

No. 22-5350

IN THE
SUPREME COURT OF THE UNITED STATES

RANDOLPH NORWOOD - PETITIONER

vs.

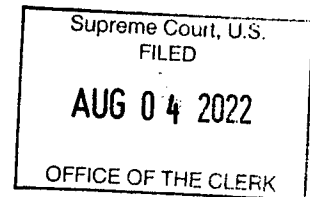
STATE OF FLORIDA - RESPONDENT(S)
ON PETITION FOR A WRIT OF CERTIORARI TO

FIRST DISTRICT COURT OF APPEAL, STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

RANDOLPH NORWOOD

11064 N.W. DEMPSEY BARRON RD.
BRISTOL, FLORIDA 32321



QUESTION(S) PRESENTED

Can a State charge a defendant with committing a crime against a specific individual and at trial present a completely different individual as the alleged victim to testify, and thereafter, convicting the defendant based on that testimony?

Is this a fatal variance and a violation of due process?

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

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**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

OPINION 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☐ is unpublished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☐ is unpublished.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☒ is unpublished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 9th Judicial Circuit, Orange County 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☒ is unpublished.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 May 10, 2022. 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) Application No.: A

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment of the United States Constitution

All persons born or naturalized in the United States, and subject to the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Mr. Norwood was arrested on November 24, 1998, and was charged with:
Count I - Home Invasion Robbery; Count II - Aggravated Assault with a Firearm;
and Count III - Grand Theft. (Appx. C)

Count one of the information alleged:

“Lawson Lamar, State Attorney of the Ninth Judicial Circuit, prosecuting for the Ninth Judicial Circuit, prosecuting for the State of Florida in Orange County, or Lawson Lamar, State Attorney of the Ninth Judicial Circuit, prosecuting for the State of Florida in Orange County, by and through the undersigned Designated Assistant State Attorney, under oath, charges that Randolph Julian Norwood, on the 5th day of November, 1998, in said County and State, did, in violation of Florida Statutes 812.135(1), 812.135(2), 775.0845, 775.087(1), 775.087(2), and 77.011, entered a dwelling, located in the vicinity of 1436 Heber Circle, Orlando, Florida, occupied by HOWARD JOHNSON, with the intent to commit a robbery, and did by force, violence, assault or putting in fear, take away from the person or custody of HOWARD JOHNSON, as owner or custodian, with the intent to temporarily or permanently deprive HOWARD JOHNSON of a right to the property or a benefit therefrom or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, and in the course of committing said offense, RANDOLPH JULIAN NORWOOD did wear a hood, mask, or other device that concealed the identity of RANDOLPH JULIAN NORWOOD, and did possess and carry, display, use, threaten, or attempt to use a firearm.”

Mr. Norwood went to trial in April of 1999. During trial, the State Attorney called a witness that identified himself as “Howard Jones Jackson.” (Appx. D) This witness provided testimony relating to the allegations made in count one of the information. At no time did the State call Howard Johnson to testify. On April 8,

1999, Mr. Norwood was found guilty as charged for all three counts of the information.

On July 12, 1999, Mr. Norwood was sentenced to a term of natural life in prison as a prison releasee reoffender.

Mr. Norwood filed a Petition for Writ of Habeas Corpus on June 1, 2021. In ground one, Mr. Norwood alleged:

“Defendant contends he is illegally detained based on the conviction of an uncharged offense, that's a fundamental error and a denial of due process, resultant of a fatal variance.”

(Appx. E)

On June 3, 2021, the State trial court issued an order dismissing Mr. Norwood's Petition for Writ of Habeas Corpus. (Appx. B) The trial court reasoned that because the claims raised in the petition could have been raised on direct appeal or on a Rule 3.850 motion, the claims were due to be dismissed.

Mr. Norwood was granted a belated appeal by the State appellate court and both parties submitted briefs. The State presented both procedural arguments and arguments on the merits. On May 10, 2022, the State appellate court rendered a decision that per curiam affirmed the trial court's ruling.

