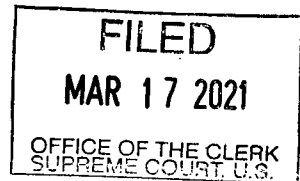


No. 20-7547

ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

Saloman Martinez — PETITIONER  
(Your Name)

vs.

United States OF America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court OF Appeals For The Sixth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Saloman Martinez # 20623-180  
(Your Name)

(USP) McCreary, P.O. Box 3000,  
(Address)

Pine Knot, KY 42635  
(City, State, Zip Code)

N/A  
(Phone Number)

### QUESTION(S) PRESENTED

Whether..... The Sixth Circuit's December 17, 2020, opinion and ruling to affirm the United States District Court for the Eastern District of Kentucky Conviction and sentence is in conflict of the Supreme Court's precedents?

- (1) Crawford v. Washington, 541 U.S. 36 (2004); And,
- (2) In re Winship, 397 U.S. 358 (1970).

## 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:

- \* United states v. Norwood, 16 F. Supp. 3d 848 (E.D. Mich. 2014),
- \* United states v. McGee, 408 F.3d 966 (7th Cir. 2005),
- \* United states v. Green, 757 F.2d 116 (7th Cir. 1985),

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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**:

The opinion of the United States court of appeals appears at Appendix A 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☒ is unpublished.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 B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

N/A ☐ For cases from **state courts**:

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

☐ reported at N/A; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; 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 December 17, 2020 / Mailbox rule in Houston

☒ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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 N/A.  
A copy of that decision appears at Appendix N/A.

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

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

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

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

5th & 6th Amendment Violations

## STATEMENT OF THE CASE

Whether..... The sixth Circuit's December 17, 2020, Opinion and ruling to affirm the United States District Court for the Eastern District of Kentucky Conviction and sentenced is in conflict of the Supreme Court's Precedents?

(1) Crawford v. Washington, 541 U.S. 36 (2004);

A Criminal Defendant has a Sixth Amendment right to be confronted with the witnesses against him at trial. The leading investigative Lieutenant was allowed to provide factual testimony and expert opinion all of which was actually based on hearsay and generalized background information maintained by the Bureau of Prisons. By admitting this testimony, did the trial Court in conjunction with the Sixth Circuit's opinion and ruling to affirm as noted above, violate the Sixth Amendment and cause error that was not harmless.

(2) In Re Winship, 397 U.S. 358 (1970);

The due Process Clause requires that proof beyond a reasonable doubt be submitted on each element of a crime. The evidence must be sufficient that any reasonable jury could rationally find guilt. Where no reliable evidence was submitted to support direct or circumstantial evidence of identity, is the evidence constitutionally insufficient to support the conviction.

In both (1) and (2):

Defendant states -- YES.

Plaintiff states --- NO.

The Trial Court said -- NO.

The Sixth Circuit -- Affirm.

1). On June 17, 2018, BOP Corrections Officer (CO) Douglas Blackburn, was working the Alpha-4 Unit at Big Sandy Federal Prison. The only other (CO) in that Unit that evening was (CO) John Maynard. Jury Trial, Vol-I, R. 179, Page ID#1519-1520 (JT-1). (CO) Blackburn, was about half-way into the second of a double shift. Id., Page ID#1532. As he was proceeding up a set of stairs to make rounds, he noticed on the other side of the unit two prisoners were attacking another prisoner in the laundry room. He went back down the stairs and was then able to see a second incident of two prisoners assaulting another prisoner. He sprayed an irritant chemical at the parties in the second incident while proceeding toward the first incident. He had used his radio as he was going toward the first (laundry room) incident to call for help. This prompted other (COs) to arrive and they instituted an immediate lock down. Id., Page ID#1519-1520.

2). (CO) Blackburn, identified the first victim as Richard Felix and the second victim as Paul Eppinger. He first sprayed Eppinger, so he would not get back up. As he was walking to the first incident, he also sprayed "the other two guys" referring to the prisoners that had been attacking Eppinger. He clarified that it was a burst of "less than one second" and when asked if he sprayed the Eppinger attackers "pretty good," he answered "Not really." Id., Page ID#1534. As he neared the first incident, he saw two prisoners stabbing Mr. Felix and sprayed them. He recognized one of the two prisoners in the second incident (the instant case) as co-Defendant Eric Flores. Id., Page ID#1521-1522. He explained that as he reached the bottom of the stairs and saw them, the two attackers stopped attacking Eppinger and were walking "across the unit." He admitted that he did not

doors. JT-2, R. 180, Page ID # 1640; 1642-1643.

clothing. He placed Eppinger in the activities room under lock door and then saw Eppinger walking toward him with bloody (b) (co) Maynard further testified that he turned to secure his office and he did not see a weapon. JT-2, R. 180, Page ID # 1640.

