

No. **23-5356**

ORIGINAL

FILED

AUG 01 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Trequan D. James — PETITIONER
(Your Name)

"et al." vs.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals of Virginia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Trequan D. James (Pro Se)
(Your Name)

Willens Ridge State Prison P.O. Box 759
(Address)

Big Stone Gap, Virginia, 24219
(City, State, Zip Code)

#1515048
(Phone Number)

QUESTION(S) PRESENTED

Did the Courts below err upholding trial Court, where Commonwealth failed to establish the identification of the Petitioner as the Perpetrator?

Was the Petitioner's Convictions Sustained in violation of well-established laws, as well as Constitutional requirement embodied in the Fifth Amendment Protection against Double Jeopardy and thus applicable to the States through the Fourteenth Amendment to the United States Constitution?

Did the appellate Courts err by upholding the trial Court's Decision of Verdict given the Petitioner where the Fact and elements were foreclosed from being re-litigated were thus done so?

Did the Courts below Commit reversible and or legal error convicting the Petitioner of Possession and use of firearm in Commission of murder where such Charge offense was Note Processed by oral agreement between both Parties and thus accepted by Judge Presiding?

Did the appellate Courts Commit reversible err in violation of Va. Sup Ct. Rule 5A:18, by refusing reversal of Petitioner's Convictions where trial Counsel for the Petitioner did so in fact cite specific legal authority of Collateral estoppel, res judicata, and Double Jeopardy, as well as moved to Present the objection itself with sufficient Particularity but was hindered by the Judge Presiding?

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:

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Attorney General,
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Richmond, Virginia, 23219

The Solicitor General of
the United States, Room 5616,
Department of Justice,
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20530-0001

RELATED CASES

Trequan James v. Commonwealth of Virginia, NO. 19-F-3492-93,
Circuit Court for the City of Richmond, John Marshall Courts Building.
Judgment entered March 25, 2021.

Trequan James v. Commonwealth of Virginia, NO. 0896-21-2,
Commonwealth of Virginia in the Court of Appeals of Virginia.
Judgment entered December 6, 2022.

Trequan James v. Commonwealth of Virginia, NO. 230007,
Commonwealth of Virginia in the Supreme Court of Virginia.
Judgment entered May 4, 2023.

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APPENDIX A By an order entered on Dec. 6, 2022, the Virginia Court of Appeals upheld the Convictions.

APPENDIX B By an order entered on Mar. 25, 2021, in the Circuit Court of the City of Richmond, John Marshall Courts Building Petitioner was

APPENDIX C Convicted of First-Degree Murder and Poss. of Firearm.

By an order entered on May 4, 2023, the Supreme Court of Virginia
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TABLE OF AUTHORITIES CITED

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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 C 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 John Marshall Circuit court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

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 May 4, 2023.
A copy of that decision appears at Appendix C .

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Supreme Court states, "[w]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Ashe v. Swenson*, 397 U.S. 436, 443 (1970). The Supreme Court of Virginia holds, "Collateral estoppel, as applied in criminal proceedings, becomes applicable only when the defendant's prior acquittal necessarily resolved a factual issue that the Commonwealth seeks to litigate again in a subsequent proceeding." *Commonwealth v. Leonard*, 294 Va. 233, 239 (2017). It is well-established Virginia law that "the Commonwealth is barred from introducing evidence to prove an offense for which a defendant has been previously acquitted, even though the facts necessarily resolved in the acquittal are not dispositive of an element of the offense charged in the second trial." *Simon v. Commonwealth*, 258 S.E. 2d 567, 220 Va. 412 (1979). The Supreme Court of Virginia states that "the doctrine of collateral estoppel is a constitutional requirement embodied in the fifth amendment protection against double jeopardy and is applicable to the states through the fourteenth amendment to the United States Constitution." *Simon v. Commonwealth*, 220 Va. 412, 415 (1979) (citing *Lee v. Commonwealth*, 219 Va. (1979)). The United States Supreme Court holds that these constitutional protections are necessary and the Supreme Court of Virginia agrees: The Supreme Court of Virginia, quoting the United States Supreme Court, has stated that application of collateral estoppel is necessary to protect defendant's constitutional rights and to prevent relitigation of issues: To hold otherwise would mean that an acquittal in a criminal case would no longer serve to clear a person's reputation concerning the issues decided in his favor..... The defendant could no longer be assured that he could be ultimately cleared of the offense of which he has been acquitted..... A contrary holding would also allow a prosecutor to engage in the practice expressly prohibited in *Ashe*:

See also Va. Code Section 18.2-308.2

the Prosecutor's treating "the first trial as no more than A dry run for the second Prosecution" and "Refin[ing] his Presentation in light of the turn of events at the first trial."..... That defendant may have to "run the gantlet" again in any event does not attenuate A defendant's interest in avoiding the strain and expense of relitigating an issue already resolved..... "To Put it bluntly, to refuse to allow the assertion of Collateral estoppel in this case (where the issue sought to be excluded is not A *Sine Qua non* of Conviction in the second trial) would simply be inequitable."

