No. 22-6677

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

PHILIP J. VONVILLE — PETITIONER
(Your Name)

vs.

COMMONWEALTH of PENNSYLVANIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Pennsylvania
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Philip J. VonVille
(Your Name)

MCCF ; 4250 Manor Drive,
(Address)

Stroudsburg, PA 18360
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did state courts in Pennsylvania fail to address both Fifth and Fourteenth amendment (Due Process) violations of court record after a second trial ended in a mistrial sua sponte by trial court?

Suggested Answer: Yes

2. Shall lower courts total reckless disregard for petitioner's rights prohibit a third trial under the Fifth Amendment of the Constitution enforceable to the states through the Fourteenth Amendment?

Suggested Answer: Yes

3. Was Petitioner's Fourth Amendment, Bill of Rights and Constitutional rights violated?

Suggested Answer: Yes

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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 judgement is the subject of this petition is as follows:

RELATED CASES

Commonwealth v. Philip J. VonVille, No. 1708 CR 2009, Lower Court, original jurisdiction. Conviction; July 13, 2010; Murder 3.

VonVille v. Kerestes, No. 3:14-cv-1582, Middle District of Pennsylvania. Judgement entered March 5, 2019.

VonVille v. Commonwealth of Pennsylvania, No. 3:21-cv-1617, Middle District of Pennsylvania. Judgement entered

VonVille v. Richard W. Luthcke, Civil action No. 3:20-cv-2446, Middle District of Pennsylvania. Judgement entered December 29, 2020

VonVille v. Haidle, Civil action No. 1:20-cv-02307, Middle District of Pennsylvania. Judgement entered February 22, 2021.

VonVille v. Commonwealth of Pennsylvania, No. 873, 908 EDA 2021, Superior Court of Pennsylvania. Judgement entered March 11, 2022.

VonVille v. Commonwealth of Pennsylvania, NO. 227/228 MAL 2022 Consolidated, Supreme Court of Pennsylvania. Judgement entered November 1, 2022.

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.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at 227 MAL 2022; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Superior Court of Pennsylvania court appears at Appendix B to the petition and is

[ ] reported at c# 873, 908 EDA 2021; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

OPINIONS BELOW

The opinion of the lower court appears at Appendix C to the petition and is: C/N: 1708 CR 2009:

[ ] reported at

[ ] has been designated for publishing but is not yet reported; or,

[X] 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 Nov. 1, 2022. A copy of that decision appears at Appendix A.

[ ] 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 STATURORY PROVISIONS INVOLVED

ARTICLE 1 SECTION 10 PENNSYLVANIA CONSTITUTION; DOUBLE JEOPARDY PROTECTIONS AFTER A MISTRIAL DECLARED BY TRIAL COURT

FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION ENFORCABLE TO THE STATES THROUGH THE FOURTEENTH AMENDMENT UNDER DUE PROCESS AND EQUAL PROTECTIONS UNDER THE LAW AND FAIR TRIAL

FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND BILL OF RIGHTS PROTECTIONS FROM ILLEGAL SEIZURE

STATEMENT OF THE CASE

The facts of this case that are supported by Discovery, Statements, and testimony and court documents and were presented to the lower court on a motion for double jeopardy held on March 25, 2021 are as follows:

July 13, 2010 VonVille was convicted of Murder 3 by the Monroe County of Common Plea later sentenced to an aggravated term of 20-40 years. Sentence was affirmed by Pennsylvania Superior court on November 11, 2011. Counsel failed to file an appeal to Pennsylvania Supreme Court. PCRA was filed by VonVille and on October 5, 2012 was denied. Superior Court affirmed denial of the petition on September 19, 2013. Pennsylvania Supreme Court denied petition for allowance of appeal on April 29, 2014.

On August 7, 2014 VonVille filed a writ of habeas corpus pursuant to U.S.C. § 2254. Hon. Martin C. Carlson M.J. appointed Federal Public Defender Office to assist VonVille. On November 5, 2018, Hon. Carlson M.J. issued a Report and Recommendation:

VonVille's procedural default should be excused. We further conclude that the fundamental, structure error in the anti-ethical jury instructions in this case, which permitted the jury to draw an adverse inference regarding VonVille's intent from VonVille's silence after the trial courts evidentiary rulings silenced VonVille's witnesses, justifies habeas corpus relief for the petitioner. Recommending VonVille's case be vacated and remanded within (120) days or the Commonwealth shall release VonVille.

On March 5, 2019, Hon. Richard A. Caputo D. J. adopted the R/R and ordered, VonVille's case be vacated and remanded for trial within (120) days or the Commonwealth release VonVille. Commonwealth appealed to the Third Circuit of Appeals and motioned for a stay with the District Court. The stay was denied after anti-ethical tactics were used and employed to try and manipulate Hon. Caputo, See. VonVille v. Kerestes; Request of a stay by Commwealth:

The Commonwealth fares no better on the other factors pertaining to its request for a stay. The second factor, irreparable injury, is satisfied here, claims the Commonwealth, because it would "need to locate two of [its] witnesses", i.e., Brittney Hartley, the eyewitness whose location is "unknown", and Detective Richard Luthcke who has since retired and "spends significant time in Florida." (Doc. 55, 7).

