

IN THE SUPREME COURT OF THE
STATE OF LOUISIANA

No. 2014-KA-2153

SUPREME COURT
OF LOUISIANA

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CLERK
OF COURT

STATE OF LOUISIANA, *Plaintiff-Appellee*

v.

RODRICUS CRAWFORD, *Defendant-Appellant*.

Appeal from Conviction and Death Sentence Imposed
In the First Judicial District, the Parish of Caddo,
No. 304,048, Hon. Joseph Bleich, Presiding.

RULE XXVIII MOTION TO REMAND

COMES NOW, Appellant Rodricus Crawford, through counsel, and moves this Court, pursuant to the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; Article I, §§ 1, 2, 3, 12, 13, 16, 17, 19, 20, 22, and 24 of the Louisiana Constitution; articles 905.9 and 917 of the Louisiana Code of Criminal Procedure; Louisiana Supreme Court Rule XXVIII; and all other applicable law, to remand this case to the district court for development of additional facts. In support of this motion, counsel states as follows:

1. The record in the above-captioned case lodged with this Court on October 17, 2014. On November 14, 2014, undersigned counsel filed a *Motion to Remand for an Evidentiary Hearing to Determine Whether a Capital Crime Actually Occurred*. The motion asked this Court to remand Mr. Crawford's case for an evidentiary hearing on Mr. Crawford's *Second Motion for New Trial*, which contained significant newly-discovered evidence that Mr. Crawford is actually innocent, and was filed within the one-year prescriptive period of La. C.Cr. P. art. 853(B).

2. Attached as exhibits to the *Second Motion for New Trial* were reports from multiple forensic pathologists, a pediatric neuropathologist, a pediatric neurologist, and an expert in pediatric infectious diseases. These reports established that several aspects of the testimony of the State's principal witness at trial regarding the cause of death were either misleading or false. Specifically, the only evidence of homicide was the medical evidence offered by Dr. Traylor. Dr. Traylor based his conclusions on four medical findings: cerebral edema, contusions on the lips, petechiae of the thymus, and two small scratches on the nose. In his testimony, Dr. Traylor conceded that petechia on the thymus was not an indicator of suffocation. Further, Dr. Traylor

acknowledged that the scratches on and below the nose of Roderius Lott could have been caused by any number of things wholly unrelated to death by smothering. Dr. Traylor relied upon the presence of cerebral edema as a side effect of smothering and the injuries to the lips as proof of a smothering type injury at the time of death.

3. The newly-discovered evidence established that cerebral edema is *inconsistent* with the State's smothering theory and, in fact, points to a separate cause of cerebral edema dating hours or days before the death. This cerebral edema is consistent with pneumonia.

4. The newly-discovered evidence also established that Dr. Traylor could have, but chose not to, take a tissue sample from the inside of the deceased's lips for microscopic analysis. Had a microscopic analysis been taken, it could have conclusively shown whether the lip injury was incurred the day before, as claimed by Mr. Crawford and the child's mother, or whether it occurred at the time of death, as claimed by Dr. Traylor.

5. The reports by numerous experts in the field attached to *the Second Motion for New Trial* indicate that the medical evidence does not support and, in fact, contradicts a finding of homicidal asphyxia.

6. This Court denied the *Motion to Remand* on March 16, 2015.

7. In the time following the filing of the *Motion to Remand* and the *Second Motion for New Trial*, more evidence has amassed against Dr. Traylor's opinion that the death was due to homicidal smothering.

8. Dr. Jeffery Kahn, a pediatric infectious disease specialist at the University of Texas Southwestern Medical Center, reviewed the case materials and concluded that "the facts presented in this case are entirely consistent with an overwhelming *Streptococcus pneumoniae* infection which, tragically, resulted in the death of this child." He further explained that pneumonia in young children can develop over the course of just a few hours and can result in death. During the initial stages, however, the seriousness of the infection may not necessarily be apparent to the child's caretaker. Dr. Kahn noted that the skin lesions may have been caused by the streptococcal infection and misidentified by individuals who did not have experience with streptococcal infections. *Exhibit A*.

9. Dr. Philip Fernsten, a bacterial immunologist who contributed to the development of the Prevnar pneumococcal vaccine in the 1990s, stated by affidavit that Dr. Traylor's testimony was false in several respects with regard to the vaccine and mechanisms of the disease.

