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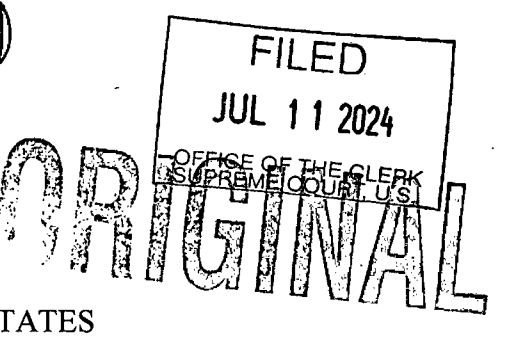

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER SMITH PETITIONER

Vs.

STATE OF OHIO-RESPONDENT.

ON PETITION FOR PETITION FOR WRIT OF CERTIORARI

THE OHIO COURT OF APPEALS
SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

Christopher Smith
Inmate No. A806276
P.O. BOX 5500
Chillicothe, Ohio 45601

PETITIONER-PRO SE.

QUESTIONS PRESENTED FOR REVIEW

1. Is a prejudicial joinder concerning unrelated counts a fundamental violation of One's constitutional right to a fair trial, if the facts of one incident intrudes on the other regardless of if it causes confusion to a jury or disregards the prejudice over the benefit standard contained in a rule of evidence?

2. Does this court continue to standby State v. Williams, 4 Ohio St. 3d 74, 446 N.E. 2d 779, syllabus (1983) for the proposition that that a confidential informant must be disclosed if its disclosure establishes an element of a crime or would be helpful or beneficial to the accused in preparing or making a defense to criminal charges? And would it not disregard or defeat the purpose of the rules of evidence?

3. Has the Supreme Courts Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) and this courts State v. Thompkins, 78 Ohio St. 3d 380, 386, 1997-Ohio-52, 678, N.E. 2d 541 (1997) been misapplied if evidence in a double murder trial presented evidence that is legally insufficient to support a verdict but was not reversed on direct appeal?

4. Does this court continue to stand by Roviaro v. United States, 353 U.S. 53; State v. Williams, 4 Ohio St. 3d 74, 446 N.E. 2d 779, (syllabus for the State of Ohio) for the proposition that "the identity of an informant must be revealed to a criminal defendant when the testimony of the informant is vital to establishing an element of the crime or would be helpful or beneficial to the accused in preparing or making their defense to criminal charges?

5. Can a search warrant issue on "probable cause" for a search based on information received from a confidential informant to believe that contraband or evidence is located in a particular place. If the search warrant affidavit is silent on the informant's veracity, reliability or basis of knowledge and where the affiant had no personal knowledge of the confidential informant's reliability, veracity or their basis of knowledge because the affiant had not talked to the confidential informant?

LISTED PARTIES

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

RELATED CASES

- State v. Smith Court of Common Pleas, (Trial Court Montgomery County, Ohio Case No. Judgement entered on September 2, 2022.

- State v. Smith, 2023-Ohio-4565, 2023-Ohio-4565; 2023 Ohio App. LEXIS 4389; 2023 WL 8670757 (Ohio Second Appellate District Case No. 29597. Entered on December 15, 2023.

- State v. Smith, 2024 Ohio LEXIS 668,(Ohio Supreme Court Case No. 2024-0126. Entered on April 2, 2024.

- State v. Smith. 2024-Ohio-1974, 2024 Ohio LEXIS 1156 Supreme Court of Ohio decision on Reconsideration declining review, Entered on May 28, 2024.

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

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

OPINIONS BELOW

[X] For cases from State courts:

The Opinion of the Highest state court to review the merits appears at Appendix [B] and is reported at State v. Smith, 2023-Ohio-4565, 2023-Ohio-4565; 2023 Ohio App. LEXIS 4389; 2023 WL 8670757. The opinion was rendered on December 15, 2023. Ohio Second Appellate District Case No. 29597.

