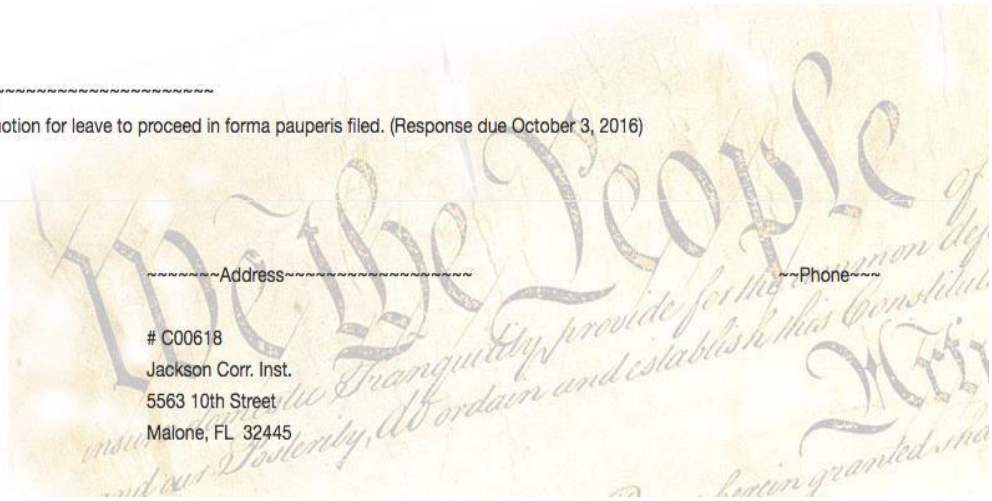
No. 16-5823

Title:	John W. Dobbs, Petitioner
	v.
	Florida
Docketed:	September 1, 2016
Lower Ct:	District Court of Appeal of Florida, Fifth District
Case Nos.:	(5D15-0977)
Decision Date:	May 18, 2015
Rehearing Denied:	June 22, 2015
Discretionary Court Decision Date:	May 25, 2016

~~Date~~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~
Aug 22 2016	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due October 3, 2016)



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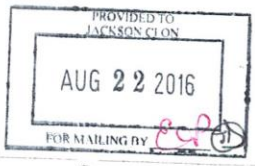

No 165823

IN THE

SUPREME COURT OF THE UNITED STATES

John W. Dobbs - Petitioner,

vs.

State of Florida et al, - Respondent.

On Petition For A Writ Of Certiorari To

The Fifth District Court of Appeals for The State of Florida

In Pro Per Petition For Writ Of Certiorari

John W. Dobbs DC# C00618
Jackson Correctional Institution
5563 10th Street
Malone, Florida 32445
In pro per

Questions Presented

Whether omitting terms like "aggressor" or of specific forcible felonies while instructing jurors that defendants standing their ground in defense of themselves or another are not justified if they initially provoked their assailant, allows convictions for non-criminal offenses; as "provoked" can translate to have angered, or irritated, and not necessarily unlawfully or aggressively.

Whether due process is violated where state courts construe objected to instructions to be affirmatively requested based on trial counsel's request for instructions on a conflicting theory, undiscussed with her client, posing a similar but not identical error.

Whether by requesting a instruction which based on the totality of the circumstances of the case does not reasonably apply, a defendant waives the court's proper interpretation and enforcement of the appropriate laws governing the circumstances even where actual innocence is established within the appropriate standards.

List of parties

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

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No _____

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 judgement below.

OPINIONS BELOW

The opinion of Florida's Fifth District Court of Appeals appears at Appendix A to the petition and Petitioner has not been provided with any information regarding whether it would be published.

JURISDICTION

The date on which the Fifth District Court of Appeals for the State of Florida decided my case was June 22, 2015.

A timely petition requesting discretionary review was denied by the Supreme Court of the State of Florida on May 25, 2016 and a copy of the order appears at Appendix B.

The jurisdiction of this Court is invoked under U.S. Supreme Court Rule 13, or 28 U.S.C. §2403(b) may apply.

Constitutional and Statutory Provisions Involved

The 6th Amendment of the United States Constitution:

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 wherein 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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The 13th Amendment of the United States Constitution:
Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The 14th Amendment of the United States Constitution:
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Florida Statute 776.013 (See Appendix C)
Florida Statute 776.041 (See Appendix E)

Statement of the case

The undisputed evidence established at trial proves that:

On the night of Oct. 24th, 2006/early morning of Oct 25th, 2006 between 1:35 am and 2:15 am, Petitioner and his then girlfriend, Deanna Washington, while visiting the state of Florida had stopped to patronize a topless bar called Thee Doll House. Inside the club the couple met a man named William Troy, and briefly engaged in a not at all hostile, but not quite polite conversation.

Around the 2:00 am closing time the couple left the club and saw Troy with 3 or 4 other men. Petitioner's vehicle and the vehicle transporting Troy's party were parked 6 parking spaces apart. One or more from Troy's party yelled to the couple something to the affect of they needed security to walk them out. Initially the statement appeared lighthearted. Petitioner is entering his car when Troy's friend and employee Andre Blanco starts to approach the passenger side of the couple's vehicle. Petitioner's girlfriend being the passenger, points out that one of them is walking over. Petitioner asks her to stay in the car, leaves the driverside and walks around the back of the car to meet him.

When Blanco arrives a fight initiates between them which all parties and witnesses perceive as a fist fight. The fight takes place close to the rear passengerside of Petitioner's vehicle. Almost immediately Blanco is knocked down and his friend Francisco Gotay approaches Petitioner swinging. Petitioner evades the punches and strikes Gotay with what all parties perceive as a punch. After being knocked down Blanco swiftly recovers and attacks Petition from behind. Petitioner's girlfriend exits the vehicle and enters the fight to help Petitioner as Anthony Riollano and William Troy

enter the foray. The couple hears someone yell "get her" or "get the girl." Its around this time that one of them appears to get seriously injured and Petitioner concedes to resorting to use his pocket knife, as Ms. Washington is grabbed by Riollano and then tossed to the side ending her courageous attempt to ward them off. Next, while Petitioner was fighting at least one other of Riollano's friends, Riollano approaches from behind, grabs Petitioner from the side by his shirt collar and strikes him on the head and neck several times. Members of his party feel they are unable to continue, and Riollano, not knowing why the fight has stopped, yet recognizing that it has; stops hitting Petitioner.

Both Blanco and Gotay notice they are bleeding and don't know why. Petitioner gets up and the couple gets in their car, and William Troy falls to the ground due to stab wounds. Subsequently, Andre Blanco and Francisco Gotay then realize they were stabbed.

As the couple leaves the parking lot a truck they believe to be occupied by one of their assailants tries to run them off the road. Hanzel Holiday a valet from the club across the street, admittedly not a witness to the incident, claims to have struck Petitioner's car twice in order to run the couple off the road. This in response to his supervisor, Phillip Allen Westfall, the valet for Thee Doll House's request for him to stop their car. On his third attempt Holiday notices Petitioner with a gun pointed in the direction of his attack, and he stops pursuit.

Blanco, Gotay, Riollano and Troy had consumed a large amount of alcohol prior to the incident, and Riollano admits to have been too drunk to drive. Both Gotay and Riollano claim not to know who threw the first punch or started the

fight and therefore don't Know whether Petitioner was defending himself against Blanco when they attacked. Blanco, Gotay, and Holiday each had multipule felony convictions; Troy had a conviction for battery of a law enforcement officer and on the night of the incident Blanco was on probation.

Blanco, though claiming not to have remained in the fight against Petitioner, and describing only being hit once by him; received multiple cuts and stabs. Gotay claims too as well though no evidence was offered outside his testimony. William Troy died as a result of his stab wounds. Holiday claims to have feared for his life. Ms. Washington believed their intentions were to take her away from Petitioner. Petitioner received multiple injuries including 6 cuts and feared for Ms Washington's safety and eventually his own life.

While Petitioner testified to have seen one of them swinging something shiny which he perceived as a knife; and security for the club, Justin Idle, claims to have seen on of them hitting Petitioner with something but he doesn't Know what it was. Everyone testified that they were unaware that Petitioner had or used a knife at any time during the altercation; except Petitioner. Petitioner, the only man classified as African American in the fight, was the only man arrested and accused of a criminal act, although he alerted the arresting officers of his self defense claim. These facts are undisputed by the State.

After Petitioner's arrest that night, Petitioner was charged by Information on November 20th, 2006 with the Second Degree Murder (with a weapon) of William Troy (count one); Aggravated Battery with a deadly weapon or causing

great bodily harm to both Francisco Gotay and Andre Blanco (counts two and three), Aggravated Assault with a firearm per. Hanzel Holiday (count four); and Shooting From A Vehicle (count five).

Petitioner's request for a trial by judge was denied and a jury trial was conducted, taking place from Feb. 26th thru March 1st, 2007. Petitioner pled not guilty by way of justifiable use of force in defense of his girlfriend and himself under Florida's then fairly new "Stand Your Ground" law Fla. Stat. 776.013(3). The trial court instructed in accordance, but over trial counsel's objections also instructed on the discretionary portion intended to alert the trier of fact that Petitioner would not be justified if he initiated the use of force through his own aggression or a seperate forcible felony. While, Standard Jury Instructions 3.6(f) and (g) clearly express this intent, the instructions as given to Petitioner's jury neglects any mention of aggressor or any seperate forcible felony and negates justification for merely initially provoking the use of force. Then to Petitioner's suprise, at the request of supporting trial counsel, the trial court added Standard Jury Instruction 3.6(K) on "Duress or Necessity" omitting the word "Duress" from it's title, and setting forth a standard by which the jury was to determine whether Petitioner's actions were necessary. While, Petitioner's reasonable belief that his actions were necessary is a prerequisite of the "Stand Your Ground" law, the "Necessity" instructions work to negate justification for several more reasons.

Petitioner was found guilty on counts one thru four and not guilty of count five (shooting from a vehicle) the only charge he denied committing the underlying acts for

completely; indicating the jury believed his account of the facts. Petitioner was sentenced on March 7th, 2007 to natual life for count one; 2 fifteen year sentences for counts two and three; and five years with a three year minimum mandatory for count four.

On direct appeal Petitioner argued that the initial provocation instruction as well as the 'Necessity' instruction was misleading or confusing to the jury and deprived him of his Constitutional guarantee of a fair and impartial jury. The state appellate court affirmed per curiam on December 16, 2008; Petitioner's motion for rehearing was denied on January 26, 2009. No opinion given for either denial.

On April 23, 2010, Petitioner initiated action for federal habeas relief pursuant to 28 U.S.C. section 2254 in the United States District Court Middle District of Florida Orlando Division. In one of twelve grounds Petitioner presented this argument and on January 24th, 2012 senior U.S. District Court Judge G. Kendall Sharp issued a 34 page order denying all twelve grounds on the merits, yet failing to address the specific arguments. Having the case dismissed with prejudice and a certificate of appealability denied, on February 1st, 2012 Petitioner submitted to the U.S. Middle District Court of Florida a notice of appeal to the 11th Circuit U.S. Court of Appeals. On June 29th, 2012 the 11th Circuit denied certificate of appealability on the merits, yet failing to address the specific arguments. On July 18th, 2012 Petitioner submitted a 'Pro Se Motion to reconsider application for C.O.A./En Banc' which was denied August 24th, 2012 (the enbanc portion was never addressed). Petitioner applied for a writ of certiorari with this Court which was denied Feb. 19, 2013; rehearing was denied April 15, 2013 (case no. 12-7709).

On August 26, 2014, Florida's First District Court of Appeals held that the jury instructions on initial provocation and self defense under the "Stand Your Ground" law were conflicting and contradictory negating each other by posing "no duty to retreat" and "a duty to retreat" constituting fundamental error in the case of Floyd v. State, 151 So.3d 452 (Fla 1st DCA 2014). Certifying a question of great public importance to the Supreme Court of Florida asking: Does Florida Standard Jury Instruction (Criminal) 3.6(f) provide conflicting instructions with respect to the duty to retreat?

On March 20, 2015, an in pro per petition for writ of habeas corpus was filed in Florida's Fifth District Court of Appeals on behalf of Petitioner, seeking relief based on the First Districts pronouncement. In reply to the States response Petitioner went even further than Floyd or the First District explaining how giving the instructions in absence of the expressed term of "aggressor" or a specific unlawful act, the term "provoked" becomes subject to ambiguous interpretation. The petition was denied on May 18th, 2015 without opinion. On June 22, 2015 Petitioner's motion for rehearing and rehearing en banc was denied citing Oliver v. State, 2015 WL 3762173 (Fla. 1st DCA Jan. 29, 2015) where the First District held that Oliver waived his right to relief based on the error by affirmatively requesting the instructions. As Petitioner had alerted the court to the fact that his trial counsel specifically objected to the instructions for each count, it must be assumed that the State's argument that Petitioner's trial counsel's request for special instructions on "necessity" which provided for a similar error was the basis for denial. The State argued that the requested instruction waived any right to relief based on the objected to instructions.

On Oct. 13, 2015 Petitioner sought discretionary review from

the Supreme Court of Florida where both his case and Oliver's were stayed pending disposition of State V. Moore, 181 So.3d 1186, 1187 which on January 14th, 2016 it dismissed review of. The court then issued an order for Petitioner to show cause as to why his case should not be dismissed as a result of its decision to relinquish jurisdiction of State v. Moore. While Petitioner's response to the order was pending, the court chose to better articulate the question posed by the First District with regard to Floyd, answering "whether Florida Standard Jury Instruction (Criminal) 3.6(f) is confusing, contradictory, or misleading with respect to the duty to retreat when there is a question as to whether the defendant was the initial aggressor."; in the negative, on March 10th, 2016 (See State v. Floyd, 186 So.3d 1013 (Fla 2016)). The Court decided that it should deny jurisdiction of Petitioner's case on May 25th, 2016 (see Appendix B).

Petitioner now seeks writ of certiorari before this Honorable Court and prays it holds true to the less stringent standard of review expressed in Haines v. Kerner, 92 S.Ct. 594, 404 U.S. 519 (1972); and if it deems necessary appoints legal counsel or representation on Petitioner's behalf to litigate.

Reasons for granting the writ

Florida's contraversial "Stand Your Ground" law has been the sensitive topic of heated discussion on T.V. news shows, T.V. talk shows, talk radio, newspapers, and internet chatter since before its effective date of October 1st, 2005; over a decade ago. The debate centers for the most part around questions of "when does it" and "when does it not" apply or does it allow selective application of its protection.

As demonstrated in the undisputed evidence presented

in the `Statement of the case' the instant case is the very epitome of the questions in controversy. This Court's opinion will clarify the standard of equal protection of "Stand Your Ground" laws nation wide.

Whether omitting terms like "aggressor" or of specific forcible felonies while instructing jurors that defendants standing their ground in defense of themselves or another are not justified if they initially provoked their assailant, allows convictions for noncriminal offenses; as "provoked" can translate to have angered, or irritated, and not necessarily unlawfully or aggressively.

The law on justifiable use of force according to Florida Statute 776.013 (3) (2006) holds that: Anyone who is not engaged in an unlawful activity and who is attacked in any place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony. (See Appendix C)

The Standard Jury Instruction on justifiable use of deadly force is 3.6(f) and justifiable use of nondeadly force is 3.6(g) and along with apprising the relative judges, attorneys, and researchers on when the law applies also provides an exception for when it does not apply. This section informs them that it applies for "Aggressor" citing Florida's "Use of force by aggressor" statute 776.041, (See Appendix D and E), and by doing so demonstrates what the jury must believe to have been proven beyond a reasonable doubt to validate the exception, activating a new set of rules.

Florida's First District Court of Appeals in Floyd v. State, 151 So.3d 452 (Fla 1st DCA 2014) held that Standard Jury Instruction 3.6(f) Justifiable Use of Deadly Force was fundamentally erroneous instructing jurors that defendant both did and did not have a duty to retreat.

As Fla. Stat. 776.041 is clearly a statute for an offense, intermingling it with affirmative defense justifiable use of force statute 776.013(3) is clearly a conflict which should require one of two circumstances for its application: 1) the defendant concedes that he was the initial aggressor or 2) the prosecution is required to, and meets the obligation of proving beyond a reasonable doubt that the defendant was the aggressor.

Oxford American Dictionary defines "aggression" as 1. the act of making an unprovoked attack. 2. a hostile action, hostile behavior. And defines "aggressor" as a person or country that attacks first or begins hostilities.

Webster's II New College Dictionary defines "aggression" as 1. Initiation of forceful, usu. hostile action against another: ATTACK 2. The practice of attacking or encroaching, esp. in violation of territorial rights: INVASION.

It is uncontested that Petitioner's trial counsel objected to the initial aggressor or more accurately the initial provoker instructions which were given for each count (See Appendix K), on the grounds that the evidence did not support it. And while the complaining witnesses never admitted to making the verbal threat that Petitioner and his girlfriend needed security to walk them to their car. The prosecutor, in closing argument, reframing it as a question, downplaying the threat and approach these men made to the couple, none the less recognizes it as undisputed facts of the case (see Appendix M closing argument p684,

p.685, 707 and 711). Even in the face of Blanco denying his approach. Based on the State's concession that the complaining witnesses initiated what can only be viewed as the initial hostilities and encroachment, it's not reasonable to presume that the jury believed the State to have proved Petitioner the initial aggressor beyond a reasonable doubt; in order for the instruction to apply.

Oxford American Dictionary defines "provoke" as 1. to make angry 2. to rouse or incite (a person) to action 3. to produce as a reaction or effect.

Webster's II New College Dictionary defines "provoke" as 1. To cause anger, resentment or deep feeling in. 2. To cause to take action 3. To stir to action.

Webster's New World Dictionary Third College Edition defines "provoke" as 1. to excite to some action or feeling 2. to anger, irritate or annoy 3. to stir up (action or feeling) 4. to call forth, evoke.

As a bully is likely to become angered, irritated or annoyed by a victims efforts to stand his ground and some people warn that unwilling victim to back down lest they "provoke" the hostility; the instruction (without reference to the purpose of applying to the initial aggressor) allows for one to lose the right to stand their ground simply because they stood their ground. Without clearly expressing the purpose of application the ambiguous terminology renders the instruction unconstitutionally vague. And allows prosecutors to obtain convictions based on nonexistent offenses.

The Florida Supreme Court in State v. Floyd, 186 So.3d 1013 (Fla. 2016) emphasized that "the jury instructions here

are necessary to focus the jury's attention on the singular pivotal question of fact concerning who was the initial aggressor and what consequences if any flow from that determination."

The instructions as given in Petitioner's case for each charge fails to clearly state that the exception only applies to an aggressor scenerio (see Appendix J (Jury Instructions) Records p. 330, 332, 334, 336, 338, 340, 343 and 344). In fact the "singular pivotal question" is never asked.

The prosecution capitalized off of the error by telling jurors on several occassions during closing argument that "Petitioner" should have left" prior to the confrontation to prevent it. Even while conceding the "Stand Your Ground" law. (See Appendix M p 708, 711 and 715).

Petitioner has noticed the absence of any indication of the aggressor purpose in the instructions of other cases as well. It even appears that the Florida Supreme Court overlooked its absence in Floyd's jury instructions based on the court's presentation of his instructions in its decision. It's possible that the equal protection of the state's "Stand Your Ground" law and due process guaranteed by the 14th Amendment of the U.S. Constitution has been and will continue to be denied to an unfathomable number of citizens within Florida's jurisdiction. Florida's Fifth District Court of Appeals' failure to recognize the constitutional magnitude of the error, along with the Supreme Court of Florida's denying of jurisdiction, is likely to result in irreparable harm to citizens and families who are the victims of unlawful attacks and even the system it self. As it is 2016 and Petitioner has presented this issue since at least 2008 never to have the

specific merits reached nor to see them addressed in any other case, this Court may be the last hope for the actual victims of violent crime. Actually innocent citizens who only want what they deserve according to the Constitution and that includes but is not limited to a fair trial by an impartial jury. (See Dobbs v. State, 1 So.3d 189 (Fla. 5th DCA 2008)).

In State v. Klayman, 835 So.2d 248, 259 (Fla. 2002) the Supreme Court of Florida clarified that: Florida courts have held that impositions of criminal sanctions without statutory authority is fundamental error... one may never be convicted of a non existent crime... conviction of a non existent crime is fundamental error mandating reversal even when error was invited by defendant as by request for jury instructions on a non existent offense... (Relying on Achin v. State, 436 So. 2d 30, 31 (Fla. 1982); Mundell v. State, 739 So.2d 1202 (Fla. 5th DCA 1999) and Fredericks v. State, 675 So.2d 989, 990 (Fla. 1st DCA 1996)).

A prime example of this rationale occurred in Mosely v. State, 682 So.2d 605, 607 (Fla 1st DCA 1996) where the court held that: "When jurors are given a instruction that would permit them to find the defendant guilty of a crime that does not exist, the error is fundamental and is per se reversible, and the case must be remanded for retrial... Specifically, the court found that the defendant was convicted of attempted manslaughter, but because the trial judge read the jurors the standard jury instruction for "culpable negligence", although no objection was raised; the appeals court found the error to be fundamental as the reference permitted the jury to find the defendant guilty of attempted involuntary manslaughter, which is a non existent crime. (One can't both attempt and involuntarily commit a single act).

Precedent in this Court has established that: Where a verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected the verdict must be set aside. Yates v. United States, 354 U.S. 298, 77 S.Ct. 1064 (1957). And where a provision of the Constitution forbids conviction on a particular ground, the Constitutional guarantee is violated by a general verdict that may have rested on that ground. Griffin v. United States, 502 U.S. 46, 112 S.Ct. 466 (1991).

Thus Petitioner asserts it to be a matter of great public importance that this Honorable Court step in to establish as the law of the land what will be a standard of equal protection regarding "Stand Your Ground" laws nationwide.

Whether due process is violated where state courts construe objected to instructions to be affirmatively requested based on trial counsel's request for instructions on a conflicting theory, undiscussed with her client, posing a similar but not identical error.

Whether by requesting a instruction which based on the totality of the circumstances of the case does not reasonably apply, a defendant waives the court's proper interpretation and enforcement of the appropriate laws governing the circumstances even where actual innocence is established within the appropriate standards.

From the moment of his arrest and all throughout his trial court proceedings Petitioner's defense has been that he acted in self defense and defense of another. The pertinent portion of the law governing the circumstances, Fla. Stat. 776.013

(3), establishes that "Anyone... who is attacked... has no duty to retreat and has the right to stand his or her ground and meet force with force including deadly force if he or she reasonably believes it is necessary..."

Yet, along with the objected to portions of Standard Jury Instructions 3.6(f) and 3.6(g) the trial court instructed the jury on 3.6(K) the defense of "Duress or Necessity" (see Appendix L) omitting the "Duress or" and simply titling it "Necessity". The instruction came at the request of Petitioners co-trial counsel. Petitioner was unaware that such a request would be made. The topic of an alternate theory of defense was never discussed and Petitioner believes it was requested out of spite because he wrote the Florida Bar Association prior to trial complaining about trial counsel. Still at the time Petitioner and the jury as well were not informed that it was in fact an alternate theory of defense. The instruction gave the appearance of being further instruction on self defense, the title infering that it was meant to clarify the standard by which the jury was to determine whether Petitioner reasonably believed his use of force to be necessary in accordance with Fla. Stat 776.013. Sadly, after his convictions Petitioner would slowly become aware of the shockingly immense conflicts with his justifiable use of force claim. And beginning with his direct appeal up into his current argument would argue that the trial court abused its discretion at the request of thereby ineffective trial counsel and relieved the state of its burden allowing the conviction of an actually innocent man. (See Appendix J and L)

Black's Law Dictionary Second Pocket Edition defines "justification" as a showing, in a court, of sufficient reason why a defendant did what the prosecution charges the defendant to answer. It defines "justification defense" as

a defense that arises when the defendant has acted in a way that the law does not seek to prevent. And defines "necessity" as a justification defense ... [etc].

The "Necessity" instructions which imposed on the jury's instructions which were supported by Fla. Stat. 776.013(3), were not supported by any Florida Statute. And imposed upon Petitioner the burden of meeting these six elements:

1) The defendant reasonably believed a danger existed which was not intentionally caused by the defendant.
2) The danger threatened significant harm to the defendant or a third person.
3) The threatened harm must have been real, imminent and impending.
4) The defendant had no reasonable means to avoid the danger except by committing (crime alleged).
5) The (crime alleged) must have been committed out of necessity to avoid the danger.
6) The harm the defendant avoided must out weigh the harm caused by committing (crime alleged).

Elements 1, 2, and 3 blend so smoothly with justifiable use of force that with its title the instruction gives the appearance of being fundamental to the jury's concideration of the term "necessary" in the "Stand Your Ground" law, Causing the hurricane of conflicts in elements 4, 5, and 6 to be severely underestimated by a less than legally adept mind. These instructions were given for each charge (see Appendix J).

For example: Petitioner never claimed to have committed 2nd degree murder, never described actions made by him which would or could constitute such an act, and not once during the trial was any evidence offered which could constitute such an act outside of the prosecutor's closing argument. Yet elements 4, 5, and 6 lead

the jury to presume otherwise. Based on this defense if the jury was asked if the defendant committed second degree murder, whether or not they were inclined to say he did it in self defense, they would have to say yes. As the purpose of law is to prevent crime and second degree murder is always a crime, the trial court, without inquiry, instructed jurors that Petitioner was guilty as charged and sought their pardon. A pardon that must not be given unless they believed that he had no other reasonable means to avoid the danger, and the harm he avoided outweighed the harm he caused. Giving Petitioner a duty to retreat before he can stand his ground, as well as a duty to prove the alleged victims had premeditated his murder, as only first degree outweighs second.

