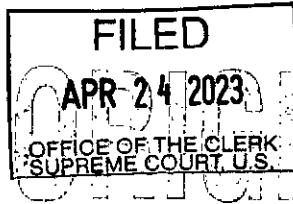


22-
NO.

IN THE
SUPREME COURT OF THE UNITED STATES



PASTOR MARIO L. SIMS,

Petitioner,

v

PETE BUTTIGIEG, MIKE SCHMUL, TIM CORBETT, ST. JOSEPH COUNTY, INDIANA by and through the ST. JOSEPH COUNTY BOARD OF COMMISSIONERS in their individual and official capacities, CITY OF SOUTH BEND INDIANA, STEPHANIE STEELE, as Corporation Counsel for the City of South Bend, TASHA REED OUTLAW, ANN-CAROL NASH, CRISTAL BRISCO, all named individuals are current or former South Bend City employees, and are sued in their official and individual capacities,

Respondents

On Petition for Writ of Certiorari to the
Indiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

Pastor Mario L. Sims, *pro se*
23778 Grove Street
South Bend, Indiana 46628

QUESTIONS PRESENTED

The First Circuit said in *Limone v. Condon* 372 F.3d 39, 44-45 (1st Cir. 2004): [I]f any concept is fundamental to our American system of justice, it is that those charged with upholding the law are prohibited from deliberately fabricating evidence and framing individuals for crimes they did not commit Actions taken in contravention of this prohibition necessarily violate due process (indeed, we are unsure what due process entails if not protection against deliberate framing under color of official sanction).

The Illinois Supreme Court, in addressing police misconduct, wrote “Simply put, there are some forms of official misconduct that are so offensive to the values of the State of Illinois that they can never be ignored.” *People v. Wrice*, 962 N.E.2d 934 (Ill. 2012). In *Wrice* the Court quoted Justice Brandeis: “Almost eighty years ago, Justice Brandeis recognized that “a single courageous state may...serve as a laboratory” in defining the rights of its people.” *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932)(Brandeis, J., dissenting). And in this light, each state retains the sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution.” *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980). In a seminal article describing the protections of individual rights within

the federalist system, Justice Brennan emphasized that state constitutional provisions were not “adopted to mirror the federal Bill of Rights.” William J. Brennan, Jr., *State Constitutions and the Protections of Individual Rights*, 90 HARV. L. REV. 489, 501 (1977). Rather, he noted, “[t]he lesson of history is otherwise,” since “the drafters of the federal Bill of Rights drew upon corresponding provisions in the various state constitutions.” *Id.* In light of this country’s historical reliance on local rights-making, Justice Brennan explained that “the decisions of [the United States Supreme] Court are not, and should not be, dispositive of questions regarding rights guaranteed by counterpart provisions of state law.” *Id.* At 501. He called for the states to “step into the breach” left by more limited federal remedies, and to strengthen the liberties and protections afforded citizens. *Id.* at 503. *See also* Ellen A. Peters, *Capacity and Respect: A Perspective on the Historical Role of the State Courts in the Federal System*, 73 N.Y.U.L. REV. 1065, 1067(1998)(Justice Brennan’s article “was a clarion call to lawyers and judges not to overlook the capacity of state law...to assist in the pursuit of justice for all.”).

Judge Learned Hand famously called “the ghost of the innocent man convicted” an “unreal dream.” *United States v. Garsson*, 291 F. 646, 649 (S.D.N.Y. 1923).

Justice Sandra Day O'Connor touted how “[o]ur society has a high degree of confidence in its criminal trials, in no small part because the Constitution offers unparalleled protections against convicting the innocent.” *Herrera v. Collins*, 506 U.S. 390, 420 (1993) (O’Connor, J., concurring).

In light of the above: The questions presented are: Can the Indiana Supreme Court, in violation of both the United States Constitutions, Illinois State Supreme court, and cases decided by this Court, make an exception to those authorities to the uncontroverted allegations made April 2019 in his verified unchallenged complaint that the Respondent sworn law enforcement officer, boasted to a Reporter that he had planted evidence to gain the Petitioner's wrongful conviction, then threatened to kill the Reporter after she made a police report and told other authorities.

