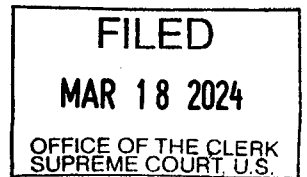


No. 23-7777



IN THE
SUPREME COURT OF THE UNITED STATES

Robert King Via Jr. — PETITIONER
(Your Name)

vs.

Chadwick Dotson — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

4th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert King Via Jr. #1458275
(Your Name)

3521 Woods Way
(Address)

State Farm, VA 23160
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

If a criminal case is brought against a defendant, when the prosecution's case rests solely on the uncorroborated testimony of alleged accomplices, does the weight of their testimony outweigh a defendant's 14th Amendment Constitutional right to present evidence in his favor?

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:

RELATED CASES

- Via v. Commonwealth, Record No. 0508-18-1, Virginia Court of Appeals. Judgement entered July 9, 2019.
- Via v. Clarke, Record No. CL21-295, Circuit Court for the City of Hampton. Judgement entered July 14, 2021.
- Via v. Clarke, Civil No. 3:22-cr-685(DJN), U.S. District Court for the Eastern District of Virginia. Judgement entered June 27, 2023.
- Via v. Dotsen, Record No. 23-6732, U.S. Court of Appeals for the Fourth Circuit. Judgement entered November 22, 2023.

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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 Vik v. Dotson, No. 23-6732; 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☐ is unpublished.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 C to the petition and is

☒ reported at Via v. Clarke, Civil No. 3:22cv685 (DTN); 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☐ is unpublished.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 _____ 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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 22, 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: December 24, 2023, and a copy of the order denying rehearing appears at Appendix B.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

This case involves Article 1, Section 8 of the Virginia Constitution which provides;

"That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, and to call for evidence in his favor, and he shall enjoy the right to a speedy and public trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgement of his peers, nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense."

This case also involves Amendment XIV, Section 1 of the U.S. Constitution which provides:

"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 any person within its jurisdiction the equal protection of the laws."

This case also includes the VI Amendment of the United States Constitution which provides;

"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 defense."

Statement of the Case

A nighttime burglary occurred in Hampton, Virginia on September 11, 2010. No arrests were made at the time, but blood was recovered that led to the arrest of Reginald Jones in March 2011. Jones named three others who he claimed assisted him in the burglary, Sammual Sanchez, Carl Genteline, and petitioner, Robert Via.

In 2012 Via was tried by a jury. The only evidence against Via was and has remained, the uncorroborated testimony of alleged accomplices, Jones, Sanchez, and Genteline. At trial the victims were able to identify Jones and Sanchez but not Via. The victims description to Police actually contradicted Via's involvement because the victims said the third robber was black and Via is white. Via presented two alibi witnesses, Amanda Kidwell and Christopher Martin but was found guilty and sentenced to 120 yrs. and 1 day.

In 2014 the Virginia Supreme Court reversed and remanded Vias conviction on the grounds that the jury was improperly instructed. See *Via v. Commonwealth* 288 Va. 114 (2014)

Via's first remanded trial occurred in November 2016. The jury was properly instructed and both sides were allowed to present all their evidence. The trial ended in a hung jury because the jurors were unable to reach a unanimous verdict.

A second remand trial occurred in May 2017. The jury was properly instructed and all evidence was presented by both sides. Again, the trial ended in another hung jury over the jury's inability to reach a unanimous verdict.

A third remand trial occurred January 2018. After trial began the defense made a motion to sequester all witnesses to testify, which was granted by the trial court. After the state rested their case, defense counsel Charles Haden, was seen in the halls of the court house speaking to defense witnesses who were expected to testify. The court had already warned defense counsel from communicating with sequestered witnesses. When questioned by the court if counsel had in fact broken the courts sequester rules and warning, defense counsel admitted to offering defense witnesses transcript of their testimony from previous trials to refresh their testimony. The trial court then barred alibi witness, Chris Martin and rebuttal witness, Ashley Aaron Watkins from testifying on the petitioners behalf. Both witnesses were crucial to petitioners defense and had testified at every trial going back to 2012.

A timely direct appeal was filed, one error being the courts abuse of discretion in excluding critical defense witnesses. The Virginia Court of Appeals accepted the appeal but denied to overturn the verdict because trial counsel failed to make a vocal objection on the record.

The objection was made at a side bar, so on the record, only defense counsels argument for the objection was recorded. (see Via v. Commonwealth Record No. 0508-18-1. July 9, 2019) The Virginia Supreme Court denied petitioners direct appeal.

A timely state Habeas Corpus was filed in the Hampton Circuit Court on February 9, 2021 which was dismissed on July 14, 2021. see Via v. Clarke, CL 21-295 (2021) An appeal was filed with the Virginia Supreme Court, which was dismissed on May 27, 2022.

