

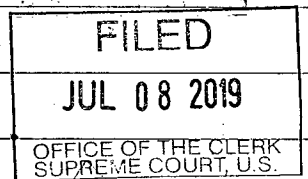
No. 19-5168

IN THE
SUPREME COURT OF THE UNITED STATES

STEPHENSON LAMAR SMITH - PETITIONER,

VS.

UNITED STATES, ET AL; RESPONDENT(S)
U.S. MARSHAL'S



ON PETITION FOR A WRIT OF CERTIORARI, TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

STEPHENSON LAMAR SMITH
420 COURTLAND STREET, N.E.,
ATLANTA GEORGIA 30308

Question Presented

Constitution

Constitution Insight Amendment Five [5] - Can you be tried twice for the same offense? The prohibition against "double" jeopardy "protect you from having the same charge twice brought against you for the same offense, but you can be tried on different charge related to that offense?"

All parties appear in the caption of the case on the cover page!

(1). ERIC Henry

Agency: APD

Badge No. [#]5143

PH: 404-208-6104

(7). Paul Howard, Jr.

District Atty. 3rd Floor

136 Pryor Street

Atlanta, Georgia 30303

(2). S. Steward

Agency: APD

Badge No. [#]3903

(8). Edward Chase

District Atty. Asst;

136 Pryor Street

Atlanta, GA 30303

(3). R. Daniels

Agency APD

Badge No. [#]0728

(9). Judge: Sterling Eaves

Magistr. Court of Fulton Co.

(4). D. Acevedo

C.S.T

Agency APD

Badge No. [#]5685,

(10). Judge: Shawn Lagrue

136 Pryor Street

Atlanta, Georgia 30303

(5). Veron Patterson

Agency No. [#]4835

(11). Judge: Ms. G. Lall

First Appearance Court

Fulton Co. Jail 901 Rice Street

Atlanta, Georgia 30303

(6). Sgt. Unknown Named

on Nov. 9, 2012

Agency APD

(12). Judge: Ms. E. Logan, Rm [#]4-C

136 Pryor Street

ATL GA 30303

(13), Judge: Ural Glanville

136 Pryor Street

Atlanta, Georgia 30303

(19), Ms. Elizabeth Markowitz

Public Defender 100 Peachtree

Street; Suite #1600

ATL GA 30303

(14), Judge: Constance C. Russell

Superior Court of Fulton County

136 Pryor Street

Atlanta, Georgia 30303

(20), George Jenkins, Asst. D.A.

136 Pryor Street

ATL. GA 30303

(15), Overton Thierry

Public Defender's Suite #1600

100 Peachtree Street, N.W.

Atlanta, Georgia 30303

(21), The Governor of GA

40 Capital Ave

Atlanta, Georgia 30303

(16), Ms. Nunn Legal Asst.

Specialist 100 Peachtree Street

Suite #1600

ATL. GA 30303

(22), Atty General 28 U.S.C.

2403 (b) - State of GA Dept. of Law

40 Capitol Ave

ATL. GA 30303

(17), Charles Burton, public

Defender Suite #1600

100 Peachtree, N.W.

Atlanta, GA 30303

(23), Magistrate Judge:

Justin S. Anand

(24), Judge: Richard W. Story

U.S. District Judge

(18), Veron S. Pitt, Jr.

Public Defender's

(25), Clerk Office's

2211 United States Courthouse

75 Ted Turner S.W.

Atlanta GA 30303

(26). Judge, Three 3 panel

MR. TJO Flat, Wilson and Jill

56 FORSyth Street

United States court of Appeals

Atlanta, Georgia 30303

(30) - Clerk's Office

Walter pollard, et al;

United States court of

Appeals 11th Cir.

56 FORSyth Street

Atlanta, Georgia 30303

(27). Judge, Frank m. Hull

United States circuit Judge's

(28). Supreme court of United States

Judge's And Justice's,

#1 FIRST Streets Office's N.E.

Washington D.C. 20543

28 U.S.C. 2101 C.F.

(29). John Horn, chief, Civil

Divison U.S. Department

of Justice. United States

Attorney Northern District

of Georgia

Richard B. Russel Federal

Building 75 Spring Street, S.W.