The weakness in the Commonwealth's claim of irreparable injury is self-revealing. As VonVille points out, Luthcke is employed part-time as a detective in the Monroe County District Attorney's Office, i.e., the same office responsible for Vonville's prosecution. 5

See http://monroecountyda.com/investigators/ (last visited May 14, 2019). In light of this, the Commonwealth's representation that it would be irreparably injured because it "would need to locate" Luthcke has no basis in fact. Accord Fed. R. Civ. P. 11(b)(3); Pa. Rules of Prof'l Conduct r. 3.3(a)(1) ("A lawyer shall not knowingly make a false statement of material fact . . ."). Likewise, Hartley's whereabouts are easily discernible. (See Doc. 59, 9 n.5). In any event, their prior testimony would be admissible at trial to the extent that these witnesses are unavailable. See Pa. R. Evid. 804(b)(1). The Commonwealth has made no showing of irreparable injury in the absence of a stay.

*** VonVille points this out because the lower court has made a habit of informing VonVille that he either doesn't understand the law or is just paranoid. Here above are the same tactics used against a district judge with the District Attorney's Office having no concern for plainly lying on record as they have in VonVille's case in two trials, proven to be common practice. Also see. Spiess v. Pocono Mountain Regional Police Department; 3: CV 10 0287; when in Spiess Det. Richard W. Luthcke and DA's office of Monroe County are evidenced of knowingly using false statements to try and procure a conviction.***

Commonwealth ignored the order by the district court, to go to trial within (120) days or release VonVille. On July 8, 2019, Hon. Caputo D.J. ordered VonVille's release. VonVille the same day gave notice to Federal Public Defenders Office that he would be residing in Sussex County, Bridgeville, DE with his family. Counsel instructed that VonVille standby for a nominal bail hearing, per Rule 600; person's to be bailable; habeas corpus. VonVille expected to be at liberty to work, raise money and assist in his own defense; also notifying the public of the civil rights violations that were said to have happened in the trial of 2010; Monroe County Courthouse obtaining a conviction of Murder 3 by violating VonVille's civil rights.

Fourth Amendment further Civil Rights violations: On July 19, 2019, Head District Attorney David E. Christine and 1st ADA Michael Mancuso of Monroe County, instructed Det. Richard W. Luthcke and Pocono Mountain Regional Police Department, Det. Lucas Bray to refile a charge of criminal homicide against VonVille, they agreed to file a charge of (criminal homicide) on July 19, 2019, without probable cause. SEE. Appendix D, which was originally filed on September 19, 2009, and was a part of VonVille habeas corpus, knowingly and recklessly violating VonVille's Fourth Amendment Constitutional and Bill of Rights and also his Fourteenth Amendment Rights to Due Process and Equal Protections under the law.

Fourth Amendment; The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, on no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. 6

Commonwealth after the filing of a new criminal homicide; Mancuso called Sussex County Troop 5, State Police Department and asked them to effectuate an arrest on a warrant they had faxed over on VonVille, they agreed. On July 22, 2019, without probable cause VonVille was arrested in front of his family by Delaware State Police, detained against his will and detained in Delaware State Prison, Sussex County Correctional Facility, having never been provided a copy of the fictitious warrant. These acts being draconian set back the rights for citizens of Monroe County, Pennsylvania and of the United States back to times prior to the ratification of the Constitution and Bill of Rights that prohibit such abusive, unethical and plainly wrong actions that were reckless and has caused and still is causing VonVille irreparable damage. Commonwealth' actions being self-serving for they hold animus toward VonVille after he had proven Monroe County Government had violated his civil rights, in VonVille v. Kerestes.

After the Commonwealth of Monroe County was denied a stay and VonVille being released the false arrest/incarceration of VonVille was intentional so to deprive VonVille of his Constitutional right and privilege to be at liberty to raise funds for counsel and assist in his own defense that included his entitlement under both Federal and State of Pennsylvania double jeopardy. See Fifth Amendment under double jeopardy enforceable to the states through the Fourteenth Amendment; also see. Pa. Art. 1 Section 10; Pa. R.A.P. 311 (a)(6):

New trial. An order in a criminal proceeding awarding a new trial where the defendant claims that the proper disposition of the matter would be an absolute discharge where the Commonwealth claims the lower court committed an error of law.

