

IN THE
SUPREME COURT OF FLORIDA

VINCENT J. ROEBUCK,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC07-807

District Court Case No. 1D05-2882

INITIAL BRIEF OF PETITIONER

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A. TABLE OF CONTENTS

| | Page |
|--|------|
| A. TABLE OF CONTENTS | ii |
| B. TABLE OF CITATIONS | iii |
| 1.Cases | iii |
| 2. Statutes | iv |
| 3.Other Authority | v |
| C. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS | 1 |
| D. SUMMARY OF ARGUMENT..... | 10 |
| E. ARGUMENT AND CITATIONS OF AUTHORITY | 11 |
| The trial court erred by preventing Petitioner Roebuck from impeaching the alleged victim with her prior false accusation | 11 |
| 1. Standard of Review. | |
| 2. Argument..... | |
| F. CONCLUSION..... | |
| G. CERTIFICATE OF SERVICE..... | |
| H. CERTIFICATE OF COMPLIANCE | |

B. TABLE OF CITATIONS

P

1. Cases

| | |
|--|-----------------|
| <i>Allen v. Butterworth</i> , 756 So. 2d 52 (Fla. 2000) | |
| <i>Carter v. Hewitt</i> , 617 F.2d 961 (3rd Cir. 1980) | |
| <i>Chambers v. Mississippi</i> , 410 U.S. 284 (1973) | 27 |
| <i>Clark v. State</i> , 567 So. 2d 1070 (Fla. 3d DCA 1990) | |
| <i>Cliburn v. State</i> , 710 So. 2d 669 (Fla. 2d DCA 1998) | 2-3, 10, 15-16, |
| <i>Conner v. State</i> , 748 So. 2d 950 (Fla. 1999) | |
| <i>Coxwell v. State</i> , 361 So. 2d 148 (Fla. 1978) | |
| <i>Davis v. Alaska</i> , 415 U.S. 308 (1974) | |
| <i>Florida Bar re Amendment of Florida Evidence Code</i> , 404 So. 2d 743 (Fla. 1981) | |
| <i>Grau v. Branham</i> , 761 So. 2d 375 (Fla. 4th DCA 2000) | |
| <i>In re Amendments to the Florida Evidence Code</i> , 782 So. 2d 339 (Fla. 2000) | |
| <i>In re Florida Evidence Code</i> , 675 So. 2d 584 (Fla. 1996) | |
| <i>In re Florida Evidence Code</i> , 638 So. 2d 920 (Fla. 1993) | |
| <i>In re Florida Evidence Code</i> , 376 So. 2d 1161 (Fla. 1979) | |
| <i>In re Florida Evidence Code</i> , 372 So. 2d 1369 (Fla. 1979) | |
| <i>Jaggers v. State</i> , 536 So. 2d 321 (Fla. 2d DCA 1988) | 2-3, 10, 15 |
| <i>J.H.C. v. State</i> , 642 So. 2d 601 (Fla. 2d DCA 1994) | |

| | |
|---|------------------|
| <i>Morrell v. State</i> , 335 So. 2d 836 (Fla. 1st DCA 1976) | |
| <i>Roebuck v. State</i> , 953 So. 2d 40 (Fla. 1st DCA 2007) | 2-3, 19, |
| <i>Rogers v. State</i> , 511 So. 2d 526 (Fla. 1987) | |
| <i>Rykiel v. Rykiel</i> , 838 So. 2d 508 (Fla. 2003) | |
| <i>State v. Guenther</i> , 854 A.2d 308 (N.J. 2004) | 10, 20 |
| <i>State v. Stradtman</i> , 346 So. 2d 67 (Fla. 1977) | |
| <i>Stradtman v. State</i> , 334 So. 2d 100 (Fla. 3d DCA 1976) | |
| <i>Williams v. State</i> , 386 So. 2d 25 (Fla. 2d DCA 1980) | 2, 10, 15-16, 18 |
| <i>Williams v. State</i> , 110 So. 2d 654 (Fla. 1959) | |

2. Statutes

| | |
|---------------------------------|--------|
| § 90.401, Fla. Stat. | |
| § 90.402, Fla. Stat. | |
| § 90.403, Fla. Stat. | 11, |
| § 90.404, Fla. Stat. | 13, |
| § 90.404(1), Fla. Stat. | |
| § 90.404(1)(b), Fla. Stat. | |
| § 90.405, Fla. Stat. | |
| § 90.405(2), Fla. Stat. | 13, |
| § 90.608, Fla. Stat. | |
| § 90.609, Fla. Stat. | 13-14, |

| | |
|---------------------------------|------------|
| § 90.610, Fla. Stat. | 3, 14, 19, |
| § 794.022, Fla. Stat. | |
| § 800.04(4)(a), Fla. Stat. | |

3. Other Authority

| | |
|--|--------|
| Art. I, § 9, Fla. Const. | |
| Art. I, § 16, Fla. Const. | |
| Fla. R. App. P. 9.210(a)(2) | |
| N.J. R. Evid. 104 | |
| N.J. R. Evid. 403 | |
| N.J. R. Evid. 405 | |
| N.J. R. Evid. 405(a) | |
| N.J. R. Evid. 608 | 21, 23 |
| N.J. R. Evid. 609 | 21, |
| U.S. Const. amend VI | |
| U.S. Const. amend XIV | |
| 3A Wigmore on Evidence § 979 (Chadbourn rev. 1970) | 22 |

C. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS.

1. Statement of the Case and Course of Proceedings Below.

Vincent J. Roebuck (hereinafter Petitioner Roebuck) was arrested and charged by information with one count of lewd or lascivious battery, pursuant to section 800.04(4)(a), Florida Statutes. (R-1).¹ The offense allegedly occurred between August 9, 2004, and August 12, 2004, in Leon County, Florida. At the time that the allegation was made, the alleged victim, A.B.,² lived with her brother, Okolo Donaldson, and his wife, Teshia Miller. Ms. Miller is Petitioner Roebuck's cousin. A.B. was fourteen years old at the time of the alleged offense.

