

20-1239

No. 21-_____

IN THE
SUPREME COURT OF THE UNITED STATES

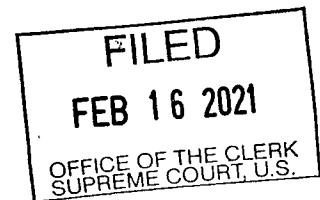
EDWARD SMITH,

Petitioner,

v.

JOSEPH DETERS, MIKE ALLEN (Former),
HAMILTON COUNTY PROSECUTOR, OHIO

Respondent.

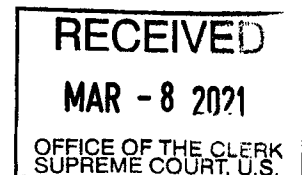


On Petition for Writ of Certiorari
To the Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

16 February 2021

E/S/ Edward Smith, Pro Se
Edward Smith #A346-408
Grafton Correctional Institution
2500 S. Avon-Belden Rd.
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QUESTIONS PRESENTED

When the Supreme Court of Ohio "**sidestepped**," & refused to enforce the protection & privileges of the 5th, 6th, & 14th Amend. to the U.S. Constitution: "stealthy encroachment." The Court denied the Petitioner's Motion For Reconsideration Memorandum In Support, on December 29, 2020, Unpublished Opinion: **State v. Smith**, 2020 Ohio Lexis 2925, Appendix A; 160 Ohio St. 3d 1449, 2020-Ohio 2463, Appendix B; 156 N.E. 3d 918.[*1]; **State v. Smith**, 2020 Ohio App. Lexis 2223, Appendix C; Appendix F: (Tr. 448-449); Appendix G: (Tr. 467-468, 469-470).

The Petitioner has given The Supreme Court of Ohio, Appendix A & B; The First Appellate District Court (Hamilton C-190289); and Appendix I; a chance to correct the miscarriage of justice. The Supreme Court of Ohio can not claim before the United States Supreme Court, they did not have a chance to correct. The Petitioner "Actual Innocent"; Jurisdictional deficiency, "stealthy encroachment." See **Murray v. Carrie**, 477 U.S. 478, 495 106 S.Ct. 2639, 91 L. Ed. 2d 397 at Syllabus [***9]; **Elberhart v. United States** (2005), 546 U.S. 12, at Syllabus HN3; **Kontrick v. Ryan** (2004), 540 U.S. 443, 455; **Mapp**, supra at HN6.

During the trial, the State's Prosecutor: Joseph Deters and Mike Allen (Former), Prosecutor, herein the State's Prosecutor; returned its own indictment using "Criminal Information", and Crim. R. 7(D). This denied the Petitioner's enforcement and protection provided by the Bill of Rights and Privileges: 5th, 6th, and 14th Amendments, Due Process of Law, to the United States Constitution. This was a matter of "Stealthy Encroachment" which is forbidden by The United States Constitution and all United States Supreme Court Precedents, Appendix F: (Tr. 448-449); Appendix G: (Tr. 467-468, 469-470).

The Petitioner at trial was charged with multiple offenses, but not in a one-count indictment. First: R.C. 2903.02(B): Felony Murder with specification;

See Judgement Journal Entry, Appendix **H**. Second: Federal Felony Weapon offense: Threatening, Mr. Spikner, a private citizen with a gun, while in his garage in the City of Cincinnati, Ohio. The Common Pleas Court Sua Sponte Motion: disallowed; the State's Prosecutor "conceded;" and the Defense Counsel "objected," Appendix **F**: (Tr. 448-449).

The United States Supreme Court stated: when constitutional rights turn on the resolution of a factual dispute, The U.S. Supreme Court is "duty-bound to make an independent examination of the evidence in the record"; **Brookhart**, supra at HN3-4. Most importantly, In **Boyd v. United States**, (1886), 116 U.S. 616, at Syllabus 5, at HN3, The Supreme Court stated: The principles laid down in this opinion affect the very essence of constitutional liberty & security. The Supreme Court also stated: at *630, *635: The Fifth Article, among other things, declares that no person "shall be compelled in any criminal case to be a witness against himself."

