

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Brian Keith Uzzle — PETITIONER
(Your Name)

vs.

Commonwealth of Virginia "etal." — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Virginia Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian Keith Uzzle
(Your Name)

24414 Musselwhite dr
(Address)

Waverly, Virginia, 23891
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether a state Court may benefit, gaining the advantage of a restart on the Speedy Trial clock (i.e. indefinitely postponing prosecution), over the accused objection, by nolle-prosequi and re-indictment of the same exact charges, knowing the accused would remain in custody?
2. Whether a state Court may gain a restart on the Speedy Trial clock by nolle-prosequi of the charges, using Continuance reasons, stating it would further investigate and reindict accused, over accused objection, while the accused remained in custody under the conditions of the nolle-prosequi charges, but held on a showcause in connection (Same criminal episode) as the nolle-prosequi charges?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this

petition is as follows: Commonwealth of Virginia, Lesley Fleming (warden)

- Lesley Fleming was the warden of Wallens Ridge State Prison where Petitioner was previously housed
it. Now Petitioner is housed at Sussex 1 State Prison and currently under the warden at Sussex 1 State Prison

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Virginia Court of Appeals court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 9 2018 (Habeas)

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 26, 2018, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Constitutional And Statutory Provisions Involved

1. U.S. Amendment 6 Rights of the accused: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...
2. U.S. Sixth Amendment Speedy Trial Guarantee Application and Scope (In Relevant part): A state practice permitting the prosecutor to take nolle-prosequi with leave, which discharged the accused from custody but left him subject at any time thereafter to prosecution at the discretion of the prosecutor the statute of limitations being tolled, was Condemned as violative of the guarantee.²⁰ *Pettit v. Klopfer* (Appendix E2)
3. U.S. Supreme Court regulations as set out in its rulings in *Klopfer v. North Carolina* 386 U.S. 213: 87 S.Ct. 988. (A) State may not, without stated justification indefinitely postpone prosecution on indictment over objection of accused, even though he was discharged from custody. (B) Even though taking of nolle-prosequi under North Carolina law had effect of permitting defendant to go whithersoever he would, he was not thereby relieved of limitations placed upon his life and liberty by prosecution; and his constitutional right to speedy trial was denied by discretion vested in Solicitor to hold him subject to trial, over his objection, throughout unlimited period during which Solicitor could restore case to calendar but during which there was no means by which defendant could obtain dismissal or have case restored to calendar for trial. U.S.C.A. Const. Amends (C) Fourteenth Amendment made applicable to states the Sixth Amendment guaranty of right to speedy trial. (Appendix E1, case in full)
4. U.S. Court of Appeals for the District of Columbia regulations as set out in *U.S. v. Lara* 520 F.2d 461: (A) Whenever the Government's action at any stage of the proceeding indicates bad faith, neglect or a purpose to secure delay itself or some other

procedural advantage the resulting delay is not justified under the Speedy trial rule. (B) Cases involving more than six months delay between indictment and trial are properly subject to inquiry and need for justification (Appendix E6, case in full)

- 5 Virginia Speedy trial Statute 19.2-243 (In Relevant part): where a district court has found that there is probable cause to believe that an accused has committed crime, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court. . . . Va Criminal Procedure 14:12 further explains in Relevant part: . . . When an accused is held in pretrial custody³. (1) trial must be held within five months of the date of the preliminary hearing . . . (Footnotes)³ An accused held (even on unrelated charges) is held in custody for purposes of the statute. Knott v. com. 215 Va 531, 211 S.E. 2d 86 (1975). Price v com. 25 Va. App. 655 (Appendix E4)

- 6 Virginia Court of Appeals ruling in Price v Commonwealth 492 S.E. 2d 44 (Appendix E5, case in full)

- 7 Virginia Criminal Procedure 14:12 (Appendix E7).