VonVille was extradited from Sussex County Correctional Facility to Monroe County Correctional Facility on July 31, 2019. Lower court held a hearing on August 1, 2019, presiding was P.J. Margherita Patti-Worthington. P.D. Jason Labbar represented VonVille vigorously defending VonVille positon that the new filing and arrest was plainly wrong. Lower court declined to quash new indictment and delayed until September 30, 2019. 7

On September 30, 2019, the lower court held a nominal bail hearing, counsel for VonVille, appointed by Worthington on August 1, 2019, Robert A. Saurman as conflict counsel." Counsel for VonVille argued the refiling of a criminal homicide was plainly wrong and considered double jeopardy, the lower court reluctantly agreed, See. N.T. Bail hearing; pgs. 36-38. Bail hearing commenced and the Commonwealth's case to deny nominal bail was VonVille's prior record as a juvenile, inadmissible, speeding ticket also inadmissible and then Det. Richard W. Luthcke testified on behalf of both Brittany D. Hartley and Betty Otting that they had concern for their well-being after learning VonVille had been released on July 8, 2019. See N.T. Bail hearing; 8-30-19, pgs. 10: 23-13; 15. Counsel for VonVille objected to this testimony by Det. Luthcke as being "hearsay". See pg. 12; 9-20, the court became agitated and "overruled", counsels objection. See pg. 12; 11 and lines 21-22. Worthington did not consider 1) VonVille

had never contacted either Otting or Hartley even during the (14) days at liberty 2) failed to recognize that VonVille had never been evidenced as a flight risk 3) VonVille having proven his constitutional rights were violated, the lower court failed to consider nominal bail under Pa. Rule 600; persons to be bailable; habeas corpus; equivalent to its Federal counter part under Rule 600; habeas corpus, but choose to deny VonVille his liberty under Art. 14; no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and community." VonVille argued the standard for nominal bail shall be under Rule 600; persons bailable; habeas corpus; and the "privilege" of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion the public safety may require it. (Joint Resolution No. 1, 1998 P.L. 1327, H.B. No. 1520) Raised in Lower court as well as in Superior and Supreme Court of Pennsylvania. This legal error irreparably injured VonVille and was contrary to the reasoning and release by Hon. Caputo D. J. See VonVille v. Kerestes, 3; 14-CV-1582, 2019 US Dist. LEXIS 85146; see

"VonVille's incarceration followed from a trial where his constitutional rights were violated. See. Griffin v. California, 380 U.S. 609, 615, 85 S. Ct. 1229, 1233, 14 L. ed. 2d 106 (1965)(Fifth Amendment forbids "instruction by the court that [and accused's] silence is evidence of guilt."); see also Burdine v. Johnson, 87F. Supp. 2d 711, 717 (S.D. Tex. 2000)("Burdine suffers irreparable harm each day that he is imprisoned in violation of the United States Constitution. Remedying such harm is the very essence of the writ of habeas corpus").

Finally, "[t]he public has a strong interest in the release of a prisoner that the court has found to be incarcerated in violation of the Constitution." Floyd v. Vannoy, 11-2819, 2017 U.S. Dist. LEXIS 96387, 2017 WL 2688082, at *3 (E.D. La. June 22, 2017). While, of course, the public has an interest in safety from dangerous criminals, "nothing has been presented to support finding that VonVille is a flight risk or danger to the community.

Actions of the lower court, Commonwealth and state officers were and in an obvious collusion and conspiracy to deprive VonVille of his "privilege" to be at liberty, wanting to silence VonVille, deprive VonVille the ability to obtain counsel and raise a claim under both state and federal double jeopardy protections. This departs from VonVille's fundamental and core rights under the Fourteenth Amendment (due process) and also Vonville's Fourth Amendment right to be free from illegal seizure and Warrants filed without probable cause.

A trial that was prohibited under Pa. Art. 1 Section 10; Fifth Amendment enforceable to the states through the Fourteenth, "conflict counsel" failed to file for double jeopardy Pa.R.A.P 311(a)(6), had transpired and was held on February, 18-21, 2020, ending in mistrial sua sponte by the trial judge Johnathan Mark VonVille argues absent "manifest necessity". 8

Due to trial counsels failings that cannot be considered reasonable also failed to follow Pa.R.A.P providing the court's reasoning to deny bail in a 1762(g) and filing (9) days late, untimely. VonVille was detained prior to trial an appeal to Superior Court that was hobbled, depriving VonVille his ability to have corrective measures made by Superior Court of Pennsylvania on Rule 600; persons to be bailable; Habeas Corpus. Counsel further injured VonVille during trial, failing to argue the Commonwealth's case of having no "basis in fact", raised in the lower court. See N.T. DJ hearing; March 25, 2019; pgs. 29-84 and in "Brief of Appellant", to Superior Court and allowance of appeal to Supreme Court of Pennsylvania. Furthermore VonVille had requested counsel to file for double jeopardy after the mistrial and counsel ignored request leaving VonVille with a Hobson's choice and deprivation of his Sixth and Fourteenth Amendment right, due process to have loyal and effective counsel at trial. VonVille filing to represent himself pro se on or around March 5, 2021.

