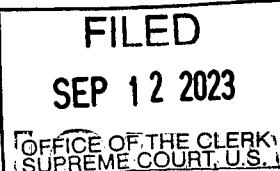


23-5647

SUPREME COURT OF THE UNITED STATES



EDDIE SAVAGE,

Petitioner,

No. 23-3067

vs.

STATE OF OHIO,

Respondent,

On Petition for a Writ

to the United States

Court of Appeals

From the Six Circuit

PETITION FOR A WRIT OF CERTIORARI

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I. Question presented

when the accuse discovers that a photograph and its contents are now not what they were once purported to be at trial, is the fourteenth amendment, equal protection of law or due process clause violated? If so, under what circumstances do the use of the photographs their contents become forfeited from the state's use and ripe for the use by the accuse to pursue relief from the conviction obtained with its use?

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IV. Petition for Writ Of Certiorari

Eddie Savage, an inmate currently incarcerated at Lebanon Correctional Intuition in Lebanon, Ohio, by way of pro se, respectfully petitioners this court for a writ of certiorari to review the judgment of the Hamilton county Trial Courts, First District court of appeals, the United States District Court for the Southern Division of Ohio, Western Division, and the United State Six Circuit Court of Appeals.

V. Opinion Below

The decision by the first district court of appeals denying Mr. savages' direct appeal is reported as State v. Savage 2019-Ohio-4859(1st Dist. Nov. 27, 2019). The supreme court of Ohio declined jurisdiction at State v. Savage, 158 Ohio St. 3d 1424, 2020-Ohio-647. The United States Federal District Court denied habeas corpus relief at Savage v. Warden, Pickaway Corr. Inst., 2022 U.S. Dist. LEXIS 170728. The first district court of appeals denied Petitioner Post-conviction and is reported as State v. Savage, 2022-Ohio-4107. The Six circuit court of appeals denying a Certificate of Appealability is reported as Savage v. Harris 2023 U.S. App. LEXIS 15946.

VI. Jurisdiction

Petitioner application seeking a Certificate Of Appealability for the Six circuit court of appeals was denied on June 23, 2023. Petitioner invokes this Court's jurisdiction under 28 U.S.C.S § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Six circuit courts of appeals judgement.

VII. Constitutional provisions Involved

USCS Const. Amend. 14, Part 1 of 15:

[Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIII. STATEMENT OF THE CASE

The United States Court of Appeals for the Sixth Circuit has recently and incorrectly established that an accused equal protection nor due process clause is violated when evidence is discovered not to be what it was once purported to be at trial. Instead, the six circuit established that when a case detective testifies that a photograph and its contents depicts “irrelevant” “paperwork” and the accused later discovers that the photograph and its contents actually depicts “material” “Boost Mobile packaging.” Then, at worst, the accused has identified some vagueness in the detective's authentication of the photographs and its contents, and therefore such an issue is a state court's evidentiary ruling that rarely rises to the level of a constitutional violation. *See Savage v. Harris* 2023 U.S. App. LEXIS 15946.

However, this court upheld in *Miller v. Pate*, 386 U.S. 1, when the record of the petitioner's trial reflected the prosecution's consistent and repeated misrepresentation that People's Exhibit 3 was, indeed, “a garment heavily stained with blood” and the prosecution's whole theory with respect to the exhibit depended upon that misrepresentation. The prosecution's theory being that the victim's assailant had discarded the shorts because they were stained with blood. A pair of paint-stained shorts, found in an abandoned building a mile away from the scene of the crime, was virtually valueless as evidence against the petitioner. The prosecution deliberately misrepresented the truth.

Here, in a case of aggravated robbery where cell phones and money was taken from a boost mobile store, the jury somehow deliberated with boost mobile wrapping “inferred” to be left over

from a cell phone that was stolen from the crime in question and “allegedly” found in petitioners rented truck. As in Miller v. Pate, the prosecutor consistently and repeated misrepresented the truth. At trial, the case detective during direct examination described what he found as a result of an unlawful search of petitioner’s rental truck as being nothing more than irrelevant “papers” and “paperwork,” and the prosecutor affirmed, “States Exhibits 17D 17E.”

