

22-5153

NO. \_\_\_\_\_

ORIGINAL

Supreme Court, U.S.  
FILED

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IN THE  
SUPREME COURT OF THE UNITED STATES

RAMON BOYCE- PETITIONER,

VS.

STATE OF OHIO- RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO

THE OHIO COURT OF APPEALS  
TENTH APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

- 1.) Has a criminal Defendant's constitutional right to self-representation been violated by a trial court, if that court unreasonably delays the Defendant's request for self-representation and the Defendant suffered prejudice due to the courts delay?
- 2.) Concerning a Pro Se, Defendant, does a trial court violate McKaskle v. Wiggins, 465 U.S. 168, 174 (1984) when the court does not allow a Defendant to control the organization and content of their own defense, to make motions or to argue points of law in a case before a court where that Defendant desires to represent them self?
- 3.) Can the State argue against a criminal defendant an authentication issue for the purpose of admissibility, relating to evidence in a criminal trial, if the documentary evidence in question, were secured by the Government or State, from another Government or State department or agency and has been marked by the Government or State as "counsel only material" so as to restrict it's availability to that criminal defendant?

## **LIST OF PARTIES**

[✓] All parties to this proceeding are listed in the caption of the case.

## **RELATED CASES**

- State v. Boyce Common Pleas Court, ( Trial Court Franklin County, Ohio Case No 17CR-2027. Judgment entered on April 29, 2019)
- State v. Boyce, 2021-Ohio-712, 2021 Ohio App. LEXIS 718, 2021 WL 929903 (Appellate Court Case No. 21AP-313, Franklin County. Entered on Mar. 11, 2021.)
- State v. Boyce, 2022 Ohio App. LEXIS 187 (Appellate Court, Application to Reopen, Ohio Ct. App. No. 21AP-313 Franklin County. Entered on Jan. 25, 2022.)
- State v. Boyce, 2022 Ohio LEXIS 1016; 2022-Ohio-1687 (Supreme Court of Ohio Case No. 2022-0251. Entered on May 24, 2022.)

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IN THE SUPREME COURT OF  
THE UNITED STATES PETITION FOR  
WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of Certiorari issues, to address the proposed questions for the country and review the judgment below.

**OPINIONS BELOW**

[√] For cases from State courts:

The Opinion of the highest State court to review the merits appear at Appendix [B] and is reported at State v. Boyce 2022 Ohio App. LEXIS 187. The opinion was rendered on Jan 25, 2022, in the Tenth District Court of Appeals for Ohio.

[√] A timely appeal was filed to the Supreme Court of Ohio on May 24, 2022. That court declined jurisdiction, the entry appears at Appendix [C] to the petition and is reported at State v. Boyce, 2022 Ohio LEXIS 1016; 2022-Ohio-1687.

## **JURISDICTION**

☐ For cases from federal courts:

The date on which the highest state court decided my case was on \_\_\_\_\_ .

☒ For cases from **state courts**:

The date on which the highest state court decided my case was May 24, 2022  
A copy of that decision appears at Appendix C.

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



## **CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED**

### **UNITED STATES CONSTITUTION:**

Sixth Amendment Rights of the accused: See Appendix (D)

Fourteenth Amendment: See Appendix (E)

### **STATUTE AND RULES**

Ohio Evidence Rule 901. Requirement of authentication or identification: See Appendix (F)

### **REVISED CODE SECTIONS**

Ohio Revised Code Section 2911.12 Burglary: See Appendix (G)

### **OTHER**

Ohio Criminal Rule 12: See Appendix (H)

Ohio Criminal Rule 16: See Appendix (I)

Ohio App. R. 26(b): See Appendix (J)

## STATEMENT OF THE CASE

On April 12, 2017 the Franklin County, Ohio grand Jury indicted Petitioner Ramon Boyce on case No. 17CR-2027 charging him with one count of burglary under Ohio Revised Code Section 2911.12, a second degree felony.

Petitioner requested to proceed Pro Se, both orally and by motion, where his request were disregarded by the court. Prohibiting Petitioner from filing trial preparation motions or partaking in his own defense. Ohio does not permit hybrid representation, *State v. Hackett*, 164 Ohio St.3d 74, 2020-Ohio-6699, 172 N.E.3d 75, at ¶ 34. Any preparation motions Petitioner would have filed would have faced scrutiny.

Petitioner's counsel, filed a motion to suppress and an amended motion to suppress relating to evidence unlawfully gained. Petitioner also filed a Pro Se, amended motion to suppress. On February 22, 2019, the court held a suppression hearing based on the motions filed. During the hearing the court only permitted Petitioner's counsel to question the single witness before the court, not Petitioner himself although he was under the impression by the record that the court was going to allow him to proceed Pro Se, prior to the hearing being held.

During the hearing the State introduced exhibits which were "run logs of the Police dispatch communications" relating to the surveillance of Petitioner the night of the alleged burglary "State's Exhibit (C)".

