

20-8078
No. _____

ORIGINAL

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IN THE
SUPREME COURT OF THE UNITED STATES

CALVIN LAMONT MACK — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third District Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Calvin L. Mack # 399663

(Your Name)

Martin Correctional Institution
1150 S.W. Allapattah Road

(Address)

Indian Town, FL 34956

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. WHETHER THE STATE AND FEDERAL CONSTITUTIONS WAS VIOLATED UNDER THE DOUBLE-JEOPARDY CLAUSES AS A RESULT OF THE SENTENCE PURSUANT TO ARTICLE I, SECTION 9 OF THE FLORIDA CONSTITUTION AND FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION?
- II. WHETHER BLOCKBURGER TEST IS APPLICABLE TO SAME ELEMENT OFFENSES WHERE RECORD DEMONSTRATES THE ELEMENTS WAS DETERMINED AND PUNISHED TWICE ON BOTH COUNTS FOR THE SAME CRIMINAL ACT?
- III. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN DECIDING A FEDERAL QUESTION IN A WAY THAT DIRECTLY AND EXPRESSLY CONFLICTS WITH PRECEDENTS OF THE SUPREME COURT OF THE UNITED STATES AND OTHER APPELLATE COURTS?
- IV. WHETHER THE LEGISLATURE INTENDED TO IMPOSE MULTIPLE PUNISHMENTS FOR THE SAME OFFENSE BY ENACTING SECTION 775.021 (4)(B)?
- V. WHETHER RELIANCE ON A PURE BLOCKBURGER "SAME-ELEMENTS" ANALYSIS COULD DETERMINE WHETHER A DOUBLE JEOPARDY VIOLATION OCCURRED WHERE THE CONVICTION / SENTENCE OF AN ENHANCED COMPOUND FELONY AND ENHANCED FELONY WHEN BOTH INCORPORATE THE SAME CORE OFFENSE, ASSAULT?
- VI. WHETHER A GENERAL VERDICT OF GUILTY UNDER CIRCUMSTANCES IS REVERSIBLE?

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:

RELATED CASES

- | | |
|--|---|
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| BRACEY v. STATE, 985 So.2d 704 (Fla. 5DCA 2008) | STATE v. JOHNSON, 483 So.2d 420 (Fla. 1986) |
| DUHART v. STATE, 724 So.2d 1223 (Fla. 1DCA 1998) | TOANA v. STATE, 742 So.2d 346 (Fla. 3DCA 1999) |
| FOSTER v. STATE, 448 So.2d 1239 (Fla. 5DCA 1984) | WEST v. STATE, 21 So.3d 916 (Fla. 5DCA 2009) |
| FRANKLIN v. STATE, 541 So.2d 1227 (Fla. 2DCA 1989) | YOUNG v. STATE, 43 So.3d 876 (Fla. 5DCA 2010) |
| LATIMER v. STATE, 44 So.3d 1239 (Fla. 5DCA 2010) | |
| LEWIS v. STATE, 740 So.2d 82 (Fla. 3DCA 1999) | STROMBERG v. CALIFORNIA, 283 U.S. 359, 51 S. Ct. 532, 75 L. Ed. 1117 (1931) |
| LYLES v. STATE, 724 So.2d 138 (Fla. 1DCA 1998) | |
| MANSFIELD v. STATE, 954 So.2d 74 (Fla. 4DCA 2007) | WILLIAMS v. NORTH CAROLINA, 317 U.S. 287, 43 S. Ct. 207, 87 L. Ed. 279 (1942) |
| SPANDLEY v. STATE, 537 So.2d 1658 (Fla. 1DCA 1989) | YATES v. UNITED STATES, 354 U.S. 298, 77 S. Ct. 1064, 1 L. Ed. 2d 1356 (1957) |
| STATE v. BARTON, 523 So.2d 152 (Fla. 1988) | |

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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 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 District Court of Appeal, Third court appears at Appendix B 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 MARCH 19, 2021.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
JUNE 8, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

Fifth Amendment of the United States Constitution.

Sixth Amendment of the United States Constitution.

Fourteenth Amendment of the United States Constitution.

Article I, Section 9 of the Florida Constitution.

