

19-7005

ORIGINAL

Supreme Court, U.S.
FILED

DEC 11 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JOHNNIE LEWIS WOOD - PETITIONER

V.

COMMONWEALTH OF VIRGINIA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was Petitioner's Sixth and Fourteenth Amendment rights violated when the state and state witnesses presented false testimony and prevented a fair submission of the controversy to the jury and that prejudiced the jury's verdict to indict and convict Petitioner?
2. Did the state decide an important question of federal law that has not been, but should be, settled by this Court, or did the state decide an important federal question in a way that conflicts with relevant decisions of this Court when the state declined to vacate Petitioner's convictions and dismiss the indictments when the indictments and convictions were procured through the use of false testimony and misrepresentation of material facts?
3. Can an indictment and conviction stand when one of the essential elements of the offense cannot be proven?

LIST OF PARTIES

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

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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

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Hampton Circuit Court appears at Appendix C to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was October 4, 2019. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: November 21, 2019, and a copy of the order denying rehearing appears at Appendix B.

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

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to U.S. Constitution: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor be deprived of life, liberty, or property, without due process of law ..."

Sixth Amendment to U.S. Constitution: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed ..."

Fourteenth Amendment to U.S. Constitution: "... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws."

Va. Code Ann. § 18.2-53.1: "It shall be unlawful for any person to use any pistol, shotgun, rifle, or other firearm ... while committing ... burglary, ..."

Va. Code Ann. § 18.2-90: "If any person in ... or in the daytime breaks and enters ... in a dwelling house ... with intent to commit ... robbery, ..., he shall be deemed guilty of statutory burglary ..."

Va. Code Ann. § 18.2-279: "If any person maliciously discharges a firearm within any building when occupied by one or more persons in such a manner as to endanger the life or lives of such person or person, ... is guilty of a Class 4 felony."

TABLE OF AUTHORITIES CITED

CASES:

<u>Bank of Nova Scotia v. U.S.</u> , 487 U.S. 250 (1988)	10,11,13,17
<u>Barts v. Commonwealth</u> , 2002 Va. App. Lexis 110 (2002) .	11,12,13
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CONSTITUTION AND STATUTES:

<u>Fifth Amendment to U.S. Constitution</u>	13
<u>Sixth Amendment to U.S. Constitution</u>	10
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STATEMENT OF CASE

STAGE IN PROCEEDINGS:

On August 7, 2000, the Grand Jury lodged three indictments against Johnnie L. Wood, hereafter referred to as Petitioner: (1) breaking and entering, while armed with a deadly weapon, the dwelling place of 227 Rip Rap Road, Hampton, Virginia, with the intent to commit robbery, in violation of V.C.A. § 18.2-90, a felony; (2) use of a firearm while committing breaking and entering of the dwelling place of 227 Rip Rap Road, Hampton, Virginia, in violation of V.C.A. § 18.2-53.1, a felony; and (3) shooting in an occupied dwelling place, located at 227 Rip Rap Road, Hampton, Virginia, in violation of V.C.A. § 18.2-279, a felony. The Grand Jury also lodged two other indictments against Petitioner in which Petitioner has not challenged. Petitioner is challenging only the three indictments as listed above.

On February 16, 2001, a jury convicted Petitioner of five felonies, the three of which Petitioner is challenging and the two that Petitioner is not challenging. Petitioner exhausted all direct appeal remedies and filed a Writ of Actual Innocence, which was denied by the Virginia Court of Appeals on June 11, 2007. On August 16, 2018, Petitioner, ipsose, filed a Motion to Vacate Void Judgment in the Circuit Court for the City of Hampton, Virginia. Petitioner challenged the indictments and convictions as void due to extrinsic fraud. Petitioner argued that the indictments were obtained using false testimony and the convictions were procured by

extrinsic fraud. Petitioner argued that the state and state witnesses presented false testimony and misrepresented material facts to the jury and that prevented a fair submission of the controversy to the court and prejudiced the jury's verdict.

