

MARK CRAWFORD 76603-079
Federal Correctional Institution
Box 4050
Pollock, Louisiana 71467

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff,

VS.

MARK CRAWFORD,

Defendant,

CASE No. _____

REQUEST TO FILE
SECOND OR SUCCESSIVE
MOTION PURSUANT TO
28 U.S.C. 2255.

(28 U.S.C. §2255(h))

INTRODUCTION

Newly discovered evidence affirms that Mark Crawford, a former two-time Mayor of Ingleside Texas, was convicted of a murder *he did not commit*. Ironically, Mr. Crawford was tried not once, not twice, but three times for this murder. The first trial ended in a hung jury, the second trial an acquittal, and the third a conviction. How? It's simple really; as the totality of the evidence now shows, Mark Crawford was *framed*.

In addition, facts and evidence in this case indicate that Bill May, Mr. Crawford's trial counsel, sabotaged Mr. Crawford's Federal trial to conceal over **one million dollars** worth of fraudulent bank loans that a corrupt banker, an associate of Mr. May's, had taken out in the name of Mr. Crawford without Crawford's knowledge. This is the story of Mr. Crawford's *actual innocence*...

On a hot Texas Summer day, May 6, 1996 to be exact, Nick Brueggen was murdered. Most of the people familiar with this case will agree to that fact. The government alleges that Mr. Crawford orchestrated this murder because he had learned that Nick Brueggen was a federal informant and was going to go to the authorities with evidence of white-collar crimes perpetrated by Crawford and various associates. This theory comes from the statements of the government's key witness, and potentially the actual murderer, Michael Glenn Beckcom. In return for his testimony, Beckcom received ten years and Mr. Crawford received a life sentence and twenty years.

THE GOVERNMENT'S STORY

Michael Beckcom, the government's key witness in the case and the only person providing testimony that Mr. Crawford was involved in the murder of Nick Brueggen, testified in the federal trial that he and a man named Kurt Johnson¹ had picked up Nick Brueggen at the Corpus Christi Airport at approximately 10:30

¹ Kurt Johnson testified in the two State trials and tried to tell a story similar to Beckcom's with the exception of numerous discrepancies that caused problems for the prosecution. These inconsistencies, include the following: (1) Johnson and Beckcom claim that they went to the airport about 10:30 a.m., Johnson stated that, while waiting at the airport for Brueggen, Beckcom had his shoes shined and that he (Johnson) purchased a magazine from a small gift shop at the Corpus Christi Airport. As proof of his claim, Johnson gave this magazine to the police. In the State trial the defense (May) proved that the magazine at issue is not available at the airport, never has been, (2) At the state trial Johnson testified that he didn't really know Crawford prior to the murder; (3) Johnson originally stated in his initial statements to the police that Crawford was a "Big Guy". Mr. Crawford is five foot nine inches tall and weighs one hundred and sixty-five pounds; Mr. Johnson is five- eleven and one hundred and ninety-five pounds, and is an avid body builder. Mr. Crawford is not a big man compared to Mr. Johnson (or Beckcom for that matter)—this fact tends to demonstrate that Kurt Johnson did not spend the day committing a murder with Mark Crawford; (4) In the State trial, Johnson claimed that while left alone to guard Mr. Brueggen (who according to Johnson and Beckcom was, at that moment, alive and in the tool box with his hands cuffed behind his back), he (Johnson) felt guilty and let Brueggen out of the box, removed the handcuffs from behind Brueggen's back, and handcuffed him in front. *Note: Nick Brueggen was in excellent physical condition and was a black belt in martial arts who often fought in martial-art competitions. Had Johnson removed Brueggen's cuffs, Brueggen would have disabled Johnson immediately. In the state trial Johnson testified that he had never been to any of Mark Crawford's offices. This fact is relevant because in the federal trial, Johnson was indicted as a codefendant, and did not testify. The federal prosecutor took full advantage of this and put on three of Mr. Crawford's former employees who falsely identified Johnson as someone they had seen at Crawford's office.*

a.m. on May 6, 1996, and had taken the victim to a warehouse on Jacoby Lane in nearby Rockport, Texas. Mark Crawford owned the warehouse. According to Mike Beckcom, Mark Crawford was driving his Red two-door Mercedes convertible that day.² If Beckcom's story is to be believed, Crawford was waiting at the warehouse when he and Johnson arrived with Brueggen (*the deceased*), and, at that time, Crawford forced Brueggen into a large metal toolbox at gunpoint.

As Beckcom's tale unfolded, he claimed Johnson was left to guard Brueggen while he and Crawford met an associate at a restaurant. After returning to the warehouse Beckcom claims that the three of them, Beckcom, Crawford and Johnson, left Brueggen unattended in the box and drove Beckcom's truck to Wal-Mart (*leaving the Red Mercedes parked in front of the warehouse*) to purchase items needed to execute Brueggen in a makeshift gas chamber (*the toolbox*). According to Beckcom, he, Crawford, and Johnson went inside the Wal-Mart and purchased a garden hose, duct tape, and a pair of bolt cutters because they had to

² Numerous witnesses testified at the two State trials that there was no Red Mercedes parked in front of the building on May 6, 1996. These witnesses include: (1) Mr. Weekly, a hostile witness who worked from his home as a gunsmith for law enforcement. Mr. Weekly lived directly across the street from the Jacoby Lane warehouse where the murder allegedly occurred and he had a direct view of the building. In the first State trial he testified he would have recognized Crawford had he been at the building, he specifically recalled seeing Beckcom's Red Ford Explorer and a White Oldsmobile but failed to remember seeing Crawford's Red Mercedes convertible, and that he observed a Satellite dish delivered to the building. Crawford had claimed that the hole that the body was eventually found in was dug in order to pour a foundation for a satellite dish. By the second State trial Mr. Weekly had passed away but his testimony from the first trial was admitted as an unavailable witness. Mr. May did not make any effort to introduce this testimony at the federal trial; (2) Officer Gonzalez was a police officer who testified at the State trial. He had written a traffic citation in front of the building at the exact moment the murder was allegedly taking place (according to Beckcom). In light of him being an eyewitness to critical evidence officer Gonzalez was placed under hypnosis by the state, the result, he did not see a Red Mercedes at the building that day; (3) Todd Houston, who worked for the naval air base testified during the State murder trials that he visited with Mark Crawford at the TNT grocery store that Mr. Crawford owned. According to Mr. Houston, this visit took place during the period of time that Beckcom claims Crawford was engaging in murder. Further, Mr. Houston testified that Mr. Crawford was not driving his Mercedes that day. This witness was not produced in federal court by Mr. May.

cut the pad lock on the overhead door of the shop/warehouse in order to get his S.U.V. inside.³

Beckcom claimed that when they returned to the warehouse (*a time that would have been approximately 5:00 p.m. based on the Wal-Mart receipt*) they cut the lock, put his (*Beckcom's*) Ford Explorer inside the shop, taped one end of the garden hose to the tailpipe of Beckcom's Ford Explorer, the other end to a hole in the toolbox, and then proceeded to tape over any other holes or gaps in the box. With the motor running, Beckcom said that he, Mark Crawford, and Kurt Johnson went outside to make small talk during Brueggen's final moments.⁴

The Friday prior to the murder, Mr. Crawford hired a young man, Ryan Mauch, to dig a hole at the shop location, Mr. Mauch testified in State trial he did not dig the hole until the day of the May 7, 1996, this is the same hole in which the body was later found. The hole was two foot by five feet by four feet deep. The federal prosecutor used this hole in its closing argument to *bury* Mark Crawford.⁵

³ At the two State trials Mr. Crawford's mechanic, who had worked at the building where Beckcom alleges that the murder occurred, testified that several of Mr. Crawford's employee's had keys to the front door but the key to the lock in question was kept on top of the power box inside the shop. The mechanic testified that Mr. Crawford knew of that key's presence and location. *Why would Mr. Crawford need bolt cutters to cut his own lock?* The mechanic was not called by Mr. May during the federal trial and this question was not asked.

