IN THE SUPREME COURT OF MISSISSIPPI

No. 2024-DR-01386-SCT

CHARLES RAY CRAWFORD

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

PETITION FOR POST-CONVICTION RELIEF

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INTRODUCTION

In *McCoy v. Louisiana*, 584 U.S. 414 (2018), the U.S. Supreme Court made clear that a defense attorney may not override a client's clear wishes and admit his guilt during a trial. This is precisely what happened during Charles Crawford's capital murder trial. Crawford's attorneys admitted his guilt and pursued an unwanted insanity defense over Crawford's repeated objections before and during trial. *See* Trial Tr. 309-310 ("We do not anticipate a defense or that the defense is going to be able to show or to attack the States case and prevent them from showing that this Defendant did in fact commit the acts that he is charged with."); Bell Aff. ¶ 4, Ex. A ("Mr. Crawford objected to the concession of his guilt and the pursuit of an insanity defense before and during trial."). As in *McCoy*, counsel's confession of guilt eviscerated Crawford's constitutional entitlement to decide upon the objectives of representation by counsel.

True, it may sometimes be tactical in capital case to admit guilt, with the hope of avoiding the death penalty at the sentencing phase. *Florida v. Nixon*, 543 U.S. 175, 178 (2004) holds that such a strategy is not necessarily deficient—***only if*** the client does not object to the concession of guilt. Here, Crawford timely and repeatedly objected both to his counsel's concession of guilt and the pursuit of an insanity defense. Under the U.S. Supreme Court's recent decision in *McCoy v. Louisiana*, 584 U.S. 414 (2018), Crawford's

constitutional rights to client autonomy were violated, and the error is a structural one requiring a new trial.

McCoy holds that a defendant's Sixth Amendment client autonomy rights are violated when counsel admits guilt over the defendant's express objections. Under *McCoy*, it does not matter whether counsel's concession is one of trial strategy. Indeed, "[b]ecause a client's autonomy, not counsel's competence, is in issue," neither the *Strickland v. Washington* standard nor the *United States v. Cronic* standard apply.[1] *McCoy*, 584 U.S. at 426. A "[v]iolation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind [the Supreme Court has] called 'structural'; when present, such an error is not subject to harmless-error review." *Id.* at 427.

Prior to *McCoy*, Mississippi courts failed to treat a confession of guilt claims as ones that violate a client's constitutional right to autonomy. Instead, Mississippi courts analyzed such claims only under the *Strickland v. Washington* two-part framework. Under *Strickland*, the Mississippi Supreme Court and the Mississippi Court of Appeals both have held that, under certain circumstances, it may be considered a "tactical decision" to concede the underlying facts of a client's guilt. *See, e.g.*, *Faraga v. State*, 514 So. 2d 295, 308 (Miss. 1987); *Williams v. State*, 791 So. 2d 895 (Miss. Ct. App. 2001).

[1] *Strickland v. Washington*, 466 U.S. 668 (1984); *United States v. Cronic*, 466 U.S. 648 (1984).

Under *McCoy*, the issue is not whether counsel's decision may be considered tactical or strategic. *McCoy* teaches that the issue is one of client autonomy—not counsel competence. Just as a defendant has the right to decide how to weigh the risks of refusing a plea, he likewise has the right to decide how to weigh the risks of denying guilt, especially in a capital case. Indeed, the answer may turn on a client's philosophical and religious beliefs about death, his relationship with friends and family, the value he places on his own integrity, and inner knowledge of his own guilt or innocence. These are not strategic questions as to *how* to achieve a client's objectives; they are questions about what the client's objectives actually *are*.

When the accused in a criminal proceeding chooses to defend against the charges rather than admit guilt, the U.S. Constitution does not allow his lawyer to override that choice. It is the accused's liberty—and, in capital cases, his life—at stake in a criminal prosecution. That is, it is "[t]he defendant, and not his lawyer or the State, who will bear the personal consequences of a conviction," *Faretta v. California*, 422 U.S. 806, 834 (1975), and it is therefore the accused who must have the ultimate authority to decide whether to admit guilt.

Crawford's claims in this petition stemming from the *McCoy* decision are statutorily alive and meritorious. *McCoy* qualifies as an intervening decision that actually adversely affects the outcome of Crawford's capital conviction and

death sentence. This Court recently recognized the holding in *McCoy* in *Bennett v. State*, 383 So. 3d 1184, 1194 (Miss. 2023) ("The United States Supreme Court has recently made expressly clear that an attorney must respect the defendant's decision whether or not to admit guilt, even after he has been convicted. '[A] defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty.'" *McCoy v. Louisiana*, 584 U.S. 414, 138 S. Ct. 1500, 1505, 200 L. Ed. 2d 821 (2018).").

Under *McCoy*, Crawford's constitutional rights to make the most fundamental choices regarding whether, and how, to defend his life and liberty were violated. A trial like Crawford's – one where counsel concedes guilt and pursues an unwanted insanity defense – is essentially no trial at all. Post-conviction relief is proper, and Crawford's conviction and sentence should be vacated.

SUMMARY OF THE ARGUMENT

1. Crawford's Sixth Amendment rights to client autonomy were gutted when defense counsel admitted his guilt over his express and timely objections. After Crawford's prior post-conviction and habeas proceedings, the U.S. Supreme Court in 2018 clarified that conceding guilt over a client's

express objection amounts to a structural error under the Sixth Amendment, and such an error requires a new trial. *See generally McCoy, supra.*

Decisions as to whether to concede guilt constitute "fundamental decisions" that speak to both of two major sets of questions in which concerns for defendant autonomy are at their peak. First, a defendant has the authority to decide, as a threshold matter, whether to avail himself of certain structural elements of the criminal justice system—i.e., by entering a plea, waiving a jury trial, or taking an appeal. Second, the defendant has final authority over his personal involvement (or non-involvement) in his case, and the fundamental goals of his defense—i.e., his attendance at trial and pretrial proceedings, the decision to testify (and what to say), and how to weigh the risks of an adverse verdict or sentence (including whether to take a plea, and whether to admit guilt before the jury). Crawford made clear to his attorneys prior to and during trial that he opposed their plan to admit his guilt.

McCoy confirms that an attorney's admission of a client's guilt is not properly analyzed simply as a question of ineffective assistance of counsel. It is instead a structural error concerning client autonomy that rendered the adjudication of Crawford's guilt presumptively unreliable. Because the violation of Crawford's constitutional right to choose his defense is a structural error, prejudice is presumed and there is no harmless error analysis. The proper remedy is a new trial.

2. The same analysis equally applies to defense counsel's pursuit of an insanity defense over his competent client's objections. Like whether to plead guilty, waive the right to a jury trial, testify, or appeal a conviction, the decision whether to assert an insanity defense is a fundamental decision over which a criminal defendant must have ultimate authority. Indeed, the insanity defense bears the features of a plea, which may only be entered by the defendant personally or by counsel with consent from the defendant.

Additionally, like a concession of guilt, a defense of insanity carries consequences that go beyond the sphere of trial tactics. What's more, unlike other affirmative defenses, a finding of insanity may result in confinement in a mental institution for a period longer than the potential prison sentence. *See generally Jones v. United States*, 463 U.S. 354 (1983); Miss. Code Ann. § 99-13-7(1). The Supreme Court's decision in *McCoy* proves that counsel cannot impose an insanity defense on a non-consenting, competent client. Just as conceding guilt carries the "opprobrium" that a defendant might "wish to avoid, above all else," *McCoy*, 584 U.S. at 423, a defendant, with good reason, may choose to avoid pursuing insanity.

Nevertheless, trial counsel here pursued an insanity defense over Crawford's objections. Bell Aff. ¶ 4 ("Mr. Crawford objected to the concession

of his guilt and the pursuit of an insanity defense before and during trial.").[2] That decision completely altered the adversarial framework of the trial, and it denied Crawford the elemental right to be heard on his claim of innocence.

3. Because a concession of guilt and/or the pursuit of an insanity defense over a competent client's objections is a structural error, prejudice is presumed. That said, this case also illustrates the dangerous breakdown in the adversarial system that occurs when an attorney admits guilt and pursues an insanity defense over a competent client's repeated objections. Crawford's attorneys conducted no investigation before trial; performed very little cross-examination during trial; hired no guilt phase experts; and failed to engage any government expert testimony to posit a credible and supportable countervailing theory to what the state claimed the evidence showed. But the evidence did not—and does not—show everything that the government's untested theory purportedly showed.

a. The government claimed that the murder weapon was a standard U.S. Marine Corps Ka-Bar knife with a seven-inch blade—the exact type of

[2] Crawford's objection was particularly understandable given that his counsel previously had not conducted sufficient investigation and preparation to pursue an insanity defense effectively. *See* Motion for Leave at 19-40, *Crawford v. State*, No. 2013-DR-02417-SCT (Miss. Feb. 25, 2014) (explaining that counsel ignored evidence and disregarded multiple experts' recommendations). Moreover, due to the high stakes in this case, Crawford had every reason to insist that his counsel conduct a thorough culpability-phase investigation before conceding guilt through an NGRI defense, when such a concession could and did result in a death sentence.

knife Crawford was known to possess. *See, e.g.,* Trial Tr. 459-460, 461-463, 660, 701.[3] The Ka-Bar knife was supposedly discovered in a field *two months after* the victim's body was found and after Crawford was arrested. *See* Charles E. Smith Aff. ¶¶ 33-35, Ex. B. The Ka-Bar knife was found in its sheath, but there were no traces of blood or tissue on the blade, guard, handle, or sheath. *Id.* at ¶ 54.

