

2 No. - 6490

IN THE

Supreme Court of the United States

JOHNNY PATTERSON,
Petitioner,

vs.

Supreme Court, U.S.

DEC 03 2023

OFFICE OF THE CLERK

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Ricky D. Dixon, and
ATTORNEY GENERAL OF FLORIDA, Ashley Moody,
Respondent(s).

On Petition for Writ of Certiorari
To The Second District Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Johnny Patterson, DC# 474091
Petitioner
DeSoto Correctional Institution Annex
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

QUESTIONS PRESENTED

#1. QUESTION PRESENTED

- I.** Did the court violate Petitioner Johnny Patterson procedural due process rights under the 5th and 14th Amendments under the U.S. Constitution and Article 1, section 9 of the Constitution of Florida by denying defense counsel's motion for judgment of acquittal?

#2. QUESTION PRESENTED

- II.** Am I not one of "We the people" with unalienable rights protected by the United States Constitution?

LIST OF PARTIES

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

RELATED CASES

- 1.) Jones v. State, 869 So.2d 1240 (Fla. 4th DCA)
- 2.) Patterson v. State, 569 So.2d 450 (Fla. 2nd DCA 1990)
- 3.) On August 18, 2023, the 2nd DCA Per Curiam Affirmed in Patterson v. State,
Opinion subject to review prior to official publication.
- 4.) United State v. Jenkins, 779 F.2d 827 (11th Cir. 1985)
- 5.) United States v. Johnson, 713 F.2d 633 (11th Cir. 1983)

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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

[] 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 on August 18, 2023, Second DCA, Per Curiam. Patterson v. State, opinion subject to review prior to official publication. Patterson filed a motion for extension of time (rehearing motion) was granted, September 6, 2023 and motion for rehearing, rehearing en banc was denied October 18, 2023. On November 3, 2023, Patterson received the mandate.
- has been designated for publication but is not yet reported; or,
- is unpublished.

The opinion of the decision of the state trial court appears at Appendix B to the petition and is

- reported at, the final order denying Defendant's Petition for Writ of habeas Corpus on April 20th, 2023. The 13th judicial circuit for Hillsborough County, Florida/criminal justice and trial division; 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 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 August 18, 2023. A copy of that decision appears at Appendix A.

[✓] A motion for extension of time to file a Motion for Rehearing was granted on September 6, 2023. A timely motion for rehearing was thereafter denied on following date: October 3, 2023 and the mandate was issued November 3, 2023, and a copy of the order denying rehearing appears at Appendix ____.

[] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) United States Constitution –Amendments 5th and 14th.
- 2.) Florida Constitution Article 1, section 9.
- 3.) Florida Statute Chapter 812.13(2)(a)

Petitioner Patterson is unsure how to notify the justice that he has a 2254 habeas corpus pending now in the middle district court of Florida, Tampa – division. Different legal grounds in each case but with the same case number.

Johnny Patterson

v.

Secretary, Dept. of Corrections

Case No.: 8:22-cv-633-TPB

AAS

In fact, petition Patterson did Petition for Writ of Certiorari asking the Justices 5/2/22 to apply (Rule 11) but Petitioner's 90-days had run out.

STATEMENT OF THE CASE

On December 16, 1987, the grand jurors of the Thirteenth Judicial Circuit in Hillsborough County indicted Mr. Patterson for first degree murder and armed robbery for an offense which occurred on December 16, 1987. Johnny Patterson was charged by indictment with first degree murder with a deadly weapon (count 1) and armed robbery with a deadly weapon (count II). The jury returned a verdict of "guilty as charged" on both counts. (R 423, 571). On June 10, 1988, the trial court sentenced Patterson to life imprisonment with twenty-five years minimum mandatory term on the murder conviction. On the armed robbery conviction, the trial court imposed a consecutive sentence of five and half years, (R 434-445, 580), in Florida Department of Corrections.

Patterson appealed the judgment of convictions and sentences to the Second District Court of Appeal. The Second District Court of Appeal per curiam affirmed on 10/12/1990. See Patterson v. State, 569 So.2d 450 (Fla. 2nd DCA 1990).

Patterson has since filed numerous postconviction motions in this case seeking to collaterally attack the judgment entered by the trial court.

Patterson had filed a "Petition for Writ of Habeas Corpus" with the Thirteenth Judicial Circuit in and for Hillsborough County, Florida on 2/6/2023. On April 20, 2023, the trial court treated said petition as a rule 3.850 and summary denied the same. On 5/21/2023, Patterson filed Appellant's Initial Brief and on August 18, 2023, the district court of appeal of Florida, Second District, per curiam affirmed. On 9/7/2023, Patterson filed his motion for rehearing, rehearing en banc,

and motion to certify question of great public importance into the district court of appeal, Second District of Florida.