On March 25, 2021 during a hearing in the lower court multiple claims on Double Jeopardy, VonVille presented statements, evidence and court records that states witnesses had been led by the Commonwealth (committing subordination of perjury) to commit perjury after state officers solicited Jessica Ladd's statement that is irreconcilably different than either Brittany Hartley's or Betty Otting's statement. (BH and BO statement obtained 9-19-09 and Jessica Ladd's statement solicited on 10-29-09)(Det. Luthcke went to Ladd's resident alone, failed to obtain a handwritten or recorded statement, in violation of VonVille's due process rights). See APPENDIX E. VonVille pointed out differences in statements to the trial court that Luthcke and the Commonwealth failed in their investigative duties for the state's case used Ladd's statement in two trials that aver 1) VonVille was jealous, angry and abusive to Hartley 2) Hernandez had decided to go back to New York and/or go to Wal-Mart and had left (10) minutes after Hartley when she went to VonVille's residence 3) Jessica Ladd had called to warn Hartley of Hernandez's pending arrival in which she Ladd heard the events of 9-19-09 via cellular phone. Det. Luthcke and DA's office failed to adhere to Pa. R.C.P 901; Identification/Authentication Evidence (a); in general, unless stipulated to satisfy the requirement of authentication or identifying and item of evidence, the proponent "must" (emphasis added) produce evidence sufficient to support a finding that item is what the proponent claims it is. Det. Luthcke did not take into custody either Brittany Hartley's or Jessica Ladd's phone and or obtain phone records to prove such a call existed when Hartley never mentioned such a call transpired. See Disc. pgs. 79, 80, 81; N.T. trial test. 2020, pg. 163-165:

Q: Comm. A. Brittany Hartley:

Q There was some discussion about when Christopher Hernandez arrived at the house and Mr. Saurman said that you indicated to the police that you got there at the same time and you said you didn't recall but you said it's possible. 9

A I don't remember.

Q Okay. I think you said in your direct testimony when you drove to come over to the house you had said goodbye to Christopher and it was your understanding he was heading back to New York?

A Yes.

Q At that time did you ask Christopher Hernandez to come to your parents' house?

A No.

Q Did you think it would have been a good idea for him to come to your parents' house?

A No.

Q What was your understanding of when you went to your parents' house of what Chris Hernandez was going to do?

A Go on about his day.

Q Okay. Do you recall him following you as you drove over to your folks' house?

A No.

Q And if you could please keep your voice up. During your direct testimony you said that when you got to the house the defendant had gathered some stuff up and he was heading him out to the burn barrel and you followed him out into the yard?

A Yes.

Q And you got a telephone call from Jessica?

A Yes.

Q And as a result of that telephone call -- well what did Jessica tell you?

A I don't remember.

Q But she called you?

A Yes.

Q Do you know why she called you?

A No.

Q Okay. And is it after receiving that phone call that you then saw Mr. Hernandez pull into the driveway?

A Yes.

Q And do you distinctly remember him pulling in the driveway or seeing him in the driveway?

A I remember seeing the truck.

Q Were you surprised to see the truck?

A Yes.

Q Did you expect to see his truck there?

A No.

Problem arises when states case has "no basis in fact" and when reviewing Brittany Hartley's and Betty Otting's statements obtained 9-19-09; see. Disc. pgs. 4, 6, 14 also see Handwritten statements averring the following: 1) VonVille having a disorder was in need of help, Betty Otting having called Hartley to come home and calm VonVille down, he was acting suicidal (caused by death threats VonVille received via cellular phone)(Texts) from Christopher Hernandez))) 2) Hernandez and Hartley were angry (N.T. trial trans. 2020, p. 120 " I was angry that he had my mom worked up"; being angry Hartley stated to Betty Otting, see discovery pg. 6, "Betty stated that Brittany told her that when she gets home she should leave the house so Philip and she could talk. Betty stated that Brittany did come home. She said Brittany's new boyfriend, Christopher Hernandez," came home with her", but he was in his own vehicle (pickup truck). Betty stated that when Brittany and Chris arrived, Betty (she) got in her vehicle (SUV) truck." END 3) Hartley nor Otting never mention any call made to Hartley from Ladd on 9-19-09 and Jessica being present on 9-19-09 never offered this alleged call to any officers, nor was she questioned by anyone of 12 officers at the scene the day of including Lead Det. Luthcke. See statement by Ladd p. 81, "I received a ride to Hartley place". This was concisely identified to the lower court, se N.T. DJ hearing; pgs. 29-84, trial court ignoring the highly prejudicial states case that has violated VonVille's Fifth Amendment right to a "fair" trial and due process rights under the Fourteenth Amendment. Trial court snickered at VonVille and considered his presentation of material evidence to be: see. N.T. DJ Hearing; 3-25-21 p 102; "whether we say that it's an argument Mr. VonVille made, a belief an opinion, etc. Mr. VonVille I don't' think understands that just because he's put all this together and has a personal opinion or comparison of statements on one occasion versus another doesn't necessarily mean that someone has committed perjury. And you know Mr. VonVille is entitled to his opinion. He certainly has identified some great fodder for cross examination but it's certainly not a basis for a dismissal of any charges.

