

In The
Supreme Court of The United States

NO. **20-7722**

Charles E. Church
Petitioner, pro se

vs.

ORIGINAL

Commonwealth of Virginia
Respondent(s) Et Al.

FILED

DEC 18 2020

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SUPREME COURT, U.S.

Petition For A writ of Certiorari To The
United States Supreme Court

Charles E. Church
Red Onion State Prison
Po Box 970
Pound, Virginia 24279

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Questions Presented

Why did the prosecutor wait a few days prior to trial to inform defense counsel that the complainant had alleged oral sex during the incident. This information had been known to the Commonwealth since February of 2016?

Why did the Commonwealth not disclose until the second day of trial, after voir dire, opening statements, direct and cross examination of the crime scene detective and the complainant, that the complainant could not identify the Barbie underwear as hers, could not identify the underwear as what she was wearing the night of the incident, and could not say if the underwear belonged to her sister?

Why did the Court of Appeals commit error in finding the underwear was not exculpatory. The Barbie underwear became exculpatory when the complainant told the prosecutor before trial she could not identify the underwear as hers?

Why did the trial judge rule in my favor not allowing a clothing item into evidence and then changes his mind, stating DNA helped change his opinion - no foundation was laid to allow clothing, so DNA should not have been considered?

Questions Presented

Why did the Judge admit that the Foundation was not laid yet, but changed his ruling based on evidence that was never presented to him?

How can a Judge per the Constitution be impartial in his decision making, when he is clearly in a rush throughout the trial, even talking about time constraints?

Why did the Commonwealth Attorney state her blood was found in clothing with DNA, which the Judge considered before changing his ruling. Then after him changing his ruling the Commonwealth Attorney changes statement saying it was not tested?

Why did the Court of Appeals refuse to rule on the remaining prongs of the 14th Amendment violation with respect to the underwear, i.e. that the Commonwealth suppressed this information and that it was material to the case?

Would the outcome of the trial been different if the petitioner, would have known about the inconsistent statements of the complainant?

Questions Presented

If all statements by complainant, had been made known pre-trial, would the petitioner of had an overwhelming argument in pre-trial motion?

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Decisions Below:

The decision of the Virginia Court of Appeals Record No. 200031, Court of Appeals No. 0264-18-2. The Order of the Circuit Court of Richmond, Virginia is reported. The case nos are CR17-F-2279 and CR17-F-2280 Va Code Sec. 18.2-67.2(A.1) and 18.2-370(A)(1)

Jurisdiction

The Judgment of the Virginia Court of Appeals Record No. 200031, Court of Appeals No. 0264-18-2 was entered on July 30th 2020. An order denying a petition for rehearing was entered on October the 9th 2020 by the Supreme Court of Virginia

Constitutional and Statutory Provisions Involved

This case involves the 14th Amendment and the 6th Amendment to the United States Constitution which provides:

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 to any person within its Jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment 6th

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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

These Amendments are enforced by the Constitution and all States are binding by these Amendments

Parties

The Petitioner is Charles E. Church a pro se prisoner currently being confined at "R.O.S.P." Red Onion State Prison in Pound, Virginia

The Respondent is the Commonwealth of Virginia Et Al,

Basis For This Honorable Court being the Proper Jurisdiction

The Supreme Court has the power to review virtually any decision of a Federal Court of Appeals, it has more limited powers to review decisions of the highest court of a state. There are very few cases that the Supreme Court is required to hear. This case involves questions of "exceptional importance", not only to the petitioner and his Constitutional Rights but also issues of importance to the Federal Judicial System. Jurisdiction is proper under 28 U.S.C. Sec. Sec 1251-58

Statement of the case

Petitioner

Charles E. Church was charged with the sexual assault of his biological daughter. Petitioner was convicted by a jury of one count of sodomy, and one count of custodial indecent liberties. The sodomy conviction carried a mandatory life sentence. The Commonwealth's case relied on the complainant's testimony, findings in a sexual assault exam, and a pair of size 8 Barbie underwear found in a family laundry pile that had the complainant's DNA and Mr. Church's DNA present. All information provided to Mr. Church indicated the complainant could identify this underwear as hers, and could identify the underwear as the underwear she was wearing the night of the alleged assault. This included the Department of Forensic Science Certificate of Analysis provided to Mr. Church in discovery, the opening statement by the prosecutor at trial, and the testimony of the crime scene detective at trial. It was not until the second day of the jury trial that the prosecution disclosed that the complainant had previously told them she could not identify the Barbie underwear as hers, and could not identify the Barbie underwear as the underwear she was wearing the night of the alleged assault. On the second day of the ~~trial~~^{trial} the prosecution also disclosed numerous inconsistent statements by the complainant that had not been previously disclosed, and were only uncovered due to the cross-examination of the complainant. Based on these Brady violations, at trial Mr. Church argued for a

