

25-6556

CASE NO. _____

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

FILED
OCT 09 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

DARRELL JONES,

Petitioner-Appellant,

v.

MISTY MACKEY, WARDEN,

Respondent-Appellee.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DARRELL JONES #A762-746
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QUESTIONS PRESENTED

Question No. I:

Where the Petitioner-Appellant's case presented a substantial showing of a denial of a constitutional right, and where the issues presented were debatable amongst jurists of reason, does the Sixth Circuit err by denying Petitioner-Appellant's request for a certificate of appealability?

Question No. II:

Where the decision of the state court resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States, does the district court err by denying Petitioner-Appellant's petition for writ of habeas corpus?

LIST OF PARTIES AND RELATED CASES

A. List of Parties.

The names of all parties to the proceeding in the court whose judgment is sought to be reviewed are contained in the caption of the case.

B. Related Cases.

There are no cases filed in this Court that are directly related to this case.

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Ex. B. United States District Court for the Northern District of Ohio, Eastern Division

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Ex. C. United States District Court for the Northern District of Ohio, Eastern Division

Jones v. Hill, N.D. Ohio No. 1:21-CV-02135-JPC, 2024 U.S. Dist. LEXIS 235695 (N.D. Ohio, April 24, 2024) (Report and Recommendation)

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OPINIONS BELOW

Appellant respectfully prays that a writ of certiorari issue to review the judgments below.

Ex. A. United States Court of Appeals for the Sixth Circuit

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Ex. C. United States District Court for the Northern District of Ohio, Eastern Division

Jones v. Hill, N.D. Ohio No. 1:21-CV-02135-JPC, 2024 U.S. Dist. LEXIS 235695 (N.D. Ohio, April 24, 2024) (Report and Recommendation)

STATEMENT OF THE BASIS FOR JURISDICTION

On July 15, 2025, the Sixth Circuit Court of Appeals issued an Order denying Appellant's requests for an Application for Certificate of Appealability and denied Appellant's Motion to Proceed *In Forma Pauperis* as moot. See *Jones v. Mackey*, 6th Cir. No. 25-3043, 2025 U.S. App. LEXIS 17518 (6th Cir., July 15, 2025) (Application for Certificate of Appealability denied; Motion to Proceed In Forma Pauperis denied as moot.) (Exhibit A).

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Constitutional Provision.

The relevant constitutional provisions involved in this case are:

U.S. Const. 14th amend.

Petitioner-Appellant is claiming the trial court's failure to sever his cases violated his constitutional right to due process of law under the Fourteenth Amendment.

U.S. Const. 6th amend.

Petitioner-Appellant is claiming he was deprived of the effective assistance of counsel on appeal as guaranteed by the Sixth Amendment.

B. Statutory Provisions.

The relevant statutes involved in this case are:

28 U.S.C. §2253(c)(1) (requirements for issuance of certificate of appealability)

28 U.S.C. §2253(c)(2) (requirements for issuance of certificate of appealability)

28 U.S.C. § 2254(d) (AEDPA requirement for issuance of writ of habeas corpus by person in state custody)

STATEMENT OF THE CASE

I. STATE COURTS PROCEDURAL HISTORY.

A. Trial.

On January 22, 2019, a grand jury indicted Petitioner-Appellant, Darrell Jones (“Appellant”), on one count of Aggravated Robbery, a felony of the first degree, in violation of Ohio Revised Code § 2911.01(A)(1) (hereinafter, “R.C. 2911.01(A)(1)”), with a One- and Three-year Firearm Specification (R.C. §§ 2941.141 and 2941.145, respectively) (Count 1); one count of Possessing Criminal Tools, a felony of the fifth degree, in violation of R.C. § 2923.24(A) (Count 2), with a Forfeiture Specifications (R.C. 2941.1417); and two counts of Robbery, felonies of the second degree, in violation of R.C. § 2911.02(A)(2), each with a One-year firearm specification. Appellant was arraigned on January 25, 2019, and entered a plea of not guilty to all charges.

On March 26, 2019, Appellant, through counsel, moved to sever the robbery counts for trial. The State opposed the motion. The trial court denied the motion on April 15, 2019.

The case proceeded to a jury trial. On April 18, 2019, the jury found Appellant guilty on each of the underlying counts but not guilty on the one-year firearm specifications§ 2941.141 firearm specifications.

On May 29, 2019, a sentencing hearing was held and the trial court sentenced Appellant to a stated prison term of four (4) years on Count 1; twelve (12) months on Count 2; three (3) years on Count 3; and two (2) years on Count 4. The sentences imposed in Counts 1, 3, and 4 are to be served consecutive to each other, and the

sentence imposed in Count 2 is to be served concurrent with the sentences imposed in Counts 1, 3, and 4. Appellant was ordered to serve an additional term of three (3) years as a mandatory prison term for the firearm specification, to be served prior to and consecutive to the above prison term; for a total of twelve (12) years in prison.