And after the Petitioner filed suit, the law enforcement officer, his legal counsel, and all other Respondents failed to file anything, in any court denying or controverting this admission of evidence planting, thereby deeming the facts admitted by operation of Indiana law. Indiana Trial Rule 8D. This petition seeks to harmonize the Indiana Supreme Court's decision with the U.S. Constitution, Illinois' State Court of last resort, and 1st Circuit Court of Appeals, and this Court.

The Indiana Supreme Court has decided an important federal question in a way that conflicts with the decisions of another State Court of last resort, Illinois Supreme Court, 1st Circuit United States Court of Appeals, and this Court; and the state court has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Nothing in the Indiana Supreme Court's refusal to grant Petitioner's "Petition to Transfer" states that it rests on state-law grounds. *See Murdock v. City of Memphis*, 87 U.S. 590 (1874); *Michigan v. Long*, 463 U.S. 1032 (1983).

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

***TIM CORBETT, v. MARIO L. SIMS, Sr., and JOHNNY W. ULMER,*
CAUSE NO.: 71C01-2103-CT-000094**

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	ii-v
TABLE OF CONTENTS	vi
TABLE OF AUTHORITIES	vii
PETITION FOR A WRIT OF CERTIORARI.....	1
DECISIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONS INVOLVED.....	ix
STATEMENT OF THE CASE	2
I. The Petitioner, by and through his three counsels, filed his verified complaint Cause Number 71C01-2109-CT-342 pursuant to the Court of Appeals Memorandum Decision 20A-CT-2390, alleging that in April 2019 the Respondent sworn law enforcement officer admitted to planting evidence in the Petitioner's criminal case to a mainstream Reporter, then threatened her life for making a police report and for her notifying public officials of his admission, all newly discovered evidence.....	2
II. As none of the Respondents controverted or denied the April 2019, newly discovered allegations contained in the verified complaint in any proceedings at any time, it was deemed admitted by operation of law, pursuant to Indiana Trial Rule 8D, therefore Petitioner filed a unopposed "Motion for Default" in 71C01-2109-CT-342 on October 8, 2022 which on October 15, 2022, the Trial Court denied, and dismissed the case <i>with prejudice</i> , without addressing the Respondent sworn law enforcement officer admitted to planting evidence in the Petitioner's criminal case to a mainstream Reporter, then threatened her life for making a police report and for her notifying public officials of his admission, all newly discovered evidence.....	8

III. Petitioner timely filed an appeal, Cause Number 21A-CT-2309, of the Trial Court's October 15, 2022 and in response to two Orders (December 10, 2021 and February 4, 2022) issued by the Court of Appeals for the Trial Court to clarify its findings and state if the Petitioner had complied with the Court of Appeals Memorandum Decision in Cause Number 20A-CT-2390 ("Scopelitis" requirement). The Trial Court finally, entered an "Order" on February 18, 2022, in which paragraph 4 of its "Order" determined that the April 2019 allegations were new and uncontested, and in paragraph 5 that the Petitioner had complied fully with the Court of Appeals Memorandum Decision in Cause Number 20A-CT-2390 ("Scopelitis" requirement), but denied the relief sought. The Indiana Court of Appeals failed to address the April 2019 newly discovered uncontested evidence, and on August 12, 2022, in Cause Number 71C01-2109-CT-342 affirmed the Trial Court.....13

IV. The Indiana Supreme Court denied Petitioner's Petition for Transfer to that Court, failed to address the April 2019 newly discovered uncontested evidence, that was deemed admitted by operation of law pursuant to Indiana Trial Rule 8D, of the Respondent sworn law enforcement officer admitting to planting evidence in the Petitioner's criminal case to a mainstream Reporter, then threatening her life for making a police report and notifying public officials, thereby affirming the Trial Court.....13

REASONS FOR GRANTING THE WRIT.....16

The Court should Grant Certiorari to uphold the rights of innocent citizens to be free from law enforcement planting evidence to wrongly gain their conviction.....16

CONCLUSION18

INDEX TO APPENDICES

APPENDIX A The Indiana Court of Appeals "Opinion" Cause Number 21A-CT-2309, filed August 12, 2022 and 2 motions Orders

