

No. _____

In the
Supreme Court of the United States

ROLLAND G. SHOUP, II,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

**On Petition for a Writ of Certiorari to the
Supreme Court of Indiana**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a state deprive a defendant of their Fourteenth Amendment right to due process of law when it admits adverse evidence *not* on the basis of a proper foundation, but simply on the arresting officer's say-so.

LIST OF PROCEEDINGS

Indiana Supreme Court

Court of Appeals Case No. 23A-IF-01350

Rolland G. Shoup, II, *Appellant*, v. /
State of Indiana, *Appellee*.

Date of Final Order: January 23, 2025

Court of Appeals of Indiana

Court of Appeals Case No. 23A-IF-01350

Rolland G. Shoup, II, *Appellant-Defendant*, v.
State of Indiana, *Appellee-Plaintiff*.

Date of Final Opinion: June 28, 2024

Date of Rehearing Denial: September 3, 2024

Marion Superior Court

Case No. 49D22-2202-IF-005239

State of Indiana, *Plaintiff* v.

Rolland G Shoup, II, *Defendant*

Judgment (docket entry): May 18, 2023

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PETITION FOR A WRIT OF CERTIORARI

Rolland G. Shoup by and through Michael J. Bruzzese, counsel for Mr. Shoup on Petition to Transfer to the Supreme Court of Indiana below, respectfully petitions this court for a writ of certiorari to review the judgment of the Indiana Court of Appeals.



OPINIONS BELOW

The trial court's entry of judgment against Mr. Shoup, dated November 11, 2023 is attached in the appendix at App.92a. The memorandum decision of the Indiana Court of Appeals, affirming the trial court's ruling and dated June 28, 2024, is attached in the appendix at App.3a. The Indiana Court of Appeals Order, denying rehearing of the appeal and dated September 3, 2024, is attached in the appendix at App.19a. The Order of the Indiana Supreme Court, dated January 23, 2025, denying Mr. Shoup's Petition for Transfer, is including in the Appendix at App.1a. No opinion herein was designated for publication.



JURISDICTION

The Indiana Supreme Court entered an order denying transfer on January 23, 2025. (App.1a.) Mr. Shoup invokes this honorable Court's jurisdiction pursuant to 28 U.S.C. § 1257(a).



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

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 life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



STATEMENT OF THE CASE

This case presents the question of whether a defendant's right to due process is violated when a court convicts, not on the basis of facts, evidence, and the law, but based on a witness's subjective opinion. May a state accept a police officer's opinion that something may have happened in the past, absent any personal knowledge of the officer, as proper foundation for admitting evidence necessary for a conviction? May a state convict on the basis of witness testimony that is in effect, "I have no evidence to support my

opinion, but I believe in my heart that if I did have evidence, it probably would support my opinion?”

On February 11, 2022, Rolland Shoup, was stopped by the Marion County, Indiana Metropolitan Police and charged with a violation of Indiana Motor Vehicle Law. Mr. Shoup was issued a ticket for Distracted Driving in violation of Indiana Code 9-21-8-59 and for Speeding in violation of Indiana Code 9-21-5-2. (App.2a; App.3a). A hearing was held on May 18, 2023, at which Mr. Shoup was held to be in violation of both ordinances. (App.92a.) Mr. Shoup had moved for judgment on the evidence citing the State’s failure of proof, because Indiana Law requires that evidence of a defendant’s speed be supported by evidence that the measuring device is properly calibrated and the State’s sole witness testified that she had no evidence the measuring device had been calibrated but simply believed it to be so. (App.4a.) The motion was denied. (App.4a.) The Trial Court entered its judgment, as a docket entry only, without written order, on May 18, 2023. (App.92a; App.80a.)

Mr. Shoup filed his Notice of Appeal with the Indiana Court of Appeals on June 16, 2023, which appeal affirmed the trial court by memorandum decision on June 28, 2024. (App.3a-18a). With its memorandum decision, the Indiana Court of Appeals affirmed the use of “pacing” as an accepted practice in Indiana, but failed to even address the Trial Court’s admission of pacing evidence without any foundation whatsoever. (App.9a-11a).

Mr. Shoup’s request for rehearing was then denied on September 3, 2024. (App.19a). Mr. Shoup the sought transfer to the Indiana Supreme Court which request

was denied on January 23, 2025. (App.1a.) This writ follows.



REASONS FOR GRANTING THE PETITION

This case presents a critical issue of national importance: whether the admission of evidence lacking any foundational reliability, based solely on a testifying officer's subjective belief, violates the Due Process Clause of the Fourteenth Amendment. The lower court's decision to admit the officer's testimony regarding the defendant's speed—derived from a speedometer with no evidence of proper setup or regular testing—contravenes Indiana law and undermines the fundamental fairness guaranteed by the Constitution. The Supreme Court should grant certiorari to resolve this due process violation and provide clarity on the evidentiary standards that safeguard defendants' rights across jurisdictions.

