

19-6422

Provided to Walton CI
On 10/8/19 for Mailing
Date

By (officer initials) C. T. B.

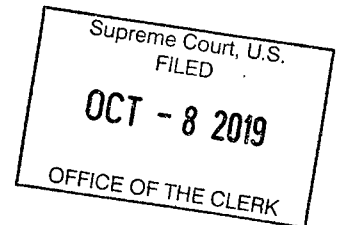
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

CALVIN DUNELL BURNS, — PETITIONER
(Your Name)



vs.

STATE OF FLORIDA, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

First District Court of Appeal - State of Florida.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Calvin Dunell Burns,
(Your Name)

Walton Correctional Institution
691 Institution Road
(Address)

Defuniak Springs, Florida 32433-1850
(City, State, Zip Code)

(850) 951-1300
(Phone Number)

QUESTION(S) PRESENTED

1). why didn't the First District Court of Appeals, State of Florida, rule fairly in the Petitioner's Direct Appeal on the merits of the issues in the Case in reference to the, Fifth and Fourteenth Amendments of the United States Constitutional violations, and Article 1, Section 1, 2., and 9., of the Florida Constitutional violations?

2). why didn't the Petitioner's Appellant Counsel, Cite the Federal Rules of Evidence, Federal Rules of Competency, Florida Rules of Evidence, and Fla. R. Crim. P. 3.211., Competency, and Fla. Stat. § 916.12., Mental Competency To Proceed, in the Petitioner's Appellant Initial Brief, OR Reply Brief?

3). why didn't the Petitioner's Appellant Counsel file a motion for Rehearing 9.330 OR Rehearing en banc 9.331 when the Petitioner asked her to file for Rehearing?

4). why didn't the trial Court hold a Competency hearing Sua Sponte for Petitioner?

5). why didn't the Petitioner's Court appointed Mental Health Expert, Dr. Harry Krop, after performing the mental evaluation, make a written finding of the Petitioner's mental Conditions?

6). why did the Petitioner's trial Counsel state that, he had received the Petitioner's Mental Health Report via email that same date, from the Mental Health Expert, Dr. Harry Krop, and that he needed additional time

Continue on next Page →

to review the via email report, and then turn right around and State, but we won't be pursuing that anymore based on the report that I've got?

7). How Can the Petitioner's trial Counsel say that, we won't be pursuing that anymore based on the report that I've got, if he needed additional time to review the report via email? Doesn't that statement in a whole sounds Contradictive?

8). How come the Petitioner's trial Counsel, never did produce the via email Mental Health Report from Dr. Harry Krop, to the trial Court's as proof of a written finding of the Petitioner's mental Condition?

9). Did the trial Counsel fabricate a story, about receiving the via email Mental Health Report from Dr. Harry Krop, on that same date?

10). Even after the grant of a one month Continuance by the trial Judge, how come the trial Counsel could not produce the via email mental Health Report from Dr. Harry Krop, to the trial Court's?

11). Does the via email Mental Health Report from, Dr. Harry Krop, even exist at all?

12). why did the trial Counsel cite, Fla. R. Crim. P. 3.220., Cost of discovery expense, when he orally request for an appointment of a Mental Health Expert to evaluate the Petitioner?

Continue on next Page →

13). why didn't the trial Counsel Cite, Fla. R. Crim. P. 3.210., 3.211., and 3.212., All rules governing Mental Competency to proceed?

14). why didn't the trial Counsel make any objections, in the Course of the Petitioner's three day trial, with all the harmful and fundamental errors made during the Course of trial, to other issues, and issues I, II, III, and IV, that the Appellant Counsel raised in the Petitioner's Initial Brief?

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:

1). First District Court of Appeal, 2000 Drayton Drive, Tallahassee, Florida 32399-0950

2). Alachua County Circuit Court (8th Cir.), 220 South main street, 4th - Floor, Gainesville, Florida 32601

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4, 5, 6, 7, 8, 9
REASONS FOR GRANTING THE WRIT	10
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A	<u>Decision of State Court of Appeal: First (DCA) State of Florida, Per Curiam and Affirmed on August 7, 2017.</u>
APPENDIX B	<u>Decision of the Alachua County Circuit Court (8th Cir.), guilty verdict of Attempted First Degree Murder on September 7, 2017.</u>
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED.

CASES.

PAGE NUMBER.

