

IN THE FLORIDA SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

Joseph E. Bearden

PETITIONER

CASE NO. SC12-314

v.s.

STATE OF FLORIDA et al
RESPONDENT

APPEAL OF NO. 2 DA9-1325

CF07-002096-XX

BY
2012 AUG 21 PM 2:05
F. J. [unclear]

INITIAL BRIEF OF PETITIONER

PROSE ON THE MERITS

SEEKING REVIEW OF DECISION

OF THE SECOND DISTRICT
COURT OF APPEAL, LAKELAND, FLA.

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NIMATE'S INITIALS

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii, iii
PRELIMINARY STATEMENT	3-4
STATEMENT OF THE CASE AND FACTS.	5
SUMMARY OF ARGUMENT	5
ARGUMENT:	
POINT ONE	6
POINT TWO	8
POINT THREE	11
CONCLUSION + PRAYER FOR RELIEF.	15
CERTIFICATE OF SERVICE	16

TABLE OF CITATIONS

CASES	<u>PAGE</u>
<u>CARPENTER v. STATE</u> 785 So.2d 1182, 1203 (Fla. 2001) 9, 10
<u>Chambers v. Mississippi</u> 410 U.S. 284 (1973) 6, 7, 8
<u>Chandler v. FRETAG</u> 348 U.S. (1945) 14,
<u>De Wolfe v. STATE</u> 62 So.3d 1142 (1 DCA 2011) 9, 15
<u>FRANQUIS v. STATE</u> 699 So.2d 1312, 1318-19 (Fla. 1977) 9
<u>HAINES v. KERNER</u> , 92 S.Ct. 594 (1972) 4
<u>HENDERSON v. STATE</u> 20 So.2d 969 (Fla. 1945) 13
<u>Idaho v. Wright</u> 110 S.Ct. 3139 (1990) 9
<u>JONES v STATE</u> 709 So.2d 512, 525, (Fla 1989) 6, 7, 12
<u>Lilly v. Virginia</u> 119 S.Ct. 1887 (1999) 4
<u>MACHADO v. STATE</u> 787 So.2d. 112, 113, (4 DCA 2001) 10

Cite TABLE OF CITATIONS - CONT. Page
MASAKA v. STATE 4 So 3d at 1283.. 10

MCCRAY v. STATE 919 So.2d 647, 649
(1D CA 2006) .. 4

ORNEIAS v. U.S. 116 S.Ct. 1657 (1996) .. 4

Reddick v. State 190 So.2d 340 (FLA 1966) .. 13

SEARS v. UPTON 130 S.Ct. 3259 (US, Ga) 2010 .. 14

State v. DiQuitto 491 So.2d 1129, 1139 (FLA 1986) .. 12

TIME WARNER cable v. Doyle 66 F.3d
867 (7th Cir 1995) .. 8

Fla. Const. 1885 Declaration of Rights - 8,

ART 1 Sec 9. - 5, 8.

Sec. 16(a) - 5, 8.

Sec. 21 - 5, 8.

Fla. Evidence Code.

Fl 90.608 - 6,

90.804 (2) (C) - 8.

US Constitution - 5,

6 Amendment - 5, 7,

14 Amendment - 5, 7, 14,

5th Amendment - 7.

In this brief, Appellant in the DCA is the Petitioner and the Respondant was the Appellee in the District Court of Appeal Second District Lakehead Florida. The Parties shall be referred to as they appeared before the Hon. Court of Appeal, except that the Appellee may also be referred to as the State.

IN this brief, the symbol R. will be used to denote the record on appeal. The opinion of Appeals Court in particular the symbol T. will be used to denote the transcript of the lower court proceedings. Both symbols will be followed by appropriate page numbers.

All emphasis in this brief is supplied by the Appellant unless otherwise indicated.

STANDARD OF REVIEW.