However, states exhibit 17D,17E somehow, “now” depicts three trademarked boost mobile items, for clarity are now labeled as petitioner exhibits:

- 17F is the plastic merchandise bag- Trademarked by boost mobile-
- 17G is one of the two booklets- the booklet labeled safety and warranty information
- 17H is the booklet with the small print trademarked “boost mobile be heard.”

That, the prosecutor seems to refer to as boost mobile wrappings in opening and closing arguments, but the State of Ohio never presented, published, identified or examined any boost mobile evidence “allegedly” recovered as a result of the case detectives search of petitioner truck. Therefore, the three items that are “now” depicted in states exhibit 17D, 17E, as (petitioner exhibits 17F,17H, 17G) are valueless as evidence against the petitioner and either the states swapped photographs depicting “paperwork” on the floor board of the truck for those that depict boost mobile packaging after the close of evidence or the prosecutor misrepresented states exhibits 17D 17E and Petitioner exhibits 17F, 17H 17G as depicting nothing more than paperwork. Whichever way, the state prosecutor deliberate misrepresented the truth.

This case questions the difference between a “vagueness in authentication” and a misrepresentation of evidence that violates Fourteenth Amendment, Due Process Clause and Equal Protection of Law.

1. Discovery of the swap in Photographic evidence

During review of the trial transcripts and development of the assignments of error for direct appeal, petitioner noticed that the prosecutor kept referring to boost mobile packaging being found in the rental truck in opening and closing arguments. Petitioner convey to appellant attorney that there was no such presentation of evidence at trial and appellant attorney inserted prosecutor misconduct for creating the false impression of evidence. The first district court of appeals issued State v. Savage 2019-Ohio-4859, in the opinion the court over ruled the third assignment of error “Cumulative Prosecutorial Misconduct” by declaring that the prosecutor remarks are accurate representation of the evidence. Petitioner then investigated, having someone go and retrieve the photographs depicting boost mobile packaging from the clerk of courts. Upon receipt 2-5-2020 petitioner pondered, then reasoned that a swap had taken place, taking into account that petitioner witnessed the photograph depicting 2 white 1 pink 8 by 11 pieces of paper on the floor board of the truck at trial.

By legal reasoning, Petitioner adopted the theory of the swap, contending that, in the first instance of searching the truck the officer created identical sets of photographs, changing what depicts on the floor board of the truck, presenting one at trial as “paperwork” and after trial exchanging the photographs in order to have the jury deliberate with photographs of boost mobile packaging found on the floor board of the truck. Confidence in the theory was reinforced with the review of the case detective’s direct examination. Specificity, petitioner observed the

courts and trial attorney's silence during the admission of the (Trial Exhibits 17D,17E) as depicting "paperwork," noting that the contents of the photographs, the three trademarked boost mobile items were never mentioned, along with the absents in the trial attorney's objections reinforced petitioner's belief in this theory.

In weighing the alternative, that the boost mobile packaging was admitted at trial. Petitioner reasoned that because there is no testimony referring to the boost mobile packaging during the case detective examination and there is no evidence in the trial transcript that the state identified, authenticated or examined the physical items depicted in the photograph at trial. In order for the state to present and or anticipate the admission of the trial photographs and their contents without the actual physical items in the photograph ever being presented, identified, or examined. Such a scheme or trick would require the favoritism and or oversight of the trial judge and the cooperation of the accused trial attorney.

Petitioner observed as proof, that the state never introduced a boost mobile representative that identified or authenticated the items in (Trial Exhibit 17D 17E) as being from that store or even the introduction of the mere possibility. That being so, any statement made by the case detective regarding whether or not the items are evidence would have been inadmissible heresy which would have led to the exclusion of the items on the grounds of irrelevance.

1.

