No. 26-6004

FILED
JAN 26 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

[redacted]

Roosevelt Charles Booth Pro Se — PETITIONER
(Your Name)

vs.

Secretary, Department of Corrections — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

District Court of Appeal, Second District of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Roosevelt Charles Booth DC# S29976
(Your Name)

5850 East Milton Road
(Address)

Milton, Florida 32583
(City, State, Zip Code)

(Phone Number)

PROVIDED TO
SANTA ROSA C.I. ON
MAR 22 2026
FOR MAILING BY
RCB

QUESTION(S) PRESENTED

1. Is a defendant entitled to relief pursuant to a Successive Rule 3.850 motion where Manifest Injustice and a denial of due process is shown on the face of the record even to a litigant raising a Successive claim?

2. Is an attorney burdened with the duty to make pretrial investigations, including locating, investigating and deposing a Key witness(es) who's exculpatory impeachment material and was made known to the attorney by the defendant?

3. Is it a violation of a criminal defendants due process if the prosecution Suppresses admissible evidence favorable to and requested by an accused where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution?

4. Is it a violation of a criminal defendants due process to allow allegations of (dissimilar, uncharged acts of sexual abuse) to become a feature of a trial?

5. Is it harmful error to admit video regarding Sexual battery, when the probative value of the video was low and the prejudice and risk of confusion of the issue is great?

6. Is it harmful error to admit evidence of as Similar fact evidence when the Similarities between the charged crime and the williams rule evidence are weak and are outweighed by the dissimilarities as well as the remoteness of the crime?

7. Is it a violation of a criminal defendants due process for a State prosecutioner to introduce testimony of allegations known to be false and contradictory by the prosecutioner in a manipulative way to contrive a guilty conviction?

8. In a criminal conviction based solely on circumstantial evidence, is it an appellate courts duty to reverse the conviction, when the evidence, although strongly suggesting guilt, fails to eliminate any reasonable hypothesis of innocense?

9. Does the Government Violate a criminal defendants right to effective assistance of counsel when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense?

10. Is it a violation of a criminal defendants due process and a violation of a criminal defendants confrontation rights under the Sixth Amendment to admit testimony of out of court hearsay statements of someone other than the declarant when (1) what was told to the witness who testified was inconsistant to what was told to another witness who testified at trial, and (2) At the time when the accusations were made to these witnesses there was no opportunity for the criminal defendant or any lawyer on the behalf of the criminal defendant to cross-examine the accusser.

11. Is it fundamental error to preclude the defense from introducing admissible evidence that would tend to prove a defendants innocense of the crimes he is being accused of?

12. Can evidence of Prior, unsworn, inconsistant statements, not subject to cross-examination at the time they are made, constitute the Sole evidence upon which to sustain a conviction?

13. Is it a deprivation of a Petitioners Rights guaranteed by the federal constitution which would entitle the petitioner to relief from his current inprisonment if his inprisonment resulted from perjured testimony that was knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him?

14. If at the closing of all of the evidence presented at a trial, There's no competent, substantial evidence to support the conviction, due to no physical evidence and multiple contradictory statements, Should a motion for J.O.A. be granted?

15. Does a criminal defendant have a basic fair trial right to receive from prosecutors "exculpatory impeachment material" either to guilt or to punishment?

16. Can a Judge act outside of a neutral standpoint in a criminal proceeding and give any party any kind of legal advise?

17. Can a trial court force a defendant to either (1) accept an insufficient counsel who was withholding essential evidence to the defendants defense theory, who was exculpatory impeachment material, or (2) represent himself not knowing the law?

18. Is the State obligated under the due process obligation under the federal constitution to disclose material evidence favorable to a defendant

LIST OF PARTIES

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

[ ] 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:

RELATED CASES

Strickland v. Washington, 104 S.Ct 2052, 80 L.Ed 2d [No. 82-1554] Mooney v. Holohan, 294 U.S. 103, 112, 79 L.Ed 791, 394, 55 S.Ct. Stephens v. State, 974 So.2d 455, 457 (Fla. 2d DCA 2008) / Michael Ernest Haagac v. State, Court of appeal of Florida, Second District, No. 2D08-4801 opinion filed June 4, 2010 / Jeremiah Bray v. State, Court of appeal of Florida, Fourth District, No. 4D10-5187, Decided Dec. 14, 2011 / Carlos Figueroa v. State, Court of appeal of Florida, Second District, No. 2010-6140, opinion filed March 30, 2012 / Donnie L. Prince v. State, Court of Appeal of Florida, Fourth district, Nos. 4D12-1176 and 4D12-1814, Decided Oct. 17, 2018 / George Copeland v. State, Court of appeal of Florida, Second District, No. 2D13-901, opinion Filed June 12, 2013 / Jose Raul Plasencia v. State, Court of Appeal of Florida, Second District, No. 2D14-1632 opinion Filed June 17, 2015 / Timothy Sneed v. State, Court of appeal of Florida, Third District, No. 3D14-2834, Opinion Filed Feb. 25, 2015 / Juan Ines Barciera v. State, Court of appeal of Florida, Fifth District, No. 5D16-630 opinion Filed July 29, 2016 / Lavoris Johnson v. State, Court of Appeal of Florida, Fourth District, No. 4D16-3571, Decided Aug. 23, 2017 / Anthony McMillan v. State, Court of appeal of Florida, Fourth District, No. 4D18-1161 Decided Sept. 5, 2018 / Maykel Beiro v. State, Court of appeal of Florida, Third District, No. 3D18-2479, opinion Filed November 13, 2019 / Ginabel Hechevarria-Figueroa v. State, Court of appeal of Florida, Third District, No. 3D20-0495 Opinion Filed May 20, 2020 / Luis Hollis v. State, Court of appeal of Florida, Fourth District, No. 4D20-1864. Decided December 9, 2020 / Gary Eacven v. State, Court of appeal of Florida, First District, No. 1D19-3927 Decided June 4, 2021 / Gary Eacven v. State, Court of appeal of Florida, First District, No. 1D19-3927 Decided Aug. 30, 2021 / Giovanni Torrell Rocks v. State, Court of appeal of Florida, Third District, No. 3D20-1418 opinion Filed March 17, 2021 / Eddie Joe Richardson v. State, Court of appeal of Florida, Fifth District, No. 3d23-2292 Decided Sept. 15, 2023 / Michael D. Locascio v. State, Court of appeal of Florida, Third District, No. 3D23-2292 opinion Filed. Oct. 16, 2024 / Lawton v. State, 731 So. 2d 60, 61 (Fla. 2d DCA 1999) / Strickland v. Washington 104 S. Ct. 2052 (1984) / Hemeshack v. White, 133 F.3d 1382 (11th Cir. 1998) / Code v. Singletary, 971 F. 2d 1513, 1518 (4th Cir. 1992) / Mendoza v. State, 81 So. 3d 579 (Fla. 3d DCA 2012) / Murray v. Carrier, 477 U.S. 478, 1068 S.Ct. 2639, 91 L.Ed 2d 397 (1986) / Wiggins v. Smith, 539 U.S. 510, 123 S. Ct. 2527, 156 L.Ed 471 (2003) / Dobb v. Turbin, 142 F.3d 1383 (11th Cir. 1998) / Adams v. Balkcom, 688 F.2d 784 (11th Cir. 1982) / Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed 2d 215 (1963) / Mooney v. Holohan, 294 U.S. 103, 112, 79 L.Ed 791, 784, 55 S.Ct. 340, 98 ALR 406 / McLean v. State, 934 So. 2d 1248 (Fla. 2006) / Reyna v. State, 308 So. 3d 1025 (Fla. 4DCA 2020) / State v. Rawls / Feller v. State / Cavaliere v. State, 147 So. 3d 628 631 (Fla. 2DCA 2014) / Geraids v. State, 601 So. 2d 1157, 1163 (Fla. 1998) / Pulcini v. State, 41 So. 3d 338 (Fla. 4DCA 2010) / Mendez Supra / Mendez v. State, 271 So. 3d 1093, 1099-1100 (Fla. 3d DCA 2019) / Peterson v. State, 129 So. 3d 451 (Fla. 2d DCA 8014) / Daggers v. State, 536 So. 2d 321 (Fla. DCA 1988) / Owens v. State, 432 So. 2d 579 (Fla. 2DCA 1983) / Strickland v. Washington, 104 S. Ct. 2052, 80 L.Ed. 2d 674, 466 U.S. 668 [No. 82-1554] / Pyle v. Kansas, 317 U.S. 213, 215, 216, 87 L.Ed 214, 216, 63 S.Ct. 177 / Alcorta v. Texas, 355 U.S. 28, 2 L.Ed. 2d 9, 78 S.Ct. 103 / Wilde Wyoming 362 U.S. 607, 4 L.Ed 2d 985, 80 S.Ct. 900 CF / Durley v. Mayo, 351 U.S. 277, 285, 100 L.Ed. 1178, 1185, 76 S.Ct. 806 /

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 12

CONCLUSION 41

INDEX TO APPENDICES

APPENDIX A Mandate - District court of appeal of Florida, Second District

APPENDIX B Final order Denying Defendants motion for Post conviction relief
order Dismissing construed motion for Post conviction relief as successive

APPENDIX C Decision of State Supreme court Denying review

APPENDIX D order of State Supreme court Denying rehearing

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Stephens v. State, 974 So.2d 455, 457 (Fla. 2d DCA 2008)	
State v. McBride, 848 So. 2d 287, 291-92 (Fla. 2003)	
Carlos Figueroa v. State of Florida, 84 So.3d 1158, 2012 Fla. App. Lexis 5006, 37 Fla. Weekly D 772 Case No.: 2D10-6140	
Faretta v. California, 422 U.S. 806 (1975)	
Mendoza v. State, 81 So.3d 579 (Fla. 3d DCA 2012)	
Strickland v. Washington, 104 S. Ct. 2052 (1984)	
Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215	
Wiggins Ve Smith, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed 471 (2003	
Sims v. State, 839 So. 2d 807, 811	
Reyna v. State, 302, So. 3d 1025 (Fla. 4th DCA 2020)	
McLean v. State, 934 So. 2d 1248 (Fla. 2008)	
Jaggers v. State, 536 So. 2d 321 (Fla. DCA 1988)	
Bell v. State, 569 So. 2d 1328 (Fla. 1st DCA 1990)	
Giglio 405 US at 154 92 S. Ct. 763	
mooney v. Holohan, 294 U.S. 103, 112, 79 L.Ed. 791, 794, 55 S.Ct. 340, 98 ALR 406	
Napue v. Illinoise, 360 U.S. 264, 269, 3 L.Ed 1217, 1221, 79 S.Ct. 177	
STATUTES AND RULES	
Fla. Stat. 90.404 (2)	
Fla. Stat. 90. 404 (2)(a)	
Fla. Stat. 90.404(2)(b)	
Fla. Stat. 90.403	
Fla. Stat. 90.803 (23)	
Fla. Stat. 90.803 (23) (C)	
Fla. Stat. 90.803-22	
Fla. Stat. 90.803 (23)(2)(b)	
Fla. Stat. 90.402	
Fla. R. App. P. 9.141 (b)(2)	
Rule 806 Attacking and Supporting declarants Credibility	
Constitutional Law § 839.5, 890 Criminal law § 49 - Due Process of Law - Right of accused	
Constitutional Law 840 - Due Process - Prosecutions suppression of evidence	
6th Amendment of the Constitution of Florida	
Rule 801 (d)(2), c, d, e	
Art. I, Sect. 16 (A) Fla. Const.	
Chapter 12 Fla. R. Crim. P.	
OTHER	
Constitutional Law § 839.5, 890 Criminal Law § 49 - Due Process of Law - Right of accused	
Rule 806 Attacking and Supporting the declarants Credibility	
6 Amendment of the Constitution of Florida	
Art. I, Sect. 16 (A) Fla. Const.	
14th Amendment	
Art. I, Sect. 14 Const. Fla.	
Amendment 8	
Bill of Rights	

(V) Case and Statutory law

	Pg.
Fla. R. App. P. 9.100	1
Art. V, Sect. 3 (b)(8) of the Fla. Constitution	1
Fla. R. App. P. 90.030 (b)(3)	1
Case No.: 2018 CF-1144Ax	1
Booth v. Wells, 2D20-1650	1
Booth v. State, 2D20-3482	1, 2
Stephens v. State, 974 So. 2d 455, 457 (Fla. 2d DCA 2008)	1
State v. McBride, 848 So. 2d 287, 291-92 (Fla. 2003)	1
Carlos Figueroa v. State of Florida, 84 So. 3d 1158, 2012 Fla. App. Lexis 5006, 37 Fla. Weekly D 772 Case No.: 2D10-6140	1
Faretta v. California, 422 U.S. 806 (1975)	8
McKenzie v. State, 153 So. 3d 867, 884 (Fla. 2014)	8
McCorvey v. State, 384 So. 3d 314, 316 (Fla. 5th DCA 2024)	8
Vander-Garcia v. State, 965 So. 2d 318 (Fla. 2d DCA 2007)	8
Jones v. State, 922 So. 2d 1088, 1090 (Fla. 4DCA 2006)	8
Fla. R. Crim. P. 3.850 (h)(2)	8
Mendoza v. State, 81 So. 3d 579 (Fla. 3d DCA 2012)	10
Wiggins v. Smith, 539 U.S. 510, 123 S. Ct. 2527, 156 L. Ed. 471 (2003)	10
Strickland 466 U.S. at 690-91	10
Bobb v. Turbin, 142 F. 3d 1383 (11th Cir. 1998)	10
Adams v. Balkcom, 688 F. 2d 784 (11th Cir. 1982)	10
Code v. Montgomery, 799 F. 2d 1481 (11th Cir. 1986)	10
Rios v. Rooma, 299 F. 3d 796 (9th Cir. 2002)	10
Jackson v. State, 965 So. 2d 302 (Fla. 1st DCA 2002)	10
Strickland v. Washington, 104 S. Ct. 2052 (1984)	11
Mikson v. Newsome, 888 F. 2d 112, 115 (11th Cir. 1989)	11
Chatham v. White, 850 F. 2d 1479, 1485 (11th Cir. 1986)	11
Code v. Singletary, 971 F. 2d 1513, 1518 (4th Cir. 1992)	11
Homesback v. White, 133 F. 3d 1382 (11th Cir. 1998)	11
Murray v. Carrier, 477 U.S. 478, 1068 S. Ct. 2639, 91 L. Ed. 2d 397 (1986)	11
Cuyler v. Sullivan, 466 U.S. 335, 100 S. Ct. 1708, 64 L. Ed. 333 (1980)	11
Fla. R. Crim. P. 3.600 (A)(2), (b)(6) and (c)	13
Fla. R. Crim. P. 3.590 (a)	13, 14
Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)	17
Brady violation	17
State v. Bagley, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)	17
Strickler v. Greene, 527 U.S. 263, 281-82, 119 S. Ct. 1963, 144 L. Ed. 2d 286 (1999)	17
Way v. State, 760 So. 2d 903, 910 (Fla. 2000)	17
Fla. Stat. 90.404 (2)(a), 90.404 (2)(b) and 90.403	17
Fla. Stat. 90.404 (2)	18
State v. Rawls	18

(vi)	Pg
Feller v. State	18
Saffor	18
Puccini v. State, 41 So. 3d 338 (Fla. 4DCA 2010)	18
Thermidor v. State, 50 So. 3d. 1184 (Fla. 4DCA 2003)	18
Sims v. State, 839 So. 2d 807, 811	18
Fla. Stat. 90.404 (2)(a)	18
Fla. Stat. 90.404(2)(b)	19
Mclean v. State, 934 So. 2d 1248 (Fla. 2006)	19
Fla. Stat. 90.403	19
Reyna v. State, 302 So. 3d 1025 (Fla. 4DCA 2020)	19
Mendez, Supra	19
Cavaliere. v. State, 147 So. 3d 628, 631 (Fla. 2DCA 2014)	19
Geralds v. State, 601 So. 2d 1157, 1163 (1992)	19
Fla. Stat. 90.803 (23)	22
Peterson v. State, 189 So. 3d 451 (Fla. 2d DCA 2014)	22
Crawford v. Washington, 541 U.S. 36; 51-52, 124 S. Ct. 1354 (2004)	22
Zmijewski v. B'Nai Torah Congregation of Boca Raton, Inc. 639 So. 2d 1022 (Fla. 4th DCA 1994)	22
Idaho v. Wright, 497 U.S. 805, 110 S. Ct. 3139 (1990)	22
Weatherford v. State, 561 So. 2d 629, 633 (Fla. 1st DCA 1990)	22
Fla. Stat. 90.803 (23)(c)	22
State v. Townsend, 635 So. 2d 949, 957-58 (Fla. 1994)	22
Fla. Stat. 90.803(23)	22
Mendez v. State, 271 So. 3d 1093, 1099-100 (Fla. 3d DCA 2019)	23
Smith v. State, 880 So. 2d 730, 741 (Fla. 2DCA 2004)	23
State v. Contreras, 977 So. 2d 896, 902-03 (Fla. 2008)	23
Fla. R. Crim. P. 3.380	24
Case No.: 2018-DP-000314	24
Fla. Stat. 90.803 (23)	25
Jaggers v. State, 536 So. 2d 321 (Fla. DCA 1988)	25
Bell v. State, 569 So. 2d 1322 (Fla. 1DCA 1990)	25
Tsavaris v. State, 414 So. 2d 1087 (Fla. 2DCA 1982)	26
Heiney v. State, 447 So. 2d 210 (Fla. 1984)	26
Owens v. State, 432 So. 2d 579 (Fla. 2DCA 1983)	26
Jackson v. State, 511 So. 2d 1047 (1987) *1049	26
Jaramillo at 257	27
McArthur v. State, 351 So. 2d 972, 976 N. 12 (Fla. 1977)	27
Jackson v. State, 511 So. 2d 1047 (1987) *1056	27
Robinson v. State, 707 So. 2d 688, 693 (Fla. 1988)	28
Routly v. State, 590 So. 2d 397, 400 (1991)	28
Giglio 405 U.S. at 154, 92 S. Ct. 763	28
Rose v. State, 774 So. 2d 629 (2000)	28
United States ex rel. Almeida v. Baldi (PA) 195 F. 2d 815, 33 A.L.R. 2d 1407	30

