

NO 24-6739

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER SMITH, PETITIONER

Vs.

STATE OF OHIO-RESPONDENT.

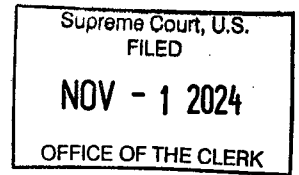
ON PETITION FOR PETITION FOR WRIT OF CERTIORARI

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.) The question for this Court is whether the Ohio trial court clearly erred in not conducting the three-step analysis of *Batson v. Kentucky* 476 U.S. 79, 106 S. CT. 1712, 90 L. ED. 2D 69 (1986) when Defendant had made a prima facie case of discrimination relating to the jury pools underrepresented African Americans and by a discriminatory striking of an African American juror. Relating to Ground Two.
- 2.) Concerning this courts *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959) does the State or government have a burden of correcting a key witnesses knowingly false or intentionally misrepresented testimony, if the testifying witness is a member of law enforcement, if that testimony so infected the trial proceedings and interfered with the jury's ability to weigh testimony or evidence offered by that witness? Relating to Ground Three.
- 3.) Can cumulative errors that are non-constitutional alone result in a constitutional violation concerning due process, if they deprive one of a fair trial? Relating to Ground Four.
- 4.) Does a trial court commit a due process violation and prejudicial error by limiting voir dire in unrelated homicide cases tried together if its time limitations removed the Defenses opportunity to effectively question and examine prospective jurors. Relating to Ground Six.
- 5.) Is a Defendant's constitutional right to a fair trial violated if a State's witness is presented as an expert to a jury even though the witness failed to submit scientific, technical or other specialized information or any sort of qualified certification? Relating to Ground Nine.
- 6.) Is a Defendant's Constitutional right to a fair trial violated by the State or Government if a prosecutor grossly vouches to a jury for one of its witness's credibility regarding a matter that was not established by testimony to secure a conviction? Relating to Ground Ten.
- 7.) Is a Defendant's Constitutional right to a fair trial violated by a court concerning a jury instruction if the instruction explained "reasonable doubt" but did not explain ""beyond" a reasonable doubt" allowing the jury to perceive it could find the Defendant guilty based on less than beyond a reasonable doubt? Relating to Ground Eleven.

LISTED PARTIES

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

RELATED CASES

- State v. Smith Case No. 2019 CR 04182 Common Pleas Court of Montgomery County, judgement entered on August 5, 2022.
- State v. Smith, 2023-Ohio-4565 (Direct Appeal Case No. 29597) Ohio Second District Court of Appeals, Judgment entered on December 15, 2023; State v. Smith, (Application to Reopen Direct Appeal unreported) Judgment entered on April 26, 2024.
- State v. Smith, 2024 Ohio LEXIS 1670 (Ohio Supreme Court Case No. 2024-0859, Supreme Court of Ohio judgment entered on August 6, 2024

TABLE OF CONTENTS

OPINION BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	20
CONCLUSION.....	22

INDEX TO APPENDIX

APPENDIX A

Opinion from the Ohio Second District Appellate Court entered on April 26, 2024.. 24

APPENDIX B

Supreme Court of Ohio decision declining review, entered on August 6, 2024. . . . 46

APPENDIX C

The Fifth Amendment: Criminal Actions; Provisions Concerning Due Process of Law and just compensation clauses: ... 47

APPENDIX D

The Sixth Amendment: Rights of The Accused: ... 48

APPENDIX E

The Fourteenth Amendment: Due Process and Equal Protection under the law: ... 49

TABLE OF AUTHORITIES

CASES

Page Number

Anthony v. Louisiana, 143 S. Ct. 29; 214 L. Ed. 2d 214 ** ; 2022 U.S. LEXIS 4905 *** ; 91 U.S.L.W. 3103 ; 29 Fla. L. Weekly Fed. S 646 ; 2022 WL 16726038....18

United States v. Agurs , 427 U.S. 97, 103, 96 S. Ct. 2392, 49 L.Ed. 2d 342 (1976).....11

