No. 25-5893

ORIGINAL

OCTOBER 2024 TERM

IN THE

SUPREME COURT OF THE UNITED STATES



Frederick M. Hill – Petitioner

vs.

Angela Stuff, Warden-Respondent[1]

**ON PETITION FOR A WRIT OF CERTIORARI TO THE**

**UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

# PETITION FOR WRIT OF CERTIORARI

FREDERICK M. HILL #A701883

RICHLAND CORRECTIONAL INSTITUTION

P. O. BOX 8107

1001 OLIVESBURG ROAD

MANSFIELD, OHIO 44901-8107

[1] Respondent Stuff is now Warden at Richland. S. Ct. Rule 35.3 Notice to the Clerk.

## QUESTIONS PRESENTED

1. Should the "one fair shot" and procedural due process require the court of appeals to notify a petitioner that an appeal and briefing schedule is being converted back to a COA, if an amended COA could bring forth arguments for granting the COA?

2. If the trial record clearly shows on its face egregious violations of the Fourth and Sixth Amendments; and cause for procedural default, is there a debatable and substantial constitutional claim; or is it adequate to deserve encouragement to proceed for a COA to be granted?

   a. During a "knock and talk" criminal investigation when there is no answer at the first door of "public common use" does it allow police to play "Let's Make a Deal" by knocking on doors numbers two and three?

   b. Whether a "knock and talk," is a physical intrusion; and a Fourth Amendment violation when access is gained by a pathway that the public would not normally use?

   c. During a criminal investigative "knock and talk", on a single, private, unregulated commercial building, is it entitled to the same Fourth Amendment protection as a house and its "curtilage"?

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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 issues to review the judgment below.

## OPINIONS BELOW

The opinion of the United States Court of Appeals appears at **Appendix A** to the petition and is reported at *Hill v. Black, No. 23-3929, 2024 U.S. App. LEXIS 13132 (6th Cir. May 30, 2024).* The opinion of the United States District Court of Ohio appears at **Appendix B** to the petition and is reported at *Hill v. May, No. 5:19-cv-1640, 2023 U.S. Dist. LEXIS241916 (N.D. Ohio Sept. 29, 2023).* The Report & Recommendation of the District Court appears at **Appendix C** to the petition and is reported at *Hill v. May, No. 5:19-cv-1640, 2023 U.S. Dist. LEXIS 241999 (N.D. Ohio April 5, 2023).* The opinion of the Stark County, Ohio, Court of Appeals, Fifth Appellate District appears at **Appendix G** to the petition and is reported at *State v. Hill, No. 2017CA00183, 2018-Ohio-3901, 2018WL4636196.* The opinion of the Stark County, Ohio, Court of Appeals, Fifth Appellate District appears at **Appendix I** to the petition and is unpublished, *State v. Hill, No. 2017CA00183 (Feb. 13, 2019).* The opinion of the Stark County, Ohio, Court of Appeals, Fifth Appellate District appears at **Appendix K** to the petition and is reported at *State v. Hill, No. 2020CA00019, 2020-Ohio-4050, 2020WL4673902.* The opinion of the Stark County, Ohio Common Pleas Court appears at **Appendix M** to the petition and is unpublished, *State v. Hill, No 2017CR0700 (Dec. 23, 2019).*

## JURISDICTION

The date on which the United States Court of Appeals decided this case was July 8, 2025.

Extension was granted to file a petition for rehearing/suggestion En banc on June 11, 2025, **Appendix F**. A petition for rehearing En banc was denied on July 8, 2025, **Appendix D**.

The jurisdiction of this Court is invoked under *28 U.S.C. § 1254(1)*.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

*FOURTH AMENDMENT*

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*FIFTH AMENDMENT*

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

*SIXTH AMENDMENT*

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

*FOURTEENTH AMENDMENT*

Section 1. 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.

*28 U.S.C. § 2253*

See **APPENDIX S**.

## STATEMENT OF THE CASE

This case arose from an anonymous complaint received on March 20, 2017 about a large marijuana grow inside a building at 1805 Allen Ave. SE, in Canton, Ohio. Detective Jesse Gambs of the Canton Police Department's Special Investigations Unit was assigned to investigate. Gambs obtained a court order for electric records that were in the name of "Price is Right Auto Sales, LLC." A search with the Secretary of State showed the business does exist and was registered by Frederick M. Hill of Barberton, Ohio. The electric records "appeared" high usage, so Gambs sought thermal image warrant on March 25, 2017, that was served with the assistance of Metro Detective Jared Blanc. The results were inconclusive.

Over weeks surveilling the building it "always appeared empty...was never any foot traffic or vehicles." Gambs decided the only realistic option that remained was a "knock and talk." On **April 12, 2017** Gambs and Detective Michele Kalabon approached the rear (north side) of the building that was completely open, the rest was fenced and padlocked. They knocked on **doors**, getting no answer, then walking to the **south side** door, smelled growing marijuana. Both left and secured a warrant from Stark County Common Pleas Judge Kristen Farmer. At 3:47 p.m., a warrant was served and discovery of a large grow operation. **(Appendix R)**.

On **April 21, 2017**, Hill was indicted on (1) Count One felonious assault, R.C. 2903.11 (A)(2), with three firearm specifications; (2) Count Two second-degree felony possession of marijuana, R.C. 2925.11 (A)(C)(3)(g); (3) Count three second-degree felony cultivation, R.C. 2925.04 (A)(C)(5)(f); (4) Count Four second-degree trafficking, R.C. 2925.03 (A)(2)(C)(3)(g); (5) Count Five third-degree felony discharge of a firearm, R.C. 2923.162 (A)(3)(C)(2); and (6) Count Six fourth-degree felony improper handling of a firearm in a vehicle, R.C. 2923.16 (A). Hill plead not guilty to all charges. **(Appendix D)**.

