IN THE FLORIDA SUPREME COURT

ERIC OLMEDA,
Appellant,

V.

STATE OF FLORIDA
Appellee.

AT LAW
DCA CASE No.: 2D12-4938
L.T. CASE No.: 00-CF-10096;
01-11095; 01-10916; 02-15025.

ON APPEAL FROM THE DISTRICT COURT OF APPEAL SECOND DISTRICT OF FLORIDA

INITIAL BRIEF OF APPELLANT

Mr. Eric Olmeda 537876

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PRO SE APPELLANT

JURISDICTION

of

FLORIDA SUPREME COURT

See art. V, § 3(b)(5), Fla. Const.

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ADVERSE LIBERTY INTEREST WERE AFFECTED WHEN THIS CASE PROCEEDED WITHOUT AN 'INFORMED CONSENT' ADVISORY BY ITS INADEQUACY WITHOUT NOTICE BY THE COURT, PREJUDICED THE DEFENDANT. NO EXPRESSED SAFEGUARD WAS ARTICULATED BY ANY PARTY OR BENCH AKIN TO ANY PRESUMPTION TEST, WHEN ITS MANIFESTED WEIGHT BORE UPON ITS OUTCOME IN ITS ENDS. WHEN ANY DEFENDANT MUST YIELD HIS RIGHTS, OR CEDE TO ANY REFERENCE OF "GUILT-FIRST" REDDITIONS; THOSE INFLUENCES, NO MATTER HOW SLIGHT, RUN UP ONE'S CULPABILITY IN THE DEFENSE'S WEAKENED STANCE. AS CONTRARY TO THE INDEFRAGABLE RIGHT AGAINST SELF-INCRIMINATION, REGARDLESS OF ANY "BUT FOR" TEST (JUSTIFICATION) OF EXCLUDABLE EXEMPTIONS RENDERED THROUGH SIMILARLY CONSTRUED IMPLICATIONS; MUST BE ATTENDANT TO THOSE VERY SAFEGUARDS GIVEN AS A MIRANDA ADVISORY MUST IN ITS MANDATE, WHEN IMPAIRED BY ADVERSE CERTAINTY OF DUE PROCESS IN ITS "INNOCENCE-FIRST" HOLDING BY ITS PRIMACY OVER THIS, OR ANY OTHER SIMILAR CASE AND CAUSE.

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IN ITS ENDS OF JUSTICE, THIS CAUSE CONTENDS THAT IT IS A CONTEXTUAL STRICT MISCOMMUNICATION OF ANY ORDINARY INTELLECT TO DECIPHER ITS STATUTORY CONSTRUCTION IN CONTRADICTION TO ANY APPLICATION OF ITS "PLAIN MEANING" (RULE) OR, ITS ACTUAL 'POLESTAR' OF ADEQUATE CONSTITUTIONAL INTERPRETATION BY ITS CONFLICTED

QUESTION OF ITS INTERPRETATION THAT WOULD HOLD TO ANY CONSISTENCY OF APPROPRIATENESS TO CERTIFY, AND SATIATE ITS CONSTITUTIONAL QUESTION WITHIN ITS 'LIVING', CENTRIST VIEW OF ITS CONSTITUTIONALITY.

THE TRIAL COURT AND THE UPPER COURTS ERRED IN THEIR JURAL REVIEW OF ITS 'CONSTITUTIONAL QUESTION' OVER ONE'S LIBERTY INTERESTS WHERE 'PRE-EMPTION' WAS AVOIDED, OR SET OFF.

TABLE OF AUTHORITIES

STATUTES

893.101, FLA. STAT. (2002, MAY)
FIORIDA DRUG ABUSE PREVENTION AND CONTROL ACT (F.D.A.P.C.A.)

CASES

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BROWN V. TOPEKA, BOARD OF EDUCATION (1954), 347 U.S. 483, 74 S.CT. - 686, 98 L.Ed. 873. (SHAWNEE COUNTY) (38 A.L.R. 1180) (U.S. (KS) (1954).
GRISWOLD V. CONNECTICUT (1965), 381 U.S. 479, 85 SCT. 1678, 14 LEd 2d. 510
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BOND V. SEC'Y DEPT. OF CORRECTIONS, 155 Fed Appx. 447 (CA 11 FIA. 2005), AT 353-54, 84 S.Ct. AT 1702-03; (See) C.f. Liparota, 471 U.S. at 426.
STATE V. ANDREWS, 133 So. 2d 701 (FLA. 1959).
SPARKMAN V. STATE, REL SCOTT, 58 So. 2d 431, 432 (FLA. 1952).
STATE V. GALE DISTRIB., 349 So. 2d 150, 153 (FIA. 1977); Ex Parte, White 178 So. 2d 876 (FIA. 1938)

LEGAL PRINCIPLES

GERTZ V. WELCH, (1974) 418 U.S. 323, 94 S.CT. 2997 (U.S. (ILL) 1974).
FN1 - C.f. GIRARD V. CITY OF PHILADELPHA, 74 U.S. 1, (U.S. (PA.) 1868)
19 LEd 53, 7 WALL. 1;
- VIDAL V. GIRARD'S EXECUTOR'S 43 U.S. 127, 2 HOW. 127, 11 LEd 205 (U.S. (PA) 1844), Semble.

PRINCIPLES OF LAW

PRELIMINARY STATEMENT

The following symbols will be used to designate references to Various aspects to the record in this appeal:

The interests as parties will be referred to as: Appealant-Defendant and Appellee-Respondent (State of FLORIDA) or their respective name and titles. The record will denote 'R' for respondent, 'D' for Defendant, 'T' for transcript [volume number and page number], and 'DP' for Depositions.

This proceeding involves an INital Brief from a motion pleader denied without prejudice from appellant's conviction and sentence for: [Case No: 01-011095], Delivery of Cocaine; [Case No: 01-010916], Trafficing in Cocaine (28 to 200 grams.) [Case No: 02-15025] Armed Trafficing in Cocaine (28 to 200).

STATEMENT OF CASE AND FACTS

The appealant is currently incarcerated under "TWO" drug-related offenses; as "time has been served" on all the additional cases. Therefore, various drug related offenses enumerated pursuant to Florida's Drug Control and Prevention Law, Section 893.13 and 893.135, Florida Statues. In case No: 00-10076, Appealant was convicted on two counts of possession of cocaine, two counts of delivery of cocaine, and three counts of possession of a controlled substance, and in May 2001, he was sentenced to eight years probation. In case No: 01-11095, Petitioner Was convicted of two counts of possession of a controlled substance and one count of delivery of cannabis and possession of a controlled substance.
On July 23, 2003, the Court found Petitioner violated his probation and imposed sentences on all three cases of five to twenty years prison for the various offenses. No direct appeal was filed. In October 2005, appealant filed a motion to Withdraw Plea/Motion to correct Illegal Sentence. The Trial Court denied the motion and appealant appealed. The Second District Court of Appeal affirmed in January, 2006. Olmeda V. State, 919 So. 2d 448 (2nd DCA 2006). Appealant then filed a 3.800(a)/3.850 motion in July, 2007, which was denied. Petitioning a appeal of that denial next, which unfortunately was affirmed by the Second District. OLMEDA V. STATE, 994 So. 2d 312 (2nd DCA 2008).
In Case No: 02-15025, appealant was convicted on one count of armed trafficing of a controlled substance and sentenced in April, 2004 to ten years

STATEMENT OF CASE AND FACTS (continued)

mandatory in prison. Appealant filed a Direct Appeal, which was subsequently dismissed. OLMEDA V. STATE, 895 So. 2d 1076 (2nd DCA 2004). IN JUNE, 2006, a Rule 3.850 Motion was filed. The Court conducted an Evidentiary Hearing on May 29, 2008, and thereafter denied the motion in August, 2008. An appeal was filed, and the Second District affirmed in September, 2010. Olmeda V. State, 49 So. 3d 247 (2nd DCA 2010). On February 2012 the appealant filed a Rule 9.030(c)(3) pursuant to Section § 79.01, Fla. Stat. 2011 (Writ of HABEAS CORPUS) to the Lower Tribunal Court. The Lower Tribunal Court denied his Summary 3.800 in August 2012. The appealant appealed this denial too the (2nd DCA) Second District Court of Appeal September 13th, 2012. On October 24, 2012 and January 3rd 2012 "60" day extension of Time motions were granted so the appealant is entitled sufficient time to prepare a "pro-se brief."

No further pleadings have been filed in these four cases. The instant Brief Challenges the Constitutionality of Section 893.13 as amended by Section 893.101 and questions eleven points of MAJOR PRINCIPALS OF THE CONSTITUTION, which have been violated. Thus, this is an appeal on denial of defendant's POST-CONVICTION RELLEF (WRIT OF HABEAS CORPUS) from convictions of Drug offenses where the trial court summarily denied the properly filed motion, which is the basis from which this appeal is made and argued.

STATEMENT OF CASE AND FACTS (CONTINUED)

A. PRELIMINARY POINT OF LAW

THE DOCTRINE OF STARE DECISIS DEFERENCE MUST BE JUDICIALLY NOTICED FOR ITS JURAL REVIEW, HOWEVER, IN PLEADINGS UNDER 'CONSTITUTIONAL QUESTION', STARE DECISIS HAS BEEN HELD AS NON-ESSENTIAL IN CASES AND CAUSES AS BEING RAISED WITHIN BY ITS PRE-EMINENT DUE PROCESS AND EQUAL PROTECTION OR ITS DEPRIVATION, WHICH MUST BE EXAMINED UNDER STRICT SCRUTINY OF FEDERAL PRIMACY OF 'PRE-EMPTION' CONTRASTED TO THE ASSUMPTION OF STATES' RIGHTS IN ITS JURAL IMPARTIALITY AND BALANCE IN MEETING THE ENDS OF JUSTICE, "AS APPLIED".

THIS QUESTION OF LAW IS OF GREAT PUBLIC IMPORTANCE — NOW CALLED FOR AS RAISED.

