

No.

19-6580

---

IN THE

SUPREME COURT *of* THE UNITED STATES

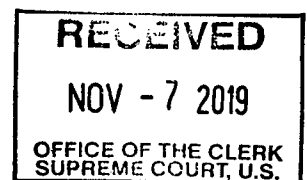
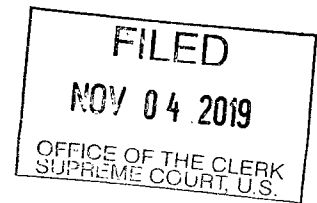
---

*In re* [ Marcus Simpson ]

---

PETITION FOR A WRIT OF MANDAMUS

---



***Preface:*** An alleged victim commits perjury initiating the charge of aggravated robbery a first degree felony criminal proceeding that causes a innocent person to be convicted of that felony by a trial court and imprisoned. Thereafter the trial court's judgment of conviction comes under collateral attack setting out the facts and circumstances amounting to the question presented. But the State's Courts the ("System"), refuses to adjudicate.

### **QUESTION PRESENTED**

Whether perjury amounts to a judicial usurpation of power , therefore mandamus (Lie).

## LIST OF PARTIES

Marcus Simpson  
781 Villas Circle  
Cincinnati, Ohio 45215  
(513 ) 668-8856

### PETITIONER PRO SE,,

\*\*\*\*\*

The Hamilton County Court of Common Pleas *et, al.,*  
The Honorable Robert H. Gorman (Judge, retired).  
1000 Court and Main Streets  
Cincinnati, Ohio 45202

### RESPONDENT,

Mr. Joseph T. Deters (0012084P)  
County's Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202  
(513)946-3227

### COUNSEL FOR RESPONDENT.

## TABLE OF CONTENTS

	Page
OPINION BELOW .....	1.
JURISDICTION .....	1.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	2-3
STATEMENT OF THE CASE .....	4-6.
REASONS FOR GRANTING THE WRIT .....	7.
CONCLUSION .....	8.

## INDEX TO APPENDICES

APPENDIX A. Complaint .	APPENDIX H. Judgment Entry
APPENDIX B. Preliminary Hearing Transcript	APPENDIX I. Judgment Entry
APPENDIX C. Grand Jury Indictment	APPENDIX J. Judgment Entry
APPENDIX D. Trial Transcript	
APPENDIX E. Trial Transcript	
APPENDIX F. Trial Transcript	
APPENDIX G Judgment of Conviction	

## TABLE OF AUTHORITIES CITED

CASES	PAGE
<i>Kerr vs. U.S. Dist. Court for Northern Dist. of California</i> , 96 S. Ct. 2119 (1976).	7
<i>Will vs. United States</i> , 389 U.S. 90, 95 (1967).	7
<i>Will vs. Calvert Fire Insurance Co.</i> 437 U.S. 655, 662, 98 S. Ct. 2552 (1978)	7
<i>State v. Simpson</i> , 1 <sup>st</sup> Dist. Hamilton No. C-840420, 1985 W L 6728.	6
<i>State ex rel Simpson v. Cooper</i> , Slip Opinion No. 2018-Ohio-4068	6
<i>State ex rel Simpson v. Cooper</i> , 120 Ohio St. 3d, 2008-Ohio-6110	6
<i>State ex rel Simpson v. Cooper</i> , 131 Ohio St 3d 1550, 2012-Ohio-2263	6
<i>State of Ohio v. Marcus Simpson</i> , No. 2012-0501 (unreported)	6
 <b>STATUTES.</b>	
Ohio Revised Code Title 2921.11	
The full text is found	3.

**IN THE**  
**SUPREME COURT *of* THE UNITED STATES**  
**PETITION FOR WRIT OF MANDAMUS**

Petitioner respectfully prays that a writ of mandamus issue to review the judgment below.

**JUDGMENT BELOW**

☒ Judgment from State of Ohio:

The judgment of: The Hamilton County Court of Common Pleas et al, The office of ; The Honorable (Judge), Robert H. Gorman (retired). State of Ohio vs. Marcus Simpson Case No. B8301629 Appendix G.

