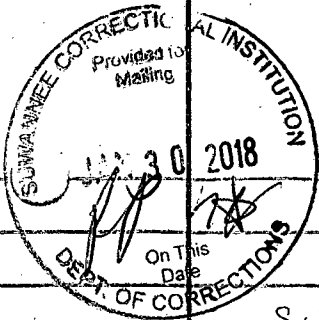




No. 17-6547

IN THE
SUPREME COURT OF THE UNITED STATES

H.K.V.
PETITIONER

V.S.

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES
et al
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
SECOND DISTRICT COURT OF APPEAL OF FLORIDA
PETITION FOR THE REHEARING OF AN ORDER
DENYING A PETITION FOR A WRIT OF
CERTIORARI

MR. HAILEY KYLE VALLIER
5964 U.S. HWY 90
LIVE OAK, FL 32060

JANUARY 30, 2018

QUESTION(S) PRESENTED

Can the State of Florida lawfully and involuntarily terminate a citizen's parental rights to their biological child under Florida Statute 39.806(1)(m) without clear and convincing evidence of a violation under F.S. 794.011 (which is required to support the termination), and furthermore deny the child to their entire biological family, whose more than willing and able to adopt him or her into their care, custody, and management?

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 as follows:

- Florida Department of Children and Families
- Statewide Guardian ad Litem Office

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REASONS FOR GRANTING THE REHEARING

The parental right to my child was terminated under F.S. 39.806(1)(m) because the Florida Department of Children and Families (FDCF) and the Statewide Guardian ad Litem Program (GAL) attempted to subsume my conviction under F.S. 800.04(4)(a) into a violation under F.S. 794.011 in an effort to satisfy the burden of proof required by clear and convincing evidence under F.S. 39.809(1).

The most important factor in this case is that I was never charged or convicted under F.S. 794.011. The Legislature has not expressed an intent to authorize separate punishments for two crimes arising out of one criminal episode when there are no spatial or temporal aspects of the surrounding circumstances in order to determine whether I had time to pause, reflect, and form a new criminal intent between occurrences that simply just do not exist.

In my criminal case, the prosecutor, at their own prosecutorial discretion, had never been determined to charge me with a criminal offense under F.S. 794.011, however, the FDCF and GAL made an attempt to reach back after a verdict had been rendered so as to reach a more favorable result in a different court in which is not allowed.

Now, hypothetically speaking under the circumstances that if I were to be indicted under F.S. 794.011(5)(a) and F.S. 800.04(4)(a), under separate counts, regarding the course of one criminal act alleging vaginal penetration by, or union with, the sexual organ of another without any spatial or temporal aspects resulting in the conception of a child (as Common Science has proven that within a single episode of sexual intercourse, only one spermatozoon fertilizes a single ovum thus procreating Homo Sapiens naturally), only one conviction could be made under that single act.

In the Court of Law, the circumstances addressed above would be

subjected to the Blockburger Analysis under the "different elements" test codified by F.S. 775.021, and the Court would bring into question the only pertinent issue at hand as to whether or not there was consent to the conduct that resulted in the conception of the child. The State would then be under the burden to prove that consent did not exist, which is indeed an element required under F.S. 794.011(5)(a) and not F.S. 800.04(4)(a) in order to obtain a valid conviction under F.S. 794.011. Upon determining this important aspect with regard to the accusatory pleading or the proof adduced at trial, the Court will enter the appropriate disposition of the case resulting in only one conviction of either F.S. 794.011(5)(a) or F.S. 800.04(4)(a).

