No. 22-6498

IN THE

SUPREME COURT OF THE UNITED STATES

Joeseph Shine-Johnson,
Petitioner,

v.

STATE OF OHIO,
Respondent,

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Sixth Circuit

PETITION FOR REHEARING

JOESEPH SHINE-JOHNSON

Pro se,

P.O. BOX 540

ST. CLAIRSVILLE, OHIO, 43050

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PETITION FO REHEARING

Pursuant to rule 44.2, the petitioner seeks to have the court rehear its decision to deny certiorari. This court not accepting Certiorari perpetuates anarchy by the lower courts in the sixth circuit because their actions in this case are inconsistent with due process. The decision(s) of the lower state courts in this case are founded on the courts failure to exercise sound, reasonable, *and legal* decision-making, and/or the appellate court's standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, *illegal*, or unsupported by the evidence and void. Under Ohio law, it is firmly established, "No court—not a trial court, not an appellate court, nor even a supreme court—has the authority, within its discretion, to commit an error of law." *Johnson v. Abdullah*, 166 Ohio St. 3d 427,437. A decision entered in violation of the essential requirements of due process of law is void. *Bass v. Hoagland*, 172 F.2d 205, 209 (5 Cir.); *United States v. Manos*, 56 F.R.D. 655, 659 (S.D. Ohio, 1972).

On Shine-Johnson's federal petition, the district court conducted a "De Novo review," on the merits his ineffective assistance of appellate counsel 26(B) claim on July 6, 2021. After the decision of his petition the Ohio Supreme Court on February 8, 2022 decided *State v. Leyh*, 166 Ohio St. 3d 365, which clarifies the standard of review for the 26(B). **1)** This court did not consider this case on the denial of a C.O.A. where it is contrary to *Buck v. Davis*, 580 U.S. 100. **2)** This court did not consider this case in light *Leyh*, which shows the Sixth Circuit and district court applied the wrong standard of review to decide his habeas petition that must be corrected, and calls for an exercise of this Court's supervisory power and is a substantial issue not presented.

Not accepting jurisdiction in this [redacted] such a departure of the "Erie Doctrine, application of C.O.A." by a [redacted] court and for the sixth circuit to continuously disregard federal precedent [redacted] A and for other appellate circuits to follow suit. The Sixth circuit decision arbitrarily denied Shine-Johnson a state created liberty interest. See, *Leyh Supra,* I.d, at 375, quoting, *Morgan v. Eads*, 104 Ohio St. 3d 142, 146.

The Sixth Circuit and U.S. District court applied the wrong standard of review arbitrarily denying habeas relief on ground six of the petition. The district court erroneously declared Shine-Johnson could not meet the prejudice prong of *Strickland.* as a "precondition" to reopen his appeal, precluding him from reopening his direct appeal, and precluding a C.O.A. The Ohio Supreme Court has made it clear "all a defendant need to show is that counsel was deficient; no colorable showing of prejudice is required." *State v. Leyh*, 166 Ohio St. 3d 365, 376, 2022-Ohio-292, P41, (Justice DeWine dissenting). The Sixth circuit approved of the district courts finding that "because a *Trombetta* claim would likely have been unsuccessful in the trial court and there is insufficient evidence in the record to support such a claim on direct appeal," as a *precondition* to reopen his direct appeal. *Shine-Johnson v. Warden*, 2021 U.S. Dist. LEXIS 124984, *20. The district court clearly denied ground six of the petition, resting on the determination of the prejudice prong of *Strickland.* The district court and Sixth circuit court, ultimately made the same prejudicial error that the appellate court made in the *Leyh* case. The Supreme Court held in *State v. Leyh*, 166 Ohio St.3d 365.

> "Concluding that Leyh failed case sanctions here was a reasonable probability that he *would have been suc* ntencing-hearing transcripts and PSI had been included in the lower district of appeals determined that there was no genuine issue present e claim of ineffective assistance of appellate counsel and accordi ts, AEDP Leyh's application to reopen his appeal under App.R. 26(B). 9th Dis. mit No. 29298, at 4 (Feb. 19, 2020). Based on the structure and text of App.R. 26(B), however, we conclude that the court of appeals *erred* by requiring Leyh to provide a demonstrable showing of ineffective assistance of appellate counsel and a *likelihood of success* on the merits of his direct appeal—in effect, that Leyh would have won the appeal but for counsel's deficient performance—as a condition to granting Leyh's application to reopen his appeal under [****7] App.R. 26(B)."