The run logs were not known to Petitioner or his counsel prior to this date but were marked as "counsel only material". Counsel only material in Ohio is prohibited from being shown to a defendant or copied in any fashion relating to a defendant, under Ohio Criminal Rule 16(C) and shall only be kept by counsel or the State. The run logs in question exonerate Petitioner of the alleged burglary based on their content.

The court during the hearing ignored Mr. Boyce's, amended motion to suppress, aside from converting the motion into a request for a Franks hearing, under *Franks v. Delaware* 438 U.S. 154 where the court permitted Petitioner to testify concerning his knowledge regarding the information contained in the affidavits for the warrants relating to his belief of falsehoods.

On April 22, 2019 after multiple request by Petitioner to represent himself the court finally permitted the self-representation. The court would later deny some of Petitioner's motions on the bases of untimeliness, although the court delayed Petitioner from making the motions sooner based off of the court not permitted him to represent himself.

The case proceeded to a jury trial where during the trial, the state marked records of police radio communications, referred to as "run logs," from the night of the burglary as state's Exhibits O1 and O2 and a Columbus Ohio Police Detective Jean Byrne's identified them. Petitioner marked the same run logs as defense Exhibit 2A and cross-examined Detective Byrne's about their contents. The state did not move to admit its Exhibits O1 and O2. When Petitioner moved to admit the run logs as defense Exhibit 2A, the trial court refused claiming the exhibit were only used to refresh one witness's recollection and was not authenticated by any person. (Apr. 24, 2019 Tr. at 829.) The trial court ruled Petitioner's proposed Exhibit 2A to be inadmissible because it claimed that no one testified about personal knowledge of that report. Preventing Petitioner from showing the exhibits to the jury and demonstrating his innocence of the crime.

On April 25, 2019, the jury returned a guilty verdict on the burglary charge. Afterwards Petitioner moved the court for a dismissal based on Double Jeopardy grounds, the trial court would not entertain the motion. The trial court issued a judgment entry on April 29, 2019 convicting Petitioner of burglary in violation of R.C. 2911.12, a felony of the second degree, and

sentencing him to a prison term of 6 years. The trial court ordered the term to be consecutive to a term imposed out of Clark County, Ohio.

Petitioner filed a timely notice of Appeal to the Ohio Tenth District Court of Appeals, where he raised the below listed assignment of error:

1. THE TRIAL COURT SHOULD HAVE DISCHARGED BOYCE FROM PROSECUTION, BECAUSE THE STATE VIOLATED HIS RIGHT TO A SPEEDY TRIAL.

On March 11, 2021 the Ohio Tenth District Court of Appeals issued a decision affirming his conviction and sentence. In State v. Boyce, 2021-Ohio-712, 2021 Ohio App. LEXIS 718, 2021 WL 929903.

On June 7, 2021, Petitioner filed a timely application to reopen pursuant to Ohio App. R. 26(b), based on ineffective assistance of Appellate Counsel, for counsel failing to raise on his direct appeal the following proposed assignment of errors:

1. THE TRIAL COURT ABUSED ITS DISCRETION AND PREJUDICED MR. BOYCE BY NOT ALLOWING HIM TO REPRESENT HIMSELF PRIOR TO WHEN IT DID.
2. THE TRIAL COURT ABUSED ITS DISCRETION AND PREJUDICED MR. BOYCE BY NOT ALLOWING MR. BOYCE TO EXPOSE TO THE JURY THE POLICE RUN LOG WHICH WOULD HAVE SHOWED THE JURY BOYCE'S INNOCENCE OF THE BURGLARY AND COMMITTED PLAIN ERROR.
3. THE TRIAL COURT SHOULD HAVE SUPPRESSED EVIDENCE OBTAINED IN VIOLATION OF THE 4TH AND 14TH AMENDMENTS TO THE OHIO AND U.S. CONSTITUTIONS.
4. THE COURT COMMITTED PLAIN ERROR WHEN IT WOULD NOT ALLOW MR. BOYCE TO MAKE A CLAIM FOR DOUBLE JEOPARDY.

On January 25, 2022, the Ohio Tenth District Court of Appeals overruled the application to reopen. In State v. Boyce, 2022 Ohio App. LEXIS 187.

Petitioner filed a timely Jurisdictional Statement to the Supreme Court of Ohio, where he requested that court to accept jurisdiction address for the State of Ohio the below listed questions:

**PERTAINING TO PROPOSITION OF LAW NO. ONE & THREE:**

- 1.) Has a criminal defendant's constitutional right to self-representation been violated by a trial court, if that court unreasonable delays the defendant's request for self-representation and the defendant suffered prejudice due to the courts delay?*
- 2.) Concerning a pro se, defendant, does a trial court violate McKaskle v. Wiggins, 465 U.S. 168, 174 (1984) when it does not allow the defendant to control the organization and content of his own defense, to make motions or to argue points of law in the case before that court?*

Petitioner pointed out this court's decisions in Faretta v. California, 422 U.S. 806, 807, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) recognizes the right of a criminal defendant to represent its self when he or she has elected to do so voluntarily and intelligently. Going hand-and-hand with a criminal defendant's right to represent themselves, is a constitutional right to be permitted to defend against the charged offenses. Upheld by this court's decision in McKaskle v. Wiggins, 465 U.S. 168, 174 (1984). Establishing a defendant's right to self-representation plainly encompasses certain specific rights. Petitioner urged that court to decide if an unreasonable delay occurs by a trial court to permit self-representation, where the delay prevents a pro se, litigant from partaking in his own defense, such as timely raising motion, questioning witnesses during hearings or requesting experts, could that delay be said to be unconstitutional.