In appellant's habeas corpus petition, a variance occurred when the evidence at trial established facts materially different from those alleged in the indictment. United States v. Johnson, 713 F.2d 633, 643 (11th Cir. 1993).

A variance occurs when the facts proved at trial deviate from the facts contained in the indictment, but the essential elements of the offense are the same.

Factual Statements

Illegal error

First Degree Murder with Deadly Weapon

There was no deadly weapon, no firearm, no weapon of any kind found prior to trial, nor was one presented at trial for jurors to view and no one testified or showed the jury what the deadly weapon looked like or how it was used during the commission of the charged crimes. Johnny Patterson is actually innocent, factually innocent and legally innocent.

TAMPA HOMICIDE DETECTIVE ON RECORD

In fact, Tampa homicide Detective Luis Potanziano investigated the death of the victim. (R 191-192). He went to the scene of the crash at about 5:35 A.M. on December 13, 1987.

The area was known for prostitution. (R 192). Fingerprints from the car and beer cans in the car did not match Johnny Patterson's prints. (R 192-199). Nor did shoe impressions which were cast in plaster match the shoes Mr. Patterson was

wearing. (R. 198-199). Potanziano found no evidence to associate Mr. Patterson with the crime and he found no firearm. (R 199).

THE FLORIDA SUPREME COURT

To apprise the accused of the specific charges against him, an information or indictment must contain all facts essential to the offense intended to be punished.

Historically, the elements of a crime" are the facts legally essential to the punishment to be inflicted. The Florida Supreme Court, 214 So.3d 578 (Fla. 4/6/2017).

FLORIDA STATUTE CHAPTER 812 THEFT, ROBBERY AND RELATED CRIMES

"812.13 – Robbery"

- (1) Robbery means the subject of larceny from the person or custody of another when the course of the taking there is the use of force, violence, assault, or putting in fear.
- (2) 2A – If in the course of committing the robbery the offender carried a firearm or other weapon, then the robbery is a robbery of the degree.
- (3) (c) If in the course of committing the robbery the offender carried no firearm, deadly weapon or other weapon, then the robbery is a robbery of the second degree. [Johnny Patterson is actually innocent, factually innocent, and legally innocent.

(#1)

FACTUAL STATEMENTS
ARMED ROBBERY UNDER SECTION 812.13(2)(A)

Johnny Patterson argues against the charged crime of armed robbery itself, and Florida statute, section (812.13 (2)(a). All the legal essential elements of "ARMED ROBBERY" under section 812.13(2)(a) Florida Statute has not been proven. Therefore, the charged crime of armed robbery, under section 812.13(2)(a) Florida must be removed as a matter of law.

#2

FLORIDA'S CASE LAW
JUDGMENT OF ACQUITTAL

DEFENDANT'S CONVICTION OF ROBBERY WITH A DEADLY WEAPON FLORIDA STATUTE 812.13(2)(A) WAS REVERSED:

The trial court erred in denying defendant's Motion for judgment of acquittal pursuant to Florida criminal procedure 3.380 because the state did not present the type of evidence necessary to sustain a jury finding that BB-gun used by defendant during a robbery was a deadly weapon. As the gun itself was destroyed prior to trial and No One testified or showed the jury how the BB-gun operated. (*Jones v. State*, 869 So.2d 1240 (Fla. 4th DCA 2004)

#3

STANDARD OF REVIEW
A MOTION FOR JUDGMENT OF ACQUITTAL

When the state fails to present competent, substantial evidence to establish every element of the charged crime, then a motion for judgment of acquittal must be granted, as a matter of law.

DEFENSE COUNSEL MOVED FOR JUDGMENT
OF ACQUITTAL ON THE RECORD

At the close of the state's case and evidence, defense counsel moved for judgment of acquittal on the basis that a robbery was not proven as to count II. (R 426).

DEFENSE COUNSEL LIST OF MOTIONS FILED IN THE TRIAL COURT

- 1.) A motion for judgment of acquittal;
- 2.) A motion for arrest of judgment;
- 3.) A motion for entry of judgment of necessary lesser offense; and
- 4.) A motion for new trial.