The Court found that the offenses in Counts 1, 3, and 4 were subject to a mandatory prison term under division (F) of R.C. 2929.13.

As to the forfeiture specifications in Count 2, the court found by a preponderance of the evidence that said items were instrumentalities and were used in the commission of the offense.

B. Direct Appeal.

On June 27, 2019, Appellant, through counsel, filed a notice of appeal to the Eleventh District Court of Appeals, and raised the following assignments of error in his appellant brief, Jones raised two assignments of error:

1. The jury's finding of guilt and the Defendant's subsequent conviction for Count One, Aggravated Robbery, Count Two, Possession of Criminal Tools, Count Three, Robbery, and Count Four, Robbery, are contrary to the manifest weight of the evidence; therefore, Defendant's convictions for said counts should be overturned, and Defendant should be remanded to the trial court for a new trial on Counts One, Two, Three, and Four.
2. The trial court failed to sever the trial of the Appellant although three separate incidents of robberies were being alleged. The Appellant should have been given the opportunity to have three separate trials.

The State filed an opposition brief on December 6, 2019.

On July 27, 2020, the appellate court found that Appellant's assignments of error were without merit and affirmed the judgment. *State v. Jones*, 11th Dist. Lake No. 2019-L-056, 2020-Ohio-3852.

Appellant filed a *pro se* notice of appeal to the Supreme Court of Ohio on September 8, 2020, and raised two propositions of law in his memorandum in support of jurisdiction:

1. Whether the conviction for count 1 Aggravated Robbery, Count 2, Possession of Criminal Tools, Count 3 Robbery, Count 4 Robbery, are contrary to the manifest weight of evidence. Therefore, Defendant/Appellants conviction for Counts 1, 2, 3, and 4, should be overturned.
2. Trial Court failed to sever the cases of the Appellant although the offenses are separate, occurred on separate days, separate times and separate locations, with separate victims. The Appellant should have been given the opportunity to have three separate trials.

The State filed a response on September 21, 2020.

The Supreme Court of Ohio declined to accept jurisdiction on November 10, 2020. *State v. Jones*, 160 Ohio St. 3d 1448, 2020-Ohio-5169, 156 N.E.3d 920.

C. Rule 26(B) Application to Reopen.

On October 26, 2020, Appellant filed a *pro se* application to reopen his direct appeal pursuant to Ohio Appellate Rule 26(B), and raised the following assignments of error:

1. Ineffective assistance of appellate counsel lack of due diligence to properly investigate appellants case so as to achieve a more effective and meaningful strategy of defense prejudiced appellants guaranteed right to effective assistance of counsel under the 6th and 14th amendments of the constitution of the United States and article 1 § 10 of the Ohio Constitution.
2. Counsel failed to raise structural error, defective indictment failed to charge Defendant with the requisite mens rea of recklessness for charged offenses mental element for physical harm robbery under R.C. 2911.02(A)(3) Defendant had no notice the recklessness was an element of physical harm robbery or force robbery thus, prejudiced Appellants right to a fair trial under the 6th Amendment, due process under the 5th and 14th Amendment of the United States

Constitution and provision of the Ohio Constitution. State v. Dzelajlija, 2009-Ohio-1072.

3. Trial Court committed plain error to the prejudice of the Appellants right to a fair trial under the 6th Amendment, due process under the 5th, 14th Amendment and violation of the 4th amendments search and seizure. Detective Morelans' false evidence and false statement use to obtain the fraudulent affidavit of probable cause warrant to arrest Defendant. Evidence listed dark colored hoodie don't exist, bandanna and sunglasses were never authenticate as being part of this 8-2-2018 Sunoco incident. T.p. 461 8-23, T.p. 540 15-20 the false statement, current, ohleg photo, was actually take in 2014, and the suspects in every video has his face covered Cleveland v. English, 175 Ohio App.3d 458, 460-461, 2008- Ohio 321, 887 N.E.2d 1205 (2008).
4. Trial counsel committed plain error to the prejudice of the Appellants guaranteed right to effective counsel and fair trial under 6th Amendment and due process, 5th and 14th Amendment, equal protection clause Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69. Prosecutions systematic exclusion of under representation of blacks and Hispanics on the jury. During strike for cause, T.p. 138 6-11 Black jurist Milley was allowed to remain, however she wasn't on the jury T.p. 145, 146 and nowhere in the transcript was she removed for cause or peremptory.
5. Trial court committed plain error that prejudiced Appellants right to a fair trial and impartial jury under the 6th Amendment and due process under the 5th and 14th Amendments by not sue sponte excusing jurist Iafalice for cause and allowing him to remain after he unequivocally stated it would be real hard for him to be impartial T.p. 37 1-5 also Iafelice close acquaintance with presiding judge T.p. 36 (16-25), head prosecutor Charles E. Coulson T.p. 63 (13) and Lake County Crime Lab Director Mr. Rohde T.p. 66 (20-25) T.p. 67 (1-16).
6. Trial court committed plain error to the prejudice of the appellants T.p. 93 (4), 106 (8) 6th amendment fair trial, impartial jury T.p. 103 (10) due process under 5th, 14th amendment of the United States Constitution and Ohio Constitution, by reading the entire indictment and prior weapon specification during the introduction of the voir dire 103 10.
7. Trial Court committed Judicial Error to the prejudice of the Appellants right to a fair trial under the 6th Amendment and due process under the 5th and 6th Amendment of the constitution of the

