ORIGINAL

No. 18-9235

IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

RICHARD McMILLAN III – PETITIONER

vs.

STATE OF FLORIDA – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH DISTRICT COURT OF APPEALS, FLORIDA

PETITION FOR WRIT OF CERTIORARI

RICHARD McMILLAN III – D.O.C. # B15432

Apalachee Correctional Institution

35 Apalachee Drive

Sneads, FL 32460-4162

QUESTION(S) PRESENTED

As to ISSUE I of this application,

QUESTION # 1: Can the Trial Court forbid Submission of Evidence at trial that supports Petitioner's Defense, when in fact, there's a dispute?

As to ISSUE II of this application,

QUESTION # 2: Should a Motion for Judgment of Acquittal be granted, when the State's Evidence is inconsistent with the information and inconsistent between testimony and physical evidence at trial?

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 proceeding in the court whose judgment is the subject of this petition is as follows:

IN THE UNITED STATES SUPREME COURT

IN AND FOR AMERICA

RICHARD McMILLAN III,

PETITIONER

vs.

STATE OF FLORIDA,

RESPONDENT

Case No.: _____

"CORPORATE DISCLOSURE STATEMENT"

COMES NOW, the Petitioner, **McMILLAN**, is filing the listed above in connection with his *Petition For Writ Of Certiorari* that is attached. This statement is filed in Good Faith pursuant to Fed. R. App. Pro. 26.1 and U.S. Sup. Ct. R. 29.6. To the best of Petitioner's knowledge the listed below are the interested persons in this case as follows:

1. Aronberg, David, (State Attorney of Palm Beach, Florida),
2. Bondi, Pam (Attorney General, Florida),
3. Burns, J. Barbara (Assistant State Attorney Palm Beach, Florida),
4. Burton, Charles (Brady Motion Hearing Judge for 15th Cir. Ct. of Palm Beach, Florida),
5. Bujnowski, Marc (Jupiter, Florida Police Department),
6. Caracuzzo, Cheryl (Trial Judge for 15th Cir. Ct. of Palm Beach, Florida),

7. Conner, (4th District Court of Appeal (4th DCA)),

8. Fronstin, P. Guy (Trial Counsel),

9. Geesey, R. Allan (Assistant Attorney General of Florida),

10. Godden, Lauran (Assistant State Attorney),

11. Gross (4th DCA),

12. Hall, Bobby (Victim alledged),

13. Hannan, Gracie (Victim alledged),

14. Hudock, Christopher (Assistant State Attorney Palm Beach, Florida)

15. Kastrenakes, John (Garcia Hearing Judge for 15th Cir. Ct. of Palm Beach, Florida),

16. Lopez, M. Adriana (Assistant State Attorney),

17. May, (4th DCA),

18. McAuliffe, F. Michael (State Attorney Palm Beach, Florida),

19. McMillan III, Richard (Petitioner),

20. McPherrin, David (Assistant Public Defender),

21. Moody, B. Ahsley (Attorney General Florida),

22. Musso, Anothoy (Palm Beach Sheriff Office (PBSO))

23. Neto, Uriel (Assistant State Attorney, Palm Beach, Florida),

24. Nurik S. Marc (Trial Counsel),

25. Oftedal, Richard (Preliminary Hearing Judge of Palm Beach, Florida),

26. Rosenburg, Robin (Status Conference Judge of Palm Beach, Florida),

27. Scott, Kevin – Drug Enforcement Agency (D.E.A.),

28. Terenzio, Celia (Assistant Attorney General Florida),

29. Wilson, Richard (Victim alledged),

To the best of Petitioner's knowledge, the listed above (29) names are the people associated with the case. At this time, Petitioner is "unaware" of any other persons, firms, partnerships, corporations, subsidiaries, conglomerates, affiliates, parent corporations, or any publicly held corporation that owns 10% or more of a party's stock. Petitioner, is "unaware" of any other persons, because he is Pro Se', and incarcerated.

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I. "PRELIMINARY STATEMENTS"

Richard Mcmillan will be also known as (A.K.A.) "Petitioner". The 15th Judicial Circuit of Palm Beach, Florida Trial Judge Cheryl Caracuzzo will be A.K.A. the "Court". The State of Florida prosecuting assistants State Attorneys Adriana M. Lopez and Christopher Hudock will be A.K.A. "State". Assistant Attorney General of Florida will also be known as "State". The Fourth District (Fla.) Court of Appeal will be A.K.A. "4th DCA". Appendix will be "**Appx.**"_ followed by "**Page**"_____, for example: "**Appx.** __ **P.** ___."

