21-6726

ORIGINAL

IN THE
UNITED STATES SUPREME COURT

CASE NO: To be assigned

MARK JASON DAVIS,
PETITIONER,

V.

THE STATE OF FLORIDA,
RESPONDENT.

ON REVIEW FROM THE SUPREME COURT OF FLORIDA
NO: _____

DISTRICT COURT OF APPEAL,

FIRST DISTRICT,

STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

Mark Jason Davis,
DC# Q09246
Hardee Correctional Institution
6901 State Road 62
Bowling Green, Florida 33834

Petitioner, *Pro 'Se*

QUESTIONS PRESENTED

WHETHER AN OPEN-AIR SNIFF CONDUCTED BY A POLICE K9 (DOG) TRAINED IN DRUG DETECTION, ON PRIVATE PROPERTY, WITHOUT A SEARCH WARRANT OR PROBABLE CAUSE, CONSTITUTES A SEARCH WITHIN THE MEANING OF THE UNITED STATES CONSTITUTION 4TH AND 14TH AMENDMENTS. *FL. S. CT. V. JARDINES* 133 SCT 1409 (2013), "THE GOVERNMENT USE OF A TRAINED POLICE DOG TO INVESTIGATE A HOME AND ITS IMMEDIATE SURROUNDINGS IS A USE SEARCH WITHIN THE MEANING OF THE 4TH AMENDMENT.

The question presented in this petition arose from the proceedings, below.

On December 7, 2018, Bay County Sheriffs executed an arrest warrant on private property. Immediate contact was made with fugitive, and the warrant was confirmed. Arrestee was a guest at private residence. After execution of arrest, a police dog, trained in drug detection, was deployed and an open-air sniff was conducted of vehicle on property. The 14th Judicial Circuit rules the open-air sniff on private property is not a search under the U.S. Const. 4th Amendment. In *Fl. S. Ct.* 569 US 133 1049 (2013), the Fl. S. Ct. differs.

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The opinion of the highest State Court to review the merits appears at APPENDIX A to the petition and is reported at *Mark Davis v. State, Florida* (Fla. 1st DCA 2021).

STATEMENT OF JURISDICTION

The date of which the highest State Court decided Petitioner's case was on July 1st, 2021. A copy of that decision appears at APPENDIX B, from the Florida Supreme Court denying Petition for review.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMENDMENT 4:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

U.S. CONST. AMENDMENT 6:

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 defense.

U.S. CONST. AMENDMENT 14, SECTION 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States 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 his

jurisdiction the equal protection of the laws.

EVIDENCE [681 - EXCLUSIONARY RULE - PURPOSE]:

The Exclusionary Rule, which excludes evidence which is wrongfully obtained from being admitted in a criminal trial, is calculated to prevent, not repair, its purpose is to deter - to compel respect for the constitutional guarantee in the only effectively available way by removing the incentive to disregard it.

EVIDENCE [681 - EXCLUSIONARY RULE - 4TH AMEND.]:

When utilized to effectuate the 4th Amendment, the Exclusionary Rule, which excludes wrongfully obtained evidence from being admitted in a criminal trial, serves interests and policies that are distinct from those that the rule serves under the 5th Amendment, and the rule is directed at all unlawful searches and seizures, and not merely those that happen to produce incriminating material or testimony as fruits.

CASES

U.S. v. Peltier, Ante at 535-538, 45 L. Ed 2d at 374, 95 S. Ct 2313

U.S. v. Calandra, 414 U.S. 338, 347, 38 L. Ed. 2d 561, 94 S. Ct 613 (1974)

Terry v. Ohio, 392 U.S 1, 12-13, 28-29, 20 L. Ed. 2d 889, 88 S. Ct 1868 (1968)

"The rule is calculated to prevent, not to repair. Its purpose is to deter, to compel respect for the constitutional guarantee in the only effectively available way, by removing the incentive to disregard it." *Elkins v. U.S.*, 364 U.S. 206, 217, 4 L. Ed

2d 1669, 80 S. Ct 1437 (1960).

