No. 23-5480

IN THE

SUPREME COURT OF THE UNITED STATES

JESUS CAPELLAN MORE - PETITIONER

VS.

STATE OF FLORIDA - RESPONDENT

ON APPEAL FROM THE 2ND DISTRICT COURT OF APPEALS, STATE OF FLORIDA

PETITION FOR A WRIT OR CERTIORARI

Jesus C. More DC# 167496
South Bay Correctional
& Rehabilitation Facility
600 U.S. Highway 27 South
South Bay, Florida 33493
561-992-9505

QUESTION(S) PRESENTED

1.) IN LIGHT OF ALEXANDER HAMILTON'S ASSERTED SEPARATION OF POWERS PRINCIPLES IN "THE FEDERALIST PAPES" NO. 78 AND 81, IS TRIAL PROCEDURAL JURISDICTION AN INSEPERABLE ASPECT OF SUBJECT MATTER JURISDICTION WHEREAS LEGISLATIVELY ENACTED PROCEDURAL RULES OF COURT MUST BE STRICTLY ADHERED TO IN ORDER FOR A COURT TO OBTAIN JURISDICTION TO DECIDE A CASE?

2.) IS A LEGISLATIVELY MANDATED COMPETENCY HEARING DEPRIVATION THE TYPE OF PROCEDURAL RULE DEPRIVATION THAT DIVESTS THE COURT OF JURISDICTION TO ACCEPT A PLEA AND/OR ADJUDICATE A CASE?

3.) CAN APPELLATE "PROCEDURAL RULE BARS" BE USED TO AVOID ADDRESSING "PROCEDURAL RULE" DEPRIVATION CLAIMS THAT QUESTION THE TRIAL COURTS JURISDICTION TO ADJUDICATE THE CASE TO BEGIN WITH?

4.) IS AN ORDER SENDING THE CASE BACK TO THE TRIAL COURT TO FOLLOW THE PROPER PROCEDURE THE ONLY REMEDY FOR A COMPETENCY HEARING PROCEDURE DEPRIVATION?

LIST OF PARTIES

[x] All parties **do not** appear in the caption of the case of 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:

1. Athan, Deeann, Public Defender, 13th Judicial Circuit

2.Cerese, Crawford Taylor, Florida Assistant Attorney General

3. Casanueva, Honorable Appellate Judge, 2nd District Court of Appeals

4. Harb, Jalal, Assistant State Attorney

5. Pompouto, Honorable Circuit Judge, 13th Judicial Circuit

6. Rossomondo, Suzy, Assistant State Attorney

7. Rothstein, Youakim, 2nd District Court of Appeals

8. Sisco, Michelle, Honorable Judge, 13th Judicial Circuit

9. Stuart, Cindy, Clerk, Tampa Office, Florida Attorney General

10. Tomasino, John ., Clerk, Florida Supreme Court

11. Villanti, Honorable Appellate Judge, 2nd District Court of Appeals

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TABLE OF AUTHORITIES CITED

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

[X] 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 unpublished.

The opinion of the Thirteenth Judicial Circuit court appears as Appendix B to the petition and is unpublished.

The opinion of the State Supreme Court appears at Appendix D to the petition and is unpublished.

JURISDICTION

[X] For cases from **state courts**:

The date on which the highest state court decided my case was March 22, 2023.

A copy of that decision appears at Appendix **A**

The date on which the state trial court decided my case was July 7, 2022.

A copy of that decision appears at Appendix **B**

The date on which the state supreme court decided my case was May 16, 2023.

A copy of that decision appears at Appendix **D**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1.) Article IV Section 4, United States Constitution "The Guarantee".
"The United States shall guarantee to every state in this Union a Republican form of government,"

2.) Republican Government principles of Separation of Powers;

"The Federalist Papers" No. 78 "... *to avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them...*" And in Paper No. 81, at par. 8: " *A legislature, without exceeding its province, cannot reverse a determination once made in a particular case; though it may prescribe a new rule for future cases. This is the principle and it applies in all its consequences, exactly in the same manner and extent, to the state governments, as to the national government now under consideration. Not the least difference can be pointed out in any view of the subject.*"

3.) 14th Amendment, Section 1;

" ...nor shall any state deprive any person of life, liberty...without Due Process of Law..."

4.) F.S. 916.12(b) ...

