IN THE
SUPREME COURT OF THE UNITED STATES

RONALD MORROBEL,
Petitioner,

vs. Number

UNITED STATES OF AMERICA
Respondent.
_____/

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

COMES NOW the Petitioner, RONALD MORROBEL, by and through undersigned counsel and pursuant to Sup. Ct. R.39, and moves this Honorable Court for leave to file the attached Petition for Certiorari in the Supreme Court of the United States without costs and to proceed in forma pauperis.

In the lower courts, the Petitioner was formally adjudicated unable to afford counsel and undersigned counsel was appointed for him under 18 U.S.C. Section 3006(a) of the Criminal Justice Act; accordingly, the Petitioner has not attached an affidavit of insolvency.

Respectfully Submitted,

s/Gregory A. Samms
GREGORY A. SAMMS, ESQ.
Counsel for Petitioner
113 Almeria Avenue
Coral Gables, FL 33134
(786) 953-5802 (tel)
(786) 513-3191 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail upon The Solicitor General, United States Department of Justice, Washington, D.C. 20530, this 24th day of January, 2019.

s/Gregory A. Samms
Gregory A. Samms, Esq
Florida Bar No. 438863

IN THE
SUPREME COURT OF THE UNITED STATES

RONALD MORROBEL,
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UNITED STATES OF AMERICA
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_____/

PETITION FOR A WRIT OF CERTIORARI

TO

THE UNITED STATES COURT OF APPEALS
IN AND FOR THE ELEVENTH JUDICIAL CIRCUIT

DECLARATION VERIFYING TIMELY FILING

Petitioner, Ronald Morrobel, through undersigned counsel, and pursuant to SUP. CT. R. 29.2 and 28 U.S.C. § 1746, declares that the Petition for Writ of Certiorari filed in the above-styled matter was placed in the U.S. mail in a prepaid first-class envelope, addressed to the Clerk of the Supreme Court of the United States, on the 24th day of January, 2019.

GREGORY A. SAMMS, ESQ.
Attorney for the Petitioner

By: s/Gregory A. Samms

Gregory A. Samms, Esq.
113 Almeria Avenue
Coral Gables, FL, Florida 33134
Telephone No. (786) 953-5802

January 24, 2019

IN THE
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RONALD MORROBEL,
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IN AND FOR THE ELEVENTH JUDICIAL CIRCUIT

GREGORY A. SAMMS, ESQ.
COUNSEL FOR PETITIONER
113 Almeria Avenue
Coral Gables, FL 33134
(786) 953-5802 (tel)
(786) 513-3191 (fax)
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PETITION FOR A WRIT OF CERTIORARI

TO

THE UNITED STATES COURT OF APPEALS
IN AND FOR THE ELEVENTH JUDICIAL CIRCUIT

RONALD MORROBEL respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Eleventh Judicial Circuit rendered and entered in Case No. 17-14496-C of that Honorable Court as a mandate on DECEMBER 4, 2018, which affirmed the judgement and sentence of the United States District Court for

QUESTIONS PRESENTED

I. Whether The District Court, Erred When It Found That The Petitioner Was An Armed Career Criminal When State Law Clearly Defined Florida Aggravated Assault As A Crime That Is Not A Crime Of Violence Under The Categorical Approach.

II. The Trial Court Erred By Finding A Four Level Enhancement for Trafficking In Firearms Without Any Evidence That Petitioner Knew Or Had reason To Know That The Buyer Would Use The Firearms Unlawfully

III. The Trial Court Erred When It Found That The Appellant Possessed A Firearm In Connection With Another Felony Offense Within the Meaning of the Sentencing Guidelines.

LIST OF PARTIES

The parties in this proceeding or persons who have an interest in the outcome of this case are as follows:

1. Ronald Morrobel, Appellant.

2. United States of America, Appellee.

3. Ignacio Jesus Vazquez, Assistant United States Attorney.

4. Karen Moore, Assistant United States Attorney.

5. Juan Videa, Co-defendant.

6. Gregory A. Samms, Esq., Attorney for Appellant.

7.Frederico Moreno, United States District Court Judge.

8. Jason Kreiss, Attorney for Co-defendant Videa.

9. Darryl Marshal, Co-Defendant.

10. Edward Joseph O'Donnell, Esq., counsel for Co-Defendant Marshal.

11. Sivashree Sundaram, Assistant United States Attorney.

12. Emily Smachetti, Assistant United States Attorney.

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TABLE OF AUTHORITIES

REFERENCE TO THE OPINION BELOW

The trial court issued no written opinions in this matter. The Eleventh Circuit Court of Appeals did issue a written, unpublished opinion which, along with the judgement of the trial court, is included in the appendix to this Petition.

STATEMENT OF JURISDICTION

This court has jurisdiction under 28 U.S.C. Section 1254 (1).

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the Court Below.

On May 18, 2017, the United States filed a ten count Indictment against the Petitioner and two co-defendants, namely, Juan Videa and Darryl Marshall. [D.E. 8]. The Indictment alleged that the Petitioner conspired to possess with intent to distribute 28 grams or more of crack cocaine in violation of 21 U.S.C. § 846 in Count One; Dealing in Firearms Without a license in violation of 18 U.S.C. § 922(a)(1)(A) in Count Two; Possession With Intent to Distribute a Controlled Substance in Count Seven; and Possession of a Firearm by a Convicted Felon in Counts Eight, Nine and Ten. [D.E. 8].

On July 18, 2017, the Petitioner plead guilty to three counts. Specifically Count One, Conspiracy to Distribute Crack Cocaine, Count Two, Possession With Intent to Distribute and Count Eight, Possession of a Firearm by a Convicted Felon. All other counts against the Petitioner were dismissed. [D.E. 65].

Subsequent to the Petitioner's guilty plea, on August 25, 2017, the Probation Department filed a Pre-Sentence Investigation Report [D.E. 41]. The probation department alleged that the Petitioner qualified for an enhanced sentence under the provisions of 18 U.S.C. § 924(e) and that he was an armed career criminal under §4B1.4(a) of the Federal Sentencing Guidelines. The three criminal priors that the

Probation Department relied on to make the ACCA determination were a 2001Florida Aggravated Assault with a Deadly Weapon conviction [D.E. 50 ¶ 70]; a 2001 Florida Aggravated Battery with Great Bodily Harm conviction; and a Florida 2011 Delivery with Intent to Sell Cocaine conviction. [D.E. 50 ¶s 71, 75]. The defense objected to the defendant being categorized as an armed career criminal and stated that the Florida Aggravated Battery and Florida Aggravated Assault charges were not crimes of violence under *Samuel Johnson v. United States v.* 135 S.Ct. 2551 (2015) which held that the imposition of an increased sentence under the "residual clause" of the ACCA, 18 U.S.C. § 924(e)(2)(B)(ii) violates due process because it is unconstitutionally vague. and should not be counted as ACCA predicates. The Court overruled the defense's objections and found the defendant to be an armed career criminal within the meaning of 18 U.S.C. 924(e). This finding gave the Petitioner a criminal history category of VI and an offense level of 37.