The now discredited Dr. Stephen Hayne performed the decedent's autopsy. Hayne testified that the victim died from a stab wound, and the stab wound could have been caused by a Ka-Bar knife like the one Crawford was known to possess. Tr. 459-463. Hayne also concluded that the decedent was anally penetrated. Tr. 465-466. Neither of Hayne's conclusions is scientifically valid.

Dr. James Lauridson is a nationally-accredited, board-certified forensic pathologist and medical physician. Using the standard dimensions of a Ka-Bar knife, Dr. Lauridson's conclusion is that "there is no scientific evidence to support Dr. Hayne's conclusion that the U.S. Marine Corps Ka-Bar knife caused the stab wound." James R. Lauridson, M.D. Aff. ¶¶ 3-6, Ex. C.[4] In

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[3] The trial transcript pages referenced in this Petition are provided at collective exhibit "M."

[4] *See also* Smith Aff. ¶¶ 53-54 (explaining the stab wound appears to be from a very sharp doubled-edged knife while a Ka-Bar has a single sharpened edge: "In Sgt. Wall's initial assessment of the victim, he stated that the stab wound appeared to be that of a 'double edged' instrument. Neither Sgt. Wall nor I are trained pathologists, but I must agree that the stab wound appears to be that of a very sharp double-edged knife, much like that of many

addition, Dr. Lauridson opines that "Dr. Hayne lacked sufficient information to support the conclusion of anal penetration and tearing ... The autopsy alone could not indicate such penetration and tearing." Lauridson Aff. ¶ 7.

Because Crawford's counsel conceded his guilt and pursued an unwanted insanity defense against his objections, counsel did not have an expert to counter Hayne during the guilt-phase of trial, and the cross-examination of Hayne was only one and a half pages.

b. There is an additional issue concerning the purported murder weapon. The Sheriff of Tippah County at the time of the murder was Paul Gowdy. Former Sheriff Gowdy recently signed an affidavit saying, "A few days after Kristy Ray's body was found, a camouflage-colored tent as found in the woods. There was food in the tent, and there was a knife. It looked like a hunting knife. There was what looked to be blood on the knife. There were pictures taken of the tent and the knife." Paul Gowdy Aff. ¶¶ 6-7, Ex. D. There is nothing in the record or evidence produced to defense/post-conviction counsel of hunting-style knife—let alone one with blood on it.

c. There is also no chain of custody of key evidence and there is inconsistent testimony as to the evidence. The best example is the clothing that happened to be found by town residents near the crime scene, but well after a

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hunting/skinning type knife. My assessment is based on years of crime scene investigation of hundreds of stab wounds ... A Ka-Bar knife has a single sharpened edge. It does have a tip, but it is not sharpened. A Ka-Bar is designed as a survival and defensive type weapon.").

search of the crime scene had been conducted by law enforcement. Sgt. James Wall prepared a report stating that, a week *after* the victim's body was found, an individual not associated with the police and named Timmy Wilbanks contacted him about finding men's clothing "neatly stacked" close to where the body was found. Sgt. Wall's report states Mr. Wilbanks came to Wall's residence, and Wall got Mr. Wilbanks to take him back to the scene and point out where the clothes were located. Wall Report p. 7-8, Ex. E.

Contrary to Sgt. Wall's report, Mr. Wilbanks testified that he and other unnamed individuals happened to find men's underwear, long johns, and a t-shirt near the crime scene. Wilbanks further stated that once the clothing items were found, another unidentified male who was with him had some type of a sack in his truck and retrieved the sack. The items of clothing were placed in the sack and then transported to the unnamed man's house. One of the men then called Sgt. Wall and told him what had happened. Sgt. Wall then responded to the unnamed man's home and took charge of the evidence. Trial Tr. 501.

Despite the inconsistent testimony; that there were clothes randomly found by civilians a full week after the crime scene was searched by law enforcement; and that the chain of custody was non-existent, Crawford's counsel did not cross-examine Mr. Wilbanks (Trial Tr. 502) or question Sgt. Wall on these issues. That evidence should have been inadmissible, and

questioning the inconsistent statements—including false statements made by one of the lead investigators—could have shattered the credibility of the investigation.

d. There is additional evidence of the prejudice Crawford suffered when his counsel pursued an insanity defense against his objections. This is most evident when viewed in light of the federal court's prior holding in Crawford's habeas proceedings. The federal court already held that Crawford's Sixth Amendment rights were violated; this alone shows that Crawford's case has been plagued by constitutional concerns from the start.

Specifically, the federal court found Crawford was subjected to a psychological evaluation without the benefit of counsel. Crawford was not present at the hearing where the issue of a psychological exam was discussed with his counsel. Also, counsel had moved to withdraw as counsel when he signed off on a psychological examination. Thus, as the federal court held, Crawford was left without any legal advice as to whether he should submit to the evaluation in violation of the Sixth Amendment. *Crawford v. Epps*, No. 3:04CV59-SA, 2012 WL 3777024, at **5-7 (N.D. Miss. Aug. 29, 2012). Even so, the Sixth Amendment violation was held to be harmless error because the psychological examination was offered *in rebuttal to the insanity defense. Id.* at **8-11. Thus, a violation of Crawford's rights (the pursuit of the unwanted

insanity defense) excused a separate violation of Crawford's rights (an evaluation conducted in violation of the Sixth Amendment right to counsel).

These basic examples demonstrate why it is unconstitutional and offends fundamental notions of fairness to concede guilt and pursue an insanity defense over a competent client's express objections. Worse, in conceding guilt and pursuing an insanity defense, counsel eviscerated a multitude of Crawford's other constitutional rights that inhere in a criminal trial. That is, when counsel affirmed Crawford's guilt, it rendered his right against self-incrimination meaningless. And rather than defend his client, counsel effectively acted as a prosecutor. *See, e.g.*, Trial Tr. 818-821 (Crawford objecting to the concession of his guilt and informing the judge that his lawyer "might as well been sitting over there with the prosecution").

4. Lastly, former Sheriff Paul Gowdy's recent affidavit raises a claim under *Brady v. Maryland,* 373 U.S. 83 (1963). The State violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment. *See Manning v. State,* 158 So. 3d 302, 305 (Miss. 2015). This includes evidence of impeachment. *Smith v. Cain,* 565 U.S. 73, 76 (2012); *Napue v. Illinois,* 360 U.S. 264, 269 (1959) ("The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to

the credibility of the witness."); *Floyd v. Vannoy*, 894 F.3d 143, 163 (5th Cir. 2018) ("[E]vidence impeaching a prosecution witness is favorable *Brady* evidence.").

Here, prosecution witnesses labeled the murder weapon as the type of Ka-Bar knife Crawford was known to carry. No traces of blood or tissue were found on the Ka-Bar knife. Now, however, the former Sheriff has sworn in an affidavit that, during the investigation, there was another hunting style knife found in a tent near the crime scene and that knife had what appeared to be blood on it. Prosecution witnesses could and should have been impeached with evidence of the existence of another knife.

STATEMENT OF THE CASE

At the time of Charles Crawford's arrest, a hostile and conflicted attorney abandoned him to aid the FBI. And that attorney ensured that he would be interrogated by the FBI and examined at the Mississippi State Hospital — without the advice or assistance of counsel. More constitutionally problematic, Crawford's next attorney, James Pannell, conceded Crawford's guilt at trial and pursued an insanity defense over Crawford's timely and express objections.

Given his counsel conceded guilt over his objections, it is no surprise that Crawford was convicted by the Lafayette County Circuit Court[5] of capital murder. *Crawford v. State*, 716 So. 2d 1028, 1031 (Miss. 1998). The jury then sentenced him to death on April 23, 1994. *Id.* The Mississippi Supreme Court affirmed on March 12, 1998. *Id.*

A. Factual Background.

1. On the evening of January 29, 1993, Kristy Ray was abducted from her parents' home in Chalybeate, Mississippi. Ms. Ray and her mother separately left a bank at 5:15 p.m. with plans to see one another later in the evening. Following an unsuccessful attempt to reach Ms. Ray by telephone, her mother arrived home that evening to find Ms. Ray's car gone, a handwritten ransom note on the table, and the telephone lines dead. *Crawford*, 716 So. 2d at 1032-1033.

Ms. Ray's mother reported her disappearance to the Tippah County Sheriff's Department. Further inspection of the family's home showed that a fingerprint was left on Ms. Ray's window and there was a stacking pallet leaned against the house outside the window to Ms. Ray's room. Within hours of Ms. Ray's disappearance, authorities started an investigation. *Id.*

[5] Crawford was initially indicted in Tippah County Circuit Court, but he was tried in Lafayette County Circuit Court on a change of venue. *Crawford v. State*, 716 So. 2d 1028, 1031 (Miss. 1998).

Earlier on January 29, a different ransom note was discovered in the attic of the house of Crawford's ex-wife's father. The ransom note had no handwriting (it had words cut out from a magazine), no date, and concerned a female named "Jennifer." When the ransom note was found, Crawford was not home. Instead, Crawford's mother had dropped him off so that he could go hunting on January 29th. Given the ransom note could not be discussed with Crawford, family members consulted the lawyer representing Crawford on unrelated charges, William Fortier, concerning the note after they received notice that Ms. Ray was missing.

After receiving the ransom note related to a female named "Jennifer," and although the note did not mention Ms. Ray, Fortier contacted the police to report the possibility that a crime was being committed. *See* Trial Tr. 883. The following day, January 30, 1993, FBI Agent Newsom Summerlin went to the Fortier law office and was given Crawford's mental health records by Fortier's law clerk—without Crawford's consent. Trial Tr. 885; Trial Tr. 124-125.

