

ORIGINAL

No. 25A156

25 - 69 12

Supreme Court, U.S.
FILED
AUG 22 2025
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

THOMAS BARTHOLOMEW SIMPSON — PETITIONER
(Your Name)

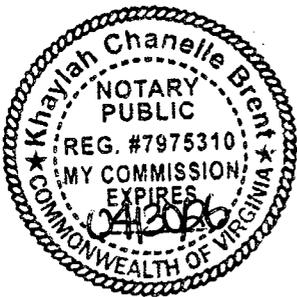
vs.

CHADWICK DOTSON, Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI



Thomas Bartholomew Simpson
(Your Name)

Haynesville Correctional Center
P.O. Box 129
(Address)

Haynesville, Va 22472
(City, State, Zip Code)

RECEIVED
OCT 15 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

City/County of Richmond, Commonwealth of Virginia

The foregoing instrument was subscribed and sworn before me this

22nd day of August, 2025

Thomas D. Simpson (Phone Number)

(Name of person seeking acknowledgement)

Khaylah Chanelle Brent
Notary Public

My Commission expires: 04/30/2026
Notary Reg. No. 7975310

I certify that the above Notary
is not a party to this action

Tom B. Hays
8/22/25

QUESTION(S) PRESENTED

- I. Whether it requires the circuit court to probe lay witness testimony or specialist forensic analysis testimony to overcome foundational objections at a criminal trial to admission of text messages in order to protect Due Process rights to a fair hearing in accordance with the Constitutional protections.
- II. Whether prosecutorial misconduct occurred by the state and lay witness giving improper expert testimony as to the foundation of the text messages in violation of Due Process.
- III. Whether prosecutorial misconduct occurred by allowing witness to deny defendant the right to effectively cross-examination by giving misleading jury of his character and trustworthiness.

TABLE OF CONTENTS

OPINIONS BELOW..... 1

JURISDICTION..... 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 21

CONCLUSION..... 33

INDEX TO APPENDICES

APPENDIX A. OPINION AND ORDER OF U.S. 4TH CIR. COURT

Page 1-4; Date: March 25, 2025

APPENDIX B. OPINION AND ORDER OF U.S. DISTRICT COURT VA E.D.

Page 1-33; Date: August 24, 2023

APPENDIX C. COA OPINION FROM U.S. VA E.D. COURT

Page 1-3; Date: October 12, 2023

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASE:	PAGE NUMBER
Atkins v. Commonwealth , 68 Va. App. 1, 2017 Va. App. LEXIS 160 (2017)	21
Bloom v. Commonwealth, 262 Va. 814 (2001)	16
Buck v. Davis, 508 U.S. 100 (2017)	22
Carpenter v. United States, 138 S. Ct. 2206 (2018)	24,26
Riley v. California, 573 U.S. 373 (2024)	24
Simpson v. Clark, 2023 U.S. Dist. LEXIS 150351 (2023)	6,31,32
Simpson v. Commonwealth, 2017 Va. App. LEXIS 292 (Nov. 21 2017) ...	15,16,17,22,26,29,31
Simpson v. Dotson, 2025 U.S. App. LEXIS 6894 (4th Cir. Va. March 25, 2025)	23
United States v. Barnes, 803 F.3d 209, 2015 U.S. App. LEXIS 17222 (5th Cir. Miss. Sept. 30, 2015)	21
United States v. Chavez-Lopez, 767 Fed. Appx. 431 (4th Cir. 2019)	21,22,23,28,32
United States . Dunnican, 961 F.3d 850 (6th Cir. 2020)	21,23
United States v. Glenn, 2025 U.S. App. LEXIS 18692 (6th Cir. 2025)	23
United States v. Ramirez, 2016 U.S. App. LEXIS 15384(11th Cir. 2016)	22
United States . Turner, 2019 U.S. App. LEXIS 24491 (8th Cir. 2019)	22
Wainwright v. Greenfield, 474 U.S. 284 (1984)	25
United States . Davis, 2019 U.S. App. LEXIS 8078 (4th Cir. 2019)	23
FEDERAL RULES	
Fed. R. of E. 402	25
Fed. R. of E. 702	25
Fed. R. of E. 803	25
Fed. R. of E. 901(a)	22,23
Fed. R. of E. 902	28
Fed. R. of E. 903	25
Fed. R. of E. 1001	25
UNITED STATES CONSTITUTION	
Fifth Amendment	25
Sixth Amendment	7,21,22,24
Fourteenth Amendment	21,22,24,25
FEDERAL STATUES	
28 U.S.S. § 2253	28
28 U.S.C. § 2254	19

CODE OF VIRGINIA

Va. Code § 8.01-54(B)(5) 18
Va. Code § 19.2-61 through §19.2-70 25

VIRGINIA SUPREME COURT RULES

Va. Sup. Ct. R. 2:402 25
Va. Sup. Ct. R. 2:701 25
Va. Sup. Ct. R. 2:803 25
Va. Sup. Ct. R. 2:1001 25
Va. Sup. Ct. R. 2:1005 25
Va. Sup. Ct. R. 901 25
Va. Sup. Ct. R. 902 25

SECONDARY SOURCES

Bonnie Burkhardt, Manufacturing Criminals: Fourth Amendment Decay in the
Electronic Age (2020). Blue Ridge Software Consulting 25

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at Simpson v. Dekon, 2025 U.S. App. LEXIS 6894, 2025 LX; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at Simpson v. Clarke, 2023 U.S. Dist. LEXIS (2023); or,

has been designated for publication but is not yet reported; or,

is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 25, 2025.

No petition for rehearing was timely filed in my case.

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

An extension of time to file the petition for a writ of certiorari was granted to and including August 6, 2025 (date) on August 22, 2025 (date) in Application No. 25 A 150.

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

For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**Fourteenth Amendment - Due Process - Fair Trial - Expert Testimony -
Foundation - Authentication - Text Messages**

**Fourteenth Amendment - Due Process - Fair Trial - Duty of Prosecution
to Disclose Exculpatory Evidence**

Sixth Amendment - Confrontation - Expert Statements - Hearsay

Sixth Amendment - Confrontation - Text Messages - Hearsay

STATEMENT OF THE CASE

Petitioner and Erica Simpson (hereafter referred to as Erica) was married on Dec. 30, 2007, and there after had two sons, J. and Z.. The couple began their separation in March 2014, after Erica had the Petitioner arrested from their home and charged with Assault and Battery of a Family Member, which was contrary to her testimony at trial that Petitioner just left the home (Tr. pg. 167 ; 12/8/2015). Petitioner was later found "Not Guilty" of those A&B charges (Petitioner's Exhibit #1, ¶1 & ¶5). Petitioner's cell phone service was turned off August 2014 (Tr. pg. 3-4, 8-11; 9/25/2015).

On April 2, 2015 Erica obtained a protection order against the Petitioner because she alleged that he showed up at their home un-announced and that she sustained scratches on her hand from an alleged wrestling match over her cell phone, which was once again contrary to Erica's testimony at trial that she obtained her protective order due to threatening text messages (Petitioner's Exhibit #1, ¶1 & ¶2) (Attachment #1, pg. 6 ¶3). (Tr. pg. 167-169, 205-207; 12/8/2015).

During the early hours of April 23, 2015, three weeks later, Erica and her boyfriend, Javelle Rowe, was asleep in her home master bedroom with the door locked, in Spotsylvania County, Virginia (Tr. pg. 212; 12/8/2015). J. and Z. was of the age of four and three, asleep in their separate bedrooms, J. directly across from Erica's, and Z. was diagonally from Erica's bedroom (Tr. pg. 144, 227; 12/8/2015). Around 2 am, Erica alleged she heard the sound of shattering glass and thirty seconds later a "banging sound" of her door being "busted open" (Tr. pg. 144, 228; 12/8/2015). Rowe went and pushed back at the door to prevent anyone from entering the room, while the intruder attempted to push it open (Tr. pg. 144, 230). Testimony alleged that the intruder held a "cylinder pipe" swinging it around through the opening of the door (Tr, pg. 144-145, 230).