Suite #606

Atlanta, Georgia 30303

Table of contents

Opinion S Below	1
Jurisdiction	I
Constitutional and Statutory provisions involved	II
Statement of the case	III
Reasons For Granting The Writ	IV
Conclusion	

Index TO APPENDICES

Appendix A

Appendix B

Appendix C

Appendix D

Appendix E

Appendix F

Table of Authorities cited one pages:

Case: Bivens vs. Six unknown named Agency: 191 Sct. 1999. p. —

Statutes And Rules: Only by exclusion can we impress upon the Zealous PROSECUTOR Paul L. Howard, And Edward Chase, et al; that violation of the constitution will do him NO Good! And only when that point is driven home can the prosecutor MR. Edward Chase be expected to emphasize the importance of Observing the Constitution demands in his instruction to the police.' (Emphasis Added).

Others: But the prosecutor George Jenkin, who loses his case because of police misconduct is not an official in the police department, he can Rarely set in motion any CORRECTIVE Action OR Adminstr. Penalties! moreover, he does not have control OR direction over police procedure / OR police actions that lead to the exclusion of evidence. It is the Rare exception when a prosecutor Paul Howard, et al; takes part in ARREST Oct. 19, 2012 thru Oct 21, 2012 searches OR Seizures Oct 23, 2012 thru Nov. 9, 2012, SO that he Edward Chase can guide police Action!!

Case: Kilgo vs. Rick, 983 F. 2d 189, 198, 11th Cir. — p. —

Statutes And Rules, Appointment of counsel in civil case however, is "a — — privilege that is justified only by exceptional circumstances. Such as the presence of Facts And legal issues which are so complex as to require the Assistancess of a trained U.S. Attorney's!!

Table of Authorities cited two pages:

Case: COURtenany vs. Randolph, 125 GA App. 581, 188 SE. 2d 396 (1970)
p. _____

Statutes And Rules: Remedies FOR unjustified ARREST;

IF Smith plaintiff was ARRESTED under a void warrant the Action is FOR False imprisonment if the warrant is void malicious prosecution is the Remedy!

Statutes And Rules: O.C.G.A. - 17-4-62 - to Seek An ARREST Warrant within 48 hour of ARREST And Since it was clearly established at the time that Oct. 19, 2012 thru - Oct. 21, 2012, detention without probable cause violated the Fourth Amendment Claim !!!

Case: Diamond vs. MARland, 395, F. Supp. 432 S.D. GA. 1975. p. _____

Statutes And Rules: violation of State ARREST Law creates NO Federal Liability if NO federal const. violation! Even when A.P.D. officer's MR. Henery violates a State ARREST statute, the officer is not liable under the Federal Civil Right Act (42) - U.S.C. - 1983 unless the officer also violated federal constitution Law government Warrant's ARREST Oct. 22, 2012 !!

Table of Authorities cited three pages!

CORRECT Type:

By allowing defenses based on school misconduct in situations ~~in which~~ in which the school's involvement in the lending relationship was not unusually extensive. For the same reason, petitioner errs in contending (Peto 18-19) that the decision of the court of appeals conflicts with this court's cases allowing state law to impose liability greater than the liability imposed by federal law.

Cases: English vs. General Electric Co., 496 U.S. 72 (1990), and California vs. ARC America Corp., 490 U.S. 93 (1989),

Address situations in which there is no conflict between the states' imposition of greater liability and federal law. Here, as in Hines, there is a conflict, because the federal scheme did not simply permit state-law school-based defenses in specified circumstances but limited state-law school-based defenses to those circumstances.⁵

Case: Simmat vs. United States Bureau of Prison, 413 F.3d 1225, 1235, 10 Cir. 2005). p. _____.

Statutes And Rules: Federal court have the Jurisdiction in Mandamus Action "to compel An officer OR employee of the United States OR An Agency to perform a duty owed to the plaintiff's Stephenson Smith, See: 28 U.S.C. 1361.]

Opinion Below

IN THE SUPREME COURT OF THE UNITED STATES PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issues to review the judgment below.

Opinions Below

☐ FOR Case From federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ Reported at Case No. [#] 18-13867 Date Filed 2/14/2019, page: 1 of 3.