Batson v. Kentucky, 476 U.S. 79 at 85-86.....7,27

Berger v. United States, 295 U. S. 78, 84, 55 S. Ct. 629, 79 L. Ed. 1314 (1935)....	19
Brady v. Maryland, 373 U.S. 83, 83 S. Ct 1194, 10 L.Ed 2d 215 (1963).....	11
State v. Brantley, 9 th Dist. Summit No. 29924, 2021-Ohio-4621, ¶ 7-9.....	11
Cage v. Louisiana, 498 U.S. 39.....	19,22
State v. DeMarco, 31 Ohio St.3d 191, 31 Ohio B. 390 509 N.E.2d 1256 (1987),...	11
Donnelly v. DeChristoforo, 416 U. S. 637, 643, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974)	19
State v. Draughn (1992) 76 Ohio App 3d. 664, 670, 602 N.E. 2d 790.....	18
Duren v. Missouri, 439 U.S. 357.....	8.
Flowers v. Mississippi, U.S. , , 139 S.Ct. 2228, 2244, 204 L. Ed. 2d 638 (2019).7	
Garrett, 2022-Ohio-4218 at¶ 270.....	11
Giglio v. United States, 405 U.S. 150, 153-154, 92 S.Ct.763, 31 L.Ed. 2d 104 (1972).....	11
Hairston v. Seidner, 88 Ohio St. 3d 57, 2000 Ohio 271, 723 N.E. 2d 575.....	17.
State v. Jackson, 92 Ohio St. 3d 436, 448, 2001- Ohio- 1266, 751 N.E. 2d 946 (2001).....	18
State v. Leyh 166 Ohio St. 3D 365; 2022-OHIO-292; 185 N.E. 3D 1075; 2022 OHIO LEXIS 235; 2022 WL 363386,	5,6
Sullivan v. Louisiana, 508 U.S. 275 (1993).....	19,22
State v, McKelton, 2016-Ohio-5735.....	12
United States v. McRae, 593 f.2d 700, 707 (5 th Cir. 1979).....	
Mooney v. Holohan, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 791 (1935)...	11,17
Mu’Min v. Virginia, 500 U.S. 415	15,16
Napue v. Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L.Ed. 2d 1217 (1959).....	8,11,12, 15, 20

Oberlin v. Akron Gen. Med. Ctr., 91 Ohio St. 3d 169.....	16
State v. Powell, 132 Ohio St.3d 233, 2012-Ohio-2577, 971 N.E.2d 865, ¶223,.....	11.
United States v. Robinson, 485 U. S. 25, 33, n. 5, 108 S. Ct. 864, 99 L. Ed. 2d 23 (1988)	19,21
State v. Samuels, 8 th Dist. Cuyahoga Nos. 81333 and 81334, 2003-Ohio-2865....	18.
Strickland v. Washington, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984...)	6
Turner v. Murray, 476 U.S. 28.....	16
United States v. Young, 470 U. S. 1, 18, 105 S. Ct. 1038, 84 L. Ed. 2d 1 (1985).....	19,21

OHIO CRIMINAL RULE

Criminal Rule 33	6
------------------------	---

OHIO EVIDENCE RULES

Evid. R. 403 (A).....	17
Evid. R. 702.....	19

APPELLATE RULE

App. R. 26(B).....	7
--------------------	---

PROPOSITION OF LAW NO. ONE:

THE OHIO SECOND DISTRICT ERRED IN NOT FOLLOWING THE OHIO SUPREME COURT’S STATE V. LEYH 166 OHIO ST. 3D 365; 2022-OHIO-292; 185 N.E. 3D 1075; 2022 OHIO LEXIS 235; 2022 WL 363386. WHEN IT PRECLUDED THE COURT OF APPEALS FROM ACTUALLY CONSIDERING THE MERITS OF HIS ASSIGNMENT OF ERRORS, AFTER HE PRESENTED A GENUINE ISSUE OF THE DEPRIVATION OF EFFECTIVE ASSISTANCE OF APPELLANT COUNSEL..... 6

PROPOSITION OF LAW NO. TWO:

THE PETITIONER WAS PREJUDICED BY THE JURY POOL WHICH WAS PREDOMINANTLY WHITE-AMERICANS, AND VIOLATED HIS EQUAL-

PROTECTION RIGHTS UNDER BATSON V. KENTUCKY, 476 U.S. 79, 106 S. CT. 1712, 90 L. ED. 2D 69 (1986).....8

PROPOSITION OF LAW NO. THREE:

PETITIONER'S RIGHT TO DUE PROCESS AND A FAIR TRIAL WERE VIOLATED WHEN PROSECUTOR'S FAILED TO CORRECT KNOWINGLY FALSE AND MISLEADING TESTIMONY FROM INVESTIGATING DETECTIVES, AND WITNESSES VIOLATING NAPUE V. ILLINOIS; FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.....9

PROPOSTION OF LAW NO. FOUR:

PETITIONER'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL WAS DENIED DUE TO THE CUMULATIVE ERRORS WHICH OCCURRED AT HIS TRIAL DEPRIVING HIM OF HIS RIGHT TO DUE PROCESS.....12

PROPOSITION OF LAW NO. FIVE:

PETITIONER'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL WAS DEPRIVED WHEN THE TRIAL COURT LIMITED THE VOIR DIRE PROCESS.....16

PROPOSITION OF LAW NO. SIX:

**THE STATE AND COURT ALLOWED A VIOLATION OF STATE EVIDENCE RULE 403 WHICH VIOLATED PETITIONER'S RIGHT TO A FAIR TRIAL WHERE THE PREJUDICE OUTWEIGHED THE BENEFIT TO THE STATE:
.....17**