**PERTAINING TO PROPOSITION OF LAW NO. TWO:**

- 3.) Can the State argue against a criminal defendant an authentication issue for the purpose of admissibility relating to evidence, if the documentary evidence in question, were secured by the State from another State department or agency and is marked "counsel only" by the State?*

Petitioner pointed out in his case the State had argued that documentary evidence “police run logs” of which the State secured from the local Police Department, Dispatch “records” used them in another proceeding a suppression hearing and marked as counsel only, to ensure their availability was restricted from Petitioner. The documents were reasonably authenticated during trial for the purpose of Evid.R. 901(A), arguing the court should find that they should not be held to the same standards. The State was aware of the source of the documents as they secured them and marked them as “counsel only”. There authentication was never in question by the parties to warrant potential prejudice on either end, except by the trial court not allowing the Petitioner to admit the documents into evidence and by allowing the State to intentionally misrepresent the evidence to the jury to secure a conviction.

Petitioner raised the below listed propositions of law to the Supreme Court of Ohio:

**PROPOSITIONS OF LAW NO. ONE:**

**WHETHER THE TRIAL COURT ABUSED ITS DISCRETION AND  
PREJUDICED MR. BOYCE BY NOT ALLOWING HIM TO REPRESENT  
HIMSELF PRIOR TO WHEN IT DID.**

**LAW AND ARGUMENT**

Petitioner in the trial court moved the court to represent himself on multiple occasions, both orally and by motion. Petitioner informed the court that his appointed counsel Mr. Baker, refused to go over his discovery with him, refused to file defensive motions relevant to his case, such as a request for a jury view of the house in question and refused to file for a shoe impression expert, as he was aware police claimed in reports his shoe’s matched prints inside of the burglarized house. In addition, Mr. Baker, did not file a motion to limit the use of Petitioner’s record, before the jury and refused to bring to the courts attention Petitioner’s Double Jeopardy claim. Although the attorney knew Petitioner was already tried related to the same facts. Mr.

Baker, refused to file a motion for the suppression of evidence gained illegally. The trial court was required to allow Petitioner to represent himself during the time he made clear to the court his desire to do so. In Ohio a criminal Defendant has the right to representation by counselor to proceed Pro Se, with the assistance of standby counsel. *State v. Martin*, 103 Ohio St. 3d 385, 2004-Ohio-5471, 816 N.E. 2d 227 ¶ 32.

The court held Petitioner responsible for Mr. Baker's lack of actions in failing to request for a shoe impression expert timely and failing to bring to the courts attention the double jeopardy issue both on the record. The trial court prejudiced Petitioner by not allowing him to proceed Pro Se, on February 22, 2019, "the date of the suppression hearing". During that hearing the court only allowed Mr. Baker, to question the witness but not Petitioner. The court ignored Mr. Boyce's, "Amended Motion to suppress" aside from converting the motion into a request for a *Franks v. Delaware* 438 U.S. 154, hearing. The court ignored all of the illegal entries into Petitioner's property, prior to a warrant being requested. See Motion filed on January 14, 2019 at 4:47 Pm. Had Petitioner been able to question the witness himself he could have highlighted the illegal entries into his home of 970 Hidden Acres at 8:00 Am. Which was prior to the warrant being requested after 9:00 Am, in violation of *Johnson v. United States* (1947) 333 U.S. 10 or *State v. Williams* (1991), 57 Ohio St. 3d 24.

#### ***COURT OF APPEALS REASONING:***

The trial court conducted a hearing on the motion to suppress on February 22, 2019. Near the end of the suppression hearing, Boyce again indicated his desire to represent himself, stating "I'm representing myself." (Feb. 22, 2019 Tr. at 114.) On February 26, 2019, the trial court issued an entry scheduling trial for April 22, 2019. In that entry, the trial court reserved ruling on Boyce's motion to withdraw Baker as counsel, stating it had "repeatedly cautioned Boyce about

the wisdom of proceeding without counsel" and indicating it would rule on Boyce's motion prior to trial. (Feb. 26, 2019 Entry at 1.) On April 9, 2019, the trial court granted Boyce's motion to withdraw Baker as counsel and proceed pro se at trial. The trial commenced on April 22, 2019.

