

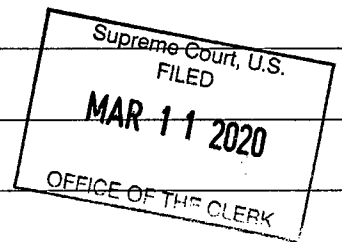
19-8205

NO.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: JONATHAN E. BRUNSON — PETITIONER



VS.

JAMES F. AMMONS, JR., OFFICE OF THE 12TH JUDICIARY,
WILLIAM R. WEST, OFFICE OF THE DISTRICT ATTORNEY OF
THE 12TH PROSECUTORIAL DISTRICT — RESPONDENTS.

PETITION FOR A WRIT OF MANDAMUS

JONATHAN E. BRUNSON

4600 SWAMP FOX HWY WEST

TABOR CITY, NORTH CAROLINA 28463

QUESTIONS PRESENTED

PRETRIAL IN 2009, MR. BRUNSON INVOKED HIS RIGHT TO IN CAMERA ACCESS TO CONFIDENTIAL RECORDS PURSUANT TO PENNSYLVANIA V. RITCHIE, 480 U.S. 39, 58 (1987). THE PRETRIAL JUDGE DENIED THE RIGHT, THE TRIAL JUDGE OVERLOOKED THE RIGHT, AND THE POST-CONVICTION JUDGES, INCLUDING RESPONDENT AMMONS, BARRED THE RIGHT WHICH CAUSED THE RIGHT TO BE UNENFORCEABLE IN STATE COURT. AND SO THE QUESTIONS ARE:

1. WHETHER "[MR. BRUNSON'S] RIGHT TO DISCOVER EXCULPATORY EVIDENCE" IS STILL ENFORCEABLE (Id. AT 41) ?
2. WHETHER "THE [STATE] GOVERNMENT [STILL] HAS THE OBLIGATION TO TURN OVER EVIDENCE IN ITS POSSESSION THAT IS BOTH FAVORABLE AND MATERIAL TO [MR. BRUNSON'S] GUILT OR PUNISHMENT" (Id. AT 57) ?
3. WHETHER "[MR. BRUNSON] IS [STILL] ENTITLED TO HAVE THE CPS FILE REVIEWED BY THE TRIAL COURT TO DETERMINE WHETHER IT CONTAINS INFORMATION THAT PROBABLY WOULD HAVE CHANGED THE OUTCOME OF HIS TRIAL [?] IF IT DOES, ... MUST [HE] BE GIVEN A NEW TRIAL" (Id. AT 58) ?
4. WHETHER RESPONDENTS ARE STILL "CONSTITUTIONAL[LY] OBLIGAT[ED] ... [TO] ENSUR[E] IN CAMERA INSPECTION OF [CONFIDENTIAL] EVIDENCE" (Id. AT 58 N. 15) ?

LIST OF PARTIES

1. JAMES F. AMMONS, JR., SENIOR RESIDENT SUPERIOR COURT JUDGE
2. OFFICE OF THE 12TH JUDICIARY
3. WILLIAM R. WEST, DISTRICT ATTORNEY
4. OFFICE OF THE DISTRICT ATTORNEY OF THE 12TH PROSECUTORIAL DISTRICT

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TABLE OF AUTHORITIES CITED

CASES

PENNSYLVANIA V. RITCHIE - - - - - PASSIM

STATUTES AND RULES

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF MANDAMUS

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF MANDAMUS ISSUE TO COMPEL RESPONDENTS TO CONDUCT AN IN CAMERA INSPECTION OF CONFIDENTIAL RECORDS PURSUANT TO THE FOURTEENTH AMENDMENTS DUE PROCESS CLAUSE UNDERLYING PENNSYLVANIA V. RITCHIE, 480 U.S. 39, 58 (1987).

OPINION BELOW

THE OPINION OF THE CUMBERLAND COUNTY SUPERIOR COURT, N.C. APPEARS AT APPENDIX A TO THE PETITION, (ORDER DATED 20 SEPT. 2019 IN CASE NOS. OBCRS63535-46).