By Saturday morning on January 30, a command post had been set up at the elementary school in Chalybeate to investigate Ms. Ray's disappearance. At approximately 7:00 p.m. on Saturday evening, officers stationed near the home of Mr. Miles saw Crawford approaching the residence. Crawford was dressed in hunting gear and leaving the woods. He was immediately arrested.

At the time of his arrest, Crawford was armed with a shotgun and a switchblade knife, and he was complaining of pain from an injury he received when he fell in a dry well while hunting. Crawford was transferred to the Chalybeate school command post. *Crawford*, 716 So. 2d at 1033.

2. Crawford was first interrogated on January 30, 1993 by FBI Agents at the Chalybeate School, in Tippah County, Mississippi. And he was subsequently interviewed on February 1 and 2, 1993 by FBI Agent Newsom Summerlin.[6] Crawford has maintained since January 30, 1993 that he requested, and was denied, counsel during his initial FBI interview. Trial Tr. 17-23 (Crawford explaining that he requested counsel). Crawford was told by authorities that "they already had spoken to [his] attorney and he had responded for them to tell [Crawford] to do the right thing." Trial Tr. 19.

According to authorities, the January 30 interview of Crawford lasted fifteen to twenty minutes. Authorities maintain that Crawford quickly conceded that Ms. Ray was deceased and that he took authorities to her body—a point Crawford has denied since 1993. *See, e.g.*, Memorandum of Authorities p. 103, *Crawford v. Epps*, No. 3:04-cv-59-SA [Doc. 21] ("Petitioner has consistently and steadfastly maintained that he did not lead law enforcement officers to the victim's body, but that the officers led him to the body after they

[6] The February 1 and 2 interview was not memorialized until two months later in April 1993.

located it using a specialized aircraft, equipped with infrared capabilities, sent from Washington D.C. just for this particular kidnapping case ... Petitioner's assertion is substantiated and confirmed by an F.B.I. report[.]"); *see also* Mar. 1994 Letter to Counsel p. 10, Ex. F (Crawford telling his counsel he wanted discovery about the airplane who led police and him to the victim's body).

3. On February 1, 1993, affidavits for arrest on the Ray murder case were filed with the Justice Court of Tippah County, Mississippi. The Justice Court then issued arrest warrants for Crawford on the same day, which directed that he be brought before the Justice Court of Tippah County on February 3, 1993, presumably for an initial appearance and appointment of counsel.

Also on February 1, Attorney William Fortier, Crawford's counsel on unrelated cases, who was never appointed as counsel in the capital case, filed a motion to withdraw as Crawford's counsel. Fortier's motion to withdraw stated "that a conflict of interest had arisen once he assisted police in arresting Crawford, and that he had 'searched the depths of his soul, and [found] no way that he [could] set aside his prejudiced feelings now existing towards the Defendant[.]'" *Crawford v. Epps*, 531 F. App'x 511, 514 (5th Cir. 2013).

Despite the motion to withdraw, Fortier met with the trial judge and district attorney later in the day on February 1 for a hearing on the state's *ore tenus* motion for a psychiatric examination. *See* Fortier Transcript, Ex. G.

Crawford was not present at the hearing. *Id.* At that hearing, Fortier confessed the state's motion for a psychiatric examination. Fortier also signed an agreed order as "Attorney for Defendant" compelling the psychiatric examination—all while never discussing it with Crawford. *See* Psych. Exam Order, Ex. H. Crawford was immediately transferred to Whitfield and was never taken to the Justice Court of Tippah County, Mississippi for his initial appearance of appointment of counsel on the murder charges.

On February 4, 1993, Fortier was granted leave to withdraw as counsel on the unrelated cases. Crawford was never appointed counsel in the capital murder case until after September 28, 1993 following his indictment on the murder charge. *See* Tippah County General Docket, Ex. I.

B. Trial for Capital Murder, Concession of Guilt, and Pursuit of Insanity Defense Over Crawford's Express and Timely Objections.

Before trial, Crawford wrote his appointed trial counsel letters about the need for investigation and discovery, reasonable doubt, and his expectation that he would be acquitted. *See* Four Page Letter to Counsel p. 4, Ex. J (telling his counsel that "reasonable doubt" exists and has been shown "sufficiently" and discussing "win[ning] this case"); Mar. 1994 Letter to Counsel, Ex. F. In his March 1994 Letter, Crawford expressed the following to counsel:

- Page 4: discussing evidence he thought should be suppressed.

- Page 8: discussing suppression of evidence and motions to be filed prior to trial and not wanting his attorneys to miss any evidence.

- Page 11: discussing "sufficient doubt" of the "credibility of" the "witnesses" and the "prosecution's evidence."

- Page 12: discussing "reasonable doubt" and when a "defendant must be a[c]quitted"; explaining every "hole in the prosecution's case must be d[i]ligently looked at" because "at risk is my life[.]"

- Page 12-13: discussing the "main objective" as "defense counsel" and that "every possible resource" should be "exhausted to obtain an a[c]quittal!"

- Page 13: reminding counsel, "I have yet to be found guilty of the charges against me! I have yet to give up hope!"

- Page 13: "Until all 12 members of a jury find me guilty beyond a reasonable doubt of every element of the crimes I've been charged with[ ] I am still innocent!!"

- Page 13: "I respectfully put this question before both of you[.] Is their [sic] any reason that one or both of you cannot fully and without any restraint[ ] dil[i]gently and aggressively p[ur]sue a not guilty verdict in this case?"

Mar. 1994 Letter to Counsel, Ex. F.

Thus, as counsel concedes, counsel knew before trial that Crawford did not want any concession of guilt and he did not want his lawyers to pursue an insanity defense. *See generally* Bell Aff. Nevertheless, once trial began, Crawford's counsel immediately conceded guilt. The following chart outlines defense counsel's concession of guilt, additional statements, and Crawford's objections during trial.

TR.	PORTION OF TRIAL	STATEMENTS
309-310	Voir Dire	Defense counsel: "The State ... will be primarily concerned almost exclusively with the 'what' of this case. What happened? When did it happen? What did Charles Ray Crawford do? When did he do it? How did he do it? The defense in this case will be focused on 'why.' What is it that caused this Defendant to do what he is alleged to have done? .... ***We do not anticipate a defense or that the defense is going to be able to show or to attack the States case and prevent them from showing that this Defendant did in fact commit the acts that he is charged with.***"
361-362	Voir Dire	Juror question to defense counsel: "I believe that I have heard you say since I have been here that you [ ] were essential[ly] going to concede the prosecutions point that the Defendant committed the acts that are alleged so the issue becomes whether or not the Defendant is insane." ... Defense counsel: "We do not anticipate as we said before which is going to be a lot of fussing and arguing about the 'what' in this case. But rather the 'why.'"
409	Objection by Crawford	Crawford: "I have got copies of letters here that I sent my attorneys and things that I wanted them to do ... they have not done them. They came here yesterday the same by the jury, ***told the jury that I was already guilty before the trial started*** and I do not recognize them as my attorneys any more." Court: "They are the attorneys that the Court has appointed for you."
415-416	Opening	Defense counsel: "[T]he state will prove the 'what' of this case. The defense will attempt through its witnesses [ ] to hopefully help you [with] the 'why.' ... Crawford is legally insane. That is what the 'why' is about in this case. The what – no one will dispute as a horrible tragedy ... that has happened ... But the 'why' in this case is as important to understand as the 'what.'"

669-672	Objection by Crawford and Response	Crawford: I want to say some more things, talk about just what happened here today and during this trial ... I have been advised by my counsel come out here and just sit here like a vegetable and not saying nothing.... Defense counsel: "....Mr. Crawford disagrees with our view of how this case out to be handled but we are going to do what it takes to do our job in this case. We were appointed to represent him in this case and we are going to use our best efforts and our best legal judgment as to what is best for him whether he agrees with us or not[.]"
743	Objection by Crawford	Crawford: ".... I want to go as to my part as objecting to these people as my counsel ... And I would also like it to be entered into the record ... I have not disrupted this trial. I have waited until the jury has been out of the room. I have not made any outburst or anything like this and I am trying to deal with this as calmly as I have."
818-821	Objection by Crawford	Crawford: "[Counsel] said that from the beginning he did not want my case. He got it dumped in his lap. He was stuck with it. There were several comments that have been made through this thing. Yesterday or day before yesterday he told me that the district attorney had commented to him that he would end up with a civil suit against him before this was all over. As the Court knows I was interviewed here by some people Monday[,] before that interview [counsel] carried me into the witness room and told me that if he heard anything mentioned about this case or anything have to do with him trying the case [ ] he would[,] personally excuse my language, get a visitors pass to Parchman and whoop my ass[.]" .... "I want to make a motion for a ***mistrial on the grounds that the jury was tainted from the beginning as I said the other day by [counsel] opening with the statement that he didn't intend – he didn't expect that he could prove or disprove what the [ ] prosecution was going to put on. He told that from the front out here to the jury and like I said the other day one of the members of the jury stood up and said well what you are saying is this man is already guilty."*** .... "***From the time that they during the voir dire of the jury told the jury that they couldn't prove that I was innocent.***

		They might as well been sitting over there with the prosecution[.]" Court: "I understand that you disagree with their representation of you but the court has appointed them...."
1178-1180	Closing	Defense counsel: "[B]efore this case ever started ... I told you that the defense in this case would show you that the question to be answered here is not what has happened but why it has happened." .... "The what of this case is not in question Kristy Ray a fine and beautiful young lady abducted, assaulted and killed; and the defendant by his own statement to law enforcement officers has never denied that ***he is the individual that actually did those things***. The question is not what happened here but why it happened. ***No one else is legally responsible for what happened here[.] .... Why did Charles Ray Crawford do this***? Was he legally sane at the time that he did it."
1189	Closing	Defense counsel: "We know if you are saying to yourself ... [h]ow can I ever face myself if I turn that monster loose. It's going to be a question in your mind."
1190	Closing	Defense counsel: "Is there any question in anybodys mind that Charles Ray Crawford is still dangerous to the community. There is certainly not in mine and there's certainly not in anybody's that has been here all week during this case."
1192	Closing	Defense counsel: "I realize what a horrible difficult and distasteful personal decision that I'm asking you to make ... [Y]ou have got the personal integrity to set aside your distaste that I know that you have for this individual."
1368-1370	Closing	Defense counsel: "[The State] ask[s] you first to become like Charles Ray Crawford and to kill." .... "Charles Ray Crawford wants the death penalty. And that is absolutely true." .... "I am not asking you to sentence him to life because he may be become a better human being someday. He does have some value. May be not as an individual but he does have some value[,] he can perhaps by the study of him ... There is a monster in there

		and we have got to find out what caused it and how to stop other monsters from coming into existence."

