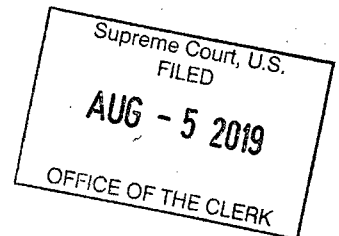


No. 19-5569

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



GARY L. BROWN — PETITIONER
(Your Name)

vs.

COMMONWEALTH OF PA. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

PENNSYLVANIA SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GARY L. BROWN #DT-8334

(Your Name)

1100 PIKE STREET

(Address)

HUNTINGDON, PA. 16654-1112

(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

1. THIS IS AN EXCEPTIONAL CASE. THE PETITIONER WAS CONVICTED OF MURDER IN CHESTER COUNTY, PENNSYLVANIA. (This incident evolved from a drug deal gone bad, in Chester County, Pa.). THE MURDER WAS CONFESSED TO BY DARYL GLASCO, WHO STATED HE DID ACT ALONE AND THAT HE WAS ALONE WHEN HE SHOT AND KILLED BOTH OF THE DECEDENTS. PETITIONER BROWN REQUESTED THE COMMONWEALTH PROVIDE FOR A DNA TEST/ANALYSIS ON EXCULPATORY EVIDENCE THAT WOULD PROVE HIS INNOCENCE. THE COMMONWEALTH DENIED THE MOTION AND THE APPELLATE COURTS REFUSED TO GRANT RELIEF ON APPEAL. THE LOWER COURTS DID ERROR AND DENIED THE PETITIONER DUE PROCESS (5TH & 14TH AMENDMENT) PROHIBITING THE PETITIONER-TO PROVE-THAT HE IS ACTUALLY INNOCENT.

LIST OF PARTIES

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

THE COMMONWEALTH OF PENNSYLVANIA, FOR THIS CASE, IS THE:
DISTRICT ATTORNEY OF CHESTER COUNTY, PA.
P.O. BOX 2746
WEST CHESTER, PA. 19380-0989

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STATUTES AND RULES

42 PA. C.S.A. § 9543.1

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 _____ 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☐ is unpublished.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 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 SUPERIOR COURT OF PA. court 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 7-23-2019.
A copy of that decision appears at Appendix A.

☐ 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

5TH AMENDMENT TO U.S. CONST.

14TH AMENDMENT TO U.S. CONST.

D U E P R O C E S S

STATEMENT OF THE CASE

THE PETITIONER, GARY BROWN, WAS CONVICTED FOLLOWING A JURY TRIAL ON SEPTEMBER 30, 1998; (the jury found Petitioner guilty 2 counts of murder in the first degree and related offenses), EVEN THOUGH THERE WAS A CONFESSION FROM DARYL GLASCO SIGNED BY GLASCO, ADMITTING TO THE 2 MURDERS, AND TO HAVE ACTED ALONE.

THE AFFIDAVIT OF GLASCO WAS ADMITTED INTO THE RECORD LATER ON AFTER THE TRIAL. N.T. 10-31-2001. ADMISSION THAT HE ACTED ALONE. SEE TRANSCRIPT PAGES 9-18. [EMPHASIS].

ON JUNE 27, 2017, PETITIONER FILED A MOTION FOR DNA TESTING. THE LOWER COURT DENIED THE MOTION ON AUGUST 21, 2017.

THE PETITIONER SET FORTH IN THE MOTION THAT THE CONFESSION BY GLASCO PROVED ACTUAL INNOCENCE. IF THE DNA TEST WAS GRANTED AS IS REQUESTED BY PETITIONER IT WOULD "PROVE" THAT SOMEONE OTHER THAN THE PETITIONER DID IN FACT KILL THE DECEDENTS, AS GLASCO STATED, THAT HE ACTUALLY KILLED BOTH DECEDENTS HIMSELF, WITHOUT ANYONE TO ASSIST HIM DO SO. PETITIONER RELIED ON IN RE: JOHN PAYNE, 129 A.3D 546 (PA. SUPER. 2015).

THE LOWER COURT ABUSED ITS DISCRETION WHEN IT DENIED THE MOTION FOR DNA TESTING FILED BY PETITIONER.