PROPOSITION OF LAW NO. SEVEN:

THE TRIAL COURT DID NOT ORDER A CORRECTION OF TESTIMONY.....17

PROPOSITION OF LAW NO. EIGHT:

THE TRIAL COURT VIOLATD THE PETITIONER'S CONSTITUTIONAL DUE PROCESS RIGHTS WHEN IT CLASSIFIED HIM AS A SEX OFFENDER WHERE HIS CASE CONTAINED NO SEXUAL RELATED CRIMES.....18

PROPOSITION OF LAW NO. NINE:

THE COURT ERRED BY NOT ENTERING A MISTRIAL WHEN IT PERMITTED THE STATE TO PREJUDICE THE PETITIONER BY ALLOWING A GUN EXAMINER TO TESTIFY AS AN EXPERT WHERE HE WAS NOT CERTIFIED OR QUALIFIED AS AN EXPERT VIOLATING THE PETITIONER'S RIGHT TO TRIAL AND RIGHTS UNDER DUE PROCESS.....18

PROPOSITION OF LAW NO. TEN:

PROSECUTORIAL MISCONDUCT DURING CLOSING WHEN THE STATE VOUCHERED FOR WITNESSES CREDIBILITY VIOLATING THE PETITIONER'S RIGHT TO TRIAL.....19

PROPOSITION OF LAW NO. ELEVEN:

THE PETITIONER WAS PREJUDICED BY THE STATE AND COURTS UNCORRECTED INSTRUCTION CONCERNING THE JURY BEING MISINFORMED RELATING TO THEIR BURDEN OF PROOF WHEN COURT MISINFORMED THE JURY CONCERNING BEYOND A REASONABLE DOUBT IN THE INSTRUCTION.....20

**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

☒ For cases from State courts:

The Opinion of the Highest state court to review the merits appears at Appendix [A] and is unreported at State v. Smith. The opinion was rendered on April 26, 2024. Ohio Second Appellate District Case No. 29597. (Application to reopen)

☒ A timely appeal was filed to the Supreme Court of Ohio on June 10, 2024. That court Declined jurisdiction, the entry appears at Appendix [B] to the petition and is reported at State v. Smith, 2024 Ohio LEXIS 1670 (Ohio Supreme Court Case No. 2024-0859, Entered on August 6, 2024).

JURISDICTION

☒ for cases from state courts:

The date on which the highest State court decided my case was August 6, 2024. A copy of that decision appears at Appendix [C].

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

UNITED STATES CONSTITUTION:

The fifth Amendment; The Sixth Amendment and The Fourteenth

Amendment U.S. Const. Amend. XIV, § 1 (Equal Protection Clause).

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 that 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 response given by 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.

PROPOSITION OF LAW NO. ONE:

THE OHIO SECOND DISTRICT ERRED IN NOT FOLLOWING THE OHIO SUPREME COURT'S STATE V. LEYH 166 OHIO ST. 3D 365; 2022-OHIO-292; 185 N.E. 3D 1075; 2022 OHIO LEXIS 235; 2022 WL 363386. WHEN IT PRECLUDED THE COURT OF APPEALS FROM ACTUALLY CONSIDERING THE MERITS OF HIS ASSIGNMENT OF ERRORS, AFTER HE PRESENTED A GENUINE ISSUE OF THE DEPRIVATION OF EFFECTIVE ASSISTANCE OF APPELLANT COUNSEL.

The court of appeals prevented review of consideration of Petitioner's assignment of errors and predetermined the outcome of his appeal by preventing the courts of appeals from even considering the merits of the appeal, which ensured that his appeal would fail. The Ohio Supreme Court's State v. Leyh 166 Ohio St. 3D 365; 2022-OHIO-292; 185 N.E. 3D 1075; 2022 OHIO LEXIS 235; 2022 WL 363386, rejected that behavior and held that an Appellant had to show during the first stage of the procedure a genuine issue that he was deprived of the effective assistance of counsel, and were not required to conclusively establish ineffective

assistance of appellate counsel, (using in part that courts language). Yet, the Ohio Second District required Appellant to undergo that same burden in violation of his due process rights. There is a distinction between “objectively unreasonable” and “legitimate grounds” or “genuine issue”. Strickland approach is correctly applied when requiring a court to apply an “objectively unreasonable” standard upon a litigant to determine ineffective assistance of counsel. However, the “legitimate grounds” with its nexus to “genuine issue” standard applied to App. R. 26(B) as spoke of in Leyh at ¶25 referencing App. R. 26(B)(5) is to be applied in a literal context. The Ohio Second Appellate District has merged the three standards to require an additional burden on Petitioner of which is not required by Appellate Rule 26 (B) which changes his requirement from demonstrating an “objectively unreasonable” standard to a “grossly unreasonable” standard by unstatutory raising the bar, which the court was not permitted to do.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IN VIOLATION OF STRICKLAND V. WASHINGTON:

The Appellate court did not properly apply Strickland v. Washington, 466 U.S. 688, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) to Appellant’s circumstances (Application to Reopen) when it required that he demonstrate ineffective assistance of Appellate counsel entirely prior to demonstrating that his assignment of errors were colorable. Which as mentioned raised his thrust hold when it pre-denied the merits disregarding that Petitioner was only required to demonstrate a “genuine issue” as to whether there is a “colorable claim” of ineffective assistance of Appellate counsel by showing that one or more assignments of errors were previously not considered by that court on their merits. Petitioner’s argument were

material which demonstrated ineffective assistance of counsel for failing to raise the issues Petitioner brought forth in his application.

PROPOSITION OF LAW NO. TWO:

THE PETITIONER WAS PREJUDICED BY THE JURY POOL WHICH WAS PREDOMINANTLY WHITE-AMERICANS, AND VIOLATED HIS EQUAL-PROTECTION RIGHTS UNDER BATSON V. KENTUCKY, 476 U.S. 79, 106 S. CT. 1712, 90 L. ED. 2D 69 (1986):

The Petitioner objected to the court under Batson that the jury pool was predominantly white and would be prejudicial. The court overruled his objection and continued with the impaneling.

Petitioner has “the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria.” Citing Batson v. Kentucky, 476 U.S. 79 at 85-86. Accordingly, a constitutional violation occurs when the prosecution challenges “potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State’s case against a black defendant.” Id. At 89. “The Constitution forbids striking even a single prospective juror for a discriminatory purpose.” Flowers v. Mississippi, U.S. , , 139 S. Ct. 2228, 2244, 204 L. Ed. 2d 638 (2019).

The trial court refused to conduct the three-step analysis required by this Supreme Court when raised by Petitioner, a court must apply a three-step analysis. First, the court must determine whether the Petitioner has established a prima facie case of purposeful discrimination. Batson supra, at 93. If the Petitioner has established a prima facie case of purposeful discrimination, then the burden shifts to the prosecutor to present a race-or gender- neutral explanation for the challenge or

pool. Batson supra, at 94. Finally, the trial court must decide, based on all the relevant circumstances, whether the defendant has proved purposeful discrimination. Batson supra, at 98. In Petitioner's case after a proper material objection by counsel of a demonstration that underrepresentation of African Americans on his venire, was due to systematic exclusion in the jury-selection process. Citing Duren v. Missouri, 439 U.S. 357. As well as the striking of a juror was motivated by race. The trial court was required but refused to apply the three-step analysis of Batson, nor required the State to demonstrate any justifications otherwise prejudicing the Petitioner and closing the process. The three steps of Batson are analytically distinct, and district courts are encouraged to follow each of Batson's three steps in sequence and to develop a comprehensive record as to each step which it failed to do so. For this reason, Petitioner's conviction should be reversed.

PROPOSITION OF LAW NO. THREE:

PETITIONER'S RIGHT TO DUE PROCESS AND A FAIR TRIAL WERE VIOLATED WHEN PROSECUTOR'S FAILED TO CORRECT KNOWINGLY FALSE AND MISLEADING TESTIMONY FROM INVESTIGATING DETECTIVES, AND WITNESSES VIOLATING NAPUE V. ILLINOIS; FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION:

Petitioner's right to due process and a fair trial were violated when prosecutors failed to correct knowingly false and misleading testimony from its witnesses, specifically the lead investigating detective and main witnesses.

**INTENTIONAL MISREPRESENTATION BY THE STATE
AND STATE'S WITNESS OF BRAND OF BULLETS:**

The State allowed knowingly misrepresentations of the evidence and uncorrected testimony by the lead detective "Steele" during trial a medical examiner testified that red tips were found in both victims of the shootings. Tr. T. pg. 1337.

Steele identified "Hornady" brand found at the crime scene. Tr. T. pg. 1396. Steele additionally testified that "red tips" were found in the victims. Tr. T. pg. 1412. Steele later referred to a magazine that contained live rounds (State's Exhibit 73.) which was found in Petitioner's home. Tr. T. pg. 1415.

Steele stated that he found a clip containing red tips at Smith's home. Tr. T. pg. 1466, creating a false connection and representation to the jury, that the red tips were the same as found relating to the shooting victims, when Steele personally knew they were not, because of the brand found at the scene was able to be identified as a brand type as "Hornady" which Steele personally identified after he collected it from the scene. The State intentionally did not mention the brand name of the 40 caliber red tips found at the Petitioner's home and Steele intentionally did not mention them either because it would undermine the representations the State and Steele made to the jury. The uncorrected testimony was prejudicial to the defense. Again Steele representation was knowingly false because he was aware that the red tips (live rounds) were not the same brand of which were recovered in the victims. Steele testified that he recovered "Hornady" (40 caliber, Smith & Wesson) See. Tr. T. pg. 1396.