Reviewing courts agree with testimony from Erica that the next thing that happened and the first statement made, was Erica yelling, "Thomas, stop, I'm going to call the police" (Tr. pg. 145). Other ambiguous statements was given which raise question

and doubt to allegations of what Erica heard "During the Altercation" and "After It Got a Little Quiet". First, Erica made separate statements to law enforcement, which was that all she identified hearing was the intruder say "Oh you nigga" and "You nigga" and that after she called 911 the assault ended and the intruder fled the scene. (Attachment #1 Master Incident Report pg.6 ¶3 and Attachment #2 Supplement Incident Report pg. 5 ¶4). The second, is what Erica said on the 911 call, that the assault had ended, but she could not tell if the intruder had left. She then stated she could hear "him", but clarified that she could hear her kids. (Petitioner Exhibit #2 pg.3). Third, was Erica's testimony at trial, before the court played the 911 call. She only stated she first yelled, "Thomas, stop, I'm going to call the police, and I started dialing the number, 911 after it got a little quiet." (Tr. pg. 145, 148; 12/8/2015). The fourth and last ambiguous recollection of Erica came after the court played the 911 call and she was questioned, which was central to the Court of Appeals of Virginia's finding of unchallenged hearsay. Only then Erica said she heard the intruder "During the Altercation" say "you nigga", then say, "its okay, J[.], when he said daddy in the hallway." Erica then testified that, "they said daddy." (Tr. pg.154; 12/8/2015).

Erica alleged that she was "very certain" that the voice she heard was that of the Petitioner even though neither Erica or Rowe ever saw the assailant's face. (Tr. pg.154, 216). Rowe did not recognize the intruder's voice, but said it sound like a male's (Tr. pg. 148, 208).

During the 911 call Erica placed, she states that her "ex-husband" had broken into her house and that she could still hear him inside the home speaking to her kids (Tr. pg. 148-149). In the background of the call at 1:55 sec., a voice in the distance can hardly be heard crying out "Daddy" (Commonwealth Exhibit 3; Petitioner's Exhibit #2 pg. 4; Tr. pg. 33-34; 11/30/2015), and two seconds later, Erica yells "Z[.]". Fifteen seconds later, one of the children are heard saying, "Broke the glass" after which Erica replies, "Your dad did it" (Tr. pg. 218; 12/8/2015) (Common. Exhibit 3 at 2:10; Petitioner's Exhibit #2 pg.4).

Rowe sustained injuries to his head and wrist which was treated at the local hospital, needing surgery for a broken wrist and staples to his skull due to lacerations there from the "cylinder pipe" being swung around in the door jamb (Tr. pg. 235-236; 12/8/2015). Evidence obtained after trial revealed that when Rowe was transported to Mary Washington Hospital, he was interviewed by Detective Corona and stated that his baby mother said, "she could not care if [the intruder] killed them both" (Attachment #2 pg. 6), which contradicted his testimony at trial that he got along with everyone in his life, when Petitioner was advancing his defence that other people wanted to harm Rowe (Tr. pg. 247-251; 12/8/2015).

Also, at approximately 2:00am, Lisa Washington, the cousin of Petitioner, opened her door to him knocking, she testified. Her home is on Taney Drive, thirty plus mins. from Erica's house, which is contrary to the Eastern District of Virginia's U.S. District Court's determination that evidence at trial was that Petitioner was at his cousin's house who lived in the same neighborhood as Erica (Tr. pg. 284; 12/8/2015) (Simpson v. Clarke, 2023 U.S. Dist. LEXIS 150351 at 23 (2023)). Lisa stated that it was either April 23rd or 24th, and testified that Petitioner told her that his mother's car was "acting up, like it was going to break down," and asked to sleep on the couch. (Tr. pg. 256; 12/8/2015).

Deputies canvassed the area after being informed by Erica of the vehicle she suspected to have been driven by Petitioner (Tr. pg. 262; 12/8/2015). At approximately 2:30am, the vehicle was located by First Sergeant Woodard of the Spotsylvania Sheriff's Office, at 10913 Taney Drive in a parking spot empty of persons (Tr. pg. 263-264). He alleged to have located one piece of glass on the ground beside the car. However, no forensic evidence was introduced at trial of the glass or of any link it had to the crime scene (Tr. pg. 265). After the vehicle was towed and searched, it yielded no evidence (Tr. pg. 266). No weapon was recovered by law enforcement after a full search of Erica's home and property, nor was any metal pipe, as described by witnesses (Tr. pg. 303-304).

On April 24, 2015, Appellant reported to Spotsylvania County's Magistrate Office and was arrested for the underlining offences.

On May 27, 2015, at Petitioner's preliminary hearing Erica gave testimony as to her first statements to law enforcement, that all she heard was the intruder say, "You nigga".

A grand jury indicted the Petitioner and he was arraigned in Spotsylvania County Circuit Court on July 6, 2015, where he pled "Not Guilty" and trial was set for Sept. 9, 2015 (Tr. pg. 41; 7/6/2015).

At an Aug. 11, 2015, bond hearing, then prosecutor Dawn M. Phillips gave statements that the intruder was "seen by his two children dressed like a ninja" (Tr. pg. 5-6; 8/11/2015).

On Sept. 25, 2015, Petitioner's counsel moved for a continuance due to prosecutor's, now Dircia DeJesus 'Schubert, disclosure of screen shot text messages which Erica alleged was sent to her from the Petitioner which was threatening and sexual in nature. The Petitioner denied sending them or having knowledge of such text messages. A hearing was held the next day and it was disclosed that the Commonwealth did not "previously" possess "or [know] of the existence of these text messages until last Friday", which was Sept. 18, 2015. Petitioner disclosed that he had not had a phone since Aug. 2014. The motion was granted and trial was then set for Dec. 8, 2015 (Tr. pg. 3-4, 8-11; 9/25/2015) (Petitioner's Exhibit #1 115).

On Nov. 30, 2015, Petitioner and counsel Favret, who was aided by Allen Polsky, argued two motions in limine she filed. The first was a 'Motion in limine To Exclude 911 Tape' and the second was a 'Motion in limine To Exclude Text Messages' (Tr. 11/30/2015). Counsel challenged the admission of Erica's 911 call in that it's prejudice outweighed any probative value and that it falls outside of the hearsay exception to excited utterance and present sense impression. The Commonwealth appeared to focus on the background "Daddy" expression, who they indicated to have been made by Z. (Tr. pg 33-34) (Petitioner's Exhibit #2 pg.3). Counsel warned that the statement "violated Mr. Simpson's Sixth Amend. Right of Confrontation and it violates due process." (Tr. pg.39). The Court allowed the 911 call to be admitted for limited purpose under the sheer purpose of excited utterances, present scene impression exception to the hearsay exceptions. The call was tremed to

3:07min(Tr. pg.41-49). The circuit court stated, "[s]o I'm not ruling specifically on the statement of the child. But there would be no way to exclude that..."(Tr. pg.48). The portion of the call admitted included the child's faint expression in the background of him calling "daddy" and missed if not turned up by the volume.

As for the screenshot text messages(STM), counsel argued they was "unreliab[le] due to there format and the manner in which they've been produced... depriving [Petitioner] of due process and a fair trial," among other challenges(Tr. pg.49-50; 11/30/2015). In counsel's written motion it was stated that:(1)"that the text messages appear to come from multiple sources";(2) "It is equally simple to erase text messages within a conversation, manipulating the overall appearance"; and((3) "Of the text messages at issue, only two screenshots contained date stamps: Februrary 5 and February 6. No year is indicated". (Petitioner's Exhibit #3). At the hearing, Counsel argued:(1) that the STM was unreliable "due to their format" and "manner in which they've been produced"(Tr. pg.49; 11/30/2015); (2) the "ability to manipulate a screenshot is extremely easy" and "you can delete text messages within a conversation very easily and there's dozens of other ways you can alter an image on the computer"(Tr. pg.54; 11/30/2015); (3) that the content "aren't things that only [the Petitioner] would know or have reason to talk about"; (4) that "the Commonwealth ^[the Pet] is not able to link those [random phone numbers] to the Appellant"(Tr. pg.55); (5) that "the text messages are subject to manipulation by the recipient, were being presented by screen shots from the phone of the allged victim in this case"(Tr. pg.56); (6) that Erica "has a motive to alter the evidence. She has a motive to change the way that [the] text messages appear and the feasibility of that is something that [counsel] think the Court needs to consider"(Tr. pg.56); and (7) that the "content of the text messages would deprive Mr. Simpson of due process and right to a fair trial(Tr. pg.49 & 65).

