No.

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN GOODMAN,
Petitioner,
v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida Fourth District Court of Appeal

PETITION FOR WRIT OF CERTIORARI

PAUL MORRIS
Law Offices of Paul Morris, P.A.
9350 S. Dixie Highway, Suite 1450
Miami, Florida 33156
(305) 670-1441/fax (305) 670-2202
FL Bar No. 193769
Email: paulappeal@gmail.com

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER

A. QUESTIONS PRESENTED FOR REVIEW

1. Whether the Court should resolve the following question for which the state courts are split (including the Florida appellate court of last resort in this case): can law enforcement officers rely on the exigent circumstance exception to the Fourth Amendment warrant requirement to justify the warrantless extraction of blood from a suspected drunk driver when the officers make *no attempt* to obtain a warrant prior to forcibly taking the blood sample and presented no evidence that a warrant judge was actually unavailable (which, in essence, would create another *per se* exigency in contravention of the Court's holding in *Missouri v. McNeely*, 569 U.S. 141 (2013)).

2. Whether a state statute silent concerning *mens rea* which criminalizes a driver's failure to render aid to a person injured in a crash was

unconstitutionally applied to the Petitioner in violation of the Due Process Clause of the Fourteenth Amendment where the evidence presented by both the State and the Petitioner supported the defense that the Petitioner was wholly unaware that another person was injured but the trial court refused to instruct the jury that the Petitioner must have known of the injury in order to be found guilty.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

C. TABLE OF CONTENTS AND TABLE OF CITED AUTHORITIES

1. TABLE OF CONTENTS

2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other

The Petitioner, JOHN GOODMAN, requests that the Court issue its writ of certiorari review the judgment of the Florida Fourth District Court of Appeal entered in this case July 26, 2017 (A-3)[1] (opinion denying rehearing entered on October 25, 2017). (A-63).[2]

D. CITATION TO OPINION BELOW

Goodman v. State, 229 So. 3d 366 (Fla. 4th DCA 2017).

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant

---

[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

[2] On March 9, 2018, the Florida Supreme Court issued an order declining to accept jurisdiction.

to 28 U.S.C. § 1257 to review the final judgment of the Florida Fourth District Court of Appeal.

F. CONSTITUTIONAL PROVISIONS AND LEGAL PRINCIPLES INVOLVED

The Fourth Amendment to the Constitution prohibits "unreasonable searches and seizures." U.S. Const. amend. IV.

The Due Process Clause of the Fourteenth Amendment to the Constitution provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law." "The existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." *Dennis v. United States*, 341 U.S. 494, 500 (1951).

G. STATEMENT OF THE CASE

1. Factual Background

The Petitioner was driving late at night on a dark road in Palm Beach County, Florida, when his car was involved in a collision. The Petitioner exited his car and observed no other vehicle or person. Because his cell phone battery was dead, the Petitioner walked from the scene to find a telephone. (A-164).

Three calls were received by 911 from three separate drivers who stopped when they noticed the Petitioner's damaged car and debris from an apparent accident. One of the callers exited her car, walked to the edge of a nearby canal, looked down, but did not see anything. (A-142-143). Another, after calling 911, walked toward the canal as well, but also ascended its steep edge and looked down. He called 911 a second time to report that he observed a vehicle in the canal.

(A-152-153). Police officers quickly responded to the scene.

After walking from the scene for a few minutes, the Petitioner came upon a residence where he obtained permission to use the telephone. He called 911 and told the dispatcher that he was in a collision, had hit something, his phone battery was dead, and that he walked from the scene to find a telephone. He stated his location. Officers picked him up and drove him back to the scene. The Petitioner repeated to them that he hit something but did not know what it was. The officers observed the Petitioner's boot prints at the scene, which showed that he did not walk near the canal, further corroborating his account that he was unaware a vehicle was in the canal. (A-361-362).

The officers observed that the Petitioner showed signs of alcohol impairment and was injured from the

accident. The Petitioner was treated for some of his injuries at the scene and driven by the officers to a nearby hospital. The Petitioner suffered back and head injuries, a broken wrist, and a fractured chest. (A-161-162).

