No. 21-____

IN THE

Supreme Court of the United States

DAMON GOODLOE,

Petitioner,

v.

CHRISTINE BRANNON,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

RUSSELL H. FALCONER
Counsel of Record
ANDREW P. LEGRAND
JOSEPH E. BARAKAT
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
(214) 698-3233
alegrand@gibsondunn.com

CHRISTINE A. BUDASOFF
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

MATTHEW BALL
GIBSON, DUNN & CRUTCHER LLP
1801 California Street, Suite 4200
Denver, Colorado 80202

Counsel for Petitioner Damon Goodloe

QUESTION PRESENTED

Whether the Confrontation Clause of the Sixth Amendment permits the prosecution to introduce statements elicited at a show-up conducted after the lone suspect is in custody.

LIST OF RELATED PROCEEDINGS

- Trial: *State of Illinois v. Damon Goodloe*, Case No. 03-209001 in the Circuit Court of Cook County, Illinois County Department–Criminal Division, Illinois (2006).
- Direct Appeal: *People v. Damon Goodloe*, Case No. 03 CR 2090, 395 Ill. App. 3d 1114 (2009) (unpublished).
- Petition for Leave to Appeal Direct Appeal to the Supreme Court of Illinois: *People v. Goodloe*, Case No. 07–1095, 236 Ill. 2d 520 (2010).
- State Habeas: *People v. Goodloe*, Case No. 1–11–0657, 2012 IL App (1st) 110657-U, 2012 WL 6861523 (2012) (unpublished).
- Petition for Leave to Appeal State Habeas to the Supreme Court of Illinois: *People v. Goodloe*, Case No. 1–11–0657, 985 N.E.2d 308 (Ill. 2013).
- Federal Habeas: *Goodloe v. Dorethy*, Case No. 13 C 2650, 2018 WL 3868889 (N.D. Ill. Aug. 14, 2018).

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Statutes

Other Authorities

Constitutional Provisions

PETITION FOR A WRIT OF CERTIORARI

Petitioner Damon Goodloe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The Seventh Circuit's opinion denying habeas relief (App. 1a) is reported at 4 F.4th 445 (7th Cir. 2021).[1] The district court's order denying habeas relief (App. 17a) is unreported, but available at 2018 WL 3868889 (N.D. Ill. Aug. 14, 2018). The Illinois Appellate Court's decision rejecting Petitioner's Confrontation Clause claim is unreported. App. 47a. Finally, the Illinois Supreme Court's denial of Petitioner's petition for leave to appeal is likewise unreported. *Id.* at 46a.

JURISDICTION

The Seventh Circuit entered its judgment on July 12, 2021. App. 1a. On March 19, 2020, this Court issued an order extending the filing deadline for all petitions for certiorari to 150 days from the date of the lower court's order denying discretionary review. On July 19, 2021, this Court rescinded that order, but only for petitions for certiorari from judgments issued after that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

---

[1] Citations are to the following: Petition Appendix: "App. __"; District Court Docket: "DCD __ at __."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

The Antiterrorism and Effective Death Penalty Act ("AEDPA") provides, in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

STATEMENT

In *Davis v. Washington*, 547 U.S. 813 (2006), this Court held that, for the purposes of the Confrontation Clause, statements are "testimonial when the circumstances objectively indicate that there is no . . . ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution," *id.* at 822. This case presents the question whether showups conducted after the lone suspect is in custody are testimonial and should therefore be excluded from evidence at trial.

1. On December 24, 2002, Pierre Jones and Edward Loggins were shot while dealing cocaine in a vacant lot in Chicago, Illinois. App. 4a. Loggins fled from the scene on foot, but Jones fell to the ground, where two members of the Chicago Police Department found him minutes later. *Id.* at 2a, 4a. The officers immediately called for an ambulance and asked Jones "who shot him," to which Jones responded, "Damon shot me." *Id.* at 2a. Jones also stated that the assailant was wearing a "black hoodie." *Id.*

Two officers left the scene in their vehicle and went to look for the offender. App. 50a. Several blocks away, they observed Damon Goodloe exit an alley in a jacket with a black hoodie underneath. *Id.* at 18a. After Goodloe produced his identification, the officers detained him and brought him to the scene of the crime. *Id.* at 19a. By that time, several ambulance personnel and "[a] lot" of police officers were present at the scene. DCD 16-5 at 130. Approximately 25 minutes had elapsed since the police officers had first arrived. *Id.* at 131, 151–52.