The Commonwealth argued two prong test in Bloom v. Commonwealth, dealing with relevance. (Tr. pg.58-65; 11/30/2015). All parties addressed party admission to the hearsay exception(Tr. pg.58,65,68).The Commonwealth made no assertion that the text messages was the reason for Erica obtaining her protective order. Bloom was used on the

Commonwealth's reply motions to the in limine introducing hearsay argument to the text messages (Petitioner's Exhibit #10).

The Court questioned that, "text messages are from February?...5th...6th... most of them don't have a date at all" (Tr. pg. 55; 11/30/2015). The Court also questioned that "[w]hether a message dated February 5th is relevant to an offense that occurred on April 23rd without anything else?" (Tr. pg. 57). The Commonwealth then first alleged that "the dates was from a time span in Feb[.] and... early part of April" (Tr. pg. 58; 11/30/2015).

Counsel objected that party admission of the STM is no exception to the hearsay rule (Tr. pg. 65; 11/30/2015).

The Court ruled that it didn't "have enough information to rule on the specifics of these text messages," and "if in fact a proper foundation is proven, may very well be admissible to show motive or intent" (Tr. pg. 65-66; 11/30/2015). That "they've got to be separated more. I mean, the Commonwealth can't just say, here are text messages" (Tr. pg. 67; 11/30/2015). They had to, "be established by a proper foundation to establish a reliability in terms of the sender" and a "decision on each individual text message as to relevant." Also, the court needed testimony at trial to then or where, to establish relevance (Tr. pg. 65-70; 11/30/2015).

The Petitioner met with his counsel at the jail and he signed a denial to a seven year to ten year plea agreement and elected instead to go to trial with the strategy of continuing to contest and dispute the STM remaining adverse in terms of authorship of and being the sender. Petitioner decided to face 20 years to life in prison also with the strategy of pointing out the bias of the investigations and the Commonwealth sole focus on the Petitioner and no one else. Counsel would also point out that Javelle Rowe had enemies. (Petitioner's Exhibit #1 pg. 3 ¶10; Petitioner's Exhibit #7).

- Proceedings and Facts at Trial -

On Dec. 8, 2015, Petitioner proceeded with trial, pleading 'Not Guilty' (Tr. pg. 6; 12/8/2015). At the onset, Counsel addressed concerns of newly disclosed video evidence of the couple's children being interviewed about the night in question, which the

Commonwealth only revealed the week before trial. Counsel's concern was that the Commonwealth would back door the "Daddy" comment with the video and that the child was not yet ruled competent to testify. Assistant Counsel, Allen Pulsky, renewed the in limine to exclude the 911 call. The trial court stated:

"The statement that people are referring to... a child say daddy... Whether he's looking for his daddy, whether he's looking at his daddy, whether he is calling out for his daddy, I don't have any idea what that statement is supposed to mean, but I suppose that it's a matter for argument." (Tr. pg.19; 12/8/2015).

The Commonwealth stated they did not intend to enter the video into evidence (Tr. pg.9-19).

Erica was the Commonwealth's first witness, who gave testimony about the night in question. This is when she gave the ambiguous and self-serving statements as to what she allegedly heard "During the Altercation", which was before the 911 phone call, and "After it Got a Little Quiet", which was during her 911 call. (Tr. pg.137-155).

"During the Altercation", Erica testified that she first yelled. "Thomas, stop, I'm going to call the police", after which she "start[ed] dialing 911." (Tr. pg.145; 12/8/2015).

The Commonwealth then goes off track, then comes back to the 911 call in order to play the tremed admitted portion aloud to the witness and jury. However, Counsel made no objections in the presence of the jury, to the call being admitted or played aloud (Tr. pg.152-153; 12/8/2015). After the call was played, the Commonwealth asked Erica to describe what she heard "During the Altercation", which meant before the 911 call was placed.

Erica now states that she heard the intruder say "you, nigga, to Javelle." She then states that she "heard him say it's okay, J[.], when he said daddy in the hallway." (Tr. pg.154).

"After it go a little quiet", Erica then said she called 911. The Commonwealth led asking, "did J[.] say anything in return or did any of your children say anything, did you hear?" The Commonwealth led Erica to allege to the jury that both sons said "daddy", relating to the 911 call recording. "They said Daddy". (Tr. pg.154-155). It was argued that the "daddy" statement was made because they was crying out for there dad, or for Rowe because he was the father figure in the home and it was a scary situation. (Tr. pg.

The Commonwealth then moved to set the foundation for the introduction of the STM by eliciting perjured testimony from Erica to the jury (Tr. pg.166-169; 12/8/2015). Erica

testified that the Petitioner "left the home in March 2014, and we started our separation", and that she would receive "text" from him. The package of STM was shown to Erica who then first testified, to the jury, that the alleged text messages was received "[r]oughly [around] April 2014"(Tr. pg.168). The Court then instructs the jury to step out while the "Motion in limine To Exclude Text Messages Evidence" resumed.

After the jury exited, the Commonwealth now alleged the messages came in around "April of 2014, a second set came September of 2014,.. third set November of 2014,.. a separate set around February 2015."(Tr. pg.173; 12/8/2015).

Counsel objected to "relevance,.. foundation,.. best evidence rule and prejudice outweighing the probative value."(Tr. pg.169; 12/8/2015). The Commonwealth now contradicted Erica's testimony, while the jury was absent, that Erica "commenced her separation... she removed him from the house"(Tr. pg. 170-171). Commonwealth Attorney Dircia DeJesus Schubert then gives perjured testimony in front of Erica, that "that's when the threatening text messages commenced", and that the text messages was "part of the basis of why she got a protective order, first and foremost."(Tr. pg.171-172). They stated that the STM "shows the defendant's then state of mind, it goes to identity... indicate his intent to commit a violent offense... his motive and absence of mistake throughout."(Tr. pg.171-173). Counsel then objected and continued to "contend that the Commonwealth has not laid the proper foundation and has not properly authenticated the screen shots", and that "on the best evidence rule, absent showing that the originals are not available, I don't think that they can come in"(Tr. pg.174).

The Court sustained the objection in terms of relevance, that "it does not show motive, it does not show opportunity, certainly, it does not show... intention." The Court further stated that, "in terms of relevance to identifying the individual who conducted the criminal activity in April of 2015, I sustain the objection. I believe they're too remote in time." (Tr. pg.174-176; 12/8/2015).

The Commonwealth then mounts its attempt at taking a second bite of the apple by only then separating the STM by the month dates, which the Commonwealth had already alleged and

which the Court had already ordered them to do during the pre-trial motion in limine, "they've got to be separated more." (Tr. pg.67 line 13 and 14; 11/30/2015). They asked the Court about the alleged February of 2015 text messages. However, she presents messages alleged to be from Sept. of 2014, to the Court. Even after further testimony from Erica, Her Honor continued to question the messages because they possessed no date stamps of day or year (Tr. pg.181-182).

Prosecutor DeJesus 'Schubert only then disclosed and alleged that "all these messages have been forensically analyzed," and stated to the Court that "by way of proffer, Detective Rickens has forensically analyzed the laptop where the documents were maintained. Based on his forensic analysis of each set of documents he would be able to inform the Court the date", and that "the files itself does not appear to have been tampered in any way." (Tr. pg.182-184).

The Court then admitted three out of six sets of SIM, text messages alleged to have been received by Erica from the Petitioner during: Sept. of 2014 (Tr. pg.185) (Commonwealth Exhibit 5); Nov. of 2014 (Tr. pg.193) (Commonwealth Exhibit 6); and Feb. of 2015 (Tr. pg.193) (Commonwealth Exhibit 9), which set Erica testified was still on her cell phone (Tr. pg.196).

