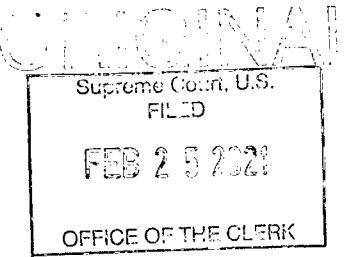


20-7425  
No. \_\_\_\_\_



IN THE SUPREME COURT OF THE UNITED STATES

Rubin Williams, *Petitioner*,

v.

STATE OF OHIO, *Respondent*.

On Petition for a Writ of Certiorari to the  
SEVENTH APPELLATE DISTRICT COURT OF OHIO

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PETITION FOR A WRIT OF CERTIORARI

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Rubin Williams  
P.O. BOX 540  
ST. CLAIRSVILLE, OH, 43950

**QUESTIONS PRESENTED**

- 1. Can a conviction of involuntary manslaughter stand, when cause of death is a Mixed drug overdose and the accused is charged with only one of the contributing drugs?**
  
- 2. Does the but-for-causation rationale of *Burrage v. United States*, 571 U.S. 204 apply to state cases where the cause of death is a Mixed Drug Overdose?**

## **LIST OF PARTIES**

[x] ALL PARTIES APPEAR ON THE CAPTION OF THE CASE

## LIST OF PROCEEDINGS

1. The Ohio Court of Common Pleas, C.P.C. No. 2018-CR-155.
2. Seventh District Court of Appeals, State v. Williams, 2020-Ohio-4430
3. The Ohio Supreme Court, State v. Williams, 2020-Ohio-5634, 2020  
Ohio LEXIS 2779 (Ohio, Dec. 15, 2020)

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**APPENDIX B:** The Opinion of the Seventh District Court of Appeals the highest court to review the merits appears at **appendix B** to this petition. The court's opinion is published at (State v. Williams, 2020-Ohio-4430).

**APPENDIX C:** The Opinion of the Ohio Court of Common Pleas appears at **appendix C** to this petition. The court's opinion is published Case No. 2018-CR-155.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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**PETITION FOR WRIT OF CERTIORARI**

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Petitioner Rubin Williams respectfully prays that a writ of certiorari issues to review the judgement below which does not comport to The United States Constitution. This respective Court and honorable justices are humbly asked to invoke jurisdiction of this case as it is of importance to current cases and future cases alike that this court takes jurisdiction and decide the matter for all.

**OPINION BELOW**

1. The Opinion of the Ohio Supreme Court appears at **appendix A** to this petition. The court's opinion is published at State v. Williams, 2020-Ohio-5634, 2020 Ohio LEXIS 2779 (Ohio, Dec. 15, 2020)
2. The Opinion of the Seventh District Court of Appeals the highest court to review the merits appears at **appendix B** to this petition. The court's opinion is published at (State v. Williams, 2020-Ohio-4430).
3. The Opinion of the Ohio Court of Common Pleas appears at **appendix C** to this petition. The court's opinion is published Case No. 2018-CR-155.

## **JURISDICTION**

The Ohio Supreme Court issued its decision {December 15<sup>th</sup>, 2020}. A copy is attached at appendix A. The Ohio Supreme Court entered final judgment on the appeal on {December 15<sup>th</sup> 2020}. A copy of the judgment is attached at appendix B. The jurisdiction of this court is invoked under 28 U.S.C. §1257(a).

## **CONSTITUTIONAL PROVISIONS**

### **U.S. Const. Amend. 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.

### **U.S. Const. Amend. VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

### **U.S. Const. Amend. XIV**

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 of the laws.

## STATEMENT OF THE CASE

On May 17, 2018, Petitioner was indicted for involuntary manslaughter for causing the death of Jennifer Bettis as a proximate result of committing or attempting to commit a felony (drug trafficking). *See R.C. 2903.04(A)*. Petitioner was also indicted for knowingly selling or offering to sell a controlled substance, specified as fentanyl (a Schedule II controlled substance). *See R.C. 2925.03(A)(1)*.

Defendant-Petitioner Rubin Williams appeals after being convicted in the Columbiana County Common Pleas Court of involuntary manslaughter and drug trafficking. Petitioner contests the sufficiency of the evidence on the causation element of involuntary manslaughter.

On August 21, 2020 the Seventh Appellate District court affirmed his judgement. Mr. Williams pro se timely filed a motion to Certify the conflict pursuant to App.R.25.; and sought review by the Ohio Supreme Court. The Ohio Supreme denied the motion to certify the conflict.