"The court shall enter its order so findings of competency and proceed..."

(See also F.S. 916.13, Fla.R.Crim.Proc. 3.212(b), Fla.R.Crim.Proc. 3.216)

STATEMENT OF CASE AND FACTS

Jesus More's counsel filed an insanity defense notice triggering the state statutes F.S. 916.12, and F.S. 916.13 requiring psychiatric evaluations and a competency hearing before the court can proceed. Judicial rules Fla.R.Crim.Proc. 3.212, and Fla.R.Crim.Proc. 3.216, and Fla. Judicial Admin. Proc. Sect. VIII, all clearly define the requirement for a competency hearing where the court can record its reasoning for findings of competency so that an appellate court has a record for review. This hearing was not performed before the court accepted the mentally challenged defendants nolo contendere plea. When the defendant recovered from the trauma of killing the woman he loved he believed he was guilty only of a crime of passion and wanted to retract his nolo contendere plea for first degree murder because he was in no competent state of mind to tender it. He filed a habeas corpus claim that the procedural deprivation rendered his plea illegal but the trial court ruled that his claim should have been raised on direct appeal and refused to address the ground. Mr. More argued to the appellate court that there was nothing preserved for him to argue on direct appeal because no record was established for review according to procedural law. The court Per Curium Affirmed the lower court's ruling. This decision is in direct conflict with Alexander Hamilton's assertions that under a republican form of government proposed the judicial branch would be bound down by strict rules governing

every case that came before them. [1] The courts decisions in this case are the result of their refusal to recognize their legal obligation to strictly adhere to procedural rules. The courts used an appellate procedural rule bar to avoid addressing a trial procedural rule deprivation claim. This is a blatant violation of the Due Process of law.

FLORIDA'S THIRD SPECIES OF JURISDICTION
THE FLORIDA BAR JOURNAL; MARCH 2008
By Judge Scott Stephens

As a practical matter, rules of procedural jurisdiction have more in common with routine procedural law than with subject matter jurisdiction. If a procedural error is fundamental it can be raised at any time. And though procedural jurisdiction is not subject matter jurisdiction it remains a legitimately jurisdictional concept in that it directly addresses the Court's authority to hear and decide a dispute.

Jurisdiction of subject matter means that the Court's authority over a particular incident, transaction, or circumstances that constitutes the subject matter of the case has been activated, as required by "Procedural" Law. The applicable procedural law affords the Court a green light to proceed under the circumstances. This is a distinct category in Florida under the Subject Matter Jurisdiction Doctrine. All that remains is to formally recognize procedural jurisdiction as a distinct existence within the Doctrine.

Subject Matter Jurisdiction, based upon a fundamental procedural law defect, at any time, voids the judgment ab initio.

A Court's authority to render the judgment was identified as one of the three judicial elements as long ago as **Arcadia Citrus...V. Hollingsworth**, 185 So. 431 @ 433 (Fla. 1938), with the other two being subject matter jurisdiction and personal jurisdiction. Along with subject matter jurisdiction was the distinction of procedural jurisdictional concepts. See: **T.D. V. K.D.**, 747 So2d 456 (Fla. 4 DCA 1999), which recognizes "Case Jurisdiction" under subject matter or personal jurisdiction. And under **Garcia V. Stewart**, 906 So2d 1117 @ 1123 (Fla. 4 DCA 2005), the court revived the Lovett notion that procedural defects can overcome bars as they constitute essential aspects of subject matter jurisdiction.

The Lovett Rule Doctrine that a court's jurisdiction must be properly invoked before it can be exercised is still good law today. **Lovett V. Lovett, 112 So 768 @776 Fla. 1927)**

[1] Article IV, Section 4; "The Federalist Papers" No. 78 and par. 8 of No. 81

REASON FOR GRANTING PETITION

Most of our Honorable legislators are chained by conscience to the thankless task of creating rules the majority of their constituents will agree to live under. They show up every day, rain or shine, to fight the good fight. But moral dilemmas can exist within laws that are crafted narrowly enough to protect people, but so broadly that they ensnare the innocent. Luckily we have a trial system where the jury protects the public when legislators err. Jurors can simply refuse to convict in the face of guilt to prevent persecution.