Given his lawyer confessed his guilt throughout trial, it is no surprise that Crawford was convicted of capital murder and sentenced to death.

C. Prior Collateral Proceedings.

1. In state post-conviction, Crawford was appointed counsel after the decision in and in accordance with *Jackson v. State,* 732 So. 2d 187 (Miss. 1999). Of note, Crawford argued that his Sixth Amendment right to counsel was violated when he was not given prior opportunity to consult with counsel about his participation in a psychiatric examination. *Crawford v. State*, 867 So. 2d 196, 205 (Miss. 2003). That argument was denied (until the case reached federal court, as discussed below). Crawford also argued his counsel was ineffective and did not maintain an attorney-client relationship with him. As to the latter argument, and prior to *McCoy v. Louisiana*, the Mississippi Supreme Court "swiftly" denied the claim. *Id.* at 206-207.

2. After being denied state post-conviction relief, Crawford filed for habeas relief in the federal court. In 2012 and 2013, the federal district court and the Fifth Circuit concluded that Crawford's Sixth Amendment right to counsel was violated due to the compelled psychiatric examination. *See Crawford v. Epps*, 531 F. App'x 511, 516-518 (5th Cir. 2013) (holding the Sixth Amendment was violated and "the Mississippi Supreme Court's evaluation of

Crawford's claim disregarded the aspect of [the] claim that asserted a right to the appointment of counsel due to the separate murder charge" and thus "the deferential standard of review reserved for habeas claims is not applicable") (cleaned up).

At the time that Mr. Fortier approved the examination on behalf of Crawford, Fortier was acting as counsel to Crawford in his unrelated cases. But the Sixth Amendment is offense specific. *Texas v. Cobb*, 532 U.S. 162, 168 (2001). Because Crawford was never given an opportunity to communicate with his counsel prior to the February 2 evaluation, and because Fortier was conflicted and never retained to represent him with respect to the capital murder charge, the federal district court held that Crawford's Sixth Amendment right to counsel was violated. *Crawford v. Epps*, No. 3:04-CV-59-SA, 2012 WL 3777024, at **6-7 (N.D. Miss. Aug. 29, 2012).

The Fifth Circuit affirmed. "Because Fortier was not retained to represent Crawford in the capital murder charge and, in any event, had filed a motion to withdraw altogether, there was no counsel who could be notified in advance about the scope of the examination, and no counsel to assist Crawford in making the significant decision of whether to submit to the examination and to what end the psychiatrist's findings could be employed. [ ] The State d[id] not contest this point on appeal." *Crawford*, 531 F. App'x at 518.

While Crawford's Sixth Amendment right to counsel was violated, his conviction and sentence were not overturned because the violation was found to be harmless error. The federal district court and Fifth Circuit concluded that there was harmless error because Crawford "cho[se] to pursue his insanity defense." *Crawford*, 531 F. App'x at 521. As the district court stated, "psychiatric evidence was presented by the State only in rebuttal to Petitioner's insanity defense. No psychiatric evidence was offered against Petitioner during the State's case-in-chief during either portion of the trial. While the assertion of an insanity defense does not waive the Sixth Amendment right to notice to counsel, it does alert the defense that psychiatric evidence may be presented in rebuttal." *Crawford*, 2012 WL 3777024, at *8; *Crawford v. State*, 867 So. 2d 196, 210–11 (Miss. 2003) (explaining that "when the defense is insanity, either general or partial, the door is thrown wide open for the admission of evidence of every act of the accused's life relevant to the issue of sanity and is admissible in evidence.").

Thus, ***only*** because Crawford purportedly chose to not contest guilt and pursue an insanity defense, the violation of his Sixth Amendment right to counsel was harmless error. But, as discussed, Crawford expressly and timely objected to his counsel confessing his guilt and pursuing an insanity defense in his capital murder trial.

ARGUMENT

I. Counsel's Admission of Guilt Over Mr. Crawford's Express Objections Violated Mr. Crawford's Constitutional Rights and Is A Structural Error Requiring a New Trial.

The U.S. Constitution forbids what happened here: over Crawford's vehement objections, the trial court permitted defense counsel to tell the jury that they were not contesting his guilt. Crawford alone had the right to choose whether to admit guilt or fully defend against the charges. This core principle is deeply embedded in the Counsel Clause of the Sixth Amendment and recognized by the U.S. Supreme Court recently in *McCoy v. Louisiana*, 584 U.S. 414 (2018).

A. The Sixth Amendment forbids counsel from overriding a client's decision on whether to admit guilt.

The defendant's right to personally make his defense is the core concern of the Sixth Amendment. The plain text of the Sixth Amendment guarantees the accused in a criminal proceeding the right to have "the Assistance of Counsel for *his* defence." U.S. CONST. AMEND. VI (emphasis added). It "does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense." *Faretta v. California*, 422 U.S. 806, 819 (1975). "The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails." *Id.* at 819-820 (footnote omitted).

Given this, the defendant has the right to conduct his own defense at trial, provided he is competent to do so and makes the choice knowingly and intelligently. *Faretta*, 422 U.S. at 819-821; *see also Indiana v. Edwards*, 554 U.S. 164, 170, 174 (2008); *McKaskle v. Wiggins*, 465 U.S. 168, 170 (1984). That right is not merely ancillary to the goal of assuring a fair or accurate trial—it reflects the accused's indefeasible prerogative to make the fundamental choices that will shape his own fate.

When a defendant chooses to accept "the guiding hand of counsel," *Powell v. State of Ala.*, 287 U.S. 45, 69 (1932), he does not relinquish the right to determine whether he will admit guilt at trial or instead defend against the charge. The Counsel Clause provides the defendant "with *assistance* at what, after all, is his, not counsel's trial." *McKaskle*, 465 U.S. at 174 (emphasis in original). "[A]nd an assistant, however expert, is still an assistant." *Faretta*, 422 U.S. at 820. The accused thus retains "the ultimate authority to make certain fundamental decisions regarding the case," including "whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal." *Jones v. Barnes*, 463 U.S. 745, 751 (1983); *see Gonzalez v. United States*, 553 U.S. 242, 250-251 (2008). Otherwise, "the right to make a defense [would be] stripped of the personal character upon which the [Sixth] Amendment insists." *Faretta*, 422 U.S. at 820.

"It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy in many areas" without first obtaining the client's express consent. *Faretta*, 422 U.S. at 820. As a matter of "practical necessity," counsel must have "control of trial management matters" to ensure that the adversary process functions effectively. *Gonzalez*, 553 U.S. at 249 (citing *Taylor v. Illinois*, 484 U.S. 400, 418 (1988)).

Those matters—decisions such as "what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence," *id.* at 248, "reflect[] considerations more significant to the realm of the attorney than to the accused," *id.* at 253. They draw upon "the expertise and experience that members of the bar should bring to the trial process," and "can be difficult to explain to a layperson." *Id.* at 249.[7]

[7] *Cf. Gonzalez*, 553 U.S. at 253 ("We do not have before us, and we do not address, an instance where ... the party by express and timely objection seeks to override his or her counsel."). In *Jones v. Barnes*, 463 U.S. 745 (1983), appellate counsel briefed only some of the arguments the defendant had requested. The Court held that the defendant had no right to insist that counsel raise every argument because counsel's constitutional duty to "'support his client's appeal to the best of his ability'" permitted counsel to focus on the strongest arguments. *Id.* at 754 (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)). But even there, counsel did not act contrary to the defendant's ultimate objective, and the Court did not suggest that counsel could have conceded the conviction was valid or refused to appeal despite the defendant's instruction. To the contrary, a defendant may "instruct[] his counsel to file an appeal," *Roe v. Flores-Ortega*, 528 U.S. 470, 486 (2000), and even if counsel believes the appeal frivolous, counsel must follow the appropriate procedures to ensure he does not "brief [the] case against his client," *Anders*, 386 U.S. at 745.

The decision to admit guilt and forgo the chance of acquittal falls nowhere near that category of decisions. The decision whether to admit guilt turns not only on a strategic assessment of the likelihood of a particular outcome in light of the evidence, but also on the value the defendant personally places on maintaining a hope of freedom—unlikely though it may be—relative to accepting a certainty of imprisonment. *Cf. Lee v. United States*, 137 S. Ct. 1958, 1968-1969 (2017) (recognizing that a defendant might reject a plea and prefer "taking a chance at trial" despite "[a]lmost certain[]" conviction). It is the defendant who will lose his liberty or face the executioner. And it is the defendant who will face the opprobrium of admitting guilt to a capital offense, reserved for the "narrow category of the most serious crimes." *Kennedy v. Louisiana*, 544 U.S. 407, 420 (2008).