***APPEALS COURT'S ERROR IN JUDGEMENT:***

The court of Appeal cited the proper standards to be applied but misapplied them when it found that Boyce's exercise of his right to self-representation was not denied because the trial court ultimately permitted him to proceed pro se, at trial.

The Appellate court reasoned that Petitioner had not demonstrated a reasonable probability that any of his proposed motions would have succeeded and, therefore, has not demonstrated a reasonable probability of success if the issue had been raised on direct appeal. The court further insinuated that under the circumstances, Boyce's right to self-representation was not denied but rather, at most, was delayed, further concluding Boyce's appellate counsel was not ineffective for failing to raise the issue on direct appeal.

The Appellate Court has disregard the U.S. Supreme Court's decisions in *Faretta v. California*, 422 U.S. 806, 807, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

"A defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so,\*\*\*"

*McKaskle v. Wiggins*, 465 U.S. 168, 174 (1984) holding:

"Pro se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points or law, to participate in voir dire, to question witnesses and to address the court and the jury at appropriate point in the trial."

And

In *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 154, 120 S. Ct. 684, 145 L. Ed. 2d 597 (2000) which held:



“Criminal defendants have a constitutional right to conduct their own defense at trial if they voluntarily and intelligently elect to do so.”

The Petitioner addressed in his application to reopen, that by him not being permitted by the trial court, to defend his own case, mainly at his “suppression hearing” he was prejudiced, where the court did not address the unlawful entry or seizer of his property prior to a warrant being requested. Boyce was additionally prejudiced where the trial court did not permit him to call a “shoe impression expert” when clearly the shoes taken by police from Petitioner, did not match the prints at the crime scene. And the trial court held it against the Petitioner, stating his request was untimely, even though the court held off on allowing him to proceed pro se, and his request for the expert was made at the earliest opportunity. Demonstrating clear prejudice, based on the court delaying Petitioner’s request to represent himself.

**PROPOSITIONS OF LAW NO. TWO:**

**WHETHER THE TRIAL COURT ABUSED ITS DISCRETION AND PREJUDICED MR. BOYCE BY NOT ALLOWING MR. BOYCE TO EXPOSE TO THE JURY THE POLICE RUN LOG WHICH WOULD HAVE SHOWN THE JURY BOYCE'S INNOCENCE OF THE BURGLARY AND THUS, COMMITTED ERROR.**

**LAW AND ARGUMENT**

The State’s Attorney Ms. Amlin, on February 22, 2019 during a suppression hearing produced “run logs of the Police dispatch communications” which were never provided in discovery to Petitioner and were marked as “counsel only”. The State introduced this as State’s Exhibit (C) on the above date. This exhibit shows that at 4:45 Am police radio in the burglary at 150 Royal Forest Blvd, as they witnessed it in real time.

The Clark County GPS shows Petitioner’s vehicle started moving at 4:43 Am and stopped at 4:45 on Indianola.

The same set of police run logs, show Petitioner and his vehicle picked up “being seen” at 4:46 Am. by an unknown officer, identified as “30-C” on Indianola. The Distance from 150 Royal Forest to Indianola is about 2 miles apart. The run logs show that Petitioner was not the suspect who police witnesses coming out of a window at 150 Royal Forest at 4:45 Am.

The court prejudiced Petitioner and violated his right to due process and right to trial by not allowing him to show the jury his innocence, as the run logs take away any question of guilt, instead the court allowed the State to make it appear that the run logs were slow to that of Petitioner’s GPS tracker on his vehicle, which if he could have shown the jury, he could have exposed to them that the run logs matched the GPS device placed on by law enforcement as they both lined up at 4:45 the vehicle shows on Indianola and at 4:46 it shows 30 C has the car on Indianola. Which both show Petitioner was miles away from the questionable house, as officers are seeing someone coming out of a window. Demonstrating Petitioner is innocent.

Criminal defendants have a constitutional right to a meaningful opportunity to present a complete defense, *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006) quoting *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986) Based on the above Petitioner was prejudiced by the courts election to not allow Petitioner to show the jury the run logs.

***APPEALS COURT’S ERROR IN JUDGEMENT:***

The court reasoned that absent an abuse of discretion, as well as a showing that the accused has suffered material prejudice, an appellate court will not disturb the ruling of the trial court as to the admissibility of evidence. Citing *State v. Huber*, 10th Dist. No. 18AP-668, 2019-Ohio- 1862, ¶ 10, quoting *State v. Oteng*, 10th Dist. No. 14AP-466, 2015-Ohio-1231, ¶ 31. The court cited the proper review to be given indicating:

“to succeed on this issue on direct appeal, Boyce would have been required to establish that the trial court abused its discretion by refusing to admit the run logs as a defense exhibit.”

