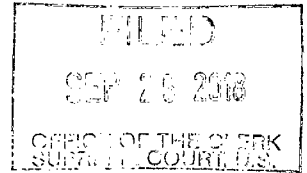


18-8207

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

WAYLAND LYNN DILTS

— PETITIONER

(Your Name)

vs.

MICHIGAN

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Michigan Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Wayland Lynn Dilts

(Your Name)

1500 Caberfae Hwy.

(Address)

Manistee, Michigan 49660

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

During Petitioner's jury trial, in state court, the prosecutor requested that the trial court "close the courtroom!" For that reason, the trial court then completely closed the courtroom to the public during the testimony of five prosecution witnesses. No evidence of any kind was ever presented to the trial court supporting the need for a courtroom closure. The trial court never gave a reason as to why it closed the courtroom. The prosecutor asked, and for that reason alone, Petitioner's trial was nonpublic. The question's are:

1. Whether Petitioner's Sixth Amendment right to a public trial was violated when the courtroom was closed to the public during his jury trial,
2. Whether the closure was a public-trial-violation so serious that it rendered Petitioner's trial fundamentally unfair,
3. Whether Petitioner's trial was the type of 'Secret-Trial' that this Court and the Sixth Amendment seeks to prevent,
4. Whether Petitioner is entitled to a NEW TRIAL.

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	14
CONCLUSION.....	15

INDEX TO APPENDICES

APPENDIX A - Copy of "GROUND 2" filed in the Ingham County Circuit in
Petitioner's post-conviction motion for relief from judgment
(9 pgs)

APPENDIX B - Ingham County Circuit denial, March 31, 2017 (2 pgs)

APPENDIX C - Michigan Court of Appeals denial, 338095, October 27, 2017 (1 pg)

APPENDIX D - Michigan Supreme Court denial, 156767, July 3, 2018 (1 pg)

APPENDIX E - Trial Transcript Pages, 10, 152-153, 185, 305-308, 382-383,
435, 485 (11 pgs)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Davis v Reynolds, 890 F.2d 1105, 1989 US App LEXIS 17817 (1989).	7
Dilts v Rapelji, 1:13-cv-00907 (March 10, 2016)	4
Estes v Texas, 381 US 532 (1965)	6
Gannett Co v DePasquale, 443 US 368 (1979)	6
Globe Newspaper Co v Superior Ct for Norfolk Cnty., 457 US 396 (1982).	5, 6
Johnson v Sherry, 586 F.3d 439, 2009 US App LEXIS 24929 (2009)	8
People v Brooks, 2018 Mich App LEXIS 270 (2018)	7
People v Dilts, 2011 Mich App LEXIS 1977 (Nov. 8, 2011)	4
People v Dilts, 492 Mich 865 (Sept. 4, 2012)	4
People v Kline, 197 Mich App 165, 1992 Mich App LEXIS 433	7
Presley v Georgia, 558 US 209 (2010).	6
Press-Enterprise Co v Superior Ct of Cal., Riverside Cnty., 464 US 501	6
Richmond Newspaper, Inc. v Virginia, 448 US 581 (1980)	6
Waller v Georgia, 467 US 39, 104 S.Ct. 2210 (1984)	6, 7

OTHER

U.S. Const, Am VI	5
Const 1963, art 1, §20	5

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 _____ 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 Michigan Supreme Court court appears at Appendix D 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 July 3, 2018.
A copy of that decision appears at Appendix D.

☐ 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

The Sixth Amendment to the United States Constitution provides, in relevant part:

In all criminal prosecutions, the accused shall enjoy the right
to a public trial.

STATEMENT OF THE CASE

Wayland Lynn Dilts ("Petitioner") was convicted following a jury trial in the Ingham County Circuit Court. Petitioner's conviction was affirmed. *People v Dilts*, 2011 Mich App LEXIS 1977 (Mich Ct App Nov. 8, 2011); 492 Mich 865 (Mich Sept. 4, 2012). Petitioner filed a petition for writ of habeas corpus, seeking habeas relief on the same four claims he raised on his appeal with the Michigan appellate courts. Petitioner later filed a motion in that court for stay and abeyance so that he could return to the state courts with additional claims not raised by appellate counsel on direct appeal. The federal court granted Petitioner's motion. *Dilts v Rapelji*, 1:13-cv-00907 (March 10, 2016).