This is the reason why the American system of due process of law is the envy of less fortunate people around the globe. The reason we must jealously protect our system from erosion. And why we need legislators who, by virtue of their personal integrity, understand that the only sound "louder" than their call to duty is the "whisper" of someone suffering injustice from their errors.

If people were angels we wouldn't need laws; but laws can cut two ways. Laws like the Florida Burglary Statute that transforms a misdemeanor trespass into a felony burglary if a person "enters or attempts to enter a residence with the intent to commit an offense therein". Hundreds of first time offenders are charged and convicted of burglarizing their own homes in violation of a domestic battery restraining order because of this overbroad terminology. Battery may seem like a formidable offence but in Florida

battery means unwanted touching. Thus, ostensibly citizens are imprisoned for offending someone's sensitivities.

Citizens like Miami resident Gerard Bonet whose love interest violated the domestic battery restraining order herself by calling him to fix her mother's roof. After helping her she once again ended the relationship. When this heartbroken SOB drunkenly showed up banging on her apartment door at 3 AM to speak with her, she called the police. They promptly arrested Mr. Bonet for attempted Burglary of an occupied dwelling; a second degree felony, even though he never attempted to enter the home.

At his trial the prosecutor told the jury that the violation of the restraining order was the intended offense needed to qualify for the crime of Burglary, and because he would've entered if the door were unlocked the attempt was justified under the law. Mr. Bonet was convicted and sentenced to 10 years in prison and 5 years' probation at a cost to taxpayers of over $270,000.00. If the jury knew of the difference in penalties between attempted burglary of an occupied dwelling (15 years in prison) versus trespassing (60 days in jail) they assuredly would never have voted guilty for it!

The recent case of Ron Rubino is another example of our justice system gone rogue. He was exercising his legal right to obtain possession of an abandoned, uninhabitable trailer home under Florida Statute §95.18, Adverse possession law. Under sect. F.S.§95.18 (9) and (10) of this law it clearly states that: " trespass is the only

criminal charge that can be pursued if a person occupies or attempts to occupy a residential structure solely by claim of adverse possession, prior to making a return to the property appraiser."

This law was enacted to help prevent blight from infecting residential neighborhoods. When Rubino was cleaning up the property the police came along and, even though he told them he was squatting under the adverse possession law, they arrested him for burglary because he stacked some of the junk he cleaned up in the back of a truck.

The owner of the abandoned property passed away and the relative who was tasked with cleaning out the personal possessions testified at trial that the only items left behind were discarded junk. Yet, the prosecutor instructed the jury that the "junk" property had value over $50.00 at a flea market, thus, theft was the intent that supported the charge of burglary. The appellate court upheld the conviction. Rubino is now serving a 15 year sentence for Burglary and petty theft for obeying the adverse possession law simply because the judge prevented a reasonable assessment of the actual crime by those tasked with determining guilt.[2]

As part of the preliminary jury instruction the judge informed them that they could face sanctions including jail if they didn't follow the law and rules he laid out. The final

[2] See: **Rubino v State** 6th DCA case no: 6D23-0180 (2023).

instruction forbid using sympathy, which is a nefarious way of preventing the use of reason. If Rubio's jury was properly instructed on the penalty in accordance with procedural law F.S. 918.10(1), they would have been encouraged to state emphatically; this is the line, this nonsense stops right here! They would've used their pardon powers to prevent injustice by not convicting him, or finding him only guilty of trespass.

And therein lies the root of the issue that is filling our state prisons with lengthy, unwarranted sentences. Criminal juries are censored, forbidden from receiving penalty instructions, even though the law mandates giving one. And then they are told they will be jailed if they don't obey the court's interpretation of the law. Would the average citizen, those who the laws are designed to protect, understand a restraining order is the kind of offence referenced in the burglary statute, or that cleaning up junk in an attempt to adversely possess a residence under the statute would make it a burglary? These are determinations a jury is supposed to make, not a judge!

Any credible civics instructor will explain that in our Republican Form of Government, as articulated by its Constitutional Framers, The courts cannot force juries to render verdicts in accordance with the judicial interpretation of a law. Verdicts are to be rendered in accordance with the juror's conscience. It's an individual assessment in accordance with case circumstances.

It's a shocking fact that Florida actually has a procedural law ordering trial judges to give juries a penalty instruction. An instruction meant to encourage the use of reason and common sense, but the Florida supreme court amended their corresponding rule to forbid doing so. We currently have a law and a rule in conflict. I was taught in civics class that in our Republican government the legislative authority predominated. What is going on in Florida? Are our legislators sleeping?