Federal Statute:

28 U.S.C. § 2101(e)

Florida Statute:

§ 843.01

§ 812.014 (2)(c) 6

§ 812.13 (2)(c)

§ 810.02 (2)(a)

§ 784.07

§ 784.03

§ 777.011

§ 775.087

§ 775.084

§ 775.021 (4)(B)

§ 775.021 (4)(B)(3)

§ 775.021 (11)

STATEMENT OF THE CASE

PETITIONER, CALVIN MACK WAS ARRESTED AND CHARGED BY INFORMATION WITH
COUNT I: BATTERY ON A LAW ENFORCEMENT OFFICER IN VIOLATION OF F.S. § 784.03 AND
784.07; COUNT II: RESISTING AN OFFICER WITH VIOLENCE IN VIOLATION OF F.S. § 843.01;
COUNT III: GRAND THEFT / VEHICLE IN VIOLATION OF F.S. § 812.014(2)(c)6; COUNT IV:
ROBBERY IN VIOLATION OF F.S. §§ 812.13(2)(c) AND 777.011; AND COUNT V: BURGLARY
OF A CONVEYANCE WITH AN ASSAULT OR BATTERY THEREIN IN VIOLATION OF F.S. §§
810.02(2)(a), 775.087, AND 777.011.

PETITIONER WAS CHARGED IN PERTINENT PART BY INFORMATION AS FOLLOWS:

"COUNT IV, ROBBERY... BY FORCE, VIOLENCE, ASSAULT, OR
PUTTING IN FEAR, TAKING CERTAIN PROPERTY, TO WIT: A PURSE
AND ITS CONTENTS FROM THE PERSON OR CUSTODIAN OF JANICE
WEISS."

"COUNT V, BURGLARY... BY ENTERING OR REMAINING IN A CON-
VEYANCE WITHOUT THE CONSENT OF JANICE WEISS OR JEROME FRANT, AS
OWNER OR CUSTODIAN, THE SAME BEING OCCUPIED BY JANICE WEISS OR
JEROME FRANT. THE DEFENDANT HAVING AN INTENT TO COMMIT AN OFFENSE,
TO WIT: THEFT, AND IN THE COURSE OF COMMITTING SAID BURGLARY, THE
DEFENDANT MADE AN ASSAULT OR BATTERY UPON JANICE WEISS BY
GRABBING JANICE WEISS' PURSE, WHICH SHE WAS WEARING AROUND HER
NECK OR SHOULDER AND PULLING OR YANKING THE PURSE UNTIL THE PURSE
BROKE FREE."

THE JURY RENDERED A GENERAL VERDICT OF GUILTY AS CHARGED IN THE INFORMATION
AS TO COUNT IV AND COUNT V ON FEBRUARY 26, 1998.

THE BURGLARY OF A CONVEYANCE WITH ASSAULT THEREIN WAS ENHANCED TO A FIRST-DEGREE FELONY DUE TO A DETERMINATION THAT AN ASSAULT WAS PERPETRATED UPON THE VICTIM: AN ENHANCED SENTENCE WAS IMPOSED FOR THE ROBBERY (STRONG ARM) BASED ON A DETERMINATION THAT AN ASSAULT WAS PERPETRATED UPON THE VICTIM. THE TRIAL COURT SENTENCED PETITIONER AS A HABITUAL FELONY OFFENDER TO LIFE IMPRISONMENT FOR THE "BURGLARY OF A CONVEYANCE WITH ASSAULT THEREIN" AND TO THIRTY (30) YEARS FOR THE "ROBBERY BY SNATCHING..." F.S. § 775.084.

PETITIONER CONTENDS THAT AS A DIRECT CONSEQUENCE OF HIS CONVICTIONS AND SENTENCE ON THE ROBBERY (STRONG ARM) AND BURGLARY OF A CONVEYANCE WITH ASSAULT THEREIN, HIS ENHANCED SENTENCE IMPOSED A PENALTY SIMPLY NOT AUTHORIZED BY LAW. SECTION 775.021(4)(b)(3); ARTICLE I, SECTION 9 FLORIDA CONSTITUTION; AND FIFTH, FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

FLORIDA STATUTE § 775.021(4)(b)(3) PRECLUDES MULTIPLE PUNISHMENTS FOR A SINGLE ACT OF ASSAULT. PETITIONER RESTS UPON THE FACT THAT THE ASSAULT UTILIZED TO ENHANCE THE BURGLARY OF A CONVEYANCE TO A FIRST-DEGREE FELONY CONSTITUTES A LESSER INCLUDED OFFENSE WHERE THE STATUTORY ELEMENTS ARE SUBSUMED BY THE GREATER OFFENSE. COUNT I, ROBBERY WHERE THE SAME ELEMENT OF ASSAULT WAS ESTABLISHED ONLY BY THE CONVICTION OF THE FIRST-DEGREE FELONY COUNT OF BURGLARY OF A CONVEYANCE WITH ASSAULT OR BATTERY THEREIN.