When the second car was removed from the canal, the officers observed that the driver was still belted in the driver's seat and had drowned. (A-356-357). None of the officers attempted to obtain a warrant to draw blood from the Petitioner.

At the hospital, a police investigator asked the Petitioner to consent to a blood draw. He declined. The investigator did not attempt to obtain a search warrant. Instead, he directed a nurse to conduct a forced draw of the Petitioner's blood. (A-366).

The State charged the Petitioner with one count of DUI manslaughter with failure to render aid, and a

second count of vehicular homicide with failure to render aid. (A-82-83). The second count was later dismissed on double jeopardy grounds. (A-5). The element of failure to render aid was charged pursuant to section 316.062, Florida Statutes, which sets forth when a driver involved in a crash must give aid to a person injured in the crash, but lacks any requirement that the State prove the driver was aware a person was injured:

> The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person shall give his or her name, address, and the registration number of the vehicle he or she is driving, *. . . and shall render to any person injured in the crash reasonable assistance*[.]

(Emphasis added). Without the element of failure to render aid, DUI manslaughter is a second-degree felony in Florida carrying a maximum term of

imprisonment of fifteen years. *See* § 316.193(3)(c)3.a., Fla. Stat. By adding the element of failure to render aid, the State charged a first-degree felony punishable by up to thirty years' imprisonment. *See* § 316.193(3)(c)3.b., Fla. Stat.

2. The Fourth Amendment Claim

Prior to trial, the Petitioner moved to suppress the results of the forced warrantless blood draw as violative of the Fourth Amendment. (A-92).[3] At a pretrial suppression hearing, the State's only witness was Troy Snelgrove, a traffic homicide investigator with the Palm Beach County Sheriff's Office. Snelgrove testified that at 1:01 a.m., police received the first of three 911 calls reporting the accident. (A-289,

[3] *See* Sup. Ct. R. 14(1)(g)(i). The Fourth Amendment issue raised in this case was timely and properly raised in the state court proceedings below (and it was passed on by both the court of first instance and the Florida appellate court of last resort).

293-296, 329-332). Three officers arrived on the scene at 1:12 a.m. The scene was described as dark and requiring a flashlight for inspection. The Petitioner's vehicle was damaged and its air bags deployed. (A-352-353, 358, 361).

At 1:55 a.m., the Petitioner reached 911 to report the accident. (A-295-296, 331-332). Two officers left the scene, picked him up and drove him back to the scene where he first received treatment for his injuries. (A-331-334, 355-356). An officer at the scene reported that there was a strong odor of alcohol on the Petitioner's breath and his speech was slurred. (A-347-348, 355-356). The Petitioner repeated to the officers that he hit something but did not know what it was. (A-355-356). At that point in the investigation, the offense was misdemeanor DUI. (A-297-300). Under Florida law, a search warrant for a blood draw could

not be obtained for misdemeanor DUI. (A-297-300). *See also* § 933.02, Fla. Stat. The Petitioner could have been asked to provide a blood sample, but none was requested. (A-349-350). At 2:26 a.m., the Petitioner was transported to a nearby hospital. (A-333-334).

After the discovery of the vehicle in the canal, a tow truck was ordered to recover the submerged vehicle. (A-353-354, 357-362). A fire rescue employee entered the canal, but without dive equipment, and based upon conflicting police reports, reported either that the submerged car was not occupied (A-345-346) or that it could not be determined whether anyone was in the car. (A-349-352).

At 2:30 a.m., the submerged car was towed from the canal and the drowned driver was discovered. (A-299-300, 335-336). The offense was now a felony (DUI manslaughter and/or vehicular homicide) for which a

search warrant could be obtained under Florida law for a forced blood draw. (A-307-308); § 933.02(3), Fla. Stat.

At 2:32 a.m., two more officers, trained in DUI traffic homicide investigations, were dispatched to the scene. (A-337-338). Snelgrove was called at 3:10 a.m. to report to the scene and arrived at 3:18 a.m. (A-299-300, 357-358).