While this sort of instruction might be appropriate for circumstances where someone steals food from a grocery store to avoid starvation. Or even a scenerio where a woman who is caught prostituting claims she did it to prevent her pimp from harming her and her child. It is not appropriate as the defense asserts evidence and a theory that no crime was committed as a matter of law, such as self defense or justifiable homicide which is never a crime. Especially where the jury was not informed that it was an alternative defense. And instructed that the defendant must be found guilty if the elements of necessity are not proven. Elements he never set out to prove.

In Little v. State, 111 So.3d 214 (Fla. 2nd DCA 2013) the court specifically titled Criminal Law Key [4] 203K769 "Necessity of use of force" while referring to the "Stand Your Ground" law. If jurist of reason have interpreted the legal terms of "Necessity" and "Justifiable" to be interchangeable regarding this same subject matter certainly a jury of laymen will as well, without being instructed not too.

So when a justification is legally sufficient and expresses a standard that the law does not seek to prevent, instructing the jury on another justification defense under virtually the same title for the same subject matter yet issuing conflicting standards is plainly and fundamentally misleading.

In response to Petitioner's original petition for writ of habeas corpus in Florida's Fifth District Court of Appeals challenging the "initial provocation" instruction (see Appendix F and G), Respondent side stepped the argument and asserted: "the issue of a conflicting instruction on duty to retreat was waived because counsel specifically asked for both the necessity instruction which included a duty to retreat and the "stand your ground" portion of the justifiable use of force which includes no duty to retreat..." "Had counsel not requested the stand your ground part, there would have been no conflict on duty to retreat..." "Appellant cannot now be heard to complain about an error he invited." (see Appendix G p.5-6)

While Respondent clearly favors the necessity instruction for Petitioner, attempting to present it as Petitioner's key defense, Respondent concedes to the conflict in the instructions as given. Respondent equates the conflict presented in the "initial provocation" instructions with the conflict presented in the "necessity" instructions, and even goes so far as to admit that they were erroneous. Respondent asserted that the error in the objected to "initial provocation" portion of the justifiable use of force instructions was invited based on the error in the requested "necessity" instructions. Citing Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan. 29, 2015). Certainly if Respondent is misled to believe that both instructions equally and simultaneously govern Petitioner's circumstances, it is not

unreasonable for the jury to do the same. Yet, the errors are not identical as the giving of either instruction manifested error for fundamentally different reasons.

While the trial court misled the jury by failing to apprise them of the aggressor purpose of the "initial provocation" instruction, it abused its discretion by granting trial counsel's request for special instructions on "Necessity" by not following due process of law.

The Florida Supreme Court has articulated a corollary rule on the subject: In order to be entitled to a special jury instruction, [a criminal defendant] must prove: 1) the special instruction was supported by the evidence; 2) the standard instruction did not adequately cover the theory of defense; and 3) the special instruction was a correct statement of law and not misleading or confusing. See Stephens v. State, 787 So.2d 747, 756 (Fla.2001) (internal footnote citation omitted); Billie v. State, 963 So.2d 837, 840 (Fla.3rd DCA 2007).

Since the implementation of Florida's "Stand Your Ground" law there have been reversals where jurors were instructed that the defendant has a duty to retreat or avoid the danger before committing the act he or she claims was committed in self defense or justifiable use of force. See McWhorter v. State, 971 So.2d 154 (Fla. 4th DCA 2007). Courts have tended to find fundamental error in this context when the erroneous instructions negate a defendant's key theory of defense. See Vowels v. State, 32 So.3d 720 (Fla. 5th DCA 2010); Smith v. State, 76 So.3d 379 (Fla. 1st DCA 2011); and Sloss v. State, 45 So.3d 66 (Fla. 5th DCA 2010).

The State court of habeas review abused its discretion and violated due process and equal protection by failing to

recognize that District Courts of Appeal must interpret statutes by the well established norm of statutory construction which requires rendering the statutory provisions meaningful. Where the plain and ordinary meaning of statutory language is unambiguous, court cannot construe the statute in a manner that would extend, modify, or limit it's express terms or it's reasonable and obvious implications. Department of Revenue ex rel. Smith V. Selles, 47 So.3d 916, 35 Fla.L. Weekly D2474 (Fla. 1st DCA 2010)

The "Necessity" instructions allowing conviction even in the face of self defense allow Petitioner to be convicted of a crime that never occurred.

This Honorable Court has long held that "If a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant he may stand his ground and that if he kills him he has not succedded the bounds of lawful self defense". Brown V. United States, 256 U.S. 335, 41 S.Ct. 501, 65 L.Ed. 961 (1921).

3 Fla. Jur. 2d Appellate Review § 364 page 4564 holds that: "a conviction for a non-existent crime is a fundamental error that can be raised at anytime even if the error was invited by the acceptance of a negotiated plea or by a request for jury instructions." See also Moore V. State, 924 So.2d 840, 31 Fla. L. Weekly D160 (Fla. 4th DCA 2006).

Fla.R.Crim.P. 3.985 requires a trial judge who deviates from the standard jury instructions to state on the record or in a seperate order the respect in which the judge finds the standard form erroneous or inadequate and the legal basis of the judge's finding. A trial court's obligation under this rule is mandatory.

In the instant case the trial court stated no respect in which she found or agreed that the standard regarding "necessity"

in the justifiable use of force instructions were inadequate thus warranting the instructions on "necessity" in the "Duress or Necessity" instructions.

The undisputed evidence established at trial and presented in the "statement of the case" is not contested by Respondent and supports Petitioner's actual innocence and establishes that Petitioner could not have been found guilty beyond a reasonable doubt. Any hypothesis of guilt is purely circumstantial. Under Florida law "where the only proof of guilt is circumstantial, no matter how strongly the evidence suggest guilt, a conviction can not be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence". State V. Law, 559 So2d 187, 188 (Fla. 1989). And a "conviction is fundamentally erroneous when the facts affirmatively proven by the State do not constitute the charged offense as a matter of law." Griffin V. State, 705 So2d 572, 574 (Fla. 4th DCA 1998); and K.A.N. V. State, 582 So2d 57, 59 (Fla. 1st DCA 1991).

This Honorable Court has long held that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." Murray V. Carrier, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed. 2d 397 (1986).

Yet in the instant case actual innocence is overcome by misleading jury instructions and Florida courts continuously turn a blind eye compounding the travesty. The continuous denial of equal protection suggests that Florida enforces some unpublished policy that African Americans are free as long as they submit to abuse from other races, or tourist are welcome

as long as they submit to abuse from good ole boy factions. Also, as the violations of due process and equal protection evince that Petitioner has not been duly convicted; and no second degree murder of William Troy; no aggravated battery of Francisco Gotay; no aggravated battery of Andre Blanco; no aggravated assault of Hanzel Holiday, actually occurred; Petitioner is held in violation of the 13th Amendment of the U.S. Constitution (No case law exists for these specific issues).

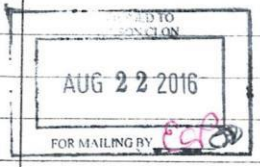
Conclusion

Thus, the petition for writ of certiorari should be granted.

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES



John W. Dobbs - Petitioner

vs.

State of Florida et al, - Respondent

Proof of Service

I, John W. Dobbs, do swear or declare that on this date as required by Supreme Court Rule 29 I have served the enclosed Petition for Writ of Certiorari on each party to the above proceeding or that party's counsel, and on every other person required to be served, by U.S. mail properly addressed to each of them and with first class postage prepaid for delivery within 3 days.

The names and addresses of those served are as follows: Clerk of the Supreme Court of the United States, Washington D.C. 20543; and the Attorney General's Office for the State of Florida, 444 Seabreeze Boulevard, Daytona Beach, Florida 32118.

I declare under penalty of perjury that the foregoing is true and correct.

John W. Dobbs DC# C00618

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Appendix-A: Order denying rehearing by Floridas Fifth District Court of Appeals citing Oliver (cover page, plus 1).
Appendix-B: Decision to deny jurisdiction by the Supreme Court of Florida (cover page, plus 1).
Appendix C: Copy of Florida Statute 776.013 (cover page, plus 2).
Appendix D: Copy of Florida Standard Jury Instructions 3.6(f) and 3.6(g) (cover page, plus 6)
Appendix E: Copy of Florida Statute 776.041 (cover page, plus 1).
Appendix F: Copy of petition for writ of habeas corpus in the 5th DCA (cover page, plus 11).
Appendix G: Copy of the State's response to the petition in the 5th DCA (cover page, plus 10).
Appendix H: Copy of Petitioner's Reply to the State's response in the 5th DCA (cover page, plus 18).
Appendix I: Copy of Motion for Rehearing and Rehearing En Banc in the 5th DCA (cover page, plus 15).
Appendix J: Copy of jury instructions given in Petitioner's trial (cover page, plus 26) (Records p.325-350).
Appendix K: Copy of trial counsel's objections to the giving of the initial provocation instructions for each count (cover page, plus 4) (trial p.655, 658, 666, and 669).
Appendix L: Copy of Florida's Standard Jury Instruction 3.6(K) (cover page, plus 2).
Appendix M: Copy of closing arguments made at Petitioner's trial (cover page, plus 35) (trial p.682-716).

Fifth District Court of Appeal Case Docket

Case Number: 5D16-872

Criminal Habeas Corpus Petition from Orange County

JOHN W. DOBBS vs. STATE OF FLORIDA

Lower Tribunal Case(s): 06-CF-15201-A

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Date Docketed	Description	Date Due	Filed By	Notes
03/15/2016	Petition Filed		Pro Se - Appellant	
03/15/2016	Acknowledgement Letter 1			
06/28/2016	Order Denying Original Petition			
06/28/2016	Denied - Order by Judge			
07/14/2016	Motion for Rehearing / Rehearing En Banc		Pro Se - Appellant	

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JUL 11 2016
FOR MAILING BY

In The District Court Of Appeals
For The Fifth District
State Of Florida

John W. Dobbs,
Petitioner,

vs. Case No.: 5D16-0872

State of Florida,
Respondent.

In Pro Per Motion For Rehearing And Motion For Rehearing En Banc

Petitioner moves this Honorable Court for rehearing pursuant to Rule 9.330 and for rehearing en banc pursuant to Rule 9.331; regarding his in pro per petition for writ of habeas corpus and offers the following in support:

I

Facts in support of motion for rehearing

On June 28, 2016 this Court denied Petitioner's in pro per petition for writ of habeas corpus; the petition was mailed on March 8th and acknowledged by this Court seven days later, on March 15th of 2016.

While, Petitioner continues to maintain his actual innocence based on the justifiable use of force evident in the undisputed facts established at trial, Petitioner demonstrated his legal innocence and eligibility for relief, showing the conditions of his detainment do not meet their constitutional mandate regarding count one, the basis for the controlling sentence, and, his timing falls within the pipeline for reversal. As the jury instruction on the lesser included offense (see Exhibit A) is fundamentally erroneous, Petitioner suffers identical prejudice to that described in Montgomery v. State, 70 So.3d 603

(Fla. 1st DCA 2009); State V. Montgomery, 39 So3d 252 (Fla. 2010); Singh v. State, 41 Fla. L. Weekly D206 4th DCA case no.: 4D08-2179 (January 20, 2016); and State v. Sandhaus, 41 Fla. L. Weekly D289 5th DCA case no.: 5D14-116 (January 26, 2016).

This Court, after possessing the petition for more than 3 months, overlooked its Constitutional mandate by denying the petition without first ordering Respondent to certify to the cause of detention, or show why relief should be denied.

This Court lacks subject matter jurisdiction to effectively suspend the writ of habeas corpus regarding Petitioner in this manner. According to Florida Criminal Practice and Procedure (second edition) Chapter 1 Jurisdiction and Venue - subject matter jurisdiction - is established by the Constitution. The 14th Amendment of the U.S. Constitution guarantees both due process and equal protection of state laws. Florida's rule of law provides (in pertinent parts:

1) Fla. Const. Art § 2 - Basic rights - All natural persons... are equal before the law among which are the right to enjoy and defend life and liberty...

2) Fla. Const. Art § 9 - Due process - No person shall be deprived of life, liberty or property without due process of law...

3) Fla. Const. Art § 13 - Habeas corpus - The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay and shall never be suspended...

4) Fla. Const. Art § 21 - Access to courts - The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

5) Fla. Stat. 79.01 - Application and writ - When any person detained in custody, whether charged with a criminal offense or not, applies... to any district court of appeal... for a writ of habeas corpus and shows by affidavit or evidence probable cause to believe that he... is detained without lawful authority, the court ... to whom such application is made shall grant the writ

forthwith, against the person in whose custody the applicant is detained...

6) Fla. Stat. 79.04 - Return to writ - Section (1) The person on whom the writ is served shall bring the body of the prisoner, or cause it to be brought, before the court, justice or judge before whom the writ is made returnable without delay and at the same time certify to the cause of detention.

In Hill v. McDonough, 547 U.S. 573, 579 (2006) the U.S. Supreme Court declared that "challenges to the lawfulness of confinement or to particulars affecting its duration are the province of habeas corpus..."

Thus, this Court is duty bound, to recognize that Petitioner was denied a fair trial by an impartial jury because of the erroneous jury instruction, and, to administer justice according to the particulars affecting his detainment.

For these reasons Petitioner contends that the court erroneously denied the petition. Petitioner respectfully submits that the Court should reverse it's denial and order that he be granted a new trial or order Respondent to certify why he should be denied a fair trial by an impartial jury, or provide its opinion.

II

Facts in support of motion for rehearing en banc

Florida Rule of Appellate Procedure 9.331 provides that district courts may order rehearing en banc if (1) it is necessary to maintain uniformity in the decisions of the court or (a) if the case is one of exceptional importance.

The instant case meets both these standards. This Fifth District has noted that cases have been deemed exceptionally important when the original panel decision conflicted with a rule of law announced by the Supreme Court or another district court, when the case was important to the jurisprudence of the State as a judicial precedent, or when the decision

impacted a large share of the community. Ortiz v. State, 24 So.3d 596, 618 (Fla. 5th DCA 2009).

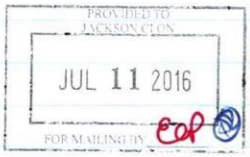
In State v. Sandhaus, 41 Fla. L. Weekly D289 5th DCA case no: 5D14-116 (January 26, 2016) this Court decided to obide by the Florida Supreme Court's holdings in State v. Montgomery, 39 So.3d 252, 255-256 (Fla. 2010) recognizing how the Court found that the then standard jury instruction on manslaughter compelled jurors toward convictions of second degree murder when it was one step removed; and went further to reiterate it's holding in Morgan v. State, 127 So.3d 708, 718 (Fla 5th DCA 2013) explaining how an impulsive overreaction to an attack or injury is insufficient to prove ill will, hatred, or spite, prerequisites to second degree murder; and that such cases instead warrant convictions of manslaughter.

Yet, in the instant case this Court fails to maintain it's uniformity and issues an order in direct conflict with the rule of law announced by the Florida Constitution, Florida Statutes, the Florida Supreme Court and other district courts.

Also, Petitioner has presented this Honorable Court with what appears to be an opportunity of judicial precedent where he asks the court to consider the possible resonating effects of the error regarding the presumed mind state and the inference which is likely to contaminate a jury's perspective when considering counts or charges that follow it under a continuous episode theory. Rehearing en banc can ensure that true justice is administered, correct a manifest injustice, protect citizens and courts from being taken unaware in similar cases, and prevent a manifest injustice from tarnishing this Court's honorable reputation. Thus, Petitioner submits the matter should be considered en banc.

Oath

Under the penalties of perjury, I hereby declare that the facts and the statements of the foregoing motions are true and correct.



John W. Dobbs,
in pro per

Certificate of service

I hereby certify that a true and correct copy has been mailed to: The Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, FL 32114; and the Office of the Attorney General, 444 Seabreeze Blvd., Daytona Beach, FL 32118.

John W. Dobbs
DC# C00618
Jackson Correctional Ins.
5563 10th Street
Malone, Fl 32445
In Pro Per

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Exhibit A

First 3 pages of the jury instructions as provide to the jury regarding the offenses of second degree murder and manslaughter (Records p325, 326, and 327).

JUSTIFIABLE HOMICIDE

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in any dwelling house in which the defendant was at the time of the killing.

EXCUSABLE HOMICIDE

The killing of a human being is excusable, and therefore lawful, under any one of the following two circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or

2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation.

I now instruct you on the circumstances that must be proved before JOHN DOBBS may be found guilty of Second Degree Murder or any lesser included crime.

MURDER - SECOND DEGREE
§ 782.04(2), Fla. Stat.
(Count One)

To prove the crime of Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. WILLIAM TROY is dead.

2. The death was caused by the criminal act of JOHN DOBBS.

3. There was an unlawful killing of WILLIAM TROY by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is "imminently dangerous to another and demonstrating a depraved mind" if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and

2. is done from ill will, hatred, spite or an evil intent, and

3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.

MANSLAUGHTER
§ 782.07, Fla. Stat.
(lesser included offense of count one)

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. WILLIAM TROY is dead.

2. JOHN DOBBS intentionally caused the death of WILLIAM TROY.

   OR

   The death of WILLIAM TROY was caused by the culpable negligence of JOHN DOBBS.

However, the defendant cannot be guilty of manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

In order to convict of manslaughter by intentional act, it is not necessary for the State to prove that the defendant had a premeditated intent to cause death.

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MAR 08 2016
FOR MAILING BY:

IN THE DISTRICT COURT OF APPEALS
FIFTH DISTRICT OF FLORIDA

JOHN W. DOBBS,
Petitioner,

v. Case No.: _____

STATE OF FLORIDA,
Respondent.
_____/

IN PRO PER PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Petitioner, John W. Dobbs, in pro per, before this Honorable Court, on petition for Habeas Corpus, as the conditions of his incarceration do not meet their constitutional mandate.

John W. Dobbs, #C00618
Jackson Correctional Institution
5563 10th Street
Malone, Florida 32445

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STATEMENT OF THE CASE

The undisputed evidence established at trial establishes that: On the night of October 24th, 2006/ early morning of October 25th 2006 between 1:35am and 2:15am, Petitioner and his then girlfriend Deanna Washington, while visiting the State of Florida, had stopped to patronize a topless bar called Thee Doll House. Inside the club the couple met a man named William Troy and briefly engaged in a not at all hostile, but not quite polite conversation.

Around the 2:00am closing time the couple left the club and saw Troy with 3 or 4 other men. Petitioner's vehicle and the vehicle transporting Troy's party were parked 6 parking spaces apart. One or more form Troy's party yelled to the couple something to the effect of they needed security to walk them out. Initially the statement appears light hearted. Petitioner is entering his car when Troy's friend and employee Andre Blanco starts to approach the passenger side of the couple's vehicle. Petitioner's girlfriend, being the passenger, points out that one of them is walking over. Petitioner asks her to stay in the car, leaves the driver's side and walks around the back of his car to meet him.

When Blanco arrives a fight initiates between them which all parties and witnesses perceive as a fist fight. The fight takes place close to the rear passenger side of Petitioner's vehicle. Almost immediately Blanco is knocked down and his friend Franciso Gotay approaches Petitioner swinging. Petitioner evades the

punches and strikes Gotay with what all parties and witnesses perceive as a punch. After being knocked down Blanco swiftly recovers and attacks Petitioner from behind. Petitioner's girlfriend exits the vehicle and enters the fight to help Petitioner as William Troy and his partner Anthony Riollano enter the foray. The couple hears someone yell "get her" or "get the girl." It's around this time that one of them appears to get seriously injured and Petitioner concedes to resorting to use his pocket knife; as Ms. Washington is grabbed by Riollano then tossed to the side ending her courageous attempt to ward them off. Next, while Petitioner was fighting at least one of Riollano's friends, Riollano approaches from behind, grabs Petitioner from the side by his shirt collar and strikes him on the head and neck several times. Members of his party feel they are unable to continue and, Riollano, not knowing whey the fight has stopped (yet recognizing that it has), stops hitting Petitioner.

Both Blanco and Gotay notice they are bleeding and don't know why. Petitioner gets up, the couple gets in their car, and William Troy falls to the ground due to stab wounds. Andre Blanco and Francisco Gotay then realize they were stabbed.

As the couple leaves the parking lot a truck they believe to be occupied by one of their assailants tries to run them off the road. Hanzel Holiday, a valet from the club across the street, admittedly not a witness to the incident; claims to have

struck Petitioner's car twice in order to run the couple off the road. This in response to his supervisor, Phillip Allen Westfall, the valet for Thee Doll House's request for him to stop their car. On his third attempt Holiday notices Petitioner with a gun pointed in the direction of his attack, and he stops pursuit.

Petitioner, the only African American male in the fight, was the only man arrested and accused of a criminal act; although he alerted arresting officers of his self defense claim.

After Petitioner's arrest that night, Petitioner was charged by way of Information on November 20, 2006 with the second degree murder with a weapon of William Troy (count one); aggravated battery with a deadly weapon or causing great bodily harm to both Francisco Gotay and Andre Blanco (counts two and three), aggravated assault with a firearm against Hanzel Holiday (count four); and shooting from a vehicle (count five).

Petitioner's trial took place from February 26th thru March 1st 2007, where he pled not guilty by way of justifiable use of force under Florida's then fairly new "Stand Your Ground" law. After presentation of the evidence the trial court instructed the jury as to count one, second degree murder, and also the lesser included offense of manslaughter in accordance with the standard jury instruction.

Petitioner was found guilty of counts one thru four and not guilty of count five (shooting from a vehicle) the only charge he denied committing the underlying

acts for completely. Petitioner was sentenced on March 7th, 2007 to natural life in prison for count one; two fifteen year sentences for counts two and three; and five years with a three year minimum mandatory for count four.

Petitioner's direct appeal was denied and his convictions affirmed by this court per curiam on December 16, 2008. Petitioner's Motion for Rehearing was denied on January 26, 2009, and this Court issued its mandate on February 20, 2009.

JURISDICTION

The jurisdiction of this court is invoked through Florida Rules of Appellate Procedure 9.100.

REASONS FOR GRANTING THE WRIT

On February 12, 2009 the 1st DCA in the case of Montgomery v. State, 70 So.3d 603 held that the language of the standard jury instruction for manslaughter by act providing that the State had to prove that the defendant intentionally caused the victims death in order to establish that he committed manslaughter, was fundamental error in prosecution for second degree murder, because due to the erroneous instructions, the jury was prevented from returning a verdict for the lesser included offense of manslaughter if it believed the defendant did not intend to kill the victim.

The State appealed the decision to the Florida Supreme Court and on April 8, 2010 the 1st DCA's decision was upheld in favor of Montgomery in State v. Montgomery, 39 So3d 252 (Fla. 2010).

Recently in Singh v. State, 41 Fla.L.Weekly D206 4th DCA Case number 4D08-2171 (January 20, 2016) the 4th DCA explained that: Giving erroneous instruction on manslaughter by act as lesser included offense constituted fundamental error where defendant was convicted of offense not more than one step removed from manslaughter. And fundamental error is not cured by giving of instruction on manslaughter by culpable negligence even if evidence would have supported finding culpable negligence.

Thus, fundamental error occurred in Petitioner's trial (See the jury instructions in records page 325-327), his jury wasn't impartial.

Since under Florida law a district court of appeal, on appeal, maintains jurisdiction of a case until the date that it issues its mandate. The fact that the 1st DCA rendered its decision on the law on February 12, 2009, means Petitioner is eligible for relief, as he falls in the pipeline where his case was pending at the time in this Court until February 20, 2009.

Also, Petitioner perceives and argues that the effects of this error resonate much deeper than the plain error regarding count one because of the extraordinary circumstances of his case. Petitioner asserts that the error which was fundamental

to the jury's consideration of count one, also prejudiced the jury's consideration of counts two, three, and four, because of the undisputed theory that the alleged crimes took place during one continuous episode. The fact is that if Petitioner were found guilty of manslaughter rather than second degree murder, it's more than likely that the jury would have felt more legitimate finding Petitioner acted in a reasonable use of force regarding the other counts.

In State v. Sandhaus, 41 Fla.L.Weekly D289 5th DCA Case No: 5D14-116 (January 26, 2016). The definition of second degree murder is "the unlawful killing of a human being, when perpetrated by an act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual." §782.04(2), Fla.Stat. (2011). The Florida Supreme Court has interpreted the section as follows:

Conduct that is imminently dangerous to another and evincing a depraved mind is characterized by an "act or series of acts that: (1) a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and (2) is done form ill will, hatred, spite or an evil intent, and (3) is of such a nature that the act itself indicates an indifference to human life. State v. Montgomery, 39 So.3d 252-255-56 (Fla. 2010)(quoting Bellamy v. State, 977 So.2d 682, 683 (Fla. 2nd DCA 2008). "[S]econd degree murder is normally

committed by a person who knows the victim and has had time to develop a level of enmity toward the victim."

