

Nº. 25-6364

IN THE

Supreme Court of the United States

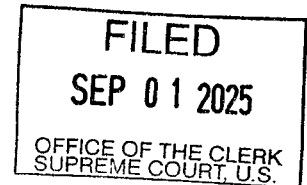
JOSHUA LUCKEY,

Petitioner,

v.

STATE OF LOUISIANA,

Respondents.



ON PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF
LOUISIANA COURT OF APPEAL, FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the trial court violate Luckey's Sixth Amendment right to confrontation and his XIV Amendment right to due process when evidence showing prior false allegations by the victims was not allowed into trial which would have established his innocence?

PARTIES TO THE PROCEEDINGS BELOW

All parties appear in the caption of the case on the cover page.

LIST OF PROCEEDINGS

Louisiana Supreme Court

Nº. 2023-KH-01259

*State of Louisiana v.
Joshua Luckey*

Date of Final Opinion: June 3, 2025

Louisiana Supreme Court

Nº. 2023-KH-01259

*State of Louisiana v.
Joshua Luckey*

Date of Opinion: December 19, 2023

Louisiana Court of Appeal, Fifth Circuit

Nº. 23-KH-314

*State of Louisiana v.
Joshua Luckey*

Date of Final Opinion: July 24, 2023

Louisiana District Court (Jefferson Parish)

Nº. 13-0751

*State of Louisiana v.
Joshua Luckey*

Date of Final Opinion: February 7, 2023

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Louisiana Supreme Court, dated June 3, 2025, is included in the appendix at App.1a. The opinion is reported at *State v. Luckey*, 2023-01259 (La. 6/3/25), 410 So.3d 787 (Mem). The ruling of the Louisiana Supreme Court dated December 19, 2023, is included in the appendix at App.3a. The opinion is reported at *State v. Luckey*, 2023-01259 (La. 12/19/23), 374 So.3d 975 (Mem). The ruling of the Louisiana Court of Appeal, Fifth Circuit, dated July 24, 2023, is included below at App.4a. The opinion is not reported or published. The findings of fact and conclusions of law of

the 24th Judicial District Court in and for the Parish of Jefferson, State of Louisiana, dated February 7, 2023, is included below at App.8a. The ruling is not reported or published.

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on June 3, 2025.

App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VI, of the U.S. Constitution (Rights of the accused) states that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV, Section 1 of the U.S. Constitution (Citizens of the United States) states that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Art. 1, Section 16 of the Louisiana Constitution (Right to a Fair Trial) states that (in pertinent part):

Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

STATEMENT OF THE CASE

On the April 3, 2013, the State in and for the 24th Judicial District Court charged Luckey by bill of information with the offense of sexual battery of known juvenile, E.D. (D.O.B. 9-22-05) in violation of La. R.S. 14:43.1 (count 1) and with the sexual battery of a known juvenile A.B. (D.O.B. 7-18-08) in violation of La. R.S. 14:43.1 (count 2).

The bill of information alleged that Luckey committed both offenses on or between November 1, 2011, and February 3, 2013, when the juveniles were, at most, seven and four years old respectively.

Luckey was arraigned on these charges and entered a single plea of not guilty. Following a jury trial, the jury rendered a verdict of guilty on both counts on November 14, 2014. On February 9, 2015, the 24th Judicial District Court sentenced Luckey to serve (25) twenty-five years on each count with those sentences to run consecutive to each other. Luckey filed his first application for post-conviction relief which was subsequently denied on September 24, 2018. Federal habeas corpus was finally denied on July 12, 2022.

Luckey filed his second application for post-conviction relief, which was denied by the trial court on February 7, 2023. App.8a. The Court of Appeal, Fifth Circuit denied writs with an opinion on July 24, 2023, with the Louisiana Supreme Court originally denying writs on December 19, 2023, stating that the writ application was untimely. App.4a; App.1a. An application for rehearing was filed with proof provided that the writ application was in-fact filed on time. The Louisiana Supreme Court denied the application for rehearing on June 3, 2025. App.1a.

REASONS FOR GRANTING THE PETITION

This Honorable Court should grant this petition for writ of certiorari because it is well established law that a criminal defendant has a Sixth Amendment right to confront witnesses against him. This Honorable Court has indicated that "[t]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." *Davis v. Alaska*, 415 U.S. 308, 315-16, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974). A criminal defendant can prove a violation of his Sixth Amendment rights by "showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.'" *Delaware v. Van Arsdall*, 475 U.S. 673, 680, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986). The Louisiana Constitution also grants this right. La. Constitution Article 1 § 16.

