



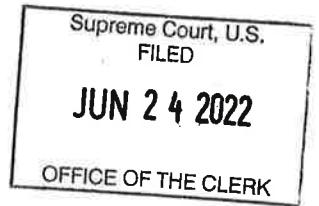
22-5046

No.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



JAMES R. BUTLER — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH DISTRICT COURT OF APPEAL, STATE OF FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES R. BUTLER DOC # B15441
(Your Name)
Liberty Correctional Institution
11064 N.W. Dempsey Barron Rd.
(Address)

Bristol, Florida, 32321
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

QUESTION A: Is the oath of the State's witness invalid in a criminal proceeding when that witness testifying from a Foreign country by video-satelite transmission is sworn in by a notary of that Foreign country, not by an official of a U.S. Court? Does that invalid oath make the witness' testimony inadmissable due to a violation of the Sixth Amendment's Confrontation Clause, i.e. the Oath? Does it violate a defendant's right to a fair trial under Due Process of the Fifth Amendment?

Of extra-ordinary importance, with this ruling by the district court, does it open the door for other district courts to develop open ended interpretations of the United States Constitution?

QUESTION B: Does failure to give a Miranda warning during a custodial interrogation make any statements concerning said interrogation inadmissible at trial?

Of extra-ordinary importance is, does this violate a defendant's right against self-incrimination under Due Process Clause of the Fifth Amendment of the United States Constitution?

QUESTION C: Does the presentation by prosecution of false testimony through a State's witness during a criminal proceeding constitute a Giglio violation when the State knew the testimony was false? Of extra-ordinary importance is this a contradiction of Constitutional law § 840 and a violation of a defendant's Due Process right to a fair trial under the Fifth Amendment of the United States Constitution?

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:

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Exhibit = EC-1, Felony Division Evidence Checklist

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE NUMBER</u>
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28 U.S.C. § 459
 Constitutional Law § 840 (1)
 Constitutional Law § 840 (2)
 Constitutional Law § 840 (6)

OTHER

Florida Constitution, Article (1), Section (9)
 United States Constitution, Fifth Amendment: Self-Incrimination
 United States Constitution, Sixth Amendment: Confrontation
 Clause; i.e. Oath

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 Fifteenth Judicial Circuit 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 12/16/2021.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 04/08/2022, 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

28 U.S.C.S § 459: Administration of Oaths, Affirmations, and Acknowledgements - Each judge or justice may administer Oaths and Affirmations. (June 25, 1948 Chapter 642, 62 Statute 908).

Constitutional Law § 840 (1): Deliberate deception of a court and jurors in a criminal case by the presentation of known false evidence is incompatible with the rudimentary demands of justice.

Constitutional Law § 840 (2): A conviction secured by the use of false evidence must fall under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Where the State, although not soliciting the false evidence allows it to go uncorrected when it appears.

Constitutional Law § 840 (6): Under the Due Process Clause, a new trial is required in a criminal case if false testimony is introduced by the State and allowed to go uncorrected when it appears could in any likelihood have affected the judgement of the jury.

United States Constitution, Confrontation Clause: ie Oath; ensures, that the witness will give testimony under Oath, impressing upon the witness the seriousness of the matter and protecting against a lie by the possibility of penalty of perjury.

United States Constitution, Fifth Amendment, Self Incrimination: No person shall be compelled in any criminal case to be a witness against himself.

Florida Constitution, Article(I), Section (9), Due Process: No person shall be deprived of life, liberty or property without due process of law, or twice be put in jeopardy for the same offense or be compelled in any criminal matter to be a witness against oneself.

