

In The
Supreme Court of the United States

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LAMAR EVANS,

Petitioner,

v.

MICHIGAN,

Respondent.

—◆—

**On Petition For Writ Of Certiorari
To The Michigan Supreme Court**

—◆—

REPLY BRIEF FOR PETITIONER

—◆—

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REPLY BRIEF FOR PETITIONER

Respondent's Brief in Opposition does not contest that there is a significant and longstanding split among the lower courts on the Double Jeopardy Clause issue this case presents. Nor does Respondent deny that Petitioner's case presents an excellent vehicle for this Court to decide that issue.

Respondent's argument on the merits demonstrates why certiorari should be granted. Respondent maintains that *United States v. Maker*, 751 F.2d 614 (3d Cir. 1984), and the courts that have followed *Maker* were correct to hold that the definition of "acquittal" found in *United States v. Martin Linen Supply Co.*, 430 U.S. 571 (1977), excludes a directed verdict granted because the prosecution failed to prove a fact not found among the elements of the charged offense. In making this argument, Respondent does not mention any of this Court's post-*Martin Linen* precedents, including *Arizona v. Rumsey*, 467 U.S. 203 (1984); *Smalis v. Pennsylvania*, 476 U.S. 140 (1986); and *Smith v. Massachusetts*, 543 U.S. 462 (2005). All of these cases stand for the proposition that a trial judge's error in construing the elements of the charged offense "affects the accuracy of [an acquittal] but it does not alter its essential character." *Smalis*, 476 U.S. at 144 n. 7. Respondent's central claim, that a directed verdict based on the trial court's addition of an "extra" element to the charged offense is not an "acquittal," is impossible to reconcile with this Court's decisions in these cases because it is

a trivial matter to recast the trial courts' errors in such cases as adding extra elements. *See* Pet. for Cert. 11-13.

It strains logic to deny that Petitioner was “acquitted.” At the close of the prosecution’s case, he moved for an acquittal because the prosecution had failed to prove a particular fact that the commentary to the standard jury instruction called an “essential element” of the charged offense. *See* Pet. for Cert. 3 n. 1. The trial judge agreed and granted a directed verdict of acquittal, both orally and in writing. Under this Court’s precedents, that decision was final for purposes of the Double Jeopardy Clause. But without this Court’s intervention, lower courts, like Respondent, will continue to rely on *Maker* and its progeny to misread the *Martin Linen* definition of “acquittal” so as to permit retrials in cases such as Petitioner’s.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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