No. **24-6704**

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN JURY, *Petitioner*,

v.

STATE OF OHIO, *Respondent.*

On Petition for a Writ of Certiorari to the
Ohio's Sixth District Court of Appeals

PETITION FOR REHEARING

Brian Jury, #654-969
BeCI
P.O. BOX 540
ST. CLAIRSVILLE, OH, 43950

Pro Se

TABLE OF AUTHORITIES

Cases

Jury v. Ohio,
2025 U.S. LEXIS 1430 (Case No. 24-6704) ..... Passim

Brady v. Maryland,
373 U.S. 83 ..... Passim

Kyles v Whitley,
54 U.S. 419 (1995) ..... Passim

State v. Azali
2023-Ohio-4643 3

State v. Gillis
2024-Ohio-726 2

State v. Marcum
2023-Ohio-4058 3

State v. McClurkin
2009-Ohio-4545 4

State v. McGuire
2018-Ohio-1390 4

State v. Nixon
2023-Ohio-4871 3

State v. Gipson,
2012-Ohio-515 ..... 2, 5

State v. Jury,
2022-Ohio-4419 ..... Passim

State v. Zirkle
1997 Ohio App. LEXIS 4173 4

Youngblood v. West Virginia,
547 U.S. 867, (2006) ..... Passim

PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner suggests that there are "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented," that militate in favor of granting rehearing (and certiorari) with respect to this petitioner, vacating the previous decision of: **Jury v. Ohio**, 2025 U.S. LEXIS 1430 (Decided Apr. 7, 2025—**Case No.: 24-6704**) denying the "Petition for Writ of Certiorari to the Court of Appeals of Ohio, Erie County" in favor of this Petitioner's case for review; or, grant certiorari, vacate, and remand such issue back to the state court per **Kyles v. Whitely**, 514 U.S. 419, ¶ 437-439; and, **Youngblood v. West Virginia**, 547 U.S. 867.

After the filing of Petitioner's original certiorari, Petitioner learned of other criminal defendants that are being subjected to the unconstitutional requirement: ***"[T]he state cannot suppress records that [] have never been in the possession of a state agent."*** Likewise, the Ohio state courts are relying on existing unconstitutional state law to circumvent this Court's clearly established precedents of **Kyles v. Whitely**, 514 U.S. 419, ¶ 437-439 (4/19/1995); and, **Youngblood v. West Virginia**, 547 U.S. 867 (6/19/2006). For these two following reasons not previously presented, this petitioner respectfully prays that this Honorable Court will recognize the greater importance than just this Petitioner's position, and assume the critical role necessary to prevent greater harm to the citizens of Ohio and potentially others relatively situated.

A. Failure to grant a rehearing and certiorari would allow the state courts to dismiss other Ohioans' "Brady" claim(s) based on the "not in possession of a state agent" rule, when the state agent knew or should have known of the evidence, failing to disclose such evidence to the defense.

Other state appellate courts have started to implement an erroneous and unconstitutional precedent set forth in **State v. Jury**, 2022-Ohio-4419: *"[T]he state cannot suppress records that it does not have — and that have never been in the possession of a state agent."* In the case, sub

judice, **State v. Jury**, 2024-Ohio-3342[1], This petitioner has proved through the Verizon Wireless letter, provided as newly discovered evidence, that the state failed to disclose evidence of TLI/CSLI, upon three separate discovery requests, to this defendant's counsel, thus making him ineffective—violating both the 14th and the 6th Amendments of the United States Constitution—and the right to a fair trial. This petitioner also proved that the prosecutor himself knew or should have known of TLI/CSLI when he used it to convict a criminal defendant. See **State v. Gipson,** 6th Dist. Erie No. E-10-038, 2012-Ohio-515.

