

19-8623
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAY 22 2000

CLERK

Joshua C.L. Moseley — PETITIONER
(Your Name)

vs.

Harold W. Clarke — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Commonwealth vs Moseley Record No. 161013 (293 VA. 453)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joshua Charles Lovell Moseley
(Your Name)

15172 Old Belfield Rd
(Address)

Capron VA
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. When two state courts arrive at different conclusion using different governing legal principles on the same case, should the Petitioner be given a rehearing?
2. Is it standard for a murder totality principle to be used in a burglary - grand larceny case?
3. If the Courts are unable to establish that the Petitioner ever exercised dominion and control over stolen items How can one be found guilty of grand larceny and burglary?
4. The Supreme Court of Virginia stated the Petitioner was a suspect in another crime, does this effect their Judgment to convict?
5. If the Supreme Court of Virginia states "It is not a matter of law we can find the Petitioner guilty beyond a reasonable doubt", but still convicts, Have the Court sit aside a law?
6. When Prosecutor introduce prior charges of Petitioner at a different trial does this deprive the Petitioner of a fair trial?

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:

Supreme Court of Virginia

Lemons

cd Goodwyn

mims

McClanahan

Powell

Kelsey

Russell

United State District Court

District Judge

Robert E Payne

United State Court of Appeals for the Fourth Circuit

WYNN

Diaz

Richardson

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Leebrick v Commonwealth 198 VA 365 94 SE 2d 212 (1956)	13
Best v Commonwealth 222 VA 387 389-90 282 SE 2d 16, 18 (1981)	3, 4, 7
Price's Case 62 VA 1044 (21 Gratt) 846 (1872)	7, 12
Tyler's Case 120 VA 868 91 S.E. 171 (1917)	7
U.S. v Kapelioujny 547 F.3d 149 151 (2d cir 2008)	8
Kineade v Sparkmen 175 F.3d 444 (6th cir 1999)	8
Steven v Ortiz 465 F.3d 1229 1240 (10th cir 2006)	9
US v Phillip 559 F.2 134 6th cir 1979	9
US v Jackson 433 F.3d 293 301 (3d cir 2006)	10
US v Mcfall 558 F.3d 451 958 (9th cir 2009)	8
STATUTES AND RULES	
Federal evidence 404.5	3

OTHER

28 USCA 2234 (d) west 1999 5-6

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 D to the petition and is

☐ reported at No. 19-11456; 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 C to the petition and is

☐ reported at Moseley v Clarke 3:19 cv40; 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 B to the petition and is

☐ reported at Moseley v Commonwealth Record No ~~180230~~ 180230; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Supreme Court of Virginia court appears at Appendix A to the petition and is

☒ reported at Commonwealth vs. Moseley 293 VA 455, 2017; 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 Jan. 28, 2020.

☐ 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: February 25, 2020, and a copy of the order denying rehearing appears at Appendix E.

☐ 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 Oct 23, 2018.
A copy of that decision appears at Appendix B.

☐ 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 No person shall be held to answer for capital or otherwise infamous crime unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces or in the Militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property without due process of law nor shall private property be taken for public, without just compensation

The Appellant has a right to be free from duplicative prosecutions and punishment where he is convicted of two crimes on same fact in violation of fifth Amendment U.S. v Jackson 433 F3d 293 301 (3d cir 2006)

As a general matter the Prosecution may not Admit at the trial of a defendant on one charge evidence that defendant has on another occasion committed some other crime Federal evidence 404.5 See U.S. v Phillip 599 F.2 134 6th cir 1979 argued in Drew v US 331 F.2d 85 (D.C. cir 1964)

14th Amendment Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or 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 any person within its jurisdiction the equal protection of the laws.

due process when prosecution made references to Petitioner prior charges Kincaid v Sparkmen 175 F3d 444 (6th cir 1999)

For the larceny presumption to arise the Commonwealth must establish that the accused was in exclusive possession of property recently stolen Price Case 62 VA 1044 (21 Graff 846 869 (1872))

The inference however arises only when the accused has been shown

to be in exclusive possession of recently stolen property regardless of how much other incriminating evidence the commonwealth has marshalled Best V Commonwealth 222 VA 387 389-90 282 SE 2d 16,18 1981 (per curiam)

Such evidence does not support a larceny presumption and without the presumption the evidence is insufficient to support the conviction Tyler's case 120 VA 868 91 SE 171 (1917)

Conviction of conspiracy related charges were reversed when prosecution could not prove beyond a reasonable doubt that accused knew value of stolen goods or that he moved them on the interstate U.S. v Kapelioujny 547 F3d 149 151 (2d cir 2008)

U.S. v McFall 558 F.3d 951 958 (9th cir 2009) prosecution's failure to prove beyond reasonable doubt that defendant obtained any property or intangible right required reversal of conviction for extortion related offenses.

