

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

HAPPY VALLEY MUNICIPAL COURT,
RESPONDENT,

VS.

LINH THI MINH TRAN,
PETITIONER.

ON PETITION FOR A WRIT OF CERTIORARI TO
IN THE SUPREME COURT OF THE STATE OF OREGON

PETITION FOR WRIT OF CERTIORARI

Linh Thi Minh Tran
Petitioner pro se
12542 SE Capella court,
Happy Valley, Oregon 97086
Phone: 503-558-0886
Email: minhlinhtrn@gmail.com

10/20/2018

QUESTION REVIEW PRESENTED

1. Was the trial court Clackamas State of Oregon's judgment sentence Municipal Court dated 01/26/2017 in favor of respondent Happy Valley Municipal Court and against Petitioner Linh Thi Minh Tran unconstitutionally cruel and unusual in this case?
2. Has the Plaintiff-Respondent Happy Valley Municipal Court failed to prove the highest standard burden of proof beyond a reasonable doubt when determining the guilt or innocence of defendant-petitioner Linh Thi Minh Tran in this case?
3. Were the trial court Clackamas County State of Oregon's ruling error intentional misrepresentations, conclusions that were reached without proper procedural protections and that lacks sufficient evidentiary support?
4. Has the trial Court Clackamas County State of Oregon erred that as a matter of law or with intent to deceive when it ruled that Defendant-Petitioner Linh Thi Minh Tran has been convicted guilty violation Happy Valley Municipal Code Low Density Residential Zone-Unpermitted Use Code (HVMC) 16.22.030?
5. Was the Judgment Sentence Municipal Court De Novo Appeal signed and entered on 01/26/2017 by trial court Clackamas County State of Oregon judge Heather L. Karabeika to convict Defendant-Petitioner Linh Thi Minh Tran to be guilty in this case clearly errors, abuse discretion standard of law, violation of the fundamental of rights, clearly violation of U.S. Constitutional, violations of

Oregon Constitutional Article I, Section 10, violation of U.S Constitutional Amendment Four, Eight, and Fourteenth, clearly deprived Defendant-Petitioner Linh Thi Minh Tran of a fair trial hearing as results the trial court has failed to demonstrate and exercise sound and reasonable and legal decisions making skills and trial court also has failed to produce and evaluation whether evidence could reasonable support the guilty verdict beyond a reasonable doubt?

6. Was Oregon Court of Appeal's decision to be error when it affirmed without opinion with trial court Clackamas County's ruling in this case presented a significant error issue of law when Plaintiff-Respondent Happy Valley Municipal Court admitted in its answering brief submitted to Oregon Court of Appeals that Officer Ryan Kersey's mistake because Defendant-Petitioner Linh Thi Minh Tran's property located at 12542 SE Capella court, Happy Valley, Oregon 97086 was not violated Happy Valley City Code HVMC 16.22.030?
7. Was Oregon Court of Appeals decide to be error that as a matter of law when it affirmed without opinion with the trial court Clackamas County State of Oregon's Judgment Sentence Municipal Court De Novo Appeal dated 01/26/2017 when there were sufficient evidences in court file to determine that Defendant-Petitioner Linh Thi Minh Tran's property located at 12542 SE Capella court, Happy Valley, Oregon 97086 is single-family dwelling?

8. Was the trial court Clackamas County State of Oregon inconsistent or confused in ruling on the issue that this case presents?
9. Was the case presents a significant issue of law include the jurisdiction of the Oregon Court of Appeals and the trial court's error?
10. Did Oregon Court of Appeals decide to be wrong when it affirmed without opinion with the trial court Clackamas County State of Oregon's Judgment Sentence Municipal Court De Novo Appeal dated 01/26/2017 when it has full knowledge that the trial court was violation of Oregon Constitutional Article I, Section 10, violation of U.S Constitutional Amendment Four, Eight, and Fourteenth, abuse discretion standard of law, violation of fundamental of rights, and clearly deprived Defendant-Petitioner Linh Thi Minh Tran of a fair trial hearing that this sentencing procedure deprived her of her federal constitutional right to have a jury determine beyond a reasonable doubt of all facts legally essential to her sentence?
11. Was Defendant-Petitioner Linh Thi Minh Tran serious harm and affected by the error decision of Oregon Court of Appeals and the trial court's error?
12. Was the error decision of Oregon Court of Appeals and the trial court error were the legal issue of state law?

13. Was the Oregon Court of Appeals decision to be error results in a serious or irreversible injustice or in a distortion or misapplication of a legal principle in this matter?
14. Why questions presented on review have importance beyond the particular case and require decision by the United States Supreme Court?

LISTS OF PARTIES

Linh Thi Minh Tran
Petitioner pro se
12542 SE Capella court,
Happy Valley, Oregon 97086
Phone: 503-558-0886
Email: minhlinhtrn@gmail.com

Paul C. Elsner, OSB#820476
Beery, Elsner & Hammond, LLP
1750 SW Harbor Way Ste 380
Portland, Oregon 97201-5106
Tel: 503-226-7191
Paul@gov-law.com
Attorney for Plaintiff- Respondent Happy Valley Municipal Court

TABLE OF CONTENTS

OPINIONS BELOW.....	10
JURISDICTION.....	13
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	14
STATEMENT OF THE CASE.....	16
Nature of the action and relief sought.....	16
Judgment Sentence Municipal Court De Novo Appeal.....	16
Nature of the Judgment.....	17
SUMMARY ARGUMENT.....	17
STATEMENT OF FACTS.....	20
ASSIGNMENT OF ERRORS.....	24
STANDARD OF REVIEW.....	26
ARGUMENT OF ERRORS.....	28
ARGUMENT	
1. Defendant-Petitioner Linh Thi Minh Tran’s property is single family dwelling not located in a zone regulated by HVMC 16.22.030 or HVMC 16.22.040.....	29
2. <u>The trial court Clackamas County State of Oregon’s Judgment Sentence Municipal Court signed by Clackamas County Circuit Court Judge Heather L. Karabeika entered 01/26/2017 was unconstitutionally cruel and unusual in this case, abuse discretion standard of law, violation of the fundamental of rights, clearly violation of U.S Constitutional, failed to demonstrate and exercise sound and reasonable and legal decisions making skills and trial court also has failed to produce and evaluation whether evidence could reasonable support the guilty verdict beyond a reasonable doubt.....</u>	31
3. Officer Ryan Kersey’s conduct was “reprehensible and outrageous and in total disregard” of Defendant-Petitioner Linh Thi Minh Tran’s homeowner’s legal rights and destroyed petitioner’s property and her dignity.....	34
REASONS FOR GRANTING THE WRIT.....	39
CONCLUSION.....	39

