No. 18-7460





IN THE

SUPREME COURT OF THE UNITED STATES

CLINT HORVATT-- PETITIONER

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL -- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS
(NAME OF THE COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CLINT HORVATT

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(Address)

CHIPLEY, FLORIDA 32428
(City, State, Zip Code)

N/A
(Phone Number)

## QUESTION(S) PRESENTED

1. In claim one and two, did the trial court fail to attach portions of the record.

2. In claim 3(A), did trial counsel fail to investigate criminal acts and disciplinary history of Detective John Merchant while he demonstrated his misconduct on the assault of the petitioner.

3. In claim 3(B), did trial counsel fail to move for a change of venue.

4. In claim 3(C), did trial counsel fail to move for a second competency hearing.

5. In claim 3(D), did trial counsel fail to pursue an involuntary intoxication defense.

6. In claim 3(E) did trial counsel fail to subject the states' case to the proper adversarial testing process.

7. In claim 4, did trial court fail by not fully elaborating on independent act doctrine to the jury for full understanding of all fact of essential elements.

## LIST OF PARTIES

**[X]** All parties appear in the caption of the case on the cover page.

**[ ]** All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whose judgment is the subject of this petition is as follows:

## TABLE OF CONTENTS



## INDEX TO APPENDICES

## TABLE OF AUTHORITIES CITED

### Cases

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or
[ ] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[X] has been designated for publication but is not yet reported; or
[ ] is unpublished.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[X] reported at 84 So. 3d 331 (5DCA 2011); or,
[ ] has been designated for publication but is not yet reported; or
[ ] is unpublished.

The opinion of the SEVENTH JUDICIAL CIRCUIT court
Appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or
[X] is unpublished.

## JURISDICTION

**[X]** For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was July 6, 2018.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 6, 2018, and a copy of the order denying rehearing appears at Appendix E.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest court decided my case was August 9, 2011. A copy of that decision appears at Appendix C.

[X] A timely petition for rehearing was thereafter denied on the following date: August 9, 2011, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**1.** In question One (1):
14th Amendment
Florida Rules of Criminal Procedure 3.850(F)(5)
Florida Rules of Criminal Procedure 9.141(b)(2)(D)

**2.** In question Two (2):
Fifth Amendment violation
14th Amendment Due Process Clause
5th Amendment violation protects against self-incrimination based upon a coerced confession only arises when the coerced statements are used in the criminal cases.
State Constitution Article 1 Section 9, Florida Constitution

**3.** In question Three (3):
14th Amendment violation due process clause, equal protection under law

**4.** In question Three (3)(C):
Florida Rules of Criminal Procedure 3.210(b) Mandates
14th Amendment violation

**5.** In question Three (3)(D):
6th Amendment violation

**6.** In question Three (3)(E):
6th Amendment violation
14th Amendment violation of due process

**7.** In question Four (4):
6th Amendment violation
14th Amendment violation of due process (failed to explain to jury)

## STATEMENT OF THE CASE

**1.** Statement for grounds one (1) and two (2) of previous motion:

In the lower court, the motion was filed, the ruling was summarily denied without attaching portions of the records to refute any of the claims as per rule 3.850(F)(5) states on a summary denial, the court shall attach portions of the record to refute the claim. This violated the 14th Amendment of petitioner's given rights. Also in the §2254 level in the U.S. District Court in the Middle District of Jacksonville when the court issued the show cause order, the state never refuted this ground.

**2.** Statement 2 for previous ground 3(A):

Before the interrogation on December 24, 2008, Detective Merchant physically assaulted me and told me that I was going in here in the eagle's nest they call it and answer yes to several; question so he can close this case. This is coercion; this is not a voluntary confession. Detective merchant's record speaks for itself. Almost 400 pages of discovery file and he ended up getting fired for several violations on the job of being a detective and under state laws of the Florida Constitution Article 1 Section 9 states that based upon the due process provision of Article 1 Section 9 of the Florida Constitution we agree that government misconduct which violates the constitutional due process rights of a defendant regardless of that defendant's predisposition warrants dismissal of the charges. *Compton v. State*, 935 So. 2d 616 (3DCA 2000).