dismissal, and in post-trial proceedings. Mr. Church argued for a new trial. The trial court denied both motions. A three-judge panel of the Court of Appeals affirmed Mr. Church's convictions finding the information regarding the Barbie underwear was not exculpatory, and the inconsistent statements were timely disclosed.

Church v. Commonwealth, 71 Va.App. 107 (2019)

Assignments of Error

1. The Court of Appeals erred in holding the complainant's inability to identify the Barbie underwear was not exculpatory, therefore affirming the trial court's erroneous denial of Mr. Church's motion to dismiss, and motion for a new trial, based on violations of his 14th Amendment right to exculpatory evidence as specified in Brady v. Maryland. This issue was preserved by Mr. Church's motion to dismiss at trial ⁽¹⁾ Joint Appendix 269-371, denied, JA 453, and by Post-Trial, ~~JA~~ motion to dismiss or for a new trial, JA 855-938, and by argument, JA 1023-1040, 1052-~~1056~~¹⁰⁵⁶, denied by the trial court, JA 1056-1060, and by order, JA 1145. This issue was preserved by the Court of Appeal's opinion.

Church v. Commonwealth, 71 Va.App. 107 (2019)

(1) All references to Joint Appendix will be "JA"

II/ The Court of Appeals erred in refusing to rule on the remaining prongs of the 14th Amendment violation with respect to the underwear, i.e. that the Commonwealth suppressed this information, and that it was material to the case. This issue was preserved by the Court of Appeals Opinion.

Church v. Commonwealth, 71 Va. App. 107 (2019)

III/ The Court of Appeals erred in finding the disclosure, on the second day of trial, of the complainant's previous inconsistent statements were timely such that there was no violation of Mr. Church's 14th Amendment rights. This issue was preserved by the Court of Appeals Opinion.

Church v. Commonwealth, 71 Va. App. 107 (2019)

Summary of The Facts

In November 2015, Mr. Church's eldest daughter, the complainant, accused him of sexual assaulting her during an overnight visit at his home. During the course of this alleged assault, the complainant testified Mr. Church removed her pajama shorts with colorful stars, a pink tank top, and underwear. JA 278, 331. The crime scene detective collected numerous pieces of clothing from the residence, including a pink tank top, Barbie underwear, and a pair of shorts with peace signs and stars. JA 199-200. These clothing items were recovered from a family laundry pile in the bathroom of Mr. Church's residence. JA 199-200. The Barbie underwear, size 8 was directly underneath the pair of shorts.

with peace signs and stars in the laundry pile. JA 204, 205. A DNA mixture profile was developed from the crotch of the underwear that could not eliminate the complainant, or Mr. Church, as contributors. JA 518-519, 522. At trial, the complainant testified she did not remember anything about the underwear she was wearing that night. JA 279. During the cross-examination of the complainant it became apparent that she had informed the prosecutors in the case that Mr. Church had come back into the bedroom a second time, had threatened to assault her younger sister, and that the complainant had offered to go in her sister's place. JA 216, 336-337. These statements were inconsistent with the complainant's prior versions of events, and had not been disclosed to Mr. Church's attorneys. On the second day of trial, the Assistant Commonwealth's Attorney informed the trial court that the complainant's statements regarding the second attempt by Mr. Church to sexually assault her sister, were inconsistent with prior statements. JA 365, 1071-1073, 1074-1144. The prosecutor made two new disclosures. (1) The complainant did tell us in trial preparation that the defendant the next morning asked her if he could do it again. She did not say that in trial yesterday. (2) JA 368. Also, when she testified, she stated that she did not remember what underwear she was wearing, and that is consistent with what she has said. JA 368. The prosecutor continued, "the complainant is not able to identify the underwear as her underwear... she's not able to say whether she was wearing it at the time or if it is hers. She said it could be hers; it could be her sister's. JA 369."

