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ORIGINAL

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

KEITH ALLEN WILSON – PETITIONER

VS.

STATE OF FLORIDA – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
SECOND DISTRICT COURT OF APPEALS, FLORIDA

PETITION FOR WRIT OF CERTIORARI

KEITH WILSON

35 APALACHEE DRIVE

SNEADS, FLORIDA 32460

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SUPREME COURT, U.S.

COVER PAGE

QUESTION(S) PRESENTED

Can the Charlotte County Court of Florida deny a Motion for Judgment of Acquittal, when the State did “not” prove Corpus Delicti of 2nd Degree Murder with Evidence that’s insufficient and circumstantial in a case that was delayed for 15 years and 6 months when fact witnesses have died and witnesses could not be located in order to prepare a defense for trial?

Can the 2nd DCA of Florida uphold that decision of the trial Court denying the JOA motions?

RELATED CASES

1. *Wilson v. State*, No. 13-CF-1296F, Charlotte County, Florida. Judgment entered Dec. 13, 2017.
2. *Wilson v. State*, No. 2D18-0500, Second District Court of Appeal. Judgment entered March 4, 2020. (Appx. A, Pg. 1).

LIST OF PARTIES

All parties appear in the Caption of the Case on the Cover Page.

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IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

Keith Allen Wilson
PETITIONER

vs.

U.S. Sup. Ct.

Case No.: _____

State of Florida

RESPONDENT(S)

CERTIFICATE OF INTERESTED PERSONS AND
CORPORATED DISCLOSURE STATEMENT

Comes now the Petitioner, in the listed above pursuant to the U.S. Sup. Ct. Rules. This Statement is filed in Good Faith and lists below the Persons of Interest in this case:

1. Charlotte County Sheriff's Department of Fla.
2. Clapham, Jesse (State Witness)
3. Feinberg, Daniel P. (Asst. State Attorney, Charlotte County, Fla.)
4. Jones, Melissa Ann Harding (State Witness)
5. Moody, Ashley (Fla. Attorney General)
6. Richards, George (Charlotte County, Fla. Trial Judge)
7. Rodriguez, Pilar (Victim/missing person)
8. Rodriguez, Marco (State Witness/Victim's Dad)
9. Rubin-Rebholz, Cynthia (Asst. State Attorney, Charlotte County)
10. Russell, Stephen B. (Charlotte County State Attorney)
11. At this time, Petitioner, does "NOT" obtain any information of subsidiaries, conglomerates, affiliates, parent corporations, or any publicly held corporation that owns 10%

or more of the party's stock, or other identifiable legal entities related to a party that is interested in the outcome of this case. Petitioner, does "NOT" obtain any information containing stock ("ticker") symbols.

PROOF OF SERVICE OF DISCLOSURE STATEMENT

I, **Keith Allen Wilson**, do swear or declare that on 7-20, 2020, as required by Sup. Ct. R. 29, I have served the enclose Corporate Disclosure Statement on each party to this Certiorari Proceeding, by depositing an envelope containing the above documents in the U.S. mail properly addressed to each of them with 1st class postage prepaid mailed to:

Solicitor General of the United States, Room 5614, Department Justice, 950 Pennsylvania Ave. N.W. Washington, D.C. 20530, and **Supreme Court of United States**, One First Street N.E. Washington D.C. 20543.

I, **Keith Allen Wilson**, declare under Penalty of Perjury that the foregoing is true and correct. Executed on 20 day of July, 2020.

Keith Allen Wilson – DC #Y63626
Apalachee Correctional Institution
35 Apalachee Drive
Sneads, Florida 32460-4166

/S/ Keith Allen Wilson
Keith Allen Wilson, Pro-Se' Litigator

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

[X] 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 N/A; or,

[] has been designated for publication but is not yet reported; or

[] is unpublished

The opinion of the **Florida Second District Appeal** court appears at Appendix A to the petition and is

reported at unknown; or,

[] has been designated for publication but is not yet reported; or

[] is unpublished

JURISDICTION

[X] For cases from state courts:

The date on which the highest state court decided my case was **Fla. 2nd DCA**. A copy of that decision appears at Appendix A, pg. 1

[X] A timely petition for rehearing was thereafter denied on the following date: **March 24, 2020, and a copy of**

the order denying rehearing appears at Appendix A, pg. 2.

