

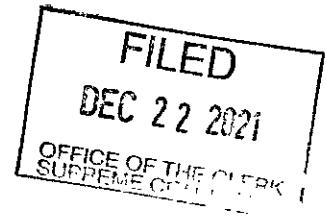
No. 21-7084 ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

DWIGHT JORDAN - PETITIONER

VS.  
ATTORNEY GENERAL -- RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO  
FIFTH DISTRICT COURT OF APPEAL  
PETITION FOR WRIT OF CERTIORARI



DWIGHT JORDAN  
WAKULLA CORR. INST.  
110 MELALEUCA DRIVE  
CRAWFORDVILLE, FL. 32327-4963

## QUESTIONS PRESENTED

GROUND 1) Whether the court can depart from clearly established law on case by case basis? *State v. Gray*, 435 So. 2d 816, 818 (Fla. 1983) is a case that was decided by the Supreme Court which says indictment or information that wholly omits to allege one or more of the essential element of a crime" can not support a conviction of that crime. It also says this is a defect that can be raised at "anytime" before trial, after trial, on appeal, or by habeas corpus this Supreme Court case is in conflict with the trial court and DCA rulings.

GROUND 2) Does the State of Florida practice of allowing a jury to be instructed that a criminal defendant may be found guilty as a principal where that defendant has not been charged pursuant to Florida Stat. 777.011 violates the U.S. Const. Amend. Which requires that a criminal defendant be informed of the charges against him?

GROUND 3) Can counsel waive defendant constitutional rights 6<sup>th</sup> Amendment to be informed of the nature of cause of the accusation against him where defendant never knowing, voluntarily, and intelligently waive his right?

GROUND 4) Can the trial court instruct the jury on two combined primary offenses? 1) Robbery with a deadly weapon or 2) robbery with a firearm, where robbery with a deadly weapon is not a lesser-included offense of robbery with a firearm. See *Davis v. State*, 235 So. 3d 320.

## **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**

*Penny v. State*, 140 Fla. 155 (Fla. 1939)  
*U.S. v. Combs*, 369 F. 3d 92 at 930-33

## **TABLE OF CONTENTS**

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
REASONS FOR GRANTING THE WRIT.....	6
CONCLUSION.....	6

## **INDEX TO APPENDICES**

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

APPENDIX G

APPENDIX H

APPENDIX I

APPENDIX J

APPENDIX K

APPENDIX L

## TABLE OF AUTHORITIES CITED

Cases	Page(s)
Davis v. State, 235 So. 3d 320	4
M. F. v. State, 583 So. 2d 1383, 1386-87 (Fla. 1991)	3
United States v. Cancilliere, 69 F. 3d 1116 (11 <sup>th</sup> Cir. 1995)	3
United States v. Saviore, 430 F. 3d 376, 380 (6 <sup>th</sup> Cir. 2005)	4
State v. Gray, 435 So. 2d 618, 818 (Fla. 1983)	3

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.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A of the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[X] is unpublished.

The opinion of the Lower Tribunal 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 9-28-2021.

A copy of that decision appears at Appendix A \_\_\_\_\_.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- 1.) Art. 1 §9 Fla. Const. M. F. v. State, 583 So. 2d 1383, 1386-87 (Fla. 1991). Due process of law requires the state to allege every essential element when charging a violation of law to provide the accused with sufficient notice of the allegation against him. By the state waiting until his closing argument to tell the jury that the petitioner was charged as a principal. See: (Appendix C) and to convict the petitioner as a principal in the same closing argument. See: (Appendix D) It prejudice the petitioner in trial preparation, presentation, and defense against such allegation. The petitioner is showing how the charging information totally omits one or more of the essential elements of the crime it "can not support a conviction of that crime." See: State v. Gray, 435 So. 2d 816, 818 (Fla. 1983). This is a defect that can be raised at "anytime" before trial after trial on appeal, or by habeas corpus. The petitioner is showing how the state court over looked established law.
- 2.) U.S. Const. Amend. V is that a defendant can only be convicted for a crime charged in an indictment. Per se reversible error occurs when the essential element of a offense are altered to broaden the possible basis for conviction beyond what is contained in the indictment/information. An amendment to an indictment occurs when the charging terms of an indictment is altered. See: U.S. v. U.S. Cancilliere, 69 F. 3d 1116 (11<sup>th</sup> Cir. 1995). By the state altering to broaden the possible basis of conviction beyond what was contained in the indictment by instructing the jury on principal it violated the petitioner's constitutional rights to be tried only on the charges that are in the information and creates possibilities that defendant may have been convicted on grounds not alleged in the information. The petitioner was prejudiced multiple times by this error because he was never notified before trial to even hear a defense for such offense that added elements that were not part of the information and it let the state argue "dual theories" the state took the petitioner to trial as being the sole perpetrator of the offense then they switched theories at the close of trial where petitioner could not defend himself against such allegation and

the state argues the petitioner was principal to same offense. See: (Appendix D) The petitioner is showing how this amounted to fundamental error and was by no way harmless and without these errors the outcome would have been different or a reasonable juror would not have found petitioner guilty.