"Simon v. Commonwealth, 220 Va. 412 (1979) (Citing *Ash v. Swenson*, 397 U.S. 436, 443 (1970) (internal quotations and citations removed)).

In "*Ash v. Swenson*, the United States Supreme Court" incorporated the doctrine of Collateral estoppel into the Fifth Amendment Prescription against double Jeopardy." *Ledbetter v. Commonwealth*, 218 Va. 98, 105 (1977), rev'd on other grounds, 218 Va. 619 (1977). The Principle of Collateral estoppel "means simply that when an issue of ultimate fact has once been determined by A valid and final Judgment, that issue cannot again be litigated between the same Parties in any future lawsuit." *Ash v. Swenson*, 397 U.S. at 443. See also *Funny Guy, LLC v. LeCese, LLC*, 293 Va. 135, 142 (2017) ("Under the concept of Collateral estoppel, 'the Parties to the first action and their Privies are Precluded From litigating [in a subsequent suit] any issue of fact actually litigated and essential to A valid and final Personal Judgment in the first action.'") (Quoting *Rawlings v. Lopez*, 267 Va. 4, 4-5 (2004)). These Principles are applied to Criminal Cases as well. "When a defendant seeks to invoke Collateral estoppel, he or she bears the burden of Proving that the precise issue or question he seeks to Preclude was raised and determined in the first action." *Midszette v. Commonwealth*, 69 Va. App. 362 (2018) (Citing *Commonwealth v. Davis*, 290 Va. 362, 368-69 (2015)). However, the issue or question resolved in the first trial with an acquittal does not have to be an actual element of the Current Charge:

STATEMENT OF THE CASE

On September 24, 2019, the Petitioner was arrested in the Chesterfield County for abduction and kidnapping with use of Firearm. The Charges were not issued due to alleged victim confessing to falsifying the Claims [Crystal Horton]. A Charge for Possession of A Firearm by A Convicted Felon was issued instead.

On December 18, 2019, the Multi-Jurisdiction Grand Jury, impaneled from the City of Richmond and the Counties of Chesterfield, Hanover, and Henrico, returned A three Count indictment charging the Petitioner with First-Degree Murder [Count One], Assault [Count Two], and Possession of Firearm in the Commission of Murder by Convicted Felon [Count Three]. See Va. Code 18.2-32, Va. Code 18.2-53.1, and Va. Code 18.2-308.2 (A).

On January 7, 2021, in the Chesterfield County Circuit Court, by A Jury, the Petitioner was tried and acquitted of Possession of Firearm by A Convicted Felon. The Petitioner was then transported to the City of Richmond to await trial for the Charges issued by the Multi-Jurisdiction Grand Jury. The Firearm, and evidence Pertaining the recovery of Such are the Same from the Chesterfield County Circuit Court Jury Acquittal Previously litigated. On March 23, 2021, the first day of Jury trial, the Petitioner's Counsel moved to introduce Motion in Limine objecting to any testimony, evidence, the Firearm and its recovery at issue from the Chesterfield County on September 24, 2019, on the grounds that Collateral Estoppel, res judicata, and double jeopardy applied. The Court allowed the motion to be exhibited for the record but continued to allow such elements from the Chesterfield County to be admitted. Several objections were made thus with certainty of such matter within the Petitioner's three day Jury trial. The Petitioner's trial Counsel further proffered what occurred in previous acquittal and also informed that she could obtain additional information, including A trial transcript. Counsel further went to requesting A continuance to retrieve such information [Chesterfield County Court order of acquittal]. The Court rejected Counsel from doing so and neglected intentions of searching out the matter.

Counsel for the Petitioner introduced the Department of Forensic Science Certificate of Analysis from the Chesterfield County revealing that no biological evidence linked the Petitioner to the Care and Custody of such Firearm in question at anytime. The Certificate was noted and exhibited for the record. The trial Court continued to overrule the objections made by Petitioner's Counsel. Counsel continued to object throughout these day July trial to no avail.

Counsel thus moved to strike the Commonwealth's Case for A dismissal of the Charges against Petitioner, where in Connection with the elements of the Firearm at issue and its recovery, the Commonwealth could not establish the identification of the Petitioner as being the Perpetrator. Counsel made several Factual Points as to why the Charges should be dismissed, as well as Presented evidence to Corroborate. On the last day of trial, Counsel renewed again such objections to the admittance of elements and evidence from Previous July trial in the Circuit Court of Chesterfield County, where the Petitioner was acquitted, as well as moved to strike the Commonwealth's Case for A dismissal of the Charges against the Petitioner. The trial Court overruled.