The officers took Goodloe "out of the vehicle and brought him up to the back of the ambulance for a showup." DCD 16-5 at 142. Jones, who was being treated inside the rear of the ambulance on a gurney, sat in an "[e]levated" position, facing outside. *Id.* at 125. With no one else displayed but Goodloe, two officers asked Jones, "Is this the individual that shot you?" App. 3a. Jones said, "That's him, he's the one that shot me." *Id.* According to one officer, when asked if he was "a hundred percent sure this is the guy," Jones responded, "Yeah, that's the guy." *Id.* at 50a–51a.

Jones died in the hospital shortly thereafter. App. 3a. After interviewing two witnesses later that day, the police learned that there might have been two shooters, not one. DCD 16-1 at 115–16.

2. Goodloe was charged with six counts of first degree murder and the charge of personally discharging a firearm during the murder. App. 48a. At trial, over Goodloe's objections, the State entered into evidence both of Jones's statements at the scene of the crime. *Id.* at 3a.

The State then proceeded to make Jones's show-up accusation to the jury the centerpiece of the trial. The State opened by recounting how "the police brought the defendant up to the ambulance and Pierre Jones said that's him. That's the guy who shot me." DCD 16-4 at 37–38. The State raised Jones's show-up accusation with all three witnesses present during the interrogation. DCD 16-5 at 16–17, 126, 137. And at closing, the State repeatedly referenced Jones's accusation. *See id.* at 178, 182, 184. The State would later concede that the show-up accusation was the only

piece of evidence that "identif[ied Goodloe] as the 'Damon' in question." DCD 15 at 21.

At the conclusion of the two-day trial, after the court instructed the jury that Goodloe could be convicted of murder based on the conduct of another person under an accountability theory, the jury found Goodloe guilty of first degree murder. App. 21a–22a. However, the jury did not find that Goodloe personally discharged a firearm in connection with Jones's death. *Id.* at 22a.

3. Goodloe timely appealed, challenging (among other things) the admission of Jones's statement at the show-up. App. 22a–23a. The Illinois Appellate Court rejected Goodloe's Confrontation Clause claim, holding that Jones's statements were not testimonial because "[t]he purpose of the police questioning enabled police assistance to meet an ongoing emergency." *Id.* at 66a. The court reasoned that "the emergency was ongoing" at the time of the show-up because "there were at least two shooters and the police had apprehended just one suspect," *id.* at 68a—despite the fact that the officers believed there to be only one suspect at the time.

4. The Illinois Supreme Court denied Goodloe's petition for leave to appeal. App. 46a. Goodloe filed a *pro se* post-conviction petition, which was summarily denied by the trial court and then denied by the Illinois Appellate Court. *Id.* at 23a–24a. On appeal, the Illinois Supreme Court again denied Goodloe's petition for leave to appeal. *Id.* at 24a.

5. Goodloe filed a federal habeas petition in the Northern District of Illinois. The district court denied

Goodloe's petition, finding that the state court's rejection of Goodloe's Confrontation Clause claim was not contrary to or an unreasonable application of clearly established federal law. App. 17a–45a.[2]

6. Goodloe timely appealed. The Seventh Circuit characterized the question "whether there was an ongoing emergency when the officers brought Goodloe to the ambulance in handcuffs as a close question." App. 10a. But it denied Goodloe habeas relief, reasoning that the officers did not "kn[ow] at that time that they had the right man" given the "discrepancies" between Jones's description and Goodloe's appearance. *Id.* at 9a. The court further reasoned that Goodloe *himself* may have posed a threat because he could have "stash[ed] the gun nearby" to later "retrieve it," *id.* at 9a n.2—notwithstanding the fact that Goodloe was in handcuffs when the show-up occurred.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW PERPETUATES AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW.