The Sixth Circuit decision is in violation of this court's decision in *Bradshaw v. Richey*, 546 U.S. 74, and the "Erie Doctrine." In the *Leyh Supra*, "The Supreme Court of Ohio noted that "the determination that a *genuine issue* of ineffective assistance of appellate counsel exists is not a determination of ineffective assistance of appellate counsel." *See, State v. Fain*, 188 Ohio App.3d 531, 2010-Ohio-2455, 936 N.E.2d 93, ¶ 20 (1st Dist.) (Cunningham, P.J., concurring in part and dissenting in part) ("A court's determination that an App.R. 26(B) claim is colorable is not determinative of the court's ultimate disposition of a reopened appeal"). Under App.R. 26(B), the determination whether appellate counsel was deficient and prejudiced the applicant is to be made after the appeal has been reopened and the parties are afforded the opportunity to have counsel, transmit the necessary record, and substantively brief the issues. *See,* App.R. 26(B)(6) through (9). *State v. Leyh*, 166 Ohio St. 3d 365, 375.

There, is nothing in the opinion of the district court or the Sixth Circuit court of appeals that addresses the App.R. 26(B) two stage process that is required. The court failed to decide if a genuine issue or a colorable claim of deficient performance even existed. In this case, however, the district court jumped the analytical gun by

requiring under App.R. 26(B)(5) not just a genuine issue of ineffective assistance of appellate counsel but proof positive of ineffective assistance of appellate counsel and prejudice. The district court either skipped the entire first stage at App.R.26(B)(5) because it found the petitioner showed a colorable claim of deficient performance, or simply felt that it could skip the first stage. The federal district court proceeded to App.R. 26(B)(9) and improperly determined the ultimate merits of the ineffective assistance of counsel claim under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), as a precondition to reopen the direct appeal. The federal courts unduly imposed a higher standard of review concluding the claim would be unsuccessful based on the prejudice prong. See, *Shine-Johnson v. Warden*, 2021 U.S. Dist. LEXIS 59808, *62-63. The Court in *Leyh Supra, I.d, at 374 held;*

> As we have noted, the structure and text of App.R. 26(B) plainly contemplate stages of analysis. In this case, Leyh had to show only at the first stage of the procedure a genuine issue that he was deprived of the effective assistance of appellate counsel. He was not required to conclusively establish ineffective assistance of appellate counsel just to be allowed to argue in a reopened appeal that he was deprived of the effective assistance of appellate counsel. Contrary to the reasoning of the court of appeals, Leyh did not have to prove that he would win the reopened direct appeal and prevail on his claim of ineffective assistance of appellate counsel as a precondition to reopening the direct appeal for further legal proceedings to contest the trial court's alleged failure to merge allied offenses."

The *Leyh supra,* is clearly an intervening circumstance of a substantial or controlling effect that clarifies Ohio law and renders the federal courts decision void. Federal due process, the "Erie Doctrine," and this court's decision Bradshaw *v. Richey*, 546 U.S. 74. This court should hear this case light of the *Leyh* decision where the sixth circuit has been misapplying the 26(B) standard for decades.

3) There are other substantial grounds not previously presented to this court is the Sixth Circuit failure to correctly apply the AEDPA Standard on §2254 (d)(1)(2)(e)(1)(2). This court has not decided if this court's decision in *Beard v. United States*, 158 U.S. 550, 563-564. or *Brown v. United States*, 256 U.S. 335, 341. paragraph One of the syllabus constitutes clearly established federal law that is applicable to Ohio's self-defense law and this case to grant habeas relief under AEDPA? Shine-Johnson with clear and convincing evidence satisfied 28 U.S.C. §2254 (d)(1)(2)(e)(1)(2) on Ground(s) One, two, three, four, of the petition.

4) The petitioner did not violate any state laws, this court did not consider, where there is evidentiary support for a defendant's theory of Self-defense, failure to instruct on self-defense violates a criminal defendant's fifth and six amendment rights; a criminal defendant is entitled to a self-defense instruction if there is evidence to support his theory. In circumstances refusing to instruct a jury on self-defense can so taint the verdict as to be an error of constitutional dimension. "see, *Taylor v. Withrow*, 288 F.3d 846, 852. The petitioner's conviction is void.