United States and the Ohio Constitution by allowing prosecution to engage in a pattern of misconduct, eliciting a defective indictment, eliciting false testimony from Officer Didona T.p. 461 8-11, 20-23 prosecutions perjured statements summation 7 7-9, T.p. 166 6-9, opposed to T.p. 376 17-18 misrepresentation of DNA evidence T.p. 674 1-3, opposed to Lake county crime lab report date 9-7-18 and 9-17-18 results indicate 2 items of evidence with same item #001-A sweatshirt, there is no sweatshirt on submission forms, and bandanna. Perjured testimony from DNA expert T.p. 715(8-11), T.p. 674 (13) presenting false evidence black jacket, blue bandanna and blue sunglasses allegedly used in 8-2-18 Sunoco incident video proves this to be false.

8. Malicious prosecution ABA standard prosecutor should not make arguments calculated to appeal to improper prejudice of the trier of fact. That denied Appellant right to fair trial under 6th Amendment, 5th and 14th Amendment due process T.p. 7 (7-9), T.p. 166 (6-9), T.p. 827 (9-10) video proves not true. United States v. Carpenter, 494 F.3d (1st Circuit 2007).
9. Prosecutions misrepresentation of evidence denied defendants right to 5th, 6th, 14th, Amendment T.p. 540 15-20 video proves this to be a lie. Black jacket, blue bandanna and blue glasses.
10. Prosecutorial misconduct prejudiced Defendant right to a fair trial, due process 5th, 6th, 14th Amendment constantly used a pattern of false identification to justify the eventual conviction of Appellant. Using OHLEG photo T.p. 45 (1-18) as comparison to fabricate a form of guilt.
11. Prosecutorial Misconduct denied Defendants right to a fair trial due process 5th, 6th, and 14th Amendment of the U.S. Constitution and Ohio Constitution by eliciting perjured testimony from Officer Didona T.p. 539 (18-25) perjured testimony from DNA expert T.p. 471 (1-7), 475 (14-15) perjured testimony from victim Rachel Laurel T.p. 375 6-12 opposed to 366 20-22 opposes to T.p. 388 10-13 Officer Rossen T.p. 389 6-7 opposed to T.p. 360 3-5. Detective Dondrea 537 19-22 video of the 8-2-18 Sunoco incident proves this to be a lie, Lt. Hengst T.p. 566 16-17 perjured.
12. Prosecutorial misconduct prejudice the Appellant right to a fair trial under the 6th Amendment and 5th, 14th, due process of the United States Constitution by permitting Detective Dondrea to sit at the

prosecution table T.p. 15 (19-22) through the entire trial then become a witness for the State T.p. 498-526.