STATEMENT OF THE CASE

- (1) Petitioner was convicted by jury trial in the Fifteenth Judicial Circuit, Palm Beach County, FL, case: 50-2009-CF004111-XXXAMB, on Feb. 16, 2017 for offense § 794-01(2)(a) and sentenced to two counts for life, concurrent.
- (2) Petitioner appealed to the Fourth District Court of Appeal, per curiam affirmed. Sept. 20, 2018 w/opinion, (R.* 000-218.)
- (3) Petitioner filed in the Supreme Court of Florida; case no: 5018-1873, Jurisdiction declined, Feb. 11, 2019.
- (4) Petitioner filed post-conviction motion for relief rule 3.850(a) on Dec. 19, 2020, (R.* 001-902), Denied June 21, 2021.
- (5) Notice of Appeal to Fourth District Court of Appeal filed July 2, 2021, (R.* 000-142, per curiam affirmed 12-16-21.
- (6) Motion for Rehearing and Rehearing En Banc filed belated with permission, Feb. 25, 2022. Denied April 08, 2022, without opinion.

(7) Notice to Invoke Jurisdiction, Filed April 28, 2022
to Fourth District Court of Appeal, Fla.

(8) Brief on Jurisdiction to Florida Supreme Court
Filed May 4, 2022, case no: SC 22-605, Declined 5-17-2022.

Record

References to James R. Butler shall be : Petitioner J.R. Butler.

References to Peggy Sue Butler shall be : P.S. Butler

References to Respondent shall be : State

References to Record are denoted as : (R.*)

References to Trial Transcripts are denoted as (T.*)

REASONS FOR GRANTING THE PETITION

Petitioner contends that the Order of the Fourth District Court of Appeal is in error. This ruling by the District Court is not remedial through any ordinary course of Appeal. The ruling of the District Court is therefore one which this Court can and should correct.

In support thereof Petitioner would present:

(1) Ground A: The States witness, the alleged witness, Peggy Sue Butler, age 29 at time of trial, hereafter designated P.S. Butler was the only alleged eyewitness to the material allegations of the charged offense for which Petitioner was on trial, was not properly sworn in before she testified by satellite-video transmission from Australia.

H.T. case no. 50-2009CF00411A XXXMB.

(2) Where the court at trial used an Australian Notary

Marcus Jenkins, to swear in P.S. Butler the oath was invalid. Where Jenkins was not an official of a United States court, he was not authorized to administer the oath to a witness in a criminal proceeding in the United States; According to 28 U.S.C. § 459 (June 25, 1948 chapter 642 62 Stat 908).

(3) The main United States Supreme Court case which address' the confrontation clause in the context of video testimony is Maryland v Craig, 497 US 836 (1990). Relying heavily on Craig, the Florida Supreme Court addressed the issue of video-satelite testimony in Harrell v. State 709 So.2d 1364 (Fla. 1998). The court stated that there are certain exceptions where a defendant's right to face to face confrontation will give way to "considerations of public policy and the necessities of the case" Id at 1368 (quoting Craig 497 us at 849-51).

"However such exceptions are [only] permitted when the reliability of the testimony is otherwise assured.

[Emphasis added] Id. 'the court stated that reliability can be found through three elements."

(4) In the instant case the first element is the one which addresses Petitioner's Ground A:

Element (1): that the witness will give testimony under oath, impressing upon the witness the seriousness of the matter and protecting against a lie by the possibility of penalty for perjury.

(5) The court in Hurrell v. State 709 So.2d 1371 (Fla. 1998) developed the following procedural guide-lines for the use of video-satelite testimony from a foreign country. in pertinent part:

Element (4): The deputy clerk in Miami was to administer an oath upon the witness in Argentina.

This also complied with the oath requirements under Maryland v. Craig 497 us 836, 110 S.ct 3165-66 (1990).

(6) However in the instant case the Oath was not administered by an authorized clerk in the courtroom in West Palm Beach, Fla.. Instead P.S. Butler's oath was administered by Marcus Jenkins, a public notary of Australia, located in New Castle, Australia. (see) Appendix, E, Exhibit A-1, (R.*) 001467, 001468, (T.*) pg. 507:23-25 and 508:1-7.

(7) Therefore the oath as administered was not a valid Oath and P.S. Butler's testimony was inadmissible in a criminal proceeding.