At trial, Petitioner Roebuck was represented by Paul Srygley, Esquire. The State was represented by Assistant State Attorney Robin Lotane. The Honorable Timothy Harley, acting circuit court judge, presided over the trial.

¹ References to the First District Court of Appeal record, case number 1D05-2882, will be made by the designation "R" followed by the appropriate page number. In addition to the original volume, the pleadings portion of the record includes a separately bound supplemental record. References to the two-volume trial transcript will be made by the designation "T" followed by the appropriate volume number and page number. References to the sentencing hearing will be made by the designation "S" followed by the appropriate page number. References to the jury selection proceeding will be made by the designation "JS" followed by the appropriate page number.

² Out of respect for all of the parties in this case, only the initials of the alleged minor victim will be used in this brief. *See J.H.C. v. State*, 642 So. 2d 601, 601 n.1 (Fla. 2d DCA 1994).

The trial jury was selected on April 25, 2005 (JS-1),³ and the case was tried on April 27, 2005. (T1-1). At the conclusion of the case, the jury returned a verdict of guilty as charged. (T2-228; R-20).

The sentencing hearing was held May 19, 2005. (S-1). Petitioner Roebuck was sentenced to twelve years' imprisonment followed by three years' sex offender probation. (S-18; R-23). A timely notice of appeal was filed on June 14, 2004. (R-40).

On direct appeal to the First District Court of Appeal, Petitioner Roebuck argued that the trial court erred by preventing him from introducing evidence that the alleged victim had made a prior false accusation. In support of his argument, Petitioner Roebuck relied upon *Cliburn v. State*, 710 So. 2d 669 (Fla. 2d DCA 1998), *Jaggers v. State*, 536 So. 2d 321 (Fla. 2d DCA 1988), and *Williams v. State*, 386 So. 2d 25 (Fla. 2d DCA 1980), wherein the Second District Court of Appeal held that a defendant has a right to impeach a witness if the witness has previously made a false accusation.

On March 30, 2007, the First District issued a written opinion affirming Petitioner Roebuck's conviction. *See Roebuck v. State*, 953 So. 2d 40 (Fla. 1st DCA 2007). In the decision, the First District rejected the Second District's prior

³ The Honorable Richard Hood, senior judge, presided over the jury selection proceeding.

false accusation line of cases and held that section 90.610, Florida Statutes, prohibits a defendant from impeaching a witness based on a prior false accusation. *See Roebuck*, 953 So. 2d at 41-44. The First District certified conflict with *Cliburn* and *Jaggers*. *See Roebuck*, 953 So. 2d at 41 (“However, in affirming as to appellant’s first issue, we certify conflict with *Cliburn v. State*, 710 So. 2d 669 (Fla. 2d DCA 1998), and *Jaggers v. State*, 536 So. 2d 321 (Fla. 2d DCA 1988), to the extent these cases create a false reporting exception to section 90.610, Florida Statutes (2005).”). On July 2, 2007, the Court accepted jurisdiction in order to resolve this conflict.

2. Statement of the Facts.

a. The State’s Case in Chief. Teshia Miller. At the time of trial, Ms. Miller resided in Tallahassee with her husband (Okolo Donaldson), her sister-in-law (A.B., the alleged victim), and her two-month-old son. (T1-34-35). In the summer of 2004, A.B. moved in with Ms. Miller⁴ because A.B.’s mother was having financial problems. (T1-35). Ms. Miller testified that Petitioner Roebuck is her cousin. (T1-35).

Ms. Miller testified that in the summer of 2004, Petitioner Roebuck was frequently at her house spending time with her husband. (T1-36). Ms. Miller

⁴ A.B.’s mother lived in the Virgin Islands and A.B. moved from the Virgin Islands to Tallahassee to live with Ms. Miller and Mr. Donaldson. (T1-46).

claimed that in September of 2004, she received some news from her mother, Saurita Tirado, regarding Petitioner Roebuck and A.B. (T1-37). Based on the conversation with Ms. Tirado, Ms. Miller talked to A.B. (T1-39). Ms. Miller testified that A.B. told her that she had been raped by Petitioner Roebuck. (T1-40). After talking to A.B., Ms. Miller called the police. (T1-40).

Jeffrey Mazerac. Mr. Mazerac, an officer with the Tallahassee Police Department, responded to Ms. Miller's residence on September 13, 2004. (T1-51). Upon arrival, Officer Mazerac talked to Teshia Miller, A.B., and Okolo Donaldson. (T1-51-53). Officer Mazerac stated that Petitioner Roebuck was twenty-three years old at the time of the alleged incident and A.B. was fourteen years old. (T1-53).

Okolo Donaldson. Mr. Donaldson stated that his sister (A.B.) came to live with him on July 19, 2004. (T1-59). Mr. Donaldson claimed that in the summer of 2004, he came home from work⁵ on a particular day at approximately 1:00 p.m. and found Petitioner Roebuck in the house with A.B. (T1-61). When he arrived home, Petitioner Roebuck was in the living room and A.B. was in her bedroom. (T1-62). On cross-examination, Mr. Donaldson admitted that he could not remember the exact date or month that he had found Petitioner Roebuck and A.B.

⁵ Ms. Miller testified that Mr. Donaldson was not working when the incident allegedly occurred. (T1-46-47).

in his house. (T1-67).

