

05-51 BUSTILLO V. JOHNSON

DECISION BELOW: Unreported, No. 042023, 3/7/05

LOWER COURT CASE NUMBER: 042023

QUESTION PRESENTED:

1. Whether, contrary to the International Court of Justice's interpretation of the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, 100-101, state courts may refuse to consider violations of Article 36 of that treaty because of a procedural bar or because the treaty does not create individually enforceable rights.

2. Whether, in deciding if improperly withheld exculpatory evidence might have affected the outcome of the original trial and thus is "material" under *Brady v. Maryland*, 373 U.S. 83 (1963), a court may (a) refuse to consider the strength or weakness of the prosecution's evidence at the original trial; (b) analyze the potential effect of the withheld evidence on an item-by-item basis, rather than in the aggregate; (c) substitute its judgment for the likely effect on the jury by attempting to reconcile the exculpatory evidence with the original verdict; and (d) give determinative weight to the testimony of trial counsel that he was unsure whether the improperly withheld evidence would have affected the outcome of the trial.

3. Whether the Supreme Court of Virginia's refusal to hear petitioner's Brady claim on the ground that he did not file the transcripts of a hearing held during habeas corpus proceedings is an adequate and independent state ground of decision that precludes this Court's review of such claim.

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION. CONSOLIDATED WITH 04-10566 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 11/7/2005