⁴ It is interesting to note that crime scene photographs show a stained roll of duct tape on a shelf (obviously not the new roll purchased from Wal-Mart) and a garden hose rolled up and attached to a faucet in the back yard. *Why would Mr. Crawford need to purchase tape and a hose when he already had those items on hand?*

⁵ This requires a bit of explanation; Mr. Crawford was in the process of converting this building into a living quarters for his nephew and his nephew's wife. Much of the interior framing in the building was already done. (Although Mr. Garcia was on the witness list, was in California at the time of the trial, and willing to testify to these facts, May did not put him on.) Earlier in the month, Mr. Crawford had a satellite dish delivered to the building. According to the satellite expert (a person who testified during Crawford's second state trial) the hole in question was required in order to pour a foundation for the dish to prevent dish vibration. The crime scene photographs depict the satellite dish and the support post for the satellite dish next to the hole in which the body was found. The expert testified that he would have dug the exact same hole in the exact same location and by those dimensions.

CRAWFORD'S STORY IS TOLD

As Crawford's misfortune would have it, at the time of his arrest, Crawford was associated with a corrupt banker employed by the Kleberg Bank in Kingsville, Texas. The banker's name was Les Tatum. Over the years of Crawford and Tatum's legitimate relationship, Mr. Crawford and his brother, borrowed and repaid millions upon millions of dollars in valid business loans; all written by Les Tatum.⁶

Unknown to Mr. Crawford, Mr. Tatum was engaged in writing fraudulent loans on his (*Tatum's*) client's businesses. Tatum would write the loan, pocket the money, and then use a larger fraudulent loan to cover his tracks, or, when possible he would "write off" the loan from the bank's books as bad debt. Several of these fraudulent loans were written to Mr. Crawford's businesses without Mr. Crawford's knowledge or consent in the months prior to and following Mr. Crawford's arrest.

In the months prior to Mr. Crawford's arrest Mr. Tatum wrote a minimum of seven loans totaling \$573,500.00 in Mr. Crawford's business names. Mr.

*This expert was not called by Mr. May at the federal trial. Note: If the murder was committed on the 6th and the hole was dug on the 7th as Mr. Mauch testified; *Where was the dead guy while the young man dug the hole? Why would Mr. Crawford send someone, not previously involved, to work at a location with a dead body laying around? Mr. Mauch had previously worked at the building and was obviously in and out during the day... was the dead guy in the box on the seventh when the hole was dug? Was the lock cut on the seventh as Beckcom claims and laying on the shop floor? If so, why did Mr. Mauch not notice the cut lock? These questions remain unanswered...**

⁶ In denying the original petition in this case, the district court made an issue of Mr. Crawford's lavish lifestyle and his \$35,000 monthly personal expenses. The fact is that Mr. Crawford owned a legitimate company for a decade that had a fifty million dollar annual payroll and millions of dollars in legitimate assets; this fact clearly separates Mr. Crawford from the other defendants in this case.

Crawford nor his brother authorized any of these loans.⁷ In addition, Les Tatum wrote a loan for \$180,000.00 to Mr. Crawford's business on June 30, 1996⁸ and another \$181,000.00 on August 28th, 1996;⁹ both without Mark Crawford's knowledge.

Mr. Crawford's arrest gave Les Tatum the reason he needed to begin the process of writing off, as bad debt, the fraudulent loans he had written in Crawford's name. In the grand jury proceeding in Mark Crawford's criminal case Mr. Tatum was questioned by the prosecutor regarding loans that Crawford knew nothing about. Mr. Tatum testified as follows:

Q. Was there any event that occurred with regard to Mark Crawford Personally in 1996. Was there any reason [*a loan to Mark Crawford*] was charged off at that time that led the bank to believe it would not receive its money?

A. Well, I don't recall the exact time that it became public, but, I mean, legal problem—I don't know how to say that. The legal problem he—I mean, it was in the front page of our paper, that for the—he was wanted for murder.

Q. All right.

A. So we had cause to believe we weren't going to collect our money...

See Exhibit 18 at 12.

⁷ Ex. 2 (Affidavits of Mark and John Crawford); Ex. 3 (Trial testimony of John Crawford).

⁸ Exhibit 26 at 6:9-11.

⁹ Exhibit 26 at 10:1-3.

Nick Brueggen's body was discovered on June 3, 1996. The story appeared in the local newspaper the following day.¹⁰ This raises the question; Why did Mr. Tatum continue to write loans on Mark Crawford's name and the names of his businesses past the date of Crawford's arrest, *if* Mr. Tatum considered Crawford's "legal problems" (*the murder*) an indication that his bank was not going to receive its money? The answer is that the loans were fraudulent and Mr. Tatum was pocketing of the proceeds of those loans without Mr. Crawford's knowledge.

Ironically, the government's key witness, Mr. Beckcom, received a \$50,000 unsecured loan from Mr. Tatum on in November 1995 and another \$35,000 loan on April 2, 1996.¹¹ The victim in the case, Nick Brueggen was killed May 6, 1996 and the body was found June 3, 1996. On June 30, 1996, after the discovery of Nick Brueggen's body and the point in time that Mr. Tatum had decided (*according to his own testimony*) that Mr. Crawford was now a poor credit risk, (*infra.*) Mr. Tatum wrote additional loans totaling \$360,000.00 at Mr. Crawford's expense. After all, Mr. Tatum was certain that Mr. Crawford was on his way to prison...

A funny thing happened at this point. Mr. Crawford was sitting in jail, mentally reeling from being accused of a murder he did not commit, when—*out of the blue*—he and his family were *approached* by a prominent local Corpus Christi

¹⁰ (Article from news paper)

¹¹ Exhibit 18 at 35-36

attorney who claimed an interest in taking Mr. Crawford's criminal case, Attorney Bill May. As it happens, Attorney Bill May was *also* banking with Les Tatum and at that very moment in time, was *himself* traveling forty-five miles to do his banking with Les Tatum in Kingsville, Texas, even though there were dozens of local banks he could have been dealing with in Corpus Christi where Mr. May's practice was located. Bill May had also received almost \$800,000.00 in unsecured loans from the Kleberg Bank that Tatum had personally written. (*See Exhibit 38; Deposition of Bill May in Kleberg First National Bank vs. William May*). There is one major difference between the loans written by Tatum to Bill May and the fraudulent loans written to the Crawford's; Bill may received the proceeds from those loans and the Crawford's did not.

During the negotiations between Crawford and Attorney Bill May for attorney fees, Mr. May suggested that Mr. Crawford get a 'loan'. When Crawford said that a loan would not be possible because he was incarcerated and his company was shut down and no longer in business; May suggested going to Les Tatum and told Crawford that he (May) could 'take care of business and make it happen'. (*Affidavit of Mark Crawford*) Crawford's family then signed for three loans from Mr. Tatum... One during the first State trial (*July of 1997*), another during the second state trial (*December of 1997*), and a third shortly thereafter, at

the conclusion of the second State trial¹² (*These loans are in addition to the fraudulent loans written by Mr. Tatum*).¹³ These facts tend to lead to an obvious question... *Why would Les Tatum be loaning money to the Crawford's to cover legal fees and paying that money directly to Attorney Bill May's bank accounts if the Crawford's had previously defaulted on over one million dollars in loans from his bank and were considered by the bank to be a poor credit risk?*¹⁴

Mr. Crawford proceeded to a State trial in Texas for the murder of Nick Brueggen represented by Attorney Bill May (*whom at that time was bought, paid for and owned by Les Tatum*). Fortunately, for Mr. Crawford, the government's two star witnesses (*Beckcom and Johnson*) couldn't keep their story straight. Due to over a hundred inconsistencies in the government's witnesses testimony and numerous alibi witnesses who stated Crawford could not have been at the murder, the jury hung in the favor of guilty, ten to two.

¹² It is noteworthy that Attorney Bill May never discloses to the Court or to co-counsel that he had received proceeds from three loans written by Les Tatum and paid to him personally to pay for Crawford's defense during the two State trials. (These monies were apparently written in the name of Crawford and paid directly into accounts controlled by May in an amount to total \$210,000) May expressed concern to his fellow co-counsel that he was fearful of being indicted alongside ~~May~~ TATUM.