On May 25, 2017, through counsel, Hill filed a motion to unseal the affidavit, search warrant, inventory, and return to the thermal imaging search on March 25, 2017, and the physical search of the warehouse on **April 12, 2017**. On June 2, 2017, the State filed an opposition, arguing the affidavit and warrant served on **May 4, 2017** contained information in an ongoing investigation. **(Appendix I)**.

On June 2, 2017, counsel filed a preliminary motion to suppress evidence obtained from searches performed of the warehouse and his residence. Hill argued the searches violated his rights under the Fourth and Fourteenth Amendments, as well as Ohio's counterparts, because the State lacked probable cause. Hill also argued that any evidence obtained during or subsequent were fruit of the poisonous tree. On July 10, 2017, the trial court granted then counsels' motion to withdraw. On July 12, 2017, the trial court appointed new counsel. Hill's new counsel withdrew the motion to suppress at an August 7, 2017 hearing.[2]

On September 1, 2017, the jury found Hill guilty on Count One-Three; Five; and Six. The jury also found Hill guilty of all three firearm specifications in Count One. On September 20, 2017, the trial court declared a mistrial as to Count Four after the jury was unable to reach a verdict, and entered a nolle prosequi at State's request.

On September 5, 2017, the trial court sentenced Hill to 11 years on Count One, with additional three and five year specifications. On Count Two, eight years merged with Count Three allied offenses. Also merged Count Five with Count One as allied offenses. On Count Six, 12 months. Count One was served consecutive to firearm specification; and consecutive to Count Two. Count One and count Six would be served concurrent for an aggregate sentence of 27 years.

[2] Transcript of the hearing was not made part of the record by the State.

On September 28, 2017, Hill, through new appellate counsel, timely filed a direct appeal raising two claims:

1. The trial court erred when it ordered appellant to serve his firearm specification consecutively with discharging firearm from motor vehicle specification.

2. The trial court erred by instructing the jury on flight.

On May 23, 2018, Hill filed a pro se **"Legal Notice to All Concerning Parties,"** to have appellate counsel removed for failing to consult before filing brief and denying Hill the opportunity to present errors that could only be presented on appeal. On June 5, 2018 the Fifth District denied. On June 14, 2018, the State filed its appellate brief. On July 2, 2018, Hill, acting pro se, requested leave to file a supplemental brief pursuant to Ohio Appellate Rule 16(c). Hill argued the search and seizure of his property was illegal and he attempted to have his court-appointed trial counsel file a motion to suppress, but refused to do so. Also stated he "clearly understand[s] how important it is to have the Court review...to properly raise and exhaust them. Hill wanted to raise several additional grounds, including:

> **GROUND NO. 1:** Appellate counsel was ineffective for not raising that trial counsel was ineffective for not filing a motion to suppress evidence which clearly prejudice appellant and denied him due process.
>
> **Supporting facts:** It could have been proven through a MOTION TO SUPPRESS EVIDENCE that police officers unlawfully entered Appellant's property, without a warrant which the FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION prohibit warrantless searches and seizures."

On July 11, 2018, the Fifth District denied and ordered the clerk not to accept any more pro se filing by Hill. On September 24, 2018, the Fifth District affirmed the trial court. **(Appendix C and G)**. The Ohio Supreme Court declined to accept jurisdiction. **(Appendix K)**.

On December 10, 2018, Hill, pro se, filed an Appellate Rule 26 (B) application to reopen the direct appeal in the Fifth District arguing appellate counsel was ineffective for failing to raise three assignments of error:

1. The trial court violated appellant's constitutional rights and committed plain error when it entered convictions for all offenses against appellant after it failed to provide the jury with verdict forms that identified the degree of the offenses or the statute of the violation of the offenses.

2. Trial Court committed plain error where it did not make the statutorily required findings prior to imposing consecutive sentences pursuant to R.C. 2929.14 (C)(4).

3. Trial counsel was ineffective, whereby violating appellant's sixth amendment right to effective assistance of counsel, for not attacking the validity of the search warrant or objecting to the methods of law enforcement's search and seizure procedures that violated the appellant's Fourth Amendment Right to the United States Constitution.

On February 13, 2019, the Fifth District issued an opinion **granting in part and denying in part**, Hill's motion to reopen.[3] **(Appendix H).** On March 12, 2019, the trial court granted the State's motion to vacate and dismiss Count Six. On June 12, 2019, the Ohio Supreme Court declined to accept jurisdiction of the appeal pursuant to Ohio S. Ct. Prac. R. 7.08 (B)(4). **(Appendix L).**

On November 22, 2019, Hill, pro se, filed a Motion for Leave to File Delayed Motion for New Trial pursuant to Ohio Criminal Rule 33 (B). Hill argued newly discovered evidence received from trial counsel on November 9, 2018 that included: (1) three photographs showing the warehouse was encircled by a chain-link fence, contrary to the testimony of Detective Gambs; and (2) a "case report" containing information used to obtain the search warrant, which stated that the detective went around fences and that the back part of the property was not fenced in. Hill argued that it was only from this correspondence that the facts became known that both trial and appellate

[3] The Fifth District ordered new counsel not to raise any other arguments from the record. **(Appendix H12).**

counsel had facts to not making a reasonable strategic and tactical decisions to withdraw the motion to suppress.

On December 23, 2019, the trial court denied, holding: (1) the motion was untimely because not filed within 120 days of the verdict; and (2) newly discovered evidence would not change the outcome of the trial. **(Appendix J)**.

On January 21, 2020, Hill, pro se, timely appealed to the Fifth District raising two assignments of error:

1. The trial court abused its discretion when it determined that trial counsel's failure to use available evidence to challenge the manner in which law enforcement obtained the search warrant in violation of the Sixth and Fourteenth Amendments of the United States Constitution, did not create a strong probability of a different outcome were a new trial to be granted.

2. Appellant was denied the effective assistance of appellate counsel, in violation of the Sixth and Fourteenth Amendments to the United States Constitution, when counsel failed to inform his client of the potential post-conviction issues in his case or the mandatory procedures involved with such pleadings.