These are all the motions that defense counsel had filed in the trial court at the close of the state's case and the evidence as to count II armed robbery. Now although Patterson knew that the "Motion for Judgment of Acquittal" meant to dismiss the indictment because of insufficiency of evidence, but Patterson had not heard the phrase "Motion for Arrest of Judgment" and had decided to look up the meaning in the Black's Law Dictionary. The dictionary defines the motion for "Arrest Judgment" as the action of a judge in stopping a judgment from being entered on a verdict, because of a defect in proceedings or because the judgment is not supported by the evidence.

Now come on, I, Johnny Patterson, a lay person and do not know anything about criminal law, but Patterson believes as the American people do that the courts know the laws and trust to protect our constitutional rights.

NO ROBBERY HAS BEEN PROVEN

The charged crime of armed robbery under Florida statute, section 812.13(2)(a) has not been proven as to count II, nor has a robbery been proven as to count II because the prosecution failed to prove an essential element, or a component, of the charged crimes that a jury must find proven beyond a reasonable doubt in order to convict Johnny Patterson.

REASONS FOR GRANTING THE PETITION

- 1.) The issue before this Court is whether the State is entitled to a jury instruction and to argue to the jury the statutory crime of armed robbery, section 812.13(2)(A) Florida Statute.
- 2.) When the state has no deadly weapon, no firearm, and no weapon to sustain the conviction of the charged crime of armed robbery under 812.13(2)(A), Florida Statute.
- 3.) Nor did the State prove all the essential elements of armed robbery under section 812.13(2)(A), Florida Statute.
- 4.) Given the indictment's failure to cite the correct statute, its failure to allege the required statutory elements, and its reference to (the Armed Robbery Statute 812.13(2)(A) Patterson did understand that he was being charged with Armed Robbery under Florida Statute, Section 812.13(2)(A) in count II.
- 5.) Now the question is, was Johnny Patterson prejudiced in his preparation and strategy as a result of the State's failure to charge armed robbery under section 812.13(2)(A), but does not prove every essential element of the charged crime of armed robbery under Florida Statute, section 812.13(2)(A)?
- 6.) Well the court in Jones v. State, 869 So.2d 1240 (Fla. 4th DCA 2004), does think so because in the case, the state did not present the type of evidence necessary to sustain a jury finding that the BB-gun used by the defendant during a robbery was a deadly weapon. As the gun itself was destroyed prior to trial and No One testified or showed the jury how the BB-gun operated. This case was REVERSED.

7.)

FACTUAL STATEMENTS

ARMED ROBBERY, UNDER SECTION 812.13(2)(a)
FLORIDA STATUTE

There was no deadly weapon, no weapon and no firearm ever found prior to trial, nor was one presented at trial for the jurors to view and No One showed the jury what this deadly weapon looked like or how it was used during the commission of the charged crimes.

8.)

TAMPA HOMICIDE DETECTIVE ON RECORD

The Tampa homicide Detective Luis Potanziano investigated the death of the victim. (R 191-192). Potanziano found no evidence to associate Mr. Patterson with the crime and he found no firearm. (R 199). Johnny Patterson is actually innocent, factually innocent and legally innocent. Johnny Patterson played no part in these crimes. These are false confessions and false convictions.

CONCLUSION

Am I not one of "WE THE PEOPLE" with unalienable rights by the United States Constitution. Due process, which is protection by the United States Constitution to the unalienable rights to life, liberty, and property. Unalienable means just that un·a·lien·able, which means neither life, liberty, nor property can be taken from me through the "lien" process. But that is what had happened through charges created by fraud, false testimony of a prostitute under the influence of drugs. And who could not remember the next day what she had said to the police. This person's character is not credible. And she lied to police. I played no part in this crime. I am one of "WE THE PEOPLE".

The undersigned affiant accept the OATHS of all public officers, specifically all judges in all courts whatsoever, as a contract between us and their true obligation to uphold and defend the constitution of the land affirmed. So help me God. And I do accept the unity and respect of that all members of the Bar Association owed to Americans by The Treaty of Westminster 1794 and their honest conduct owned by The Bar Association Treaty of 1947. My flag is the flag of PEACE. I am one of "we the people", the declaration of independence and the Constitution for the United States of America is a Trust and I am one of the beneficiary. See 13 Am. Jur. 2nd Ed, section 71 and 82. No violation of my private American rights by section 1, of the 14th Amendment justices the solution of a constitutional provision, nor can any rule over my obligation to the creator, nor put

any government person above my King and Lord Jesus Christ with authority over me.

WHEREFORE, based on the foregoing facts, argument, and cited authorities, the petitioner prays that this Court will grant certiorari.

Respectfully submitted,


/s/ 
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Petitioner, pro se
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