13. Ineffective trial counsel denied Appellant right guaranteed by the 6th Amendment and right to a fair trial 6th Amendment, and 5th, 14th amendment due process by failing to thoroughly investigate Defendants case, police evidence, prosecution's case in order to establish an effective and cohesive defense strategy.
14. Trial counsel failed to challenge the defective indictment denied Appellant right to a fair trial, due process under the 5th, 6th, and 14th Amendment of the United States Constitution and provisions of the Ohio Constitution.
15. Trial Counsel allowed prosecution to keep biased jurist Iafelice on Jury T.p. 37 (1-5) severely prejudiced Defendants right to a fair trial and impartial jury under 6th Amendment, due process 5th and 14th Amendment of the United States Constitution.
16. Trial Counsel failed to argue Fruit of a poisonous Tree due to the police misconduct, fraudulent affidavit for probable cause 4th Amendment violation, and using false evidence, false statement and false arrest that permeated throughout the entire trial. Denied Appellant a fair trial, due process under the 5th, 6th, and 14th Amendment of the United States Constitution and Ohio Constitution.
17. Trial Counsel allowed prosecution to present false evidence without an objection. The black jacket, blue bandanna, and blue sunglasses are not in the 8-2-18 incident as stated by prosecution. Denied Appellants right to effective counsel, fair trial, and due process under the 5th, 6th, and 14th Amendment of the United States and Ohio Constitutions.
18. Trial Counsel never challenged the perjured statements from prosecution T.P. 7 (7-9) T.P. 166 (6-9) DNA expert T.P. 471 (1-7), 475 (14-15) denied Appellants right to effective counsel, fair trial, due process under the 5th, 6th, and 14th, Amendment of the United States and Ohio Constitution.
19. Trial counsel failed to petition for a DNA expert so as to effectively challenge and rebuttal states DNA expert. Prejudiced Appellant right to a fair trial and due process because counsel inexperience in DNA failed to achieve a significant defense.

20. Trial Counsel's numerous professional errors contributed to the severe cumulative error doctrine that permeated this entire trial, are as follows. Judicial Error, Police Misconduct, Prosecutorial Misconduct, Perjured Testimonies from police, Prosecution, victim Rachel Lauriel, Malicious prosecution, False evidence, Defective indictment, misrepresentation of the DNA, Fabricated DNA results. All this and more was allowed to occur due to this blatant ineffective assistance of counsel that denied appellant his right to effective counsel that denied appellant his right to effective counsel guaranteed by the 6th amendment of the United States and Ohio Constitution. Every assertion is substantiated in this application and trial transcripts, Cumulative error Doctrine. *State v. Karl*, 142 Ohio App.3d 800, 757, N.E.2d 30 (2001). Had trial counsel properly investigated and achieved a coherent strategy the outcome of the trial would have been different.

The State filed a response on October 26, 2020. Appellant filed a reply on November 13, 2020.

On March 23, 2021, the appellate court denied the application to reopen. See *State v. Jones*, 11th Dist. Lake No. 2019-L-056 (Mar. 23, 2021)

On May 4, 2021, Appellant filed a notice of appeal to the Supreme Court of Ohio and raised sixteen propositions of law.

On June 22, 2021, the Supreme Court declined to accept jurisdiction. *State v. Jones*, 163 Ohio St. 3d 1454, 2021-Ohio-2069, 169 N.E.3d 684.

II. FEDERAL COURT PROCEDURAL HISTORY

A. Federal Habeas Corpus Petition (28 U.S.C. 2254).

On October 26, 2021, Appellant filed in the United States District Court for the Northern District of Ohio, Eastern Division, a federal habeas corpus petition pursuant to 28 U.S.C. 2254, raising nine grounds for relief:

Ground One: Conviction of Counts 1) Aggravated Robbery, 2) possession of criminal tools, 3) robbery, 4) robbery are against the manifest weight of the evidence.

Ground Two: Improper joinder of the three separate cases violated due process, right to a fair trial by an impartial jury.

Ground Three: Ineffective assistance of appellate counsel/prejudiced appellant's right to 4th, 6th, and 14th Amendments of the United States Constitution.

Ground Four: Prosecutorial ABA standard violation 3-5.6(A), 3-5.6(B), 3-5.6(C) prejudiced appellant's 5th, 6th, 8th, 14th Amendment of the United States Constitution.

Ground Five: Structural error, indictment failed to charge the requisite mens rea for robbery. Grand jury was present with false evidence and perjured testimony to obtain an indictment. A violation of the due process right to a fair trial and impartial jury and equal protection of the law.

Ground Six: Judicial error: this ground and all sub-grounds fundamentally prejudiced appellant's right to the 4th, 5th, 8th, and 14th Amendments to the United States Constitution and Article 1 Section 10, 16 of the Ohio Constitution:

A) Court allowed prosecution to engage in a pattern of misconduct that permeated the entire trial.

B) Court failed to remain impartial and permitted this miscarriage of justice to go uncorrected.

Ground Seven: Trial court committed plain error that prejudiced appellant's right to the 5th, 6th, 8th, and 14th Amendment of the Constitution of the United States and Article 1 Section 10, 16 of the Ohio Constitution.

Ground Eight: Prosecutorial misconduct prejudiced appellant's rights to the 4th, 5th, 6th, 8th, and 14th Amendment of the Constitution of the United States and Article 1 Section 10, 16 of the Ohio Constitution.