A.B. A.B. alleged that during the summer of 2004, Petitioner Roebuck came to her house on a particular day (about a week before school started)⁶ when no one else was there. (T1-73). It was the only day Petitioner Roebuck had ever come to the house when no one else was there. (T1-74). A.B. opened the door and allowed Petitioner Roebuck to enter the house. (T1-74). The two subsequently engaged in a conversation, wherein Petitioner Roebuck told A.B. that her brother (Mr. Donaldson) owed him money. (T1-74). A.B. claimed that Petitioner Roebuck began touching her face. (T1-74). The two went to the couch and A.B. asserted that Petitioner Roebuck began fondling her breasts. (T1-75). A.B. claimed that she “froze up” and that she was scared. (T1-75). A.B. alleged that Petitioner Roebuck took off her pants⁷ and “took out his penis.” (T1-75). She testified that he already had a condom on his penis. (T1-75). A.B. claimed that Petitioner Roebuck proceeded to have sex with her. (T1-75). After the alleged encounter, A.B. testified that Petitioner Roebuck told her that if she ever told anyone about the incident, he would kill her brother. (T1-79). She claimed that her brother arrived home shortly after the alleged incident. (T1-79). A.B. alleged that she did not tell her brother (or anyone else) because she was scared for her brother’s life.

⁶ A.B. started school in August of 2004. (T1-71-72).

(T1-79, 81).

Proffered testimony. Defense counsel proffered additional testimony from A.B. outside the presence of the jury concerning a prior false accusation that A.B. had made against her brother. (T1-95). A.B. acknowledged that when she lived in the Virgin Islands, she accidentally burned herself on her face with an iron. (T1-96). When questioned about the burn by her teachers, a nurse, and her mother, A.B. blamed the burning incident on her brother (Okolo Donaldson). (T1-96). A.B. admitted that she had lied about the incident and that her brother did not burn her. (T1-96-97). As a result of the false accusation, A.B.’s brother was sent to jail and/or a juvenile detention center for six months. (T1-96-97).

At the conclusion of the proffered testimony, the trial court ruled that Petitioner Roebuck would not be able to present to the jury the testimony regarding A.B.’s prior false accusation. (T1-103). The trial court held that the evidence was “not proper impeachment.” (T1-103).

At the conclusion of A.B.’s testimony, the State rested. (T1-90).

b. Petitioner Roebuck’s Case in Chief.

Saurita Tirado. Ms. Tirado is Teshia Miller’s mother and Petitioner Roebuck’s aunt. (T1-111). Before A.B. made the accusation against Petitioner

⁷ A.B. stated that Petitioner Roebuck did not pull down her underwear. (T1-77).

Roebuck, Ms. Tirado learned that A.B. might be sent back to the Virgin Islands due to problems Ms. Miller and Mr. Donaldson were having with A.B. (T1-116-17). Prior to trial, defense counsel proffered that Ms. Miller and Mr. Donaldson had discovered that A.B. was having a sexual relationship (with someone other than Petitioner Roebuck) and in order to avoid punishment and in order to avoid being sent back to the Virgin Islands, A.B. fabricated the charge against Petitioner Roebuck. (T1-8-9). However, the trial court ruled pretrial that Petitioner Roebuck would not be able to present any evidence regarding the alleged sexual relationship with the other man or men. (T1-16). During Ms. Tirado's testimony, the trial court again prevented defense counsel from questioning the witness regarding A.B.'s sexual relationship with the other man/men. (T1-116).

Teshia Miller (recalled). Ms. Miller stated that it was not until after A.B. accused Petitioner Roebuck of raping her that she considered sending A.B. back to the Virgin Islands. (T1-132). Ms. Miller admitted that she had encountered some problems getting A.B. to fulfill her household chores. (T1-133). Ms. Miller also admitted that there had been times when A.B. had come home late. (T1-133). Ms. Miller acknowledged that she approached her mother (Ms. Tirado) about obtaining money for a plane ticket to send A.B. back to the Virgin Islands (T1-135); but Ms. Miller claimed that she did not approach her mother until after A.B. claimed that she had been sexually assaulted by Petitioner Roebuck. (T1-135). Ms. Miller

testified that her cousin (Glenn Barkley)⁸ may have stayed at her house in the summer of 2004. (T1-138-39).

Saurita Tirado (recalled). Ms. Tirado stated that *prior* to the date that A.B. claimed that Petitioner Roebuck sexually assaulted her, Ms. Miller had asked to borrow some money from Ms. Tirado in order to buy a plane ticket to send A.B. back to the Virgin Islands. (T1-140).

Barry Lee Harris. At the time of trial, Mr. Harris was seventeen years old. (T1-152). Mr. Harris was a friend of Mr. Donaldson and had previously spent a substantial amount of time at Mr. Donaldson's house. (T1-150). On several occasions, Petitioner Roebuck and A.B. were also at Mr. Donaldson's house when Mr. Harris was there. (T1-151). Mr. Harris said that on at least one occasion, he heard Mr. Donaldson threaten to send A.B. back to the Virgin Islands. (T1-154).

Okolo Donaldson (recalled). Mr. Donaldson acknowledged that he did not have a good relationship with his wife's family. (T2-168).

A.B. (recalled). A.B. continued to claim that Petitioner Roebuck had the condom on his penis when he entered her residence on the day of the incident, yet she admitted that Petitioner Roebuck did not have an erection when he initially entered the residence. (T2-174).

⁸ At the time of trial, Mr. Barkley was approximately thirty years old. (T1-139).

At the conclusion of A.B.'s testimony, the defense rested. (T2-185). The State did not present any rebuttal witnesses. (T2-185).

c. Verdict. The parties gave their closing arguments (T2-192-219), and the trial court instructed the jury. (T-186-91, 219-224). The jury found Petitioner Roebuck guilty as charged. (T2-228; R-20).

D. SUMMARY OF ARGUMENT.

Petitioner Roebuck submits that the trial court erred by preventing him from impeaching the alleged victim with her prior false accusation. Although Florida law generally prohibits impeachment based on specific acts of misconduct, the Second District has recognized an exception when a victim/witness has made a prior false accusation. *See Cliburn v. State*, 710 So. 2d 669 (Fla. 2d DCA 1998); *Jaggers v. State*, 536 So. 2d 321 (Fla. 2d DCA 1988); *Williams v. State*, 386 So. 2d 25 (Fla. 2d DCA 1980). Petitioner Roebuck submits that the interests of justice favor adopting the prior false accusation exception espoused by the Second District. Moreover, as recently explained by the New Jersey Supreme Court in *State v. Guenther*, 854 A.2d 308, 323 (N.J. 2004), “[t]he weight of authority from other jurisdictions” allows a criminal defendant to impeach a victim/witness with a prior false accusation. Finally, preventing a criminal defendant from impeaching a victim/witness with a prior false accusation violates the defendant’s constitutional right of confrontation. Accordingly, Petitioner Roebuck respectfully requests the

Court to quash the decision below and remand with directions that Petitioner Roebuck receive a new trial wherein he is permitted to impeach the alleged victim with her prior false accusation.