Statement OF The Case

Petitioner was arrested on or about the second day of September twenty eleven. He was charged on September 12, 2011, shortly after a showcause was placed on him. Stating from the same criminal episode as the subject charges. The Commonwealth refer to this showcause as an unrelated probation violation. October 25, 2011 a preliminary hearing was held, where the District Court found probable cause to certify the charges to the circuit court.

On December 2, 2011 prosecution placed a hold on Petitioner for it's own reasons in connection with it's Jail house informant for the Subject charges. This hold had Petitioner moved from Riverside Regional Jail back to Chesterfield County Jail where he was the only Inmate facing such serious charges.

March 6, 2012 trial date the case was continued due to Prosecution holding the identity of it's Jail house informant a secret until the day before (March 5, 2012). However Prosecution took the position and stated on the record that it was ready for trial (Appendix F1), resulting in the continuance being charged against Petitioner.

On March 12, 2012 Petitioner recieved new counsel because of a conflict of intrest with his original counsel and the Jail house informant. Prosecution then nolle-prosequi the charges over Petitioner's objection. Petitioner remained in custody on the showcause and under the same conditions of the hold placed on him by the nolle-prosequi charges. (complete transcript attached App. F2)

Only 7 days after nolle-prosequi Petitioner was reindicted on the same exact charges May 30 + 31st, 2012 trial commenced resulting in Petitioner being convicted. June 1, 2012 Prosecution uplifted it's hold and Petitioner was moved back to Riverside Regional Jail.

September 10, 2012 Sentencing date, Petitioner argued a Speedy trial motion which was denied before the Sentence and conviction became final. Petitioner then raised the Speedy Trial issue statutory and constitutional in the following post conviction courts: Virginia Court of Appeals and Supreme Court of Virginia on appeal, Chesterfield Circuit Court at trial, and Supreme Court of Virginia on Habeas Corpus.

Reasons For Granting The Petition

Writ of Certiorari should be granted for the following reasons: 1. If this Honorable Court does not step in and govern, if not abolish this Procedure/practice. An accused could be held prior to trial ad infinitum.

The Virginia State Court has adopted a procedure/practice where the prosecution, with courts approval, can nolle-prosequi an accused charges over his objection, gaining a restart on the Speedy Trial clock upon re-indictment, of the same charges, for the same exact alleged criminal act. This practice/procedure is commonly used in the Virginia State Courts. According to the Virginia Supreme Court this "Restart" of the Speedy Trial clock is Statutory and Constitutional.

In *Harris V. Commonwealth*, 258 Va. 516, 585, 520, S.E. 2d 825, the Va. Supreme Court States: A nolle-prosequi is a discontinuance which discharges the accused from liability on the indictment to which the nolle-prosequi is entered. Furthermore a new indictment is a new charge, distinct from the original charge or indictment. When an original indictment is supplanted by a second indictment, the terms contemplated by E code 19.2-243 I are to be counted from the time of the second indictment.

The Harris Court observed that simply because a motion for nolle-prosequi comes close in time to the running of a defendant's Speedy Trial does not obviate the ultimate effect of that motion. Once the motion is granted, the defendant is released from custody or the terms of his bond. This case and its findings as pointed out above, which are Contrary to the statute's plain language 19.2-243, the U.S. Supreme Courts findings in *Klopfer V. North Carolina* 87 S.Ct 988, 386 U.S. 213 (U.S.N.C.), and the Sixth Amendment Speedy Trial Guarantee it self.

Which States? A state practice permitting the prosecutor to take nolle-prosequi with leave, which discharged the accused from custody but left him subject at any time thereafter to prosecution at the discretion of the prosecutor, the 6

Statute of limitations being tolled, was condemned as violative of the of the guarantee.²⁰ (see *attachment E2). Despite Harris Courts findings being in opposite, the lower courts lean on it in denying Petitioner assertions.