ORDER: Stephenson Lamar Smith, proceeding pro se, seeks leave to proceed on appeal in forma pauperis ("IFP") to challenge the district court's denial of his motion to reopen, following its dismissal of his 42 U.S.C. 1983 complaint without prejudice. He also moves for appointment of counsel. As brief background, Smith's 1983 Action Named 34 local, state, and federal officials as defendants, and alleged that he was falsely arrested, falsely imprisoned, and maliciously prosecuted. The district court originally dismissed the appeal as frivolous, pursuant to 28 U.S.C. 1915(e)(2), because: (1), several of the defendants were due to be dismissed from the case, either because they were immune from suit or because the complaint did not include any specific allegations against them; because the district court did not abuse its discretion in denying Smith's motion to reopen, Any appeal, (1). Denied on 2/14/2019

Opinion Below

The opinion of the United States district court appears at Appendix "B" to the petition and is

☐ Reported at case No. [#] 1:16-cv-04519-RWS Document 20 filed 08/24/18
page 1 of 1 Stephen L. Smith vs. Ted Jackson, et al. ORDER;

On April 20, 2017, this court adopted the Magistrate Judge's Report and Recommendation and dismissed Plaintiff's Complaint for his failure to state a claim pursuant to 28 U.S.C. 1915(c)(2). [Doc. 10]. The Eleventh Circuit later dismissed plaintiff's appeal [Doc. 18].

Over a year after this action was originally dismissed, plaintiff has now filed a "motion to re-open the case." Doc. 19. Because plaintiff's motion does nothing to cure the deficiencies in his complaint identified by the Magistrate Judge and adopted by this court, it is hereby DENIED. It is so ordered, this 24th day of Aug, 2018

Richard W. Story

United States District Judge

[] FOR case from federal courts: Appendix^{v1} C^{v0}

The date on which the United States District Court for the Northern District of GA Stephenson Smith vs. Ted Jackson et. al, civil no. 1:16-CV-4519-RWS-JSA ORDER - ATTEST: A TRUE COPY CERTIFIED THIS MAY 10, 2017:

This case is before the court for consideration of plaintiff's Application to Appeal In Forma Pauperis [Doc. 13]. plaintiff brought this action pursuant 42 U.S.C. 1983 asserting claims based on False arrest, false imprisonment, and malicious prosecution. On April 20, 2017, the court issued an order [Doc. 10] adopting the Report and Recommendation of Magistrate Judge Justin S. Anand and dismissing the case, without prejudice; pursuant to 28 U.S.C. 1915(c)(2).

Appendix D case no. 1:16-cv-04519-RWS Doc. 25 Filed 09/14/2018

1 of 2 Stephens Smith vs. Ted Jackson, et al., Prisoner civil Rights

42 U.S.C. 1983 Order: This court adopted the Magistrate Judge's Report
And Recommendation and dismissed Plaintiff's complaint for his failure
to state a claim pursuant to 28 U.S.C. 1915(e)(2), Dec. 10.

The Eleventh cir. later dismissed Plaintiff's appeal. Dec. 18, over
one year after this action was originally dismissed, Plaintiff filed
a "motion to Re-open the case." Dec. 19. Because Plaintiff's motion
did nothing to cure the deficiencies in his complaint identified by the
Magistrate Judge and adopted by this court, this court denied the motion.
(Dec. 22).

Plaintiff has now filed a notice of Appeal hereof and asks this court to
appoint his counsel. (Dec. 21, 22). This case is closed and Plaintiff has
not provided any Reason for the court to Reconsider its decision.
Plaintiff's motion for appointment of counsel (Dec. 22) is Denied.
Any further motion for counsel should be directed to the Eleventh
Circuit.

It is so ordered, this 13th day of September, 2018

Richard W. Story

United States District Judge

JURISDICTION

✓ FOR case from federal courts:

The date on which the United States Court of Appeals decided my case was April 08, 2019 Appeal NO. [#]18-13867-E

Entry of dismissal: Pursuant to the 11th Cir. R. 42-1 (b), this appeal is DISMISSED for want of prosecution because the appellant Stephenson Lamar Smith has failed to pay the filing and docketing fees to the district court within the time fixed by the Rules effective April 08, 2019.