" '[E]xtreme recklessness' or 'an impulsive overreaction to an attack or injury is itself insufficient to support a second degree murder conviction." Antoine v. State, 138 so.3d 1064, 1073 (Fla. 4th DCA 2014) (quoting Dorsey v. State, 74 So.3d 521, 524 (Fla. 4th DCA 2011). An impulsive overreaction to an attack or injury is insufficient to prove ill will, hatred, or spite. Morgan v. State, 127 So.3d 708, 718 (Fla. 5th DCA 2013); Bellamy, 977 So.2d at 684. "While the jury may reasonably reject the theory of self-defense in a case involving a defendant's impulsive overreaction to a victim's attack, such a case warrants a conviction of manslaughter, not second degree murder." Dorsey, 74 So.3d at 524 (citing Poole v. State, 30 So.3d 696, 698-99 (Fla. 2nd DCA 2010).

The jury's view of Petitioner's mind state, and thus degree of culpability, was fundamentally tainted regarding each charge that followed; after having been compelled to presume that Petitioner acted with ill will, hatred, spite, evil intent or a depraved mind based on the error in the instruction on the lesser included. It's more than reasonable to conclude that the jury believed that it may have been reasonable for Petitioner to use non-deadly force based on their perception of the circumstances, but that he exceeded the force he was entitled to regarding count one. They would then be hard pressed to find that Petitioner was not acting in a

depraved mind state in the counts to follow. Once set on the course of having declared Petitioner guilty of murder rather than manslaughter, debating Petitioner's culpability regarding the other charges would seem almost frivolous.

For jury instructions to constitute fundamental error the error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error. Tramel v. State, 2015 WL 2186613, 40 Fla.L.Weekly D1104 (1st DCA May 12, 2015).

Considering the undisputed facts and the totality of the circumstances its more likely than not that the error regarding count one had a poisonous effect on counts two, three, and four.

"The scope and flexibility of the writ- - it's capacity to reach all manner of illegal detention - - it's ability to cut through barriers of form and procedural mazes - - have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." Henry v. Santana, 62 So.3d 1122, 1128 (Fla. 2011) quoting Harris v. Nelson, 394 U.S. 286, 291, 89 S.Ct. 1082, 22 L.Ed.2d 281 (1969).

CONCLUSION

Wherefore Petitioner respectfully requests that this Honorable Court reverse and remand counts one thru four for a new trial, or provide any other relief this court recognizes Petitioner is entitled to, to avoid a manifest injustice.

John W. Dobbs #C00618
Jackson Correctional Institution
5563 10th Street
Malone, FL 32445-3144
In pro per

DECLARATION

UNDER THE PENALTIES OF PERJURY, I hereby declare that I have read the foregoing in pro per petition for writ of habeas corpus; and the facts stated herein are true.

John W. Dobbs #C00618

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been mailed to: The Fifth District Court of Appeal, 300 South Beach St., Daytona Beach, FL 32114; and the Office of the Attorney General, 444 Seabreeze Blvd., Daytona Beach, FL 32118 this 8th day of March 2016.

John W. Dobbs #C00618
Jackson Correctional Institution
5563 10th Street
Malone, FL 32445-3144
In pro per

Fifth District Court of Appeal Case Docket

Case Number: 5D16-872

Criminal Habeas Corpus Petition from Orange County

JOHN W. DOBBS vs. STATE OF FLORIDA

Lower Tribunal Case(s): 06-CF-15201-A

Right-click to copy shortcut directly to this page

03/28/2016 09:34

Date Docketed	Description	Date Due	Filed By	Notes
03/15/2016	Petition Filed		Pro Se - Appellant	
03/15/2016	Acknowledgement Letter 1			

Fifth District Court of Appeal Case Docket

Case Number: 5D15-977

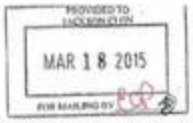
Criminal Habeas Corpus Petition from Orange County

JOHN W. DOBBS vs. STATE OF FLORIDA

Lower Tribunal Case(s): 2006-CF-15201-A-O

8/17/2015 10:56

Date Docketed	Description	Date Due	Filed By	Notes
03/20/2015	Petition Filed		Pro Se - Appellant	
03/20/2015	Acknowledgement Letter 1			
03/24/2015	ORD-Respondent to Respond			
04/01/2015	RESPONSE		Attorney General - Appellee	
04/01/2015	Appendix to Response		Attorney General - Appellee	
04/16/2015	Reply			
05/18/2015	Order Denying Original Petition			
05/18/2015	Denied - Order by Judge			
06/03/2015	Motion for Rehearing / Rehearing En Banc		Pro Se - Appellant	
06/22/2015	Order Deny Motion for Rehearing / Rehearing En Banc			
07/09/2015	Returned Records			
07/09/2015	Disp. w/o Mandate			
07/21/2015	NOTICE OF DISCRETN. JURISDICTN			
07/21/2015	Review Sent to Supreme Court			
07/22/2015	Acknowledged Receipt from Supreme Court			
07/22/2015	Supreme Court Disposition			



IN THE DISTRICT COURT OF APPEALS FIFTH DISTRICT OF FLORIDA

JOHN W. DOBBS,
PETITIONER,

Case No.:

VS.

STATE OF FLORIDA,
RESPONDENT,
_____/

IN PRO PER PETITION FOR WRIT OF HABEAS CORPUS

Comes now, Petitioner, John W. Dobbs, in pro per, before this Honorable Court, on petition for Habeas Corpus, as the conditions of his incarceration do not meet their Constitutional mandate.

John W. Dobbs DC# C00618
Jackson Correctional Institution
5563 10th Street
Malone, FL 32445-3144

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STATEMENT OF CASE

The undisputed evidence established at trial establishes that: On the night of Oct. 24th, 2006 / early morning of Oct. 25th, 2006 between 1:35 am and 2:15 am, Petitioner and his then girlfriend Deanna Washington, while visiting the state of Florida had stopped to patronize a topless bar called the Thee Doll House. Inside the club the couple met a man named William Troy, and briefly engaged in a not at all hostile, but not quite polite conversation.

Around 2:00am closing time the couple left the club and saw Troy with 3 or 4 men. Petitioner's vehicle and the vehicle transporting Troy's party were parked 6 parking spaces apart. One or more form Troy's party yelled to the couple something to the affect of they needed security to walk them out. Initially the statement appeared lighthearted. Petitioner is entering his car when Troy's friend and employee Andre Blanco starts to approach the passenger side of the couples vehicle. Petitioner's girlfriend being the passenger, points out that one of them is walking over. Petitioner asks her to stay in the car, leaves the driver side and walks around to the back of the car to meet him.

When Blanco arrives a fight initiates between them which all parties and witnesses perceive as a fist fight. The fight takes place close to the rear passenger side of Petitioner's vehicle. Almost immediately Blanco is knocked down and his

friend Francisco Gotay approaches Petitioner swinging. Petitioner evades the punches and strikes Gotay with what all parties perceive as a punch. After being knocked down Blanco swiftly recovers and attacks petitioner from behind. Petitioner's girlfriend exits the vehicle and enters the fight to help Petitioner as Anthony Riollano and William Troy enter the foray. The couple hears someone yell "get her" or "get the girl". Its around this time that one of them appears to get seriously injured and Petitioner concedes to resorting to use his pocket knife, as Ms. Washington is grabbed by Riollano and then tossed to the side ending her courageous attempt to ward them off. Next, while Petitioner was fighting at least one other of Riollano's friends, Riollano approaches from behind, grabs Petitioner from the side by his shirt collar and strikes him on the head and neck several times. Members of his party feel they are unable to continue and, Riollano, not knowing why the fight has stopped, yet recognizing that it has; stops hitting Petitioner.

Both Blanco and Gotay notice they are bleeding and don't know why. Petitioner gets up and the couple gets in their car, and William Troy falls to the ground due to stab wounds. Andre Blanco and Francisco Gotay then realize they were stabbed.

As the couple leaves the parking lot a truck they believe to be occupied by one of their assailants tries to run them off the road. Hanzel Holiday a valet from the club across the street, admittedly not a witness to the incident; claims to have

struck Petitioner's car twice in order to run the couple off the road. This in response to his supervisor, Phillip Allen Westfall, the valet from Thee Dolls House's request for him to stop their car. On his third attempt Holiday notices Petitioner with a gun pointed in the direction of his attack, and he stops pursuit.

Blanco, Gotay, Riollano and Troy had consumed a large amount of alcohol prior to the incident. Blanco, Gotay, and Holiday each have multiple felony convictions; Troy had been convicted of battery on a law enforcement officer; and on the night of the incident Blanco was on probation. Blanco, though claiming not to have remained in the fight against petitioner, and describing only being hit once by him; received multiple cuts and stabs. Gotay claims too as well though no evidence was offered outside his testimony. William Troy died as a result of his stab wounds. Holiday claims to have feared for his life. Petitioner received multiple injuries including 6 cuts. While Petitioner testified to have seen one of them swinging something shiny which he perceived as a knife; and security for the club, Justin Idle, claims to have seen one of them hitting Petitioner with what he believes may have been a key; all testified to never seeing Petitioner with a knife during the altercation; except Petitioner. Petitioner, the only African male in the fight was also the only man arrested, and accused of a criminal act; although he alerted the arresting officers of his self defense claim.

After petitioner's arrest that night, Petitioner was charged by information on November 20th, 2006 with second degree murder (with a weapon) of William Troy (count one); aggravated battery with a deadly weapon or causing great bodily harm to both Francisco Gotay and Andre Blanco (counts two and three); aggravated assault with a firearm against Hanzel Holiday (count four); and shooting from a vehicle (count five)

Petitioner's trial took place from Feb. 26th thru March 1st, 2007, where he pled not guilty by justifiable use of force under Florida's then fairly new stand your ground law. Over trial counsel's objection, Orange County Circuit Court Judge Lisa T. Munyon, instructed the jury on the second portion of the forcible felony law where the jury was told that Petitioner's actions were not justifiable if they believed he provoked his assailants. Petitioner was found guilty on counts one thru four and not guilty of count five (shooting from a vehicle) the only charge he denied committing the underlying acts for completely. Petitioner was sentenced on March 7th, 2007 to natural life for count one; 2 fifteen year sentences for counts two and three; and five years with a three year minimum mandatory for count four.

On direct appeal and subsequent federal efforts Petitioner argued that the initial provocation instruction was misleading or confusing to the jury and deprived him of his Constitutional guarantee of a fair trial.

JURISDICTION

The jurisdiction of this court is invoked through Florida Rules of Appellate Procedure 9.100.

REASONS FOR GRANTING WRIT

On August 26th, 2014, the First District Court of Appeals for the state of Florida, in a case called Floyd v. State, (see Floyd v. State, 39 Fla.L.Weekly D1800), declared that the "initial provocation" instruction in conjunction with the "stand your ground" instruction; negated the "stand your ground" clause. This was reinforced with its decision in Deandre Ross v. State, 40 Fla.L.Weekly D327 1st DCA. Case No.:1D13-4401 (February 3rd, 2015).

In both cases the jury was instructed that "the deadly use of force is not justified if you find: [the defendant] initially provoked the use of force against himself, unless[:]...[he] had exhausted every reasonable means to escape the danger other than using deadly force." Floyd at D1800. The jury was also instructed that "[i]f the defendant was not engaged in unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force..."

The Floyd court explained this instruction was conflicting because the stand your ground provision stated the defendant had no duty to retreat so long as he was not engaged in unlawful activity; however the "aggressor" portion stated he had a

duty to retreat if he provoked. Thus, the instruction stated the defendant "did not have to retreat... and did have a duty to retreat before using deadly force." Id at 1801. The court concluded the "conflicting jury instructions negated each other in effect, and therefore negated their possible application to Floyd's only defense" self defense pursuant to the stand your ground law.

In the instant case both instructions were provided for each of the charges for which Petitioner was convicted (see trial transcript p. 717-760 for jury instructions or records p. 325-350). The harmful effect on his case is materially indistinguishable from that of either Floyd or Ross. The fact, that jurist of reason agree with the prejudicial effect Petitioner has asserted for years results from combining the two instructions, establishes beyond a reasonable doubt the high likelihood that its influence deprived Petitioner of his 6th amendment right to a fair and impartial jury. In violation of both the U.S. and Florida Constitutions. Any argument, made by the State for any reason whether invited or otherwise, made in opposition to this petition can only verify the States intention to hold Petitioner to a double standard. This would again violate the Constitutional guarantee of protection against cruel and unusual punishment. As, Petitioner could not possibly succeed in a request that a court of law hold him to a double standard regarding guilt or innocence.

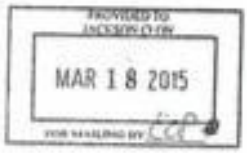
Thus, Petitioner respectfully request this Honorable Court to reverse each of the relevant convictions granting the relief provided to both Floyd and Ross, and prays for his emergency release from an unlawful detainment.

Respectfully submitted,

John W. Dobbs DC# C00618

DECLARATION

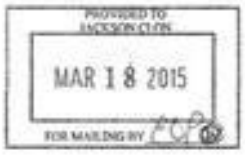
Under the penalties of perjury, I declare that I have read the foregoing in pro per petition for writ of habeas corpus; and the facts stated herein are true



John W. Dobbs DC# C00618

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been mailed to: The Fifth District Court of Appeal, 300 South Beach St., Daytona Beach, Fl. 32114; and the Office of the Attorney General 444 Seabreeze Blvd., Daytona Beach, Fl. 32118.



John W. Dobbs DC# C00618
Jackson Correctional Institution
5563 10th Street
Malone, FL 32445-3144
In pro per

District Court of Appeal
Fifth District
300 South Beach Street
Daytona Beach, Florida 32114
(386) 255-8600

ACKNOWLEDGMENT OF NEW CASE

DATE: March 20, 2015

STYLE: JOHN W. DOBBS v. STATE OF FLORIDA

5DCA#: 5D15-977

The Fifth District Court of Appeal has received the Petition reflecting a filing date of 3/20/15

The county of origin is Orange.

The lower tribunal case number provided is 2006-CF-15201-A-O

The filing fee is No Fee-Habeas Corpus.

Case Type: Habeas Corpus Criminal

The Fifth District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

cc: John Dobbs Office Of Attorney General

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JOHN W. DOBBS ,

Petitioner,

v. CASE NO. 5D15-0977

STATE OF FLORIDA ,

Respondent.
_____/

DATE: March 24, 2015

BY ORDER OF THE COURT:

ORDERED that Respondent in the above-styled cause shall, within **ten** days of the date hereof, file a response to the Petition for Writ of Habeas Corpus, filed March 20, 2015.

I hereby certify that the foregoing is
(a true copy of) the original Court order.

Pamela R. Masters
PAMELA R. MASTERS, CLERK

cc:

Office of Attorney General John W. Dobbs

RECEIVED, 4/1/2015 11:56 AM, Pamela R. Masters, Fifth District Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JOHN W. DOBBS,
Petitioner,

v. CASE NO. 5D15-0977

STATE OF FLORIDA,
Respondent.
_____/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, the Respondent, by and through the undersigned Assistant Attorney General, pursuant to this Court's March 24, 2015, order to respond to the Petition For Writ Of Habeas Corpus, filed with this Court on March 20, 2015, and states:

PROCEDURAL HISTORY

Petitioner was tried by jury and convicted as charged in the information of second degree murder with a weapon, two counts of aggravated battery with a deadly weapon or causing great bodily injury and aggravated assault with a firearm. He was found not guilty of shooting from a vehicle. He was sentenced to life imprisonment for the murder conviction, concurrent terms of 15 years imprisonment on the aggravated battery counts and a 5 year concurrent term for the aggravated assault. He appealed to this Court and was initially represented by the Public Defender's Office

who filed a brief on his behalf, an amended initial brief and a second amended initial brief. (See 5D07-1057) However, Petitioner exercised his right to represent himself dismissing his appellate counsel and the second amended brief filed by the Public Defender's Office was withdrawn. Petitioner filed his own *pro se* initial brief, raising three issues. The issues were sufficiency of the evidence, cumulative prosecutorial misconduct and improper jury instructions. (Appendix G) Specifically, Petitioner argued that the trial court committed fundamental error by giving the necessity instruction because it negated self-defense. (Appendix G, pg. 50-51) He argued that the necessity instruction was in direct conflict with his self-defense and/or justifiable use of deadly force in that the justifiable use of deadly force eliminated the duty to retreat which was contrary to the necessity instruction thus confusing and misleading the jury. (Appendix G, pg. 53) This Court *per curiam* affirmed on December 16, 2008. *Dobbs v. State*, 1 So. 3d 189 (Fla. 5th DCA 2008).

While Petitioner's direct appeal was pending, he filed a Florida Rule of Criminal Procedure 3.850 Motion for Postconviction Relief which was dismissed due to the pending direct appeal. Petitioner never filed another rule 3.850 motion. Petitioner did file a 28 U.S.C. §2254 Petition For Writ Of Habeas Corpus with the United States District Court Middle District of Florida. (USMD Case No: 6:10-cv-663-Orl-18-GJK) One of the issues raised was the same jury instruction issue raised

on direct appeal. (Appendix A, pgs. 96-118) The federal habeas petition was denied and dismissed with prejudice on January 24, 2012. (Appendix B) He sought a certificate of appealability with the United States Eleventh Circuit Court of Appeals which was denied on June 29, 2012. (Appendix C) Petitioner even sought certiorari review in the United States Supreme Court, however, that petition was denied as well. (Appendix D)

ARGUMENT

Petitioner argues that this Court should follow the cases of *Floyd v. State*, 151 So. 3d 452 (Fla. 1st DCA 2014), *rev. granted*, 2014 WL 7251662 (Fla. 2014), and *Ross v. State*, 40 Fla. L. Weekly D327 (Fla. 1st DCA Feb. 3, 2015), which held that conflicting jury instructions as to the defendant's duty to retreat before using deadly force against the victims was fundamental error. Petitioner is entitled to no relief.

First, it is the Respondents position that the instant Petition For Writ Of Habeas Corpus should be denied as the issue is procedurally barred. Issues that could have, should have, or were raised on direct appeal or in a Florida Rule of Criminal Procedure 3.850 Motion For Postconviction Relief are procedurally barred. *Wright v. State*, 857 So. 2d 861, 874 (Fla. 2003), *cert. denied* 541 U.S. 961, 124 S.Ct. 1715, 158 L.Ed.2d 402 (2004). Habeas proceedings may not be utilized to present issues that should have been raised on direct appeal or to obtain a second appeal. *Baker v.*

State, 878 So. 2d 1236 (Fla. 2004); *Johnson v. State*, 114 So. 3d 205 (Fla. 5th DCA 2012), *rev. denied*, 116 So. 3d 383 (Fla. 2013); *Richardson v. State*, 918 So. 2d 999 (Fla. 5th DCA 2006). Habeas corpus also should not be used to present issues which should have been raised at trial. *Wright, supra.* The time limit has long since passed to file a rule 3.850 motion because Petitioner's conviction and sentence became final when mandate was issued on February 20, 2009. Fla. R. App. P. 3.850(b). The basic issue was raised on direct appeal, the same exact issue should have and could have been raised on direct appeal and it should have been raised at trial. Because it was already raised, or should have been raised on direct appeal, it is procedurally barred.

In addition to being procedurally barred, the instant issue is law of the case. Petitioner argued in the instant case on direct appeal that the jury instructions were conflicting, confusing and misleading regarding the duty to retreat in the necessity instruction and no duty to retreat in the "stand your ground" portion of the justifiable use of deadly force instruction. (Appendix G, pgs. 50-53) This Court *per curiam* affirmed. (5D07-1057) This is essentially the same argument he is making now, just that the conflict is within the justifiable use of deadly force instruction itself instead of between necessity and the "stand your ground" portion of justifiable use of force instruction. The law of the case doctrine prevents the litigation of issues which were

actually decided in a prior appeal. *State v. McBride*, 848 So. 2d 287, 289-90 (Fla. 2003); *Mediate v. State*, 108 So. 3d 703 (Fla. 5th DCA 2013). As indicated above, not only has Petitioner raised the jury instruction issue in this Court, but he has also raised it in federal court, it was denied and dismissed with prejudice, the United States Eleventh Circuit Court of Appeal denied a certificate of appealability and the United States Supreme Court denied certiorari review.

In addition, the issue of a conflicting instruction on duty to retreat was waived because defense counsel specifically asked for both the necessity instruction which included a duty to retreat and the "stand your ground" portion of the justifiable use of force which includes no duty to retreat. (Appendix F, pgs. 656, 658, 660-661; Appendix E, pgs. 331, 333) Had counsel not requested the stand your ground part, there would have been no conflict on duty to retreat. (Appendix F, pg. 656, 658) In *Oliver v. State*, 2015 WL 376213 (Fla. 1st DCA Jan. 29, 2015), the first district distinguished *Floyd*, finding that Oliver had affirmatively requested and agreed to the applicable parts of the justifiable use of deadly force instructions thereby waiving any claim of fundamental error. Counsel did the same in the instant case except with necessity. She requested both the necessity instruction and the "stand your ground" portion of the justifiable use of force instruction. One required a duty to retreat while the other did not. Appellant cannot now be heard to complain about an error he

invited. *Armstrong v. State*, 579 So. 2d 734 (Fla. 1991)("By affirmatively requesting the instruction he now challenges, Armstrong has waived any claim of error in the instruction). The instant case was more than an unknown acquiescence to the instruction or just a failure to object. Defense requested the instruction.

Last, Respondents argue that even if the justifiable use of force instruction was erroneous, it was not fundamental because it was not his only defense and did not deprive him a fair trial. When a challenged jury instruction involves an affirmative defense, as opposed to an element of the crime, fundamental error only occurs when a jury instruction is so flawed as to deprive the defendant of a fair trial. *Martinez v. State*, 981 So. 2d 449 at 455 (Fla. 2008). An erroneous jury instruction constitutes fundamental error if it negates the defendant's sole defense. *Krause v. State*, 98 So. 3d 71 (Fla. 4th DCA 2012), *rev. dismissed*, 129 So. 3d 1068 (Fla. 2013). In the instant case, justifiable use of deadly force was not Petitioner's sole defense as he also asserted necessity. (Appendix E)

If this Court disagrees with the above arguments, Respondents would acknowledge the conflict within the justifiable use of force instruction itself as laid out in *Floyd,* but would ask this Court to hold the case in abeyance until the issue is resolved by the Florida Supreme Court which has granted review in *Floyd*.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

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ROBIN A. COMPTON
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COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing response has been furnished by U.S. Mail to John W. Dobbs, DOC# C00618, Jackson Correctional Institution, 5563 10th Street, Malone, FL, 32445-3144, this 1st day of April, 2015.

Robin A. Compton
ROBIN A. COMPTON
Assistant Attorney General

PROVIDED TO JACKSON CI ON
APR 13 2015
FOR MAILING BY

IN THE DISTRICT COURT OF APPEALS
FIFTH DISTRICT OF FLORIDA

JOHN W. DOBBS,
Petitioner,

v. Case No.: 5D15-977

STATE OF FLORIDA,
Respondent.
_____/

IN PRO PER REPLY TO RESPONDENT'S RESPONSE

Comes now, Petitioner, John W. Dobbs, in pro per, before this Honorable Court, in Reply to Respondent's Response, contesting Respondent's allegation that petitioner is not entitled to relief; although the conditions of his incarceration do not meet their Constitutional Mandate.

John W. Dobbs, DC#C00618
Jackson Correctional
Institution
5563 10th Street
Malone, Florida 32445

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REASONS FOR GRANTING THE WRIT

As Respondent points out in the procedural history portion of its response to Petitioner's petition for writ of habeas corpus, Petitioner has diligently pursued relief due to the conflict presented by the "Initial Provocation" instruction when in conjunction with that of the "Stand Your Ground" instruction; dating as far back as his initial appeal before this Honorable Court. See Dobbs v. State, 1 So.3d 189 (Fla. 5th DCA 2008), rehearing denied January 26, 2009. Respondent even points out Petitioner's efforts for federal habeas corpus regarding this issue, while neglecting to point out that their only reason for denial given for this issue was that Florida law recognized no prejudicial effect in this regard. This has changed. Now, the only question to be determined is the degree of prejudice which is currently being decided by the Florida Supreme Court.

While, all constitutional error does not rise to the degree of fundamental; all fundamental error must be deemed constitutional. The fact that jurist of reason have concluded that fundamental error has occurred in this context, means at the very least that: 1) a jury of laymen may have been misled due to the instruction; and 2) short of denying that the Floyd and Ross courts are jurist of reason the guarantee of an impartial jury may have been compromised in Petitioner's case. Despite some assertions initial provocation does not

automatically equate to initial aggressor. There is nothing in the language of the instruction inferring that jurors hold it out of the context of layman terms. Some people consider taking a bold stance in the face of danger provoking the threat. Petitioner may have lost his right to stand his ground without having engaged in unlawful activity in the eyes of the jury.

This Honorable Court should note that Petitioner does not currently argue fundamental error in this regard, preferring to leave this conclusion to the professionals; and merely argues that this issue, which his attorney objected to at trial, has now been recognized as prejudicial to his defense. Based on this new perspective and change of law governing cases such a Petitioner's, this original proceeding should be deemed timely and no procedural bar should apply.

As well, Respondent's response opens the door for Petitioner to present this Honorable Court with his argument regarding the adverse effect of trial court's decision to give the six elements of 'Necessity' as a special instruction; as Respondent argues that this validates any other conflict that occurred. Petitioner asserts that two wrongs don't make a right. Respondent fails to show cause as to why Petitioner should be the victim of a double standard.