PETITIONER ARGUES THIS CASE RAISES A TRUE Blockburger "SAME ELEMENTS" ANALYSIS IN DETERMINING WHETHER A DOUBLE JEOPARDY VIOLATION HAS OCCURRED WHEN HE WAS CONVICTED AND SENTENCED FOR A FELONY AND A COMPOUND FELONY WHERE BOTH INCORPORATE THE VERY SAME INDISPENSIBLE ELEMENT.

Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180 (1932); Harris v. Oklahoma, 433 U.S. 682, 97 S.Ct. 2912 (1977); United States v. Dixon, 509 U.S. 688, 113 S.Ct. 2849 (1993).

Both Harris and Dixon's modification - clarification of Blockburger EXPRESSLY PROHIBITS A SECOND CONVICTION / MULTIPLE PUNISHMENTS FOR AN OFFENSE THAT WAS PROVED IN CONVICTING FOR ANOTHER.

THE COURT IN HARRIS STATED:

"WHEN CONVICTION OF A GREATER CRIME CANNOT BE HAD WITHOUT CONVICTION OF THE LESSER CRIME, THE DOUBLE JEOPARDY CLAUSE BARS PROSECUTION FOR THE LESSER CRIME AFTER CONVICTION OF THE GREATER CRIME."

THUS, THE PURPOSE OF FLORIDA STATUTE § 775.021(4)(b)(3) SEEMS TO ADOPT THIS CONCEPT AND IT BECOMES READILY APPARENT THAT THE LEGISLATURE DID NOT AUTHORIZE MULTIPLE PUNISHMENTS FOR A SINGLE ACT OF "ASSAULT" AS PERPETRATED AND REFLECTED IN THIS CASE. "IT IS INDISPUTABLE, PETITIONER WAS CHARGED BY INFORMATION WITH TWO (2) OFFENSES INVOLVING THE ELEMENT OF ASSAULT."

PETITIONER, CALVIN MACK'S SENTENCE ON COUNT V, ROBBERY (STRONG ARM), A DETERMINATION WAS MADE THAT AN ACT OF ASSAULT WAS COMMITTED IN THE COURSE OF THE ROBBERY. LIKEWISE, ON COUNT VI, BURGLARY OF A CONVEYANCE WITH ASSAULT THEREIN WAS ENHANCED BECAUSE A DETERMINATION ESTABLISHED AN ACT OF ASSAULT WAS COMMITTED IN THE COURSE OF THE BURGLARY. I.E., GONZALES V. STATE, 585 So.2d 932 (Fla. 1991); TORNA V. STATE, 742 So.2d 366 (Fla. 3DCA 1999).

PETITIONER MAINTAINS THE DISTRICT COURT ABUSED ITS DISCRETION AND DECIDED THIS CASE IN A WAY THAT IS IN DIRECT AND EXPRESS CONFLICT WITH OTHER APPELLATE COURTS CONCERNING THE SAME IMPORTANT FEDERAL QUESTION.

THE DISTRICT COURT DENIED PETITIONER THE PROCEDURAL REQUIREMENTS OF DUE PROCESS AND DISREGARDED THE ROLE OF CONSTITUTIONAL GUARANTEE AGAINST DOUBLE JEOPARDY AS ASSURING COURTS DO NOT EXCEED ITS LEGISLATIVE AUTHORIZATION BY IMPOSING MULTIPLE PUNISHMENTS FOR A SINGLE CRIMINAL ACT. IN RE NIELSEN, 131 U.S. 176, 9 S. CT. 672 (1889); BROWN V. OHIO, 432 U.S. 161, 97 S. CT. 2221 (1977); BUTLEDGE V. UNITED STATES, 517 U.S. 292, 301, 116 S. CT. 1241 (1996).

IN RE NIELSEN, 131 U.S. 176, 188, THE COURT HELD,

"[A] PERSON WHO HAS BEEN TRIED AND CONVICTED FOR A CRIME WHICH HAS VARIOUS INCIDENTS INCLUDED IN IT CANNOT BE A SECOND TIME TRIED FOR ONE OF THOSE INCIDENTS WITHOUT BEING TWICE PUT IN JEOPARDY FOR THE SAME OFFENSE."

