No.: 22-5842

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

LEX LUGARD EUGENE,
Petitioner,

versus

ATTORNEY GENERAL OF FLORIDA, Ashley Moody,
Respondent(s).

ON PETITION FOR WRIT OF CERTIORARI TO
THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

L. Eugene B13960
LEX L. EUGENE, DC# B13960
Petitioner, *pro se*
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QUESTIONS PRESENTED

I. WHETHER *UNSUBSTANTIATED* ALLEGATIONS OF MISCONDUCT INTRODUCED IN A CRIMINAL SENTENCING PROCEEDING VIOLATES THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WHERE SUCH *UNSUBSTANTIATED* EVIDENCE HAS NO RELEVANCE TO THE CHARGED CRIMES OR ISSUES BEING DECIDED IN THE PROCEEDING?

II. WHETHER THE EXCLUSION OF RELEVANT TESTIMONY OF A PROSECUTION'S KEY WITNESS INFRINGES ON THE CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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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 is issued to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court of last resort, i.e., the Fourth District Court of Appeal of Florida, to review the merits appears at Appendix "A" to this petition and is unpublished. Further, although the appeal court issued a written opinion in Petitioner's direct appeal, Petitioner did not nor could have sought further review in the Florida Supreme Court because the court affirmed the underlying issue to this petition "without discussion". See *Eugene v. State*, 311 So.3d at 872.

JURISDICTION

The date on which the highest state court with jurisdiction, i.e., the Fourth District Court of Appeal of Florida, decided my case was July 14, 2022. A copy of that decision appears at Appendix A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article I, Section 9, Clause 2, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

United States Constitution Amendment I, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Constitution Amendment VI, "In all criminal prosecutions, the accused shall enjoy the right to [...] be confronted with the witnesses against him; [...]".

United States Constitution, Amendment XIV, Section I, "No State shall make or enforce any law which [...] shall 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."

United States Code Annotated Title 28, §1257: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

STATEMENT OF THE CASE[1]

Petitioner was charged with Count 1: Vehicular Homicide; Count 2: Fleeing or Eluding Causing Serious Bodily Injury or Death; Count 3: Leaving the Scene of a Crash involving Death; Count 4: Driving while license is suspended or revoked Causing serious bodily injury or death; Count 5: Sale or Possession of Fentanyl with intent to sell; Count 6: Sale or possession of schedule IV substance; Count 7: Possession of Cocaine; and Count 8: Resisting an Officer Without Violence. (Appendix D, pg. 2).

Before trial, the state filed a motion in limine to preclude cross-examination of Officer Mark Sohn, the officer involved in Petitioner's high speed chase, regarding the Boynton Beach Police Department's policy in high speed chase. Id. defense counsel argued that Officer Sohn's testimony in that regard were necessary to show his bias and motive to lie or color his testimony because he violated the Boynton Beach Police Department's policy regarding high speed chase which could result in his termination. Id. The trial court sided with the state and granted the state's motion in limine and found that the Boynton Beach Police Department's policy in high speed chase was irrelevant in a criminal proceeding. Id.

Out of the presence of the jury, defense counsel proffered Officer Sohn's would be trial testimony to the jury which the trial court precluded pursuant to its order granting the state's motion in limine. Id. pg. 3.

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[1] Unless requested, to avoid unnecessary and voluminous appendix, the concise facts in this petition are cited as referenced in Petitioner's Initial Briefs —on direct appeal, pages 1 to 7; after resentencing, pages: 1 to 7; and Respondent's answer brief, pages 1 to 6 attached as Appendices D, B, and C respectively.

