

No. 18-6861

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

NOV 16 2018

OFFICE OF THE CLERK

John Wilborn — PETITIONER  
(Your Name)

vs.

Kelly Ryan — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

First Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Wilborn  
(Your Name)

1 Harvard Road, P.O. Box 1218  
(Address)

Shirley, MA 01464-1218  
(City, State, Zip Code)

None

(Phone Number)

### QUESTION(S) PRESENTED

Where John Wilborn made an actual innocence claim, did the Commonwealth violate John Wilborn's rights by withholding the probable cause transcript from the courts below; did the Commonwealth violate John Wilborn's rights by tampering with the evidence.

Presently, John Wilborn has a copy of the probable cause transcript which contradicts the holding of the district court and John Wilborn does not have a copy of the autopsy report, even though he sought a copy, and by withholding these documents, and depriving John Wilborn from presenting fully his actual innocence claim, did the Commonwealth deny John Wilborn's right to have all the evidence in front of the court below for review, and thus denied John Wilborn the ability to prove all the constitutional violations.

Did the court below err in declining to issue a certificate of appealability, and should this court issue a certificate of appealability.

## 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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## TABLE OF AUTHORITIES CITED

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## OTHER

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 A 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 is unpublished.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 B 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 \_\_\_\_\_ 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 October 15, 2018, and received on October 29, 2018

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 \_\_\_\_\_. 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**

**Fifth and Fourteenth Amendments to United States Constitution.**

## STATEMENT OF THE CASE

Docket No. 1:11-cv-11797 -- District Court -- dated  
August 15, 2012.

I did have a claim, motion for probable cause hearing transcript, motion for autopsy report, was in front of the court, the court denied my petition without putting all the evidence in front of the court, yes, the probable cause hearing transcript was legal for me to have and the autopsy report, the probable cause hearing, Rule 5-C-2254, Docket No. First Circuit -- date filed, November 26, 2012, 12-2407, motion for probable cause hearing in front of court motion for, autopsy report, in front of the court, Rule 5-C-Legal for me to have after the applicability was approved I was not given probable cause hearing transcript, no autopsy report.

I couldn't present my case, yes, I have the probable cause transcript, I need a copy of the autopsy report as soon as possible. Yes, I can prove all constitutional errors. The First Circuit denied my petition on September 4, 2013, the United States Supreme Court docket no. 13-7025, letter from United States Supreme Court dated October 22, 2013, yes, I asked the court to appoint counsel, motion for probable cause transcript, autopsy report to be approved. And, all errors be in front of the court, the court denied my petition without putting the probable hearing, autopsy

report, all errors in front of the court. I didn't default, I did not waive any rights. Jennings, trial attorney, knew at the probable cause hearing in November of 1976 that all my rights were being violated, he knew that witnesses could testify that my right hand was not cut as the scene of the crime.

Volume 4, p. 71, from the probable cause transcript, Lt. Coppinger's testimony is that he arrived at the scene of the crime at 10:00 am, October 4, 1976, he said that the body was discovered on the threshold, he lied, after he arrived, the medical examiner arrived, between 10:00 and 10:30 am on October 4, 1976, he said that he examined the body and that the body was laying there for ten to 12 hours. He testified that the body could have been dead for 12 hours at that point. The death certificate says that the victim died, October 4, 1976, in the am, he can't die in the am on October 4, 1976, ten to 12 hours from 10:30 am before that he can only die in the pm on October 3, 1976, before midnight, the medical examiner testified that the body could have laid there for 12 hours before 10:30 am, the medical examiner's testimony is in Volume 1, pps. 13 and 15, the medical examiner's testimony on pps. 31 and 32 is that the medical examiner testified that the body was moved, and at p. 32, that the body was on his back, based on his report, six to ten hours for lividity to form on his back, at the probable cause hearing and at trial, none of the pictures showed the body on it's