(a) (co) Maynard testified that he heard the scuffle of the first incident from his office. He could not see Flores bent over at the waist making a motion but he could not see who was on the floor

\*Foot Note - 1

back to his cell (315), he looks up at the camera. (co) Blackburn walking that other prisoner to his own cell. As Martinez is coming going back to the unit, talking to another prisoner and then

he was observed walking around the back side of some tables, the only time that Martinez looked directly at a camera was after review, he concluded that the second Eppinger attacker was Martinez. Unit Alpha-4, and he can recognize the prisoners by face. After his he explained that his 40-hour work week involved solely working in

Video footage in an effort to identify the second Eppinger attacker. (4) (co) Blackburn returned to work after two days and reviewed

Page ID # 1525-1526.

where he was ultimately taken by helicopter to the hospital. Id., started having chest pains, and was taken to the medical officer him. (co) Blackburn washed his face off because of the spray,

in there because he was bleeding and it was a place to contain room. (co) Blackburn assumed that another (co) had placed Eppinger down, he and other (cos) removed Eppinger from the activities 3), once the unit was under control through immediate lock

on Eppinger at that time. Id., Page ID # 1523-1524.

recognize the second attacker. He did not notice injuries

Claimed that the prisoner that Martinez, walked with was Valles who is purportedly a leader of the Mexikanemi. He also claimed that he knew the attackers of Felix (Rodney Galindo and Michael Morin) to be members of the Mexikanemi. Id., Page ID #1527-1528.

5.) (co) Blackburn admitted that prisoner Juan Compian was in Alpha-4 and was a member of the Mexikanemi. Id., Page ID #1540. (co) Blackburn admitted that between the time of the incident and his transfer to another unit (January 2019), he was able to observe Martinez and Eppinger together and saw no violence or aggressiveness between them even though Eppinger is a member of a rival gang. Id., Page ID #1541.

6.) (co) John Maynard, was able to see Flores as he was making his striking motions on Eppinger. (co) Maynard was very clear that all striking motions were coming from Flores. JT-2, R. 180, Page ID ##1644-45. (co) Maynard then used a reference book to go through the prisoner's identification/cell assignment log. He initially pulled out the cards for Flores and Compian as the two attackers of Eppinger. Id., Page #1646. (co) Maynard explained his subsequent identification of Martinez by claiming that he watches them enough to recognize that gait and mannerisms. He indicated that by watching the video he could follow Martinez all the way back to his assigned cell including, at some point, seeing his face. Id., Page ID #1648. (co) Maynard, however, had only worked in Alpha-4 for 17 days prior to the incident. Id., Page ID #1652-1654. (co) Maynard never noticed any other violence or incidents between Martinez and Eppinger. Id., Page ID #1655-1656. (co) Maynard admitted that the report he prepared for Lt. Johnson did not include an identification of Flores or Martinez as the attackers of Eppinger. Id., Page ID ##1659-1660.

7). (co) Blackburn wrote a memorandum for Lt. Johnson and identified Flores as one of the Eppinger attackers. The memorandum was lost by the BOP. Id., Page ID# 1536-1537. In a hearing outside the presence of the jury, (co) Blackburn said that he was not sure that he identified Flores and Martinez in the missing memo. Id., Page ID# 1552. A break was taken between the end of (co) Blackburn's testimony before the jury and the trial court's inquiry into the missing memo (outside the presence of the jury). During the break, the BOP found the missing memo and it was e-mailed to Counsel. Id., Page ID# 1555. This prompted a warning from the trial court to the (AUSA) to have the BOP do another thorough check to avoid any further surprises. Id., Page ID# 1557.

8). During the testimony of (co) Maynard, he answered about his lack of identification of Flores and Martinez by saying it is "Not In This Report." This prompted a bench conference that established that yet another report was missing. Id., Page ID# 1660-1664. (co) Maynard then confirmed that his first written summary was "lost." Id., Page ID# 1666.

