

No. 21-

PROVIDED TO APALACHEE  
CORRECTIONAL INSTITUTION  
ON 9/2/2021 KB  
FOR MAILING VS

SUPREME COURT OF THE UNITED STATES

**21 - 6043**

Vedrick L. Symonette

Petitioner

vs.

State of Florida

ORIGINAL

Respondent

On Petition for a Writ of Certiorari to the  
Florida Supreme Court

FILED  
OCT 01 2021

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SUPREME COURT, U.S.

PETITION FOR A WRIT OF CERTIORARI

Mr. Vedrick L. Symonette  
DC# X07229  
Apalachee Correctional Institution  
52 West Unit Drive  
Sneads, Florida 32460

BirthSON of Dr. Kinley.

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## I. Question Presented

Where information so vague, indistinct, and indefinite it resulted in due process violation, Brady v Maryland violation, and a Fundamental Miscarriage of Justice, is information so fatally defective as to deprive the convicting court of jurisdiction?

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#### IV. Petition for Writ of Certiorari

Vedrick L. Symonette, BirthSON of Dr. Henry Clifford Kinley, is an inmate currently incarcerated at Apalachee Correctional Institution in Sneads, Florida, respectfully petitions this court for a writ of certiorari to review the judgment of the Florida Supreme Court.

#### V. Opinions Below

The decision by the Florida Supreme Court denying Mr. Symonette's direct appeal is reported as Symonette v. State of Florida SC21-497 3D19-1170 (Fla. 6/8/21). The Florida Supreme Court denied Mr. Symonette's petition for hearing on June 8, 2021. That order is attached. Exhibit 1.

#### VI. Jurisdiction

Mr. Symonette's petition for hearing to the Florida Supreme Court was denied on June 8, 2021. Mr. Symonette invokes this Court's jurisdiction under 28 U.S.C. 1257, having timely filed this

petition for writ of Certiorari within ninety days of the Florida Supreme Court's judgment.

## VII. Constitutional Provisions Involved

United States Constitution, Amendment XIV :

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.

## VII. Statement of the Case

Over 50 years ago, this Court held in Brady v Maryland that the suppression by the prosecution of evidence favorable to and requested by an accused violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.

In Mars v Mounts the Court held that a trial court, upon motion, shall order the prosecuting attorney to furnish a statement

of particulars, when the indictment or information upon which the defendant is to be tried fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense.

This case presents the question of whether the information is so fatally defective as to deprive the convicting court of jurisdiction as is held in Murphy v Beto ?

### 1. Fatally Defective Information and Fundamental Miscarriage of Justice

The information states that the offense occurred on or between April 1, 2016 and September 1, 2016. Mr. Symonette filed (2) pre-trial Motions for Statement of Particulars asking the state to narrow down its lengthy 5-month time frame because he had documented records proof that he lived and worked in Killeen, Texas during that time frame.

The State refused to narrow down the time frame and trial court denied both Motions at separate hearings. Then, at trial,

the alleged victim changed her story and stated that the offense occurred on July 4, 2016. Mr. Symonette was surprised and ambushed with this specific date. And had the State not withheld this date from Mr. Symonette he would have proved : (a) his Probation Officer (Case #F13012859) gave him permission to travel to Killeen, Texas to spend the July 4, 2016 holiday with his then-wife<sup>1</sup>, her sister<sup>2</sup>, and to look for a house to live in upon termination of his probation ; (b) Mr. Symonette's Bank records evidence show that on June 29, 2016 he spent \$500.00 to rent a BMW vehicle from Sixt rental car ; (c) Mr. Symonette's driving record (Driver's Licence #S553-872-71-170-0) shows that on July 2, 2016 a Louisiana State Trooper wrote him a speeding ticket , while heading west-bound on Interstate 10 , in the BMW vehicle ; (d) Mr. Symonette's credit card records show he pre-paid hotel accommodations (with cheaptickets.com) to stay at the Marriott Courtyard hotel in Killeen, Texas ; and (e) Mr. Symonette's then-wife and her sister would have testified that

on Monday, July 4, 2016 Mr. Symonette was physically present in the Marriott Courtyard hotel in Killeen, Texas.