Criminal Procedure Law Chapter 900 to 925; section 918.10(1): "...The trial judge must instruct the jury on the penalty for the offenses charged".... and contradicting judicial rule 3.390(a), "...The trial judge must not instruct the jury on the penalty for the offenses charged..."

This law was first adopted in its entirety, [3] but then judicially amended because it encouraged jury pardons. [4] There now exists a conflict in violation of the due process of law. The state supreme court amended their rule regardless of the separation of powers principles that forbid doing so.

In America, under the principles of separation of powers, the courts are empowered to hold the law challenged beside the constitutional article invoked and decide if it is constitutional or unconstitutional, and after having done so the courts duty ends. The courts cannot abrogate duly enacted laws. Laws can only be amended by

[3] **In Re:3.390(a)**; 272 So2d 65(Fl 1971)
[4] **In Re:3.390(a** ;416 So2d 1126(Fl 1982); **In Re:3.390(a** 462 So2d 386(Fl 1984)

revisers Bills, repealed, or found unconstitutional in a court of law. But even then the courts can't obtain jurisdiction unless the law is challenged by someone with standing. The courts cannot strike down a law on their own volition. This would lead to chaos!

In its ruling the recommending committee complained the amendment was necessary to..." discourage that deplorable phenomenon known as a jury pardon." At the time Chief justice Boyd warned that it was improper because the rule was adopted from a law, but he was out-voted by the other justices who wanted to wrest control of state courts from the legislature. Obviously none of those justices read " The Federalist Papers " regarding the principles of separation of powers that specifically forbid legislating from the bench.

This power bestowed upon the court by the court has allowed Florida to lead the nation in the amount of prisoners serving life without parole sentences; nearly 14,000 and growing. A distinction that would be laudable if not for the suffering it causes. Not to mention the cost to taxpayers of over $27,000.00 annually per prisoner. A cost that grows exponentially as they age over 65 and require more medical care. This illegal practice of jury censorship has Florida's prison system on course to becoming the largest hospice chain in the world.

THE BOTTOM LINE

In a republican government the legislative authority necessarily predominates; period.

Nobody is saying the judiciary cannot create their own procedural rules,

as long as those rules are consistent with acts of Congress; period.

The judiciary can only declare acts of Congress unconstitutional. They cannot amend or alter laws in any way; period.

The Florida Supreme Court justices who voted to abrogate legislatively enacted rules committed an impeachable offense; period.

They simply did not have the jurisdiction to do so.

When the Oklahoma Supreme Court issued a stay of execution for convicted murderer Clayton Lockett, after his appeals were exhausted, Governor Mary Fallen issued an executive order overriding the stay to execute him on schedule. The legislature issued articles of impeachment against the Justices who voted for the stay because they violated separation of powers by acting after their jurisdiction expired. The court immediately reconvened and withdrew their stay. This is how the people protect themselves from judicial branch oppression.

This is justice; period.

The standard jury instruction threatening to jail any juror who violates the rules, and then stating that the rules forbid using sympathy, is dictating the role of the jury, and may in fact be abridging a defendant's 6th amendment right to their impartiality.

The courts cannot dictate the role of the jury; period.

Hmmmm.... Didn't the United States Supreme Court say in 1895 that defendants were entitled to verdicts of conscience? And didn't Antonin Scalia say in his 2004 Blakely dictum that the judiciary could not dictate the role of the jury? [5]

THE EMPIRE OF REASON:
(Why This Emperor Has No Clothes)

There's a big difference between hard core criminality and crimes committed as a result of a victim's culpability. This is essentially because most people behave in direct response to actions; they react to stimuli. If the victims hadn't been misbehaving or acting aggressively to begin with, the defendants wouldn't have responded the way they did. The charges and sentences are supposed to reflect the distinguishing characteristics of the criminal circumstances. For this reason the Florida legislature enacted the Criminal Procedure Law Chapter 900 to 925. Section 918.10(1), requires a penalty instruction to encourage the juror's to use their compassionate sense of empathy and reason in order to assure that prison sentences fit the circumstances of the crime. For instance:

[5] (See: **Sparf V U.S.** 156 U.S. 51 (1895); **Blakely V. Washington** 124 S.Ct. 2531 (2004).)

