

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

HECTOR L. LEDESMA,

Petitioner,

v.

GOVERNMENT OF THE VIRGIN ISLANDS,

Respondent.

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CIVIL NO. SX-07-CV-558

**PETITION FOR WRIT OF HABEAS
CORPUS**

MEMORANDUM OPINION

MOLLOY, Robert A., Judge

THIS MATTER comes before the Court on Petitioner's Extraordinary Motion for Writ of Habeas. Petitioner, Hector Ledesma ("Ledesma"), seeks the dismissal of his conviction for aggravated rape in the first degree and unlawful sexual contact in the first degree. Ledesma also seeks immediate release from incarceration. Ledesma argues that the victim, B.T., has credibly recanted her trial testimony and he is therefore entitled to such relief because he is factually innocent. The People argue that B.T.'s recantation is not credible and that Petitioner's motion should be denied. After a review of the record and the Magistrate Judge's recommendation, the Court will deny Petitioner's request for habeas relief.

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 11, 2004, a jury of the Territorial Court of the Virgin Islands for the District of St. Croix found Ledesma guilty of aggravated rape in the first degree and unlawful sexual contact in the first degree.¹ The Territorial Court entered Judgment and Commitment on

¹ The Territorial Court was renamed the Superior Court on October 9, 2004. *See Mitchell v. Wilson*, 62 V.I. 326, 332 n.5 (Super. Ct. 2015).

August 2, 2004. Ledesma was sentenced to concurrent terms of fifteen years without the possibility of parole for aggravated rape and five years for unlawful sexual contact. Ledesma filed a timely notice of appeal on August 2, 2004. The instant matter, filed on November 17, 2007, was stayed pending the outcome of the appeal. Ledesma filed a Motion for Injunction on September 2, 2008, to seek an evidentiary hearing on the premise of “newly discovered” information contained within this Motion and the habeas motion. On April 22, 2009, the Appellate Division of the District Court of the Virgin Islands upheld Ledesma’s conviction after finding sufficient evidence to convict Ledesma of the charged crimes.

Following the resolution of Ledesma’s appeal, Ledesma filed a Motion for Status Conference on December 14, 2009. This matter was assigned to a magistrate judge to submit a recommendation for final disposition.² The Court issued an Order scheduling this matter for an evidentiary hearing, which was held on November 21, 2011.³ At the hearing, the victim in the underlying rape case, B.T., recanted her trial testimony via video conference. Detective Naomi Joseph, who appeared in person, provided testimony reaffirming the finding of her original investigation that Hector Ledesma had a sexual relationship with B.T., a child under the age of thirteen. After the hearing, the parties were given the opportunity to further brief the issues, which they did. On June 5, 2012, the magistrate judge issued her recommendation that the writ of habeas corpus should be denied. Ledesma filed an objection to the

² The magistrate judge would “conduct hearings and submit proposed findings of fact and make recommendations for the disposition by a Superior Court Judge of any motion of applications of post-trial relief made by individuals convicted of criminal offenses.” Form D. Req. for Designation of Magistrate, March 29, 2010.

³ The underlying criminal trial was held on June 9-11, 2004. The magistrate judge held an evidentiary hearing on Ledesma’s habeas petition on November 21, 2011. This memorandum opinion references both court transcripts from Ledesma’s criminal trial and the evidentiary hearing. To avoid confusion, the Court will cite the trial transcript as “Trial Tr.” and the evidentiary hearing as “Hr’g Tr.” henceforth.

recommendation arguing that the magistrate judge incorrectly determined that B.T.'s recantation was not credible, because the magistrate judge applied an erroneous standard to evaluate Ledesma's evidence.

II. LEGAL STANDARD

The Revised Organic Act, codified at 48 U.S.C. § 1561 et seq., "serves as a *de facto* constitution for the Virgin Islands," and mandates that, "[a]ll persons shall have the privilege of the writ of habeas corpus." *Rivera-Moreno v. Gov.'t of the V.I.*, 61 V.I. 279, 296-97 (V.I. 2014) (referencing *Tobal v. People*, 51 V.I. 147, 152 (V.I. 2009)). Under the Virgin Islands Code, "[e]very person unlawfully imprisoned or restrained of his liberty, under any pretense whatsoever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint." 5 V.I.C. § 1301. "Habeas corpus is an equitable remedy whereby individuals who are restrained in violation of their constitutional rights may seek release." *Monsanto v. Gov.'t of the V.I.*, 49 V.I. 163, 169 (V.I. Super. Ct. 2007) (citing *Wilkinson v. Dotson*, 544 U.S. 74, 78-79 (2005)), *rev'd on other grounds sub nom. People v. Monsanto*, Civ. No. 2007/129, 2007 V.I. Supreme LEXIS 21 (V.I. 2009) (unpublished). Notably, the habeas corpus statute is procedural – the issuance of the writ does not decide the issues or guarantee the petitioner is entitled to relief. *Rivera-Moreno*, 61 V.I. at 312 (internal citation omitted). However, the habeas corpus petition is not a vehicle for directly appealing a conviction or relitigating trial. *Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 377 (V.I. 2013) (opining that "[i]t is settled legal precedent that criminal defendants are barred from using [post-conviction collateral attacks like habeas] to relitigate issues decided on direct appeal" (internal quotations and citation omitted)); *see also Ibrahim v. Gov.'t of the V.I.*, Civ. No. 2007/76, 2008

V.I. Supreme LEXIS 20, at *4 (V.I. Jan. 18, 2008) (unpublished) (stating that “a writ of habeas corpus is an inappropriate medium to rehash these issues”).

