23-7623

No. 18-____

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Estephen Castellon,

Petitioner,

vs.

State of Ohio,

Respondent.

On Petition for a Writ of Certiorari
to the Court Of Appeals Of Ohio Eighth Appellate District

PETITION FOR A WRIT OF CERTIORARI (Direct Collateral Review)

Estephen Castellon
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I. Question Presented

Whether the failure to preserve potentially exculpatory evidence under the Trombetta and Youngblood standards, coupled with delays in trial proceedings, constitutes a violation of the defendant's Sixth Amendment right to a speedy trial?

Whether law enforcement's application of Crim.R. 45 to extend the time limit for executing a warrant, in contravention of Crim.R. 41, constitutes a circumvention of a defendant's Sixth Amendment right to a speedy trial, thus warranting review by this Court?

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(J) FBI internal report found in FOIA
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IV. Petition for Writ Of Certiorari

Estephen Castellon, served a seven year sentence in the Ohio Dept of Rehab & Corrections (ODRC) and is still under Post Release Control, respectfully petitions this court for a writ of certiorari to review the judgment of Ohio's 8th Dist. Court of Appeals, Cuyahoga County.

V. Opinions Below

The decision by Ohio's Eighth Appellate District; denying Mr. Castellon's direct appeal is reported as: STATE OF OHIO vs. ESTEPHEN CASTELLON CA-23-112522, filed: 11/22/23 (see Appendix A). The Ohio Supreme Court denied Mr. Castellon's petition for hearing on 3/5/24 (Appendix B). Note: ODRC legal mail policy: 75-MAL-03 requires mail to have a control number or it is treated as regular mail; meaning inmates are given copies and originals are disposed of. Documents obtained while the petitioner was incarcerated may not be original.

VI. Jurisdiction

Mr. Castellon's petition for a hearing to the Ohio Supreme Court was denied on March 5, 2024. Mr. Castellon invokes this Court's jurisdiction under **28 U.S.C. §1257**, having timely filed this petition for a writ of certiorari within ninety days of the Ohio Supreme Court's judgment.

VII. Constitutional Provisions Involved

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII. Statement of the Case

This case raises Youngblood's conception of due process and asks if the constitutional right of access to evidence coincides with the right to a speedy trial.

> In the decision of Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995), it was held that "a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." Kyles, 514 U.S. at 434, 115 S. Ct. at 1565. All that is required is a "showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Id. at 435, 115 S. Ct. at 1566.

1. ARREST AND PROCEDURAL DEVELOPMENT THROUGH TRIAL:

On 8/22/16 a COMPLAINT BY INDIVIDUAL was filed in Lakewood Ohio. A written statement by the complaining witness alleged that Castellon had digitally penetrated and performed cunnilingus on her while she pretended to be asleep as she had mistaken him for an intruder, also that when she said stop he stopped right away.

Lead investigator Dt. Donald Mladek conceded to learning that Mr. Castellon lived in California ("September") before the indictment (Tr. Pg #234), (please see also Appendix C official doc change of address to CA 4/16). The PCR court was provided evidence that Castellon was not fleeing to his own residence. However, the record reflects that on 11/1/16 a Summons was sent to Lakewood Ohio triggering a same day capias on indictment (see docket). Castellon was labeled a fugitive. On 12/5/16 he was arrested at work in Corona CA and extradited to Cuyahoga County (Ohio). Bail was set at $250,000.

Before trial Castellon wrote a letter to the court explaining the reason he was waiving the jury; as information from his iPhone was deleted while he was in custody and he could not properly put forth his defense. Trial Judge Shannon Gallagher put the letter on the record (please see PCR, and trial docket). A waiver of speedy trial was also made before trial however, the court found Castellon incompetent to waive counsel and thus incompetent to waive any rights *Moran v. Godinez*, 40 F.3d 1567 (9th Cir. 1994).

Trial commenced exactly one year after arrest: 12/5/17. During trial it came to light that two body camera interviews with the accuser were allegedly destroyed by Lakewood PD (Tr. Pg #122-126 and 218-219) (see also Appendix D police Incident report).

A guilty verdict on two counts of (Forcable) Rape and Kidnapping was retuned (one count of attempted Rape was dismissed). At sentencing Castellon fired his attorney and attempted to address several motions he submitted *pose*; in part: speedy trial violation and prosecutorial misconduct. It was at that point, the court found him incompetent and reassigned counsel who did not assert his motions. Mr. Castellon was sentenced to a total of seven years in prison, five years of post release control and classified as a tier III sex offender (lifetime registry).

