10/23/26

No. 26- 557

IN THE

Supreme Court of the United States

DENNIS G. TILTON,

Petitioner,

v.

CITY OF EASTLAKE, OHIO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF OHIO,
ELEVENTH APPELLATE DISTRICT, LAKE COUNTY

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a state appellate court may reject a claim of suppressed evidence on the ground that counsel's failure to use that evidence was "trial strategy," and that "[f]or all we know" the evidence "w[as] available to appellant during discovery," where the defendant has told that court the opposite and the court has declined to employ the record-correction procedures available to it — and where the State played a booking recording to the jury, told the jury on the record that "[t]he jury has the video," and furnished the defendant, for his appeal, one minute and forty-four seconds of it.

2. Whether the Due Process Clause permits a conviction to rest on a stipulation to an element of the offense — here, the prior conviction that converts R.C. 4511.19(A)(2) into the count carrying the entire sentence — where the stipulation was signed outside the courtroom, the trial court stated on the record that it had never seen the document, no colloquy established the defendant's knowing and voluntary assent, the jury was instructed "[t]he parties have stipulated to this element of the offense; therefore, you are to accept this element as true," and the state appellate court held that the defendant's claim of duress "can only be raised in a petition for post-conviction relief" that no Ohio court will entertain.

3. Whether *Webb v. Texas*, 409 U.S. 95 (1972), is violated where a trial court, during a recess in the testimony of the defendant's sole corroborating witness and after striking her central answer, tells her she "will not be permitted to continue with [her]

testimony" and that the court's enforcement mechanisms "include[] a fine, a finding of contempt of court, and you can be jailed up to 30 days," after which defense counsel states he "will just ask a few questions," the examination ends within two pages, and no redirect follows — and whether Webb reaches a witness whose testimony is curtailed rather than prevented.

4. Whether a State may deny all review of a federal claim by directing it to a forum that does not exist, where the court of appeals held the claim could "only be raised in a petition for post-conviction relief," the municipal court that imposed sentence held it has no jurisdiction over such petitions, the court of common pleas held it is not the sentencing court, and the court of appeals then held that no court had jurisdiction at all.

PARTIES TO THE PROCEEDING

Petitioner is Dennis G. Tilton, the defendant-appellant below, appearing *pro se*. He is captioned below as "Dennis Gail Tilton."

Respondent is the State of Ohio, City of Eastlake, the plaintiff-appellee below, as captioned in the courts of Ohio. The prosecution was conducted by the Prosecutor for the City of Eastlake.

RELATED PROCEEDINGS

1. *State of Ohio, City of Eastlake v. Tilton*, Willoughby Municipal Court Nos. 24TRC04297 and 24CRB02089 — judgment of conviction and sentence entered January 16, 2025 (Cornachio, J.).
2. *State v. Tilton*, Eleventh District Court of Appeals, Lake County, Nos. 2025-L-016 and 2025-L-017 — affirmed December 8, 2025, reported at 2025-Ohio-5471; reconsideration denied January 29, 2026.
3. *State of Ohio, City of Eastlake v. Dennis Gail Tilton*, Supreme Court of Ohio No. 2026-0197 — jurisdiction declined by Entry filed May 26, 2026 (Kennedy, C.J.). **This is the judgment from which certiorari is sought.**
4. *Tilton v. State of Ohio*, Lake County Court of Common Pleas No. 25CV001105 — dismissed August 5, 2025 (Condon, J.).
5. *Tilton v. State of Ohio*, Eleventh District Court of Appeals No. 2025-L-112 — decided April 27, 2026; reconsideration denied August 5, 2026.

6. *State v. Tilton*, Supreme Court of Ohio No. 2026-1271 — memorandum in support of jurisdiction filed September 21, 2026; pending.
7. *State ex rel. Tilton v. Cornachio*, Eleventh District Court of Appeals No. 2026-L-0053 — original action for a writ of mandamus against Judge Marisa L. Cornachio and others; now pending in the Supreme Court of Ohio as No. 2026-1345.
8. *Tilton v. City of Eastlake*, N.D. Ohio No. 1:26-cv-2172 — civil action under 42 U.S.C. § 1983; pending (Hendershot, J.).

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OPINIONS AND ORDERS BELOW

The judgment entry of the Court of Appeals of Ohio, Eleventh Appellate District, filed August 5, 2026, is unreported and is reproduced at Appendix A. The opinion of the Eleventh District Court of Appeals of Ohio, entered December 8, 2025, is reported at *State v. Tilton*, 2025-Ohio-5471, and is reproduced at Appendix D. Citations in the form "¶ 48" are to the numbered paragraphs of that opinion; paragraphs of any other decision are cited by case name. The entry denying reconsideration, filed January 29, 2026, is unreported and is reproduced at Appendix D.

The Entry of the Supreme Court of Ohio declining to accept jurisdiction, filed May 26, 2026, in Case No. 2026-0197, is unreported and is reproduced at Appendix B. It states in full: "Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to Rule 7.08(B)(4)." It is signed by Chief Justice Sharon L. Kennedy.

The judgment of conviction and sentence of the Willoughby Municipal Court, entered January 16, 2025, is unreported and is reproduced at Appendix J.

JURISDICTION

The Supreme Court of Ohio declined to accept jurisdiction over Petitioner's appeal, No. 2026-0197, by Entry filed May 26, 2026, under S.Ct.Prac.R. 7.08(B)(4). App. B. That Entry is the final judgment of the highest court of the State of Ohio in which a decision could be had.

The copy of the Entry at Appendix B bears, in addition to the Supreme Court of Ohio Clerk's filing notation of May 26, 2026, a stamp of the Clerk of Court of Lake County dated June 12, 2026. The later stamp reflects receipt of the Entry by the clerk of the court of appeals and is not the date of the judgment.

Under Rule 13.1, the ninety-day period ran to August 24, 2026. On August 19, 2026, Justice Kavanaugh extended the time within which to file this petition to and including October 23, 2026 — the full sixty days Rule 13.5 permits. Application No. 26A207. This petition is filed within that period.

Jurisdiction is invoked under 28 U.S.C. § 1257(a). Each federal question presented was raised in the Memorandum in Support of Jurisdiction filed in the Supreme Court of Ohio on March 16, 2026, as Propositions of Law Nos. 2, 3, 4, 5 and 6, App. K, and each was raised in the Amended Brief of Appellant filed in the Eleventh District Court of Appeals on August 25, 2025, App. M.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides, in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; to have compulsory process for obtaining

witnesses in his favor, and to have the Assistance of Counsel for his defence."