The probation department also increased the Petitioner's guideline range four levels for allegedly violating U.S.S.G. *§ 2K2.1(b)(1)(A), (B)* which provides *a four-level increase if an* offense involved eight to 24 firearms, and a two-level increase applies if an offense involved three to seven firearms. U.S.S.G *§ 2K2.1(b)(1)(A), (B).* The defense objected to this determination and argued that

only a two level increase should apply because the defendant should only be responsible for 5 firearms. After the objections on this issue were discussed the parties agreed that only 5 guns should be attributed to the defendant and the guideline calculation was adjusted upward two levels instead of four. [Sent. Trans. p. 56].

The probation department assessed a four-level increase under 2K2.1(b)(5) for the trafficking of firearms. The defense objected to this assessment stating that the defendant did not traffic in firearms because the defendant did not fit the precise definition of trafficking under 2K2.1(b)(5). The court overruled the defense objection and assessed a four-level increase. [Sent. Trans. p. 98].

In paragraph 60 of the PSI the probation department assessed a four-level increase pursuant to § 2K2.1(b)(6)(B). Under § 2K2.1(b)(6)(B) if the defendant "used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, the offense level is increased by four levels." *§ 2K2.1(b)(6)(B).* The defense objected to this assessment and the trial court overruled the objection and granted the four-level increase. [Sent. Trans. p. 98].

After the court heard argument on all the objections to the PSI, the Court found the Petitioner to be a career criminal corresponding with a criminal history category of VI. The court then found the guideline level to be 34 with a guideline range of 262 to 327 months. [Sent. Trans. p. 110]. Subsequent to calculating the Petitioner's guideline range the court heard argument on the factors enumerated in 18 U.S.C. 3553 and granted the Petitioner a downward variance to 210 to 262 months. [Sent. Trans. p. 113].

On May 24, 2016 the Petitioner timely filed his Notice of Appeal to the Eleventh Judicial Circuit. [D.E. 48].

ARGUMENT

I. The Court Erred When It Found That The Appellant Was An Armed Career Criminal When State Law Clearly Defined Florida Aggravated Assault As A Crime That Is Not A Crime Of Violence Under The Categorical Approach

The Armed Career Criminal Act ("ACCA"), provides enhanced sentencing for individuals who violate 18 U.S.C. § 922(g) and have "three previous convictions for a violent felony, serious drug offense, or both, committed on

occasions different from one another..." 18 U.S.C. §924(e)(1). The ACCA defines "violent felonies" as any crime punishable by imprisonment for a term exceeding one year that:

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) (ii) is burglary, arson, or extortion, involves use of explosives, ***or***

(iii) ***otherwise involves conduct that presents a*** **serious** ***potential risk of physical injury to another***....

18 U.S.C. 924§(e)(2)(B) (emphasis added).

The first portion of the statute, subsection (e)(2)(B)(i) is known as the "elements clause," the first portion of subsection (e)(2)(B)(ii) is known as the "enumerated crimes clause," and the last portion of Section (B)(ii), is known as the "residual clause."

On June 26, 2015, the United States Supreme Court struck down the italicized clause, commonly known as the residual clause, as a violation of the Fifth Amendment's guarantee of due process. *See Samuel Johnson v. U.S.*, 135 S. Ct. 2551, 2557 (2015). Specifically, the Supreme held that the ACCA's residual

clause violated due process because it violated [t]he prohibition of vagueness in criminal statutes." *Samuel Johnson*, 135 S.Ct. at 2556-2557.

However, the Supreme Court in *Samuel Johnson* did not invalidate ACCA's elements clause or enumerated crimes clause. *Samuel Johnson*, 135 S.Ct. at 2563. On April 18, 2016, the Supreme Court announced that *Samuel Johnson* is retroactively applicable to cases on collateral review. *Welch v. United States*, 136 S.Ct. 1257 (2016).

Thus, when determining whether a prior conviction qualifies as a violent felony under the ACCA, courts may only look to the elements of the crime, not the underlying facts of the conduct that led to the conviction. *Id.* Only the prior statues of conviction, the charging document or the jury instructions are determinative. The facts of the underlying conduct of the conviction are not relevant to a *Samuel Johnson* analysis. See *Descamps v. United States* 133 S.Ct. 2276 at 2283-85 (2013). Thus, courts should "look no further than the statute and judgment of conviction." *United States v. Estrella*, 758 F.3d 1239, 1244 (11th Cir. 2014). In so doing, courts "must presume that the conviction 'rested upon nothing more than the least of the acts' criminalized." *Moncrieffe v. Holder*, 569 U.S.184 (2011). Absent

an ACCA enhancement, the maximum sentence for violation §922(g) is ten years imprisonment. *See 18 U.S.C. §924(a)(2).*

After *Samuel Johnson*, for a prior conviction to qualify as a "violent felony," for purposes of the ACCA, the court must determine whether it falls under the elements clause because it "has as an element the use, attempted use, or threatened use of physical force against the person of another" or under the enumerated offenses clause because it is "burglary, arson, or extortion." *18 U.S.C. 924(e)(1).* In that regard, the Supreme Court first instructs courts to "compare the elements of the statute forming the basis of the defendant's conviction with the elements of the 'generic' crime. *Descamps*, 133 S.Ct. at 2281. If the elements of the state offense are either "the same as, or narrower than, those of the generic offense," then any conviction under the statute qualifies as a predicate offense for purposes of the ACCA enhancement. *Descamps, supra.* Likewise, under the categorical approach, if the prior conviction on its face requires proof, beyond a reasonable doubt and without exception, an element involving the use, attempted use, or threatened use of physical force against a person for every charge brought under that statute, then it too qualifies as a violent felony under the ACCA. *Descamps*, 133 S.Ct. at 2283-84. This is called the "categorical approach." But "if the statute sweeps more broadly than the generic crime, a conviction under that law

cannot count as an ACCA predicate, even if the defendant actually committed the offense in its generic form." *Descamps*, 133 S.Ct. at 2283.