vii	Pg
United States ex rel. Thompson v. Dye (PA) 221 F. 2d 763	30
Mooney v. Holohan, 294 U.S. 103, 112, 79 L. Ed. 791, 794, 55 S. Ct. 340, 98 ALR 406	30
Pyle v. Kansas, 317 U.S. 213, 215, 216, 87 L. Ed. 214, 216, 63 S. Ct. 177	30
Mooney v. Holohan, 294 U.S. 103	31
Napue v. Illinoise, 360 U.S. 264, 269, 3 L. Ed. 2d. 1217, 1221, 79 S. Ct. 1173	31
Alcorta v. Texas, 355 U.S. 28 L. Ed. 2d. 9, 78 S. Ct. 103	31
Wilde v. Wyoming, 362 U.S. 607, 4 L. Ed. 2d 985, 80 S. Ct. 900, CF	31
Durley v. Maya, 351 U.S. 277, 285, 100 L. Ed 1178, 76 S. Ct. 806	31
Criminal Law - Evidence in general - Application of Harmless Error Test	32
State v. Diguilio, 491 So. 2d 1129 (1986)	32
State v. Murray, 443 So. 2d 955 (Fla. 1984)	33
Arango v. State, 437 So. 2d 1099 (Fla. 1983)	33
Speakelink v. [redacted] Wainwright, 372 So. 2d 927 (Fla. 1979)	33
Constitutional Law § 839.5, 890 Criminal Law § 49 - Due process of Law - Right of Accused	34
Jackman v. State, 140 So. 2d 627 (Fla. 3d DCA 1962)	34
Brookings v. State, 495 So. 2d 135 (Fla. 1986)	34
Fla. Stat. 90.803-(22)	34
Fla. Stat. 90.402	34
Fla. Stat. 90.403	34
Fla. Stat. 90.803 - 23 (2)(b)	34
Rule 806 Attacking and Supporting the declarants credibility	35
Rule 801 (d)(2), C, d, E	35
Fla. Stat. 90.803 - 22	35
Fla. Stat. 90.803 - 23	35
Fla. Stat. 90.404 (2)	35
Feller v. State,	36
Saffor	36
pulcini v. State, 41 So. 3d 338 (Fla. 4DCA 2010)	36
Thermidor v. State, 50 So. 3d 1184 (Fla. 4DCA 2003)	36
Sims v. State, 839 So. 2d 807, 811	36
Mclean v. State, 934 So. 2d 1248 (Fla. 2006)	36
Reyna v. State, 302 So. 3d 1025 (Fla. 4DCA 2020)	36
Mendez, Supra	37
Cavaliere v. State, 147 So. 3d 628, 631 (Fla. 2DCA 2014)	37
Geralds v. State, 601 So. 2d 1157, 1163 (Fla. 1992)	37
6 Amendment of the Constitution of Florida	37
Art. 1, Sect. 16 (A) Fla. Const.	38
14th Amendment	38
Chapter 12 Fla. R. Crim. P.	38
Fla. R. Crim. P. 3.380	39
Jaggers v. State, 536 So. 2d 321 (Fla. 2DCA 1988)	40
Bell v. State, 569 So. 2d 1322 (Fla. 1DCA 1990)	40
Owens v. State, 432 So. 2d 579 (Fla. 2DCA 1983)	41
[illegible]	41

	Pg.
McArthur V. State, 351 So.2d 972, 976 N.12 (Fla. 1977)	41
State V. Arthur	42
800.04 (a)(1)	42
800.04 (5)(b) Fla. Stat.	42
Fla. R. Crim. P. 3.131 (a)	42
Fla. Const. Art. 1, Sect. 14	43
Sylvester V. State, 175 So.3d 813 lex-8601 5th DCA 2014	43
Williams V. State, 855 So.2d 1206 (175 So.3d 813, 814)	43
Fla. Stat. 907.04	43
Alexander V. Broward County Sheriff 4009-1032, 6 So.3d 707 lex. 17546, 4th 2009	43
Luyao V. Mascaca, 815 So. 2d 748 (Fla. 4DCA 2002)	44
Brazil Jenne, 755 So.2d 784 (Fla. 4DCA 2000)	44
Fla. Stat. 907.041 (4)(b)(1)	44
Fla. Stat. 903.046	44
Fla. R. crim. P. 3.131	44
Hernandez V. Roth, 890 So.2d 1173 (Fla. 3rd 2004)	44
Art. 1, Sect. 14 Const. Fla.	44
Fla. Stat. 907.041 (4)(h)	44
martina V. State, 602 So.2d 1334 (Fla. 5DCA 1992)	44
Amendment 8	44
Bill of Rights	44
Carlos Figueroa V. State of Florida, 84 So.3d 1158, 2012 Fla. App. Lexis 5006, 37 Fla. L. Weekly D 772	
Case No.: 2D10-6140	45
Stephens V. State, 974 So.2d 455, 457 (Fla. 2d DCA 2008)	45
State V. McBride, 848 So.2d 287, 291-92 (Fla. 2003)	45
Fla. R. App. P. 9.141 (b)(2)	45
Stephens V. State, 974 So.2d 455, 457 (Fla. 2d DCA 2008)	46
State V. McBride 848 So.2d 287, 291-92 (Fla. 2003)	46
Stephens, 974 So.2d at 457	46

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 **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] 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 _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Manatee County Twelfth Judicial Circuit court appears at Appendix B to the petition and is

[ ] reported at _____; 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 a 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 Oct. 6, 2025. A copy of that decision appears at Appendix A.

[✓] A timely petition for rehearing was thereafter denied on the following date: October, 20, 2025, and a copy of the order denying rehearing appears at Appendix C & D.

[ ] An extension of time to file the petition for a 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

Constitutional Law 840 - Due Process - Prosecutions Suppression of evidence:
The Suppression by the prosecution of evidence favorable to and requested by an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

* Constitutional Law § 839.5, 840 Criminal Law 849 - Due process of Law - Rights of accused: "it is essential to due process of law in a fair adversary process that an accused have the right (1) to be present at all stages of the trial where his absense might frustrate the fairness of the proceedings (2) to testify on his own behalf, and (3) to be convicted only if his guilt is proven beyond a reasonable doubt."
* 90.803-23 hearsay exception Statement of child victim: Unless the source of information or method of circumstances by which the statement is reported indicates a lack of trustworthyness, an out of court statement made by a child victim with a physical, mental, emotional or developmental age of 16 years or less describing any act of child abuse, or any neglect, abuse, any act of sexual abuse towards a child, the offense of child abuse, the offense of aggrevated child abuse, or any offense involving any unlawful sexual act, contact, intrusion, or penetration performed in the presense of, with, by, or on the declarant child, not otherwise admissible is admissible in evidence in any civil or criminal proceeding if: (1) the court finds in a hearing conducted outside the presense of the Jury that the time, content, and circumstances of the statement provide sufficient safegards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate, and (2) the child either testifies or is available as a witness, provided that there is other corroborative evidence of the abuse or offense; unavailability shall include a finding by the court that the childs participation in the trial or proceeding would result in a likelihood of severe or emotional or mental harm; in addition to findings pursuant to s. 90.804 (1)
* Rule 806 Attacking and supporting the declarants credibility: "When a hearsay statement or statement described in Rule 801 (d) (2), C, d, or E has been admitted in evidence, the defendants credibility may be attacked, and then supported by evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarants inconsistant statements or conduct regardless of when it occured or whether the declarant had an opportunity to explain or deny it."
* the 6th Amendment of the Constitution of Florida, Rights of the accused provides: "In all Criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial Jury of the State and district where in the crimes shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation, to be confronted with the witness against him, to have a compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

On April 30, 2018 the State Charged me With one Count of lewd or lascivious molestation upon a Child less than 12 years old, between Feb. 6 and 8 of 2018 by touching the genitals of A.B in a lewd or lascivious manner. (R14). The information was amended on the 21st of March, 2022 to add one Count of Sexual battery on a Child less than 12 years of age by Union of his mouth With A.B.'s Vagina. (R1279).

In February 2019 the trial Court granted my Counsels motion to Withdraw and appointed Charley Demosthenous (R 26, 33-35). In February 2020 the trial Court granted my motion to dismiss Mr. Demosthenous as my Counsel and appointed him as Standby Counsel. (R 202, 958, 1598-1612). On the 8th of November 2021 I told the Court that I Cannot properly represent myself, requested Counsel, And the trial Court re-appointed Mr. Demosthenous to represent me. (R 2012-14). In March, 2022 the trial Court Conducted an inquiry upon my new motion to dismiss Mr. Demosthenous (R 2054, 2058). I told the Court that my trial Counsel is not representing me because he refused to put in a motion to dismiss and evidence that the Child testified differently prior to the State Showing the Witness documents during depositions (R 2059-60). Mr. Demosthenous indicated my allegations lacked Specific facts to Support a motion to dismiss, the evidence pertained to me wanting him to Subpeona my attorney from the dependancy Case who did not respond to his Calls or emails, and Mr. Demosthenous did not think it would be benificial to force the Witness to testify. (R 2061-63). The prosecutor indicated that She met With Witnesses prior to depositions, but did not coach them regarding what to Say. (R 2067). The Court found Mr. Demosthenous Sufficiently explained that he attempted to contact the prior dependancy counsel, his Concerns regarding admissibility and Whether it was a good idea to pressur a former attorney to testify about the matter. (R 2069) The trial Court Concluded that I failed to Show reasonable Cause to believe Mr. Demosthenous is rendering ineffective assistance of Counsel, granted my motion to dismiss Mr. Demosthenous as my trial Counsel but appointed him as Standby Counsel (R 202, 958, 1598-1612, 2071). On April 25, 2022 the trial Court denied my motion to present A.B.'s testimony from the dependancy proceeding as hearsay exception. (R 1293-97; T 225-28). the trial Court conducted a Faretta inquiry during Which I indicated I was 30 years old, Completed

my Ged, Can read and write, does not have any mental health issues and is not under the influence of drugs or alcohol, he understands the charges, has never conducted a voir dire, I was somewhat familiar with Florida Statutes and Criminal rules of procedure, I understand the evidence code a little bit, I was not sure how to make various objections, and I did not know how to proffer evidence. (R2071-81). The trial Court found I was not familiar with the law, Court procedure, and the rules of evidence. (R2081). The trial Court opined that it would be better for me to be represented by a trained counsel. (R2081-82). I responded that I do not want to waive Counsel, but wants to dismiss Mr. Demosthenous. (R2082-83). The trial Court found that I Knowingly and voluntarily waived my right to Court appointed Counsel and freely exercises my right to Self-representation under Florida law (R2084-2106). On April 13, 2022 the trial court offered to appoint Mr. Demosthenous to represent me, who requested a different attorney, but the trial Court indicated that I was not entitled to a court-appointed attorney of my own Choosing when it did not find Mr. Demosthenous deficient. (R2093-95). After further inquiry, I indicated that I do not want to represent myself but is forced to. (R2098-2130). On April 18, 2022 I told the court that I contacted Mr. Demosthenous who said that he is unable to take over the case. (R2114). The trial court responded he is available and appointed him as Standby counsel. (R2124-25). I filed prose motions to dismiss the Charge for insufficient Prima facie evidence of guilt, which the trial court denied. (R28, 32, 48-112, 134-147, 208-211, 215, 399, 483-86, 1630). The State filed a notice of intent to use Child hearsay Statement from grandmother, police and Child protection Service (CPS), to which the Petitioner objected and argued in Significant parts that it would be an unfair process and violate my right to Confront Witnesses. (R962-93, 933, 979-92). On the 8th of Sep, 2021, the trial Court held a hearing and granted the notice of Child hearsay evidence from the Childs grandmother and CPS. (R1154). MS. Faith testified that She is my mother and A.B.'s grandmother. (R1857). A.B lived with the Petitioner and Petitioner's father until the case originated around Feb. 2018, when MS. Booths daughter told her that A.B. wanted to talk to her because her dad did Something wrong. (R1857, 1860). Around that time, A.B.'s mother had been incarcerated for three or four months (R1860). The next day She asked A.B. What happened, and A.B. answered that her dad did Something wrong, pointed to her vagina area and Said her dad put his mouth down there. (R1861-62). He was playing Video games and other Kids were asleep (R1862). MS. Booth reported it to law enforcement the next day. (R1864). A.B had been dishonest before, She had lied about taking $100 from her Wallet, Stealing a bracelet When She visited a relative, and taking Something out a neices book (R1865-67). Mrs. Kira Parks of CPS identified a video recording of her interview with A.B. on Feb. 20, 2018 (R1918). In the recording A.B indicated that She was eight years old, daddy did Something he was not supposed to do, he was playing mom and dad when She was watching T.V. With her brother in uncle Keyshawns room at grandma faiths house, he touched her private where She pee's with his hands. (R1871, 1878-82). On another occasion, I touched her top part (chest) while I was drying her off with a towel after She finished Showering. (R1885). Mrs. Parks also identified a recording of her interview with T.C. on April 25, 2017. (R1923-24). In the video recording, T.C. indicated that She is thirteen and was Sexually abused last year. (R1891). She was Sleeping with her mom, When She woke up to See the Petitioner naked and pulling down her pants to have Sex with her. (R1897-98). Her pants were around her knees, and he was pulling her down Closer to his body. (R1909). She told him no and he Stopped. (R1897-98). Another time She woke up to him fingering her vagina. (R1899, 1901). She vaguely remembers a third time

that he touched the outside of her vagina while she was asleep. (R1905). She recalls that his fingers went inside her vagina two or three times, and the other times, they were around there. (R1908). The State had filed a notice of intent to use similar fact evidence of the petitioner penetrating the vagina of T.C. with his finger(s) in March, 2016. (R19). On March 9, 2022 the trial court granted the notice of intent to use similar fact evidence from case 2018-CF-1575. (R1270, 2048). The defense had argued substantive differences between the two cases in that T.C. was in bed with her mother when she woke up to see Petitioners Penis erect with pants pulled down and incidents of digital penetration of her vagina, whereas A.B. Alleged a touching outside her ~~vagina~~ private and touching of her top (Chest), and the probative value of the evidence is substantially outweighed by its prejudicial value. (R2035-36). On April 27, 2022 a Jury found me guilty of both counts charged. (R1518). I filed a motion for J.o.A. arguing the evidence is insufficient to sustain the verdict. (R1316). The trial court adjudicated me guilty and Sentenced me to concurrent terms of life imprisonment with life as a minimum mandatory on Count 1 (Sexual battery). (R1384-89). On May 27, 2022 I filed a notice of Appeal (R1301) Trial.

Prior to Jury selection on April 25, 2022, the trial court enquired and I responded that I was 31 years old, has up to 12th grade education and completed my Ged, Can read and write, does not have any mental health issues and is not under the influence of drugs or alcohol, that I understand the charges and potential penalties, has never selected a Jury, and does not understand challenges or objections to a potential Juror, he understands Florida evidence code and rules of Criminal procedure, is not sure how to impeach witnesses, does not know how to proffer evidence, does not desire to represent myself, but does not want the court to re-appoint Mr. Demosthenous. (T3-12). The trial court overruled my request for a 12 person Jury for a Capital offense based on the States' argument the offense is Capital for Sentencing purpose only and does not require a 12 person Jury. (T18). The trial court overruled my objections to the States motion in limine to precude references to failure to call witnesses or what the witnesses testimony would have been, where the Petitioner had argued that he wanted to call his prior attorney, Michael Kelly, as a witness but was not able to subpeona him from Jail. (T29-32). During Jury selection I objected to the States preemptory challenge of prospective Juror 24 and requested a race neutral reason as he was the only african american on the panel. (T209). The trial court overruled the objection, finding that the States' reason that he did not know if he could listen to testimony and consider it as evidence is a race neutral reason. (T209-11). A panel of 6 Jurors and 2 alternates was selected and sworn in. (T217-19). A.B. Testified that she lives at her grandmother Faiths residence with her three Siblings and her blind uncle. (T270). She identified me as her father and testified that when she was 8 years old, she and her Siblings lived with her mom and dad in bradenton at her grandad and ms. Stellas house. (T. 272-75, 331). Once or twice in Feb. 2018, while her mom was in Jail, Something inappropriate happened with her father. (T279). The first time, She woke up from a nightmare and went to the bottom bunk where her father was watching T.V. (T280). He asked her to take off her pants, touched the outside of her front part where she pees with his hands, and he licked it with his mouth. (T282-86). She pulled up her pants and he told her not to say anything. (T286). She does not remember how much time passed between when he touched her with his hands and when he touched her with his mouth. (T286). A few days later, her dad came into the room, pulled her pants halfway down, he asked her Something, She said no, and he pulled her pants back up without touching her private. (T288-89). A couple of days after she told grandma Faith, Mr. Dwight and a policeman came and talked with her. (T291-92). She was placed at her aunt Rose's house and was