David J. Smith

Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit
by: Gloria M. Powell, E, Deputy Clerk

FOR THE COURT - By Direction

The jurisdiction of this Court is invoked under 28 U.S.C. § 1259 (a).

JURISDICTION

✓ FOR case from federal courts:

The date on which the United States Court of Appeal decided my case was Date 10/21/2017 page 1 of 9 case No. [#]17-11934-C - ORDER Stephenson Lamar Smith vs. Ted Jackson, et al.

Stephenson Smith proceeding pro se, seeks leave to proceed on appeal in forma pauperis ("IFP") to challenge the district court's dismissal of his 42 U.S.C. 1983 complaint without prejudice. He also move FOR appointment of counsel. In February 2017, Smith Filed an Amended 1983 complaint: 1-34 - Official's State and Federal at Hand! In his Amended Complaint, Smith alleged that he was Falsely arrested, Falsely imprisoned, and maliciously prosecuted. Specifically, he contended that, on October 23, 2012, he was arrested and charged with Robbery by Force, Aggravated Assault, False Imprisonment, and Simple battery. He alleged that his arrest warrant was illegal because he was not present and there was no evidence. Also, he contended that he was Arrested again on November 9, 2012, and illegally booked on November 12, 2012. He contended that he did not have a First appearance hearing on November 10, 2012, OR any preliminary hearing. He also alleged that he did not have an Attorney, and that he had NOT been indicted by a grand jury in violation of the Fifth Amendment. He also contended that he was not provided a speedy trial, in violation of the Sixth Amendment. Additionally, he asserted that he was Arrested without due process and without a probable-cause determinally, in violation of the Fourth and Fifth Amendments.

The jurisdiction of this court is invoked under 28 U.S.C. 1257(c).

Jurisdiction

28:25. Petition For habeas corpus in state court where Smith's a person in custody has not been Indicted;

Stephenson L. Smith

Petitioner

Civil Action No. [#]12 SC-115258

See: 12-CP-132775

-VS-

Ted Jackson ETAL;

Respondent(s).

Petition FOR A writ OF Habeas corpus

(A). JURISDICTION AND PARTIES:

I, hereby bring this Petition FOR a writ OF Habeas corpus and shows that he is being held in custody pursuant to An ARREST in Fulton County Georgia in violation of due process of Law, contrary to the Fourth, Fifth, Sixth And Fourteenth Amendments to the United States Constitution And Similar provision of the Georgia Constitution.

(1). Smith was ARRESTED And charged with the offense of Robbery by Force, Aggrt. ASLT; False Imprisonment; Simple Battery; Smith has been incarcerated in the Fulton County Jail Since NOV. 9, 2012, And has not yet been charged by Indictment OR presentment.

(2). NO Reasonable bond has been Set in this Matter.

(3). Respondent Ted Jackson is the Sheriff OF Fulton County, Georgia And MAY be served at Fulton County Georgia

(D. Next page(s)) !!

(4). Stephenson L. Smith Relies Upon the Fulton County Jail booking printout Ninety (90) days Jail List and others documents Records And transcripts which he may tender at the Evidentiary hearing in this case, if the defendant does not tender them, OR at such time as the court directs.

Constitutional And Statutory provision involved:

(B). Grounds For RELIEF: Petitioner, Smith Restraint of Liberty is in violation of his Fourth, Fifth, Sixth And Fourteenth Amendment Right by reason of the following:

Grounds One: I is being held to Answer For An Famous Crime Without presentment or Indictment of a Grand Jury, in violation of the Fifth Amendment;

Supporting Fact's: The True Bill indictment NO: ^{# 115258} ~~12SC-105258~~ Filed on 11-16-2012 Grand Jury Foreperson, Smith waive copy of Indictment list of witness, Formal Arraignment And plead, Not Guilty:

Grounds Two: I is being held without trial in violation of his Sixth Amendment Right to a Speedy Trial;

Supporting Fact's: See: O.C.G.A. - 17-7-170 Speedy Trial Demand 90 days From Nov. 9, 2012 thru Feb. 12, 2013 the First Speedy Trial term!
From 2/12/13 thru MAY 1, 7, 2013 the Second term Demand:

Grounds Three: Smith has been Arrested and held without due process And without determination of probable cause in violation of the Fourth And Fifth Amendments;