2. DIRECT APPEAL:

Assigned counsel timely pursued a direct appeal. On February 21, 2019, Ohio's 8th App. Dist. affirmed the conviction: *State v. Castellon*, 2019-Ohio-628. On direct appeal assigned counsel did not raise a speedy trial violation. However, Castellon attempted to raise speedy trial, Brady and Youngblood in a supplemental brief which was not heard (see appellate docket).

Castellon timely filed a Federal habeas petition to the Northern Dist. of Ohio: *Castellon v. Buchanan* 1:2020cv00940. The District court declined an evidentiary hearing as well as subpoena *duces tecum*. While incarcerated at Noble Correctional Institution a false charge of extortion (against staff) was waged and Castellon was thrown in the hole for 18-days, then transferred to another facility; during which he missed a deadline to file a notice of appeal; the false charge was eventually overturned (see Appendix E). The District Court did not accept "cause shown" thus, the Sixth Circuit closed the case on jurisdictional grounds.

3. FIRST PETITION TO VACATE:

On March 18, 2019, Mr. Castellon mailed a Petition to Vacate or set Aside Judgment of Conviction or Sentence (postconviction relief (PCR)); the clerk filed the petition on March 27, 2019. The State argued that the trial court did not have jurisdiction due to the petition being filed one day late. On April 15, 2019 the Trial Court denied the petition without submitting findings of facts and conclusions of law. According to Ohio law at the time, Castellon did not have an appeal available to him. Castellon filed a §1983 1st Amd, denial of access to the court (officials' interference) Castellon v. Hinkle et al 2:20-cv-06420-ALM-EPD

4. SECOND PETITION TO VACATE:

In 2016, Castellon made a FOIA request to the DOJ requesting an audit of the handling of his iPhone; the (partial) report was issued on **11/7/22**. On 2/10/23, Castellon filed a Petition for Successive PCR *vis-à-vis* newly discovered evidence found in the FOIA report. On 2/22/23 the trial court denied: successive PCR without findings of facts and conclusions of law (App. A).

5. PCR DIRECT APPEAL:

On 3/17/23 Castellon timely filed notice of appeal to Ohio's 8th Dist. Court of appeals. On 11/22/23 the 8th Dist. affirmed the trial court's decision. As per the docket the Clerk did not mail the decision to Castellon until 11/27/23. On 11/30/23 Castellon submitted an application for reconsideration pursuant to Ohio's App. R. 26(A). The clerk filed said application on 12/12/23. On 12/13/23 the 26(A) was denied as untimely due to the 10-day filing rule (see App. docket).

6. PCR - SUPREME COURT OF OHIO'S JURISDICTIONAL APPEAL:

Mr. Castellon timely filed for a hearing to the Ohio Supreme Court. On March 5, 2024 the court declined jurisdiction (see Appendix B).

IX. REASONS FOR GRANTING THE WRIT

A. To uphold the principles of fairness and due process in the legal system and to ensure justice is served in situations where officials implement Crim.R. 45 to extend the time limit for executing a search warrant, in conflict with Crim.R. 41, which results in a circumvention of a defendant's Sixth Amendment right to a speedy trial.

The Sixth Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment to the United States Constitution. **Barker v. Wingo, 407 U.S. 514, 515, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).**

On 1/2/17 Castellon made a request for his attorney to retrieve his iPhone from the county property room as it contained evidence he needed for his defense (see Castellon's affidavit). However, Dt. Mladek intercepted the release and took possession (with a warrant). Assistant prosecutor Anthony Miranda drafted a second warrant for the data dump. This second Warrant and Affidavit are the mechanisms facilitating the violation (see Appendix F and G). The record reveals a scheme designed to stifle the proceedings to the tune of prejudicial delay. Trial commenced 12/5/17; sixteen months after the official complaint, thirteen months from the indictment and precisely one year from the arrest date. See Doggett v. United States, 505 U.S. 647, 651-52, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992).

Ohio's interpretation of Crim.R. 41 and 45:

> Crim.R. 41 governs the issuance of search warrants. Crim.R. 41(C)(2) provides that a search warrant shall command the officer to search, within three days, the person or place named or the property specified. Crim.R. 41(C)(2). While search warrants must ordinarily be executed within three days of their issuance, Crim.R. 45(A) provides that, in computing any period of time prescribed or allowed by these rules, by the local rules of any court, by order of court, or by any applicable statute, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in computation. State v. Seaburn, 2017-Ohio-7115

If Crim.R. 45 demands that "the last day of the period so computed shall be included", then why in lue of stating the "last day of the period"; would the language in this particular warrant state:

> **"The Court finds that it is necessary, pursuant to Crim.R. 45, to waive the requirement under Crim.R. 41 that this warrant be executed within three days, and**

that prejudice would not result given the nature of the electronic equipment involved."?