Mark Gibson was a first time offender. The 22 year old was on trial for a non-violent capital crime based solely on the victim accusation a crime even occurred. The jury was hesitant to convict solely on the accusation of an obviously hostile victim, but just to be safe they voted guilt, later claiming they did so just so the alleged victim could get the help they felt was needed. As they were exiting the courtroom they overheard the judge and prosecutor discussing the mandatory life sentence. They stopped in the middle of their departure and after consulting with each other, approached the judge: "Your honor did we just hear you correctly? Is this young man going to get a life sentence? Because if we had known that sentence we would not have voted guilty for it!"

Didn't the Florida Supreme Court call the penalty instruction a meaningless act they couldn't be forced to perform? [6]

A meaningless act indeed!

I believe it's safe to assume that Mark Gibson did not get the impartial verdict of conscience he is constitutionally entitled to. [7]

So, there you have it, the 64.5 year average sentence meted out by Florida Courts is directly related to the illegal abrogation of this duly enacted procedural law. This is why there are nearly 14,000 life without parole sentences. It's because our jurors are

[6] See: **Simmons V. State**, 160 So2d 626 (Fla. 1948).
[7] See: **Gibson v State**, 721 So2d 363 (Fla. 2 DCA 1998)

censored to discourage the use of their pardon powers by depriving them of their procedural right to know the penalty. They do not know they are sending their fellow citizens to languish suffering in prisons under excessive penalties they would never agree to. Thus, this court should recognize procedural jurisdiction as an inseparable part of the subject matter jurisdiction Doctrine. If legal procedures are not followed the court cannot get the "Green Lighted Jurisdiction" required to adjudicate the case; period!

This will allow State prisoner's procedural deprivation claims to be exempt from tolling provisions. This is so that Florida prisoners can bring these claims in Habeas Corpus petitions to the trial courts for relief at any time. It will enable prisoners like Mark Gibson to get relief under the Teague Retroactivity Doctrine, where if a procedure like the amended rule 3.390(a) is found to be invalid, and the invalidated procedure led to the conviction, or if the proper procedure would have resulted in an acquittal; relief can be retroactively applied. [8] This will encourage State Appellate Courts to do their duty and address the claims before they reach the federal courts.

The comments from the jury in the Gibson case, that if they had known the mandatory life sentence they would never have voted guilt for it, proves the procedure's deprivation was a substantive error. If the courts agree that the amended rule 3.390(a) contradicting the penalty instruction mandate is invalid, they can order a new trial where the right to the penalty instruction procedural law 918.10(1) would be enforced. In most

[8] **Teague v Lane**, 489 US 298 (1989).

cases the prosecutors will offer plea deals that would be commensurate with the circumstances of the crime. Thousands of prisoners serving unwarranted sentences, because of the over indicting efforts of prosecutors to gain leverage in plea negotiations, will finally see justice served.

(MEMORANDUM OF LAW)
SUMMARY OF ARGUMENT

Article IV, Sect. 4 of the United States Constitution guarantees every citizen of every State a Republican form of government. A government consisting of three separate branches; The Executive, Legislative, and Judicial. Our Constitution's Framers, Alexander Hamilton, James Madison, and John Jay, struggled against fierce opposition from Anti-Federalists who enjoyed power and wealth under the articles of confederacy. Pamphleteer Abraham Yates published Anti-Federalist Paper No. XI warning:

"Under the new government proposed there is nothing to prevent the judicial branch from seizing jurisdiction over any act of the legislature and nullifying it. With this power these unelected officials can mold the government into any form they pleased!"

In answer to this challenge James Madison noted in "The Federalist Papers" No. 51: "*In a Republican Government the legislative authority necessarily predominates*". Followed by Alexander Hamilton who published "The Federalist Papers" No. 78 asserting that:

"To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them".

This means judges must strictly adhere to rules of practice and procedure; period.

And in Paper No. 81, at par. 8: " *A legislature, without exceeding it's province, cannot reverse a determination once made in a particular case; though it may prescribe a new rule for future cases. This is the principle and it applies in all its consequences, exactly in the same manner and extent, to the state governments, as to the national*

government now under consideration. Not the least difference can be pointed out in any view of the subject."

This means the Federal and States legislatures have the power to make rules of court; period.