The Court has the power to conduct evidentiary hearings to hear proof in favor and against the allegedly false imprisonment or detention, but must first determine whether the writ for habeas corpus establishes a prima facie claim for relief. “When presented with a petition for writ of habeas corpus, a court must first determine whether the petition states a prima facie case for relief – that is, whether it states facts that, if true, entitle the petitioner to relief – and also whether the stated claims are for any reason procedurally barred.” *Rivera-Moreno*, 61 V.I. at 311 (quoting *People v. Romero*, 883 P.2d 388, 391 (Cal. 1994)). The habeas petitioner “bears the burden of proving the facts supporting the petition or establishing grounds entitling him to relief.” *Monsanto*, 49 V.I. at 169. If a petitioner alleges that he is illegally imprisoned, the petition must state how the imprisonment is illegal. 5 V.I.C. § 1302(2). “The petitioner must state specific factual allegations which require habeas relief rather than conclusory or speculative allegations.” *Mitchell v. Wilson*, 62 V.I. 326, 330 (V.I. Super. Ct. 2015). The Court will deny the habeas petition outright if it determines that the petition does not state a prima facie case for relief. *Donovan v. Gov.'t of the V.I.*, 2013 V.I. LEXIS 21, at *7 (V.I. Super. Ct. Mar. 25, 2013); see *Mitchell*, 62 V.I. at 330. If the petition for writ of habeas corpus is denied, then “[i]f the time during which such party may be legally detained in custody has not expired, the court shall remand such party if it appears that he is legally detained in custody—(1) by virtue of process issued by a court or judge in a case where such court or judge has jurisdiction; or (2) by virtue of a warrant or final judgment or decree of

any competent court of criminal jurisdiction, or of any process issued upon such warrant, judgment or decree." 5 V.I.C. § 1313.

When the Court has determined that the petitioner has established a prima facie case for relief and ought to issue the writ, the Court "shall grant [a writ of habeas corpus] without delay." 5 V.I.C. § 1304. When a petition for writ of habeas corpus is granted, the court "may order a remedy other than discharge from incarceration." *Rivera-Moreno*, 61 V.I. at 298. Upon the Court's issuance of the writ, the respondent must file a return responding to the allegations in the habeas corpus petition. 5 V.I.C. § 1308. The burden of proof then shifts to the respondent to establish the legality of the petitioner's custody in the return, which becomes the principle pleading in the habeas proceeding. *Mitchell*, 62 V.I. at 330. The petitioner files an answer to the return, referred to as the traverse, which is analogous to an answer in a civil case. *Rivera-Moreno*, 61 V.I. at 313. After the traverse is filed, the Court will hold an evidentiary hearing to determine the merits of the habeas corpus petition. *Id.* at 314. The official or person holding the petitioner in custody must bring "the body of the party" before the Court for the hearing of the return, where the Court "shall proceed to hear and examine the return, and such other matters as may be properly submitted to its hearing and consideration." 5 V.I.C. §§ 1309-1310. The Court shall conduct the hearing so that the parties may present proof in favor of granting or denying the habeas petition. 5 V.I.C. § 1311. During the hearing, the Court has the power to compel the attendance of witnesses, perform all such acts as necessary to ensure a fair and impartial hearing, and determine the merits of the habeas petition. *Id.*

In this matter, the Court did not explicitly grant the writ. The Court, however, determined that Ledesma had made a prima facie showing that he may be entitled to relief by adhering to the procedure under the habeas corpus statute. The Court appointed Ledesma an attorney to represent him; ordered a response from the Government; held an evidentiary hearing on B.T.'s recantation testimony where witnesses were examined and cross-examined; brought forth Ledesma's body to the hearing to be there in person; and reviewed several legal briefs both for and against granting the petition for writ of habeas corpus. *See* Transcript for the Evidentiary Hearing (Nov. 21, 2011) at 4 [hereinafter "Hr'g Tr."]. Thus, the Court finds that the writ was effectively granted and the Court will proceed to analyze the merits of the case. *See Rivera-Moreno*, 61 V.I. at 312 (determining that "the Superior Court implicitly found, by appointing the Office of the Territorial Public Defender as his counsel and ordering a response from the Government, that Rivera-Moreno had made a prima facie showing that he may be entitled to relief, and thus *in effect* granted the writ") (emphasis added)).