The Circuit Court denied Petitioner's motion on November 12, 2018. On January 10, 2019, Petitioner filed a timely appeal to the Virginia Supreme Court, which refused the appeal on October 4, 2019. On October 9, 2019, Petitioner filed a timely Petition for Rehearing in the Virginia Supreme Court, which was denied on

The questions presented to this Court were raised in the Motion to Vacate Void Judgment, Petition for Appeal, and Petition for Rehearing. No hearings were held for Petitioner's actions, thus, no transcripts are presented. The Motion to Vacate Void Judgment, Petition for Appeal, and Petition for Rehearing, as well as the state court orders and opinions, are included in the appendix for the Court's review.

FACTS OF THE CASE:

As noted above, the Grand Jury lodged three indictments against Petitioner. According to State law, the existence of a dwelling place is a required element of the indictments. If a structure cannot be proven to be a dwelling place, as defined by law, then there is not sufficient cause to indict or convict. A dwelling place is defined as a house or structure regularly used

for sleeping. Well-established case law provides that a structure or house must be used for functions typically associated with habitation as opposed to another purpose, and must be maintained to make it suitable for immediate or rapid habitation. Such maintenance includes the presence of utilities and other items normally associated with daily habitation.

The testimony presented to the Grand Jury falsely represented the structure to have an address of 227 Rip Rap Road, Hampton, Virginia, and was the residence of Teddy Thompson, alleged victim. The Grand Jury found this testimony credible and certified the three indictments as true bills. At trial, the state did not present any actual evidence that the building constituted a dwelling place, as required. Instead, the state and state witnesses used the terms "house," "home," and "residence" to describe the character and nature of the building to the jury. This characterization misled the jury into believing the structure was the residence of Teddy Thompson and was a dwelling place.

In addition, the jury was not given any instructions about what the legal requirements are for a structure to constitute a dwelling place, even though it is well-established law to do so. Virginia Appellant Courts ruled that a dwelling place has a more limited meaning and the jury may mistakenly equate the terms "house" or "residence" as a structure which complies with the requirements of a dwelling place, therefore, a proper instruction is required.

In Petitioner's pro se Motion to Vacate Void Judgment, Petition for Appeal, and Petition for Rehearing, Petitioner provided incontrovertible evidence that proved the testimony presented to the Grand Jury and trial jury was false and the building on Rip Rap Road, Hampton, Virginia did not have an address assigned and could not meet any of the legal requirements to constitute a proper dwelling place. Petitioner presented incontrovertible evidence that the building was not Teddy Thompson's or anyone else's residence. Petitioner presented clear and convincing evidence that the state and state witnesses used terms that misrepresented the character and nature of the building and that prejudiced the jury's verdict.

Petitioner's evidence indicated: (1) the building did not have an assigned address of 227 Rip Rap Road, Hampton, Virginia at the time of the offenses;¹ (2) the building was not the residence of anyone's at the time of the offense;² (3) the building was not suitable and could not be maintained to be suitable at any point during nor after the time of the offense;³ and (4) the building was

1 According to Vanessa T. Valldejuli, Hampton City Attorney in 2015, there was no property in the City of Hampton, Virginia to which the address of 227 Rip Rap Road was assigned in the year 2000. (See Appendix D - Exhibit #1) Offense date was January 12, 2000.

2 According to the City of Hampton Department of Planning Staff Report dated July 10, 2000, the structure on Rip Rap Road did not have any tenants nor owner(s). (See Appendix D - Exhibit #1a)

3 According to the same report as footnote 2, the structure was condemned and listed as nonresidential structure; (See Appendix D - Exhibit #1a) - The structure did not have any utilities active and was unsafe for occupancy.

demolished by the City of Hampton after the offenses.⁴

This evidence was not contested nor refuted by the state. The state claims that there was no extrinsic fraud committed because the nature of the structure was litigated at length at trial. The state did not provide any references to the trial record to support this argument. The state courts accepted this argument and found that there was no sufficient reason to grant the relief requested.