B. CANONS OF CONSTRUCTION

A STATUTE CANNOT GO BEYOND ITS TEXT: AS SECTION 893.101, FLA. STAT. FAILED TO STIPULATE "PARTIAL" ELIMINATION OF ITS ASSUMED FULLY REDACTED MENS REA ELEMENT WITHIN THE BODY OF THE STATUTORY LANGUAGE; QUESTIONS ITS LEGISLATIVE INTENT AS AMENDED,

EXCEPTIONS MUST NOT BE 'READ IN', AS THE COURT INTERPRETATION HAD DONE, NO MATTER ITS REASON TO ITS ENACTED LAW. QUESTION OF LAW WITHIN THE COURTS ATTEMPT TO MOLLIFY ITS ASSUMED 'PARTIAL' ELIMINATION BY ITS AMENDED LEGISLATIVE INTENT CANNOT ADD NOR SUBTRACT WORDS OR TERMS NOT SET THERE BY THE STATE LEGISLATURE UNDER STRICT SCRUTINY OF ITS ESTABLISHED WORDS OF THAT PARTICULARIZED LAW, BY ITS KIND AND SUB-SPECIE. WITHIN ALL GENERAL INTENT OFFENSES MUST BE HELD AS FUNDAMENTAL ERROR OR STRUCTURAL DEFECT (WHICH IS REVERSABLE ERROR).

OPENING STATEMENT OF QUESTIONS PRESENTED AND ARGUED.

Supremacy of its Constitutional Question "AS APPLIED" argues error to be reviewed in Line to DUE PROCESS and EQUAL PROTECTION; to wit question as matter to Law:

1. Original Legislative intent to its ensuing amended intent;
2. Discrimination by segregation of a minority interest offense by its kind, within its class distinction of general intent offenders with its distinguishment of its class of people targeting;
3. Jeparation of powers where the court Legislated from the bench it's decisional law of surplusage to "PARTIAL" redaction disadvantaged the appellant as its advantaged states interests over individual interests violates DUE PROCESS;
4. Void for Vagueness; Vague and ambiguous Language denies the cognizant understanding of the common, ordinary intellect;
5. The question of primacy by the doctrine of 'pre-emption';
6. Non-essential usage of stare decisis in issues to be discerned to Constitutional questions without precedential requisite, or the necessity of a "PATH WELL-TROD";
7. Crucial 'Liberty interest' advisory 'informed consent' to insure the guarantee of rights against self-incrimination when adopting any presumption defense under affirmative defenses to enlist protection, or prohibition of any potential waiver interest when opting to negate the right to remain silent in an effort to disprove state's case against any assumed culpability, or "guilt-first" but for test, when it necessitates any defense which gives cause to "CEDE" one's excuseable, excludable exemption as it affords the state opportunity of eased prosecution in its essential duties of proving beyond any reasonable doubt by its 'OPEN DOOR' policy to confront defendant's presumption, or actual innocence protected by the DUE PROCESS CLAUSE "INNOCENCE" HOLDING, FIRST AND FOREMOST;
8. The constitutional question by its dimension arises to its "SEPARATE BUT EQUAL" standing fails in its Constitutionality;

9. NO PERSON, OR CITIZEN SHALL BE ADVERSELY AFFECTED BY AN AMENDED PIECE OF LEGISLATION IN ITS INSTRUMENTALITY, WHICH DEPRIVES THE DEFENDANT "TO BE SECURE IN THEIR PERSONS" SHALL NOT BE VIOLATED;
10. AFFIRMATIVE DEFENSES COMPEL AN ACCUSED TO LESSEN HIS LIABILITY TO ANY "GUILT-FIRST" CREATION ON THE RECORD WHEN FORCED BY CIRCUMSTANCE TO EXPLAIN HIMSELF, HIS ACTS OR CULPABILITIES, IN DIRECT CONTRAVELLATION TO THE "RIGHT AGAINST SELF-INCRIMINATION" BY ITS STRICT SCRUTINY AND TOTALITIES UNDER JUDICIAL REVIEW;
11. "SURPLUSAGE" BY THE COURT'S LEGISLATION VOLITIVE TO THE SEPARATION OF POWERS IN ITS DIRECT REGARD TO IMPLIMENTATION OF 'PARTIAL' REDACTION OF MENS REA NOT LEGISLATED, NOR ENACTED, BY THE COURTS INTERPRETATIVE DECISIONAL LAW AS IT SETS A PRECEDENT UNLAWFULLY — AND UNCONSTITUTIONALLY,
12. INTOLERANCES OF THE FEW IN AUTHORITY IN ITS GOVERNANCE OVER ITS ELECTED COMMUNITY (OR STATE) ENACTED AN AMENDED LEGISLATION WITHOUT "CONSENT OF THE GOVERNED" IN ITS REPRESENTATIVE CAPACITY UNDER REPUBLICAN FORUM OF GOVERNMENT FAILED TO SEEK AUTHORITY OF THE CONSENT OF THOSE GOVERNED WHEN REVAMPED POLICY MUST BE GIVEN TO PUBLIC INITIATIVE AND REFERENDUM. ESPECIALLY WHEN ANY AMENDED LEGISLATION THAT INVOKES A "SEGREGATION" OF A "CLASS OF PEOPLE" WITHOUT CONSENSUS OR VOTE, CHECKS AND BALANCE RUNS AFOUL OF CONSTITUTIONAL PRINCIPLES WHEN VIEWED UNDER JUDICIAL REVIEW IN STRICTNESS TO DUE PROCESS EQUAL PROTECTION AS A LAW "OF THE PEOPLE, "BY THE PEOPLE", AND FOR THE PEOPLE MUST BE ATTENDENT TO ITS PRINCIPLES AND TENANTS. CHAPTER 893.101, FLA. STAT. FAILED TO DO SO. IT MUST BE FREE OF ANY IMPAIRMENT OR DANGEROUS ENCROACHMENT, NO MATTER HOW SLIGHT IN ITS DEPRIVATION;
13. IN SUM, HAS THE COURT AVOIDED PREDICATE CAUSES NOTED IN ADKINS, SHELTON, AND THIS INSTANT CASE OR LAMBERT V. CALIFORNIA AS PRESENTED ON ITS OWN MERITS, IN THEIR DISCRETION TETHERED ITS CORE VALUES TO THE CONSTITUTION BY ITS 'FULL OR PARTIAL' REDACTION IS QUESTIONED, WITHOUT DISCRIMINATION TO ITS "KIND" (SPECIE) IN CONTRADICTION TO ALL OTHER LEGISLATED

GENERAL INTENT OFFENSES HAD OFFENDED THE CONSTITUTION; MUST NOW BE HELD VOLITIVE TO ITS INHERENT SAFEGUARDS AS ADDRESSED TO THIS URGENT 'CONSTITUTIONAL QUESTION'.

"AS APPLIED", THIS CONSTITUTIONAL QUESTION CONFLICTS NON-LEGISLATED LANGUAGE FOR ITS COURT'S INTERPRETATION AS BEING MEANINGFUL TO ENSUING CHALLENGES WHEN ITS CONSTITUTIONALITY HAS REMAINED UNSETTLED, SET OFF, OR PASSED THROUGH. AT FIRST BLUSH, ITS INTERPRETATION OPINED EXASPERATES THE SPIRIT AND LETTER OF THE CONSTITUTION. THE COURT IS URGED TO PURVIEW ITS JURAL DISCRETION OF CAUSES AFFECTING THE INSTANT CASE IN ITS PRIMACY TO THE LAW OF THE LAND, PRE-EMPTION AND ALL NOTED — AS — CONFLICTS HEREIN.

893.101, FLA.STAT. IS NOT SOUND: UNCONSTITUTIONAL "AS APPLIED" AND ON ITS FACE.

THE COURTS, FROM TIME-TO-TIME, DECIDE CASES WITHOUT THE NECESSITY OF STARE DECISIS OR WHETHER OR NOT THE NATURE OF THE ARGUMENT; ITS SUFFRAGE TO DUE PROCESS; ITS PREJUDICE OF DEFECTS OR FUNDAMENTAL ERRORS; ITS STRUCTURAL DEFECTS; OR ITS WRONGLY APPLIED LEGISLATIVE LANGUAGE CONSPIRES AGAINST ANY CONSTITUTIONAL PREMISE MUST BE ADEQUATELY REDRESSED — AND ANSWERED — UPON ANY 'CONSTITUTIONAL QUESTION' RAISED, IN ACCORDANCE TO ITS SPIRIT OF A LIVING CONSTITUTION WITHIN THE REALM OF EQUAL PROTECTION AND DUE PROCESS.

THIS PRESENTMENT MUST BE TREATED AS A 'FIRST IMPRESSION'.

A WRITTEN OPINION IS SOUGHT FROM THIS COURT BY ITS CONSIDERATIONS.

SUMMARY OF ARGUMENT

AN "AS APPLIED" CHALLENGE TO LAW, AS MOUNTED HERE, QUESTIONS ITS CONSTITUTIONALITY TO LAW OF CHAPTER 893.101, FLA. STAT, ET SEQ., AS TO ITS LEGITIMACY OF ITS AMENDED LEGISLATIVE INTENT; ITS COURT INTERPRETATION BY MEANS OF WORD SURPLUSAGE NOT PLACED THERE BY THE LEGISLATURE IMPLICATES DECISIONAL LAW ADEQUACY; AND, MORE IMPORTANTLY, SEPARATION OF POWERS AS LEGISLATING FROM THE BENCH, WOULD BE, HAD BEEN MADE VOLITIVE TO DUE PROCESS AND EQUAL PROTECTION SAFEGUARDS.

LIBERAL CONSTRUCTION OF A LIVING CONSTITUTION APPLIES TO THE ORIGINAL LEGISLATIVE INTENT, ITS INTERPRETATION, PURPOSE, AND SPIRIT; AS SPECIFICALLY ADDRESSED HERE, WHERE THE DOCTRINE OF STARE DECISIS IS ESSENTIALLY USELESS IN MATTERS OF GREAT PUBLIC IMPORTANCE TO CONSTITUTIONAL LAW, CONTRASTED HEREIN.

