18-9823 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FREDDIE LEE MORRIS,

Petitioner/Appellant

versus

SECRETARY, DEPARTMENT
OF CORRECTIONS, and
ATTORNEY GENERAL OF FLORIDA

Respondent/Appellee.

On Petition for a Writ of Certiorari From The United States Court of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Freddie Lee Morris, DC#029947
Petitioner, pro se
South Florida Reception Center
South Unit
13910 N.W. 41st Street
Doral, Florida 33178-3014

QUESTION(S) PRESENTED

WHETHER THE STATE OF FLORIDA VIOLATED PETITIONER'S SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL, WHEN POLICE INSERTED A PAID INFORMANT IN PETITIONER'S JAIL CELL, FOR THE SOLE PURPOSE OF EXTRACTING INFORMATION THAT WOULD INCULPATE PETITIONER'S INVOLVEMENT IN UNSOLVED CRIMES THAT WERE UNDER INVESTIGATION?

WHETHER THE DISTRICT COURT ERRED IN DENYING MORRIS' PETITION FOR WRIT OF HABEAS CORPUS, ON PROCEDURAL GROUNDS, WHERE THE ISSUES RAISED, WOULD WORK A MANIFEST INJUSTICE, BASED ON VIOLATION(S) OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS, WHERE POLICE TACTICS, WHICH INCLUDED TRICKERY AND DECEPTION, WERE EMPLOYED TO COERCE PETITIONER INTO IMPLICATING HIMSELF IN CRIMES COMMITTED BY ANOTHER?

WHETHER PETITIONER'S PLEA WAS UNCONSTITUTIONALLY OBTAINED, WHERE IT WAS INDUCED THROUGH PROMISE, TRICKERY, AND THREATS, IN THE ABSENCE OF THE ASSISTANCE OF COUNSEL, MAKING THE PLEA INVOLUNTARY AND VOID *AB-INITIO*?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[√] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. **FREDDIE LEE MORRIS,** is the Petitioner, who is housed at South Florida Reception Center, South Unit, whose address is 13910 N.W. 41st Street, Doral, Florida 33178-3014, who is being detained in prison in violation of Constitutional rights.

2. **MARK S. INCH**, is the Secretary, of the Florida Department of Corrections, who is responsible for the daily operations of the Florida Department of Corrections, whose offices are located at 500 S. Calhoun Street, Tallahassee, Florida 32399-2500.

3. **ASHLEY BROOKE MOODY**, is the Attorney General, of the State of Florida, who is the chief prosecuting officer for the State of Florida, whose offices are located at The Capitol, Plaza Level – 01, Tallahassee, Florida 32399-1050.

4. **FRANCISCO ACOSTA**, is the Warden, at South Florida Reception Center, South Unit, is responsible for Petitioner's immediate detention, whose address is 14000 N.W. 41st Street, Doral, Florida 33178-3003.

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APPENDIX A

Proceedings in the United States Court of Appeals for the Eleventh Circuit:

Appellate Case # 18-13564-D

[√] The opinion of the United States court of appeals appears at Appendix A and is reported at:

1. *Morris v. Sec'y DOC,* 2018 U.S. App. LEXIS 34456 (11th Cir. 12/6/2018)
2. *Morris v. Sec'y DOC,* 2019 U.S. App. LEXIS 1365 (11th Cir. 1/15/2019)

Proceedings in the United States District Court Middle District of Florida:

Case # 8:17-cv-02892-MSS-AEP (District Judge: Mary S. Scriven)
(Magistrate Judge: Anthony E. Procelli)

[√] The opinion of the United States district court appears at Appendix A and is unpublished

1. Order, dismissing case as time barred
2. Judgment in favor of the Attorney General/Secretary DOC (Case Closed)

APPENDIX B

PROCEEDINGS IN THE STATE COURTS

Proceedings in the District Court of Appeal, Second District of Florida:

Case # 77-7187-B; 77-7116-B and 2D17-2250

[√] The opinion of the highest state court to review the merits appears at Appendix B to the petition and is reported at:

Morris v. State, 246 So.3d 306 (Fla. 2nd DCA 11/15/2017)

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OPINIONS BELOW

A copy of the reasoned opinion of the United States Court of Appeals for the Eleventh Circuit, Case No. 18-13564-D, *Freddie Lee Morris v. Sec'y Dept. of Corrections,* 2018 U. S. App. LEXIS 34456 (11th Cir. December 6, 2018) and after motion for rehearing, *Freddie Lee Morris v. Sec'y Dept. of Corrections,* 2019 U.S. App. LEXIS 1365 (11th Cir. January 15, 2019) are reproduced and attached at Appendix A.

The unreasoned decision of the Second District Court of Appeal of Florida, regarding Mr. Morris' challenge to the constitutionality of the State Court conviction and sentence in Motion(s) for Post Conviction Relief and Petitions for Writ of Habeas Corpus are published at; *Morris v. State,* 246 So.3d 306 (Fla. 2nd DCA 11/15/2017)(Table); *Morris v. State,* 152 So.3d 584 (Fla. 3rd DCA 12/03/2014)(Table); and Post Conviction DNA testing at, *Morris v. State,* 940 So.2d 1172 (Fla. 2nd DCA 09/20/2006)(Table), are reproduced and attached at Appendix B.

JURISDICTION

Jurisdiction is invoked under 28 U.S.C. §1254(1) and Part III of the Rules of the Supreme Court of the United States. The decisions of the federal and state courts were entered:

[√] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was December 6, 2018.

[√] A timely petition for rehearing was denied by the United States Court of Appeals on January 15, 2019 and a copy of the order denying rehearing appears at Appendix A.

[√] For cases from **state courts:**

The date on which the highest state court decided my case was November 15, 2017. A copy of that decision appears at Appendix B

This petition is being filed within 90 days of the Eleventh Circuit's denial pursuant to Supreme Court Rule 13.1, and is therefore timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

U.S. CONSTITUTIONAL AMENDMENT V

The Fifth Amendment Self-incrimination Clause, which applies to the States via the Fourteenth Amendment, provides that no person "shall be compelled in any criminal case to be a witness against himself."

U.S. CONSTITUTIONAL AMENDMENT VI

". . . [i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." "A defendant's Sixth Amendment right to counsel attaches at all critical stages in the proceedings after the initiation of formal charges."

U.S. CONSTITUTIONAL AMENDMENT XIV

The Due Process Clause of the Fourteenth Amendment prohibits a *State* from depriving a person of "life, liberty, or property, without due process of law."

STATEMENT OF THE FACTS

On July 11, 1977 in Pinellas County, Florida, it was alleged that Charles Willis Malone, Jr. (Malone) and Co-defendant Freddie Lee Morris (Morris) attempted an Armed Robbery and Kidnapping of a victim, who had exited a bank in the area, however, the crime was thwarted, when the victim called for help and the suspects fled the scene in the victims vehicle. Malone was later identified as one of the suspects, when his fingerprints were matched to latent prints taken from the victim's vehicle, which enabled police to comprise a photo line-up containing Malone and Morris' mug shots from which witnesses identified them as the perpetrators of the attempted robbery, and specifically identified Malone as the suspect who had carried a firearm during that attempted robbery.

On July 14, 1977 based on a missing persons report filed by his wife, police began investigating the disappearance of one Jessie Wilbur Woodward (Woodward), who failed to return home from work. Later, on that same day and date (July 14, 1977) an investigation was initiated based on a Robbery and Murder that took place at a Texaco Service Station in Tampa, where the victim Manuel Tanner (Tanner), the service station attendant, was found bludgeoned with a metal pipe, (he subsequently died from massive head trauma the following day) and the service station's cash register was pilfered along with a large number of cigarette cartons being stolen.