On August 11, 2020, the Fifth District affirmed the trial court, holding that Hill's first assignments of error focused on issues not properly before the court because the success of the merits was unnecessary to resolve the motion. Second, the motion was untimely because Hill was not unaware of the new evidence and not unavoidably prevented from obtaining them through reasonable diligence. Also, the delay between discovering the evidence, January 2019, and the filing ten months later was not within a reasonable time.[4] **(Appendix I)**. The Fifth District ruled the Gambs' Case Report was not part of the record. **(Appendix I and R)**. On November 10, 2023,

[4] This holding has been determined by the Ohio Supreme Court was **error.** *State v. Bethel, 167 Ohio St. 3d 362, 2022-Ohio-783, 192 N.E. 3d 470, ¶58.*

the Ohio Supreme Court declined to accept jurisdiction of the appeal, *S. Ct. Prac. R. 7.08 (B)(4).* **(Appendix M).**

On July 18, 2019, Hill, pro se, filed a 28 U.S.C. § 2254 habeas petition raising the following two grounds for relief:

1. Defendant was denied the effective assistance of trial counsel, in violation of the Sixth and Fourteenth Amendment to the United States Constitution, when counsel failed to use available evidence to challenge the manner in which law enforcement obtained the search warrant.

2. Defendant was denied the effective assistance of appellate counsel, in violation of the Sixth and Fourteenth Amendment to the United States Constitution, when counsel failed to inform his client of the potential post-conviction issues in his case or the mandatory procedures involved with such pleadings.

On April 5, 2023, the magistrate judge recommended that the petition be denied as to ground one both because of procedure default and failure on the merits; and ground two as procedurally defaulted; but recommended that a certificate of appealability be granted with respects to ground one and **whether ineffective assistance of appellate counsel raised in his motion to reopen** should excuse the procedural default to ground one. **(Appendix D).**

On September 29, 2023, the district court filed its Opinion and Order accepting in part and rejecting in part the R & R, dismissing the petition and denying to issue a certificate of appealability. **(Appendix C).**

On November 14, 2023, the Sixth Circuit directed the district court to file Hill's pro se application for a certificate of appealability as a notice of appeal. **(Appendix N).** On November 17, 2023, the Sixth Circuit issued a show cause order why the appeal should not be dismissed as untimely. **(Appendix O).** Hill, pro se, replied and the show cause was **WITHDRAWN** on January 10, 2024. **(Appendix P).**

On or around, May 17, 2024, Hill, pro se, asked the Sixth Circuit to appoint counsel for filing of the appellate brief.[5] On May 30, 2024, the Sixth Circuit converted the appeal and briefing scheduled back to a COA; and denied Hill a COA. **(Appendix A).**

On June 11, 2025, Hill, pro se, requested rehearing/suggestion en banc claiming errors of due process; failing to give liberal reading of pro se pleadings; conflict with Federal caselaw to "business curtilage"; the district court failed to read transcript; and both the Sixth Circuit and district court ruled on the merits in a 28 U.S.C. § 2253 proceeding. The State **did not** oppose. On July 8, 2025, the Sixth Circuit denied En banc. **(Appendix D-F).**

**Statement of Facts**

On April 12, 2017, Gambs and Kalabon preformed a "knock and talk" on a warehouse located at 1805 Allen Avenue, SE in Canton, Ohio. Gambs started a surveillance and subpoenaed electric records for the past two years. There was no traffic seen going to or from the warehouse, "**Not a soul.**" Except one night, at approximately 1 a.m., was a vehicle registered to Hill's son, Brandon Friedlien.

Gambs knew that the warehouse had a fence around the building and the front gate had a "padlock" securing it. Gambs and Kalabon began to "search" for a way to enter the property. **(Appendix R).** Gambs testified to similar facts, but clarifying the "knock and talk" that led to his alleged probable cause for a warrant served on April 12, 2017:

> We knock on the door. Ah, there is three doors. There is a couple bay doors, but there is three man doors on the place. **Ah we go and knock on two of the doors and get no answer. I go to knock on the, I guess would be the southwest door, and, ah, upon approaching the door I could detect the smell of growing marijuana; and as I actually got up to the door to knock, it was overwhelming at that point that there was, there was clearly, ah, some kind of a marijuana grow inside.**

[5] This was Hill's third request for counsel's assistance during the habeas process.

**(ECF 22-1 Transcript PAGE ID 1121-1122).** Gambs uses the electric bill and the "plain smell" as "probable cause" to secure a warrant. **(Id. at 1122).** Gambs testified that studying an electric bill for a three to four month raise then drop of 200 Kilowatts (200,000 watts) swings, **"that would be noticeable,"** that mimic the growing cycles. **(Id. at 1112-1113). There was none! (Id. at 1197).**

Gambs went to Judge Kristen Farmer, secured a search warrant and then served the warrant seizing over 62-thousand grams of marijuana; and grow lab. Gambs, allegedly, leaves a copy of the warrant and inventory list on a table. Gambs also left a note wrote by Kalabon and was pinned to a wall by a screwdriver.[6] Gambs note stated, "Sorry we missed you...Cant wait to meet you in person!" **(Appendix G2-G4, Q, R).**

Gambs continues by explaining various Exhibits shown to the jury of 17 garbage bags of marijuana; grow equipment; and other evidence. Gambs then testifies at the conclusion of the search he has to legally leave the search warrant and inventory list. Also the note asking him to call. Gambs identified **State's Exhibit 23 W**, that was shown to the jury of the warrant allegedly served on April 12th. **ECF 22-1 Transcript PAGE ID 1176-1177).** Gambs testified that Hill was apprehended on April 13, 2017 by Canton P.D. and U.S. Marshalls. **Id. at PAGE ID 1216.**

Deputy Jarrod Blanc testified, on April 12, 2017, he was at work on his regular shift from 1:30 to 9:30 p.m. He was contacted by Gambs informing him that he was in the process of securing a warrant. Just by happenstance, the gym Blanc works out is located at 1807 Allen Avenue, SE. At 10:45 p.m., he leaves the gym, still in his workout clothes, places duffle bag containing his work clothes and duty side arm into a sheriff's **unmarked** Dodge van just behind the passenger's seat.