Argument

Standard of Review

The burden is on Mr. Church to establish the trial court erred in not granting a new trial due to the Brady violation in this case Giggleton v. Commonwealth, 52 Va. App. 99, 112 (1963). However, if a constitutional error occurred, the conviction must be reversed if the evidence was material and its suppression undermined confidence in the outcome of the trial.

United States v. Bagley, 473 U.S. 667, 678 (1985)

Argument

The court of Appeals erred in finding the underwear was not exculpatory. The Barbie underwear became exculpatory when the complainant told the prosecutor, before trial, she could not identify the underwear as hers, or as the underwear she was wearing the night of the alleged assault. The underwear raised a reasonable doubt as to whether the underwear was worn by the complainant during the incident;⁽²⁾ it put in question the relevance of the underwear, the admissibility of the underwear, and the related DNA because without an identification connecting the underwear to the assault the underwear was not relevant and not admissible; and it strengthened Mr. Church's defense that Mr. Church's DNA was present on the underwear through

⁽²⁾ The Commonwealth argued at closing that the underpants were the complainant's based on the circumstantial evidence of their size, and the presence of the complainant's DNA VA 169-770. Mr. Church could not fully challenge this circumstantial argument because he was not timely

transfer DNA from the laundry pile, and not from direct contact with the complainant during a sexual assault.⁽³⁾ Most significant, the underwear was exculpatory because of the actions Mr. Church would have taken had he been aware of this information. Mr. Church would have further challenged the police investigation. See *Kyles v. Whitley*, 514 U.S. 419, 445-450 (1995) (highlighting one exculpatory aspect of the government's contradictory eyewitness statements being the ability of the defendant to challenge more effectively the police investigation in the case). Mr. Church would have further investigated his own case.⁽⁴⁾ And because this information was not disclosed until the second day of trial, Mr. Church was unable to effectively object to the publication and admission of the underwear ~~and~~⁽⁵⁾ unable to litigate ~~the case~~ pre-trial the relevance of the underwear, or to limit the Commonwealth's reference up and until foundation for its admission had been laid.⁽⁶⁾ And unable to effectively cross-examine and challenge the complainant on her recollection of the alleged assault specifically about the underwear. *Bowman v. Commonwealth*, 248 Va. 130, 135 (1994)

informed of the complainant's previous statements that she could not identify the underwear.⁽³⁾ JA 793 (Mr. Church's closing argument discussing transfer.)⁽⁴⁾ This is particularly significant given the disputed expert testimony about the presence of a third allele in the DNA profile for the complainant or the underwear itself. JA 659. And the complainant's sister did have some medical conditions in her genital region

("Bowman reasonably may have taken different and potentially significant actions which could have strengthened Bowman's defense").

The suppression of this information about the underwear, by disclosing it the second day of trial, affected the outcome of the trial.

Kyles v Whitley, 514 U.S. 419, 434 (1995) ("The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.") The exculpatory evidence regarding the underwear came to light after the prosecutor had referred to the underwear in their opening statement, the entirety of the complainant's testimony had concluded, and the crime scene detective had testified and published the physical underwear in question to the jury.⁽⁷⁸⁾ The defense even mentioned the

that would have been explored during the trial and additional investigation. JA 242.⁽⁵⁾ Mr. Church did object to the publication, testimony, and admission of the underwear as lacking foundation at each stage of the proceeding where it was discussed. JA 198, 200.

⁽⁶⁾ The court of appeals stated this was a "mere possibility" of an alternative trial strategy. Church at *11. But this is not what the record established. Mr. Church did object, numerous times, to the admission of the Barbie underwear. JA 198, 200, 206, 536. The inability of the complainant to identify the Barbie underwear would have changed the effectiveness of Mr. Church's objections

underwear in their opening, ⁽⁹⁾ unaware that the complainant could not identify the Barbie underwear as her underwear. During the crime scene detective's testimony, he specifically referenced the underwear as the "most probative evidence."

Placing significant weight on it before the jury. ⁽¹⁰⁾ Mr. Church did not object, or cross-examine, the detective about the complainant's inability to identify the underwear as hers, or being worn the night of the alleged incident, because Mr. Church did not know at that time that the complainant could not identify the underwear in either context. The detective then published the underwear to the jury, going so far as to exit the witness box and turned the underwear inside out for the jury to observe. ⁽¹¹⁾ He also specifically pointed out staining on the crotch area of the underwear to the jury. ⁽¹²⁾ Mr. Church would have employed a different pre-trial motions litigation and investigation, voir dire, opening statement, and cross-examinations, had he known the complainant could not identify the

that he did, in fact, make at trial. This is not a "mere possibility" of a changed trial strategy, but an actual trial strategy that was rendered ineffective because Mr. Church was not aware of this exculpatory evidence. ⁽¹⁾ JA 105. Mr. Church objected to crime scene detective describing the reasons he selected the Barbie underpants as evidence. JA 200, the publication and the introduction of the underwear through the detective.

