

ORIGINAL

Supreme Court, U.S.
FILED

FEB 02 2021

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21-5362
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TERM 2021

ROBERT LEE CRAWFORD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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SUBMITTED: January 29, 2021

QUESTIONS PRESENTED

A. Is the Fourth Amendment violated when a warrantless off-site forced entry search of a gunsafe is preceded by a warrantless seizure of the gunsafe facilitated by an officers intentional misrepresentations of facts to a county attorney, which was preceded by a forced entry into a shared home absent exigent circumstances, which was preceded by an unconstitutional pretextual stop based upon an anonymous call that lacked any degree of reliability?

B. Is the Sixth Amendment right to confrontation violated when a court simply assumed police reports and anonymous informant information is reliable when presented on the record by probation officers that lack any personal knowledge of the reported event or actual contact with the informant relevant to the crime charged?

C. Is the Fifth and/or the Fourteenth Amendment right to due process violated when a federal prosecutor: (1)Solicits testimony from parole officers that he knows to be false; (2) fails to correct the false testimony when it appears; and (3) the false testimony was material in both the conviction and sentencing of the petitioner?

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Robert Crawford, a prisoner appearing pro se, prays that this Court command respect for the law, and petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit or to grant certiorari, vacate the judgment, and remand for consideration, and any relief this Court deems just and proper.

JURISDICTION

The court of appeals issued a memorandum denying Crawford's request for appellate relief on November 2, 2020. Appendix A. The court of appeals issued its order denying Crawford's rehearing on December 9, 2020. Appendix B. This court's jurisdiction is invoked under 28 U.S.C. 1254 (10).

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at United States v. Robert Crawford, 2020 U.S.App.LEXIS 34524, ___ Fed. Appx. ___; Appendix A.

CONSTITUTIONAL AND STATUATORY PROVISIONS INVOLVED

This case involves the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States. Appendix C.

STATEMENT OF THE CASE

Crawford challenges the denial of a suppression motion due to violations of Due Process, Confrontation and Search and Seizure. Information was misrepresented to the lower courts by the government, sweeping the courts and judges along in a false narrative and panic dynamic. Instead of sorting out the facts of the case arriving at the truth the courts were swept up in the unsupported false testimonies. The effect was to force Crawford to limit his exposure to an extreme sentence by plea rather than risk a 20 year federal sentence consecutively imposed to his state time already serving.

Crawford went into a suppression hearing expecting a fair hearing. Instead, when he successfully disputed every element of the government's *disclosed* reasons for his July 18, 2018 arrest the

government then *pivoted* to second hand testimony from P&P officers about police reports, drug dogs, guns, anonymous informants and ATF investigations. None of these items were testified to by an officer with actual knowledge, video footage exists that directly disputes the officer's reports, but were not disclosed to defense prior to the suppression hearing. Such testimoy about police reports by P&P officers violates this Courts guidance in *Brady v. Maryland*, *Melendez-Diaz v. Massachusetts* and *Crawford v. Washington*. Additionally, the presecutor solicited information from probation officers concerning the use of annonymous informants and an ATF investigation that he knew was not only false and misleading, but none of which had been disclosed to the defense for meaningful adversarial testing. AUSA Thaggard did nothing to correct the misleading testimony in the courts order denying suppression. Such solicitation of false testimony, and the failure of a prosecutor to correct it once it appears violates this Courts guidance in *Napue v. Illinois* & *Giglio v. United States*.

The lower courts completely overlooked the facts that Crawford was pretextually stopped, by an anonymous tip recieived by Helena Police. The information in the tip proved fruitless and failed to describe Crawford or adequately predict any illegal activity. When officers seized Crawford and the vehicle the officers violated, this Court's guidance in *Alabama v. White* and *Florida v. J.L.*

The forced entry through a window of Crawford and Gilbreath's home absent an exigent circumstance was an unreasonable intrusion, as was the seizure of Ms. Gilbreath's gunsafe without the intention of obtaining a warrant. APO Miller falsely reported to the county attorney that Crawford lived alone, despite evidence that a female lived there. Crawford's parole officer was onsite and was not consulted for valid information. The off-site warrantless forced entry into Ms. Gilbreath's gunsafe was also an unreasonable extension of the search because it followed the exploitation of a chain of illegal acts by officers. Such search and seizure violates this Court's

guidance in Griffin v. Wisconsin and Utah v. Strieff.

Crawford's arrest subsequently to the above totality of circumstances was premature and based upon false and misleading information, speculation, and conjecture. Any evidence to substantiate Crawford's arrest has yet to be disclosed or subjected to meaningful adversarial testing. What allegations were disclosed were successfully disputed.

Crawford has been denied equal protection of the laws violating the Fourteenth Amendment.

PRIOR PRECEEDINGS

On July 18, 2018, Crawford was arrested outside his home in Butte Silver-bow County, Montana for alleged parole violations. On January 23, 2019, an indictment was filed in the United States District Court in the District of Montana charging Crawford with two counts of prohibited person in possession of a firearm, in violation of 18 U.S.C.A. 922(g)(1). CR 1-2; ER 264-66. Crawford was still in the Silver-bow County Detention Center at the time of the indictment. On the same date, the Honorable Donald W. Malloy ordered a warrant for Crawford's arrest.

On January 29, 2019 the Honorable Jeremiah C. Lynch issued a Writ of Habeas Corpus to the warden of the Silver-Bow County Detention Center and the United States Marshall; CR6; ER 267-72. Crawford was transferred and arraigned on February 19, 2019 where he pleaded not guilty to both counts. CR8, ER256.