The Framers of the Sixth Amendment would unquestionably have understood the Counsel Clause to forbid counsel from incriminating a defendant against his will. At common law, "it was not representation by counsel but self-representation that was the practice in prosecutions for serious crimes." *Faretta*, 422 U.S. at 823; *see also Powell*, 287 U.S. at 60-61. The defendant was required to plead and prove all affirmative defenses and mitigation defenses; "indeed, 'all ... circumstances of justification, excuse or alleviation' rested on the defendant." *Patterson v. New York*, 432 U.S. 197, 202 (1977) (quoting 4 Blackstone, *Commentaries on the Law of England* *201). The

defendant personally had the right—and obligation—to decide whether to admit his guilt to the jury or to defend against the prosecution's case. In cases where the defendant was entitled to counsel, counsel's role was limited to debating points of law. 4 Blackstone, *Commentaries* *348-350.

In fact, when the Bill of Rights was ratified and, in the years afterward, it was understood that defense counsel could not admit the defendant's guilt over the defendant's objection. Thomas Erskine expressed the rule of the defense bar in 1792 during his celebrated defense of Thomas Paine:

> If the advocate refuses to defend, from what he may think of the charge or of the defence, he assumes the character of the judge ... and ... puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favor the benevolent principle of English law makes all presumptions, and which commands the very judge to be his counsel.

1 Speeches of Lord Erskine 474-475 (High ed. 1876); *cf. Grosjean v. American Press Co.*, 297 U.S. 233, 247-248 (1936) (relying on Erskine). The same rule prevailed throughout the next century. In 1924, when Clarence Darrow famously conceded Leopold and Loeb's guilt to keep them from death row, *see Nixon*, 543 U.S. at 192, he did so only at sentencing, *after* the defendants had already pleaded guilty. *See* Attorney for the Damned: *Clarence Darrow in the Courtroom* 18 (Weinberg ed. 2012).

The Sixth Amendment provides a defendant with both the right to control the objectives of his defense and the right to the assistance of counsel.

It has never been understood to require a defendant to choose between the two. *Cf. Simmons v. United States*, 390 U.S. 377, 394 (1968) ("[W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another."). Put to that choice, a defendant would only "believe that the law contrives against him" and would feel the necessity to forgo counsel and represent himself—thus losing the benefits that skilled counsel brings and to which he is entitled. *Faretta*, 422 U.S. at 834 ("It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts."). And the burdens of a rule requiring such a choice would fall most heavily on a defendant who lacks the means to seek out and hire an attorney who will abide by his wishes. The Sixth Amendment does not demand that choice, and it forbids a court from requiring a defendant to make it.

B. In *McCoy v. Louisiana*, the Supreme Court held that the Sixth Amendment is violated when counsel concedes guilt over a defendant's objection; the violation is a structural error concerning client autonomy and not counsel's competence.

In the last twenty years, the U.S. Supreme Court twice has addressed the question of where a criminal defendant's authority over his trial ends and defense counsel's begins. In *Florida v. Nixon*, 543 U.S. 175 (2004), the Supreme Court held that a defense attorney may admit a client's guilt when the client is unresponsive. Express consent is not required. *Id.* at 178. The *Nixon* Court

did not answer the logical corollary: Can defense counsel concede guilt when his or her client explicitly objects?

McCoy v. Louisiana, 584 U.S. 414 (2018) answered that question in the negative. The Court held that a defendant's Sixth Amendment rights are violated when counsel admits guilt over the defendant's express objections.

In his opening statement, McCoy's counsel ("English") told the jury that the evidence would show that McCoy was guilty of the offense. Similar to in Crawford's case here, McCoy protested that his counsel was "selling [him] out," yet the judge allowed the concession. *McCoy*, 584 U.S. at 419 (alteration in original). The jury eventually found McCoy guilty on three counts of first-degree murder and sentenced him to death.

On appeal in state court, McCoy argued that English's strategy was not only unsuccessful but also unconstitutional, violating his Sixth Amendment rights. *State v. McCoy*, 218 So. 3d 535, 568 (La. 2016). The Louisiana Supreme Court affirmed the conviction. *Id.* at 541. Applying an ineffective assistance of counsel analysis under the *Strickland*, the court concluded that the concession strategy was a reasonable tactical approach and did not prejudice McCoy's case. *McCoy*, 218 So. 3d at 564-72.

The U.S. Supreme Court reversed. The Court's opinion accords with the principle of defendant autonomy and the long-standing maxim that the Sixth Amendment guarantees the right to a *personal* defense. While a defendant is,

of course, guaranteed the "Assistance of Counsel," the defendant himself remains master of the defense and is entitled to make fundamental decisions in his own case.

The Framers "understood the inestimable worth" of a defendant's "free choice" to determine the objectives of his own defense. *Faretta*, 422 U.S. at 834; *see McCoy*, 138 S. Ct. at 1508. In other words, criminal defense is personal business. Some capital defendants will certainly choose to permit an admission of guilt to minimize the risk of execution. Others may reasonably hold that life in prison—as an admitted murderer in the eyes of the law, their family, and the public—is not a life worth living, and will risk a death sentence for any hope, however small, of exoneration. "Our system of laws generally presumes that the criminal defendant, after being fully informed, knows his own best interests and does not need them dictated by the State. Any other approach is unworthy of a free people." *Martinez*, 528 U.S. at 165 (Scalia, J., concurring in the judgment).

In the related context of guilty pleas, the Supreme Court also has held that a defendant can show he would not have pleaded guilty if he knew he could be deported, even though he had no realistic defense:

> But for his attorney's incompetence, Lee would have known that accepting the plea agreement would certainly lead to deportation. Going to trial? Almost certainly. If deportation were the "determinative issue" for an individual in plea discussions, as it was for Lee; if that individual had strong connections to this

> country and no other, as did Lee; and if the consequences of taking a chance at trial were not markedly harsher than pleading, as in this case, that "almost" could make all the difference ... Not everyone in Lee's position would make the choice to reject the plea. But we cannot say it would be irrational to do so.

Lee v. United States, 582 U.S. 357, 371 (2017).

Just as a defendant has the right to decide how to weigh the risks of refusing a plea, he likewise has the right to decide how to weigh the risks of denying guilt in a capital case. The answer may turn on his philosophical and religious beliefs about death, his relationship with friends and family, the value he places on his own integrity, and inner knowledge of his own guilt or innocence. These are not strategic questions as to *how* to achieve a client's objectives; they are questions about what the client's objectives actually *are*.

In *McCoy*, the defendant informed the court both before and during trial that he objected to the admission of guilt, but the court did nothing to protect McCoy's rights. Because the court deprived McCoy of his right to decide for himself whether to admit guilt or maintain his innocence, he was entitled to a new trial. *McCoy*, 584 U.S. at 428 ("The trial court's allowance of English's admission of McCoy's guilt despite McCoy's insistent objections was incompatible with the Sixth Amendment. Because the error was structural, a new trial is the required corrective."); *see also Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017); *cf. Holloway v. Arkansas*, 435 U.S. 475, 488 (1978).

Under *McCoy*, the constitutional violation in Crawford's trial was "complete" upon the deprivation of that right, regardless of whether Crawford also suffered a violation of his separate right to the effective assistance of counsel, *see United States v. GonzalezLopez*, 548 U.S. 140, 144-148 (2006), or whether his counsel's admissions affected the verdict, *see id.* at 148-151. Crawford deserves a new trial.

C. Prior to *McCoy*, Mississippi courts analyzed confession of guilt claims under only the *Strickland* framework and held that concessions of guilt may sometimes be a matter of trial strategy.

Under *McCoy*, it does not matter whether counsel's concession of guilt over a client's objections is one of trial strategy. *McCoy* explained that "[b]ecause a client's autonomy, not counsel's competence, is in issue," neither the *Strickland* standard nor the *Cronic* standard apply. *McCoy*, 584 U.S. at 426. Instead, "[v]iolation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind [the Supreme Court has] called 'structural'; when present, such an error is not subject to harmless-error review." *Id.* at 427. Thus, under *McCoy*, "counsel may not admit her client's guilt of a charged crime over the client's intransigent objection to that admission." *Id.* at 426.

Prior to *McCoy*, the Mississippi Supreme Court and the Mississippi Court of Appeals held that it may be considered a "tactical decision" under *Strickland* to concede the underlying facts of guilt. *Faraga v. State*, 514 So. 2d

295, 308 (Miss. 1987). *Faraga* was a capital murder case. Among other statements, counsel in *Faraga* told the jury, "I'm not going to come up here and argue that they've not proven the things necessary to bring back a verdict of murder." *Id.* at 307. Counsel's strategy was to concede the underlying facts during the guilt phase to help the defendant during sentencing. *Id.* at 308 ("It should also be borne in mind that the candor by Taylor at the guilt phase could have helped Faraga in the sentencing phase."). The Court held that the lawyer's "tactical decision" in *Faraga* did not violate *Strickland. Id.* at 306 (explaining that a "case of clear guilt supported by confessions and direct evidence is less likely to support a claim of ineffectiveness").

Because Mississippi courts, prior to *McCoy*, only analyzed concession of guilt claims through the lenses of *Strickland*, the Court in *Faraga* did not view the claim as a structural violation under the Sixth Amendment's right to personal autonomy. The same is true for additional decisions in Mississippi. For example, in *Williams v. State*, 791 So. 2d 895 (Miss. Ct. App. 2001), the Court of Appeals relied on *Faraga* and held that an attorney's concession of guilt as to one of two charges did not violate *Strickland.* In that case, Mr. Williams shot a woman at her place of employment in a convenience store and he was charged with aggravated assault. Separately, Mr. Williams was charged with kidnapping. His counsel did not put on a defense to the aggravated assault charge and even admitted his guilt of this charge in

opening statements. Even though aggravated assault was a lesser sentence than kidnapping, it was a separate count—not a lesser-included-offense of kidnapping. Even so, the Court of Appeals held counsel was not ineffective under *Strickland*. *Williams*, 791 So. 2d at 899 (explaining that conceding guilt may be "a legitimate trial tactic in the face of overwhelming evidence of guilt").