[X] A timely appeal was filed to the Supreme Court of Ohio on January 24, 2024. That court Declined jurisdiction, the entry appears at Appendix [C] to the petition and is reported at State v. Smith, 2024 Ohio LEXIS 668, (Ohio Supreme Court Case No. 2024-0126. Entered on April 2, 2024. A timely reconsideration was filed and the court denied reconsideration which appears at Appendix [D] to the petition and is reported at State v. Smith,. 2024-Ohio-1974, 2024 Ohio LEXIS 1156 Entered on May 28, 2024.

JURISDICTION

[X] for cases from state courts:

The date on which the highest State court decided my case was May 28, 2024. A copy of that decision appears at Appendix [D].

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

UNITED STATES CONSTITUTION:

Fourth Amendment, Fifth Amendment, Sixth Amendment and Fourteenth Amendment U.S. Const. Amend. XIV, § 1 (Equal Protection Clause).

REVISED CODE SECTIONS

2903.02 and 2933.83.

STATEMENT OF THE CASE

In January 2020, Christopher Smith, (hereinafter "Petitioner") was indicted in a 14-count indictment in Montgomery Ohio on Counts One through Eight relating to the shooting death of Brandon Harris and the non-fatal shooting of William Earnest at approximately 3:00 a.m.at Rick's Jazz Club, located at 1832 Lakeview Avenue in Dayton Ohio. Counts Nine through Fourteen arose out of the shooting death of Clarence Brown at approximately 10:10 a.m. in the front of the Save Food Super Market, at 1829 Germantown Street in Dayton Ohio.

Petitioner filed motions to suppress all eyewitness identifications and any evidence seized from his residences as well as all evidence obtained from his cell phone and related pinging and unlawful tracking of his phone. Petitioner moved for relief from prejudicial joinder of counts arguing that the two sets of offenses were completely unrelated and violated his fundamental right to a fair trial. Petitioner filed a motion requesting the trial court order the State's disclosure of the confidential informant of which was the only person who accused Petitioner of the shootings, the motion was denied. All motions were denied.

A jury trial commenced on July 25, 2022 the State presented testimony of witnesses from both shooting scenes, mainly Earnest, responding patrol officers and investigating homicide detectives, evidence technician, a deputy coroner who conducted or supervised the autopsies, and a firearm examiner from the crime lab. The State also offered numerous exhibits, including photographs, surveillance videos, spent bullets and bullet cartridges, photo spreads, unrelated bullets found in Petitioner 's apartment which contained a different caliber then those found at the shootings, and other items. Petitioner offered four witnesses, a bartender at the jazz club, a witness for the food market shooting, a Detective "Williams" who had previously testified as a State's witness, a Doctor Melissa Berry, a

memory and eyewitness identification expert. No witnesses testified Petitioner was the shooter of either incident. The jury found Petitioner guilty of all offenses and specifications. Petitioner was sentenced to a minimum of 38 years to life in prison to a maximum of 39 years to life. A motion for a new trial was filed under Criminal rule 33 based on a responses given by a jurors indicating they watched a video that was not admitted during the trial; repeated court disturbances and misconduct by the judge involving unmonitored communication with the jury. The court denied the motion without a hearing. Petitioner timely appealed raising relevant assignments of errors of which he reiterates to this court.

On December 15, 2023 the Ohio Second Appellate District issued an opinion affirming the conviction and sentence. Petitioner timely filed a jurisdictional statement to the Ohio Supreme Court who declined jurisdiction and now raises the following Propositions of Law to this court:

PROPOSITION OF LAW NO. ONE:

THE TRIAL COURT ERRED IN OVERRULING PETITIONER 'S MOTION FOR RELIEF FROM PREJUDICIAL JOINDER.