JURISDICTION

ISSUANCE BY THE COURT OF AN EXTRAORDINARY WRIT IS AUTHORIZED BY 28 U.S.C. § 1651 (9).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

AMENDMENT XIV STATES " ... NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES AND IMMUNITIES OF CITIZENS OF THE UNITED STATES, 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. "

STATEMENT OF THE CASE

IN 2008, MR. BRUNSON WAS CHARGED WITH SEXUAL ABUSE OF A MINOR. IN 2009, MR. BRUNSON FILED A PRETRIAL MOTION FOR DISCOVERY THAT INCLUDED A PENNSYLVANIA V. RITCHIE, 480 U.S. 39, 58 (1987) REQUEST THAT INVOKED HIS CONSTITUTIONAL RIGHT TO IN CAMERA ACCESS TO CONFIDENTIAL RECORDS OF THE PROSECUTING WITNESS. MR. BRUNSON FILED NUMEROUS PRETRIAL MOTIONS TO COMPEL THE CONFIDENTIAL FILES. IN RESPONSE, PRETRIAL JUDGE LUCY INMAN DENIED MR. BRUNSON'S RIGHT BY RULING ON JUNE 9, 2011 THAT MR. BRUNSON HAD BEEN PROVIDED "ALL OF THE MATERIAL THAT I EXPECT EXIST IN THE DSS RECORD REGARDING THE MATTER," (JUNE 9, Tp. 26). JUDGE INMAN DID NOT CONDUCT AN IN CAMERA JUDICIAL INSPECTION OF THE CONFIDENTIAL RECORDS AS REQUIRED BY RITCHIE. DURING TRIAL, THE PROSECUTING WITNESS MISSTATED ON CROSS-EXAMINATION THAT SHE REPORTED SEXUAL ABUSE BY MR. BRUNSON TO PSYCHOLOGIST DR. ELLIS FOR TWO (2) YEARS FROM 2006-2008 BEFORE DR. ELLIS ALERTED CPS. THE PROSECUTING WITNESS ALSO MISSTATED NUMEROUS REASONS WHY DR. ELLIS DID NOT REPORT THE ABUSE FOR TWO (2) YEARS FROM 2006-2008. IN RESPONSE, TRIAL JUDGE MARY A. TALLY STATED SHE BELIEVED THE PROSECUTING WITNESS'S "TESTIMONY IS NOT TRUE" AND WISHED TO REVIEW IN CAMERA THE DSS RECORD AND DR. ELLIS'S PSYCHOLOGY REPORT OF THE PROSECUTING WITNESS, BUT WHEN THE STATE INDICATED IT DID NOT HAVE THE REPORTS JUDGE TALLY DROPPED THE ISSUE. (JUNE 16, Tpp. 4-10). JUDGE TALLY DID NOT CONDUCT AN IN CAMERA JUDICIAL REVIEW OF THE CONFIDENTIAL RECORDS AS REQUIRED BY RITCHIE. CONSEQUENTLY, MR. BRUNSON WAS CONVICTED IN 2011 BASED SOLELY ON THE TESTIMONY OF THE PROSECUTING WITNESS THAT JUDGE TALLY BELIEVED THE "TESTIMONY IS NOT TRUE," AND WITHOUT STATE EXPERTS, WITHOUT PHYSICAL EVIDENCE, AND WITHOUT IN CAMERA JUDICIAL ACCESS TO CONFIDENTIAL RITCHIE EVIDENCE, AND AS ADMITTED TO BY SOCIAL WORKERS L. GOODE-

EATMON AND W. NUNNERY, THE WITHHELD EXCULPATORY CONFIDENTIAL SOCIAL SERVICES RECORDS INCLUDES, BUT NOT LIMITED TO, 1) A 1999 DSS/CPS REPORT OF THE PROSECUTING WITNESS; 2) A 2008 DSS/CPS REPORT OF THE PROSECUTING WITNESS; 3) A PSYCHOLOGY REPORT OF THE PROSECUTING WITNESS; 4) A PSYCHIATRY REPORT OF THE PROSECUTING WITNESS; 5) A LYME DISEASE REPORT OF THE PROSECUTING WITNESS; 6) NOTES OF INTERVIEWS WITH PSYCHOLOGIST DR. ELLIS, AND 7) NOTES OF INTERVIEWS WITH PSYCHIATRIST DR. BARR THAT WERE ALL PART OF THE DSS/CPS INVESTIGATIVE CASE FILE. ON DIRECT APPEAL, MR. BRUNSON FILED A MOTION FOR APPROPRIATE RELIEF (MAR) IN THE N.C. COURT OF APPEALS SEEKING RITCHIE RELIEF THAT WAS DENIED. POST-CONVICTION, MR. BRUNSON WAS TIME-BARRIED FROM FILING A PETITION FOR A WRIT OF HABEAS CORPUS IN THE U.S. DISTRICT COURT. POST-CONVICTION, MR. BRUNSON FILED A PETITION FOR A WRIT OF HABEAS CORPUS IN THE STATE TRIAL COURT SEEKING RITCHIE RELIEF AND MULTIPLE MARS SEEKING RITCHIE RELIEF FILED ON JULY 12, 2018 AND DENIED ON AUGUST 14, 2018, FILED ON OCT. 8, 2018 AND DENIED ON JANUARY 17, 2019, FILED ON APRIL 5, 2019 AND DENIED ON JUNE 14, 2019, AND FILED ON JUNE 6, 2019 AND DENIED ON SEPT. 30, 2019. MR. BRUNSON ALSO FILED A PETITION FOR A WRIT OF CERTIORARY NO. P16-399 P18-081 IN THE N.C. COURT OF APPEALS SEEKING RITCHIE RELIEF THAT WAS DENIED. MR. BRUNSON ALSO FILED A PETITION FOR DISCRETIONARY REVIEW NO. 247P16-b IN THE N.C. SUPREME COURT SEEKING RITCHIE RELIEF THAT TOO WAS DENIED. MR. BRUNSON HAS EXHAUSTED ALL AVAILABLE STATE REMEDIES FOR RITCHIE RELIEF SINCE 2009, BUT TO NO AVAIL. THE STATE COURTS HAVE REFUSED TO RECOGNIZE THE SUPREME AUTHORITY OF RITCHIE BY NON-COMPLIANCE. THUS, THE RITCHIE RELIEF SOUGHT IS NOT AVAILABLE FROM ANY OTHER COURT.

