

18-8566 ORIGINAL  
No.

FILED  
MAR 07 2009

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN B. LOWE — PETITIONER  
(Your Name)

VS.

STATE OF MISSISSIPPI RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSISSIPPI SUPREME COURT (ms. sc)  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN B. LOWE  
(Your Name)

P.O. Box 1419

(Address)

LEAKESVILLE, MS 39451

(City, State, Zip Code)

(601) 394-5600 EXT. 1277  
(Phone Number)

QUESTION(S) PRESENTED

ISSUE NO: 1

WHETHER MULTIPLE INSTANCES OF CIRCUMSTANTIAL  
EVIDENCE CAN ACCUMULATE AND BECOME DIRECT EVIDENCE?

ISSUE NO: 2

WHETHER THE JURY IS ALLOWED TO DECIDE "IF"  
EVIDENCE IS CIRCUMSTANTIAL OR DIRECT EVIDENCE?

## 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

CASES	PAGE NUMBER
<i>NEDER V. UNITED STATES, 527 U.S. 1 119 S.C.T. 1827 144 L.ED. 2d 35 (1999)</i>	<u>6</u>
<i>MC QUIGGIN V. PERKINS 569 U.S. 383 133 S.C.T. 1924</i>	<u>6</u>
STATUTES AND RULES	<i>N/A</i>
OTHER	<i>N/A</i>

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**: N/A

The opinion of the United States court of appeals appears at Appendix N/A to the petition and is

reported at N/A; 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 is unpublished.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 N/A to the petition and is

reported at N/A; 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 is unpublished.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 B to the petition and is

reported at 2016-CT-00214 - SCT; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the MISSISSIPPI COURT OF APPEALS court appears at Appendix A to the petition and is

reported at 2016-KA-00214-COA; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

[ ] For cases from **federal courts**: N/A

The date on which the United States Court of Appeals decided my case was N/A.

[ ] No petition for rehearing was timely filed in my case. N/A

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/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 27<sup>TH</sup>, MARCH, 2018.  
A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: 11<sup>TH</sup> DAY SEPT. 2018, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including APR. 17, 2018 (date) on APR. 17, 2018 (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

DUE PROCESS 5<sup>TH</sup> AMENDMENT

MS. CONST. ART. 3 SEC. 14

RIGHT TO A FAIR TRIAL 6<sup>TH</sup> AMENDMENT

MS. CONST. ART. 3 SEC. 26

STATEMENT OF THE CASE

UPON RETRIAL LOWE'S COUNSEL OFFERED ERRONOUS JURY INSTRUCTION AND THEY WERE GIVEN BY THE COURT. AND HE WAS FOUND GUILTY.

LOWE TIMELY APPEALED, AND ON APPEAL THE STATE RAISED THE THEORY THAT COMBINED CIRCUMSTANTIAL EVIDENCE AMOUNTS TO DIRECT EVIDENCE. THE MISSISSIPPI COURT OF APPEALS AGREED WITH THE STATE AND AFFIRMED LOWE'S CONVICTIONS.

LOWE FILED A REHEARING THAT WAS DENIED. LOWE THEN FILED FOR CERTIORARI WITH THE MISSISSIPPI SUPREME COURT AND THEY DENIED CERTIORARI WITH TWO JUDGES OBJECTING TO THE ISSUES RAISED HERE.

REASONS FOR GRANTING THE PETITION

LOWE WOULD SHOW THAT THIS IS AN ISSUE(S)  
OF IMPORTANCE BEYOND THE PARTICULAR FACTS  
AND PARTIES INVOLVED; FOR IF ALLOWED TO  
STAND OTHER DEFENDANTS WILL FALL UNDER THIS  
UNFAIR VIOLATION OF DUE PROCESS RIGHTS.

LOWE WOULD SHOW ALSO THAT THIS ISSUE NEEDS  
TO BE RESOLVED BECAUSE OF THE DISAGREEMENT  
AMONG LOWER COURTS ABOUT THIS SPECIFIC LEGAL  
QUESTION, AND IS OF IMPORTANCE TO THE PUBLIC  
IN RESOLVING THIS ISSUE(S).

NEDER V. UNITED STATES, 527 U.S. 1, 119 S.C.T. 1827, 144 L.Ed. 2d 35 (1999) STATES ("FAILURE TO SUBMIT AN INSTRUCTION CONTAINING ALL OF THE ELEMENTS OF THE OFFENSE, OR IN THE INSTANT, THE FAILURE TO SUBMIT ANY JURY CHARGE AT ALL, IS SUBMITTED TO BE STRUCTURAL ERROR OF CONSTITUTIONAL DIMENSION WARRANTING AUTOMATIC REVERSAL.") - LOWE WOULD OFFER THAT THE INSTRUCTIONS THAT WERE OFFERED WERE CLEARLY ERRONEOUS AND AMOUNTED TO NO INSTRUCTION AT ALL.

MCQUIGGIN V. PERKINS 569 U.S. 383 133 S.C.T. 1924 STATES ("...THE COURT HAS APPLIED THIS "FUNDAMENTAL MISCARRIAGE OF JUSTICE EXCEPTION" TO OVERCOME VARIOUS PROCEDURAL DEFAULTS, INCLUDING, AS MOST RELEVANT HERE, FAILURE TO OBSERVE STATE PROCEDURAL RULES, SUCH AS FILING DEADLINES.") - LOWE OFFERS THAT SINCE THE STATE FAILED TO FOLLOW STATE LAW PRECEDENT OF PROPER PROCEDURE FOR CIRCUMSTANTIAL EVIDENCE STANDARDS AND CREATED A NEW "COMPOUND CIRCUMSTANCE IS DIRECT EVIDENCE" - THIS IS SURELY A FUNDAMENTAL MISCARRIAGE OF JUSTICE - LOWE ALSO INCORPORATES HON. KITCHENS OBJECTION HERE BY REFERENCE.

JOINED BY HON. JUDGE KING - WHO WERE  
BOTH ON POINT WITH THIS OPINION.

LOWE WOULD PRAY THAT THIS HONORABLE COURT  
ADMINISTER RELIEF OF ANY MANNER IN THIS  
IMPORTANT MATTER - AND CONSIDER THIS MEA-  
GER PRO SE APPLICATION.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John B. Lowe  
Date: 3/4/19

U.S.C. 28 <sup>ss</sup> 1746