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In The
Supreme Court OF The United States
JANUARY Term, 2019

Obelin James Aviles
Petitioner

VS.

State OF Florida
Respondent

ON Petition FOR Writ OF Certiorari To
Second District Court OF Appeal, Lakeland, Florida

Petition FOR WRIT OF CERTIORARI

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JAN 18 2019

FOR MAILING

LD/NA

Questions Presented

(I).

Whether Petitioner's verdict of guilt was obtained unconstitutionally where (1) Statements used in obtaining the guilty verdict were given involuntary and therefore in violation of due process of law;

(II).

Whether post-Miranda warnings of rights after Petitioner was

coerced, goaded and threatened into giving inculpatory statements which were later used during trial for the benefit of the State to obtain a conviction legally sound Doctrine of *Miranda v. Arizona*, *infra*, and not being so, was Petitioner's due process and equal protection of law breached;

(III).

Does the States dual convictions on Count One, "Manslaughter with a firearm" and Count Two, "Shooting, missile into building, vehicle, dwelling violate Petitioner's rights of Double Jeopardy where the Manslaughter w/ firearm is the result of the shooting, missile into building, vehicle dwelling, where there were no break in time, there was a single death, by the firing of a single shot all simultaneously without interruption;

(IV).

Does Petitioner's illegal immigration status deprive him of the fruits and rights guaranteed under Constitutional law and American Declaration of Human Rights, Duties of Man, that is afforded to every man, woman and child that are United States citizens and if so, has Petitioner been subject to prejudice and unfair treatment where he can not speak, read, nor comprehend the English language, was not provided a qualified interpreter during interrogation and was not provided a qualified interpreter for his first six (6) months of post-arrest and waiting in jail not knowing or understanding the charges placed against him or possible prison sentence he faced, but the most damaging was not being able to prepare an adequate, proper and timely defense and preserve exculpatory evidence which would have exonerated him of the crimes.

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PRAYER

Petitioner Obelin James Aviles, pro se, and in good faith, respectfully request that a Writ Of Certiorari issue to review the judgement(s) and opinion(s) of the Second District Court Of Appeal for the State of Florida and the judgement(s) and opinion(s) of the State Trial Court.

Opinions Below
The opinion of the Second District Court of Appeals is without a written opinion and is attached as Appendix A.
The decision of the Tenth Judicial Circuit Court is unpublished and it is attached as Appendix B.

Jurisdiction

The opinion/judgment of the Second District Court of Appeals, which is the highest State court which decided on November 07, 2018. A copy of that decision appears at Appendix A. This Petition for Writ of Certiorari is filed within ninety (90) days of that date. *see: May v. United States*, 537 U.S. 522, 527 (2003); *Bond v. Moore*, 304 F.3d 720, 724 (11th Cir. 2003) ("Petitioners must file Petition for Writ of Certiorari within 90 days after the State court renders its decision/order").

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1); 28 U.S.C. § 1257(a);

Article-31 regarding admissibility and Rule-34(a);

"In establishing the jurisdiction of the United States Supreme Court for the Interstate American Commission on Human Rights, the Petitioner Abel James Ayiles simply states that his Petition is proper before the Court his having satisfied Article-31 regarding admissibility, and Rule-34(a), whereas, and by the following he will show that the United States, or a State in its nation of States, to wit: Florida has acted in violation of the Constitution; The American Declaration of Human Rights and Duties of Man; and that of the Covenant on Civil and Political Rights, governing said bodies" (T.C.C.R.R.).

List Of Parties

All parties do not appear in the caption of the case on the cover page. Additional Parties Below:

1. Tenth Judicial Circuit Court, Judge Donald G. Jacobson; Date of Order: July 27, 2017; attached as Appendix B.

Constitutional And Statutory Provisions Involved

These matters are being brought before this Honorable United States Supreme Court on Petition of the one, Obelin James Ayiles, IV, and by which he will show that the United States, or some member of its Union of States to have breached both The American Declaration Of Human Rights, Duties Of Man and that of The International Covenant on such Civil and Political Rights; Having been Adopted, December 16, 1966, by The General Assembly, and entered into Force, March 23, 1976, In accordance with Article-49; And, in specific regard, that Petitioner Obelin James Ayiles has been convicted in violation of Article-49; and that of both State and Federal Constitutions; in particular to the Fifth, Sixth and Fourteenth Amendment of the United States Constitution; Article I, Sections 9 and 16 Of Florida Constitution's Right to Due Process; Right not to be twice placed into Jeopardy for the same offense; Right not to be Compelled to be a witness against himself in a criminal proceeding; Right to a fast and speedy trial; Right to Effective Counsel and Right to a fair and impartial Jury Trial. The Fifth Amendment provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor, shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (Amend 5, U.S.C.A.).

