APPENDICIES

Includes:

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

APPENDIX G

Respectfully submitted,

Salena Nicole Glenn

Salena Nicole Glenn #104431
Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

APPENDIX A

The United States Court of Appeals, For the Sixth Circuit, JUDGMENT, filed February 25, 2025-Case No. 24-3905

Petitioner has included:

- MOTION FOR REQUEST TO GRANT CERTIFICATE OF APPEALABILITY (COA), filed November 4, 2024 (affidavit included)
- MOTION FOR RECONSIDERATION OF DENIAL OF CERTIFICATE OF APPEALABILITY, filed March 3, 2025
- MOTION TO ALTER OR AMEND JUDGMENT/FEDERAL RULES OF CIVIL PROCEDURE RULE 59(e), filed March 20, 2025(affidavit included)

No. 24-3905

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SALENA NICOLE GLENN,

Petitioner-Appellant,

v.

WARDEN ERIN MALDONADO,

Respondent-Appellee.

ORDER

Before: NORRIS, Circuit Judge.

Pro se Ohio prisoner Salena Nicole Glenn appeals the district court's judgment denying her 28 U.S.C. § 2254 habeas corpus petition. Glenn moves the court for a certificate of appealability (COA), for appointment of counsel, and for leave to appeal in forma pauperis. The court denies Glenn's COA application for the following reasons.

A state jury convicted Glenn of drug and evidence-tampering offenses, and the trial court sentenced her to a total term of 20 years of imprisonment. The Ohio Court of Appeals affirmed Glenn's convictions but remanded the case to the trial court for resentencing. *See State v. Glenn*, No. 9-19-64, 2021 WL 321548 (Ohio Ct. App. Feb. 1, 2021). The Ohio Supreme Court did not accept Glenn's appeal for review. *See State v. Glenn*, 168 N.E.3d 1198 (Ohio 2021) (table). On remand, the trial court reimposed a 20-year sentence.

Glenn then filed two petitions for post-conviction relief in the trial court, raising due process violations. The court denied Glenn's petitions as untimely and/or barred by res judicata. The Ohio Court of Appeals denied Glenn's delayed application for leave to appeal. *State v. Glenn*, No. 9-22-30 (Ohio Ct. App. Aug. 3, 2022).

Next, Glenn filed an Ohio Rule of Appellate Procedure 26(B) motion to reopen her direct appeal and asserted ineffective-assistance-of-appellate-counsel claims. The Ohio Court of

Appeals denied the motion as untimely. *See State v. Glenn*, No. 9-19-64 (Ohio Ct. App. July 13, 2022). Glenn did not appeal to the Ohio Supreme Court.

Glenn then filed a § 2254 petition in the district court, claiming (1) the trial court violated her rights to a fair trial and to present a complete defense, (2) insufficient evidence supported her convictions, (3) her trial and appellate counsel performed ineffectively, (4) the police illegally searched and seized her and violated her right to confront an adverse witness, and (5) the trial court erred by not instructing the jury that she was indicted in a joint indictment. The district court adopted a magistrate judge's report and recommendation that concluded that Glenn's claims were procedurally defaulted and/or not cognizable. Accordingly, the court denied Glenn's petition and declined to issue a COA.

Glenn appealed and now moves this court for a COA. In her COA application, Glenn seeks appellate review of claims 1 and 4 only. By limiting her COA application to these two claims, Glenn has forfeited claims 2, 3, and 5. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002) (per curiam).

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the applicant must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When a district court denies a habeas petition on procedural grounds, this court may issue a COA only if the applicant shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Glenn's convictions arose out of a local drug task force's investigation into the drug-trafficking activities of Glenn's boyfriend, Illya Green. A confidential informant made at least five controlled buys of narcotics from Green at Green's house. Glenn was not present during

these buys. The task force used evidence gathered from the buys to obtain a search warrant for Green's house. The task force executed the warrant on March 21, 2019. Glenn, who was present, fled as officers entered the house and tried to leave the scene in her car. Another officer stopped Glenn and arrested her. Officers then searched Glenn's car and discovered cocaine and a mixture of heroin and fentanyl. Green made out-of-court statements claiming responsibility for the drugs in Glenn's car, but he invoked his Fifth Amendment right against self-incrimination and did not testify at Glenn's trial. *See Glenn*, 2021 WL 321548, at *1. Additionally, the trial court found that Green's out-of-court statements were not trustworthy and ruled that they were not admissible as statements against interest under Ohio Rule of Evidence 804(b)(3).

Before trial, Glenn sought discovery of the confidential informant's identity and videos of the prearrest controlled buys on the ground that it was potentially exculpatory. Because the prosecution had only charged Glenn with offenses that occurred on March 21, the trial court ruled that evidence that Glenn was not present during the earlier drug transactions was not relevant and denied Glenn's motion to compel. Glenn refused the trial court's offer to review the videos in camera to determine whether they had any exculpatory value. The court also denied Glenn's motion to identify the confidential informant.

Glenn raised the trial court's denial of her discovery motion and the exclusion of Green's out-of-court statements as a cumulative-error claim in the Ohio Court of Appeals. She argued that the trial court's rulings effectively prevented her from presenting a defense that the drugs in her car belonged to Green. But Glenn failed to ensure that the controlled-buy videos were included in the record, so the court of appeals ruled that she had not shown that they were material to her defense. The court also found that the videos were not relevant because of the limited scope of the indictment and the prosecution's case-in-chief. Accordingly, the court concluded that the trial court did not err in denying Glenn's discovery motion. Having reached that conclusion, the court declined to decide whether the trial court erred in excluding Green's out-of-court statements. *See Glenn*, 2021 WL 321548, at *2-6.

In claim 1, Glenn argued that the trial court violated her Fifth Amendment right to a fair trial and Sixth Amendment right to present a complete defense by denying her request for the controlled-buy videos and excluding Green's out-of-court statements. The district court ruled that Glenn procedurally defaulted this claim. In her COA application, Glenn characterizes claim 1 as a violation of the prosecution's duty to disclose exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963). So limited, reasonable jurists would not debate whether claim 1 deserves encouragement to proceed further because it is not arguably meritorious. *See Dufresne v. Palmer*, 876 F.3d 248, 253-54 (6th Cir. 2017) (per curiam); *see also Moody v. United States*, 958 F.3d 485, 488 (6th Cir. 2020) ("[A] certificate is improper if *any* outcome-determinative issue is not reasonably debatable.").

Brady requires the prosecution to disclose evidence that is material to the defendant's guilt or punishment. *Brady*, 373 U.S. at 87. One of the requirements of a *Brady* violation is that the petitioner must demonstrate a reasonable probability that the result of her trial would have been different had the prosecution disclosed the suppressed evidence. *See McNeill v. Bagley*, 10 F.4th 588, 599 (6th Cir. 2021). But here, as the Ohio Court of Appeals found, Glenn failed to make a proffer of the controlled-buy videos, so they are not in record. As result, the videos cannot be evaluated to assess whether or not they are exculpatory. Consequently, a reasonable jurist could not conclude that the result of Glenn's trial might have been different had the prosecution produced the videos to Glenn. Accordingly, a reasonable jurist would not debate whether Glenn's *Brady* claim was meritorious.

Additionally, the prosecution did not suppress Green's out-of-court exculpatory statements. Rather, the trial court ruled that Green's statements were inadmissible under the Ohio Rules of Evidence. A trial court's evidentiary ruling is not reviewable in federal habeas proceedings unless it was "so fundamentally unfair as to violate the petitioner's due process rights." *Wilson v. Sheldon*, 874 F.3d 470, 475 (6th Cir. 2017) (quoting *Coleman v. Mitchell*, 244 F.3d 533, 542 (6th Cir. 2001)). To meet this burden, the petitioner must show that the state court's

evidentiary ruling was "contrary to, or involved an unreasonable application of, clearly established Federal law." 28 U.S.C. § 2254(d)(1).

Due process may require a trial court to admit a co-defendant's hearsay exculpatory statement as a statement against penal interest if the circumstances indicate that it is trustworthy. *See Chambers v. Mississippi*, 410 U.S. 284, 298-302 (1973). In this case, the trial court concluded that Green's exculpatory statements were not trustworthy because he had already admitted that the drugs in the house were his, and therefore he had nothing to lose by claiming that the drugs in Glenn's car were also his to protect her. Additionally, the court found that evidence that Glenn aided and abetted Green's drug-trafficking activities by transporting money for him undermined the reliability of his exculpatory statements. Glenn makes no attempt to show that the Supreme Court reached a different result in a case with materially indistinguishable facts, *see Lockyer v. Andrade*, 538 U.S. 63, 73 (2003), or that the trial court committed "an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). Accordingly, reasonable jurists would not debate whether this claim deserves encouragement to proceed further.

Claim 4 asserted a Fourth Amendment violation concerning Glenn's arrest and the seizure of evidence from her car. The district court ruled that this claim was not cognizable in federal habeas proceedings because Ohio provides an adequate mechanism to litigate Fourth Amendment claims. Reasonable jurists would not debate that conclusion. *See Terrell v. Sheldon* 841 F. App'x 861, 861-63 (6th Cir. 2021).

For these reasons, the court **DENIES** Glenn's COA application. The court **DENIES** all other pending motions as moot.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 25, 2025
KELLY L. STEPHENS, Clerk

No. 24-3905

SALENA NICOLE GLENN,

Petitioner-Appellant,

v.

WARDEN ERIN MALDONADO,

Respondent-Appellee.

Before: NORRIS, Circuit Judge.

JUDGMENT

THIS MATTER came before the court upon the application by Salena Nicole Glenn for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the application for a certificate of appealability is DENIED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES OF APPEALS

FOR THE SIXTH CIRCUIT

SALENA NICOLE GLENN

Petitioner-Appellant

v.

Case No. 24-3905(GSA)

WARDEN ERIN MALDANO

Respondent-Appellee

MOTION FOR REQUEST TO GRANT CERTIFICATE OF APPEALABILITY(COA)

Now comes, petitioner -appellant, Salena Nicole Glenn, pro se, and pursuant to 28 U.S.C.S § 2253 (2)(3); USCS Fed Rules App. Proc. R 22 (b)(2), respectfully requests the Court to issue a certificate of appealability for an appeal from the Northern District Court's September 19, 2024, final judgment denying habeas corpus relief in this matter.

This case holds substantial concern of Constitutional violations. 28 U.S.C.2253 (2)(3) Salena Nicole Glenn received regular mail from within the Ohio Reformatory from Women, not being addressed to the concern of it being legal on October 26, 2024. Which the prison received the document on the October 21, 2024 and it was filed on October 17, 2024. (letter received stated "you may submit **one signed** motion with this court, stating the issues for review and why

this court should review them. If that is your choice, please do so as soon as possible". 6th Cir. R. 22 (a)) Glenn pursues as to submitting another COA in a different form. Considering the attempt to submit a prior one must have been of error and done incorrectly. Trying to be precise as to the reasoning for review.

I, Salena Nicole Glenn respectfully request that this Court issue a Certificate of Appealibity (COA) to permit my appeal of the district court's denial of habeas relief. This appeal addresses several fundamental constitutional violations that resulted in a wrongful conviction and unconstitutional incarceration. I assert that my case raises substantial violations of my Fourth, Fifth, and Fourteenth Amendment Rights. Being reviewed the Court would find a miscarriage of justice that mandates immediate release. 28 U.S.C.2253 (2)(3)

Grounds for Certificate of Appealablity

1. Issue of illegal search and seizure (Fourth Amendment Violation) Law enforcement pulled me from my vehicle at gunpoint without a warrant, reasonable suspicion, or probable cause, in clear violation of Fourth Amendment protections.Doc.14-1 at 530-532 In the hearing held it was stated not to mention nothing about a search warrant. Doc. 15 at 1521 This illegal seizure undermined the foundation of the case against me., making all subsequent evidence invalid. Mapp v. Ohio, 367, U.S. 643(1961) and United v. Beals, 698 F.3d 248 (6th Cir. 2012, established that evidence gathered from unconstitutional actions cannot support a conviction. Thus, a COA is warranted to determine whether this fundamental violation voids the entire basis for the conviction. The review of the pre-trial transcripts is in dire need for review due to the abuse discretion of the trial court, actions

that were taken involving the illegal search without a search warrant. Case no. 3:22-cv-908 Doc. 15 at 792-829

2. Issue of Brady Violation and Due Process (Fifth and Fourteenth Amendment Violation) The prosecution withheld exculpatory evidence, violating the Brady doctrine and my right to a fair trial. Crucial Evidence-such as a third party's confession (Doc.14-1 at 459-464,523-524) to the crime and statements from law enforcement officers (Doc.14-1 at 522/Doc. At 1432) affirming that the drugs in question did not belong to Glenn-was withheld from the jury. This prosecutorial misconduct prevented the jury from considering key evidence that would likely have changed the trial's outcome. In Brady v. Maryland, 373 U.S. 83 (1963). The Supreme Court held that withholding exculpatory evidence violates due process. Similarly, the 6th Circuit in Phillips v. Hoffner, 742 Fed. Appx. 49 (6th Cir. 2018) ruled that suppression of evidence impacting the defendant's ability to present a defense infringes upon due process rights. The suppression of this evidence in this claim demands appellate review from within the higher courts. Petitioner-appellant, Salena Nicole Glenn, respectfully request this Court to review, Traverse Doc. 24 and Objection to R&R filed by Salena Nicole Glenn, Doc. 29. True and actual facts of the whole entirety of this claim is within these filings originating from Case No. 3:22-cv-908 *Id*

3. Issue of Actual Innocence and Fundamental Miscarriage of Justice. I assert my innocence and submit that the suppression of evidence-including a third party's confession and statements form officers that would exonerate me-constitutes a fundamental miscarriage of justice. *Id* as established in Schulp v. Delo, 513 U.S. 298 (1995), and House v. Bell,

547 U.S. 518 (2006) procedural default may be overcome in cases where credible evidence shows that no reasonable juror would have convicted the defendant. Here, the deliberate withholding of exculpatory evidence, coupled with the third –party confession, provides grave injustice. Also considering the third-party was the target of the investigation. *Id*

Request for immediate Consideration

This appeal is not only a matter of justice but an urgent request for relief form a wrongful conviction and unconstitutional confinement. Every day of incarceration based on a wrongful conviction constitutes on going irreparable harm. Being confined in an environment that is worse than the Liberty of the one being stripped of. Immediate consideration is warranted to prevent continued violations of Glenn's constitutional rights and to address the severe miscarriage of justice in this case/claim. It is important to review Doc. 24 & 29 *Id* as to the barring of this fundamental miscarriage of justice. Containing all truth and nothing but the truth with facts of this claim. Especially concerning that of the Fruit of the Poisonous Tree, pre-trial review of transcripts. Doc. 15 at 792-829 Case No. 3:22-cv-908

Conclusion

Given the substantial constitutional issues and the urgency of this matter, of a sentence of 20 years ;18 mandatory, being incarcerated since March 2019. Petitioner-appellant, Salena Nicole Glenn respectfully request the issuance of a Certificate of Appealablility. This COA presents significant question and procedural fairness, due process, and wrongful conviction that demands this Court's attention. There are several substantial constitutional violations and

showings that warrants a COA that petitioner-appellant has shown pursuant to 28 U.S.C. § 2253 (2)(3) (1) that reasonable jurists would find this district court's "assessment of constitutional claims debatable or wrong," or (2) that reasonable jurist would find "it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473,484(2000); Fed. R. App., Rule 22(b)

Respectfully submitted,

Salena Nicole Glenn

Salena Nicole Glenn#104431
Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

CERTIFICATE OF SERVICE

I, the undersigned petitioner-appellant, Salena Nicole Glenn, hereby certify on November 4, 2024. I served a true and correct copy of the foregoing **MOTION FOR REQUEST TO GRANT CERTIFICATE OF APPEALABILITY(COA)** and sent by regular U.S. mail to UNITED STATES COURT OF APPEALS, THE SIXTH CIRCUIT clerk at the address below from within the Ohio Reformatory for Women(ODRC)

Potter Stewart
U.S. Courthouse

Office of the Clerk
UNITED STATES COURT OF APPEALS
100 Fifth Street Room 540
Cincinnati, OH 45202-3988

Salena Glenn

Salena Nicole Glenn #104431
Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

I declare under penalty of perjury that the foregoing is true and correct 28 U.S.C. §1746.

IN THE UNITED STATES DISTRICT COURT

6TH DISTRICT COURT FOR OHIO

AFFIDAVIT OF SUPPORT OF SALENA GLENN

I, Salena Glenn state that the following written statements are true and factual, now bringing forth to the attention of the higher courts, the 6th Circuit Court of Ohio:

1. I am the Plaintiff coming forth to this court as an incarcerated individual at the Ohio Reformatory for Women in Union County.
2. I was arrested on March 21,2019 as I was sitting in a parked vehicle registered in my name.
3. I Salena N. Glenn, was not given a search warrant or have never seen a search warrant.
4. I was not driving and was not pulled over as to the oppose of a traffic stop
5. Illya Green the co-defendant in the case made several confession as to the crime that was committed on the day of March 21,2019 Case:3:22-cv-00908-SL Doc.# 14-1 PageID#520/ Doc. #14-1 PageID#522
6. Illya Green wrote letters that were to be exhibits A15& A16 and were excluded from trial as to the jury not to see. Doc. 14-1 PageId#459-464
7. Illya Green was the target of the investigation as to the informant dealt with him and when asked by detectives stated Salena Glenn was his girlfriend.Doc. 14-1PageID#491
8. Illya Green took ownership of his crime as to the drugs. Doc.14-1 PageID#521
9. Detective Baldrige stated Glenn was running from the house to the car that gave him probable cause, and Detective Scott Sterling signed an affidavit, stating they stopped Glenn sitting in her parked vehicle. Doc. 14-1 PageID#530
10. Illya Green signed another affidavit as to his confession and plea deal after the event of Glenn being incarcerated.Doc. 14-1 PageID520
11. I, Salena Glenn have thoroughly tried to pursue this claim of being violated of Constitutional violations leading to other Constitutional violations and have entered actions herein to the Habeas Corpus Court, reiterating actions within the MOTION TO REQUEST FOR CERTIFICATE OF APPEALABLITY to the attention of the 6th Circuit Court of Ohio.

Salena Glenn
Affiant

Sworn to, or affirmed, and subscribed in my presence this 8th day of October, 2024.

NOTARY PUBLIC STATE OF OHIO

MARY FITZPATRICK
Notary Public
State of Ohio
My Comm. Expires
March 22, 2027

Mary Fitzpatrick
Notary Public

My Commission Expires: March 22, 2027

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SALENA NICOLE GLENN
Petitioner - Appellant,

CASE NO. 24-3905

v.

WARDEN ERIN MALDONADO
Respondent - Appellee,

MOTION FOR RECONSIDERATION OF DENIAL OF CERTIFICATE OF APPEALABILITY

Ohio Reformatory for Women
Salena Nicole Glenn #104431
1479 Collins Ave
Marysville, Ohio 43040-0000

Petitioner respectfully requests reconsideration of this Honorable Higher Court's decision denying the Certificate of Appealability(COA) in this Case No. 24-3905.The district court's procedural ruling, as well as the determination of whether the petitioner's Constitutional Rights were violated, is a matter of considerable legal debate, and it is submitted that reasonable jurist standard has been misapplied.

Grounds for Reconsideration

Petitioner asserts that the claims raised in the original COA are debatable among reasonable jurist, and thus a COA should be granted as to no claim to be fortified as it is stated that the 6th Circuit will review the whole claim and no request of COA needs to be submitted, unless needing to point out what constitutional standards need to be viewed. Specifically, the petitioner's claims are grounded in multiple violations of constitutional rights that were not properly addressed by the district court and were effectively ignored by the state court, which leads to a miscarriage of justice that is in need of a review.

1. Violation of Fourth Amendment Rights-
   The original COA raised an important Fourth Amendment issue regarding an unlawful seizure. Petitioner, Glenn, was sitting in a parked vehicle with no active traffic stop when he was forcibly removed at gunpoint by men in all black, law enforcement officers. This conduct was a clear violation of Glenn's constitutional rights, as no search were not adequately addressed by the lower courts. Additionally, the absence of a valid search warrant or reasonable suspicion further exacerbates the constitutional violation.
2. Third-Party Confession and Hearsay Issue-
   The district court and state court erroneously dismissed third-party's confession as hearsay; who was under investigation for drug dealing, admitted to placing the drugs in Glenn's vehicle, and informing the officers, the location, what it was and how much it was. It was documented in the police reports that they watched in drive cars registered in Glenn's name. The third-party's confession was considered a crucial piece of evidence supporting the claim that Glenn's was wrongly implicated in a drug offense. The confession was not addressed as of the defense, nor was the third-party brought in for cross-examination, despite their direct involvement in the case.

Including that the officer that stated she knew the drugs was not Glenn's, as the jury was removed as the officer testified. The failure to allow this exculpatory evidence to be submitted to the jury resulted in a denial of Glenns right to a fair trial. The Confession challenged as hearsay was an essential part of the defenses narrative and merits careful Reconsideration

3. Denial of Evidence and Fair Trial-

   The state court's refusal to allow key evidence-specifically, evidence that Glenn had not participated in any drug transactions-further underscore the fairness of the defense counsel did not preserve this issue for appellate review. Complete miscarriage of justice of a wrongly convicted person. The failure of the defense counsel to effectively challenge the procedural issues and preserve exculpatory evidence represents a significant constitutional violation and is to be reconsidered. There is no procedural default as to an innocence person claim to assure violations leading to a miscarriage of justice.

4. Improper Indictment Procedures-

   The issue of the joint indictment being split without a motion is a crucial procedural error that was not properly addressed. Glenn was improperly separated from the co-defendant without a motion or any legal justification. This action had a prejudicial impact of the fairness of the trial and violated Constitutional rights to a fair trial and impartial process.

   The separation of the joint indictment has not been adequately addressed in the previous ruling and warrants further examination, as to the concern of several issues within this claim.

5. Denial of Constitutional Rights

   The court's decision to deny a COA in Case No. 24-3905, asserting that the jurist of reason would find the claims debatable, overlooks the significant constitutional violations at issue. Which leads to a miscarriage of justice. The multiple errors outlined, including the unlawful seizure, the denial of exculpatory evidence the hearsay ruling and the improper indictment procedure, collectively raise serious doubt about the validity of the conviction and the fairness of the trial. Reasonable jurists would find this claims debatable and deserving for a full review.

Conclusion

For the foregoing reasons. Petitioner respectfully request that this higher Honorable Court to reconsider the denial of the COA. To respectfully, carefully review this claim upon justice. The order stated within it, that the court found evidence that Glenn aided and abetted Green's drug-trafficking activities by transporting money for him. This issue as to the statement, stated, has never not been mentioned within the court system as to including as charges brought forth as to a crime. Petitioner will further review as to instruction of Ohio's adequate mechanism to litigate Fourth Amendment claims. The issues raised in this case, including violations of constitutional rights, procedural errors, and improper legal rulings, present substantial legal questions that warrant further examination. A reasonable jurists would find these issues debatable, and this higher Honorable Court has the authority to allow for full appellate review to set upon justice as to the matter of a Miscarriage of Justice. Petitioner, respectfully request that this Honorable Court to reconsider granting the motions filed, previous as to appointing counsel, forma pauper, and the original COA. Petitioner will conclude that this Honorable Court to consider providing counsel to assistant as to filing a Federal Rules of Civil Procedure 59(e)or including Federal Rule of Appellate Procedure 40(d)(1). With all due respect.

Petitioner respectfully pursues for justice even considering being under the ADA with a diagnosis of a closed head injury, along with other mental medical conditions, even verifying that petitioner has severe asthma and rods and screws in right ankle. That will help justify justice of being able to flee. Including that there is a document addressed as a sworn affidavit from a detective stating that, Glenn was stopped sitting in a park vehicle. All of this evidence as to information is in the case file, is even more reason for a full review. Considering the implication of a harsh sentence of 20 years and 18 mandatory bringing forth acknowledgement that petitioner has no criminal background of such like activities.

Respectfully Submitted

Salena Nicole Glenn

Ohio Reformatory for Women
Salena Nicole Glenn #104431
1479 Collins Ave.
Marysville, Ohio 43040

CERTIFICATE OF SERVICE

I Certify a copy of the foregoing MOTION FOR RECONSIDERATION OF DENIAL OF CERTIFICATE OF APPEALABILITY has been sent by Regular U.S. mail to the following below: on this 3rd day of March 2025.

Office of The Clerk
United States Court of Appeals
100 E. fifth Street 540
Cincinnati, Ohio. 45202-3988

Jerri L. Fosnaught - assistant attorney General
Criminal Justice Section
30 E. Broad Street, 23rd Fl.
Columbus, Ohio 43215

Salena Nicole Glenn
Petitioner - appellant

Ohio Reformatory for Women
Salena Nicole Glenn # 104431
1479 Collins Ave
Marysville, Ohio 43040

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SALENA NICOLE GLENN,

Petitioner-Appellant,

v.

CASE NO. 24-3905

WARDEN ERIN MALDONADO,

Respondent-Appellee,

MOTION TO ALTER OR AMEND JUDGMENT/ FEDERAL RULES OF CIVIL PROCEDURE RULE 59 (e)

Comes now respectfully, Petitioner- Appellant, Salena Nicole Glenn, pursuant to 59(e) of the Federal Rules of Civil Procedure, and respectfully moves this Honorable Higher Court to alter or amend its judgment/order entered on February 25, 2025, for the following reasons: Certain documentation is not completely accurate that is within the ORDER.

In support of this motion, Glenn asserts that the courts are overlooking or misapprehending crucial facts and legal principles, which directly impact the viability the claims set herein. The arguments set forth below are drawn from motion to request a COA, stemming from the district court's judgment, denying a 28 U.S.C §2254 affirming no correction from the lower court, and no acknowledgment of a stern Constitutional violation of rights. Glenn is coming forth in pursuant of "Justice". Respectfully, requesting assistant from the Honorable Higher Court.

"Where the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in state court, either in at the time of trial or in a collateral proceeding. In other words, a federal evidentiary hearing is required unless the state-court trier of fact has after a full hearing reliably found the

relevant facts." The need for a hearing is governed by Townsend v. Sain, 372 U.S. 293,312-313 (1963) To support this claim, a petitioner must show: "(1) that he has alleged facts that, if proved, would entitle him to relief, and (2) that the state courts, for reasons beyond his control, never considered the claim in a full and fair hearing." Matthew v. Anderson, 253 F.3d 1025,1039(7th Cir.2001)

1.Legal Standard

Federal Rules of Civil Procedure59(e) provides that a party may file a motion to alter or amend a judgment in the event of(a)an intervening change in controlling law;(b) the availability of new evidence; or (c)the need to correct clear error of law or prevent manifest injustice.

Glenn reserve a right to correct the process of the two petitions that was claimed to be filed, respectfully pleading for the Higher Honorable Court to review the Post-conviction. Glenn was only entitled to file one petition, and submitted it timely according to OhioRev.Code§29532.1(A)(2) the trial transcripts were filed on January 29,2020 in the appeals court and the PC was delivered on January 28&29, 2021.Still leaves question as to why it is stated that two petitions' were filed? And noting that it was sealed without notification. Ohio.Civ.R.5

To overcome a procedural hurdle, a petitioner must demonstrate the constitutional violations he alleges" ha[ve] probably resulted in the conviction of one who is actually innocent," such that a federal court's refusal to hear all claims or defaulted claims would be a miscarriage of justice." Schlup v. Delo,513 U.S. 298,326,115 S.Ct.851 [1995].

Suppression of drug evidence not being sought, was very critical, yet counsel did not challenge its admissibility despite serious question about the validity of the warrant upon which the search was based on. State v. Reichenbach, 153, W 2d. 126.101. P.3d 80 (2004)

Glenn carefully read from the district court of appeals that the claim would be completely reviewed, no COA was required only if you want to point out specifically what to be reviewed. Considering the whole claim was entitled for review. Glenn was pointing out what was of importance as to the constitutional standard of law. Respectfully requesting that this claim be viewed as a whole.

2.Grounds for Motion

In this case petitioner-appellant, has procedural reason that bars Glenn to bare upon the constitution for which it stands, forwarding with procedural circumstances of standard upon Constitutional Rights. The intervening change for controlling laws proceeds to be in a wide range of this case, and error in law of an American citizen being stripped of their liberty.

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Glenn was sitting in a parked vehicle and did not flee as officers entered the house nor, did Glenn try to leave the scene in her car.

The task force executed a warrant on March 21, 2019, of a house, Glenn was sitting in a parked car when she was approached. There is a written sworn affidavit statement of a detective stating Glenn was stop sitting in a parked vehicle. Doc.#14 at 580 Glenn was not presented with no warrant and –had the jury heard all the conflicting testimony—it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt. House v. Bell, 547 U.S. 518,165 L. Ed 2d 1,126 S.Ct.2064(2006) If task force failed to produce a warrant or a legitimate reason for the action, it could undermine the right to challenge the evidence presented against. Mapp v. Ohio; Boyd v. United States 116 US 616 626 262

Glenn had no knowledge of a crime being committed and no participation in any crime on the day of March 21,2019.

3. Argument

Clear Error in the court's Judgment: "Additionally, the court found that evidence that Glenn aided and abetted Green's drug-trafficking activities by transporting money for him undermined the reliability of his exculpatory statements. This statement was never mentioned as to a charge of Glenn and bares to be corrected by the Higher Honorable Court that has the authority.

However, in light of the recent development, such as Green had a history, Green was pulled over driving vehicle registered to Glenn, and Green was being watched and he dealt with an informant. Green also confessed the day of, he informed the officers of the whereabouts of the drugs, what it was, and how much it was. Doc.15 at 1359-1360

Illya Green the co-defendant confessed multiply times as to his crime committed, which evidence is available for review, including a hearing can be set for a truthful testimony. On the day of March 21,2019, during initial arrest. Doc.14-1 at 520&522, He wrote letters that where to be exhibits A15&A16, which were excluded from the jury. Doc.14-1 at 459-464 Green took ownership of drugs in interview. Doc.14-1 at 521 Illya Green signed a sworn affidavit as to his confession. Doc. 14-1 at 520 The informant stated Glenn was the girlfriend. Doc. 14-1 at 491 Which was turned around committing Glenn of drug trafficking sentencing to a 20 years18 mandatory.

Glenn did not refuse to ensure the video of the control buys, the IOAC from the attorney that was from Marion, refused to assure evidence for further review. Which he was to be certified to know to do. It is even noted that Glenn was not around during any transaction. Glenn went from the girlfriend to the drug trafficker? Doc.14-1 at 491

Glenn proceeds with having all evidence and information to proclaim a "miscarriage of justice".

The court held that when exculpatory evidence is not considered it could infringe upon due process rights. Phillip v. Hoffner,742 Fed.APPX.49 (6th .2018) The jury had no knowledge of all evidence and it was withheld, Constitutional Violation, Fed R. Evid.801 (d)(2)(E), *Brady* requires the prosecution to disclose evidence that is material to the defendant's guilt or punishment. *Brady*, 373 U.S. at 87. One of the requirements of a *Brady* violation is that the petitioner must demonstrate a reasonable probability that the result of her trial would have been different had the prosecution disclosed the suppressed evidence.

Newly Discovered Evidence:

- Glenn has severe medical conditions including a closed head injury, under the American Disability Act. Glenn v. Comm'r of Soc. Sec., 2013 U.S. Dist. LEXIS 95995
  The attorney from Marion county in Marion, was informed there was no way, due to being on multiply medication Glenn was capable of committing the crimes indicted for. Never the less understand the aspect of the trial requesting not to have a jury and change venues. And was brushed off with denial.

- Glenn could have never fled as officers entered the house because medically Glenn has severe asthma including rods and screws in right ankle. Therefore, there was no probable cause legitimately of actions being taken. Detective, Scott Sterling, Marion Police Department, stated "officers also stopped Salena Green who was sitting in her parked vehicle outside of the residence. Doc.14-1 at 530
- Glenn was snatched up out of the car she had two items in her hand, pills and keys. Doc.14-1 at 532
- Glenn was charged with the drugs that was in the house and was not present in the home. This evidence was noticed as to the report of an affidavit in support of arrest warrant being said of a total of 158 grams of cocaine and 18 grams of heroin in Salena's car and the living room of 223 West Columbia St. Marion, Marion County, Ohio.Doc.14-1 at530
- The court did allow a proffer of Officer Stacey McCoy which has been discarded but recorded on the record. Without the jury knowing, of her testimony of affirming that she knew the drugs were not Glenn's. Doc.14-1 at 522

Legal Error:

A hearing is evident for the record or even a new trial due to the process of error, exception-cause &prejudice, of a "miscarriage of justice", including complete competency of ineffective assistance of counsel.

The jury never knew of certain evidence or had any knowledge. Glenn was left without no defense as to the attorney not having any to present. Ineffective assistant of counsel stands firm, due to the attorney not even requesting witness or accuser, established that defendant has the right to front their accuser and challenge the validity of the evidence. Crawford v. Washington, 541 U.S. 36 (2004)

Green statement was never hearsay, he was the target of the investigation, and was being watch for less than 30 days by the drug task force, he sold to the informant and dealt with him, stating Glenn was his girlfriend.Doc.14-1 at 491 He took ownership Doc. 14-1 at 521of his crime and drugs by pleading guilty being sentenced to 12 ½ years. He admitted to the responsibility for his drugs, excluding this evidence from a jury, "violation" as it could significantly have affected the outcome. Brady v. Maryland, 373, U.S. 83(1963). Suppression of evidence favorable to the

petitioner by the prosecution violates "due process". When exculpatory evidence is not considered it can infringe upon due process rights. Phillips v. Hoffner,742 Fed.APPX.49 (6Cir.2018)

Glenn respectfully requests that this Honorable Court to review the concern of the Post-Conviction, carefully this issue has never been address. And the whole claim as to its entirety.

4.Relief Sought/Conclusion

Based on the foregoing, petitioner-appellant, Salena Nicole Glenn, respectfully request that this Honorable Higher Court reconsider its ruling to grant a Certificate of Appealability, as well as alter or amend its judgment in this case. Glenn seeks relief in pursuant of a wrongful conviction of an American citizen that is innocent. But if not so, respectfully request this Higher Honorable Court to grant a new fair trial as to opposing charges of the indictment, specifically revising the judgment/order as to the statement that Glenn being committed a crime of aided and abetted, and putting on the record the whole truth of facts as it addresses to police records or by immediately releasing Glenn with the terms of time being served.

Wherefore, petitioner-appellant, Salena Nicole Glenn respectfully requests that this Honorable Higher Court to alter or amend its judgment as set forth above, and for such other relief as the Court deems just and proper. Glenn, has established that the trial was farce, mockery of justice, and conscience of actions taken to strip an American citizen of Liberty. Procedurally, proceeding concerning the fundamental of the circumstances as to Justice. Glenn's is in dire need, to proceed, for assistance of the Higher Court to process adequate counselor under 18 USCS §3006 A(a)(1)(F)(H)(I), due to Constitutional violations, error in law, withholding evidence, and having newly discovered evidence pleading for assistance of the Higher Court to process adequate counselor under 18 USCS §3006 A(a)(1)(F)(H)(I).

Respectfully Submitted,

Salena Glenn

Salena Nicole Glenn #104431
Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

Affidavit Included

CERTIFICATE OF SERVICE

I, Salena Nicole Glenn, petitioner-appellant, certify that a copy of the foregoing **MOTION TO ALTER OR AMEND JUDGMENT UNDER RULE 59 (e)** has been sent by regular US mail to the following below: 20 day of March 2025.

United States Court of Appeals
Office of The Clerk
100 E. Fifth Street 540
Cincinnati, Ohio 45202-3988

Jerri L. Fosnaught-Assistant Attorney General
Criminal Justice Section
30 E. Broad Street, 23rd Fl.
Columbus, Ohio 43215

affidavit included

Salena Glenn
Salena Nicole Glenn#104431

Ohio Reformatory for Women
Salena Nicole Glenn#104431
1479 Collins Ave.
Marysville, Ohio 43040

AFFIDAVIT OF SWORN TRUTH SUPPORTED WITH FACTS THAT ARE ON RECORD/CAN BE VERIFIED

1. I, Salena Glenn was in the alley in parked vehicle and was not pulled over for a traffic stop.
2. I, Salena Glenn was not addressed by an officer under oath.
3. I Salena Glenn did not knowingly or willingly commit a crime.
4. I Salena Glenn had no knowledge of a crime in action.
5. I Salena Glenn was not approached with a search warrant or given a search warrant
6. I Salena Glenn had items in each hand when pulled from vehicle.
7. I Salena Glenn did not run and hide drugs in no vehicle.
8. I Salena Glenn has severe asthma, and rods and screws in right ankle
9. I Salena Glenn was in bad car accident and deemed disable, diagnosed with several mental conditions including a closed head injury.
10. I Salena Glenn was on multiply medication the day of the arrest March 21,2019
11. There is a sworn affidavit by detective Scott, Sterling attest to the truth of Glenn sitting in a parked vehicle.
12. I Salena Glenn was not in the house when the officer raided the house.

Salena Glenn

Salena Nicole Glenn

Sworn to, or affirmed and subscribed in my presence this 20 day of March 2025

declare under penalty of perjury that the foregoing is true and correct 28 U.S.C. section 1746, U.S.C. 1621

Salena Glenn

Not available as time needed

Notary Public

My Commission Expires: N/A

SRW
19 Collins Ave.
Marysville, Ohio 43040

APPENDIX B

The United States Court of Appeals, For the Sixth Circuit, ORDER, filed May 29, 2025-Case No. 24-3905

Petitioner has included:

- MOTION TO ALTER OR AMEND A JUDMENT/USCS FED RULES CIVIL PROC 59 (e), filed June, 23, 2025
- NOTICE OF APPEAL TO A COURT OF APPPEALS FROM A JUDGMENT/ORDER OF A DISTRICT COURT, filed June23, 2025
- United States Court of Appeals, For the Sixth Circuit, two letters filed July, 02, 2025

  1. Stating that the Motion to Alter to Amend Judgment is untimely

  2. Stating the appeal is being returned unfiled with no further action, enclosing a United States Supreme Court packet.

  *These documents were submitted timely and Glenn falls at the mercy of the court for assistant and legal counsel, due to the concern of matters regarding Case. No. 3:22-CV-00908-SL, In United States District, Northern District of Ohio, Eastern Division

No. 24-3905

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SALENA NICOLE GLENN,

Petitioner-Appellant,

v.

WARDEN ERIN MALDONADO,

Respondent-Appellee.

ORDER

Before: GIBBONS, BUSH, and DAVIS, Circuit Judges.

Pro se Ohio prisoner Salena Nicole Glenn petitions for a panel rehearing of our order of February 25, 2025, denying her application for a certificate of appealability.

We DENY Glenn's rehearing petition because she has not cited any misapprehension of law or fact that would alter our prior decision. *See* Fed. R. App. P. 40(b)(1)(A).

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SALENA NICOLE GLEN

Petitioner-Appellant,

v.

No.24-3905

WARDEN ERIN MALDONADO,

Respondent-Appellee.