Under *McCoy*, Mississippi courts erred in not analyzing concession of guilt claims as structural errors violating a defendant's Sixth Amendment right to autonomy. Indeed, the trial "strategy" in *Faraga* was similar to that in *McCoy*. In *Faraga*, the attorney conceded his client was guilty of murder but made a "factual argument that it was not capital murder." *Id.* at 308. In *McCoy*, counsel conceded that McCoy committed the murders but argued that the murders did not amount to first-degree murder. *McCoy*, 584 U.S. at 419-420; *id.* at 429-430 (Alito, J., dissenting) ("English admitted that [McCoy] committed one element of that offense, *i.e.*, that he killed the victims. But English strenuously argued that petitioner was not guilty of first-degree murder[.]"); *id.* ("English did not admit that petitioner was guilty of first-degree murder.").

As *McCoy* shows, counsel may claim that confessing guilt was trial strategy under *Strickland*. But *Strickland* is not the correct inquiry. Confessing guilt over a competent client's express objections violates the Sixth

Amendment's guarantee of client autonomy—*regardless of whether it was trial strategy or not.*

McCoy changes how Mississippi understands and applies claims where counsel admits the underlying facts of guilt, especially in the death penalty context. In fact, the Court cited *McCoy* recently and explained the impact of the decision in Mississippi. *Bennett v. State*, 383 So. 3d 1184, 1194 (Miss. 2023) ("The United States Supreme Court has recently made expressly clear that an attorney must respect the defendant's decision whether or not to admit guilt, even after he has been convicted. '[A] defendant has the right to insist that counsel refrain from admitting guilt, even when counsel's experienced-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty.'" *McCoy v. Louisiana*, 584 U.S. 414, 138 S. Ct. 1500, 1505, 200 L. Ed. 2d 821 (2018).").

Under *McCoy* and Mississippi's explanation of it in *Bennett*, Crawford is entitled to a new trial.

D. Here, Crawford expressly objected to any concession of guilt before and during trial.

No trial can be considered constitutionally fair when an attorney is given the authority to override the accused's wishes to concede nothing. Here, as the affidavit from trial counsel shows, "Mr. Crawford objected to the concession of

his guilt and the pursuit of an insanity defense before and during trial." Bell Aff. ¶ 4. Despite this, counsel conceded guilt even as early as voir dire:

> Counsel: We do not anticipate a defense or that the defense is going to be able to show or to attack the States case and prevent them from showing that this Defendant did in fact commit the acts that he is charged with."

Trial Tr. 309-310; *id.* ("The defense in this case will be focused on why. What is it that caused this Defendant to do what he is alleged to have done."); *id.* at 1178-1180 ("No one else is legally responsible for what happened here[.]").

Like in *McCoy*, Crawford objected immediately, and the Court did nothing to protect Crawford's rights:

> Crawford: I have got copies of letters here that I sent my attorneys and things that I wanted them to do ... they have not done them. They came here yesterday the same by the jury, told the jury that I was already guilty before the trial started and I do not recognize them as my attorneys any more.
>
> Court: "They are the attorneys that the Court has appointed for you.

Trial Tr. 409. Crawford continued objecting and pursuing his rights throughout the trial. He even moved for a mistrial. The Court still did nothing:

> Crawford: I want to make a motion for a mistrial on the grounds that the jury was tainted from the beginning as I said the other day by [counsel] opening with the statement that he didn't intend – he didn't expect that he could prove or disprove what the [ ] prosecution was going to put on. He told that from the front out here to the jury and like I said the other day one of the members of the jury stood up and said well what you are saying is this man is already guilty.
> ....

> From the time that they during the voir dire of the jury told the jury that they couldn't prove that I was innocent. They might as well been sitting over there with the prosecution[.]
>
> Court: I understand that you disagree with their representation of you but the court has appointed them....

Trial Tr. 818-821.

As *McCoy* recognizes, the effects of violating a defendant's right to autonomy are "immeasurable," because jurors are "almost certainly swayed by a lawyer's concessions" of facts central to a conviction. If that right has any meaning, it must mean that a lawyer is not allowed to tell the jury an account of the facts that the defendant contends is *untrue*—exactly what Crawford's counsel did here.

E. This claim is statutorily alive.

Intervening Decision. Mississippi's post-conviction scheme provides mechanisms for inmates to rely on "intervening" decisions. *McCoy v. Louisiana* is an such intervening decision, as it "would have actually adversely affected the outcome of his conviction or sentence." Miss. Code Ann. § 99-39-27. The same is true for Mississippi's recent explanation of and reliance on *McCoy* in *Bennett v. State*, 383 So. 3d 1184, 1194 (Miss. 2023). Under *McCoy* and Mississippi's explanation of it in *Bennett*, Crawford is entitled to a new trial.

As this Court explained in *Nixon v. State*,

> The intervening decision in *Gilliard* was *Clemons* ... However, the Supreme Court's decision did not a announce a new decision in *Clemons* for purposes of the *Teague* test; rather, it 'follow[ed], *a fortiori,*' from its previous decision in *Godfrey v. Georgia,* 446 U.S. 420, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1990). *Respect for finality of judgments had to yield to the necessity of correcting a decision erroneous at the time it was made*[.]"

Nixon v. State, 641 So. 2d 751, 755 n.7 (Miss. 1994) (emphasis added).

McCoy changed how Mississippi courts understand and analyze unwanted confession of guilt claims. Prior to *McCoy*, such claims were viewed under the *Strickland* rubric and confessing guilt could be considered a matter of trial strategy. After *McCoy*, such claims are treated as a matter of client autonomy—*not counsel competency*. When a competent client expressly objects to any confession of guilt, there is no amount of trial strategy that can overcome the constitutional violation. Under *McCoy*, the violation is not subject to a showing of prejudice or the harmless error standard. Prior to *McCoy*, this Court misapplied the issue.

Like the Louisiana Supreme Court in *McCoy*, this Court, including in Crawford's very case, analyzed the issue as a claim for counsel ineffectiveness. *See generally Crawford v. State*, 867 So. 2d 196 (Miss. 2003). That was error. *McCoy* and this Court's recent decision in *Bennett* are both intervening decisions. Under those decisions, Crawford is entitled to a new trial.

Interest of Justice Statutory Exception. Additionally, in accordance with Miss. Code Ann. §99-39-5(1)(e), any person sentenced by a court of record

of the State of Mississippi may move to vacate, set aside, or correct the judgment or sentence if the person claims "that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." This Court previously incorrectly applied a legal standard to Crawford's case. While Crawford need not demonstrate prejudice because the Sixth Amendment violation here is structural, Crawford has shown "material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." These facts include Dr. Lauridson's affidavit that a Ka-Bar knife was not the weapon used; trial counsel's affidavit concerning the unwanted confession of Crawford's guilt; Charles Smith's affidavit concerning, among other issues, the lack of chain of custody of the evidence; and former Sheriff Gowdy's affidavit that there was a knife with what appeared to be blood on it—a knife never disclosed to the defense.

No Statutory Bar Applies. There is no time bar at issue here. "Noticeably absent from this statute is a time limitation in which to file a second or successive application if such application meets one of the statutory exceptions." *Bell v. State*, 66 So. 3d 90, 91-93 (Miss. 2011). The PCR Act grants petitioners the right to file second-in-time petitions in certain circumstances. One of those circumstances is intervening decisions of law. There is no time

limitation in the PCR Act for second-in-time petitions that are based on intervening law.

Similarly, neither the res judicata nor waiver bars apply. Crawford's claims could not have been decided on direct appeal, post-conviction, or federal habeas. In fact, that is the very point of Crawford's claim: *McCoy* is intervening law. By definition, intervening law could not have been previously raised or decided.

There is no dispute that Crawford's constitutional rights were violated. Nor is there any dispute that petitioners like Crawford must have a fair opportunity to vindicate their federal rights. Indeed, even if state procedures are facially "evenhanded," they still "cannot be used as a device to undermine federal law." *Haywood v. Drown,* 556 U.S. 729, 739 (2009); *see also, e.g., Johnson v. Mississippi*, 486 U.S. 578, 587 (1988); *Hathorn v. Lovorn*, 457 U.S. 255, 262- 263 (1982). Here, Crawford's claims are not barred, and a new trial is warranted.

II. A New Trial Is Required Because Counsel Violated Crawford's Constitutional Right to Client Autonomy By Pursuing An Insanity Defense Over Crawford's Objection.

Like whether to plead guilty, waive the right to a jury trial, testify, or appeal a conviction, the decision whether to assert an insanity defense is a fundamental decision over which a criminal defendant must have ultimate authority. It is an essential aspect of "that respect for the individual which is

the lifeblood of the law." *Faretta*, 422 U.S. at 834. "The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense." *Id.* at 819.

In Mississippi, the law has been "unclear" as to whether "an attorney can assert an insanity defense without his client's consent." *McBeath v. State*, 271 So. 3d 579, 585 (Miss. Ct. App. 2018) ("This appears to be an open issue in Mississippi, but most jurisdictions hold that defense counsel may not assert an insanity defense over the objection of a competent defendant. *See, e.g.*, *McLaren v. State*, 407 P.3d 1200, 1212 (Wyo. 2017) (collecting cases)."). *McCoy* answers the previously "open issue" in Mississippi. Counsel cannot impose an insanity defense on a non-consenting, competent defendant. Just as conceding guilt carries the "opprobrium" that a defendant might "wish to avoid, above all else," *McCoy*, *supra*, insanity involves the same opprobrium—especially here where it involved a concession of guilt in a capital murder trial.

