

IN THE SUPREME COURT OF THE UNITED STATES

1 First Street, N. E.  
Washington, D.C. 20543

CLAUDIA C. HOERIG,

Petitioner,

No.: 25-5466

v.

WARDEN, DAYTON

CORRECTIONAL INSTITUTION,

Respondent.

On Petition For a Rehearing from the denial of  
a Writ of Certiorari (OCT-06-2025)

Related Cases: Sixth Circuit – Case No.: 24-3382 (GSA)

Hoerig v. Olds, 2025 U.S. App. LEXIS 1296 (Jan-21-2025)

Hoerig v. Olds, 2025 U.S. App. LEXIS 7053 (Mar-26-2025)

**PETITION FOR A REHEARING**  
**Pursuant to USSC Rule 44**

Signature: \_\_\_\_\_

Claudia C. Hoerig, Pro se (W-102849)

Dayton Correctional Institution

4104 Germantown Pike

Dayton – Ohio 45417

Executed on JAN-21-2026

## QUESTION ONE (SOLE QUESTION) (\*)

Pursuant to the Due Process Clause of the Fifth and Fourteenth Amendments and WINSHIP, and in the context of the **intermediate-burden-shift framework** of McDonnell Douglas and Burdine (the two-step analytical framework distinct from Jackson at 319); a contention under Jackson v. Virginia, 443 U.S. 307, emphasis **at 317 n.10 (the standard for ruling on a denial of a Rule-29 Motion for Acquittal)**, and emphasis **at 318 n.11 (the standard for ruling on reasonable doubt raised by the defense, adopting the “test” in Curley, 160 F.2d 229, 232-233)**, is the prosecution under the affirmative duty to **disprove** evidence raising **reasonable doubt** put in issue by the **testimony** of the defendant fully **negating** the element of “**intent**” in an **aggravated murder** sole indictment and which satisfied the statute of **manslaughter** and operated as an undisputed **mitigating-defense** by a **preponderance of the evidence** sufficient to **acquit** petitioner of an indictment of **aggravated murder** as a **matter of law**?

(\*) **ANNOTATION TO QUESTION ONE:** Grounds for Rehearing are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented: Question One above is in essence a reframing of the original Certiorari **Question 1(a)** to clarify to this Court that the Sixth Circuit **misapprehended** the **context** of Petitioner’s claim and **failed to recognize** that Petitioner’s claim was **outside** and **beyond** the familiar standard of Jackson at 319, and thus the Sixth Circuit **failed to recognize** a due process constitutional question of **first impression** related to **CLAIM ONE** in Petitioner’s **Motion for a COA and Rehearing** in violation of Miller-El v. Cockrell, 537 U.S. 322 at 336-337, but subsequently, in its **intervening case**, on **NOV-06-2025** the Sixth Circuit **recognized** in Groves v. Warden, Dayton Corr. Inst., 2025 U.S. App. LEXIS 29285 (albeit in the context of IAC), that it is a violation of constitutional rights for a court to ignore a defendant’s **unrebutted testimony negating “intent”** in its selective analysis of the evidence in an aggravated murder indictment.

## REASON FOR GRANTING THE REHEARING

Petitioner urges this Court to grant a Rehearing, as there is no doubt that this is a serious constitutional question of **first impression**, necessary to address a 3-decade-old **conflict** between rulings in the Sixth Circuit; **conflict** with other Circuit Courts; and **conflict** with several USSC precedents, pursuant to the application of Jackson v. Virginia, 443 U.S. 307, emphasis **at 317 n.10 (the standard for ruling on a denial of a Rule-29 Motion for Acquittal)**, and emphasis **at 318 n.11 (the standard for ruling on reasonable doubt raised by the defense, adopting the “test” in Curley, 160 F.2d 229, 232-233) (not Jackson at 319)**.

Petitioner, pro se, urges this Court for an opportunity to reframe her original Certiorari **QUESTION 1(a)** to **clarify** to the Court that the Sixth Circuit failed to employ the attention to detail expected of a federal Circuit Court required to recognize a **constitutional question of first impression** within Winship (intermediate-burden to disprove “reasonable doubt” put in issue by the defendant and “negating” an element of the indictment establishing a mitigating defense to Aggravated Murder) related to CLAIM ONE in Petitioner’s Motion for a COA and Rehearing in violation of Miller-El v. Cockrell, 537 U.S. 322 at 336-337. CLAIM ONE is a claim of **Insufficiency of the Evidence** to meet INTERMEDIATE-BURDEN as contemplated in Jackson at 317 n.10 and Jackson at 318 n.11 (but **outside** of the familiar context of Jackson at 318) in the context of the **testimony** of the defendant asserting FACTS negating an indictment of Aggravated Murder (a negative-defense within the meaning of Engle v. Isaac), but which satisfies the inferior statute of Manslaughter (not included in the indictment), and raising reasonable doubt that must be disproved by the prosecution.