DISCRIMINATORY SEGREGATION AS A BIAS CRIME TOWARD ITS 'CLASS' PREJUDICE OF A TARGETED-PROFILED MINORITY INTEREST WITHIN ITS KIND (GENERAL INTENT OFFENSES), AFFECTED PROCEDURAL DUE PROCESS ERROR OR STRUCTURAL DEFECT TO SAFEGUARDED RIGHTS AND IMMUNITIES, BY AND THROUGH 'EQUALITY BEFORE THE LAW!' THE INSTANT CASE OF PREJUDICE FELL WITHOUT FAVOR TO RECEIVE AN IMPARTIAL JURAL REVIEW ON THIS QUESTION TO BE TREATED THE SAME BEFORE THE LAW. AND, TO BE FURTHER TREATED UNDER THE SAME PROTECTION AS A MATTER TO DUE PROCESS LAW THROUGH ITS 'CONSTITUTIONAL QUESTION' CONFLICTED TO ALL OTHER GENERAL INTENT OFFENSES, NO MATTER ITS OFFENSIVE SPECIE, ARGUED HERE.

INDEED, DE FACTO (DISCRIMINATORY) SEGREGATION OF ITS PARTICULARIZED 'CLASS OF PEOPLE' AGGRIEVED HEREIN (DRUG OFFENDERS WITHIN ITS DISTINGUISHED GENERAL INTENT OFFENDER CLASSIFICATION) IS APTLY AT CROSS-PURPOSES TO THE CONSTITUTION TO

"Equal protection", "Equal opportunity", or "Human Rights". See, (Rosa) Parks v. UNITED STATES (ALABAMA). (Judicial discretion does not apply here, nor argued). See, pre-emption.

The balancing test must be made to moral certainty against derrogation of "HUMAN RIGHTS" that had been flagrantly disregarded as aggrieved under undisputed rights affecting moral rights of any minority interest, or "CLASS" to be made free of any impigned justice in its ends. It must resist any attempt to be made volitive by either "SEPARATE BUT EQUAL", or "Necessary and proper" [Status] by the Courts moral obligation of rights and fairness through expressed, indefeasible rights of the accused under DUE PROCESS Law and the defendant's justifiable right to those immunities and protected safeguards against segregation. (In Kind.)

Moreover, at question is the Judicial Activism BY THIS COURT'S PERJORATIVE PHRASE OF inclusion to "PARTIAL" MENS REA redaction not set down by Legislative intent when applying Lawful weight to its inclusion as positive Law, rather than in applying its Legislative intent strict construction to the Letter without activism of 'surplusage' by means of Legislating from the bench made contrary to "separation of powers" in its Lawfullness. Doing so violated its discriminatory "DE FACTO SEGREGATION" outright as its dimension to constitutional Law directly violates this minority 'CLASS OF PEOPLE' within its kind, and offenders in general. (ALL).

The court's decision should have cautiously approached this constitutional question by its judicial restraint on doctrinal cases that should have been decided on its

NARROWEST POSSIBLE GROUNDS, NOTABLY AFFECTED DRUG OFFENDERS (POSSESSION) WITHIN ITS PROFILED GENERAL INTENT 'OFFENDER CLASSIFICATION' STATUS, WHICH ITS OPINED DECISION HINGED ON SOCIAL CONTROVERSY BY WHICH THIS COURT RENDERED A SOCIO-JUDICIALLY ENGINEERED RESULT (IN KIND) THOUGH OF QUESTIONABLE NECESSITY AS INFERRED TO ITS UNCONSTITUTIONALITY, 'AS APPLIED'.

INDEFEASIBLE FUNDAMENTAL FAIRNESS WAS NOT OBTAINED IN RESULT, IN FACT, AVOIDED AS 'SET OFF', OR 'PASSED THROUGH' FOR OTHER TECHNICALITIES, RATHER THAN DIRECTLY ADDRESSING ITS QUESTION OF CONSTITUTIONALITY, 'AS APPLIED' OR 'ON ITS FACE'. WE ADDRESS 'AS APPLIED.' SEE ADKINS.

IN SUM, 'PRE-EMPTION' QUESTIONS ABOUND AS AKIN TO THE ISSUES RAISED HERE. PRE-EMPTION HAS BEEN BROUGHT FORTH IN ITS FORCE AND EFFECT HEREIN. PRE-EMPTION MUST BE MADE SOUND.

LIBERTY INTEREST BY 'INFORMED CONSENT' FAILED TO BE OPINED BY THIS COURT WHEN ADDRESSING ANY PRESUMPTION TEST MANIFEST BY AN AFFIRMATIVE DEFENSE'S INHERENT "GUILT-FIRST' REFERENCE AS ITS CEDES CULPABILITY OR ADMISSIBILITY IN ITS DEFENSIVE POSTURE WHEN PROVIDED FOR IN ONE'S "BUT FOR" EXCLUDEABLE, EXEMPTION TEST EASES THE PROSECUTION'S BURDEN OF PROVING BY ANY QUASI-ADMISSIBILITIES; AND, FURTHER DISADVANTAGES THE DEFENDANT BY ITS INTENDED "OPEN DOOR" POLICY, WHICH, IN FACT, HAS BEEN MADE INFLAMATORY IN ITS DEGRADATION TO "INNOCENCE-FIRST" UNDER LAW OF DUE PROCESS. THE COURT FAILED TO PROVIDE ANY LIBERTY INTEREST ADVISORY PRIOR TO MAKING ANY PRESUMPTION APPLICABILITY UNDER AN AFFIRMATIVE DEFENSE. SEE, MIRANDA, AND "INFORMED CONSENT."

CHAPTER 893.101, FLA.STAT., ET SEQ, IN ITS REVIEW DOES NOT DISCUSS ANY SPECIFICITY TO 'PARTIAL' REDACTION AS DETERMINED BY THE COURT MUST BE MADE 'VOID FOR VAGUENESS' IN ITS SOUNDNESS TO LAW. 'PARTIAL' REDACTION OF MENS REA INTENT WAS NOT STIPULATED OR REASONED WITHIN THE CONTENT OF ITS LEGISLATIVE INTENT AND ITS CONJOINED AMENDED STRICT CONSTRUCTION. NO MINCING OF WORDS OR TERMS OR ARTICULATED INFERENCES HAD BEEN MADE PART OF THE MINUTES. IT TOOK THE COURT TO OPINE ITS INCLUSIVENESS BY ADDITIONAL SURPLUSAGE, NOT SET DOWN BY THE LEGISLATURE. IT IS GIVEN TO APPEARANCES THAT ALL IT TOOK WAS THE COURT'S ENDORSEMENT OR ITS "ADMIXTURE" OF WORDS TO ITS DUBIOUS QUALITY AND VALUE WHERE ITS INTERPRETATION, STANDING APART FROM EQUITY OF THE LAW, MADE ITSELF A PART OF ITS LANGUAGE BY ITS LEGISLATION FROM THE BENCH.

QUESTIONABLE INTERPRETATION ILLUSTRATED ITS LACKING FOR WANT OF COGNATE CLARITY TO AVOID ITS MISUNDERSTANDING FOR THE COMMON INTELLECT. IN EFFECT, THE COURT SANCTIONED ITS INTERPRETIVE REASONING IN ORDER TO EFFECTUATE THE LAW AS MORE — AS DECISIONAL LAW IN ITS ENDS. IT REMAINS UNLAWFUL TO ITS CONSTITUTIONALITY NONETHELESS, EITHER "AS APPLIED" OR "FACIALLY".

IT REMAINS VOLITILE TO SOUND UNDERSTANDING IN ITS SIMPLEST, CLEAREST LANGUAGE PRIOR TO ANY COURT-HELD INTERPRETATION BEING NECESSITATED. IT REMAINS VAGUE AND AMBIGUOUS. THUS, VOID FOR ITS VAGUENESS. THOSE OF ORDINARY INTELLECT WOULD BE TROUBLED BY ITS COMPLETE UNDERSTANDING IN ORDER TO DERIVE THE (COURT'S) FINAL MEANING AND EFFECT. IT FAILED (LANGUAGE) TO SUCCINTLY CLARIFY ITS MEANING AND INTENTIONS AS WRITTEN. IN ITS FAILURE TO MEASURE UP, IT FALLS TO AN 'ABERRATION TO LAW'. SECONDLY, IT VIOLATED ITS SEPARATION OF POWERS WITHOUT TRUE CHECKS AND BALANCES.

'STRICT SCRUTINY' MUST BE USED HERE RATHER THAN THE RATIONAL BASIS TEST AS VIOLATIONS OF SPECIFIC RIGHTS TO THE CONSTITUTION HAVE BEEN VIOLATED BY AN AMENDED ENACTMENT OF LAW. ANY DE FACTO DISCRIMINATION BY ITS SEGREGATIVE MEANS AND METHODS USURPED EQUAL PROTECTION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION AND TO ITS SPIRIT AS A LIVING INSTRUMENT IN ITS LIBERAL CENTRIST REASONING (MIDDLE-OF-THE-ROAD). ITS CLARITY OF UNDERSTANDING BY AN ORDINARY INTELLECT, BY ITS WORDS SET DOWN NECESSITATED THE COURT'S INTERPRETATION OF AN INCLUSION OF 'PARTIAL' REDRESS NOT LEGISLATED IN ITS EXACTITUDE. RATHER, ONE MUST GUESS AT THE MEANING OF ITS LAW OR HOW THIS SPECIFIC VARIATE TO THE REMAINING GENERAL INTENT LAWS BY COMPARISON MUST ASSUME HOW IT MUST BE APPLIED. THEREBY, WITHOUT THE COURT'S INSISTENCE TO CLARITY ITS POINT OF LAW BY ADDED SURPLUSAGE, MUST BE MADE 'VOID FOR VAGUENESS'. THE LAW, AS IS, "AS APPLIED" IS UNENFORCEABLE.

THE LAWS AS WRITTEN AND ENACTED DO NOT SAY THAT EVERYONE MUST BE TREATED EXACTLY THE SAME, THOUGH ALL MEN WHERE CREATED EQUAL. IT IS MADE SELF-EVIDENT THAT THEY DO SAY THAT NO ONE CAN BE TREATED UNFAIRLY. "EQUAL CHANCE, EQUAL EXPOSURE" (EARL WARREN COURT) GIVES VALIDITY TO 'EQUAL PROTECTION', 'EQUAL OPPORTUNITY' AND 'HUMAN DIGNITY' (JUSTICE KENNEDY) IN ITS "EQUALITY BEFORE THE LAW" OF HUMAN RIGHTS, NOW DEGREGATED, TO ITS ETHIC AND OBLIGATION, SEE (ROSA) PARKS V. ALABAMA (1955) OR ROE V. WADE (1973); JUDICIAL REVIEW.

