

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-1239

Edward Smith, :

Petitioner, :

- vs -

State of Ohio, :

Respondent. :

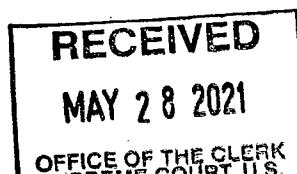
RULE 44 PETITION/MOTION FOR REHEARING

"ONCE IN JEOPARDY" Conviction Acquittal Pursuant To: 5th Amendment U.S. Const. and Ohio Const. Article IV Section 3(B)(2); O.R.C. 2945.17: Common Law Felony Offense "ACQUIT & DISCHARGE"

(Petitioner's Writ of Certiorari was denied on April 19, 2021)

Now comes Petitioner/Defendant pro se, and requests this Honorable United States Supreme Court to grant this Rule 44 Petition/Motion for Rehearing: **"Once In Jeopardy"** Conviction Acquittal Pursuant To: The 5th Amendment U.S. Constitution and The Ohio Constitution Article IV Section 3(B)(2); O.R.C. 2945.17: Common Law Felony Offense. See Memorandum in Support with Citations.

For the convenience of this Court, the authentication of the documents: Certified Transcript of Record, are previously filed. Petitioner/Defendant, requests this Court when stated, refer to: pg. iii Table of Contents/Appendix: "D," "E," "F," "G," & "H". Also Attached to this Motion: Closing Arguments by Defense Counsel, Attachment: "J" T.p. 843.



Petitioner/Defendant, on May 20, 2021, sent a petition to file, along with a \$200 filing fee, and is now asking this Court to dismiss that Petition without prejudice. Please accept this petition/motion that includes the \$200 filing fee on May 26, 2021.

Dated: May 26, 2021

Respectfully Submitted,



E/S/ Edward Smith, Pro Se

Edward Smith #A346-408

Grafton Correctional Institution

2500 S. Avon-Belden Rd.

Grafton, OH 44044

MEMORANDUM IN SUPPORT

“ONCE IN JEOPARDY” Conviction Acquittal Pursuant To: The 5th Amendment U.S.

Constitution and The Ohio Constitution Article IV Section 3(B)(2); O.R.C. 2945.17:

Common Law Felony Offense.

In the trial of 1997 and 1999, Petitioner/Defendant was charged with the same one count indictment, Felony Murder pursuant to O.R.C 2903.02(A). In both trials, the **same** lesser common law felony gun offense was included: Alleging Petitioner/Defendant to have threatened a private citizen, Mr. Spikner, with a gun while in his garage in the City of Cincinnati.

In the 1997 trial, Judge M. Marsh presided. In the 1999 trial, Judge Tracy entered an acquittal pursuant to O.R.C. 2945.17: Common Law Felony Offense; this is in accordance with The 5th Amendment U.S. Constitution and The Ohio Constitution Article IV Section 3(B)(2). See pg. iii Table of Contents/Appendix “F” T.p. (448-449); in conjunction with: pg. iii Table of Contents/Appendix “G” T.p. (467-468, 470); also Closing Arguments by Defense Counsel. See Attachments to this Motion “J” T.p. 843. See **Mitchell vs. State**, 42 Ohio State 383, Syllabus 1, at *384.

The First District Appellate Court of Ohio had no legal jurisdiction to remand for a second trial to the common pleas court of Hamilton County. The Petitioner/Defendant states that he is the person that was held for the 1997 trial and the 1999 trial, pursuant to O.R.C. 2923.02(A): felony murder. He was acquitted for the lesser common law felony gun offense pursuant to O.R.C. 2945.17: Common Law Felony Offense; this is in accordance with The 5th Amendment U.S. Constitution and The Ohio Constitution Article IV Section 3(B)(2). See pg. iii Table of Contents/Appendix “F” T.p. (448-449).

Petitioner/Defendant requests his immediate release from prison as commanded by the 5th Amendment to the United States Constitution and The Ohio Constitution, Article 1 Section 10; "Once In Jeopardy." Please refer to the precedents stated above and below from The United States Supreme Court and The Supreme Court of Ohio.

See **State vs. Smith**, 2000 Ohio at APP. Lexis 5082; see Table of Contents/Appendix: "H" 1999 (Judgement Journal Entry). See **State vs. Smith**, 130 Ohio App. 3d 360, 720 N.E. 2d 149 (First District 1998); see **Sanabria vs. United States** (1978), 437 U.S. 54, at *64; see **Ashe vs. Swenson** (1970), 397 U.S. 436, 444.

Petitioner/Defendant asserts acknowledgement for "Once In Jeopardy," that is found in **Wilhelm vs. Cleveland** 8 Ohio [* * *6] Law ABS. 655, at page 656 which states: that in said former prosecution that the witnesses was sworn and one witness testified....: See also American Jurisprudence 2d 236, Section 175, which provides in part as follows: "Jeopardy attaches in a non-jury case when the accused is brought to trial and the court begins to hear evidence." See also **Green vs. United States** (1957) 355 U.S. 184 [*188] HN2, 3 and 4. See **State vs. Bryant** (1971) 31 Ohio Misc. 230 State of Ohio Syllabus at 1-2.

