

**IN THE
SUPREME COURT OF THE UNITED STATES**

FRANK EVANS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Eleventh Circuit affirmed the district court's denial of federal habeas relief to Petitioner Frank Evans, a Florida inmate, finding that Evans' double-jeopardy claim failed on the merits. That tracked the second part of the Secretary's two-pronged argument for affirmance: the Secretary had argued, first, that the jeopardy claim was unexhausted because Evans failed to raise it in state court, and second, that the claim failed on the merits in any event. The question presented is:

Whether the Eleventh Circuit erred in allegedly affirming based on a ground not presented by the Secretary.

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OPINION BELOW

Frank Evans seeks certiorari review of the decision of the United States Court of Appeals in *Evans v. Sec'y, Florida Dep't of Corr.*, No. 24-10464, 2026 WL 607318, (11th Cir. Mar. 4, 2026). (A-1).¹

¹ The Secretary will refer to Evan's appendix.

STATEMENT OF THE CASE AND FACTS

Evans was charged with attempted second-degree murder with a deadly weapon and was tried by jury. At the conclusion of jury deliberations, the state trial court realized it had failed to provide the jurors with a written copy of the jury instructions as required by Florida Rule of Criminal Procedure 3.400(b). “So, in an attempt to protect Mr. Evans’ rights, the trial court did not accept the jury’s verdict.” (A-1: 2). The court offered the defense the choice of declaring a mistrial or sending the jury back to review the written instructions before rendering a verdict. *Id.* The defense chose for the jury to review the instructions. After being instructed to ensure that the verdict complied with the instructions, the jury retired to further deliberate. (A-1: 2-3). The jury returned with a guilty verdict of aggravated battery as a lesser included offense of attempted second-degree murder. *Id.*

On direct appeal, the only claim raised was that the state trial court erred in denying Evans’ motion for a new trial “due to the prosecutor’s allegedly improper comments during closing argument.” (A-1:3). The state district court *per curiam* affirmed. *Evans v. State*, 255 So. 3d 308 (Fla. 3d DCA 2018)(3D17-0590).

Evans subsequently filed a postconviction motion. In ground one of that motion, Evans argued that his conviction was obtained in violation of the Double Jeopardy Clause. (A-1:4). The postconviction court denied the motion as procedurally

barred, as it deemed it an issue that must be raised on direct appeal. The state district court *per curiam* affirmed *Evans v. State*, 320 So. 3d 745 (Fla. 3d DCA 2021).

In his amended federal corpus petition under 28 U.S.C. § 2254, Evans labeled ground one “Double Jeopardy.” The district court addressed ground one alleging that Evans’ “. . . double jeopardy rights were violated because the trial court, the State, and his defense counsel . . . manipulated the . . . Rules of Criminal Procedure by declaring a “[s]ua sponte sham . . . mistrial . . .” (A-2 at 11). The court noted that in his postconviction motion, Evans argued that the trial court erred in declaring a mistrial in violation of his double jeopardy rights. (A-2 at 11-12). In footnote eight, the district court addresses Evans’ claim explaining that to the extent Evans meant to argue under Florida Rule of Criminal Procedure 3.400(b), it was a matter of state law and not cognizable in a federal habeas petition. (A-2: 11).

The district court correctly stated the facts and procedural history of Evan’s case. (A-2: 1-7). But the district court then engaged in an erroneous double jeopardy analysis. (A-2:12-17). The district court did not address the double jeopardy claim Evans made: that his double jeopardy rights were violated because the jury returned an acquittal and was then instructed to deliberate further. Instead, it analyzed the elements of two offenses, lewd and lascivious molestation and lewd and lascivious battery, that Evans was not charged with.

The court of appeals granted in part Evan’s motion for a certificate of appealability on the question, “whether the district court erred in denying Ground One . . . on the de novo determination that Evans had not demonstrated a double

jeopardy violation, where its analysis was based on . . . convictions for lewd and lascivious molestation and lewd and lascivious battery.” (A1:6).

The circuit court affirmed in an unpublished opinion. It began by acknowledging that the district court “misunderstood Mr. Evans’ double jeopardy claim and applied the wrong law to the wrong facts.” (A-1:8). The district court, the Eleventh Circuit explained, construed Evans’ claim as involving the application of the *Blockburger* same-elements test, when in fact the claim challenged the entry of a guilty verdict after the jury had returned a prior “verdict” that was not read aloud in court. *Id.* While “[n]ormally, an error of this kind would warrant a reversal and remand for further proceedings,” the Eleventh Circuit deemed that unnecessary here because, turning to the merits of Evans’ claim, “there is no viable claim and remand would be futile.” *Id.* After all, the state trial court did not accept the original verdict, and “[i]t is well settled that under Florida law for a verdict to be valid, it must be announced in open court in the presence of the jurors and the accused.” (A-1 at 10). “As a result, Mr. Evans’ double jeopardy protections were not triggered.” *Id.* Seeing no even potentially meritorious claim for the district court to consider on remand, the Eleventh Circuit affirmed the denial of habeas relief.

Evans now urges this Court to grant, vacate, and remand on the theory that the Eleventh Circuit affirmed based on a ground not presented by the Secretary. Pet. 6–8 (citing *Margolin v. Nat’l Assn. of Immigration Judges*, 608 U.S. ___, 146 S. Ct. 1285 (2026)).

REASONS FOR DENYING THE PETITION

Evans is simply incorrect that the Eleventh Circuit affirmed based on a ground not argued by the Secretary.

