

No. 25-7295

IN THE
SUPREME COURT OF THE UNITED STATES

SCOTTIE BERNARD SHAVER

Petitioner,

-vs-

RUSS RURKA, Acting Warden,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

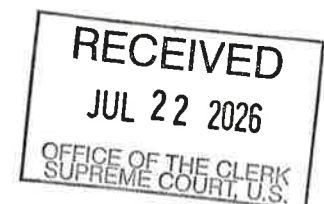
PETITION FOR REHEARING

Submitted by:



Scottie Bernard Shaver, #405867
Petitioner In Propria Persona
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

7/5/26



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SCOTTIE BERNARD SHAVER,

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-VS-

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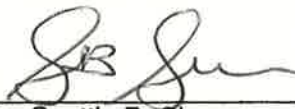
Respondent.

CERTIFICATION OF PETITIONER

Petitioner, Scottie Bernard Shaver, hereby certify under the penalty of perjury consistent with Title 28 USC § 1746, that my petition for rehearing/reconsideration is submitted in good faith and not for any form of delay, and is restricted to the ground presented under Rule 44.2 addressing the state courts' wrong analysis to address a *Bruton* claim under the theory of *Crawford v Washington*, violating the Sixth Amendment to the U.S. Constitution. The Petition has (8) pages of text and 2795 total words.

Submitted by,

July 5, 2026

/s/ 
Scottie B. Shaver

No. 25-7295

IN THE
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SCOTTIE BERNARD SHAVER,

Petitioner,

-VS-

RUSS RURKA, Acting Warden,

Respondent.

PETITION FOR REHEARING

Petitioner, Scottie Bernard Shaver in his proper person, hereby petitions this Honorable Court for rehearing pursuant to Rule 44.1-2, of the Supreme Court, to address an issue of significant importance to the American Jurisprudence which has never been adjudicated by this Court leaving the State Courts and the Courts below in a state of flux without proper guidance from this Court. Consistent with Rule 44.1, this petition for rehearing is timely submitted. Petitioner states in support as follows:

1. Petitioner asserts that this Court has yet to decide whether or not an improper analysis used to decide a 'confrontation/cross examination claim under *Crawford v Washington*, 541 US 36 (2004), when ruling on a claim under *Bruton v United States*, 391 US 123, 126 (1968), does not

deprive a Petitioner of the right to a fundamental fair trial which violated the confrontation - cross examination clause as was done in the instant case.

2. A clear and concise reading of the opinions of the State Court, and the lower federal courts when addressing this Sixth Amendment claim, leads to the age-old question that: "how can anything separate - be equal?" Allowing the *Crawford* ruling on confrontational - cross examination inquiries to supersede a clear cut case of *Bruton v United States*, does just that. *Bruton* has its own factual predicates to arrive at the safeguards of the Sixth Amendment guarantee of confrontation - cross examination, while *Crawford* leans to a judicial inquiry of 'testimonial' for an out of court statement to be confrontational worthy of cross examination.

3. *Bruton* and *Crawford* has two different standards, i.e., *Bruton* (out of court), *Crawford* (police interrogation). Thus, the separate but equal doctrine has, once again, reared its ugly head and as such, this Court should, once again, overrule this analysis. Accord, *Brown v Board of Education*, 347 US 483 (1954).

4. The Sixth Circuit, as well as the State Courts of Michigan, relied on *Crawford v Washington* to deny relief on the *Bruton* claim. The analysis used was constitutionally wrong. The Court's below ruled that Ivory Shaver's out of court statement could be allowed into trial which violated this Court's ruling in *Crawford*, 541 US at 68; *Davis v Washington*, 547 US at 822 and *Whorton v Bockting*, 127 US 1173, 1179 (2007), yet, the Courts below ignored this Court's ruling in *Bruton*, 391 US at 126-128. [We similarly exclude accomplice confession where the defendant had no opportunity to cross examine]. This Court should, as a matter of constitutional law reconsider its denial of certiorari and revisit the matter - viewed through the lens of *Bruton*. The ground asserted should be considered under the rehearing banner allowed by S. Ct. Rule 44.2.

7. The Court should, as a matter of constitutional law, review the rehearing claim due to its "exceptional importance", i.e., the claim has never been adjudicated by this Court leaving all state and federal courts below at a 'disastrous posture' without any guidance on a specific constitutional claim - the right to confront and cross examine ones accuser. US Constitution Amend. VI.