VonVille points out Judge Johnathan Mark is plainly wrong and obviously not impartial when ignoring the Commonwealth's unethical tactics, seeking a conviction not justice, prohibited by the black letter of the law. ... Accord Fed. R. Civ. P. 11(b)(3); Pa. Rules of Prof'l Conduct r. 3.3(a)(1) ("A lawyer shall not knowingly make a false statement of material fact . . ."). Also see. IRVINE v. CALIFORNIA, Evidence § 681 – Fourth Amendment as barring admission in state prosecution of evidence illegally by state officers. The use of evidence obtained by methods used by the police in this case and the prosecutor, using illegally obtained and compelled evidence, violates the "fair trial" guarantee by the Fifth and Fourteenth Amendment to the Constitution of the United States. See Rochin v. California, 342, U.S. 165, 96 L. ed. 183, 72 S Ct. 205, 25 ALR 2d 1396. Compare On Lee v. United States, 343 U.S. 747, 96 L. ed. 1270, 72 S ct. 967; Schartz v. United States, 287 U.S. 435, 77 L. ed. 413, 53 S Ct. 210, 86, ALR 249; Olmstead v. United States, 277 US 438, 72 L. ed. 944, 48 S Ct. 564, 66 ALR 376; Chambers v. Florida, 309 U.S. 227, 84 L ed. 716, 60 S Ct. 472.

Brought fourth also before Superior Court and Supreme Court of Pennsylvania was the trial courts *sua sponte* declaration that there was manifest necessity for a mistrial, after Judge Mark could not persuade either 1 ADA Chad A. Martinez or counsel for VonVille, Robert A. Saurman to declare a mistrial were it was made clear if nobody would declare a mistrial, Judge Mark would so boldly and have no problem with arguing it later. (Document pp. 18, 20, 21, and 22, (N.T. 2/21/20, material evidence) No consideration of the Defendants rights and interest in having this matter resolved in his favor were considered, from the onset, it was very telling "early" on the day the court declared a mistrial. It is clear that there was no consideration given to the prerequisite of "manifest necessity" by the lower court. (Pa. Const. Art. 1 § 10; U.S.C. Constitution Art. 1 § 14). Attempt to give further explanation on a later day See. N.T. DJ hearing; 3-25-21, is telling, ADA Chad A. Martinez offers the court cause for "manifest necessity" as both trial court the commonwealth tried to justify the mistrial.

"It's very telling if you would to look at the record as a whole." As I VonVille required more than "speculation" to the courts claims, this "infuriated" Judge Mark, in fact he exited without concluding the hearing and after screaming "I'm done", "witnessed" by (MCCF), Sgt. Makenzie of (MCCF), after Judge Mark exited the Zoom video hearing abruptly, uncertain how to move forward everyone else, the commonwealth, Judge Marks assistant, transcriber if the hearing all exited leaving VonVille without the ability to be heard any further. Worth of noting a "motion to return property" was not heard at all on 3-25-21, due to a tirade and sudden 11 departure when Judge Mark could not conclude with any certainty that there was cause to justify a mistrial. (Offered by ADA Martinez; Juror #1 was covering for Juror #3, to put into context, I VonVille made it clear that nothing **"other than the jurors being black"** would constitute cause to believe such a "belief" further noted there was another juror No.2 who said "he wasn't paying attention". (For "belief" in law is to be supported in some way by evidence).

On 3-25-21, Judge Mark violated VonVille's right to be heard when exiting without giving VonVille an opportunity to get on record his complete argument. (I attempted to obtain raw transcripts to prove transcripts had been altered omitting Judge Johnathan Mark's sudden angry outburst and abrupt exit, to no avail) In "Brief of Appellant VonVille identified court record of Judge Mark attempting to persuade both the Commonwealth and counsel for VonVille to move for a mistrial successively therefore declaring one himself. See "Brief of Appellant" N.T. Trial trans. February 21, 2020; (pp.168):

MR. MARTINEZ: I don't know. I -- it

seems like it has to be an individual colloquy to determine if there was any bias. They've already acted as a group in doing this.

THE COURT: Hm?

MR. MARTINEZ: They've already acted as

a group in doing this.

THE COURT: Well, then there's bias

there, but you didn't want to make the motion.

6Neither did Mr. Saurman.

MR. MARTINEZ: I feel constrained with

respect to motions for a mistrial.

THE COURT: I get it!

MR. MARTINEZ: As the Commonwealth.

THE COURT: I get it!

MR. SAURMAN: Judge, I'm not sure he

can make a motion. I'm not sure he can make a

motion.