Even more vital to that right is public confidence in a judicial system that would not convict an innocent person. This Honorable Court stated, "indeed, concern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system. That concern is reflected, for example, in the fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." *Schlup v. Delo*, 513 U.S. 298, 325, 115 S.Ct. 851, 866, 130 L.Ed.2d 808 (1995) (citing, *In re Winship*, 397 U.S. 358, 372, 90 S.Ct. 1068, 1077, 25 L.Ed.2d 368 (1970)) (internal quotations omitted); See also T. Starkie, *Evidence* 756 (1824) ("The maxim of the law is . . . that it is better that ninety-nine . . . offenders should escape, than that one innocent man should be condemned."). This is the very thing that

happened in this case. To allow the conviction to stand would be a miscarriage of justice of the highest order.

The Trial Court Precluded Luckey from Cross-Examining E.D. with Impeachment Evidence Concerning a Prior False Allegation.

Defense was denied introduction of evidence from the St. Tammany Sheriff's Office where the victims in this case made claims against their under "Jerry Jenkins" prior to Luckey's trial. These alleged accusations, after a brief investigation, were dismissed and no charges filed against Mr. Jenkins after it was determined that the statements against him were false. If the trial court would have allowed these records to be submitted into evidence, the credibility of the victims would have been brought into question. The evidence would have demonstrated a pattern of identical behavior between what was alleged against the uncle Mr. Jenkins and the allegations against Luckey. The evidence would have also provided a solid explanation as to how the victims (E.D. & A.B.) were so well coached into being able to give such outrageous false accusations.

The United States Court of Appeal, Ninth Circuit heard a similar case in 2009 in *Holley v. Yarbough*, 568 F.3d 1091 (9th Cir. 2009). In the Holley case, relying on *Davis*, *Van Arsdall*, and *Lucas*, the court held that the trial court committed constitutional error by denying Holley the right to meaningful cross-examination of the prosecution's leading witness when it precluded Holley from introducing impeachment evidence against the victim [Raina] in that case. *Holley*, 568 F.3d at 1102, citing *Davis v. Alaska*, *supra*; *Delaware v. Van Arsdall*, *supra*; and *Michigan v. Lucas*, 500 U.S. 145, 111 S.Ct. 1743, 114 L.Ed.2d 205 (1991). The Holley court reasoned that Holley's cross-examination of Raina and introduction of evidence that she had made prior claims of her own sexual appeal was clearly relevant to impeach Raina, and thus allow the jury to evaluate the credibility

of her allegations. Discrediting the accuracy and reliability of Raina's testimony could have shown a tendency to exaggerate or overstate, if not outright fabricate. *Holley*, 568 F.3d at 1099 (internal citations omitted). This sentiment is echoed in the 2005 case *Fowler v. Sacramento County Sheriff's Dep't*, 421 F.3d 1027, 1035 (9th Cir. 2005) ("[T]he right to cross-examine includes the opportunity to show [not only] that a witness is biased, [but also] that the testimony is exaggerated or [otherwise] unbelievable." (alteration in original) (quoting *Pennsylvania v. Ritchie*, 480 U.S. 39, 51-52, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987))). "Evidence that Raina had a highly active sexual imagination or that she had a familiarity with sexual activities was relevant to counter the prosecution's theory of the case, as emphasized during closing argument, that a little like Raina would not fabricate things of a sexual nature." *Holley*, 568 F.3d at 1099.

Like *Holley*, Luckey sought to impeach E.D.'s credibility by presenting the certified reports associated with the case that was dismissed involving the uncle Jerry Jenkins. St. Tammany Parish Sheriff's Office (STPSO) would have testified to the nature of the allegations involving Mr. Jenkins, their falsity, and the subsequent dropping of the charges. Also, like *Holley*, being able to discredit the accuracy and reliability of E.D.'s testimony could have shown to the jury a tendency to exaggerate or overstate, if not outright fabricate. Like Raina in *Holley's* case, the prosecution needed to characterize E.D. as a child who could be relied on to tell the whole truth, and not exaggerate or fantasize about sexual issues, and this characterization might reasonably have been put into question by the evidence of the prior allegation of sexual battery by her uncle. Because E.D.'s "accuracy and truthfulness" were key elements of the state's case, the jury might have received a significantly different impression of her credibility had Luckey

been allowed to introduce evidence of E.D.'s prior allegations of sexual battery by her uncle and cross-examine her about them. Luckey contends that E.D.'s credibility formed the heart of the prosecution's case. Basically, the trial was nothing more than a credibility contest between the alleged victims and Luckey. Without knowing about E.D.'s false accusations against her uncle, the jury could not evaluate her accusations against Luckey in the full context of a pattern of false accusations and a possible underlying motive.