INDEX TO APPENDICES

1. APPENDIX A. PICTURE OF DEFENDANT-PETITIONER LINH THI MINH TRAN'S PROPERTY LOCATED AT ADDRESS 12542 SE CAPELLA COURT, HAPPY VALLEY, OREGON 97086.
2. APPENDIX B. DVD CAMERA AUDIO RECORD WAS PRESENTED AT TRIAL COURT HEARING.
3. APPENDIX C. ORDER DENYING PETITIONER LINH THI MINH TRAN'S PETITION FOR RECONSIDERATION OF OREGON SUPREME COURT DATED 07/26/2018.
4. APPENDIX D. ORDER DENYING PETITIONER LINH THI MINH TRAN'S PETITION FOR REVIEW OF OREGON SUPREME COURT.
5. APPENDIX E. ORDER DENYING RECONSIDERATION OF OREGON COURT OF APPEALS DATED 01/30/2018.
6. APPENDIX F. DECISION OF OREGON COURT OF APPEALS AFFIRMED WITHOUT OPINION DATED 12/13/2017.
7. APPENDIX G. NOTICE OF OREGON COURT OF APPEALS REGARDING DEFENDANT-PETITIONER LINH THI MINH TRAN FILED NOTICE OF APPEAL THIS CASE TO OREGON COURT OF APPEALS ON 02/07/2017.
8. APPENDIX H. NOTICE OF APPEAL.
9. APPENDIX I. ORDER OF CLACKAMAS COUNTY CIRCUIT COURT JUDGE HEATHER L. KARABEIKI DATED 08/30/2016.
10. APPENDIX J. TRIAL COURT JUDGMENT SENTENCE MUNICIPAL COURT DE NOVO APPEAL ENTERED DATED 01/26/2017.
11. APPENDIX K. STATUTORY WARRANTY DEED PROPERTY 12542 SE CAPELLA COURT, HAPPY VALLEY, OREGON 97086.
12. APPENDIX L. CLACKAMAS COUNTY OFFICIAL RECORDS VERIFYING OWNERSHIP OF PROPERTY 12542 SE CAPELLA COURT, HAPPY VALLEY, OREGON 97086 DATED 05/16/2018.
13. APPENDIX M. CLACKAMAS COUNTY TAX ASSESSOR APPRAISAL PROPERTY 12542 SE CAPELLA COURT, HAPPY VALLEY, OREGON 97086 DATED 02/19/2006.
14. APPENDIX N. RESPONDENT HAPPY VALLEY MUNICIPAL COURT'S ANSWERING BRIEF.

15. APPENDIX O. TRANSCRIPT RECORD OF TRIAL COURT
CLACKAMAS COUNTY HEARING ON 08/30/2016.
16. APPENDIX P. HAPPY VALLEY CITY CODE ROOMING HOUSE.
17. APPENDIX Q. LETTER OF OFFICER RYAN KERSEY DATED
09/03/2015.
18. APPENDIX R. PROPERTY 12542 SE CAPELLA COURT, HAPPY
VALLEY, OREGON 97086 FROM CLACKAMAS COUNTY OFFICIAL
MAPS AND RECORD.
19. APPENDIX S. WITNESS VERIFICATION DATED 01/01/2016.
20. APPENDIX T. HAPPY VALLEY MUNICIPAL COURT TRIAL
NOTIFICATION DATED 04/12/2016.
21. APPENDIX U. HAPPY VALLEY MUNICIPAL COURT CITATION
VIOLATION DESCRIPTION 0772801 DATED 05/04/2016.
22. APPENDIX V. NOTICE OF APPEAL TO CLACKAMAS COUNTY
CIRCUIT COURT DATED 06/01/2016.
23. APPENDIX W. CLACKAMAS COURT DOCKET SHEET CASE NO.
16VI83928.
24. APPENDIX X. PROPERTY TAX 12542 SE CAPELLA COURT, HAPPY
VALLEY, OREGON 97086 YEAR 2017.

TABLE OF AUTHORITIES CITED

CASES

<i>Apprendi v. New Jersey</i> , 530 U. S. 466, 490 (2000).....	22,26
310 Or. At 355-56	
<i>State v. King</i> , 307 Or 332, 768 P2d 391 (1974).....	27
<i>State v. Harris</i> , 288 Or 703, 721, 609 P2d 798 (1980).....	23
<i>State v. Krummacher</i> , 269 Or 127, 137-38, 523 P2d 1009 (1974).....	27
307 Or at 339.....	24
<i>State v. Rainey</i> , 298 Or 459, 466, 692 P2d 635 (1985).....	27
<i>State v. Hickmann</i> , 273 Or. 358, 360, 540 P.2d 1406 (1975).....	32
<i>Blakely v. Washington</i> , 542 US 296-Supreme Court 2004.....	22
<i>Ailes v. Portland Meadows</i> , 312 Or. 376, 823 P. 2d 956 (1991).....	32

STATUTES AND RULES

Happy Valley Municipal Code, Title 16.....	25
HVMC 16.22.030.....	16,17,18,21,22,23,24,29,30,31,33,37
HVMC 16.22.040.....	29,40,33
Oregon Constitutional Article I, Section 10.....	21
U.S Constitutional Amendment Four.....	21
U.S Constitutional Amendment Eight.....	21
U.S Constitutional Amendment Fourteenth.....	21
ORAP 5.45.....	32
ORAP 5.42(2).....	26,33
ORS 138.040.....	10
ORCP 12B.....	32

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **Oregon State Courts:**

The Order Denying Reconsideration, Case Name: Happy Valley Municipal Court vs. Linh Thi Minh Tran, Case Number: S065809 in the Supreme Court of the State of Oregon was issued on 07/26/2018 by Martha L. Walters, Chief Justice Supreme Court.