The Fourteenth Amendment, Section 1, provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

Ohio Rev. Code § 4511.19(A)(2) provides, in relevant part:

> No person who, within twenty years of the conduct described in division (A)(2)(a) of this section, previously has been convicted of or pleaded guilty to a violation of this division, a violation of division (A)(1) of this section, or any other equivalent offense shall do both of the following:

STATEMENT OF THE CASE

Petitioner Dennis G. Tilton is seventy-two years old. He was tried by a jury in the Willoughby Municipal Court on January 13 and 14, 2025, and sentenced on January 16, 2025.

The trial transcript is paginated continuously across Volumes I and II. Citations in the form "Tr. 396:18-23" are to that pagination, page and line. Each page carries twenty-five lines. Relevant excerpts are reproduced at Appendix O.

A. September 8, 2024: The Stop

Petitioner was involved in a two-vehicle accident in Eastlake, Ohio. Eastlake police and Eastlake Fire Department personnel responded. The fire personnel were Lieutenant Kirk Lovick, a paramedic of eighteen years, Tr. 224:14-25, and Firefighter Jason Gvora, a paramedic of twenty-three years, Tr. 246:23-24.

The arresting officer, Patrolman Justus McGrath, recorded in his written report that EMS "let me know Dennis wanted to go to the hospital." App. P. He confirmed it on the stand: "EMS said that he was requesting being taken to the hospital." Tr. 187:16-17. Asked directly, "Did you ever take him to the hospital?", he answered: "No, we did not." Tr. 187:18-19. On cross-examination, confronted with his report's contrary statement that Petitioner had refused hospitalization, he conceded that Petitioner had initially told EMS he wanted to go. Tr. 191:12-17 (App. O). The two fire-department witnesses testified to the opposite. Lt. Lovick said he asked whether Petitioner wished "to be seen by anybody medically, be transported to the hospital," and that the response was "No," Tr. 231:11-15, and that the department could not complete an assessment because "He would not let us," Tr. 234:8-9. Firefighter/EMS Gvora testified that Petitioner "denied that he had any injuries and didn't want to go to the hospital." Tr. 252:3-6.

Petitioner was not transported and was not medically evaluated. No medical record of that night was ever created.

Petitioner testified at trial to the conditions that account for each observation the officers attributed to intoxication. He has had tinnitus since age twelve — "continual static in my ears" — leaving him deaf in one ear and unable to differentiate rapidly spoken words. Tr. 327:23-328:16. He told the jury: "When I try to ask questions, it makes people very confused, and they become argumentative, as if I'm accusing them of something." Tr. 328:22-24. A 1980 construction accident rotated and compressed a vertebra, ending his occupation, Tr. 330:18-21; because of it, "I have to plan each motion before I do something, because if I move too quickly doing something, I can actually slip my back out." Tr. 332:6-9. That same limitation led him to direct an apprentice, Dominic, into spaces aboard the boat he could no longer reach himself. Tr. 320:25-321:13. Petitioner is urinary catheter dependent, testifying that he must insert a catheter into the urethra to bypass an enlarged prostate that "closes off the urethra and prevents urination," and that "I cannot do it voluntarily." Tr. 325:2-6. Without it the pressure is "an incredible amount . . . that cannot be relieved," Tr. 325:17-18, leaving him "[v]ery agitated." Tr. 326:4-6.

Every state witness described the encounter in the same standardized vocabulary: odor of alcoholic beverage, glossy or bloodshot eyes, slurred speech, uncooperative, argumentative, refused. Only Petitioner's testimony supplied the medical explanation for each observation.

No field sobriety tests were performed. Tr. 285:17-18. Lieutenant John McCauley, the second officer on

scene, acknowledged that Petitioner was "allowed to refuse those tests." Tr. 286:6-8. Petitioner was not told he was under arrest before McCauley drew his taser and projected its laser at Petitioner's chest, Tr. 285:23-286:12, and McCauley obtained what he called "immediate compliance once the laser beam was placed on his chest," Tr. 286:11-17. Asked whether Petitioner had been combative, McCauley answered: "Nothing combative. Just verbally argumentative." Tr. 275:22-24. When Petitioner had difficulty entering the cruiser, McCauley "had to pull his head downward" and "push down into his stomach to kind of get that bend." Tr. 279:1-8. What the officers described as resistance was, as Petitioner told the jury, his preparing "for the stress and pain and agony of doing it." Tr. 332:2-3.

After searching Petitioner's pockets, McGrath found a catheter in his pocket and placed it on the patrol car. Asked when the car had last been washed, he answered, "I have no idea"; asked whether it was "probably pretty dirty," he answered, "Possibly, yes." Tr. 194:6-19. Petitioner testified that a non-sterile catheter means "I run the risk of infection." Tr. 326:7-9.

B. September 8-9, 2024: Booking

Petitioner was secured in a cell while another arrestee was processed, "yelling at us about giving him his catheter." App. P. The officer attempted to read the BMV 2255 advisement form while the catheter was withheld. *Id.* He testified that he was not "able to get through the reading of that form initially," that Petitioner "was asking for his catheter during the entire time," and that he got through

"maybe the first sentence." Tr. 161:6-23. He then left. Tr. 162:6-10.

The report records what he did next: he booked the other arrestee first "to allow Dennis to calm down," then returned the catheter and read the BMV 2255 form with a witness officer present. App. P.

Asked whether, as Petitioner was asking for the catheter, he had said "you're going to wait, bud," the officer did not deny it; he answered that another arrestee was being processed. Tr. 195:12-22. Asked whether, on returning, he "held it up and made him say please," he answered: "Yes." Tr. 196:1-3. He agreed he had been "frustrated and letting off steam." Tr. 196:14-16. The device had remained in his car or in the booking room. Tr. 162:23-25.

The officer told the jury the delay was "about five, six minutes." Tr. 162:11-13. He twice fixed that interval not from Petitioner's requests for the catheter but from a later moment: "about five, six minutes after, **he said he had to urinate**," Tr. 162:11-13, and again, "Yes, **after he said he had to urinate**," Tr. 163:2-5.

When the advisement was finally read, Petitioner did not understand it. The officer testified: "Once I completed, he said he did not understand what — he didn't understand the section I just read to him and **that I was slurring my speech.**" Tr. 163:18-20. "He said, I do not understand." Tr. 163:25. The report records the same exchange, and its conclusion: "I said so you are refusing, **he said I can't refuse if I don't**

understand." App. P. Petitioner also declined to sign the form "because he does not understand." *Id.*

His written report states that when he removed the catheter from Petitioner's pocket he "ensured him it would be coming with him." App. P. It records no delay, no condition, and no demand that Petitioner say "please."

