

No. _____

19-5514

IN THE

SUPREME COURT OF THE UNITED STATES

Office of the clerk

IN re Charlene Rosa — PETITIONER
(Your Name)

vs.

State of Florida et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 11th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

FILED

JUN 13 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF ~~CERTIORARI~~ ^{or} Habeas Corpus

Charlene Rosa
(Your Name)

Lowell Annex, 11120 Gainerville Road
(Address)

Ocala, Florida 34482
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether this Entire Case that resulted in a Wrongful Conviction of a Innocent person because of defense counsel Lack of Knowledge and understanding of the Law, Facts, rules, and Statute constitute a Certify question of great public importance for the Interest of Justice to be serve. and or Whether defense counsel could claim Reasonable Trial Strategy to Excuse Lack of Knowledge and understanding of the Law, rule, Facts and Statute.
 2. Whether counsel theory to the Jury that Petitioner enlist Dutch Assistance To collect money owed by the Victim and that Dutch killed the alleged Victim Petitioner set this whole course of action in motion by asking Dutch to go get her money establish petitioner as a principal to a first degree Murder under Section 777. 011 or a lesser included offense of third degree Murder.
 - (b) on denying habeas Corpus, the district court finds that defense counsel theory to the Jury was an admission to third degree Murder and not First degree murder therefore counsel's decision was a reasonable Trial Strategy.
- The Certify Question is whether the district court apply ~~inproper~~ Standard to Excuse defense counsel unconstitutionality that place petitioner as a Co-felon with Dutch which establish her as a principal under Section 777. 011 and Equally as culpable as Dutch who defense counsel insinuated actually Killed the Victim. and
- (c) Whether Trial counsel can reasonable claim Trial Strategy To Excuse his Lack of Knowledge and understanding of the Law, Facts, rule, and Statute.

Question (9) Presented Continued

3. Whether Third degree Murder is a lesser included offense of a First degree murder committed upon an elderly person or disabled adult as the alleged victim in this case was in her 70's.
 - (b) Whether trial counsel could claim Reasonable trial Strategy to excuse his lack of knowledge and understanding of the Law, facts, rules, and statute of Third degree murder.
4. Whether the Jury Instruction and Verdict form constitute defense Counsel theory to the Jury that Petitioner 'Cause' the Victim's death.
 - (b) Whether petitioner's Jury trial was Fundamentally Unfair and her conviction and present confinement violates her Sixth Amendment right to Counsel.
5. Whether she was Entirely deprived of Impartial Jury and Adequate representation which violate her Sixth Amendment right and her present confinement and conviction is unconstitutional.
6. Whether there exist due process and Equal protection of the Law Violations and her conviction and present confinement violate her Fourteenth Amendment right to a fair proceeding and to be treated fairly.
7. Whether there exist a Brady Violation Exculpatory Evidence as to factual showing of Identification as to the factual element on conviction Necessitate reversal of conviction and deserves protection from double jeopardy.
8. Whether Brady Violation, new and reliable Exculpatory Scientific DNA Evidence support petitioner actual innocence on her allegations of Constitutional errors Necessitate habeas Corpus relief.

LIST OF PARTIES

- ☒ 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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-5
REASONS FOR GRANTING THE WRIT	6-25
CONCLUSION.....	25

