

23-7019

No.

ORIGINAL

FILED

JAN 08 2024

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Quindell Montreé' Kirby — PETITIONER  
(Your Name)

vs.

Director Dotson — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Fourth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Quindell M. Kirby #1465044

(Your Name)

Keen Mountain Correctional Center 3402 Kennel Gap; P.O.Box 860  
(Address)

Oakwood, Virginia 24631

(City, State, Zip Code)

(276)-498-7411

(Phone Number)

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## QUESTIONS PRESENTED

The body of the alleged victim was discovered in the City of Richmond, not the County of Chesterfield. The prosecution failed to disclose "Brady" (exculpatory) material that was in the hands of investigating agencies. The prosecution, in bad faith (intentionally), failed to collect (preserve) evidence potentially favorable to the defense. The prosecutor destroyed evidence favorable to Petitioner. This holding raises substantial federal questions that warrant immediate review by this Court:

1. Why was The Circuit Court of the County of Chesterfield Commonwealth of Virginia allowed to prosecute this case? Where precedent supports Petitioner's position, Virginia Code §19.2-247 addresses the proper venue for homicide prosecutions under circumstances which make it unknown where such crime was committed, to wit:  
the offense shall be amenable to prosecution in the courts of the county or city where the body of the victim may be found....

2. Does the Court deems it proper to protect the rights, privileges, and immunities of the accused? Because it was the Petitioner's Constitutional Right to have a Fair Trial in the City of Richmond, not the County of Chesterfield.

3. Are the Courts aware the Petitioner's conviction was obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the Petitioner?

4. Why are the Courts overlooking the facts that the prosecutor destroyed exculpatory evidence that could have exonerated the Petitioner?

5. Are the Courts aware of that in the final defense motion to strike, defense counsel stated "there is no evidence that would raise a strong presumption, or any presumption at all, that this crime actually occurred in the County of Chesterfield."? And that the Commonwealth responded that "Judge, it is a legal issue, but the Commonwealth - arguing for jury instruction that venue was not a factual issue for jury determination . . .

6. So, do this Court deem it proper, to not notify the jury in Chesterfield County, that a crime was not committed in Chesterfield County but in the City of Richmond?

7. So, why wasn't this case prosecuted in the City of Richmond where the victim's body and property was discovered?

8. How wasn't jury instruction that venue was a factual issue not given to the jurors for jury's determination?

## 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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## TABLE OF AUTHORITIES CITED

CASES:

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11 Va. App. 671, 401 S.E.2d 431 (1991)

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Texaco, Inc. v. Runyon

207 Va. 367, 150 S.E.2d 132 (1966)

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Brady v. Maryland

373 U.S. 83 (1963)

Arizona v. Youngblood

488 U.S. 451 (1988)

Darden v. Wainwright

477 U.S. 168 (1986)

## STATUTES AND RULES:

Virginia Code § 19.2-244 .... dictates that a criminal case must typically be prosecuted in "the county or city in which the offense was committed."

Virginia Code § 19.2-247 .... provides a solution: "If there evidence exists that a homicide has been committed either within or without this Commonwealth, under circumstances which make it unknown where such crime was committed, the offense shall be amenable to prosecution in the courts of the county or city where the body of the victim may be found...."

## 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 A 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 B 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 D to the petition and is

reported at Record No. 1284-23-2 8th Dec, 2023; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Court of Appeals of Virginia court appears at Appendix D to the petition and is  
 reported at Record No. 1284-23-2 8th Dec, 2023; 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 September 1, 2023.

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: October 11, 2023, and a copy of the order denying rehearing appears at Appendix C.

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 September 2, 2014. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: April 24, 2015, 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

Suppression by prosecution of evidence favorable to an accused upon request violates due process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution. U.S.C.A. Const Amend. 14.

Denial of Due Process of Law unless defendant can show bad faith on part of police; requiring defendant to show bad faith both limits extent of police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where interests of justice most clearly require it, that is, those cases in which police themselves by their conduct indicate that evidence could form basis for exonerating defendant.

U.S.C.A. Const. Amend. 14.

Failure to request favorable evidence does not leave government free of all obligation to disclose such evidence to defendant, under Brady. U.S.C.A Const. Amends. 5, 14

Three situations in which Brady claim might arise despite defendant's failure to request favorable evidence are: where previously undisclosed evidence revealed that prosecution introduced trial testimony that it knew or should have known was perjured; where government failed to accede

to defense request for disclosure of some specific kind of exculpatory evidence; or where government failed to volunteer exculpatory evidence never requested or requested only in general way, if suppression of evidence would be of sufficient significance to result in denial of defendant's right to fair trial. U.S.C.A. Const. Amend. 5, 14

In determining whether evidence that government failed to disclose to defendant satisfied "materiality" test of Brady, question is not whether defendant would more likely than not have received different verdict with evidence, but whether in its absence he received "fair trial," understood as a trial resulting in verdict worthy of confidence; "reasonable probability" of different result is accordingly shown when government's evidentiary suppression undermines confidence in outcome of trial. U.S.C.A. Const. Amend.s. 5, 14.

## STATEMENT OF THE CASE

The victim in this case "Peter Ambrister's" body was discovered in an abandoned lot by a pair of Richmond City Police Officers on the afternoon of October 18th, 2011. An unidentified citizen had alerted the police to a suspicious vehicle, which led to the discovery. Ambrister was slumped over in the passenger side of the vehicle. Three (3) eyewitnesses gave statements to Richmond PD, stating they saw a white or hispanic male leave out of the victim's vehicle and disappear. These facts were overlooked.