The Order Denying Review, Case Name: Happy Valley Municipal Court vs. Linh Thi Minh Tran, Case Number: S065809 in the Supreme Court of the State of Oregon was issued on 05/03/2018 by Thomas A. Balmer, Chief Justice Supreme Court.

The Order Recalling Appellate Judgment, Case Name: Happy Valley Municipal Court vs. Linh Thi Minh Tran, Case Number: S065809 in the Supreme Court of the State of Oregon was issued on 06/04/2018 by by Martha L. Walters, Chief Justice Supreme Court.

The Appellate Judgment and Supplemental Judgment, Case Name: Happy Valley Municipal Court vs. Linh Thi Minh Tran, Case Number: A163472 in the Oregon Court of Appeals was issued on 08/08/2018.

The Order Denying Reconsideration, Case Name: Happy Valley Municipal Court vs. Linh Thi Minh Tran, Case Number: A163472 in the Oregon Court of Appeals was issued on 01/30/2018 by Rex Armstrong, Presiding Judge, Oregon Court of Appeals.

The Judgment Affirmed Without Opinion and Costs allowed, payable by Appellant Linh Thi Minh Tran, Case Name: Happy Valley Municipal Court vs. Linh Thi Minh Tran, Case Number: A163472 in the Oregon Court of Appeals was issued on 12/13/2017 by Armstrong, Presiding Judge, and Tookey, Judge, and Shorr, Judge, Oregon Court of Appeals.

The Judgment Sentence Municipal Court De Novo Appeal in favor of Plaintiff Happy Valley Municipal Court and against Defendant Linh Thi Minh Tran, Case Name: Happy Valley Municipal Court vs. Linh Thi Minh Tran, Case Number: 16VI83928 in the Clackamas County Circuit Court of the State of Oregon was issued on 01/26/2017 by Clackamas County Circuit Court Judge Heather L. Karabeika.

The Order from the Clackamas County Circuit Court of the State of Oregon in favor of Plaintiff Happy Valley Municipal Court and against Defendant Linh Thi Minh Tran, Case Name: Happy Valley Municipal Court vs. Linh Thi Minh Tran, Case Number: 16VI83928 in the Clackamas County Circuit Court of the State of Oregon was issued on 08/30/2016 by Clackamas County

Circuit Court Judge Heather L. Karabeika.

JURISDICTION

[X] For Case from state courts:

The Order Denying Reconsideration, Case Name: Happy Valley Municipal Court vs. Linh Thi Minh Tran, Case Number: S065809 in the Supreme Court of the State of Oregon was issued on 07/26/2018 by Martha L. Walters, Chief Justice Supreme Court. A copy of the order denying reconsideration in the highest state court Oregon Supreme Court of the State of Oregon was issued on 07/26/2018 appears at Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Oregon Constitutional Article I, Section 10:

Section 10. Administration of justice. No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.—

U.S Constitutional Amendment Four

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S Constitutional Amendment Eight

The **Eighth Amendment (Amendment VIII)** of the **United States Constitution** prohibits the federal government from imposing excessive bail, excessive fines, or cruel and unusual punishments.

U.S Constitutional Amendment Fourteenth

The **Fourth Amendment** was part of the Bill of Rights that was added to the Constitution on December 15, 1791. It protects people from unlawful searches and seizures. This **means** that the police can't search you or your house without a warrant or probable cause.

2017 ORS 138.057¹

Appeal from judgment involving violation

(1)(a) If a justice court or municipal court has become a court of record under ORS **51.025** (**Justice court as court of record**) or **221.342** (**Method by which municipal court becomes court of record**), an appeal from a judgment involving a violation shall be as provided in ORS chapter 19 for appeals from judgments

entered by circuit courts, except that the standard of review is the same as for an appeal from a judgment in a proceeding involving a misdemeanor or felony. If a justice court or municipal court has not become a court of record under ORS **51.025** (**Justice court as court of record**) or **221.342** (**Method by which municipal court becomes court of record**), the appeal from a judgment involving a violation entered by the justice court or municipal court may be taken to the circuit court for the county in which the justice court or municipal court is located. An appeal to a circuit court must be taken in the manner provided in this subsection.

Happy Valley City's Code 16.12.030 Definitions.

Rooming house. A single-family dwelling, accessory dwelling unit (ADU) or either unit of a two-family dwelling (duplex), which is rented for a valuable consideration or wherein rooms with or without cooking facilities are rented for a valuable consideration to or occupied by between more than two and up to five (5) or more natural persons unrelated by blood, marriage or legal adoption to the owner or operator of the house. Temporary gratuitous guests as used herein shall refer to natural persons.

**PETITIONER LINH THI MINH TRAN'S PETITION FOR A WRIT OF
CERTIORARI TO UNITED STATES SUPREME COURT**

STATEMENT OF THE CASE

Nature of the action and relief sought

This is an action of petition for a writ of certiorari to the judgment entered on 01/26/2017 by Judge Heather L. Karabeika in Clackamas County Circuit Court of the State of Oregon against defendant-petitioner Linh Thi Minh Tran. The trial court made verdict defendant Linh Thi Minh Tran was found guilty to violate of Happy Valley City Code 16.22.030 Low Density Residential zone-unpermitted use and charged in the amount of money \$6,000.00 against defendant-petitioner Linh Thi Minh Tran. Defendant-Petitioner Linh Thi Minh Tran seeks reversal of the Trial court Judgment Sentence Municipal Court De Novo Appeal and waive all fine in the amount of total \$6,000.00.

Judgment Sentence Municipal Court De Novo Appeal

Defendant-Petitioner Linh Thi Minh Tran was verdict for guilty violation Happy Valley City Low Density Residential Zone-Unpermitted Use Code (HVMC) 16.22.030. Judgment Sentence Municipal Court De Novo Appeal in Clackamas County Circuit Court was entered on January 26, 2017, Case Number: 16VI83928.