C. September 9 and 16, 2024: The Case File

Charges were filed the next day in two cases. The Willoughby Municipal Court's certified docket shows, in each, an entry dated **September 9, 2024: "POLICE REPORT FILED."** App. Q. The same docket shows, in the OVI case, "BMV 2255 FILED" on that date. *Id.*

On September 16, 2024, the trial court sustained Petitioner's motion to preserve evidence: "THE COURT FINDS DEFENDANT'S MOTION TO BE WELL TAKEN AND THEREFORE, SUSTAINS THE SAME." *Id.*

D. The Charges and the Count That Carries the Sentence

Four convictions resulted. In No. 24TRC04297: count one, operating a vehicle under the influence, R.C. 4511.19(A)(1), a first-degree misdemeanor, by jury; count two, operating a vehicle under the influence **and refusing to provide a breath or blood sample**, R.C. 4511.19(A)(2), a first-degree misdemeanor, by jury; and count three, lanes of travel, R.C. 4511.25(A), a minor misdemeanor, by the

court. In No. 24CRB02089: resisting arrest, R.C. 2921.33(A), a second-degree misdemeanor, by jury. App. J.

The arresting officer confirmed to the jury that there were two OVI charges — one for the refusal, one for operating. Tr. 168:14-19.

Counts one and two merged, and the trial court sentenced on count two because, in its words, "Count two carries greater mandatory sentencing penalties as outlined in the statute." App. J. Petitioner's entire sentence — a $1,000 fine, thirty days in the Lake County Jail, a three-year license suspension, eighteen months of community control, and $500 in restitution — rests on R.C. 4511.19(A)(2).

That offense has three elements. The defendant must have a qualifying prior conviction **within twenty years**; he must operate a vehicle under the influence; and, after arrest, having been asked to submit to a chemical test **"and being advised by the officer in accordance with section 4511.192 . . . of the consequences of the person's refusal,"** he must refuse. R.C. 4511.19(A)(2). The first element came in by stipulation. The third rests on the booking sequence described in Part B.

E. January 13, 2025: The State's Case

Counsel told the court Petitioner had arrived: 'I spied him out the window in the parking lot. I'm not positive, but I think it may be him.' Tr. 5:2-4. When Petitioner reached the courtroom and attempted to address his health, the court had already been

notified of his conditions. Defense counsel, rather than advocating for Petitioner's health claim, suggested the court require 'a doctor's confirmation that he's not playing games,' Tr. 5:8-13, after which the court declared Petitioner in violation of his bond and immediately proceeded to trial with 50-plus prospective jurors waiting. Tr. 9:11-21.

The prosecutor told the jury in opening statement that Petitioner "has a prior conviction within 20 years," Tr. 126:16-17 — minutes after the court instructed that opening statements "are not evidence," Tr. 123:5-10 — and that "[b]ased on his continued lack of understanding and being argumentative, that response was treated as a refusal," Tr. 126:1-3.

The arresting officer was then asked on direct, immediately after establishing that one of the two OVI counts was "for the refusal": "Are you aware of whether the defendant has a prior OVI conviction within the last 20 years?" He answered, "Yes." Tr. 168:20-22. The question was leading, it was not framed as a stipulation, and no objection was made.

The State's Exhibits 4a and 4b are booking videos — the general booking area and the cell. Tr. 177:2-5. The State played portions to the jury, navigating within them by elapsed time: Exhibit 4a at "17 minutes, 33 seconds," "18 minutes, 20 seconds," and "19 minutes, 3 seconds," Tr. 177:24-179:20; Exhibit 4b at "4 minutes, 22 seconds," "7 minutes, 44 seconds," "14 minutes, 10 seconds," "15:42," "27:35," "30:13," "31:42," "31:55," and finally "**the 32 minute, 51 second mark**," Tr. 179:25-181:17 (App. O). Stopped

at that last mark, the officer confirmed that Exhibit 4b was the recording on which he "read the defendant the BMV 2255 form" and "treat[ed] it like a refusal." Tr. 181:18-23. Asked whether the stumble he had described was "able to be seen on the booking video," he answered: "No." Tr. 178:14-25, 179:1-18.

On cross-examination, defense counsel marked the arresting officer's report as **Defendant's Exhibit A**. The officer identified it: "Yes, this is my narrative." Tr. 193:2-6. Counsel directed him to the paragraph describing the handcuffing and asked whether anything in it noted resistance. He answered: "At this point, no." Tr. 193:7-11; 194:1. Counsel also established that the report is "a record of the case" that the officer reviews before testifying and writes "to the best of your effort at the time." Tr. 192:18-25.

At the close of the day the court admitted the State's exhibits one by one — the aerial photograph, both BMV 2255 exhibits, the 911 call, and both recordings — concluding, "Well, all the exhibits, then, are going to be admitted without objection." Tr. 291:21-22. **Defendant's Exhibit A was never moved, never ruled upon, and never admitted.** The exhibit index records it as offered at page 193 with the admission column blank, and it is mentioned nowhere in the remaining 245 pages of trial.

The court then said: "**The stipulation. I have not seen that.** Have you reviewed it, Mr. Bangerter?" Tr. 291:23-25. By then the arresting officer had already testified to its subject. The court read the document aloud, observed that "[t]hat's signed by the prosecutor, counsel, and the defendant," accepted it,

and directed that it "be read to the jury first thing tomorrow morning." Tr. 292:17-19. Petitioner had signed it outside the courtroom, under the notation "Under Duress." App. N. The court did not remark on that notation, and no colloquy was conducted with Petitioner then or at any later point.

F. January 14, 2025: The Stipulation, the Defense Witness, and the Defense Case

The stipulation was read to the jury:

> There is a stipulation of the parties and it states, "We, Defendant Dennis G. Tilton and the attorneys for the respective parties, do hereby stipulate to the following without the necessity of testimony or other evidentiary documentation:
>
> "That the Defendant, within twenty years of the offenses charged, has previously been convicted of or pleaded guilty to the offense of Operating a Vehicle While Under the Influence of Alcohol, Drugs, or a Combination of Them."
>
> And that stipulation is signed by the parties.

Tr. 303:2-15. The State rested, and the court immediately said, "Mr. Bangerter, would you call your first witness, please." Counsel answered, "The defense calls Joanne Arnett." Tr. 303:19-24.