Petitioner now seeks a writ of certiorari to determine if his constitutional rights were violated, if the state court decided an important question of federal law that has not been, but should be, settled by this Court, or if the state court decided an important federal question in a way that conflicts with relevant decisions of this Court.

⁴ According to a photo taken of the property after the offense, the structure was demolished and removed. There is an empty lot where the structure stood. (See Appendix D - Exhibit #2)

REASONS FOR GRANTING THE WRIT

1. The Sixth and Fourteenth Amendments guarantee Petitioner rights to a fair and equitable process in his criminal prosecution. These guarantees impose on the state certain duties consistent with its sovereign obligation to ensure that Petitioner is afforded due process in his criminal prosecution. (See Cone v. Bell, 556 U.S. 449; 173 L. Ed. 2d 701; 129 S. Ct. 1769 (2008)) Requisites of the state duties are to ensure that false evidence is not used to obtain indictment(s) and/or convictions, and there is a fair submission of the controversy to the court that will allow the trier of facts to make a fair and accurate determination of the facts to resolve the controversy. (See Napue v. Illinois, 360 U.S. 264; 3: L. Ed. 2d 1217; 79 S. Ct. 340; (1959))

When a state prosecutor or state witness, during grand jury proceedings, uses improper testimony or false evidence to obtain indictment(s) of a criminal defendant, the indictment(s) cannot stand and must be dismissed. (See Bank of Nova Scotia v. U.S., 487 U.S. 250; 101 L. Ed. 2d 228; 108 S. Ct. 2369 (1988)) and U.S. v. Feurtado, 191 F. 3d. 420 (4th Cir. 1999)) Also, an indictment must be dismissed when an error so compromised the structural protections of the grand jury as to render the proceedings fundamentally unfair, and such error prejudiced the defendant; and, where an indictment is challenged for non-constitutional error, the standard of prejudice for determining if an indictment should be dismissed is whether the violation substantially influenced the grand

jury's decision to indict; or if there is grave doubt that the decision to indict was free from the substantial influence of such violations. (See Bank of Nova Scotia, *supra*)

In Petitioner's case, the state prosecutor and/or state witness presented false testimony/evidence to the grand jury to procure three indictments for offenses charged under Va. Code Ann. §§ 18.2-90, 18.2-53.1, and 18.2-279. The false testimony/evidence directly influenced the grand jury's decision to indict, and if it were not for the false testimony/evidence, the grand jury would have had no other option but to decline to issue the indictments.

In order for the state to obtain valid indictments for these offenses, the state must provide testimony/evidence to a grand jury that the building, located on Rip Rap Road, Hampton, Virginia, constituted a proper dwelling under Virginia law. (See Va. Code Ann. §§ 18.2-89 and 18.2-90, Giles v. Commonwealth, 51 Va. App. 449; 658 S.E. 2d 703 (2008), Rash v. Commonwealth, 9 Va. App. 22; 383 S.E. 2d 749 (1989), and Barts v. Commonwealth, 2002 Va. App. Lexis 110 (Ct. of Appeals Feb. 2002))

According to Virginia statutory and case law, a building is a dwelling house when the house is used for the purpose of habitation and other functions typically associated with habitation, and the building must be maintained to make it suitable for habitation. Such maintenance includes the presence of utilities and other items normally associated with daily habitation. If the building does not meet the requirements of a dwelling place, an indictment cannot be issued. (See Va. Code Ann. §§ 18.2-89 and 18.2-90, Giles v. Commonwealth,

wealth, supra, Rash v. Commonwealth, supra, Barts v. Commonwealth, supra, and Johns v. Commonwealth, 53 Va. App. 742; 675 S.E. 2d 211 (2009))

In Petitioner's case, the state prosecutor and/or state witness testified to the grand jury that the building located on Rip Rap Road, Hampton, Virginia had an address of 227 Rip Rap Road, was the residence of Teddy Thompson, alleged victim, and was used for habitation and other activities associated with habitation. This testimony directly influenced the grand jury's decision to issue three indictments as true bills for violating Va. Code Ann. §§ 18.2-90, 18.2-53.1, and 18.2-279 against Petitioner.