POINT ONE

HAS THE SUPREME COURT THE POWER TO DECIDE "CONSTITUTIONAL QUESTIONS" WITHOUT STARE DECISIS PREDICATE REGARDLESS OF NON-EXISTENT PRECEDENTIAL LAW IN FORGING NEW LAW?

WHAT WEIGHT MUST BE ATTRIBUTED OR DUE TO CONSIDERATIONS OF STARE DECISIS OF 'PARTIAL' REDACTION OF A LAW (CHAPTER 893.101) AND ITS CONFLICTED, ADVERSE LEGISLATIVE INTENT UNDER PROMINENCE TO "CONSTITUTIONAL QUESTIONS") ON REDRESS WHICH LAY AT THE ROOT OF ITS CONSTITUTIONALITY? OR ITS PARTIAL ELIMINATION

STARE DECISIS RELATED TO SUCH CASES AS BROWN V [TOPEKA] BOARD OF EDUCATION, 1954; ROE V WADE, UNITED STATES V. THE WILL OF STEPHEN GIRARD, GRISWOLD V. CONNECTICUT, (DRED) SCOTT V. SANFORD MUST BE HELD AS NON-ESSENTIAL IN ISSUES OF CONSTITUTIONAL QUESTION OR DIMENSION FOR THE FIRST TIME ON APPEAL — AS FUNDAMENTAL ERROR AROSE. ("IT SHOULD GO WITHOUT SAYING THAT THE VITALITY OF THESE CONSTITUTIONAL PRINCIPLES CANNOT BE ALLOWED TO YIELD SIMPLY BECAUSE OF DISAGREEMENT WITH THEM" — EARL WARREN, U.S. SUPREME COURT, CHIEF JUSTICE).

THE INSTANT CASE IS MORALLY LITTLE DIFFERENT FROM THE LEGISLATIVE INTENT RESISTENCE THAT WAS MET BY THE COURTS INFAMOUS DESEGREGATION DECISIONS DECADES AGO. THEY ARE REVISITED HEREIN. SEE CASES AS NAACP V. ALABAMA, PARKS (ROSA) V. ALABAMA, SEMBLE; AND PANOPLY OF PROGENIES.

THIS CASE, IN ITS CAUSE, IS NOT SO INDISTINGUISHABLE AS ITS ACCIDENT CASES, AT LARGE — IN ORDER TO ACHIEVE COMPLIANCE TO ANTI-SEGREGATION CAUSES — EVEN IF IT MUST BE DECIDED BY STARE DECISIS PRINCIPLES TO MIDDLE-OF-THE-ROAD REASONING — OR BY A MORE LIBERAL CONSIDERATION.

AS RAISED, THE QUESTION OF THE SPIRIT OF CONSTITUTIONAL PROVISIONS DO NOT LAY IN ITS STARE DECISIS HOLDINGS, RATHER THAN TO BY WHAT WAS DECIDED.

THE DOCTRINE OF COMMON LAW UNDER WHICH COURTS PREFER, PLUS ITS STATUTORY OR DECISIONAL LAW HOLDINGS, MADE ON POINTS OF LAW OR ON THE

SAME OR SIMILAR MATTERS OF LITIGATION MAY FOLLOW PRECEDENT.

HOWEVER THAT MAY BE, STARE DECISIS IS NOT INVIOLABLE; THE DOCTRINE IS ESSENTIALLY USELESS IN CONSTITUTIONAL LAW. SEE, WEBSTERS NEW WORLD DICTIONARY, LAW DICTIONARY, WILEY PUBLISHING, INC., 2006.

STARE DECISIS MUST BE SET ASIDE IN THIS DECISION.

CONSTITUTIONAL LAW IS SET FOR ARGUMENT HEREIN.

THE COURT MUST BALANCE BETWEEN STATE AND FEDERAL POWER.

POST SCRIPT

"LET THE END BE LEGITIMATE, LET IT BE WITHIN THE SCOPE OF THE CONSTITUTION, AND ALL MEANS WHICH ARE APPROPRIATE, WHICH ARE PLAINLY ADAPTED TO THAT END, WHICH ARE NOT PROHIBITED, BUT CONSISTENT WITH THE LETTER AND SPIRIT OF THE CONSTITUTION, ARE CONSTITUTIONAL." SEE MC CULLOCH V. MARYLAND.

"JARRING AND DISCORDANT JUDGEMENTS" ARE INTOLERANT TO THE SOUNDNESS OF THE CONSTITUTIONAL IN ANY MIDDLE OF THE ROAD APPLICABILITY.

"SO FAR AS THEY ARE REPUGNANT TO THE CONSTITUTION AND LAWS OF THE UNITED STATES," THEY MUST BE "ABSOLUTELY VOID." (STATE LAWS AS A MATTER OF VITAL INTEREST TO THIS INTEREST). (MARSHALL, J.).

MAY NO "OPPOSING AND ENDURING FORCE" IRREPARABLY RENDER THE CONSTITUTION AS A BLACK LETTER LAW.

'PARTIAL ELIMINATION' OF MENS REA WITHIN A GENERAL INTENT OFFENSE CANNOT BE JUSTIFIED AS "THE CONSTITUTION KNOWS NO SUCH WORD," NOR IS IT ENTWINED IN ITS LANGUAGE.

POINT TWO

"CONTENT DISCRIMINATION" HAS OCCURRED BY THE LEGISLATURES' INTENTIONAL SEGREGATION OF THIS SPECIFIC STATUTE BY ITS INTENT WITHIN ITS SPECIE AND WITHIN ITS GENERAL INTENT CLASS OF OFFENSE OR ITS CREATIONISM, REMAINS "UNCONSTITUTIONAL".

'CONTENT DISCRIMINATION' DISENFRANCHISES THE ABSOLUTE PRINCIPLES AND VALUES, SUCH AS HUMAN RIGHTS DESIGNATED HERE, BY ITS TARGETED DISTINCTION OF AN EXCESSIVELY RESTRICTIVE PIECE OF LEGISLATION (893.101, FLA. STAT.) IN ITS ASSUMPTIVE COMPELLING STATE INTEREST OVER ONE'S INDIVIDUAL INTERESTS OR HUMAN RIGHTS. IT VIOLATES THE ESSENTIAL PRINCIPLES OF DUE PROCESS IN ITS NARROWLY WORDED PROHIBITIONS THAT NOTICABLY ACHIEVES ITS FORM OF SEGREGATION IN ITS PURPOSEFUL RESTRAINT FROM ALL OTHER GENERAL INTENT CASES, OR ALL OTHER LAWS FOR THAT MATTER, IN ITS BLATANCY.

REGARDLESS OF ITS STATUTORY DEFAMATION AGAINST ITS MINORITY INTEREST OR CLASS, IT IS AN INFLAMMATORY 'BIAS CRIME' INCONSISTENCY BY ITS VINDICTIVE RETRIBUTION BY ITS PROFILED KIND AS IT INCITES OTHER LAWS OF OTHER OFFENSES TO BE LIKEWISE ALTERED IN KIND. IT INCITES GROWING ANOMOSITY, HATE CRIME TARGETING, STREET JUSTICE OR LYNCH-MOB RETRIBUTIVE JUSTICE BY ITS CONTENT DISCRIMINATION.

AS LEGISLATED, IT IS A FORM OF CONTENT-BASED RESTRICTIVENESS IN ITS DIRECT CONTRAVALLATION TO FUNDAMENTAL FAIRNESS AND EQUAL PROTECTION AS PROTRACTED BY THIS CASE AND ITS CONSTITUTIONAL QUESTION VOLITIVITY.

THE MORAL VIGORS OF CONSTITUTIONAL LAW ARE FUNDAMENTALLY SOUND, THOUGH CONTESTED BY THIS ERRANT PIECE OF LEGISLATION (893.101, FLA. STAT.).

NOW, TO HOLD FAST TO ITS "CONTENT-BASED DISCRIMINATION" TO GIVE IT VALIDITY WOULD BE TO ACCORD IT A SANCTION BEYOND CENSORIOUS MORAL RIGHT OR BELIEF IN VIEW OF CONSTITUTIONAL SOUNDNESS.

STATUTE 893.101, FLA. STAT., REMAINS UNSOUND.

POINT THREE

WHAT WEIGHT IS DUE CONSIDERATION OF STARE DECISIS IN BALANCING ITS PROHIBITIONS TO ITS 'AS APPLIED' CONSTITUTIONAL QUESTION OF ITS TARGETED "CLASS" OR "CLASS OF PEOPLE" WHO ARE INTENTIONALLY DISCRIMINATED AGAINST LEGISLATIVELY FROM ALL OTHER GENERAL INTENT OFFENSES BY ITS 'PARTIALITY' QUESTION OF REDACTED MENS REA BY MEANS OF ITS INTENDED DE FACTO SEGREGATION?

WHAT WEIGHT IS GIVEN TO ANY FORM OF SEGREGATION WHICH INDISCRIMINATELY REINTEGRATES UNCONSTITUTIONAL PRACTICES BY "SEPARATE BUT EQUAL" POLICY THAT HAS BEEN HELD IN A NEGATIVE LIGHT AS VOLITIVE TO DE FACTO SEGREGATION?

INSULAR GENERAL INTENT CAUSES CANNOT ISOLATE OR SEGREGATE POINTS PRICKED OUT BY WORDS OR TERMS BY WHICH TO SUBJECT ITS DISCRIMINATION FURTHER. IN DOING SO, NARROWLY SPEAKING, DENIES ONE, AS THIS DEFENDANT. HIS CLASS WITHIN A "CLASS OF PEOPLE" BY PROHIBITING HIS LIBERTY INTERESTS BY ITS SUBSTANTIAL ARBITRARY IMPOSITIONS AND PURPOSELESS RESTRAINTS. SEE, 893.101, FLA. STAT. (AS APPLIED IN ITS AMENDING). TO DENY ONE OF HIS 'KIND' WITHIN HIS SPECIE (DRUG OFFENSES EN TOTO), IS TO PERMIT THE GOVERNMENT THE RIGHT TO 'CHIP AWAY' OR ERODE THE RIGHTS OF THE INDIVIDUAL UNDER THE CONSTITUTION AS A MANIFESTED INJUSTICE.