Joanne Arnett Tilton — Petitioner's wife with whom he has cohabited for 41 years, Tr. 305:8-20, and who

retained her name at marriage and is referred to in the transcript as Joanne Arnett — accompanies him to his physicians. She was the only witness besides Petitioner who could describe his conditions from direct observation, and she took the stand within seconds of the jury's hearing the stipulation read aloud.

Her first substantive answer concerned Petitioner's prediabetes. Tr. 306:8-13. The State objected; the answer was struck. The jury was removed. The court gave her "one verbal warning regarding your decorum and your conduct in this courtroom," Tr. 309:17-25, told her "you will not be permitted to testify here" if she could not comply, Tr. 311:2-5, and then:

> If you cannot follow the rules, and it goes beyond that, there are other ways by which the Court will enforce the rules. **That includes a fine, a finding of contempt of court, and you can be jailed up to 30 days.**

Tr. 311:8-13. Counsel, asked whether he wished to say anything further or needed a minute with his witness, answered that the court had been clear and added: "**I will just ask a few questions.**" Tr. 311:18-23. He did. Her remaining direct examination occupies only two pages. On cross-examination, as she began to answer "Correct. But I did —," the prosecutor interrupted: "Just yes or no." Tr. 315:5-10. There was no redirect.

Despite the threat of contempt, Arnett testified in the two pages that remained that when Petitioner's blood

sugar is low "he becomes very irritable" and that without "the proper amount of food and liquid, the situation is just exacerbated," compounded by his need for a catheter to urinate, Tr. 312:17-25; that he is "deaf in one ear, and doesn't hear well out of the other ear," causing him to appear irritable "because he can't hear what you're saying," Tr. 313:4-8; that she recognized the smell of his breath as consistent with low blood sugar or a catheter infection, not alcohol, Tr. 313:9-20; and that she could not remember the last time she saw him consume alcohol, Tr. 313:21-24.

Petitioner testified at trial to the conditions that account for each observation the officers attributed to intoxication. Testimony established that on the day of his arrest, he had spent the entire workday performing marine engine maintenance and brightwork on a boat, using caustic chemicals including ketone, acetone, gasoline, diesel fuel, and concentrated bilge cleaner in an enclosed environment with limited ventilation. Tr. 319:12-320:4. These chemicals create burning effects to the eyes and skin upon exposure. Tr. 320:5-12 Petitioner testified he worked with bare hands for dexterity and cleaned up "the best you can later." Tr. 320:11-12. This occupational chemical exposure directly accounts for the physical signs officers later attributed to alcohol intoxication — reddened eyes, skin irritation, and chemical odor.

Petitioner testified he had consumed no food since breakfast and no fluids throughout the workday. Tr. 322:2-3, 10-11. The collision occurred when Petitioner sneezed while turning into direct sunlight at the

intersection of Lake Shore Boulevard and Erie Road. Tr. 322:16-323:1. Petitioner then detailed for the jury his medical history, including a 1989 prediabetes diagnosis and a 2001 diagnosis of benign prostate hyperplasia requiring use of a medically prescribed catheter. Tr. 323:22-324:14.

On cross-examination of Petitioner the prosecutor demanded medical records in open court; when he began to explain — "I asked if I could bring that in, and I was told —" — she cut him off: "Okay, I'm not asking that." Tr. 335:11-336:1. The specific demand was: "Yes or no. Is it here today, for the jury?" Tr. 335:23-25. He answered: "I'm sorry, I can't answer that question." Tr. 336:1. The court of appeals later faulted him for producing no documentation. ¶ 19. Minutes later Petitioner told the court he had not eaten, Tr. 339:20-21, and asked whether the air conditioning could be turned off, Tr. 340:5-6. The court excused the jury and took the matter outside its presence. Tr. 340:16-341:20.

At sidebar the court put on the record that Petitioner had just finished testifying to "numerous self-disclosed health issues" and that "[w]e don't have any information on that other than what he has disclosed here." Tr. 341:25-342:4. **The court then observed, in its own words — not Petitioner's** — that he was "shaking, indicating that he's cold," and summoned the Willoughby Fire Department. Tr. 342:6-9. Petitioner did not leave the witness box; EMS examined him in the courtroom (not by qualified doctors knowledgeable in his extenuating medical conditions, Tr. 339:12-16) while he remained in it. Tr. 342:24-343:3; 343:17. Defense counsel, not EMS itself,

then relayed to the court: "I spoke with EMS. They checked his blood sugar, they checked him out. He was feeling a little bit better and would like to proceed." Tr. 343:4-8. No EMS witness testified to that assessment in EMS's own words. The jury returned and cross-examination resumed. Tr. 343:23-344:7.

On cross-examination, the prosecutor played Exhibit 4b to its thirtieth minute and pressed Petitioner for five pages on whether he had understood the advisement — the same recording he later received (totaled) one minute and forty-four seconds. Tr. 349:10-17, 350:5-11, 351:1-5. 352:1-7. 353:10-22, 354:3-8 (App. O).

Petitioner later testified that he had not understood the advisement: "I did not understand what he meant, by his slurred words to me, a person talking through a solid plexiglass door, in an echoing jail cell . . . So I could not understand everything he said, except 20 years, and that's what stuck in my brain." Tr. 353:10-22. There was no redirect. Tr. 354:6-8.

When testimony resumed, counsel renewed his Crim.R. 29 motion, telling the court that "we had two additional witnesses detailing medical issues and the reasons for the observation of the officer that should provide an alternate view other than being intoxicated." Tr. 355:18-25. Defense witness Dominic was never called.

In final closing, the prosecutor argued the absence of the records she had demanded: "You heard a lot of testimony about different medical conditions. **You**

have not heard testimony about medical records documenting these medical conditions, or medical experts." Tr. 383:21-25. She also told the jury that "EMS Gvora and Lieutenant Lovick, their testimony was the defendant never asked them to go to the hospital." Tr. 384:6-8.

The court instructed the jury that "[i]t need not be shown that the person understood the consequences of his or her refusal," Tr. 396:9-11, and that a refusal "need not have been knowingly and intelligently made," Tr. 396:16-17. The court also instructed the jury: "The parties have stipulated to this element of the offense; therefore, you are to accept this element as true." Tr. 396:21-23.

G. January 16, 2025: Sentencing

At sentencing, without prior notice, the court also adjudicated count three, lanes of travel, R.C. 4511.25(A), as a bench trial, no hearing noticed, no opportunity to contest the finding afforded. Tr. 419:7-11.