On July 20, 1977, Malone was arrested by the Pinellas County Sheriff's Department for the Attempted Robbery and Kidnapping that occurred on July 11, 1977. Malone was taken to the old Pinellas County Jail, located at that time on Fort Harrison Avenue, where he was charged by information in Pinellas Case Number 77-3833 and 77-4382 with those crimes.

On July 26, 1977 Morris was taken into custody by Pinellas County authorities and charged with the same Attempted Robbery and Kidnapping under the same case numbers as Malone, i.e., 77-3833 and 77-4382 as Malone's co-defendant.[1]

Subsequently, Charles Willis Malone, Jr. was arrested by the Hillsborough County Sheriff's Department and indicted for the Robbery and Murder of the Texaco Service Station attendant Manuel Tanner, (Case No. 77-5091) based on fingerprint evidence found on a length of metal pipe, left at the scene of the crime, determined to be the murder weapon in that case. Freddie Lee Morris was not a suspect in that crime on the date Malone was indicted.

Police were still investigating the disappearance of Jessie Woodward, although his abandoned vehicle had been found and Malone's fingerprints were identified as being present inside that vehicle, Woodward's body had not yet been

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1 At the Pinellas County Jail Morris was placed in a cell with an inmate named Larry Mobley, a paid police informant, for the sole purpose of extracting information from Morris regarding the ongoing murder investigation that occurred on July 14, 1977.

found at this time.

Unknown to Freddie Morris, prior to Malone's extradition to Hillsborough County for the Tanner (Texaco Station) Robbery/Murder, Larry Mobley, the Police Informer, (who had been in a cell with Morris), was moved from the Pinellas County Jail to Hillsborough County Jail and placed in a cell with Malone for the same purpose as was intended with Morris, e.g., to extract information regarding the whereabouts of Jessie Woodward.[2]

Eventually, Hillsborough authorities were able to secure the temporary release of Larry Mobley (the informant) and by dressing him in civilian clothes they arranged for Mobley to visit Malone at the Hillsborough County Jail, where after gaining his confidence, that the informer would help Malone with an attorney, Malone revealed the location of Jessie Woodward's body (corpse).

However, even after Mobley had gotten directions to where Woodward's remains were located from Malone during two visits at the County Jail, Police were still unable to find the evidence (Woodward's body) in order to charge Malone with Woodward's murder.

Authorities subsequently used Larry Mobley (informant) to convince Freddie Morris, who was still at the Pinellas County Jail, by offering him a promise

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2 Informant Mobley was unable to secure any incriminating information from Morris regarding his involvement in the Woodward investigation or the Texaco Station robbery/murder.

of a reduced charge and short sentence, if he would lead police to where Woodward's body was located. Morris eventually acquiesced and cooperated with police personally directing them to where Woodward's remains were located.

All information gathered by the police informant, (Mobley) was accomplished outside of presence of counsel and based on promises of immunity from prosecution, where police knew the murders of Woodward and Tanner, were the individual act of Charles Malone, as he was the one who shot Woodward and beat Tanner to death, where all the evidence gathered during their investigation, i.e., eye witnesses and physical evidence, from both crime scene's, pointed to Malone as the sole perpetrator of those crimes. The only evidence involving Freddie Morris was what police were able to obtain through their informer, who was still Morris' cell partner at Pinellas County Jail, which ultimately became the proximate cause that led Morris to cooperate with authorities by leading police to the exact spot where Woodward's body was located.

Based on Morris' cooperation the State Attorney for Hillsborough County was able to obtain an indictment charging Malone with the First-degree Murder of Jessie Woodward in their Case No. 77-7178. However, notwithstanding Morris' cooperation those promises made to Morris for his assistance were not honored and in fact were never intended, instead were inflicted as a means to gain a separate indictment charging Morris with the same crimes committed by Malone, not as a

co-perpetrator, but rather as if Morris committed the crimes alone.

On October 17, 1977, Hillsborough County extradited Freddie Lee Morris from Pinellas County, and on October 23, 1977 Hillsborough State Attorney gained an Grand Jury Indictment in Case No.(s) 77-7178 and 77-7116 charging Morris with the same murders that they had indicted Malone with committing, albeit as a lone perpetrator not as a principle.