In fact, The U.S. Supreme Court reversed the judgment, in **Brookhart v. Janis** (1966), 384 U.S. 1, HN3-4, for the same reason Petitioner is claiming. The Supreme Court of Ohio affirmed this in R.C. 2941.30 in (1965), "55" years ago, which is now Crim. R. 7(D). See also e. g., **Edwards v. South Carolina**, 372 U.S. 229, 235; **Blackburn v. Alabama**, 361 U. S. 199, 205, n. 5.

The Petitioner relies on: The U.S. Supreme Court Precedents stated; The Certified Trial Transcript Procedural of Record, Appendix **E**: (Tr. 446-470) (FBI agent Testimony); The Common Pleas Trial Judge sua sponte motion, Appendix **F**: (Tr. 448-449); The Common Pleas Trial Judge Ruling and Opinion, Appendix **G**: (Tr. 467-468; 469-470); and the First Appellate District Court Entry by Chief Judge Mock on August 1, 2019, Appendix **D**: as reasons why the writ of certiorari should be granted. The Petitioner filed his original direct appeal, and Appellate Attorney, did not present and argue The U.S. Federal Constitution claims, argued and presented above. **Strickland v. Washington**, 466 U.S. 668.

TABLE OF CONTENTS

Question Presented.....	i:a, i:b
Table of Authorities.....	iv, v
Petition for Writ of Certiorari.....	1
Opinions Below.....	1, 2
Jurisdiction.....	3
Relevant Constitutional and Statutory Provisions.....	4, 5
Statement of the Case.....	6, 7, 8
Reasons for Granting the Petition for Writ.....	9
I. The Court should grant the Petition: "Actual Innocent, "stealthy encroachment," this is a "Jurisdictional Deficiency": The Ohio Supreme Court and the First Appellate District Court of Hamilton County, has " sidestepped " the Fifth, Sixth, & Fourteenth Amendment to the United States Constitution, and "ALL" of the U.S. Supreme Court Precedent Cases. The Ohio Supreme Court declined to accept jurisdiction and the appeal on November 10, 2020 with an unpublished opinion. The Ohio Supreme Court denied Petitioner's: Motion for Reconsideration, with an unpublished opinion on December 29, 2020. The First Appellate District Court of Hamilton County denied the appeal, June 10, 2020.....	9
II. The Court should Grant the Petition: "Actual Innocent", "Stealthy Encroachment," this is a "Jurisdictional Deficiency". The Hamilton County, Ohio State's Prosecutor Joseph Deters, Mike Allen (1999-former), has intentionally misapplied the "criminal information," and used Crim. R. 7(D) to " sidestep ," the Fifth, Sixth, & Fourteenth Amendment to the United States Constitution & "ALL" of the U.S. Supreme Court Precedent Cases; There is no federal grand jury indictment returned, [but] rather upon one returned by the State's Prosecutor.....	10, 11
Conclusion.....	12
Certificate of Service.....	13
Appendix.....	1a

[Appendix table of contents on following page]

Appendix A: December 29, 2020. No. 2020-1152: The Supreme Court of Ohio Denied Motion for Reconsideration Unpublished Opinion.....	1a
Appendix B: November 10, 2020. No. 2020-1152: The Supreme Court of Ohio Declined to Accept Jurisdiction of the Appeal.....	2a
Appendix C: June 10, 2020: First Appellate District Court of Ohio Hamilton County Judgement Entry Appeal No. C-190289; Denied Appeal.....	3a
Appendix D: State v. Smith (1999), No: B 9609928: Certified Trial Transcript of Procedural Record: ENTRY by Chief Appellate Judge Mock, on August 1, 2019.....	7a
Appendix E: State v. Smith (1999), No: B 9609928: Certified Trial Transcript of Procedural Record: (Tr. 446-470)-(25 pages)-(FBI agent Rozier Testimony).....	8a
Appendix F: State v. Smith (1999), No: B 9609928: Common Pleas Trial Court: Sua Sponte Motion (Tr. 448-449).....	10a
Appendix G: State v. Smith (1999), No: B 9609928: Common Pleas Trial Court: "Only Written Ruling-Opinion" (Tr. 467-468, 469-470).....	29a
Appendix H: State v. Smith (1999), No: B 9609928: Judgment Journal Entry.....	33a
Appendix I: November 20, 2020. No. 2020-1152: Petitioner's, S. Ct. Proc. R. 18.02 Motion for Reconsideration Memorandum In Support	34a

