

Justice for Wilbert Gay, Jr. (Boise)



Location **Idaho**
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Thanks for responding to our ad. The Justice for Wilbert Gay, Jr. Committee was formed to secure Wilbert Gay's freedom. Wilbert is a 58 year old Philadelphia man, who has been incarcerated for over 35 years. We are struggling to get Pennsylvania to give him the opportunity to appeal his 1978 conspiracy to commit murder conviction, which is his right guaranteed by the U.S. Constitution.

The movie, "The Thin Blue Lie" is about the same Philadelphia homicide unit that interrogated Wilbert Gay, Jr., beat him and forced him to sign a statement. Wilbert Gay, Jr. would not learn until after his trial that when these detectives were interrogating him that they were being investigated by the FBI for violating the constitutional rights of a firebombing murder suspect and witnesses in order to get a confession which led to a conviction. The movie is about the six Philadelphia homicide detectives who beat and coerced the suspect and witnesses in order to get a confession which led to a conviction.

At Wilbert Gay's preliminary hearing (aka probable cause hearing), he was charged with conspiracy to commit murder. With such a charge you don't have to participate in the actual murder to be found guilty, if there is evidence that you were part of a conspiracy to commit the murder (agreement and planning) than you would be held just as responsible for the murder as the person who did the actual killing. The statement that Wilbert Gay was forced to sign was not a confession to the murder or to participating in a conspiracy to commit the murder. The statement in legal terms was an extrajudicial exculpatory statement. In a word it said I was a passenger in a car with the victim and the driver, when there was words between the driver and the victim. The driver stopped the car, got out of the car and got weapons out of the trunk of his car and shot the victim. The statement said that the defendant (Gay) in no way participated in the murder of the victim. The presiding preliminary hearing judge, initially stated that additional evidence was required to hold Gay for trial. At that point in the preceding the assistant district attorney stated that he had a statement from the codefendant (the shooter) implicating Gay in the murder. At that point, the judge, with the assurance from the assistant district attorney, that the statement would be available going forward, Gay was held for trial. At the July 25, 1978 trial the assistant district attorney never presented as evidence the statement that the codefendant allegedly had made and the codefendant never took the stand at Gay's trial. The only probable cause to arrest and hold Wilbert Gay for trial was the alleged statement made by the codefendant (shooter) and without such a statement or testimony by the codefendant there was no probable cause for his trial to proceed. That did not stop the prosecution from going forward with the "malicious prosecution" of Wilbert Gay, Jr.

Six members of the Philadelphia homicide unit were the focus of the movie "The Thin Blue Lie" were convicted of the murders before the trial (March 22, 1978) of victim. The statement that Wilbert Gay was forced to sign was not a confession to the murder or to participating in a conspiracy to commit the murder. The statement in legal terms was an extrajudicial exculpatory statement. In a word it said I was a passenger in a car with the victim and the driver, when there was words between the driver and the victim. The driver stopped the car, got out of the car and got weapons out of the trunk of his car and shot the victim. The statement said that the defendant (Gay) in no way participated in the murder of the victim. The presiding preliminary hearing judge, initially stated that additional evidence was required to hold Gay for trial. At that point in the preceding the assistant district attorney stated that he had a statement from the codefendant (the shooter) implicating Gay in the murder. At that point, the judge, with the assurance from the assistant district attorney, that the statement would be available going forward, Gay was held for trial. At the July 25, 1978 trial the assistant district attorney never presented as evidence the statement that the codefendant allegedly had made and the codefendant never took the stand at Gay's trial. The only probable cause to arrest and hold Wilbert Gay for trial was the alleged statement made by the codefendant (shooter) and without such a statement or testimony by the codefendant there was no probable cause for his trial to proceed. That did not stop the prosecution from going forward with the "malicious prosecution" of Wilbert Gay, Jr.

The only evidence that connected Wilbert Gay to the crime was the statement that four of the convicted felon detectives had obtained from him. On December 3, 1976, a Suppression Hearing was held to suppress the statement that Wilbert Gay said was not given voluntarily. The presiding judge was the same judge that presided over the suppression hearing in the firebombing murder case. At both suppression hearings the presiding judge believed the detectives who would later be indicted and convicted of violating the constitutional rights of the firebombing murder suspect and witnesses.