Charles Willis Malone was brought to trial in the early part of 1978, from which he was convicted of the first-degree murders of Jessie Woodward and Manuel Tanner, and based on the jury's verdict and recommendation the court sentenced Malone to death by electrocution.

On March 23, 1978 Freddie Morris entered into a plea agreement with the State Attorney, assuming that he would receive a reduced sentence as a benefit of his cooperation during the investigation of the crimes that convicted Malone, i.e., when the State offered a plea to a lesser-included charge of Second-Degree Murder[3] and Unarmed Robbery, providing that the plea would be entered as an open plea to the court without any guarantee of a reduced sentence.

Based on this open plea the Court sentenced Morris to a term of Natural Life in both cases, all cases and counts to be served concurrently.

On December 8, 1980, the Florida Supreme Court reversed Charles Willis

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3 At the time Morris entered his plea, Second-degree murder was not a lesser – included offense to First-degree Murder.

Malone's conviction and sentence, ordering a new trial, because the tactics used by police to extract a confession and incriminating evidence, implicating him the murders were obtained in violation of Malone's constitutional rights, being made without having counsel present and the statements made by Malone to the Police Informant (Mobley) should have been suppressed. See: *Malone v. State,* 390 So.2d 338, 340-41 (Fla. 1980).

Ultimately the State chose not to retry the case against Malone and subsequently a plea was entered by Malone in both robbery and murder cases to two (2) sentences of natural life to run concurrently, ostensibly the exact same sentence received by Freddie Morris.[4]

In his petition, below Morris complained that he was the victim of the same constitutional deprivations as was Malone, only to a higher degree, where his incriminating statements and cooperation were obtained in the same manner, except without any evidence connecting him to the crimes being investigated. Police gained the evidence needed against Morris through their paid informer (Larry Mobley) and Morris' eventual plea was entered through counsel based on trickery and promise of favorable treatment, when there was never any intent to fulfill those promises. Morris plea was unconstitutionally obtained and therefore void.

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4 Charles Willis Malone, Jr. died in prison of natural causes in 2014.

Proceedings through the State and Federal Courts:

On February 15th, 2017, Morris filed a Petition for Writ of Habeas Corpus into the State trial court, i.e., the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, asserting that during post-arrest proceedings, while incarcerated in the Pinellas County Jail, charged with an alleged robbery and kidnapping, when detective's from the Tampa Florida Police Department, intentionally placed a paid police informant into the same cell with Morris for the sole purpose of extracting information regarding a murder that occurred in Hillsborough County, for which police had another suspect, Charles Willis Malone, in custody at the Hillsborough County Jail.

As it would come to be known, this same police-informant had gained the trust of another suspect, Charles Malone, who had confided in the informant that he had in fact killed the victim and revealed the location of the victim's body to the informant, however, police could not locate the remains even after being notified of the location.

This prompted police to use this same informant in an attempt to locate the whereabouts of a victim's body, when this same informant had been used to gain a confession from another suspect, Charles Willis Malone, that he did indeed kill this victim.

Morris further asserted in Ground Two of his petition, that the indictments

procured by the State, charging him with two Counts of First-degree Murder, were constitutionally defective, where the theory of prosecution was that Morris killed the two victim's, not as a principle, but rather as the sole perpetrator, when the State had already charged Charles Willis Malone with the same two murders in the same manner. Hence producing inconsistent theories in separate prosecutions of two defendant's charged with the same murders.

The trial court, by written order, on March 23, 2017, denied Morris' Petition on procedural grounds, reasoning that the petition was unauthorized because a petition for writ of habeas corpus cannot be used as a means to seek a second appeal or to litigate issues that could have been or were raised in a motion under rule 3.850. (Appendix "A-1"). Morris filed a Motion for Rehearing on April 7, 2017 arguing that his petition was authorized under the manifest injustice exception to the rule. On April 26, 2017 the trial court denied rehearing. (Appendix "A-2"). On May 20, 2017 Morris filed his timely Notice of Appeal asking that the Second District Court of Appeal review his case.