Given the prosecution ability to begin prosecution then nolle-prosecui the charges or indictments over the accused objection, only to re-indict the accused for the same exact charges, gaining a fresh start on the speedy trial timeframe, COMPLETELY ELIMINATES the accused rights to a Speedy Trial.

In Petitioners case, the Prosecutor nolle-prosecui the case with the expressed intention to bring the charges right back, while Petitioner remained continuously in custody on a Showcause in the same Jurisdiction as the Subject charges (nolle-prosecui charges). This Showcause was taken out by the courts because Petitioner fought the Subject charges. This Showcause was attached to the Subject charges and could not be resolved until the Subject charges were resolved. If the nolle-prosecui would have laid the charges to rest as if they never existed like the courts rely on as set out in Harris v Commonwealth (cited above) then the Showcause would not have existed either and therefore could not have held Petitioner in custody. In reality the nolle-prosecui never went into effect.

The trial Court stated and rely on its own findings that the Showcause is an unrelated "probation violation." The so called "probation violation" (which in reality is a Showcause) was caused by the same criminal conduct, stemming from the same episode as the Subject charges where the courts had full control, authority, and rights over petitioner from his initial arrest until trial.

Prosecution stated on the record that the Petitioner would remain in custody after the nolle-prosecui ("he is being held on a Showcause without bond, and we have intentions to direct indict him", Tr. 3/12/12 P.3, L10-12). Prosecution noted three additional times that Petitioner would still be held without bond on his Showcause (Tr. 3/12/12 P.4, L8-10, P.4, L17-19, P.6, L7-8).

*"attachment" should read "appendix" instead.

In addition Prosecution gave no Constitutional Justifiable reasons for its nolle-prosequi, over objection. Instead the record reflects that Prosecution Judged its evidence to be insufficient and nolle-prosequi the charges instead of Seeking a Continuance to evade a Speedy Trial motion.

Reasons given by Prosecution was: It recieved late alibi notice from Petitioners counsel. That it wanted to further investigate Petitioner's alibi claim, possibly find and sapena a "potential" witness. And that Petitioner's new counsel had Just been appointed. None of these reasons call for a nolle-prosequi or Justify denial of Petitioner's Speedy Trial rights.

At the march 6, 2012 trial date prosecution took the position that they were ready to proceed with trial despite Petitioner alibi claim. that prosecution recieved at least 7 days prior to march 6, 2012 trial date (Appendix F1). No violation of a discovery order was argued by prosecution. The "potential" witness was of no material to prosecutions case, the "potential" witness was questioned by police on 8/29/11 the day after the crime took place. No information was given indicating he would be of any help to prosecution. Instead he stated he was not on the scene and he did not witness the crime. (Tr. 2, P. 142-143.

During Grand Jury testimony in early October 2011, Prosecutions eyewitnesses placed the "Potential" witness on the scene for the first time, after leaving him out of the story told to the police on the scene. Prosecution had more than enough time to locate this "potential" witness, for a second time.

As for Petitioner's new counsel Just being appointed, this was a matter for Petitioner to take up, not prosecution. Petitioner openly objected to the nolle-prosequi. More over, prosecutions problem with the Speedy Trial clock, brought about from defense Counsel's belated motion to withdraw was self-inflicted. Had prosecution not tactictically chosen to keep the identity of its Jailhouse informant a secret, the problem would have been avoided.

Only 7 days past from nolle-prosequi and re-indictment, and the

record does not indicate any efforts made by prosecution to investigate Petitioner's alibi or locate the "potential" witness. The point, Petitioner would like to drive home (Highlight) to this court, is that prosecution never planned on, or actually stop prosecuting Petitioner. In opposite of a nolle-prosequi which means that Prosecution does not wish to^{*}investigate further. Nor, was the charges "laid to rest as if they never existed." Yet, prosecution benefited off the nolle-prosequi then re-indictment gaining a restart on the Speedy Trial time period, both Statutory and Constitutional (?); while Petitioner remained in custody continuously.