And at par. *9 "It may in the last place be observed that the supposed danger of judiciary encroachments on the legislative authority which has been upon many occasions reiterated is in reality a phantom... While this ought to remove all apprehensions on the subject it affords, at the same time, a cogent argument for constituting in the Senate a court for the trial of impeachments."*

This means if appointed judicial officials violate their oaths to obey the constitution they can be impeached; period.

In 1948 the Florida Supreme court stated: *"If the court is required to depart from its course, and discuss matters having no bearing on the true function of the jury, the trial is disconcerted and impeded. The penalty instruction is a meaningless procedure this court cannot be forced to perform."* [9]

The court's dictating the true function of the jury is no different than dictating the role of the jury. Claiming the legislature cannot force the court to perform a procedure because they feel its meaningless is wrong.

This opinion is antithetical to Republican Government separation of powers principles; period.

This opinion is an impeachable offense; period.

Nonetheless, in 1971 the legislature enacted the Criminal Procedure Law Chapter 900 to 925, at sect. 918.10(1) reaffirming the people's desire to codify a jury penalty instruction. Essentially enacting a "No, we really mean it" statute. The Supreme court

[9] See: **Simmons V. State**, 160 So2d 626 (Fla. 1948).

exercised their authority under Fl. Const. Art. V, Sect. 2(a): "The Supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review." The key word here being adopt. They adopted Sect. 918.10(1) in its entirety as their corresponding rule 3.390(a). [10]

In 1984 the Supreme court ruled to adopt the recommendation of their procedural rules committee and amended their rule 3.390(a) to forbid the penalty instruction because 17 out of 20 committee members felt it unfairly encouraged the jury to use their pardon powers. [11]They've bestowed upon themselves the power to adopt their own committee rules by distorting the Constitutions meaning so that they can nullify legislative acts contrary to separation of powers principles. This was made clear in their 2008 decision in Massey V David: "*Legislated procedural laws cannot encroach on this courts rule making authority.*" This case was wrongly decided. It is antithetical to republican government principles of separation of powers. This opinion was an impeachable offence; period.

The United States Supreme court determined that: "*We must hold firmly to the doctrine that in the courts of the United States it is the duty of the juries in criminal cases to take the law from the courts and apply the law to the facts as they find them to be from the evidence. From the courts rests the responsibility of declaring the law. Upon the jury the responsibility of applying the law so declared, to the facts as they, upon their conscience,*

[10] See: Re: 3.390(a), 272 So2d 65 (Fla. 1971).
[11] See: **In Re:3.390(a),** 416 So2d 1126 (Fla. 982): 462 So2d 386 (Fla. 1984); See: **Massey V David** 979 So2d 93 (Fla.2008).

believe them to be. A court cannot give advance instruction to find a verdict in accordance with the court's opinion of the law." [12]

In their dictum the justices noted how English courts would jail juries that didn't render verdicts in accordance with the courts opinions or until they rendered a unanimous verdict, a practice forbidden in America.

In this country the court declares a mistrial if the jury can't reach a unanimous decision. However, Florida judges threaten to jail any jurors who violate the rules of deliberation and then instructs them on the court's interpretation of the law. Laws are supposed to be self-evident by their language so that citizens of common intelligence can decipher their meanings. If it takes a lawyer to explain what behavior a law proscribes it is either unconstitutionally overbroad or void for vagueness.

Florida judges go further to tell jurors how to think and feel when deliberating. Is this any less intimidating than the forbidden act of threatening to jail jurors if they don't reach a verdict? Jurors need to know the penal jeopardy that would be the result of their decisions. This is the only leverage a defendant has to encourage his fellow citizens who have the sole power to convict him to base their verdicts upon contemporary standards of virtue and justice.

It was only recently that Governor Scott repealed the cohabitation statute that had been on the books since 1898. This law made living together out of wedlock punishable

[12] **Sparf v. US**, 156 US 51 (1895)

by a 500 dollar fine and 60 days in jail. Floridian's have the legal right to have their jurors informed of the jeopardy they would face as a result of a guilty verdict under this Draconian law, or any law! They could find innocence in the face of guilt to reflect their moral sense of justice based upon their contemporary community standards. We must not forget that it is the jury, once duly sworn and seated, that has the sole power to do so.

