No. 22-1203

In The

Supreme Court of the United States

ALAN PATRICK FOWLER – PETITIONER

v.

BOBBY LUMPKIN, DIRECTOR – RESPONDENT

On Petition for Writ of Certiorari
to the United States Court of Appeals
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Alan Patrick Fowler, Pro Se
TDCJ Powledge Unit, 1400 FM 3452
Palestine, TX 75803
Powledge Unit Tel. (903) 723-5074

QUESTIONS PRESENTED

1) Could reasonable jurists disagree on whether there is insufficient evidence of *specific* intent to commit murder where Fowler never shot at a person, never tried to shoot at a person, never aimed the gun at a person, and never pointed the gun at a person; and the victim was not in Texas at the time?

2) Could reasonable jurists disagree on whether Fowler received ineffective assistance of counsel where counsel did not investigate Fowler's mental and medical history by failing to talk to his doctors and request Fowler's medical records showing a suicide attempt just six months prior to his arrest?

3) Could reasonable jurists disagree on whether Fowler was denied his Constitutional right to confront witnesses where Fowler was portrayed as a life-long threat by non-testifying witnesses during sentencing resulting in the maximum sentence–20 years?

LIST OF PARTIES

Alan Patrick Fowler, Pro Se, Petitioner
TDCJ No. 02152337
Powledge Unit, 1400 FM 3452
Palestine, TX 75803
(903) 723-5074

Bobby Lumpkin, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent

c/o Jessica Michelle Manojlovich,
Assistant Attorney General of Texas,
Criminal Appeals Division
P.O. Box 12548
Austin, TX 78711-2548
(512) 936-1400

RELATED CASES

1. Criminal District Court No. 1, Tarrant County, Texas, Trial Court No. 1495202R, (Conviction, May 10, 2017)

2. Direct Appeal in the Court of Appeals, Second Appellate District of Texas, Fort Worth, No. 02-17-00154-CR (Conviction affirmed, October 4, 2018)
3. Petition for Discretionary Review in the Texas Court of Criminal Appeals, No. PD-1218-18 (Refused January 30, 2019)

4. Application for writ of habeas corpus in the Court of Criminal Appeals in the State of Texas under Code of Criminal Procedure Article 11.07, Case ECF No. 21-7. (Denied on June 16, 2021)

5. Petition under 28 U.S.C. § 2254 for writ of habeas corpus in the U.S. District Court, Northern District, Fort Worth Division, No. 4:21-CV-1192-O (Petition denied, October 21, 2022)

6. Petition for Certificate of Appealability in the U.S. Court of Appeals for the Fifth Circuit, No. 22-11142 (COA denied, March 2, 2023)

7. Motion for reconsideration and petition for rehearing en banc in the U.S. Court of Appeals for the Fifth Circuit, No. 22-11142 (Motion for reconsideration and petition for rehearing en banc denied, April 4, 2023)

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES CITED

Cases: **Page:**

Statutes: **Page:**

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is reported at March 2, 2023.

The opinion of the United States District Court for the Northern Division of Texas appears at Appendix B to the petition and is reported at October 21, 2022.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 2, 2023.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 4, 2023, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Ground 1: The Fourteenth Amendment "protects accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364 (1970).

Ground 2: The Sixth Amendment grants the accused the right to assistance of counsel.

Ground 3: Fowler was denied his Sixth Amendment right to confront witnesses.

STATEMENT OF THE CASE

[Please note: All Exhibit and Reporter's Record (RR) references herein are from the Appendix of Fowler's Petition under 28 U.S.C. § 2254 ("2254") for a writ of habeas corpus in the U.S. District Court, Northern District of Texas, Fort Worth Division.]

In May 2016, Fowler was hospitalized after a failed suicide attempt. (RR Vol. 8 at 170 and Vol. 9 at 41). Doctors noted, "He feels suicidal daily." (Exhibit D at 3, 11, 12, 21). On August 8, 2016, Fowler left his home after a disagreement with his wife. (RR Vol. 9 at 61-63). Fowler testified, "I was just going to drive around to clear my head." (RR Vol. 9 at 63).

Fowler's legally purchased and properly registered handgun was secured inside his locked vehicle (RR Vol. 9 at 61-62) with a home-made

suppressor still attached from his trip to the gun range the prior weekend. (RR Vol. 9 at 119, 127-128).