Officer Sohn's Proffered Testimony:

Boynton Beach Police Department has a policy regarding pursuit of vehicles while the officer is in a marked police car. Appendix D, pg 3. It provides that the pursuit of the vehicle must be in a non-reckless manner with emphasis on the safety of citizens and property. The pursuit of a vehicle is only initiated if the officer reasonably believes that the fleeing person has committed any forcible felonies. Id. Officer Sohn testified that he had no reason to believe that Petitioner had committed any forcible felony. Id. The policy also provides that the officer should terminate the chase if he reasonably believes the risks are greater to public safety than the benefits of the immediate apprehension and, if so, the chase should be called off. Id. If the Boynton Beach Police Department conduct an internal investigation into a complaint, the department can find the complaint founded, sustained, or exonerated and there can be punishment or sanctions against the officer(s) involved. Id.

In August 2002, Office Sohn received a written reprimand for accidentally discharging his firearm. Id. In March 2004 Officer Sohn received a five-day suspension for a reprimand for violating department's vehicular pursuit policies. Id. In October 2004, Officer Sohn received a written reprimand for insubordination and in July 2010, he was reprimanded for pursuing a vehicle without his lights being activated. Id. In 2012, Officer Sohn was involved in high speed chase which resulted in a crash and death in violation of the department's policy regarding high speed chase and that complaint was sustained by the Boynton Beach Police

Department resulting in Officer Sohn's suspension. Appendix D, pg 4. Officer Sohn is being sued for the crash and death in Petitioner's case and the suit alleges that Officer Sohn violated the Boynton Beach Police Department's pursuit of vehicles policy. Id.

Officer Sohn's Trial Testimony

At trial, Officer Mark Sohn testified that he was on duty and in uniform in a marked vehicle. Id. He saw Petitioner speeding and, as Petitioner's car approached him, it braked suddenly causing the front of the car to dip down. Id. Officer Sohn ran the license plate on Petitioner's vehicle and learned that it was expired. Id. ten minutes later, Officer Sohn Petitioner's car in a quick stop convenience store and when Officer Sohn pulled in, Petitioner quickly left in his car. Id. Officer Sohn tried to get behind Petitioner's car but could not catch up to him. Id. Petitioner was speeding. Id. Officer Sohn radioed out to other Boynton Beach Police Officers for back up about Petitioner's. Id. he saw Petitioner turned onto Federal Highway but could not keep up with Petitioner's car. Id. He eventually caught up to Petitioner's car and radioed other officers and activated his lights. Id. Petitioner's car accelerated, crossed the yellow line, and passed another truck in front of him. Id. After Petitioner passed the truck, Petitioner tried to make a an abrupt right hand turn, but was not able to successfully make the turn and lost control, left the road and went onto a sidewalk, through a chain link fence, and into a field. Id. at pgs 4-5. Officer Sohn activated his siren and saw that Petitioner's car had stopped into the field. Id. at 5. Another officer arrived at the crash scene and found a small child

laying in the ditch in the field who was not breathing and had head trauma. Id. The child later died of his injuries. Id. Currently, there is a civil law suit against Officer Sohn, Petitioner, and the City of Boynton Beach regarding the crash and death of the child. Id. 5.

Vehicular Investigator Robert Stephan testified he was called to the scene of the crash that day and noticed tire marks going from the road, over the shoulder back onto the road and over a sidewalk. Id. A fence was damaged when the Buick SUV hit it. Id. pgs 6-7. He further testified that there were no structural issues on the road that day that would have caused the crash and the speed limit in the area was 30 miles per hour. Id. 7. He determined that Petitioner was driving at a high rate of speed and crossed over the double line to pass a car. Id. The investigator stated that the SUV had made a very sharp right turn and, because the car was going too fast, it slid out of control. Id. Because the airbags in Petitioner's car were not deployed, there was no stored information about the crash in the vehicle's black box computer system. Id.

Petitioner was found guilty of Vehicular Homicide, Fleeing or Eluding, operating a motor vehicle carelessly causing death, and resisting officer without violence. The trial court dismissed count 2: Fleeing or eluding and Count 3: operating a motor vehicle carelessly causing death on double jeopardy grounds. Id

On April 2, 2019, the trial court held a sentencing hearing. There, the state presented testimony from several witnesses. One of the witnesses, Deputy Grindey, a member of the gang unit at the Palm Beach County Sheriff's Office, testified that

Zoe Mafia Family ("ZMF") is a Haitian prison gang. The Deputy Grindey was "not an expert of ZMF". Deputy Grindey was only "slightly" familiar with the rules and history of ZMF. Appendix B, pgs 2-3.