INDEX TO APPENDICES

APPENDIX A	District Court Civil Docket. See for U.S. Court of Appeals record page 2. CoA denied January 2019; reconsideration denied March 2019.
APPENDIX B	the ^{an} Report of Magistrate Judge, April 2, 2018
APPENDIX C	Order adopting Magistrate Report And Recommendation. May 31, 2018.
APPENDIX D	Order Denying Motion For Rehearing. September 12, 2018
APPENDIX E	Order To Show Cause 28 U.S.C. § 2254, NOV. 17, 2016.
APPENDIX F	Response in opposition to Petition For writ of Habeas Corpus and supporting Memorandum of Law. March 16, 2017
APPENDIX G	District Court of Appeals Fourth District, Direct Appeal opinion Jan. 2010.
APPENDIX H	Notice Pursuant To Rule 3.220(b)(4) Filed 08/03/2017.
APPENDIX I	Grand Jury Indictment True Bill June 30, 2004
APPENDIX J	Amended Indictment 8/25/2005 2 pages
APPENDIX K	Jury Instruction and Verdict form. July 5, 2007
APPENDIX L	Inmate request's State of Florida Department of correction. see for dates varies.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
State v. Dene (Fla. 2d DCA 1987)	6
Sakak V. Broida & Napier (Fla. 2d DCA 1989)	8
Brady v. Maryland (1963)	9, 21, 22, 23, 24
Jones v. State (1999)	11
Tibbs v. State (1976)	14, 20
Amaro v. State (2019)	15
Lawery v. State (1979) quashed (1982)	20
Schlup v. Delo (1995)	23, 24
United States v. Gaudin	24
Sullivan v. Louisiana (1993)	24
Winskip 397 U.S. at 364, 25 L. Ed 2d 368, 90 S.Ct. 1068	24
Supreme Court Case 87 L. Ed 2d 802	24
McGuiggan v. Perkins 2013	9, 23, 24
STATUTES AND RULES	4, 8, 17
782.04(1)	4, 8, 17
782.04(2)	4, 8, 17
777.011	4, 8, 11, 14, 15, 19, 20
777.04(2)(3)	4, 11, 14, 15
836.05	4, 11
777.04(5)(a)(b)(c)	15
776.01	21
776.02	21
OTHER	8
Rule of Criminal Procedure 3.850	8
AEOPA of 1996	8
Section 95.11(4)(a)	9, 22, 23
Rule 3.220(b)(1)(4)	24
Amdt 14	24
Amdt 6.3	

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of ^{habeas corpus} ~~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 A Page 2 to the petition and is

☐ reported at N/A; 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 B, C & D to the petition and is

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

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 07, 2019.

☐ 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: March 07, 2019, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including January 23, 2019 (date) on January 29, 2019 (date) in Application No. 1 A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment

Fourteenth Amendment

FL. Statute 782.04 (1)

FL. Statute 782.04 (2)

FL. Statute 777.04 (2)(3)

FL. Statute 777.011

FL. Statute 777.04 (5)(a)(b)(c)

FL. Statute 775.082

FL. Statute 836.05.

Art V 3 (b) (4)

STATEMENT OF THE CASE

1. On June 30, 2004 The State of Florida filed Grand Jury Indictment A True Bill and Indict the Petitioner on one count of First Degree Murder pursuant to Section 782.04(1) of The Florida Statutes.
2. On 8/25/05 The State filed an Amendment Capias was served, Arraignment was held and Plea was entered on the Amended Indictment pursuant to Section 782.04(2) of The Florida Statutes.
3. On June 25 through July 5, 2007 Petitioner Proceed To Jury Trial on The State Case against her in the Amendment, Florida Statute 782.04(2)
4. Defense Counsel proceeded with a theory to the Jury that constitute a Disjunctive allegation an alternative theory of the Amendment. Defense Counsel theory constitute FL Statute 777.011, and 777.04(2)(3) punishable by as in the Grand Jury Indictment 782.04(1). Contrary to the state allegation Against Petitioner Statute 782.04(2).
5. The Trial Court gave the Jury Instruction and Verdict form base on the defense theory pursuant to the Grand Jury Indictment 782.04(1) and 777.04(2)(3) and 777.011, and 836.05. devoid of the state case 782.04(2).
6. The Jury found petitioner Guilty as in the Grand Jury indictment 782.04(1). Petitioner was sentence to natural life in prison.
7. A timely Direct Appeal was filed that the 4th DCA basically find a Frieious due to defense counsel theory to the Jury pursuant to FL Statute 777.011 and 777.04(2)(3) and 836.05.
8. Petitioner filed a timely motion for Post conviction relief on April 22, 2011 that was summarily denied adopting the State response.
9. She filed a timely Appeal that was Affirmed march 2017 without an opinion.
10. She filed a timely petition for writ of Habeas corpus that was denied by the United States District Court on May 31, 2018.

Statement of the case continued

11. She filed a timely Notice of Appeal in the United States Court of Appeals 11th Circuit and Application for Certificate of Appealability that was denied on January 2019.
12. She filed a timely motion for reconsideration that was denied on March 07, 2019.
13. She filed a timely Writ of Certiorari in the Supreme Court of the United States that was mailed on January 23, 2019 and received by this Court on January 29, 2019 that was subsequently denied.
14. Petitioner presently has pending rehearing on writ of Certiorari.
15. She filed a timely petition for writ of habeas corpus in this Court.