The Sixth Amendment provides:

"In all criminal prosecutions, the accused shall enjoy the right to a Speedy and

public trial, by an impartial jury of the State and district where the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense". (Amend. 6, U.S.C.A.).

The Fourteenth Amendment provides, in part:

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

Article I, Sections 9 and 16 of Florida Constitution emulate the Federal Constitution pertaining to Due Process and Equal Protection, right not to be placed twice in jeopardy for the same offense, to not be compelled to be a witness against oneself, to effective assistance of counsel, to a fast and speedy trial and to an impartial and fair jury trial.

The American Declaration Of Human Rights, Duties Of Man (A.D.H.R.D.M), also known as Universal Declaration Of Human Rights (U.D.H.R.), defines in further detail all of the inalienable rights guaranteed under the United States Constitution and the Florida Constitution, and shall not be abridged by any State in the Union of States or of foreign design.

As such, the Petitioner Obelin James Aviles is entitled to these inalienable rights and liberties.

Statement of The Case

1) In the early morning hours, while it was still dark outside, on the 4th day of September, 2006, Frank Anderson Judy and Ricardo Rodriguez, did illegally enter the locked private property of Pettitioner Aviles, in a stolen vehicle, with the intent to rob, burglarize or otherwise commit a violent and forcible felony upon Pettitioner, his family and/or the occupants of Pettitioner's home;

2) Again on September 04, 2006, Frank Anderson Judy, exited the stolen vehicle armed with a .357 chrome plated firearm, in which he had arrived with his accomplice, Ricardo Rodriguez, and did by force enter into the place where Pettitioner Aviles and his family rightfully belonged and lay their head; and then

3) Armed with a gun, did violently poke said gun into Pettitioner Aviles body making the Pettitioner out of sleep, and attempted to rob and assault the Pettitioner, Abelin James Aviles, where then a struggle occurred over control of the weapon; shots were fired; unknown at that time one of the bullets had hit Frank Anderson Judy's foot which perforated one of his toes; to which he (Judy) let go of the gun and it landed on the ground between the assailant Frank Anderson Judy and Pettitioner Aviles;

4) Pettitioner Aviles then took possession of the weapon and Frank Judy ran toward the back of Pettitioner Aviles properly toward the back entrance gate of Pettitioner's property; Pettitioner Aviles gave chase; Pettitioner Aviles feared for his and his family's safety and life and believed Frank Anderson Judy may have been going for another firearm or weapon;

5) Pettitioner arrived at the back corner of his residence and verily made out the awaiting stolen vehicle which Frank Anderson Judy arrived in; if was still dark outside; Pettitioner Aviles heard a loud pop and saw sudden movement by the stolen vehicle; believing that Frank Anderson Judy or accomplice Ricardo Rodriguez were armed with other firearms and had taken a shot at him, Pettitioner Aviles fired one shot in the general direction of the stolen vehicle;

6). The bullet hit the back passenger window on the drivers side of the stolen vehicle, ricochet and ended up hitting Frank Anderson Judy where he sat after entering the stolen vehicle in the front passenger seat of the automobile;

7). On that fatal day of September 04, 2006, Frank Anderson Judy paid the Ultimate price, (his life), in the course of committing a forceable felony, upon or against the natural person of Petitioner Obelin James Aviles, his family, property and home, a place no less that Petitioner Aviles so rightly belonged;