Fowler knew of several colleagues who took their own lives due to depression. (RR Vol. 9 at 65). Fowler drove to the home of Kevin Lane, his former boss and friend, to commit suicide and raise awareness about the severity of depression in the workplace. (RR Vol. 9 at 65, 67, 123).

Fowler sat in Lane's backyard for three or four hours..." vacillating between killing myself and trying to convince myself to live...I shifted my weight and the gun went off." (RR Vol. 9 at 74-75, 143, 168).

Fowler did not flee but waited 12-15 minutes for the police to arrive because he sought to take responsibility for the broken window and thought he would get the mental health help he needed. (RR Vol. 9 at 76).

There was no evidence Fowler shot at a person, tried to shoot at a person, raised the gun toward a person or ever saw anyone in the unoccupied room. (RR Vol. 9 at 74-77, 80, 83-84, 168). Kevin Lane, the victim, was not in Texas at the time (RR Vol. 7 at 169). Mr. Lane testified that he had never been threatened by Fowler (RR Vol. 7 at 186).

The jury found Fowler not guilty of attempted capital murder for retaliation yet convicted him of attempted murder. (RR Vol. 9 at 215-216). Fowler was given the maximum sentence – 20 years. (RR Vol. 10 at 182).

REASONS FOR GRANTING THE WRIT

This conviction for attempted murder is so far departed from accepted and usual proceedings that the supervisory power of the Court should be exercised based on the following:

- Fowler was alone when he accidentally discharged a single bullet on a path into a habitation which could not hit anyone.

- The room of the habitation was empty, and the victim was not in Texas at the time.

- In *Braxton v. U.S.* the U.S. Supreme Court held that specific intent to kill would be unreasonable unless the victim was in the room.

- In *Francis v. Franklin*, 471 U.S. 307, 326, 105 S. Ct. 1965 (1985) the U.S. Supreme Court held that a bullet that failed to take a path on which it would have hit anyone supports the lack of intent defense.

The U.S. District Court, Northern District of Texas, Fort Worth Division held, "for the reasons discussed herein, a Certificate of Appealability is DENIED." *Fowler v. Lumpkin*, 2022 LEXIS 192261, P. 16.

This decision is contrary to the Supreme Court which explained when a Court justified its denial of a COA based on its adjudication of the actual merits, "it has placed too heavy a burden on the prisoner at the COA stage." *Buck v. Davis*, 580 U.S. 100, 117 (2017).

In support of the issuance of a Certificate of Appealability, Fowler would show the Court the following issues listed in this petition:

A. GROUND 1: THERE IS INSUFFICIENT EVIDENCE OF SPECIFIC INTENT TO COMMIT MURDER AND THAT DEATH COULD RESULT FROM THE ACTS OF FOWLER

The District Court denied Fowler's Writ based on the opinion of the Second Court of Appeals which concluded,

> "An attempt conviction may therefore stand 'where the completion of the crime was apparently possible to the defendant, even if the completion of the crime was not actually possible.'" *Herring v. State*, 2014 Tex. App. LEXIS 540 citing *Chen v. State*, 42 SW3d 926.

However, the Second Court of Appeals relied on the wrong standard. Neither *Herring* nor *Chen* applies in the present case because there was no evidence presented at trial that Fowler thought completion of the crime was possible.

The record shows that the Court's decision is contrary to, and an unreasonable application of, clearly established Federal law, as determined by the U.S. Supreme Court, under *Jackson v. Virginia*, which stated "the critical inquiry on a review of the sufficiency of the evidence to support a criminal conviction must be...to determine whether the record evidence could reasonably support a finding of guilt

beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979).

> The Texas Penal Code states:
>
> "A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended. (Tex. Penal Code Ann. §§ 15.01(a), 19.02(b)(1)).

The District Court's denial of Fowler's Certificate of Appealability is contrary to both the United States Supreme Court under *In re Winship* and the Fifth Circuit under *Weeks v. Scott.*

The Fourteenth Amendment "protects accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970).

The Fifth Circuit ruled, "it appears that the [Texas] state law defines the substantive 'tends' element of the attempted offense by equating it with 'could,' i.e., death must be possible from the act." *Weeks v. Scott*, 55 F.3d 1059, 1062-1063 (5th Cir. 1995).

