

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Marshall Baykin — PETITIONER
(Your Name)

vs.
People of the State of Illinois — RESPONDENT(S)
Kim Foxx Attorney

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Supreme Court

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

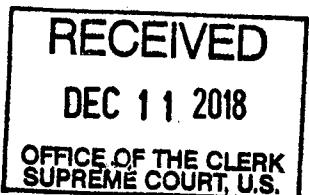
PETITION FOR WRIT OF CERTIORARI

Marshall Baykin
(Your Name)

2600 N. Brinton Ave
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Dixon Illinois 61021
(City, State, Zip Code)

n/a
(Phone Number)



QUESTION(S) PRESENTED

Marshawn Baykin was unable to adequately confront the D.N.A. Evidence used against him and the conclusions drawn by the forensic experts, where prior to trial the court denied his request to have the Illinois state Police determine the number of Nine-Loci D.N.A. Matches in the offender database, which denied Baykin his constitutional rights to present relevant evidence and a complete defense.

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:

Marsham Baykin #R-59817 (Petitioner) vs.
People of the state of Illinois (Respondents) ~~ATTY STATES~~
ATTORNEY office of Kim Foxx.

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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 _____ 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 is unpublished.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 is unpublished.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 A to the petition and is

reported at Case # 123543; 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 _____

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 9/26/18.
A copy of that decision appears at Appendix A.

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

U.S. Constitution, Amendment VI, XIV

Ill. Const. 1970, Art. I, Sec. 8

725 ILCS 5/166-5 (West 2006)

STATEMENT OF THE CASE

See next page for statement of the case.



STATEMENT OF FACTS

Marshaun Boykin was convicted of two counts of predatory criminal sexual assault following a jury trial. The first count alleged that on or about May 11, 2011, Boykin, who was 17 years of age or older, knowingly committed an act of sexual penetration upon M.W., to wit: contact between Boykin's penis and M.W.'s vagina, and M.W. was under 13 years of age when the act was committed, in violation of 720 ILCS 5/12-14.1(a)(1) (West 2010). (C. 54) The second count alleged a second act of sexual penetration under the same statute; namely, contact between Boykin's penis and M.W.'s anus. (C. 56)

Boykin ultimately opted to represent himself at trial. Before the court allowed Boykin to proceed *pro se*, the court admonished Boykin pursuant to Supreme Court Rule 401(a). (R. N12-16; PP2-12)

Prior to trial, Boykin filed a *pro se* motion for discovery. (C. 217) In this motion, Boykin requested a search of the Illinois State Police DNA database for nine loci matches, pursuant to 725 ILCS 5/116-5 (West 2010). (C. 220-222) Boykin requested the search in order to support his defense theory that anything less than a match at 13 loci is not a DNA match. (C. 222) The court denied Boykin's request for a DNA database search for nine loci matches on the ground that Boykin had no "good faith basis" to support such a search. (R. AAA21) The court also ruled that Boykin's theory, that anything less than a match at 13 loci was not a DNA match, was an issue for trial, not a pretrial motion. (R. AAA21-23)

At trial, the complainant, M.W., testified that her date of birth is

January 17, 1999. (R. OOO21) She was 16 years old at the time of trial. M.W. testified that on the night of May 11, 2011, she was "raped" by Boykin on a playground of Carver Elementary School. (R. OOO22-23) M.W. stated that she was familiar with Boykin before the "rape," from seeing him around her friend Javon's house. (R. OOO66) M.W. testified that at about 9:30 p.m. on the night in question, Boykin grabbed her hand and walked her over to the playground. (R. OOO23-24) Boykin then lifted M.W. up and put her on some playground equipment. (R. OOO26) Boykin pulled down M.W.'s pants and shorts, then unbuttoned his pants. (R. OOO27) Boykin inserted his penis in M.W.'s vagina, then in her anus. (R. OOO27-28) M.W. felt scared. (R. OOO28)

After the incident, Boykin and M.W. left the playground in opposite directions. (R. OOO28) M.W. went home later that evening, and told her mother about the incident. (R. OOO28-29) An ambulance arrived a little while later and took M.W. to Roseland Hospital. (R. OOO29) M.W. reported the incident to hospital staff. (R. OOO29) Samples were taken from M.W.'s vagina, anus and back. (R. OOO29-30)

A few days later, M.W. gave an interview at the Children's Advocacy Center. (R. OOO30) She also saw a doctor there. (R. OOO30)