[But] "despite its broad deterrent purpose, the Exclusionary Rule has never been interpreted to prescribe the use of illegally seized evidence in all proceedings or against all person." *U.S. v. Calandra*, 414 U.S., at 348, 38 L. Ed. 2d 561, 94 S. Ct 613.

See Also:

Michigan v. Tucker, 417 U.S. 433, 446-447, 41 L. Ed. 2d 182, 94 s. Ct 2357 (1974)

Arizona v. Gant, 556 U.S 332, 129 S. Ct 1710, 173 L. Ed. 2d 485 (2009)

STATEMENT OF THE FACTS

In October 2018, a warrant out of Tallahassee, Florida, was issued for the Petitioner for a conditional release violation (Parole violation). The violation was for an unauthorized change of address and for failing to report truthfully. On Dec 7, 2018, Petitioner was allegedly observed driving a Nissan by BCSO Detective D. Cummings and/or W. Anderson. Petitioner was later observed standing in the yard of 724 E. 14th Street (a private residence) by these same detectives. Petitioner was apprehended at 724 E. 14th Street moments later. Petitioner was immediately placed in restraints as the warrant was confirmed. At the time of arrest, three other individuals were present: Jazmin Miller (resident of 724); Tamori Johnson (guest); and Whitney Jones (guest). Petitioner was arrested 10-15 feet away from the vehicle in question, at the same location Petitioner had been observed standing by the arresting detectives. After Petitioner's arrest, the K-9 unit was called and deployed, and an open-air sniff was conducted of the Nissan. A warrantless search was conducted, in which meth and cocaine was seized. Petitioner was not arrested in the Nissan, is not the registered owner of the Nissan, nor was Petitioner within reaching distance of the Nissan at the time of his arrest. However, Petitioner was charged with the contents found in the Nissan. Jazmin Miller was also arrested, on separate charges (which were later dismissed).

A.) Proceedings in the District Court

On November 22nd 2019, the 14th Judicial Circuit of Bay County Florida found petitioner guilty of Trafficking in Methamphetamine and Possession of Cocaine. Petitioner was sentenced to 40 years for Count 1 Trafficking in Methamphetamine with a (consec) 5 year sentence for Count 2 Possession of Cocaine. (App. 33 i a) On December 2nd 2019 Defense Counsel filed a Notice of Appeal with the 14th Judicial Circuit of Bay County Florida. At current Petitioner has filed a Post Conviction claim (3.850) alleging the following: Ineffective Assistance of Counsel on multiple grounds;

1.) Counsel(s) failed to properly convey or advise Mr. Davis of the States plea offer; 2.) Attorney autumn Miller failed to convey or advise Mr. Davis of the State's plea offer and Attorney Stanley Peacock failed to properly investigate Mr. Davis case file; 3.) Counsel(s) failed to abide by Mr. Davis' demand for a speedy trial; 4.) Counsel failed to investigate and property argue a motion to suppress; 5.) Counsel failed to investigate and secure the property deeds in connection with the motion to suppress; 6.) Counsel failed to apprise the trial court of the conflicts in its factual findings regarding its ruling on the motion to suppress; 7.) Counsel misinformed Mr. Davis about the length of sentence he was facing; and 8.) Counsel misinformed Mr. Davis that the evidence did not exist to secure a conviction

B.) **Proceedings in the Appellate Courts**

Petitioner appealed to the First District Court of Appeal on December 2, 2019. The (1st DCA) issued a Per Curiam Affirmed. Decision on (April 23, 2021) Petitioner timely filed a petition for rehearing/written opinion. May 10, 2021 at present there are no Petitions in Appellate District Court of Appeal. (1st DCA of the State of Florida.

C.) Order Denying Petitioner petition for rehearing/written opinions is denied by First District Court of Appeal of the State of Florida. (June 10, 2021).

D.) Order mandating First District Court of Appeal of the State of Florida opinion. CC: (Without Attached Opinion) to Honorable Bill Kinsaul, Clerk. (July 01, 2021). There are no current Petitions in Appellate District Court of Appeal. (1st DCA).