## REASON FOR GRANTING THE PETITION

### I.

**Can A Conviction Of Involuntary Manslaughter Stand, When Cause Of Death Is A Mixed Drug Overdose And The Accused Is Charged With Only One Of The Contributing Drugs?**

To duly convict the Petitioner in this case the jury would have to find that Mr. Rubin Williams was guilty for involuntary manslaughter for causing the death of Jennifer Bettis as a proximate result of committing or attempting to commit a felony (drug trafficking). *See R.C. 2903.04(A)*. and for knowingly selling or offering to sell a controlled substance, specified as fentanyl (a Schedule II controlled substance). *See R.C. 2925.03(A)(1)*. There would have to be scientific certainty that the Fentanyl solely caused Ms. Bettis's death and that none of the other drugs found in Ms. Bettis's system contributed to her death resulting in a mixed drug overdose.

Here, the coroner testified to a reasonable degree of medical certainty that the decedent's cause of death was asphyxia and a result of a mixed drug overdose. (Tr. 473). The death certificate reported: the immediate cause of death was asphyxia, a condition leading to the cause was "mixed drug overdose," and the injury occurred when the decedent took a lethal dose of drugs. (Tr. 485,493); (Def. Ex. C). Petitioner emphasizes the reporting of a "mixed drug overdose," the ability of the anti-anxiety drug to suppress respiration if overused, and the testimony that a person can build a tolerance to heroin and even to fentanyl. (Tr. 470). The appeal court only acted in a one sided determination of the facts. The Expert testified that each of the independent drugs could cause the death alone and it would be impossible to determine which of the drugs were the sole cause of the death from the toxicology report alone especially where the expert did not know how the drugs

specifically affected Ms. Bettis or her tolerance or her pattern of drug use, especially without an autopsy.

The expert proceeded in contradiction to his prior testimony above, that without fentanyl Ms. Bettis would not have died. (Tr. 494) This was not based on scientific certainty but his belief. (Tr.494) If this evidence is sufficient and could be known without an autopsy and from the toxicology test alone, with all of the experts educational background and on the job experience, it would be completely erroneous to conclude a mixed drug overdose occurred which was his findings as an immediate cause of death. Especially if he could have easily concluded an overdose occurred solely because of fentanyl. This is clearly an adept play of the state prosecutor eliciting misleading evidence in face of clear and convincing evidence of a mix drug overdose. The Expert witness also told the jury he did not care about an autopsy. (Tr. 494) The expert continued and never stated his belief was based on scientific certainty. (Tr.494) When questioned if this finding was based on speculation he answered he did not know, because he did not know the legal definition of speculation. Then he states it was based off a report he found online and that it may be speculation, because I really don't know 100% what the definition of speculation is. (Tr.494-495)

The Expert was willing to go into what he thought was a lethal dose of fentanyl without a guarantee and only guessing. The only scientific certainty that is found with fentanyl was there was 9 nano-grams per milliliter of blood. He tells the jury the therapeutic range is from 1-to2 nano-grams, the state exhibits 14 states the

therapeutic range was 1 to 3, the expert also testified that ranges change depending on the author. (Tr.468, 485-486) The expert kept stating he was speculating. Just because there is a therapeutic range, which differs from person to person, does not prove beyond a reasonable doubt that the use of fentanyl above those ranges are automatically lethal. The Expert has no proof other than a guess that 9 nano-grams is lethal by itself. There were other drugs in her system that were significantly larger in amount than fentanyl, each drug was not over the counter drugs and there is no proof Ms. Bettis had a prescription for any of the drugs. The expert testified that the other drugs could cause the death if too much was taken.

*In Kostos:*

Okay. Let's go back and talk about that tycol - toxicology report. So, I was kind of processing your testimony the other day, and your theory is the combined effect of cocaine and heroin caused Mr. Baker's death. Correct?

A. That's correct.

Q. So, not just the heroin?

A. Correct.

Q. So, but for the use of the cocaine, do you know whether or not the heroin would have killed him?

A. No.

Q. Or, are we guessing?

A. It would be a guess. There's no way to tell for sure if he would have died of only heroin. There's no way to tell if he would have died only of cocaine. But, certainly, he died when they were both mixed together. That's the best that we can - -

Q. I appreciate your honesty.

The expert admitted that there is no way for him to tell for sure if someone would have died from heroin alone even with the measurements of each drugs in the decedents system. If the expert had no way of telling for sure which drug caused the death where an autopsy was performed. How is this expert any different and

able to know with absolute certainty none of the other drugs caused her death and the fentanyl alone killed Ms. Bettis without performing an autopsy? The Testifying expert merely did an independent report of another doctor's report who died. Ms. Bettis remains were cremated before the testifying expert was put into office. (Tr. 459-460,490) Therefore he could do nothing more than the original doctor in the case who had the remains and could have done an autopsy. The original report concluded it to be a mixed drug overdose. Anything other than this finding is what the expert testified to in the *Kostos* case as guessing and is mere speculation.