taken to cpt office, where she talked with mrs. Kira Parks. (T294) A few days before the trial, She watched the video recording of her interview with mrs. Kira Parks to help her remember. (T294-299). She had told mrs. Kira that her dad touched her private with his hands, and She did not say that he touched her with his mouth. (T295). Upon the prosecutioner asking had he touched your private with his mouth, She responded "yeah". (T295). She does not know why She did not tell mrs. Parks about that. (T301). She thinks the Petitioner abused her once or twice. (T302). Her mom was in Jail when I allegedly assaulted her, and She remembers being told that She said that her mom was in the house when it happened. (T302, 324-26, 330). On Cross-examination A.B. Testified that I never touched her breast in a sexual manner, but She told mrs. Kira parks during the forensic interview that I touched her breast inappropriately. (T300). The trial court Sustained the States objection to me asking A.B, have you ever denied these allegations before, like have you ever told anyone that I never touched you before? because according to CPS case worker Dwight Roberts - (T300). On redirect examination the State refreshed her recollection with a transcript and asked whether She remembered testifying at the dependancy hearing that her dad touched her private with his hands and licked her private, to which She answered yes. (T333). Ms. Faith testified that She is my mother and A.B.'s grandmother. (T346). She currently lives with her blind adult Son, A.B. and A.B's three younger siblings. (T347). In Feb. 2018 A.B. and her siblings lived with their parents at the residence of her ex-husband and his girlfriend Stella (T348). Her daughter told her that A.B. wanted to talk to her about her father having done Something wrong. (T350). The next day, She Spoke with A.B. at lincoln park. (T350-51). She asked A.B. What was going on, A.B. Said that her father had touched her wrong, and when She asked where, A.B. pointed to her vagina. (T351-52). She said Something about in the room playing video games, and based on the conversation, he Supposedly put his mouth. (T351). After talking with other family members, She reported it to the Sheriffs office the next day. (T352. At that time, A.B.'s mother was incarcerated for about four months. (T353). They removed the Children from Stellas home, and they are currently living with MS. Faith (T353). During Cross-Examination She clarified that A.B. had Said the other Children were asleep, I was playing video games, I touched her with my mouth but did not Say hands. (T354-55). Detective michael page attended the forensic interview of A.B. and discussed the case with cps investigator. (T362). The Childrens mother was in Jail from Nov. 15, 2017 until She was released on march 2, 2018. (T363-64). The trial court Sustained the States objection to me asking detective page if he had expressed doubts about the Situation. (T364). Mrs. Kira parks interviewed A.B. at the CPS office on Feb. 20, 2018 when A.B. was 8 years old. (T370-71). She identified a DVD recording of the interview, which was admitted over my renewed objection to Child hearsay Statements as unreliable. (T375-77). In the recording, A.B. indicated that daddy did Something that he's not Supposed to do by playing mom and dad. (T387). One night he touched the outside of her private where She pees with his hands. (T388, 395). Another time, he touched the top part of her body while drying her off after a Shower. (T393). The trial court overruled my renewed objection that the hearsay testimony was unreliable. (T399). The trial court instructed the Jury that T.C.'s testimony Concerned other Crimes or acts allegedly committed by the Petitioner and is to Consider it for the limited purpose of proving motive, opportunity, intent, plan, Knowledge, and Absense of mistake or accident. (T402). The trial Court overruled my objection to the States' request to instruct the Jury that the evidence is to be considered to Corroborate A.B.'s testimony, finding the Petitioners objection without further argument is insufficient. (T403-04). The trial Court restated the instruction to the Jury and added that the evidence is also to be considered for Corroborating the testimony of A.B. (T404). T.C. testified that She was born on Dec. 15, 2003, and She moved with her mother to a Studio apartment in bradenton Florida around Dec. 15, 2016. (T406-08). A few days later her

mother let the petitioner and his family, who was neighbors, move in with them for two or three weeks. (T408-09). Petitioner and his wife slept in the bed with her mother, which was seperated from the rest of the apartment by a curtain, the Petitioners 4 children slept in T.C.'s bunk bed, and T.C. slept in a made up bed down by the desk area. (T410-11). During that time, there were five or six times something happened that was not right. (T415). The first time she fell asleep next to her mom while I was at the end of the bed, and Ana had said that she was going to take a shower. (T414). T.C. woke up at the end of the bed with her pants pulled down to her knees and the Petitioners pants were down with his genetalia erect, and she believes the Petitioner pulled her to the end of the bed and pulled her pants down. (T414-15). She was probably wearing leggings, shorts or something like that, and cannot remember if she was wearing underwear. (T415). She told him no, he said sorry, don't tell anybody, and he got in the shower with Ana. (T416) Two or three days later, she was in her sleeping area, and she woke up to him fingering her by inserting his finger in her vagina. (T416-17). She told him to stop, and he walked away. (T416). A day or two later, she woke up and he had put his fingers in her vagina (T418). In the 5 or 6 times, he penetrated her with his fingers two or three times, and the other times his hands were on her inner thigh like he was about to penetrate her. (T419). She did not think her mother would believe her because stuff had happened to her sister and her mother didn't believe her sister. (T418). She did not tell anyone until she told someone at a church event in 2017, and a police officer showed her photographs to identify the person who did those things to her. (T418-20). During cross-examination, T.C. denied that she previously said that she did not remember the specific details of the allegations. (T421). The Petitioner proffered T.C. had said that she did not remember the specific details until after she was afforded the opportunity to see the video of her forensic interview. (T426). The prosecutor disagreed and provided me a copy of the deposition. (T423-24). The petitioner indicated that he could not find the page and line numbers, but it is in there because he had underlined it in his transcripts. (T425-26). The petitioner indicated that he did not bring his copy of the jury instructions and answered that he did not know about the lesser-included offenses. (T429-34). During another inquiry, I restated that I do not want to represent myself but is forced to because I do not want mr. Demosthenous. (T457-58). Mr. Anthony Cerniglia was the detective who assisted in presenting an array of 6 photographs to T.C. from which she selected Petitioners photograph (T478-81). Officer Brian Winyate testified that in Feb. 2018, he was dispatched to meet a CPS investigator at the 10th Street address in bradenton, Florida. (T473). The seperated A.B. from the Petitioner to avoid coercion by taking her to the backyard. (T474). While they were interviewing A.B. Petitioner came out with a bag of garbage, they told him to stay inside, he said he was bringing garbage out, and he remained there a little longer than needed to just drop garbage. (T474). He was staring at A.B. whos facial expression changed and she appeared afraid and was no longer willing to talk. (T475). The State rested. (T483). Petitioner moved for J.o.a., arguing the State has not met its burden to present prima facie case of guilt, and the evidence has too many inconsistancies. (T489). The trial court denied the motion, finding there was sufficient facts elicited to make a prima facie case that I touched A.B.'s vagina in a lewd or lascivious manner when she was less than 12 yoa, and his mouth penetrated or had union with her vagina. (T480-90). Petitioner testified that he never touched his daughter, the accusation doesn't make sense because nothing happened, her testimony brought to his attention that they might be pissed because he had sex with another woman when she alleged those things, and that he was bringing out garbage when he came out on the back porch. (T495-98). The trial court sustained the States objection to his statements that he was not able to bring witnesses, and what A.B. talked about is not lighting up. (T496-97). In

the Standby asked him to talk about T.C., The Petitioner said he does not know anything about T.C., he Stayed with a neighbor called grace for 3 days after he had moved because of false accusations that he was selling drugs. (T499). The trial Court agreed the Standby counsel should not be asking questions because it might create an appellate issue, and the trial court directed the Petitioner to continue his testimony in a narrative. (T502). The Petitioner restated that he did not do what is alleged and is not guilty of these crimes. (T502). The trial court denied my renewed motion for J.O.A. (T530-31). The trial court instructed the Jury that the lesser-included crimes in the definition of Sexual battery but failed to include lewd or lascivious molestation. (T536, 543). It also instructed the Jury that "it is to Consider the admitted evidence of other crimes or wrongs committed by the Petitioner as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absense of mistake or accident, or corroboration of A.B's testimony. (T541). The State argued the Jury can use T.C.'s testimony to corroborate the credibility of A.B's testimony because T.C. described Several instances where the Petitioner removed her pants and touched her genetals with his hands as A.B. described and on accasion digitally penetrated her with his fingers, and Similar to A.B. there were other people in the apartment, and he told her not to tell. (T562-68). The Petitioner objected by saying that none of that is Similar fact and Should never have been introduced at trial. (T568). The Petitioner argued that he does not have anything to prove his innocense except A.B's inconsistent Statements, where She told grandma faith that he used his mouth, then told CPS that I only used my hands, alleged that I touched her breast in a Sexual manner and later Said he never touched her breasts, testified that incidents occured one night when her mother was present, when manatee county record Shows that the mother was incarcerated. (T572-80). The trial Court Sustained the States objection to his argument that A.B. told a different Story at another trial about whether the incidents occured. (T577). The Jury found the Petitioner guilty of all counts Charged. (T594-95). The trial Court re-appointed Mr. Demosthenous for the Sentencing phase, adjudicated the Petitioner guilty, and Sentenced him to Concurrent life sentences as a Sexual predator. (T600-06). [redacted]

The Judgment and Sentence were affirmed by mandate issued August 3, 2023. (See Attachment 2) Petitioner filed his initial rule 3.850 motion on Oct. 17, 2023, raising nine grounds for relief. (See Attach. 3

Ground one - The defendant was court appointed ineffective assistance of Counsel, and Should have been appointed new assistance of Counsel.

Ground two - Defendant was forced by trial Court to go prose self-representation

Ground three - The Conviction was obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

Ground four - Court allowed State to introduce at trial, testimony of Similar fact evidence, in apposition to Fla. Stat. 90.404(2)(a), 90.404(2)(b), and 90.403.

Ground five - State did not meet the burden required to prevail at trial.

Ground Six - Court erroneously allowed testimony of out of court hearsay statement from grandmother Faith Booth.

Ground Seven - Court Should have granted my motion for J.O.A.

Ground eight - Court forced Counsel to be ineffective

Ground nine - The Judge entered into the fray by giving Counsel advice to the defendant.

On Nov. 6, 2023 the Court Struck grounds one and three with leave to amend and Summarily denied the remaining

[redacted]

(See Attachment 3) (See attachment 4) (See Attachment 5) (See attachment 8 accurate. I filed my amended motion on Febuary 29, 2024, raising six additional grounds for relief: Ground Ten - Giglio violation
Ground Eleven - Pigulie violation
Ground twelve - [redacted] hitchcock violation
Ground thirteen - Violation of Due Process
Ground fourteen - Movants equal protection clause was violated
Ground Fifteen - Movant was held on an excessive bail for four consecutive years that he could not afford, denying him his right to pretrial release on reasonable conditions guaranteed to him by the "Bill of Rights"

On June 6, 2024 the Court Struck grounds eleven, fourteen and fifteen with leave to amend. the present motion followed. the court addresses defendants remaining ~~grounds~~ claims in turn.

Ground one: Defendant claims trial counsel was ineffective for failing to call C. Michael Kelly as a witness. Defendant alleges Kelly would have been able to testify to inconsistant testimony given by the victim, A.B. in an earlier dependancy court action. On March 30, 2022 the court conducted a hearing on one of defendants many motions to discharge his court appointed attorney. The court found that counsel had not been ineffective and advised defendant he would not receive substitute counsel. Defendant confirmed he still wished to discharge counsel, and after conducting an inquiry pursuant to Faretta v. California, 422 U.S. 806 (1975), the court granted defendants request to represent himself. Counsel served as standby counsel until after the jury returned its verdict, When defendant accepted the courts offer to reappoint counsel for Sentencing. Having decided to represent himself, defendant cannot now complain that he was denied effective assistance of counsel for failing to call a witness at trial or effectively impeach A.B. McKenzie v. State, 153 So.3d 867, 884 (Fla. 2014). To the extent Defendant claims Counsel was ineffective for failing to file a motion for a new trial after being reappointed, the claim is Conclusory after defendant was given an opportunity to amend. McCorvey v. State, 384 So.3d 314, 316 (Fla. 5th DCA 2024) Claim denied.

Here, The court only addresses two of the many claims that made trial counsel ineffective. ① Claim that trial counsel was ineffective for failing to call C. Michael Kelly as a witness, that I alleged Kelly would have been able to testify to inconsistant testimony given by the victim, A.B. in an earlier dependancy court action, and ② Claim that Counsel was ineffective for failing to file a motion for a new trial after being re-appointed.

The other claims that made trial counsel ineffective that were never considered or addressed Comes to follow in Argument.

In March of 2025 I filed an emergency Petition for writ of habeas corpus in the trial court that Sentenced me, Showing claims of manifest Injustice. On April 9, 2025 the court issued an order dismissing construe ; motion for post-conviction relief as successive, Stating the part: The current habeas petition, which Collaterally attacks the Judgment and Sentence in this case, is properly treated as a motion under Rule 3.850. Valdez-Garcia v. State, 965 So.2d 318 (Fla. 2d DCA 2007). Although the claims raised in the petition are "nearly" identical to the claims raised in defendants prior post-conviction motion, defendants pending Petition for belated appeal does not deprive this Court of Jurisdiction to consider the petition. Jones v. State, 922 So.2d 1088, 1090 (Fla. 4th DCA 2006). A post-conviction motion may be dismissed as successive if ① it fails to allege new or different grounds for relief and the prior determination was on the merits or ② there is no good cause for the failure to assert any new and different claims from the prior post-conviction motion. Fla. R. Crim. P. 3.850 (h)(2). The petition fails to allege new and different claims from the prior post-conviction motion, which was denied on the merits, and to the extent defendant raises new and different claims, he fails to allege good cause for failing to raise them in his prior Post-Conviction motion.

[redacted]

By scrutinizing both "The final order denying defendants motion for post conviction relief" and the "Emergency petition for writ of habeas corpus"; you'll find that I did, in my "Emergency petition for writ of habeas corpus" ① Allege new and different claims from the prior post-conviction 3.850 motion "Second amended" "which did not deny each and every ground on the merits; ② raise the grounds therein the emergency petition for writ of habeas corpus, in the prior post-conviction motion 3.850 "Second Amended". When you look at the "Final order denying defendants motion for post conviction relief", you'll See that, I filed my initial rule 3.850 motion on oct. 17, 2023 raising nine grounds for relief. On NOV. 6, 2023 the court struck grounds one and three with leave to amend and summarily denied the remaining grounds.

That being; grounds: two, four, five, six, seven, eight and nine were never considered [redacted] nor ruled on, and were never denied on the merits.

That being; Since the grounds were never considered, ruled on, nor denied on the merits; grounds: 2, 4, 5, 6, 7, 8, and 9 are new and different claims from the prior motion, and grounds raised in my prior post conviction motion. I filed my amended motion on Feb. 29, 2024 raising six additional grounds; grounds: Ten, eleven, twelve, thirteen, fourteen and fifteen. If you look at the "Final order denying defendants motion for post conviction relief (Pg. 2) you'll find that on June 6, 2024 the court struck grounds eleven, fourteen and fifteen with leave to amend, but never mentioned or gave any instructions on what to do concerning grounds Ten, twelve and thirteen. Scrutiny of page 4 of the final order denying defendants motion for post-conviction relief, you'll find that ground twelve states: Because claims of trial court error are not cognizable under rule 3.850, this claim is denied, and also that ground thirteen states: Because claims of trial court error and challenges to the sufficiency of the evidence are not cognizable under rule 3.850, this claim is denied, and also that ground Fifteen states: Because claims of trial court error and speedy trial violation are not cognizable under rule 3.850, denied. That being, Since grounds twelve, thirteen and fifteen were never considered or denied on the merits, they too were, ① new and different claims from the prior post-conviction 3.850 motion "Second Amended" which did not deny each and every ground on the merits ② raised the grounds therein the emergency petition for writ of habeas corpus, in the prior post conviction motion 3.850 "Second Amended".

On May 9, 2025 I filed a notice of appeal to the Emergency petition for writ of habeas corpus;

On August 27, 2025 the Second district court of appeal, State of Florida, Per Curiam Affirmed.

On September 5, 2025 I filed a: motion for rehearing, requesting a written opinion; and a motion to relinquish jurisdiction; to the Second district Court of Appeal, State of Florida.

On September 19, 2025 the motion for rehearing, request for a written opinion, and motion to relinquish Jurisdiction were denied.

I, Roosevelt Charles Booth, here now, Respectfully petitions this court for a writ of mandamus Compelling the district Court to resolve this case on its merits.

As to Ground one: The defendant was court appointed ineffective assistance of counsel, and should have been appointed new assistance of counsel.

The movant respectfully submits that his present motion for post-conviction relief is predicated upon facts set forth herein, and that all the facts sworn to throughout the present motion, and incorporated memorandum of law, support

REASONS FOR GRANTING THE PETITION

As to ground 1: The defendant was court appointed ineffective assistance of counsel, and should have been appointed new counsel. The Petitioner Respectfully Submits that his present petition is predicated upon facts set forth here in, and that on the facts sworn to throughout the present motion, and incorporated memorandum of law, support each of my claims. Additionally, that his claims of State and Federal Constitutional errors, merit an evidentiary hearing as controvered factual matters sworn to herein require Judicial determination. This ground for ineffective assistance of counsel exists, here listed as follows:

A) I was deprived of my right to effective assistance of Counsel where my counsel failed to locate, investigate, depose, and Call (C. Michael Kelly) as an exculpatory witness, thus, depriving me of my rights to due process of law and a fair trial as guaranteed by both State and Federal Constitutions.

In the present case the petitioner proceeded to trial maintaining his innocence of the crimes charged against him, that it was not his desire to represent himself, that he did not know what he was doing, and that he needed help, and again told the court and the Standby counsel that there was a witness he needed to testify on his behalf, they still refused to give me another counsel and they refused to bring the witness to testify, inadvertantly suppressing an essential witness to my defense, a witness who would have changed the outcome of the trial and changed the verdict from guilty to not guilty.

In support of this argument, the petitioner relies on Mendoza v. State, 81 So. 3d 579 (Fla. 3d DCA 2012) which held: "Unlike the strategic decision to call a witness to testify at trial, the failure to locate, and investigate witnesses can often serve as a colorable claim of ineffective assistance of counsel. Wiggins v. Smith, 539 U.S. 510, 123 S. Ct. 2527, 156 L. Ed. 471 (2003), Observing that counsel has a duty to make reasonable investigations. (Quoting Strickland 466 U.S. at 690-91) Counsel has a duty to investigate. Dobb v. Tuchin, 142 F. 3d 1383 (11th Cir. 1988. Pretrial investigations and preparations are keys to effective assistance of counsel. Adams v. Balkcom, 688 F. 2d 784 (11th Cir. 1982). Failure to conduct meaningful pretrial investigations satisfies the first prong of Strickland. Code v. Montgomery, 799 F. 2d 1481 (11th Cir. 1986). Failure to investigate and consider exculpatory evidence can be deficient. Rios v. Rooma, 299 F. 3d 796 (9th Cir. 2002). In order to allege a facially sufficient claim of ineffective assistance of counsel for failure to call a witness, a discription of the testimony, an explination of how the omission of the testimony prejudiced the outcome of the petitioners case, the identity of the witness, and that the witness was available must be contained. (See, Jackson v. State, 965 So. 2d 302 (Fla. 1st DCA 2002).

Petitioner declares his counsel ineffective for failing to locate, investigate, and depose (C. Michael Kelly) as an exculpatory witness. The Petitioner Respectfully asserts that had his counsel investigated the witness, he would have learned that he indeed was available to testify, (he works in the courthouse everyday) and would have testified; "Yes, I was at the trial, yes, She did Say he Kissed her in the mouth, and then later on Said he didn't, yes, She did Say daddy never takes them baths, yes, She did Say there was a time in between the alleged two incidents to go to the Store, apposed to both happening before She put back on her pants, yes, She did Say that, on that night She came down and laid in the bed with her mother, Ana Martinez, and her father, yes, She did Say that, after her father had touched her, She went outside, called her mom, and her mom came back and Picked her and her brothers and Sister up, and they all left, yes, She did Say that the reason why her mom was not at the house with them was because She went with her mom to get party decorations for her Sisters birthday party, a Shadow of a doubt would have been cast on the testimony. Surely by Just the mothers presence in the Story, having the whole incident Surrounding the mom being there, doing Specific things, leaving with a specific purpose, With a particular person, and returning, to pick everyone up and leaving again.