8). Then came Sheriff's Detective, Angela Macke, who by premeditated design, either ignored, failed to have FOLE conduct tests, failed to disclose several tested articles including but not limited to DNA samples, gunshot residue tests, fingerprints, or failed entirely to investigate the abundance of readily available exculpatory evidence in the case; evidence that clearly and conclusively supported Petitioner Aviles reporting of self-defense; depriving Petitioner of a fair, impartial jury trial;

9). Then came Detective Navarro, via, directions of Detective Angela Macke, to act as a liaison and language interpreter between Petitioner Aviles who failed to Mirandize Petitioner Aviles while in custody and during interrogations then utilized the unmirandized statements during trial to obtain or help secure a conviction for the State of Florida; topped off by the complete systematic breakdown of the Public Defender's Office in charge of representing Petitioner Aviles in his defense, a systematic breakdown so prejudicial for Petitioner's defense where there was Twelve Public Defender changes prior to expiration of Petitioner Aviles right to a fast and speedy trial causing multiple delays and loss of Exculpatory evidence and other documents that not only was violative of Petitioner Aviles Constitutional right to a fast and speedy trial, but also violative of Petitioner's right to effective assistance of counsel and of a fair, impartial jury trial where the only evidence preserved by Detective's Angela Macke and Detective Navarro was inculpatory in nature in violation of Brady;

10). Subsequently, Petitioner Aviles was arrested on September 04, 2006, and

charged by Detective Macke, with the "Premeditated Murder" of Frank Anderson July, even knowing the evidence, had it been preserved, clearly contradicted the charges;

11). On September 22, 2006, the State of Florida, then formally charged Petitioner Aviles with Manslaughter, and the Shooting into an Occupied Vehicle; see: Appendix C.

12). By then the State of Florida, on September 26, 2006, Amended its Information to include an enhancement Statute, wherein the State would look to substantially increase the penalty imposed if Petitioner Aviles were to be found guilty. The augmentation was without a hearing nor justification, and clearly without the due process of law, as Petitioner Aviles neither spoke, read, nor understood the English language, as no interpreter had been assigned notwithstanding the good faith or bad faith of the prosecution; see: Appendix D.

13) And again on April 04, 2008, the State of Florida, amends its Information to increased charges from Manslaughter to Second Degree Murder; what is so significant about this untimely augmentation of the charges, is that the investigation had ended years earlier, and that no new evidence was made available to the prosecution; see: Appendix E.

14). This Honorable Court is then invited, to take careful notice of the fact that Petitioner Aviles, is never re-arraigned after the States amended informations; and this is significant for a number of reasons, (1) the amended information supplants the original, in other words, all things begin again new; and that (2) without the re-arraignment one cannot be considered to have been fully informed, nor noticed of the accusations against him.

15). The Petitioner, Obelin James Aviles then calls this Honorable Court's mind's eye, to the fact that, "Police and its Investigators, Angela Macke and Detective Navarro", were aware at the time, that the vehicle in which "Frank Anderson July" lay dead, was stolen, and that the vehicles driver was accomplice, "Ricardo Rodriguez", and that there was a likely probability that these two men had just committed a home invasion robbery, at the

home of Obelin James Aviles; yet, and as in this case, accomplice "Ricardo Rodriguez" is not arrested, he is not charged with the stolen vehicle, the home invasion, and or the attempted robbery of Petitioner Aviles; nor the culpable homicide of his accomplice, "Frank Anderson Judy" as is warranted by law; and that which has now been uncovered, is the fact that "Ricardo Rodriguez" had been previously and was at the time the incident occurred working undercover as a C.I. (Confidential Informant) in other case not pertaining to Petitioner Aviles. see: Appendix E.

16). Before moving on, Petitioner Aviles quickly addresses the issues of Legal Counsel and whether counsel was effective in representing Obelin James Aviles, at any time, before, or during the criminal trial against him; and states that no single act may constitute "Ineffective Assistance", although, and in this case, the complete breakdown of the Court appointed Public Defender's Office, in that the Court had to appoint (9) separate lawyers; the Court's own evaluation of said lawyers stating that the appointed lawyers were lazy and did not want to do their jobs; amounts to cumulative error and ineffective assistance of counsel. Then, and if the cumulative errors were not enough to prejudice this Petitioner; the trial judge forced counsel, Ronald S. Tulin, to trial on March 24, 2009, even knowing counsel Tulin was ill-prepared. see: Appendix G.