To the contrary, the proof of the underlying felony [Robbery by Snatching] is needed to prove intent necessary for the Burglary of a Conveyance with Assault Therein conviction and subsequent assault element.

When as here, conviction of a greater crime cannot be had without conviction of the lesser crime: the double jeopardy clause bars prosecution for the lesser crime after conviction for the greater crime.

Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180 (1932); Walker v. Florida, 397 U.S. 387, 90 S.Ct. 1184 (1970); Grafton v. United States, 206 U.S. 333, 382, 27 S.Ct. 749 (1907).

In the contexts of successive convictions and multiple punishments, the double jeopardy bar applies if the two offenses for which the defendant is punished or tried cannot survive the "same elements" or "Blockburger" test... Id.

In the case at bar, the verdict form contained no indication as to whether the jury had found that [Petitioner] had committed an assault or battery in the course of burglary of a conveyance with assault or battery therein. The determination of "with assault or battery" was necessary so as to not run afoul of the double jeopardy issue...

And since this determination was not made, Petitioner was indeed subjected to double jeopardy by his conviction of both burglary of a conveyance with assault or battery therein and the assault-element in the

Robbery by snatching. LATIMER V. STATE, 44 So.3d 1239 (Fla. 5DCA 2010). Thus, double jeopardy principle counsel precludes PETITIONER'S conviction / sentence for simple assault arising from the same criminal transaction.

COUNT I, ROBBERY involves the taking of money or other property from the person or custody of another... "when in the course of the taking there is the use of force, violence, assault, or putting in fear." F.S. § 812.13 (1997).

[T]he verdict form gave no indication as to whether the jury determined that the taking in this case constituted robbery because of the accompanying assault on the victim, or based upon some separate use of force or violence. Therefore, convictions for both robbery and simple assault cannot stand. YOUNG V. STATE, 43 So.3d 876 (Fla. 5DCA 2010); WEAT V. STATE, 21 So.3d 916 (Fla. 5DCA 2009); LYLES V. STATES, 724 So.2d 138 (Fla. 1DCA 1998); LEWIS V. STATE, 740 So.2d 82 (Fla. 3DCA 1998); ARNOLD V. STATE, 514 So.2d 419 (Fla. 2DCA 1987).

MOREOVER, A GENERAL VERDICT MAKES IT IMPOSSIBLE FOR THE COURT TO DETERMINE WHICH OF TWO OPTIONS THE JURY DETERMINED TO EXIST...

VALENTINE V. STATE 688 So.2d 313 (Fla. 1996); YATES V. UNITED STATES, 354 U.S. 298, 77 S.Ct. 1064, 1 L.Ed. 2d 1356 (1957). This is consistent with the policy behind section 775.021(11) Florida Statute.

As stated, PETITIONER could not be convicted of both ASSAULT AND BURGLARY OF A CONVEYANCE WITH ASSAULT THEREIN BECAUSE IN ORDER TO ENHANCE BURGLARY INTO A FIRST-DEGREE FELONY OF BURGLARY OF A CONVEYANCE WITH ASSAULT OR BATTERY THEREIN UNDER FLORIDA STATUTE § 810.02, THE STATE PROSECUTORS HAD TO PROVE EACH AND EVERY ELEMENT OF THE OFFENSE OF ASSAULT, AND THE FACTFINDER HAD TO DETERMINE THAT AN "ASSAULT OR BATTERY" WAS COMMITTED DURING THE BURGLARY, SO THAT THE SAME ASSAULT COULD NOT CONSTITUTE A SEPARATE OFFENSE. ASTROP V. STATE, 682 So.2d 1153 (Fla. 4DCA 1993); BRADLEY V. STATE, 540 So.2d 185 (Fla. 5DCA 1989).

"...THE ASSAULT IN BOTH OFFENSES STEMMED FROM THE SAME INCIDENT OR CRIMINAL EPISODE?" THEREFORE, PETITIONER CANNOT BE TRIED OR CONVICTED FOR BOTH THE PRIMARY OFFENSE AND THE ANCILLARY INCORPORATED OFFENSE WITHOUT BEING TRIED OR CONVICTED TWICE FOR THE SAME OFFENSE IN VIOLATION OF THE PETITIONER'S CONSTITUTIONAL DOUBLE JEOPARDY RIGHTS. ARTICLE I, § 9; 5th AMENDMENT.