The Petitioner was convicted of First-Degree Murder and use of A Firearm/Possession in Commission of Murder by A convicted Felon. On July 29, 2021, the Court conducted A Sentencing hearing, where Counsel for the Petitioner moved to set aside the verdict. The Court overruled. The Petitioner appealed. By an order entered on December 6, 2022, the Court of Appeals of Virginia upheld the Convictions. The Petitioner appealed. By an order entered on May 4, 2023, The Supreme Court of Virginia denied the Petitioner's Petition. This writ follows.

REASONS FOR GRANTING THE PETITION

The Court of Appeals of Virginia has decided a Federal Question in direct conflict with the applicable decision of this Court.

The United States Supreme Court has stated, "[c]ollateral estoppel" is an awkward phrase, but it stands for an extremely important principle in our adversary system of justice. It means simply that when an issue of ultimate fact has been determined by a valid and final judgment, that issue cannot be litigated between the same parties in any future lawsuit." *Ashe v. Swenson*, 397 U.S. 436, 443 (1970). The Virginia Supreme Court has applied this principle in the double jeopardy context, ruling that a felony prosecution was barred by a misdemeanor acquittal during a combined misdemeanor trial and felony preliminary hearing because the misdemeanor acquittal completely adjudicated necessary facts in the defendant's favor. *Davis*, 290 Va. 362, 777 S.E. 2d 555 (2015). Res judicata means a 'matter adjudicated', and it precludes the relitigation of a claim or issue once a final determination on the merits has been reached by a court of competent jurisdiction. *Commonwealth ex rel Gray v. Johnson*, 7 Va. App. 614, 618, 376, S.E. 2d 787, 788 (1989).

The Supreme Court of Virginia lists the following four requirements for the application of collateral estoppel, which are all satisfied in this instant matter: (1) The parties to the two proceedings must be the same;

a. *Commonwealth v. Treguan James* in both trials.

(2) The factual issue sought to be litigated must have been actually litigated in the prior proceeding; a. Here, the Commonwealth sought to introduce evidence regarding the possession of the firearm linked to a homicide, which was recovered by Chesterfield County Police on September 24, 2019; b. The possession of such firearm by the defendants on the same date was fully litigated in the Circuit Court in Chesterfield County on January 7, 2021; c. The defendant was acquitted of the charge of possession of a firearm by a convicted felon by a jury; and

(3) The factual issue must have been essential to the judgment rendered in the prior proceeding;

a. The Factual issue here — the defendant's Possession of the Firearm — was essential to the Judgment rendered in Chesterfield County; b. The Jury's Not Guilty Verdict was based on the lack of evidence regarding the "Possession" element of the Charge, Not any lack of evidence of the First Prong, whether or not the defendant was A Convicted Felon; c. Therefore, the Factual issues — actual or Constructive Possession of the Firearm — was essential to the Previous Judgment. (4) The Prior Proceeding must have resulted in A Valid, Final Judgment against the Party to whom the doctrine is Sought to be applied; a. The Final Judgment of the Trial Court in Chesterfield County was Valid. The Factual issue the Commonwealth Sought to relitigate here is the Possession of the Firearm recovered in Chesterfield County — they Sought to introduce Chesterfield Police Officers testimony, Pictures, and body worn Camera Footage of the recovery of such Firearm. These are the Same Officers and evidence Presented in the Chesterfield Circuit Court trial. Therefore, this essential Fact, this issue, was finally resolved by the Petitioner's acquittal on January 7, 2021, before A Jury. The Fact that the Charges in Chesterfield (Possession of Firearm) are not necessary elements of the Charges in the City of Richmond (Murder and use of A Firearm) does Not matter — Collateral estoppel applies here Pursuant to Virginia and Supreme Court Jurisprudence, which require that the Commonwealth be Prohibited from introducing or eliciting any said testimony or evidence. See Va. Code Section 18.2-308.2, and United States Constitution.

Collateral estoppel is A Constitutional requirement embodied in the Fifth Amendment Protection against double Jeopardy and is applicable to the States through the Fourteenth Amendment to the United States Constitution.

"Simon v. Commonwealth, 220 Va. 412, 415 (1979) (Citing Lee v. Commonwealth, 219 Va. — (1979)). This Court holds that those Constitutional Protections are necessary and the Supreme Court of Virginia agrees: The Supreme Court of Virginia, quoting THIS Court, has stated that the application of Collateral estoppel is necessary to protect defendants Constitutional rights and to prevent relitigation of issues.