Petitioner then filed a post-conviction motion for relief from judgment with the trial court, which was denied. *People v Dilts*, No. 09-001265-FC, 09-001332-FC, 09-001331-FH (Ingham Cty Cir Ct March 31, 2017). Petitioner unsuccessfully appealed that decision in the state court. Mich Ct App October 27, 2017; Mich. July 3, 2018.

Per its order, Petitioner then returned to the federal district court with a motion to lift the stay, reopen his habeas case, and allow Petitioner to amend his habeas petition by adding the new claims which were fully exhausted in the state courts.

In his post-conviction motion for relief from judgment, Petitioner raised a claim that his Sixth Amendment right to a public trial was violated because, during his trial, the courtroom was unjustifiably closed to the public during the testimony of five prosecution witnesses. See APPENDIX A (Issue #2). The

trial court denied relief on this particular claim, and denied the motion in its entirety. See APPENDIX B (Order dated March 31, 2017). The Michigan Court of Appeals denied leave. See APPENDIX C (denial dated October 27, 2017). The Michigan Supreme Court also denied leave. See APPENDIX D (denial dated July 3, 2018).

Before this Court today is Petitioner's claim that the trial court violated his Sixth Amendment right to a public trial because, the only reason for the closure was because the prosecutor asked. The prosecution in this case requested a courtroom closure and provided no detail about the need for a closure, and provided no evidence whatsoever supporting the need for a courtroom closure. Despite this complete lack of evidence, the trial court judge went ahead and Ordered the courtroom closed. For absolutely no justifiable reason at all, the courtroom thereafter was completely closed to the public during the testimony of five prosecution witnesses. Petitioner here has provided this Court with all transcripts involving the courtroom closure. See APPENDIX E (Trial Transcript pages (TTp) 10, 152-53, 185, 305-08, 313, 382-83, 435, 485). With regard to the closing of the courtroom during Petitioner's trial, fundamental unfairness was observed and the state courts erred when they found no public trial violation.

The federal and state constitution guarantee criminal defendant's the right to a public trial. US Const, Am VI; Const 1963, art 1, §20. While this Court has held that the right of access to a criminal trial is "not absolute," *Globe Newspaper Co. v Superior Ct for Norfolk Cnty.*, 457 U.S. 596, 606 (1982), the Court has never actually upheld the closure of the courtroom during a criminal trial or any part of it, or approved a decision to allow witnesses in such a trial to testify outside the public eye.

The Court has explained that "[t]he central aim of a criminal proceeding must be to try the accused fairly;" and the right to a public trial is "one created for the benefit of the defendant!" *Waller v Georgia*, 467 U.S. 39, 46 (1984)(quoting *Gannett Co. v DePasquale*, 443 U.S. 368, 380 (1979); *Presley v Georgia*, 558 U.S. 209, 212 (2010)(explaining that the right to a public trial "is the right of the accused"). Furthermore, "[i]n addition to ensuring that judge and prosecutor carry out their responsibly, a public trial encourages witnesses to come forward and discourages perjury!" *Waller*, 467 U.S. at 46. There is a strong presumption in favor of a public trial, grounded in the belief that it is critical to affording an accused a fair trial, as "'judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings!" *Waller*, 467 U.S. at 46 n4 (quoting *Estes v Texas*, 381 U.S. 532, 588 (1965)).

The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered. *Waller v Georgia*, 467 U.S. at 48; *Press-Enter. Co v Superior Ct of Cal., Riverside Cty.*, 464 U.S. 501, 510; *Richmond Newspaper, Inc. v Virginia*, 448 U.S. 581 (1980)(absent an overriding interest, articulated in findings, the trial of a criminal case must be open to the public). To justify the denial of access to any member of the public to a criminal trial, the reason must be a "weighty one!" *Globe Newspaper Co.*, 457 U.S. at 606.