The Fifth Amendment of the United States Constitution provides that no person shall be subject for the same offence to be twice put in jeopardy of life or limb. See also Florida's Constitution Article I, Section 9. If the Court convicted me under both F.S. 794.011(5)(a) and F.S. 800.04(4)(a) in regards to an act that occurred simultaneously and involved only a single victim, a single location, and no temporal break resulting in the conception of a child then the State would be held in violation of the prohibition against Double Jeopardy. See *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), *Graham v. State*, 207 So. 3d 135 (Fla. 2016), *Batchelor v. State*, 193 So. 3d 1054 (Fla. 2016), *Roughton v. State*, 185 So. 3d 1207 (Fla. 2016), *Ready v. State*, 183 So. 3d 1234 (Fla. 2016), *Tuttle v. State*, 177 So. 3d 1246 (Fla. 2015), *Mizner v. State*, 154 So. 3d 391 (2nd DCA 2014), *Benjamin v. State*, 79 So. 3d 781 (4th DCA 2011), *Smith v. State*, 41 So. 3d 1041 (1st DCA 2010), *Roberts v. State*, 39 So. 3d 372 (1st DCA 2010), *State v. Drawdy*, 136 So. 3d 1209 (Fla. 2014), *State v. Meshell*, 2 So. 3d 132 (Fla. 2009), *Binus v. State*, 979 So. 2d 439 (4th DCA 2008), *State v. Paul*, 934 So. 2d 1167 (Fla. 2006).

As stated in the case of *Roughton*, id 185 So. 3d 1209 "[l]ewd or lascivious molestation (SIC) requires a specific lewd and lascivious intent, which sexual battery does not" . . . (id at 1211) "where a statute prohibits alternative types of conduct, a double jeopardy determination" requires

an analysis that breaks the conduct elements into specific alternative conduct which is in the other statute being compared". . . . "[T]he Court must focus on the particular component of the statute that is in issue." and in this case, the only conduct at issue here is "... vaginal penetration by, or union with, the sexual organ of another...". Compare F.S. 794.011(1)(h) with F.S. 800.04(1)(a).

As in *Tammihill*, the particular component of the Statutes that was in issue was "... oral penetration by, or union with, the sexual organ of another...". Despite the significant revisions to Section 800.04, *Fla. Statutes*, that took place in 1984, 1990, and 1999 (See ch. 99-201, S. 6, *Laws of Fla.*; ch. 90-120, S. 1, *Laws of Fla.*; ch. 84-86, S. 5, *Laws of Fla.*, See also *State v. Paul*, 934 So. 2d 1167, *id.* at 1181), Double Jeopardy was and still is violated under these particular circumstances; as in *State v. Hightower*, 509 So. 2d 1078 (Fla. 1987) and *Roberts v. State*, 687 So. 2d 959 (5th DCA 1997) in which these two cases were decided before the most significant revision to F.S. 800.04, the Double Jeopardy rule still applies, as in the case of *Tammihill*, which was decided in 2003, the State agreed. (After the 1999 revision to F.S. 800.04)

See *Tammihill v. State*, 848 So. 2d 442 (4th DCA 2003), *id.* at 443.

"We next address the double jeopardy issue raised by appellant. Appellant correctly argues, and the State agrees, that his convictions for both sexual battery with slight force and lewd and lascivious battery based on the same act of oral penetration or union violate his right against double jeopardy. See *Fjord v. State*, 634 So. 2d 714 (Fla. 4th DCA 2002). Contrary to the State's assertions that the issue has been waived, violation of double jeopardy is a fundamental error which can be raised for the first time on appeal. See *Haynes v. State*, 878 So. 2d 457, 458 (Fla. 4th DCA 2002); see also *Rios v. State*, 791 So. 2d 1208 (Fla. 5th DCA 2001) (convictions for sexual battery and lewd and lascivious act reversed based on double jeopardy even though appellant did not object to the sentencing error and did not raise the issue in a motion to correct sentence).

(e.)"

Additionally, F.S. 794.01(5)(a) specifically states in pertinent part: "without that person's consent..." which this phrase is completely omitted from F.S. 800.04(4)(a), and this petition does not call to focus on F.S. 800.04(4)(a)? which is described in pertinent part as "2. Encouraging, forcing, or enticing..." due to the simple and relevant fact that it is crystal clear that O.T.'s mother was indeed a "willing participant" to the conduct that lead to the conception of our beloved daughter. The focus should plainly be on F.S. 800.04(4)(a) 1.

