

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 30th day of October, 2009.

Marcellus Leon Crawley,

Appellant,

against

Record No. 090144

Circuit Court No. CL07-2950

Gene M. Johnson, Director,
Department of Corrections,

Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of the City of Richmond.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is error in the judgment of the Circuit Court of the City of Richmond.

In 2004, Marcellus Leon Crawley was convicted of abduction with intent to defile and forcible sodomy. He was sentenced to 20 years imprisonment on each offense, to run consecutively, with 21 years suspended. His direct appeals were unsuccessful. In 2007, Crawley filed a petition for a writ of habeas corpus in the circuit court, alleging that he had received ineffective assistance of counsel at trial and requesting an evidentiary hearing. The Director of the Department of Corrections filed a motion to dismiss. After a hearing on the motion and reviewing briefs, exhibits and arguments of counsel, the circuit court granted the Director's motion and dismissed Crawley's petition. Crawley was thereafter awarded an appeal.

Crawley makes two related claims, (1) that the habeas court erred in denying his request for limited discovery of information in the Commonwealth's possession regarding the boyfriend the complaining witness was dating at the time of the offense, and (2) that his trial counsel was ineffective in failing to demand production of that information in the Commonwealth's possession and in failing to make proper objection to the Commonwealth's failure to disclose it. Crawley contends the "boyfriend information" would have impeached the testimony of the complaining witness.

The evidence at trial, stated in the light most favorable to the Commonwealth, was that in the early morning of March 8, 2003, Michelle Williams (Michelle), who was alone in her house, heard a knock at the front door. When she opened the door, a man she did not know, who was wearing a blue ski mask, forced his way inside, forcibly sodomized her, and left. At trial, she could not identify Crawley as her attacker and testified that she had never known him.¹

Crawley's version of events was that he had been having a "secret affair" with Michelle and that the encounter on the morning of March 8, 2003 was consensual. He testified that during the encounter, he heard a knock at the front door and Michelle told him to be quiet and leave. He said he then heard someone going around the side of the house, followed by a knock at the back door, whereupon Crawley went out the front door and ran from the scene. He said he was fearful because he "figured it was either her boyfriend or one of the neighbors" and "whoever it was, they

¹ The victim called the police after her attacker left and was taken to a hospital where DNA evidence was collected. Crawley was identified as the perpetrator by a DNA "cold hit."

probably was armed." Crawley testified that the reason his affair with Michelle had to be "secret" was that each of them was involved in a relationship with someone else at the time.

When cross-examined at trial, Michelle testified that she had no boyfriend at the time of the offense, was not dating anyone and had no romantic or physical relationship with anyone.

At a pre-trial hearing, defense counsel, seeking to have Crawley admitted to bail, mentioned to the court the defense of consent, asserting that Crawley had known Michelle and was having a relationship with her at the time of the offense. The assistant commonwealth's attorney appearing in the case responded: "I actually spoke to the person she was dating at the time that this alleged crime happened and it wasn't Mr. Crawley." Crawley argues on appeal that this information, clearly in the Commonwealth's possession at the time of trial, would have served to corroborate his version of events and to impeach the testimony of the complaining witness. He contends that it would not only have affected Michelle's credibility by refuting her testimony that she had no boyfriend at the time, but it would also have shown that she had a motive to fabricate her testimony by concealing from her boyfriend knowledge of her affair with Crawley. Further, he says, it would have corroborated his stated reason for fleeing the scene.²

² In the habeas case, Crawley's counsel at the criminal trial filed an affidavit stating that when the assistant commonwealth's attorney stated at the bail hearing that she had spoken to Michelle's boyfriend, "it did not have much of an impact on me or my preparation of Crawley's case at that time" because he was preparing a different strategy of defense. Counsel stated that when Michelle testified at the trial five months later that she had no boyfriend, he was sure that he did not recall the assistant commonwealth attorney's remark. He expressed the view, however, that the Commonwealth, knowing of the boyfriend information, should have disclosed it when Michelle testified.

Code § 8.01-654(B)(4) permits a habeas court to adjudicate a petitioner's claims based upon the trial record but does not prohibit the use of affidavits to supplement the record. Rule 4:1(b)(5) permits limited discovery in habeas cases in the habeas court's discretion. The petitioner is not entitled to a plenary hearing or to any discovery as a matter of right. Yeatts v. Murray, 249 Va. 285, 289, 455 S.E.2d 18, 21 (1995). Nevertheless, the habeas court's authority to adjudicate the issues solely upon the record is conditioned upon a preliminary finding that "the allegations of the illegality of the petitioner's detention can be fully determined on the basis of recorded matters." Code § 8.01-654(B)(2).

Here, this Court cannot agree with the habeas court's conclusion that the record, as supplemented by trial defense counsel's affidavit, is sufficient to permit a determination that the information in the Commonwealth's possession, if timely disclosed at trial, would not have so affected the fact-finder's decision as to lead to a different result. The versions of events given at trial by Michelle and by Crawley were in direct conflict and each version was essentially uncorroborated. Any evidence tending to add credit to one version and to discredit the other could have had a significant effect.

Crawley's request for discovery is limited. He seeks disclosure of any information in the Commonwealth's possession concerning the name of the boyfriend, contact information for him, and any notes of discussions with him by agents of the Commonwealth. If such information exists and is produced, the habeas court will be in a better position to determine whether (1) Crawley's claims can be "fully determined on the basis of recorded matters," or (2) whether an evidentiary hearing should be granted,

and (3) whether it is reasonably likely that evidence resulting from such discovery, if produced at trial, considered in the light of the totality of the evidence before the trial court, would have led to a different result. See Strickland v. Washington, 466 U.S. 668, 695-96 (1984).

For those reasons, the judgment appealed from is reversed and the case is remanded to the circuit court with direction to grant limited discovery and for further proceedings consistent with this order.³

This order shall be certified to the said circuit court.

A Copy,

Teste:

*original order signed by the
Clerk of the Supreme Court of
Virginia at the direction of the
Court*

³ Because the case is being reversed on the basis of Crawley's first assignment of error, it is unnecessary to address the second. Accordingly, the Court does not reach Crawley's claim of ineffective assistance of counsel at trial.