E. ARGUMENT AND CITATIONS OF AUTHORITY. The trial court erred by preventing Petitioner Roebuck from impeaching the alleged victim with her prior false accusation.

1. Standard of Review.

“As a general rule, relevant evidence is that which tends to prove or disprove a material fact.” *Grau v. Branham*, 761 So. 2d 375, 378 (Fla. 4th DCA 2000) (citing § 90.401, Fla. Stat.). “All relevant evidence is admissible unless its probative value is substantially outweighed by the danger of unfair prejudice, or unless otherwise excluded by law.” *Id.* (citing §§ 90.402, 90.403, Fla. Stat.). A trial court’s ruling regarding the admissibility of relevant evidence is reviewed on appeal pursuant to the abuse of discretion standard of review. *See id.* However, Petitioner Roebuck submits that whether the Florida Evidence Code contains a prior false accusation exception to the rules governing impeachment of witnesses is a pure question of law subject to the *de novo* standard of review. *See Rykiel v. Rykiel*, 838 So. 2d 508, 510 (Fla. 2003) (stating that if the issue presented in a decision is a pure question of law, the decision is subject to *de novo* review). Similarly, whether Petitioner Roebuck’s constitutional right of confrontation was violated by the trial court’s ruling is also a pure question of law subject to the *de*

novo standard of review.

2. Argument.

This case presents two questions for the Court's review. First, the Court must decide whether the Florida Evidence Code permits a criminal defendant to impeach a victim/witness with the victim/witness' prior false accusation. If the answer to the first question is no, then the Court must decide whether a criminal defendant's state and federal constitutional right to confrontation overrides the Florida Evidence Code and compels the admission of a victim/witness' prior false accusation.

a. The facts of the instant case.

Prior to trial, defense counsel informed the trial court that he intended to introduce evidence that A.B. had previously made a false accusation against another person. (T1-19). The trial court instructed defense counsel to proffer the testimony during the trial, indicating that a ruling on the admissibility of the evidence would be made at the time of the proffer. (T1-20). The trial court added that "[t]he fact that a witness may have said something untruthful in a collateral matter is not necessarily admissible." (T1-20).

During the trial, defense counsel proffered the testimony of A.B. outside the presence of the jury. (T1-95). A.B. acknowledged that when she lived in the

Virgin Islands, she accidentally burned herself on her face with an iron, but when questioned about the incident by her teachers, a nurse, and her mother, A.B. blamed the burning incident on her brother. (T1-96). A.B. admitted that she had lied about the incident and that her brother did not burn her. (T1-96-97). As a result of the false accusation, A.B.'s brother was sent to jail and/or a juvenile detention center for six months. (T1-96-97).

The trial court ruled that Petitioner Roebuck would not be able to present to the jury the testimony regarding A.B.'s prior false accusation. (T1-103). The trial court held that the evidence was "not proper impeachment." (T1-103). Petitioner Roebuck submits that the trial court erred by preventing him from presenting evidence that A.B. had made a prior false allegation.

b. The Florida Evidence Code.

The Florida Evidence Code generally prohibits "[e]vidence of a person's character or a trait" of his or her character "to prove action in conformity with it on a particular occasion." § 90.404(1), Fla. Stat. The general prohibition on the use of character evidence, however, is subject to a number of exceptions. *See* § 90.404(1)(b), Fla. Stat.;⁹ § 90.405(2), Fla. Stat.;¹⁰ § 90.609, Fla. Stat.¹¹ The instant

⁹ Section 90.404, entitled "Character evidence not admissible to prove conduct; exceptions; other crimes; evidence," provides in subsection (1)(b):

Character of victim.—

case concerns the exception pertaining to a victim/witness' character for untruthfulness to attack the victim/witness' credibility at trial.

The Florida Evidence Code permits evidence in the form of reputation or a prior criminal conviction to attack a victim/witness' credibility by establishing the victim/witness' character for untruthfulness. *See* § 90.609, Fla. Stat.; § 90.610, Fla. Stat.¹² A party may introduce such evidence for the purpose of asking a jury

1. Except as provided in s. 794.022[, Florida Statutes], evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the trait; or

2. Evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor.

¹⁰ Section 90.405, entitled "Methods of proving character," provides in relevant part:

(2) Specific instances of conduct. – When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of that person's conduct.

¹¹ Section 90.609, entitled "Character of witness as impeachment," provides:

A party may attack or support the credibility of a witness, including an accused, by evidence in the form of reputation, except that:

(1) The evidence may refer only to character relating to truthfulness.

(2) Evidence of a truthful character is admissible only after the character of the witness for truthfulness has been attacked by reputation evidence.

¹² Section 90.610, entitled "Conviction of certain crimes as impeachment," provides:

to draw an inference that a witness with a reputation for untruthfulness is capable of lying on the stand. However, this Court has held that “evidence of particular acts of misconduct cannot be introduced to impeach the credibility of a witness.” *Rogers v. State*, 511 So. 2d 526, 532 (Fla. 1987).

c. The Second District’s prior false accusation exception.

Despite the general rule prohibiting impeachment based on specific acts of misconduct, the Second District has recognized an exception when a victim/witness has made a prior false accusation. See *Cliburn v. State*, 710 So. 2d 669 (Fla. 2d DCA 1998); *Jaggers v. State*, 536 So. 2d 321 (Fla. 2d DCA 1988); *Williams v. State*, 386 So. 2d 25 (Fla. 2d DCA 1980). As explained below, in all

(1) A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which the witness was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:

(a) Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.