On May 21, 2020, Petitioner filed a Motion for Extension of Time to file Certiorari, in which was denied on June 4, 2020, but the Clerk mailed Petitioner a U.S. Sup. Ct. Order (Order List: 589 U.S.) that gave Petitioner 150 days to file this Certiorari, due to Covid-19 Pandemic.

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

See *Coleman v. Thompson*, 501 US 772, 730 (1991) holding “when this Court reviews a State Court decision on direct review pursuant to Tit. 28 USC 1257, it is reviewing the judgment if resolution of a Federal question cannot affect the “Judgment”, there is nothing for the Court to do.”

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions that are involved in this Writ of Petitioner’s Birthright to American Due Process embedded in U.S. Constitution.

The Statutory Provisions that are involved are Tit. 18 USCS 3485 Evidence and Witnesses.

STATEMENT OF THE CASE

Petitioner was charged with second degree murder on August 16, 2013, for the killing of Pilar Rodriguez in early 1999. (Appx. B, Pg. 37-38). The jury found Appellant guilty as charged, and was sentenced to life imprisonment on December 13, 2017. Petitioner proceeded to trial between Oct. 9, 2017 and Oct. 18, 2017.

Melissa Cooper Harding Jones and Jesse Clapham were the State’s star witnesses. Melissa testified:

“During the five to six months Melissa was living with Petitioner in Kentucky, her

mother and sister met Marco Rodriguez and his three year-old daughter, Pilar, at a laundromat in Hollywood. Pilar hit it off with Debra Cooper immediately. Upon leaving the laundromat, Marco showed up at Debra's apartment asking for a place to sleep because he and his daughter were homeless. Marco and Pilar lived with Debra and Amanda for approximately four months with Marco sleeping in the living room and Pilar with either him, Debra or Amanda." (Appx. C, Pg. 445, 495-496, 1129-1130).

While Melissa was back in Florida, she babysat Pilar because Marco could not afford daycare. (Appx. C, Pg. 450, 496, 641). Melissa maintained contact with Petitioner by calling his cellphone from a payphone near her apartment, as she did not have a cellphone or landline. (Appx. C, Pg. 643, 810, 1459). She also traveled up to Punta Gorda, at her expense, a few times to stay with Petitioner in a hotel. (Appx. C, Pg. 647-648, 1463).

During one of her trips to Punta Gorda, Melissa brought Pilar. Debra had no concerns when Melissa took Pilar to visit Petitioner overnight. After making a few uneventful trips to visit Petitioner, including those with Pilar in tow, Melissa planned to visit Petitioner at the end of January 1999, for a few weeks. Marco was doing community service at night and could not care for Pilar, so Melissa planned to take Pilar with her. Melissa testified that Marco got frustrated and "hateful" towards Pilar and hit her in the head with a tape case. He said he wanted to put her in the garbage, and he asked Melissa if she would raise Pilar until he was back on his feet. Melissa and Pilar left on January 31, 1999 to visit Petitioner. (Appx. C, Pg. 453-454, 468-469, 471, 651).

Petitioner stated he was not expecting Melissa until Valentine's Day and that she showed up two weeks early with Pilar. Melissa did not call Petitioner until she was in Ft. Myers to let him know she was coming, and she did not tell him Pilar was with her. Upon their arrival, Petitioner found an apartment to lease in Charlotte County for two weeks, and he bought groceries for them. (Appx. C, Pg. 1465-1470).

Pilar slept on the couch with the comforter from the bed for warmth, while Petitioner and Melissa stayed in the bedroom. Petitioner never made Pilar sleep in the closet. The next day, February 1st, Petitioner went to work at 3:30 a.m. and picked up his semi-trailer at his grandmother's house. He returned to the apartment at 10:00 p.m. (Appx. C, Pg. 1470-1477).

He went to work on February 2nd at 3:00 a.m. and both Melissa and Pilar were inside the apartment when he left. Petitioner returned at 10:00 p.m. and found Melissa sitting on the bed looking dazed and confused, with an armband from the hospital on her wrist. (Appx. C, Pg. 1470-1473). Petitioner inquired about Pilar's whereabouts and Melissa told him that Pilar's father, Marco, had picked her up.

He also noticed two soda bottles, that had cigarette butts inside, and empty KFC boxes. Petitioner had not left any KFC for them and he knew that Melissa, like him, did not smoke. He also noticed Pilar's suitcase and dolls were not around but assumed Melissa put them away. Petitioner never saw Pilar again after he left for work early in the morning on February 2nd. (Appx. C, Pg. 1474-1477).

