

No. \_\_\_\_\_

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In the  
Supreme Court of the United States

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MARCUS ALLEN COOPER,

*Petitioner,*

v.

VIRGINIA,

*Respondent.*

\_\_\_\_\_  
**On Petition for a Writ of Certiorari to the  
Supreme Court of Virginia**

\_\_\_\_\_  
**PETITION FOR A WRIT OF CERTIORARI**

\_\_\_\_\_  
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## **QUESTION PRESENTED**

Whether a trial court abridges the defendant's Fourteenth Amendment right to present a complete defense by excluding evidence that the sole inculpatory witness fabricated evidence against the defendant in a case that turned entirely on that witness's credibility.

## **RELATED PROCEEDINGS**

Supreme Court of Virginia: *Commonwealth of Virginia v. Marcus Allen Cooper*,  
Record No. 250134 (Sep. 12, 2025)

Court of Appeals of Virginia: *Commonwealth of Virginia v. Marcus Allen Cooper*,  
Record No. 1221-23-3 (Dec. 18, 2024)

Virginia Circuit Court, 25th Judicial District, Rockbridge County: *Commonwealth of  
Virginia v. Marcus Allen Cooper*, Nos. CR22000438-00 and CR22000439-00 (June  
14, 2023)

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## **PETITION FOR A WRIT OF CERTIORARI**

Marcus Allen Cooper, an inmate currently incarcerated at State Farm Correctional Center in State Farm, Virginia, by and through counsel Blake A. Weiner, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Virginia.

## **OPINIONS BELOW**

The opinion of the Court of Appeals of Virginia is unpublished and is currently available at 2024 WL 4594779. That opinion and order is attached as Appendix ("App.") A at App. 1-21. The Supreme Court of Virginia denied Mr. Cooper's Petition for Appeal on September 12, 2025. That order is attached as App. B at App. 22.

## **JURISDICTION**

The Supreme Court of Virginia denied Mr. Cooper's Petition for Appeal on September 12, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a), having timely filed this petition for a writ of certiorari within ninety days of the Virginia Supreme Court's judgment.

## CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment provides, in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

It is well established that a criminal defendant has a right to present a complete defense pursuant to the Fourteenth Amendment. *See Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (“Whether rooted directly in the Due Process Clause of the Fourteenth Amendment ... or in the Compulsory Process or Confrontation clauses of the Sixth Amendment ... the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’”) (quoting *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532 (1984)); *Trombetta*, 467 U.S. at 485 (“Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense.”).

This case raises the question of whether that right is violated when a defendant is forbidden from presenting evidence that the sole inculpatory witness fabricated evidence against the defendant in a case that turned entirely on that witness's credibility.

## **I. Background and Charges**

Petitioner Marcus Allen Cooper was indicted in Rockbridge County, Virginia, on charges of rape and strangulation based on allegations by his former partner, S.M., with whom he shares a child. App. 2. The Commonwealth's case depended entirely on S.M.'s testimony; there was no physical evidence or eyewitness corroboration. Around the same time, a separate Buena Vista prosecution based on S.M.'s allegations resulted in a mistrial, and the charges were later dismissed. App. at 2.

## **II. Pretrial Events of S.M.'s Evidence Fabrication**

Shortly before the scheduled Rockbridge County trial, S.M. provided law enforcement with two documents purporting to be Facebook Messenger screenshots that appeared to show Mr. Cooper soliciting her murder to prevent her testimony. App. at 2-3. The Commonwealth obtained a search warrant to Facebook, but Facebook did not corroborate that Mr. Cooper sent the messages. The defense immediately discovered that the screenshots were fabricated from an online website. After investigation, the Commonwealth conceded that the messages S.M. provided it were fabricated and website-generated. App. at 3.



The parties then jointly sought a continuance to further investigate and definitively demonstrate the fabricated screenshots were created by S.M., including possible digital-forensic analysis. App. at 2. The Commonwealth agreed that the fabricated messages would “create credibility issues that would be very discoverable exculpatory for the defense.” App. at 23. The trial court denied the motion, finding the fact that S.M. may have fabricated the evidence against Mr. Cooper to be no “different from bringing in a boss from three years ago [asking if she] ever lie[d] on her time sheet at McDonalds.” App. at 24.