Nature of the Judgment

Defendant-Petitioner Linh Thi Minh Tran pled “not guilty” to the charge but Clackamas County Circuit Court State of Oregon Judge Heather L. Karabeika tried to convict Defendant-Petitioner Linh Thi Minh Tran was guilty of violation of Happy Valley City Low Density Residential Zone-Unpermitted Use Code (HVMC) 16.22.030. Trial Court Judgment Sentence Municipal Court De Novo Appeal was entered on January 26, 2017.

On February 7, 2017, Defendant-Petitioner Linh Thi Minh Tran was timely filed Notice of Appeal to Oregon Court of Appeals.

On July 26, 2018, the highest state court Oregon Supreme Court issued an order denying petition for reconsideration this case.

Summary of Argument

- Plaintiff-Respondent Happy Valley Municipal admitted into Plaintiff-Respondent’s answering brief submitted to Oregon Court of Appeals dated 07/10/2017 that Officer Ryan Kersey’s mistake when he issued the Happy Valley City’s Uniform Citation for Defendant-Petitioner Linh Thi Minh Tran because Defendant-Petitioner Linh Thi Minh Tran’s property is located at address 12542 SE Capella court, Happy Valley, Oregon 97086 is not located in zone regulated by HVMC 16.22.030.

- 'Oregon Court of Appeals' decision was error that as a matter of law when in affirmed without opinion with trial court's ruling in favor of Plaintiff-Respondent Happy Valley Municipal Court to verdict Defendant-Petitioner Linh Thi Minh Tran even though Plaintiff-Respondent Happy Valley Municipal Court admitted that Officer Ryan Kersey made mistake.
- 'Oregon Court of Appeals' decision was error that as a matter of law because the trial court's Judgment Sentence Municipal Court De Novo Appeal dated 01/26/2017 was HVMC 16.22.030 never mentioned about HVMC 16.22.040.

- **More important, there was sufficient evidences in court file that Defendant-Petitioner Linh Thi Minh Tran's property located at address 12542 SE Capella court, Happy Valley, Oregon 97086 is not located in a zone regulated by HVMC 16.22.030 or HVMC 16.22.040 instead, it is a single-family dwelling based on documentations that recorded into Clackamas County Official Records since 2006 to present and Clackamas County Official Tax Assessor since 2006 to present include: Clackamas County Summary Verifying Ownership, Property Tax Assessor and Appraisal drawings and maps, and Happy Valley City's maps.**

- The Witness Mark Serva who has been invited by Plaintiff-Respondent Happy Valley Municipal Court to the trial hearing on August 31, 2016 indicated before the trial court that Officer Ryan Kersey entered into Defendant-Petitioner Linh Thi Minh Tran's homeowner's residence without her writing consent and discussed about her property foreclosure status with the people even though Officer Ryan Kersey and those people did not have any interest or any title or any rights of possession to Defendant-Petitioner Linh Thi Minh Tran's property 12542 SE Capella court, Happy Valley, Oregon 97086. The wrongful conduct of Officer Ryan Kersey occurred on December 23, 2015 during Defendant-Petitioner Linh Thi Minh Tran had been arrested and jailed by other Officer Darryn J. Kuehl and Officer Benjamin J. Toops. Officer Ryan Kersey's conduct was "reprehensible and outrageous and in total disregard" of the homeowner's legal rights of Defendant-Petitioner Linh Thi Minh Tran.
- Officer Ryan Kersey admitted before the trial court that he entered into Defendant-Petitioner Linh Thi Minh Tran located at 12542 SE Capella court, Happy Valley, Oregon 97086 without her writing consent and he discussed about the foreclosure status of Defendant-Petitioner Linh Thi Minh Tran's property with other people even though he and other people did not have any

interest or any title or any rights of possession of Defendant-Petitioner Linh Thi Minh Tran's property.

Statement of Facts

By filing this petition for a writ of certiorari, Defendant-Petitioner Linh Thi Minh Tran did not agree with the trial court Clackamas County Circuit Court State of Oregon's decision and requests United States Supreme Court granted for Petitioner Linh Thi Minh Tran's petition for a writ of certiorari because the trial court's Judgment Sentence Municipal Court dated 01/26/2017 was unconstitutionally cruel and unusual and this judgment should be reversed.

The Plaintiff-Respondent Happy Valley Municipal Court failed to prove the highest standard burden of proof beyond a reasonable doubt when determining the guilt or innocence of defendant-petitioner Linh Thi Minh Tran in this case. Instead Defendant-petitioner Linh Thi Minh Tran provided all sufficient evidence in documentations that recorded in Clackamas County Official Records since 2006 to present, Clackamas County Official Tax Assessor and Appraisal since 2006 to present, and Happy Valley City's maps including: Summary Verifying Ownership sheet, Clackamas County Official Tax Assessor and Appraisal, and Happy Valley City's maps to determine to trial court and Oregon Court of Appeals that property 12542 SE Capella court, Happy Valley, Oregon 97086 is single-family dwelling as

defined by Clackamas County Official Records and Clackamas County Official of Tax Assessor and Appraisal since 2006.

The trial court Clackamas County State of Oregon's ruling error against petitioner Linh Thi Minh Tran that as a matter of law intentional misrepresentations, conclusions that were reached without proper procedural protections and that lacks sufficient evidentiary support. The trial court's error that as a matter of law when it tried to convict Defendant-Petitioner Linh Thi Minh Tran was guilty violation Happy Valley City Code Low Density Residential Zone-Unpermitted Use Code (HVMC) 16.22.030 in this case.

