

JUL 17 2019

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IN the

Supreme Court of the United States
Washington, DC 20543

RE: Rosa v Florida, et al
No: 18-9065

Charlene Rosa - Petitioner Pro-se

vs.

State of Florida et al - Respondent(s)

Motion for Rehearing on the Denial of
Writ of Certiorari pursuant to Rule 33.2(b) and Rule 44.6.

United States Court of Appeals 11th Circuit
(name of last court ruled on the merits of the case)

Motion For Rehearing

Charlene Rosa

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SUPREME COURT, U.S.

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Question(s) Presented

1. Whether the Standard of Strategic Decision use by both the United States Court of Appeals and District Court to justify defense counsel's unconstitutionality on the Factual Element and Material Facts in this case at hand, was improper.
2. Whether trial counsel presentation of the Factual Elements and Material Facts to the Jury could be consider a reasonable trial strategy and/or a strategy at all.
3. Whether trial counsel presentation of the Factual Element to the Jury ~~Constitute~~ a Disjunctive Denial a denial that denies the ~~First degree murder~~ allegations as untrue in the alternative to the First degree murder charge as Petitioner asserts in her claim (or)
- 3(b) Whether The Trial counsel presentation of the Factual Element to the Jury constitute an alternative theory of ~~Third degree murder~~, a lesser included offense of the First Degree murder charge to which Petitioner was on trial as the United States Court of Appeals and District Court finds in its decision
4. Whether the Jury Verdict was based on The State prosecutor allegation of charge Description and presentation to the Jury that Petitioner 'Killed' the Victim, or

Question(s) Presented Continued

- 4(b) Whether the Jury Verdict was based on the defense counsel disjunctive allegations to the jury that petitioner caused the victims death. a denial of the Sixth Amendment USC 4 Const. Amend 6.
5. Whether the Verdict returned by the jury was a direct Verdict of Conviction, which violate the defendant's Constitutional right to a impartial jury determination of her guilt or innocence. Amend 6.
6. Whether the jury instruction and Verdict form directed the jury on both the state prosecutor allegation that petitioner killed the alleged victim and the defense counsel allegations that petitioner caused the victims death. or
- 6(b) Whether the jury instruction and Verdict form was devoid of the state prosecutor allegation that petitioner killed the alleged victim, and solely based on the defense counsel allegation that petitioner caused the alleged victims death.
7. Whether petitioner was prejudiced because of defense counsel disjunctive alternative denial asserting that she "caused" the alleged victims death, deprive her of meaningful adversarial testing of the state case.
8. Whether petitioner conviction and present confinement violates her Sixth Amendment right to counsel and impartial jury determination on the factual element and material

Question(s) Presented Continued

Facts

9. Whether the Charge Description by the State of Florida First degree murder allegation that 'petitioner killed' the Victim is 'Contrary' to the Jury instruction and Verdict that asserted that 'petitioner caused' the alleged Victim's death.
10. Whether there exist a due Process and Equal Protection of the Law Violation guaranteed by the Fourteenth Amendment of the Constitution.
11. Whether the State of Florida charged petitioner with an accomplice and or Co-defendant.
- ~~11(a)~~^{11(b)} Whether the Jury instruction and Verdict that asserts that 'petitioner caused' the death of the alleged Victim constitute an accomplice theory and an allegation.
- 11(c) Whether defense Counsel theory to the Jury that 'petitioner caused' the alleged Victim's death by solicit an individual name Dutch to Extort her payment from the Victim, and that this individual Dutch allegedly killed the Victim constitute the Jury instruction and Verdict. deprived petitioner of substantial Jury, Fair trial, and adequate representation for her defense. U.S.C.A. Const. Amend 6 and 14.
12. Whether petitioner was charged in the indictment as convicted or she was charged in a amendment that was before the Jury.

Question(s) Presented Continued

13. Whether the Factual Showing of Identification is a genuine issue in this case.
14. Whether defense counsel presentation on the Factual Element Identifying petitioner and Dutch as the perpetrator of the alleged murder was a factual defense or a legal defense.
15. Whether defense counsel presentation on the Factual Element Identifying petitioner and Dutch as the perpetrator of the alleged murder was truthful inculpatory Evidence that did not affect the reliability of the Jury's determination (en)
- 15(b). Whether defense Counsel presentation on the Factual Element Identifying petitioner and Dutch as the perpetrator of the alleged murder was False and Misleading Exculpatory Evidence, Brady material that affect the reliability of the Jury's determination.
16. Whether the State failed to establish the identity of this petitioner as the perpetrator of the alleged murder.
17. Whether defense counsel unconstitutionality on the presentation of the Factual Element and material facts belong in the Category of Evidentiary insufficiency and not trial error.
18. Whether alleged Overwhelming Evidence was "mere" Coincidence and Irrelevant to the alleged First degree murder case.

