IN THE FLORIDA SUPREME COURT

FLORIDA SUPREME COURT CASE NO.
CIRCUIT COURT CASE NO.: 132000CF040026A000XX

COREY SMITH, Petitioner,

vs.

ASHLEY MOODY, Attorney General of the State of Florida,

and,

RICKY D. DIXON, Secretary, Department of Corrections, State of Florida,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT AND NATURE OF RELIEF SOUGHT

Petitioner, Corey Smith, comes to this Court seeking correction of a manifest injustice. The jury that decided Mr. Smith's guilt was instructed using erroneous jury instructions for the necessarily lesser-included charge of manslaughter for the five charges of first-degree murder and the one charge of second-degree murder. The use of the erroneous instructions deprived the jury of the means to differentiate between a first-degree murder and a lesser-included manslaughter. Under the instructions given, jurors could have convicted Mr. Smith even if they did not find that he intended to kill. Because Mr. Smith was prosecuted as a principal to all of the homicides and not even present for the killings (with the exception of the murder of Leon Hadley, wherein he was prosecuted as the actual killer), his intent was necessarily at issue. The error was fundamental under the law extant during the pendency of the direct appeal.

But for the ineffectiveness of appellate counsel in failing to raise this issue before this Court, the four convictions for first-degree murder and two convictions for manslaughter would have been reversed. As a result, the two first-degree murder convictions for which Mr. Smith is being resentenced, as well as the contemporaneous convictions for murder and man-

slaughter upon which the State intends to rely as aggravating factors at Mr. Smith's capital resentencing, are invalid and the state and federal Constitutions and fundamental fairness mandate habeas relief.

Due process requires this Court to grant his petition, vacate the convictions for first-degree murder and manslaughter, and remand for a new trial. This petition for habeas corpus relief is being filed to address substantial claims of constitutional error, which demonstrate that Mr. Smith was deprived of his right to a fair, reliable jury trial. The proceedings which resulted in his convictions and death sentences violated Mr. Smith's due process rights.

BASIS FOR INVOKING THE JURISDICTION OF THE COURT

The injustice which has occurred is that Mr. Smith was convicted of four counts of first-degree murder and two counts of the lesser-included manslaughter, when the jury was instructed with fundamentally erroneous jury instructions for the lesser-included charge of manslaughter. The jury was instructed that both first-degree murder and manslaughter necessitated the intent to kill. Absent, instructing the jury that there is a distinction between intentionally killing a person (murder) versus intentionally committing an act that causes the death of the victim (manslaughter), the jury was left to believe the two were the same, resulting in a conviction for first-degree

murder as opposed to the category-one lesser-included offense of manslaughter. Now, the State is again seeking the imposition of death for two of those first-degree murder convictions, convictions predicated upon the use of erroneous jury instructions, and is seeking to aggravate the sentences to death with the contemporaneous two first-degree murder convictions, for which Mr. Smith was sentenced to life without the possibility of parole, and two manslaughter convictions, for each of which Mr. Smith was sentenced to 15 years in the Florida Department of Corrections, as aggravating factors.

A procedural bar premised upon *res adjudicata* may be overcome in order to avoid manifest injustice:

> Under Florida law, 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." *Muehlman v. State*, 3 So. 3d 1149, 1165 (Fla. 2009) (alteration in original) (recognizing this Court's authority to revisit a prior ruling if that ruling was erroneous) (quoting *Parker v. State*, 873 So. 2d 270, 278 (Fla. 2004)); see *State v. J.P.*, 907 So. 2d 1101, 1121 (Fla. 2004) (same); *Parker v. State*, 873 So. 2d 270, 278(Fla. 2004) (same); see also *Fla. Dep't of Transp. v. Juliano,* 801 So. 2d 101, 106 (Fla. 2001) ("[A]n appellate court has the power to reconsider and correct an erroneous ruling that has become the law of the case where a prior ruling would result in a 'manifest injustice.'" (quoting *Strazulla v. Hendrick*, 177 So. 2d 1, 3 (Fla. 1965)(.

State v. Akins, 69 So. 3d 261, 268 (Fla. 2011).

Indeed, in *Strazulla v. Hendrick*, 177 So. 2d 1, 3-4 (Fla. 1965), this Court explained:

> In 1953 the decision in *Beverly Beach Properties v. Nelson, supra*, 68 So. 2d 604, was rendered. In that case this court stated plainly that
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> > 'We may change 'the law of the case' at any time before we lose jurisdiction of a cause and will never hesitate to do so if we become convinced, as we are in this instance, that our original pronouncement of the law was erroneous and such ruling resulted in manifest injustice. In such a situation a court of justice should never adopt a pertinacious attitude.'
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> . . .
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> In view of the apparent conflict, it is clear that the *Beverly Beach Properties* decision must be held to have impliedly, if not expressly, modified the earlier holding in *Family Loan Co. v. Smetal, supra*, and similar decisions; and, insofar as these earlier decisions may be construed as holding that an appellate court in this state is wholly without authority to reconsider and reverse a previous ruling that is 'the law of the case', we hereby expressly recede therefrom.
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> We think it should be made clear, however, that an appellate court should reconsider a point of law previously decided on a former appeal only as a matter of grace, and not as a matter of right; and that an exception to the general rule binding the parties to 'the law of the case' at the retrial and at all subsequent proceedings should not be made except in unusual circumstances and for the most cogent reasons-and always, of course, only where 'manifest injustice' will result from a strict and rigid adherence to the rule. *Beverly Beach Properties v. Nelson, supra.*

This Court's recognition of its "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" under *Muehlman v. State*, 3 So. 3d at 1165, is in accord with the well recognized inherent equitable powers vested in American courts. Indeed, a court's inherent equitable powers were explained in *Holland v. Florida*, 130 S. Ct. 2549, 2563 (2010), in which the U.S. Supreme Court explained:

> But we have also made clear that often the "exercise of a court's equity powers . . . must be made on a case-by-case basis." *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964). In emphasizing the need for "flexibility," for avoiding "mechanical rules," *Holmberg v. Armbrecht*, 327 U.S. 360, 375 (1946), we have followed a tradition in which courts of equity have sought to "relieve hardships which, from time to time, arise from a hard and fast adherence" to more absolute legal rules, which, if strictly applied, threaten the "evils of archaic rigidity," *Hazel-Atlas Glass Co. V. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944). The "flexibility" inherent in "equitable procedure" enables courts "to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct . . . particular injustices." *Ibid*.

The circumstances presented by Mr. Smith in this petition demonstrate "exceptional circumstances" such that "reliance on the previous decision would result in manifest injustice." *Muehlman v. State*, 3 So. 3d 1149, 1165 (Fla. 2009). This is because, as explained herein, this Court's original pronouncement of the law in Mr. Smith's prior appeal was erroneous and such ruling resulted in manifest injustice. When this Court previously denied Mr. Smith's claim under *Montgomery v. State*, 70 So. 3d 603 (Fla. 1st DCA 2009), this Court misunderstood the nature of the claim.

Moreover, the United States Supreme Court has held that there is, at a minimum, an equitable right to effective collateral counsel. *See Martinez v. Ryan*, 132 S. Ct. 1309 (2012). Mr. Smith was represented by attorney Charles White during the post-conviction proceedings, while Mr. White was also representing a charged co-conspirator and co-defendant, Latravis Gallashaw, in federal court, for the purpose of attempting to secure a reduction in Mr. Gallashaw's federal sentence. To the extent that Mr. Smith's court-appointed registry counsel filed a state habeas petition that failed to adequately address an obvious ineffective assistance of appellate counsel claim, Mr. Smith was denied his equitable right to effective collateral counsel, and his ineffective assistance of appellate counsel claim also should be entertained on the merits in this petition.

REQUEST FOR A STAY

Corey Smith is pending a capital resentencing trial for two counts of first-degree murder in Miami-Dade County, pursuant to this Court's Mandate in *Smith v. State*, 213 So. 3d 722 (Fla. 2017). The State is again seeking imposition of the death penalty. The trial is scheduled to begin August 28, 2023. Undersigned counsel for Mr. Smith was retained June 5, 2023, and is filing this petition as expeditiously as possible. Mr. Smith requests this Court grant this petition and in the interim, issue an Order to Show Cause to stay the proceedings in the lower court.

The dates of offense for the 17 counts charged in the Indictment in Mr. Smith's case span from 1994 to 1998. Practically speaking, the resentencing trial that is set to take place later this month occurs nearly 30 years after the crimes were committed, and is, in and of itself, already a re-sentencing. In this petition, Mr. Smith seeks to vacate his convictions for all the homicide charges - both convictions of first-degree murder and manslaughter. While Mr. Smith is only before the trial court for resentencing on the two convictions for first-degree murder wherein he received death sentences based on non-unanimous recommendations, the State is seeking to use the contemporaneous homicide convictions, addressed in this petition, as evidence of the aggravating factor colloquially known as the "prior violent felony" aggravator.

If Mr. Smith's convictions for the two counts for first-degree murder for which he is to be resentenced are vacated, as is sought in this petition, it serves no practical purpose to hold the resentencing trial and *then* address the constitutionality of the convictions themselves. Further, to allow the State to pursue use of homicide convictions predicated upon fundamentally erroneous jury instructions necessarily embeds error in this resentencing proceeding. Thusly, these issues should be addressed and resolved prior to the commencement of any retrial.

REQUEST FOR ORAL ARGUMENT

Due to the seriousness of the issues involved, Mr. Smith respectfully requests oral argument.

JURISDICTION TO ENTERTAIN PETITION AND GRANT HABEAS CORPUS RELIEF

The petition presents issues which directly concern the constitutionality of Mr. Smith's convictions and sentences of death. This Court has jurisdiction to entertain a petition for a writ of habeas corpus, an original proceeding governed by Fla. R. App. P. 9.100. This Court has original jurisdiction under Fla. R. App. P. 9.030(a)(3) and Article V, § 3(b)(9), Fla. Const.