(8) Of special importance is the trial court in the instant case actually addressed this specific issue before trial; (see) Appendix E, Exhibit A-2 (R.*) 000910, (T.*) pg 72:9-17; quoting in part, L.T. Judge Jeffery Gillen;

"and another issue that I was a little understand clear on in Harrell the apparently, I guess, OKed a procedure where I was able to on the clerk here was able to swear the witness there."

also (see) Appendix E, Exhibit A-3(R.*) 000811, (T.*) 73:8-14.

quoting Judge Gillen;

"I'm just saying that in Harrell the procedure that the court followed, apparently without any problem recognized by the Supreme Court was, they swore straight from the Courtroom. [Emphasis added].

Defense counsel Jacob Noble agreed: "Okay!"

(9) However during trial when the gear for the video-satellite transmission was being set up, Judge Gillen and defense counsel J. Noble discuss the oath to be sworn before P.S. Butler gives deposition and during trial. (see) Appendix E, Exhibit A-4, 2 pgs (R.*) 001437, 001438, (T.*) pgs 477:18-25, 478:1-16, quoting in part;

Court: Okay. So, what you can do, I'm assuming there is a person there ---

Noble: yes.

Count: who can administer the oath?

Noble: That is correct.

Count: Okay, so we'll go ahead, so that person is going to end up administering the oath twice basically.

Noble: correct

Count: But she does need to be sworn in the presence of the jury.

Noble: that's fine.

This was error by the court.

(10) Of note is the fact that every witness, including defendant, James R. Butler, here after designated, J.R. Butler, with the exception of P.S. Butler were sworn in by the clerk of the Fifteenth Circuit Court in the courtroom in west Palm Beach, Fla. P.S. Butler was not. Referring to (R.*) pgs. (in part), testifying witnesses at trial.);

(R.*) 001 285, (T.*) 325: 10-13, C. Rogers

(R.*) 001 327, (T.*) 367: 8-12, J. Hale

(R.*) 001 371, (T.*) 411: 16-21, R. Michaud

(R.*) 001 410, (T.*) 450: 10-14, Sergeant Yungk

(11) Allowing a witness to testify without being sworn in by an authorized officer of the court is fundamental error, to allow it to go uncorrected is a manifest injustice of such egregious nature that one of the most basic underpinnings of the United States Justice System and the U.S. Constitution has been torn away, "that a witness will testify under oath. Justice without adherence to its most basic principles is no longer justice, it is tyranny.

(12) Should such an error by a lower court be allowed to stand, the door is opened for the lower courts to develop their own interpretations of the constitution.

The text of the Sixth Amendment does not suggest any open-ended exceptions from the confrontation requirements to be developed by the lower courts.

(see) Crawford v. Washington, 541 U.S. 36 (2004).

The oath is an integral part of the confrontation clause of the Sixth Amendment.

(13) The decision of this issue is of great importance to every defendant in this technological age we live in.

(14) "Constitutional errors with rare exceptions are subject to harmless error analysis;" (see) State v De Guilio 491 So.2d 1129, 1134 (Fl. 1986); the court adopts the harmless error test, that the State as the beneficiary of the error must prove beyond a reasonable doubt that the error complained of did not contribute to the verdict."

(15) Here P.S. Butler was the State's only witness to testify to the materially disputed facts of the alleged offense.

(16) One of the elements of the harmless error test is the importance to the prosecution's case. As the only eyewitness P.S. Butler was crucial to the prosecution.

(17) Where P.S. Butler's testimony is inadmissible due to

an invalid oath, the State fails to present adequate testimony or evidence to sustain a conviction.

(18) For a Writ of Certiorari to issue the petitioner must establish: (a) A departure from the essential requirements of law; the State's witness testified without being sworn in by an authorized official of a U.S. Court.

(b) Resulting in a material injury to the remainder of the case; the witness P.S. Butler was the only eyewitness to the alleged offense.