MOTION TO ALTER OR AMEN D A JUDGMENT /ORDER

USCS FED RULES CIVILPROC 59(e)

Dated May 29, 2025

Petitioner-Appellant, Salena Nicole Glenn, comes forth now respectfully. Pursuant to USCS Fed Rule Civil Proc R 59(e) A motion to alter or amend a judgment/order must be filed no later than 28 days after the entry of the judgment/order.

On May 29, 2025 an ORDER was filed stating We DENY Glenn's rehearing petition because she has not cited any misapprehension of law or fact that would alter our prior decision. Fed.R.App.40 (b) (1) (A)

Glenn bares to come forth respectfully with the *burden* of submitting this claim. Which Glenn is not a professional attorney, still needing the assistant of professional assistant due to conditions of medical concern Glenn v. Comm'r of Soc.Sec., 763 F.3d 494 .Which the orders/judgments decisions verify the desperate desire for assistance with this matter?

Glenn knows that this case is of national importance and respectfully pleads with request that this higher court to adhere to the matter, providing professional assistance of one being stripped of their liberty. Upon consideration as to the *rule of law* U.S.C.S §3006 A (a) (1) (A) (F) (H) (I)

Evidence- That was never brought forth or considered being mention

*Glenn has severe asthma including rods and screws in her right ankle. Which can be submitted as new evidence, proving that she could have not been the one that ran from the house and place drugs in her own vehicle.

*Glenn also brings note that the prosecutors withheld other evidence that was crucial to the claim. Glenn was pulled from vehicle at gunpoint and had to two items, one in each hand. Keys and a Bayer aspirin bottle. This important information was not given to the jury, considering there could have been no reasonable doubt that Glenn was able to put the contraband where it was found.

MEMORANDM IN SUPPORT OF

Glenn comes forth showing with law and facts that of violations of the U.S Constitution containing that of state and federal.

The scenario raises national importance of constitutional and legal issues under both federal and state law in the United States. Glenn has positioned the scenario below the facts, case law, and applications.

1.Fourth Amendment violation-Unlawful Search and seizure-This concern was important to this case and the lower courts stated in the trial transcripts, that this matter is not of concern and is not to be brought up.(Transcripts Doc.15 at1521/ 792-1609)Glenn was in a parked vehicle, no traffic stop, or knowledge of a crime being committed. Pulled out at gunpoint, without proper adjudication. (Doc. 14 at 532)

Legal Facts:

The Fourth Amendment of the U.S. Constitution protects individuals against unreasonable searches and seizures. The argument as to the courts that it is not her drugs? (Doc.15 at 1252) and "in this case we are dealing with a search of a home."(Doc. 15 at 821)

-a search warrant, probable cause, or a recognized exception must justify any search

Case law; that is relevant to the situation

Katz v. United States, 389 U.S. 347 (1967): Established the "reasonable expectation of privacy."
Carroll v. United States, 354 U.S. 394 (1957): Suppression of evidence was important as to a search warrant.
State v. Gant, 216 Ariz.1 (2007): The warrantless search was unlawful.
Florida v. Jardines, 569 U.S. 1 (2013):Finding no probable cause for the fourth amendment search, rendering invalid the warrant based upon information gathered in that search.
Jardines v. State 73 So.3d 34 (2011): Unreasonable government intrusion.

Applications:

- Ms. Glenn's vehicle was searched without a warrant, without probable cause, and without consent, violating the Fourth Amendment.(Doc. 14-1 at 532)

- Illya Green confessed to putting the drugs in the area which they were found, without Glenn's knowledge. Stating the exact location, how much it was, and what it was.
- Illya Green providing information about drugs, that alone does not excuse by passing judicial approval (i.e. warrant) without exigent circumstances?

2. Illegal Arrest or Detention

Legal Facts:

The Fourth Amendment prohibits unlawful seizures, including detentions and arrests without probable cause or a warrant.

Case law; that is relevant to the situation

Terry v. Ohio U.S. 1 (1968): Allows brief stops only with reasonable suspicion.

Dayton v. New York, 445 U.S. 573 (1980): Requires a warrant for arrests in private places unless exigent circumstances exist.

Applications:

- Glenn was sitting in a park vehicle, having no knowledge of a crime being committed. Glenn was the target of an investigation and never dealt with no informant.
- The officer pulling a gun removing Glenn, from her vehicle without identifying himself, a warrant, or justification. Constitutes an Unlawful seizure...
  -This conduct may amount to excessive or assault?

3. *Fruit of the Poisonous Tree Doctrine*

Legal Facts:

Evidence obtained via unconstitutional means (illegal search or seizure is inadmissible in court).

-This is a central part of the exclusionary rule.

Case law; that is relevant to the situation

Wong Sun v. United States, 371 U.S. 471 (1973): Established the doctrine.

Applications:

- Illya Green took ownership of the drugs, he knew exactly where they were, how much it was and what it was. Glenn had no knowledge of such events or crime taken place.
- Illya admitted to placing the drugs in the location without, Glenn's knowledge.

-The drugs found in the car can be inadmissible if the search violated her right? Any evidence derived from the search could have *constituted* as being tainted?

*This may be the reason why the lower court focus at the pretrial that this information should not be brought forth and not to address.

4. Lack of Mens Rea-No criminal intent (knowledge)

Legal Facts:

Mens Rea (criminal intent) is required element in most drug trafficking statues. Glenn most definitely had no knowledge of or any intent to distribute drugs.

-Without knowledge or intent to distribute trafficking charges typically cannot stand?

Case law; that is relevant to the situation

Staples v. United States, 511 U.S. 600(1994): The government must prove knowledge of the illegal nature of possession.

Applications:

- Green took ownership of his/the crime admitting to placing the drugs where he had put them. Letting it be known that they were his.
- Glenn was sentenced to a decade in prison giving a term of 20 years; 18 mandatory of a non-violent offense.
- Glenn had no knowledge of the drugs in the car, which may not meet the elements for knowing possession of drug trafficking.
- Green was the target of the investigation and he dealt with the informant.
- Green confessed as to the police report about the information about the drugs and that, that lady don't have anything to do with this, having no knowledge.

The several confessions of statements taken/given by Mr. Illya Green further supports Glenn's lack of knowledge. May amount to exculpatory evidence and, a wrongful conviction of that of one

that is actually innocent. This can be reason that the lower courts misapprehended law within the case, to prevent future occurrences.

5. Brady Violation/Withholding Exculpatory Evidence

Legal Facts:

Under Brady V. Maryland, 373 U.S. 83(1963): Prosecutors must disclose exculpatory evidence (evidence favorable to the defense)

Case law; that is relevant to the situation

Fed R. Evid. 801 (d) (2) (E)

Glenn has provided all case law that is relevant within this case. And also has included a copy of the Travers, and Objections to the Magistrate decision. Proving that she has intentionally tried to submit information that is relevant to this claim to prove her innocence.

Applications:

- Considering police and prosecutors withheld Illya Green's confessions or did not disclose the questionable manner of the search *from* the *jury*, it may constitute a *Brady Violation*, which is grounds for overturning a conviction.
- The jury was told that Glenn was running from the house to the car, which was perjury. *Included is a sworn affidavit that was never brought forward or mention, that the jury never knew anything about. Glenn has included the sworn affidavit within this motion. -This can constitute for a new trial, this information was not given to the jury.

6. Potential Civil Rights Claim/42 U.S.C. §1983

Legal Facts:

If Glenn's constitutional rights were violated by law enforcement officers under color of law, this may have cause of action under 42 USC § 1983?

Case law; that is relevant to the situation

Hope V. Pelzer, 536 U.S. 730 (2002): Government officials can be held liable for obvious constitutional violation.

Applications:

- Glenn was sitting in a parked car
- Glenn had no knowledge of a crime
- Glenn never ran from the house to the car to put drug in vehicle
- Glenn has added an affidavit from officer stating Glenn was stopped sitting in a parked vehicle
- Glenn has evidence that the jury never knew-Illya Greens confessions, or the statement made by officer, that she knew the drugs were not Glenn's
- All evidence is on file at Case: 322-cv-00908-SL in black & white as to the police reports and transcripts that can/will entitle Glenn to a new trial or either an overturned conviction.

I declare under penalty of perjury that the foregoing is true and correct U.S.C 1746 §18 U.S.C. §1621

Glenn does not afford adequate law library time to complete the properness of the submission of the motions, due to hours being restricted in law library and not having space available as to time.

Glenn proceeds with respect and apologies for the incompleteness of this motion has put forth effort but has no time due to time sensitivity to complete to a better standard. This is reason to appoint Glenn professional legal counsel to support this claim. Glenn is adding the two (2) important motions to review for evidence is support of this claim to be reviewed.

Conclusion

Glenn has proceeded within the court system providing **law & fact** of actions that have been taken upon from within Marion County, Ohio. Glenn has respectfully persevered with bravery to submit the actual truth of occurrences.

Included as evidence are the following motions, Traverse(Doc. 20) and Objections to Report &Recommendations (Doc. 21), which this Honorable Court might not yet had the chance to review. Glenn has tried to pursue with stating communicable laws, facts, and cases, despite Glenn not being an attorney. But, according to the information provided within the law library at ORW it states to just explain to the courts, and that they know that we are not attorneys.

Glenn respectfully pleads to be granted professional assistance, considering medical concerns of comprehension. Glenn is persistent as to letting the scenario be known. Glenn was not responsible or had any knowledge of the crime that she was committed of. Respectfully requesting that this claim be appropriately adjudicated as to the concern of justice.

Now Glenn is again submitting the *laws & facts* in form to be notified and seen. If these action are not being taken upon correctly, Glenn consistently pleads for assistant of professional counsel to proceed. Glenn respectfully is following this action with a notice of appeal under Rule 4(a) (4) (A) in whole.

Glenn respectfully and pleads that this court to be governed as to these facts containing law. Glenn proceeds noting that there can be more judges involved in the decisions of this claim, under Circuit Rule 35-3. United States v. Heredia, 460 F.3d 1093 (2006)

*The ineffectiveness assistance of counsel (IAOC) that is also being disregarded need to be brought to the attention within this claim/case. Which the post-conviction was ruled untimely and was not untimely. Including the lower courts separating a joint indictment without a motion. All this actions are on record to be reviewed in this case, and needs assistance as to professional assistance so that matters can be addressed appropriately with correctness.

I declare under penalty of perjury that the foregoing is true and correct U.S.C 1746 §18 U.S.C. §1621

Salena Nicole Glenn 6-23-25

Salena Nicole Glenn#104431/Signed on
Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

CERTIFICATE OF SERVICE

I, Salena Nicole Glenn, certify that the original copy of the foregoing **MOTION TO ALTER OR AMEN D A JUDGMENT /USCS FED RULESCIVILPROC 59(e) Dated May 29, 2025** has been sent by regular U.S. mail to the Sixth Circuit Court on this 23, day of June 2025

Mailed to:

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
100 E. FIFTH STREET, ROOM 540
CINCINNATI, OHIO 45202-3988

Attorney General Office
Jerri Fosnaught
30 East Broad Street 14th Floor
Columbus, Ohio 43215-3428

Clerk of Courts
Sandy Opacich
1716 Spielbusch Ave.
Toledo, Ohio 44604

Glenn did not add a copy of the objections to the magistrate judge order or the Traverse to the other parties, they have them on file, and have reviewed them to make their decision.

Salena Nicole Glenn 6-23-25

Salena Nicole Glenn#104431/Signed on
Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. §U.S.C. §1621).

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SALENA NICOLE GLEN

Petitioner-Appellant,

v.

No.24-3905

WARDEN ERIN MALDONADO,

Respondent-Appellee.

Declaration of Inmate Filing

I am an inmate confined in an Ohio Reformatory for Women facility/institution. Today on Jun23, 2025, I am depositing the **MOTION TO ALTER OR AMEN D A JUDGMENT /USCS FED RULESCIVILPROC 59(e) Dated May 29, 2025** Upon this case, in the ORW facility/institution internal mailing system. U.S. regular mailing postage is being prepaid by me from within the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. §U.S.C. §1621).

Salena Nicole Glenn 6-23-25

Salena Nicole Glenn /Signed on

Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SALENA NICOLE GLEN

Petitioner-Appellant,

v.

No.24-3905

WARDEN ERIN MALDONADO,

Respondent-Appellee.

Notice of Appeal to a Court of Appeals From

A Judgment/Order of a District Court

Salena Nicole Glenn, petitioner-appellant, appeals to the United States Court of Appeal for the Sixth Circuit from the final judgment/order entered on May 29, 2025.U.S.C.S Fed Rule App.Proc. Rule 4(a) (4) (A)

Memorandum to support follows:

Salena Nicole Glenn 6-23-25

Salena Nicole Glenn /Signed on

Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

MEMORANDUM IN SUPPORT OF:

Salena Nicole Glenn, comes now comes forth respectfully in accordance to an order that was presented on May 29, 2025. According to U.S.C.S Fed Rule App.Proc. Rule 4(a) (4) (A), Glenn respectfully comes forth bringing attention of the matter, that Glenn has persistently applied rules, laws, and facts to this claim that has stemmed from within Marion County, Ohio case no. 19-cr-0122.Glenn has added evidence within the **MOTION TO ALTER OR AMEN D A JUDGMENT /USCS FED RULESCIVILPROC 59(e) Dated May 29, 2025** to be reviewed.

Hoping in good faith that this Honorable Higher Court, look profoundly in pursing complete justice.

Salena Nicole Glenn 6-23-25

Salena Nicole Glenn /Signed on

Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SALENA NICOLE GLEN

Petitioner-Appellant,

v.

No.24-3905

WARDEN ERIN MALDONADO,

Respondent-Appellee.

Declaration of Inmate Filing

I am an inmate confined in an Ohio Reformatory for Women facility/institution. Today on Jun23, 2025, I am depositing the **Notice of Appeal to a Court of Appeals From a Judgment/Order of a District Court**

Upon this case, in the ORW facility/institution internal mailing system. U.S. regular mailing postage is being prepaid by me from within the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. §U.S.C. §1621).

Salena Nicole Glenn 6-23-25

Salena Nicole Glenn /Signed on

Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

CERTIFICATE OF SERVICE

I, Salena Nicole Glenn, certify that the original copy of the foregoing **Notice of Appeal to a Court of Appeals From a Judgment/Order of a District Court** has been sent by regular U.S. mail to the Sixth Circuit Court on this 23, day of June 2025

Mailed to:

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
100 E. FIFTH STREET, ROOM 540
CINCINNATI, OHIO 45202-3988

*According to U.S.C.S Fed Rule App.Proc. Rule 3 (d) (1) (2) (3) the clerk will serve other parties; 3 copies included

Attorney General Office
Jerri Fosnaught
30 East Broad Street 14th Floor
Columbus, Ohio 43215-3428

Clerk of Courts
Sandy Opacich
1716 Spielbusch Ave.
Toledo, Ohio 44604

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. §U.S.C. §1621).

Salena Nicole Glenn 6-23-25
Salena Nicole Glenn /Signed on

Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Kelly L. Stephens
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: July 02, 2025

Ms. Salena Nicole Glenn
Ohio Reformatory for Women
1479 Collins Avenue
Marysville, OH 43040-0000

Re: Case No. 24-3905, *Salena Glenn v. Erin Maldonado*
Originating Case No. 3:22-cv-00908

Dear Ms. Glenn,

Your Petition for Panel Rehearing is late; it was not submitted within the time allowed by Federal Rules of Appellate Procedure 40(a), nor did you submit a Motion for Extension of Time to File the Petition. For these reasons, the petition is being returned unfiled. *See Sixth Circuit Local Rule 40(b).*

Sincerely,

s/Gretchen A.
Case Manager
Direct Dial No. 513-564-7018

cc: Ms. Jerri L. Fosnaught

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Kelly L. Stephens
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: July 02, 2025

Ms. Salena Nicole Glenn
Ohio Reformatory for Women
1479 Collins Avenue
Marysville, OH 43040-0000

Re: Case No. 24-3905, *Salena Glenn v. Erin Maldonado*
Originating Case No. 3:22-cv-00908

Dear Ms. Glenn,

This Court received your Notice of Appeal to a Court of Appeals from a Judgment/Order of a District court on July 1, 2025. We are returning this document to you unfiled and with no further action. Enclosed is a United States Supreme Court packet.

Sincerely,

s/Gretchen A.
Case Manager
Direct Dial No. 513-564-7018

cc: Ms. Jerri L. Fosnaught

Enclosure

APPENDIX C

United States District, Northern District of Ohio, Eastern Division, Judgment entry, dated September 19, 2024-Case No. 3:22-cv-908

Petitioner has included:

- PETITIONER'S TRAVERSE/RESPONSE TO RESPONDENTS ANSWER/RETURN OF WRIT, filed February 10, 2023
- PETITIONER'S OBJECTIONS TO MAGISTRATE REPORT AND RECOMMENDATION, filed July 2, 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SALENA GLENN,	)	CASE NO. 3:22-cv-908
	)	
PETITIONER,	)	CHIEF JUDGE SARA LIOI
	)	
vs.	)	**MEMORANDUM OPINION AND ORDER**
TERI BALDAUF,	)	
RESPONDENT.	)	

On May 23, 2024, Magistrate Judge James E. Grimes, Jr. issued a Report and Recommendation ("R&R") recommending that this Court deny the petition for writ of habeas corpus filed by *pro se* petitioner Salena Glenn ("Glenn" or "petitioner") pursuant to 28 U.S.C. § 2254. (Doc. No. 25 (R&R).) Glenn sought and received extensions of time to file her objections to the R&R and subsequently filed timely objections. (Doc. No. 29 (Objections).) Respondent filed neither a response to Glenn's objections nor her own objections. For the reasons discussed herein, Glenn's objections to the R&R are OVERRULED, the R&R is ACCEPTED, and Glenn's petition is DENIED.

I. BACKGROUND

The R&R sets forth a detailed factual and procedural history of this case based on the summary provided by the Ohio Court of Appeals for the Third Appellate District. (Doc. No. 14, at 238–40.)[1] In habeas corpus proceedings brought by a person under 28 U.S.C. § 2254, factual determinations made by state courts are presumed correct. 28 U.S.C. § 2253(e)(1). The petitioner

[1] All page number references herein are to the consecutive page numbers applied to each individual document by the Court's electronic filing system.

has the burden of rebutting that presumption by clear and convincing evidence. *Franklin v. Bradshaw,* 695 F.3d 439, 447 (6th Cir. 2012). This Court accepts the magistrate judge's summary as if rewritten herein. (*See* Doc. No. 25, at 2–4.) The Court repeats here only the background facts most relevant to Glenn's objections.

On April 4, 2019, the Marion County Grand Jury indicted Glenn on five drug-related counts, and one count of tampering with evidence. (Doc. No. 25, at 2.) After a jury trial in state court, Glenn was found guilty on four counts, including trafficking in cocaine, possession of cocaine, aggravated possession of fentanyl, and tampering with evidence. (*Id.*) Two of the counts merged for purposes of sentencing and Glenn was given consecutive sentences on the three remaining counts, for an aggregate prison term of 20 years. (Doc. No. 14-1, at 90–92.) Glenn took a direct appeal, and the appellate court remanded for resentencing. *See State v. Glenn,* No. 9-19-64, 2021 WL 321548, at *8 (Ohio Ct. App. Feb. 1, 2021). On remand, the trial court again merged two of the counts of conviction for sentencing purposes and imposed consecutive sentences on the three remaining counts for the same aggregate prison term of 20 years. (Doc. No. 14-1, at 589–91.)

In January 2021, Glenn filed two petitions to vacate or set aside her judgment. (Doc. No. 14-1, at 361, 465.) The state trial court denied both petitions. (*Id.* at 584–88.) In June 2021, the Ohio Supreme Court declined to accept jurisdiction over Glenn's appeal. (*Id.* at 278.) A year later, Glenn filed a *pro se* delayed application for reopening her direct appeal under Ohio Appellate Rule 26(B). (*Id.* at 279–94.) The court of appeals denied Glenn's application for reopening as untimely. (*Id.* at 341–42.)

On May 31, 2022, Glenn filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Glenn's petition raises five grounds for relief, which are reproduced as written:

> **GROUND ONE:** Salena Glann's Right to a fair trial, Right to present a complete defense 6th Amendment Right to a speedy trial.
>
> **GROUND TWO:** Selina Glenn was denied due process, abuse of discretion, evidence was insufficient to support the guilty verdict 5th + 14th amendment.
>
> **GROUND THREE:** Ineffective assistance of counsel plain error 6th Amendment + 14th Amendment.
>
> **GROUND FOUR:** Illegal Search + Seizure, Confrontation of Adverse Witness 4th + 6th Amendment.
>
> **GROUND FIVE:** The trial court errored [sic] when it did not instruct the jury of the joint indictment; there was no motion to file to separate joint indictment. 5th, 6th, 14th Amendment.

(Doc. No. 1, at 5–13.)

In his R&R, the magistrate judge recommends dismissing all five grounds as procedurally defaulted. He recommends that Grounds One, Two, and Four may also be dismissed as non-cognizable upon federal habeas review. (Doc. No. 25, at 15–31.)

II. STANDARD OF REVIEW

A. 28 U.S.C. § 636(b)(1)(C)

Under 28 U.S.C. § 636(b)(l)(C), "[a] judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *See also Powell v. United States,* 37 F.3d 1499 (Table), 1994 WL 532926, at *1 (6th Cir. 1994) ("Any report and recommendation by a magistrate judge that is dispositive of a claim or defense of a party shall be subject to *de novo* review by the district court in light of specific objections filed by any party."); Fed. R. Civ. P. 72(b)(3) ("[t]he district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to."). "An 'objection' that does nothing more than state a disagreement with a magistrate's suggested resolution, or simply summarizes what has been presented before, is not an 'objection' as that term

is used in this context." *Aldrich v. Bock*, 327 F. Supp. 2d 743, 747 (E.D. Mich. 2004); *see also Cole v. Yukins,* 7 F. App'x 354, 356 (6th Cir. 2001) ("The filing of vague, general, or conclusory objections [to a magistrate judge's report and recommendation] does not meet requirement of specific objections and is tantamount to a complete failure to object.") Accordingly, habeas petitioners who do not advance proper objections "waive[] [their] right to *de novo* review." *Thompson v. Bracy*, No. 1:19-cv-58, 2022 WL 911260, at *6 (N.D. Ohio Mar. 29, 2022). After review, "[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

B. AEDPA

Although this Court must review any matter properly objected to *de novo*, in the habeas context, it must do so under the deferential standard of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which provides:

> 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.

28 U.S.C. § 2254(d)(1)–(2).

In *Harris v. Stovall,* 212 F.3d 940, 942 (6th Cir. 2000), the Sixth Circuit noted the Supreme Court's explanation of these standards. With respect to the first prong:

> A decision of the 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." [A]n "unreasonable application" occurs when "the state court identifies the correct legal principle from [the Supreme] Court's decision but unreasonably applies that principle to the facts of the prisoner's case." A federal habeas court may not find a state adjudication to be "unreasonable" "simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly."

Id. at 942 (quoting *Williams v. Taylor,* 529 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) (internal citations omitted)). As to the second prong, federal courts must "presume the correctness of state courts' factual findings unless applicants rebut this presumption with 'clear and convincing evidence.'" *Schriro v. Landrigan,* 550 U.S. 465, 473–74, 127 S. Ct. 1933, 167 L. Ed. 2d 836 (2007) (quoting 28 U.S.C. § 2254(e)(l)).

Under AEDPA's deferential habeas review standard, the question before the Court on *de novo* review "is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold." *Id.* at 473. To obtain habeas corpus relief from a federal court, "a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011).

This standard is difficult to meet "because it was meant to be." *Id.* at 102. "[H]abeas corpus is a 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Id.* at 102–03 (quoting *Jackson v. Virginia*, 443 U.S. 307, 332, n.5, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) (Stevens, J., concurring in judgment)).

III. DISCUSSION

Glenn's objections are largely incoherent and do not identify any specific portions of the R&R to which she takes issue. At best, they make conclusory statements that constitutional violations occurred and reassert the factual bases for issues she has with her conviction and sentence. (*See, e.g.*, Doc. No. 29, at 29 ("This case is not to be dismissed. In recognition of an American Citizen being stripped of his Liberty and violated by his Constitutional Rights concerning an Unconstitutional, Illegal Arrest.").) Glenn explains that, through her objections to the R&R, she aims to "bring forth the actual events" of the day she was arrested, and to "rebut[] the state['s] facts, including every detail that was left out[.]" (Doc. No. 29, at 5.) These accounts were previously offered in her habeas petition and traverse. (*See generally* Doc. No. 1; Doc. No. 20.)

Glenn includes in her objections a section entitled "Procedural default," but as far as the Court can discern, she does not engage with the R&R's reasoning that all of her habeas grounds are procedurally defaulted—much less offer clear and proper objections to the magistrate judge's recommendations. (*See* Doc. No. 29, at 37–39.) Glenn's objections are also silent regarding the R&R's conclusions that many of her grounds are not cognizable on federal habeas review.

Objections like Glenn's are *improper*: "The filing of vague, general, or conclusory objections does not meet the requirement of specific objections and is tantamount to a complete failure to object." *Drew v. Tessmer*, 36 F. App'x 561, 561 (6th Cir. 2002) (citing *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995) (finding that objections that allege the magistrate's recommendation is incorrect, but "fail to specify the findings . . . believed [to be] in error" are overly general and improper)). A party disappointed with the magistrate judge's recommendation has a "duty to pinpoint those portions of the magistrate's report that the district court must specially

consider." *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (citation omitted). Glenn has not met that duty.

Further, the vast majority of the filing merely rehashes arguments raised in the petition and traverse. Objections that are "simply a repetition of what the Magistrate Judge has already considered" are improper and can be overruled on this basis alone. *United States v. Bowers*, No. 06-7, 2017 WL 6606860, at *1 (E.D. Ky. Dec. 26, 2017).

Improper objections like Glenn's are not entitled to *de novo* review. *Aldrich*, 327 F. Supp. 2d at 747; *see also Cole*, 7 F. App'x at 356 (to obtain *de novo* review, objections to the R&R must be specific, not "vague, general, or conclusory"). The Court therefore need only review the R&R for clear error. *Kirkland v. Comm'r of Soc. Sec.*, No. 5:20-cv-2480, 2022 WL 643169, at *5 (N.D. Ohio Mar. 4, 2022) ("A 'general objection is treated as no objection at all and results in only clear error review' of the Report and Recommendation." (quoting *Allgood v. Shoop*, No. l:19-cv-2808, 2021 WL 2116280, at *l (N.D. Ohio May 25, 2021))); *Day v. Onstar, LLC*, No. 2:19-cv-10922, 2019 WL 3315278, at *l (E.D. Mich. July 24, 2019) (frivolous, conclusive, or general objections to a report and recommendation are reviewed for clear error (quotation marks and citations omitted)).

This Court has reviewed the R&R, which thoroughly analyzed Glenn's five grounds for relief in the context of the procedural history of this case. As explained, because Glenn has not asserted proper objections to the magistrate judge's R&R, she waived her right to *de novo* review. After a clear error review of petitioner's objections and a careful review of the R&R, the Court finds it is appropriate to adopt the magistrate judge's R&R denying Glenn's petition, and to overrule Glenn's objections.

Notwithstanding the lack of proper objections, in an abundance of caution, the Court

addresses several arguments raised by Glenn in her 45-page filing.

A. OBJECTIONS RELATING TO PROCEDURAL DEFAULT

As an initial matter, the Court observes that Glenn offers three new grounds for relief that she represents "are available for full review and are not procedurally defaulted." (Doc. No. 29, at 26.) Specifically, she raises the following as possible grounds: (1) the trial court committed numerous evidentiary errors, (2) the trial court erred in imposing consecutive sentences, and (3) the jury's verdicts were against the manifest weight of the evidence. (*Id.*) Glenn appears to acknowledge that these grounds should have been, but were not, raised in her habeas petition, and this is fatal to her argument. (*Id.* ("if [the claims] were left out as they should not have been . . . Petitioner respectfully request for this to be corrected for the record. . . .")). "It is well-established that a habeas petitioner cannot raise new claims or arguments in an objection that were not presented to the Magistrate Judge." *Pryor v. Erdos*, No. 5:20-cv-2863, 2021 WL 4245038, at *8 (N.D. Ohio Sept. 17, 2021) (collecting cases); *see also Crockett v. Sloan*, No. 1:16-cv-550, 2017 WL 1050364, at *3 (N.D. Ohio Mar. 20, 2017) (rejecting petitioner's attempt to raise new claims in objections "when those claims or arguments were never presented to the magistrate judge"); *Thompson v. Hooks,* No. 1:13-cv-1324, 2016 WL 8674655, at *2 (N.D. Ohio Sept. 30, 2016) (similar); *Roark v. Meko,* No. 12–cv-73, 2013 WL 3107654, at *3 (E.D. Ky. June 17, 2013) (similar). Accordingly, the Court will not consider these new claims.

B. OBJECTIONS RELATING TO CAUSE AND ACTUAL PREJUDICE

Glenn also appears to argue the procedural default of her existing grounds may be excused for "cause and actual prejudice," citing the alleged withholding of *Brady*[2] material, and the

[2] *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) (holding the government must provide criminal defendants with material, exculpatory evidence in its possession).

existence of prosecutorial misconduct. (Doc. No. 29, at 37 (citing *Coleman v. Thompson*, 501 U.S. 722, 750, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991) (review of a state prisoner's defaulted claims is barred unless the prisoner can demonstrate cause and actual prejudice that occurred because of the alleged violation of federal law)). These objections, however, are vague or non-cognizable upon federal habeas review. With respect to the "misconduct," the specifics of Glenn's complaint about the prosecutor are too vague for the Court to discern and can be overruled on this basis alone. *Drew*, 36 F. App'x at 561 (vague, general, and conclusory objections to a magistrate judge's R&R are improper).

Glenn's allegations regarding the withholding of *Brady* materials appear to refer to the trial court's refusal to permit discovery on five prior controlled buys as not relevant to the pending charges. (*See* Doc. No. 29, at 11, 37.) As noted by both the state appellate court and the magistrate judge, the trial court offered to review the alleged exculpatory evidence *in camera* several times, but Glenn's trial attorney declined, and the evidence was never preserved on the record. *Glenn,* 2021 WL 321548, at *5. (*See* Doc. No. 25, at 17.) To the extent Glenn now attempts to raise ineffective assistance of counsel in failing to preserve this evidence for appellate review as cause for her default, the argument is unavailable. While ineffective assistance of counsel can excuse a petitioner's procedural default, Glenn procedurally defaulted her ability to raise the ineffectiveness argument about both her trial and appellate counsel vis-à-vis the alleged exculpatory evidence by (1) not raising her trial counsel's alleged ineffectiveness on direct appeal and (2) not timely appealing the court's denial of her delayed Rule 26(B) application. (*See* Doc. No. 1, at 6; Doc. No. 14-1, at 341–42.) Because Glenn's ineffective assistance claim is itself procedurally defaulted, she cannot assert it as cause to excuse procedural default of her other claims. *Edwards v. Carpenter,* 529 U.S. 446, 453, 120 S. Ct. 1587, 146 L. Ed. 2d 518 (2000) (an ineffective assistance of counsel

claim asserted as cause for the procedural default of another claim can itself be procedurally defaulted).

Having found that Glenn cannot establish "cause" for procedural default of her claims, the Court need not reach the issue of actual prejudice. *Murray v. Carrier,* 477 U.S. 478, 494–96, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986). Glenn, therefore, has failed to establish excuse for the procedural default of her claims.

C. **OBJECTIONS RELATING TO "MISCARRIAGE OF JUSTICE"**

Glenn correctly observes that, even in the absence of cause and actual prejudice, a petitioner may still be able to overcome procedural default if he or she can establish that failure to review the habeas claim will result in a "fundamental miscarriage of justice." *Edwards,* 529 U.S. at 451 (citation omitted). A "fundamental miscarriage of justice" occurs in "an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent." *Murray,* 477 U.S. at 496. A claim of actual innocence "requires [the] petitioner to support his allegations of constitutional error with new reliable evidence . . . that was not presented at trial." *Schlup v. Delo*, 513 U.S. 298, 324, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995). The evidence upon which she appears to rely to demonstrate her innocence—the unpreserved *Brady* material and a letter from Ilya Green, a co-defendant, stating that the drugs were his—is not new. (Doc. No. 25, at 28; Doc. No. 20, at 17–18.) Both the alleged *Brady* material and the Green letter existed at the time of trial, and cannot now be relied upon to establish actual innocence. *Id.*

Likewise, Glenn's argument that the evidence offered against her at trial constituted "fruit of the poisonous tree" that flowed from an alleged improperly executed search warrant does not show that Glenn is "actual[ly]" or "factual[ly] innocen[t]" of the charges. *Bousley v. United States,* 523 U.S. 614, 623, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998) (citation omitted). At best,

this argument only supports a claim of "legal insufficiency," which, in any event, cannot excuse procedural default. *Id.* ("It is important to note . . . that 'actual innocence' means factual innocence, not mere legal insufficiency." (citing *Sawyer v. Whitley,* 505 U.S. 333, 339, 112 S. Ct. 2514, 120 L. Ed. 2d 269 (1992))). Glenn has not met *Schlup*'s requirements for demonstrating "actual innocence," and, accordingly, has not established that failure to excuse her procedural default will result in a "fundamental miscarriage of justice." *Schlup,* 513 U.S. at 324; *Edwards,* 529 U.S. at 451.

IV. CONCLUSION

The Court concludes that petitioner has not asserted proper objections and, thus, has waived her right to *de novo* review. The Court has reviewed the R&R for clear error and found none. Petitioner's objections are overruled, and the Court accepts and adopts the R&R. Accordingly, Glenn's petition is denied and dismissed in its entirety. The Court certifies that an appeal from this decision could not be taken in good faith and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. §§ 1915(a)(3), 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated: September 19, 2024

HONORABLE SARA LIOI
CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SALENA GLENN, Petitioner, vs. TERI BALDUF, Respondent.	CASE NO. 3:22-cv-908 CHEIF DISTRICT JUDGE SARA LIOI MAGISTRATE JUDGE JAMES E. GRIMES JR. **REPORT & RECOMMENDATION**

Petitioner Salena Glenn filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. Doc. 1. Glenn is in custody at the Ohio Reformatory for Women in Marysville, Ohio, pursuant to judgment in the Marion County Court of Common Pleas Case No. 19-CR-122. The Court referred this matter to a Magistrate Judge under Local Rule 72.2 for the preparation of a Report and Recommendation. For the following reasons, I recommend that the Petition be dismissed.

Summary of Facts

In habeas corpus proceedings brought by a person under 28 U.S.C. § 2254, factual determinations made by state courts are presumed correct. 28 U.S.C. § 2254(e)(1). The petitioner has the burden of rebutting that presumption by clear and convincing evidence. *Franklin v. Bradshaw*, 695 F.3d 439, 447 (6th Cir. 2012).

The Ohio Court of Appeals for the Third Appellate District summarized the facts underlying Glenn's conviction as follows:

> **{¶2}** On March 21, 2019, agents of a multi-jurisdictional drug task force conducted a search of a residence at 223 West Columbia Street, Marion, Ohio ("223 West Columbia") pursuant to a search warrant. Inside the residence, law enforcement officers located drugs, and Illya Green ("Green") and Kevin Swift ("Swift") were arrested. Outside the residence, law enforcement officers heard a noise and located Glenn attempting to leave the residence in her vehicle. During a subsequent search of Glenn's vehicle, law enforcement officers located substances which were later determined to be cocaine and a mixture of fentanyl and heroin.
>
> **{¶3}** On April 4, 2019, the Marion County Grand Jury issued a joint indictment charging Glenn, Green, and Swift with a variety of offenses. (Doc. No. 2). Specifically, the Marion County Grand Jury indicted Glenn on six counts: Count One of trafficking in cocaine in violation of R.C. 2925.03(A)(2), (C)(4), a first degree felony; Count Two of possession of cocaine in violation of R.C. 2925.11(A), (C)(4), a first-degree felony; Count Three of aggravated possession of fentanyl in violation of R.C. 2925.11(A), (C)(11), a second-degree felony; Count Four of tampering with evidence in violation of R.C. 2921.12(A), a third-degree felony; Count Five of trafficking in heroin in violation of R.C. 2925.03(A)(1), (C)(6), a fourth-degree felony; and Count Six of aggravated possession of drugs in violation of R.C. 2925.11(A)(1), (C)(1), a fourth-degree felony. (*Id.*). Count Two contained a major drug offender specification under R.C. 2941.1410 and Count Five contained a forfeiture specification under R.C. 2941.1417. (*Id.*). On April 8, 2019, Glenn appeared for arraignment and entered pleas of not guilty to the counts and specifications in the indictment. (Doc. No. 7).

{¶4} On May 31, 2019, Glenn filed a motion for additional discovery. (Doc. No. 37). In the motion, Glenn requested that the trial court compel the State to provide her with any and all video recordings, police reports, and documentation regarding controlled buys at 223 West Columbia on February 26, 2019, February 28, 2019, March 12, 2019, March 14, 2019, and March 20, 2019. (*Id.*). Glenn argued that the information was discoverable under Crim. R. 16 because it was "material to mitigation, exculpation, or impeachment." (*Id.*).

{¶5} On June 7, 2019, the State filed its memorandum in opposition to Glenn's motion for additional discovery. (Doc. No. 38). The State argued that, although the five prior controlled buys were referenced in the affidavit for the search warrant which was executed on March 21, 2019, neither Glenn nor her codefendants were charged with any crimes relating to those transactions. (*Id.*). Further, the State argued that Glenn failed to demonstrate that she would be prejudiced by non-disclosure of the controlled buys detailed in the search warrant affidavit. (*Id.*).

{¶6} On June 11, 2019, the trial court held a hearing on Glenn's motion for additional discovery. (Doc. No. 39). At the conclusion of the hearing, the trial court denied Glenn's motion for additional discovery. (June 11, 2019 Tr. at 30). (*See* Doc. No. 39).

{¶7} The case proceeded to a jury trial on August 22, 23, and 26, 2019. (*See* Doc. No. 113). Prior to the commencement of trial, the trial court dismissed Counts Five and Six of the indictment and the forfeiture specification that related to Count Five of the indictment. (*Id.*). At the close of the State's case, Glenn made a motion for acquittal under Crim.R. 29, which the trial court denied. (Aug. 26, 2019 Tr. at 709-717). On August 26, 2019, the jury found Glenn guilty of all the remaining counts in the indictment and the major drug offender specification associated with Count Two. (Doc. Nos. 105, 106, 107, 108). (*See* Doc. No. 113).

> {¶8} A sentencing hearing was held on September 16, 2019. (Doc. No.113). Upon agreement of the parties, the trial court found that Counts One and Two merged for purposes of sentencing. (*Id.*). Accordingly, the State elected to sentence Glenn on Count Two. (*Id.*). The trial court sentenced Glenn to a mandatory term of 11 years in prison on Count Two, a mandatory term of 7 years in prison on Count Three, and 24 months in prison as to Count Four. (*Id.*). Further, the trial court ordered that the sentences should be served consecutively to each other for an aggregate prison term of 20 years. (*Id.*). The following day, the trial court filed its judgment entry of sentence. (*Id.*)

State v. Glenn, Case No. 9-19-64 (3d App. Dist. Feb. 1, 2021); Doc. 14, at 238–240.