Question(3) Presented Continued

19. Whether the United States District Court decision finding that defense Counsel's action on the Factual Elements and the Material Facts was a Strategic Decision created a New Constitutionally Ineffective Assistance of Counsel claim that is Non-Exhausted in the State Court Necessitate further proceeding.
20. Whether the United States District Court improperly denied Petitioner Newly discovered Evidence claim that she asserts Exculpatory Evidence a Brady material, where the State Amended the charge to which petitioner was convicted and Sentence to prison, Approximately one month after the conviction was an admission by the State that the conviction was premise upon defense theory to the Surge.
21. Whether the United State District Court improperly denied petitioner relief on DNA Exculpatory Evidence, a Brady material.
22. Whether the United States District Court improperly found that petitioner made Voluntary Statements to the arresting Special Agents, where the record establish that statements was obtain in Violation of Miranda rule, grounds for Federal Constitutional Challenge to conviction obtained thereby.
23. Whether Certiorari is Necessary For Arrest of Judgment where irregularities and errors made by the United States Court of Appeals and district Court is apparent on the face of the record.

Statement of the case

1. Petitioner was indicted on Grand Jury indictment dated June 30, 2004; Charge Description unlawfully and feloniously and from a premeditated design to effect the death of a human being, Colea Salzman, did kill and murder the said Colea Salzman. See following case summary file 06/30/2004. Statute 78a.04(1)
2. The State Filed Affidavit in Aid of Extradition 05/10/2005 sworn Affidavit and warrant dated September 11, 2002. See following case summary file 05/10/2005.
3. After petitioner was arrested the State filed Amendment, copies served 08/25/2005. Charge Description first degree murder w/o premeditation. Arraignment held and plea entered on 09/21/2005 on the Amendment made on 08/25/2005; First Degree Murder w/o premeditation. Statute 78a.04(2).
4. On 06/25/2007 - 07/05/2007 Jury trial held on charge of the State Amendment dated 08/25/2005 Statute 78a.04(2)
5. Throughout the Jury trial on 06/25/2007 - 07/05/2007 the presented its allegation to the Jury consistent with the Amendment made on 08/25/2005; Charge Arraignment and plea entered on 09/21/2005. and; Statute 78a.04(2)
- 5(b) Throughout the Jury trial on 06/25/2007 - 07/05/2007 the defense counsel presented its allegation to the Jury with the consistent with the Grand Jury indictment dated June 30, 2004 and the sworn Affidavit and warrant dated September 11, 2002. Contrary to the State allegation in its Amendment presented to the Jury by the State. Statute 78a.04(1).

Statement of the Case continued

(6. On 07/05/2007 after the State and defense rested the Trial Judge instructed the Jury on First Degree Premeditated murder asserting that petitioner caused the Victim's death of the Victim. Statute 782.04(1) An "act" includes a series of related actions arising from and performed pursuant to a single design. which such instruction is 'Contrary' to the 'State charge' of First degree murder w/o Premeditation and allegation to the Jury that 'Petitioner Killed' the alleged Victim. Statute 782.04(2) On the other hand, the instruction to the Jury by the Trial Judge constitute defense Counsel presentation using the Grand Jury Indictment and its sworn Affidavit and Warrant to establish beyond a reasonable doubt, that his client, this 'Petitioner Cause' the alleged Victim's death through her 'act' a series of her action. See Jury instruction and Verdict form.