A few months later, M.W. viewed a line-up at the police station. (R. OOO31-32) She identified Boykin from the line-up as the person who assaulted her. (R. OOO31-33)

On cross-examination by Boykin, M.W. stated that after the assault, she went to Javon's house before going home to report the incident to her

mother. (R. OOO55-56) M.W. stated that she went to Javon's house at first because her mother was not home. (R. OOO56) M.W. was at Javon's house for only few minutes before she went home. (R. OOO56)

Sirkethia Haywood, M.W.'s mother, testified that in May 2011, she lived with her five daughters, including M.W. (R. OOO79) M.W. was 12 years old at that time. (R. OOO80) Haywood was familiar with Boykin through a friend. (R. OOO97)

On May 11, 2011, Haywood left her house around 3:00 or 4:00 p.m. M.W. was home when Haywood left, and her demeanor was her usual. (R. OOO80) When Haywood returned home around 9:40 p.m., M.W.'s demeanor was not the same. (R. OOO81-82) M.W. appeared unhappy and afraid. Haywood had to go looking for M.W. before she saw her. (R. OOO82) Haywood spoke with M.W., then immediately went outside to call the police. (R. OOO82) An ambulance arrived and took M.W. to Roseland Hospital. (R. OOO83) Haywood accompanied M.W. to the hospital. (R. OOO84)

On cross-examination, Haywood testified that she called the police at 10:00 p.m. (R. OOO86) Haywood stated that she went looking for M.W. at a friend's house after Haywood initially returned home, because M.W. was out past her 8:00 p.m. curfew. (R. OOO89-90) Haywood did not know at first that M.W. had been at Javon's house that night. (R. OOO91) Haywood knew that M.W. and two of her other daughters had been with Boykin at one point that evening. (R. OOO92) Haywood and her husband eventually located M.W. and brought her home. (R. OOO93-94) M.W. reported the incident when they returned home, and Haywood called the police. (R. OOO94)

Haywood recalled that another woman named Audrey also called the police. (R. OOO95) However, Haywood did not recall that Audrey called the police around 2:00 a.m., or that Haywood and M.W. arrived at the hospital after 2:00 a.m. (R. OOO95-96)

Jeffery Thrun, a Chicago Fire Department Paramedic, testified that he was dispatched to M.W.'s home at around 2:25 a.m. on May 12, 2011. (R. OOO107) Upon arrival, Thrun spoke with M.W. in the presence of Haywood to determine what kind, if any, medical treatment M.W. needed at that point. (R. OOO107-108) In response, M.W. stated that around 10:00 p.m., she was on her way to a candy store when she was pulled around a corner by someone she knew and sexually assaulted. (R. OOO108) M.W. stated that her assailant "undid her pants and raped her." (R. OOO109) M.W. stated that she kept trying to get away and push the assailant off of her. But the assailant kept pulling her back by the arm. M.W. seemed very shaky and afraid. Thrun transported M.W. to Roseland Hospital. (R. OOO109)

Capri Reese testified that she was the triage nurse who initially treated M.W. at Roseland Hospital. Reese met M.W. in the emergency room at about 3:00 a.m. on May 12, 2011. (R. PPP7-9) M.W.'s mother was present. (R. PPP9) Reese spoke with M.W. to assess what kind of medical treatment she may need. (R. PPP10) M.W. reported that she was on her way to a candy store when she encountered a known male. (R. PPP11) As the two initially walked off together, the known male became aggressive and started pushing M.W. off to the side. (R. PPP11) The known male then sexually assaulted M.W., penetrating her vaginally and anally. Based on this report, samples

were collected from M.W. for a rape kit. (R. PPP11-12) Vaginal and anal swabs were collected from M.W. (R. PPP12) M.W.'s upper back was also swabbed after M.W. reported male contact with her upper back. (R. PPP18) Blood samples were taken from M.W. (R. PPP14) M.W. was also given medications to prevent sexually transmitted diseases and pregnancy. (R. PPP19-20) M.W. was shaken and withdrawn when Reese treated her. (R. PPP22)

Dr. Antonio Navarrete testified that he was M.W.'s treating physician in the emergency room. (R. PPP38-39) Dr. Navarrete treated M.W. at about 3:00 a.m. on May 12th. (R. PPP39-40) During the course of treatment, M.W. reported that she was on her way to a candy store and sexually assaulted, both vaginally and anally. M.W. reported that she knew the man. (R. PPP40)

Aside from collecting samples for a sexual assault kit, Dr. Navarrete conducted a pelvic and vaginal exam of M.W. (R. PPP41-43) During the vaginal exam, Dr. Navarrete observed a recent hymenal tear. (R. PPP43)