Americans escaped the perplexities over which rights they were individually entitled to --Natural Law or English Common Law-- by giving two rights pre-eminent importance. If the right to representation and to trial by jury were left to operate in full force, they would shelter nearly all other rights and liberties of the people. Meaning the people must maintain control in two forums: the jury box and the ballot box.

Justice Antonin Scalia articulated in the dictum of Blakely:

"The very reason the framers put jury trial guarantee into the constitution is that they were unwilling to trust government to mark the role of the jury... the 6th amendment by its terms is not a limitation on judicial power, but a reservation of jury power. It limits judicial power only to the extent that the claimed judicial power infringes on the province of the jury. The court cannot force a jury to render a verdict against their conscience based upon the court's opinion of the law." [13]

Compare these legal principles to the Florida supreme court's concepts of a republican form of government and the judicial branch power to abrogate laws. As they stated in the Simmons dictum;

[13] (Thomas Greene: Verdict According to Conscience, Perspectives on the English Criminal Trial By Jury; 1200 to 1800, Chicago 1985.); **Blakely v Washington**, 124 Sct. 2531 (2004)

"If the court is required to depart from its course and discuss matters having no bearing on the true function of the jury, the trial is disconcerted and impeded. The penalty instruction is a meaningless procedure that this court cannot be forced to perform." [14]

And the dictum of Massey: *"Generally the legislature is empowered to enact procedural law. Statute 57.01(2) is a procedural law that impermissibly encroaches on this courts rule making authority."*[15]

The Florida constitution gives the supreme court the power to adopt rules of court, not create them! This claimed authority does not exist! The Simmons court is not only committing the forbidden act of marking the role of the jury but challenging the authority of the legislature to enact rules of court as well..

The Simmons case calling the penalty instruction a meaningless act was wrongly decided. The court's decision places the Florida judicial branch in opposition to Alexander Hamilton's separation of powers principles which he clearly defined:

" No man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer today." [16] And: *"... to avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them..."*[17]

The federal courts are obligated to correct the Florida supreme court's obvious encroachments onto the legislative branches powers to enact rules of court in this manner by virtue of the power bestowed in the United State Constitution's Art. IV, Sect. 4's guarantee to a republican form of government.

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[14] Simmons V State, 160 So2d 626,(Fl. 1948)
[15] Massey V David 979 So2d 93 (Fla. 2008):
[16] "THE FEDERALIST PAPERS": No. 78 at paragraph 19 ":
[17] par. 21

The mandate of judicial compliance to procedural rules gives weight to the procedural jurisdiction concept as a principle of subject matter jurisdiction in that the courts authority over a particular incident, transaction or circumstance that constitutes the subject matter of the case must be activated as required by procedural law, in order to give it the green light to proceed. In the absence of that green light the court loses the jurisdiction to adjudicate ab initio. [18]

Justice Clarence Thomas equated the standard for competency for pleading guilty or waiving the right to counsel with the competency standard for standing trial, and in "44 Liquormart" showed his willingness to abandon precedent. In fact, late Justice Antonin Scalia stated: *"Justice Thomas doesn't believe in stare decisis, period. If a constitutional line of authority is wrong, he would say 'Let's get it right'."* With his willingness to reexamine constitutional doctrines, including the "Political Question Doctrine" that seems to attach to any Art. IV Sect. 4 claims, this court would be well within its jurisdictional authority to rule on this claim presented. [19]

Antonin Scalia was very vocal with his theories that constitutional language should be interpreted according to the original meaning the relevant words had when they were enacted into law. His common sense approach is required in cases such as this where trial rules are disregarded but appellate rules are strictly adhered to.

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[18] Garcia v Stewart, 906 So2d 1117(4DCA 2005)@1123.

[19] Scott Douglas Gerber, First Principles: The Jurisprudence of Clarence Thomas. (2002): Godinez V. Moran (1993): "Originalism: The Lesser Evil" A Matter of Interpretation. Antonin Scalia 1988 lecture.; Federal Courts and The Law (1997); "The Rule of Law is a Law of Rules"; (1989 article)

Tunis Wartman declared in his 1800 Treatise concerning censorship:

"Society isn't the instrument of government created for the purpose of affording grandeur and consequence to the latter. Government is, strictly speaking, the creature of society originating in is discretion, and dependent upon its will. Society must, therefore, necessarily possess the unlimited right to examine and to investigate. Knowledge is the only guardian which can prevent us from becoming the vassals of tyranny and the dupes of imposture."