On May 3, 2019, Crawford filed a motion to suppress all evidence resulting from his arrest on July 18, 2018. CR25; ER 273-74. A hearing was held on June 6, 2019 in front of the Honorable Dana L. Christensen. CR 34; ER 258-59. On June 21, 2019, the district court denied Crawford's motion to suppress. CR 25; ER671.

On June 26, 2019, a Superseding Indictment was filed still charging Crawford with two counts of prohibited person in possession of a firearm, in violation of Title 18 U.S.C.A. 922 (g)(1). CR 37; ER 676-78. On that same day Crawford filed a motion to change his plea to guilty. CR 26; ER 673-75. Per a plea agreement, Crawford agreed to plead guilty to count two of the indictment and preserved his right to appeal the district court's denial of his suppression motion. CR43; ER 683-92.

On July 1, 2019, the government filed an offer of proof. CR 42; ER 679-82. On July 11, 2019 Crawford plead guilty to the Honorable Magistrate Judge Jeremiah C. Lynch, requesting a condition that the government provide the police video's from the Helena stop. Appendix D pg 7-13.

The magistrate judge filed findings and recommendations recommending the district court accept Crawford's guilty plea, which it did on July 16, 2019. CR 48; ER 693-94.

On November 8, 2019, the court imposed a sentence of 96 months to count two, to run concurrently to any sentence that was imposed in connection with any revocation proceeding that Crawford confronted in Lake County District Court Cause no. DC-12-49, followed by three years of supervised release. CR 65; ER4. The court approved Crawford's right to appeal its order denying the suppression motion, and judgement was entered that same day. CR65; ER3.

Crawford timely filed his appeal on November 15, 2019. CR68; ER1-2.

The Ninth Circuit Court of Appeals affirmed on November 2, 2020. Appendix A. The Ninth Circuit Court of Appeals denied Crawford's request for rehearing on December 9, 2020. Appendix B. Crawford asked counsel of record to withdraw from representation and mail a sample writ format to Crawford allowing Crawford to petition this Court for a Writ of Certiorari, the Ninth Circuit Court of Appeals issued the order withdrawing counsel on December 21, 2020. Appendix E.

On September 21, 2020 Crawford appeared before the Montana Board of Pardons and Parole for a revocation hearing concerning the events of July 18, 2018. Crawford was found "Not Guilty" of the drug violations leaving only the federal convictions as his only violations of parole. Crawford was then paroled to his federal sentence. Appendix F. Upon request Crawford's parole was extended to February 2021. Appendix G.

FACTUAL BACKGROUND

The following information is from the suppression, change of plea, sentencing hearing, related exhibits, reports and information about what has not been supplied for the record. Copies of hearing transcripts and other materials are included in the appendices. Crawford is writing in the third person for the Courts convenience in identifying parties. Crawford is the author of this petition and is not a lawyer, he prays this Court liberally construe this petition and interpret it to raise the strongest arguments it suggests.

This case begins on April 23, 2018 when Crawford first reported to his parole officer that his niece Audrey Messenger was temporarily staying with him. CR 26-5; ER 318. That same day Crawford also informed his parole officer that his girlfriend was also going to move in. Dan Blando, Crawford's parole officer has consistently confirmed that he knew that Crystal Gilbreath lived with Crawford. CR 26-7; ER 355-57 Appendix H pg 32-34.

On April 24, 2018 Crystal Gilbreath purchased a gunsafe from Murdoch's in Butte, Montana so that as she moved her property from storage units into the home Crawford would not have access to her firearms and ammunition. Appendix I. Crystal is registered with the safe manufacturer as the only owner of the safe.

Problems soon developed as Audrey had multiple people over at all hours and items belonging to Crawford and Gilbreath began to go missing. Crawford's bank account with Wells Fargo was overdrawn and Crawford had to file fraud claims. Appendix J. Audrey was asked to move out.

Even after Crawford changed the locks Audrey would break into the house with friends and steal paperwork, car titles, and keys. Crystal placed important papers including a Bill of Sale and tow receipt into her safe. Appendix K. Blando misrepresents Crawford to have been in Gallatin County in his Chronological note for 2/5/18 CR26-5; ER 319. Because Crawford was nearly arrested over the car subject to the Bill of Sale and the 2/5/18 entry Crystal placed the papers in her safe in case Crawford had to prove how he obtained the car.

Crawford owns and operates two businesses, "Wrench Turner Repair" and "Crawford Construction and Roofing", pursuant to Crawford's approved parole plan submitted prior to his November 29, 2017 release from the Montana State Prison. Crawford was in the process of business startup. Crawford's parole officer Dan Blando was aware of Crawford's businesses. CR 26-5; ER318.

Crawford has had as many as four fulltime employees at one time. Crawford's construction tools and a lot of his mechanics tools had been in storage, however, Butch Moreno provided Crawford with additional mechanic tools and specialty tools to help Crawford compete for more jobs and be successful.

Gilbreath was preparing to go to trial against of member of a prominent Butte family for rape, where Gilbreath was the victim. Gilbreath's documents, clothing, personal items, ect. were being stolen from the house when Audrey and her friends came around.

Being supportive to Gilbreath, arranging rides for material delivery to job sites and other work related chores, issues with the Virginia Department of Motor Vehicles over Crawford's drivers license, the unauthorized access to Crawford's bank account and fraud claims with his bank, as well as all the chaos over thefts from his home caused Crawford a lot of stress. Then on top of all of this Gilbreath informed Crawford that she could no longer get her safe to open.

Crawford was newly released from prison, where for nearly seven years all of his decisions and responsibilities were made for him. The stress from his life outside proved too much for him to handle. Appendix L pg 16-33.