¹³ Bill May Deposition Exhibit 38

¹⁴ At the time of these loans, issued by Les Tatum, Mr. May was in trouble with the Texas State Bar association and had received a **JUDGEMENT OF FULLY PROBATED SUSPENSION** requiring him to comply with several conditions of probation. If Mr. May violated any of these conditions of Probation he would be subject to suspension from the BAR. (Ex. 40) One condition required by Mr. May's probation was that he comply with the "Interest on Lawyers Trust Account (IOLTA) requirements in accordance with Article XI of the State Bar Rules. (See Ex. 40 at 4.) When Mr. May was deposed in the case of *Kleberg Bank v. May* he admitted that loans written by Les Tatum for the representation of Mark Crawford were deposited to his personal and business accounts and used for "operating expenses". See *Exhibit 38*. This intermingling of funds likely violates the Texas Bar Rules and would have had the effect of violating Mays probation.

The second Texas State trial commenced and consisted, for the most part, of the same evidence as the first trial; *with one major exception*. One of the government's key witnesses was a man named William Noel. Noel was a convicted felon who had been caught *red handed* in possession of the dead man's briefcase and identifying documents, a sawed off shotgun, and a stun gun on the very evening that the body of Nick Brueggen was discovered. Noel possessed these items in his automobile a short distance from Mr. Crawford's residence. Naturally, being an ex felon in possession of a sawed off shot gun—in the state of Texas, Noel was arrested. Noel would make a number of inconsistent statements over the next few hours but eventually he would change his story to state that Mr. Crawford had given him the dead man's briefcase.¹⁵ Soon after he decided to change his story and implicate Crawford, Noel was released from custody.

Noel enjoyed his freedom throughout the first State trial where he testified for the State that Mark Crawford had given him the dead man's briefcase. Noel was given complete immunity¹⁶. *However*, A tragedy occurred in between Mr. Crawford's first and the second State trial. William Noel (*the government's witness*), true to his violent nature, targeted a local female real-estate agent and phoned the women asking her to show him a home. Feeling uneasy with the

¹⁵ The defense believes that officer Rivera was overzealous in his interrogation of Noel. The body of Brueggen had been discovered on the property of Mark Crawford and certain connections needed to be made to support Rivera's theory of the case.

¹⁶ This included the dismissal of the felon in possession of a firearm charges. This charge could have led to a minimum of fifteen years and a Maximum of a life sentence under federal law in effect at the time considering Noel's violent history.

situation, she arrived at the meeting with her husband. Noel kidnapped the couple, beat and bound the man, and then brutally raped the woman in front of her bound husband.¹⁷

Because of his recent arrest, Noel had no more reason to lie and, in the second state trial he recanted his previous perjurous testimony; instead of implicating Crawford, William Noel testified at the second State trial that he was given the dead man's briefcase by Mike Beckcom, the government's key witness, and that he was told by Beckcom to *plant* the evidence at Mr. Crawford's home in order to *frame* Crawford for the murder. Obviously, that case ended in an acquittal.¹⁸

The federal government pursued the case and indicted Mark Crawford, John Crawford, Kurt Johnson, and two others on numerous federal charges including charges related to the murder of Nick Brueggen. The federal case was heard in Federal District Court in Fresno California. May immediately approached Crawford and suggested that he (*Crawford*) request that May be appointed to the case due to his *familiarity* with the issues.¹⁹ May also made this representation to

¹⁷ If officer Rivera and the State of Texas had not released this violent and brutal criminal who was willing to tell any lie needed to gain his freedom, this tragic crime would have never occurred. William Noel was arrested, was later convicted, and was eventually sentenced to multiple life sentences for a crime that he should have never had the opportunity to commit. That is a fact.

¹⁸ **Note** that Mr. Beckcom is the same person who received the \$50,000.00 check from Les Tatum and an additional \$35,000.00 thirty days prior to the murder. Mr. Noel also testified that Mr. Beckcom ordered him to bury the dead man on Mr. Crawford's property in the hole that Mr. Crawford intended to use to support a satellite dish.

¹⁹ Affidavit of Mark Crawford.

the Court and further represented that he wanted to take the case.²⁰ Because of the complexity of the case, an unusual thing happened; that request was **granted** and May was assigned as lead counsel in the federal case.

As federal investigators combed the evidence to make their case against Crawford and his associates they uncovered several connections to Kleberg National Bank and Les Tatum; *to include the fraudulent loans that Les Tatum had written on the names of the Crawford's businesses.* Naturally, the investigators assumed at the time that the loans had been taken and signed for by the Crawford's and were therefore part of the Crawford's fraudulent criminal endeavor's. Little did they know, Les Tatum was the only criminal behind those loans...

As the Federal trial neared, the pressure started to build on Mr. Tatum and Mr. May; The government had uncovered many of the fraudulent loans written by Les Tatum in the Crawford's names and included this information in their allegations against the Crawford's. Mr. Tatum was called to testify to the Grand Jury in the Crawford's federal criminal case on June 28, 1998²¹, in addition, Les Tatum was put on the Government's witness list.²² At this point, it was obvious to Les Tatum and Bill May that there was a problem. If Tatum was put on the stand in the Crawford trial, the fact that he had written a million dollars in fraudulent loans in the Crawford's names without their knowledge was sure to be discovered

²⁰ Exhibit. 15 at 6; Transcript of appointment of counsel hearing.

²¹ Exhibit: 18

²² See. Exhibit: 38

as would the fact that he had written \$800,000.00 worth of fraudulent loans to Bill May, which were actually received by May and at that very moment remained unpaid.

In addition, Mr. May had never informed the court that he (May) had been paid an additional \$210,000.00 written on the Crawford's name and deposited directly to May's account by Les Tatum to cover Mark Crawford's legal fees. This amount represents the combined total of three loans in July, August, and November 1997. Mr. Crawford authorized these three loans. (*Affidavit of Crawford*).²³

Within days, Les Tatum would walk into Kleberg First National Bank and confess his crimes. Soon thereafter Tatum himself would be the subject of a federal indictment for bank fraud where he would eventually plead guilty.²⁴ As it turns out, numerous businesses were listed on Tatum's indictment as businesses to which Tatum wrote fraudulent loans without the knowledge of the owners of the accounts, in addition, unknown to the court, Mr. May believed loans that he had received to be subject of Tatum's indictment.²⁵ (need the date of Tatum's indictment.)

Even though the government was, at that very moment, accusing Tatum of fraudulent loans to businesses in the Crawford's names (*without their knowledge*),

²³ Exhibit 38

²⁴ Judgment in Les Tatum's criminal case.

²⁵ Exhibit 4 at 5

the government used the information to attack the Crawford's. On cross examination of John Crawford the issue of the Kleberg bank was raised by the prosecutor and John Crawford was attacked by the government repeatedly about loans that had been written to the Crawford's by Les Tatum following Mark Crawford's arrest (*the fraudulent loans pocketed by Tatum and probably shared with May and to which the Crawford's had no knowledge*). John Crawford rightfully denied any knowledge of these loans.²⁶ In the cross-examination of John Crawford the prosecutor sought to tie each of the members of the alleged conspiracy to Mr. Tatum and his criminal activity at the Kleberg Bank:

Q. ... Can you tell the jury who Les Tatum is?

A. He is a banker at Kleberg First National Bank.

Q. And he is your banker; is that right?

A. Yes, he was my banker.

Q. And how far is Mr. Tatum's bank from where you are?

A. From where I live or from the office?

Q. Well, from where you live

A. 45, 50 minutes.

Q. 45, 50 minutes? And that's a 50-minute drive?

²⁶ This amounts to prosecutor misconduct, a violation of *Brady v. Maryland*, and or ineffective assistance of trial counsel for failing to use the information to rehabilitate the testimony of John Crawford. The government was well aware to the fact that Tatum was under federal investigation for writing loans to individuals without their knowledge yet the prosecutor used these questions to infer to the jury that the Crawford's were guilty of fraud. *Ex. 26: Excerpts from testimony of John Crawford*. In addition, it is fair to conclude that due to the government's investigation of Tatum they had learned that Tatum's Testimony to the Grand Jury in Crawford's criminal case was perjurous. Nevertheless the government failed to disclose this fact to the court.