According to Black's law Dictionary (10^{th} edition, page 660): 'Manifest constitutional error' is an error by the trial

court that has an identifiably negative impact on the trial to such a degree that the constitutional rights of a party is compromised. • A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at trial. 'Manifest error' is an error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or credible evidence in the record.

Petitioner is a victim of both, resulting in a miscarriage of justice.

Assistant Attorney General Robin A. Compton, argues, that the trial court's assertion, that defense counsel requested a six element instruction on necessity be added to the justifiable use of force instruction to the jury, validates the conflict. This concedes to the conflict petitioner asserts deprived him of his constitutional right to an impartial jury, but in a back handed way as if confused as to petitioner's defense. Stating on page 5 of the State's response "had counsel not requested the stand your ground part, there would have been no conflict on duty to retreat." Also Respondent's last statement on page 5 acknowledges that the giving of the necessity instruction in conjunction with the stand your ground instruction not only presented a conflict but was error; though claiming that it was invited. Yet, invited error is not the invincible error Respondent portrays it to be. There are rare instances when even

invited errors require reversal. Respondents conceding to the error should subject it to constitutional scrutiny to judge the harm.

Petitioner request this Honorable Court to take judicial notice of Petitioner's asserting the stand your ground defense prior to trial and even more clearly at the adversary preliminary hearing (See Hearing page 4) and also where counsel advised the trial court and jury of his self defense claim prior to the charge instruction phase(beginning trial page 153). Also, please take notice of the fact that there is no record of any formal or official request by trial counsel for the necessity instruction outside of the statement made by the trial court. Perhaps such a request was made during some non official or secret conference between trial counsel and the trial court without Petitioner's knowledge. Still, there are multiple reasons such a request by law should not be successful.

Black's Law Dictionary Second Pocket Edition defines 'justification' as a showing, in a court, of sufficient reason why a defendant did what the prosecution charges the defendant to answer. It defines 'justification defense' as a defense that arises when the defendant has acted in a way that the law does not seek to prevent. And defines 'necessity' as a justification defense…[etc].

In Little v. State, 111 So.3d 214 (Fla. 2nd DCA 2013) the court specifically titled criminal law key (4) 203K769 'necessity of use of force' while referring to the stand your ground law. Thus, jurist of reason have interpreted the legal terms of necessity and justification or justifiable to be interchangeable in some instances.

So when a justification is legally sufficient and expresses a standard that the law does not seek to prevent, instructing the jury on another justification defense for the same subject matter where issuing conflicting standards imposes a circular conflict.

The law on justifiable use of force according to Florida Statute 776.013(3)(2006) holds that: Anyone who is not engaged in an unlawful activity and who is attacked in any place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

The trial court issued an instruction on 'necessity' imposing upon Petitioner the burden of meeting these six elements:

1) The defendant reasonably believed a danger existed which was not intentionally cause by the defendant.

2) The danger threatened significant harm to the defendant or a third person.

3) The threatened harm must have been real, imminent and impending.

4) The defendant had no reasonable means to avoid the danger except by committing (crime alleged).

5) The (crime alleged) must have been committed out of necessity to avoid the danger.

6) The harm the defendant avoided must out weigh the harm caused by committing (crime alleged).

Since the implementation of the stand your ground clause there has been reversals where jurors were instructed that the defendant has a duty to retreat or avoid the danger before committing the act he or she claims was committed in self defense or justifiable use of force, as in McWhorter v. State, 971 So.2d 154 (Fla. 4th DCA 2007). The additional six element instruction on 'necessity' is not part of the standard procedure when or after instructing a jury on justifiable use of force concerning the same act, and is therefore subject to a special jury instruction standard of consideration. Thus, even if trial counsel had officially requested the instruction in some formal

manner, the Florida Supreme Court has articulated a corollary rule on the subject:

In order to be entitled to a special jury instruction, [a criminal defendant] must prove: (1) the special instruction was supported by the evidence; (2) the standard instruction did not adequately cover the theory of defense; and (3) the special instruction was a correct statement of law and not misleading or confusing. *See* Stephens v. State, 787 So.2d 747, 756 (Fla. 2001) (internal footnote citation omitted); Billie v. State, 963 So.2d 837, 840 (Fla. 3rd DCA 2007).

As expressed by Black's Law Dictionary the term justifiable use of force means that it is a sufficient defense (which adequately covers the theory of defense), for a use of force, by pure definition. And again the Attorney General's Office concedes to the conflict on page 5 of its response. The fact that there is an inference that the elements of necessity as instructed can be applied if one turns a blind eye to the several conflicts does not legitimize it as proper or allow for its survival under constitutional scrutiny.

Courts have tended to find fundamental error in this context when the erroneous instructions negate a defendant's key theory of defense. See: Vowels v. State, 32 So.3d 720 (Fla. 5th DCA 2010) also Smith v. State, 76 So.3d 379 (Fla. 1st DCA 2011); and Sloss v. State, 45 So.3d 66 (Fla. 5th DCA 2010).

Along with the conflicts between the instructions regarding: 1) whether Petitioner had a duty to avoid the danger, or no duty to retreat; 2) whether the actions Petitioner claimed to have taken in defense of himself and his girlfriend establish that he was not engaged in an unlawful activity or as the last 3 elements of the necessity instruction instructs the jury, the crimes charged were in fact committed; and 3) whether Petitioner had been within his rights to use deadly force to prevent great bodily harm and the commission of a forcible felony or the harm he avoided must outweigh the harm he caused. A mandatory presumption precluding the jury from considering Petitioner's entitlement to the protections of the justifiable use of force statute 776.013(3) was imposed for each charge in the closing portion of the necessity instruction. As, the jury was instructed that if it did not find petitioner committed the acts of which he admits out of necessity (in compliance with all six elements) it should find the defendant guilty.

Where Petitioner testified to specific acts under specific circumstances, for the jury to be instructed on conflicting standards governing these specific acts under those specific circumstances, is to suggest that Petitioner should be held to a double standard. A jury charged in such a manner can find the defendant guilty while finding that he may have been justified in his use of force. The State no longer has the burden of

proving he did not act in self defense, and the defendant can be found guilty of a crime that never occurred and is thereby non existent.

In Stephens the defendant was not entitled to giving of his proffered special jury instructions concerning his theory of defense with respect to felony murder charge, as defendant failed to prove the standard instructions given did not adequately cover his theory of defense or that proffered special instructions were a proper statement of the law that would not mislead or confuse the jury. Stephens v. State, 787 So.2d 747, 26 Fla.L.Weekly S161 (Fla. 2001).

Also, the use of a standard jury instruction does not relieve the trial court of its duty to ensure that the instructions accurately and adequately convey the law applicable to the circumstances of the case. Cliff Berry, Inc. v. State, 37 Fla.L.Weekly D80 (Fla. 3rd DCA 2012).

Mandatory presumptions in jury instructions, even though rebuttable, are different from permissive presumptions, which do not require the trier of fact to infer elemental fact from proof by prosecutor of the basic one and places no burden of any kind on defendant; permissive presumptions merely allow inference to be drawn and are constitutional so long as inference would not be irrational.

To say that an error did not contribute to the verdict and is thus harmless is to find that error unimportant in relation to everything else jury considered on issue in question, as revealed in record.

To say that instruction to apply unconstitutional presumption did not contribute to verdict and was thus harmless error is to make judgment about significance of presumption to reasonable jurors, when measured against other evidence considered by those jurors independently of presumption, and before reaching such judgment, court must ask what evidence jury actually considered in reaching its verdict and then must weigh probative force of that evidence as against probative force of presumption standing alone.

When determining whether instruction to apply unconstitutional presumption did not contribute to verdict and was thus harmless error, issue is whether jury actually rested its verdict on evidence establishing presumed fact beyond reasonable doubt, independently of presumption. Yates v. Evatt, 111 S.Ct. 1884, 500 U.S. 391 (1991).

This Honorable Court has held that 'when jurors are faced with both correct and erroneous instructions as to the applicable legal rules, there is no reason to believe that they are likely to intuit which is the correct one and which is the

erroneous one…' Fields v. State, 33 Fla.L.Weekly D1945 (Fla. 5th DCA 2008).

Citing Floyd v. State, 39 Fla.L.Weekly D76 (Fla. 1st DCA 2014) in other words if the use of deadly force is necessary to prevent imminent death or great bodily harm to oneself or others, then deadly force is justified without regard to any effort to retreat. The jury instruction[s] at issue, however defines[s] justifiable use of deadly force as being dependant not only upon the degree of threat to a defendant, but also upon the degree to which the defendant has made an effort to escape the threat. In effect, the trial court instructed the jurors that [defendant] both did and did not have a duty to retreat.

If [defendant's] only defense at trial was that he had used deadly force to defend himself and others. The conflicting jury instructions negated each other in their effect, and therefore negated their possible application to [defendant's] only defense. Id.

See also Richards v. State, 39 So.3d 431 (Fla. 2nd DCA 2010) (holding that the erroneous use of a outdated jury instruction on the justifiable use of deadly force requiring the defendant to retreat if possible negated defendant's claim of self defense and rose to the level of fundamental error); Grier v. State, 928 So.2d 368 (Fla. 3rd DCA 2006)(explaining that fundamental error

exists when incorrect jury instructions negate defendant's sole defense).

Fowler v. State, 921 So.2d 708, 711 (Fla. 2nd DCA 2006); see Murray v. State, 937 So.2d 277, 282 (Fla. 4th DCA 2006)(holding that law does not require defendant to prove self defense to any standard measuring assurance of truth, exigency, near certainty or even mere probability; defendant's only burden is to offer facts from which his resort to force could have been reasonable). Once a defendant makes a prima facie showing of self defense, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self defense. Fowler, 921 So.2d at 711. The burden of proving guilt beyond a reasonable doubt, including the burden of proving that a defendant did not act in self defense, never shifts from the State. Id (citing Brown v. State, 454 So.2d 596, 598 (Fla. 5th DCA 1984).

In the instant case whether inadvertently or calculatingly Petitioner is being held based on a double standard for crimes that, minus the juries being instructed on a duty to retreat for Petitioner, would not have otherwise existed in his case.

Where a verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected the verdict must be set aside. Yates v. United States, 354 U.S. 298, 77 S.Ct. 1064 (1957). Where a provision of the

Constitution forbids conviction on a particular ground, the Constitutional guarantee is violated by a general verdict that may have rested on that ground. Griffin v. United State, 502 U.S. 46, 112 S.Ct. 466 (1991).

'Conviction of a non existent crime is fundamental error mandating reversal even when error was invited by defendant, as by request for a jury instruction on a non existent offense.' Guzman v. State, 947 So.2d 1045 (Fla. 2006); Barragan v. State, 957 So.2d 696 (Fla. 5th DCA 2007). When self defense becomes an element of 2nd Degree Murder or Aggravated Battery or Aggravated Assault they become non existent offenses. Nor is failure to retreat or avoid the danger an element of these charges.

Petitioner's only defense at trial was that he had used deadly force to defend himself and another. The double standard must fail.

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CONCLUSION

Wherefore Petitioner respectfully requests that this Honorable Court grant Petitioner the long overdue relief from judgment and either reverse, reverse and remand, or at the very least grant an evidentiary hearing so that these issues may be better litigated.

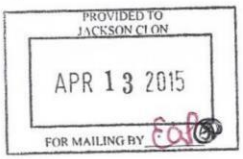
Respectfully submitted,

John W. Dobbs, #C00618

DECLARATION

Under the penalties of perjury, I declare that I have read the foregoing in pro per Reply to Respondent's Response; and the facts stated herein are true.

John W. Dobbs, #C00618



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been mailed to: The Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, FL 32114; and the Office of the Attorney General, 444 Seabreeze Blvd., Daytona Beach, FL 32118.

John W. Dobbs, #C00618
Jackson Correctional
Institution
5563 10th Street
Malone, FL 32445-3144
In pro per

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JOHN W. DOBBS,

Petitioner,

v. CASE NO. 5D15-0977

STATE OF FLORIDA,

Respondent.
_____/

DATE: May 18, 2015

BY ORDER OF THE COURT:

ORDERED that the Petition for Writ of Habeas Corpus, filed March 20, 2015, is denied.

I hereby certify that the foregoing is (a true copy of) the original Court order.

JOANNE P. SIMMONS, CLERK

cc:

Office Of Attorney General Robin A. Compton John Dobbs

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
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Office Of Attorney General Robin A. Compton John Dobbs

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JUN 01 2015
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IN THE DISTRICT COURT OF APPEALS
FOR THE FIFTH DISTRICT
STATE OF FLORIDA

JOHN W. DOBBS,
Petitioner,

v. Case No.: 5D15-977

STATE OF FLORIDA,
Respondent.
_____/

IN PRO PER MOTION FOR REHEARING AND MOTION FOR REHEARING EN BANC

Petitioner moves this Honorable Court for rehearing pursuant to Rule 9.330, and for rehearing en banc pursuant to Rule 9.331; regarding his in pro per petition for writ of habeas corpus, and offers the following in support:

I
FACTS IN SUPPORT OF MOTION FOR REHEARING

On May 18, 2015 this court denied Petitioner's in pro per petition for writ of habeas corpus. Although, this court expressed no opinion with its ruling in favor of Respondent, Respondent asserted four reasons to deny Petitioner relief. Those reasons were:

1) Petitioner is procedurally barred as the issue was or should have been brought up in earlier proceedings;

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FIFTH DISTRICT

2) Regardless of the merits, this court's holdings should be confined by the law of the case doctrine;

3) The complained of error is identical to a separate but invited error in Petitioner's jury instructions, and;

4) Although self defense and defense of another was Petitioner's sole defense to his charges, the presentation of both justifiable use of force instructions followed by the conflicting instructions on necessity (allegedly requested by defense counsel) establishes that any error was not fundamental because in this manner Petitioner presented more than one defense.

In ruling in favor of Respondent the court misapprehended and overlooked standards previously upheld by this court; Florida Supreme Court precedent and; some controlling points of law. Specifically where Petitioner's sole defense was the use of deadly force in defense of himself and another; Florida legislature had established statutory provisions which were in effect at the time of his actions (see Florida Sessions Law chapter 2005-27 Self Defense – Deadly Force p. 138-140 (Appendix A)). Respondent conceded that both the initial provocation instruction and the instructions on necessity conflicted with the jury's instructions on the law as stipulated by Florida legislature. Petitioner demonstrated how the conflicts allow for his conviction of crimes that never occurred based on non existent offenses, relieving the State of its burden of proof.

In Coleman v. state, 128 So.3d 193, 38 Fla.L.Weekly D2574 (Fla. 5th DCA 2013) the court recognized that denial of defendant's first petition for writ of habeas corpus, which alleged that appellate counsel was ineffective for failing to challenge trial court's error in overruling defendant's objection to erroneous manslaughter jury instructions, resulted in manifest injustice, so as to warrant granting defendant's second petition for writ of habeas corpus raising same issue. Pointing out that "appellate courts have the power to reconsider and correct erroneous rulings [made in earlier appeals] in exceptional circumstances and where reliance on the previous decision would result in manifest injustice." See State v. Akins, 69 So.3d 261 (Fla. 2011) (citing Muehleman v. state, 3 So.3d 1149, 1165 (Fla. 2009)). In Akins the Florida Supreme Court held that the law of the case doctrine and collateral estoppel did not bar the appellate court from reconsidering the defendant's meritous claim alleging double jeopardy and illegal sentence.

In Thornton v. State, 963 So.2d 804, 32 Fla.L.Weekly D1821 (Fla. 3rd DCA 2007) the court expressed two exceptions to the confines of the doctrine of law of the case: first, a trial court is not bound to following the ruling if the facts upon which the prior ruling was made are no longer the facts of the case; and second, an appellate court may reconsider and correct an erroneous ruling that has become the law of the case where a manifest injustice would result. In Thornton the issue was

the use of a statement which "was in simultaneous violation of several important principles of law."

In the instant case the instructions given to Petitioner's jury were in simultaneous violation of several important principles of law.

Black's Law Dictionary (second pocket edition) defines 'manifest injustice' as an error in the trial court that is direct, obvious, and observable, such as a defendant's guilty plea that is involuntary or is based on a plea agreement that the prosecution has rescinded.

Thus, manifest injustices have been recognized to occur in several forms.

One such injustice which this court has long recognized the obligation to correct is conviction of a non-existent crime based on a non-existent offense. The crimes for which Petitioner has been convicted are not only non-existent because they did not occur in this case, but also because they are based on non-existent offenses not charged in the information. Primarily failure to retreat or exhaust every reasonable means to avoid the danger, among others, before defending oneself or others, in the instant case, has become an element in which a defendant can be convicted of charges where there is no such element at all. While there was a time when such a failure could legally sustain a conviction, the standard was changed prior to the incident founding the instant case. Thus, as in McLaughlin v. State, 700 So.2d 392, 22 Fla.L.Weekly D1836 (Fla. 1st DCA 1997) where the

defendant's conviction had to be vacated because that form of offense no longer existed in the state of Florida; so must Petitioner's.

This DCA in Williams v. State, 516 So.2d 975, 12 Fla.L.Weekly 2531 (Fla. 5th DCA 1987) held that; Being convicted of crime that never occurred is error of such fundamental nature as is correctable on appeal without objection below, and must be reversed in the interest of justice. Appellate court could treat appeal as petition for certiorari and quash conviction or could treat appeal as petition for writ of habeas corpus and grant relief.

In Mosely v. State, 682 So.2d 605, 607 (Fla. 1st DCA 1996) the court held that: When jurors are given a instruction that would permit them to find the defendant guilty of a crime that does not exist, the error is fundamental and is per se reversible, and the case must be remanded for retrial...Specifically, the court found that the defendant was convicted of attempted manslaughter, but because the judge read the jurors the standard jury instruction of "culpable negligence," although no objection was raised; the appeals court held that the error was fundamental as the reference permitted the jury to find the defendant guilty of attempted involuntary manslaughter, which is a non-existent crime.

Instructing a jury is a delicate matter. Just as a defendant should not be convicted of attempting to commit a crime through negligence. A defendant who

has the right to stand his ground should not be convicted of a crime for failure to try to avoid the danger.

While, Respondent claims on page 6 of the response to the petition that "Defense counsel requested the instruction" on the elements of "necessity," Respondent fails to attach or even cite the portion of the record which shows such a request. Thus, Petitioner can only concede that the error was invited in so far as no objection was made, which makes Petitioner's case distinguishable from the case of Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan. 29th 2015) cited on page 5 of Respondent's response. Such an allegation should not be accepted for face value by this court. Especially in light of Respondent's concession that it was error, and it's being the sole reason used to contest the merits of Petitioner's claim. Perhaps a rehearing will give Respondent an opportunity to verify this allegation for the court.

Nevertheless, chapter 1 of Florida Criminal Practice and Procedure – Jurisdiction and venue §1.1 in General – holds that "the divestment or absence of subject matter jurisdiction on the part of a court of law may not be overcome or avoided by the voluntary acts or consent of a defendant."

This DCA in Jordan v. State, 801 So.2d 1032, 27 Fla.L.Weekly D15 (Fla. 5th DCA 2001) held that: the general principle which the court must adhere to requires the court to interpret legislation, not rewrite it. [Yet, had legislation intended for

both, the justifiable use of deadly force standards, and, the six elements of necessity, to govern where a defendant's sole defense is that he used deadly force to defend himself and/or others.]The general rule of statutory construction is that when criminal legislation is susceptible to more than one meaning it must be strictly construed in favor of the accused. [Thus, the holdings of this court dictate that the standards favoring the accused be the law of the case]. It is a fundamental principle of jurisprudence that one can not be convicted of a non-existent crime. Id.

The Florida Supreme Court holds that 'conviction of a non-existent crime is fundamental error mandating reversal even when error was invited by defendant, as by request for a jury instruction on a non-existent offense." Guzman v. State, 947 So.2d 1045 (Fla. 2006).

3 Fla.Jur.2d Appellate Review §364 page 4564 holds that: a conviction for a non-existent crime is a fundamental error that can be raised at anytime even if the error was invited by the acceptance of a negotiated plea or by a request for jury instructions. See also Moore v. State, 924 So.2d 840, 31 Fla.L.Weekly D160 (Fla. 4th DCA 2006).

As, held in Mosely v. State, 682 So.2d 605, 607 (Fla. 1st DCA 1996) an instruction that would permit a defendant to be found guilty of a crime that does not exist is per se reversible error. In Johnson v. State, 53 So.3d 1003 (Fla. 2010) the Florida Supreme Court held that like the harmless error test, the per se

reversible error rule is concerned with the due process right to a fair trial. The test of whether a given type of error can be properly categorized as per se reversible is the harmless error test itself. Thus, the role of the appellate courts is to ensure that criminal trials are free from harmful error, the presence of which would require reversal. In Ventura v. State, 29 So.3d 1086 (Fla. 2010) the court held that the test for harmless error was not whether defendant's guilt was otherwise demonstrated by overwhelming evidence, but whether there was no reasonable possibility that the error contributed to the conviction.

The denial issued by this court does not do justice and is in direct conflict with controlling points of law previously held by this court, its sister courts, and the Florida Supreme Court as demonstrated throughout this motion. This court has stated the recognition of the obligation and urgency of addressing these sorts of issues holding that "conviction of a non-existent crime is fundamental error which requires reversal, regardless of whether the error was invited by the defendant. Mundell v. State, 739 So.2d 1201, 24 Fla.L.Weekly D1803 (Fla. 5th DCA 1999); Fredericks v. State, 675 So.2d 989, 21 Fla.L.Weekly D1368 (Fla. 1st DCA 1996). And reiterating this in Barragan v. State, 957 So.2d 696 (Fla. 5th DCA 2007).

This DCA has long held that "the burden of proving guilt beyond a reasonable doubt, including the burden of proving that a defendant did not act in self defense, never shifts from the State." Citing Brown v. State, 454 So.2d 596,

598 (Fla. 5th DCA 1984). Yet in the instant case the trial court has relieved the State of it's burden by way of jury instructions and this court has as well with a blanket denial.

When Petitioner proved that his right to stand his ground was negated by the initial provocation instruction and his right to the provisions of justifiable use of force statute 776.013(3) was negated by the instructions on necessity, which Respondent made an issue regarding this petition, in order to sustain the denial of Petitioner's requested relief. Petitioner proved that acts which may not have been criminal under one standard had been criminalized under another, without any change in the statues, circumstances or facts of the case.

For these reasons Petitioner contends that the court erroneously denied the petition and respectfully submits that the conflicting instructions relieved the State of its burden, forced an unconstitutional presumption on the jury and allowed for Petitioner to be convicted of crimes that never occurred based on non criminal elements and that the order denying relief by this court should be reversed.

II
FACTS IN SUPPORT OF MOTION FOR REHEARING EN BANC

In support of this motion for rehearing en banc Petitioner contends that the court misapplied the standards and prior holdings of this court, its sister courts and the Florida Supreme Court as demonstrated in the controlling points of law presented in section I of this motion. The decision in this case effectively held that

the applicable standards allow for a manifest injustice to be sustained by a manifest injustice.

District Courts of Appeal must interpret statutes by the well established norm of statutory construction which requires rendering the statutory provisions meaningful. Where the plain and ordinary meaning of statutory language is unambiguous, court cannot construe the statute in a manner that would extend, modify, or limit its express terms or its reasonable and obvious implications. Department of Revenue ex rel. Smith v. Selles, 47 So3d 916, 35 Fla.L.Weekly D2474 (Fla. 1st DCA 2010)((See Appendix A).

In Figueroa v. State, 84 So.3d 1158, 37 Fla.L.Weekly D772 (Fla. 2nd DCA 2012) the court held that conviction on a charge not made by the indictment or information is denial of due process…that …can be raised at anytime: before trial, after trial, on appeal, or by habeas corpus. Such circumstances of conviction and life sentence presented "uncommon and extraordinary circumstances" as required to afford relief on defendant's appeal from denial of motion…in order to prevent a manifest injustice…even though issue had already been raised on direct appeal and in prior post conviction motions; defendant should have been granted relief when he first raised issue on direct appeal.

Certainly, circumstances that allow for citizens to receive life sentences for crimes that did not occur based on non-existent offenses qualify as "uncommon

and extraordinary circumstances" the equivalent of conviction for a crime not charged, and present issues of exceptional importance.

Florida Rule of Appellate Procedure 9.331 provides that district courts may order rehearing en banc if (1) it is necessary to maintain uniformity in the decisions of the court or (2) if the case is one of exceptional importance.

The instant case meets both these standards. And it should take more than an unverified allegation by Respondent to cause a district court of appeal to deny a facially sufficient petition for the extraordinary writ of habeas corpus. Surely the 1st DCA in Oliver (cited Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan 29, 2015) in page 5 of Respondent's response) did not found its opinion denying Oliver the relief granted in both Floyd v. State, 151 So.3d 452 (Fla. 1st DCA 2014) and Ross v. State, 40 Fla.L.Weekly D327 (Fla. 1st DCA 2015) merely because the State alleged that Oliver affirmatively requested the erroneous instruction. Surely, the State was required to provide attachments or cite that portion of the record. Brown v. State, 689 So.2d 1288 (Fla. 1st DCA 1997); Flores v. State, 662 So.2d 1350, 1352 (Fla. 2nd DCA 1995); Hubbard v. State, 662 So.2d 746 (Fla. 1st DCA 1995).

