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IN THE
SUPREME COURT OF THE UNITED STATES
Washington D.C. 20543

Lensky Jeanbart – Petitioner,

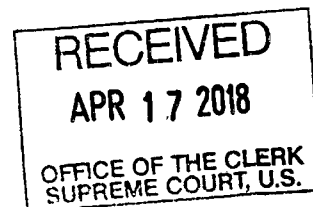
v.

STATE OF FLORIDA – Respondent.(s)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
FOR THE FOURTH DISTRICT, STATE OF FLORIDA

PETITION WRIT OF CERTIORARI

LENSKY JEANBERT, DC# W18646
Hamilton Correctional Inst. – Annex
11419 SW County Road # 249
Jasper, Florida 32052-3735



PRELIMINARY STATEMENT

Appellant was the defendant and Appellee the prosecution in the criminal division of the Circuit Court of the 15th Judicial Circuit, in and for Palm Beach County, Florida. In this brief the parties will be referred to as they appear before the court.

“R” represents the on appeal.

“T” represents the transcript

“SR” represents the supplemental record.

QUESTIONS PRESENTED

1) How was the appellate court lawfully permitted to deny appellant relief on Direct Appeal when trial court erred in failing to conduct an adequate Faretta hearing before allowing appellant to represent himself before trial, at trial and failed to inquire as to appellant's mental and physical health?

2) How was the appellate court lawfully permitted to deny appellant relief on Direct Appeal when trial court erred in failing to instruct the jury on Independent Act, which was requested by appellant?

3) How was the appellate court lawfully permitted to deny appellant relief on Direct Appeal when trial court erred in failing to grant appellant's Motion for Judgment of Acquittal where there was insufficient evidence that appellant acted as a principal or aided and abetted the shooter in case?

LIST OF PARTIES

Lensky Jeanbart, Appellant

State of Florida, Respondent

Fourth District Court of Appeal

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OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and has been designated for publication but is not yet reported.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was November 9, 2017. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: January 10, 2018, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATUTE AND RULES

Florida Statute § 782.04(1)(a)(1) Fla. Stat. (2016)

Florida Statute § 775.087 (2)(a)1 Fla. Stat. (2016)

Florida Statute § 810.02(1) *and* (2)(b) Fla. Stat. (2016)

Florida Statute § 795.087 *and* (2) Fla. Stat. (2016)

Florida Statute § 790.19 Fla. Stat. (2016)

Florida Statute § 777.011 Fla. Stat. (2016)

Florida Statute § 777.03(1)(C) *and* (2)(b) Fla. Stat. (2016)

Florida Statute § 777.04(1) Fla. Stat. (2016)

STATEMENT OF THE CASE

Appellant, Lensky M. Jeanbart, was charged with two counts of Attempted First Degree Murder (Premeditated) with a Firearm (Count 1 and 2) Burglary while Armed (Count 3) , two counts of Shooting into an Occupied Vehicle (Count 4 and 5), Aggravated Assault with a Firearm (Count 6) and Accessory after the Fact (Count 7) (R 112). All counts were alleged to have occurred on March 25, 2016 (R 112). Appellant was found guilty on Count 1 and 2, not guilty on Count 3, and guilty on Counts 4, 5 and 7 (R 127) The trial court granted a judgment of acquittal on Count 6 for Aggravated Assault with a Firearm (T 603). Because Appellant did not do any of the shooting in this case, he was apparently convicted as a principal by aiding and abetting the shooter. Throughout the trial, appellant represented himself and only elected to have standby counsel take over after the verdict. (T 734)

On the day of the incident, sometime between 11:20 to 11:50 a.m., Jean Aime drove with his two daughters to his mom's house in a car that he borrowed from a friend. (T 173-75). The car that Jean Aime drove was an Infinity Q-50, and Jean Aime's friend was not with them (T 174) Jean Aime parked the Infinity on the street in front of his mom's house, got out of the car, and assisted his two daughters out of the car. (T 176-177) The three walked to the front door and Jean Aime said "hi" to some friends that were in a black SUV (Tahoe or Suburban), which was parked on the same street about five or six feet from his car (T 177, 179) Jean Aime testified that he thought one of the people in the black SUV was Kason Lindor, the victim for Count 2 of Attempted First Degree (Premeditated) Murder (T 180)

As Jean Aime unlocked the front door to his mom's house, his younger daughter ran back to the Infinity to get something she forgot, and at the same time a silver Chevy Cruze with window tint came around the block (T 178, 180, 181) The silver Chevy stopped in front of the house between his car and the Tahoe (T 178). Jean Aime had seen the silver car "busting a U-turn" when he was parking. (T 178-180)