A. Approximately, yes.

Q. And Mr. Tatum was not only your banker, he was Mark Crawford's banker, too, wasn't he?

A. I don't know if he was his personal banker. He was the banker for the business, Superior Employee staff Management.

Q. You got loans from Mr. Tatum; isn't that true?

A. Yes, I did.

Q. And Mark Crawford got loans from Mr. Tatum?

A. Probably.

Q. And Mr. Galvan got loans from Mr. Tatum, isn't that true?

A. Probably.

Q. And Geneva Garza got loans from Mr. Tatum; isn't that true?

A. I have no idea.

Q. Michael Beckcom got loans from Mr. Tatum; isn't that true?

A. I believe that's the way it turned out, yes.

Q. Isn't it true you introduced Mike Beckcom to Mr. Tatum?

A. I called Mr. Tatum and Mr. Tatum said he would meet with Mr. Beckcom. I took Mr. Beckcom over there. I waited in the lobby whether he got a loan or not, I do not know.

Q. All right. TNT Quick Stop got loans from Mr. Tatum?

A. I don't know.

Q. Do you know that Mr. Tatum is currently under indictment?

A. I heard rumors.

Q. for bank fraud?

A. I don't know that.

The government went on to confront John Crawford with seven loans written to the Crawford's businesses to which John Crawford knew nothing about.²⁷ Mr. May failed to object to the government's surreptitious attack of John Crawford. Why? Because at that very instant, Mr. May himself had almost \$800,000.00 worth of outstanding loans written by Les Tatum and deposited to his (May's) personal and business accounts.²⁸ May would later be called on by the government to testify that Les Tatum's *modus operandi* was to write fraudulent loans on the names of Tatum's clients without their knowledge.

During Bill May's initial preparation for Mr. Crawford's federal trial it appears that Mr. May was preparing a strategic defense that would have undoubtedly led to Mr. Crawford's second acquittal in relation to the murder of Brueggen. According to numerous witnesses, Bill May was intending to call William Noel to the stand to testify that Crawford was *framed* by the government's

²⁷ Exhibit 26; *see also* affidavit of John Crawford.

²⁸ These loans are reviewed in Mr. May's deposition in the *Kleberg Bank* lawsuit: \$65,113.40 in February 1993 (Exh. 38 at 150:10-151:3); \$14,777.50 in August 1993 (id. at 153:10-153:13); \$65,227.00 in August 1993 (id. at 156:7-156:23); \$65,227.00 February 1994 (id. at 158:11-158:18); \$72,000.00 in March 1994 (id. at 162:22-163:2); \$89,623.65 in October 1994 (id. at 169:7-170:8); \$88,051.19 in December 1994 (id. at 175:10-175:17); \$57,920.20 in December 1994 (id. at 186:1-186:22); \$85,151.08 in February 1995 (id. at 188:19-189:3); \$7,504.36 in March of 1995 (id. at 193:23-194:7); \$46,000 in May 1995 (id. at 197:14-198:25); \$20,011.64 in August 1995 (id. at 210:20-212:6); \$81,000 in January 1996 (id. at 222:10-222:16); \$30,053.26 in July of 1996 (id. at 240:3-240-14); \$151,890 in January 1997 (id. at 249:22-250:2); \$69,637.44 in August 1997 (id. at 259:25-260:6); \$331,994.00 in January 1998 (id. at 268:6-268:8); and \$53,000 in June 1998 (id. at 271:16-271:21). *These amounts are in addition to the \$210,000.00 in loan proceeds paid to Mr. May from Mr. Tatum for the representation of Mr. Crawford.*

key witness (*Beckcom*).²⁹ For example; Roger Litman, second chair counsel, made the following sworn statement:

Q: Anything you would like to illuminate on that, anything you would like to add?

A: It was a given all along that Mr. Noel would be called, and I was under the belief [based on representation made to me by Mr. May] that Mr. Noel was going to testify as a witness for Mr. Crawford.

Exhibit 3 at 8:21-25.

In addition Mr. May filed a motion and declaration to the court attesting to the need of numerous experts to challenge the single fingerprint linking Crawford to the crime; to explain why Crawford caused the hole to be dug which the dead man was found in; to discuss an alternative cause of death (*an insulin overdose*), and to challenge the verity of the government's forensic evidence.³⁰ May's sworn declaration in support of his request for the Court's authorization of experts reads in relevant part as follows:

In the trial in State Court the defense consulted with a forensic expert Max Courtney. He was an expert in duct tape and also gathered scientific evidence from the box which Nick Brueggen had allegedly been killed in. At issue in the case was whether a piece of duct tape which had the defendants fingerprint was associated with tape used to seal the box to suffocate Nick Brueggen. He would provide evidence that they were not associated and show that several different types of tape were present at the defendants shop.

In the trial in State Court the defense secured the testimony of an expert in the installation of TV satellite dishes. The body of Mr.

²⁹ Exhibit 3 at 8:21-25: See also affidavit of Mark Crawford.

³⁰ Exhibit 17 at 6-7

Brueggen had been found in a hole which had been dug by another person ostensibly for a satellite dish at the defendants request. The State attempted to show through an expert that the hole was not suitable for satellite installation and was really a grave. The defense expert testified that he went to the area and determined that in fact the hole was the best location for the satellite dish and the size of the hole was appropriate given the type of soil.

In the trial in state court an issue was the cause of death of the deceased. The Nueces County Medical Examiner called as a State witness testified that the cause of death was asphyxiation by automobile exhaust by history. He admitted that he found no evidence showing that this was the cause of death, and ruled as so only because this was what the accomplice had said had happened. The government maintains that the deceased was locked in a large metal box to which a hose from an exhaust was attached. The expert hired by the defense examined this box and found no evidence of any trace elements from exhaust in the box. The defense would use another medical examiner to establish an alternative theory of the cause of death, namely that the deceased may have died from an insulin overdose. A quantity of insulin and a syringe was recovered buy law enforcement from Mike Beckcom when he was arrested. Insulin would also cause death in fashion similar to asphyxia deaths where a large enough dosage is given. A theory of the defense used in the State trial was that [Brueggen] was killed elsewhere and his body taken to the defendants building in order to frame [Crawford]. William Noel testified at trial that Mike Beckcom framed Mark Crawford and had asked him to plant the briefcase of the deceased at the house of Mark Crawford.

Exhibit 17 at 6-7.

The district court granted the above referenced experts requested by Mr. May in preparation for the federal trial. Thereafter, may did not subpoena or even speak to any of the experts referenced in May's declaration.³¹

In addition, May hired an investigator and put numerous alibi witnesses on the defense witness list. Many of these same witnesses testified during the second

³¹ Exhibit 14 at 1-6

State trial that led to Mr. Crawford's acquittal in State Court.³² Unfortunately for Mr. Crawford, May would also neglect to call any of these witnesses and the federal jury would never hear any of this evidence.

Soon after this preparation, something happened that caused Attorney Bill May to abandon Mr. Crawford's defense. This time period coincides perfectly with the discovery of the Loans that Tatum had written to the Crawford's and Tatum's involvement in the case. A telling piece of evidence is a transcript of a side bar that May had with the Court in which May deceived and misled the Court to evade the fact that he had personally received over half a million dollars worth of questionable loans from Tatum.³³

As the trial progressed Mr. May failed to call William Noel after promising the jury he would do so in his opening argument, even though William Noel was ready and willing to testify that the government's key witness (*Beckcom*) instructed him to *frame* Crawford.³⁴ Mr. May did not call any of the experts referenced in his declaration nor did he call many or the alibi witnesses on the defense witness list. One of the Alibi witnesses actually claimed to be with Crawford at the time Beckcom alleges the murder occurred. In the end May did not attack many of the key points that he outlined in his declaration in support of expert witnesses and his

³² Exhibit 6

³³ Exhibit 27 at 4-5.

³⁴ Exhibit 28

own opening argument. The result; Mark Crawford was convicted of numerous counts related to the murder on Mr. Brueggen.