"If two statutory offenses have the exact, same essential constituent elements, or when one statutory offense includes all of the elements of the other, those two offenses are constitutionally "the same offense" and a person cannot be put in jeopardy as to both such offenses unless the two offenses are based on two (2) separate and distinct factual events..." Id. FRANKLIN V. STATE, 541 So.2d 1227 (Fla. 2DCA 1989).

As explained by both Scalia and Rehnquist opinions, Harris adds the concept to Blockburger that if the crime charged incorporates by reference other offenses, then all such incorporated offenses become "elements" of the greater offense and a conviction of the greater offense bars further prosecution of the incorporated offenses. United States v. Dixon, 509 U.S. 688, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993); Harris v. Oklahoma, 433 U.S. 682, 97 S.Ct. 2912, 53 L.Ed.2d 1054 (1977); Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180 (1932).

More succinctly, it is clear from the language of section 775.021(4)(b), Florida's "Blockburger statute", that it does not authorize successive punishments for necessarily lesser included offenses. It expressly precludes conviction and sentences for those offenses which are lesser offenses - i.e., "offenses the statutory elements of which are subsumed by the greater offense."

Petitioner asserts the District Court abused its discretion and decided this case in a way that directly and expressly conflicts with other Appellate Courts and Florida Supreme Court and precedents of the Supreme Court of the United States on the same important federal questions.

Torwa v. State, 742 So.2d 366 (Fla. 3DCA 1999); Lewis v. State, 740 So.2d 82 (Fla. 3DCA 1999); Lyles v. State, 724 So.2d 138 (Fla. 1DCA 1998); Spradley v. State, 537 So.2d 1058 (Fla. 1DCA 1989); Duhart v. State, 724 So.2d 1223 (Fla. 1DCA 1998); Arnold v. State, 514 So.2d 419 (Fla. 2DCA 1987); Manfield v. State, 954 So.2d 74 (Fla. 4DCA 2007); Foster v. State, 448

So.2d 1239 (Fla.5DCA 1984); BRACEY v. STATE, 985 So.2d 704 (Fla.5DCA 2008); LATIMER v. STATE, 44 So.3d 1239 (Fla.5DCA 2010); WEST v. STATE, 21 So.3d 916 (Fla.5DCA 2009); YOUNG v. STATE, 43 So.3d 876 (Fla.5DCA 2010). Also, STATE v. JOHNSON, 493 So.2d 420 (Fla. 1986); STATE v. BARTON, 523 So.2d 152 (Fla. 1988); STATE v. BROWN, 633 So.2d 1059 (Fla. 1994).

"[A] double jeopardy violation is fundamental error which can be raised for the first time on appeal..."

PETITIONER AVERS HE WAS SUBJECTED TO DOUBLE JEOPARDY WHEN HE WAS PLACED IN JEOPARDY TWICE FOR THE SAME OFFENSE IN THE SAME CRIMINAL EPISODE IN VIOLATION OF ARTICLE II, SECTION 9 OF THE FLORIDA CONSTITUTION AND THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

THE DOUBLE JEOPARDY CLAUSE OF THE FLORIDA CONSTITUTION PROVIDES THAT:

"[N]O PERSON SHALL BE TWICE PUT IN JEOPARDY FOR THE SAME OFFENSE..."

THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION PROVIDES:

"[N]OR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE AND LIMB."

PETITIONER, CALVIN MACK SOUGHT DISCRETIONARY REVIEW OF THE THIRD DISTRICT COURT OF APPEALS' DECISION TO FLORIDA SUPREME COURT AND FILED A MOTION

for Certification and sought to certify a question to the Florida Supreme Court and the District Court arbitrarily circumvented the judicial process by denying Petitioner's Application for Review of the erroneous decision. Appendix D, Appendix E.

The law is well settled where a provision of the constitution forbids conviction on a particular ground, the constitutional guarantee is violated by a general verdict that may have rested on that ground.

Griffin v. United States, 502 U.S. 46, 53, 112 S.Ct. 466 (1991).