At 3:33 a.m., Snelgrove went to the hospital where the Petitioner was in the custody of a deputy and confirmed what he was told at the scene – that the Petitioner showed signs of alcohol impairment. (A-303-304). Snelgrove asked the Petitioner to consent to a blood draw. When the Petitioner declined, Snelgrove stated that he had probable cause to take a forced blood draw and that the Petitioner could not refuse. Snelgrove directed a nurse to conduct a forced blood

draw. (A-365-366). The nurse used Snelgrove's test kit to draw two vials of the Petitioner's blood. (A-309-310).

Snelgrove testified that in previous cases, he obtained search warrants at night on five to six occasions. (A-311-312). Snelgrove estimated that at night, from the time probable cause was developed, it had taken him 2 to 2-and-1/2 hours to obtain a search warrant. (A-323-324). In terms of contacting a prosecutor at night for assistance, Snelgrove testified: "Sometimes they [the prosecutors] answer right away, sometimes they don't." (A-317-318). As for a prosecutor contacting the duty judge, Snelgrove stated that it "could vary in terms of how long it would take to get to that judge." (A-319-320). In the case of the Petitioner, Snelgrove made no attempt to contact a prosecutor or a judge or otherwise determine how long it would have taken to obtain a warrant. (A-369-370).

The trial court denied the motion to suppress (A-67-81), finding no Fourth Amendment violation based upon Snelgrove's testimony that "it would have taken him a substantial amount of time to prepare a warrant for the blood draw and have it reviewed, approved and executed." (A-77). Citing *Missouri v. McNeely*, 569 U.S. 141 (2013), the trial court concluded that the "totality of circumstances indicate that there was an exigency which justified taking Defendant's blood without first obtaining a warrant." (A-74-78).

3. The Due Process Claim

Prior to trial, the Petitioner filed a motion arguing that the failure to render aid element charged pursuant to section 316.062 was unconstitutional as applied by imposing strict liability without regard to whether the Petitioner had any knowledge of the presence of a possibly injured person. (A-122-133).

Alternatively, the Petitioner requested that the jury be instructed that he could only be found guilty of failing to render aid if the State proved that he "knew that the accident resulted in death or injury" as opposed to proving mere knowledge of the accident. (A-17, 131).[4] The proposed instruction would have allowed the jury to consider the defense that the Petitioner was not aware of the presence of anyone in need of aid. The trial court deferred ruling. At trial, the Petitioner testified – consistent with his 911 call and statements to the police – that he was unaware of the presence of the second vehicle in the canal, much less that there was a person in that vehicle. (A-163-164). However, the trial court denied the Petitioner's jury instruction

[4] *See* Sup. Ct. R. 14(1)(g)(i). The *mens rea* issue raised in this case was timely and properly raised in the state court proceedings below (and it was passed on by both the court of first instance and the Florida appellate court of last resort).

request and instead instructed the jury as follows:

> If you find the defendant guilty of driving under the influence manslaughter, you must further determine whether the State proved beyond a reasonable doubt that John Goodman at the time of the crash A, knew that the crash had occurred. And B, willfully failed to give information as required by law. And C, willfully failed to render aid as required by law. Willfully means intentionally, knowingly, and purposely. Florida requires that a driver of any vehicle involved in a crash resulting in injury or death of any person or damage to any vehicle or other property which is driven or attended by any person must supply his name, address, and the registration number of the vehicle he is driving, to any person injured in the crash or to the other driver or occupant or other person attending any vehicle or other property damaged in the crash . . . .

(A-18-20). For the vehicular homicide count, the trial court specifically told the jury:

> [T]he State is not required to prove that John Goodman knew that the accident

resulted in injury or death.

(A-16).

At the conclusion of the trial, the jury found the Petitioner guilty as charged. The trial court sentenced the Petitioner to sixteen years in prison.

H. REASONS FOR GRANTING THE WRIT

1. Whether the Court should resolve the following question for which the state courts are split (including the Florida appellate court of last resort in this case): can law enforcement officers rely on the exigent circumstance exception to the Fourth Amendment warrant requirement to justify the warrantless extraction of blood from a suspected drunk driver when the officers make *no attempt* to obtain a warrant prior to forcibly taking the blood sample and presented no evidence that a warrant judge was actually unavailable (which, in essence, would create another *per se* exigency in contravention of the Court's holding in *Missouri v. McNeely*, 569 U.S. 141 (2013)).