The Illinois Appellate Court unreasonably applied Supreme Court precedent in holding that Jones's show-up accusation was nontestimonial. Because the Seventh Circuit improperly denied habeas relief, this Court should grant certiorari to clarify that show-ups—a common police tactic used to obtain *evidence for trial*—are testimonial when the only known suspects are in custody and the scene where the show-up

[2] Goodloe also raised a claim of ineffective assistance of counsel, which the Northern District of Illinois—and then the Seventh Circuit—rejected. Goodloe does not raise that claim here.

occurs is secured.

The Confrontation Clause applies only to the admission of testimonial hearsay. *See Crawford v. Washington*, 541 U.S. 36, 59 (2004). Statements are testimonial "when the circumstances objectively indicate that there is no . . . ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Davis v. Washington*, 547 U.S. 813, 822 (2006). They are nontestimonial when the "circumstances objectively indicat[e] that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." *Id.*

At minimum, an emergency ends—and protection under the Confrontation Clause begins—once a suspect is taken into custody and the crime scene is secured. In *Davis*, this Court addressed two companion cases that illustrate this basic principle. The declarant in *Davis* called 911 to report an ongoing domestic assault, claiming that her boyfriend was "here jumpin' on [her] again" and had "just r[un] out the door." 547 U.S. at 817–18 (second alteration in original). When police arrived four minutes later, they observed the declarant in a "shaken state" with "fresh injuries on her forearm and her face." *Id.* at 818. The Court found that the 911 call was nontestimonial because: (1) the declarant "was speaking about events *as they were actually happening*, rather than describ[ing] past events"; (2) her "call was plainly a call for help against bona fide physical threat"; (3) her statements were necessary "to *resolve* the present emergency, rather than simply to learn . . . what had happened in the past"; and (4) her "frantic answers were provided

over the phone, in an environment that was not tranquil, or even . . . safe." *Id.* at 827 (first alteration in original; internal quotation marks omitted).

By contrast, the relevant statements in *Hammon v. Indiana* were made after the police had already responded to a domestic disturbance and escorted the husband to a separate room. 547 U.S. at 819–20. The Court held that the declarant's statements were testimonial because "[t]here was no emergency in progress" and the officers did not seek to determine "what [wa]s happening, but rather what [had] happened." *Id.* at 829–30 (internal quotation marks omitted). Moreover, the interrogation was "formal enough" because it occurred "in a separate room, away from her husband," *id.* at 830, and "remove[d] in time from the danger she described," *id.* at 832.

Michigan v. Bryant, 562 U.S. 344 (2011), confirms that the Confrontation Clause applies at the very least to statements made after a suspect is in custody. There, officers responded to a shooting and questioned the declarant about "what had happened, who had shot him, and where the shooting had occurred." *Id.* at 376. Although the Court held that the declarant's statements were nontestimonial because the questioning "occurred in an exposed, public area, prior to the arrival of emergency medical services, and in a disorganized fashion," *id.* at 366, the Court reiterated that "'a conversation which begins as an interrogation to determine the need for emergency assistance' can 'evolve into testimonial statements'" where "a perpetrator is disarmed, surrenders, [or] is apprehended." *Id.* at 365 (quoting *Davis*, 547 U.S. at 828).

Not surprisingly, courts nationwide have concluded that statements are testimonial, and subject to