Nevertheless, subsequently, on NOV-06-2025, in its intervening case, the Sixth Circuit recognized in Groves v. Warden, Dayton Corr. Inst., 2025 U.S. App. LEXIS 29285 (albeit in the context of an IAC claim), that a defendant’s **testimony** asserting FACTS within the inferior statute of Manslaughter (for which defendant was not indicted), it operated as a negative-defense to an indictment for Aggravated Murder, creating an INTERMEDIATE-BURDEN for the prosecution to DISPROVE the FACTS of the NEGATIVE-DEFENSE. The nuance being that defendant was NOT indicted with Manslaughter as a “lesser-included-offense”, and instead was

only indicted with Aggravated Murder, which she plead NOT GUILTY to, and her sole NEGATIVE-DEFENSE was her TESTIMONY that she acted in HEAT OF PASSION, essentially satisfying the elements of the inferior statute of Manslaughter (which defendant was not indicted with), which pursuant to the principles of due process, would require the prosecution to DISPROVE the NEGATIVE-DEFENSE of Manslaughter if the prosecution wishes a conviction of the indicted offense of Aggravated Murder. Therefore, a defense of HEAT OF PASSION BY PROVOCATION, and ACT and FACT not contained in the indictment, operates as a NEGATIVE-DEFENSE to an indictment of Aggravated Murder (not an affirmative-defense to Aggravated Murder), because it NEGATES the element of "intent and premeditation". Again, the nuance is that the defendant was not indicted with Manslaughter. The prosecution did not put Manslaughter in issue. The defendant's testimony put Manslaughter in issue as a NEGATIVE-DEFENSE to Aggravated Murder, not as an affirmative-defense.

Thus, it is a violation of constitutional rights (due process) for a court to IGNORE a defendant's unrebutted testimony asserting FACTS satisfying an inferior statute of Manslaughter negating "intent" to commit Aggravated Murder in its SELECTIVE ANALYSIS of the evidence in its rulings to justify a misplaced FINDING of sufficient evidence to support a conviction of Aggravated Murder, while at the same time, FAILING TO POINT to any evidence DISPROVING the defendant's testimony asserting FACTS satisfying the inferior statute of Manslaughter for which defendant was not indicted. Manslaughter and Aggravated Murder are two distinct offenses. A TESTIMONY admitting to ACTS satisfying the elements of an inferior statute of Manslaughter is a NOT-GUILTY PLEA to an offense of Aggravated Murder, which is a NEGATIVE-DEFENSE raising REASONABLE DOUBT and shifting the INTERMEDIATE-BURDEN to the prosecution to DISPROVE the inferior statute of Manslaughter to obtain a conviction on the indictment of Aggravated Murder.

And that is a context outside of Jackson at 319, a distinct context contemplated in Jackson at 317 n.10 and Jackson at 318 n.11, which triggers the prosecution's INTERMEDIATE-BURDEN to DISPROVE REASONABLE DOUBT raised by the NEGATIVE-DEFENSE of Manslaughter under the principles of Engle v. Isaac at 122, pursuant to the Sixth Circuit's decision in Gall v. Parker (2000), recognizing that "*a State must then DISPROVE that defense as part of its burden of*

*proof*”, which is in direct CONFLICT with another case in the Sixth Circuit (RHODES, 1996), which the Sixth Circuit relied on to deny appealability to Claudia grounded on the mischaracterization that Claudia merely raised a claim of Manifest Weight of the Evidence, not Sufficiency, and which now requires the USSC to intervene and REMAND Claudia’s case to the Sixth Circuit for a constitutional ruling consistent with Gall v. Parker, 231 F.3d 265 at 287, 304 (not RHODES), which follows Winship principles, requiring the prosecution to DISPROVE a defense of Manslaughter if it want<sup>S</sup> a conviction of the offense of Aggravated Murder. Ironically, this dispositive WASHING EFFECT of her TESTIMONY is what triggers the prosecution’s INTERMEDIATE-BURDEN, also recognized in Rhodes v. Brigano, 91 F.3d 803 at 809 n.2 (when *“the defendant established the existence of one of the mitigating circumstance by a preponderance of the evidence, the prosecution’s proof beyond a reasonable doubt of the element of murder is irrelevant; the defendant can be convict only of manslaughter.”*)

The proof of an element (heat of passion by provocation) that distinguishes between Aggravated Murder and Manslaughter implicates WINSHIP due process as much as an element that distinguishes guilt and innocence. A DEFENSE of Manslaughter is a NEGATIVE-DEFENSE to Aggravated Murder which negates the element of INTENT and PREMEDITATION. In Ohio HEAT OF PASSION is not an element of Aggravated Murder; instead it is an element of a distinct offense, which, if proven by the defendant, the defendant can only be convicted of Manslaughter, not Aggravated Murder.