The Judgment Sentence Municipal Court De Novo Appeal signed and entered on 01/26/2017 by trial court Judge Heather L. Karabeika to convict Defendant-Petitioner Linh Thi Minh Tran to be guilty in this case was clearly errors, abuse discretion standard of law, violation of the fundamental of rights, clearly violation of Oregon Constitutional Article I, Section 10, violations of U.S Constitutional Amendment Four, Eight, and Fourteenth, clearly deprived Defendant-Petitioner Linh Thi Minh Tran of a fair trial hearing that this sentencing procedure deprived Defendant-Petitioner Linh Thi Minh Tran's federal constitutional right to determine beyond a reasonable doubt of all facts legally essential to Defendant-Petitioner's sentence. **More important, Plaintiff-**

Respondent Happy Valley Municipal Court admitted into Plaintiff-Respondent's

answering brief submitted to Oregon Court of Appeals on July 10, 2017 that **Officer Ryan Kersey's mistake** because Defendant-Respondent Linh Thi Minh Tran's property 12542 SE Capella court, Happy Valley, Oregon 97086 is not located in a zone regulated by HVMC 16.22.030. In *Apprendi v. New Jersey*, 530 U. S. 466, 490 (2000): "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." This rule reflects two longstanding tenets of common-law criminal jurisprudence: that the "truth of every accusation" against a defendant "should afterwards be confirmed by the unanimous suffrage of twelve jury of his equals and neighbors," *Blakely v. Washington*, 542 US 296 - Supreme Court 2004. As results the trial court has failed to demonstrate and exercise sound and reasonable and legal decisions making skills and trial court also has failed to produce and evaluation whether evidence could reasonable support the guilty verdict beyond a reasonable doubt.

Oregon Court of Appeal's decision was error when it affirmed without opinion with trial court Clackamas County's ruling in this case presented a significant issue of law and bad faith to defendant-petitioner Linh Thi Minh Tran although Plaintiff-Respondent Happy Valley Municipal Court admitted in its answering brief submitted to Oregon Court of Appeals on July 10, 2017 that **Officer Ryan Kersey's mistake** because Defendant-Petitioner Linh Thi Minh

Tran's property address at 12542 SE Capella court, Happy Valley, Oregon 97086 is not located in a zone regulated by HVMC 16.22.030. Therefore, Defendant-Petitioner Linh Thi Minh Tran is not guilty in violation of HVMC 16.22.030.

Defendant-Petitioner Linh Thi Minh Tran's property at address 12542 SE Capella court, Happy Valley, Oregon 97086 is single family dwelling based on documentations recorded into Clackamas County Official Records since 2006 to present and Clackamas County Official Tax Assessor and Appraisal since 2006 to present including: drawings and maps, Summary verifying ownership property 12542 SE Capella court, Happy Valley, Oregon 97086. These legal documentations are demonstrated that the property 12542 SE Capella court, Happy Valley, Oregon 97086 is not located in a zone regulated by HVMC 16.22.030 and HVMC 16.22.040 instead, it is single-family dwelling as defined by Clackamas County Official Tax Assessor and Appraisal and Clackamas County Official Records since 2006 to present.

Officer Ryan Kersey admitted before the trial court that he entered into Defendant-Petitioner Linh Thi Minh Tran located at 12542 SE Capella court, Happy Valley, Oregon 97086 without petitioner Linh Thi Minh Tran's writing consent and he discussed about the foreclosure status of Defendant-Petitioner Linh Thi Minh Tran's property 12542 SE Capella court, Happy Valley, Oregon 97086 with other five people even though he and other five people did not have any

interest or any title or any rights of possession of Defendant-Petitioner Linh Thi Minh Tran's property at 12542 SE Capella court, Happy Valley, Oregon 97086.

The Court of Appeals decision was error results in a serious or irreversible injustice or in a distortion or misapplication of a legal principle caused Defendant-Petitioner Linh Thi Minh Tran serious harm and affected physical and mental health by the error decision of Oregon Court of Appeals and the trial court.

Because this case could not resolve the questions presented on review in this case at the highest Oregon State Court, thus, it is very importance beyond the particular case and require decision by the United States Supreme Court.

ASSIGNMENT OF ERROR

The trial court erred in sentencing Defendant-Petitioner Linh Thi Minh Tran verdict guilty violation Happy Valley City Code Low Density Residential Zone-Unpermitted Use (HVMC) 16.22.030.

7 THE COURT: This is a trial notification for
8 May 4th of 2016.

9 All right. This case was reviewed by this Court
10 de novo, which is a fresh trial, a full new trial. The
11 issue is whether or not the City has met their burden of
12 proof regarding whether or not Ms. Tran violated
13 Happy Valley Municipal Code 16-2030 on the dates that were
14 alleged in the original citation, September 3rd, 2015 to

15 December 23rd of 2015. It is clear from the record that
16 Ms. Tran was on notice by Mr. Kersey's visit and
17 subsequent letter that she was potentially violating
18 zoning codes of the City of Happy Valley.

19 This is Exhibit 4 of the City, dated
20 September 3rd, a letter sent to the defendant clearly
indicating that she was in violation potentially of the

1 Happy Valley Municipal Code, Title 16.
2 She also tried to assert that she was not in the
3 low-density zone, which is contrary to the evidence.

4 She also tried to assert that she did not
5 violate the code at all, which is contrary to the
6 evidence.

7 And then she tried to say that she has the right
8 to have caregivers for herself or her father, although
9 none of the members that rented from her appeared to be
10 caregivers or healthcare providers for herself or her
11 father who does not appear to live with her.

12 So the Court does find Ms. Tran guilty of the
1 offenses alleged.

2
13 THE COURT: I'm trying to suspend a little bit
14 of this fine so you are able to pay it. I know that times
15 are tough financially for you right now. If you don't
16 comply with this Court order, the full amount of \$6,000

17 will be due by you. So I'm going to suspend half of that,
3 if you pay it in the next 30 days. I am imposing a
fine. That fine will be \$3,000
4 total, and you are going to need to pay that within 30
5 days, or set up a payment plan with the city of Happy
6 Valley. So I will order that you report to the city of
7 Happy Valley in the next 30 days to set up a payment plan.
8 If you do not, the Court will be forced to potentially
9 enhance that. So make sure you comply with that order.
18
1

Standard of Review

Appendi v. New Jersey, 530 U. S. 466, 490 (2000) describes the standard an appellate court uses when exercise to consider or not to consider the error, the error must be one “of law”; that it must be “apparent” i.e., the point must be obvious, not reasonably in dispute; and that it must appear “on the face of the record,” i.e., the reviewing court must not need to go outside the record to identify the error or choose between competing inferences, and the facts constituting the error must be irrefutable. 310 Or. At 355-56.