After the direct appeal in the case was affirmed Mr. May (Trial counsel represented to Mark Crawford numerous times that he (May) was preparing a §2255 petition and was going to “fall on his sword”).³⁵ Crawford made repeated request to May for May to send Crawford his Trial Transcripts and other documents needed to help research and prepare his §2255 claims. *Id.* This was due to the fact that Mr. Crawford had lost confidence in May and knew that the one year clock to file his §2255 was ticking. *Id.* During the running of the one year period (§2255(f)(1)) these attempts included at least three phone calls to May’s office from the prison, several letters, and attempts to contact May from Mr. Crawford’s family and friends. *Id.*; *See also affidavits of* However, Mr. May quit taking Crawford’s calls on the eleventh hour. *Id.*, With a one year deadline looming in the case, a jailhouse litigant helped prepare Mr. Crawford’s original Habeas Petition during a lengthy lockdown at the United States Penitentiary in Florence Colorado from only Mr. Crawford’s memory of the events. Due to the lockdown in effect at the prison, the author of the original petition did not have access to the record in the case, Mr. Crawford did not have possession of the trial transcripts, or the institutional law library. Nevertheless, a petition was timely filed. It alleged, among other things, that trial counsel was ineffective for failing to

³⁵ Crawford Affidavit/Nina May/ May’s secretary?

investigate the case, failing to prepare for trial, that a conflict existed between counsel (Mr. May and petitioner), that Mr. May was distracted by personal and emotional factors going on at the time of trial, and that he had fallen asleep during trial.

The focus of the petitioner's original argument was that Mr. Bill May, trial counsel in the two State trials and the federal trial, failed to call a key defense witness after promising the jury he would do so in opening arguments. The witness in question was William Noel.³⁶

After the Florence prison lockdown and while the petition was pending, Crawford retained counsel who had to reschedule depositions in the case three times due to difficulties in getting Bill May to appear.³⁷ Before counsel could conclude their research of the case the government filed an answer. Crawford's new counsel then filed a reply to the government's answer expanding on the claims made in the original petition. The reply brief at issue consisted of accusations that in addition to May's failure to call Noel, May failed to call "eleven" other alibi or defense witnesses and four additional expert witnesses; all of whose testimony would have contradicted the testimony of Beckcom and supported the *actual*

³⁶ Note: During the first state trial Noel testified that Crawford had given him Brueggen's brief case; nevertheless, the jury hung ten to two in favor of guilty. In the second trial Noel recanted his previous testimony and claimed that Mike Beckcom (the government's Key witness in the case) had given him the briefcase and instructed him (Noel) to plant the dead man's briefcase and belongings at Crawford's home. Needless to say, based on this new testimony, Crawford was acquitted of the murder at the second State trial. **There is no other significant difference in the evidence presented at the first and second state trial.**

³⁷ Affidavit of Counsel

innocent alibi defense of Mark Crawford.³⁸ All of these witnesses testified in the State trial that led to acquittal but were not called in the federal trial, even though Crawford was represented by the exact same attorney.

Further, the reply supplemented the record with respect to Crawford's conflict of counsel claim and attempted to add numerous exhibits demonstrating the glaring conflict between Crawford, Tatum, and May. Part of the supplemented material was a newly discovered deposition of Attorney Bill May related to a civil case wherein Kleberg Bank had sued Mr. May. Therein May admitted, for the first time, that he was paid to represent Crawford by Mr. Tatum and that Les Tatum had personally authorized close to \$800,000.00 in highly questionable loans for May, many of them in the months leading to the Crawford trial. *A per se conflict. (The district court erred in not considering that evidence)*. It is noteworthy that the deposition of Bill May referenced here did not occur until 2006 (*Well after Crawford's one year had expired and therefore could not have been discovered sooner*).

The government responded to Mr. Crawford's reply brief (*and the 40 exhibits supporting it*) on the ground that it raised new claims after the answer, and was therefore time barred. Mr. Crawford argued that the new facts raised in the reply related back to his original claims. The district court disagreed and struck the claims as well as substantial evidence supporting the May/Tatum conflict. Mainly,

³⁸ MARK CRAWFORD'S REPLY BRIEF IN SUPPORT OF 2255 MOTION: Case No. 1:02-cv-06498-OWW; Doc. 7

these new facts related to alibi witnesses whose combined testimony supported Mr. Crawford's *actual innocence*.³⁹ A request for Certificate of Appealability followed and was denied, as was Supreme Court Review.

Fortunately for Mr. Crawford; Mr. Beckcom, the government's key witness, could not keep a secret... While in prison serving the reduced sentence that he received for his cooperation in the case, (*Beckcom*) bragged to a fellow inmate and confessed that he (*Beckcom*) was the true killer and that *he* had personally killed Nick Brueggen and framed Mark Crawford for the murder in retaliation for the two men sleeping with Susan, Beckcom's girlfriend. Specifically, newly discovered witness affidavits state::

Mike Beckcom bragged to me that he had found out that two of his business partners had slept with his girlfriend so he killed one and framed the other one for the murder...⁴⁰

Specifically, Beckcom told me that he hit the fucker with a stun gun and shot him up with insulin... ...he said that the guy he framed use to be a Mayor in Texas.

At the time this statement was made to me I was in the Federal correctional institution in Beaumont, Texas with Mike Beckcom. At the time Beckcom made this statement to me I assumed he was just making up a story. Recently I stumbled onto a case while doing legal research in the law library and I noticed Beckcom's

³⁹ This author notes that the District Court's eventual decision to strike the portions of Mr. Crawford's amended claim (failure of Mr. May to call numerous alibi witnesses and expert witnesses tending to prove Crawford's actual innocence) based on a procedural or time bar is now suspect pursuant to the Supreme Court's recent decision in *McQuiggins*.

⁴⁰ In Mr. Crawford's affidavit Crawford makes clear that he never slept with Beckcom's girlfriend and in fact hardly knew her but Crawford attest to the fact that Beckcom continuously questioned Crawford about Susan and regularly accused several other business associates of sleeping with her. It is noteworthy that at the time of the Brueggen murder Crawford had put the majority of his business interest into Beckcom's name and Beckcom would therefore have the most to gain financially from framing Crawford.

name and the fact that the case involved a Mayor from Texas being accused of Murder. I realized that Beckcom's story was probably true.

(witness affidavit).

This is the newly discovered evidence upon which this motion is based but there is more, much more...

LEGAL ANALYSIS

Second successive petitions claiming *actual innocence* must be authorized by the Court of appeals prior to the district court having jurisdiction to hear the petition. Title 28 U.S.C. 2255(h) states: "A second or successive motion must be certified as provided in section 2244 [28 U.S.C. 2244] by a panel of the appropriate court of appeals to contain—

(1) Newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the offense;

The "newly discovered evidence" at issue here is the affidavit of Joe X. This affidavit could not have been discovered sooner because obviously petitioner had no way of knowing that Beckcom, the government's witness, would confess to Mr. X.

As this Court is well aware, in order to obtain authorization to file a second or successive petition, the petitioner must make a "prima facie" showing that he is entitled to relief. This is simply "a sufficient showing of possible merit to warrant

a fuller exploration by the district court.” *United States v. MacDonald*, 641 F.3d 593, 612 (4th Cir. 2010); *See also Bennett v. United States*, 119 F.3d 468, 469 (9th Cir. 1997)

In relation to request for habeas release by State prisoners making claims of actual innocence, the Supreme Court has stated “[t]o be credible, an actual innocence claim requires petitioner to support his allegations of Constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.” *Griffin v. Johnson*, 350 F.3d 956 (9th Cir. 2003); *Citing Schlup v. Delo*, 513 U.S. 298.

When discussing the term “evidence as whole” found in §2255(h) the Fourth Circuit has held that “[we] could not ignore the pre-AEDPA [Supreme Court] precedent in interpreting “evidence as a whole.” Indeed, by its plain language, ‘the evidence as a whole’ means, in equivalent language of *Schlup*, ‘all the evidence’. *See MacDonald*, 641 F.3d at 612. When considering “actual innocence” review [this Court] must incorporate “*all evidence*, including that alleged to have been admitted illegally (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongfully excluded [through attorney neglect] or to have become available only after the trial.” *Griffin v. Johnson*, 350 F.3d 956, 961-963 (9th Cir. 2003). In *Griffin* this Court described the *Schlup* gateway in broad terms:

“In order to pass through *Schlup*’s gateway, and have an otherwise barred constitutional claim heard on the merits, a petitioner must show that, in light of all the evidence, *including evidence not introduced at trial*,’ it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt. (*Citations omitted*)(*emphasis in original*). We framed the relevant question not as whether the new evidence was available to the defendant during his trial, but rather as whether the new evidence was *introduced to the jury* at trial.”