The appeals court relies on this specific testimony that the expert concludes himself may be speculation. (Tr. 495) Therefore, this is not an absolute fact or proof beyond a reasonable doubt that the decedent specifically died from fentanyl alone which is why he concluded the death to be a mixed drug overdose. The expert in this case is guessing. This is a clear miscarriage of justice that the appeals court violates APP.R.12 and the constitutional rights of the Petitioner. The jury if allowed will believe the false testimony of the expert witness where the judge does not step in. The Motion for acquittal should have been granted.

The indictment reads clearly that Mr. Williams caused the death of Ms. Bettis solely with fentanyl and not a mixed drug. Then after the expert clearly testifies and stands behind his cause of death which would acquit the Petitioner. The Expert plays a bias role for the prosecutor and elicits testimony that he says himself may be speculation and clearly not evidence beyond a reasonable doubt. The appeals court concludes.

"The standard for reviewing the sufficiency of the evidence to support a criminal conviction on appeal is the same as the standard used to review the denial of a motion for acquittal. See, e.g., Crim.R. 29(A) (referring to insufficient evidence), (C) (post-verdict motion for acquittal); State v. Williams, 74 Ohio St.3d 569, 576, 1996- Ohio 91, 660 N.E.2d 724 (1996). Whether the evidence is legally sufficient to sustain a conviction is a question of law dealing with adequacy. State v. Thompkins, 78 Ohio St.3d 380, 386, 1997- Ohio 52, 678 N.E.2d 541 (1997). An evaluation of witness credibility is not involved in a sufficiency review as the question is whether the evidence is sufficient if believed. State v. Yarbrough, 95 Ohio St. 3d 227, 2002-Ohio-2126, 767 N.E.2d 216, ¶ 79, 82; State v. Murphy, 91 Ohio St.3d 516, 543, 2001- Ohio 112, 747 N.E.2d 765 (2001). In other words, sufficiency involves the state's burden of production rather than its burden of persuasion. Thompkins, 78 Ohio St.3d at 390 (Cook, J., concurring).

"A conviction can be sustained based on circumstantial evidence alone." State v. Franklin, 62 Ohio St.3d 118, 124, 580 N.E.2d 1 (1991). Circumstantial evidence inherently possesses the same probative value as direct evidence. State v. Treesh, 90 Ohio St.3d 460, 485, 2001- Ohio 4, 739 N.E.2d 749 (2001). A conviction cannot be sustained because of Guessing. The Circumstantial evidence and direct evidence both prove that the death was caused by a "MIXED DRUG OVERDOSE."

Without a doubt in this case the cause of death was a "mixed drug overdose." Mr. Williams was indicted for involuntary manslaughter for causing the death of Jennifer Bettis as a proximate result of committing or attempting to commit a

felony (drug trafficking). *See R.C. 2903.04(A)*. Petitioner was also indicted for knowingly selling or offering to sell a controlled substance, specified as fentanyl (a Schedule II controlled substance). *See R.C. 2925.03(A)(1)*.

The expert testified he made the immediate cause of death a “MIXED DRUG OVERDOSE” because of all the drugs in her system. (Tr.485) This finding was based on scientific certainty. Then the expert went outside that scientific certainty to guess and speculate that without the fentanyl the decedent would not be dead but could not say whether or not Ms. Bettis was a regular user of fentanyl but a tolerance could be built to fentanyl. (Tr. 485) The expert did not know what pattern of drug use Ms. Bettis engaged in. The Expert stated even nicotine could cause someone to asphyxiate. There is no way for this expert to say that a person solely died from fentanyl alone especially after testifying every drug in her system could have killed her alone. The expert testified She had Benzodiazepine at 14.1 nanograms and this drug can suppress breathing and does not have a therapeutic range and a person could die from taking too much of the drug. (Tr.480,481) The expert admitted an overdose is a slippery slope because a person can overdose on medication including Tylenol or Aspirin and that you could overdose on any medicine. (Tr. 482) It is an error before the court to allow the Expert to testify and conclude the death to be a mixed drug overdose then retract those scientific findings and change the cause of death to a drug overdose by fentanyl on the stand. Where the expert claimed that Ms. Bettis received a lethal dose of fentanyl is speculation and an error. This Is false and Misleading evidence.