The prosecution failed to DISPROVE an essential element of the NEGATIVE-DEFENSE, the inferior statute of Manslaughter: HEAT OF PASSION BY PROVOCATION.

THE COURT NEVER MADE A FINDING THAT CLAUDIA “DIDN’T ACT IN HEAT OF PASSION BY PROVOCATION”. The courts must conform with the principle that HEAT OF PASSION is a NEGATIVE-DEFENSE to the elements of INTENT AND PREMEDITATION in the context of Claudia’s trial for Aggravated Murder because: (a) Manslaughter is not a lesser-included-offense; (b) Claudia was not indicted with Manslaughter; (c) Manslaughter is not a lesser-included-offense, instead it operated as a MITIGATING DEFENSE to Aggravated Murder; (d) Evidence of Manslaughter was put in issue by the defendant through her testimony, to deny

intent to commit Aggravated Murder, not by the prosecution, which triggered the prosecution's INTERMEDIATE-BURDEN to DISPROVE Manslaughter beyond a reasonable doubt to obtain a convict of Aggravated Murder, which it failed to do.

In fact, her testimony of HEAT OF PASSION BY PROVOCATION was so strong that the judge added jury instructions on Manslaughter. Nevertheless, the judge **nullified** the effect of her testimony by also telling the jury not to consider her TESTIMONY of HEAT OF PASSION BY PROVOCATION if it first found that the prosecution proved Aggravated Murder, which prevented the jury from convicting her of Manslaughter and ACQUITTING her of Aggravated Murder. As it relates to this case, if homicide was committed with a lesser mens rea of HEAT OF PASSION BY PROVOCATION, and no intent, it is NOT MURDER, but only MANSLAUGHTER.

Petitioner waves all other questions and wishes this Court to grant certiorari to the sole question above, reframing QUESTION ONE. The records are sufficient to demonstrate that the State has not met its **intermediate-burden to disprove** that Petitioner is merely guilty of **manslaughter**, not murder.

**“Even a thief is entitled to complain that he has been unconstitutionally convicted and imprisoned as a burglar”** (Jackson v. Virginia, 443 U.S. at 324).

The Sixth Circuit's **intervening case** decided on NOV.06.2025 in Groves v. Warden, Dayton Corr. Inst., 2025 U.S. App. LEXIS 29285 (albeit in the context of IAC), features the recognition of a constitutional right violation that applies directly to Petitioner's Motion for Rehearing pending in the USSC, which is an **intervening Opinion** by the Sixth Circuit directly on point with the issues raised on Certiorari, which further supports her argument that the Sixth Circuit failed to recognize a legitimate constitutional claim in violation of Miller-El v. Cockrell, 537 U.S. 322 at 336-337.

Additionally, the USSC line of cases (see item 18 below), and the Circuit Court line of cases (see item 19 below) make apparent the Sixth Circuit's error in failing to recognize constitutional claims so strong that require the Sixth Circuit to vacate defendant's conviction as void to the extent that it did not conform to the constitutional mandates concerning SUFFICIENCY OF THE

EVIDENCE combined with the due process doctrine that the prosecution has an INTERMEDIATE-BURDEN to DISPROVE **reasonable doubt** raised by the **testimony** of the defendant fully negating “intent” to commit murder.