Relevant Procedural History[1]

State Court Proceedings

In May 2019, Glenn filed a motion for additional discovery with the trial court. Doc. 14-1, at 34. The State opposed Glenn's motion, Doc. 14-1, at 40, and the trial court held a hearing in June 2019, Doc. 14-1, at 44. During the hearing, the parties discussed the discoverability and admissibility of certain evidence, which the trial court ultimately determined was not discoverable. Doc. 14-1, at 310–316. The trial court offered to consider the evidence at issue *in camera*, to further consider arguments raised by Glenn's trial counsel as to its relevance, but Glenn's trial counsel declined the trial court's offer for *in*

[1] The procedural history has been identified as relevant through review of the parties' briefing to this Court and is not intended to provide an exhaustive description of all proceedings that may have occurred.

camera inspection. Doc. 14-1, at 315. The trial court denied Glenn's motion for additional discovery. Doc. 14-1, at 44.

The case proceeded to a jury trial on Counts One through Four of the indictment. Doc. 14-1, at 90–92. In August 2019, a jury in Marion County, Ohio, found Glenn guilty of all remaining counts and found a major-drug-offender specification applied to Count 2. Doc. 14-1, at 91. Glenn was sentenced to 11 years in prison on Ground 2 (which, on agreement of the parties, included Count 1 for sentencing purposes), 7 years in prison on Count 3, and 24 months in prison on Ground 4. *Id.* The trial court ordered Glenn's sentence to be served consecutively for a term of 20 years. *Id.*

Direct Appeal

Glenn timely filed a notice of appeal with the Third District Court of Appeals, Marion County, Ohio. Doc. 14-1, at 94, 117. Glenn raised three assignments of error on appeal:

> 1. The trial court's numerous errors involving evidentiary issues denied appellant the right to present a defense thereby violating her constitutional due process rights to a fair trial under the State and Federal Constitutions. (Record Reference: Transcript of Pre-Trial (Date 6/11/19), Tr. Vol. III, pp. 602-650).
>
> 2. The trial court erred in imposing a prison term consecutive to another prison term because there was no finding that the sentence was not disproportionate to any danger the defendant may pose to the public and the trial court failed to identify specific reasons in support of its finding that consecutive sentences were appropriate. (Record Reference: Judgment Entry).

3. The jury's verdicts were against the manifest weight of the evidence in violation of the United States Constitution and the Ohio Constitution. (Record Reference: Judgment Entry).

Doc. 14-1, at 122.

The State opposed Glenn's arguments, Doc. 14-1, at 145, and in February 2021, the Ohio court of appeals overruled Glenn's first and third assignments of error, *State v. Glenn*, 2021-Ohio-264, 2021 WL 321548 (Ohio Ct. App. 2021). The Ohio court of appeals sustained Glenn's second assignment of error, vacated her sentence, and remanded the case to the trial court for resentencing. *Id.*

In March 2021, Glenn filed a timely pro se notice of appeal with the Ohio Supreme Court. Doc. 14-1, at 226, 229. She asserted three propositions of law in support of her appeal:

1. The trial court's numerous errors involving evidentiary issues denied appellant the right to present a defense thereby violating her constitutional due process rights to a fair trial under the State and Federal Constitutions. (Record Reference: Transcript of Pre-Trial (Date 6/11/19), Tr. Vol. III, pp. 602-650).

2. The trial court erred in imposing a prison term consecutive to another prison term because there was no finding that the sentence was not disproportionate to any danger the defendant may pose to the public and the trial court failed to identify specific reasons in support of its finding that consecutive sentences were appropriate. (Record Reference: Judgment Entry).

3. The jury's verdicts were against the manifest weight of the evidence in violation of the United States Constitution and

> the Ohio Constitution. (Record Reference: Judgment Entry).

Doc. 14-1, at 239–49.

In June 2021, the Ohio Supreme Court declined to accept jurisdiction over Glenn's appeal. Doc. 14-1, at 278.

Petition to Vacate

In January 2021, Glenn filed two petitions to vacate or set aside her judgment of conviction or sentence, one on January 28 and the other on January 29. *See* Doc. 14-1, at 361, 465. The State opposed, arguing that Glenn had either raised or could have raised these claims on direct appeal. Doc. 14-1, at 575, 577. Glenn replied. Doc. 14-1, at 580, 582. The state trial court dismissed and denied Glenn's petitions, finding that the January 29 filing was untimely under Ohio law and the January 28 filing was barred by Ohio's doctrine of res judicata. Doc. 14-1, at 584–88. Glenn did not appeal to the court of appeals.

Resentencing

In March 2021, the state trial court held a resentencing hearing. Doc. 14-1, at 590. Following the hearing, the trial court sentenced Glenn to a mandatory term of 11 years on Count 2, a mandatory term of 7 years on Count 3, and 24 months on Count 4. *Id.* It ordered her to serve her sentences consecutively for a total term of 20 years. *Id.*

Delayed Appeal

In May 2022, Glenn filed a pro se notice of appeal and motion for leave to file a delayed appeal with the court of appeals. Doc. 14-1, at 593, 595. In August 2022, the court of appeals denied leave to file a delayed appeal, finding that Glenn failed to provide sufficient reasons for her untimely appeal. Doc. 14-1, at 608.

Ohio Appellate Rule 26(B) Delayed Application for Reopening

In June 2022, Glenn filed a pro se delayed application for reopening her direct appeal under Ohio Appellate Rule 26(B).[2] Doc. 14-1, at 279–340. In her application, Glenn alleged that she was denied effective assistance of appellate counsel and claimed that she did not make certain arguments on direct appeal due to ineffective assistance of appellate counsel. Doc. 14-1, at 290–93. Glenn argued that she failed to file an application to reopen her direct appeal because of the amount of time it took her to receive the trial transcript. Doc. 14-1, at 280.[3] The court of appeals denied Glenn's application for reopening as untimely

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[2] A Rule 26(B) application to reopen is the method to raise ineffective assistance of appellate counsel. *See* Ohio App. R. 26(B)(1). An application must be filed "within ninety days from journalization of the appellate judgment [on direct appeal] unless the applicant shows good cause for filing at a later time." *Id.*

[3] Rule 26(B) doesn't require the applicant to file transcripts. *See* Ohio App. R. 26(B)(e) (an application must contain "[a]ny parts of the record available to the applicant"); *State v. Marcum*, No. CA96-03-049, 2002 WL 42894, at *2 (Ohio Ct. App. Jan. 14, 2022) ("Nothing in the rule requires counsel to provide or make available a copy of the trial transcript to an applicant for purposes of preparing an App.R. 26(B) application.").

and found that she failed to show good cause for her untimely filing. Doc. 14-1, at 341–42. Glenn did not appeal to the Ohio Supreme Court.

Federal Habeas Corpus Petition

Glenn filed a petition for federal habeas corpus relief in May 2022. In it, Glenn raised the following five grounds for relief, which are reproduced as written:

> GROUND ONE: Salena Glenn's right to a fair trial, right to present a complete defense 6th Amendment Right to a speedy trial.
>
> GROUND TWO: Salena Glenn was denied due process, abuse of discretion, evidence was insufficient to support the guilty verdict 5th & 14th amendment.
>
> GROUND THREE: Ineffective assistance of counsel plain error 6th Amendment & 14th Amendment.
>
> GROUND FOUR: Illegal Search & Seizure, Confrontation of Adverse Witness 4th and 6th Amendment.
>
> GROUND Five: The trial court errored when it did not instruct the jury of the joint indictment; there was no motion to file to separate joint indictment. 5th, 6th, 14th Amendment.

See Doc. 1, at 5–13.

Legal Standard

Under the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, 110 Stat. 1214, petitioners must meet certain procedural requirements to have their claims reviewed in federal court. *Smith v. Ohio Dep't of Rehab. & Corr.*, 463 F.3d 426, 430 (6th Cir. 2006). "Procedural barriers, such as statutes of limitations and rules concerning procedural default and

exhaustion of remedies, operate to limit access to review on the merits of a constitutional claim." *Daniels v. United States*, 532 U.S. 374, 381 (2001). Although procedural default is sometimes confused with exhaustion, exhaustion and procedural default are distinct concepts. *Williams v. Anderson*, 460 F.3d 789, 806 (6th Cir. 2006). Failure to exhaust applies when state remedies are "still available at the time of the federal petition." *Id.* (quoting *Engle v. Isaac*, 456 U.S. 107, 125 n.28 (1982)). But when state court remedies are no longer available, procedural default rather than exhaustion applies. *Id.*

Exhaustion

A federal court may not grant a writ of habeas corpus unless the petitioner has exhausted all available remedies in state court. 28 U.S.C. § 2254(b)(1)(A). A state defendant with federal constitutional claims must fairly present those claims to the state courts before raising them in a federal habeas corpus action. 28 U.S.C. § 2254(b),(c); *Anderson v. Harless*, 459 U.S. 4, 6 (1982) (per curiam); *Picard v. Connor*, 404 U.S. 270, 275–76 (1971); *see also Fulcher v. Motley*, 444 F.3d 791, 798 (6th Cir. 2006) ("Federal courts do not have jurisdiction to consider a claim in a habeas petition that was not 'fairly presented' to the state courts") (quoting *Newton v. Million*, 349 F.3d 873, 877 (6th Cir. 2003)). A constitutional claim for relief must be presented to the state's highest court to satisfy the fair presentation requirement. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 845-48 (1999); *Hafley v. Sowders*, 902 F.2d 480, 483 (6th Cir. 1990). And a habeas petitioner must present both the

factual and legal underpinnings of the claims to the state courts. *McMeans v. Brigano*, 228 F.3d 674, 681 (6th Cir. 2000). This means that the "petitioner must present his claim to the state courts as a federal constitutional issue—not merely as an issue arising under state law." *Koontz v. Glossa*, 731 F.2d 365, 368 (6th Cir. 1984).

Procedural default

Procedural default may occur in two ways. *Williams*, 460 F.3d at 806. First, a petitioner procedurally defaults a claim by failing "to comply with state procedural rules in presenting [the] claim to the appropriate state court." *Id.* In *Maupin v. Smith*, the Sixth Circuit directed courts to consider four factors when determining whether a claim is barred on habeas corpus review due to a petitioner's failure to comply with a state procedural rule: whether (1) there is a state procedural rule applicable to the petitioner's claim and whether the petitioner failed to comply with that rule; (2) the state court enforced the procedural rule; (3) the state procedural rule is an adequate and independent state ground on which the state can foreclose review of the federal constitutional claim; and (4) the petitioner can demonstrate cause for failing to follow the rule and actual prejudice by the alleged constitutional error. 785 F.2d 135, 138 (6th Cir. 1986); *see also Williams*, 460 F.3d at 806 ("If, due to the petitioner's failure to comply with the procedural rule, the state court declines to reach the merits of the issue, and the state procedural rule is an independent

and adequate grounds for precluding relief, the claim is procedurally defaulted.") (citing *Maupin*, 785 F.2d at 138).

Second, "a petitioner may procedurally default a claim by failing to raise a claim in state court, and pursue that claim through the state's 'ordinary appellate review procedures.'" *Williams*, 460 F.3d at 806 (citing *O'Sullivan*, 526 U.S. at 848). "If, at the time of the federal habeas petition, state law no longer allows the petitioner to raise the claim, the claim is procedurally defaulted." *Id.* While the exhaustion requirement is satisfied because there are no longer any state remedies available to the petitioner, *see Coleman v. Thompson*, 501 U.S. 722, 732 (1991), the petitioner's failure to have the federal claims considered in the state courts constitutes a procedural default of those claims that bars federal court review, *Williams*, 460 F.3d at 806.

To overcome a procedural bar, petitioners must show cause for the default and actual prejudice that resulted from the alleged violation of federal law that forms the basis of their challenge, or that there will be a fundamental miscarriage of justice if the claims are not considered. *Coleman*, 501 U.S. at 750.

Merits review

If a state's courts adjudicated the merits of a claim, a habeas petitioner may obtain habeas relief under 28 U.S.C. § 2254, if the petitioner can establish one of two predicates. To establish the first predicate, the petitioner "must identify a 'clearly established' principle of 'Federal law' that" has been

established by a holding of the Supreme Court. *Fields v. Jordan*, 86 F.4th 218, 231 (6th Cir. 2023) (en banc); *see* 28 U.S.C. § 2254(d)(1). The petitioner must then show that state's court's adjudication "was *contrary to*," or "involved an *unreasonable application* of" that "clearly established" precedent. 28 U.S.C. § 2254(d)(1) (emphasis added); *see Fields*, 86 F.4th at 232.

To establish the second predicate, the petitioner must show that the state's court's adjudication "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." 28 U.S.C. § 2254(d)(2).

"Under the 'contrary to' clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by the [United States Supreme] Court on a question of law or" based on "a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 412–13 (2000). "Under the 'unreasonable application' clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from th[e] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id.* at 413. "[A]n 'unreasonable application of'" the Court's holdings is one that is "'objectively unreasonable,' not merely wrong; even 'clear error' will not suffice." *White v. Woodall*, 572 U.S. 415, 419 (2014) (quoting *Lockyer v. Andrade*, 538 U.S. 63, 75–76 (2003)).

"[A] 'clearly established' principle of 'Federal law' refers to the "holdings," not "dicta," of the Supreme Court's decisions. *Fields*, 86 F.4th at

231 (quoting *White*, 572 U.S. at 419). A state court is not required to cite Supreme Court precedent or reflect an "awareness" of Supreme Court cases, "so long as neither the reasoning nor the result of the state-court decision contradicts" such precedent. *Early v. Packer*, 537 U.S. 3, 8 (2002); *Lopez v. Wilson*, 426 F.3d 339, 358 (6th Cir. 2005). If the Supreme Court has not addressed the petitioner's specific claims, a reviewing district court cannot find that a state court acted contrary to, or unreasonably applied, Supreme Court precedent or clearly established federal law. *Carey v. Musladin*, 549 U.S. 70, 77 (2006); *see White*, 572 U.S. at 426 ("Section 2254(d)(1) provides a remedy for instances in which a state court unreasonably applies this Court's precedent; it does not require state courts to extend that precedent or license federal courts to treat the failure to do so as error.").

In determining whether the state court's decision involved an unreasonable application of law, the Court uses an objective standard. *Williams*, 529 U.S. at 410. "A state court's determination that a claim lacks merit precludes federal habeas review so long as 'fair-minded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)); *see also Bray v. Andrews*, 640 F.3d 731, 738 (6th Cir. 2011). "[A] state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well

understood and comprehended in existing law beyond any possibility for fair-minded disagreement." *Harrington*, 562 U.S. at 103.

Discussion

1. The Ground One claims are not cognizable and are procedurally defaulted.

The Court notes that, with the exception of Glenn's enumerated ground in her Petition, neither party presents legal argument related to Glenn's Ground One claim independently from the other claims raised. While the Court has liberally construed Glenn's arguments, her arguments are defaulted or otherwise not cognizable for the reasons described. *See Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004) ("[l]iberal construction [of a pro se habeas petition] does not require a court to conjure allegations on a litigant's behalf") (quoting *Erwin v. Edwards*, 22 F. App'x 579, 580 (6th Cir. 2001)).

In Ground One, Glenn appears to argue that her right to present a complete defense was violated when: (1) the trial court denied the admission of certain allegedly exculpatory evidence related to five previous controlled buys, and (2) the jury was removed from the courtroom during a proffer of testimony from one of the officers who performed the search that resulted in Glenn's arrest. Doc. 1, at 5. While Glenn presented these two evidentiary issues on direct appeal, Doc. 14-1, at 128–34, 239–245, not all aspects of Glenn's Ground One claim were presented in her direct appeal. Specifically, she references a "letter from Illya Green stating the drugs were his." Doc. 1, at 5. And she asserts for the first time in her traverse: "trial attorney deficiency

performance for not preserving the evidence by not properly sealing for further review and refusing the trial court and the state the opportunity to review the exculpatory evidence that was potentially available for review." Doc. 20, at 11. Glenn also asserts that her attorney's deficiencies, both trial and appellate, "were several cumulative effect of errors."[4] Doc. 20, at 11.

To the extent that the arguments raised in Glenn's Ground One were raised on direct appeal, the Court must defer to the state appellate court's decision on the merits absent a showing that the state court's decision was: (1) contrary to or involved an unreasonable application of clearly established federal law; or (2) resulted in an unreasonable determination of the facts. 28 U.S.C. § 2254(d). Glenn has not argued that the court of appeal's determination was contrary to or an unreasonable application of clearly established federal law. She also does not allege that the court of appeal's decision was based on an unreasonable determination of the facts. In fact, Glenn does not make any argument related to the court of appeal's decision.

Even if Glenn had challenged the court of appeal's decision, the basis of Glenn's argument is less than clear, especially given that Glenn doesn't discuss

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[4] Glenn does not develop any further argument as to cumulative error but even if she did it is not cognizable. *Williams*, 460 F.3d 789, 816 (6th Cir. 2006) ("cumulative error claims are not cognizable on habeas [review] because the Supreme Court has not spoken on this issue."). Additionally, the court of appeals rejected her prior cumulative error arguments on direct appeal. *Glenn*, 2021 WL 321548, at *6. But Glenn has not challenged the court of appeals' determination.

that court's decision. Before the court of appeals, Glenn framed her first issue as one involving "numerous errors" that "denied [her] the right to present a defense thereby violating her due process rights." Doc. 14-1, at 128. Before discussing the errors that Glenn specifically alleged, the State responded that Glenn's argument implicated "[t]he doctrine of cumulative error" and argued that "to find cumulative error, 'a court must first find multiple errors.'" *Id.* at 153 (citation omitted).

In considering Glenn's issue, the court of appeals explained that Glenn argued that when it failed to give her evidence about the five previous controlled buys, the State withheld material evidence. *Glenn*, 2021 WL 321548, at *5; *see* Doc. 14-1, at 34. The trial court, however, had offered to the review the evidence in camera. But Glenn's counsel declined "the trial court's offer to review the requested material." *Glenn*, 2021 WL 321548, at *5. As a result of counsel's decision, the trial court did not review the potential evidence and it was "never made part of the record." *Id.* Based on this background, the court of appeals concluded that there was no basis to "find that the evidence requested was related to the indictment or that it was material to the preparation of Glenn's defense." *Id.* In other words, the court of appeals rejected Glenn's argument as to the controlled buys because her counsel's decision foreclosed the court's ability to rule in her favor.

Further, the court of appeals reasoned, "[u]nder the doctrine of cumulative error, under which Glenn makes her argument, a court must first

find multiple errors committed at trial." *Glenn*, 2021 WL 321548, at *6. And because the court had rejected the first leg of Glenn's two-leg cumulative-error argument, even if the trial court erred by not admitting Green's statements, Glenn's cumulative-error argument failed. *Id.*

Since Glenn says nothing about the court of appeals decision as to the controlled buys evidence and Green's statements to a police officer, there is no basis to conclude that she could meet her burden under 28 U.S.C. § 2254(d)(1) as to that issue.

To the extent that the Court can discern Glenn's argument related to Green's statements, she appears to argue that the state trial court violated Ohio Rule of Evidence 801(d)(2)(E) (statements by a co-conspirator) by withholding exculpatory evidence from the jury in violation of her federal constitutional rights.[5] *See* Doc. 20, at 10, 15. But alleged violations of state evidentiary rules are not cognizable on federal habeas. *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991); *Bey v. Bagley*, 500 F.3d 514, 519 (6th Cir. 2007). And the reference to rule 801(d)(2)(E) is unexplained; Glenn did not raise the rule before the court of appeals and that court did not decide Glenn's appeal on the basis of this rule. So Glenn failed to fairly present the issue to Ohio's courts.

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[5] Although Glenn refers to federal rule of evidence 801(d)(2)(E), Doc. 20, at 10, her trial took place in state court. So I construe her reference to the federal rule as a reference to the corresponding Ohio rule of evidence. *See* Doc. 14-1, at 188–98 (citing Ohio rules of evidence).

Further, under Ohio's res judicata rule, because Glenn could have raised this issue on direct appeal, it is now too late for her to raise it in Ohio's courts. *State v. Szefcyk*, 671 N.E.2d 233, 235 (Ohio 1996) (reaffirming the rule from *State v. Perry*, 226 N.E.2d 104 (1967)). Ohio's courts consistently enforce this rule, *see State v. Cole*, 443 N.E.2d 169, 170–71 (1982), and the Sixth Circuit has held that Ohio's res judicata rule is an adequate and independent state ground on which to procedurally bar review of a habeas claim, *see Coleman v. Mitchell*, 268 F.3d 417, 427–32 (6th Cir. 2001); *see also Durr v. Mitchell*, 487 F.3d 423, 432 (6th Cir. 2007). So even if this Court were to construe Glenn's first ground as raising a constitutional issue related to Ohio rule of evidence 801(d)(2)(E), the issue is procedurally defaulted. *See Scott v. Houk*, 760 F.3d 497, 505 (6th Cir. 2014).

Also contained within Glenn's Ground One argument are vague references to a letter written by Green. Doc. 1, at 5. The letter from Green does not appear to have been presented at trial and Glenn has not developed any argument that would support expansion of the record to allow a federal habeas court to consider this new evidence. Elsewhere in her traverse, and without any supportive analysis, Glenn asserts that she is entitled to an evidentiary hearing. *See* Doc. 20, at 18. But this request was not presented in her petition, it is not clearly connected to Green's letter, and she does not make any argument to demonstrate why she is entitled to an evidentiary hearing. Habeas petitioners may only obtain an evidentiary hearing if their claim "relies

on a new," retroactively applicable "rule of constitutional law," or "a factual predicate that could not have been previously discovered through the exercise of due diligence." 28 U.S.C. § 2254(e)(2). Glenn does not rely on a new constitutional rule and does not claim that she exercised due diligence. Thus, Glenn has not made any showing sufficient to justify expansion of the record at this juncture such that the Court should, or could, consider Green's letter.

Glenn appears to argue that Green's letter and the other evidence referenced in her Ground One were not presented at trial due to trial counsel's ineffectiveness. *See* Doc, 1, at 5; Doc. 20, at 11–12. But as discussed in relation to Ground Three, Glenn has defaulted all claims of ineffective assistance of counsel. Alleged ineffective assistance of counsel, therefore cannot provide cause to excuse her default. The Court need not address the prejudice prong of that evaluation because the cause-and-prejudice test is "'in the conjunctive.'" *Murray v. Carrier*, 477 U.S. 478, 494–96 (1986) (citation omitted). Failure to address both prongs of the test is thus "fatal" to a habeas petitioner's effort to meet the test. *Thacker v. Rees*, 841 F.2d 1127, 1988 WL 19179, at *6 n.4 (6th Cir. 1988) (unpublished); *see Hockenbury v. Sowders*, 718 F.2d 155, 160 (6th Cir. 1983) ("The 'cause' and 'prejudice' requirement ... is in the conjunctive. Not finding 'cause' in this case, we need not address the issue of prejudice."); *Jones v. Tibbals*, No. 5:13-cv-1171, 2014 WL 1806784, at *8 (N.D. Ohio May 7, 2014) ("Since the cause and prejudice standard is in the conjunctive, Petitioner's failure to show 'cause' ends the analysis.").

Even if the Court did consider the prejudice prong, Glenn's only argument related to prejudice is that alleged errors prevented her from showing her innocence. Throughout Glenn's Ground One claims are statements that the trial court's rulings and trial counsel's performance, which prevented the admission of certain evidence, precluded her from proving her innocence. *See e.g.*, Doc. 20, at 10–12. A claim of actual innocence "requires the petitioner to support [her] allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Schlup v. Delo*, 513 U.S. 298, 324 (1995). Statements simply asserting that she was innocent does provide sufficient factual support for a claim of actual innocence under the federal habeas corpus review. *See Bousley v. U.S.*, 523 U.S. 614, 623–624 ("It is important to note ... that 'actual innocence' means factual innocence, not mere legal insufficiency.") (citing *Sawyer v. Whitley*, 505 U.S. 333, 339 (1992)).

Because Glenn's Ground One claims are either not cognizable or procedurally defaulted, I recommend her Ground One be dismissed.

2. The Ground Two claims are not cognizable and are procedurally defaulted.

Glenn's Ground Two claims generally pertain to the sufficiency of the evidence presented at trial and additional evidentiary claims which are, respectively, not cognizable and procedurally defaulted. Doc. 1, at 7.

Glenn asserts that her manifest weight claim is preserved for habeas review. Doc. 20, at 14. While Glenn did what is generally required to preserve a claim for federal habeas review, i.e., presenting the claim to the state courts on direct appeal, this presentation does not mean that her claim is inherently proper for federal habeas consideration. Indeed, manifest weight of the evidence claims are generally not cognizable for federal habeas review. *See Jaeger v. Wainwright*, No. 1:19-cv-2853, 2023 WL 6554265, at *22 (N.D. Ohio Sept. 1, 2023) (citing and discussing cases), *report and recommendation adopted*, 2023 WL 6282944 (N.D. Ohio Sept. 27, 2023). But the Sixth Circuit has explained that manifest weight claims may preserve sufficiency of the evidence claims. *See Nash v. Eberlin*, 258 F. App'x 761, 765 (6th Cir. 2007). So, to the extent that Glenn's claim could be construed as a sufficiency of the evidence claim it may be cognizable if it is properly preserved. But it was not properly preserved.

A federal habeas court "will not consider an issue of federal law on direct review from a judgment of a state court if that judgment rests on a state-law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision." *Harris v. Reed*, 489 U.S. 255, 260 (1989). The court of appeals rejected Glenn's manifest weight claim based on Ohio Appellate Rule 16(A)(7), which is an independent and adequate ground. Doc. 14-1, at 216–18. A number of courts have held that Ohio Appellate Rule 16(A)(7) is an adequate and independent basis on which a state may rely to

foreclose habeas relief. *See Hayes v. LaRose*, No. 5:14-cv-2461, 2016 WL 1599807, at *6 (N.D. Ohio Jan 27, 2016) ("Courts in both this district and the Southern District of Ohio have found Ohio Appellate Rule 16(A)(7) an adequate and independent state rule upon which the state may foreclose federal habeas review.") (collecting cases), *report and recommendation adopted by* 2016 WL 1558764 (N.D. Ohio Apr. 18, 2016); *see also Jennings v. Harris*, No. 1:19-cv-01678, 2022 WL 3142888, at *19 (N.D. Ohio July 6, 2022), *report and recommendation adopted*, 2022 WL 3151187 (N.D. Ohio Aug. 5, 2022). Because this state rule is "firmly established and regularly followed," Glenn's claim is not subject federal habeas review unless she can excuse her procedural default. *See Smith v. Eppinger*, No. 21-3366, 2022 WL 13892512, at *2 (6th Cir. 2022).

In the "supporting facts" portion of her petition, Glenn appears to mention certain additional evidentiary claims and challenges to the trial court's rulings. Doc. 1, at 7. But to the extent that the Court discern these claims, Glenn did not raise them on direct review. *See* Doc. 14-1, at 117–39, 228–49. The time for appeal has now passed, barring these evidentiary claims under Ohio's res judicata doctrine. *See Coleman*, 268 F.3d at 427. And, to the extent that some of these claims were raised in Glenn's petitions for post-conviction relief, see Doc. 14-1, at 361–64, 465–68, those petitions were denied as untimely and barred by Ohio's doctrine of res judicata. *See* Doc. 14-1, at 584–88. the claims in them are thus also defaulted.

A habeas court can "consider the merits of procedurally defaulted claims" if "the petitioner demonstrates cause for the default and prejudice resulting therefrom, or that failing to review the claim would result in a fundamental miscarriage of justice." *Williams*, 460 F.3d at 805–06. "[I]n certain circumstances counsel's ineffectiveness in failing properly to preserve [a] claim for review in state court will suffice" to establish cause. *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000). But that ineffectiveness claim "must 'be presented to the state courts as an independent claim before it may be used to establish cause for a procedural default.'" *Id.* at 452 (quoting *Murray v. Carrier*, 477 U.S. 478, 489 (1986)); *see Burroughs v. Makowski*, 411 F.3d 665, 668 (6th Cir. 2005) ("To constitute cause, that ineffectiveness must itself amount to a violation of the Sixth Amendment, and therefore must be both exhausted and not procedurally defaulted.").

As explained in more detail as to Ground Three, Glenn has procedurally defaulted an ineffective assistance of appellate counsel argument. Doc. 20, at 14–15. Glenn, therefore, cannot now raise an ineffective assistance of appellate counsel claim as cause for her default.

Because Glenn's Ground Two claims are either not cognizable or procedurally defaulted, I recommend that Ground Two be dismissed.

3. The Ground Three claims are procedurally defaulted.

Glenn's Ground Three claim is for ineffective assistance of counsel as to both her trial and appellate counsel's performance in the state court

proceedings. Doc. 1, at 8. Glenn also asserts ineffective-assistance arguments in relation to various Grounds throughout her petition and traverse. *See e.g.*, Doc. 1, at 5–7; Doc. 20, at 11, 12, 15, 23. In an effort to streamline the analysis of Glenn's various ineffective assistance claims—which generally are ineffective trial counsel for failure to assert certain evidentiary issues and ineffective appellate counsel for failure to raise trial counsel's alleged deficiencies and among other issues on direct appeal—are addressed together below.

Ohio has a "dual-track system" for raising ineffective-assistance-of-counsel claims. *See Hill v. Mitchell*, 842 F.3d 910, 936 (6th Cir. 2016). Grounds for relief that are "based on evidence wholly *within* the trial record must be brought on direct appeal." *Id.* "[C]laims based on evidence *outside* the trial record," on the other hand, "cannot be brought on direct review and must be raised in a petition for state post-conviction relief." *Id.* And if an ineffective-assistance claim "relies on evidence within the trial record" such that the claim could have been brought on direct appeal, Ohio's res judicata rule will bar post-conviction review of the claim. *Id.* "Ohio courts routinely apply the res judicata rule to" such claims. *Smith v. Bagley*, 642 F. App'x 579, 586 (6th Cir. 2016) (citing *State v. Cole*, 443 N.E.2d 169, 171 (1982)); *see Williams*, 460 F.3d at 806 ("Thus, if an Ohio petitioner failed to raise a claim on direct appeal, which could have been raised on direct appeal, the claim is procedurally defaulted.") (citing *Engle v. Issac*, 456 U.S. 107, 125 n.28 (1982)).

Glenn's ineffective assistance arguments as to her trial counsel are based on the record. See Doc. 1, at 8 (claiming that counsel failed to subpoena Green, file motions, request evidence, preserve issues, or move to suppress). Glenn admits that she did not raise trial counsel's alleged ineffectiveness on direct appeal. Doc. 1, at 6. But Glenn argued in a delayed Rule 26(B) application that appellate counsel should have argued that trial counsel was ineffective for failing to assert ineffective assistance of trial counsel and other alleged deficiencies. *See* Doc. 14-1, at 279.

As an initial matter, an Ohio Rule 26(B) application does not preserve the underlying claim of error. *See Davie v. Mitchell*, 547 F.3d 297, 312 (6th Cir. 2008). So Glenn has never presented to Ohio's courts an ineffective assistance claim as to her trial counsel. And it is now too late for her to do so. *See Hill*, 842 F.3d at 936; *Williams*, 460 F.3d at 806.

Further, the court of appeals denied Glenn's delayed Rule 26(B) application because it was untimely under Ohio procedural rules and because Glenn failed to show good cause to excuse that untimeliness. *See* Doc. 14-1, at 341–42. Glenn did not appeal this decision to the Ohio Supreme Court. So she has doubly defaulted this claim. First, because Glenn failure to comply with Ohio's procedural rule is an adequate and independent basis to reject her claim, Glenn has defaulted her ineffective assistance of appellate counsel claim. *See Fautenberry v. Mitchell*, 515 F.3d 614, 640 (6th Cir. 2008); *Parker v. Bagley*, 543 F.3d 859, 861–62 (6th Cir. 2008) (claims raised in a Rule 26(B)

Application that the Ohio court of appeals rejected as untimely are procedurally defaulted). Second, Glenn also procedurally defaulted her ineffective assistance of appellate counsel claim because she failed to appeal the court's denial of her delayed Rule 26(B) application. And because Glenn's ineffective assistance of appellate counsel claims are defaulted, her appellate counsel's alleged ineffectiveness cannot provide cause to excuse the default of any of her claims, including her ineffective assistance of trial counsel claims. *See Edwards*, 529 U.S. at 451.

Because all of Glenn's ineffective assistance claims are procedurally defaulted, she cannot raise them now unless she can show cause and prejudice for her default.

As to cause, Glenn claims that she

> has demonstrated cause, showing that all the actions taken against her deterring to comply. The petitioner had no way to prevent the cause, which prejudiced her to the extent of a fair trial and proving her innocence. ... Glenn had two (2) attorney's, trial and appellate, neither attorney raised the evidence available to them, which was both material and exculpatory, that would have proved Glenn's actual innocence which resulted in a fundamental miscarriage of justice.

Doc. 20 at 17–18. It appears that Glenn is attempting to assert cause for her default based on the combination of all of her attorney's alleged failures to provide adequate representation. This argument ignores the fact that Glenn failed to comply with state procedural rules to present her ineffective assistance of appellate counsel claim or otherwise appeal the denial of that

claim based on state procedural rules. Glenn does not present any argument as to cause for her failure to properly raise an ineffective appellate counsel claim in state court. As a result, Glenn fails to show cause to excuse her default of both ineffective appellate counsel claims because her procedurally barred ineffective appellate counsel claim cannot preserve her trial counsel claim. *Edwards*, 529 U.S. at 451. Because Glenn has not shown cause, the Court need not address whether there was actual prejudice. *Hockenbury*, 718 F.2d at 160 ("The 'cause' and 'prejudice' requirement ... is in the conjunctive. Not finding 'cause' in this case, we need not address the issue of prejudice.").

Because Glenn has not excused her default, she cannot raise any of her ineffective assistance claims now unless Glenn can show that she suffered a fundamental miscarriage of justice such that his is "an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent." *Murray*, 477 U.S. at 496. As discussed above, a claim of actual innocence "requires the petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Schlup*, 513 U.S. at 324. Glenn has not provided the required support to demonstrate her actual innocence. The evidence that she argues would show her innocence is not new and was presented to the trial court; rather it was not admitted based on the trial court's evidentiary rulings or, in the case of Green's letter, the evidence existed

at the time of trial but was not presented. *See Supra*, at 15–21. As discussed in relation to Ground One, Glenn has not made any cognizable argument as to why the trial court's evidentiary rulings are appropriate for federal habeas review. Glenn, therefore, has not demonstrated that her procedural default should be excused.

Glenn's Ground Three claims should be dismissed as procedurally defaulted.

4. The Ground Four claims are not cognizable and are procedurally defaulted.

Glenn appears to next argue that the evidence upon which her arrest and ultimate conviction were based was illegally obtained in violation of her Fourth Amendment rights. Doc. 1, at 11; *see* Doc. 20, at 23.

To the extent that Glenn is arguing that her Fourth Amendment rights were violated due to an improperly executed search warrant, any such claims are generally not cognizable. If a state has made "available [an] avenue for [a habeas petitioner] to present his claim to the state courts," the Supreme Court's decision in *Stone v. Powell*, 428 U.S. 465 (1976) "prohibits federal habeas corpus review of [the petitioner's] Fourth Amendment claim." *Good v. Berghuis*, 729 F.3d 636, 637, 639 (6th Cir. 2013). Ohio provides an "adequate" "mechanism" to raise Fourth Amendment claims. *See Riley v. Gray*, 674 F.2d 522, 526 (6th Cir. 1982) (finding that Ohio criminal and appellate rules provide adequate procedural mechanisms for litigating Fourth Amendment claims); *See also, e.g., Dotson v. Harris*, No. 4:19-cv-1237, 2020 WL 907642, at *7 (N.D.

Ohio Jan. 29, 2020), *report and recommendation adopted*, 2020 WL 906344 (N.D. Ohio Feb. 25, 2020).

Additionally, even if Glenn's Fourth Amendment claims were cognizable, which they are not, Glenn's Ground Four claims could have been, but were not, presented at trial or during her direct appeal. And it is now too late for her to present them in a state post-conviction petition. *See* Doc. 14-1, at 587 (rejecting Glenn's post-conviction petition based in part on res judicata). So her claims are procedurally defaulted. *Williams*, 460 F.3d at 806.

Further, Glenn does not attempt to show cause to excuse her failure to raise her Ground Four arguments on direct appeal. Instead, Glenn argues that she attempted to assert these issues in a petition for post-conviction relief, which she recognizes was deemed untimely by the state trial court. Doc. 20, at 23. She also indicates that she "plans to present this error to the appellate court." Doc. 20, at 23. Neither of these assertions affects the Court's procedural default assessment because they only further show that Glenn has not fairly, or timely, presented her Ground Four claims to the appropriate state courts. And claims raised in a post-conviction petition that the court denies as untimely or barred by res judicata are procedurally defaulted for federal habeas purposes. *See Smith v. Warden, Toledo Corr. Inst.*, 780 F. App'x 208, 219 (6th Cir. 2019) (claims raised in a post-conviction petition that the state court denies as untimely are procedurally defaulted) (citing *Walker v. Martin*, 562 U.S. 307, 310–11 (2011)); *Coleman*, 268 F.3d at 427) (claims raised in a

post-conviction petition that the state court denies on the basis of res judicata are procedurally defaulted) (citing *State v. Perry*, 226 N.E.2d 104, 108 (Ohio 1967)). Glenn makes no argument pertaining to cause and prejudice for her failure to fairly present her claims through the state court proceedings.

Glenn's Ground Four claims should be dismissed as not cognizable and procedurally defaulted.

5. The Ground Five claims are procedurally defaulted.

Glenn's Ground Five claim asserts that the trial court erred by not instructing the jury that Glenn was indicted in a joint indictment and that her trial counsel erred by not moving to "separate [the] joint indictment." Doc. 1, at 13.[6] Glenn never raised this issue at any time on direct appeal or otherwise. And it is now too late to do so. Glenn's Ground Five claim is thus procedurally defaulted. *Williams*, 460 F.3d at 806.

Glenn has not argued cause and prejudice for her failure to raise these claims. In fact, Glenn's traverse does not distinguish any separate argument related to her Ground Five claims.

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[6] Contained within Glenn's Traverse is a single-sentence argument that "Petitioner['s] right to a speedy trial was violated when she was not brought to trial within 90 days. R.C. 2945.71." Doc. 20, at 26. But claims raised for the first time in a traverse are forfeited. *See Tyler v. Mitchell*, 416 F.3d 500, 504 (6th Cir. 2000) (claims raised for the first time in a traverse are improper). Further, Glenn does not develop any speedy trial argument beyond this sentence and there is no indication from Glenn's petition that she intended to raise a speedy trial violation. Moreover, Glenn does not appear to invoke her federal right to a speedy trial. Instead, she cites only Ohio's speedy trial statute without any developed argument. So Glenn has forfeited this argument.

Conclusion

For the reasons set forth above, I recommend that Glenn's Petition be dismissed.