Furthermore, the Petitioner Submits that the defense counsels' Performance was grossly incompetent, Where he failed to locate, depose, and call (C. Michael Kelly) as an exculpatory Witness. (Failure to conduct a proper investigation satisfies the first prong of Strickland) Also, counsels performance was deficient Where counsel failed to present

[redacted]

evidence in support of his theory, thus violating Movants State and Federal Constitutional Rights to effective assistance of Counsel and due process. Because defense counsel persued a defense of innocense, against Movants wishes, counsel could have no sound strategic decision in failing to investigate, or present exculpatory evidence that would have corroborated that defense. No competent lawyer would have presented such a defense without evidence to support such a defense.

The Movant contends that he has been prejudiced by counsels deficiency because he was unable to corroborate his defense theory, and therefore was found guilty of crimes that in light of the presented affidavit, he obviously did not commit. Michael Kelly's testimony would have corroborated Movants defense theory; in a case where the State based its case on conflicting testimony of the State's witnesses, and thus would have weakened the States case. there exists a reasonable probability that Michael Kelly's testimony would have and still would cast a doubt upon the Jury and that the present case would end in an acquittal.

The Movant asserts that, had counsel proffered testimonial evidence from C. Michael Kelly in conJunction of evidence, that the alleged acts never lined up, and said testimony that involved mother being at the house the night of alleged Sexual abuse, was clearly untruthful; it would be determined that the alleged victim was not credible. and the Movant would have, and would be acquitted of all charges.

The Movant now asserts, that but for his counsels deficient performance, the outcome of the present case would be entirely different.

Memorandum of Law

Under the dictates of Strickland v. Washington, 104 S. Ct. 2052 (1984), a movant is entitled to effective assistance of Counsel which conforms to community standards in Strickland, the United States Supreme Court promulgated a two prong test outlining the standard for Judging ineffective assistance of Counsel claims, specifically counsel is ineffective when (1) his or her representation falls below an objective standard of reasonableness and (2) but for the deficiency in representation, there is a reasonable probability that the result of the proceeding would have been different, Id at 687. To substantiate the first prong, the movant must prove that his counsels performance was objectively unreasonable, and that the alleged deficiency was not sound strategy. This presumption is not insurmountable. Although there is a presumption that a particular act or omission constitutes sound ~~strategy~~ trial Strategy, See, Mikson v. Newsome, 888 F. 2d 112, 115 (11th Cir. 1989); Chatham v. White, 850 F. 2d 1479, 1485 (11th Cir. 1986). The mere incantation of the word Strategy does not insulate attorney behavior from review. The attorneys choice of Strategy must be reasonable under the totality of the circumstances. Code v. Singletary, 971 F. 2d 1513, 1518 (4th Cir. 1998). Ineffective assistance may consist of a variety of acts or omissions. It may consist of failing to conduct adequate investigations. Horneback v. White, 133 F. 3d 1382 (11th Cir. 1998) Id in Murray v. Carrier, 477 U.S. 478, 1068 S. Ct. 2639, 91 L. Ed 2d 397 (1986), the United States Supreme court held that even a singular error may constitute ineffective assistance of counsel, if that error is egregious enough. Also See, Cuyler v. Sullivan, 466 U.S. 335, 100 S. Ct. 1708, 64 L. Ed 333 (1980).

Conflict of interest

On Feb. 25, 2019 Charly Demosthenous, ESQ was appointed to represent Movant. by Sep. 25, 2019 there was enough mishap between the movant and the attorney (which lead up to violations of his constitutional Rights) for him to feel like he wasnt being represented adequately, and that he needed to file a motion to dismiss the counsel at hand and have one replaced that would actually help him.

On Sep. 25, 2019 the movant filed his first motion to dismiss counsel. On Oct. 14, 2019 there was a court order setting a

[redacted]

counsel because he was unsure why the courts hadn't responded yet to his motion when the Jail makes daily trips to the courthouse dropping off legal mail. The hearing set for 10/28/19 was cancelled, and the hearing was conducted on [redacted] 10-31-19. The request to dismiss counsel was denied.

On Oct. 13, 2019 the movant filed a second motion to dismiss counsel; on 11-19-19 there was a court order setting a hearing for 12-11-19 to dismiss counsel. on 12-11-19 the motion to dismiss counsel was held; that request to dismiss counsel was also denied. On Feb. 7, 2020 the movant filed a third motion to dismiss counsel. On 2-12-20 the court set a hearing for tuesday, Feb. 26, 2020 at 3:00. On Feb. 26, 2020 the court granted the movants motion to dismiss counsel but did not appoint new counsel, Stating; Counsel was not ineffective, Court then proceeded to allow counsel to stay as Standby counsel at the counsels request; reluctant and unsure of what a standby counsel was at the time, the movant agreed to allow the counsel to stay as standby. On Nov. 8, 2021 the movant chose to have Charalampos Demosthenous reappointed as counsel of record. On 11-8-21 appointed counsel rescheduled all motions to a later date. Docket sounding was set for 11-24-21, trial set for 12-6-21. On 11/23/21 trial was Canceled, Continuance granted, case was set for docket sounding on 4-12-22 trial set for 4-25-22. On 3-21-22 movant filed a fourth motion to dismiss counsel because counsel still refused to contact witness and he kept saying, "I can't enter that transcript into evidence" and told movant he wasn't even sure if he could use the witness, hearing for motion to dismiss counsel was set for 3-30-22. On 3-30-22 Court granted movants motion to dismiss Counsel, did not appoint new assistance of counsel or standby counsel, and there relieved counsel of any further obligation in the matter. Court then proceeded on to give movant advice on how he should obviously proceed with the case. Telling the movant to focus on another case ultimately could have been the reason why the movant didn't have time to learn how to properly impeach the witness at trial. That time he spent focusing on what the Judge said "was the obvious thing to focus on" could have been time spent on learning how to properly impeach the alleged victim at trial; which was the only way he could have prevailed at trial. (Note; movant did not know how to impeach the witness at trial and received advice from the Judge on how to do so. Court set docket sounding for 4-13-22 and Jury trial for 4-25-22. On 4/4/22 Court order was issued granting movants motion to [redacted] dismiss counsel and denying movants motion to appoint new counsel. On 4-12-22 movant was called in by court to assure that it was my desire to represent myself or would I like to have an attorney appointed to me. (Which was Charalampos demosthenous). I let the court know again that it is not my desire to represent myself. Court offers Charley, movant tells court that he called Charley and Charley said "he would not be ready for trial, I'm on my own". Court says he says Charley will be ready and insisted on offering Charley as counsel. Court finally convinced movant to allow Charley to be standby counsel again because movant would need trial clothes, reluctant, movant agreed for clothes.

Argument

This Judgment is unlawful because the movant was afforded ineffective assistance of counsel. there was a clear conflict of interest between the movant the counsel being that the movant attempted to dismiss the counsel twice, and successfully dismissed the counsel twice. If the attorney was already dismissed and relieved from any obligation in the case, he should have never been re-appointed as counsel or standby counsel. The facts and circumstances of the case raised a clear conflict of interest and the movant should have been appointed new assistance of counsel. On Feb. 25, 2019 Charalampos Demosthenous esq. was appointed to represent me. Charley's actions and lack of actions during his involvement of the case proved him to be ineffective assistance of counsel. On 3-1-19 counsel put in a motion to authorize private investigator. On 3-5-19 there was an order to authorize private investigator. On 3/27/19 case was reset for case managment, set for 5-1-19. Case was reset for case managment on 5-2-19, set for 6-19-19. On

[redacted]

In 8-28-19 case was reset for case managment, set for 9-18-19. On 9-18-19 docket sounding was set for 3-24-20, and jury trial set for 4-6-20. The movant realized that his 175 day speedy trial right was being infringed upon and was being told that he couldnt use evidence that would cast a shadow of a doubt on the case. The attorney proved to be ineffective assistance when he not only failed to get in contact with the witness but also continuously told the movant that he was not going to pressure someone into testifying. The record shows that, on 7-30-21 [redacted] I filed a list of motions, two of them being; 1) Defendants testificandum motion, and 2) Compulsory process motion. Term: Compulsory process- text: compulsory process - for a witness signifies and means a process that will compel a witness into court who refuses to come without it. The counsel was ineffective because he was unwilling to do what needed to be done to assure that a witness who could testify on the behalf of the movant was made known and present. The movant knew about the witness since 1-11-19, Charley was appointed on 2-25-19, I continuously told Charley about the dependancy hearing, the witness, the change of the testimony, and the impossibility of the statements stated therein, And from 2-25-19 to 2-26-21 he failed to get in contact with this witness, Moreso, as standby counsel even, from Feb. 26, 2020 to April 27, 2022 he was still unable to get in contact with the witness, through his own unwillingness or the Judge's limitation on what the counsel could do to assist me with in the proceedings. The record shows that both reasons lead up to this unlawful conviction.

The goal of this cause is to protect the valued American principles of due process, equal protection of the law, and my 6th Amendment right to effective assistance of counsel as guaranteed by both State and Federal Constitutions.

In the instant case, I proceeded to trial maintaining that I was innocent of the charged offences; however, because the entire trial included a swearing match between the states witnesses, the jury's determination of a verdict was based intirely on the credibility of the alleged victims. As such, had the state's evidence been thoroughly and effectively challanged after a more thorough investigation of the evidence, there exists a reasonable probability that the present cause would have ended in an acquittal.

Therefore, in order to protect the movants due process, equal protection of the law and right to effective assistance of counsel, reversal of the present convictions and sentence are warranted.

Failure to Request new trial

In addition to all of the other deficiencies of the counsels actions and lack of actions, the re-appointed assistance of counsel failed to file a motion for a new trial within the 10 day time period. I Roosevelt Charles Booth filed a handwritten prose motion for new trial march 11, 2024, filing date. As grounds for relief I cited Fla. R. Crim. P. 3.600(A)(2), (b)(5) and (c). An order was issued denying my motion for new trial stating the part: "The trial took place from April 25, 2022 through April 27, 2022, inclusive. On April 27, 2022, the jury rendered its verdict of guilty as charged, on count 1 (Capital Sexual battery) and count 2, (lewd or lascivious molestation by person 18 yoa or older upon a child less than 12 yoa) as alleged in the states amended information that was filed on March 21, 2022. The same day as the jury's verdict [redacted] the movant [redacted] was adjudicated guilty and sentenced to life in prison on both counts. Florida rules of criminal procedure 3.590 (a) clearly states that "a motion for new trial may be made ... in writing and filed with the clerks office, within 10 days of the verdict or the finding of the court." The defendants handwritten, prose motion for new trial was filed on March 11, 2024, a little after 22 months after the jury's verdict was rendured, ordered and adjudicated the 15th day of March, 2024; my handwritten prose motion for new trial filed on March 11, 2024 is denied. Original Signed March 15, 2024) (Matt Whyte, Circuit Judge.

[redacted]

Argument

During the dates of April 27 through May 7, 2022, I, Roosevelt Charles Booth, was indeed being represented by appointed counsel, Charley Demosthenous, (after he was already discharged off my case two times already) Charley was not discharged again, (a third time) until may 27, 2022. Thus, Charley failed to enter a motion for new trial within the 10 day time period allowed pursuant to Fla. R. Crim. P. 3.590(a). There were and are plenty of merit filled grounds that could have been and should have been raised in a motion for a new trial in the case at hand.

Moreso, I didn't know about the 10 day time limitation for a new trial, but even if I did, I was still being represented at the time by an appointed counsel and any motion filed by me acting Prose would have been a nullity. It was that appointed counsels obligation to file for a new trial. There were plenty of grounds to cause for a new trial, although he only needed one; (The Judge entered into the fray instead of staying neutral) there was evidence introduced that should have never been allowed, there was evidence kept from the jury that should have been allowed, the jury overlooked and/or never took into consideration all of the evidence pointed out and placed on the record, and a multitude of other unlawful actions and sins that took place in my proceedings.

Therefore, the appointed counsel, yet again proved to be ineffective assistance of counsel and this unlawful conviction and sentence should be reversed and vacated. (See attachment 9)

As to Ground Two: Defendant was forced by trial court to go Prose - Self-Representation.

The record clearly shows that the counsel that was court appointed proved to be ineffective by being both: unwilling and unable to; (because of the Judge's limitation to what and how he could assist me), get in contact with a witness that he and the court knew about that could have ultimately cast a shadow of a doubt on the alleged victims testimony, even so, the trial court still found the movants complaints and reasons why his court appointed counsel was ineffective to be meritless. This conviction and sentence and judgment is unlawful because I was clearly unqualified and did not know how to properly represent myself even to a minimum standard to be able to prevail at trial. Pg. 2138 lines 24-25 - Pg. 2139 lines 1-11; Pg. 2140 lines 7-25; Pg. 2104 lines 10-25; Pg. 2105 lines 1-14 (Record on appeal).

Ultimately it was the Judge's decision as to rather I was capable of represeating myself or not; (Pg. 1778 lines 24-25 pg. 1779 lines 3-5) (Record on appeal). The record clearly shows that the [redacted] movant did not know the law, was not familiar with criminal rules of procedure, never picked a jury, didn't know how to proffer evidence, didn't know how to impeach a witness properly, didn't know the melbourne, neil and slappy objections that I could make, couldn't tell the Judge one exception to the general prohibition on hearsay being admissible in court; didn't know what voir dire was, didn't know the best evidence rule, could not give one example of when character evidence would be appropriate, wasn't really sure when you were supposed to make a motion for J.o.A.; I didn't know what steps I needed to take to protect my appellate rights; I knew what jury instructions were but did not know of where to find them. (Pgs 1776 lines 18-25 Pgs. 1777 lines 1-25 pg 1779 lines 7-25 pg 1780 lines 1-25 pg 1781 lines 1-25 pg 1782 lines 1-25 pg 1783 lines 1-23. (Record on appeal)

Even after the court completely discharged the attorney from any further obligations in the proceedings and later still finding that I was not able to represent myself and needed assistance of counsel, and strongly urged me to be represented by a trained lawyer, the court still insisted on offering me the same discharged attorney. The record shows that even as close as a week away from trial, and the counsel himself saying he would not have enough time to prepare for trial; the Judge still continued to force Mr. Demosthenous upon me. It was either accept the insufficient counsel, who was withholding evidence that was essentia

Pg.2114 lines 8-14; 15-19; 20-25, Pg.2115 lines 14-25; pg.2116 lines 1-5. pg2117 lines 11-22. After again refusing Courts offer of Charley, Court still coerced me into having Charley as Standby Counsel by a matter of Clothes. Pg.2119 lines 17-25 - page 2120 lines 1-5. Pg.2130 lines 24-25. pg.2135 lines 23-25. Pg.2136 lines 1-4. (Record on Appeal) (note: Pg.2136 line 25 - pg 2137 lines 1-25 - pg. 2138 lines 1-25, During the 6 minute recess, (Shown on pg 2138 line 17), I asked the counsel about the witness, (C. Michael Kelly) and the transcript from the dependency hearing trial, held on 1-11-19, the counsel again stated that he was not going to enter the transcript into evidence, and he was unsure if he could even use the attorney as a witness; upon further questioning from the movant, Counsel flat out said, "I'm not going to use him" "I'm just not". I dont feel like it would be benificial to force someone into testifying; So I went back into the court and continued to refuse the insufficient counsel who again told me he wasn't going to use evidence that was essential to the case and my defense; evidence that could have cast a shadow of a doubt on the alleged victims testimony. Even there after, the Judge continued to offer Mr. Demosthenous as counsel throughout the duration of the trial, or continue to represent myself. Since the beginning, I proved to not know the law and my incapability of representing myself. Record shows that I didn't know the meaning difference of disputed and undisputed; there clearly should have been some kind of concern if I didn't know the difference between disputed and undisputed facts, and the Judge felt like he had to use the words agree and disagree, how could I have the mental capacity to represent myself in a Criminal prosecution? Record shows that, at the trial, I still did not know how to impeach the witness and that I simply failed to do the process right, and that the witness (C. Michael Kelly) still didn't show up at the trial. (Standby counsel could have done something to get him to come), but he didn't and the Judge still continued to force this insufficient counsel upon me, or force me to represent myself, even though I didn't even know how to properly impeach someone, which was the only way that I could have prevailed at trial. (Note: Pg. 306 lines 3-25 - Page 307 line 1; Pg. 309 lines 2-20; Pg. 312 lines 5-8; Pg. 314 lines 8-14; (Trial transcript) plenty was on record to prevail at trial) (Pg. 314 lines 15-23 Trial transcript). (See Attachment 10)

(See also, attachment 11)

As to Ground three: Brady Claim - The conviction was obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the movante

The prosecution was required to make known to the defense of all the parties that attended that dependancy hearing on Jan. 11, 2019 because they were all exculpatory impeachment material; under the State discovery statutes; the failure of the prosecution to do so violated my Rights under the due process clause of the 14th Amendment and the confrontation clause of the Sixth Amendment. Here, are two seperate claims, First, that the prosecution was required by Statute to disclose this information about all the witnesses that could have testified in my favor, and violated State law by not doing so, and Second, that failure to disclose this information about specific witnesses violated my Federal Rights under due process clause and confrontation clause. In Particular, Movant contends that, denial of access to these witnesses and information deprived me of possible impeachment evidence against the alleged victims

The court of appeal State's that a criminal defendant discovery Rights arise from two sources - State Statute and Federal Constitution that the prosecutions obligation to disclose information under the Federal constitution in particular, only extended to "material exculpatory" information within the prosecutions control, and that to prevail on such a claim, a defendant must also show a reasonable probability that, had

the evidence in question been disclosed, the result would have been different.

In the case at hand, there were allegations that were made, there was no physical evidence in the case; no DNA, no hair, no saliva, doctor physical showed no signs of sexual abuse; all was needed in the case to prevail at trial, as to show that the statements of the allegations were indeed inconsistant. If "any of" or all of those witnesses would have testified and said "yes", I was at the trial, "yes", She did say he kissed her in the mouth, and later on said he didn't, "yes", She did say daddy never takes them baths, yes, she did say there was a t[illegible] between the alleged two incidents to go to the store, opposed to both happening before she [illegible] pants; yes, She did say that on that night She came down and laid in the bed with [illegible] Martinez, and Father; "yes", she did say that, after her father had touched her, She went [illegible] her mom, and her mom came back and picked her, and her brothers and sister up and they outside, [illegible] all left; "yes", She did say that the reason why her mom was not at the house with them was because She went with her mom to get party decorations for her sisters birthday party; a shadow of a doubt would have been cast on the testimony; Surely by just the mothers presense in the story, having the whole incident surrounding the mom being there, doing specific things, leaving with a specific purpose, with a particular person, and returning, to pick everyone up and leaving again.