APPENDIX B The Trial Court Order of February 18, 2022

APPENDIX C Indiana Supreme Court "Order" denying Transfer 1/26/2023
vii

TABEL OF AUTHORIES

	Page
Cases	
<i>State ex rel. Bd. of Commr's v. Jamison</i> , 42 N.E. 350 (Ind. 1895).....17	
<i>Herrera v. Collins</i> , 506 U.S. 390 (1993).....iv	
<i>Limone v. Condon</i> 372 F.3d 39 (1st Cir. 2004).....ii	
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983).....v	
<i>Murdock v. City of Memphis</i> , 87 U.S. 590 (1874).....v	
<i>New State Ice Co. v. Liebman</i> , 285 U.S. 262, 311 (1932).....ii	
<i>People v. Wrice</i> , 962 N.E.2d 934 (Ill. 2012).....ii	
<i>Pruneyard Shopping Center v. Robins</i> , 447 U.S. 74, 81 (1980).....ii	
<i>Smith v. Ind. Dep't of Correction</i> , 883 N.E.2d 802 (Ind. 2008).....17	
<i>State of Indiana, v. Andrew M. Royer</i> , April 8, 2021, Court of Appeals Case No.20A-PC-955 May, Judge.....16	
<i>United States v. Garsson</i> , 291 F. 646 (S.D.N.Y. 1923).iii	

Constitutions

Fourth Amendment to the United States Constitution.....	16
Fifth Amendment to the United States Constitution.....	16
Sixth Amendment to the United States Constitution.....	16
Eighth Amendment to the United States Constitution.....	16
Fourteenth Amendment to the United States Constitution.....	16

Trial Rules

Indiana Trial Rule 8D.....	8
-----------------------------------	----------

Other Authorities

<i>State Constitutions and the Protections of Individual Rights, 90 HARV. L. REV. 489, 501 (1977).....</i>	iii
<i>Ellen A. Peters, Capacity and Respect: A Perspective on the Historical Role of the State Courts in the Federal System, 73 N.Y.U.L. REV. 1065, 1067(1998).....</i>	iii

PETITION FOR A WRIT OF CERTIORARI

Petitioner Pastor Mario Sims respectfully requests the issuance of a writ of certiorari to review the judgment of the Indiana Supreme Court.

OPINIONS BELOW

The Indiana Supreme Court “Order” in 71C01-2109-CT-342, denying Petitioner’s “Petition to Transfer” was issued on 1/26/2023, and is reproduced at Pet. App. C.

The Indiana Court of Appeals “Opinion” Cause Number 21A-CT-2309, affirmed the Trial Court’s “Order” filed February 18, 2022, in Cause Number 71C01-2109-CT-342 and is reproduced at Pet. App A. The Order was affirmed 2/01/2023. The Trial Court Order is reproduced in Pet. App. B.

JURISDICTION

The Indiana Supreme Court entered judgment on January 26, 2023. See Pet. App. C, and therefore this Petition for Writ of Certiorari is timely filed within 90 days of the Order.

This Court’s jurisdiction is invoked under 28 U.S. Code § 1257 as the Petitioner alleges herein the Indiana Supreme Court, as the highest court of the State of Indiana in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari as a statute of the State of Indiana is drawn in question on the ground of its being repugnant to the Constitution, laws of the United States, and rights, privileges, or thereof.

STATEMENT OF THE CASE

I. Trial court proceedings

On or about April 15, 2019, the Petitioner, Pastor Mario L. Sims, (“Pastor Sims”) was contacted by an investigative news reporter, Alexis Rivas Shear from ABC 21 News.

Pastor Sims was asked by the reporter if he was available for a meeting and if they could meet at the church where he is the Senior Pastor.

The news reporter arrived at the church with a cameraman and another news reporter, Tom Powell. The news reporter, Mrs. Shear disclosed to Sims that she was conducting an interview with Mr. Tim Corbett, Mr. Corbett was a South Bend, Indiana Police Officer in 1994, and he is now still in the law enforcement field as a consultant/cold case investigator with the St. Joseph County Metro homicide unit.

According to Mrs. Shear during her interview with Mr. Corbett, Mr. Corbett admitted that he had planted evidence in the case of Pastor Mario L. Sims in 1994.

Mrs. Shear stated that she was afraid for her life, but that Pastor Sims could act on what she had told him about Mr. Corbett’s statement.

Pastor Sims was made aware that Mrs. Shear had taken steps to inform others of the admission made by Mr. Corbett. Mrs. Shear stated her news executives told her she had to make a police report about Mr. Corbett's admission, therefore she called Elkhart City Police Officer Davin Hackett who took her statement about the admission.