MANIPULATED IDENTIFICATION DATE TO JURY:

The State knowingly represented false evidence to the jury when it introduced evidence of the photo spread (State's Exhibit 57) with a fabricated date on it

representing that it was shown and signed on December 5, 2019 (the day of the shooting) by witness Haynes. Tr. T. pg. 750 and Tr. T. pg. 756. However, Haynes testified at trial that he did not see or sign the photo spread on December 5, 2019. See Tr. T. pg. 777.

WITNESS WILLIAM MCINTOSH'S STATEMENT (Save Food Mart):

William McIntosh, provided information to law enforcement that was knowingly false based on the direction of the investigation and information of which was collected. McIntosh, stated that he was present at the Save Food Mart and witnessed Smith shooting. He stated that he witnessed smith leave the scene in a Black Chrysler 300. (Search Warrant Affidavit)¹. The state used McIntosh's knowingly false statements to secure arrest warrants, generated photo spreads, then suggested to witnesses to identify smith, fabricated the timeline of the signed spreads to make them appear to be the date of the shooting. Obtained video footage from the apartment which depicted a suspect running. Where an actual witness Dwanisha Nicholson, testified that she witnessed a person running after the shooting. Tr. T. pg. 574-575. Again the law enforcement and the States reliance on McIntosh was fully contradicted by actual witnesses. Dwanisha Nicholson testimony and the footage of the crime demonstrated no vehicles were involved. The State and law enforcement knew McIntosh information was false.

A violation of due process occurs when the state obtains a conviction through the use of "deliberate deception of court and jury by the presentation of testimony known to be perjured."

¹ McIntosh did not testify at the Defendant's trial.

Mooney v. Holohan, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 791 (1935). The same is true when the state does not solicit evidence that is false but “allows it to go uncorrected when it appears.” Napue v. Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959). Both situations present a deprivation of due process akin to the typed addressed in Brady v. Maryland, 373 U.S. 83, 83 S. Ct 1194, 10 L. Ed 2d 215 (1963). See United States v. Agurs , 427 U.S. 97, 103, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976); Giglio v. United States, 405 U.S. 150, 153-154, 92 S.Ct.763, 31 L. Ed. 2d 104 (1972). See also State v. Brantley, 9th Dist. Summit No. 29924, 2021-Ohio-4621, ¶ 7-9.

PROPOSTION OF LAW NO. FOUR:

PETITIONER’S CONSTITUTIONAL RIGHT TO A FAIR TRIAL WAS DENIED DUE TO THE CUMULATIVE ERRORS WHICH OCCURRED AT HIS TRIAL DEPRIVING HIM OF HIS RIGHT TO DUE PROCESS.

The Petitioner’s constitutional right to a fair trial was denied due to the cumulative errors which occurred at trial depriving him of Due Process, under the cumulative-error doctrine, a conviction may be reversed when the cumulative effect of general nonprejudicial errors deprives an Appellant of a fair trial even though each of the instances of trial-court error may not individually constitute cause for reversal. Citing, Garrett, 2022-Ohio-4218 at¶ 270, citing State v. Powell, 132 Ohio St.3d 233, 2012-Ohio-2577, 971 N.E.2d 865, ¶223, and State v. DeMarco, 31 Ohio St.3d 191, 31 Ohio B. 390 509 N.E.2d 1256 (1987), paragraph two of the syllabus. Including the errors raised by Defendant in his direct appeal and in this application, including:

OTHER SPECIFIC ERRORS:

In Petitioner's case lack of effective cross Tr. T. pgs. 774-76.; The court allowed the State at times to lead the witness over the defense specific objections. Tr. T. pg. 801. Objection leading. Tr. T. pgs.816-817. Tr. T. pg. 1046. Asked and answered. Tr. T. pg. 1326-1328. Video not authenticated Tr. T. pg. 663. State v, McKelton, 2016-Ohio-5735 (rejecting conduct).

CORONERS PHOTOS MORE PREJUDICIAL THEN PROBATIVE (BOTH):

Coroners photos more prejudicial then probative. 1326-1328. United States v. McRae, 593 f.2d 700, 707 (5th Cir. 1979).

THE STATE REPRESENTED A WITNESS WAS RELATED TO THE OTHER HOMICIDE WHICH CONFUSED THE JURY WITHOUT CORRECTION:

The State represented to the jury that the jury just "saw Dwanisha "relating her to the Jazz Club. Which mislead the jury with the evidence where she was not related to that homicide as she was only an alleged witness for the "Save food Mart" homicide which was never corrected allowing the jury to created false nexus. See Tr. T. pg. 670. She testified she was at the store. See Tr. T. pg. 574. Napue v. Illinois, 360 U.S.264 at HN1 (misleading testimony, uncorrected.)