Counsel had also made foundational and relevance objections to the Commonwealth's continued advance of hearsay party admission. After the Commonwealth alleged forensic analysis testimony and the Court began admitting the text messages, Counsel objected that "I would still object to those messages coming in through this witness without testimony from Detective Rickens about the forensic analysis" (Tr. pg.185; 12/8/2015). This was the first and last time Counsel mentioned Rickens' name. It was also the last time any other party mentioned Detective Rickens name on the record.

When the Commonwealth attempted to admit Exhibit 6, the Court asked Erica, "[i]s there a phrase that you're familiar with?" To which Erica replied, "I'm familiar with all of them." (Tr. pg. 190). The Court asked, "was there any consistency in the phone numbers they were coming from?" Erica replied, "[n]o. He didn't have a phone so he would from his iPod download apps that gave you random phone number.., because I had him blocked on my iPhone, so he could get through (Tr. pg.191; 12/8/2015).

Counsel's objections was the "same, same objections,.. and these text messages in

"particular,.. extremely inflammatory and risk unduly prejudicing the defendant... not relevant to the case, to the charges that are before the court today... no specific date... prejudice nature outweighs and probative value"(Tr. pg.191-193;12/8/2015). The Court weightd the pro protective order to Exhibit 6, and ruled them admissibile in that "there are specific threats as a result of whatever legal activity is going on at that time." However, this set was alleged to have been from November of 2004 when there was no legal activities going on between the couple.

As to the Commonwealth's Exhibit 9, which allegedly was received Feb. of 2015, the Commonwealth asked Erica, "for those particular February messages, where are they presently stored?" Erica replied, "on my laptop." Erica then testified that she "turned" her old cell phone, which contained or which received Commonwealth Exhibit 5 and 6, "into the Verizon store."(Tr. pg.195-202;12/8/2015).

The jury re-entered and the Commonwealth picks back up on setting the foundational questions to submit the SIM into evidence. They asked Erica how she fwlt and what did she do after receiving the threatening text messages? Erica testified and gave further perjured testimony to the SIM, that she "got a protective order"(Tr. pg.205-207;12/8/2015).

The court withheld all alleged text messages from being published to the jury during the case-in-chief, in accordance with proceeedure on evidence which admissability relied on further pending relevance testimony, Detective Rickens'(Tr. pg.204-205;12/8/2015).

On Javelle Rowe's cross, Counsel began a line of questioning to show the court "that this was a targeted attack on Mr. Rowe, there's other people in his life that could be responsible for [the attack]"(Tr. pg.248;12/8/2015). Counsel began by asking Rowe if he "agree that there are people in [his] life that [he] don't have the greatest relationship with?"(Tr. pg.246). After objections, Rowe committed perjury by testifying that, "no, I have a good relationship with everyone who's in my life."(Tr. pg. 247). However, later discovered evidence proves the Commonwealth allowed him to commit perjury because he told detectives at the hospital on the night of the incident that his baby momma said, "She who could not care if [the intruder] killed them both."(Spotsylvania Sheriff's Office Incident

Reports; Attachment 1&2). After a side bar due to the Commonwealth's objection about Rowe being charged with Assault and Battery, which would then lead to protective orders he had out against him, Counsel was not permitted to proceed with their defense. (Tr. pg. 250; 12/8/2015). (Exhibit #1,

Upon both parties resting, Petitioner asked Counsel, "what about the detective? He didn't testify. What about Detective Rickens?" To which question went ignored. (Petitioner's Exhibit #1, 112 and 13).

Counsel met with Petitioner before closing arguments and discussed strategies for closing arguments which was: (1) pointing to the holes in the Commonwealth's case and evidence in order to create a reasonable doubt; (2) demonstrate the inconsistencies in the Commonwealth's case and evidence; (3) the bias of the investigation and it having focussed only on Appellant. (Petitioner's Exhibit #1, 113). Petitioner understood it to include a defense against authorship of the STM. Unbeknownst to the Petitioner, however, Counsel began her closing arguments by stating to the jury that the Petitioner was the author and sender of the STM: "Mr. Simpson is extremely angry with Erica, and you'll see text messages when you go back to deliberate that Erica retrieved text from Thomas and that will show that he's extremely angry with her." (Tr. pg. 358; 12/8/2015).

During submation, Counsel also pointed to holes in the Commonwealth's case and evidence weakness:

"heard no evidence of DNA... no evidence of fingerprints or blood or hair... nothing from the vehicle... no physical evidence... connected to Thomas Simpson... No evidence that he had any bruising or injury on his arm... no evidence that the police saw Thomas Simpson near Erica's house... or near the car that they say he was driving. In fact, they never saw him at all on April 23rd... this club or this pipe... no one seems to specifically identify... they haven't presented that... because they was never found... Lisa Washinton house... around two a.m.,... Erica Simpson also testified that the break-in happen around two a.m. Javelle Rowe testified that it was around 1:30." (Tr. pg. 359-362; 12/8/2015).

However, it was the Commonwealth who mentioned text messages first in closing arguments, alleging how "angry" the Appellant was (Tr. pg. 353-354; 12/8/2015), then on rebutal submation, began reading STM aloud to the jury (Tr. pg. 368-372). Also, they played a portion of the 911 call, where a faint voice in the background, having the volume turned up, can be heard crying out, "Daddy"! The prosecutor said, "Did you hear that? I'm going to play it again..."

"Daddy, Daddy, Daddy, That's what he's screaming. Thomas Simpson didn't live in that house anymore." (Tr. pg.342 and 377-378;12/8/2015). However, Counsel already argued that the child was crying out for his dad or Javelle Rowe for help in a scary situation. And, Erica had already testified that the first statement she made was "Thomas, stop, I'm going to call the police" (Tr. pg.145;12/8/2015).

Nevertheless, the juries first attempt to reach a verdict failed (Tr. pg.385-390;12/8/2015). However, on their second attempt, the Petitioner returned a "Guilty" verdict of Armed Statutory Burglary and sentenced to 20 years imprisonment; Furtively Entering the Home of a Person Protected by a Protective Order and sentenced to 3 months imprisonment; and the Malicious Wounding was reduced to the lesser-included offence of Assault and Battery and sentenced to 12 months imprisonment. (Tr. pg.393-394;12/8/2015 and Tr. pg.36-37; 2/10/2016).

On appeal, the Petitioner, being indigent, continued with Rebecca Favret as attorney arguing against the admission of the STM and Appellant being the author. Admission of the 911 call "daddy" statement was also argued. Simpson v. Commonwealth, 2017 Va. App. LEXIS 292 (Nov. 21, 2017). The appeal argument for the STM was:

- "2. The Trial Court erred in admitting screenshot images of text messages because:
 - a. The screenshots lacked the proper foundation;
 - b. The screenshots were not relevant; and
 - c. The screenshots were substantially more prejudice than probative.

Counsel argued on appeal that, "Erica Simpson's testimony did not lay the proper foundation to warrant their admission... the Commonwealth failed to establish the sender's identity... witness who authenticates the records is a neutral professional. Instead, in this case, the only witness whom the Commonwealth called to authenticate the messages was the alleged victim." (ACAVAB pg.18-19). It was stated "the screenshot were not prepared by a telephone service provider; they were prepared by Erica Simpson. Not an disinterested party." Petitioner brief also mentioned that, "the court permitted the Commonwealth's Attorney to proffer additional evidence to lay foundation.. [they] proffer that Detective Rickens forensically analyzing the screenshots to determine the date Ms. Simpson downloaded

"the images to her computer and to ascertain whether the images had been tampered with" (id pg. 20). The brief also argued the fact that Rickens failed to testify and that he "was not subject to cross-examination or scrutiny by the fact finder." The Commonwealth relied on Bloom v. Commonwealth(2001) on appeal, but counsel pointed out that that "[i]n that case, the defendant "admitted that he had sent the instant messages", unlike that of the Petitioner case, the text messages "were not properly linked to Petitioner." That the "purported connections were not specific nor unique enough to Appellant and did not constitute information that only Appellant would have known... the sender never indentified himself even by nickname."