Where a defendant asserts an affirmative defense which is legally viable, only to find the jury instructed in a manner in which it can be dismissed based on none of the facts in evidence and no criminal act by the defendant, a tradition of

oversights at the corrective stage can deprive everyday citizens of essential constitutional rights and unduly cause them embarrassment in their own courts of law.

After his direct appeal was silently affirmed. Petitioner's family posted the website americanmekinguniversal.org (which has received over a million hits averaging over 100 visits a day) displaying all the records, transcripts, arguments, orders etc. to date in order to educate the public on how their rights are protected or neglected by the system. Another denial without an opinion demonstrates no justice.

Petitioner's cause has gathered the support of over 200 petitioners who support the relief requested in the instant case by Petitioner. Many of whom are member of CBS Radio, Coast to Coast am, and the Florida Bar Association (See Appendix B).

The Fifth District has noted that cases have been deemed exceptionally important when the original panel decision conflicted with a rule of law announced by the Supreme Court or another district court, when the case was important to the jurisprudence of the State as a judicial precedent, or when the decision impacted a large share of the community. Ortiz v. State, 24 So.3d 596, 618 (Fla. 5th DCA 2009).

The instant case provides this Honorable Court with an opportunity to clarify the care, consideration, and diligence that goes into protecting the constitutional rights of those who stand before its trial courts innocent until proven guilty. Here in lies an opportunity to save both, the everyday citizens of the communities within the jurisdiction of this court, and the overworked officials of its lower tribunals, a great deal of unnecessary embarrassment. Also, as an issue of this constitutional magnitude can be raised at anytime, a correction of the judgment by this court may prevent its own judgment from being supplanted in the future. The effect of instructing a jury on a duty to retreat where the defendant is not engaged in unlawful activity and has the right to stand his ground, as with the initial provocation instruction, is an issue this court has yet to elaborate on. And the issue of instructing a jury on the 6 elements of "necessity" where the defendant has asserted the defense of justifiable use of deadly force under the current standards is apparently unprecedented, regarding published cases. This court would be doing society a grave injustice by not taking a stance and providing guidance in these dark areas. Certainly an en banc ruling would assist in abating the success and consistency of these types of manifest injustices in its own backyard. Thus, Petitioner submits the matter should be considered en banc.

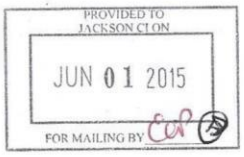
OATH

UNDER THE PENALTIES OF PERJURY, I hereby declare that the facts and the statements of the foregoing motion are true and correct.

John W. Dobbs, in pro per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been mailed to: The Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, FL 32114; and the Office of the Attorney General, 444 Seabreeze Blvd., Daytona Beach, FL 32118.



John W. Dobbs #C00618
Jackson Correctional Institution
5563 10th Street
Malone, FL 32445-3144
In pro per

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this Motion for Rehearing has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.100.

John W. Dobbs, in pro per

IN THE DISTRICT COURT OF APPEALS
FOR THE FIFTH DISTRICT
STATE OF FLORIDA

JOHN W. DOBBS,
Petitioner,

v. Case No.: 5D15-977

STATE OF FLORIDA,
Respondent.
_____/

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Appendix A - Florida Session Law 2005-27

Appendix B - Online signatures of advocates petitioning to Free John Dobbs

Supreme Court of Florida

WEDNESDAY, JULY 22, 2015

CASE NO.: SC15-1342
Lower Tribunal No(s).: 5D15-977;
482006CF015201
000AOX

JOHN W. DOBBS vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

Having determined that this Court is without jurisdiction, this case is hereby dismissed. See Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002).

No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

tr
Served:

WESLEY HAROLD HEIDT
JOHN W. DOBBS
HON. TIFFANY MOORE RUSSELL, CLERK
HON. JOANNE P. SIMMONS, CLERK
HON. GREG ALLEN TYNAN, JUDGE

Florida Supreme Court Case Docket

Case Number: SC15-1342 - Closed

JOHN W. DOBBS vs. STATE OF FLORIDA

Lower Tribunal Case(s): 5D15-977, 482006CF015201000AOX

09/24/2015 11:26

Doc.	Date Docketed	Description	Filed By	Notes
	07/21/2015	NOTICE-DISCRETIONARY JURIS (DIRECT CONFLICT)	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	
	07/22/2015	No Fee Required		HABEAS BELOW
	07/22/2015	ACKNOWLEDGMENT LETTER-NEW CASE	Supreme Court Florida FSC BY: Supreme Court Florida FSC	
	07/22/2015	DISP-REV DISM NO JURIS (STALLWORTH)		Having determined that this Court is without jurisdiction, this case is hereby dismissed. See Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002). No motion for rehearing or reinstatement will be entertained by the Court.
	07/24/2015	JURIS INITIAL BRIEF	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	PLACED WITH FILE
	08/24/2015	MISC. DOCKET ENTRY		PLACE WITH FILE

PROVIDED TO JACKSON CI ON
JUL 20 2015
FOR MAILING BY

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JOHN W. DOBBS,
Petitioner,

v. Case No.: _____

STATE OF FLORIDA,
Respondent.
_____/

RECEIVED
JOHN A. TOMASINO
JUL 24 2015
CLERK, SUPREME COURT

IN PRO PER JURISDICTIONAL BRIEF FOR DISCRETIONARY REVIEW

COMES NOW, Petitioner, John W. Dobbs, in pro per, requesting discretionary review, by this Honorable Court, of the denial of his motion for rehearing and motion for rehearing en banc, by the 5th DCA on June 22, 2015, regarding his petition for writ of habeas corpus. As the conditions of his incarceration do not meet their constitutional mandate and the DCA decision expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law, the jurisdiction of this Court is invoked through Florida Rules of Appellate Procedure 9.120.

John W. Dobbs, #C00618
Jackson Correctional Institution
5563 10th Street
Malone, Florida 32445

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STATEMENT OF THE CASE

The undisputed evidence established at trial establishes that: On the night of October 24th 2006/early morning of October 25th 2006 between 1:35am and 2:15am, Petitioner and his then girlfriend Deanna Washington, while visiting the State of Florida had stopped to patronize a topless bar called Thee Doll House. Inside the club the couple met a man named William Troy and briefly engaged in a not at all hostile, but not quite polite conversation.

Around the 2:00am closing time the couple left the club and saw Troy with 3 or 4 other men. Petitioner's vehicle and the vehicle transporting Troy's party were parked 6 parking spaces apart. One or more from Troy's party yelled to the couple something to the affect of they needed security to walk them out. Initially the statement appears light hearted. Petitioner is entering his car when Troy's friend and employee Andre Blanco starts to approach the passenger side of the couple's vehicle. Petitioner's girlfriend, being the passenger, points out that one of them is walking over. Petitioner asks her to stay in the car, leaves the driver side and walks around the back of the car to meet him.

When Blanco arrives a fight initiates between them which all parties and witnesses perceive as a fist fight. The fight takes place close to the rear passenger side of Petitioner's vehicle. Almost immediately Blanco is knocked down and his friend Francisco Gotay approaches Petitioner swinging. Petitioner evades the

punches and strikes Gotay with what all parties and witnesses perceive as a punch. After being knocked down Blanco swiftly recovers and attacks Petitioner from behind. Petitioner's girlfriend exits the vehicle and enters the fight to help Petitioner as Anthony Riollano and William Troy enter the foray. The couple hears someone yell "get her" or "get the girl." It's around this time that one of them appears to get seriously injured and Petitioner concedes to resorting to use his pocket knife; as Ms. Washington is grabbed by Riollano then tossed to the side ending her courageous attempt to ward them off. Next, while Petitioner was fighting at least one of Riollano's friends, Riollano approaches from behind, grabs Petitioner from the side by his shirt collar and strikes him on the head and neck several times. Members of his party feel they are unable to continue and, Riollano, not knowing why the fight has stopped (yet recognizing that it has), stops hitting Petitioner.

Both Blanco and Gotay notice they are bleeding and don't know why. Petitioner gets up, the couple gets in their car, and William Troy falls to the ground due to stab wounds. Andre Blanco and Francisco Gotay then realize they were stabbed.

As the couple leaves the parking lot a truck they believe to be occupied by one of their assailants tries to run them off the road. Hanzel Holiday, a valet from the club across the street, admittedly not a witness to the incident; claims to have

struck Petitioner's car twice in order to run the couple off the road. This in response to his supervisor, Phillip Allen Westfall, the valet for Thee Doll House's request for him to stop their car. On his third attempt Holiday notices Petitioner with a gun pointed in the direction of his attack, and he stops pursuit.

Blanco, Gotay, Riollano, and Troy had consumed a large amount of alcohol prior to the incident. Blanco, Gotay, and Holiday each have multiple felony convictions; Troy had been convicted of battery on a law enforcement officer; and on the night of the incident Blanco was on probation. Blanco, though claiming not to have remained in the fight against Petitioner, and describing only having been hit once by him; received multiple cuts or stabs. Gotay claims too as well, though no evidence was offered outside his testimony. William Troy died as a result of his stab wounds. Holiday claims to have feared for his life. As did Petitioner. Petitioner received multiple injuries, including 6 cuts. While Petitioner testified to have seen one of them swinging something shiny which he perceived as a knife; and security for the club, Justin Idle, claims to have seen one of them hitting Petitioner with what he believes may have been a key; all testified to never seeing Petitioner with a knife during the altercation; except Petitioner. Petitioner, the only African American male in the fight, was also the only man arrested and accused of a criminal act; although he alerted arresting officers of his self defense claim.

After Petitioner's arrest that night, Petitioner was charged by Information on November 20, 2006 with the second degree murder (with a weapon) of William Troy (count one); aggravated battery with a deadly weapon or causing great bodily harm to both Francisco Gotay and Andre Blanco (counts two and three); aggravated assault with a firearm against Hanzel Holiday (count four); and shooting from a vehicle (count five).

Petitioner's trial took place February 26th thru March 1st, 2007, where he pled not guilty by way of self defense. No demonstrative evidence was offered outside of Petitioner's regarding the use of his knife during the altercation, as all relevant testimony demonstrated a lack of personal knowledge, because no one perceived it with either of their five senses until after the altercation had ended. All relevant testimony demonstrated that the complaining witnesses approached Petitioner of their own free will solely for the purpose of attacking him; without having witnessed him engaging in any aggravating factor, in what they perceived as a fist fight. On several occasions during closing argument the prosecution instructed the jury that Petitioner could and should have left prior to the altercation. Orange County Circuit Court Judge Lisa T. Munyon instructed the jury on the then fairly new "Stand Your Ground" law on justifiable use of deadly force, and over trial counsel's objection instructed the jury on the second portion of the forcible felony instruction where the jury was told that Petitioner's actions were not

justified if they believed that he initially provoked his assailants. She also instructed the jury on six elements under the title of necessity, three of which present a conflict, debatably requested by Petitioner's trial counsel. Both added instructions require Petitioner to exhaust every reasonable means to avoid the danger and take away his right to stand his ground.

On March 1st, 2007, Petitioner was found guilty of counts one thru four and not guilty of count five (shooting from a vehicle) the only charge he denied committing the underlying acts for completely. Petitioner was sentenced on March 7th, 2007, to natural life for count one; 2 fifteen year sentences for counts two and three; and five years with a three year minimum mandatory for count four.

On direct appeal and subsequent federal efforts Petitioner argued that the instructions were misleading or confusing to the jury and deprived him of his constitutional guarantee of a fair trial.

On August 26th, 2014, the 1st DCA in the case of Floyd v. State, 151 So.3d 452 (Fla. 1st DCA 2014) held that conflicting jury instructions as to the defendant's duty to retreat presented by the initial provocation instruction constituted fundamental error. "If [defendant's] only defense at trial was that he had used deadly force to defend himself and others. The conflicting jury instructions negated each other in their effect, and therefore negated their possible application to [defendant's] only defense." Review was granted by this Honorable Supreme

Court in State v. Floyd case no.: SC14-2162. This Court ruled in favor of Floyd on December 16, 2014.

On March 18th, 2015, Petitioner submitted a in pro per petition for writ of habeas corpus which was filed March 20th, 2015, in the 5th DCA. The State responded on April 1st, 2015, citing Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan. 29, 2015). Petitioner submitted a Reply Brief and was denied on May 18, 2015. Rehearing and rehearing en banc were denied June 22, 2015.

SUMMARY OF THE ARGUMENT

Petitioner petitioned the 5th District Court of Appeal for Writ of Habeas Corpus based on the 1st District Court of Appeal holdings in Floyd v. State, 151 So.3d 452 (Fla. 1st DCA 2014) arguing that he was subjected to equal prejudice because of the conflicting jury instructions. Respondent's relevant argument alleged that Petitioner's trial counsel affirmatively requested necessity instructions which presented a similar conflict to that presented by the initial provocation instruction, thus, the error was invited citing Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan. 29, 2015). In Oliver the 1st District distinguished Floyd, finding that Oliver had affirmatively requested and agreed to the applicable parts of the instruction thereby waiving any claim of fundamental error. Respondent, also argued that the alleged request for necessity instructions amount to a presentation of multiple defenses; thus, fundamental error did not occur because the instruction

did not negate Petitioner's only defense. Petitioner refuted these allegations explaining that: 1) unlike Oliver, Petitioner's trial counsel specifically objected to that portion of the instruction; 2) the allegation that trial counsel requested the instructions on necessity is not clearly demonstrated by the record and thus should not be taken as fact; 3) self defense and defense of another was Petitioner's sole defense during trial regardless of the presentation of different laws on the subject and; 4) the harm from the conflict presented by either instruction had the effect of not only negating the standard instruction on self defense but negating the Florida Statute and legislative intent as expressed in Sessions Law chapter 2005-27 allowing for conviction of non existent crimes. The court denied the petition without opinion, but denied rehearing and rehearing en banc citing Oliver.

ARGUMENT

Determinative questions:

1) Whether giving of instructions which allow for conviction based on non existent offenses allow for conviction of non existent crimes.

2) Whether an allegation that an error was affirmatively invited must be demonstrated by the record to succeed.

3) Whether a claim of self defense based on justification and a claim of self defense based on necessity qualify as a presentation of multiple defenses.

The law on justifiable use of force according to Florida Statute 776.013(3)(2006): Anyone who is not engaged in an unlawful activity and who is attacked in any place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

The initial provocation instruction reads: However, the use of force likely to cause death or great bodily harm is not justified if you find: (Defendant) initially provoked the use of force against himself, unless: a) the force asserted toward the defendant was so great that he reasonably believed that he was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than using force likely to cause death or great bodily harm to assailant. b) in good faith, the defendant withdrew from physical contact with (assailant) and indicated clearly to (assailant) that he wanted to withdraw and stop the use of force likely to cause death or great bodily harm, but (assailant) continued or resumed the use of force.

The trial court issued an instruction on "necessity" for each charge imposing upon Petitioner the burden of meeting these six elements:

1) The defendant reasonably believed a danger existed which was not intentionally caused by the defendant. 2) The danger threatened significant harm to the defendant or a third person. 3) The threatened harm must have been real, imminent and impending. 4) The defendant had no reasonable means to avoid the danger except by committing (crime alleged). 5) The (crime alleged) must have been committed out of necessity to avoid the danger. 6) The harm the defendant avoided must out weigh the harm caused by committing (crime alleged).

The necessity instruction was presented as a special instruction in a manner in which it would be interpreted as a further instruction on self defense rather than a separate defense. The conflicting elements to establish innocence, in light of Petitioner's affirmative defense, relieved the State of its burden and resulted in conflicting standards to determine guilt in the eyes of the jury.

Petitioner submits that the instructions allow for his conviction of non existent crimes in two manners: 1) they allow for conviction of crimes that do not exist according to criminal statute because of the incorporation of elements such as failure to try to avoid the danger which is a non existent offense among others; and 2) they allow for conviction of crimes that did not occur based on presumptions created by criminal sanctions without statutory authority; relieving the State of its burden.

The denial of Petitioner's requested relief by the 5th DCA demonstrates direct conflict with the holding of the 1st DCA in Mosley v. State, 682 So.2d 605, 607 (Fla. 1st DCA 1996) that: "when jurors are given a instruction that would permit them to find the defendant guilty of a crime that does not exist the error is fundamental and is per se reversible, and the case must be remanded for retrial." And also conflicts with State v. Klayman, 835 So.2d 248, 259 (Fla. 2002) where this Supreme Court decided that: Florida courts have held that impositions of criminal sanctions without statutory authority is fundamental error...one may never be convicted of a non existent crime...conviction of a non existent crime is fundamental error mandating reversal even when error was invited by defendant as by request for jury instructions on a non existent offense...(Relying on Achin v. State, 436 So.2d 30, 31 (Fla. 1982); Mundell v. State, 739 So.2d 1202 (Fla. 5th DCA 1999) and Fredericks v. State, 675 So.2d 989, 990 (Fla. 1st DCA 1996)).

There is also conflict with this courts holdings in Fitzpatrick v. State, 859 So.2d 486 (Fla. 2003) where it was held that: a general verdict that rested on alternative grounds is to be set aside in cases where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected.

Wherefore, petitioner prays this Honorable Court accepts jurisdiction.

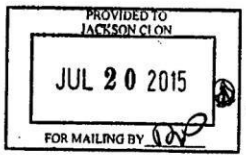
OATH

UNDER THE PENALTIES OF PERJURY, I hereby declare that the facts and the statements of the foregoing motion are true and correct.

John W. Dobbs, in pro per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been mailed to: The Florida Supreme Court, 500 S. Duval Street, Tallahassee, FL 32399; and the Office of the Attorney General, 444 Seabreeze Blvd., Daytona Beach, FL 32118.



John W. Dobbs #C00618
Jackson Correctional Institution
5563 10th Street
Malone, FL 32445-3144
In pro per

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this in pro per jurisdictional brief for discretionary review has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.100.

John W. Dobbs, in pro per

IN THE SUPREME COURT
OF THE STATE OF FLORIDA

JOHN W. DOBBS,
Petitioner,

v. Case No.: _____

STATE OF FLORIDA,
Respondent.
_____/

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Appendix A – 5th District Court Order denying Rehearing and Rehearing En Banc citing Oliver v. State.

John W. Dobbs #C00618
Jackson Correctional
Institution
5563 10th Street
Malone, FL 32445-3144
In pro per

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JOHN W. DOBBS ,

Petitioner,

v. CASE NO. 5D15-0977

STATE OF FLORIDA ,

Respondent.
_____/

DATE: June 22, 2015

BY ORDER OF THE COURT:

ORDERED that Petitioner's Motion for Rehearing and Rehearing En Banc, filed June 3, 2015, is denied. See Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan. 29., 2015).

I hereby certify that the foregoing is
(a true copy of) the original Court order.

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

cc:

Office of Attorney General Robin A. Compton John Dobbs

Appendix A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been mailed to: The Florida Supreme Court, 500 S. Duval Street, Tallahassee, FL 32399; and the Office of the Attorney General, 444 Seabreeze Blvd., Daytona Beach, FL 32118.

John W. Dobbs #C00618
Jackson Correctional
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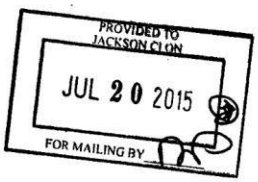
In pro per



PROVIDED TO JACKSON CI ON
SEP 28 2015
FOR MAILING BY EOP

John W. Dobbs DC# C00618
Jackson Correctional Institution
5563 10th Street
Malone, Florida 32445

John A. Tomasino, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399

Re: Request for recourse regarding a violation of due process and possible manifest injustice perpetrated by this Court, in the case of John W Dobbs vs. State, case No. SC15-1342, which has been closed due to dismissal based on an erroneous determination that this Court was without jurisdiction.

Dear Honorable Clerk,

I am an American citizen who has, for the last nearly 9 years, been the victim of a gross miscarriage of justice resulting from multiple manifest injustices. Most recently, my case was dismissed by this Court only one day after recieving documents reflecting a filing date of 7/21/15, concerning my 'Notice to invoke discretionary jurisdiction' (see Exhibit A-1 and 2). Yet, there appears to be some mistake. Not only does Fla.R.App.P, Rule 9.120, require that I file a jurisdictional brief within 10 days of the filing of the notice; the dismissal which bears your signature cites a case infering that my case was dismissed based on the mistaken belief that the DCA ultimately denied me without opinion. Since my notice was filed on July 21st 2015, and my case dismissed on July 22nd 2015, this suggests that the rule requiring submission of a jurisdictional brief is moot having no practical significance, as my timely brief was submitted or filed on July 24th 2015 (just 3

days after the notice and 2 days after the case was dismissed for a determination of lack of jurisdiction)(see Exhibits B and C).

Also, this Court's dismissal citing Stallworth V. Moore, 827 So.2d 974 (Fla.2002)(a case referring to cases that had been denied by Florida's DCA's per curiam without opinion), suggests that this Court was unaware that while the 5th D.C.A. did deny my initial habeas petition per curiam without opinion, it denied my subsequent motion for rehearing and rehearing en banc citing Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan. 29, 2015)(published in 40 Fla. L. Weekly D303 case NO. 1D13-1281). While the 5th DCA docket for my case (case NO. 5D15-977) does not note this citation it is none the less on the court order. It is my belief that this Court may have prematurely dismissed my case based on the 5th DCA docket's failure to reflect this opinion. The actual order citing Oliver was submitted with my jurisdictional brief. The case of Joshua T. Oliver v. State is currently pending before this Court, case NO. SC15-623 (see Exhibits D, E and F).

Where the rules governing discretionary review state that the clerk will summarily dismiss cases that were per curiam affirmed or denied without opinion for lack of jurisdiction; the rule is that per curiam decisions which merely cite a case as controlling authority will be dismissed unless that case is currently pending in this Court or has been quashed by this Court. This Court in Jollie v. State, 405 So.2d 418 (Fla. 1981) held that a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by the Supreme Court continues to constitute a prima facie express conflict and allows for the Supreme Court to exercise its jurisdiction. See also Difilippo v. Rayle 684 So.2d 819 (Fla. 1996); and Walker v. State, 682 So.2d 555 (Fla. 1996). More recently in Gandy v. State, 846 So.2d 1141, 1143 (Fla. 2003) the Court explained that, for this Court to have subject matter jurisdiction over a district court decision containing only a citation to other authority, the citation would have to be to a case that was "pending before this Court, or has been reversed on appeal or review" among other reasons.

Throughout my enduring of a wrongful incarceration I have been the victim of a number of law enforcement officials acting outside the color of the law. The 5th DCA citation to Oliver presents me with my first and what may be my only chance to have a portion of my case reviewed impartially. Your dismissal of my case based on the standard in Stallworth, rather than that of Gandy, has the potential to be a misapplication of law of catastrophic effects on my self, my family, and others like us who have suffered so much.

As, although it is blatantly clear that the 5th DCA denial, finding that the erroneous 'initial provocation' portion of the justifiable use of force instruction (see Floyd v. State, 151 So3d 452 (Fla 1st DCA 2014). State v. Floyd, Florida Supreme Court case No. SC14-2162 Dec. 16 2014) based on a claim that I affirmatively requested the instruction, as in Oliver; is erroneous in and of itself. Since my co-counsel at trial P.D. Mellisa Vickers is clearly recorded as having objected to that specific portion of the instructions for each count on pages 655, 658, 666, and 669 of the trial transcript (see Exhibit G-1, 2, 3, and 4). The fact that the DCA cited Oliver as the reason and chose not to hold my case in abeyance of this Court's ruling in Oliver has already resulted in a delay of justice.

Your decision effectively takes me out of the pipeline for relief regarding an issue I've been arguing for about 7 years or more. If Oliver (whose case is stayed pending this Court's ruling on the certified questions presented in State V. Moore, case No. SC13-1236), is granted relief, and my case is not pending at the time, I could be denied relief and meaningful access to the courts despite years of due deligence.

State V. Moore is schedualed for oral argument at 9 am, Thursday, Oct 8, 2015 (see Exhibit H p 4 of 4). Less than 2 week from now. I am aware that regarding my previous case NO. SC15-1342, no motion for rehearing or clarification or reinstatement will be entertained, but I know that you are not helpless, as I am, to cure this. There must be some way within your powers to provide me with a timely and sufficient remedy to this dilemma for which I am not at fault.

My case is the epitome of one of the most controversial issues

of the new millennium. The Stand Your Ground Law. With both racial and political overtones. My ex girlfriend and I were approached and surrounded at our vehicle by 5 drunk men outside a strip club. The State prosecutor felt it unnecessary to say why. I was the only African American male in the fight and the only one arrested. Again the prosecution felt it unnecessary to say why. Regardless of the fact that each of the victims and witnesses testified that they were unaware of when I started to use my pocketknife against my multiple assailants, the State prosecutor argued that I started using it with my first action. Again the prosecution felt it unnecessary to say why. And told the jury I could have and should have left.