For the limited purpose of helping to implement the categorical approach, the Supreme Court has also recognized a "narrow range of cases" in which courts can utilize what is called the "modified categorical approach." *Descamps* at 2284. The modified categorical approach allows courts to review certain documents from the state proceedings, known as "*Shepard* documents," to determine if the state court convicted the defendant of the generic offense. *Id.* at 2283-84. Even though the modified categorical approach lets courts briefly look at the facts, it "retains the categorical approach's central feature: a focus on the elements, rather than the facts, of a crime. And it preserves the categorical approach's basic method: comparing those elements with the generic offense's." *Descamps* at 2285. Thus, the inquiry "is always about what elements the defendant was convicted of, not the facts that led to that conviction." *United States v. Lockett*, 810 F.3d 1062 at 1266 (11th Cir. 2016). The Eleventh Circuit has recognized that "the modified categorical approach can be applied only when dealing with a divisible statute: a statute that 'sets out one or more elements of the offense in the alternative.'" *Lockett, supra*. The Court may refer to *Shepard* documents to determine under which version of the crime the defendant was convicted.

These *Shepard* documents include, "the charging document, the plea agreement or transcript of colloquy between the judge and defendant, or ... some comparable judicial record of this information." *Shepard v. U.S.*, 544 U.S. 13 at 26 (2005).

However, if a statute "lists multiple, alternative elements, and so effectively creates different crimes," then no conviction under the statute can be assumed to be generic. *Lockett*, supra. In other words, the modified categorical approach only applies "to explicitly divisible statutes" *Lockett, supra* at 1266. If the statute "does not concern any list of alternative elements," then the "modified approach ... has no role to play," and is thus not applicable. *Descamps*, 133 S.Ct. 2285-86. Where the modified categorical approach cannot be utilized, the court should limit its review only to the statute and judgment of conviction. Courts are not permitted to consider a defendant's underlying conduct, or the facts forming the basis for the conviction. *Descamps*, 133 S.Ct. at 2285.

If a statute "lists multiple, alternative elements, it effectively creates several different crimes," and as a result it is divisible. *Id.* However, if the prior offense of conviction does not require the jury or factfinder to actually find all of the elements of the generic, enumerated offense, then the statute is not divisible. *Id.* at 2290, 2293.

Florida aggravated assault is subject to the categorical approach as determined by *Turner v. Warden Coleman FCI*, 709 F.3d 1328 (11th Cir. 2013). In *Turner* the 11th Circuit analyzed Florida aggravated assault to determine if it was a crime of violence in light of *Curtis Johnson v. United States,* 559 U.S. 133 (2010). The court analyzed the elements of aggravated assault and made a determination that "the underlying facts of Turner's conviction are unnecessary to classify Florida aggravated assault as a violent felony here, because by its definitional terms, the offense necessarily includes an assault, which is "an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so." Therefore, a conviction under section 784.021 will always include "as an element the . . . threatened use of physical force against the person of another, *§ 924(e)(2)(B)(i)*, and Turner's conviction for aggravated assault thus qualifies as a violent felony for purposes of the ACCA." *Id.* at 1338.

Clearly then Florida Aggravated Assault is subject to the categorical approach. Though the Eleventh Circuit seemed to foreclose the issue of whether an aggravated assault is a crime of violence, the decision did not consider the fact that Florida state court decisions have determined that aggravated assault can be committed by culpable negligent conduct and therefore the least of the conduct that

can be committed under the aggravated assault statute does not qualify as a crime of violence under ACCA.

The aggravated assault charge in the view of the defense, does not qualify as a crime of violence under the ACCA.[1] In order to determine if a specific offense qualifies as a predicate offense under ACCA one must look only to the statutory elements of the offense, without reference to the facts of the defendant's actual crime—in determining whether Florida's aggravated assault statute satisfies the elements clause. *See Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684, (2013). For the offense to satisfy the definition of "violent felony" under the elements clause, "the least of the acts criminalized" must have as an element the actual, attempted, or threatened use of physical force against another person. *Id.*

However, though *Turner* has found aggravated assault to be a violent felony under ACCA that decision has been seriously questioned. Judge Pryor in her concurring opinion of *United States v. Golden*, 854 F.3d 1256, 1257-58 (11th Cir. 2017), pointed out that the *Turner* court failed to rely upon the state court's definition of whether an aggravated assault was a crime of violence as required by

---

[1] The 2001 version of aggravated assault is as follows: (1) An "aggravated assault" is an assault:
(a) With a deadly weapon without intent to kill; or
(b) With an intent to commit a felony.
(2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

United States v. Rosales-Bruno, 676 F.3d 1017, 1021 (11th Cir. 2012). (Where in determining whether a conviction is a crime of violence for sentencing enhancement purposes District courts are bound by Florida court's determination and construction of the substantive elements of that state offense).

> If in *Turner* we had looked to Florida caselaw, we would have found that the State may secure a conviction under the aggravated assault statute by offering proof of less than intentional conduct, including recklessness. *See, e.g., Kelly v. State, 552 So.2d 206, 208 (Fla. DCA 1989)* ("Where . . . there is no proof of intentional assault on the victim, that proof may be supplied by proof of conduct equivalent to culpable negligence . . . or by proof of willful and reckless disregard for the safety of others."); LaValley v. State, 633 So. 2d 1126, 1127 (Fla. DCA 1994). And under our own binding precedent, "a conviction predicated on a *mens rea* of recklessness does not satisfy the 'use of physical force' requirement" of the elements clause. *Palomino Garcia*, 606 F.3d at 1336.

United States v. Golden, 854 F.3d 1256, 1257-58 (11th Cir. 2017).

Golden cited *Kelly v. State* which made it abundantly clear under Florida law that aggravated assault can be committed without the intentional intent to create great bodily harm. "Aggravated assault is a crime of intent. Where, as here, there is no proof of an intentional assault on the victim, that proof may be supplied by proof of conduct equivalent to culpable negligence." *Kelly* at 208. (See also *Green v. State*, 315 So. 2d 499, 500 (Fla. 4th DCA1975).

In *Dupree v. State*, 310 So. 2d 396 (Fla. 2nd DCA, 1975), the defendant drove his tractor across the center line and hit a car killing three people. After a jury trial he was convicted of aggravated assault. On appeal the *Dupree* court affirmed that Florida aggravated assault could be committed by culpable negligence, which the court defined as:

> Culpable negligence means conduct of a gross and flagrant character, evincing reckless disregard of human life or the safety of persons exposed to its dangerous effects; or that entire want of care which would raise the presumption of indifference to consequences; or such wantonness or recklessness or grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others, which is equivalent to an intentional violation of them.

DuPree v. State, 310 So. 2d 396 (Fla. 2nd DCA 1975)

The *Golden* concurring opinion makes it clear that an aggravated assault with or without a weapon can be accomplished without specific intent *mens rea* and can occur with reckless conduct, which falls short of the physical violence necessary to be a crime of violence under ACCA. As such the defendant does not qualify for the enhancements under the ACCA because Florida aggravated assault can be committed with culpable negligence.

