

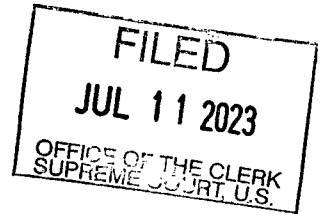
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IN THE
SUPREME COURT OF THE UNITED STATES

CODY J. KEY ----- PETITIONER

VS.

STATE OF FLORIDA ----- RESPONDENT

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

CODY J. KEY
19225 U.S. HIGHWAY 27
CLERMONT, FLORIDA 34715
(PRISONER PETITION)

QUESTION PRESENTED

WHETHER THE DUE PROCESS/NOTICE REQUIREMENTS OF A FEDERAL JUDICIAL CANON (RULE OF STRICT CONSTRUCTION) CAN BE ABROGATED BY A STATE LEGISLATURE BY CODIFYING THE JUDICIAL CANON?

LIST OF PARTIES

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 a follows:

Ashley Moody, Attorney General for the State of Florida.

RELATED CASES

1. ***Key v. State***, 348 So.3d 691 (Fla. 1st DCA 2022)
2. ***Key v. State***, SC2022-1540 (Fla. 2023)

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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.

OPINIONS BELOW

This case originates from State Court proceedings.

The opinion of the highest State Court to review the merits appears at (*Appendix A*) to the petition and is reported at **Key v. State**, 348 So.3d 691 (Fla. 1st DCA 2022), of the Southern Reporter;

The State trial court judgment and sentence documents appear at (*Appendix B*) to the petition and is unpublished;

The State Supreme Court decision denying discretionary review appear at (*Appendix C*) to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was April 17, 2023. A copy of that decision appear at (**Appendix C**).

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution guarantees that no citizen “be deprived of life, liberty, or property, without due process of law.” Amend. V, U.S. Const.

In terms of Criminal prosecutions initiated against citizens, the Sixth Amendment guarantees that a criminal defendant “be informed of the nature and cause of the accusation.” Amend. VI, U.S. Const.

These Constitutional Due Process/Notice requirements of the Fifth and Sixth Amendments apply to the States through Section 1 of the Fourteenth Amendment to the United States Constitution.

These fundamental Due Process/Notice provisions of the Federal Constitution are embodied in a judicial canon of statutory construction – “The rule of Strict Construction.”

This particular canon of Statutory Construction is the subject of this petition, based upon an asserted erosion of the rule by codifying it through a State Legislature pursuant to Section 775.021(1), Florida Statutes.

This codification process places the rule of Strict Construction strictly into a “***Double Jeopardy***” analysis by the State of Florida. See §775.021(4)(a)(b), Florida Statutes.

The Due Process/Notice requirements of the Fifth and Sixth Amendments have been repealed by implication through this codification process by the State of Florida.

STATEMENT OF THE CASE

On March 30, 2021, following jury trial, Petitioner Cody Key was convicted on a six (6) Count information charging him with the following: (Count I), burglary of a dwelling or structure with damage in excess of \$1000.00; (Counts II, III), burglary of a dwelling; (Counts IV, V), grand theft auto; (Count VI), trespass in a structure or conveyance.

On May 28, 2021, the trial court entered a judgment of conviction and sentence as to these Counts: (Count I), life imprisonment; (Counts II, III), forty (40) years imprisonment; (Counts IV, V) ten (10) years imprisonment, each Count to be served concurrently, entered in the Circuit Court of the Fourth Judicial Circuit, Duval County, Florida (*Appendix B*).

The First District Court of Appeal of the State of Florida affirmed the trial court with a written opinion in *Key v. State*, 348 So.3d 691 (Fla. 1st DCA 2022), issuing its mandate October 31, 2022 (*Appendix A*).

A petition seeking discretionary review was filed with the Florida Supreme Court, which was denied April 17, 2023, Florida Supreme Court Case Number SC22-1540 (*Appendix C*).

On August 18, 2019, William Schneider heard an urgent knock at the door of his home around 2:30 a.m.

Schneider armed himself and opened his front door. Petitioner Key stood at the doorstep and asked Schneider not to shoot. Key stated that he borrowed his grandmother's car, a Lexus, and got it stuck in the municipal park adjacent to

Schneider's house. That night, the park was quite wet. The Lexus was stuck in the mud almost up to the floorboard. Schneider went with Key to the park, and Key asked him to help get the Lexus out of the mud. Schneider obtained a boat rope, drove his truck to the park, and positioned the truck to tow the Lexus out. Key crawled under the Lexus and attached the rope, getting muddy in the process. Schneider and Key then attempted to remove the Lexus. After several attempts, the rope broke. Schneider told Key that a tow truck would be necessary to remove the Lexus. Schneider then went back to his home.