AS TO COURT ERROR IS DE NOVO
Review MCCRAY v. STATE 919 So.2d
647, 649 (10CA 2006) Lilly v. VIRGINIA
119 S.Ct. 1887 (1999) MIXED QUEST-
IONS OF CONSTITUTION LAW THAT
INDEPENDANT REVIEW IS NECESSARY
TO MAINTAIN CONTROL OF AND TO
CLARIFY, THE LEGAL PRINCIPLES
GOVERNING THE FACTUAL CIRCUMSTANCES
NECESSARY TO SATISFY THE PROTECTIONS
OF THE BILL OF RIGHTS (QUOTING
ORNELAS v. U.S. 116 S.Ct. 1657 (1996)
AND PRO SE PETITIONS AND MOTIONS
AS THIS SHOULD BE LIBERALLY CONSTRUED
IN PETITIONERS FAVOR. HAINES v.
KERNER, 92 Sct. 594 (1972), THE ISSUE
AS BEFORE THIS HOW. COURT IS NOT ONLY
ONE OF GREAT PUBLIC IMPORTANCE AS ONE
WHICH MAY OCCUR AGAIN AS ERROR IF
NOT CORRECTED. ALSO ONE WHICH PETITIONER
WOULD BE SUBJECT TO IRREPARABLE HARM
IN THE FUTURE THRU THE DENIAL OF
MY CONSTITUTIONAL RIGHTS TO A TRIAL
BY JURY AS THE FACT FINDERS AND
TO A PRODUCTION OF WITNESSES
FOR THE DEFENSE AND FOR CREDIBILITY
TO BE DECIDED BY THE JURY AND
NOT THE 7th OR 13th JUROR. WHERE
TRIAL IS BEFORE 6 OR 12 MEMBERS.
(IN MY CASE THE HON. JUDGE WAS THE 13th JUROR).

STATEMENT OF CASE AND FACTS.

Petitioner has also filed a concurrent writ of Habeas Corpus claim alleging ineffective counsel on 1st Direct appeal and is proceeding with the Brief on the merits for Discretionary Review. Facts and procedural history stated. Pgs 2-3 of initial petition in this Hon. Court.

Summary of Argument.

Point one: The Lower Courts Decision is a unreasonable and erroneous Application of a Decision of the U.S. Supreme Court and the U.S. Constitution.

Point two: The Lower Courts Decision is contrary and unreasonable. Application of the law as against the Fla. Constitution and Laws Art 1 Sec. 9, and Sec. 16 (a), Art 1 Sec. 21

Point three: The lower Courts Decision is a unreasonable and erroneous violation of the 6th and 14th Amend of the U.S. Constitution. and was not harmless

ARGUMENT

Point ONE: The DISTRICT COURT OF APPEALS AFFIRMANCE ON DIRECT APPEAL IS AN UNREASONABLE, ERRONEOUS APPLICATION OF A DECISION OF THE U.S. SUPREME COURT AND THE U.S. CONSTITUTION AND LAWS.

Similar to Chambers v. Mississippi 410 U.S. 284 (1973) my case deals with purported statements that incriminated Ray Allen made to a third party Mr. Angela Tyler a family friend shortly after the murder of Mr. Ryan Skipper. In the record referred to as victim Skipper. The Hon. trial judge on his own used his interpretation of Chambers, and Fla. evidence code to find that the testimony was inadmissible - proffered testimony was not credible relying on JONES v. State 709 So. 2d 512, 525 (Fla. 1998) Further held that the defense could not call Ray Allen to ask him if he made the purported statements that Ray Allen was with William Brown and helped him when Skipper was killed even though he denied the actual stabbing under FS 90.608 a person can impeach a party but under Fla. law it is still improper for a party to call a person witness merely as a device to place impeachment testimony before a jury.

The lower court unreasonably applied and erroneously interpreted Chambers in a mechanistic manner, the a

Point Two: The Lower Courts Decision
is CONTRARY AND UNREASONABLE
Application OF the law as against
The FLORIDA Constitution AND Laws
Art 1 Sec. 9, and Sec. 16 (a), Art 1, Sec. 21.