Record shows that, the mother of the alleged victim, was indeed incarcerated, months before the alleged incident, and didn't get out until months after the allegations were made and law enforcement got involved. All of those witnesses could have testified that, at least that part of the testimony was clearly impossible to be true, thus, casting a shadow of a doubt on the case, which if I would have been afforded the information of those people, and would have been able to get them to come to trial, and that evidence would have been disclosed, the result would have been different.

Criminal defendants have a basic fair trial right to receive from prosecutors "Exculpatory impeachment material", either to guilt or to punishment, "defense request unnecessary".

"Exculpatory evidence" is evidence the suppression of which would undermine confidence in the verdict, under the Brady rule, prosecution is required only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial. "material exculpatory evidence; includes evidence effecting witness credibility; When witnesses' reliability is likely determinative of guilt or innocense.

In a number of decisions, including the landmark in the United States Supreme Court, has held that the prosecution has a "due process" obligation under the Federal Constitution to disclose material evidence favorable to a criminal defendant. The accused was unsuccessful on direct review and sought State collateral review. Although the accused was ultimately unsuccessful there as well, he was able to present some evidence favorable to him that the State had failed to disclose before or at trial. Eventually, the accused filed a habeas corpus petition in the United States district court, and included a Brady claim; but the district court denied the petition. In Certiorari, the Supreme Court reversed the Court of appeals' judgment and remanded the case for further proceedings.

In an opinion, it was held that on Federal habeas corpus review, the accused was entitled to a new trial because of the prosecutions failure to comply with the due process obligation to disclose material evidence, favorable to the accused, concerning his possible innocense of the crime, for the net effect of the evidence withheld by the State raised a reasonable probability that the evidence disclosure to competent counsel would have produced a different result, as among other prosecutor remains responsible for gauging that effects, regardless of any failure by the police to bring favorable evidence to the prosecutors attention.

Brady claim - Although the materiality prongs of the Brady and Giglio tests are often confused as one and the same, they are not, the Brady Standard of materiality applies where the prosecutor fails to disclose favorable evidence to the defense, in which case the undisclosed evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.

In the case at hand, the State and trial court is in clear violation of Brady v. Maryland, 373 U.S. 83 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

* Brady violation by suppressing a witness (C. Michael Kelly) favorable to the movant that could have cast a shadow of a doubt on the State's case and Changed the verdict.

In accordance with Brady, and the united States' Supreme Courts' Subsequent pronouncements in United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d. 481 (1985) The court recently enunciated: There are 3 Components to a true Brady violation, (1) the evidence at issue must be favorable to the accused, either because it's exculpatory, or because it is impeaching (2) that evidence must have been Suppressed by the State either willfully or inadvertantly and (3) prejudice must have ensued. Strickler v. Greene, 527 U.S. 263, 281-82, 119 S.Ct. 1963, 194 L.Ed.2d. 286 (1999); See Way v. State, 760 So.2d 903, 910 (Fla. 2000).

* Constitutional law 840 - Due Process - Prosecutions Suppression of evidence.

The Suppression by the prosecution of evidence favorable to and requested by an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. (See attachment "A") (Defendants motion for Compulsory process)

The Suppression of this witness was a violation of due process clause of the fourteenth Amendment.

Due to the facts and circumstances of the case at hand there is a clear Brady violation. (1) The witness (C. Michael Kelly) as a witness was favorable to the accused movant, because he could have cast a shadow of a doubt on the case and the jury's decision and Changed the verdict to not guilty, as the witness would have been used to impeach the alleged victim. (2) The evidence was suppressed by the State and the trial court inadvertantly as the movant had made known to the court and to the State of this witness who would've Changed the outcome of this verdict, on multiple occassions, through my motion to Subpoena the witness from Jail, at heacings where I attempted to dismiss my counsel for refusing to get in Contact with this witness, yet the court and the State refused to make the witness a part of the proceedings, and (3) prejudice was definately ensued as the Judge Showed favoritism throughout the Whole time Since my case was assigned to him, by continuously granting the State Continuances, with no good Cause Shown; Simply because the State refused to do depositions for 4 Straight years, and Continuously Stated, the States not ready to go to trial yet because depositions have not been done yet, despite my repeated requests for a speedy trial, the Judge at trial repeatedly Sustained the State's objections that was without reason, and the Judge repeatedly gave me legal advice at trials, Showing his willingness to be prejudice and bias, and to Show favoritism, and to go against the law and rules of criminal procedure. All of which prove that theres a clear Brady violation and my conviction and Sentence Should be reversed and vacated.

As to Ground four: Court allowed State to introduce at trial; testimony of Similar Fact evidence, in opposition of Fla. Stat. 90.404(2)(a), 90.404(2)(b) and 90.403. (See att. 21)

The court committed reversable error when they allowed the Similar fact evidence pursuant to 90.404(2). Reason being why, the "Similar fact evidence" pursuant to Fla. Stat. 90.404(2) Should not have been allowed at trial are as follows: As the Supreme Court explained in State Vs. Rawls; the holding in hewing grew out of the specials problems presented in such cases: Because the victim knows the perpetrator, the numerated purposes of "the williams rule", such as identity are not at issue, also, the victim is typically the sole witness and corroborative evidence is scant, the victims credibility is the focal issue. Accordingly, we held that in narrow class of cases involving sexual battery within familial context, Similar fact evidence is admissible to corroborate the testimony of the victim, thus, the court provided for a relaxed standard of admissibility for similar fact evidence corroborating a victims testimony. However, the charged and the collateral offenses "must share some unique characteristic or combination of characteristics which sets them apart from other offenses". (See attachment 7)

In Feller Vs. State, the two offenses had only two things in common: both was the same type of offenses and both involved young girls. the court held that; "although sexual battery on an underaged child is a reprehensible offense, it is not so unique in itself that it should be uniformly admissible under Section 90.404(2), this type of evidence is more readily admitted if it involved the same victim."

In Saffor, the court adopted a two prong test for the admission of collateral crime evidence in sexual abuse cases within familial context. First, both the charged offenses and the collateral offenses must occur within the family settings, Second, there must be some additional showing between the incidents in order for the collateral crime evidence to be admissible. In Saffor, the Supreme Court held that the similarities between the charged offenses of sexual battery of the defendants girlfriends 10 year old son and the collateral offense of attempted lewd assault of the defendants 12 year old niece were not sufficient to render the collateral offense admissible. Although the offenses took place in the familial context, there were differences in the victims ages and gender, and the acts took place at different times of the day. The court held that the only similarity was both offenses were committed while the children were asleep in bed. (See Pulcini Vs. State, 41 So. 3d 338 (Fla. 4DCA 2010) finding that the similarities between the charged crime and the williams rule evidence were weak and were outweighed by the dissimilarities as well as the remoteness of the crime. See also, Thermidor Vs. State, 50 So. 3d 1184 (Fla. 4DCA 2003) Concluding that the dissimilarities outweighed the similarities. Furthermore, Sims Vs. State, 839 So. 2d 807, 811 (explaining that), "A mere similarity will not render the similar facts legally relevant to show identity, there must be identifiable points of similarity to persuade the compared factual situations". (See attachment 7)

In the case at hand, the State failed the test for the collateral evidence to be admitted pursuant to Fla. Stat. 90.404(2), despite the fact, the trial court still allowed the collateral evidence to be admitted into evidence; which was objected to, and argued in substantial facts and accordingly, my conviction and Sentence should be reversed and vacated.

It was unlawful and unconstitutional, a clear violation of my due process to improperly admit and allow "Similar fact evidence". The trial court errored and violated my due process by improperly admitting and allowing evidence of allegations of prior sexual acts with another child to be a feature of the trial. Section 90.404(2)(a) Fla. Stat. 2018 adopted williams rule that evidence of uncharged bad acts or collateral crimes is admissible to prove

knowledge, identity or absense of mistake or accident, but such evidence is inadmissible when it is relevant solely to prove bad character or propensity. Section 90.404(2)(b) added that the collateral evidence may be considered for its bearing on any matter to which it is relevant in a child molestation case. (See attachment 7)

In McLean v. State, 934 So.2d 1248 (Fla. 2006), The Supreme Court held that provision satisfies due process because it's bounded by section 90.403 Fla. State, which provides for weighing the probative value of the evidence of the prior child molestation against its potential for unfair prejudice and requires a trial court to either exclude the evidence or substantially limit its presentation so that it does not become a feature at trial. Id at 1242. The Court concluded that the evidence of a collateral act of child molestation is relevant under the williams rule to corroborate the victims testimony if the offenses have similarities other than the fact that both occured in a familial context. McLean at 1258. The court concluded that, the less similar the acts are, the less relevant or admissible is the evidence of the prior acts, and the more likely its probative value will substantially be outweighed by the danger of unfair prejudice, confusion of issues. Id at 1258. The court also provided that in assessing whether the probative value of evidence of previous molestations is substantially outweighed by the danger of unfair prejudice, the trial court should evaluate: (1) the similarity of the prior acts to the charged regarding to the location of where the acts occured, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charged; (3) the frequency of the prior acts and (4) the presense or lack of intervening circumstances, and (other factors). McLean at 1262.

In Reyna v. State, 308 So.3d 1025 (Fla. 4th DCA 2020) the court held that the trial court abused its discretion by admitting evidence of a collateral crime. The court explained that similarity is adequate when a defendants conduct conforms to an identifiable pattern. Id. 1031 (Citation omitted) the court concluded that a prior sexual touching of a victim did not form an identifiable pattern to qualify as admissible williams rule evidence because of significant dispacities from the charged sexual batteries and its minimal probative value would be substantially outweighed by the danger of unfair prejudice. Id. at 1032. See also, Mendez, Supra.

In Mendez, Supra the court found the States reliance on evidence of an uncharged crime, coupled with the lack of corroborating physical evidence or a confession, undermined the confidence in the verdict as to constitute fundamental error.

As in Reyna, the collateral acts involving T.C. and her sister were not sufficiently similar to qualify as admissible williams rule evidence because of significant dispacities from the charged sexual acts, and the minimal probative value of the evidence would be substantially outweighed by the danger of unfair prejudice. T.C. was over 12 years old and the incidents occured mainly when she was asleep. The first incidents described attempted penile sex when she was sleeping in bed with her mother, and she described several other incidents of fingering or penetration of her vagina. Whereas, A.B. alleged one incident of touching the outside of her Vagina with his hands and licking the vagina with his mouth while she was awake. There was no allegation of attempted penile penetration in A.B. and no allegation of oral sex in T.C. Adults were present for T.C. but not in A.B. The trial court also allowed T.C.'s opinion that she believes I must have pulled her to the end of the bed and pulled her pants down, and the similar stuff had happened to her sister and her mother did not believe her sister. In addition, detective Cerniglia testified the movant coerced A.B. and the Standby Counsel led the movant into testifying that he had to move with T.C.'s mother because of allegations that he was selling drugs.

The collateral acts did not meet the similarity in location, manner, closeness in time, frequency and presense or lack of intervening circumstances between the charged acts and the collateral acts. Therefore

(See attachment 13. F.I.) (See Case No.: 2018-DP-000314)(Jan. 11, 2019 Trial transcript) evidence of the collateral crimes involving T.C., her sister, and the movant selling drugs lacked sufficient similarities to be admissible even under the relaxed standard of admissibility for child molestation cases, and any probative value was substantially outweighed by the danger of unfair presudice or confusion of issues.

Moreover, the trial court allowed evidence of the uncharged collateral crimes to be a feature of the instant trial, when the only evidence of the charged crimes was A.B.'s inconsistant testimonies regarding whether I touched the ouiside of her vagina with my hands and/or my mouth touched her vagina during an incident. Given the prior bad acts lacked similarity to the charged crimes, they were not necessary and tended to show propensity, and the presudicial value of the evidence substantially outweighed any probative value. See, Cavaliere v. State, 147 So. 3d 628, 631 (Fla. 2DCA 2014)(error admitting video regarding sexual battery when the probative value of the video was low and the presudice and risk of confusion of the issue was great. Thus the court erred by the admittance and allowance of the hearsay statements of similar fact evidence. Moreso, it was also reversable error to allow vague information of similar fact evidence from T.C. to become a feature of the trial, as it unfairly presudiced me in the eyes of the jury and caused the jury to give undue weight to the information. See Geralds v. State, 601 So. 2d, 1157, 1163 (Fla. 1992) "vague information regarding a prior felony clearly has the effect of unfairly presudicing the defendant in the eyes of the jury and creates the risk of the jury giving undue weight to such information"). Cavaliere, Supra (Harmful error to admit circumstances of a dissimilar predatory sexual battery). (See attachment 7)

As to Ground Five: State did not meet the burden required to prevail at trial

The issue of insufficiant evidence is reviewable denova, and a conviction should be reversed, if after reviewing the evidence in the light most favorable to the State, it is not supported by competent, substantial evidence. Due to the facts and circumstances of the case, the record will reflect that all of the evidence presented to the jury was conflicting and circumstantial and did not exclude any reasonable hypothesis consistant with innocense, and the State never met its burden of proving beyond a reasonable doubt that I committed the crimes I was on trial for.

The specific reasons why the State did not meet the burden required are as follows: (See attachment 10)

It is well settled that in a criminal prosecution the state bares the "burden of proof", and that burden is to prove beyond a reasonable doubt that a person has committed the crime that he is being accused of.

In the case at hand, when the alleged victim first made these allegations she told her grandmother Faith that I had put my mouth on her private parts. The grandmother made the report to the BPD. A case worker of CPS was assigned and arrangments were made for a forensic interview to be conducted with Mrs. Kira Parks.

During the forensic interview she states that her dad did some things he wasn't supposed to do by playing mommy and daddy. She states that her father touched her with his hands where she goes pee. She then made another accusation that I touched her breast while drying her off. Those were the only allegations made during the forensic interview with Kira Parks, She never made any accusations about the father putting his mouth on her privates; which is inconsistant with what was originally told to the grandmother. When the A.V. (alleged victim) was in her deposition; she was asked about the allegations she made about the touching of her breast while being dried off and she says that "she might have been thinking that something bad was happening but now she doesn't feel like anything bad was happening"; more inconsistancies. To add to the inconsistancies in the allegations in the case at hand; the A.V. gave her testimony in court to Honorable Judge Teresa K. Dees, (case No.: 2018-DP-000314). While testifying during her direct examination by the State, she was asked if I ever did a bad kiss on her, kissing her in the mouth, she answered no; later on, upon her cross examination by the guardian ad litem, she states that I did kiss her in the mouth, after the guardian ad litem (Pavia) physically demonstrated on her hands by kissing and licking herself and asking if anyone kissed or licked her. To add to the inconsistancies in the case at hand, the father kissing her in the mouth was not something that was alleged when the allegations of sexual abuse began. During her testimony in trial

She also alleges that I touched her breast inappropriately, which She later said wasn't true in a deposition Conducted later on. Furthermore, to add to the inconsistancies in the case at hand, during the direct-exam by the State of the alleged victim, of her testimony given in open court, She testified that her mother was there, present at the house right before these alleged Sexual abuse incidents occured. She testified that her mother was there that night but left to go with her mom (the A.V.'s grandmother) (her mom's mom, Abuela) and after the alleged Sexual abuse occured, She called her mom and She came back and picked her and her brothers and Sister up. During her Cross-examination by my attorney (C. Michael Kelly), She was asked again who was all in that house the night of the alleged Sexual abuse incidents to assure that there was no mistake in placing her mom in the house before the alleged abuse occured and She continued to place her mom in the house right before these alleged Sexual abuse incidents occured. (Case No.: 2018-DP-000314) (Jan. 11, 2019).

This statement made by the A.V. can be proved to be a lie by manatee county Sheriffs office business records, because the mother of the Alleged victim was clearly incarcerated at the onset of the case, and could not have possibly been in that house right before this alleged incident occured because the records will also reflect that the mother was not released until march of 2018 (M.C.S.O. Booking number 2017-010226, For: Ana Lilia Martinez, D.O.B. 6-18-93) (M.S.O. business record certification form Signed by, Sharon Chasteen; M.S.O director of Records). (See Attachment 15)

Moreso, the alleged victim has also denied these allegations during the initial contat with CPS case worker Dwight Roberts. In her deposition, after being Shown previous police reports and a video of her forensic interview right before her deposition, after being Shown previous police reports and a video of her forensic interview right before her depo., the A.V. testified that She only denied the allegations because I was standing at the back door; but inconsistant Statements are inconsistant Statements, and for the purpose of this Petition and to further Show that the States' evidence is insufficient to prove beyond a reasonable doubt that I committed this Crime, and that this petition Should be granted; this inconsistancy is added to the list of inconsistancies and Contradictions in these allegations.

In that trial of 2019, January 11, Scrutiny of the Story will reveal that the whole Story evolved around the mom being home. "Sleep" in the bed with the father; daughter wakes up from a bad dream, comes down, lies in the same bed with mom and dad, mom wakes up "because" of the loud noise from the t.v. "A movie", a specific movie "Naruto", and fighting in the movie was the loud noise, even a specific reason in this Story; not just an accidental, "my mom was there", and then never mentioned again. Mom leaves the house with (abuela) (Ana's mom) a specific person, to get party decorations, a specific item, for her Sisters Ouveincietta, Birthday party, for a specific person and reason. Then, these things happened; there was a trip to the Store, a specific place, to get Chocolate and Juice, Specific items, and when we came back, that's when the Second incident happened. The A.V. then testified that, She went outside, Called her mom, and the mome "came back", and picked her and her other Siblings up and they all left.

In her deposition the A.V. testifies that both times happened back to back before she put back on her pants.

By the closing of all of the States evidence the A.V. had already Stated in testimony that She remembers Someone telling her that She told Someone that her mother was in the house with us all, the night the Sexual abuse occured. So it was evidence that the Jury Knew about. They knew about all of the inconsistancies pointed out herein and Should not have found me guilty.

Surely one can be convicted by testimony alone, but the allegations must be inherently clear and convincing.