REASONS FOR GRANTING A WRIT OF CERTIORARI

A writ may be granted if it is shown (**1**) that a U.S. Court of Appeals decision is in conflict with another U.S. Court of Appeals decision; (**2**) a State's Supreme Court has ruled on a Federal question in a way that conflicts wither with another State's Supreme Court or with a U.S. Court of Appeals; or (**3**) a U.S. Court of appeals has decided an important question of Federal law that has not been, but should be, settled by the United States Supreme Court...*Supreme Court Rule #10.. (A)(B).*

In this matter, the decision of the 14th Circuit creates a conflict with long standing precedent of this Court and other U.S. Courts of Appeals regarding warrantless searches without probable cause. Further, this case presents an important question of law that has not yet been decided by the United States Supreme Court.

Finally, the decision of the 14th Circuit is incorrect under present case law. *Florida Supreme Court v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409, *1417 (2013), ruled "the government's use of trained police dogs to investigate the home and its immediate surroundings is a "search" within the meaning of the 4th Amendment.". *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct 1710, 173 L. Ed 2d 485 (2009), "police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or

it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies".

PETITIONER WAS DENIED DUE PROCESS OF LAW BY INEFFECTIVE ASSISTANCE OF COUNSEL, BY COUNSEL'S FAILURE TO PROPERLY FOR TRIAL

Trial Counsel's failure to properly prepare for Trial denied Petitioner the opportunity to present exculpatory and impeachment evidence. This failure so affected the truth determining process as to have resulted in Petitioner's wrongful conviction for crimes he did not commit. Trial Counsel's failure to develop and present evidence known to Counsel, was unprofessional conduct. The acts and omissions prejudiced to the extent no confidence can be placed in the verdict. *Strickland v. Washington*, 104 S. Ct. 2052 (1984) holds, the 6th Amendment requires Counsel to be fully informed of the case to conduct an investigation and interview potential witnesses.

Petitioner presented Trial Counsel with the names of these witnesses, and that these witnesses were willing and available to testify for the defense. The witnesses provided to Trial Counsel were: Tamari Johnson, Whitney Jones, and Jazmin Miller (who testified at Petitioner's trial for the defense). Trial Counsel failed to contact Tamari Johnson and Whitney Jones. Given the fact that Petitioner is incarcerated and isolated from society, Petitioner does not now have contact information, along with the fact there is no time left on the Jurisdictional timelines requirement of 28. U.S.C. § 2244(B) for Petitioner to obtain this contact information and affidavits in support.

Petitioner is certain that if given the opportunity, said witnesses would testify to the following:

1) On Dec 7, 2018, Petitioner was arrested at (Jazmin Miller) 724 E. 14th Street, "residence" for an active warrant.
2) Immediate contact was made with Petitioner, who was placed in handcuffs as warrant was confirmed.
3) Petitioner was not arrested in the Nissan in question, nor was he in reaching distance of said vehicle.
4) The K-9 unit was only deployed after the execution of Petitioner's arrest.
5) No consent was given to search by the property owner, Jazmin Miller, nor by Petitioner.
6) 724 E. 14th Street is private property, with "No Trespassing" signs and "Private Property" signs on display
7) Petitioner was a guest of Jazmin Miller.

The arresting officers clearly established corrupt motives to testify against Petitioner. There could be no rational or tactical decisions not to interview and present the named witnesses to impeach the credibility of the (BCSO) arresting officers.

Petitioner did provide impeachment evidence to Trial Counsel in the form of

witnesses: Jazmin Miller, resident of 724 E. 14th Street; Tamari Johnson, a guest of Jazmin Miller; and Whitney Jones, another guest of Jazmin Miller. All would have offered evidence that impeached the Prosecution's allegation that Petitioner was in sole control/occupant of the Nissan in question. Petitioner also informed Counsel of inconsistent statements and testimonies made by arresting officers.

1) W. Anderson - SID - stated he did not see Petitioner driving the Nissan.[1] (R. 407), only to make a conflicting testimony that he did see Petitioner driving the Nissan (R. 409).