IN ADDITION to misapplying Chambers
v. MISSISSIPPI cite omitted mechanically
and Florida evidence code 90.804 (2)(c)
to defeat the ends of Justice, I
was denied my Fla. Constitutional Rights
to a fair trial, 6th and 14th Amend
USCA. My Fla. Constitutional Rights
to produce witness in my behalf, Confront
my accusers, Trial by Jury, Right to
Counsel for my Defense, where state
Laws Rules conflict with National
Laws. The National laws are Superior.
Art 6 Sec. 2. US. Constitution laws of
any state not withstanding Time
WARNER Cable v. Doyle 66 F.3d 867 (7th
Cir 1995) Due process and equal protection
of US + state constitution prohibit using
the evidence code. to defeat the
Constitution ends of Justice. Fla Const
Art 1, Sec. 9, that no person shall be deprived
of life, liberty, . . . without due process of law.
Art 1, sec 16 (a) compulsory process for witnesses,
to confront adverse witnesses, Counsel, Art 1, sec.
21, Right to trial by Jury. Const, 1885 Declaration
of Rights. For the Jury to decide. Judge
only a gate keeping function decide whether

Corroborating circumstances show the declarant's trustworthiness. The relevant circumstances only include those surrounding the making of the statement and those that render the declarant worthy of belief.

FRANZ v. State 699 So.2d 1312, 1318-19 (Fla. 1997) citing Idaho v. Wright 110 S.Ct. 3139 (1990)

The lower courts unreasonably and erroneously used the Jones standard of review to deny relief.

IN a post conviction context as to newly discovered evidence where there is recantation testimony, etc. that's fine for the trial court judge is the sole determiner of credibility in a jury trial as a matter of my right to a fair trial per the 6th & 14th Amendments the jury and not the judge.

IN De Wolfe v. State 62 So.3d 1142 (10/20/11) that Hon. Court. noted that the trial judge should consider the language used and the setting in which the statement was made, and decide whether the statement is consistent with both the defendant's general version of events and other evidence presented at trial.

citing Masaka v. State 4 So.3d 1274, 1282, (2009) citing Carpeniter v.

STATE 785 So.2d 1182, 1203 (Fla. 2001)
Machado v. State 787 So.2d 112, 113
(Fla 4DCA 2001) that Credibility is
FOR the Jury Masaka v. State 450.
3d at 1283 (2DCA 2009)

In my case the excluded evidence was central to the defense where there was nothing but circumstantial evidence and theories who's account the "Jury" would believe as to who was with the deceased at the time of his murder who murdered him. That Ray Hiller was present and he had helped his twin William Brown and William Brown killed victim Skipper the statement was made spontaneously to an alleged acquaintance Ms. Angela Tyler, and against penal interest was made as a out of court confession. was unlikely fabricated at the time it was made.

Point three. The lower Courts decision is a UNREASONABLE AND ERRONEOUS VIOLATION OF THE 6th AND 14th AMEND. OF THE US. CONSTITUTION AND WAS NOT HARMLESS.

The ERROR WAS NOT HARMLESS, THE TRIAL JUDGE SUD SPEAR presented his own Chambers Analysis, to prevent me from calling Ray Allen and Ms. Angela Tyler as witnesses to prevent the Jury from hearing and deciding the facts and credibility of Ray Allen's statement against penal interest to Ms. Angela Tyler. and At the end of the Courts proffered testimony proceeding the Hon. Judge + 7th or 13th Juror stated to the States Attorney, "I believe that we've eliminated Angela Tyler & Ray Brown from being recalled, giving credence that the intent was not to insure due process, and Fair trial but contrary to Chambers etc omitted to mechanically defeat the ends of Justice, by keeping testimony away from the Jury that may would have

* (V18-2320) volume + page of transcript.

Reasonably affected the jury's verdict. State v. Digasio 491 So.2d 1129, 1139. (Fla. 1986) The state as the beneficiary of the error has the burden to show that the error was harmless, if the appellate court, reviewing court cannot say beyond a reasonable doubt that the error did not affect the verdict, then the error is by definition harmful.

At no time did the state even argue that the error in excluding the evidence would be harmless. and it can't be said beyond a reasonable doubt that the excluded testimony - could not have produced a reasonable doubt in the minds of the jurors, and would have led to acquittal.