The Commonwealth, on the other hand, argued that "[t]hat trial court did not abuse its discretion in admitting the text messages screenshots because the messages were opposing party admission of Simpson, and the probative value... was not substantially outweighed by danger of unfair prejudice." (CCAVAB pg.2). The Commonwealth continued to argue hearsay exception, that "the messages were admissible over a hearsay objection"(id pg.14). They argued that the original writings are not required if they are "lost or destroyed, except if it is lost or destroyed in bad faith." Generally, "to prove the content of a writing, the original writing is required!"(id. pg.13). To argue the messages probative value. the Commonwealth relied on the allegation that the Petitioner "seperated from her", Erica, to establish a starting date and motive of jealousy(id. pg.15)(see ¶26).

The Court of Appeals of Virginia determining factors in its denial was that, "[a]fter appellant moved out of the family home, he began sending threatening text messages to [Erica, Erica] took screenshots of many of the messages and uploaded them to her computer, and on April 2, 2015, she obtained a protective order against appellant." Simpson v. Commonwealth, 2017 Va. App. Lexis 292(Nov. 21, 2017 pg.2)(also see ¶27). This determination of facts was based on fraud. The Court stated that, "[Appellant] offered no evidence at the motion hearing or at trial that [Erica] had in any way fabricated or manipulated the screenshots or the underlying text messages... there was an adequate foundation for admission of the screenshots."(id. pg.11).

The Court of Appeals of Virginia added a side note that, "[a]ppellant offers a series of inopposite cases to support his argument that the Commonwealth did not adequately authenticate the screenshots by establishing their reliability... Here, appellant raised no hearsay objection to the screenshots. Thus, he cited cases, involving computer-generated, third-party records which were offered as business records to overcome hearsay objections, have no bearing on the instant case." Simpson v. Commonwealth, pg. 10, footnote 3(2017).

The appeals court also conceded that, "[t]he text messages contained in the admitted screenshots were relevant to proving the intent, malice, motive, and identity of the intruder, all of which were at issue in the instant case. While appellant correctly point out that some of the messages... were prejudicial,.."(id. pg.12-13(2017)).

On appeal to the Supreme Court of Virginia, the Petitioner argued that the admission of the screenshots was not harmless because "the primary issue was identity, the text messages had a significant impact on the Commonwealth's case. The Commonwealth was allowed to use inadmissible evidence to suggest impermissibly that Petitioner had a violent nature which motivated him to commit the offenses charged. Without this vivid illustration of the Defendant's character, the Commonwealth's case would have been considerably weaker." (Sup. Crt. Appellant Brief pg.29).

- Circuit Court Habeas Petition -

The Petitioner, pro se, filed a habeas corpus petition on Sept. 30, 2019, by prison mail. The petition contained four claims of ineffective assistance of counsel.

Relating to the STM, Appellant claimed that:

" I. Counsel was Ineffective For Failure To Move For Dismissal of Screenshot Text Messages When The Commonwealth Failed To Present Their Forensic Analysis Testimony Through Witness Detective Rickens;"

On June 24, 2020, the Respondent submitted a 'Motion to Dismiss' along with a proposed 'Final Order' for the Circuit Court to endorse.

On Sept. 10, 2020, the Petitioner objected to "how the Commonwealth is given the right to fashion the Court's order and denial opinion" and warned that it, "will cause the Federal Court,.. to be discriminatory on the face pursuant to the respondent crafting in their best

"interest" in a motion for extension of time.

On October 27, 2020, the Petitioner submitted his 'Reply Motion To Grant Petition' raising the fact that Counsel had yet to submit an affidavit and asked for an evidentiary hearing. The Petitioner re-submitted the proposed 'Final Order' with no changes from the first, and verbatim to the Petitioner's motion to dismiss, on Nov 4, 2020.

On Dec. 21, 2020, the Circuit Court signed and endorsed the Commonwealth's 'Final Order', which denied and dismissed Petitioner's Writ of Habeas Corpus without holding any evidentiary hearing or having an affidavit from trial Counsel. Petitioner filed his notice of appeal on Jan. 20, 2021, appealing to the Supreme Court of Virginia.

- Habeas Corpus Appeal To The Supreme Court Of Virginia -

On March 22, 2021, the Petitioner submitted his 'Petition For Appeal' of the 'Final Order' from the Spotsylvania County Circuit Court's ORDER to dismiss his writ of habeas corpus, arguing that:

1. The Circuit Court Erred In Dismissing And Denying Petition For Writ of Habeas Corpus As Meritless According to the Record Because:
 - a. Counsel was ineffective in Claim I and the Circuit Court misconstrued the facts and that issues was not already raised on appeal;...
2. The Circuit Court Erred in Dismissing And Denying Petition For Writ of Habeas Corpus Without Taking Evidence, Ore tenus, and By Affidavit From Counsel Because:
 - a. The Circuit Court relied on hindsight by Appellee who failed to present an affidavit from Counsel;...
3. The Circuit Court Abused Its Discretion By Signing Appellee's Drafted 'Final Order' In Violation of Va. Code §8.01-654(B)(5).

On July 1, 2021, new Virginia legislation to the Freedom of Information Act (FOIA) went into effect. In the exercise of due diligence, the Petitioner submitted a 'Motion For FOIA of Criminal Records' to the Spotsylvania County Circuit Court, requesting "that the Court ORDER the law enforcement agencies of Spotsylvania County,.. Sheriffs Office... Commonwealth's Attorney Office, to release ALL criminal incident and criminal investigative records" pursuant to Va. Code. On Nov. 10, 2021, the Petitioner received from the Spotsylvania County Sheriff's Office 22 pages of Master and Supplementary Incident Reports which: (1) was newly discovered evidence to support the Commonwealth's knowledge of prosecutorial misconduct in that they allowed false testimony; (2) newly discovered evidence bringrise to new claims; and (3) newly discovered evidence that supports Petitioner's recollection.

On Dec. 16, 2021, the Petitioner therefore submitted a 'Motion For Leave To Amend And Expand Petition For Appeal' which included a new assignment of error and requested leave to submit prosecutorial misconduct claims as newly discovered FOIA evidence due to the records proving elements to earlier claims which could not have been provided prior, without an evidentiary hearing, that the "Commonwealth Attorney Committed Prosecutorial Misconduct by:

'VIII. Allowing Javelle Rowe to give conflicting testimony about, "hav[ing] a good relationship with everyone who's in my life;
All in violation of Appellant's 14th and 5th Amendment of the United States Constitution."

All claims based on newly discovered evidence from Spotsylvania Sheriff's Office Incident Reports.

The reports stated as follows:(Motion For Leave To Amend; Attachment 1 and 2 12/16/2015)

'Supplementary Incident Report' by Corna, Sr. Frank on 4/23/2015(S.I.R.):

1. "She said she could not care if [intruder] killed them both; and
2. That notably, no incident report of Detective Rickens forensic analysis of SIM authenticity.

Among other material evidence as to innocence.

On Jan. 6, 2022, the Supreme Court of Virginia denied the Petitioner's petition for leave to expand. On May 11, 2022, the Supreme Court of Virginia refused the petition for appeal and denied request for a rehearing on June 30, 2022.

On July 5, 2022, Petitioner submitted pro se 28 U.S.C §2254 petition for writ of habeas corpus to the United States District Court for the Eastern District of Virginia with Forma Pauperis request.

Petitioner's habeas was denied and dismissed on Aug. 24, 2023.

Petitioner filed his notice of appeal and a request for a certificate of appealability to the District Court on September 21, 2023, and on October 12, 2023, the District Court denied his request for COA.