Inasmuch, the cases are legion that have reversed criminal convictions where the jury was permitted to consider an improper legal theory. Even where a general verdict renders impossible the determination whether the jury in fact relied on the improper theory, a conviction possibly predicated on such mistaken interpretation of the law will not stand. Stromberg v. California, 283 U.S. 359, 367-68, 51 S.Ct. 532, 75 L.Ed. 1117 (1931).¹ "There was no rational connection between the facts proved and the facts presumed..."

1- The rule of the Stromberg case has deep roots and controls. Ashcraft v. Tennessee, 322 U.S. 143, 64 S.Ct. 921 (1944); Terminiello v. Chicago, 337 U.S. 1, 69 S.Ct. 894 (1949); Street v. New York, 394 U.S. 576, 89 S.Ct. 1354 (1969); Leary v. United States, 395 U.S. 6, 89 S.Ct. 1532 (1964); Bachtell v. Maryland, 397 U.S. 564, 90 S.Ct. 1312 (1970); Zant v. Stephens, 462 U.S. 862, 103 S.Ct. 2733 (1983); Cramer v. United States, 325 U.S. 1, 36 W.45, 65 S.Ct. 918 (1945).

Both PRECEDENT AND CONSTITUTIONAL LAW, MANDATES A GENERAL VERDICT OF GUILTY IN A CRIMINAL CASE MUST BE SET ASIDE WHERE IT IS SUPPORTABLE ON ONE GROUND BUT NOT ON ANOTHER; AND IT IS IMPOSSIBLE TO TELL WHICH GROUND THE JURY SELECTED. VALENTINE V. STATE, 688 So.2d 313 (Fla. 1996); YATES V. UNITED STATES, 354 U.S. 298, 77 S. Ct. 1064, 1 L. Ed. 2d 1354 (1957).

IN STROMBERG V. CALIFORNIA, SUPRA, "A CONVICTION MUST BE SET ASIDE WHERE THE VERDICT OF GUILTY DID NOT SPECIFY THE GROUND UPON WHICH IT RESTED AND THE JURY WAS INSTRUCTED THAT THEIR VERDICT MIGHT BE GIVEN WITH RESPECT TO ANY ONE OF THE THREE CLAUSES OF THE STATUTE THE VIOLATION OF WHICH WAS CHARGED, AND ONE OF SUCH CLAUSES IS UNCONSTITUTIONAL."

IN WILLIAMS V. NORTH CAROLINA, SUPRA, "WHERE A GENERAL VERDICT OF GUILTY WAS RENDERED IN A CRIMINAL CASE AND ONE OF THE THEORIES ON WHICH THE CASE WAS TRIED AND SUBMITTED IS BASED ON A GROUND WHICH IS INVALID UNDER THE FEDERAL CONSTITUTION, THE JUDGMENT CANNOT BE SUSTAINED."

LIKewise, IN CRAMER V. UNITED STATES, 325 U.S. 1, 36 N. 45 (1945), THE COURT HELD, "THE VERDICT IN THIS CASE WAS A GENERAL ONE OF GUILTY, WITHOUT SPECIAL FINDINGS AS TO THE ACTS ON WHICH IT RESTS." SINCE IT IS NOT POSSIBLE TO IDENTIFY THE GROUNDS ON WHICH CRAMER WAS CONVICTED, THE VERDICT MUST BE SET ASIDE IF ANY OF THE SEPARABLE ACTS SUBMITTED WAS INSUFFICIENT.

And in TORNA v. STATE, 742 So.2d 366, (Fla.3DCA 1999), the District Court directly holds, "that when a general verdict makes it impossible for the court to determine which of two options the jury determined to exist, the [court] must construe the verdict as finding the option most favorable to the defendant."

BECAUSE of this uncertainty, and the fact that the Sixth Amendment gives the Petitioner the right to have his fate decided by a UNANIMOUS VERDICT, the court must consider carefully the jury's verdict in light of the charges. Appendix F.

As so ably pointed out by Judge Cowart in BRADLEY v. STATE, 546 So.2d 185 (Fla.5DCA 1989), UNDER SECTION 810.02, Florida Statutes, the differentiating factors which determine the degree of the burglary offense become "ELEMENTS" of SEPARATE OFFENSES. FURTHER, THESE DIFFERENTIATING FACTORS ARE STATED IN THE ALTERNATIVE AND SET OUT IN DIFFERENT SUB-PROVISIONS MAKING THEM SEPARATE AND DISTINCT FELONIES. "THE DIFFERENTIATING ELEMENTS ARE NOT MIX AND MATCH..." UNDER THIS STATUTORY STRUCTURE, A CONVICTION FOR "FIRST-DEGREE BURGLARY" CANNOT STAND IF, ALTHOUGH ALL OF THE JURORS AGREE THAT A BURGLARY TOOK PLACE IN WHICH THE DEFENDANT COMMITTED A BATTERY OR WAS ARMED, ONLY HALF THE JURORS AGREE THAT A BATTERY TOOK PLACE AND ONLY HALF AGREE THAT THE DEFENDANT WAS ARMED.