1. In line with Engle v. Isaac, 456 U.S. 107 at 122, the Sixth Circuit decided in,

**Gall v. Parker, 231 F.3d 265 at 287 and 304 (2000, CA6)**

*“[\*287]. . . A WINSHIP violation occurs when the State has shifted the burden of proof . . . for a defense that negates a required element . . . [\*304] . . . An alternative way to gain habeas review is to show that a defense raised fully negates an element of a crime; a State must then DISPROVE that defense as part of its burden of proof. See Engle v. Isaac, 456 U.S. 107 at 122. A contention that a State failed to DISPROVE this type of defense raises a colorable constitutional claim appropriate for habeas review.”*

**“DUTY” OR “NO DUTY” TO “DISPROVE” AN ELEMENT OF THE DEFENSE?**

2. Gall v. Parker, 231 F.3d 265 at 287 and 304 (2000, CA6) held that “a State must then disprove that defense as part of its burden of proof”, therefore the Sixth Circuit ruling in Hoerig, 2025 U.S. App. LEXIS 1296 at \*7 is in direct **conflict** with the Sixth Circuit’s ruling in Gall v. Parker.
3. The Sixth Circuit in HOERIG at \*7 disagrees with its own decision in GALL at 287, 304, and in HOERIG at \*7 it maintains that the State does not need to disprove a negative-defense as part of its **intermediate-burden of proof**.

**INTERMEDIATE BURDEN TO “DISPROVE” A NEGATIVE DEFENSE IS WELL-ESTABLISHED IN ENGLE V. ISAAC**

4. Petitioner **challenges precisely this conflicting conclusion of law** in her case, see Hoerig, 2025 U.S. App. LEXIS 1296 at \*7, stating that due process does not require the State to disprove the defendant “acted in heat of passion by provocation”, conveniently **ignoring** that she testified on

her own behalf and therefore established her **negative-defense** to murder by a **preponderance of the evidence** and the prosecution stayed **silent** and **failed** to **rebut** her testimony.

THE SIXTH CIRCUIT'S DECISION IN HOERIG \*7 DOES NOT SQUARE WITH CIRCUIT OR USSC LAW

5. Hoerig, 2025 U.S. App. LEXIS 1296 at \*7, erroneously relied on **RHODES** to deny habeas relief:

*In her motion for a COA, Hoerig does not dispute these findings and instead maintains that the State was required and failed to **disprove** that she **acted with "sudden provocation"** . . . Moreover, because the lack of sudden provocation or "sudden fit of rage" is not an element of aggravated murder—contrary to what Hoerig suggests—the State was not required to prove it at trial. See Rhodes v. Brigano, 91 F.3d 803, 804, 809 n.2, 810-11 (6th Cir. 1996).*

6. In other words, the Sixth Circuit in Hoerig, 2025 U.S. App. LEXIS 1296 at \*7, should instead have relied on its own ruling in Gall v. Parker, 231 F.3d 265 at 287, 304 (2000, CA6) to grant habeas relief, which **has already decided** that "**a State must then **disprove** that **defense** as part of its burden of proof**".
7. Therefore, it is **unclear** why the Sixth Circuit chose to rely on Rhodes, 91 F.3d 803 (1996, CA6) to deny habeas relief, being that RHODES is a distinguishable case not involving a **sufficiency claim** or **a denial of a Rule 29 Motion for Acquittal** claim, it is merely a jury instruction challenge under Mullaney (Claudia never challenged Jury Instructions, even though she could have; RHODES never challenged INSUFFICIENCY OF THE EVIDENCE, even though he could have).

#### **RHODES IS NO LONGER GOOD LAW**

8. In fact, Rhodes, 91 F.3d 803 (1996, CA6) is **no longer good law**, as it is in direct **conflict** with Benge v. Johnson, 474 F.3d 236 at 245-246 (2007, CA6), which finally agreed that the jury instruction challenged by RHODES was incorrect because it "**instructed the jury that it could not consider defendant's guilt as to the charge of voluntary manslaughter if it concluded [first] that he was guilty of aggravated murder**". See Black v. Tennessee, 2025 U.S. LEXIS 2568 (Jun.30.2025) (explaining the devastating violation of due process of this type of jury instruction **flaw** in Tennessee, also under the Sixth Circuit's watch).

#### **IRONICALLY, RHODES' ANALYSIS OF INTERMEDIATE-BURDEN OF PROOF MUST BE ENFORCED TO ACQUIT CLAUDIA**

9. And ironically, the Sixth Circuit could have relied on RHODES to grant habeas relief just as well.

Rhodes, 91 F.3d 803 at 809 n.2, stated:

When *“the defendant establishes the existence of one of the mitigating circumstances by a preponderance of the evidence, the prosecution’s proof beyond a reasonable doubt of the elements of murder is irrelevant; the defendant can be convicted only of voluntary manslaughter.”*