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At Wilbert Gay's trial the prosecution called ten witnesses to testify. The first nine witnesses consisted of one homicide detective, two street cops, one evidence technician, the victim's coworker, his sister, wife, neighbor and a deputy medical examiner. None of these witnesses contributed anything to the prosecution's case as far as Wilbert Gay's involvement in a conspiracy to commit murder. The police described the scene of the crime. The detective was one of a number of officers that arrested the codefendant (the shooter). The coworker testified that he saw the victim as he left work for the day get into a car with two men, but could not identify the two men. The medical examiner described the manner of the victim's death. His sister said when she had last seen her brother and where he lived. The wife pointed out they were married three months before he was murdered, but were separated at the time of his death. The neighbor said that the codefendant and another man had come to her apartment inquiring about the whereabouts of the victim. She also stated that she had never seen the defendant, Wilbert Gay, Jr. before. For the tenth witness the Philadelphia Assistant District Attorney had the audacity to put on the stand at Gay's trial one of the convicted detectives (felons) to testify to the "legality" of the statement that he and three of the other convicted detectives had obtained from Gay. Wilbert Gay's court appointed attorney didn't call one witness and Wilbert Gay didn't take the stand. Gay's court appointed attorney acted as if he had no knowledge of the fact that the detective who testified about the legality of the statement that he had obtained from Wilbert Gay was a convicted felon and therefore made no attempt to impeach his testimony.

In the prosecution's closing argument, with a case based only on an exculpatory statement, and no corroborating evidence she had to create the illusion that Wilbert Gay had agreed with the codefendant to commit the murder. One way to do that is to assume a fact that is not supported by evidence or to distort a fact so that an inference can be made that supports your case. For example, one of the first things she said in her closing argument was, "The two men went and picked up the deceased at his job. They took him for a joy ride, apparently, and they were going to retaliate for the theft that they believed or Jerry (the shooter) believed that the deceased had committed." There is no way to logically infer from the fact that a man gets into a car occupied by two men that the two men have conspired to kill the third man or in any way harm him. At another point in her closing argument the prosecutor states, "At one point while they were in the car the defendant had words with the deceased." She states that twice in her closing argument. Nowhere in the statement is it stated that the defendant had words with the deceased. Actually, it was the codefendant (the shooter) that had words with the deceased. In the prosecution closing argument there are numerous examples of these types of reasoning and misstatements of fact. Wilbert Gay's trial was a bench trial and the judge declared that he was guilty of conspiracy to commit murder. When the convicted homicide detective's appeals were denied they were sent to a federal prison in Florida to serve their sentences.

Wilbert Gay appealed his case on the basis of ineffective counsel, that there was insufficient evidence to find him guilty and that the prosecution committed numerous Brady Violations. A Brady violation is when the prosecution fails to reveal evidence which would tend to support the defense's contention that the defendant is not guilty. Such as the prosecution's failure to reveal the fact that the detective who testified to the legality of the statement that he obtained from Wilbert Gay Jr. was a felon. The Pennsylvania Appeals Court to date has failed in their legal responsibility to give Gay's issues a fair and impartial hearing.

Additional details about the railroading of Wilbert Gay, Jr. by the Pennsylvania criminal injustice system can be found on our [moveon.org](https://petitions.moveon.org/sign/justice-for-wilbert-gay) petition. We ask that you please support our campaign by signing our online petition at:

https://petitions.moveon.org/sign/justice-for-wilbert-gay?source=s.icn.em.mt&r_by=12090685

Thanks, Cleve Parmer Justice for Wilbert Gay, Jr. Committee

PS: On April 12, 2015, Wilbert Gay, Jr. amended his June 21, 2013 PCRA petition. A quote from that petition follows below:

"The law requires the prosecution to produce Brady and Giglio material whether or not the defendant request any such evidence. *Strickler v. Greene*, 527 U.S. ; *United States v. Agurs*, 427 U.S. 97 107 (1976). The Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article One, Section Nine of the Pennsylvania Constitution require a prosecutor to disclose exculpatory evidence to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963); *Commonwealth v. Smith*, 532 Pa.

177, 615 A.2d 321 (1992). Under Brady and its progeny, the prosecutor has a duty to correct false or misleading evidence that is harmful to the defendant. Giglio v. United States, 405 U.S. 150 (1972); Commonwealth v. Wallace, 500 Pa. 270, 275-76, 455 A.2d 1187 (1983).

The prosecuting attorney in the case sub judice, had full knowledge of her only witness against petitioner being indicted and convicted in federal court on March 22, 1978, a full four months before petitioner's trial started, for beating witnesses and suspects in the city of Philadelphia."