The Constitution of the State of Florida guarantees that "[t]he writ of habeas corpus shall be grantable of right, freely and without cost." Art. I, § 13, Fla. Const. In its jurisdiction to issue writs of habeas corpus, this Court has an obligation to protect Mr. Smith's right under the Florida Constitution to be free from cruel or unusual punishment and it has the power to enter orders assuring that those rights are protected. *Allen v. State*, 636 So. 2d 494, 497 (Fla. 1994) (holding that the Court was required under Article I, § 17 of the Florida Constitution to strike down the death penalty for persons under 16 at time of crime); *Shue v. State*, 397 So. 2d 910 (Fla. 1981) (holding that this Court was required under Article I, § 17 of the Florida Constitution to invalidate the death penalty for rape); *Makemson v. Martin County*, 491 So. 2d 1109 (1986) (noting that "[t]he courts have authority to do things

that are essential to the performance of their judicial functions. The unconstitutionality of a statute may not be overlooked or excused"). This Court has explained: "It is axiomatic that the courts must be independent and must not be subject to the whim of either the executive or legislative departments. The security of human rights and the safety of free institutions require freedom of action on the part of the court." *Rose v. Palm Beach City*, 361 So. 2d 135, 137 n.7 (1978).

Where a guilty verdict stands and a Florida trial will decide only life or death, only the Supreme Court has jurisdiction over extraordinary writs. *See* Fla. Const. art. V, § 3(b)(1) (stating the supreme court "[s]hall hear appeals from final judgments of trial courts imposing the death penalty"); 2) Fla. Const. art. V, § 3(b) (7) (stating the supreme court "[m]ay issue writs of prohibitions to courts and all writs necessary to the complete exercise of its jurisdiction").

Applying this specifically granted authority, the Court has repeatedly asserted its exclusive authority to decide any and all issues pertaining to our state's death penalty. In *State v. Jackson,* 306 So. 3d 936, 939 (Fla. 2020), the Court explained its jurisdiction to hear a writ of prohibition against a Circuit Court presiding, as here, over a *Hurst* resentencing proceeding. *Hurst v. State*, 202 So. 3d 40 (Fla. 2016). It employed a two-step analysis. *First*, the Court has jurisdiction under Article five, section 3 (b)(7)

to issue writs necessary to complete its "'ultimate jurisdiction,' conferred elsewhere in the constitution." *Id.* (quoting *Williams v. State*, 913 So. 2d 541, 543 (Fla. 2005)). *Second*, the Court used its subsidiary all-writs jurisdiction in order to aid its ultimate capital-direct-review jurisdiction under section (3)(b)(1). *Id.* The Court added that it was entertaining the writ to "decide an issue unique to capital cases or to the death sentence itself." *State v. Preston*, 376 So. 2d 3, 4 (Fla. 1979). That is already before this Court on direct appeal and that has resulted in at least one vacated death sentence being reinstated by a circuit court in the absence of a resentencing proceeding." *Id.*

Jackson is not the first case but rather one of many in which this Court has made similar pronouncements about its jurisdiction deriving from the combination of sections (3)(b)(1) and (3)(b)(7), which it has called "exclusive." *See State v. Fourth Dist. Ct. of Appeal*, 697 So. 2d 70, 71 (Fla.1997) ("In order to clarify our position, we now hold that in addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all types of collateral proceedings in death penalty cases. This includes cases in which this Court has vacated a death sentence and remanded for further penalty proceedings. However, our jurisdiction does not include cases in which the death penalty is sought but not yet imposed, or cases in which we have vacated both the conviction and sentence of

death and remanded for a new trial.") (citation omitted); *State v. Durousseau*, No. SC20-297, 2020 WL 7693135 n.1 (Dec. 28, 2020) (unreported) (noting, in capital resentencing where the State filed a writ in First District Court of Appeal to overturn trial court's decision excluding evidence from the proceeding, that "the First District transferred the petition to this Court. We review it under our jurisdiction to issue 'all writs necessary to the complete exercise of [our] jurisdiction'") - (quoting Fla. Const. Art. V, § 3(b)(7)); *Farina v. State*, 191 So. 3d 454, 454–55 (Fla. 2016) (noting in capital resentencing in which petitioner sought review of trial court's order dismissing his motion for new trial based on newly discovered evidence pertaining to his guilt verdict that this "Court has jurisdiction because Farina's death sentence was vacated and remanded for further proceedings, but his murder conviction remains").

The two-step analysis in *Jackson* disproves the District Court's jurisdiction here. Just as the all-writs jurisdiction of section (3)(b)(7) does "'not constitute a separate source of original or appellate jurisdiction" but instead "operates as an aid to the Court in exercising its 'ultimate jurisdiction,' conferred elsewhere in the constitution." *Jackson*, 306 So. 3d at 939 (quoting *Williams*, 913 So. 2d at 543), section 4(b)(3) endows this Court with the authority only to "issue writs of mandamus, certiorari, prohibition, quo warran-

to, and other writs necessary to the complete exercise of its jurisdiction." Fla. Const. Art. V, § 4(b)(3). This is a limited, not blanket grant of authority.

That authority, no different from that endowed in the Supreme Court by section (3)(b)(7), *Engel v. City of North Miami*, 111 So. 2d 92, 93 (Fla. 3d DCA 1959), confers no separate source of appellate jurisdiction on the District Court of Appeal. It merely operates as an aid to the District Court of Appeal in exercising its ultimate jurisdiction. "[I]f this court does not have direct appeal jurisdiction, it has no jurisdiction to issue a special writ." *State ex rel Bettendorf v. Martin Cnty. Environmental Control Hearing Bd.*, 564 So. 2d 1227, 1228 (Fla. 4th DCA 1990). The District Courts of Appeal have repeatedly so held.[1]

The Third District Court of Appeal will never have ultimate jurisdiction over Mr. Smith's case, unless and until the murders convictions for which

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[1] *State ex rel Bettendorf*, 564 So. 2d at 1228 ("Special writ jurisdiction follows the appellate process. Jurisdiction to issue a writ of prohibition and all writs necessary or proper to the complete exercise of a court's jurisdiction is limited to such writs in proceedings involving a subject matter over which that court has original or appellate jurisdiction.") (citing *State ex rel. Fla. Real Estate Commission v. Anderson*, 164 So. 2d 265 (Fla. 2d DCA 1964)); *Eckert v. Board of Com'rs of North Broward Hosp. Dist.*, 720 So. 2d 1151, 1153 (Fla. 4th DCA 1998) (same); Fla. Dept. of Community Affairs v. Escambia Cnty., 582 So. 2d 1237, 1239 (Fla. 1st DCA 1991) ("Because ultimate review of the final order of the Administrative Commission is in this court, an extraordinary petition to review a nonfinal order or to challenge the jurisdiction of the agency or DOAH is properly filed in this court, not the Circuit Court."); *Department of Health, Bd. of Dentistry v. Barr*, 882 So. 2d 501 (Fla. 1st DCA 2004) (same limitation on circuit court writs).

he received death are vacated. If he is again sentenced to death after this resentencing trial, the case will return to the Supreme Court; if life, no appeal will be available. The District Court of Appeal will have no "ultimate jurisdiction" here, if Mr. Smith was to proceed to his resentencing trial now; and has no all-writs jurisdiction now.[2] *Compare with State v. Perry,* 192 So. 3d 70, 72 (Fla. 5th DCA 2016) (assuming jurisdiction over State's petition for a writ of prohibition, where potentially-capital case was pretrial, and would, in the event of a life sentence or lesser punishment, be appealable to this Court).

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[2] The Third District Court of Appeal could, by contrast, have ultimate jurisdiction over this case if Mr. Smith's convictions had been reversed and he was in the Circuit Court for a full re-trial, because the district courts of appeal have jurisdiction to hear appeals taken as of right from trial courts, Fla. Const. Art. V, § 4(b)(1), and any conviction could potentially be reviewed in that court (absent another sentence of death). That is why the Supreme Court held in *Fourth District Court* that its exclusive jurisdiction "does not include cases in which the death penalty is sought but not yet imposed, or cases in which we have vacated both the conviction and sentence of death and remanded for a new trial." 697 So. 2d at 71. *See also State v. Preston*, 376 So. 2d 3, 4–5 (Fla. 1979) (rejecting jurisdiction, concerning pretrial motions in first-degree murder case, and transferring writs to the District Court of Appeals because "the issues in these types of motions are not unique to capital cases or to the death sentence itself" and there "is no compelling reason that they cannot be reviewed in the district courts like all other interlocutory matters in the course of a criminal proceeding"); *cf. Evans v. State*, 213 So. 3d 856, 859 (Fla. 2017) (taking jurisdiction over pretrial petitions for writs of prohibition concerning issue uniquely pertaining to capital sentencing arising under revised statutory scheme in chapter 2016–13, Laws of Florida).

This Court has provided the example of *declining* extraordinary-writs jurisdiction where its ultimate jurisdiction will not be aided. In addition to the directive in this regard in *Fourth District Court*, in *Williams*, 913 So. 2d at 543, cited by *Jackson*, this Court declined to exercise its all-writs jurisdiction to correct allegedly illegal sentences because the petitioners had not cited an "independent jurisdictional basis that would allow the Court to exercise its all writs authority, and no such basis is apparent on the face of the petitions." *Id.* at 544 (distinguishing *Bedford v. State*, 633 So. 2d 13 (Fla.1994) as a case in which the Court, because it had reviewed the capital case earlier on direct appeal, had later exercised all-writs jurisdiction in aid to its ultimate authority under section (3)(b)(1) to review death sentences).