Petitioner here provides this Court with five examples of cases where the prosecutor requested a courtroom closure and then provided that court with some detail about the need for the closure. Some evidence supporting the need for the closure:

1. In *Davis v Reynolds*, 890 F.2d 1105, 1989 U.S. App LEXIS 17817, before the jury was impaneled or any testimony had been taken, the prosecutor requested that the public be excluded during the complaining witness' testimony. The prosecutor noted that the judge at the preliminary hearing had cleared the courtroom during the same witness' testimony, and that the witness had experienced some emotional and psychological trauma associated with the incident.
2. In *Waller v Georgia*, 467 U.S. 39, 1984 U.S. LEXIS 86, the state moved to close to the public any hearing on the motion to suppress. The prosecutor argued that the suppression hearing should be closed because under the Georgia wiretap statute any publication of information obtained under a wiretap warrant that was not necessary and essential would cause the information to be inadmissible as evidence. The prosecutor stated that the evidence derived in the wiretaps would involve some persons who were indicted but were not then on trial, and some persons who were not then indicted. He said that if published in open court, the evidence might very well be tainted.
3. In *People v Kline*, 197 Mich App 165, 1992 Mich App LEXIS 433, the prosecutor requested closure during the complainant's testimony because of, the nature of the testimony, the age and mental disability of the complainant, and the fact that the complainant lived in a trauma center after the incident.
4. In *People v Brooks*, 2018 Mich App LEXIS 270, the prosecutor requested that the courtroom be closed during the complainant's testimony due to the sensitive nature of the charges and her young age, and because her allegations had caused significant conflict in her extended family.

5. In Johnson v Sherry, 586 F.3d 439, 2009 U.S. App LEXIS 24929, the prosecutor moved to close the courtroom during the testimony of three prosecution witnesses. The prosecutor informed the court that two witnesses had been killed under very suspicious grounds near the time of the preliminary examination and that a number of the remaining witnesses were afraid to testify at trial.

In each of those cases, the prosecutor requested a courtroom closure and provided the respective court with some detail about the need for the closure, provided the court with some evidence supporting the need for the closure. Petitioner here specifically points to the fact that in each of those cases, the court was presented with some evidence supporting the need for the closure.

During Petitioner's jury trial, the trial court did close the courtroom to the public during the testimony of several witnesses. The trial court was not presented with some detail about the need for the closure. The trial court was not presented with any kind of evidence supporting the need for a courtroom closure. The trial court in this case never considered Petitioner's Sixth Amendment right to a public trial. The prosecutor in this case simply asked the trial court to "close the courtroom!" and for that reason alone, Petitioner's jury trial was nonpublic. When compared to the above cases (1-5), and others like them around the country, involving courtroom closures, Petitioner's trial record demonstrates a level of unfairness never before witnessed by This Court.

In the instant case, before the jury was impaneled or any testimony had been taken, while addressing some trial related matter's, the following took place:

THE COURT: Any other matters we need to address?

MR. DEWANE(prosecutor): I have nothing right at this moment other than possibly, if necessary, during the victim's testimony we could close the courtroom. I don't see that to be an issue right now, but if it becomes an issue, I would make that motion before the Court outside the presence of the jury. Thank you.

THE COURT: I think that's wise. Also, as to the preliminary instructions to prospective jurors, I do have those if either side wants to review them.

See APPENDIX E ("Appx. E", TTP. 10 Ln 13-24). The prosecutor did not say [why] it may be necessary to close the courtroom, he did not say [who] exactly it was that the courtroom was to be closed to, he did not cite to any particular statute or court rule in which he was relying on for closure, and he provided no detail to the trial court about the need for the closure. No evidence of any kind was presented to the trial court supporting the need for a courtroom closure.

After a jury was selected and outside the presence of the jurors, the following took place:

THE COURT: All right. Are there any matters we need to address prior to entrance of the jurors?

MR. DEWANE: Judge, the only matter I would address is I talked to my victim, Lyndsay Dilts, and I think that's probably the only person we're going to be able to get through today. She has asked that the courtroom be closed during her testimony but for having her aunt, Jennifer Clancy, in here not -- as a support person but sitting back there. I know Ms. Hamlin has some people watching today and I mentioned that to them and they understand that and they can watch for an hour. I think it's going to be about 45 minutes before we get to testimony.