17). Petitioner Aviles was subsequently convicted of Manslaughter With a firearm (Count One) and Shooting into an occupied vehicle (Count Two). Petitioner Aviles was sentenced to 30 years as to Count One, "Manslaughter With a firearm, and to 15 years as to Count Two, Shooting Into An Occupied Vehicle. see: Appendix H.

18). June 30, 2011, Petitioner Aviles filed a petition for writ of habeas corpus alleging ineffective assistance of Appellate Counsel which was denied on February 9, 2012¹.

19). April 30, 2012, Petitioner filed what he was told was the appropriate vehicle for his personal replevin, which he is sure to be entitled: his Motion for post-conviction relief, pursuant to Florida Rules Of Criminal Procedure, Rule 3.850.²

1+2; All Listed Motions, Reply's, Responses and Court Orders readily available upon request.

20. On August 27, 2012, and now, some six (6) years after the arrest of Petitioner Obelin James Aviles, the Trial Court grants to him an evidentiary hearing on his Motion For Post-Conviction Relief; although, and as in this case, the hearing is subject to such unreasonable delay; and

21. Eventually held March 2013, and quickly denied March 5, 2013, the Court amending its Order March 27, 2013; only after Petitioner Obelin James Aviles filing of Notice Of Appeal on March 14, 2013,

22. Comes Now, the natural man, Obelin James Aviles, who, by means, and for purposes has travailed domestic processes (Rule 31), only now to appear before this Honorable Court, carrying with him his substantial complaint, i.e., Petition For Writ Of Certiorari, by which he will show the United States, or some State within the Union Of States, to have, with callous indifference, breached both the United States and Florida Constitution and the American Declaration on Human Rights, Duties of Man, and that of the International Covenant on Civil and Political Rights, when, and by means, the State of Florida and/or its Agents acted, by design and in combination to deprive Obelin James Aviles of his right to Due Process and Equal Protection of the law, right to a "Fair Trial", right to effective counsel, right to not be placed twice into jeopardy for the same offense, right against self-incrimination, in fact the States actions and, or international omissions deprived Obelin James Aviles, of the presumption of innocence, and his sole defense, his inherent right to "Self-Defense", his God given right to defend himself, his property, his life and above all the lives of his family.

REASONS FOR GRANTING THE PETITION

I. Petitioner Has Been Convicted In Violation Of The American Declaration Of The Rights And Duties Of Man; And That Of Both State And Federal Constitution.

(a). Having by chance come to know next of friend, and now being more fully informed regarding such complex matters of law; Petitioner now knows, according to law, to have a right not to be twice placed into jeopardy in a criminal proceeding for the same offense, guaranteed by right of the Fifth Amendment to the United States Constitution; and that it's conviction against the Petitioner, where the State did try, convict and sentence the Petitioner Obelin James Aviles on both Count One: "Manslaughter with a firearm, Florida Statute § 782.07" and Count Two: "Shooting or throwing a missile At or into a building, vehicle, or Dwelling, Florida Statute § 790.19," did in fact, violate the Petitioner's rights in said effect, see: Appendix H.

(b). Under Florida law the Courts of Florida have held that, "A single manslaughter with a firearm may have for its object the violations of two (2) or more laws or two or more substantive offenses; no matter how many repeated violations of the law may have been the object of the manslaughter w/ firearm, the manslaughter w/ firearm and the shoot, throw missile into building, vehicle or dwelling, is only one offense, unconsumed, not abandoned, and was not terminated, and where, as here, no evidence was brought forward that suggest that the Manslaughter w/ firearm and the Shoot, throw Missile into building, vehicle or Dwelling, was not on going," see: Willes Vs. State, 2016 WL 4131803 (Fla. 2nd DCA 2016); ► Negroon Gilde Rubio V. State, 987 so. 2d 217, 219 (Fla. 2nd DCA 2008).