TESTIFYING TO VIDEO AND NOT MEMORY:

The States witness Haynes and Earnest both watched a video shown by the prosecutor two days before trial of the shooting and then testified to the jury about facts of the video of which were learned only by viewing the video.

(RELATING TO STATES WITNESS HAYNES) (Jazz Club):

Haynes admitted that he testified admitting that after watching the video he learned things of which he testified to. Tr. T. pg. 673.

(RELATING TO STATES WITNESS EARNEST) (Jazz Club):

The Petitioner objected due to the States Witness Earnest testifying to facts of which he learned during the viewing of the video, and not his own memory. Tr. T. pg.816. The court overruled the objection, indicating the Petitioner could discuss it on cross. *Id.* at 816.

The prosecutor prejudicially represents to the jury and directs Earnest to make an improper identification before the jury of the Petitioner representing it to be "Pooter" which is an alleged nickname of the Petitioner. When the State stated "Anything before Pooter gets there" Tr. T. pg. 818. The problem with this is that the witnesses alleged identification was made premised on the State's representation of the person on video being "Pooter". State witness admitted that he only claimed the person on video being "Pooter" after the State insinuated it was "Pooter". Tr. T. pg. 835-836. The State admits it implicated Smith as Pooter when they stipulated to identification. Tr. T. pg. 865-866.

The State's witness Earnest admitted that the State named Smith as Pooter, which followed the Petitioner's name being used as being referred to as the suspect or Pooter. Tr. T. pg. 865-866. (video suggest Smith). The problem with this is the State's actions contributed to a makeshift identification of the Petitioner of which the witness followed only based on the direction of the State. Tr. T. pg. 849.

HEARSAY ALLOWED BY COURT:

Relating to witness Stiver, the court permitted hearsay testimony over objections. Tr. T. pg. 975. Objection renewed. Tr. T. pg.977.

STATES WITNESS STEELE PARTICIPATED IN A COURT DISRUPTION

(BOTH):

The Lead investigating Detective Steele, got up from the prosecutions table to force someone out of the courtroom in the presence of the jury, during cross of State Witness Stiver. The court also failed to check motion cameras. (Relating to a huge disruption) Tr. T. pg. 1018. Steele took the role as a hero as a member of law enforcement which provided false credibility to his testimony and to his stature before the jury.

WEAPONS UNDER DISABILITY:

The Petitioner was prejudiced by the court with the introduction of "Weapons Under Disability" evidence where he did not testify allowing prejudicial inferences to be drawn of the Petitioner to have a propensity for violence or for being a felon or drug offender, where such evidence was not material to a trial on two mistaken identity homicides causing prejudice under Ohio Law. Citing State v. Creech, 150 Ohio St. 3d 540.

(RELATING TO STATES WITNESS DETECTIVE WILLIAMS)(Both):

The State's witness Detective Williams, testified that a video showed Petitioner's vehicle at Tr. T. pg.1188. Counsel objected because no evidence was presented that concluded that the vehicle in the video related in any way to the Petitioner. Tr. T. pgs. 1188-1189. Williams also testified that the Petitioner was wearing in the video the clothing of the suspect. Tr. T. pg.1183. Which was not supported by the evidence presented during the trial.

The State's witness Detective Williams, was asked why did a witness not sign a paper and Williams stated to the jury that she was scared of your client. Tr. T. pg.1298. Williams stated this knowing that this statement was not supported by the record and was done to inflame the jury, where no information or evidence was presented that substantiated that testimony. The State lead the witness when referring to the video correcting the witness as to who the video depicts. Tr. T. pg.1188 over objection. Napue v. Illinois, 360 U.S. 264 at HN1(misleading testimony, uncorrected.)

(RELATING TO STATES WITNESS DETECTIVE COPE)(Both):

The court allowed Detective Cope to testify to the photo spread that he created showing writing on it that he was not a witness too. Tr. T. pgs. 1073-1074. Tr. T. pgs. 1079-1081.

PROPOSITION OF LAW NO. FIVE:

PETITIONER'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL WAS DEPRIVED WHEN THE TRIAL COURT LIMITED THE VOIR DIRE PROCESS:

The court committed prejudicial error when it limited the voir dire process in a double homicide case. Tr. T. pgs. 463-470. (Discussion about the prejudice of limited time frame provided.) See Tr. T. pg. 494. This court made clear that voir dire examination serves dual purposes enabling a court to select an impartial jury and assisting counsel in exercising peremptory challenges. Citing Mu'Min v. Virginia, 500 U.S. 415 at HN 10. In Petitioner's case where he was tried on serious offenses of which should have been tried separately the court prejudiced the Petitioner by imposing a blank time frame of one hour and fifteen minutes' total,

removing the opportunity to effectively question and examine the prospective jurors. Citing *Turner v. Murray*, 476 U.S. 28 (Counsel should be permitted to present uncontested facts to the venire directed at revealing prospective juror's biases.) Looking to *Mu'Min v. Virginia*. Supra.