On June 23, 2019 Crawford made the choice to drive up to Delmoe Lake, there he saw people he knew from Missoula 20 years ago. Crawford made the choice to drink and use drugs the entire weekend. The only good choice Crawford made was not driving until he was able to function. On June 26, 2018 Crawford was still hungover when he reported to his parole officer. Crawford admitted what he had done to his parole officer Dan Blando. When Crawford would not provide names of others at the lake, Blando restricted Crawford's travel despite possible legal consequences for an open job contract in Helena. CR 26-5; ER 318.

As Crawford left the Butte Probation building, Dale Guccinone was entering. Crawford had known Dale about 17 years. Dale provided that Dale's wife is in jail because his nephew "Luke" left a syringe with heroin in it and P&P found it during a search. Dale was going in to "talk" to his wife's parole officer to see if he would place a bond on her. Dale further provided that he had turned Luke in for stealing Robert Guccione's (Dale's Father) Hydrocodone pain pills. Crawford told Dale that he had just signed an admission form because he partied at the lake. Dale entered his wife's parole officer's office and falsely provided to him, then to the supervisor Tony Barrett, that he knows

Crawford to be using and selling drugs. Dales wife was later released from custody.

It is Crawford's belief that Dale offered to set Crawford up. This belief is based upon Dale telling Crawford on July 18, 2018, that federal agents had asked Dale to set Crawford up. (Dale had spent nearly an hour trying to talk Crawford into purchasing drugs for him). This information about who provided information has never been disclosed to the defense. Dale provided nothing about a gun and was the only informant Tony Barrett spoke to. CR28-3; ER 578-81. Tony Barrett spoke to Blando of this information, two weeks later Blando mistates that the information came from the ATF and involved firearms when he back dated his Chronological note entry. CR 26-5; ER 318. (The actual entry date is in the right hand column). Unknown to Crawford at the time, Dale Guccione had pending drug charges in Livingston, Helena, and Butte. One of the charges was possession with the intent to distribute.

On July 6, 2018 Gilbreath attempted, unsuccessfully, to report a break in of one of her storage units. She loaded of lot of valuable items, and unknown to Crawford at the time, several firearms in the back seat area of her truck. The firearms were in cases but the cases do not indicate a firearm manufaturer.

Later that evening, after sunset, Gilbreath picked up Crawford to take him to Helena to pick up a motorcycle for resale and a job completion check. Caitlyn Dreesden was picked up from the next street over to drive the truck back. Crawford and Gilbreath did not know that Dressden was on probation.

Luke Guccione showed up just before Crawford left needing help on his car. Crawford showed Luke a picture of the motorcycle, Luke not only knew the motorcycle, but that it had just

been moved from Boulder to Helena and gave Crawford directions to the house.

Helena Dispatch received an anonymous tip that people in a white pickup would be at a house on Mill road and they would have a bunch of drugs.

Sgt. Uriah wood set up to watch for a white pickup seeing the truck driven by Gilbreath leave a house on Mill Road, Sgt. Wood instructed Deputy Robert Rivera to pull the truck over for failure to use a right hand turn signal. The government has consistently used information from the police reports generated by Sgt. Wood and Deputy Rivera to influence the district court judge. Appendix L pg 8-9 also pg 26-28; CR-35; ER-650-52. Video of the stop was not produced until after Crawford's change of plea hearing. Appendix D pg 7-13. The court has never viewed the Helena videos and has never heard testimony from the officers who authored the reports. Instead they were entered into the record by the government and testified to by a probation officer. The video shows that Deputy Rivera gave conflicting reasons for pulling the truck over, both stated reasons were disputed and proven mechanically false, Sgt. Wood did not provide a K-9 video because he was caught by Crawford pulling on the leash. Gilbreath was naming what guns she had and where they were in the truck. The entire stop was a pretextual stop. The truck was impounded to search for drugs and Crawford was arrested. It is important to note that there were no drugs, drug paraphernalia and not even any officer observations that any of the occupants of the truck were under in the influence of drugs. There was no traffic citation for a broken taillight or failure to use a turn signal issued. it is Crawford's position that when officers did not find drugs, they stole Gilbreath's property out of a police impound. (Later the next year an officer Wood was arrested for stealing over \$8,000 from the police fund in Helena.)

While Gilbreath and Crawford were being detained by police in Helena, intruders had broken into their house, drinking, using drugs, and looting their property. Appendix L pg. 26-27.

On July 9, 2019, while Crawford was still in detention, APOs Jacob Miller, James Cameron, and Dan Blando forced entry into Crawford's house through a window. Blando did not agree with this method. CR26-7; ER 353-55. It was known that Gilbreath lived with Crawford, evidence of female items were evident in the house as well. CR26-7; ER 342. Officers have never articulated exigent circumstances requiring a forced entry into the house and garage more than 48 hours after Crawford was taken into custody. Officers knew that search policies were violated. CR26-7; ER 353-55. Department policies are mandated by the Montana Administrative Procedure Act and are written. CR26-19; ER422. Crawford was not notified until officers found Gilbreath's gunsafe. APO Jacob Miller contacted a locksmith, the store that sold the safe and the safe manufacturer. His purpose was to gain access to the safe without asking the owner (Gilbreath). Had Miller provided the safe company with the safe's serial number he would have discovered that the safe is registered to Gilbreath. Gilbreath's number was provided to Dan Blando on July 16, 2018. On July 12, 2018 Crawford was released from detention and met with Tony Barrett and Bud Walsh (supervising officers) where Crawford informed them that he knows Gilbreath owns firearms but does not know what all she has in her safe. Gilbreath called Probation and Parole on July 12, 2018, but her call was not returned. In fact the only way Gilbreath was able to speak with an officer about her safe was to personally sit in the waiting room at the Butte Office and catch Dan Blando on July 31, 2018. CR26-5; ER 316. (Note that Blando does **not** mention in this chronological note that Gilbreath previously claimed that she had no interest in the safe. The only one to make this report is Jacob Miller. Dan Blando admits under cross-examination that reports at the Butte office are discussed between officers, they even copy and paste, sometimes back dated etc., without first verifying evidence. Appendix H. pg 42-50. This would account for *four officers* generating *five reports* each falsely claiming the "Bill of Sale" stated Crawford had purchased the safe from a third party.