Lauren Schubert testified as an expert in DNA analysis. (R. PPP70-77) Schubert tested the anal and vaginal swabs, and the blood standard taken from M.W. (R. PPP78-79) Schubert separated the non-sperm cell DNA from the sperm cell DNA from the anal and vaginal swabs. (R. PPP76, PPP79) A human male DNA profile was identified on the sperm fraction of the vaginal swab. (R. PPP80) Schubert did not yet have Boykin's known DNA standard at that time. (R. PPP80) For the sperm fraction of the vaginal swab, there was only enough DNA to test at nine loci. (R. PPP80-81)

A human male DNA profile was also identified in the sperm fraction from the anal swab. (R. PPP87) This was a complete male DNA profile with information at all 13 loci. (R. PPP86-88) However, at two of the 13 locations, there was only partial information, so it was not complete at those locations. (R. PPP86-87) Schubert put the male profile from the anal and vaginal swabs into the DNA database. (T.R. PPP88) The database searched yielded an association to Tyrone Williams, also known as Marshaun Boykin. (R. PPP88) Schubert requested a confirmatory standard from Boykin. (R. PPP89)

Leonard Plaxico, an investigator with the State's Attorney's Office, testified that on November 15, 2011, he took buccal swabs from Boykin for DNA analysis. (R. OOO113-115) The evidence was sealed and transported to the Chicago Police Department. (R. OOO116)

The confirmatory testing for Boykin's buccal swab was assigned to forensic scientist Christine Prejean. (R. OOO 158-60; PPP89) Prejean testified that the DNA from the sperm fraction from the vaginal swab was compared to Boykin's known DNA profile. (R. OOO161) She testified that the two profiles "matched." (R. OOO162) However, Prejean stated that the match was only at nine loci and was not a complete profile. Prejean explained that a full DNA profile has DNA types at 13 locations. Here, there was only a DNA profile generated at nine possible locations, not the full 13. (R. OOO162) Prejean testified that this profile would be expected to occur in approximately one in 70 billions blacks. (R. OOO163)

Prejean also compared the DNA from the sperm fraction from the anal

swab to Boykin's known DNA profile. (R. OOO165) The two profiles "matched" and was a full profile. This profile would be expected to occur in approximately 1 in 39 quadrillion blacks. (R. OOO165)

Lynette Wilson, a forensic scientist with the State Police, testified that she analyzed the swab taken from M.W.'s upper back and compared it to the known DNA standard from Boykin. (R. PPP114-20) The DNA from the back swab "matched" Boykin's DNA at nine loci. (R. PPP121) This profile would be expected to occur in approximately one in 70 billion blacks. (R. PPP122)

Detective Brian McKendry testified that on June 9, 2011, he spoke with Boykin at the police station. (R. PPP138-39) Boykin stated that his date of birth is September 24, 1986. (R. PPP140)

Detective Joseph Leyendecker testified that M.W. identified Boykin from a line-up as the person who assaulted her. (R. PPP152) M.W. accompanied Leyendecker to the scene of the assault to point out exactly where it occurred. (R. PPP152)

In his defense, Boykin called Javon Gardner. (R. QQQ11) Gardner knew Boykin through a mutual friend. (R. QQQ12) Gardner denied playing any role in M.W.'s assault. (R. QQQ12) Gardner stated that he was with Boykin and a few others earlier on the night of the incident. (R. QQQ21-22)

Boykin also called Andrea Haywood, M.W.'s sister. (R. QQQ63-64) Haywood also stated that she was at the playground where the assault took place earlier on the night of the incident. (R. QQQ65-67) Haywood was with M.W., Javon and few others when Boykin walked up. (R. QQQ66) Haywood left M.W. out on the playground when Haywood was told that her other sister

wanted to see her. (R. QQQ67) When Haywood returned to the playground, no one was there. (R. QQQ69-70) Haywood also knew Boykin as "Ty." (R. QQQ89) Haywoood did not witness the assault. (R. QQQ91)

Boykin opted not to testify in his own behalf after being fully admonished by the court. (R. QQQ120)

At the close of all evidence, the jury found Boykin guilty of two counts of predatory criminal sexual assault. (R. RRR77) The court sentenced Boykin to two consecutive terms of 35 years in prison. (R. YYY61) This appeal followed.

REASONS FOR GRANTING THE PETITION

The reasons this petition should be granted are listed on the next pages: 12 through 19.

