

No. 18-7024

IN THE
SUPREME COURT OF THE UNITED STATES

JACQUES VILLAFANA – PETITIONER

vs.

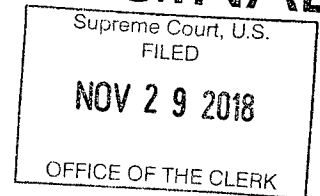
HAROLD W. CLARKE – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

JACQUES VILLAFANA,
LVCC – 1607 PLANTERS ROAD
LAWRENCEVILLE, VIRGINIA. 23868

ORIGINAL



QUESTION PRESENTED

1. Whether the Virginia statutes, when applied in Petitioner's case, that allow for the destruction of evidence – post-trial – without notice are unconstitutional?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

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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

Order of the Supreme Court of Virginia denying review is attached hereto as Appendix "A." The Order of the Circuit Court for the City of Virginia Beach is also attached as Appendix "B." And, a copy of the Order of the Supreme Court Of Virginia denying rehearing is attached as Appendix "C." All of the foregoing opinions were unpublished.

JURISDICTION

Jurisdiction is conferred upon this Court by 28 U.S.C.A. § 1257 (a) to review by writ of certiorari a final judgment rendered by the highest court of a state in which a decision could be had.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following provision of the United States Constitution is involved: U.S. Const. Amends. XIV. The test of said provision are attached hereto as Appendix "D."

STATEMENT OF THE CASE

Petitioner's challenges – as-applied – the Virginia statutes that allow for the destruction of evidence, post-trial, without notice. This is an important question of federal law: Whether Petitioner's Due Process right under the Fourteenth Amendment has been violated? The Virginia statutes' constitutionality has not been, but should be, settled by this Court.

On September 17, 2003, after witnessing Shawn Rentsch shoot and kill Marc Villafana (Petitioner's brother) and Michael Hough, Petitioner called 911. Shawn, however, accused Petitioner of entering his house, along with Marc and Michael, and repeatedly beat him with guns. Shawn, apparently, had to get 6 staples in his head because of the alleged beating.

During Petitioner's jury trial, however, trial counsel questioned the detective as to why the gun wasn't tested since it was presumed to be used in the assault (R.) (Tr. Transcript 406:21-25). The detective conceded that a test should have been done. *Id.* Petitioner, was eventually found guilty by a jury on one count of armed burglary; one count of malicious wounding and two counts of use of a firearm in a commission of a felony on September 15, 2005.

Eleven years later in 2016, Petitioner motioned the Virginia Beach Circuit Court for a Scientific Analysis Of Previously Untested Scientific Evidence. The analysis was to test the 9-mm handgun that was used as evidence.

In the Respondent's reply to Petitioner's post-conviction motion, it stated that an order to destroy the evidence was made on April 12th, 2011; and that no notice was given according to statute (App., 1e). The Virginia Beach Police department eventually destroyed the handgun on January 29th, 2015.

So, on September 27, 2016, the Virginia Beach Circuit Court denied Petitioner's motion as moot because the gun was destroyed. Subsequently, Petitioner filed a State habeas petition. Petitioner

claimed, among other things, that a due process violation occurred because he did not receive notice before the state destroyed his handgun. The court, however, dismissed Petitioner's habeas petition. The court held that the weapon used in a crime and was properly destroyed without notice under Code § 19.2-386.29. In addition, the court stated that there was no evidence that an examination of the gun would have provided exculpatory evidence. Petitioner appealed, but the Supreme Court of Virginia denied his petition (App., 1a). The Supreme Court of Virginia also denied rehearing (App., 1c).

REASON FOR GRANTING THE PETITION

1. The Virginia Statutes That Allow For The Destruction Of Evidence, Post-Trial, Without Notice Are Unconstitutional.

Petitioner challenges the application of the State's statutes (App., 1e, 1f). The statutes do not prescribe safeguards for when notice should be given to a defendant prior to the destruction of forfeited weapons used in the commission of a criminal offense that contain exculpatory evidence. In addition, the destruction of Petitioner's evidence – without notice – made it unreasonable for him to obtain comparable evidence by any other means to present in the event of a retrial or another proceeding allowed by law. And since there aren't any safeguards in the rules for weapons that contain exculpatory evidence, the application of the State's statutes that weapons used by any person in the commission of a criminal offense, shall be destroyed by entry of an order; and that no notice to the defendant shall be required, violated Petitioner's Due Process right for destroying his handgun without notice. Therefore, the State statutes are unconstitutional.

This is an important question of federal law that has not been, but should be, settled by this Court. In the seminal case involving the preservation of evidence, this Court opined that "the government violates due process if the evidence possessed exculpatory value that was apparent before the evidence was destroyed, and the evidence is of such a nature that the defendant would be unable to

obtain comparable evidence by any other reasonable means.” *California v. Trombetta*, 467 U.S. 479, 489, 104 S.Ct. 2528, 2534 (1984); see also *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333 (U.S.Ariz.1988) (held that failure of police to preserve potentially useful evidence was not denial of due process of law absent defendant's showing bad faith on part of police.)

The issues in *Trombetta* and *Youngblood* dealt with the preservation of evidence prior to trial. In this case, Petitioner's evidence possessed exculpatory value and was destroyed post-trial. Furthermore, the Court in *Trombetta* spoke of evidence whose exculpatory value is "apparent." *Trombetta*, 467 U.S., at 489, 104 S.Ct., at 2534. Here, Petitioner has shown that the evidence was apparent because it contained exculpatory value when the police detective conceded at trial that a test should have been done. (R.) (Tr. Transcript 406:21-25). This evidence was not simply an avenue of investigation that might have led in any number of directions; rather, it was critical to the prosecution's case-in-chief: that Petitioner repeatedly beat the victim with a handgun resulting in a head wound that required 6 staples.

Moreover, once Petitioner exhausted his collateral attack in both state and federal courts, he motioned for a Scientific Analysis of Human Biological Evidence on the handgun. In the post-conviction motion, Petitioner argued that the analysis would exculpate him by showing that there was neither blood nor hair fibers, from the victim, on the handgun. This analysis would have been inconsistent with the type of beating the victim allegedly suffered. The exculpatory evidence would have shown that it was factually impossible for Petitioner to be guilty of a malicious wounding.

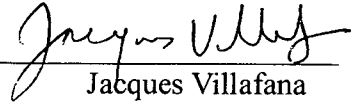
The destroyed evidence prevented Petitioner from obtaining a scientific analysis, as well as presenting the analysis to the State's highest court under a writ of actual innocence. That said, when the State applied the statutes to destroy Petitioner's evidence without notice, it violated his Due Process right.

CONCLUSION

For the foregoing points and authorities, Petitioner prays that this Honorable Court reverse the State court's ruling, as well as his conviction for violating his Due Process right.

Date: 11 / 27 / 2018

Respectfully Submitted



Jacques Villafana