Supporting Fact's: O.C.G.A. 17-4-45 WARRANTS was void: See: O.C.G.A. 17-4-62 - to seek An Arrest Warrant within 48 hour of ARREST And

Since it was clearly established at the time that Oct. 19, 2012, then Oct. 21, 2012, detention without probable cause violated the Fourth Amendment claim

This is to certify that the within is a true and correct copy of Original criminal proceeding in case No. [#]87-CR-1931 And ~~88-CR-2702~~ 8, page And 5, pages. The State vs. Smith, That is of Record and on files in the clerk office, This 1st day of MAY, 2013
Deputy Clerk: And 7th day of MAY, 2013.]

Grounds Four: Smith incarceration is a violation of the Fifth Amendment against CRUEL AND UNUSUAL punishment:

Supporting Fact's: State vs. Smith, Indictment No. [#]12 SC-115258, Booking No. [#]1242975, Judge Glaville: AS TO All counts: ORDER OF NOLLE PROSEQUI upon motion of Assistant District Atty; GEORGE JENKINS that indictment in the above styled case is ORDERED NOL PROSSED The Surety is Relieved of liability in this case unless judgment has been entered against the bond. SO ORDER this 16th day of MARCH 2015:

Grounds Five: Smith is innocent his Incarceration is therefore violation of the Fifth, Sixth, Eighth, And Fourteenth Amendments;

Count 1 of 4

Supporting Fact's In the name and behalf of the Citizen of GA, do charge And Accuse Stephen Lemar Smith, with the offender, OF Robbery by Force O.C.G.A.-16-8-40, entered Oct. 19, 2012

Count 2 of 4

And the Grand Jurors aforesaid in the name and behalf of the
Citizen of GA, do charge And Accuse Stephenson L. Smith with the
offense of Aggravated ASSLT; O.C.G.A. - 16-5-21 on Oct. 19, 2012,
Untried

Count 3 of 4

And the Grand Jurors aforesaid, in the name and behalf of the
Citizens of Georgia, do charge And Accuse Stephenson Lamar Smith
with offense of False Imprisonment O.C.G.A. - 16-5-41 - - -
For the said Accused, in the County of Fulton and State of GA
on the 19th day of October 2012, did unlawfully detain Denise
Wilkins without legal Authority and in violation of the person
liberty of said Denise Wilkins; Contrary to the laws of said
State, the good order, peace and dignity thereof;

Count 4 of 4

and the Grand Jurors aforesaid, in the name and behalf of the
Citizen of GA, do charge And Accuse STEPHENSON LAMAR SMITH with
the offense of Simple Battery O.C.G.A. 16-5-23 (Mis. Demeanor For
the said Accused, in the County of Fulton and State of GA, on the 19th
day of October, 2012 did unlawfully And intentionally cause physical
harm to Denise Wilkins by striking her Arms with Accused's hands
And Fists; Contrary to the laws of said State, the good order, peace
And dignity thereof Paul L. Howard, JR. District Attorney Untried
Judge: G. Lall, 11-10-12 bond Denied misc-1-4- P/N- 11-21-12
at 9 am. 4-C-RMth The Recidivist Act:

CCS: Request For Relief;

Wherefore I prays:

(A). That I, be served according to the Law;

(B). That this case be set down For a hearing;

(C). That an Evidentiary hearing be held;

(D). That the writ be granted and Smith be Release from custody;

(E). That the charges against I be dismissed, OR in the alternative that I, be released on Smith Recognizance; See: march 16, 2015;

(F). For such other and Further Relief as justice may Require;

181 Stephenson L. Smith

Prose: 420 Courtland St N.E.,

Atlanta, Georgia 30308

Statement of the case

IN THE SUPERIOR COURT OF FULTON COUNTY

State of Georgia

Agency Case No. 122951170

vs.

Stephenson Lamar Smith

Statement of Witness

I, in v. E. C. Henry [#] ID the undersigned under penalty of prosecution pursuant to O.C.G.A. - 16-10-20 for the crime of False Statement and Writing, do state the following:

I am over eighteen (18) years of age and am not suffering from any legal disabilities. I make this statement from personal knowledge. I am, and at all times relevant here have been a duly certified law enforcement officer with the Atlanta Police Department.