Id. at 963

THE NEWLY DISCOVERED EVIDENCE IN THIS CASE IF PROVEN AND CONSIDERED IN LIGHT OF ALL THE EVIDENCE AS A WHOLE DEMONSTRATES BY CLEAR AND CONVINCING EVIDENCE THAT NO REASONABLE JUROR COULD CONVICT MARK CRAWFORD OF ANY CRIME RELATED TO THE MURDER OF NICK BRUEGGEN.

The newly discovered evidence in this case is one of two things; it is either fraudulent, or in the alternative, it proves beyond *any doubt* that Mr. Crawford is innocent of the murder of Nick Brueggen and was framed by Mike Beckcom, who is the real murderer and the government’s *key witness* in the case. This author does not make this statement based on the newly discovered evidence alone (an affidavit from someone in prison), but rather the fact that the affidavit in question corroborates other evidence and facts in the case. In other words, if the affidavit is proven and “viewed in light of the evidence as a whole,” it proves “by clear and convincing evidence that a reasonable juror would not have found the movant guilty of the offense.” Here’s how...

William Noel was a simple man, a criminal, a rapist, a kidnapper, a robber, and quite possibly a killer. William Noel was a key government witness during the

first trial and testified against Mark Crawford. You see, Noel was caught, red handed, not far from Mr. Crawford's home on the evening that Nick Brueggen's body was found buried in a hole on a separate piece of property owned by Mr. Crawford. In Mr. Noel's possession was the dead man's briefcase, credit cards, and other identifying documents. It's noteworthy that when Noel testified at the second state trial he admitted using those credit cards from the date of Brueggen's disappearance to the date of his (Noel's) arrest.

During the first State murder trial Mr. Noel testified that he was given the dead man's belongings by Mark Crawford, implicating Crawford in the murder. That jury hung. Naturally, in the second trial the government again put Noel on the stand but a significant event had occurred; William Noel had been arrested for the kidnapping, robbery, and brutal rape of a local real-estate agent leading to his own life sentence. Because the government's promised immunity no longer mattered, Noel recanted his previous testimony and testified in the State trial that Mike Beckcom (*the government's key witness*) had given him Nick Brueggen's briefcase and instructed him to plant it at Mark Crawford's house in order to *frame* Mark Crawford for the murder of Nick Brueggen.

In proceedings connected to the original petition in this case, Attorney Bill May responded to the allegation that he was ineffective for promising the federal jury in his opening statement that he was going to put William Noel on the stand who would testify that Mark Crawford was framed and then failing to do so.

When Mr. May's co-counsel in the case, Roger Litman, found out that May represented this fact to the jury without even having Noel under subpoena he stated, under oath, that he found that conduct "shocking."⁴¹

Nevertheless, Bill may responded that he had decided not to call Noel because Noel was an incredible and unpredictable witness and also because he thought Noel was on the government's witness list. The District Court originally denied Mr. Crawford's Ineffective Claim on this ground (*Even though it was the testimony of William Noel that caused the acquittal in the second State trial*). The newly discovered evidence at issue (the affidavit of Joe X) *corroborates* Noel's State trial testimony and his current affidavit in that, Noel claims the dead man's briefcase was given to him by Beckcom to *frame* Crawford.⁴² Mr. Noel's testimony is now much more believable. The new evidence states that Beckcom bragged about killing one business partner (*Breuggen*) and framing a second business partner (*Crawford/a former Mayor in Texas*) for the murder.

Secondly, and perhaps most important to this case. In the 1997 State murder trial, the defense developed a theory that Brueggen was killed elsewhere by Beckcom and Johnson and planted at Crawford's building sometime later. The defenses theory of the cause of death was an *insulin overdose*. The reason for this theory is that Beckcom had once said to Crawford that if he (*Beckcom*) ever wanted to kill someone he would inject them with insulin and leave them in their

⁴¹ Deposition of Litman

⁴² Noel's affidavit.

car, in a garage, with the motor running. This, according to Beckcom would make the death appear accidental. (*Affidavit of Mark Crawford*)

When Crawford learned that Beckcom was claiming that the cause of death of Nick Brueggen was Carbon Monoxide poisoning, he found this very coincidental and informed his attorney, Bill May, who would soon uncover a key fact. When arrested, Mike Beckcom, the government's key witness in this case, was in possession of a full syringe of insulin.

During the State trial May confronted Beckcom on the stand about the insulin and Beckcom admitted possessing the syringe, he admitted that too much insulin could cause death, and he further admitted that based on his experience it would be hard to trace because insulin is a natural occurring chemical in the body.⁴³ Further, a forensic examiner in the State trial testified that the death of Brueggen would be consistent with an Insulin overdose and the State never disproved that theory (*This expert was subpoenaed by May for the Federal trial but was never called by May*).⁴⁴

The newly discovered evidence and affidavit in question states that Beckcom admitted to the murder and claimed that he injected the victim with insulin after shocking him with a stun gun. As it happens, both Beckcom and Noel were caught with stun guns at the time of their arrest. This fact coupled with the

⁴³ Ex. Beckcom's testimony.

⁴⁴ Affidavit of expert.

fact that Beckcom was in possession of a full syringe of insulin at the time of his arrest, is strong medicine.

Kurt Johnson originally stated to the authorities that the reason he went to the authorities about the murder when he did, is that Mike Beckcom had told him that he would kill him if he found out that he (*Johnson*) was sleeping with Beckcom's then girlfriend, Susan. The newly discovered evidence claims that Mike Beckcom, the government's witness, bragged that he murdered one guy and framed the other for the murder because the two men had slept with his girlfriend.⁴⁵

William Noel testified in the second State trial that he and Mike Beckcom wanted Brueggen dead. Noel claimed that Crawford became angry at Beckcom about this and dismissed the idea and did not want anything to happen to Brueggen.

THE PETITIONER'S ACTUAL INNOCENT CLAIMS ARE BASED ON NEWLY DISCOVERED EVIDENCE, NEWLY PRESENTED EVIDENCE, AND CONSTITUTIONAL TRIAL ERROR. MR. CRAWFORD'S CLAIM THEREFORE EXCEEDS THE REQUIREMENTS OF §2255(h)(1).

This case is unique in that the "newly discovered evidence" (the affidavit of Mr. X) is not tied, itself, to constitutional error. However, "newly presented evidence" is tied to Crawford's ineffective assistance of counsel claims. These claims, while technically time barred by the AEDPA must now be heard pursuant

⁴⁵ It is noteworthy that Mr. Crawford denies ever having any kind of relationship with Beckcom's girlfriend but recalls Beckcom being obsessively jealous. *See* Affidavit of Mark Crawford, Attached.

to this Court's reasoning in *Griffin* as well as the Supreme Court's reasoning in *Schlup* and *McQuiggins*. All of Mr. Crawford's claims involve *newly discovered* or *newly presented* evidence that support his *actual innocence*.

"Actual innocence, if proved, serves as a gateway through which a federal habeas corpus petitioner may pass regardless of whether the impediment to consideration of the merits of his constitutional claim is a procedural bar or the expiration of the statute of limitations set by the Antiterrorism and Effective Death Penalty Act, 28. U.S.C. 2244(d)(1)(A) (*McQuiggins v. Perkins*, U.S. No. 12126, 5/28/13)

OTHER EVIDENCE SUPPORTING CRAWFORD'S INNOCENCE

Mr. Crawford's post conviction counsel obtained an affidavit and numerous opinions from a forensic expert in 2006. The expert in question, Mr. John I. Thornton, has half a century of forensic expertise, has published 185 works, and specializes in fingerprint analysis. Mr. Thornton provided the following opinion about the government's fingerprint expert used in Mr. Crawford's federal trial:

At the 1999 trial of Mark Crawford, Oscar Kizzee, a Texas Department of Public Safety fingerprint analyst, testified to the identification of a fingerprint found on duct tape under a Jobox construction site toolbox as having been made by a finger of Mr. Crawford. Mr. Kizzee was not asked to specify the finger, nor was he asked to provide the number of matching characteristics that he claimed in his comparison. He testified that in his normal practice, he would be satisfied with seven matching characteristics, and that in the Crawford matter, he had found "at least" seven characteristics. He testified further that his understanding of the FBI criteria for

identification was that the FBI would accept seven matching characteristics “or less”.