Nevertheless, the Legislature has clearly not warranted or authorized the involuntary termination of an individual's parental rights to their child that has been conceived as a result of an act of lewd or lascivious battery, made unlawful pursuant to F.S. 800.04(4)(a); There is currently no such legislation supporting this type.

The FDCE and GAL charged me under F.S. 39.806(1)(m) without any presentment or indictment of F.S. 794.011 or of any other information of such conduct filed under oath by a prosecuting officer of the Court. See Florida's Constitution Article I, Section 15. The FDCE and GAL attempted to try me in a Court for a crime I was never charged with nor convicted of in which is strictly prohibited in Florida. The allegations brought forward by the FDCE and GAL do not contain any sustainable evidence, and under Florida's Constitution Article I, Section 14, the presumption of my innocence regarding a violation under F.S. 794.011 is great, due to the immediate fact that Florida's Criminal Justice system is based on the presumption that every person charged with a crime is innocent until proven guilty. See State v. Blair, 39 So. 3d 1190 (Fla. 2010)

Inasmuch I have never been indicted for a violation under F.S. 794.011 to begin with, and that I've already been tried in the Court of Law regarding the conception of my child; being only charged and convicted under F.S. 800.04(4)(a) and F.S. 827.04(3) as a direct result of a

99.99% positive paternity test, this gives the effect to the proof of innocence of a violation under F.S. 794.011 and that the presumption of a child not being conceived as a result of an act of sexual battery made unlawful pursuant to F.S. 794.011 is great. See United States Revised Statutes 5209, 6: "The presumption of innocence is evidence created by the law in favor of the one accused, whereby to overcome the proof which the law has created." See *Coffin v. United States*, 156 U.S. 432, 15 S.Ct. 394, 39 L.Ed.481 (1895).

A "reasonable doubt" is the condition of mind produced by the proof resulting from the evidence in the court of criminal cases, however, in a termination of parental rights proceeding, the standard of proof must be nothing less of "clear and convincing evidence" which this Court in 1982 held required by Fourteenth Amendment due process clause.

This controlling effect over this petition for rehearing is specifically cited in *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) and in *Addington v. Texas*, 441 U.S. 418, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1978).

As stated in *Santosky*, id. 455 U.S. 755 "When the State brings a criminal action to deny a defendant liberty or life, however, 'the interests of the defendant are of such magnitude that historically, and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment.' *Ibid.* The stringency of the 'beyond a reasonable doubt' standard bespeaks [*pg. 608] the 'weight and gravity' of the private interest affected. id. at 427, 60 L.Ed.2d 323, 99 S.Ct. 1804, Society's interest in avoiding erroneous convictions, and a judgment that those interests together require that 'society impos[e] almost the entire risk of error upon itself'."

id. at 455 U.S. 769 "Congress requires 'evidence beyond a reasonable doubt for termination of Indian parental rights, reasoning that 'the removal of a child from the parents is a penalty as great [as] if not

greater, than a criminal penalty...." H.R. Rep. No. 95-1386, p.22 (1978). Congress did not consider, however, the evidentiary problems that would arise if proof beyond a reasonable doubt were required in all state-initiated parental rights termination hearings.

Like civil commitment hearings, termination proceedings often require the factfinder to evaluate medical and psychiatric testimony [as I've previously provided this Court with such written testimony in the initial petition for a writ of certiorari regarding the psychological evaluation and risk assessment produced by Dr. Chris J. Carr, Ph.D.], and to decide issues difficult to prove to a level of absolute certainty.

