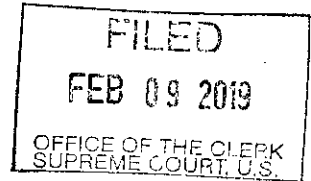


No. 18-8106



IN THE
SUPREME COURT OF THE UNITED STATES

Benjamin Crump — PETITIONER
(Your Name)

vs.

State of Delaware — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the State of Delaware
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Benjamin Crump #00154003
(Your Name)
JTVCC
1181 Paddock Road
(Address)

Smyrna DE 19977
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether a conviction obtained through the use of false evidence by a material state witness - the only state witness to reliably identify the defendant at trial - must be vacated under the Fourteenth Amendment?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

N/A
The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at 2017 WL 6403510 (_____); or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the Delaware Superior Court court appears at Appendix BC to the petition and is

☒ reported at 2017 WL 6403510 (Del. Super. 12/14/17), or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 8/7/18.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 9/18/18, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution, Amend. 14

sec. 1. ... nor shall any State deprive any person of life, liberty ... without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On the evening of November 23, 1981, Ms. Marcelle Price was walking home when she was grabbed by a short, stocky, light skinned black man, threatened with a knife, forced to a secluded area, raped, and released to return home (A-21-22).

Ms. Price was examined, a rape kit was prepared, and her clothing was seized by detectives (DI#71, A168) (A-26).

Ms. Price gave a detailed description of her assailant and looked at mug books (which included Mr. Benjamin Crump's picture) but she could not choose her assailant (DI#18, C96, A-44).

Two years later the detectives became fixated with Mr. Crump and tried to tie him to a number of unsolved crimes including the rapes of Monica Anderson and Ms. Price (DI#71, A173, A-215).

After further investigation the detectives dropped Monica Anderson for being an uncooperative or unreliable "victim" for the more pliable younger Ms. Price as the "victim" of choice (08-2).

Once the detectives altered Mr. Crump's picture to more closely resemble the initial description given by Ms. Price (in 1981), and made Mr. Crump's picture more noticable, Ms. Price was pressured into identifying Mr. Crump's picture (A-43-45, A-47-48).

Even then Ms. Price was not positive - at best she was able to offer that she may be only "pretty sure" Mr. Crump resembled the rapist (A-25).

Since there were problems with the identification procedures - repeated showings, lightening the picture, pressuring the young "victim" - the detectives knew they could not win, so they sent their evidence to the FBI to obtain a more positive "identification." Id.

FBI Agent Michael Malone examined the evidence and informed the Delaware detectives that he was able to testify that Mr. Crump's hair was statistically proven to be "microscopically similar" to that of the rapists' (A-26-34, A-59-63).

It was only after Agent Malone was on board that "some action was taken against" Mr. Crump (A-59). Mr. Crump was then indicted, arrested, tried, convicted, and sentenced only because of FBI Agent Malone's "identification" testimony (A-26-34, A-59-63).

That was it for Mr. Crump! It was a slam dunk case ~~and~~, because of FBI Agent Malone's "identification" of Mr. Crump as the rapist no court in Delaware would listen to Mr. Crump's pleas to have the convictions and sentences vacated. Crump v. State, No. 321, 1984 (Del.); Crump v. State, No. 456, 1988 (Del.) (DI#23,38,44).

30 years after Mr. Crump was tried, the U.S. Dept. of Justice revealed that Agent Malone had intentionally "misrepresented" the facts and, therefore, Mr. Crump's convictions and sentences must be vacated "in the interest of justice" (A-14-16).

Delaware DAG Kathleen Jennings concealed this DOJ notice such that the DOJ Special Counsel for the FBI was forced to press the issue of Agent Malone's false testimony by taken the extraordinary action of informing Mr. Crump personally (A-13).

Mr. Crump promptly informed the Delaware Courts of FBI Agent Malone's false testimony (DI#57). However, even though the Delaware Courts have agreed that Agent Malone's testimony was material and false; was "new evidence", "was a misrepresentation of the evidence", that "played a large part in [Mr. Crump's] conviction", "was likely so important that it tainted the trial and undermined the confidence in the outcome", the Delaware Courts applied a harmless error analysis to deny Mr. Crump relief. Ex. B, pp. 3-7; Ex. A; Ex. B.