The Court of Appeals rationalize that:

“Boyce was the subject of surveillance by Columbus Police Detective Jean Byrne and a team of plainclothes officers. He was ultimately arrested and charged with burglary of a residence at 150 West Royal Forest Boulevard in Columbus. At trial, the state marked records of police radio communications, referred to as "run logs," from the night of the burglary as state's Exhibits O1 and O2 and Detective Byrne identified them. Boyce marked the run logs as defense Exhibit 2A and cross-examined Detective Byrne about their contents. The state did not move to admit its Exhibits O1 and O2. When Boyce moved to admit the run logs as defense Exhibit 2A, the trial court refused because the exhibit "was only used to refresh one witness's recollection and "was not authenticated by any person (Apr. 24, 2019 Tr. at 829.)”

The trial court ruled Boyce's proposed Exhibit 2A to be inadmissible because "[t]here was no one who testified about personal knowledge of that report." Id.

The court of appeals ignored the facts of the case in two major respects 1.) that the run logs were marked as “counsel only material” which is a clear indication that the State did not want Boyce to possess the documents. And 2.) that the exhibits were authenticated and did not need to be authenticated as the State secured them, and if a party were to be prejudiced, it would be Mr. Boyce, there authentication was never in question by the parties to warrant potential prejudice on either end. In *State v. Keith*, 79 Ohio St. 3d 514 (1997) this court held:

“The requirement of authentication is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Evid.R. 901(A).”

The court of appeals ruled that an exhibit must be authenticated before it is admitted into evidence. Citing, *State v. Boddie*, 10th Dist. No. 12AP-74, 2012-Ohio-5473, ¶ 14. "An exhibit is authenticated when the record establishes that it 'is what its proponent claims.' quoting Evid.R. 901(A). In this case the court stated, although Detective Byrne briefly identified the run logs, there was no testimony establishing they were true and accurate copies of the original run logs or

any other form of authentication. The court incorreced noted this based of off the origin of the documents as mentioned above came from the State.

The court of Appeals state:

“Boyce argues the run logs would have been beneficial to his defense but offers no argument to establish why the trial court erred by refusing to admit them into evidence.”

The court of Appeals ignored their own summary of Petitioner’s issue (“**would establish he was not in the area when the burglary occurred.**”) indicating that he was prejudice by the trial court not permitting him to show he was innocent of the burglary as established by the run logs. Petitioner suffered prejudice by his Appellate counsel not raising this issue on his appeal.

### **PROPOSITIONS OF LAW NO. THREE:**

**WHETHER THE TRIALCOURT SHOULD HAVE SUPPRESSED EVIDENCE OBTAINED IN VIOLATION OF THE 4TH AND 14TH AMENDMENTS TO THE OHIO AND U.S. CONSTITUTIONS.**

### **LAW AND ARGUMENT**

On February 22, 2019 the trial court held a hearing concerning a motion to suppress filed by trial counsel Mr. Baker, and an amended motion to suppress field Pro Se, by Petitioner. In Petitioner’s motion he outlined why and how his rights were violated. Indicating to the court the police searched and were removing property from 970 Hidden Acers at 8:20 Am. Where they did not request for a warrant until after 9:00 Am. State v. Williams 57 Ohio St. 3d 24. A search warrant is void ab initio if not signed by a judge prior to the search. State v. Vuin, 89 Ohio L. Abs. 193; State v. Rodriquez (1990), 66 Ohio App. 3d 5. (Suppression ordered where it appeared that the initial entry to premises occurred before the search warrant was issued.)

Petitioner’s Pro Se, motion indicated that his BMW was entered searched and taken

without a warrant. Where a warrant was not requested until days later after it was searched and items placed in it by police.

Petitioner argued in his Pro Se, motion, that his Ford Explorer was searched and taken from 970 Hidden Acres, without permission or without a warrant.

On February 22, 2019 the trial court held a hearing on the motion to suppress where the State and court ignored all of the illegal entries and searches of Petitioner's property that he addressed in his motion. The State and court converted his motion to a request for a Franks hearing, under Franks v. Delaware. 438 U.S. 154, 98 S. Ct. 2674 57 Ld 2d 667 (1978).

***APPEALS COURT'S ERROR IN JUDGEMENT:***

The Appellate court noted in it's January 25, 2022 decision officers photographed and collected the items around Boyce's car and impounded the car. Detective Byrne obtained a search warrant for Boyce's car a few days later. The first critical detail the court of appeals is overlooking is, police took Petitioner's car prior to securing a warrant to do so. The court of appeals also noted that Counsel's motion centered that Boyce had a reasonable expectation of privacy in any location where someone is using an electrical device to locate a private persons stolen laptop, even if this were true. Which the trial court largely noted was not. (Motion to Suppress T.pg. 109-110) This shows of its self that trial counsel Mr. Baker was ineffective in raising the meritless motion to suppress arguing an illogical point, and as no stolen laptops were recovered in this case nor dealt with Petitioner. In this case no one reported missing any laptops.

The Appeals court noted that the trial court conducted a hearing on the motion to suppress on February 22, 2019 and noted that the trial court never address the illegal entries into Petitioner's property stating:

“\*\*\* the trial court did not expressly address Boyce's claims that his home and car were searched before the respective search warrants were obtained, but the court referred to Detective

Byrne having taken "all the proper steps in securing a warrant for the location, for the residence and for the BMW that was involved in the incident." (Feb. 22, 2019 Tr. at 112.)"

