

No. 18-9051

Supreme Court, U.S.

FILED

FEB 01 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

QUINTONIUS B. GOLSTON — PETITIONER
(Your Name)

vs.

LORIE DAVIS, DIRECTOR — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

QUINTONIUS B. GOLSTON
(Your Name)

2661 FM 2054
(Address)

TENNESSEE COLONY, TEXAS 75884
(City, State, Zip Code)

(Phone Number)

ORIGINAL

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:

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OTHER

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 A 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 is unpublished.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 _____ 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 is unpublished.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 is unpublished.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 _____ court appears at Appendix _____ 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 is unpublished.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 November 05, 2018.

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: _____, 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

UNITED STATES CONSTITUTIONAL AMENDMENT VI.

STATEMENT OF THE CASE

Petitioner was indicted for first degree Murder enhanced by a prior felony conviction of Robbery. After a plea of not guilty to the offense and not true to the enhancement he proceeded to trial. On April 29, 2011 he was FOUND GUILTY BY A JURY AND enhancement found to be true. He was assessed 40 years in the Texas Department of Criminal Justice Institutions Division and given a \$10,000 fine.

He timely appealed his conviction. The Sixth Court of Appeals affirmed in an unpublished opinion on June 29, 2012, Golston v. State 06-11-00136-CR, 2012 Tex.App.LEXIS 5251 (Tex.App.-Texarkana, 2012) Petition for discretionary review was refused by the Texas court of Criminal Appeals on October 24, 2012. Golston filed a writ of habeas corpus on October 22, 2013 which was denied without written order by the TCCA on December 25, 2014. Petitioner filed his Federal writ on December 25, 2014 within the AEDPA guidelines. The United States District Court for the Eastern District of Texas at Texarkana denied relief on December 21, 2017 Hon. Rodney Gilstrap, District Judge presided. Golston, subsequently, requested COA in the Fifth Circuit Court of Appeals at New Orleans, which was denied on November 5, 2018 and signed by Hon. Edith H. Jones United States Circuit Judge.

REASONS FOR GRANTING THE PETITION

WHETHER THE COURT OF APPEALS FIFTH CIRCUIT ERRED IN FINDING PETITIONER'S EXONERATORY EVIDENCE (Brady Claim) TO BE WITHOUT MERIT?

FACTS SUPPORTING CLAIM:

In the early morning hours of May 19, 2007 a fight between Joshua Rigsby and Petitioner took place at the Esquire Club. This altercation was allegedly over the theft of Petitioner's rims by Rigsby. This incident later culminated in the shooting death of complainant (Nelson). Petitioner adopts by reference the intermediate Courts factual account where it is supported by the official record. Petitioner and Rigsby were thrown out of the Esquire club by security. After the altercation, Brown, who was called by Rigsby to bring a gun and pick him up, later encountered Petitioner at the raceway gas station. They became embroiled in a confrontation. (RR Vol. 4, Pgs. 27-29) According to State's witness Brown; the confrontation seemed to be at a standstill when the girls arrived. Petitioner was facing Rigsby and Brown with his hands at his side. Rigsby wanted to fight. When the girls pulled up they got out of the car talking, saying "Whats up now?" as they approached him (Dinky) from behind. (RR Vol. 4, Pgs. 28-29) It is uncontested that these two women approached petitioner from the rear in a provocative manner and one of them hit him with a broken bottle which sliced open a wound in his head/neck area. It becomes controverted as to who swung the precipitating blow. (RR Vol. 4, Pgs. 28-29) According to Brown Papoose hit Dinky (Petitioner) in the head/neck area. An act clearly dangerous to human life The record supports that petitioner faced a threat from Rigsby and an

imminent threat from behind from Donyell and Papoose. (RR Vol.4 Pgs. 25-29) His 'state-of-mind' is immediately relevant here as to his reasonable 'apprehension of fear of danger'. Petitioner knew that Donyell (complainant) Had a propensity for violence.¹ He was aware that Papoose could harm him as well. Petitioner faced a reasonable apprehension of fear of danger from three (3) possible assailants. While the jury found "Sudden passion" his counsel, who took over the case (3) weeks prior to trial, failed to research the facts and law of the case, to appreciate that petitioner was entitled to a charge of self defense against multiple assailants.

WITHHELD EXCULPATORY EVIDENCE

The State has a duty to divulge exculpatory or impeachment evidence to the defense. Failure to comply with this mandate violates due process. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 10 L.Ed.2d 215(1963). In Brady, the court held that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the 'good faith' or bad faith of the prosecution. *id.*, at 373 U.S. at 83, 83 S.Ct. 1194. The Court has since held that 'the duty to disclose such evidence is applicable even though there has been no request by the accused.' United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). And that the duty encompasses impeachment evidence, as well as exculpatory evidence. United States v. Bagley, 473 U.S. 667 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

¹Nelson was accused of stabbing Cedric Fagan in the heart in the fall of 2006. On Christmas Eve 2006 she allegedly beat and slashed Keitha Gant across the forehead while straddling her. She(Nelson) died May 19, 2007.

