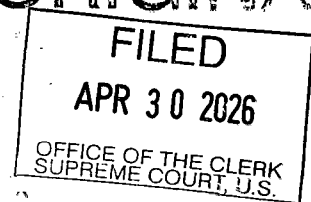


No. 26-5100 ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Paul Allen Marshall — PETITIONER
(Your Name)

Virginia vs.
Commonwealth Attorney RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Virginia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Paul Allen Marshall
(Your Name)
VA DOC centralized mail Dist. center
3521 Woods way
(Address)

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

None
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether Mr. Marshall's U.S. Constitution Amend VI right to a speedy trial was violated?
- 2) if Mr. Marshall's U.S. Constitution Amend VI right to confrontation clause was violated due to him not being able to confront a witness at trial?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

Paul Allen Marshall

Virginia

RELATED CASES

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3, 5, 9, 11

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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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 C 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☒ is unpublished.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 State Trial Court 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☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was April 24, 2025. A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: June 2, 2025, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

U.S. Constitution, Amend 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."

Virginia Constitution, Art. 1, § 8

"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 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 judgment of his peers."

Virginia Constitution, Art. 1, § 11

"That no person shall be deprived of his life, Liberty, or property without due Process of law that, in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred."

Virginia Constitution, Art. 1, § 7

"That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised."

Virginia Code § 17.1-330 Declaration of Judicial emergency, states in pertinent Part as follows:

A. A judicial emergency may be declared as provided in this section when a disaster, as defined in § 44-146.1b, substantially endangers or impedes the operation of a court, the ability of persons to avail themselves of the court, or the ability of litigants or others to have access to the court or to meet schedules or time deadlines imposed by court order, Rule, or statute.

B. Any order declaring a judicial emergency shall specify (i) the court or courts and facilities affected by the order; (ii) the nature of the disaster necessitating the order; (iii) the time period or duration of the judicial emergency; and (iv) any other information relevant to the suspension or restoration of court operations, including but not limited to extension of deadlines.

D. Notwithstanding any other provision of law, such order may suspend, toll, extend, or otherwise grant relief from deadlines, time schedules, or filing requirements imposed by otherwise applicable statutes, rules, or court orders in any court processes and proceedings, including all appellate court time limitations.

Virginia. Code § 19.2-243, Limitation on prosecution of felony due to lapse of time after finding of probable cause, states, in pertinent part, as follows:

Where a district court has found that there is probable cause to believe that an adult has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court; and if the accused is not held in custody but has been recognized for his appearance in the circuit court to answer for such offense, he shall be forever discharged from ~~the state and probable cause~~ Prosecution therefor if no trial is commenced in the circuit court within nine months from the date such probable cause was found.

If there was no preliminary hearing in the district court, or if such Preliminary hearing was waived by the accused, the commencement of the running of the five and nine months periods, respectively, set forth in this section, shall be from the date an indictment or presentment is found against the accused.

U.S. Constitution. Amend VI - Confrontation Clause
by its words provides a criminal defendant the right to "confront" face-to-face the witnesses giving evidence against him at trial. That core guarantee serves the general perception that confrontation is essential to fairness, and helps to ensure the integrity of the factfinding process by making it more difficult for witnesses to lie.

STATEMENT OF THE CASE

On February 27, 2018; Sgt. Weston of the King George Sheriff's Department arrested Mr. Marshall on warrants alleging that he violated Virginia Code § 18.2-51, specifically alleging that he maliciously shot Sabrina Leigh Ryce, and Alleging that he violated Virginia code § 18.2-53.1, specifically alleging that he used a firearm while committing a felony, malicious shooting. These warrants alleged violations occurring the same day they were issued. Mr. Marshall was given no bond and has been held since that date.

This matter was initially set for arraignment in the general District Court for King George County (hereinafter "GDC") on February 28, 2018.