DIRECT APPEAL

Petitioner raised as the third assignment of error “Cumulative Prosecutor Misconduct” contending that the state claimed during opening argument T.P. 30 Ln 23 and closing argument T.P. 914 that there was evidence on counts 5&6 found in the recovered Fl50, thus creating the false impression of evidence. The Defendant also submits that the cumulative effect of the prosecutor's misconduct deprived defendant of a fair trial.” Citing at Savage v. Collins, 2021 U.S. Dist. LEXIS 221600, At [*P29].

The District overrule the assignment of error declaring the following: [*P29] Finally, Savage claims that the prosecutor misstated the evidence in opening and closing by telling the jurors that Boost packaging was found in the truck that Savage rented. However, the state submitted two photographs into evidence that showed Boost packaging in the truck. [**11 Thus, the prosecutor's remarks were accurate representations of the evidence.” State v. Savage 2019-Ohio-4859 (1st Dist. Nov. 27, 2019).

A month after the appellate decision, petitioner filed a timely *pro se* motion for reconsideration in the First District, arguing that the alleged evidence of Boost Mobile packaging was not properly authenticated, and the prosecutor committed misconduct in presenting this evidence. The reconsideration was not well taken.

The supreme court declined jurisdiction, discretionary appeal not allowed by State v. Savage, 140 N.E.3d 743.

2.

TRIAL COURT

POST-CONVICTION 2953.21

In November 2020, Petitioner filed a "Motion for Delayed Post-conviction" in the common pleas court, and in February 2022, Petitioner amended the petition with a document entitled "2nd Amendment to Delayed Post-conviction." In this petition, petitioner contended that he was denied a fair trial and the effective assistance of counsel when his trial counsel, the prosecutor, and a police detective allegedly conspired to replace photographs of the original paperwork found in Petitioner retail truck with photographs of Boost Mobile packaging. To support the post-conviction claims, petitioner pointed to the police detective's trial testimony related to the admission of the photographs and notes that the detective used the phrase "paperwork" to represent the photograph and its contents instead of the boost mobile packaging. The trial court denied the post-conviction without finding of facts or conclusion of law.

3. APPEAL REVIEW

POST- CONVICTION O.R.C 2953.21

The first district court of appeals opinion *State v. Savage, 2022-Ohio-4107* upheld the lower court's denial of Petitioners post- conviction claims reasoning that the trial court had no jurisdiction to entertain the *O.R.C. 2953. 21* post- conviction petition, reasoning the following:

“Savage has not satisfied those jurisdictional requirements. Savage has not argued that his post-conviction claims are based on a new right recognized by the United States Supreme Court, and he has not demonstrated that he was unavoidably prevented from discovering the photographs and the trial testimony upon which he now relies to support his post-conviction claims. Although he contends that he was just recently able to review the photographs admitted at trial, Savage had access to these photographs before and at his trial as well as during his direct appeal.”

[*P7] “Because Savage has not demonstrated that the common pleas court had jurisdiction to consider his post-conviction petition under *O.R.C. 2953.23*, the court properly dismissed his petition and its amendment. Accordingly, we overrule Savage's single assignment of error and affirm the common pleas court's judgment.”

4.

WRIT OF HABEAS CORPUS

Petitioner's first ground explicitly raised the issue of the alleged swap. Expanding in the Reply, Petitioner argued that, before and during trial, Exhibits 17D and 17E contained what he refers to as irrelevant "paperwork." Then, after the close of evidence, Petitioner alleged the "prosecution switched [Exhibits 17D and 17E] so that the jury would deliberate" with photographic evidence of the Boost Mobile materials. Petitioner contended that he only learned of the swap on February 5, 2020, when he received the Boost Mobile images.

However, the United States District Court declared that: "Savage's complaints about authenticity and relevance are not cognizable under federal habeas review. It is hornbook law that federal habeas relief cannot be granted for state court violations of purely state law. Only "custody in violation of the Constitution or laws or treaties of the United States" warrants relief. Ohio's laws govern what evidence is relevant in Ohio court and how that evidence is authenticated. *Ohio Evid. R. 401*; *Ohio Evid. R. 901*. Indeed, few bodies of law fit more squarely in the province of state, and not federal, law. A state [*40] evidentiary rule will only raise federal constitutional Due Process concerns if the rule "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.