Melissa stayed with Petitioner for the two weeks as planned, and on February 14th, they talked about having Melissa's sister from Wisconsin come down and stay with her, as Petitioner was worried about Melissa staying by herself due to her diabetes. He offered to buy her sister a plane ticket to Florida but her sister was unable to fly down from Wisconsin. Petitioner bought Melissa a plane ticket to visit her. (Appx. C, Pg. 1475-1477).

Shortly after arriving in Wisconsin, on February 23, 1999, law enforcement arrived at the home of Melissa's sister and her husband, because Pilar's father had reported Pilar missing to Hollywood Police. (Appx. C, Pg. 517-518, 588-590).

Melissa admitted at trial that she initially told the detectives in Wisconsin that Pilar's father picked her up. She continued telling this story to the police in Wisconsin for two to three hours. At trial, she stated that she lied to the officers

and had planned to tell them that she went to the hospital while Petitioner was at work, and that Marco had picked up Pillar. (Appx. C, Pg. 680, 719-720).

She testified that she went to the convenience store nearby on February 2nd, because she was not feeling well and left Pilar inside the apartment alone for hours while Petitioner was at work. Melissa collapsed at the store, taken to the hospital and released a few hours later. (Appx. C, Pg. 680-681, 686).

A few hours after Melissa told the police that Marco had picked up Pilar, she changed her story and told them that after she returned from the hospital, Petitioner had killed Pilar by punching her head. She said she made it sound accidental which she said was also a lie. (Appx. C, Pg. 721-722).

She told the police she left Pilar alone in the shower, heard a thud and found Pilar on the floor. She admitted that this was a lie too. (Appx. C, Pg. 836). Melissa admitted that she wrote letters to Petitioner after Pilar's death expressing her love, and took a bus from Hollywood to Charlotte to visit but he sent her back the next day. (Appx. C, Pg. 722-728).

After law enforcement was advised on February 23rd, that Pilar was missing, they searched the apartment where Pilar had been living with Petitioner and Melissa, which was occupied by a new tenant. (Appx. C, Pg. 921-924).

The officers located dark hair from the bathroom floor that looked cut and they found two areas of the carpet with blood. Petitioner's car was processed for evidence and several areas in Punta Gorda were searched for Pilar. A lake was drained and K-9 units were deployed, to no avail. (Appx. C, Pg. 949-950, 965-970).

Searches for Pilar went on for years and approximately ten years later, in 2009, Detective Gandy, with the Charlotte Sheriff's Office, was working on cold cases including Pilar's. Det. Gandy conducted a search of the property of Petitioner's grandmother, where Petitioner used to live. While no physical evidence was uncovered, a new witness, Jesse Clapham who saw the search on television,

contacted the Sheriff's Office and gave a statement. Jesse had just been released from prison on January 2009 and was related to Petitioner by marriage. (Appx. C, Pg. 561-565, 1248).

Jesse testified that late at night in 1999 or 2000, he saw Petitioner, his uncle Bert Clapham, and his father, Marlin Clapham, standing around the trunk of a car and he saw a little purple foot sticking out of a pink blanket. (Appx. C, Pg. 1262-1264).

Melissa testified that Pilar's body was completely incased inside a very large plastic garbage bag, with no body parts protruding, and that Pilar did not have any blankets. (Appx. C, Pg. 805-806).

Jesse claimed he asked Petitioner if the girl in the trunk was the girl on the news, and Petitioner responded "Yeah, she suffocated somehow." Jesse claimed Petitioner later said that the girl's body was put in a septic tank. (Appx. C, Pg. 1268-1269, 1272). During an interview, Jesse said he did not remember any discussions with Petitioner regarding what happened to Pilar. He also said during deposition that his statement regarding suffocation was made by someone else in the family. Jesse admitted he had five felony convictions, four involving dishonesty. He claimed he could not come forward sooner and report what he saw until his uncle Bert and his father passed away. (Appx. C, Pg. 1258-1259, 1290-1297). Jesse acknowledged that both his father and uncle passed away before he was incarcerated, and he knew the little girl was missing before he went to prison. He claimed his dad did not die until just before Jesse went to prison in May 2008, and Bert died six months prior. (Appx. C, Pg. 1277-1278).

Bert's wife, Rosemary Clapham, testified that Bert died much earlier, in 2001, and Marlin died in 2004. (Appx. C, Pg. 1323). Petitioner stated he never saw Bert, Marling, or even Jesse in February 1999, and that the incident Jesse described involving Bert looking in his trunk, never happened. (Appx. C, Pg. 1486-1487).