7. The Jury returned a Direct Verdict of Conviction at the direction of the Trial Judge, by whose direction the Jury is bound, a conviction that petitioner is guilty of First Degree Premeditated murder for Cause the death of the Victim through her 'act' a series of action. a Verdict that is 'Contrary' to the State charge Description and allegation against the petitioner that was presented to the Jury by the State prosecutor during the entire trial proceeding from opening Statement to closing argument, and was 'Consistent' with defense Counsel theory to the Jury using the 'Grand Jury Indictment' and sworn supporting Affidavit and Warrant to prove beyond a reasonable doubt, that this 'Petitioner Cause' the Victim's death. Statute 782.04(1)

Statement of the case continued

8. The Trial Judge Sentence the petitioner to Natural life in prison consistent with the conviction of First Degree Premeditated Murder. Statute 782.04(1)
9. Approximately one month after petitioner was convicted and sentence to prison the State amended the charge Description to 'Solicit' to commit armed robbery First Degree Murder which is consistent with defense Counsel theory to the Jury using the sworn Arrest Affidavit and Warrant. Statute 782.04(1)
10. The Direct Appeal Court Affirmed the conviction and life sentence finding that the State indicted the appellant for both Felony murder and Premeditated Murder and that the defense theory is that Dutch who petitioner solicit to extort payment from the Victim Killed the Victim and that the defense ~~attempt~~ ^{attempt} to prove that Dutch committed the murder to present polygraph test result and that telephone recording conversation indicates petitioner involvement that lead to the death of the Victim. Statute 782.04(1).
11. Petitioner filed a timely ineffective Assistance of Counsel claims that was summarily denied by the trial Court adopting the State response, and was Affirmed on Appeal without opinion.
12. Petitioner filed a timely petition for habeas Corpus in the United States district Court that adopted the State response in an opinion and was Affirmed by the United States Court of Appeal denial of reconsideration of Certification of Appealability.

Reason For Granting The Petition

1. The original filed petition for writ of Certiorari was insufficient for the United States Supreme Court to grant certiorari.

Petitioner file this facially sufficient motion for rehearing in good faith for good cause for a new consideration of the case by this Court for the interest of justice.

2. Petitioner asserts that the United States District Court improperly adopted the State response in its decision finding that defense counsel unconstitutionality on the Factual Elements and material facts in this case was a 'Strategic Decision' which is Contrary to Rule of Criminal Procedure 3.850 and Rule of Appellate Procedure that held the State response to a 3.850 is not a record attachment as is contemplated by the Rules of Criminal Procedure 3.850 and Rule of Appellate Procedure and thus cannot be used as justification for a summary denial of a 3.850. See *Flores v. State*, 662 So.2d 130 (Fla. 2nd DCA 1995).

'Contrary to', State response in opposition to petition For writ of Habeas Corpus Supporting Memorandum of Law Page 24-38; Report of Magistrate Judge Page 23-36; order adopting Magistrate report Page 1-16 and order denying motion for reconsideration Page 1-10 establish grounds for reversal.

- 2 (b) In Addition order denying reconsideration Page 1-10 improperly rely on Memorandum and attorney client Privilege letters prepare by defense Counsel to refute claim which is outside the record and cannot be use as Substitute for an evidentiary hearing Subject to cross-examination in a proceeding under Rule of Criminal

Reason For Granting Petition Continued

Procedure 3.850. *Cintiron V. State*, 508 So.2d 1315 (Fla. 2d DCA 1987); also *Bryant V. State*, 661 So.2d 73 (Fla. 2d DCA 1987). Necessitate a Evidentiary hearing for live testimony by defense Counsel, Subject to Oath and Cross-Examination, that falls under the purview of *Brady v Maryland* 1963, Miranda rule, and Section 901.1, Fla. Stat. See also *England V. State* (Fla. 2006) establish Counsel as a witness.

2. (c) Further, the United States District Court relying on the Direct Appeal Court Interpretation on the Facts on the Law is outright improper on the part of the District Court where petitioner claim being asserted in her petition for habeas Corpus relief is one of ineffectiveness of Trial Counsel that general rule is that ineffectiveness of Counsel claims are not Cognizable on appeal when the issue has not been raised in the Trial Court. See *Blanco V. Wainwright*, 507 So.2d 1377 (Fla. 1987). also pursuant to the rule of Criminal procedure 3.850 and Rule of Appellate procedure Direct Appeal is not a vehicle for Ineffective Assistance of Counsel's claims. Necessitate grant of Certiorari because; Contrary to, Response in Opposition to Petition For Writ of Habeas Corpus and Supporting Memorandum of Law Page 2; Report of Magistrate Page 4-7; and order Adopting Magistrate report and recommendation Page 6-7. C. Objection number 3. establish that petitioner was entirely deprived of a Fair and Impartial habeas Corpus proceeding on her ineffectiveness of Assistance of Counsel's claim Necessitate a Writ of Certiorari for the Interest of Justice. USCA. Const. Amend 6.