A. Granting, vacating, and remanding is unwarranted because, contrary to Evans' assertions, the decision of the Eleventh Circuit did not violate the party-presentation principle. Evans claims that the Secretary never argued below that "remand was futile because Petitioner's double jeopardy claim failed on its merits," and therefore that the Eleventh Circuit erred in affirming on that ground. (Pet 7). But Evans is simply wrong. (Pet. 7). The Secretary *did* contest the merits of the claim. *Evans v. Sec'y Fla. Dep't of Corr.* No. 24-10464, Doc. 60, pp. 24-25.

Each of the following arguments appear in the Secretary's Eleventh Circuit answer brief:

- "Assuming *arguendo* that the claim of double jeopardy based on the court's refusal to accept the jury verdict would have been clearly developed, it would have failed because '[f]or a verdict to become valid...it must be announced in the courtroom in the presence of the jurors and the accused.' *Griffin v. State*, 414 So. 2d 1025, 1028 (Fla. 1982). That did not occur in this case. Nowhere, except in his brief, does Evans say that there was a verdict of acquittal. The verdict was not seen or published." *Id.* at 24-25.
- "In *United States v. Gatlin*, 90 F.4th 1050, 1061 (11th Cir. 2024), *cert. denied*, No. 24-5241, 2025 WL 76513 (U.S. Jan. 13, 2025), after the jury returned an inconsistent verdict, the district court clarified the jury instructions and sent them back to continue deliberating. The appellant

- argued that by doing this, his Fifth and Sixth Amendment rights to a fair trial and double jeopardy were violated. This Court ruled ‘the district court had not accepted the jury’s verdict and, as a result, the verdict was not final.’ *Id.* at 1068. While an inconsistent verdict is not the issue in this case, the point is that when a court has not accepted the jury verdict, and sends the jury back with instructions, double jeopardy is not violated.” *Id.* at 25.
- “As discussed above, after a brief recess and in the presence of Evans, defense counsel agreed to cure the error by having the state trial court give the written jury instructions to the jury with directions. It follows that a trial court’s rejection of an unpublished jury verdict does not violate double jeopardy.” *Id.*

In sum, the Secretary contested Evans’ theory that the jury’s unread first “verdict” implicated the Double Jeopardy Clause. In fact, Evans acknowledged and replied to the Secretary’s merits argument. *Evans v. Sec’y Fla. Dep’t of Corr.* No. 24-10464, Doc. 62, p. 8.

That makes this case unlike *Margolin v. Nat’l Ass’n. of Immigration Judges*, 608 U.S. ___, 146 S. Ct. 1285 (2026), the decision Evans identifies as requiring a GVR. *Margolin* involved a remand predicated on a theory never offered by the respondent, who was the appellant in the court of appeals. The respondent there conceded that under the Civil Service Reform Act (CSRA), federal employees are required to bring work related grievances before the Merit Systems Protection Board and not before the federal district courts, but argued that the claims raised were not the kind of

claims covered under the CSRA. So, whether the claims raised by respondent were covered under the CSRA became the sole issue before the Fourth Circuit. But rather than addressing that issue, the court reversed and remanded based on the court questioning the functions of the CSRA. *Id.* at 1287.

This Court reversed. It held that the Fourth Circuit’s opinion violated “the principle of party presentation” by reversing the district court on a ground not argued by the appellant. *Id.* at 1288. As this Court explained, a court violates the party-presentation principle when it decides “a case different from the one advanced.” *Id.*

Nothing in the Eleventh Circuit’s holding contravenes that rule. The Secretary urged affirmance below on the alternative ground that Evans’ jeopardy claim failed on the merits. Citing *Gatlin*—a case relied on by the Secretary—the Eleventh Circuit affirmed, correctly concluding that a final verdict must be published and accepted by the court before jeopardy protections are triggered. (A-1 at 9-10).

B. Even if Evans could fairly claim that the Secretary did not argue the merits below, that still would not warrant a GVR. Under AEDPA, a district court may award habeas relief to a state inmate “only as ‘law and justice require.’” *Brown v. Davenport*, 596 U.S. 118, 132 (2022) (quoting 28 U.S.C. § 2243). It would make no sense to compel the courts of appeals to reverse the denial of habeas relief in a case bereft of ultimate merit—no matter the basis for the district court’s denial or the nature of the parties’

arguments on appeal. When the inmate has no valid claim on the merits, “law and justice” do not demand the issuance of habeas corpus.

This Court’s habeas precedents reflect that view. In *Wood v. Milyard*, for example, this Court held that the courts of appeals have “discretion” to “address *sua sponte*” an argument for affirming the denial of habeas relief that was not pressed on appeal by the State. 566 U.S. 463, 473 (2012). Though courts should “reserve that authority for use in exceptional cases,” they may nonetheless affirm a habeas denial on an unargued ground so long as the court does not “override a State’s deliberate waiver” of an argument. *Id.* at 472-73; *see also Granberry v. Greer*, 481 U.S. 129, 133-35 (1987) (holding that a court of appeals may consider a habeas petitioner’s failure to exhaust even when not raised by the state); *Caspari v. Bohlen*, 510 U.S. 383, 389 (1994) (similar for *Teague v. Lane*’s non-retroactivity bar). In making that judgment, the court of appeals should weigh “the interests of comity and federalism.” *Granberry*, 481 U.S. at 134. Here, comity and federalism would not have justified ordering an award of habeas corpus to which Evans was not entitled.

Evans’ petition thus fails on both the facts and the law. He is mistaken that the Eleventh Circuit affirmed on the strength of an argument not argued by the Secretary, and is further mistaken that the Eleventh Circuit would have committed any error even if it had done so.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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