(c). The Double Jeopardy Clause set forth under the 5th Amendment protects against a Second prosecution for the same offense after acquittal; it protects against a second prosecution for the same offense after conviction and against multiple punishments for the

same offense. see: ▶ United States v Adams, 1 F.3d 1566 (11th Cir. 1993); ▶ United States v Maza, 983 F.2d 1004 (11th Cir 1993). The Double Jeopardy Clause forbids successive prosecutions and cumulative punishment of a crime and, or its lesser included offenses. see: ▶ United States v Dixon, 509 U.S. 688 (1993).

(d). Petitioner Obelin James Aviles was illegally tried, convicted and sentenced for two crimes, one which does consume the other; happened during a single incident without interruption; and one single shot was fired at or into the stolen vehicle; that did strike Frank Anderson Judy after ricocheting from the back passenger side window of the stolen vehicle; and as a result while in the commission of committing a violent crime against Petitioner Obelin James Aviles after waking the Petitioner at gun point at Petitioner's home, the place Petitioner and his family rightly lay their head at night; Frank Anderson Judy lost his life. The elements of this incident transpired during a single act, thus, convictions and separate punishments for both Count One: Manslaughter w/ Firearm and Count Two: Shooting or Throw Missile At or Into A Building, Vehicle or Dwelling do violate Petitioner's Constitutional rights which require reverse and remand for a New trial on one of the Charges and, or, remand/reversal with directions to vacate either one of Petitioner Aviles convictions and sentences.

(e). In a similar case, the Trial Court of (Florida) convicted defendant Dion Michael Carawan of Count One: Attempted Manslaughter w/ Firearm; Count Two: Aggravated Battery; and Count Three: Shooting or Throwing Missile At or Into A Building, Vehicle or Dwelling, find the defendant guilty on all charges where defendant receive three (3) sentences. After sentencing defendant Carawan sought review asserting a violation of the prohibitions against Double Jeopardy. The District Court Of Appeal, Fifth District, declined to rule and Certified the issue. The Florida Supreme Court answered and held that: "Where the record did not establish beyond a reasonable doubt that the victim was struck by more than one blast, both offense, i.e., Attempted Manslaughter w/ Firearm and Shoot or throw Missile at or into a building, vehicle or dwelling, were predicated on one single

(i) For the foregoing reasons, Petitioner Obelin James Ariles respectfully pray this Court accept jurisdiction of his case as it is his last resort, grant his Petition reversing and remand the decision of the lower Tribunal with directions to vacate one of the convictions above.

need not hitting Frank Anderson dead, which unfortunately ended his life. at the time they were committing a violent felony against Petitioner Ariles, which then the or into the stolen vehicle which Ricardo Rodriguez and Frank Anderson were driving dwelling occurred in one convives, single event where Petitioner fired a single bullet at mented as the Mouslaughter w/ firearm and the Shoot, thru Missile into building, vehicle or 76 LEd 306 (1932), standards. In Petitioner Obelin James Ariles case, Blackburger standard is LEd. ad (1969), and is governed by the Blackburger V. United States, 384 U.S. 299, 304, 52 S.Ct. 180, (h) The double jeopardy clause applies to all the States. Benton V. Maryland, 395 U.S. 784, S.Ct.

V. State, 109 So. 3d 831, 832 (Fla. 3rd DCA 2013).

(a) substantive offenses for the single act of possession of one weapon. see; Williams with double jeopardy principles, charge, convict and sentence a defendant with two principles of Double Jeopardy. The Court held that, "The state cannot consistently and unlawful possession of a firearm while engaged in a criminal offense violate general life sentences he received for his convictions for Second Degree Murder. (9) Dubose filed a 3,850 motion. In the motion, Ground 3, Dubose claims that the gen- of final counsel in a timely rule 3,850 motion. see; Dubose V. State, 163 So. 3d 215 (Fla. 3rd DCA 2015).

conviction and sentence without prejudice to Dubose raising ineffective assistance aged in a criminal offense. On Direct Appeal the Third District affirmed Dubose's of Second Degree Murder and one count of unlawful possession of a firearm while engaged in another case defendant Dubose was convicted and sentenced for one count (p)

445 Case No: 69,384 (September 3, 1982).

Dion Michael Carrasco V. State, 515 So. 3d 161, 1982 Lexis Fla. 2266, 12 Fla. L. Weekly the convictions of the final court for vacating either one or the other conviction. see; underlying act and multiple convictions were improper. The Court reversed/remanded

II.