The court called an unsworn victim advocate by name without introduction: "I will start with Ms. Marshall." Tr. 419:15-16. She stated, without oath or credentials: "The victim is present in court today. There is restitution that is owed to her. She is owed a $500 deductible." Tr. 419:21-23. The court imposed 180 days with 150 suspended, thirty to be served, and ordered $500 in restitution on a collision the police report classified as non-injury. (App. P).

H. March 2025 - April 2026: The Search for a Forum

On March 4 and March 12, 2025, while his direct appeal was pending, Petitioner moved the trial court to compel disclosure of exculpatory evidence under *Brady v. Maryland*. The court denied each motion in a single sentence: "In his pro se motion, Defendant raises claims that **are not properly before this Court.**" Judgment Entries of March 12 and March 14, 2025 (Cornachio, J.).

On May 15, 2025, the Eleventh District refused to add his post-trial materials to the record and directed that post-conviction petitions are "filed in the trial court where the sentence was imposed." On May 22 and May 29, 2025, that court — the Willoughby Municipal Court — treated a group of his filings, including a motion to compel disclosure of the police report and booking video, as a petition for post-conviction relief under R.C. 2953.21 and dismissed them for want of jurisdiction under *State v. Cowan*, 101 Ohio St.3d 372, 2004-Ohio-1583. App. G; App. H.

On July 31, 2025, the Eleventh District overruled his motion to supplement the record, identifying the material he sought as "a police report documenting repeated requests for hospital transport" and holding it "dehors the record." App. F. On August 5, 2025, the Lake County Court of Common Pleas dismissed his complaint because it was not the sentencing court, while acknowledging that *Cowan* "left an individual in Tilton's situation without a remedy." Judgment Entry, Aug. 5, 2025. On August 8, 2025, three days after that court acknowledged that *Cowan* "left an

individual in Tilton's situation without a remedy," Petitioner filed an emergency motion in the same court for relief under Civ.R. 60(B)(1), (2), (3), and (5). It was denied August 11, 2025, as "not well taken," without explanation. App. E. On April 27, 2026, in No. 2025-L-112, the Eleventh District held that no court had jurisdiction over his post-conviction filing. App. C.

After trial Petitioner had requested the booking recording in order to prosecute his appeal. He received **one minute and forty-four seconds.** He filed a certified exhibit-review and discrepancy log in the court of appeals documenting the difference and moved under App.R. 9(E) and 10(E) to settle and correct the record. App. L; App. F. The court of appeals did not employ those procedures.

I. The Decision Below

The Eleventh District affirmed on December 8, 2025.

On the medical evidence: the court faulted Petitioner for producing no medical documentation. ¶ 19.

On the booking recording: the court held that suppression of the booking video would not have changed the outcome, and that counsel's failure to play it was "a matter of trial strategy." ¶¶ 47-48.

On the suppression claim: the court assumed, "[f]or all we know," that the report and the video were available to trial counsel and simply not used, faulted Petitioner for not showing a "reasonable nexus" to the alleged *Brady* violation, and drew its statement of the

Brady standard from a dissent. ¶¶ 58-59, quoting *United States v. Olsen*, 737 F.3d 625, 628 (9th Cir. 2013) (Kozinski, C.J., dissenting), citing *Brady*, 373 U.S. at 87.

On the stipulation: the court acknowledged that "**the stipulation relieved the State of its burden of producing such testimony.**" ¶ 38. As to duress: "That is a matter dehors the record and **can only be raised in a petition for post-conviction relief.**" ¶ 39.

The court found Petitioner's challenges "arguably reasonable" in light of trial counsel's "reasonable and fair" Crim.R. 29 argument, yet held no evidence was "prejudicial." ¶ 75.

The court did not address the warning to the defense witness.

Reconsideration was denied January 29, 2026. App. D. The Supreme Court of Ohio declined jurisdiction on May 26, 2026. App. B.

REASONS FOR GRANTING THE WRIT

Each of the four questions presents an important question of federal law that has not been, but should be, settled by this Court. Sup. Ct. R. 10(c).

I. A Court May Not Presume the Completeness of a Record the Defendant Has Told It Is Incomplete

The Eleventh District rejected Petitioner's suppression claim in two sentences that cannot both be true of this record. It said "[t]here is nothing in the record before the court indicating that the State withheld any evidence," and that "[f]or all we know" the materials "were available to appellant during discovery, but counsel simply determined the 'evidence' was not useful." ¶ 59. It then held that counsel "could have requested that the full video be played to the jury. He did not, but we maintain such a decision is a matter of trial strategy." ¶ 48.

A. The premise of both holdings is that counsel possessed the evidence and chose not to use it. The record forecloses that premise as to the recording. Defense counsel told the jury in his opening statement: "And you'll see when we play the video that once he gets that device, he urinates for about a minute and a half." Tr. 128:21-23. He never played it. An attorney who tells a jury what a recording will show has decided to use the recording, not to withhold it. The court of appeals' characterization of that omission as "a matter of trial strategy," ¶ 48, is contradicted by counsel's own announced intention. The label "strategic" attaches only to a choice actually made. A characterization that "resembles more a *post hoc* rationalization of counsel's conduct than an accurate description of [his] deliberations" is owed no deference. *Wiggins v. Smith*, 539 U.S. 510, 526-527 (2003); see *Hinton v. Alabama*, 571 U.S. 263, 273-274 (2014) (per curiam) (omission resting "not on any strategic choice but on a mistaken belief" is deficient performance, not strategy).

The State navigated both recordings by elapsed time, out to "the 32 minute, 51 second mark" of Exhibit 4b. Tr. 179:25-181:17 (Statement §E). When Petitioner testified that he had asked for medical attention at the jail, the prosecutor answered the testimony with the recording itself — "That's incorrect," he said; "The jury has the video," she replied. Tr. 347:17-22. The jury had it. Petitioner, prosecuting his appeal, received one minute and forty-four seconds. A recording the State walked to its thirty-third minute is not a recording of one minute and forty-four seconds.

The recording does not corroborate the refusal element — it is the alleged refusal element. Stopped at the 32-minute, 51-second mark, the officer confirmed to the jury that Exhibit 4b was the recording on which he "read the defendant the BMV 2255 form" and "treat[ed] it like a refusal." Tr. 181:18-23 (Statement §E). The officer's own testimony reveals the refusal was a characterization, not a fact: the word was the prosecutor's, and asked why he so treated it, he answered, "Because the man was being uncooperative, said he didn't understand." Tr. 181:25-182:1. R.C. 4511.19(A)(2)(b) makes that advisement an element of the only count carrying Petitioner's sentence. The jury saw it. Petitioner, appealing that element, received one minute and forty-four seconds of it.