Jackson also illustrates that the statement in *Fourth District Court* about "collateral proceedings in capital cases" being in the exclusive jurisdiction of this Court is not limited to collateral attacks on death sentences. 697 So. 2d at 71. *Jackson* involved a capital resentencing in which the defendant/respondent had no sentence at all, but was awaiting capital resentencing. It did not involve a collateral attack on a death sentence, but the analysis outlined in all of the above cases remained the same. The posture here is the same. Here, too, the Supreme Court has jurisdiction.

This Court must protect Mr. Smith's Sixth, Eighth and Fourteenth Amendment rights under the U.S. Constitution. Where constitutional rights--whether state or federal--of individuals are concerned, this Court may not abdicate its responsibility in deference to the legislative or executive branches of government. Instead, this Court is required to exercise its independent power of judicial review. *Ford v. Wainwright*, 477 U.S. 399 (1986).[3]

The fundamental constitutional errors challenged herein in the context of a capital case warrant habeas relief. *See Wilson*, 474 So. 2d at 1163; *Baggett v. Wainwright*, 229 So. 2d 239, 243 (Fla. 1969). The reasons set forth herein demonstrate that the Court's exercise of its jurisdiction, and of its authority to grant habeas relief, is warranted in this action.

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Mr. Smith was indicted on December 13, 2000, along with seven other co-defendants, in a 17-count Indictment. Addressing only the homicide

[3] This Court has consistently maintained an especially vigilant control over capital cases, exercising a special scope of review. *Elledge v. State*, 346 So. 2d 998, 1002 (Fla. 1977); *Wilson v. Wainwright*, 474 So. 2d 1162, 1165 (Fla. 1985). This Court has not hesitated in exercising its inherent jurisdiction to review issues arising in the course of capital collateral proceedings. *State v. Lewis*, 656 So. 2d 1248 (Fla. 1995). This petition presents substantial constitutional questions concerning the administration of capital punishment in this State consistent with the United States and Florida Constitutions.

charges, Smith was indicted for five counts of first-degree murder and one count of second-degree murder. Exhibit A (Indictment).

Mr. Smith's trial began October 4, 2004. Mr. Smith was convicted of four counts of first-degree murder for the murders of Cynthia Brown, Leon Hadley, Jackie Pope, and Angel Wilson. The penalty phase lasted three days in February of 2005. The jury recommended life for the murders of Leon Hadley and Jackie Pope and death for the murders of Cynthia Brown (by a vote of 10-2) and Angel Wilson (by a vote of 9-3). The Court followed the jury's recommendation and sentenced Mr. Smith to death for the murders of Ms. Brown and Ms. Wilson and life for the murders of Mr. Hadley and Mr. Pope.

For the alleged first-degree murder of Melvin Lipscomb, Mr. Smith was convicted of manslaughter without a firearm and sentenced to 15 years in the Florida Department of Corrections. For the alleged second-degree murder of Marlon Beneby, Mr. Smith was convicted of manslaughter without a firearm and sentenced to 15 years in the Florida Department of Corrections. Both victims were shot and killed.

This Court affirmed Mr. Smith's convictions and sentences on March 19, 2009. *Smith v. State*, 7 So. 3d 473 (Fla. 2009). This Court detailed the deaths of all six victims in its opinion. Of the six homicide convictions, the State's theory of prosecution was that a person other than Mr. Smith com-

mitted five of the six killings, those killings allegedly happening at the order or behest of Mr. Smith. Only the murder of Leon Hadley was believed to have been personally committed by Mr. Smith. But not initially. The State prosecuted Mark Roundtree for the murder of Leon Hadley initially. Roundtree was convicted of the murder of Leon Hadley and sentenced to life in prison. While serving that sentence, Roundtree gave a number of different statements about his involvement in Mr. Hadley's death, implicating Mr. Smith, even going so far as to admit that he, Roundtree, was in the car, but had not shot Mr. Hadley. Roundtree later admitted that he had made up this involvement in Mr. Hadley's death to make himself more helpful as a witness to the State in the hope of receiving a reduced sentence in exchange for his testimony. In spite of Rountree's obvious credibility issues, the State still utilized his testimony in its prosecution of Mr. Smith. Ultimately, after he testified against Mr. Smith, Roundtree's conviction and sentence were vacated and he was resentenced to time served for conspiracy to commit the murder of Leon Hadley, and Roundtree walked out the door a free man.

To summarize, three of the four murders for which Mr. Smith was convicted were committed by someone other than Mr. Smith. Both of the manslaughters were committed by someone other than Mr. Smith. Mr. Smith was only prosecuted as the actual killer of Leon Hadley, *after* some-

one else was prosecuted, convicted and sentenced to life in prison, and then received a significant reduction in his sentence in return for his testimony against Mr. Smith, for the murder of Mr. Hadley.

On appeal from the denial of the Rule 3.851 Motion, the Florida Supreme Court affirmed the trial court's denial of all of the post-conviction claims, with the exception of Mr. Smith's claim related to the constitutionality of Florida's death penalty sentencing scheme. On March 16, 2017, in light of *Hurst v. Florida*, 202 So. 3d 40 (Fla. 2016), this Court remanded the two counts wherein Mr. Smith received death sentences based on non-unanimous death recommendations for a *de novo* penalty phase resentencing trial. The mandate issued April 6, 2017. *Smith v. State*, 213 So. 3d 722 (Fla. 2017).

Contemporaneous to the filing of the appeal of the denial of the Rule 3.851 Motion, post-conviction counsel filed a Petition of Writ of Habeas Corpus Based Upon Ineffective Assistance of Counsel on Appeal alleging a number of claims. The fourth claim alleging ineffective assistance of appellate counsel (ISSUE IV THAT APPELLATE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO CHALLENGE THE JURY INSTRUCTION ON MANSLAUGHTER GIVEN AT TRIAL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION ON DIRECT APPEAL) reads as follows, in its entirety:

In Issue XI of his Initial Brief, SMITH complains that his trial counsel failed to object to the principal instruction given in connection with the conspiracy counts as constituting ineffective assistance of counsel. *Ramirez v. State*, 371 So.2d 1063 (Fla. 3d DCA 1979), which held that a principal instruction should not given with respect to a conspiracy count was controlling precedent at the time of the trial. If trial counsel had objected, and cited *Ramirez*, the court would have likely held to the jury instructions so that the principal instruction amended would not have applied to the conspiracy counts. SMITH has shown that failure to have objected constituted ineffective assistance of counsel citing *McKay v. State*, 988 So.2d 51 (Fla. 3d DCA 2008); *Evans v. State*, 985 So.2d 1105 (Fla. 3d DCA 2007).

In the Order denying SMITH's 3.851 Motion, the Court found that the adequacy of the jury instructions was an issue that should have been raised on direct appeal citing *Johnson v. State*, 903 So.2d 888, 899 (Fla. 2005). It therefore found SMITH's claim procedurally barred.

To the extent that the Court was correct, appellate counsel was ineffective for failing to challenge the jury instruction as plain error. If prior counsel was not required by the standards of her profession to raise plain error, any procedural bar erected by the Court should be removed, and the issue allowed to proceed as presented in the Initial Brief.

Although the Court below sought to excuse trial counsel from having failed to anticipate a change in the law, appellate counsel could also be found ineffective for failing to argue that the manslaughter instruction given in this case was fundamentally flawed. *Pierce v. State,*121 So. 3d 1091 (Fla. 5th DCA 2013).

In *Pierce*, the Court noted that although appellate counsel is not necessarily required to anticipate changes in the law, appellate counsel can be ineffective for failing to raise favorable cases decided by other jurisdictions during the pendency of an appeal that could result in a reversal. For instance, before *Montgomery* was decided by this Court, it was before the First District Court of Appeals. *Montgomery v. State*, 70 So.3d 603 (Fla. 1st DCA 2009). On February 12, 2009, which was before the Opinion affirming the Judgment and Sentences in this case, the First District held that the standard manslaughter instruc-

> tion, which was utilized in this case, improperly suggested an intent to kill. Since the legal argument had been adopted in one district court case, albeit by another district, appellate counsel was ineffective for failing to raise the argument. *Shabazz v. State*, 955 So.2d 57 (Fla. 1st DCA 2007) (holding appellate counsel ineffective for failing to raise favorable cases from other districts in Florida even though controlling law in district which appeal was heard was unfavorable); *Ortiz v. State*, 905 So. 2d 1016 (Fla. 2d DCA 2005) (determining that appellate's counsel's failure to request supplemental briefing on favorable appellate decision from other district court constituted ineffective assistance of counsel); *Whatley v. State*, 679 So. 2d 1269 (Fla. 2d DCA 1966) (determining that although issue was not completely settled, counsel was ineffective for failing to cite favorable case law from another district in effect at time of pending appeal).
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> Since the district court in *Montgomery* had already been issued, appellate counsel had a duty to bring the holding of that decision to the attention of this Court. Failure to do so constituted ineffective assistance of counsel on appeal.

Mr. Smith had also attempted to raise the issue during the pendency of his post-conviction proceeding by filing a *pro se* motion to amend the Rule 3.851 Motion, which was treated as a nullity because he was represented by counsel. In addressing the alleged ineffective assistance of appellate counsel claim, this Court wrote:

> Smith asserts that his appellate counsel was also ineffective in failing to challenge the jury instruction on manslaughter. We decided *Montgomery*, however, in April 2010, which was several months after we affirmed Smith's direct appeal of his convictions and sentences. Appellate counsel cannot be deemed ineffective for failing to anticipate the change in law. *See Nelms v. State*, 596 So. 2d 441, 442 (Fla. 1992).

> Smith also relies on the First District's decision in *Montgomery v. State*, 70 So.3d 603, 604 (Fla. 1st DCA 2009), approved, 39 So.3d 252 (Fla. 2010). Because trial counsel for Smith did not object to the manslaughter instruction, appellate counsel would have been required to demonstrate fundamental error. *See Daniels v. State*, 121 So. 3d 409, 417 (Fla. 2013). "Failing to instruct on an element of the crime over which the record reflects there was no dispute is not fundamental error." *Id.* at 417–18 (quoting *Garzon v. State*, 980 So. 2d 1038, 1042 (Fla. 2008)). Here, Smith has failed to allege that the intent element was in dispute. Because we find that this claim would have lacked merit had it been raised by appellate counsel, we conclude that Smith has failed to demonstrate that his appellate counsel was ineffective in this regard. Accordingly, we deny this habeas claim.