Petitioner requested the trial court to sever the Jazz Club shooting incident from Save Food Mart shooting in light of Crim. R. 8(A) State v. Hamilton, 37 Ohio St. 3d 153, 158, 524 N.E. 2d 476 (1988) and Crim. R. 14 permits a defendant to request severance of the counts in an indictment 'on grounds that he or she is prejudiced by the joinder of multiple offenses." State v. Ford, 158 Ohio St. 3d 139, 2019-Ohio-4539, 140 N.E. 3d 616, ¶ 104, quoting State v. LaMar, 95 Ohio St. 3d 181, 2002-Ohio-2128, 767 N.E. 2d 166, ¶ 49.

The record established the Jazz club shooting and Save Food Mart shooting were two different alleged criminal episodes occurring at different times and locations. The only similarity in the two is both occurred on December 5, 2019. They were committed seven

hours apart-the Jazz Club shooting occurred at approximately 3:09 am at 1832 Germantown Street Dayton Ohio and the Save Food Mart shooting at approximately 10:13 am at 1829 Germantown Street Dayton Ohio. Consolidation of the counts resulted in prejudice to Petitioner and denied him his right to a fair trial where the jury combined evidence of the two crimes to find Petitioner guilty when, if considered separately, it would not have been able to have done so. The record establishes the two murders evidence was difficult- if not impossible- for the jurors to hold separate and distinct to the criminal allegations. The jurors were confused and used one offense as corroborative of the other when in fact no such relationship existed. Even the State confused the witnesses when, in her direct exam of Haynes, referenced "...we just saw Dwanesha... end up going into the club." Tr., p. 670. Dwanesha Nicholson, was a witness of the alleged Food Save Mart shooting- not the Jazz Club shooting. And Nicholson was not at the Jazz Club at all. The trial court disregarded that Evidence of prior alleged incidents are not admissible under Evid. R. 404(B) because the prior alleged incidents are not inextricably related to the crimes charged in this case and do not form part of the immediate background or the basis for the crimes charged. State v. Sims, Court of Appeals of Ohio, Second District, Green County 191 Ohio App. 3d 2010; 2010-Ohio-6228 State v. Curry (1975), 43 Ohio St. 2d 66, 73, 330 N.E. 2d 720.

No evidence which formed "part of the immediate background of the alleged act which forms the foundation of the crime charged in the indictment, "and which are "inextricable related to the alleged criminal act." The State failed to demonstrate or offer any evidence that the two separate incidents shared a "distinct, identifiable scheme, plan, or system used in the commission of the charged offense." Moreover, the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. See

Evid. R. 403; State v. Williams, 134 Ohio St. 3d 521, 983 N.E. 2d 1278 (Ohio, 2012.) Whoever, shot the first victim at the night club is on video were wearing a mask and "no one" stated that they saw behind the mask or that they could identify the person wearing the mask. The State attempted to claim it was the same clothes that can be matched and alleged Petitioner wore those clothes. However, a witness at the Save the Food Mart shooting described the man running away after the shooting as wearing a red coat whereas the Jazz Club shooter wore a blue Jordan sweatshirt undermining the states theory. No evidence suggest Petitioner had a motive to harm any of the people at either place. The State presented no evidence that any of the individuals involved with the Jazz Club were also involved with the Save Food Mart shooting. The shootings were unrelated and should have been tried separately.

PROPOSITION OF LAW NO. TWO:

THE TRIAL COURT ERRED IN OVERRULING PETITIONER 'S MOTION TO SUPPRESS.

Petitioner filed several motions arguing that certain pieces of evidence should be suppressed, to wit: Photo spread evidence, evidence seized from his residence at 5067 Well Fleet Drive Trotwood Ohio and evidence from a phone.

Photo spreads of Earnest, Haynes and Nicholson:

Testimony was presented that photospreads were shown to: William Earnest, Dondray Haynes, Dijon Martin, Nicole Moore, Vanessa Jackson and Dwanesha Nicholson. Revised Code §2933.83(B)(1)(2) & (3) codifies the specific procedures law enforcement are required to follow when conducting photo line ups concerning blind administrators. "Blind administrator' indicating an administrator that does not know the identity of the suspect. See Revised Code §2933.83(A)(2). State v. Howard, 2014 Ohio 2176 (Ohio App. 2014.)