STATEMENT OF THE CASE CONTINUED

ON OCTOBER 31, 2001, GLASCO TESTIFIED AT PETITIONER'S PCRA HEARING, AND UNDER OATH, SWORE THAT HAD HE BEEN CALLED BY TRIAL COUNSEL TO TESTIFY AT PETITIONER'S TRIAL, THAT HIS TESTIMONY WOULD HAVE BEEN CONSISTENT TO WHAT IS IN HIS AFFIDAVIT. SEE N.T. 10/31/2001, page 25. [EMPHASIS]

GLASCO, ADMITTED TO KILLING "BOTH" OF THE DECEDENT'S AND TO HAVE KILLED THEM WITHOUT ANYONE ELSE BEING PRESENT OR ANYONE ELSE ASSISTING HIM. HOUSE V. BELL, 126 S.CT. 2064 (2006).

BOTH JANICE BOYD AND CAROL HILL PROVIDED AFFIDAVITS THAT PROVED PETITIONER WAS NOT AT THE SCENE OF THE ROBBERY/MURDER.

PETITIONER MORE THAN PROVED THAT THERE WAS A STRONG CASE OF ACTUAL INNOCENCE, IN THIS INSTANT CASE. SCHLUP V. DELO, 115 S.CT. 851 (1995).

THE MOTION FOR DNA TESTING WAS FILED SO THAT THE RESULTS WOULD FURTHER PROVE, WITHOUT ANY DOUBT, THAT THE PETITIONER WAS NOT AT THE SCENE, OR IN THE VEHICLE OF THE DECEDENT'S, WHEN THE KILLING TOOK PLACE. BASTIEN V. DRAGOVICH, 128 F.SUPP.2D 204 (M.D. PA. 2000)

THE LOWER COURT ROUTINELY DENIED THE MOTION WITHOUT CONDUCTING FURTHER FACT FINDING IN THE FORM OF THE DNA TESTS.

REASONS FOR GRANTING THE PETITION

THE PETITIONER, GARY BROWN, RESPECTFULLY REQUESTS THIS HON. COURT TO GRANT THIS PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT, FOR THE FOLLOWING REASON:

HERE, PETITIONER GARY BROWN, HAS ALWAYS ASSERTED THAT HE IS ACTUALLY INNOCENT, FOR THE CRIMES FOR WHICH HE WAS CONVICTED. THE PETITIONER FILED A 42 PA. C.S.A. § 9543.1 MOTION REQUESTING DNA TESTING ON JUNE 27, 2017. THE LOWER COURTS DETERMINED THAT THE PETITIONER FAILED TO SHOW PRIMA FACIE EVIDENCE OF ACTUAL INNOCENCE, AND THEREFORE DENIED THE PETITIONER THE MOTION FOR DNA TESTING.

PETITIONER BROWN POINTS OUT TO THIS HONORABLE COURT, THAT HERE, IN THIS INSTANT CASE, DARYL GLASCO, HAS CONFESSED TO THE MURDERS OF BOTH SAYSANA LAOMOI AND TY SACKSITH. IN ADDITION DARYL GLASCO SPECIFICALLY SAID HE ACTED ALONE WITH NO HELP FROM ANYONE. HE ALSO CLEARLY STATED THAT THE PETITIONER HAD ABSOLUTELY NO INVOLVEMENT IN THE MURDERS NOR IN THE PLANNING OF THE MURDERS. SEE N.T. 10/31/2001, PAGE 25 -- DEFENSE EVIDENCE EXHIBIT NO.1.

THE DNA TESTING WOULD PRODUCE EVIDENCE THAT COMPLETELY DOES DISCREDIT THE COMMONWEALTH THEORY THAT THE PROSECUTOR PRESENTED AGAINST PETITIONER BROWN.

THE COMMONWEALTH THEORY WAS THAT GLASCO DID NOT ACT ALONE BUT WAS ACCOMPANIED BY THE PETITIONER WHO WAS THE ACCOMPLICE OF DARYL GLASCO. GLASCO CATEGORICALLY DENIED THAT ANYONE ACTED WITH HIM OR ASSISTED HIM OR THAT ANYONE WAS EVEN PRESENT WHEN HE KILLED THE TWO DECEDENTS. N.T. 10/31/2001, PAGES 9-25.

THE COMMONWEALTH ALLEGED THAT THE - PETITIONER WAS IN THE VEHICLE WITH GLASCO, WHEN THE TWO DECEDENTS AND PRESENTED A PARTIAL LATEX LIFTED FINGERPRINT THAT THE PROSECUTOR ASSERTED BELONGED TO GARY BROWN, THE PETITIONER. THIS, THE COMMONWEALTH STATED WAS PROOF THAT THE PETITIONER WAS IN THE VEHICLE WITH THE TWO DECEDENTS.