THE COURT: Well, of course he can! **(<u>Goading the Comm. to Motion for a mistrial!</u>)**

MR. SAURMAN: There are times during a

trial when the Commonwealth makes a motion for a

mistrial that's an "automatic acquittal". Now,

whether that applies here or not, I haven't

researched it. I know Mr. Martinez hasn't

researched. I'd be happy to let him try and see if

it -- but I mean, I'm not trying to be facetious

here, but I know that's constraining him. This is a very unique situation. If a prosecutor moves for a mistrial following --

THE COURT: Okay.

MR. SAURMAN: -- it's an acquittal.

THE COURT: Okay. I don't mind 4bringing them back in here one at a time. But if

we get a couple and they heard all this information

and they were -- then I'm going to declare the

mistrial. (Problem arises when the jurors say they heard nothing or was mistaken)

MR. MARTINEZ: I understand, Your Honor.

MR. SAURMAN: Understood, Your Honor.

I think we could save it, but if you hear enough to

persuade you, that's --

THE COURT: This isn't about saving it!

That's the whole point! This is about finding out.

And frankly, I am completely "nonplus" that anyone

wants to continue with this trial even if they have

this. I may still declare one. I get it! You and

Mr. VonVille built in another issue! That's great! **(Context: I'm pretty Livid, N.T. 2/21/20, pp. 191, 22-25)**

(Issues were of the Courts doing, Supreme Court even says when a mistrial is declared without consent from the Defendant, "failure to consider if there are less drastic alternatives to a mistrial creates "doubt about the propriety" of the exercise of the trial courts discretion"; Comm. v. Green, 596 Pa. 504, April 11, (2008)(Pa.R.Crim.P. 65 (B); U.S.C. V Amend; Pa. Const. art. 1 § 10 Amend.; 1§ 14 Amendment, Double Jeopardy Clause

MR. SAURMAN: Not the intention Judge,

but I don't think –

THE COURT: Look, I know. This is not

of your making. I'm just saying you've

successfully built another one in. So –

(Accusation of impropriety, "has no basis in fact", considered harassment, and Judge Mark holds issue with the preservation of defendants' rights)

Courts claims that there is a prejudice concerning the Commonwealth is self-serving and plainly wrong, VonVille points out the record: Nothing Prejudicial, "only" (3) jurors were given a colloquy, Juror No. 1 (pp. 172) said "he heard nothing", Juror No. 2 (N.T. 2/21/20; pp. 175) said "he wasn't paying attention" and Juror No. 4, said what she heard was unclear and she was not certain. (N.T. 2/21/20; pp. 181,182)"She said that she looked up as to why the last trial was thrown out. And she said that -- and I couldn't hear everything of what she said. She said something along the lines of the case was thrown out because of some testimony by the Defendant. I couldn't make out the rest of the details". (Does not meet the standard of Manifest Necessity, for if there is "**ANY**" doubt, this issue shall be settled in favor or the defendant) See. *Commonwealth v. Montorano, 559, Pa. 533 November 10(1999) also see. Commonwealth v. Cobb, 617 Pa. 207, 52 A.3d 1200, 1012 Pa. LEXIS 1947 (Aug. 23, (2012) Affirmed by Com. v. Cobb, 619 Pa. 478, 65 A.3d 297, 2013 Pa. LEXIS 738 (April 18, 2013)(Trial court erred in denying motion to Dismiss Under Double Jeopardy)*

What Juror No. 3 disseminated: pp. 140; "They wanted to know why we were coming back in here after 11 years to retry the case, so I told them why." pp. 141; "I just let them know that we were retrying it because he didn't get a chance to speak his peace. That is what I read." (Emphasis added)(VonVille argues that the first jury had issue with jury instructions (N.T. 7/13/10) and again in (N.T. 2/21/20) Not telling a jury "why" we are back 11- or 13 years later will always be seen as a bias toward the Commonwealth if they don't seek to right a wrong and only look to hide impropriety's said to have happened of a Constitutional dimension, there will certainly be the same perceived bias if a 3rd trial is permitted.

Judge Marks believes he hears the following, having no basis in fact of or in the record, may I note Judge Mark declares that the jury must have known that what occurred in the 2010 trial, civil right violations against VonVille, he "does not" point out any evidence to confirm his argument: 14

(N.T. 2/21/20; pp. 161; **THE COURT**: My understanding from what the **other juror reported to the tipstaff** and what Juror No. 3 said was that the look-up, if you will, the research on the

Internet, occurred in the jury room with the rest of the jury. And while at least one person carried out their responsibility to report that properly so, **(I VonVille ask who?)** and I -- I don't want to try to be politically correct or choose my words, you know, "I want to get my point across". And my point is that this happened in front of all the jurors and obviously "no one said stop". No one said don't tell us anything. I mean, I shouldn't say no one. At least all people didn't do that. And there were at least **"tacit"** participation in this whole thing because "supposedly" it happened in front of them. If that is the case, I will declare a mistrial. You'll have your issue, Mr. Saurman. But I can't have that. We can't have jurors who are going to be able to do that, "even if it's not direct." All right. You know, Mr. Saurman in his closing talked about a crime that wasn't anything to do with this case, but it's the same principle that you discussed. I mean, if people are tactfully participating and accepting the benefits of something that violates rule, you know, I don't have the confidence that they're going to follow the rules the rest of the way myself either. "I'll do that on my own motion if no one else wants to do it!" **(Never identified and brought forth the Juror who was said to have spoken up?)(Only spoke to 3 jurors)**

Its clear Judge Mark is wavering on who reported what? Now I point to the real "cause" to declare a mistrial by Judge Mark: (pp. 187)

"I believe there's an adverse connotation with respect to the Commonwealth, with respect to the Court, with respect to the Government, and with respect to the processes."