Officer Hackett then filed a report of the statement made by Mrs. Shear to his department's Internal Affairs office. And, she also called the former South Bend City Board of Public Safety President Mr. Pat Cotrell as well to former City Councilman Derek Dieter, both Mr. Cotrell and Councilman Dieter were former members of the South Bend City Police Department.

Further, Pastor Sims was made aware of a news article by the news agency Young Turks in September of 2019, in which then South Bend City Mayor, Pete Buttigieg, Mike Schmuhl, and the South Bend City Legal Department were aware that Mr. Corbett had bragged about planting evidence to gain convictions of Black males. The information obtained by the Young Turks was obtained through discovery by using of the Freedom of Information Act.

The information obtained by the Young Turks support the information provided to Pastor Sims by Mrs. Shear that Mr. Corbett

fabricate and/or planted evidence against Sims resulting in his conviction of a crime that he did not commit.

Another important piece of evidence that came to the attention of Sims was Mr. Corbett's own words, spoken by the others, who are on tapes which were heard by Mrs. Karen DePaepe, the former Communication Director of the South Bend Police Department.

While these tapes have not yet been made public, Mrs. DePaepe's deposition supports Mrs. Shears' statement that Mr. Corbett fabricated evidence to convict men of crimes they did not commit.

After many fruitless years of trying to prove he had been wrongly convicted, Pastor Sims finally in April of 2019 obtained the evidence and from an unexpected source, the law enforcement officer admitting to planting evidence in his case to wrongly convict him and the discovery uncovered by investigative reporters TYT (The Young Turks) in September of 2019 confirming the admission of evidence planting of Pastor Sims and other black criminal defendants.

First Trial Court Proceeding

On January 18, 2020, in response to this newly disclosed credible, admissible evidence of evidence planting in his criminal case in 1994 obtained in April 2019, Pastor Sims, by and through his three counsels, filed a complaint in St. Joseph Superior Court Cause No. 71D06 2001 CT 000024 .

On January 21, 2020, Pastor Sims moved for a change of venue, which Defendants opposed on the bases that Sims had not shown he was unlikely to receive a fair trial on account of local prejudice and that St. Joseph County was not a party to the lawsuit.

On January 26, 2020, Sims filed an amended complaint, in which he named “St. Joseph County” as a defendant but not its board of commissioners.

On January 29, 2020, Defendants filed a motion to dismiss and for sanctions, arguing that Sims’s complaint was based on the 1995 convictions and had failed to comply with the requirements of Scopelitis and Bramer.

On February 12, 2020, the St. Joseph Superior Court dismissed Sims’s complaint and reserved the issues of whether the dismissal was to be with or without prejudice and whether to impose sanctions for the Marshall Circuit Court, where the case was transferred.

On December 4, 2020, Sims moved for another change of venue.

On December 11, 2020, the Marshall Circuit Court denied Sims's motion for change of venue, ruled that Sims's complaint was dismissed with prejudice, and found Sims and his counsel jointly and severally liable for \$11,025.00 in attorney's fees and the \$157.00 fee to transfer the case to Marshall Circuit Court, which Defendants had paid to "move the case along[.]":

Pastor Sims timely appeal the ruling of the Marshall Circuit Court and the St. Joseph Superior Court and on April 14, 2021 Court of Appeals of Indiana in a Memorandum Decision 20A-CT-2390 (quoting *Scopelitis*, 797 N.E.2d at 352) stated:

“...Our order in *Scopelitis*, however, is not a complete ban; Sims may file claims related to the 1995 convictions so long as he complies with its requirements. “

We affirm in part and reverse in part. Vaidik, J., and Brown, J., concur.”

Second trial Court Proceeding (after remand)

A. After remand of No. 71D06 2001 CT 000024 and as required by the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021, Pastor Sims, by his counsels, on June 23, 2021, filed his “Second Amended Verified Complaint,” “Plaintiff’s Brief Directed Solely to the Court (“Scopelitis Brief”) and his Plaintiff’s “Verification of Compliance with the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021,” all to comply with *Scopelitis*.

On September 1, 2021, on its own motion the Trial Court determined Pastor Sims was required to file his complaint under a new cause number after the appeal.

B. Pursuant to the Trial Court’s September 1, 2021 Order Pastor Sims filed on September 6, 2021, his “ Plaintiff’s Brief Directed Solely to the Court in Support of His Verified Complaint at Law Pursuant to the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021” and “Verified Complaint at Law pursuant to the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021 with a footnote stating: Pursuant to that memorandum decision, Plaintiff also files his “Brief” showing doctrines of *res judicata*, *collateral estoppel*, or *law of the case*, does not apply, and attaches “Relevant Documents” as required reproduced at appropriate Pet. App. B.

