

21-7182

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

“In re ERNESTJUDGESMITHIII” – PRO SE PETITIONER

Vs.

DAREN L. SHIPPY - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI

SUPREME COURT OF FLORIDA

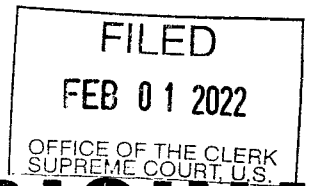
NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE

PETITION FOR WRIT OF CERTIORARI

ERNEST JUDGE SMITH III

500 East Adams Street

Jacksonville, Florida, 32202



ORIGINAL

QUESTION(S) PRESENTED

1. Isn't the Fourth and Fourteenth Amendments violated when exigent circumstances are created through police officers use of unreasonable law enforcement tactics ?
2. Isn't the Fourth and Fourteenth Amendments violated when exigent circumstances cease, and police officers continue to search ?
3. Isn't The Knock and Announce rule a clearly establish right?
4. Isn't the Fourth and Fourteenth Amendments violated when police officers enter a premises they know is occupied without performing a Knock and Announce procedure?
5. Isn't the Fourth and Fourteenth Amendments violated when police officers search and seize a person inside their home without warrants issued ?
6. Isn't the Fourth and Fourteenth Amendments violated when police officers arrest a person without conducting a reasonable investigation ?

7. Isn't the Fourth and Fourteenth Amendments violated when police officers arrest a person and involuntarily without probable cause or warrants issued, escorts or transport that person from one place to another ?

8. Isn't the Fourth and Fourteenth Amendments are violated when police officers arrest a person first and then search for incriminating evidence ?

9. Isn't the Fourth and Fourteenth Amendments violated by the government when they use evidence that derived from an unlawful search and seizure ?

10. Isn't it a Fourteenth Amendment violation for prosecutors to knowingly make false , material statements pertaining to a criminal case ?

11. Isn't the Fifth and Fourteenth Amendments violated when a person is to stand trial and defend their self against charges that is knowingly based on perjured material evidence ?

12. When prosecutors intentionally alters evidence, violating the Fourteenth

Amendment doesn't that warrant a dismissal of criminal charges ?

13. Isn't it a Fifth and Fourteenth Amendment violation when a Judge sets a Hearing for a motion, but does not give the defendant an opportunity to present or rebuttal arguments ?

LIST OF PARTIES

1. Daren L. Shippy

Assistant Attorney General

PL-01, The Capitol

Tallahassee, Florida 32399- 1050

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OTHER

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 at Appendix _____ to

The petitioner 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 of appeals at Appendix _____
to the petitioner 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 _____ 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

JURISDICTION

☐ For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was
N/A.

☐ No petition for hearing was timely filed in my case.

☐ A timely petition for rehearing was thereafter denied on the following date:
_____, and a copy of the order denying rehearing appears at
Appendix N/A.

☐ An extension of time to file the petition for 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

_____. A copy of that decision appears at Appendix A.

[] A timely petitioner for rehearing was thereafter denied on the following date: _____, a copy of the order denying rehearing appears at Appendix A.

[] 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

FLORIDA STATUTES

1. Accarino v. United States, 85 U.S. App. D.C. 394, 402, 179 F. 2d 456 (1949)

“ But where one lies under a probable suspicion only, and is not indicted, it seems the better opinion that no one can justify the breaking open doors in order to apprehend him.”

2. Ames v. State 739 So. 2d 699 Fla. 1ST DCA (1999)

“ Defendant was under arrest when the police officers escorted her off the bus, as defendant was not free to leave at the time, and thus she was “ seized” within the meaning of the Fourth Amendment.”

3. Arizona v. Youngblood, 488 U.S. 51, 109 S. Ct. 333, 102 L. ED. 2D 281 (1988)

“Dismissal warranted where prosecutor fails to preserve evidence useful to defendant or intentionally alters evidence.”