2) Steven Cook - SID - said W. Anderson observed Petitioner driving the Nissan (R. 423), but as shown above, W. Anderson's testimony is in conflict with itself, making the identification of Petitioner invalid due to inconsistent testimonies. Steven Cook - SID - later testified that D. Cummings - K-9 Handler - was on the scene when Petitioner was taken into custody (R. 429).

3) D. Cummings - SID - K-9 Handler - testified that he arrived after Petitioner was taken into custody (D. 779).[2] D. Cummings then testified that he arrived on the scene in his vehicle along with his K-9 (T. 40), (T. 41), which is in direct conflict with...

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[1] (R.) references the record on appeal filed with the First District Court of Appeal, followed by the paginated #.

[2] (D) references the Deposition transcripts filed with the 1st DCA, followed by the paginated #.

4) Dalton Heape - TEA - Photographer - who testified he arrived after the arrest of Petitioner (T.447).[3] He then testified that he arrived on the scene in the same vehicle with D. Cummings (T. 454), which is inconsistent with D. Cummings' testimony, also impeaching the credibility of the BCSO arresting officers. Again, there could be no rationale or tactical decisions not to interview and present Petitioner's witnesses, especially since it was the Prosecution's contention that Petitioner was in sole control / occupation of the Nissan in question. To not dispel this claim and impeach the critical prosecution elements of the case was ineffective assistance of counsel.

Petitioner informed counsel to subpoena the GPS location of all arresting officials at the time of Petitioner's arrest, as impeachable evidence to establish the truth that K-9 handler D. Cummings was not on the scene at the time of Petitioner's arrest, but arrived only after.

The United States Supreme Court, along with the Courts of Appeals, have long held Trial Counsel's failure to properly prepare for trial is an abdication of his duty to his client. *Strickland v. Washington*, 466 U.S. at 691, "counsel's actions are usually based quite properly on informed strategic choices made by the defendant and on information supplied by the defendant...[what] investigation decisions are

[3] (T.) references the Trial transcripts filed with the 1st DCA, followed by paginated #.

reasonable depends critically on such information."

Petitioner provided Trial Counsel with exculpatory evidence that if presented would have impeached the Prosecution's case. Character evidence that if presented would have placed Petitioner in a different light before the jury.

Petitioner was fearful of questioning Trial Counsel's decisions, in fear that he would agitate Trial Counsel and this would be detrimental to his case. Rather than act on the information provided by Petitioner, Trial Counsel admonished Petitioner, instructing Petitioner to "let him do what he is certified to do".

Prosecution alleged Petitioner was in sole control / occupation of the Nissan in question, with no supporting facts and only inconsistent statements and/or testimonies made by the Prosecutor's witnesses. Trial Counsel failed to raise "standing, latent prints" as a possible defense. *Dugas v. Coplan*, 428 F.3d 317 at 332 (1st Cir. 2005); Counsel's failure to investigate possible defense was ineffective assistance of counsel. *Marchall v. Cathel*, 428 F.3d 452 at 465-71 (3rd Cir. 2005); Counsel's lack of preparation at a critical stage in the proceeding, failure to prepare and review evidence was ineffective assistance. The acts and omissions resulted in an ineffective cross-examination of each witness in failing to impeach each witness with prior inconsistent statements, and a corrupt motive to testify against Petitioner.