(c) That was not remedied on post judgment appeal; the District Court affirmed the conviction. (see) Vermette v. Ludwig 707 So. 2d 242, 244 (Fl. 2nd DCA 1997).

(19) The last two prongs of the test are jurisdictional and must be met before a higher court can determine there was a departure from the essential requirements of law.

(20) The decision of the District Court conflicts with a decision of the Florida Supreme Court on the requirements constituting a valid oath as it is enunciated in Hannell v. State, Fl., 28 U.S.C.S. § 459, Maryland v. Craig, Crawford v. Washington, and the Confrontation Clause, i.e. Oath, of the Sixth Amendment of the United States Constitution.

(21) For the above stated reasons Petitioner would invoke the Judicial Discretion of this Honorable Court, that a writ of Certiorari issue.

- (21) Ground B: A Miranda violation occurred during the interrogation of J.R. Butler, petitioner, May 12, 1998 by J. Hale, who at the time was an investigator for the 27th District Attorney's Office, Sequoyah County, Oklahoma, making her an agent of the State.
- (22) The State through J. Hale's testimony at trial argues that it was not a custodial interrogation. J.R. Butler was actually in jail, in Sequoyah County, Ok. on an unrelated case no. CM-98-288 for a violation of Protective Order against Josie Butler.
- (see) Appendix F, Exhibit m-1; the Order of release to Sequoyah County Sheriff's Office, Ok., to release J.R. Butler on May 13, 1998. The order was signed by Judge S. Sprouse of the District Court of Sequoyah County, Ok.
- (23) This official document proves that J.R. Butler

was in custody on May 12, 1998. Therefore any interview by an agent of the State on May 12, 1998 constituted custodial interrogation requiring a Miranda warning before the interrogation. (see) Miranda v. Arizona 384 US 436, 86 S.Ct 602, 16 L.Ed. 694 (1966); and Ross v. State 45 So3d 403, 414 (Fla. 2010).

(24) the trial courts opinion on testimony by J. Hale during trial, where J. Hale specifically claims in error that the interrogation with J.R. Butler took place on May 18, 1998 (see) Appendix F, Exhibit m-3, (J.*) 403:11-22. J. Hales typed notes of the actual interrogation, with her name on it, and dated May 18, 1998, and the heading identifies J.R. Butler. (see) Appendix F, Exhibit m-5.

(25) of special importance, there is no mention of miranda warning given to J.R. Butler in J. Hales notes

of the interrogation. The State had a copy of J. Hale's typed report and therefore knew J. Hale was in error on the date. The State also had a copy of the order to release J.R. Butler on May 13, 1998. (see) Appendix F, Exhibit EC-1, (R.*) 000466, which was State's Felony Division Evidence checklist. It included the typed interview report with J.R. Butler by J. Hale dated May 12, 1998, as well as the Order to release J.R. Butler on May 13, 1998. This Felony Evidence checklist dated Sept 16, 2010 and signed by Palm Beach County A.S.A. Kevin Moot proves the State had both of the documents well before trial. J. Hale had a copy of her dated notes at trial. (see) Appendix F, Exhibit m2 (R.*) 001345, (T.*) pg 385:12; Exhibit m4, (R.*) 001346, 001347, (T.*) pgs 386:18-25, 387:1, the date is clearly typed in large print at the bottom of every page, along with

J. Hales name. (see) Appendix F, Exhibits m-5 + m-6.

(26) The State through J. Hale's testimony continued to mislead the court and the jury on the true date of the interrogation of J.R. Butler, as well as the true date of P.S. Butlers initial interview with J. Hale, (see) Appendix F, Exhibit m-3, (T*) pg 403-11-22.

This was done to avoid admitting J. Hale had not given Miranda warning to J.R. Butler on May 12, 1998, they did not need Miranda if J.R. Butler was not in custody at the time of the interrogation.

(27) No actual documentation was ever submitted to the court at trial or in State's response to the petitioners post conviction motion Rule 3,850 appeal to prove J. Hale had even Mirandized J.R. Butler. State, court and J. Hale simply argued that J. Hales testimony was all that was necessary.