4. Atterbury v. City of Miami Police Dep’t 322 Fed. Appx. 724 (11th Cir 2009)

“Actual probable exists when the facts and circumstances within the police officer’s knowledge warrant a reasonable belief that the suspect had committed or was committing a crime. This information may be garnered from an informant’s allegations and corroborating evidence.”

5. Benefield v. State 160 So 2d 706 Fla (1964)

“When an officer is authorized to make an arrest in any building he should first approach the entrance to the building. He should the knock on the door and announce his name and authority, sheriff, deputy sheriff, policeman or other legal authority and has a warrant, he may proceed to serve it. He is not authorized to be there to make an arrest for a felony without a warrant”

6. D’ Agostiono v. State 310 So 2d 12 Fla (1975)

“Officers cannot search first for incriminating evidence and then base an arrest and conviction upon such illegal search and seizure.”

7. Davis v Mississippi 394 U.S. 721, 22 L. Ed 2d 676, 89 SCT 1394 (1969)

“The Fourth Amendment is meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions are termed arrests or investigatory detentions.”

8. Donnelly v De Christoforo, 46 US 637 (1979)

“When specific guarantees of the Bill of Rights are involved this court has taken special care to assure that prosecutorial conduct in no way impermissibly infringe on them.”

9. Dunaway v New York, 442 U.S. 200, 60, 99 S. Ct. 2248 L. Ed. 2D 824 (1979)

“Police officers violated Fourth and Fourteenth Amendment when, without probable cause, they seized defendant and transported him to the police station for interrogation.”

10. Franks v. Delaware, 438 US 154 98 S. Ct. 2674, 57 L. Ed. 2d 824 (1978)

“ To seek to establish that petitioner’s courthouse statement to police had been obtained in violation of petitioner’s Miranda rights, and that the search warrant was thereby tainted as the fruit of an illegally obtained confession.”

11. Giglio v United States., 405 U.S. 150, 92 S. Ct. L. Ed. 2d 104 (1972)

“To establish a Giglio violation, it must be shown that: (1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material.”

12. Grigoryan v Barr, 959 F. 3d 1233 (2020)

“ The right to a fair hearing derived from the Fifth Amendment Due Process Clause applied in removal proceeding and it required a full and fair hearing that included a reasonable opportunity to present and rebut evidence and to cross examine witnesses.”

13. Haynes v Florida 470 US 811, 84 L. Ed 2d 705, 105 S. CT. 1643 (1985)

“ It was held that police officers acting without probable cause and without a warrant violate the Fourth Amendment, made applicable to the states by the Fourteenth Amendment, by forcibly removing a person from his home or other place where he is entitled to be and transporting him to the police station”

14. Henry v. United States, 361 U.S. 98, 100 80 S. Ct 168, 170, 4 L Ed 2d 134(1959)

“ Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its

adoption affirmed that common rumor or report, suspicion, or even strong reason to suspect was not adequate to support warrant for arrest”

15. Ingram v. City of Columbus 185 F.3d (1999).

“For although exigent circumstances surrounding the hot pursuit justified defendants’ failure to obtain a warrant to enter plaintiffs’ home, they did not justify the unannounced entry into plaintiffs’ home”

16. Kellom v State, 849 So. 2d 391 (Fla. 1st DCA 2003)

“However, the doctrine is not applicable in cases in which the knock-and-announce statute is violated, as the application of the doctrine to evidence seized in violation of the knock-and-announce rule would render the statute and the policy behind it meaningless”

17. Mapp v. Ohio, 367 U.S. 643 81 S. Ct. 1684 L. Ed. 2d 1081 (1961)

“All evidence obtained by searches and seizures in violation of U. S. Const. amend IV is inadmissible in a state court”

18. Murray v. United States, 487 U.S. 533, 539, 101 L. Ed. 2d 472 108 S Ct 2529 (1988)

“Independent source doctrine does not apply when evidence was illegally obtained due to the initial police illegality .”