the Confrontation Clause, when made after the perpetrator is apprehended and the crime scene is secured. *See*, *e.g.*, *Boldridge v. State*, 310 So. 3d 1140, 1143 (Fla. Dist. Ct. App. 2021) (statements did not address an ongoing emergency because "the threat had ended when the police arrested [the defendant] before talking to the victim"); *Battle v. State*, 19 So. 3d 1045, 1047 (Fla. Dist. Ct. App. 2009) (statements were testimonial when made "while [the defendant] was in police custody, and so were not solicited by the police in attempts to respond to an ongoing emergency"); *State v. Griffin*, 30 So. 3d 1039, 1048 (La. Ct. App. 2010) (testimony was inadmissible because "[d]efendant was under arrest when the statements were made"); *People v. Decosey*, No. 283051, 2009 WL 1068878, at *4 (Mich. Ct. App. Apr. 21, 2009) (finding "statement to police after defendant was arrested, and at a time when no ongoing emergency existed . . . was testimonial"); *State v. Wright*, 726 N.W.2d 464, 476 (Minn. 2007) (statements "f[e]ll squarely within the category . . . barred by the Confrontation Clause" when interview occurred while defendant "was in police custody"); *State v. Warsame*, 735 N.W.2d 684, 696 (Minn. 2007) (concluding that declarant "made nontestimonial statements up to the point [the perpetrator] was apprehended"); *State v. Habbitt*, 114 Wash. App. 1044 (2002) (holding that statement "made at the showup violated . . . the federal confrontation clause").

The circumstances existing "at the time" of the show-up objectively indicate that neither the police officers nor Jones had the primary purpose of "resolving an ongoing emergency." *Bryant*, 562 U.S. at 361 n.8, 363. Any such emergency ended before the police orchestrated the official show-up. By that time, multiple officers had responded, cordoned off the crime

scene, and apprehended the one and only suspect then implicated in the shooting. DCD 16-4 at 84; DCD 16-5 at 9, 14–16. Unarmed, handcuffed, and surrounded by law enforcement personnel, Petitioner objectively posed no threat to Jones, the officers, or the public at large. DCD 16-5 at 140, 142.[3] Rather, as the officers later admitted, the primary purpose of the show-up was "*to identify*" Petitioner, *id.* at 143 (emphasis added)—that is, to "prove past events . . . relevant to [his] criminal prosecution," *Davis*, 547 U.S. at 822.

In defiance of clearly established federal law, the Illinois Appellate Court nevertheless held that an emergency was ongoing at the time of the show-up because "there were at least two shooters and the police had apprehended just one suspect." App. 68a. The court explained that "[e]ven with the apprehension of the one suspect, a second shooter remained at large keeping the emergency alive." *Id.* at 68a–69a. And the court suggested that the emergency "had not ceased" until the police were "100 percent sure that [Petitioner] was" the shooter. *Id.* at 70a.

That ruling was contrary to or an unreasonable application of the "primary purpose" test articulated in *Davis*. As this Court has made clear, "[t]he existence of an ongoing emergency must be objectively as-

---

[3] Nor was the show-up intended to resolve an ongoing medical emergency. After all, medical professionals had already arrived, moved Jones to the back of an ambulance, and begun administering care. DCD 16-5 at 14–16, 123, 126. The officers didn't inquire about Jones's medical condition, and the paramedics were in no apparent rush to transport Jones to the hospital. On the contrary, they waited roughly fifteen minutes for the police to conclude the show-up before departing the scene. *Id.* at 131.

sessed from the perspective of the parties to the interrogation *at the time*, not with the benefit of hindsight." *Bryant*, 562 U.S. at 361 n.8 (emphasis added). At the time of the show-up, however, the officers had no idea that a second shooter was at large. When first questioned by the police, Jones stated that "Damon" had shot him and described the perpetrator as "*one person*, wearing a black hoodie." DCD 16-3 at 211 (emphasis added); *see also* App. 48a; DCD 16-5 at 137. That's why the officers set out "to look for *the* offender." App. 50a (emphasis added). After detaining Petitioner, the officers "immediately proceeded back to the ambulance where the victim was." DCD 16-5 at 142. They then asked Jones if Petitioner was "*the* individual that shot [him]," to which Jones responded, "that's him, he's *the one* that shot me." *Id.* at 143 (emphases added). The police never commenced a search for the second shooter that evening because they had no reason to believe one existed.[4] Accordingly, any emergency ended when the only known suspect "at the time" was "apprehended." *Bryant*, 562 U.S. at 361 n.8, 365.

