

No. 18-9745 and 18A1345

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2018

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MARION WILSON,

Petitioner,

-v-

STATE OF GEORGIA,

Respondent.

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA AND/OR  
THE SUPERIOR COURT OF BALDWIN COUNTY, GEORGIA**

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**THIS IS A CAPITAL CASE**

**EXECUTION SET FOR JUNE 20, 2019, AT 7:00 P.M.**

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**REPLY BRIEF IN SUPPORT OF  
PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF GEORGIA AND/OR  
THE SUPERIOR COURT OF BALDWIN COUNTY, GEORGIA**

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Petitioner, Marion Wilson, respectfully submits this Reply Brief in support of his Petition for a Writ of Certiorari to review the decision of the Supreme Court of Georgia, entered in this case on June 20, 2019. *See Wilson v. State*, Case No. S19W1323 (GA) (Appendix A).

The thrust of the State’s Brief in Opposition is that this Court has no business telling the state how to enforce its laws. As has been established since this Nation’s early days, “[s]tates may not disregard a controlling, constitutional command in their own courts.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 727 (2016) (citing *Martin v. Hunter’s Lessee*, 14 U.S. 304, 1 Wheat. 304, 340-41, 344 (1816)). As set forth more fully in the Petition, the State of Georgia’s creation of the right to DNA testing in criminal cases has created due process rights to its enforcement that are well within this Court’s jurisdiction. Moreover, as Mr. Wilson argues, the statute and its interpretation by the lower courts independently violate the federal constitution. By definition,

there cannot be an adequate and independent state law ground when the state law itself violates the federal constitution. The petition is properly before this Court.

Prosecutor Fred Bright pointedly relied on Mr. Parks' necktie to create the illusion of evidence inculpatory Mr. Wilson and inciting the jury to impose the death penalty. The State seeks to gloss over this argument by ignoring it and re-urging the sufficiency of the evidence presented at trial—*i.e.* a view of the evidence most favorable to the prosecution—to support the conviction and death sentence, but that, simply, is not what this case is about. The prosecutor's necktie argument was central to the case and the prosecutor's closing arguments in both phases, but especially the penalty phase, proves it. *See, e.g., Banks v. Dretke*, 540 U.S. 668, 700 (2004) ("The prosecution's penalty-phase summation . . . left no doubt about the importance the State attached to Farr's testimony. What Farr told the jury, the prosecution urged, was 'of the utmost significance' to show '[Banks] is a danger to friends and strangers, alike.'").<sup>1</sup>

The State also makes a big deal about the timing of Mr. Wilson's motion. As the Court is aware, Mr. Wilson has challenged the constitutionality of the statute's focus on "delay." Moreover, the extraordinary motion for new trial was filed before certiorari was denied by this Court in *Wilson v. Ford*, No. 18-8389. It was filed before the warrant for Mr. Wilson's execution was issued. And, contrary to the statutory scheme—which required Mr. Wilson simply to "state" that the motion was not filed for delay (which he did)—the trial court decided the issue against Petitioner rather than scheduling a hearing at which the validity of that statement was to be tested. O.C.G.A. § 5-5-41(c)(4)(A) and (6)(E). Indeed, the statute sends

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<sup>1</sup> That Mr. Wilson was seen in a videotape later that evening wearing gloves does not diminish the potential exculpatory nature of DNA testing. Particularly if Butts' DNA were to be found on the necktie, such evidence would undeniably discredit the prosecutor's arguments about Mr. Wilson's involvement in yanking Mr. Parks from the car and shooting him.

mixed messages about when to file an extraordinary motion for new trial, incentivizing “delay” because it limits the number of extraordinary motions that may be filed to one, but then punishing a defendant who develops a meaningful case by seeking to develop additional evidence to support the motion and to otherwise challenge the validity of his conviction or sentence. *See* O.C.G.A. 5-5-41(b).

### **CONCLUSION**

For the reasons set forth above and in his Petition for Writ of Certiorari, Mr. Wilson respectfully requests that the Court grant the Petition for Writ of Certiorari.

Respectfully submitted this 20th day of June, 2019.



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**CERTIFICATE OF SERVICE**

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This is to certify that I have served a copy of the foregoing document this day by electronic mail on counsel for Respondent at the following address:

Beth Burton, Esq.  
Deputy Attorney General  
132 State Judicial Building  
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Atlanta, Georgia 30334-1300  
bburton@law.ga.gov

This 20th day of June, 2019.



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Attorney