Smith, 213 So. 3d at 746.

CLAIM

THE MURDER AND MANSLAUGHTER CONVICTIONS WERE OBTAINED USING FUNDAMENTALLY ERRONEOUS JURY INSTRUCTIONS IN VIOLATION OF MR. SMITH'S RIGHTS PURSUANT TO THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION.

I. THE LAW CHANGED PRIOR TO MR. SMITH'S CASE BECOM ING FINAL.

This Court made an unreasonable factual determination in the *Smith* opinion dated March 16, 2017. The Court viewed the record as a failure by appellate counsel to anticipate - but, the Court simply got the dates wrong - *Montgomery* was decided BEFORE Mr. Smith's case became final. Mr. Smith's case became final April 13, 2009. The First District Court of Appeal decided *Montgomery v. State* on February 12, 2009. Thus, Mr. Smith's case

was not final when *Montgomery* was decided by the First District Court of Appeal. Therefore, Mr. Smith's appellate counsel would have not needed to anticipate a change in the law when the law changed while Mr. Smith's appeal was still pending.

In *Montgomery*, the First District Court of Appeal certified a conflict with the Fifth District Court of Appeal and certified a question of great public importance to the Florida Supreme Court: IS THE STATE REQUIRED TO PROVE THAT THE DEFENDANT INTENDED TO KILL THE VICTIM IN ORDER TO ESTABLISH THE CRIME OF MANSLAUGHTER BY ACT? Those issues were still pending resolution before the Florida Supreme Court when Mr. Smith's case became final, but the timing has no bearing on whether or not Mr. Smith could have raised the *Montgomery* issue in his direct appeal after the First District Court of Appeal decided *Montgomery*.

Appellate counsel had a constitutional duty under the Sixth Amendment to keep abreast of changes in the law. *See Johnson v. State*, 796 So. 2d 1227 (Fla. 4th DCA 2001) ("A reasonably effective criminal defense attorney must keep himself or herself informed of significant developments in the criminal law, including decisions of other district courts around Florida."), citing *Villavicencio v. State*, 719 So. 2d 322, 323 (Fla. 3d DCA 1998), rev. denied, 732 So. 2d 329 (Fla. 1999).

In *Knight v. State*, 267 So. 3d 38, 47 (Fla. 1st DCA 2018), the District Court held:

> R. Regulating Fla. Bar 4-1.1, Competence "A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."), and cmt. ("Maintaining competence. To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, . . . and comply with all continuing legal education requirements to which the lawyer is subject."); see also *Johnson v. State*, 796 So. 2d 1227, 1228-29 (Fla. 4th DCA 2001) ("A reasonably effective criminal defense attorney must keep himself or herself informed of significant developments in the criminal law . . . .") (cited in *Monroe v. State*, 191 So. 3d 395, 404 n.7 (Fla. 2016).

Had appellate counsel kept herself informed of the significant developments of decisions of district courts across Florida, as is required by the law and the rules regulating practitioners admitted to practice law in Florida referenced above, counsel would have been aware of the decision in *Montgomery v. State*, 70 So. 3d 603 (Fla. 1st DCA 2009). Once aware, reasonably effective counsel would have moved this Court for leave to amend the initial brief on merits on direct appeal and/or to stay the issuance of an opinion in Mr. Smith's case, pending the resolution of the certified conflict and question of great public importance. This Court would have likely granted such requests. *See Cotto v. State*, 141 So. 3d 615 (Fla.

4th DCA 2014) ("Because the issue in this case is presently on review by the Florida Supreme Court in *Falcon v. State*, 111 So. 3d 973 (Fla. 1st DCA), rev. granted, No. SC13-865, 137 So. 3d 1019, 2013 Fla. LEXIS 1259, 2013 WL 6978507 (Fla. June 3, 2013), and we are confident that the court will make a full determination of the issues presented, we stay issuance of our mandate in this case pending the outcome of that proceeding. Other cases pending with this court raising this same issue shall be stayed by order pending the outcome in Falcon."). *See also Florida Nat'l Bank v. Genova*, 460 So. 2d 895 (Fla. 1984) ("That appeal has been stayed pending the outcome of the decision of this Court in this case."); *Golphin v. State*, 945 So. 2d 1174 (Fla. 2006) ("The proceedings in *Mays v. State*, No. SC04-2149, have been stayed pending the resolution of the instant case."); *Walker v. State*, 988 So. 2d 6 (Fla. 2d DCA 2007) ("The State has sought review of *Walker*, 964 So. 2d 886, in the Florida Supreme Court, and the appeal has been assigned case number SC07-1866. That case has been stayed, however, pending the outcome in *Collins v. State,* 893 So. 2d 592 (Fla. 2d DCA 2004), review granted, *State v. Collins*, 929 So. 2d 1054 (Fla. 2006), which presents a similar issue.")

Ultimately, this Court answered the question of great public importance in the negative: the crime of manslaughter by act does not require

the State to prove that the defendant intended to kill the victim. The Court affirmed the First District Court of Appeal's holding, reversing and remanding Mr. Montgomery's case for a new trial. *State v. Montgomery*, 39 So. 3d 252 (Fla. 2010). Subsequently, this Court receded from its decision in *Montgomery* to the extent that a conviction one-step removed from the erroneous jury instruction for a lesser-included offense did not necessitate reversal. *See Knight v. State*, 286 So. 3d 147, 151-152 (Fla. 2019) ("We thus recede from our precedents to the extent they found fundamental error based on an erroneous jury instruction for a lesser-included offense one step removed from the offense of conviction.")

Be that as it may, the law in effect at the time of Mr. Smith's appeal controlled. *See Wheeler v. State*, 344 So. 2d 244, 245 (Fla. 1977) ("The decisional law in effect at the time an appeal is decided governs the issues raised on appeal, even where there has been a change of law since the time of trial.")

Had appellate counsel been reasonably effective, the outcome of the appeal would have been the vacatur of the homicide convictions and remand for a new trial. Mr. Smith timely raised an ineffective assistance of appellate counsel claim in a state habeas petition, and this Court accepted jurisdiction and issued the opinion outlined herein. Therefore, this Court

may issue a writ of habeas corpus under the manifest injustice exception or any other relief possible if it finds that the initial opinion was in error in light of the facts and law presented herein. *See Figueroa v. State*, 84 So. 3d 1158 (Fla. 2nd DCA 2012).

II. USE OF THE ERRONEOUS INSTRUCTIONS WAS FUNDAMENTAL ERROR.

This Court made an unreasonable factual determination in regard to the controlling law regarding manslaughter instructions during Mr. Smith's direct appeal proceedings. The law was that instructing the jury with the necessarily lesser-included manslaughter jury instructions, which instructed that the State was required to prove that the defendant had the intent to kill, was error; appellate counsel was ineffective; the error was fundamental because the intent of Mr. Smith was necessarily at issue wherein he was prosecuted pursuant to the principal theory and not even present for the killings. *See Smith v. State*, 213 So. 3d 722 (Fla. 2017).

This Court overlooked the fact that the decisional law at the time of Mr. Smith's appeal held that the failure to properly instruct the jury on manslaughter without the element of intent to kill - even where instructing the jury on the lesser-included manslaughter by act with intent to kill went un-

objected to - was fundamental error. *See Montgomery v. State*, 70 So. 3d 603 (Fla. 1st DCA 2009).

The First District Court of Appeal in *Montgomery* held that by virtue of its verdict of second-degree murder, the jury necessarily found that Montgomery lacked the intent to kill the victim. As here, the court in the *Montgomery* case instructed the jury as to the lesser-included crime of manslaughter by act thusly:

> The State had to prove "two things: The first being again that [the victim] is dead and, secondly, that Mr. Montgomery intentionally caused her death." After an intervening instruction regarding excusable and justifiable homicide, the court continued, "In order to convict of manslaughter by intentional act it is not necessary for the state to prove that the defendant had a premeditated design to cause death...." These instructions are consistent with the standard jury instructions for second-degree murder and manslaughter by act. See Fla. Std. Jury Instr. (Crim.) 7.4, 7.7.

Montgomery v. State, 70 So. 3d 603, 604 (Fla. 1st DCA 2009).

This Court held that Mr. Smith failed to demonstrate fundamental error because he failed to show that intent was at issue. Intent was inherently at issue in Mr. Smith's case because he was not prosecuted as the actual killer of any of the victims, with the exception of Leon Hadley. Furthermore, in its decision, which this Court affirmed, the First District Court of Appeal held that by virtue of its verdict of second-degree murder, the jury necessarily made a finding that Montgomery did not intend to kill the victim. Here,

we do not have the benefit of any finding as to whether Mr. Smith was the actual killer or what his intent may have been, other than he was convicted as charged of four counts of first-degree murder and two counts of the lesser-included offense of manslaughter.

There was no interrogatory sought as to whether Mr. Smith was the actual killer, and in fact, the theory of prosecution for three of the four murder convictions was that Mr. Smith was not the actual killer - and the verdict forms reflect accordingly. Mr. Smith was convicted of the murder of Leon Hadley *with* a firearm (firearm interrogatory given). Despite the fact that Jackie Pope and Angel Wilson were shot and killed, Mr. Smith was convicted of both of their murders, *without* a firearm (firearm interrogatory given). It is clear that the jury did not wholly accept the State's principal theory of prosecution that Mr. Smith was guilty of all of the actions of his co-defendants. Ms. Brown was not killed with a firearm, and as such, no firearm interrogatory was given on the verdict form.