ORAP 5.45(2) provides: “No matter assigned as error will be considered on appeal unless it was preserved in the lower court; provided that the appellate court may consider errors of law apparent on the face of the record. An error will not be

considered by an appellate court when the error is not preserved in the trial court”
(Emphasis added).

State v. King, 307 Or 332, 768 P2d 391 (1974), describes the standard an appellate court uses when reviewing the sufficiency of evidence for conviction.

The Oregon Supreme Court stated:

"[T]he question is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Harris*, 288 Or 703, 721, 609 P2d 798 (1980). It is not proper for us to hold that there is a reasonable doubt because of conflicts in the evidence. After a verdict of guilty, such conflicts must be treated as if they had been decided in the state's favor. After the conflicts have been so decided, we must take such decided facts together with those facts about which there is no conflict and determine whether the inferences that may be drawn from them are sufficient to allow the jury to find defendant's guilty beyond a reasonable doubt. Our decision is not whether we believe defendant is guilty beyond a reasonable doubt, but whether the evidence is sufficient for a jury to so find. *State v. Krummacher*, 269 Or 127, 137-38, 523 P2d 1009 (1974)."

307 Or at 339.

Inferences that are drawn must follow more likely than not from the facts giving rise to the inference. When an inference is the sole basis for finding the existence of an element of the crime, the inference must follow beyond a reasonable doubt from the underlying facts. *State v. Rainey*, 298 Or 459, 466, 692 P2d 635 (1985).

The standard of review required by the Due Process Clause of the

Fourteenth Amendment to the United States Constitution is similar: "[T]he relevant question is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. "C

ARGUMENT

- 1. Defendant-Petitioner Linh Thi Minh Tran's property located at address 12542 SE Capella court, Happy Valley, Oregon 97086 is single family dwelling not located in a zone regulated by HVMC 16.22.030 or HVMC 16.22.040 based on documents that recorded into Clackamas County Official Records and Clackamas County Tax Assessor and Appraisal.**

Based on drawings, maps, documentations recorded into Clackamas County Official Records since 2006 to present and Clackamas County Tax Assessor and Appraisal since 2006 to present including: Summary Verifying Ownership Records, and drawing and maps of Clackamas County Tax Assessor and Appraisal since 2006 to present, these sufficient documentation and drawings and maps to demonstrate that Defendant-Petitioner Linh Thi Minh Tran's property located at address **12542 SE Capella court, Happy Valley, Oregon 97086 is single-family dwelling. Here the documentations recorded in Clackamas County Official Records and Clackamas County Tax Assessor and Appraisal since 2006 to present indicated very Clearly that: the property is located at address 12542 SE Capella court, Happy Valley, Oregon 97086 is single family resident, Subdivision Burgundy Rose #2 3946, Lot 143, parcel number: 05011636, Tax**

Code Area: 012-149, Property # 22E01AA14900, Property Characteristics:

Neighborhood: 11061: Happy Valley newer subdivisions 100, 101, Land Class

Category: 101: Residential land improved, Building Class Category: 14:

Single family resident, class 4, Year Built: 2005. See Clackamas County Tax

Accessor and Appraisal and Summary Verifying Ownership Property

Account Summary is attached as Excerpt of Record. Defendant-Petitioner Linh

Thi Minh Tran's property at address 12542 SE Capella court, Happy Valley,

Oregon 97086 is single family dwelling house as defined by Clackamas County

Property Tax Assessor and appraisal Report and verifying property ownership

records in Clackamas County Official Records since 2006 to present. Defendant-

Petitioner Linh Thi Minh Tran's property is not located in a zone regulated by

HVMC 16.22.030 or HVMC 16.22.040.

Happy Valley City's Code 16.12.030 Definitions.

Rooming house. A single-family dwelling, accessory dwelling unit (ADU) or either unit of a two-family dwelling (duplex), which is rented for a valuable consideration or wherein rooms with or without cooking facilities are rented for a valuable consideration to or occupied by between more than two and up to five (5) or more natural persons unrelated by blood, marriage or legal adoption to the owner or operator of the house. Temporary gratuitous guests as used herein shall refer to natural persons.

Because Defendant-Petitioner Linh Thi Minh Tran's property is not located in a zone regulated by HVMC 16.22.030, Defendant-Petitioner Linh Thi Minh Tran is not guilty violation Happy Valley City Code Low Density Residential Zone-Unpermitted Use Code HVMC 16.22.030. The trial court's Judgment Sentence Municipal Court dated 01/26/2017 was unconstitutionally cruel and unusual in this case. As results the trial court has failed to demonstrate and exercise sound and reasonable and legal decisions making skills and trial court also has failed to produce and evaluation whether evidence could reasonable support the guilty verdict beyond a reasonable doubt.

Because this case presents a significant issue of law include the jurisdiction of the Court of Appeals or the trial court results in a serious or irreversible injustice or in a distortion or misapplication of a legal principle caused Defendant-Petitioner Linh Thi Minh Tran serious harm and affected not only her future and affected her physical and mental health. Therefore, Defendant-Petitioner Linh Thi Minh Tran requests Oregon Supreme Court grants for Defendant-Petitioner Linh Thi Minh Tran's petition for review and Defendant-Petitioner Linh Thi Minh Tran's conviction should be reverse.

2. The trial court Clackamas County State of Oregon's Judgment Sentence Municipal Court signed by Clackamas County Circuit Court Judge Heather L. Karabeika entered 01/26/2017 was unconstitutionally cruel and unusual in this case, abuse discretion standard of law, violation of the fundamental of rights, clearly violation of U.S Constitutional, failed to demonstrate and exercise sound and reasonable and legal decisions making skills and trial court also has failed to produce and evaluation whether evidence could reasonable support the guilty verdict beyond a reasonable doubt.