REASONS FOR GRANTING THE PETITION

I. THE STATE COURTS DECISION TO DENY MR. BRUNSON IN CAMERA JUDICIAL ACCESS TO CONFIDENTIAL SOCIAL SERVICES RECORDS OF THE PROSECUTING WITNESS DIRECTLY CONFLICTS WITH THE U.S. CONSTITUTIONS FOURTEENTH AMENDMENTS DUE PROCESS AND EQUAL PROTECTION CLAUSES AND WITH RELEVANT DECISIONS OF THIS COURT IN PENNSYLVANIA V. RITCHIE, 480 U.S. 39, 58 (1987).

THIS HONORABLE COURT HELD IN PENNSYLVANIA V. RITCHIE, 480 U.S. 39, 58 (1987) THAT A DEFENDANT WHO IS CHARGED WITH SEXUAL ABUSE OF A MINOR HAS A CONSTITUTIONAL RIGHT TO HAVE THE RECORDS OF THE CHILD ABUSE AGENCY THAT IS CHARGED WITH INVESTIGATING CASES OF SUSPECTED CHILD ABUSE, AS THEY PERTAIN TO THE PROSECUTING WITNESS, TURNED OVER TO THE TRIAL COURT FOR IN CAMERA REVIEW TO DETERMINE WHETHER THE RECORD CONTAINS INFORMATION FAVORABLE TO THE ACCUSED AND MATERIAL TO GUILT OR PUNISHMENT. "[MR. BRUNSON'S] RIGHT TO DISCOVER EXCULPATORY EVIDENCE AND THE STATES INTEREST IN ENSURING A FAIR TRIAL CAN BE PROTECTED FULLY BY THE TRIAL COURT CONDUCTING IN CAMERA REVIEW OF CONFIDENTIAL FILES". Id. AT 41. "IT IS WELL SETTLED THAT THE GOVERNMENT HAS THE OBLIGATION TO TURN OVER EVIDENCE IN ITS POSSESSION THAT IS BOTH FAVORABLE TO THE ACCUSED AND MATERIAL TO GUILT OR PUNISHMENT." Id. AT 57, THIS COURT REMANDED THE CASE TO ALLOW THE TRIAL COURT TO PROCURE AND REVIEW THE SOCIAL SERVICES RECORDS. "[MR. BRUNSON] IS ENTITLED TO HAVE THE CPS FILES REVIEWED BY THE TRIAL COURT TO DETERMINE WHETHER IT CONTAINS INFORMATION THAT PROBABLY WOULD HAVE CHANGED THE OUTCOME OF HIS TRIAL. IF IT DOES, HE MUST BE GIVEN A NEW TRIAL." Id AT 58. "THE CONSTITUTIONAL OBLIGATION IMPOSED BY RITCHIE IS ONE IMPOSED UPON THE STATE, WHICH MEANS UPON THE JUDGE [AMMONS]

(5)