In the present case, the State presented no evidence for the jury to draw the conclusion that death could occur. The State did not even show that an injury could occur. Further, the State presented no evidence to show that Fowler thought he was shooting

at Mr. Lane (or anyone else) when the gun went off accidentally.

Facts from the Reporter's Record

- Fowler never shot at a person, never tried to shoot at a person, never aimed at a person, never pointed the gun at a person and never raised the gun toward a person. (RR Vol. 9 at 74-77, 80, 83-84).

- Fowler accidentally fired a single bullet into an unoccupied room. (RR Vol. 6 at 129; Vol. 9 at 74-75, 140, 168).

- No person was in the room. The uncontroverted fact that the room was empty is corroborated by the State's own witness. (RR Vol. 6 at 129).

- The alleged victim was not in Texas. (RR Vol. 7 at 169).

- The lone bullet hit the window near the ground on a path which could hit no person. (See RR State's Ex. 6-9).
- No evidence introduced at trial that death could result.

- The State confirmed that only one bullet was discharged and specifically noted 19 bullets that were not fired. (RR Vol. 6 at 168-169, 171, 219).

- After the accidental discharge, Fowler did not flee, but put the gun away so no one could get hurt, and patiently waited 12-15 minutes at the

scene for police to arrive so he could take responsibility for the broken window. (RR Vol. 9 at 76-77, 81-84, 144-146).

The decision of the Fifth Circuit in *U.S. v. Rojas Alvarez* was consistent with the decisions of the U.S. Supreme Court finding that "[A] verdict may not rest on mere suspicion, speculation, or conjecture, or on an overly attenuated piling of inference on inference." *U.S. v. Rojas Alvarez*, 451 F.3d 320, 333 (5th Cir. 2006).

In addition to *Jackson v. Virginia*, the decision of the Texas Court of Criminal Appeals is contrary to clearly established Federal law under *Braxton v. U.S.* and under *Francis v. Franklin*.

Specific Intent to Murder is Unreasonable When the Room is Unoccupied

In *Braxton v. U.S.*, the U.S. Supreme Court held, "The government must prove defendant had the specific intent to kill...it would be unreasonable to conclude that Braxton was shooting at the marshals unless...the marshals had entered the room." *Braxton v. U.S.*, 500 U.S. 344, 350 111 S. Ct. 1854, 1859 (1991). (Reversed where defendant shot twice at a door knowing U.S. marshals were on the other side and defendant "claims to have intended to frighten the marshals, not shoot them.").

Specific Intent to Murder is Unreasonable if the Shot Could Not Hit Anyone

In *Francis v. Franklin*, the U.S. Supreme Court held, "[the] shot's failure to hit anyone or take a path on which it would have hit anyone... supported the lack of intent defense." *Francis v. Franklin*, 471 U.S.

307, 326, 105 S. Ct. 1965 (1985) quoting *Franklin v. Francis*, 720 F.2d 1206 (11th Cir. 1984) (murder conviction overturned due to a jury charge error and the error was not harmless where the first bullet killed the homeowner, but the second bullet could not have hit anyone.)

In the present case, the one and only bullet travelled into an unoccupied room on a path on which no person could be killed or even injured. (RR Vol. 9 at 74-75, 140, 168, State Ex. 6-9). State Ex. 6-9 shows the lone bullet hit the window near the bottom frame close to the ground.

Put simply – There is insufficient evidence that Fowler intended to murder or harm anyone (other than himself) and that death could result. Fowler preserved this issue by moving for a directed verdict of not guilty which was denied. (RR Vol. 8 at 134).

B. **GROUND 2:** TRIAL COUNSEL WAS INEFFECTIVE 1) IN THE GUILT PHASE AND 2) IN THE PENALTY PHASE FOR FAILING TO INVESTIGATE AND PRESENT EVIDENCE OF FOWLER'S MENTAL HEALTH HISTORY

The District Court denied Fowler's Writ concluding, "the Court is being asked to speculate as to how things might have turned out differently, which the Court cannot do."

In fact, Fowler asked the District Court to consider whether the investigation "was *itself reasonable*" under *Wiggins V. Smith*, 539 U.S. 510, 523. *(Emphasis by Fowler).*

The record shows that the Court's decision is contrary to, and an unreasonable application of, clearly established Federal law, as determined by the U.S. Supreme Court, under *Strickland v. Washington*. "[Counsel] had a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v. Washington*, 466 U.S. 668, 688, 690-691, 104 S. Ct. 2052, 2061, 2066, 80 L.Ed.2d 674 (1984).