Petitioner Has Been Convicted In Violation Of The American
Declaration Of Rights And Duties Of Man; And That Of Both
State And Federal Constitution Where Miranda Warning Was
Not Waived, Nor, Properly Administered Prior To Interrogations

(a). Having by chance to come to know next of friend, and now being more fully in-

formed regarding such complex matters of law, Petitioner Obelin James Aviles (Aviles
herein after) now knows, according to law, to have a right to an Attorney prior to his
giving any statements to the Police Agency and has a right not to be compelled to be a
witness against himself in a criminal trial; and that these rights are abridged when
the Police Agency does not give Miranda Warning until post interrogation; and then
the government utilizes the UN-Mirandized inculpatory statements during trial to
gain a conviction in a criminal case; depriving Petitioner Aviles of effective assistance
of counsel; Due Process of law; and of a fair, impartial jury trial in this case.

(b). On the early morning hours of September 04, 2006, Petitioner Aviles arrived back
at his place of residence and discovered several law enforcement officers, without first
obtaining a search warrant, were searching his property, homes and R.V. Trailer. Upon
arrival, Petitioner Aviles was handcuffed, interrogated and placed into the Polk Sheriff's
Police car. While waiting in the police car, Petitioner Aviles was approached on several
different occasions by lead investigating Officer "Detective Angela Macke", who after
several attempts to question Petitioner Aviles discovered that Petitioner could not speak, read
nor understand the English language. Detective Macke, after becoming aware of these
facts, instructed Detective Navarro, who speaks semi Spanish language, to translate questions
to Petitioner Aviles from English to Spanish then as liaison to her, translate Petitioner Aviles
answers from Spanish to English to her.

(c). Petitioner Aviles was detained, in Custodial custody of law enforcement and could not
leave, nor, was he allowed to leave when he requested to do so. Shortly thereafter Petitioner Aviles

was transported to the Polk County Sheriff's Office and placed into an interrogation room where he was met by Detective Angela Macke and Detective Navarro. For several hours Detective Navarro questioned Petitioner Aviles. Finally, Detective Macke asked whether Petitioner Aviles understood the Miranda Warning of his rights, at which time Detective Navarro stated that he forgot to give Miranda but that he would do so. "It must be noted that Detective Navarro is not a qualified interpreter from English to Spanish, visa versa, Languages and spoke a completely different dialect of Spanish than that which Petitioner Aviles grew up with, nor, did Detective Navarro at no time Interpret in Spanish, or English the Miranda Warning, nor, did Petitioner Aviles waive any right thereof." It should also be noted that de novo review of the record of this case would uncover no signed waiver of Miranda by the Petitioner, or, a signed Miranda form by Petitioner, thus, his claim must be construed as fact absence such evidence, especially here where Detective Navarro coerced Petitioner Aviles into giving statements that are inculpatory and where Detective Navarro has vested interest in the outcome of the interrogation, in obtaining a confession, that would support a conviction and sentence for the State of Florida.

(d). In cases such as in Petitioner Aviles, "If defendant alleges the statements he made during custodial interrogation were involuntary, the government must show by a preponderance of the evidence that the interrogation was preceded by Miranda warnings, and that the defendant validly waived these rights." see: Miranda v Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). Under Miranda the Police are required to advise someone of the following rights:

(e). "You have a right to remain silent. Anything you say can and will be used against you in a court of law. You have a right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand each of these rights I have explained to you? Having the rights in mind do you wish to talk to us now?" Id.

(f). Then, absent of Miranda warning, Detective Navarro coerced and graded Petitioner Aviles into giving inculpatory statements by telling the Petitioner that he had to tell law enforcement what happened and that until he gave police his statement he was not going to be able to go home to his wife and son, further coercing Petitioner Aviles by threats that without him giving the police a statement if and when the case went to Court, Petitioner Aviles would go to prison and never get to see or be with his wife and son ever again. Detective Navarro coerced Petitioner Aviles into giving the following accounts of Events:

(g). "September 03, 2006, witness Rodriguez and victim Judy arrived at his residence and place of business. Victim Judy wanted to sell Two (2) guns to Petitioner Aviles; (1) a .22 caliber, and (2) Chrome Plated .357 pistol(s) for \$500.00. Petitioner Aviles only wanted the .22 pistol but kept both firearms for Judy storing them in his Tractor. Witness Rodriguez and left Aviles residence, returned later that evening, which time, witness Rodriguez left again leaving Judy behind at Petitioner Aviles's home. Later that night unknown friends of Judy arrived at Petitioner's residence and gave Judy a ride to his father's home.