In deciding defense jury instructions, the court must view the evidence in the light most favorable to the defendant. *State* v. *Robinson*, 47 Ohio St. 2d 103, 112-113. The court imposed a definite duty to retreat because he was in the yard ignoring the imminent danger he faced. (Tr. Doc No. 45-2 PAGEID 5352-53). The trial court refused to grant the no duty to retreat or the proffered jury instruction(s) supported by the evidence because of opposing evidence in the record Shine-Johnson objected. (Tr. Doc No. 45-2 PAGEID 5358-60). The trial court instructed the jury "A person has

a duty to retreat unless he is in his home or vehicle." (Tr. Doc No. 45-2 PAGEID 5671) *improperly invaded* the jury's fact-finding function and effectively took the jury's finding of the third element from the jury. See, *Barker v. Yukins*, 199 F.3d 867; *United States v. United States Gypsum Co.*, 438 U.S. 422, 446; *Sullivan v. Louisiana*, 508 U.S. 275, 277. It is for the jury to decide whether Shine-Johnson used that degree of force reasonably necessary under the circumstances. *State v. Napier*, 105 Ohio App.3d 713, 721, 664 N.E.2d 1330 (1995); *Brown v. United States*, 256 U.S. 335, 341 paragraph three of the syllabus.

Shine-Johnson argued that imposing the duty to retreat under the circumstances presented by the defense theory is not applying the correct standard of law based upon the particular facts of his case. (Tr. Doc No. 45-2 PAGEID 5341-46) The court failed to meet its obligation. Jury instructions must be tailored to adequately and correctly convey the law applicable to the particular issues raised by the evidence in a particular case. *State v. Guster* (1981), 66 Ohio St.2d 266, 271, 421 N.E.2d 157. An incomplete charge will constitute grounds for reversal of a judgment where the charge as given misleads the jury. See *Columbus Ry. Co.* v.. *Ritter* (1902), 67 Ohio St. 53. A caveat expressed by this court long ago is still relevant today: A charge ought not only be correct, but it should also be adapted to the case and so explicit as not to be misunderstood or misconstrued by the jury. *Aetna Ins. Co.* v.. *Reed* (1878), 33 Ohio St. 283, 295. See *Marshall v. Gibson*, 19 Ohio St. 3d 10,12(1985)

When a defendant has been convicted through a judicial process which is defective in some fundamental respect, e.g., incorrect receipt or rejection of

evidence, *incorrect instructions*, or prosecutorial misconduct. When this occurs, the accused has a strong interest in obtaining a fair re-adjudication of his guilt free from error, just as society maintains a valid concern for insuring that the guilty are punished. *Duncan*, 154 Ohio App.3d 254, 2003-Ohio-4695, 796 N.E.2d 1006, at ¶ 38, quoting *Burks v. United States*, 437 U.S. 1, 15, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

5) The Sixth circuit approved of the state appellate courts applying the self-defense standard in a novel and unforeseeable manner to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope. *United States* v. *Lanier*, 520 U.S. 259, 267-268, n. 6, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997) This court did not consider the lower federal courts allowed the state appellate court to violate Shine-Johnson 's right to fair warning. To make the warning fair, so far as possible the line should be clear." *McBoyle* v. *United States,* 283 U.S. 25, 27, 75 L. Ed. 816, 51 S. Ct. 340 (1931). "'The . . . principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.'" *Bouie* v. *City of Columbia,* 378 U.S. 347, 351, 12 L. Ed. 2d 894, 84 S. Ct. 1697 (1964) (quoting *United States v. Harriss,* 347 U.S. 612, 617, 98 L. Ed. 989, 74 S. Ct. 808 (1954)). The court's decision is inconsistent with due process and void. Limitation inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of the government. *Hanson v. Denckla*, 357 U.S. 235, 2L ed. 2d. 1283, 78 S. Ct. 1228.

There is no language in any Ohio statues, common law or prior case law that give the petitioner a fair warning that he has a duty to retreat or avoid a "potential

trouble" before facing an imminent, actual or threatened force. And/or that he had a duty to avoid or retreat from his home and/or retreat in his home. And/or that he had a duty to retreat the imminent danger because he was in his own yard. Attempting to modify or overrule the Ohio Supreme court, The Tenth Appellate District court expressly held: "Furthermore, appellant cites no authority to support his claim it is erroneous or prejudicial error for the prosecutor to impliedly connect the duty to avoid trouble with the not-at-fault element." Shine-Johnson cited *State v. Jackson*, 22 Ohio st.3d 281, 284, 490 N.E.2d 893 (1986) (the three self-defense elements are cumulative, and thus are considered one after the other.) Further, in *State v. Dale,* 2013- Ohio-2229 (concurring opinion.)