In *Schmerber v. California*, 384 U.S. 757 (1966), the Court found that the warrantless seizure of a driver's blood was reasonable. Adopting a totality-of-the-circumstances approach, the Court reasoned: (1) the officer had probable cause that Schmerber operated a vehicle while intoxicated; (2) alcohol in the body naturally dissipates after drinking stops; (3) the lack of time to procure a warrant because of the time taken to

transport Schmerber to a hospital and investigate the accident scene; (4) the highly effective means of determining whether an individual is intoxicated; (5) a common procedure was used involving virtually no risk, trauma, or pain; and (6) the procedure was performed in a reasonable manner. *See id.* at 768-72.

In *Missouri v. McNeely*, 569 U.S. 141 (2013), the Court granted certiorari to resolve the ensuing split of authority as to whether the body's natural metabolization of alcohol creates a "*per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." *Id.* at 145, 147. The Court answered the question in the negative, holding instead that the exigency must be determined based upon the totality of the circumstances, and that the metabolization of alcohol was but one of the factors to

be considered in evaluating whether the circumstances were exigent. *See id*. at 149, 156. Based upon the limited record and arguments presented in *McNeely*, the Court expressly declined to address in detail the factors that might give rise to exigent circumstances sufficient to meet the prosecution's burden for justifying a non-consensual warrantless blood draw:

> Because this case was argued on the broad proposition that drunk-driving cases present a *per se* exigency, the arguments and the record do not provide the Court with an adequate analytic framework for a detailed discussion of all the relevant factors that can be taken into account in determining the reasonableness of acting without a warrant. It suffices to say that the metabolization of alcohol in the bloodstream and the ensuing loss of evidence are among the factors that must be considered in deciding whether a warrant is required. No doubt, given the large number of arrests for this offense in different jurisdictions nationwide, cases will arise when anticipated delays in obtaining a warrant will justify a blood test without judicial authorization, for in every case the law must be concerned that evidence is being destroyed. But that inquiry ought not to be pursued here where

> the question is not properly before this Court. Having rejected the sole argument presented to us challenging the Missouri Supreme Court's decision, we affirm its judgment.

Id. at 165. The Court did, however, note that "[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." *Id.* at 152.

Despite declining to discuss in detail all the relevant factors for determining the reasonableness of a warrantless blood draw, the Court did offer some guidance: "We do not doubt that some circumstances will make obtaining a warrant impractical such that the dissipation of alcohol from the bloodstream will support an exigency justifying a properly conducted warrantless blood test." *Id.* at 153. "Consider, for

example, a situation in which the warrant process will not significantly increase the delay before the blood test in conducted because an officer can take steps to secure a warrant while the suspect is being transported to a medical facility by another officer. In such circumstance, there would be no plausible justification for an exception to the warrant requirement." *Id*. at 153-54.

In the five years since *McNeely*, the state courts are already issuing conflicting decisions where police officers never even attempted to secure search warrants prior to conducting warrantless non-consensual blood draws in DUI prosecutions and no other exigency was shown to justify the failure to obtain a warrant. On one side of the split are state court holdings that suppression is mandated by the Fourth Amendment upon consideration of *McNeely*.

See, e.g., State v. Reed, 400 S.W.3d 509, 511 (Mo. Ct. App. 2013) ("We defer to the trial court's determination of the facts, including the facts that the trooper could have requested assistance and had assistance with the arrest of Reed, that the officer was trained to request a search warrant but chose not to, and that there were no other emergency circumstances."); *Bell v. State*, 485 S.W.3d 663, 667 (Tex. Ct. App. 2016) (no exigent circumstances existed to justify the warrantless blood draw where none of the officers involved attempted to determine whether a magistrate was available to sign a warrant for a blood draw); *People v. Armer*, 20 N.E.3d 521, 525 (Ill. App. Ct. 2014) ("[T]he record shows that while there may have been some delay attendant to securing the accident scene and transporting the defendant to the hospital, three officers were available to assist with the investigation. Deputy Cross . . . or