An appeal followed to the Second District Court of Appeal, of Florida in Case No. 2D17-2250, where Morris argued in his 'Initial Brief' that the trial court erred in denying his Petition on procedural grounds, where Morris' claim of manifest injustice and his constitutional right to counsel during police interrogation usurped the procedural requirements of the rule and that the charging document

was defective.

The Second DCA affirmed Morris' appeal in a *per curiam* decision rendered on November 15, 2017. *Morris v. State,* 246 So.3d 306 (Fla. 2nd DCA 11/15/2017)(Table). (Appendix "A-3")

On November 28, 2017, Morris initiated proceedings in the United States District Court for the Middle District of Florida, Tampa Division, in Case No.: 8:17-cv-02892-MSS-AEP by filing a Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. §2254, with Memorandum of Law in support. On December 19, 2017, the Hon. Mary S. Scriven, District Judge, issued an Order to Show Cause, specifically requiring that Morris show cause why the Petition should not be dismissed as being time barred. (Order Appendix "B-1") On January 17, 2018, Morris responded to the Order to Show Cause arguing that he should be excused from any procedural default, where the violation of his constitutional rights were so egregious that he should be entitled to equitable tolling. However, on August 8, 2018, Judge Scriven rendered an order "Dismissing" Morris' Petition as time barred. (Order denying Petition - Appendix "B-2"). The case was closed on August 9, 2018. (Appendix "B-3").

On September 14, 2018, Morris filed an appeal to the United States Court of Appeals for the Eleventh Circuit, by filing a Motion for Certificate of Appealability and Motion to Proceed in forma pauperis w/affidavit of indigence. On December

6, 2018, the Court of Appeals in an Order rendered by the Hon. Kevin C. Newsom, U.S. Circuit Judge, denied Morris' Motion for COA and denied him IFP as being Moot. (Appendix "C-1"). *Morris v. Sec'y DOC,* 2018 U. S. App. LEXIS 34456 (11th Cir. 12/6/2018). Morris filed a timely Motion to Reconsider, pursuant to 11th Cir. Rule 22-1(c) and 27-2, which the Court of Appeals denied on January 15, 2019. *Morris v. Sec'y,* 2019 U.S. App. LEXIS 1365 (11th Cir. 1/15/2019).

On March 27, 2019, Morris filed a timely Petition for a Writ of Certiorari to the United States Supreme Court.

This petition for writ of certiorari follows:

REASON FOR GRANTING THE PETITION

PETITIONER'S PLEA WAS UNCONSTITUTIONALLY OBTAINED, WHERE IT WAS INDUCED THROUGH PROMISE, TRICKERY, AND THREATS, IN THE ABSENCE OF THE ASSISTANCE OF COUNSEL, IN VIOLATION OF PETITIONER'S FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION?

Freddie Lee Morris, (Morris) a prisoner serving a life sentence in the Florida Department of Corrections, a sentence, that was the product of an unconstitutionally procured plea agreement, challenges the State and Federal Court(s) order's denying his post-conviction and habeas petition(s), asserting a manifest miscarriage of justice.

In his petition below Morris complained that after he was arrested and counsel was appointed, the State intentionally induced him to make incriminating statements to a police informant in violation of Morris' right to counsel. Hence, because Morris' statements were impermissibly elicited through this police informant, the information gathered by the informant would have been inadmissible under *United States v. Henry*, 447 U.S. 264, 100 S. Ct. 2183, 65 L. Ed. 2d 115 (1980). However, the illegally obtained information was instead used to induce Morris to enter into a coerced plea agreement, where he was placed in fear of the possibility of being sentenced to death. *United States v. Battle,* 447 F.2d 950, 951 (5th Cir. 1971)("Government cannot lure a defendant into a plea bargain by false information") *affirmed* 467 F.2d 569, 570 (5th Cir. 1972); *Trotter v. United*

States, 359 F.2d 419, 420 (2nd Cir. 1966)("Plea bargain obtained by flagrant trickery violates a defendant's constitutional rights").