The Eleventh Circuit has clearly stated that in determining whether a state crime meets the definition of a crime of violence under Federal law, it is the state's determination of the scope of state law which Federal Courts are bound to follow.

In conducting this analysis, sentencing courts "are bound to follow any state court decisions that define or interpret the statute's substantive elements because state law is what the state supreme court says it is." *United States v. Estrella*, 758 F.3d 1239, 1246 (11th Cir. 2014).

Golden makes it clear that an aggravated assault with or without a weapon can be accomplished without specific intent *mens rea* and can occur with reckless conduct which falls short of the physical violence necessary to be a crime of violence under ACCA. As such the defendant does not qualify for the enhancements under the ACCA.

II. The Trial Court Erred By Finding A Four Level Enhancement for Trafficking In Firearms Without Any Evidence That Petitioner Knew Or Had reason To Know That The Buyer Would Use The Firearms Unlawfully

In paragraph 59 of the PSI the probation department adds a four-level enhancement for trafficking in firearms as follows:

> Specific Offense Characteristics: Since the defendant engaged in the trafficking of firearms, the offense level is increased by four levels, § 2K2.1(b)(5). +4
>
> U.S.S.G. 2K2.1(b)(5).

In order for the trafficking enhancement to apply, U.S.S.G. Application Note 13(A) requires two elements to be proven by a preponderance of the evidence -- they are that the defendant:

> (i) transported, transferred, or otherwise disposed of two or more firearms to another individual, or received two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual; and
>
> (ii) knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual—
>
> (I) whose possession or receipt of the firearm would be unlawful; or
>
> (II) who intended to use or dispose of the firearm unlawfully.
>
> *Application Note 13(A).*

The Guidelines commentary makes clear the enhancement applies; if the defendant "had reason to believe" his conduct would result in the transfer of firearms

to someone whose possession would be unlawful. *See U.S.S,G § 2K2.1, cmt. n. 13(A)(i)-(ii).*

In *United States v. Asante*, 782 F.3d 639 (11th Cir. 2015), the defendant was enhanced for trafficking in firearms by the District Court. The District Court heard evidence that Defendant used a straw buyer to buy guns unlawfully, and there was evidence that defendant knew that the firearms would be smuggled to Jamaica. Even though the court had the benefit of the aforementioned evidence it found that the Government failed to prove that he "[k]new or had reason to believe" that his conduct would result in another's unlawful possession, use or disposal of the firearm. Similarly, in the case *sub judice*, the government presented no evidence that the purchaser of the weapon would engage in unlawful conduct with the firearm.

The *Asante* court did however ultimately find that the enhancement under U.S.S.G. 2K2.1(b)(5) did apply to Asante by utilizing the second way the enhancement can apply by proving that the defendant "[k]new or had reason to believe that [his] conduct would result in the transport, transfer, or disposal of a firearm to an individual . . . [w]ho intended to use or dispose of the firearm unlawfully." Id., *app. n. 13(A)(ii)(II).* The Asante court found that the defendant [k]new or had reason to believe" that his conduct would

result in the transfer of a firearm to someone "[w]ho intended to use or dispose of the firearm unlawfully."

Here, the government presented no evidence that the Petitioner knew or had reason to know that the buyer would use the firearms unlawfully. The transactions between the Appellant and the undercover buyer were simply transactional and therefore did not contain the necessary evidentiary heft necessary to trigger the trafficking enhancement. The defendant engaged in sale conversations with the C.I. but did not have conversations regarding the purpose of the C.I.'s purchase. The defendant was not concerned with the C.I's activities and was only engaged in the sale of the weapons because of his own dire financial situation. He wasn't interested in any criminal activity that the C.I, may have been engaged in. He didn't know what the intention of the C.I. was. Therefore, the defendant does not satisfy both prongs of the trafficking enhancement and he should not receive a four-level enhancement for trafficking under 2K2.1(b)(6)(B). This court should grant this Petition for Writ of Certiorari and overrule the trial court's findings that the four level enhancement for trafficking in firearms was justified.

III. The Trial Court Erred When It Found That The Appellant Possessed A Firearm In Connection With Another Felony Offense Within the Meaning of the Sentencing Guidelines.

A defendant receives a four-level increase under the Sentencing Guidelines, if he "[u]sed or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense." *U.S.S.G. § 2K2.1(b)(6)(B).* The applicable commentary provides this enhancement applies "if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense." *Id.*, cmt. n.14(A). "Another felony offense," for purposes of § 2K2.1(b)(6)(B), "means any federal, state, or local offense, other than the . . . firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained." *Id.*, cmt.n.14(C). Where a defendant challenges one of the factual bases of his sentence, the government must prove the disputed fact by a preponderance of the evidence with reliable and specific evidence. *United State v. Rodriguez*, 732 F.3d 1299, 1305 (11th Cir. 2013).

In order to establish the necessary intent, the government can show that the Appellant "knew or had reason to believe that [his] conduct would result in the transport, transfer, or disposal of a firearm to an individual . . . who intended to use or dispose of the firearm unlawfully." *Id.* cmt. n.13(A)(ii)(II). In applying the trafficking enhancement under this subsection, we look to the "circumstances known to the defendant" when he transferred the firearms, "not to what actually happened with the firearms." *United States v. Asante*, 782 F.3d 639, 644 (11th Cir. 2015).

Alternatively, the trafficking enhancement can apply if the circumstances known to the defendant when he transferred the firearms, or received the firearms with the intent to transfer them, established that the defendant "[k]new or had reason to believe " that his conduct would result in the transfer of a firearm to someone "[w]ho intended to use or dispose of the firearm unlawfully." Id. The courts look critically not to what actually happened to the firearms, but instead to the circumstances known to the defendant. *Id.*

The government presented no evidence that the defendant knew the buyer of the firearms purpose. The Appellant met on occasions and sold firearms. The transactions were clean in that there was not discussion of the buyer's purpose. The Appellant was simply engaged in a transaction without any purpose other than

obtaining enumeration in order to survive. The facts show that the Appellant was an individual who was suffering from a years long drug problem. [D.E 50 ¶ 114]. He was at times homeless. His conversations with the undercover buyer focused on what type of gun that the buyer wanted and how much could it be purchased for. A review of the factual proffer contains no allegations pertinent to any knowledge that the Appellant may have had regarding the purpose of the transaction from the prospective of the buyer. [D.E. 36].