Detective Zachary Williams, engaged in the investigatory functions of the murders responding to the Jazz Bar, spoke to bartender Amy Hoskins (Tr., P. 80), downloaded hours of video surveillance from the Jazz Bar, Save Food Mart and Bancroft apartment areas. Tr., p. 84. He rode with Detective Tom Cope around Trotwood for "approximately an hour" looking for car driven by suspect Tr., pp. 120,122. and worked on phone "ping" information related to a suspect. Tr., p. 121. Williams thereafter presented photo spreads to the witnesses. Earnest-one of the victims of the Jazz Club shooting-circled Petitioner 's photo and indicated that was his cousin and someone he knows. Tr., pp 94-95. With that information known to him, Williams then presented a photo spread to Haynes who circled Petitioner and indicated he "patted down" Petitioner at the Jazz Club. Tr., p. 108. Williams then presented a third, and final photo spread to Nicholson who circled Petitioner 's picture because the suspect had similar eyes. When asked if anyone told her "who to circle" she answered, "No, they didn't. It's just basically saying, like, we know they on here. Pick one." Tr. P. 622. Williams told the jury that Nicholson made a "positive identification". Tr. P. 1297. Williams would only know an identification was "positive" unless he knew the identity of the suspect. Williams was not a blind administrator and made the identifications suggestive in violation of Petitioner 's constitutional rights.

Trotwood address evidence:

"The most basic function of any government is to provide for the security of the individual and of his property. Miranda v. Arizona, 384 U. S. 436, 384 U.S. 539 (1966). Law enforcement officers searched the residence of Petitioner without his consent, searched and created an affidavit without probable cause to do so relying on a name provided by an unnamed informant that was not interviewed by investigating detectives. An informant's

"veracity," "reliability," and "basis of knowledge" are all highly relevant in determining the value of his report. Illinois v. Gate, 462 U.S. 213 (1983) at 230. The U.S. Supreme Court opined, the element "...should be understood simply as closely intertwined issues that may usefully illuminate the common sense, practical question whether there is "probable cause" to believe that contraband or evidence is located in a particular place." The search warrant in this case was silent on the informant's veracity, reliability or basis of knowledge. Likely because Detective Steele had no personal knowledge of the CI's informant's reliability (Tr. Pp. 273, 301), veracity (Tr., p. 301), his basis of knowledge (Tr., p. 301) and had not talked to the CI (Tr., p 301).

Phone:

Petitioner moved to suppress all evidence obtained or seized as a result of information obtained from his cell phone without a warrant. In Riley v. California 573 U.S. 373 (2014) The Supreme Court held that police cannot search information from a cell phone without a warrant. Citing Carpenter v. United States, 138 S. Ct. 2206 (2018), it further held acquisition from wireless carriers of defendant's historical cell-site location information (CSLI) was a search under the Fourth Amendment, and a warrant was required. Searches and seizures conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

Detective Steele stated "I 'pinged' Petitioner 's phone number under exigent circumstances..." Search Warrant Affidavit, page 2. ¶ 5. It is Petitioner 's position that the Detective needed a warrant to "ping" his phone under both the federal and Ohio