Ground Nine: Ineffective assistance of trial counsel prejudiced appellant's right to the 4th, 5th, 6th, 8th, and 14th Amendment of the United States Constitution and Article 1 Section 10, 16 of the Ohio Constitution.

The Warden filed a Return of Writ on December 10, 2021, and Appellant filed a Traverse on January 6, 2022.

Under Local Rule 72.2, the case was referred to a Magistrate Judge, who issued a report and recommendation on April 24, 2024, recommending the Court deny the petition on the grounds that: Ground One is non-cognizable or procedurally defaulted; Grounds Two and Three fail on the merits; and Grounds Four through Nine are procedurally defaulted. Also, the Magistrate Judge recommended that the Court not grant a certificate of appealability. *Jones v. Hill, 2024 U.S. Dist. LEXIS 235695, 2024 WL 5278622 (Apr. 24, 2024)* (Exhibit C).

On June 14, 2024, Appellant filed Objections to the Report and Recommendation.

On January 3, 2025, over Appellant's objections, the district court adopted the magistrate judge's report and recommendation in its entirety and denied habeas relief. The district court also denied Appellant a certificate of appealability and leave

to proceed in forma pauperis. *Jones v. Hill*, N.D. Ohio No. 1:21-cv-2135, 2025 U.S. Dist. LEXIS 705 (N.D. Ohio, Jan. 3, 2025) (Exhibit B).

Appellant filed a timely Notice of Appeal to the United States Court of Appeals for the Sixth Circuit, which was construed by the Court as an application for a certificate of appealability. See Fed. R. App. P. 22(b). Appellant also filed a motion to proceed in forma pauperis.

On July 15, 2025, the Sixth Circuit denied Appellant's application for a certificate of appealability and denied his motion to proceed in forma pauperis as moot. *Jones v. MacKey*, 2025 U.S. App. LEXIS 17518 (July 15, 2025) (Exhibit A).

It is from these proceedings that Appellant is now before the Supreme Court of the United States requesting it to grant certiorari.

REASONS FOR GRANTING THE PETITION

REASON NO. I:

WHERE THE PETITIONER'S CASE PRESENTED A SUBSTANTIAL SHOWING OF A DENIAL OF A CONSTITUTIONAL RIGHT, AND WHERE THE ISSUES PRESENTED WERE DEBATABLE AMONGST JURISTS OF REASON, THE SIXTH CIRCUIT ERRED BY DENYING PETITIONER'S REQUEST FOR A CERTIFICATE OF APPEALABILITY

A habeas petitioner may not appeal the denial of his habeas petition unless the District Court or Court of Appeals "issues a certificate of appealability." *Hernandez v. Peery*, ____ U.S. ___, 141 S.Ct. 2231, 2234, 210 L.Ed.2d 977 (2021); 28 U. S. C. §2253(c)(1); see also *Gonzalez v. Thaler*, 565 U. S. 134, 143, n. 5, 132 S.Ct. 641, 181 L.Ed.2d 619 (2012). Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a COA "may issue . . . only if the applicant has made a substantial showing

of the denial of a constitutional right.” §2253(c)(2). To make that showing, a habeas petitioner must demonstrate “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 v. McDaniel*, 529 U. S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000) (internal quotation marks omitted). AEDPA does not “require petitioner[s] to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus.” *Miller-El v. Cockrell*, 537 U.S. 322, 338, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003). Rather, “[a]t the COA stage, the only question is whether” the “claim is reasonably debatable.” *Buck v. Davis*, 580 U.S. 100, 116-117, 137 S.Ct. 759, 197 L.Ed.2d 1 (2017).

The issue confronting the Sixth Circuit was whether reasonable jurists could debate the District Court’s disposition of Petitioner’s habeas petition. That question, in turn, depends on whether reasonable jurists could argue that the Ohio court of appeals’ decision contravened or unreasonably applied clearly established federal law. They certainly could.

Here, however, the Sixth Circuit declined to issue a COA on the basis that Petitioner could not prove that some jurists would grant the petition for habeas corpus, instead of whether the “claim is reasonably debatable.” This Petitioner contends is contrary to clearly established law. Therefore, the Court should grant certiorari.

Appellant was denied his right to a fair trial under the Due Process Clause of the Fourteenth Amendment when he was subjected to the prejudicial joinder of the charges in three separate indictments in violation of the Due Process and Equal Protection Clauses of the United States Constitution.

Prejudicial joinder exists where "an individual's right to a fair trial is either threatened or actually deprived." *United States v. Sturmoski*, 971 F.2d 452, 460 (10th Cir. 1993).

Ohio Crim.R. 14 governs relief from prejudicial joinder and provides, in part, the following:

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment . . . the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires.