Id. at 455 U.S. 758. "Lassiter declared it 'plain beyond the need for multiple citation' that a natural parent's 'desire for and right to 'the companionship, care, custody, and management of his or her children' is an interest far more precious than any property (id. at 455 U.S. 759) right. 452 U.S. at 27, 68 L. Ed. 2d 640, 101 S.Ct. 2153, quoting Stanley v. Illinois, 405 U.S. at 651, 31 L. Ed. 2d 551, 92 S.Ct. 1208. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. 'If the State prevails, it will have worked a unique kind of deprivation. A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.' 452 U.S. at 27, 68 L. Ed. 2d 640, 101 S.Ct. 2153.

"In government-initiated proceedings to determine juvenile delinquency, In re Winship, supra; civil commitment, Addington v. Texas, supra; deportation, Woodby v. INS, supra; and denaturalization, Chaunt v. United States, supra, and Schneiderman v. United States, supra, this Court has identified losses of individual liberty sufficiently serious to warrant imposition of an elevated burden of proof.

Id. at 455 U.S. 761. "Given this disparity of consequence, we have no difficulty finding that the balance of private interests strongly favors heightened procedural protections. (*pg. 612)

id at 455 U.S. 769 "A majority of the States have concluded that a "clear and convincing evidence" standard of proof strikes a fair balance between the rights of natural parents and the States legitimate concerns. See n 3, supra. We hold that such a standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process. We further hold that determination of the precise burden equal to or greater than that standard is a matter of state law properly left to state legislatures and state courts. (cf. Addington v Texas, 441 U.S., at 433, 60 L Ed 2d 323, 99 S Ct 1804

id at 455 U.S. 767 "[T]he state registers no gain towards its declared goals when it separates children from the custody of fit parents." Stanley v Illinois, 405 U.S., at 652, 31 L Ed 2d 551, 92 S Ct 1208; id at 455 U.S. 760 "But until the state proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." "Thus, (id at 455 U.S. 761) at the factfinding, the interests of the child and his natural parents coincide to favor use of error-reducing procedures."

Also, in this case, my child was placed in Florida State Licensed Foster Care at only two days old. In Footnote 11 of the majority from this Court in Santosky (1982), in support of vacating and remanding, the Footnote states:

"some losses cannot be measured. In this case, for example, Jed Santosky was removed from his natural parents' custody when he was only three days old; the judges finding of permanent neglect effectively foreclosed the possibility that Jed would ever know his natural parents."

and id at 455 U.S. 766 "For the natural parents, however, c*pg. 615 the consequence of erroneous termination is the unnecessary

destruction of their natural family. A standard that allocates the risk of error nearly equally between those two outcomes does not reflect properly their relative severity."

I also want to point out that even though I'm currently an inmate confined in an institution, I still retain my Constitutional Rights. See *William Overton, Director, Michigan Department of Corrections v. Michelle Buzzetta*, 539 U.S. 126, 123 S.Ct. 2167, 156 L.Ed.2d 162, *rehden* 539 U.S. 982, 124 S.Ct. 35, 156 L.Ed.2d 693 (2003):

id. at 539 U.S. 137. "Our decision today is faithful to the principle that "federal courts must take cognizance of the valid constitutional claims of prison inmates." *Turner v. Safley*, 482 U.S. 78, 84, 96 L.Ed.2d 64, 107 S.Ct. 2254 (1987). As we explained in *Turner*:

"Prison walls do not form a barrier separating prison inmates from the protections of the Constitution. Hence, for example, prisoners retain the constitutional right to petition the government for the redress of grievances, *Johnson v. Avery*, 393 U.S. 483 [211 L.Ed.2d 718, 89 S.Ct. 747] (1969); they (*id.* at 539 U.S. 138) are protected against invidious racial discrimination by the Equal Protection Clause of the Fourteenth Amendment, *Lee v. Washington*, 390 U.S. 333 [19 L.Ed.2d 1212, 88 S.Ct. 994] (1968); and they enjoy the protections of due process, *Wolff v. McDonnell*, 418 U.S. 539 [41 L.Ed.2d 935, 94 S.Ct. 2963] (1974); *Haines v. Kerner*, 404 U.S. 519 [30 L.Ed.2d 652, 92 S.Ct. 594] (1972). Because prisoners retain these rights, "[w]hen a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights." *Procunier v. Martinez*, 416 U.S. at 405-406 [40 L.Ed.2d 224, 94 S.Ct. 1800], "*Ibid.*"