### RHODES IS A “BLESSING” FOR CLAUDIA, NOT A “CURSE”

10. Bottom line, RHODES is Claudia’s  **blessing**, as she should have been granted habeas relief based on RHODES’  **analysis** on the prosecution’s  **intermediate-burden**. Therefore, it is still  **unclear** why the Sixth Circuit relied on Rhodes, 91 F.3d 803 to deny habeas relief.
11.  **RHODES** ruling is schizophrenic, as its  **analysis** of the prosecutor’s  **intermediate-burden** to  **disprove** that defendant acted in heat of passion is a  **“blessing”**; but its  **“conclusion of law”** contrary to the principles of Winship and Engle is a  **“curse”** and unless the Sixth Circuit undertakes overruling  **en banc RHODES’s conclusion of law**, the USDC will continue to misapply AEDPA standard to bar habeas relief to legitimate cases of Insufficiency of the Evidence invoking  **“the Curley test”**, and many defendants like Cornell Rhodes and Claudia Hoerig will continue to be denied the protections of Jackson-Curley, Engle, Martin, Holland, and Winship, and suffer wrongful convictions.
12. Mr. Cornell Rhodes has been wrongfully incarcerated as a  **“premeditated murderer”** since 1989 for a crime of  **manslaughter**. He is almost 80 years old, and still incarcerated.

### THE SIXTH CIRCUIT’S REFUSAL TO CORRECT ITS OWN PRECEDENTS EN BANC

THIS CASE DOES “NOT” INVOLVE A GENUINE DISPUTE OF FACTS AND AEDPA DEFERENCE DOES “NOT” APPLY

13. ANALYTICAL DISTINCTION - A claim of Insufficiency of the Evidence in the context of  **“a denial of a Rule-29 Motion for Acquittal”** as contemplated in Jackson v. Virginia, 443 U.S. at 317 n.10; and a claim under Jackson at 318 n.11 (adopting the reasonable doubt test in Curley, 160 F.2d 220, 232-233), is strictly a  **question of law** for the  **trial court**, as a  **matter of law** (not fact), meaning, it does  **not** involve a  **dispute of facts**. This case should never have went to the jury.
14. WHY PETITIONER SHOULD GET CERTIORARI?

- Because this case does not involve a **genuine dispute** of facts. The testimony of defendant fully negated intent to commit murder and it was not rebutted by the prosecution.
- Because prosecution was silent and **failed to rebut** reasonable doubt mandated by the principles of due process contemplated in **Jackson at 318 n.11** (the standard for ruling on reasonable doubt raised by the defense, adopting the CURLEY test).
- This case should never have went to the jury because of the due process principles contemplated in **Jackson at 317 n.10** (the standard for ruling on a denial of a Rule-29 Motion for Acquittal).
- Because the one-judge Opinion of the Sixth Circuit is in **conflict** with several authoritative decisions of other United States Court of Appeals.
- Because the one-judge Opinion of the Sixth Circuit is in **conflict** with another decision of the Sixth Circuit, to wit, **Gall v. Parker, 231 F.3d 265 at 287, 304 (2000, CA6)**.
- Because of the particularity of each point of law, and arguments in support of the petition, which the Opinion has **overlooked** or **misapprehended**.

15. STANDARD FOR “DE NOVO” REVIEW - Both the Sixth Circuit and the USDC erred by refusing to review **de novo** whether the State Court adjudicated Petitioner’s **insufficiency of the evidence** in the context of a “denial of a Rule 29 motion for acquittal” claim pursuant to clearly established due process principles, where, clearly established federal law provides that the reasonable-doubt standard of the **Due Process Clause of the Fifth and Fourteenth Amendment**, protects the accused, pursuant to **Jackson v. Virginia**:

(1) Jackson, 443 U.S. at 315 (citing: Winship at 364),

*"The constitutional standard recognized in the Winship case was expressly phrased as one that protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged."*

(2) Jackson, 443 U.S. at 317 n.10,

*[\*317 n.10] ". . . Fed. Rule Crim. Proc. 29, serves only to highlight the traditional . . . beyond-a-reasonable-doubt standard to the evidence is not irretrievably committed to jury discretion. . . .The power of the factfinder to err upon the side of mercy, however, has never been thought to include a power to enter an unreasonable verdict of guilty. . . . Any such premise is wholly belied by the settled practice of testing evidentiary sufficiency through a motion for judgment of acquittal and a postverdict appeal from the denial of such a motion."*

(3) Jackson, 443 U.S. at 318 n.11,

*[\*318 n.11] ". . . on the strength of Winship. . . the directed-verdict criterion articulated in Curley v. United States, 81 U. S. App. D. C. 389, 392-393, 160 F.2d 229, 232-233 (If "reasonable" jurors "must necessarily have . . . a reasonable doubt" as to guilt, the judge "must require acquittal, because no other result is permissible within the fixed bounds of jury consideration"). This is now the prevailing criterion for judging motions for acquittal in federal criminal trials. See generally 2 C. Wright, Federal Practice and Procedure § 467 (1969 and Supp. 1978)."*