The court of Appeals held:

"In any event, we found Petitioner's case was distinguishable from Kosto (and Burrage). Id. at ¶ 42-43. We opined that a rational person could find the state showed fentanyl was an independent cause of death (which would have occurred even if she had no other drugs in her system) as the evidence showed the decedent injected a "lethal dose" of fentanyl thinking it was the heroin which she requested from Petitioner. Id. at ¶ 42. We alternatively said the state [[\*5]] sufficiently established that fentanyl was a but-for cause of death as the coroner specified that the victim would not have died if she had not used the fentanyl. Id. at ¶ 43, 50.

[[\*P8]] Even though we believed Kosto misinterpreted the but-for test set forth in Burrage, the evidence in our case is distinct. And, even if we had applied the Kosto interpretation of Burrage, our judgment would not have changed due to the unique evidence in our case. As the evidence indicated the decedent believed she was receiving the heroin she ordered from Petitioner (not fentanyl) and the coroner concluded the victim would still be alive but for taking the fentanyl and also concluded the dose of fentanyl in the decedent's system was lethal, this case is distinguishable from Kosto. Although Petitioner criticizes parts of the coroner's testimony in his case, this does not change the fact that we accepted the testimony or make Petitioner's facts similar to those in Kosto. Contrary to Petitioner's suggestion, the Fifth District did not rule that a coroner is prohibited from opining that the amount of the drug supplied by the defendant was a lethal dose (or that the victim would not have died if she had not ingested [[\*6]] the supplied drug) merely because, as here, the death certificate reported the immediate cause of death was asphyxia and reported that a condition leading to the cause was mixed drug overdose."

The Court misconstrues the petitioners argument. The petitioner was establishing the expert in Kostos admitted that to make any suggestion that one of the drugs independlty killed the victim where the cause of death was mixed drug overdose would be guessing and not facts. The same rationale applies in the petitioners case the expert witness made a guess and that guess was contrary to all the known medical science and there was no way for the expert to factually say which drug killed the victim. In this case 9 nanograms of fentanyl were found in Ms. Bettis System this is not a lethal dose of fentanyl only a toxic dose which is an agreed

upon medical fact, the experts statement was material to Mr. Williams Conviction. The Prosecutor failed to correct Dr. Wilson's false and misleading testimony given that it is a well-known scientific fact that a toxic level of fentanyl 5-10 nanograms per milliliter, while 10-15 nanograms per milliliter is toxic to fatal, and 15 nanograms per milliliter is generally fatal. Wildenthaler v. Galion Cmty. Hosp..

2019-Ohio-4951

The Lead investigator Brandie Phillips testified 20 milliliters of blood was drawn from the subclavian artery. It is a well-known scientific fact that the validity of the toxicology report and asserted that postmortem drug redistribution could significantly alter every clinical finding. United States v. Smith, 656 Fed. Appx. 70, 2016 U.S. App. LEXIS 13454 (6th Cir. Ky., July 22, 2016).

The process of postmortem drug redistribution. Postmortem drug redistribution is a scientific process by which drug residue may move between the liver and the heart after a person dies. Consequently, this phenomenon may cause a postmortem toxicology report to find artificially high or artificially low levels of drugs in someone's system. United States v. Smith, 656 Fed. Appx. 70, 2016 U.S. App. LEXIS 13454 (6th Cir. Ky., July 22, 2016). Therefore the amount of fentanyl ingested would have been much lower.

In a nutshell given the fact that Dr. Graham and testifying expert Dr. Wilson had all of this information from detective Talbert all the direct and circumstantial evidence of what allegedly took place, if they knew the death occurred solely because of fentanyl then that could have easily been and should have been the

immediate cause of death in this case. The Court in this case constructively Amended Williams indictment without notice and affecting his opportunity to present a defense. The level of fentanyl in Ms. Bettis system was only at a level of toxic and not lethal. There is arguably a reasonable probability that but for the use of other drugs, the death would not have occurred. By the findings of these doctors. Both doctors found the death to be caused by a MIXED DRUG OVERDOSE. That is the cause of death, not an overdose due to FENTANYL as he is charged with.

