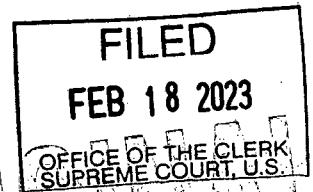


No. 22-7322



IN THE
SUPREME COURT OF THE UNITED STATES

TEVARIS CRAWFORD,

Petitioner

v.

MACK BAILEY, Warden of Lunenburg
Correctional Center for the Department
of Corrections for the Commonwealth
of Virginia,

Respondent

PETITION FOR WRIT OF CERTIORARI

Appeal Case No. 22-6271 Tevaris Crawford v. Mack Bailey
District Court No. 1:21-cv-00527-CMH-IDD

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I. QUESTION PRESENTED

1. Did the Appeals Court of the Fourth Circuit error by denying a certificate of appealability?

II. LIST OF PARTIES

Petitioner - Appellant: Tevaris Crawford

Respondent - Appellee: Mack Bailey, Warden of Lunenburg Corrections of the Commonwealth of Virginia

Interested Parties that this Writ may Affect in Time: US Court of Appeals for the Fourth Circuit

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FEDERAL STATUTES

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V. PETITION FOR WRIT OF CERTIORARI

Tevaris Crawford, who is actually innocent of the crimes he was wrongfully convicted, respectfully ask this Court for a writ of certiorari to review the judgement of the United States Court of Appeal for the Fourth Circuit because his convictions are prohibited by the 14th Amendment of the United States Constitution. Brought by Tevaris Crawford, and substantiated by the record, is new reliable evidence not presented at trial calling into question the key testimonial proof of his guilt, and suggest another suspect. This new evidence was suppressed and misrepresented, resulting in both a *Brady* and *Napue* constitutional violations.

VI. OPINIONS

The decisions by the United States Court of Appeals for the Fourth Circuit denying Crawford, a certificate of appealability on October, 21, 2022 (APP. 29) and a rehearing *en banc* on November 22, 2022 (APP. 32) under No. 22-6271. Orders and unpublished Opinion is attached in the Appendix ("APP.") at APP. 29 – APP. 32 Appeal and petition were timely filed.

VII. JURISDICTIONAL STATEMENT

Crawford's petition for rehearing *en banc* was denied on November 22, 2022. Crawford invokes this Court's jurisdiction under 28 U.S.C. § 1254 (1) and Article III, Section II.

VIII. CONSTITUTIONAL PROVISION

The Petitioner brought this habeas for violations of his rights under the 5th and 14th Amendments of the U.S. Constitution.

IX. STATEMENT OF CASE

This case involves two victims, one malicious shooting and the killing during a robbery attempt. According to the surviving victim, there were two suspects, one whom was the sole gunman. Recovered from the scene were cigarette butts, a cigar, and a beer bottle which bore the DNA of two unidentified individuals other than Crawford. However, Crawford's DNA was found on a cigarette butt and the same beer bottle. Law enforcement never recovered a firearm. Notably, the only evidence identifying Crawford as the shooter was the single testimony of the victim. Therefore, this case was one of credibility: Gonder's testimony against Crawford's alibi defense.

However, not presented during trial was Gonder's original description of the shooter, as memorialized in the lead detective J. Simmons' police report, who differed in Crawford's physical appearance. After personally learning of the exculpatory evidence's existence, Crawford filed a Motion To Set Aside The Verdict in the Circuit Court of the City of Richmond, John Marshall Courts Building. After hearing the evidence, the trial court determined, by way of its January 11, 2016 Opinion and Order (APP. 1 – APP. 5), that the evidence was suppressed and exculpatory, but did not undermine confidence in the outcome of the trial (APP. 2-

3).

Crawford then, filed a writ of habeas corpus in the United States District Court claiming his actual innocence under *Schulp*, warranting gateway relied for his *Brady* claim, as well as his *Napue* and *Stovall* claims. The District Court entered on January 27, 2022 an Order denying Crawford's petition (APP. 5 – 6). Crawford filed a combined opening brief and application for a certificate of appealability in the US Court of Appeals for the Fourth Circuit. The Court denied the issuing a certificate of appealability on October 21, 2022 (APP. 29). Crawford timely filed the petition for rehearing *en banc*. Petition was denied on November 22, 2022 Order (APP. 32).