This petitioner is not asking this Honorable Court to vacate the previous decision of: **Jury v. Ohio**, 2025 U.S. LEXIS 1430 (Case No. 24-6704) because of his case only; but moreover, to stop the establishment of an exponential abuse of discretion throughout Ohio state courts. This Petitioner's cause is much greater than just his own self-indulgence—he sees the disastrous unconstitutionality being applied across the Ohio appellate court system, knowing a discretionary review by the Ohio Supreme Court will be seldom, if at all! This Petitioner wishes this Honorable Court's intervention before this becomes an epidemic of mass injustice. Besides this case, this Petitioner offers the following cases currently abusing the "not in possession" veil:

> **State v. Gillis**, 2024-Ohio-726, 2024 Ohio App. LEXIS 681, 2024 WL 862468
> ... were inoperable the day of the incident and thus there was no evidence to preserve. See **State v. Jury, 2022-Ohio-4419,** 203 N.E.3d 222 , ¶ 17 (6th Dist.) ("[T]he state cannot suppress records that it does not have — and that have never been in the possession of a state agent."). Accordingly, under the unique facts of this case, we find that the trial court did not err when it denied Gillis's motion to dismiss. Gillis's second assignment of error is overruled.

---

[1] The state appellate court has speciously stated:

"The Verizon letter, dated January 24, 2023, merely confirms that the records that Jury was seeking were "past retention," that is, they do not exist. The letter has no bearing on the trial court's ruling that Jury's latest claims are barred by res judicata and the law of the..... claims is new evidence. All the letter proves is that Verizon does not have any of the CSLI data or text messages that Jury is seeking. Because Jury failed to submit documents showing that he was unavoidably prevented from meeting Crim.R. 33 's time requirement, the trial court did not abuse its discretion by denying his motion for leave without a hearing." ¶ 28, ¶31

The appellate court failed to honor their own decision stating that this petitioner was "clearly unaware of what CSLI was until 2018" ¶ 8, nor rightfully admit that the Verizon Wireless letter was a clear violation of **Brady** where the state failed to disclose, which would have overcome any procedural bars, i.e., res judicata or case law doctrine.

Court Ohio Ct. App., Cuyahoga County

Date February 29, 2024

State v. Nixon, 2023-Ohio-4871, 2023 Ohio App. LEXIS 4670, 2023 WL 9067373
... state's possession. As the Sixth District succinctly stated in a similar case in which the appellant repeatedly sought text messages between himself and the victim, "the state cannot suppress records that it does not have—and that have never been in the possession of a state agent." **State v. Jury ,** 6th Dist. Erie No. E-22-005, **2022-Ohio-4419** , ¶ 17 , 203 N.E.3d 222 . Further, the state obtained—and disclosed—some of the information he was seeking by obtaining his friend's cell phone records. Just as in...

Court Ohio Ct. App., Portage County

Date December 29, 2023

State v. Azali, 2023-Ohio-4643, 2023 Ohio App. LEXIS 4466, 2023 WL 8827953
... did engage in efforts to obtain these recordings, the record is devoid of any indication that the defense ever attempted to secure this footage. Ultimately, "[t]he state cannot suppress records that it does not have — and that have never been in the possession of a state agent." **State v. Jury , 2022-Ohio-4419** , 203 N.E.3d 222 , ¶ 17 (6th Dist.) ; State v. McGuire , 8th Dist. Cuyahoga No. 105732, 2018-Ohio-1390 , ¶ 32 , quoting State v. Zirkle , 4th Dist. Meigs No. 95 CA 21, 1997 Ohio App. LEXIS 4173...

Court Ohio Ct. App., Cuyahoga County

Date December 21, 2023

State v. Marcum, 2023-Ohio-4058, 2023 Ohio App. LEXIS 3904, 2023 WL 7413361
... for her cell phone. Although the State had physical possession of Marcum's cell phone, Brady did not require the State to obtain the contents of his phone. "[T]he state cannot suppress records that it does not have — and that have never been in the possession of a state agent." **State v. Jury, 2022-Ohio-4419** , 203 N.E.3d 222 , ¶ 17 (6th Dist.) . Finally, we agree with the trial court that "nothing in the text messages constituted new evidence that was material to the defendant's guilt or innocence...