Over all given that Petitioner was tried at least 70 days after his 152 day in custody Statutory Speedy Trial frame, and at least 3 months past the 6 month Constitutional time frame that any delay past this point causes inquiry of the Barker Factors of Barker V Wingo, 407 U.S. 514, 530 (1972), and need for justification from prosecution. The stated purpose from prosecution to re-indict, the fact that Petitioner was re-indicted so close in time following nolle-prosequi, and lack of proof in the record supporting prosecution claimed reasons for nolle-prosequi. Prosecution's genuine concern to evade a Speedy trial motion, stands exposed.

Accordingly this procedure/practice was executed in the most Oppressive, unfair, violative manner possible. And to allow this is to support State prosecutors and/or Courts to openly violate an accused right to a Speedy trial and hold him subject to trial as long as they wish by nolle-prosequi and re-indictment at their power of individual free decision.

^{*}"Investigate" should read "prosecute" instead.

Reasons for Granting the Petition

Writ of Certiorari should be granted by this Honorable Court for the following reasons: 2. This Court has already struck

down the procedure used in this case, as in violation of the Sixth Amendment Speedy Trial Guarantee. In *Klopfert v. North Carolina*, 87 S.Ct.

988, 386 U.S. 213 (U.S.N.C. 1967)

The nolle-prosequi then reindictment procedure condoned by the Virginia State Court as set out in *Harris v. Commonwealth*, 258 Va. 567, 585, 520 S.E.2d 825, has already been condemned by this Court in *Klopfert v. North Carolina* (cited above). The North Carolina procedure in *Klopfert* and Virginia in *Harris* are in its plainest form and are not dissimilar from each other. They both point out and revolve around the accused being discharged from custody after nolle-prosequi was entered.

This Honorable Court shot down the courts assumption that this procedure as applied to *Klopfert* placed no limitations on him, and was in no way violative of *Klopfert* rights. The U.S. Supreme Court, Mr. Chief Justice Warren, held that even though taking of nolle-prosequi had effect of permitting defendant to go whithersoever he would, he was not thereby relieved of limitations placed upon his life

and liberty by prosecution, and his constitutional right to a Speedy Trial was denied by discretion vested in Solicitor to hold him subject to trial over his objection, through out unlimited period during which Solicitor could restore case to calendar but during which there was no means by which defendant could obtain dismissal or have case restored to calendar for trial. *Klopfert* case was reversed and remanded

for proceedings consistent with opinion of Court.

Like wise Petitioner could not obtain dismissal or have his case

restored to calendar for trial, after nolle-prosequi. Here Petitioner

grievance stands in a stronger posture than *Klopfert* and *Harris*

because the Petitioner remained continuously in custody after the nolle-

prosequi. Prosecution executed this nolle-prosequi in the most oppressive

way gaining the tactical advantage of restarting the Speedy Trial clock.

The prevailing argument set forth by the Virginia State Court rest

On its conclusion that the nolle-prosequi laid the charges to rest as if they never existed and that a new indictment is a new charge distinct from the original charge or indictments. That the time for Speedy trial is to be counted from the new indictment. In plainer terms, the state court believes that it can circumvent the Speedy trial clock by nolle-prosequi then reindictment of the same exact charges without violating an accused's rights to a Speedy trial. This is the focus of this Petition and Petitioner prays this Court step in and correct this wrong. Clearly the Constitution or any U.S. Supreme Court ruling on Speedy trial support such an erroneous conclusion. The state courts ignore the clearly established, controlling, law of the U.S. Constitution and this court's findings in Klopfer.

In Klopfer case he was arrested Feb. 24, 1964 and indicted. Prosecution began in March 1964, the jury failed to reach a verdict, the trial judge declared a mistrial and ordered the case continued for the term. Several weeks prior to the April 1965 criminal session of the Superior court, the state solicitor informed Petitioner of his intention to have a nolle-prosequi with leave entered in the case. During the session, petitioner, through his attorney, opposed the entry of such an order in open court. In spite of Petitioner's opposition the court indicated that it would approve entry of a nolle-prosequi with leave if requested to do so by the solicitor. But the solicitor declined to make a motion for a nolle-prosequi with leave. In stead he filed a motion with the court to continue the case, which was granted by the courts.

