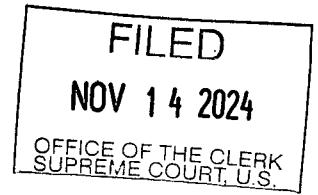


24-6379

No. _____



ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Lamar Reese — PETITIONER
(Your Name)

VS.

State of Ohio — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Ohio
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lamar Reese #660559
(Your Name)

P.O. Box 45699
(Address)

Lucasville, Ohio 45699
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

The Cause involves a Substantial Constitutional question pursuant to Article IV, Section 2(B)(2)(a)(ii) of the Ohio Constitution, and fundamental-fairness review under the 5th and 14th Amendments, Due Process Clause under the U.S. Constitution, and fundamental-fairness review under the 6th Amendment, particularly as the right to Confrontation and as to the right to be confronted only with credible and admissible evidence, this case is one of a Constitutional dimension. Furthermore, in so far as this a case that involves a felony and involves a felony and involves review of "Scientific" evidence, it is one of great public and/or general interest.

The Court of Appeals of Ohio Erred in denying the motion for leave to file reconsideration, and the application for reconsideration, while there is Subsequent Supreme Court of Ohio Judgment invalidating the Court of Appeal's prior holding under the standard of Ohio App.R. 14(B).

The Supreme Court of Ohio accepted Jurisdiction and reviewed a similar delayed reconsideration proceeding in State v. Moore, 149 Ohio St. 3d 557, 2016-Ohio-8288, 76 N.E. 3d 1127, ¶¶ 90.

The issue is the admissibility of the polygraph examination under Daubert v. Merrell Dow Pharmaceutical, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed. 2d 469 (1993), in which the Supreme Court of Ohio adopted this United Supreme Court case.

This cause involves a case in which a polygraph examination came into evidence without satisfying the bare elements of admissibility under Daubert and Federal Rules of Evidence 702 and Ohio Rules of Evidence 702.

Petitioner-Lamar Reese posits that for the reasons above that this Court should take review.

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5,6
CONCLUSION.....	7

INDEX TO APPENDICES

APPENDIX A *The Opinion of the Seventh District Court of Appeals of Ohio*

APPENDIX B *The Decision of the Supreme Court of Ohio*

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
State v. Moore, 149 Ohio St. 3d 557, 2016-Ohio-8288	5
State v. Grate, 164 Ohio St. 3d 9, 2020-Ohio-5584	5
State v. Lyttle 2012-Ohio-3042	5
State v. Lawson 2013-Ohio-803	5
State v. Moore 2013-Ohio-5868	5
State v. Reese, 7th Dist. Mahoning No. 14 MA 116, 2016-Ohio-557	5
Terry v. Caputo, 115 Ohio St. 3d 351	5,6
State v. Thomas 2020-Ohio-4635	5
Miller v. Bike Ath. Co., 80 Ohio St. 3d 607	6
Daubert v. Merrell Dow Pharmaceutical, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)	5
STATUTES AND RULES	
Ohio App.R. 26(A)	5
Ohio App.R. 15(A)	5
Ohio App.R. 14(B)	5
Ohio Rules of Evidence Rule 702	5
Federal Rules of Evidence Rule 702	5
Rules of the Supreme Court of the United States Rule 10(c)	6
OTHER	

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

reported at State v. Reese, 175 Ohio St. 3d 1425; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Seventh District Court of Appeals of Ohio court appears at Appendix A to the petition and is

reported at State v. Reese 2024-Ohio-2013; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was Aug 20, 2024. A copy of that decision appears at Appendix B.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

	Page
Due process clause of the 5 th and 14 th Amendments of the U.S. Constitution	6
Right to Confrontation of witness clause of the 6 th Amendment of the U.S. Constitution	6

STATEMENT OF THE CASE

The following facts established Appellant's conviction without guilt beyond reasonable doubt. The State relied on circumstantial evidence. The case turns on the testimony of a few witnesses, all of whom suffered impeachment, and a polygraph examination. The case began as an indictment for aggravated murder, with a gun specification, and aggravated robbery. The matter proceeded through testimony, and the matter resulted in a guilty verdict on April 21st, 2014. The trial court sentenced the Appellant - Petitioner - Lamar Reese to 33 years to life.

Supporting that conviction and sentence, the state relied largely on the testimony of Aaron Triplett who suffered remarkable impeachment and the polygraph examiner, Michael Lopresti. Aaron Triplett's testimony was essentially, was Lamar Reese and Frankie Hudson Jr. both was the shooters in the matter.