A short time later, Schneider saw flashing lights of a tow truck. He went outside and watched a tow truck, driven by Key, attempting to get to where the Lexus was stuck in the mud. However, the tow truck, too, got stuck. Schneider spoke with Key again, who asked for two shovels. Schneider gave Key the shovels. However, by this point, Schneider had become suspicious and called the police. Later that morning, law enforcement came to Schneider's home and asked him to help identify a suspect. At a show-up, Schneider identified Key (*Trial Transcript*, p. 230).

Jacksonville, Florida Sheriff's Deputy Paul Dew testified to investigating a burglary alarm at Allen's towing on August 18, 2019. When Dew arrived, he saw a chain-link gate lying in the roadway that appeared to have been pushed outward, away from the Allen's Towing property. There was also a license plate by the gate. The gate was from a metal chain-link gate lying in the roadway that appeared to have been pushed outward, away from the Allen's Towing property. There was also

a license plate by the gate. The gate was from a metal chain-link fence at Allen's Towing. Dew later went to Schneider's residence and saw the Allen's Towing tow truck stuck in the mud. The front license plate was missing from the tow truck (*Trial Transcript, p. 176-79*).

The owner of Allen's Towing, Kenneth Rozier, testified that the towing vehicles were kept at the property enclosed by the gate at Allen's Towing. The property had an office building. Rozier testified that one of his tow trucks was taken from the property and driven through the front gate on August 18, 2019. The gate was in working order before August 18, but sustained damage from the truck. Rozier testified that the gate was functional after being bent back into shape. However, the damage had not otherwise been repaired by trial. (*Trial Transcript p. 244-245; 248*).

An employee of Hercules Fence, Bradley Allen, testified to estimating the value of the fence repair at Allen's Towing. The estimate for repair amounted to \$1,800.00 (*Trial Transcript, p. 253*).

A different estimate, totaling \$2,500.00, was proffered by a different vendor (*Hearing Transcript, p. 17*).

At trial, defense counsel objected to this procedure as speculation to the fence's repair cost estimate (*Trial Transcript p. 258*). At trial, Key moved for a judgment of acquittal on Count I, arguing that the State had failed to prove that the caused damage to the structure over \$1,000.00, that the State only showed that there was damage to the fencing, which does not constitute the structure or property within

the structure (*Trial Transcript*, p. 294-295). The trial court denied the motion (*Trial Transcript*, p. 296-297), (*Appendix D*).

At a pretrial motion to dismiss the information as to Count I, counsel for Mr. Key argued that the \$1,000.00 damage threshold under the burglary statute was determined by the “fair market value” of the fence at the time it was originally installed, not its replacement cost at the time of the offense (*Hearing Transcript*, p. 18-20).

On appeal, the First District Court of Appeal opined, when affirming the trial court: “we find that the State presented sufficient evidence to allow the jury to conclude that [Petitioner] Key caused over \$1,000.00 in damage to the structure during the burglary of Allen’s Towing Service.” *Key*, 348 So.3d at 695: “***There do not appear to be any Florida cases that directly address whether the fence is itself part of the curtilage.***”¹

¹ This logic by the appellate court exemplifies the necessity of filing for certiorari review in the Supreme Court: the erosion of the due process/notice requirements of the Fifth and Sixth Amendments specified in the Rule of Strict Construction. This ambiguity in the burglary statute at issue, “*curtilage*” was to be resolved favorably to Mr. Key pursuant to that rule.

REASONS FOR GRANTING THE PETITION

The Rule of Strict Construction, also referred to as “The Rule of Lenity” is essentially a judicial canon of Statutory interpretation rooted in the fundamental due process/notice requirements of the Fifth Amendment to the United States Constitution.

See Dunn v. United States, 442 U.S. 100, 112 (1979)(“This practice [rule of Strict construction] reflects not merely a convenient maxim of Statutory Construction. Rather, it is rooted in fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited”)(citing *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *United States v. Harris*, 347 U.S. 612, 617 (1954); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939); *McBoyle v. United States*, 283 U.S. 25, 27 (1931)).

The Florida Legislature has codified this Federal Canon of Statutory Construction by enacting Section 775.021(1), Florida Statutes, which provides: “The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused” **§775.021(1), Fla. Stat. (2023)**.

Upon first impression, this codifying of a Federal judicial Canon of Statutory Construction simply elevates the Canon to a level of State law, in terms of due process/notice requirements mandated by the **Fifth and Sixth Amendments** as applied to the States through the Due Process Clause of the **Fourteenth Amendment** to the United States Constitution.

See Conage v. State, 346 So.3d 594, 602-03 (Fla. 2022)(Answering a certified question for State law from the Federal Court of Appeal’s for the Eleventh Circuit):

“Through Section 775.021(1), Florida Statutes, the Legislature has elevated lenity from a Canon of Constructive to a Statutory Command. That Statute tells us to construe provisions in the criminal code strictly. And the Legislature further instructs that, when the language of a Statute is susceptible of differing constructions it shall be construed most favorably to the accused. In Florida, the rule of lenity is a default rule that comes into play at the end of the interpretive process.” 346 So.3d at 602-03.