Here, Oregon Supreme Court can review Judgment Sentence Municipal Court De Novo Appeal dated 01/26/2017 signed by Clackamas County Circuit Court Judge Heather L. Karabeika entered 01/26/2017 in which she tried to convict Defendant-Petitioner Linh Thi Minh Tran was guilty of violation Happy Valley City Code HVMC 16.22.030 and fined \$6,000.00 against Defendant-Petitioner but based on Respondent Happy Valley Municipal Court's Answering Brief had submitted to Oregon Court of Appeals dated July 10, 2017, page 12, footnote number 2 in which Respondent indicated that: **"On the City's Uniform Citation and Complaint for this matter, Happy Valley Code Enforcement Officer Kersey plead that Appellant's unlawful rooming house violated HVMC 16.22.030. In fact, Appellant's property is located in a zone regulated by HVMC 16.22.040, which expressly prohibits rooming houses. Because "rooming houses" are prohibited in all residential zones, including those regulated by both 16.22.030 and 16.22.040, Officer Kersey's mistake is a harmless error that may be disregard by the Court as it does not affect the**

substantial rights of Appellant. See ORCP 12B.” Respondent’s Answering brief admitted error determined that the trial court has failed to demonstrate and exercise sound and reasonable and legal decisions making skills and trial court also has failed to produce and evaluation whether evidence could reasonable support the guilty verdict beyond a reasonable doubt as results Defendant-Petitioner Linh Thi Minh Tran’s serious harm and affected not only her future and affected her physical and mental health.

In Ailes v. Portland Meadows, 312 Or. 376, 823 P. 2d 956 (1991), Oregon Supreme Court said: **“Generally, before an appellate court may address whether a trial court committed an error in any of the particulars of the trial of a case, the adversely affected party must have preserved the alleged error in the trial court and raised the issue on appeal by an assignment of error in its brief. ORAP 5.45”**

In State v. Hickmann, 273 Or. 358, 360, 540 P.2d 1406 (1975). Oregon Supreme Court said: “To be sure, procedural limits on a trial court’s authority to act are important. If a trial court takes an action that exceeds its authority, that action may be voidable; and if a party that is affected adversely by such an action properly objects in the trial court and properly raises the issue on appeal, the appellate court may nullify it. The Court of Appeals may or may not decide that the claimed error in this case is one of law apparent on the face of the record. If the

court does exercise its discretion in that regard, it must explain why it did so. We refined the procedure that an appellate court should follow before reaching an inadequately preserved or raised claim or error. We stated that the error must be one “of law”; that it must be “apparent” i.e., the point must be obvious, not reasonably in dispute; and that it must appear “on the face of the record,” i.e., the reviewing court must not need to go outside the record to identify the error of choose between competing inferences, and the facts constituting the error must be irrefutable.” 310 Or. At 355-56.

ORAP 5.45(2) provides: “No matter assigned as error will be considered on appeal unless it was preserved in the lower court; provided that the appellate court may consider errors of law apparent on the face of the record. An error will not be considered by an appellate court when the error is not preserved in the trial court” (Emphasis added).

Pursuant to ORAP 5.45 (2), because Plaintiff-Respondent Happy Valley Municipal Court has already failed to preserve and argument error between HVMC 16.22.030 and HVMC 16.22.040 in the trial court, therefore, plaintiff-respondent’s error will not be considered by an appellate court when the error is not preserved in the trial court.

From the reasons above to prove that the trial court’s Judgment Sentence Municipal Court signed by Clackamas County Circuit Court Judge Heather L.

Karabeika entered 01/26/2017 was unconstitutionally cruel and unusual in this case, thus, Defendant-Petitioner Linh Thi Minh Tran's conviction should be reversed.

3. Officer of Happy Valley City State of Oregon, Ryan Kersey's conduct was "reprehensible and outrageous and in total disregard" of Defendant-Petitioner Linh Thi Minh Tran's homeowner's legal rights and destroyed petitioner's property and her dignity.

The Witness Mark Serva who has been subpoenas by Plaintiff-Respondent Happy Valley Municipal Court indicated before the trial court that Officer Ryan Kersey entered into Defendant-Petitioner Linh Thi Minh Tran's homeowner's residence without her writing consent and discussed about her property foreclosure status with the people in her house even though Officer Ryan Kersey and those people did not have any interest or any title or any rights of possession to Defendant-Petitioner Linh Thi Minh Tran's property. The wrongful conduct of Officer Ryan Kersey occurred on December 23, 2015 during Defendant-Petitioner Linh Thi Minh Tran had been arrested and jailed by other Officer Darryn J. Kuehl and Officer Benjamin J. Toops. Officer Ryan Kersey's conduct was "reprehensible and outrageous and in total disregard" of the homeowner's legal rights of Defendant-Petitioner Linh Thi Minh Tran.

1 A We asked her in general what was going on -- I'm
2 sorry -- Ryan told us the house was in foreclosure. We
3 asked her about that; what was going on with that.

4 Q When you say "we," who are you referring to?

5 A Other renters.

6 Q How many other renters were there back at that
7 time?

8 A I would say five.

1 MR. BIELLO: I believe that's a concern in this
2 case. This was a video that I was forwarded. It is from
3 a YouTube channel online that I believe is Ms. Tran's. It
4 is my belief from reviewing a couple of the videos that

1 THE COURT: Do you know where the audio or video
2 recording -- who was doing it? Can you describe that.

3 MR. BIELLO: I believe Ms. Tran.

4 THE COURT: I see. All right. Go ahead.

5 Mr. Serva, did you recognize that conversation?

6 A Yes.

7 Q Were you present for that conversation?

8 A Yes.

9 Q Was Ms. Tran present for that conversation?

10 A Yes.

11 Q Was that voice take you heard, the person
12 talking about the fact that this was her house

1 A I don't recall that.

2 Q And actually Ryan came, not because of the issue
3 that Happy Valley -- did Ryan come and say that everybody

4 had to move out?

5 A No. He said that it was in foreclosure and that
6 she is in violation of her code.

7 Q He didn't have the right to discuss that, but he
8 did discuss about the foreclosure and the people who were
9 living there?

10 A Yes

Officer Ryan Kersey admitted before the trial court that he entered into Defendant-Petitioner Linh Thi Minh Tran located at 12542 SE Capella court, Happy Valley, Oregon 97086 without her writing consent and he discussed about the foreclosure status of Defendant-Petitioner Linh Thi Minh Tran's property with other people even though he and other people did not have any interest or any title or any rights of possession of Defendant-Petitioner Linh Thi Minh Tran's property 12542 SE Capella court, Happy Valley, Oregon 97086. The wrongful conduct of Officer Ryan Kersey occurred on December 23, 2015 during Defendant-Petitioner Linh Thi Minh Tran had been arrested and jailed by other Officer Darryn J. Kuehl and Officer Benjamin J. Toops. Officer Ryan Kersey's conduct was "reprehensible and outrageous and in total disregard" of the homeowner's legal rights of Defendant-Petitioner Linh Thi Minh Tran.