Appellant was driving the Chevy (T 181-84, 199-200, 261-62). Appellant parked the silver Chevy between the Infinity and the black SUV, but the front part of the Chevy was hidden behind the bumper of the SUV, such that from his mom's front door, Jean Aime could not see the person exit the passenger side (T 184-85, 187)

Jean Aime saw the passenger door of the silver Chevy open and he then heard a gunshot and saw the shooter at his car window pointing the gun; the man shot at the driver's side car window (T 185, 187, 188-89, 192) Jean Aime ran toward his car, he heard the passenger of the black SUV say "it's kids over here, it's kids in the car," and made mention that Kason Lindor told shooter "What are you doing?" "You are stupid!" and Jean Aime heard another gunshot (T 185, 86, 192-93) The shooter said "I don't give a fuck and shot in the air (T 193-94, 241). The shooter had a big black handgun with a gray or silver top (T 225).

The shooter then approached the passenger in the black SUV, Kason Lindor as Kason Lindor was on the step to the door of the SUV, and Kason Lindor and the co-defendant "tussled" in the SUV (T 185-86, 192-94, 195, 237-38) Jean Aime testified that he heard the shooter saying something about "snitching" or

“people owing him money,” and the man was “screaming out loud going crazy telling he don’t give a f***, I’ll kill people out here” (T 186, 195-96). There was a lot of screaming, and he wasn’t sure who said something about “snitching, money” (T 195-96, 233-35)

While the shooter and Kason Lindor were tussling, Jean Aime grabbed his youngest daughter and ran back to the house (T 186, 194, 196-97, 259). At some point, Jean Aime thought the shooter left and opened the front door and Jean Aime saw the SUV reverse into the Infiniti, hit it, and pull off (T 191, 196-97). Jean Aime heard another two or three gunshots before the SUV pulled off. (T 191, 197-98). After the SUV pulled away, Mr. Aime saw the shooter in the roadway, and he then walked towards Jean Aime’s car and fired another shot (T 191, 197-98).

During the time when Appellant’s co-defendant was involved with the victim’s, Appellant drove the Chevy away, turn around, and came back (T 196-97, 236-37, 258). Appellant was screaming at the shooter, saying “Let’s go, let’s go, you doing dumb shit right now.” (T 194, 198, 199). The gunman, still at Aime’s car, was saying “don’t snitch, don’t snitch.” (T 201)

The SUV left and the shooter shot another shot into Aime’s car (T 191). Detective Kenny Smith of P.B.S.O. showed a lineup to Jean Aime and he identified Appellant (T 317-322).

Deputy Michael Preston was on road patrol and went to the scene of an accident involving a silver Chevy which had rear ended another car (T 265-269, 271). The driver of the Chevy got out of the car and went to sidewalk. (T 268, 270, 273-275). The deputy made contact with the driver (t 277). The passenger was

trapped inside the car when the air bag deployed (T 272-273). He was wounded and confused (T 273, 278). While the deputy was dealing with the passenger, the driver got into another car and left. (T 278). The passenger got in the driver's seat and drove away (T 275). He was later involved in another crash in the silver Chevy (T 275)

Deputy Whitten was on road patrol that day and went to the scene of a crash where the silver Chevy had flipped over (T 330-31, 335). Two guns were found on the floor of the car (T 331-335) Only one of those guns was used in the shooting (T 404-424, 507). DNA test indicated that at some point, Appellant was in possession of one of the guns, but not the one used in the shooting (T 497-498, 507).

Both Detective Chapman and Detective Drake arrived to appellant's mother's home, which was 18 to 19 blocks away from the shooting, in response to several 911 calls to what appeared to be an Aggravated Battery. Appellant was going out of consciousness when Detective Chapman arrived. (T 775 16-17)

Appellant was in the back bedroom of mother's home with his brother Abraham who was on the 911 call. Abraham was holding a towel to appellant's head; Appellant had a laceration to his head and left hand. (T 372 23-25) Appellant was airlifted to St. Mary's Medical Center due to his injuries. (T 388 15-19)

Appellant was found guilty on Count 1, guilty or Count 2, not guilty of Count 3, and guilty of Counts 4 through 7. (T 726-729). The judge granted a judgment of acquittal on Count 6. (T 603) Appellant was sentenced on Count 4

and 5 to 15 years in prison; on Counts 1 and 2 to 20 years prison, all sentences concurrent (T 772). On Count 7, appellant received an adjudication and one day time served. (T 742, 772).