The appeals court opinioned in this case:

*Factual distinctions between cases do not serve as a basis for conflict certification.*" Id. at 599. In Whitelock, the Ohio Supreme Court dismissed the appeal on the grounds that the conflict was improperly certified and urged appellate courts to certify "only those cases where there is a true [[\*\*3]] and actual conflict on a rule of law." Id. Furthermore, the issue proposed for certification must be dispositive of the case. State v. Agee, 7th Dist. Mahoning No. 14 MA 0094, 2017-Ohio-7750, ¶ 4, citing State ex rel. Davet v. Sutula, 131 Ohio St.3d 220, 2012-Ohio-759, 963 N.E.2d 811, ¶ 2.

We reviewed the Fifth District's Kosto case in addressing Petitioner's appeal, and we criticized statements made by the Kosto court. The Fifth District found the evidence was insufficient to show the heroin supplied by the defendant caused the victim's death where the victim also ingested cocaine which the defendant did not supply. In that case, the coroner testified it was the acute combination of these two drugs that caused the death and he could not testify as to whether the heroin alone would have killed the victim or whether the cocaine alone would have killed the victim. The Kosto court seemed to believe the but-for causation test set forth by a non-binding United States Supreme Court case required the expert to say the victim "would have died from the heroin use alone." See Kosto, 5th Dist. No. 17 CA 54 at ¶ 23, quoting Burrage v. United States, 571 U.S. 204, 134 S.Ct. 881, 892, 187 L.Ed.2d 715 (2014).

It is clear The court of appeals is making a factual distinction not the defendant. The conflict is based on law followed in another district court which found contrary to the Seventh Appellate District. The matter of law is whether the

petitioner can be found guilty of involuntary manslaughter where the cause of death is a mixed drug overdose and the petitioner is only charged with the sale of one drug.

In State v. Kostos, 2018-Ohio-1925 the court found and recognized that

We note the indictment and the bill of particulars both allege that the cause of Chad Baker's death was based on the felony of corrupting another specifically with heroin...

in Burrage, the United States Supreme Court was interpreting a penalty enhancement provision in a federal statute, not an Ohio criminal statute. However, this distinction does not dissuade us from applying the rationale of Burrage herein, and "we cannot amend statutes to provide what we consider a more logical result." State v. Link, 155 Ohio App. 3d 585, 2003-Ohio-6798, 802 N.E.2d 680, ¶ 17, citing State v. Virasayachack (2000), 138 Ohio App.3d 570, 741 N.E.2d 943. Accordingly, upon review, we find insufficient evidence was presented for reasonable fact finders to conclude beyond a reasonable doubt that Petitioner was guilty of involuntary manslaughter as charged by the State."

it is well-established that the State bears the burden of establishing each and every element of a charged crime and must do so with proof beyond a reasonable doubt. See, e.g., State v. Buckner, 5th Dist. Richland No. 2016 CA 101, 2018-Ohio-233, ¶ 23, 104 N.E.3d 227, citing In re L.R., 8th Dist. Cuyahoga No. 93356, 2010-Ohio-15, ¶ 11. We note that during redirect examination, Dr. Lee was asked by the prosecutor if there was "any way to know whether Chad used weak heroin, strong heroin, or any combination?" He replied: "He used enough that it killed him — that's all I can say." Tr. at 281. However, just moments before that, Dr. Lee had reiterated that the cause of death for Chad was a combination of cocaine and heroin. See Tr. at 278.

We hereby hold that the "but-for causality" rationale of Burrage must also be applied to the element of "causing serious physical harm" to another under R.C. 2925.02(A)(3), and accordingly, upon review, we find insufficient evidence was presented in this instance for reasonable fact finders to conclude beyond a reasonable doubt that Petitioner was guilty of corrupting another with drugs, namely heroin, as charged by the State.

The difference between this case and *Kostos* case is the name of the defendants, the name of the drugs, the Charge of "trafficking" versus "corrupting another" and the fact that the expert without scientific certainty was not willing to assume or speculate and or guess the death was caused by heroin alone while there

was a mixture of drugs in the decedents system in *Kostos* and in Mr. Williams case the expert witness was willing to assume and speculate and or guess Fentanyl was the cause of death even after concluding the death was a result of a mixed drug overdose. Also in *Kostos* there was an autopsy performed and there was no autopsy performed in Mr. Williams case. Where there was an autopsy performed in *Kostos* and the expert still could not independently say heroin caused the death then the expert in Williams case would have not been better situated to say Fentanyl caused Ms. Bettis death where no Autopsy was performed and only a toxicology test was performed.