The Court of Appeals of Virginia opinion affirming the trial Court of the City of Richmond [John Marshall Courts Building] Convictions; holding that the trial Court admission of the firearm, body worn camera footage, and testimony from the Chesterfield County Jury trial acquittal, concerning the firearm itself and its seizure at the time of Petitioner's arrest was not an abuse of discretion because the Petitioner did not establish Collateral estoppel principles applied was an erroneous err. Contrary to the Court of Appeals of Virginia holding, multiple objections were made thus with certainty of elements foreclosed by Previous litigation. Trial Counsel for Petitioner further proffered what occurred in Previous acquittal and furthermore moved to obtain additional information including the trial transcript. Not to mention Counsel Presented Motion in Limine at the beginning of day one of three Jury trial Pertaining Factual information of such. Counsel also moved to request an Continuance to take necessary action on first day of Jury trial.

"Jones v. Commonwealth, 71 Va. App. 597, 607 (2020). The trial Court hindered Counsel from doing so. Such admission of decision was in violation of well-established Virginia law as well as of Fifth Amendment Protection against double Jeopardy and which is applicable to the States through the Fourteenth Amendment to the United States Constitution." Simon v. Commonwealth, 220 Va. 412, 415 (1979) (Citing Lee v. Commonwealth, 219 Va. - (1979). See also Va. Sup Ct. Rule 5A:18, which calls for A reversal of trial Court ruling. THIS Court holds that these Constitutional Protections are necessary and the Supreme Court of Virginia agrees: the Supreme Court of Virginia, quoting THIS Court has stated that application of Collateral estoppel is necessary to protect defendant's Constitutional rights and to prevent litigation of issues. See Ashe v. Swenson, 397 U.S. 436, 443 (1970).

"Clodfelter v. Commonwealth, 218 Va. 98, 105 (1977) rev'd on other grounds, 218 Va. 619 (1977), "Funny Guy, LLC v. LeCage, LLC, 293 Va. 135, 142 (2017) (quoting Rawlins v. Lopez, 267 Va. 4, 4-5 (2004),

"Commonwealth v. Leonard, 294 Va. 233, 239 (2017).

The Court of Appeals of Virginia Committed err. Upholding the trial Court of the City of Richmond [John Marshall Courts Building], holding the Circumstantial evidence established the Petitioner's identification as Perpetrator in the First-Degree Murder.

Contrary to the Court of Appeals of Virginia holding, the ONLY assertion of the identification being the Petitioner came from an incredible witness whose Credibility in weight is untrustworthy of belief due to her falsifying erroneous offenses against the Petitioner, of which alleged witness confessed to doing so when interviewed by detectives on the day of Petitioner's arrest. Such Charges were abduction and Kidnapping with use of Firearm. By her actions is how the Petitioner's arrest came about. The Firearm is that which the Petitioner was acquitted of, of which alleged witness claim was used in the falsified offenses. Such Firearm was linked to the Homicide. There were multiple Surveillance video Footage, including the one of the Homicide, in which the Petitioner was NOT identified. The Petitioner has tattoo markings on his face, neck, Hands, Legs, and other Parts of his Person. The male in the Surveillance Footage holds NOT such identifiable markings, thus excluding the Petitioner as being the Perpetrator. Alleged witness stated that she communicated with the Petitioner Prior to Homicide via Call and text — there was NO Such Content retrieved from Petitioner's Cellular device when obtained by Search Warrant issued and executed. Neither was Her Cellular Device.

The Firearm the alleged witness and the trial Court attempted to attribute to the Petitioner, the Department of Forensic Science Certificate of Analysis revealed that Such Firearm was NOT linked to the Petitioner at Anytime. Certificate is in the record.

The Circumstantial evidence Presented by Commonwealth, alone, and or in Combination with alleged incredible witness, did NOT establish the identification of the Petitioner as being the Perpetrator.

The Commonwealth sought the elements of the Petitioner's Previous Jury trial acquittal in the Chesterfield County Circuit Court on January 7, 2021, Concerning the recovery of Firearm, evidence, body worn Camera footage, and testimony of Police officer to Convict the Petitioner of First-Degree Murder and Possession and use of Firearm in the Commission of Murder. The hearing of such not only was an violation of Virginia Law and Constitutional rights, but so impacted the Jury's verdict given because the Firearm was the same in both cases.

The Court of Appeals of Virginia opinion held in upholding the trial Court's decision is in violation and is in direct Conflict with the applicable decision of THIS Court Precedence in the aforementioned Virginia Law, Cases, and Constitutional rights.

THIS Court Should exercise its Supervisor Powers and authority over the lower Courts to attain the ends of Justice.

CONCLUSION

Petitioner, Trequan D. James, has been deprived of basic and important fundamental rights guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and has been convicted in violation of Virginia law.

The petition for a writ of certiorari should be granted.

Petitioner seeks relief in this Court to restore those rights. Petitioner Prays THIS Court will issue A writ of Certiorari and reverse Judgment of Court of Appeals of Virginia

Respectfully submitted,

Trequan D. James (Pro Se)

Date: July 17, 2023