This testimony could have been challenged at the time of the 1999 trial, and could have been challenged effectively. The FBI has never claimed that seven characteristics would constitute an adequate match, and certainly has never stooped to “seven or less.” In my opinion, this testimony transcends the threshold of the absurd... ..A cogent cross-examination of Mr. Kizzee at the time of the 1999 trial would have revealed that his criteria for identification was totally devoid of a basis in the science of fingerprint, and was defective in the extreme.

Affidavit of John I. Thornton, Exhibit 12 at 1-2. Mr. Thornton is the author of *D. Stoney and J. Thornton, A Critical Analysis of Quantitative Fingerprint individuality, Forensic Sciences, Vol. 31, No. 4, October 1986.*

The so called expert opinion of Mr. Kizzee, harshly criticized by the above forensic expert, deals with the single fingerprint of Mark Crawford. This fingerprint is the only physical evidence in existence linking Mark Crawford to the murder of Nick Brueggen. Mr. Thornton’s opinion that the government’s expert, Mr. Kizzee, *lied* when he testified that he could positively identify a fingerprint of Mark Crawford based on seven identifying characteristics, is newly discovered evidence that has not been previously considered by the court. And there is more...

Mr. Weekly, a hostile witness, was a gunsmith for local law enforcement and lives directly across the street from the Jacoby Lane building where the body of Nick Brueggen was found. Mr. Weekly testified in the first State Trial that he recalled a Satellite Dish delivered to the building in the weeks prior to May 6, 1996. Mr. Weekly also testified that while he did not recall a Red Mercedes at the

building that week, he knows Mark Crawford on site and would have recognized him if he were there. Mr. Weekly passed away before the second State trial but his testimony was allowed in that case after motion by Bill May. *May did not attempt to submit this testimony to the federal jury.*

Officer Gonzalez was a police officer in Aransas Pass Texas and happened to be writing a traffic citation in front of the Jacoby Lane address where the murder allegedly occurred at that exact moment in time. Officer Gonzalez was placed under hypnosis by the State and still did not recall a Red Mercedes Convertible at the building that afternoon.

Maria Vidaduc is a teller at the Wal-Mart where the government's witness (*Beckcom*) alleges that he, Johnson, and Crawford purchased the bolt cutters, duct tape, and a hose. As it happens Mrs. Crawford worked for Wal-Mart and though not friends with Ms. Vidaduc, is an associate. Ms. Vidaduc knows Mark Crawford on site because he was a local Mayor and somewhat of a celebrity and Ms. Vidaduc did not see Mark Crawford in the store that day even though the receipt showing the purchase of the items in question, was written on her register; a register that she is required to log into with her own unique security code, a Wal-Mart policy. (*Mr. May failed to interview and call this witness*)

Mark Crawford's two sons, one who is now an attorney in Texas and the other a C.W.I. Inspector testified that they took the day off of school that day and

spent the relevant part of the day with their dad, Making Beckcom's story impossible.

The School principle where the two Crawford boys attended school testified at Mr. Crawford's state trial that that the Crawford boys were not at school that day, corroborating the boy's story and Mr. Crawford's alibi. (*Bill May neglected to call this witness to the federal trial*). (*Notably, the prosecution made the point in closing in the federal trial that the boys must be lying because it was a school day*).

Todd Houston who works at the local airbase testified at the State trial that he got off work on May 6, 1996 at 4:00 p.m. and went to Mr. Crawford's grocery store (TNT Grocery) and visited with Mr. Crawford for approximately twenty minutes. The grocery store is ten miles from the location where the government's key witness, Mr. Beckcom, claims Crawford was, at that moment, preparing to commit the murder of Nick Brueggen. Mr. Houston's testimony makes Beckcom's story impossible. (*This witness testified in the state murder trial and was not called by May to the federal trial*).

Domingo Adame, Mr. Crawford's mechanic, testified in the State trial that the key to the pad lock on the shop door is kept on the top of the power box inside the building and that Mark Crawford was well aware of that fact. Establishing that Mark Crawford would not have needed bolt cutters to cut his own lock. (*Mr. May failed to make this point or call this witness at the federal trial.*)

Merisa Gomez, now a nurse, was the girlfriend of one of Crawford's sons at the time and states that she saw Mr. Crawford and the boys together that day at around three pm, making Beckcom's story *impossible*.

Crime Scene Photographs show that there was already an old stained roll of duct tape and a water hose at the shop where Beckcom alleges the murder took place. Crawford would not have needed to buy a roll tape and a hose that he already owned. (*Mr. Mays argued this fact in the State murder trial but this issue was not addressed at the federal trial.*)

Ryan Mauch was a young man trying to make his way by doing odd jobs. He testified that on the Friday May 3, 1996 Mr. Crawford paid him one hundred dollars to dig a hole behind his (*Crawford's*) building in order to pour a foundation for a satellite dish. (*The same satellite dish that Mr. Weekly observed being delivered*). According to Mr. Mauch he dug the hole on May the 7th. *This raises the question; where was the dead guy while the hole was being dug, if the dead guy was killed on the 6th as Beckcom claims? (This witness was called in the Federal trial by The Federal Prosecutor, but May failed to ask any of those types of questions.)*

Mr. Holland is an expert witness that Mr. May specifically filed a motion in federal court to authorize. According to Mr. May's declaration in support of his motion for expert witnesses, Mr. Holland was needed because he was a satellite dish expert. The Court authorized Mr. Holland. Mr. Holland had been called by

Mr. May at the State trial and he testified that he examined the building at Jocoby Lane and the property and satellite dish and that the location of the hole was precisely where the dish would need to be placed to receive a proper signal. Further, Mr. Holland testified that he would have dug the exact same hole by those same dimensions to pour a foundation for the dish in order to reduce vibration. *(Even though this expert was authorized following Mr. May's written request, the witness was not called to the federal trial.)*

Amber Miller was Nick Brueggen's mistress. She testified in the state trial that she lived an extravagant lifestyle fully funded by Nick Brueggen. Amber Miller claimed that she knew Frank Bochicchio but had never met Mark Crawford *(Thus distancing Crawford from Brueggen)*. Ms. Miller testified in the State trial that she was aware that Brueggen was missing but did not report it. Instead, she went to Mr. Brueggen's residence and took furniture and other possessions that belonged to Brueggen for no apparent reason. Ms. Miller was the beneficiary of a hundred thousand dollar life insurance policy in the event of Brueggen's death. Ms. Miller testified that her credit card, drawn on Brueggen's account, quit working the day after Mr. Brueggen's disappearance.⁴⁶ Apparently, someone discontinued Ms. Miller's credit card drawn on Brueggen's account the day of or

⁴⁶ Coincidentally, Frank Bochicchio's name was on Brueggen's account and he is the only person, other than Brueggen who could have deactivate Ms. Miller's card. William Noel was caught with credit cards that belonged to Brueggen and had used those cards numerous times (daily it seems) following Brueggen's disappearance. That is odd. Why would Bochicchio cancel Ms. Miller's card and not the rest? Maybe Ms. Miller did not use the card intentionally to distance herself from the murder? It is noteworthy that Ms. Miller admitted on the stand in the second trial that she called Bochicchio seven times on the day following Brueggen's disappearance.

the day after the murder. In the alternative, Ms. Miller intentionally quit using the card to distance herself from the investigation. In the State trials, Ms. Miller acknowledged that she called Mr. Bochicchio seven times the day after the murder. Mr. Bochicchio had control of Brueggen's accounts. Both Miller and Bochicchio had a financial motive to kill Brueggen. (*Miller testified during the state trials but was not called by May during the federal trial.*)

Sandy Carothers is a real-estate agent in Rockport, Texas. Mr. Crawford and his sons were at Ms. Carother's office on the 6th of May, 1996 during the hours that Beckcom claims Mr. Crawford was with him preparing to commit the murder of Brueggen. Evidence in support of this fact is a signed and dated real-estate contract bearing both Mr. Crawford's and Ms. Carother's signatures as well as a time and date stamp from Ms. Carother's fax machine to the title company in Portland, Texas. This document establishes the fact that Crawford was in fact not with Beckcom at that time and makes Beckcom's story *impossible*. (*This witness was not called by Mr. May and this document was never produced at trial.*)

Diana Gordon is a mother of two who remembered seeing Mr. Crawford at the TNT grocery store on May 6, 1996 at approximately 2:30 p.m. in the company of his two sons. Ms. Gordon's testimony corroborates the recollection of Mr. Houston and makes Mike Beckcom's story *impossible*.