Subsequently, via written motion, the defense renewed the joint request for additional time, and moved again under the Fourteenth Amendment to present the overwhelming evidence<sup>1</sup> it already possessed proving that S.M. fabricated the messages. App. at 11, 29-30. In an oral order on the morning of trial, the trial court again denied the request to present S.M.’s fabrication to the jury, finding that it would “confuse” the jury because S.M.’s fabrication was “an irrelevant consideration,” and “collateral” to the issues in the case. App. at 11-12; 26-27.

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<sup>1</sup> The trial court accepted as undisputed several pieces of direct and substantial evidence proving S.M. fabricated the messages: (1) only S.M. provided the fabricated evidence to the prosecution (App. 33), (2) she claimed a third party sent her the evidence but could not provide any information about this alleged person (App. 33), (3) when downloaded from fraudulent websites, the fabricated evidence automatically saves as “facebook\_messenger\_chat” (App. 34), (4) this exact filename appeared in the “Facebook messages” S.M. emailed to the government, proving she downloaded them directly from the website (App. 34), (5) S.M. claimed she took screenshots of the messages on her phone, but when she provided screenshots in the past the filenames contained timestamps—unlike the fabricated messages she sent (App. 36-37), (6) the fabricated messages contained specific statements identical to those she gave police in earlier interviews (App. 35), (7) no evidence suggested anyone else created these messages.

### **III. Trial**

At trial, as expected, the Commonwealth's case rested entirely on S.M.'s testimony and credibility—it did not present any physical evidence and its only other witness was the investigator. App. at 25; 28 (Commonwealth admitting in closing argument that the case comes down to whether the jury will “listen to her and decide if you believe her and if you believe her, he is guilty.”). Because the trial court denied Mr. Cooper's Motion, Mr. Cooper was forbidden from presenting to the jury evidence that S.M. fabricated evidence against Mr. Cooper to impeach S.M., demonstrate S.M.'s bias against Mr. Cooper, and her motivation to lie. The jury then found Mr. Cooper guilty of rape and strangulation.

### **IV. Proceedings on Appeal**

On appeal, Mr. Cooper challenged, *inter alia*, the exclusion of S.M.'s fabrication of the Facebook screenshots, arguing that it violated his Fourteenth Amendment right to present a complete defense. App. at 14. In a memorandum opinion, the Court of Appeals of Virginia affirmed in one statement, holding that “the evidence here was ‘simply too attenuated’ to amount to a constitutional violation, and the court's concerns about ‘confusion of the issues’ was well founded,” despite the fact that the Commonwealth's case rested entirely on S.M.'s credibility, and the fabrication impeached her credibility, and demonstrated her bias and motivation to lie. App. at 14. A petition for rehearing *en banc* was denied. App. at 31. Mr. Cooper

then petitioned to the Supreme Court of Virginia, raising the Fourteenth Amendment denial. App. at 32. The Supreme Court of Virginia denied Mr. Cooper's Petition. App. at 22.

This petition seeks review solely of whether the trial court's exclusion of evidence that the sole inculpatory witness fabricated evidence in a case turning entirely on that witness's credibility violated Mr. Cooper's Fourteenth Amendment right to present a complete defense.

## **REASONS FOR GRANTING THE WRIT**

### **I. The Decision Below Conflicts With This Court's Precedent.**

This Court has long held that a criminal defendant must have a meaningful opportunity to present a complete defense and to expose a witness's bias and motive to fabricate: *Davis v. Alaska*, 415 U.S. 308, 317-18 (1974) ("In the instant case, defense counsel sought to show the existence of possible bias and prejudice of [the witness.] We cannot speculate as to whether the jury, as sole judge of the credibility of a witness, would have accepted this line of reasoning had counsel been permitted to fully present it. But we do conclude that the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on [the witnesses] testimony which [was] crucial[.]"); *Crane v. Kentucky*, 476 U.S. 683, 687 (1986) (finding that the flawed analysis below, "under the circumstances of this case, contributed to an evidentiary ruling that deprived

petitioner of his fundamental constitutional right to a fair opportunity to present a defense.”). These decisions recognize that impeachment revealing fabrication, bias, or motivation to lie is not a collateral sideshow, but the core of confrontation and a fair trial when credibility is relevant, let alone essential. The trial court’s categorical exclusion cannot be reconciled with those cases.