III. DISCUSSION

Ledesma seeks habeas corpus relief arguing that the victim, B.T., has recanted her previous trial testimony and confessed to her mother that she was not raped by Ledesma. Extraordinary Mot. for Writ of Habeas, at 2. Following an evidentiary hearing, at which B.T. further recanted her trial testimony, Ledesma claims that he has shown that he is factually innocent by more than a preponderance of the evidence. Pet'r's Args. in Supp. of the Honorable Magistrate Judge's Recommendation that Pet'r's Habeas Corpus Pet. be Granted,

at 1. Accordingly, he argues for his immediate release because he has been committed on a criminal charge without reasonable or probable cause. *Id.* at 2.

The Appellate Division of the District Court of the Virgin Islands found, on direct appeal, that the evidence presented at trial was sufficient to uphold Ledesma's conviction. *Ledesma v. Government of the Virgin Islands*, 51 V.I. 792 (D.V.I. App. 2009). "[C]onviction after a constitutionally adequate trial strips the defendant of the presumption of innocence. The government bears the burden of proving the defendant's guilt beyond a reasonable doubt, but once the government has done so, the burden of proving innocence must shift to the convicted defendant." *Herrera v. Collins*, 506 U.S. 390, 443 (1993) (Blackmun, J., dissenting). Here, Ledesma was required to make a sufficient showing that the new recantation evidence presented entitles him to relief.

A. The Credibility of the Recantation Testimony

The V.I. Supreme Court has held that "[r]ecantation is suspect and therefore unreliable." *Phillips v. People of the V.I.*, 51 V.I. 258, 281 (V.I. 2009). "[S]uch evidence designed to contradict earlier in-court testimony is viewed with the 'utmost suspicion.'" *Id.* (citing *United States v. DiPaolo*, 835 F.2d 46, 49 (2d Cir. 1987)). "Recantation testimony is properly viewed with great suspicion. It upsets society's interest in the finality of convictions, is very often unreliable and given for suspect motives, and most often serves merely to impeach cumulative evidence rather than to undermine confidence in the accuracy of the conviction." *Dobbert v. Wainwright*, 468 U.S. 1231, 1233-34, 105 S. Ct. 34, 36 (1984) (Brennan, J., dissenting opinion) (rejecting the Court's denial of a stay of execution due to his objection to the use of the death penalty); *see also United States v. Jackson*, 427 F. App'x 109, 112 (3d Cir.

2011) (reiterating previous Third Circuit case law that “[r]ecanting affidavits and witnesses are viewed with extreme suspicion.”); *Mokhtar Haouari v. United States*, 510 F.3d 350, 353 (2d Cir. 2007) (determining that “[i]t is axiomatic that witness recantations ‘must be looked upon with the utmost suspicion.’”); *United States v. Dogskin*, 265 F.3d 682, 685 (8th Cir. 2001) (holding that courts “look upon recantation with suspicion” and that “recanted testimony that bears on a victim’s credibility or directly on the defendant’s guilt will warrant a new trial if it would probably produce an acquittal on retrial.”) (internal citations omitted); *Landano v. Rafferty*, 856 F.2d 569, 572 (3d Cir. 1988) (opining that “[c]ourts have historically viewed recantation testimony with great suspicion”); *United States v. Vincent*, 491 F.2d 1326, 1332 (2d Cir. 1974), cert. denied, 419 U.S. 880, 42 L. Ed. 2d 120, 95 S. Ct. 144 (1974) (stating that “[r]ecanting affidavits and witnesses are looked upon with ‘the utmost suspicion’ by the courts”).

Furthermore, recantation testimony tends to be an unreliable form of proof, particularly when it involves an admission of perjury. *Teagle v. Diguglielmo*, 336 F. App’x. 209, 213 (3d Cir. 2009); see *Commonwealth v. Henry*, 550 Pa. 346, 363, 706 A.2d 313, 321 (1997) (“Recantation testimony is extremely unreliable. When the recantation involves an admission of perjury, it is the least reliable form of proof.”) (internal citations and quotations omitted). When the recantation is in the form of an affidavit, in which the witness admitted that his testimony at trial was perjury, it does not fall into any category of reliable evidence – such as exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence. *Ajamu-Osagboro v. Patrick*, 620 F. Supp. 2d 701, 718 (E.D. Pa. 2009) (citing

Schlup v. Delo, 513 U.S. 298, 324, 115 S. Ct. 851, 865 (1995)).⁴ When the evidence is an affidavit that a witness perjured his testimony at trial and is now recanting, “[s]uch suspicious and untrustworthy evidence does not, in the absence of additional corroborating evidence or circumstances, meet the standard of reliability contemplated by *Schlup*.” *Teagle*, 336 F. App’x at 213 (finding that the witnesses’ affidavits admitting perjury failed to meet the *Schlup* standard of new and reliable evidence – even if they had, a reasonable juror would have been more likely than not to find beyond a reasonable doubt that the defendant committed the crime); *Dahn v. Reddish*, Crim. No. 1:05-CV-79 (WLS), 2010 U.S. Dist. LEXIS 144718, at *14 (M.D. Ga. Dec. 7, 2010), *vac’d on other grounds*, No. 09-12261, 382 F. App’x. 853 (11th Cir. 2010) (deciding that even though a child rape victim recanted her testimony in an affidavit, and then reversed her recantation in a deposition, but it did not meet the *Schlup* standard of new evidence to prove actual innocence).