The State's Exhibits will be abbreviated as "**St. Exh. #** ___ **P.** ___."

II. STANDARD OF REVIEW

The U.S. Supreme Court Reviews a State Court decision on direct review pursuant to Tit. 28 USCS 1257, it is reviewing the judgment; if resolution of a Federal question cannot affect the "Judgment", there is nothing for the Court to do, *See* *Coleman v. Thompson*, 501 U.S. 722, 730 (1991).

This standard applies to ISSUES I and II of this application, and Petitioner contends that the errors affected his "Judgment".

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

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

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

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

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

[ ] reported at _____; or,
[ ] 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 B to the petition and is

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

The opinion of the 15th Jud. Cir. Ct., Palm Beach, Fla. court appears at Appendix C to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

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

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

[ ] 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 this Court is invoked under 28 U.S.C. § 1254(1).

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

The date on which the United States Court of Appeals decided my case was Dec. 13, 2018. A copy of that decision appears at Appendix B.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Feb. 27, 2019, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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 this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Constitutional provisions and Statutory provisions involved in ISSUE I of this Application are U.S. Const. Amend. VI Compulsory Process Clause and Tit. 18 USCS 3482, because the 15th Judicial Circuit Court of Palm Beach, Florida denied Petitioner's Right to Present evidence that supports his theory of the case. Plus, the Fourth District Court of Appeals in Florida upheld the Lower Court's decision that are in conflict with *Chambers v. Mississippi*, 410 U.S. 284 (1973), and *Mateo v. State*, 932 So. 2d 376, 381-382 (Fla. 2nd DCA 2006), and *Mathis v. State*, 208 So. 3d 158 (Fla. 5th DCA 2016), and *Old Chief v. U.S.*, 519 U.S. 172, 179 (1997) .

2. The Constitutional provisions and Statutory provisions involved in ISSUE II of this Application are U.S. Const. Amend. V and XIV Due Process Clause and Tit. 18 USCS 3482, because the 15th Judicial Circuit Court of Palm Beach, Florida denied Petitioner's Judgment of Acquittal, where the State of Florida did "NOT" present sufficient evidence to support their principal theory of the case, nor did the State present competent substantial evidence of Petitioner's intent in Counts III-VII of the State's Information. Plus, the 4th District Court of Appeals in Florida upheld the Lower Court's decision, that are in conflict with *Jackson v. Virginia*, 443 U.S. 307 (1979) and *Inre Winship*, 397 U.S. 358, 368 (1970).

STATEMENT OF THE CASE

In the case at hand, Petitioner, was arrested on June 27, 2011. On January 26, 2017, the State filed its Third Amended Information, **(Appx. A, P. 4-11)** that charged Petitioner with Racketeering in Count I in violations of Florida Statutes

(2010) (F.S.) 895.02(3), 895.03, 895.02(4), 895.03(3), and 777.011 as Principal, **(Appx. A, P. 5)**.

Count II alledged Conspiracy to Commit Racketeering in violations of F.S. 895.02(3), 895.02(4), 777.04(3), 895.02, 895.03, and 895.04(2010), **(Appx. A, P. 8)**.

Counts III – VII, the information alledged Trafficking in Oxycodone (14 g. – 28 g.), in which were the Predicate Incidents # 1-5 under Count I, in violations of F.S. 893.03(1)(b), (2)(a), (3)(c)3 or (3)(c)4, and 893.135(1)(c)1b, (2010), **(Appx. A, P. 8-9)**.

Counts VIII – XI alledged Trafficking in Oxycodone (28 g. – 30 Kg.), in which were the Predicate Incidents # 6-9 under Count I, in violations of F.S. 893.03(1)(b), (2)(a), (3)(c)3 or (3)(c)4, and 893.135(1)(c)1c (2010), **(Appx. A, P. 9-10)**.

Also, the State filed 2nd Amended Bill of Particulars on Jan. 17, 2017, **(Appx. A, P. 2-3)**, that gives a description of what the State intended to prove at trial.

The Petitioner plead "NOT" guilty to the charges. The charges spring from the Petitioner and his Co-Defendant Pasquale Gervasio, (*See* Information Counts I, II, XII – XIII, **(Appx. A, P. 10-11)** owning/managing two pain management clinics in Palm Springs and Boca Raton, Florida. The Petitioner and Co-Defendant also managed a pharmacy in Boca Raton, Florida, that was assisted by a consulting firm. Ultimately, Gervasio pled guilty to his charges.

Trial by Jury was held on Jan. 31, 2017 – Feb. 15, 2017.