(b) Evidence of juvenile adjudications are inadmissible under this subsection.

(2) The pendency of an appeal or the granting of a pardon relating to such crime does not render evidence of the conviction from which the appeal was taken or for which the pardon was granted inadmissible. Evidence of the pendency of the appeal is admissible.

(3) Nothing in this section affects the admissibility of evidence under s. 90.404 or s. 90.608[, Florida Statutes].

three of these cases, the criminal defendant was permitted to impeach a victim/witness with the victim/witness' prior false accusation.

In *Cliburn*, the defendant was charged with burglarizing his former girlfriend's apartment. The defendant attempted to introduce evidence that the former girlfriend had previously filed a false kidnapping charge against another boyfriend, but the trial court held that the evidence regarding the prior false accusation was inadmissible. *See Cliburn*, 710 So. at 670. The Second District reversed, stating:

The victim was the prosecution's key witness on the burglary charge. In fact, she was the State's only witness to the events constituting the charged crime. As we noted in *Williams v. State*, 386 So. 2d 25, 26 (Fla. 2d DCA 1980), the credibility of such a witness is a crucial issue. In that case, we held that the trial court erred when it refused to allow defense counsel to impeach the State's key witness by showing that she had made a false statement to police on a previous occasion. *Id.* at 26-27. Moreover, in *Jaggers v. State*, 536 So. 2d 321, 327 (Fla. 2d DCA 1988), where the witness previously had made a false allegation of sexual abuse, we noted that evidence relevant to a prosecuting witness's possible bias or corruptness is admissible. When assessing a key witness's credibility, the jury must know about any improper motives. *Id.*

The reasoning in *Williams* and *Jaggers* requires reversal of the burglary conviction in this case. We remand for a new trial on that count. The proffered testimony concerning the false police report is admissible on retrial.

Cliburn, 710 So. 2d at 670.

Similarly, in *Jaggers*, the defendant was charged with capital sexual battery

(three minor victims). At trial, the State presented a *Williams*¹³ rule witness who testified that she had previously been sexually abused by the defendant. *See Jagers*, 536 So. 2d at 326. On cross-examination, defense counsel sought to ask that witness if she had not, on a previous occasion, charged her own father with a sexual assault on her and then later admitted the falsity of the charge against her father. *See id.* at 327. The trial court prevented the evidence regarding the prior false accusation, finding that the credibility of a witness may not be impeached by proof that the witness has committed specific acts of misconduct. *See id.* On appeal, the Second District reversed, concluding that evidence concerning a prior false accusation is an exception to the rule that the credibility of a witness may not be impeached by proof that the witness has committed specific acts of misconduct:

[F]or every broad general principle of law, there seems to be an exception applicable to particular circumstances. Section 90.405(2), Florida Statutes (1985) allows proof of specific incidents of conduct where that evidence is offered to prove a particular trait of character. In this case, that trait of character was that the witness may be inclined to lie about sexual incidents and charge people with those acts without justification.

There is a long line of authority from this court and others which permits the type of testimony on cross-examination that was prohibited here. Evidence that is relevant to the possible bias, prejudice, motive, intent or corruptness of a witness is nearly always not only admissible, but necessary, where the jury must know of any improper motives of a prosecuting witness in determining that witness' credibility. That is particularly true in the case of allegations

¹³ *Williams v. State*, 110 So. 2d 654 (Fla. 1959).

of sexual abuse where there is no independent evidence of the abuse and the defendant's sole defense is either fabrication or mistake on the part of the alleged victims.

....

The trial court erred in refusing to allow the defense to cross-examine Brown regarding her prior false statement to the police. Brown was the key prosecution witness because she was the only witness to the shooting other than Williams. Thus, her credibility was a crucial issue.

Id. at 327-28.

Finally, in *Williams*, the defendant was charged with murder and the defendant's version of events at trial conflicted with the version provided by the only other witness to the crime. The defense attempted to impeach the witness by establishing that the witness had lied to the police on a previous occasion,¹⁴ but the trial court prevented the impeachment. *See Williams*, 386 So. 2d at 26. The Second District reversed, reasoning:

The trial court erred in refusing to allow the defense to cross-examine Brown regarding her prior false statement to the police. Brown was the key prosecution witness because she was the only witness to the shooting other than Williams. Thus, her credibility was a crucial issue. In *Stradtman v. State*, 334 So. 2d 100, 101 (Fla. 3d DCA 1976), *approved*, 346 So. 2d 67 (Fla. 1977), the Third District Court of Appeal held:

It is a well recognized rule that limiting the scope of

¹⁴ The previous lie involved an incident where the witness observed a known person throw a brick at her car, which caused the witness to call the police, but when the police arrived, the witness lied and said that she did not know who had thrown the brick. *See Williams*, 386 So. 2d at 26.

cross-examination in a manner which keeps from the jury relevant and important facts bearing on the trustworthiness of crucial testimony constitutes error, especially where the cross-examination is directed to the key prosecution witness.

Accord, Morrell v. State, 335 So. 2d 836 (Fla. 1st DCA 1976). We agree and hold that it was error for the court to refuse to permit defense counsel to impeach Brown's credibility by showing that she had lied to the police on a prior occasion. This right is particularly important in a capital case such as this where a defendant's right to cross-examine witnesses is carefully guarded, and limiting cross-examination on any matter plausibly relevant to the defense may constitute reversible error. *Coxwell v. State*, 361 So. 2d 148 (Fla. 1978).

Williams, 386 So. 2d at 26-27 (footnote omitted). *See also Clark v. State*, 567 So. 2d 1070, 1071 (Fla. 3d DCA 1990) (holding that the trial court erred by preventing defense from questioning witness about whether she had lied about a prior accusation).