Charges shall be severed under Crim.R. 14 if the joinder will prejudice the moving party's rights. Crim.R. 14. A defendant is prejudiced by joinder when each crime cannot be proven by simple and direct evidence, such that a jury is unlikely to be able to segregate the proof required for each offense. See *State v. Brinkley*, 105 Ohio St. 3d 231, 2005-Ohio-1507, ¶ 30, 824 N.E.2d 959. Evidence is no simple and direct if it fails to satisfy four requirements: "if the jury is incapable of readily separating the proof required for each offense, if the evidence is likely to confuse jurors, if the evidence is not straightforward, and if there is danger that the jury would "improperly consider testimony on one offense as corroborative of the other."'" *State v. Kramer-Kelly*, 8th Dist. Cuyahoga No. 11123, 2023-Ohio-1031, ¶ 85, quoting *State v. Wright*, 4th Dist. Jackson No. 16CA3, 2017-Ohio-8702, ¶ 52.

In this case, Appellant argued his right to a fair trial was prejudiced because evidence from a stronger case was used to supplement and connect the stronger case to the weaker cases. In particular, evidence of the blue bandana and jacket, found subsequent to the August 2, 2018 incident, was exclusively used to establish guilt for the July 24, and 29, 2018 incidents.

In addressing this issue, the Ohio court of appeals made the following findings:

Here, the other acts evidence was admissible under Evid.R. 404(B) to establish appellant's identity as well as a common scheme or plan. All three robberies occurred within 10 days of one another, between July 24, 2018 and August 2, 2018. The sites of the three robberies, the Quality Inn and Sunoco gas station, essentially neighbor one another on Euclid Avenue in the city of Wickliffe. Appellant, at the time of the first robbery, was staying at the hotel that was robbed and, when the next two robberies occurred, he was residing at a hotel six-tenths of a mile from the other robbery locations. Finally, the perpetrator, in each of the crimes, had a common appearance and methodology; he approached witnesses wearing a hat, and sunglasses with uniquely tinted lenses. And in two of the three robberies, he wore a coat — peculiar attire for the mid-summer months. He covered his mouth and lower face to disguise his facial features; in the first robbery, with a napkin and, in the second and third, a bandana. And, upon contacting the witnesses, he either threatened them with a gun or showed the witness that he possessed what appeared to be a gun.

State v. Jones, 11th Dist. Lake No. 2019-L-056, 2020-Ohio-3852, ¶ 39.

It is the Appellant's position that joinder of offenses solely because they are of the same or similar character creates a greater risk of prejudice to the Appellant, while the benefits from consolidation are reduced because 'unrelated offenses normally involve different times, separate locations, and distinct sets of witnesses and victims.'" The evidence from the three separate robberies were not simple and direct, depriving the jury of the ability to compartmentalize the facts related to each

of the offenses. See *United States v. Cody*, 498 F.3d 582, 587 (6th Cir. 2007) (noting prejudicial joinder is unlikely when evidence is easily separated).

On review by the Sixth Circuit, the Court held:

Jones next claims that the trial court violated his due process rights by refusing to sever the robbery charges into separate trials. "Improper joinder does not, in itself, violate the Constitution." *United States v. Lane*, 474 U.S. 438, 446 n.8, 106 S. Ct. 725, 88 L. Ed. 2d 814 (1986). To obtain federal habeas relief on a misjoinder claim involving state law, a petitioner "must show that misjoinder of the counts 'result[ed] in prejudice so great as to deny [him] his . . . right to a fair trial.'" *Davis v. Coyle*, 475 F.3d 761, 777 (6th Cir. 2007) (alteration in original) (quoting *Lane*, 474 U.S. at 446 n.8). To demonstrate substantial prejudice, Jones needed to show "actual prejudice, not merely the potential for prejudice." *Id.* The Ohio Court of Appeals concluded that Jones was not prejudiced by joinder of the robbery charges because, pursuant to Ohio Rule of Evidence 404(B), evidence of each robbery would have been admissible at separate trials even if the charges were severed. *Jones*, 2020-Ohio-3852, 2020 WL 4284921, at *5-6. Reasonable jurists could not debate the district court's determination that the state court's rejection of Jones's misjoinder claim was neither contrary to, nor an unreasonable application of, clearly established federal law, or based on an unreasonable determination of the facts. See *Wilson v. Parker*, 515 F.3d 682, 705 (6th Cir. 2008).

Jones v. Mackey, 2025 U.S. App. LEXIS 17518, *5-*6 (6th Cir. 2025).

Under these circumstances, Appellant contends that, because he presented a substantial showing of a denial of a constitutional right, which deserved encouragement to proceed further, the Court should grant certiorari.