Most significantly, it is clear from the verdict forms themselves, the jury grappled with the offense on which to convict Mr. Smith related to the homicide charges Exhibit B (verdict forms). As to Count XII, for the murder of Jackie Pope, guilty of a lesser-included crime of manslaughter was Xed, as well as the interrogatory for manslaughter, "without a firearm." Those Xs were then scribbled over and guilty of first-degree murder and without a

firearm Xed. Similarly, Count XIII, as to the second-degree murder of Marlon Beneby, second-degree murder was Xed and then scribbled over and ultimately the lesser-included crime of manslaughter and without a firearm designated as the verdict. Again, similarly, Count VII, as to the first-degree murder of Melvin Lipscomb, the jury initially Xed guilty of first-degree murder and then changed its verdict to guilty of the lesser-included crime of manslaughter without a firearm for Mr. Smith's role in the death of Melvin Lipscomb.

Manslaughter by act with intent to cause death is statutorily similar to first-degree murder, but for premeditation. Because the State's theory of prosecution for all of the homicide charges, with the exception of the murder of Leon Hadley (and the quality and credibility of that investigation and prosecution is noted above), was that Mr. Smith was not the actual killer, Mr. Smith's intent was necessarily at issue. The jury made no specific findings regarding intent, other than to convict Mr. Smith of first-degree murder for four of the killings and manslaughter for two of the killings. The jury clearly struggled with those decisions, as delineated by the changes in verdicts reflected on the forms. If the jury believed the State's theory of prosecution for the killings of Melvin Lipscomb and Marlon Beneby, Mr. Smith would have been convicted of first-degree murder and second-degree murder respectively. However, Mr. Smith was convicted of manslaughter with-

out a firearm for his role in those killings. It is clear the jury did not entirely accept with the State's principal theory prosecutions. For every homicide count, the investigation and prosecution of Mr. Smith necessarily included the testimony of co-conspirators and co-defendants, people who actually killed the victims and received a benefit to testify against Mr. Smith. It is now recognized, and the jury is accordingly instructed, that such testimony is to be considered with great caution because these witnesses are inherently less credible.

The manslaughter by act standard instructions have now been changed to reflect, dependent upon the evidence, regarding the intentionality of the defendant's actions, either that: a) (Defendant) intentionally committed an act or acts that caused the death of (victim); or b) (Defendant) intentionally procured an act that caused the death of (victim). Rather than intending to cause death, the manslaughter instructions reflect that the State must prove that the defendant intentionally committed an act that caused death or intentionally procured an act that caused death.

The jury in this case may have decided that Mr. Smith committed an intentional act that caused the death of the victims as opposed to intentionally killing the victims. And, due to the fundamental error, the appellate courts are unable to make this determination. It is a capital first-degree murder case; intent should not be left to guesswork and speculation. *See*

Montgomery v. State, 70 So. 3d 603, 607 (Fla. 1st DCA 2009) (“The manslaughter by act instruction would be more accurate if it provided that the State was required to prove that the defendant "committed an intentional act that caused the death of the victim." Because this language is not present, the instruction is misleading.”). It was the trial court’s duty to properly instruct the jury in this case. Absent, instructing the jury that there is a distinction between intentionally killing a person versus intentionally committing an act that causes the death of the victim, the jury was left to believe the two were the same, resulting in a conviction for first-degree murder as opposed to the category-one lesser-included offense of manslaughter.

A reasonable arbiter of fact, properly instructed on the requisite level of intent, would have found that Mr. Smith intentionally committed the act of RICO and RICO/Conspiracy which resulted in the death of the victims in this case. The above rationale is even more true because Mr. Smith was charged under the principal theory, and the jury was advised that Mr. Smith was guilty of each of the acts of the co-defendants as if Mr. Smith committed the acts himself. Had the jury been instructed properly that it could find Mr. Smith guilty of manslaughter (or third-degree murder) by committing the intentional acts of RICO and RICO/Conspiracy resulting in the death of the

victims as opposed to committing an intentional killing of the victims, the outcome of the proceedings would have been different.

The Indictment in this case charged that Mr. Smith, and others known and unknown, did unlawfully and feloniously kill the victims, from a premeditated design to effect the death of the victims. Mr. Smith was also charged with RICO/Conspiracy and Racketeering/RICO. The jury could have found that the intentional act of agreeing and conspiring to commit RICO and RICO/Conspiracy, which resulted in the death of the victims, warranted a conviction for manslaughter (or third-degree murder); however, the jury was never afforded the opportunity to make this determination due to the erroneous jury instruction that was read in this case.

Although this Court found that Mr. Smith failed to allege that the intent element was in dispute, this Court overlooked the fact that absent the distinction between *intentionally killing* a person (murder) or *intentionally committing an act* that causes the death of the victim (manslaughter) the jury was left to believe the two were the same, resulting in a conviction for first-degree murder as opposed to the category one lesser-included offense of manslaughter.

Given the facts of this case, fundamental error did occur. This Court overlooked these facts and the above cited law when rendering its prior decision in *Smith v. State*, 213 So. 3d 722 (Fla. 2017).

Furthermore, this Court held in *Montgomery* that the error was fundamental and per se reversible where the conviction was one step removed from the erroneous instruction on the lesser-included offense. *State v. Montgomery,* 39 So. 3d 252, 259 (Fla. 2010) ("Because Montgomery's conviction for second-degree murder was only one step removed from the necessarily lesser-included offense of manslaughter under *Pena,* fundamental error occurred in his case which was per se reversible where the manslaughter instruction erroneously imposed upon the jury a requirement to find that Montgomery intended to kill Ellis."). This Court also discussed that where the conviction is twice removed from the erroneous instruction, the error is not per se reversible, but rather is subject to harmless error analysis, writing:

> In *Pena,* we concluded that "when the trial court fails to properly instruct on a crime two or more degrees removed from the crime for which the defendant is convicted, the error is not per se reversible, but instead is subject to a harmless error analysis." *Pena,* 901 So. 2d at 787. We explained that
>
> > the significance of the two-steps-removed requirement is more than merely a matter of number or degree. A jury must be given a fair opportunity to exercise its inherent "pardon"

> power by returning a verdict of guilty as to the next lower crime. If the jury is not properly instructed on the next lower crime, then it is impossible to determine whether, having been properly instructed, it would have found the defendant guilty of the next lesser offense.

State v. Montgomery, 39 So. 3d 252, 259 (Fla. 2010).

The error in Mr. Smith's case is fundamental error for the reasons discussed herein, and this Court has held that all fundamental error is harmful, while noting that not all harmful error is fundamental. *Reed v. State*, 837 So. 2d 366, 370 (Fla. 2002). If the error is fundamental, and therefore necessarily harmful, it cannot be subjected to harmless error analysis. *Reed*, 837 So. 2d at 369-370 ("Furthermore, we take this occasion to clarify that fundamental error is not subject to harmless error review."). Even so, if the Court was to apply a harmless error test here, the State would fail and Mr. Smith's homicide convictions would still necessitate reversal.

> The harmless error test, as set forth in *Chapman* and progeny, places the burden on the state, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction.

State v. DiGuilio, 491 So. 2d 1129, 1135 (Fla.1986)

Here, there is greater than a reasonable probability that the error contributed to the verdicts, for the reasons discussed herein, and even if the harmless error test was applied, the State cannot prove beyond a reasonable doubt that the error did not contribute to the verdicts.

Mr. Smith again faces the possibility of a death sentence and it would be a manifest injustice to allow this error to perpetuate, notwithstanding the fact that Mr. Smith's convictions have now since long become final. To proceed with the resentencing trial for the two convictions of first-degree murder wherein Mr. Smith was previously sentenced to death based on non-unanimous recommendations and to allow for the introduction of the convictions for contemporaneous prior violent felonies, all of which resulted from the use of fundamentally erroneous jury instructions, violates Mr. Smith's constitutional rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

This is a capital case in which the prosecution asks the trial court to impose the death penalty. Heightened standards of due process apply. *Elledge v. State*, 346 So. 2d 998 (Fla. 1977) *Mills v. Maryland*, 108 S. Ct. 1860, 1866 (1988) ("In reviewing death sentences, the Court has demanded even greater certainty that the jury's conclusions rested on

proper grounds."), *Proffitt v. Wainwright*, 685 F. 2d 1227, 1253 (11th Cir. 1982) ("Reliability in the factfinding aspect of sentencing has been a cornerstone of [the Supreme Court's death penalty] decisions."), and *Beck v. Alabama*, 447 U.S. 625, 638, 100 S. Ct. 2382, 65 L.Ed.2d 392 (1988 (same principles apply to guilt determination). "Where a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed." *Gregg v. Georgia*, 428 U.S. 153, 187, 96 S. Ct. 2909, 49 L.Ed.2d 859 (1976) (plurality opinion) (citing cases).

Due process, under the U.S. and Florida Constitutions, requires this Court to grant, vacate, and remand for a new trial. Because both the first-degree murder jury instruction and the manslaughter jury instruction given in this case contained an element of intent to kill, the jury had no means to distinguish between the greater or lesser charges, and to return a verdict as to a homicide without intent to kill.

CONCLUSION AND RELIEF SOUGHT

The resulting convictions for first-degree murder and manslaughter, whether the sentence be death, life or a term of years in prison, stand in violation of due process and fundamental fairness. Habeas relief is warranted. For all the reasons discussed herein, Mr. Smith respectfully urges this

Court to grant habeas corpus relief, vacating his convictions for first-degree murder and manslaughter and remanding for new trials to determine guilt.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of August, 2023, I electronically filed the foregoing Petition for Writ of Habeas Corpus with the Clerk of the Court by using the e-filing portal system which will send a notice of electronic filing to the following: Allison Ferber Miller, Esq., Craig Whisenhunt, Esq., Ripley Whisenhunt, PLLC, 8130 66th St., Suite 3, Pinellas Park FL 33781-2111, allison@rwlaw.org, craig@rwlaw.org; Michael Von Zamft, E.R. Graham Building 1, 350 NW 12 Avenue, Miami, FL 33136-2111, MichaelVonZamft@miamisao.com; Office of the Attorney General, capapp@myfloridalegal.com; Honorable Andrea Wolfson, Circuit Judge, Circuit Judge, 11th Judicial Circuit, 1351 N.W. 12th, ST., Miami, FL 33125, F061@jud11.flcourts.org

By: */s/ Allison Ferber Miller*
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CERTIFICATE OF COMPLIANCE

I certify that this Petition for Writ of Habeas Corpus was prepared in compliance with Florida Rule of Appellate Procedure 9.045.