ARGUMENT ONE

The Court should grant the appellant relief in this case in regards to claim that trial court erred by failing to conduct an adequate Faretta Hearing before allowing appellant to represent himself before trial; and at trial and by failing to inquire as to appellant's mental and physical health. The knowing and intelligent waiver required by Faretta also requires inquiry into such matters as to defendant's age, education, mental condition and past experience with criminal proceedings. *Abaunza v. State*, 18 So.3d 609, 610 (Fla. 1st DCA 2009); *Petty v. State*, 1 So.3d 1183 (Fla. 1st DCA 2009); *Smith v. State*, 956 So.2d 1288 (Fla. 4th DCA 2007); *Davis v. State*, 10 So.3d 176, 178 (Fla. 1st DCA 2013); *Flowers v. State*, 976 So.2d 665, 666 (Fla. 1st DCA 2008). It was clear from evidence before and during trial that appellant was hospitalized for injuries received after a severe automobile accident that led to appellant being airlifted to hospital to be treated for head injury and lacerations to hand. (T 388 15-19) There was absolutely no competency hearing or investigation to determine appellant's sanity. The appellant in this case may have been insane at the time of the crime on March 25, 2016 and prior and during trial. There was no psychiatric examination and due to failure to hold competency examination the appellant may have had psychiatric disorder, including hallucinations and severe paranoia and psychiatric history may have shown mental illness. To safeguard that due process guarantee, the Supreme Court announced in *Pate v. Robinson*, 383 U.S. 375, 86 S. Ct. 836, 15 L. Ed 2d 815 (1966) a separate procedural due process right to a competency hearing

whenever the facts or events presented to the trial court raise a bonafide doubt as to the defendant's competency. Appellant's trial judge did not inquire regarding appellant's mental and physical condition and as a result, the inquiry was inadequate (SR) See *Faretta v. California*, 422 U.S. 806 (1975) There was doubt to appellant's competency during trial. Following the State's objection to one of appellant's questions, the trial court reminded appellant that the court could not educate appellant about the law and appellant was getting close to the court finding he was not competent to represent himself (T327).

The appellant's competency during trial was questionable and appellant's competency prior to jury trial was questionable. Standby counsel did not take over criminal case until after verdict was orally pronounced and jury was discharged from duty in case. The appellant in this case was charged with (2) or two counts of Attempted First Degree (Premeditated) Murder, Burglary while Armed, (2) or two counts of Shooting into an Occupied Vehicle, Aggravated Assault with a Firearm and Accessory after the Fact. The appellant was facing (2) or two life sentences for the two Counts of Attempted First Degree (Premeditated) Murder and several decades in the Department of Corrections for other offenses commit on March 25, 2016. Appellant was found guilty of (2) or two Counts of Attempted First Degree (Premeditated) Murder Count 1 and 2, and not guilty of Burglary while Armed Count 3, guilty of Shooting into an Occupied Vehicle Counts 4 and 5 and guilty of Accessory after the Fact to Burglary of a Conveyance with a Firearm Count 7, 3. The trial court failed to

conduct an adequate Faretta hearing and appellant was not asked at any time during inquiry about his physical and mental health. There were due process requirements as outlined in the 14th Amendment of the U.S. Constitution that Court ignored by allowing appellant to proceed pro se in spite of questionable competency. A criminal defendant has a due process right not to be proceeded against while incompetent U.S.C.A. Const. Amend 14. The State may not proceed against a person at any material stage of criminal proceeding while the person is mentally incompetent Fla.R.Crim.P. 3.210(a) Florida Rules of Criminal Procedure 3.210(a) through 3.212 established the required competency hearing procedures for determining whether a defendant is competent to proceed or has been restored to competency. Due process requirements were not satisfied in this case. The Supreme Court of Florida had published a model colloquy wherein the judge is to (1) inquire concerning the defendant's age, education, his ability to read and write, any mental or physical conditions, and whether anyone has threatened him concerning the decision to proceed without counsel; (2) advise the defendant that a lawyer can assist him in calling witness and presenting evidence, advise him regarding whether he should testify, is familiar with the rules of evidence, can ensure accurate jury instructions are given, and preserve errors to appeal and (3) warn the defendant he will not receive special treatment and will be limited by the resources available to him while in custody. See In Re Amendment to Fla.R.Crim.P. 3.11(d)(2)(3), 719 So.2d 873, 876-77 (Fla. 1998).