After Petitioner's arrest in this case, Deputy Grindey received a gang field interview review report which claimed that Petitioner is a member of ZMF. According to Deputy Grindey, the officer who conducted the field interview report, —who did not testify—, had allegedly recovered a piece of paper under a mattress in a cell where Petitioner was once assigned while he was in the Palm Beach County Jail. That piece of paper was recovered well after Petitioner had left the county jail. Deputy Grindey had no idea how long Petitioner was assigned to that cell where the piece of paper was allegedly recovered. Over relevance, hearsay, and authentication objections, which the trial court overruled, the state introduced the piece of paper into evidence. Id. 3.

The piece of paper allegedly listed various phrases or pieces of information related to ZMF. For instance, the paper listed the "five laws" of ZMF (Blood. Loyalty, Trust, Respect, and Honor), the date of Haitian independence (1804), and one of Haiti's national mottos (*Liberté, égalité, fraternité*). The paper also included the phrase "stand ya ground." Id. The paper listed the letters "Z," "M," and "F," followed respectively by the phrases "first to pop off," "always in the middle," and "last man standing." Deputy Grindey interpreted the phrase "first to pop off" "means you're going to be the first one to act" and "last one standing" meant "if

there's some kind of confrontation, they [ZMF] plan on being the last person -- the first person to start it and the last person to finish it." Id at 4-5.

Deputy Grindey claimed that "the only reason that somebody would have this is if they were considering being a member or studying to be a member." He also claimed that one had to know the rules on the paper to become a member of ZMF. Deputy Grindey further testified he was informed by another officer that Petitioner had a tattoo of "Zoe" on his right arm. And according to Deputy Grindey, members of ZMF wore this tattoo. Deputy Grindey was clueless as to why, where, or when Petitioner got his tattoo. Deputy Grindey did not exclude the fact that there are those who innocently have the "Zoe" tattoo and who are not member of ZMF.[2] Id at 4. The state failed to introduce a nexus between ZMF and Petitioner's charged offenses. Likewise, the state introduced no evidence indicating that ZMF actually engages in or endorses illegal activities.

Argument at Sentencing:

After the witnesses testified, the trial court determined whether the PRR and Habitual Felony Offender statutes applied. Defense counsel acknowledged that the PRR statues applied to Petitioner's vehicular homicide conviction. However, the state also sought an additional Habitual Felony Offender sentence on the vehicular homicide conviction and argued:

> I think, from my interpretation, or reading the statute, it's mandatory unless the court finds on the record that sentencing is not necessary for the protection of the public, which is why we put forth

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[2] In fact "Zoe" is a term associated with Haitian pride. See, e.g., https://www.hitc.com/en-gb/2021/05/18/zoe-haitian/

> the testimony of Detective Grindey stating the [Petitioner's] association with the Zoe gang, and the information he had in regards to that.
>
> I also would point the court to the presentence investigation that's in the file. On that, on the biographical information it references a Zoe tattoo on the [Petitioner]'s arm. That would be consistent with what detective Grindey testified to as well.
>
> So from the gang standpoint, the state submits that he's a danger to the community, being a member of a Haitian prison gang, as well as his past, the things that he's continuously done. I mean, I'll go through his criminal history, but his criminal past.
>
> And the bigger fact of he committed this offense two months after being released from prison. He was released from prison on December 19th, 2015. So every action he's ever taken proves that he's an absolute danger to society. And that the state would submit that he should be treated as a habitual offender and have an increased maximum punishment based on the danger that he presents to society."

(Appendix C, pgs. 5-6.)