REASONS FOR GRANTING THE PETITION

Petitioner Rosa asserts that the National importance of having the Supreme Court decide the question involved is to answer questions of great public importance and this Court has Jurisdiction. Art V 3(b)(4), Fla. Const. and Federal Constitution. State v. Dene, 517 So. 2d 1156 (Fla. 2d DCA 1987).

Claim one

The United States District Court finds in its decision, denying Petitioner habeas corpus relief; that defense counsel's unconstitutionality was a "Strategic Decision". see Report of Magistrate Judge Appendix B; order adopting Magistrate report Appendix C; and order denying reconsideration Appendix d.

The District Court on the Factual Element of the case argues as follows; During opening statement, defense counsel did not concede that petitioner was guilty of the charged, first degree murder. to the contrary, defense counsel repeatedly stated in opening that Ms. Rosa did not kill Lola Salzman. see ECF No. [31-1] at 364-368. Instead, defense counsel provided a preview of the state's evidence consisting of telephone calls in which 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 see Page 13.

Took a knife and swung it at Petitioner. Id at 364, 366. Defense counsel then argued that Dutch killed the victim Id. see Page 14.

Reason For Granting The Petition Continued.

NO. [31-17] at 1233-1234. The inclusion of these offenses formed part of defense counsel's trial strategy. Id at 1344 That's our theory, Dutch killed her. She set this course of action in motion by asking Dutch to go get her money).

See NO. [31-17] at 1233-1252. There after, in closing argument, Petitioner's Counsel argued as follows:

I have never, since this trial started asserted to you that my client was innocent or was not involved, I would lose all credibility with you if I did, but what I have come before you to say is that my client is not guilty of First degree murder, rather, my client committed a much lesser crime, and you're going to get an instruction on that, and that crime is that she committed the crime of third degree murder. That's why we're here today. See Page 15 of order adopting Magistrate report. Appendix Z.

Petitioner Rosa asserts that such use of Reverse Williams Rule Evidence to insinuated that another person other than petitioner killed the alleged victim in this case at hand was a lack of knowledge and understanding of the Law, facts, rules, and Statute on the part of trial counsel and therefore trial counsel cannot claim reasonable trial strategy to excuse his lack of knowledge and understanding of the Law, facts, rule, and Statute, and the United States District Court and Court of Appeals decision is erroneous to find that Defense Counsel's unconstitutionality was a strategic decision, just to make this case go away.

Such decision by the District Court establish that it is

Reason for Granting petition Continued

Necessary for a Exceptional Circumstance to Warrant the exercise of Extraordinary Discretionary powers, in this Court of last resource, and founder of Constitution. Petitioner asserts that adequate relief cannot be obtain on these claims that is properly Exhausted in the State Court and the district court decision on Strategic Decision created a New Constitutionally ineffective Assistance of Counsel claim that would be procedurally barred from the State Court, pursuant to rule of criminal procedure 3.850 and the AEOPA of 1996.

In Addition the New matter created by the district court asserting that defense counsel unconstitutionality was a Strategic Decision did not arise until the United States Court of Appeals denied petitioner timely filed motion for reconsideration on March 07, 2019. See Section 95.11(4)(a) Florida Statute (1989); also Sakak V. Broida & Napier P.A. 545 So. 2d 380 (Fla. 2d DCA 1989).

Lack of Knowledge and Understanding pursuant to Statute, rule, Law, and Material, Facts.

Petitioner asserts that defense Counsel Disjunctive allegation against her. an alternative theory of the First degree murder to which she was on trial shows that she is a principal to the First degree murder under Section 777.011; Solicitation Statute 777.04(2)(3) and or Grand Jury Indictment 782.04(1) 'Contrary' to the State case in Amendment Indictment presented to the Jury against Petitioner pursuant to Statute 782.04(2).

Reason For Granting the Petition Continued

In Addition, petitioner was convicted as charge in the indictment, that charged her as a single defendant, with no co-felon. She also was convicted for 'cause' the alleged victim's death by act a series of her action as insinuated to the jury by defense counsel establish constitutional error in the record necessitate a De Novo review of the previous judgment. absent a co-felon the conviction of the petitioner for 'cause' the death of the victim cannot stand.