By: */s/ Allison Ferber Miller*
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Exhibit A

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA - SPRING TERM, 2004

F00-40026A-H (06)

INDICTMENT

STATE OF FLORIDA v.

(A) COREY SMITH,
also known as "BUBBA",

(B) LATRAVIS GALLASHAW,
also known as "TRAV",

(C) ANTONIO GODFREY,
also known as "GARHEAD",

(D) JULIUS STEVENS,
also known as "JUDOG",

(E) ERIC STOKES,
also known as "ERIC STEWART",
also known as "CRAZY E",

(F) JEAN HENRY,
also known as "HAITIAN JEAN",

(G) EDDIE HARRIS,
also known as "EDDIE BO",

and

(H) CHAZRE DAVIS,
also known as "CRIP",

Defendants.

I. RICO/CONSPIRACY (A-H)
895.03(4) and 777.011 F1

II. RACKETEERING/RICO (A-F)
895.03 and 777.011 F1

III. CANNABIS/CONSPIRACY TO TRAFFICK
(A,B,C,D,E,F)
893.135(5) & 777.011 F1

IV. COCAINE/CONSPIRACY TO TRAFFICK
(A,B,C,D,E,F)
893.135(5), 777.04(3) & 777.011 F1

V. CONSPIRACY TO COMMIT FIRST
DEGREE MURDER (A)
782.04(1), 777.04(3) and 777.011 F1

VI. FIRST DEGREE MURDER (A)
782.04(1), 775.087, 775.0845
and 777.011 FC

VII. FIRST DEGREE MURDER (A,C)
782.04(1), 775.087 and 777.011 FC

VIII. MURDER/PREMEDITATED/ATTEMPT (C)
782.04(1)(A)1, 775.087 & 777.011 F1

IX. CONSPIRACY TO COMMIT FIRST
DEGREE MURDER (A,H)
782.04(1), 777.04(3) and 777.011 F1

X. FIRST DEGREE MURDER (A,H)
782.04(1) and 777.011 FC

XI. CONSPIRACY TO COMMIT FIRST DEGREE
MURDER (A,D,E,F)
782.04(1), 777.04(3) and 777.011 F1

XII. FIRST DEGREE MURDER (A,D,E,F)
782.04(1), 775.087 and 777.011 FC

XIII. MURDER SECOND DEGREE/FIREARM (A,B)
782.04(2), 775.087 and 777.011 F1

XIV. FIRST DEGREE MURDER (B)
782.04(1), 775.087 and 777.011 FC

XV. CONSPIRACY TO COMMIT FIRST DEGREE
MURDER (A,D,E,F,G)
782.04(1), 777.04(3) and 777.011 F1

XVI. FIRST DEGREE MURDER (A,D,E,F,G)
782.04(1), 775.087 and 777.011 FC

XVII. FIRST DEGREE MURDER/SOLICIT (B)
782.04, 777.04(2) and 777.011 FC

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that from as early as July, 1994, until on or about January 5, 1999, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", JEAN HENRY a/k/a "HAITIAN JEAN", EDDIE HARRIS a/k/a "EDDIE BO", and CHAZRE DAVIS a/k/a "CRIP", did unlawfully and feloniously conspire with another person or persons, to wit: COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", Antonio Allen, JEAN HENRY a/k/a "HAITIAN JEAN", EDDIE HARRIS a/k/a "EDDIE BO", and CHAZRE DAVIS a/k/a "CRIP", and others both known and unknown, or endeavor to violate any of the provisions of s. 895.03, Florida Statutes, in violation of s. 895.03(4) and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

THE ENTERPRISE

The defendants, along with others known and unknown, were members of an enterprise operating in Miami-Dade County, Florida, known as the "John Doe" organization ("enterprise"). The enterprise profited by distributing powdered cocaine, crack cocaine and marijuana in Liberty City, Overtown and Coconut Grove, Florida. The enterprise also used violence and threats of violence to maintain order, to expand its base of operation and to retaliate against rival drug organizations.

The leaders of the "John Doe" organization paid other conspirators to carry out specific tasks. "Lieutenants" were hired to manage the drug distribution operation at the drug sale points called the "holes." "Street sellers" were hired to sell drugs at the holes, and to collect the proceeds of drug sales. "Lookouts" were hired to watch for police activity. "Gunmen" were hired to provide security for the holes. "Table men" were hired to process and package quantities of cocaine and marijuana for distribution.

The enterprise and its members used standard telephones, pay telephones, cellular telephones and paging devices to set up drug deals. The members of

the organization used coded language to indicate drug types, quantities and prices in an attempt to avoid law enforcement detection. The organization maintained records detailing the amount of money and drugs each street seller had "on the books."

The organization would work in two "shifts" at each hole. Each shift had its own lookouts, street sellers, gunmen and lieutenants overseeing operations.

To prepare the members and associates of the organization to engage in acts of violence, the organization acquired and maintained an arsenal of automatic and semi-automatic weapons.

ROLES WITHIN THE ENTERPRISE

The defendants shared responsibilities within the organization, but generally had the following roles within the enterprise:

COREY SMITH was the leader of the organization.

LATRAVIS GALLASHAW was a top lieutenant who oversaw the daily operations of the organization.

JULIUS STEVENS a/k/a "JUDOG", ANTONIO GODFREY a/k/a "GARHEAD", JEAN HENRY a/k/a "HAITIAN JEAN", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and EDDIE HARRIS, also known as "EDDIE BO", were lieutenants, and served as managers and enforcers for the organization.

CHAZRE DAVIS a/k/a "CRIP" was a person instrumental in allowing the enterprise access to victim CYNTHIA BROWN.

CONSPIRATORIAL ACTS

In furtherance of the conspiracy and in order to effect the objectives thereof, members of the enterprise (the organization) agreed to commit at least one of the following acts, among others, in Miami-Dade County, Florida, and elsewhere.

A. From July, 1994, up until January, 1999, COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did agree, conspire, combine or confederate with each other and Antonio Allen, and others both known and unknown, to traffick, sell, manufacture, or deliver, or possess with intent to traffick,

sell, manufacture, deliver, cocaine and marijuana, meaning all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

B. Beginning on approximately August 14th, 1995, and continuing up to and including August 21, 1995, COREY SMITH a/k/a "BUBBA", discussed with members of the organization killing LEON HADLEY, a rival drug dealer.

C. On or about August 21, 1995, COREY SMITH a/k/a "BUBBA", and PHIL WHITE and KELVIN COOK A/K/A CALVIN COOK, while wearing masks, did unlawfully and feloniously kill LEON HADLEY, by shooting LEON HADLEY with a firearm.

D. On or about August 27, 1996, ANTONIO GODFREY a/k/a "GARHEAD", did kill MELVIN LIPSCOMB, by shooting MELVIN LIPSCOMB with a firearm.

E. On or about November 7, 1996, COREY SMITH a/k/a "BUBBA", shot and killed DOMINIQUE JOHNSON, a rival drug dealer.

F. Between March 12, 1997, and July 25, 1997, COREY SMITH a/k/a "BUBBA", and CHAZRE DAVIS a/k/a "CRIP", did unlawfully and feloniously agree, conspire, combine, or confederate with each other, and others known and unknown, to murder CYNTHIA BROWN,

G. On or about July 23, 1997, COREY SMITH a/k/a "BUBBA", arranged for and caused the murder of CYNTHIA BROWN, a witness to SMITH's murder of DOMINIQUE JOHNSON.

H. On or about July 24, 1997, COREY SMITH a/k/a "BUBBA", and CHAZRE DAVIS a/k/a "CRIP", did unlawfully and feloniously kill CYNTHIA BROWN by asphyxiation.

I. On or about March 31, 1998, COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did agree, conspire, combine, or confederate with each other and others known and unknown to murder JACKIE POPE.

J. On or about March 31, 1998, JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did kill JACKIE POPE, by shooting JACKIE POPE with a firearm.

K. On or about July 23, 1998, LATRAVIS GALLASHAW a/k/a "TRAV", shot MARLON BENEBY, a drug seller for the "John Doe" organization, over a dispute concerning profits from drug sales. BENEBY died as a result of the gunshot wounds inflicted by GALLASHAW.

L. On or about September 10, 1998, Antonio Allen possessed 466 small bags containing over 158 grams of powdered cocaine, 359 small bags containing over 55 grams of crack cocaine, money and a handgun.

M. On or about September 22, 1998, Winston Harvey possessed 26 pounds of marijuana and money intended for LATRAVIS GALLASHAW.

N. On or about September 30, 1998, Charles Clark possessed approximately 80 small bags containing 30.7 grams of crack cocaine, 62 small bags containing 13.6 grams of powdered cocaine, two .38 caliber revolvers, one .25 caliber revolver and $846 in cash.

O. On or about October 24, 1998, LATRAVIS GALLASHAW a/k/a "TRAV", possessed $16,000 and a trafficking amount of narcotics.

P. On or about December 1, 1998, COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", EDDIE HARRIS a/k/a "EDDIE BO", and JEAN HENRY a/k/a "HAITIAN JEAN", did kill ANGEL WILSON, by shooting ANGEL WILSON with a firearm.

Q. On or about December 11, 1998, ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JULIUS STEVENS a/k/a "JUDOG", while attempting to kill ANTHONY FAIL, shot in excess of thirty rounds of ammunition into a dwelling occupied by four adults and five children.