one of the other officers, could have attempted to contact the State's Attorney to secure a search warrant. Nothing in the record suggests any circumstances which would have prevented one of the officers from attempting to secure a warrant. There is no evidence that the officers would have faced an unreasonable delay in securing a warrant. In this case, Deputy Cross admitted that he did not attempt to secure a warrant."); *see also Gore v. State*, 451 S.W.3d 182, 197-98 (Tex. Ct. App. 2014) ("Other than [the prosecutor's] testimony that in his experience it would take two to three hours to 'wake up a judge' and get a warrant, there is no evidence of whether that would have been true in this particular case . . . ." "To accept [the prosecutor's] testimony that it usually takes two to three hours to get a warrant as sufficient evidence of exigency in every DWI case would be to create a *per se*

exigency rule, which *McNeely* expressly prohibits.").

On the other side are the state court decisions which, after considering *McNeely*, find no Fourth Amendment violation despite law enforcement's failure to attempt to obtain a warrant prior to a blood draw, reasoning that the prosecution's burden of establishing exigent circumstances was satisfied simply upon a showing that there might have been difficulty in obtaining a warrant. *See, e.g.*, *State v. Inmon*, 409 P.3d 1138, 1144 (Wash. Ct. App. 2018) ("It would have taken at least 45 minutes to prepare and obtain judicial approval for a search warrant. Deputy Przygocki lacked reliable cell phone coverage in the rural area, so obtaining a telephonic warrant may have been a challenge. Under the circumstances, obtaining a warrant was not practical."); *Aguilar v. State*, 239 So. 3d 108, 109 (Fla. 3d DCA 2018) (another Florida case

finding exigent circumstances justified a warrantless blood draw – even though "no effort was made to get a warrant" – based upon the officer's speculation that it would have taken at least four hours to obtain a warrant).

In *State v. Stavish*, 868 N.W. 2d 670 (Minn. 2015), the Minnesota Supreme Court was itself divided on the exigency issue. The majority held that the prosecution established exigent circumstances by showing: law enforcement had reason to believe the defendant was impaired by alcohol; it was important to draw defendant's blood within 2 hours of the accident; and defendant's "medical condition and need for treatment rendered his future availability for a blood draw uncertain. . . . ." One of the several dissenters opined that the majority in effect created yet another improper *per se* exigency exception to the warrant

requirement in square conflict with *McNeely*:

> [I]t is clear that the State did not meet its burden to prove exigent circumstances. No finding by the district court or evidence in the record suggests that [the officer] could not have obtained a warrant within the time remaining in the 2-hour window. While the State generally contends that the telephonic warrant process . . . is burdensome and that there is no guarantee that the on-call judge would have answered a call at that time of night, the State presented no evidence establishing approximately how long it would have taken to obtain a warrant or that a judge was actually unavailable. Without any evidence establishing such facts, the State cannot meet its burden to show that the delay necessary to obtain a warrant, under the circumstances, "significantly undermin[ed] the efficacy of the search." *McNeely*, 569 U.S. at 152. To conclude otherwise is to, in effect, create another *per se* exigency in contravention of *McNeely*. *Id*. at 152-53, 156. If the record actually established the burdensome nature of the telephonic warrant process, that would be one thing, but all we have here is the State's assertion, nothing more. If the record established that a judge was actually unavailable, that would be one thing, but all we have here are the State's speculations.

Stavish, 868 N.W.2d at 683-84 (Page, J., dissenting)

(one citation omitted).

In the Petitioner's case, the Florida trial and appellate courts were similarly faced with a case where there was no evidence presented by the prosecution at the suppression hearing as to how long it would have taken any of the several available officers to obtain a warrant, or that either the duty judge or duty prosecutor was actually unavailable, or that a warrant could not have been obtained within a reasonable time. Rather, the prosecution's sole witness at the suppression hearing, Officer Snelgrove, testified that in his *prior* experience, there were times at night when it had taken him as much as 2-and-1/2 hours to obtain a warrant. But Snelgrove also testified that on some occasions at night, he can obtain a prosecutor "right away" and as for reaching the duty judge, it "could vary in terms of how long it would take to get to that judge."