See also *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996):

id at 519 U.S. 110. "Courts have confronted, in diverse settings, the 'age-old problem' of '[p]roviding equal justice for poor and rich, weak and power-ful alike." *Griffin v. Illinois*, 351 U.S. 12, 16, 100 L.Ed. 891, 76 S.Ct. 585, 55 ALR2d 1055 (1956)" (id at 519 U.S. 116). "But tellingly, the Court has consistently set apart from the mine run of cases those involving state controls or intrusions on family relationships." "[5a] Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as 'of basic importance in our society,' *Boddie*, 401 U.S., at 376, 28 L.Ed. 2d 113, 91 S.Ct. 780, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect. See, for example, *Turner v. Safley*, 482 U.S. 78, 96 L.Ed. 2d 64, 107 S.Ct. 2254 (1987), ⁵ pg. 4882 *Zablocki v. Redhail*, 434 U.S. 374, 54 L.Ed. 2d 618, 98 S.Ct. 673 (1978), and *Loving v. Virginia*, 388 U.S. 1, 18 L.Ed. 2d 1010, 87 S.Ct. 1817 (1967) (marriage); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 86 L.Ed. 1655, 62 S.Ct. 1110 (1942) (procreation); *Pierce v. Society of Sisters*, 268 U.S. 510, 69 L.Ed. 1070, 45 S.Ct. 571, 39 ALR 468 (1925), and *Meyer v. Nebraska*, 262 U.S. 390, 67 L.Ed. 1012, 43 S.Ct. 625, 29 ALR 1446 (1923) (raising children). M.L.B.'s case, involving the State's authority to sever permanently a parent-child bond, demands the close consideration. (id at 519 U.S. 117) the Court has long required when a family association so undeniably important is at stake. We approach M.L.B.'s petition mindful of the gravity of the sanction imposed on her and in light of two prior decisions most immediately in point: *Lassiter v. Department of Social Servs of Durham Cty.*, 452 U.S. 18, 68 L.Ed. 2d 640, 101 S.Ct. 2153 (1981), and *Santosky v. Kramer*, 455 U.S. 745, 71 L.Ed. 2d 599, 102 S.Ct. 1388 (1982).

id at 519 U.S. 118 "Santosky held that a "clear and convincing" proof standard is constitutionally required in parental termination proceedings. . . . In so ruling, the Court again emphasized that a termination decree is "final and irrevocable." "Few forms of state action," the Court said, "are both so severe

and so irreversible". . . . As in *Lassiter*, the Court characterized the parents' interest as "commanding," indeed, "far more precious than any property right." . . . Although both *Lassiter* and *Santosky* yielded divided opinions, the Court was unanimously of the view that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." . . . It was also the Court's unanimous view that "[f]ew consequences of judicial action are so grave as the severance of natural family ties."

id. at 519 U.S. 121 "Similarly here, the stakes for petitioner M.L.B. - forced dissolution of her parental rights - are large, 'more substantial than mere loss of money.'" . . . In contrast to loss of custody, which does not sever the parent-child bond, parental status termination is "irretrievably[ly] destructi[ve]" of the most fundamental family relationship. . . . And the risk of error, Mississippi's experience shows, is considerable. See *supra*, at 109, n. 3, 136 L. Ed. 2d, at 483."