Dutch who defense counsel insinuated to the jury allegedly killed the victim. the state conceded that Dutch was not involved in the alleged murder to which petitioner was convicted. And the district court decision, adopted the state response asserting that defense counsel made a strategic decision blaming the murder on Dutch, to gain credibility from the jury for the jury to find petitioner guilty of a lesser included offense of third degree murder.

Petitioner asserts that there exist Exculpatory Brady material as to the identity of an actual 'killer' to which she was convicted for 'cause' the death of the victim without a killer to face her accuser under the confrontation clause.

The prosecutor has an obligation pursuant to Rule 3.220(b)(1)(4) and Brady vs. Maryland, and under the due process clause of the Federal Constitution, to disclose evidence favorable to an accused - Supreme Court Cases. 87 L. Ed 2d 802.

Petitioner asserts that the foregoing establish a due process and Equal Protection clause violation.

Reason for Granting the Petition continued

guaranteed by the due process to a fair trial and to be treated fairly in the State of Florida Justice system.

Likewise, Defense Counsel presented to the jury that petitioner committed the crime of principal. See 444.011; Solicitation, Extortion, and Third Degree Murder on the alleged Victim.

Petitioner asserts the principal to murder, Solicitation, Extortion, and third degree murder is crimes that is punishable from a number of years, life in prison, and or the death penalty.

Petitioner asserts that she was prejudice Cause by defense Cause adverse presentation to the jury that aggravated the conviction. defense Counsel informing the jury that petitioner committed the above uncharged felonies against the Victim prejudice the jury against petitioner and Cause the jury to convicted petitioner for 'Cause' the Victim's death which is 'Contrary' to the State case against petitioner that was before the jury, allegation that petitioner Killed the Victim.

Under the due process Clause of the Fifth Amendment and the ~~Sixth~~ notice and jury trial guarantees of the Sixth Amendment, any fact (other than Prior Conviction) that increase the Maximum penalty for a crime must be charge in the indictment, submitted to the jury, and proven beyond a reasonable doubt.

The Fourteenth Amendment Commands the same answer in this case in Violating a State Statute

Reason for Granting Petition continued

See *Jones v. States* 526 US 227, 143 L. Ed 2d 311, 119 S Ct. 1215 (1999), construing a federal statute.

Petitioner asserts that absent defense counsel allegations to the jury that petitioner committed the crime of principal offense 744.01; Solicitation 744.04(2)(3); Extortion 836.05; and Third degree murder against the alleged victim to which she was on trial petitioner would have been ~~Exonerated~~ because the trial judge saw that the state failed to present as much as a prima facie showing to establish petitioner as the perpetrator of the alleged murder of her ex-employer, the trial judge saw that trial counsel had proven beyond a reasonable doubt that petitioner 'caused' the alleged victim's death.

The trial judge then instructed the jury entirely on defense counsel allegation against petitioner devoid of the state allegation for the jury to return a direct verdict of conviction.

Petitioner asserts that the Direct Verdict of conviction that is based entirely upon defense counsel allegations to the jury against her deprived her of her fundamental constitutional right to a impartial jury determination of her guilt or innocence.

Likewise any attorney acting under the Sixth Amendment would have requested jury instruct solely on First Degree murder and Not Guilty Verdict in this case only. No lesser included offense and petitioner would be acquitted because the state best evidence the alleged recording on conversation and the arrested special agents testimony would have been

Reason for Granting Petition Continued

discredited.

The State presented no evidence to prove beyond a reasonable doubt that Petitioner is the unknown female in the recording conversations with Marine Hylton and Omar Nunez. And neither Marine Hylton nor Omar Nunez testified as to the authenticity of the recording conversations and their motives for their testimony.

And the Arresting officers presented no evidence to prove voluntariness of statement and that all steps was taken to protect Petitioner Miranda rights under the Federal Constitution. Coupled with the fact that the Examination result of Petitioner hands discredited these Special Agents testimony establish that Petitioner had no scar in any of her hand that these lying witnesses testified that Petitioner showed them at the time of her arrest. Absent trial counsel who was Petitioner lead prosecutor, the State would have not prove the fabricated allegations against Petitioner.