**3.** Statement for question 3 from previous ground 3(B):

Counsel failed to motion the court for a change of venue. This is the issue. When the state talked to petitioner's counsel about a change of venue due to it was inflammatory in the community that petitioner was not going to receive a fair trial, then petitioner's counsel just ignored this from the state. Even the state saw this from the community. In *Skrilling v. U.S.* 130 S.Ct. 2896(2016) the Court verified that due process requires a change of venue:

> "The constitutional place of trial prescriptions however do not impede transfer of the pleading to a different district at the defendants request if extraordinary local prejudice will prevent a fair trial, a basic requirement of due process. Id. 2912, citing in RE: *Murchison*, 75 S.Ct. 623.

And in all due respect to this Honorable proceeding, the state of all entities saw the local prejudice to wanted a change of venue. Also in the U.S. District Court for the Middle District of Jacksonville, when that court issued a show cause order the attorney general did not refute this ground.

**4.** Statement for question 4 from previous ground 3(C):

Claim of ineffective assistance of counsel when petitioner came into the jail and within 24 hours he was classified as a psych patient with suicidal ideologies. Several attempts on my own life. Then petitioner was declared competent to stand trial in January 2010. Then on March 31, 2016, petitioner had a pretrial hearing when he cut his wrist in open court. Need I remind this Court Florida Rules of Criminal Procedure 3.210(b), the defendant is to be examined by no more than 3 experts. Petitioner was just examined by one (1) then after the act of self-mutilation in court my counsel did not do another evaluation to see if I was competent to stand trial. However, in *Scott v. State*, 420 So 2d 595, 597 (Fla. 1982), the Florida Supreme Court provided the basis for petitioner's relief on this ground: Even where the defendant has been found competent the court must be vigilant to reconsider a defendant's competency if circumstances change. (A) Prior determination of competency does not control when new evidence suggests the defendant is at the current time incompetent, *Nowitzke*, 572 So. 2d 1349, when the court has reasonable grounds to believe a criminal defendant may not be competent to proceed, it has no choice but to conduct a competency hearing, *Tingle v. State*, 536 So. 2d 202, 203 (Fla. 1988) and a failure to do so constitutes an abuse of discretion. See *Molina v State*, 946 So. 2d 1103, 1106 (Fla. 5DCA 2006), abuse or to refuse to reconsider competency where evidence suggests that defendant is incompetent, this violates petitioner's due process right.

**5.** Statement 5 to previous ground 3(D):

As the record shows, petitioner did clearly show numerous prescriptions of (Xanax). The state and the attorney general keep saying nothing in the record nor does the defendant show any evidence that he actually consumed the drug (Xanax). Now the taking of Xanax of the defendant is followed up by prescription and eyewitness testimony of the victims' mother in her deposition. Barbara Zieglier as the record shows, Documents 13-1 page Id. 2213 and prescriptions document 8-7 page Id. 75, 76, 77, 78, 79, 80, 81 that court and the attorney general never looked through the record before ruling, and to mention the state fails to refute this claim when it was at the §2254 level of the U.S. District Court in the Middle District of Jacksonville from the attorney general. This is also a 6th Amendment violation from defense counsel.

**6.** Statement 6 to previous ground 3(E):

This is ineffective assistance of counsel when the attorney's that represented petitioner during the time of court procedures just piggy backed off the state to save money and during trial these attorney's asserted to me that they had many

defenses to provide from. However, they basically did nothing just a cross examine defense. Did not apply any other defense strategy as the record shows. See document 13-2 page Id 2215 page 852 where the court asks the defense then petitioner's defense Bradley states the "defense rests". This is a murder trial and my attorney's are not giving a defense, this is pure ineffective assistance of counsel in violation of the 6th Amendment.