The Jury found Petitioner guilty as to all counts. On Feb. 27, 2017, Petitioner was sentenced to 35 years in State Prison.

In this application, Petitioner, seeks review of a Florida-State Court Judgment, specifically in the 15th Judicial Circuit Court for Palm Beach, Florida and the 4th DCA of Florida.

This application complains of "two" Trial Court errors as follows:

ISSUE ONE:

The Trial Court abused its discretion by "NOT" allowing Petitioner his Right to present physical material and relevant evidence consisting of patient's files **(Appx. A, P. 1, 12)**, that would have corroborated and confirmed Petitioner's testimony that there were patients that were being discharged for numerous reasons, **(Appx. C, P. 1846-1850)**.

The evidence corroborates and confirms Petitioner's theory of his Defense that he was conducting a ligitimate business and "NOT" an illicit business as alledged by the State of Florida, **(Appx. A, P. 2-10)**.

This issue was raised during the final charge conference and proffer by Trial Counsel, before the Jury rested, **(Appx. C, P. 1838-1841, 2051-2054)**.

The State addressed this issue during the final charge conference, **(Appx. C, P. 1838)**.

The Court addressed this issue during Trial Counsel's proffer, **(Appx. C, P. 2051-2054)**.

The Trial Court ruled that the Patient's files were cumulative, not relevant, and Trial Counsel was attempting improper impeachment, **(Appx. C, P. 1841)**.

This issue was raised on appeal and was denied by the 4th DCA by PCA opinion, **(Appx. B, P. 1)**.

Trial Counsel argued Federal questions sought to be reviewed by stating: "it was our position that the jury should have been allowed to have access to these files to see in fact that these files did exist... to be able to review the files"..., **(Appx. C, P. 2052)**.

ISSUE TWO:

At the conclusion of the State's case, Trial Counsel, moved for Judgment of Acquittal (JOA). Trial Counsel stated:

> **TRIAL COUNSEL: "there was insufficient evidence as to the Defendant's participation in any of the charges alledged in the information" (Appx. C, P. 1475)**

The Court ruled:

> **COURT: "I will respectfully deny your JOA" (Appx. C, P. 1475)**

After, the Defense rested its case. Trial Counsel stated:

> **TRIAL COUNSEL: "we would renew our JOA"... "evidence was insufficient as a matter of law"... "insufficient evidence that relate to the prescribing in bad faith and the counts that relates to the untruthful means used to obtain the shipments from seacost medical"... "it's Count XI which relates to the transfer of medications from the clinics to Country Value Pharmacy, and then their corresponding predicate acts with respect to the RICO and the RICO conspiracy. And so we would submit that there was insufficient evidence as a matter of law"... (Appx. C, P. 2048-2049)**

The ruling of the Court:

> **COURT: "The renewed JOA is denied" (Appx. C, P. 2051)**

During Post-Trial, Trial Counsel filed a written JOA Motion, **(Appx. A, P. 13-14)**. This written JOA renewed the arguments in Counsel's JOA after the Defense rested its case listed above, **(Appx. C, P. 2051)**

During Petitioner's Sentencing Hearing, the Court ruled that the written JOA:

> **COURT: "re-raises what you've already moved for during trial, so I deny your JOA" (Appx. C, P. 2760).**

Trial Counsel argued federal questions that the evidence was insufficient, **(Appx. A, P. 13-14; Appx. C, P. 1475;** and **Appx. C, P. 2048-2051)**.

This issue was raised on Direct Appeal and was denied by the 4th DCA by PCA Opinion, **(Appx. B, P. 1)**

EVIDENCE PRESENTED AT TRIAL

The State of Florida presented (25) witnesses that testified against Petitioner combined with (29) State Exhibits introduced through those witnesses, **(Appx. C, P. 25, 374, 681-682, 975, 1272, 1505, 1814)**.

Eight of the State witnesses were impeached during trial. Eight of the State witnesses took plea deals with the State for exchange of testimony against Petitioner, and for a lighter prison term.

The Defense presented (4) witnesses combined with (10) Defense Exhibits. The Petitioner took the stand to testify, and his corporate attorney testified that the pain clinics operation was based on the law contained in American Jurisprudence by Florida Laws. Petitioner's Defense was "Advice of Counsel."