The July 4, 2016 date was both exculpatory and impeachment evidence which was withheld from Mr. Symonette prior to jury trial. And the fundamentally defective information did not specify this date.

There is no scientific or physical evidence which links Mr. Symonette to any sex crime whatsoever! And the State withheld exculpatory evidence from Mr. Symonette and Knowingly used false testimony to wrongly convict Mr. Symonette of a crime he clearly did NOT commit.

Mr. Symonette's conviction and 20 year prison sentence for lesser - included charge of lewd and lascivious molestation and lewd and lascivious battery is a Fundamental Miscarriage of Justice.

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And trial court lacked jurisdiction to try the case because the offense was not properly charged in the information.

## 2. Direct Appeal

On direct appeal, appellate counsel argued that trial court erred when it excluded Mr. Symonette's vital documentation evidence, due to discovery violation, without holding a required Richardson hearing, thus denying Mr. Symonette his due process right to present a case to the jury.

In a pro se supplemental initial brief, Mr. Symonette renewed his argument of the Fundamentally Defective Information and Actual Innocence which the third district court refused to address, and unfairly denied. (Exhibit 3).

However, the third district court did express a written opinion in its denial of Mr. Symonette's direct appeal. (Exhibit 2). Mr. Symonette then sought discretionary review of the denial of his direct appeal in the Florida Supreme Court. (Exhibit 4).

Mr. Symonette again renewed his argument of the Fundamentally Defective Information and Actual Innocence in the Florida Supreme Court, which was also denied on June 8, 2021.

## IX. REASONS FOR GRANTING THE WRIT

A. To avoid a Fundamental Miscarriage of Justice, where multiple Constitutional violations have resulted in the conviction of one who is actually innocent, this Court should exercise its Supervisory Power because the Florida Supreme Court has sanctioned a great departure from the accepted and usual course of judicial proceedings by a lower court

In Chambers v Mississippi 410 US 284, this Court held that the right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. And in Brady v Maryland 373 US 83 this Court held that it is illegal for the prosecution to suppress, and withhold evidence favorable to an accused, which is material to guilt and punishment.

In Mars v Mounts 895 F.2d 1348 it is well established

that a trial court must order the prosecution to furnish a Statement of Particulars, when the information fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense. The Florida Supreme Court's holding in Dell'Orfano v State 616 So.2d 33 perfectly mirrors Mars in every respect.

Yet, a Fundamental Miscarriage of Justice has occurred in Mr. Symonette's case due to (2) Constitutional violations : (1) Mr. Symonette's crucial documentation evidence was excluded, thus, denying his due process right to present a case to the jury ; and (2) The State withheld the July 4, 2016 date from Mr. Symonette, prior to jury trial, which was both exculpatory and impeachment evidence. And both of these Constitutional violations have resulted in the conviction of Mr. Symonette who has demonstrated his actual innocence.

The information used to charge Mr. Symonette is so fatally

defective it deprived the convicting court of jurisdiction. And in Murphy v Beto 416 F.2d 98, the Court held that jurisdiction to try an offense includes jurisdiction to determine whether the offense is properly charged.

The information in Mr. Symonette's case did not properly charge him, because it failed to specify the July 4, 2016 date suddenly alleged at trial.

Because Mr. Symonette has demonstrated with documented evidence proof his exact whereabouts on July 4, 2016 and the days leading up to that date.

And the information used to charge Mr. Symonette is so fatally defective it deprived the convicting court of jurisdiction.

This case presents this Court with an opportunity to correct this Fundamental Miscarriage of Justice; due to an information so fatally defective it deprived the convicting court of jurisdiction; and multiple Constitutional violations which resulted in the conviction of one Son whom

is actually innocent.

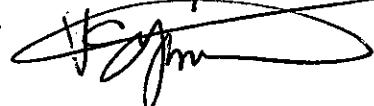
## X. CONCLUSION

For the foregoing reasons, Mr. Symonette respectfully requests that this Court issue a writ of certiorari to review the judgment of the Florida Supreme Court.

### OATH

Under penalties of perjury I swear that the foregoing is all true and correct.

Respectfully Submitted,



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