Skepticism for recantation testimony is particularly warranted “in cases of child sexual abuse where recantation is a recurring phenomenon.” *Mulholland v. Government County of Berks, Pa.*, 706 F.3d 227, 240 n.18 (3d Cir. 2013) (quoting *United States v. Provost*,

⁴ The U.S. Supreme Court has held “that prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, ‘it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.’ This formulation, *Schlup* explains, ‘ensures that petitioner’s case is truly extraordinary, while still providing petitioner a meaningful avenue by which to avoid a manifest injustice.’” *House v. Bell*, 547 U.S. 518, 536-37, 126 S. Ct. 2064, 2076-77 (2006) (quoting *Schlup v. Delo*, 513 U.S. 298, 327). The new evidence (i.e. admission of perjured testimony under oath) would have to cross the threshold from skepticism to being so reliable and credible to prove actual innocence and conclusively exonerate the defendant. In other words, the new evidence would be so convincing to prove the petitioner’s actual innocence that it would be more likely than not that a reasonable juror would have reasonable doubt that the defendant committed the crime. See *Jones v. Taylor*, 763 F.3d 1242, 1247 (9th Cir. 2014) (finding the “[recantation] evidence insufficient to meet the high standard required to merit relief on a freestanding actual innocence claim because it was not a case of conclusive exoneration, and several pieces of evidence remained uncontested that pointed to the petitioner’s guilt”) (internal quotations omitted). The *Schlup* legal standard is demanding and permits review only in the extraordinary case.

969 F.2d 617, 621 (8th Cir. 1992)); *United States v. Miner*, 131 F. 3d 1271, 1273-1274 (8th Cir. 1997) (determining that "[s]kepticism about recantations is especially applicable in cases of child sexual abuse where recantation is a recurring phenomenon"). In *Edwards v. Government of the Virgin Islands*, the District Court opined that "skepticism about recantation is especially applicable in cases of child abuse where recantation is a recurring phenomenon such as when family members are involved and the child has feelings of guilt or family members seek to influence the child to change her story." *Edwards v. Gov.'t of the Virgin Islands*, Crim. No. 2001/247, 2006 U.S. Dist. LEXIS 67452, at *8-9 (D.V.I. Aug. 29, 2006) (internal quotations and citations omitted) (holding that the "recanted" testimony of a child abuse victim consisting of a statement that she forgave her father and still loved him was insufficient to entitle defendant to a new trial), *aff'd Virgin Islands v. Edwards*, 233 F. App'x 167 (3d Cir. 2007)); *see also United States v. Loudner*, 203 F. Supp. 2d 1083, 1101 (D.S.D. 2002) (opining that "[r]ecanted testimony is viewed with skepticism because a child who makes subsequent statements directly contradicting her earlier testimony either is lying now, was lying then, or lied both times") (internal quotations and citation omitted); *State v. Tharp*, 372 N.W.2d 280, 282 (Iowa Ct. App. 1985) (determining that "[i]n cases of [child sex abuse], where families are torn apart, there is great pressure on the child to 'make things right'").

Provided that a court or a jury could have convicted the defendant with sufficient evidence presented at trial, the recantation of testimony of a witness will not necessarily trigger a re-trial or an evidentiary hearing. *Malone v. People of the V.I.*, 53 V.I. 408, 428 (V.I. 2010) (internal quotations and citations omitted) (holding that the defendant was not

entitled to a new trial or an evidentiary hearing based on witnesses' recantation of testimony, unless the defendant could demonstrate that without the testimony, the jury might have reached a different conclusion). Even in cases where the "[u]ncorroborated testimony of the victim is sufficient evidence for conviction," the trial court must determine the reliability of the recanting witness because the reliability of the recantation is controlling on the trial court's discretion to grant relief, whether or not the original testimony of that witness was the sole basis for conviction. *State v. Ieng*, 87 Wash. App. 873, 878, 942 P.2d 1091, 1094 (1997);⁵ *see also Woods v. State*, 141 So. 3d 14, 15 (Miss. App. 2014) (upholding the defendant's conviction of statutory rape because the court found both the victim's affidavit and her testimony at the [evidentiary] hearing were not credible, while her testimony at [the] trial had been credible; therefore no new trial was warranted).⁶

B. Findings by the Magistrate Judge

After holding an evidentiary hearing, the magistrate judge found that B.T.'s testimony was unreliable and that her recantation was unbelievable. Magistrate Judge's Recommendation for Denial of Writ of Habeas Corpus, at 6. The Magistrate Judge's Recommendation considered the following as indicia of the unreliability of B.T.'s recantation:

⁵ "Recantation by an important witness of his or her testimony at the trial does not necessarily, or as a matter of law, entitle the defendant to a new trial. The determination of such matters rests in the sound discretion of the trial court, and its action will not be set aside except for clear and manifest abuse. . . . The untrustworthy character of recanting testimony is well known by those experienced in the trial of criminal cases, and when such testimony is offered, it calls for a rigid scrutiny. When the trial court, after careful consideration, has rejected such testimony, or has determined that it is of doubtful or insignificant value, its action will not be lightly set aside by an appellate court." *State v. Eder*, 78 Wash. App. 352, 362, 899 P.2d 810, 814 (1995).