TABLE OF AUTHORITIES

Argersinger v. Hamlin (1972), 407 U. S. 25, 28 at HN1.....	4
Berger v. United States (1935), 295 U.S. 78.....	2
Blackburn v. Alabama, 361 U.S. 199, 205, n. 5.....	i:b, 2
Boyars v. United States (1927), 71 L. Ed. 520, Syllabus HN3-4.....	5
Boyd v. United States, (1886), 116 U.S. 616, 630, 635.....	i:b, 1, 3, 5, 8, 9, 10, 12
Branzburg v. Hayes (1972), 408 U.S. 665.....	8
Brookhart v. Janis (1966), 384 1, at HN3-4.....	i:b, 1, 3, 4, 7, 8, 9, 10, 12
Edwards v. South Carolina, 372 U.S. 229, 235.....	i:b
Elberhart v. United States (2005), 546 U.S. 12 at Syllabus HN3.....	i:a, 1, 4, 8, 9, 10, 12
Hoffman v. United States (1951), 341 U.S. 479, 486-487.....	2
Johnson v. Zerbst 304 U.S. 448, 464.....	2
Kontrick v. Ryan (2004), 540 U.S. 443, 455, 456	i:a, 1, 4, 8, 9, 10, 12
Mapp v. Ohio (1961), 367 U.S. 643, at HN6.....	i:a, 2, 8, 12
Malloy v. Hogan (1964), 378 U.S. 1, at HN1.....	2
Murray v. Carrie, 477 U.S. 478, 495 at Syllabus [***9].....	i:a, 1, 8
State v. Smith, 2020 Ohio Lexis 2925; 160 Ohio St. 3d 1449, 2020- Ohio 2463, 156 N.E. 3d 918.[*1] unpublished opinion.....	i:a, 1, 2, 3, 4, 7, 9, 10
State v. Smith, 2020 Ohio App. Lexis 2223	i:a, 1, 2, 3, 4, 7, 9, 10
Strickland v. Washington (1984), 466 U.S. 668.....	i:b, 2

Statutes, Rules Constitutional Provisions

Fifth Amendment, U.S. Constitution.....	passim
Sixth Amendment, U.S. Constitution.....	passim
Fourteenth Amendment U.S. Constitution.....	passim

Crim. R. 7(D).....	i:a, i:b, 2, 3, 4, 5, 6, 7, 10
U.S. Supreme Court Rule (c).....	3
R.C. 29.02(B)(1).....	i:a, 2, 5, 6
R.C. 2903.02.....	i:a, 2, 5, 6
R.C. 2941.30	i:a, i:b, 5, 7

PETITION FOR WRIT OF CERTIORARI

Petitioner Edward Smith, respectfully petitions the Court for writ of certiorari, "Actual Innocent," jurisdictional deficiency, stealthy encroachment, "**sidestepped**" by The Supreme Court of Ohio: See **State v. Smith**, 2020 Ohio Lexis 2925, Appendix A; 160 Ohio St. 3d 1449, 2020-Ohio 2463, Appendix B; 156 N.E. 3d 918.[*1] unpublished opinion; **State v. Smith**, 2020 Ohio App. Lexis 2223, Appendix C.

OPINIONS BELOW:

The Supreme Court of Ohio on December 29, 2020, "**sidestepped**" and denied with an unpublished opinion: Motion For Reconsideration. See **State v. Smith**, 2020 Ohio Lexis 2925, Appendix A; Petitioner, S. Ct. Prac. R. 18.02: Motion for Reconsideration timely filed on November 20, 2020, Appendix I; with Memorandum In Support. "It can not be said by the Supreme Court of Ohio, did not have a chance to correct this miscarriage of justice." Petitioner, Edward Smith, "Actual Innocence claim." Stealthy Encroachment, **Brookhart v. Janis** (1966), 384 U.S. 1, at HN3-4; **Boyd**, supra,*630, at *635; Because this claim is not time barred by jurisdictional deficiency, The Constitution must prevail; See **Kontrick v. Ryan** (2004), 540 U.S. 443, 455, 456; **Elberhart v. United States** (2005), 546 U.S. 12, at Syllabus HN3; **Murray v. Carrie**, 477 U.S. 478, 495 106 S.Ct. 2639, 91 L. Ed. 2d 397 at Syllabus [***9]; **Boyd v. United States**, (1886), 116 U.S. 616, *630, at *635. The Court stated: "it is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any "Stealthy Encroachment".