The August 1965 criminal session of the court did not list Klopfer's case for trial. To check the status of his case, Klopfer filed a motion expressing his desire to have the charges against him concluded. On August 9, 1965 the court entered a nolle-prosequi over the objection of the accused (Klopfer). Klopfer was later reindicted and convicted.

Our Honorable U.S. Supreme Court ruled in Klopfer: That even though taking of a nolle-prosequi under North Carolina law had effect of permitting defendant to go whithersoever he would, he was not thereby relieved of limitations placed upon his life and liberty by prosecution; and his Constitutional right to a speedy trial was denied by discretion vested in solicitor to hold him subject to trial over his objection;

throughout unlimited period during which Solicitor could restore case to calendar but during which there was no means by which defendant could obtain dismissal or have case restored to calendar for trial.

The consequence of this oppressive criminal procedure is made apparent by this case before the Court. Petitioner was denied an opportunity to exonerate himself in the discretion of the Commonwealth (Prosecution) who held him subject to trial, over his objection, throughout the unlimited period in which the Commonwealth restored the case to the calendar for trial, at its own discretion, while Petitioner remained in custody and could not, have his case dismissed, restored for trial inside his statutory Speedy Trial time limit, or at least have a date scheduled in full consideration of his Speedy trial deadline. To add assault to injury the nolle-prosequi which enabled Petitioner to successfully have his case dismissed or have his case tried inside his statutory Speedy trial time frame, never went into effect. It never laid the charges to rest as if they never existed nor had the effect of allowing Petitioner to go withersoever he will. Not only did Petitioner remain in custody on the Showcause after nolle-prosequi, he remained under the conditions of a hold placed on him by prosecution for its own reasons dealing with its Confidential Informant. Petitioner remained under the conditions of this hold from 12/2/11 until June 1, 2012 one day after trial.

Petitioner suffered obvious prejudice and the oppression from the court procedure was more serious to Petitioner than Klopfer. His charges were more serious and he remained in custody after the nolle-prosequi. However the Virginia State Court argument and ruling is the same argument and ruling from the North Carolina State Court that this Court struck down in Klopfer v North Carolina. This Court stepped in corrected the N.C. State Court error as in violation of the Speedy trial guarantee. Making a milestone case that you find cited in the U.S. Constitutional books in the Section for the Sixth Amendment Speedy trial guarantee. Though the state courts ignore it and practice in opposite of its ruling, "as if it never existed". For this reason above others, this Court should grant this Petition, forcing the state Court to respect your rulings and follow your examples.

Reasons For Granting This Petition

Writ of Certiorari should be granted by this Honorable court for the following reasons: 3. The State Courts ruling is in conflict with the United States Court of Appeals for the District of Columbia ruling in *U.S. v. Lara*, 520 F.2d 460 (C.A.D.C.) 1975 and the tortuous path taken by Prosecution in Petitioners case was flat out wrong.

The lower courts ignore the fact that the prosecution acted in bad faith executing a nolle-prosequi then reindictment to secure a delay outside Petitioners Statutory Speedy trial time frame. Clearly gaining a procedure advantage, a restart on the speedy trial clock. Prosecution decision to nolle-prosequi instead of continuing the case was dictated by tactics not necessity. A continuance option was available and the reasons given by the Commonwealth for its nolle-prosequi amount to nothing more than a continuance.