> "A defendant first must prove (a) that he was not at fault and (b) that he reasonably believed he was in grave danger and deadly force was reasonable. So far, so good. The final part of the pattern instruction requires a defendant to prove (c) that he did not violate a duty to retreat. To find a duty to retreat, however, a jury must find either that a defendant was at fault or that he was unreasonable. But these inquiries involve determinations that a jury already will have made under (a) and (b) above. If a jury had found that a defendant was at fault or was unreasonable, he could not rely on self-defense anyway. In that situation, the jury never 'would reach the duty-to-retreat issue. Conversely, if a jury found that a defendant was not at fault and was reasonable, it could not logically change its mind and reach a contrary conclusion on the duty-to-retreat issue. Thus, as the pattern instruction is worded, there never will be a duty to retreat. A jury's findings on parts (a) and (b) of the self-defense instruction will determine the applicability of the defense. The instruction regarding a duty to retreat is wrong and is the result of circular reasoning."

The state appellate court also held Shine-Johnson violated a duty to retreat or avoid by using deadly force in his yard while facing imminent danger ignoring the common law stand your ground rule of the "True Man Doctrine" that applies to his case. The state court unconstitutionally broadened the "No duty to retreat or avoid"

common law, to hold that the use of force must be used in the confines of the home. The court held the common law "castle doctrine" rule was not applicable to his particular facts and circumstances unconstitutionally applying R.C. 2901.05 and R.C. 2901.09. When one is assaulted in his home there is no duty to retreat. *State* v. *Peacock* (1883), 40 Ohio St. 333, 334; *State v. Williford* 49 Ohio st.3d 247, 250, paragraph two of the syllabus. Thus, violating Shine-Johnson's right to fair warning. This is an obvious subterfuge of law to evade consideration of a federal issue." The federal habeas court is not bound by the state court's determination of state law. *Mullaney v. Wilbur*, 421 U.S. 684, 690-91, 95 S.Ct. 1881, 44 L. Ed. 2d 508 (1975).

In deciding the petitioner's prosecutorial misconduct claim on direct appeal, the Tenth appellate District Court, unreasonably applied federal law, its decision is contrary to *Donnelly v. DeChristoforo,* 416 U.S. 637 (1974). Thus, only addressing two of the twenty plus misstatements of the law failing to make the required determination for each of the remaining remarks *Donnelly* requires, and evaluating the cumulative effect of improper comments made during the course of an entire trial. *Berger v. United States*, 295 U.S. 78, 84-89, 55 S. Ct. 629, 79 L. Ed. 1314 (1935). The state appellate court with confirmation bias misapprehended and ignored, probative, material evidence in the record central to the prosecutorial misconduct claim when it expressly held;

> 'The prosecutor's cited statement here did not concern appellant's duty or lack thereof to retreat from danger once inside his own home. The appellant does not cite to case law extending R.C. 2901.09(B) to a defendant's choice to return home to potential trouble. Therefore, we find appellant has not demonstrated error in this regard." See, *Shine-Johnson v. Warden,* 2021 U.S. Dist. LEXIS 149564.

Shine-Johnson with clear and convincing evidence showed the prosecutor misstated the law on Shine-Johnson's duty to retreat from within the home from a cohabitant. (Tr. Doc No. 45-2 PAGEID 5283-5300); (Tr. Doc No. 45-2 PAGEID 5448); (Tr. Doc No. 45-2 PAGEID 5456-58); (Tr. Doc No. 45-2 PAGEID 5465-67); (Tr. Doc No. 45-2 PAGEID 5478); (Tr. Doc No. 45-2 PAGEID 5526). Those misapprehensions fatally undermined the fact-finding process, rendering the resulting factual finding unreasonable. *Taylor v. Maddox,* 366 F.3d 992, 999-1001 (9th Cir. 2004) *citing Wiggins v. Smith,* 539 U.S. 510,527-28; *Hill v. Shoop,* 11 F.4th 373 (6th Cir. 2021) The state court ignored probative evidence central to satisfying 2254(d)(2)(e)(1). See, *Miller-El v. Cockrell* , 537 U.S. 322, at 346.