Court Ohio Ct. App., Montgomery County

Date November 09, 2023

While Petitioner's argument is centered around his case, he would like to show this Honorable court the deceptive practices used to obviate **Brady**, i.e., **State v. Marcum**, 2023-Ohio-4058—here, the court had in their possession, but failed to obtain the contents of the cell-phone. This is very similar to this Petitioner's case—where counsel made actual request for "all" cell phone records. It seems only clear that this would include TLI/CSLI from the cell phone provider? Failure to disclose material evidence is or should be unconstitutional.

This Court's prompt intervention is mercifully needed. Please vacate this Honorable Court's previous decision and grant certiorari, either accept review or vacate, and remand to the lower state court for further consideration consistent with this Honorable Court's precedents.

B. Failure to grant a rehearing and certiorari would allow the state courts to dismiss other Ohioans their "Brady" claim(s) based on the unconstitutionality set forth in Kyles v. Whitely, 514 U.S. 419, ¶ 437-439 (4/19/1995); and, Youngblood v. West Virginia, 547 U.S. 867 (6/19/2006).

The denial of Petitioner's case, sub judice, is based on the very same premises as **State v. Jury, 2022-Ohio-4419, ¶ 17** (without the Verizon Wireless Letter). These so-called precedents of **State v. McGuire**, 8th Dist. Cuyahoga No. 105732, 2018-Ohio-1390, ¶ 32; **State v. McClurkin**, 10th Dist. Franklin No. 08AP-781, 2009-Ohio-4545, ¶ 57 date back to:

> **State v. Zirkle, 1997 Ohio App. LEXIS 4173, Id. 11**
> The defense does not enjoy an absolute right to all evidence which may be in the possession of state, but rather is entitled to access to evidence which is material. *United States v. Agurs* (1976), 427 U.S. 97; *Brady v. Maryland* (1963), 373 U.S. 83. While the federal Constitution provides no right to pretrial discovery of such evidence, see *Weatherford v. Bursey* (1977), 429 U.S. 545, **the state of Ohio has granted pretrial discovery rights to criminal defendants who request disclosure pursuant to Crim. R. 16(B).** (Emphasis).

This predates **Youngblood v. West Virginia,** 547 U.S. 867 (6/19/2006). Moreover, **Zirkle** does not directly contradict that of **Kyles v. Whitely**, 514 U.S. 419, ¶ 437-439 (4/19/1995), but the above referenced cases (*McClurkin/McGuire*) involving this Petitioner's case sub judice do.

Possession by definition is "the control of." The state appellate court is attempting to define possession of as actually having said evidence within their custody. This is not and was not the interpretation of Brady within the decision of this Honorable Court in **Kyles v. Whitely**, 514 U.S. 419, ¶ 437-439, nor that of **Youngblood v. West Virginia,** 547 U.S. 867.

The state courts, more so the Sixth Appellate District Court of Erie County Ohio, have deceptively twisted the interpretation of "possession" to fit the denial of this Petitioner, when in reality, this Honorable Court has never specifically required "possession" to be a factor of a

Brady violation. This Honorable court has numerously cited **Kyles v. Whitely**, 514 U.S. 419, ¶ 437-439 to the "know[ingly]" or should have known standard—which is a difficult hurdle in and of itself. This Petitioner has successfully done just that. See **State v. Gipson,** 6th Dist. Erie No. E-10-038, 2012-Ohio-515.

To reiterate, this Petitioner has shown that TLI/CSLI[2] was material because TLI/CSLI would have provided location information of this Petitioner throughout the day in question, negating the need of Petitioner's testimony and change defense counsel's strategy in trying the case, i.e., impeaching the alleged victim, etc. Moreover, Petitioner's smart phone would have had the ability to track this Petitioner throughout the day in a very intensive/exhaustive manner.

Conclusion

This petition for rehearing is presented in good faith and not for delay. This Petitioner mercifully request that this Court vacate it prior decision and accept review, or vacate and remand the Ohio appellate court's decision to be consistent with this Honorable Court's precedents.

Respectfully Submitted,

Brian Jury, #654-969
P.O. Box 540
St. Clairsville, OH 43950
Petitioner—Pro Se

[2] As this Honorable Court acknowledged in **Carpenter v. United States**, 585 U.S. 296, 302, 312, syllabus, et al.