Appendix K; Appendix H pg 92.

On July 18, 2018 Crawford discovered drugs and paraphenalia while cleaning his home. CR 28-2; ER457. Crawford placed the contraband in a black bag with a US Postal Money order and Business information with the intention of taking them to his parole officer.

This same day Dale Guccione arrived attempting to get Crawford to aquire drugs for him. After nearly an hour Dale informed Crawford that federal agents were trying to get Dale to set Crawford up. Audrey Messenger and Luke Guccione arrived, surprised to see Crawford out of jail. Crawford took Audrey across town to clear out the house. When Crawford returned to the house two young males were looking for Audrey. CR 28-2; ER 531. Crawford sent them away. Crawford entered the house from the rear, when he reached to retrieve the bag he spotted the firearm subject to count two. Crawford tried to reach Christopher Wold, who Crawford suspected owned the firearm. Appendix L pg 32-34.

Crawford was taken into custody by APO's in an unassisted "high risk apprehension" by P&P officers with no cameras or other means to record the events. Despite the governments claims that Crawford tried to flee, when interviewed by Crawford's investigator officers admit that Crawford only moved at most 5 feet. Crawford placed the items on the ground, stepped away with hands up. Crawford did not stumble. CR 28-1; ER 507-08 (Note Crawford moved 5 feet, the female moved three to four feet).

When Lt. Moore arrived to take Crawford into custody he repeatedly insisted Crawford was a person he knows to be called "Doc." This fact is recorded by Lt. Moore's body camera. "Doc" is Arthur Meyer a person Crawford is constantly mistaken for. Appendix L pg 23-26. Dan Blando has repeatedly refused to provide information about Meyer. Meyer is on Blando's caseload also. CR

26-7; ER 385-86. Meyer was actually arrested in Idaho for interstate transport of narcotics to Montana soon after Crawford's arrest. Appendix L pg 31.

On July, 18, 2018 Crawford was arrested for drugs, a firearm and a stolen motorcycle that had been left in and at his home by intruders. All of the charges and parole violations at the state level have been dismissed by a finding of "Not Guilty" except for the federal sentence Crawford challenges here. Appendix F.

The government provided testimony and reports to the court that it knew to be false, specifically an ATF investigation, and information that Crawford always carries a gun by multiple anonymous informants. This false narrative was the cornerstone of the courts decision in not only denying suppression but sentencing Crawford. CR 35; ER 650; and Appendix L pg 7-11.

The government puts forth that Crawford somehow was able to afford about 20 firearms only 7 months out of prison. Rejecting the idea that Crystal Gilbreath, a heavy equipment operator of 10 years, and not a prohibited person is the owner by misleading Helena police reports claiming Gilbreath had no knowledge of the very firearms she "Names" and gives location to on video. Appendix L pg 7-11.

Evidence seized by probation and parole has been intentionally damaged and stolen by officers involved in the case. On July 9, 2018 a backpack belonging to Gilbreath was seized from the Red Dodge pickup, this was never returned compare also the contents from the safe vs what was returned by photos. None of the jewlery, coins, or valuables were returned despite multiple attempts by Gilbreath and Crawford's ex-wife. Appendix O. [Note also the damage to the stamp collection].

The only probation officer to allegedly speak to an informant that alleged to see a gun has

refused to provide information during the State prosecution and was never tested in the Federal prosecution. Compare CR28-1; ER 471 and CR28-3; ER 278-81. (Tony Barrett testified at suppression about an informant observing a gun. Barrett "*thinks*" Jacob Miller spoke to her but Barrett did not. See Appendix H pg 73-79).

REASONS FOR GRANTING THE PETITION

A. The district court denied Crawford's motion to suppress evidence seized as the fruit of a warrantless off site search of Gilbreath's gunsafe, which was seized unlawfully by an officer providing misinformation to a county attorney that Crawford lived alone, the safe was discovered by an unreasonable forced entry into a home absent exigent circumstances. The decision to search the home was prematurely based upon an unconstitutional pretextual stop that was based upon an anonymous call to law enforcement that lacked enough information to serve as a basis for reasonable suspicion.

The Ninth Circuit did not directly address the issue, but it did rule that Crawford could not challenge the search of the safe because he disclaimed ownership of the safe. The Circuit did not consider any of the information acquired by Crawford's counsel during questioning of Dan Blando concerning: 1) his contradictory testimony that Crystal Gilbreath denied ownership of her safe on July 9, 2018, despite his statements to Crawford's investigator. CR 267; ER 348-49; 2) Dan Blando also provided a chronological note on 7-31-18 where Gilbreath saw him in person concerning her safe and guns that were taken during the search. CR 26-5; ER 316; and 3) Dan Blando's reporting and memory can not be trusted as a credible source of information. Appendix H pg 41-52. Crawford's attorney appropriately assumed that officers would not engage in improper litigation conduct to obtain a conviction.