A. Issues of Crawford and Bruton are Different Inquiries

In the context of the question presented in this Petition for Rehearing, the Court is asked to clarify whether or not a confrontation cross examination violation under *Bruton v United States*, *infra*, should be reviewed under the ruling announced in *Crawford v Washington*, to determine the Sixth Amendment error warrants reversal. Petitioner Shaver was subjected to a true Bruton error where his non-testifying codefendant gave an out of court statement regarding the alleged crime which was used against him at trial. The state trial judge during the first trial ruled that the statement could not be allowed into evidence and the jury was unable to convict. At the second trial, this same statement was allowed before the jury and both Defendants were convicted. Throughout the appeal process, the Courts ruled that this was 'harmless error' in light of the judge's jury instructions. Petitioner Shaver asserts that this violated this Court's ruling in *Bruton*, which was codified in *Lilly v Virginia*, 527 US 116, 134 (1999). Thus, he seeks rehearing.

B. The Importance of the Bruton/Crawford clarification

The importance of the *Bruton* question presented in this Petition for rehearing is for this Court to address the due process clause of the Fourteenth Amendment in tandem with the 'confrontation - cross examination clause, where there would be no further needs for the Courts below to speculate as to how to apply the factual predicates of Bruton, to a factual predict in *Crawford v Washington*, *supra*. That is, does *Bruton* require a finding of the statement being testimonial before it applies as a violation of the Sixth Amendment right to confrontation. Petitioner Shaver believe that this Court's decision in *Lilly v Virginia* provides the answer to the inquiry and *Bruton* prevails. Rehearing in warranted. US S Ct Rule. 10(c).

Reasons for Granting Rehearing

WHERE THE COURTS BELOW APPLIED THE WRONG ANALYSIS TO DETERMINE A SIXTH AMENDMENT CLAIM UNDER BRUTON, USING CRAWFORD AS ITS CORRECT PREMISE TO DECIDE WHETHER A CONFRONTATION/CROSS EXAMINATION CLAIM WAS VIOLATED, DID THIS COURT ALLOW THE SEPARATE BUT EQUAL DOCTRINE TO RESURFACE UNDER THE CONFRONTATION CLAUSE REQUIRING REHEARING.

This Petition for rehearing should be granted because the state trial court created a Sixth Amendment violation during the second trial by ruling that the extra judicial statement of the non testifying codefendant, Ivory Shaver, would be allowed into the trial as evidence against Petitioner Scottie Shaver, after ruling in the first trial that the statement violated the cross examination rights of Petitioner. Thus, Judge Lamb, not only abused his judicial discretion, he exhibited judicial bias when he reversed his former ruling regarding the statement of Ivory Shaver who was not testifying. This Court's denial of Certiorari allows the state courts as well as the US District Court to conflate the confrontation/cross examination of *Bruton* as applied to simple confrontation claims under *Crawford v Washington*, and ignored this Court's ruling in *Franklin v New York*, 145 S Ct 831 (2025).

The Bruton Inquiry is premised on the non-testifying Codefendant

The confrontation error complained of here occurred when the state trial Judge reversed his former ruling and allowed the codefendant's statement to be entered as evidence against Petitioner. Judge Lamb knew the significance of the statement because he ruled it could not be admissible against other defendants during the first trial. The jury in the first trial could not reach a unanimous verdict causing a mistrial. The second trial, where the statement was allowed against all other defendants, the jury convicted. This created a *Bruton* error requiring relief. Accord, *Cruz v New York*, 107 S Ct 1714 (1968).

Although the state trial court relied on a case from this Court under the confrontation clause concept, *Crawford v Washington*, 541 US 36, 59 (2004), the trial court disparaged the *Bruton* requirements and completely ignored this Court's ruling in *Lilly v Virginia*, 527 US at 120, thereby misapplying the ruling in *Lilly v Virginia*, 527 US 116; 119 S Ct 1887 (1999), which was clearly established at the time of Petitioner's trial. The state trial court erred, and the US District Court contained this erred when it adopted, without a hearing, the ruling by the Michigan Court of Appeals on this claim, using the non-testimonial criteria of *Crawford v Washington*, to deny the claim under *Bruton v United States*, 391 US at 137; *Lilly v Virginia*, 527 US at 129, which clearly stands for the proposition that where the accomplice statement against his penal interest

did not justify its use as evidence against another person, reversal was required. *Gray v Maryland*, 523 US 185, 194-195 (1998). Petitioner's case meets the *Bruton's* confrontational inquiry. Had a casual review of this Sixth Amendment claim been conducted on certiorari the outcome would have been different. That is, this Court would have stood by its former *Bruton* ruling and reversed the Courts below, prohibiting the testimonial conflation of a *Bruton* claim.