Dated: May 23, 2024

/s/ James E. Grimes Jr.
James E. Grimes Jr.
U.S. Magistrate Judge

OBJECTIONS

Any objections to this Report and Recommendation must be filed with the Clerk of Court within 14 days after the party objecting has been served with a copy of this Report and Recommendation. 28 U.S.C. § 636(b)(1). Failure to file objections within the specified time may forfeit the right to appeal the District Court's order. *See Berkshire v. Beauvais*, 928 F.3d 520, 530–31 (6th Cir. 2019).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SALENA GLENN,	)	CASE NO. 3:22-cv-908
	)	
PETITIONER,	)	CHIEF JUDGE SARA LIOI
	)	
vs.	)	
	)	**JUDGMENT ENTRY**
TERI BALDAUF,	)	
	)	
RESPONDENT.	)	

For the reasons set forth in the contemporaneously filed memorandum opinion, the petition of Salena Glenn for a writ of habeas corpus is DENIED. Further, the Court CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. 28 U.S.C. 2253; Fed. R. App. P. 22(b).

IT IS ORDERED.

Dated: September 19, 2024

HONORABLE SARA LIOI
CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SALENA GLENN, Pro-se

Petitioner,

v.

TERI BALDAUF, Warden

Respondent,

Case No. 3:22 CV 908

Judge Lioi

Magistrate Judge Grimes

Habeas Corpus

PETITIONERS'S TRAVERSE/

RESPONSE TO RESPONDENT'S ANSWER/RETURN OF WRIT

Salena Glenn, pro-se
Petitioner
104431
1479 Collins Ave.
Marysville, Ohio 43040

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SALENA GLENN, Pro-se
Petitioner

v.

TERI BALDAUF, Warden
Respondent,

Case No. 3:22 CV 908

Judge Lioi

Magistrate Judge Grimes

Habeas Corpus

PETITIONER'S TRAVERSE/ RESPONSE TO RESPONDENT'S ANSWER/RETURN OF WRIT

Petitioner, Salena Glenn Pro-se makes this TRAVERSE/RESPONSE in reply to the Respondent's ANSWER/RETURN OF WRIT filed on October 28, 2022. (Doc#14); pursuant to 28 U.S.C. section 2254 and Habeas Corpus Rule 5 (e).

STANDARD FOR GRANTING RELIEF

A Federal Court may grant habeas relief to a prisoner incarcerated on a state conviction only if the violation of the Constitution or law of the United States. 28 U.S.C. section 2254 (a). The Habeas petition is a request to the Federal Court to address errors, omissions, or irregularities committed during the criminal trial that makes the conviction unlawful; unlawful in the sense that laws were not followed or the conviction in some form was contrary. Bringing forth Petitioner to establish state, federal, or constitutional law. A habeas petition may be granted only if a state court's ruling on a Federal Constitutional question was contrary to, or involved an unreasonable application of, clearly established Federal law, or was based on and unreasonable determination of the facts in light of the evidence presented in the State Court proceedings. 28.U.S.C. section 2254(d)(1) & (2). There are exemptions that hold up to the jurisdiction within the Federal Court, in consumption involving Ineffective Assistance of Counsel, Fundamental Miscarriage of Justice and Actual Innocence Exception.

In Reference to the Respondent's Answer/Return Writ, the Petitioner comes forth answering orderly in the fashion therein. (Doc.14) Petitioner, Glenn respectfully request that the Federal Habeas Corpus Court actually set these proceedings as value to serve. Petitioner, comes forth bringing matters to the most simplified version. In consideration of the aspects, of the courts time.

I. STATEMENT OF FACTS

Throughout, these proceedings, these binding factual findings, shall not be presumed to be adequately completely correct erred with regards to not presenting the complete truth within procedures. (Doc#14) (Record Reference: Respondent's Answer/Return Writ) Petitioner proceeds with relevance to 28 U.S.C. section 2254 (e)(1). Evolving case no. 19-CR-122 the trial court concepts of theory impels the Petitioner to rebut with several thesis of true and factual reasoning of Fundamental Miscarriage of Justice, Actual Innocence Exception and Ineffective Assistance of Counsel. Including Constitutional Due Process of Law Violation, etc...

2. On March 21, 2019, agents of a multi-jurisdictional drug task force conducted a search of a residence at 223 West Columbia Street, Marion, Ohio (223 West Columbia) pursuant to a search warrant. Outside of the residence; in the back where Glenn's vehicle was in the alley; officers stated they heard a noise. (Doc#15) (Id.) (Date 8/23/19), TR. Vol II, pp.239-240) Glenn was in her vehicle heading indefinably to deal with daily life. When Glenn did proceed with preparation, a man in all black with a gun approached the vehicle. Aiming directly in eyes view, screaming, "get out of the vehicle". Glenn froze, lifting her hands and was immediately grabbed out. Terry Violation Holding two objects in her hands, keys and a pill bottle. (Doc#15) (Record Reference: Transcript of Proceedings (Date 8/23/19), TR. Vol II, pp.277&368) The officer stated Glenn had drugs. There was no patrol vehicle posing to a traffic violation not even a search warrant presented to Glenn in essence of a gun being drawn and grab out of the vehicle. (Reference Record: Pretrial Motion Audiotaped Proceedings(Date6/11/19) p.30) The court stated, "in this case we are dealing with a search of a home".

3. On April 4, 2019, the Marion County Grand Jury issued a joint indictment charging Glenn, Green, And Swift with a variety of offenses. (Doc#14) (Record Reference: Respondent's Answer/Return of Writ, I. Statement of Facts p.2, paragraph 2) On April 8, 2019, Glenn appeared for arraignment and entered pleas of not guilty to the counts and specifications in the indictment. (Id.) There upon, Glenn had to pursue to reveal the actions taken.

4. On May 31, 2019, Glenn's trial Attorney filed a motion for additional discovery. (Doc#14) (Record Reference: Respondent's Answer/Return of Writ, I. Statement of Facts p.2, paragraph 4) The trial attorney argued that the information was discoverable under Crim. R. 16 because it was "material to mitigation, exculpation or impeachment." (Id.) Glenn had no substantial reason to doubt or question that the trial attorney knew exactly the provisions for the standard of law. Trial attorney's failure to take the steps necessary to have evidence admitted to be elicited by Higher Courts, most definitely precluded Glenn's process rights to a fair litigation. Counsels ineffectiveness in failing properly to preserve any claim for review will suffice. (Carrier,477, U.S.,488)

5. On June7, 2019, the State filed it memorandum in opposition to motion for additional discovery. (Doc#14) (Record Reference: Respondent's Answer/Return of Writ I. Statement of Facts p.2-3 paragraph 5) In defense of Glenn, sufficiency from trial attorney was futile. Trial attorney made no substantive effort to even file a motion to suppress. A suppression was necessary to get the five control buys because the state was using them as proof of probable cause. Also the reasoning for the search

warrant on the house at 223 West Columbia Street, Marion Ohio. No search warrant was ever presented on vehicle or Glenn. Had the trial attorney been effective the evidence would have unequivocally proved, Glenn was not a drug dealer, did not sell or possess any drugs and that the drugs did not belong to Glenn. Motion to Suppress was of value and importance involving case no. 19-CR-122.Suppression of Drug Evidence not being sought, was very critical, yet counsel did not challenge its admissibility despite serious questions about the validity of the warrant upon which the search was based on. State v. Reichenbush, 153 w. 2d, 126,101 p. 3d 80(2004)

6. On June 11, 2019, the trial court held a hearing on the motion for additional discovery. (Record Reference: Respondent's Answer/Return Of Writ, I. Statement of Facts p.3, paragraph 6) The trial court denied the motion for additional discovery. (Id.) In reference to (Petitioner's Traverse/Response p.3 paragraph5) pertain to this fact. Attentively noting (Doc#15) (Pretrial Motion Audio taped Proceedings(Date6/11/19) pp.31-32) For the record: The trial attorney statements of stating "I don't know, I am not positive" shows deficiency. Affecting the stability of the Petitioner's claim to litigate the fairness of a trial to pursue her innocence. The dissolution of the matters had not been addressed properly, when the trial attorney stated "there was no severance "Especially containing to the joint indictment and the speedy trial. Abuse of Discretion could have taken place in the(Pretrial Motion Audio taped proceedings.) (Doc#15)

7. The case proceeded to a jury trial on August 22,23,26,2019. (Record Reference: Respondent's Answer/Return of Writ, I. Statement of Facts p.3, paragraph 7) Before trial, the trial attorney visited Glenn in the Marion County Jail. Bringing awareness of charges that had been dismissed. (Doc#15) (Record Reference: Specifically stating that count six was a (strategy) because it held the burden of proof factoring the honesty of what was in Glenn's hand pills and keys. Officer stated Glenn had something else. Transcripts of Proceedings (Date 8/23/2019) TR. Vol II, p.224) (Id.) Glenn also, informed trial attorney about Glenn being under the American Disability Act, having several mental &physical disorder. Glenn was letting it be known that there is no way she was guilty, as to the charges especially running to hide drugs having rods &screws in her right ankle with severe asthma. Trial attorney stated "we will not get off into that", not following through with a thorough investigation. Glenn was arrested on March 21,2019. These dates leave a theory in pursuant to ORC Ann.2945.71(E). Glenn's right to a speedy trial not being brought to trial within 90 days. Mendaciously within the procedures of the litigation, Glenn's time does not seem to rectify even if it was to be tolled. An aspect concerning the(Doc#15) (Pretrial Motion Audiotaped Proceedings (Date6/11/19) pp.30-33). Brings regard to Miscarriage of Justice, Ineffective Assistant of Counsel, Abuse of Discretion, etc. Knowing the trial court forced a decision of sua sponte without the proper protocol as being properly journalized before the expiration of the speedy trial period and must have set forth a reason for continuance. (Id.) No reason given was valid but for the record it was stated "Well, I think the court can do it to sua sponte in the interest of "justice". Trial attorney was deficient for not being sure what was taken upon.

At the closing of the State's case, Glenn's trial attorney made a motion for acquittal under Crim. R. 29, which the trial court denied. (Doc#15) (Proceedings, Vol. III (Date 8/26/19) pp.709-712) Trial attorney put it on record as to Count 1 through 4.

- Trafficking in cocaine, there was zero evidence that Salena Glenn knowingly prepared for shipment, shipped, transported, delivered, prepared for distribution or disturbed a control

substance. Each detective testified that they didn't see Salena Glenn in the house, didn't have knowledge that she had ever even touched the drugs on the table.

- Possession, they did not know is she is coming or going. None of the detectives were able to testify to that. Using the best evidence that the State can provide, which is Detective Adkins, he assumes she was in the house. Assumption is not enough. As far as the car. They don't have that she knew the drugs was in the car. In fact, Salena Glenn several times denied knowing the drugs were in the car.
- Aggravated possession of fentanyl. (Id.) They could not differentiate which one was which, in the house or in the car.
- Tampering with evidence, requires Glenn had knowledge of the investigation. (Unmistakable Crime Doctrine) She knew nothing about an investigation because Glenn was not the target of an investigation. Nobody saw Salena Glenn go from the house to the car. So there is no knowledge element met with the tampering. (Id.)

On August 26,2019 the jury reached its verdict not receiving all of the evidence that could have changed the outcome of the jury. The jury would have known that Glenn was innocent, if the letters of Illya Green stating the drugs was his were submitted. (Doc#14-1, Dated 10/28/22, Page ID# 459-464, case:322-cv-0098-SL) (Exhibit B). The police report of the day March 21, 2019, Illya Green's confession of the drugs belonging to him, where he put them, and how much it was stating that lady has no dealing in nothing. (Doc#14-1, Dated 10/28/22, Page ID#523-524 case:322-cv-0098-SL) (Exhibit C). The police report when the informant stated Glenn was only his "girlfriend".". (Doc#14-1, Dated 10/28/22, Page ID# 491, case:322-cv-0098-SL) (Exhibit D) Also statement from officer McCoy stating she knew the drugs did not belong to Glenn. Including the letters withheld at trial". (Doc#14-1, Dated 10/28/22, Page ID# 522, case:322-cv-0098-SL) (Exhibit E).

8. A sentencing hearing was held on September 16, 2019. (Doc.#14) (Record Reference: Respondent's Answer/Return of Writ, I Statement of Facts p.3 paragraph8) Ordering Glenn to a heedful prison term of 20 years making 18 mandatory. Glenn had no prior record exposed to any of the offenses and Glenn was not a threat to the public, considering Glenn never sold any drugs, possessed any drugs or trafficked any drugs. (Doc#14-1, Dated 10/28/22, Page ID# 576-577 case:322-cv-0098-SL) (Exhibit A) Glenn upholds her state of being innocence of the crimes brought upon her. Drug trafficking, aggravated possession of fentanyl, and tampering with evidence.

9.The State withheld evidence that was the reason for the search warrant (that still is not presented to this day) That was the cause&effect of the events on March 21, 2019. This evidence was a major production in Glenn's case that would have changed the verdict of the jury and would have proven Glenn to be innocent of charges brought against her. Giving the jury knowledge of evidence that was relevant was for Glenn' defense is a right to present a fair defense. The letters that was exhibits were withheld. (Doc#14-1, Dated 10/28/22, Page ID# 459-464, case:322-cv-0098-SL) (Exhibit B). The statement from Green in the police reports the day of March 21, 2019. (Doc#14-1, Dated 10/28/22, Page ID#523-524 case:322-cv-0098-SL) (Exhibit C). The police report from when the informant stated Glenn was only his" girlfriend". (Doc#14-1, Dated 10/28/22, Page ID# 491, case:322-cv-0098-SL) (Exhibit D) Also the statement from officer Stacey McCoy stating she knew the drugs was not Glenn's. (Doc#14-1, Dated 10/28/22, Page ID #522 case:322-cv-0098-SL) (Exhibit E) Glenn's trial attorney had no defense

to pursue in the defense of Glenn's innocence, considering all of the evidence was denied and proffered with the jury being excused from the court. Not being able to present a full defense and present evidence to the jury can be "Unconstitutional" and a right to" Due Process".

II. PROCEDURAL HISTORY

A. State Conviction

(Doc#14) (Record Reference: Respondent's Answer/Return Writ, p.3 A. State Conviction) Had Glenn constitution (physical-make up) been investigated, the state's conviction would not have held up to the grounds of a conviction. Glenn has a closed head injury diagnosed with other disabilities, severe asthma and rod&screws in her right ankle. Glenn tried to present this evidence to the trial attorney, who stated" we will not get off into that". This evidence is new evidence, that was relevant to case no.19-CR- 122. (Exhibit F) Glenn was unconstitutionally detained and convicted on March 21, 2019. Glenn was put in a position of force to constitute the value of constitutional standards against the State's conviction. Glenn had no involvement with any drugs had the state requested finger prints this would have help prove her innocence.

B. Direct Appeal

Glenn's notice appeal that was filed by appellant attorney was timely and submitted to the Supreme Court. The Supreme Court did not want to take jurisdiction. One judge: judge Donnelly J., dissents and would appoint counsel. (Exhibit G) Glenn comes forth presenting the three assignment of errors that are included in the Petition (case: 3:22-cv-00908-SL). (Record Reference: Doc#14, Respondent's Answer/Return of Writ, p. 5) Which now can be presented to the Federal Court having the authority to establish "due process of law". The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the Public Safety may require it." (U.S.C.S Const., Art.I section 9 c 12) **The Federal Court has jurisdiction of authority over the state to look into a case if there are Constitutional Violation or Due Process of the Law, containing to relevancy...**

C. Ohio App.R.26(B) Delayed Application for Reopening

Glenn did proceed with following through with the aspects of filing and ineffective assistance of appellate counsel &trial counsel claim, with a delayed application for 26 B application. Petitioner knows it is the appellate courts discretion to accept an untimely 26B application and Glenn presented the facts thereof for good reasoning. Glenn also submitted evidence that proved her delay. Trying to contact the appellate attorney for transcripts, the application states you need to reference the transcripts for relevant records. Hoping that the consideration of the pandemic would factor in at all cost, knowing not only was the prison on lockdown but the world was in a super natural disaster for over 2 years.

Petitioner knew the importance of letting it be known to the courts containing ineffective assistance of counsel. Petitioner, Glenn reviewed the transcripts once they were received on August 4, 2021. (Case no.19-CR-122-SL Doc#14-1, PageID#436&437) (Exhibit H) Noting that it was stated for the record by the trial court as to," Well I guess the Court of appeals will have to decide that, then". (Doc#15) (Transcripts of Proceedings, Vol.II, Date 8/23/2019, p.538) Including stating "You can appeal on it" (Doc#15) (Transcripts of Proceedings, Vol.II, Date 8/23/2019, p.693) These matters could have been preserved as claims since they were preserved on the record. Attentively noting Glenn presented an independent claim of Ineffective Assistance of Counsel to the trial Court. (Exhibit24) & (Exhibit 26) (State Court Records) (Doc#14-1) Bringing the IAOC claim to the awareness at the level of recognition at the state court, preventing the claim to be established as a procedural default and giving the state court a chance to correct it. (Rose v. Lundy, 455 U.S. 509,518,102 S.Ct.1198,1203,71 L. Ed,2d,379(1982) This claim could have been presented had the appellate attorney (Joseph Edwards) good friends of (Judge Warren T. Edwards) correctly viewed transcripts, IAOC was preserved for the record when the trial court stated "prime example of ineffective of assistance of counsel is trying to be set up. (Transcripts of Proceedings, Vol.III, Date 8/26/2019, pp. 691-692)

D. Petition to Vacate

Noting on January 19, 2021 Glenn filed a timely Post-Conviction. In reference to the matter, Petitioner elicits the verification of supporting documents to prove that the trial court erred as to denying a timely PC. Furthermore, Glenn was never addressed with the denial of the petition(Id) until it was present in the Respondent's Answer/Return Writ. (Doc#14) Petitioner noticed in the record of the merit the Post-Conviction was sealed 3/12/2021. (case: 3:22-cv-00908-SL Doc#14-1, PageID# 436&437) (Exhibit I) Petitioner knew the importance of the factor of admitting the PC and constantly addressed the matter to having the docket reviewed by case manager and kitting the Ohio Public Defenders. No one could locate the PC not knowingly considering it was sealed. (Id) Ohio Rev. Code Ann section 29532.1(A)(2) provides that the time for the filing a petition for a post-conviction relief, stating that the petition must be filed no later than 365 days after the date on which the transcripts is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication. The trial transcripts were filed on January 29,2020(case 3:22-CV-00908-SL, Doc#14-1, Filed 10/28/22, PageID#784) (Exhibit J) The state said they received the PC on January 28,2021 and January 29,2021. Which is a timely PC, referencing the 2 days that are stated. Criminal Rule 45 (A)Petitioner mailed the Post-Conviction on January 19,2021. (Exhibit K) This is a conspicuous action upon the state court. It is noted that the trial court precluded the records of the post-conviction by sealing them and discretely pondering them in a judgment entry, underneath request for counsel, when Petitioner had already obtained counsel for the appeal. (Exhibit L) Two matters were indifferent including the Petitioner was pro se as to the Post-Conviction. (Exhibit 50) Petitioner, brings forth recognition to the Higher Courts as to this matter. Addressing to show how the state court has erred on another relevant concern for the merit. Even if this concerns holds no barring as to the Habeas Corpus Petition it shows credulous actions taken upon the state court. Justifying being filed timely. Had the petitioner been noticed or served, she would have most

definitely pushed forth a motion to appeal had she received notification because there were excellent grounds to pursue. Especially concerning the petition was sealed and hidden in a judgment entry under another matter not relevant or addressing Petitioner as pro se.(Id) According to docket Petitioner was never addressed. (ID)Petitioner respectfully request that this court to consider this on the merit.

E. **2020 Resentencing**

In regards to the judgment entry of resentencing on March 18, 2021.Petitioner clearly can contain the events of that day noting the trial court asked if she had anything to state for the record regarding the resentence, which is not included. (Family members did attend) (Exhibit 51) (State records) Reasoning as to Petitioner requesting discovery, some information not included is important to compel. Within these proceedings other actions were taken that needs to be of avail. Judge Warren T. Edwards good friend of Attorney Joseph Edwards for the record stated. Glenn was railroaded from filing a timely appeal, as to the merits, on record the trial court addressed the concern of the appeal and asked Glenn if she wanted to appeal, keeping the same attorney (Joseph Edwards) Glenn stated yes. Petitioner consisted on contacting the appellate attorney, when the counsel finally responded, "I am no longer your attorney "after the deadline was concluded. (Case 3:22-CV-00908-SL Doc#14-1 Filed 10/28/22, PageID#757) (Exhibit M) Abandonment is a per se violation of the 6th amendment. Castellanous v. States,26 F.3d at 718 (original, id at 720) Petitioner, appellate attorney did not persist any argument given at the resentence as to Glenn defense, considering co-defendants was offered plea deals and both had prior drug history.

F. **Delayed Appeal**

Glenn filed a pro se, delayed appeal showing sufficient reason for the cause: Letter to the Judge(Case:3:22-CV-0098-SL Doc#14-1, filed 10/28/22, PageID#755)(Exhibit N)Letter to the Attorney Joseph Edwards(Case:3:22-CV-0098-SL Doc#14-1, filed 10/28/22, PageID#756)(Exhibit O)Letter to the Attorney Joseph Edwards(Case:3:22-CV-0098-SL Doc#14-1, filed 10/28/22, PageID#758)(Exhibit P)Letter to Ohio Public Defender(Case:3:22-CV-0098-SL Doc#14-1, filed 10/28/22, PageID#759)(Exhibit Q)Letter from Ohio Public Defender(Case:3:22-CV-0098-SL Doc#14-1, filed 10/28/22, PageID#760)(Exhibit R)These causes prevented Petitioner to move forward to the merits completely disabling Glenn considering communication with the attorney's .Prejudicing Petitioner, Glenn to the effect of the ability to come forth to prove her innocence, concerning case no.19-cr-0122.The **Federal Court has jurisdiction of authority over the state to look into a case if there are violations that are Constitutional, Due Process of Law, containing to relevancy...**

G. **Federal Habeas Petition**

Glenn, pro se, filed a timely Federal Habeas Corpus Petition, bringing forth grounds and supporting facts as stated to the application on May24, 2022. (Doc#1, Petition) For the record the application specifically stated set forth all grounds in the petition to prevent being barred as to reference any other claims later. Petitioner provided exactly that

considering limited resources as to supplies. In support of an affidavit to request that the Federal Court look into the merits of all claims pursing to the relevancy of an actual innocence claim of a wrongful conviction; whetering the difference.(Case 3:22-CV-00908-SL, Doc#2, Attachment #1)Due to time management, Petitioner respectfully requests of the court to reference matters address therin,case 3:22-cv-00908-SL, Doc#14,Filed 10/28/22,PageID#128-130,pp.7-9)Petitioner brings forth all grounds/claims that the state court had the opportunity to address and consistently refused with denial of admittance, arbitrating in the matter disregarding procedural due process. Respectfully requiring revisory to look into Re gestae upon this case no.19-cr-122 is reasoning as the Habeas Petition. The state court proceeded beyond in criminating Petitioner Glenn, as to regarding events even using certain tactics to violate the fundamental rights of the amendments within the Constitution.

III. ARGUMENT

A. Statute of Limitations

When a post-conviction petition is untimely under state law that is the end of the matter for purposes of section 2244(d)(2). Attentively, according to Petitioners post-conviction which was filed in the mailing system January 19,2021, Noting the transcripts were filed January 29,2021, and the state court stated they received the PC January 28,2021 &January 29,2021, according to the dates it was timely. Also Rectifying that the state never addressed the matter of the post-conviction to the Petitioner until the Habeas Corpus Petition. (Doc No.1) The case was sealed and the Petitioner was not notified as pro se, they addressed the matter as to the appellate attorney who was not submitting the post-conviction. Glenn conviction became final 90 days after the Supreme Court of Ohio issued its decision declining to accept jurisdiction of the appeal, (Exhibit 36, Case No. 2021-0351) The Habeas Corpus Petition was filed timely. (Id)Now Glenn brings for the Habeas Petition filed May 24,2022 to take on the jurisdiction of this case. (Id)

B. Exhaustion, Procedural Default, and Waiver

1. Standard

After a rendering a decision from the Supreme Court, makes the claims valid to bring forth seeking a Writ of Habeas Corpus in Federal Court. Petitioner tried to address the state to correct any and all justice. Petitioner had exhausted all remedies as to these claims (Record Reference: 3:220-CV-0098-SL Doc #14 filed 10/28/22 PageID#125-126 pp.4-5)Glenn's federal claims have been fairly presented to the state's highest court and to all appropriate state courts pursuant to 28 U.S.C. 2254.Further, the foregoing Federal claims have been fairly presented under the same theory as presented to the state court, with invalid reasoning for Justification as to a hidden clarification containing the post-conviction that just now has rendered. (Record Reference: 3:220-CV-0098-SL Doc #14 filed 10/28/22 PageID#126 p.6 D. Petition to Vacate) Sealing information can be confirmed as to the docket (Exhibit I) date 3/12/2021.Petitioner had no knowledge or

given notice. Emphasizing the appeal process, Petitioner Glenn's appellate attorney raised claims of error in a timely matter preserving them in the court of appeals. These claims were not waived, and are not exhausted for Federal Habeas Corpus review. Petitioner has enacted several forces as to the state, presenting every claim of the Federal grounds to the state courts, which are now available to address to the merits. Which Petitioner now brings forth given the opportunity of the Federal Court to provide procedural safeguards to ensure a fair trial of Due Processes of the 4th, 5th, 6th and 14th amendments. Throughout the merits of case no. cr-19-0122, trial court denied evidence, withheld evidence, also did not let the events prior to the day come forth, that was the reasoning said for the search warrant of the home. Which Glenn was in her vehicle. The trial attorney never filed no motion to suppress any or no evidence which was critical and relevant to charges.(IAOC)Appellate attorney not bringing up any errors throughout the proceedings that was preserved for review and not ever mentioning ineffective assistance of counsel.(IAOC)Prejudicing the Petitioner completely disabling evidence to heard, hiding exculpatory evidence, not admitting confessions to be presented, bringing forth proper motions so that claims can be reserved for the merits to prove Glenn of her innocence was a Fundamental Miscarriage of Justice. Glenn was prejudice to any and all evidence that was available to her defense to show her innocence. The cause of not admitting statements from co-defendant, officers and informant prejudiced Glenn to the fullest, that no jury would have found Glenn guilty of charges brought forth had they been presented with all the evidence which all evidence was withheld and denied not even suppressed. Holding exculpatory evidence from jury is a due processes of Federal Constitutional Right. Fed R. Evid. 801 (d)(2)(E) Thus, in this instance, Federal collateral review of Glenn's claims are not barred. The Supreme Court of Ohio declines to accept jurisdiction.(Exhibit 36) Additionally, Glenn has presented new reliable exculpatory evidence that was not presented at trial(Case:3:22-CV-00908-SL Doc#14-1 Filed 10/28/22, PageID#520&521)(Exhibit S)(Exhibit T) that demonstrates that Glenn was innocent of charges against her and that is the confessions of the co-defendant Green, that the drugs belonged to him as he was the target of the investigation and was dealing with an Informant, which this evidence of the informant was critical to Glenn's case because it would have proved Glenn sold no drugs, had no dealings with drugs or knowledge. The officers even stated they knew the drugs was not Glenn's and that they believed Green as to his statement as to where he put the drugs, how much it was, and that he did it without my knowledge the day of March 21, 2019. None of this evidence was available for the jury and would have gave a different outcome. The Marion Police Department has stopped Illya Green in the past driving vehicles registered to Salena Glenn. (Exhibit D) The task force had records of Greens prior criminal drug trafficking and possession history. (Record Reference: 3:220-CV-0098-SL Doc #14-1 filed 10/28/22 PageID#582&583) (Exhibit U) The withholding/denial by the trial court to permit evidence to introduce into evidence was a Fundamental miscarriage of Justice. The jury had a right to know and consider this evidence because it would have created reasonable doubt as to whether Glenn was guilty of charges against her, and more likely than not no reasonable jury would have found Glenn guilty beyond a reasonable doubt. Causes that enabled Petitioner to follow procedural processes has been established

throughout the merits of case no.19-cr-0122 documented on record, through the proceedings. Prejudicing Glenn to prove she is actually innocent.

Pro se litigants are held to less stringent standards than formal pleadings drafted by lawyers. Estelle v. Gamble, 429 U.S. 97,106,50 L. Ed 2d 251,97 S.Ct. 285(1976) Haines v. Kerner 404 U.S. 519,520,30 L. Ed 2d 652,92 S.Ct.594 (1972); also see Fed R. Civ. P 8 (f)

2.Application to Glenn

a. Grounds One and Two-Evidentiary Rulings

(Record Reference: case: 3:22-cv-00908-SL, Doc#14, Respondent's Answer/Return Writ pp.16-17, PageID#137-138) Trial attorney deficiency performance for not preserving the evidence by not properly sealing for further review and refusing the trial court and the state the opportunity to review. Appellate attorney was ineffective for not presenting an ineffective assistance claim, knowing that the trial attorney did not proceed with the proper procedural due process. Both attorney's deficiency causes were so harmful to the Petitioner preventing Glenn "due process of law "as to the critical errors there was no way she could have prevented it. This is only one of the external circumstances that was cause that prejudiced Glenn to prove her innocence. There were several cumulative effect of errors. This is one of the trial errors/process of procedures that prejudiced the Petitioner, the underlying errors worked to Glenn's actual and substantial disadvantage affecting her entire case no.19-cr-0122with error of constitutional dimensions." U.S. v. Frady,456 U.S. 152,170(1982) fundamental error one which would automatically mandate a new trial. (narrow)Coleman v. Thompson,111 S.Ct. 2546,2557(1991); Chapman v. California, 386 U.S. 18(1967) (harmless error doctrine) Even if one finds or cannot see if the evidence is relevant to a crime, that evidence had to be of an important factor if it was motioned to compel. Petitioner was not able to see or have any evidence in her defense all evidence was denied, withheld, or not even suppressed to bring forth. This resulted in a Fundamental Miscarriage of Justice that Glenn was denied the right to present the exculpatory evidence establishing her actual innocence. The jury had a right to know that the drugs belonged to Green(co-defendant) by and through his own confession, Strickland v. Washington,466, U.S. 668. Withholding exculpatory evidence from a jury is a due process of Federal Constitutional Right. The Petitioner has come forth demonstrating how her 4th, 6th ,5th and 14th amendment right within the within the constitution have been violated. The Acts and Omission contained from trial and appellate attorney may constitute cause for procedural default. Petitioner has demonstrated that all external factors with the merits of the Habeas Corpus Petition(Doc#1) to her defense interfered with Glenn's efforts to comply with procedural rule. The attorney's deficiency prevented every action. For that cause, prejudiced Petitioner concluding with numerous errors, and the fact of having nothing at all to present for a defense. Had any of the attorneys established procedural due process, would have allowed Petitioner a

complete Constitutional right. The outcome of the jury would have been different had any evidence if not all had been presented. Jury was not aware of confessions given by co-defendant. Smith v. Wainwright,799, F.2d 1442(CA111986) A federal court should asses the merits of a Habeas Corpus procedurally defaulted claim when the petitioner has demonstrated cause and prejudice that excuse default. Pro se litigants are held to less stringent standards than formal pleadings drafted by lawyers. Estelle v. Gamble, 429 U.S. 97,106,50 L. Ed 2d 251,97 S.Ct. 285(1976) Haines v. Kerner 404 U.S. 519,520,30 L. Ed 2d 652,92 S.Ct.594 (1972); also see Fed R. Civ. P 8 (f)

b. Grounds One through Five

(Record Reference: case: 3:22-cv-00908-SL, Doc#14, Respondent's Answer/Return Writ pp.17-19 PageID#138-140) Even though the barring of the Post-Conviction is not a factor in proceeding to the Habeas Corpus, as to the merit of this case it shows tactics of the state. Causing Glenn not to be able to present the claim, causing it be untimely. (Id)Notice that the petition was filed January 28, 2021 and January 29,2021, the transcripts were filed January 29,2020(Id)Then the trial court sealed the record, not even notifying the petitioner as pro se, hiding the decisions inside and judgment entry as involving two (2) different concerns. The state stated claims are defaulted under Ohio doctrine of res judicata, never addressing any of the claim considering. (Record Reference: case: 3:22-cv-00908-SL, Doc#14, Respondent's Answer/Return Writ p16, PageID#127) Stating Glenn filed an untimely PC, prejudiced her to bring claims forth for complete recognition. Glenn request that this Court Res judicata the PC petition. The cause of this process is actual prejudiced because it prevented the petitioner to present. Miscarriage of Justice, sealing documents without notification, not notifying petitioner as pro se, and hiding the decision behind another matter. Had petition been available to see and notifying these claims would have been rectified. Glenn's claims of actual innocence to the respects of Fundamental Miscarriage of Justice, permits the rights to the claims being heard for Federal Habeas Corpus Review. Glenn brings forth and submit all evidence with validation case: 3:22-cv-00908-SL as to the erroneous errors that were displayed and construed to deprive her liberty.

C.Ground Two

(Record Reference: case: 3:22-cv-00908-SL, Doc#14, Respondent's Answer/Return Writ pp.19-21, PageID#140-142) As to the claim of the manifest weight of evidence, this claim is preserved for the merits of Habeas Corpus review. The Ohio Supreme Court declined to take jurisdiction of the appeal. (Exhibit 36) To determine if a criminal conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witness, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost it way and created such a fundamental

miscarriage of justice that the conviction must be reversed or a new trial granted. State v. Thompkins,78 Ohio St. 3d, 380,387,678, N.E.2d 541 (1997) quoting Martin,20 Ohio App. 3d at 175. The appellate attorney raised this claim in the sufficiency for direct review, but failed to adequately argue manifest weight of evidence, no-contestation-didn't point to anything in the record to demonstrate that evidence weighs in Petitioners favor; no cause citations. Appellate counsel deficiency caused for this matter not to be address properly and prejudiced petitioner to a fair review. Ineffective assistance of appellant attorney also references to him not bringing forth an ineffective of assistance claim upon the trial attorney. In revealing as to the procedures amongst the merits. **The Federal Court has jurisdiction of authority over the state to look into a case if there are Constitutional violations, Due Process of Law, containing to relevancy...**Glenn stands firm in her actual innocence claim, considering throughout the merits of case no. 19-cr-0122 every obstacle seemed deterrent. State v. Hebdon, 12th Dist. Butler Nos.CA-2012-03 and CA 2012-03-062, 2013-Ohio-1729.

d.Ground Three

(Record Reference: case: 3:22-cv-00908-SL, Doc#14, Respondent's Answer/Return Writ pp.21-22, PageID#142-143) Ineffective assistant of counsel shall have been brought up in appeal. Parker v. Matthews,567 U.S(2012) The appellate attorney, which whom attend law school, was to know to conserve this claim as to the merits. Considerably preserves an Ineffective assistance of appellate counsel claim. Strickland v. Washington This cause completely prejudiced the Petitioner in allowing the claim to be introduced because there was no way possible considering appellate attorney Joseph Edwards good friends of Judge Warren T. Edwards allowed it to occur. Constitutional violations of one who is actually innocent can be shown due to the evidence containing to the evidence within case: 3:22-cv-00908-SL. Withholding exculpatory evidence, not allowing witnesses to be available as to the reasoning for the search of a house, not presenting a search warrant containing no traffic stop, and not bringing forth confession or admitting statements into evidence Fed R Evid.801 (d)(2)(E). Glenn has constantly demonstrated the actions brought forth within the merits in the beginning as to case 19-cr-122. Glenn had a trial attorney and appellate attorney that were licensed. In all the evidence that has been brought forth shows some deficiency. Especially not filing no type of motion to suppress furthermore anything. Owens v. U.S., 387 F.3d,607 (CA72004) The vehicle was never taken and search for evidence of a crime, no traffic stop, or warrant presented. United States v. Sanders,796 F.3d 1241 (10th Cir 2015) Glenn was not a target of an investigation, nor did she possess or sell any drugs and had no knowledge of drugs. The trial attorney failed to investigate a witness who admitted to police that he was involved in the crime and that Petitioner had no played no part. Towns v. Smith,395 F 3d 251(6th Cir 2005) Failure to make proper objections to inadmissible evidence. Martin v. Grosshans, 424 F.3d 588(7th Cir 2005) A motion to suppress at all most any trial is critical. A.M. v. Butler,360 F.3d 787 (7th Cir 2004) Which was a very important

as to the evidence of drugs. Making reference to Glenn's medical record, having severe asthma and rods&screws in her right ankle, there was no way Glenn could have run a marathon beating everyone running out the house to hide drugs. Trial attorney failed to interview important witness before the trial not even a subpoena. Richard v. Quaterman, 566 F.3d 353(5th Cir 2009) **The Federal Court has jurisdiction of authority over the state to look into a case if there are Constitutional Violations or Due Process of Law, containing to relevancy...**

e. Ground Three

There are exemptions within this petition that gives the Federal Habeas the right to review the claims in the application, Ineffective Assistance of Counsel, Fundamental Miscarriage of Justice and Actual Innocence Exception. The petition has shown that both attorney's performances were deficient. The errors that were made was so serious as if they were no functioning as "attorney's" not guaranteeing the petitioner by the 6th amendment. The errors were so serious it deprived Glenn of a fair trial, to prove and show her innocence. Glenn has demonstrated cause, showing that all actions taken against her deterring to comply. The petitioner had no way to prevent the cause, which prejudiced her to the extent of a fair trial and proving her innocence. Not allowing exculpatory evidence, admission of written and verbal statement, and including an officer stating she knew the drugs was not the Petitioners. Admission of inadmissible evidence is grounds for Habeas Corpus Relief only if it renders whole trial fundamentally unfair and if absent evidence verdict probably would have been different. Carter v. Armontrout, 929 F.2d 1294,1296-97 (8th Cir 1991) Therefore, Glenn had two (2) attorney's, trial and appellate, neither attorney raised evidence available to them, which was both material and exculpatory, that would have proved Glenn's actual innocence which resulted in a Fundamental Miscarriage of Justice. Edwards v. Carpenter, 529, U.S. 446 Cause &Prejudice has been meet as the cause of ineffective assistance of counsel both trial and appellate attorney's. The resulting prejudiced denying the right to introduce the evidence into trial to be considered by the jury and to be preserved on the record for appellate review. Glenn is actual innocent and the evidence to show and prove she is innocent has not been allowed to be considered by any court. Thus more, ineffective assistance of counsel should have been brought up in the appeal. Parker v. Matthew, 567, U.S. (2012) An appellate attorney was to know to address that on the merit. A way to raise a violation of state law is to raise it as a sub claim under ineffective assistance of counsel claiming that counsel did not use state constitution, state laws, or state rule: including procedural due process to protect the petitioner's rights. e.g. Shaw v. Wilson, 721 F.3d 908 (7th Cir 2013) Petitioner submitted an independent claim as to the refererncing to ineffective assistance of counsel giving the state the opportunity to address it. (Exhibit 24) (Exhibit26) The Federal Court should not decline jurisdiction and consider that the state did not provide a full and fair opportunity to litigate. Denying all evidence, withholding evidence, and not admitting statements into evidence. The evidence not only from the co-defendant

was admissible, but the statement from the officers, saying they knew the drugs was not Glenn's and that they believed Green's statement to be true. Fed R. Evid 801 (d)(2)(E) The state court violated and accused "right to present a defense" by applying hearsay and reliability "rules to exclude defense witnesses' testimony that was exculpatory and sufficiently trustworthy. Chambers v. Mississippi/ Mordick v. Valenzuela, 780 Fed, Appx 430 (9th Cir 2019) Glenn requests that the Federal Court look into the inequity of these claims pursuant to case no. 19-cr-0122. Requesting for a prayer of relief from adjudication procedures. In consideration of a Petitioner is entitled to an evidentiary hearing in Federal Court if his alleges facts which, if proven would entitle him to relief. Cave v. Singletary, 971 F.2d,1513,1516, (11th Cir 1992). Respectfully requesting that the Federal court reference to 18 U.S.C.S Section 306 A in reconsideration of...