1. The Helena Stop was pretextual

Gilbreath was stopped for an alleged traffic infraction. "A seizure justified only by a police-observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation." Rodriguez v. United States, 135 S.CA 1609, 1612 (2015). A pretextual stop is unconstitutional if it is shown that but for the belief in a report of drugs the stop would not have happened. United States v. Orozco, 858 F.3d 1204 (9th cir 2017). Dispatch received an anonymous tip that people in a white pickup would be carrying a lot of drugs. When Sgt. Wood observed a white pickup in the area he instructed Deputy Rivera to conduct a traffic stop alleging failure to use a right turn signal. Deputy Rivera did not observe this traffic infraction. Video of the incident reveals that Deputy Rivera did in fact observe Gilbreath use multiple directional signals as he followed her, positioning himself to initiate a traffic stop. The Ninth Circuit in United States v. Lopez-soto, 205 F.3d 1101, 1106 (9th 2007) held "... good faith but mistaken belief that motorist violated traffic laws does not justify stop under the fourth amendment."

a. The tip was anonymous

The information originated with the Helena law enforcement dispatch. Because dispatch did not provide details about the information it can only be treated as anonymous. "Because the FBI did not provide the sheriff's department with information about the basis of its tip, the tip should be treated as an anonymous tip." United States v. Morales, 252 F. 3d 1070, 1074 (9th Cir 2000) (Applying United States v. Thomas, 211 F.3d 1186, 1190, n.3 (9th Cir. 2000)).

b. Anonymous tips demonstrate reliability through predictions

The only information available to Sgt. Wood, who directed another officer to conduct a

pretextual stop, was the information from dispatch about an anonymous caller. The information did not identify any of the occupants of the vehicle and described the vehicle only as a white truck. The only predictive behavior was the house where the truck would be and that they had a lot of methamphetamine, there was nothing that demonstrates the informants basis of knowledge. Any person could have driven by the house and observed the white truck and called in with more information than dispatch provided. A license plate number could have been - *but was not* - provided. Anyone who had a disagreement with the occupant of the house, i.e. a jealous boyfriend or as Crawford suspects, intruders looting his home in Butte called to have him detained while they carried out their deeds.

"[A]n anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity inasmuch as ordinary citizens generally do not provide excessive recitation of the basis of their everyday observations and given the veracity of persons supplying anonymous tips is 'by hypothesis largely unknown and unknowable.'" Alabama v. White, 496 U.S. 325, 329 (1990) (Quoting Illinois v. Gates, 462 U.S. 213, 237 (1983)); see also, Florida v. J.L., 529 U.S. 266, 275 (2000) (Kennedy, J. concurring) ("If the telephone call is truly anonymous, the informant has not placed his credibility at risk and can lie with impunity. The reviewing court cannot judge the credibility of the informant and the risk of fabrication becomes unacceptable."). For this reason, in order for an anonymous tip to yield reasonable suspicion to stop or seize a suspect, the Court "require[es] 'something more'." White, 496 U.S. at 329 (Quoting Gates, 462 U.S. at 227).

In White, officers were provided through an "anonymous tip" that Vanessa White would be leaving 235-C Lynnwood Terrace Apartments at a particular time in a brown Plymouth station wagon - the right taillight lens was broken, she would be going to Dobey's Motel, and in a brown

attache' case would have about an ounce of cocaine. The tip in White can be broken down into identifying information (White's name, location, vehicle and the brown attache case) and predictive criminal information (exactly where White would be, exactly when she would leave the apartment, exactly where she would go, and that she possessed cocaine). Officers observed all of the information given by the tip and stopped White just short of Dobey's Motel.

This Court deemed the White case a "*Close case*" and concluded that "under the totality of the circumstances the anonymous tip, as corroborated, exhibited sufficient indication of reliability to justify the investigatory stop of respondent's car."

That is precisely what did *not* happen here. Law enforcement was provided as the only identifying information, (that a "white truck" would be at a certain house). There was no description of who the people were or looked like. There was no description of the license plate or other identifying information. Next the provided predictive criminal behavior information - the people would have a bunch of methamphetamine - this lacks any reliability such as: Who has it?; where is it?; how do you know this?; providing no basis of knowledge. The only thing officers had to observe prior to the stop was three people got into a white pickup and drove away. There was nothing observed that broke the law or confirmed criminal predictions. Sgt. Uriah Wood had nothing to go on.

After the stop police point out that a torch was observed in plain view on the floor of the truck and torches are known to be used to ingest drugs. The "torch" observed is used to solder wire connections. Beyond the torch police can point to nothing else drug related, including any observations that anyone appeared under the influence of drugs. (Sgt. Wood claimed his k-9 "alerted" to the presence of drugs, however this is disputed on video by Rivera's patrol unit and

Wood failed to provide a video of his own because Crawford directly confronted Sgt. Wood over pulling multiple times on the leash as the K-9, "Villi", attempted to go around the open passenger door). Additionally, there were no drugs or paraphenalia found in the truck or on the persons taken into custody by police, nor did anyone appear to be under the influence of drugs.

2. The search of Crawford's home was unreasonable.

Although Crawford's status as a person on parole places limits on his constitutional protections, those limits are set by his signed conditions of release. Crawford does not contest that probation and parole officers may search or had reason to search. What he contests is the "nature of the government's intrusion" and the "physical invasion of the home." The uncontested facts are that: 1) probation officers did not notify Crawford prior to the search of his home; 2) Officers forced entry into Crawford's home through a window; 3) The search was conducted more than 48 hours after Crawford's arrest; 4)Exigent circumstances did not exist; and 5) Searches must be conducted professionally and in the least demeaning manner possible.