Based on Jesse Clapham's statement to police, Melissa Cooper was reinterviewed in Washington State where she

was living. She changed her story again, offering details that she never mentioned over the last several years. She told the detective Petitioner had cut Pilar's hair to look like a boy. (Appx. C, Pg. 735-737). Melissa was arrested and her statement led to Petitioner's arrest. Melissa was charged with aggravated manslaughter of a child, which changed to accessory after the fact, and her testimony against Petitioner was part of her plea deal. (Appx. C, Pg. 561-566, 741-744). She eventually went back to Hollywood to live with her mother and sister and became Pilar's caretaker while Marco and Pilar lived with them. She kept in phone contact with Petitioner by calling him and met him in Punta Gorda a few times with Pilar when Marco had no one to babysit. (Appx. C, Pg. 641, 647). She said Petitioner initially wanted her to live with him at his grandmother's house in Punta Gorda and that he knew she would be bringing Pilar for an indefinite period of time. (Appx. C, Pg. 652).

According to Melissa, Petitioner made Pilar sleep on the couch, the floor, or the closet inside the apartment he leased for them during their trip to Punta Gorda in February 1999. She claimed Petitioner was physically abusive towards her and slapped, hit and choked her immediately after arriving in Charlotte County, and he hit Pilar hard in the face and arm with an open hand. (Appx. C, Pg. 672-673). Melissa said she did not go outside the apartment because he did not want them to, but admitted Petitioner would not have known if they went outside while he was working. She did walk to Circle K to make phone calls. (Appx. C, Pg. 674-676).

Melissa further claimed Petitioner would make Pilar stand for hours without sitting down and he severely battered Pilar between February 2nd to 14th, 1999. She stated that he punched Pilar in the head with a closed fist and she fell back hitting the doorjam with her head. Pilar was screaming, crying and holding her head, and Melissa was restrained from going to her by Petitioner who forced her to have sex. Afterwards, Pilar was no longer interested in watching television and she slept for a few days. (Appx. C, Pg. 688-692).

Melissa testified that she felt a mushy spot on Pilar's head and told Petitioner Pilar needed medical attention. While Petitioner was at work, she went to talk to Pilar, who

was sleeping, but she was unresponsive. When Petitioner came home that night, she told him that Pilar needed to go to the hospital, but Petitioner said he could not take her because they would see the bruises. (Appx. C, Pg. 694-696).

Pilar was never responsive again and died, in spite of Petitioner's attempt of CPR, and to revive her in the shower. (Appx. C, Pg. 696). Melissa was asked why she did not seek help for Pilar at the Circle K she had previously gone to when she was not feeling well, and she responded, "I don't know. I-I don't know," (Appx. C, Pg. 697).

The details Melissa added several years later to her original story in 1999, included her claim that Petitioner put Pilar's body in a black garbage bag and said he was going to bury her against Melissa's protestations. (Appx. C, Pg. 688-689).

Melissa testified that after Petitioner returned to the apartment, he said he hoped he buried her deep enough and she did not know where Pilar's body was buried. (Appx. C, Pg. 700).

Contrary to the allegations Melissa came up with ten years after the incident, Petitioner testified he never hit, slapped, pushed, or bathed Pilar, or cut her hair. Nor did he put Pilar in a trash bag or blanket, and he never put her in the trunk of his vehicle. (Appx. C, Pg. 1479). In fact, the only time Pilar was in his car was when he picked her and Melissa up at the bus station. Petitioner stated he did not dispose of Pilar's body in a septic tank or bury her, he did not feed her to alligators or put a leash or collar on her neck. (Appx. C, Pg. 1480-1481). Petitioner did not know Pilar was missing until law enforcement contacted him, and he cooperated with the Charlotte Police Department by voluntarily giving them a statement and taking them to the apartment. (Appx. C, Pg. 541-543; 552; 1481).

Jailhouse snitch, Christopher Benning, who has 15 felony convictions, testified that he was incarcerated at the same time as Petitioner in August 2013 to 2014. Benning wrote a letter to the State Attorney's Office and gave a statement based on Petitioner's comments that he said he overheard. (Appx. C, Pg. 871; 877-888). Benning alleged that

Petitioner said the child was crying and would not stop, so he slapped the child and its head hit the doorframe and the child fell. He claimed he heard Petitioner say he tied the child to the bed and went to work. When he got home the child was dead, so he got rid of the body. (Appx. C, Pg. 883-84).