Moreover, the rules encompasses evidence 'known only to the police investigators' which obligate the individual prosecutor with the duty to learn of any favorable evidence known to others acting on the governments behalf, including the police. Strickler v. Greene, 527 U.S. 263, 281, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999) (Quoting Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)).

In the case at bar, counsel for defendant went to the Bowie County District Attorney's office along with defendant to view the evidence when counsel was initially retained. Counsel was retained (21) twenty-one days prior to trial. At this meeting a physical altercation ensued with the prosecutor attacking defense counsel. (See Affidavit, Steven R. Rosen). This incident perpetrated by State counsel had a "chilling effect" on counsel's ability to investigate and procure evidence for petitioner's defense. At trial defense counsel cross-examined Det. Vickers about a videotaped interview he conducted with Cedric Fagan where Fagan was stabbed by Nelson (complainant). Officer Vickers stated that he had the videotape in his vehicle. (Rr Vol. 4 Pg. 262) Defense counsel requested that Vickers go to his truck and retrieve it. The court stated; "We're not stopping right now." The prosecutor in the case had not turned over this evidence and the record supports this. The prosecutor Elliott admitted that, "We do not have that tape." "I mean, I don't have it." "We have a file that's it." (RR Vol. 4 Pg. 267) This record excerpt is evidence that the State did not comply with Brady regardless of the good faith or bad faith of the State. Twenty-one days is not a lot of time for "out-of-town counsel" to procure evidence

from a prosecutor who physically assaulted him. (See Affidavit) Pursuant to Strickler v. Greene, the prosecutor had a duty to make available 'favorable' evidence known to the police acting on the governments behalf. id., at 527 U.S. 281.

CREDIBILITY AND PROPENSITY

Det. Vickers recommended that the case against Nelson (complainant) be dropped because in his opinion, she acted in self defense. Vickers' credibility immediately becomes 'fair-game' because he stated that Nelson told him (3) three different versions of the stabbing. Vickers stated that Fagan told him he attacked Nelson. This is controverted in the record. (RR Vol. 4 Pgs.255-58) (RR Vol. 4 Pgs. 269-71) Most importantly the propensity of Nelson weighs heavily against Vickers' credibility as Nelson had assaulted atleast one other person during the time she was investigated for Fagan's assault.¹ In the instant case she was at the least a vocal participant who approached defendant from his blindside.

THE RECORD IS IMPLICIT OF A FAILURE TO DISCLOSE

Had the altercation not happened where State counsel assaulted the defense counsel that counsel may have had an opportunity to investigate. But a physical altercation which caused counsel to leave had a chilling effect on counsel's ability to conduct an impartial investigation. EVEN WITH THIS ALTERCATION the State still had the duty to disclose. Obviously, this did not occur as this incident with Det. Vickers is now before the court. The court pre-emptively denied any request by counsel to enter the tape into evidence, whether or not defense counsel listened to it or not. The court reasoned as follows:

"adds nothing to this in light of the fact that the individual has testified as to what happened."

counsel responded;

"So you're denying my request for the officer to get the tape out of his truck...so it may be listened to by me."

Essentially, defense counsel was asking to listen to the tape in order to make a determination of whether to attempt to introduce it into evidence. The court's pre-emptive denial 'stifled' cross examination to bring forth the truth. And contrary to the Court's assessment the tape if listened to by counsel could have allowed him to attack Vicker's 'suspect' credibility. It must be stated that in spite of Vickers' recommendation that charges be dropped against Nelson. Her constant participation in or being a party to violence belied any recommendation made by Vickers. And petitioner believes that Vickers' tape to assess his credibility is and 'was' fair game, but for the court's denial.

Clearly, as in Brady, Strickler, et.al, the tape was material and relevant and could have changed the outcome of the proceeding. The State court's ruling not to admit the tape 'negated' any benefit viewing it would have brought. A huge question 'hangs over this proceeding' why would a seasoned Detective recommend no charges be brought against someone (Nelson) where there was overwhelming evidence as to her propensity for violence? This defies logic and conventional wisdom. More importantly it denies and violates a very important protection pursuant to Brady v. Maryland, with reference to disclosing evidence timely which may impact the proceeding, especially where this evidence was known only to Det. Vickers and the D.A.". Strickler v. Greene.

The Court of Appeals Fifth Circuit has decided an important question of Federal law which conflicts with this court's holding in Brady v. Maryland, supra, and were the facts of the videotape considered petitioner would have been acquitted. Det. Vickers who possessed the evidence, was a State actor and petitioner could not compel production of the evidence and had no adequate remedy at law. Accordingly, this court should exercise its supervisory powers and grant certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John G. Burch".

Date: 2-1-19