REASONS FOR GRANTING THE PETITION

ISSUE I

THE TRIAL COURT OF PALM BEACH COUNTY, FLORIDA ERRONEOUSLY ABUSED ITS DISCRETION BY FORBIDDING PETITIONER FROM INTRODUCING PATIENT FILES IN SUPPORT OF HIS DEFENSE, AND THE FOURTH DISTRICT COURT OF FLORIDA APPEALS ERRONEOUSLY UPHELD THE TRIAL COURT'S DECISION IN VIOLATION OF U.S. CONST. AMENDMENT VI RIGHT TO COMPULSORY PROCESS

I. DISCUSSION

In this Application, Petitioner contends that the Trial Court "nullified" his Defense when it forbid him of introducing physical evidence of patient files that were in Discovery during Pre-Trial, (Appx. A, P. 1, 12).

The physical evidence of Patient files corroborates with testimonial evidence of Petitioner, (Appx. C, P. 1846-1850) that Patients were being discharged for various reasons.

The Patient files corroborates Petitioner's position that he was conducting a ligitimate business and "NOT" an illicit business as alledged by the State, (Appx. A, P. 2-10).

II. HISTORY OF ISSUE

The history of this issue is contained within Petitioner's statement of the case.

III. MEMORANDUM OF LAW

The Petitioner contends that the Trial Court is in violation of various Federal and State Laws, specifically:

Fed. Evid. Code 401: Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the Evidence and (b) the fact is of consequence in determining the Action.

See Also: Fla. Statutes (F.S.) 90.401 (2010) Relevant Evidence tending to prove or disprove a material fact.

Fed. Evid. Code 402: General Admissibility of Relevant Evidence, also F.S. 90.402 (2010) – all relevant evidence is admissible, except as provided by law.

Fed. Evid. Code 403: Excluding Relevant Evidence for prejudice, confusion, waste of time... See also F.S. 90.403 (2010).

Chambers v. Mississippi, 410 U.S. 284, 302 (1973) holding: "Few rights are more fundamental than that of an accused to present witnesses in his own defense." Although this quotation refers to "witnesses," the principle obviously includes other forms of evidence as well. Our own Supreme Court has held that "where evidence tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt, it is error to deny its admission," *Rivera v. State*, 561 So. 2d 536, 539 (Fla. 1990).

Old Chief v. U.S., 519 U.S. 172, 179 (1997) "general requirement that evidence is admissible only if directed to matters in dispute."

IV. ARGUMENTS

During opening statements, the State alledged that:

STATE: ... "the case will be about an unconventional drug dealer"... "McMillan, the Defendant in this case set up a business to make

money which is ordinarily legal, but it becomes illegal when that business a medical clinic, it becomes illegal when the operation of that business makes money by prescribing for example Oxycodone to anyone who walks through the door," (Appx. C, P. 42-43).

Petitioner contends that the listed above opening by the State "inflamed" the minds of the Jury, thereby creating a "dispute." In order to challenge the State's "dispute", Petitioner testified:

Q: "Did you tally the number of discharged patients?"

Q: "Mr. McMillan, during the time that you reviewed the patient files in the State's possession?"

Petitioner testified that it was (1,274) discharged patients out of (10,000) files. (175) patients were discharged for failed urine test. (210) patients were discharged for doctor shopping. (90) patients were discharged for altered MRI's. (215) patients were discharged for illegal drugs, and (130) patients were discharged for IV track marks detected. (68) patients were discharged for suspected drug sales. (121) patients were discharged for not following facility protocol. (252) patients were discharged because of negative urine analysis. (Petitioner's testimony herein – summation), (*See* **Appx. C, P. 1846-1850**).

Petitioner contends that his testimony contained within the Record (**Appx. C, P. 1846-1849**), clearly refutes the State's allegations that "prescribing oxycodone to anyone who walks through the door," (**Appx. C, P. 43**)

The Patient's files would have clearly given the Trial Court and Jury physical evidence that would have displayed that the medical clinic was "NOT" prescribing Oxycodone to anyone who walks through the door.

The State was allowed to introduce (**St. Exh. # 22-24**) to alledge misconduct by Petitioner.

Unfortunately, the Petitioner was "UNABLE" to introduce his Evidence that the medical clinic's conduct was "NOT" irrespective to the Laws, F.S. 895.03, 777.011, 777.04, 893.135, etc. (**Appx. A, P. 2-10**)

Petitioner contends that the Trial Court "destroyed" his Fla. Jury Inst. 3.7 Plea of Not Guilty; Reasonable Doubt; and Burden of Proof.

Petitioner contends that by the Trial Court "NOT" allowing the Jury to Review the Patient files [visually] combined with the State's opening statements, it affected the Judgment of Jury. (**Appx. C, P. 43**).

See Cotton v. State, 763 So. 2d 437, 446 (Fla. 4th DCA 2000) "defendant's testimony is no substitute fo other evidence corroborating it."