back. At trial the coroner didn't tell the jury that the body was moved, the state's main witness testified that the body was across the threshold before the victim died, they lied and said that she was trying to get an ambulance and the victim was still alive, the witness lied, Jennings, knew that the witness was lying and the victim was dead before midnight, October 3, 1976, Jennings, trial attorney also knew that only negative blood type was admitted into evidence at the probable cause hearing, trial and the grand jury, John Wilborn's blood type was typed in 1979 at the Shattuck Lemuel Hospital, October 4, 1976, Lynn Police, say that they arrested John Wilborn, yes, I was found not guilty of armed robbery during my trial in 1978, grand jury, January of 1977, probable cause hearing, November of 1976, direct appeal in January of 1981. Jennings, trial attorney didn't make sure that all errors were in front of the court. Margorie Q. Swift report was admitted into evidence at the probable cause hearing, it says O-negative. At trial, Joseph Mastone testified, Volume 1, pps. 58, 59 and 60 that one blood type was typed at the scene, that blood type was O-negative, the dead man's blood type, Mastone testified at the probable cause hearing that one blood type was typed at the scene of the crime.

At trial, Mastone testified at p. 908, the court gave him a court order to put his results from the scene of the crime in front of the courts, he told him to tell his, either negative or positive, pps. 938, 939, and 940, Mastone

testified that only the victim's blood type was typed at the scene of the crime.

Please explain why Jennings did not make sure that the time of death was correct, October 3, 1976, why he didn't point the contradiction out, why didn't he make sure that the record says O-negative, the Margorie Swift report is dated October 14, 1976, John Wilborn is O-positive and is dated 1979.

All of the aforementioned establishes a violation of the Fifth and Fourteenth Amendments as established by this court in Ashe v. Swenson, 397 U.S. 436 (1970); Gideon v. Wainwright, 372 U.S. 335 (1964); Kyles v. Whitley, 514 U.S. 419 (1995); McQuiggin v. Perkins, 569 U.S. \_\_\_\_ (2013); Panetti v. Quarteman, 551 U.S. 930 (2007) and Wearry v. Cain, 136 S.Ct. 1002 (2016).

As for the motion for the autopsy report, at volume 1, pps. 13, 14, 15, and 16 of the probable cause hearing, the medical examiner testified that the body laid there for ten to 12 hours, 10 AM to 10:30 AM, October 4, 1976, he examined the body and said that it could have laid there for 12 hours, p. 16, he testified that the lividity was formed on it's back, six to ten hours, he said in it's report, posterior lividity, the body was lying on it's back ten to 12 hours before 10:30 AM, the victim can't die in the AM, only in the PM, the death certificate says that he died in the AM on October 4, 1976, the autopsy report contradictions state witnesses testimony. The

prosecution and Jennings trial attorney knew about the contradiction, the witness, the state's main witness said that she was in bed asleep in the AM and that woke up and heard a noise and went to see what was going on, she said that the victim was still alive and that the victim was stretched out across the threshold, she lied and said that she was trying to get an ambulance so that the victim would have medical attention. Pps. 31 and 32 of the probable cause hearing, he testified that the body was moved, Lt. Coppinger testified that his arrival at the scene of the crime October 4, 1976, at 10:00 AM in the morning, he said no witnesses were questioned at that time and the police testimony said that no witnesses were questioned, Volume 4, p. 71, Lt. Coppinger's testimony is that the body was lying on it's left side, probable cause hearing, and at trial, all the pictures show the body on it's right side.

## **REASONS FOR GRANTING THE PETITION**

Because John Wilborn has suffered violation of his Fifth and Fourteenth Amendment rights in his effort to prove actual innocence of the murder in this case, it is respectfully suggested that this court grant the petition for writ of certiorari, and issue a certificate of appealability to allow John Wilborn to present his pleading to the court below, the First Circuit Court of Appeals.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Wilborn

Date: 11-6-18