7. Statement 7 to previous ground 4:

Ineffective assistance of counsel, failing to argue independent act doctrine. The definition of Independent Act in *Maxwell v. State*, 2015 WL 4486466 (5DCA 2015); The independent act arises when one co-felon who previously participated in a common design/plan does not participate in acts committed by his co-felon which fell outside of and are foreign to the common design of the original collaboration (Id. 1). A defendant whose co-felon exceeds the scope of the original plan is exonerated from any punishment imposed as a result of the independent act (Id. 141). See also *Wagner v. State* 921 So. 2d 38 (4DCA 2006). The original plan by William Dewey Foster was he was going to be a flower delivery guy/ (See document 13-3 page Id. 2217 'page 26' line 9-12). That plan was ended by petitioner and forgotten about and agreed upon by the co defendant William Dewey Foster (Shooter). See document 13-3 page Id. 2217 'page 26' lines 9-23). Now several months have passed and my relationship with the victim was on great terms and getting better. When Mr. Foster approached on December 12, 2008, it was to purchase pills from the victim.

Mr. Foster, on his own accord, chose to rob the victim and myself at that time which this was not part of any plan. The victim refused to turn over her purse and resisted the robbery and that's when Foster, the shooter, shot her then reached in and took the purse which had the pills in it after he took petitioner's wallet. See Document 13-4 Id. 2219 pg. 416 lines 10-25; pg. 417 all pg. 418 all. Then petitioner called 911 to report and get EMS for victim. Petitioner ran over to the ambulance (See Document 13-5 Id. 2221 pg. 419 lines 1-16; Document 13-5 Id. 2222 pg. 929 lines 17-25; Document 13-5 Id. 2223 pg. 30 lines 1-8.

A guilty man would not have done all this. Petitioner wanted to help the victim and did not know what was going on when this psychopath robbed and shot my fiancé. Petitioner repeated this during my interrogation and described Mr. Foster to the police who apprehended him shortly after and when in custody, Mr. Foster was found with the victim's purse, my wallet and the gun. (See Document 13-6 Id 2225 pg. 885 lines 22-25; Document 13-6 Id. 2226 pg. 886 lines 1-5).

However, the common design of original plan from a flower delivery guy to this where Foster was supposed to purchase pills from the victim, this is not even close to the original collaboration, so the independent act doctrine is a viable

defense. That warrants relief and my attorney's did not express this defense to the jury, they just rested with no defense. (See Document 13-2 Id. 2215 pg. 852 lines 18-22). However, in the U.S. Supreme Court in *Gilbert v. State of California*, 87 S.Ct. 1951 (1967), stated for petitioner to be found guilty that the accomplice must cause the death of another human being by an act committed in furtherance of the common design (And as proven the common design was no longer in place as the shooter acted on his own idea and being, in violation of petitioner's 6th Amendment right to effective counsel.

## REASONS FOR GRANTING THE PETITION

1. From question One (1) and Two (2):

This record clearly demonstrates with the law that pertains to the attachment of records on a summary denial. Clearly, the trial court payed no attention to this fact. Also, this does conclude from the pertinent fact that the trial court's misapplication of a properly established rule of law (Fla. R. Crim. P. 3.850(f)(5)(2015) which the lower court denied petitioner his due process of law, prejudiced him on the face of the record and is prohibited by the 14th Amendment of the United States Constitution. This is the reason for granting this issue.

2. From question Three (3)(A):

As per law that is from the Florida Constitution Article 1 Section 9 from the due process provision, the trial courts did not use or investigate any factual findings of this issue and totally abused its adversarial testing process by not trying to investigate by just not doing anything besides allowing error not investigating the facts of Detective Merchant's history. The court allowed for the Detective's credibility to go on which is a complete error of the court to allow this to happen and not investigating is completely erroneous factual findings to allow this violation of law to be present in this court of law which is a misapplication of properly stated rule of law from the Florida Constitution and in the *Blackburn v. Alabama*, 86 S.Ct. 274, 361 (1996).

3. From question Three (3)(B):

The record demonstrates that the state accepted a change of venue was warranted so the record does rest with the petitioner's claim that this trial should not have been in Putnam county also that the jury was influenced highly by the multimedia coverage of the murder and the news media proclaimed to have transpired between the petitioner and his co-defendant and the inflammatory effects on the community which by law is a misapplication of established law. *Skrilling v. U.S.*, 130 S.Ct. 2896 (2016), With the state conceding to the fact that this case/trial should not have been held in Putnam county and this is clearly ineffective assistance of trial.