(h). In the early morning hours of the following day, "September 04, 2006", Petitioner Aviles was startled awoken from sound sleep by Judy poking the Chrome Plated .357 into his ribs and screaming in English, which Petitioner could not understand. Petitioner surmised he was in imminute danger due to the fact that Judy had broken into his locked tractor and stole the .357 pistol which was stored there the previous day upon Judy's request, and figured that Judy aimed to rob him and possibly kill him and his family.

(i). Petitioner Aviles grabbed Judy's gun hand and a struggle ensued where shots were fired. One of the bullets hit the inside roof of the work van which exited the roof blowing a great big hole through it, (Appendix I)³ the second bullet hit Judy in his right foot perforating his toe (Appendix J)⁴.

3. Petitioner Aviles was sleeping in his work van parked in his drive way because the day prior to the day of events he got bad vibes from Rodriguez and Judy as both of them were high on drugs and acting very strange.

4. Petitioner Aviles was unaware at the time that Judy shot himself in the foot,

(j). During the struggle Judy lost control of his weapon; which fell to the ground, landing between Petitioner Aviles and Judy; Petitioner Aviles reached the weapon first, picked it up and Judy ran toward the back of Petitioner's residence toward the back entrance to the property; Aviles feared for his life and was in the heat of the attack. Petitioner is a well known gun collector and had several other firearms stored inside the trailer Judy had illegally entered to steal the .357 as well as multiple weapons stored inside his other vehicles and R.V. which were parked in the back of his property where Judy had ran. Petitioner Aviles gave chase after Judy.

(k). Petitioner Aviles arrived at the back entrance of his property. It was still dark outside compounded by there being no lights due to there being a power failure from aftermath of hurricanes. As Petitioner Aviles turned the corner of his home leading to the back entrance several things occurred in almost instantaneous procession; First Petitioner noticed the stolen vehicle which Rodriguez and Judy had been driving⁵ parked by, or, right in front of his R.V. where he kept several of his firearms, (Appendix K), which was also close to his Oldsmobile (daily driving vehicle), which also contained firearms and bullets, (Appendix L); Second Petitioner noticed the hood of the stolen vehicle⁶ was raised and the hood of his R.V. was opened; Third, Petitioner caught a sudden movement out of the corner of his eye close to his R.V. and the stolen vehicle; Fourth, Petitioner heard a loud bang and believed Rodriguez and Judy had shot at him; Fifth, out of fear of his life Petitioner did fire a single shot in the general area where the stolen vehicle was parked, where the sudden flash of movement and loud bang also came from, which did hit the back passenger side of the stolen vehicle, ricochet and hit Judy out of which caused death to Judy while he was in the commission of committing a violent crime against Petitioner Aviles.

5. Petitioner Aviles was not aware the vehicle Rodriguez and Judy were driving was stolen until Discovery was made; The hood of the vehicles were raised because they stole his R.V. battery;

6. The Stolen Vehicle was already off the scene of the crime when Police arrived; it had been driven away by Rodriguez with Judy's body in the front seat.

(L). Petitioner respectfully requests the Court to take careful notice of the facts that co-partner in crime to Judy, "Ricardo Rodriguez" was never charged with a crime, although Rodriguez admits to the stolen vehicle and driving "Judy" to Petitioner Aviles' residence to commit the aggravated robbery and assault, a fact that was kept from the jury which had the jurors known would have changed the outcome of the proceedings.⁷

(m). Generally, a confession obtained by police questioning will be considered involuntary if it is shown to be the result of either physical coercion, or non-subtle types of psychological coercion. see: ▶ Greenwald v. Wisconsin, 390 U.S. 579, 88 S.Ct. 1152, 20 LEd. 2d 777 (1968); and in vein Courts have suppressed confessions that resulted from promises of leniency or threats of additional prosecution made by the Police; see: ▶ United States v. Powe, 591 F.2d 833 (D.C. Cir. 1978); i.e., ▶ Moran v. Burdine, U.S., 106 S.Ct. 1135, 89 LEd 2d 410 (1986).