Petitioner does know that during trial, Counsel repeatedly was unaware of

the inconsistencies in each witness' testimony and rendered ineffective assistance of counsel. See *Goodman v. Bertrand*, 467 F.3d 1022 at 1023-31 (7th Cir. 2006); Trial Counsel's failure to subpoena critical witnesses (Tamari Johnson and Whitney Jones) to impeach the credibility of the Prosecution's witnesses, failing to subpoena GPS location of all arresting officers and failing to subpoena K-9 (Bix) field performance records and certifications (also see trial transcripts of D. Cummings), in which Petitioner requested was ineffective assistance of counsel. Also see *Pavel v. Hollins*, 261 F.3d 710, 217-18 (2nd Cir. 2001); Counsel's failure to call important fact witnesses and expert witnesses at trial was ineffective because testimony would have rebutted the Prosecution's case. *Strickland v. Washington*, 104 S. Ct. 2052 (1984) "does require counsel to properly prepare for trial and vigorously advocate his cause. The most essential element of defense counsel's duty is to conduct a proper cross-examination of witnesses against client. This is the foundation of the confrontation clause of the Sixth Amendment." Trial counsel's failure to prepare and conduct a proper cross-examination was ineffective assistance that so prejudiced the Petitioner as to have affected the truth determining process. See *Kimmelman v. Morrison*, 477 U.S. 365 at 385 (1986); *Gonzalez-Sobreal v. United States*, 244 F. 3d 273 at 279 (1st Cir. 2001); *Bell v. Miller*, 500 F. 3d 149, 154-57 (2nd Cir. 2007); and *Berryman v. Morton*, 100 F. 3d 1089 (3rd Cir. 1996); where the Court of Appeals have held counsel's failure to prepare and

conduct a proper cross-examination is ineffective assistance of counsel.

PETITIONER WAS DENIED DUE PROCESS OF LAW AND A FAIR TRIAL BY INEFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO OBJECT TO PROSECUTOR MISCONDUCT.

At the conclusion of the presentation of the case, the District Attorney informed the Jury that Petitioner "threw the keys to the Nissan into the bushes because [he] knew law enforcement was coming and did so to avoid being in possession." This allegation to the incident, an omission whether intentional or not, led an already tainted and partial jury to believe these incidents actually occurred. The very nature and characterization of these counts as incidents created a prejudice in the minds of the jury to convict Petitioner. (T. 213).[4]

Trial Counsel's remarkable and unprofessional conduct, letting such a prejudicial allegation go unchallenged, lead the jury to convict Petitioner. Any rational person would conclude these actions occurred. No evidence of such accusations, cultivation, no eye witnesses, statements, testimonies, nor RNA/DNA evidence. Trial Counsel was ineffective for allowing prosecutor misconduct to go unchallenged. Any competent trial attorney would have most certainly objected. *Strickland v. Washington*, 104 S. Ct. 2052 (1984).

[4] (T.) references the Trial transcript, filed with the 1st DCA, followed by paginated #.

THE COURT OF APPEALS DECISION IS INCORRECT

Once a defendant establishes a factual basis for a suppression motion, the government must prove that the search was proper by a preponderance of the evidence. See *U.S. v. Mendenhall*, 446 U.S. 544, 557, 64 L. Ed 2d 297,100 S. Ct 1870 (1980); *U.S. v. Matlock*, 415 U.S. 164, 177 N. 14 39 L. Ed 2d 242, 94 S. Ct. 988 (1974); *Bumper v. North Carolina*, 391, U.S. 542, 548 20 L. Ed 2d 797, 88 S. Ct 1788 (1968); *U.S. v. Calvente*, 722 F. 2d 1019, 1023 (2nd Cir. 1983); *U.S. v. Robles*, 253 F. Supp. 2d 544 (2002).

The State Court's determination that Petitioner was not denied a fair trial before an impartial jury is contrary to or an unreasonable application of clearly established federal law, as determined by the Florida Supreme Court in *Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed 2d 495 (Fla. 2013), holding, "the government's use of trained police dog to investigate the home and its immediate surroundings is a "search" within the meaning of the 4th amendment."

Where Petitioner filed a pretrial motion for suppress of evidence, in which Petitioner exercised his right to a fair trial as guaranteed by the 6th and 14th Amendments, and 4th Amendment; "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probably cause, supported by oath or affirmation and particularly describing the place to be

searched and the persons or things to be seized."

The Court's denial of Petitioner's request for suppression of evidence denied Petitioner substantive right to a fair trial. Trial Court's abuse of discretion in this instance constitutes plain error. In the instant case, the Trial Court had a responsibility to the Petitioner to ensure his right to a fair and impartial jury and trial, but failed to uphold its duty to Petitioner by allowing illegal search and seized evidence to be admitted.