**JURISDICTION**

☒ Original action in mandamus

The jurisdiction of this Court is invoked under Title 28 United States Code. Section 1651(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Constitution Article VI.**

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial Officers, both of the United States and the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

### **Constitutional Amendment II.**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

### **Constitutional Amendment IV.**

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 person or things to be seized.

### **Constitutional Amendment V.**

No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **Constitutional Amendment VIII.**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted..

### **Constitutional Amendment X.**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

### **Constitutional Amendment XIII.**

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

### **Constitutional Amendment XIV.**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection under law.

### **Ohio Statutory Law**

Ohio Revised Code Title [29] XXIX Crimes -Procedure Chapter 2921: Offenses Against Justice and Public Administration.

#### **Perjury 2921.11**

[A] No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.

[B] A falsification is material regardless of its admissibility in evidence, if it can effect the course or outcome of the proceeding. It is no defense to a charge under this section that the offender mistakenly believed a falsification to be immaterial.

[C] It is no defense to a charge under this section that the oath or affirmation was administered or taken in an irregular manner.

[D] Where contradictory statements relating to the same material fact are made by the offender under oath or affirmation and within the period of the statute of limitations for perjury, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.

[E] No person shall be convicted of a violation of this section where proof of falsity rests solely upon contradiction by testimony of one person other than the defendant.

[F] Whoever violates this section is guilty of perjury, a felony of the third degree.

## STATEMENT OF THE CASE.

1). On April 14<sup>th</sup>, 1983 in the Hamilton County Municipal Court, being first duly cautioned and sworn, Mr. Brunkel instituted the charged of aggravated robbery pursuant to R.C. Sec. 2911.01 against petitioner with the filing of a complaint, basing this on and specifically alleging petitioner attempting a theft offense had on or about his person a deadly weapon to wit a knife and [his] Mr. Brunkel's "recovery of property". Appendix A. [here and after (Appx \_\_, ]

2). On April 21<sup>st</sup>, 1983, in the Hamilton County municipal Court at petitioner's Preliminary Hearing, being first duly cautioned and sworn, Mr. Brunkel was asked if petitioner had taken anything from him. Mr. Brunkel replied, "*No.*" Appx. B. paragraph(s) 10-11. [here and after (Appx \_\_, para(s) \_\_, )].

3). On May 19<sup>th</sup>, 1983, the Hamilton County Grand Jury returned a indictment charging petitioner with the offense of aggravated robbery in violation of R.C. Sec. 2911.01. The Grand Jury specifically charged petitioner with " THEFT OF UNITED STATES CURRENCY FROM JOEY BRUNKEL had ON OR ABOUT HIS PERSON A DEADLY WEAPON, *to-wit*: A KNIFE. in violation of Section 2911.01 of the Ohio Revised Code, and against the peace and dignity of the State of Ohio". Appx. C. .

4). On April 23<sup>rd</sup> 1984 in The Hamilton County Court of Common Pleas, at petitioner's bench trial before The Honorable (Judge), Robert H. Gorman. Mr. Brunkel being first duly cautioned and sworn, was asked if petitioner had "attempted to take his money.". Mr. Brunkel replied "*No*". [Appx. D. para(s) 4-5 ]

5). The complaint Appx A). and preliminary hearing transcript's specifically Appx B.) were omitted from the records.



6). On that same day April 23<sup>rd</sup> 1984, at the end of the States case, petitioner's motioned for a Rule 29 judgment of acquittal. The Court found a theft offense was "attempted" and therefore, overrule the same. [Appx. E. para(s) 3 thru 11].

7). On that same day April 23<sup>rd</sup> 1984, at the end of the trial, the court found the case to be "strictly one of credibility" and found "There is no question in my mind that the Brunkel's are telling the truth and that what happened on the evening in question are exactly the facts as they occurred. Therefore, I am convinced beyond a reasonable doubt that the defendant is guilty as charged". [Appx. F. para(s) 6 thru 18,].

8). On the 25<sup>th</sup> day of May 1984, petitioner was sentenced to the Ohio State Max Penitentiary (Columbus Ohio) for a term of five (5) to twenty-five (25) years for committing the offense of aggravated robbery under R.C. Sec. 2911.01 [Appx. G. Judgment Entry \*].