THE COURT'S INTERPRETIVE RHETORIC TO INCLUDE 'PARTIAL REDACTION' OF MENS REA IS TO PERMIT LEGISLATION BY THE BENCH IN DIRECT VIOLATION TO THE SEPARATION OF POWERS IN ITS CHECKS AND BALANCES AS ITS YIELDS ITS DECISION TO BE MADE PART OF THE LAW; GREATER THAN ANY EDICT OR DICTU. THE LOOPHOLE IN THE MAY 2002 LEGISLATION BY THE COURT WAS NOT ENACTED BY THE LEGISLATURE, FALLS TO ITS CONSTITUTIONALITY AS ERROR OF A MANIFEST WEIGHT. IT CLEARLY FALLS TO 'CRIMES AGAINST HUMANITY' IN ITS REPUGNANCY TO ITS CONSTITUTIONALITY IN RESULT. SEE JUDICIAL REVIEW, STRICT SCRUTINY, AND THE JUDICIARY ACT).

SECONDLY, ANY FORESEEABLE DANGER OF THE AMENDED LEGISLATION (CHAPTER 893.101, FLA. STAT.) WAS FURTHER ENDANGERED BY ITS ABSENCE IN ITS STATUTORY CONSTRUCTION (PARTIAL MENS REA) ONLY TO BEING INTERPRETED AS SUCH, MADE ITS CONSTITUTIONALITY INTOLERANT BY ITS 'CLASS' DISTINCTION OVER THIS DEFENDANT WITHIN ITS SPECIE OF GENERAL INTENT OFFENSES.

IT PLACED A GREATER RISK OF ENDANGERMENT FROM THOSE WELL-DELINEATED OFFENSES TO SEGREGATE THIS PARTICULAR CHAPTER AS ITS FOSTER CHILD CONTRARY TO DENIED LIBERTY INTERESTS AS MANIFESTED.

THE LIABILITY OF THE AMENDED STATUTE, 893.101, FLA. STAT., MUST BE VIEWED AS: "IF THE NATURE OF A THING IS SUCH THAT IT IS REASONABLY CERTAIN TO PLACE LIFE AND LIMB IN PERIL WHEN 'NEGLIGENTLY MADE', IT IS THEN A THING OF DANGER. ITS DANGER GIVES WARNING OF THE CONSEQUENCES TO BE EXPECTED." THUS, IF ITS 'FACT' OF SEGREGATION IS MADE EMMINENT, ITS DANGER AS ASCRIBED OR MISTAKENLY MADE UNCLEAR BY THE ABSCENCE OF 'PARTIAL' REDACTION AROSE TO ITS CONSTITUTIONAL DIMENSION IN ITS INTOLERANCE TO BOTH HUMAN RIGHTS AND FUNDAMENTAL FAIRNESS. SEE, COMPREHENSION OF THE ORDINARY INTELLECT; AMBIGUITY IN ITS VOIDANCE.

LAW MUST BE MADE SUBJECT TO THE PRINCIPLE OF CHANGE, BUT NOT TO BE MADE INCLUSIVE OF SEGREGATIVE PRACTICES AGAINST HUMANITY BY HIS CLASS OR STATION.—NOR INTRUSIVELY HELD.

SEGREGATION VIOLATES HUMAN RIGHTS WHEN INTENTIONALLY TARGETED AS A SPECIFIC CLASS WITHIN ITS CLASSIFICATION BY ANY MEANS OR VIEWS.

POINT FOUR

SEPARATION OF POWERS; THE COURT MAY NOT LEGISLATE FROM THE BENCH

WHAT WEIGHT IS DUE VALID CONSIDERATION OF THE SEPARATION OF POWERS IN ITS CHECKS AND BALANCES WHERE THE COURT ASSUMED THE POWERS OF THE LEGISLATURE BY INSTILLING LANGUAGE OF 'PARTIAL' MENS REA INTENT INTO THE STATUTORY READING BY MEANS WHICH ALTERED ITS MEANING, FORCE AND EFFECT, ADVERSELY DISADVANTAGED AND FURTHER INJURED THE ACCUSED BY ITS IMPACT. DEFENDANT SUFFRAGE MUST BE HELD AS A LEGAL WRONG BECAUSE OF THE COURT'S INTERFERENCE AND INSISTENCE BY DECISIONAL LAW MADE TO THE RELEVANT STATUTE (CHAPTER 893), IS ENTITLED TO JUDICIAL REVIEW AND RELIEF THEREOF. BY HIS STANDING, DEFENDANT HAD BEEN DEPRIVED LIBERTY INTEREST UNDER ITS CONSTITUTIONALITY AND ITS QUESTION TO LAW AS AGGRIEVED AND PREJUDICED.

THIS QUESTION MADE OF THE INSTANT CASE'S CONSTITUTIONALITY IS RIPE, MATURE FOR ITS REVIEW AND DECISION IN FAVOR OF THE APPELLANT-DEFENDANT. SEE, POINT ONE, "WHAT WEIGHT IS DUE CONSIDERATION OF STARE DECISIS ..."

THIS QUESTION OF MERIT IS RELEVANT TO ITS SUBJECT MATTER (TO LAW) FOR JUDICIAL REVIEW AND JUDICIAL ENFORCEMENT BY GOVERNANCE OVER ITSELF TO RECTIFY EITHER ABUSE OF DISCRETION OR ABUSE OF PROCESS, IN A COURT OF COMPETENT JURISDICTION.

THIS COURT HAS THE AUTHORITY TO SET ASIDE THIS CASE-IN-CHIEF, WHERE THESE ALLEGATIONS SATISFY; ARBITRARY, CAPRICIOUS ABUSE OF DISCRETION CONTRARY TO CONSTITUTIONAL RIGHT BY EXCESSIVE COURT INFLUENCE IN ITS IMBALANCE OF POWER BY LEGISLATING FROM THE BENCH. IT QUESTIONS ITS "LEGALITY". SEE, "CLEARLY ERRONEOUS" TEST, IN ACCORDANCE WITH WHAT THE REVIEWING COURT DEEMS TO BE THE "NEEDS OF JUSTICE", IN ITS ENDS.

WHICH BRINGS US TO ITS ARGUENDO: "WHETHER THE COURT ERRED IN INTERPRETING THE REDACTED LEGISLATIVE INTENT OF ITS STATUTORY LANGUAGE WITH ITS ADDITION OR MINCING OF WORDS (IN ITS COURT INDUCED SURPLUSAGE) TO ENACT A PIECE OF LEGISLATION AS A MATTER OF LAW, NOT SET DOWN BY THE FLORIDA LEGISLATURE, WAS SUFFICIENT, IN AND OF ITSELF TO BE OFFENSIVE TO CREATE LAW OR INFLUENCE SUCH LEGISLATIVE LAW OUTSIDE ITS DOMAIN OR REALM IN ITS INCLUSION OF "PARTIAL" REDACTION OF MENS REA NOT PLACED THERE BY THE LEGISLATURE BY THE CONSENT OF THE GOVERNED, (WITHOUT PUBLIC INITIATIVE OR REFERENDUM).

SUCH ACTS OR INSTITUTIONS BY THE COURT GIVE CAUSE TO BE HELD AS UNCONSTITUTIONAL IN ITS RENDERING OF SECTION 893.101, FLA.STAT.

POINT FIVE

THE COURT IS NOT PERMITTED TO LEGISLATE FROM THE BENCH.

> WHAT WEIGHT IS DUE CONSIDERATIONS OF STARE DECISIS IN EVALUATING THE "CONSTITUTIONAL QUESTION" OF ANY 'PARTIAL' REDACTION IN A LAW WHERE IT MAY CONFLICT TO ORIGINAL LEGISLATIVE INTENT TO ITS AMENDED INTENT INVOLVING MENS REA AS DEFINED WITHIN CRIMINAL INTENT, WHERE STATUTORY LANGUAGE FAILS TO ELICIT ANY WORD OR TERM OF 'PARTIALITY'? OR 'CLASS OF PEOPLE'?

THE NATURE OF THE QUESTION POSED IS SUFFICIENTLY SIGNIFICANT ENOUGH TO ADVERSELY AFFECT A TRIAL'S OUTCOME.

IN LIGHT OF THE INSTANT CASE, ADDED TO JUDICIAL REVIEW OF BOTH ADKINS AND SHELTON COMES TO QUESTION THE FULL SCOPE OF DUE PROCESS WITHIN GUARANTEED LIBERTY INTERESTS, WHICH CANNOT BE PROHIBITED TO A FEW PRECEDENTIAL CASES OR BE FURTHER LIMITED TO THE ONLY KNOWN NATIONAL CASE OF LAMBERT V. CALIFORNIA (SEMBLE).

NOTABLY, THIS QUESTION MUST TAKE INTO EFFECT KNOWN CAUSES WITHOUT PRECEDENTIAL CASE STUDIES, TO WIT:

ROE V. WADE, U.S. V. THE WILL OF STEPHEN GIRARD, STANLEY V. GEORGIA, LAWRENCE V. TEXAS, GRISWOLD V. CONNECTICUT, U.S. V. WEEKS, AND (DRED) SCOTT V. SANFORD (PREDICATE FOR THE FOURTEENTH AMENDMENT) FOLLOWED BY PLESSY V. FERGUSON (OVERTURN SCOTT).

"AS IT TURNS OUT, A FINE-GRAINED PARSING OF THE SUPREME COURT PRECEDENTS IS UNNECESSARY..." (SHELTON, 23 FLA L. WKLY C 1469, WHEN COMPARED TO JUDICIAL SCRUTINY OF CONSTITUTIONAL QUESTIONS, WHERE STARE DECISIS IS NOT ESSENTIAL).

WHICH BRINGS US TO: "WHETHER THE COURT ERRED IN INTERPRETING THE INTENT OF THE LANGUAGE", WITHOUT ADDING OR MINCING WORDS AS IN SURPLUSAGE TO ENACTED LEGISLATION AS A MATTER OF LAW, AS SET DOWN, IS SUFFICIENTLY PERMISSIVE ENOUGH TO ALLOW THE COURTS TO LEGISLATE FROM THE BENCH ANY TERMS, SUCH AS "PARTIAL" MENS REA.