The prosecution’s case turned entirely on S.M.’s credibility. She was the sole inculpatory witness. The defense proffered evidence that this witness fabricated evidence—Facebook Messenger screenshots—and sent them to law enforcement shortly before trial to support her accusations against Mr. Cooper and falsely incriminate him. The court accepted this proffer, but ruled the evidence inadmissible and deeming that it would “confuse” the jury because it was “an irrelevant consideration,” and “collateral” to the issues in this case.

Those rulings contravene the principles of *Crane*, *Davis*, and numerous other Supreme Court cases which forbid excluding defense evidence that is central to the defense theory, and which hold that a defendant must be allowed to expose facts from which bias, motive to fabricate, or corruption may be inferred—particularly where, as here, the case rises or falls on a single accuser’s credibility. The trial court’s erroneous ruling reflects a categorical bar incompatible with this Court’s cases, which allow trial judges reasonable limits on cross-examination and evidence presentation,

but not the elimination of an entire, prototypical line of bias and fabrication impeachment at the heart of the defense.

The appellate rationale likewise conflicts with this Court's decisions. On appeal, the decision below rejected Mr. Cooper's constitutional argument with one conclusory statement: "the evidence here was 'simply too attenuated' to amount to a constitutional violation, and the court's concerns about 'confusion of the issues' was well founded." That reasoning cannot be reconciled with this Court's decisions and well-established law on the right to present a complete defense. Critical defense evidence of bias, motive, and impeachment cannot be recasted in conclusory fashion as "collateral" where credibility is the trial's focus. The rulings below thus depart from the accepted and usual course of judicial proceedings and warrant this Court's review.

## **II. The Petition Presents an Exceptionally Important Federal Question.**

The question presented implicates foundational federal interests. It goes to the uniform enforcement of constitutional guarantees that are indispensable to the integrity of criminal adjudication: the right to present a defense and to confront one's accuser with evidence of bias, fabrication, and motivation to lie. The record below shows courts invoking language such as "collateral," "far afield," and "misleading" to exclude precisely the sort of evidence this Court's cases protect. Without guidance,

similar exclusions will recur in single-witness prosecutions nationwide, generating non-uniform applications of core constitutional rules and undermining the reliability of verdicts.

### **III. This Case Is an Ideal Vehicle.**

The issue is cleanly presented and preserved. The trial court categorically barred any use of the fabricated evidence—purported Facebook messages—even on the assumption that the witness created and sent them to authorities to falsely incriminate the defendant. The appellate court then affirmed. There are no material factual disputes or waiver problems. Indeed, the Commonwealth agreed at trial that the evidence creates “credibility issues that would be very discoverable exculpatory for the defense.” This petition presents one discrete federal question concerning the exclusion of a single category of impeachment evidence central to the defense.

### **IV. The Real-World Consequences Are Grave.**

If the decision stands, trial courts will have a blueprint for insulating sole-witness prosecutions from meaningful testing: recharacterize concrete evidence of fabrication as “collateral” or “confusing” and exclude it altogether—even when the court assumes the fabrication occurred. That approach invites convictions to rest on untested testimony, elevates form over the truth-seeking function of trials, and erodes the uniform constitutional floor this Court has set for criminal proceedings.

The systemic damage is direct: defendants will be barred from presenting classic bias and fabrication impeachment in the very cases where it matters most, increasing the risk of wrongful convictions and undermining public confidence in the administration of justice.

### **CONCLUSION**

For the foregoing reasons, Mr. Cooper respectfully requests that this Court issue a writ of certiorari to review the judgment of the Supreme Court of Virginia.

Respectfully submitted,

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