16. Martin v. Ohio (1987), 480 U.S. 228 at [\*234]

*"...When the prosecution has made out a prima facie case and survives a motion to acquit, the jury may nevertheless not convict if the evidence offered by the defendant raises any reasonable doubt about the existence of any fact necessary for the finding of guilt."*

17. The Sixth Circuit thus far declined to explain how courts should square Claudia’s case scenario of **unrebutted reasonable doubt** with Martin at 234, Engle at 122 and Jackson at 315, Jackson at 317 n.10, and Jackson at 318 n.11. Both Ohio and the USDC in the Sixth Circuit never inquire whether a genuine dispute of facts exists and automatically label a Criminal Rule 29 Motion for Acquittal for Insufficiency of the Evidence (a claim contemplated in Jackson at 317 n.10; and Jackson at 318 n.11 (the **CURLEY test**)) as merely a “**manifest weight of the evidence**” claim, noncognizable in habeas corpus, as “an obvious **subterfuge** to evade consideration of a federal question”. (See Gall v. Parker, 231 F.3d 265 at 287, 304 (2000, CA6). (See Item 1 above).
18. The Sixth Circuit’s Conclusion of Law in Hoerig, 2025 U.S. App. LEXIS 1296 at \*7 that the prosecution does not have the duty to “disprove” a negative-defense is in CONFLICT with USSC precedents.

(1) Martin v. Ohio (1987), 480 U.S. 228 at [\*237]

*[\*237] \*\*\* The clear implication of this ruling is that when an affirmative **defense** does **negate** an element of the crime . . . . In such a case, In re Winship, 397 U.S. 358 (1970), requires the state to prove the **nonexistence** of the **defense** beyond a reasonable doubt.*

(2) Holland v. United States, 348 U.S. 121

*[\*136]“...When the government fails to show an investigation into the validity of leads furnished by the taxpayer, the trial judge may consider them as true and the government’s case insufficient to go to the jury.”*

*[\*138]“...But where relevant leads are not forthcoming, the Government is not required to negate every theory of innocence, a matter peculiarly within the knowledge of the defendant.”*

*[\*139]“...Once the Government has established its [\*139] case, the defendant remains quiet at his peril ...the practical disadvantages to [the defendant] are lessened by the pressure on the Government to CHECK and NEGATE relevant LEADS.”*

(3) Engle v. Isaac, 456 U.S. 107 at 122

*“Most of these decisions adopt respondents’ reasoning that [\*122] . . . due process commands the prosecution to prove **absence** of . . . [heat of passion] if that **defense** **negates** an element, such as purposeful conduct, of the charged crime.”*

(4) Anderson v. Liberty, 477 U.S. 242 at Syllabus (c) and P.p 256-257

To defeat a motion for acquittal, the State must offer **concrete** evidence, and not simply state that the jury could have **disbelieved** defendant's testimony that she **acted in heat of passion**.

(5) Parker v. Matthews, 567 U.S. 37

(The courts cannot find **extensive** evidence of **heat of passion by provocation**, and yet reject a **sufficiency-of-the evidence** claim, **unless** it also finds that **the defense** failed to raise **reasonable doubt**, or ample evidence pointing in the other direction as well.)

(6) Musacchio v. United States, 577 U.S. 237

(The **defense** becomes part of the prosecution's case once the defendant breaks its silence and puts the **defense** in issue.)

(7) Burdine, 450 U.S. 248 at 253-256

INTERMEDIATE-BURDEN – BURDEN SHIFT - Sufficiency of the **defendant's evidence** should be evaluated; a **negative defense** which raises **reasonable doubt**, meaning, evidence that meets the preponderance of the evidence threshold.

