

Name of Applicant or Applicant's Representative: David Crawford.

Contact Information: dcraw090669@gmail.com; 415 264 9355

Name of Defendant: David Crawford

Court Docket Number: 19-SM-013902-A

Date of Conviction: 3/12/2020

Conviction Offense: PC245, PC273.5

Defense Attorney: Charles Smith (trial)

Describe Applicant's claim of innocence?

Ms. Capri (accuser) fabricated the charges that she was strangled by Mr. Crawford on 15 September 2019 four weeks after confronting him at a Palo Alto restaurant with a female client and consultation with divorce attorneys. She was motivated by a desire for custody and financial leverage in the subsequent divorce. Ms Capri then:

- Filed a false report with the Atherton Police (20 September 2019)
- Provided false testimony of a "strangling" under oath before a jury (4 March 2020)
- Conspired with her best friend (Ms. McGill) to provide false corroborating testimony of a strangling before a jury (5 March 2020)
- Provided false written documents to law enforcement for use in a jury trial of a text to her therapist describing a strangling
- Testified to the authenticity of text to her therapist before a jury (4 March 2020)

Mr. Crawford (applicant) does not dispute that the couple argued that morning. He has consistently told both police and the jury that Ms. Capri became furious when he announced he was leaving the home on Sunday morning, accused him of "going to see her", and slapped and scratched him. He defended himself and walked away. As he shielded his face to repel her attack, Ms. Capri dug her fingernails into his left arm leaving a scratch observed and photographed by police 5 days later.

Post-conviction evidence demonstrates Mr. Crawford's actual innocence by showing:

- 1) WhatsApp messages in which Ms. Capri and her best friend, Ms. McGill acknowledge to one another that no strangling occurred days before going to police and alleging a strangling.
- 2) Ms. Capri's actual texts exchanged with her therapist showing the text she provided to law enforcement and alleged she sent to her therapist was never received, and contradicts the actual texts sent before and after it.
- 3) Ms. Capri's phone and text records from AT&T confirm no record of a text to her therapist describing a strangling was ever sent.

TRIAL CONTEXT

- The trial was he-said, she-said. There were no witnesses. Capri had no injuries. Crawford had a 6-inch scratch on his left arm. Neither party sought medical care. Capri admits she “did email” for 35 minutes after the incident. No prior incidents were alleged at trial or subsequent incidents since trial.
- At trial, Ms. Capri sought to corroborate her story in two ways:
 1. Best Friend Testimony: Ms. McGill testified that Ms. Capri called her within a half hour and “definitely she told me that he put his hands around her neck and choked her”
 2. Therapist Text: Capri provided a text to DDA Martin that she alleged she sent to Dr. Beth Gorney (the couple’s therapist) describing the alleged strangling.
- With the apparently powerful corroborating evidence in items 1 and 2 above, the Jury nevertheless deliberated for 11.5 hours over three days, declared themselves deadlocked twice, and ultimately rendered a split verdict.

CASE NO. 19SM13902A

JURY INQUIRY

Date: 3/11 Time: 2:26 Inquiry No. 6

Juror's Number: _____

Question/Request: We seem to be hopelessly ~~split~~^{divided} on all three counts with little hope of converging. We have been trying to listen to each other's views but can't convince each other otherwise.

Court's Response: _____

- The jury converged 7 minutes after declaring themselves deadlocked a third time and being told by Judge Leeland Davis that if they did not converge, they would need to restart deliberations with a new juror in the following week at the cusp of COVID (Gavin Newsom declared a state of emergency 4 days earlier). EXHIBIT C in attached Writ of Habeas Corpus
- Judge Leeland Davis rebuked Ms. Capri’s divorce counsel (Charli Hoffman) on the record in March 2020 for “trying to sabotage this trial” by leaking evidence during the trial from a body of evidence Ms. Capri had refused to produce.

4 What is troubling to the Court is what appears
5 to be an effort on the part of Renee's team of attorneys
6 to somehow sabotage this proceeding. And it's extremely
7 troubling to the Court. This is information which clearly
8 those attorneys had before we began the trial, which
9 clearly could have been produced prior to the trial, but
10 for some reason was not, and only is being produced
11 because somehow they believe that it furthers their
12 purposes. And it is not a game that this Court tolerates
13 or thinks is ethical.