⁶ In the underlying case, the victim testified at trial in great detail to having sexual intercourse with the Defendant. However, she later recanted her story to her mother and submitted an affidavit regarding her recantation. The jury found the victim's testimony credible during trial. Other evidence satisfying the elements of the crime was also presented. The Appellate Division of the District Court affirmed the convictions. *See Ledesma v. Gov't of the V.I.*, Crim. No. 2004/120, 2009 U.S. Dist. LEXIS 35126, at *10 (D.V.I. Apr. 22, 2009).

(1) B.T.'s admission of perjured testimony;⁷ (2) the great detail and conviction with which B.T. testified at trial; B.T.'s early steps to protect Ledesma during the police investigation; (3) remorse and guilt for the conviction of a man she had romantic feelings towards; and (4) sexually suggestive photographs sent by B.T. to Ledesma during his incarceration.⁸ *Id.* at 3-4. The magistrate judge determined that the recantation "was so dependent on feelings of guilt it fails to rise to a level of trustworthiness to cast any serious doubt on her trial testimony." *Id.* at 5. The magistrate judge contrasted B.T.'s recantation testimony with the evidentiary hearing testimony of Detective Joseph who reaffirmed the findings of her investigation. The magistrate judge also considered other trial evidence indicating the existence of a sexual relationship between Ledesma and B.T. Weighing B.T.'s unreliable recantation testimony "with other competent and uncontroverted evidence presented at trial," the magistrate judge came to the conclusion that "the recantation testimony does not sufficiently call into question Ledesma's conviction to warrant relief." *Id.*

Ledesma argues in his opposition to the magistrate judge's recommendation that B.T. credibly recanted her trial testimony at the evidentiary hearing. Pet'r's Objs. to the Magistrate Judge Court's Recommendation that the Pet'r's Habeas Corpus Pet. Be Denied, at 1 (hereinafter "Pet'r's Objs."). As indica of reliability of the recantation, Ledesma points to the following: (1) B.T. voluntarily came forward to recant; (2) B.T. stated that her testimony

⁷ Under the Virgin Islands Code, absent clear proof that she knew that perjury was wrongful at the time she gave her trial testimony at the age of thirteen, B.T. was not capable of committing the criminal act of perjury. See 14 V.I.C. § 14(2). However, the Court still considers an admission of presenting false testimony under oath relevant to judging the reliability of the recantation testimony.

⁸ The Magistrate Judge's Recommendation incorrectly states that Ledesma introduced the photographs at the evidentiary hearing. The photographs were introduced at the hearing by the Respondents over the objections of Ledesma's counsel. Hr'g Tr. at 28-31.

as a thirteen year old child was influenced by authority figures; (3) B.T., as a child, was a troubled girl with a history of lying; (4) B.T., as an adult, understands her obligation to tell the truth under oath; and (5) B.T.'s evidentiary hearing testimony was clear and specific. Pet'r's Objs., at 3-6.

Ledesma also points to several perceived errors in the Magistrate Judge's Recommendation that undermine its finding that B.T.'s recantation was unreliable. First, Ledesma points to "[t]he Magistrate [Judge] Court's reliance on the timing of B.T.'s claim of rape at Sunny Isle to undermine B.T.'s credibility in her Hearing testimony." *Id.* at 1. The Magistrate Judge's Recommendation states "[t]he respondent accurately points out this falsehood was told to police *after* she told her mother about her relationship and was subsequently questioned by police." Recommendation at 4. The magistrate judge found that the fabrication was likely a product of B.T.'s desire to protect Ledesma from harm and B.T.'s fear of the investigatory process. *Id.*

In addition, Ledesma claims that such a conclusion undermines the magistrate judge's recommendations because "[t]he trial record is clear; B.T. never told her mother that she had a relationship with Mr. Ledesma." However, the record does indicate that at some point B.T. did in fact tell her mother that she had sexual relations with Ledesma. During the evidentiary hearing, B.T. testified that in 2004 she was having problems with telling her mother lies and that one of those lies was that she had sex with Hector Ledesma. Hr'g Tr. at 18-19. At trial, B.T.'s mother testified that "[a]t the beginning [B.T.] didn't told [sic] me anything." Trial Tr. dated June 10, 2004, at 45 [hereinafter "Trial Tr."]. At the evidentiary hearing, B.T. indicated that her mother talked to her about the relationship with Ledesma. Hr'g Tr. at 22. By the

time the Sunny Isles rape claim was made on March 30, 2004, B.T.'s mother was already well aware of B.T.'s relationship with Ledesma. B.T. had told Esther Ferris of the Department of Human Services about the relationship (Hr'g Tr. at 79; Trial Tr. dated June 10, 2004, at 50), her mother had filed a police report on February 19, 2014 (Trial Tr. dated June 10, 2004, at 24), and B.T. had already given a statement to Detective Joseph on February 22, 2014 (Trial Tr. dated June 10, 2004, at 79).