Petitioner was a guest of 724 E. 14th Street, and active warrant was issued. Petitioner was arrested 10-15 feet away from the vehicle in question. This vehicle was not registered to Petitioner. There is no incident to arrest clause, seeing that the vehicle could not have possessed any evidence to support said warrant. *Garner v. Louisiana*, 368 U.S. 157, 164 (1961); "it is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction." See also *Re-Oliver*, 333 U.S. 257, 273 (1948). [394 U.S. 111, 113]

OTHER CIRCUITS ARE IN CONFLICT OVER WHETHER A WARRANTLESS SEARCH, WITHOUT PROBABLY CAUSE, FOLLOWING THE EXECUTION OF AN ARREST WARRANT, IS IN VIOLATION OF THE UNITED STATES CONSTITUTION'S 4TH AND 14TH AMENDMENTS.

The decision of the 14th Circuit creates conflict between Circuits as to whether an officer can conduct a warrantless search after the execution of an arrest warrant. *Arizona v. Rodney Joseph Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 Ed 2d 485 (2009);

1) Police may search incident to arrest only the space within an arrestee's "immediate control", meaning the area from within which he might gain possession of a weapon or destructible evidence. The safety and evidentiary justification underlying *Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed 2d 685 (1969) reaching-distance determine Belton's scope. *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed 2d 768 (1981). Accordingly, Belton does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle. Circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle. (L. Ed Digest: Search and Seizure 12).

2) Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the 4th Amendment - subject only to a few specifically established and well-delineated exceptions. Among the exceptions to the warrant requirement is a search incident to a lawful arrest. These exceptions derive from interests in officer safety and evidence preservation that are typically implicated in arrest situations. (L. Ed Digest; Search and Seizure 12; 25).

3) A search incident to arrest may only include the arrestee's person and the area "within his immediate control" - that phrase is construed to mean the area from within which he might gain possession of a weapon of destructible evidence. That limitation, which continues to define the boundaries of the exception, ensures that the scope of a search incident to arrest is commensurate with its purpose of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy. Searches incident to arrest are reasonable in order to remove any weapons the arrestee might seek to use, and in order to prevent the concealment or destruction of evidence. If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search,

both justification for the search-incident-to-arrest exception are absent and the rule does not apply. *Arizona v. Gant*, L. Ed Digest Searches and Seizures 12.

Upon execution of the arrest warrant, BCSO Detective D. Cummings deployed a K-9 unit to conduct an open-air sniff of vehicles parked on private property. The vehicle in question no one occupied. The 14th Circuit decision is in direct conflict with *Arizona v. Rodney Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed 2d 485 (2009). *Florida v. Jardines*, 569 US 1, 133 S. Ct 1409, 185 L. Ed 2d 495 (2013), lacking probable cause. The 14th Amendment (Equal Protection Clause), demands that similarly situated persons be treated similarly under the law. *Plyer v. Doe*, 457 U.S. 202, 216, 102 S. Ct. 2382 *368 72 L. Ed 2d 786 (1982).

Evidence (681 - Exclusionary Rule - 4th Amendment) when utilized to effectuate the 4th Amendment, the Exclusionary Rule, which excludes wrongfully obtained evidence from being admitted in a criminal trial, serves interests and policies that are distinct from those that the rule serves under the 5th Amendment, and the rule is directed at all unlawful searches and seizures, and not merely those that happen to produce incriminating material or testimony as fruit.

PETITIONER WAS DENIED A FAIR TRIAL BY TRIAL COURT'S ABUSE OF DISCRETION

The Trial Court's negligence resulted in Petitioner's wrongful conviction, by failing to acknowledge Rules, and United States Constitution 4th, 8th, and 14th Amendments, therefore, depriving Petitioner of his United States Constitutional rights. Evidence (681 - Exclusionary Rule - 4th Amendment), "when utilized to effectuate the 4th Amendment, the Exclusionary Rule, which excludes wrongfully obtained evidence from being admitted in a criminal trial, serves interests and policies that are distinct from those that the rule serves under the 5th Amendment, and the rule is directed at all unlawful searches and seizures, and not merely those that happen to produce incriminating material or testimony as fruit." The Trial Court knowingly used a quashed case, *Joelis Jardines v. State of Florida*, 73 So.3d 34 (2011), to deny Petitioner's Motion to Suppress. [Quote, Trial Court] "An open-air sniff conducted by a dog trained by police in drug detection is not a search within the meaning of the U.S. Constitution's 4th Amendment."