Moreover, the suggestion that an emergency endures until the perpetrator is identified with 100 percent certainty is a gross misapplication of this Court's precedent, which recognizes that an emergency is not ongoing "for the entire time that the perpetrator of a violent crime is on the loose." *Bryant*, 562 U.S. at 365. The state court's rule eviscerates the right to confront

---

[4] It was not until the police interviewed witnesses hours later that they had reason to believe a second person might have been involved in the shooting. DCD 16-1 at 115–116; DCD 16-3 at 195. No second shooter was ever found or charged in this case. *See* App. 48a.

one's accuser by stretching the notion of an ongoing emergency well beyond its breaking point. Indeed, the police are almost never *100 percent sure* as to the guilt or innocence of a person accused of a crime, even after conviction. *See*, *e.g.*, *Herrera v. Collins*, 506 U.S. 390, 415 (1993) ("[H]istory is replete with examples of wrongfully convicted persons . . . ."); *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013) (permitting plea of actual innocence to ensure "that federal constitutional errors do not result in the incarceration of innocent persons"). Under the state court's standard, "the guarantee of confrontation is no guarantee at all." *Giles v. California*, 554 U.S. 353, 375 (2008) (plurality opinion).

The Seventh Circuit compounded this error in denying habeas relief. While recognizing that this case presents "a close question," App. 10a, the court speculated that Petitioner may have still posed a danger during the show-up because he could have "stash[ed a] gun nearby and retrieve[d] it," *id.* at 9a n.2. But the court did not elaborate on how Petitioner may have done so, given that he was handcuffed and surrounded by multiple officers. DCD 16-5 at 140, 142. And while the court believed "it was prudent for the police to confirm that they had the right suspect before stopping the search," App. 9a, the court ignored that the police had already called off the search after taking Petitioner into custody, DCD 116-3 at 217–218; DCD 16-5 at 142. Simply put, "the circumstances objectively indicate[d] that there [wa]s no . . . ongoing emergency" at the time of the show-up, and the courts below erred in holding otherwise.[5] This Court should

[5] Admission of the show-up accusation was not harmless error because, as the government has admitted, that testimony was

grant certiorari to correct this unreasonable application of clearly established federal law.

II. THE QUESTION PRESENTED IS IMPORTANT AND RECURRING.

The importance of the Confrontation Clause and the question presented cannot be overstated. The Confrontation Clause of the Sixth Amendment ensures a "bedrock procedural guarantee," *Crawford*, 541 U.S. at 42, that is "essential and fundamental" for "the kind of fair trial which is this country's constitutional goal," *Barber v. Page*, 390 U.S. 719, 721 (1968) (quoting *Pointer v. Texas*, 380 U.S. 400, 405 (1965)). It is thereby one of our "fundamental guarantees to life and liberty." *Kirby v. United States*, 174 U.S. 47, 55 (1899). Allowing testimonial statements given during a show-up to be used against a criminal defendant—with no opportunity for the defendant to confront the accuser—precludes the Sixth Amendment guarantee of the rights necessary to a full defense. The presented question is all the more important because of the high likelihood that it will continue to arise, occurring whenever a show-up takes place. *See* Andrew M. Smith & Michelle Bertrand, *The Impact of Multiple Show-Ups on Eyewitness Decision-Making and Innocence Risk*, 20 J. Experimental Psychol.: Applied 247, 249 (2014) (stating that over 34% of the officers surveyed "reported that they had conducted a show-up within the previous year"). This will lead to repeated challenges to constitutional rights and continued uncertainty on whether the statements should be allowed at trial.

---

the only evidence that "identif[ied Petitioner] as the 'Damon' in question." DCD 15 at 21.

Eyewitness statements, though impactful, are very often mistaken. Studies have determined that approximately 40% of eyewitness identifications are wrong. Aldert Vrij, Psychological Factors in Eyewitness Testimony, in *Psychology and Law: Truthfulness Accuracy And Credibility* 105, 106 (Amina Memon et al. eds., 1998). And show-ups, where only one person is presented for identification, may be even less reliable. *See* Richard Gonzalez et al., *Response Biases in Lineups and Showups*, 64 J. Personality & Soc. Psychol. 525 (1993). There is a "commonsense notion that one-on-one showups are inherently suggestive . . . because the victim can only choose from one person, and, generally, that person is in police custody." *State v. Herrera*, 902 A.2d 177, 183 (N.J. 2006).