In challenging these indictments, Petitioner presented irrefutable evidence to the state courts that the testimony/evidence presented to the grand jury was false. Petitioner presented irrefutable evidence that the building purported to be a dwelling place was not and could not be a dwelling place: (1) did not have an address of 227 Rip Rap Road, but in fact, had no address assigned at all;⁴ (2) was not the residence of Teddy Thompson, but in fact, was not and could not be a residence at all (did not have nor capable of

⁴ According to Vanessa T. Validejuli, Hampton City Attorney in 2015, there were no property in the City of Hampton, Virginia to which the address of 227 Rip Rap Road was assigned in the year 2000. (See Exhibit #1 in Appendix D) Offense date was January 12, 2000.

maintaining any utilities);⁵ and (3) was not suitable for any habitation at all, as testified to the grand jury, but in fact, was listed as a condemned non-residential structure scheduled to be destroyed.⁶

Petitioner's evidence was not disputed by the state prosecutor in any of the state prosecutor's responses to Petitioner's pleadings, and in fact, in essence, conceded that the structure did not and could not meet any of the requirements to constitute a dwelling place as required by state law. However, the state courts, after reviewing the undisputed and irrefutable evidence, declined to dismiss the indictments against Petitioner. The state courts' ruling is in direct conflict with this Court's judgment in Napue v. Illinois, *supra*; Bank of Nova Scotia v. U.S., *supra*; Fourth Circuit Court's ruling in U.S. v. Feurtado, *supra*; and its own ruling in Giles v. Commonwealth, *supra*; Rash v. Commonwealth, *supra*; Barts v. Commonwealth, *supra*; and Johns v. Commonwealth, *supra*; and the guarantees secured by the U.S. Constitution.

2. The Due Process Clause of the Fifth and Fourteenth Amendments guarantees a criminal defendant the right to a fair trial whose result can be relied upon. When false information is used to obtain a conviction, that violates the defendant's constitutional rights

5 According to the City of Hampton Department of Planning Staff Report dated July 10, 2000, the structure on Rip Rap Road did not have any tenants nor owner(s). (See Appendix D, Exhibit 1a)

6 According to the City of Hampton Department of Planning Staff Report dated July 10, 2000, the structure was listed as a condemned nonresidential structure, unsafe, unable to maintain any utilities, and scheduled to be demolished. (See Appendix, Exhibit 1a)

to a fair trial. (See Ricciuti v. New York City Transit Authority, 124 F. 3d 123 (2d Cir. 1997)) Moreover, a prosecutor's use of information he knows to be false to describe evidence would be a violation of due process. The Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. (See Miller v. Pate, 386 U.S. 1, 17 L. Ed. 2d 690, 87 S. Ct. 785 (1967))

In Petitioner's case, at trial, the state and state witnesses repeatedly described the character and purpose of the building on Rip Rap Road falsely. They purported, to the jury, the building: (1) had an address of 227 Rip Rap Road, Hampton, Virginia, which it did not; (2) was the residence of Teddy Thompson, which it was not; and (3) was a home used for sleeping and other activities associated with habitation, which it was not. According to documents from the City of Hampton, it was impossible for the building to sustain any suitable habitation at all. (See footnotes) To obtain the convictions, the state and state witnesses repeatedly used the terms "house" "home;" and "residence" to describe the character and nature of the building. These terms misled the jury into believing the building was a place for habitation.