A timely federal Habeas Corpus was filed in the Eastern U.S. District Court on October 13, 2022. The U.S. District Court made a ruling to deny relief. see Via v. Clarke, Civil No. 3:22 cv 685 (DTN) In their ruling opinion they stated, "Here, the testimony of multiple witnesses who stated Via participated in the robbery was convincing," and "Moreover, Via's alibi was not particularly convincing." Reluctantly, they decided even if the petitioners trial attorney acted with deficiency to satisfy the Strickland prong, petitioner was not prejudiced because the weight of uncorroborated accomplice testimony outweighed any alibi or other witnesses petitioner may have presented the court.

After the District Court denied Habeas relief, they further denied to grant a Certificate of Appealability. Petitioner requested a COA to be granted by the 4th Circuit Appeals court, citing 6th Amendment and 14th Amendment constitutional violations but the Appeals court would not grant a COA on December 29, 2023

Reasons for Granting Writ

A. Decided an important Federal question that conflicts with decisions by a state court of last resort

The U.S. District court has made a ruling in which the 4th Circuit Appellate Court has affirmed that is in conflict with long standing state court precedent. The District court has determined the weight of uncorroborated alleged accomplice testimony "convincingly" outweighs the petitioners right to present evidence in his favor.

First, this decision conflicts with the Virginia Supreme courts ruling in *Jones v. Commonwealth* 111 Va. 862, 868, 69 S.E. 953, 955 (1911), which says, "if two or more accomplices are produced as witnesses, they are not permitted to corroborate one another, but the same rule applies as if their but one." Here, the U.S. District court ruled that "... the testimony of multiple (uncorroborated) witnesses who stated Via participated in the robbery was convincing." emphasis added (see District Courts Mem. Opinion, Appendix C, pg. 11) This position conflicts with Virginia law because it has been long standing precedent in the Commonwealth, stemming from the Jones' case, that though a jury may convict someone based solely on the uncorroborated testimony of alleged accomplices, "they (the jury) should be warned by the court against doing so." quoted from the Jones' case.

more recently the Virginia Supreme Court reaffirmed the Jones ruling in *Via v. Commonwealth* 288 Va. 114 (2014), where as in Jones the jury was not properly warned with instruction by the court about convicting Via solely on uncorroborated testimony of alleged accomplices. This amounted to reversible error in each case, and the fact that the Virginia Supreme Court warns a jury against such a conviction proves they acknowledge this sort of evidence as not being so great as to outweigh a defendants constitutional right to be given a fair trial.

Secondly, the District courts ruling is contrary to Virginia law by affirming petitioner was not prejudiced when the court ruled to exclude critical defense witnesses, regardless if the exclusion was the result of ineffective trial counsel or the courts abuse of discretion.

Under Article I, section 8 of the Virginia Constitution it ensures, "That in criminal prosecutions a man hath a right... to call for evidence in his favor." By denying the petitioner relief, they've thus denied him his right guaranteed under the Virginia Constitution.

The Virginia Appellate and Supreme courts have made several clear rulings to ensure a defendants right to present evidence in his favor. Evidence which tends to cast any light upon the subject of inquiry is relevant. "More over, evidence which has a tendency to add force and effect a party's defense is admissable, unless excluded by a specific rule or policy consideration." *Cash v. Commonwealth*, 5 Va. App. 506, 513, 364 S.E. 2d 769 (1988)

"Any fact however remote, that tends to establish the probability or improbability of a fact in issue is admissible." *Brown v. Commonwealth* 23 Va. App. 225, 232, 475 S.E. 2d 836, 839 (1996).

"An accused has the unqualified right to 'call for evidence in his favor.' This includes the right to prepare for trial which in turn, includes the right to interview material witnesses and ascertain the truth." *Bobo v. Commonwealth* 187 Va. 774, 779, 48 S.E. 2d 213, 215 (1948)

A trial court is given wide discretion to decide 'if whether a witness should be prevented from testifying.' "Factors to be considered include whether prejudice will result to the defendant and whether the violation of the rule resulted from intentional impropriety." *Jury v. Commonwealth* 10 Va. App. 718, 721, 395 S.E. 2d 213, 215 (1990)

"Orders excluding witnesses during the taking of testimony play an important part in our system of justice and should be enforced. However, if their enforcement is to work justice and not injustice, care must be taken by trial courts and counsel to ensure that those orders are plainly announced and their effect is made clear to all parties involved." see *Jury v. Commonwealth* 10 Va. App. 718, 722, 395 S.E. 2d 213, 216 (1990); *Warmouth v. Commonwealth* 29 Va. App. 476, 484-85, 513 S.E. 2d 418, 422 (1999) In this particular case which petitioner is seeking the court to grant writ of certiorari, the exclusion of petitioners alibi and rebuttal witnesses worked to serve a great injustice.