The Montana State Supreme Court provided in *Stave v. Therriault*, 2000 MT 286, 302 Mont. 189, 14 p.3d 444 (2000):

[I]n analyzing the officers entrance of the home, however, we restated the indelible rule that warrantless searches conducted inside a home are *per se* unreasonable, 'subject to only a few specifically established and well-delineated exceptions, Hubbel, 286 Mont. @ 212, 951 P.2d @ 879. This court has routinely stated that the physical invasion of the home is the chief evil to which the Fourth Amendment and Montan's Article II sec. 11 are directed. We have emphasized again and again that the entrance to the home is where the Federal and Montana Constitutions draw a firm line, and that absent an exception that threshold may not be crossed without a warrant. See e.g. *State v. Kao*, (1985), 215 Mont. 272, 282-83, 697 P.2d 903, 907 (quoting *Payton v. New York* (1980) 455 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639; *State v. Bassett*, 1999 Mt 109, P25, 294 Mont. 327, p25, 982 P.2d, 410, p25. Further, it is well-settled that the governments intrusion into a home through an unlocked door is no different than if entry is gained with a key, or the use of force. See e.g., *Sabbath v. United States*, (1968), 391 U.S. 585, 590, 88 S.Ct. 1755, 1758-59, 20 L.Ed.2d 828 (intepreting statue that requires an officer to announce his authority before officer may "break" into a home to

execute a search warrant."

The court went on to rule, "Thus our analysis of the 'nature' of an officer's warrantless intrusion into a person's home cannot escape the necessity that the State prove that one of the exceptions provided under our search and seizure jurisprudence applies."

In the case of Therriault - a probationer on the Intensive Supervision Program - his parole officer arrived at Therriault's home to perform a compliance check, found the front door unlocked and entered the home. The Supreme Court of Montana found that this intrusion violated the Fourth Amendment because the officer did not make a reasonable request to search. In Crawford's case officers did not need to make a request, but only notify Crawford prior to conducting the search. CR 26-19; Er 422. Crawford was only notified when officers located Gilbreath's locked gunsafe, well after the search was under way.

a. Forced entry was not imposed as a condition of Crawford's release

The circumstances under which a probation officer (or parole officer) may forcibly enter the home of a parolee or probationer and make a warrantless search are limited to cases in which it has been authorized by a statute or a valid regulation of a parole board or where it has been expressly imposed as a condition of parole or probation by the judge who imposed the sentence. Griffin v. Wisconsin, 483 U.S. 868, 97 L-Ed.2d 708, 107 S.Ct. 3164 (1987); United States v. Giannetta, 909 F.2d 571, (1st Cir. 1990). These holdings which treat searches and seizures by probation and parole officers as administrative searches that are governed by the Reasonableness Clause of the Fourth Amendment, Griffin, 483 U.S. at 87, are premised on the principle that "what degree of surveillance is permissible in the individual case should not simply be left to the judgement of the supervising officer, but should be determined by the releasing authority..." In Crawford's case this Court need

only see the interview of Dan Blando, Crawford's parole officer, for evidence that the forced entry and search was not reasonable. CR 26-7; ER 353-35.

b. Warrantless seizure and off site search of the gun safe was per se unreasonable.

In *United States v. Swearingen*, 2013 US Dist. LEXIS 6783, Judge Dana L. Christensen - *Crawford's Judge* - agreed with Swearingen. As a general matter, law enforcement officers must have a warrant to seize property. "A seizure conducted without a warrant is per se unreasonable under the fourth amendment - subject to only a few specifically established and well delineated exceptions." *United States v. Hawkins*, 249 F.3d. 867, 872 (9th Cir, 2001). For instance, "Where law enforcement authorities have probable cause to believe that a container holds contraband or evidence of a crime, but have not secured a warrant, the Court has interpreted the [Fourth] Amendment to permit the seizure of the property pending issuance of a warrant to examine its contents if the exigencies of the circumstances demand it or some other recognized exception to the warrant requirement is present." *United States v. Place*, 462 U.S. 696, 701, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983). See also *United States v. Licata* 761 F.2d 537, 542 (9th Cir 1983) (both probable cause and exigent circumstances must exist).

Swearingen, a person convicted of sexually assaulting minor children in the Fourth Judicial District Court of Missoula, Montana, years later was twice indicted Federally for possession of child pornography. The United States District Court twice ruled that a search condition permitted officers to search Swearingen's computers and devices, but the removal of such devices from the residence and off-site search violated Swearingen's Fourth Amendment right, because officers did not obtain a warrant. Very much the same factual basis Crawford puts forth. Gilbreath's gunsafe was removed from the home without a warrant by APO Miller calling County Attorney Sam Cox and

misinforming him that Crawford lived alone. For nine days probation and parole had Gilbreath's safe where APO Miller contacted the safe manufacturer, Murdoch's - where the safe was purchased - and Cooney's locksmiths inquiring about how to get into a locked safe without the code, (he never called the owner of the safe or gave the serial number to the manufacturer to determine the registered owner). CR-28-1; ER491-94. The same issue is present in Crawford's case. A closed container was removed from Crawford's shared residence. It matters not who the safe belongs to at that point a warrant was necessary to conduct the off-site search, probation officers were well aware of the Swearingen decisions in federal court. CR-28-3; ER 582-83. Still APO Miller sought only to circumvent a warrant by lying to a county attorney.

c. Crawford did not live alone.

Dan Blando was present for the search of Crawford's home. Jacob Miller lied to CA Sam Cox to seize the safe without a warrant. Evidence supports Crawford did not live alone by observations and a note to Crawford on the side of the safe from Gilbreath, the other resident of the home. CR-26-7; ER 357-58; Appendix H pg 32-34; and appendix Q confirms that Crawford was not the only person residing in the home. Seizure of Gilbreath's safe pursuant to a search condition imposed on Crawford was an unreasonable extension of Crawford's parole conditions and does not provide an exception to the warrant requirement. Therefore from the time APO Miller lied to County Attorney Sam Cox all evidence was tainted by exploitation of the illegal act.