The lower federal courts with confirmation bias approved the majority opinion of the Tenth appellate district court's subterfuge of state law, holding that the appellant chad a duty to retreat from a "potential trouble" instead of imminent danger. Whether there is imminent danger of death is assessed "at the time of the attack." *State v. Thomas,* 77 Ohio St.3d 323, 332. The prosecutor clarified his theory and arguments by telling the jury that you don't consider self-defense at the time the petitioner pulled the trigger. (Tr. Doc No. 45-2 PAGEID 5631-32); (Tr. Doc No. 45-2 PAGEID 5641). The trial Court on the record stated outside of the presence of the jury in denying the No Duty to retreat jury instruction stated that "the jury is supposed to be considering the duty to retreat at the time of the shooting," (Tr. Doc No. 45-2 PAGEID 5357-58) The trial court and the prosecutor gave irreconcilable and opposing rationales on the

same point of law in which the state appellate court made a clear subterfuge from law approving both, finding no error. See, *Miller-El*, 537 U.S. at 346.

Federal due process requires the correction of this void conviction, where the state court lacked the authority to act, modifying and overruling the Supreme Court of Ohio. The state appellate court unconstitutionally applied the self-defense standard in an unforeseeable manner on direct appeal by imposing a duty to avoid or retreat from a "potential danger." Thus, creating a new or novel law requiring a duty to retreat from his home altering the self-defense standard, unconstitutionally expanding Shine-Johnsons burden of proof under R.C. 2901.05. Ohio law only require a person to retreat or avoid from a potential trouble instead of an *actual* or *threatened* force. *State v. Champion* (1924), 109 Ohio St. 281, at 284, paragraph one of the syllabus. The danger must be either actual or apparent. *Napier v. State*, 90 Ohio St. 276, 277, 107 N.E. 535, 535. With regard to self-defense, a person generally had a duty to retreat before using deadly force "at the time of the incident in question." *State v. Williford*, 49 Ohio St. 3d 247, 250, 551 N.E.2d 1279 (1990).

The U.S. district court concluded the petitioner has not "persuaded" this Court that the Supreme Court of Ohio would have decided his claims about misstatement of the law of self-defense differently from the Tenth District. particularly pertinent is ¶ 33: "Appellant has not cited cases in which, despite the definitions in R.C. 2901.05(D), the no duty to retreat exception extends to a similar factual situation to the case at hand, where, after an altercation with a cohabitant inside of the home, the defendant fires the fatal shot from the yard. Shine-Johnson cited *Erwin v. State*,

29 Ohio St. 186, 195 (1876). See. *Shine-Johnson v. Warden*, 2021 U.S. Dist. LEXIS 149564, *6-7.

The right to "stand your ground" under "common law" in Ohio has always been firmly rooted in Ohio law. Ohio relied on the "true man" doctrine and is stated in 27 Ohio Jur. 2d 636, Homicide, Section 95; *Erwin v. State*, 29 Ohio St. 186, 199 paragraph five of the syllabus. The Supreme Court of the United States relied on *Erwin supra,* acknowledging the application of the doctrine of "retreating to the wall" was carefully examined by the Supreme Court of Ohio in *Beard v. United States,* 158 U.S. 550, 563-564. (The court below erred in holding that the accused, while on his premises, outside of his dwelling-house, was under a legal duty to get out of the way.) The U.S. district court with the approval of the Sixth Circuit erroneously concluded the *Beard supra,* did not apply to this case. See, *Shine-Johnson v. Warden*, 2021 U.S. Dist. LEXIS 149564, *11-12, 2021 WL 3508083 (S.D. Ohio August 10, 2021). In *Martin v. Ohio*, 480 U.S. 228, 236, 107 S. Ct. 1098, 94 L. Ed. 2d 267 (1987), This court expressly upheld Ohio's common law self-defense. State *v. Krug,* 2019-Ohio-926, P24, 2019 Ohio App. LEXIS 982, *8.

The Ohio Supreme court in *State v. Williford*, 49 Ohio St.3d 247, 249, 551 N.E.2d 1279 (1990), and *State v. Robbins*, 58 Ohio St.2d 74, 388 N.E.2d 755 (1979) relied on *Graham v. State*, 98 Ohio St. 77, 79, 120 N.E. 232, 233. The *Graham* court, relied on *Erwin supra,* and adopted Beard *supra. Brown v. United States*, 256 U.S. 335, 341. paragraph One of the syllabus relied on *Beard supra.* The "true man doctrine", however, remains viable tenets of Ohio law. *State v. Hughes*, 1988 Ohio App. LEXIS

4786, *15.; *State v. Fisher*, 1986 Ohio App. LEXIS 6832, *5-6; *State v. Blanton*, 111 Ohio App. 111, 116, 170 N.E.2d 754, 758. The Sixth Circuit court of appeals has also recognized that Ohio law allowed for appellants to stand their ground. *Beach v. Humphreys*, 1988 U.S. App. LEXIS 5387, *24-25, 845 F.2d 325; *Melchior v. Jago*, 723 F.2d 486. (found "a person who is where he has a right to be may stand his ground and resist force with force, but a person who is where he has no right to be must follow the common law rule and "retreat to the wall.")

