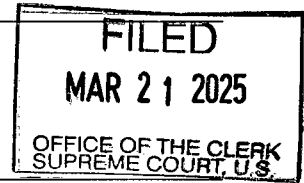


24-6927
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



BRYANT COBB — PETITIONER

vs.

STATE OF OHIO — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE OHIO SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Bryant Cobb, #A800-112

501 Thompson Road

P.O. Box 8000

Conneaut, OH 44030

pro se Petitioner

QUESTIONS PRESENTED FOR REVIEW

Question: Whether the Ohio Court of Appeals for the Fifth Appellate District's affirmation of the denial of Petitioner's motion to suppress is repugnant to the "Excessive Bail" Clause of U.S. Constitution, Amendment VIII and to U.S. Constitution, Amendment IV (as both provisions are applicable to Ohio under the "Privileges or Immunities" and "Due Process" Clauses of U.S. Constitution, Amendment XIV, §1).

LIST OF PARTIES

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

RELATED CASES

State of Ohio v. Bryant Cobb, Richland County Common Pleas Court No. 2022 CR 497 R, motion to suppress overruled (entry filed June 8th 2023) and judgment of conviction (judgment entered August 25, 2023); *State of Ohio v. Bryant Cobb*, Ohio Court of Appeals for the Fifth District No. 2023 CA 0051, judgment affirmed (judgment entered July 8, 2024), reconsideration denied (judgment entered August 5th 2024); *State of Ohio v. Bryant Cobb*, Ohio Supreme Court No. 2024-1268, appeal not accepted for review (judgment entered November 26, 2024), reconsideration denied (judgment entered December 23, 2024).

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

Petitioner respectfully prays that a writ of certiorari is issued, so as to review the judgment below which affirmed the denial of his motion to suppress.

OPINIONS BELOW

The Richland County Common Pleas Court's order, overruling Petitioner's motion to suppress, is unreported, but is set forth at Appendix 1; and such court's sentencing entry is set forth at Appendix 2.

The Ohio Court of Appeals for the Fifth District's decision, affirming Richland County Common Pleas Court's denial of Petitioner's motion to suppress and its judgment of conviction, is reported at 2024-Ohio-2608 and is also set forth at Appendix 3.

The Ohio Court of Appeals for the Fifth District's decision, denying reconsideration, is unreported.

The Ohio Supreme Court's decision, declining to accept jurisdiction of the appeal, is reported at 2024 Ohio LEXIS 2617 and is also set forth at Appendix 4.

The Ohio Supreme Court's decision, denying reconsideration, is reported at 2024 Ohio LEXIS 2854 and is also set forth at Appendix 5.

JURISDICTION

The date on which the Richland County Common Pleas Court overruled Petitioner's motion to suppress was June 8th 2023; and, on August 25th 2023, such court entered a judgment of conviction (a copy of each of such decisions appear at Appendix 1 and 2, respectively).

The date on which the Ohio Court of Appeals for the Fifth District affirmed Richland County Common Pleas Court's denial of Petitioner's motion to suppress and its judgment of conviction was July 8th 2024 (a copy of such opinion appears at Appendix 3).

Then, a timely application to reconsider was denied on August 5th 2024.

Thereafter, an application for jurisdictional appeal was declined on November 26th 2024 (a copy of such decision appears at Appendix 4).

Finally, a motion for reconsideration was denied on December 23rd 2024 (a copy of such decision appears at Appendix 5).

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

CONSTITUTIONAL PROVISIONS, RULES, AND STATUTES INVOLVED

Ohio Crim. R. 46 (2022), in pertinent part, provides:

(B) Pretrial release. Unless the court orders the defendant detained under division (A) of this rule, the court shall release the defendant on the least restrictive conditions that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the protection or safety of any person or the community, and that the defendant will not obstruct the criminal justice process. ***.

(2) Non-financial conditions of release. The court may impose any of the following conditions of release:

(i) Any other constitutional condition considered reasonably necessary to reasonably assure appearance or public safety.

