

No. 20-5369

Supreme Court, U.S.
FILED

APR 14 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Don Farmer — PETITIONER
(Your Name)

vs.

John Woodson-(Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Don Farmer
(Your Name)

1349 Correctional Center Road
(Address)

Dillwyn, Va. 23239
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1.) Whether the evidence supplied through verbal testimony of a witness is considered testimonial, where statements must be "functionally identical to live in court testimony."?
- 2.) Whether a complaint under Va. Code § 18.2-61, that the Commonwealth avocated the position that Williams was the rapist?
- 3.) Whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or common custom."?
- 4.) Does it reflect that there may be no factfinding at all, at least for certain types of claims?

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:

Don Farmer Petitioner

John Woodson (Warden) Respondent

Katherine Quinlan Adelfio
Assistant Attorney General
Counsel for Respondent

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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

☐ 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☐ is unpublished.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☐ is unpublished.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 B 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☐ is unpublished.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 Richmond Circuit court appears at Appendix C 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 1-27-2020.

☐ 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: _____, 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 1-29-2013.
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

The Due Process Clause of the federal constitution guarantees to every criminal defendant the right to a fair trial. Article 1, Section 11 of the Constitution of Virginia simply guarantees that the due process rights of criminal defendants be protected.

STATEMENT OF THE CASE

The underlying alleged crime of rape murder robbery and burglary took place in 1987. Supposedly two black men entered the home of Patricia Fraenzel and her grandmother, killing the grandmother, raping Patricia and stealing their money. One man fled and the other was caught by police upon exiting the home. The man arrested at the scene (Lorenzo Williams) was identified by the victim/Patricia as the rapist and he was prosecuted and convicted.

Two decades later, DNA analysis identified Mr. Don Farmer, as one contributor to sperm samples taken from Patricia Fraenzel.

Mr. Farmer over and over denied any involvement in the 1987 matter, though he did acknowledge that sometime around this time he had sexual intercourse

with Patricia/victim. Attempting to create his whereabouts or alibi from over 20 years previously was impossible. It was determined from the semen taken from the victim that there were multiple DNA profiles identified, attesting to the fact that the victim/Patricia, arguably had had intercourse with multiple men over the course of the 5 to 7 days prior to the alleged rape.

The outstanding issue with Mr. Farmer's case was his video taped confession twenty four years later. (January 27, 2011)

Commonwealth Ex.11 Mr. Farmer's Interview Video Transcript (January 27, 2011) at 21-22,. He denied participating in the attack with Williams and could not offer or confirm any details other than what the detectives had given him. The detectives

questioned Mr. Farmer for almost two (2) hours, asking him fourteen (14) times if he had raped Patricia.

After denying it thirteen (13) times, Mr. Farmer asked the detectives to leave the room. When the detectives returned, for some unknown reason, Mr. Farmer said he raped Patricia. Video-Interview (January 27, 2011)

Mr. Don B. Farmer was indicted on January 27, 2011 by the multijurisdictional grand jury for the City of Richmond for the October 4, 1987 rape of Patricia Fraenzel, the murder of Eathel Fraenzel and associated charges of robbery and burglary. Mr. Farmer was arraigned by the Circuit Court of the City of Richmond.

The Public Defender's Office represented Lorenzo Williams who was charged and convicted of the rape of Patricia and the murder of Eathel Fraenzel in 1988. Shannon Taylor a private attorney, Court appointed to represent Mr. Farmer.

The trial was held in front of the Honorable Margaret P. Spencer on October 6-7, 2011.

(Tr. p. 33-34) Thereafter, Mr. Farmer was arraigned and entered pleas of not guilty on all four charges. The jury convicted Mr. Farmer of all four charges and sentenced him to a total of one-hundred and twenty-five (125) years.

