

No.

In The

Supreme Court of the United States

Eugene Roberts,

Petitioner

vs.

The People of the Virgin Islands,

Respondent

On Petition For A Writ of Certiorari
To The Virgin Islands Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Virgin Islands Supreme Court violated Appellant's constitutional right to due process and right to counsel by not granting a mistrial based on an *in camera* review where Appellant was not allowed to participate but the *People* were.
2. Whether the Virgin Islands Supreme Court violated Appellant's constitutional right to due process and right to counsel by not granting a mistrial based on an *in camera* review where Appellant was not allowed to participate but the *People* were.
3. Whether the Virgin Islands Supreme Court's failure to require full disclosure of the Internal Affairs' Use of Force Report pursuant to *Brady* and *Giglio* violated Appellant's constitutionally protected right to due process.

PARTIES TO PROCEEDING AND RELATED CASES

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

- People vs. Roberts, No. SX-2014-CR-00136, Superior Court of the Virgin Islands Division of St. Croix. Judgment entered May 20, 2019.
- Roberts vs. People, No. SCT-CRIM-2019-0051, Supreme Court of the Virgin Islands Division of St. Croix. Judgment entered April 19, 2022.

JURISDICTION

The Virgin Islands Supreme entered its judgment on April 19, 2022. No petition for rehearing was filed. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1260.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fifth Amendment To The United States 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, 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 offense 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 use, without just compensation.

Sixth Amendment To The United States 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, 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 defense.

STATEMENT OF THE CASE

On April 19, 2014, there was a shooting at the Frontline Nite Club in Estate Colquohoun on the island of St. Croix. One person was killed and two others were injured in the shooting. One of the injured persons was an off-duty police officer. Eugene Roberts and four other persons were arrested on a Twenty-Two count

Information and Warrant issued by the Virgin Islands Superior Court. Numerous discovery requests were made seeking the production of the off-duty officer's personnel file, which contained an Internal Affairs Use of Force Report relating to the shooting incident on April 19, 2014. The Internal Affairs Use of Force Report, an 8-page document, was not produced to the defense until after the close of the People's case in chief, and when it was produced only 1 of the 8 pages of the report was given to the defense. App. 55a – 56a. That one page that was produced contained information that was both exculpatory and impeachment. At trial, Roberts moved for a mistrial on November 4, 2016, on the grounds of *Brady* and *Giglio* violations due to the People's failure to produce the Internal Affairs Use of Force report. App. 83a – 85a. Roberts was sentenced on May 10, 2019, and following his sentencing a *Judgment and Commitment* was entered on May 20, 2019. App. 35-37. An appeal was taken to the Virgin Islands Supreme Court and the Virgin Islands Supreme Court entered its *Opinion and Judgment* on April 19, 2022. App. 1a-34a.

REASONS WHY CERTIORARI SHOULD BE GRANTED

There are two reasons why certiorari should be granted in this instance. First, The Virgin Islands Supreme Court has decided, or rather failed to decide, an important federal question in a way that conflicts with another state court of last resort. Second, the Virgin Islands Supreme Court has decided an important question of federal law that has not, but should be, settled by this Court.

It is undisputed that Eugene Roberts was denied the disclosure of the Internal Affairs Use of Force report. Appellant has always contended that the disclosure of this report was required, not just because it was impeachment material under *Giglio v. U.S.* 405 U.S. 150 (1972), but more importantly, because it was exculpatory material under *Brady v. Maryland*, 373 U.S. 83 (1963). Just the single page of that 8-page report, which the defense was allowed to view, contained several major critical pieces of evidence: that there was one shooter; that the person the officer shot was the brother of Eugene Roberts not Eugene, etc. These facts, coupled with the testimony of the girlfriend eyewitness that the co-defendant did the shooting, could have completely exonerated Roberts, as well as do major damage to the testimony of the police officer.

The issue of whether it was error to not allow the defense through counsel to review statements made by police officers as part of an Internal Affairs investigation has been decided by other state courts with opposite results to that of the Virgin Islands Supreme Court. In *Commonwealth v. French*, 396 Pa. Super. 436, 453-54, 578 A.2d 1292, 1301 (1990), *aff'd*, 531 Pa. 42, 611 A.2d 175 (1992) it was concluded that where officers are witnesses at trial, the court's denial of access to defense counsel of the police witnesses' statements in an internal affairs investigation constituted error. The court in *French* noted that because of the adversarial system of justice, a trial court's *in camera* review of statements and determination that it is without impeachment value and of no use to the defense is one that is reached without the benefit of an advocate's eye. *French*, 396 Pa. Super. at 455, 578 A.2d at 1301.

The court in *French* also stated that a trial court is not in a position to determine the value that a prior statement has for the defense without first allowing defense to inspect the statement and hearing arguments from defense after the inspection. *French*, 396 Pa. Super. at 455, 578 A.2d at 1301-02 (quoting *Commonwealth v. Hamm*, 474 Pa. 487, 498-99. 378 A.2d 1219, 1225 (1977)). See also, *Robinson v. State*, 354 Md. 287, 313, 730 A.2d 181, 195 (1999) a case that is analogous to this case, the court held that it was error to not allow a defendant through counsel to review statements made by police officers as part of an Internal Affairs investigation and that the error was not harmless.

However, contrary to the rulings in other state courts, the Virgin Islands Supreme Court disregarded those rulings and elected not to follow those rulings. Here the Court chose to substitute its determination as to the value of the prior statements to the defense. Had Eugene Roberts been tried in the U.S. District Court of the Virgin Islands and filed an appeal with the Court of Appeals for the Third Circuit the failure to disclose the internal affairs report would have received a different treatment.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that this *Petition for Writ of Certiorari* should be granted. The Virgin Islands Supreme Court is in need some guidance.

Respectfully submitted,

DATED: September 21, 2022



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EUGENE ROBERTS.

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CERTIFICATE OF SERVICE

I, Renee D. Dowling, an attorney appointed by order of the Virgin Islands Supreme Court, hereby certify that on July 18, 2022, a copy of the Petition for A Writ of Certiorari and a copy of this Certificate were served on The People of the Virgin Islands, 213 Estate La Reine, RR1 Box 6151, Kingshill, VI 00851, by depositing an envelope containing the above documents in the United States mail with first class postage prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 21st, 2022.



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