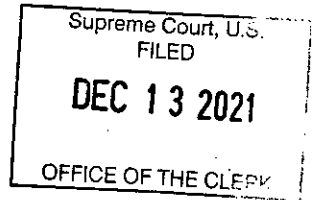


No. **21-7067 ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES



Kimmie D. Baker — PETITIONER  
(Your Name)

vs.

State of Arizona — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arizona Supreme Court  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kimmie D. Baker  
(Your Name)

1550 E. Thunderbird #2106  
(Address)

Phoenix, Az 85022  
(City, State, Zip Code)

623-219-2621  
(Phone Number)

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### QUESTION(S) PRESENTED

1, Should the holding of *United States V. Eberhart* 546 U.S. 12 (2005). "that in this case Government neglected to respond and not Contest the merits of the July 7, 2020 motion, nor by moving to dismiss on the basis of untimeliness 361 U.S. at 221, Be Reviewed on writ of Certiorari,

- 2,
- (a) a new trial motion was filed shortly after it was discovered on July 7, 2020, but the Government failed to rule on the motion.
  - (b) the motion alleges Exculpatory evidence that would have changed the outcome of the trial.
  - (c) the motion pertains to a July 26, 2012, hearing to inlimine and preclude at trial a Arizona Department of Economic Security Side Variance Report associated with its adjudication findings.

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

☐ For cases from **federal courts**:

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

☒ reported at Superior Court Decision; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

☒ reported at Arizona Court of Appeals; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the Arizona Supreme Court court appears at Appendix C to the petition and is

☒ reported at Superior Court + Arizona; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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☒ For cases from **state courts**:

The date on which the highest state court decided my case was September 22, 2021  
A copy of that decision appears at Appendix K5 A C.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth, Six, and Fourteenth, Amendments

4<sup>th</sup>: Unreasonable Search and Seizures

6<sup>th</sup>: Right to a impartial Jury

14<sup>th</sup>: No State shall 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 law.

Provision Involved:

28 U.S.C. § 2680, Section 1346(b) shall not apply

28 U.S.C. § 1257(a)

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

|                            |                                |
|----------------------------|--------------------------------|
| United States V. Eberhart  | 126 S. Ct 403 (2005)           |
| United States V. More      | 709 F. 3d 287 (4th Cir 2013)   |
| United States V. Pizza     | 647 F. 3d 539 (5th Cir. 2011)  |
| United States V. Bank      | 546 F. 3d 507 (7th Cir. 2008)  |
| United States V. Verlande  | 485 F. 3d 553 (10th Cir. 2007) |
| United States V. Hernandez | 433 F. 3d 1328 (11th Cir 2005) |
| United States V. Tarango   | 396 F. 3d 666 (5th Cir 2005)   |
| United States V. Scroggins | 379 F. 3d 233 (5th Cir 2004)   |

### STATUTES AND RULES

Federal Statute:

Under 28 U.S.C. § 2680, the  
Provision of Section 1346(b) of this title  
shall not apply to: (h) any claim arising out  
of assault, battery, false imprisonment, false  
arrest, malicious prosecution, abuse of process,  
libel, slander, misrepresentation, deceit, or  
interference with contract rights, or to (j) any

### OTHER

Federal Statute:

The Jurisdiction of this Court is invoked  
under 28 U.S.C § 1257 (a)

## **LIST OF PARTIES**

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## **RELATED CASES**



## STATEMENT OF THE CASE

Petitioner Kimmie Dwayne Baker (hereinafter "Petitioner"), a former Tempe Union High School District Head Security Guard. This Case arises from a alleged burglary and theft in October 2011, out of Tempe High School Tempe Arizona. The charges were ultimately scratched, and Petitioner were later indicted. After a lengthy trial a Jury found Petitioner guilty. Petitioner filed several rule 32, Post-Conviction petitions. On July 7, 2020, Petitioner after discovering newly discovered evidence of a "Side Variance Report" generated by the Arizona Department of Security, file a motion seeking a new trial, see attached exhibit (A). On or about July 26, 2012, a hearing was held to inlimate the adjudication findings of the Department of economic Security which were found infavor of Petitioner. At the said time Petitioner didn't have in his custody or control a copy of the "Side Variance report". Without such said report the State was able to argue that the Tempe Union High School district never made any statements to the Arizona Department of Economic Security Unemployment about why it was determined that Petitioner should be terminated thereby severing Petitioner's Contract of employment. Petitioner filed the July 7, 2020,

Newly discovered evidence motion as soon as it was discovered Seeking a new trial. The motion was never ruled on by Judge Timothy Ryan see Appendix (A). The July 7, 2020, motion is exculpatory evidence and would have changed the outcome of the trial.

### REASONS FOR GRANTING THE PETITION

The Court Should grant the writ in agreement  
Eberhart v. United States 546 U.S. 12 (2005).

Eberhart v. United States 546 U.S. 12 (2005)  
Considered Federal Rule of Criminal Procedure 33(a)  
allows a district Court to "vacate any Judgment  
and grant a new trial if the interest of Justice  
so requires." But "(a)ny motion for a new trial grounded  
on any reason other than newly discovered evidence  
must be filed within 7 days after the verdict or finding  
of guilty, or within such further time as the Court  
sets during the 7-day period. Petitioner had no  
other choice but to bring to the Courts attention  
after discovery of the Newly Discovered Evidence  
on July 7, 2020. This piece of Evidence is Exculpatory  
and would have changed the outcome of the  
trial. The Government neglected to respond and  
not contest the merits of the motion nor by  
moving to dismiss on the basis of untimeliness.  
For said neglect and argument presented by Petitioner  
this writ should be granted and remanded for a  
hearing.

In the interest of Justice the July 7, 2020, motion deserves a hearing, Judge Timothy Ryan refused to take any further action at the time see appendix (A).

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kim W. Baker

Date: January 19, 2022