Petitioner Rosa was charged by the State of Florida for allegedly 'killed Mrs. Salzman'. She was convicted base on trial defense counsel allegations to the jury that she 'cause the death' of the victim by 'act' a series of her action.

Defective Jury Instruction and Verdict Form
Relying on the United States District Court's finding. The United States District Court find in its decision that defense counsel did not say that Petitioner killed the victim. but through preview of recording conversation

Reason for Granting Petition Continued.

in which Petitioner admitted she enlisted Dutch assistance to collect money owed to her by the Victim.

Petitioner asserts that she informed defense counsel and the Trial Court numerous times that she is not the unknown female in the alleged conversations because she did not have the alleged conversations and the allegation is not true.

Mrs. Salzman had never owed her any money.

See motion to discharge counsel dismissed by Trial Judge on October 19, 2006. See also Trial transcript Page 3-6 and 9-10. See also Petitioner Telephone record from Jamaica that defense counsel stipulated to that would have exonerated petitioner.

The United States District Court went on the state that; defense counsel made statement, that's our theory Dutch killed her. She [petitioner] set this course of action in motion by asking Dutch to go get her money. Petitioner hasa asserts that such statement by the district court constitute her constitutionally ineffective assistance of counsel claim and the jury verdict that she asserts that her conviction was obtained by defense counsel allegation against her insinuating to the jury that she solicited Dutch to Effort payment from the alleged victim and that she "cause" the victim's death by her action. Therefore she has establish that she was entitle to relief in the United States District Court necessitate the exercise of this Court's Extraordinary discretionary power.

The jury instruction and Verdict form is defective

Reason for Granting Petition Continued

because the instruction read that petitioner is guilty of 'Cause' the Victim's death by 'Act' a Series of her action. Contrary to the Charge allegation that she 'Killed' the Victim. See Appendix _____

Coupled with the fact that it found the petitioner Guilty as charge as in the Grand Jury indictment that charged petitioner as a single defendant, See Appendix _____.

because the indictment, jury instruction, and verdict form failed to charge petitioner with a Co-felon. The identity of a 'killer' is a genuine issue in this case at hand where petitioner was convicted of 'Cause' the Victim's death by 'Act' a Series of her action.

The state case against petitioner failed to establish the identity of Rosa with a Co-felon who allegedly committed the alleged murder. See Tibbs vs. State 337 So. 2d 788, 791 (Fla. 1976).

Likewise the state case is insufficient. Factual showing of identification, under either the Banks or Scott distinction. Rosa case is therefore one which deserves protection from double jeopardy. See Tibbs vs. State 337 So. 2d 788, 791 (Fla. 1976); see Fla. principal statute 774.011 and solicitation statute 774.04(2)(3) that defense counsel allegation which the conviction was based on constitutes.

The foregoing establish that defense counsel lack knowledge and understanding of the law, facts,

Reason for Granting the Petition Continued

rule, and statute, and therefore cannot claim reasonable trial strategy to excuse his lack of knowledge of the law, facts, rule and statute. See *Amaro v. State*, 80.3d __, 44 F.L.W. D 1349 (Fla. 5th DCA May 24, 2019).

Petitioner asserts that defense counsel performance was per se deficient and was neither a factual defense or a legal defense.

74 is a defense to a charge of criminal solicitation that, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose, the defendant;

(a) Abandoned his or her attempted to commit the offense or otherwise prevented its commission;

(b) After soliciting another person to commit an offense, persuaded such other person not to do so or otherwise prevented commission of the offense, or

(c) After conspiring with one more person to commit an offense, persuaded such persons not to do so or otherwise prevented commission of the offense. See Fla. Statute

777.04(5) (a) (b) (c) establish that defense counsel entirely lack knowledge and understanding of the fact, law, rule, and statute as to what constitute a defense and what constitute an disjunctive allegation of the charge crime of First degree murder, alternative theory equal to the charge crime not lesser degree as he insinuated.

his insinuation of solicitation 777.04(2)(3); principal 777.011; Extortion and Third degree murder as a lesser degree of First degree murder was so prejudicial, it entirely deprive petitioner of Adequate representation, Violate her

Reasons For Granting Petition Continued
Sixth Amendment right to Counsel and Impartial
Jury, and due process and Equal protection of the
Law guaranteed by the Fourteenth Amendment.