What the withheld portion contains is not in dispute: it is the catheter exchange the arresting officer himself described on the stand — the delay, the demand that Petitioner say "please," and his own admission that he had been "frustrated and letting off

steam." Tr. 195:12-22; 196:1-3; 196:14-16 (Statement §B). His written report, by contrast, says only that he assured Petitioner the catheter "would be coming with him." App. P. The State's theory of both the OVI and the resisting-arrest counts was that Petitioner was uncooperative and argumentative — the court of appeals wrote that his "defiance and unwillingness to engage or cooperate with officers was manifest," ¶ 47 — and the recording the jury saw and Petitioner did not is the recording of that conduct. It is also the recording of the medical conditions Petitioner described on the stand — conditions every state witness replaced with standardized language.

B. The error is not merely that the court guessed wrong. It is that the court guessed at all, when Ohio law gave it the means to find out. App.R. 9(E) and 10(E) exist precisely to settle disputes about what the record contains. Petitioner filed a certified discrepancy log and moved under both rules. The court neither employed the procedures nor explained why. It instead resolved the factual dispute against him with the phrase "[f]or all we know," and then took its statement of the *Brady* standard from a judge writing in dissent — a designation its own citation carried. ¶¶ 58-59, quoting *United States v. Olsen*, 737 F.3d 625, 628 (9th Cir. 2013) (Kozinski, C.J., dissenting), citing *Brady*, 373 U.S. at 87. The opinion quoted was a dissent from the denial of rehearing en banc; the court cited *Brady* itself only as the case that dissent was in turn citing. A court that knows it is quoting a dissent, and says so, has not mistaken the authority. It has chosen it.

Brady v. Maryland, 373 U.S. 83, 87 (1963), places the obligation on the prosecution. *Kyles v. Whitley*, 514 U.S. 419, 436-437 (1995), requires that suppressed evidence be "considered collectively, not item by item," and extends the duty to "favorable evidence known to the others acting on the government's behalf in the case, including the police." *Youngblood v. West Virginia*, 547 U.S. 867, 869-870 (2006) (per curiam), confirms that Brady reaches evidence in police files. "For all we know" inverts that allocation. It converts the State's duty to disclose into the defendant's burden to prove, from a record he says is incomplete, that the record is incomplete.

The court made the circularity explicit. It faulted Petitioner for failing "to create a reasonable nexus between the evidence at issue and the alleged *Brady* violation(s)." ¶ 59. The only way to establish that nexus is from the contents of the evidence at issue. Petitioner asked for those contents and received a tenth of them. A rule that conditions relief on a showing which only the withheld material can supply is not a materiality standard. It is a bar.

The premise is also contradicted by the trial court's own docket. Eastlake Police Incident Report No. 24-01444 (App. P) was filed in the Willoughby Municipal Court on September 9, 2024 — the day after the arrest — in both cases, App. Q; its contents document requests for hospital transport that conflict with the State's trial testimony. Under Ohio App.R. 9(A)(1), "the original papers and exhibits thereto filed in the trial court" constitute the record on appeal. The court of appeals said so itself, overruling as moot his motion to compel production of *Brady* material because the

record "shall contain all original papers filed in the trial court." Magistrate's Order, Mar. 24, 2025 (App. I). The report is in the record. The court of appeals had already told Petitioner, in a separate entry, that he was "entitled to rely upon any and everything in the trial court record," described this same report as one "documenting repeated requests for hospital transport," and then overruled his motion to add it because it was "dehors the record." Judgment Entry, July 31, 2025 (App. F). It placed outside the record a document its own trial court's docket shows was filed in the case, and directed the claim to post-conviction relief as a matter "dehors the record" instead. ¶ 39. The same entry relied on that docket affirmatively where it suited: the court held that "[t]he trial court's docket . . . demonstrates that, on March 24, 2025, a notice of exhibits/evidence was filed," and that "there is no need to supplement the record with the exhibits." App. F. The docket was proof of what the record contained when it defeated his motion, and proof of nothing when it supported his claim. The same docket records that on September 16, 2024, the trial court sustained Petitioner's motion to preserve evidence. App. Q. The recording he later received runs one minute and forty-four seconds.

The report, reproduced at Appendix P, contains the arresting officer's own contemporaneous account of the exchange on which the refusal element turns — the same non-comprehension exchange set out above, Statement §B, down to Petitioner's declining to sign the form "because he does not understand." App. P.

No counsel could conclude that this evidence "was not useful," as the court of appeals supposed, to a defense

that the asserted refusal was a failure of comprehension. It is the officer's own corroboration of it. The court of appeals did not read the report. It assumed what the report contained and then assumed a reason for not using it — and did so in the same opinion that faulted Petitioner for producing "no documentation." ¶ 19.

The formulation the court borrowed defines materiality only as evidence "material to guilt or innocence," ¶ 58, and supplies no measure of it. The court supplied one of its own: whether suppression "would have any likelihood of changing the outcome." ¶ 47. That is not the test. The test is whether there is "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different" — a probability "sufficient to undermine confidence in the outcome." *United States v. Bagley*, 473 U.S. 667, 682 (1985); *Kyles*, 514 U.S. at 434. A defendant need not show that the verdict would have changed. The court of appeals required exactly that, of a recording it had never seen, nine-tenths of which Petitioner had never received.

C. The consequence is a denial of appellate review as this Court has defined it. *Griffin v. Illinois*, 351 U.S. 12, 19-20 (1956), requires that appellate review be as adequate for the poor as for those who can pay, and *Draper v. Washington*, 372 U.S. 487, 497 (1963), requires a record of sufficient completeness for consideration of a defendant's claims. *Evitts v. Lucey*, 469 U.S. 387, 393-394, 405 (1985), holds that state appellate review must comport with due process and may not be a "meaningless ritual." Petitioner argued that the booking recording contradicted the officers'

characterizations. He could not show the contradiction, because he held a tenth of the recording. The court then held against him for producing "no documentation." ¶ 19.

That absence has a source. The arresting officer's report records that EMS, on scene, relayed Petitioner's request to go to the hospital, and that he was arrested rather than examined. App. P. A defendant who asks to be taken to a hospital, is not taken, and is then faulted on appeal for producing no medical records has been required to supply what the State's own conduct prevented from existing.