Through jury censorship the Florida Supreme Court appears to have duped the citizens out of their ability to control the courts. A practice that has led to innocents being falsely convicted, and exposing many others to the bullying practices of prosecutors who routinely over-indict criminal defendants in order to gain leverage in plea negotiations. And make no mistake, the legislature fully intended that the jurors participate in this process through the enactment of the penalty instruction procedural law.

It's important to note that the State's Supersession law F.S. 25.371 was repealed in 2012. [20] This supersession law once allowed judicial rules to supersede legislated rules of court. When it was pointed out that this law allowed the judicial branch to legislate from the bench it was repealed for violating the non-delegation doctrine.

Likewise, U. S. House Representative Kastenmeier attacked the federal supersession law, arguing to have the clause removed for violating the non-delegation doctrine, a separation of powers abridgment. This argument was voted down in the

[20] HB Ch. 2012-116 Committee substitute for HB7055; sect. 16: as of July 1 2012

Senate. The senators noted that the judiciary would not attempt to override legislative acts. [21]

State delegate Theophilus Parsons expressed the importance of having a defense against arbitrary government oppression when he lectured the conventioneers at the 1788 Massachusetts convention:

"The people themselves have in their power effectually to resist government oppression without being driven to an appeal to arms. Let him be considered a criminal by the general government; yet only his fellow citizens can convict him. They are his jury, and, if they pronounce him Innocent, not all the powers of Congress can hurt him. And Innocent they certainly will pronounce it the supposed law he resisted or violated was an act of oppression."

Alexander Hamilton was very specific about how the people were protected from judicial branch oppression. The courts would be bound down by strict rules governing every case that came before them. Therefore it's a straight forward course correction when appellate courts are presented with procedural violation claims;

Send them back to the trial courts for the proper procedure; period.

The courts are currently standing behind Appellate Procedural tolling bars to avoid addressing procedural deprivation claims. Appellate procedural tolls can only apply when a trial court has legally obtained jurisdiction to begin with. This is the very essence of our 14th amendment due process of law guarantees.

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[21] See: U.S. HB 100-889, Pg 3, Aug 26 1988, re: Title 28 part V Ch. 31, § 2072(b), with further comments on pages 27 & 28, U.S.; (2 Elliot. Deb. 94;2 Bancroft, Hist. Const. 267)

Thomas Jefferson cited Judicial abuses from the British King in our declaration of independence as compelling reasons for gaining independence from his rule, each of which mirrors what the Florida Judicial branch has done with the powers they've bestowed upon themselves:

(1). *He has refused his assent to laws the most wholesome and necessary for the public good.*
(The judge refuses to obey the competency hearing law in this case and the Judiciary the Penalty Instruction law)

(2). *He has forbidden his governors to pass laws of immediate and pressing importance.*
(The judiciary forbids the legislature from passing trial procedure laws of immediate and pressing importance by abrogating them after their adoption)

(8). *He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.*
(Claiming the legislature doesn't have the judicial power to mandate court rules under the state constitution)

(18). *For depriving us in many cases of the benefits of trial by jury.*
(Censoring juries in order to control their powers)

(22). *For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.*
(By negating legislative rule making authority and making their rules supersede enacted rules they've suspended the legislatures power and made themselves junior varsity legislators with the power to rule from the bench)

An outlaw judiciary is irreconcilable with the American concept of independence. Just as the executive branch cannot break the law to enforce the law, the courts cannot violate the law to process the law. Judicial branch impropriety is a serious threat to the integrity of our union. Not from outright illegal conduct, such as the obvious procedural

law abrogation practices noted here, but from its erosion of republican principles. The slow chipping away over time. No court has ever had the power to call an act of Congress meaningless when it involves liberty; period.

Patriot blood waters that tree, and the vainglorious vaporing's of intellectual elitists in robes will never uproot it. People will only tolerate abuse until they draw the line and revolt. One needs only to study our past to see that future.

Alexander Hamilton was very specific about how the people were protected from judicial branch oppression. The courts would be bound down by strict rules governing every case that came before them. Therefore it's a straight forward course correction when appellate courts are presented with procedural violation claims;

Send them back to the trial courts for the proper procedure; period.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

/s/ more

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