McCoy did not involve an insanity defense unwillingly forced on a competent defendant. This is so because, under Louisiana law, counsel may not force an insanity defense on a competent defendant who objects to such a defense. *See* Resp. Br., *McCoy v. Louisiana*, 2017 WL 6524500, at *15 (U.S. 2017) ("McCoy's prior refusal to plead not guilty by reason of insanity limited English's ability to submit evidence regarding a mental defect."); *see also State v. McCoy*, 2014-1449, 218 So. 3d 535, 571 (La. 2016), *rev'd and remanded*, 138

S. Ct. 1500 (2018). The Court's decision in *McCoy* shows why the decision whether to assert an insanity defense is a fundamental decision over which a criminal defendant must have ultimate authority. *State v. Lowenfield*, 495 So. 2d 1245, 1252 (La. 1985) ("It appears beyond argument that when a competent defendant wishes to plead not guilty rather than guilty by reason of insanity, and clearly understands the consequences of his choice, then counsel must acquiesce to the wishes of his competent client").

Not only is pleading insanity the functional equivalent to a guilty plea, but pleading insanity has personal implications even separate from that. That is, the primary reason the insanity defense cannot be imposed on an unwilling defendant is that it directly violates the *McCoy* right to maintain innocence. But even where this concern is absent, the defendant's choice to avoid contradicting his own personal beliefs as well as to avoid the risk of confinement in a mental institution are still present. These considerations go beyond mere trial tactics and so must be left with the defendant.

Public trials are more than exercises in strategic lawyering. *See Gannett Co. v. DePasquale,* 443 U.S. 368, 380 (1979) ("Our cases have uniformly recognized the public trial guarantee as one created for the benefit of the defendant."). And the imposition of an unwanted defense contravenes the very nature of our criminal justice system. Indeed, the insanity defense bears the features of a plea, which may only be entered by the defendant personally or

by counsel with consent from the defendant. *Johnson v. State*, 117 Nev. 153, 163 & n.15, 17 P.3d 1008, 1015 (2001) (citing *ABA Standards for Criminal Justice*, Standard 4-5.2); *State v. Bean*, 171 Vt. 290, 300 (2000); *Treece v. State*, 313 Md. 665, 675, 547 A.2d 1054, 1060 (1988).

Further, unlike other affirmative defenses, a finding of insanity may result in confinement in a mental institution for a period longer than the potential prison sentence. *See generally Jones v. United States*, 463 U.S. 354 (1983) (the length of confinement may exceed the period that the acquittee could have been incarcerated if he had been convicted); Miss. Code Ann. § 99-13-7(1)-(2) ("When any person is indicted for an offense and acquitted on the ground of insanity, the jury rendering the verdict shall state in the verdict that ground and whether the accused has since been restored to his sanity and whether he is dangerous to the community. If the jury certifies that the person is still insane and dangerous, the judge shall order him to be conveyed to and confined in one of the state psychiatric hospitals or institutions. (2) There shall be a presumption of continuing mental illness and dangerousness of the person acquitted on the ground of insanity."); *Johnson*, 117 Nev. at 163; *Treece*, 313 Md. at 677; *Pickering v. State*, 2020 WY 66, 464 P.3d 236, 259 n.17 (Wyo. 2020) ("Mr. Pickering refused to enter a[ ] [not guilty by reason of mental illness] plea, and an NGMI plea may not be entered by counsel over the objection of a defendant.") (citing *McLaren v. State*, 2017 WY 154, ¶¶ 62–63, 407 P.3d 1200,

1215–16 (Wyo. 2017) *overruled on other grounds by Snyder v. State*, 2021 WY 108, ¶ 17, 496 P.3d 1239, 1244 (Wyo. 2021)).

Here, Crawford was found competent to stand trial. Competence to stand trial includes the competence to decide, in consultation with one's attorney, whether to waive fundamental constitutional rights and "whether (and how) to put on a defense and whether to raise one or more affirmative defenses." *Godinez v. Moran*, 509 U.S. 389, 398 (1998). Mississippi Rule of Criminal Procedure 12.2 makes clear that the determination of the defendant's competency to stand trial is separate and distinct from the determination of the defendant's sanity at the time of the offense. The determination that Crawford was competent necessarily included a determination that Crawford was competent to make the decision of whether to pursue an insanity defense.

Crawford's rejection of the insanity defense should have been respected. That it was not caused a violation of Crawford's constitutional right to autonomy, which is a structural error for which no showing of prejudice is required. This claim is statutorily alive for the same reasons as discussed in Section I, *supra*. The only possible remedy for such a structural error is a new trial.

III. Crawford's Sixth Amendment Claims are Structural Errors Not Subject to Harmless Error Review and Prejudice is Presumed; That Said, There are Concrete Examples of Prejudice Here In Any Event.

Even if the violations of Crawford's constitutional rights were not a structural error, prejudice is easy to show. And, here, that prejudice is overwhelming.

a. Crawford's counsel knew both before and during trial that he objected to the pursuit of an insanity defense because he did not want his guilt conceded. That both counsel and the trial court stripped Crawford of his Sixth Amendment and personal autonomy rights and caused a substantial deprivation of Mr. Crawford's liberty is alone prejudice. But there are more, concrete examples too.

b. The insanity defense here was the equivalent of a guilty plea. Because Crawford's counsel refused to present an innocence defense, as Crawford insisted, counsel did not investigate and hired no guilt-phase experts. Thus, the jury heard from Dr. Stephen Hayne (and others) that Mr. Crawford had anally raped Ms. Ray and murdered Ms. Ray with a large U.S. Marine Corp. Ka-Bar knife – a knife Mr. Crawford was known to be carrying.

Indeed, the now discredited Dr. Stephen Hayne performed the decedent's autopsy. Hayne testified that the victim died from a stab wound and the stab wound could have been caused by a Ka-Bar Knife like the one Crawford was

known to possess. Trial Tr. 459-463. Hayne also concluded that the decedent was anally penetrated. Trial Tr. 465-466. Neither of Hayne's conclusions is scientifically valid.

Dr. James Lauridson is nationally-accredited, board-certified forensic pathologist and medical physician. Using the standard dimensions of a Ka-Bar Knife, Dr. Lauridson's conclusion is that "there is no scientific evidence to support Dr. Hayne's conclusion that the U.S. Marine Corps Ka-Bar knife caused the stab wound." Lauridson Aff. ¶¶ 3-6.[8] In addition, Dr. Lauridson opines that "Dr. Hayne lacked sufficient information to support the conclusion of anal penetration and tearing ... The autopsy alone could not indicate such penetration and tearing." Lauridson Aff. ¶ 7.

Because Crawford's counsel conceded his guilt and pursued an unwanted insanity defense against his objections, counsel did not have an expert during the guilt-phase of trial and the cross-examination of Hayne was only one and a half pages.

[8] *See also* Smith Aff. ¶¶ 53-54 (explaining the stab wound appears to be from a very sharp doubled-edged knife and a Ka-Bar has a single sharpened edge: "In Sgt. Wall's initial assessment of the victim, he stated that the stab wound appeared to be that of a 'double edged' instrument. Neither Sgt. Wall nor I are trained pathologists, but I must agree that the stab wound appears to be that of a very sharp double-edged knife, much like that of many hunting/skinning type knife. My assessment is based on years of crime scene investigation of hundreds of stab wounds ... A Ka-Bar knife has a single sharpened edge. It does have a tip, but it is not sharpened. A Ka-Bar is designed as a survival and defensive type weapon.").

c. There is a separate issue concerning the purported murder weapon as well. The Sheriff of Tippah County at the time of the murder was Paul Gowdy. He signed an affidavit saying, "A few days after Kristy Ray's body was found, a camouflage-colored tent was found in the woods. There was food in the tent, and there was a knife. It looked like a hunting knife. There was what looked to be blood on the knife. There were pictures taken of the tent and the knife." Gowdy Aff. ¶¶ 6-7. There is nothing in the record or evidence produced to defense/post-conviction counsel of hunting-style knife—let alone one with blood on it.

d. There is also no chain of custody of key evidence and there is inconsistent testimony as to the evidence. *See generally* Smith Aff. The best example is the clothing that happened to be found by town residents near the crime scene but well after a search of the crime scene had been conducted by law enforcement. Sgt. James Wall prepared a report stating that, a week *after* the victim's body was found, an individual not associated with the police and named Timmy Wilbanks contacted him about finding men's clothing "neatly stacked" close to where the body was found. Sgt. Wall's report states that Mr. Willbanks came to Wall's residence. Wall Report p. 7. Wall states he got Mr. Wilbanks to take him back to the scene and point out where the clothes were located. *Id.*

Contrary to Sgt. Wall's report, Mr. Wilbanks stated that he and other unnamed individuals happened to find men's underwear, long johns, and a t-shirt near the crime scene. Wilbanks further stated that once the clothing items were found, another unidentified male who was with him had some type of a sack in his truck and retrieved the sack. The items of clothing were placed in the sack and then transported to the unnamed man's house. One of the men then called Sgt. Wall and told him what had happened. Sgt. Wall then responded to the unnamed man's home and took charge of the evidence. Trial Tr. 501.

