

22-5916

ORIGINAL

Court of Appeals No. 0422-20-1

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

AUG 03 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

RANDY LEE LASSITER JR. — PETITIONER  
(Your Name)

vs.

COMMONWEALTH OF VIRGINIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF VIRGINIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RANDY LEE LASSITER JR.

(Your Name)

P.O. BOX 759

(Address)

Btg Stone Gap, VA 24219

(City, State, Zip Code)

751-822-3429

(Phone Number)

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### QUESTION(S) PRESENTED

The Virginia Supreme Court Erred by Affirming the Court of Appeals Ruling Allowing Jailhouse Informant Raul Ramos to Testify at Trial Because the Commonwealth's Mid-Trial BRADY Disclosures Violated Petitioner's DUE PROCESS Rights and Deprived him a Fair Trial.

## 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:

APPEAL  
CC-IST  
APPEAL  
IST  
APPEAL  
IST

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APPEAL

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### STATUTES AND RULES

### OTHER

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 \_\_\_\_\_ 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☐ is unpublished.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☐ is unpublished.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 240772 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☒ is unpublished.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 VA Supreme Court court appears at Appendix 240772 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 \_\_\_\_\_.

☐ 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 March 17, 2022.  
A copy of that decision appears at Appendix 210772. VA SUPREME COURT

☒ A timely petition for rehearing was thereafter denied on the following date: May 12, 2022, and a copy of the order denying rehearing appears at Appendix 210772. VA SUPREME COURT

☐ 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

In determining whether a Brady violation has occurred, this Court must consider under the totality of the circumstances, the petitioner received a Fair trial, understood as a trial resulting in a verdict worthy of confidence. United v. Bagley, 473 U.S. 667, 678 (1985)

The Facts and circumstances here are that the Commonwealth deliberately and strategically chose to withhold the identity of Ramez Ramos to gain an upper hand at trial and further misrepresented that Ramos would only testify as a rebuttal witness if the petitioner took the stand in his own defense. This kind of gamesmanship offends the notion of a Fair trial that underlies the Brady Principle. The premise of our criminal justice system is the government's ultimate interest in prosecution is not to maximize convictions for their own sake, but to ensure that "Justice shall be done". United States v. Agurs, 427 U.S. 97, 111 (1976)

Therefore the government should "Prosecute with earnestness and vigor" but may not use "improper methods calculated to produce a wrongful conviction. Prosecutorial misconduct justifies reversing a conviction only where it so infected the trial with unfairness as to make the resulting conviction a denial of Due Process. Berger v. United States, 295 U.S. 78 (1935) In this case, the Commonwealth failed to live up to its duty and instead chose to pursue a strategy of obfuscation and misrepresentation in order to maximize their chances of securing a finding of guilt. Jailhouse informants are a particularly risky and unreliable category of criminal informant. Like all informants they provide evidence to the government in the hope of receiving a benefit. But they have additional characteristics that make them especially poor witnesses. They are incarcerated, so they are surrounded by a ready-made supply of vulnerable targets who are already suspected of criminal conduct.

Ramos admitted to being a "career criminal", had no proof that he had ever been housed with petitioner, and that he was hoping for "leniency" in exchange for his testimony implicating petitioner. Where a breach of the prosecutor's constitutional duty to disclose deprives the defendant of a Fair trial, the verdict must be set aside. Agurs, 427 U.S. at 108

Brady v. Maryland, 373 U.S. 83, 87 (1963) The right to testify on one's own behalf is a bedrock constitutional principal and has several sources in the United States Constitution, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments. Rock v. Arkansas, 483 U.S. 44 (1987)