The state further argued at length that Petitioner's alleged membership in ZMF was an indication that he is "a future danger to the community"; consequently, Petitioner deserved a longer sentence because he was a gang member. The state submitted that Petitioner's gang membership showed an inclination to commit future crimes and that ZMF engaged in crime and argued:

> "But in addition to all of his history, we have somebody who's a documented gang member, who - as the Court's well aware, this Court has sat in a criminal realm for a while now, and understands, and I'm sure has seen and heard testimony about gangs and what - I guess kind of the premise of what they're about.
>
> And I'm not going to do [sic] a normal road of what may or may not occur and future crimes, but the fact of the matter is, we've got somebody who's pledging to a prison gang. I don't think that they're Girl Scouts selling cookies on the side of the street. You know, this is somebody who has taken to a life of crime and a life of disregard."

(Appendix B, pg. 6.

At the conclusion of arguments, the court pronounced sentence and stated in pertinent part:

> The predicate acts for both PRR, prison release reoffender, have been established. The predicate for habitual felony offender have also been established. The only thing that has to be determined with respect to the habitual felony offender is whether I consider [Petitioner] a danger to the community.
>
> Based on the evidence presented, his record, I find that he is a danger to the community. And therefore my sentence will be as follows:
>
> I sentence [Petitioner] to thirty years in the Department of Corrections with credit for one thousand one hundred and forty-five days time served.

Appendix C, pgs. 5-6).

Petitioner appealed his judgment of conviction and sentence to the Fourth District Court of Appeal of Florida. There, Petitioner argued that the trial court violated Petitioner's due process rights to a fair trial and to cross-examine Officer Sohn regarding relevant evidence to assist the jury to understand Officer Sohn's motive and bias to lie or color his trial testimony so the jury could assign proper weight to Officer Sohn's testimony. The state cross appealed contending the trial court wrongly dismissed the fleeing or eluding count on double jeopardy grounds. The Fourth DCA denied Petitioner's contention "without discussion"[3] and granted the state's cross-appeal and reinstated Petitioner's fleeing and eluding conviction

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[3] Although the appeal court issued a written opinion, Petitioner could not have sought review in the Florida Supreme Court because the court affirmed the underlying issue to this petition "without discussion". See *Eugene v. State,* 311 So.3d at 872.

with instruction to resentence Petitioner accordingly. *Eugene v. State*, 311 So.3d 871 (Fla. 4th DCA 2021).

Pursuant to the appellate court's decision in Petitioner's direct appeal, a resentencing hearing was held on October 7, 2021, on the fleeing and eluding count before the same judge. There, the state requested that the trial court to sentence Petitioner to 124.35 months, consecutive to his thirty (30) years Habitual Felony Offender sentence for Count 1. Defense counsel requested fifteen (15) years sentence for Count 2, concurrent with Count 1. Id. at 7.

Prior to pronouncing sentence at Petitioner's resentencing, the trial court expressly stated that it was considering the arguments made at both this sentencing and Petitioner's prior sentencing then pronounced sentence as follow:

> "At this time, based on the evidence that was presented at trial, arguments made today and at the previous sentencing hearing, I am going to sentence petitioner on Count II, guilty of Fleeing and attempting to elude, injury or death, to the score sheet of 124.350 months."

Id.

On appeal from resentencing, Petitioner argued that the resentencing court's consideration of unsubstantiated allegations of his affiliation with the Haitian prison gang ZMF violated the First and fundamental due process clause of the Fourteenth Amendments to the United States Constitution warranting de novo resentencing on the fleeing and eluding count.

On July 14, 2022, the Fourth District Court of Appeals of Florida per curiam affirmed Petitioner's appeal without a written opinion. Petitioner did not file a motion for rehearing and this petition ensues.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari because Florida Statute § 775.084 as applied is unconstitutional where the sentencing court relied on unsubstantiated allegations or factors at sentencing. The trial court limiting cross-examination of state key witness, a police officer, violates Sixth and Fourteenth Amendment rights to cross-examination and fair trial. Further, the decisions of the state court of last resort is erroneous and contrary to and in conflict with this Court's decisions in *Dawson v. Delaware*, 503 U.S. 159 (1992), *Chambers v. Mississippi,* 410 U.S. 284 (1973), and *Davis v. Alaska*, 415 U.S. 308 (1974), which presents a timely opportunity for this Court to resolve such conflicts. While it is not this Court's duty to right every error, its failure to address these conflicts will allow the state court to propagate its erroneous and conflictive decisions. Hence, this Court should seize this timely opportunity to provide clear guidance on these important constitutional issues.