B. The district court denied Crawford's motion to suppress and sentenced Crawford based upon police reports and anonymous informant information that was presented through probation and parole officers and *not* by any officer actually involved in the reports or any officer who actually spoke to the anonymous informer that alleged to have seen Crawford with

a firearm. CR 25; ER 650-53. Appendix L pg 7-11; see also Crawford's objections Appendix L pg 9, 36, 44-45. Video was not produced to the defense prior to suppression concerning the police reported events. Appendix D pg 7-13.

The Ninth Circuit did not directly address the issue of confrontation. Appendix A, B, and P. The circuit did not consider any of the information Crawford's attorney acquired during his questioning of APO Tony Barrett and his reasonable suspicion analysis for Crawford's July 18, 2018 arrest. Appendix H pg 86-99. Once Crawford was successful in his dispute of the *disclosed* reasons for his arrest the government pivoted to *undisclosed* reasons and *anonymous* informants. None of the informant information was disclosed by the government prior to the suppression hearing testimony, Appendix H pg 90-97 and 114-118. Furthermore, the officer giving the testimony about informant information did not know if the person who allegedly saw a handgun can identify a firearm. CR-28-3; ER-580. In fact, Tony Barrett did not even speak to this person, he "*thinks*" it was Officer Miller. CR-28-3; ER-581.

1. Crawford has the right to confront his accusers.

This Court has consistently held the Sixth Amendment's Confrontation clause to be a "bedrock procedural guarantee" applying both to federal and state prosecutions; see *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

This Court explained in *Hoffa v. U.S.*, 385 U.S. 293, 87 S.Ct 408, 17 L.Ed.2d 374 (1966) "The established safeguards of the Anglo-American legal system leave the veracity of a witness to be tested by cross-examination, and credibility of his testimony to be determined by a properly instructed jury." Crawford in this case faced criminal charges, his adversaries, - police reports from Helena, anonymous informants, and any officer who spoke to the alleged informant relevant to

Crawford's charges - never faced adversarial testing to determine such basic elements as veracity, credibility, motive, and basis of knowledge. The fact is the court cannot even be sure the informant identified Crawford and not Meyer because any person with knowledge has yet to be examined. Informants not disclosed must be considered anonymous. Anonymous tips standing alone does not demonstrate an informant's veracity or reliability because they cannot be held accountable if he or she provides inaccurate information, and the police cannot assess the tipsters reputation. See Florida v. J.L., 529 US.266, 270,146L.Ed.2d 254, 120 S.Ct. 1375(2000).

2. The court simply assumed the police reports are reliable

Judge Moran explained in Downie v. Klincar, 759 F. Supp 425, 428 (N.D.Ill. 1991) "police reports can be adversarial in nature, arising from confrontation between a suspect and a police officer. They can also be advocacy pieces, written for prosecutors to use in deciding whether or how to charge a suspect. A police officer thus may have many reasons to present events in a nonneutral light and cannot be assumed to have recorded the relevant events in an entirely neutral way. Even the most candid witness will naturally remember and recount events in a light that supports the story he is trying to tell. These concerns led Congress to exclude police reports from the hearsay exception for public records and reports found in Fed.R.Evid.803(8) when offered in criminal cases... Courts cannot simply assume that any police report is reliable without more information or corroborating evidence."

This reasoning is sound with several circuits, even in proceedings that are considered far more flexible than an adversary criminal trial; see United States v. Bell, 785 F.2d 640 (8th Cir, 1986). concerning parole revocation proceedings; United States v. Menzas de Jesus, 217 F.3d 638 (9th Cir 2000) Statements in a police report that were recounted in the PSR "should not be

considered by the court because they were inherently unreliable and insufficient to show even a preponderance of the evidence standard..."; U.S. v. Valdez, 65 F.3d 177 (9th Cir, 1995) and U.S. v. Johnson, 710 F.3d 784 (8th Cir, 2013) "violation of due process right to question witness at a revocation hearing when probation officer read a police report into the record" and U.S. v. Padilla, 793 Fed.Appx.749 (10th Cir, 2019) "... police reports - as a category of evidence - are not inherently reliable."

In Crawford's case, the government had the opportunity to call witnesses to prove its allegations. Appendix H pg 4-5. The government provided APO Dan Blando and APO Tony Barrett. Testimony from these witnesses did not provide evidentiary support for unknown informant information, adversarial police reports, undocumented contraband, misleading information leading to an unconstitutional search and seizure, and a phantom ATF investigation. In fact, the testimony from both probation officers sharply contradicted prior reports and testimony. It was also revealed that Butte APO's generate incident reports together, sometimes copy and paste each others reports, back date reports and include evidence they have not observed. Appendix H pg 40-50. It is more difficult to ferret out the truth when reports are generated without an officer's personal knowledge and actual evidence.

The police reports were material to the courts denial of Crawford's suppression. CR 25; ER 650-52.

C. AUSA Joseph Thaggard solicited testimony from Probation officers that: 1) Was known by AUSA Thaggard to be false; 2) the false testimony was allowed to go uncorrected when it appeared; and 3) the false testimony was material in denying suppression of evidence and sentencing Crawford.

The ninth Circuit did not directly address the issue as Crawford's counsel would not present prosecutorial misconduct claims. Crawford did attempt twice to raise the issue before the Ninth Circuit by Addendum, however it was not even viewed by the court. Appendix P pg 4-6.

1. Known false testimony was presented to the court.

Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.127(1959) has been cited in over 5,600 decisions. This Court found that "A conviction obtained through the use of false evidence, known to be such by representatives of the state, must fall under the Fourteenth Amendment." and "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." This Court further stated "It is of no consequence that the falsehood bore upon the witness credibility rather than directly upon the defendant's guilt. A lie is a lie no matter what its subject, and if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth... That the district attorney's silence was not the result of guile or a desire to prejudice matters little, for its impact was the same, preventing, as it did, a trial that could in any real sense be termed fair." The only difference in applying Napue in this case is the fact that a federal prosecutor solicited the false testimony, so the Fifth Amendment Due process of law is violated.