id. at 519 U.S. 119 "M.L.B., on the other hand, maintains that the accusatory state action [*pg. 490] she is trying to fend off is barely distinguishable from criminal condemnation in view of the magnitude and permanence of loss she faces. Cf. *In re Gault*, 387 U.S. 1, 50, 55, 18 L. Ed. 2d 527, 87 S.Ct. 1428 (1967) (resisting "feeble enticement of the 'civil' label-of-convenience," and holding that Fifth Amendment's safeguard against self-incrimination applies in juvenile proceedings). See also *Santosky*, 455 U.S., at 756, 760, 71 L. Ed. 2d 599, 102 S.Ct. 1388 (recognizing stigmatic effect of parental status termination decree: "[I]t entails a judicial determination that [a parent is] unfit to raise [her] own children.")"

id. at 519 U.S. 127 "Respondents and the dissenters urge that we will open floodgates if we do not rigidly restrict *Griffin* to cases ty

ped "criminal." See post, at 141-144, 136 L. Ed. 2d, at 504-506 (Thomas, J., dissenting); Brief for Respondents 27-28. But we have repeatedly noticed what sets parental status termination decrees apart from mine run civil actions, even from other domestic relations matters such as divorce, paternity, and child custody. See supra, at 117-120, 136 L. Ed. 2d, at 487-489, and n. 11. To recapitulate, termination decrees "work[] a unique kind of deprivation." L. Cassiter, 452 U.S. at 27, 68 L. Ed. 2d 640, 101 S. Ct. 2153. In contrast to matters modifiable at (id. at 519 U.S. 128) the parties will or based on changed circumstances, termination adjudications invoke the awesome authority of the State "to destroy permanently all legal recognition of the parental relationship." Rivera, 483 U.S. at 580, 97 L. Ed. 2d 273, 107 S. Ct. 3001. Our L. Cassiter and Santosky decisions, recognizing that parental termination decrees are among the most severe forms of state action, Santosky, 455 U.S. at 759, 71 L. Ed. 2d 599, 102 S. Ct. 1388, have not served as precedent in other cases."

See also Troxel v. Granville, 530 U.S. —, 120 S. Ct. —, 147 L. Ed. 2d 49 (2000) [pp. 99-138] in 'Separate Opinion' II (p. 9, 2 L. Ed. 2d) "The Fourteenth Amendment provides that no state shall 'deprive any person of life, liberty, or property, without due process of law.' We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, 'guarantees more than fair process.' (Washington v. Glucksberg, 521 U.S. 702, 719, 138 L. Ed. 2d 772, 117 S. Ct. 2258 (1997)). The clause also includes a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.' Id., at 720, 138 L. Ed. 2d 772, 117 S. Ct. 2258; see also Reno v. Flores, 507 U.S. 292, 301-302, 123 L. Ed. 2d 1, 113 S. Ct. 1435 (1993).

The liberty interest at issue in this case - the interests of parents in the care, custody, and control of their children - is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in Meyer v. Nebraska, 262 U.S. 390, 399, 401, 67 L. Ed. 1042, 43 S. Ct. 625 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and to control the education of their own. "Two years lat-

er, in *Pierce v. Society of Sisters*, 268 US 510, 534-535, 69 L Ed 1070, 45 S Ct 571 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.*, at 535, 69 L Ed 1070, 45 S Ct 571. We returned to the subject in *Prince v. Massachusetts*, 321 US 158, 88 L Ed 645, 64 S Ct 438 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor (*pg. 57) hinder." *Id.*, at 166, 88 L Ed 645, 64 S Ct 438.