The language Congress enacted requires death to 'result from' use of the unlawfully distributed drug, not from a combination of factors to which drug use merely contributed." *Id. at 891*. The Court proceeded to hold that at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841(b)(1)(C) unless such use is a but-for cause of the death or injury." *Id. at 892*.

In *State v Kostos*, the 5th District Ohio Court of Appeals followed The *Burrage* case, and in the Seventh Appellate District denied to follow the *Burrage* case where the circumstances where more similar than different and charged with involuntary manslaughter for a mixed drug overdose.

This is a miscarriage of justice and the defendant is actually innocent and there is a large amount of evidence to support that the states witness Nicole

Mitchell who was the original suspect and possibly the sole perpetrator behind trafficking the drugs that killed Ms. Bettis. Nicole Mitchell's house was raided just weeks before the incident for drug trafficking. The petitioner was not even involved with Mitchell at that time and she was already serving prison time for involuntary manslaughter and would be willing to lie and say anything on the stand and place the blame on the defendant to get out of prison in exchange to testify.

The Court of appeals concluded:

**\*P14]** After Petitioner moved for acquittal, he testified in his own defense and presented the testimony of his former girlfriend. Petitioner testified that he began selling drugs to the decedent in early 2016 but claimed he was not still selling to her in October of that year. (Tr. 574-575). He said he sold heroin and crack but did not sell fentanyl as people were not using it yet. (Tr. 585). He claimed his roommate, who was his supplier, evicted him around October 11, 2016 and took his drug cache. (Tr. 576, 578, 586). Petitioner said after he moved into Nicole's house, Nicole supplied drugs to the decedent, not him. (Tr. 574-575). He said he used Nicole's phone and logged in to Facebook but forgot to log out when he gave the phone back to her, which gave her access to his Facebook account. (Tr. 581-582). He denied speaking to the decedent through his Facebook account on October 14, 2016. (Tr. 582). His criminal history **\*\*10]** was discussed. He did not use the drugs he sold (besides marijuana and some pills), but he noted that his girlfriend and other users tested his product supply. (Tr. 595-596).

**\*P15]** Ursula testified that when Petitioner's roommate cut off his drug supply in October 2016, Petitioner no longer had drugs to sell and lacked a supplier. She claimed that Nicole and her boyfriend would pick up drugs from somewhere on the east side of Youngstown as they had a car. (Tr. 549-550, 553). Still, Petitioner continued to arrange drug sales through Facebook Messenger. (Tr. 559-560). Ursula knew Nicole brought drugs to the decedent shortly before her death because Petitioner (and Nicole) told her. (Tr. 554). Ursula admitted that after Nicole and her boyfriend would retrieve and deliver the drugs, they all would split the "profit" (she would snort it and they would inject it). (Tr. 556). Ursula acknowledged her criminal and drug history.

The Circumstantial evidence and direct evidence show's that Nicole Mitchell had access to his facebook accounts and was the last person to have contact with Miss Bettis, She was already in prison for Involuntary Manslaughter, The

petitioner did not have access to drugs, Ursula testified she was with Mitchell who went and got the drugs that was given to Ms. Bettis. Witness Nicole Mitchell who gave Ms. Bettis the drugs that killed her, home was raided for drug activity before the petitioner had any dealings with Mitchell. (Tr. 404-405, 407-408) Mitchell also pointed out the petitioner did not sell any drugs other than Heroin. (Tr. 390) Ursula admitted after Nicole and her boyfriend, not the Petitioner would retrieve and deliver drugs and they would all split the profit. Ursula did not say the Apellant was involved. Nicole Mitchell also stated She ran drugs for other people and would also buy drugs for others. (Tr. 408-409, 412). The petitioner claimed he did not have any drugs because he got into an argument with Duke and Nicole confirms the petitioner came to her home because he got into it with Duke. (Tr. 408, 574-575)

Therefore, the day in question The petitioner did not have any drugs and Nicole and Her boyfriend gave Ms. Bettis drugs. The fold of fentanyl had a males DNA on the package but not the petitioner's.(Tr. 356-358)

A determination of whether circumstantial evidence relied upon by the state is sufficient, as a matter of law, to exclude a reasonable theory of innocence, necessarily involves our weighing the evidence to a limited extent; we must ascertain whether reasonable minds could find only that the circumstantial evidence was consistent with guilt and that the defendant's theory of innocence was therefore excluded. If the circumstantial evidence is as consistent with innocence as with guilt, then doubt must be resolved in favor of innocence. *State v.. Kulig, supra, at 160.*