In the case at hand, there is not one place that there's consistancy in these allegations, from the first two people, the denial to CPS, to changes in the allegations at the trial, added allegations involving a body that couldn't be there, to the depositions, to the testimony given at trial in April, 2022. (See attachment 13)

This conviction and sentense is unlawful because there is no physical evidence to the case at hand and the story never lines up, and due to the facts and circumstances of the case, I should have been found not guilty.

The State never met its burden required to prevail at trial; the issue of insufficient evidence is reviewable denova, and a conviction should be reversed, if after reviewing the evidence in the light most favorable to the State, it is not supported by Competent, Substantial evidence.

As to Ground Six: State erroneously allowed testimony of out of court hearsay statement from grandmother Faith Booth. (See attachment 15)

The trial court committed reversible errors by allowing cumulative evidence of hearsay. Child Hearsay - hearsay, an out-of-court statement offered in court by someone other than the declarant as evidence of the matter asserted, is inadmissible unless it falls within a statutory exception of 90.803(23) Fla. Stat., such as reliable statement of child victim. In addition to the right to a fair trial not tainted by hearsay, the presentation of such statements to a jury may also violate a defendants confrontation rights under the Sixth Amendment. Peterson v. State, 129 So. 3d 451 (Fla. 2d DCA 2014); See also, Crawford v. Washington, 541 U.S. 36, 51-52, 124 S. Ct. 1354 (2004) (an accuser who makes a formal statement to government officers (including police officers) bears testimony in a sense that a person who makes a casual remark to an acquaintance does not).

In Zmiewski v. B'nai Torah Congregation of Boca Raton, Inc., 639 So. 2d 1028 (Fla. 4th DCA 1994) the court cited Idaho v. Wright, 497 U.S. 805, 110 S. Ct. 3139 (1990) for the proposition that "a court is to use the totality of the circumstances in determining reliability" of a child victim's out-of-court statement, and "a court should not consider other corroborating evidence to determine the reliability of the childs statements. In [redacted] Weatherford v. State, 561 So. 2d 629, 633 (Fla. 1st DCA 1990), the Court stated that Section 90.803(23)(c) requires the trial court to make specific findings of fact on the record, setting forth the reasons the court determined the out-of-court statements to be reliable, and the reason it discounted any indications of a lack of reliability.

In State v. Townsend, 635 So. 2d 949, 957-58 (Fla. 1994), the court found that for a hearsay statement to be admitted under 90.803(23) Fla. Stat., a trial court must find that the source of the information or the method or circumstances by which the statement is reported is trustworthy and the circumstances of the statements provide sufficient safeguards of reliability by considering whether the statement was elicited in response to questions from adults, the mental state of the child when the abuse was reported, the motive to fabricate, the ability of the child to distinguish between reality and fantasy, the vagueness of the accusations, the possibility of any improper influence on the child by participants involved in a domestic dispute, and contradictions in the accusation.

Here, the trial court erroneously allowed the child's grandmother and the CPS investigator to introduce A.B.'s out-of-court statements under the child hearsay exception. The error was preserved and qualifies as fundamental error. See Mendez v. State, 271 So.3d 1093, 1099-1100 (Fla. 3d DCA 2019) (holding that molestation and sexual battery convictions constituted fundamental error where there was no physical evidence to corroborate her version of events, nor was there any confession or admission.

The hearsay from ms. Faith included testimony that her daughter told her that A.B. wanted to talk to her because her dad did something wrong, and A.B. told MS. Faith that her father had touched her with his mouth and pointed to her vagina area. (R1857-60, T351-52) MS. Faith conceded that A.B. had a history of stealing and lieing. the next day, A.B. denied the acts to a CPS investigator, which the State alleged was coerced by the movants appearance.

In the hearsay from the recording of the forensic interview, A.B. had indicated that she was eight years old, daddy did something he was not supposed to do, he was playing mom and dad when she was watching T.V. with her brother in uncle Keyshawn's room at grandmas house, he touched the outside of her private where she pees with his hands. (R1871, 1878-82, T387-88, 395). On another occassion he touched her top part while he was drying her off with a towel after she finished showering. (R1885, T393). The movant alleged that A.B. denied the allegations during a dependancy proceeding, which the movant was precluded from using through counsel negiect and resulting self-representation. (R1865-67, T225-28, 300). A.B. also gave inconsistant testimonies regarding her mother's presence around the time of the alleged crimes.

Under the circumstances, the hearsay statements did not have sufficient safeguards of reliability because they were elicited in response to questions from adults, the child had a history of dishonesty, there was motive to fabricate when the child was apparently upset at the domestic situation where the movant brought another woman in the home while her mother was in Jail. The accusations were vague and changed from touching vagina with his mouth, to alleged denial, to only touching outside of vagina and chest with his hands, to alleged denial, to touching vagina with his hands and mouth. The hearsay statement from the grandmother tended to be confirmation bias of double hearsay obtained from a daughter, and the hearsay from CPS tended to be testimonial in nature in violation of the Movants rights under the Confrontation Clause. See, Crawford; Contreras at 903; Leonard at 1261 (inference that a non-testifying witness furnished the police with evidence of a defendants guilt was hearsay and violated his right of Confrontation). See, Smith v. State, 880 So. 2d 730, 741 (Fla. 2DCA 2004) (holding recorded statements of eye witnesses to a shooting relaying the Shooters alleged statements constituted hearsay within hearsay and were inadmissible). In State v. Contreras, 979, So. 2d 896, 902-03 (Fla. 2008), the court cited "Crawford" for the proposition that that statements to police are testimonial in nature when "the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution" and admission of such hearsay would deny a defendant's confrontation right under the Sixth Amendment regardless of it's reliability.

Even if relevant, the hearsay evidence should have been excluded under Section 403, Fla. Stat. because its probative value was substantially outweighed by the danger of prejudice, risks of confusion or misleading the jury. The hearsay from the CPT forensic interview appears to indicate the acts occured when

indicated he touched the outside of her vagina with his hands and licked it with his mouth after she woke up from a nightmare, when she lived with her dad and her mom in Bradenton at her grandad and ms. Stella's house. (T273-75, 282-86, 331).

As to Ground Seven: Court should have granted my motion for J.O.A. (See attachment 16)

I, Roosevelt Charles Booth, also contends that the court should have granted my motion for J.O.A; more being, the 2nd District should have reversed the trial courts denial of my motion for J.O.A. and vacated my conviction and sentence. Reason being; by the end of all the evidence presented by the State, I moved for a J.O.A. pursuant to Fla. R. Crim. P. 3.380. I argued that, due to the facts and circumstances of the case, the record will reflect that all of the evidence presented to the Jury was conflicting and circumstantial and did not exclude any reasonable hypothesis consistant with innocense, and the State never met its burden of proving beyond a reasonable doubt that I committed the crimes I was on trial for, and provided specific reasons why, which were as follows:

When the alleged victim first made these allegations, she told her grandmother Faith that I put my mouth on her private parts. The grandmother made the report to the BPD. A CPS case worker was assigned and arrangments were made for a forensic interview to be conducted with "Kira Parks". During the forensic interview she states that her dad did something he wasn't supposed to do by playing mommy and daddy. She states that her daddy touched her with his hands where she goes pee. She then made another accusation that her daddy touched her breast while drying her off. Those were the only allegations made during the forensic interview with Kira Parks; she never made any accusations about me putting my mouth on her privates, which is inconsistant with what was originally told to her grandmother. When the alleged victim was in her deposition, she was asked about the allegations she made about the touching of her breast while being dried off and she says that she might have been thinking that something bad was happening, but now, she doesn't feel like anything bad was happening; more inconsistancies. To add to the inconsistancies in the allegations in the case at hand, the alleged victim gave her testimony in court to Honorable Teresa K. Dees (Case No.: 2018-DP-000314).

While testifying, during her direct examination by the State, she was asked if I ever did a bad kiss on her, kissing her in the mouth, she answered no, later on, upon her cross-examination by the guardian ad litem, she states that I did kiss her in the mouth, after the guardian ad litem (Paula) physically demonstrated on her hands by licking herself and asking if anyone kissed her or licked her. To add to the inconsistancies in the case at hand, the father kissing her in the mouth was not something that was alleged when the allegations of sexual abuse began. During her testimony given to court, she also alleges that I touched her breast inappropriately, which she later said wasn't true in a deposition conducted by (Charalampos Demosthenous) (appointed attorney for petitioner) and (Ashley Susnick) (States attorney). Furthermore, to add to the inconsistancies in the case at hand, during the direct-exam. by the State of the alleged victim of her testimony given in court, she testified that her mother was there, present at the house, right before these alleged sexual abuse incidents occured. She testified that her mother was there that night but left to go with her mom (the alleged victims grandmother) (her mom's mom abuela) and after the alleged sexual abuse occured, she called her mom and she came back and picked her and her brothers and sister up. During her cross-exam. by my attorney (C. Michael Kelly) she was asked again who all was in that house the night of the alleged sexual abuse incidents occured. (Case No.: 2018-DP-000314) (Jan. 11, 2019). This statement made by the alleged victim can be proved to be a lie by manatee County Sheriffs office business records, because the mother of the alleged victim was clearly incarcerated at the onset of this case, and could not have possibly have been in that house right before this alleged incident, nor is it possible for her to have picked her up after this alleged incident occured because the records will also reflect that the mother was not released until march of 2018 (Mrs. Sandra King

number 2017-010226, for, Analilia Martinez, D.O.B. 6-18-93)(MCO business record certification form, signed by Sharon Chasteen, MSO director of records).

Moreso, the alleged victim has also denied these allegations during the initial contact with CPS case worker Dwight Roberts. In her deposition, after being shown previous police reports and a video of her forensic interview right before her deposition, the alleged victim testified that she only denied the allegations because I was standing at the back door, but inconsistant statements are inconsistant statements, and for the purpose of the J.O.A. and to further prove that the States evidence is insufficient to prove beyond a reasonable doubt that I committed this Crime and that this motion for J.o.A. should be granted, this inconsistancy is added to the list of inconsistancies and contradictions in these allegations. Theres no legal limitation on the powers of the Jury to convict on the uncorroborated testimony of a prosecutrix in prosecutions of rape, this basic law has been subsequently elaborated to State that a conviction may be so sustained on the affirmative testimony of the prosecuting witness, when the witness is not fully impeached as discredited and particularly where there are corroborating facts and circumstances in evidence. That is not to say, however, that the direct testimony of the prosecutrix in rape case must necessarily be corroborated by independent evidence, it is only to say that, in order to sustain a conviction, without other proof, such testimony must be inherently clear and convincing and not materially impeached or discredited. (See attachment 17)

Evidence of prior, unsworn, inconsistant statements, not subject to cross-examination at the time they are made, cannot constitute the sole evidence upon which to sustain a conviction. Moreso, uncorroborated hearsay statements cannot be used as sole evidence to convict, this rule applies to statements admitted under Fla. Stat. Ch. 90.803(23), prior, unsworn, uncorroborated statements without more are insufficient as a matter of law to sustain a conviction. Jaggers V. State, 536 So. 2d 321 (Fla. DCA 1988).

In Bell V. State, the court reversed the defendants convictions for sexual battery, holding that where the sole piece of evidence used to convict the defendant was the uncorroborated hearsay statement of his grandson, the evidence was insufficient as a matter of law. The court further held that where no other admissible evidence was offered, the State failed to prove its case beyond a reasonable doubt. Bell V. State, 569 So. 2d 1322 (Fla. 1DCA 1990).

In the case at hand there is no physical evidence proving guilt such as DNA, audio or video surveillance, the only evidence to this matter is the unsworn forensic interview of the alleged victim of inconsistant statements, which at the time of the taking there was no opportunity for me or any lawyer on my behalf to cross-examine the alleged victim; Accordingly, a motion for J.o.A in the instant case should be granted.

The purpose of a motion for J.o.A. is to challange the legal sufficiency of the evidence in the trial. If the trial court holds the evidence insufficient, a J.o.A. will be entered and the defendant cannot be retried. The rule establishes one requirement concerning the contents of a motion for J.o.A. and that is the motion must fully set forth the grounds upon which it is based. The J.o.A. in the instant case met that requirement; the motion wasn't some boilerplate motion which is technical and perfocma in nature, in addition to the indication that the state has failed to prove prima facie case of guilt, I have specifically, in detailed manner, explained how the State has failed to meet its burden. Finally, the law is clear that, the State is required to prove each and every element of the offense charged, beyond a reasonable doubt to establish a prima facie case, and when the State fails to meet this burden; a J.o.A. should be granted. The law is also clear that courts should not grant a motion for J.o.A. unless the evidence is such that no view which the jury may lawfully take of it favorable to the opposite party can be sustained under the law with no physical evidence proving guilt and the only evidence the State is relying upon to sustain a guilty verdict is uncorroborated, inconsistant and contradicting statements, by law a jury could not find

me guilty of the crimes that I have been accused of. The rules hold that when a States case is based Wholy on Circumstantial evidence, a special standard to test the Sufficiency of the evidence must be used. Where the Only proof of guilt is Circumstantial, no matter how Strongly the evidence may suggest guilt, a conviction cannot be Sustained unless the evidence is inconsistant with any reasonable hypothesis of innocense.

Wherefore, I, Roosevelt Charles Booth, prays this Honorable Court will grant this motion and enter a J.o.A. in the above Style Cause, clearing me from all Charges filed against me in this matter. The trial court denied my motion.

I then moved to introduce my own evidence to impeach the alleged victim with the prior inconsistant Statements on the record. During my attempts to execute the impeachment process correctly, the record clearly reflects that, the alleged victim States, multiple times that she remembers being told that she told Someone, her mother was in that house with us, the night of the alleged Sexual abuse. The record clearly shows that the alleged victim States She has read the papers of her stating these things. The record clearly reflects that the impeachment evidence was clearly laid down and pointed out; the whereabouts of which it came, the exact page numbers transcript of the dependancy trial conducted on Jan. 11, 2019. Pg. 71, 72, 73, 74, 75 and 76. (See Attachment 18). The record clearly reflects that the alleged victim doesnt remember details of the alleged Sexual abuse. None of my evidence tended to incriminate me, only further brought out the inconsistancies and discrepancies in the case, and made way for them to be placed on record. At the conclusion of all the evidence, I again moved for J.o.A, again the trial court denied the motion.

When, as here, the State's evidence against the defendant is Circumstantial, this Courts Sole is to determine Whether the Jury might have reasonably concluded that the evidence excluded every reasonable hypothesis but that of guilt. (Tsavaris v. State, 414 So.2d 1087 (Fla. 2DCA 1982).

The weight of the evidence is a matter for the trier of fact, and Jury verdict should not be reversed where there is Substantial, Competent evidence to Support it. Heiney v. State, 447 So.2d 210 (Fla. 1984). Never the less, In Criminal convictions based Solely on Circumstantial evidence, it is this courts duty to reverse the Conviction, when the evidence, although Strongly Suggesting guilt, fails to eliminate any reasonable hypothesis of innocense. Dixens v. State, 432 So.2d 579 (Fla. 2DCA 1983).

Here, in the present case, Scrutiny of the facts and Circumstances of the case, you will conclude that the State did not present Substantial, Competent evidence to Support the Jury's verdict, and you guys must vacate my Convictions. Jackson v. State, 511 So.2d 1047 (1987) * 1049.

Allegations laid out in Sequence, here's what the States evidence persists of:
1) Allegations made to the first person of Sexual abuse, (Stella marie Bings), Whom of which was depo'd but never called as a witness; 2) allegations of Sexual abuse to a second person (Tijuana Renee Booth) Who was never depo'd and never called to testify; 3) allegations to a third person, the paternal grandmother (of mouth only) who reported the allegations to the Bradenton police department; 4) The alleged victim denying the allegations to the initial officers assigned to the case, CPS case worker (Dwight Roberts) who was never properly investigated by the ineffective appointed assistance of Counsel, nor was he called to do depositions, or called to testify, 5) allegations of Sexual abuse by the father of hands only, and after Showers while drying off in forensic interview by Kira Parks, b) allegations of Sexual abuse by the father of both, hands and mouth in a deposition conducted by Charalampos Demostheneous, and States attorney, Ashley Dubiak, which also contained the denial of the allegations of the lewd or lascivious acts from the father while drying her off in the Shower. She made claims of to Kira Parks in her forensic interview; 7) Testimony given in open court by the alleged victim of Sexual abuse by the father of both hands and his mouth; contrary to what was originally told to the forensic interviewer, and to her grandmother Faith, 8) Testimony which confirmed her recantment of Sexual abuse of the touching of her breast after the Shower; 9) Testimony which Showed that the alleged victim did [illegible] incidents and the alleged victim was coerced into saying things.

[redacted]

because if she didnt remember any details of the alleged incidents, ~~[illegible]~~ the testimony given was testimony recited to the courts because she just watched a video of her previous statement.

Given the quality of the States evidence; it is clear that my conviction hinges on inconsistant allegations; incompetent, contradicting, circumstantial evidence, evidence of which if looked at in totality was untruthful and unreliable and I should have never been convicted of the crimes charged against me, even if I did fail to properly execute the impeachment process properly. There was no DNA evidence to the case at hand; no semen, no hair, no saliva, and no signs of sexual abuse. The sole testimony of the alleged victim was the only evidence relied upon for my life sentence and conviction, testimony that changed everytime it was told to someone different, whenever she wasnt told what to say.

The Supreme Court of Florida has repeatedly said that where the only proof of evidence is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistant with any reasonable hypothesis of innocense. (Jaramillo at 257, McArthur v. State, 351 So.2d 972, 976 N.12 (Fla.1977) Viewing all the evidence presented in light most favorable to the State, as you must do on Appellate review, (Jackson v. State, 511, So.2d 1047 (1987) 1050) you'll find that the State failed to present substantial, competent evidence sufficient to enable the jury to exclude every reasonable hypothesis of my innocense, thus violating my constitutional Rights.

As to ground eight: Court forced assistance of counsel to be ineffective.

By limiting what the Stand by counsel could do to assist me in preparing for trial, caused the counsel to be ineffective. The Judge allowed the attorney to do two things for me, 1) issue a subpeonae to the witness ive been talking about, to a specific hearing, and set hearings for me when I file motions. The Judge continuously told me that, since I wanted to represent myself, I was going to have to do everything by myself, the filing, set hearings, (subpeonae witnesses, (which I couldnt do, and the Judge knew it, he told me that I couldnt and he still let the proceedings go forward without me being able to secure a key witness, an essential witness to my defense and or the transcript from the dependency hearing held on Jan. 11, 2019. (ie testimony held before Judge Stephen M. Whyte, Circuite Judge at Manatee County Judicial center, on September 8, 2020) which also violated my Constitutional rights.