## STATEMENT OF THE CASE

On August 1, 2018, Randy Lee Lassiter Jr., hereinafter referred to as Petitioner was indicted by a grand jury for allegedly committing a robbery, abduction, (2) use of a Firearm in commission of a Felony, and wearing a mask or hood to conceal identity. On that same, Counsel for Petitioner and the attorney for the Commonwealth agreed upon a scheduling order that was approved and signed by the Honorable Junius P. Fulton. One of the provisions of the order required the Commonwealth's attorney to forward all discovery to defense counsel "on or before 3 weeks before trial". Petitioner called his fiancé, Shanika Mclease, as an alibi witness. Petitioner did not testify. The Commonwealth then notified the court that it intended to call Raul Ramos, a Jailhouse informant who claimed to have previously shared a cell with Petitioner in the Norfolk City Jail, as a rebuttal witness to Ms. Mclease. The Commonwealth did not disclose Ramos as a potential Jailhouse informant witness prior to trial. Further, the Commonwealth informed trial counsel during the first day of trial that it did not intend to call Ramos as a witness unless Petitioner testified. Petitioner objected to Ramos testifying on Due Process grounds. Petitioner argued that the Commonwealth "Ambushed" him by failing to timely disclose Ramos's existence, and thereby deprived ~~petitioner~~ of the opportunity to investigate basic facts related to Ramos such as whether he was actually ever housed with Petitioner, his history of testifying in other cases in exchange for leniency, and his ability to view news reports about Petitioner's case while in custody. The Commonwealth stated that it did not ~~intend~~ intend to offer any other proof other than Ramos's testimony that Ramos had ever been housed with Petitioner. Further, the Commonwealth stated it had no obligation to investigate the veracity of Ramos testimony. Judge Hall overruled Petitioner's Due Process objection to exclude Ramos testimony from trial. Ramos was an eleven-time convicted felon with pending charges of burglary and violation of probation in both Norfolk and Fredericksburg Virginia. Among his prior offenses were convictions for Armed Robbery, 2 other counts of Robbery, burglary, grand larceny, mail fraud, brandishing a ~~machete~~ on school property, and damaging a vehicle.

## REASONS FOR GRANTING THE PETITION

While the United States Courts Permit the use of informants, they also have cautioned their use with regard to credibility. As early as 1952, Justice Robert Jackson opined in Lee v. United States, 343 U.S. 747, 757 (1952) that the use of informers, accessories, accomplices, False Friends, or any of the other betrays which are "dirty business" may raise serious questions of credibility. The Ninth Federal Circuit more recently opined: "Never has it been more true than it is now that a criminal charged with a serious crime understands that a fast and easy way out of trouble with the law is ... to cut a deal at someone else's expense and to purchase leniency from the government by offering testimony in return for immunity, or in return for reduced incarceration." N. Mariana Islands v. Bowie, 243 F.3d 1109, 1123 (9th Cir 2001)

The work of the Innocence Project bears out the dangers of unreliable jailhouse informant testimony. In their report detailing the first 364 DNA exonerations, 17% of the false convictions involved informant testimony. This makes it critically important that the use of jailhouse informants be closely scrutinized and that prosecutors strictly adhere to discovery rules pertaining to the use of informants. Brady v. Maryland, 373 U.S. 83, 87 (1963)

The Commonwealth assured defense counsel that if petitioner did not testify in his own behalf, the Commonwealth would not call Ramos as a witness. After Petitioner did not take the stand, the Commonwealth reneged on their promise and called Ramos as a rebuttal witness. The right to testify on one's own behalf is a bedrock constitutional principle and cannot be stripped from a defendant through misrepresentations made by the Commonwealth. Rock v. Arkansas, 483 U.S. 44 (1987) to deny petitioner the right to tell his story from the stand dehumanizes the administration of justice. A defendant's testimony as to non-involvement should not be disregarded lightly.

The most important witness for the defense is the defendant's right to present his own version of events in his own words. A defendant's opportunity to conduct his own defense by calling witnesses is incomplete if he may not present himself as a witness. Washington v. Texas, 388 U.S. 14 (1967)

The gamesmanship of the Commonwealth in advising defense counsel that Ramos would only testify in rebuttal to petitioner's testimony may have impacted whether the defendant testified in his own defense which is clearly a problem of a constitutional dimension.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Randy Yamith

Date:

8/2/22