Petitioner Roebuck requests the Court to adopt the prior false accusation exception espoused by the Second District. Petitioner Roebuck submits that such an exception is mandated by the interests of justice.¹⁵ Moreover, as explained

¹⁵ In the opinion below, the First District rejected the Second District's prior false accusation exception because the First District concluded that exception is contrary to the legislative intent set forth in section 90.610. *See Roebuck*, 953 So. 2d at 43 ("The statute as written properly implements legislative intent, and it is not for this court to add unwritten provisions to the statute where the statute is clear on its face."). Petitioner Roebuck notes that "[g]enerally, the Legislature has the power to enact substantive law, while the Court has the power to enact procedural law." *Allen v. Butterworth*, 756 So. 2d 52, 59 (Fla. 2000). This Court has previously

below, the weight of authority from other jurisdictions generally favors allowing a criminal defendant to impeach a victim/witness with a prior false accusation.

d. The New Jersey Supreme Court's decision in *State v. Guenther*, 854 A.2d 308 (N.J. 2004).

In *State v. Guenther*, 854 A.2d 308 (N.J. 2004), the New Jersey Supreme Court addressed whether a victim in a criminal case can be impeached with evidence of a prior false accusation. In *Guenther*, the defendant was charged with sexual assault and other crimes related to the abuse of his stepdaughter. At trial, the defendant was prevented from introducing evidence of a prior false accusation of sexual abuse that his stepdaughter made against a neighbor. After reviewing the common law, New Jersey caselaw, and cases from other jurisdictions, the New Jersey Supreme Court adopted a prior false accusation exception to the New Jersey

recognized that “the Florida Evidence Code is both substantive and procedural in nature” *In re Amendments to the Florida Evidence Code*, 782 So. 2d 339, 342 (Fla. 2000) (citing *In re Florida Evidence Code*, 372 So. 2d 1369 (Fla. 1979) (adopting Evidence Code to the extent it is procedural), *clarified*, *In re Florida Evidence Code*, 376 So. 2d 1161 (Fla. 1979); *see also Florida Bar re Amendment of Florida Evidence Code*, 404 So. 2d 743 (Fla. 1981); *In re Amendment of Florida Evidence Code*, 497 So. 2d 239 (Fla. 1986) (adopting amendments to Code to the extent they are procedural); *In re Florida Evidence Code*, 638 So. 2d 920 (Fla. 1993) (same); *s28 In re Florida Evidence Code*, 675 So. 2d 584 (Fla. 1996) (same)). Petitioner Roebuck submits that the existence of a prior false accusation exception is procedural in nature. It follows that this Court has exclusive jurisdiction to recognize the existence of a prior false accusation exception to the Florida Evidence Code.

Rules of Evidence.¹⁶

In *Guenther*, the New Jersey Supreme Court explained that the rule prohibiting impeachment based on specific conduct evidence derived from the common law, noting that the rule's rationale was to prevent unfairness to the witness in having to defend against all charges and to avoid confusion of the issues before the jury:

The general principle embodied in N.J.R.E. 608 and 405(a)¹⁷

¹⁶ New Jersey's rules of evidence are substantially similar to the Florida Evidence Code. In particular, New Jersey Rule of Evidence 608, entitled "Evidence of character for truthfulness or untruthfulness," provides:

The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, provided, however, that the evidence relates only to the witness' character for truthfulness or untruthfulness, and provided further that evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise. Except as otherwise provided by [New Jersey] Rule [of Evidence] 609 [(impeachment by prior convictions)], *a trait of character cannot be proved by specific instances of conduct.*

(Emphasis added).

¹⁷ New Jersey Rule of Evidence 405, entitled, "Methods of proving character," states the following in subsection (a):

Reputation, opinion, or conviction of crime. When evidence of character or a trait of character of a person is admissible, it may be proved by evidence of reputation, evidence in the form of opinion, or evidence of conviction of a crime which tends to prove the trait. Specific instances of conduct not the subject of a conviction of a crime shall be inadmissible.

originated in the common law. Accordingly, we must examine the rationale for the common law rule barring the use of specific conduct evidence to challenge a witness's credibility for truthfulness. We must determine whether that rule has continuing vitality when applied to evidence of a victim-witness's prior false accusation.

Several centuries ago, courts began to prohibit the use of prior instances of conduct to attack the credibility of a witness for two essential reasons: to prevent unfairness to the witness and to avoid confusion of the issues before the jury. 3A Wigmore on Evidence § 979, at 823, 827 (Chadbourn rev. 1970). Those reasons remain the present justification for the exclusion of specific conduct evidence. *Id.* at 823. The use of prior instances of misconduct to impeach credibility was considered to be unfair to the witness because "it would be practically impossible for the witness to have ready at the trial competent persons who would demonstrate the falsity of allegations that might range over the whole scope of his life." *Id.* at 826. Thus, the rule was designed to prevent unfair foraging into the witness's past, as well as unfair surprise.

The second rationale for the bar on specific conduct evidence was the concern that such wide-ranging collateral attacks on the general credibility of a witness would cause confusion of the true issues in the case. *Ibid.* Courts were reluctant to permit testimony on minor points that would invite more tangential testimony relating to the witness's character for truthfulness, needlessly protracting the trial "with relatively little profit." *Ibid.* Modern courts continue to cite that rationale – the avoidance of "minitrials" on collateral matters that "tend to distract and confuse the jury" – as the primary justification for the exclusion of prior acts evidence. *Carter v. Hewitt*, 617 F.2d 961, 971 (3rd Cir. 1980). It was not a lack of relevance that gave rise to the rule prohibiting evidence of prior instances of untruthful conduct to impeach the witness's credibility, but the "auxiliary policies" regarding unfairness to the witness, confusion of issues, and undue consumption of time. Wigmore, *supra*, § 979, at 827.

