

IN THE SUPREME COURT OF OHIO

GEORGE L. DINGESS,

CASE NO. 07CR-08-6217

PETITIONER

HABEAS CORPUS

v

13-1332

TIMOTHY BUCHANNON,

(WARDEN) RESPONDENT

PETITIONER SUBMITS HIS DECLARATION IN SUPPORT
OF WRIT OF HABEAS CORPUS

George L. Dingess

 GEORGE L. DINGESS, PRO SE.

no# 677-810.

15708 State Route 78 West

Caldwell, Ohio 43724

COUNSEL FOR RESPONDENT,

PRISONER LITIGATION DIVISION

*770 West Broad St.
Columbus, Ohio 43215*

COUNSEL FOR RESPONDENT,

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DECLARATION

STATE OF OHIO

COUNTY OF NOBLE

SS..

GEORGE L. DINGESS

Now comes the petitioner George L. Dingess, in pro se, and respectfully submits his declaration in support of his petition for writ of habeas corpus.

The primary issue before the court is whether there is legal authority to incarcerate petitioner George L. Dingess. The petitioner presents the following statement in the form grounds and supporting authorities in support of his petition and the relief as prayed for.

- 1) petitioner George L. Dingess is a United States citizen, and resident of the state of Ohio residing at the time of this arrest in Reynoldsburge, Ohio and not a resident of Whitehall, Ohio as implied or expressed, and claims actual innocence.
- 2) Respondent, through State of Ohio, it's officers and agents, agencies, and offices have trampled the state and federal rights of your petitioner in order to obtain an illegal arrest and consequential conviction against him, while acting under color of law.
- 3) In fact, and that, Detective Sgt Allen of the Whitehall, Ohio Police Department maliciously and vindictively swore upon his oath and affirmation that he had received information from a

- confidential informant (C.I.) in order to obtain “probable cause”, for surveillance of Ms. Natasha Felts private residence and for cause to arrest after a terry-stop and obtain a search warrant of Ms. Natasha Felts private residence on 8/17/2006, see trial transcript pg. 76 TR 2-3
- 4) In fact, and that, Detective Sgt. Allen made a conscious-decision to use this “hearsay exception to a evidence rule in order to obtain a probable cause search warrant as the “tail that wags the dog”, knowing this (C.I.) “did not exist”, and was not subpoenaed for trial nor ever identified by the state agents or officers contrary to Crawford v. Washington 124 S. Ct. 1354(2004). Also Agular 378, U.S. At 114-115 Franks 98 S. Ct. 2674 (1978).
 - 5) In fact, and that Crawford, Sayra is binding authority on the State of Ohio, exclusively upon those who pursue trial such as petitioner, whom did not waive or relinquish his rights, privileges, and/ or immunities to any foreign jurisdiction.
 - 6) In fact, and that, this petition is based on the sixth amendment's confrontation clause citing Franks v. Delaware 98 S. Ct. 2674 (1970). Accord, article I section 10 and 16 of the Ohio Constitution.
 - 7) In fact, and that, the United States Supreme Court addressed this issue “beyond pre-adventure,” in... Brinegar v. United States, 338 U.S. 160,172-73 which settled the questions in contrast to the State of Ohio's position. Subjudice, and in favor of petitioner's position, that the factor relating to admissibility of evidence under hearsay exception contained in evidence rules 804-806 for purpose of proving guilt at the trial (by omission of the C.I.) to challenge the Allen affidavit deprived the evidence as a whole, of sufficiency to show probable cause for the search of either petitioner or Ms. Felt's residence. Id. At 172. the distinction places a wholly unwarranted emphasis upon the criterion of admissibility in evidence to prove the accused guilt of the facts relied upon to show probable cause, “ that emphasis,” goes much to far in confusing and disregarding the difference between what is an illegal arrest and search incident, and what is difference between guilt in a criminal case338 U.S. At 172-73.