Mr. Benning also claimed he heard Petitioner say to inmate Barr that the female he was with saw the child's foot in the trunk. Benning said he heard these comments through the air vents. (Appx. C, Pg. 880; 886). Benning acknowledged he wanted out of prison and his testimony was a condition of his sentencing, and he received a benefit for testifying. (Appx. C, Pg. 873-874; 889).

Randall Lindsey was in jail with Petitioner between July 9th and 13th, 2014, and he received a lesser sentence for assisting the State in this case. (Appx. C, Pg. 1584-85). Mr. Lindsey was facing 90 years but only received 4 for his assistance to the State and his testimony at Petitioner's trial. (Appx. C, Pg. 1589).

Mr. Lindsey, who was 13 felony convictions and violated his probation, claimed he heard Petitioner say to inmate Barr that someone cannot be convicted of murder without a body. (Appx. C, Pg. 1585-88).

Contrary to the testimony of Mr. Benning, Petitioner stated that because he was 100 pounds heavier when he was in prison with Mr. Benning, he was physically unable to step on top of the sink in order to communicate with another inmate. Therefore, talking through an air vent to inmate Barr or any other inmate was physically impossible for him. (Appx. C, Pg. 1573).

REASONS FOR GRANTING THE PETITION

Argument #1

THE CHARLOTTE COUNTY, FLORIDA TRIAL COURT ERRED IN DENYING PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL AS THE EVIDENCE WAS INSUFFICIENT TO PROVE THE ELEMENTS OF

SECOND-DEGREE MURDER, AND THE 2ND DCA OF FLORIDA ERRED BY UPHOLDING THAT DECISION IN VIOLATION OF *JACKSON V. VIRGINIA*, 443 US 307 (1979) AND U.S. CONST. AMEND. V DUE PROCESS

Defense counsel moved for a judgment of acquittal at the conclusion of the State's case on the basis that the evidence presented was insufficient to prove second degree murder or manslaughter, because the State failed to prove the victim was deceased, in which the Court denied the motion. (Appx. C, Pg. 1424). During trial, counsel objected that the State could "NOT" prove Corpus Delicti, in which the Court overruled the objection. (Appx. C, Pg. 536). "In determining the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." *Simmons v. State*, 934 So.2d 1100, 1111 (Fla. 2006), quoting *Bradley v. State*, 787 So.2d 732, 738 (Fla. 2001).

"In order to prove corpus delicti in a homicide case, the State must establish: (1) the fact of death; (2) the criminal agency of another person as the cause thereof; and (3) the identity of the deceased person." *Meyers v. State*, 704 So.2d 1368, 1369 (Fla. 1997). The State can prove the fact the victim is dead by competent, substantial evidence despite the inability to find the victim's body. *Crain v. State*, 894 So.2d 59, 72 (Fla. 2004).

"The corpus delicti of murder can be proven circumstantially even without any evidence of the discovery of the victim's body." Id. *Ramsammy v. State*, 43 So.3d 100, 105 (Fla. 4th DCA 2010). Here, as in *Ramsammy*, the evidence was insufficient to support Petitioner's conviction for second degree murder where the victim's body was never recovered, no physical evidence of the manner of death was presented, no physical evidence like blood, DNA, or any other type of forensics was found indicating a death occurred, no confession to killing or even hitting the victim was ever made, and the only alleged eyewitness, co-defendant Melissa Cooper, who claimed Petitioner caused the child's death, had a motive to kill the victim as she had previously threatened

to kidnap the victim, and she lied to the police multiple times. (Appx. C, Pg. 680, 1163-1164).

Melissa Cooper also received leniency in exchange for testifying at Petitioner's trial. (Appx. C, Pg. 741-744). The victim was in the custody of co-defendant Melissa Cooper when she disappeared, and Melissa Cooper's inconsistent and evolving statements to law enforcement show a consciousness of guilt. (Appx. C, Pg. 680). See *Burkell v. State*, 992 So.2d 848, 852 (Fla. 2008). Citing *Walker v. State*, 495 So.2d 1240, 1241 (Fla. 5th DCA 1986) (holding that evidence that defendant lied to police to defeat or avoid prosecution was admissible as showing consciousness of guilt).

Whereas, Petitioner never wavered in his statements to law enforcement or trial testimony that he did not commit the crime charged, and that he was not even home when the crime occurred. Furthermore, Petitioner's alleged inculpatory statements to any of the witnesses cannot be considered a confession, as they failed to provide evidentiary support to establish that the victim's death was caused by Petitioner's criminal actions.