* Pg. 1976 lines 12-25, Court causing problems and knows it.
* Pg. 1977 lines 17-19, Attorney tells Court its hard being an attorney and sitting with your hands tied, and not being able to help.
* Pg. 1976 Attorney knew he didnt sign subpeonae, so Sheriffs office couldnt serve it. (he never told me).
* Pg. 1974 lines 16-25 through Pg. 1975 lines 1-11, 16-25, Shows that the Court is making things more difficult for me deliberately, because he simply wants to give full effect to the counsel at hand, Shows attorney might even be willing to help.
* Pg. 1977 lines 1-10, Shows Court even threatens attorneys about helping me get essential evidence needed for due process.

This Judgement and Sentence is unlawful and unconstitutional and should be reversed and vacated because, not only was counsel ineffective, he was forced to be ineffective by the trial Judge's decision to limit his/her ability to help me; which violated my constitutional right to due process.

[redacted]

As to ground Nine: The Judge entered into the fray by giving "Counsel advice" to the Petitioner.

My Constitutional rights to due process was also violated because the Judge Showed clear signs of showing favoritism at different times of the proceedings. Scrutiny of the record will show that the Judge continuously gave the State continuances with, no good cause Shown, only that they didnt have depositions done, and the State wasnt ready to go to trial yet, yet refused to give me a continuance until it was ready for trial with my only witness, and of the trial transcript admitted, and you can clearly see through scrutiny of the record that, at the trial conducted on April 25, 26, 27, I did not know how to impeach a witness with prior inconsistant statements, and the Judge began to coach me with advice on how to, and what I needed to do to impeach the witness. Hesping or not, at no time Should the Judge enter into the fray and give any advice to any party. Pg. 306 lines 8-12, 15-16; Pg. 309 lines 2-24; Pg. 312 lines 5-8; Pg. 313 lines 1-14 pg. 314 lines 1-18; Pg 316 lines 4-12; Pg. 317 lines 8-20; Pg. 321 lines 3-7.

This Judgment and conviction is unlawful and unconstitutional and Should be reversed and vacated because the Judge at various times of the proceedings played favorites, Side with the State here, Side with the petitioner here, when he Should've stayed neutral throughout the whole process, and by him not doing so violated my Constitutional rights to a fair trial and proceeding.

As to ground Ten: Giglio Violations: By the State misleading the defense and the Jury by Knowingly and deceptively allowing and [illegible] introducing false testimony at trial was fundumental error and a violation of my Constitutional rights depriving me of my right to a fair trial.

Use of false, purjured testimony - in order to establish a giglio violation, a defendant must show that (1) the prosecutor or witness gave false testimony; (2) the prosecutor knew the testimony was false, and (3) the statement was material. (See Robinson v. State, 707 So. 2d 688, 693 (Fla. 1998) Bowtly v. State, 590 So. 2d 397, 400 (1991).

The Standard for determining whether false testimony is material, under Giglio is the Same as the Standard for determining whether the State withheld material evidence in violation of Brady. (See Giglio 405 U.S. At 154, 92 S.Ct. 763). False testimony is material if there is a reasonable likelihood that it could have effected the Jury's verdict; See, Rose Vs. State, 774 So. 2d 629 (2000).

* 2018-CF-1144 * * FEDERAL * * 2018-DP-000314 *

April 26, 2022 Trial transcript — January 11, 2019 Trial Transcript

* Pg. 279 lines 22-25 through Pg. 280 lines 1-4 (Trial transcript - 2018-CF-1144) Shows that the alleged victim testified that her mom was in jail when I allegedly Sexually abused her, but if they wouldnt have inadvertantly suppressed the witness (C. Michael Kelly) and prevented me from entering the trial transcript from the dependancy hearing held on Jan. 11, 2019, violating my Constitutional right to present evidence to support my defense theory, he would've testified that in 2019 She testified that her mom was in the house with us the night of this alleged incident, and that She testified that the reason her mother wasnt there was because She went with her mom to get party decorations. (See pg. 76 of Jan. 11, 2019 trial transcript).

/ Kelly would have testified that the alleged victim testified that she came down where both her mother and I were, on the bottom bunk the night of, if he wasnt Suppressed. (See pg. 151 of Jan. 11, 2019 trial transcript.

* Pg. 300 lines 20-25 of trial transcript (2018CF1144) Shows that they refused to let me introduce to the Jury that the alleged victim once denied these allegations. (See also, Jury instructions)

[redacted] 2018-CF-1144 * FEDERAL * 2018-DP-000314

April 26, 2022 Trial Transcript January 11, 2019 Trial Transcript

*Pg. 302 lines 11-22 (trial transcript 2018CF1144) Shows that the State told her that she once said her mother was in the house right before I allegedly sexually molested her so the State knew that the testimony given was false testimony

*Pg. 303 lines 1-25 through Pg. 304 lines 1-8 trial transcript 2018CF1144, Shows:

(1) That the State gives a specific number of pages from that trial testimony so she clearly went over that trial testimony (Jan. 11, 2019) So she clearly knew testimony given was false, (2) that the Judge entered into the fray by giving me legal advice (clearly showing prejudice) like when he sustained States "plain" objection "without reason" on pg. 300 lines 24-25 (trial transcript, 2018CF1144) and (3) that I clearly didn't know how to properly impeach a witness with prior inconsistant statements and should not have been representing myself.

*Pg. 305 line 2 trial transcript 2018CF1144, again shows prejudice as court sustained states objection without reason

*Pg. 305 line 2-11, Shows again I clearly didn't know how to impeach a witness, I didn't know the law, and didn't know the rules of criminal procedure; I should not have been allowed to represent myself.

*Pg. 306 lines 3-25 through line 1, trial transcript 2018CF1144, Shows that the petitioner clearly pointed out and placed on record, in court, in the presence of the jury, plenty of contradicting statements and discrepancies, enough to impeach the alleged victim, so the Judge, the States attorney and the jury, all knew that the testimony given was false testimony, and the Judge should have granted my (J.O.A.)

*Pg. 306 lines 3-25 through Pg. 307 lines 1-25 through Pg. 308 lines 1-25 through pg 309 lines 1-25 Shows again, that I still didn't know how to properly impeach the alleged victim and at this point is showing the incapability of being able to grasp the concept of how to do so. (trial transcript, 2018CF1144).

*Pg 308 lines 1-25, trial transcript, 2018CF1144, Shows the State manipulating the situation to get a conviction; She clearly had the Jan. 11, 2019 trial transcript for years and knew the alleged victim placed her mom in that house, on the night of the alleged incident.

*Pg. 309 lines 2-20 trial transcript 2018-CF-1144, Shows I still didn't know how to impeach

*Pg. 311 lines 2-25, Pg. 312 lines 1-8 pg. 312 lines 18-25, pg. 313 lines 1-14, trial transcript, 2018CF1144; still helping me.

*Pg. 313 lines 24-25 through Pg. 314 lines 1-23; Pg 315 lines 20-25 transcript, 2018CF1144, Shows that the State and court knows about the contradictions and discrepancies, all the evidence that would completely impeach the alleged victim and allow me to go home (and case to acquittal) moreso even; they knew exactly where to find the evidence, yet they still allowed this false testimony to be introduced to the jury and worse even, allowed me to be convicted and sentenced to life in prison because of this false testimony.

*Pg. 314 lines 15-21 trial transcript, 2018CF1144, Shows that all (6) pages should've been read to the jury, but through deception and manipulation, to get a conviction, the States' attorney (Ashley Dusnik) only had her read a couple of those pages to "intentionally" "mislead" "the jury" (See pg. 332 lines 19-20).

*Pg 316 lines 4-12 trial transcript, 2018CF1144, more legal advice given to me from the Judge.

*Pg 325 lines 1-14 trial transcript 2018CF1144; Show I introduced impeachment evidence and the State objected to it without reason, just a "plain" "objection" and the Judge sustained it and overlooked the inconsistant statements.

*Pg 325 lines 24-25 through pg. 326 lines 1-2 trial transcript 2018CF1144, Shows moreso that the court clearly has all the evidence needed for impeachment purposes and still allowed false, perjured testimony to be introduced at trial, no-one corrected this false testimony; if the false testimony would have been corrected, I would not have been convicted and sentenced to life in prison.

2018-CF-1144 *FEDERAL* 2018-DP-000314

April 26, 2022 trial transcript January 11, 2019 trial transcript

*Pg.330 lines 13-23 trial transcript 2018CF1144; Alleged victim confirmed her inconsistant statements.

*Pg.331 through Pg.334 trial transcript, 2018CF1144; the State clearly knows this is false testimony, She clearly is manipulating this situation by adding what pages She wants to be heard and omitting what pages would show the whole picture, pages that if would have been shown to the Jury would have changed the outcome of the trial, but she intentionally and deceptively left those pages out to obtain an unlawful conviction.

*Pg.334 lines 18-25 through Pg.335 lines 1-18 trial transcript 2018CF1144, more advice given to me by the Judge.

*Pg.336 lines 6-11 trial transcript 2018CF1144, Court states alleged victim admits to making different inconsistant statements in the past.

*Pg.337 lines 6-14 trial transcript 2018CF1144, Affirms that the alleged victim read the transcript that had her stating her mother wasn't in the house with us the night this alleged Sexual abuse occured because She went to get party decorations, not because She was incarcerated.

Pg.325 lines 16-25 through Pg.336 lines 1-2 trial transcript 2018CF1144, shows She clearly states she remembers telling someone She was in the house with us that night, before the alleged Sexual abuse.

Pg.318 trial transcript 2018CF1144, also shows that the State knew the impeachment process was going improperly, She knew there was impeachment evidence, and still allowed the false testimony to be presented, which lead to my conviction and Sentence.

*Pg.332 Shows that the alleged victim has been Coerced. 2018CF1144 trial transcript.

*Pg.331-334 Shows the State's deception, manipulation, and lieing in omission. 2018CF1144.

*Pg.334 Shows more advice given to me by the Judge, trial transcript 2018CF1144

*Pg.335 lines 4-12; 13-18; I pointed out inconsistancies, Judge acknowledges discrepancies, and still allowed false, Coerced, manipulated testimony to remain as was, which left the Jury to be mislead, assisting in my conviction and life Sentence.

*Scrutinize pages 268-337 (2018CF1144 trial transcript) and you'll see that the alleged victim was Coerced, manipulated and lead into saying what the State wanted her to say, (well before trial, before depositions even, right before trial, and throughout the trial itself. Which ultimately lead up to the violation of my Constitutional rights and due process of law, because of these fundamental errors my Sentences and Convictions Should be Reversed and Vacated. (See attachment 10)

The Court of appeals relied in the main on two decisions from the third circuit court of appeals - United States ex rel. Almeida v. Baldi (PA) 195 F.2d 815, 33 A.L.R.2d 1407, and United States ex rel. Thompson v. Dye (PA) 221 F.2d 763 - which indeed, State the correct Constitutional rule. This ruling is an extention of Mooney v. Holohan, 294 U.S. 103, 112, 79 L.Ed. 791, 794, 55 S.Ct. 340, 98 A.L.R. 406, where the court ruled on what non-disclosure by a prosecutor violates due process:

"Its a Requirement that cannot be deemed to be Satisfied by mere notice and hearing if a State has contrived a Conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of Court and Jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure a conviction and imprisonment of a defendant is as inconsistant with rudamentary demands of Justice as is the obtaining of a like result by intimidation."

In Pyle v. Kansas, 317 U.S. 213, 215, 216, 87 L.Ed. 214, 216, 63 S.Ct. 177, We phrased the rules in broader terms:

"Petitioners papers are inexpectly drawn, but they do Set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate

Suppression by these same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal constitution, and if proven, would entitle petitioner to release from his present custody. Mooney v. Holohan, 294 U.S. 103.

In Napue v. Illinoise, 360 U.S. 264, 269, 3 L. Ed. 2d. 1217, 1221, 79 S. Ct. 1173; we extended the test formulated in Mooney v. Holohan when we said:

"The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." And See, Alcorta v. Texas, 355 U.S. 28, 2 L. Ed 2d 9, 78 S. Ct. 103; Wilde Wyoming, 362 U.S. 607, 4 L. Ed. 2d 985, 80 S. Ct. 900. Cf. Durley v. Mayo, 351 U.S. 277, 285, 100 L. Ed. 1178, 1185, 76 S. Ct. 806 (dissenting opinion)

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. (See attachment /2/ defendants compulsory process motion)

The principle of Mooney v. Holohan is not punishment of society of misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the Federal domain.

"The united States wins its point whenever justice is done its citizens in courts. A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant." (Opinion of the court by Mr. Justice Douglas, announced by Mr. Justice Brennan).

Due to the facts and circumstances of the case at hand there is a clear giglio violation which deprived me of my right to a fair trial and due process of law. In sync with the requirements to establish a Giglio violation I have already proved with competent substantial evidence that: (1) the prosecutor and the witness gave false testimony, (2) the prosecutor knew the testimony was false, and (3) the statement was material, being that (1) it came from the alleged victim, whom of which without, there couldn't have been an indictment or information or any case to take to a trier of fact, and (2) This evidence, if properly presented would have proven my innocence and I would have been acquitted of all charges filed against me. All of which prove that theres a clear Giglio violation, and this fundamental error violated my constitutional right to due process of the law and my conviction and sentence should be reversed and vacated.

AS is, that was the actions of the State's attorneys actions and the Judges allowance of the lies and deception to mislead the Jury, that Jury and trial were tainted, also depriving me of my rights to A fair trial and accordingly my Conviction and Sentence should be reversed and vacated.

[redacted]

How does one get past the harmless error test?

As to ground Eleven

In the case at hand, the Governments case depended almost entirely on the alleged victims testimony, without it, there could have been no indictment and no evidence to carry the case to the Jury. The Alleged victims Credibility as a witness was therefore an important issue in the case, and evidence of any understanding or denial of the allegations of, was relevant to her Credibility and the Jury was entitled to know of it; as the State also Violated my Constitutional Rights to due process of the Law by precluding evidence to be Shown to the Jury, that the alleged Victim at one point denied the allegations.

* Criminal law - Evidence in General; Application of Harmless Error Test requires examination of entire record by appellate Court; including close examination of permissible evidence on which Jury could have legitimately relied, and in addition, even closer examination of impermissible evidence which might have possibly influenced Jury verdict.

* Presumption as to effect of error, Burden - Harmless - error test places burden on state, as benificiary of error, to prove beyond a reasonable doubt that error complained of did not contribute to verdict, alternatively stated, that there is no reasonable possibility that error contributed to Conviction.

* Prejudice to defendant in General - Harmless error is not sufficiency-of-the-evidence, correct result, not clearly wrong, Substantial evidence, more probable than not, Clear and Convincing, or even overwhelming evidence test, but rather; question is whether there is reasonable possibility that error effected Jury.

The State cannot prove beyond a reasonable doubt that withholding an essential witness which could have Cast a Shadow of a doubt on the States case from being a feature of the trial, allowing inadmissible evidence of Similar fact evidence not similar, and allowing inadmissible hearsay Statement from grandmother, did not Contribute to the verdict.

* Accordingly, the responsibility as an appellate court is to apply the law as the legislature has so clearly announced it; Appellate Courts are not endowed with the privilage of doing otherwise regardless of the View of which they might have on individuals.

* See, State Vs Digiulio, 491 So. 2d 1129 (1986)

In his perceptive essay, the riddle Harmless-error, former chief Justice Traynor addresses various common errors which historically, Appellate courts fall into when applying harmless-error analysis. The worse is to abdicate Judicial responsibility by falling into one of the extremes of all too easy affirmance or all too easy reversal, neither course is acceptable. The test must be conscientiously applied and the reasoning of the court set forth for the guidance of all concerned and for the benifit of further Appellate review. The Test is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a Substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test. Harmless error is not a device for the appellate court to Substitute itself for the trier of fact by simply weighing the evidence, ~~or more~~. The focus is on the effects on the error on the trier of fact. The question is whether there is a reasonable possibility that the error effected the verdict. The Burden to show the error was harmless must remain on the State. If the appellate court cannot say beyond a reasonable doubt that the error did not effect the verdict, than the error is by definition harmful. This rather truncated Summary is not comprehensive but it does serve to warn of the more common errors which must be avoided. We have eschewed the draconian measure of automatically reversing convictions as a means

How does one get past the Harmless-error test?

of punishing prosecutorial misbehavior. State V. Murray 443 So. 2d 955, (Fla. 1984).

However, we reiterate what we said in Murray, at 956

"When there is overzealousness or misconduct on the part of either the prosecutor or defense lawyer, it is proper for either trial or appellate courts to exercise their supervisory powers by registering their disapproval, or, in appropriate cases, referring the matter to the Florida bar for disciplinary investigation." Aranyo V. State, 437 So. 2d 1099 (Fla. 1983); Spenkelink V. Wainwright, 372 So. 2d 927 (Fla. 1979).

In The present case, the State clearly knew that they could not legally prevail at trial, given a fair proceeding. Main reason being but not limited to Just the fact, is that the credibility of the alleged victim is incredible, due to all of the inconsistancies and contradictions in the allegations. Maybe in a different Situation, taking that type of case to trial would have been proper, but as it is, to handle prosecutions on a case by case basis, taking that case to trial was not only a waist of precious court time but also money, Considering I had already provided the States attorney and the trial court with relevant admissible evidence, Showing that the testimony of the alleged victim and these allegations are indeed inconsistant, and as it was that, all it was going to come down to was the testimony at trial, and the credibility of the alleged victim, taking that case to trial, the State was clearly at an aim for an illegal and unconstitutional Conviction.