Measured against that standard, Savage's arguments concerning authentication and relevance do not cut it as a basis for habeas review. Savage cites *Ohio Evidence Rule 901* and *Federal Rule of Evidence 901* concerning authentication; Savage fails to cite to any authority concerning relevance. In so doing, Savage fails to identify any applicable federal constitutional principle or law implicated by the Ohio evidence rules.

"Nor does Savage advance his cause by noting that the witness who identified the photographs at trial referred to "paperwork" in the car foot well rather than "Boost Mobile packaging." Presumably, Savage would have the Court conclude that this description means that the witness must have been reviewing photographs different from the ones now included within the record, depicting Boost Mobile materials. But the Court is not convinced. Having reviewed the [*34] allegedly "falsified" 17D and 17E, the Court concludes that the description the witness provided of the photographs at trial is consistent with the appearance of those exhibits now, and thus does not support a claim that the exhibits were swapped." See *Savage v. Warden, Pickaway Corr. Inst.*, 2022 U.S.

5. USCS FEDURAL CIVIL PROCEDURAL RULE 59

Petitioner moved the federal district for an order granting reconsideration. In the motion, Petitioner challenges the Court's conclusion that he failed "to show that exhibits 17D and 17E were falsified." Specifically, Petitioner disputed that what the case detective described as "irrelevant" paperwork and what the prosecutor described as "material" Boost Mobile packaging" refer to the same depiction. Petitioner demonstrated the difference by identifying the individual items inside the photographs as "Petitioners exhibits, 17F, 17H, [and] 17G, proclaiming that they are examples of "unaccounted for items" that improperly influenced the jury's deliberations.

However, the United State District Court declared that: "Savage is not entitled to an altered or amended judgment. He has not identified a clear error of law or fact, newly discovered evidence, an intervening change in controlling law, or any manifest injustice. See *Betts v. Costco Wholesale Corp.*, 558 F.3d 461, 474 (6th Cir. 2009) (describing the showing needed to alter or amend a judgment). Instead, Savage asks to relitigate issues the Court has considered [*4] and rejected, and seeks to raise novel arguments previously available to him. See *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008) ("Rule 59(e) ... 'may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.'" (quoting 11 *Wright & Miller*, Federal Practice and Procedure § 2810.1 (2d ed. 1995)); *Whitehead v. Bowen*, 301 F. App'x 484, 489 (6th Cir. 2008) (recognizing a party's "set[ting] forth his own account of the events" does not constitute "newly discovered evidence"). The Court Declines Savage's invitation. See *McFarlane v. Warden, No.*

2:18-cv-1377, 2019 U.S. Dist. LEXIS 128320, 2019 WL 3501531, at *1-2 (*S.D. Ohio Aug. 1, 2019*) (denying a Rule 59(e) motion to reconsider a habeas petition).

6. UNITED STATES SIX CIRCUTE COURT OF APPEALS CERTIFICATE OF APPEALIBILTY

The United States Court of Appeals for the Sixth Circuit rejected then re-characterized and reviewed petitioner merits using an incorrect legal standard as a “evidentiary rulings” and by doing so circumvented the *Fourteenth Amendment*, equal protection and due process of law by analyzing the “degree” of the case detective’s authentication under a harmless error standard instead of analyzing the detective’s representation of the photograph and its contents.

The six circuit declared the following: “Reasonable jurists would not debate [*6] whether Savage made a substantial showing of the denial of a constitutional right. *See 28 U.S.C. § 2253(c)(2)*. Each of Savage's claims was based on the purely conjectural and therefore frivolous premise that a swap of trial exhibits had occurred because the case detective testified that the subject photographs depicted "paperwork" instead of "Boost Mobile packaging." At worst, Savage identified some vagueness in the detective's authentication of the exhibits, and a state court's evidentiary rulings rarely rise to the level of a constitutional violation. *See Stewart v. Winn, 967 F.3d 534, 538-39 (6th Cir. 2020); Broom v. Mitchell, 441 F.3d 392, 406 (6th Cir. 2006)*. Reasonable jurists would not debate whether the trial court's admission of the subject exhibits rendered Savage's trial fundamentally unfair. *See Broom, 441 F.3d at 406.*”