AS WELL AS ALL OTHER STATE ACTORS [INCLUDING WEST] INVOLVED IN THE PROCESS OF ENSURING IN CAMERA INSPECTION OF EVIDENCE SUFFICIENTLY SHOWN, UNDER RITCHIE, TO BE SUBJECT TO THAT INSPECTION. IF INSPECTION IS EFFECTIVELY DENIED BY ANY ACTOR IN THE CHAIN, INCLUDING THE JUDGE [AMMONS] AS FINAL ACTOR, THE FACT THAT SOME OTHER ACTORS IN THE CHAIN MAY HAVE DISCHARGED THEIR PORTION OF THE OBLIGATION CANNOT INSULATE A VIOLATION FURTHER ON. NEITHER CAN THE OBLIGATION OF THE JUDGE [AMMONS], AS FINAL ACTOR IN THE PROCESS, BE AVOIDED BY DRAWING ON STATE LAW REQUIREMENTS WHICH MAY BE — AND UNDOUBTEDLY ARE — MORE STRINGENT THAN THE MERELY 'PLAUSIBLE SHOWING' WHICH, UNDER RITCHIE, SUFFICES TO REQUIRE IN CAMERA INSPECTION." Id. AT 58 n 15.

REQUIREMENTS PURSUANT TO RULE 20.1 :

IN 1987, THIS HONORABLE COURT HEARD THE APPEALS OF THE DECISIONS OF THE STATE COURTS AND EXERCISED ITS POWER TO REVERSE AND/OR MODIFY THOSE DECISIONS BY DECLARING PENNSYLVANIA V. RITCHIE, 480 U.S. 39, 58 (1987) AS SUPREME LAW. FORTY-THREE YEARS LATER, HOWEVER, IT APPEARS THAT RITCHIE HAS FALLEN BY THE WAYSIDE IN THE STATE OF NORTH CAROLINA SINCE MR. BRUNSON HAS SPENT THE LAST TEN YEARS MOTIONING AND PETITIONING THE N.C. SUPERIOR COURT, THE N.C. COURT OF APPEALS, AND THE N.C. SUPREME COURT FOR RITCHIE RELIEF, BUT TO NO AVAIL. THE STATE JUDGES' DENIED THE MOTIONS AND PETITIONS AND THUS REFUSED AND FAILED TO OBEY THE PLAIN AND SIMPLE COMMANDS OF RITCHIE IN SPITE OF THE SUPREMACY CLAUSE IN ARTICLE VI OF THE U.S. CONSTITUTION THAT DECLARES THE CONSTITUTION, LAWS, AND TREATIES OF THE FEDERAL GOVERNMENT TO BE SUPREME LAW OF THE LAND TO WHICH

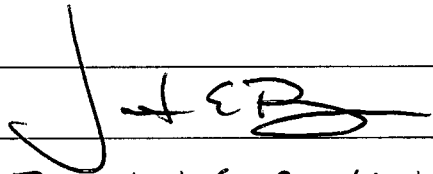
JUDGES IN EVERY STATE ARE BOUND REGARDLESS OF STATE LAW TO THE CONTRARY.

THE PLAIN LANGUAGE OF RITCHIE SPEAKS DIRECTLY TO PRETRIAL IN CAMERA ACCESS TO CONFIDENTIAL FILES BY DECLARING " [MR. BRUNSON'S] RIGHT TO DISCOVER EXCULPATORY EVIDENCE AND THE STATES INTEREST IN ENSURING A FAIR TRIAL CAN BE PROTECTED FULLY BY THE TRIAL COURT CONDUCTING IN CAMERA REVIEW OF CONFIDENTIAL FILES."

I.D. AT 41. HERE, JUDGES INMAN AND TRUETT CHOSE NOT TO OBEY THIS COMMAND BY NOT CONDUCTING IN CAMERA REVIEW OF CONFIDENTIAL FILES. THE PLAIN LANGUAGE OF RITCHIE ALSO SPEAKS DIRECTLY TO POST-TRIAL IN CAMERA ACCESS TO CONFIDENTIAL FILES BY DECLARING " [MR. BRUNSON] IS ENTITLED TO HAVE THE CPS FILES REVIEWED BY THE TRIAL COURT TO DETERMINE WHETHER IT CONTAINS INFORMATION THAT PROBABLY WOULD HAVE CHANGED THE OUTCOME OF HIS TRIAL. IF IT DOES, IT MUST BE GIVEN A NEW TRIAL." I.D. AT 58. HERE, RESPONDENT QUOTE AMMONS CHOSE NOT TO OBEY THIS COMMAND BY NOT CONDUCTING IN CAMERA REVIEW OF CONFIDENTIAL FILES BY