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[6] Hill contradicts this testimony, saying it was impaled with a knife and no warrants were left.

Blanc goes north back past 1805 Allen and sees the gate open with an orange Dodge Ram parked inside facing the southwest corner of the building. Blanc sent Gambs a text message saying the vehicle he seen earlier was there and was going to hang out in the area. **He is now doing surveillance.**[7]

Blanc pulls on the side of a business facing the street, with his headlights on, and sees the Dodge Ram leaving. Blanc still does not grab his identification and side arm, but has time to text Gambs again, telling him Hill is leaving. Blanc states that the orange Dodge **drove past him and was startled when he broke the headlights** and making him jump the curb. He observed the driver exit and began walking around the back of the truck. Although he was trying to reach for his weapon behind the seat, **he stopped to answer a call from Gambs.**[8]

Blanc decides to take off with Hill following. When Blanc gets to Cleveland Avenue, he slams on the brakes and heard three gunshots. At no time was Blanc's weapon checked for being fired or himself for gunshot residue.[9]

Blanc's actions are not typical of an officer, he is speeding down the streets of Canton blowing stop signs and lights. Hill had no way of knowing he was a police officer.

Larry Hootman, crime scene specialist, from the Ohio BCI's Youngstown office, was contacted on April 13, 2017 to process an orange Ram pick-up. Hootman took pictures, fingerprints, and DNA. A **ballistic impact** was noted on the **right rear** quarter panel, passenger side. Two casings were found on the driver's seat and a .380 caliber Hornady was located on the driver's side floor near the rocker panel. The bullet impact, in **State's Exhibit 22 H**, traveled "from the front of the vehicle to the back," the bow or wave (yaw) effect shows the direction.

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[7] Blanc does not grab his identification or side arm at the point of starting a surveillance of a grow lab just raided.
[8] At no time did Blanc just open the door or roll down the window to announce himself as a police officer.
[9] Ohio Bureau of Criminal Investigations ("BCI"), was not called to investigate a police involved shooting.

Hootman concluded that this was caused by a "deflection or a richochet" from the bullet hitting the "B" pillar of Blanc's van.

On April 14, 2017, Hootman processed the van Blanc drove. He noted a bullet hole on the driver's side door, just below the window sill at the "B" pillar. A second one at the top beside the rear hatch.

Gina Friedlein, Hill's fiancé, testified to entering the warehouse on three separate occasions after April 12th. The first time was one week after the arrest when an eviction notice was received. After being shown **State's Exhibit 22 W (warrant and inventory)**, she testified to seeing the inventory list sitting on top of a cylinder-shaped fan, right on top, the third time entering the building. She could not have missed the inventory list the first two times because it was right in the open next to the door when it was opened.

Hill testified that he was Inuit, born in Alaska. He explains the events of April 12th. He notices things are wrong when he opens the gate and sees the white truck is missing. Things get more eerie when he opens the door and his dog "Kyra" does not run to meet him. While walking to the other parts of the warehouse it looks like a tornado hit. He starts to see piles of blood with paw prints in them. He starts to become scared and is confronted with a note impaled with a "knife" into the door. He reads the note, then starts panicking. He sees no warrant, inventory list, business cards, nor any clues the police are involved. If they were there, he would have seen them.

Hill calls the number on the phone twice, thinking some harm could come to his family. No one answered, there is no voice mail. Hill tries to tell the jury what is going on in his head and "the people just got killed down south." The judge stops him.[10]

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[10] Hill was prevented by Judge Frank Forchione from presenting evidence or arguing to the jury that he had no knowledge Blanc was an officer and his state of mind that a robbery was committed. Hill had connections with the Rhoden family where 8 members were killed in Pike County, Ohio. See *State v. Wagner, 2025-Ohio-542 (4th District).*

Hill leaves the building, thinks he hears a noise, turns to see a van coming towards and jumps out the way. He chases to get a plate number. He does not know who these people are. He gets to Cleveland Avenue, when the nose of the truck gets past the van's sliding door and hears gunshots. Hill fires back twice. He goes to Skipco Auto, leaving both guns in the truck. He never threw them from the Ram.

**State's Exhibit 23A** and **Exhibit 23 W** (April 12, 2017 warrant and inventory), were admitted into the record and submitted to the jury. **(ECF 22-3 Transcript PAGE ID 1557)**. These should have been transmitted as the record on direct appeal to the Fifth Appellate District.[11]

## REASONS FOR GRANTING THE PETITION

Professor Anthony G. Amsterdam aptly stated:

> The question is not whether you or I must draw the blinds before we commit a crime. It is whether you and I must discipline ourselves to draw the blinds every time we enter a room, under pain of surveillance if we do not.

*Amsterdam, Perspectives on the Fourth Amendment, 58 Minn. L. Rev. 349, 403 (1974).*

Petitioner Frederick M. Hill, argues that the reasons for granting the Writ mirror the same as extraordinary circumstances under Rule 60 (b)(6). In this appropriate case, a "risk of injustice;" and "the risk of undermining the public's confidence in the judicial process" are clearly presented in the State's record. *Buck v. Davis, 580 U.S. 100, 123, 137 S. Ct. 759 (2017).*

The State convicted Hill in its efforts to **cover up corrupt and unconstitutional acts** by the Canton P.D., with help from the State's courts.[12] Hill asks the Court, if during a criminal

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This was a "high profile" case reported as being a **Cartel** robbery of a marijuana grow operation. Hill had just visited before the murders. ("Cant wait to see you" **(Appendix Q)**).