Further this complaint shows the statute of limitations does not apply because of fraudulent concealment, all defendants had a duty to disclose and not violate the law. Finally this is filed as a new a case pursuant to the entry of August 30, 2021, by Judge Mike Bergerson, in CAUSE NO.: 71D06-2001-CT-000024 without objection from the parties.”

After the mandatory *Scopelitis* screening was conducted by the trial court, the case was docketed on September 6, 2021, under the new Cause Number.: 71C01-2109-CT-342. (reproduced at Pet. App.)

Pastor Sims served the verified complaint via USPS certified mail and filed copies proving service on the record. After more twenty three (23) days elapsed, and the Respondents failed to appear, move to enlarge time, or file any motion or appearance, on October 8, 2021, Pastor Sims filed his “Verified Motion for Entry of Default Pursuant to Trial Rule 55(A).” (reproduced at Pet. App. B)

None of the Respondents filed an opposing motion, moved to enlarge time to respond or challenge service. The facts were deemed admitted.

Indiana Trial Rule 8D. T.R.8 (D) provides:

“Averments in a pleading to which a responsive pleading is required, except those pertaining to amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

On October 15, 2021, approximately thirty nine (39) days after this case was filed after the trial court conducted its *Scopelitis* screening, without any filing made on behalf of the Defendants, with no hearing being held of any type, and with no motion before it, although the docket shows “Order on motion,” the Trial Court, inexplicably, entered the following:

Order

“This Court has reviewed the Verified Complaint at Law filed in this cause and having reviewed the rhetorical paragraphs of the Complaint, the Court FINDS that it is redundant, duplicative, and substantively no different from Plaintiff Mario Sims’ Verified Complaint with cause numbers 71D06- 2001-CT-24 and 50C01-2002-CT-16. The Court FINDS that the Complaint as filed is subject to the doctrines of res judicata and collateral estoppel. Therefore, this cause is ordered DISMISSED with prejudice. It is therefore Ordered, Adjudged, and Decreed that this cause is DISMISSED with prejudice”

Dated: 10/15/2021

Hon. John E. Broden ¹

1 During the appeal the Court of Appeals, with no party arguing it, sua sponte determined this Order was enter in error See Opinion August 12, 2022 Pet. App. A

II. The Second Indiana Court of Appeals proceedings

On December 10, 2021, the Court of Appeals entered an Order directing the trial court to clarify its Order of October 15, 2021 within twenty days, specifically requesting it to clarify whether or not Sims complied with *Scopelitis*.

After not responding to the Court of Appeals within 20 days, the Court of Appeals again on February 7, 2022, entered an Order directing the trial court to clarify its Order, within twenty days, specifically requesting it to clarify whether or not Pastor Sims complied with *Scopelitis*.

Finally, more than 70 days after the original Order to clarify was issued on December 10, 2021, the trial court complied with the second Order issued on February 7, 2022, and on February 18, 2022, issued an Order confirming Pastor Sims had complied with *Scopelitis* (and the case was allowed to be filed on September 6, 2021) but the collateral estoppel and law of the case now required the court to dismiss the case (based on cause numbers 71D06- 2001-CT-24 and 50C01-2002-CT- which were both the subject of the Indiana Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021, *vacating* the ruling in 50C01-2002-CT-1 and remanding 71D06-2001-CT-24 and simply requiring Sims to comply with *Scopelitis*).