Despite the inconsistent testimony; clothes randomly being found by civilians a full week after the crime scene was searched by law enforcement; and the chain of custody being non-existent, Crawford's counsel did not cross-examine Wilbanks (Trial Tr. 502) or question Sgt. Wall on these issues.[9]

e. In confessing guilt against Crawford's express objections, counsel it rendered Crawford's right against self-incrimination meaningless. For

[9] Charlie Smith's Affidavit (Ex. B) outlines additional issues concerning the chain of custody being non-existent and inconsistent testimony by the government. For example, Sgt. Wall testified that the victim was found with her hands handcuffed behind her (Tr. 636), but the coroner said the victim was found with her hands in front of her (Tr. 438). The photos of when the victim was found do not show the victim handcuffed. Smith Aff. ¶ 7. The victim's body was also "repositioned several times" *while at the crime scene. Id.* ¶¶ 8-10. Further, the crime scene photos show the victim in various states of clothing *while still at the crime scene. Id.* ¶¶ 8-11. *See also* Collective Exhibit of Photographs, Ex. K. Exhibit K are photographs that were not entered as exhibits during trial (nor were they in trial counsel's file; they were recently found by Crawford's counsel at the Tippah County Sheriff's Office). The additional exhibits referenced in Smith's Affidavit were exhibits entered in evidence at trial, and they are referenced by their trial exhibit numbers.

example, the right to remain silent is a decision to be made in the unfettered exercise of a defendant's own will. Here, trial counsel acted as appointed agent—but contrary to his will—and incriminated him. The only way Crawford could have overcome counsel's incrimination would have been to testify himself—against his right not to testify—and proclaim his innocence and essentially say his lawyers are lying.

f. Crawford's due process rights were also gutted. The "right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi,* 410 U.S. 284, 294 (1973). Crawford was denied that "fair opportunity." Trial counsel eviscerated Crawford's due process rights to hold the prosecution to its burden of proof.

g. Per the Sixth Amendment, a defendant has the right to have compulsory process for obtaining witnesses in his favor. The prosecutor has the power to compel witnesses to attend by using the police system at the government's disposal. The Sixth Amendment levels the playing field by allowing this same ability to the Defendant. *Washington v. Texas*, 388 U.S. 14 (1967). Here, Crawford asked trial counsel to investigate and obtain the

necessary experts (e.g., to challenge the DNA, autopsy findings).[10] Trial counsel did none of this.

h. Crawford's right to confront his accusers was also violated when counsel confessed his guilt and pursued an insanity defense over his objections. Trial counsel conceded, even as early as jury selection, that the defense was not going to challenge the prosecution's case as to guilt. Thus, even when counsel asked the few questions they did ask on cross-examination, counsel already had diminished Crawford's right to confront his accusers and contest the prosecution's case.

i. Next, Crawford was prejudiced by the prejudicial evidence introduced because of the pursuit of the unwanted insanity defense. "When the defense is insanity, either general or partial, *the door is thrown wide open for the admission of evidence of every act in the accused's life relevant to the issue of insanity and is admissible in evidence.* The trial court is to be liberal in allowing the introduction of evidence or examination of witnesses which tends to show the insanity or sanity of the accused." *McLeod v. State,* 317 So. 2d 389, 391 (Miss. 1975) (emphasis added); *see also, e.g., Riles v. McCotter,* 799 F.2d 947, 953–54 (5th Cir. 1986) ("By pursuing this avenue of defense ... Riles

[10] Prior to Crawford's trial, the Mississippi Supreme Court had held that it is "imperative that no defendant have [DNA] evidence admitted against him without the benefit of an independent expert witness to evaluate the data on his behalf." *Polk v. State,* 612 So. 2d 381, 393, Appendix A (Miss. 1992). Crawford's counsel did not obtain such an expert.

opened the door to the state's evidence and waived his Fifth Amendment privilege against self-incrimination."); *Amero v. Dir.*, No. 2:19-CV-195-Z-BR, 2021 WL 4393154, at *13 (N.D. Tex. Aug. 24, 2021), *report and recommendation adopted sub nom. Amero v. Dir.*, No. 2:19-CV-195-Z-BR, 2021 WL 4391647 (N.D. Tex. Sept. 24, 2021) (explaining that "raising an insanity defense could very well have opened the door to a plethora of problems for Amero."); *Crawford v. Lee*, No. 3:17-CV-105-SA-DAS, 2020 WL 5806889, at *16 (N.D. Miss. Sept. 29, 2020) ("With the presentation of any insanity defense, prejudicial evidence is practically unavoidable.").

There are at least two primary instances of prejudicial evidence here that was introduced at trial due to the unconstitutional pursuit of an insanity defense over Crawford's objection.

One: In federal habeas, the district court and the Fifth Circuit already concluded that Mr. Crawford was subjected to a psychiatric evaluation without the benefit of counsel in violation of the Sixth Amendment. As the Fifth Circuit found, in choosing to pursue an insanity defense, Crawford "made the 'significant decision' regarding the psychiatric evaluation, and cannot complain that he was denied the effective assistance of counsel prior to the examination because he was unable to consult with his attorney as to whether to submit to a psychiatric examination." *Crawford,* 531 F. App'x. at 521 (quoting *Vardas v. Estelle,* 715 F.2d 206, 211 (5th Cir.1983).

Two: During Mr. Crawford's capital murder trial, inflammatory and unsubstantiated prior bad acts were introduced. This Court in post-conviction review as well as the federal habeas court considered the fact that such prejudicial information was introduced. But both this Court and the federal habeas court held that the prosecution could use otherwise inadmissible "past criminal history" because Mr. Crawford's counsel invoked the "insanity defense." *Crawford v. Epps*, 3:04CV59-SA, 2008 WL 4419347, at *39 (N.D. Miss. Sept. 25, 2008), *vacated in part,* 353 F. App'x 977 (5th Cir. 2009).

That insanity defense should not – and constitutionally could not – have been asserted over Crawford's objections. That the jury heard inflammatory, inadmissible evidence due to the assertion of an unconstitutional insanity defense is another example of the overwhelming prejudice here.

IV. Crawford's Rights Under *Brady v. Maryland* Were Violated When the State Withheld Evidence of the Location of a Separate Knife Near the Crime Scene.

The former Sheriff of Tippah County has signed an affidavit that a hunting style knife was found near the crime scene with what appeared to blood on the knife. Neither that piece of evidence nor the discovery of such a piece of evidence is anywhere in the record. Further, there is no evidence that Crawford was ever found in possession of any knife (or other weapon for that matter) that was found with what appeared to be blood on it. The Sheriff's affidavit also maintains that photos of such a knife and the location where it

was found were taken. There are no such photos in defense counsel's record. All of this violates Crawford's due process rights. *Brady v. Maryland,* 373 U.S. 83 (1963).

The State violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment. *See Manning v. State,* 158 So. 3d 302, 305 (Miss. 2015). This includes evidence of impeachment. *Smith v. Cain*, 565 U.S. 73, 76 (2012); *Napue v. Illinois,* 360 U.S. 264, 269 (1959) ("The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness."); *Floyd v. Vannoy*, 894 F.3d 143, 163 (5th Cir. 2018) ("[E]vidence impeaching a prosecution witness is favorable *Brady* evidence."); *Arango v. State*, 497 So. 2d 1161, 1161 (Fla. 1986) (prima facie case of a Brady violation due to the suppression of a weapon).

Here, prosecution witnesses labeled the murder weapon as the type of Ka-Bar knife Crawford was known to carry. No traces of blood or tissue were found on the Ka-Bar knife. Now, however, the former Sheriff has sworn in an affidavit that, during the investigation, there was another hunting style knife found in a tent near the crime scene and that knife had what appeared to be

blood on it. Prosecution witnesses could and should have been impeached with evidence of the existence of another knife.

V. Reservation of Right to Amend/Supplement Post-Conviction Petition When Counsel Receives Information/Documents Requested from the FBI.

Crawford has requested documents from the FBI through both the Freedom of Information Act (FOIA) and the Privacy Act (FOIPA). Crawford received documents from his FOIA/FOIPA request, but it did not appear to be a complete file and most documents were redacted. Crawford appealed and was successful (Appeal No. 1525624-001). Crawford then received additional documents, but information was redacted that had not previously been redacted. After that, Crawford submitted an additional FBI request. Crawford also submitted a narrower request in hopes of receiving responsive documents sooner rather than later. (Crawford has expedited his requests with the FBI). In his latter request, Crawford seeks to have three FBI crime scene photos unredacted and a letter unredacted concerning "entrapment." *See* Photos/Letter, Ex. L. Crawford reserves the right to amend and/or supplement this Petition once counsel receives relevant responses from the FBI.

CONCLUSION

Charles Crawford's constitutional rights to make the most fundamental choices regarding whether, and how, to defend his life and liberty were violated when counsel admitted his guilt and pursued an unwanted insanity defense

over Crawford's timely and repeated objections. Post-conviction relief is proper, and Crawford's conviction and sentence should be vacated.

Respectfully submitted, this the 12th day of December 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that I have on this day caused the foregoing to be filed using the MEC system, which sent notice to all counsel of record, including:

Ashley Sulser
Office of the Attorney General
P.O. Box. 220
Jackson, MS 39205

Dated: December 12, 2024.

/s/ *S. Beth Windham*
S. BETH WINDHAM

Exhibit Label	Exhibit Description
A.	Affidavit of David Bell (2021)
B.	Affidavit of Charles Smith (2023)
C.	Affidavit of James R. Lauridson, MD (2021)
D.	Affidavit of David Paul Gowdy (2022)
E.	Report by Master Sergeant James Wall
F.	March 1994 letter from Charles Crawford to Counsel
G.	Randy Fortier transcript
H.	Order for Psychiatric Examination
I.	Tippah County General Docket
J.	Four (4) Page letter from Charles Crawford to Counsel
K.	Collective Photographs
L.	Redacted FBI FOIA Photos and Letter
M.	Collective Trial Transcript
N.	Verification signed by Charles Crawford