Prejudice

Petitioner Rosa was prejudice by the defense counsel
Lack of knowledge of the Law, facts, Rules and Statute
and, his failure to understand what constitute a
defense, deprived her of a Fundamentally fair Jury
trial, and Cause her to be Wrongfully convicted
due to his misunderstanding of when and how to
proceed in the use of Reverse Williams Rule Evidence
to show another Person committed the offense and
or what constitute a disjunctive alternative theory,
from a lesser included offense and or what constitute
Third degree murder. resulting in a innocent accuse
been convicted for First degree Premeditated murder
and Sentence to Natural life in prison because
of his inadequacy. and the United States District
Court finding that defense counsel unconstitutionality
on the Factual Elements of the First Degree murder
case that should be left solely to a Impartial Jury
determination was improper. Necessitate the Supreme
Court of the United States to exercise its Extraordinary
discretionary power and Entertain this motion for
Extra Ordinary petition for a writ of habeas Corpus.

Relying on the United States District Court order adopting
Magistrate report Page 13 to 15 with the Jury instruction
and Verdict form and therefore establish that the
United States District Court erroneously found that
defense counsel theory to the Jury constitute

Reason(8) For Granting Petition Continued

Third Degree Murder a lesser included and that the Jury had a Choice to find petitioner guilty of a lesser included offense but choose to adopt the State Case and find the petitioner guilty of First degree Premeditated murder.

Petitioner asserts that

1. The United States District Court is incorrect in it finding as she was not formerly charged, Arraigned nor entered a plea or proceeded to Jury trial on the Grand Jury Indictment dated June 30, 2004. Statute 782.04(1).

Rather, she was served a Capias, Arraignment held, plea entered and she proceeded to Jury trial on a Amendment Indictment dated 8/25/2005 Statute 782.04(2). Murder w/o Premeditation. Therefore she was prejudice from defense counsel Inadequacy, on the Law, fact, rule, and Statute where he failed the knowledge and understanding of what a Amended indictment means that superseded the Grand Jury Indictment and did not preserved the Felony Murder allegation because of defense counsel Lack of knowledge of what a Amendment to the indictment meant, he proceeded to Jury trial using the Grand Jury Indictment theory that the State had abandon for unfounded when Verifying the informers statements including the recording conversations. Because of defense counsel Lack of knowledge and understanding a innocent accused was destroy and therefore defense counsel cannot claim reasonable trial strategy for his Lack of knowledge and understanding of what a Amendment to a Indictment mean when a defecture

Reasons For Granting Petition Continued

Grand Jury Indictment was Amended. because the use of which defense counsel put the ~~Grand Jury~~ defective Grand Jury Indictment to, petitioner was convicted and sentence on the defective Grand Jury Indictment establish that her present confinement and conviction is unconstitutional and the district Court improperly find defense counsel's unconstitutionality as a strategic decision make further proceeding necessary for the individual interest and the question of the great public interest as the public has interest in a indigent individual to be appoint competent counsel for their defense.

2. The United States District Court asserts that defense counsel theory to the Jury was an admission to third degree murder. see Page 13-15 of district Court order adopting Magistrate report. Such action by defense counsel asserts by the district court is contrary to the Florida Statute on third degree murder and under the Law could not constitute third degree murder because the crime is against the elderly and or disabled. Mrs. Salzman was in her 70th and neither the crime of third degree murder or defense counsel alleged extortion could be constitute third degree murder. therefore establish prejudice because of defense counsel lack of knowledge and understanding of the Law on what crime constitute third degree murder deprived a innocent defendant of a Fundamentally fair trial result in a wrongful conviction make further proceeding necessary as the district court improperly finds that defense counsel admission

Reason(s) For Granting Petition Continued
on the Factual Elements was or could be
interpreted as third degree murder and therefore
was a reasonable trial strategy when in fact
under the law in this particular case that is
involved a elderly person could not be consider
third degree murder under the law, facts, rules,
and statute. Therefore trial counsel cannot
claim reasonable trial strategy to excuse
his lack of knowledge and understanding of
the law, rule, facts and statute of the crime
of third degree murder.