The Trial Court ruled that the Patient's files were cumulative and not relevant, (**Appx. C, P. 2051-2054**). Petitioner contends that the Patients files were "NOT" cumulative, because Petitioner did "NOT" enter other Patient's files that were discharged. Petitioner contends that the Patient's files were relevant to his Defense that the Medical Clinics were operating legally, in which would have proved a fact more probable in determining the action, Fed. Evid. Code 401, F.S. 90.401 (2010). Petitioner contends that the Trial Court's decision to forbid the Patient's files prejudiced the Petitioner to the affect that the Jury was "UNABLE" to visualize that Patients were being discharged, Fed. Evid. Code 403, F.S. 90.403 (2010).

Furthermore, the Jury could "NOT" adequately determine the "dispute" between the State and Petitioner concerning Patients being prescribed Oxycodone and Patients "NOT" being prescribed Oxycodone – the centerpiece of this case.

"If" the jury would have been able to review the discharged Patient's files, the Jury would have found reasonable doubt as stated in Fla. Jury Inst. 3.7 and found Petitioner "NOT" Guilty as to "All" Counts of the Information, **(Appx. A, P. 2-11)**.

Petitioner contends that the Trial Courts decision to forbid the Jury to review the Patient's files was an abuse of discretion that was arbitrary, fanciful, or unreasonable, *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980).

ISSUE II

THE TRIAL COURT OF PALM BEACH COUNTY, FLORIDA ERRONEOUSLY DENIED PETITIONER'S JUDGMENT OF ACQUITTAL MOTION, AND THE FOURTH DISTRICT COURT OF FLORIDA APPEALS ERRONEOUSLY UPHELD THE TRIAL COURT'S DECISION IN VIOLATION OF U.S. CONST. AMENDMENTS V, XIV DUE PROCESS

I. DISCUSSION

In this Application, the Petitioner contends that the State's Evidence is insufficient as "matters of facts and law," that the physical and testimonial evidence is inconsistent with the State's Information, **(Appx. A, P. 4-10)**. In this issue, Petitioner will discuss Information Counts III – VII, in which is predicate incidents I – V of Count I of the RICO ACT allegations.

The Petitioner will demonstrate that the Information compared to the "State's key witness Dr. Rubenstein, Mark" **(Appx. C, P. 1276-1321)** to the State's

alledged "Key Pieces of Evidence," presented/introduced to the Jury through expert Dr. Rubenstein is insufficient and inconsistent, **(Appx. D, E, and F)**.

Petitioner contends that the Trial Court's "Judgment" to deny JOA Motion and allow the Jury to consider Fla. Jury Inst. 25.11(b) (2010) in Counts III – VII pertaining to Fla. Statutes (F.S.) 893.135 is in error. Petitioner contends that the State failed to present sufficient evidence to prove beyond a reasonable doubt that Petitioner committed any acts of the crimes charged. "IF" the Trial Court would have granted the JOA Motion, the Jury would "NOT" have considered F.S. 893.135 Jury Instructions, thereby affecting the "Judgment" of the Jury to find Petitioner guilty of the crimes charged.

II. HISTORY OF ISSUE

The History of this Issue is contained in Petitioner's Statement of the Case.

III. MEMORANDUM OF LAW

Under the Due Process Clause of the 5th Amendment, the prosecution is required to prove beyond a reasonable doubt every element of the crime with which a defendant is charged, In re: *Winship*, 397 U.S. 358, 364 (1970). The reasonable doubt requirement applies to elements that distinguish a more serious crime from a less serious one, as well as to those elements that distinguish criminal from non-criminal conduct, *Apprendi v. N.J*, 530 U.S. 466, 488-92 (2000). The government's failure to meet its burden of proof results in the defendant's acquittal at trial or reversal of the conviction on appeal, *See U.S. v. Burgos*, 703 F. 3d 1, 16-17 (1st Cir. 2012) (prosecution's failure to prove beyond a reasonable doubt that defendant

knew or was willfully blind to mariahuana distribution and not other illegal activity required reversal of conviction for conspiring to distribute) *U.S. v. Jones*, 713 F. 3d 336, 346-52 (7th Cir. 2013) (Prosecution's failure to prove beyond a reasonable doubt that defendant was involved in manufacturing crack required reversal of conviction for possession with intent to distribute.)

IV. ARGUMENTS

A. COUNT III: PREDICATE INCIDENT #1 OF RICO ACT

The State's information alledged that Richard McMillan III did knowingly "sell" to Richard A. Wilson... a prescription written in bad faith and not in the course of professional practice, **(Appx. A, P. 5, 8)**.