However, the State of Florida has construed this Codified Canon of Statutory Construction not in the context of the notice requirement of the *Fifth and Sixth Amendments*, but, rather, in a Double Jeopardy analysis also found in the Fifth Amendment to the United States Constitution. *See* Florida statutes Annotated Section 775.021(1); *see also Stephens v. State*, 331 So.3d 1241 (Fla. 1st DCA 2022). A further reading of Section 775.021, in pari materia, verifies this repeal by implication of the notice requirement found in the *Fifth and Sixth Amendments* specifically, Section 775.021(4)(a)(b), Florida statutes, provides:

(a) Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the Sentencing judge may order the Sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading of the proof adduced at trial.

(b) The intent of the legislature is to Convict and Sentence for each Criminal Offense committed in the course of one criminal episode or transaction and *not to allow the principle of lenity as set forth in subsection (1) to determine legislative intent. Exceptions to this Rule of Construction are:*

1. Offenses which require identical elements of proof.
2. Offenses which are degrees of the same offense as provided by Statute.
3. Offenses which are lesser offenses the Statutory elements of which are subsumed by the greater offense.

§775.021(4)(a) (b), Fla. Stat. (emphasis added); CF. *Blockburger v. United States*, 284 U.S. 299 (1932).

To demonstrate how Petitioner Cody Key was affected by this implied repeal of the Due Process/Notice requirement of the Fifth and Sixth Amendments, by State Codification of the Rule of Lenity, Petitioner first goes to Florida’s burglary statute, Section 810.02 which provides that burglary is defined as “[e]ntering a dwelling, a structure, or a conveyance with thee intent to commit an offense therein . . .” *§810.02(1)(b)1., Fla.Stat. (2019)*.

A “structure” in the State of Florida, is defined as “a building of any kind, either temporary or permanent, which has a roof over it, **together with the curtilage thereof**” §810.011(1), Fla.Stat. (2019) (emphasis added).

Because there is no Statutory definition of Curtilage, Florida uses the common law meaning of the word. *See State v. Hamilton*, 660 So.2d 1038, 1041-45 (Fla. 1995). In determining the common law definition of “*curtilage*” Black’s

Law Dictionary defines that term as meaning “the land or yard adjoining a house, usually *within an enclosure*.” (Tenth Ed.)(emphasis added).

In this instance, Mr. Key received a term of life imprisonment for purportedly causing over \$1,000.00 damage to the “**enclosure**” of the “land or yard adjoining” the structures located at Allen’s Towing, not to any property found within the enclosure:

Pursuant to §810.02(2)(c)2., Florida Statutes, the State was required to prove that Mr. Key “[caused]” damage to the dwelling or structure, or *to property within the dwelling or structure* in excess of \$1,000.00 §810.02(2)(c)2., Fla. Stat. (2019)(emphasis added).

The State appellate court affirmed the trial court’s finding that the damage to the enclosure itself, not the “*property within*” the enclosure, as required pursuant to the enhancement provision of section 810.02(2)(c)2 qualified Mr. Key to receive an enhanced penalty of life imprisonment of the offense of burglary of a dwelling or structure with damage in excess of \$1,000.00, based upon the estimated damage to the enclosure. (*See Appendix A*).

Furthermore, the threshold \$1,000.00 dollar amount finding necessary to impose the enhanced sentence was determined by introducing two (2) different estimates from different fence companies to replace the damaged portions of the enclosure at the replacement cost at the time of the offense, the year 2019, not the “Fair Market Value” of the portion of the enclosure *at the time it was originally*

installed, as required by Florida law. *See Negron v. State*, 306 So.2d 104, 108 (Fla.1974); **see also** 13 Fla.Jur.Evidence §172. (emphasis added).

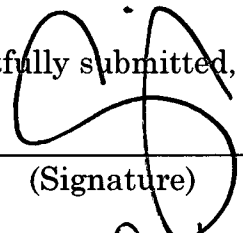
In sum, Mr. Key was “forced to speculate” *Dunn*, 442 U.S. at 112, whether he violated the burglary sentencing enhancement provisions of Section 810.02(2)(c)2., Florida Statutes, where his third degree felony offense of burglary was enhanced to first degree felony punishable by life imprisonment, based upon the implied repeal of the Due Process/Notice requirements of the Fifth and Sixth Amendments to the United States Constitution, a result of the Florida Legislature codifying the Rule of Lenity, *a Federal Canon of Statutory interpretation*.

It is for these reasons, the Writ of Certiorari should be granted. Please.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,



(Signature)

Cody J Key, pro se
(Name)

07 - 10 - 2023
(Date)