On that date, the office of the Public defender was appointed. The warrants were then amended in GDC to allege that the victim was a family or household member and the matter was transferred to the Juvenile and domestic Relations District court for King George County (hereinafter "the JDR court") and set for a preliminary hearing on May 7, 2018. On March 18, 2018, the defendant presented a motion for bond to the JDR court, which was denied.

May 7, 2018 - The Defendant's preliminary hearing was conducted in the JDR Court and the matter was certified to this court.

July 12, 2018 - The Commonwealth's Attorney presented the matter to the grand jury, which returned True bills for both malicious shooting and use of a Firearm in Commission of a Felony, Aggravated Malicious Wounding, Abduction, Strangulation, Attempted 2nd degree Murder; also Jury trial was set for October 4, 2018.

July 23, 2018 - on a motion from the Commonwealth Attorney, the charge of malicious shooting was dismissed without prejudice.

October 4, 2018 - Commonwealth Attorney requested Mr. Marshall complete a competency to stand trial evaluation, jury trial was continued despite Mr. Marshall request for speedy trial right to be acknowledged.

December 6, 2018 - status was held for competency evaluation Mr. Marshall was competent Commonwealth Attorney wasn't satisfied of the results and requested the court for another competency evaluation with a provider of his offices choice.

December 20, 2018 - matter was continued evaluation wasn't conducted.

February 28, 2019 - Mr. Marshall was again found competent to stand trial.

May 2, 2019 - motions hearing, was continued by request of commonwealth.

June 13, 2019 - The motion to suppress and For Expert Funds and corresponding ex parte hearing was denied.

July 18, 2019 - These matters was set for jury trial at request of commonwealth attorney

November 19, 2019 - Jury trial continued due to unavailability of counsel, the court had Mr. Marshall sign a temporary waiver of his speedy trial right effective until April 2, 2020.

March 16, 2020 - The supreme court of Virginia entered an order declaring a judicial emergency in response to the novel coronavirus Covid-19, ordering courts to "continue all civil, traffic and criminal matters, including jury trials, subject to a defendants right to a speedy trial." That order was initially effective through April 6, 2020.

March 27, 2020 - first extending order with limited modifications.

December 18, 2020 - Extension order was entered and was effective through January 28, 2021,

~~March 31, 2020~~ March 31, 2020 through April 2, 2020 jury trial was continued to May 27, 2020 through May 29, 2020 and Mr. Marshall signed an order agreeing to toll temporary his right to a speedy trial until the new trial date.

May 1, 2020 - the supreme court of Virginia entered an order clarifying the tolling of Statutory trial deadlines during the Judicial Emergency. That order clarified that references in the Emergency orders to protecting "A defendant's right to a speedy trial" refer to the constitutional right to a speedy trial.

May 6, 2020 - the supreme court of Virginia entered an order extending the emergency order.

May 18, 2020 - all courts may hear in person non-emergency matters if they determine it is safe to do so.

June 22, 2020 - order extended, laid out procedures by which jurisdictions may submit Plans to Supreme court of Va in order to conduct jury trials.

August 13, 2020 - Supreme court of Va approved a plan for resumption of jury trials for Stafford county, which borders King George county to the west. Jury trial was set for August 10, 2020 through August 12, 2020 on May 28, 2020 over Mr. Marshall objection.

August 10, 2020 - Mr. Marshall requested this ^{circuit} court to dismiss these matters on speedy trial grounds, motion dismissed
bond also denied King George County didn't approve a jury plan into January 20, 2021.

May 16, 2021 - start of 4 day jury trial

July 29, 2021 - trial court imposed the jury recommended sentence.

March 17, 2022 - hearing was held on the motion to set aside the jury's verdict motion denied.

April 17, 2024 - A three panel of the court of appeals affirmed the trial court decision.

May 9, 2024 - Mr. Marshall filed a petition for rehearing en banc petition denied.