14 I've asked counsel to brief this issue. I will
15 take it under submission. But, Mr. Martin, please let
16 Renee's team of attorneys know that this Court does not
17 appreciate their tactics --

- Judge Leeland Davis commented on the record at Crawford's sentencing hearing in September 2020 that the case "troubled him" and that "everything was done with an eye toward the family law case where based on everything this court has reviewed, young, innocent, impressionable children are being used as pawns" and "this is offensive to the court".

14 What's troubling to me here is that this Court
15 gets the sense -- and it's through no fault of either of
16 the attorneys that are handling this particular case --
17 but it's clear to this Court that nothing this Court does
18 here is about this case. That everything that has
19 transpired during the course of this case was done with an
20 eye towards the family law case where based upon what this
21 Court has reviewed young, innocent, impressionable
22 children are being used as pawns, and that is offensive to
23 this Court.
24 And that is why I am struggling here with what
25 is the appropriate avenue to travel because I do not want
26 anything that this Court does to be used in any way,

What proof exists to support Applicant's claim of innocence?

POST CONVICTION EVIDENCE

1. *EXHIBIT D in attached Writ of Habeas Corpus: Hundreds of WhatsApp Messages between Ms. Capri and Ms. McGill from 17-18 September of 2019 (2-3 days after the alleged strangling, 2-3 days before filing a police report, and 4 months before testifying before the jury).*
 - Capri and McGill refer to the incident as “verbal abuse” and “threatening to strangle” – demonstrating actual innocence of the strangling charge underpinning Crawford’s PC245, PC273.5 convictions and directly contradicting McGill and Capri’s trial testimony 4 months later that “definitely, she said he put his hands around her neck and choked her” and Capri’s testimony of the same.

You are setting an excellent example for her

9/17/2019 9:30:36 AM(UTC-7)

That woman are strong. And verbal abuse is not ok

9/17/2019 9:30:57 AM(UTC-7)

You have been abused for years

9/18/2019 7:37:41 AM(UTC-7)

And now he has added physical abuse on top of it

9/18/2019 7:38:08 AM(UTC-7)

And the worst kind with threatening to strangle you

9/18/2019 7:38:32 AM(UTC-7)

- Capri discusses a plan to “irritate him” to “to get him back into a relationship with her”- revealing a lack of fear not consistent with someone brutally strangled 2 days earlier (At this time, Ms. Capri was still cohabitating with Mr. Crawford.) The texts also demonstrate Capri was suspicious of infidelity (consistent with Crawford’s explanation) and actively cultivating pathways to gain advantage in the divorce (consistent with Judge Davis’ suspicions).

I kind of want to irritate him just enough to get back in a relationship with Chelsea but not enough to make him angry

9/17/2019 9:33:06 AM(UTC-7)

And then be all nice and tell him that it’ll be our secret and we won’t tell the kids about her

9/17/2019 9:33:37 AM(UTC-7)

- Capri and McGill share a Huffington Post article titled, “11 Subtle Signs You Might be in an Emotionally Abusive Relationship”. If brutally strangled, Capri would not need “subtle signs” to assess whether her relationship was abusive.

Really good article

9/17/2019 10:51:40 PM(UTC-7)

https://www.huffpost.com/entry/signs-of-emotional-abuse-relationship_n_5a999fbee4b0a0ba4ad31a4d/amp
11 Subtle Signs You Might Be In An Emotionally Abusive Relationship
Don't let these warning signs fly under the radar.

www
huffpost
com
entry
signs-of-emotional-abuse-relationship_n_5a999fbee4b0a0ba4ad31a4d
www
huffpost
com
entry
signs-of-emotional-abuse-relationship_n_5a999fbee4b0a0ba4ad31a4d
amp

9/17/2019 10:52:39 PM(UTC-7)

- Capri and McGill discuss hiring a “CIA guy” to “track dav” and “catch him with her”. If Capri had been brutally strangled just two days earlier, she would not have been concerned with complex schemes to demonstrate infidelity. Instead, this exchange reveals her true motive and a conspiracy between Capri and her best friend Ms. McGill. Ms. Capri denied under oath that her suspicions of infidelity had anything to do with her allegations.