The facts set forth below are true to the best of my knowledge and facts included in the police report. Agency case number 122951170 are incorporated herein.

On the 19th day of October, 2012 the defendants herein named;

Stephenson Lamar Smith 01/14/1962 did at approximately 5:00 am
(TH)

at 1797 Evan Drive, Apartment #3 Atlanta GA 30315, In Fulton County, Georgia, Commit the Following acts.

- (1). Robbery by Force O.C.G.A. 16-8-40
- (2). Aggravated Assault with intent to Rob. O.C.G.A. 16-5-21
- (3). False imprisonment O.C.G.A. - 16-5-41
- (4). Simple Battery O.C.G.A. - 16-5-23 Misdemeanor

On or about October 21, 2012, I was dispatched regarding an assault call. Victim Denise Wilkins stated that defendant her boy friend for past nine months showed up at her home on or about October 19, 2012 and smelled like alcohol. Defendant demanded sex. When victim refused, defendant choked her with a scarf grabbed her roughly above the until she told him where she kept her cash. Defendant took \$140 in U.S. currency, locked the bedroom door and told victim that she wasn't going anywhere until he left. Defendant subsequently left with victim cash, her cellular telephone, her state issued identification card and her apartment keys. At the time of my interview with victim two days after the incident victim had severe bruising on her arms consistent with the alleged assault. Victim positively identified the defendant. Warrants were issued for defendant's arrest.

I will provide a copy of all supplement and investigative report to the District Attorney at that time. Inv. Eric C. Henry, Jr. #2688
Further witness sayeth at that time Naught. 10/22/12
Sworn and subscribed telephonically

this 22th day of October 2012, Notary public my commission Expires
6/28/13

TII

Reason FOR Granting the petition

The State of Georgia

Agency case ~~12~~ 12-2951170

-VS-

Stephenson Smith

Notice in Aggravation and States
intent to seek Recidivist punishment

And

Notice of State intent to impeach Defendant with prior
Convictions:

Come now the State of Georgia to provide notice to the defendant
as follows.

- ☐ Evidence in Aggravation of punishment to O.C.G.A. 17-10-2;
☒ State intent to seek General Recidivist punishment pursuant
to: ☒ O.C.G.A. - 17-10-7-(A). ☐ O.C.G.A. - 17-10-7(b) ☐ O.C.G.A.
17-10- ☐ State intent to impeach Defendant with prior Convictions
FOR a Felony OR Any crime involving dishonestly OR making false
Statement pursuant to O.C.G.A. 24-9-84.1

These notice are based upon the conviction listed below:

CLERK #	Primary Charge	County	Conviction Date
(1). 2-88747	Theft by shoplifting	FULTON	11/18/1997
(2). 88CR-2700	Perjury	Dekalb	09/28/1988
(3). UNKNOWN	Theft by Rec'd stolen property	Dekalb	02/26/1988
(4). 11-88560	Aggravated ASLT	FULTON	02/26/1987

I hereby certify that I, have on this date Served these notice upon the Counsel of Record For defendant.

☐ by depositing a copy with the U.S. posted Service in a properly addressed envelope with adequate postage to ensure property delivery

☐ by hand delivery; OR

☒ by Retrieval of the Fulton County public Defender and Conflict Defender From the Complaint Room

This 23rd day of October, 2012

Counsel of Record

PAUL L. HOWARD JR.
District Attorney, A.J.C.

Reason FOR Granting the petition
PROOF OF INCARCERATION

This document is to advise you that

Detainee Name Smith, Stephenson Lamar

Alias: Smith, Stephenson Smith, Stephenson L.

Date of Birth: 01/14/1967

Race: Black Sex: male Age 45

The above mentioned was in the custody of Fulton County

1012 Ashby Terrace

Atlanta, GA 30338

As of 11/09/2012

For the offense of Robbery by Force

Agg ASLT

Simple Battery

FLS imprisonment

Charge to Link Legacy Booking Record And cases:

Charge to Link Legacy Booking Record And cases:

And/or serving the Following Sentence:

The Detainee was Released

A Shield of Pride

To Whom

Sheriff, Fulton county, Georgia Name:

Title:

Date: 3/17/2013

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Stephenson Lamar Smith

Date: July 8, 2019