And yet, juries give inordinate weight to identifications and eyewitness testimony at trial. *Watkins v. Sowders*, 449 U.S. 341, 352 (1981) (Brennan, J., dissenting). "[D]espite its inherent unreliability, much eyewitness identification evidence has a powerful impact on juries. . . . All the evidence points rather strikingly to the conclusion that there is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says, 'That's the one!'" *Id.* (emphasis omitted). Because of the outsized impact identification at a showup has on a jury, it is of the utmost importance that the identification be presented in accordance with the Sixth Amendment, providing a defendant with the right to confront his accuser and cross examine him or her before the jury.

As described above, Courts are currently struggling with where to draw the line on when identifications at show-ups are testimonial and when they are

not. As the Seventh Circuit stated, this case presents "a close question." App. 10a. This case is important because it is vital that lower courts get these determinations correct. This Court should take up this case to add clarity to this area of law, thereby protecting constitutional rights from government impediment and assisting courts in correctly applying law and cases passed down by this Court.

III. THIS CASE PRESENTS AN IDEAL VEHICLE TO RESOLVE THE QUESTION PRESENTED.

The facts and the procedural posture of this case make it an ideal vehicle to determine whether the Confrontation Clause of the Sixth Amendment permits the prosecution to introduce statements elicited at a show-up conducted after the lone suspect is in custody.

The question is presented without any complications, cleanly and squarely. The issue was raised and ruled upon at every stage of the proceedings below. *See infra* 5–6. This case also presents only one question, allowing the Court to address the issue narrowly and provide clarity without the extraneous issues.

The question presented is also important to the outcome at trial; likely so important as to have been determinative. As explained above, not only does eyewitness testimony strongly sway a jury's decision, but the prosecution relied heavily, and at times exclusively, on the statements made at the show-up. Furthermore, admission of the show-up accusation was not harmless error because, as the government has admitted, that testimony was the only evidence that "identif[ied Petitioner] as the 'Damon' in question."

DCD 15 at 21. If this testimony had been deemed inadmissible, as it should have been, the prosecution would likely have failed to tie the Defendant to the crime.

Finally, the facts of this case made it a good vehicle for determining the question presented. The difficult aspect of the case does not come from the facts, but from an application of the law. It also puts into stark relief that danger present if the questions presented are not resolved: prosecutors will be able to use out of court statements like the ones in this case to completely decide the fate of the defendant despite lacking other independently sufficient evidence of guilt. It is vital that this Court continue to protect the rights ensured by the Confrontation Clause of the Sixth Amendment.

CONCLUSION

Goodloe was brought to the scene of a crime in handcuffs to be identified by a victim in distress. There was no ongoing emergency, as immediate danger had passed and, after combing the streets, the police had apprehended the only individual in the vicinity. The evidence alone was not sufficient to connect Goodloe to the crime, but the statements made at the show-up were admitted into evidence and presented to the jury as eyewitness testimony. This Court has determined that statements such as these should not be permitted at trial because they are testimonial and made outside of an emergency situation. Without this testimony, which was elicited in a non-emergency situation, the jury's findings may have been drastically different.

Because eyewitness testimony is given an overwhelming weight by juries, the jury determination was doubtlessly impacted, leading to conviction even though all other evidence was sparse.

These facts show all the more clearly why allowing the prosecution to introduce statements elicited at a show-up conducted after the lone suspect is in custody is a clear violation of the Confrontation Clause of the Sixth Amendment and should not be permitted. And without resolving the question presented, the issues will continue to arise in future cases.

* * *

For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

RUSSELL H. FALCONER
Counsel of Record
ANDREW P. LEGRAND
JOSEPH E. BARAKAT
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
(214) 698-3233
alegrand@gibsondunn.com

CHRISTINE A. BUDASOFF
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

MATTHEW BALL
GIBSON, DUNN & CRUTCHER LLP
1801 California Street, Suite 4200
Denver, Colorado 80202

Counsel for Petitioner Damon Goodloe

December 9, 2021