C.Cognizable Claims

1. Standard

(Record Reference: case: 3:22-cv-00908-SL, Doc#14, Respondent's Answer/Return Writ p.24, PageID#145) Something must call into question the validity of fairness of trial. (quoting Morrison,477 U.S. at 382) Habeas Relief is available only if the petitioner was deprived, at "some point" in the state court proceedings, of a right guaranteed by the United States Constitution. Bell v. Arn, 536 F.2d 695 (6th Cir 1976). Federal Habeas Corpus can hear a case bringing forth several constitutional violations. Especially that of an illegal search and seizure no motion to suppress due to deficiency of both attorneys'. Never took vehicle and searched it for an evidence of a crime 4th amendment. United States v. Sanders, 796 F.3d ,1241 (10th Cir 2015) the officer taking property under warrant shall give the person from whom or whose premises the property was taken a copy of the warrant and a receipt for the property was taken. Ohio Crim. R. 41 (D)(1) Petitioner never was addressed with a warrant or given one, and was not involved in a traffic stop. Holding exculpatory evidence from jury is a due process of Federal Constitutional Right. Within this merit of claims holds constitutional violations of one who is actually innocent and can be shown containing to that of evidence brought forth. Referencing to the search an unlawful search cannot be justified by what is found, and search which is unlawful in the beginning is not made lawful by discovery and seizure of contraband articles. People v. Martin, 382 Ill.1192,46 N>E> 2d, 997,1942Ill. Lexis 478(Ill,1942) (Id) Failure to move for suppression of evidence of an attorney's deficient performance, including failing to request a missing witness charge with the respect to confidential informant who did not testify at trial, and not objecting to admission of any confessions from co-defendant or officers. Henry v. Scully, 78 F.3d 51. These are not only just severe cognizable claims, but also a miscarriage of justice of one who is actually innocent not being able to introduce no evidence in her defense. These acts of gross incompetence of an attorney, ineffective assistance of counsel. Played part in the cause and prejudiced Glenn, the cause was so critical to the extreme were petitioner had no way to prevent any actions taken by either attorney. Prejudicing Glenn to the effect of bringing forth Ineffective Assistance of Counsel, Fundamental Miscarriage of Justice and to show

being Actual Innocent by depriving her of Constitutional Rights. Had the jury been able to view any or all evidence the verdict would have been different. Throughout the merits of this case 19-cr-0122 from the beginning presents a complete thorough review to the ability of the Federal Court, with the respect of. Thus for instance had the trial court not severance the joint indictment. (Doc#15) (Pretrial Motion Audiotaped Proceedings, 6/11/19, p.31, Page ID#822) Not applying proper procedure and protocol to separate the trial was a complete Fundamental Miscarriage of Justice, resulted in the deprivation of a specific Constitutional guarantee such as a right to call witness; or the right to a fair trial was not secured by the 14th amendment. Turpin v. Kassulke, 26 F.3d,1392,1404 (6th Cir 1992) (quoting Jenkins v. Bordenkircher, 611 F.2d, 162,168 (6th Cir 1979) Failure to keep trials together denied Petitioner to a fair trial, had the trial not been severed. (Id) The jury would have been able to separate, the Petitioner and all the evidence would have been able to be admitted, it would have most definitely showed the petitioner had no involvement in the crime assuring a different scope or magnitude from that of the co-defendants. United States v. Blakenship, 382 F.3d 110,1123-25 (11th Cir 2004) However joint trials are favored and the potential for prejudiced alone is insufficient to mandate severance. Standford v. Parker, 266 F.3d 442, 459 (6th Cir 2001) In this case, justice lost its way in the trial court depriving an innocent person to prove their innocence, was a Miscarriage of Justice. Note: not having no evidence at all for defense, being denied and withheld.

2.Appication to Glenn

b. Grounds One and Two-Evidentiary Rulings

(Record Reference: case: 3:22-cv-00908-SL, Doc#14, Respondent's Answer/Return Writ pp.25-31, PageID#146-152) Holding exculpatory evidence from jury is a due process of Federal Constitutional Right. Fed R. Evid. 801 (d)(2)(E) Not admitting statements from co-defendant. Glenn is not only asking for a relief based upon the Miscarriage of Justice due to errors in an evidentiary ruling. This case no. 19-cr-0122 consist of substantive an procedural due process, miscarriage of justice, ineffective assistance of counsel, and held evidence to that of a person who is actual innocent. All evidence was relevant and admissible, knowing that Green the co-defendant was the target of the investigation and the he dealt with the informant, Glenn was just his girlfriend. (Exhibit D) So the five (5) control buys on video was exculpatory evidence that was material to mitigation, exculpation, or impeachment. Brady v. Maryland, 373 U.S. 83,87,83 S.Ct. 1194,10 L. Ed 2d 215 (1963). This was not about good faith or bad faith, it was about Glenn trying to pursue her innocent showing that she was not a drug dealer, or did not possess any drugs. Evidence is material if there is a "reasonable probability" that the result of the trial would have been different had the evidence been disclosed to the defense. State v. Osie,140 Ohio St.3d 131,2014-Ohio-2966,153,16 N.E. 3d 588, quoting Kyles v. Whitley, 514 U.S. 419,433,115 S.Ct. 1555,131 L. Ed 2d 490(1995) quoting United States v. Bagley, 473, U.S. 667,682,105 S.Ct. 3375,87 L. Ed 2d 481 (1985) The jury was not even aware of the confessions given by co-defendant. Smith v. Wainwright, 799, F .2d,1442 (CA111986) Not even the co-defendants taped confession on camera on the day of

March 21, 2019 not used at trial. Williamv.Ward,110 F.3d 1508(CA10 1997) Not one statement mentioned by co-defendant, but Green confessed to the crime at least six (6) times. This could not have been just made up hearsay, knowing the circumstances. Hearsay of co-defendant not admissible. Bruton v. United States, 391 U.S. 123,127,88 S.Ct.1620,1628,20 L. Ed 2d 476 (1986). Glenn had needed all evidence to be presented or attempted to be presented at trial, especially that pertaining to events prior to March 21, 2019. This was the reason for the search warrant that is still has not been presented, to bring forth action, so the gross incompetence of the trial attorney will suffice. Due to the availability of claims within this merit; Glenn will not argue that there are multiple errors as the multiple errors have been documented. Glenn request that the Federal Court take jurisdiction of authority over the state to look into this case: 3:22-cv-00908-SL with regards to "Justice".

b. Ground Four-Fourth Amendment

(Record Reference: case: 3:22-cv-00908-SL, Doc #15, Filed 11/04/22, p.30, PageID#821) The trial court stated we are dealing with a search of a home. (Pretrial Motion Audiotaped Proceedings, 6/11/19, p.30) Glenn was in her vehicle approached by a man in all black with a gun and snatched out of her truck. There was no traffic violation and no search warrant presented, not even and officer asking Glenn for identification. The court also states that the trial court stated we are dealing with a search of a home. (Pretrial Motion Audiotaped Proceedings, 6/11/19, p.30) Glenn was in her vehicle approached by a man in all black with a gun and snatched out of her truck. There was no traffic violation and no search warrant presented, not even an officer asking Glenn for identification. The court also states that the trial attorney or reference to some form of deficiency when he suggests that the trial attorney could have asked "Where, anywhere, is her name on anything? "The search warrant, anything?" (Transcript proceedings, Vol III,8/26/2019, p.691) The trial attorney acts and omission, of not filing no type of motion to suppress this cause, prejudiced Glenn. A motion to suppress was critical in this proceedings. The vehicle was never taken and searched for evidence of a crime. 4th amendment. United States v. Sanders, 796 F.3d 1241 (10th Cir 2015) Glenn did proceed with filing a Post-Conviction, that she knew was due by January 29, 2021. The trial court stated that they received it January 28,2021 and January 29, 2021, but stated it was untimely. Petitioner knew nothing of the matter until the procedure of the Habeas Petition, when the respondent presented it in the answer. Noting that the PC was sealed and the decision was rendered under another judgment entry of a different entity. Petitioner brought forth this claim, considering the trail attorney actions of gross incompetence causes, consist of prejudicing Glenn. (case 3:22-cv-00908-SL, Doc#14, Filed 10/28/22, Page ID#122, Respondent's Answer/Return of Writ, p.6, PageID#127) Glenn plans to present this error to the appellate court, had Glenn knew of the matter of filing untimely, she would have been persistent as to the error with the dates was recognizable to be defended. As the Honorable Federal Habeas Corpus Court review these claims as well as the merit of case no.19-cr-0122, Petitioner hopes that in good faith that all actions to be

considered as to Justice. These claims can be brought forth and viewed in this Habeas Corpus considering the Supreme Court declined to accept jurisdiction over this case. The evidence containing to the search warrant of the home at 223 West Columbia Street, Marion, Ohio still has not been presented to show validation. Glenn was in her vehicle and not presented with no search warrant or opposed to a traffic violation. (Id) U.S. V. Taylor, 600 F. 3d 678 (A62010) Walter, 426 F.3d at 846.The drugs was claimed to be found in vehicle and no suppression of drug evidence not sought. State v. Reichenbach, 153 W.2 126,101 P.3d 80 (2004) Before ending this Traverse, Petitioner would like to bring forth special attention as to the Proceeding (Transcript Proceedings, VolIII,8/26/2019, pp.680-693, Page ID#1151-1124) Within the merits of case no. cr-19-0122 trial attorney did seek to a mistrial. Not trying to take up too much more of the courts time, but the direct examination of Detective Matt Baldrige holds value, whom sat in the courtroom through the whole trial and this was his investigation. (Transcript proceedings, Vol III 8/26/2019, pp.647-693, Page ID# 1478-1524) The detective stated on record in front of the jury that the evidence that he had about Glenn was never presented to the courts, stating she was the target also. This information should have been stricken from the record as to the jury not to consider it by the courts, but it was not. The trial court erred in not admitting relevant and prejudicial evidence, and failed to instruct the jury that the evidence could not be considered. This violated the petitioners 5th, 14th amendment right of the U.S. Constitution, and Article I section 10 and 16 of the Ohio Constitution. Ohio Evidence Rule 404(B).State v. Sager (1987)31 Ohio St. 3d 173,31 Ohio B,375,510 N.E.2d 343; also State v. Williams, 134 Ohio St.3d 521,2012-Ohio-5695,983,N.E. 2d.1278,16;including State v. Lewis Supra,66 Ohio App.3d.37,583 N.E. 2d 404 (2dDist 1990) at 13 Ohio B, 375, 510 N.E. 2d 343 Suppressing prosecuting attorney of exculpatory evidence favorable to petitioner materially and prejudicially interfered with petitioner right to due process...This violated petitioner 5th &14th amendment rights of the U.S. Constitution and Article I section 10 and 16of the Ohio Constitution . Ohio Criminal Rule 16, Brady v. Maryland ,375, U.S. 83,87 S.C.and 1194,10L. Ed.2d.215.Petitoner was deprived effective assistant of counsel. This violated petitioner 5th,6th and 14th amendment right of the U.S. Constitution and Article I section 10 and 16 of the Ohio Constitution .Strickland v. Washington 466 U.S. 668,104 S.Ct 2058, 8L.ED 2d,674 (1984); also State v. Bradley (1989)42 Ohio St. 3d, 136,538 NE 2d 373.The trial court erred and committed reversible error by not permitting petitioner to introduce into evidence prior testimony by the available witness to argue that the witness testimony was true and for that reason credible. This violated Petitioner right to confront the witness under the 5th, 6th, and 14th amendment rights of the U.S. Constitution and Article I section 10 and 16 of the Ohio Constitution. Crawford v. Washington, 124 S. Ct at 1369; State v. Williams (1986) 23 Ohio St. 3d 16,490 N.E. 2d 906; State v. Daniels, (1993) 92 Ohio App.3d, 473,480,636, N.E. 2d 336 Evidence Rule 804; see also State V. Young (1996)7-Ohio-App.2d.194,197,220 N.E. #d 146.The trial court erred at committed reversible error by severance, without proper protocol this excluded the sole eyewitness. The exclusion of the tactics used did prejudiced the petitioner right to present a defense

and her theory of her case to the jury. This violated petitioner right to the 5th, 6th and 14th amendments rights to the U.S. Constitution and Article I section 10 of the Ohio Constitution. Ohio Criminal Rule 16, Brady v. Maryland,375, U.S. 83,87 S. Ct 1194,10 L. Ed 2d.215.Petitioner was deprived effective assistant of counsel. This violated Petitioner 5th, 6th and 14th amendment right of the U.S. Constitution and Article I section 10 and 16 of the Ohio Constitution. Strickland v. Washington 466 U.S. 668,104 S. C.t 2058,8L. Ed 2d,674 (1984); also State v. Bradley (1989)42 Ohio St.3d, 136,538 NE 2d 373.The trial court erred and committed reversible error by not permitting petitioner to introduce into evidence prior testimony by the unavailable witness to argue that the witness testimony was true and for that reason credible. This violated petitioner right to confront the witness under the 5th, 6th and 14th amendment rights of the U.S. Constitution and Article I section 10 and 16 of the Ohio Constitution. Crawford v. Washington, 124, S. Ct at 1369; State v. Williams (1986) 23 Ohio St. 3d. 16,490 N.E.2d 906; State v. Daniels, (1993) 92 Ohio App 3d, 473,480,636, N.E. 2d 336 Evidence Rule 804; see also State V. Young (1996) 7-Ohio-App.2d. 194,197,220 N.E. 2d 146. The trial court erred at committed reversible error by severance, without proper protocol this excluded the sole eyewitness. The exclusion of the tactics used did prejudice the petitioner right to present a defense and her theory of her case to the jury. This violated petitioner right to the 5th, 6th and 14th amendment rights to the U.S. Constitution. Lakewood v. Papadelis, (1987) 82 Ohio St. 3d.5,511 N.E.2d 1138: State v. Brown, 64 Ohio St.3d 649,1992-Ohio-19,597 N.E. 2d. 510(1992); Washington v. Texas (1967) 388 US 14,19,18 L. Ed 2d.101,9,87 S.C.t 1920; Pennsylvania v. Ritchie, (1987) 480 US 39,56,94 L. ED 2d.107 S. Ct 989; State v. Litreal, 170 Ohio App.3d,670,2006-Ohio-5416.Petitioner right to a speedy trial was violated when she was not to trial within 90 days. R.C. 2945.71 Petitioner's Traverse/Response to Respondent's Answer/Return of Writ p.4, paragraph 7) (Id) This violated petitioner's 5th, 6th and 14th amendment rights of the U.S. Constitution and Article I section 10 and 16 of the Ohio Constitution. State v. Field, Ohio App 3d, 2006-Ohio-223, N.E. 2d,2006 Ohio App. (Jan. 2,2006); State v. Blackburn, 118 Ohio St. 3d 163,2008-ohio-1823,887 N.E. 2d.319,10. With respect to the Honorable Federal Habeas Court Glenn request that the merits please be reviewed due to Justice. The result of the proceedings would have been different had the jury been able to view all evidence in the defense of the petitioner, noting; the trial attorney had nothing to present on the behalf of Glenn. Petitioner requesting that the Federal Court reference to 18 USCS section 3006A in reconsideration of representation... A Federal Court should access the merits of a Habeas Petition procedural defaulted claim when the petitioner has demonstrated cause and prejudice that excuses default, especially that of the gross incompetence of Ineffective Assistant of Counsel, Miscarriage of Justice, and that of an Actual Innocent Person. Glenn request that the Federal Court look into the Inequity of these claims pursuant to case no. 19-cr-0122 from within the state of Ohio.

CONCLUSION

Requesting for a prayer of relief from adjudication procedures, from the Honorable Federal Habeas Corpus Court. For the foregoing reason, Petitioner Glenn request this court to issue the Writ, vacating the convictions and sentences, or order that Glenn be afforded a new trial after carefully reviewing within a time of availability, or consider being immediately released from custody. Reviewing this case from the record, some authority is required to pursue. In Hopes of good Faith upon "Justice". Respectfully submitting the all typed copy on this 16th February, 2023.

Respectfully Submitted,

Salena Glenn

Salena Glenn, Pro-se
Petitoner-104431
1479 Collins Ave.
Marysville, Ohio 43040

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing PETITIONERS TRAVERSE/RESPONSE TO RESPONDENT'S ANSWER /RETURN OF WRIT has been filed, and served upon the Respondent Jerri L. Fosnaught (0077718), at Assistant Attorney General, Criminal Justice Section, 30East Broad Street, 23rd Floor, Columbus, Ohio 43215. via U.S. mail, postage prepaid, this 19th day of December 2022.Petitioner also respectfully submitted the all typed copy this 16th February ,2023

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

SALENA GLENN, Pro se
Petitioner,

v.

TERI BALDAUF, WARDEN
Respondent,

CASE NO. 3:22 CV 908

JUDGE SARA LIOI

MAGISTRATE JUDGE JAMES GRIMES JR.

HABEAS CORPUS

PETITIONER 'S OBJECTIONS TO MAGISTRATE REPORT AND RECOMMENDATION

Comes now the Petitioner, pro se, to lodge his timely Objections to the Report and Recommendation issued by the Magistrate Judge Grimes on the 23 day of May 2024, pursuant to Habeas Rule 11 (a), F.R.A.P. Rule 22, and 28 U.S.C.§2253(c). The due date for these Objections were deterred due to Petitioner an incarcerated individual that of being detained, receiving the document on June 6, 2024 from Ohio Reformatory for Women, due to an ineligible copy being served through regular mail. The petitioner contacted the Federal Court at the Phone # 419-213-5500 and spoke to Jennifer Smith @ or around 12:15 informing the courts of the status of needing and extension of time, letting it be noted that Glenn filed an extension via mail on June 3, 2024. In all due respect that it be granted for the day of June 24, 2024.Also interfering as to the date of June 24,2024, petitioner had file for and extended extension considering that the law

library will be open only for two (2) days the week of June 17, 2024.Needing until July 8, 2024. (second request)

Petitioner Salena Glenn did proceed with filing a Petition for a Writ a Habeas Corpus under 28 U.S.C § 2254 Doc.1. Petitioner followed through with filing a Traverse Doc.20 & Doc.21 which this Report & Recommendation stemmed forth from.

A Habeas Petition is a request to the Federal Court to address errors, omissions, or irregularities committed during trial that makes a conviction unlawful; in the sense that laws were not followed or the conviction in some form was contrary. Within the Traverse Doc.20 & Doc.21, the petitioner respectfully requests that the court reference as to laws of action taken with the process and procedures to clarify the reiteration taken herein.

Conforming as to the United States Constitution this case no. 3:22 CV 908 Doc.1, be set upon accordance to constitute. **The Federal Court has jurisdiction of authority over the state to look into a case if there are Constitutional Violations or Due Process of Law, containing to relevancy...**

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. **UNITED STATES CONSTITUION, ARTICLE I §9 c 12.** Petitioner is not a threat to the public, as to her record of history. Doc. 14-1 at 576 & Doc. 14-1 at 577

The sole function of writ of Habeas Corpus is to grant relief from unlawful imprisonment or custody, and it cannot be used properly for any other purpose. Hill v. Johnson, 539 F.2d 439,1976 U.S. App Being that the petitioner trial attorney did request a mistrial due to Detective perjured statement to the jury of false information, which was n ever stricken from the record and was discussed in the chambers away for jury. Doc. 15 at 1516-1521

This theory that has risen from the affidavit in support of arrest warrant dated March 22, 2019 one (1) day after the arrest on March 21,2019. Doc.14-1 at 530-531 One officer stated he had probable cause as to seeing Glenn run from the house to the car, which leaves unsupportive aspects as to this voided statement of perjury which was presented to a jury and not stricken from the record railroading a jury as to a false truth Case No. 19-CR-122. (Transcripts Doc.15 at 792-1609) The affidavit from the officer as stated above, states that petitioner Glenn was stopped sitting in her parked vehicle. *Id* (Glenn has severe asthma/rods & screws in left ankle)

There was not probable cause in the event of a citizen sitting in a parked vehicle, not been seen of any actions of illegal activity on the day of March 21, 2019.The vehicle was not searched instantly after the petitioner was grabbed out, without being approached appropriately as to the Oath of an authorize official officer. A hearing held not to mention a nothing about a search warrant. Doc.15 at 1521

The picture is seeming to become more observant to be seen clear as to the aspect of the process that was taken. Concealing/ secreting certain evidence as to no respect of law in aegis to the of the Constitution.

Warranting this claim to be set forth due to an **"Unconstitutional/Illegal Arrest"**. According to the case supplemental report given by authority it was even stated that petitioner was inside the vehicle as he posed that it might leave "pulling his firearm". Doc. 14-1 at 532 Petitioner is an American citizen having no arrest warrant or traffic violation, as to Glenn was not even driving or a threat posing as to a gun being drawn on this day that matters. *Id* Fruit of the Poisonous Tree /4th Amendment of the Constitution

Federal Habeas jurisdiction review does not extend to correction of purely state law procedural errors that do not rise to the level of Constitutional due process violation. Shipley v. Oklahoma 313 F.3d 1249 2002 U.S. App Lexis 25974

With clear and convincing evidence, a Constitutional due process violation has taken place and yes petitioner was put in a situation as to a total violation being an American citizen, not protected of a crime that authority knew was taking place as to petitioner was not aware. Glenn v. Comm'r of Soc. Sec., 763 F.3d 494

This leaves the petitioner in awe to only be able to present "specific allegations" that provide a "reason to believe that the petitioner may, if the facts are more fully developed, be able to demonstrate that he is entitled to relief." Bracy,520 U.S. at 908-09(quoting Harris v. Nelson,394 U.S. 286,300(1969) Doc. 17 at 2

*Noting March 21, 2019 this time of year, there were no laws as to the inspection of cameras but there was only one (1) on this day being afforded as to that of a search warrant of a home of.Doc.15 at31. Glenn was in the alley sitting in her parked vehicle. Doc. 15at 1069,1070

Musing to the fact that the only factor the petitioner has to present are fully blown, withstanding within the documents/transcripts, affidavits, statements and police reports being brought unto this Honorable Federal Court, case no. 3:22 CV 908 are all relevant as to the conception of this claim and all herein that is provided to present.Doc. 15 792-1609&Doc.14-1 156-790

A request for Certificate of Appealablity is being filed simultaneously with the Objections.

SUMMARY OF FACTS

In habeas corpus proceedings brought by a person under 28 U.S.C. §2254(e)(1). The petitioner has the burden of rebutting that presumption by clear and convincing evidence. Franklin v. Bradshaw, 695 F.3d 439,447(6th cir.2012) Petitioner respectfully requests that this Honorable court to reference the contest presented in the within the Traverse Doc.20 & Doc.21

Here comes the petitioner rebutting the state facts, including every detail that was left out, under penalty and truth, I Salena Glenn bring forth the actual events of the day of March 21, 2019. Petitioner must address these points to the higher courts as to the remedy that they are being left out as to an act of infringement, concealing/secreted and sealing documents.

Bringing to the recognition of: Salena Nicole Glenn did not have a warrant out for an arrest the court sated on record, why is no one bringing up that fact of the argument is it's not her drugs? Doc.15 at 1252 and "in this case we are dealing with a search of a home".Doc.15 at 821 Glenn was sitting in a parked vehicle, this is a Constitutional concern of standard giving a stand point question to bring to the acknowledgement of. Petitioner sitting in a parked vehicle, not knowingly under no investigation of a crime having no involvement any crime, no traffic stops not presented with a search warrant and not being addressed of notice of any officers on the scene as of authority. Fruit of the Poisonous Tree /4th Amendment of the Constitution" *Id*

The court even stated we are only dealing with the events of the day March, 21, 2019.Doc.15 at 802 Noting throughout the trial was a conceiving alternated prostrate as to the petitioner, as to the attorney used no defense mechanism at all.

Petitioner was approached by a guy in all black with a huge gun, screaming and yelling, put your hands up then grabbed out of vehicle. Doc. 14-1 at 532 The matter of fact as to the merit

is Glenn was grabbed out of the vehicle having two (2) items in hand right& left, noting a set of keys and a pill bottle. Doc. 14-1 at 532 Glenn could have not actually been seen putting drugs in the area found if both of hands were occupied being grabbed from the vehicle. This matter was thrown out of the court as an intriguing tactic. It was not to be mentioned or brought forth. This was proof that petitioner never did what they stated Glenn did. The jury was misled even railroaded not knowing all of the facts and evidence, there is not no way without a reasonable doubt would any jury have found petitioner guilty had they knew the facts of truth. *Id*

Federal Courts may grant habeas relief only to correct errors of Federal Constitutional Magnitude. Oxborrow v. Eikenberry,877 F.2d,1395,1400(9th Cir 1989(stating that federal habeas courts are not concerned with errors of state law. "unless they rise to the level of Constitutional violations)

All of the actions taken herein clearly and convincing shows evidence that rise to the level of Constitutional violations:

1.Petitioner sitting in a parked car in alley *Id* Doc. 14-1 at 530

2.Petitioner was not committing a crime

3.Petitioner was not under investigation or a target of one

4.Petitioner did not violate no traffic violations

5.Petitioner was not presented with a search warrant

6. Petitioner was not presented with an all person search warrant or a search warrant for the vehicle.

7. Petitioner was not even addressed as to the standard of oath as to being approached by authority. (gun aimed, yelled at, grabbed up) *Id*

A very important concern was that the officer stated to the jury that they saw petitioner running from the house to the car, according to the report the officers approached the vehicle with drawn gun having a thought that the vehicle was going to leave. Doc.14-1 at 532 There is no reasonable doubt that a jury would have found petitioner guilty of a crime he did not commit had they known the factual truth of the made up aspersion of aspiration to convict the petitioner.

Accordingly, had the jury knew or heard of all the conflicting evidence, it is more than likely than not that a reasonable jurors viewing the erred or records as a whole would have lacked reasonable doubt. House v. Bell,547 U.S. 518The jury could not have the law or rights of being a citizen.

On the day of March 21, 2019 there was no activity reported of a crime in the permit to draw a gun and snatch a civilian out of vehicle.

Petitioner might have found a citizen guilty, had been told that they were running from inside of the house to the vehicle with drugs...being misled with infringement of a false statement of conception, concealing secreted exculpatory evidence to jury. Fed.R. Evid 801(d)(2)(E) Criminal Rule 16 Had the jury known the true entity of report and being able to view all evidence, no reasonable jury could have petitioner guilty of the offenses herein, especially that of an innocent person.

The authority that was in charge of this investigation knew of a crime that was being committed and assuming to fail to protect a citizen such as the petitioner. In regards to them knowing that the co-defendant had a prior record and was driving vehicles registered to petitioner, Doc. 14-1 at 491(police report)

Had the petitioner knew of actions being taken, Glenn would have most definitely got in another car owned to pursue her daily activities, as to maintaining the well-being of one's self. Glenn v. Comm'r of Soc. Sec., 763 F.3d 494

Forcing petitioner Glenn out of the vehicle with a firearm aimed at head with no attempt of effort that was supporting a legal or constitutional arrest. Doc. 14-1 at 532 Not even addressing the concern of an officer oath of approaching with identity. When authorities supposedly had a search warrant for a house, that petitioner Glenn's did not reside at. *Id*

This was an unconstitutional illegal arrest ascertainably as to any American citizen pulling a gun pointing it at the vehicle as it had dark tinted windows which the officer could not see inside, stating he saw Glenn reach behind the seat. Forcefully pulling petitioner from the vehicle Glenn had two (2) items in her hand a set of keys and a Bayer aspirin botte.Doc.14-1 at 532 This was crucial as to evidence of the perjured statement of petitioner putting something in the car because Glenn's hands were consumed upon being snatched up. *Id*

I must remind the higher courts that this information was disregarded because it was part of the truthful initiative of the support of the petitioner. The state court came to some conclusion that this informative information was not to be mentioned as well as other things. Leaving the petitioner with no defense at all to present, on the behalf of the attorney not having nothing for a defense denied all evidence that was material to mitigation, exculpation or impeachment.

Transcripts are reference as to evidence of the mockery held within the state court at the Municipal Court in Marion, Ohio.Doc.15 at 792-1609 this was the Judge Warren T. Edwards first jury trial, he stated on the record.Doc.15 at 1047-1048

An unlawful search cannot be justified by what is found and search which is unlawful in the beginning is not made lawful by discovery and seizure of contraband articles. People v.

Martin, 382111.192,46 NE 2d 997,1942111 Lexis 478(111,1942) / Boyd v. United States,116 U.S. 616,623 [**39] 29 L. Ed.746,6 S.Ct.524(1886) Vehicle was never taken for evidence of a crime United States v. Sanders,796 F 3d 1241(10th Cir.2015)

To be entitled to relief in federal habeas corpus a petitioner must establish that there has been an infringement of a right guaranteed under the United States Constitution as stated of an individual. *Id* Clemmons v. Sowder,34 F. 3d 352,357(6th Cir 1994)

Within a case that holds value of concern of the arrest one must contest to prevail the actuality of the character that has been presented to incriminate. Glenn v. Comm'r of Soc. Sec., 763 F.3d 494 Glenn could have been under no investigations, especially concerning the concern of disabilities, Constitutional Rights of one being stripped of his liberty. State v. Lewis 2023-Ohio-3036

Petitioner only brings forth this claim due to Constitutional Rights of an American Citizen that occurred from March 21, 2019. *Id* This was the only day that the Court stated mattered as to the subject, concealing evidence so that it could not be presented to the jury, stating it was law. Doc.15 at 792-829 The whole Pre-Trial proceedings is important to review.

An American citizen sitting in a parked car not knowingly of any criminal activity no known threat to society and a gun being drawn and grabbed up.

The co-defendant Green did state to the officer over three (3) times as to the whereabouts of the drugs, how much it was and where he put them.Doc. 15 at 1359-1360 *Noting officer Matthew Creps Doc15 at 1220, trooper Jeremey Bice Doc. 15 at 1312, detective Colin Lowe Doc.15 at 1336 all stated they never saw petitioner Glenn in the house, the jury was railroaded into being misled as to false statement being told that petitioner was running from the house to the vehicle to make it seem as if she owned the drugs, as to being that of committing crime.

There is no way a jury would have found petitioner guilty of a crime had they not known the truth, "of the perjury that stemmed from the officer stating they saw Glenn running from the house to the vehicle which was to give him probable cause". When it is stated clearly that Glenn was sitting in her parked her vehicle outside of the residence. Doc.14-1 at 530-531, which was in the alley Doc 15 at 1069 -1070

Petitioner can only bare to be reluctant to the adversity of the crime and or indictment, that he has become involved. Using the knowledge that still holds obtainable as it stands. Petitioner will rebut, showing with clear and convincing evidence as the reasoning for an "entitled immediate relief" and or evidentiary hearing to replenish the record for further proceedings if needed with assistance of a professional legal counsel, as to the factual dispute including being sentence to that of a wrongful conviction, correcting even to that of being timed served. *Id* Charged with the drugs in the house and was not in the house!

Heedlessly seeing that of the concern of the sentencing of twenty (20) year, 18 mandatory, (non-violent crime) as to the officer questioned the confidential informant and was advised that Salena is the girlfriend Doc.14-1 at 491 Petitioner was charged with serious offense of a crime. *Id*

As to reference to the order given to petitioner Doc.17 at 5. Petitioner respectfully does not bare to belie to the Honorable court considering no court of this matter. Glenn just respectfully proceeds with following through to presume justice being that of a single mother of two (2) young men including a young grandchild in support to continue to follow through as to a business owner within the community and now to help the community as to the rehabilitation of prison from serving the time of five and half (5 ½) years.*Id*

According to the admittance of occurrences that was concealed from the events of March 21,2019. Involving the violation of one's Constitutional rights of being stripped of his liberty is the importance of this camouflage within the Municipal Court of Marion, Ohio. Doc. 15 at 792-1609.

Containing to that of one being actually innocence of the proceeding that have been set forth. Under penalty and truth reiterating documents/transcripts, affidavits, statements, police report and the proffer within the state courts as to the jury being removed not given the opportunity to hear the officer Stacy McCoy testimony, Doc. 15 at 1432 "She advised the drugs were not hers and I knew that. Doc.14-1 at 522(supplemental report)

Petitioner comes forth not to debate the summary of facts of the oppression set herein but to reiterate the fact of truth that has been left out herein of acknowledgement. A Constitutional Violation of Due Process; they all knew so as to the reasoning of concept of the sealed, concealed/secreted document can be that of Unconstitutional arrest to be adhered to including prosecutorial misconduct and a right to due process.

So therefore this is why the petitioner holds fast as knowing that there was a Constitutional standard stripping a citizen of his liberty held within these processes.

Which entitles petitioner to have this case reviewed for the merits to concur justice within the Federal Court giving permission considering the Supreme court denied jurisdiction. Are "Structural defects in the trial mechanism per se prejudicial" a rule of automatic reversal?

Petitioner can only bear to respectfully think of a lot of questions in mind, considering that Glenn was in a bad car accident left for dead, rehabilitant as to that under the American Disability Act, petitioner was on a case load at the time of this event and believe it or not on this

day had an appointment to meet with an appointed mentor to pursue to success. Glenn v. Comm'r of Soc. Sec., 763 F.3d 494

Petitioner don't know if they knew of these aspects had they been investigating Glenn for a crime, it would have been noted that the life style Glenn perceived was of that rewarded in 2017. Referencing that petitioner was living off of section 8 that was helping keeping the stability of well-being. All of the information is of public record had there been an investigation of petitioner, Glenn.*Id*

Or was this another act of infringement as to not let this information not be noted, leaving a defamation of character to jury and the state that this claim has been presented upon? Railroading the whole concept of a crime presented herein as to one that is actually innocent.*Id*

This claim has been set forth within the higher courts to be set upon to pursue giving that of the authority to prevail justice.

Relevant Procedural History

State Court Proceedings

Petitioner can only afford to constantly keep repeating the corpus delicti that took place within the State of Ohio, Municipal Court of Marion County, Ohio. Doc.14 at 122-154 considering this is what has occurred.

Considering the fact of being incarcerated, having restrictions as to abilities to pursue claims, referencing as to times as to the law library, mailing room, and distrusting through authorities within the facility at Ohio Reformatory for Women. Petitioner respectfully request the Honorable Federal Court to take in consideration of pleading to the assistance of professional legal counsel. Even though the Supreme Court did not want to take jurisdiction one Judge Donnelly did recommend counsel. State v. Glenn, 163 Ohio St. 3d 1440

Petitioner only comes forth with clear and convincing evidence to meet the good cause standard within the context of documented police reports, statement, sworn affidavits, and trial transcript under penalty of perjury and truth.

Musingly to the fact that on March 21, 2019, there was only one officer with a video camera in spur of a search warrant of a home at 223 West Columbia Street in Marion, Ohio that petitioner Glenn did not reside at. Doc.15 at 821 and was in her parked vehicle in an alley having no search warrant as to an arrest involving petitioner. Doc. 15 at 1522.

This theory leaves petitioner in awe to only be able to present "specific allegations" that provide a "reason to believe that the petitioner may, if the facts are more fully developed, be able to demonstrate that he is ...entitled to relief." (quoting Harris v. Nelson, 394 U.S. 286,300 (1969) Bracy, 520 U.S. at 908-09 Doc.17

The Federal Court holds jurisdiction to justify justice in accordance of that of ineffective assistance of counsel, miscarriage of justice, and an actual innocence exception. Doc.20& Doc.21

Direct Appeal

Petitioner was assigned attorney W. Joseph Edwards good friend of Judge Warren T. Edwards filed a notice of appeal with the Third District Court of Appeals, Marion county, Ohio Doc. 14-1 at 271-322 Raising only three (3) assignments of error on appeal. *Noting petitioner Glenn tried to access the attorney to give input/advice and was denied, being prejudiced.Doc. 14-1 at 756-759 State v. Glenn,2021-Ohio-264

HN4A defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Jones v. Bradshaw 2022 U.S. App Lexis 984

This is just one of the several valid reason that petitioner needs to hold an evidentiary hearing as to adhere to facts of this claim as them being a factual dispute. Clark v. Nagy, 934 F 3d 483

The three (3) assignment of errors that was raised on appeal:

1. **The trial court's numerous errors involving evidentiary issues denied appellant the right to present a defense thereby violation her constitutional due process rights to a fair trial under the State and Federal Constitutions. (Record Reference: Transcript of Pre-Trial (Date 6/11/19) Doc. 15 at 792-892**

   Tr. Vol.III, pp.602-650). Doc. 15 at 1433-1481

2. **The trial court erred in imposing a prison term consecutive to another prison term because there was no finding that the sentence was not disproportionate to any danger the defendant may pose to the public and the trial court failed to identify specific reasons to support of its findings that consecutive sentences were. Appropriate. (Record Reference: Judgement Entry).**

3. **The jury's verdicts were against the manifest weight of the evidence in violation of the United States Constitution and the Ohio Constitution. (Record Reference: Judgement Entry)**

*Noting these errors where presented to the Supreme Court on time. State v. Glenn, 163 Ohio St. 3d 1440 Doc.14-1 at 433 Now leaving for the Honorable Federal Habeas Corpus Court to review for the merits. Petitioner stands to have the Federal Court to correct this error as to the

Federal court to review claims they were presented with process and procedure on time and should have been submitted with the other assignment of errors that was added.

If petitioner left these assignments out it had to be a mistaken error, which stills leaves a question as to the ability of Glenn, needing assistant with legal professional assistance. Glenn v. Comm'r of Soc. Sec., 763 F.3d 494;

Petitioner, attorney did file a timely direct appeal *Id* Petitioner did submit the three (3) assignments of error to the Supreme Court *Id* Which respectfully are preserved for the Federal Habeas Court to adhere, and the reasoning Glenn set forth the additional claims, considering the structural error of the Post-Conviction that has not been recognized.

According to the ORDER Doc.17 states petitioner may clarify her argument and raise any proper discovery claims that she would like the court to consider at 3. (See Traverse) Doc. 20 & Doc. 21 and these were to be included seeing that they were file timely.

******Petition to Vacate***

Petitioner must bring it to the attention of the courts as to the filing of the Post-Conviction. As to the Post-Conviction matter it states that it was filed untimely and barred by Ohio's doctrine of res judicata. Doc.14-1, at 739-743 This seems to be the norm composed as to petitioners limited research as to a definite way not to get a PC heard or notice of: concluding important factors.

Petitioner was informed of the importance of a Post-Conviction as to the research and knew it was due 365 days after being filed in the third circuit court of appeals. Which the transcripts were filed on January 29,2020. Doc.14-1 at 784 The state stated they received the petition on January 28, 2021 & January 29, 2021 *Id* Confirming to the dates, how was the

petition late & why were there two (2) petition? When it only takes one to submit, noting that the petitioner sent the petition from the prison on January 19, 2021.