A VIDEO TAKEN OF THE SCENE BY A NEIGHBORING BUSINESS DID RECORD THE DECEDENT'S VEHICLE-AND RECORDED IT SWERVING OUT OF CONTROL- BUT THE VIDEO DID NOT SHOW THE PETITIONER TO BE AT THE SCENE. NONETHELESS, THE COMMONWEALTH ARGUED IN ITS OBJECTION TO THE MOTION FOR DNA TESTS THAT THE ABOVE EVIDENCE AND OTHER SUSPECT CIRCUMSTANTIAL ALLEGATIONS, WOULD PREVENT THE PETITIONER FROM ESTABLISHING A PRIMA FACIE SHOWING OF ACTUAL INNOCENCE. THE COMMONWEALTH ARGUED THIS SHOULD PREVENT THE PETITIONER'S MOTION FOR DNA TESTING BEING GRANTED.

IT IS SIMPLY AN OUTRAGEOUS ASSUMPTION TO THINK GLASCO WOULD ADMIT TO BEING THE SHOOTER AND TO HAVE KILLED THE DECEDENTS, ALONE, WITH NO HELP FROM ANYONE, IF HE DID NOT DO SO. THAT EXPOSURE TO SUCH CRIMINAL ACTS WAS ADMITTED TO BY GLASCO-BECAUSE HE WAS THE LONE ASSAILANT.

THIS ALONE, ESTABLISHED PRIMA FACIE EVIDENCE, OF BROWN'S ACTUAL

INNOCENCE. THE MOTION FOR DNA TESTING FILED BY PETITIONER SHOULD HAVE BEEN GRANTED. THE DNA TESTING STATUTE, WHICH WAS PASSED UNANIMOUSLY BY THE PENNSYLVANIA GENERAL ASSEMBLY, SHOULD BE REGARDED AS A REMEDIAL STATUTE AND INTERPRETED LIBERALLY IN FAVOR OF THE CLASS OF CITIZENS WHO WERE INTENDED TO DIRECTLY BENEFIT THEREFROM, NAMELY THOSE THAT ARE WRONGLY CONVICTED OF A CRIME. SEE IN RE: PAYNE, 129 A.3D 546, 554 (PA. SUPER. 2015); (EN BANC)..

THE COMMONWEALTH ALLEGED THAT THE PETITIONER MUST HAVE BEEN IN THE VEHICLE WITH GLASCO WHEN GLASCO KILLED THE DECEDENTS. THE PETITIONER HAS ALWAYS ASSERTED THAT HE WAS NOT WITH GLASCO WHEN THE DECEDENTS WERE KILLED AND THAT PETITIONER HAD NO PART IN THE PLANNING OF THE TWO DECEDENTS DEMISE.

NOT LONG AGO A LAWYER FROM THE NORTHWEST UNITED STATES REACHED A LARGE SETTLEMENT FROM THE DEPARTMENT OF JUSTICE FOR HIS ARREST AS A TERRORIST WHOSE FINGERPRINTS WERE LIFTED FROM A BOMB PACKAGE FOUND AT CUSTOMS IN EUROPE. THE F.B.I. VERIFIED THE PRINTS AS BEING THOSE OF THE LAWYER IN THE UNITED STATES. THE F.B.I. CLAIMED TO HAVE SOLVED THE CASE AND HAD THEIR MAN. HOWEVER THE THE UNITED KINGDOM'S SCOTLAND YARD WAS NOT SO SURE. (They saw a slight[variation]). SCOTLAND YARD CONDUCTED DNA TESTING ON THE OILS TAKEN FROM THE FINGERPRINT LIFT TAPE AND THE DNA TEST RESULTS, PROVED CONCLUSIVELY THAT THE DNA OF THE LAWYER/SUSPECT DID NOT MATCH THOSE OF THE DNA TAKEN FROM THE OILS.

THE DNA TESTING SAVED THE LAWYER SUSPECT WHEN THE F.B.I. LATEX FINGERPRINT ANALYSIS WAS PROVEN TO BE INACCURATE.

PETITIONER BROWN, REQUESTS THAT THIS COURT FIND THAT THE TWO LOWER COURTS ABUSED THEIR DISCRETION IN REFUSING TO PERMIT THE MOTION FOR DNA TESTING TO BE GRANTED.