⁽⁹⁾ JA 206, JA 182

Barbie underwear as hers, and could not identify the underwear as the underwear she was wearing the night of the incident. This error is intertwined with the trial itself, and cannot be fixed with a continuance, or recess. This exculpatory evidence was material.

The court of Appeals also found that the discovery of prior inconsistent statements by the complainant during cross-examination, and the disclosure of additional inconsistent statements during the second day of trial, were also not a Brady violation because they were timely disclosed. Church, 71 Va.App. at 120-121. But the claim that these inconsistent statements were timely disclosed one, is not accurate as they were disclosed on the second day of trial, after the complainant had completed her direct and cross examination testimony, but this conclusion also ignores that suppressed exculpatory evidence must be considered "collectively, not item by item," in determining if their failed disclosure amounts to a Brady violation. Kyles, 514 U.S. at 436 citing Bagley 473 U.S. at 675. When considered in total, the suppression of inconsistent statements by the complainant, and the suppression of a significant exculpatory fact regarding the only physical evidence in the case connecting the complainant and Mr. Church,

(10) JA 214

(11) JA 204, 205

(12) JA 205, 206

rendered the verdict unworthy of confidence. Mr. Church's motion to dismiss the charges was well-founded, and at a minimum, he established his right to a new trial.

Petitioner's 14th Amendment Rights were violated.

Petitioner has a fundamental right to due process of law, as well as equal protection from these laws.

Conclusion

Throughout the course of Petitioner's legal proceedings he was deprived of these rights. There are safeguards to insure that all rules and principles which have been well established in our systems of jurisprudence for the enforcement and also protection of these rights due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. The trial court erred in denying Petitioner's motion to dismiss, or motion for a new trial due to the Brady material not disclosed and the violation of Petitioner's 14th Amendment rights.

the pieces of evidence at issue were exculpatory, or impeachment evidence. The Complainant's inconsistent prior statements were impeachment evidence and a required Brady disclosure. The Commonwealth suppressed these pieces of evidence. The Complainant's inability to identify the Barbie underwear was also suppressed by the Commonwealth. The prior inconsistent statements of the complainant, and the impeachment from her step-mother, were also suppressed. Petitioner was prejudiced by the suppression of this exculpatory evidence. Petitioner was prejudiced by the failure to disclose the exculpatory nature of the Barbie underwear. Petitioner was prejudiced by the failure to timely disclose the inconsistent statements of the complainant. The government misconduct in this case undermined the petitioner's right to fundamental fairness and due process in the criminal proceedings

United States v. Ojeda, 478 F.2d 224, 234 (4th Cir (2007)

The Commonwealth's actions here were "so outrageous as to shock the conscience of the court."

United States v. Osborne 935 F.2d 32, 36 (4th Cir (1991)

Charges should be dismissed against Petitioner. But at a minimum, Petitioner has met the legal standard for a new trial on these charges. Petitioner has established repetitive suppression by the Commonwealth in this case of material, prejudicial evidence. The judgment must be reversed and Petitioner should be set free or at

least a new trial which would be a fair and just result. Embodied in the due process concept are the basic rights of a defendant in criminal proceedings and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge; the presumption of innocence under which guilt must be proven by legally obtained evidence and the verdict must be supported by the evidence presented; the right of an accused to be warned of Constitutional rights. Petitioner's 14th Amendment Rights were undermined to the point that he was already guilty before he even walked into the courtroom, the Commonwealth has a blatant disregard to the due process standards of fairness and justice.