Intrinsically the fact that this particular petition was sealed has to be introduced foremost. Doc. 14-1 at 780 There was no motion filed as to this matter of sealing and no form of notification as to this factor taken place as to the petitioner being pro se of the concern. Doc.14-1 at 780 The PC was even filed under another judgement entry noting the hearing that was held was criminal in matter. A Post-Conviction is civil in matter.Doc. 14-1 at 739-742 (*Id*) Petitioner never received notification of judgment entry or sealing of record, not even documented that it was even delivered. Doc. 14-1 at 780 Reasoning must be that counsel for the given matter might have been addressed as to the good friend of the Judge. *Id* Noting why was it sealed? *Noting that none of these concerns has been addressed or corrected.

As soon as petitioner noticed this secreted, concealed information that was sealed, due to following through with Habeas Corpus, Glenn filed a delayed PC to the third circuit court was given a judgement entry stating it was unavailable even though an appeal of notice was missing also submitted to the Supreme, whom stated they do not hear PC matters. (Supplemental information added)

Bringing recognition forth that the hearing held for a resentence addressing that of Joseph Edwards, Counsel for defendant. It was not directed or addressed as notifying to petitioner that was pro se in the matter to confirm. Could the Post-Conviction being sealed on the docket and not notifying the correct party or being addressed to the Counsel at the time of the hearing and not the pro se party be justifiable? This was a hearing for a resentencing, and the Post-Conviction judgement was underneath this hearing as if it was being hidden noting it was sealed without notification.Doc. 14-1 at 739-743

This concept alone would hold up for the federal court to take jurisdiction and address matters of concern giving an evidentiary hearing to constitute corrections of necessity, or given order to have the remedies corrected.

This concept holds several questions as to the procedure. How was there two (2) petitions filed? When only one petition is only required, this concern can bare that one could be entitled to an evidentiary hearing as to this concern alone due to that of a factual dispute. Including that the Ohio's doctrine of res judicata was not witnessed with no statements of what was included in the petition. It seems that this Ohio's doctrine res judicata is a way to conclude and restrict to ones ending, even if it is not justified., not giving claims a chance to be heard or seen.

Petitioner noticed through reviewing the documents, petitioner did receive two (2) of the state's responses dated February 11, 2021 as to STATES RESPONSE TO DEFENDANT'S PETITION TO VACATE OR SET ASIDE JUDGMENT OF CONVICTION OR SENTENCE& STATES RESPONSE TO DEFENDANT'S MOTION TO SUPPLEMENT THE RECORD.Doc. 14-1 at 730-733. Petitioner swear under penalty and perjury of truth that is the only information was received as to the Post-Conviction guiding the petitioner to respond as he did on March 19,2021Doc. 14-1 at 735,736,737 The petitioner had no acknowledge of notice as to the judgement entry file on March 12, 2021 due to it being sealed, and no notification of this process taken place. The first acknowledge of this matter was through the petition of the Habeas Corpus, as to the documents provide from the attorney general Dave Yost. (Return of Writ) Doc.14 and this is when the petitioner followed through to appeal.*Id*

Petitioner can only show with clear and convincing evidence of documentation of the processes that have taken place just as it was stated in the Traverse.Doc.20 &Doc 21 using presentation of statements, documents, affidavits and police reports. Petitioner can only reiterate what have taken place as to being prejudiced against all process and procedure as to being detained and stripped of liberty.

As this matter set forth still seem to be arising. How can information be secreted and concealed as to being able oppose especially if it is exculpatory evidence. Fed. R. 801(d)(2)(E) of not only petitioner committing a crime but anyone. It seems as if the state court was making a mockery of the court system as to the concern of laws & rules; Criminal Rule 16 was most definitely exempt in this case according to the Transcript of Audiotaped Proceedings/Pretrial Motion. Doc.15 at 792-829

Resentencing

In March 2021, there was a resentencing hearing Doc. 14-1 at 590, mandated by the Third Appellate Court back to trial court. The heedful sentence of mandatory term of eleven (11) years on count 2, a mandatory term of seven (7) years on count 3, and twenty-four (24) months on count 4. Totally twenty (20) years.

Petitioner was given the same original sentence given at trial sentence of serving consecutively for a term of 20 years/18 mandatory. *Noting Attorney Joseph Edwards whose good friends of Judge Warren Edwards had no remarks as to this given status, as to assisting petitioner with regards to the tremendous sentence set forth as to the standard which it was given, giving no effort as to rebut. Not even mentioning that they charged petitioner with what was in the house, not one officer saw her in. *Id* (herein)

HN4A defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Jones v. Bradshaw 2022 U.S. App Lexis 984

Clearly this was to be the argument that was presented by Attorney Joseph Edwards submitted to the courts. Seeming to stow' a-way as not to the defense to the petitioner when this was to be an argument to supply as to the matter he had presented to the third circuit appellate court. Noting that the Attorney had no argument as to the resentence.

2. The trial court erred in imposing a prison term consecutive to another prison term because there was no finding that the sentence was not disproportionate to any danger the defendant may pose to the public and the trial court failed to identify specific reasons to support of its findings that consecutive sentences were. Appropriate. (Record Reference: Judgement Entry).

This assignment was to be rebutted or argued in some form since it was presented. But was not at the hearing, mentioning anything, prejudicing the petitioner as to the matter.

In light of the facts of presenting the petitioner with such a heedful sentence as for the record of Glenn's record leaves concern due to his record of having no felony or drug charges on defendant's prior record. Doc. 14-1 at 576 & Doc. 14-1 at 577

This was the discovery in part that the petitioner was requesting because it was things that was said and not said on the record as to the concern of the matter. *Id* Doc. 17

At the end of the hearing the Judge presented with asking the petitioner if he had wanted to appeal the resentencing as to the petitioner family(son) was present, and the answer was yes. It was stated on the record if petitioner wanted to keep the same attorney available that was

present, and the response was yes. Petitioner even submitted letters to the attorney and courts to verify. Doc. 14-1 at 755-759

Petitioner constantly tried to contact the attorney as to the matter with several letters, even as to that of receiving a copy of the transcript.Doc. 14-1 at 756 Petitioner even addressed phone conversation for verification and was told that the attorney stated he have no memory because he had so many clients.

In regards to the resentence hearing the petitioner even informed the attorney in letter form as to input that would be helpful, due to the judge stating that petitioner had a bad criminal record and did not own any businesses because of petitioners noticing the defamation of the character and record. The importance of this was to be addressed with verification of documentation. Doc. 14-1 at 755 & Doc. 14-1 at 757 Which as stated Attorney Joseph Edwards good friends of Judge Warren Edwards made no remarks at the resentencing as to corrective measure for petitioner at all.

Petitioner even reached out to the court as to the concern of the matter also. Doc. 14-1 at 755. Glenn insisted even through all obstacles that tried to deter by contacting the Office of the Ohio Public Defender. Doc. 14-1 at 759 &Doc. 14-1 at 760

It was to a great disadvantage which was cause & prejudice as to the regards of a citizen pursing for justice amongst their case when the attorney responded later on after the date expired explaining with no constituent of the matter as to the resentencing hearing. Doc. 14-1 at 757

Petitioner still is void on the concept of the resentence as to Glenn had no bad criminal record of which no crime of drug activity being involved. Doc.14-1 at 576-577

Noting for the record that petitioner had no involvement in drug activities Glenn was stated by the informant as questioned by detectives who was the lady he advised "girlfriend". Doc. 14-1 at 491

As to the memorandum of support of sentencing obtaining from the trial lawyer he did present to the courts in document form as containing to the sentence to be considered. Doc. 14-1 at 582 However, this Court must be aware of the circumstances giving rise to the conviction. There was no direct evidence that Ms. Glenn sold drugs or even handled the drugs. Further, the co-defendant Illya Green, made five (5) separated confessions, none of which the Defendant was able to present to the jury based on the Court's previous ruling. However, obviously the Court saw the evidence in Defendants proffer and it mitigates Ms. Glenn for the purposes of sentencing. This evidence includes:

1) **The officers found the drugs;**
2) **The Marion County Prosecutor's Office charged Mr. Green and Kevin Swift with possession and trafficking of said drugs;**
3) **Mr. Green admitted the drugs in the house were all his and not Ms. Glenn's;**
4) **Mr. Green admitted the drugs in the vehicle owned by Ms. Glenn were his;**
5) **Mr. Green described the type of drugs in the house;**
6) **Mr. Green described the weight of the drugs in the vehicle;**
7) **Mr. Green described the location of the drugs in the vehicle;**
8) **Mr. Green described how the drugs got to the location in the vehicle;**
9) **Mr. Green corrected Baldridge as to these facts;**
10) **Detective Baldridge stated he believed Mr. Green to be honest;**

11) Detective Baldrige admitted to hearing Mr. Green on camera in five previous drug buys as the drug dealer;

12) Mr. Green wrote two (2) letters after being charged admitting that all the drugs located during the search were his after being provided counsel, participated in Pretrial, and was incarcerated for a lengthy period of time;

13) Mr. Green had prior felony convictions for drug related offenses as Co-defendant Swift, and both of these individuals were found running from the living room containing drugs.

Therefore, based on the minimal criminal culpability in this case, a minimum sentence is warranted.Doc. 14-1 at 582-583

*Noting none of these matters were addressed as to the sentence of the petitioner considering Glenn was given the max in effort of trying to prove his innocence. Being given a lengthy heedful sentence of 20 years/18 mandatory for a non-violent crime, petitioner still until this day is standing firm that he did not commit a knowing crime, was not addressed with a search warrant with no traffic violation and was most definitely not under investigation, Glenn was not involved.

These actions as to not stating anything on the record as to assistance of the attorney as to the petitioner to pursue any claims was a cause that prejudiced Glenn. *Id* Doc. 20 &Doc.21

Delayed Appeal

Petitioner did not file a delayed appeal, Glenn submitted a timely appeal as to being represented by Attorney Joseph Edwards that are good friends with Judge Warren T. Edwards that is within this claim within this Federal Court. Case No. 3:22 CV. 908. *Id* Petitioner was not allowed to give any input of suggestions of facts. State v. Glenn,2021-Ohio-264

HN4A defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Jones v. Bradshaw 2022 U.S. App Lexis 98

The Three assignments that were presented to the Third Circuit Appeals Court was submitted to the Supreme Court timely and now gives the Habeas Corpus Federal Court the jurisdiction to review. *Id*

The three (3) assignment of errors that was raised on appeal:

1. The trial court's numerous errors involving evidentiary issues denied appellant the right to present a defense thereby violation her constitutional due process rights to a fair trial under the State and Federal Constitutions. (Record Reference: Transcript of Pre-Trial (Date 6/11/19) Doc. 15 at 792-892
   Tr. Vol.III, pp.602-650). Doc. 15 at 1433-1481
2. The trial court erred in imposing a prison term consecutive to another prison term because there was no finding that the sentence was not disproportionate to any danger the defendant may pose to the public and the trial court failed to identify specific reasons to support of its findings that consecutive sentences were. Appropriate. (Record Reference: Judgement Entry).

To determine if a criminal conviction is against the manifest weight of the evidence, the court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witness, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost it way and created such a fundamental miscarriage of justice that the

conviction must be reversed or a new trial granted. State v. Thompkins, 78 Ohio St. 3d, 380,387,678, N.E. 2d 541(1997) quoting Martin, 20 Ohio App.3d at 175.

Petitioner pleads that is Honorable Federal Court to review these claims within the merits as they were filed timely and submitted to the Supreme Court. *Id* If it is an issue respectfully requesting this higher court to correct the error for the record.

Ohio Appellate Rule 26(B) Delayed Application for Reopening

Petitioner did proceed with following through for the record after receiving transcripts from another source Doc. 14-1 at 436and considering the natural disaster that happen due to Co-vid and was denied stating filed untimely. Petitioner tried like a nail in a tooth to get transcripts from attorney to pursue all claims., Doc. 14-1 at 756-759

In petitioner claim, the prospective to filing in the supreme court addressed and submitted timely, as follows: Which these claims are to reviewed as to the Federal Court considering they were submitted timely.

1. **The trial court's numerous errors involving evidentiary issues denied appellant the right to present a defense thereby violation her constitutional due process rights to a fair trial under the State and Federal Constitutions. (Record Reference: Transcript of Pre-Trial (Date 6/11/19) Doc. 15 at 792-892**

   Tr. Vol.III, pp.602-650). Doc. 15 at 1433-1481

2. **The trial court erred in imposing a prison term consecutive to another prison term because there was no finding that the sentence was not disproportionate to any danger the defendant may pose to the public and the trial court failed to identify specific reasons to support of its findings**

that consecutive sentences were. Appropriate. (Record Reference: Judgement Entry).

3. **The jury's verdicts were against the manifest weight of the evidence in violation of the United States Constitution and the Ohio Constitution. (Record Reference: Judgement Entry)**

Petitioner respectfully request for this to be corrected for the record included within this Objection as to the Report of Recommendations, if this is an issue as to this concern. Considering these assignment of errors is not mentioned within the Report of Recommendation.

The court stated on record as referencing to ineffective assistant of counsel, and to appeal. Doc. 15 at 1522-1524 The attorney Joseph Edwards good friend of Warren Edwards, did not mention this matter at all. A direct appeal is crucial in any proceeding which this claim was to added, this was the valid reason petitioner pursued with persistence to submit a 26(B) This cause prejudiced Glenn.

HN4A defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief. Jones v. Bradshaw 2022 U.S. App Lexis 98

Federal Habeas Corpus Petition:

These three (3) grounds that were filed timely as to the processes and were introduced to the Supreme Court which did not take jurisdiction over the claim.Doc.14-1 Are grounds that can to be brought forth considering they are not procedurally defaulted in no type of way, it seems to be that these grounds, are not being mentioned because they are not within the Report of Recommendation. If Glenn did fail to present this claims, it shows the effort of continuously

pushing forward despite the disability obtained that is not getting medically treated. Glenn v. Comm'r of Soc. Sec., 763 F.3d 494/ 18USCS § 3006 A (a)(1)(A)(H)(I).

Petitioner knew these claims were available for review, if they were left out as they should not have been, they are available for full review and are not procedurally defaulted. Petitioner respectfully request for this to be corrected for the record included within the Objection as to the Report of Recommendations if this is an issue as to this concern.

1. **The trial court's numerous errors involving evidentiary issues denied appellant the right to present a defense thereby violation her constitutional due process rights to a fair trial under the State and Federal Constitutions. (Record Reference: Transcript of Pre-Trial (Date 6/11/19) Doc. 15 at 792-892**

   Tr. Vol.III, pp.602-650). Doc. 15 at 1433-1481

2. **The trial court erred in imposing a prison term consecutive to another prison term because there was no finding that the sentence was not disproportionate to any danger the defendant may pose to the public and the trial court failed to identify specific reasons to support of its findings that consecutive sentences were. Appropriate. (Record Reference: Judgement Entry).**

3. **The jury's verdicts were against the manifest weight of the evidence in violation of the United States Constitution and the Ohio Constitution. (Record Reference: Judgement Entry)**

This case stands for review for the record as to higher courts to see, Fed. R. 801(d)(2)(E);Criminal Rule 16 and To determine if a criminal conviction is against the manifest weight of the evidence, the court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witness, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost it way and created such a fundamental miscarriage of justice that the conviction must be reversed or a new trial granted. State v. Thompkins, 78 Ohio St. 3d, 380,387,678, N.E. 2d 541(1997) quoting Martin, 20 Ohio App.3d at 175. Respecting the court to concur the matter of concern as to the resentencing and Post-Conviction for the record.Doc.20 & Doc.21 *Id*

Legal Standard

The legality within this claims shows a complete cause that prejudiced the petitioner right in the beginning addressing that only of the day of March 21, 2019. Doc. 15 at 792-829(Important to Review) Doc.20 & 21 that was only to be respected as to the court but throughout the proceedings this was what not stood. Doc.15 at 792-1609

The court counsel is free to challenge the validity of the search warrant. But that is not what we're dealing with here.Doc.15 at 821. (gross impotence) something was to validate the importance of this Unconstitutional, Illegal Arrest, the attorney did nothing. *Id* Doc.20&Doc.21

Government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about to conduct the defense. See e.g. Geders v. United States,425 U.S. 80,96 S.Ct.1330(1976) The state court interfered with discovery, presentation of relevant facts, throughout the complete proceedings.*Id*

Bringing to the attention of the Higher Courts, that there five incidents that lead to the supposed search warrant of a home,*Id* that Glenn the petitioner did not commit any drug

trafficking truth is alleged and it was stated she was only present during one of those days as to advised of a girlfriend. *Id* The courts have instructed that they were only talking about what happened on March 21st, 2019 which is a total Constitutional Violation in this case.Doc. 15 at 223. Throughout the proceedings all type of factual matters that were made up to convict one of a crime were mentioned, even in that of the mistrial, "when it was off the record in the chambers out of the hearing of the jury."Doc.15 at 1516

Petitioner must bring forth acknowledge as to the officer of authority stated Glenn had hidden something but when petitioner was apprehended her hands were occupied with two (2) items keys and a pill bottle. Doc. 15 at 1054-1055 there was no way possible that had occurred.

HN14 "As a general matter, where there is a factual dispute, the Habeas Court must hold an evidentiary hearing to determine the truth of the petitioners claim". Clark v. Nagy, 934 F 3d 483

Before the jury comes in discussion day two (2) of the trial the basis of the search warrant is disturbed as null and void as to the state court. Doc. 15 at 1049-1050Which this is an important aspect as to a crime if someone was permitting one, the petitioner sitting in a parked vehicle in alley, when the search warrant was the reason for a search of a home. *Id* The importance of a search warrant is important to any citizen.

It is clear as to the officer Sam Walter that is someone is reaching for something, does not give cause to search that vehicle as to his testimony. Doc. 15 at 1199 including verification her hands were occupied. Doc.15 at 1198

Structural error leads to a miscarriage of law interloping that of a Constitutional Violation. Petitioner does not know if this case law fits this term, but is applying. O'Neal v. Balcarel,993 F.3d 618

Petitioner bares to set forth a reasonable probability submitting the information within of the whole truth and nothing but the truth.

Petitioner comes to stand, that the validation of the Habeas Courts function in considering a habeas petition presenting how petitioner Glenn conviction violated Constitution, laws, or treaties of the United States.

Petitioner has to construed as a constructionist as to the aspects of this claim knowing that he was not part of a crime. Something must call into question the validity of fairness of trial. (quoting Morrison, 477 U.S. at 382) Doc.20 & Doc.21

Petitioner is not presenting this claim as to question to the higher courts but respectfully wanting the higher courts to consider with care as to due diligence. *Id*

In a proceeding instituted by an application for a writ of habeas corpus by a person in custody. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence. The untrue facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense. 28 USCS § 2254(e)(1)(B)

The state court stated; It is your duty not to form or express an opinion to this case until it is finally submitted to you and you have all the evidence and instruction of law. Doc. 15 at 1223. This misled and railroad the jury into a false truth because they thought it was law and that they had all of the evidence.

Discussion

This case is not to be dismissed. *Id* In recognition of an American Citizen being stripped of his Liberty and violated by his Constitutional Rights concerning an Unconstitutional, Illegal Arrest. Fruit of the Poisonous Tree / 4th Amendment of the Constitution Which seems to

somehow not have been an important factor as to petitioner Glenn within this case from the beginning, it is an important factor.

This matter has seemed to be construed to one side as to that of the oppression, noticing that herein there are two (2) sides to adhere. Which is entitled to an evidentiary hearing as that of a known factual disputes, resentence of a wrongful conviction, or an immediate release. This case does not seem to be void as to a dismissal of no recognition of an American Citizen being stripped of his Liberty and violated by his Constitutional Rights.

The petitioner does not warrant to disrespect the higher courts with any argument but to bring forth the evidence that holds to prevail that is established herein.

Petitioner can only stand on the evidence presented at hand because it is all that there is to present. All of the discovery and evidence are held within the context of documented police reports, statement, sworn affidavits, and trial transcript under penalty of perjury and truth.

As to the order presented Doc. 17 that petitioner has all the discovery that is needed to present recognizing during this Unconstitutional arrest there were no cameras but one (1) which was for the search warrant of a home at 223 West Columbia Street in the City of Marion Ohio. Which still has not presented till this day.

Petitioner did file an INEFFECTIVE ASSISTANCE OF COUNSEL filed bringing to the attention of to the Marion County, Ohio Common Pleas Court, Marion, Ohio on December 26, 2019. Doc. 14-1 at 248, Doc.14-1 at 258 as a sub claim, even the court mentioned it on the record. The good friend attorney of the judge did not even add this claim to the direct appeal. (gross incompetence)

The only way to raise a violation of state law is to raise it as a sub claim under ineffective assistance of counsel claiming that counsel did not use the state constitution, state laws, or state rule to protect the petitioners right. e.g. Shaw v. Wilson,721 F.3d 908 (7th Cir 2013)

It has been settled throughout United States history that the Constitution protects every criminal defendant against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. Harmless Error Doctrine proves that all the errors directly affected the verdict.

Pleading to the Honorable Court to correct all process giving the Higher Courts the authority to apply that they have jurisdiction.

CONCLUSION

In conclusion as to the record that has come before this Honorable Habeas Corpus Court that has the power to grant writ of relief from unlawful imprisonment or custody of one detained due to Unconstitutional arrest. In that of being in custody of violation of his Constitution or laws of the United States of America. 28 USCS § 2241(3) it is only in finding such violation as to one's Constitutional rights that this case not be dismissed. It is not Justice to dismiss this claim.

Pleading that it is necessary to bring petitioner into court to testify or for a new trial considering those of authority perjured the jury. 28 USCS§2241 (c)(3)(5) considering every aspect of this claim as to the merit to be true as to the evidence containing documentation in

black& white. To give petitioner "immediate release" as to the violation of one's Constitutional Rights being stripped of Liberty or pleading to correcting the process and procedures of the sentence as to time served with and immediate release in 120 days or sooner.

Petitioner respectfully comes forth as to the Higher courts to stand as it is to be stated of all the circumstances set forth herein. Noting that the police report was of that of an investigation against Illya Green the state court presumed with a case stating not to mention this matter but throughout the whole trial matters where mention of petitioner as the criminal.

Green even confessed of his action taking all credibility on his own accord of his responsibility.

1. **He stated it was his and none of it belonged to Salena. Doc.14-1 at522**
2. **Illya said "don't nothing belong to the lady man". Doc. 14-1 at 523**
3. **During the interview with Illya he took ownership of the cocaine that was found in Salena's vehicle.Doc.14-1 at 521**
4. **Letters Illya Green wrote that were exhibits were excluded Exhibit A15& A16.Doc.14-1 at 460,463**
5. **Affidavit of Illya Green.Doc.14-1**

[The court stated for the record, the argument is it's not her drugs] Doc.15 at 1252

First, as the Supreme Court has stated," [a]confession is like no other evidence" in that it is among "the most probative and damaging" typed of evidence because if "come[s] from the actor himself, the most. [*626] knowledgeable and unimpeachable source of information about his past conduct." Arizona v. Fulminante,499 U.S. 279,296,111 S. ct 1246,113 L.Ed.2d 302, (1991) (second and third quotes quoting Bruton v. United States 391 U.S.123,139-40, 88S.ct 1620,20 L.Ed.2d 476 (1968)

The confession very well could have been the straw that broke the camel's back in establishing a reasonable doubt as to the jury finding petitioner guilty. See Hawkins v. United States,358 U.S. 74,80,79 S.ct.136,3L.Ed.2d. 125(1958) *Noting the state court did separate the joint indictment without a motion to severance. Doc. 15 at 792-829(Important)Was a tactic to deter the case, had it been a joint trail Green would have told the truth as it is all herein.

For the reasons set forth above, Petitioner Glenn respectfully request that this Honorable Federal Court to way the way of all the aspects that are on the merits as to the concern case no. 19-CR-122.Petitoner comes forth noting that all of the facts, actions that were taken of authority to stand to present them under penalty and truth with documentation as of one's own right of being violated of his Constitutional rights and due process as to the procedures that have been taken upon in deprivation as referencing in the Traverse Doc.20&21

As to reference to the order given to petitioner Doc.17 at 5. Petitioner respectfully does not bare to belie to the Honorable Federal Habeas Court considering no court of this matter.

Glenn just respectfully proceeds with following through to presume justice being that of a single mother of two (2) young men including a young grandchild in support to continue to be that. Continuing (insured)businesses within the community and now being guide to lead and help within the community as to the rehabilitation of prison from serving the time of five and half (5 ½) years. *Id* Respectfully requesting Justice to pursue.

District court's habeas jurisdiction extends only to claims that petitioner is in custody in in violation of the Constitution, laws, or treaties of U.S. 28 USCS §2254 (a) and it is only on finding such violation that the Federal Court may grant habeas relief. Moore v. Drekte,369 F.3d 844,2004 U.S. App lexis 9005(5th Cir 2004) It is only where the alleged error resulted in the denial of fundamental fairness that habeas relief be granted. Cooper v. Sowder,837 F.2d 284,286

With respect to the Honorable Federal Court, petitioner present the facts with truth within the merit of this objection. *Id*

Historically stated fact, had an officer actually seen petitioner Glenn reaching and coming up with something as to this particular matter, would have turned out different, and this claim would not be set upon the higher courts considering the perjured statements persisted from the authorities according to this day herein. *Id*

Salena Glenn

Salena Nicole Glenn#104431
Ohio Reformatory for Women
1479 Collins Ave.
Marysville, Ohio 43040

Salena Glenn

Affiant

Sworn to, or affirmed, and subscribed in my presence this 2nd day of July, 2024.

NOTARY PUBLIC STATE OF OHIO

MARY FITZPATRICK
Notary Public
State of Ohio
My Comm. Expires
March 22, 2027

Mary Fitzpatrick

Notary Public
My Commission Expires: March 22, 2027

OBJECTIVE

This matter that has occurred on March 21, 2019, stemmed way to bring forth to the highest court to reason. An incarcerated individual that is detained at Ohio Reformatory for Women does not have access to pursue claims in the matter of that of a legal professional counsel, reasoning why the petitioner still stand firm in assistance as to this concern needing and respectfully requesting that this honorable court would adhere to providing professional counsel. 18USCS § 3006 A (a)(1)(A)(H)(I), (not receiving legal mail in a time or appropriate, not having adequate time as to resources or making copies, limited to when mail is disturbed) Glenn v. Comm'r of Soc. Sec., 763 F.3d 494

In reference to the ORDER, Doc.17 When one looks at the content can see the stated "specific allegations" that no jury could have found petitioner Glenn having all the true facts, guilty without a reasonable doubt.

Petitioner bares to stand with all evidence held in his possession containing to that of this claim, which he is bringing forth not deterring as to not being provided professional legal assistance to the best of his ability. Which still might be missing some important facts but still pursing as to the concern of time.

Exhaustion

Petitioner Glenn has presented all claims to the state courts even in the concept of being deterred due to the infringement of his Constitutional due process of his rights, pursing as pro se to only the advantage that he has. Still needing the assistant of legal professional counsel due to the disadvantages that an incarcerated individual has, including the disabilities that have been accompanied to petitioner. Which leaves medical concerns as to one's mental state of his mind rather he is in support of following through correctly to pursue any claims, even considering if he was competent for a trial. **18USCS § 3006 A (a)(1)(A)(H)(I); Glenn v. Comm'r of Soc. Sec., 763 F.3d 494**

Petitioner has notices throughout looking over this claim in a whole, documents have not been read in full arrangement of which they stand. Leading one to a constant verge of catastrophe within the system within the State of Ohio.

The only way to raise a violation of state law is to raise it as a sub claim under ineffective assistance of counsel claiming that counsel did not use the state constitution, state laws, or state rule to protect petitioner's rights. e.g. Shaw v. Wilson, 721 F.3d 908(7th Cir.2013)

Petitioner notices that there was an INEFFECTIVE ASSISTANCE OF COUNSEL filed bringing to the attention of to the Marion County, Ohio Common Pleas Court, Marion, Ohio on December 26, 2019. Doc. 14-1 at 258 & Doc.14-1 at 248 and the court did bring mention as to the fact of concern. Doc. Leaving question as to why did not the appellant attorney his good friend pursue this issue for the merits as to the concern of the appeal.*Id*

A habeas petitioner who can prove that they have denied a fair trial by gross incompetence of their attorney will be granted the writ. Noticing that the court even stated it seems like ineffective assistance of counsel is trying to be set up.*Id*

Procedural default

Petitioner have demonstrated to this Honorable Federal Court, holding the position to withstand, that the Constitutional violations have been disregarded as to a crime alleged conviction of one who is actually innocent, an such that a federal court refusal to hear any aspects of this claim entirely, would be "a miscarriage of justice". Schulp v. Delo 513 U.S.299, 130 L. Ed.2d 808, 1153. ct.851 (1995)

Considering not only Brady Material withheld is a cause for default, but all the evidence concealed/secreted, and sealed is prosecutorial misconduct.*Id*

Any material that is withheld is a cause for default, withholding any evidence that's material to mitigation, exculpation or impeachment, Criminal 16, is pretty clear that the state has to turn it over, any mater that is material. Doc. 15 at 796

Holding exculpatory evidence from jury is a due process of Federal Constitutional Right. Fed.R. Evid.801 (d)(2)(E) Doc. 20 &Doc.21

To overcome a procedural bar, petitioner must show cause for the default and actual prejudice that resulted from the alleged violations of Federal law that forms the basis of their challenge, or that will be a fundamental miscarriage of justice if the claims are not considered. Coleman,501 U.S.at 750. Doc.20 & Doc.21(Traverse)

Miscarriage of justice a grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite of lack of evidence on an essential element of the crime. The state

had no evidence and all the evidence that they did have was denied to the petitioner not being able to bear any justifiable defense.

Noting that of many confessions of the actual victim of the crime Illya Green made attempts to confess, which has been ignored in this matter being secreted from jury.

1.He stated it was his and none of it belonged to Salena. Doc.14-1 at522

2.Illya said "don't nothing belong to the lady man". Doc. 14-1 at 523

3.During the interview with Illya he took ownership of the cocaine that was found in Salena's vehicle.Doc.14-1 at 521

4.Letters Illya Green wrote that were exhibits were excluded Exhibit A15& A16.Doc.14-1 at 460,463

5.Affidavit of Illya Green.Doc.14-1

Petitioners bears to understand as the how can the state not be defaulted as to judgement considering time, with no valid reason as to that of over looked. Doc. 11 at 108 Noting the petitioner can be procedural defaulted as to time, noting that they are detained having no access to updated law materials, knowledge of a professional counselor, also being restricted as to time being cause to be prejudiced because of processes. Doc. 11 at 108 Not even.barring the true fact of the natural disaster amongst the world.

Set herein is all the evidence that proves, without a doubt, someone else committed the crime for which petitioner Glenn was convicted. Herra v. Collins,506 U.S. 390 (1993); Schulp v. Delo,513 U.S. 298,327-329(1995) Doc 20 &Doc.21

In addition, procedural default may also be excuse by showing of actual innocence. Kirby v. Beightler 2010, U.S. Dist. Lexis 87158, at 75.

Petitioner can only bear to bring forth recognition as to the actual innocence concept, obtaining to all of the records within even those statements of perjury against Glenn brought forth to this Honorable to set upon **JUSTICE**.

Merits review

The trial attorney did move for a mistrial (returning to the chambers of the record) Doc.15 at 1516 as to the testimony of perjury about Glenn being the target of the investigation given that still misleading the jury as to being railroaded, the officers did not even know who petitioner was until the day that there confidential advised them that Salena is the girlfriend of Illya Green, on February 28th, 2019. Noting he approached the testimony different of Stacy McCoy her testimony was different. Doc. 15 at 1412, not even stricken from the record as to the whole trail might be stricken from the record, noting the court stated in the pretrial proceedings that the search warrant was not of importance and not to be mentioned. Doc. 15 at 792-829 *Id*

[The court stated for the record, the argument is it's not her drugs] Doc.15 at 1252

Confirming from the Correctol side of view the jury had to know nothing about law, and was constantly feed the statement search warrant Doc. 15 at 792-829not even knowing the proper concept of the barring of effect it holds to a citizen for which it stands (That's her place.), but they were misled that petitioner resided in the property even in the closing remarks.(petitioner cannot confirm this as to the docket because it is missing as report, but petitioner has a copy of the transcripts and it states on page 780 on 8/26/2019, Proceedings, Vol.III) Which was perjury considering Glenn had just gotten a home in Southfield, Michigan that is public records, as to advise of her oldest son who had just got drafted into the NBA 2k live. (Historical event)

Trial Attorney did move for a Criminal Rule 29 on all charges Doc.15 at 1540-1542:

On Count on, trafficking in cocaine, there was zero evidence that Salena Glenn knowingly prepared for shipment, shipped, transported, delivered, prepared for distribution or distributed a control substance. Each detective testified that they didn't see Salena Glenn in the house, didn't know if she was in the house. They testified that they didn't have knowledge that she had ever touched the drugs on the table. So, therefore we would request 29 on Count one.

Count two is possession. Especially in the house, again, they don't know if she is coming, going. None of the detectives were able to testify to that. And using the best evidence that the State can provide, which is Detective Adkins, he assumes she was in the house. Assumption is not enough.

So on that basis, they can't show that she's ever touched the drugs in the house, can't show that she—Strike that, Your Honor—can't show that she ever touched the drugs in the house.

And as far as the car, all they have is that she was in the car. They don't have that she knew that the drugs were in the car. In fact, Ms. Glenn several times denied knowing that the drugs were in the car.

And in the indictment, Your Honor, they don't differentiate what is for which count. For example, the trafficking, whether it's in the car or in the house, they can't tell us which one is which.

As for **Count Three**, which is aggravated possession of fentanyl, the same reason, it was found in the house, found in the car. They can't differentiate which one was which.

And **Count four**, it requires that she had knowledge of the investigation, number one, for a tempering charge. The Supreme Court has held that you can't use—it's called the Unmistakable Crime Doctrine. You can't use fact that she may have known that something was illegal. Even if she knew that the stuff in the car was illegal, you can't use that to show knowledge of a pending investigation.Doc. 15 at 1540-1542

Petitioner Glenn is definitely doing time for what was in the house and in the car and none of the drugs were owned by her. [The court stated for the record, the argument is it's not her drugs] Doc.15 at 1252

The attorney Mr. Edwards good friend of judge Mr. Edwards did not prevail an argument of question as to this concern as to nothing at the resentencing hearing. *Id*

To determine if a criminal conviction is against the manifest weight of the evidence, the court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witness, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost it way and created such a fundamental miscarriage of justice that the conviction must be reversed or a new trial granted. State v. Thompkins, 78 Ohio St. 3d, 380,387,678, N.E. 2d 541(1997) quoting Martin, 20 Ohio App.3d at 175.

Noting the appellate attorney, the good friend of the judge did not give no supportive argument as to facts of the third assignment error filed as to the wrongful conviction. *Id* Doc.20&Doc.21

NOTARIZED CERTIFICATE OF SERVICE

I, the undersigned petitioner Salena Glenn, pro se, hereby certify that on 2nd July, 2024. I served a true and correct copy of the foregoing: **OBJECTIONS TO MAGISTRATE REPORT AND RECOMMENDATION** being filed and sent by regular U.S. Mail to the Federal Courts at addresses below:

Office of the Clerk
United States District Court
Northern District of Ohio
Carl b. Stokes United Court House
801 West Superior Avenue
Cleveland, Ohio 44113-1830

114 James M. Ashely & Thomas W. L. Ashley
United States Court House
1716 Spielbush Avenue
Toledo, Ohio 43604-5385

Salena Glenn
Affiant

Sworn to, or affirmed, and subscribed in my presence this 2nd day of July, 2024.

NOTARY PUBLIC STATE OF OHIO

MARY FITZPATRICK
Notary Public
State of Ohio
My Comm. Expires
March 22, 2027

Mary Fitzpatrick
Notary Public
My Commission Expires: March 22, 2027

APPENDIX D

The Supreme Court of Ohio, Entry, Filed June 8, 2021-Case No. 2021-0351

The Supreme Court of Ohio

State of Ohio

v.

Salena Glenn

Case No. 2021-0351

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Marion County Court of Appeals; No. 9-19-64)

Maureen O'Connor
Chief Justice

APPENDIX E

In The Court Of Appeals of Ohio, Third Appellate District, Marion County, JUDGMENT ENTRY, filed February 1, 2021-Case No. 9-19-64

Petitioner has included:

- BRIEF OF DEFENDANT-APPELLANT, filed May,19, 2020

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 9-19-64

v.

SALENA GLENN,

JUDGMENT ENTRY

DEFENDANT-APPELLANT.

For the reasons stated in the opinion of this Court, it is the judgment and order of this Court that the judgment of the trial court is affirmed in part and reversed in part with costs assessed equally between Appellant and Appellee for which judgment is hereby rendered. The cause is hereby remanded to the trial court for further proceedings and for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.

JUDGE

JUDGE

JUDGE

DATED: FEB 1 2021

ORIGINAL

IN THE COURT OF APPEALS OF MARION COUNTY, OHIO
THIRD APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee,	:	**Case No. 09-19-064**
v.	:	
SALENA GLENN,	:	**Regular Calendar**
Defendant-Appellant.	:	

BRIEF OF DEFENDANT-APPELLANT

W. Joseph Edwards, Esq.
Attorney At Law
Supreme Court No. 0030048
The Law Office of W. Joseph Edwards
511 S. High Street
Columbus, Ohio 43215
614/309-0243

Attorney for Defendant-Appellant

Ray Grogan, Jr. Esq.
Assistant Prosecuting Attorney
Supreme Court No. 0084002
Marion County Prosecutor's Office
134 E. Center Street
Marion, Ohio 43302
740/ 223-4290

Attorney for Plaintiff-Appellant

EXHIBIT 31

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ASSIGNMENTS OF ERROR

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II. THE TRIAL COURT ERRED IN IMPOSING A PRISON TERM CONSECUTIVE TO ANOTHER PRISON TERM BECAUSE THERE WAS NO FINDING THAT THE SENTENCE WAS *NOT* DISPROPORTIONATE TO ANY DANGER THE DEFENDANT MAY POSE TO THE PUBLIC AND THE TRIAL COURT FAILED TO IDENTIFY SPECIFIC REASONS IN SUPPORT OF ITS FINDING THAT CONSECUTIVE SENTENCES WERE APPROPRIATE. (RECORD REFERENCE: JUDGMENT ENTRY)

III. THE JURY'S VERDICTS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE (RECORD REFERENCE: JUDGMENT ENTRY)

STATEMENT OF THE CASE

The Defendant-Appellant Salena N. Glenn was indicted on April 4, 2019 by a Marion County Grand Jury in a four (4) count indictment as follows: Count 1, Trafficking in Cocaine, R.C. § 2925.03(A)(2)/(c)(4), a felony of the first degree; Count 2, Possession of Cocaine, RC § 2925.11(A)(c)(4), a felony of the first degree; Count 3, Aggravated Possession of Fentanyl, R.C. § 2925.11(A)/(c)(11), a felony of the second degree; Count 4, Tampering with Evidence, R.C.§ 2921.12(A), a felony of the third degree.