INCORRECTLY FINDING " THAT [MR. BRUNSON'S] MOTION IS REQUESTING AN IN CAMERA JUDICIAL REVIEW OF SOCIAL SERVICES RECORDS. " THAT SUCH A REVIEW OF RECORDS IS CONSIDERED FOR PENDING CASES AND IS NOT APPROPRIATE IN THIS CASE AS A JURY FOUND THE DEFENDANT GUILTY ON JUNE 17, 2011. " THE PLAIN LANGUAGE OF RITCHIE ALSO SPEAKS DIRECTLY TO STATE JUDGES' AVOIDANCE OF THEIR CONSTITUTIONAL OBLIGATION IMPOSED BY EITHER BY APPLYING STATE LAW REQUIREMENTS BY DECLARING " IF INSPECTION IS EFFECTUALLY DENIED BY ANY ACTOR IN THE CHAIN, INCLUDING THE JUDGE [AMMONS] AS FINAL ACTOR, THE FACT THAT SOME OTHER ACTORS IN THE CHAIN MAY HAVE DISCHARGED THEIR PORTION OF THE OBLIGATION CANNOT INSULATE THE VIOLATION FURTHER ON. NEITHER CAN THE OBLIGATION OF THE JUDGE [AMMONS], AS FINAL ACTOR IN THE PROCESS, BE AVOIDED BY DRAWING ON STATE LAW REQUIREMENTS WHICH MAY BE - AND UNDOUBTEDLY

ARE — MORE STRINGENT THAN THE MERELY 'PLAUSIBLE SHOWING' WHICH, UNDER RITCHIE, SUFFICES TO REQUIRE IN CAMERA INSPECTION." Id. at 58 n 15. HERE, RESPONDENT AMMONS CHOSE NOT TO OBEY THIS COMMAND BY NOT CONDUCTING IN CAMERA REVIEW OF CONFIDENTIAL FILES BY INCORRECTLY CONCLUDING LAW " THAT THE DEFENDANT [MR. BRUNSON] HAS NOT SHOWN GOOD CAUSE WHY THE COURT SHOULD NOT IMPOSE THE PROCEDURAL BAR ORDERED PURSUANT TO THE PROVISIONS OF N.C. GEN. STAT. § 15A-1419. THE STATE JUDGES, INCLUDING RESPONDENT AMMONS, WILLFUL DISOBEDIENCE AND OPEN DISRESPECT OF THE ORDER, AUTHORITY, AND DIGNITY OF THIS HONORABLE COURT FOR THE PAST TEN YEARS CONSTITUTES THE OFFENSE OF CONTEMPT OF THIS COURT. THIS DIRECT CONTEMPT OF THIS COURT HAS WIDE RANGING RAMIFICATIONS. FOR INSTANCE, IT CREATES EXTRAORDINARY CIRCUMSTANCES BY ALLOWING STATE JUDGES, INCLUDING RESPONDENT AMMONS, TO GO BEYOND WHAT IS PRESCRIBED BY RITCHIE FOR THE REGULAR ADMINISTRATION OF JUSTICE. THE STATE JUDGES' DIRECT CONTEMPT OF THIS COURT ALLOWS THEM A DISCRETION TO EITHER COMPLY OR NOT COMPLY WITH THE COMMANDS OF RITCHIE. AS A RESULT, STATE JUDGES ARE ALLOWED TO CHERRY-PICK WHO GETS THE RIGHT TO RITCHIE RELIEF, WHICH SETS A DANGEROUS PRECEDENT BECAUSE IT PROVIDES STATE JUDGES A WIDE LATITUDE TO CHOOSE WHO GETS THE RIGHT TO RITCHIE RELIEF BY RACE, SEX, RELIGION, ETC. IN THIS CASE AT BAR, IT CAN BE PLAUSIBLY ALLEGED THAT MR. BRUNSON IS BEING OUTRIGHT DENIED HIS RIGHT ALREADY INVOKED SINCE 2009. OR, IT CAN BE PLAUSIBLY ALLEGED THAT MR. BRUNSON IS BEING DENIED THE RIGHT BECAUSE HE IS A BLACK MALE SINCE HE WAS IN FACT TREATED DIFFERENTLY FROM WHITE MALES SIMILARLY CHARGED WITH SEXUAL ABUSE OF A MINOR IN CUMBERLAND COUNTY, N.C. THAT WERE AFFORDED THEIR RIGHT TO IN CAMERA JUDICIAL ACCESS TO CONFIDENTIAL RITCHIE FILES. SEE E.G., STATE OF NORTH CAROLINA V. JOHN NACKAB (CIRCA 2009). MR. NACKAB, A WHITE MALE

A handwritten signature in black ink, appearing to read 'JEB' with a stylized flourish at the end.

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