

## Supreme Court to Review Fairfax Case

*Convicted of Murder, Honduran Says Police Denied Him Access to Embassy*

By TOM JACKMAN  
Washington Post Staff Writer

The U.S. Supreme Court agreed yesterday to hear the appeal of a convicted murderer from Fairfax County who contends that police never told him he had the right to consult embassy officials from his native Honduras.

The case of Mario A. Bustillo, who formerly lived on Backlick Road in Springfield, was one of two cases accepted by the high court yesterday to resolve the question of how to apply the international Vienna Convention to the U.S. justice system. The treaty, signed by the United States in 1969, requires that authorities who arrest a foreign national "shall inform the person concerned without delay of his rights" to speak with someone from his embassy or consulate.

The Supreme Court's decision also will affect a pending death penalty case in Fairfax. Attorneys for Dinh Pham, a Vietnam native accused of strangling a Merrifield woman and her 22-month-old daughter in January 2004, have contended that Pham was not advised of his Vienna Convention rights, and the judge in the case is considering eliminating the death penalty in the trial as a sanction for violating the treaty.

One of Pham's attorneys said yesterday that he was considering asking that Pham's trial, set for Jan. 9, be postponed until the Supreme Court resolves the issue. Prosecutors said they would oppose a delay.

Bustillo was 19 when he was arrested in the Dec. 10, 1997, slaying of James R. Merry.

Merry was smoking a cigarette outside the Popeye's restaurant in the Springfield Plaza shopping center when he was struck in the head with a baseball bat.

Fairfax police and prosecutors said Bustillo mistakenly believed Merry was a member of a rival gang.

Bustillo has maintained his innocence since his arrest. Alexandria lawyer John C. Kiyonaga vigorously pursued Bustillo's appeal for seven years, mainly arguing that Bustillo was innocent.

Fairfax prosecutors had three eyewitnesses who identified Bustillo as the killer.

But two other witnesses said someone else, whom they knew only by his nickname, struck the fatal blow.

Bustillo's brief to the Supreme Court, written by Jeffrey A. Lamken, argues that if Bustillo had had access to the Honduran Embassy, Honduran officials would have assisted him in finding the other suspect.

"Virginia's failure to observe [Bustillo's] Vienna Convention rights deprived him of evidence that not only raises reasonable doubt about his guilt, but also strongly supports his innocence," Lamken wrote.



BY LUCIAN PERKINS — THE WASHINGTON POST

Alexandria lawyer John C. Kiyonaga, right, with Exaltacion and Belinda Bustillo, parents of Mario A. Bustillo, a Honduran man convicted of murder whose appeal will be heard by the U.S. Supreme Court.

At trial, Fairfax prosecutors ridiculed the notion of the alternative suspect. But Kiyonaga eventually obtained a videotape of the alternative suspect, Julio Cesar Osorto, confessing to the slaying.

Authorities later turned over police reports to Bustillo's appellate attorneys indicating that Osorto had been stopped not far from the crime scene. Virginia courts, however, rejected his appeals. Lamken's brief says that the United States has apologized to Honduras for violating Bustillo's Vienna Convention rights.

"I have the proof that I didn't do this," Bustillo told The Washington Post in 2002. "They robbed my freedom. They robbed my dreams."

Fairfax Commonwealth's Attorney Robert F. Horan Jr. said, "Historically, the Vienna Convention has never been found by the federal courts to be grounds to throw out a confession, or to throw out a case."

Horan said the Supreme Court had considered the argument in other Virginia cases, and "so far, they have not found the Vienna Convention creates any substantive rights equal to the rights that exist in the American Constitution."

The U.S. justice system recently has begun paying closer attention to the issue, with some prodding from the International Court of Justice. After Mexico filed a complaint with the

international court in 2003, contending that the U.S. had violated the Vienna Convention rights of 51 Mexican defendants on death row, the ICJ ordered the U.S. government to review all 51 cases, saying Mexican consular officials could have aided the defendants.

After that ruling, the governor of Oklahoma commuted the death sentence of one of the Mexican defendants, acknowledging that his Vienna Convention rights had been violated. Earlier this year, President Bush ordered a review of all remaining cases.

As another Mexican case headed to the U.S. Supreme Court from Texas on the same issue, Bush withdrew the United States from the portion of the Vienna Convention that gives the international court final jurisdiction over those who say their rights have been violated. The United States had proposed that portion of the treaty, in part to aid the safety of U.S. citizens held in other countries.

Now the court has accepted not only Bustillo's case, but also a case from Oregon.

The defendant in that case is Moises Sanchez-Llamas, a Mexican, who was convicted of attempted murder after wounding a police officer in 1999. He was sentenced to 20 years in prison and argues that his statements to police should have been suppressed because he was not told of his right to contact the Mexican consulate.