The indictment arose from the execution of a search warrant at a residence on March 21, 2019 in Marion, Ohio by agents of a drug task force operation. Defendant-Appellant, Salena Glenn, (hereinafter Appellant) was arrested outside and in the rear of the residence in a black Ford Explorer. An individual named Illya Green, street name "Black", was arrested inside the residence of 223 West Columbia Street, in Marion, Ohio. It was clear from the outset of the investigation that Green was the target. (Tr.Vol. III, p. 581). Defendant-Appellant was arraigned on April 8, 2019 and entered not guilty pleas as to all four (4) counts.

A pre-trial was held on June 11, 2019. Appellant's counsel requested that the Court compel the state to produce the video recordings of prior drug buys at 223 West Columbia Street, i.e. the location of Appellant's arrest. (Tr. Pre-trial). Appellant's defense at trial was that her boyfriend, Illya Green, was the drug dealer and she was not involved in the transactions. Defense counsel wanted to present the videos at trial, which apparently depicted Green selling drugs from the residence, to prove that Green, not Appellant, was the guilty party.

The trial court denied Appellant's request. The matter was tried to a jury beginning on August 22, 2019. The jury rendered a verdict on August 27, 2019 of guilty as to all counts. On September 17, 2019, Appellant was sentenced to a definite term of 20 years in prison.

On March 9, 2020, co-defendant Illya Green, in case number 2019 CR 0116, entered a guilty plea with the State of Ohio and received a sentence of 12 years and 6 months in prison.

This is Appellant's direct appeal of her conviction and sentence; a sentence of 7.5 years more than the target of the investigation is serving for the same conduct.

STATEMENT OF THE FACTS

Defendant-Appellant sets forth the salient features of the important witnesses called on behalf of the State of Ohio. The defense rested its case without calling any witnesses to testify.

As stated above, the charges against Defendant-Appellant arose from the execution of a search warrant on March 21, 2019 at a location of 223 West Columbia Street in Marion, Ohio by narcotics officers of a multi-jurisdictional task force known as MARMET. The target of the investigation was an individual named Illya Green, street name "Black", who law enforcement had made multiple buys from this residence which served as the basis for the search warrant. (Tr. Vol. II, p. 581).

Lieutenant Chris Atkins was the supervisor of the paramilitary force that executed the search warrant on the date, time, and location. (Tr. Vol. II, p. 229). Atkins role was to cover another officer who would attempt entrance of the residence through a bathroom window. While in a position near the window and in close proximity to the rear of the house, Atkins heard a noise that drew his attention to a black Ford SUV. (Tr. pp. 268-276). Atkins moved toward the rear of the residence an observed a person entering the vehicle. (Id.

at 270-276, 296-300). He could not determine if the person was male or female.

Atkins eventually removed the individual from the SUV and it was Defendant-Appellant herein, Salena Glenn. (Id. at 270-280). Officer Atkins did not know if Appellant had been in the home prior to his observing her. (Id. at 315). Appellant was secured and placed in handcuffs, but Atkins did not search the vehicle at that time. (Id. at 275-277). Rather the vehicle was searched by Jeremy Bice, a Trooper with the Ohio State Highway Patrol.

Bice searched the SUV and found drugs "behind the front passenger seat, the left side of it, next to the center console, along the seat rail." (Tr. Vol. III, p. 480).

The drugs Bice found were eventually turned in for analysis at BCI in Bowling Green, Ohio. Sara Lipton, a forensic chemist at BCI, did the analysis and determined that the drugs Bice found in the SUV amounted to 136.43 grams of cocaine and 10.4 grams of a heroin/fentanyl mix. (Tr. Vol II, p. 457-465).

Stacy McCoy is a deputy with the Marion County Sheriff's Department and a member of the MARMET Drug Task Force. (Tr. Vol. III, p. 554).

McCoy was part of a team that executed a search warrant at 223 West Columbia Street on March 21, 2019, and during this time, she was wearing a body cam. (Id. at 555).

On that day, McCoy encountered Appellant at the scene as well as Illya Green, the target of the investigation. Prior to McCoy testifying, Green, who was in custody as a result of his case arising from these facts, (2019 CR 0116) was brought before the Court with counsel and exercised his Fifth Amendment right not to testify for Appellant in response to a subpoena previously issued.

McCoy's testimony was largely based on what she observed at the scene as well as her interview of Appellant. Appellant did admit to McCoy that the vehicle was hers (Tr. Vol. III, p. 571), but denied that the drugs found inside belonged to her. (Id.). In fact, McCoy testified that Appellant repeatedly told her, "not mine", as in "(i)t's in my car, but it's not mine.".

After McCoy's testimony concluded, the jury was excused and defense counsel was permitted to proffer her testimony regarding Illya Green. (Tr. Vol. III, p. 602). In the proffer, McCoy described her interview of Green, which took place while he was handcuffed at the 223 West Columbia address.

Green repeatedly told McCoy that Appellant had nothing to do with the drugs. (Id. at 604) Specifically, Green told McCoy, "Salena has got no deal in this. She's just in the wrong place at the wrong time." (Id. at 604).

The defense believed that Deputy McCoy, under Ohio Evid. R. 804, should be allowed to present the out of court statements made at the scene by the target, Illya Green, regarding Ms. Glenn's involvement. (Tr. Vol. III, p. 630-645). The trial court denied Appellant's request. (Id. at 643). McCoy was the last important witness for the state. The state rested its case on the record. (Tr. Vol. III, p. 709). The defense rested without calling any witnesses.

As stated above, Appellant is currently serving a twenty (20) year prison sentence, 7.5 years more than the target of the investigation.

ASSIGNMENT OF ERROR ONE

I. THE TRIAL COURT'S NUMEROUS ERRORS INVOLVING EVIDENTIARY ISSUES DENIED APPELLANT THE RIGHT TO PRESENT A DEFENSE THEREBY VIOLATING HER CONSTITUTIONAL DUE PROCESS RIGHTS TO A FAIR TRIAL UNDER THE STATE AND FEDERAL CONSTITUTIONS. (RECORD REFERENCE: TRANSCRIPT OF PRE-TRIAL (DATED 6/11/19), Tr. Vol. III, pp. 602-650)

Appellant wanted to assert a simple defense in this case. She was not a drug dealer. Any drugs found in the residence of 223 West Columbia Street or the Ford SUV (registered to her name) belonged to her boyfriend, Illya Green. Simply put, Appellant wanted the jury to believe that she was "in the wrong place at the wrong time" and though around drugs, she did not participate in the sale or possession thereof. To do so, Appellant wanted to present two important pieces of evidence: prior buys from 223 West Columbia Street and statements made by co-defendant Green at the scene during the execution of the search warrant .

As discussed during the June 11, 2019 pre-trial, video records existed which showed prior drug buys from the residence where the search warrant was executed. Appellant wanted to introduce this evidence, because it would have revealed that it was Illya Green, not Appellant, who was selling drugs from this location.

The second piece of evidence dealt with the statements made by Illya Green during the execution of the search warrant to Stacy McCoy, a deputy with the Marion County Sheriff's Department. Green's statements were elicited from Deputy McCoy during a proffer. (Tr. Vol. III, p. 602-620).

McCoy testified, outside of the presence of the jury, that Green repeatedly told her that Appellant had nothing to do with the drugs. Essentially, Green admitted to McCoy that Appellant was not involved in the sale of drugs, but rather she was merely his girlfriend. Green took responsibility as the drug dealer.

Green's statements were completely consistent with the intelligence of the MARMET Drug Task Force. McCoy testified unequivocally that Green was the focus of the investigation. (Tr. Vol. III, p. 581). Appellant wanted to introduce this testimony. Not only was it consistent with her defense, but it also was consistent with the law enforcement investigation, thereby bolstering her position.

Unfortunately for the defense, the trial court, inexplicably, refused to permit Appellant to introduce either of the above-referenced areas of evidence. As to Green's statements to Deputy McCoy, Appellant sought to introduce this evidence under Ohio Rule of Evidence 804(B)(3) which allows for the introduction of hearsay statements when the declarant is unavailable and there exists an indicia of reliability of said statements. For example, statements against the declarant's pecuniary interest can establish levels of

reliability to permit admissibility. Rule 804(b)(3) does not require that the information within the statement be clearly corroborated; it requires only that there be corroborating circumstances which clearly indicate the trustworthiness of the statement itself. U.S. v. Price, 134 F. 3d 340, 347 (6th Cir. 1998). As the Seventh Circuit observed in U.S. v. Garcia, 986 F. 2d 1135 (7th Cir. 1993), the corroboration requirement of this rule is a preliminary question as to the admissibility of the statement, not an ultimate determination as to the weight to be given to that statement. The Seventh Circuit held in Garcia that the trial court does not need to be completely convinced as a prerequisite to admission that the exculpatory statements are true. Rather, the trial court need only find that sufficient corroborating circumstances exist which indicate the trustworthiness of the statements. Then, it is the jury that may then make the ultimate determination concerning the truth of the statements.

In this case, Green had previously invoked his Fifth Amendment right and refused to testify. As such, he was to be considered "unavailable". The Court then refused to allow Appellant's Counsel to question Deputy McCoy regarding Green's statements to her. This prevented the jury from determining

the credibility of Green's out-of-court statements. Rather, the Court determined Green's statements were untrustworthy.

Of course, the Court made this finding *after* it had already denied Appellant the opportunity to receive in discovery the "prior buys" from 223 West Columbia. These prior buys would not only have shown that Green was the person selling drugs from the residence, but also help corroborate his statements to Deputy McCoy that he was the dealer and Appellant was innocent.

It strains credulity that the Court determined Green's statements were unreliable when the Court was aware of two things: 1) Green was the target of the investigation, and 2) the State had, in its possession, video recordings of Illya Green doing deals from the Columbia Street residence, which ultimately served as the basis for the warrant. This created an ironic and incompatible position for the State, on one hand arguing Green's statements were untrustworthy while on the other, in possession of video evidence which supported these admissions to McCoy.

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the

Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." Crane v. Kentucky, 476 U.S. 683, 689-690 (1990). (Quoting California v. Trombetta, 467 U.S. 479, 485 (1984). This right is abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purpose they are designed to serve. U.S. v. Scheffer, 523 U.S. 303, 308 (1988). In Holmes v. South Carolina, 547 U.S. 319, the United States Supreme Court reversed a conviction in which the defendant was barred from introducing certain evidence that implicated another person in the commission of the crime.

In the instant case, the trial court's rulings on the "prior buys" and the Evidence Rule 804(3) issue, both involving Illya Green were clear error and prevented Appellant from presenting a defense. Clearly, the "prior buy" videos should have been turned over to the defense to allow their use at trial. But, just as important, the "prior buy" videos could have assisted to proving the trustworthiness of Green's statements to McCoy. Appellant's position is that Green's statements were reliable and should have been introduced pursuant to Evid. R. 804(3) without the videos. That said, the combination of

the videos with Green's statements to McCoy would have allowed Appellant to present a very credible defense to the jury.

The Court's errors clearly prevented Appellant's right to a fair trial and violated Federal Constitutional law.

ASSIGNMENT OF ERROR TWO

II. THE TRIAL COURT ERRED IN IMPOSING A PRISON TERM CONSECUTIVE TO ANOTHER PRISON TERM BECAUSE THERE WAS NO FINDING THAT THE SENTENCE WAS *NOT* DISPROPORTIONATE TO ANY DANGER THE DEFENDANT MAY POSE TO THE PUBLIC AND THE TRIAL COURT FAILED TO IDENTIFY SPECIFIC REASONS IN SUPPORT OF ITS FINDING THAT CONSECUTIVE SENTENCES WERE APPROPRIATE. (Record Reference: Judgment Entry)

"The Ohio Supreme Court has repeatedly held that in imposing consecutive sentences, a trial court need not use the exact words of the statute, but it must be clear from the record that the trial court made the required findings and stated its reasons for its findings. *State v. Comer*, 99 Ohio St.3d 463, 2003 Ohio 4165, P21, 793 N.E.2d 473" *State v. Wirgau*, 3d Dist. Logan No. 8-05-04, 2005-Ohio-3605, ¶ 10. Appellant contends that the trial court neither made the appropriate findings to impose consecutive sentences nor supported the imposition of consecutive sentences for the record in

accordance with the requirement. A review of the transcripts indicate the trial court failed to articulate specific findings that consecutive sentences were necessary to protect the public and punish the offender.

Beyond that, in reviewing these factors, the trial court appears to reason that the imposition of the sentence is, at least in part, due to the fact that there was a lack of remorse by Appellant saying, "...the defendant has no remorse. I understand that she has maintained her innocence. She has the right to do that and has the right to appeal. But her comments in the PSI go beyond merely maintaining innocence. She even alleges in her letters that she was somehow set up. I would note that that's inconsistent with her jail mails, which indicate that she knew what was going on with her man, and her man told her to stay away from it. So I find no remorse also." (Sentencing Transcript, p. 12-13)

This places Appellant in the ultimate Catch-22: She is effectively being punished for maintaining her innocence while being in proximity of a crime, but then is also punished by not providing sufficient remorse. Either she is allowed to maintain her innocence or she can show genuine remorse, but failure to provide the opportunity then subsequently penalizing Appellant should not be used as a factor in the determination of the sentencing. As a

result, the Court failed to state, with specificity, the finding to support consecutive sentencing.

ASSIGNMENT OF ERROR THREE

III. THE JURY'S VERDICTS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF THE UNITED STATES CONSTITUTION AND THE OHIO CONSTITUTION. (Judgment Entry)

Even when a verdict is supported by sufficient evidence, an appellate court may nevertheless conclude that the verdict is against the manifest weight of the evidence because the test under the manifest weight standard is much broader than that for sufficiency of evidence. *State v. Banks*, 78 Ohio App.3d 206, 214, 604 N.E.2d 206 (10th Dist. 1992); *Martin*, 20 Ohio App.3d at 175.

To determine if a criminal conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial granted. *State v.*

Thompkins, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), *quoting Martin*, 20 Ohio App.3d at 175.

"A reviewing court will not reverse a conviction where there is substantial evidence upon which the court could reasonably conclude that all the elements of an offense have been proven beyond a reasonable doubt." *State v. Eskridge*, 38 Ohio St.3d 56, 526 N.E.2d 304 (1988), at paragraph two of the syllabus. Further, the Ohio Supreme Court has specifically stated that a manifest weight argument is proper for appellate review in a case involving an affirmative defense. *See State v. Hancock*, 108 Ohio St.3d 57, 840 N.E.2d 1032, 2006-Ohio-160. While sufficiency review is based on due process, proof supportive of an affirmative defense does not detract from proof beyond a reasonable doubt of acts constituting the charged offense. *Id.* at 63, 840 N.E.2d at 1043.

Even if the Court feels that the verdict is supported by sufficient evidence, it should find that it is against the manifest weight of the evidence. "In assessing whether a verdict is against the manifest weight of the evidence, we examine the entire record, weigh the evidence and all reasonable

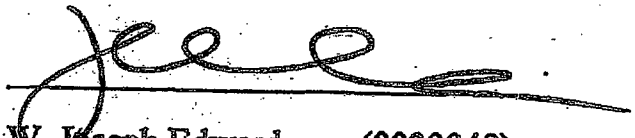
inferences, consider the witnesses' credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the verdict must be overturned and a new trial ordered." State v. Martin, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

Counsel has cited the relevant portion of transcript contained herein as to why the State believes the verdict was correct, however to preserve Appellant's rights for future review, seeks the Court to review the facts contained within this testimony to see if they establish all requisite elements of the offenses.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests this Court to sustain her assignments of error and remand this matter to the trial court consistent with this finding.

Respectfully submitted,



W. Joseph Edwards (0030048)
511 South High Street
Columbus, Ohio 43215
Telephone: 614/309-0243
E-mail: jedwardslaw@live.com

Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing has been served upon the following, by United States mail, this 8th day of May, 2020:

Ray Grogan, Jr. Esq.
Assistant Prosecuting Attorney
Supreme Court No. 0084002
Marion County Prosecutor's Office
134 E. Center Street
Marion, Ohio 43302
740/ 223-4290

Attorney for Plaintiff-Appellee

W. Joseph Edwards (0030048)

APPENDIX

Judgment Entry dated 09/16/19, CASE NO. 19 CR 122

APPENDIX F

In The Court of Common Pleas, Marion County, Ohio General Division, JUDGMENT ENTRY OF SENTENCING, dated March 19, 2021-Case No.19-CR-122

In The Court of Common Pleas, Marion County, Ohio General Division JUDGMENT ENTRY OF SENTENCING, dated September 17, 2019-Case No. 19-CR-122

IN THE COURT OF COMMON PLEAS OF MARION COUNTY, OHIO
GENERAL DIVISION

STATE OF OHIO, * **Case No. 19-CR-122**

Plaintiff, * **Judge Warren T. Edwards**

-vs- *

SALENA GLENN, * **JUDGMENT ENTRY OF SENTENCING**

Defendant. *

On August 22, 2019, this cause came on for trial before a jury on the charges contained in Counts 1, 2, 3, 4, and Major Drug Offender Specification as to Count 2 of the Joint Indictment. It is therefore ORDERED that the charges in Counts 5, 6, and Forfeiture Specification as to Count 5 are dismissed. At the conclusion of the trial, on August 26, 2019, the jury, having been duly impaneled and sworn, having considered the evidence produced on behalf of the State of Ohio and on behalf of the Defendant, and having been duly charged as to the laws of the State of Ohio, after due deliberation, agreed upon their verdict. In the presence of the Defendant and her attorneys, the verdict, signed by all members of the jury, was read to the Defendant. It was the unanimous verdict of the jury that the Defendant is "Guilty" of Count 1, Trafficking in Cocaine [R.C. 2925.03(A)(2)/(C)(4)], F1, "Guilty" of Count 2, Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1, "Guilty" of Major Drug Offender Specification as to Count 2 [R.C. 2941.1410], "Guilty" of Count 3, Aggravated Possession of Fentanyl [R.C. 2925.11(A)(C)(11)], F2 and "Guilty" of Count 4, Tampering with Evidence [R.C. 2921.12(A)], F3. The Court accepts the Jury's verdict. The Court hereby enters a judgment finding the Defendant **Guilty of Count 1, Trafficking in Cocaine [R.C. 2925.03(A)(2)/(C)(4)], F1, "Guilty" of Count 2, Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1, Major Drug Offender Specification as to Count 2 [R.C. 2941.1410], "Guilty" of Count 3, Aggravated Possession of Fentanyl [R.C. 2925.11(A)(C)(11)], F2 and "Guilty" of Count 4, Tampering with Evidence [R.C. 2921.12(A)], F3.**

Thereafter, on September 16, 2019, the Defendant appeared before the Court with her attorneys Rocky Ratliff and Edwin M. Bibler for a Sentencing Hearing in conformity with the provisions of Section 2929.19 of the Ohio Revised Code. Both the prosecuting attorney and the attorney for the Defendant were afforded an opportunity to present evidence and/or information relevant to the imposition of sentence in this case. The Court then gave the Defendant an opportunity to address the Court on her own behalf, and the Court then inquired of the Defendant in order to determine if the Defendant had anything to say as to why sentence should not be imposed.

The Court has carefully considered the record, the oral statements, and the presentence investigation report. The Court has also carefully considered the purposes and principles of sentencing in accordance with R.C. 2929.11 and the appropriate seriousness and recidivism factors in accordance with R.C. 2929.12.

EXHIBIT 51

Upon agreement of the parties, the Court finds that the offenses in Count 1, Trafficking in Cocaine [R.C. 2925.03(A)(2)/(C)(4)], F1 and Count 2, Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1, are allied offenses of similar import resulting from the same conduct and merge pursuant to R.C. 2941.25. The State elected to proceed to sentencing on Count 2, Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1.

Thereafter, on March 18, 2021, the defendant appeared before the Court with her attorney Joseph Edwards, for a re-sentencing hearing.

It is **ORDERED, ADJUDGED, AND DECREED** that Defendant, **SALENA GLENN**, is re-sentenced as follows:

Count 2: **Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1, Major Drug Offender Specification as to Count 2 [R.C. 2941.1410], to a mandatory term of 11 years in prison.**

Count 3: **Aggravated Possession of Fentanyl [R.C. 2925.11(A)(C)(11)], F2, to a mandatory term of seven (7) years in prison.**

Count 4: **Tampering with Evidence [R.C. 2921.12(A)], F3, to a term of 24 months in prison.**

It is further **ORDERED** the sentences in Counts 2, 3, and 4 imposed on the Defendant shall be served consecutive to each other, for a total aggregate prison term consisting of 20 years.

In finding that the sentences shall be served **consecutively**, the Court finds that consecutive sentences are necessary to punish the Defendant or to protect the public from future crime, and that the sentences are not disproportionate to the seriousness of the Defendant's conduct and the danger posed by the Defendant. The Court further finds that the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for either of the offenses committed as part of the course of conduct adequately reflects the seriousness of the Defendant's conduct.

IT IS FURTHER ORDERED that pursuant to R.C. 2929.18(A)(3) the Defendant shall pay a mandatory fine of $10,000.00 as to Count 2 and $7,500.00 as to Count 3, for a total of $17,500.00. The Defendant shall pay mandatory fine to the Clerk of Court's Office. The Clerk of Courts shall distribute the fine money to the law enforcement responsible for the arrest and prosecution of the Defendant, which the Court finds is the one-half to MARMET Drug Task Force and one-half to the Marion County Prosecuting Attorney.

The Court has advised the Defendant of all of the following: that upon her release from prison, the Defendant will be subject to a mandatory period of five (5) years of post-release control by the Parole Board. During any period of post-release control, the Defendant will be under the supervision of the Adult Parole Authority. If, after being released and while on post-release control, the Defendant violates the conditions of post-release control, the Parole Board may impose upon the Defendant a new prison term consisting of up to a maximum of one half of the stated

prison term originally imposed. If, while on post-release control, the Defendant commits another felony, the Defendant could receive an additional prison term of the greater of one year or the time remaining on post-release control, in addition to any other prison term imposed for the new offense.

IT IS FURTHER ORDERED that the Defendant be transported to the Ohio Reformatory for Women, Marysville, Ohio, for assignment to an appropriate penal institution. It is further ordered that the Defendant be given credit for **183** days of local jail (03/21/19-09/20/19) that she was confined through the date of sentencing for any reason arising out of this offense, plus any additional days the Defendant is confined between the date of sentencing and the date committed to the Ohio Reformatory for Women. The Defendant also previously served prison time from 09/20/19-03/18/21, for this offense.

The Court orally advised the Defendant of her right to appeal pursuant to Appellate Rule 4(B), and that her notice of appeal must be filed with the Clerk of this Court within thirty (30) days of the file-stamped date of this Entry.

Costs and appointed attorney fees are waived.

Judge Warren T. Edwards

cc: Justin Frey, Assistant Prosecuting Attorney
Joseph Edwards, Defense Counsel

FIREARM NOTICE TO DEFENDANT

Pursuant to R.C. 2923.13, Defendant is prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance. If prohibited, you will remain so even after you have been released from prison, community control sanctions, and/or post release control. You can only restore your right to possess a firearm by applying to the Court to relieve you from disability pursuant to R.C. 2923.14. Violation of this section is a felony and is punishable by a prison sentence and/or a fine.

Exhibit A

IN THE COURT OF COMMON PLEAS OF MARION COUNTY, OHIO
GENERAL DIVISION

STATE OF OHIO,

Plaintiff,

-vs-

SALENA GLENN,

Defendant.

2019 SEP 17 PM 3:37
JESSICA WALLACE
CLERK OF COURTS

Case No. 19-CR-122

Judge Warren T. Edwards

JUDGMENT ENTRY
OF SENTENCING

On August 22, 2019, this cause came on for trial before a jury on the charges contained in Counts 1, 2, 3, 4, and Major Drug Offender Specification as to Count 2 of the Joint Indictment. It is therefore ORDERED that the charges in Counts 5, 6, and Forfeiture Specification as to Count 5 are dismissed. At the conclusion of the trial, on August 26, 2019, the jury, having been duly impaneled and sworn, having considered the evidence produced on behalf of the State of Ohio and on behalf of the Defendant, and having been duly charged as to the laws of the State of Ohio, after due deliberation, agreed upon their verdict. In the presence of the Defendant and her attorneys, the verdict, signed by all members of the jury, was read to the Defendant. It was the unanimous verdict of the jury that the Defendant is "Guilty" of Count 1, Trafficking in Cocaine [R.C. 2925.03(A)(2)/(C)(4)], F1, "Guilty" of Count 2, Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1, "Guilty" of Major Drug Offender Specification as to Count 2 [R.C. 2941.1410], "Guilty" of Count 3, Aggravated Possession of Fentanyl [R.C. 2925.11(A)(C)(11)], F2 and "Guilty" of Count 4, Tampering with Evidence [R.C. 2921.12(A)], F3. The Court accepts the jury's verdict. The Court hereby enters a judgment finding the Defendant Guilty of Count 1, Trafficking in Cocaine [R.C. 2925.03(A)(2)/(C)(4)], F1, "Guilty" of Count 2, Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1, Major Drug Offender Specification as to Count 2 [R.C. 2941.1410], "Guilty" of Count 3, Aggravated Possession of Fentanyl [R.C. 2925.11(A)(C)(11)], F2 and "Guilty" of Count 4, Tampering with Evidence [R.C. 2921.12(A)], F3.

Thereafter, on September 16, 2019, the Defendant appeared before the Court with her attorneys Rocky Ratliff and Edwin M. Bibler for a Sentencing Hearing in conformity with the provisions of Section 2929.19 of the Ohio Revised Code. Both the prosecuting attorney and the attorney for the Defendant were afforded an opportunity to present evidence and/or information relevant to the imposition of sentence in this case. The Court then gave the Defendant an opportunity to address the Court on her own behalf, and the Court then inquired of the Defendant in order to determine if the Defendant had anything to say as to why sentence should not be imposed.

The Court has carefully considered the record, the oral statements, and the presentence investigation report. The Court has also carefully considered the purposes and principles of sentencing in accordance with R.C. 2929.11 and the appropriate seriousness and recidivism factors in accordance with R.C. 2929.12.

Upon agreement of the parties, the Court finds that the offenses in Count 1, Trafficking in Cocaine [R.C. 2925.03(A)(2)/(C)(4)], F1, and Count 2, Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1, are allied offenses of similar import resulting from the same conduct and merge pursuant to R.C. 2941.25. The State elected to proceed to sentencing on Count 2, Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1.

It is ORDERED, ADJUDGED, AND DECREED that Defendant, SALENA GLENN, is sentenced as follows:

Count 2: Possession of Cocaine [R.C. 2925.11(A)/(C)(4)], F1, Major Drug Offender Specification as to Count 2 [R.C. 2941.1410], to a mandatory term of 11 years in prison.

Count 3: Aggravated Possession of Fentanyl [R.C. 2925.11(A)(C)(11)], F2, to a mandatory term of seven (7) years in prison.

Count 4: Tampering with Evidence [R.C. 2921.12(A)], F3, to a term of 24 months in prison.

It is further ORDERED the sentences in Counts 2, 3, and 4 imposed on the Defendant shall be served consecutive to each other, for a total aggregate prison term consisting of 20 years.

In finding that the sentences shall be served consecutively, the Court finds that consecutive sentences are necessary to punish the Defendant or to protect the public from future crime, and that the sentences are not disproportionate to the seriousness of the Defendant's conduct and the danger posed by the Defendant. The Court further finds that the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for either of the offenses committed as part of the course of conduct adequately reflects the seriousness of the Defendant's conduct.

IT IS FURTHER ORDERED that pursuant to R.C. 2929.18(A)(3) the Defendant shall pay a mandatory fine of $10,000.00 as to Count 2 and $7,500.00 as to Count 3, for a total of $17,500.00. The Defendant shall pay mandatory fine to the Clerk of Court's Office.

The Court has advised the Defendant of all of the following: that upon her release from prison, the Defendant will be subject to a period of five (5) years of post-release control by the Parole Board. During any period of post-release control, the Defendant will be under the supervision of the Adult Parole Authority. If, after being released and while on post-release control, the Defendant violates the conditions of post-release control, the Parole Board may impose upon the Defendant a new prison term consisting of up to a maximum of one half of the stated prison term originally imposed. If, while on post-release control, the Defendant commits another felony, the Defendant could receive an additional prison term of the greater of one year or the time remaining on post-release control, in addition to any other prison term imposed for the new offense.

IT IS FURTHER ORDERED that the Defendant be transported to the Ohio Reformatory for Women, Marysville, Ohio, for assignment to an appropriate penal institution. It is further ordered that the Defendant be given credit for 180 days of local jail that she was confined through the date of sentencing for any reason arising out of this offense, plus any additional days the Defendant is confined between the date of sentencing and the date committed to the Ohio Reformatory for Women.

The Court orally advised the Defendant of her right to appeal pursuant to Appellate Rule 4(B), and that her notice of appeal must be filed with the Clerk of this Court within thirty (30) days of the file-stamped date of this Entry.

Court costs and jury costs are assessed to Defendant.

Judge Warren T. Edwards

cc: Ray Grogan, Jr., Prosecuting Attorney
Justin Frey, Prosecuting Attorney
Rocky Ratliff, Defense Attorney
Edwin M. Bibler, Defense Attorney

FIREARM NOTICE TO DEFENDANT

Pursuant to R.C. 2923.13, Defendant is prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance. If prohibited, you will remain so even after you have been released from prison, community control sanctions, and/or post release control. You can only restore your right to possess a firearm by applying to the Court to relieve you from disability pursuant to R.C. 2923.14. Violation of this section is a felony and is punishable by a prison sentence and/or a fine.

APPENDIX G

- Affidavit of Illya Green
  Case: 3:22-CV-00908-SL Doc# 14-1 page ID #520

- Interview with Illya Green
  Case: 3:22-CV-00908-SL Doc# 14-1 page ID #521

- Affidavit signed by Det. Scott Sterling, Marion Police Department
  Case: 3:22-CV-00908-SL Doc# 14-1 page ID #530,531

- *Transcript of Audiotaped Proceedings, Pretrial Motion
  Case: 3:22-CV-00908-SL Doc# 15 page ID # 792 thru PageID#829

- Case: 3:22-CV-00908-SL Doc# 15 Page ID # 1050-1051
- Case: 3:22-CV-00908-SL Doc# 15 Page ID # 1178-1179
- Case: 3:22-CV-00908-SL Doc# 15 Page ID # 1255-1254
- Case: 3:22-CV-00908-SL Doc# 15 Page ID # 1292-1293
- Case: 3:22-CV-00908-SL Doc# 15 Page ID # 1354-1355
- Case: 3:22-CV-00908-SL Doc# 15 Page ID # 1522-1525

Glenn presents these documents within the appendices in order to show that if the jury had been advised on hidden exculpatory evidence, there could have been reasonable doubt that Glenn would not have been convicted. Ohio Criminal Rule 16; Ohio Evid. R. 804; U.S.C.S Fed.Rules Evid. R. 801

I, Salena Nicole Glenn attests to sitting in a legally parked vehicle, forcibly removed at gunpoint, was not addressed as to an officer under oath, or never presented with a search warrant.

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. §1746; 18 U.S.C. §1621

Salena Nicole Glenn

Salena Nicole Glenn, #104431

Affidavit of Illya Green

I Illya Green after being duly sworn, hereby depose as follows;

1. I am an inmate at the Ohio Department of Corrections, A755-355 after being convicted in the Marion County Common Pleas Court in case No: 19-CR-0116.
2. I was indicted on Drug related charges alongside Selena Glenn.
3. Selena Glenn is innocent of the charges she was convicted of as it relates to the heroine and crack cocaine that was found in her vehicle.
4. Without her knowledge, I placed the heroine, and crack cocaine in a bag which I placed in the back of the middle row seat of her car.
5. I pled the 5th at her trial when called to testify because I did not want to self-incriminate myself.
6. During my sentencing however, I took full ownership and responsibility for the drugs, and told the judge that the drugs were mine.
7. I choose to write the affidavit not because I was threatened or promised anything, but because it is the right and honorable thing to do, and I cannot in good conscience allow my actions to be the reason why an innocent person is locked up.
8. I am willing to testify to the above stated facts at any hearing.

Illya M. Green

Illya M. Green

Sworn to and scribed in my presence this 1st day of April, 2020.

NOTARY

NOTARIAL SEAL STATE OF OHIO

Madeline N. Rhodes
Notary Public, State of Ohio
My Commission Expires 04-18-2020

Exhibit S

process of packaging the drugs for sale when the warrant was served.

4. The quantity of drugs located was not consistent with personal use.

5. During an interview with Illya he took ownership of the cocaine that was found in Salena's vehicle. Illya told me that he lived at 223 West Columbia Street and that he and Salena were in a relationship.

6. Salena denied that she placed the cocaine in her vehicle but did say "I don't know who's it is, I'm not telling, I'm not doing that." Salena admitted that she was not prescribed the Oxycodone pills and that she "bought them on the street."

7. Illya identified 2 cell phones as belonging to him and the phones were seized by Det. Lowe.

8. Based on my training and experience with the Drug Task Force I know that Drug Traffickers commonly use there cell phones as a way to communicate with those that they purchase drugs from as well as people they supply drugs to.

9. I am requesting a search warrant be issued to search the Samsung Galaxy S9 cell phone and blue Verizon cell phone belonging to Illya Green as I believe the phone contains evidence related to the possession and distribution of illegal drugs.

IN THE MUNICIPAL COURT OF MARION COUNTY, OHIO

THE STATE OF OHIO, :

-v- : Case No. 19-CRA-761

SALENA N. GLENN, : AFFIDAVIT IN SUPPORT OF ARREST WARRANT

DEFENDANT. :

MUNICIPAL COURT FILED MAR 22 2019 MARION, OHIO

I, Det. Scott Sterling, Marion Police Department, being first duly sworn and placed under oath, hereby swear that the following facts, in addition to those set forth in the Complaint filed herein, are true and support a finding of probable cause for the purpose of obtaining an arrest warrant:

On or about March 21, 2019, officers executed a search warrant at Illya Green's residence located at 223 West Columbia St in Marion. As officers breached the front door, Illya Green and Kevin Swift ran out of the living room towards the back of the house. Both men were taken into custody. Officers searched the residence starting with the living room. Officers found marijuana, heroin, a digital scale, and 12 grams of cocaine on the living room coffee table. Officers found a pyrex dish in the kitchen that contained several small chunks of suspected cocaine. Officers also looked in the microwave and noticed white residue on the glass plate. Officers also stopped Salena Green who was sitting in her parked vehicle outside of the residence. Officers noticed that Salena was reaching towards the back seat on the passenger seat side. Officers searched that area of the car and found a large bag of suspected cocaine. This bag was later weighed and found to contain 146 grams of cocaine. Officers also found a smaller bag of suspected heroin next to the bag of cocaine. Officers found a total of 158 grams of cocaine and 18 grams of heroin in Salena's car and the living room of 223 West Columbia St. Marion, Marion County, Ohio.

#25

Det. Scott Sterling
Marion Police Department

From:

03/22/2019 14:23 #528 P.005/005

CRA 19 761

NOTARIZATION

STATE OF OHIO)
) SS
MARION COUNTY)

Sworn to and subscribed before me a Notary Public for the State of Ohio on March 22, 2019.

Beverly James
Notary Public

BEVERLY JAMES
Notary Public-State of Ohio
My Commission Expires April 28 2023

MUNICIPAL COURT
FILED
MAR 22 2019
MARION, OHIO

IN THE COURT OF COMMON PLEAS

MARION COUNTY, OHIO

State of Ohio,

Plaintiff,

vs. : Case No. 19 CR 122

Salena Glenn,

Defendant.

- - -

TRANSCRIPT OF AUDIOTAPED PROCEEDINGS

Pretrial Motion

- - -

HONORABLE WARREN T. EDWARDS, Presiding

Tuesday, June 11, 2019
Marion County Courthouse
100 North Main Street
Marion, Ohio 43302

- - -

TRACI E. PEOPLES

PROFESSIONAL REPORTER

- - -

ANDERSON REPORTING SERVICES, INC.
1421 West Third Avenue
Columbus, Ohio 43212
(614) 326-0177

APPEARANCES:

RAYMOND A. GROGAN JR., Attorney at Law
JUSTIN FRYE, Attorney at Law
Marion County Prosecutor's Office
134 East Center Street
Marion, Ohio 43302
Telephone: (740) 223-4290
Fax: (740) 223-4299
E-mail: rgrogan@co.marion.oh.us

On behalf of the Plaintiff.

ROCKY RATLIFF, Attorney at Law
EDWIN BIBLER, Attorney at Law
Ratliff Law Office
200 West Center Street
Marion, Ohio 43302
Telephone: (740) 383-6023
Fax: (740) 383-2066
E-mail: attorney.ratliff@gmail.com

On behalf of the Defendant.

- - -

- - -

P R O C E E D I N G S

- - -

THE COURT: Okay. Hopefully, the last case on the docket today is State of Ohio v. Salena Glenn, Case No. 19 CR 122.

Will counsel enter an appearance, please.

MR. GROGAN: Raymond Anthony Grogan, Jr., Bar No. 0084002, Marion county Prosecuting Attorney, representing the State of Ohio, Your Honor.

MR. RATLIFF: Attorney Rocky Ratliff, Supreme Court No. 0089781, representing Ms. Salena Glenn, who is seated to my right. And to her right is Attorney Edwin Bibler from our office, Your Honor.

THE COURT: Very good. And we are here on the defendant's motion for additional discovery, namely, the supporting evidence and witness names from the search warrant in this case. Is that correct?

MR. RATLIFF: I guess if that's the way the Court wants to characterize the evidence, Your Honor.

THE COURT: All right.

MR. RATLIFF: I'm saying -- What I'm

saying, Your Honor, we're here for five video recordings of alleged drug buys that happened at 223 West Colombia.

THE COURT: Well, let me rephrase, Counsel. I'm not going to -- I'm not going to caption your motion the way -- by -- I mean, that's the gist of what you want; right.

MR. RATLIFF: Yeah. I want five video recordings of drug buys at 223 West Columbia.

THE COURT: Right. That are the basis for the search warrant; right?

MR. RATLIFF: They used them to get a search warrant, yes.

THE COURT: Right. Okay.

And would you want the name of the --

MR. RATLIFF: CI that was in the search warrant.

THE COURT: Right.

MR. RATLIFF: Yeah.

THE COURT: Okay. And I'm just making sure I've ruled on the other motions, which are motion for return of property. That's been done; correct?

MR. RATLIFF: Yes, it has.

THE COURT: Okay. So this is the only

outstanding motion currently on this case; correct?

MR. RATLIFF: Yep.

THE COURT: Okay. Well, then go ahead and proceed. It's my understanding, based upon reading the briefs, I don't believe that any evidence is necessary in this case. But I want to give counsel an opportunity for any oral argument on these motions before I make a ruling.

MR. RATLIFF: Yes. Thank you, Your Honor.

Again, what we were asking for was the five recordings and the identity of the CI. I think Criminal Rule 16 is pretty clear that the State has to turn over any material that's material -- any evidence that's material to mitigation, exculpation or impeachment.

I think the evidence that they currently have, which is the five videos, and also the CI, is needed for the defense's case. I believe the evidence shows -- is exculpatory in nature. I think it's material to this case. The evidence was used to get a search warrant.