Counsel's Deficient Performance #1

Prior to trial, defense counsel knew that Fowler's sole defense – and the truth – was that he was contemplating suicide at the time of the accidental discharge based on the following:

- Both Fowler and his wife, Ashley Fowler, specifically informed counsel about the suicide attempt and 24-hour commitment to the psychiatric ward of Ochsner LSU Health Shreveport in Shreveport, LA, on May 9-10, 2016 (just three months prior to Fowler's suicide attempt on August 9, 2016, at Kevin Lane's home). (See "2254" Appendix, Ex. I, Affidavit of Fowler and Ex. J, Affidavit of Ashley Fowler).

[Fowler's note: My first name – Alan –was misspelled as "Allen" on the medical record. See "2254" Appendix, Ex. H, "Ochsner Medical Records."]

This knowledge should have "triggered an obligation to look further." *Wiggins v. Smith*, 539 U.S. 510, 519 123 S. Ct. 2527 (2003). (Counsel was

ineffective for failing to investigate and present mitigating evidence.) Despite Fowler's persistent requests for counsel to do so, counsel failed to request Fowler's medical and mental health records from Ochsner LSU Health Shreveport (LA).

If counsel doesn't look, counsel cannot develop and present evidence for the jury to consider. "Counsel has a duty to make reasonable investigations..." *Strickland*, at 690-691.

Counsel's Deficient Performance #2:

- Both Fowler and his wife, Ashley Fowler, offered to provide counsel with a list of doctors to provide information and serve as witnesses. (See aforementioned Exs. I and J).

- Counsel did not talk to Dr. Karen King, DO (See "2254" Appendix, Ex. M, Affidavit of Dr. King)

- Counsel did not talk to Dr. George Wolcott, EdD, LPC, LMFT (See "2254" Appendix, Ex. N, Affidavit of Dr. Wolcott, EdD)

Defense counsel failed to contact Fowler's doctors. Dr. Karen King and Dr. George Walcott confirmed they were not contacted by Mr. J. Warren St. John. (See Affidavits in "2254" Appendix, Exs. M and N). Fowler tried, but was unable, to obtain Affidavits from other Ochsner doctors who treated him to confirm defense counsel did not talk to them. (See Affidavits in "2254" Appendix Exs. J and K).

There was no reason to limit the investigation into Fowler's medical and mental health history. It was unreasonable to decide that a phone call to health care providers and a simple request for medical and mental health records were unnecessary. Counsel did not even elicit pertinent information from Fowler's family until a very few days before trial. (See "2254" Appendix, Ex. K, Affidavit of David Fowler).

> "If there is only one plausible line of defense...counsel must conduct a reasonably substantial investigation into that line of defense, since there can be no strategic choice that renders such an investigation unnecessary."
> *Strickland,* at 2061.

The defense counsel for a client facing attempted capital murder submitted no exhibits during the guilt phase of the trial. The Reporter's Record shows no testimony from Fowler's doctors and other health care providers, no expert medical or mental health testimony and no evidence related to Fowler's medical and mental health records.

Prejudicial Effect

If counsel had investigated promptly, he could have presented, at least, five significant pieces of mitigating evidence.

- Just three months prior to August 9, 2016, two doctors and two other health professionals independently noted that Fowler was suicidal.

a) "He feels suicidal daily." – Dr. Omar Haque, MD (See "2254" Appendix, Ex. H "Ochsner Medical Records," Page 12)

b) "he feels like he needs help or he is going to end up killing himself." – Dr. Furqan Akhter, MD (See "2254" Appendix, Ex. H "Ochsner Medical Records," Page 11)

c) "things would be better without me alive" – Mr. Nathan D. Fewell, MSW (See "2254" Appendix, Ex. H "Ochsner Medical Records," Page 21)

d) "feeling suicidal" – Ms. Marla K. Pendarvis, RN (See "2254" Appendix, Ex. H "Ochsner Medical Records," Page 3)

- Three medical professionals specifically noted Fowler had no homicidal ideation (HI). (See "2254" Appendix, Ex. H "Ochsner Medical Records," Pages 3, 5, 12)

- Dr. Omar Haque, MD, noted "He had 'not hit rock bottom' because he 'hasn't been arrested or been to jail.'" (See "2254" Appendix, Ex. H "Ochsner Medical Records," Page 12). This would help the jury understand the events of August 9,

2016, as Fowler testified that he "waited 12-15 minutes for the police to arrive" because "I really thought I would get the help I needed." (RR Vol. 9 at 76, 84).