Richard A. Wilson did "NOT" testify that he was given the prescription in bad faith, **(Appx. C, P. 25, 374, 681-682, 975, 1272, 1505, 1814)**.

Dr. Quinn Karter, the person that wrote the prescription, did "NOT" testify that he wrote the script in bad faith, **(Appx. C, P. Indexes, Appx. F, P. 1936)**.

The State's Key Expert Witness Dr. Mark Rubenstein, testified that Wilson was addicted to Oxycodone since 2006 for low back pain, (Appx. C, P. 1312).

The State examined Dr. Rubenstein:

> **STATE: "Do you know the results of his drug screen?"**
>
> **DR. RUBENSTEIN: "the inital urine drug screen was "negative", it would mean that he wasn't using those agents. And the doses prescribed at the initial visit would therefore be excessive and not have a legitimate purpose," (Appx. C, P. 1314-1316)**

Dr. Rubenstein's testimony that the drug screens were "negative" are inconsistent with what the actual drug screens read.

The (2) alledged drug screens presented by the **St. Exh. # 24 Appx. F, P. 1944-1945** clearly display that one line on both tests read "positive" and "NOT" all "negative" as alledged by Dr. Rubenstein, **(Appx. C, P. 1315-1316)**, *See* F.S. 90.702(1), Fed. R. Evid. 702.

Plus, the (2) drug screens do "NOT" display "who" completed these screens, nor "when" these screens were completed, such as a date and time, nor "where" these screens were completed at, nor "how" these screens were completed. The name of Richard A. Wilson is "NOT" listed on the screens, compare to **St. Exh. # 22, Appx. D, P. 1878, 1880-1881**, in which a name and date is written on the screens.

Furthermore, the (2) screens in **St. Exh. # 24, Appx. F, P. 1944-1945** do "NOT" display what drugs these tests were for, for example marihuana, heroin, cocaine, benzodiazepines, opium, etc., to prove beyond a reasonable doubt that the prescriptions **(Appx. F, P. 1936)** were written in bad faith.

Petitioner contends that the scripts were written in bad faith is insufficient, because the **St. Exh. # 24, Appx. F, P. 1944-1945** clearly undermines the State's position that the Scripts were written in bad faith based upon that Richard A. Wilson didn't have drugs in his system, when in fact the alledged drug tests display that drugs were in his system. Therefore, the scripts were written in good faith.

Wherefore, Count III must be vacated by the U.S. Supreme Court of America.

B. COUNTS IV-V: PREDICATE INCIDENTS #2-3 OF RICO ACT

In Counts IV-V, the State's Information alledged that Richard McMillan III did knowingly "sell" to Richard A. Wilson... a prescription written in bad faith and not in the course of professional practice, **(Appx. A, P. 5-6, 8-9)**.

Richard A. Wilson did "NOT" testify that he was given the script in bad faith, nor did Dr. Quinn Karter **(Appx. F, P. 1928)**, or Dr. Randy M. Dean (Appx. F, P. 1924) testify that the scripts were written in bad faith, **(Appx. C, P. Indexes)** (*See* Trial Index for witnesses that testified), *See* Pgs. 25, 374, 681-682, 975, 1272, 1505, 1814.

The State's Information alledged that the scripts were written on April 12, 2011 (Ct. IV) and May 10, 2011 (Ct. V), **(Appx. A, P. 8-9)**.

Dr. Rubenstein did "NOT" provide any testimony as to "who" the scripts were written to, or "what" dates the scripts were written, or "where" and "how" the scripts were written, (Appx. C, P. 1310-1321)

The State examined Dr. Rubenstein:

> **STATE: "Do you know the results of his drug screen?"**
>
> **DR. RUBENSTEIN: "the inital urine drug screen was "negative", it would mean that he wasn't using those agents. And the doses prescribed at the initial visit would therefore be excessive and not have a legitimate purpose," (Appx. C, P. 1314-1316)**

Rubenstein's testimony that the drug screens were "negative" are inconsistent with what the actual drug screens read, presented by **St. Exh. # 24, Appx. F, P. 1944-1945**, in which clearly display that one line on both of the tests

read "positive" and "NOT" all "negative" as alledged by Dr. Rubenstein, **(Appx. C, P. 1314-1316)**, *See* F.S. 90.702(1), Fed. R. Evid. 702.