Secondly, although the prosecutor knew that Morris' statements were impermissibly elicited and that the informant's testimony would have been inadmissible had Morris proceeded to trial, the prosecutor knowingly used this leverage to gain Morris' cooperation in locating the body of victim, [Jessie Woodward] thereby eliciting enough incriminating evidence against Morris to gain an indictment for first-degree murder, and his subsequent guilty plea. And; third, where the informant's illegally obtained information was then later used by the State Prosecutor, with full knowledge at Morris' plea hearing, to insure his guilty plea and subsequent life sentence, in violation of the United States Supreme Court's decision in *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972).

The standard to be considered when evaluating whether incriminating statements were obtained through persons other than the police is the "deliberately elicited" standard. Usually, determining whether the "deliberately elicited" standard has been met becomes an issue in cases .... where incriminatory statements from a defendant were obtained through persons other than the police, who .... acted as police informants or surrogates. *Smith v. State,* 28 So.3d 838, 858

(Fla. 2009);[1] also *State v. Wooley,* 482 So.2d 595, 596 (Fla. 4th DCA 1986).

In this case, Detective Carpenter of the Hillsborough County Sheriff's Department, deliberately solicited the help of a police informer to trick both Charles Willis Malone, and Freddie Lee Morris into unwittingly giving incriminating evidence to the State by unscrupulous means, going so far as to gain the informer's temporary release from the County Jail, dressing him in civilian clothes and arranging his visitation with Malone at the Hillsborough Jail, to trick him into revealing the location of Jessie Woodward's body. However, when that did not produce the expected result, because even with Malone's cooperation, police were unable to locate Woodward's remains, they then turned their efforts to Morris, having their informant goad him into cooperating through the use of threats of seeking the death penalty or a sweet plea deal if he would cooperate. *Machibroda v. United,* States, 368 U.S. 487, 82 S. Ct. 510, 7 L. Ed. 2d 473 (1962)("A guilty plea, if induced by promise or threats, which deprived it of the character of a voluntary act, is void.").

Perhaps the most intolerable violation of constitutional rights forwarded here was the perpetration by State Agents, including the State Attorney, who prompted

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1 *Smith v. State,* 28 So.3d 838, 858 (Fla. 2009) cites to *Malone v. State,* 390 So.2d 338, 339 (Fla. 1980), Morris' co-defendant, whose case was remanded for a new trial based on the exact issue Morris presented to the State Court, where the Police used the same informant as was employed in Malone's case to gain Morris' cooperation.

police to act in the way that they did, depriving Morris of his constitutional rights. "Gross deception used as a means of evading constitutional rights has no place in our system of justice" *Illinois v. Perkins,* 110 S.Ct. 2394, 2400 (1990); *Voltaire v., State,* 697 So.2d 1002, 1005 (Fla. 4th DCA 1997).

The issues presented in this case show that after Morris was arrested and counsel had been appointed, albeit, in an Attempted Robbery case that Morris allegedly participated in with Malone, the State intentionally created a situation likely to induce Morris to make incriminating statements to a police informant, in violation of Morris' Sixth Amendment right to counsel.

Because Morris' cooperation and subsequent plea was impermissibly induced through a paid police informant, by threatening Morris that the State would pursue a death sentence if he did not cooperate, and promises that his cooperation would bring a reduced charge and sentence, without the assistance of an attorney, this process further violated Morris' constitutional rights under *Miranda v. Arizona,* 384 U.S. 436 (1966).

Moreover, pursuant to *Miranda*, the term "interrogation" refers not only to express questioning, but "any words or actions on the part of the police .... that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980), where the Court explained: "This focus reflects the fact that the

Miranda safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response." *Innis*, 446 U.S. at 301-02 (emphasis in original).