I wonder if after I made the CIA guy we can get him to track dav and catch him with her

9/17/2019 9:23:58 AM(UTC-7)

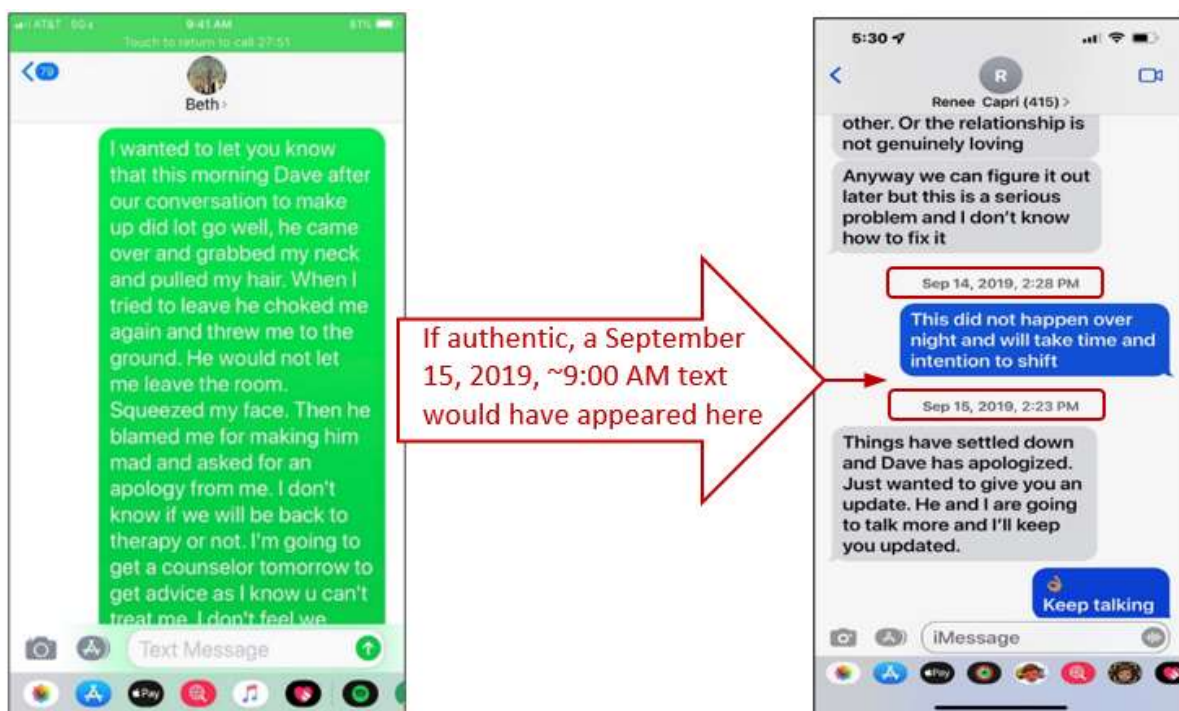
Yeah baby.

9/17/2019 9:24:13 AM(UTC-7)

Do it

9/17/2019 9:24:16 AM(UTC-7)

2. *Exhibit F in attached Writ of Habeas Corpus: Copies of all text messages between Ms. Capri and Dr. Beth Gorney (couple's therapist) on the day before and day of the alleged strangling.* These demonstrate:
 - Dr. Gorney never received a text describing a “strangling” that Ms. Capri alleged she sent to Dr. Gorney, provided to DDA Josh Martin, and testified before the jury she sent to Dr. Gorney.