R. On or about December 16, 1998, JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", JEAN HENRY a/k/a "HAITIAN JEAN" and EDDIE HARRIS a/k/a "EDDIE BO" fled from STOKES' residence, where an assault rifle was found. STEVENS discarded a second gun while being chased by law enforcement personnel.

COUNT II

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that from as early as July, 1994, until on or about January 5, 1999, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", consisting of and being associated with an enterprise, to wit: the "JOHN DOE" GANG, an individual or group of individuals associated in fact, although not a legal entity, for the purpose of engaging in criminal activities, did unlawfully, knowingly and feloniously conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt, in violation of s. 895.03 and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

INCIDENTS OF RACKETEERING

In furtherance of the enterprise and in order to effect the objectives thereof, the members of the enterprise (the organization) committed at least two of the following incidents, among others, in Miami-Dade County, Florida, and elsewhere.

A. From July, 1994, up until January, 1999, COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did unlawfully and feloniously agree, conspire, combine or confederate one with the other and with Antonio Allen and others known and unknown, to commit a felony under the laws of the State of Florida, to wit: The unlawful Trafficking in Cannabis, meaning all parts of the plant Cannabis Sativa, including all varieties thereof, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, in an amount in excess of 50 pounds but less than 2,000 pounds, said conspiracy being in violation of s. 893.135(5) and s. 777.011, Florida Statutes.

B. From July, 1994, up until January, 1999, COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did unlawfully and feloniously agree, conspire, combine or confederate with another person or persons, to wit: COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", Antonio Allen, JEAN HENRY a/k/a "Haitian Jean", and others both known and unknown, to commit a felony under the laws of the State of Florida, to wit: unlawful Trafficking in Cocaine, or any mixture containing cocaine, as described in s. 893.03(2)(a), Florida Statutes, in an amount of 400 grams or more, said conspiracy being in violation of s. 893.135(5)(b), s. 777.04(3), and s. 777.011, Florida Statutes.

C. On or about August 21, 1995, COREY SMITH a/k/a "BUBBA", and PHIL WHITE and KELVIN COOK A/K/A CALVIN COOK, while wearing masks, did unlawfully and feloniously kill a human being, to wit: LEON HADLEY, from a premeditated design to effect the death of the person killed or any human being, by shooting the said LEON HADLEY with a firearm, in violation of s. 782.04(1), s. 775.087 , s. 775.0845 and s. 777.011, Florida Statutes.

D. On or about August 27, 1996, ANTONIO GODFREY a/k/a "GARHEAD", did unlawfully and feloniously kill a human being, to wit: MELVIN LIPSCOMB, from a premeditated design to effect the death of the person killed or any other human being, by shooting the said MELVIN LIPSCOMB with a firearm, in violation of s. 782.04(1), s. 775.087 and s. 777.011, Florida Statutes.

E. Between March 12, 1997, and July 25, 1997, COREY SMITH a/k/a "BUBBA", and CHAZRE DAVIS a/k/a "CRIP", did unlawfully and feloniously agree, conspire, combine, or confederate with another person or persons, to wit: CHAZRE DAVIS and/or COREY SMITH, and others known and unknown, to commit a criminal offense, to wit: Murder in the First Degree, upon CYNTHIA BROWN, in violation of s. 782.04(1), s. 777.04(3) and s. 777.011, Florida Statutes.

F. On or about July 24, 1997, COREY SMITH a/k/a "BUBBA", and CHAZRE DAVIS a/k/a "CRIP", did unlawfully and feloniously kill a human being, to wit: CYNTHIA BROWN, from a premeditated design to effect the death of the person killed or any human being, by asphyxiation, in violation of s. 782.04(1) and s. 777.011, Florida Statutes.

G. On or about March 31, 1998, COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did unlawfully and feloniously agree, conspire, combine, or confederate with another person or persons, to wit: COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", to commit a criminal offense, to wit: Murder in the First Degree, upon JACKIE POPE, in violation of s. 782.04(1), s. 777.04(3) and s. 777.011, Florida Statutes.

H. On or about March 31, 1998, JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did unlawfully and feloniously kill a human being, to wit: JACKIE POPE, from a premeditated design to effect the death of the person killed or any other human being, by shooting the said JACKIE POPE with a firearm, in violation of s. 782.04(1), s. 775.087 and s. 777.011, Florida Statutes.

I. On or about July 23, 1998, LATRAVIS GALLASHAW a/k/a "TRAV", did unlawfully, feloniously and 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, kill MARLON BENEBY a/k/a "BIG SHORTY", by shooting the said MARLON BENEBY a/k/a "BIG SHORTY" with a firearm, in violation of s. 782.04(2), s. 775.087 and s. 777.011, Florida Statutes.

J. From about June 1, 1998, until January 1, 1999, COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", JEAN HENRY a/k/a "HAITIAN JEAN", and EDDIE HARRIS a/k/a "EDDIE BO", did unlawfully and feloniously agree, conspire, combine, or confederate with another person or persons, to wit: COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", EDDIE HARRIS, a/k/a "EDDIE BO", and JEAN HENRY a/k/a "HAITIAN JEAN", to commit a criminal offense, to wit: Murder in the First Degree, upon ANTHONY FAIL, in violation of s. 782.04(1), s. 777.04(3) and s. 777.011, Florida Statutes.

K. On or about December 1, 1998, COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", EDDIE HARRIS a/k/a "EDDIE BO", and JEAN HENRY a/k/a "HAITIAN JEAN", did unlawfully and feloniously kill a human being, to wit: ANGEL WILSON, from a premeditated design to effect the death of the person killed or any other human being, by

shooting the said ANGEL WILSON with a firearm, in violation of s. 782.04(1), s. 775.087 and s. 777.011, Florida Statutes.

L. On or about December 11, 1998, ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JULIUS STEVENS a/k/a "JUDOG", with a premeditated design to kill ANTHONY FAIL and/or JAMES HARVEY, and while attempting to kill ANTHONY FAIL and/or JAMES HARVEY, shot in excess of thirty rounds of ammunition into a dwelling occupied by four adults and five children, in violation of s. 782.04(1), s. 775.087 and s. 777.011, Florida Statutes.

COUNT III

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that from July, 1994, up until January, 1999, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did unlawfully and feloniously agree, conspire, combine or confederate one with the other and with Antonio Allen and others known and unknown, to commit a felony under the laws of the State of Florida, to wit: The unlawful Trafficking in Cannabis, meaning all parts of the plant Cannabis Sativa, including all varieties thereof, whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, in an amount in excess of 50 pounds but less than 2,000 pounds, said conspiracy being in violation of s. 893.135(5) and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT IV

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that from July, 1994, up until January, 1999, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did unlawfully and feloniously agree, conspire, combine or confederate with another person or persons, to wit: COREY SMITH a/k/a "BUBBA", LATRAVIS GALLASHAW a/k/a "TRAV", ANTONIO GODFREY a/k/a "GARHEAD", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", Antonio Allen, JEAN HENRY a/k/a "HAITIAN JEAN", and others both known and unknown, to commit a felony under the laws of the State of Florida, to wit: unlawful Trafficking in Cocaine, or any mixture containing cocaine, as described in s. 893.03(2)(a), Florida Statutes, in an amount of 400 grams or more, said conspiracy being in violation of s. 893.135(5)(b), s. 777.04(3), and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT V

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that beginning on approximately August 14, 1995, and continuing up to and including August 21, 1995, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", and others known and unknown, did unlawfully and feloniously agree, conspire, combine, or confederate with another person or persons, to wit: MARK ROUNDTREE, JULIUS STEVEN, and/or persons known or unknown at this time, to commit a criminal offense, to wit: Murder in the First Degree, upon LEON HADLEY, in violation of s. 782.04(1), s. 777.04(3) and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT VI

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about August 21, 1995, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", and others known and unknown, did unlawfully and feloniously kill a human being, to wit: LEON HADLEY, from a premeditated design to effect the death of the person killed or any human being, by shooting the said LEON HADLEY with a firearm, in violation of s. 782.04(1), s. 775.087, s. 775.0845 and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT VII

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about August 27, 1995, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", and ANTONIO GODFREY a/k/a "GARHEAD", did unlawfully and feloniously kill a human being, to wit: MELVIN LIPSCOMB, from a premeditated design to effect the death of the person killed or any other human being, by shooting the said MELVIN LIPSCOMB with a firearm, in violation of s. 782.04(1), s. 775.087 and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT VIII

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about August 27, 1995, within the County of Miami-Dade, State of Florida, ANTONIO GODFREY a/k/a "GARHEAD", did unlawfully and feloniously attempt to kill a human being, to wit: OSCAR ANDERSON, from a premeditated design to effect the death of the person killed or any human being, by shooting the said OSCAR ANDERSON with a weapon, to wit: A firearm, in violation of s. 782.04(1)(a)1, s. 777.04(1), s. 775.087, and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT IX

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that between March 12, 1997, and July 25, 1997, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", and CHAZRE DAVIS a/k/a "CRIP", did unlawfully and feloniously agree, conspire, combine, or confederate with another person or persons, to wit: CHAZRE DAVIS a/k/a "CRIP" and/or COREY SMITH a/k/a "BUBBA", and others known and unknown, to commit a criminal offense, to wit: Murder in the First Degree, upon CYNTHIA BROWN, in violation of s. 782.04(1), s. 777.04(3) and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT X

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about July 24, 1997, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", and CHAZRE DAVIS a/k/a "CRIP", did unlawfully and feloniously kill a human being, to wit: CYNTHIA BROWN, from a premeditated design to effect the death of the person killed or any human being, by asphyxiation, in violation of s. 782.04(1) and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT XI