May 5, 2021 - Errored in admitting statement recording by victim's brother which was an out of court statement entered in for the truth of the matter was constituted inadmissible hearsay.

REASONS FOR GRANTING THE PETITION

The ~~sixth~~ Amendment of the United States Constitution states, "that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. CONST. AMED. IV. The United States Supreme Court has "held that, by virtue of the Fourteenth Amendment, the sixth amendment right to a speedy trial is enforceable against the states as 'one of the most basic rights preserved by our constitution.'" Smith v. Hooley, 393 U.S. 374, 374-75 (1969) (quoting Klopfer v. North Carolina, 386 U.S. 213, 226 (1967)). The Virginia constitution states, in part, 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." VA. CONST. ART. I § 8.

Additionally, Virginia Code § 19.2-243 stipulates that a defendant "shall be forever discharged from prosecution for such offense if no trial is commenced, in the circuit court within five months" if such defendant is held in custody or nine months if the defendant has been released on bond. However, as outlined above, under the emergency orders from the Supreme Court of Virginia, this statutory deadline has been tolled.

The Virginia Supreme Court in issuing its emergency declarations has been relying on Virginia Code § 17.1-330; This provision gives no explicit permission to suspend jury trials and no directive regarding any constitutional rights. That statute allows the court to "suspend, toll, extend, or otherwise grant relief from deadlines, time schedules, or filing requirements imposed by otherwise applicable statutes, rules, or court orders in any court processes and proceedings." Virginia Code § 17.1-330(D). This provision is explicitly limited to statutes, rules, and court orders and does not give the Supreme Court authority to suspend constitutional rights, such as the constitutional right to a speedy trial and the constitutional right to a jury trial.

The Supreme court even acknowledged this distinction in its May 1, 2020 order clarifying the tolling of speedy trial deadlines. In that order, the Supreme court noted that its emergency orders provided that criminal matters should proceed "if necessary 'to avoid violating a defendant's right to a speedy trial right.'" The Supreme court noted that the reference in that phrase was to constitutional speedy trial right, as distinct from the statutory speedy trial right. The Supreme court correctly observed that its authority under Virginia code § 17.2-330(D) "applies only to deadlines and other time limitations imposed by statutes, rules, or court orders" as distinct from those imposed by constitutional obligations. Thus, just as the Supreme court lacks authority to suspend the authority to suspend the constitutional right to a speedy trial it also lacks the authority to suspend a defendant's constitutional right to a jury trial.

Constitutional speedy trial

In Barker v. Wingo, the United States Supreme court established that dismissal "is the only possible remedy" for a violation of a defendant's right to a speedy trial, 407 U.S. 514, 522 (1972). That case also identified four factors which must be considered in reviewing compliance with the constitutional demand for a speedy trial: "length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id.* at 530. That court unequivocally stated that "none of the four factors identified [are] either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Id.* at 533. Rather, that court established a balancing test by which these factors "must be considered together with such other circumstances as may be relevant." *Id.* Those factors have been adopted in Virginia. Howard v. Commonwealth, 281 Va. 455 (2011). Taking those four factors in turn, the balance clearly tilts in favor of the defendant and demonstrates that he has been deprived of his constitutional right to a speedy trial and the charges must be dismissed.

Virginia . code §19.2-243, Limitation on prosecution of felony due to lapse of time after finding of probable cause, states, in pertinent Part, as follows:
where a district court has found that there is probable cause to believe that an adult has committed a felony, the accused; if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court; and

if the accused is not held in custody but has been recognized for his appearance in the circuit court to answer for such offense, he shall be forever discharged from prosecution there for if no trial is commenced in the circuit court within nine months from the date such probable cause was found.

if there was no preliminary hearing in the district court, or if such Preliminary hearing was waived by the accused, the commencement of the running of the five and nine months periods, respectively, set forth in this section, shall be from the date an indictment or presentment is found against the accused.