Constitutions. In other words, an exigent circumstance did not exist at the time the Detective "pinged." Exigency is defined as "a situation where the inevitable delay incident to obtaining a warrant must give way to an urgent need for immediate action.'" United States v. Keys, 145 Fed. Appx. 528 (6th Cir. 2005) quoting U.S. v. Morgan, 743 F. 2d 1158, 1162 (6th Cir. 1984). The doctrine of exigency applies in order to prevent "the imminent destruction of vital evidence." At the time Detective Steele received information from Agent Buzzard, all law enforcement knew was a shooting occurred. As opposed to stating "an exigency existed" to justify violating the fourth Amendment, the Detective elected not to secure a warrant. Exigency also applies where the police encounter the "need to protect or preserve life or avoid serious injury." Mincey v. Arizona, 437 U.S. 385, 392, 98 S. Ct. 2408, 2413 (1978). The circumstances did not fit. United States v. Aquino, 836 F. 2d 1268, 1270 (10th Cir. 1970). Police manipulation or abuse exists when police create the exigency. See, e..g. Kentucky v. King, 563 U.S. 452, 453 (2011); Ewolski v. City of Brunswick, 287 F. 3d 492, 504 (6th Cir. 2002); 1, 2006-Ohio-862(6th Dist. 2006); United States v. Williams, 354 F.3d 497, 504-05 (6th Cir. 2003). Cf. United States v. Purcell, 526 F. 3d 953, 960 (6th Cir. 2008).

Here the affiant in the search warrant affidavit does not inform the warrant issuing judge of the facts so that the warrant issuing judge can determine if an exigency existed, the affiant provided the conclusory averment "I 'pinged' Petitioner 's phone under exigent circumstances." Yet, he had already conducted the 'ping' search without a warrant. Conclusory averments do not establish exigent circumstances. See e.g., Smith v. Stone, 2000 U.S. App. LEXIS 11785, Fn.3 (6th Cir. 1999). When at the location of the shooting, the Detective stated that he and other detectives interviewed witnesses who "could not" identify

the shooter. (S.W. Affidavit, p. #2, ¶2.) The detective did not possess any information that Petitioner 's phone was located on Petitioner. Thus, finding the location of the phone did not necessarily mean finding the location of Petitioner. Secondly, the information the detective had prior to the "pinging," was that a suspect ran toward the DeSoto Bass Courts but he also had information that the suspect supposedly ran to the Washington Arms apartments on Bancroft Street, across from the DeSoto Bass Courts. Indicating there was no exigent circumstances present.

PROPOSITION OF LAW NO. THREE:

THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING PETITIONER 'S MOTION FOR THE STATE TO DISCLOSE CONFIDENTIAL INFORMANT AND FURTHER DENIED PETITIONER 'S ABILITY TO PRESENT A FULL DEFENSE AT TRIAL BY NOT ALLOWING THE DEFENSE TO CALL THE INFORMANT.

Petitioner sought disclosure of a confidential informant ("CI") purportedly used in the investigation of the shootings at issue in his case. Detective Steele did not have a possible suspect until the CI came forward. Tr., p. 1391. Where disclosure of an informer's identity, or of the contents of his communications, is relevant and helpful to the defense of an accused, or is essential to a fair trial, the government's privilege to withhold disclosure of the informer's identity must give way. Roviaro v. United States, 353 U.S. 53 (1957) at syllabus. FBI Agent Buzzard informed Detective Cope that one of his informants (later determined to be William "Rashawn" Mcintosh) was present at the scene of the homicide that took place at Save Food Market and that Christopher 'Pooter' Smith was the shooter. This information was relayed to the Dayton police Department, who used the information to place Petitioner 's photograph in a photo spread to show witnesses. The State argued the sole use of the CI's information was to place Defendant's photo in the photo spread, but it

disregarded if the CI had a motive to lie. In State v. Williams, 4 Ohio St. 3d 74, 446 N.E. 2d 779, syllabus (1983) this court held "the identity of an informant must be revealed to a criminal defendant when the testimony of the informant is vital to establishing an element of the crime or would be helpful or beneficial to the accused. When the degree of participation of the informant is such that the informant virtually becomes a state's witness, the balance swings in favor of requiring disclosure of the informant's identity. State v. Price, 2nd Dist. Montgomery No. 223080, 2008-Ohio-4746, ¶¶27-30. The trial court erroneously determined the CI's testimony would not be helpful to the defense. The CI informed the FBI that he/she "heard" both about a witness to the shooting and that Petitioner was the perpetrator who then shared this information with the Dayton Police who used it to place Defendant's photograph in a photo spread to show to unrelated witnesses. Petitioner needed the identity of the CI so he could interview him and call him as a witness. The photo spread identifications by witnesses did not identify Petitioner as the shooter-as the CI claimed additionally the photo spreads were presented at trial. No one identified Petitioner as a shooter, the shooter was masked, left the scene, no gun found and no DNA evidence linked Petitioner to the crime scene. Importantly Officers found no witnesses until after information was received from the informant. Searches were conducted with, and without, a warrant based upon the unnamed informant's words alone. The informant, was the only person accusing him of being a shooter and his testimony would have been material and beneficial.