- 8) In fact, and that, It was detective Sgt. Allen's clandestine, practice, custom, or habit of claiming hearsay statements exist by "anonymous C.I.'s," in order to by-pass federal complexities, see motion to suppress hearing case no. 07CR-08-6217 pg. 15, pg. 16 at TR. 25 and pg. 35 at Tr. 5-15 also pg. 36 at TR. 4-7. Where Sgt Allen's testimony was sufficient enough to undermine the legitimacy of the suppression hearing contrary to O.R.C. 2933.22(a) mandates trial judge then entered his judgment *atra vires*.
- 9) In fact, and that, if the trial judge would not have rendered a decision contrary to clearly established supreme court precedent as to the legality of admissibility of evidence, according, Terry v. Ohio, 399 U.S. 1, 20Led. 2D 889, 88 S. Ct. 868 (1968) and Crawford, supra, and Frank, supra. Petitioner would not be imprisoned today. It is similarly baffling as to the 10th district court of Appeal's standard applied on direct appeal on de novo review was likewise misplaced, due to the ripple effect caused by Sgt. Allen's Alleged (C.I.'s) hearsay statements, deemed trustworthy and reliable as "the tail that wags the dog" and his perjured testimony as to petitioner's alleged statement at the police station, knowing no one can even see in the (holding cells) was never put to the test, to tease out the truth.
- 10) In fact, and that, in retrospect to the admission of 3rd party hearsay testimonial evidence in violation of 6th amendments confrontation clause, the State was able to withhold impeachment evidence which would have further displayed Sgt Allen's conscious-decision to circumvent the truth and petitioner's federal rights when the state failed to admit the testimony of several witnesses and also admit evidence regarding a phone call had between Sgt. Allen and Natasha Felts and it's contents favorable to petitioner at trial, a practice not well taken by the sixth circuit federal court of Appeals in, United States v Word 806 F 2d 658, 669, (geir 1986) notwithstanding the exclusion of witnesses Ward and Barney, which Sgt. Allen also used as 3rd party hearsay testimony at trial for probable cause for arrest incident and search of Ms Felts's residence, which Sgt Allen finally released the fact he had made contact with actual tenant of

the apartment proving he (Sgt. Allen) knew his probable cause warrant was nullified on its face, and the plain view evidence could not be linked to petitioner. Assumptions are not evidence beyond a reasonable doubt for conviction upon 3rd party hearsay statements neither are assumptions used for a probable cause warrant for search.

- 11) In fact, and that, in order to put Sgt. Allen's hearsay testimony to the test it was absolutely essential that defense witnesses Natasha Felts, Ms Ward and Mr. Barney, along with the states's alleged (C.I.) be subpoenaed to trial to comport with Crawford supra, and the fifth and sixth amendments requirement noticeably absent in the instant case. Thus leaving Sgt Allen's false and prejudicial hearsay statements "untested by adversarial process." See also, United States v. Clark 988 F. 2d. 1459, 1467. (6th Cir 1993) and accord, United States v. Agers, 407 U.S. 97, 103, 96 S. C.T 2392, 49 L. Ed. 2d. 342 (1976). Crawford supra, and Frank Supra.
- 12) In fact, and that, if the State of Ohio would have recognized authorities and viewed this matter according to primarily, Frank's, Crawford, Algular, and Wong Sun V. United States, 371 U.S. 471, 83 S. C.T. 407, 9 LED 2d 411, and not Led astray by an overzealous prosecution then Sgt Allen's attack on petitioner state/federal rights would not have prevailed. Guilt or innocence is not the real issue here today. The issue is, the veracity of sworn statements by police (Sgt Allen) used for arrest and search warrant for that arrest, and whether the arrest of petitioner on that hearsay evidence was illegal or meets constitutional muster? Did the trial court ever have valid jurisdiction to here the matter generally, or did the trial court lose jurisdiction during the course of proceedings when ruling contrary to clearly established Supreme Court precedent authority. See Ballard v. U.S. 420 F 3d. 404 (6th Cir 2005). on trial and jury instructions.
- 13) Petitioner claims he is a subject of the bias motivated actions of an overly zealous police Sgt.(Allen) who will/ would swear to anything to obtain the desired arrest or search incident. Unfortunately petitioner chose to remain entrenched in his federal protections and use the Bill of Rights as a shield and finally puts Sgt. Allens custom, practice or habit to the test. Albeit in

tardy fashion.