9). The nurse in the medical unit testified that Eppinger had "some" stab wounds to his back with one identified as three centimeters long with "quite a bit" of bleeding. He had a puncture wound to his hand and a large cut at the back of his left leg. Her testimony was unclear as to which wounds needed sutures but he was sent out to the hospital for sutures for at least one of them. Id., Page ID# 1676-1677.

10). Eppinger testified that prior to June 17, 2018, he was familiar with Flores and Martinez. They socialized by playing handball, drinking coffee and having meals together. Id., Page ID# 1729. Eppinger denied that the individuals that assaulted him on June

17, 2018, were in the courtroom at the time of trial. Id., Page ID# 1730-1735; 1741. The three of them continued to socialize after June 17, 2018. Id., Page ID# 1735.

#### Statement of Proceedings Below

11). On Nov. 15, 2018, the indictment charging Rodney Galindo (D-1), Michael Moring (D-2), Eric Flores (D-3), and Saloman Martinez (D-4) was filed. R.1, Page ID# 1. The Indictment charged Galindo with assault with intent to commit murder (Count-1) and possession of a prohibited object in a federal penal facility (Count-3). It also charged Morn with the same in Count-2 and 4, respectively. Count-5 charged Flores with assault with a dangerous weapon and Martinez with the same offense in Count-6. Id., Page ID# 1-3. On March 18, 2019, Galindo entered a guilty plea to Counts-1 and 3. R.51, On the same day, Morn entered a guilty plea to Counts-2, and 4.

12). On March 26, 2019, Martinez filed a motion in limine to preclude Lt. Johnson's expert testimony or general testimony about gangs. (Motion in Limine). The motion challenged the testimony based on relevance and, if relevant, being unfairly prejudicial. The trial court denied the motion by order of April 8, 2019. The jury trial commenced as to Flores and Martinez on April 20, 2019.

Martinez' trial counsel made a motion for directed verdict pursuant to Rule 29 which the trial court denied on the record.

13). The jury trial concluded on April 16, 2019, with a verdict of guilty to Count-5 (Flores) and Count-6 (Martinez). On August 21, 2019, Flores was sentenced to 110 months consecutive to his current sentence. Also on August 21, 2019, Martinez was sentenced to 100-months to be served consecutively to his current sentence. Martinez filed his notice of appeal on the day judgment entered, and on December

17, 2020, the Sixth Circuit affirmed the District Court's trial conviction and sentence.

### Question(s) Presented, Law-n-Argument

Whether... the Sixth Circuit's December 17, 2020, opinion and ruling to affirm the United States District Court for the Eastern District of Kentucky conviction and sentence is in conflict of the Supreme Court's precedents?

### Part One: Crawford v. Washington *supra*

A Criminal Defendant has a Sixth Amendment right to be confronted with the witnesses against him at trial. The leading Investigative Lieutenant was allowed to provide factual testimony and expert opinion all of which was actually based on hearsay and generalized background information maintained by the Bureau of Prisons. By admitting this testimony, did the trial court in conjunction with the Sixth Circuit's opinion and ruling to affirm as noted above, violate the Sixth Amendment and cause error that was not harmless.

14). On March 26, 2019, Defense Counsel filed a motion in limine in conjunction with its objection to (SIS) Lt. Johnson testifying based on his training and experience as to the norms and cultures of federal prison gangs. There is no per se rule prohibiting a law enforcement officer from testifying in a dual role capacity where such testimony meets the required standards of relevance and reliability. *United States v. Tocco*, 200 F.3d 401, 418-19 (6th Cir. 2000). Typically, gang related testimony comes from an officer's significant experience investigating a particular gang. While

not binding on this Court, a federal district court conducted a thoroughly reasoned analysis of why an FBI agent could not testify about general characteristics of gangs. The primary failure was a lack of familiarity with the particular gang, based on significant experience investigating that particular gang. See *United States v. Norwood*, 16 F. Supp. 3d 848 (E.D. Mich. 2014).

Indeed, courts have recognized that most jurors are aware that gang members deal drugs, commit violent acts, and react unfavorably when their misdeeds are reported to authorities. *United States v. McGee*, 408 F.3d 966, 978 (7th Cir. 2005).

(5), with no basis or foundation for Lt. Johnson's knowledge other than the very general information he stated under oath during trial, he identified both Flores and Martinez as soldiers in the Mex'kanemi. Again with no foundation, Lt. Johnson explained the origins of the Mex'kanemi (Texas Dept of Corrections), their gender/ethnic composition (Hispanic males mostly from Texas) and what the translation of the name means (Free Mexican).