The holding in Napue concerned a witness that was asked by the prosecutor: "Have I promised you that I would recommend any reduction of sentence to anybody? to which Hamer, the witness replied, "you did not." [That answer was false and known to be so by the prosecutor.] More recently in Dow v. Virga, 729 F.3d 1041 (9th Cir 2013) A prosecutor examined Detective Oglesby, she asked: "At whose request was the band-aid placed beneath all of the participant's right eyes?" Oglesby responded: "Mr. Dows." This testimony was false. in addition, as the state appellate court

stated, the prosecutor knew at the time that this "representation was erroneous." Nevertheless, the prosecutor did not correct the detective's testimony.

In Crawford's case the federal prosecutor examined APO Dan Blando about his 26 July, 2018 Chronological note entry specifically soliciting testimony about the ATF; CR-26-5;ER-318 he asked:

Q: Between the time that you spoke to him that morning and his showing up later in the day, did you have a conversation with your supervisor, officer Barrett, about the Defendant?"

A: Yes, I did.

Q: And what were you told?

A: I was told not have any outside contact with the defendant due to him being watched by Alcohol, Tobacco, and Firearms. [*This answer is false and known by the prosecutor to be false*] Appendix H pg 17 and Appendix R.

The same prosecutor called probation officer Tony Barrett to the stand, and the prosecutor asked:

Q: Alright. And what was your reasonable suspicion for doing a search on his residence?

A: Well, the reasonable suspicion, I had that way before this incident, was several individuals had advised us he had been in possession of a gun and one individual actually advised us that they had seen the gun... Taking those facts and then the fact that we found out -- or we were advised by ATF,..." [*This information is known by the prosecutor to be false*. Not just the phantom ATF investigation, but there was only one informant who said anything about a gun not several and Tony Barrett had no personal knowledge about that informer, or if she can identify a firearm.]; CR 28-3;

ER 581.

Later on Barrett testified, "Well, *three* individuals who provided information on Mr. Crawford's activities..." [*This information was also known to the prosecutor to be false.* There were only two alleged informers at the time of the interview with Crawford's investigator, one was a male (Dale Guccione) from June 26, 2018 who said "*nothing about a gun*". The other was female and nothing is known about her or who she really saw as not only has she never been produced, the officer Tony Barrett "*thinks*" talked to her has not been tested.]; All of the transcripts of officer interviews were provided to the prosecutor prior to suppression and in fact were part of the court's exhibits. CR28-3; ER 578-81. AUSA Joseph Thaggard knew this testimony was false and never attempted to correct the record.

2. The false testimony was material.

The Ninth Circuit Court in *Dow v. Virga*, 729 F.3d 1041 (9th Cir, 2013) also applied a materiality element to prove a violation of Napue. In Crawford's case the court summarized Butte APO's probable cause to investigate Crawford based upon the informant and ATF testimony the prosecutor knew to be false and failed to correct.

"Sometime around the June 25, 2018 incident, Blando's supervising officer, probation officer Tony Barrett received information from trusted informants indicating that Crawford was involved in selling drugs and carrying a weapon. Based on that information, Barrett told Blando not to have any contact with Crawford outside of the office and decided to watch Crawford more closely. Additionally, Blando was informed that the ATF had begun to watch Crawford."

CR35; ER 650.

Crawford's conviction was obtained through the use of evidence known by the prosecutor to be false.

CONCLUSION

For the above reasons, Crawford pleads that this Court command respect for the rule of law, his petition for a Writ of Certiorari should be granted.

Dated this 28 day of January, 2021.



Robert Crawford/ Petitioner

VERIFICATION

Robert Crawford, being first duly sworn does hereby verify under penalty of perjury: That I am the author of the foregoing Petition for Writ of Certiorari and all information supplied herein by me are true and correct upon information and belief. I do know Dale Guccione to have been the male informant giving false information to probation officers on June 26, 2018 and I stand under penalty of perjury that what I presented at sentencing to Judge Christensen is true. As I wrote this there are multiple other details I have left out only because those presented are my strongest arguments. But I know the Helena police reports and Butte P&P reports to contain a lot of false and misleading information, i.e. the "sword" is an antique fencing foil and is blunt tipped. Also the "chemicals" known to be used to manufactuer methamphetamine are normal chemicals and cleaners found in a mechanic shop. I own a mechanic business as well as a contruction company I had no chemicals

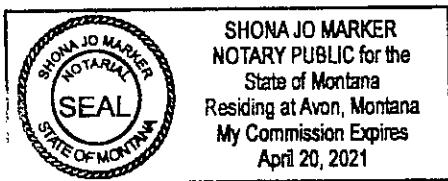
intended to be used in the manufacture of methamphetamine. There were also multiple intruders in the home prior to and after the probation search conducted on July 9, 2018. Finally, Gilbreath's safe was purchased on April 24, 2018 to comply with federal law and the conditions of my parole. The safe with digital entry only was selected so that claims could not be made that I had a key.

dated this 28 day of January 2021.



Robert Crawford

Subscribed and Sworn to before me: Shona Jo Marker



Shona Jo Marker
Residing at Avon MT
Commission Expires
April 20, 2021

Certification of compliance

The forgoing is printed in no less than 12pt type, double spaced except for citations, and less than 40 pages on 8 1/2 X 11 white paper, using Open Office Word Pad. My sincerest apologies for mis-spelling and poor grammar as this program has no spell check.