The Certified Trial Transcript of Procedural Record, Appendix E: (Tr. 446-470)-(25 pages): ENTRY by Chief Appellate Judge Mock, on August 1, 2019, Appendix D; Certified Trial Transcript of Procedural Record, Appendix E: (Tr. 446-470)-(25 pages) (FBI agent Rozier Testimony); Common Pleas Trial Court: Sua Sponte Motion, Appendix F: (Tr. 448-449);

Common Pleas Trial Court "Only Conclusive and Concluded Ruling-Opinion," Appendix G: (Tr. 467-468, 469-470); and Judgment Journal Entry, Appendix H.

The State's Prosecutor, intentionally with malice for the return of a guilty verdict by the State's jury, used Crim. R. 7(D). See **Berger v. United States** (1935), 295 U.S. 78; To deny Petitioner Stealthy Encroachment Protection and Enforcement: Bill of Rights & Privileges, Petitioner's: 5th, 6th, & 14th Amendment to the United States Constitution, and "All" The United States Supreme Court Precedents: The U.S. Supreme Court has Never allowed such infringement by any Federal Officer upon a citizen while in his home/dwelling, except for exigent circumstances. See **Mapp v. Ohio**, 367 U.S. 643, at Syllabus HN6. The U.S. Supreme Court stated: All evidence obtained by searches and seizures in violation of The Federal Constitution is inadmissible in a criminal trial in a State Court; **Malloy v. Hogan** (1964), 378 U.S. 1, at HN1; **Hoffman v. United States** (1951), 341 U.S. 479, 486-487; **Johnson v. Zerbst**, 304 U.S. 448, 464.

In the case at bar, (1999) Petitioner was convicted of felony murder: R.C. 2903.02, The record reflects that Petitioner, the sentencing transcript was sentenced to "15 years to life" The record reflects that sentencing transcript and sentencing Journal. Entry does not comport with the statutorily mandated sentencing provision language of R.C. 29.02(B)(1) which provides; "* * * whoever is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life" However, the trial court imposed prison term "15 years to life" in Petitioner case. See Judgment Journal Entry Appendix H; See 160 Ohio St. 3d 1449, 2020-Ohio 2463, Appendix B; 156 N.E. 3d 918.[*1]; **State v. Smith**, 2020 Ohio App. Lexis 2223, Appendix C.

JURISDICTION

The United States Supreme Court should grant the petition for a writ of certiorari: "Actual Innocent," jurisdictional deficiency, stealthy encroachment," and grant this petition from the judgment of The Supreme Court of Ohio, which has continued "**sidestepping**" the Federal Constitution by condoning The State's Prosecutor using Crim. R. 7(D), to ensure a guilty verdict from the jury. **Brookhart**, supra; **Boyd**, supra, at *630, *635; See **State v. Smith**, 2020 Ohio Lexis 2925, Appendix A; 160 Ohio St. 3d 1449, 2020-Ohio 2463, Appendix B; 156 N.E. 3d 918. [*1] unpublished opinion; **State v. Smith**, 2020 Ohio App. Lexis 2223, Appendix C. So Pray for writ of certiorari.

This Court has jurisdiction under 28 U.S.C. § 1254(1). Appendix 1A

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS:

Petitioner Edward Smith respectfully petitions the Court for writ of certiorari to review the judgment of the Supreme Court of Ohio unpublished opinion: Motion for Reconsideration on December 29, 2020, **State v. Smith**, 2020 Ohio Lexis 2925 Appendix A; 160 Ohio St. 3d 1449, 2020-Ohio- 2463, Appendix B; 156 N.E. 3d 918; **State v. Smith**, 2020 Ohio App. Lexis 2223, Appendix C.

The Fourteenth Amendment's Due Process Clause provides that "[n]o State shall * * * deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend. V.

Sixth Amendment to the United States Constitution: * * * a speedy public trial * * *.