Further the defendant did not have any reason to know what was the purpose that the buyer of the firearms was intending. He was simply engaged in a transaction and had no reason to believe that it would be used or possessed in connection with anther felony offense. Further there was no evidence presented by the government that the Appellant knew what the purpose of the buyers use for the guns purchased. Thus the 4-level enhancement should not apply.

Without any clear evidence that the Petitioner knew the buyers purpose, this Court should grant the Petition for Writ of Certiorari and overrule the District Court's erroneous finding.

REASONS FOR GRANTING THE WRIT

The Eleventh circuit improperly disregarded state law which clearly states that Florida Aggravated Assault can be committed with gross negligence. As such, Florida Aggravated Assault is not a crime of violence under the categorical approach established by Federal precedent.

The four level enhancement that the Petitioner received for trafficking in firearms was improperly applied to the Petitioner's guideline calculations. The requirements under U.S.S.G. Application Note 13(A) that the Petitioner knew that the purchasers purpose for the firearms were unlawful or that he intended to use or dispose of the firearm unlawfully were ignored by the trial Court and the Circuit Court. In order to reestablish that the requirements of U.S.S.G. Application Note 13(A) are followed by District Courts throughout the United States, this Petition should be granted.

Finally, the Petitioner should not have received an enhancement for possessing a firearm in connection with another felony offense within the meaning of U.S.S.G. § 2K2.1(b)(6)(B) of the sentencing guidelines. The government presented no evidence that the Petitioner knew that the buyer of the firearms intended to use or dispose of the firearm unlawfully. In order to ensure that District Courts actually follow the guidelines evidentiary requirements, this court should grant this Petition.

CONCLUSION

For the reasons stated here the Petition for a Writ of Certiorari should be granted.

Respectfully Submitted
GREGORY A. SAMMS, ESQ.
Counsel for Petitioner
113 Almeria Avenue
Miami, FL 33137
(786) 953-5802 (tel)
(786) 513-3191 (fax)
Florida Bar No. 438863

BY: s/Gregory A. Samms

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition was served via U.S. Mail upon the Solicitor General of the United States, U.S. Department of Justice, Washington D.C. 20530 and electronically filed upon this Court on this 24th day of January, 2019.

BY:s/Gregory A. Samms

GREGORY A. SAMMS, ESQ.
Florida Bar No. 438863

Appendix

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14496
Non-Argument Calendar

D.C. Docket No. 1:17-cr-20334-FAM-3

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONALD MORROBEL,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(November 5, 2018)

Before TJOFLAT, MARTIN, and BRANCH, Circuit Judges.

PER CURIAM:

Ronald Morrobel appeals his 210-month sentence, imposed after he pled guilty to conspiracy to possess with intent to distribute 28 grams or more of crack cocaine and a detectable amount of heroin, dealing in firearms without a license, and being a felon in possession of a firearm and ammunition. He argues the district court erred by enhancing his sentence under two United States Sentencing Guidelines provisions and the Armed Career Criminal Act ("ACCA").

I.

Morrobel and two co-defendants, Juan Videa and David Marshall, were indicted in May 2017. The indictment charged Morrobel with conspiracy to possess with intent to distribute 28 grams or more of cocaine base and a detectable amount of heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(iii), and 846; dealing in firearms without a license, in violation of 18 U.S.C. §§ 922(a)(1)(A), 924(a)(1)(D), and 18 U.S.C. § 2; four counts of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1); and possessing with intent to distribute a detectable amount of cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2.

Morrobel pled guilty to conspiracy to possess with intent to distribute cocaine base and heroin, unlicensed firearms dealing, and one count of possession of a firearm by a convicted felon. The government dismissed all other counts. As part of the guilty plea, the parties stipulated to a factual proffer stating that

Morrobel sold guns and drugs to undercover officers several times. The proffer specified that Morrobel "personally sold narcotics" and "firearms and ammunition to members of the law enforcement investigation."

Before sentencing, a probation officer prepared a presentence investigation report ("PSR"). The PSR calculated Morrobel's base offense level as 22 under United States Sentencing Guideline § 2K2.1. It applied several offense-level enhancements, including a four-level enhancement under Guidelines § 2K2.1(b)(5) for trafficking in firearms as well as a four-level enhancement under Guidelines § 2K2.1(b)(6)(B) for possessing a gun in connection with another offense. The PSR also classified him as an armed career criminal. Morrobel filed objections to the PSR, arguing, among other things, that the enhancements for trafficking in firearms and possessing a firearm in connection with another felony offense did not apply and that he was not an armed career criminal.

The district court sentenced Morrobel and his codefendants at the same hearing but addressed each separately. The court overruled Morrobel's objections to the enhancements under Guidelines § 2K2.1(b)(5) and (b)(6)(B), as well as ACCA. It determined Morrobel's final offense level was 34 and his criminal history category was VI, resulting in a guideline range of 262 to 327 months. The court varied downward from the Guidelines and sentenced Morrobel to 210 months. This appeal followed.

II.

We recognize at the outset that this was an unusual sentencing hearing. All three codefendants were sentenced at the same hearing, which lasted much of the day, although there were several breaks. The defendants each raised similar objections, particularly the objections to Guideline § 2K2.1(b)(5) and (b)(6)(B). The district court began the hearing by asking each defendant whether he had read the PSR (all three had), but the court did not ask whether the defendants had any factual objections to the PSR. The court also never expressly adopted the facts contained in the PSR. In the morning, the court heard from Videa's counsel then from Marshall's counsel.

During these early parts of the hearing, the record shows the court understood from the limited details in the factual proffer and the nature of the parties' objections to the PSR that the parties "don't agree on anything with the facts." The court repeatedly offered to vacate the guilty pleas so the parties could litigate the facts in front of a jury. In this way, for Videa, and perhaps for Marshall as well, the court appeared to consider only the factual proffer and facts expressly admitted by the defendants at sentencing, while not relying on the facts contained in the PSR.

But once the court turned to Morrobel's objections, the court and the parties seemed to have arrived at a firmer grasp of what facts were agreed to and what

objections remained. Thus, in the portion of the transcript in which Morrobel made his objections to the sentencing enhancements, there appears to be agreement about the facts, such that the dispute was about the legal implications of those facts. The court seemed to understand the parties' dispute as being about whether the agreed upon facts satisfied the legal requirements for enhancements under the Guidelines and ACCA. On appeal, the government relies heavily on the facts contained in the PSR. Morrobel does not argue those facts were not admitted. We therefore find it appropriate to rely on the facts contained in the PSR to resolve Morrobel's appeal.

We now turn to Morrobel's challenges to the two Guideline enhancements imposed by the district court. In assessing the imposition of a sentencing enhancement, we review the district court's findings of fact for clear error and its application of the Guidelines de novo. United States v. Perez-Oliveros, 479 F.3d 779, 783 (11th Cir. 2007).