THE COURT: Okay. Any matters on behalf of your client?

MR. KAMAR(defense counsel): No, Your Honor.

(Appx. E, TTP 152 Ln 22 - TTP 153 Ln 13). The prosecutor requested closing the courtroom during the testimony of Lyndsay Dilts ("Lyndsay"). The prosecutor did not say [why] Lyndsay asked that the courtroom be closed, he did not say [who]

exactly it was that the courtroom was to be closed to, he did not cite to any particular statute or court rule in which he was relying on for closure, and he provided no detail to the trial court about the need for the closure. Again no evidence was presented to the trial court supporting the need for a courtroom closure in this case.

After that, the jury was brought in, instructions were given, and both the prosecutor and defence counsel gave their opening statements. The following then took place:

THE COURT: Thank you. Mr. Dewane, your first witness.

MR. DEWANE: The people call Lyndsay Dilts to the stand.

THE COURT: Counsel, in regard to this testimony, will the courtroom be closed?

MR. DEWANE: Please.

THE COURT: All right. I would ask all unnecessary parties to leave the courtroom. The courtroom will be closed.

(Appx. E, TTP 185 Ln 12-21). Once the courtroom was completely cleared of "all" spectator's, Lyndsay was placed under oath and she testified. No evidence of any kind was ever presented to the trial court supporting the need for a courtroom closure. For that reason, closing the courtroom to the public during Lyndsay's testimony violated Petitioner's Sixth Amendment right to a public trial.

Lyndsay was the only person to testify on the first day of Petitioner's jury trial (Tuesday). Petitioner was incarcerated throughout his criminal proceedings. For that reason, each day of court, Petitioner was brought into the courtroom via a side entrance away from the main entryway doors used by members

of the general public. Petitioner's reference to "the public" specifically means all members of the general public. On the first day of, Tuesday, when Petitioner was escorted into the courtroom, he immediately noticed the presence of his wife, his children, his siblings, his parents, and several other spectators throughout the audience whom he did not recognize. Prior to the trial court's closure Order, that morning, the courtroom was opened to the public. On the second day of the trial, however, Thursday, when Petitioner entered the courtroom this time, he immediately noticed that the only person in the audience was his wife, Heather Dilts ("Mrs. Dilts"). For some reason, that morning, the courtroom was not opened to the public. The trial court did not allow public access. The courtroom was completely closed to the public. While the courtroom was closed, the trial court, the prosecutor, and defense counsel addressed some trial related matters. At that time, the prosecutor said

"The last issue, Judge, is on Tuesday you closed the courtroom for Lyndsay Dilts' testimony. Several witnesses that I have outside have indicated to me that Heather Dilts kept looking into the window and peering in and kept looking at my witness. I believe a closed courtroom should be a closed courtroom and I'd ask that you admonish her not to be peeking into the window or anything of that nature!"

(Appx. E, TTP 305 Ln 16-23). The prosecutor presented no evidence to the trial court supporting the allegation that Mrs. Dilts was looking in a window. The trial court called Mrs. Dilts up to the podium, placed her under oath, and admonished her not to be looking in the doors. The trial court then excused Mrs. Dilts. As Mrs. Dilts was leaving the courtroom, the following took place:

THE COURT: Thank you. Are we having another child testify?

MR. DEWANE: Judge, we are calling Alisha Castilla. She's age 14. She's asked that the courtroom be closed but for her support person, I believe it's Aunt Anna.

THE COURT: Before the jury comes in, I'm going to ask my law clerk to get some colored paper, tape it together, close the windows with tape, and ask the judicial assistant to put a closed sign -- to make a closed sign so we can tape that outside as well. It will just take a moment, and then when you are finished with that, if you could bring in the jurors.

(In it's entirety at Appx. E, TTp 305 Ln 16 - TTp 308 Ln 21). No evidence was presented to the trial court supporting a need for a courtroom closure here. For that reason, closing the courtroom to the public during this entire part of the trial violated Petitioner's Sixth Amendment right to a public trial.