Petitioner was entitled under Virginia law to attack the prosecutions witnesses by presenting his own rebuttal witness and corroborating alibi witness. See *Deavers v. Commonwealth* 220 Va. 14, 16, 255 S.E.2d 458, 459 (1979); *Hummel v. Commonwealth* 217 Va. 548, 550, 231 S.E.2d 216, 217 (1977) "Because the trier of fact determines the credibility of witnesses." *Zirkle v. Commonwealth* 189 Va. 862, 870, 55 S.E.2d 24, 29 (1949) Petitioner was entitled under Virginia law to offer impeaching evidence that had the tendency to cause the trier of fact to reject the prosecutions witnesses testimony. "Relevant evidence that tends to impeach a witness' credibility and assists in an accuseds defense is always admissible." *Hummel*, 217 Va. 548, 550, 231 S.E.2d 216, 217 (1977)

It has repeatedly been the position of the Virginia Appeals and Supreme courts to admit any relevant evidence by the defense to prove the defendants innocence. Their decisions rest on the constitutional grounds of the Virginia Constitution as well as the U.S. Constitution, both of which guarantee an accused the right to present evidence in his favor. However, the decision of the District court, which was affirmed by the 4th Circuit Appeals court, has decided the petitioner was not prejudiced when the trial court excluded his defense witnesses. It is their opinion that the testimony of multiple uncorroberated alleged accomplices "convincingly" outweighs a petitioners well founded constitutional right to present the trial court with a complete defense. This question of federal law conflicts with several rulings of the state court of last resort,

B. Decided an important federal question in a way that conflicts with relevant decisions of this court.

The Federal Rule on Evidence 403 states, "while the Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury."

Furthermore, this court has made several rulings that protect an accused's right to present evidence in his favor, in such cases as *Holmes v. South Carolina* 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed. 2d 503 (2006); *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142, L.Ed. 2d 636 (1986); *California v. Trombetta*, 467 U.S. 479, 485, 104 S.Ct. 2528, 81 L.Ed. 2d 413 (1984); *Washington v. Texas*, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed. 2d 1019 (1967); *Chambers v. Mississippi*, 410 U.S. at 302, 93 S.Ct. 1038, 35 L.Ed. 2d 297 (1973); *Rock v. Arkansas*, 483 U.S. 44, 58, 56, 107 S.Ct. 2704, 97 L.Ed. 2d 37 (1987).

In all these monumental decisions, this court made rulings to protect a petitioner's right to present evidence in his favor before a trial court. However, the U.S. District Court and Appeals court of Virginia has made a ruling that conflicts with all the relevant rulings of the United States Supreme Court rulings by deciding uncorroborated accomplice testimony 'convincingly' outweighs a petitioner's right to present evidence in his favor.

The US District Court nor 4th Circuit Appeals court would even grant petitioner a Certificate of Appealability to review petitioners claims for relief after the District court denied relief.

C. Importance of the Question Presented

This case presents a fundamental question in regards to a defendants 14th Amendment Constitutional right of Due Process to present evidence in his favor, when the prosecutions evidence against a defendant is the uncorroberated testimony of alleged accomplices, does the weight of their testimony outweigh a defendants right to present the court with evidence of his innocence?

This question is of such great importance because now more than ever, the United states is so polarized and divisive. People are quick to sacrifice the integrity of their word if it means to serve ones own self-interest, and when anyone like the petitioner is faced with being falsely accused by uncorroberated accomplice allegations, to ensure justice is served, defendants must be allowed to defend their self before a court of law by presenting evidence in their favor.

It is the cornerstone of a fair and impartial justice system to allow anyone accused of a crime to defend their self. The importance of this question unfortunately extends far up the social ladder to the president of the United states back all the way down to the most poor among our nation and is enhanced when lower courts take it upon their selves to act as the trier of fact and determine the credibility to be given to witnesses

From reading their trial transcript. When a case is brought before a court of law, that's to be heard by a trier of fact, it's in the best interest of justice to allow both the prosecution and defense, a fair opportunity to present all relevant evidence to prove their theory of guilt and innocence. This circumstance must be universally applied to every person in the United States whose put on trial, for a crime especially.

Petitioner is seeking this court to grant this Writ of Certiorari in the hope this court may rule on an answer to the question presented that involves a defendant's 14th Amendment right to present evidence of his innocence, and a 6th Amendment right to effective assistance of counsel, even if the evidence against him is solely based on uncorroborated alleged accomplice testimony.

Conclusion

For the foregoing reasons, Certiorari should be granted.

March 26, 2024

Respectfully Submitted,

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WRSP

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