In *Holley*, the allegations that Raina brought used the same language against Holley that Raina had told two neighborhood children concerning doing "weird stuff" in a closet with her boyfriend, a term she also used to describe what Holley had done in rubbing her legs and breasts; that a neighborhood boy wanted to "hump her brains out"; and that her brother Matthew had once tried to have sex with her. *Holley*, 568 F.3d at 1096-97 (quotations in original). Like *Holley*, there were several similarities between the account described by E.D. against Luckey and the account concerning the charges that were dismissed against the uncle. The allegations against the uncle revealed that a pornographic movie was viewed by E.D.; in the allegations against Luckey there was an alleged pornographic movie involved. In the allegations against the uncle, E.D., was allowed to watch the rest of a television show in exchange for her allowing sexual acts; in the allegations against Luckey, E.D. was given "frozen fruit" in exchange for allowing the sexual acts; in the allegations against the uncle, E.D. said uncle told her "it's a secret between us and you may never tell;" in the allegations against Luckey, E.D. said that Luckey said the same thing "it's a secret between us and you may never tell."

This Honorable Court has stated that, "a showing of constitutional error under the Sixth Amendment only merits [relief] if the error was not harmless, that is, if it had a

substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 638, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993). As the Ninth Circuit found in the *Holley* case, Luckey asks that this Honorable Court finds that the error committed by the trial court was not harmless, given the importance of E.D.'s testimony in front of the jury. "Precluding cross-examination of a central, indeed crucial witness to the prosecution's case is not harmless error." *Olden v. Kentucky*, 488 U.S. 227, 232-33, 109 S.Ct. 480, 102 L.Ed.2d 513 (1988) (per curiam).

Luckey is Innocent of the Charges that were brought against him but was not able to effectively prove his innocence due to the trial court's error.

La. Code Crim. P. art. 926.2 allows defendants to bring claims of factual innocence to the courts accompanied with new, reliable, and noncumulative evidence that would be legally admissible at trial and that was not known or discoverable at or prior to trial. Luckey brought the claim of factual innocence to the lower state courts, which included sworn affidavits from Susan Whitehead and Luckey's father concerning his whereabouts during the time of the alleged crimes. Luckey could not be in two places at the same time. At a minimum, this new evidence warranted an evidentiary hearing. The lower courts should not have precluded Luckey from bringing his factual innocence claim. This Honorable Court has adhered to the principle that habeas corpus [collateral attack] is, at its core, an equitable remedy. This Court has consistently relied on the equitable nature of habeas corpus to preclude application of strict rules of res judicata. Thus, for example, in *Sanders v. United States*, this Court held that a habeas court must adjudicate even a successive habeas claim when required to do so by the "ends of justice." *Sanders v. United States*, , 373 U.S. 1, 15-17, 83 S.Ct. 1068, 1077-1078, 10 L.Ed.2d 148 (1963). While recognizing that successive petitions are generally precluded from review, Justice Powell's plurality

opinion expressly noted that there are "limited circumstances under which the interests of the prisoner in relitigating constitutional claims held meritless on a prior petition may outweigh the countervailing interest served by according finality to the prior judgment." *Kuhlmann v. Wilson*, 477 U.S. 436, 452, 106 S.Ct. 2616, 2626, 91 L.Ed.2d 364 (1986).

The *Carrier* standard requires a habeas petitioner to show that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." *Murray v. Carrier*, 477 U.S. 478, 496, 106 S.Ct. 2639, 2649-2650, 91 L.Ed.2d 397 (1986). To establish the requisite probability, the petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence. Luckey has already presented to this Honorable Court the violation of his Sixth and Fourteenth Amendment rights when the state lower courts denied him the right to cross-examine the witnesses against him using impeachment evidence. As this Court held in *Schlup v. Delo*, using the *Carrier* standard, an evidentiary hearing is warranted to assess the probative force of the newly presented evidence in connection with the evidence of guilt adduced at trial. *Schlup v. Delo*, 513 U.S. at 330. The state presented no physical or DNA evidence at trial against Luckey. The only evidence was the uncorroborated statements of the victims, which were easily contradicted with the introduction of the false allegations that were brought against the uncle. In Louisiana, "the testimony of a single witness is sufficient to support a conviction." *State v. Deason*, 2022-597 (La.App. 3 Cir. 2/23/23), 357 So.3d 955, 958, writ denied, 2023-00436 (La. 9/6/23), 369 So.3d 1268 (Mem). The jury found an innocent man guilty. This Honorable can right this wrong by granting this application for writ of certiorari.

CONCLUSION

For these reasons, the petition for a Writ of Certiorari should be granted.

Respectfully submitted this **1st** day of **September, 2025**.

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