(See data extraction warrant Appendix G).

The answer is best described in the facts surrounding a *Trombetta/Youngblood* "bad faith" test as the assistant prosecutor who drafted the warrant essentially rewrote the rules and thus substantively annihilated the effect of the search warrant. Rubber stamping to this degree was prejudicial to Castellon's Sixth Amendment right to a speedy trial. If this scheme sets precedent, then police have carte blanche to hijack evidence indefinitely.

Circuit courts have concurred that:

> Once the data is seized and extracted by law enforcement, the warrant is considered executed for purposes of Rule 41, and under Rule 41(e)(2)(B), law enforcement may analyze that data at a later date. See United States v. Cleveland, 907 F.3d 423, 431 (6th Cir. 2018) ("[U]nder Rule 41, an execution period specified in a warrant applies to the time to seize the device or to conduct on-site copying of information from the device. This deadline does not apply to the time to analyze and investigate the contents of the device off-site."); United States v. Huart, 735 F.3d 972, 974 n.2 (7th Cir. 2013)

The instant case requires a different point of view from the circuit courts' analysis: what is the remedy for a procedural scheme that delays the actual extraction? (On the front end) in other words a warrant designed in such a way that manipulates the Fourth Amendment to strip a defendant of his constitutional protections as demonstrated in *Barker vs. Wingo*?

Which also leads us to the fact that the warrant, affidavit and chain of custody were withheld from the defense so that it could not be challenged...

B. To avoid the infringement on defendants' Sixth Amendment right to a speedy trial and due process, this court should clarify the "bad faith" standard under Trombetta and Youngblood that applies when law enforcement fails to preserve potentially exculpatory evidence in addition to delays in trial proceedings.

Data dump: The docket reflects over 16 requests for discovery. During trial defense counsel Bethany Stewart states: "there has been question or discussion about missing and/or information from the cell phone dump". Prosecutor Steven Szelagieicz conceded that "it was discussed and it never came up again" (Tr. Pg. #227). (see also Castellon's Affidavit in successive PCR and Tr. Pg #5 and pg #222-235).

Withholding the Warrant, Affidavit and Chain of Custody had a chilling effect on Castellon's defense. In the Affidavit Dt. Mladek portrays himself as a forensic examination expert:

> "27. Affiant avers that in Affiant's training and experience, forensic examination of cell phones may often take longer than three days. Therefore, Affiant respectfully requests that the Court waive the requirement under Crim.R. 41 that this warrant be executed within three days."

(see Appendix F (data extraction Affidavit))

At trial Dt. Mladek, though not sworn in as an expert and clearly not qualified; testified to the veracity of the data. However, a technician Richard Johnson of Westlake PD is supposedly the person who performed the data dump of 5/22/17. Mr. Johnson was not called to testify and Westlake PD refuses to submit their Chain of custody (see Appendix H emails from public records requests). During cross, Mladek could not explain the time stamps from Lakewoods COC nor if he was present during the extraction (see Tr pg 222-235).

Mladek's excuse for sending the iPhone to the FBI is that Mr. Johnson told him they would unlock the phone for free and apparently the company cellebrite would charge $1495 Note: Johnson does not state BCI's capabilities nor anything about the FBI (see Appendix I Westlake PD forensic report dated **1/4/17 completed on 1/6/17**). Why did Dt. Mladek wait a month before sending the phone to the Cleveland FBI office? iPhone submitted on **2/1/17** (see Appendix J) FBI internal report found in FOIA).

How did Dt. Mladek and Prosecutor Miranda predict this dilemma at the time of drafting the warrant; if he had yet to speak with Tech Johnson, or BCI, or the FBI? And why not just ask Castellon for the pass code since he clearly needed the data as well? Was it to save $1495? Absolutely [n]ot none of that makes any sense but to delay, obstruct and tamper with the evidence, i.e. by the time Castellon saw a copy of data (5 1/2 months later) the texts he was prepared to use were deleted (see Castellon's Affidavit in PCR).

These scheme(s) define bad faith - starting with the fugitive tag; the presumption of guilt led to a year in county jail and the inability to put forth a defense. Dismissal on speedy trial violation is the only remedy.

> Prior to conviction, the accused is shielded by the presumption of innocence, the "bedrock[,] axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law." *Reed v. Ross,*468 U.S. 1, 4, 104 S.Ct. 2901, 82 L.Ed.2d 1 (1984) (internal quotation marks omitted). The Speedy Trial Clause implements that presumption by "prevent[ing] undue and oppressive incarceration prior to trial, ... minimiz[ing] anxiety and concern accompanying public accusation [,] and ... limit[ing] the possibilities that long delay will impair the ability of an accused to defend himself." *Marion,*404 U.S., at 320, 92 S.Ct. 455 (internal quotation marks omitted). See also *Barker v. Wingo,*407 U.S. 514, 532–533, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972).