And I think this goes to the State's argument. They're basically saying, "Hey, we got this evidence over here. But we're not charging

with it, so we don't have to give it to you."

I don't believe that's the law, Your Honor. In fact, I believe that's not the law or the Criminal Rule. Because the purpose of the rule is to have a fair trial.

The State has evidence that my client committed some drug trafficking in this case that's exculpatory in the fact she wasn't committing any drug trafficking, in particular at the place in question in the case, which is 223 West Colombia. And they have five incidences where she did not commit trafficking. I think it's exculpatory in nature.

Also --

THE COURT: Counsel, your argument is the absence of criminal conduct by your client on five individual occasions means that she didn't commit? Isn't that like a propensity argument?

Like -- I mean, if counsel over there were arguing, "Well, we have five examples of her trafficking in the past, doesn't that mean she trafficked this time?" You wouldn't -- You wouldn't -- You would be jumping up and down, telling me that's not admissible.

It sounds to me like you want to make a

propensity argument, "Well, here's five occasions she didn't commit crimes."

I'll put it another way. I drive to this courthouse every day. And, occasionally, I speed. But I can find five occasions where I didn't speed. You think those are admissible?

MR. RATLIFF: I think anything that has my client, the address or co-defendants in it, that relate to drugs and drug trafficking, is admissible in this case, Your Honor. Yes.

THE COURT: You think any example of your client trafficking or not trafficking at this address is admissible?

MR. RATLIFF: Yes.

THE COURT: So if they want to bring in 20 other examples of your client trafficking -- I mean, your client is indicted for a specific date in this case.

MR. RATLIFF: That's --

THE COURT: It's not a date range.

MR. RATLIFF: And I think the rules of evidence allow prior bad acts. I think the rules of evidence would allow in this --

THE COURT: Under very limited circumstances, and only where the -- where the

prejudice of such admission would -- the probative value would outweigh the prejudice.

And, Counsel, I don't know a defense attorney licensed in the state that thinks a prior criminal act being admitted wouldn't be, you know, incredibly prejudicial against their client.

MR. RATLIFF: I understand that argument, Your Honor. But this shows no prior criminal acts that --

THE COURT: But that's my point. So the 365 days a year I drive here, if five of them I don't speed, that's evidence that I didn't speed on one particular occasion?

MR. RATLIFF: And, Your Honor, under your example, if you drove here, that doesn't mean you're speeding.

So, in this case, just because we're in the residence, doesn't mean we're trafficking, doesn't mean that we're possessing anything.

THE COURT: Right. But my point is that this is about one -- this indictment and this trial is going to be about one day, March 21, 2019. I guess on or about that day, but one day. And evidence of other acts, short of some argument by counsel that convinces me that the relevance

outweighs the prejudicial value, is not going to be admitted.

MR. RATLIFF: Your Honor, all I can tell you will is, we have open discovery rules in the state of Ohio for a reason. Because the State has evidence that has my client in it, and they refuse to turn it over simply because she is not charged with that. That is not -- That is not the purpose and the thought process behind open discovery under Criminal Rule 16. And I think it's in violation with all the case law in Criminal Rule 16.

And in their brief, they cite the reason they won't give it is because they don't plan on calling the people to testify in any hearing or trial. But that doesn't mean the defense doesn't want to call them. I understand that they don't want to call them. I may want to call the people.

So they're not identifying all of the people that allegedly have been in this house when there's trafficking and possession going on and stuff like that.

THE COURT: Well, Mr. Ratliff, I guess what I'm getting at is, what I don't understand about your argument is, I see people in here all day long, and their PSI has, you know, three pages of

criminal conduct. And what you're telling me is that, if that criminal conduct occurred at that same address, the State over there is under some obligation to turn over every prior -- every piece of evidence they have about every prior criminal conduct?

MR. RATLIFF: No. That's not what I'm telling you, Your Honor. I am saying that they're entitled to -- we're entitled to discovery that has my client in it concerning criminal conduct and the co-defendants in this case, in the residence in question. This isn't you're having them turn over criminal conduct at the Dairy Queen.

THE COURT: On a different occasion, though.

MR. RATLIFF: No, I understand. With the same criminal pattern, Your Honor. That -- If the defense chooses to say she doesn't deal in drugs, and we don't deal in drugs, but yet we have evidence --

THE COURT: But that's a propensity argument. You're telling me --

MR. RATLIFF: All these people --

THE COURT: -- "I've always been law-abiding, therefore I'm law-abiding on this day,"

is what you're arguing. And that's not admissible under the rules of evidence.

MR. RATLIFF: What I'm saying, Your Honor, if our -- We are charged with multiple counts of trafficking and multiple counts of possession.

THE COURT: All on the same day.

MR. RATLIFF: And they have no evidence of trafficking. That's what I'm trying to tell you.

THE COURT: Well, I understand.

MR. RATLIFF: On that day or any other day.

THE COURT: I understand that that's your contention. But my point is, what does evidence on another day matter? We're talking about evidence of this day.

MR. RATLIFF: I understand. The evidence they have on other days, Your Honor, directly goes into a search warrant that they get to go get evidence of this day. So I don't see how evidence that was used to get a search warrant to go get other evidence is not able to be produced under Criminal Rule 16. We're entitled to it. We're in it. The co-defendants are in it.

They used this evidence to get more evidence, and they're now -- the State wants to

argue that the evidence just stops right here because we want it to, because we don't want to use this evidence over here, and we don't even want to show you the evidence.

There is no way that that is Criminal Rule 16. Everything under -- that we have asked for is allowable under the rule, Your Honor. Because the rule said it has to be material to mitigation, exculpation or impeachment.

THE COURT: As to the charged conduct.

MR. RATLIFF: Yeah. And they used this to go get the stuff that they charged her with. I mean, it directly is tied into what we're asking for, the charges in question.

THE COURT: Let me put it another way.

So if I'm a cop, and I have a search warrant to go search your house, and your co-counsel, Mr. Bibler, is there, and he's not involved in anything that occurs in the affidavit of the search warrant, but he's patted down for officer safety or whatever, and searched, and drugs are found on him during the search of your home, you're telling me that the search warrant is somehow applicable -- the evidence used to obtain the search warrant is somehow relevant to Mr. Bibler's case?

MR. RATLIFF: I think, under Criminal Rule 16, the way that you were able to search Mr. Bibler was through a warrant. So, yes. Because, otherwise, you have no legal right to search Mr. Bibler for any reason. So it's the way you -- it even led to him being searched. So, yes, Your Honor.

THE COURT: As opposed to just the existence of a search warrant?

MR. RATLIFF: Well, I mean --

THE COURT: Because my experience is that the body of the search warrant is usually redacted when it's admitted, that the sworn statement -- that the existence of the search warrant is generally known to -- to a jury, but the sworn statement alleging past criminal conduct is generally not admitted to a -- for a jury's consideration.

Is what you're telling me that you think that the jury should get to see all that stuff?

MR. RATLIFF: What I'm telling you, Your Honor, is I don't know what it is. Because we haven't been able to see it, even though my client and the co-defendants are in it. So I can't tell you what the jury is able to see or not see in the evidence, because we haven't been privy to the

evidence. Because they won't turn it over. So I don't know what the jury would be able so see. And I can make no comments to the evidence being admissible or not.

But, obviously, if there's statements in there where -- I mean, there is potential for any kind of statements in there, Your Honor, that totally exonerates my client. We don't know.

THE COURT: Statements from before the search --

MR. RATLIFF: From co-defendants.

THE COURT: -- are somehow going to exonerate conduct of your client at a future date?

MR. RATLIFF: Potentially. I don't know what's in there. And I think the law recognizes anything is within the realm of possibility.

THE COURT: What else do you want to say, Counsel?

MR. RATLIFF: That's it, Your Honor. Thank you.

THE COURT: On behalf of the State?

MR. GROGAN: Thank you, Your Honor. May it please the Court.

Ultimately, Your Honor, the -- we're talking about police reports, videos from uncharged

conduct, is essentially what this boils down to. The defense is attempted to -- they want these, as I understand it, narratives and body-cam footage and things, things that are referenced in the search warrant, from conduct that occurred prior to March 21st.

What I would say is -- in response, is this: 404(B) evidence, acts of other -- other bad acts evidence could only come if they fall into one of the MIMIC exceptions. Right? Like a mistake, identity, mode of operation, and so on.

If -- And the State, quite frankly, has to -- pursuant to the rule, has to provide written notice of our intention to use such evidence at trial to the defendant prior to trial.

And then, even in light of that, not only does it have to fall under one of those exceptions, and we have to give notice, the ultimate gatekeeper, in addition to that, Your Honor, is you. And you would have to do a probative or prejudice analysis to ensure that that evidence could come in.

The State is --

THE COURT: Let's be clear here, Mr. Grogan. You don't plan to present this evidence at all?

MR. GROGAN: That's correct. That is correct. The State has no intention of bringing up any other -- and -- any other evidence, other than what occurred on March 21st at 223 West Columbia Street.

In addition to that --

THE COURT: Does any of the conduct in any of this evidence -- is any of that conduct charged as part of the six counts in this indictment or the specifications?

MR. GROGAN: Everything that is charged in this indictment and the specifications relates to conduct on March 21, 2019.

THE COURT: So nothing that was used to obtain the search warrant?

MR. GROGAN: That's correct. The search warrant is executed. The evidence is located. And the conduct that is charged is solely conduct that occurred on March 21st. We have not charged any conduct that occurred prior to March 21st.

THE COURT: Do you understand that if you do not turn over the items that led to the search under the search warrant, other than the fact that the search was done pursuant to a search warrant, I'm not going to let in any other evidence regarding

the search warrant?

MR. GROGAN: Of course. Absolutely. And I think -- and, quite frankly, if we were to -- from a very practical perspective, this matter goes to trial, the State may -- as a matter of course, in questioning Detective Baldridge or Detective Lowe or any of the other detectives that are there, "What were you doing that day?"

"We had a search warrant."

That's about it. We -- The witness doesn't get to dive into that. I would not be introducing the --

THE COURT: I understand. But what I'm saying is, if any testimony is produced indicating that the search warrant was based on prior buys, I'm either going to make you turn over the evidence at that time, or I'm going to mistry your case at that time.

MR. GROGAN: Sure. Of course.

THE COURT: Do you understand?

MR. GROGAN: Without question.

We -- It is the State's intention, when this matter comes to trial, to try the conduct that occurred on March 21, 2019. The MARMET detectives understand that. My office understands that. The

State does not plan to introduce any conduct that occurred prior to this. That's just -- that is how we plan to proceed. The only evidence that we intend to produce at trial are the occurrences that occurred on March 21, 2019.

If we were to charge the conduct that is -- as alleged in that affidavit, if we were to do that, without question, we would -- Criminal Rule 16 would apply.

THE COURT: So the State has no argument or will be making no arguments as to modus operandi, with regard to this or any of the co-defendants and prior possessions or sales; is that correct?

MR. GROGAN: That's correct.

THE COURT: And you understand if you do, I will stop the trial and --

MR. GROGAN: Absolutely.

THE COURT: -- either mistry it or make you turn over that evidence.

MR. GROGAN: Absolutely.

THE COURT: What's your take on Mr. Ratliff's --

MR. GROGAN: If the State -- The State is not trying to have it both ways. And I mean that. The State is not trying to be disingenuous. If

we're not charging the conduct, we're not bringing up the conduct.

Even though, under 404(B), I understand the angst. We -- You know, the State would have the ability to try to do that. But this -- Here's what I can tell -- Here's what I can tell the defense counsel, the defendant, and the Court: If I or one of my assistants wanted to put on 404(B) evidence, we would comply with the rule and provide written notice. And immediately upon providing written notice of our intention to do that, we would provide them with all of the evidence for those other bad acts. That's the -- Because that's the way it works.

MR. RATLIFF: Your Honor, just --

THE COURT: I'm going to give you a chance to rebut, Mr. Ratliff.

MR. GROGAN: That's okay. He can go, Your Honor.

THE COURT: Okay.

MR. RATLIFF: I'm just -- I'm confused, I guess, as defense counsel, how we're at 404(B). Because we're talking about relevancy and being the gatekeeper and the trial being -- you know, the trial court being the gatekeeper. I don't have a

problem with any of that.

My problem is, we're talking about evidence under Criminal Rule 16 that we think we're entitled to that we haven't even seen. We can't even get to whether it's relevant or irrelevant. We haven't even seen it.

THE COURT: I understand your arguments.

MR. RATLIFF: That's where I'm at. I mean, I'm at --

THE COURT: I understand your arguments. And I'm going to ask Mr. Grogan a couple other questions.

MR. RATLIFF: Sure.

THE COURT: And you let me know if you think they're what you're getting at.

MR. GROGAN: If I may --

THE COURT: Let's talk about Rule 16.

MR. GROGAN: Okay. Let's talk about it.

THE COURT: He thinks he's entitled to this under Rule 16. What do you have to say about that?

MR. GROGAN: I disagree. Because it's not -- it's uncharged conduct. If you look at the bill of particulars that was filed on April 16th, we don't talk about anything prior to March 21st.

THE COURT: So, Mr. Grogan, do you feel that your office is required to turn over all prior evidence of bad or unbad acts, good behavior, that you're aware of, for every criminal defendant that you charge?

MR. GROGAN: No, Your Honor.

You know, and I think that, ultimately, you know, if we -- so as by way of example, it's -- I mean, if we had an individual charged with possession -- If we were to indict somebody this week for possession of heroin, for example, and it's the person's second time; and we know of another instance that occurred two months ago, we wouldn't -- but for uncharged conduct, there is an argument that, under 404, for lack of mistake, depending on what the defense would be, that the defendant would be entitled to narratives and other police reports as it relates to that uncharged conduct from two months ago. But they wouldn't be discussed at trial. And we wouldn't -- we wouldn't offer it under Criminal Rule 16.

Criminal Rule 16, in my opinion, relates to charged conduct. In this case, these counts are in the indictment, which all relate to March 21st. Everything that relates to March 21st, including the

affidavit which discusses prior incidents, has all been turned over. We have turned over everything as it relates to that day.

You know, I think if this -- as I said, if the State were to take this back to the grand jury and seek an indictment for these incidents that occurred then, then, without question, we would have to turn this over.

I just think, given the posture of the case, given the charged conduct, and given what the State intends to demonstrate at trial in terms of what date the conduct occurred, I do not believe that the State has to -- that, pursuant to Criminal Rule 16, the State has to produce this to the defendant.

THE COURT: Now, Mr. Grogan, I understand what you're saying. And you're telling me that all of the items Mr. Ratliff is requesting in this case are things that occurred prior to the day of the charged conduct, March 21, 2019; is that correct?

MR. GROGAN: That -- From looking at his motion for additional discovery filed May 31st, that's my understanding, Your Honor.

THE COURT: And you're representing this to me as an officer of this court?

MR. GROGAN: That's - Yeah. That's what I'm telling you. From my off-the-record conversation with Mr. Ratliff, and looking at his motion here, anything that occurred on March 21st -- narratives, pictures --

THE COURT: All right.

MR. GROGAN: -- whatever, has -- in my opinion, I believe has been provided.

THE COURT: Next question.

MR. GROGAN: Yes.

THE COURT: You, as the prosecutor, as well as all of your assistants, have an obligation, both under the rules and an ethical obligation, as well as a moral one, to turn over any exculpatory evidence --

MR. GROGAN: Of course.

THE COURT: -- that you have --

MR. GROGAN: Of course.

THE COURT: -- in every case.

MR. GROGAN: Of course.

THE COURT: Have you done that in this case?

MR. GROGAN: Yes.

THE COURT: Now, our system sets up the prosecutor as the gatekeeper for what is

exculpatory. The Court generally does not review that. You understand what's at stake when you make such a representation. Have you done that in this case?

MR. GROGAN: It is my good-faith belief that the State has -- is not in possession of -- with respect to the additional discovery -- of anything that would exculpate the defendant from her conduct on March 21, 2019.

THE COURT: Very good.

MR. GROGAN: The State would even go a step further, Your Honor. If the Court would -- and the defendant would like the Court to do an in camera inspection of these documents, the State would have no objection to that, to double-down on what it is that we're representing.

So I have no objection if the defense wants to consider that. The State has no objection to that. If the Court wanted to do an in camera inspection of these transactions and the narratives, the State has no objection.

THE COURT: Are you requesting that, Mr. Ratliff?

MR. RATLIFF: I am not requesting that, Your Honor. I'm just requesting what I'm entitled

to under Criminal Rule 16.

In particular, the State even put in their argument 16(B), which requires the disclosure of items related -- again, related -- to the particular case indictment information and complaint. I don't know how this is not related to the indictment and complaint, when they use the evidence to get a warrant to go get their charges. I mean, it's just -- it's baffling to me that this --

THE COURT: All right. Well, I just asked you a simple question. Are you requesting that? You're telling me you're not.

MR. RATLIFF: I am not requesting that, Your Honor.

THE COURT: Okay.

MR. RATLIFF: I think, in fact, it --

THE COURT: All right. Then I'm going to let Mr. Grogan finish his argument, and I will give you a chance to rebut.

MR. RATLIFF: And I just want to tell you why I'm not requesting that, Your Honor. I'm not requesting that, because then I think we're getting into stuff that may not be relevant or irrelevant, with the Court looking at it before. So, I mean,

that lists a whole bunch of other problems. The Court would see evidence that wouldn't come in to a trial. So I'm -- that's my reasoning for not asking for that, Your Honor. I just want to --

THE COURT: I think the case law has a presumption that the Court can only consider relevant evidence, even if it sees everything else.

But, anyway, Mr. Grogan, anything else you want to say with regard to --

MR. GROGAN: Nothing, Your Honor. Thank you, sir.

THE COURT: Very good.

Mr. Ratliff, rebuttal?

MR. RATLIFF: Yeah. Your Honor, I presented to the Court a Criminal Rule 16 argument; the State used a 404(b). I don't think we even get there without us seeing the evidence to even say what comes in and what doesn't.

I think the material contained as to the defendant is possibly exculpatory. And I understand the Court has said, rightly so, that the State is the gatekeeper of this evidence. I don't know if Mr. Grogan -- I don't think he said he personally saw this. So I don't know if he's seen this.

But, in this case, Your Honor, if this

evidence isn't turned over, it would allow the State and, in particular, the police department, to say whatever they want in affidavits. Because no one is there to check it, at all.

THE COURT: I think the Court has that obligation. And I believe I do it in every search warrant I sign.

MR. RATLIFF: Well, this evidence is not being seen by anybody but the State, Your Honor. And I think, in this case, the judge that did that, she did not see the evidence. It's just an affidavit.

And I think the case law is pretty clear that occasionally officers don't tell the whole truth. That's why there's good-faith exceptions and so forth. So if no one is seeing the evidence but the State, I think we're going down a very slippery slope.

THE COURT: I think that's where in camera inspections come in, isn't it?

MR. RATLIFF: It can. It can, Your Honor.

THE COURT: But you're not requesting one.

MR. RATLIFF: I am not requesting it,

because I don't think we're to that point. I think it's clear that I'm entitled to the evidence under Criminal Rule 16, for the reasons stated.

Thank you, Your Honor.

THE COURT: I just want to be clear. I mean, I think the next step, given that a CI is involved here and well-known risks with such activity, that the next step would be to have the Court look at it. And you don't want me to do that.

MR. RATLIFF: No, Your Honor. But I will let the Court know that we will be calling the CI, or we'll serve the department with the CI's number. And we'll have him here to testify, Your Honor.

Thank you.

THE COURT: Well, I'll deal with that subpoena and any subsequent motions if that happens. Because only relevant testimony will be admitted.

Here's -- Anything else anybody wants to say before I rule here?

MR. GROGAN: Nothing, Your Honor, thank you.

THE COURT: Very good.

Criminal Rule 16 requires each party to provide opposing counsel written witness lists, including names and addresses of any witness that it

intends to call in its case in chief or reasonably anticipates calling in rebuttal or surrebuttal. It does not require that all prior good or bad acts in possession of the State be turned over. Only relevant evidence needs to be turned or that which is exculpatory to the indicted charge.

In addition, I would note that Rule 16(B) says that -- the word "or" appears -- "are intended for use by the prosecuting attorney as evidence at trial." The prosecuting attorney has represented that none of this evidence will be used at trial. And the Court will enforce that representation.

I look at defense counsel's motion. He cites several cases in that motion. And I do agree that the Court does have a balancing act test to apply here. But when I look at the cases that are cited, each of these cases are situations where the charged conduct is the conduct involved in the indictment -- the indicted conduct is the conduct that's being withheld, being the CI. In each of the cases cited, it appears that the information is the identity of a CI, and that identity information is relevant in those cases, because the CI -- because the charged conduct is the buy done by the CI.

That is not what we have in the case at

bar. In this case, we are dealing with a search of a home. Counsel is free to challenge the validity of a search warrant. But that's -- That's not what we're dealing with here. We're asking for enforcement of Rule 16. This is not evidence that is relevant to the -- to the March 21, 2019, search of the home. And I don't believe that the State has to turn it over, and the interest of protecting the witness outweighs it.

The Court would have considered doing an in camera inspection in this case. But the defense specifically indicated that it did not want the Court to do that.

Therefore, at this time, the State does not have to turn over the recordings or the identity of the CI. If the defense issues the subpoena, I will deal with motions regarding it at a later time.

Folks, we are set for trial in this matter on June 25th. I am inclined to summons a jury, given that we are two weeks away from that date. And the parties don't seem anywhere near resolution in this matter.

But I'm also hearing that counsel intends to subpoena witnesses that may or may not be relevant to the events of March 21st. Are we going

to be ready for trial on June -- on June the 25th?

MR. RATLIFF: The defense will, Your Honor.

MR. GROGAN: I believe so, Your Honor.

THE COURT: Very good.

MR. RATLIFF: It's also our understanding that it will be a trial with the other two co-defendants that are indicted.

THE COURT: Well, that will depend on what happens on the other co-defendants' cases. Should they plea, or should their attorneys have motions -- I mean, your client has a right to a jury trial, but she doesn't necessarily have a right to have her case tried with other -- with the co-defendants. And one of those co-defendants has a brand-new attorney. So I don't know if Mr. Gjostein will be up to speed by June 25th. If he's not, then I may grant him a continuance and try the other two. You know, there is no right to be tried with the fellow people in your indictment.

MR. RATLIFF: But there is no motion to sever and have them --

THE COURT: Well, I think the Court can do it to sua sponte in the interest of justice. You're not waiving speedy trial, are you?

MR. RATLIFF: I don't know if we -- I thought we already did at some point.

THE COURT: I mean, I --

MR. RATLIFF: I'm not positive.

THE COURT: You're telling me your client is innocent, and I don't want to violate her speedy trial rights just because some other person fired their attorney and new counsel -- you know, a month before trial and new counsel needs understandable time to get up to speed.

MR. RATLIFF: I don't know the reason of Mr. Doyle's departure, Your Honor. I was simply asking that there was no severance. So I just assumed -- making sure and double-checking.

THE COURT: Well, I should say, for the record, he got off due to conflict. But --

MR. RATLIFF: So I'm just --

THE COURT: But, you understand, I wouldn't put you in that position, either, to make you try a case within a month, just because you were new and two other defendants wanted to go forward.

MR. RATLIFF: That wasn't my intent, Your Honor. My intent was to simply ask if all defendants were going forward on the same day. Because there's been no continuance or motion on

anybody's trial --

THE COURT: Well, what I'm --

MR. RATLIFF: -- that I know of.

THE COURT: What I'm telling you, Mr. Ratliff, is it would be -- If you're wanting a trial, then it would be this Court's intent to honor your wish. If a co-defendant wants a continuance, and it's justified, I may grant their wish. If, upon them getting a continuance, you want a continuance, I might do that. But I'm asking you today, should I summons a jury or not? And you're telling me you want a trial. If you're telling me you want to wait until when the co-defendants are set, which I think is --

THE BAILIFF: The 14th, Your Honor.

THE COURT: -- later this week, we can reconvene at that time.

But each of your -- each of these three co-defendants have their own rights. And I'm not going to violate one of their rights just out of judicial economy, so I only have to have one jury.

MR. RATLIFF: You can summon a jury, and my client will go forward, Your Honor.

THE COURT: Very good. That's what we'll do, then.

Would you like to be informed if the co-defendant is continued?

MR. RATLIFF: I would, Your Honor.

THE COURT: All right.

MR. GROGAN: I can let you know too. As a matter of fact, Rocky, I can call you after -- the 14th is Friday, right?

THE BAILIFF: Yes.

MR. GROGAN: Right. So I can call you after that and let you know.

THE COURT: Mr. Ratliff, if the co-defendant's attorneys need more time, are you going to want a continuance?

MR. RATLIFF: I would have to discuss that with my client, because she's obviously wanting -- doing time, Your Honor.

THE COURT: Okay.

MR. RATLIFF: (Inaudible.)

THE COURT: Well, what I want to do is save the County the expense of summonsing a jury --

MR. RATLIFF: And I think, with her, she's obviously going to -- with any person that's incarcerated, want to know what things are continuance-wise --

THE COURT: I understand.

MR. RATLIFF: (Inaudible.)

THE COURT: It will be as short as possible. But I don't -- like I -- I mean, Mr. Gjostein is brand-new on the case. I don't -- Has he even gotten discovery yet?

MR. FRYE: He has, Your Honor.

MR. GROGAN: I believe so.

THE COURT: Well, if you're telling me you might want a continuance, I'm going to wait until Friday to summons this jury.

MR. RATLIFF: That will be fine.

THE COURT: Because I don't want to -- I don't want your client to incur unnecessary expense, should she ultimately be convicted in this case. I'm not presuming her guilty or anything. I'm just trying to think about -- you know, summonsing a jury costs, you know, $1,000 or so. And those costs are frequently passed on to anyone who is convicted. And I don't want her to pay for two juries if she's convicted.

And I'm not implying that you're guilty, ma'am. I presume you're innocent, unless the State proves otherwise. But I don't -- Do you understand what I'm saying?

THE DEFENDANT: Yes. Are you talking to

me?

THE COURT: Yes.

THE DEFENDANT: Yes.

THE COURT: I don't want you to have to pay twice if you do have to pay. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Okay. So I will wait until we hear from counsel after the co-defendant's case on Friday, which is set at 1:30, I believe. And it is listed as a final pretrial. But, again, counsel is brand-new. So I will do what's necessary to make sure that Mr. Green has, you know, competent counsel. I won't want to retry any of these cases.

Anything else for the record?

MR. GROGAN: Your Honor, I would just say -- yeah, I personally have not reviewed those items. But I will look at those narratives and look at those videos myself personally. And I'm happy to report to the Court on the 14th, and Mr. Ratliff on the 14th, to find -- I do not have any knowledge, and neither does my assistant prosecutor sitting with me, Justin Frye, has any -- with respect to anything that would be exculpatory. But to double-down and confirm that, I will personally review it and personally try the case when it comes

up.

Thank you.

THE COURT: Thank you.

If the defense changes its mind about an in camera inspection, let the Court know, and I will take the time to do that myself as well.

MR. GROGAN: Thank you, Your Honor.

THE COURT: All right. I'll see everybody -- or, it sounds like, I'll hear from everybody on Friday, then.

MR. GROGAN: Thank you, Your Honor.

Thank you, Rocky.

THE COURT: Thank you.

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(End of recording.)

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C-E-R-T-I-F-I-C-A-T-E

I do hereby certify that the foregoing is a true, correct and complete written transcript of the audiotaped proceedings in this matter, reduced by me into stenotypy, to the best of my ability, and transcribed from my stenographic notes on the 9th day of January, 2020.

Traci E. Peoples

TRACI E. PEOPLES
Professional Reporter and Notary Public in and for the State of Ohio.

My Commission Expires July 15, 2024.

we're not getting into that. That's 404(B).

Is that clear enough?

MR. RATLIFF: Yeah, Your Honor. I just -- you know, for the purposes of the record, it's my understanding the Court is saying we can't get into the fact that they have buys into the house; buys with a co-defendant, not my client; and buys less than -- or attempted buys less than 24 hours. That's why they're there that day in particular, not some other day in the future. They're actually there that day because --

THE COURT: You can't get into it as a basis for the search warrant. If you want to open the door to you client's or her co-habitant's bad conduct, if you want to open that door, you know, and no one objects, maybe I'll let you get it in. I mean, if no one objects to you asking, "Hey, have you bought at this house before? Have you bought from my client before?" If no one objects -- I don't know why you would do that, Mr. Ratliff. But if you want to do that and no one objects, I'm not going to sua sponte rule. But what I'm telling you is, as regards to the search warrant, we're not going to talk about the basis for the search warrant. That's not appropriate. That's a matter

of law, not a matter of fact.

MR. RATLIFF: What -- I guess in the search warrant, Your Honor, would be a whole bunch of prior buys to the residence.

THE COURT: Correct.

MR. RATLIFF: Okay.

THE COURT: And I can tell you right now, if the State tries to get into prior bad acts at that house of your client or anyone else, and you object, it's 404(B). I'm going to exclude it.

If you get into it and they don't object -- which if I were standing over there and you wanted to bring up all of the bad conduct that ever happened at this house, I'd let you do it. If no one objects, I don't have -- I'm not going to sua sponte rule. But what I'm telling you is, the basis for the search warrant is off limits. It is a matter of law. I have ruled that this is a lawful search warrant. We're not going to get into why it was issued.

MR. RATLIFF: Okay.

THE COURT: So if you want to ask about prior buys, you can do that, but not within the context of the search warrant. Why you would want to do that, I don't know.

being first duly sworn, as hereinafter certified, testifies and says as follows:

- - -

DIRECT EXAMINATION

BY MR. DANIELS-HILL:

Q. Can you please state your name for the record.

A. My name is Sam Walter.

Q. How are you employed?

A. I'm a police officer with the City of Marion.

Q. How long have you been with the Marion Police Department?

A. About three years.

Q. And did you receive training in order to be a police officer?

A. I did.

Q. What was that training?

A. Basic peace officer training at the State Patrol Academy.

Q. And how long did that last?

A. About four months.

Q. And is this the only agency you've ever worked for?

A. I also worked for the City of Delaware

Police Department.

Q. What happened on March 21, 2019?

A. I assisted detectives from MARMET with a search warrant.

Q. Prior to executing the search warrant, did you have a meeting about going over duties and who was going to do what?

A. We did. We had a briefing for it.

Q. What kinds of things were discussed at that briefing?

A. We discussed the target house, what the search warrant was for, what each individual's role was going to be during the search warrant.

Q. And what was your role that day?

A. My role was to go to the west side of the house and break out a window that we believed to be the bathroom.

Q. And what's the point in breaking out the bathroom window?

A. To make sure no one goes to the bathroom to flush any evidence.

Q. So what happened when you went to the residence?

A. I broke out the window on the west side of the property.

MR. RATLIFF: Do you have another witness that we possibly could just ask for a recess on her and recall her?

THE COURT: I've already assigned myself to Monday. So we'll take a 10-minute recess, if that's sufficient.

MR. GROGAN: Yes.

THE COURT: I imagine that Ray could run down the street in 10 minutes and get it.

MR. GROGAN: That's the thing. I don't have access to it. Nobody will --

THE COURT: All right.

MR. GROGAN: That's the thing. The only one who has access to it is her.

THE COURT: All right.

MR. GROGAN: So I'm just going to ask her.

THE COURT: You can drive her down there. Are we ready, gentlemen?

MR. GROGAN: Yes. Thank you.

(End of conference in chambers.)

THE COURT: Ladies and gentlemen, we're going to take a short recess. I apologize for this. But we need about 10 minutes to get a few things in order. So, with that, all rise. And just finish

those doughnuts up for me back there.

(Jury leaves.)

THE COURT: Tom, kick that door, please.

All right. I'm going to give you until a quarter after. But, guys, this is -- I mean, this is ridiculous. You should have your exhibits together -- you know, marked. We're marking things on the fly.

MR. GROGAN: It's on me. It's on me.

THE COURT: I mean, this is a big case. We should be ready to go.

And number two, like, I don't understand why -- I mean, I've been trying trials for two decades, every bit as serious as this one, and why we're doing chain of custody right now is beyond me. Because my grasp of this case -- Granted, I don't know all the evidence, and I'm not trying to impede anybody's arguments; but this is a "not my drugs" case, not "the drugs were tampered with," not "the wrong drugs were tested." As least no one has made those arguments yet. I understand you've got to do your due diligence. But we're going into Monday, bringing these people back. And, at the rate we're moving, it could be Tuesday. Let's get it together, please.

approach?

THE COURT: Yes.

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The following discussion was held at the bench, out of the hearing of the jury:

MR. GROGAN: I just want to mention Item No. 3, the drugs found on the table -- I didn't ask her about any of that -- but we didn't redact that from the report. We need to redact that.

Rocky, you talked about that before.

THE COURT: I don't think it's a problem of further redacting being done. That should be sufficient.

MR. GROGAN: No, I agree. And the reason we didn't talk about this before was somebody -- I don't know which officer it was -- but somebody represented that the suspected heroin was on the table. And that's Item No. 3. And so, because we already mentioned it, we just kept it in the report. But I'm just --

THE COURT: Was she charged with -- Was it included in one of the counts?

MR. GROGAN: No. That's why we need to take it out.

THE COURT: I agree.

MR. GROGAN: You know, somebody mentioned it before. I just don't think it was communicated -- so, obviously, before we publish it, we probably need to strike those out.

THE COURT: Defense's thoughts on that?

MR. RATLIFF: Yes. I have no problem with further redaction. I won't really go into Item 3.

MR. GROGAN: Okay. So I think, for time's sake, we can just do the redaction later, and we'll make sure it's done before we publish it to the jury.

THE COURT: Is someone going to ask this lady why one item has both fentanyl and heroin in it and how we determine how much of each? Because I heard three cocaines, and one fentanyl and one heroin, in one weight.

MR. GROGAN: That's right.

THE COURT: I see someone that understands what I'm saying. It's your guys' case.

Anything else?

MR. RATLIFF: No.

MR. GROGAN: No, Your Honor.

THE COURT: All right.

MR. DANIELS-HILL: I just wanted to bring

issued the subpoena is satisfied, as long as the Court declares him unavailable to them, which I am willing to do, now that I have heard from Mr. Green that he will not testify.

Does the State have anything it wants to add?

MR. GROGAN: Not at this time, Your Honor.

THE COURT: The only other thing I have to say to Mr. Green and Mr. Gjostein is, we are scheduled for a suppression hearing on Monday. I'm still going to be in this trial. I think the best thing to do would likely be to reschedule that.

MR. GJOSTEIN: Yes. Actually, I'm glad you brought that up when not everybody is present. Because one of the decisions I was going to make on this was whether or not we would do oral testimony with respect to my suppression of the warrant. I'd like to get a copy of the transcript, at least for -- you know, not every witness, but certainly the detectives from MARMET that testified -- prior to making a decision and see what they said.

THE COURT: I understand. I will say that there has not been much testimony today about it. This Court essentially suppressed all testimony

regarding what led to the warrant. This case is about March the 21st and search of the house. We had hearings in this case regarding the issuance of the warrant and the defense in this case's request to turn over CI information. And that was all denied.

So if you want the transcript, you're welcome to it. But there isn't anything in the testimony regarding what led to the search warrant.

MR. GJOSTEIN: Okay. Well, at any rate, I would like to just review certain key --

THE COURT: How about this. How about this, Tom. How about if we send you the audio. And then if you want the transcript --

MR. GJOSTEIN: That's fine. Actually, that's fine.

THE COURT: It will save a lot of cost for everybody.

And if you want a transcript, I'll give it to you. But let's start with the audio.

MR. GJOSTEIN: That's perfect. Thank you.

THE COURT: All right.

MR. GJOSTEIN: I didn't think of that. Thank you.

decision, by our part, not to object. It was a very strategic decision. And it is what it is.

MR. RATLIFF: I understand in this case, Your Honor, the State has not wanted to present this jury with a full picture of anything. In fact, they've, at every turn, tried to keep evidence out, and for me even looking at evidence under the discovery rules.

So the fact that he says now, the last witness, all of a sudden we're not a target of the if investigation. And yet his own affidavit doesn't have us doing any transactions, is ridiculous.

THE COURT: Right. And that's an excellent point that you could have simply made by saying, "Where, anywhere, is her name on anything? The search warrant, anything?"

And the answer would have been a very good answer for you. But you decided to get -- violate my order and get specific about the bases for this order. And, because you did that, you got answers you don't like about your client that weren't discoverable about this. And you brought in 404(B) information on your own client.

I don't know if you're trying to set up an "ineffective assistance of counsel" claim, but

what I just saw in there is a prime example of it.

MR. RATLIFF: Which I take offense to any -- the Court bringing up any ineffective assistance of counsel. Because, quite honestly, I think we were entitled to it the whole time. We still are entitled to it. And --

THE COURT: Under what rule?

MR. RATLIFF: The State is withholding it.

Under the discovery rules of Criminal 16, Your Honor. And the fact that he has all this evidence and the State has all this evidence, and we're not even able to look at it, is utterly ridiculous, in my opinion. I understand that was your ruling on that prior hearing, but the fact that he says --

THE COURT: Right. And so you decided to willfully violate it, in the middle of this trial.

MR. RATLIFF: I did not talk about the warrant, Your Honor. I talked about his affidavit, sworn statements to the Court.

THE COURT: Yes.

MR. RATLIFF: I didn't talk about his --

THE COURT: That is exactly what I ruled on earlier, is that you were warned that if you

wanted to submit the warrant, you could. But it would be redacted as to the basis, because they were prior bad acts.

MR. BIBLER: Your Honor, in my understanding, what Detective Baldridge was testifying to, it was that Salena Glenn was the subject of an investigation. And then he went into that he had other evidence, other than what had been presented today. So that's what allowed Mr. Ratliff to go into, okay, what was that other evidence?

THE COURT: You can't open your own door. We're done here. You guys are done with this topic. You've got to move on. You can appeal on it. You can do whatever you want. But we're not talking to this jury any more about other acts of your client.

MR. RATLIFF: Okay.

THE COURT: We're going to do one more thing. Since we watched repairmen come out of the jury room, we're going to look in here, and we're all going to be satisfied that nothing was left.

(Counsel check room.)

THE COURT: Are you satisfied, gentlemen? I want that on the record.

MR. GROGAN: The State is satisfied, Judge.

THE COURT: Are you satisfied that there's been no tampering with anything in the jury room?

MR. GROGAN: The State is so satisfied.

MR. RATLIFF: It appears, Your Honor, I don't know the first individual --

THE COURT: I believe it was a MARMET detective.

MR. GROGAN: It was Jesse Allen.

MR. RATLIFF: Yeah. And he is here on a subpoena for us. I think he's probably coming in to see what time for his testimony.

THE COURT: All right.

MR. RATLIFF: And the other two, I believe, were workers for the elevator that is now broken. I think they were coming out because the shaft is actually in the jury room -- or the ladder to get to the roof.

THE COURT: If the workmen come back, Ms. Hoffman, my secretary, will supervisor their presence in the jury room. Is that okay with you?

MR. GROGAN: Fair enough.

THE COURT: But no officer is to be let back in chambers again during the period of the trial. You tell them to wait out -- And I will say,