(C) Factors. Subject to subsection (G)(2) of this rule, in determining the *** conditions of bail, the court shall consider all relevant information ***.

Ohio Constitution, Article I, §9, in pertinent part, provides:

All persons shall be bailable by sufficient sureties *** except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the *** conditions of bail. Excessive bail shall not be required ***.

U.S. Constitution, Amendment VIII, in pertinent part, provides:

Excessive bail shall not be required ***.

U.S. Constitution, Amendment XIV, §1, in pertinent part, provides:

*** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of *** liberty *** without due process of law ***.

STATEMENT OF THE CASE

This instant proceeding arises out of the Ohio Court of Appeals for the Fifth District's affirmation of the Richland County Common Pleas Court's judgment overruling Petitioner's motion to suppress and such lower court's judgment of conviction, and out of such appellate court's denial of reconsideration; and out of the Supreme Court of Ohio's declination of review thereof and its denial of reconsideration.

As pertinent to this proceeding, Petitioner was released on bond in an unrelated case, Richland County Common Pleas Court Case No. 2022 CR 147. Such bond was conditioned on Petitioner's granting of consent to a search without warrant (leaving only the option of either granting consent or staying in jail) which Petitioner granted on April 5th 2022. While on pretrial supervision and electronic monitoring (another condition of his bail), probation officers, on June 6th 2022, went to Petitioner's home in order to conduct a surprise home search and ultimately found drugs on his person. Afterwards, on July 21st 2022, Petitioner was indicted with five felony counts in Richland County Common Pleas Court Case No. 2022 CR 497 R. Later, on January 24th 2023, Petitioner moved to suppress the relevant evidence as being fruit of an unconstitutional search, and, by an entry filed June 8th 2023, the Richland County Common Pleas Court overruled such motion. As a result of the overruling of his motion to suppress, Petitioner, on August 21st 2023, pled no contest to two of the five felony counts and the court, by entry filed August 25th 2023, sentenced him to 6-9 years. (Appendix 1-2; Appendix 7, pp. 4-5; Appendix 9, pp. 3-5.)

Seeking to vindicate his right/ privilege under U.S. Constitution, Amendments VIII and XIV, §1, Petitioner, in appellate proceedings, sought relief from the trial court's overruling of his motion to suppress and sought a reversal of the conviction. Particularly, counsel for Petitioner argued that the consent given was not voluntary and that the evidence recovered was the fruit of an unconstitutional search. (Appendix 7, p. 6-7.) Afterwards, the Ohio Court of Appeals for the Fifth District affirmed the trial court's judgment, holding that Petitioner voluntarily consented to warrantless searches. (Appendix 3, p. 4 at ¶¶6-8.)

Next, on July 9th 2024, Petitioner sought a reconsideration of the Ohio Court of Appeals for the Fifth District's affirmation. In such Application for Reconsideration, Petitioner alleged that *State v. Benton* (1998), 82 Ohio St. 3d 316 is inapposite and that "warrantless searches have no connection to assuring the defendant's appearance or public safety." (Appendix 8, p. 1.) Subsequently, on August 5th 2024, the Ohio Court of Appeals for the Fifth District denied reconsideration.

Ever eager to uphold his right(s)/ privilege(s) under U.S. Constitution, Amendments IV and VIII (applicable to Ohio courts pursuant to U.S. Constitution, Amendment XIV, §1), Petitioner continued on by invoking the Ohio Supreme Court to accept jurisdiction of a jurisdictional appeal, aimed at reviewing the Ohio Court of Appeals for the Fifth District's judgment. Particularly, Petitioner asserted that "Ohio law forbids a court from imposing consent to warrantless searches as a condition of pretrial bond[:]" that Ohio law does not allow the compulsory suspension of U.S. Constitution, Amendment IV protections of a person presumed innocent; and that the

conditioning of bond release upon the granting of consent to general searches renders any search thereunder unconstitutional. (Appendix 9, pp. 3, 6-7.) Upon the submission of each parties' stance, the Ohio Supreme Court, on November 26th 2024, declined to accept jurisdiction. (Appendix 4.) Later, Petitioner sought reconsideration (Appendix 10), but to no avail as the Ohio Supreme Court, on December 23rd 2024, declined to reconsider its judgment (Appendix 5).