Article 6 clause 2 Supreme Law of Land

This constitution and the Laws of the United States which shall be made in Pursuance thereof and all treaties made or which shall be made under the Authority of the United States shall be the Supreme Law of the land; and the judges in every State shall be bound thereby any thing in the Constitution or laws of any state to the Contrary notwithstanding

A State Court consideration of volunteeriness in assessing trustworthiness of a declarant statement is contrary to Federal law *Steven V Ortiz* 465 F.3d 1229 1240 (10th Cir 2006)

28 USCA 2254 (d) (West 1999) The Supreme Court recently instructed that 2254 (D)(1) defines two categories of cases in which a state prisoner may gain habeas relief see *William V Taylor* 529 US 362 120 S.Ct 1495 1519-20 146 L.Ed 2d 389 (2000) (O'Connor) Concurring under the first category involving state decision contrary to Federal law, A defendant must show that state court arrived at a opposite conclusion reached by Supreme Court on a question of law or state court decide a case differently

than Supreme Court on a set of materially indistinguishable facts 120 S Ct at 1523

The second category involves the unreasonable application of federal law by state court if state court has correctly identified the governing legal principle from that of the Supreme Court but unreasonably applied that principle to the facts of the prisoner case it may grant the writ of habeas corpus Id at 1523.

STATEMENT OF THE CASE

In the Virginia Lower Court of Appeals It was stated that grand larceny and burglary inferences does not apply in Petitioner's case because Prosecutor could not prove that Petitioner exercise dominion and control over stolen items. So application of the larceny and burglary are not permitted and they reversed and dismissed convictions Handed down by Hampton city Circuit Court of Virginia

The Commonwealth appealed to the Supreme Court of Virginia Stating the Petitioner was a suspect in another crime and his I.D was mixed with stolen items from other burglaries. The Supreme Court of Virginia used circumstantial evidence and Murder totality standards to reinstate convictions.

The Supreme Court use of circumstantial evidence with Murder totality standards in a larceny-burglary case is disproportionate

Murder Cases uses probability to convict accused by a chain of events, circumstances, motives, and connecting missing links but to convict of burglary and grand larceny other governing legal principles exist

for burglary - larceny inference to apply the accused must be shown to be in exclusive possession of recently stolen property regardless of how much other incriminating evidence the Commonwealth has marshalled (Best v. Commonwealth, Price's Case.)

The Court of Appeals, Commonwealth and Supreme Court of Virginia assumes in it's opinion that the Circumstantial evidence presented in this case does not prove I the petitioner had exclusive dominion and control over stolen property found in Kelton Adams - Elkin Crown Victoria (Commonwealth vs Moseley 292 VA 455 pg 11, 5-8)

By Supreme Courts ~~own~~ statement and law all other evidence does not support a larceny presumption and without this presumption the evidence is insufficient to support the conviction (Tyler's case)

When Prosecution fails to prove the Petitioner obtain stolen items or exercise exclusive dominion and control over stolen property conviction were reversed (Mc Fall)

In U.S v Kapeliougy Convictions were reversed when prosecution could not prove beyond a reasonable doubt that the accused knew of stolen goods or that he move them on the interstate also (US v Mc Fall)

The Petitioner was not given the same inferences as other similarly situated equally protected under law of the 14th Amendment

The Supreme Court of Virginia stated "It is not a matter of law we can find the Petitioner guilty beyond a reasonable doubt" (Commonwealth v Moseley 293 VA 455 pg 9 8-10)

This is because that court assessed a statement in violation of the law.

The Prosecutor introduce that the petitioner was a suspect in another crime. (trial transcript pg 48 14-28)

This Violates due process when prosecution made references to petitioner prior charges (Kincade v Sparkmen)

The Supreme Court₈ stated the Petitioner was in

an area of one burglary while he match a description of a suspect in an additional attempted burglary (Commonwealth v Moseley 293 VA 455 pg 9, 1-3)

for the Petitioner to be addressed as a suspect in an additional crime in court this claim must be made by the eye witness.