However, the timing of when B.T. first told her mother about her relationship is a less important issue than the timing of when B.T. made the claim that she had been raped. On March 30, 2004, after hearing that Ledesma had been arrested, B.T. reported that she had previously gone to Sunny Isles Theater, with a girl whose name she did not remember, and was raped by three guys in the bathroom next to the lottery office. Trial Tr. dated June 10, 2004, at 78. Detective Joseph investigated the alleged rape and concluded that it didn't happen. *Id.* At trial B.T. testified that she claimed that she had been raped at Sunny Isles "[s]o Hector could come out of jail." Trial Tr. dated June 9, 2004, at 171. This Court finds, as the magistrate judge found, that such facts are indicative of B.T.'s desire to protect Ledesma from harm. Further, the evening after testifying at trial, B.T. threw a tantrum and broke several objects. Trial Tr. dated June 10, 2004, at 31. She told her mother that she liked Ledesma and implored her mother not do anything that could hurt him. *Id.* Her romantic feelings for Ledesma at the time of the incident and her feelings of guilt and remorse only heighten the skepticism and suspicion that naturally attaches to recantation testimony.

Ledesma also argues that the magistrate judge's findings as to the credibility of B.T.'s recantation are tainted by the magistrate judge's error when it said that Ledesma introduced

photographs at the evidentiary hearing showing an adult B.T. in sexually suggestive positions and scantily clad. As previously stated, those photographs were actually introduced by the Government over the objections of Mr. Ledesma. The fact that B.T. and Ledesma communicated over Facebook and that she has sent him such photographs weighs on the credibility of her recantation regardless of who introduced the photographs at the hearing. As B.T. indicated at the evidentiary hearing, she sent the photos because "he haven't seen me in a while; and I feel like I'm still his friend." Hr'g Tr. at 28-29. The mistake in proponent of the photographs has no bearing on the conclusion drawn above that B.T.'s past romantic feelings for Ledesma and her feelings of guilt and remorse affect the credibility of her evidentiary hearing testimony.

Additionally, Ledesma claims that the Magistrate Judge's Recommendation is undermined by the characterization of B.T.'s recantation as an admission of perjured testimony. B.T. was twelve years old when she was victimized and thirteen years old when she testified at trial. Ledesma points to Title 14, Section 14 of the Virgin Islands code which provides:

All persons are capable of committing crimes or offenses except -

...

(2) children over the age of seven years and under the age of fourteen years, in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness.

14 V.I.C. § 14.

Ledesma argues that B.T.'s evidentiary hearing testimony established a number of reasons that she did not testify truthfully at trial. At the evidentiary hearing, B.T. testified that Detective Joseph implied that if she did not tell the truth she would be sent to the Youth

Rehabilitation Center (Hr'g Tr. at 20), that Detective Joseph told her what to say (Hr'g Tr. at 22; *Id.* at 66), that the prosecutor told her what to say (Hr'g Tr. at 25), and that she didn't want to disappoint her mother (*Id.*). Ledesma asserts that "[t]he pressure of being confronted by law enforcement, together with the involvement of her mother, about a subject as sensitive as sexual intercourse, would likely cause any 12-13 year old girl to do or say whatever she thought she had to in order to avoid further confrontation and embarrassment that came with it." Pt'r's Objs. at 4. According to Ledesma, under such circumstances, it is unfair to characterize B.T.'s recantation as an admission of perjury because "[a] 12-13 year old girl who succumbs to pressure from authority figures does not exercise any malice in doing so." *Id.*

It is beyond dispute that, during B.T.'s recantation testimony, she claimed that she had presented false testimony at trial. Hr'g Tr. at 60 and 65. The magistrate judge found that this admission raised the level of suspicion around the recantation. Mag.'s Rec. at 3. This finding, however, was not dispositive on the issue of reliability. The magistrate judge held an evidentiary hearing, listened to testimony, took evidence, and examined the record to come to the conclusion that B.T.'s recantation was unreliable.

A further review of the recantation testimony gives reason to question its reliability. At the evidentiary hearing, B.T. testified that she never reported that she had been raped at Sunny Isles. Hr'g Tr. at 63. During the trial, B.T. testified that she had falsely reported that she had been raped at Sunny Isles. Trial Tr. dated June 9, 2004 at 170. Detective Naomi Joseph testified at trial that B.T. made a claim that she had been raped by three guys in a bathroom near the Sunny Isles Theater and that the conclusion of her investigation was that

it did not happen. Trial Tr. dated June 10, 2004 at 78-79. Detective Naomi Joseph also testified at the evidentiary hearing that B.T. had reported that she had been raped at Sunny Isles but that the investigation determined that no such incident occurred. Hr'g Tr. at 80.

At the evidentiary hearing when asked "isn't it true that you made a statement to Detective Joseph vividly describing Mr. Ledesma's private areas?" and B.T. answered "No." Hr'g Tr. at 63. Yet at trial, B.T. testified that she had made a signed statement to Detective Joseph and that in that statement she described Ledesma's penis as "long and skinny" and "with skin." Trial Tr. dated June 9, 2004, at 160 and 177. In other instances, B.T.'s evidentiary hearing suffered from her inability to recall details. For example, B.T. could not recall whether Ledesma had given her pictures of himself. Hr'g Tr., at 32 and 41. B.T. also could not recall how she came into possession of Ledesma's cell phone. Hr'g Tr., at 59. While the inability to recall such information seven years later might seem trivial in comparison to her outright recantation that she had sexual intercourse with Ledesma, they are indicative of the reliability of her recantation testimony.