4. From question Three (3)(C):

From the record can and did demonstrate that the misapplication of law of Florida Rules of Criminal Procedure 3.210(b) the court erred while the petitioner mutilated himself in front of the court and his mental instability was consistent with the laws required to make sure petitioner was competent to proceed. As per law requires and as in *Scott v. State*, 120 So. 2d 595, 597 (Fla. 1982) of the Florida

Supreme Court. The Court just allowed the proceedings to continue without the proper fact finding procedures to which then was a misapplication of properly established rules of law.

5. From question Five (5) (3)(D):

Record demonstrates clearly that the attorney general did not refute this claim and the misapplication of law in this case is apparent where a witness states that the petitioner was acting weird when he was taking the prescription medication Xanax that he was prescribed by a medical center. Counsel was ineffective for not arguing this in trial court to the jury which did affect petitioner's substantial rights and a violation of his 6th amendment right.

6. From question Six (6) (3)(E):

As the petitioner did in his case and the record confirms that the petitioner pointed out that counsel failed to subject the state's case against him to a meaningful adversarial testing process during the trial where there is a reasonable likelihood that would be objectivity where when the state rested its case counsel failed to subject the state's case to a rebuttal at all. Petitioner has pointed out this throughout his postconviction process. (See Document 13-2 Id. 2215 pg. 852 lines 18-22). However, the record demonstrates that the trial courts fail to apply the proper standards of law to petitioners case which is misapplication of properly stated rule of law in *U.S. v. Cronic*, 104 S.Ct. 2039 (1984) and *Topps v State*, 865 So. 2d 1253-55 (Fla. 2004); and a violation of his 6th Amendment right to have effective assistance of counsel.

7. From question Seven (7) Four(4) of previous ground:

The prejudice that the petitioner suffered due to the misapplication of properly stated rule of law and the prosecutor not knowing how in fact the independent act doctrine actually applied and misleading the trial court that there were no cases that could be used as a defense to the petitioners case was highly prejudicial to petitioner to the extent of his due process.

Question during a criminal trial the defense chooses the correct defense to use in this criminal trial the prosecutor was allowed to give his point of view as to how this defense would pertain. I've never seen this before. It's like petitioner had to ask permission to use independent act doctrine and the state did not want petitioner to so the court did not allow for relief at the evidentiary hearing.

In hindsight, petitioner's due process was violated with the 6th Amendment and the misapplication of properly stated rule of law. *Wagner v. State*, 921 So. 2d 38 (4DCA 2006) Id. 141. And no to mention that, what the court came up with as the evidentiary hearing having been denied with all the findings are full of merit.

The court just prejudiced petitioner especially when the state admitted on trial transcripts pg 56 lines 1-5 stated to court to petitioner on the stand, you weren't involved with killing Summer. It was just a conversation, you never gave any information, you never gave him a gun, you never gave him money, you never told him where to find her, and you never gave him a map, correct? Then I stated "I'm convicted of it".

With this statement from the state in open court the judge did not move for any type of relief since the state knew petitioner had nothing to do with this murder. This is a misapplication of properly stated rule of law to prevent a miscarriage of justice and an illegal detainment.

No. _____

_____

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_____

CLINT HORVATT-- PETITIONER

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL -- RESPONDENT(S)

**PROOF OF SERVICE**

I, Clint Horvatt, do swear or declare that on this date, November 29th, 2018, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:
(1) Secretary, Department of Correction; 501 South Calhoun Street, Tallahassee, Florida 32399-2500; (2) United States Supreme Court One First Street N.E.., Washington, DC 20543; (3) United States Attorney General 950 Pennsylvania Ave. N.W. Washington, DC 20530-0001.

I declare under penalty of perjury that the foregoing is true and correct.

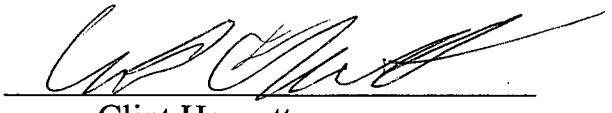
Executed on November 29th, 2018

Clint Horvatt

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Clint Horvatt

Date: November 29th 2018