PROPOSITION OF LAW NO. FOUR:

THE JURY'S VERDICTS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

The trial court and Second Appellate District both misapplied State v. Thompkins, 78 Ohio St. 3d 380, 386, 1997-Ohio-52, 678, N.E. 2d 541 (1997) by applying it to the manifest

weight but not to the sufficiency part of the argument thereby violating Jackson v. Virginia 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). Mentioning but not applying "the relevant inquiry was whether after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." State v. Robinson, 124 Ohio St. 3d 76, 2009-Ohio-5837, ¶34, 919 N.E. 2d 190, quoting State v. Jenks, 61 Ohio St. 3d 259, 574 N.E. 2d 492 (1991), ¶ 2 the proper application of Jackson v. Virginia, supra, after it should have considered the elements of R.C. 2903.02 Ohio's murder statute which required one to cause the purposeful "death of another". Citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

The facts are clear "no" witnesses identified Petitioner as a shooter of either murder. The clothing of the shooter in each murder incident was different- blue sweatshirt (Jazz Club) versus a red coat (Save Food Mart.) No firearms were recovered. No scientific evidence (eg, DNA, fingerprint) linked Petitioner to either crime. A state's witness Haynes admitted that he fired his gun after contradicting himself. Tr., p. 758. And Tr., p. 763. The witness further contradicted the suspects clothing. Tr.p.717. And. Tr., p.717. He lied to the jury having a criminal justice degree. Tr., pp. 645-655 then recanted Tr.pp. 832, 845. A Dwanesha Nicholson testified she had not seen the person who fired a shot. Tr., pp. 574, but seen the person who ran after the shot was wearing a red coat Tr., pp. 574-575. A Vanessa Jackson testified she saw a man in a red coat run away after hearing shots. Tr., p. 1748. The Supreme Court holds for a conviction to be constitutionally sound, every element of the crime must be proved beyond a reasonable doubt. In re Winship, 397 U.S. at 364. No

evidence establishes Petitioner shot or killed anyone making the Jury's verdicts not supported by sufficient evidence and against the manifest weight of the evidence.

PROPOSITION OF LAW NO. FIVE:

THE TRIAL COURT ERRED IN OVERRULING PETITIONER 'S MOTION FOR MISTRIAL AND HIS MOTION FOR NEW TRIAL.

Petitioner moved for a mistrial/new trial, because after the verdict, court's staff, counsel and the state's representative went into the jury room to talk to the jurors. Jurors advised the main evidence that led them to the guilty verdicts was a video. Specifically, States Exhibit 52 was not shown to the jury but was entered into evidence for appellate record purposes only. Tr., p.1622. Exhibit 52(A). This exhibit was in the jury's possession who viewed it in violation of Petitioner's right to a fair trial. Under Crim. R. 33, a new trial may be granted" ... Irregularity in the proceedings... or Misconduct of the jury, prosecuting attorney, or the witnesses for the State. ***. An arrest was made in the presence of the jury conducted by the states stand-in representative Sergeant Steele, jurors also witnessed a lady "Loretta" being forced to leave the courtroom where her phone was taken away and pictures deleted. The incidents left impressions on the jurors placing the states representative in a heightened state, where he appeared accredited for his conduct. After trial the jury claimed it reviewed a "Bancroft Street Video" which allowed them to identify Petitioner as the suspect depicted in the video who "handed something" to someone. The jury stated "we had to slow down to see it." No such evidence was presented during trial, and counsel stated he had never seen any such video. Petitioner 's counsel stated he had viewed and "slowed down" each "Bancroft Street Video" and none of them show a suspect handing anything to anyone. The Court disturbance and improper conduct by the jurors were grounds for a mistrial and new trial of which counsel requested. Tr., p. 1003-1019.