- The medical records corroborate Fowler's testimony regarding life insurance. (RR 9 at 40-41). These records would have countered the Prosecutor's suggestion that Fowler was lying about life insurance. (RR Vol. 9 at 110). Two doctors stated:

    a) "patient stating 'she [wife] would be better off with my life insurance and not me.'" – Dr. Angeline Trinh, MD, on May 9, 2016 (See "2254" Appendix, Ex. H "Ochsner Medical Records," Page 5).

    b) "He thinks his family will be better off with the life insurance money than with me." – Dr. Omar Haque, MD, on May 9, 2016 (See "2254" Appendix, Ex. H "Ochsner Medical Records," Pages 12, 16).

- The medical records show Fowler was prescribed a dangerous combination of Norvase, Wellbutrin, Adderall (Dextroamphetamine-Amphetamine) and Prozac (See "2254" Appendix, Ex. H, Pages 12, 17) along with Zoloft (See Appendix,

> Ex. H "Ochsner Medical Records," Page 8). The combination of these medications is known to increase the risk of serotonin syndrome (See "2254" Appendix, Ex. O), a condition that is known to lead to alterations in mental status. A medical expert could have assisted in the preparation for trial and could have explained this to the jury along with how it affected Fowler.

In *Williams v. Taylor*, Justice Stevens noted, "it is undisputed that Williams had a right – indeed, a constitutionally protected right – to provide the jury with the mitigating evidence that his trial counsel either failed to discover or failed to offer." *Williams v. Taylor*, 529 U.S. 362, 393, 120 S. Ct. 1495, 146 L.Ed.2d 389 (2000). (Conviction reversed because counsel was ineffective for failing to investigate and present mitigating evidence.)

If counsel had investigated, had admitted Fowler's medical records and called Fowler's health care professionals to testify, there is a reasonable probability that the jury would have found him not guilty of attempted murder. Further, there is a reasonable probability that the jury would not have sentenced him to the maximum – 20 years. The lack of evidence of intent further enhances the prejudicial effect of counsel's ineffectiveness.

Defense Counsel Mr. J. Warren St. John's Affidavit Response

Fowler's trial counsel, Mr. J. Warren St. John, filed an affidavit in response to Fowler's State Application for a Writ of Habeas Corpus. The Affidavit from Mr. St. John does not state facts refuting the grounds raised by Fowler – it simply contains conjecture and unsupported conclusions. Mr. St. John stated, "All relevant facts were fully investigated, including ...exhaustive search to look for any potential witnesses." (See "2254" Appendix, Ex. L – Affidavit of Mr. J. Warren St. John).

The U.S. Supreme Court has held that a state court's "assumption that the investigation was adequate...reflected an unreasonable application of *Strickland*." *Wiggins v. Smith*, 539 U.S. 510, 528, 123 S. Ct. 2527 (2003) (reversed due to ineffective assistance of counsel). In *Wiggins*, the ineffective defense counsel retained a psychologist to evaluate defendant Wiggins, gathered social service records and reviewed a Pre-Sentencing Investigation report before abandoning his own investigation. In the present case, defense counsel, Mr. St. John did not retain an expert, did not talk to Fowler's doctors, and did not obtain and review Fowler's medical records.

Counsel's deficient assistance resulted in prejudice because the jury did not have a chance to consider: 1) actual evidence that Fowler was attempting suicide and 2) evidence of Fowler's mental state that would have resulted in a sentence of less than 20 years – the maximum.

C. GROUND 3: FOWLER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO CONFRONT WITNESSES IN THE PENALTY PHASE

The District Court did not opine on the fact that Fowler was not allowed to confront the "security specialists" and "security professionals" that accused Fowler of harming Mr. Lane in the future.

The record shows that the Court's decision is contrary to, and an unreasonable application of, clearly established Federal law, as determined by the U.S. Supreme Court, under *Crawford v. Washington* which stated "[i]n all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him. We have held that this bedrock procedural guarantee applies to both federal and state prosecutions." *Crawford v. Washington*, 541 US 36, 42, 124 S. Ct. 1354 (2004).