Petitioner requested a COA from the United States Court of Appeals For The Fourth Circuit on Oct. 27, 2023, arguing:

Issue #1 : REASONABLE JURIST COULD DIFFER AS TO WHETHER THE DISTRICT COURT CORRECTLY DETERMINED THAT PETITIONER'S COUNSEL WAS NOT INEFFECTIVE FOR FAILURE TO MOVE FOR DISMISSAL OF SCREENSHOT TEXT MESSAGES WHEN THE COMMONWEALTH FAILED TO PRESENT THEIR FORENSIC ANALYSIS TESTIMONY THROUGH WITNESS DETECTIVE RICKENS: IN VIOLATION OF PETITIONER FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION:

Issue #2 : REASONABLE JURIST COULD DIFFER AS TO WHETHER THE DISTRICT COURT PROPERLY DISMISSED WRIT OF HABEAS CLAIM THAT THE STATE COURT'S DETERMINATION THAT AN ADEQUATE FOUNDATION WAS ESTABLISHED IDENTIFYING PETITIONER AS THE SENDER OF SCREENSHOT TEXT MESSAGES WAS BASED ON AN UNREASONABLE DETERMINATION BECAUSE WITNESS TESTIMONY WAS CHALLENGED REQUIRING THE CERTIFICATION TO COMPARE WITH WITNESS TESTIMONY;

Issue #3 : REASONABLE JURIST COULD DIFFER AS TO WHETHER THE DISTRICT COURT PROPERLY DISMISSED CLAIM CLAIM 3(C) AND CLAIM(5)(b) BECAUSE CASE AGAINST PETITIONER WAS EXTREMELY WEAK AND IN THE EXERCISE OF DUE DILIGENCE THROUGHOUT HIS STATE HABEAS PROCEEDINGS HE MOVED THE SUPREME SCOURT OF VIRGINIA REQUESTING SUPPLEMENTATION OF CLAIMS AFTER RECEIVING NEWLY DISCOVERED EVIDENCE; and

Issue #4 : REASONABLE JURIST COULD DIFFER AS TO WHETHER THE DISTRICT COURT ERRED IN DISMISSING AND DENYING PETITION BASED ON FINAL ORDER THE RESPONDENT DRAFTED AND STATE COURT ENDORSED BECAUSE IT WAS A ONE SIDED UNREASONABLE DETERMINATION OF FACTS AND LAW WHICH VIOLATES THE SEPARATION OF POWERS DOCTRINE OF THE CONSTITUTION.

On March 25, 2025, The Fourth Circuit denied Petitioner a COA in that he failed to make the requisite showing pursuant to 28 U.S.C § 2253(c)(1)(A) and (c)(2).

On June 17, 2025, Petitioner requested an extension of time(MOTION FOR CONTINUANCE) due to two major lockdowns within 30 days at Haynesville Correctional Center in May and June of 2025, preventing him from being able to shepardize and prepair his petition for writ of certiorari. Also that the Respondent interfered with his correspondence with this Supreme Court of the United States on June 6, 2025, by returning mail from the Court to the Petitioner back to the Court, further delaying his filing because he did not receive the mail for another 30 days.

REASONS FOR GRANTING THE PETITION

This case presents an important conflict which United States v. Chavez-Lopez, 767 F.3d 431 (4th Cir. 2019) declared has not been resolved: Whether it requires the Circuit Court to probe lay witness testimony or specialist forensic analysis testimony to overcome foundational objections at a criminal trial to admission of text messages in order to protect Due Process rights to a fair hearing in accordance with the Constitutional protections?

The Fifth Circuit held that lay witness testimony laid sufficient foundation for authenticating text messages. United States v. Barnes, 803 F.3d 209, 2015 U.S. App. LEXIS 17222 (5th Cir. Miss. September 30, 2015). The court held that the government established a sufficient foundation by establishing authentication through a lay witness that:

Testified that she had seen Hall use Facebook, she recognized his Facebook account, and the Facebook messages matched Hall's manner of communicating. She also testified that Hall could send text messages from his cell phone, she had spoken to Hall on the phone number that was the source of the texts, and the content of the text messages indicated they were from Hall.

Id. The Court stated that "[A]lthough she was not certain that Hall authored the messages, conclusive proof of authenticity is not required for the admission of disputed evidence."

The Sixth Circuit applies the contrary rule. In 2020, the court determined in United States v. Dunnican, 961 F.3d 859, 2020 FED App. 181p, 1183, 2020 U.S. LEXIS 18088 (6th Cir. 2020), that expert testimony was required:

District court did not err in allowing government to introduce data extracted from defendant's cellular telephone because government adhered to authentication procedure, defendant's text messages were not hearsay because they were defendant's own statements, and government complied with Rules of Evidence when it presented extracted data in summary form.

The Court should resolve this conflict and overturn the rule of the Fifth Circuit that deprives defendants of their right to Due Process and Confrontation protected by the Sixth and Fourteenth Amendments of the United States Constitution.

The state court of Virginia has offered conflicting options also. In Atkins v. Commonwealth, 68 Va. App. 1, 2017 Va. App. LEXIS 160 (2017), the court admitted text messages against Atkins objection that the Commonwealth failed to establish that he was the author of the messages. However, the Court of Appeals of Virginia rules that the specialist forensic

analysis testimony established the foundation. However, later that same year, it ruled in this case, Simpson v. Commonwealth, 2017 Va. App. LEXIS 292, 2017 WL 5574715 (Va. Ct. App. November 21, 2017), that the "trial court properly admitted screenshots of text messages, as the victim testified she received the screenshots, about the means used to save them, and about the extensive personal details contained in the messages which convinced her that defendant was their author." The highest court of Virginia upheld the decision.

The Court should resolve this conflict and overturn the ruling of the state courts that deprives defendants of their Due Process and Confrontation protected by the Sixth and Fourteenth Amendments of the United States Constitution.

This case does present a question which jurist could find debatable, and the Fourth Circuit erred in denying Petitioner Certificate of appealability because Petitioner presented a denial of a constitutional fair proceeding which reasonable jurist could find the district court's assessment debatable or wrong. Buck v. Davis, 580 U.S. 100, 115-117(2017). This Court is called upon to exercise its supervisory power.

1. Four Circuits Require Expert Witness Testimony To Overcome Foundation Objections To Admission Of Text Messages

In United States v. Chavez-Lopez, 767 Fed. Appx 431(4th Cir. 2019), the court of appeals declared that "[t]he district court did not plainly err by admitting the text messages and call logs without expert testimony about the data extraction process because no Fourth Circuit or U.S. Supreme Court precedent dictated that such testimony was ~~required~~ ^{necessary}." Id. at 435. This Court's supervisory power is warranted outside a plain error review.

The Eleventh Circuit ruled in United States v. Ramirez, 658 Fed. Appx. 949, 2016 U.S. App. LEXIS 15384 (11th Cir. 2016), that "where defendant appealed district court's admission of photographs of text messages, requirement of authenticating or identifying under Fed. R. Evid. 901(a) was satisfied, admission did not violate best evidence rule because while investigation was continuing, original phone had dropped in water and was rendered inoperable, and rule of completeness was not violated."

In United States v. Turner, 934 F.3d 794, 2019 U.S. App. LEXIS 24491 (8th Cir. 2019),

the Eighth Circuit determined "[t]ext messages and photographs extracted from defendant's phone were properly authenticated. It reasoned that: (1) defendant said phone was his; (2) text messages and photographs were extracted from phone; (3) officer testified about extraction process; and (4) at least one text said "this is sam."

As mentioned before, the Sixth Circuit ruled in United States v. Dunnican, 961 F.3d 859, 2020 FED APP. 181P, 2020 U.S. App. LEXIS 18088 (6th Cir. 2020), that the district did not err in allowing government to introduce data extracted from defendant's cellular phone because government adhered to authentication procedures, defendant's text messages were not hearsay because they were defendant's own statements, and government complied with Rule of Evidence when it presented extracted data in summary form.

The Fourth Circuit upheld in United States v. Davis, 918 F.3d 397, 2019 U.S. App. LEXIS 8078 (4th Cir. 2019), "that since government amply made prima facie showing required by Fed. R. Evid. 901, district court did not abuse its discretion in admitting the photographs that police officer took of the text messages on informant's cellphone." *Id.* at 397.

However, the Fourth Circuit ruled in the present case that "Simpson has not shown that the allegedly 'erroneous evidentiary ruling were so extreme as to result in a denial of a constitutionally fair proceeding[.]'" Simpson v. Dotson, 2025 U.S. App. LEXIS 6894, 2025 LX 203910, 2025 WL 900424 (4th Cir. Va. March 25, 2025). UNPUBLISHED.

Recently, expert and lay witness testimony in general has exposed a conflict among the circuits. In United States v. Glenn, 2025 U.S. App. LEXIS 18692 (6th Cir. 2025), the Sixth Circuit ruled that improper expert opinion testimony about the meaning of the text messages caused reversible error.