REASONS FOR GRANTING THE PETITION

MR. NORWOOD WAS DENIED HIS DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION WHEN HE WAS CHARGED WITH COMMITTING A FELONY AGAINST A SPECIFIC INDIVIDUAL BUT WAS TRIED AND CONVICTED OF COMMITTING THAT FELONY AGAINST A COMPLETELY DIFFERENT INDIVIDUAL

This Court has made absolutely clear that a trial court cannot permit a defendant to be tried on charges that are not made in the indictment or information. Stirone v. United States, 361 U.S. 212, 217 (1960). The reason being is that a defendant cannot be convicted of an uncharged crime. Conviction upon a charge not made would be a sheer denial of due process. Thornhill v. Alabama, 310 U.S. 88, 96 (1940) quoting DeJonge v. Oregon, 299 U.S. 353, 362 (1937).

However, a variance alone is not enough to rise to the level of a due process violation, prejudice must be shown. this court explained:

“The true inquiry, therefore, is not whether there has been a variance of proof, but whether there has been such a variance as to 'affect the substantial rights' of the accused. The general rule that allegations and proof must correspond is based upon the obvious requirements (1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at trial; and (2) that he may be protected against another prosecution for the same offense.”

Berger v. United States, 295 U.S. 78, 82 (1935) quoting Bennett v. United States, 227 U.S. 333, 338 (1913).

In Mr. Norwood's case, he was charged by information with home invasion robbery. The information alleged that Mr. Norwood committed the home invasion

robbery against Howard Johnson. (Appx. C). However, an individual by the name Howard Jones Jackson testified at trial as the victim of the home invasion robbery. Howard Johnson was never called to testify against Mr. Norwood. Based on the testimony of Howard Jones Jackson, Mr. Norwood was convicted of home invasion robbery.

“It is well established in Florida law that for crimes against persons, the name of the person victimized is an essential element of the crime that the State must prove beyond a reasonable doubt in a criminal prosecution.” Holborough v. State, 103 So.3d 221, 223 (Fla. 4th DCA 2012). As such, Mr. Norwood was denied due process of law when he was convicted of committing home invasion robbery against Howard Jones Jackson, yet was charged with committing home invasion robbery against Howard Johnson.

Mr. Norwood also alleges that this error is not harmless. Nothing is stopping the State of Florida from filing an information against Mr. Norwood charging him with home invasion robbery against Howard Jones Jackson. Double Jeopardy does not prohibit this action because although Howard Jones Jackson testified against Mr. Norwood, the information that Mr. Norwood was convicted under charged Howard Johnson as the victim.

A case similar to Mr. Norwood's is that of Wescott v. State, 72 So.3d 304 (Fla. 1st DCA 2011). Wescott was charged with providing a false name to

investigator Steve Harvey. However, the State only presented evidence at trial that Wescott gave a false name to Sergeant Bill Starling. The Florida First District Court of Appeal held:

“the error cannot be considered harmless because Appellant could, in theory, twice be convicted of the same crime because he was convicted of providing a false name to Sergeant Starling even though the State has yet to charge him with that crime.”

Wescott, 72 So.3d at 305.

This is also the type of error that can be raised at any time in the State of Florida and not constrained by procedural necessities. In Powell v. State, 174 So.3d 498 (Fla. 4th DCA 2015), the defendant alleged that he was charged with one crime but was convicted of another. The trial court dismissed defendant's motion as untimely and the Florida Fourth District Court of Appeal reversed. The State Appellate Court held:

“A conviction for an uncharged crime can be raised at any time as it is a denial of due process... The trial court could have considered the untimely 3.850 motion as a petition for Writ of Habeas Corpus.”

Powell, 174 So.3d at 498.

As such, this issue is properly before this court and ripe for review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

/s/


Randolph Norwood

Liberty C.I.

11064 N.W. Dempsey Barron Rd.

Bristol, Florida 32321

Date: August 1st 2022