A.

Morrobel challenges the district court's enhancement of his sentence under Guideline § 2K2.1(b)(5). That section applies if the defendant

> (i) transported, transferred, or otherwise disposed of two or more firearms to another individual, or received two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual; and

(ii) knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual—

(I) whose possession or receipt of the firearm would be unlawful; or

(II) who intended to use or dispose of the firearm unlawfully.

USSG § 2K2.1 cmt. n.13. When deciding whether a defendant knew his conduct would result in the transfer of a firearm to someone who intended to dispose of it illegally, we look "to the circumstances known to the defendant." United States v. Asante, 782 F.3d 639, 644 (11th Cir. 2015).

In Asante, this court upheld the district court's application of the § 2K2.1(b)(5) trafficking-in-firearms enhancement. 782 F.3d at 646. The record in Asante showed the defendant told his codefendant that he was transporting firearms to make money, directed the codefendant to purchase smaller caliber guns to facilitate the transport, and was aware that those firearms would be then concealed in cars and shipped abroad to his brother, who planned to retrieve the smuggled firearms. Id. This evidence supported the inference that, at the time the defendant received and transferred the firearms, he knew or had a reason to believe that his conduct would result in the transfer of the firearms to a person who intended to use or dispose of the firearms unlawfully. Id.

For Morrobel, the district court did not clearly err in applying the four-level trafficking-in-firearms enhancement. The PSR established that Morrobel

transferred more than two firearms to the undercover agent and thus satisfied the first prong of the enhancement. See USSG § 2K2.1 cmt. n.13(A)(i). As to the second prong, the undisputed facts in the PSR were that Morrobel sold at least 28 grams of crack cocaine and several firearms, including four fully or semi-automatic rifles and a revolver with a defaced serial number, in a series of transactions with the same buyer. Despite Morrobel's argument that he was never on notice that the buyers intended to use the firearms for future criminal activity, the PSR noted that Morrobel sold several firearms with silencers or large capacity magazines, one of which was stolen and one of which had a defaced serial number. Given the number of Morrobel's transactions with the same buyer as well as the types of firearms sold, the record supported the district court's finding that Morrobel knew or had reason to believe that he transferred firearms to someone who intended to use them to engage in unlawful armed-drug trafficking or other criminal conduct. See USSG § 2K2.1(b)(5); id., § 2K2.1 cmt. n.13(A)(ii)(II); Asante, 782 F.3d at 645–46. We therefore affirm on this issue.

B.

Morrobel also challenges the district court's application of Guideline § 2K2.1(b)(6). That Guideline provides for a four-point increase in offense level if the defendant

> (A) possessed any firearm or ammunition while leaving or attempting to leave the United States, or possessed or transferred any firearm

> or ammunition with knowledge, intent, or reason to believe that it would be transported out of the United States; or
>
> (B) used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense[.]

Id. The Guideline commentary explains that the firearm must have "facilitated, or had the potential of facilitating, another felony offense." Id. § 2K2.1 cmt. n.14(A). If the other felony offense is "a drug trafficking offense in which a firearm is found in close proximity to drugs," the enhancement applies. Id. § 2K2.1 cmt. n.14(B). The commentary defines "[a]nother felony offense" as "any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained." Id. § 2K2.1 cmt. n.14(C). The commentary also states that the enhancement applies "in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia . . . because the presence of the firearm has the potential of facilitating another felony offense." Id. § 2K2.1 cmt. n.14(B).

The district court did not err by enhancing Morrobel's sentence by four levels under § 2K2.1(b)(6)(B). During a single transaction, Morrobel sold the confidential source $200 worth of crack cocaine and a Smith and Wesson Air

Weight .38 revolver with a defaced serial number. Morrobel's simultaneous possession of drugs and a firearm during this transaction potentially emboldened him to make the drug sale. See USSG § 2K2.1(b)(6)(B); id. § 2K2.1 cmt. n.14(A)–(B); United States v. Gainey, 111 F.3d 834, 837 (11th Cir. 1997). We therefore affirm on this issue as well.

III.

Morrobel next argues he is not an armed career criminal because his conviction for Florida aggravated assault does not qualify as a violent felony. We review de novo whether a prior conviction qualifies as a violent felony within the meaning of ACCA. United States v. Hill, 799 F.3d 1318, 1321 (11th Cir. 2015) (per curiam). ACCA provides that a defendant convicted of possession of a firearm as a convicted felon who has three previous convictions for a violent felony or a serious drug offense shall be imprisoned not less than 15 years. 18 U.S.C. § 924(e)(1). "Violent felony" is defined, in relevant part, as any crime punishable by a term of imprisonment exceeding one year that "has as an element the use, attempted use, or threatened use of physical force against the person of another." Id. § 924(e)(2)(B)(i).

This Court has held that a Florida aggravated assault conviction under Florida Statute § 784.021 "will always include as an element the threatened use of physical force against the person of another . . . and thus qualifies as a violent

felony for the purposes of the ACCA." Turner v. Warden Coleman FCI, 709 F.3d 1328, 1338 (11th Cir. 2013) (quotation marks omitted and alterations adopted). This holding was reaffirmed in United States v. Golden, 854 F.3d 1256 (11th Cir. 2017) (per curiam), which relied on Turner to hold that aggravated assault under § 784.021 is a crime of violence under the identical definition provided in Guideline § 2K2.1(a)(2). Golden, 854 F.3d at 1256–57.

Based on this court's decisions in Golden and Turner, the district court did not err in finding Morrobel's prior conviction for aggravated assault with a deadly weapon under § 784.021(1)(a) constituted a violent offense for purposes of his ACCA sentence enhancement. Although Morrobel argues that Turner was wrongly decided, we are bound to apply it unless it is overturned by the Supreme Court or by this court sitting en banc. See Golden, 854 F.3d at 1257. We therefore affirm on this issue.

AFFIRMED.

UNITED STATES DISTRICT COURT

Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
RONALD MORROBEL

JUDGMENT IN A CRIMINAL CASE

Case Number: **17-20334-CR-MORENO**
USM Number: **16020-104**

Counsel For Defendant: **Gregory A. Samms**
Counsel For The United States: **Ignacio Vazquez, Jr.**
Court Reporter: **Gilda Pastor-Hernandez**

The defendant pleaded guilty to Counts 1,2,8 of the Indictment.