Argument

Marshaun Balkin was unable to adequately confront the D.N.A. Evidence used against him and the conclusions drawn by the forensic experts, where Prior to trial the court denied his request to have the Illinois State Police determine the number of nine-loci D.N.A. Matches in the offender database, which denied Balkin his constitutional right to present relevant evidence and a complete defense, see People v. Wright, 612 IL App (1st) 073106, ¶ 60, U.S. Const. Amend's. VI, IV; Ill. Const. 1970, art. 1, § 2, 8; Taylor v. Illinois, 84 U.S. 400 (1988). Also see Exhibits from brief pages 2 through 17.

ARGUMENT

Marshaun Boykin was unable to adequately confront the DNA evidence used against him and the conclusions drawn by the forensic experts, where prior to trial the court denied his request to have the Illinois State Police determine the number of nine-loci DNA matches in the offender database, which denied Boykin his constitutional right to present relevant evidence and a complete defense.

Given the extraordinary power that DNA evidence has on juries, thorough confrontation of the evidence is critical to achieve a fair and reliable jury verdict. DNA evidence is arguably the most powerful weapon in the State's arsenal. In fact, as this Court has noted, "whenever a DNA expert uses the words, 'it's a DNA match,' the jury believes the defendant is guilty." *People v. Wright*, 2012 IL App (1st) 073106 at ¶ 96. Prior to trial, Boykin sought to contextualize the DNA evidence against him by determining the quantity of nine-loci matches that exist in the Illinois DNA database. The trial court denied Boykin's request to order a DNA database search to reveal the number of nine-loci matches. The State exploited that ruling by telling the jury during closing arguments that the DNA evidence revealed, "it's him." (R. RRR13) A new trial is warranted because Boykin was denied his constitutional right to properly and fully confront the scientific evidence presented by the State, and to present a complete defense.

The circuit court's denial of a defendant's request for a pretrial DNA database search is reviewed for an abuse of discretion. *People v. Wright*, 2012 IL App (1st) 073106, ¶ 60.

A defendant has a constitutional right to present relevant evidence in support of a complete defense. U.S. Const. Amends. VI, XIV; Ill. Const., 1970, art. 1, §2, 8; *Taylor v. Illinois*, 484 U.S. 400 (1988). Prior to trial, Boykin attempted to exercise

his constitutional right to present relevant evidence in support of a complete defense when he requested a search of the Illinois State Police DNA database for nine loci matches, pursuant to 725 ILCS 5/116-5 (West 2010). (C. 220-222) Boykin requested the search in order to support his defense theory that anything less than a match at 13 loci is not a DNA match. (C. 222) The court denied Boykin's request for a DNA database search for nine loci matches on the ground that Boykin had no "good faith basis" to support such a search. (R. AAA21) The court also ruled that this was an issue for trial, not a pretrial motion. (R. AAA21-23) This ruling was clearly an abuse of discretion.

In *People v. Wright*, 2012 IL App (1st) 073106, this Court recognized that 725 ILCS 5/116-5 allows criminal defendants to seek pretrial DNA database searches to determine how many nine-loci matches there are in the State's database, and that the trial court in that case abused its discretion by failing to grant the defendant's request for a database search. ¶¶1, 11, 58. The court held that the statute only required a defendant to show that a search of and access to the DNA database was material to the defense investigation or relevant at trial. ¶80.

Wright is particularly instructive in this case. In *Wright*, defense counsel requested, under section 116-5, a DNA database search such as the one that Boykin requested here. *Id.* at ¶ 11. In his request, counsel noted that a study that was run of the Arizona DNA database in which there were 65,493 profiles, 144 pairs of individuals matched at nine or more loci. *Id.* The trial court denied counsel's request. *Id.* at ¶ 18. At Wright's jury trial, the State's DNA expert testified the male DNA profile extracted from the victim's rectal swabs matched the defendant's DNA profile at nine loci. *Id.* at ¶ 39. The expert also testified that he would expect

this profile to occur in one in 420 trillion black individuals. *Id.* On cross-examination, defense counsel began to question the expert about the significance of the Arizona offender database study, but was interrupted by the court. *Id.* at ¶ 43. Counsel rested without presenting any evidence. *Id.* at ¶ 47. The jury convicted the defendant of aggravated criminal sexual assault. *Id.*

On appeal, defendant argued, *inter alia*, that the trial court deprived him of his right to present a defense by: (1) failing to order the Illinois State Police to run a database search; and (2) by preventing the defense from asking the State's DNA expert any questions about the Arizona search. *Wright*, 2012 IL App (1st) 073106 at ¶ 56. Recognizing that section 116-5 was designed to allow defendants to qualify otherwise absolute DNA evidence, this Court held that it was not only proper to cross-examine an expert as to other database searches, but also that the trial court erred in refusing to order a DNA database search. *Id.* at ¶¶ 86, 97, 132. Specifically, this Court found that:

A trial court cannot bar a defendant's access to evidence that has a good chance of creating a reasonable doubt in the jury's mind, in light of the facts and circumstances of the case and other evidence that is likely to be admitted at trial. To do so would be to pervert the purpose of the statute and call into question the integrity of the criminal process.