The Court should Grant the Petition "Actual Innocent," When there is a "Jurisdictional Deficiency." The Hamilton County Common Pleas State's Prosecutor had intentionally misapplied the "criminal information," and used Crim. R. 7(D) to enforce it (Tr. 448-449). Appendix F: When asked by the Trial Court if he wanted to "impeached," his own witness about the federal felony gun offense, charged by FBI agent Rozier, Prosecutor answered: [NO]. See Appendix F: (Tr. 448-449). This was without a federal grand jury indictment returned, [but] rather upon one returned by the State's Prosecutor, charging the Petitioner with a federal felony gun offense, while in his garage in the City of Cincinnati, Ohio, Appendix G: (Tr. 467-468, 4469-470). "Stealthy Encroachment." See **Argersinger v. Hamlin** (1972), 407 U. S. 25, 28 at HN1; Also jurisdictional deficiency; **Kontrick v. Ryan** (2004), 540 U.S. 443, [*455 *456]; **Elberhart**, supra at HN3.

The Common Pleas Trial Court: Sua Sponte Motion, Appendix F: (Tr. 448-449). See **Brookhart v. Janis** (1966), 384 1, at HN3-4 stated: when a constitutional right turn on the resolution of the factual dispute the United States Supreme Court is duty-bound to make an

independent examination of the evidence in the record: "Stealthy Encroachment." See Appendix E (Tr. 446-470). The Common Pleas Trial Court: "Only Ruling and Opinion, Conclusive and Concluded Certified Transcript of Proceeding Record, Appendix G: (Tr. 467-468, 469-470). **Boyars v. United States** (1927), 71 L. Ed. 520, Syllabus HN3, at HN4; **Boyd v. United States**, (1886), 116 U.S. 616, *630, at *635: "it is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any "Stealthy Encroachment".

STATEMENT OF THE CASE

Petitioner was indicted by the Hamilton County Court of Common Pleas on one count of "felony murder" pursuant to R.C. 2903.02, (1999). "Felony murder" was enacted in 1998 pursuant to R.C. 2903.02. The trial court sentenced Petitioner to "15 years to life". Petitioner's first conviction in 1997 was reversed in 1998 by the First Appellate District Court of Appeals. The trial court sentenced Petitioner to "15 years to life".

Petitioner asserts that the record clearly reflects that Petitioner sentencing transcript and sentencing Judgment Journal Entry, Appendix H: does not comport with the statutorily mandated sentencing provision language of R.C. 2929.02(B)(1) which provides; "* * * whoever is convicted of or pleads guilty to murder in violation of Section 2903.02 of The Revised Code shall be imprisoned for an indefinite term of fifteen years to life." However, the trial court imposed a prison term of "15 years to life" in Petitioner's case. Petitioner was convicted in (1999), Appendix H.

Petitioner was not tried upon an indictment returned by a grand jury, but rather upon one returned by the State's Prosecution: Crim. R. 7(D): Criminal Information. This is proven from the Common Pleas Trial Court, "Sua Sponte Motion," called at trial during the Prosecutor, Direct-Examination of its witness, Appendix F: (Tr. 448-449); Appendix G: (Tr.467-468,470). FBI agent Randall M. Rozier, Stationed in New Rochelle, New York, Appendix E:(Tr. 461), herein FBI agent Rozier. The United States Constitution, Fourteenth Amendment Due Process Clause provides that "[n]o State shall * * * deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend. V.

The Sixth Amendment: Every person shall have a speedy and public trial. The State's Prosecutor charged Petitioner with threatening a private citizen, Mr. Spikner, with a gun while in

his garage in the City of Cincinnati, Ohio, Appendix F: (Tr. 448-449). FBI agent Rozier, testified in open court that he drew his weapon to protect, and made the custodial arrest, Appendix E: (Tr. 460, 463-465); Appendix G: (Tr. 468-470). No Law Abiding Citizen Should Be Subject To: A Trial; An Arrest; In His Home/Dwelling; Without Probable Cause And A Warrant, Other Than Exigent Circumstances.