Under those circumstances, where the circumstantial evidence is equally consistent with two reasonable but opposed theories, it is apparent that reasonable minds cannot find that the circumstantial evidence is consistent only with guilt and precludes a theory of innocence. On the other hand, if the circumstantial evidence is so supportive of the theory of guilt that the theory of innocence is not reasonable, then reasonable minds may conclude that the circumstantial evidence is consistent only with the theory of guilt and irreconcilable with any reasonable theory of innocence. See *State v. Ebright*, 11 Ohio App. 3d 97 citing *State v.. Sheppard* (1956), 165 Ohio St. 293 [59 O.O. 398]; *State v.. Williams* (1976), 47 Ohio App. 2d 330 [1 O.O.3d 393].

There is nothing linking the petitioner to causing the death of Ms. Bettis by way of fentanyl who died of a Mixed Drug Overdose. The court allowed the petitioner to become convicted of involuntary manslaughter without sufficient evidence and is an constructive amendment to his indictment.

#### REASON FOR GRANTING THE PETITION

##### II.

**Does the but-for-causation rationale of *Burrage v. United States*, 571 U.S. 204 apply to state cases where the cause of death is a Mixed Drug Overdose?**

In *Burrage v. United States*, 571 U.S. 204, 134 S. Ct. 881, 892, 187 L.Ed.2d 715 (2014), which involved a penalty enhancement provision under 21 U.S.C. Sec. 841(b)(1)(C). Said federal statute in essence imposes a 20-year mandatory minimum sentence on a defendant who unlawfully distributes a Schedule I or II drug, when "death or serious bodily injury results from the use of such substance." The United States Supreme Court in *Burrage* granted certiorari on two questions, the first of which was whether the defendant could be convicted under the "death results" provision when the use of the controlled substance was a "contributing cause" of the death. *Id.* at 886. The Court first determined that the federal statute in question imposes a requirement of "but-for causation." *Id.* at 889-891. Although the Government proposed the argument that an act or omission should be considered a cause-in-fact if it was a "substantial" or "contributing" factor in producing a given result, this was rejected by the Court. *Id.* at 890.

In *State v Kostos*, the 5th District Ohio Court of Appeals followed The *Burrage* case, and in the Seventh Appellate District denied to follow the *Burrage* case where the circumstances were more similar than different and charged with involuntary manslaughter for a mixed drug overdose. This is a miscarriage of justice and the defendant is actually innocent and there is a large amount of evidence to support that the states witness Nicole Mitchell who was the original suspect and possibly the sole perpetrator behind trafficking the drugs that killed Ms. Bettis who house was raided just weeks before the incident for drug trafficking and she already serving prison time for involuntary manslaughter and would be

willing to lie on the stand and place the blame on the defendant in a county where racial bias is prevalent.

The Seventh District Court of Appeals also held:

In any event, we found Petitioner's case was distinguishable from *Kosto* (and *Burrage*). *Id.* at ¶ 42-43. We opined that a rational person could find the state showed fentanyl was an independent cause of death (which would have occurred even if she had no other drugs in her system) as the evidence showed the decedent injected a "lethal dose" of fentanyl thinking it was the heroin which she requested from Petitioner. *Id.* at ¶ 42. We alternatively said the state [[\*\*5]] sufficiently established that fentanyl was a but-for cause of death as the coroner specified that the victim would not have died if she had not used the fentanyl. *Id.* at ¶ 43, 50.

[[\*P8]] Even though we believed *Kosto* misinterpreted the but-for test set forth in *Burrage*, the evidence in our case is distinct. And, even if we had applied the *Kosto* interpretation of *Burrage*, our judgment would not have changed due to the unique evidence in our case. As the evidence indicated the decedent believed she was receiving the heroin she ordered from Petitioner (not fentanyl) and the coroner concluded the victim would still be alive but for taking the fentanyl and also concluded the dose of fentanyl in the decedent's system was lethal, this case is distinguishable from *Kosto*. Although Petitioner criticizes parts of the coroner's testimony in his case, this does not change the fact that we accepted the testimony or make Petitioner's facts similar to those in *Kosto*. Contrary to Petitioner's suggestion, the Fifth District did not rule that a coroner is prohibited from opining that the amount of the drug supplied by the defendant was a lethal dose (or that the victim would not have died if she had not ingested [[\*\*6]] the supplied drug) merely because, as here, the death certificate reported the immediate cause of death was asphyxia and reported that a condition leading to the cause was mixed drug overdose.