There is an issue now because I've declared this you know, with respect to any retrial if there is a conviction at that point. So I'll just say for the record that this is borne on my declaring this mistrial was not only what we heard happened, but the fact that we're living with this here in the moment, and there's absolutely no way that I could put my head in a pillow and think we were going to get a fair proceeding here if we continued on with this. And if a two-dimensional cold review of the record reveals that that was an error later, then so be it! Thank you all. **(Judge Mark, to put into context was angry and even said of record to be livid.)**

Counsel Saurman makes it clear that I VonVille am willing to go forward and that a mere corrective instruction would cure the error.

MR. SAURMAN: Not the intention Judge, but I don't think –

THE COURT: Look, I know. This is not

of your making. I'm just saying you've

successfully built another one in. So –

MR. SAURMAN: Well, I've talked to Mr. VonVille a little. I think I know his position. But I would say that one of my themes of 15

my closing was no one ever listened to PJ. I said

that about the cops. I said now you're here to listen to him.

I think all that information does is it

says, listen he didn't get a chance to talk before.

I don't think it's inconsistent with anything they

heard. And I think that doesn't change --

THE COURT: The Government keeping

someone from talking is much different than people

didn't listen when he tried to tell them.

MR. SAURMAN: I don't think that --

THE COURT: The one is the same thing the kids always say because their parents don't listen to them. The other is when you take a kid and kidnap them and lock them up. **(Admission that I VonVille was "kidnapped under the color of law" and he didn't want the public to know).**

MR. SAURMAN: I think --

THE COURT: It think it's that much of

a difference "**in my mind**".

(His mind not the law was what Judge Mark considers sound discretion cannot be consider sound at all in fact Judge Mark's competence should be further reviewed)

MR. SAURMAN: And I think that could be

"easily corrected". "It wasn't a matter of the

Commonwealth prevented him from speaking". I mean,

I don't know how you correct that, but he wasn't

prohibited from speaking by the District Attorney's

Office. However, he didn't get a chance –

THE COURT: Let me say this. You made an argument.

MR. SAURMAN: Yes.

THE COURT: They might be lay people,

but they've not stupid collectively.

Probably not individually either. Somebody knows and collectively they know that, **"the only reason this is coming back now is because he was convicted and "some Court" said that the Government made a mistake, or this Court made a mistake, which is part of the Government"**.

The whole Jury had said to have "worried", because having a case come back will "ALWAYS" give a negative condonation that the Government made a mistake, again that jury or the next will have the same "imagined" bias, clearly Judge Mark is reaching and there is no "manifest necessity", the court only looked to protect itself and the Commonwealth and no considerations to VonVille's rights were taken into consideration. See *Commonwealth v. Martorano, 559, Pa. 533 November 10(1999), "a fair trial is not simply a lofty goal, it is a constitutional mandate,...and where that constitutional mandate is ignored by the Commonwealth, we cannot simply turn a blind eye and give the Commonwealth another opportunity."; Although the holding in Smith was articulated in a case involving the government's intentional suppression of material information, it was later interpreted broadly in Martorano to encompass all serious prosecutorial misconduct undertaken with the purpose of denying the defendant his constitutional right to aa "fair" trial. See Martorano, 559 Pa. at 538-39, 741 A.2d at 1223; also see Commonwealth v. Johnson, 231 A.3d 807 May19, (2020) Commonwealth v. Green, 596, Pa. 504 April 11, 2008.*

(CAUSE FOR ACTING UNDER THE COLOR OF LAW TO RE-ARREST VONVILLE, UNWARRANTED AND SELF-SERVING FOR MONROE COUNTY COURTHOUSE HOLDS ISSUE WITH VONVILLE BEING GRANTED A NEW TRIAL THAT REVEILS A PLOT TO CONVICT VONVILLE OF MURDER STARTING SEPTEMBER 19, 2009, NO RIGHTS OF VONVILLE WERE EVER CONSIDERED, EVERY ENTITY OF THE JUDICIAL SYSTEM WAS USED TO TRY AND RECONVICT VONVILLE AND KEEP HIM SILENT WHILE DOING IT, LOWER COURT IN TOTAL DISREPAIR) 16