I. Florida's Habitual Felony Offender Statute § 775.084, as Applied, is Unconstitutional.

It is well-settled that Due process requires that factual determinations at sentencing be supported by a preponderance of the evidence. *McMillan v. Pennsylvania*, 477 U.S. 79, 91; 106 S.Ct. 2411, 2419 (1986). It is also well established that "the First Amendment protects an individual's right to join groups and associate with others holding similar beliefs." *Dawson v. Delaware*, 503 U.S. 159, 163 (1992). Equally well established is that "the Constitution does not erect a per se barrier to the admission of evidence concerning one's beliefs and associations

at sentencing simply because those beliefs and associations are protected by the First Amendment." Id. 165; see also *United States v. Abel*, 469 U.S. 45, 105 S.Ct. 465, 83 L.Ed.2d 450 (1984) (Holding evidence admissible to show bias, even assuming that membership in the organization was among the associational freedoms protected by the First Amendment).

Here, in Petitioner's first sentencing hearing, the prosecution sought harsher Habitual Felony Offender sentence, pursuant to Florida Statute § 775.084, based in part on Petitioner's alleged membership in the Haitian prison gang ZMF. In support, the prosecution relied on merely a piece of paper —recovered from Petitioner's previously assigned jail cell, well after he had moved from that jail cell— and a "Zoe" tattoo on Petitioner's arm. The prosecution failed to present any evidence, testimony, or admission to substantiate its allegation that Petitioner is in fact a member of the Haitian prison gang ZMF. Additionally, the prosecution failed to establish any nexus between the Petitioner's convictions —vehicular homicide and fleeing or alluding— and Petitioner's alleged membership in ZMF. Further, the prosecution failed to establish that ZMF has committed or endorsed any unlawful or violent acts. Hence, the allegation of Petitioner's membership in ZMF was unsubstantiated and irrelevant to prove that Petitioner is a danger to the community.

Furthermore, at resentencing, the resentencing court implicitly relied on the same violative factor in resentencing Petitioner on Count II and stated:

> "At this time, *based on the evidence that was presented at trial,* ***arguments made today and at the previous sentencing hearing,*** I am

> going to sentence petitioner on Count II, guilty of Fleeing and attempting to elude, injury or death, to the score sheet of 124.350 months."

Therefore, Florida's Habitual Felony Offender Statute § 775.084, as applied, is unconstitutional where the court, sentencing and resentencing, considered Petitioner's *unsubstantiated* alleged ZMF affiliation in his sentencing and resentencing proceedings in violation of his First and Fourteenth Amendments to the United States Constitution where such evidence has no relevance to Petitioner's convictions for vehicular homicide and fleeing or alluding and the prosecution failed to substantiate Petitioner's alleged ZMF membership "by a preponderance of the evidence" as due process requires. Consequently, this Honorable Court should seize this opportunity to correct the state court's contrary and conflictive decision to preserve uniformity with its decision in *Dawson v. Delaware*, 503 U.S. 159 (1992).

II. The State Court's Decision is Erroneous and in Conflict with this Court's Decisions in *Chambers v. Mississippi,* 410 U.S. 284 (1973), *Davis v. Alaska,* 415 U.S. 308 (1974) and its Progeny.

It is well established that "the right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process." *Chambers v. Mississippi,* 410 U.S. 284, 294 (1973); see also *Davis v. Alaska,* 415 U.S. 308 (1974).