[11] Hill has tried to gain access to the warrants, but the State has replied that they were "destroyed". *State ex rel. Hill v. Todaro, 2024-Ohio-375, 2024WL396351.* The State had a duty to preserve this evidence when Hill filed his App. R. 26 (B) motion. *California v. Trombetta, 467 U.S. 479, 488 (1984); Arizona v. Youngblood, 488 U.S. 51, 57-58 (1988).*

[12] Under the **clean hands doctrine**, a court should not lend its judicial power to a plaintiff who seeks to invoke that power for the purpose of consummating a transaction in clear violation of law. *Johnson v. Yellow Cab Transit Co., 321 U.S. 383, 387, 64 S. Ct. 622 (1944).* See also *Dep't of Homeland Sec. v. D.V.D., 145 S. Ct. 2153, 2158 (2025)*

investigative "knock and talk," if the entry onto **private commercial property** is taken by a non-public path to the first door, is it a search requiring a warrant? Or, when there is no answer after a "knock" on the first door, does it allows police to play "Let's Make a Deal" and knock on doors two and three, then probable cause is found at door three? Or, could a claim arguing "business curtilage" be fatal to denying a COA when caselaw used the term and is defined as a place where the public has no licensed invitation?

Before the Court can answer these questions, it may have to decide if Hill was denied procedural due process in an application for a certification of appealability ("COA"). If the Sixth Circuit denied Hill's opportunity to amend the COA and misapplied *28 U.S.C. § 2253*, remand would be required since this Court is a court of final review. *Holland v. Florida, 560 U.S. 631, 654, 130 S. Ct. 2549 (2010).*

1. **Should the "one fair shot" and procedural due process require the court of appeals to notify a petitioner that an appeal and briefing schedule is being converted back to a COA, if an amended COA could bring forth arguments for granting the COA?**

This Court should exercise its discretion to answer this question of first impression. A pro se pleading must be held to a less stringent standard than formal pleadings drafted by lawyers. *Erickson v. Pardus, 551 U.S. 89, 94 (2007); Estelle v. Gamble, 429 U.S. 97, 106 (1976)* (documents filed pro se to be liberally construed). Hill has been pro se since the direct appeal was decided.

The Sixth Circuit's "**show cause**" order gave Hill the impression that a COA was granted and awaiting the briefing schedule. The failure to give notice and an opportunity to defend denied the liberty interest in a habeas corpus proceeding without due process. *U.S. Const. 5th and 14th Amendments*. The federal courts are directed by the constitution to grant due process, which states

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*(Sotomayor, J., dissent).* The State cannot convict with evidence from a known unconstitutional "knock and talk," or seized without a warrant.

in part, "No person shall...be deprived of life, liberty, or property, without due process of law." *U.S. Const. 5th Amendment.*

Habeas corpus remains available to every individual detained in the United States as a critical check on the Executive, ensuring that it does not detain individuals except in accordance with law. *Hamdi v. Rumsfeld, 542 U.S. 507, 525, 124 S. Ct. 2633 (2004).* There is a fundamental nature of a citizen's right to be free from involuntary confinement by his own government without due process of law. *Id. at 531; Hawk v. Olson, 326 U.S. 271, 274 (1945) ("to safeguard liberty of all persons within the jurisdiction of the United States against infringement through any violation of the constitution.").*

"The fundamental requisite of due process of law is the opportunity to be heard." *Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652 (1950) (cite omitted).* An elementary and fundamental requirement of due process in any proceeding which is to be accorded **finality** is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Id.*

*28 U.S.C. § 2241,* and its companion provisions, provide at least a skeletal outline of the procedures to be afforded a petitioner. *Hamdi, 542 U.S. at 525.* See also *Slack v. McDaniel, 529 U.S. 473, 482, 120 S. Ct. 1595 (2000)* (COA statue establishes procedural rules.). The Federal Rules of Civil Procedure apply in habeas corpus proceedings under *28 U.S.C. § 2254* "to the extent that [it is] not inconsistent with" applicable federal statutory provisions of the AEDPA. *Gonzalez v. Crosby, 545 U.S. 524, 529, 125 S. Ct. 2641 (2005); 28 U.S.C. § 2254, Rule 12.*

The Federal Circuits allows motions or leave to expand; or an amended COA. *Plaster v. Les Parish, 2024 U.S. App. LEXIS 35222 (6th Cir. 2024); Lambrix v. Sec'y, Fla. Dept. of Corr., 851 F.3d 1158, 1159 (11th Cir. 2017); United States v. Villareal, 87 F.4th 689, 693 (5th Cir. 2023);*

*Walters v. Martin, 18 F.4th 434, 441 (4th Cir. 2021) (motion to expand granted); Velazquez v. Superintendent Fayette SCI, 937 F.3d 151, 157 n. 2 (3rd Cir. 2019) (same).*

Hill, pro se, filed to the Sixth Circuit for a COA after being denied a COA by the district court. **(Appendix A and B)**. The clerk of the Sixth Circuit ordered the district court to file the COA as an appeal. **(Appendix N)**. Then the Sixth Circuit ordered Hill to "show cause...why the appeal should not be dismissed" as untimely. Further, **"that the briefing schedule be held in abeyance." (Appendix O)**. Hill complied, and the show cause was **WITHDRAWN**. **(Appendix P)**. Hill could only believe that this was now an appeal, and put **back on** the briefing schedule.

Surprisingly, on May 30, 2024, a circuit judge, unbeknownst to Hill, converted the appeal back to a COA and denied. **(Appendix A)**. Hill challenged this ruling by asking for rehearing and/or suggestion for rehearing en banc, pursuant to *Fed. App. R. 35* and *40*, in bringing the arguments in question two. **(Appendix D-F)**.

In this instant case, Hill is at the point of finality. There is no automatic right to appeal the final order of a district judge in a habeas corpus proceeding. A "petitioner must seek and obtain a COA" from a circuit justice or judge. *Miller-El v. Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029 (2003); 28 U.S.C. § 2253(c)(1)(A).*

If denied, certiorari can be taken to this Court, but without more, error review of a court of appeals is not favored, it "is not a matter of right, but of judicial discretion."

> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

*S. Ct. R. 10.*

Was Hill entitled to notice that the appeal and briefing schedule was being converted back to the COA reviewing stage if an amendment would have been successful to give the "one fair shot at habeas review." *Gonzalez, 545 U.S. at 542 (Stevens, J., dissent).*

2. **If the trial record clearly shows on its face egregious violations of the Fourth and Sixth Amendments; and cause for procedural default, is there a debatable and substantial constitutional claim; or is it adequate to deserve encouragement to proceed for a COA to be granted?**

Notwithstanding the above argument, Hill did present valid claims that his **second trial counsel's** decision to abandon the motions to unseal and suppress warrants was deficient and prejudicial. *Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052 (1984); Joshua v. DeWitt, 341 F.3d 430, 449-50 (6th Cir. 2003) (ineffective assistance claim granted when trial and appellate counsel failed to raise meritorious 4th Amendment claim).* Hill asserts that there are least four (4) separate violations by Gambs' entrance on April 12, 2017, associated with the "knock and talk."

Both trial and appellate counsel failed in their duties of bringing the skills and knowledge necessary to meet the case, to consult; and to adequately review trial records available on and before August 7, 2017 that clearly showed a motion to suppress evidence seized on April 12, 2017 would have been successful. *Premo v. Moore, 562 U.S. 115, 124, 124 S. Ct. 733 (2011); Kimmelman v. Morrison, 477 U.S. 365, 382-83, 106 S. Ct. 2574 (1986).*

The effective assistance of counsel is guaranteed by the Constitution, the *Sixth Amendment*, states in part, "In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence." *U.S. Const. 6th Amendment.* This is made applicable to the States:

> 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.

*U.S. Const. Fourteenth Amendment.*

The Sixth Circuit indulged in an "post hoc rationalization" of counsel's decision making that contradicted the available evidence. *Premo, supra at 109.* Second trial counsel already knew: 1) that Gambs entered the property on April 12th seizing evidence at 3p.m.; 2) Hill stated that there was no inventory or warrant left. Also, confirmed by his fiancé; 3) the State continued to verify the **sealed** warrant was executed on **May 4, 2017, (ECF 21-2 Response PAGE ID 239; Response PAGE ID 639)**; 4) the Fifth Appellate District's factual finding supports the warrant was issued on **May 4, 2017, (Appendix H)**; 5) photos attached to Hill's *Crim R. 33 (B)* were **State's Exhibit 23 A** from discovery and trial, which show the first door, third door, and I-77 at the rear; and 6) Gambs' Case Report stated no "foot traffic or vehicles," it always appeared empty, **Appendix R.**

The Sixth Circuit's order denying a COA held:

> In this case, the allegedly unconstitutional search involved a warehouse Hill was renting. See *Hill*, 2018 WL 4636196, at *1. **Hill does not claim that he lived in the warehouse or that he used the warehouse for "intimate activities" that are usually associated with a home**. *Oliver*, 466 U.S. at 179. Consequently, the area surrounding the building was not entitled to "curtilage-like" protection. See *Mathis*, 738 F.3d at 730. The investigating detective reported that he and another officer approached the warehouse from the north side, which was "completely open." **Moreover, Hill admits that the chain-link fence did not enclose the rear of the warehouse. Based on these facts, a competent attorney could have reasonably concluded that the warehouse was accessible to the public through the rear of the property, and therefore that the officers were lawfully at the place where they smelled marijuana in the warehouse**. *Cf. United States v. Dunn*, 480 U.S. 294, 304 (1987) ("It follows that no constitutional violation occurred here when the perimeter fence, and over several similarly constructed interior fences, prior to stopping at the locked front gate of the barn.").

**(Appendix A5) (emphasis added).**

In denying a COA, the Sixth Circuit lost focus of the standard of review under *28 U.S.C. § 2253 (c)(2)*, which states, "A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right." The court of appeals should limit its examination to a threshold inquiry into the underlying merit of Hill's claims. *Miller-El*, supra at 327, citing *Slack*, supra at 481.

Appellate counsel was privy to the complete record and if his review fell short of bringing forth the most promising arguments on direct appeal, his representation fell short of that guaranteed by the *Sixth and Fourteenth Amendments. Smith v. Murray, 477 U.S. 527, 536, 106 S. Ct. 2661 (1986).* Appellate counsel was already deemed ineffective for failing to challenge the jury verdict form. **(Appendix H).**

Gambs' search was not supported by a valid search warrant dated on April 12, 2017, or based on a recognized exception to the warrant requirement. *State v. White, 2018-Ohio-1339, 110 N.E.3d 139, ¶12 (7th District); State v. Rodriquez (1990), 66 Ohio App.3d 5, 538 N.E.2d 384 (6th District)* (search before valid warrant).

Was Hill convicted for possession and growing marijuana obtained by evidence in violation of *Fourth and Fourteenth Amendments. Mapp v. Ohio, 367 U.S. 643, 655, 81 S. Ct. 1684 (1961); Wong Sun v. United States, 371 U.S. 471, 484 (1963); Grumbley v. Burt, 591 Fed. Appx. 488, 499 -500 (6th Cir. 2015) (case in chief loss significant evidence in three of five counts).* Would the existence of 62,000 thousand grams of illegally obtained marijuana in a courtroom prejudice the jury to other charges?