The same absence supplied the State's proof. The sentencing court rested its finding of intoxication on the paramedics above the officers — "weighing even more heavily than the testimony of the police officers . . . are the two paramedics who testified," Tr. 431:2-6 (App. O) — and both had confirmed that no medical assessment of Petitioner was ever completed. Tr. 234:5-9; 252:3-6 (App. O). The conclusion drawn from an examination that never happened was evidence against him. The records that examination never generated were held against him too.

D. The question recurs and will recur more often. Body-worn and booking-room recording is now the national trend in criminal proof. This Court has addressed the completeness of written transcripts. It has not addressed what a State owes a defendant when the evidence is a recording the State itself placed before the jury, and the defendant is later furnished a fraction of it under a redaction rationale the record does not support. Nor has it addressed

whether a state appellate court may resolve a documented record dispute by assumption rather than by the correction procedures its own rules provide.

II. An Element of the Offense Was Removed From the Jury by a Stipulation No Court Examined

Petitioner's sentence rests on R.C. 4511.19(A)(2). The prior conviction within twenty years is not sentencing background. It is the first element of that offense. The court of appeals understood this: it wrote that "the stipulation relieved the State of its burden of producing such testimony." ¶ 38. The trial court instructed the jury in the same terms: "The parties have stipulated to this element of the offense; therefore, you are to accept this element as true." Tr. 396:21-23.

A. *In re Winship*, 397 U.S. 358, 364 (1970), requires proof beyond a reasonable doubt of every element. *United States v. Gaudin*, 515 U.S. 506, 510-511 (1995), holds that the Fifth and Sixth Amendments entitle a defendant to a jury determination of every element. *Sandstrom v. Montana*, 442 U.S. 510, 521-524 (1979), and *Carella v. California*, 491 U.S. 263, 265-266 (1989) (per curiam), hold that an instruction directing the jury to take an element as established is constitutional error.

A defendant may of course stipulate. But a stipulation that removes an element is a waiver of the jury-trial right as to that element, and this Court has required that such waivers be the defendant's own, knowing

and voluntary. *Boykin v. Alabama*, 395 U.S. 238, 242-244 (1969), holds that a waiver of trial rights may not be presumed from a silent record. *Brookhart v. Janis*, 384 U.S. 1, 6-7 (1966), holds that counsel may not consent to a procedure that allows conviction without the State putting on its case, where the defendant has not himself agreed. And *Douglas v. Alabama*, 380 U.S. 415, 418-419 (1965), holds that the opportunity to test the State's proof is a primary interest secured by the Confrontation Clause. A stipulation establishing an element "without the necessity of testimony or other evidentiary documentation" forgoes that testing altogether. Under *Brookhart*, only the defendant may make that choice, and only on a record showing he made it.

B. The record here is silent in exactly the way *Boykin* forbids. No colloquy was conducted. The stipulation was executed, in appellant's words, "off record [and in] the lobby . . . under coercion and duress." ¶ 39. Petitioner wrote "Under Duress" after his signature. App. N. The court of appeals did not find that claim false — it held only that "whether appellant was pressured into the stipulation is not a matter for this court to decide on direct appeal." ¶ 39. As Part IV explains, post-conviction relief has no forum. Petitioner was never asked whether he understood the stipulation, agreed to it, or signed it freely. The trial court itself said, after the arresting officer had already testified to the subject, "The stipulation. I have not seen that." Tr. 291:23-25 (Statement §E). The judge who instructed the jury to accept the element as true had not read the document establishing it at the time the jury first heard about it.

Meanwhile the element reached the jury three times by other routes: in opening statement, after an instruction that opening statements "are not evidence," Tr. 123:5-10; 126:16-17; through a leading question to a police officer, framed not as a stipulation but as the officer's own knowledge, Tr. 168:20-22; and finally in the reading, placed in the last breath before the defense called its first witness, Tr. 303:2-15, 19-24. No limiting instruction under Ohio Evid.R. 105 was given at any point.

C. The third element compounds the problem. R.C. 4511.19(A)(2)(b) requires that the defendant have been "advised by the officer in accordance with section 4511.192 . . . of the consequences of the person's refusal." The officer's own difficulty completing that advisement, and Petitioner's stated non-comprehension, are set out above. Tr. 161:6-23 (Statement §B); 353:16-22 (Statement §F). His written report corroborates it in the officer's own hand: Petitioner "said he did not understand what I said because I slurred my words," and when the officer said "so you are refusing," Petitioner answered, "I can't refuse if I don't understand." App. P. The same report records Petitioner saying he did not understand repeatedly, from the opening moments of the encounter, before any advisement was attempted. App. P. The jury was then instructed that "[i]t need not be shown that the person understood the consequences of his or her refusal." Tr. 396:9-11 — this after the prosecutor had told the jury in opening that Petitioner's "continued lack of understanding" was itself "treated as a refusal." Tr. 126:1-3.

Officer McGrath testified that he treated the advisement as a refusal because Petitioner "said he didn't understand." Tr. 182:1-3. McGrath's NHTSA training recorded that same expression of non-comprehension as an "unusual response" — a clue of impairment. Tr. 145:15-21; 186:18-19. Petitioner's words were thus used twice against him: once as a refusal, once as evidence of intoxication. The jury instruction removed any requirement that a refusal be knowing or intelligent: a refusal "need not have been knowingly and intelligently made." Tr. 396:16-17. No exit existed for innocent confusion.

III. The Sanction Warning to the Sole Corroborating Witness Violated *Webb v. Texas*

Webb v. Texas, 409 U.S. 95, 97-98 (1972) (per curiam), holds that a trial judge's admonition to a defendant's sole witness, delivered in terms calculated to frighten the witness, deprives the defendant of due process. The right is the right to present a defense. *Washington v. Texas*, 388 U.S. 14, 19 (1967); *Chambers v. Mississippi*, 410 U.S. 284, 294, 302 (1973). "Few rights are more fundamental than that of an accused to present witnesses in his own defense," and a court weighing that right against a competing interest "may not ignore [its] fundamental character." *Taylor v. Illinois*, 484 U.S. 400, 408, 414 (1988). *Taylor* sustained the exclusion of a defense witness, but the competing interest there was a willful discovery violation undertaken for tactical advantage. *Id.* at 415. Here the competing interest was courtroom decorum, and the measure placed before the witness was thirty days in jail.

The sequence is set out above, Statement §F. The sanction was explicit: the court told Joanne Arnett that its enforcement mechanisms "include[] a fine, a finding of contempt of court, and you can be jailed up to 30 days." Tr. 311:8-13. Offered a minute with his witness, counsel declined: "I will just ask a few questions." Tr. 311:18-23 (Statement §F).