9). On direct appeal counsel challenged your petitioner's conviction on insufficient-evidence and manifest-weight grounds.

10). The Court of Appeals for the First Appellant District, affirmed the conviction. State v. Simpson, 1<sup>st</sup> Dist. Hamilton No. C-840420, 1985 WL 6728 (Apr. 3, 1985).

11). Petitioner requested review of his conviction in the Ohio Supreme Court, but was denied jurisdiction on October 8<sup>th</sup> 1985.

12). Petitioner filed habeas corpus in the States Courts and Federal District Court which was denied and the Sixth Circuit Court of Appeals affirmed.

13). On March 24<sup>th</sup> 1986, petitioner introducing the omitted documents *Id* filed in the trial court the first of what will be four collateral attacks under state statute to vacate the judgment at issue, and the last on September 20<sup>th</sup> 2005 setting out the same facts and circumstances amounting to the question presented, each was denied on procedural and/or res judicata grounds. After full exhaustion of appellate review to the State Supreme Court which denied review. In July of 2008 petitioner filed his first of what will be five mandamus actions under state statute to vacate the judgment at issue in the States Appellate and Supreme Courts amplifying the same facts as here and that res judicate dose not apply, each was denied on res judicate grounds and or affirmed on appeal *See*; [State ex rel *Simpson v. Cooper* , Slip Opinion No. 2018-Ohio-4068] Appx H, references [State ex rel *Simpson v. Cooper*, 120 Ohio St.3d 297, 2008-Ohio-6110],. [State ex rel *Simpson v. Cooper*, 131 Ohio St.3d 1550, 2012-Ohio-2263] State Supreme Court case No. 2012-0501] [unreported]. On June 5<sup>th</sup> 2019 petitioner going back to the States Supreme Court filed the last mandamus Case 2019-Ohio-3263 setting out the same issues, the respondent filed to dismiss on res judicata grounds, the Court granted the same Appx I. Petitioner requesting reconsideration amplifying the abuse of power and it's the system, duty owed their oath and constitution to correct this wrong.. The court denied the same Appx, J.

14). The facts are clear indisputable and indefensible.

15). Relief cannot be obtained in any other form or Court.

---

\* Appx. G, The judgment under attack.

## REASONS FOR GRANTING THE WRIT

This case represents the 'judicial usurpation of power caused by perjury' two of the most egregious forms of governmental intrusions inflicted upon the people.

Under the facts and circumstances as set out perjury, a crime against justice itself, that caused the usurpation is patently on the face of the records. Yet the system fails to adjudicate and correct this represents exceptional problems in its self. There is no greater shock to the integrity of the system and all citizens as to find this type of intrusion was inflicted upon a citizen, then with both facts and law in their favor calling this to the systems attention, their Constitutional Rights are worthless because the system will not adjudicated and enforced them facts show just last year Ohio's Supreme Court even went as fair as to note "Emphasis deleted" regarding petitioner's amplifying attention to the illegal act of perjury that caused the usurpation. Appx H. para 9, which should amount to abuse of discretion. One out of the seven justice's has refused and refuse's to participate. Appx. *Id* page 3. The intrusion inflicted was specifically the fear the framers made clear to protected the people against with the Tenth X Amendment which when as feared is disregarded for over three and a half decades or any time allows the usurpation of power and abuse of discretion to go unchecked - indeed, sanctioning the same is clearly ingrained in the state's system itself. Appx. para's, 5-9 *supra*. Will vs. United States, 389 U.S. 90-95. (1967). Will vs. Calvert Fire Insurance Co. 437 U.S. 655, 662. 98 S.Ct. 2552 (1978). Kerr vs. United States Dist. Court for Northern Dist. Of California, 96 S.Ct. 2119 (1978). \*\*


---

\*\* The Court stated: "Mandamus is available where there is a clear and indisputable abuse of discretion or usurpation of judicial power by the trial court. " The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations...only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy. *Will, Kerr and Will. supra*. "

## CONCLUSION

The writ of mandamus should be grant

Respectfully Submitted

  
\_\_\_\_\_

Date Nov 2nd 2019