19. Payton v. New York, 445 U.S. 573, 586, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980)

“ our cases have firmly established the basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable”

20. People v. Pelchat, 62 N.Y. 2d 97, 105, 464 N.E. 2d 447, 476 N.T.S. 2d 79, 83 (1984)

“It is familiar doctrine that a prosecutor serves a dual role as advocate and public officer. He is charged with the duty not only to seek convictions but also to see that justice is done. In his position as a public officer he owes a duty of fair dealing to the accused and candor to the courts, a duty which he violates when he obtains a conviction based on evidence he knows to be false. Such misconduct may impair a defendant’s due process rights and require a reversal of the conviction. It goes without saying that this duty also rests upon the prosecutor during pretrial proceedings.”

21. Salves v. Waters, 2020 U.S. Dist.

“An arresting officer is required to conduct a reasonable investigation to establish probable cause”

22. Silverthorne Lumber Company v United States, 251 U.S. 385 40 S. Ct. 182 64 L Ed. 319 (1920)

“The rights of a corporation against unlawful searches and seizures are to be protected, even if the same result might have been achieved in a lawful way”

23. Seibert v. State, 923 So 2d 460 Fla 2006

“ Thus, an officer must cease a search once it is determined that no emergency exists”

24. Terry v Ohio, 392 US 1 88 S. Ct. 1868 20 L Ed 889 (1968)

“When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measure to determine whether the person in fact carrying a weapon and to neutralize the threat of physical harm”

25. United States v. Basurto, 497 F. 2d 781 (9th Cir. 1974)

“ The Due Process of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is base partially on perjured testimony, when the perjured testimony is material”

26. United States v. Mendenhall, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed 2d 497 (1980)

“Because the defendant was not free to leave at that time, she was “seized” within the meaning of the Fourth Amendment”

27. United States v Rico 51 F. 3d 495 (5 Cir. 1995)

“ We next consider whether the agents themselves created the urgent situation by the use of unreasonable law enforcement tactics”

28. United States v Thompson, 700 F 2d 944 (5th Cir.1983) U.S. App.

“Government agents cannot justify their search on the basics of exigent circumstances of their making”

29. United States v Webster, 750 F 2d 307 (5th Cir. 1984)

A full-blown arrest rest at the opposite end of spectrum and of course, is illegal unless supported by probable cause”

30. Van Allen v. State, 454 So. 2d 49 (Fla. 4th DCA 1984)

“If the premises are occupied, however the failure to comply with the knock and announce statute will not be excused even if the officer reasonably believed that the premises were unoccupied”

31. Wong Sun v. United States, 371 U.S. 471, 479, 83 S. Ct. 407, 413, 9 L. Ed. 2d 441, 450 (1963)

“Police officers often have good reason to suspect that a crime has been committed but that is not enough to justify an arrest”

STATEMENT OF THE CASE

POLICE MISCONDUCT:

The Jacksonville Sheriff Office violated the petitioner's 4th Amendment Bill of Rights and 14th Amendment Due Process Clause. On the morning of March 9, 2018 Jacksonville Sheriff Officer D.P. Jadlocki #63949 and G. M. Wood #67533 were dispatched to the petitioner's home at 5047 Jies Court Jacksonville, FL. 32209 on the accusation of sexual battery. Upon arrival at the petitioner's home both officers testified they made contact with Amya E. Smith (allege victim) and Pia C. Badger (complainant) outside the petitioner's home. See Exhibit A pg. 16, Lines 19-25 and pg. 17 Lines 1-12. See Exhibit B pg. 27, Lines 13 – 25. Petitioner is inside his home sleep and unaware of the police presents or anybody else outside his home. Both officers testified that as time went on other people arrived at the petitioner's home and they were aware of them being agitated and impatient to interact with the petitioner due to the accusations that were made. See Exhibit A pg. 17 Lines 21 – 25 and pg. 18 Lines 1 – 2. Exhibit B pg. 28 Lines 3 – 10. The complainant testified to being upset. See Exhibit C pg. 19 Line 18. Both officers and complainant testified to breaching of the petitioner's home, which police officers chased the complainant and Ashley Wright through the petitioner's garage to prevent them from doing bodily harm to the petitioner. See Exhibit A pg. 18 Lines 6 – 8. Exhibit B pg. 31 Lines 6 – 7. Exhibit C pg. 20. Being that both officers admitted they were aware of the parties outside the petitioner's home, being agitated and impatient to interact with petitioner whom is inside his home, which would make the situation hostile, Off. Jadlocki told the parties to stand by their cars. See Exhibit C pg. 19 Lines 1 – 5. The court must < “consider whether the police officers themselves nevertheless created