I am in prison because the jury was instructed that I had to exhaust every reasonable means to avoid the danger presented by my assailants, when I actually had the right to stand my ground. Based on my affirmative defense claim that I met force with force even deadly force, to defend my self and another, admittedly not making any effort to retreat or avoid my attackers in accordance with the justifiable use of force statutes; the instructions that I must try to avoid the danger were fundamental error. I was found guilty of count one, second degree murder of a man who was the third or fourth man to approach and engage me in the violent confrontation. I was sentenced to life for that. I was found guilty of count two, aggravated battery against a man who admits to coming at me swinging blows because I appeared to be winning a fist fight against his friend whom he doesn't know if I was defending myself from. I was found guilty of count three, aggravated battery against a man who testified that he was the first to be attacked by me at his car (which was parked 6 spaces from mine), that I initiated the fight by striking him with a knife that he neither saw, felt, or perceived with either of his other 5 senses till after I'd left the scene. Even though C.S.I. says the fight took place close to the rear passenger side of my car and his friends and all other witnesses say it was a fist fight and he approached me, and he told police he only joined the fight to help a friend and never knew he was stabbed or when. I was sentenced to 15 years apiece for each charge of aggravated battery. And 5 years for aggravated assault

against a man who testified that he attacked me without knowing what was going on.

The instructions effectively told the jury that I was guilty of any crime I was accused of regardless of its elements based on an element which is not even a part of the statutory offense. Thus, not only have I been convicted of a crime that doesn't exist according to statute, such as, second degree murder by way of self defense; I have also been convicted of crimes that never occurred, as for example, the malicious or depraved mind necessary to constitute second degree murder is not competently demonstrated and does not exist in this case.

In State V. Klayman 835 So.2d 248, 259 (Fla. 2002) this Court held that one may never be convicted of a non existent crime... Conviction of a nonexistent crime is fundamental error mandating reversal even when error was invited by defendant as by request for jury instructions on a nonexistent offense. Florida courts have held that imposition of criminal sanctions without statutory authority is fundamental error. Relying on: Achin V. State, 436 So.2d 30, 31 (Fla. 1982); Mundell v. State, 739 So.2d 1202 (Fla. 5th DCA 1999); and Fredericks V. State, 675 So.2d 989 (Fla 1st DCA 1996).

I am an innocent man regarding these convictions, and my ex and I were the initial and intended victims of the incident. If this Court rules in favor of Moore and Oliver, and I am left to try again in the DCA, which will likely render more denials without express reason or change its reasoning for denial, then what lawfully could be nothing more than an inadvertent mistake by this Honorable Court, will be responsible for not only a denial of due process, but a manifest injustice as well. Please help.

Your honor, under penalties of perjury I hereby declare that the facts and statements of this letter to you are true and correct.

Sincerely,
John Dobbs

Exhibit A

1- copy of Court order dismissing my case

2- copy of Court order acknowledging my case

Supreme Court of Florida

WEDNESDAY, JULY 22, 2015

CASE NO.: SC15-1342
Lower Tribunal No(s).: 5D15-977;
482006CF015201
000AOX

JOHN W. DOBBS vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

Having determined that this Court is without jurisdiction, this case is hereby dismissed. See Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002).

No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

tr
Served:

WESLEY HAROLD HEIDT
JOHN W. DOBBS
HON. TIFFANY MOORE RUSSELL, CLERK
HON. JOANNE P. SIMMONS, CLERK
HON. GREG ALLEN TYNAN, JUDGE

Exhibit
A-1

Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
KRISTINA SAMUELS
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

ACKNOWLEDGMENT OF NEW CASE

July 22, 2015

RE: JOHN W. DOBBS vs. STATE OF FLORIDA

CASE NUMBER: SC15-1342
Lower Tribunal Case Number(s): 5D15-977; 482006CF015201000AOX
Lower Tribunal Filing Date: 7/21/2015

The Florida Supreme Court has received the following documents reflecting a filing date of 7/21/2015.

Notice to Invoke Discretionary Jurisdiction

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tr
cc:
WESLEY HAROLD HEIDT
JOHN W. DOBBS
HON. JOANNE P. SIMMONS, CLERK

Exhibit
A-2

Exhibit B

Copy of instructions for filing

NOTICE TO INVOKE DISCRETIONARY JURISDICTION IN THE FLORIDA SUPREME COURT

INSTRUCTIONS FOR FILING

1. Rule 9.120, Fla.R.App.P., provides for discretionary review by the Florida Supreme Court of decisions rendered by a District Court of Appeal, such as on direct appeal or appeals in rule 3.850 and rule 3.800, to name just a few.

2. The original and one copy of the notice must be filed with clerk of the District Court which rendered the decision in question with "30 days of rendition of the order to be reviewed," along with the filing fees proscribed by law, or appropriate motion to proceed in forma pauperis [under 57.085(10), general affidavit for criminal cases; or, 57.085, long affidavit for civil cases]. Rule 9.120(b). One copy must be filed with the Attorney General's Office.

3. A jurisdictional brief, limited solely to the issue of the Supreme Court's jurisdiction and accompanied by an appendix containing a conforming copy of the decision of the district court, must be filed within 10 days of filing the notice.

4. The scope of the discretionary review is narrow, providing for review of district court decisions which:

   a. expressly declares valid a state statute.
   b. expressly construes a provision of the state or federal constitution.
   c. expressly affects a class of constitutional officers.
   d. expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law.
   e. passes on a question certified to be of great public importance.
   f. is certified to be in direct conflict with decisions of other district courts of appeal.

5. Note that only District Court decisions which expressly state the basis of the decision are reviewable. Per Curiam Affirmed decisions without opinion are not reviewable under this provision.

6. Before proceeding, read rules 9.120 and 9.030(a)(2)(A), and carefully review **Chapter 24** of Florida Appellate Practice by Philip Padavano for an in depth discussion on discretionary review proceedings.

Exhibit B

Exhibit C

Copy of Court docket of my closed case

Florida Supreme Court Case Docket

Case Number: SC15-1342 - Closed

JOHN W. DOBBS vs. STATE OF FLORIDA

Lower Tribunal Case(s): 5D15-977, 482006CF015201000AOX

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09/09/2015 02:00

Doc.	Date Docketed	Description	Filed By	Notes
	07/21/2015	NOTICE-DISCRETIONARY JURIS (DIRECT CONFLICT)	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	
	07/22/2015	No Fee Required		HABEAS BELOW
	07/22/2015	ACKNOWLEDGMENT LETTER-NEW CASE	Supreme Court Florida FSC BY: Supreme Court Florida FSC	
	07/22/2015	DISP-REV DISM NO JURIS (STALLWORTH)		Having determined that this Court is without jurisdiction, this case is hereby dismissed. See Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002). No motion for rehearing or reinstatement will be entertained by the Court.
	07/24/2015	JURIS INITIAL BRIEF	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	PLACED WITH FILE
	08/24/2015	MISC. DOCKET ENTRY		PLACE WITH FILE

Exhibit C

Exhibit D

1- Copy of DCA denial of habeas petition

2- Copy of DCA denial of rehearing & rehearing en banc

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JOHN W. DOBBS ,

Petitioner,

v. CASE NO. 5D15-0977

STATE OF FLORIDA ,

Respondent.
_____/

DATE: May 18, 2015

BY ORDER OF THE COURT:

ORDERED that the Petition for Writ of Habeas Corpus, filed March 20, 2015, is denied.

I hereby certify that the foregoing is
(a true copy of) the original Court order.

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

cc:

Office Of Attorney General Robin A. Compton John Dobbs

Exhibit D-1

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JOHN W. DOBBS ,

Petitioner,

v. CASE NO. 5D15-0977

STATE OF FLORIDA ,

Respondent.
_____/

DATE: June 22, 2015

BY ORDER OF THE COURT:

ORDERED that Petitioner's Motion for Rehearing and Rehearing En Banc, filed June 3, 2015, is denied. See Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan. 29., 2015).

I hereby certify that the foregoing is
(a true copy of) the original Court order.

Joanne P. Simmons
JOANNE P. SIMMONS, CLERK

cc:

Office of Attorney General Robin A. Compton John Dobbs

Exhibit
D-2

Exhibit E

Copy of my 2 page 5th DCA docket

Fifth District Court of Appeal Case Docket

Case Number: 5D15-977

Criminal Habeas Corpus Petition from Orange County

JOHN W. DOBBS vs. STATE OF FLORIDA

Lower Tribunal Case(s): 2006-CF-15201-A-O

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07/27/2015 04:00

Date Docketed	Description	Date Due	Filed By	Notes
03/20/2015	Petition Filed		Pro Se - Appellant	
03/20/2015	Acknowledgement Letter 1			
03/24/2015	ORD-Respondent to Respond			
04/01/2015	RESPONSE		Attorney General - Appellee	
04/01/2015	Appendix to Response		Attorney General - Appellee	
04/16/2015	Reply			
05/18/2015	Order Denying Original Petition			
05/18/2015	Denied - Order by Judge			
06/03/2015	Motion for Rehearing / Rehearing En Banc		Pro Se - Appellant	
06/22/2015	Order Deny Motion for Rehearing / Rehearing En Banc			
07/09/2015	Returned Records			
07/09/2015	Disp. w/o Mandate			
07/21/2015	NOTICE OF DISCRETN. JURISDICTN			
07/21/2015	Review Sent to Supreme Court			

Exhibit Ep 1

07/22/2015	Acknowledged Receipt from Supreme Court			
07/22/2015	Supreme Court Disposition			

Exhibit Ep2

Exhibit F

Copy of Oliver's 1 page docket with this Court

Florida Supreme Court Case Docket

Case Number: SC15-623 - Active

JOSHUA T. OLIVER vs. STATE OF FLORIDA

Lower Tribunal Case(s): 1D13-1281, 162007CF016267AXXXMA

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07/27/2015 02:52

Doc.	Date Docketed	Description	Filed By	Notes
	04/07/2015	NOTICE-DISCRETIONARY JURIS (DIRECT CONFLICT)	PS Joshua T. Oliver G14967 BY: PS Joshua T. Oliver G14967	
	04/09/2015	No Fee - Insolvent		INSOLVENT BELOW
	04/09/2015	ACKNOWLEDGMENT LETTER-NEW CASE	Supreme Court Florida FSC BY: Supreme Court Florida FSC	
	04/13/2015	JURIS INITIAL BRIEF	PS Joshua T. Oliver G14967 BY: PS Joshua T. Oliver G14967	W/APPENDIX
	04/24/2015	ORDER-STAY PROCEEDINGS FSC (TAG CASE)		The proceedings in this Court in the above case are hereby stayed pending disposition of State v. Moore, Case No. SC13-1236, which is pending in this Court.
	04/24/2015	JURIS ANSWER BRIEF	RS State Of Florida STATE1 BY: RS Giselle Denise Lylen 508012	
	04/24/2015	APPENDIX-JURIS BRIEF	RS State Of Florida STATE1 BY: RS Giselle Denise Lylen 508012	

Exhibit F

Exhibit G

1 - p.655 of my trial transcript

2 - p.658 of my trial transcript

3 - p.666 of my trial transcript

4 - p.669 of my trial transcript

possibilities. One would not apply because the defendant is not charged with an independent, forcible felony aside from this altercation, so I don't want to have a circular instruction and commit fundamental error as some others have done. So I would delete one unless somebody can come up with an independent forcible felony that the defendant is alleged to have been committing. No? Okay. Is either the State or the Defense requesting two?

MS. VICKERS: No, Your Honor.

THE COURT: State?

MS. LASKOFF: I would.

THE COURT: All right. Then I will give -- I will delete the two, the number, the number two. I will place this, make it one paragraph.

MS. VICKERS: Just for the record, the defense objects to 2B.

THE COURT: Okay. Do you have a specific legal objection?

MS. VICKERS: Yes, because it is not supported by the evidence, the facts in evidence during this trial. Also says the defendant initially provoked the use of force against the defendant.

THE COURT: It would read better if it was against himself.

Exhibit G-1

THE COURT: The next is defense of property. I don't believe that that would apply unless I hear an argument otherwise. I will delete defense of property. I will again delete the dwelling, residence occupied, vehicle paragraphs. I will include the no duty to retreat, no duty to retreat paragraph.

MS. VICKERS: Yes.

THE COURT: But I will delete the definition of dwelling, residence and vehicle. The two one sentence, or the one sentence paragraph, a person does not have the duty to retreat if it is in a place where the person has a right to be will remain. And then we get to the use of non-deadly force is not justifiable if you find -- and we have already established that the defendant is not accused of any independent forcible felonies, so one did not apply. State, are you requesting two?

MS. LASKOFF: Yes, Your Honor.

THE COURT: Defense, you're objecting?

MS. VICKERS: Yes, Your Honor.

THE COURT: All right. I will give it. I will delete the following two paragraphs that deal with the use of force and resisting arrest. I will include the paragraph that is to be read in all cases which begins, in deciding whether the defendant was justified in

Exhibit G-2

aggravated battery in there as well?

MS. VICKERS: Correct.

THE COURT: And then we have aggravated battery. The defendant is not charged with any independent forcible felonies, so one would not apply. State, are you requesting two?

MS. LASKOFF: Yes.

THE COURT: And defense, you're objecting?

MS. VICKERS: Yes, Your Honor.

THE COURT: And I overrule the objection. I believe I still need to delete the two paragraphs that deal with the resisting arrest.

MS. VICKERS: Correct.

THE COURT: All right. I will delete those. The next paragraph is read in all instances which the paragraph after that is the no duty to retreat paragraph. I assume you are wanting that?

MS. VICKERS: Yes.

THE COURT: The paragraph after that is the presumption of fear paragraph and you want occupied vehicle?

MS. VICKERS: Yes, Your Honor.

THE COURT: All right. In an occupied vehicle. And that would be if the victim had unlawfully and forcibly entered, that would not apply. Removed or

Exhibit G-3

MS. CHIEN: Yes.

MS. VICKERS: Yes.

THE COURT: Just like the other instruction. I will delete dwelling and residence and I will put or between unlawful and forcibly entered or removed or attempted to remove. Remove dwelling or residence from each of those and from the following paragraphs.

After that, if the defendant was not engaged in unlawful activity, then the duty to retreat is always given. I will delete the definitions of dwelling, residence, vehicle, include the sentence a person does not have a duty to retreat. The next set of paragraphs is the use of non-deadly force is not justified if you find one would not apply because the defendant is not charged with an independent forcible felony.

State, are you requesting two?

MS. LASKOFF: Yes, Your Honor.

THE COURT: And defense, you're objecting?

MS. VICKERS: Yes.

THE COURT: My ruling will be the same. The two paragraphs following that which talk about resisting arrest would not apply. The paragraph after that which starts in deciding whether is given in all cases. I would delete the paragraph regarding reputation and give the final three understanding that the defense is

Exhibit G-4

Exhibit H

Copy of 4page docket for State v. Moore in this Court

Florida Supreme Court Case Docket

Case Number: SC13-1236 - Active

STATE OF FLORIDA vs. JIMMY MOORE, JR.

Lower Tribunal Case(s): 1D10-4052, 2009-CF-25

Right-click to copy shortcut directly to this page

07/23/2015 05:16

Doc.	Date Docketed	Description	Filed By	Notes
	06/18/2013	NOTICE-DISCRETIONARY JURIS (CERT GPI)	PT State Of Florida STATE2 BY: PT Anne Conley 770670	
	07/15/2013	No Fee - State		
	07/15/2013	ACKNOWLEDGMENT LETTER-NEW CASE	Supreme Court Florida FSC BY: Supreme Court Florida FSC	
	09/05/2013	MOTION-STAY (PROCEEDINGS BELOW)	PT State Of Florida STATE2 BY: PT Anne Conley 770670	
	09/16/2013	ORDER-SHOW CAUSE (TAG-DECLINE JURIS)		Petitioner shall show cause on or before October 1, 2013, why this Court's decision in Daniels v. State, 38 Fla. L. Weekly S380 (Fla. June 6, 2013), is not controlling in this case and why the Court should not decline to accept jurisdiction in this case. Respondent may file a reply on or

Exhibit Hp7

				before October 11, 2013.
	09/16/2013	ORDER-SHOW CAUSE (TAG-DECLINE JURIS)		Petitioner shall show cause on or before October 1, 2013, why this Court's decision in Haygood v. State, 38 Fla. L. Weekly S93 (Fla. February 14, 2013), is not controlling in this case and why the Court should not decline to accept jurisdiction in this case. Respondent may file a reply on or before October 11, 2013.
	09/16/2013	ORDER-STAY PROCEEDINGS BELOW GR		Petitioner's Motion to Stay Enforcement of Lower Court's Mandate filed in the above cause is granted and proceedings in the First District Court of Appeal and in the Circuit Court of the Third Judicial Circuit in and for Madison County, Florida, are hereby stayed pending disposition of the petition for review filed herein.
	09/25/2013	RESPONSE	PT State Of Florida STATE2 BY: PT Anne Conley 770670	TO OTSC 09/16/2013
	10/10/2013	REPLY TO RESPONSE	RS Jimmy Moore, Jr. N00284 BY: RS Kathleen Ann Stover 513253	TO OTSC 09/16/2013 (DANIELS v. STATE)
	10/11/2013	REPLY TO RESPONSE	RS Jimmy Moore, Jr. N00284 BY: RS Kathleen Ann Stover 513253	TO OTSC 09/16/2013 (HAYGOOD v. STATE)
	12/16/2014	ORDER-JURIS ACCEPT/BRIEF SCHED (OA LATER DATE)		The Court accepts jurisdiction of this case. Oral argument will be set by separate order. Counsel for the parties will be notified of the oral argument date approximately sixty days prior to oral argument. Petitioner's initial brief on the merits shall be served on or before January 12, 2015; respondent's answer brief on the merits shall be served twenty days after service of petitioner's initial brief on the merits; and petitioner's reply brief on the merits shall be served twenty days after service of respondent's answer brief on the merits. The Clerk of the First District Court of Appeal shall file the record which shall be properly indexed and paginated on or before February 16, 2015. The record shall include the briefs filed in the district court separately indexed. The Clerk may provide the record in the format as currently maintained at the district

Exhibit Hp2

				court, either paper or electronic. If an electronic record, the Clerk of the First District Court of Appeal should contact the Clerk of this Court for instructions on transmittal of the electronic record.
	01/12/2015	MOTION-EXT OF TIME (INITIAL BRIEF-MERITS)	PT Jay Paul Kubica 26341 BY: PT Jay Paul Kubica 26341	
	01/13/2015	ORDER-EXT OF TIME GR (INITIAL BRIEF-MERITS)		Petitioner's motion for extension of time is granted and petitioner is allowed to and including February 11, 2015, in which to serve the initial brief on the merits. NO FURTHER EXTENSIONS OF TIME WILL BE GRANTED TO PETITIONER FOR THE FILING OF THE INITIAL BRIEF ON THE MERITS. All other times will be extended accordingly. (1/15/2015 ORDER AMENDED TO REFLECT INITIAL BRIEF-MERITS)
	02/11/2015	MOTION-EXT OF TIME (INITIAL BRIEF-MERITS)	PT State Of Florida STATE2 BY: PT Jay Paul Kubica 26341	
	02/11/2015	ORDER-EXT OF TIME GR (INITIAL BRIEF-MERITS)		Petitioner's motion for extension of time is granted and petitioner is allowed to and including February 23, 2015, in which to serve the initial brief on the merits. NO FURTHER EXTENSIONS OF TIME WILL BE GRANTED TO PETITIONER FOR THE FILING OF THE INITIAL BRIEF ON THE MERITS. All other times will be extended accordingly.
	02/12/2015	RECORD/TRANSCRIPT	Hon. Jon S. Wheeler, Clerk D1 BY: Hon. Jon S. Wheeler, Clerk D1	1 VOLUME CC PAPER, 6 VOLUMES OF RECORD, 2 VOLUMES SUPP. RECORD (FILED ELECTRONICALLY)
	02/23/2015	INITIAL BRIEF-MERITS	PT State Of Florida STATE2 BY: PT Jay Paul Kubica 26341	
	02/23/2015	APPENDIX-MERIT BRIEF	PT State Of Florida STATE2 BY: PT Jay Paul Kubica 26341	
	03/19/2015	MOTION-EXT OF TIME (ANSWER BRIEF-MERITS)	RS Jimmy Moore, Jr. N00284 BY: RS Kathleen Ann Stover 513253	
	03/20/2015	ORDER-EXT OF TIME GR (ANSWER BRIEF-MERITS)		Respondent's motion for extension of time is granted and respondent is allowed to and including April 10,

Exhibit Hyp 3

				2015, in which to serve the answer brief on the merits. NO FURTHER EXTENSIONS OF TIME WILL BE GRANTED TO RESPONDENT FOR THE FILING OF THE ANSWER BRIEF ON THE MERITS. All other times will be extended accordingly.
	04/13/2015	ANSWER BRIEF-MERITS	RS Jimmy Moore, Jr. N00284 BY: RS Kathleen Ann Stover 513253	
	04/13/2015	MOTION-ACCEPTANCE AS TIMELY FILED (BRIEF)	RS Jimmy Moore, Jr. N00284 BY: RS Kathleen Ann Stover 513253	
	04/14/2015	ORDER-ACCEPTANCE AS TIMELY FILED GR (BRIEF)		Respondent's motion to accept brief as timely filed is granted and respondent's answer brief on the merits was filed with this Court on April 13, 2015.
	05/08/2015	MOTION-EXT OF TIME (REPLY BRIEF-MERITS)	PT State Of Florida STATE2 BY: PT Kathryn Lane 26341	FILED AS PETITIONER'S MOTION FOR EXTENSION OF TIME FOR REPLY BRIEF
	05/08/2015	MOTION-TOLL TIME	PT State Of Florida STATE2 BY: PT Kathryn Lane 26341	
	05/13/2015	ORDER-EXT OF TIME GR (REPLY BRIEF-MERITS)		Petitioner's motion for extension of time is granted and petitioner is allowed to and including May 18, 2015, in which to serve the reply brief on the merits. NO FURTHER EXTENSIONS OF TIME WILL BE GRANTED TO PETITIONER FOR THE FILING OF THE REPLY BRIEF ON THE MERITS.
	05/18/2015	REPLY BRIEF-MERITS	PT State Of Florida STATE2 BY: PT Kathryn Lane 26341	
	05/28/2015	ORDER-OA SCHED (PREV ACCEPTED)		The Court previously accepted jurisdiction. The Court will hear oral argument at 9:00 a.m., Thursday, October 8, 2015. A maximum of twenty minutes to the side is allowed for the argument, but counsel is expected to use only so much of that time as is necessary. NO CONTINUANCES WILL BE GRANTED EXCEPT UPON A SHOWING OF EXTREME HARDSHIP.
	05/28/2015	ORAL ARGUMENT CALENDAR		

Exhibit Hp 4

Florida Supreme Court Case Docket

Case Number: SC15-1342 - Active

JOHN W. DOBBS vs. STATE OF FLORIDA

Lower Tribunal Case(s): 5D15-977, 482006CF015201000AOX

10/14/2015 11:46

Doc.	Date Docketed	Description	Filed By	Notes
	07/21/2015	NOTICE-DISCRETIONARY JURIS (DIRECT CONFLICT)	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	
	07/22/2015	No Fee Required		HABEAS BELOW
	07/22/2015	ACKNOWLEDGMENT LETTER-NEW CASE	Supreme Court Florida FSC BY: Supreme Court Florida FSC	
	07/22/2015	DISP-REV DISM NO JURIS (STALLWORTH)		Having determined that this Court is without jurisdiction, this case is hereby dismissed. See Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002). No motion for rehearing or reinstatement will be entertained by the Court.
	07/24/2015	JURIS INITIAL BRIEF	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	PLACED WITH FILE
	08/24/2015	MISC. DOCKET ENTRY		PLACE WITH FILE
	10/05/2015	MOTION-REHEARING	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	(RC)
	10/06/2015	DISP-REHEARING GR		(RC) Petitioner's "Request for recourse regarding a violation of due process and possible manifest injustice perpetrated by this Court, in the case of John W Dobbs vs. State, case No. SC15-1342, which has been closed due to dismissal based on an

Doc.	Date Docketed	Description	Filed By	Notes
				erroneous determination that this Court was without jurisdiction" has been treated as a Motion for Rehearing and is hereby granted.
	10/13/2015	ORDER-STAY PROCEEDINGS FSC (TAG CASE)		The proceedings in this Court in the above case are hereby stayed pending disposition of State v. Moore, Case No. SC13-1236, which is pending in this Court.