Starting with VonVille v. Kerestes, VonVille had proven his constitutional rights have been violated in 2010, by the lower court to obtain a conviction. Second showed the tactics used to try and manipulate the district court in a motion for a stay making false statements. Third the refiling of a criminal homicide is evidenced in court records as VonVille was irreparably injured again when being falsely arrested/incarcerated. The lower court doing a bait

and switch to hold VonVille until trial where the court tried to reconvict VonVille. Forth "conflict counsel", having no reason to file untimely motions prior to trial depriving VonVille of his "privilege" under rule 600: Habeas Corpus, further redounding VonVille's ability to defend himself was counsels failures at trial one being failing to file for Double Jeopardy prior to trail and again after the trial court declared a mistrial sua sponte. This is a complete record of VonVille never being afforded a "fair" trial, due process, or equal protections under the law per the United States Constitution.

Now VonVille only given 2-4 hours a week to prepare legal documents has to try to file adequate filings with the appellant courts while detained in Monroe County Correctional Facility against his constitutional rights of no fault of his own. Will this court find it outrageous and find cause to afford VonVille not only the ability to be heard on appeal but to have his "liberty" reinstated so he can find help in his defense and or have unrestrained access to a computer and legal materials to file appropriately. VonVille pleads with the SUPREME COURT OF THE UNTIED STATES to grant equal protections after VonVille has under extreme duress done his best to prove there is merit and cause to have the Federal Government intercede, God willing! "Prayer for relief".

VonVille respectfully request's that this Honorable court afford assistance to VonVille by way of Federal Public Defender as did Honorable Martin C. Carlson M.J of the Middle District of Pennsylvania, to help protect VonVille's rights, in the name of justice, respectfully.

REASON FOR GRANTING PETITION

Enshrined in the United Constitution is a core belief is that the right to life and liberty and protections under due process and equal protections are for all citizens of the United States. VonVille herein has never been afforded such entitlements but due to his lack of family, lower class status, Hispanic origin (minority), and lack of funds. VonVille has never enjoyed the presumption of innocence for Monroe County Government has been evidenced as taking their county back 250 years prior to the ratification of the Constitution of the United States and Bill of Rights but instead has in place tactics to circumvent VonVille's constitutional rights so the Court and Commonwealth can gain a conviction and not justice, first in VonVille v. Kerestes and again in the trial of 2020, these actions shall shock the conscience of this court for these actions are prohibited by the Constitution.

The Fifth Amendment of the United States mandates that every citizen be granted a "fair" trial that did not happen, see "VonVille v. Kerestes", nor did it happen after VonVille was released by the District Court. The Fourth Amendment making it clear the Commonwealth is not to issue a Warrant absent probable cause and use such a warrant to kidnap a citizen to silence him, "especially when that citizen has already proven that his Constitutional rights were violated in the same Court/Commonwealth." Then there is the all-encompassing mandate of the Fourteenth Amendment of the United States that [a]ll citizen's will be afforded due process under the law.

It is incumbent that the total disrepair evidenced of court record be rectified and VonVille's case be a light to make such corrective actions within Monroe County pf Pennsylvania for the officers of the lower courts have used their position maliciously against VonVille, seeming to void any recourse on behalf of VonVille. VonVille having been subjected to the whims of powerful political affiliates within Pennsylvania and abroad in Delaware after being kidnapped by Delaware State Police on behalf on the Commonwealth of Monroe County District Attorney's Office. For the public has never gotten the opportunity to hear of such abuses by Monroe County Government for VonVille has been affectively silenced until the lower court wrongly convicts VonVille again with all the power they possess. This should certainly shock the biggest court in the world as egregious and malicious and for Pennsylvania Courts to turn a blind eye to VonVille's plight is alarming. It should be noted that first trial ADA Barney A. Anderson is now with the Attorney General's Office of Pennsylvania and trial Judge was the Mayor of Stroudsburg, PA, Judge Johnathan Mark. Both have done more than their part to injure VonVille and take his very life and liberty by any means. May this court grant review, assistance, and relief for without intervention the lower court will deny the very material evidence that would acquit VonVille of being guilty of Murder 3, again depriving VonVille of a fundamentally fair trial and due process.

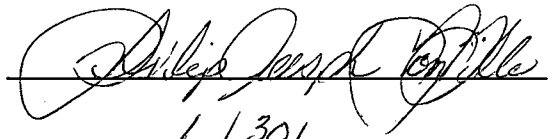
I Philip Joseph VonVille, has been fighting for my life now for 13 ½ years against insurmountable odds, to get back to my only family, my son. I have done all I could to better myself and will continue to pursue my innocence, may this court finally grant the same level of review as did Hon. Martin C. Carlson and Hon. Richard A. Caputo D.J. for the lower court discounts their decision and has extreme animus toward me for my ability to prove they have violated my civil rights in the trial of 2010 to gain a conviction, completely.

PROUD TO BE AN AMERICAN !

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 1/30/23