Id. at ¶ 81.

Because all the statute required was that such evidence be material to the investigation of the defense or relevant at trial, the defendant had met the statutory threshold to request a DNA database search. *Id.* at ¶ 80. This Court held that the defendant should have been granted one and accordingly reversed defendant's conviction and remanded for a new trial. *Id.* at ¶¶ 132-33.

In *People v. Watson*, 2012 IL App (2nd) 091328, the appellate court held that trial counsel was ineffective for failing to sufficiently challenge a partial DNA match at only seven loci in a residential burglary case. ¶¶25-33. The court noted that counsel's failure to develop for the jury that the missing loci could be critical and, in fact, exculpatory, was not objectively reasonable. *Id.* at ¶ 26. The court also held that prejudice was established given the aura of infallibility that DNA evidence is often assumed to have and the fact that DNA evidence was the only direct evidence against the defendant. *Id.* at ¶33.

Here, like in *Wright*, section 116-5's threshold was clearly met. The statute only required Boykin to show that a search of and access to the DNA database was material to the defense investigation or relevant at trial. *Id.* at ¶80. Prejean testified that the DNA from the sperm fraction from the vaginal swab was compared to Boykin's known DNA profile. (R. OOO161) She testified that the two profiles "matched." (R. OOO162) However, Prejean stated that the match was only at nine loci and was not a complete profile. Prejean explained that a full DNA profile has DNA types at 13 locations. Here, there was only a DNA profile generated at nine possible locations, not the full 13. (R. OOO162) Prejean testified that this profile would be expected to occur in approximately one in 70 billions blacks. (R. OOO163)

Lynette Wilson, a forensic scientist with the State Police, testified that she analyzed the swab taken from M.W.'s upper back and compared it to the known DNA standard from Boykin. (R. PPP114-20) The DNA from the back swab "matched" Boykin's DNA at nine loci. (R. PPP121) This profile would be expected to occur in approximately one in 70 billion blacks. (R. PPP122)

As to the significance of a “match” at fewer than 13 loci, one legal scholar has explained that matching at fewer than 13 loci will *exclude* a suspect if it can be determined that there is no match at the remaining available loci. “When the same thirteen loci can be typed in a crime-scene sample, a mere nine-[loci] match will not generate a suspect. In fact, the discrepancies in the full profile at the other four loci will exclude a suspect as a possible source of crime-scene DNA.” David H. Kaye, *Trawling DNA Databases for Partial Matches: What is the FBI Afraid Of?*, 19 Cornell J.L. & Pub. Pol'y 145, 153–54 (2009).

Moreover, the trial court’s denial of Boykin’s pretrial motion was prejudicial. While M.W. identified Boykin as the person who assaulted her, there was no other evidence, aside from the DNA, that implicated Boykin. As noted above, DNA evidence is arguably the most powerful weapon in the State’s arsenal. “[W]henever a DNA expert uses the words, ‘it’s a DNA match,’ the jury believes the defendant is guilty.” *Wright*, 2012 IL App (1st) 073106 at ¶ 96. The prejudice in this case was heightened when the prosecutor argued in closing that the DNA evidence revealed “it’s him.” (R. RRR13) The prosecutor also told the jury that Boykin’s DNA was all over M.W.’s body. (R. RRR19)

In sum, in order for Boykin to exercise his constitutional right to adequately confront the State’s evidence and present a complete defense, Boykin should be permitted to determine the probability of finding nine-loci profile matches in the Illinois DNA database. Determining that a nine-loci match in an offender database occurs in a statistically significant manner is certainly relevant to effectively confront the statistical probabilities introduced by the State. Boykin was denied his constitutional right to fully confront the scientific evidence when the trial court

denied his request to search the Illinois database to determine the number of nine-loci matches. Thus, Boykin's convictions must be reversed and this cause remanded for a new trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11-13-18