Worse-Even, the taking of this case to trial was not only a waist of precious court time and money, but an act of cruel and unusual punishment, not to Just myself (the Petitioner) but to my daughter, a 12 year old minor that they put on the Stand Just to make her out to be a liar, a 12 year old minor that they put on the Stand Just to lead her through this emotional breakdown, this cruel and unusual act, they put a 12 year old minor on the Stand for hours against her own father, the father, who didn't know how to properly impeach a witness and told the Court this even on multiple accassions. Monsters, They All Are, as they sat there and watched my baby bawl her eyes out with no remorse in their hearts. Wicked They Are, and So is this Whole "Justice" System if you guys in view of this Petition agree and Say the actions of that trial court were of Justice, In Respects to this court, and the Justice System, those who are in view of this Petition and all who would uphold the law with the "If" I utilized there before here. Honorable Judge Stephen M. Whyte Should've Stepped in and Said "Enough Mr. Booth" "Sit down" I will not allow you to represent yourself anymore, you clearly don't know what you're doing, you dont know the law, you don't know the criminal rules of procedure, you don't know how to proffer evidence, and you clearly don't know how to properly impeach a witness With these prior inconsistant Statements, which is the only way you can prevail at this trial. Surely Mr. Justice would opinion, no, at no time Should a Judge enter into the fray"... and he would be absolutely correct, but the Honorable Judge Stephen M. Whyte didn't have problems picking and Choosing Sides at different parts of the proceedings in the case at hand entering into the fray where and when he felt like it, giving me legal advice even at trial where he also allowed all kinds of false testimony and inadmissible evidence to be introduced to the Jury, tainting the Jury, and violating my Constitutional rights to due process.

Where as, my Conviction and Sentence Should be reversed and vacated.

As to ground Twelve, hitchcock violation

There was a hitchcock violation in the mist as the Court made fundamental error as they unconstitutionally limited the evidence I could present to the Jury that of which could have altered the Jury verdict, in the

[redacted]

2020, Stating: See, #3, #4, #6, and #7 of the motion in limine. (see attachment 19 and 20)

As to ground Thirteen: Violation of due process

Constitutional law § 839.5, 890 Criminal law § 99 - Due process of law - Rights of accused provides: "it is trial to "due process" of law in a fair adversary process that an accused have the right (1) to be present a Stages of the trial where his absence might frustrate the fairness of the proceedings (2) to testify on his o behalf, and (3) to be convicted only if his guilt is proven beyond a reasonable doubt.

By the time of the trial conducted in April 2022, to convict me of the allegations was unlawful and titutional, being that there were multiple different stories of these allegations. (See Jackman v. Sta So. 2d 627 (Fla. 3d DCA 1962) See, als, Brookings v. State, 495 So. 2d 135 (Fla. 1986), Where the court found that t ability of counsel to impeach the trial testimony of a witness through the use of depositions obviated n nced to resort to the grand Jury testimony).

The same should have been the same with the case at hand. It was also a violation of my due process to limit/prohibit me from introducing the trial transcript of Jan. 11, 2019, as 90.803 states: §90.803 - Hearsay exception availability of declarant immaterial - (22) former testimony: former testimony given by the declarant which testimony was given as a witness at another hearing of the same or different proceedin or in a deposition taken in compliance with law in the course of the same or another proceeding; if the p against whom the testimony is now offered; or in a civil action or proceeding a predecessor or a persi a similar interest, had an opportunity and similar motive to develop the testimony by direct, cross or re examination, provided, however, the court finds that the testimony is not inadmissible pursuant to 90.402 or 90.403. [redacted]

Furthermore, my due process was violated by allowing child hearsay as 90.803 - 23 Hearsay exception Statement a Child victim provides: "Unless the source of information or method or circumstances by which the statement is reported indicates a lack of trustworthyness, an out of Court statement made by a child victim with a physical mental, emotions or developmental age of 16 or less describing any act of child abuse or neglect, any act of se abuse towards a child, the offense of child abuse, the offense of aggrevated child abuse, or any offense involving unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant Child, not otherwise admissible is admissible in evidence in any civil or criminal proceeding if: (1) the court finds in a hearing conducted outside the presense of the Jury that the time, Content, and circumstances of the Statement provide Sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate, and (2) the child either (A) Testifies, or (B) is available as a witness, provided that there is other corroborative evidence of the abuse or offense. (3) unavailability shall include a finding by the court that the Childs participation in the trial or proceeding would result in a likelihood of severe or emotional or mental harm, in addition to findings pursuant to s. 90.804(1). Also, to put my 12 year old daughter on the Stand to testify, although that Childs participation in the trial proceeding was most definately going to result in a severe emotional or mental harm, (as was at trial) was cruel and unusual punishment to an underaged alleged victim of sexual abuse.

Moreso, To put a 12 year old minor on the Stand to testify at the trial when they already had multiple conflicting testimonies from the alleged victim was unconstitutional and a violation of my due process, as it went against §90.803 - 23(2)(b), which its purpose is to protect those of the such, providing that: any child 16 years or less should be deemed unavailable to testify as a witness at trial. The unavailability shall include finding [illegible]

childs participation in the trial or proceeding would result in a likelihood of severe emotional or mental harm, allowing not otherwise admissible evidence admissible in any criminal or civil proceeding. Thus, proving that, putting my 12 year old daughter on that stand at trial was cruel and unusual punishment against me and my daughter, and a violation of my due process, especially when the State already knew the lawful outcome of the trial, given the facts and circumstances of the proceedings as was already. Rule 806 Attacking and Supporting the declarants Credibility provides: "When a hearsay statement or statement described in rule 801(d)(2)(c), C, d or E, has been admitted in evidence, the defendants credibility may be attacked, and then supported by evidence ~~of the declarants~~ that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarants inconsistant statement or conduct regardless of when it occured or whether the declarant had an opportunity to explain or deny it. The State already knew that whenever they introduced evidence through Child hearsay, the petitioner would then introduce the impeachment evidence of all of the inconsistant statements and contradictions in the alleged victims testimony, which is not hearsay, but testimony given in open court at trial, under oath, admissible evidence, pursuant to 90.803-22 - former testimony, which the State had been provided with for over 3 years. All and all, when it finally came down to it, by the rules of the law, the State should not have been able to use the hearsay rule, reason being, the rule of hearsay exception, Statement of child victim clearly provides that: "Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of untrustworthiness, an out of court statement made by a child victim 16 years of age or younger of sexual abuse or any unlawful sexual act, contact, intrusion, or penetration performed in the presense of, with, by, or on the declarant child, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding. The rule of hearsay also provides the court find in a hearing that the time, content, and the circumstances of the statement provide sufficient safeguard of reliability. In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assection, the reliability of the child victim; and any other factor deemed appropriate. By the time of that hearing for the hearsay exception, there was plenty of evidence showing the lack of untrustworthyness. Me and my Counsel argued in substantial parts of the unreliability of the hearsay statement and objected to the use of because the allegations were conflicting and untrustworthy. The court still admitted the hearsay evidence, arguing that the hearsay statement is untrustworthy due to all the discrepancies and contradictions in the allegations. The courts error is revieuwable de nova, reversable error, and was timely objected to, and my conviction and sentense should be reversed and vacated. Upon hearing of the contradicting statements of the alleged victim, pursuant to 90.803-23, the hearsay statement should not have been allowed.

My rights to due process was further violated when they allowed the similar fact evidence pursuant to 90.404(2). Reason being why the "similar fact evidence" pursuant to Fla. Stat. 90.404(2) should not have been allowed at trial are as follows:

As the Supreme Court explained in State v. Davis, the holding in hearing grew out of the special problems presented in such cases: "Because the victim knows the perpetrator, the numerated purposes of the Williams rule, such as identity are not at issue, also, the victim is typically the sole witness and corroborative evidence is scant, the victims credibility is the focal issue. Accordingly, we held that in narrow cases involving sexual battery within familial context, similar fact evidence is admissible to corroborate the testimony of the victim. Thus, the court provided for a relaxed standard of admissibility in familial for similar fact evidence corroborating a victims testimony. However, the charged and the collateral offenses must share some unique characteristic or combination of characteristics which sets them apart from other offenses."

In Feller v. State, the two offenses had only two things in common: both was the same type of offenses, and both involved young girls. The courts held that, "although sexual battery on an underaged child is a reprehensible offense, it is not so unique in itself that it should be uniformly admissible under section 90.404(2), this type of evidence is more readily admitted if it involved the same victim." In Saffor, the court adopted a two prong test for the admission of collateral crime evidence in sexual abuse cases within familial context. First, both the charged offenses and the collateral offenses must occur within the family setting, second, there must be some additional showing between the incidents in order for the collateral crime evidence to be admissible. In Saffor, The Supreme Court held that the similarities between the charged offenses of sexual battery of the defendants girlfriends 16 year old son and the collateral offense of attempted lewd assault of the defendants 12 year old niece were not sufficient to render the collateral offense admissible. "Although the offenses took place in the familial context, there were differences in the victims ages and genders and the acts took place at different times of the day. The court held that the only similarity was both offenses were committed while the children were asleep in bed. (See, Puicini v. State, 41 So. 3d. 338 (Fla. 4DCA 2010) finding that the similarities between the charged crime and the williams rule evidence were weak and were outweighed by the dissimilarities as well as the remoteness of the crime. (See also, Thermidor v. State, 50 So. 3d 1184 (Fla. 4DCA 2003) Concluding that the dissimilarities outweighed the similarities. Furthermore, Sims v. State, 289 So. 2d 807, 811 (explaining that) "a mere similarity will not render the similar facts legally relevant to show identity; there must be identifiable points of similarity that persuade the compared factual situation." [redacted]

In the case at hand the State failed the test for the collateral evidence to be admitted pursuant to Fla. Stat. 90.404 (2), despite the fact, the trial court still allowed the collateral evidence to be admitted into evidence, which was objected to and argued in substantial facts and accordingly, my Conviction and Sentence should be reversed and vacated. It was unlawful and unconstitutional, a clear violation of my due process to improperly admit and allow "Similar fact evidence" The trial court erroed and violated my due process by improperly admitting and allowing evidence of allegations of prior sexual acts with another child to be a feature of the trial. Section 90.404 (2)(a) Fla. Stat. 2018 adopted williams rule that evidence of uncharged bad acts or collateral crimes is admissible to prove a material fact in issue, including but not limited to, proof of motive, intent, opportunity, preparation, plan, knowledge, identity, or absense of mistake or accident, but such evidence is inadmissible when it is relevant solely to prove bad character or propensity. Section 90.404(2)(b) added that the collateral evidence may be considered for its bearing on any matter to which it is relevant in a child molestation case. In McLean v. State, 934 So. 2d 1248 (Fla. 2006) The Supreme Court held that provision satisfies due process because it's bounded by Section 90.403 Fla. Stat. which provides for weighing the probative value of the evidence of the prior child molestation against its potential for unfair presudice and requires a trial court to either exclude the evidence or substantially limit its presentation so that it does not become a feature at trial. Id. at 1249. The court concluded that evidence of a collateral act of child molestation is relevant under the williams rule to corroborate the victims testimony if the offenses have similarities other than the fact that they both occured in a familial context. McLean at 1258. The court concluded that, the less similar the acts are the less relevant or admissible is the evidence of the prior acts, and the more likely its probative value will substantially be outweighed by the danger of unfair presudice, the trial court should evaluate, (1) the similarity of the prior acts to the charged regarding the location of where the acts occured, the age and gender of the victims, and the manner in which the acts were committed; (2) the closeness in time of the prior acts to the act charged, (3) the frequency of the prior acts, and (4) the presense or lack of intervening circumstances and (other factors) McLean at 1262.

In Reyna v. State, 302 So. 3d 1085 (Fla. 4DCA 2020) The court held that the trial court abused its discretion by admitting evidence of a collateral crime. The court explained that similarity is adequate when a defendants conduct conforms to an identifiable pattern. Id. at 1091 (citation omitted) The court concluded that a prior sexual touching of a

victim did not form an identifiable pattern to qualify as admissible williams rule evidence because of significant disparities from the charged sexual batteries and its minimal probative value would be substantially outweighed by the danger of unfair prejudice. Id. at 1032. (See also, in Mendez, Supra, The court found the States reliance on evidence of an uncharged crime, coupled with the lack of corroborating physical evidence or a confession, undermined the confidence in the verdict as to constitute fundamental error.

As in Reyna, the collateral acts involving T.C. and her sister were not sufficiently similar to qualify as admissible williams rule evidence because of significant disparities from the charged sexual acts, and the minimal probative value of the evidence would be substantially outweighed by the danger of unfair prejudice. T.C. was over 12 years old and the incidents occured mainly when she was asleep. The first incidents described attempted penile sex when she was sleeping in bed with her mother, and she described several other incidents of fingering or penetration of her vagina. Whereas, the alleged victim alleged one incident of touching the outside of her vagina with his hands and licking the vagina with his mouth while she was awake. There was no allegation of attempted penile penetration in A.B. and no allegation of oral sex in T.C.. Adults were present in T.C. but not in A.B. The trial court also allowed T.C.'s opinion that she believes I must have pulled her to the end of the bed and pulled her pants down, and the similar stuff had happened to her sister and her mother did not believe her sister. In addition, detective Cerniglia testified the petitioner coerced A.B. and the standby counsel led me into testifying that I had to move with T.C.'s mother because of allegations that I was selling drugs.

The collateral acts did not meet the similarity guidlines of McLean either because there was no similarity in location, manner, closeness in time, frequency and presense or lack of intervening circumstances, between the charged acts and the collateral acts.

Therefore, evidence of the collateral crimes involving T.C., her sister, and me selling drugs lacked sufficient similarities to be admissible even under the relaxed standard of admissibility for child molestation cases, and any probative value was substantially outweighed by the danger of unfair prejudice or confusion of issues.

Moreover, The trial erroneously allowed evidence of the uncharged collateral crimes to be a feature of the instant trial, when the only evidence of the charged crimes was A.B.'s inconsistant testimonies regarding whether I touched the outside of her vagina with my hands and/or my mouth touched her vagina during one incidents.

Given the prior bad acts lacked similarity to the charged crimes, they were not necessary and tended to show propensity, and the prejudicial value of the evidence substantially outweighed any probative value. (See, Cavaliere v. State, 147 So. 3d 628, 631 (Fla. 2DCA 2014) (error admitting video regarding sexual battery, when the probative value of the video was low and the prejudice and risk of confusion of the issue was great.

Thus, my due process was violated also by the admittance and allowance of the hearsay statements of similar fact evidence. Moreso, it was also a violation of my due process to allow vague information of similar fact evidence from T.C. to become a feature of the trial, as it unfairly prejudiced me in the eyes of the jury and caused the jury to give undue weight to the information. (See, Grecalds v. State, 601 So. 2d 1157, 1163 (Fla. 1992). "Vague information regarding a prior felony clearly has the effect of unfairly prejudicing the defendant in the eyes of the jury and creates the risk of the jury giving undue weight to such information. Cavaliere, Supra, (harmful error to admit circumstances of a dissimilar predatory sexual battery).

Furthermore, my due process was violated when they denied me my right to a speedy trial. Well before the trial conducted in April 2022, having a fair trial was an impossible burden for the State to meet. The 6th Amendment of the Constitution of Florida, Rights of the accused, provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation, to be confronted with the witness against him, to have a compulsory process for obtaining witnesses in his favor, and

[redacted]

to have the assistance of counsel for his defense.

I asked for years, but had my rights Governed by the 6th Amendment of the U.S. Constitution denied, as they repeatedly refused to grant me my speedy trial request. The discretion of the trial court to determine the time of trial is limited in 3 ways: 1st, A trial must not be held too soon after arraignment, 2nd time to prepare for trial must not be too long after arraignment because a trial must be scheduled within a certain number of days from a defendants arrest, and the trial must actually begin within that time. This is the Speedy trial rule found in the criminal rules and in the 6th Amendment of the U.S. Constitution and Article I, Section 16(A) of the Fla. Constitution. The Speedy trial rule is not only a guidline or limitation upon a trial courts discretion, but an enforceable one, as its violation may in some cases, result in a discharge of a defendant from further prosecution. Furthermore, the 6th Amendment right to jury trial is binding among the states through the due process clause of the 14th Amendment.

The Supreme Court of the United States has stated that the deep committment of the nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement qualifies for protection under the due process clause of the 14th Amendment and must therefore be respected by the States. The trial court post-poned trial for (3) consecutive years in the instant case. Chapter 12 of Fla. R. Crim. P. (Lexis nexis) provides: A party has no right to a continuance. A post ponement of a trial may be granted by a trial court only and then in its discretion. The rule is that "on a motion by the State, or a defendant or on its own motion, the court may grant a continuance in its discretion for good cause shown". Furthermore, the excersise of a courts discretion is predicated upon two seperate aspects of a continuance issue. The first aspect of this issue concerns the procedure for bringing the request for continuance to the attention of the court. A proper and timely motion must be filed by the party desiring the delay, and failing to do this properly can have fatal consequences. The second aspect concerns the reason for a continuance request. There must be sufficient grounds for a court to exercise its discretion favorably. As stated: A common ground concerns the need for additional time to prepare for trial.

On top of the State post poning trial for 3 consecutive years, the State was not filing proper and timely motions requesting the delays adding up to the 3 year postponement. The State repeatedly came to court stating the same thing over and over again, "the State is not ready to go to trial yet because they're still waiting to have the Child hearsay and the Similar fact evidence hearing", the State can't go to trial without hearings conducted, meanwhile, never having the hearings conducted, and the fact remained, as I had to request that the hearings be conducted through motions. As to the second aspect, the requirement of sufficient grounds for a court to exercise its discretion favorably for additional time to prepare for trial is also in violation. Reason being: (1) the same ground was stated for continuances for over two years, after all that long while, the same ground couldn't be considered sufficient grounds. Furthermore, the insufficient grounds couldn't have been made in good faith due to the facts and circumstances of the case, the rules of the laws of Florida, case laws, Fla. court decisions, the U.S. Constitution, the Fla. Constitution, Fla. Statutes, and also taking into consideration the Judge's statement about the States attorney (Ashley DUSNIK) experience in the law. She knows the legal standard she has to meet to lawfully be able to use the Williams rule of similar fact evidence and the child hearsay exception statement of child victim, thus, her knowing that neither forms of the evidence that she was relying upon to prevail at trial will be rendered legally admissible evidence, her repeatedly postponing trial for the same reason have not been in good faith and shows a perfect example of the possible unlawful actions that could take place in a criminal prosecution, and why the Speedy trial rule, found in the criminal rules, in the 6th Amendment of the U.S. Constitution and Art. I, Sect. 16(A) of the Fla. Constitution is established, to protect those in serious criminal cases against arbitrary law enforcement and qualifies for protection under the due process clause of the 14th Amendment. State will probably argue that I waived my right to a speedy trial in full; but I only waived my right to a speedy trial that day because the court appointed counsel "Tracy Renee Dishman" walked up to me in court that day and said "we're here to sign away your rights to a speedy trial" I told her I didn't want to; She says I don't have to; She says she doesn't recomend that I do, but if I don't sign away my rights to a speedy trial that day, I was more than welcome to represent

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard E. Brittain DC# 509776

Date: January 26, 2026