On the second day of Petitioner's trial, that morning, the courtroom was not open to the public. While it was closed, Mrs. Dilts was admonished, the trial court had its staff tape paper to the windows and a "CLOSED" sign to the outside of the main entryway doors, the trial court, the prosecutor, and defense counsel addressed some trial related matters, the jurors were brought into the courtroom, and Alisha Castilla ("Alisha") was brought into the courtroom. While the courtroom was completely closed to the public, Alisha was called to the stand (Appx. E, TTp 313), placed under oath, and she testified. No evidence was presented to the trial court supporting the need for the closure. For that reason, closing the courtroom to the public during Alisha's testimony violated Petitioner's Sixth Amendment right to a public trial.

At the conclusion of her testimony, Alisha was excused and the prosecutor called Alexis Castilla ("Alexis") to the stand (Appx. E, TTp 382). At that time, the trial court judge asked the prosecutor, "Counsel, the courtroom will remain closed," and the prosecutor responded with, "Please" (Appx. E, TTp 382 Ln 23-25). While the courtroom was closed to the public, Alexis was called to the stand,

placed under oath, and she testified. No evidence was presented to the trial court here supporting the need for a courtroom closure. For that reason, closing the courtroom to the public during Alexis' testimony violated Petitioner's Sixth Amendment right to a public trial.

At the conclusion of her testimony, Alexis was excused and the prosecutor called Jennifer Ross ("Jennifer") to the stand (Appx. E, TTP 435). While the courtroom was closed to the public, Jennifer was called to the stand, placed under oath, and she testified. No evidence was presented to the trial court supporting the need for a courtroom closure here. For that reason, closing the courtroom to the public during Jennifer's testimony violated Petitioner's Sixth Amendment right to a public trial.

At the conclusion of her testimony, Jennifer was excused and the prosecutor called Rudy Castilla ("Rudy") to the stand (Appx. E, TTP 485). At that time the trial court announced, "We are at this time opening the courtroom!" Petitioner here submits that the announcement landed on deaf ears because there simply was no audience. The courtroom has remained closed to the public. What's more, there is no evidence that any officer of the court, or any other person for that matter, informed the public that access to the proceedings was now allowed. There is no evidence that any member of the public actually entered the courtroom to hear Rudy's testimony. For that reason, closing the courtroom to the public during Rudy's testimony violated Petitioner's Sixth Amendment right to a public trial. Regardless of whether public access was allowed before or after his testimony, the proceedings which have been taking place behind those closed doors were secret no more.

REASONS FOR GRANTING THE PETITION

This matter involves a courtroom closure, during witness testimony, which rises to a level of fundamental unfairness never seen by This Court. During Petitioner's jury trial, in state court, the prosecutor requested that the trial court "close the courtroom." The trial court said "Okay." For that reason, the trial court then completely closed the courtroom to the public during the testimony of five prosecution witnesses. No evidence of any kind was ever presented to the trial court, to begin with, supporting the need for a courtroom closure. The trial court never gave a reason as to why it closed the courtroom. The trial court never considered Petitioner's Sixth Amendment right to a public trial or the public's First Amendment right of access to the proceedings. The prosecution asked, and with no hesitation whatsoever, the trial was secretly conducted behind closed doors. The prosecutor asked, and for that reason alone, Petitioner's trial was nonpublic. Closing the courtroom to the public violated Petitioner's Sixth Amendment right to a public trial, and the closure was a public-trial-violation so serious that it rendered Petitioner's trial fundamentally unfair.

On direct appeal, appellate counsel carefully prepared his Brief on Appeal in such a way as to withhold from the appellate courts any knowledge of a courtroom closure here. In a post-conviction motion for relief from judgment filed in the Ingham County Circuit Court, Petitioner raised and argued a public-trial-violation claim, but it is readily apparent that neither the trial court nor the appellate courts actually read the Trial Transcript pages pertaining to the closing of the courtroom. A new trial is the only remedy here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Wayne Dille

Date: September 24, 2018