PROPOSITION OF LAW NO. SIX:

THE STATE AND COURT ALLOWED A VIOLATION OF STATE EVIDENCE RULE 403 WHICH VIOLATED PETITIONER'S RIGHT TO A FAIR TRIAL WHERE THE PREJUDICE OUTWEIGHED THE BENEFIT TO THE STATE:

The State and court violated State Evidence rule 403 where its prejudice outweighed the benefit to the state when it permitted the viewing of a video over objection. Tr. T. pg. 594; Tr. T. pgs. 603-606. Ohio Evidence Rule 403 (A) provides that, "although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury," As the Ohio Supreme Court has acknowledged:

"Exclusion on the basis of unfair prejudice involves more than a balance of mere prejudice. If unfair prejudice simply meant prejudice, anything adverse to a litigant's case would be excludable under Rule 403. Emphasis must be placed on the word 'unfair.' Unfair prejudice is that quality of evidence which might result in an improper basis for a jury decision. Consequently, if the evidence arouses the jury's emotional sympathies, evokes a sense of horror, or appeals to an instinct to punish, the evidence may be unfairly prejudicial. Usually, although not always, unfairly prejudicial evidence appeals to the jury's emotions rather than intellect."

Oberlin v. Akron Gen. Med. Ctr., 91 Ohio St. 3d 169 (at 172)

In Petitioner's case the video was used by the State to evoke a sense of horror and emotion instead of to present evidence violating the Petitioner's right to a fair trial.

PROPOSITION OF LAW NO. SEVEN:

THE TRIAL COURT DID NOT ORDER A CORRECTION OF TESTIMONY:

The trial court did not order the that the State correct their knowingly misleading testimony. The Petitioner through counsel filed a motion which was believed to not have been answered addressing the lack of a correction and addressing the prejudice that it inferred. (referring to Exhibit 1.) A violation of due process occurs when the State obtains a conviction through the use of "deliberate deception of court and jury by the presentation of testimony known to be perjured. "Mooney v. Holohan, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 791 (1935).

PROPOSITION OF LAW NO. EIGHT:

THE TRIAL COURT VIOLATD THE PETITIONER'S CONSTITUTIONAL DUE PROCESS RIGHTS WHEN IT CLASSIFIED HIM AS A SEX OFFENDER WHERE HIS CASE CONTAINED NO SEXUAL RELATED CRIMES:

The Petitioner's has been wrongly classified as a sex offender, where he has been held with sex offenders placed in special housing for sex offenders. The Petitioner has no history of any sex related offense. Nor had he been charged with offenses of which were sexually motivated, nor alleged. (Criminal Docket Sheet) Hairston v. Seidner, 88 Ohio St. 3d 57, 2000 Ohio 271, 723 N.E. 2d 575. (Courts speaks through its journal entries.)

PROPOSITION OF LAW NO. NINE:

THE COURT ERRED BY NOT ENTERING A MISTRIAL WHEN IT PERMITTED THE STATE TO PREJUDICE THE PETITIONER BY ALLOWING A GUN EXAMINIER TO TESTIFY AS AN EXPERT WHERE HE WAS NOT CERTIFIED OR QUALIFIED AS AN EXPERT VIOLATING THE PETITIONER'S RIGHT TO TRIAL AND RIGHTS UNDER DUE PROCESS.

The Petitioner moved for a mistrial under Criminal Rule 29 after the court allowed a State's witness to violate Petitioner's right to trial by permitting a violation of Evidence Rule 702(B) and (C) by failing to qualify its witness as an expert and by failing to submit scientific, technical or other specialized information specifically lacking a firearms ballistic report, and qualified certification. Tr. T. pgs. 1658-1659. Ohio Evidence Rule 702(C) states that expert-witness testimony must be "based on reliable scientific, technical, or other specialized information. "See also State v. Jackson, 92 Ohio St. 3d 436, 448, 2001- Ohio- 1266, 751 N.E. 2d 946 (2001) ("An expert opinion is competent if it is held to a reasonable degree of scientific or medical certainty.") State v. Samuels, 8th Dist. Cuyahoga Nos. 81333 and 81334, 2003-Ohio-2865, ¶ 24. The State has not contested Rule 702 (C) citing State v. Jackson. Supra, and waived arguments concerning the Rule 29 motion filed.