If a defendant commits a burglary AND commits a battery, he has committed a first-degree felony OR if defendant commits a burglary AND arms himself with a dangerous weapon, he has committed a first-degree felony.

Although both are alternative ways of committing a first-degree felony burglary, the battery in sub-provision (a) or the arming in sub-provision (b) are distinct elements which must be unanimously determined by the jury to have existed before a conviction for a burglary under the respective provision can be sustained.

In the case at bar, by the general verdict in this case, the court simply cannot be sure that a unanimous jury found either element to have been proved beyond and to the exclusion of any reasonable doubt. Still, the verdict in this cause denied petitioner his right to a unanimous verdict; and the alternative verdict is apparent on the face of the record and the structure of the burglary statute is clear on the face of the statute.

Sixth Amendment; Fourteenth Amendment.

By enacting section 775.021 (4)(b), the legislature has made it clear that although it wants every truly separate offense committed by the defendant during any criminal episode to be punished, it does not want to impose multiple punishments for the same offense - "offenses which are lesser offenses the statutory elements of which are subsumed

by the GREATER offense?" Thus, considering the gravity of the offense and the harshness of the penalty; the sentences imposed on other criminals in the same jurisdiction; and the examination of sentences imposed for the same offense in other jurisdictions.

Therefore, compelling reasons exist for the complete exercise of this Court's discretionary jurisdiction to rectify the indifference and maintain uniformity of said important federal question(s) not only for [petitioner] but for others similarly-situated. 28 U.S.C. § 2101 (e).

REASONS FOR GRANTING THE PETITION

This Honorable Court should intervene and grant certiorari because a State Court of last resort has so far departed from the accepted and usual course of judicial proceedings... The [Third District Court of Appeals] has decided an important federal question in a way that directly and expressly conflicts with the decision(s) of other / another state court of last resort and has erroneously decided an important federal question in a way that clearly conflicts with relevant decisions and controlling precedent of this Honorable Court.

More succinctly, certiorari is warranted in this cause to maintain uniformity of the relevant decisions and constitutional law and precedent on the same important federal questions and to rectify the indifference for others who are similarly-situated in their plight for justice as a matter of federal constitutional law.

To the contrary, each of the defendant(s) in the following cited cases obtained relief from the appellate court, to wit: [Spradley v. State, 537 So.2d 1058 (Fla. 10CA 1989); Lyles v. State, 724 So.2d 138 (Fla. 10CA 1998); Duhart v. State, 724 So.2d 1223 (Fla. 10CA 1998); Arnold v. State, 514 So.2d 419 (Fla. 20CA 1987); Lewis v. State, 740 So.2d 82 (Fla. 30CA 1999); Turner v. State, 742 So.2d 866 (Fla. 30CA 1999); Mansfield v. State, 954 So.2d

74 (Fla. 4DCA 2007); FOSTER v. STATE, 448 So.2d 1239 (Fla. 5DCA 1984); BRACEY v. STATE, 985 So.2d 704 (Fla. 5DCA 2008); WEST v. STATE, 21 So.3d 916 (Fla. 5DCA 2009); YOUNG v. STATE, 43 So.3d 876 (Fla. 5DCA 2010); LATIMER v. STATE, 44 So.3d 1239 (Fla. 5DCA 2010)].

Therefore, to give each of these [defendants] relief but to deny Mr. Mack the same relief for virtually identical circumstances is a manifest injustice that does not promote - in fact, it corrodes - uniformity in the decisions of the appellate courts.

The national importance of having this Honorable Court decide the questions involved address compelling reasons for the exercise of this Court's discretionary jurisdiction.

Thus, considering the gravity of the offense and the harshness of the penalty; the sentences imposed on other criminals in the same jurisdiction; and the examination of sentences imposed for the same offense in other jurisdictions.

"This case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Honorable Court as a matter of federal constitutional law..."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Calvin Mack

Date: April 16, 2021