2 BY MR. BIELLO:

3 Q Mr. Kersey, can you tell the Court what this is?

4 A This is municipal code 16.12.030, which are
5 definitions within the land development code of the City.

6 Q Okay. And pertaining to this case, what
7 definitions are contained in those definitions that are
8 relevant to this case?

9 A We are looking at low-density residential zones
10 and rooming houses.

1 Q Okay.

2 MS. TRAN: What is this?

3 MR. BIELLO: This is 16.22.030.
4 BY MR. BIELLO:

5 Q I am going to show you what has been marked as
6 City's Exhibit No. 3. Can you identify that document?

7 A Yes. This is the low-density residential zoning
8 description within the City municipal ordinance.

9 Q Okay. As far as that code, in low-density
10 residential areas, are rooming houses allowed?

11 A No.

12 Q What is your understanding of a rooming house
13 is?

14 A A rooming house, we define it in our city
15 ordinance as a single-family dwelling or an ADU or a
16 two-family duplex, which is rented for valuable
17 consideration.

A Yes. On December 23rd, 2015, our Happy Valley

police were out speaking with some of the residents of the

property, out on the street, and I arrived and made contact with Sergeant Christensen and one of the tenants who identified himself as Mark.

11 So Mark invited me into the home to speak with

12 the other tenants in the living room. So myself and

1 Sergeant Christensen went in there

2 A I spoke with Chelsea Monday, Ashley Conrad,

3 Mandy Hill, who also goes by Miranda Hill, and that's who

2 had her son living with her.

3 Q The low-density zone that your lawyer just

4 submitted to the Court --

5 A Yes. I show that as 16.22.030, low-density

6 residential zones.

1 A I told your tenants to talk to you to see if

2 your property was in foreclosure due to unpaid taxes on

3 the property and the information you posted on YouTube.

REASONS FOR GRANTING THE PETITION FOR A WRIT OF CERTIORARI

The reasons for granting Defendant-Petitioner Linh Thi Minh Tran's Petition for a writ of certiorari because for the reasons as follows:

- 1. Defendant-Petitioner Linh Thi Minh Tran's property located at address 12542 SE Capella court, Happy Valley, Oregon 97086 is single family dwelling not located in a zone regulated by HVMC 16.22.030 or HVMC 16.22.040 based on documents that recorded into Clackamas County Official Records and Clackamas County Tax Assessor and Appraisal.**
- 2. The trial court Clackamas County State of Oregon's Judgment Sentence Municipal Court signed by Clackamas County Circuit Court Judge Heather L. Karabeika entered 01/26/2017 was unconstitutionally cruel and unusual in this case, abuse discretion standard of law, violation of the fundamental of rights, clearly violation of U.S Constitutional, failed to demonstrate and exercise sound and reasonable and legal decisions making skills and trial court also has failed to produce and evaluation whether evidence could reasonable support the guilty verdict beyond a reasonable doubt.**
- 3. Officer of Happy Valley City State of Oregon, Ryan Kersey's conduct was "reprehensible and outrageous and in total disregard" of Defendant-Petitioner Linh Thi Minh Tran's homeowner's legal rights and destroyed petitioner's property and her dignity.**

CONCLUSION

Based on foregoing reasons, written parties' submissions to trial court Clackamas County Circuit Court and Oregon Court of Appeals including: Petitioner Linh Thi Minh Tran's opening brief, Respondent's answering brief, Petitioner's Reply Brief, Petitioner's petition for reconsideration, and petitioner's petition for review, and pleadings, papers, exhibits, video cameras and audio records, excerpt of records, Defendant-Petitioner Linh Thi Minh Tran requests United States Supreme Court grants for Defendant-Petitioner Linh Thi Minh Tran's petition for a writ of certiorari and Trial court's Judgment Sentence Municipal Court De Novo Appeal should be reversed.

Defendant-Petitioner Linh Thi Minh Tran declares that the above statements and Exhibits of records is attached into petition for a writ of certiorari are true to the best of petitioner's knowledge and belief, and that petitioner understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated: 10/20/2018

Linh Thi Minh Tran
Defendant-Petitioner pro se
12542 SE Capella court,
Happy Valley, Oregon 97086
Tel: 503-558-0886
Email: minhlinhtrn@gmail.com

CONCLUSION

Based on foregoing reasons, written parties' submissions to trial court Clackamas County Circuit Court and Oregon Court of Appeals including: Petitioner Linh Thi Minh Tran's opening brief, Respondent's answering brief, Petitioner's Reply Brief, Petitioner's petition for reconsideration, and petitioner's petition for review, and pleadings, papers, exhibits, video cameras and audio records, excerpt of records, Defendant-Petitioner Linh Thi Minh Tran requests United States Supreme Court grants for Defendant-Petitioner Linh Thi Minh Tran's petition for a writ of certiorari and Trial court's Judgment Sentence Municipal Court De Novo Appeal should be reversed.

Defendant-Petitioner Linh Thi Minh Tran declares that the above statements and Exhibits of records is attached into petition for a writ of certiorari are true to the best of petitioner's knowledge and belief, and that petitioner understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated: 10/20/2018



Linh Thi Minh Tran
Defendant-Petitioner pro se
12542 SE Capella court,
Happy Valley, Oregon 97086
Tel: 503-558-0886
Email: minhlinhtrn@gmail.com

PETITIONER LINH THI MINH TRAN'S PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES SUPREME COURT. HAPPY VALLEY MUNICIPAL COURT VS. LINH THI MINH TRAN. Linh Thi Minh Tran, Defendant-Petitioner pro se, 12542 SE Capella court, Happy Valley, Oregon 97086| Tel: 503-558-0886| Email: minhlinhtrn@gmail.com|Page 41 of 47