In *Massiah v. United States*, 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964), the United States Supreme Court held that the Sixth Amendment prohibits law enforcement officials from deliberately eliciting statements from a defendant after the right to counsel has attached. "[S]tatements 'deliberately elicited' from a defendant after the right to counsel has attached and in the absence of a valid waiver are rendered inadmissible and cannot be used against the defendant at trial." *Rolling v. State*, 695 So. 2d 278, 290 (Fla. 1997)(citing *Massiah*, 377 U.S. At 206).

The "deliberately elicited issue" often arises when incriminatory statements are obtained by those persons acting as police informants or agents. *See Rolling*, 695 So. 2d at 290. In *Rolling*, the court held that "[u]sually, determining whether the 'deliberately elicited' standard has been met becomes an issue in cases, like this

one, where incriminatory statements from a defendant were obtained through persons other than the police who allegedly acted as police informants or surrogates." *Id.* The key to the inquiry is whether a confession was "obtained through the active efforts of law enforcement." *Id.* at 291; *see, e.g., United States v. Henry*, 447 U.S. 264, 100 S. Ct. 2183, 65 L. Ed. 2d 115 (1980)(use of a paid jailhouse informant to stimulate conversation with defendant rendered incriminating statements inadmissible at trial); *Massiah*, 377 U.S. at 201 (arranging for co-defendant to meet and discuss pending case in co-defendant's wire-tapped car met the "deliberately elicited" standard). Further, this analysis does not require the alleged agent have knowledge of his or her role in "deliberately eliciting" statements from a defendant in violation of his right to counsel. *See, e.g., Calhoun,* 479 So. 2d 241, 245 (Fla. 4th DCA 1985)(placement of defendant's brother in defendant's videotaped interrogation room rendered the brother an unwitting agent of law enforcement and allowed the Sheriff's agents to vicariously initiate and participate in a *post-Miranda* interrogation that law enforcement could not legally accomplish directly).

In the instant case, law enforcement officials actively participated in a plan to elicit incriminating statements from Morris after Morris had been already been appointed counsel in Pinellas County, when law enforcement officials planted a paid police informant in the same cell with Morris at the Pinellas County Jail

posing as Morris' roommate, with the specific intent to evoke his cooperation to locate Jessie Woodward's body. Moreover, it is clear that police investigators intended to use this informer as their tool to gain whatever information that they could to strengthen the case against Malone and Morris in two homicide investigations.

Lastly, the State Prosecutor knew that Morris' cooperation was unconstitutionally obtained and that the informer's involvement was illegal, notwithstanding, the prosecutor knowingly used the informant's acts to develop incriminating evidence against Morris so that he could pursue a first-degree murder indictment and goad Morris into entering into a plea agreement under the threat of seeking the death penalty.

"A guilty plea, if induced by promise or threats, which deprived it of the character of a voluntary act, is void." *Machibroda v. United,* States, 368 U.S. 487, 82 S. Ct. 510, 7 L. Ed. 2d 473 (1962); *Waley v. Johnston,* 316 U.S. 101, 62 S.Ct. 964, 86 L.Ed. 1302 (1942); and *Walker v. Johnston,* 312 U.S. 275, 61 S.Ct. 574, 85 L.Ed 830 (1941).

Separate indictments same criminal act:

This issue was presented to the State Court couched in terms of defective indictment, because the State of Florida chose to indict both Charles Willis Malone and Freddie Lee Morris, in separate Grand Jury indictments, for the same murders,

not as co-defendant's or principals, but rather as if both had acted separately in committing the same crimes individually.

Essentially, the sworn testimony used before the Grand Jury to gain indictments for the murder, of victim Jessie Woodward, were presented in separate indictments employing the same language, that each Malone and Morris carried out the same acts in the same manner to effect the death of one victim. These theories of prosecution are diametrically in-opposite and constitute and unfair advantage in favor of the State.