I. The Lower Court's Ruling Violates Due Process by Admitting Evidence Without Foundation.

In Indiana, the admissibility of readings from measuring devices like speedometers hinges on a clear foundational requirement: the device must be “set up properly and regularly tested.” *See, e.g., Robinson v. State*, 634 N.E.2d 1367, 1374 (Ind. Ct. App. 1994). The reason for the rule is to ensure reliability, a cornerstone of due process, by preventing courts from relying on unverified or speculative evidence. Here, the testifying officer admitted she had no knowledge of whether her speedometer was calibrated, offering only her subjective

belief that it “had been.” No records, testimony, or other evidence substantiated this belief. Yet, the lower court admitted the speedometer reading, convicting the defendant based solely on this unsupported assertion.

The Due Process Clause demands more. This Court has long held that procedural fairness requires evidence to bear sufficient indicia of reliability, particularly when it forms the basis of a conviction. *See: Manson v. Brathwaite*, 432 U.S. 98, 114 (1977) (emphasizing reliability as “the linchpin” of due process in evidentiary rulings). Admitting the speedometer evidence without any foundation—relying instead on the officer’s hunch—deprives the defendant of a meaningful opportunity to challenge the accuracy of the accusation against him, a hallmark of due process violation. *See: Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (due process requires procedures that minimize the risk of erroneous deprivation). “The fundamental requirement of due process is the opportunity to be heard . . . *in a meaningful manner.*” *Id.* (emphasis added).

A defendant cannot be said to have been heard “in a meaningful manner” when, as here, the evidence against him is admitted on the basis of a police officer’s testimony that they have no evidence to support their allegations but simply believe them to be true:

Q: I am correct that you have no specific knowledge of how [the speedometer] was calibrated or who calibrated it . . . You – this is something you believe, but have no evidence of; is that accurate?

A: Yes, sir.

(App.7a-8a.)

Due process requires that conviction be made on facts, evidence, and the law and not on the subjective beliefs of the arresting officer.

II. The Issue Is Likely to Evoke Review.

Most Courts would likely dismiss speeding infraction cases, such as the one at bar, as “just a speeding ticket,” a characterization that renders them uniquely likely to evade Supreme Court review. Most individuals cited for speeding face modest fines—typically a few hundred dollars—and very likely lack the financial incentive or legal resources to pursue a defense at trial let alone appeals through multiple courts and ultimately certiorari. Yet, the due process violation here, where evidence was admitted without foundation based solely on an officer’s subjective belief, carries implications for fairness in countless similar cases.

The question is not whether a lowly speeding infraction is worthy of review, but rather whether the constitutional right to due process of law may be abridged in *any* judicial proceeding. Does an American’s constitutional rights vanish when accused of “small crimes” instead of “big crimes?” Is a ten dollar fine enough for the Fourteenth Amendment to apply or need it be ten-thousand dollars before a citizen is afforded his constitutional rights?

Without this Court’s intervention, the lower court’s ruling stands announcing that the protections of the United States Constitution may be ignored so long as it may be assumed that defendants lack the motivation or means to escalate a “mere” speeding ticket to the nation’s highest court. Granting certiorari is essential to address this violation of due process in a context

that would otherwise slip through the cracks of the judiciary.

The evasive nature of speeding tickets amplifies the urgency of review in this case; the apparent triviality belies the systemic importance. Very few citizens will ever need to assert their constitutional right to due process of law as the defendant in a capital case, but most Americans can be expected to incur a small fine for an infraction once or more during their lifetime. Thousands of infractions are adjudicated daily across the United States, and no part of The Fourteenth Amendment suggests that the minuscule nature of the deprivation of liberty and property one may face as a result means due process rights need not apply.

If lower courts are permitted admit evidence without foundation, as occurred here, simply on the say-so of the arresting officer, they are permitted undermine due process on a massive scale one “tiny, unimportant case” at a time. The low stakes of each individual case deter defendants from seeking higher review. This petitioner, by contrast, has brought the issue to this Court’s doorstep, presenting a rare opportunity to clarify the constitutional bounds of evidentiary reliability in a low stakes, but ubiquitous, category of cases. If the Supreme Court does not grant certiorari now, the question of whether subjective belief alone can substitute for proper evidentiary foundation simply because the defendant is not accused of a particularly heinous crime may remain unresolved indefinitely, leaving countless defendants vulnerable to unchecked procedural unfairness in proceedings they are unlikely to challenge.

The Supreme Court’s guidance is needed to prevent these deprivations of constitutional rights.

III. The Case Is an Ideal Vehicle for Review.

This petition offers a clean vehicle to address this evidentiary issue. The record is unambiguous: the officer testified she had *zero* knowledge of the speedometer's calibration, and no additional evidence established its reliability. (App.7a-8a.) The officer agreed succinctly that it was simply a "belief" that the speedometer had been calibrated. The lower court's decision to admit the evidence turned solely on that subjective belief, presenting a binary due process question unclouded by factual disputes or procedural complexities. Granting certiorari would allow this Court to reinforce the foundational safeguards essential to due process and protect defendants from future arbitrary evidentiary rulings.



CONCLUSION

For the foregoing reasons, Mr. Shoup respectfully requests that this Court issue a writ of certiorari to review the judgment of the Indiana Court of Appeals.

Respectfully submitted,

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