Supreme Court of Florida

TUESDAY, OCTOBER 6, 2015

CASE NO.: SC15-1342
Lower Tribunal No(s).:
5D15-977; 482006CF015201000AOX

JOHN W. DOBBS vs. STATE OF FLORIDA

Petitioner(s) Respondent(s)

Petitioner's "Request for recourse regarding a violation of due process and possible manifest injustice perpetrated by this Court, in the case of John W Dobbs vs. State, case No. SC15-1342, which has been closed due to dismissal based on an erroneous determination that this Court was without jurisdiction" has been treated as a Motion for Rehearing and is hereby granted.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

td
Served:

WESLEY HAROLD HEIDT
JOHN W. DOBBS
HON. TIFFANY MOORE RUSSELL, CLERK
HON. JOANNE P. SIMMONS, CLERK
HON. GREG ALLEN TYNAN, JUDGE

JOHN W. DOBBS vs. STATE OF FLORIDA

Lower Tribunal Case(s): 5D15-977, 482006CF015201000AOX

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02/02/2016 04:28

Doc.	Date Docketed	Description	Filed By	Notes
	07/21/2015	NOTICE-DISCRETIONARY JURIS (DIRECT CONFLICT)	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	
	07/22/2015	No Fee Required		HABEAS BELOW
	07/22/2015	ACKNOWLEDGMENT LETTER-NEW CASE	Supreme Court Florida FSC BY: Supreme Court Florida FSC	
	07/22/2015	DISP-REV DISM NO JURIS (STALLWORTH)		Having determined that this Court is without jurisdiction, this case is hereby dismissed. See Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002). No motion for rehearing or reinstatement will be entertained by the Court. *** 10/6/2015 REINSTATED ***
	07/24/2015	JURIS INITIAL BRIEF	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	PLACED WITH FILE
	08/24/2015	MISC. DOCKET ENTRY		PLACE WITH FILE
	10/05/2015	MOTION-REHEARING	PS John W. Dobbs C00618 BY: PS John W. Dobbs C00618	(RC)
	10/06/2015	DISP-REHEARING GR		(RC) Petitioner's "Request for recourse regarding a violation of due process and possible manifest injustice perpetrated by this Court, in the case of John W Dobbs vs. State, case No. SC15-1342, which has been closed due to dismissal based on an erroneous determination that this Court was without jurisdiction" has been treated as a Motion for Rehearing and is hereby granted.
	10/13/2015	ORDER-STAY PROCEEDINGS FSC (TAG CASE)		The proceedings in this Court in the above case are hereby stayed pending disposition of State v. Moore, Case No. SC13-1236, which is pending in this Court.
	02/02/2016	ORDER-SHOW CAUSE (TAG-DECLINE JURIS)		Petitioner shall show cause on or before February 17, 2016, why in light of this Court's decision to discharge jurisdiction in State v. Moore, SC13-1236, this Court should not decline to exercise jurisdiction in this case. Respondent may serve a reply on or before February 29, 2016.

Supreme Court of Florida

TUESDAY, FEBRUARY 2, 2016

CASE NO.: SC15-1342
Lower Tribunal No(s).:
5D15-977; 482006CF015201000AOX

JOHN W. DOBBS vs. STATE OF FLORIDA

Petitioner Respondent

Petitioner shall show cause on or before February 17, 2016, why in light of this Court's decision to discharge jurisdiction in State v. Moore, SC13-1236, this Court should not decline to exercise jurisdiction in this case. Respondent may serve a reply on or before February 29, 2016.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

ks
Served:

WESLEY HAROLD HEIDT
JOHN W. DOBBS
HON. JOANNE P. SIMMONS, CLERK

PROVIDED TO JACKSON CI
FEB 15 2016
FOR MAILING BY:

In the Supreme Court of the State of Florida

John W. Dobbs
Petitioner,

vs. Case No.: SC15-1342

State of Florida
Respondent.

Showing this Court risks effectively authorizing the slavery and servitude of a U.S. citizen, for crimes not committed; in violation of the 13th Amendment of the U.S. Constitution; as cause, addressing this Court's February 2, 2016 order.

In pro per
John W. Dobbs, DC# C00618
Jackson Correctional Institution
5563 10th Street
Malone, Florida 32445

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Summary of the argument

On November 20, 2006 the State filed charges against Petitioner for the second degree murder (with a weapon) of William Troy (count one); aggravated battery with a deadly weapon or causing great bodily harm to both Francisco Gotay and Andre Blanco (counts two and three); aggravated assault with a firearm against Hanzel Holiday (count four); and shooting from a vehicle (count five).

Petitioner's trial took place Feb. 26th thru March 1st, 2007, where he pled not guilty by way of self defense. No demonstrative evidence was offered outside of Petitioner's regarding the use of his pocket knife during the altercation, as no one perceived it or it's use with either of their five senses until after the altercation had ended. All relevant testimony demonstrated that none of the complaining witnesses were seriously injured until they approached Petitioner and he found himself under attack. All relevant testimony demonstrated that the fight started as what they perceived as a fist fight. On several occasions during closing argument the prosecution instructed the jury that Petitioner could and should have left prior to the altercation. Orange County Circuit Court Judge Lisa T. Munyon instructed the jury on the then fairly new "Stand Your Ground" law on justifiable use of deadly force, and over trial counsel's objection (see Exhibit A 1-4) instructed the jury on the second portion of the forcible felony instruction, where the jury was told that Petitioners actions were not justified if they believed that he initially provoked his assailants. Though no unlawful act was expressed to necessarily qualify as initial provocation the instruction required Petitioner to exhaust every means to avoid the danger that the jury deemed reasonable, prior to his use of force. Directly in conflict with his right to stand his ground.

On March 1st, 2007, Petitioner was found guilty of counts

one thru four and not guilty of count five (shooting from a vehicle) the only charge he denied committing the underlying acts for completely. Petitioner was sentenced on March 7th, 2007, to life in prison for count one; 2 fifteen year sentences for counts two and three; and five years with a three year minimum mandatory for count four.

On direct appeal and subsequent federal efforts Petitioner argued that the instructions were misleading or confusing to the jury and deprived him of his constitutionally guaranteed fair trial.

On August 26th, 2014, the 1st D.C.A. in the case of Floyd v. State, 151 So.3d 452 (Fla. 1st DCA 2014) held that conflicting jury instructions as to the defendant's duty to retreat presented by the initial provocation instruction constituted fundamental error: "If [defendant's] only defense at trial was that he had used deadly force to defend himself and others. The conflicting jury instructions negated each other in their effect, and therefore negated their possible application to[defendant's] only defense." Review was granted by this Honorable Court in State v. Floyd case no.: SC14-2162. This Court ruled in favor of Floyd on December 16, 2014.

On March 18th, 2015, Petitioner submitted a in pro per petition for writ of habeas corpus; which was filed March 20th, 2015, in the 5th DCA; based on the 1st DCA holdings in Floyd. Despite trial counsel's objection to the instruction Respondent alleged that trial counsel affirmatively requested instructions on necessity which presented a similar conflict to that presented by the initial provocation instructions, thus, the error was invited; citing Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan. 29, 2015). In Oliver the 1st District distinguished Floyd, finding that Oliver had affirmatively requested and agreed to the applicable parts of the instruction thereby

waiving any claim of fundamental error. In reply Petitioner explained that: 1) unlike Oliver, Petitioner's trial counsel specifically objected to that portion of the instructions; 2) self defense and defense of another was Petitioner's sole defense during trial regardless of the presentation of different laws on the subject and; 3) the harm from the conflict presented by the instructions had the effect of not only negating the mandatory portion of the self defense instruction but also negating legislative intent as expressed in Sessions Law chapter 2005-27, allowing for conviction of non existent crimes. The 5th DCA denied the petition without opinion on May 18th, 2015, but denied rehearing and rehearing en banc citing Oliver.

Petitioner sought discretionary review with this Court and on October 13th, 2015, this Court stayed proceedings in the instant case pending it's disposition of State v. Moore, case No. SC13-1236 which was pending in this Court. On January 14th, 2016, this Court determined that it should, after further consideration and hearing oral argument, exercise its discretion and discharge jurisdiction in Moore; resulting in the February 2nd, 2016, order Petitioner addresses now.

Where the instant case has been plagued by law enforcement officials acting outside the color of the law, this Court is likely the only judicial authority with the strength to provide Petitioner the immediate release he is entitled to. For this Court to relinquish jurisdiction without granting Petitioner at least a new trial, would effectively amount to this Court indirectly condoning: 1) the selective application of Florida's already controversial "Stand Your Ground" law in prima facie self defense cases; 2) the giving of instructions that allow for conviction based on non existent offenses and, thus, conviction of non existent crimes and; 3) the slavery and servitude of U.S. citizens for crimes not committed.

Argument

This Court risks indirectly authorizing the slavery and servitude of U.S. citizens for crimes not committed; in violation of the 13th Amendment of the United States Constitution

As, Petitioners convictions and detainment result from violations of Florida Constitution Article 1 sections 2, 9, 12, and 21; U.S. constitutional demands for due process and equal protection; and result in a violation of the 8th Amendment ban on cruel and unusual punishment. This case has all the requirements to make it appropriate, justiciable, and necessary for this Court's swift and thorough review.

The decision of this Court to dismiss review in State v. Moore case no: SC13-1236 (the case in which the instant case was stayed pending disposition of), after having entertained oral arguments and other such litigation for over 2 years, essentially amounts to silent affirmation of the 1st DCA ruling in favor of Moore. As, in that case it was the state who appealed the relief granted to him. While in the instant case the opposite has occurred, and it is Petitioner who seeks, at least, the same relief which should have been granted but was denied by the 5th DCA. As the law and facts of this case clearly and overwhelmingly favor Petitioner, to delay or dismiss this case without his receiving relief based on the standard of this Court would not be a fair and proper administration of law.

This liberty issue concerning one who is actually innocent and continues to be victimized by systematic neglect and abuse establishes a miscarriage of justice the result of manifest injustices that should overcome procedural bars to meet the ends of justice. Thus, this Court has not only subject matter jurisdiction, but compelling reasons to exercise its authority to rectify this great travesty

of justice; lest these misapplications of law and abuses of discretion be accepted as covert but cultural norms throughout Florida's judicial and justice system.

Where Petitioner's sole defense at trial was that the force he used both non deadly and deadly was justified and necessary to defend himself and another, Florida law is clear. Florida Statute 776.013(3)(2006) reads: A person who is not engaged in an unlawful activity and who is attacked in any place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

The 13th Amendment of the United States Constitution provides, in pertinent part: "Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

According to Black's Law Dictionary the term 'miscarriage of justice' is defined as: A grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of the crime.

Florida Evidence Codes 301.1 and 301.2 explain how in criminal cases the burden of proof is much higher than in civil cases. Here the burden on the prosecution is to prove each element of a crime by proof beyond a reasonable doubt. In the instant case no such proof was provided to the jury, thus, failing to meet the criterion necessary to establish that Petitioner has been 'duly convicted' in accordance with the 13th Amendment. Petitioner has not been

duly convicted and did not commit the crimes for which he is imprisoned. Petitioner's convictions are solely the result of various ways the State was relieved of it's burden by inferences made to the jury through alluding to evidence not admitted, or misleading statements of law, perpetrated by officials in both the closing argument and jury instruction phases of trial. These acts were fundamentally prejudicial to Petitioner's defense and, thus, the trial itself.

Trial court proceedings proved beyond a reasonable doubt Petitioner's actual innocence of counts one, two, and four, and proved the insufficiency of the evidence to sustain count three.

According to State's witness and security for the club Justin Idle the incident took place like this:

Trial p.253

Line 1 Q- So they were -- members of the group of four were saying something to the other gentleman regarding that they had, that that gentleman had to walk out with security?

Line 4 A- Yes.

Line 11 Q- OKay. So what was his response to them saying that to him?

Line 13 A- Umm, he said he doesn't need anybody to back him up.

Line 15 Q- Where is he when he is saying that?

Line 16 A- He's standing at the driver's side of the door at his vehicle. The door is open and he's standing right at the driver's side.

Trial p.254

Line 24 Q- What happened next, did he get into his vehicle?

Line 25 A- No. He -- from what I remember, he stood there

Trial p.255

beside his vehicle then the, some of the other gentlemen began to continue yelling. I can't recall what they were yelling but slowly walked toward his vehicle. Then it looked like there was going to be a fight, so I told my security, my other security guy Leo to call police, at which time when I turned back around, they were

fist fighting.
Trial p.269
Line 7 Q- At least three of them started advancing on the black male, black female?
Line 9 A- They started to walk toward him and continue to yell at him.
Line 18 Q- OKay. All right. Now, the fight starts and you didn't see who started this fight, did you?
Line 20 A- No.
Trial p.270
Line 11 Q- And everybody was throwing punches back and forth, and fighting?
Line 13 A- Yes.
Line 14 Q- And then you mentioned that the, one of the group of males, I know its confusing, because we don't -- you are not sure of names. One of the group of four came up behind the black male and actually hit him in the throat with something?
Trial p.271
Line 4 A- Yes.
Line 5 Q- But you don't know what that object was?
Line 6 A- No.
Line 7 Q- Was it dark out there?
Line 8 A- Yes. Pretty dark.
Trial p.278
Line 9 Q- You said that the men had surrounded the black male?
Line 11 A- Yes.
Trial p.282
Line 21 Q- At one point when that happened, umm, the black male was kind of on the ground, or kind of squatted down?
Line 23 A- Squatted down, yes. Kind of like leaned over, more in a defensive position. Not more --

As, security clearly perceived that these men advanced on Petitioner and his female companion with violent intent, certainly it was

reasonable for Petitioner to share this view. Petitioner reasonably believed that to stand his ground and defend himself and his girlfriend it was necessary to meet force with force even deadly force against their multiple assailants. Still Petitioner initially tried to repel them with his fists.

According to State's witness and valet for the club Phillip Westfall the incident took place like this: (Adversary preliminary hearing) Records p.42

Line 24 Q- And when he -- when the Hispanic male walked those 30 feet to the black male, what -- did you hear -- or what did you first see happen?

Records p.43

Line 1 A- As he was approaching him, it was looking like they were going to fight. And then the black male swung and hit him, and instantly he spun, caught himself from -- caught himself on the ground with his hands. He didn't hit the ground and fall. He almost did, but he caught himself with his hands and got back up.

Line 19 Q- OKay. After the Hispanic male got -- was hit, did the three Hispanic -- what did the three other friends do?

Line 21 A- The second one approached.

Records p.44

Line 1 Q- OKay. And what did he do?

Line 2 A- He swung at the black male twice, missed, and then the black male hit him.

Line 9 Q- OKay. And then what was the female doing at this time?

Line 10 A- Screaming. And as the third guy approached, she attacked him.

Line 14 Q- OKay. So the female was trying to ward off the third person coming up?

Line 15 A- Yes.

Records p.45

Line 13 Q- OKay.

Line 14 A- I don't -- I think I focused back on the -- the black male fighting

the first--first gentleman. He--he would--he was fighting very well. And he--he--the guys would approach him, he knocked them back real quick.

Line 20 Q - And--but these guys kept coming, right?

Line 21 A - Yes, ma'am.

Records p. 47

Line 5 Q - No. I just want to know any type of interaction between the guy who eventually died and the black gentleman. Did you see them fight at all?

Line 7 A - Yes. He was coming after the black gentleman, and to be honest I do believe I saw the two punches in his chest that made the wounds. He hit him twice in the chest and then spun off that way, off to the left and went behind me.

The other gentleman right instantly came from kind of the passenger door where the female was after him, he hit him with a right hook, what looked to me as a right hook in the face and he spun off back the other direction.

And then that's when I started seeing all of the blood.

Records p. 48

Line 5 Q - Okay. Going to the last part of what you had said earlier, which was you did see the fourth guy get in some punches, is that correct?

Line 15 A - I did not see the connection of the--the last gentleman fighting, who did get the lick--punches in. I did not see them connect. I was facing this direction. I was facing away from that at that point. When I turned around, the Hispanic gentleman had him by the shirt punching him. I saw at least three punches in the face.

Line 19 Q - And was the black gentleman on the floor, though?

Line 20 A - He was going down, but he wasn't letting him go.

Based upon the preponderance of the evidence standard after the Adversary Preliminary Hearing Petitioner's immunity from prosecution should have been recognized. Even the arresting officer Deputy Herbert Mercado testified referring to Petitioner as the victim twice (see Records

pages 54 and 55). As, the transcripts of taped interviews by Orange County detectives verify; there wasn't even an allegation made by eye witnesses or alleged victims infering that Petitioner was not acting in defense of himself or another. Petitioner was the only man arrested, but should have been the only man released after questioning. As Justin Idle testified, and Leonard Bolanos provided in his interview with detectives, he had Leo call police prior to anyone being hurt because he saw 4 men moving toward 1 man and woman with violent intent. Clearly, security viewed their advance as too much to handle, therefore, too much for 1 man and a female to handle, and called police initially on the couples behalf. Obviously, this is why Deputy Mercado refers to Petitioner as the victim, because he understood the couple to be the initial and intended victims of the altercation. Suspiciously, the 911 tapes Petitioner asserted held exculpatory evidence from calls made before, during, and after the incident and lose of life; in an almost unprecedented event; were destroyed while in police custody. Never the less, even though the valet Phillip Allen Westfall provided a watered down version of his prior testimony, at trial his testimony favored Petitioner as a matter of law:

Trial p.285

Line 5 Q- And who did you hear screaming?

Line 6 A- A female.

Trial p.287

Line 23 Q- And who was over in that direction?

Line 24 A- There were four gentlemen by their vehicle here'.

Trial p.288

Line 3 Q- And who was she with by that vehicle that she was standing in the passenger door of?

Line 5 A- There was a black gentleman at the driver's side of that vehicle.

Line 7 Q- And what did the black gentleman at the driver's side of the vehicle do, if anything?

Line 9 A- Umm, when she was done screaming there was one gentleman walking

in this direction. Their vehicle was parked approximately right there, He came from the driver's side.

Line 13 Q- Can you use this car as an example?

Line 14 A- He came from the drivers door around the back of the car to meet the other gentleman and punched him in the head.

Trial p.291

Line 1 A- A second gentleman from this vehicle traveled over to the black gentleman.

Line 3 Q- And what did he do when he got there?

Line 4 A- He swung at the guy twice, missed both times and the black guy hit him.

Line 20 Q- And what were the other, the remaining two guys doing at this point?

Line 25 A- After this second gentleman got hit, a third one

Trial p.292

from the silver vehicle was walking over and the female in this vehicle who was still by the passenger door area attacked him.

Trial p.301

Line 5 Q- And the car that Mr. Dobbs was in was about 40 feet away is that correct?

Line 7 A- I'd say there's two spaces between these vehicles. It would be --it would be one, two, three, four, five or six spaces away, and one row back.

In a State where it is lawful for a man to stand his ground, shoot and kill another for advancing on him with violent intent, in order to prevent harm to himself and/or another, and be innocent of crime. Can a man have been lawfully deemed guilty of a crime merely because the jury may have believed he threw the first punch instead of bullet, or used a pocketknife, while facing the same circumstances? Even if they knew it was 4 or 5 men rather than just the 1 that's legally necessary? Surely they were confused or mislead as to the law. Petitioner seriously doubts George Zimmerman's jury was given the initial provocation

instruction.

The testimony of participants in the altercation, as well, provide overwhelming evidence of Petitioner's actual innocence, to the degree that no scenerio admitted into evidence can be viewed to lawfully support a conclusion that the prosecution met its burden to prove Petitioner did not act in self defense beyond a reasonable doubt. Even prosecutor Kimberly Laskoff's closing argument that Petitioner reacted to the advance of these men by immediately swinging wildly with the pocketknife, cutting and stabbing them as they approached him is legally insufficient. Not only is it not supported by competent substantial evidence; but as a matter of law to rebut Petitioners defense of justifiable use of force the prosecution must provide evidence that these men advanced upon and surrounded the couple without the intent to do harm. To depict Petitioner as the villian in this situation is to legitimize and perpetuate the old slave owner's phobia of African Americans rising in the face of oppression.

According to the trial testimony of Deanna Washington (the black female) who was girlfriend/fiance of the Petitioner and ambition of these drunk men that night:

Trial p. 548

Line 2 Q- And you never saw John Dobbs with a knife did you?

Line 4 A- That is correct.

Line 5 Q- OKay. And when this first gentleman hit John Dobbs, isn't it true that what happened at this point is John hit him so hard, he knocked him to the ground?

Line 8 A- All I remember is umm, blood everywhere. I remember from that first guy that was walking to our car attacked John Dobbs.

Line 19 Q- OKay. And then when did you see somebody else come up?

Line 21 A- I seen someone come up after the fact that the guy-- he was still trying to attack and get like strength--

Trial p.550

Line 3 Q-You are not sure when the second guy came over?
Line 4 A-No.
Line 5 Q-And you were still in your car at this point?
Line 6 A-Yes.
Line 7 Q-All right. All right. And when did you get out of your car?
Line 9 A-I got out the car when I noticed the other three guys from the group run over and surround him, John Dobbs.
Line 19 Q-You can finish.
Line 20 A-OKay. The guys from the three, as in from walking from their car came over and attacked John Dobbs as in surrounding him and all he could do is swing on whoever that was coming towards him and--

Ms. Washington also testified that she believed they intended to take her away from Petitioner.

According to Crime Scene Investigator Allison Wright, whom during his police interrogation Petitioner asked "Have you ever heard of anything like this?" and she responded "Self defense, yea," Petitioner received several injuries from his assailants; some of which were:

Trial p.362

Line 17 Q-OKay. Now again you noted several injuries to Mr. Dobbs?
Line 19 A-Yes, I did.
Line 20 Q-And you noted the left upper lip was swollen?
Line 21 A-Yes.
Line 22 Q-There was a cut on the right eyebrow?
Line 23 A-Yes.
Line 24 Q-A cut on the right chin?
Line 25 A-Yes

Trial p.363

Line 1 Q-There was an abrasion on the left knee?
Line 2 A-Yes.
Line 3 Q-There was a cut on the right thumb?

Line 4 A- Yes.
Line 5 Q- There was abrasions on the right and left little fingers?
Line 7 A- Yes.
Line 8 Q- There was a cut on the middle finger?
Line 9 A- Yes.
Line 10 Q- There were two cuts on the left forearm?
Line 11 A- Yes.

Trial p.364

Line 1 Q- Okay. And there are-- also in the injuries to Mr. Dobbs, you noted there were linear red marks on the left chest?
Line 4 A- Yes.

The State's expert witness supervising crime scene investigator Susan Mears testified that the average parking space is around 10 feet wide (see trial p.340). The State adopted the position that the vehicles were 6 parking spaces apart. This would indicate the vehicles were around 60 feet apart. Petitioner closed the distance by around 10 feet in moving from the driver's side to the rear passenger side to intercept their advance toward Ms. Washington. Their assailants traveled at least 50 feet to initiate the confrontation. C.S.I. Susan Mears also testified that based on the blood splatter evidence found on Petitioner's Acura the altercation took place close to the rear passenger side of the car (see trial p 343-344 and 347-348). (Also see Exhibit B 1-13)

Regarding Count one - the second degree murder of William Troy. Though Petitioner and Ms. Washington testify describing 5 men attacking, rather than Justin Idle's and Phillip Westfall's 4. Nevertheless, the very evidence offered to obtain the conviction is the same evidence that establishes Petitioner's actual innocence. Even Troy's cohort's demonstrate that he was 3rd or 4th in the battle and struck by the fatal blow as he became one of Petitioner's multiple assailants. Thus, Petitioner was sentenced to life in prison for a murder that did not occur, as, the homicide was justified, as a matter of law.

According to West's Florida Practice Series 'Florida Evidence' Code 90.604 - Lack of Personal Knowledge:

Except as otherwise provided in 90.702 (expert witnesses), a witness may not testify to a matter unless evidence is introduced which is sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may be given by the witnesses own testimony.

Section 604.1 states: 90.604 provides that a witness must have personal knowledge of the matter about which he or she testifies. The testimony must be based on matters perceived by the senses of the witness.

In the instant case none of the adversary witnesses perceived that Petitioner had resorted to using his pocketknife with either of their 5 senses until the entire altercation had ended. Therefore it can not be used to justify their aggression and any statements contrary to Petitioner's in regard expressed a lack of personal knowledge.

According to Anthony Riollano who is recognized as the 4th or 5th from the group to engage Petitioner:

Trial p. 226

Line 25 Q- And who was the altercation with?

Trial p. 227

Line 1 A- The altercation started between the male that was in the vehicle and one of the people that were with us.

Line 10 Q- Could you tell who hit who first?

Line 11 A- No.

Line 24 Q- OKay. How long until somebody else, a third person joined in? Are we talking minutes, seconds?

Trial p. 228

Line 1 A- No. This all happened, I mean, to my recollection, the whole thing maybe was about 45 seconds or something like that, maybe a minute

or so. It wasn't very long at all.

Line 5 Q- When you say the whole thing, are you talking about everybody getting involved?

Line 7 A- Yeah, the whole altercation, as far as your specific question, umm, I would say a couple seconds, maybe, ten seconds, five seconds, something like that.

Trial p.231

Line 18 Q- When you approached him, was he fighting with another member of your party at the time that you approached him?

Line 21 A- I believe so.

Trial p.232

Line 1 Q- What did you do when you approached him on his side?

Line 3 A- Umm, I grabbed him by the side of his shirt and I hit him maybe three or four times and then everything stopped.

Line 15 Q- Where about on his body were you hitting him?

Line 16 A- Toward the back, like his neck and maybe the back of his head area.

Trial p.233

Line 3 Q- So you stopped swinging as well, as soon as he was, started walking away?

Line 5 A- No. I was just -- I hit him like three or four times, and then I stopped hitting him. And then he got up, you know, and he went towards his vehicle, and--

Trial p.236

Line 16 Q- Sir, at any time did you see the defendant or the female with any knives, guns, weapons, anything like that?

Line 18 A- No.

Line 19 Q- Was there a lot of blood when this was happening, when this fight was occurring?

Line 21 A- During the altercation I didn't notice, you know, I didn't notice a lot of blood. It was after when we noticed that William was on the floor.

Trial p.237

Line 25 Q- At this point had somebody said that they were

Trial p. 238
Calling 911 or --
Line 2 A- Not that I recall. You Know, Andre and Francisco then started to notice that they were stabbed, so they started tending to their injuries and I stayed with William.
Trial p. 239
Line 25 Q- So you -- I mean, would you consider yourself
Trial p. 240
intoxicated to the point that you wouldn't have driven that night?
Line 3 A- I wouldn't have driven, no.

