

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILBERT FRANK, JR. — PETITIONER
(Your Name)

vs.

KELLY SANTORO-WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT - CENTRAL DISTRICT of CA.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WILBERT FRANK, JR.
(Your Name)

100 MAIN STREET
(Address)

SAN QUENTIN, CA 94964
(City, State, Zip Code)

(951) 314-7663
(Phone Number)

QUESTION(S) PRESENTED

Whether the government's failure to preserve evidence that allows the defendant to avoid criminal liability once unearth fall outside of Petitioner's constitutional Equal Protection and Due Process Clauses of the Fourteenth Amendment allowed "meaningful opportunity to present a complete defense" as interpreted by the UNITED STATES SUPREME COURT in CALIFORNIA V. TROMBETA (1984) 467 U.S. 479.

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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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~~^{order} of the United States court of appeals appears at Appendix B to the petition and is

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~~X~~ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
~~X~~ is unpublished.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☐ is unpublished.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☐ is unpublished.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 December 15, 2017.

☐ 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: JANUARY 30, 2018, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

The due process clause of U.S. Constitution, Amendment XIV requires the state to disclose to criminal defendants favorable evidence that is material to guilt or to punishment. Under the due process clause of the U.S. Constitution Amendment XIV criminal prosecutors must comport with prevailing notions of fundamental fairness. In the instant case, the excluded evidence is sufficiently important in the ascertainment of the truth and in the interest of justice that a new trial should be ordered. In the instant case, the trial and appellate courts ignored that it is reasonably probable that the verdict at trial would have been different with the excluded experts testimony.

The importance of holding the police and the prosecution to their obligations under *Trombetta* and *Youngblood* cannot be hyperbolized. Police and prosecutors are more than willing to avail themselves of collected evidence when it benefits their theory. Petitioner only demands a level playing field that gives defendants equal access to collected evidence.

Equal and fair usage in this respect is nothing less than the foundation upon which due process is built. Secondly, and more importantly, *Trombetta* demonstrates that the absence of bad faith does not end the analysis. The evidence at issue in this case centered upon the issue of consciousness. If Petitioner was, in fact, in an involuntary intoxication state, under the law, he would not be responsible for his act.

STATEMENT OF THE CASE

On November 30, 2010, Petitioner shot and killed his wife, Silvia. In 2011, Petitioner Wilbert Frank, Jr. was convicted of first degree murder. Frank admittedly possessed and fired the shotgun, at a Santana restaurant scheduled meeting. Frank's unsuccessful defense was that the incident happened while he was in a state of involuntary intoxication during an exposure to carbon monoxide, and thus, that he lacked the intent for all crimes with which he was charged. Riverside County Superior Court sentenced him to life in prison with the possibility of parole. During the trial, Frank argues he was prejudiced by the absence of both Dale Feb and Dr. Stacey Wood. The symptoms displayed by Plaintiff once in the custody of law enforcement provided a logical foundation to support Dale Feb and Dr. Stacey Wood's opinions and therefore FRANK's complete defense. Dr. Wood looked at direct medical evidence strongly tending to prove the validity of Petitioner's defense. Mr. Feb looked at the objective measurable results of exposure to carbon monoxide in the residence and concluded FRANK was in an intoxicating environment. This evidence was not just corroborative, and certainly more than cumulative. It was direct essential evidence of Petitioner's asserted involuntary intoxication state during the shooting. In discussing the facts surrounding the afternoon shooting, the trial judge emphasized only those that might prove FRANK was aware of what he was doing, omitting those that did not. An involuntarily intoxicated state would preclude an express malice or the intent to kill.

REASONS FOR GRANTING THE PETITION

This case presents a constitutional question never addressed by this court:

If the evidence destroyed qualifies as potentially useful and meets the exculpatory value standard, does the destruction deprive the Plaintiff of the ability to establish avoidance of criminal liability.

Plaintiff submits the following reasons for granting this petition.

FIRST, the trial judge failed in his decision to avoid an evidentiary hearing

SECOND, the prosecution focused out of context bits and pieces of Mr. Frank's interrogation concerning the weapon

THIRD, with experts available to firm up an involuntary intoxication defense in a criminal trial where a defendant needs only a reasonable doubt to prevail, one has to question the arbitrary denial of this testimony

FOURTH, The judge overlooked Dale Feb's expertise and lacked complete understanding of his conclusion, and

Finally, deliberation and premeditation are precluded because one cannot formulate an intent to kill or deliberate or premeditate in an involuntary intoxicated state

Petitioner submits that reasonable jurist could not disagree that the government's failure to preserve a blood sample demonstrating definitively that the murder occurred while laboring under carbon monoxide poisoning deprived FRANK of his constitutional right to present a complete defense. Accordingly, the state court's decision was an unreasonable application of *California v. Trombetta* (1984) 467 U.S. 479. The district court erred by denying FRANK's petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Wilbert Frank, Jr.

Date: April 23rd, 2018