Jones v. State 709 So.2d 512, 525 (Fla. 1998) was erroneously used by the lower court, to cast doubt on the credibility and reliability of witnesses. the evidence is entirely distinguishable it involved Felons coming forward with vague inculpatory comments made years after Jones's trial after Jones was sentenced to death, as a matter of law in Florida when a post-conviction evidentiary hearing is held, credibility and weight of the

evidence is to be determined by the Judge as the sole fact finder, At trial credibility is to be determined by the Jurers, not based on the preponderance of the evidence but beyond a reasonable doubt. based on the Constitution art 1, sec. 16 and 21 of Florida and the U.S. Constitution. No Curfear Judicial interference in Reddick v. State 190 so-2d. 340 (Fla 2DC 1966) where there is a conflict between the Constitution, and Rules, statutes etc. the Constitution controls, and is Superior as to Rights of the individual. As further support Henderson v. State 20 so 2d 469 (Fla 1945) the Right to confront and cross examine your accuser, and the Right to a fair trial by Jury is embedded in the state and Federal Constitution. and a manifest injustice is an exception to the procedural bar that would entitle one to relief. The proceedings denied me a fair trial where contrary to the 6th and 14th Amendment, the trial Judge invaded the province of the Jury, and prevented counsel from presenting a viable defense and the Jury was prevented from deciding the case on all the available evidence as fact finders as to Guilt or innocence in reference to my charge of Murder and accessory to murder.

Due Process per the 14th Amendment
of the US Constitution is mandatory
on the States Chandler v. Frezza
398 U.S. 3 (1970) and per the Fla.
Constitution. The Right
to call witnesses for the defense
is a part of that Constitution
due process established by the
Founders of this Great Government
of laws not people. and the
exclusion of my witness and
subversion of that Right constituted
a denial of Due process. From
Chambers cited in Sears v. Upton
130 S. Ct. 3259 (US GA, 2010).

Without the Constitution and Declaration
of Rights the proceedings would
become fundamentally lawless there
becoming as many laws as there
are men and would defeat the
purpose and ensue Judicial Tyranny,
and chaos. who's result would move
not only a people but a nation and
the world from one of civilization
to **Barbarity**, a leap backwards.
Instead of a **STEP** Forward.

CONCLUSION AND PRAYER FOR RELIEF.

THERE IS A CLEAR DIFFERENCE ON THE
SAME POINTS OF LAW IN THE SECOND
DCA IN MY CASE AND THE FIRST DCA.
AS TO CONSTITUTIONAL LAW AND THE
APPLICATION OF CHAMBERS V. MISSISSIPPI.
SEE DEWOLFE V. STATE 62 SO. 3D 1142 (10/4/2011)
AND THE DENIAL OF DUE PROCESS.
AND THE CONSTITUTION'S DECLARATION OF
RIGHTS AND RULES OF EVIDENCE, STATUTES
& CODES.

PRAYER FOR RELIEF.

THAT THIS HON. COURT WILL REVIEW
THIS CASE EXERCISING ITS INHERENT
POWER AND AUTHORITY, AND GRANT
WHAT EVER RELIEF IT DEEMS FIT
AND PROPER, AND WILL LIBERALLY
CONSTRUCT MY PETITION, ACCORDINGLY
AND NOT EXCLUDING REVERSAL THAT
THE LOWER COURTS THE SECOND DCA,
AND 10th JUDICIAL CIRCUIT ERRONEOUSLY
AND UNREASONABLY, INTERPRETED AND
MISAPPLIED CHAMBERS. THAT I WAS
DENIED A FAIR TRIAL & DUE PROCESS 14th USCA

Respectfully Submitted

~~X Joseph E. Bearden~~
PRINT NAME. Joseph E. Bearden

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THIS FOREGOING INITIAL BRIEF ON THE MERITS HAS BEEN FURNISHED BY 1ST CLASS MAIL TO OFFICE OF ATTORNEY'S GENERAL HON. Pam JO. Bondi, THE Capitol PL-01, TALLAHASSEE FLORIDA 32399 THIS 13 day OF Aug 2012.

this day I lost control of documents by giving same to prison officials for processing and mailing.

Respectfully Submitted
~~X Jeff Baskin~~