Text Renee alleged she sent to Dr. Gorney on 9/15 at ~9:00 a.m.
(Provided by Ms. Capri on 12/2/2019)

Texts Renee actually exchanged with Dr. Gorney on 9/14 and 9/15/2019
(Provided by Dr. Gorney post-conviction)

- Texts before and after the alleged text contradict the alleged text – in message and tone.
 - i. Capri’s alleged text describes a brutal strangling. The actual text sent in the afternoon promises “He and I are going to talk more”.
 - ii. Capri’s alleged text ends the therapeutic relationship with Dr. Gorney – “I know you can’t treat me”. The actual text sent in the afternoon promises “I’ll keep you updated.”
 - Texts before and after the alleged text fit together in tone and message (the full lengthy context of 9/14 texts between Capri and Dr. Gorney are included as Exhibit F in the Attached Writ of Habeas Corpus.)
 - i. The day-before texts recount verbal argument about tutoring children
 - ii. The four-hours-after text updates the therapist that the couple had made up and were resolving their problems.
3. Exhibit P in the attached Writ of Habeas Corpus: Capri phone records from September 2019. These demonstrate:

- Ms. Capri never sent the alleged text describing a “strangling” that Ms. Capri provided to DDA Josh Martin, alleged she sent to the therapist, and testified before the jury she sent to Dr. Gorney.

How the post-conviction evidence was produced: Production of the post-conviction evidence was blocked by DDA Martin and Ms. Capri during the criminal trial on the grounds that Ms. Capri was not a party to the matter and doctor-patient privilege. During the trailing divorce, Ms. Capri sought to expand her charges for economic and custody leverage. To defend himself, Mr. Crawford sought and was granted discovery. Ms. Capri and McGill deleted ~10,000 items of known evidence in violation of restraining orders leaving the items described above.

PRE-CONVICTION EVIDENCE

1. Brandee Krzanich Testimony: Ms. Krzanich testified at trial that Ms. Capri told her, “I have a noose around his neck” and “It’s a formula. The more time I get with the kids, the more money I get”

18 Q And what was the conversation about custody that
19 you were having with her?

20 A I was trying to explain to her that in any
21 divorce situation, 100 percent custody was not going to be
22 reasonable, and that she had to come up with something
23 reasonable and keep the kids in mind because 100 percent
24 was just not -- not reasonable. And she said -- that's
25 when she freaked out and said, "I have a noose around his
26 neck." And I ended the conversation because I never -- I
1 was so uncomfortable.

2 Q And when you say you ended the conversation,
3 literally you told her you can't talk anymore and hung up?

4 A Yes. Yes, absolutely. And my husband is, like,
5 "Get off the phone," because I was horrified.

6 THE COURT: Next question.

7 MR. SMITH: Okay.

1 A Probably three days before. And I was driving
2 home on Alpine, and that's when she said, "It's just a
3 calculation. It's a quick divorce. If I get 100 percent
4 custody, it's a calculation of how much I get."
5 And we -- I'd been trying to explain to her that
6 100 percent was not --
7 Q And did she indicate that she, at least in her
8 own mind, believed she would get more money if she got
9 100 percent custody?
10 MR. MARTIN: Objection; leading.
11 THE COURT: Sustained.
12 Q BY MR. SMITH: What did she say, other than what
13 you've already told us, about the financial impact of
14 getting full custody?
15 A She said, "It's a formula. It's a calculation.
16 The more time I have the kids, the more money I get."

2. Scratch on Crawford's arm: Police photographed a 6-inch scratch on Crawford's arm. This directly contradicts Ms. Capri's testimony that she never touched Crawford but instead "went limp and waited" when attacked.



Has Applicant submitted the same or a similar claim of innocence to any other organization? If so, please list:

- **No.** Mr. Crawford pursued a Habeas Petition based on ineffective assistance of counsel and new evidence, but no claim of actual innocence has been made to date.
- **Pending: 1473 Motion to Vacate:** via Clifford Gardner and Edward Swanson – Mr. Crawford will reluctantly commence preparation of this filing after receiving no ruling from San Mateo County Superior Court on his 1203.4 Petition for Dismissal filed on 9 September 2024.
- **Pending: Federal Writ of Habeas Corpus** Filing for violations of 6th and 14th amendment

Did the underlying case involve DNA evidence? If so, please describe:

No