The defendant is adjudicated guilty of these offenses:

TITLE & SECTION	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
21 U.S.C. § 846	Conspiracy to possess with intent to distribute 28 grams or more of cocaine base and a detectable amount of heroin	05/05/2017	1
18 U.S.C. § 922(a)(1)(A)	Dealing in firearms without a license	05/05/2017	2
18 U.S.C. § 922(g)(1)	Possession of a firearm and ammunition by a convicted felon	08/26/2016	8

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed on the motion of the government.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: **9/28/2017**

Federico A. Moreno
United States District Judge

Date: September 29, 2017

DEFENDANT: **RONALD MORROBEL**
CASE NUMBER: **17-20334-CR-MORENO**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **210 MONTHS.**

(Count 1-210 months; Count 2 - 60 months; Count 8 -15 years [Counts 2 and 8 to run CONCURRENT to Count 1]).

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

_____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **RONALD MORROBEL**
CASE NUMBER: **17-20334-CR-MORENO**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Count 1 - LIFE; Count 2 - 3 years; Count 8 - 5 years (CONCURRENT).**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **RONALD MORROBEL**
CASE NUMBER: **17-20334-CR-MORENO**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$300.00	$0.00	$0.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

NAME OF PAYEE	TOTAL LOSS*	RESTITUTION ORDERED	PRIORITY OR PERCENTAGE

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: **RONALD MORROBEL**
CASE NUMBER: **17-20334-CR-MORENO**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of $300.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

CASE NUMBER DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)	TOTAL AMOUNT	JOINT AND SEVERAL AMOUNT

The Government shall file a preliminary order of forfeiture within 3 days.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

17-20334-CR-MORENO/TURNOFF

CASE NO. _____

21 U.S.C. § 846
21 U.S.C. § 841(a)(1)
18 U.S.C. § 922(a)(1)(A)
18 U.S.C. § 922(g)(1)
18 U.S.C. § 924(e)(1)
18 U.S.C. § 924(d)(1)
21 U.S.C. § 853

UNITED STATES OF AMERICA

v.

JUAN VIDEA,
a/k/a "Johnnie,"
a/k/a "John,"
DARRYL MARSHALL,
a/k/a "Block," and
RONALD MORROBEL,
a/k/a "Nino,"

Defendants.
_____/

INDICTMENT

The Grand Jury charges that:

COUNT 1
Conspiracy to Possess with Intent to Distribute a Controlled Substance
21 U.S.C. § 846

In or around April 17, 2015, through on or about May 5, 2017, in Miami-Dade County, in the Southern District of Florida, the defendants,

JUAN VIDEA,
a/k/a "Johnnie,"
a/k/a "John,"
DARRYL MARSHALL,
a/k/a "Block," and
RONALD MORROBEL,

a/k/a "Nino,"

did knowingly and willfully combine, conspire, confederate, and agree with each other and with persons known and unknown to the grand jury, to possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1); all in violation of Title 21, United States Code, Section 846.

The controlled substance involved in the conspiracy attributable to each of the defendants as a result of their own conduct, and the conduct of other conspirators reasonably foreseeable to them, is twenty eight (28) grams or more of a mixture and substance containing a detectable amount of cocaine base, commonly referred to as "crack cocaine," a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(b)(1)(B)(iii).

It is further alleged that the controlled substance involved in the conspiracy attributable to each of the defendants as a result of their own conduct, and the conduct of other conspirators reasonably foreseeable to them, is a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance.

COUNT 2
Dealing in Firearms Without a License
18 U.S.C. § 922(a)(1)(A)

From on or about October 2, 2015, through on or about May 5, 2017, in Miami-Dade County, in the Southern District of Florida, the defendants,

JUAN VIDEA,
a/k/a "Johnnie,"
a/k/a "John,"
DARRYL MARSHALL,
a/k/a "Block," and
RONALD MORROBEL,
a/k/a "Nino,"

did willfully engage in the business of dealing in firearms without a license, in violation of Title 18, United States Code, Sections 922(a)(1)(A), 924(a)(1)(D), and 2.

COUNT 3
Possession with Intent to Distribute a Controlled Substance
21 U.S.C. § 841(a)(1)

On or about October 2, 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant

DARRYL MARSHALL,
a/k/a "Block,"

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance.

COUNT 4
Possession with Intent to Distribute a Controlled Substance
21 U.S.C. § 841(a)(1)

On or about November 13, 2015, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant

DARRYL MARSHALL,
a/k/a "Block,"

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance.

COUNT 5
Possession with Intent to Distribute a Controlled Substance
21 U.S.C. § 841(a)(1)

On or about January 22, 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant

JUAN VIDEA,
a/k/a "Johnnie,"
a/k/a "John,"

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of cocaine base, commonly referred to as "crack cocaine."

COUNT 6
Possession of a Firearm by a Convicted Felon
18 U.S.C. § 922(g)(1)

On or about August 23, 2016, in Miami-Dade County, in the Southern District of Florida, the defendant,

RONALD MORROBEL,
a/k/a "Nino,"

having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm in and affecting interstate and foreign commerce, in

violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).

COUNT 7
Possession with Intent to Distribute a Controlled Substance
21 U.S.C. § 841(a)(1)

On or about August 26, 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant

RONALD MORROBEL,
a/k/a "Nino,"

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of cocaine base, commonly referred to as "crack cocaine."

COUNT 8
Possession of a Firearm by a Convicted Felon
18 U.S.C. § 922(g)(1)

On or about August 26, 2016, in Miami-Dade County, in the Southern District of Florida, the defendant,

RONALD MORROBEL,
a/k/a "Nino,"

having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).

COUNT 9
Possession of a Firearm by a Convicted Felon
18 U.S.C. § 922(g)(1)

On or about October 25, 2016, in Miami-Dade County, in the Southern District of Florida, the defendant,

RONALD MORROBEL,
a/k/a "Nino,"

having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).

COUNT 10
Possession of a Firearm by a Convicted Felon
18 U.S.C. § 922(g)(1)

On or about November 8, 2016, in Miami-Dade County, in the Southern District of Florida, the defendant,

RONALD MORROBEL,
a/k/a "Nino,"

having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).

FORFEITURE ALLEGATIONS

a. The allegations of Counts 1 through 10 of this Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendants have an interest.

b. Upon conviction of any violation of Title 21, United States Code Sections 846 and 841, as alleged in this Indictment, the defendants **JUAN VIDEA**, **DARRYL MARSHALL,** and **RONALD MORROBEL,** shall forfeit to the United States all of their right, title and interest in any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of such violation, and in any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation, pursuant to Title 21, United States Code, Section 853(a).

c. Upon conviction of any violation of Title 18, United States Code Section 922, as alleged in this Indictment, the defendants, **JUAN VIDEA, DARRYL MARSHALL,** and **RONALD MORROBEL**, shall forfeit to the United States all their right, title, and interest in any firearm and/or ammunition involved in or used in the commission of such violation, pursuant to Title 18, United States Code, Section 924(d)(1), made applicable by Title 28, United States Code, Section 2461(c).