This court in **Tibbs vs. Florida** (1982), 457 U.S. 31, at [*41] which states: it is prescribed that upon a trial judge's ruling "excluding evidence" that is necessary for the State's Prosecution to prove an essential element a charge crime: then such a ruling is a judgment of acquittal on that particular charge; **Burkes vs. United States** (1978), 437 U.S. 1, at [*18]; **Green vs. United States** (1957), 355 U.S. 184 at 187-188.

In **United States vs. Ball** (1896), 163 U.S. 662 at [*671] stated by a unanimous court held: The verdict of acquittal was final, and could not be reviewed on error or otherwise without putting [the defendant] twice in jeopardy, and thereby violating the Constitution; **United States**

vs. Martin Linen Supply Co. (1997), 430 U.S. 564, *569, *571, *572; **Evans vs. Michigan** (2013), 568 U.S. 313, [*318], at HN4, 5, 6, & 7; **Smith vs. Massachusetts** (2005), 543 U.S. 462 at *464, *465; **United States vs. Scott** (1978), 437 U.S. 82, at *97.

The jury for the “first” murder trial (1997), and the jury for the “second” murder trial (1999), has aquitted Petitioner from the Common Law felony gun offense charge: Threatening a private citizen, Mr. Spikner with a gun while Petitioner was in his garage, while in the City of Cincinnati. This is the same included offense charged by the State’s Prosecution in the one count indictments from both trials. Common Pleas Trial Court Judge Tracy has acquitted the Petitioner and has “indirectly commanded” the jury to do the same. See pg. iii Table of Contents/Appendix: “F” T.p. (448-449); in conjunction with pg. iii Table of Contents/Appendix “G” T.p. (467-468, 470); also Closing Arguments by Defense Counsel. See Attachments to this Motion “J” T.p. 843.

See First District Appellate Court (C-190289), pg. iii Table of Contents/Appendix: “D” Entry by Chief Judge Mock Certified Transcript of Record Aug. 1, 2019; pg. iii Table of Contents/Appendix “E” Certified Transcript of Record: T.p. (446-470). FBI agent Rozier, stationed in New Rochelle, New York, testified in both one count indictment murder trials: “first” (1997) & “second” (1999).

Common Pleas Trial Court Judge Ann Marie Tracy’s “Judgement of Acquittal” that was held at sidebar conference mid trial, in Petitioner’s “second” murder trial (1999), confirms the “Once In Jeopardy”. There, the Common Law felony gun offense charge, by the State’s Prosecution, was excluded. See pg. iii Table of Contents/Appendix “F” T.p. (448-449); in conjunction with: pg. iii Table of Contents/Appendix “G” T.p. (467-468, 470); also Closing Arguments by Defense Counsel. See Attachments to this Motion “J” T.p. 843.

CONCLUSION

Herein, it has been shown that Petitioner/Defendant has been placed in "Once In Jeopardy" and has been Acquitted by Common Pleas Trial Court Judge Tracy. Most importantly this is proven from the former 1997 trial, in which "Once In Jeopardy" attached. Pursuant to the Fifth Amendment to The United States Constitution and The Ohio Constitution Article IV Section 3(B)(2); 2945.17: Common Law Felony Offense. Petitioner/Defendant, Edward Smith, requests his immediate release from prison due to the above violations of law; **Mitchell, *supra*** at Syllabus 1, at [*383] and [*384]; and **Sanabria vs. United States, *supra***; and the above precedents stated. So Petitioner/Defendant hopes and prays.

Respectfully Submitted,


Edward Smith

Edward Smith, Pro Se

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing Rule 44 Petition/Motion for Rehearing: "ONCE IN JEOPARDY" Conviction Acquittal pursuant to: The 5th Amendment U.S. Constitution and The Ohio Constitution Article IV Section 3(B)(2); O.R.C. 2945.17: Common Law Felony Offense. Sent Certified U.S.P.S. Mail to: The United States Supreme Court, 1 First St. NE, Washington, DC 20543; and Sent Certified U.S.P.S. Mail To: Joseph Deters Hamilton County Prosecutor: 230 E. 9th Street, Suite 4000, Cincinnati, Ohio 45202.

Dated: 26 May 2021


Edward Smith #346-408

24 And then she's faced with a lineup; and
25 Sergeant Stevenson said the only thing that she



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RULE 44 PETITION/MOTION FOR REHEARING

CERTIFICATION

I, Edward Smith, Petitioner pro se, hereby certify that the forgoing Petition for Rehearing is presented in good faith, with a reasonable belief that I am entitled to the relief sought in this case, and not for purposes of delay. Notably, there has been no stay of execution of sentence sought or granted in this case.

“ONCE IN JEOPARDY” Conviction Acquittal Pursuant To: 5th Amendment U.S. Const.
and Ohio Const. Article IV Section 3(B)(2); O.R.C. 2945.17: Common Law Felony Offense
“ACQUIT & DISCHARGE”

Dated: May 26, 2021

Respectfully Submitted,



Edward Smith, Pro Se

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2500 S. Avon-Belden Rd.
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