Jardines was quashed and reversed, *Florida S. Ct. v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409 185 L. Ed 2d 295 (2013), "the government use of trained police dogs to investigate the home and his immediate surroundings is a search within the meaning of the 4th Amendment." In fact, *Jardines 73 So.3d 34 (2011)* also cites, "probable cause, reasonable suspicion is the proper evidentiary showing of wrongdoing that the government must make prior to conducting a dog "sniff test"

at a private residence."

Here, the Trial Court erred in using a quashed case to convict Petitioner of illegally seized evidence. Evidence seized without probable cause or reasonable suspicion, thereby violating Petitioner's United States Constitution 4th, 8th, and 14th Amendment, and causing great distress mentally and emotionally. Total disregard to the Evidence - 681 Exclusionary Rule - 4th Amendment, and the United States Constitution. In this act of the Trial Court's abuse of discretion, Petitioner is subject to a discipline that is unconstitutional. The Trial Court's decision is incorrect in merit and is abusive in its standings, to the mental, emotional, and physical authorities of the Petitioner. Not only was Petitioner's suppression motion denied, but it was done so maliciously, through and abuse of discretion.

Trial Court's abuse of discretion extends even further to Petitioner's Motion to Dismiss. When Trial Court's denied Petitioner's Motion to Dismiss, it was done so by Trial Court's decision to rule the Prosecutor's traverse as a traverse, when in fact it was a "demurrer". Prosecutor alleges there are additional facts that Petitioner was the sole occupant of the Nissan in question, but failed to list any additional facts in his "moot" traverse. Prosecutor's failure to "dispute" any number of "undisputable facts" Petitioner cited in Motion in Dismiss brands Prosecutor's traverse a demurrer. *State v. Snyder,* 635 So.2d 1057, at 1059 (Fla. 2nd DCA 1994); *State v. Teague*, 452 So.2d 72 (Fla. 1st DCA 1984), in which

Petitioner's dismissal is to be granted.

The Trial Court had a responsibility to the Petitioner to ensure his right of a fair and impartial jury and trial, but failed to uphold its duty to Petitioner by not granting Petitioner's Suppression and Dismissal motions. The provided information is in direct conflict with Trial Court's decision, and are factual evidence, based on records of the Court, of the Trial Court's abuse of discretion, directly in violation of the United States Constitution's 14th Amendment, and Florida Supreme Court. *Florida S. Ct. v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed 2d 495 (2013).

Trial Court abused his discretion when Petitioner filed a complaint with the Florida Judicial Qualification against the Judge, due to bias treatment. Complain #19-626:Stephenson. Petitioner informed the Court and Defense Counsel of his action, and the Court responded with an Ex-Parte of Communication. Judge Dustin Stephenson knew that a conflict existed, but refused under (28 United States Constitution § 144) to remove himself. Trial Court's actions were not only unprofessional, but deprived Petitioner of his 14th Amendment.

Trial Court's abuse of discretion is unreasonable when it comes to the Constitution. Even the denial of Petitioner's Request of (J.O.A.) Judgment of Acquittal, the State never proved its burden of constructive poss. or actual poss. Petitioner is therefore wrongfully convicted.

Finally, since the Trial Court's charges permitted the Jury to convict for acts entitled to 4th Amendment and 14th Amendment protection, (*Wung Sun* 371 U.S. 471, 9 L. Ed 2d 441, 83 S. Ct. 407 (1963); *Florida S. Ct. v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed 2d 495 (2013)) independently requires reversal of these convictions.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted. The Court may wish to consider summary reversal of the decision of the 1st DCA.