REASON NO. II:

WHERE THE DECISION OF THE STATE COURT RESULTED IN A DECISION THAT WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES, THE DISTRICT COURT ERRED BY DENYING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

28 U.S.C. § 2254(d), as amended by The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), imposes the following standard of review for habeas cases:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

A decision of a state court is "contrary to" clearly established federal law if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405-06, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000). An "unreasonable application" occurs when "a state court decision unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case." *Id.* at 409.

In this case, the adjudication of the merits in the Ohio Court of Appeals for the Eleventh Appellate District of Appellant's claim that he was prejudiced by the joinder

of offenses resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

The Sixth Amendment guarantees the right to a fair trial. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 551, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976). A "fair trial in a fair tribunal is a basic requirement of due process." *Id.* (quotation marks omitted).

Appellant presented the following issue on direct review to the State court of appeals:

"The trial court failed to sever the trial of the appellant although three separate incidents of robberies were being alleged. The appellant should have been given the opportunity to have three separate trials."

The State court of appeals overruled the claim as follows:

[*P33] "Pursuant to Crim.R. 8(A), 'two or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offense charged, whether felonies or misdemeanors or both, are of the same or similar character * * *.' Generally, joinder of offenses is liberally permitted in order to conserve judicial resources, prevent incongruous results in successive trials, or to diminish inconvenience to witnesses." *State v. Quinones*, 11th Dist. Lake No. 2003-L-015, 2005-Ohio-6576, ¶35, citing *State v. Torres*, 66 Ohio St.2d 340, 343, 421 N.E.2d 1288 (1981). The law generally favors joinder of multiple offenses in a single trial. *State v. Franklin*, 62 Ohio St.3d 118, 122, 580 N.E.2d 1 (1991)

[*P34] Pursuant to Crim.R. 14, it may be necessary to separate trials to prevent prejudice. *State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, ¶29, 824 N.E.2d 959. Crim.R. 14, provides, in relevant part: "If it appears that a defendant * * * is prejudiced by a joinder of offenses * * * for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts * * *."

[*P35] "When a defendant claims that joinder is improper, he must affirmatively show that his rights have been prejudiced." *Quinones* at ¶38. "The accused must provide the trial court with sufficient

information demonstrating that he would be deprived of the right to a fair trial if joinder is permitted." *Id.*, citing *State v. Lott*, 51 Ohio St.3d 160, 163, 555 N.E.2d 293 (1990). "The state may negate the defendant's claim of prejudice by demonstrating either of the following: (1) that the evidence to be introduced relative to one offense would be admissible in the trial on the other, severed offense, pursuant to Evid.R. 404(B); or (2) that, regardless of the admissibility of such evidence, the evidence relating to each charge is simple and direct." *Quinones* at ¶39, citing *State v. Franklin*, 62 Ohio St.3d 118, 122, 580 N.E.2d 1 (1992).

[*P36] The standard for granting or denying separate trial is an abuse of discretion, which should be so exercised as to prevent injustice and secure the applicant of his right to a fair trial. See, e.g., *State v. Brunelle-Apley*, 11th Dist. Lake No. 2008-L-014, 2008-Ohio-6412, ¶108.

[*P37] Appellant argues his right to a fair trial was prejudiced because evidence from a stronger case was used to supplement and connect the stronger case to the weaker cases. In particular, evidence of the blue bandana and jacket, found subsequent to the August 2, 2018 incident, was exclusively used to establish guilt for the July 24, and 29, 2018 incidents. We do not agree.

[*P38] Pursuant to Evid.R. 404(B), other acts evidence may be admissible "as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." "To be admissible to prove identity through a certain modus operandi, other-acts evidence must be related to and share common features with the crime in question." (Emphasis sic.) *State v. Lowe*, 69 Ohio St.3d 527, 1994- Ohio 345, 634 N.E.2d 616 (1994), paragraph one of the syllabus.

[*P39] Here, the other acts evidence was admissible under Evid.R. 404(B) to establish appellant's identity as well as a common scheme or plan. All three robberies occurred within 10 days of one another, between July 24, 2018 and August 2, 2018. The sites of the three robberies, the Quality Inn and Sunoco gas station, essentially neighbor one another on Euclid Avenue in the city of Wickliffe. Appellant, at the time of the first robbery, was staying at the hotel that was robbed and, when the next two robberies occurred, he was residing at a hotel six-tenths of a mile from the other robbery locations. Finally, the perpetrator, in each of the crimes, had a common appearance and methodology; he approached witnesses wearing a hat, and sunglasses with uniquely tinted lenses. And in two of the three robberies, he wore a coat — peculiar attire for the mid-summer months. He covered his mouth and lower face to disguise his facial features; in the first robbery,

with a napkin and, in the second and third, a bandana. And, upon contacting the witnesses, he either threatened them with a gun or showed the witness that he possessed what appeared to be a gun.