By denying Petitioner and the public, Protection and Enforcement of his/their rights and privileges to the Bill of Rights guaranteed by the 5th, 6th & 14th Amendment to the United States Constitution & The United States Supreme Court Precedent Cases: would make the U.S. Constitution and The United States Supreme Court Precedents just words without Power and Authority, Void. But, Petitioner knows The United States Supreme Court will never allow it to happen * * * There is not a single precedent case: ever written by the United States Supreme Court in America Jurisprudence History, That Has Not Been Honored! & For Surely Always Will Be For The Sake Of Our Constitution & Trust In The Lord God * * * "

In fact, The Supreme Court of Ohio and First Appellate District Court (Hamilton C-190289) has once again "**sidestepped**" & used R.C. 2941.30, now superseded by Crim. R. 7(D); in an unpublished opinion denied on December 29, 2020, Appendix A, B and C. Petitioner timely filed November 20, 2020: S. Ct. Prac. R. 18.02 Motion for Reconsideration, Appendix I.

The Supreme Court of Ohio, some 55 years ago, denied **Brookhart** (1965), supra; When The United States Supreme Court reversed in **Brookhart** (1966), supra, at HN3-4. What is more appalling and wicked by FBI agent Rozier, is that he admitted in open court and gave perjurious testimony, to his lack of integrity and authority, Appendix E: (Tr. 460-464); Appendix G: (Tr. 468, 469-470). FBI agent Rozier wanted to avenge the death of his cousin, at all/any cost. How much more serious when the State's Prosecutor, for the State of Ohio did what "Stealthy

Encroachment" forbids; Federal Constitution: Fifth, Sixth, & Fourteenth Amendment due process of law: U.S. Constitution and United States Supreme Court Precedent Cases: **Brookhart**, supra at HN3-4; **Boyd**, supra; **Mapp**, supra at syllabus HN6; **Branzburg v. Hayes** (1972), 408 U.S. 665 33 L. Ed. 2d 623, 92 S. Ct. 2646, and many Precedents quoted above & below.

The Fifth Amendment, in Petitioner's case, the third prong test, multiple conviction: Commands "double jeopardy." To disregard this "Actual Innocent claim," and jurisdictional deficiency would be indeed a miscarriage of justice. **Brookhart**, supra; **Boyd**, supra; **Elberhart**, supra at HN3; **Kontrick**, supra at 455-456, **Murray v. Carrie**, 477 U.S. 478, 495 106 S. Ct. 2639, 91 L. Ed. 2d 397 at Syllabus [***9]. Petitioner hopes and prays the writ of certiorari be granted.

REASONS FOR GRANTING THE PETITION FOR WRIT

I.

A.

The Court should Grant the Petition "Actual Innocent," When there is a "Jurisdictional Deficiency, Stealthy Encroachment," Proven By The Certified Trial Transcript Procedural of Record, Appendix E: The Supreme Court of Ohio has once again "**sidestepped**," The Fifth, Sixth, & Fourteenth Amendment to the United States Federal Constitution & The United States Supreme Court Precedents: Appendix A & B. See **Brookhart** (1966), *supra*, at HN3-4; **Boyd** (1886), *supra* *630, *635; **Elberhart**, *supra*, at HN3; **Kontrick**, *supra*, at 455, 456.

The Supreme Court of Ohio denied: Motion for Reconsideration on December 29, 2020, **State v. Smith**, 2020 Ohio Lexis 2925, Appendix A; 160 Ohio St. 3d 1449, 2020-Ohio-2463, Appendix B; 156 N.E. 3d 918 unpublished opinion; and **State v. Smith**, 2020 Ohio App. Lexis 2223, Appendix C.

The Confirmation for Granting This Petition for Writ of Certiorari Is Further Proven In The Common Pleas Trial Court Judge: Sua Sponte Motion, Appendix F: (Tr. 448-449). The Common Pleas Trial Court Judge: "Only Conclusive and Concluded Ruling and Opinion," Appendix G: (Tr. 467-468, 469-470).

FBI agent Rozier has brought total shame to the Federal Constitution & The United States Supreme Court Precedents & To All American Citizens. This is clearly a lack of integrity in his sworn oath to: "Serve and Protect." This case should be reversed, without any hesitation *

* * So Prays! The Petitioner for the Writ of Certiorari.

REASONS FOR GRANTING THE PETITION FOR WRIT

II.

A.

The Court should Grant the Petition "Actual Innocent," When there is a "Jurisdictional Deficiency," "Stealthy Encroachment," Proven By The Certified Transcript Procedural of Record: Appendix E: (Tr. 446-470)(25 pages, FBI agent Rozier Trial Testimony).