Hill presented to the Fifth Appellate District on his motion to reopen the direct appeal; and delayed motion for new trial that trial counsel was ineffective for failing to continue with the motion to suppress or object to way of finding probable cause, because of meritorious facts that probable cause for a search warrant was discovered after an unconstitutional "knock and talk" entry onto private commercial property not accessible to the public; not open for business purposes; no one was on the property; access to the public doors was secured by a locked fence; and Gambs traversed the curtilage from the northwest side, knocking on two doors, and only when going to knock on a third door on the southwest side smelled marijuana that was the probable cause

for a warrant. *Florida v. Jardines, 569 U.S. 1, 133 S. Ct. 1409 (2013); Kentucky v. King, 563 U.S. 452, 131 S. Ct. 1849 (2011).*

The Fifth Appellate District held the following in rejecting:

> In the case sub judice, a search warrant was executed on **May 4, 2017** at a location that appellant was renting. The search warrant was based on an affidavit. Appellant's trial counsel filed a motion to unseal the search warrants and appellee, in its response, indicated that the warrant was based on an affidavit containing information relation to an uncharged suspect or suspects. While appellant's trial counsel filed a Preliminary Motion to Suppress, the motion was abandoned by trial counsel.
>
> As noted by appellee, the search warrant is not part of the record on appeal. As noted by the court in State v. Ellis, 8th Dist. Cuyahoga No. 90844, 2009-Ohio-4359, ¶6:
>
> * * *
>
> Appellate counsel cannot be Ineffective in falling to argue that the search warrant was not valid when the warrant was not part of the record.
>
> Appellant also contends that appellate counsel was ineffective in failing to contest the search of the warehouse. However, the "knock and talk" effectuated at the door to the warehouse, prior to discovery of the marijuana, is recognized as a constitutionally sound police procedure. Kentucky v. King, 563 U.S. 452, 131 S. Ct. 1849, 1862, 179 L. Ed 2d 865 (2011). "When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether [the person at the door is an officer or a private person], the occupant has no obligation to open the door or to speak." State v. Miller, 2nd Dist. Montgomery No. 24609, 2012-Ohio-5206, 982 N.E.2d 739, ¶18, citing King, supra, 131 S. Ct. at 1862. At trial, Detective Gambs testified that upon approaching the door on the southwest side, he could detect the smell of growing marijuana. On such basis, he obtained a search warrant. See United States v. Charles, 29 F. Appx. 892, 898 (3d Cir. 2002) (officer may obtain warrant based on "plain smell" of marijuana from inside house during lawful "knock and talk").

**(Appendix H8-H10) (emphasis added).**

Hill only needs to makes a substantial showing of the denial of a constitutional right. This is shown by a demonstration that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were "'adequate to deserve encouragement to proceed further.'" *Slack*, 529 U.S. at 484.

The threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. *Miller-El*, 537 U.S. at 336. The "COA does not require a showing that the appeal will succeed." *Id.* at 337. Hill only had to "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.*

Hill would be entitled to a COA if the "knock and talk" exception was constitutionally unsound at any point before Gambs smelled marijuana **at door number three**. *Jardines and King, supra.* If, under the facts presented, the warehouse Hill was renting was entitled to the protection of "business curtilage" in commercial property, it would be debatable by reasonable jurists that a COA issue. *Dow Chemical Co. v. United States, 476 U.S. 227, 106 S. Ct. 1819 (1986); See v. City of Seattle, 387 U.S. 541, 87 S. Ct. 1737 (1967).*

Hill's claim rests, in part on a violation of the "knock and talk" exception, that resolution of the COA requires a preliminary consideration of *King and its progeny. Miller-El, 537 U.S. at 338.* Then how ineffective assistance of counsel relates to a failure to file a motion to suppress at trial and on direct appeal. *Premo and Kimmelman, supra.*

The right against unreasonable searches and seizure without a warrant is protected by the constitution. A warrant can only issue upon probable cause by sworn affidavit, the *Fourth Amendment*, states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*U.S. Const. 4th Amendment.*

Where a substantial showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the

allegedly false statement is necessary to the finding of probable cause, the false material is set to one side, and if the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the extent as if probable cause was lacking on the face of the affidavit. *Franks v. Delaware, 438 U.S. 154, 155-156, 98 S. Ct. 2674 (1978).*

Hill states that the "purposeful misrepresentation" was that Gambs did not include in the affidavit the facts of knocking on doors one and two, before "approaching" the third door. *Jardines, 569 U.S. at 8; Carroll v. Carman, 574 U.S. 13, 135 S. Ct. 348 (2014)* (per curiam).

**a. During a "knock and talk" criminal investigation when there is no answer at the first door of "public common use" does it allow police to play "Let's Make a Deal" by knocking on doors numbers two and three?**

The "knock and talk" rule announced in *King* was a well-established exception to the warrant requirement at the time of Hill's arrest. Officers may seek consent-based encounters if they are lawfully present in the place where the consensual encounter occurs. *King, 563 U.S. at 463.* When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak. *Id. at 469-70.*

Approximately twenty months later, this Court reaffirmed in *Jardines*, holding, the Fourth Amendment "holds the property of every man so sacred, that no man can set his foot upon his neighbor's close without his leave." *Jardines,* 569 U.S. at 7-8. If Gambs' investigation took place in a constitutionally protected area, it was accomplished through an unlicensed physical intrusion. *Id. at 7.*

The implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then **(absent invitation to linger longer) leave**. *Id. at 569 U.S. at 8.* "The scope of a license—express or implied—is limited not only to a particular area but also to a specific purpose. *Id. at 9.*

This Court overturned the *Third Circuit Court of Appeals*, that a "knock and talk" must be initiated at the front door. An officer may approach any door a **visitor may approach**, knock, and wait, **but if there is no answer he cannot proceed to other doors**. *Carroll, 574 U.S. at 18.*

Gambs' "Case Report" stated he knocked on "doors", then when approaching the south side smelled marijuana. **(Appendix R)**. If he knocked on doors, this would be a violation of *King and Jardines, supra.* After no answer at the first door he did not leave, he played "Let's Make a Deal" by knocking on doors two and three. *Carroll, 574 U.S. at 18.*

Would a reasonable jurist agree that if Gambs' affidavit stated probable cause was discovered only after knocking on the third door the warrant is valid; or that if Gambs failed to included that information he recklessly excluded information, or if included, a judge would find probable cause. *Jardines, supra; Franks, supra.*

**b. Whether a "knock and talk," is a physical intrusion; and a Fourth Amendment violation when access is gained by a pathway that the public would not normally use?**

Certain limitations on this license prevents entrance from **any path**. A visitor, or the police, "must stick to the path that is typically used to approach a front door, such as a paved walkway."