PERHAPS IT WOULD BE PERVERSION OF THE DNA STATUTE IF BROWN'S REQUEST WERE TO BE GRANTED, UNDER THE SAID AUSPICES OF A STATUTE - THAT IS DESIGNED TO AID THE WRONGLY CONVICTED, IN ORDER TO FURTHER INTERESTS OF THE COMMONWEALTH. IN OTHER WORDS: THE DNA TESTING RESULTS WOULD MAKE THE COMMONWEALTH AWARE OF WHO THE DEPOSITER OF THE CONTESTED PRINT IS. IT WOULD GIVE THE COMMONWEALTH THE OPPORTUNITY TO UTILIZE THE DNA DATA BASE BANK, INCLUDING BOTH THE STATE AND FEDERAL DNA DATA BANKS. SEE COMMONWEALTH V. JOHN PAYNE, 129 A.3D 546, n.#18, (PA. SUPER. 2015). FOOTNOTE #18 SETS FORTH THAT MANY OF THE 329 DNA EXONEREES NOTED IN THE DNA STUDY AND THAT WERE FOUND INNOCENT, WERE AT FIRST CONVICTED ON EVIDENCE FAR MORE OVERWHELMING THAN THAT EVIDENCE PRESENTED BY THE COMMONWEALTH AGAINST PETITIONER BROWN. DNA PROVED THE INNOCENCE OF THE 329 EXONEREES.

THE QUESTION IS, WHETHER SOME RESULTS COULD PROVE INNOCENCE. IN COMMONWEALTH V. CONWAY, 14 A.3D 101 (PA. SUPER. 2011), THE COURT ADDRESSED THE DATA BANK THEORY AND HOW IT IS APPLICABLE UNDER § 9543.1 (EMPHASIS ON PAGE 112).

THERE CANNOT BE A SERIOUS ARGUMENT BY THE COMMONWEALTH IN PROTEST OF THE PETITIONER MAKING A PRIMA FACIE SHOWING OF ACTUAL INNOCENCE. GLASCO CONFESSED TO KILLING BOTH OF THE DECEDENTS. HE ALSO STATED THAT HE ACTED ALONE AND WITHOUT ANYONE ASSISTING HIM. GLASCO HAD NO ACCOMPLICES. N.T. 10/31/2001, PAGES 9-25.

IN COMMONWEALTH V. GODSCHALK, 679 A.2D 1295 (PA. SUPER. 1996), THE SUPERIOR COURT DENIED GODSCHALK'S MOTION FOR DNA TESTING. A SHORT TIME AFTER THE SUPERIOR COURT'S DECISION GODSCHALK FILED A PETITION WITH THE FEDERAL COURT. SEE GODSCHALK V. MONTGOMERY D.A. OFFICE, 177 F. SUPP. 2D 366 (E.D. OF PA. 2001). THE RESULT WAS THIS: GODSCHALK DID RECEIVE THE DNA TESTS AND THE RESULTS VINDICATED GODSCHALK. 177 F.SUPP.2D 366,369. THE SUPERIOR COURT RECOGNIZED ITS MISTAKE IN GODSCHALK. BECAUSE OF THE DNA TESTING, GODSCHALK WAS ABLE TO PROVE HE WAS WRONGFULLY CONVICTED.

HERE, PETITIONER GARY BROWN HAS ESTABLISHED A PRIMA FACIE CASE OF ACTUAL INNOCENCE. THE DNA TESTING WOULD PROVE THAT THE COMMONWEALTH DID WRONGFULLY CONVICT AN ACTUALLY INNOCENT PETITIONER.


THE PETITIONER REQUESTED THE DNA TESTING OF THE BLOOD SWABBED FROM THE TRIGGER GUARD OF THE HANDGUN USED TO MURDER BOTH VICTIMS. ADDITIONAL SWABS EXIST OTHER THAN THE ONE PREVIOUSLY EXAMINED, AND THESE SWABS, IF DNA TESTED, WILL REVEAL THAT THERE IS DNA THAT BELONGS TO GEORGE CORNELL, THE FORMER OWNER OF THE HANDGUN. THE DNA RESULT INDICATED ONLY ONE OF THE BLOOD SWABS WAS TESTED. PETITIONER HAS ASSERTED THE DNA TESTING OF THE ADDITIONAL BLOOD SWABS WILL PRODUCE

EXCULPATORY RESULTS, FOR PETITIONER BROWN. HERE, GLASCO DID IN FACT CONFESS TO ACTING ALONE AND THAT HE SHOT AND MURDERED BOTH OF THE DECEDENTS, WITHOUT ANY ACCOMPLICE OR HELP FROM ANYONE. THIS DOES ESTABLISH THAT THE PRIMA FACIE STANDARD OF ACTUAL INNOCENCE, WAS SATISFIED, IN THIS CASE BY PETITIONER BROWN.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


GARY L. BROWN #DT-8334

Date: AUGUST 1, 2019