Having exhausted all possible avenues for relief in the Ohio courts, Petitioner respectfully urges that the Ohio Court of Appeals for the Fifth District's judgment is repugnant to U.S. Constitution, Amendment IV, to the Excessive Bail Clause of U.S. Constitution, Amendment VIII (both applicable to Ohio courts pursuant to U.S. Constitution, Amendment XIV, §1), and is at variance with this Court's decisions (and those of other federal courts) as explained in the argument below.

REASONS FOR GRANTING THE PETITION

- I. Decision affirming the denial of Petitioner's motion to suppress is repugnant to U.S. Constitution, Amendment IV and to the Excessive Bail Clause of U.S. Constitution, Amendment VIII (applicable to Ohio courts pursuant to U.S. Constitution, Amendment XIV, §1).

In light of its affirmation of the Richland County Common Pleas Court's overruling of Petitioner's motion to suppress evidence, alleged to have been the fruit of an unconstitutional search, its failure to reconsider such affirmation, and its audacity to ignore this Court's interpretation of the U.S. Constitution, the Ohio Court of Appeals for the Fifth District (and the Supreme Court of Ohio) appears to hold itself out to be "Supreme" over, and suggests that its interpretations of federal law are paramount to those of, this Court. That being so, Petitioner implores this Court to strike down such delusions, by granting his petition; not only as a benefit to his interest in this particular case, but so as to remind that excess bail shall not be required and as to clarify that the threat of withholding release on bail for a refusal to consent to general searches renders involuntary any subsequent consent to search.

As a threshold matter, this Court has jurisdiction to review the aforesaid judgment (that of the Ohio Court of Appeals for the Fifth District) because of its repugnancy to U.S. Constitution, Amendment IV, to Amendment VIII's Excessive

Bail Clause,¹ and to the interpretations thereof. More particularly, the decision is so repugnant as it permits Ohio courts to place arrestees in the precarious position of having to make a Hobson's choice of constitutional dimension—consenting to the abridgement of an arrestee's Amendment IV right to privacy in his/ her residence and the effects therein, under the coercive threat of the government's withholding of the Amendment VIII right to bail. On certiorari, this Court will not have much problem in ascertaining that a consent-to-search was involuntarily given where release on bail was conditioned on the grant of such consent; and that, under such circumstances, bail was excessive. Of course this Court has an interest in the uniform application of federal law,² even when such law is applied in a state court of last resort. See Sup. Ct. R. 10(b) or (c). In fact, this Court's precedent, in its various factual contexts, highlights that it is a duty of this Court to ascertain, in order that federal guaranties may appropriately be enforced, whether a nonfederal ground

¹ The Excessive Bail Clause is applicable to Ohio via U.S. Constitution, Amendment XIV, §1. See *Booth v. Maryland*, 482 U.S. 496, 501 n.5 (1987) ("The prohibitions of the Eighth Amendment apply to the States through the Due Process Clause of the Fourteenth Amendment."); *McDonald v. City of Chicago*, 561 U.S. 742, 764 n. 12 (2010) (Excessive Bail Clause incorporated into Due Process Clause).

² See generally, *Clafflin v. Houseman*, 93 U.S. 130, 136 (1876) ("The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws.").

adequately and independently supports the Ohio Supreme Court's judgment below.³ Frankly, permitting the judgment below to stand, unchecked by this Court (who, in the context of federal law, rightfully holds the title of "Supreme"), enables the seeds of rebellion against our Federal Constitution to mature into an outright revolution whereby state courts may condition release on bail upon an arrestee's waiver of 4th Amendment rights.