<u>Bass v. State</u> , 547 So. 2d 680 (Fla. 2004)	7
<u>Bertolotti v. State</u> , 476 So. 2d 130 (Fla. 1985)	7
<u>Boatright v. State</u> , 452 So. 2d 666 (Fla. 4 th DCA 1984)	6
<u>Bozeman v. State</u> , 698 So. 2d 629 (Fla. 4 th DCA 1997)	8
<u>Brooks v. State</u> , 180 So. 3d 1094 (Fla. 1 st DCA 2015)	5
<u>Brown v. State</u> , 124 So. 2d 481 (Fla. 1960)	6
<u>Brown v. State</u> , 787 So. 2d 229 (Fla. 2d DCA 2001)	7
<u>Castro v. State</u> , 547 So. 2d 111 (Fla. 1989)	9
<u>Chester v. State</u> , 213 So. 3d (Fla. 1 st DCA 2017)	5
<u>Childers v. State</u> , 936 So. 2d 585 (Fla. 1 st DCA 2006)	8
<u>Cochran v. State</u> , 711 So. 2d 1159 (Fla. 4 th DCA 1998)	7
<u>Cochran v. State</u> , 925 So. 2d 370 (Fla. 5 th DCA 2006)	5
<u>Conahan v. State</u> , 844 So. 2d 629 (Fla. 2003)	7
<u>Cotton v. State</u> , 177 So. 3d 666 (Fla. 1 st DCA 2015)	5
<u>Czubak v. State</u> , 570 So. 2d 925 (Fla. 1990)	8
<u>Dessaure v. State</u> , 891 So. 2d 455 (Fla. 2004)	8
<u>D'Oleo-valdez v. State</u> , 531 So. 3d 1347 (Fla. 1988)	5
<u>Dougherty v. State</u> , 149 So. 3d 672 (Fla. 2014)	5
<u>Drope v. Missouri</u> , 420 U.S. 162, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975)	5
<u>Everett v. State</u> , 124 So. 3d 938 (Fla. 1 st DCA 2013)	8
<u>F.B. v. State</u> , 852 So. 2d 226 (Fla. 2003)	
<u>Freeman v. State</u> , 717 So. 2d 105 (Fla. 5 th DCA 2005)	7
<u>Giarrette v. State</u> , 501 So. 2d 1376 (Fla. 1 st DCA 1987)	7
<u>Gomez v. State</u> , 751 So. 2d 630 (Fla. 3d DCA 1999)	6
<u>Gore v. State</u> , 719 So. 2d 119 (Fla. 1998)	6

Continue on next Page →

CASES

PAGE NUMBER

<u>Harden v. State</u> , 87 So. 3d 1243 (Fla. 4th DCA 2013).	9
<u>Herbert v. State</u> , 526 So. 2d 709 (Fla. 4th DCA 1988).	9
<u>Jackson v. State</u> , 89 So. 3d 1011, 1018 (Fla. 4th DCA 2012).	7
<u>J. B. v. State</u> , 705 So. 2d 1376 (Fla. 1998).	6
<u>Johns v. State</u> , 832 So. 2d 959 (Fla. 2d DCA 2002).	7
<u>Johnson v. State</u> , 969 So. 2d 938 (Fla. 2007).	6
<u>Joseph v. State</u> , 868 So. 2d 5 (Fla. 4th DCA 2004).	6
<u>King v. State</u> , 130 So. 3d 676 (Fla. 2013).	7
<u>Knowles v. State</u> , 632 So. 2d 62 (Fla. 1993).	6
<u>McKenzie v. State</u> , 830 So. 2d 234, 238 (Fla. 4th DCA 2002).	7
<u>Miller v. State</u> , 804 So. 2d 609 (Fla. 3d DCA 2002).	8
<u>Monte v. State</u> , 51 So. 3d 1196 (Fla. 4th DCA 2011).	5
<u>Mosley v. State</u> , 569 So. 2d 832 (Fla. 2d DCA 1990).	6
<u>Pacifico v. State</u> , 642 So. 2d 1178 (Fla. 1st DCA 1994).	6, 7
<u>Pratt v. State</u> , 1 So. 3d 1169 (Fla. 4th DCA 2009).	9
<u>Reynolds v. State</u> , 177 So. 3d 296 (Fla. 1st DCA 2015).	5
<u>Ross v. State</u> , 913 So. 2d 1184 (Fla. 4th DCA 2005).	8
<u>Ruiz v. State</u> , 743 So. 2d 1 (Fla. 1999).	7
<u>Sempier v. State</u> , 907 So. 2d 1277 (Fla. 5th DCA 2005).	7
<u>Servis v. State</u> , 855 So. 2d 1190 (Fla. 5th DCA 2003).	7
<u>Tillman v. State</u> , 647 So. 2d 1015 (Fla. 4th DCA 1994).	7
<u>Toler v. State</u> , 95 So. 3d 913 (Fla. 1st DCA 2012).	6, 7
<u>Turnblin v. State</u> , 29 So. 3d 1093 (Fla. 2010).	6
<u>Williams v. State</u> , 110 So. 2d 654 (Fla. 1989).	8
<u>Whitfield v. State</u> , 549 So. 2d 1202 (Fla. 3d DCA 1989).	6
<u>Zern v. State</u> , 191 So. 3d 962 (Fla. 1st DCA 2016).	5