The "criminal information" was used by the Prosecutor: Crim. R. 7(D) to enforce it, "though," "the State's Prosecutor Conceded," Appendix F: (Tr. 449). Defense Counsel Objected Appendix F: (Tr. 449); The Common Pleas Trial Court Judge, Disallowed Appendix F: (Tr. 449). See **Brookhart** (1966), *supra*, at HN3-4; **Boyd** (1886), *supra* *630, *635; **Elberhart**, *supra*, at HN3; **Kontrick**, *supra*, at 455, 456. Moreover, this case "mirrors" The United States Supreme Court, reversal in **Brookhart**, *supra*, at HN3-4; The Supreme Court of Ohio and The First Appellate District Court, has once again "**sidestepped**" the Fifth, Sixth & Fourteenth Amendment to the United States Federal Constitution & The United States Supreme Court Precedents. See Appendix A, B, & C.

The State's Prosecutor has intentionally misapplied the "criminal information," and used Crim. R. 7(D) to enforce it, "though," "The State's Prosecutor conceded" (Tr.449); Defense Counsel Objected (Tr. 449); and The Common Pleas Trial Court Judge, Disallowed, (Tr. 449). See Appendix F. See **Brookhart**, *supra*; **Elberhart**, *supra*; **Kontrick**, *supra*. Moreover, this case "mirrors" The United States Supreme Court, a reversal in **Brookhart**, *supra*, at HN3-4; The Supreme Court of Ohio has once again "**sidestepped**," The Fifth, Sixth, & Fourteenth Amendment to the United States Federal Constitution & The United States Supreme Court Precedents: Appendix A, B, & C.

Most importantly, The Defense Counsel **"Impeached"** the State Prosecutor's witness FBI agent Rozier, Appendix E: (Tr. 464-465, 468-470); and **all twelve jurors returned a guilty verdict** * * * This is further confirmation In Granting The Petition for Writ of Certiorari Is Further Proven In The Common Pleas Trial Court Judge: Sua Sponte Motion, Appendix F: (Tr. 448-449). The Common Pleas Trial Court Judge: "Only Conclusive and Concluded Ruling and Opinion" Appendix G: (Tr. 467-468, 469-470).

"All" of The United States Supreme Court Precedents Ever Written: Are 100% flawless and they are Argued and Presented above and below. ***

The Federal Constitution [NEVER] needs aid in its opinion in what the Federal Constitution has said! and what the Federal Constitution will forever say! and mean! IN THE BILL OF RIGHTS AND PRIVILEGES:: FIFTH, SIXTH, & FOURTEENTH AMENDMENT DUE PROCESS OF LAW." FBI agent Rozier has brought total shame to the Federal Government and to all American Citizens. This is clearly a lack of integrity in his sworn oath to: "Serve and Protect." This petition should be granted without any hesitation

*** So Prays! The Petitioner for the Writ of Certiorari

CONCLUSION

The Court should Grant the Petition. The Supreme Court of Ohio and First Appellate District Court (Hamilton County 190289) has once again "**sidestepped**," The Fifth, Sixth, & Fourteenth Amendment to the United States Federal Constitution & The United States Supreme Court Precedents. "Actual Innocent"; "Stealthy Encroachment"; "Jurisdictional Deficiency". Appendix A, B, & C. This is Proven By The Certified Trial Transcript Procedural of Record, Appendix E: (Tr. 446-470) (25 pages FBI agent Rozier Trial Testimony); Common Pleas Trial Court Judge: Sua Sponte Motion, Appendix F: (Tr. 448-449); The Common Pleas Trial Court Judge: "Only Conclusive and Concluded Ruling and Opinion," Appendix G: (Tr. 467-468, 469-470). **Brookhart** (1966), supra, at HN3-4; **Boyd**, supra at *630, *635; **Mapp**, supra at syllabus HN6; **Elberhart**, supra at HN3; **Kontrick**, supra.

FBI agent Rozier has brought total shame to the Federal Constitution, The U.S. Supreme Court Precedents, & To All American Citizens. This is clearly a lack of integrity in FBI agent Rozier's sworn oath to: "Serve and Protect." The Court should Grant the Petition * * *

So He Hopes & Prays!

Dated: February 16, 2021

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Edward Smith", is written over a horizontal line.

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