(28) However J. Hales testimony has been proven to be erroneous - (refer) to paragraphs: 24, 25, 26. Where she continued misleading statements to the jury constituted perjury. The states continued misleading the jury and court through J. Hales testimony constituted a Giglio violation, (refer) to Ground (c).

(29) All of J. Hales testimony need be stricken from the record due to her pernicious misleading testimony of facts crucial to the case.

(30) J. Hale was easily the most prolific witness for the state. Without her inadmissible testimony misleading the court and jury, there is a reasonable doubt that the verdict would have been different.

(31) Miranda warnings are "not themselves protected by the constitution, but are instead measures to ensure that a [suspect] right against compulsory

self-incrimination is protected;" (see Moran v. Burbine 475 U.S. 412, 425, 106 S.Ct. 89, L.Ed 410 (1986). Under the Fifth Amendment; "no person shall be compelled in any criminal case to be a witness against himself."

(32) Miranda creates a rule of evidence: Statements made during custodial interrogation by a person who is not informed of, or waived, his privilege against compulsory self-incrimination and the right counsel are inadmissible in a criminal proceeding. (see)

U.S. v. Peterson 414 F.3d 825, 828 (7th Cir. 2009).

Miranda is required during any interrogation where it is "likely to elicit an incriminating response;" (see U.S. v. Torres-Lona, 481 F.3d 150, 757 (8th Cir. 2007).

(33) The decision of the District Court of Appeal directly conflicts with the Florida Supreme Court

on the issue of custodial interrogation as relates to a Miranda violation; Ross v State and the Self-incrimination clause of Article (1), Section (9) of the Florida Constitution and enunciated in; Traylor v. State 596 So.2d 957 (Fla. 1992). The decision also conflicts with Federal cases: Miranda v. Arizona, Moran v. Burbine, U.S. v. Peterson and U.S. v. Torres-Luna, and the Due Process Clause of the Fifth Amendment of the United States Constitution. For the above stated reasons Petitioner would invoke the Judicial Discretion of this Court, that a Writ of Certiorari

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(34) Ground C: Petitioner States that a Giglio violation occurred and a violation of Constitutional Law § 840, when the State in reference to J. Hales claim, that "other documents included her giving Miranda" to Petitioner on May 12, 1998.

(35) The State's Attorney, Ms. Richardson stated at a conference during trial: (see) (R.*) 001348 (T.*) 388: 6-15, †, Appendix G, Exhibit G1:

Ms. Richardson: "It's a 1998 case. when we request all the documents in Oklahoma we only have what they give us. what the govt us are, two written statements, reports from Mrs. Hale. So we have two written reports from the victims statement as well as this defendants statement. No other documents from law enforcement or the state Attorney's office in the State of Oklahoma have been provided to us. We have nothing else to turn over. [Emphasis Added].

(36) This is a clearly deflative statement to the court by Ms. Richardson. It is also an outright fabrication

on the part of the State to the Court. (see) Felony Division Evidence Checklist, (R.#) 000466, Appendix F, Exhibit EC-1, which was sent in Discovery to at the time defense attorney, Frederick Susaneck on Sept 16, 2010. It specifically lists the following documents were sent by the State to defense attorney:

- (1) Interview report for P.S. Butler from 27th District Attorney's Office (2 pgs)
- (2) victim P.S. Butler's video
- (3) Interview report with J.R. Butler from 27th District Attorney's Office, (4 pgs)
- (4) Justice Center Report (6 pgs)
- (5) Oklahoma Dept. of Human Services Referral
- (6) Affidavit, Information and warrant (For Offense in Oklahoma).
- (7) Bond and Order of Release (For Oklahoma)

(37) This Felony Division Evidence Checklist dated Sept. 6, 2010, sent by A.S.A. Kevin Moot of Palm Beach County, Fla. proves the State's Attorney had in its possession it claimed in a bench conference before