> A visitor cannot traipse through the garden, meander into the **back yard, or take** other circuitous detours that veer from the pathway that a visitor would customarily use.

*Jardines, 569 U.S. at 19-20 (Alito, J., dissent)* (emphasis added).

The officers would have to follow a path of "reasonableness" like walkways, driveways, porches and places where visitors could be expected to go. *Id. at 19 fn.* A back door must be readily accessible to the public and used as a principal door. *Id. at 20.*

Gambs manner of doing a "knock and talk" by searching for an opening down railroad tracks and a three sided fence was outside the scope. *United States v. Wells, 648 F.3d 671, 678 (8th Cir. 2011).* "Sneaking around the backyard is not part of a legitimate constitutional 'knock and talk.'" *Id. at 680.* See also *United States v. Fugate,2011 U.S. Dist. LEXIS 171178 (S.D. Ohio May 27, 2011), *3-*5, aff'd 499 Fed. Appx. 514 (6th Cir. 2012).*

**c. During a criminal investigative "knock and talk", on a single, private, unregulated commercial building, is it entitled to the same Fourth Amendment protection as a house and its "curtilage"?**

Hill argues the Sixth Circuit's ruling conflicted with United States Supreme Court caselaw on "business curtilage" and Fourth Amendment arguments that reasonable jurists would find debatable or wrong. *Miller-El, supra.*

The Sixth Circuit, along with several other Circuit Court of Appeals, misapply this Court's reasoning that a commercial property suffers from less Fourth Amendment protection then a home. *Dow, 476 U.S. at 235 ("Plainly a business establishment or an industrial or commercial facility enjoys certain protections under the Fourth Amendment.").*

The Government has "greater latitude to conduct warrantless inspections of commercial property" because the sanctity of the home and "[the] interest of the owner of commercial property is not one in being free from any inspections." *Dow, 476 U.S. at 237-38, citing Donovan v. Dewey, 452 U.S. 594, 598-599, 101 S. Ct. 2534 (1981).* This is applicable to a closely regulated business. *Marshall v. Barlow's Inc., 436 U.S. 307, 313, 98 S. Ct. 1816 (1978).*

The Fourth Amendment protects the interest of an owner from unreasonable government intrusions onto his property. *Donovan, 452 U.S. at 599*; *See, 387 U.S. at 543*. Inspections of commercial property are unreasonable if "not authorized by law or are unnecessary for the furtherance of federal interests." *Donovan, 452 U.S. at 599*. Hill had no real expectation that his property would be "inspected" by the government. *Id.*

The Fourth Amendment bars criminal prosecution for refusing the warrantless inspections of commercial structures not used as private residence. *See, 387 U.S. at 542*. Accord, *Camara v. Municipal Court of San Francisco, 387 U.S. 523, 87 S. Ct. 1727 (1967)*. This Court has refused to uphold **unreasonable criminal investigative searches merely because commercial rather than residential premises were the object of the police intrusions**. *See, supra at 543* (citations omitted).

> If a commercial property is searched for contraband or evidence of crime, the same restriction pertains as to a home.

*Donovan, 452 U.S. at 598 fn.6, citing G.M. Leasing Corp. v. United States, 429 U.S. 338, 352-359 (1977) ("the intrusion into petitioner's privacy was not based on the nature of its business, its license, or any regulation of its activities." Id. at 354)*. See also *People v. Lee (1986), 186 Cal. App.3d 743, 749, 231 Cal. Rptr. 45, 1986 Cal. App. LEXIS 2148 (Not open to public, same as home)*.

Hill's **pro se** use of the word "business curtilage" was held fatal to a "substantial constitutional claim" determination by the Sixth Circuit. The *Dow* decision ruled an "actual physical entry" of enclosed areas, or "business curtilage," by an administrative agency would raise significantly different questions. *Dow,. at 476 U.S.* 237. Why not the police?

Specifically, this Court held "that the open areas of an industrial plant complex with numerous plant structures spread over an area of **2,000 acres are not analogous to the 'curtilage'**

**of a dwelling for purposes of aerial surveillance.**" *Id. at 476 U.S. at 239. Dow* did not abrogate the issues reached in *United States v. Swart, 679 F.2d 698 (7th Cir. 1982). Id. at 476 U.S. at 239 fn.7.*[13]

In *Swart*, the defendant had a reasonable expectation of privacy to the closed property after employees had left the premises. *Swart, 679 F.2d at 699-700.* The limitation on the *business premises doctrine* does not allow Gambs to do a general search of areas not open to the public, or to use the reduced expectation of privacy when he "plain smelled" items as a customer would not ordinarily smell them. *Id. at 701.* Gambs had no reason to believe that the public had to walk down railroad tracks and enter from the rear; or that doors number two and three were open to the public, "**it appeared always empty.**" *Id. at 701-02.*

Gambs exceeded the implicit invitation of a commercial establishment by entering "during non-business hours or when there are no employees on the premises." Second, Gambs had no reason to believe that the rear of the property; or doors numbers two and three "were in an area generally open to the public." *Swart, 679 U.S. at 701-02; Jardines, 569 U.S. at 9.*

At no time has the State or federal courts required the State to prove their burden that the scope of the "knock and talk" was followed. *Coolidge v. New Hampshire, 403 U.S. 443, 455 n. 7, 91 S. Ct. 2022 (1971).*

[13] This Court granted certiorari to a ruling in a footnote, saying that it was not a "dicta" ruling in *Brentwood Acad. V. Tenn. Secondary Sch. Ath. Ass'n, 531 U.S. 288, 293-94, 121 S. Ct. 454 (2001)* (anticipated finding of state action when member public schools all in same state); *NCAA v. Tarkanian, 488 U.S. 179, 193 n.13, 109 S. Ct. 454 (1988)* (situation would be different if membership consistent of institutions within the same state).

## CONCLUSION

For these reasons, *Certiorari* should be summarily granted directing the Sixth Circuit Court of Appeals to grant Hill the amendment to the COA and the COA.

Respectfully submitted,

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