Order

"The Court having reviewed the case of *Sims v. Scopelitis*, 797 N.E.2d 348, 352 (Ind. Ct. App. 2003) as well as Plaintiff's Verified Complaint at Law and attached Exhibits and Memorandum of Law now FINDS as follows: 1. Plaintiff's Verified Complaint at pages 26 and 27, titled "Plaintiff's Verification of Compliance with the Court of Appeals Memorandum Decision 20A-CT-2390 of April 14, 2021, Pursuant to Indiana Rule 11B" includes the relevant text from the *Scopelitis* ruling that this Court must consider in determining whether Plaintiff's lawsuit may be filed and proceed. 2. The Court FINDS that Plaintiff has complied with (1) in that Plaintiff has provided this Court with a copy of the Complaint that he wishes to file. Plaintiff has also complied with (2) in that this Court sees attached a list of 22 matters that appear to constitute a copy of all the relevant documents pertaining to ultimate disposition of each and every previous suit initiated by Plaintiff Sims from the same Defendant or emanating, directly or indirectly, from any alleged conspiracy by public officials. Plaintiff's counsel have also submitted a legal brief aimed at addressing why this new proposed cause of action should not be (3) subject to dismissal under the doctrines of res judicata, collateral estoppel, or law of the case. Further, Plaintiff Sims has complied with both (4) and (5) of *Scopelitis* in that the proposed Complaint is Verified and, as previously stated, the final section of the opinion is included. It thus falls to this Court to review Plaintiff's Verified Complaint at Law consisting of Eight Counts and rhetorical paragraphs and determine whether the proposed Complaint is not subject to dismissal under the doctrines of res judicata, collateral estoppel, or law of the case. In reviewing the Verified Complaint, the Court FINDS that the proposed Verified Complaint at Law is barred by the doctrines of collateral estoppel and law of the case. The basic gravamen of the Verified Complaint is the same- it sues a similar cast of individuals- then Mayor Buttigieg, his Chief of Staff Mike Schmul, Tim Corbett, St. Joseph County, the City of South Bend, and two former corporation counsel for the City of South Bend, Cristal C. Brisco and Stephanie Steele. The Verified Complaint goes on to allege a host of conspiracies across various levels of local government but all centered on

the actions of Defendant Corbett and the alleged fraudulent concealment of evidence and retaliation against Plaintiff. *In fact, the only real "new" element as set out in the proposed Verified Complaint is the conduit of these actions which is a local news anchor and a reported conversation that she allegedly had with Defendant Corbett.* (Italics added) Thus, while Plaintiff's Verified Complaint at Law and supporting documents complies with multiple prongs of Scopelitis, ultimately Plaintiff's Verified Complaint is subject to Dismissal With Prejudice under the doctrines of collateral estoppel and law of the case. Thus, Plaintiff's Verified Complaint at Law is DISMISSED with prejudice.

Dated: 2/18/2022

Hon. John E. Broden."

Paragraph 4 of the above Order show the Trial Court found the allegations of the Respondent sworn law enforcement officer admitting to planting evidence in the Petitioner's criminal case to a mainstream Reporter, then threatening her life for making a police report and for her notifying public officials of his admission, were never denied or controverted in any proceedings at any time (Thereby were by operation of law deemed admitted pursuant to Indiana Trial Rule 8D), and Paragraph 5 shows the Petitioner fully complied with *Scopelitis* as required the Indiana Court of Appeals Memorandum Decision in Cause Number 20A-CT-2390, but the Trial Court wholly failed to address the April 2019, newly discovered allegations.

III. The Indiana Court of Appeals

On August 12, 2022, the Indiana Court of Appeals Cause Number 21A-CT-2309, affirmed the Trial Court's February 18, 2022, Order in Cause Number 71C01-2109-CT-342 without addressing the allegations of the Respondent sworn law enforcement officer admitting to planting evidence in the Petitioner's criminal case to a mainstream Reporter, then threatening her life for making a police report and for her notifying public officials of his admission, which were never denied or controverted in any proceedings at any time and thereby were by operation of law deemed admitted pursuant to Indiana Trial Rule 8D.

IV. On Petition to Transfer to the Indiana Supreme Court

“ORDER”

“This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice’s views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition. Being duly advised, the Court DENIES the petition to transfer. All other pending motions are denied as moot. Done at Indianapolis, Indiana, on 1/26/ 2023.

**Loretta H. Rush
Chief Justice**

All Justices concur.”

The Indiana Supreme Court in Cause Number 21A-CT-2309, affirmed the Trial Court's February 18, 2022, "Order" in Cause Number 71C01-2109-CT-342 and the August 12, 2022, the Indiana Court of Appeals Opinion in Cause Number 21A-CT-2309, without addressing the allegations of the Respondent sworn law enforcement officer admitting to planting evidence in the Petitioner's criminal case to a mainstream Reporter, then threatening her life for making a police report and for her notifying public officials of his admission, which were never denied or controverted in any proceedings at any time and thereby were by operation of law deemed admitted pursuant to Indiana Trial Rule 8D.