Here, we have a minor who had romantic feelings towards a man who was subsequently convicted of statutory rape for the sexual interactions he had with her. She maintains that to this day she considers him a friend. Her recantation is so tied up in feelings of guilt and remorse that, when examined alongside the prior instances in which B.T. tried to protect Ledesma, B.T.'s claim that she lied extensively at trial, the inherently suspicious nature of recantation testimony, and the notable inconsistencies between her evidentiary hearing testimony and the evidence presented at trial, the Court finds that B.T.'s recantation is neither reliable nor credible. The Court comes to this conclusion after reviewing the

Magistrate Judge's Recommendation, the evidence presented at the evidentiary hearing, and the record.

C. The Appropriate Standard for a Claim of Actual Innocence

Ledesma argues that the magistrate judge applied an erroneous standard in evaluating the evidence presented during the evidentiary hearing. In the Magistrate Judge's Recommendation, the magistrate judge found "B.T.'s testimony at the evidentiary hearing to be unreliable and largely an attempt to right damage she feels her relationship with Ledesma has caused him. Even if her recent testimony was seen as reliable, Ledesma fails to establish it is more likely than not that no reasonable juror would have found Ledesma guilty." Mag.'s Rec. at 5. Ledesma argues that this standard imposed too high a burden on himself as a petitioner for habeas corpus. The appropriate standard, Ledesma claims, is whether he has shown by a preponderance of the evidence that he never had sexual relations with B.T. Pet'r's Objs. at 8.

The Supreme Court of the Virgin Islands has yet to speak as to: (1) whether a freestanding claim of actual innocence is a cognizable claim for habeas relief under Virgin Islands law; and (2) if it is a cognizable claim, what the appropriate standard is for granting such relief.⁹ The Appellate Division of the District Court has not spoken to the issue and there does not appear to be any published Superior Court cases addressing a claim of actual innocence. The District Court of the Virgin Islands, when it has addressed actual innocence in the context of habeas relief, has only done so to determine whether the petitioner has

⁹ The U.S. Supreme Court has not spoken directly on this issue either. It has addressed the actual innocence standard for constitutional claims that are procedural, but not free-standing. *See Herrera v. Collins*, 506 U.S. 390, 404-05, 113 S. Ct. 853, 862-63 (1993) ("We have never held that it extends to freestanding claims of actual innocence.").

sufficiently demonstrated actual innocence as a gateway to pursue a procedurally defaulted federal habeas claim on other constitutional grounds. *See, e.g. Pickard v. United States*, 312 F.Supp.2d 735 (D.V.I. 2004).¹⁰

The Virgin Islands Code permits “[e]very person unlawfully imprisoned or restrained of his liberty, under any pretense whatever” to inquire into the cause of confinement or restraint by filing a petition for writ of habeas corpus.” 5 V.I.C. § 1301. Ledesma argues that he is entitled to discharge, under Title 5, Section 1314 of the Virgin Islands Code, because his actual innocence means that he has been committed on a criminal charge without reasonable or probable cause. However, the provisions of section 1314, which provide the grounds for discharge of a prisoner in custody by virtue of process from any court or judge or officer thereof, are subject to the restriction of section 1313. 5 V.I.C. § 1314. Section 1313 requires that “[i]f the time during which such party may be legally detained in custody has not expired, the court shall remand such party if it appears that he is legally detained in custody - . . . (2) by virtue of a warrant or final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such warrant, judgment or decree.” 5 V.I.C. § 1313. Here, Ledesma was arrested on probable cause, tried, and convicted by a jury of his peers. The trial court sentenced him to a term of incarceration. His appeal of his conviction on

¹⁰ The U.S. Supreme Court has held “that actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup* and *House*, or, as in this case, expiration of the statute of limitations. We caution, however, that tenable actual-innocence gateway pleas are rare: ‘[A] petitioner does not meet the threshold requirement unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.’” *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1928 (2013) (quoting *Schlup*, 513 U.S., at 329, 115 S. Ct. 851, 130 L. Ed. 2d 808). *See House*, 547 U.S., at 538, 126 S. Ct. 2064, 165 L. Ed. 2d. 1 (emphasizing that the *Schlup* standard is “demanding” and seldom met); *Herrera v. Collins*, 506 U.S. 390, 404, 113 S. Ct. 853, 862 (1993) (“But this body of our habeas jurisprudence makes clear that a claim of ‘actual innocence’ is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.”).

sufficiency of the evidence was denied. Ledesma is in custody by process of the Court and its final judgment. Under the habeas provisions of the Virgin Islands Code that Ledesma cites to, he is not entitled to discharge.