Petitioner Aviles was made to believe that if he didn't give a statement he would not be able to return home with his wife and son on that day; then he was threatened that if he did not give a testimony/statement when his case went to court he would go to prison for life and would never see his wife and son again; and that he had no choice but to give a statement; however, and even admitted yet downplayed during trial, Miranda Warnings were not given until after Petitioner Aviles gave an inculpatory statement, which coercion (psychological coercion) is condemned.

(n). "A person must be advised of Miranda warnings only when 'in custody' and the police want to question him." see: ▶ Miranda v. Arizona, at 384 U.S. at 444. In Petitioner Aviles' case, upon sight he was placed in handcuffs, placed in the backseat of Polk County Sheriff's police car, was extensively questioned; then without release from restraint, transferred to the Polk County Police Department, placed into an interrogation room, extensively

7. Several years after trial Petitioner uncovered the reason Ricardo Rodriguez was not charged with a crime was because he was working with Detective Angela Macke and Polk County Sheriff's Office as a C.I. (Confidential Informant) on other cases which became more valuable.

questioned, interrogated, threatened and coerced into giving damaging statements while still in restraints, (handcuffs), not being allowed to leave when requested, and without Miranda or an Attorney.

(c). "In Custody" has a technical definition. It means 'either being arrested or having your freedom of movement restricted to such a degree that it constitutes an arrest'. see: ▶ Rhode Island v Innis, 446 U.S. 291, 298, 100 S.Ct. 1682, 64 LEd 2d 297 (1980). Here, in the instant case at hand Petitioner Aviles was in Police Custody as defined above.

(p). The government has the burden of proving by a preponderance of the evidence that Petitioner Aviles' statements that did self-incriminate him, was voluntary. see: ▶ Lego v Twomey, 404 U.S. 477, 92 S.Ct. 613, 30 LEd 2d 618 (1972). An involuntary statement or confession cannot be used at trial to impeach the defendant. see: ▶ New Jersey V Portash, 440 U.S. 450, 99 S.Ct. 1292, 59 LEd. 2d 501 (1979).

Wherefore, Petitioner Obelin James Aviles pray this Honorable Court to accept jurisdiction of his case and issue show cause orders upon the appropriate Respondents as why the Petition For Writ Of Certiorari should not be granted and the case reversed and remanded for vacation of either Count One: Manslaughter w/ firearm or Count Two: Shoot, throw missile at or into building, vehicle, ... ect..

Petitioner further moves for granting of a new trial as Miranda warning was not given until post-interrogation which resulted in inculpatory statements and confessions depriving Petitioner Obelin James Aviles of his right to counsel, right not to be compelled to be a witness against himself, and right to a fair jury trial.

It is so Respectfully Requested.

CONCLUSION

The petition for a writ of certiorari should be granted in this case to cure a miscarriage of justice placed upon the Petitioner through-out all state court proceedings of fundamental due process and equal rights violations and all of the above, including the Double Jeopardy prosecution, conviction and sentence.

Respectfully Submitted,

/s/ 
Obelin James Aviles, pro se.

DC # H32720

Wakulla Correctional Institution

110 Melaleuca Drive

Crawfordville, Florida 32327

Notice Is Requested

Petitioner Obelin James Aviles respectfully request this Honorable Court take great Notice of Appendix L, where assailant Frank Anderson Judy (deceased) removed his tennis shoes in order to move stealthily around Petitioner Aviles property and residence without being heard or leaving possible shoe prints; and to Appendix K which shows Petitioner's R.V. where the stolen vehicle was parked, a school bus and next to it the Oldsmobile where Judy removed his shoes; But take special notice of Appendix K in top left corner where the white Van sits, approximately 100 yards from Judy's shoes, that is where Judy tried to rob and assault Petitioner with a firearm.