INDIANA SUPREME COURT FAILED TO ADDRESS THE UNCHALLENGED NEWLY DISCOVERED EVIDENCE, DEEMED ADMITTED AS FACT BY OPERATION OF LAW, OF THE LAW ENFORCEMENT OFFICER'S ADMITTED EVIDENCE PLANTING, HIS DEATH THREAT MADE TO THE REPORTER IN APRIL OF 2019 OR ADDRESS THE NEWLY DISCOVERED EVIDENCE, WHICH IS UNCONTROVERTED ALLEGATIONS, UNCHALLENGED NEWLY DISCOVERED EVIDENCE, DEEMED ADMITTED AS FACT BY OPERATION OF LAW, MADE IN THE COMPLAINT OF THE STORY BY THE YOUNG TURKS IN SEPTEMBER OF 2019 CONFIRMING EVIDENCE WAS PLANTED IN PASTOR SIMS CRIMINAL CASE

Pastor Sims' "Second Verified Complaint at Law" filed on September 6, 2021, alleged that in April 2019 the Respondent sworn law enforcement officer admitted to planting evidence in the Petitioner's criminal case to a mainstream Reporter, then threatened her life for making a police report and for her notifying public officials of his admission.

The allegations were never controverted or denied in any court of law, and pursuant to Indiana Trial Rule 8D, are now deemed admitted as fact. More importantly, the Trial Court determined in its "Order" of February 18, 2022, these allegations were in fact newly discovered.

Pastor Sims' s due process rights at trial were violated by presentation of false and misleading evidence resulting in his conviction obtained in violation of his rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution as well as the coordinate rights established under the Indiana Constitution. See *State of Indiana, Appellant-Respondent, v. Andrew M. Royer, Appellee-Petitioner*, April 8, 2021, Court of Appeals Case No.20A-PC-955 May, Judge.

REASONS FOR GRANTING THE WRIT

The Court Should Grant Certiorari to uphold the state and U.S. Constitutions protections against a innocent citizen being intentional wrongly convicted by a law enforcement officer planting evidence.

The Indiana Supreme Court and Indiana Court of Appeals failed to address the newly discovered evidence of April 2019, the death threat and the evidence of evidence planting by the Young Turks and has decided an important federal question in a way that conflicts with decisions of another State's Supreme Court, Illinois, the 1st Circuit Court of Appeals, the Supreme Court of the United States, and both the United States Constitution and Indiana Constitutions.

The Indiana Constitution mandates that “[a]ll courts shall be open,” Ind. Const. art. I, § 12, reflecting “the ancient maxim of jurisprudence that every one is entitled to his day in court, and no one shall be condemned unheard.” *State ex rel. Bd. of Commr’s v. Jamison*, 42 N.E. 350, 351 (Ind. 1895).

Further, the provision “guarantees access to the courts to redress injuries to the extent the substantive law recognizes an actionable wrong.” *Smith v. Ind. Dep’t of Correction*, 883 N.E.2d 802, 807 (Ind. 2008).

Government must treat its citizens fairly by following laws and established procedures in everything it does. While the Constitution, in its entirety, uses the phrase “due process of law” twice (as a protection applied against actions by the national government in the Fifth Amendment and as a protection applied against state government actions in the Fourteenth Amendment), the principle of due process is woven throughout the document. In the end, steadfast protection of rights for those accused of crimes serves to protect us all. It is the commitment to this principle that makes the United States, as John Adams once noted, “a government of laws, and not of men”

CONCLUSION

The Court Should Grant *Certiorari* to harmonize the Indiana Supreme Court's decision with the decisions of other state's courts of last resort, in this case the Illinois Supreme Court, the United States Court of Appeals 1st Circuit and this Court, and correct the rulings that are repugnant to another State's Supreme Court rulings, the Indiana State constitution, the United States Constitution, rulings of federal circuits, and cases decided by this Court, that if not addressed by this Court, would allow uncontroverted, unchallenged, newly discovered evidence, deemed admitted by operation of Law, Indiana Trial Rule 8D, and by Court Order on February 18, 2022, of law enforcement officers planting evidence to gain wrongful convictions, then threatening a member of the press after filing a police report and disclosing to other officials, causing the public to lose faith in the American system of justice.

Pastor Sims respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,

**Pastor Mario L. Sims, *pro se*
23778 Grove Street
South Bend, Indiana 46628
(574)298-0110
Email: mariolsims@gmail.com**

April 24, 2023