Continue on next Page →

STATUTES AND RULES

PAGE NUMBER

<u>§ 90.403, Fla. Stat. (2016)</u>	3, 8
<u>§ 90.404, Fla. Stat. (2016)</u>	3, 8
<u>§ 916.12, Fla. Stat.</u>	3, 5
<u>Fla. R. Crim. P. 3.210</u>	3, 5
<u>Fla. R. Crim. P. 3.211</u>	3, 5
<u>Fla. R. Crim. P. 3.212</u>	3, 5
<u>Fla. R. Crim. P. 3.220</u>	5
<u>Fla. R. Evid., 90.104., 90.201., 90.601.</u>	3
<u>Fed. R. Evid., 103, 104, 105, 601. Rule 801 and 802.</u>	3

OTHER

<u>5th and 14th Amendments U. S. Constitution</u>	3, 5, 6, 8, 9
<u>Article 1, Section 1., 2., and 9., Fla. Constitution</u>	3, 5, 6, 8, 9

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.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A 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 First (DCA) - State of Florida court appears at Appendix A 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 _____.

☐ 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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Aug. 16, 2019.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix None.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1). United States Constitution Amendments; 5th; 14th; Due Process of law, and equal protection of the laws.
- 2). Florida Constitution, Article 1, Section 1. Political Power, 2. Basic Rights, and 9. Due Process.
- 3). Federal Rules of Evidence, 2017; Rule 103 Ruling on Evidence; Rule 104 (a)(b)(d)(e); Rule 105; Rule 201 (b), (1)(2); (c), (1)(2); (d); (e); (f); Rule 601. Competency To Testify In General, (First Line). Rule 801; 802; Article VIII. Hearsay.
- 4). Florida Rules of Evidence, 2017; Rule 90.104. Rule on Evidence; Rule 90.201 Matter which must Be Judicially Noticed; Rule 90.601 General Rule of Competency.
- 5). Florida Rules of Criminal Procedure 3.210, 3.211, and 3.212.
- 6). Florida Statute § 916.12. Mental Competency To Proceed. (1)(2), (3)(a-f), (4)(a-d), (5); See: 2005 and 2006 Amendments.

STATEMENT OF THE CASE

1). on May 16, 2016 the Petitioner Mr. Calvin D. Burns, was arrested and charged by the Alachua County Sheriffs, for being accused of the alleged Attempted Murder in the First Degree on Roderick Belmer. The Petitioner then held on to his innocents and proceeded to trial by jury. The trial started on September 5, 2017 and ended on September 7, 2017.

on November 11, 2016 at pre-trial-competency the Petitioner's Counsel Mr. W. Charles Fletcher informed the Court that he filed "paperwork" to have Petitioner evaluated. He also provided the Court with an order for a Competency evaluation.

on November 22, 2016 an order appointing Dr. Harry Krop to perform a Competency evaluation for Petitioner was signed. The record shows that the only request that Mr. Fletcher made, regarding the appointment for an expert for Petitioner's mental health evaluation, was a motion filed pursuant to Florida Rules of Criminal Procedure 3.220(0), in order to incur cost of discovery expense.

on November 22, 2016 the Court granted the motion stating, "Defendant's Motion For Authorization to incur Cost of a Mental Health Expert to perform a Competency evaluation is hereby granted".

On February 28, 2017 Mr. Fletcher informed the Court that the evaluation report had been received via email that same date, but that he needed additional time to review it. Mr. Fletcher then stated, "But we won't be pursuing that anymore based on the report that I've got. so I ask for a one month continuance for case management".

Continue on next Page →

The Court granted the request for a one month Continuance. During the course of trial not once did Mr. Fletcher object to the proceeding of the Petitioner being tried while he's incompetent or maybe incompetent to stand trial.