XI. REASONS FOR GRANTING THE WRIT

A. To Avoid the Possibility of an Exchange in Photographs and or its Depicted Contents or the Insert of a Photo Shopped Photographs into the record at the end of a trial and or to Prevent a State from using a “Vagueness in Authentication” to Circumvent A Misrepresentation. The United State Supreme Court Should Amend Ohio and Federal Rule 901, Thereby, Requiring the “Representation,” of Photographs and Their Contents. Such an Amendment or Clarification to the Rule Would Eliminate the use of false evidence to obtain a conviction.

B. DIRECT APPEAL

The First District Court erroneously supplemented the case detective’s representation of the photographic and its contents for the prosecutor representations of the photographic and their contents, *State v. Savage*, 2019-Ohio-4859, [*P29], and by doing so, exchanged the subject of the photographs and their contents from “irrelevant” paperwork to “materiel” boost mobile packaging. Thus, using a false document that devices a material fact: *18 USCS 1001 (A)(1)(2)(3)*

Moreover, *Ohio* and *Federal* Evidence rules were enacted to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination. *Ohio* and *Federal Evid. R. 901, (b)(1)*, established the requirement of authentication or identification and should “now” in cooperate the requirement of “representation.” Thereby, in acting a procedure that would eliminate the possibility of photographs and its contents becoming, unlawfully exchanged for other inadmissible, prejudicial, photographs and their contents after the close of evidence at trial

or falsely represented during trial. In other words, whenever a state witness with firsthand knowledge produce testimonial evidence of a photograph and its contents that are intended to be introduce at trial and is later discovered to be a misrepresentation of the photograph and or its contents and the representation withholds a material fact from the materiality of the photograph and their contents or its relevance. The statement used to identify or authenticate and or “represent” the photograph “should” not only constitute a fraudulent statement, but is also “explicitly irrelevant” and cannot serve the purpose of authenticating, identifying or representing the photograph or its contents. Therefore, the publishing of the photograph without proper “representation,” identification or authentication that discloses to the jury rather or not the inferences that can be drawn from the photograph and its contents “could be true,” “are in fact true,” or, “are irrelevant,” the photograph and its contents should not only be “explicitly” “irrelevant” under *Ohio* and *Federal Evid. R.402*, but also the inadmissible evidence, if prejudicial, should be the equivalent to the knowingly use of false evidence to obtain a conviction.

In any event, the *Fourteenth Amendment*, due process clause and equal protection of law, should deprive any trial judge of the authority to admit any false writing or document, photograph and its contents knowing the same to contain any materially falsities into a trial court or post-conviction record. In other words, even a ruling and or evidentiary hearing performing such an act, if transpired, would be void and or a nullity, “instead of abuse of discretion.” and although the evidence may reside in the record, until the falsities are resolved, it should never officially be admitted into the record for the benefit of the moving party’s use, knowing the same to be used to obtain a conviction with its use.

Petitioner, petitions this honorable United State Supreme Court to clarify rather or not there the Fourteenth Amendment is violated when an appellant court supplements a witness representation of a photograph and its contents for the prosecutor representations of the photograph and its contents.

a.

TRIAL COURT POST CONVICTION 2953.21

Although this case is the first of its kind, if Ohio and Federal Evid R. 901 (B)(1) do not require to a witness to “representation” the photograph and its contents an accused in Ohio, will, and can, go to trial and get convicted with evidence that was never introduced at his or her own trial. The State of *Ohio* would enjoy an erroneous and unlawful discretion in what actually constitutes a “vagueness in authentication” of evidence vs what violates an accuse Fourteenth Amendment due process clause and equal protection of law.