X. REASON FOR GRANTING WRIT

The panel's decision of the United States Court of Appeals for the Fourth Circuit denying a certificate of appealability conflict with this Court's clear precedent that "[t]he constitutional requirement that the government prove the defendant's guilt beyond a reasonable doubt also impedes convictions based on dubious identification evidence." *Perry v. New Hampshire*, 565 U.S. 228, 246 (2012). As a certificate of appealability is warranted where there is "a substantial showing of the denial of a constitutional right", 28 U.S.C. § 2253 (c)(2), the Court's conclusion in its *per curiam* (APP. 31) that base on the record "Crawford has not made the requisite showing" is erroneous. This is because the record clearly shows the follow facts:

1. At trial, the only evidence provided as proof of Crawford's identity as the gunman beyond a reasonable doubt was Gonder's sole identification testimony. Specifically, the Commonwealth produced no physical or forensic evidence directly linking Crawford to the shooting and attempted robberies of the victims.
2. However, not presented at trial was Gonder's original account, as memorialized in detective J. Simmons' police report summary, describing a suspect who differed in Crawford's physical appearance. Specifically, Gonder initially described "the shooter" as having "twisted braids" hairstyle and "a chipped tooth up top". Notably, though the Commonwealth did not disclose the original description of the assailant's hairstyle and distinct dental feature before or during the trial phase, the Commonwealth did provide the original description to be made a part of a post-trial presentencing report. More notably, Crawford **does not** have a chipped front tooth up top, **nor has he ever had twisteds**. Crawford hairstyle as seen in his arrest photo and on his I.D. (taken on the day of the offense) was cornrows.
3. Furthermore, **the reliability of Gonder's original description of the assailant, its suppression and exculpatory nature is substantiated by the Richmond Circuit Court's January 11, 2016 Order (APP. 1- 4).** In the Order, the Court determined that the description included within the presentencing report was the same as that contained within the police

report. In addition, the Court also determined that the testifying detective had in fact “authored the report”. (APP. 3) memorializing the original description of the assailant’s hairstyle and “chipped front tooth up top” (APP. 1 - 2). Most notably, is that, the Court factually determined that these descriptions were “suppressed” and “exculpatory” (APP. 2 -3). However, the Court determined that “even if the items were exculpatory” Crawford had not satisfied the third prong of Brady violation, a legal issue which Crawford has sought review by the habeas courts (APP. 2 -3).

In all, the Fourth Circuit Court’s decision to not issue a certificate of appealability in light of the record completely conflicts with this Court’s precedents establishing that the constitution prohibits convictions based upon questionable identification evidence.

Firstly, the record substantially supports Crawford’s actual innocence under *Schulp v. Delo*, 513 U.S. 298 (1995). This is because the original eyewitness account of the assailant’s hairstyle and dental feature not only calls into question the key testimonial proof of Crawford’s identity as the assailant, but also suggests another assailant. Further, in light of the contrast between Gonder’s prior exculpatory description of the assailant and in-court identification testimony, no reasonable jury would have lacked doubt. *House v. Bell*, 547 U.S. 518 (2006); also see *Kyles v. Whitley*, 514 U.S. 419, 443 (“A jury would reasonably have been troubled by the adjustments of Smallwood’s original story...His description of the car had gone from a ‘Thunderbird’ to ‘LTD’ and he saw fit to say nothing about the assailant’s

shoulder-length hair and mustache”).⁶

Secondly, the record clearly shows that the Commonwealth failed to disclose such evidential material to Crawford’s actual innocence, violating *Brady v. Maryland*, 373 U.S. 83 (1963). Also see *Smith v. Cain*, U.S., 132 S.Ct. 627 (2012).

Thirdly, the prosecutor was aware that Gonder had changed the assailant’s hairstyle from “twisted braids” to “cornrows” and omitted the “chipped front tooth up top”, thereby, giving a false impression to the jury of an accurate identification of Crawford as the perpetrator. Therefore, the prosecutor’s allowance of Gonder’s misleading testimony on the critical issue of identity to go uncorrected violated *Napue v. Illinois*, 360 U.S. 83 (1963). See also *United States v. Agus*, 427 U.S. 97, 103 (1976) (Petitioner is entitled to relief if “there is any reasonable likelihood that the false testimony would affect the judgement of the jury.”).

Lastly, because none of the circumstantial evidence in the case irrefutably proves Crawford committed the shooting and attempted robberies, the Constitution cannot tolerate his conviction where the only evidence directly connecting him to the crimes is Gonder’s dubious testimony. *Wearry v. Cain*, 136 S.Ct. 1002 (2016). Lastly, though Crawford’s DNA was on a cigarette butt and beer bottle found at the scene, also found at the scene were items that bore the DNA of two unidentified individuals. Therefore, without Gonder’s dubious testimony, there literally no evidence singling Crawford out as the gunman. Under these circumstances, the District Court’s assessment of Crawford’s constitutional claims is reasonably debatable, and therefore, the Circuit Court erred in not issuing a certificate of

appealability. *Buck v. Davis*, 137 S.Ct. 759, 773 – 74 (2017).

IN CONCLUSION, if this Court agrees with the Petitioner, he respectfully request that upon remand, order the Circuit Court to issue a certificate of appealability.

Respectfully submitted,

/s/ Tevaris F. Crawford
Tevaris F. Crawford

A handwritten signature in black ink, appearing to read "Tevaris Crawford", followed by a stylized flourish or initial.