- 14) Petitioner claims the tainted testimony of Sgt. Allen becomes evident from the record when viewed in light more favorable to petitioner not the state, particularly, when Sgt. Allen is cross-examined as to his knowledge of affirming the 1946 fountain view residency for probable cause warrant, and on direct cross-examination as the apartment of Mr. Dingess (Petitioner), allegedly presumed to be obtained from his reliable source (C.I.) was in fact the residence of Ms. Felts. He did not comply with police policy or procedure and depart, but attempted to cure the defect; by plain site rule and, then swearing witnesses (Ward) and (Barney) once pulled over upon Sgt. Allen's order under guise of a Traffic stop both stated they had gave money to blackman to buy crack. (Ward) being the driver actually stated she saw no drugs at any time, both Ward's and Barney's statements conflict with Allen's affidavit accord, Crawford and Frank supra.
- 15) Petitioner claims absent a valid warrant or (probable cause), and absent a reliable statements by a known (C.I.) or co-offender (Ward or Barney) or any other police officer: Sgt Allens overt acts aimed at petitioner were without legel authority, unlawful, and unconstitutional, rules of evidence, and clandestine police policies, procedures, and practices do not have legal superiority over petitioner rights, privileges, and immunities. It is claimed by petitioner that he was subject of an illegal and unlawful prosecution and unconstitutional trial process contrary to any clearly established form of justice at common law more akin to some foreign de facto form of jurisprudence.
- 16) Petitioner claims rely on clearly established U.S. Supreme Court precedent regarding constitutional law which "but for ", the constitutional errors no reasonable fact finder would have found probable cause for the arrest and conviction of petitioner on untested hearsay statements. If not for the state of Ohio in the presence of police Sgt. Allen of the Whitehall police departments clandestine "one man crusade" under legal guise, thus far, sufficient to undermine the confidence of petitioner's trial process as the "tail that wags the dog" warrants an

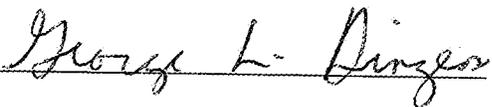
evidentiary hearing in order to develop the state court record, accord, William v. Taylor, 529

U.S. 420, 432, 146 L.Ed. 2D 435 (200));

17) Therefore, all the foregoing grounds raised by petitioner and for the best interest of justice the petitioner respectfully request the following relief:

- a) That this court order this cause remanded for evidentiary hearing de jure.
- b) That this court address this petition on the merits raised herein.
- c) That this court order respondent to make ready their return of writ in response in 20 days
- d) That for good cause shown the writ should issue and the petitioner discharge de jure

Respectfully Submitted,



George L. Dingess

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V

TIMOTHY BUCHANNON,

(WARDEN) RESPONDENT

CERTIFICATE OF VERITY

STATE OF OHIO

COUNTY OF NOBLE

SS..

GEORGE L. DINGESS

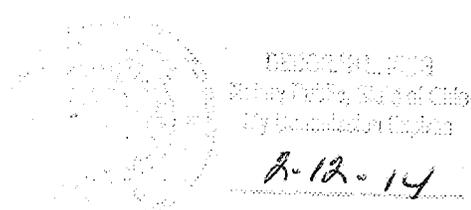
AFFIANT PRO SE:

After being duly cautioned according to law I depose and go on to state the statements contained in paragraphs 1-17 and true and correct, and further saith naught.

Respectfully Submitted,

George L. Dingess

George L. Dingess, Pro Se:



sworn and subscribed before me this 14 day of Aug, 2013

Deborah L Pray

Notary Public

My Commission expires 8-12, 20 14

/ Noble County / State of Ohio /