Body cam(s): Two body camera interviews with the accuser were allegedly destroyed by Lakewood PD:

- First: Officer Register [original statement] (Tr. Pg #124).
- Second: Dt. Mladek recorded [his] interview with accuser (Tr. Pg.#'s 218-19).

Castellon was denied proper cross-examination and impeachment evidence. Nothing could equate to the tangible footage and its omission deprived Castellon a fair trial.

United States v. Agurs, 427 U.S. 97, 96 S. Ct. 2392, 49 L. Ed. 2d 342, 1976 U.S. LEXIS 72 (U.S. June 24, 1976)

> Failure of the prosecution to disclose evidence favorable to an accused violates due process... Impeachment evidence as well as exculpatory evidence fall within the scope of the rule... The Government's failure to assist the defense by disclosing information that might have been helpful in conducting the cross-examination of prosecution witness amounts to a constitutional violation only if it deprives the defendant of a fair trial.

United States v. Bagley, 473 U.S. 667.105 S. Ct. 3375. 87 L. Ed. 2d 481.1985 U.S. LEXIS 130. 53 U.S.L.W. 5084 (U.S. July 2, 1985)

The police misconduct is evident, combined with the conscious effort(s) by the State to prevent Castellon from raising these issue(s) eliminates any good-faith or simple isolated negligence and thus, case *sub judice* is primed for a *Trombetta/Youngblood* test.

California v. Trombetta, 467 U.S. 479 (1984), see also, Ariz. v. Youngblood. 488U.S. 51, 109 S. Ct. 333, 102 L. Ed. 2d 281, 1988 U.S. LEXIS 5404, 57 U.S.L.W. 4013 (U.S. November 29, 1988)

Since the court(s) refused an evidentiary hearing *via* PCR and *habeas* Castellon had to surmount extreme obstacles just to make the record; e.g., the actual iPhone data dump Warrant was obtained through a (6-year) FOIA request to the DOJ; The Affidavit for said warrant and chain of custody was obtained through a public records request (*mandamus*) against the Cuyahoga county prosecutor's office (see State of Ohio ex rel. Estephen Castellon v. Cuyahoga County Prosecutor, Case No. 2024-0203). However, to this day Castellon is still getting the runaround, a public records request to Lakewood PD came back as the case was "expunged" then that they cannot release records to an "imprisoned person" (see Appendix K Lakewood's response to public records request). As well as Westlake PD refusing to release their chain of custody. Ohio adopts these procedural schemes as the normal course of operations with complete disregard to its prejudicial effect.

Albeit this case provides ample evidence of bad faith by the state; perhaps it's time to take a fresh look at the applicability of Young blood.

Please see essay by Norman C. Bay:

> "Incoherence characterizes post-Youngblood case law decided in state and lower federal courts. There are significant disparities in the ways in which courts have interpreted fundamental aspects of Youngblood, including the meaning of "bad faith," whether the lost evidence must be potentially exculpatory or possess apparent exculpatory value to establish a due process violation, and what remedy is available in the event of a violation.18 Regardless of the approach used, the bad faith standard imposes an almost insurmountable burden upon the accused. Over the past two decades, only a handful of courts have found due process violations.19 Taken as a whole, those developments have so undermined Youngblood's rationale and legitimacy that it no longer merits stare decisis effect. In place of the bad faith standard, a better, more balanced approach would take into account the overriding concern of due process: **adjudicative fairness**. Thus, a court would assess both police culpability and the materiality of the lost evidence or prejudice suffered by the accused."

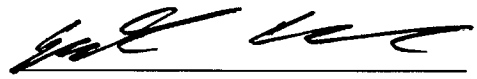
Norman C. Bay, Old Blood, Bad Blood, and Youngblood: Due Process, Lost Evidence, and the Limits of Bad Faith, 86 WASH. U. L. REV. 241 (2008). Available at: https://openscholarship.wustl.edu/law_lawreview/vol86/iss2/1

Case at bar presents the Court with an opportunity to clarify the application of the *Trombetta/Youngblood* standard in the face of law enforcement actions that violate due process. Absent intervention by this Court, the Court Of Appeals Of Ohio Eighth Appellate District's published decision will work to undermine the carefully-crafted procedural safeguards of *Barker* that this Court has spent the past 50+ years developing.

X. CONCLUSION

For the foregoing reasons, Mr. Castellon respectfully requests that this Court issue a writ of certiorari on direct collateral review of the judgment of Ohio's Eighth District Court of Appeals.

Respectfully submitted this 28th day of May, 2024.



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