the urgent situation by the use of unreasonable law enforcement tactics”> See United States v Rico, 51 F3d. 495(5th cir. 1995). Also see United States v Thompson, 700 F2d. 944 (5th cir. 1983). The complainant testified that the police officers pulled her and Ashley Wright out of the petitioner’s home the re-entered the petitioner’s home and detained petitioner, making a unlawful entry and arrest of petitioner, placing handcuffs on petitioner. See Exhibit A pg. 23 Lines 12 – 13, Exhibit B pg. 31 Lines 21 – 25 and pg. 32 Line 1 also Exhibit C pg. 20 and pg. 21 Lines 1 – 11.< “ An officer must cease a search once it is determined that no emergency exists”> See Siebert v State, 923 So 2d 460 Fla. 2006. For although exigent circumstances surrounding the hot pursuit of the complainant and Ashley Wright justified police officers failure to obtain a warrant to enter petitioner’s home, however police officers unannounced re-entry of petitioner’s home was unjustified. See Ingram v. City of Columbus 185 F 3d 579 (1999). Both officers testified they were aware that petitioner was inside his home. See Exhibit A pg. 17 Lines 13 – 19 and Exhibit B pg. 28 Lines 12 – 25, pg. 29 Line 1. Both officers testified they did not perform a knock and announce procedure before they entered petitioner’s home. See Exhibit A pg. 18 Lines 16 – 23 and Exhibit B pg. 29 Lines 11 – 13. > “ If the premises are occupied, however, the failure to comply with the knock and announce statute will not be excused even if the officer reasonably believed that the premises were unoccupied.”> Van Allen v State, 454 So 2d 49 Fla 4th DCA 1984. “< <” When an officer is authorized to make an arrest in any building, he should first approach the entrance to the building. He should then knock on the door and announce his name and

authority, sheriff, deputy sheriff, policeman, or other legal authority, and what his purpose is in being there, he is not authorized to be there to make an arrest for a felony without a warrant”. > *Benefield v State*, 160 So 2d 706 Fla (1964). < “ But where one lines under a probable suspicion only, and is not indicted it seems the better opinion that no one can justify the breaking open door in order to apprehend him” > *Accarino v United States*. 85 App, DC 394, 400, 179 f2D 456, 462 (1949).” > Police officers were not armed with warrants and did not have probable cause, independent facts that a crime occurred or corroborating evidence that a crime occurred to arrest petitioner inside his home, only accusations. See Exhibit A pg. 22 Lines 11 – 16 and Exhibit B pg. 31 Lines 17 – 25, pg. 32 Line 1. See Exhibit A pg. 16 Line 1 and Exhibit B pg. 26 Lines 25, pg. 27 Line 1. See < *Atterbury v City of Miami Police Dep’t* 322 Fed, Appx. 724 (2009) . Police officers never conducted a reasonable investigation to establish actual probable cause, petitioner was arrested inside his home without police officers interviewing him See > *Savales v Waters U. S. Distr.* (2020)> Furthermore the arrest of petitioner is unjustified, petitioner is sleep inside his home, unaware of police officers presents and people breaching his home, petitioner is not the aggressor. < “ Police officers had no reason to believe petitioner was armed and dangerous or posed a threat to police officers or others.”> *Terry v Ohio*, 392 U.S. 1 88 S. Ct. 1868 20 L. ED (1968). < “ A full blown arrest rest at the opposite end of the spectrum and coarse is illegal unless supported by probable cause.”> *United States v. Webster*, 750 F2d. 307 (cir 5 1984)”>. < “ A basic principle of the Fourth Amendment law that searches and seizures inside a home without a