3. The United States District Court asserts that the
Jury could find petitioner guilty on a lesser
included offense but chose to find her guilty
on the primary charge adopting the state case.
Petitioner asserts that the record is contrary
to the United States District Court finding
as the Jury adopted defense counsels allegations
and not the state allegations, because the record
establish that the state allegations was devoid from
the Jury instruction and Verdict form. See
Jury Instruction and Verdict Form Appendix
The state allegations to the Jury was that petitioner
killed the alleged victim. While defense counsel
theory to the Jury constitute the Jury's instruction
and Verdict asserting that petitioner 'Cause' the
death of the alleged victim.

3(b) there is no lesser included offense for Principal
offense whether he or she is or not actually present
or constructively present and the commission of the
Crime pursuant to FL Statute 777.011 all principals

Reason(s) For Granting Petition Continued

are equally culpable of first degree therefore petitioner was prejudiced by defense counsel insinuation to the jury that his client was a principal to a third degree murder. And the United States District Court erroneously finds that defense counsel error was a strategic decision.

It is apparent on the face of the record that defense counsel lack knowledge and understanding of the Florida principal law, and therefore petitioner trial was fundamentally unfair. And trial counsel could not claim reasonable trial strategy for his lack of knowledge of the law statute rule and fact by the Florida principal law, see *Lauery v. State* 4 Fla. 104 1979; quashed 1982.

Petitioner asserts that she was entitled to jury instruction on first degree murder only, as there were no lesser included offense for defense counsel principal allegation to the jury Fl. Stat. 777.011 absent defense counsel theory that she caused the death of the alleged victim. Because the state evidence is insufficient to prove beyond a reasonable doubt that she killed the alleged victim. see *Tibbs v. State*, 337 So. 2d 788, 791 (Fla. 1976).

Further Second Degree murder does not constitute a lesser included offense in this case where both the state prosecutor and the defense counsel labored ferociously to place petitioner at the scene of the alleged murder and or where the legislature abolished all distinctions between principals in the first degree and second degrees and accessories before the fact and made all principals equally culpable regardless of whether

Reason(s) For Granting Petition Continued

whether she is or is not actually or constructively present at the commission of the offense; repealing Sections 776.01 and 776.02, Florida Statutes; and prescribing the effective date here of.

Petitioner asserts that there exist Brady material on the identity of the perpetrator of the alleged murder that will acquit her. The State is withholding Brady Exculpatory Evidence as to the identity of the perpetrator of the alleged murder and she was convicted because of defense counsel false principal theory to the jury.

The violation by defense counsel is Brady Violation. Exculpatory Evidence that affected the jury determination and the jury determination was unreliable and the jury trial proceeding was fundamentally unfair.

Further the State is withholding Brady Exculpatory DNA Evidence.

The United States District Court asserts that, holding that the court did not abuse its discretion in failing to conduct an evidentiary hearing when petitioner did not produce any reliable evidence to support the claim of actual innocence. Such as the allegedly Exculpatory DNA report or its result. See Page 9 of order adopting Magistrate report at Appendix C.

Petitioner asserts that during her trial proceeding defense counsel elicited from the DNA Analyst that her blood was found on a wall picture in a hallway at the scene of the crime.

The United States District Court Magistrate Judge report finds that the defense counsel did not elicit this comment. The records is contrary to the Magistrate finding. See Page

Reason(s) For Granting Petition continued

28 - 29 Appendix B.

On the other hand, on April 12, 2016 the American Crime Laboratory advise the Broward County Crime Laboratory and State attorney's office that there was inappropriate use of DNA Evidence in this petitioner 2007 Jury trial.

The State file a notice pursuant to Rule 3.220(b) 4 and conceded that this evidence is in the possession of the State attorney's office and may fall within the purview of Brady v. Maryland 1963 and/or Rule 3.220.

See notice attach ~~Appendix~~ _____

Petitioner Rosa asserts that pursuant to Brady v. Maryland 1963 and Rule 3.220(b)(1)(4) Prosecutor have an obligation to serve her and disclose all Exculpatory evidence to her. The State attorney's office failed its ~~prosecutor's~~ obligation to serve her a copy of the notice, report and result of the DNA Evidence.