3. Petitioner assert that because of the restriction on the page limit she will conform this motion for rehearing to the Factual Element of the case.

Reason For Granting Petition Continued

That will establish ~~the~~ concern with the sufficiency of Factual showing of Identification that belong in the category of Evidentiary insufficiency and was not "mere" trial error. 2. The Material Fact that Violated the Conviction and 3. Credible Scientific DNA Exculpatory evidence, Brady material that establish petitioner actual innocence to support petitioner claims of Constitutionally Ineffective Assistance of Counsel, that her Conviction and present confinement Violates her Sixth Amendment right to Counsel and Impartial Jury determination, and due process and Equal protection to a Fair Trial proceeding and to be treated Fairly in the Courts, guaranteed by the ~~Fourteenth~~ Fourteenth Amendment of the Constitution. U.S.C.A. Constitution Amend. 6 and 14. Necessary to

~~en~~ Grant Writ of Certiorari. Relying on Tibbs v. State (Fla. 1976); Burke or Scott distinction; Brady v. Maryland; Section 901.1 Fla. Stat. England v. State (Fla. 2006); Schlup v. Delo (1995).

4. Petitioner asserts that her Ground one and Two of her claims in her petition for habeas corpus denied by the United States District Court was intertwined.
- 4 (b) The State conceded that: with regard To Ground 2(A), trial Counsel was not ineffective for failing to challenge the authenticity of the recording telephone calls admitted into evidence. In Ground 2(C), Petitioner claims that trial Counsel was ineffective for admitting at trial that she extorted a friend to collect her payment and that friend subsequently killed the victim. These two claims are closely intertwined. See Response in opposition to petition for Writ of Habeas Corpus and Supporting Memorandum of Law Page 29-30. Based on this admission by the State establish a clear and convincing positive proof of a material fact that the defense counsel error in admitting the recording

Reason for Granting Petition Continued.

Conversations as 'authentic' establish him as a witness against petitioner, and conversations into evidence and as authentic vitiated the conviction as it lead him to inform the jury that Ground 2 (c) Petitioner extort a Friend to collect her payment, and that Friend killed the Victim. Ground one an alternative disjunctive denial that petitioner is guilty she cause the Victim's death with his Frivolous 'mere' Word that she committed a third degree murder that is unsupported by his admission on the Factual Elements and material fact. also his Disjunctive denial in a First degree murder trial is neither a Factual defense or a Legal defense sufficient to gain credibility from the jury under the Fact and Law of his presentation where is Factual Concession constitute the crime charge of First degree murder. See Tibbs v. State (Fla. 1976) under either Burks or Scott distinction; Brady v. Maryland, Section 901.1 Fla. Stat. and England v. State establish denial of counsel critical stage.

4(c) The United States District Court adopted the State response finding that defense counsel presentation on the Factual Element and material facts establishing Petitioner as the perpetrator of the alleged murder in that the 'Cause' the Victim's death was a Strategic Decision was improper, see order adopting Magistrate report page 13-15 because such error by defense counsel belong in the Category of Evidentiary insufficiency and not 'mere' trial error. Necessitate the Grant of Certiorari to inspect the record on the proceeding for irregularities and errors. because 'Neither' the State nor the defense present 'sufficient evidence' to prove that the recording conversations was authentic, Marine Hylton and Omar Nunez did not testify that the recording conversation was authentic. see response in opposition to petition for writ of Habeas corpus and supporting Memorandum of Law Page 31. The State asserted that neither Hylton nor Nunez denied that the tapes admitted into evidence represented true and accurate recordings of the telephone conversations they had with petitioner. on the other hand, petitioner asserts that 'Neither' Hylton or Nunez 'agreed' that the recording conversation was

Reason for Granting Petition Continued.