In *Delaware v. Van Arsdall,* 475 U.S. 673 (1986), this Court held:

> "The Confrontation Clause of the Sixth Amendment guarantees the right of an accused in a criminal prosecution 'to be confronted with the witnesses against him.' The right of confrontation, which is secured for

> defendants in state as well as federal criminal proceedings 'means more than being allowed to confront the witness physically.' Indeed, [t]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination. ***Of particular relevance here, '[w]e have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.***'"

Id. at 678-79. (internal citations omitted).

The Court further held that:

> "Trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. [...], 'the Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'"

Id. at 679. (internal citations omitted).

Here, the trial court's blanket exclusion of Officer Sohn's proffered testimony regarding the Boynton Beach Police Department's policy concerning high speed chase to expose to the jury Officer Sohn's motive and/or bias to color his testimony violated Petitioner's due process rights, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitutions, to a fair trial and to confront the witness against him. Such testimony was especially relevant to show officer Sohn's motive, and/or bias to color his testimony, or lie because his reckless action, in this case, blatantly violated the Boynton Beach Police Department's policy concerning high speed chase which may result in an internal affairs investigation for such violation and culminate to his termination from the Boynton Beach Police Department.

Furthermore, it is axiomatic that a police officer is generally regarded by the jury as disinterested and objective and therefore highly credible. Here, Officer Sohn, a police officer, was the prosecution's key witness who took the witness stand clad in the color of his decorated uniforms to testify regarding his seventeen plus years as a police officer. Hence, Petitioner should have been allowed to cross-examine Officer Sohn regarding the Boynton Beach Police Department's policy concerning high speed chase which would have exposed Officer Sohn's many violations of the Boynton Beach Police Department's policy concerning high speed chase as well as past dispositions of investigations of Officer Sohn and potential adverse consequences of his reckless action in this case. Had the jury been apprise of such testimony, they would have realized Officer Sohn's bias and/or motive to color his testimony or even lie because he may lose his job due to his history of violations during his employment at the Boynton Beach Police Department, including his reckless action in this case, and would have weighed Officer Sohn's testimony differently. In fact, in August 2022, after an internal affairs investigation, Officer Sohn was fired from the Boynton Beach Police Department for violating the department's policy regarding high speed chase in this case and a subsequent case involving death. Consequently, the trial court's blanket prohibition against exploring and exposed Officer Sohn's motive and/or bias through cross-examination regarding the Boynton Beach Police Department's policy concerning high speed chase violated Petitioner's due process rights to a fair trial and to confront the witness against him guaranteed by the Sixth and Fourteenth Amendments to the

United States Constitution; and the state court's decision is erroneous and in conflict with this Court's decisions in *Chambers v. Mississippi,* 410 U.S. 284 (1973), and *Davis v. Alaska*, 415 U.S. 308 (1974) and its progeny.

In sum, Florida's Habitual Felony Offender Statute § 775.084, as applied, is unconstitutional where the sentencing court considered *unsubstantiated* allegation in a criminal sentencing proceedings in violation of the First and Fourteenth Amendments to the United States Constitution where such evidence has no relevance to the accused's convictions and the prosecution failed to prove such allegation "by a preponderance of the evidence" as due process requires. Further, the trial court's blanket prohibition against exploring potential bias of prosecution's key witness, a police officer, through cross-examination on relevant evidence infringes on the accused's due process rights to a fair trial and to confront the witness against him guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution; and is erroneous and in conflict with this Court's decisions in *Chambers* and *Davis* and its progeny.

CONCLUSION

Wherefore, based on the foregoing, the Honorable Court should grant this petition for a writ of certiorari.

Respectfully submitted,

B13960

LEX L. EUGENE, DC# B13960
Petitioner, Pro se

Date: September 26, 2022

No.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

LEX LUGARD EUGENE,
Petitioner,

versus

ATTORNEY GENERAL OF FLORIDA, Ashley Moody,
Respondent(s).

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that this Petition for Writ of Certiorari contains 4531 words on 18 pages, excluding the parts of the petition that are exempt by Supreme Court Rule 33.1(d). I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2022.