This brings back the unresolved public interest in lay versus expert testimony expressed in United States v. Chavez-Lopez, 767 Fed. Appz. 431 (4th Cir. 2019), "No Fourth Circuit or Supreme Court precedent dictates that expert testimony is necessary to authenticate information simply copied from a cell phone to a hard drive." *Id.* at 435. How then can a lay witness testimony be sufficient to satisfy forensic analysis of text messages? This case present the means for this Court's supervisory power to set precedent.

2. The Fourth Circuit Denied COA To An Important Question Of Federal Law That's Debatable Among Reasonable Jurists, Which Has Not Been, But Should Be, Settled By This Court:

The cell phone data collected through text messages has caused the denials of a variety of Constitutional fair proceedings in the past resulting in Supreme Court precedent, applied to states through the Fourteenth Amendment, protecting individual and societal rights and interest. In Carpenter v. United States, 138 S. Ct. 2206 (2018), the Court answered a Fourteenth Amendment question to a new phenomenon; the ability to chronic a person past movement through the record of his cell phone signals "detected by actions such as sending text messages. The Court" [d]eclined to grant the state unrestricted access to a wireless carrier's database of physical location information."

In addition, the Court set stare decisis in Riley v. California, 573 U.S. 373 (2014) answering the question, "[w]hether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested." The answer was simple, "get a warrant".

Today's novel question about cell phone data is in the public's interest, what other Constitutional guarantees will protect a person from (emphasis added) text messages? States and United States Court of Appeals have conflicting decisions on how to protect a defendant's due process rights from text message evidence used in a prosecution against him: An inmate having alleged text messages on paper identified as being his, while in a jail cell awaiting trial. Challenges to the chain of custody requires objections to foundation, hearsay, relevance, and best evidence rule, all respectfully require this Court, today, to answer: What lay witness testimony and expert witness testimony probe establishes admission of text messages, in order to protect the Sixth and Fourteenth Amendment due process rights and Confrontation clause, for the personal interest in liberty afforded in order to protect an untainted fair trial and review process.

Another Constitutional protection of individual's interest is also present in this case for the Court to consider dictum upon review pursuant to the public's interest. The

Fifth and Fourteenth Amendment guarantees the defendant a right to remain silent. This Court held in Wainwright v. Greenfield, 474 U.S. 284 (1984), that "Silence does not only mean muteness; it includes the statement of a desire to remain silent [.]". Therefore, the question arises, whether a defendant, who exercised his right to remain silent, trusting in the interest of society by a jury, can be forced to testify by the state through a series of diabolical alleged text messages whose authorship he defended against in this digital age of machine learning.

This case, therefore, presents an important question of not only individual and society's interest, but that of the public's, this Court: Whether the foundation of text messages shall be laid by the testimony of a lay witness or specialist.

3. State And Federal Laws Involved

In the present case at bar, several rules and laws are presented that are important in order to protect Due Process and Confrontation Clause rights of individuals. This is because several technical advances are developed that manipulate text messages data. Senders can go undetected. Others are used to spy on communication. Bonnie Burhardt, author of Manufacturing Criminals: Fourth Amendment Decay In The Electronic Age, and former employee of the Department of Defense software engineer, warned about the importance of protecting Constitutional rights against and for text messages. Software has been created that "creates a two-way portal for files to be retrieved or deposited onto a user's computer, so extra unrequested files can be deposited into a user's directory virtually undetected", called Shareaza or Sharazea-LE. Another called BitTorrent that can plant evidence undetected.

The Federal government has created the Electronic Communication Privacy Act in response. Similarly, Virginia has enacted §19.2-61 through §19.2-70.1 Interception, disclosure, etc., of wire, electronic or oral communications unlawful; penalties; exceptions laws.

Other provisions mirror state and federal laws. Hearsay is protected by Va. Sup. Ct. R. 2:803 for state and Fed. R. E. 803 for federally. Best Evidence (Va. Rule 2:1001 and 2:1005) (Fed. R. E. 1001). Chain of Custody (Va. Rule 901 & 902) (Fed. R. E. 903). Relevance (Va. Rule 2:402) (Fed. R. E. 402). Expert testimony (Va. Rule 2:701) (Fed. R. E. 702).

4. This Case Is An Appropriate Vehicle To Resolve An Important Question Ripe For Review

The questions presented in this case implicates fundamental rights. Digital technology is changing for the best. In reference to the current reality, this Court has stated in Carpenter v. United States, 585 U.S. 296 (2018), that "[w]hen confronting new concerns wrought by digital technology, this Court has been careful not to uncritically extend existing precedents."

Artificial Intelligence and machine learning are expanding innovation rapidly in services, labor, and now, ideas. Not only are images being duplicated to generate human replicas and voices, but writings are being created by computers. Robot text messages are being used in marketing, and by using machine learning, can learn to output text messages that tends to reflect a specific individual.

However exciting the pros, this Court is called on to protect from the cons. This case is an example of such and should cause pause if the Fourth Circuit precedent stands. Law must be set by the United States Supreme Court, that it requires specialist testimony, not that of a lay witness, to establish the foundation of text messages in a criminal proceeding.

The Petitioner was an inmate at the regional jail awaiting trial in a week, when his lawyer informed him of a stack of printed screenshot text messages the Commonwealth had just obtained, alleging he had sent them to Erica. Petitioner had been in prison for four months, and in addition hadn't had a cell phone for a year. The Petitioner denied having knowledge of the threatening text messages and Counsel began her objections to the foundation, hearsay, best evidence rule, confrontation, relevance, and prejudice outweighing its probative value at the Nov, 30 2015, motion in limine.

The Commonwealth's case was extremely weak, and the text messages were material to the Commonwealth's case, "relevant to proving the intent, malice, motive, and identity of the intruder, all of which were at issue in this instant case." Simpson v. Commonwealth, 2017 LEXIS Record No. 0311-16-2, pg. 12-13 (2017). At one point during trial the Court ruled the text messages inadmissible.

The Commonwealth, Virginia Court Of Appeals determination upheld by the Supreme Court of Virginia, the Federal Eastern District Court of Virginia, and now the Fourth Circuit all rely on cases in which the defendants were arrested with the phone in question in their possession. This was not the fact in this case where no phone, device, or papers were seized from the Petitioner.

The screenshot text messages were not prepared by a telephone service provider, they were prepared by Erica. Not a disinterested party. Erica explained she took the screenshot images to share with the police. Distinguished from telephone records which are created automatically and stored by a service provider. She had to choose which text messages to screenshot and when. Her alleged method of taking the screenshots of her Iphone and uploading them to her computer were subject to manipulation inherent in motion technology, which Petitioner warned of when arguing his motion in limine. The process she explained by which she would upload the images to her computer and share them with the law enforcement was lay testimony. Her testimony does not support a finding that the device or manner of production was reliable and falls far short of the guidelines set forth in precedential and persuasive cases.

In addition to Erica's testimony, the trial court permitted the Commonwealth's Attorney to proffer additional evidence to lay foundation for the screenshots. The Commonwealth's Attorney proffered that detective Rickens' forensic analysis of the screenshots determined the date Erica downloaded the images to her computer and ascertain whether the images had been tampered with. This was inadequate foundation for the evidence when, again, the witness privy to that information was not called to testify and was not subject to cross-examination or scrutiny by the fact finder. Even if the proffer was adequate, this information does not assuage concerns about the screenshots' reliability because they could have easily been manipulated prior to creating one screenshot.

Next, the Commonwealth failed to lay the foundational notice requirements. The state provided no certificate or certifying personnel to compare Erica's testimony with.

she gave no testimony that authenticated a computers output, that the output came from a computer or source by "hash vale", which " " is a number that is often represented as a sequence of charaters and is produced by an algorithm based upon the digital content of a drive, medium, or file." Fed. R. E. 902(13) and (14) TT 9.

Also, the Commonwealth failed to lay the foundation for the senders identity. None of the messages were in the Petitioner's possession, he never admitted to sending them, and no phones were found relating to him, Furthermore, the Commonwealth pointed to the nickname of relatives, an address near a location where a relative had a connection, the mention of "boys" and a statement about the recipiant being in school to connect the messages to the Petitioner. This method must fail because such information was not specific or unique enough to Petitioner and did not constitute information that only Erica would have known or Petitioner would know.