Prosecution stated it wanted to further investigate and that it would continue prosecution by reindictment following the nolle-prosequi. While Petitioner remain in custody on a showcause in the same jurisdiction as the nolle-prosequi charges. The nolle-prosequi in Petitioners case was not necessary and was done with oppressive intentions contrary to what nolle-prosequi is by definition, knowing that the nolle-prosequi would not actually, in reality, have the effect of laying the charges to rest as if they never existed nor relieved the limitations placed on Petitioner by prosecution. Instead it was done to secure a delay outside Petitioners Statutory Speedy trial time frame.

Lara Court pointed out the following: Whenever the Government action at any stage of the proceeding indicates bad faith, neglect or a purpose to secure delay itself or some other procedure advantage, the resulting delay is not justified under Speedy trial rule.

Cases involving more than six months delay between indictment and trial are properly subject to inquiry and need for justification.

The Virginia State Court did not and can not properly justify its delay past 6 months from arrest until trial. The procedure it used to secure the delay outside Petitioners Statutory Speedy trial time frame, was in bad faith. Securing the procedure advantage of a restart on the Speedy trial clock, hence, a delay itself. Which once done at any stage of the

proceedings violated Petitioner's right to a Speedy trial.

Plain for this court to see the path taken by prosecution was clearly wrong, it nolle-prosequi the charges just to bring them right back seven days later, while Petitioner remained in custody under the conditions of a hold placed on him by prosecution for the nolle-prosequi charges. This hold had him moved from Riverside Regional Jail back to Chesterfield County Jail, where there was no adequate law library and Petitioner was the only inmate facing such serious charges. This hold remained on Petitioner from 12/2/11 through the week long period his case was nolle-prosequi until 6/1/12 one day after he was convicted.

Also Petitioner was held on a showcause for catching the nolle-prosequi charges. All types of restraints imposed by prosecution remained on Petitioner after nolle-prosequi, as stated above. The Courts having full control, authority, and rights over Petitioner never wanted to release him from custody following its nolle-prosequi. It enjoyed restarting the Speedy trial clock, over objection, while the Petitioner remained in custody stressed and helpless. Petitioner now prays that this court grant this petition and address this issue for all to see and use as an example case!

Reasons For Granting The Petition

Writ of Certiorari should be granted by this Court for the following reasons:
: 4. Now the time is right for this Honorable Court to step in and re-address this issue, making it plain to the state courts that this procedure, as applied to Petitioner, is in violation of the U.S. Constitution, Sixth Amendment right to a Speedy trial.

The U.S. Supreme Court case law is supposed to be controlling though the state courts often, almost always, ignore it, defining the law in its own way. Contrary to the Constitution and U.S. Supreme Court rulings as was done here. Here in Virginia, the courts adopted a similar procedure that this Court ruled against in *Klopfer* and uses it often with no restraints.

Its procedure and argument is the same as was done and argued in *Klopfer v North Carolina* (1967). This Court's, U.S. Supreme Court, ruling striking it down means nothing to the state court. Obviously the practice/procedure used here is in opposite to this court's rulings on the same issue.

Now the time is right for this Court to father the lower courts and set them straight on this often used state practice that is in itself, violative of the guarantee.

To add in support of granting this Petition, to further show the state courts err, and its refusal to even abide by its own law, Petitioner points out the following: There is Virginia case law that shows that Petitioner's Statutory Speedy trial rights were violated. *Price v Commonwealth* 25 Va. App 655, 492 S.E.2d 447 (1997). Price case and Petitioner's case is very close in nature, almost exact. The only relevant difference is that Price had a Juvenile transfer hearing instead of a preliminary hearing. Price court points out that "... both proceedings require the district court to find probable cause to believe that the accused committed the alleged felonious act as a condition to further prosecution of the offense in the circuit court." (See Appendix , 3rd pg.) Placing Petitioner's case and Price case in the same posture!

Virginia Criminal Procedure 14:12 ends all disputes. It states when an accused is held in Pretrial custody³: (citing the following) 3 An accused held (even on unrelated charges) is held in custody for purposes of the statute. (citing Price) (See Appendix E7).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brian K. Uzzle

Date: _____