PROPOSITION OF LAW NO. SIX:

PETITIONER 'S RIGHTS WERE VIOLATED WHEN THE TRIAL JUDGE MET WITH THE JURY BEFORE DELIBERATIONS.

Petitioner's fundamental right to a fair trial was violated when the trial judge inappropriately met with jurors before deliberations after the state rested, first allegedly discussing finishing witnesses and going longer into the day for court (Tr., pp. 615. 629.) Second time allegedly discussing timing and scheduling (Tr., p. 1319.) and the third was allegedly discussing an alternate juror's dismissal for a "personal conflict". (Tr., p. 1799.) Any of the instances could have tainted the jurors and Petitioner had a Due Process right to be present for all of the discussions. Snyder v. Massachusetts, 291 U.S. 97, 105-106, 54 S. Ct. 330, 332, 78 L. Ed. 674 (1934).) Private contacts between a judge and jury which occurred before the commencement of deliberations are no less of a problem than those occurring after deliberations have started. Such contacts are "pregnant with possibilities for error." United States v. Smith 31 F. 3d 469 (7th Cir.) citing to United States v. United States Gypsum Co., 438 U.S. 422, 460, 57 L. Ed. 2d 854, 98 S. Ct. 2864 (1978). Snyder v. Massachusetts, 291 U.S. 97, 105-106, 54 S. Ct. 330, 332, 78 L. Ed. 674 (1934).) Once the jury has begun to deliberate, counsel must be given an opportunity to be heard before the trial judge responds to any juror's inquiry. Rogers v. United States, 422 U.S. 35, 95, S. Ct. 2091, 45 L. Ed. 2d 1 (1975).

PROPOSITION OF LAW NO. SEVEN:

PETITIONER 'S RIGHT TO A FAIR TRIAL WAS VIOLATED BECAUSE OF PROSECUTORIAL MISCONDUCT.

The prosecutor engaged in misconduct affecting Petitioner s right to a fair trial when she (1) insulted Petitioner 's defense counsel, (2) insulted Petitioner and (3) indirectly

commented on Petitioner not testifying. Prosecutorial misconduct warrants reversal if conduct deprived the defendant of a fair trial. State v. Apanovitch (1987), 33 Ohio St. 3d 19; State v. Keenan (1993), 66 Ohio St. 3d 402. A prosecutor strikes hard blows, but may not strike foul ones. Berger v. United States (11935), 295 U.S. 78, 88. In closing argument, the prosecutor made the following insulting comments about Petitioner 's trial counsel:

> "The only evidence that you have that the cell phone—well, the only statements, because it's not evidence, that the cell phone company can track your phone everywhere you go, is from a guy defense counsel who can't run a video. "

Tr. pp. 2073-2074 (emphasis added.)

> "There was a suggestion that we didn't put – we didn't put Vanessa Jackson on to hide her. He can't speculate why we did or didn't put witnesses on. You can't speculate about what witnesses said or didn't say if they were called. Maybe it was because it was a seven-hour cross-examination of the witness.[1] Maybe it was because we thought he'd take the bait."

Tr. P. 2079 (emphasis added.)

In closing argument, the prosecutor insulted Petitioner:

> "You think you can just send it—give me what you got on Chris Smith. There—and he—and by the way, look at the phone box that matched the phone they were tracking. It's a flip phone. Talking about Snapchat and all these things you're doing. He's running on a flip phone back in 2019."

Tr. P. 2075 (emphasis added.)