- authentic, but it was defense Counsel who ^{informed the} ~~left his duty~~ jury that Tapes Authentic. establish that petitioner was deprived of counsel at critical stage of trial.
- 4(d) In Addition, Detective Ronald Benker who allegedly taped record the alleged conversations failed to attest that he Varies the informers Maxine Hyften and Omar Nunez statements including recording conversations for 1. Motives 2. Truthfulness 3. Authenticity. See sworn arrest Affidavit and Warrant signed by Affiant and Judge Susan Lebew dated September 11, 2002. in possession of United States court of appeals and district court.
5. The United States District Court improperly adopted the State response asserting that petitioner was 'charged' by way of Indictment with one count of First degree murder on June 30, 2004. See State response in opposition Page 1; report of Magistrate Page 6; and order adopting Magistrate report Page 2. which is 'Contrary' to the State Court record that establish that petitioner was 'Indicted' on Grand Jury Indictment for First degree premeditated murder dated June 30, 2004. See Direct Appeal court opinion Page 1 Rosa v. State January 2010. Petitioner Rosa asserts that she was 'not' formerly 'charge' on the Grand Jury Indictment to which she was convicted and sentence. Necessitate the grant of Certiorari for the interest of Justice. See record in the possession of the United States court of appeals and district court.
6. Petitioner asserts that the United States District Court record establish her claim of Constitutionally ineffective assistance of trial counsel where the District Court asserted that; 'defense counsel asserted that Mrs. Rosa did not kill Lola Salzman, instead, defense counsel provided a preview of the State's evidence consisting of 'telephone calls' asserting that Petitioner admitted she enlisted Dutch's assistance to collect money owed by the victim and that the encounter with the victim went awry when she took a knife swung it at Petitioner. Defense counsel argued that Dutch killed the victim. That our theory, Dutch killed her. She set this course of action in motion by asking Dutch to get her money'. See order adopting Magistrate report Page 13-15. Petitioner asserts that such theory presented to the jury by defense counsel constitute the direct verdict of conviction and the Grand Jury Indictment that she was 'not formerly charge on', and petitioner was Entitled to Federal habeas corpus relief in the United States District Court and court of Appeals.
7. Petitioner asserts that she was Served an Amended Capias on 08/25/2005

Reason For Granting Petition Continued

- on 09/21/2005 Arraignment held, plea entered on Amended Indictment 'Charge Description First Degree Murder w/o Premeditation'. She invoked her right to Jury Trial on Amended Indictment to which she was formerly charged. See Felony Case Summary Case No: 04-010827 CF10A. Therefore Conviction is Contrary to the Amendment to which petitioner was charged and proceed to Jury Trial necessitate grant of writ of Certiorari for the Interest of Justice. See record in the possession of the United States District Court and Court of Appeals. Petitioner was entitled to habeas corpus relief.
8. United States District Court finding that defense counsel unconstitutionality on the Factual Element on material fact was a Strategic Decision just to make this case go away 'Created a New Matter' of Constitutionally ineffective assistance of counsel Non-Exhausted in the State Court and there is no other remedy available to petitioner because of the AEDPA 1996. Therefore Certiorari is necessary for the interest of Justice. See Section 95.11(4)(a); also *Sakak v. Broida & Napier PA*, 545 So.2d 380 (Fla. 1989).
9. After petitioner was convicted on a Direct Verdict of Conviction base on defense counsel inadequacy, the state filed New Amendment Charge Description Solicit to commit armed Robbery First degree murder to Bolster defense counsel theory to which petitioner was convicted See. Case No: 062005 CF01014414A8810. Establish that petitioner was entitled to Federal habeas relief on her claim alleging that her conviction and present confinement violates Sixth Amend. to Counsel.
10. The foregoing establish that defense counsel inadequacy on the Factual Element and the material fact that cause petitioner's conviction was Exculpatory Evidence Brady material False and misleading Evidence that affect the reliability of the jury determining necessary to grant Certiorari for the Interest of Justice because prejudice was presume and jury verdict is unreliable.
11. The United States District Court finding that petitioner failed to produce DNA report and results is improper because Filing # 59928307 E-filed 08/03/2017 was sufficient showing of Exculpatory Evidence Brady material necessary to grant relief. Therefore Certiorari is necessary. See page 9 of district court order adopting magistrate report.

CONCLUSION
Rehearing on denial of writ of Certiorari should be granted. Respectfully Submitted,
Charlene Thosa 206814.

Certificate of Service

I, hereby Certify that I submit this motion for rehearing to be mailed to;
Office of the Clerk, Supreme Court of the United States, Washington DC. 20543
and to:

Office of the Attorney General 1515 Flagler Drive West Palm Beach FL 33401
I declare under penalty of perjury that the foregoing is true and correct.
Executed on July 17, 2019. Page 13 of 15
(signature)