The Court of Appeals and the State of Ohio are the only parties making a factual distinction of the two cases. The Petitioner raised the conflict based on the same question as a matter of "LAW" whether a person can be convicted of involuntary manslaughter where the cause of death is a mixed drug overdose and the indictment only charges with one of the drugs causing the death?

The determination found in Seventh District court of appeals is highly unreasonable based on fact and law. At the end of [\*P8] the court makes a clear contradiction of it's entire argument.

In this case Dr. Wilson testimony is false and misleading. This evidence is false because there is known medical facts agreed upon the medical field which is apparent and should have been known to the prosecutor in this case. The 9 nanograms of fentanyl that were found in Ms. Bettis System this is not a lethal dose of fentanyl as the Expert falsely testified to. That amount fentanyl is only considered to be a toxic dose and is a tried and known scientific fact. According to the argument of the court that specific evidence is material to Mr. Williams Conviction. The Prosecutor failed to correct Dr. Wilson's false and misleading testimony given that it is a well-known scientific fact that and this Expert witness with all his grueling hours of training is well aware of the different ranges of fentanyl. The ranges are a toxic level of fentanyl is 5-10 nanograms per milliliter, while 10-15 nanograms per milliliter is toxic to fatal, and 15 nanograms per milliliter is generally fatal. Wildenthaler v. Galion Cnty. Hosp., 2019-Ohio-4951. Therefore, with this well-known Scientific evidence showing 9 nanograms is not a lethal dose and a reasonable trier of fact could not find Mr. Williams guilty beyond a reasonable doubt as the appeals court state above.

The court of appeals in this case tries to use this evidence to distinguish from Williams case even though it is factually the same with minor differences. The expert admitted in *Kostos* that there is no way for him to tell for sure if someone

would have died from heroin alone even with the measurements of each drugs in the decedents system. If the expert had no way of telling for sure which drug caused the death where an autopsy was performed. How is this expert any different and able to know with absolute certainty none of the other drugs caused her death and the fentanyl alone killed Ms. Bettis without performing an autopsy? He would not be able to it is impossible. That makes the expert's testimony False and misleading.

In Conclusion the Petitioner was denied a fair trial and due process. Because the evidence was not sufficient as found in Burrage v. United States, 571 U.S. 204, 134 S.Ct. 881, 892, 187 L.Ed.2d 715 (2014), The traditional assumption that "proof of a criminal charge beyond a reasonable doubt is constitutionally required," Winship, 397 U.S. at 362, has been endorsed explicitly and tied directly to the Due Process Clause. Id., at 364. When the quantum of proof supporting a conviction falls sufficiently far below this standard, then the Due Process Clause requires that the conviction be set aside, even in the absence of any procedural error. Jackson v. Virginia, 443 U.S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979). In short, the courts have already recognized that certain substantive defects can vitiate the protection ordinarily afforded by a trial, so that formal compliance with procedural rules is no longer enough to satisfy the demands of due process. The same is true of a facially valid determination of probable cause. Even if prescribed procedures are followed meticulously, a criminal prosecution based on perjured testimony, or evidence on which "no rational trier of fact" could base a

finding of probable cause, cf. *id.*, at 324, simply does not comport with the requirements of the Due Process Clause.

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The Petitioner requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Therefore, the court should grant relief to answer the federal question at hand that the state courts has purposely bypassed.

## CONCLUSION

Therefore, this court should grant Certiorari.

Respectfully Submitted,

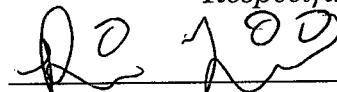


Rubin Williams

Febuary 27 2021

## CERTIFICATE OF SERVICE

I, Rubin Williams hereby certify that on the 22 day of February, 2021, a copy of the following PETITIONERS PETITION FOR CERTORARI. was sent by regular U.S. mail United States Supreme Court Clerk of Courts.

*Respectfully Submitted,*  


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RUBIN WILLIAMS (A734401)  
BELMONT CORRECTIONAL  
INSTITUTION  
68518 BANNOCK ROAD  
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## CERTIFICATE OF COMPLIANCE

No. \_\_\_\_\_

Rubin Williams, *Petitioner*,

v.

STATE OF OHIO, *Respondent*.

As required by Supreme Court Rule 33.1(h), I certify that the petition for writ of certiorari contains 6,526 words, excluding the parts of the petition that are exempted by the Supreme Court Rule 33.1(d)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February, 22, 2021

Respectfully Submitted,



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