Each text message exhibit was from a different phone number and was saved as a different name in Erica's phone; she was unable to testify that she had previously known Petitioner to use a particular phone number matching even one of the text messages.

Due to the trial courts abuse of discretion in admitting the text messages with only the lay witness testimony, the diabolical nature of the text messages have prevented Petitioner from a fair trial, direct appeal, and post-relief proceeding. The text messages were extremely prejudicial, resulting in a cumulative denial of his constitutioal rights: due process, confrontation, and liberty.

The Fourth Circuit Stated in United States v. Cavez-Lopez, 767 Fed. Appx. 431 (4th Cir. 2019) that "[n]o Fourth Circuit or Supreme Court precedent dictates that expert testimony is necessary to authenticate information simply copied from a cell phone to a hard drive. "However, Erica testified that Petitioner used an application on his iPod to generate phone numbers from which to send the text messages, but the application was not named or explained further. Her explanation is the reason why the State and Federal determination are a unreasonable determination and why jurors could find the claims debateable: the lay witnesses testimony of foundation is subjective and prong to manipulation and fabrication.

5. The Screenshot Text Messages Was Material And Extremely Prejudicial

The Commonwealth case was extremely weak against Petitioner and the text messages was material for them in order to obtain a conviction. The Court of Appeals of Virginia determined as such:

"The text messages contained in the admitted screenshots were relevant to proving the intent, malice, motive, and identity of the intruder, all of which were at issue in the instant case."

Simpson v. Commonwealth, 2017 Va. App. LEXIS 292, at 12-13 (2017). Without legal protection of due process and confrontation, the Commonwealth was able to prove each element of the crimes through the text messages as if Petitioner was testifying himself. The Commonwealth Attorney exploited that prejudice in her closing arguments, reading through every exhibit and telling the jury the text messages were the reason they should be certain of Petitioner's guilt. (Trans. Pg. 369-372; 12/08/2015).

The elements of the crimes were proven through the text messages that lacked specialist testimony. The question is why couldn't Commonwealth produce certificates of analysis and an expert witness. Petitioner had a right to confront the forensic analysis the lay testimony of Erica in order to impeach her testimony, that the reason she got the protective order was because of threatening text messages. (Trans. Pg. 166-169). This was not true. There were no text messages entered into evidence at the April 2nd 2015 protective order hearing. Forensic analysis testimony would have exposed the perjured testimony because of how they were retrieved. It wasn't from courthouse records, which would have been revealed, even though Petitioner may have known this at trial. Impeachment evidence was not available due to the violation.

Another reason the Commonwealth didn't produce expert testimony was because in April 2014 (Emphasis added), Petitioner had a cell phone and could not contact Erica due to a preliminary protective order. This is important for two reasons. First, to impeach Erica's testimony that the Petitioner left the home and that began their separation. (Trans. Pg. 166-168). When in fact Erica had Petitioner arrested after he returned from playing a professional arena football game, which charges he was found not guilty of five months

earlier while awaiting trial. The Commonwealth didnt want juror's or the Court to hear those facts. Not only would this evidence impeached her testimony, but it would have exposed motives of malicious prosecution from Erica and the Commonwealth. "Secondly, the Commonwealth alleged the first set of text messages was April 2015 when the couple began their seperation, that he began sending threatening messages. Expert testimony would have perjured Erica's testimony and the Commonwealth's allegations during motion in limine getting the messages admitted, even though that set was ruled inadmissible, because no messages came from the Petitioner's cell phone in April 2014 while a preliminary protective order was active. Expert testimony would have impeached the adverse parties. The motion in limine allegations changed in trials in limine. The defense was not notified properly.

Violation's of Petitioner's due process by the court to not afford him expert testimony and certification did not afford him an oppertunity to protect himself from the malicious prosecution. The Commonwealth failed to reveal any foundational forensic analysis of the dates. The dates alleged at the pre-trial motion in limine changed during trial, not affording the defense an oppertunity to prepare. Counsel was unable to investigate the allegations that the protective order was obtained because of threatening text messages because it was only stipulated to at the one day trial. Not two months earlier at the continuance hearing or a week earlier at the pre-trial motion in limine. Petitioner filed for discovery and the Commonwealth commenced a trial by ambush. Had the Commonwealth's misrepresentaion's been properly discovered prior to trial, the defense would have been able to expose the adversaries malice, motive, and intent to maliciously prosecute him. TT Depriving Petitioner of his due process to a prima facie showing ambushed him during trial by the on the spot lay witness self-serving dates, times, foundational testimony, and impeachment evidence, Which was all revealed on the spot. Depriving Petitioner his right to confront the expert witness deprived Petitioner of impeachment evidence to perjure the lay witness testimony as to the identity of the author being him, expose manipulation tactics, and the untrustworthyness of the data and source. Prejudice outweighed the text messages probative value and was material and not harmless.

As a result, admission of the text messages were erroneous" and "Extreme as to result in a denial of a constitutionally fair trial, appeal and post-relief proceeding. As a result in poking holes in Commonwealth's evidence, the jury failed to come to a unanimous verdict on their first attempt. (Trans. Pg. 385-390). This proves the text message violations significant constitutional error and no harmless error occurred. (Trans. Pg. 359-362).

As for any "daddy" comments, Erica testified that the first thing she said was, "Thomas Stop, I'm going to call the police". (Trans. Pg. 145). The appeals court of Virginia agreed. Simpson v. Commonwealth, (2017). Any child standing around would have inferred that the intruder was Thomas, their father. It was also explained that they were calling out for a father figure in a scary ordeal. (Trans. Pg. 359-362).

Lisa Washington's house was thirty plus minutes away from Erica's house. This fact was misrepresented by the federal district court, resulting in an unreasonable determination. The district court determined that Lisa Washington lived in the same neighborhood as Erica. Simpson v. Clark, 2023 U.S. DIST LEXIS 150351 (2023) Testimony at trial was that Lisa saw Petitioner at 2am (Trans. Pg. 284), and Erica claimed the break-in also happened at 2am (Trans. Pg. 144). It was agreed that if Erica's testimony was believable, you would have to believe her time line. Lisa was also confused as to what day it was. (Trans. Pg. 256) Furthermore, the Sheriff's office supplementary report reveals that the Commonwealth was contacted by Rowe, first two weeks before the trial alleging Petitioner was at Lisa's house. (Attch #2, Pg. 15). The same report reveals that Rowe perjured himself on the stand by saying he gets along with everyone but he told the detectives that his baby momma wished the intruder "Killed them both". (Attch #2, Pg. 6) This was impeachment evidence withheld from Petitioner. Lisa testified it wasn't unusual for Petitioner to come to her home at that time of the night.

Erica's testimony that she was 100% sure that the voice she heard was Petitioner's, Reasonable jurist could find that debatable because counsel explained her bias against the Petitioner to the jury. (Trans. Pg. 359-362; 12/08/2015). They were encouraged to weigh the veracity of Erica's alleged identification of intruder's voice accordingly, that she had a protective order against him and he would be the first person she would think was the intruder.

A search of Petitioner's mother's vehicle and Erica's property yielded no evidence of a weapon as described by the victims. One shard of glass was located in a parking lot containing "Hundreds" of vehicles, but the Commonwealth could not link any piece of glass to the crime scene.

Not only did the district court misrepresent the material allegations, that "[Petitioner] admitted that he had driven his mother's car to Erica's neighborhood", it happened a second time in the court's written opinion that "Simpson alleges that Ferguson had told him that Rowe 'was upset with Holly for saying that and [Holly] said that [Petitioner] should know that". No where in the trial records, or post-relief proceeding records does it state Petitioner said or testified to any of the district court's determining factors. Petitioner didn't testify at trial. Simpson v. Clark, @023 U.S. DIST LEXIS 150351 (2023). The mistakes were pled on COA's but denied.

Because the jury couldn't reach a verdict on its first attempt, even with the evidence above, the text messages are material, prejudicial, and not a harmless admission.

The Fourth Circuit has identified a conflict which this Court has not set precedent for. United States v. Chavez-Lopez (4th Cir. 2019). And settle two of the three questions presented dealing with text message's foundation testimony.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Thomas O. Sypri

Date: 8/22/25