REASONS FOR GRANTING THE PETITION

I. PERJURY BY MATERIAL STATE WITNESS REQUIRES NEW TRIAL^①

The Question is whether a conviction obtained through the use of false evidence by a material state witness - the only state witness to reliably identify the defendant at trial - must be vacated under the Fourteenth Amendment?

At Mr. Crump's trial, the State's "identification" expert witness, FBI Agent Michael Malone, testified that a couple hair samples from the rapist "microscopically matched" and "was completely indistinguishable from" Mr. Crump's hair samples.^②

Thirty years after trial the FBI informed DAG Kathleen Jennings that FBI Agent Malone's testimony was false and encouraged DAG Kathleen Jennings to vacate Mr. Crump's convictions, however, DAG Jennings did not inform Mr. Crump or the Delaware trial courts.^③

Appointed PC Counsel, the PC Prosecutor, and the PC Court all conceded that Agent Malone's testimony was "material", "was false", "tainted the trial", and "undermines confidence in the outcome."^④

① Mr. Crump incorporates herein Mr. Crump's PC Court filings (DI#76, pp. 3-21; DI#80, pp. 2-14), and PC Appeal filings (Opening Brief, pp. 1-15, 26-29; Motion For Rehearing En Banc, pp. 1-4).

② A-14-A-16; DI#76, pp. 5-7; DI#76, pp. 5-7.

③ A-15, p. 2 ("interest of justice"); DI#76, pp. 5-7; Del. Lawyers Rules Prof Conduct Rule 3.8(d)(1-2) ("timely disclosure")

④ DI#70, pp. 5-7; DI#76, pp. 5-7; DI#78, pp. 3-4; DI#80, pp. 3, 8-9, 10-11; DI#82, pp. 2-7.

Nevertheless, without any perjury hearing, PC Counsel, PC Prosecutor, and PC Court concluded that, based upon "contaminated" post-trial DNA evidence, Mr. Crump can not show prejudice.^⑥

However, under all the Delaware State, U.S. 3rd Circuit, and U.S. Supreme Court decisions, perjury by such an essential material witness prejudicially violates due process and requires a new trial per se - even without proof of prejudice.^⑦

Based upon this Court's precedence and its progeny, Mr. Crump should have received a perjury hearing and a new trial. Certiorari should be granted to determine whether this Court's perjury precedents are still relevant and must be complied with by the Delaware State courts?

A. PREJUDICE NOT REQUIRED

To quote the U.S. Supreme Court, a "lie is a lie, no matter what its subject," thus, "a reasonable likelihood that the perjured testimony affected the judgment is all that is required."^⑧

⑥ DI #70, pp. 7-10 (no "prejudice"); DI #76, pp. 7-8 (no prejudice); DI #82, pp. 4, 6-7 (no prejudice, "would not lead to a different outcome if retried").

⑦ Del. Const. Art. I, sec. 7; U.S. Const. Amend. 14; DI #76, pp. 3-4, citing Brady v. Maryland, 83 S.Ct. 1194, 1196-97 (1963) (irrespective of good faith or bad faith of prosecutor); Franks v. Delaware, 98 S.Ct. 2674 (1978); Fowler v. State, 2018 Del. LEXIS 393 (Aug. 27, 2018); Worthy v. State, 120 A.3d 581 (Del. 2015); Napue v. Illinois, 79 S.Ct. 1173 (1959); Giglio v. U.S., 92 S.Ct. 763 (1972); Haskell v. Superintendent, 866 F.3d 139 (3rd Cir. 2017); Curran v. Delaware, 259 F.2d 707 (3rd Cir. 1958).

⑧ Haskell, 866 F.3d at 152, quoting from Napue, 79 S.Ct. at 1177, citing Curran, 259 F.2d at 712-13 (State "concedes" detective perjury denies due process).

According to this U.S. Supreme Court precedent, when, as in this case, the prosecution relied exclusively upon "covert perjury" testimony - that the trial jury was instructed they "should accept" ⁽⁹⁾ to prove the only disputed material element of the crime of rape (in this case "identification") that "could have affected the judgment of the jury" than due process demands that prejudice is not required and a new trial must be granted. ⁽¹⁰⁾ U.S. Const. Amend. 14.

1. FALSE/MATERIAL EVIDENCE PROVEN

The FBI Agents' "identification" opinion was offered upon that material fact, which was the only issue that was strongly contested at trial (DI# 18, A-43 to A-48, A-58).