THE COURT MUST NOT GIVE AID TO THE PROSECUTION AT THE DISADVANTAGE OF THE ACCUSED BY LEGISLATING FROM THE BENCH.

IN SUM, CONSTITUTIONAL BALANCE IN ITS WELL-SETTLED STABILITY WITHIN ITS LIVING CONSTITUTIONAL QUESTION OF FUNDAMENTAL FAIRNESS (RIGHTS) NOW ON REDRESS IN ITS DISPATCH TO LAW, WHERE THE INSTANT CASE REPRESENTS NEW GROUNDS ARISING TO CONSTITUTIONAL DIMENSION.

THIS COURSE OF ACTION MUST NOT BE HELD TO REVIEW THROUGH ANCIENT, PRECEDENTIAL LAW ('WELL-TROD') OR THROUGH OR IN COMPARISON TO A.E.D.P.A., RATHER TO THE PRIMACY AND LEGITIMACY TO THE CONSTITUTION ONLY. AS A NOVEL AN ISSUE THAT MAY BE, THE ISSUES RAISE LEGAL CONUNDRUMS THAT MUST BE WEIGHED IN CONTRAST TO BOTH ADKINS AND SHELTON BY ITS COMPARATIVE WEIGHT OR VALUE TO FLORIDA'S DRUG OFFENSES ("MODIFIED" GENERAL INTENT CRIMES), NOTABLY THAT OF CHAPTER 893.101, FLA. STAT., ET SEQ.

THE SUPREME COURT'S OPINION WAS LEVERAGE AGAINST THE A.E.D.P.A., RATHER THAN TO SATISFY MATTERS OF LAW TO THE WEIGHT OF THE CONSTITUTION. THE COURT IN ITS JURISPRUDENCE 'SET OFF' OR 'PASSED THROUGH' ON ITS OPPORTUNITY TO DIRECTLY ADDRESS THOSE MATTERS AND ITS CONSTITUTIONALITY ON REDRESS TO BOTH ADKINS AND SHELTON, EVEN THOUGH THESE CAUSES GAVE THE COURT'S AN OPPORTUNITY TO RIGHT A WRONG AND TO RECTIFY ITS PREVIOUS OPINION PREMISED UPON TECHNICALITIES, RATHER THAN ITS RAISED QUESTION OF ITS CONSTITUTIONALLY 'AS APPLIED' OR 'ON ITS FACE' IN MEASURE OF ITS SPIRIT AND SOUNDNESS.

TO NOT, IN SUMMATION TO, CONCLUSIVELY DRAW UPON ITS CONSTITUTIONAL DIMENSION IS TO LEAVE OPEN ITS QUESTION IN PERPETUITY "IN ADFINITUM". AS SUCH, THIS QUESTION SEEKS AN EMPHATIC, DEFINITIVE RESOLUTION OF ITS CONSTITUTIONALITY (QUESTION) OF CHAPTER 893.101, FLA. STAT. AS MODIFIED AND AMENDED IN ITS LEGISLATIVE INTENT — NOT TO BE GLOSSED OVER INTRANSIENTLY.

893.101, FLA. STAT. REMAINS UNSOUND. (AS APPLIED).

POINT SIX

CONSTITUTIONAL LAW IS NOT GIVEN TO DEFERENCE OR PRIMACY OF THE FLORIDA DRUG ABUSE PREVENTION AND CONTROL ACT IN VIEW OF THE ADKINS-SHELTON DISAGREEMENT WHEN WEIGHING ITS DUE PROCESS CONSIDERATIONS "AS APPLIED" WHEN CONSIDERING CONSTITUTIONAL QUESTIONS.

THE NATURE OF THE ISSUE PRESENTED IS SUFFICIENTLY ADEQUATE ENOUGH TO ADVERSELY AFFECT THE DECISION OF THE LOWER COURT IN ITS DETERMINATION TO FUNDAMENTAL FAIRNESS.

THE FLORIDA DRUG ABUSE PREVENTION AND CONTROL ACT (F.D.A.P.C.A., HEREAFTER) MUST NOT BE HELD AS THE CRUCIBLE EDIFICE OVER CONSTITUTIONAL LAW. IT MUST ASSUME A "SECOND CHAIR" POSITION UNDER THE SUPREMACY CLAUSE OF THE CONSTITUTION.

IN THE OPINION OF THE COURT, IT HELD, " 'PARTIAL' ELIMINATION OF MENS REA AS AN ELEMENT OF CRIMES ANALGOLOUS TO THOSE IN FLORIDA'S DRUG ABUSE PREVENTION ACT, BEYOND ANY POSSIBILITY OF 'FAIRMINDED DISAGREEMENT'. THAT IS A TALL ORDER AND AS IT HAPPENS, 'AN IMPOSSIBLE ONE'."

HOWEVER THAT MAY BE, THE CONSTITUTION GOVERNS ANY FUNDAMENTAL FAIRNESS CONSIDERATIONS OVER THE INFERIOR F.D.A.P.C.A.. NOW, THAT IS A TALL ORDER AND NOT AN IMPOSSIBLE ONE.

WHEN DEFINED: "ELIMINATION" (AS NOTED ABOVE) MEANS TO EXCLUDE A THING IN ITS ENTIRETIES. THEREBY, THE COURT'S INTERPRETATION IS FLAWED. TO HOLD THAT A 'PARTIAL' ELIMINATION WAS HAD BY THE LEGISLATURE BY ITS LAW IS ERRONEOUS, OTHERWISE THE LEGISLATURE WOULD HAVE SAID SO, IN NO UNCERTAIN TERMS (OR WORDS) SET DOWN TO ITS RIGID STATUTORY CONSTRUCTION IN VERBIAGE UNDERSTANDABLE BY THE ORDINARY INTELLECT. THEY DID NOT DO SO. THE LAW IS UNCLEAR.

THEREFORE, LEGISLATED LAW CANNOT BE MADE DECISIONAL LAW WHEN WORDS EMPLOYED WITHIN ITS STATUTORY LANGUAGE DO NOT GIVE IT FULL AND COMPLETE CONTEXTUAL MEANING, CLEARLY STATED WITHOUT ALTERATION OR SURPLUSAGE BY ACENDENT WORDS OR THE COURT'S INTERPRETATION.

THIS CAUSE HAS ARISEN TO A CONFUSING STATE OF AFFAIRS OF ITS OWN (SEE, 893.101, FLA.STAT. LANGUAGE AND INTERPRETATION), WHERE THE TRIAL OR SUPREME COURT MAY "INFER" PARTIAL ELIMINATION WAS NOT SET TO LAW IN ITS CLARITY OF LANGUAGE. IF PARTIAL NEGATION HAS, IN FACT, OCCURRED, THAT PORTION OR PARTIAL 'MENS REA' ELEMENT 'REMAINING' MUST BE PROVED BY THE STATE PROSECUTOR'S OFFENSE BEYOND A REASONABLE DOUBT OF ANY HYPOTHESIS OF INNOCENCE, THEREFORE.

IT REMAINS A 'FACT NECESSITY' BY ITS CASE CONTRIBUTION TO A COMMISSIONABLE OFFENSE — TO BE PROVED — ABSOLUTELY. SEE, IN RE WINSHIP (NO CITATION GIVEN).

DUE PROCESS HAD BEEN VIOLATED BY ITS DEPRIVATION TO LAW.

FINALLY, THE SUPREME COURT MUST BE THE LAST SAFEGUARD AND BASTION OF DUEPROCESS PROTECTION SUCH AS "FUNDAMENTAL LAW WHICH CONDUCTS AND CONTROLS THE OTHERWISE UNCONTROLLABLE LEGISLATIVE POWER," A CHECK TO "HOT FOOTED ACTION" BY "IMPULSIVE MAJORITIES". SEE, AMENDED LEGISLATIVE INTENT "AS APPLIED" AND CONTRASTED TO ALL OTHER POINTS OF LAW.

THEREBY, THE SUPREME COURTS ULTIMATE WEAPON OF "JUDICIAL REVIEW" "IS LIKELY TO BE OF INCREASING VALUE". (SEE, TAFT OR HUGES, JJ.). SEE ALSO, 893.101, FLA.STAT.

Inclosing, the option a defendant has to claim on an "As-Applied" basis that his or her innocent possession of an illicit substance which leads to criminalized action "clearly demonstrates" A serious due process problem would be raised by application of the Act; due too the jury being permitted to presume the defendant was aware of the illicit nature of the substance, even when the affirmative defense is raised. see Fla. Std. Jury Instr. (Crim.) 25.2,. (See Cf. Liparota, 471 U.S. at 426 (construing a statute to include mens rea, noting that "to interpret the statue otherwise would be to criminalize a broad range of apparently innocent conduct"). This Act could be unconstitutionally applied to a specific defendant. (See Adkins PARIENTE J.

POINT SEVEN

Adverse Liberty interest were affected when this case proceeded without an "informedconsent' advisory by its nadequacy without notice by the court, prejudiced the defendant. NO expressed safeguard was articulated by any interest or bench akin to any presumption test when its manifested weight bore upon its outcome in its ends. When any defendant must yield his rights or cede to any reference of "GUILT-FIRST" renditions, those influences, no matter how slight, run up one's culpability in their defense's weakened stance as contrary to the indefragable right against selfincrimination regardless of any "BUT FOR" test (JUSTIFICATION) of excludable exemptions rendered through similarly construed implications; Must be attendant to those very safeguards given as a MIRANDA advisory must in its mandate, when impaired by adverse certainty of DUE PROCESS in its "Innocence-FIRST", bidding by its primacy over this, or any other similar case and cause when using any affirmative defense.
The court could not move forward without such a waiver interest. Reversible error occurred in result. Structural defect is hereby noticed.