That bail is generally available to allow an accused person to be released before trial is fundamental to the American system of justice. Pretrial release not only makes it easier for an accused person to prepare a defense, it also upholds the presumption of innocence by ensuring that a person is not punished before being convicted. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). Although a court may impose bail conditions to protect an individual or the public, the primary function of bail is to allow for pretrial release, while also assuring that the accused person will appear in court when required. *Id.* at 4-5; *United States v. Salerno*, 481 U.S. 739, 752-754 (1987); *Bland v. Holden* (1970), 21 Ohio St.2d 238, 239. To be even more frank, there is nothing in either of the state courts' record which suggest that Petitioner is a danger to any one individual or to the community, nor has there been any legitimate state interest claimed below which would justify the bond condition of an

³ See *NAACP v. Alabama*, 357 U.S. 449 (1958); *Wolfe v. North Carolina*, 364 U.S. 177 (1960).

arrestee consenting to warrantless, general searches⁴—surely, the Excessive Bail Clause applies to conditions of release,⁵ and the Fourth Amendment “protection reaches all alike, whether accused of crime or not ***.” *Weeks v. U.S.*, 232 U.S. 383, 392 (1914).

Evenmore, the fact that Petitioner was permitted bail evinces the trial court’s belief that Petitioner is not the type of person who “poses a substantial risk of serious physical harm to any person or to the community[;]”⁶ thus, the court, by grant of bail, disposed of any assertion that consent-to-search, as a condition of release, is “reasonably necessary to reasonably assure *** public safety.”⁷ What is more, consent-to-search was never even sanctioned by the trial court as a condition

⁴ See Crim. R. 46(C) (court to consider relevant information when fashioning bail conditions).

⁵ *Salerno* at 754.

⁶ Ohio Constitution, Article I, §9. Also note that one may prevail on an Eighth Amendment challenge to release conditions by showing that the release conditions are so excessive in relation to the asserted government interest. See *Salerno* at 754 (proposed conditions of release or detention must not be excessive in light of legitimate state interests); *Stack* at 5; *Galen v. County of Los Angeles*, 477 F. 3d 652, 659-660 (9th Cir. 2007) (bail may not be set to achieve invalid interests or in an amount that is excessive in relation to the interest sought to be achieved).

⁷ Crim. R. 46(B)(2)(i).

of bail—the court, in exercising its discretion, instead, found electronic monitoring to be the least restrictive condition which would reasonably assure the Petitioner's appearance in court, the protection or safety of any person or the community, and that he would not obstruct the criminal justice process. (Appendix 6).⁸ Without a determination by the court that consent-to-search, as a bond condition, is so reasonably necessary (and is the least restrictive in assuring the government interests outlined in Crim. R. 46), Petitioner has suffered an egregious loss, occasioned by executive officers. Petitioner's dilemma is very similar to what the defendant in *U.S. v. Scott*, 450 F. 3d 863 (9th Cir. 2006) experienced—the executive officers here have “short-circuit[ed] the process by claiming that the arrest itself is sufficient to establish that the conditions [here, condition of random, general searches] are required.” *Scott* at 874. It is inescapable that Petitioner, by virtue of the presumption of innocence, had privacy and liberty interests far greater than any probationer or parolee.⁹

⁸ Note that the plain language of Crim. R. 46(B) and of Ohio Constitution, Article I, §9 places within the discretion of the court, as opposed to state executive officers, the determination of what conditions a release shall be subjected to.

⁹ See *Scott* at 873 (holding that a defendant “out on his own recognizance before trial has greater privacy and liberty interests than a probationer) and at 874 (“That an individual is charged with a crime cannot, as a constitutional matter, give rise to any

II. Conclusion

The petition for writ of certiorari should be granted so as to preserve the presumption of innocence, to safeguard against the erosion of a court's discretion in setting bail conditions, and to protect arrestees from excessive bail and coercion to waive Fourth Amendment rights.

Respectfully Submitted
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inference that he is more likely than any other citizen to commit a crime if he is released from custody).