

**CASE NO.: 19-6877**

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**IN THE SUPREME COURT OF THE UNITED STATES**

**CHRISTOPHER R. BROWN, PETITIONER**

**V.**

**FLORIDA, RESPONDENT**

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**ON PETITION FOR WRIT OF CERTIORARI  
TO THE DISTRICT COURT OF APPEAL OF FLORIDA  
FOURTH DISTRICT**

**REPLY TO BRIEF IN OPPOSITION**

Christopher R. Brown, pro se, <sup>DC#</sup> 379505  
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## **PETITIONER'S REPLY TO BRIEF IN OPPOSITION**

The Petitioner, Christopher R. Brown, pro se file this reply in pursuant to Rule 15.6 and 17.5 of the United States Supreme Court Rules, and this Honorable Court has jurisdiction to review this writ, as the record will support as follows:

- (A) The Petitioner case reveals that it has met the exception to the rule to overcome procedural default, whereas failure to consider the Petitioner's claims will result in a fundamental miscarriage of justice.
- (B) Where a constitutional violation has probably resulted in the conviction of one who is actually innocent, where Petitioner claims of constitutional violations has resulted in structural errors.
- (C) The Petitioner, assertion in all claims presented, and the brief for Respondent in opposition firmly established a federal constitutional violation has been committed that has resulted in a structural error, that requires a reversal of such conviction.

## **QUESTIONS PRESENTED**

- 1) Whether Petitioner was deprived of due process when the state courts failed to apply collateral estoppel or res judicata to bar the government from introducing evidence in his criminal trial after a forfeiture court held there was no probable cause for seizure of the evidence.
- 2) Whether the state court applied the wrong standard in denying petitioner's claim of ineffective assistance of trial counsel.
- 3) Whether Petitioner has been subject to disparate treatment because his co-defendant obtained relief on a claim that Petitioner's appellate counsel did not raise on appeal because Petitioner's trial counsel did not preserve the issue for appeal.
- 4) Whether the cumulative effect of the Petitioner claims establish cause for the default and actual prejudice resulting from the alleged constitutional violations.

**THE PETITIONER REPLY TO**  
**RESPONDENT IN OPPOSITION**

- A) The Respondent asserts, a Writ of Certiorari is not warranted because Petitioner's first question presented, has never presented the argument to a lower state court.

Where the Petitioner claim the lower state court was barred by res judicata as a ground for relief in either of his petitions for Writ of Habeas Corpus.

1. However, whole Petitioner raise all claims as plain error, and as the Respondent, agreed Petitioner claims review can be had due to plain error.

Whereas, the Petitioner has established from the face of the record, the State Attorney during the prosecution of his case knowingly presented illegally obtained evidence being 16,000 dollars that was not probable cause, and was ordered that the money be returned to Ms. James after a lengthy adversarial preliminary hearing held March 22, 23, 2010. Presiding, the Honorable Paul B. Kanarek. Such an act by the state prosecutor is a manifest structural error.

- B) The principle that a State Attorney may not knowingly and intentionally use illegal evidence to obtain conviction is implicit in any concept or ordered liberty. See Mooney v. Holohan, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 2d 791 (1935). Where the record is void of any appeal from the State Attorney, form the forfeiture hearing that was held March 22, 23, 2010.

C) The Respondent asserts the state court properly applied the ineffective assistance of counsel standard to Petitioner's claim that appellate counsel failed to raise the exclusion of James prior testimony on appeal. Accordingly... an error such as the crux the Petitioner's claim would have justify reversal on direct appeal. Whereas the U.S. Supreme Court has recognized a special category of errors which must be corrected regardless of their effect on the outcome of the case." See U.S. v. Olano, 507 U.S. 725, 735, 113 S. Ct. 1170, 1265, 123 L. Ed. 2d 508 (1993). The court labeled this category of errors as structural. See Arizona v. Fulminate, 499 U.S. 279, 310, 111 S. Ct. 1246, 1265, 113 L. Ed. 2d 302 (1991).

1. Therefore, Petitioner rightly asserts that his appellate counsel was ineffective for failing to raise the constitutional violation of not merely that the errors at his trial created a possibility of prejudice but that they worked to his actual and substantial disadvantage infecting his entire trial with error of constitutional dimension. See United States v. Frady, 456 U.S. 152, 170, 102 S. Ct 1584, 71 L. Ed. 2d 816 (1982).
2. In any event whenever a State Attorney/prosecutor seeks to obfuscate the truth – seeking function of a trial court by knowingly presenting illegal evidence, testimony or fraudulent documents swearing to such untruths, the integrity of the judicial proceeding is place in jeopardy. Thereby to affirm and deny Petitioner's claim of ineffective assistance of appellate counsel would result in a decision that was contrary to, and involved an

unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States, see Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Based on the record of appeal counsel was ineffective during direct appeal, where there was a manifest structural error in both case.

D) Finally, the Petitioner asserted that he suffered disparate treatment from his co-defendant. Nevertheless, Respondent asserts he did not when the evidence against the two defendants was not identical and their theories of defense was not identical.

1. Moreover, the Petitioner's trial was a joint trial and for the State Attorney/assistant prosecutor to violate the co-defendant's due process in the presents of the jury by presenting evidence that was knowingly and intentionally use to obtain a tainted conviction, in both cases. As well as precluding former testimony of Ms. James was evenly substantial for Petitioner as it was for (co-defendant Wyatts) where both testified at the adversarial preliminary hearing and both received the same jury instructions that included the act of principal, as the law hold: In pertinent part:

If the defendant helps another person or persons [commit] [attempt to commit] a crime, the defendant is a principal and must be treated as if [he] [she] had done all the things the other person or persons did if...



Thereafter, both defendants were found guilty.

2. Subsequently, as the Respondent rightly contends, the presence of the unauthorized cash, that clearly was the principal unlawful evidence, that obtain a tainted conviction of the Petitioner, by the Asst. State Attorney, but the law hold: The state attorney/prosecutor is bound by the constitution and the laws of this state, and when strict compliance is knowingly and intentionally disregard an order to gain a conviction, the Asst. State Attorney cases an impenetrable cloud over the principle that society's searches for the truth are the polestar that guides all judicial inquiry. The U.S. Supreme Court explained this as follows:

“A conviction obtained b y the known use of perjured testimony [even the prosecutor's own sworn testimony] is fundamentally unfair... for it involves a corruption of the truth-seeking function of the trial process.”

3. The rationale underlying this principle is timeless. If a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of a court... Such a contrivance by a state to produce the conviction and imprisonment of a defendant is inconsistent with rudimentary demands of justice. See United States v. Agurs, 427 U.S. 97, 103-04, 96 S. Ct. 2392, 49 L. Ed. 2d 342 (1976).

The plain error in Petitioner's case, result in a manifest structural error from the use of prosecutor illegally obtained evidence in both cases.

E) A structural error in a criminal trial always requires reversal of a conviction because such error renders the trial an unreliable vehicle for the determination of guilt." See Rose v. Clark, 478 U.S. 570, 577-78, 106 S. Ct. 3101, 3105-06, 92 L. Ed. 2d 460 (1986).

1. "Structural error creates consequences that are necessarily unquantifiable and indeterminate" Sullivan v. Louisiana, 508 U.S. 275, 282, 113 S. Ct. 2078, 2083, 124 L. Ed. 2d 183 (1993). Due to the nature of structural error, whether a defendant objects or fails to object to such an error is a fundamental flaw. In the trial process and undermines the structural integrity of the criminal tribunal itself." See Vasquez v. Hillery, 474, U.S. 254, 263-64, 106 S. Ct. 617, 623, 88 L. Ed. 2d 598 (1986).

WHEREFORE, based on the Brief of Respondent in Opposition, and the Petitioner's Reply, this Honorable Court should grant Certiorari Review or alternatively reverse for a federal evidentiary hearing, as this reply is filed in good faith.

Respectfully Submitted,

/s/ Christopher R. Brown

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### **CONCLUSION**

The Petitioner prays this Honorable Court grant Certiorari Review and grant the proper relief that this court deem just.

Respectfully Submitted,

/s/ Christopher R. Brown

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### **DECLARATION AND OATH**

UNDER PENALTIES OF PERJURY, I declare that I have read the foregoing Reply Motion and swear that the facts stated in it are true and correct in accordance with Section 92.525(2) Florida Statutes, (2010).

Respectfully Submitted,

/s/ Christopher R. Brown

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