Decisions of a court of last resort are to be regarded as law and should be followed by inferior courts, whatever the view of the latter may be as to their correctness, until they have been reversed or overruled." *Krause v. State* (1972), 31 Ohio St.2d 132, 148, 285 N.E.2d 736 (Corrigan, J., concurring). Lower courts have "*no jurisdiction* to reverse, modify, or overrule a decision of the Ohio Supreme Court." *Thacker v. Bd. of Trustees of Ohio State Univ.* (1971), 31 Ohio App.2d 17, 21, 285 N.E.2d 380. The intermediate appellate courts of Ohio have been relying on appellate court *dicta,* using their interpretation of statutory rules under R.C. 2901.05 and R.C. 2901.09 to circumvent, modify and/or overrule the "True Man doctrine," which is a common law rule that has never been abrogated or the issues in regards to duty to retreat or avoid and no duty to retreat.

The state appellate court unconstitutionally imposed a definite duty to retreat or avoid based on the location of where the force was used, and not the circumstances surrounding the necessity to use the force. The state appellate courts have ignored established common law, by limiting a person's duty to retreat to location at the

exclusion of the circumstances faced by the appellant at the time of attack lacking any reasonably safe means of retreat. Thus, creating circular reasoning and prejudicially instructing superfluous duty to retreat instruction and completely ignoring and failing to apply the Common law stand your ground law under the "True Man Doctrine."

"In applying [Ohio] law, federal courts anticipate how the [Ohio Supreme Court] would rule in the case and are bound by controlling decisions of that court." *Bear Stearns Gov't Sec., Inc. v. Dow Corning Corp*, 419 F.3d 543, 549 (6th Cir. 2005). The Ohio Supreme common law self-defense rule is clearly established "and the federal court is not bound by decision of the intermediate state appellate court when we are convinced that the highest state court would decide differently." *Dale Baker Oldsmobile, Inc. v. Fiat Motors of North America, Inc.*, 794 F.2d 213, 218 (6th Cir. 1986). This case is clear and obvious the Ohio Supreme court would decide the case differently and find in favor of prosecutorial misconduct and the court provided incomplete jury instruction and that True Man doctrine was applicable to this case.

In regards to the validity of common law, under Ohio law it is well settled that state statutes are to be read and construed in the light of and with reference to the rules and principles of the *common law* in force at the time of their enactment, and in giving construction to a statute the legislature will not be presumed or held, to have intended a repeal of the settled rules of the common law unless the language employed by it clearly expresses or imports such intention." *Mann v. Northgate Investors*, L.L.C., 138 Ohio St. 3d 175, 179. (2014). The "True Man Doctrine" has never

been abrogated applicable to Shine-Johnson's case. See, *State v. Melchior*, 56 Ohio St. 2d 15, 15, 381 N.E.2d 195, 199. *Paragraph one of the syllabus.* The Ohio Supreme court followed *Melchior* in *State v. Robbins*, 58 Ohio St. 2d 74, 79-80, 388 N.E.2d 755, 758. The "True Man Doctrine" has recently been statutorily codified under S.B. 175 as the Stand your ground law and is applicable to this case.

Shine-Johnson has satisfied AEDPA 2254 (d)(1)(2)(e)(1)(2) to grant Habeas relief and/or at least a C.O.A. The dissenting justice found a subterfuge of state law and a constitutional violation of due process and fair trial due to prosecutorial misconduct. When a state appellate court is divided on the merits of the constitutional question, issuance of a certificate of appealability should ordinarily be routine." *Rhoades v. Davis*, 852 F.3d 422, 429.; *Jones v. Basinger*, 635 F.3d 1030; *Jordan v. Fisher*, 576 U.S. 1071. The Ohio Supreme Court was divided on accepting jurisdiction on the 26(B) issues four to three, and five to two on the duty to retreat issue. The petitioner had a divided panel at every stage of his appeal. Shine-Johnson's conviction is ultimately void.

Conclusion

This court should use its discretion grant rehearing and accept certiorari on all previous issues because there is compelling reason(s) to grant the writ.

Respectfully Submitted,