The Contrary to Unreasonable Application of Bruton

The state trial court's ruling was so woefully contrary to the ruling from this Court in *Lilly v Virginia*, that the sole remedy is to grant certiorari and reverse the courts below. Indeed, in *Lilly*, addressing the *Bruton* criteria, this Court clearly opined:

"In the years since *Bruton* was decided, we have reviewed a number of cases in which one defendant's confession has been introduced into evidence in a joint trial pursuant to the instructions that it could be used against him but not against his codefendant. Despite frequent disagreement over matters such as the adequacy of the trial judge's instruction, or the sufficiency of the redaction of ambiguous references to the declarant's accomplice, we have consistently either stated or assume that the mere fact that one accomplice's confession qualified as a statement against his penal interest did not justify its use as evidence against another person." *Gray v Maryland*, 523 US 185, 194-195; 140 LEd 2d 294 (1998). [Stating that because the use of an accomplice confession "creates a special, and vital, need for cross-examination." a prosecutor desiring to offer such evidence must comply with *Bruton*, hold separate trials, use separate juries, or abandoned the use of the confession], " *Gray*, 523 US at 200; *Lilly*, 527 US at 129.

Judge Lamb Displayed Judicial Bias and Partiality when he reversed his Original Ruling at the behest of the Prosecutor

In the instant case, the state trial court records are clear. Following the first trial which ended in a hung jury, Judge Lamb reversed his original ruling regarding the extra judicial-non-testifying statement from Ivory Shaver who had invoked his Fifth Amendment privileges against self incrimination. Judge Lamb ruled that the statement would be allowed to enter the case against Petitioner Scottie Shaver and other codefendants on the request from the prosecution. This statement violated this Court's ruling in *Bruton* and *Lilly*, and deprived Petitioner of his right to cross examine the witness against him, i.e., his non testifying codefendant to made the out of court statement. Judge Lamb's judicial posture changed from 'impartial' to 'partial' and displayed

biasness towards the accused. This Court has addressed like circumstances previously. This Court in *In re Murchison*, 394 US 133; 75 S Ct 623 (1955), pointed out that:

"A fair trial in a fair tribunal is a basic requirement of due process. fairness, of course, requires an absence of actual bias in the trial of a case. But our system of law has always endeavored to prevent even the possibility of unfairness. To this end, no man can be a judge in his own case and no man is permitted to try cases where he had an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said however, that every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clean and true between the state and the accused, denies the latter due process of law. *cf* *Tumey v Ohio*, 273 US 510, at 532. Such a stringent rule may some times bar trial judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, justice must satisfy the appearance of justice." *Offutt v United States*, 348 US 11. *id* at 136.

This Court again revisited the same in a dissent by Justice Sotomayor in *Isom v Arkansas*, 140 S Ct 342; 205 L Ed 2d 373 (2019), and Justice Sotomayor said:

"... At the same time, the Court has acknowledged that [a]llowing a decision maker to review and evaluate his own prior decision raises problems. *Withrow*, 421 US at 58 n. 25. Perhaps because of the risk that a judge might be so psychologically wedded to his or her previous position that s/he will consciously or unconsciously avoid the appearance of having erred or changed positions. Quoting, *Withrow*, 421 US at 57. And it has warned that a judge personal knowledge and impression of a case may sometimes outweigh the parties arguments." *cf* *In re Murchison*, 349 US at 138; *Isom*, 140 S Ct at 344.

Judge Lamb allowed the non-testifying codefendant's statement to be entered as substantive evidence against Petitioner depriving him of an opportunity to cross examine or challenge its reliability, a judicial circumstance explicitly prohibited under *Bruton*. This is a structural error not amenable to harmless error inquiry, or so said this Court in *Arizona v Fulminante*, 499 US 279 (1991).

Petitioner Shaver asserts that because of the unique circumstances of his *Bruton* claim, this Court should adopt a categorical approach like in *Lilly v Virginia*, 527 US 116 (1999), where concurring opinions from two justices agreed with the plurality that the admission of the accomplice's statement violated the confrontation clause, adopting a categorical approach that all non-testifying codefendants' statements qualify as 'testimonial' for purposes of the confrontational

clause and leave the 'primary purpose test' and its chaos and confusion out of the realm of the confrontation clause when faced with a true, well categorized *Bruton* claim. This categorical approach would prohibit the state courts from rendering a contrary to - applying an unreasonable application of clearly established law from this Court on Sixth Amendment inquiries, as was done by the Michigan Court of Appeals on the claim. (See Appendix p 115a). This Writ of Certiorari should issue on this Sixth Amendment violation to cure the significant trial error of the constitutional guarantee. US Const. Amends. VI and XIV. This was addressed by the Court in *Lilly*, where this Court explained: "an accomplice testimony is not admissible in joint trials, where the confessor exercise his fifth amendment right not to testify.