Plus, the (2) drug screens do "NOT" display "who" completed these screens, nor "when" these screens were completed, such as a date and time, nor "where" these screens were completed at, nor "how" these screens were completed. The name of Richard A. Wilson is "NOT" listed on the screens, compare to **St. Exh. # 22, Appx. D, P. 1878, 1880-1881**, in which a name and date is written on the screens.

Petitioner contends that the scripts were written in bad faith is insufficient, because the **St. Exh. # 24, Appx. F, P. 1944-1945** clearly undermines the State's position that the scripts were written in bad faith based upon that Richard A. Wilson didn't have drugs in his system, when in fact the alledged drug tests display that drugs were in his system. Therefore, the scripts were written in good faith and Counts IV-V must be vacated by the U.S. Supreme Court of America.

C. COUNT VI: PREDICATE INCIDENT #4 OF RICO ACT

In Count VI, the Information alledged that McMillan did knowingly "sell" to Bobby Hall... a prescription written in bad faith and not in the course of professional practice, **(Appx. A, Pg. 6, 8)**.

Hall, Bobby did "NOT" testify that he was given the script in bad faith, nor did Dr. Aaron, Arnold provide testimony that he wrote the script in bad faith, **(Appx. D, P. 1876, Appx. C, P. 25, 374, 681-682, 975, 1271, 1505, 1814)**.

The State's Information alledged that the scripts were written on "March 10, 2011", **(Appx. A, P. 8-6)**, but in **St. Exh. # 22, Appx. D, P. 1876**, it displays a script

written by Dr. Aaron on "March 15, 2010" (360 days earlier than "March 10, 2011" alledged in the Information).

Therefore, the State of Florida did "NOT" prove beyond a Reasonable Doubt that Petitioner wrote a script in bad faith.

Dr. Rubenstein did "NOT" provide any testimony as to "who" the script was written to, or "what" date the script was written, or "where" and "how" the scripts were written, **(Appx. C, P. 1298-1303)**.

Moreover, Dr. Rubenstein testified that on the "initial visit" (Jan. 6, 2010), Hall was given 90 Percocet (10 mg.), and 150 Oxycodone (30 mg.), **(Appx. C, P. 1301-1302)**, but the **St. Exh. # 22** does "NOT" display a script for 90 Percocet (10 mg.), or 150 Oxycodone (30 mg.) written on January 6, 2010, **(Appx. D, P. 1853-1861, 1872-1875, 1877-1878, 1882)**.

Therefore, Rubenstein's testimony listed above is false and insufficient to withstand the conviction, F.S. 90.702(1), Fed. R. Evid. 702.

Dr. Rubenstein testified that "Red Flags in this particular set of circumstances, these patients having an MRI ordered locally prior to seeing the patient," **(Appx. C, P. 1295-1296)**.

St. Exh. # 22, rebuts this claim by Rubenstein, because it displays that during Hall's first visit he was given a physical by Dr. Pinsley on Jan. 6, 2010, **(Appx. D, P. 1872-1875)**. Afterwards, Dr. Pinsley wrote the script for the MRI, **(Appx. D, P. 1877)**, then Hall went to have his MRI completed at POM MRI and Imaging Center on Jan. 6, 2010, **(Appx. D, P. 1882-1884)**.

Then on Jan. 7, 2010, POM MRI and Imaging Center, faxed the results of the MRI back to Dr. Pinsley, that read Hall suffered from buldge of intervertebral disc, *See* # **C4-C5, C5-C6**, and **C6-C7** of **St. Exh. # 22, Appx. D, P. 1883**.

Later, on March 15, 2010, Hall was seen by Dr. Aaron for his second visit/physical, **(Appx. D, P. 1871)** in which displays that Hall suffered from low back pain, etc., based on the MRI completed on his 1st visit on Jan. 6, 2010, **(Appx. D, P. 1882)**.

During Hall's second visit on March 15, 2010, Dr. Aaron wrote the script for his meds, **(Appx. D, P. 1876)**.

As a result, the testimony by Dr. Rubenstein, that an "MRI was ordered locally prior to seeing the patient" is incorrect and false testimony, (Appx. C, P. 1295). Rubenstein's testimony is clearly rebutted by the State's own **Exhibit # 22** and it proves that the State did "NOT" prove all the elements of the crimes charged and Petitioner's Count VI should be vacated by the U.S. Sup. Ct. of America, *See* F.S. 90.702(1), Fed. R. Evid. 702.

Petitioner contends that the State presented **St. Exh. # 22** to confuse the Court and Jury, because the State used Hall's (3) visits to the pain clinic to make it seem like it was one visit. Hall's (3) visits were on Jan. 6, 2010, March 15, 2010, and September 13, 2010, **(Appx. D, P. 1850-1884)**.