(8) Smith v. United States (2013), 568 U.S. 106, at [\*110]

[\*110] *“\*\*\* The State is **foreclosed** from shifting the burden of proof to the defendant only “when an **affirmative defense** does **negate** an element of the crime.” MARTIN v. Ohio, 480 U.S. 228, 237, 107 S. Ct. 1098, 94 L. Ed. 2d 267 (1987) (Powell, J., dissenting). **Where instead it “excuse[s] conduct that would otherwise be punishable,” but “doesn’t controvert any of the elements of the offense itself,” the Government has no constitutional duty to overcome the defense beyond a reasonable doubt.***

(9) Xiulu, 142 S. Ct. 2370 at [\*2388]

Citing: Smith v. United States (2013), 568 U.S. 106, at [\*110]

19. The Sixth Circuit's Conclusion of Law in Hoerig, 2025 U.S. App. LEXIS 1296 at \*7 that the prosecution does not have the duty to “disprove” a negative-defense is in CONFLICT with the rulings of other Circuit courts:

(1) Pierce v. United States, 414 F.2d 163 at 168 n.10 (1969, CA5)

*Defenses, As a matter of law - If there is a factual controversy it is usually for the jury to resolve, not for the court to find as a matter of law. However, the evidence may be so strong that the court may be justified in finding [the defense] as a matter of law.*

(2) Schmidt v. Foster, 891 F.3d 302 at 306 (2018, CA7)

*"The prosecution must then **disprove** the **defense** beyond a reasonable doubt."*

(3) United States v. Alexander, 471 F.2d 923 at 944 (1972, D.C. Cir.)

*"...When a defense...to murder – adequate provocation...has been put in issue, the Government must **prove its absence** beyond a reasonable doubt."*

(4) United States v. Jackson, 824 F.2d 21 at 26 (1987, D.C. Cir.)

*"Testing Evidentiary Sufficiency Through a **Motion for acquittal** – "Jackson v. Virginia, 443 U.S. 307, at 317 n.10, . . . (1979) (noting the "settled practice of testing evidentiary sufficiency through a **motion for judgment of acquittal** and a post verdict appeal from the denial of such a motion").*

(5) United States v. Mitchell, 725 F.2d 832 at 836 (1983, CA2)

*"...the prosecutor must **disprove** at least an element of that **defense** beyond a reasonable doubt..."*

(6) United States v. Taylor, 686 F.3d 182 at 191-192 (2012, CA3)

*"Due Process requires . . . the government to **disprove** beyond a reasonable doubt any defense that **negates** an element of the charged offense."*

(7) United States v. Pothier, 919 F.3d 143 (2019, CA1)

(defendant's testimony is beneficial to the defendant because it fills many of the prosecution's **evidentiary gaps**, and the practical effect is to neutralize and preclude the State's reliance on circumstantial evidence to infer guilt to meet its burden to prove its case in chief beyond a reasonable doubt.)

(8) United States v. Garcia, 919 F.3d 489 (2019, CA7)

Overview: A trial judge erred in denying defendant's **motions for acquittal** under Fed. R. Crim. P. 29 where the government secured a verdict finding him guilty of distributing cocaine based solely upon a federal agent's opinion testimony purporting to interpret several cryptic intercepted phone calls between defendant and a known drug dealer.

(9) Appel v. Horn, 250 F.3d 203 at 210 (2001, CA3)

*28 U.S.C.S. § 2254(d) applies only to claims already adjudicated on the merits in State court proceedings. It follows that when, although properly preserved by the defendant, the state court **has not reached the merits** of a claim thereafter presented to a federal habeas court, these **deferential standards do not apply**. When a state court has adjudicated the claim on the merits, the federal habeas court **must conduct a de novo review over pure legal questions and mixed questions of law and fact**, as a court would have done prior to the enactment of Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 110 Stat.*

1214. However, the state court's factual determinations are still presumed to be correct, rebuttable upon a showing of clear and convincing evidence. 28 U.S.C.S. § 2254(e)(1).

(10) United States v. Goldesberry, 128 F.4th 1183 (2025, CA10)

Overview: The court found that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that Mr. Goldesberry knowingly touched K.G. and the evidence equally supported the defense's theory that the touching was an accident, as Mr. Goldesberry claimed.