Petitioner does not contend a court may never caution a witness about courtroom conduct. The question is narrower and is open. In *Webb* the witness refused to testify at all, and this Court had no occasion to decide what showing is required where the witness takes the stand but her testimony is compressed. That is the far more common case, and the rule governing it is unsettled. If *Webb* reaches only the witness driven entirely from the stand, then a warning that shortens testimony is unreviewable no matter how severe, and the protection *Webb* announced is available only in its rarest form.

Joanne Arnett was the one witness who could corroborate from direct observation the medical conditions that account for the officers' observations. Her curtailed testimony left those conditions supported only by Petitioner's own account — which the court of appeals then dismissed for want of "documentation or medical records." ¶ 19.

This record is an unusually clean vehicle, because the measure of the compression is in counsel's own words, spoken in direct response to the warning, before the examination resumed. The Eleventh District did not address the warning, counsel's response, or the truncation that followed.

IV. Ohio Has Directed These Claims to a Forum It Holds Does Not Exist

A. The Eleventh District held that Petitioner's claims — the stipulation's voluntariness, the suppressed evidence, his medical records — "can only be raised in a petition for post-conviction relief." ¶ 39. Four Ohio courts have now held that no such petition can be filed.

The Willoughby Municipal Court, which imposed the sentence and to which the court of appeals directed him, held it lacks jurisdiction. It had no choice. The Supreme Court of Ohio has held, in syllabus, that "[a] municipal court is without jurisdiction to review a petition for postconviction relief filed pursuant to R.C. 2953.21." *Cowan*, 101 Ohio St.3d 372, syllabus. *Cowan* saw "no logical reason to arrive at a different conclusion with respect to state-law convictions in municipal court," *Cowan* at ¶ 13, which is precisely this case: Petitioner was convicted in municipal court of state-law misdemeanors under R.C. 4511.19 and R.C. 2921.33. And *Cowan* held that supplying the missing procedure would require rewriting the statute — a task it assigned to the General Assembly, not to the courts. *Cowan* at ¶ 19.

The Lake County Court of Common Pleas dismissed because it is not the sentencing court — while acknowledging that *Cowan* "left an individual in Tilton's situation without a remedy." Judgment Entry, Aug. 5, 2025. The Eleventh District then held, in No. 2025-L-112, that no court had jurisdiction at all. App. C. Petitioner's motion to transfer the record to a court that could hear him was never ruled upon.

This is not a procedural default. Petitioner did not sleep on his rights; he filed in every court each prior court identified, and each told him he was in the wrong one. The claims were never defaulted, never waived, and never heard.

B. The claims are outside the record because of what happened inside the courtroom. Defense counsel elicited testimony that Petitioner's apprentice was with him all day on September 8, 2024, witnessed the chemical exposure that is the alternative explanation for the odor attributed to alcohol, and took photographs that evening. Tr. 318:14-25, 319:12-25, 320:1-4, 320:23-25, 321:5-13, 322:1-25. (App. O). Counsel drew out every one of those facts on direct examination — and then called neither the witness nor the photographs.

Counsel told the jury in opening statement that "you'll see when we play the video," Tr. 128:21-22, and never played it. He conducted no redirect of Joanne Arnett after the sanction warning in Part III curtailed her testimony, and none of Petitioner after the prosecutor cut off his attempt to explain his medical records. Tr. 354:6-8. None of these omissions required investigation beyond what counsel himself began at trial — he identified the medical explanation himself in his Crim.R. 29 renewal, Statement §F, Tr. 355:18-25, and did not present it. Each omission left evidence outside the record that the court of appeals then held could not be added — because it was "dehors the record," because counsel's choice was "trial strategy," ¶ 48, and because the only remedy was a post-conviction petition. ¶ 39.

The court of appeals came close to saying so itself. In its final substantive paragraph it wrote that Petitioner "takes issue with the State's witnesses and its evidence," and that "[h]is challenges are arguably reasonable, especially in light of trial counsel's reasonable and fair Crim.R. 29 argument to dismiss the charges at the close of the State's evidence." ¶ 75. The Crim.R. 29 argument the court called reasonable and fair is the argument in which counsel told the trial court that "we had two additional witnesses detailing medical issues and the reasons for the observation of the officer that should provide an alternate view other than being intoxicated." Tr. 355:18-25. The court of appeals therefore found Petitioner's challenges arguably reasonable, and found reasonable the very motion that identified the evidence which would have supported them. It then held that the evidence could not be added to the record, that counsel's failure to present it was strategy, and that the claim could be heard only in a forum Ohio holds does not exist. ¶¶ 19, 48, 39. A defendant whose challenges a state appellate court calls "arguably reasonable" should be able to present them somewhere.

C. This petition does not ask the Court to find that trial counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984). *Wiggins* and *Hinton* are cited for a narrower proposition: that a reviewing court may not supply a strategic rationale the record does not contain. Whether each omission was in fact a strategic choice is not the question here. Either way the constitutional defect is the same: Ohio's procedural structure has closed every door through which the excluded evidence could enter.

Martinez v. Ryan, 566 U.S. 1, 12 (2012), recognized that when a State requires claims to be raised in collateral proceedings, the adequacy of those proceedings is a federal concern. *Trevino v. Thaler*, 569 U.S. 413, 429 (2013), extended the principle to States whose procedural design makes it "highly unlikely" a defendant will have a meaningful opportunity to raise a claim. Both cases arose in habeas proceedings under 28 U.S.C. § 2254, but the principle they announce is one of due process, not of habeas procedure: a State may choose how to structure its courts, but it may not structure them so that a class of defendants has no court at all.

Ohio has done exactly that. It has created a procedural circuit — municipal court to court of appeals to post-conviction and back — that returns every filing to the court that sent it, and ends where it began. For municipal-court misdemeanants, a holding that a claim may be raised "only" in post-conviction relief is a holding that it may not be raised at all.

The claims under Parts I through III of this petition were each pressed to the Supreme Court of Ohio as Propositions of Law. That court declined review in a single sentence. There is no further state remedy to exhaust and no record left to develop.

CONCLUSION

Petitioner is seventy-two years old and was convicted of misdemeanors. He does not ask this Court to retry his case. He asks it to decide four questions his case

presents and that no court has answered: whether a state appellate court may resolve a documented dispute about the record by assuming the record is complete; whether an element of an offense may be established by a stipulation no court has examined and an instruction to accept it as true; whether *Webb v. Texas* protects a witness whose testimony is shortened rather than prevented; and whether a State may direct a federal claim to a forum it holds does not exist.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: October 23, 2026