The Petitioner court claimed that by the court ignoring Petitioner's claims of his constitutional rights being violated it insinuates that they rejected the arguments. The court did not address the trial court converting Boyce's motion to suppress into a franks hearing.

It reasoned that the court permitted Boyce, through attorney Baker, to ask Detective Byrne about the assertions included in her search warrant affidavits. Which it did not.

The appellate court stated that Boyce did not state in his application or his motion any evidence that his property was entered prior to a warrants being requested. The court of appeals ignored two factors 1) during the suppression hearing, the trial court did not permit Boyce to personally address the witness especially with exhibits. And 2) Boyce filed a request for the court to take "JUDICIAL NOTICE" filed on March 15, 2019, which he quoted transcripts of her prior statements in Clark County which he would have used had the court permitted him to question her. The Judicial Notice was ignored by the trial court. Which was mentioned in the reply in the 26(b). Further the record speaks for its self. The witness claimed that Petitioner came out of his house to SWAT and that afterwards police entered the house prior to her getting a warrant. Detective Byrne's originally claimed in Clark County that SWAT did a protective sweep for the officer's safety attempting to justify police entering prior to a warrant. Then in Franklin County claimed that the house was not entered until after a warrant was requested. The State could not claim a protective sweep because Petitioner's house was being watched by police and they knew who was in the house as testified. And they could not say that they did not go into the house after the warrant because they were already in at 8:20 Am.

The court of Appeals contradicts their own ruling acknowledging that police entered the vehicle placed items inside and requested a warrant days later after the car was illegally entered

and taken. The items placed inside of the BMW were located around 150 Royal Forest more than a mile away from his parked vehicle on Indianola where police placed them. The appeals court's stated Petitioner has not cited any evidence in his application to reopen or his pro se amendment to the motion to suppress to support his claim that police officers searched his car before obtaining a search warrant.

Overlooking that Mr. Baker only did a bare bones questioning, and attempted to release the witness Detective, prior to even addressing the warrant regarding the BMW until the State stopped him. Stating:

“MR. BAKER: Thank you, Detective. I'm finished.

THE COURT: Thank you.

MS. AMLIN: Do you want to ask her any questions about the search warrant for the BMW?

MR. BAKER: Well, that's correct. Thank you, Ms. Amlin.”

(Motion to suppression T.pg. 65 lines 11-17).

Mr. Baker, still did not go into the Ford Explore being searched or taken without a warrant nor them going into Boyce's car or home without a warrant. The Appeals court credits the trial court for allowing Petitioner to testify about the false claims in Detective Byrne's affidavit where none of it was addressed to the Detective who fabricated the claims pointed out in Boyce's request for Judicial Notice.

Petitioner pointed out in his motion to suppress and in his Application to reopen that all of the items taken from 970 Hidden Acres, were taken by Detective Byrne's and claimed to be stolen from 150 Royal Forest, when the Detective Byrne's knew they were not in any fashion related, nor ever mentioned to the homeowner, both the trial court and Petitioner court has

ignored this fact and both have refused to address it which Boyce pointed out were taken unlawfully from him.

Appellate counsel, was ineffective for failing to raise this claim in his direct appeal.

**PROPOSITIONS OF LAW NO. FOUR:**

**WHETHER THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT WOULD NOT ALLOW MR. BOYCE TO MAKE A CLAIM FOR DOUBLE JEOPARDY.**

**LAW AND ARGUMENT**

Petitioner's moved the court to dismiss the count of burglary, based on the grounds of double jeopardy being that he was tried in Clark County for the same offense. The trial court would not allow Mr. Boyce to mention how or why it constituted double jeopardy.

The double jeopardy clause prohibits; 1) a second prosecution for the same offense after acquittal, 2) a second prosecution for the same offense after conviction, and 3) multiple punishments for the same offense. United States v. Halper (1989) 490 U.S. 435, 440, S. Ct. 1892 1897, 104 L. Ed. 2d 487, 496.

***APPEALS COURT'S ERROR IN JUDGEMENT:***

The Appellate court correctly articulated Petitioner's argument, that the trial court committed plain error by refusing to consider his motion to dismiss under the Double Jeopardy Clause.

The court of Appeals addressed the record in this case stating:

"After the trial court announced the jury's verdict, it proceeded immediately to sentencing. When the trial court asked Boyce if he wished to make a statement, Boyce claimed the prosecution should have been barred by the Double Jeopardy Clause. Boyce appeared to suggest one of the Clark County charges included a specification related to the burglary at 150 West Royal Forest. Boyce presented the trial court with a partial copy of the indictment and an unsigned verdict form from his Clark County case, asserting they mentioned the burglary at 150 West Royal Forest."