U.S constitution. Amend VI - confrontation clause; by its words provides a criminal defendant the right to "confront face to face the witnesses giving evidence against him at trial. That core guarantee serves the general perception that confrontation is essential to fairness, and helps to ensure the integrity of the factfinding process by making it more difficult for witnesses to lie.
see Commonwealth V. Murphy, 107 Va. Cir. 297 HN 12 There is no covid exception to the constitution of the united states or to the constitution of the commonwealth of va if, from Public safety measures deemed necessary for the administration of Justice, there arise significant and negative consequences affecting a citizens fundamental or constitutional rights, Particularly the liberty interest of a citizen, in a criminal case, The commonwealth, and not the citizen, should bear the consequences.

Length of Delay

Commonwealth v. Murphy, 107 Va. Cir. 297 (1912) - There is no COVID exception to the constitution of the United States or to the Constitution of the Commonwealth of Virginia. If, from public safety measures deemed necessary for the administration of justice, there arise significant and negative consequences affecting a citizen's fundamental or constitutional rights. Particularly the liberty interest of a citizen in a criminal case, the Commonwealth, and not the citizen, should bear the consequences.

Barker discusses the length of delay as a "triggering mechanism" which is "necessarily dependent upon the peculiar circumstances of the case." *Id.* at 530-31. For purposes of speedy trial, this period begins once a defendant is arrested. *Fowlkes v. Commonwealth*, 218 Va. 763, 766 (1978). In this case, Mr. Marshall has been arrested since February 26, 2018 and the matter has been pending since that date. As a result, he has been held nearly ~~10~~ 9 years trying four times to have his constitutional rights respected.

While the circumstances of different cases may lead to longer acceptable delays, such circumstances are more appropriately considered for the reason for delay. See *Barker v. Wingo*, 407 U.S. at 531 ("The delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge") as for the threshold issue, 35 months since arrest is certainly a period "sufficient to merit further review." *Miller v. Commonwealth*, 29 Va. App. 625, 633 (1999) (that court reviewed a delay of approximately thirteen months between detainer and trial.) See also *Arnold v. Commonwealth*, 18 Va. App. 218 (1994) (finding that a "fourteen months delay from [the defendant's] initial indictment to her trial requires further analysis.")

Reason for delay

There are many reasons for the delays in this trial, many due to the Commonwealth's request, others caused by Mr. Marshall while those are not his fault are properly chargeable to him. Additionally, for the period from November 19, 2019 until April 2, 2020, was temporary waiver of speedy trial rights despite two jury trials set for October 4, 2018 to November 19, 2019 which Mr. Marshall requested his right to speedy trial be reviewed by Judge and was denied.

Delays since May 29, 2020 have been entirely caused by the emergency orders of trial court and the Virginia Supreme Court and the failure of this court to enact a plan for conducting jury trials. As discussed above, those orders suspended constitutional rights without adequate authority. The result has been to place the defendant in the constitutionally untenable position of choosing between two of the essential guarantees made to criminal defendants by both the United States and Virginia constitutions. The defendant highlights both but chooses the United States and Virginia constitutional violations.

The United States Supreme Court has clearly stated that "A defendant has no duty to bring himself to trial; the state has that duty as well as the duty of insuring that trial is consistent with due process. Moreover, for the reasons earlier expressed, society has a particular interest in bringing swift prosecutions, and society's representatives are the ones who should protect that interest."

Barker v. Wingo, 407 U.S. 514, 521 (1972). Further, the United States Supreme Court has stated "that trial by jury in criminal cases is fundamental to the American scheme of justice" in holding that the Fourteenth Amendment Due Process Clause applies the jury trial requirements of the Sixth Amendment to the states.

Duncan v. Louisiana, 391 U.S. 145, 149 (1968). Therefore, the delay cannot be excused simply because the defendant is choosing to exercise his right to a jury trial. The Commonwealth, through both the Commonwealth's attorney's office and the court, is obligated to ensure that the defendant is allowed to exercise all of his fundamental constitutional rights.