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about March 31, 1998, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did unlawfully and feloniously agree, conspire, combine, or confederate with another person or persons, to wit: COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", to commit a criminal offense, to wit: Murder in the First Degree, upon JACKIE POPE, in violation of s. 782.04(1), s. 777.04(3) and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT XII

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about March 31, 1998, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", and JEAN HENRY a/k/a "HAITIAN JEAN", did unlawfully and feloniously kill a human being, to wit: JACKIE POPE, from a premeditated design to effect the death of the person killed or any other human being, by shooting the said JACKIE POPE with a firearm, in violation of s. 782.04(1), s. 775.087 and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT XIII

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about July 23, 1998, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", and LATRAVIS GALLASHAW a/k/a "TRAV", did unlawfully, feloniously and 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, kill MARLON BENEBY a/k/a "BIG SHORTY", by shooting the said MARLON BENEBY a/k/a "BIG SHORTY", with a firearm, in violation of s. 782.04(2), s. 775.087 and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

APR 05 2005

/s/ Albert Acuña, ASA

COUNT ~~XIII~~ XIV

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about September 13, 1998, within the County of Miami-Dade, State of Florida, LATRAVIS GALLASHAW a/k/a "TRAV", did unlawfully and feloniously kill a human being, to wit: KEVIN SMALLS, from a premeditated design to effect the death of the person killed or any other human being, by shooting the said KEVIN SMALLS with a firearm, in violation of s. 782.04(1), s. 775.087 and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT XV

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that from about June 1, 1998, until January 1, 1999, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", JEAN HENRY a/k/a "HAITIAN JEAN", and EDDIE HARRIS a/k/a "EDDIE BO", did unlawfully and feloniously agree, conspire, combine, or confederate with another person or persons, to wit: COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", EDDIE HARRIS, a/k/a "EDDIE BO", and JEAN HENRY a/k/a "HAITIAN JEAN", to commit a criminal offense, to wit: Murder in the First Degree, upon ANTHONY FAIL, in violation of s. 782.04(1), s. 777.04(3) and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT XVI

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about December 1, 1998, within the County of Miami-Dade, State of Florida, COREY SMITH a/k/a "BUBBA", JULIUS STEVENS a/k/a "JUDOG", ERIC STOKES a/k/a "ERIC STEWART" a/k/a "CRAZY E", JEAN HENRY a/k/a "HAITIAN JEAN", and EDDIE HARRIS a/k/a "EDDIE BO", did unlawfully and feloniously kill a human being, to wit: ANGEL WILSON, from a premeditated design to effect the death of the person killed or any other human being, by shooting the said ANGEL WILSON with a firearm, in violation of s. 782.04(1), s. 775.087 and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

COUNT XVII

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that from approximately July 30, 2000, until October 31, 2000, within the County of Miami-Dade, State of Florida, LATRAVIS GALLASHAW a/k/a "TRAV", did unlawfully and feloniously solicit, command, encourage, hire, or request another person, to wit: "TRISH GETER KELLY", to commit a criminal offense, to wit: Murder in the First Degree, upon Assistant State Attorney JARRETT WOLF, in violation of s. 782.04, s. 777.04(2) and s. 777.011, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

Jose A Martinez

JOSE A. MARTINEZ
FOREPERSON OF THE GRAND JURY

(A) BLACK; MALE; DOB 08/17/72; SS #: 264-63-8237
(B) BLACK; MALE; DOB 01/02/78; SS #: 589-01-8472
(C) BLACK; MALE; DOB 01/26/72; SS #: 591-20-4184
(D) BLACK; MALE; DOB 03/15/74; SS #: 265-67-7079
(E) BLACK; MALE; DOB 11/19/76; SS #: 591-09-4064
(F) BLACK; MALE; DOB 02/02/77; SS #: 265-79-1927
(G) BLACK; MALE; DOB 03/30/78; SS #: (unknown)
(H) BLACK; MALE; DOB 05/31/63; SS #: 265-69-6483

Exhibit B

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

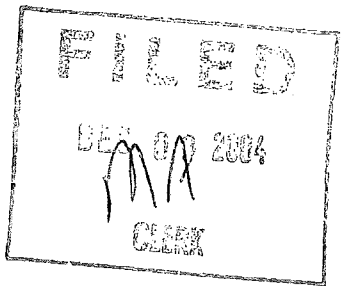
Plaintiff,

vs.

COREY SMITH,
also known as "BUBBA",

Defendant.

Case No. F00-40026 A
Judge Bernstein



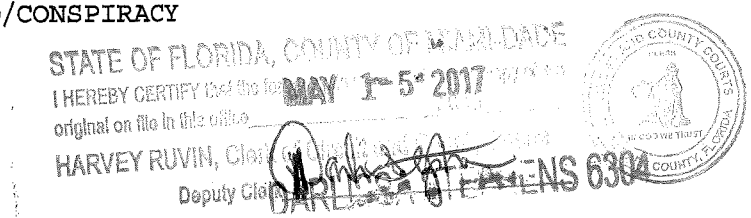
VERDICT

We the jury, in Miami-Dade County, Florida, this 3 day of DEC., 2004, find the defendant, COREY SMITH, also known as "BUBBA",

AS TO COUNT I:

(A.) ☒ GUILTY of RICO/CONSPIRACY

B. ☐ NOT GUILTY



AS TO COUNT II:

(A.) ☒ GUILTY of RACKETEERING/RICO

B. ☐ NOT GUILTY

AS TO COUNT III:

(A.) ☒ GUILTY of CANNABIS/CONSPIRACY TO TRAFFICK

1. ☒ The quantity of the substance involved was in excess of 50 pounds but less than 2,000 pounds.

2. ☐ The quantity of the substance involved was 2,000 pounds or more but less than 10,000 pounds.

3. ☐ The quantity of the substance involved was 10,000 pounds or more.

B. ☐ NOT GUILTY

AS TO COUNT IV:

(A.) ☒ GUILTY of COCAINE/CONSPIRACY TO TRAFFICK

1. ☐ The quantity of the substance involved was in excess of 28 grams but less than 200 grams.

2. ☐ The quantity of the substance involved was 200 grams or more but less than 400 grams.

3. ☒ The quantity of the substance involved was 400 grams or more but less than 150 kilograms.

B. ☐ NOT GUILTY

AS TO COUNT V:

A. ☒ GUILTY of CONSPIRACY TO COMMIT FIRST DEGREE MURDER of Leon Hadley

B. ☐ NOT GUILTY

AS TO COUNT VI:

(A.) ☒ GUILTY of FIRST DEGREE MURDER of Leon Hadley

1. ☒ with a firearm

2. ☐ without a firearm

B. ☐ GUILTY of lesser included crime of SECOND DEGREE MURDER of Leon Hadley

1. ☐ with a firearm

2. ☐ without a firearm

C. ☐ GUILTY of lesser included crime of MANSLAUGHTER of Leon Hadley

1. ☐ with a firearm

2. ☐ without a firearm

D. ☐ NOT GUILTY

AS TO COUNT VII:

A. ☒ GUILTY of FIRST DEGREE MURDER of Melvin Lipscomb

1. ☐ with a firearm

2. ☐ without a firearm

B. ☐ GUILTY of lesser included crime of SECOND DEGREE MURDER of Melvin Lipscomb

1. ☐ with a firearm

2. ☐ without a firearm

(C.) ☒ GUILTY of lesser included crime of MANSLAUGHTER of Melvin Lipscomb

1. ☐ with a firearm

2. ☒ without a firearm

D. ☐ NOT GUILTY

AS TO COUNT IX:

(A.) ☒ GUILTY of CONSPIRACY TO COMMIT FIRST DEGREE MURDER of Cynthia Brown

B. ☐ NOT GUILTY

AS TO COUNT X:

(A.) ☒ GUILTY of FIRST DEGREE MURDER of Cynthia Brown

B. ☐ GUILTY of lesser included crime of SECOND DEGREE MURDER of Cynthia Brown

C. ☐ GUILTY of lesser included crime of MANSLAUGHTER of Cynthia Brown

D. ☐ NOT GUILTY

AS TO COUNT XI:

(A.) ☒ GUILTY of CONSPIRACY TO COMMIT FIRST DEGREE MURDER of Jackie Pope

B. ☐ NOT GUILTY

AS TO COUNT XII:

A. ☒ GUILTY of FIRST DEGREE MURDER of Jackie Pope

1. ☐ with a firearm

2. ☒ without a firearm

B. ☐ GUILTY of lesser included crime of SECOND DEGREE MURDER of Jackie Pope

1. ☐ with a firearm

2. ☐ without a firearm

C. ☒ GUILTY of lesser included crime of MANSLAUGHTER of Jackie Pope

1. ☐ with a firearm

2. ☒ without a firearm

D. ☐ NOT GUILTY

AS TO COUNT XIII:

A. ☒ GUILTY of MURDER SECOND DEGREE/FIREARM of Marlon Beneby a/k/a "Big Shorty"

1. ☐ with a firearm

2. ☐ without a firearm

B. ☒ GUILTY of lesser included crime of MANSLAUGHTER of Marlon Beneby a/k/a "Big Shorty"

1. ☐ with a firearm

2. ☒ without a firearm

C. ☐ NOT GUILTY

AS TO COUNT XV:

A. ☒ GUILTY of CONSPIRACY TO COMMIT FIRST DEGREE MURDER of Anthony Fail

B. ☐ NOT GUILTY

AS TO COUNT XVI:

A. ☒ GUILTY of FIRST DEGREE MURDER of Angel Wilson

1. ☐ with a firearm

2. ☒ without a firearm

B. ☐ GUILTY of lesser included crime of SECOND DEGREE MURDER of Angel Wilson

1. ☐ with a firearm

2. ☐ without a firearm

C. ☐ GUILTY of lesser included crime of MANSLAUGHTER of Angel Wilson

1. ☐ with a firearm

2. ☐ without a firearm

D. ☐ NOT GUILTY

SO SAY WE ALL,

FOREPERSON