Unfortunately for the accused, there will very seldom be any proof at all of such a malice act, outside of the examination of the trial court record that could help determine whether or not photographic evidence was exchanged after trial for other photographic evidence or was actually just falsified during trial. Regardless of which actually accrued the accused should enjoy the benefit of the equal protection and due process clause of law. In other words, whether the accuse could prove the falsification and tampering with a record during his trial or an exchange in photographic evidence after trial. The bottom line principle in either case will always be the

same. Which is, in cases like this, the foundation of admissibility for the photographic evidence will always be omitted from the record. Thus, the foundation is used to connect and establish the “relevance” and materiality of the evidence to the issues at trial. Therefore, without a judge ruling, finding the photographs and its contents relevant in the record or a prosecutor’s elicitation of relevance, or even a witness disclosure of relevance of the particular evidence. The applicable standard should be to analyze the photograph and their contents under the false evidence doctrine with the authority derived out of *Ohio* and *Federal Evidence Rule* 402, the contention should be irrelevant evidence is inadmissible, and if prejudicial, the inadmissible evidence should be equivalent to false.

As a principle of law, the state would have until a jury render the verdict to correct what it known to be false. After which, the safe guard of the equal protection of the law and due process clause of an accuse should automatically forfeit the use of the evidence from the state and the evidence should become ripe as a matter of “newly discovered evidence.” As a matter of course, an accuse should enjoy the benefit of evidentiary hearing. Upon a finding that the evidence is prejudicial, or there is any likely hood that the evidence contributed to the guilty verdict. The evidence, under the principle of fraud and *Brady*, that should satisfy the prongs of *O.R.C* 2953.21 post-conviction “unavoidably prevent” from discovery, “clear and convincing” and *Crim. R.* 33 leave to file delay New Trial Motion.

b. POST-CONVICTION O.R.C 2953.21 APPELLANT REVIEW

The trial court and district courts of appeals benefited from the use of the false evidence by using the appearance of the photographs and its contents in the trial record as proof that the photographs and its boost mobile contents were admitted during trial, instead of using the foundation of admissibility and the witness testimony attesting to the representation of the photographs and its contents, Ohio and Federal R. 901 (B)(1).

That being the case, if this honorable court incorporates the requirement of “representation” into Ohio and Federal Rule 901 (B)(1). Such an amendment to the rule would protect Ohioans constitutional due process clause and equal protection of law by requiring the District appellant Courts, when analyzing whether or not photographic evidence and its content were actually admitted during trial or just falsified during trial, to rely on the representation the foundation of admissibility, direct examination and cross examination of the testimony that allegedly admitted the photographic evidence and its contents into evidence which the accuse has called into question. Requiring the merit of the claim to be based on the testimony of the witnesses with fist hand knowledge, connecting the photographic evidence and its content to the issues at trial, thereby establishing its relevancy, and examining the trial transcripts in such a way that a reasonable person would believe that the defendant, and or trial attorney acknowledges the probative value of the photographic evidence and its contents in question.

In other words, when the Photographic evidence is called into question and cannot satisfy the above analysis the Photographs and its contents should be forfeited from use by the state and become ripe for the use by the accuse to pursuit relief from the conviction obtained with its use.

Satisfying the Crim. R. 52 (B) Plan error standard, the “unavoidably prevent from discovery” and “clear and convincing evidence” prong in O.R.C 2953.21, and Crim. R. 33 unavoidably prevented from discovery.

Such an amendment to the rule or clarification is necessary to prevent the state from circumventing the federal law, *18 USCS § 1001*; *(a) (1)(2)(3)* and Ohioans Fourteenth Amendment, equal protection and due process clause of law with the device of a material fact, materially falsification, fictitious, or the fraudulent statement or representation or the uses of any false writing or document knowing the same to contain any materially falsities to obtain a conviction.

C. WRIT OF HABEAS CORPUS

The United States Federal District judgment, declaring that the case detectives' representation of the photographs and its contents to depicting "paperwork" being consistent with the photograph and its boost mobile contents should violate Ohio and Federal Rule 901 (B)(1), the "representation of the photograph and its contents. A violation of this kind should be a fraudulent statement, material omission, a falsifies, the concealment that the photographs and its contents are trademarks by boost mobile, concealment that the state never produced evidence that the boost mobile items could be, are in fact from, or precluded as evidence. Which would and do so, cover up the state prosecutors scheme that the boost mobile contents were never identified, never examined never cross examined and uses a materially false document knowing the same to contain materially false, fictitious, or fraudulent statement, 18 USCS § 1001.