Guenther, 854 So. 2d at 315. The New Jersey Supreme Court explained that if the concerns regarding unfairness and confusion are alleviated, then the rationale for

the rule prohibiting impeachment based on specific conduct evidence no longer exists:

When those “auxiliary policies” do not apply, the rationale for the exclusion of such evidence no longer exists. [3A Wigmore on Evidence § 979, at 827]. An example is the long-standing rule allowing the admission of a prior criminal conviction as a method of undermining the general credibility of a witness. *Id.* § 980, at 828. The use of a prior criminal conviction does not require the calling of witnesses because “the judgment cannot be reopened and no new issues” are raised. *Ibid.* In addition, there is no danger of unfair surprise because the witness presumably is aware of his own record of conviction. *Ibid.* Similarly, our rules permit testimony in the form of an opinion regarding a witness’s reputation for lack of truthfulness in the community because the scope of inquiry is limited and the witness is protected against a prolonged excursion on a collateral matter. In short, our rules recognize the power and relevance of evidence relating to a witness’s character for truthfulness. However, we prohibit the use of specific instances of conduct to prove a character trait for pragmatic reasons associated with the efficient and orderly presentation of a trial.

Id. at 315-16 (citation omitted).

After reviewing New Jersey precedent, the New Jersey Supreme Court concluded that “a prior false allegation is not admissible to impeach the general credibility of a witness under a plain reading of N.J.R.E. 608.” *Id.* at 318. However, the New Jersey Supreme Court held that an exception to the New Jersey evidence rules is warranted under limited circumstances:

We conclude that in limited circumstances and under very strict controls a defendant has the right to show that a victim-witness has made a prior false criminal accusation for the purpose of challenging that witness’s credibility. Although our Confrontation Clause

jurisprudence informs our decision, we do not decide this issue on constitutional grounds, but rather by making a narrow exception to N.J.R.E. 608 consistent with the rationale of that rule.

A witness's propensity for making false criminal allegations is admissible if presented in the proper form. For instance, under our evidence rules, a witness may testify in the form of an opinion that the victim has a reputation for lying, and the defendant may argue from such testimony that the victim is, therefore, not worthy of belief. N.J.R.E. 608. Moreover, a criminal conviction may be used to impeach the witness for the purpose of drawing an inference that the witness's testimony is not as trustworthy as that of a person with a blameless past. *See* N.J.R.E. 608, 609. Both examples are permissible attacks on the general credibility of a witness; neither imposes the burden of a mini-trial.

That a victim-witness uttered a prior false accusation may be no less relevant, or powerful as an impeachment tool, than opinion testimony that the witness has a reputation for lying. Moreover, a prior criminal conviction for criminal mischief or aggravated assault probably has far less bearing on the trustworthiness of a victim's testimony than a prior false accusation, but there is no question concerning the admissibility of the prior conviction. Yet, proving a prior false accusation – unlike presenting reputation testimony or evidence of a prior conviction – if not strictly regulated, could cause the very type of sideshow trial that N.J.R.E. 608 was intended to prevent. We are confident, however, that trial courts, with proper guidance and limitations, can decide appropriately when the admission of prior false accusation evidence is central to deciding a case that hinges on the credibility of a victim-witness. Trial courts are well qualified to determine when such evidence will create the prospect of a mini-trial and when the probative value of that evidence is outweighed by the risk of undue prejudice, confusion of the issues, or waste of time. *See* N.J.R.E. 403. In certain cases, we believe that the interests of justice require that we relax the strictures against specific conduct evidence in N.J.R.E. 608.

Id. at 323.¹⁸

¹⁸ The holding in *Guenther* is consistent with “[t]he weight of authority from other

Petitioner Roebuck requests the Court to adopt the well-reasoned opinion of the New Jersey Supreme Court.¹⁹ As in New Jersey, under the Florida Evidence

jurisdictions.” *Guenther*, 854 A.2d at 323. In *Guenther*, the New Jersey Supreme Court surveyed other jurisdictions and found that a number of states allow a criminal defendant to impeach a victim with evidence of a prior false accusation. See *Guenther*, 854 A.2d at 321-23.

¹⁹ The New Jersey Supreme Court articulated the framework to be followed by trial courts when deciding whether a prior false accusation is admissible:

We now must determine the circumstances that will justify the admission of prior false accusation evidence. First, we limit our holding to a criminal case that involves the impeachment of a victim-witness whose credibility was the central issue in the case. The trial in this case essentially was reduced to a credibility contest between the victim and defendant. Second, the introduction of the prior false accusation evidence cannot become the tail wagging the dog; that is, proof of the false accusation cannot become such a diversion that it overshadows the trial of the charges itself. On the one extreme, we will have the witness who admits the false accusation on cross-examination, averting the need for extrinsic evidence. At the other extreme, we will have the witness who claims that the prior accusation is true, in which case only a complete trial of that issue will determine the truth or falsity of the accusation. In keeping with the historical rationale for the common law rule now codified in N.J.R.E. 608, we disfavor using the trial of charged offenses as the forum for an extended mini-trial for the collateral determination of a prior criminal accusation.

In deciding whether to permit the impeachment of a victim-witness who allegedly made a prior false accusation, trial courts must first conduct an admissibility hearing pursuant to N.J.R.E. 104. At that hearing, the court must determine by a preponderance of the evidence whether the defendant has proven that a prior accusation charging criminal conduct was made by the victim and whether that accusation was false. That standard strikes the right balance, placing an initial burden on the defendant to justify the use of such evidence while not

Code, a witness may testify that the victim has a reputation for lying, and the defendant may argue from such testimony that the victim is, therefore, not worthy of belief. *See* § 90.609, Fla. Stat. Moreover, a criminal conviction may be used to impeach the victim/witness for the purpose of drawing an inference that the

setting an exceedingly high threshold for its admission. We note that the admission of this type of specific conduct evidence is an exception to N.J.R.E. 608 and should be limited only to those circumstances in which the prior accusation has been shown to be false. Among the factors to be considered in deciding the issue of admissibility are:

1. whether the credibility of the victim-witness is the central issue in the case;
2. the similarity of the prior false criminal accusation to the crime charged;
3. the proximity of the prior false accusation to the allegation that is the basis of the crime charged;
4. the number of witnesses, the items of extrinsic evidence, and the amount of time required for presentation of the issue at trial; and
5. whether the probative value of the false accusation evidence will be outweighed by undue prejudice, confusion of the issues, and waste of time.