- 3.) The Constitutional Inferency, that violated petitioner's due process rights 5, 6, and 14 Amendments runs along with U.S. v. Saviores, 430 F. 3d 376, 380 (6<sup>th</sup> Cir. 2005) were the defendant information improperly combined elements of both offenses and the jury was given instruction that tended to compound the confusion which error cast substantial doubt on whether defendant was unanimously convicted of an offense criminalized by.

The petitioner information improperly combined elements of both offenses which are robbery with a deadly weapon or robbery with firearm both are under the 812.13(2)(A) Fla. Stat. See: (Appendix F). These offenses are 2 primary offenses robbery with a deadly weapon is not a lesser included offense of robbery with a firearm. See: Davis v. State, 235 So 3d 320.

The petitioner's due process rights were also violated by trial counsel's ineffectiveness because counsel failed to object to this improper combined elements within the information.

Counsel's failure to object to this information waived the petitioner's rights to challenge the information this prejudiced the petitioner because petitioner never intelligently and voluntarily waived his right, counsel had known or should have known of the changes in law or challenged this duplicitous information had counsel objected and had not waived petitioner's rights the petitioner would have had the equal protection of law and benefited from this error as in U.S. Saviores, 430 F. 3d 376, 380 (6<sup>th</sup> Cir. 2005) and others.

- 4.) The Constitutional Ingerency that violated petitioner's due process rights 5, 6, and 14 Amendments runs along U.S. v. Saviores, 430 F. 3d (6<sup>th</sup> Cir. 2005) were the defendant's information improperly combined elements of both offenses and the jury

was given instruction that tended to compound the confusion which error cast substantial doubt on whether defendant was unanimously convicted of an offense criminalized by.

The Petitioner information improperly combined elements of both offenses with are robbery with a deadly weapon or robbery with firearm which are both under the 812.13(2)(A) Fla. Stat. See: (Appendix F) these offenses are 2 primary offenses. Robbery with a deadly weapon is not a lesser-included offense of robbery with a firearm See: Davis v. State, 235 So. 3d 320. Also, the jury was given the same instruction on both offenses that tended to compound the confusion which error cast substantial doubt on whether the defendant was unanimously convicted on an offense criminalized by See: (Appendix G). The prosecutor prejudiced the defendant when he told the jury that "A firearm is any weapon which expels a projectile by action of explosive or one we can use light on". A deadly weapon is any weapon that can be used to cause death or great bodily harm. So not only is he guilty of robbery with a deadly weapon he's guilty of robbery with a firearm. See: (Appendix E). The petitioner is showing how this amounted to fundamental error and was by no way harmless and without this error the outcome would have been different or a reasonable juror would not have found the petitioner guilty.

## **STATEMENT OF THE CASE**

### **Rule 14(g)**

The defendant was found guilty of robbery w/ deadly weapon or firearm after a jury. On February 3, 2010 defendant was sentenced to life in prison. The defendant appealed to the 5<sup>th</sup> DCA that PCA the appeal see: Jordan v. State, 56 So.3d 784 (Fla. 5<sup>th</sup> DCA 2011). On July 22, 2011 the defendant filed a 3.850 to the lower court see; (Appendix H) a final order denying defendant 3.850 see; (Appendix I). The defendant appealed his 3.850 motion to the 5<sup>th</sup> DCA which was PCA see; Jordan v. State, 109 So.3d 1171 (Fla. 5<sup>th</sup> DCA 2013). Defendant filed a second motion for

postconviction relief on August 28, 2017 see; (Appendix J) a order denying that motion see; (Appendix K). Defendant appealed motion to 5<sup>th</sup> DCA which was PCA see; Jordan v. State, 239 So.3d 700 (Fla. 5<sup>th</sup> DCA 2018).

Rule 14(l)

In the circuit court during trial specifically during the jury instruction on the information see; (Appendix L) and of the (Appendix ). The defendant is raising this issue for the first time in a writ of Habeas Corpus see; State v. Gray, 435 So.2d 816, 818 (Fla. 1983). This is a defect that can be raised at anytime before trial after trial on appeal or by habeas corpus because a violation of due process affecting a defendant constitutional rights renders a conviction unconstitutional and void. This court has jurisdiction pursuant to Article I Section 13; and Article V Section (5)(b) Florida Constitution. The Writ of Habeas Corpus is enshrined in the U.S. Constitution to be used as a means to correct a manifest injustice, and is available for use when all other remedy has been exhausted. Baker v, State, 878 So.2d 1236, 1246 (Fla. 2004).

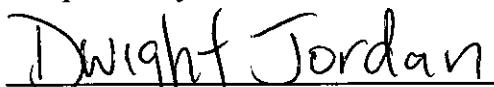
### **REASONS FOR GRANTING THE PETITION**

The reason for granting this petition is to correct the lower court's wrong doings.

### **CONCLUSION**

The petition for writ of certiorari should be granted

Respectfully submitted,

  
Dwight David Jordan DC# 526809

Date: 2-1-22