

**United States Federal District Court  
for the District of Rhode Island**

No \_\_\_\_\_

Randy Anderson pro-se  
Petitioner

vs.

A.T. Wall, RI Dept. of Corrections  
Respondent

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**Actual Innocence Claim  
Federal Writ of Habeas Corpus**

Now comes the petitioner, Randy Anderson, and moves this honorable Court to vacate his conviction and order a new trial.

Petitioner contends that the State's case was based solely on the credibility of the Complaining witness.

On May 9, 1995, petitioner was charged with two (2) counts of first degree sexual assault stemming from an alleged incident of March 9, 1995, and March 12, 1995.

On October 19, 1998, petitioner had a week long Jury trial in Kent County Superior Court. Justice Robert Krause presided.

A jury found petitioner guilty on Count #1 but Not Guilty on Count #2.

On January 8, 1999 petitioner was sentenced to a total of 60 years. 30 years to server and 20 years probation and a consecutive 10 years as a habitual offender. Because petitioner was serving an 18 year sentence as a probation Violator, the 30 year and 10 year terms were consecutive.

For Judicial economy, this petitioner shall simply indicate that he had a timely appeal and had also filed two previous State Post-Convictions, one of which was the subject of a 28 U.S.C. § 2254.

## SYNOPSIS

On May 5, 1995, Complainant gave a handwritten police statement to the Warwick Police Department. Her first lines were, "I had sex once prior to the incident". (See Ex #1) Also in this same statement, she stated that she "Did not receive any medical treatment". (See Ex #1)

On June 27-30, 1995, Petitioner had a probation violation hearing in Kent County Superior Court before Justice Francis Darigan. Complainant testified under oath, under cross examination that she had previously accused her natural father of sexual abuse to DCYF in 1992. She quickly recanted this accusation and accused someone else of making this call to DCYF. An attempt to obtain these DCYF records to prove Complainant gave statements to DCYF indicating that her natural father sexually abused her was of no avail because 3 years had passed and all unfounded complaints are destroyed after 3 years. (See Ex #2) On June 27-30, 1995 at the same probation violation hearing, Complainant testified under oath that she had been raped by a then ex-boyfriend, Joseph Throux at his home in May of 1994, and that she had told this petitioner and her two best friends, Carissa Ferla and Bethann Colletta (See Ex #3).

On October 19, 1998 at the start of petitioner's trial, Counsel for petitioner filed a Superior Court Crim. Rule 16 motion for discovery. (his second) and a motion for all exculpatory evidence in the State's possession as well as a Superior Court Crim. Rule 26.3 motion to attempt to impeach the complainant with prior false accusations of sexual abuse. At some point during the trial, a Voir dire hearing was held to determine if petitioner would be allowed to use any prior false accusations of sexual abuse. The Complainant took the stand and under cross examination now stated that she was NOT raped by her ex-boyfriend as she previously testified on June 27, 1995, but that he "attempted" to rape her. However, when asked by Mr. Regine if she did, at some point have sexual relations with Joseph Theroux, her reply was, "About a week later" (See Ex #4). Counsel for petitioner withdrew the Rule 26.3 motion and the Jury never got to hear any of this information.

On November 15, 2008, petitioner came into possession of a medical examination report dated June 15, 1995 in which the Complainant had a vaginal examination as a result of the alleged sexual assault. (See Ex #5) This report was not turned over by the State. The information in the report is the basis of this Actual Innocence claim. The report indicates that the Complainant was actually a virgin as late as June 15, 1995, the date of the reported exam. Petitioner contends that had he had a copy of this report prior to trial, he could have impeached the Complainant with her prior false accusations of rape AND consensual sex.

For example:

- 1) The Complainant's May 5, 1995 police statement that she had sex once prior to this alleged incident clearly was a lie because she was still a virgin on June 15, 1995, two months after she made the statement. There is also no mention of any previous rape.
- 2) 2) The Complainant's probation violation hearing testimony that she was raped by an ex-boyfriend in May of 1994 was also a lie because again, she was still a virgin 13 months later. Her testimony that she told this petitioner and two of her best friends that she was raped by her ex-boyfriend was true as far as that is what she TOLD them, but what she told them was a lie. Joseph Throuex himself testified that he was told by friends at school that Lisa was telling people at school that he raped her.
- 3) Her trial Voir Dire testimony that she had not been raped, but rather that he "attempted" to rape her, and then a week later she states that she began a consensual sexual relationship with the same boy, was also a lie. The question, "Did there come a time when you had a consensual sexual relationship?" was the only question put out by the State, so it is highly possible that the State was also duped into believing that she was (1) raped and (2) had a consensual sexual relationship based on her April 17, 1995 statement and her testimony at the probation violation hearing. The medical exam also reveals that the Complainant claimed to use condoms as a mode of birth control. This is not likely since that same exam states "Patient unable to tolerate internal (vaginal)

exam / Hymen intact.” Therefore, the patient, this Complainant was a virgin and her many claims of sexual activity, forced and consensual, were medically impossible.

Because the State’s entire case is based solely on the credible word of the Complainant, and it is crystal clear that she repeatedly lied; lied to the Warwick Police Department on her opening line of the police report, lied in her probation violation testimony about a previous rape, lied to this petitioner and her friends by telling them she had been raped, and lied at her Voir dire testimony about having had a consensual sexual relationship. Had trial counsel had this medical report to impeach her credibility, NO jury would have been able to convict beyond a reasonable doubt. It is important to note that the State chose to try this petitioner on two counts of sexual assault together, and that this case is a case of credibility. The case rises and falls with the complainant’s word. Defense was able to show that on at least one of the dates the complainant alleges to have been sexually assaulted, the petitioner was actually home at the time and not with the complainant. The Jury chose not to believe her on this count and found the petitioner not guilty. Additionally, the Jury asked to have the meaning / definition of Reasonable Doubt reread to them. (See Ex #6)

Petitioner contends that as a matter of Constitutional Law and given the fact that it is now clear that the case is based solely on lies and perjury, that the Means of Justice ought to serve to order this petitioner a new trial. NO Juror, given this knowledge, along with the acquittal of Count #2 could find this petitioner guilty beyond a reasonable doubt.