20. **NOTE:** The claims of the defendants in the Circuit court precedents cited above failed because either the prosecution **rebutted** the **defense**, or the defendant didn't testify. **Claudia's case is stronger because her testimony was not rebutted by the prosecution.**
21. Rather, the Ohio Court of Appeals by mere fiat and **with no analysis** of the cases it relied on, wholly excludes a legitimate RULE 29 MOTION FOR ACQUITTAL claim from the ambit of due process under the Fifth and Fourteenth Amendments, thus erroneously rendering due process concerns never applicable to a denial of a RULE 29 MOTION FOR ACQUITTAL claim even when the State **failed to rebut the testimony** of the accused **negating** an essential element of the crime.
22. Claudia made a RULE 29 MOTION FOR ACQUITTAL after the close of all evidence. The **State** has **failed** to provide sufficient evidence to **create a genuine dispute** of material fact to **disprove** that Claudia **acted in heat of passion** (she established all the **elements** of a prima facie case of **manslaughter**).
23. Now, the State has to prove that Claudia's defense is a PRETEXT, but it **failed** to carry its **intermediate burden** under the McDonnell Douglas, 411 U.S. 792 (1973) **burden-shift framework** to **point to evidence** sufficient to **create a genuine** issue of material fact as to whether Claudia's defense of **heat of passion** was a PRETEXT. The Sixth Circuit failed to follow due process principles.
24. The Sixth Circuit's Opinion is resting on a fundamental **misconception of a "point of law"** that the prosecution does not have the burden to **"disprove"** an **element** of a **"negative defense"**, given that such interpretation would essentially **nullify** the **"reasonable-doubt standard"** mandated by WINSHIP at 364 as explained in Chambers, 410 U.S. at 290 n.3 (*the cumulative effect of rulings in frustrating efforts to develop an exculpatory defense*); precisely: a denial of a Rule-29 Motion for

Acquittal combined with the jury instructions telling jury not to consider evidence of manslaughter. What is **dispositive** is her explanation that she used the gun “**in a fit of rage by provocation**”. That is what is the **dispositive inquiry** of this entire case, **that she acted in heat of passion, and the State failed to disprove her negative-defense** (exculpatory evidence). The word-game that the Sixth Circuit’s Opinion engages in is of little consequence, because it **cannot change** the fact that Petitioner did prove her **defense of heat of passion** by a **preponderance of the evidence**, and the law is clear that she is **entitled to a judgment of acquittal as a matter of law** of the higher charge, unless the State **disproves** the defense that **she acted in heat of passion**. Rhodes, 91 F.3d 803 at 809 n.2 (see item 9 above).

25.

## CONCLUSION

The petition for a writ of certiorari should be granted. A **Motion for a COA** and **Motion for a Rehearing en banc** should have issued, pursuant to Miller-El v. Cockrell, 537 U.S. 322 at 336-337.

I declare under penalty of perjury that the foregoing is true and correct (28 USC 1746) and that this Petition for writ of Certiorari was placed in the prison mailing system on JAN / 21 / 2026.

Signature: \_\_\_\_\_

Claudia C. Hoerig, Pro se (W-102849)

Dayton Correctional Institution, 4104 Germantown Pike, Dayton – Ohio 45417

Executed on JAN-21-2026

IN THE SUPREME COURT OF THE UNITED STATES

1 First Street, N. E.  
Washington, D.C. 20543

CLAUDIA C. HOERIG,  
Petitioner,

No.: 25-5466 (Petition for Rehearing)

v.

On Petition For a Rehearing from the denial of  
a Writ of Certiorari to the

WARDEN, DAYTON  
CORRECTIONAL INSTITUTION,  
Respondent.

United States Court of Appeals For the  
Sixth Circuit – Case No.: 24-3382 (GSA)  
Hoerig v. Olds, 2025 U.S. App. LEXIS 1296 (Jan-21-2025)  
Hoerig v. Olds, 2025 U.S. App. LEXIS 7053 (Mar-26-2025)

**PROOF OF SERVICE**

I, CLAUDIA HOERIG, do swear or declare that on this date, JAN / 21 / 2026, as required by Supreme Court Rule 29 I have served the enclosed **MOTION REHEARING** on each party to the above proceeding or that party’s counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

DAVE YOST – Ohio Attorney General  
c/o – Jerri L. Fosnaught (Assistant Attorney General)  
30 East Broad St., 23<sup>rd</sup> Floor, Columbus, Ohio 43215

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JAN / 21 / 2026.

Signature: Claudia C. Hoerig

Claudia C. Hoerig, Pro se (W-102849)

IN THE SUPREME COURT OF THE UNITED STATES

1 First Street, N. E.  
Washington, D.C. 20543

CLAUDIA C. HOERIG,

Petitioner,

No.: 25-5466 (Petition for Rehearing)

Related to USAP6 No. 24-3382

v.

WARDEN, DAYTON

CORRECTIONAL INSTITUTION,

Respondent.

**CERTIFICATE**

I, **Claudia C. Hoerig**, certify that the grounds for Rehearing are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

I, **Claudia C. Hoerig**, certify that the petitioner for Rehearing is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JAN / 21 / 2026.

Signature: \_\_\_\_\_

*Claudia C. Hoerig*

Claudia C. Hoerig, Pro se (W-102849)

Dayton Correctional Institution

4104 Germantown Pike

Dayton – Ohio 45417