The State also made indirect comments about Petitioner not testifying infringing on his right not to testify. Tr. P. 2078

("uncontroverted evidence"), 2086 ("you were told I have information I can't share with you";... I bet he didn't want us to show those coroner photos"), 2090 ("The people who would have known what was between them beef, one of them dead. The other one's in Georgia.") 2097-2098. Such conduct was well beyond the normal latitude allowed in

[1] The reference was to defense counsel's examination of Detective Zachary Williams.

closing arguments, was improper, prejudicial and Petitioner 's right to a fair trial was largely violated.

Defendant-Petitioner urges this court to accept jurisdiction to consider the substantial constitutional questions and issues of public as well as great general interest posed in the case relating to all defendants in this nation who are or may be tried and convicted of cases of which they are innocent or wrongly charged.

The Supreme Court of Ohio declined jurisdiction on April 2, 2024. Petitioner now seeks this courts attention on the proposed question presented for not only Ohio but for the entire country.

REASON FOR GRANTING THE PETITION

This case involves felonies and raises both substantial constitutional questions and issues of great general public interest. The issues raised are important to the citizens of this nation, pertaining to criminal Defendants constitutional rights to fair trials and fair criminal proceedings. This court is urged to grant this writ of certiorari to address the following issues and proposed questions:

1. Is a prejudicial joinder concerning unrelated counts a fundamental violation of One's constitutional right to a fair trial, if the facts of one incident intrudes on the other regardless of if it causes confusion to a jury or disregards the prejudice over the benefit standard contained in a rule of evidence?

2. Does this court continue to standby State v. Williams, 4 Ohio St. 3d 74, 446 N.E. 2d 779, syllabus (1983) for the proposition that that a confidential informant must be disclosed if its disclosure establishes an element of a crime or would be helpful or beneficial to the accused in preparing or making a defense to criminal charges? And would it not disregard or defeat the purpose of the rules of evidence?

3. Has the Supreme Courts Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) and this courts State v. Thompkins, 78 Ohio St. 3d 380, 386, 1997-Ohio-52, 678, N.E. 2d 541 (1997) been misapplied if evidence in a double murder trial presented evidence that is legally insufficient to support a verdict but was not reversed on direct appeal?

4. Does this court continue to stand by Roviaro v. United States, 353 U.S. 53; State v. Williams, 4 Ohio St. 3d 74, 446 N.E. 2d 779, (syllabus for the State of Ohio) for the proposition that "the identity of an informant must be revealed to a criminal defendant when the testimony of the informant is vital to establishing an element of the crime or would be helpful or beneficial to the accused in preparing or making their defense to criminal charges?

5. Can a search warrant issue on "probable cause" for a search based on information received from a confidential informant to believe that contraband or evidence is located in a particular place. If the search warrant affidavit is silent on the informant's veracity, reliability or basis of knowledge and where the affiant had no personal knowledge of the confidential informant's reliability, veracity or their basis of knowledge because the affiant had not talked to the confidential informant?

As Stated this case involves felonies and raises both substantial constitutional questions and issues of great general public interest for criminal Defendant's in this nation who may be innocent of crimes. At bar this case involves two unconnected murder trials which occurred at different times with different witnesses. Their merger for the purpose of a trial embarked on multiple fundamental protected rights violations, under not only the Ohio Constitution but the United States Constitution involving: the right to be free from prejudicial joinders of offenses; a court's refusal to disclose a confidential informant; a Defendant's right to have evidence suppressed which was secured without a warrant by election of law enforcement and not circumstances; An appellate courts misapplication of the sufficiency of the evidence standard discussed in State v. Thompkins and both judicial and juror misconduct. Petitioner urges this court accept this case's giving permission to rephrase any questions it decides or to address the following questions as stated:

This court should accept jurisdiction over this case to consider the serious issues this case presents.

CONCLUSION

The petition for a writ of certiorari should be respectfully granted. Signed under the penalty of perjury.

Christopher Smith

Christopher Smith

Date June 28, 2024