It was not, it was made by an officer who had no proof that the Petitioner participate in another crime this is heresay testimony

for the Supreme Court of Virginia to consider voluntarily in assessing trustworthiness of a declarant statement is contrary to Federal law (Steven V Ortiz)

When Prosecution introduce to the Court that the Petitioner had committed another crime in the past, this alters the judgment influencing the Supreme court ruling and lead to a double conviction.

The Supreme Court may have assumed if the Petitioner had a chance to committ one crime he may have committed another crime (Phillip case)

The Prosecutor is prohibited by state and Federal law to introduce prior charges at a different trial of the petitioner

The Supreme court utilized such introduction and misapplied standards of Murder totality in a grand larceny and burglary case where governing legal principles are different

The Appellant has a right to be free from duplicative prosecutions and punishments where he is convicted of two crimes on same fact in violation of fifth Amendment (US v Jackson)

REASONS FOR GRANTING THE PETITION

When two State Courts arrive at different conclusion using different governing legal principles in the same case we must ask ourselves a question does this threaten the infrastructure of our Judicial system?

Laws are formed under constitutional statute and provision are to enforce equal protection and due process so no one will be shown partiality or favoritism

Inferences formed in law are utilized to draw appropriate conclusions to convict or exonerate but no court can sit aside standard applicable by law and replace them with perception because innocent people will be convicted

Should the Court let a State Court prosecutor introduce Petitioner's prior charges at a different trial? to allow this what does this say about our judicial system? furthermore this introduction permits a Judge to assume if the Petitioner had a chance to commit one crime than he may have committed the charge crime No one in the world should be punished for a possibility or perception.

I ask this Court to grant my Writ of Certiorari because of controversial decision handed down by two State court especially when the Convicting State Court itself stated "It is not a matter of law that this Court can find the Petitioner guilty beyond a reasonable doubt

Our entire Justice system is built on law and guilty beyond a reasonable doubt and by all means necessary both of these must be enforced by the highest Court

When the prosecutor introduces the Petitioner participated in other crimes it deprived the Petitioner of a fair trial affected the Supreme Court of Virginia decision and they set aside provision and inferences established by law using

a murder totality standard and perception to reinstate burglary-larceny conviction

Will the Courts now allow Murder totality Standards rape or Human trafficking statute be used to Convict people of non-violent crimes abroad?

In all of the nation burglary - grand larceny case burglary and grand larceny inferences were used to reverse or convict

The Petitioner case is the only burglary and grand larceny case reversed by a Murder totality standard

Price's case (21 Gratt) is the standard for all burglary-larceny case since 1872 Possession is an essential key to find one guilty of larceny stating

Commonwealth must establish that the accused was in exclusive possession of property recently stolen, one can be exclusive in possession of an item when he jointly possess it with another However the evidence must show that the accused was consciously asserting at least a possessory interest in or was exercising dominion over the stolen property

The Court of Appeals, Commonwealth, and Supreme Court agreed that they could not present a
12

Case were the Petitioner ever had exclusive dominion and control over stolen property
Moseley v Commonwealth 293 VA 455, pg 11 4-7

In accordance with law and Supreme Court Virginia own statement I ask this court to grant the Writ

In Leebrick v Commonwealth, Leebrick was known to sleep under a porch where stolen items were kept; Leebrick also knew that items were stolen and even when questioned by cops he tried to escape arrest. Later on appeal it was shown other had access to the porch and Leebrick was never found in exclusive possession of stolen items so his conviction was reversed.

The main component in the Petitioner case is that the Prosecutor introduced prior charges at a different trial and stated Petitioner F.d was commingled with stolen goods from another burglary and introduced a Murder totality as a way to intertwine perception

However this allowed them to set aside inferences and deprived Petitioner of equal protection under laws

Which other have retain.

In the Petitioner Case stolen items were found in a car where others had access to, No exclusive possession or knowledge of stolen goods could be presented and the Petitioner did not own the car nor was I in the car when stolen items were found so my conviction should have remain reversed and dismissed.

Our judicial system should not be deluded in favor of anyone and enacted laws establish under the constitution should not be distorted but appropriately assigned.

for these reason mentioned I pray my Writ of Certiorari is granted not just for me but to preserve the provision retained by the citizens of America and hold true the laws that guard national integrity and equality.

Sincerely

14 Joshua Moselery

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joshua Mosely

Date: May 21 2020