2). ISSUE 1.

The trial Court erred by failing to conduct a competency hearing and failing to make written finding that Appellant was competent prior to his trial.

The following case laws support any issues on the Petitioner's Competency, Fundamental error, and Florida Rules of Criminal Procedure 3.210 and 3.212: D'oleo-valdez v. State, 531 So. 3d 1347, 1348 (Fla. 1988). Drope v. Missouri, 420 U.S. 162, 172, 95 S. Ct. 896, 43 L. Ed 2d 103 (1975). Dougherty v. State, 149 So. 3d 672, 679 (Fla. 2014). Cochran v. State, 925 So. 2d 370, 373 (Fla. 5th DCA 2006); Monte v. State, 51 So. 3d 1196, 1202 (Fla. 4th DCA 2011). Chester v. State, 213 So. 3d 1080, 1082 (Fla. 1st DCA 2017); Zern v. State, 191 So. 3d 962, 964 (Fla. 1st DCA 2016); Reynolds v. State, 177 So. 3d 296, 299 (Fla. 1st DCA 2015); Cotton v. State, 177 So. 3d 666, 668-669 (Fla. 1st DCA 2015); Brooks v. State, 180 So. 3d 1094, 1095-96 (Fla. 1st DCA 2015).

Mr. Fletcher should have filed a motion pursuant to Florida Rules of Criminal Procedure 3.210, 3.211, and 3.212. which would have been the proper motion to file in reference with the Petitioner's Competency issues, and cited Florida Statute § 916.12, Mental Competency to proceed.

The Petitioner have a United States Constitutional Right of the Fifth and Fourteenth Amendments, and a Florida Constitutional Right Article 1, Section 2. and 9., not to be tried while incompetent to proceed at trial.

Continue on next Page→

3).

ISSUE 2.

The trial Court erred by allowing the Prosecutor to cross-examine Appellant regarding his opinion as to the veracity of the other state witnesses.

During the course of trial the Prosecutor repeatedly ask the Petitioner if all the state witnesses were lying.

The following case laws support any issues of fundamental error, and the Prosecutor questioning the Petitioner as to the veracity of the state witnesses: Johnson v. State, 969 So. 2d 938 (Fla. 2007).

F. B. v. State, 852 So. 2d 226, 229 (Fla. 2003) (quoting Brown v. State, 124 So. 2d 481, 484 (Fla. 1960). J. B. v. State, 705 So. 2d 1376, 1378 (Fla. 1998). Gomez v. State, 751 So. 2d 630 (Fla. 3d DCA 1999).

Boatright v. State, 452 So. 2d 666, 668 (Fla. 4th DCA 1984); Knowles v. State, 632 So. 2d 62, 65 (Fla. 1993). Turnlin v. State, 29 So. 3d 1093, 1101 (Fla. 2010). Mosley v. State, 569 So. 2d 832 (Fla. 2d DCA 1990);

Whitfield v. State, 549 So. 2d 1202 (Fla. 3d DCA 1989); Joseph v. State, 868 So. 2d 5 (Fla. 4th DCA 2004). Toler v. State, 95 So. 3d 913, 918 (Fla. 1st DCA 2012). Gore v. State, 719 So. 2d 1197, 1201 (Fla. 1998).

Pacifico v. State, 642 So. 2d 1178, 1184 (Fla. 1st DCA 1994).

The Petitioner have a united states Constitutional Right of the Fifth and Fourteenth Amendments, and Florida Constitutional Right Article 1, Section 2., and 9., due process of law and equal protection of the laws.

Continue on next Page→

4).

ISSUE 3.

The prosecutor made improper comments in closing arguments which denied Appellant of his right to a fair trial.

During closing arguments the prosecutor made improper comments on facts not in evidence, vouched for Belmer's credibility, asserted his own opinion as an accepted method to determine truthfulness, improperly argue that Belmer had no interest in the outcome of the case except for justice, shift the burden of proof to the defense, vouched for the credibility of multiple state witnesses, and implied the Appellant must be guilty because the state would not take a case to trial if Defendant was not guilty.

The following case laws support any issues of fundamental error, and the prosecutor's improper comments in closing arguments: Pacifico v. State, 642 So. 2d 1178, 1182 (Fla. 1st DCA (1994)). McKenzie v. State, 830 So. 2d 234, 238 (Fla. 4th DCA 2002). Conahan v. State, 844 So. 2d 629, 640 (Fla. 2003); King v. State, 130 So. 3d 676 (Fla. 2013); Bertolotti v. State, 476 So. 2d 130 (Fla. 1985). Tillman v. State, 647 So. 2d 1015 (Fla. 4th DCA 1994). Freeman v. State, 717 So. 2d 105 (Fla. 5th DCA 2005). Garrette v. State, 501 So. 2d 1376, 1379 (Fla. 1st DCA 1987); Johns v. State, 832 So. 2d 959, 962 (Fla. 2d DCA 2002); Brown v. State, 787 So. 2d 229, 230-231 (Fla. 2d DCA 2001); Servis v. State, 855 So. 2d 1190, 1195 (Fla. 5th DCA 2003). Ruiz v. State, 743 So. 2d 1, 5 (Fla. 1999). Toler v. State, 95 So. 3d 913, 918 (Fla. 1st DCA 2012). Jackson v. State, 89 So. 3d 1011, 1018 (Fla. 4th DCA 2012). Sempier v. State, 907 So. 2d 1277, 1278 (Fla. 5th DCA 2005). Cochran v. State, 711 So. 2d 1159, 1163 (Fla. 4th DCA 1998). Bass v. State, 547 So. 2d 680, 682 (Fla. 1st DCA 1989).

Continue on next Page →

The Petitioner have a united states Constitutional Right of the Fifth and Fourteenth Amendments, and Florida Constitutional Right Article 1, Section 2. and 9., due process of law, and equal protection of laws.

5). ISSUE 4.

The admission of evidence of prior bad acts related to APPELLANT's no contact order was irrelevant, prejudicial, and presumptively harmful.

During the course of trial the Prosecutor asked the Petitioner why was he running from the police. The Petitioner told the Prosecutor that he ran, because he thought the police were looking for him because of a no contact order, between him and Mrs. Mobbs. Although the Petitioner volunteered to answer the question truthfully. The Prosecutor should not have continued to ask the Petitioner about the no contact order. The prosecutor's intentions were only to show the Jury that Petitioner's bad character or propensity to commit violence.

The following case laws support any issues of fundamental error, the prosecutor's admission of evidence of prior bad acts, and Florida Statutes § 90.404 (2)(a) and 90.403; Dessaure v. State, 891 So. 2d 455, 466 (Fla. 2004); Childers v. State, 936 So. 2d 585, 592 (Fla. 1st DCA 2006). Everett v. State, 124 So. 3d 938, 939 (Fla. 1st DCA 2013). Ross v. State, 913 So. 2d 1184, 1188 (Fla. 4th DCA 2005); Miller v. State, 570 So. 2d 925, 928 (Fla. 1990). Bozeman v. State, 698 So. 2d 629, 631 (Fla. 4th DCA 1997). Czubak v. State, 570 So. 2d 925, 928 (Fla. 1990); Williams v. State, 110 So. 2d 654 (Fla. 1989).

Continue on next Page →

Castro v. State, 547 So. 2d 111 (Fla. 1989). Herbert v. State, 526 So. 2d 709 (Fla. 4th DCA 1988); Pratt v. State, 1 So. 3d 1169 (Fla. 4th DCA 2009); Harden v. State, 87 So. 3d 1243 (Fla. 4th DCA 2013).

The Petitioner have a united States Constitutional Right of the Fifth and Fourteenth Amendments, and Florida Constitutional Right Article 1, Section 2. and 9., due process of law, and equal protection of laws.

REASONS FOR GRANTING THE PETITION

The Petitioner honestly asserts herein the, Petition for a writ of Certiorari, the reasons why the foregoing should be granted. Stated as follows:

1). The foregoing Petition Should be granted, for the honesty and upholding of the laws in this stupendous Country of the united States of America, with Respect, Liberty, and Justice for all.

2). The foregoing Petition should be granted, based on the "Substantive Facts" that the trial Court's, and the First District Court's of Appeals, of the State of Florida, deliberately failed to properly follow protocols of the united States, and State of Florida: Constitutional Provisions, treaties, statutes, Rules, ordinances, and Regulations involved in the Petitioner's Criminal Case.

3). The foregoing Petition should be granted, because the united States of America "Laws are Just", the law is the law, and Justice of the laws should be served, Respected, and upheld with pride by all Citizen of the united States of America.

Dr. Martin Luther King Jr. once said, "Indjustice anywhere is a threat to Justice everywhere".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Calvin R. Burrow

Date: October 8, 2019