He then explained that the group has a paramilitary-type structure which uses ranks such as generals, captains, lieutenants, soldiers and prospects. He explained that for a particular prison facility, a lieutenant would be in charge of the group members and that they have a written constitution.

a. Lt. Johnson then explained some characteristics of the Mex'kanemi's

- (1) They have a propensity toward violence.
- (2) They use weapons more than the other groups.
- (3) They require an assault (formerly a kill) to get in and an assault (formerly a kill) to get out.

16). A portion of the video was played that covered the immediate time frame of the assault. Lt Johnson was then asked if he identified the victims and he then provided their names. He further claimed that they were members of the Mexican Mafia with no foundation for that knowledge. He then stated they were a very small group with no particular security threat assignment. They were an affiliate of the Mexican Mafia from other states. He claimed that the victims were the only two members of the Arizona Mexican Mafia in Bog Sandy on June 17, 2018. He then went on to explain the rank of Felix (Soldier) and Eppinger (Captain). He claimed no personal knowledge of this information. No foundation for these details were provided.

17). Lt. Johnson, identified the attackers of Felix to be Rodney Galindo and Michael Morin. He claimed they were members of the Mexican Mafia and provided their ranks. This testimony combined both factual detail as to the attackers in the first incident as being members of the same gang as Martinez with no particular evidentiary purpose and more characteristics of the gang without foundation. Establishing for the jury based on hearsay that there were simultaneous assaults was unfairly prejudicial without proper foundation to show a real connection.

18). At the core of the Confrontation Clause is the right of every defendant to test the credibility of witnesses through cross-examination. Boggs v. Collins, 226 F.3d 228, 236 (8th Cir. 2000). ... No expert nor Government witness testified that any video footage showed Martinez with a weapon or that he was within striking distance of Eppinger at any time. Martinez's Sixth Amendment Confrontation Clause has been violated and ignored United States v. Green, 257 F.2d 116 (7th Cir. 1985).

## Part Two: In Re Winship Supra.

The due process clause requires that proof beyond a reasonable doubt be submitted on each element of a crime. The evidence must be sufficient that any reasonable jury could rationally find guilt. Where no reliable evidence was submitted to support direct or circumstantial evidence of identity, the evidence is constitutionally insufficient to support the conviction.

19) A Trial counsel made a motion for directed verdict pursuant to Rule 29. The motion was denied from the bench. The motion was renewed after all the evidence was closed. In a Criminal Case, the court must determine whether, viewing the trial testimony and exhibits in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Brown v. Kenten, 567 F.3d 191, 205 (6th Cir. 2009) (citing Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

20). In In Re Winship, Supra, this Court studied the origin of the burden of proof in a Criminal Case. Finding that it had been adopted into the common law in its current formulation near the founding of the country, the Court noted that it had been assumed as the working standards in volumes of cases addressing the topic. Id., at 361-362. Accordingly, it was included in the due process clause of the 5th-14th Amendments. Id., 364.

21). It is well-settled that an essential element that the Government must prove beyond a reasonable doubt is the identification of a defendant as the person who perpetrated the crime charged. Green Supra. Direct, in-court identifications of the defendant are not required. Rather, circumstantial evidence may support the

identification of the defendant, United States v. Clay, 667 F.3d 689, 701-702 (6th Cir. 2012).

22). In the instant case, the connection was clear speculation and hearsay prejudicial gang affiliation and the travels on foot after the incident. Even the path Martinez took after the incident is actually attributed by Lt. Johnson to a gang characteristic -- escorting the leader. The fault, however, lies in the absence of any reliable evidence that Martinez is actually a gang member. An exacerbating problem in this case is that the jury did not even hear the source of Lt. Johnson's conclusion that Martinez belonged to the Mexicanami. The bottom line here, the evidence presented to the jury lacked a critical element (identity of Martinez as one of Eppinger's attacker) beyond a reasonable doubt in violation of this Court's precedent established law in In Re Winship, supra.

#### REASONS FOR GRANTING THE PETITION

This Court should grant the Petition in order to determine whether Martinez, 5th - n- 6th Amendment rights are not only violated, but also in conflict with this Court's two established Precedents as set forth above.

**CONCLUSION**  
A primary issues in this case is whether Martinez' 5th -n- 6th Amendment rights was and still being violated.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Salomea Martinez

Date: March 13, 2021