Some courts have recognized that due process prevents the prosecution from presenting inherently factually contradictory theories in different criminal prosecutions. The Eighth Circuit in *Smith v. Groose,* 205 F.3d 1045, 1051, 1052 (8th Cir. 2000) stated:

> "The State's use of factually contradictory theories in this case constituted 'foul blows,' error that fatally infected Smith's conviction. Even if our adversary system is 'in many ways, a gamble,' that system is poorly served when a prosecutor, the state's own instrument of justice, stacks the deck in his favor. The State's duty to its citizens does not allow it to pursue as many convictions as possible without regard to fairness and the search for truth."

The separate indictments procured by the State Attorney of Hillsborough County, charging both Malone and Morris with committing the same acts, as the sole perpetrator are the 'foul blows,' that the *Smith* case refers to implying that, as

in this case, "...when a prosecutor, the state's own instrument of justice, stacks the deck in his favor..."

The State knew or should have known that Freddie Lee Morris did not discharge the firearm that killed Jessie Woodward, nor did he strike the blows that killed Manuel Tanner. All the evidence in these case(s) pointed to Charles Willis Malone as being the sole perpetrator, essentially inflicting the fatal wounds on the victim(s) without Morris' participation or knowledge that the killings had occurred until well after the fact. Notwithstanding, the State chose to charge Morris in a manner that suggested that he not only joined in the crimes, but by the wording of the indictments, that he committed the offenses alone, because, the indictments were fashioned in a manner so that Malone and Morris could be charged separately.

The Florida Supreme Court in citing centuries old United States Supreme Court precedent, has stated that; "to apprise the accused of the specific charges against him, an information or indictment must contain all facts essential to the 'offense intended to be punished.'" *Insko v. State,* 969 So.2d 992, 995 (Fla. 2007) quoting: *United States v. Carll,* 105 U.S. 611, 612 (1881). "Historically, the 'elements of a crime' are the facts 'legally essential to the punishment to be inflicted'" *id.* (quoting *Harris v. United States,* 536 U.S. 545, 561 (2002) See also, *Aaron v. State,* 284 So.2d 673, 677 (Fla. 1973)("The right of persons accused of

serious offenses to know, before trial, the specific nature and detail of crimes they are charged with committing is a basic right guaranteed by our Federal and State Constitutions.")

Here, the State pursued an indictment against Freddie Lee Morris for Murder in the First-degree, that was known to have been committed by someone else. Yet, despite this knowledge, the murder charges were vehemently prosecuted to the extent that they were used as a means to gain Morris' cooperation and then used that cooperation to insure a conviction against Morris and sentence him to life in prison.

CONCLUSION

This Honorable Court should grant certiorari, because the constitutional violations asserted violate this court's precedent in; *Massiah v. United States*, 377 U.S. 201, 206, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964), i.e., that the Sixth Amendment is violated when a government agent deliberately elicits incriminating statements from a defendant who is represented by counsel. This Court has established three requirements for finding a Sixth Amendment violation based on deliberately eliciting an incriminating statement through an informant: (1) an informant was acting as a "government agent"; (2) the informant engaged in a "deliberate elicitation" of incriminating information from the defendant; and (3) the right to counsel had attached at the time of the conversation between the defendant

and the informant. *Maine v. Moulton*, 474 U.S. 159, 106 S. Ct. 477, 88 L. Ed. 2d 481 (1985)(asserting that the Sixth Amendment right to counsel is violated when an informant engages the defendant "in active conversation ... [that] was certain to elicit" incriminating statements).

Respectfully submitted,

Freddie L. Morris

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PROOF OF SERVICE

I, Freddie Lee Morris, do swear or declare that on this date, 17th day of June, 2019, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage pre[paid], or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Mark S. Inch, Sec'y, FDOC, 500 S. Calhoun Street, Tallahassee, Florida 32399-2500 attn: C. Suzanne Bechard, C.A.A.G., Concourse Center 4, 3507 E. Frontage Road, Suite 200,Tampa, Florida 33607-7013 (See Notice of Appearance Waiver)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 17th day of June, 2019.

Freddie L. Morris

Freddie Lee Morris, #029947