And in *Troxel* [14] "It would be anomalous, then, to subject a parent to any individual judge's choice of a child's associates from out of the general population merely, because the judge might think himself more enlightened than the child's parent." and in *M. I. B.* [id at 519 US 110] "Although the Federal Constitution guarantees no right to appellate review, *id.*, at 18, 100 L Ed 891, 76 S Ct 585, 55 ALR2d 1055, once a State offends that right, *Griffin* held, the State may not "bolt the door to equal justice," *id.*, at 24, 100 L Ed 891, 76 S Ct 585, 55 ALR2d 1055 (Frankfurter, J., concurring in judgment)." and [id at 519 US 124] "In accord with the substance and sense of our decisions in *Lassiter* and *Santosky*, see *supra*, at 117-120, 136 L Ed 2d, at 487-489, we place decrees forever terminating parental rights in the category of cases in which the State may not "bolt the door to equal justice," *Griffin*, 351 US, at 24, 100 L Ed 891, 76 S Ct 585, 55 ALR2d 1055 (Frankfurter, J., concurring in judgment); see *supra*, at 110, 136 L Ed 2d, at 483."

And I return to the subject on Double Jeopardy as stated in *Rios v. State*, 791 So. 2d 1208 (Fla. 5th DCA 2001) after the 1999 revision to F.S. 806.04:

"Double jeopardy rights are fundamental and can be raised at any

time. It is well established that convictions for sexual battery and lewd and lascivious assault, arising from a single act, are prohibited by double jeopardy. [id at 1210] "Finally, Rios argues that the trial court erred in adjudicating and sentencing him on count two because both the sexual battery and the lewd and lascivious count were based on the same act, resulting in a violation of his Fifth Amendment right against double jeopardy. . . . Specifically, Count 1 alleged that Rios committed a sexual battery by "inserting his penis into the child's anus." Count 11 alleged that Rios committed a lewd and lascivious assault upon a child by "anal penetration with his penis." . . . Based on these facts, we find that the conviction for lewd and lascivious assault violated double jeopardy and must therefore be reversed."

Now, I am aware that some of these cases that I've cited contain awful scenarios and circumstances, but I am using these cases to serve as an example in order to prove my legal grounds with this court. As in the case of *Tammill v. State*, 848 So. 2d 442 (Fla. 4th DCA 2003) mentioned earlier in this petition, the component of the statutes that was in issue was "oral penetration" and in the case of Rios (cited above) the component in issue was "anal penetration" and both cases violated double jeopardy. As in this instance, my child was naturally conceived via the component of "vaginal penetration" which is in issue here. Therefore, the FOCF and GAL's argument is in direct violation of the prohibition against double jeopardy, as they allege a crime I was never charged with or convicted of in the first place. The State's attempt to subsume my conviction of F.S. 800.04(4)(a) into a violation of F.S. 794.011 via a "pari materia" standpoint in order to satisfy F.S. 39.806(1)(m) is an application deemed unconstitutional and does not serve a legal ground to involuntarily terminate my parental rights required by clear and convincing evidence under F.S. 39.809(1). Therefore, under the law, the termination order must be reversed/vacated due to the fact that the Legislature has not authorized this type of termination of parental rights in the State of Florida. See also *Hansen v. State*, 730 So. 2d 327 (Fla. 5th DCA 1999) and *Skeens v. State*, 733 So. 2d 1094 (Fla. 2nd DCA 1999).

I was convicted under F.S. 806.03(4)(a) in relation to the conception of my daughter, and this negates any possibility that a violation under F.S. 794.011 could've been committed by my person. In this case, any commission of a crime under F.S. 794.011 is rendered "void ab initio". I was never charged or convicted under F.S. 794.011 at any given period. See *Cerbajal v. State*, 75 So. 3d 238 (Fla. 2011): "Jurisdiction to try an accused does not exist under Fla. Const. art. I, § 15 unless there is an exact information, indictment, or presentment filed by the state." (A charging instrument is essential to invoke the circuit courts subject matter jurisdiction.) See F.S. 26.012(2)(d). (Jurisdiction is determined by the charge made.) See also *State v. Perkins*, 977 So. 2d 643 (Fla. 5th DCA 2008) [id. at 646] "Article I, Section 15(a) of the Florida Constitution, requires that an information charging a felony be made under oath:

No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court."