Additionally, Virginia code § 17.1-330(c) permits a court to conduct sessions in a neighboring jurisdiction not effected by the disaster, while that statute contemplates a neighboring jurisdiction not effected, it could allow for a transfer to a neighboring jurisdiction less effected by the disaster. Counsel is unaware of any efforts made to transfer proceedings such as this one to the neighboring jurisdiction of Stafford once that county was approved to conduct Jury trials, but the availability of that avenue of guaranteeing the defendant his constitutional rights to a speedy trial and a jury trial highlights the failure to ensure Mr. Marshall was tried in a timely manner.

Mr. Marshall's assertion of his Right

The United States Supreme court noted that the assertion of the speedy trial right can vary greatly depending on the other circumstances listed, but noted "that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Barker v. Wingo*, 407 U.S. at 531-32. While some continuances were with the defendant's consent, and the defendant has entered a temporary waiver of speedy trial for a portion of the delay, the defendant has demanded to trial court that his right to a speedy trial be acknowledged. This is the 4th time Mr. Marshall have asked constitutional rights be acknowledged.

Prejudice to the defendant

In assessing Prejudice to the defendant, the United States Supreme court has identified "three basic demands of criminal justice" protected by the right to a speedy trial: [1] to prevent undue and oppressive incarceration prior to trial, [2] to minimize anxiety and concern accompanying public accusation and [3] to limit the possibilities that long delay will impair the ability of an accused to defend himself." *Smith v. Hooey*, 393 U.S. at 378 (quoting *United States v. Ewell*, 383 U.S. 116, 120 (1966)).

The defendant Mr. Marshall has been held for nearly five years while he enjoys the presumption of innocence on these charges. This elimination of his freedom served to compound the anxiety and concern which accompany the public accusation. Mr. Marshall has made many claims that the delay has impaired his ability to defend himself.

Confrontation - out of court statements - truth of matter asserted

in the U.S. Supreme Court Digest, Lawyers' Edition the confrontation clauses requirements apply only when the prosecution uses out of court statements to prove the truth of the matter, asserted. The confrontation clause provides that in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him. In operation, the clause protects a defendant's right of cross-examination by limiting the prosecution's ability to introduce statements made by people not in the courtroom. and so the clause bars the admission at trial of any hearsay meaning, out of court statements offered to prove the truth of the matter asserted.

"Hearsay is a statement, other than one made by the declarant while testifying at trial, which is offered to prove the truth of the matter asserted." Clark v. Commonwealth, 14 Va. App. 1068, 1070, 421 S.E.2d 28, 30 (1992). "As a general rule, hearsay evidence is incompetent and inadmissible," and the party seeking to rely upon an exception to hearsay rule has the burden of establishing admissibility." Larson v. Commonwealth, 52 Va. App. 423, 431, 663 S.E.2d 553, 557 (2008) (quoting Neal v. Commonwealth, 15 Va. App. 416, 420-21, 425 S.E.2d 521, 524 (1992))

During the course of the trial, the Commonwealth in Mr. Marshall's trial sought to introduce a 911 call made by the victim's brother, Mr. Marshall objected to the admission of the 911 because he wasn't able to confront witness. The Commonwealth did not argue that the 911 call fell within one of the recognized exceptions to the hearsay rule, because it was ^{used} ~~conceded~~ for the truth of the matter asserted. it is reversible error because Mr. Marshall wasn't able to confront the witness statements.

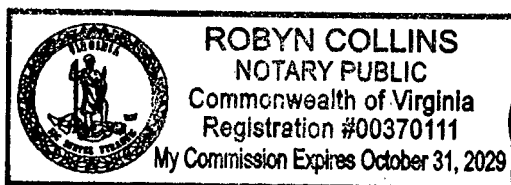
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ann BOO

Date: 4/30/26



RC