A forensic Expert hired by the defense testified at the second state trial that he performed a scientific test on the metal tool box which the government's

witness (*Beckcom*) alleged was used as the sealed gas chamber to execute Brueggen. The forensic examiner was unable to find any trace elements of carbon monoxide in that box. This testimony makes Beckcom's story and the government's theory of this case *physically impossible*. (*This witness was not called in the federal trial*).

Max Courtney is a forensic expert specializing in the analysis of duct tape. Mr. Courtney testified during the State trials that the small piece of duct tape found at the scene (*an old and worn raggedy piece of tape*) which allegedly held a single fingerprint of Mr. Crawford was not the same as the duct tape found at the scene and covered with Kirk Johnson's prints (*the new tape purchased at Wal-Mart*).

The Nueces County Medical Examiner testified in the second State trial that **he did not find any actual evidence of carbon monoxide poisoning** when examining the corpse of Nick Brueggen. Rather the expert testified that he based his assumption off of police reports and the statement of Beckcom and Johnson. He testified that an insulin overdose may have caused Brueggen's death. (*This witness was not called at the federal trial*). This is relevant in light of a new expert sworn statement which posits that carbon monoxide is present in human remains long after death. (*This witness did not testify in federal court*.)

CONSTITUTIONAL ERROR AT TRIAL

Mr. Crawford's original trial in this matter was *riddled* with constitutional error. First, the government and Mr. Crawford's primary chair trial lawyer (Bill

May) hid from the court the fact that he had received payments from Loans, written on the names of Crawford's businesses, directly to May's accounts from banker Les Tatum. Tatum was on the government's witness list in the case, testified to the grand jury in the case, and allegations in that case involved fraudulent loans written to the Crawford's by Tatum. More substantial is the fact that Les Tatum was indicted by the Federal government for writing fraudulent loans and Attorney Bill May was a subject of that indictment. During the Crawford trial, May was served with a lawsuit from Kleberg Bank concerning \$600,000.00 worth of loans Les Tatum had written to May which remained unpaid. Mr. May filed his answer to this lawsuit on the date of the closing argument in the federal trial. May was later called by the government to testify against Les Tatum.

Second, the representation that Mark Crawford received from Bill May amounted to ineffective assistance of counsel in the following respects: (1) May was ineffective for failing to call numerous alibi and defense witnesses who were prepared to and who had previously testified to Mr. Mark Crawford's *actual innocence* during the State murder trial resulting in acquittal. One of these witnesses is an unbiased witness who claimed to be with Mr. Crawford at the tiem Beckcom claims the murder occurred; (2) May failed to call numerous expert witnesses who's testimony would and had previously cast doubt on the government's theory of the case; Mr. May promised the jury that he would call these witnesses in his opening argument and failed to do so. The same witnesses

had testified at the State murder trial resulting in acquittal and (3) Bill May failed to present key evidence in the case that would and had previously caused doubt in the minds of the Jury in both State trials. All of these witnesses and this evidence had been previously submitted and argued by May in Mr. Crawford's State Murder trial. That trial ended in a unanimous decision in favor of **not guilty**.

To support the petitioner's claim the petitioner submits the depositions and affidavits of numerous professionals and officers of the court including Mr. May's co-counsel, his investigator, and May's own secretary.⁴⁷ These witnesses attest to the fact that May's actions, inactions, and behavior in this case were incomprehensible and "shocking".⁴⁸ Nevertheless, the petitioner's original \$2255 in this case was denied.

There is no question that Mr. May was representing conflicting interest between his questionable relationship with Les Tatum and his representation of Crawford. All indications point to the fact that May was preparing to put on a strong defense prior to Tatum's involvement in the case. At the exact moment in

⁴⁷ Exhibit 3 and 4: (May's co-counsel Roger Litman harshly criticizes May's representation of Crawford and May's failure to call key alibi witnesses.); Exhibit 6 (Private Investigator Deborah Cordis-Weaver criticizes May as being "volatile" and "irresponsible", noting that May failed to call numerous alibi witnesses that were under subpoena and who had traveled from Texas to be present for the California trial; Exhibit 7 (Mr. Crawford's son in law, Mr. Thomas Henry, states that May borrowed \$43,800 from him for expenses during the Crawford trial.)(This money was never repaid and May received these funds from his client's family in addition to the money he billed the government pursuant to the Criminal Justice Act for the same expenses); Exhibit 14: (Attorney, Kenna R. Cavnar, states that she contacted all thirteen experts listed on the Defendant's Notice of Experts filed on April 15, 1999. Four of the thirteen were not reachable and the other nine denied ever being contacted by Crawford's attorney for his defense); Exhibit 11: (Pharmacist James T. O'donnell opinioned that May was at a high risk of impaired judgment due to May's admitted narcotic drug use coupled with alcohol during Crawford's trial); Exhibit 12: (Forensic Expert John I. Thornton sharply criticizes Mays failure to test the government's forensic evidence in the case)

⁴⁸ Exhibit 3 at 15:15

time that Tatum became involved and was himself a target of the federal government, Bill May systematically and intentionally sabotaged Crawford's defense. One witness, Mr. May's own secretary, who was totally unrelated to Crawford, has provided newly discovered evidence that states the following:

Before and during the Crawford trial when he [May] needed money he would send people down to the bank in Kingsville where Les Tatum worked to get money when it was needed. One day while eating Lunch, we were discussing how money comes and goes and Bill explained that he was never worried about money that he could always get money and he mentioned Les Tatum and how the "poor bastard" paid him so much money and now he is locked up. We also talked about Bill's physical problems during the time of the trial, and his use of prescription pain killers and alcohol. During the time that I knew him and worked for him, he regularly used Oxycotin, Lortab 7.5, and other prescription pain killers. On one occasion when I arrived at his apartment, I found various types of drugs, including marijuana, cocaine, and other pills lying on the kitchen table, as well as the kitchen counters..."

Exhibit 9 at 1.

CONCLUSION

In order for Mark Crawford to be guilty; Mr. Weekly, Officer Gonzalez, Maria Vidaduc, Marco Crawford (*an attorney*), Chris Crawford (*a CWI inspector*), a school principle, Todd Houston, Marisa Gomez (*a nurse*), Mr. Hollond, and Max Courtney (*a forensic expert*) must all be lying.

In order for Mr. Crawford to be guilty; one would have to believe that a person could tape a garden hose to a tailpipe, pump the exhaust into a sealed metal box (*without the engine stopping*), and there not exist any trace elements of carbon

monoxide (*exhaust fumes*) remaining in the box when the box was tested by a forensic expert thirty days later.

In order for Mark Crawford to be guilty one must believe that Mr. Crawford would drive to Wal-Mart to purchase a pair of bolt cutters for the purpose of cutting a pad lock to which *he* possesses a key and to purchase tape and a hose which, according to crime scene photographs, he already owns.

In order for Mark Crawford to be guilty one must determine that twelve jurors who heard more evidence in the State trial than did the jury in the federal trial, made a mistake when they acquitted Mark Crawford of the very same murder.

Michael Glenn Beckcom is a liar and a perjurer. That is what *the evidence as a whole* reflects in this case. Mr. Beckcom killed Mr. Brueggen with an insulin overdose, buried the body on the property of Mr. Crawford, and then paid William Noel to plant the dead man's briefcase at Mr. Crawford's house in order to *frame* Crawford for the murder. Years later he bragged about the crime to a fellow inmate. Mark Crawford is innocent.

Mr. Crawford has more than met the standard required by 28 U.S.C. §2255(h)(1) and as such this court **grant** the instant motion and allow his attached petition to proceed in the district court.

Respectfully submitted this _____ day of _____, 2013.

Mark Crawford, *pro se*