This false testimony and misrepresentation of material facts to the jury are defined by Virginia State law as extrinsic fraud. It is well established in Virginia case law that misrepresentation of material facts, under oath, constitutes extrinsic fraud, and extrinsic fraud is conduct that prevents a fair submission of the

controversy to the court (i.e. prevents a fair trial). (See Commonwealth v. Holmes, 2016 WL 7018458 and Turner v. Commonwealth, 2015 WL 10765165)

Also, it is well established by Virginia courts that the jury may mistakenly equate the terms "house" and "residence" with any building that appears from the outside to provide habitation at sometime, whether in the past, present, or in the future. However, a "dwelling house," one that is required to sustain convictions under Va. Code Ann. §§ 18.2-90, 18.2-53.1, and 18.2-279, has a more limited meaning, and the terms "house" and "residence" cannot be considered only to reach a conclusion that the building complies with the requirements of a dwelling place; and a proper jury instruction, regarding what constitutes a dwelling place to sustain a conviction, is required.⁷ (See Johns *supra*)

To substantiate Petitioner's claims of extrinsic fraud and use of false evidence, Petitioner provided the state courts with inconvertible proof, which was obtained after trial and after exhaustion of direct appeal remedies, that the building did not have an address assigned at all and the address of 227 Rip Rap Road was not assigned to any property listed in the City of Hampton before, during, nor after the time of the offense; the building was not and could not

⁷ At the end of closing arguments, the court asked both counsels whether an instruction regarding the requirements of a dwelling place was necessary. Both counsels informed the court that they would instruct the jury concerning the requirements. However, neither counsel did. No jury instruction was given regarding what constitutes a dwelling place and how the terms "house" and "residence" alone were insufficient to make that determination.

have been the residence of Teddy Thompson nor anyone else residence before, during, nor after the time of the offense; the building was listed as condemned, nonresidential structure and scheduled to be destroyed before, during, and after the time of the offense;⁸ the building did not have any utilities, was unsafe for occupancy, and was unable to be maintained for any type of habitation before, during, and after the time of the offense. This evidence was not challenged nor disputed by the state prosecutor. In fact, in essence, the state prosecutor conceded these facts to be true.

Petitioner also presented numerous Virginia cases that supported his claims of extrinsic fraud and use of false evidence. Petitioner presented clear and convincing evidence that the state and state witnesses presented false testimony/evidence to the jury, misrepresented material facts to the jury, and that false testimony/evidence directly influenced the jury's decision to convict. Petitioner provided undeniable proof that the false testimony/evidence was the determining factor that caused the jury to find Petitioner guilty of breaking and entering in the dwelling place of 227 Rip Rap Road, Hampton, Virginia, use of a firearm while committing breaking and entering of a dwelling place of 227 Rip Rap Road, Hampton, Virginia, and shooting in an occupied dwelling place, located at 227 Rip Rap Road, Hampton, Virginia. Without a proper dwelling place, the jury could not have convicted Petitioner of these charges.

⁸ The building was destroyed sometime after the offense occurred. It is an empty lot where the building stood. (See Appendix D, Exhibit 2)

However, the state courts, after reviewing the undisputed and irrefutable evidence, declined to vacate Petitioner's convictions and dismiss the charges. The state courts' ruling is in direct conflict with this Court's judgment in Bank of Nova Scotia, *supra*, and the guarantees secured by the U.S. Constitution. The U.S. Constitution entitles Petitioner to a fair trial. Whether a conviction for a crime should stand when a state has failed to accord federal constitutionally guaranteed rights is every bit as much of a federal question as what particular federal constitutional provisions themselves mean, what they guarantee, and whether they have been denied. (See Crawford v. Commonwealth, 281 Va. 84 (2011)).

According to this Court's ruling in Napue, *supra*, "it is the duty of the U.S. Supreme Court to make its own independent examination of the record when federal constitutional deprivations are alleged; the duty resting on the Court's responsibility for maintaining the Constitution inviolate." As such, Petitioner respectfully asks this Court to review the record, ~~and~~ all documents in the Appendix, including Appendix G, to determine whether the Petitioner's convictions should stand.

CONCLUSION

Petitioner respectfully asks and prays that this Court, for the reasons state herein, issue a writ of certiorari in this case, and upon review, vacate Petitioner's convictions and dismiss the indictments.

Respectfully Submitted,

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