Significantly, Dr. Traylor testified that Roderius was “given appropriate immunizations” and in order for him to have had pneumococcal pneumonia, the “vaccine would have had to have been bad.” According to Dr. Fernsten, one dose of Prevnar-13, given at a time when the child was ill, would not have been protected against pneumonia or sepsis caused either by *Streptococcus pneumoniae* or by a number of other pathogenic bacteria that cause these life-threatening infections in young children. Exhibit B.

10. Dr. Thomas Young, an expert forensic pathologist and former Medical Examiner of several counties in Missouri, submitted a report finding that “[t]he photographs of the child’s lips in this case do not demonstrate a pattern of injury that would fit smothering as a diagnosis.” He found that a bacterial infection in the blood can lead to sudden, unexpected death in young infants and young children. Dr. Young concluded that “it is not reasonable for anyone to surmise ‘asphyxia secondary to smothering’ as a cause of death from autopsy findings, particularly when the autopsy findings point to a more likely cause: an overwhelming bacterial infection.” *Exhibit C*.

11. This Court’s Rule XXVIII provides that this Court may “remand for the development of facts relating to whether the sentence is excessive.” This Court has done so in several cases. For example, in *State v. Smith*, the Uniform Capital Sentencing Report revealed discrepancies between the testimony at trial and the statements of witnesses interviewed by Probation and Parole officers. 400 So.2d 587, 593 (La. 1981). These discrepancies concerned “(1) whether the victim left the group of boys prior to the murder; and (2) whether any verbal encounters occurred between the victim and his companions and the defendant and his companion.” *Id.* This Court remanded for a hearing to resolve these discrepancies, noting that: “This procedure is necessitated by the unique severity of the penalty involved in this case and by the fact that the jury’s determination to impose death is based upon a single aggravating circumstance.” *Id.* at 594. Remand would also allow, to the extent agreed upon by the parties, an alternate negotiated resolution of the case.

12. This Court has also noted that the motive underlying a Rule XXXVIII remand may be the “avoidance of a future postconviction application challenging the effectiveness of counsel.” *State v. Williams*, 480 So.2d 721, 727 (La. 1985) (citing to *State v. Fuller*, 454 So.2d 119 (La.1984) (remanding under Rule XXXVIII where counsel did not submit any mitigating

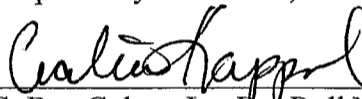
evidence at the penalty phase)). “A promptly conducted hearing is the most expeditious means of making such a determination.” *Id.*

13. In this case, the jury found as aggravating circumstances that the victim was under the age of twelve, and that the offender was engaged in the perpetration or attempted perpetration of second degree cruelty to juveniles. R. 530. The critical issue at trial, and on appeal, is whether Roderius Lott died as a result of natural causes, or whether he died as a result of homicidal smothering. The resolution of this issue would necessarily impact the excessiveness of the sentence imposed. This Court should remand to resolve the discrepancies between the State’s trial expert testimony and the newly-discovered evidence regarding the cause of death.

CONCLUSION

14. WHEREFORE, Mr. Crawford respectfully requests that this Court grant Mr. Crawford’s request to remand for factual development under this Court’s Rule XXVIII, § 5.

Respectfully Submitted,



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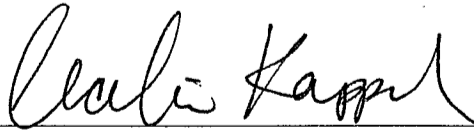
Counsel for Rodricus Crawford

CERTIFICATE OF SERVICE

I hereby certify that this document was sent by first class mail, postage pre-paid, or delivered by hand, upon:

Tommy Johnson, Assistant District Attorney
Caddo Parish District Attorney’s Office
525 Marshall St.
Shreveport, Louisiana 71101

on this 10th day of August, 2016.



Cecelia Trenticosta Kappel

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ORDER

Considering the foregoing, it is HEREBY ORDERED that Mr. Crawford's motion to remand the matter for the development of facts relating to whether the sentence is excessive is HEREBY GRANTED. The district court is ordered to hold an evidentiary hearing to resolve the issues identified in Mr. Crawford's *Second Motion for New Trial* and *Motion for Remand and Exhibits*.

Signed, this ___ day of _____, 20__.

Justice, Louisiana Supreme Court