warrant are presumptively unreasonable”> Payton v New York, 445 U.S. 573 , 586 100 S. Ct. 1371, 63 L. Ed. 2D 639 (1980). < “ Police officers often have good reason to suspect that a crime has been committed but that is not enough to justify arrest”> Henry v United States, 361 U.S. 98, 100 80, S. Ct 168, 170, 4 L. Ed. 2d 134 (1959). “< An arrest with or without a warrant must stand upon firmer ground than mere suspicion.”> Wong Sun v United States , 371 us 471, 479, 83 S. Ct. 407, 413, 9, L. Ed. 2d 441, 450 (1963). Officer Jadlocki and the complainant testified that after the petitioner was arrested, Officer Jadlocki proceeded to escort petitioner out his home and placed him in the back of his patrol car. See Exhibit A pg. 23 Lines 5 – 8 and Exhibit C pg. 21 Lines 7 – 11. The petitioner was under arrest when police officers escorted him out his home. See Ames v State, 739 So 2d 699 Fla 1st DCA (1999)”> < “ Because the petitioner was not free to leave at that time he was seized with meaning of the Fourth Amendment” > United States v Mendenhall, 446 us 544, 100 S. Ct. 1870, 64 L. Ed 2d 497 (1980). The petitioner was then transported to the Police Memorial Building involuntarily, without warrants and without probable cause. After petitioner was interrogated he was transported back home. See Exhibit A pg. 22 Lines 19 – 20. Which further proves to the court that actual probable cause was not establish to arrest petitioner. < “ Police officers violated the Fourth and Fourteenth Amendment when, without probable cause, they transported him to police station for interrogation” > Dunaway v New York, 442 us 200 , 60, 99 S. Ct. 2248 L. Ed. 2d 824(1979).”> < “ Haynes v Florida, 470 us 811, 84 L. Ed. 705, 105 S Ct. 1643 (1985)”> < “ Davis v Mississippi, 394 us 721, 22 L. Ed. 2d 676, 89 S Ct 1394

(1969).”> Arrest warrant was issued for the petitioner arrest on August 21, 2018 and petitioner was arrested on August 22, 2018 on sexual battery charges for evidence that derived from March 9, 2018. See Exhibit D. Due to the fact that the police officers violated the petitioner’s 4th Amendment Bill of Right and 14th Amendment Due Process Clause when they unlawfully re-entered and arrested petitioner inside his home without warrants issued, without probable cause and without performing the knock and announce procedure the warrant and the evidence that derives from the warrant is tainted as the fruit of an illegal search and seizure. See *Franks v. Delaware*, 438 US 154, 57 L. Ed 2d 667, 98 SCT 2674 (1978). < “ Officers cannot search first for incriminating evidence and then base an arrest and conviction upon such illegal search and seizure.”> *D’Agostino v State*, 310 So 2d 12 (1975). < “ All evidence obtained by searches and seizures in violation of U.S. Const. IV is inadmissible in a state court” > *Mapp v Ohio*, 361 us 643, 81 S Ct. 1684 L. Ed. 1081(1961). < “ The evidence seized from the resulting in unlawful search and unlawful seizure of petitioner must be suppressed as “fruit of the poisonous tree” See > *Silverthorne Lumber Company v United States*, 251 U.S. 385 40 S. Ct. 182 64 L. Ed. 319 (1920). The Inevitable Discovery Doctrine does not apply to this case because the police officers violated the Knock and Announce statute. See *Kellom v. State*, 859 So. 2d 391(Fla. 1st DCA 2003). < “The Independent Source Doctrine does not apply when evidence was illegally obtained due to the initial police illegality”> *Murray v. United States*, 487 U.S. 533, 539, 101 L. Ed 2d 472 108 S Ct 2529 (1988).