The Supreme Court held, "There are few subjects, perhaps, upon which this Court and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-examination is this country's constitutional goal." *Pointer v. Texas*, 380 US 400, 405, 85 S. Ct. 1065 (1965).

The state solicited hearsay testimony from Kevin Lane regarding unsupported accusations from "security assessment teams" against Fowler.

These testimonial statements from non-testifying witnesses asserted the truth as derived from the veracity and competency of these non-testifying "security specialists" and "security

assessment teams" which were not subject to cross-examination. The record shows the following:

Specifically, the State asked Mr. Lane the following three questions in (RR Vol. 10 at 6-9):

> "Question: Since this happened on August the 9th of 2016, what steps have you taken to beef up security, if you will, of your home?"
>
> "Answer: So a variety of steps. I have gotten several different private security specialists to do walk-throughs of our home to understand threat assessments, to understand what the risks are."
>
> 'A. ...This was from a security specialist that reviewed the house. But they went through various scenarios of where they would post up 100 yards off the property, and they went through scenarios where they could simply, you know, snipe us and with the wall not even being an issue..."
>
> "Q. Is there a lot of concern with your future safety?"
>
> "A. Absolutely...Right. I mean, they've had special – specialists look at this situation."

"A. I've been advised by professionals that I have a problem for the rest of my life as it relates to security."

"Q. And no matter what happens in this this week, do you feel like no matter what amount of years that the jury gives that one day he will get out, and do you feel like your safety is compromised at that point?

"A. I feel like with enough time, with significant time, I could make preparations.

"Q. When you've had these people that have told you—these security assessment teams and various people that are in that field, have they explained to you that ultimately if somebody wants to get you that they're just going to do that?" (RR Vol. 10 at 11-12).

"A. They have. They—They have been very direct. They've—they've—they've illustrated a number of ways, whether it's we can snipe you with a high-powered rifle from 100 yards from across the fence, and you'd never see it coming to different various explicit scenarios on how they would go about it." (RR Vol. 10 at 12).

> "Q. Now, I can't ask you—it'd be improper for me to ask you what amount of years you think is appropriate from the jury because that's their decision." (RR Vol. 10 at 13)
>
> "Q. Do you think that with what he did and the steps he took that a maximum sentence is appropriate?" (RR Vol. 10 at 14-15).
>
> "A. I absolutely do." (RR Vol. 10 at 15).
>
> "Q. Even the maximum sentence, do you feel at some point he will always be a threat?" (RR Vol. 10 at 15).
>
> "A. I believe the security professionals who have advised me that I have a problem for the rest of my life. That said, a maximum sentence helps me a lot. That gives me some years of safety and some years of preparation to get ready for what's coming." (RR Vol. 10 at 15).

There was no indication these statements were reliable. "[The Confrontation Clause] commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." *Crawford*, at 61.

The State could have called the unidentified "security professionals" as witnesses so Fowler could cross-examine them. There was no reason to dispense with the Confrontation Clause.

These accusations from "security professionals" were testimonial as they were made after Fowler's arrest while prosecutors and police were gathering evidence for trial.

The hearsay testimony was the basis of the State's unsupported argument that Fowler was a future threat and should be sentenced to 20 years – the maximum. Fowler, with no criminal history, suffered actual prejudice as he was sentenced to 20 years. If Fowler had been able to cross-examine the unidentified "security professionals" he would have been able to demonstrate the unreliability of the accusations, to test the foundations of their opinions, to examine whether they qualify as experts to render opinions on future threats, how they were compensated, and to determine what evidence was reviewed prior to opining on this matter.

The hearsay statements violated the Confrontation Clause, especially the references to "problem for life" and the "maximum sentence helps me a lot" which were attributed to the hearsay "experts."

There is more than a reasonable probability that Fowler would not have been sentenced to the maximum.

CONCLUSION

For the aforementioned reasons, I believe the petition for a writ of certiorari should be granted so the Court can consider if a Certificate of Appealability should be granted.

Respectfully submitted,

Alan Patrick Fowler, Pro Se

TDCJ Powledge Unit

1400 FM 3452

Palestine, TX 75803

Powledge Unit Tel. (903) 723-5074

Date: June 7, 2023

APPENDIX TABLE OF CONTENTS