On December 13, 2011, Mr. Farmer appeared in the Richmond Circuit Court for his formal sentencing. Mr. Farmer's final statement was, He was very remorseful of Mrs Eathel Fraenzels' death and also said Patricia did not come clean with her testimony. Sentencing Trial (December 13, 2011)

The Commonwealth introduced additional evidence including a certificate of analysis showing that Mr. Farmer could not be eliminated as a contributor for the DNA found in the victim's vagina. (Tr. p. 263)

The Commonwealth also introduced a taped interview in which Mr. Farmer implicated himself in the crime. (Tr. October 7, 2011 p. 89, 149).

The Opening Statement of coerced or false confession (Trial Court Oct. 6-7, 2011) is purpose to inform the jury of what counsel expects the evidence to be so that the jury may better understand the evidence.

see e.g. Arrington v. Commonwealth, 10 Va. App. 446, 392, S.E 2d. 844 (1990)

Confessions in criminal cases, an admission of guilt by the accused is usually referred to as a "confession", although the term "admission" is also used, especially when the statement made by the accused is self-damaging but does not amount to a complete acknowledgment in the crime charged.

Paden v. Commonwealth, 259 Va. App. 595, 529 S.E 2d 792 (2000)

I was there... and um well with the girl I knew her, you know what I'm saying, but way things happened Renzo wanted to rob, go up there and rob somebody... you know, so I was the - you know so it's like he said he pushed me up in the house..., then the girl you know she was crying and everything so only thing I did, you know, was ah take her in the back and Renzo in there beating up on the woman, you know, and that's way it happened. He was all coked up. Farmer added, "And I raped her."

The detectives took a buccal swab of the inside of Farmer's mouth for further DNA analysis.

A conviction by trial court which has admitted coerced confession deprives a defendant of liberty without due process of law. When the facts admitted by the state show coercion, a conviction will be set aside as violative due process.

Brown. v. Allen U.S.443 (1993)

The Due Process Clause of the federal constitution guarantees to every criminal defendant the right to a fair trial. Article 1, Section 11 of the Constitution of Virginia similarly guarantees that the due process rights of criminal defendants be protected.

In order to prove that Farmer's DNA was present as a result of rape rather than consensual sexual intercourse (as Farmer maintained), the Commonwealth relied on the victim's testimony describing her alleged rape in the apartment-but ignored the victim's testimony that it was someone else who committed the rape.

The Supreme Court of Virginia, applying *Mendez-Diaz v. Massachusetts*, has held that certificates of laboratory analysis were admitted into evidence at trial in three criminal prosecutions were testimonial.

Cypress v. Commonwealth 280 Va. 305, 312, 699 S.E. 2d, 209-10 (2010) (quoting *Mendez v. Massachusetts*, 557 U.S. 305 (2009))

Before testifying, every witness shall be required that he or she will testify truthfully, by oath affirmation administered in a form calculated to awaken the conscience and impress the mind with the duty to do so.

Taylor v. Beck, 24 Va. (3 Rand) 316, 320 (1825) Va. Code Ann. § 1-250

But, as Patricia testified by oath, Williams was her sole rapist.

Sentencing Trial (December 13, 2011) Farmer stated that "Patricia did not come clean with her testimony."

Until DNA evidence freed them, courts rejected all of their innocence claims. The DNA evidence frequently exonerated people whom any trial error had been found harmless of for whom appellate and post-conviction judges had concluded that there was "overwhelming" evidence of guilt.

Brandon L. Garrett, Convicting the innocent: (2011) Judging Innocence, 108 Colum. L. Rev. 55, 108 (2008)

REASONS FOR GRANTING THE PETITION

Mr. Farmer asks this Honorable Court to grant his petition, after reviewing the rulings and the issues surrounding the Richmond Circuit Court, the Court of Appeals of Virginia and the United States Court of Appeals for the Fourth Circuit Eastern Division in determination that the petitioner challenge the outcome of the extraordinary instances when a constitutional violation has caused the conviction of one innocent of the crime and then determine the facts to ascertain the true cause of the detention.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Don Farnv

Date: 4-13-2020



A. A. Webb
04.13.2020