POINT EIGHT

VAGUENESS : VOID FOR VAGUENESS

CHAPTER 893.101 REMAINS UNCONSTITUTIONAL "AS APPLIED" AS IT FALLS TO VAGUE AND AMBITUOUS BY ITS MISUNDERSTANDING OF THE COMMON, ORDINARY INTELLECT AS NOTED BY ITS INCERTAINTY, WITHOUT A TRUE SENSE OF CLARITY, CANNOT IMPLY NOR CONNOTE ANY INFERENCE OR REFERENCE TO A 'PARTIAL' REDACTION OF MENS REA NOT SET TO STATUTORY LANGUAGE OF THE AMENDED VERSION OF LEGISLATIVE INTENT AS ENACTED.

IN ITS ENDS OF JUSTICE, THIS CAUSE CONTENDS THAT IT IS A CONTEXTUAL STRICT MISCOMMUNICATION OF ANY ORDINARY INTELLECT TO DECIPHER ITS STATUTORY CONSTRUCTION IN CONTRADICTION TO ANY APPLICATION OF ITS 'PLAIN MEANING' (RULE) OR ITS ACTUAL 'POLESTAR' OF ADEQUATE CONSTITUTIONAL INTERPRETATION BY ITS CONFLICTED QUESTION OF ITS INTERPRETATION THAT WOULD HOLD TO ANY CONSISTENCY OF APPROPRIATENESS TO CERTIFY AND JAMATE ITS CONSTITUTIONAL QUESTION WITHIN ITS 'LIVING', CENTRIST VIEW OF ITS CONSTITUTIONALITY.

ABSENT ANY STRICT HOLDING OF CONSTRUCTION, AND VOID OF ANY ACTUAL WORDS OF CLARITY, HAVE MISCONSTRUED THIS AMENDED CHAPTER. NO MATTER HOW WIDE OR NARROW ITS CONSTITUTIONAL DOORWAY; ANY DOOR SELECTION AT THIS POINT WOULD VIOLATE ITS CONSTITUTIONAL SPIRIT TO ITS LETTER OF THE LAW. IT MUST NOT BE FOUND UNBOUND OR A DEAD LETTER, HOWEVER, AS WRITTEN WITHOUT ANY WORDING OF ITS 'PARTIAL' REDACTION CANNOT BE SO OBVIOUSLY HELD AS MENS REA INTENT REDACTION (IN ITS FULLNESS) HAS BEEN ARGUED AND DEBATED FOR DECADES. THE COURTS MUST CEDE THIS SALIENT POINT OF LAW.

INDEED, AS ENACTED, THE CONSTITUTIONAL FRAMEWORK HAD BE DISENFRANCHISED BY ITS ENACTMENT OF SECTION 893.101, FLA. STAT. IN ALL ITS VAGUENESS AND DISPARITY, "AS APPLIED". SEE, DISCRIMINATE DEPRIVATIONS, INTOLERANCE.

IN SUM, AS READ, THE STATUTORY LANGUAGE OF THE 'MENS REA' REDACTION IS SO VAGUE THAT NO COMMON, ORDINARY MAN OF AVERAGE INTELLECT WOULD EVER BE ABLE TO COMPREHEND ANY OF THE ENACTED LEGALESE AS TO DERIVE ANY MEANINGFUL SENSE OF 'PARTIALITY' IN ITS REDUCTION, OR ADDUCE SUCH INTERPRETIVE REASONING FROM ITS PASSAGE AS WRITTEN. IT IS DEVOID OF ANY CONTEXT AND ITS CONSEQUENCE WHERE ANY REASONABLE MAN (TEST) COULD ADEQUATELY UNDERSTAND THE FULLNESS OF ITS IMPLICATIONS BY ITS CONFUSING COMPLEXITY OF ITS DESULTORY LANGUAGE BY ANY MEANINGFUL 'REFERENCE OR INFERENCE' IN ITS DERIVATIVE RENDITION TO ITS LAW AS SET DOWN, MUST BE HELD AS VOID FOR VAGUENESS.

NO VALID CONSIDERATION MUST BE GIVEN THIS SECTION (893.101) WHERE ITS LANGUAGE IS SO VAGUE AND OBSCURE AS TO COMPEL THE COURTS TO GIVE MEANING AND EFFECT TO ITS DEFINING ESSENTIALS; WHERE ITS DEFICIT WAS LEGISLATED BY THE BENCH TO INFER AND CONNOTE 'PARTIAL' REDACTION NOT PLACED THERE BY THE LEGISLATURE. CAUSE AND EFFECT HAD NOT OBTAINED SECTION 893.101, FLA. STAT. IS FACIALLY UNCONSTITUTIONAL 'AS APPLIED'.

THE COURT INTERPRETATION MUST NOT BE CONFUSINGLY HELD TO BE EITHER AN EXCEPTION OR A WAIVER TO PERMIT ITS "LEGISLATION BY THE BENCH" TO HAVE CAUSE AND EFFECT, ONLY A REMEDIAL ACTION AS NOTICED TO THE LEGISLATURE TO MAKE REPAIR TO ITS LAW IN ORDER TO BE LAWFUL — OR EVEN CONSTITUTIONAL — MUST BE MADE RIGHT.

THE LANGUAGE OF THE STATUTE REMAINS DISCORDANT AND NEBULOUS WITHOUT ITS AMENDING, PASSAGE, AND EXECUTIVES SIGNATURE; THUS, UNCONSTITUTIONAL ON ITS FACE. ADDITIONALLY, THERE IS SIMPLY NO BASIS FOR SAYING THAT THE LEGISLATURE INTENDED THE SAME MEANING GIVEN TO IT BY THE COURT TO ITS 'PARTIALITY', WHERE ITS MEANING SHOULD HAVE BE STATED TO TERMS ON THEIR FACE — NOW AFFECTED THE OUTCOME OF THESE CASES. AS WRITTEN, THE LANGUAGE IS REPUGNANT AND INSULTING TO THE ORDINARY INTELLECT TO COMPREHEND ITS FULLNESS TO THE LAW. THIS ISSUE AND CONCERN CANNOT BE "GLOSSED" OVER.

DEFENDANT HAS BEEN IMPAIRED, HIS FUNDAMENTAL RIGHTS.

POINT NINE

WHAT WEIGHT MUST BE GIVEN TO THE PRIMACY OF "PRE-EMPTION" WHEN ITS CONSIDERATIONS OVER THE LEGITIMACY OF THIS CAUSE MUST SUBSTANTIATE ITS AUTHORITY HERE IN THIS INSTANCE AND THAT OF THE ADKINS-SHELTON CAUSES FROM WHICH IT IS DERIVED BY TENANT?

THE TRIAL COURT AND THE UPPER COURTS ERRED IN THEIR JURAL REVIEW OF ITS 'CONSTITUTIONAL QUESTION' OVER ONE'S LIBERTY INTERESTS WHERE 'PRE-EMPTION' WAS AVOIDED OR SET OFF.

AS A DERIVATIVE OF THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION DEFERENCE WAS GIVEN TO ANY THOUGHT OF 'PREEMPTION' WHEN, AS HERE, IT IS ASSERTED THAT LEGISLATION ANALGOLOUS TO THE CHAPTER 893.101, PARTICULARITIES MUST BE NOW CONSIDERED ON ITS MERITS AND RIPENESS. FEDERAL LEGISLATION TAKES SUPREMACY OVER STATE AND LOCAL LAWS AS BROUGHT FORTH BY THE DEFENDANT.

THIS CONSTITUTIONAL QUESTION TO LAW MEETS CONTEMPORARY ISSUES CONCERNING THIS INSTANT CASE. ERROR IS BROUGHT. MANIFESTED INJUSTICE OCCURRED IN RESULT AND MUST BE REPAIRED IN ITS ENDS.

THERE, IN THIS CASE, THERE IS NO DISTINCTION BETWEEN NATIONAL AND STATE CITIZENSHIP. A CITIZEN OF A STATE, AS NOTED BY THIS CAUSE, IS SIMPLY A CITIZEN OF THE UNITED STATES LIVING IN THAT STATE (FLORIDA).

SEE, PROCEDURAL DUE PROCESS (NARROW GROUNDS OF PROPER PROCEDURES); ALSO SEE, PROTECTION FROM STATE INTERFERENCE.

POINT TEN

The constitutional Law raised by the "PARTIAL" elimination of MENS REA goes "Beyond Ratio Decidende." What weight is given to its comparative Legitimacy as now conflicted between original legislative intent and its amended legislative intent when at odds; or its derrogation to constitutional Law when each disparages the others intentions as conflicted?

This is an open challenge to Constitutional Law "AS APPLIED".

For the courts to reason in their orbiter dicta of the Law's "PARTIAL" elimination must not be held as decisional Law for this, or any other ensuing causes in any degree of firmanence to that law.
Dictum is just that — A statement of opinion or a general rule mandating corrective action by the Legislature for its repair rather than to permissively leave open the law to its vulnerability to a constitutional question. The statutory Language encunciated its full and "COMPLETE" MENS REA "ELIMINATION", not that of any "PARTIAL" redaction which, by the court's assistance held to the protracted error by opining its "PARTIALITY" not stated by the strict scrutiny of the statutes actual Language as enacted.

Confusion Mounts.
It is not the court's obligatory requsite to "refine" the Law for the Legislature as it would be considered a violation to the separation of powers by Legislating from the bench. Clearly this is a major violation to DUE PROCESS.
As here in this instant case, "THE CONSTITUTION OF THE UNITED STATES OF AMERICA has been dishonored."

POINT ELEVEN

CHAPTER 893.101, FLA. STAT (2002) IS CONSTITUTIONALLY UNSOUND AS WRITTEN AND ENACTED WHERE UNCERTAINTY LAY AS TO ITS KIND OF 'INTENT' OFFENSE IN QUESTION.

SIMULTANEOUSLY, THIS CONSTITUTIONAL QUESTION MAY BE RAISED FOR THE FIRST TIME ON APPEAL AS IT COULD NOT BE COGNITIVELY DETERMINED AS EITHER A GENERAL INTENT OFFENSE OR ITS DISTINGUISHABLE COUNTERPART: A STRICT LIABILITY CAUSE AS WRITTEN AND SUPPORTED BY LEGAL PUNDITS, PROFESSORS AND THOSE OF EMERITUS STUDIES THROUGH ITS FILED AMICUS CURIAE BY OVER THIRTY PLUS DISTINGUISHED LEGAL MINDS WHO QUESTIONED ITS KIND OR SPECIE OF OFFENSE [AS FRIENDS OF THE COURT]. SEE 893.101, FLA. STAT.