This case does not foreclose a petition for writ of habeas corpus asserting free-standing claim of actual innocence. Section 3 of the Revised Organic Act, provides that “[a]ll persons shall have the privilege of the writ of habeas corpus and the same shall not be suspended except as herein expressly provided.” Revised Organic Act § 3, 48 U.S.C. § 1561. As addressed in the concurring opinion in *Rodriguez v. Bureau of Corrections*, “it is appropriate to presume that Congress intended that the meaning of the habeas provision it included in our Revised Organic Act would be consistent with the Supreme Court’s interpretation of the habeas provision of the U.S. Constitution.” *Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 383 (V.I. 2013) (Hodge, C.J. concurring). “[The court] must apply the Supreme Court’s interpretation of applicable constitutional rights, even if those interpretations issued *after* Congress created the Revised Organic Act.” *Id.* at 385.

The Magistrate Judge’s Recommendation appears to have applied the standard used by federal courts in determining if a prisoner’s assertion of actual innocence with a procedurally defaulted constitutional claim can overcome that procedural bar by making a showing of actual innocence. Federal courts look to whether, “in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him.” *Bousley v. United States*, 523 U.S. 614, 623 (1998). “Though information discovered subsequent to a criminal trial that a witness’s testimony was perjured satisfies the *prima facie* showing of new evidence . . . the form in which the ‘evidence’ has been presented to us here is insufficient for

us to certify the second part of the prima facie test: that petitioner would be able 'to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense . . .'" *Mokhtar Haouari v. United States*, 510 F.3d 350, 353 (2d Cir. 2007). The allegation of constitutional error must be accompanied by *reliable* evidence that was not presented at trial. *Sweger v. Chesney*, 294 F.3d 506, 523 (3d Cir. 2002). A petitioner who can make such a showing is allowed to proceed with a constitutional claim that would otherwise be barred because the petitioner waited too long to file a petition for habeas corpus under the federal statute after exhausting his state remedies. *Id.*

As Ledesma himself notes, a pre-requisite to granting his petition is that B.T.'s recantation testimony had to be reliable. Pet'r's Obj., at 8. Regardless of the applicable standard, Ledesma has failed to carry his burden. He has presented no evidence that this court considers credible or reliable to establish, even by a preponderance of the evidence, that he is factually innocent.

D. Ledesma Has Not Established That His Due Process Rights Were Violated

Ledesma also seeks habeas relief premised on alleged prosecutorial misconduct. In his petition for writ of habeas corpus, Ledesma alleges that B.T.'s trial testimony was false and that B.T. "was unduly influenced and coerced by those in position of government agencies." Extraordinary Mot. for Writ of Habeas, at 3. He argues that the People's use of B.T.'s testimony at trial violated his due process rights. *Id.* "[T]o establish a due process violation based on a state's solicitation of, or failure to correct, false evidence, a defendant must show: (1) the falsity and materiality of testimony, and (2) prosecutor's knowledge of such falsity." *Rodriguez v. Bureau of Corr.*, 58 V.I. 367, 375 (V.I. 2013). The prosecutor at trial

solicited testimony from B.T. about her sexual interaction with Ledesma. Trial Tr. dated June 9, 2004, at 138-47. When her testimony at trial differed from previous statements, the prosecutor directly confronted her about those differences. *Id.* at 147-70. The prosecutor used the difference between her trial testimony and her previous statements to show how B.T. would lie to protect Ledesma just like she did when she made the false claim that she had been raped at Sunny Isles. *Id.* at 170-71. The prosecutor corrected what he believed was false testimony from B.T. and in doing so protected Ledesma's due process rights.

The central fact of B.T.'s testimony, divorced from its details, was that she had sexual relations with Ledesma. Based on B.T.'s recantation, Ledesma argues that this central fact was false and the product of coercion. The Court does not find B.T.'s recantation reliable or credible. Therefore, the Court does not find that false testimony was presented as to this central fact nor does the Court find that the prosecutor knew of the falsity of this central fact. Accordingly, Ledesma does not have a habeas corpus claim that he was deprived of his due process rights by the prosecutor's conduct.

IV. CONCLUSION

Upon review of the Magistrate Judge's Recommendation, the evidence presented at the evidentiary hearing, and the record, this Court finds that Ledesma is not entitled to the relief he seeks. Ledesma met the prima facie standard for a plausible claim to warrant an evidentiary hearing to determine whether or not his constitutional due process rights were violated. But, the recantation testimony by B.T. is suspect, not credible, and fails to pass the gateway threshold to warrant a finding of actual innocence. Finally, Ledesma has not satisfied the burden of proof to prove prosecutorial misconduct that would trigger a due

process violation. Accordingly, the Court will deny Ledesma's petition for habeas relief. An appropriate order follows.

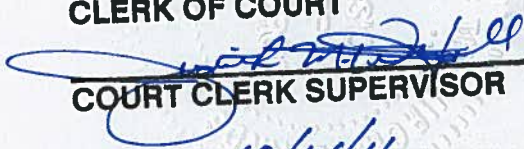
Dated: October 13, 2016



ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:

ESTRELLA H. GEORGE
CLERK OF COURT



COURT CLERK SUPERVISOR

DATED: 10/14/16