PROSECUTORIAL MISCONDUCT:

The petitioner has also been a victim of prosecutorial misconduct in this case, petitioner placed a Motion For Relief in the Lower Tribune based on prosecutorial misconduct filed on July 9, 2021 See Exhibit E, committed by A.S.A. Kelli Shobe Bar No: 113140 and A.S.A. Terence Martin Bar No: 881767. Judge Branham who currently resides over petitioner's case in the Lower Tribune struck and denied petitioner's motion in open court claiming the argument had been prior argued before See Exhibit F pg. 9 Lines 16 – 22. On Judge Branham's Order he admitted the statements that were made by the prosecutors were false and statements identified on the record See Exhibit G. On September 11, 2019 Judge Aho held a hearing based on a Motion to Compel the petitioner placed in the court to give petitioner the warrants that allowed police officers to re-enter and arrest petitioner inside his home See Exhibit H. In that hearing Ms Shobe and Judge Aho agreed that those warrants did not exist. See Exhibit I pg. 9 Line 1 and pg. 13 Lines 22 – 25. Also in that hearing Ms. Shobe stated " Your Honor, I can just briefly explain that facts of this case. The victim called her mother from the bathroom of the defendant's home reporting that illegal sexual activity had occurred between herself and the defendant. The mother then called – placed a 911 call. The victim was still locked inside of the bathroom inside of the defendant's house. Officers entered the home in order to retrieve the victim, and at that point in time the defendant was placed under arrest." See Exhibit I pg. 12 Lines 20 – 25 and pg.13 Lines 1 – 5. That probable cause does not exist. Both police officers testified that upon arrival at the petitioner's home they

made contact with the allege victim and complainant outside petitioner's home. See Exhibit A pg. 16 Lines 20 – 25, pg. 17 Lines 1 – 11 and Exhibit B pg. 27 Lines 13 – 25. The petitioner's Motion To Compel Discovery of warrants was denied. See Exhibit J. On August 25, 2020 Judge Aho held a hearing based on a Habeas Corpus the petitioner placed in the court, about a 4th Amendment Bill of Right and 14th Amendment right violation, See Exhibit K. To justify the re-entry and arrest of petitioner inside his home, in that hearing Mr. Martin stated " they heard a loud noise, observed these individuals chase Mr. Smith into his residence". See Exhibit L pg. 14 Lines 25 and pg. 15 Lines 1 – 3. That probable cause does not exist. Both officers testified Mr. Smith was inside his home. See Exhibit A pg. 17 Lines 13 – 19 and Exhibit B Lines pg. 28 Lines 23 – 25 and pg. 29 Line 1. Let the court be advised that Mr. Martin was A.S.A. whom held the depositions of the police officers. See Exhibit A pg. 25 and Exhibit B pg. 34. The petitioner's Habeas Corpus was denied See Exhibit M. Also let the court be advised that Ms. Shobe and Mr. Martin came up with different probable causes to justify the police officers re-entry and arrest of the petitioner inside his home and neither of those probable causes exist. < " When prosecutors knowingly make material false statements they commit a Giglio violation." > Giglio v United States, 405 U.S. 150 92 S. Ct. L. Ed. 2d 104 (1972). Which the Due Process Clause is violated depriving petitioner of life, liberty and due process of law. Obviously Ms. Shobe and Mr. Martin knowingly made those false material statements to cover up the police officers illegal activity. Without the false material statements made by the prosecutors it's conclusive that the police officers