The evidence presented failed to exclude Petitioner's hypothesis that he was not at home when the child disappeared, and that the child was in the sole custody of co-defendant, Melissa Cooper, at the time the child went missing. (Appx. C, Pg. 1470-1474).

In *Lindsey v. State*, 14 So.3d 211 (Fla. 2009), the Court concluded that the defendant's admission of killing a person during a robbery one month after the murder occurred, combined with the other evidence of possession of the stolen jewelry and the defendant's statements to another inmate that he had to kill someone once, was insufficient to sustain a conviction for murder.

The court noted that even a "deep suspicion the appellant committed the crime charged is not sufficient to sustain conviction." Id. at 216, quoting *Williams v. State*, 143 So.2d 484, 488 (Fla. 1962); See also, *Ballard v. State*, 923 So.2d 475, 482 (Fla. 2006) ("suspicions alone cannot satisfy the State's burden of proving guilt beyond a reasonable doubt...").

In this case, even if the State had established the corpus delicti of murder because Pilar's disappearance is "strong circumstantial evidence of her death" by the criminal agency of another, the State's evidence was insufficient to establish that the child's sudden disappearance and apparent death was not due to the specific criminal agency of Petitioner. See *Ramsammy v. State*, 43 So.3d 100 (Fla. 2010) (the defendant's description of grabbing victim by neck, combined with other circumstantial evidence of her death, was insufficient to support murder conviction, where defendant's statement, while potentially an admission of domestic battery, could not be classified as confession or give evidentiary support to establish victim's death was caused by defendant's criminal actions, and did not evince consciousness of guilt for second degree murder.)

Here, nothing in the evidence overcame the reasonable hypothesis that Petitioner was not the person that caused the child's death as the child was in the care of her babysitter, Melissa Cooper, who admittedly lied to law enforcement several times. (Appx. C, Pg. 680).

Marco Rodriguez originally gave a statement that Melissa stated: "What's up if I kidnapped your daughter." "I kidnapped Pilar, that's what she told me," (Appx. C, Pg. 1163-1164).

Additionally, there was no physical evidence presented linking Petitioner to the charge of second-degree murder. Here, as in *Ramsammy*, Supra, no body was found, nor evidence of blood, DNA, or fingerprints linking him to the victim's murder or pointing to any murder at all.

Petitioner notes the distinction between *Ramsammy* and the instant case, in that here, a third party – the co-defendant – accused Petitioner of committing the murder and testified that she was present when it occurred. However, when Melissa Cooper initially made her inconsistent statements to law enforcement accusing Petitioner in 1999, he was never arrested. (Appx. B, Pg. 20-24).

In fact, it was not until ten years later, in 2009, that Melissa was re-interviewed and suddenly came up with

additional incriminating statements against Petitioner. (Appx. B, Pg. 20-24).

The State failed to disprove Petitioner's reasonable hypothesis of innocence, that he was not at home when the crime occurred and that the child had been in the sole custody of Melissa Cooper the last time she was seen alive. Therefore, this case should be reversed as the State failed to present evidence, which was inconsistent with Petitioner's theory of defense.

About a week after Petitioner was found guilty by the Jury, Counsel filed a Written JOA Motion. (Appx. B, Pg. 490-492). The Court denied the JOA Motion after a hearing conducted before sentencing. (Appx. B, Pg. 500; Appx. C, Pg. 1804).

At the JOA Hearing, Counsel argued that the State committed a Due Process violation stemming from a time-delay in filing the Information against Petitioner. (Appx. C, Pg. 1807-1813).

In the case at hand, Marco Rodriguez reported his daughter Pilar Rodriguez was missing on Feb. 23, 1999. (Appx. B, Pg. 20-24).

Originally, Melissa Cooper told detectives in Wisconsin that she and Petitioner placed Pilar in a garbage bag, after Petitioner hit Pilar in the head with a closed fist. Melissa made these statements that implicated Petitioner in 1999. (Appx. B, Pg. 21).

The State waited until Aug. 16, 2013 to file an Information against Petitioner. (Appx. B, Pg. 37-38).

Petitioner contends that the 15 years and 6 months preaccusation delay caused "actual," "personal," "substantial," and "presumptive" prejudice to Petitioner. See *Randolph v. State*, 418 So.2d 1164, 1175 Fn. 1 (1982).