The probable cause for seeking and obtaining a search warrant for the felony of DUI manslaughter came into being at 2:30 a.m., when the submerged car was found with its drowned driver at which time all of the officers at the scene were already aware of evidence of the Petitioner's alcohol impairment. Even if there had been evidence that the warrant process would have taken 2 hours, there still was no exigency as a warrant could have been obtained no later than 4:30 a.m., which is within a reasonable time for an effective blood test under Florida law. *See, e.g., State v. Banoub*, 700 So. 2d 44 (Fla. 2d DCA 1997) ("[F]our hours after being stopped, a driver's blood-alcohol level should already have peaked and be no higher than it was at the time of driving. Because of this fact, the test results obtained after four hours are probative of the blood-alcohol level at the time of driving. . . ."). But

again, there was no evidence presented by the prosecution that a warrant could not have been obtained even earlier than 4:00 a.m., the time when the warrantless blood draw eventually took place.

Despite the foregoing failure of the State's proof, both the trial and appellate courts ruled in the Petitioner's case that the prosecution met its burden of proving exigency consistent with *McNeely*. The appellate court in the Petitioner's direct appeal went so far as to treat Snelgrove's *speculative* testimony as *conclusive* proof that it would have actually taken "an additional two hours to obtain a search warrant." (A-59). In other words, as the law now stands in Florida (and elsewhere), the prosecution can establish exigency simply upon presenting testimony from a police officer that he did not attempt to obtain a warrant for a blood draw in a DUI case because he believed that the

warrant process *might* have been time-consuming or difficult or challenging.

It is true that the Court waited until 2013 to resolve in *McNeely* the split of authority that ensued following the decision rendered in *Schmerber* some 47 years earlier. The State of Florida might argue that the Court should wait a similar period of time to allow the "percolation" of more state court decisions before stepping in to resolve the split that has ensued as a result of the conflicting attempts to address the question left unanswered in *McNeely*. The Petitioner would respond that the split of authority is already apparent and in present need of resolution before the split widens even more.

2. Whether a state statute silent concerning *mens rea* which criminalizes a driver's failure to render aid to a person injured in a crash was unconstitutionally applied to the Petitioner in violation of the Due Process Clause of the Fourteenth Amendment where the evidence presented by both the State and the Petitioner supported the defense that the Petitioner was wholly unaware that another person was injured but the trial court refused to instruct the jury that the Petitioner must have known of the injury in order to be found guilty.

The Court has not ruled specifically when, if ever, the imposition of strict liability in a criminal statute by itself violates the violates the Due Process Clause of the Fourteenth Amendment. The Court has recognized that strict liability criminal offenses are not necessarily unconstitutional. *See Lambert v. California*, 355 U.S. 225, 228 (1957). In addition, the Court has stated that no single rule resolves whether a crime must require intent to be valid, "for the law on the subject is neither settled nor static." *Morissette v.*

United States, 342 U.S. 246, 260 (1952).

The Petitioner was charged pursuant to section 316.193(3)(c)3.b., Florida Statutes, which increases DUI manslaughter from a second-degree felony to a first-degree felony if "[t]he person failed to give information and render aid as required by s. 316.062[, Florida Statutes]." Section 316.062 requires the driver of any vehicle involved in a crash resulting in injury to or death of any person to "render to any person injured in the crash reasonable assistance." The statute is silent concerning *mens rea.*

Both prior to and during the trial, the Petitioner requested that the jury be instructed that in order to convict him of failure to render reasonable assistance to any person injured in the crash, the prosecution must prove that he knew or should have known that another person was injured. The trial court rejected

this request and charged the jury that the prosecution need only prove that the Petitioner "knew that the crash had occurred."

The premise that wrongdoing must be conscious in order to be criminal is fundamental to this country's justice system. As stated by the Court in *Morissette*, 342 U.S. at 250-51:

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom on the human will and a consequent ability and duty of the normal individual to choose between good and evil. . . . Unqualified acceptance of this doctrine by English common law in the Eighteenth Century was indicated by Blackstone's sweeping statement that to constitute any crime there must first be a "vicious will."