Triplett received consideration in the form of immunity from prosecution involving the homicide or drug transactions that were at issue in the Davis homicide. Moreover, Triplett made two inconsistent statements, one four days after the September, 2011 date of the homicide, in speaking to police, and then one other, conflicting, fully a year and a half later. That second statement came after Triplett himself, was implicated as the murderer.

The final piece of circumstantial testimony leading to the conviction of Petitioner came from Michael Lopresti. Lopresti is a polygrapher for Bureau of Criminal Investigations. He did a stipulated polygraph examination of Petitioner. This polygraph examination, however, was far from perfect.

Petitioner's Codefendant Frankie Hudson Jr. was found not guilty of the charges as Petitioner. Petitioner deserves the same outcome as his Codefendant.

Petitioner appealed his conviction to the Court of Appeals of Ohio for the Seventh Appellate District on August 19th, 2014. The Court of Appeals then affirmed the conviction on February 10th, 2016. But there was obvious error in that court's decision. Petitioner then filed a motion for leave to file for reconsideration, in which the Court of Appeals denied on May, 24th, 2024. Petitioner filed an Appeal to the Supreme Court of Ohio on July 2nd, 2024. The Supreme Court of Ohio declined to accept jurisdiction on August 20th, 2024.

Petitioner now prays the Supreme Court of United States grant Certiorari.

REASONS FOR GRANTING THE PETITION

If there is subsequent Supreme Court of Ohio judgment invalidating a Court of Appeals prior holding, the court may grant leave to file an application for reconsideration after the expiration of the prescribed time pursuant to Ohio App. Rule 14(B) and Ohio App. R. 26(A).

Here, the Appellate Court erred in denying the Motion for Leave to file reconsideration, and the Application for reconsideration, while there is subsequent Supreme Court of Ohio judgment invalidating the Court of Appeals' prior holding in this case, and also with obvious polygraph errors.

The Supreme Court of Ohio accepted jurisdiction and reviewed a similar delayed reconsideration proceeding in State v. Moore, 149 Ohio St. 3d 557, 2016-Ohio-8288. In Moore, the "extraordinary circumstances" were "the on-point, substantive, retroactive United States Supreme Court decision in Graham." Id. at ¶ 99.

Here, the Court of Appeals for the 7th Appellate District noted that Petitioner-Lamar Reese filed a Motion for Leave to file Reconsideration, along with the application for Reconsideration almost four years after State v. Grate, 164 Ohio St. 3d 9, 2020-Ohio-5584.

But there is no case law or statute limiting the time to file motion for leave to file reconsideration, along with the Application for reconsideration, after the Subsequent Supreme Court of Ohio judgment invalidating a Court of Appeals' prior holding.

In State v. Lytle 2012-Ohio-3042, and State v. Lawson 2013-Ohio-803, and State v. Moore 2013-Ohio-5868, there were different time frames of reconsideration being filed after subsequent Supreme Court of Ohio judgment invalidating a Court of Appeals' prior holding.

Here, in Petitioner-Lamar Reese's case, Grate invalidated the 7th District Court of Appeals' Decision in State v. Reese, 7th Dist. Mahoning No. 14 MA 116, 2016-Ohio-557.

The Appellate Court's decision and opinion in Reese is based on General acceptance, and disagreeing with Weaver's citing of Daubert v. Merrel Dow Pharmaceutical, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed. 2d 469 (1993). In Reese the Appellate court concluded that "since the polygraph test is not viewed as scientifically reliable, the state, in this case, could not have put forth evidence of general scientifically reliable evidence of a polygraph test as Petitioner asserts it should have done in order to comply with Ev. R. 702(c), it is because the test is not generally viewed as scientifically reliable, that polygraph results are only admissible upon stipulation by the parties." Id at ¶ 36. But that sentiment is obviously incorrect.

I Daubert the United States Supreme Court established that even upon proposed polygraph examinations, polygraphs don't need to be generally viewed as scientifically reliable to meet Federal Rules of Evidence 702, and that Any and All Expert Evidence needs to be relevant and reliable. "The Frye test has its origin in a short and citation-free 1923 decision concerning the admissibility of evidence derived from a systolic blood pressure deception test, a crude precursor to the polygraph machine." Daubert Supra, and "general acceptance" can yet have a bearing on the inquiry. A "reliability assessment does not require, although it does permit, explicit identification of relevant scientific community." Daubert Supra, and "the inquiry envisioned by Rule 702 is, we emphasize, a flexible one. It's overarching subject is the scientific validity--and thus the evidentiary relevance and reliability--of the principles that underlie a proposed submission. The focus, of course must be solely on principles and methodology, not on the conclusions that they generate." Daubert Supra.