Numerous defense witnesses have died and numerous defense witnesses could "NOT" be located, in order to be interviewed. Petitioner's grandmother could "NOT" be interviewed because at the time of filing the information, she

suffered from Alzheimer's disease. Thereby, prejudicing the Petitioner and denying Petitioner his Federal Right to a Fair Jury Trial, and his Common Law Right to present a defense. The Right to Present a Defense is embedded in the Magna Carta (1215 A.D.) These rights that have been violated by the State Courts affected the judgement at trial.

In addition, to the 15 yrs. and 6 months preaccusation delay, the State didn't proceed to trial until Oct. 10, 2017. (Appx. C, Pg. 335), in which was 4 years and 2½ months delay. This means at the time of trial, the case was 19 years and 8½ months stale.

During the JOA Hearing, the State argued the State did "NOT" intentionally delay the filing of the Information because between Feb. 1999 until 2010, the State did "NOT" have sufficient evidence to prosecute. (Appx. C, Pg. 1816).

Petitioner contends that based upon Melissa's interview in Wisconsin in 1999 (Appx. B, Pg. 21), the State did have sufficient evidence to prosecute Petitioner in 1999, but failed to do so, in order to gain a tactical advantage, *Townley v. U.S.*, 665 F.2d 579 (1982), *U.S. v. Lovasco*, 431 US 783 (1977).

The tactical advantage that the State gained by the 15 yrs. and 6 months delay was a circumstantial evidence witness Jesse Clapham.

Jesse Clapham testified that late at night in 1999 or 2000, he saw Petitioner, his uncle Bert Clapham, and his father, Marlon Clapham standing around the trunk of a car and he saw a little purple foot sticking out of a pink blanket. (Appx. C, Pg. 1262-1264).

Petitioner contends that the listed above evidence is "FALSE" and insufficient. Petitioner is requesting that the U.S. Supreme Court of America to take Judicial Notice (Fed. R. Evid. 201) of Marlon Clapham's Lee County, Florida Case No. 722122 and/or No. 361991CF002289000ACH. (Appx. D, Pg. 1-3).

Petitioner contends that because of Marlon Clapham's charges of Robbery without Firearm, (Appx. D, Pg. 1-3), he was located in a State and/or Federal Prison. Therefore, it

would be "IMPOSSIBLE" for Marlon Clapham to be standing around a car with Petitioner and Albert Clapham in 1999 or 2000, because Marlon Clapham was in prison; thereby making Jesse's testimony to be "FALSE". Also creating a tactical advantage over Petitioner, because at the time of trial, Marlon and Albert Clapham were dead, and could "NOT" be interviewed or examined concerning the exactness of Jesse's claims.

Petitioner contends that in America, a criminal conviction cannot rest on false testimony. See *U.S. v. Agurs*, 427 US 97, 103-104 (1976).

Petitioner is requesting that the U.S. Sup. Court to grant review of his case, because the 12th Circuit Charlotte County Florida Court decided several important questions of Federal Law in a way that conflicts (**Sup. Ct. R. 10**) with the decisions of the Florida Supreme Court, namely: *Williams v. State*, 143 So.2d 484, 487 (Fla. 1962) holding: "A re-examination of the record discloses that the only witness on this subject, George Gray, testified that the man he saw fleeing the H & K Market on the night of Kaplan's death was "about six feet or a little higher"; "he looked like a colored man," but Gray did not know whether he was light or black."

In Petitioner's case, Jesse testified he "saw a little purple foot," (**Appx. C, Pg. 1262-1264**), meaning that he "NEVER" eye-witnessed the dead body of Pilar Rodriguez, but it was a foot of someone unidentified.

Petitioner contends that Jesse did "NOT" identify who the little purple foot belonged to, i.e., Pilar Rodriguez, meaning that the State did "NOT" prove Corpus Delicti; meaning Petitioner's case is in conflict with *Ramsammy v. State*, 43 So.3d 100, 104-105 (Fla. 2010) holding that "Suspicions cannot be the basis of a criminal conviction."

At the JOA Hearing, State argued to the Court: "Without the testimony of Mr. Clapham (Jesse) who came forward in 2009, and then the subsequent additional interviews of Ms. Harden-Jones, the babysitter, there was not sufficient evidence to prosecute this case until 2010." (**Appx. C, Pg. 1816; Appx. B, Pg. 22**).

Petitioner contends that the additional interviews/evidence of Ms. Harden-Jones (Melissa) is also insufficient and "FALSE", mainly because: At trial, Melissa testified that Petitioner beat, slapped and choked her during the time frame she lived in the apartments. (Appx. C, Pg. 673).

Afterwards, she flew to Wisconsin to live with her sister. (Appx. B, Pg. 655-656).

During the visit to Trail Apartments, Charlotte County Sheriffs took photos of Melissa in 1999 which were introduced at trial as State Exhibits 2-3 (Appx. B, Pg. 372-374). Joseph Keith (Melissa's brother in law testified State Ex. #3 was a depiction of Melissa in 1999 (Appx C, Pg. 584-586).

A review of those photos of Melissa in 1999 reveals that her face and neck does "NOT" display signs of abuse, such as black eyes, busted lips, or choke marks on her neck (Appx. B, Pg. 372-374) meaning that Petitioner did "NOT" abuse her, (Also Appx. C, Pg. 1138) (Marco Rodriguez testimony).

Therefore, this additional interview (Appx. B, Pg. 22) that was presented as Williams Evidence by Fla. State Law F.S. 90.404 and Fed. R. Evid. 404 is insufficient as a matter of Federal Law, because it is "False", Id. *US v. Agurs*, 427 US at 103-104.

Petitioner contends that the trial Court's decision to deny the JOA Hearing (Appx B, Pg. 500) is in conflict with *Scott v. State*, 581 So.2d 887, 891 (1991), mainly because of the 15 yrs. and 6 months pre-accusation delay combined with the false circumstantial evidence of Melissa and Jesse listed above, resulting in conflict with the U.S. Sup. Court decision. See: *In Re Winship*, 397 US 358, 364 (1970) ("holding that the government must prove "every fact necessary to constitute the crime beyond a reasonable doubt").

The *Winship* "beyond-a-reasonable-doubt" standard applies in both State and Federal proceedings. See *Sullivan v. La.*, 508 US 275, 278 (1933); *Winship* at 363: "It

encourages community confidence in criminal law by giving "concrete substance" to the presumption of innocence. *Id.* In his concurring opinion, Justice Harlan noted that the standard is founded on a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free. *Id. at 372* (Harlan, J., concurring).

Petitioner contends that the State did "NOT" prove its case beyond a reasonable doubt, See Fla. Jury Insts. 7.4 element #1: "Victim is dead".

Wherefore, the U.S. Supreme Court must issue a Writ of Certiorari to the Charlotte County Court and/or the 2nd DCA of Florida, for upholding the lower Court's decision, that is in violation of the U.S. Constitutional Amendments V, XIV, Due Process.

CONCLUSION

Wherefore, Petitioner is requesting the U.S. Supreme Court to Order the State of Florida and/or the U.S. Solicitor General to file a Brief in Opposition as to why the U.S. Supreme Court should not grant this Writ of Certiorari, Sup. Ct. R. 15.1.

Petitioner is requesting that the U.S. Supreme Court to appoint Petitioner qualified counsel to handle any and all matters, Sup. Ct. R. 9, Tit. 18 USCS 3006A(d)(7).

Petitioner is requesting to have (30) days to file a Reply to the State's Brief in Opposition, Sup. Ct. R. 15.5 and 15.6.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Keith allen Wilson

Date: 7-20-20

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

U.S. Sup. Ct.

Case No.: Not Assigned

Keith Allen Wilson

PETITIONER

vs.

State of Florida
RESPONDENT(S)

PETITION FOR A WRIT OF CERTIORARI WITH
INCORPORATED MEMORANDUM OF LAW

PRELIMINARY STATEMENTS

Keith Allen Wilson will be known as "Petitioner." George Richards will be known as "Court." Assistant State's Attorney Daniel P. Feinberg will be known as "State." Kevin C. Shirley will be known as trial "Counsel." Susan M. Shanahan will be known as "Appellate Counsel." Attorney General Ashley Moody and Asst. Attorney General of Florida Michael Schaub will be known as the "State." The Second District Court of Appeals of Florida will be known as "2nd DCA." The victim in this case "Pilar Rodriguez", a missing person cold case file from Feb. 1999. Petitioner's Appendix will be known as Appx. ___, Pg. ___. in which are portions of the Records and Files in this Case. Petitioner will be utilizing the original Record on Appeal and Trial Transcripts Page Numbers in the Appendix. The Trial Transcripts Page Numbers that Petitioner will be utilizing are located on the bottom of the page.

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