Morissette was a federal prosecution for converting property of the United States, in which the defendant claimed that he thought the property had been

abandoned. At trial, the judge instructed the jury that the defendant's belief that the property had been abandoned was no defense. *See id.* at 249. The question before the Court was whether Congress' failure to identify a mental element in the statutory language evidenced a legislative intent to create a strict liability defense. In answering this question, the Court reviewed both English and American common law, under which both a *mens rea* and an *actus reus* were traditionally necessary to define a crime. *See id.* at 250-54. The Court identified certain exceptions in which lawmakers had created strict liability crimes, generally limited to minor infractions and "public welfare offenses." *Id.* at 254-56. The Court reversed the defendant's conviction, ruling that he had to know not only that he was taking the casings, but also that someone else still had property rights in them. *See id.*

at 271. However, the *Morissette* Court did not purport to enunciate any constitutional rule binding on the states.

In a more recent decision, the Court reinforced the rule that the imposition of criminal liability generally requires proof of *mens rea*. *See Staples v. United States*, 511 U.S. 600 (1994). *Staples*, like *Morissette*, also interpreted a federal statute (26 U.S.C. § 5861(d)) which criminalized the possession of an unregistered machine gun. The Court explained that dispensing with *mens rea* in the statute would require a defendant to have knowledge of criminal conduct that is traditionally lawful, *see id.* at 601, and has the potential to impose severe penalties on the innocent. *See id.* at 618. As a result, the Court concluded that Congress could not have intended to eliminate a *mens rea* requirement in such a situation. *See id.* But as in

Morissette, in *Staples*, the Court did not establish a constitutional rule regarding *mens rea*. *See also Elonis v. United States*, – U.S. –, –, 135 S. Ct. 2001, 2009 (2015) ("The fact that [a] statute does not specify any required mental state, however, does not mean that none exists."); *Liparota v. United States*, 471 U.S. 419, 420 (1985) (holding that the statute making it a crime to knowingly possess or use food stamps in an unauthorized manner requires knowledge of the facts that made the use of the food stamps unauthorized).

However, in *Lambert*, the Court came close to addressing the constitutionality of a state statute that lacks an element of *mens rea*. *Lambert* involved a direct appeal from a California criminal conviction under a felon registration ordinance. The question in the case was whether a registration act of this character "violates due process where it is applied to a

person who has no actual knowledge of his duty to register." *Lambert*, 355 U.S. at 227. In *Lambert*, the Court avoided laying down a blanket constitutional rule requiring *mens rea* in every case. *See id.* at 228. Rather, the Court confined itself to the facts before it, which involved totally passive conduct, and the Court found a violation of due process arising from the defendant's lack of notice. *See id.* at 229. A decade later, the Court acknowledged that it "has never articulated a general constitutional doctrine of *mens rea*." *Powell v. Texas*, 392 U.S. 514, 535 (1968). Referring to *Lambert*, the Court said in a footnote that "[i]t is not suggested [] that *Lambert* established a constitutional doctrine of *mens rea*." *Id.* at 536 n.27.

The Petitioner requests that the Court grant review to address the question of whether and under what circumstances a strict liability felony offense (i.e.,

an offense that is not a "minor" or "public welfare" offense) violates the Due Process Clause of the Fourteenth Amendment. In this case, the prosecution was not required to prove that the Petitioner knew of the resulting injury or reasonably should have known from the nature of the accident. There was a clear dispute as to whether the Petitioner had such knowledge. Not only does the record establish that the Petitioner exited his car and observed no other vehicle or person, and that he did not approach the canal where the second vehicle was submerged, the record also establishes that one of the 911 callers exited her car, walked to the edge of a nearby canal, looked down, and still did not see the second vehicle. In light of these facts, an important federal constitutional issue is presented as to whether the lack of a *mens rea* requirement resulted in a due process violation in the

Petitioner's prosecution.

I. CONCLUSION

The Petitioner requests that the Court grant the petition for writ of certiorari.

Respectfully Submitted,

PAUL MORRIS
Law Offices of Paul Morris, P.A.
9350 S. Dixie Highway, Suite 1450
Miami, Florida 33156
(305) 670-1441/fax (305) 670-2202
FL Bar No. 193769
Email: paulappeal@gmail.com

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER