No: 20-5269

IN THE
SUPREME COURT OF THE UNITED STATES

AMADEO VALLS - *Petitioner*
(Your Name)

vs.

FLORIDA - *Respondent(s)*

on

PETITION FOR A WRIT OF CERTIORARI

to

FLORIDA THIRD DISTRICT COURT OF APPEAL
(Name of Court that last ruled on merits of your case)

PETITION FOR A WRIT OF CERTIORARI

AMADEO VALLS
(Your Name)
F.D.O.C. # M83689
BLACKWATER RIVER CORRECTIONAL FACILITY
5914 JEFF ATES ROAD
MILTON, FLORIDA 32583

QUESTION(S) PRESENTED

(I.) WHETHER DUE PROCESS PROHIBITS FLORIDA FROM EXCLUDING MENS REA INSTRUCTION FROM BURGLARY CHARGES OR WHETHER IT IS STRUCTURAL ERROR FOR TRIAL COURTS TO REFUSE TO SUBMIT AN ELEMENT TO JURORS IF SUCH ELEMENT IS ESSENTIAL, IN DISPUTE, AND, AS THE TOPMOST MATERIAL CONSIDERATION, HIGHLY CAPABLE OF ACQUITTING ACCUSED.

(II.) WHETHER TENANCY CONTROVERTS THE NECESSARY MENS REA ELEMENT FOR THE CRIME OF BURGLARY OR WHETHER FAILURE TO SUFFICIENTLY REBUT A VULNERABLE TENANT'S AUTOMATICALLY REASONABLE BELIEF NEGATING MENS REA IS CAPABLE, BY ITSELF, OF RENDERING BURGLARY CONVICTION CONSTITUTIONALLY PROHIBITED.

(III.) DOES CHARGING CONTRADICTORY SETS OF ALTERNATIVE INSTRUCTIONS, REQUIRING CONFLICTING LEGAL FINDINGS FOR THE SAME FACTS, BECOME CAPABLE, BY ITSELF, OF RENDERING TRIAL CONSTITUTIONALLY INADEQUATE.

(IV.) WHETHER DUAL THEORY LANGUAGE IN FLORIDA'S CAPITAL MURDER STATUTE AUTHORIZES UNLIMITED OVER-RULING OF A STRUCTURAL RIGHT TO GRAND JURY REINDICTMENT.

(V.) WHETHER CUMULATIVE PREJUDICIAL EFFECT OF ERROR IS CAPABLE, BY ITSELF, OF RENDERING A TRIAL CONSTITUTIONALLY INADEQUATE.

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:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari to review the judgment below.

OPINIONS BELOW

For cases from **State Courts**:

The opinion of the highest State Court to review the merits appears at Appendix **D** to the petition and is; unpublished.

The opinion of the same State Court (originally deciding) same case appears at Appendix **F** to this petition and is; reported at 159 So.3d 234 (Fla. 3d DCA 2015).

JURISDICTION

For cases from **State Courts**:

The date on which the highest State Court decided my case was April 1st, 2020. A copy of that decision appears at Appendix **D**.

A timely petition for rehearing was thereafter denied on the following date: April 20th, 2020, a copy of the order denying rehearing appears at Appendix **E**.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5 – Criminal actions Provisions concerning Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6 – Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 14

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, a gunshot victim himself, committed justifiable homicide during a domestic firefight on September 7th 2009. The grand jury returned a "no bill" for first-degree (premeditated) murder, so Florida then filed a second-degree murder information on September 29th 2009, yet later indicted him for first-degree (felony) murder, on February 15th 2012, via a legally interlocking count of predicate felony burglary to structure for entering driveway "curtilage" of his allegedly abandoned sublet in order to commit (misdemeanor prank) criminal mischief. See Appendix A

Petitioner was convicted on both counts at the original trial on October 2012, later reversed for omitting burglary affirmative defense instruction. ***Valls v. State***, 159 So. 3d 234, 238 (Fla. 3d DCA 2015). See Appendix F

In 2016, Prosecutors ambushed the defense at new trial with yet another predicate felony theory --- burglary to conveyance --- via a constructive amendment to indictment applied by (misconstrued) license of the statutory dual theory language behind first-degree murder statute. The trial court overruled defense objections, granting the uncharged theory --- featuring new evidence, closing arguments, and jury instructions.

Other exceptions took place during that retrial and then at two more retrials. Prosecutors introduced irrational presumptive instructions. Prosecutors also conflated two contradictory sets of mutually exclusive alternative burglary instructions that negated an affirmative defense argued in (III.), infra. Trial court denied judgment of acquittal argued in (II.), infra. This unique case has three structural error vectors, i.e., (a) aggravated usurpation of petit jury's authority via purposeful omission of crucial acquitting instruction argued in (I.), infra, (b) aggravated usurpation of grand jury's authority via constructive amendment argued in (IV.), infra, and (c) biased trial judge, not argued on appeal.

Two retrials ended in hung-juries. The mistrials were contested since juries submitted queries on conveyance burglary --- requesting clarification on that uncharged burglary just prior to deadlocking. Thus, based on two "promoted" hung-juries, a pretrial interlocutory appeal on double jeopardy grounds was still pending, during trial, at the state level. ***See Valls v. State***, 251 So. 3d 144 (Fla. 3d DCA 2018) (collateral attack dismissed). ***See*** Appendix G

Petitioner was reconvicted at a fourth trial in December 2017. Petitioner's direct appeal, challenging fourth trial, was denied by per curiam affirmed decision without opinion on April 1st 2020, and rehearing motion denied on April 20th 2020. ***See*** Appendices B, C, D, E, H, I, J, K, L

REASONS FOR GRANTING THE PETITION

(I.) WHETHER DUE PROCESS PROHIBITS FLORIDA FROM EXCLUDING MENS REA INSTRUCTION FROM BURGLARY CHARGES OR WHETHER IT IS STRUCTURAL ERROR FOR TRIAL COURTS TO REFUSE TO SUBMIT A ELEMENT TO JURORS IF SUCH ELEMENT IS ESSENTIAL, IN DISPUTE, AND, AS THE TOPMOST MATERIAL CONSIDERATION, HIGHLY CAPABLE OF ACQUITTING ACCUSED.

When Florida accused Petitioner of knowingly trespassing that alleged knowledge became the core material consideration. To then deny jurors that factual determination, as a matter of law in favor of Florida, is a structural error.

Mens rea is an embedded element within statutory crimes based on common law crimes. It is the one essential element fundamentally in common in all crimes. To deny its charge is to deny tradition. [(1)] States must prove an accused's guilty mind --- whereby one "knew or should have known" that the intent by his actions was wrongful and criminal since "[t]he existence of a mens rea is the rule of, rather

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1 [(1) Mens rea is so "[u]niversal and persistent," ***U.S. v. U.S. Gypsum Co.***, 438 US 422, 436 (1978), that it requires no "statutory affirmation." ***Morrisette v. U.S.***, 342 US 246, 251-52 (1948). Judges cannot "[d]isregard this bedrock American tradition." ***U.S. v. Bruguier***, 735 F. 3d 754 (CA 8 2013) (en banc) (concurring) (citing Morrisette, supra)]

than the exception to, the principles of Anglo-American criminal jurisprudence." ***Dennis v. U.S.***, 341 US 494, 500 (1951). The separate states avoid, however, the burden of proving mens rea by excluding mens rea from standard jury instructions. But to not instruct on mens rea, in order to convict, is unconstitutional when such knowledge is disputed.

Burglary is a compound crime. It contains two mens rea components --- burglars must knowingly trespass while also harboring a criminal intent therein. Pursuant to statutory expansion of common law burglary, Florida standard burglary instructions charge juries with burglary's criminal intent therein, but do not charge juries with burglary's knowingly trespass (i.e. --- silent on the question of fact concerning burglar's mens rea element of willful trespass knowledge). Prosecutors, relying on Florida courts default use of burglary's affirmative defense instruction (statutorily designated for licensees and invitees), have taken strategic liberties by overcharging vulnerable lessees' petty crimes as burglary in order to reap tactical benefits off this critical lack of knowledge instruction, but, contrary to Winship mandate. In Re Winship, 397 US 358, 363-64 (1970). Thus, until Florida's standard burglary instructions include the omitted knowledge element, to deny then specially requested instruction on knowledge in cases where mens rea is in dispute, and

also a key material consideration highly capable of acquitting, further compounds this error by omission. [([2])] [([3])]

Trial by jury is structural, serving as "[a]n inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge," ***Duncan v. Louisiana***, 391 US 145, 156 (1968), designed "[t]o prevent oppression by the government," ***Williams v. Florida***, 399 US 78, 100 (1970), realized through sound judgment by one's peers. Sound verdicts are rendered by informed juries charged with sufficient information to resolve all disputed elements. While informative resolution of all legal disputes is how jury verdicts are justifiably rendered, juries highest purpose is protecting innocence by acquittal, but

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[2] [(2) One standard burglary instruction does instruct on knowledge, using "knew or should have known" language --- but it is only applicable during instances where contested premises are deemed "open to the public." See Fla. Std. Jury Instr. (Crim) 13.1 (2009-2017) --- paragraph six --- which states: "[Give if applicable] If (defendant) entered premises that were open to the public, but then entered an area of the premises that [he] [she] knew or should have known was not open to the public, (defendant) committed a burglary if [he] [she] entered that non-public area with the intent to commit [(the crime alleged)] [an offense other than burglary or trespass] in that non-public area."]

[3] [(3) Although a default affirmative defense for licensees and invitees was given as mandated, see Valls, id. at 238, still, such partial defense (Petitioner was operating as a sublessee) was neutralized, see (III.), infra at 17-20, by conflicting alternative burglary instructions. Unlike mens rea, affirmative defenses are not elements. Patterson v. N.Y., 432 US 197, 210 (1977).]

jurors cannot acquit if a disputed element is being omitted in favor of the State. So that structural "safeguard" is short-circuited by omitting elements that acquit. That is a bright-line. The Constitution and Bill of Rights both guarantee jurors will knowledgeably resolve each and every disputed material element necessary to render justified verdicts based on their authority to informatively answer all pertinent questions of fact about a case, which includes a key structural warranty "[t]hat under a proper instruction the jury would have acquitted." ***Neder v. U.S.***, 527 US 1, 28-29 (1999) (STEVENS, J., concurring in part and concurring in judgment).

On a case by case basis, if an omitted element is disputed and, as a topmost "material consideration," also capable of acquitting, then the Court's harmless error designation in Neder is incomplete, if not illogical, since the Court did not incorporate, but, instead, overlooked the explicit precedent in ***Stevenson v. U.S.***, 162 US 313 (1896), reiterated in ***Matthews v. U.S.,*** 485 US 58 (1988), which essentially overrules the Neder premise that "[t]he omission of an element from the judge's charge to the jury can be harmless error," Neder, ***id.*** at 7 (majority opinion). In that light Neder subverts the original concept of "trial by jury" when its own premise places itself above the sacred right to acquit, the Stevenson ruling, and against the Duncan "safeguard" which carries an implicit guarantee that omission of a disputed element "can [never] be harmless error" because constitutional verdicts are not rendered unless jurors first resolve omitted elements that are disputed, material, and possibly

acquitting. Judges cannot resolve disputed omissions as a matter of law by reaching that determination themselves. It misses the whole point of jury trials, justice through "informed" peers. Courts cannot later "[h]ypothesize a guilty verdict that [was] never in fact rendered." ***Sullivan v. Louisiana***, 508 US 275, 279 (1993).

If the instant facts demonstrate a structural defect which cannot be deemed harmless, see Neder, id. at 32 (SCALIA, J., concurring in part and dissenting in part) (opining that "[d]epriving a criminal defendant of the right to have the jury determine his guilt of the crime charged which necessarily means his commission of every element of the crime charged can never be harmless."), then the Court should revisit "[p]rotecting the right to have a jury resolve [omitted] critical issues of [disputed] fact," ***id.***, at 28, which protects the right to "resolve" issues which may acquit, the key structural guarantee ensuring an accused's liberty under due process of law. Petitioner claims that, contrary to original documented rights and rule of lenity, he has lost one too many of his substantial rights (i.e. --- "[t]he only one to appear in both the body of the Constitution and the Bill of Rights" **id.**, at 30), lost amid reactionary "tension" struggling with but a mere legal premise overly construed in the Neder denial of a core right through what has become "harmful" hyperextension of the harmless error doctrine. This case is at least ripe enough to also answer the omission vector of the Court's reserved question on whether structural error

automatically satisfies its third plain error rule. ***U.S. v. Marcos***, 560 US 258 (2010). [([4])]

Florida's Third District Court of Appeal improperly determined Petitioner's guilt (by affirming trial court's usurpation of jurors authority to render an informed verdict under a crucial acquittal determination), misapprehending the structural omission of a pertinent mens rea charge on burglary's element of knowledge. Two previous (hung) juries were laboring without such mens rea instruction, so, unable to informatively connect facts to missing question of fact necessary to resolve that key element, were also unable to determine what Florida courts were too quick to assume. Petitioner was denied a fair substantial right to acquittal, a structural right behind trial by jury, guaranteed via informed jurors empowered by thorough charges. The root structure of all jury trials is access to pertinent information and instruction, unhampered by prosecutors or judges manipulations, clearly delineating what each element of a crime is supposed to encompass --- in order to find, at the intersection of jury acquittal, every essential element proven beyond a reasonable doubt. Anything less is unconstitutional.

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[4] [(4) Part II of the unanimous Neder decision was not unanimous and so it could be said to not have definitively expressed "[a] clear and well accepted constitutional law. We have long recognized, of course, that the doctrine of stare decisis is less rigid in its application to constitutional precedents, and we think that to be especially true of a constitutional precedent that is both recent and in apparent tension with other decisions." ***Harmelin v. Michigan***, 501 US 957, 965 (1991) (citations omitted)]

Burglary's common law knowledge element, like any offense's element, "[i]s a question of fact that must be determined by the jury." ***U.S. v. Gaudin***, 28 F. 3d 943 (CA 9 1994) (en banc), affirmed by, 515 US 506 (1995). "[I]t is a structural guarantee..." ***Carella v. California***, 491 US 263, 268 (1989) (concurring), which commands that a "[v]erdict cannot stand if the instruction provided the jury do not require it to find each element of the crime..." ***Cabana v. Bullock***, 474 US 376, 384 (1986). So "[t]he touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an 'element' or 'ingredient' of the charged offense." ***Alleyne v. U.S.***, 133 S. Ct. 2151, 2158 (2013). Knowledge "[c]onstitutes an [essential common law] 'element'" of burglary, so "[i]t must be found by a jury." ***Id.*** It was not.

The defense requested special instruction on knowledge, as willful trespass knowledge --- basing the mens rea of burglary --- was at issue, as Petitioner appropriately believed that the curtilage was essentially "open" for his private use as a current sublessee (see footnote 2). The premise of Petitioner's key prayer was to labor "[u]nder a proper [mens rea] instruction [where] the jury would have acquitted." Neder, ***id.*** at 28-29. The defense instruction correctly stated that: "[T]he State of Florida must prove that Amadeo Valls had knowledge that his entry was without permission." See Appendix H at page 27.

Petitioner reiterated, under rigors of a second cross-examination, that he believed he (did not trespass but) entered lawfully. Whether his belief was

reasonable questioned the very heart of prosecution's burden to prove the "[e]ssential elements... [of] knowledge that such entry is without permission," ***T.S.J. v. State***, 439 So. 2d 966, 967 (Fla. 1st DCA 1983), the mens rea behind what constitutes burglary's "willful trespass." ***Long v. State***, 28 So. 775 (Fla. 1900). The instant existence of mens rea was highly questionable. Current tenants automatically lack mens rea. Since burglars enter knowing such unlawful entries are willfully trespassed, if one reasonably believes that he is not trespassing, then mens rea is nonexistent. No trespass no burglary. For one can only knowingly burglarize by willfully trespassing (despite required criminal intent, for even occupants can have criminal intents therein), so it demands conscious trespassing. Knowledge instruction here would have challenged key considerations material to Florida's uncommon allegation that, not only did an allegedly ousted renter's curtilage (driveway) burglary exist, but, that its existence also precluded a prima facie case of self-defense. ***Valls, id.*** at 238.

Such critical knowledge considerations required factual determination by informed jurors, requiring informed findings for either one of two possible mindsets, i.e. --- either guilty mind of willfully trespassing alleged by prosecution, or else, innocent mind of lawfully ingressing (or someone reasonably believing he was lawfully entering, however allegedly ousted) professed by Petitioner. For "[t]he mens rea element... rests... on a factual determination. That is the fact [Petitioner] sought to put in issue. Either [Petitioner] knew he was [trespassing] or he did not." ***Arizona v. Clark***, 548 US 735 (2006) (KENNEDY,

J., dissenting). It was just that simple --- did he or did he not know. Jurors never knew such simplicity even existed. Yet prosecutors overcharged a weak case, realized by two hung-juries, so trial court knew how such instructional simplicity acquitted Petitioner. It was a purposeful structural lapse in favor of conviction. It reached a bright line.

When trial court refused informative instruction on that critical question of fact (condensed into knowledge), such question was determined a matter of law and against Petitioner (boxing him into willful trespasser liabilities). ***See*** Stevenson, ***id.*** at 315-16 (finding reversible error for refusing instruction since "[T]he presence or absence of malice would be the material consideration in the case... [was] determined by the trial court as one of law and against the defendant."). Stevenson still applies, foreclosing discretion to deny instruction on "material considerations." ***See***, Matthews, ***id.*** at 63 (reiterating that "[a] defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor.") (citing Stevenson, supra). Jurors authority to determine knowledge's question of fact was usurped, defining abuse of discretion --- since unauthorized ruling as a matter of law (against submitting "knowledge" instruction) what must be submitted as a question of fact is (at least) "plain error." ***Gaudin,*** 28 F. 3d at 951-52.

Petitioner's reasonable explanation of his renter's state of mind --- the logical (automatic) antithesis of trespass knowledge --- required informed jury

consideration to balance against potential overcharging of renter's curtilage entry. A strong acquittal nexus, the denied knowledge instruction would have furnished valuable guidance into this cause's central matter, explaining the need to find factual determinants for either an ousted renter that willfully trespassed curtilage, proving burglary, or else, prove current renter's lesser included offense of criminal mischief (admitted by Petitioner), while also determining burglary's interlocking homicide. ***Valls, id.*** at 238. It was that "all encompassing." Even if "[e]vidence might appear to the court to be simply overwhelming to show that the [curtilage was knowingly trespassed by ousted former tenant] and not [entered by sublessee reasonably believing it lawful despite ejectment attempts], so long as there was some evidence relevant to the issue of [lack of mens rea], the credibility and force of such evidence must be for the jury, and cannot be matter of law for the decision of the court." ***Stevenson, id.*** at 315.

The undisputed relevant evidence --- the rental agreement, rent being current, search warrant for Petitioner's sublet room, no forcible entry, and the open nature of the curtilage's front driveway --- was "sufficient" and made the net "credibility and force of such evidence" forming Petitioner's belief that more reasonable against knowledge of willful trespass. Jurors should have been allowed to labor on such understandable knowledge instruction as sufficient evidence supported its use, the instruction was neither misleading nor confusing but a short accurate statement of core law, that instructed on a missing foundational element in burglary for the felony murder puzzle within Petitioner's close case

exemplified by two prior hung-juries. It was the key instruction that would have potentially acquitted him. Yet determination of knowledge's existence was not made. That is, laymen conceptualization of mens rea is nonexistent, so there was no reasonable likelihood of burglary deliberations on such uninformed matters without mens rea language being present, best worded in simple knowledge language. Such language would have served jurors' careful determination on a core matter --- burglary mens rea --- utterly foreign to them, and, as the topmost question of fact, was highly capable of liberating Petitioner.

Therefore, since mens rea was not instructed, and yet, whether knowledge existed was the core material consideration at trial, it required being specially instructed to jurors. As such, trial court's abuse of discretion in refusing to instruct on disputed knowledge was a structural defect for this refusal created impermissible risks that jurors did not make (structurally acquittal) findings required by the Constitution, which deprived Petitioner of his constitutional rights under the Fifth, Sixth and Fourteenth Amendments.

Stevenson v. U.S., 162 US 313, Matthews v. U.S., 485 US 58, U.S. v. Haywood, 363 F. 3d 200, Morrisette v. U.S., 342 US 246, U.S. v. Bruguier, 735 F. 3d 754, Rodriguez v. State, 147 So. 3d 1066, Weiler v. U.S., 323 US 606, T.S.J. v. State, 439 So. 2d 966, D.R. v. State, 734 So. 2d 455, Long v. State, 28 So. 775, Mooneyham v. Bowles, 72 So. 931, Montana v. Egelhoff, 518 US 37, U.S. v. Gaudin, 28 F. 3d 943, U.S.

v. Gaudin, 515 US 506, McFadden v. U.S., 135 S. Ct. 2298, Patterson v. N.Y., 432 US 197, Chicone v. State, 684 So. 2d 736, Staples v. U.S., 511 US 600, U.S. v. U.S. Gypsum Co., 438 US 422, Dennis v. U.S., 341 US 494, U.S. v. Freed, 401 US 601, U.S. v. Balint, 258 US 250, Jones v. U.S., 527 US 373, Bruno v. U.S., 308 US 287, Cabana v. Bullock, 474 US 376, U.S. v. Calandar, 414 US 338, Henderson v. Morgan, 426 US 637, U.S. v. FastHorse, 747 F. 3d 1040, U.S. v. Stanford, 823 F. 3d 814, U.S. v. Montoya-Gaxiola, 796 F. 3d 118, U.S. v. Gomez, 580 F. 3d 1229, U.S. v. Makkar, 810 F. 3d 1139, U.S. v. Burgos, 703 F. 3d 1, U.S. v. Lowe, 795 F. 3d 519, Cole v. Young, 817 F. 2d 412, Dixon v. U.S., 548 US 1, Alleyne v. U.S., 133 S. Ct. 2151, Apprendi v. N.J., 530 US 466, In Re Winship, 397 US 358, Clark v. Arizona, 548 US 735

(II.) WHETHER TENANCY CONTROVERTS THE NECESSARY MENS REA ELEMENT FOR THE CRIME OF BURGLARY OR WHETHER FAILURE TO SUFFICIENTLY REBUT A VULNERABLE TENANT'S AUTOMATICALLY REASONABLE BELIEF NEGATING MENS REA IS CAPABLE BY ITSELF OF RENDERING BURGLARY CONVICTION CONSTITUTIONALLY PROHIBITED.

Notwithstanding extraordinary statutory expansion of common law burglary, courts must acknowledge burglary's mens rea element, yet recent Florida case law has subjected allegedly 'ousted' tenants to burglary liabilities pursuant to obscure superior "possessory interests" analysis, ***see Pierre v. State***, 77 So. 3d 699 (Fla. 3d DCA 2011), which ignores the

clear logic of tenants' automatic lack of mens rea, so Florida trial courts deny vulnerable tenants their right to discharge of overcharged petty crimes posing as felony burglary when, logically, all tenants automatically lack necessary knowledge mindset behind burglary's willful trespass mens rea. Statutory burglary has overreached itself. The Court should rule that, it is beyond reasonable doubt, that current tenants cannot develop mens rea necessary to burglarize their own premises. ***Winship, id.*** at 364. ***See,*** In re M.E., 370 So. 2d 795 (Fla. 1979).

Prosecution's failure to rebut Petitioner's reasonable belief and automatic renters state of mind that his ingress was innocent of any willful trespasser's mindset (despite the criminal mischief behind his admitted prank) acquitted him. Petitioner appropriately believed he ingressed his rental's curtilage driveway as rightfully as any current renter would have, especially upon laboring under recently informed understanding that complainant's attempt at wrongful eviction (tactically being proffered as abandonment) cannot dispossess him. ***See Palm Beach Florida Hotel v. Nantucket Enterprises,*** 211 So. 3d 42 (Fla. 4th DCA 2016) (finding that self-help eviction tactics cannot dispossess tenants). Petitioner's automatic reasonable belief conclusively negated burglary's essential element of "knowledge," necessary to prove burglary in Florida, see T.S.J., id. at 967 (acquitting mere invitee), so that a directed verdict of acquittal should have issued if not for trial court's unreasonable denial of defense requested motion for judgment of acquittal at termination of trial(s) of Petitioner's case, which deprived him of his

constitutional rights under the Fifth, Sixth and Fourteenth Amendments.

Morrisette v. U.S., 342 US 246, Jackson v. Virginia, 443 US 307, T.S.J. v. State, 439 So. 2d 966, D.R. v. State, 734 So. 2d 455, Whetstone v. State, 778 So.2d 338, Pierre v. State, 77 So. 3d 699, In re M.E., 370 So. 2d 795, Palm Beach Florida Hotel v. Nantucket Enterprises, 211 So. 3d 42, Dennis v. U.S., 341 US 494, U.S. v. Freed, 401 US 601, U.S. v. Balint, 258 US 250, Montana v. Egelhoff, 518 US 37, In Re Winship, 397 US 358, Clark v. Arizona, 548 US 735

(III.) DOES CHARGING CONTRADICTORY SETS OF ALTERNATIVE INSTRUCTIONS, REQUIRING CONFLICTING LEGAL FINDINGS FOR THE SAME FACTS, BECOME CAPABLE, BY ITSELF, OF RENDERING TRIAL CONSTITUTIONALLY INADEQUATE.

Contradictory, mutually exclusive charges, when truly contradictive, are "[c]onflicting jury instructions [which] negate each other in their effect, and therefore, negate their possible application." ***Floyd v. State***, 151 So. 3d 452, 454 (Fla. 1st DCA 2014), quashed by, State v. Floyd, 186 So. 3d 1013, 1022 (Fla. 2016). The Constitution implicitly protects against such unjust negation. ***Winship, id.*** at 364. And so should the Court --- i.e., announce an explicit ruling on such question of law for the benefit of bench and bar.

Upon the undisputed facts, plain (negation) error becomes apparent upon analyzing the end result of trial court's erroneous decision to grant instruction on both sets of alternative burglary instructions which define mutually exclusive burglary types. [(5)]

Essentially, this is "[a] case where the [alternative] jury instructions shift[ed] the jury's attention from the issue at hand to a [contradictive] non-issue." State v. Floyd, 186 So. 3d at 1021. At "issue" was a mandated "entering in" burglary's affirmative defense instruction, ***Valls, id.*** at 238, see also Fla. Std. Jury Instr. (Crim) 13.1 (2017), and the prejudicial "non-issue" was alternative instruction on conflicting "remaining in" burglary, because no evidence supported a "remaining in" theory. It is absurd to suggest that burglars can simultaneously commit two opposing burglary methods at the same time, and illogical to instruct as such. But the tactical advantages behind such conflicting absurdity was what the prosecution sought. [(6)]

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[5] [(5) See Fla. Std. Jury Instr. (Crim) 13.1 (2017) (providing two disjunctive sets of alternative instructions which define contradictive burglary methodologies behind two conflicting burglar types, i.e., defining nonconsensual burglars via "entering in" burglary set of paragraphs, and defining post-consent burglars via "remaining in" burglary set of paragraphs)]

[6] [(6) Prosecutors, at the second trial, agreed that "remaining in" alternative instructions were not appropriate, but then, after suffering the first hung-jury mistrial setback, the lead prosecutor about-face demanded alternative instructions at third (and fourth) trial, while she ignored her own appellate specialist arguing against such erroneous use.]

Although paragraph three of "entering in" burglary instructions contemplates an affirmative defense, paragraph one of "remaining in" burglary instructions contradictorily contemplates using the same facts that paragraph three's affirmative defense uses, but, instead, used as its initial reverse incriminating element. No reversely incriminated affirmative defense can ever maintain its effectiveness under such conflict. So entering's and remaining's "long form" instructions conflict over the end result of proving that very same question of legality. The two opposing paragraphs' language essentially negate each other, so that while jurors were instructed on how to reach the mandated affirmative defense via entering's paragraph three, the jury was also (conflict) instructed, via the alternative remaining's paragraph one, that they would find a guilty verdict on burglary if Appellant relied on the very same facts proving his affirmative defense.

This conflict asked jurors to find the same facts but then apply those same facts twice over, onto contradictive sets of faulty combined questions of fact compelling jury determinations for opposing verdict consequences off of a same legal entry, but based off of dissimilar burglar entry mechanics --- both "unlawful entering" mechanics (questioning what type of ingress occurred, i.e., either if nonconsensual entry occurred versus if affirmatively defensible consensual entry occurred) and "unlawful remaining" mechanics (accepting initial legal ingress as passé, i.e., now becoming a "nonaffirmatively indefensible" consensual entry, yet, then, singularly questioning if, post-entry, it later became nonconsenting) --- which could never be "presumed" as having being

diametrically "followed" too. Cf. ***Richardson v. Marsh***, 481 US 200, 211 (1987).

Ultimately, illogical combination of contradictive legal determinations for the same entry mechanics, when instructed together, negated the affirmative defense instruction as such alternative instructions together had the explicit consequence of negating Petitioner's right to have informed jurors correctly deliberate on his mandated affirmative defense at the new trial(s). Both mutually exclusive alternative instructions, either by not being followed, or by being resolved in favor of the state, remained influential in relation to what jurors did and did not consider, i.e., directly misleading the affirmative defense and indirectly misleading the mens rea question, two defenses thwarted by the unusual dynamics of Petitioner's case, depriving him of his constitutional rights under the Fifth, Sixth and Fourteenth Amendments.

Mills v. Maryland, 486 US 367, Yates v. U.S., 354 US 298, Bollenbach v. U.S., 326 US 607, Hedgpeth v. Pulido, 555 US 57, Richardson v. Marsh, 481 US 200, Yates v. Evatt, 500 US 391, State v. Belton, 461 A. 2d 973, Ray v. State, 522 So. 2d 963, Lopez v. State, 805 So. 2d 41, Roberson v. State, 841 So. 2d 490, Butler v. State, 493 So. 2d 451, Tinker v. State, 784 So. 2d 1198, State v. Floyd 186 So. 3d 1013, Floyd v. State, 151 So. 3d 452, Ross v. State, 157 So. 3d 406, Sullivan v. Louisiana, 508 US 275, Connecticut v. Johnson, 460 US 73, Carella v. California, 491 US 263, Boyde v. California, 494 US 370, McFadden v. U.S., 135 S. Ct.

2298, Johnson v. U.S., 520 US 461, Waddington v. Sarausad, 555 US.179, California v. Roy, 519 US 2, County Court of Ulster County v. Allen, 442 US 140

(IV.) WHETHER DUAL THEORY LANGUAGE IN FLORIDA'S CAPITAL MURDER STATUTE AUTHORIZES UNLIMITED OVERRULING OF A STRUCTURAL RIGHT TO GRAND JURY REINDICTMENT.

Florida's Third District Court of Appeal affirmed Petitioner's convictions (affirming trial court's usurpation of grand jury's reindictment authority) upon refusing to reverse impermissible constructive amendment to the indictment of an uncharged crime. That is, upon the undisputed facts, the court affirmed the granted [mis]construal of the dual theory language of the first-degree murder statute in order to constructively amend the indictment with another predicate (uncharged) burglary theory during three felony murder retrials of Petitioner's case depriving him of due process of law. Proof of constitutional inadequacy turns then on whether "circumstances" behind trial court's allowance for such constructive amendment to indictment made its extraordinary application permissible or not.

Florida, as well as a majority of states, recognizes a loophole, in the legal fiction of the felony murder doctrine, authorizing prosecutors license to pursue

uncharged predicate felony murder theories by moving trial judges to amend first degree murder indictments constructively via its statute's "dual theory" language. ***Sloan v. State***, 69 So. 2d 871, 872 (Fla. 1915).

It is well settled that, when a first-degree murder count alleges "only" premeditation, "[t]he state does not have to charge felony murder in the indictment," to prosecute both theories together. ***O'Callaghan v. State***, 429 So. 2d 691, 695 (Fla. 1983). Decisional law affirming Sloan's statutory loophole delves on but one specific amendable murder "construct" (with exception of a variant construct analyzed in ***Crain v. State***, 894 So. 2d 59 (Fla. 2004)), limiting case law recognition of the rule's procedure to only where obvious need for amended "construction" of indictments exists --- where capital murder indictments "only" charge premeditation. That is, first-degree murder writs, crafted as single count indictments containing but only premeditated theory language --- charged just by itself --- provide sufficient implicit "notice" of unutilized felony murder, so prosecutors can also elect, at trial, to pursuit that missing uncharged felony murder theory too since the "dual theory" statute lists enumerated predicate felonies which prosecutors are authorized to utilize to establish first degree murder in lieu of premeditation.

Florida's limited Sloan rule statutorily subjects defendants, however, to what the Court otherwise considers denial of due process on a "substantial right" stemming from using constructive amendments to indictments contrary to the Grand

Jury Clause. For the Court opined that: "[t]he right to have the grand jury make the charge on its own judgment is a substantial right which cannot be taken with or without court amendment." ***Stirone v. United States***, 361 U.S. 212 (1960). This right, upon its racial discrimination, is recognized as structural error. ***Vasquez v. Hillery***, 474 US 254 (1986). Usurping this right should be structural too. ***Cf. U.S. v. Cotton***, 535 US 625 (2002).

Unconstitutionality arises, then, if prosecutors further broaden the scope of what is an already utilized felony murder prosecution without resorting to reindictment as misconstrual of the Sloan rule is the easiest means to expand the set range of already indicted felony murder prosecutions. If already in use, there is no need then to reuse what already exists, i.e., no necessity exists for utilizing an already utilized dual theory for yet "another" predicate theory. Misconstruing Sloan facilitates an advantageous work-around of that grand jury "substantial right" since strategically utilizing an uncharged predicate theory on top of an already charged predicate theory tactically enhances the likelihood of conviction by taxing defenses via introduction of trial surprise, expanded criminal liabilities and other closely associated prejudices, when, most murder indictments are usually crafted with that dual theory nature already utilized.

The Sloan rule's valid use is but a narrow one, i.e., existing to only fill in a vacuum whenever the circumstances of a single count of premeditated murder also allows a fitting in of a "missing" predicate

felony murder liability too, but only when there lays no preexisting felony predicate. While Florida is at liberty to construe its statutes as it sees fit, that liberty still takes second place to constitutional protections guaranteed every citizen. For the murder statute cannot just accommodate granting Sloan-like constructs unlimited sources of authority behind the felony murder doctrine's legal fiction. Sloan is the rare exception not the norm. Florida grand juries craft almost all likely indictments as dual theory indictments anyway. So the rule mostly stays unused, as available dual theory avenues are likely indicted, since obvious dual theories tend to be found already worded together, i.e., both dually preexisting inside one count.

Sloan misconstrual is highly prejudicial when that preexisting predicate felony theory is also incorporated inside separately charged predicate felony count(s), i.e., readily contained within a second count of a two count felony murder indictment whereby, like herein, both counts are now bound together by the overriding principle of "legally interlocking counts." ***See, Brown v. State***, 959 So. 2d 218 (Fla. 2007), quashing, ***State v. Brown***, 924 So. 2d 86 (Fla. 3d DCA 2006). Legally interlocking counts is a structural principle. It is its own powerful binding construct, legally rendering illogical jury verdict outcomes subservient to it by its discharge capacities under "true inconsistent verdicts" jury findings, which are "[t]hose in which an acquittal on one count negates a necessary element for conviction on another count." ***Gonzalez v. State,*** 440 So. 2d 514, 515 (Fla. 4th DCA), review dismissed, 444 So. 2d 417 (Fla. 1983).

Thus, the structural narrative of legally interlocking counts capacity for fatal discharges necessitates theoretical consistency to function, or otherwise fail defendants, a substantial right within a substantial right rendered inherently unworkable by inclusion of an extra (uncharged) predicate felony "theory" but not separately charged "count." Sloan rule's misconstrual collapses legally interlocking counts when such (unlocked) foreign, uncharged theories cloud the dualistic counts' force behind that true inconsistent verdicts fixture. That is, Sloan misconstruction unlocks the theoretical legal force rationale behind the ability to bind outcomes of fatal verdict inconsistencies dwelling within all interlocking dual charged counts to the state's advantage. It relocks both a charged crime with an added uncharged crime into malignant quasi states of prejudicially blurred, diffused, and theoretically inconsistent relationships --- mixed components compromising the essential, legally binding nature preexisting between original, mutually dualistic, interlocking counts so that "an acquittal on one count [now does not] negates a necessary element for conviction on another count." Id. Sloan misconstruction negates, instead, the effectiveness of legally interlocking counts ability to automatically acquit any truly inconsistent verdicts to the prejudice of the accused who stands to significantly benefit from such structural mechanism. Likewise, a fatal risk that prosecutors face in pursuing weak felony murder prosecutions, as herein, is a structural risk negated by unconstitutional misconstrual.

Florida is at liberty to present grand juries with any creative theory it may see fit. Yet, only grand juries vote on indictments, thus, binding prosecutors to indictments returned by a grand jury. Ex Parte Bain, 121 U.S. 1, 10-11 (1887). The "[g]rand jury is vested with broad discretion... in framing the charges," Vasquez, id. at 275 (concurring), and, it is with grand juries wherein "[l]ies the power to charge... numerous counts or a single count," id., at 263 (majority), the whole crux of this issue. So then, when that initial determination of how many counts will be charged is made, it is "[n]ot subject to challenge... [even if] acted on the basis of inadequate or incomplete evidence," ***U.S. v. Calandra***, 414 US 338, 345 (1974). If a grand jury returns a first degree murder writ whereupon two counts legally interlock into a specifically set felony murder construct, then, given the prosecution's heavy influence over grand juries, there is no doubt that that fixed construct is the only construct prosecutors sought to pursue so that is the construct the defense prepares against, even if later seen as a mistake in want to be "acted on the basis of inadequate or incomplete evidence," Id., much less then should it be later seen as means to gain that which is "acted on the basis" of strategic gamesmanship.

There is no genuine need to later pursue yet another "extra" predicate felony theory during trial too, which failed to be charged when the opportunity existed, regardless of any rationales for updating "inadequate or incomplete evidence," or some inspired creativity, or last minute corrective fixes. The legitimate use, of first-degree murder's "extraordinary" statutory allowance when already pre-exercising, is rendered

complete by its dual theory nature being previously made whole, by the grand jury itself. So, once a grand jury's labor is finished, the dual theory liberties taken by it in crafting a set felony murder indictment are structured and binding. Prosecutors cannot then simply restructure the foreclosed, i.e., reset a preexisting dual theory set with yet another "in trial" theory. Aside Sloan's limited valid usage, reindictment is the only valid alternative.

When indictments return charging two separate interlocking counts, as both parts of what the felony murder doctrine's statutory dualism allows, then such structure's interlocking relationships must be respected. If not, due process is offended. Since no valid need exists for re-exercising that already set statutory dualism, then, if not procedurally reindicted, it is done without any legitimate reason or procedure, and thus, without reasonable validity it becomes void, a null misconstruction, i.e., unconstitutionally broadening jeopardy. The Court should "[c]onsider an indictment to be constructively amended when the essential elements of the offense contained in the indictment are altered to broaden the possible bases for conviction beyond what is contained in the indictment." ***U. S. v. Ward***, 486 F. 3d 1212 (11th Cir. 2007). Sloan is not some unlimited broad application, as wide-open use of this statutory loophole should not work around how: "[a] jury instruction that constructively amends a grand jury indictment constitutes per se reversible error because such an instruction violates a defendant's constitutional right," ***U.S. v. Weissman***, 899 F. 2d 1111 (11th Cir. 1990). For "[e]ver since Ex Parte Bain, 121 U.S. 1, was decided in 1887 it has been the rule

that after an indictment has been returned its charges may not be broadened through amendment except by the grand jury itself." Stirone, supra.

When Sloan is used to just tactically re-broaden jeopardy it wholly usurps a structural right underpinning the due process of reindictment.

During "new trial" settings, applying Sloan offends other pertinent principles of law too (e.g. --- law-of-the-case, judicial estoppels, prejudicial misjoinders, even double jeopardy) which further foreclosed such misconstrual herein. Likewise, the question of a presumption of prosecutorial vindictiveness also arose too since, albeit new charges are avoided (misconstrual's side benefit), the scheme's effect is the same as if new charges were filed, i.e, punishing defendants for prevailing on appeal by facilitating assured reconviction strategies. ***Cf. Blackledge v. Perry***, 417 U.S. 21 (1974).

The Florida Supreme Court passed on a mildly misconstrued variation of the Sloan rule, see ***Crain v. State***, 894 So. 2d 59 (Fla. 2004), where the majority opinion found (in a hard case making for bad law) no plain error for adding a second "uncharged" kidnapping intent "element" within "divergent" felony murder instructions when separate kidnapping count "charged" by the indictment alleged only one intent element and was instructed on only that one intent. That court noted that: "[W]e do not address whether the felony murder instruction given in this case would

have constituted harmful error had Crain preserved the issue with a proper objection." Crain, id. at n. 11.

The mild Crain misconstrual is, however, highly distinguishable.

First, the error in Crain's felony murder instruction involved just an extra uncharged kidnapping "element," a short phrase added to the end of the charged element which went unnoticed, as opposed to the severity of the instant use of a wholly separate uncharged burglary "crime" with separate evidence, arguments and jury instructions --- alongside biases boosting all manner of subconscious human irrationalities behind compounded associations of guilt conflated by additional accusations, associated prejudices, and frustrating confusion --- from one burglary split into separate burglary crimes. For the misconstrual "doubly" expanded Petitioner's preset criminal liability for felony murder, restricted to but one "charged" predicate accusation to now two felonious crimes divided out of the original crime. ***See Brown v. Ohio***, 423 US 161, 169 (1977) (noting "[t]he Double Jeopardy Clause is not such a fragile guarantee that prosecutors can avoid its limitations by the simple expedient of dividing a single crime into a series of temporal or spacial units,"). So, by broadening a limited jeopardy, a potential acquittal of a mere overcharged curtilage burglary that was weakly "engineered" to entrap a vulnerable renter was (re)engineered into a mini crime spree of two felonious burglaries alleging inextricably intertwined crimes tactically prejudicing a prima facie case of self-defense.

Second, in Crain, that uncharged element was instructed just once within unchallenged instructions, as opposed to extreme severities of the instant uncharged crime's language repeated use, blanketing the jury instructions over seven times, throughout different paragraphs, where two paragraphs' language (including a "special" instructed paragraph) exclusively defined conveyance for that uncharged crime of conveyance burglary.

Third, Crain's unpreserved claim was raised on appeal as fundamental (plain) error (four years before that same court approved Fla. Std. Jury Instr, (Crim) 3.12 (d) (legally interlocking counts) which would have significantly altered that final analysis, see, In re Std. Jury Instr., 996 So. 2d 854 (Fla. 2008)), as opposed to the instant claim's repeated objections raised during its three retrials usage, including a pretrial motion in limine, causing constant court friction plus unsuccessful recusal motions. [([7])]

Fourth, Crain's claim involved but a mere inadvertent slip up, at end of trial, inserting a snippet phrasing an uncharged element, and nothing else, as opposed to severities herein where the uncharged crime's initial use has then re-embellished itself by continuous reuse, i.e., cofeatured throughout two following retrials.

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[7][(7) Petitioner's defense attorneys filed five motions to recuse denied by the trial judge that presided over the last three trials.]

Fifth, Crain's claim lacked noticeable prejudices, i.e., showing neither trial ambush dynamics nor discernible jury confusion as opposed to the instant claim where it was ever present, from initial trial ambush frictions to repeated examples of highly discernible jury confusion upon two juries specifically querying about the uncharged conveyance. Lacking special circumstances, Crain occurred at an original trial's ending, as opposed to the severity of the instant claim where several retrial principles of law were violated herein.

Ultimately, convictions on uncharged crimes violate due process. ***Stromberg v. California***, 283 U.S. 359, 367-68 (1931). Proceedings are a nullity when uncharged crimes are featured, argued and instructed at trial. Uncharged crimes infiltrating trials in misconstrued guises mimicking statutory loopholes should offend due process too. So the Sloan rule's loophole, if misconstrued, should also create a nullity. Given that "death is different," expanding the felony murder doctrine's loophole is a dangerous precedent. There must be some constitutional limit, given basic due process concerns, disallowing the recrafting of statutory [mis]construals of felony murder acts that, by virtue of needless (re)broadening scopes of prosecutions, should be prohibited under the Grand Jury Clause through the Due Process Clause.

Unlike ***Hedgpeth v. Pulido***, 555 US 57 (2008), where the Court examined a slight, non-indictment based, alternative felony murder instruction, the issue of expanding Sloan usage (when death is different) for

the sake of tactically amending misconstruals by Florida, and other states with similar statues, thereby adding inadmissible evidence and closing arguments in addition to extra alternative instructions, is an issue of great national concern regarding states' ability to circumvent the Court's maxim that a "[c]onviction upon a charge not made would be a sheer denial of due process." ***DeJonge v. Oregon,*** 297 U.S. 353, 362 (1937), which, herein, irreparably deprived Petitioner of his constitutional rights under the Fifth, Sixth and Fourteenth Amendments.

Hedgpeth v. Pulido, 555 US 57, Sloan v. State, 69 So. 2d 871, Crain v. State, 894 So. 2d 59, Weatherspoon v. State, 194 So. 3d 341, Weatherspoon v. State, 214 So. 3d 578, O'Callaghan v. State, 429 So. 2d 691, Armstrong v. State, 642 So. 2d 730, Brown v. State, 959 So. 2d 218, Gonzalez v. State, 440 So. 2d 514, Mahaun v. State, 377 So. 2d 1158, Redondo v. State, 403 So. 2d 954, Stirone v. U.S., 361 US 212, U.S. v. Norris, 281 US 619, U.S. v. Hunter, 558 F. 3d 495, Ex Parte Bain, 121 U.S. 1, U.S. v. Weissman, 899 F. 2d 1111, U. S. v. Ward, 486 F. 3d 1212, U.S. v. Madden, 733 F. 3d 1314, Stromberg v. California, 283 U.S. 359, Blackledge v. Perry, 417 U.S. 21, Thigpen v. Roberts, 468 U.S. 27, U.S. v. Goodwin, 457 U.S. 368, DeJonge v. Oregon, 297 US 353, Brown v. Ohio, 423 US 161, U.S. v. Calandar, 414 US 338, Vasquez v. Hillery, 474 US 254, U.S. v. Iacaboni, 363 F. 3d 1, U.S. v. Hassan, 578 F. 3d 108, U.S. v. Centeno, 793 F. 3d 378, U.S. v. Randall, 171 F. 3d 195, U.S. v. Lockhart, 844 F. 3d 501, U.S. v. Pigee, 197 F. 3d 879, U.S. v. Collins, 350 F. 3d 773, U.S. v. Ward, 747 F. 3d 1184, U.S. v. Farr, 536 F. 3d 1174, U.S. v. Lander, 668 F. 3d 1298

(V.) WHETHER CUMULATIVE PREJUDICIAL EFFECT OF ERROR IS CAPABLE, BY ITSELF, OF RENDERING A TRIAL CONSTITUTIONALLY INADEQUATE.

Upon the undisputed facts, trial court committed multiple errors forcing a reconviction, establishing the reasonable likelihood that such cumulation of errors rendered Petitioner's trial arbitrary and fundamentally unfair. The Court has, in passing on other questions of law, only just briefly acknowledged the principle of cumulative prejudicial effect of error. ***See, Fahy v. Connecticut***, 375 US 85, 91 (1963) (observing that: "[N]or can we ignore the cumulative prejudicial effect of this evidence upon the conduct of the defense at trial."), ***see***, also, ***Taylor v. Kentucky***, 436 US 478, 487 n. 15 (1978) (noting that: "[t]he cumulative effect of the potentially damaging circumstances of this case violated the due process guarantee of fundamental fairness in the absence of an instruction as to the presumption of innocence...").

The mere fact that Petitioner "could" have --- logically and legally --- been convicted of both charged counts on the basis of all the evidence, still does not mean that he "would" have been so convicted if he were not also under extraneous burdens of broadening scopes of cumulative error within ever expanding reprosecutions, especially since indecision by two prior hung-juries exemplified a very close case. There is no sufficient basis for excluding prejudice given the broadened jeopardy featuring, arguing and instructing on yet another burglary theory, where a

new prejudicial range of prosecution was improperly broad, whereupon an uncharged crime was improperly submitted to the jury alongside other cumulative instructional errors. Thus, given Petitioner's original trial setback suffering reversibly prejudiced original proceedings, there is a reasonable likelihood that prosecutors resorted to new prejudices in his second, third and fourth trial too, so the possibility of thrice being irredeemably reprosecuted with cumulative prejudicial error expounds even extra indignation onto the unnecessary additional prejudices, facilitated by repeated errors that, should have rendered each retrial unconstitutionally inadequate. [([8])]

Ultimately, "[i]t was only after admission of the [uncharged conveyance burglary's evidence] and only after their subsequent use to [broaden reprosecutions] and only after introduction of the [new uncharged liabilities and prejudices] that the [Petitioner twice] took the stand, admitted [his] acts, and tried to establish that the nature of those acts was not within the scope of the felony statute under which the [Petitioner] had [not] been charged." Fahy, id. at 91. And yet, even more cumulative error occurred.

The Court should directly pass, with "in depth" specific analysis, on the question of cumulative prejudicial effect of error, in crucial need of a concise

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[8] [(8) Florida recklessly engaged in unsustainable trial-by-attrition overreaching via deliberate piling on of cumulative error throughout three retrials. *See* ***Green v. U.S.***, 355 U.S. 184, 187-188 (1957).]

answer with sufficient nuanced elaboration, more so, given increasingly harsh new habeas standards under AEDPA. This case is ripe. It would be of national interest to bench and bar to learn how the Court answers such question of law in the case of state criminal litigants alleging constitutional violations caused by arbitrarily prejudicial effects of cumulative error alone, since these same litigants cannot simply assert that such was, under AEDPA, "unreasonable application of clearly established Federal law as determined by the Supreme Court," when much of such legal questioning is yet still undetermined.

Upon the undisputed record on direct appeal, a Florida appellate court's failure, in a close case, to overlook cumulative prejudicial effect of error findings, and thus, not assign reversible error based just on aggregational prejudices of multiple exceptions and charging errors compromising Petitioner's substantial rights to a fair trial within the unreasonable trial proceedings of Petitioner's case, deprived him of his constitutional rights under the Fifth, Sixth and Fourteenth Amendments.

Taylor v. Kentucky, 436 US 478, Fahy v. Connecticut, 375 US 85, Berger v. U.S., 295 US 78, Breakiron v. Horn, 642 F. 3d 126, U.S. v. Adams, 722 F. 3d 788, U.S. v. Wallace, 848 F. 2d 1464, U.S. v. Hands, 184 F. 3d 1322, U.S. v. Hesser, 800 F. 3d 1310, Green v. U.S., 355 U.S. 184, Hetenyi v. Wilkins, 348 F. 2d 844, Carsey v. U.S., 392 F. 2d 810

CONCLUSION

This Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/s/ 

Date: July 15th, 2020