As for the circumstantial evidence relied upon by the prosecution, the lack of evidence tying Kirby to the crime was also notable. Despite theorizing that Kirby took over driving Ambrister's cab, the prosecution found no fingerprints matching Kirby's from the side doors, steering wheel, service radio or any portion of the cab (Tr. I Sept 5, 2012, P126). In theory the perpetrator would have had to make full (body on body) contact, "physically" with the victim's entire body. Common sense would suggest that contact to the upper body (t-shirt area) would have been unpreventable. Indicating the perpetrator would have definitely came into contact with the victim's t-shirt.

## REASONS FOR GRANTING THE PETITION

Meaningful access to justice has been the consistent theme of cases. We recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the state proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense. Thus, while the court has not held that a state must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy, see Ross v. Moffitt, 417 U.S. 600, 41 L.Ed.2d 341, 94 S.Ct. 2437 (1974), it has often reaffirmed that fundamental fairness entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system," id., at 612, 41 L.Ed.341, 94 S.Ct. 2437. To implement this principle, we have focused on identifying the "basic tools of an adequate defense or appeal," Britt v. North Carolina, 404 U.S. 226, 227, 30 L.Ed.2d 400, 92 S.Ct. 431 (1971), and we have required that such tools be provided to those defendants who cannot afford to pay for them.

The private interest in the accuracy of a criminal proceeding that places an individual's life or liberty at risk is almost uniquely compelling. Indeed, the host of safeguards fashioned,

Quindell Montrae' Kirby is Actually Innocent of this crime. That should be reason enough. The evidence and facts pointed to someone else. The Constitution requires that criminal defendants be provided with a fair trial, not merely a "good faith" try at a fair trial. Here, by what may have been nothing more than police ineptitude, was denied the opportunity to present a full defense. That ineptitude, however, deprived Quindell of his guaranteed right to due process of law.

V. Reasons the writ requested herein  
should issue:

It's the right and honorable thing to do. As I have indicated from the beginning, the very beginning, there is no dispute that Peter Ambrister the victim in this case was the victim of a homicide. What we do dispute is the notion that Quindell M. Kirby; the petitioner, is the man responsible for that homicide. The Commonwealth failed to prove without a reasonable doubt Mr. Kirby committed this crime. The Commonwealth also failed - Government's Constitutional Disclosure Duties.

The Fifth and Fourteenth Amendments require the government to disclose specific types of evidence to defendants. Kirby "must be afforded" those rights and he wasn't. In "bad faith" investigators failed to preserve DNA evidence that had apparent exculpatory value; then Senior Deputy Commonwealth's Attorney Dennis H. Duncan destroys that evidence and twenty items involved in this case once Kirby requested it.

As in Exhibit "d" Kirby was mentioning this exculpatory evidence to his attorney January 11, 2014 where his attorney states: "In my opinion, there was no 5th Amendment Violation, and it is certainly not part of the appeal. so you could look at that as ineffective assistance counsel on the part of Todd Pittman defense

I have told you, Mr. Kirby was not the killer in this cruel murder of Peter Ambrister. I wouldn't even call what the Commonwealth presented to be evidence. See *Wearry v Cain*, 136 S.Ct 1002, 1004, 1006 (2016) (Brady violation because undisclosed impeachment evidence was material and State's trial evidence was "house of cards" that relied heavily on key witness testimony of Irene Giles; a 7-time felon ~~with~~ an unknown number of misdemeanors involving lying, cheating, and/or stealing. In *Wearry v. Cain*, the Court held that failure to disclose ... undermined confidence in defendant's conviction when the "trial evidence resemble[d] a house of cards, built on the jury crediting a known liar [key witness's] account rather than [defendant's] alibi." 136 S.Ct. 1002, 1006 (2016).

It was first reported by Richmond PD that three (3) eyewitnesses stated they saw a white male leave out of the victim's vehicle at the time of the murder. Mr. Kirby is African American. Chain of Custody issues two departments handling of DNA evidence resulted in a Brady violation led to destruction of exculpatory (material) evidence on behalf of the government. Unknown contributors (2) in a DNA mixture inside of the victim's pants pockets. The courts already deem evidence favorable to petitioner, that why his Motion for Scientific Testing of Evidence was GRANTED. ~~Pre-Trial~~ Kirby was denied motion for Appointment of DNA Expert

In *United States v. Bagley*, the Court held that the government's duty under Brady arises regardless of whether the defendant makes a request for the evidence. 473 U.S. 667, 682 (1985) (plurality opinion). But Kirby, did, however, in his Motion for Discovery on November 2, 2011 and the Commonwealth stated: "The Commonwealth is aware of the continuing duty to disclose and reserves . . . (Commonwealth's Response To Defendant's Motion For Discovery). Exhibit "b" pag 3.

This was a injustice that was done to Mr. Kirby, we need to right that wrong. That evidence should have been tested not destroyed. (prosecution's constitutional duty to disclose favorable evidence governed by materiality standard and not limited to situations where defendant requests favorable evidence); *Bagley*, 473 U.S. at 685 "[E]vidence qualifies as material when there is any reasonable likelihood it could have affected the judgment of the jury." (quoting *Napue v. Ill.*, 360 U.S. 264, 271 (1959)).

In this case the government is responsible, so the government needs to take responsibility and overturn Kirby's conviction.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Quidell King

Date: 1-5-24