Here, there is no dispute that Petitioner was jointly tried with his codefendant. There is no dispute that codefendant Ivory Shaver exercised his Fifth Amendment privilege not to testify. His statement to Travier, which amounts to a confession should not have been admitted under the confrontation clause because Petitioner had no meaningful opportunity to confront Ivory regarding the confession. This is precisely what the Confrontation Clause is designed to prevent. *Bruton*, 391 US at 126, where this Cour made clear:

"The confession of a codefendant who exercise his/her Fifth Amendment right not to testify is not admissible against the other defendants because that defendant has no opportunity to cross-examine the codefendant. The admission of a codefendant's confession at a joint trial under these circumstances violate the other defendant's right to confrontation if the confession incriminates that defendant." *Bruton*, 391 US at 126. Id.

There was no need for a testimonial inquiry under Bruton

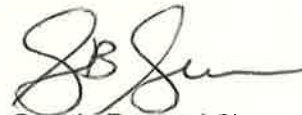
Petitioner asserts that in his case, the confession to Travier by Codefendant Ivory implicated him as one of the persons involved. The spill-over affect from Travier's testimony was prejudicial to Petitioner because the term "Nephew" was easily recognized by the jury as Scottie Shaver. This was prejudicial error and Judge Lamb disregarded the constitutional right of Petitioner. The Judge's ruling to allow the statement into the trial via the rules of evidence, violated this Court's ruling in *Richardson v Marsh*, 481 US 200, 211 (1987); *Gray v Maryland*, 532 US 185, 192 (1998). Unlike the first trial where the testimony of Travier was not used, that jury could not find guilt.

Thus, Travier's testimony was indeed prejudicial to Petitioner Shaver (Tr XV pp 93-95). Petitioner urges this Court to conduct rehearing under its former ruling in *Cruz v New York*, 481 US at 193. (The codefendant's confession must be excluded even when it merely corroborates the defendant's own confession), 481 US at 193. *Id.* Allowing the Courts below to use the testimonial inquiry for confrontational review under *Bruton*, strains 'credulity' and puts the wagon in front of the horse.

CONCLUSION

Because this Court denied certiorari without addressing the *Bruton* claim asserted, Petitioner seeks rehearing to demonstrate the need for this Court to clarify the issue so that it will not surface again. That is, apply the *Crawford* test-inquiry for confrontation purposes as it relates to a true *Bruton* claim. The two claims are separate inquiries, they cannot be applied equally to reach the desired outcome. For these reasons, Petitioner urges this Court to grant his petition for rehearing and revisit the matter with respect to the *Bruton* claim. Alternatively, remand the case back to the lower Courts where an evidentiary hearing can be employed and the *Bruton/Crawford* inquiry can be fully explained and placed on the record to determine whether Petitioner was denied his constitute right to confront and cross examine the witnesses against him,. US Const. Amend. VI.

Respectfully submitted,



Scottie Bernard Shaver, #405867
In Propria Persona
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

Dated: July 5, 2026

ATTACHMENT-A

Letter from Court Clerk Indicating Certiorari was Denied

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

June 22, 2026

Mr. Scottie Bernard Shaver
Prisoner ID #405867
Lakeland Correctional Facility
141 First Street
Coldwater, MI 49036

Re: Scottie Bernard Shaver
v. Russ Rurka, Acting Warden
No. 25-7295

Dear Mr. Shaver:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris", written in a cursive style.

Scott S. Harris, Clerk

No. 25-7295

IN THE
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SCOTTIE BERNARD SHAVER,

Petitioner

-VS-

RUSS RURKA, Acting Warden,

Respondent.

PROOF OF SERVICE

I, Scottie B. Shaver, declare that on this date, July 5, 2026, as required by Supreme Court Rule 44.1, I served the enclosed Petition for Rehearing on the Assistant Attorney General for the State of Michigan, Ms. Ann M. Sherman, by depositing same in an envelope containing the above documents in the hands of prison officials at the Lakeland Correctional Facility, in Coldwater (Branch County), Michigan to be mailed by US Postal Service to:

Ms. Ann M. Sherman, AAG
Michigan Department of Attorney General
Post Office Box 30212
Lansing, Michigan 48911

I declare under the penalty of perjury consistent with Title 28 USC § 1746, that the foregoing is true and correct.

Dated: July 5, 2026

/s/ 
Scottie B. Shaver