The trial court never reviewed the documents and the State only viewed the two documents mentioned. Which the court of Appeals acknowledges the State's remarks stating:

“ ”\*\*\* seemed to relate to an engaging in a pattern of corrupt activity count," in the Clark County case.”

(Tr. Vol. IV at 924.)

The prosecutor asserted there did not appear to be a double jeopardy issue and objected to introduction of the Clark County documents after Boyce had been convicted. The appeals court acknowledged that the State would not view the additional documents which would have demonstrated Petitioner was placed in jeopardy twice. But takes no notice that the court did not view any of the documents relating to his double jeopardy issue stating:

“The trial court held that prosecution for the burglary at 150 West Royal Forest was not barred by the Double Jeopardy Clause even if it had formed the predicate for a charge of engaging in a pattern of corrupt activity charge in the Clark County case. The court effectively treated Boyce's statements as a motion to dismiss based on the Double Jeopardy Clause and denied the motion, concluding the prosecutions were for different offenses involving a different animus.”

The Appellate court stated that

“Contrary to Boyce's representation, the record indicates the trial court considered his motion to dismiss based on the Double Jeopardy Clause. Boyce suggests prosecution in this case was barred by the Double Jeopardy Clause because he had been tried on the same facts in Clark County.”

The Appellate court stated Boyce has not provided any additional information to support his fourth proposed assignment of error; therefore, we are limited to the trial record. The Appellate court held Petitioner to an unreasonable burden to present evidence from another conviction to that court where no such requirement stood prior to its request. Thus, creating additional prejudice, Petitioner's Appellate attorney was ineffective for failing to raise this issue.

The Appellate court stated that the Supreme Court has held " 'the conduct required to commit a RICO violation is independent of the conduct required to commit [the underlying predicate offenses].' " citing *State v. Miranda*, 138 Ohio St.3d 184, 2014-Ohio-451, ¶ 13, 5 N.E.3d 603. And *State v. Schlosser*, 79 Ohio St.3d 329, 335, 681 N.E.2d 911 (1997) ("[T]he intent of Ohio's RICO statute 'is to impose additional liability for the pattern of corrupt activity involving the criminal enterprise. Arguing that assuming for purposes of analysis that the burglary of 150 West Royal Forest formed part of the predicate for a pattern of corrupt activity conviction in Clark County, that would not be the same offense for double jeopardy purposes as the underlying burglary. But it has ignored that the presentation of this burglary count in Clark County went far outside of the range of the RICO count and that the trial court in Clark county acknowledged that in its record. But another point is that the offense did not merit a RICO count in Clark County as it lacked the enterprise element of engaging which amounts to just a conviction for burglary of the 150 Royal Forest count in both jurisdictions.

The Appellate court stated Boyce has not provided any additional information to support his fourth proposed assignment of error; therefore, we are limited to the trial record. The Appellate court held Petitioner to an unreasonable burden to present additional evidence from another conviction to that court, where no such requirement stood. Thus, creating additional prejudice, Petitioner's Appellate attorney was ineffective for failing to raise this issue in violation of his constitutional rights.

On May 24, 2022 the Supreme Court of Ohio declined to accept jurisdiction. In *State v. Boyce*, 2022 Ohio LEXIS 1016; 2022-Ohio-1687 Case No. 2022-0251.

Petitioner timely files this Writ of Certiorari to this court:

## **REASON FOR GRANTING THE PETITION**

This case addresses issues that are important to the citizens of this nation, pertaining to criminal Defendant's constitutional rights during criminal proceedings. This court is urged to grant this writ of certiorari to address the following issues and proposed questions:

### **CONCERNING THE RIGHT TO SELF-REPRESENTATION:**

Regarding a criminal Defendant's right to self-representation:

"Has a criminal Defendant's constitutional right to self-representation been violated by a trial court, if that court unreasonable delays the Defendant's request for self-representation and the Defendant suffered prejudice due to the courts delay?"

And,

"Concerning a Pro Se, Defendant, does a trial court violate McKaskle v. Wiggins, 465 U.S. 168, 174 (1984) when the court does not allow a Defendant to control the organization and content of their own defense, to make motions or to argue points of law in a case before a court where that Defendant desires to represent them self?"

This Court's decisions in Faretta v. California, 422 U.S. 806, 807, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975) recognized the right of a criminal defendant to represent its self, when he or she has elected to do so voluntarily and intelligently. This court has never addressed the ramifications of a trial courts "unreasonable delay" or "timeliness" in permitting self-representation to a criminal defendant. This issue is far more common than generally recognized and is not without consequences to those criminal defendants who elect to represent themselves, especially in states that have cut off deadlines for pretrial motion filings, such as Ohio which has Ohio Criminal Rule 12.

Ohio Criminal Rule 12 reads in part:

\*\*\*\*

(C) Pretrial motions. Prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial:

\*\*\*

(D) Motion date. All pretrial motions except as provided in Crim. R. 7(E) and 16(M) shall be made within thirty-five days after arraignment or seven days before trial, whichever is **earlier**. The court in the interest of justice may extend the time for making pretrial motions.”