All pursuant to Title 21, United States Code, Section 853 and Title 18 United States Code, Section 924, made applicable by Title 28, United States Code, Section 2461.

A TRUE BILL

FOREPERSON

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY

IGNACIO J. VÁZQUEZ, JR.
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v.

JUAN VIDEA et al,

Defendant.

_____ /

CASE NO. _____

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division: (Select One)

__X__ Miami _____ Key West
____ FTL _____ WPB ____FTP

New Defendant(s) Yes ____ No ____
Number of New Defendants _____
Total number of counts _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) X
List language and/or dialect English

4. This case will take _____ days for the parties to try.

5. Please check appropriate category and type of offense listed below:

	(Check only one)		(Check only one)	
I	0 to 5 days	____	Petty	_____
II	6 to 10 days	__X__	Minor	_____
III	11 to 20 days	____	Misdem.	_____
IV	21 to 60 days	____	Felony	__X__
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) NO
If yes:
Judge: Case No. _____
(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) YES
If yes:
Magistrate Case No. 17-MJ-02624-AOR
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of Juan Videa- May 5, 2017 and Ronald Morrobel- May 5, 2017
Defendant(s) in state custody as of _____
Rule 20 from the District of
Is this a potential death penalty case? (Yes or No) ____

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes _____ No _____

IGNACIO J. VAZQUEZ, JR.
ASSISTANT UNITED STATES ATTORNEY
FL Bar NO. 16275

*Penalty Sheet(s) attached

REV 5/3/17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: JUAN VIDEA

Case No: _____

Count #: 1

Conspiracy to Possess with Intent to Distribute a Controlled Substance

Title 21, United States Code Section 846

*** Max.Penalty:** 40 years' imprisonment

Count #: 2

Dealing in Firearms Without a License

Title 18, United States Code Section 922(a)(1)(A)

***Max. Penalty:** 5 years' imprisonment

Count #: 5

Possession with Intent to Distribute a Controlled Substance

Title 21, United States Code Section 841(a)(1)

***Max. Penalty:** 20 years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: **DARRYL MARSHALL**

Case No: _____

Count #: 1

Conspiracy to Possess with Intent to Distribute a Controlled Substance

Title 21, United States Code Section 846

*** Max. Penalty:** 40 years' imprisonment

Count #: 2

Dealing in Firearms Without a License

Title 18, United States Code Section 922(a)(1)(A)

***Max. Penalty:** 5 years' imprisonment

Count #: 3-4

Possession with Intent to Distribute a Controlled Substance

Title 21, United States Code Section 841(a)(1)

***Max. Penalty:** 20 years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: RONALD MORROBEL

Case No: _____

Count #: 1

Conspiracy to Possess with Intent to Distribute a Controlled Substance

Title 21, United States Code Section 846

*** Max. Penalty:** 40 years' imprisonment

Count #: 2

Dealing in Firearms Without a License

Title 18, United States Code Section 922(a)(1)(A)

***Max. Penalty:** 5 years' imprisonment

Count #: 6, 8-10

Possession of a Firearm and Ammunition by a Convicted Felon

Title 18, United States Code Section 922(g)(1)

***Max. Penalty:** Life imprisonment

Count #: 7

Possession with Intent to Distribute a Controlled Substance

Title 21, United States Code Section 841(a)(1)

***Max. Penalty:** 20 years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-20334-CR-MORENO/OTAZO-REYES

UNITED STATES OF AMERICA

v.

RONALD MORROBEL,

Defendant.
_____/

FACTUAL PROFFER

Had this case proceeded to trial, the Government would have proved beyond a reasonable doubt that the following facts occurred in Miami-Dade County, in the Southern District of Florida and elsewhere:

Starting in April 17, 2015 South Florida law enforcement officers began an investigation addressing a group of individuals identified as illegal narcotics and firearms dealers operating in Miami-Dade County, Florida. Law enforcement initially conducted multiple undercover purchases from Juan Videa ("VIDEA") of drugs and gun sales. However, as time progressed VIDEA began introducing his associates, such as Darryl Marshal ("MARSHAL") and Ronald Morrobel ("MORROBEL"), to complete sales with the law enforcement's undercover agent. Recorded telephone calls and body camera footage captured VIDEA, MARSHALL and MOROBELL making statements which confirmed that were members of a common plan to sell narcotics and firearms.

During his participation in the narcotics conspiracy MORROBEL personally sold narcotics to members of the law enforcement investigation as follows: 1.) July 26, 2016, $450 of cocaine base; 2.) August 19, 2016, $100 worth of cocaine base; 3.) August 26, 2016, $200 worth of

cocaine base. The parties stipulate that it was foreseeable to MORROBEL that the conspiracy would involve 28 grams of cocaine base, but less than 112 grams of cocaine base. SAF ID

Further, during his participation in the dealing of firearms MORROBEL also personally sold firearms and ammunition to members of the law enforcement investigation as follows: 1.) August 23, 2016, sale of a fully automatic Mac 11 with extended magazine with silencer and An AK-47 style rifle with two 30 round magazines; 2.) October 25, 2016, sale of a Hesse rifle; 3.) November 8. 2016, sale of a AR-15 style rifle. The parties stipulate that MORROBEL's conduct constituted engaging in the business of dealing in firearms and that MORROBEL did not have a license issued under federal law to sell firearms. At the time of each firearm sale MORROBEL was a convicted felon, prohibited from possessing firearms or ammunition, and thus he was aware that he sales and possession of firearms was unlawful.

From April 17, 2017 to May 5, 2017, pursuant to Court order, law enforcement intercepted wire communications involving MORROBEL's telephone line. During wire interceptions, law enforcement captured VIDEA, MARSHALL, MORROBEL and various associates discussing the future drug transactions and actions in furtherance of their conspiracy. On May 4-5, 2017, law enforcement intercepted VIDEA and MORROBEL discussing the commission of a robbery or ~~murder of a victim~~. Based on the danger reflected in the communications, law enforcement arrested MORROBEL and VIDEA on May 5, 2017.

BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY

Date: 7/18/17 By: _____

IGNACIO J. VÁZQUEZ, JR.
ASSISTANT ~~UNITED~~ STATES ATTORNEY

Date: 7/18/17 By: _____

GREGORY SAMMS, ESQ.
ATTORNEY FOR DEFENDANT

Date: 7/18/17 By: _____

RONALD MORROBEL
DEFENDANT