AS SUCH, THE DEFENDANT [NOW APPELLANT], BEING OF COMMON, ORDINARY INTELECT AND THOSE WHO SIMILARLY FILED THE AMICUS CURIAE BY ITS ENDORSEMENT COULD NOT DETERMINE THE TYPE OF OFFENSE UNTIL, AND ONLY UNTIL, THE FLORIDA SUPREME COURT HELD THIS STATUTE OUT AS A GENERAL INTENT OFFENSE TO BE PROVED BEYOND A REASONABLE DOUBT. THUS, UNCONSTITUTIONAL. "VOID FOR VAGUENESS" IN ITS AMBIGUITY AND UNCERTAINTY.

THE COURT'S HOLDING IN GERTZ V WELCH, 418 US 323 (1974) (JUNE 25, 1974) HELD 'STRICT LIABILITY' AS "LIABILITY WITHOUT FAULT" NOT JUST A REDUCED INTENT APPLICATION TO LAW. "IF A PERSON COMMITS AN ACT COMING UNDER THIS RULE EVEN BY ACCIDENT, OR IN IGNORANCE, OR WITH GOOD MOTIVES, AND SO ON, THAT PERSON IS LIABLE FOR DAMAGES. THERE IS NO REQUIREMENT THAT ANY FAULT — NOT EVEN SIMPLE NEGLIGENCE — BE SHOWN; THE ONLY PROOF REQUIRED IS THAT IT MEET THE CONDITIONS SET FORTH BY LAW AND THAT THE DEFENDANT DID IT. OF COURSE, LIABILITY CAN BE MITIGATED BY AN EFFECTIVE DEFENSE." (SEE AFFIRMATIVE DEFENSE).

NO FAULT HAS BEEN PROVED IN THIS CAUSE AS PRESENTED.

THE STATE, UNDER 'STRICT LIABILITY' THE STATE IS NOT REQUIRED TO

PROVE ANY DEGREE OF 'FAULT' (LIABILITY, INTENT, OR CULPABILITY). THAT IS, OF COURSE, THAT IT HAD BEEN DECLARED AS A STRICT LIABILITY CRIME — HOWEVER, THE SUPREME COURT OF FLORIDA HELD TO ITS DETERMINATION OF A GENERAL INTENT 'VARIATION' (PARTIAL ELIMINATION) OFFENSE RATHER THAN ITS COUSIN, ITS REDUCED INTENT OFFENSE.

THUS, NO ONE, LEGAL MIND IT OR THIS ORDINARY INTELLECT OF AN APPELLANT, COULD DETERMINE ITS LEGAL STATUS. INDEED, THEREFORE, IT MUST BE HELD AS VAGUE AND AMBIGUOUS (VOID FOR VAGUENESS TEST); AS SUCH — "UNCONSTITUTIONAL" AS READ (WITHOUT BEING MISUNDERSTOOD AS IT HAD BEEN BY SO MANY PARTIES AND INTERESTS, INCLUSIVE OF THE STATE PROSECUTOR'S OFFICE) (SEE FILED AMICUS CURIAE).

THE STATUTE, BY ITS CONSTRUCTION OR LANGUAGE WAS NOT ADEQUATE IN ITS INTERPRETATION BY THE ORDINARY INTELLECT TO KNOW OF ITS LIBELOUS DEGREE WITH ANY CERTAINTY.

THEREBY, IN SUM, "UNCONSTITUTIONAL" AS APPLIED.

IN SUMMATION

In SUM, the instant case on appeal renders its issues for a written opinion predicated on the relevant issues, though they allege existence of several defects on its face, as misapplication of the Law, abuse of discretion, inclusively of DE FACTO Segregation, Legislating from the bench (by conflict to separation of powers), or pre-emption by its primacy through THE SUPREMACY CLAUSE, falls to violation and deprivation of Fundamental rights, non-essential stare decisis, surplusage, "class of people" creationism and void for vagueness, amongst other meaningful matters at law; must be given full Judicial Review.

Each, on their own Merits can be appealed for the first time for their immenent impact on CONSTITUTIONAL LAW in its necessity and spirit. Vigorous language by the court Legislated its essential context as that of "PARTIAL" MENS REA redaction, when it was not an explicit construction of words or terms enacted, but given sanctification as decisional Law by the courts interpretation of its inclusion, violates its separation of powers in its Legislating from the bench.

Similarly, conflicted is the original Legislative intent to its contrasted amended Legislative intent without public initiative, or its referendum by vote conflicts its implimentation as enacted between the republican forum of government now conflicted to its democratic means to permit its governance without the "consent of the governed".

Section 893.101, FLA. STAT., as written is insensible, thereby it is of no Lawful consequence — "AS IS" — or, "AS APPLIED". The opinions of the court, as more than "DICTU", failed to directly answer its ADKINS or SHELTON case issue of CONSITUTIONALITY; and, by avoidance, it has invoked its parsimonous, tight-fisted holding in its error. No other dispensation had been appropriated by the court pending its final disposition of its constitutionality.

A written opinion is sought by this request of the court.

CONCLUSIN

Statutory effect beyond Legislative intent by courts inclusion of its 'PARTIAL' elimination not expressed within its language.

under strict scruting of its statutory construction, no provision of its Law in its Language or inference holds to proscribed Legislative intent that expressed 'PARTIAL' elimination of its MENS REA intent element which renders up the constitutional question of its Ligitemacy by the court's questionable inclusiveness by its interpretation, ill-founded by its own legislation from the court through "EXCESSES OF SURPLUSAGE" and "IMPROPER LEGAL REQUSITES" that arise 'beyond' any AUTHORITY AS SEPARATION OF POWERS. Section 893.101, FLA. STAT. "REMAINS UNCONSTITUTIONAL".

An unforeseeable JUDICIAL ENLARGEMENT OF A CRIMINAL STATUE APPLIED RETROSPECTIVELY "IS A VIOLATION OF THE DUE PROCESS CLAUSE." See. Bond V. Sec'y DEPT. OF CORRECTIONS, 155 Fed Appx. 447 (CA 11 FLA. 2005), AT: 353-54, 84 S.Ct. At 1702-03.

Moreover, "IT IS WELL ESTABLISHED IN THE LAW THAT WHERE THE CONSTRUCTION PRESCRIBES THE MANNER IN WHICH SOMETHING MAY BE ACCOMPLISHED, THE MEANS ARE EXCLUSIVE." STATE V. ANDREWS, 133 So. 2d 701 (FLA. 1959). "FURTHER, EXPRESS OR IMPLIED PROVISIONS OF THE CONSTRUCTION CANNOT BE ALTERED, CONTRACTED, OR ENLARGED BY LEGISLATIVE ENACTMENT." See. SPARKMAN V. STATE REL, SCOTT, 58 So. 2d 431, 432 (FLA. 1952).

Furthermove, "INDETERMINING THE CONSTITUTIONALITY OF A STATUE, COURTS SHOULD BE GUIDED BY THE STATUTE'S SUBSTANCE AND MANNER OF OPERATION, RATHER THAN BY ITS FORM TO THE EXTENT POSSIBLE, COURTS HAVE A DUTY TO CONSTRUE A STATUE IN SUCH A WAY AS TO AVOID CONFLICT WITH THE CONSTITUTION." STATE V. GALE DISTRIB., 349 So. 2d 150, 153 (FLA. 1977); See, EX PARTE, WHITE 178 So. 2d 876 (FLA. 1938). (A STATUE QUESTON ON IT'S CONSTITUTIONALITY).

IN SUM, THE LOWER COURT ERRED IN ITS JUDICIAL REVIEW WHERE IT FAILED TO ASCERTAIN FUNDAMENTAL FAIRNESS TENANTS OF DUE PROCESS AND EQUAL PROTECTION AS REVEALED BY THE MERITOUS POINTS RAISED. THE COURT FURTHER ERRED IN RULING THAT SECTION 893.101, FLA. STAT. COULD BE FOUND SOUND OR CLEAR FOR THE MEN OF ORDINARY INTELLECT TO UNDERSTAND, REASON OR EMPLOY ITS LANGUAGE WITHOUT AID OF A COURTS INTERPRETATION OR THE SIMPLY CLEAR WORDING OF ITS CONSTRUCTION. IT MUST BE FOUND CONTRARY TO CLEARLY ESTABLISHED CONSTITUTIONAL LAW IN ITS CONFLICT AS URGED HEREBY. IT MUST BE HELD ASVOID FOR VAGUENESS BY ITS OVERWROUGHT COMPLEXITY AND SURPLUSAGE OF 'PARTIAL' TO CONSTITUTE ANY ADEQUATE MEANING BY WHICH TO INSTITUTE IT AS LAW.

THE MERITS OF THIS CAUSE MAY BE RAISED ON REDRESS FOR THE FIRST TIME ON APPEAL BY THEIR QUESTIONS TO CONSTITUTIONALITY; MUST BE HEARD. THE COURT MUST BE RECEPTIVE AND ATTENDENT TO ITS REPAIR AND REMEDIATION. THE DEFENDANT-APPELLANT URGES THE COURT TO GRANT RELIEF.

THE COURT SHOULD, AND MAY, TREAT THIS PRESENTMENT AS ONE OF 'FIRST IMPRESSION' WITHIN ITS COMPETENT JURISDICTION.

CONSTITUTIONAL QUESTIONS HAVE BEEN CALLED.

THE CONSTITUTION MUST NOT BE HELD HOSTAGE BY ANY SUPERFLUOUS OR MEANINGLESS LANGUAGE, NOR MAY IT BE SO PERMISSIVE AS TO ALLOW IT TO ACT AS A BLACK LETTER LAW IN ALL ITS PRINCIPLES OR ITS PRIMACY. SEE, HORNBROOK LAW.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief was Furnished to institutional officials for mailing to:

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~&~

THE DISTRICT COURT OF APPEAL
SECOND DISTRICT
P.O. Box 327
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Respectfully Submitted,
/s/ Eric Olmeda
Eric Olmeda #537876

OATH

Under penalties of perjury, I declare that I have read the foregoing brief and that the facts stated in it are true.

Date: 6/30/13

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