As mentioned Ohio Criminal Rule 12, controls the time to file motions. Going hand-and-hand with a criminal defendant’s constitutional right to represent themselves, is a constitutional right to control one’s own defense which includes filing motions, upheld in this court’s decision in McKaskle v. Wiggins, 465 U.S. 168, 174 (1984). In this case this court established a defendant’s right to self-representation plainly encompasses certain specific rights such as a Sixth Amendment right to conduct one’s own defenses.

This court is urged to decide if an unreasonable delay occurs by a trial court to permit self-representation, which prevents the defendant litigant from partaking in his own defense, such as timely raising motion, calling or questioning witnesses during hearings or requesting experts, could that delay be said to be unconstitutional.

In the present case the Petitioner was prejudiced by the trial courts delay in allowing him to represent himself, preventing him from timely filing motions and requesting experts in his defense.

#### **CONCERNING ADMISSIBILITY OF COUNSEL ONLY EVIDENCE:**

Regarding the admissibility of evidence by a criminal Defendant, where the State or Government has designated such material as “counsel only” or otherwise placed a restriction on its availability :

“Can the State or Government argue against a criminal Defendant an authentication issue for the purpose of admissibility, relating to evidence in a criminal trial, if the documentary evidence in question, were secured by the State or Government, from another State or Government department or agency and has been marked by the State or

Government as "counsel only material" so as to restrict it's availability to that criminal Defendant?"

Particularly, in Ohio, Criminal Rule 16 (C) allows a prosecutor to designate any material subject to disclosure under this rule as "counsel only" by stamping a prominent notice on each page or thing so designated. "Counsel only" material also includes materials ordered disclosed under division (F) of this rule. Except as otherwise provided, "counsel only" material may not be shown to the defendant or any other person, but may be disclosed only to defense counsel, or the agents or employees of defense counsel, and may not otherwise be reproduced, copied or disseminated in any way. Defense counsel may orally communicate the content of the "counsel only" material to the defendant.

In this case the State has argued that documentary evidence "police run logs" dispatch communications, of which the State secured from the City of Columbus Police Department, and marked the documents as counsel only material, to ensure its availability to Petitioner would be restricted, used the documents in presenting its case to a witness, as State's Exhibits O1 and O2.

Petitioner used the same documents toward the same witness but retitled them as Defense Exhibit 2A. The State elected not to admit its Exhibits O1 and O2. Petitioner moved to admit his Defense Exhibit 2A, but was objected to by the state, claiming the documents were not authenticated under Ohio Evid.R. 901(A).

Ohio Evid. R. 901(A) reads:

"(A) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(B) \*\*\*\*\*"

The trial court sustained the objection and Petitioner was prevented from having the documents admitted. During Petitioner's appeal the Ohio Tenth District Court of Appeals, affirmed the trial court's decision not to admit Defense Exhibit 2A stating:

"[t]here was no one who testified about personal knowledge of that report.

\*\*\*

\*\*\* although Detective Byrne briefly identified the run logs, there was no testimony establishing they were true and accurate copies of the original run logs or any other form of authentication. \*\*\* "

State v. Boyce 2022 Ohio App. LEXIS 187 at HN7.

The Ohio court of Appeals disregarded a key factor when it considered the facts, that is that the documents were "counsel only" which in order to be counsel only, each document had to be stamped with a prominent notice "counsel only". Citing Ohio Criminal Rule 16 (C), which Defense Exhibit 2A was marked "counsel only". This demonstrates that the run logs were accurate copies of the State's originals, which further shows that authentication was not required as the documents were what they were purported to be.

The documents were used by both the State and the Defense, regarding the same witness Detective Byrne, the State was aware of the source of the documents as they secured them, not the defense and marked them as "counsel only". There authentication was never in question by the parties to warrant potential prejudice on either end and the documents show with other evidence, Petitioner was actually innocent of the burglary.

Yet, due to the court's decision not to admit Defense Exhibit 2A, the State's Attorney took full advantage during closing arguments, intentionally misrepresenting to the jury, that the timelines of the police dispatch logs "Defense Exhibit 2A", was off to that of the GPS device placed on Petitioner's vehicle by law enforcement, creating in the minds of the jury that Petitioner was responsible for the alleged burglary. Although, in actuality the Defense Exhibit

2A, "Police dispatch printout logs" matched completely up to the GPS devices timeline. Which shown Petitioner two miles away from the home and observed by another officer known as "30C", during the time of the burglary in real time.

Petitioner request that this court grants certiorari related to this issue to decide if this court finds fundamental prejudice to a criminal Defendant, when the State or Government during a criminal trial challenges a Defendant for the purpose of authentication, regarding the admissibility of material of which the State or Government secured from another State or federal agency itself, and has marked such material as "counsel only" or has placed any other restriction on its availability to that Defendant.

### **CONCLUSION**

The petition for a writ of certiorari should be respectfully granted.

Respectfully Submitted,



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Date: 7-7-22