PROPOSITION OF LAW NO. TEN:

PROSECUTORIAL MISCONDUCT DURING CLOSING WHEN THE STATE VOUCHES FOR WITNESSES CREDIBILITY VIOLATING THE PETITIONER'S RIGHT TO TRIAL.

The Prosecutorial committed misconduct during closing when the state grossly vouched for its witness's credibility, violating the Petitioner's right to a fair trial. Relating to Tr. T. pgs. 2084-2085. 2090 and 2091-2092. State v. Draughn (1992) 76 Ohio App 3d. 664, 670, 602 N.E. 2d 790. The prosecutor made an inflammatory statement that Smith was walking around all night thinking that he just shot his cousin. Tr. T. pg. 2090. This was not supported by the record and was done to inflame the jury. This court in Anthony v. Louisiana, 143 S. Ct. 29; 214 L. Ed. 2d 214 ** ; 2022 U.S. LEXIS 4905 *** ; 91 U.S.L.W. 3103 ; 29 Fla. L. Weekly Fed. S

646 ; 2022 WL 16726038 held that “this Court has explained that prosecutorial misconduct may rise to a due process violation in different circumstances, including when a prosecutor “vouche[s] for the credibility of witnesses,” *United States v. Robinson*, 485 U. S. 25, 33, n. 5, 108 S. Ct. 864, 99 L. Ed. 2d 23 (1988); “express[es] his personal opinion concerning the guilt of the accused,” *United States v. Young*, 470 U. S. 1, 18, 105 S. Ct. 1038, 84 L. Ed. 2d 1 (1985), or “suggest[s] by his questions that statements had been made to him personally out of court,” *Berger v. United States*, 295 U. S. 78, 84, 55 S. Ct. 629, 79 L. Ed. 1314 (1935). The ultimate question has been whether a prosecutor’s conduct “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Donnelly v. DeChristoforo*, 416 U. S. 637, 643, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974) which has occurred in this case.

PROPOSITION OF LAW NO. ELEVEN:

THE PETITIONER WAS PREJUDICED BY THE STATE AND COURTS UNCORRECTED INSTRUCTION CONCERNING THE JURY BEING MISINFORMED RELATING TO THEIR BURDEN OF PROOF WHEN COURT MISINFORMED THE JURY CONCERNING BEYOND A REASONABLE DOUBT IN THE INSTRUCTION.

The Petitioner was prejudiced by the State and courts uncorrected instruction where it misinformed the jury relating to their burden of proof when it misinformed the trial jurors making it appear that the jury could find the Petitioner guilty based on less than beyond a reasonable doubt in the courts instruction. Tr. T. pgs. 2100-2001. The court explained reasonable doubt but did not explain ““beyond” a reasonable doubt.” Citing *Sullivan v. Louisiana*, 508 U.S. 275 (1993) (Constitutionally deficient instruction); *Cage v. Louisiana*, 498 U.S. 39

(unconstitutional where made to appear jury could find defendant guilty below a standard of beyond a reasonable doubt.).

REASON FOR GRANTING THE PETITION

This case involves a single criminal trial of two unrelated counts of murder and raises a net of substantial constitutional questions and issues of great general public interest for 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 some of the many constitutional errors which occurred in this case: relating to question One, in this case an Ohio trial court erred in not conducting the three-step analysis of *Batson v. Kentucky* 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986) after the Defendant made a prima facie case of discrimination relating to both his jury pools underrepresented African Americans and the discriminatory striking of an African American juror.

Concerning question Two Petitioner desires this court to answer if *Napue v. Illinois*, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959) for the proposition of the State or governments obligation to correct knowingly false or intentionally misrepresented testimony, applies to a testifying witness that is a member of law enforcement for the state or government, if such testimony so infected the trial proceedings or interfered with a jury's ability to weigh testimony or evidence.

Concerning question Three Petitioner desires this courts attention concerning cumulative error arguments that may be held to be non-constitutional asking this court to decide if such errors can transform into a constitutional violation regarding due process under the Fourteenth Amendment, if those errors deprive one of a fair

accused right to a fair trial under the constitution. Concerning question Seven, this court has acknowledged that a jury instruction is constitutionally deficient if it is lead to believe or appear that a jury can find a defendant guilty on a standard below beyond a reasonable doubt. Citing Sullivan v. Louisiana, 508 U.S. 275 (1993) (Constitutionally deficient instruction); Cage v. Louisiana, 498 U.S. 39. Petitioner ask that this court reaffirms that position and hold additionally that if an instruction explains “reasonable doubt” but does not explain ““beyond” a reasonable doubt” it can be found to lead a jury to perceive it could find a Defendant guilty based on less then beyond a reasonable doubt based on the inference of the omitted lead by the court.

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

CONCLUSION

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

Christopher Smith
Christopher Smith

Date November 1st 2024.