Through Rubenstein's testimony it seems like the (3) visits were combined into one visit, **(Appx. C, P. 1296-1303)**.

Petitioner contends these actions by the State affected the "Judgment" of the Court and Jury.

D. COUNT VII: RICO ACT PREDICATE INCIDENT #5

In Count VII, the Information, alledged that Richard McMillan III on or about October 19, 2010... did knowingly "sell"... "deliver" to Gracie Hannan by means of a prescription written in bad faith... **(Appx. A, P. 6, 9)**

Gracie Hannan did "NOT" testify that she was given the prescription in bad faith, nor did Dr. Karter provide testimony that he wrote the scripts in bad faith, **(Appx. E, P. 1892, Appx. C, P. Indexes)** (*See* Trial Indexes for Witnesses that testified), **Pgs. 25, 374, 681-682, 975, 1272, 1505, 1814.**

The State's Information alledged that the scripts were written on or about Oct. 19, 2010, **(Appx. A, P. 6, 9)**

The scripts contained in **St. Exh. # 23** were "NOT" written on "Oct. 19, 2010" but were written on "Oct. 20, 2010", **Appx. E, P. 1892.** Therefore, the State's evidence is insufficient to convict Petitioner.

The State elicited testimony from Dr. Rubenstein that the scripts were written in bad faith, because:

> **Q: "were you able to make a determination about what types of treatment she received?"**
> **A: "the 72 yr. old female was given despite an initial negative urine drug screen..." (Appx. C, P. 1306, Appx. E, P. 1892).**

The Petitioner contends that the listed above testimony by Dr. Rubenstein is "false" because **St. Exh. # 23, Appx. E, P. 1899** displays that the drug screen test

was "positive" for one line. Petitoner contends that the writings around the test are inconsistent with what the test actually reads, F.S. 90.702(1), Fed. R. Evid. 702.

As a result, the scripts written for Hannan, were written in good faith and this conviction must be vacated by the U.S. Sup. Ct. of America, because the listed above evidence is insufficient to withstand.

E. COUNT I: RICO ACT/PRINCIPAL THEORY

The State of Florida, charged Petitioner in Count I – Racketeering alledging a violation of F.S. 777.011 did conspire to conduct or participate... directly or indirectly in said enterprise... (**Appx. A, P. 5**, Also *See* Predicate Incidents # 1-5).

In summation, the State alledged that Petitioner aided, abeted, counseled, or hired Dr. Quinn Karter, Dr. Randy M. Dean, and Dr. Arnold Aaron to write scripts in bad faith for the purpose of Racketeering (Ct. I) and Conspiracy (Ct. II). Dr. Karter wrote the scripts alledged in RICO ACT Predicate Incidents # 1-2, 5, (**Appx. F, P. 1936, 1928, and Appx. E, P. 1892**).

Dr. Randy M. Dean wrote the scripts alledged in RICO Incident # 3, **Appx. F, P. 1924** and Dr. Aaron wrote the scripts alledged in RICO Incident # 4, **Appx. D, P. 1876**.

Doctors Karter, Dean and Aaron did "NOT" testify that Petitioner aided, abeted, counseled or hired them to write Oxycodone scripts in bad faith, (**Appx. C, P. 25, 374, 681-682, 975, 1272, 1814**)

Therefore, the State's Principal Theory is insufficient to withstand the convictions in RICO ACT Incidents # 1-5/Counts III-VII of the State's Information.

The convictions must be vacated by the U.S. Sup. Court of America.

CONCLUSION

1. Petitioner is requesting the Appointment of Counsel for Briefing and Oral Arguments, etc., Sup. Ct. R. 39.7, R. 16.

2. Petitioner is requesting that the U.S. Solicitor General to file Brief in Opposition as to why Certiorari should not be granted, Sup. Ct. R. 15.1.

3. Petitioner is requesting a (30) day extension of time to file a Reply Brief, if U.S. Sol. General files their Brief, Sup. Ct. R. 15.5 and 6.

4. Petitioner is requesting that the Supreme Court to Order the Court Clerk to have the Record transmitted, Sup. Ct. R. 16.2.

PRAYER FOR RELIEF

God, I'm coming to you today, requesting that you protect the U.S. Supreme Court and to allow justice to prevail in this case. God, thank you for everything. Amen.

The Petition for a Writ of Certiorari should be GRANTED.

Respectfully Submitted;

5|3|19
DATE

/S/ [signature]
RICHARD McMILLAN III
D.O.C. # B15425