Federal Rules of Evidence 702 hold that "general acceptance is not a necessary precondition to admissibility of scientific evidence, however 702 do assign to the trial Judge that expert testimony needs to be reliable foundation."

In Grate the Supreme Court of Ohio reminded everyone that the Supreme Court of Ohio Adopted the Daubert Standard and the Federal Rules of Evidence 702 Standard for purposes of Ohio Rules of Evidence 702(c). "Under the Federal Rules of Evidence 702, the trial Judge must ensure that any and all Expert evidence admitted is not only relevant, but reliable." Grate Supra Id at ¶ 92. Grate also points to Terry v. Caputo, 115 Ohio St. 3d 351, in which the Supreme Court of Ohio Explains it Adopted the Daubert Standard and the Federal Rules of Evidence 702 Standard for Purposes of Ohio Rules of Evidence 702(c).

The Seventh District Court of Appeals in Reese concluded that Grate does not have a polygraph examination in it. But Grate points to the Supreme Court of Ohio's Adoption of Daubert, in which Daubert clearly has the establishment for polygraph expert in it. Also see State v. Thomas 2020-Ohio-4635.

REASONS FOR GRANTING THE PETITION

Pursuant to the Rules of the Supreme Court of the United States Rule 10(c) : A Petition for a writ of Certiorari will be granted for a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court, which is the Supreme Court of the United States.

Under Ohio Law, even if the state and a defendant stipulate to the admissibility of a polygraph examination the examination still must conform to the rules of evidence, particularly rule 702 as to the admissibility of Expert testimony. Here, there is no such evidentiary threshold.

In *Miller v. Bike Ath. Co.*, 80 Ohio St. 3d 607, and *Terry v. Caputo*, 115 Ohio St. 3d 351, and *Grate*, the Supreme Court of Ohio recognized it's adoption of *Daubert*, in which *Daubert* established that even upon proposed polygraph examinations, polygraphs don't need to be generally viewed as scientifically reliable to meet Federal Rules of Evidence 702, and that any and all Expert evidence needs to be relevant and reliable.

Here, in *Reese* the Court Erred in allowing a stipulated polygraph absent a proper foundation under evidentiary Rule 702 for it's admission, also this Particular Polygraph suffered from an obvious defect in Reliability. The polygraph Examiner had no testimony that establishes the scientific reliability of the examination. Certainly there was nothing of the record to guide the Jury as to how they would determine whether this particular examination was or was not given in such a way that would yield a reliable or unreliable result. This impacts the defense's ability to cross-examine relatively to the limitation and possibility for error of the technique of polygraph interrogation. This impacts Due process clause of the 5th and 14th Amendments of the U.S. Constitution, and impacts the right to Confrontation of witness clause of the 6th Amendment of the U.S. Constitution.

This particular polygraph showed obvious error in reliability. The polygraph examiner asked Petitioner, Lamar *Reese* whether he was a citizen of Canada, when indeed he was a citizen of the United States, Lamar *Reese* was told to say yes, although the polygraph examiner deemed this result to be irrelevant, it is apparent from the record that this yes answer, which was not true, was found non-deceptive.

The 7th District Court of Appeals did not fully consider that even before *Daubert* and Rule 702 preceded *Frye*, *Souel*, and *Davis*, that in *Souel* the Supreme Court of Ohio noted with approval the sentiments expressed by the Supreme Court of Wyoming in *Cullin v. State* *Supra* {134} "we see no reason why the polygraph expert should be treated in any more restrictive manner than other experts. That the polygraph deals with mind and body reactions should not subject it to exclusion from consideration any more than other testimony of scientific nature. We have long utilized the expertise of psychiatrists and psychologists to furnish advice and assistance to the jury to explore the mysteries of the mind with respect to mental illness as a defense. Medical doctors are regularly called upon to testify as to the intricate workings of the body in sensitive questions of complex physical condition or cause of death. It is the normal obligation of the trial judge to protect the jurors from exposure to evidence which might mislead them, regardless of whatever kind of scientific evidence is under scrutiny. The device of cross-examination soon smokes out the inept, the unlearned, the inadequate self-styled expert."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lamar Reese

Date: November 11th, 2024