"Rule 3.140(g) [Florida Rule of Criminal Procedure] further amplifies this provision by providing in relevant part that:

An information charging the commission of a felony shall be signed by the state attorney or a designated assistant state attorney, under oath stating his or her good faith in instituting the prosecution and certifying that he or she has received testimony under oath from the material witness or witnesses for the offense."

"His or her rights cannot be terminated unless the evidence meets a standard higher than the preponderance standard..." See *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 873 [id. at 519 U.S. 140]. I shouldn't be branded unfit for affiliation with my daughter, and I'm endeavoring to defend against the State's destruction of my family bonds. I do resist the brand associated with a parental/fitness adjudication, and I wholeheartedly seek to be spared from the State's devastatingly adverse actions. This is not just and is not equal. My criminal case has been substantially mitigated, and my daughter cannot be forgotten because she is worth fighting for. I vow to embark on a dedicated clear-conscious effort in becoming a loving, nurturing, and protective Father over my daughter. I'm currently enrolled in Family Integrity Training

(FIT) Practical Parenting Courses and Celebrate Recovery Programs.

CONCLUSION

I, Hailey Kyle Vallier, the petitioner, respectfully request relief under the Due Process, Equal Protection, and Double Jeopardy clauses of the United States Constitution as the Fourteenth Amendment affords me the right to parent my daughter, and the Fifth Amendment protects me from the imposition of Double Jeopardy (Fla. Const. Art. I, S. 9). All the cases cited in this petition rests exclusively upon these clauses, and here, due process is quite a sufficient basis for vacating / reversing the Order of the Involuntary Termination of my Parental Rights.

The unconstitutional application of F.S. 39.806(1)(m) and F.S. 794.011 to my person violated my due process rights to make decisions concerning the care, custody, and control to my beloved daughter. It also violated my rights under the Double Jeopardy clause. The trial court's termination order in this case simply recites statutory language; It describes no evidence and otherwise details no reason for finding me clearly and convincingly unfit to be a parent, nor does it reveal any sufficiency of the evidence to support termination under F.S. 39.806(1)(m).

I have exhibited reasonable concerns and cardinal virtues for my daughter, and I have expressed an unrelenting interest in taking responsibility for her welfare. It is my hope that this court will accept to endorse the holdings of the citations mentioned in this petition as the State has foreclosed the possibility that Olivia would ever know her natural family. She was only two days old when she was taken by the State and this loss has been immeasurable.

As a friendly reminder, the State has not provided my family and I with any services since Olivia's birth, and it is in my opinion that this court should rectify these circumstances in order for us to be rewarded the chance that's never been given to us; In Olivia's best interests.

Most Respectfully,

Hailey K Vallier

In Honor of the Constitution

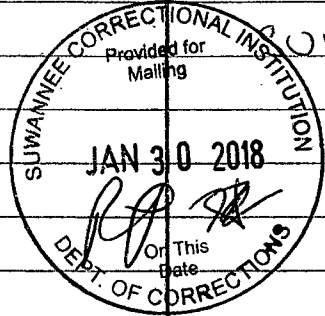
In Christ Jesus

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January 30, 2018

No. 17-6547

IN THE



SUPREME COURT OF THE UNITED STATES

H. K. V.

PETITIONER

V. S.

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,

et al.

RESPONDENT(S)

CERTIFICATION OF COUNSEL
(OR OF A PARTY UNREPRESENTED BY COUNSEL)

I, Hailey Kyle Vallier, do hereby certify that the PETITION FOR THE REHEARING OF AN ORDER DENYING A PETITION FOR A WRIT OF CERTIORARI is restricted to the grounds specified in Supreme Court Rule 44.2, and is presented in GOOD FAITH. This matter coming before the Court and to the parties involved does not serve the purpose for unnecessary delays. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 30, 2018.

Hailey K Vallier

Hailey Kyle Vallier, 751633

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Live Oak, FL 32060