Conclusion Complete From Statement of Case

Petitioner respectfully ask this honorable Court to reverse his conviction, and remand this matter, for a new trial, or whatever other remedies this honorable Court deems appropriate. For the foregoing reasons, Petitioner should be granted in this case

Reasons For Granting the Writ

A. Conflicts With Decisions of other Courts

On June 15th 2018 a petition for an Appeal was filed on behalf of petitioner on December the 21st 2018, The court of Appeals of Virginia denied petitioners petition for Appeal Record NO. 0264-18-1 Circuit Court was CR17-F-2279 and CR17-F-2280 from the circuit court of the city of Richmond, Virginia

On March 5th 2019 A hearing was conducted by a Three-Judge panel and petitioners Counsel. This hearing was decided in only 3 days. The court of Appeals decided on March 8th 2019 to grant petitioner his appeal in part and also denied it in part. Showing they were willing to consider more carefully several of the issues that was raised. The three judge panel awarded an appeal to petitioner with respect to the following assignments of error:

- (1) The Trial Court erred in denying petitioners motion to dismiss, or for a new trial, based on violations of his 14th Amendment Rights to exculpatory evidence as specified in Brady v. Maryland
- (2) The trial court erred in admitting Commonwealth's Exhibit 3, the underwear, and the related DNA evidence and testimony.

On August 11th 2020 A petition for rehearing was filed and sent to the Supreme court of Virginia. On October 9th 2020. The Supreme Court of Virginia denied petitioners petition for rehearing to set aside the Judgment rendered herein on July 30th, 2020 from the Court of Appeals of Virginia.

B. Importance of Questions

All these questions being presented clearly shows that petitioners Constitutional rights were violated this affected every stage of the trial, and this fundamentally changed petitioners theory of defense, along with a number of late disclosed inconsistent statements of the complainant. The Brady violations in this case are severe, and require, at a minimum, a new trial for petitioner. The Government misconduct in this case undermined the petitioners right to Fundamental Fairness and due process in the Criminal Proceedings.

United States v. Dyess, 478 F.3d 224, 234 (4th Cir. (2007)

The commonwealths actions here were "so outrageous as to shock the conscience of the court;

United States v. Osborne, 935 F.2d 32, 36 (4th Cir. (1991))

These questions also show that the Commonwealth Attorney knowingly and willingly lead the Judge to believe something that she knew herself was not true!!!

These questions also show petitioner has/and had met the legal standard for a new trial on these charges. The petitioner wants to respectfully remain aggressive and adamant about the statements made by the complainant along with other matters in this case. Had the statements been made known pre-trial, the petitioners case would of had an overwhelming argument in pre-trial motion and the underwear would have never been allowed into court at trial, which would have also meant no DNA evidence for prosecution. No reasonable person could ever have confidence in the jury's verdict. Especially when you also see that the jury found defendant not guilty on two of the most serious charges, which shows they did not have confidence in the entirety of the prosecutions case and they did not believe the entire story of complaining witness. Even the prosecutors, before the jury went to deliberate, asked to dismiss one of the most serious charges. That left only the one most serious charge and one lesser charge. The Commonwealth's Attorney said when she disclosed the exculpatory statement made by complainant on day two of trial that it was not inconsistent with what she said at trial yesterday. That statement is false and misleading. You cannot take into account what was said during trial toward whether the statement is inconsistent. If we were told a reasonable time before trial, then the statement would in fact be inconsistent with anything she had

said before. The Commonwealth's Attorney knew this and knowingly and willingly deceived the court. That was evident in her opening statement. The fact that she put the Detective on the stand first to show the underwear and parade them inside and out in front of the jury box. She even put on my ex-wife, Complainant's mother, to try and say she remembered what size clothes they wore almost 2-years earlier. And then when they put Complainant on the stand they only asked if she remembered the underwear she was wearing and when she said NO, they quickly moved on and explored the issue no further. One would have to ask themselves how the Commonwealth Attorney could possibly ask Complainant that question knowing that Complainant had already stated to her weeks if not months before trial that she didn't remember the underwear and could not even identify the underwear and that they could even be her sisters'. Furthermore, if she did not remember this previous statement by Complainant pretrial, then how can she possibly say that when she did ask the question it did not immediately jog her memory of what Complainant told her pretrial. And this was still day 1 of trial and yet Commonwealth Attorney on day 2 tells Judge of several inconsistencies and statements she now remembers after "barking her brains" late last night. How did she not remember what the Complainant told her as soon as she asked the question

While Complainant was on stand. Knowingly and willingly the Commonwealth's Attorney deceived and misled the Court, the Jury, and the defense in hopes of influencing the Jury in her favor, and hopefully receiving leniency from the Judge hoping he would rule in her favor, which he did. Judge gave prosecution leeway to do whatever they wanted in this case.

"This is the importance of all the questions presented"

Conclusion

Petitioner hopes and prays this honorable Court accepts this writ of certiorari throughout its entirety