If the court, pursuant to its gate-keeping role, determines that evidence of the prior false accusation is admissible, the court has the discretion to limit the number of witnesses who will testify concerning the matter at trial. The court must ensure that testimony on the subject does not become a second trial, eclipsing the trial of the crimes charged.

Guenther, 854 So. 2d at 324. In Petitioner Roebuck’s case, there was no danger of the “mini-trial” *Guenther* sought to avoid. A.B. admitted that the accusation against her brother was false and the defense counsel’s impeachment concerning this prior false accusation would have only required the presentation of one witness (the cross-examination of A.B.) and would have taken very little time to present.

victim/witness' testimony is not as trustworthy as that of a person with a blameless past. *See* § 90.610, Fla. Stat. Both examples are permissible attacks on the general credibility of a victim/witness; neither imposes the burden of a mini-trial. That a victim/witness uttered a prior false accusation may be no less relevant, or powerful as an impeachment tool, than testimony that the victim/witness has a reputation for lying. And, as the New Jersey Supreme Court explained, a prior criminal conviction for criminal mischief or aggravated assault probably has far less bearing on the trustworthiness of a victim/witness' testimony than a prior false accusation, but there is no question concerning the admissibility of the prior conviction.

e. Constitutional right to confront witnesses.

The due process clauses of the Fourteenth Amendment to the United States Constitution and article I, section 9, of the Florida Constitution guarantee a criminal defendant the right to a fair trial. The ability to call witnesses to testify on one's own behalf has "long been recognized as essential to due process." *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). It is also well established that a defendant has the right to confront witnesses against him as guaranteed by the Sixth Amendment to the United States Constitution and article I, section 16, of the Florida Constitution. *See Davis v. Alaska*, 415 U.S. 308, 318 (1974); *Conner v. State*, 748 So. 2d 950, 954-55 (Fla. 1999). "The right of an accused in a criminal

trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers*, 410 U.S. at 294. "The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process." *Id.*

Petitioner Roebuck's constitutional right of confrontation was denied by the trial court's refusal to allow Petitioner Roebuck to cross-examine A.B. regarding the prior false accusation. Petitioner Roebuck submits that his constitutional right of confrontation takes precedence over the common law rule embodied in the Florida Evidence Code to the extent that the Code bars impeachment of a victim/witness with a prior false accusation.

In the opinion below, the First District rejected Petitioner Roebuck's constitutional claim, reasoning that the prior false accusation was not relevant:

We are not unmindful that, based on the facts of a particular case, due process may require germane cross-examination of a witness regarding a prior incident of false reporting. However, in the instant case, the facts as presented at trial do not support the finding of a due process violation. In Florida, section 90.403, Florida Statutes (2004), authorizes the exclusion of otherwise relevant evidence where the evidence's prejudice outweighs its probative value. Such a balancing test is authorized and does not violate due process. *Id.* In the instant case, the prior incident of false reporting did not involve appellant and was not made concerning allegations of sexual abuse. As such, the evidence lacked the necessary relevance needed to amount to a due process violation.

Roebuck, 953 So. 2d at 44 (citation omitted). Petitioner Roebuck submits that it

was error to conclude that the prior false accusation was irrelevant simply because the accusation involved a different party and a different crime. In *Cliburn*, the Second District applied the prior false accusation exception even though the prior false accusation involved a third party and a different crime. *See Cliburn*, 710 So. 2d at 609-10.²⁰ Pursuant to *Cliburn*, the prior false accusation in the instant case was relevant.

Accordingly, for all of the reasons set forth above, Petitioner Roebuck respectfully requests the Court to adopt the prior false accusation exception recognized by the Second District and the New Jersey Supreme Court. Petitioner Roebuck was denied a fair trial as a result of the trial court's refusal to allow him to impeach A.B. with the prior false accusation. A.B. was the State's only witness to the events constituting the charged crime. The credibility of A.B. was the crucial issue in this case.²¹ The jury had a right to know about A.B.'s prior false

²⁰ In *Cliburn*, the defendant (the alleged victim's former boyfriend) was charged with burglary. The alleged victim had previously made a false kidnapping accusation against a previous boyfriend. *See Cliburn*, 710 So. 2d at 670.

²¹ Petitioner Roebuck submits that A.B. had a motive to lie about the allegation in the instant case. First, at the time of the allegation, A.B. was being threatened by her guardians with the possibility of being sent back to the Virgin Islands due to her improper behavior. The allegation against Petitioner Roebuck allowed A.B. to remain in the United States (because it shifted her family's focus from her to Petitioner Roebuck). (T1-10). Second, at the time of the allegation, Petitioner Roebuck was seemingly angry with A.B.'s brother (and possibly A.B. as well) because A.B.'s brother owed money to Petitioner Roebuck. (T1-74). Notably,

accusation before assessing her credibility. The trial court's ruling violated Petitioner Roebuck's constitutional right of confrontation. Petitioner Roebuck is therefore entitled to a new trial.

A.B. made the prior false accusation against her brother because, at the time of the prior allegation, her brother was angry with her: "I knew that he was angry with me." (T1-96).

F. CONCLUSION.

Petitioner Roebuck respectfully requests that the First District's decision in *Roebuck* be quashed and that this case be remanded with directions that Petitioner Roebuck receive a new trial wherein he is permitted to impeach the alleged victim with her prior false accusation. All appropriate relief is respectfully requested

G. CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

Assistant Attorney General Giselle Lylen Rivera
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by U.S. mail delivery this 27th day of July, 2007.

Respectfully submitted,

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H. CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies pursuant to Florida Rule of Appellate Procedure 9.210(a)(2) that the Initial Brief of Petitioner complies with the typefont limitation.

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