Uncontested facts in the PC record prove that Agent Malone's testimony was false (DI# 71, p. A-241), that there were problems with the police mugshot procedures (DI# 18, A-45 to A-48), and, in the prosecutor's words, the victim's identifications were "contradictory" (DI# 18, A-63).

Thus, there can not be any doubt that Agent Malone's testimony was material, was false, and did "affect the judgment of the jury". Haskell, 866 F.3d at 146-147.

⁽⁹⁾ DI# 18, A-72 to A-73 ("The expert can tell you facts. The expert is also permitted to give you opinions, which most witnesses are not permitted to do. That testimony is called expert testimony, and there has been expert testimony offered in this case... You should accept his conclusions...") (emphasis added).

⁽¹⁰⁾ Haskell, 866 F.3d at 146, 152, citing Napue and Giglio; Hayes v. Brown, 399 F.3d 972, 985 (9th Cir. 2005) ("materiality necessarily compels the conclusion that the error was not harmless").

2. HARMLESS ERROR NOT RELEVANT

Mr. Crump's PC filings meticulously proved that Agent Malone's testimony was "new evidence,"⁽¹¹⁾ which even the PC Courts conceded (DI#82, p.6 of App. C, "may be new evidence").

Mr. Crump's PC filings meticulously proved that Agent Malone's testimony was "material," which PC Counsel, PC Prosecutor, and the PC Courts all conceded⁽¹²⁾ (n.4). Ex. C, p.4.

Mr. Crump's PC filings meticulously proved that Agent Malone's testimony was "false," which PC Counsel, PC Prosecutor, and the PC Courts all conceded (n.4; n.12). Ex. C, p.4.

Mr. Crump's PC filing meticulously proved that Agent Malone's testimony "could have affected the judgment of the jury" (n.4; n.12), as demonstrated by the Prosecution's trial closing and rebuttal arguments to the jury (DI#18, A-26 to A-27, A-59 to A-63).⁽¹³⁾ Ex. C, p.4.

Under facts such as these it was clear error for the state PC Courts to rely upon a "harmless error analysis" to deny Mr. Crump's a new trial "not just because [those claims] involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process."⁽¹⁴⁾ U.S. Const. Amend. 14; Ex. C, pp. 6-7.

⁽¹¹⁾ DI#57, Ex. A and DI#71, pp. A16, A253. Please note that 30 years after Mr. Crump's trial the FBI notified Delaware State Attorney General Kathleen Jennings about Agent Malone's perjury.

⁽¹²⁾ DI#76, pp. 3-10; DI#80, pp. 8-11.

⁽¹³⁾ Haskell, 866 F.3d at 147 ("like our case, the prosecution returned to and emphasized the false testimony in its summation").

⁽¹⁴⁾ Haskell, 866 F.3d at 146 ("corruption"), at 150 ("separate") (citing Brecht).

SUMMARY

Before the PC Courts Mr. Crump proved that Agent Malone's perjury was not discovered until September 30, 2014, when the FBI notified AG Kathleen Jennings (n.11). This was 30 years after Mr. Crump's trial. This was "new evidence" that, because it was material, false, and could have affected the jury verdict, required under this Courts' precedence that Mr. Crump receive a new trial.

By 2014, Agent Malone's perjury, in this case and hundreds of others across the country, was so well known to prosecutors that it received "special attention" in the FBI Special Counsel's Report (A-14). Agent Malone's perjury became so notorious that an entire book was written thereon. ⁽¹⁵⁾

FBI Special Counsel Norman Wong recommended that the Delaware PC Courts grant Mr. Crump a new trial "in the interests of justice" (A-15 to A-16). However, the PC Courts' barred Mr. Crump from obtaining relief (Appendix A, B, C). Thus, Mr. Crump must look to this Court for relief.

⁽¹⁵⁾ see Kelly, J., "Tainting Evidence. Inside the Scandals at the FBI Crime Lab." The Free Press (1998) (pp. 271-308); National Institute of Justice Journal, Issue NO. 279 (4/2018), pp. 11-25, 35-47.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Benjamin Crump

Date: 2/5/19

XC: Clerk, Delaware Supreme Court
Del. AG Kathleen Jennings
Jailhouse Lawyer Association