As, Riollano testified to being too drunk to drive and attacking Petitioner because his friends were having a hard time whipping him, rather than because Petitioner was using a weapon. And irrespective of whether or not Petitioner was defending himself. His testimony amounts to a confession of a crime against Petitioner. And Petitioner's imprisonment suggests that Florida enforces some unpublicized policy that African Americans are free as long as they submit to abuse from other races or, tourist are welcome as long as they submit to abuse from good ole boy factions.

According to the trial testimony of the manager of the strip club 'Thee Doll House', Mr Swift (which the trial court unreasonably denied the jury the priviledge of hearing), Andre Blanco came back to the club to apologize for the incident:
Trial p. 519
Line 11 Q- When he came to apologize, did he appologize for what they had done at Thee Dollhouse?
Line 13 A- Well, actually for the most part, and then actually what had transpired, because they were regular customers at our club, and I guess what happened was, I guess the negative publicity or I guess any publicity at all is what he came to apologize for, so yes.
Line 18 Q- Did he also apologize for what had happened?

Line 19 A-Yes.

The testimony was not hearsay and was exculpatory showing evidence of Blanco's consciousness of guilt. Victims don't usually feel the need to apologize for being attacked. The trial court's intentions are questionable for specifically ordering Mr. Swift not to testify to that in the juries presence.

According to Andre Blanco's Adversary Preliminary Hearing testimony concerning the death of William Troy:

Records p.18

Line 15 Q-OKay. And after Frank--you saw Frank hit Mr. Dobbs, did you see Mr. Troy or your other friend...

Line 17 A-No.

Records p.19

Line 2 Q-OKay. So at that time you had turned away? You weren't really paying attention.

Line 4 A-Exactly.

Line 14 Q-You mean you couldn't tell that it was three people on one?

Line 15 A-No. It never was three people on one.

Line 16 Q-OKay. Well, how would you know that, you weren't looking?

Line 17 A-OKay. Your right.

Records p.21

Line 19 A-I never actually saw Will getting hit.

Line 20 Q-OKay. So you never saw them in a confrontation?

Line 21 A-No.

At least this portion of his testimony is consistent with his Transcript of taped interview with detectives that night (see Exhibit C 7pages). His trial testimony in regard is another unexplained story:

Trial p.162

Line 24 -As I looked over to the left I saw Frank. I guess he was trying to help me because I got hit and he got stabbed as

Trial p.163
well, and then Will and the gentleman were scuffling together, and when I looked over, I see Will on the ground.

On trial p.182, after alleging he was stabbed before he attacked Petitioner, but didn't know he was stabbed; Blanco claims to have seen Petitioner wrestling with William, and while their wrestling this time, Will is on the ground. Yet, even ignoring the unexplained contradictory statements made under oath in official proceedings violating Florida's perjury statute 837.021; which the prosecutor must have been aware of. Blanco's failure to imply who initiated the violence between Petitioner and Troy while implying that Troy was at a disadvantage, the totality of the circumstances still exonerate Petitioner. Petitioner fending off both Blanco and Frank must be considered an aggravating factor when Troy enters the foray.

Regarding Count two - the aggravated battery of Francisco Gotay. Gotay's own trial testimony exonerates Petitioner, proves his use of force was justified, and that he committed no crime:

Trial p.203
Line 2 Q - What happened? Can you tell the jury?
Line 3 A - Umm basically Andre, Andre walked over to him. They started fighting. He hit Andre with a good punch.

Trial p.204
Line 8 Q - The two of them start fighting. Did you see who started it, who hit who first?
Line 10 A - No.
Line 14 Q - And then what happened?
Line 15 A - The fight ensued and basically when Andre fell down to the floor, I ran over there and the girl--
Line 17 Q - Why?
Line 18 A - Because I wanted to help my friend. My friend just hit the floor. I dont know why he hit the floor, so I ran over there and as soon

as I ran over there the girlfriend was jumping around. And I can't really say what she was saying, but she was talking nonsense. And as soon as I ran over there, I kind of took my eyes off the defendant and looked at her. And I swung but I didn't get anything, and I got punched and he stabbed me in the face.

Trial p.205

Line1 Q- What were you swinging at?

Line2 A- Mr. Dobbs.

Line18 Q- Did you see a knife?

Line19 A- Never seen a knife.

Trial p.208

Line 14 Q- Okay. And was it a situation where -- did the four of you at one time go over to the defendant when the fight happened?

Line 17 A- No. It was pretty much a one-on-one until of course, I seen Andre fall on the floor and then I ran over. Umm, we didn't jump him or anything like that.

Trial p.215

Line25 Q- All right. And you also mentioned that this

Trial p.216

was one after another coming up and fighting with Mr Dobbs, is that right?

Line 3 A- That is correct.

Trial p.217

Line14 Q- And you didn't know that you were cut until later on?

Line16 A- That is correct.

Gotay demonstrably testified that the good punch Petitioner hit Blanco with was not the first punch thrown, being it was thrown after the fight had already started. And admits to attacking Petitioner immediately after Blanco fell. A fall which occurred within the first few seconds of the altercation, and did not eliminate Blanco from the equation. Gotay verifies that Petitioner initially repeled Blanco with nondeadly force using only fists against him; and Gotay himself as well, as he claims to have been punched and then stabbed. Gotay also verifies that the

fight was only one on one for the first couple of seconds and that Petitioner only acted in response to acts of aggression from his party. No crime was committed. No crime was demonstrated. Petitioner's use of force was justified even deadly force after Blanco fell but got up to attack from behind, while Gotay attacked from the front, and all this in the first seconds of the fight.

Regarding Count three - the aggravated battery of Andre Blanco. Blanco's own trial testimony is not only perjured but insufficient to sustain the conviction and exculpatory as it activates Petitioner's right to defend himself from the earliest moments of the altercation:

Trial p.161

Line 13 Q - What happened?

Line 14 A - Umm, when the guy got into the car and the lady got into the car, they drove like in the parking lot to another section into the parking lot which was parallel to my car, and the gentleman jumped out of the car. When he jumped out, he lunged at my face.

Line 19 Q - He what?

Line 20 A - He lunged at my face. I thought I got punched, hard, because I fell to the ground, but I actually got stabbed in my face.

Trial p.162

Line 3 Q - And did you approach their car?

Line 4 A - No. I did not

Line 5 Q - Now, what happened when the lunging happened?

Line 6 A - When I got hit; I spun around to the floor. I held my balance with my right hand. I got back up and saw the body that actually hit me, ran after him, grabbed him by the back of the neck, started hitting him there.

Line 17 Q - OKay. And what happened, did you get hurt?

Line 18 A - After, yeah, after I went after him and I grabbed him by the back of the neck and started hitting him, my body started feeling weak, so I walked away from the actual confrontation and I started to lose, I guess, consciousness because I was -- I guess I was losing

blood, but I felt real weak and faint.
Trial p.166
Line24 Q- Did you ever see a knife?
Line25 A- No. I did not
Trial p.169
Line6 Q- Was it an instance where he was in his car and all four of you approached his car?
Line8 A- No.
Line9 Q- Okay. And did the four of you attack him?
Line10 A- No. We did not
Trial p.181
Line25 Q- Okay. Yeah, why did you get in a fight anyway?
Trial p.182
Line1 A- He-- when he came out of the car, I guess I was the first one that he could approach and then I, like I said, he just lunged at me. I got stabbed. I realized that I got -- I didn't realize that I got stabbed, I felt that I got hit real hard, so then I went back and attacked him.
Line11 Q- How far apart were you when you went?
Line12 A- Probably about five feet, six feet.
Trial p.183
Line15 Q- Then why do you think -- what makes you tell the jury you got stabbed?
Line17 A- All the blood, the slices in my face, my arms, my chest.
Trial p.188
Line4 Q- You also saw -- at any given point in time, you have also seen at least one of your friends punching Mr. Dobbs as well, is that true?
Line7 A- Yes.
Line11 Q- Isn't it also true that you, about a week later, you returned to The Dollhouse?
Line13 A- Yes.

Blanco's description of only being struck once infers that his claim to have been stabbed in the initial confrontation, is a reason-

able conclusion through process of elimination. Yet, he also testifies to having been cut or stabbed multiple times. A fact that his theory of events does not allow for. Clearly he engaged Petitioner more times or longer than he admits. As he received slices to his face, which is plural, he gave the jury no reason to believe he didn't get cut for the first time around the same time he received his other cuts; which is later in the fight.

Along with the fact that Blanco is obviously willing to commit perjury regarding whether he initially approached the couples vehicle precipitating the confrontation, and whether his friends approached or attacked Petitioner, as they confess. Blanco provided no demonstrable evidence to substantiate his claim that what he perceived as a punch was actually a stab, and provides proof beyond a reasonable doubt that he lacked personal knowledge as to any specific point during the battle that the stabbings actually occurred. His testimony which is the only conflicting evidence on the matter, is insufficient to rebut Petitioner's claim that he started using his pocketknife after facing multiple assailants. Blanco perceived no knife, no blood, and no serious injury, as a result of being floored, with either of his five senses; prior to running up and grabbing and attacking Petitioner from behind. Even if the jury chose to believe his scenerio wholeheartedly, Petitioner can only be under that scenerio held accountable of simple battery. After which according to Blanco, Petitioner posed no threat and he had to chase him down to exact his revenge. Triggering Petitioner's right to defend himself from the earliest moments of the confrontation, under his own scenerio, Petitioner can not be deemed duly convicted of the aggravated battery. As the State must show a sufficient link between the weapon and the crime alleged, it failed to overcome Petitioner's constitutional presumption of innocence.

Also the prosecution must be deemed aware that Blanco had to be told by detectives where and how many times he'd been stabbed. As well as that he told them he never knew he was stabbed because he was drunk,

and that he thinks he saw someone else fighting and only ran over there to help a friend (see Exhibit C).

Regarding Count Four - the aggravated assault of Hanzel Holiday. Holiday's own trial testimony exonerates Petitioner, proves his use of force was justified, and that he committed no crime of aggravated assault:

Trial p.436

Line 1 A - I was in a F-150 Ford Truck.

Line 2 Q - And so you drove across the street and did you actually stop and talk with somebody?

Line 4 A - No, Allen told me to stop that car right there. It was an Acura, a gray Acura.

Line 16 Q - And what did you do?

Line 20 A - I hit the vehicle, tried to stop it?

Trial p.438

Line 6 Q - Now, if are you -- when you are doing this, are you honking the horn or doing anything like that?

Line 8 A - No.

Line 17 Q - When you pulled alongside of it, what was your intention there?

Line 19 A - My intention was to try to force it off the road.

Trial p.440

Line 16 Q - You stated that as soon as you saw the gun out the window, that's when you hit the brakes?

Line 18 A - Yes.

Trial p.442

Line 7 Q - Your supervisor. Does Allen go by the name Phillip?

Line 9 A - Yes.

Line 10 Q - Phillip Westfall?

Line 11 A - I think that's his last name. I don't really know his last name.

Trial p.444

Line 25 Q - Now, an F150, that's a pretty big truck, isn't

Trial p.445
it?
Line 2 A-Yes it is.
Trial p.447
Line 18 Q-We are clear on that. You are chasing them down the road hitting their car twice trying to ram them off the road?
Line 21 A-Right.
Trial p.455
Line 16 Q-And you have no lawful authority to stop anyone, do you?
Line 18 A-No.

It pains Petitioner to admit that in light of such evidence and reckless perjury, his being the only man arrested and charged with criminal conduct suggests some sinister motive and reasoning on the part of the prosecution.

The standard upheld in similar cases, even prior to the stand your ground amendment to justifiable use of force has been that while the defendant carries the burden of going forward with evidence of self defense the burden of proving guilt beyond a reasonable doubt never shifts from the State; and this standard broadly includes the requirement that the State prove beyond a reasonable doubt that the defendant did not act in self defense; and if the State fails to disprove this beyond a reasonable doubt, the trial court is duty bound to grant a judgement of acquittal in favor of the defendant. Brown v. State, 454 So.2d 596 (Fla. 5th DCA 1984); Sneed v. State, 580 So.2d 169, 170 (Fla. 4th DCA 1991).

In Thompson v. State, 552 So.2d 264 (Fla 2nd DCA 1989) the court overturned the verdict because the State failed to rebut the defendant's prima facie case of self defense because the victim turned assailant pursued defendant relentlessly and defendant was outnumbered by victims allies.

The U.S. Supreme Court has long held that "if a man reasonably believes that he is in immediate danger of death or grievous

bodily harm from his assailant he may stand his ground and that if he kills him he has not succeeded the bounds of lawful self defense." Brown v. U.S., 256 U.S. 335, 41 Sct. 501, 65 L.Ed. 961 (1921).

In the instant case the prosecutor violated just about every due process protection clause regarding closing arguments seeking to secure the conviction. And perhaps most damaging of all made the error in the complained of instructions a feature of her closing argument.

Florida Criminal Practice and Procedure §13.34(6)(3) states with regard to closing arguments: An obvious kind of prohibited argument is that which refers to matters outside of the evidence admitted at trial. This impropriety is obvious because it offends the very purpose of closing arguments - to apply the evidence admitted at trial to the law of the case.

In the instant case the faith of the people in the prosecutor's intentions was abused and leveraged to condemn an innocent man.

For example: During closing argument the prosecutor presented a number of falsehoods as facts with statements about Petitioner such as 'he was mad, pissed off, and fired up' in an effort to inflame the jury. The prosecutor went so far as to defame Ms Washington's nature, intentions, and fears claiming 'she was egging him on', even fabricating words for a nonexistent exchange between the couple. And used phantom evidence with statements like 'he got out the car with the knife in his hand', 'he held the knife like this' (demonstrating the knife being held in a position no one testified to and in opposition to Petitioner's testimony), and 'he cut himself' in an effort to blind the jury to the evidence of Petitioner's desperate situation and make them comfortable with the thought of an outrageous conviction (see trial pages 684, 685, 705, 706, 710, 711, and 715).

The prosecutor made an enormous effort to deprive the jury of it's pardoning power by asserting at least ten times 'it wasn't self defense' or 'it wasn't a lawful act' and offering her personal opinion

that 'there's no way he didn't get out of his car and commit murder and aggravated battery.' The prosecutor vouched for the credibility of the complaining witnesses telling the jury that they 'didn't get together and make this up.' In fact she even advised that the conflicts in their testimonies attested to their honesty. While calling Petitioner a liar and claiming that his expressed concern for his girlfriend was merely a 'magic trick' to fool them. And on top of all this irrational bias, argued as if a matter of law that Petitioner had an obligation to back down with statements like 'he could have left' and 'he should have left' on several occassions (see trial pages 706, 707, 708, 710, 711, 713, 714, 715, and 716).

In light of the prosecutor's conceding that 'Andre walks over' despite Andre's testimony that he did not, the prosecutor must be viewed to have been aware of his perjury. Yet, rather than fulfill it's ethical obligation, the prosecution chose to muddle the facts by adopting Petitioner's version of events which the evidence supported and presenting a twisted version of Blanco's depicting him as an innocent victim.

Throughout Petitioner's more than 9 years of unlawful incarceration Petitioner has struggled to understand what could motivate a number of state officials to condone such obvious injustice. Being aware, that Blanco was on probation at the time and, changed his version of events with each proceeding, in a state where mere negative police contact usually results in a violation, and he and the other complaining witnesses each had multiple felony convictions. Ultimately, Petitioner can perceive no other reason besides race, and vindictiveness to appease the well connected, wealthy and prestiegious William John Troy III, who is father of the deceased William John Troy IV. While Petitioner is a man of humble means and background. (see Exhibit D)

The aforementioned facts of Petitioner's trial court proceedings demonstrate that the conditions of Petitioner's incarceration are in

violation of both the U.S. and Florida constitutions and the result of extreme fundamental error.

As demonstrated; through exhibits submitted with Petitioner's letter to the clerk which this Court reconstrued as a motion for rehearing, which was granted resulting in this case being stayed pending disposition of State v. Moore; the 5th DCA denied the relief Petitioner requested due to the erroneous instructions based on a perception that they were affirmatively agreed to or requested when they were actually objected to. Still, Petitioner has argued that the initial provocation instruction in conjunction with the 'stand your ground' justifiable use of force instruction was misleading as it instructs that one may lose their right to stand their ground if the jury finds they initially provoked the use of force they claim self defense against. Yet, the instruction does this without a legal definition for what qualifies as provocation, which laymen have been known to occassionally view as refusing to back down. Therefore one may lose their right to stand their ground and defend themselves based on no unlawful act.

In Floyd v. State, 151 So.3d 452 (Fla. 1st DCA 2014) the court held that: "If [defendant's] only defense at trial was that he had used deadly force to defend himself and others. The conflicting jury instructions negated each other in their effect, and therefore negated their possible application to [defendant's] only defense." In other words if the use of deadly force is necessary to prevent imminent death or great bodily harm to oneself or others, then deadly force is justified without regard to any effort to retreat. The jury instruction[s] at issue, however define[s] justifiable use of deadly force as being dependant not only upon the degree of threat to the defendant, but also upon the degree to which the defendant has made an effort to escape the the threat. In effect, the trial court instructed the jurors that [defendant] both did and did not have a duty to retreat."

The 1st DCA coming to this realization in Floyd none the less decided

in Oliver v. State, 2015 WL 376213 (Fla. 1st DCA Jan. 9, 2015) that any claim of fundamental error was waived because in that case the applicable parts were affirmatively agreed to and requested. This suggest that what may not have been a crime may lawfully be viewed as a crime based on a request by trial counsel for the trial judge to instruct the jury in that manner.

Although in the instant case trial counsel specifically objected to the inclusion of the 2nd part of the forcible felony instructions called 'initial provocation' regarding each count (see trial pages 655-669 or Exhibit A1-4). Petitioner is compelled to point out that 3 Fla. Jur. 2d Appellate Review §364 page 4564 states: a conviction for a nonexistent crime is a fundamental error that can be raised at anytime even if the error was invited by the acceptance of a negotiated plea or by a request for jury instructions. (see also Moore V. State, 924 So.2d 840 (Fla. 4th DCA 2006)). The 1st DCA findings in Oliver is especially suprising because in Mosley V. State, 682 So.2d 605, 607 (Fla 1st DCA 1996) the court held that: "when jurors are given a instruction that would permit them to find the defendant guilty of a crime that does not exist the error is fundamental and is per se reversible, and the case must be remanded for retrial." In Mosley the defendant was charged with attempted manslaughter. Apparently the jury was properly instructed on that charge, but trial court also instructed them on culpable negligence, thus, the DCA determined that the instructions allowed for Mosley to be found guilty indirectly of attempted involuntary manslaughter. A nonexistent crime.

Just as one can't be guilty of attempting to and involuntarily committing manslaughter as a single act. And instructing in such a way allows for conviction based on an element outside the statute. Being convicted for failure to try to avoid the danger where one has a right to stand one's ground allows the same. In fact the distinguishing elements of the criminal degree wouldn't matter in self defense claims. One can be found guilty of the main charge by the prosecutor merely proving they failed to retreat. Rendering both the statute for the offense and the statute for the defense meaningless. Relieving the State of it's burden.

As far as any argument regarding the trial courts instructions on the elements of 'necessity'. In Little v. State 111 So.3d 214 (Fla. 2nd DCA 2013) the court specifically titled criminal law Key (4) 203K769 'necessity of use of force' while referring to the 'Stand Your Ground' law. As the legal terms of 'necessity' and 'justification' are sometimes interchangeable; though that error may have been invited, the jury was misinstructed on the law governing the circumstances, and contrary to statute.

In State V. Klayman, 835 So.2d 248, 259 (Fla. 2002) this Court clarified that: Florida courts have held that imposition of criminal sanctions without statutory authority is fundamental error... one may never be convicted of a non existent crime... conviction of a non existent crime is fundamental error mandating reversal even when error was invited by defendant as by request for jury instructions on a nonexistent offense... (Relying on Achin V. State, 436 So.2d 30, 31 (Fla. 1982); Mundell v. State, 739 So.2d 1202 (Fla. 5th DCA 1999) and Fredericks v. State 675 So.2d 989, 990 (Fla. 1st DCA 1996)).

After his direct appeal was silently affirmed without opinion Petitioner's family posted the website americanmekinguniversal.org (which has received over a million hits and averages over 100 visits a day) displaying all records, transcripts, arguments, orders etc. to date; in order to educate the public on how their rights are protected or neglected by the system. As, Petitioners cause has gathered the support of approaching 300 petitioners advocating for the relief requested by Petitioner in the instant case (many of whom are members of CBS radio, Coast to Coast am, and the Florida Bar Association) (see Exhibit E 1-2). For this Court to discharge jurisdiction and not reach the merits of this claim would leave Petitioner and hundreds of his supporters in a confused and despondent state regarding the integrity of Florida's Justice system.

Conclusion

Wherefore, Petitioner respectfully request that this Honorable Court order his immediate release; remand for a new trial; or any other form of relief this Court deems appropriate.

Oath

Under the penalties of perjury, I hereby declare that the facts and statements of the foregoing showing of cause are true and correct.

John W Dobbs, in proper

Certificate of service

I hereby certify that a true and correct copy has been mailed to: The Florida Supreme Court, 500 S. Duval Street, Tallahassee, FL 32399; and the Office of the Attorney General, 444 Seabreeze Blvd., Daytona Beach, FL 32118.

PROVIDED TO JACKSON CI
FEB 15 2016
FOR MAILING BY:

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In proper

In the Supreme Court
Of the State of Florida

John W. Dobbs
Petitioner,

vs Case No.: SC15-1342

State of Florida
Respondent.

Index to Exhibits

Exhibit A - Trial counsel's objections to the initial provocation instructions.
Exhibit B - Photos of Petitioner's documented injuries
Exhibit C - Copy of Andre Blanco's Transcript of taped interview by detectives.
Exhibit D - Small display of prestige belonging to the deceased's father.
Exhibit E - Approaching 300 signatures of those who support Petitioner's request.

In pro per
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Filing # 38361707 E-Filed 02/29/2016 07:46:35 AM

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JOHN W. DOBBS,
Petitioner,

v. Case No. SC15-1342
5D15-977

STATE OF FLORIDA,
Respondent.
_____/

REPLY TO PETITIONER'S RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW the Respondents, State of Florida, in reply to Petitioner's response to this Court's order to show cause why in light of this Court's decision to discharge jurisdiction in *State v. Moore*, SC13-1236, this Court should not decline to exercise jurisdiction in this case and states:

1. In his Petition For Writ Of Habeas Corpus filed in the Florida Fifth District Court of Appeal, Petitioner argued that the justifiable use of force instruction on duty to retreat negated his defense citing to *Floyd v. State*, 151 So. 3d 452 (Fla. 1st DCA 2014), *rev. granted*, 168 So. 3d 229 (Fla. 2014). The Fifth District Court of Appeal denied the Petition For Writ Of Habeas Corpus on May 18, 2015. The same court denied his Motion For Rehearing citing to *Oliver v. State*, 2015 WL 376213 (Fla. 1st DCA Jan. 29, 2015).

2. In *Oliver, supra*, the First District held that the defendant waived any claim of fundamental error by affirmatively

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requesting and specifically agreeing to the challenged jury instruction.

3. In *Moore v. State*, 114 So. 3d 486 (Fla. 1st DCA 2013), *rev. dismissed*, 2016 WL 164157 (Fla. Jan. 14, 2016), the issues were whether the defendant waived what would otherwise be fundamental error in the manslaughter instruction regarding intent to kill and the failure to instruct on justifiable or excusable homicide. The First District held that mere failure to object to an erroneous jury instruction is insufficient by itself to waive a claim of fundamental error based upon the instruction. This Court declined to exercise jurisdiction in *Moore*.

4. This Court should decline to exercise jurisdiction in this case as there is no express and direct conflict in the lower court's decision with a decision of another district court of appeal or of this Court on the same question of law. Unlike *Moore*, defense counsel specifically requested the instruction on the "stand your ground" portion of the justifiable use of force which includes no duty to retreat and necessity which requires the defendant to have "no reasonable means to avoid the danger" which is the same thing as having a duty to retreat. (See attached appendix, pgs. 656, 658, 660-661) Had counsel not requested the "stand your ground" portion, there would have been

no alleged conflict on duty to retreat, which Respondents do not concede.

5. Petitioner is correct that defense counsel objected to the initial provocation part of the justifiable use of deadly force instruction, however, given the fact that he affirmatively requested the necessity instruction which included essentially the same thing, he waived the error just as in *Oliver*. Also, the instant case is factually distinguishable from both *Moore, supra* and *Floyd, supra*, in that justifiable use of deadly force was not Petitioner's sole defense as he also claimed necessity.

6. Last, courts have declined to find fundamental error where there is a factual dispute as to who was the initial aggressor. *Jackson v. State*, 180 So. 3d 1103 (Fla. 5th DCA 2015); *Woodsmall v. State*, 164 So. 3d 696 (Fla. 5th DCA 2015); *Sims v. State*, 140 So. 3d 1000, 1003, n. 3 (Fla. 1st DCA 2014). In the instant case, there was a factual dispute as to who was initial aggressor.

WHEREFORE, this Court should decline to exercise jurisdiction.

Respectfully submitted,

PAMELA JO BONDI
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Reply To Petitioner's Response has been furnished by U.S. Mail to John Dobbs, DOC# C00618, Jackson Correctional Institution, 5563 10th Street, Malone, FL, 32445, this 29th day of February, 2016.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and type of font used in this brief is 12-point Courier New, in compliance with Fla.R.App.P. 9.210(a)(2).

Robin A. Compton
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Counsel for Respondent