Petitioner filed numerous motion for the State to produce the Exhibit material to which she is entitle, to no Avail. She also filed to the Federal District and United States Court of Appeals for permission to file Second successive habeas corpus petition motion for new trial base on Exculpatory Brady Material DNA Evidence she was denied the relief to which she seeks and is Entitle.

Petitioner asserts that she was Entitle to habeas corpus relief in the United States District Court base on exculpatory DNA Evidence Brady Material and;

Defense Counsel unconstitutionality on the Factual Element

Reasons For Granting Petition continued

Identification of a perpetrator.

The State conceded that defense counsel allegation to the Jury that Dutch Killed Mrs. Salzman was a strategic decision therefore the factual elements to which petitioner conviction was base was false and misleading exculpatory evidence, Brady Violation which affected the reliability of the Jury determination. See *Schlup v. Delo* 513, U.S. 298, 324 (1995).

Under the Due process clause Federal Constitution, the prosecutor has a duty to disclose evidence favorable to the accused - Supreme Court case 87 L. Ed 2d 802.

Petitioner asserts that; Approximately one month after she was wrongfully convicted because of defense counsel inadequacy, the State file a new Amendment to bolster defense counsels theory to the Jury 'Solicit' to Commit ~~Armed~~ Robbery, First degree murder. Since petitioner filed newly discovered evidence the State has now dropped the case to gain advance over the petitioner pursuant to Rule 3.220(b)(1)(4); *Brady v. Maryland* 1963; and Due process - Supreme Court case 87 L. Ed 2d 802 the State attorney office of Broward County have a prosecutor obligation duty to disclose said exculpatory evidence of Identification to the petitioner, and she also have a Constitutional right to face her accuser under the Confrontation Clause.

Petitioner pray that this Honorable Supreme Court of the United State will grant ~~her~~ ~~her~~ on Exculpatory Evidence on Identity and DNA Brady Evidence.

Petitioner asserts that in light of the the New Exculpatory Evidence on Identification of an actual killer and the

Reason(3) For Granting Petition Continued

DNA Evidence, no juror, acting reasonably, would have voted to find her guilty beyond a reasonable doubt. See *McQuiggin v. Perkins* 2013 (citing *Schlup* 2006); also *Brady v. Maryland* 1963.

Petitioner asserts that; At stake in this case are constitutional protections of surpassing importance; the proscription of any deprivation of liberty without due process of law; Amdt. 14, and the guarantee that in all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury; Amdt. 6.3. Taken together these rights indisputably entitle a criminal defendant to a jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt. *United States v. Gaudin*, 515 U.S. 506, 510, 132 L. Ed 2d 444, 115 S. Ct. 2310 (1995): See also *Sullivan v. Louisiana*, 508 U.S. 275, 278, 124 L. Ed 2d 182, 113 S. Ct. 2078 (1993) *Winship*, 397 U.S. at 364, 25 L. Ed 2d 368, 90 S. Ct. 1068. The due process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he or she is charged.

The foregoing establish that Petitioner was 'Entirely' deprived of impartial jury determination on the Factual Elements that should have left solely to a jury determination.

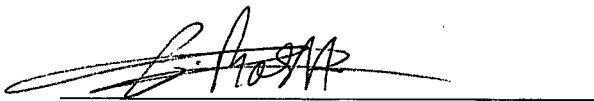
She was Entirely deprived of adequate representation as her public Defender Lack of knowledge and understanding of the Laws, Facts, Rules and Statute was like that of a prosecutor to her defense which adversely affect the outcome of the trial proceeding result in the Jury trial Fundamentally unfair.

And therefore, trial counsel cannot claim Reasonable Trial strategy to Excuse Lack of knowledge and Understanding of the Law, Fact, Rules, and Statute, his ~~action~~ establish petitioner constitutionally ineffective Assistance of counsel claim, alleging that her conviction and present Confinement violate her sixth Amendment right to Counsel. In Addition, Petitioner asserts that, base on her actually innocence Evidence presented, it is more likely than not that no reasonable juror would have convicted her in light of the new evidence which she alleged to support her claim, and the use of an improper standard by both the Court of Appeals and the District Court make further proceeding necessary in Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 07-26-2019