More than 30 years ago this Court this court up held in Miller v. Pate, 386 U.S. 1 that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. Mooney v. Holohan, 294 U.S. 103. There has been no deviation from that established principle. Napue v. Illinois, 360 U.S. 264; [****11] Pyle v. Kansas, 317 U.S. 213; cf. Alcorta v. Texas, 355 U.S. 28. There can be no retreat from that principle here.

a. **USCS FEDURAL CIVIL PROCEDURAL RULE 59**

Petitioner filled a reconsideration under the newly discovered evidence exception with the United States Federal District court and specifically outlined the unidentified items depicted in the trial photographs as "Petitioner exhibits 17F,17H,17G" proclaiming that they are examples of "unaccounted for items" depicted in the trial photograph that improperly influenced the jury's deliberations.

However, the District Court declaration is the heart of the matter in question, "Petitioner exhibits 17F,17H,17G" are trademarked by boost mobile and therefore are inferred as material and relevant to the issue at trial. With that, the use of the phase "paperwork" to representation the trade marked boost mobile items falsifies, conceals, and devices a material fact that uses a materially fraudulent statement and representation of the photographs depiction of the trade mark "boost mobile" items and therefore the use of those photograph and contents should be forfeited from use by the state as a matter of the Fourteenth Amendment equal protection and due process clause and ripe for an accused in pursuant of relief from the conviction obtain with its use as a matter of the equal protection of the law. With that, and under the circumstance that an accuses identifies individual "petitioner exhibits" that are material and are depicted inside of a photograph labeled as a trial exhibit the "petitioner exhibits" should, under the Fourteenth Amendment equal protection and due process clause should constitute as newly discovered evidence and the state should be preclude from its use.

D. UNITED STATE SIX CIRCUTE COURT OF APPEALS

The United States Six Circuit Court should have analyzed Petitioner merits guided by an inquiry analyzing whether or not photographs and its contents were actually admitted during trial, by focusing on the foundation of admissibility, direct examination, and cross examination of the testimony that laid the foundation of the photographs and its contents called into question by petitioner. The six circuit should have based the merit of the claim on whether or not the testimony of the witnesses with fist hand knowledge, connects the photographic evidence and its content to the issues at trial, and or establishing relevancy from the evidence of examining the trial transcripts in such a way that a reasonable person would believe that the defendant, and or trial attorney acknowledges the probative value of the photographic evidence and its contents in question. For example: without the physical photographs and its contents the description herein of the photographs and contents provided would lead any reasonable person to believe that what the detective recovered under all circumstances was “irrelevant” to any and every issue at trial. Meaning, there is no foundation of admissibility, no factual relevance connecting any issue at trial.

Ohio and Federal Evid. R. 402 should deprive a trial judge of the authority to admit “explicitly,” “inadmissible” evidence in to the trial court record. “Explicitly” inadmissible evidence without a foundation of admissibility should forfeited from any use by the state and in violation of an accuse Fourteenth Amendment, equal protection of law and due process clause, and the evidence should be ripe as newly discovered evidence that should satisfy the requirement of SHULP, the new reliable evidence, critical physical evidence, that was not presented at trial, " Schlup v. Delo, 513 U.S. 298, 324, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995).

CONCLUSION

Petitioner contends, either the photographs and its contents were photo shopped, swapped out for other identical photographs and their contents or according to the state just falsified during the publishing of the photographs. Either way, the state poisoned the juice in the tea cup with misconduct. The First Distract court of appeals, although not soliciting the juice, drank from the cup when it appeared. The United States District Court seemed to add sugar and sip while the Six Circuit Court of appeals stirred the juice with the intent to pass on what was left in the cup to the United State Supreme Court. Petitioner, petitions this honorable court to purge the juice from the poisonous tea cup.

Respectfully



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