[*P40] The Supreme Court of Ohio has validated the use of other acts evidence in order to establish identity. See, e.g., *State v. Coley*, 93 Ohio St.3d 253, 2001- Ohio 1340, 754 N.E.2d 1129 (2001) ("other-acts" evidence of kidnapping, robbery, and other related crimes admissible in aggravated murder trial); *State v. Green*, 90 Ohio St.3d 352, 369, 2000- Ohio 182, 738 N.E.2d 1208 (2000) (same facts; Coley's accomplice, Joseph Green); *State v. Bey*, 85 Ohio St.3d 487, 490, 1999- Ohio 283, 709 N.E.2d 484 (1999) (nearly identical facts between prior homicide to prove identity not an abuse of discretion); *State v. Woodard*, 68 Ohio St.3d 70, 73, 1993- Ohio 241, 623 N.E.2d 75 (1993) (carjacking attempt to prove identity as to later carjacking and murder properly allowed); *State v. Jamison*, 49 Ohio St.3d 182, 183-187, 552 N.E.2d 180 (1990) (evidence of other similar robberies sufficiently probative to prove identity).

[*P41] In light of the common features of the crimes, we conclude the other-acts evidence was admissible to prove identity under Evid.R. 404(B). In this respect, appellant has failed to establish his rights were prejudiced by the joinder of offenses.

[*P42] Even if the other acts evidence would have been inadmissible, we further conclude the evidence of each offense is simple and direct. Evidence is "simple and direct" if the jury is readily capable of separating the proof required for each offense, if the evidence is not likely to confuse jurors, if the evidence is straightforward, and if there is little danger that the jury would improperly consider testimony regarding one offense as corroborative of the other. See *State v. Freeland*, 4th Dist. Ross No. 12CA003352, 2015-Ohio-3410, ¶14; see also *State v. Goodner*, 195 Ohio App.3d 636, 2011-Ohio-5018, ¶44, 961 N.E.2d 254 (2d Dist.)

[*P43] Each of the robberies involved different witnesses that independently testified to the facts of the crimes, which were of a similar character. The facts of each offense were uncomplicated and straightforward. And, under the circumstances of each incident, we discern no basis for the conclusion that the evidence of each, heard together, would confuse the jury or that the jury would improperly consider the testimony concerning one offense as corroborative of another offense. The evidence of the three crimes was therefore separate and distinct and did not prejudice appellant's rights. We accordingly

hold the trial court did not abuse its discretion in joining the offenses for a single trial.

State v. Jones, 11th Dist. Lake No. 2019-L-056, 2020-Ohio-3852, ¶¶ 33-43.

The fact that the charges in Appellant's case were robberies weighs against joinder in a single trial. The evidence presented to a single jury had a cumulative effect and acted as corroborating evidence for two unrelated allegations of robbery, in violation of Evid.R. 404(B). In addition, the evidence presented by the state was not simple and direct; rather, it tended to blur together, due to the similarity of the allegations. This constituted reversible error, as it prevented the jury from being able to reach separate, distinct conclusions regarding each offense.

As noted by the keen observations of Judge Learned Hand regarding the inherent peril in trying multiple crimes together are highly relevant in this case:

"There is indeed always a danger when several crimes are tried together, that the jury may use the evidence cumulatively; that is, that, although so much as would be admissible upon any one of the charges might not have persuaded them of the accused's guilt, the sum of it will convince them as to all. This possibility violates the doctrine that only direct evidence of the transaction charged will ordinarily be accepted, and that the accused is not to be convicted because of his criminal disposition. Yet in the ordinary affairs of life such a disposition is a convincing factor, and its exclusion is rather because the issue is practically unmanageable than because it is not rationally relevant. When the accused's conduct on several separate occasions can properly be examined in detail, the objection disappears, and the only consideration is whether the trial as a whole may not become too confused for the jury."

Therefore, it is the Appellant's position that the decision of the State court of appeals seriously offended the Due Process and Equal Protections Clauses of the United States Constitution, and resulted in a decision that is contrary to clearly established Federal law as determined by this Court with respect to criminal

defendants' right to a fair trial and equal protection of the law under the Fourteenth Amendment.

CONCLUSION

For the above-stated reasons, and in the interest of justice, Petitioner-Appellant respectfully requests the Court to grant certiorari to the Sixth Circuit Court of Appeals.

Respectfully submitted,



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