unlawfully re- entered and unlawfully arrested petitioner inside his home without warrants issued or probable cause or without performing a knock and announce procedure See Exhibit A pg. 18 Lines 16 – 23, Exhibit B pg. 29 Line 11 – 13. See Exhibit A pg. 23 Lines 12 – 13, Exhibit B pg. 31 Lines 21 – 23. See *Benefield v State* 169 So 2d 706 Fla (1964) and See *Payton v New York* , 445 US 573 586 100 S Ct. 1371 63 L Ed 2 (1980). < “ It is a familiar doctrine that a prosecutor serves a dual role as advocate and public officer. He is charged with the duty not only to seek convictions but also to see that justice is done. In positions as a public officer he owes a duty of fair dealings to the accused and candor to the courts, a duty which he violates when he obtains a conviction based on evidence he knows to be false. Such misconduct may impair a defendant’s due process rights and require a reversal of the conviction. It goes without saying that this duty also rests upon the prosecutor during pretrial proceedings.” > *People v. Pelchat*, 62 N.Y. 2d 97, 464 N.E. 2d 447, 476 N.Y. 2d 79 (1984). The false material statements made by the prosecutors violated the petitioner’s substantial rights and prejudice the petitioner from his 4th amendment Bill of Rights to be free from unreasonable searches and unreasonable seizures and the 5th amendment Bill of Right Due Process Clause to fair trial. < “ When specific guarantees of the Bill of Rights are involved this court has taken special care to assure that prosecutorial conduct in no way impermissibly infringe them” > *Donnelly v. De Christoforo*, 416 US 63 (1974). < “ The Due Process Clause of the Fifth Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony,

when the perjured testimony is material.” > United States v. Basurto, 497 F. 2d (9th Cir. 1974). Furthermore < “ dismissal warranted where prosecutors fails to preserve evidence useful to defendant or intentionally alters evidence.” > Arizona v. Youngblood, 488 U.S. 51, 109 S. Ct. 333, 102 L. Ed 2D 281 (1988).

JUDGE MISCONDUCT:

The petitioner would also like to bring to the court attention the misconduct that has been displayed by Judge Branham who currently resides over petitioner’s case in the Lower Tribune. The petitioner place a Motion For Relief in the court based on prosecutorial misconduct See Exhibit E. Judge Branham set a hearing date for the motion on September 10, 2021 See Exhibit N Line Document 732. On September 10, 2021 the petitioner made a court appearance, but before the hearing on the motion commenced Judge Branham struck and denied the motion without giving the petitioner an opportunity to present or rebuttal arguments of the State Attorney. See Exhibit F pg. 9 Lines 12 – 25. Which violated the petitioner’s 5th Amendment Bill of Right Due Process Clause to a fair hearing. “ < The right to a fair hearing derived from the Fifth Amendment Due Process Clause applied in removal proceeding and it required a full and fair hearing that included a reasonable opportunity to present and rebut evidence and to cross examine witnesses.”> Grigoryan v Barr, 959 F. 3d 1233 2020 U.S. App.

REASONS FOR GRANTING THE PETITION

There has been a final judgment in the petitioner's appeal rendered by The Florida Supreme Court, denying the petitioner review and an opportunity for a rehearing See Exhibit O. There is conclusive evidence through the provided Exhibits in the petitioner's Writ of Certiorari that thus far throughout the judicial process the petitioner's 4th, 5th Amendment Bill of Rights and 14th Amendment Due Process Clause has been and continues to be violated by police and judicial officers. Furthermore, the early settlers actually came here to establish the rule of God on earth. That was their goal! Look at the laws they established for the colonies from the beginning. The minds of many were filled with the Bible. And they did accomplish the mighty goal of establishing the rule of law. The leaders and people of early America died to give this nation freedom and to establish the Constitution – probably the greatest constitution there has ever been. Many shed their blood because they believed in this government. The Constitution was created by men who held great respect for the respect for the Bible and its Author, basic truths. They built a system to safeguard the God – given freedoms of every man. They created a government aimed at restraining the corruptible human heart. They guaranteed the rights of all citizens to worship God without fear of government coercion. In 1954, Supreme Court Chief Justice Earl Warren wrote, “ I believe the entire Bill of Rights came into being because of the knowledge our forefathers had of the Bible and their belief in it.” In many ways, an attack on the U.S. Constitution is an attack on God, and the truth of God.

CONCLUSION

The petition for status on stay should be granted.

Respectfully Submitted and served

/s/ Ernest Judge Smith III

Date: February 01, 2022