Due to the fact, circumstances and evidence in this case there was a great need to inquire as to appellant's mental and physical health to determine whether appellant was competent to stand trial and whether or not appellant was competent to represent himself for the purpose of trial. Detective Drake, who had a degree in nursing stated "during trial" "He was in the bedroom, back bedroom with his brother Abraham who was on the 911 call. Um Abraham was holding a towel to his head, he had a laceration to his head and left hand." (T 372 23-25) Detective Drake also stated during his testimony that he got a good look at the defendant head injury while at St. Mary's Medical Center for the ER. (T 373 23-25) Detective Chapman, who was present at the scene of appellant's mother's residence stated that appellant was unresponsive (T 388 5) Detective Chapman also stated during trial appellant was going out of consciousness when Detective Chapman arrived (T 475 16-17) to appellant's mother's home. (T475 16-17)

According to testimony during trial appellant was an alleged driver of Derilus who fired an initial shot at a vehicle occupied by a 2 year old girl, who tussled with the second victim in case Kason Lindor after Kason Lindor stated "it's kids over here, it's kids in the car," prior to Derilus firing shot into the air, who fired two or three shots at SUV with Kason Lindor as occupant after the Tahoe crashed into Infinity parked in front of Jean Aime's mother's home and co-defendant who fired last shot at an unoccupied vehicle. Appellant may have very well been traumatized by the event that took place at 903 South "G" Street sometime between 11:20 to 11:50 a.m. in the afternoon in front of 10 to 15

including children. The appellant may have been traumatized by occurrences in Broward County where vehicle rolled over after co-defendant jumped from passenger seat to driver seat and drove away from the scene of a rear end accident. Deputy Preston stated during Day 1 of trial that "It was on his face", (T 270 - 14) in reference to blood on appellant's face after the rear-end accident. Deputy Preston also stated during direct on Day 1 of trial that, "There was heavy damage to the silver vehicle, the Chevy, all airbags had deployed." Deputy Preston explained that damages made to the vehicle were so severe after the rear-end accident that he couldn't get passenger side door to open. The appellant was said to have exited the vehicle after the rear end accident and began to pace back and forth on the sidewalk while still bleeding prior to vehicle rollover of Chevy Cruze. (T275, 1-2) The appellant in this attempted first degree (premeditated murder case was involved in very intense happenings on March 25, 2016 and competency prior, during and after trial was highly questionable. The appellant argued during closing that had a painful emotional experience during the course of crime. The appellant may have met the criteria for commitment when he could receive treatment for mental and psychological issues that impaired his ability to proceed to trial. The sentence in this criminal case should have been postponed to determine appellant's competency. Due to actions made by Court error rose to the level of fundamental error. The Trial Judge in this case did warn the appellant of dangers of representing himself and the consequences of his choice, but did not inquire as to appellant's mental and physical health. The constitution permits judges to take realistic account of the

particular defendant's mental capacity by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent. *Indiana v. Edward*, 128 S. Ct. at 2377-88; *Tennis v. State*, 997 So. 2d 375, 376 (Fla. **2008**)

ARGUMENT TWO

The Court in this case should grant relief in this case where the appellant was denied the Independent Act Instruction in case where there was evidence that not only created conflict with the State's Principal Theory, but also evidence that co-defendant acted independently of appellant. The co-defendant in this attempted premeditated murder case fired an initial shot into a vehicle occupied with only a 2 year old occupant in the beginning of shooting.

Thereafter, Kason Lindor, the second victim in case also named in Count 2 of Attempted First Degree Premeditated Murder, sought to go toe to toe with the shooter, which led to a tussle between shooter and Kason Lindor. The passenger of the Tahoe put his feet out like he's about to go confront him like he didn't care he had the gun out there because nobody knew he shot the car first (T 193 23-24). The record established that Kason Lindor and co-defendant Derilus "tussled" in the SUV. At some point, Jean Aime testified that he believed he heard the shooter saying something about "snitching" or "people owing him money." And the man was screaming out loud going crazy telling he don't give a f***, I'll kill people out here" (T 186, 195-96) During the shooting Jean Aime thought the shooter left and opened the front door, and Jean Aime saw the SUV reverse into the Infiniti, hit it, and pull off (T 191, 196-97). After the SUV pulled away, Jean Aime saw the shooter in the roadway, and co-defendant Derilus walked toward Jean Aime's car and fired another shot (T 191, 197-98) Prior to this last shot fired into Jean Aime's vehicle the appellant

screamed at shooter Derilus "Let's go, let's go, you are doing dumb shit right now!"

There was ample evidence from the trial testimony of Jean Aime to support an Independent Act Instruction being read to the jury. The Trial Judge in this case abused her discretion in not granting Independent Act Instruction. A trial court's decision to withhold a jury instruction is reviewed for an abuse of discretion. *Davis v. State*, 922 So.2d 438, 444 (Fla. 4th DCA 2006) The trial court's discretion is limited because a criminal defendant is entitled to have the jury instructed on his theory of defense if there is any evidence to support the defense. The trial court should not weigh the evidence to determine whether the instruction is appropriate *Charles v. State*, 945 So.2d 579, 582 (Fla. 4th DCA 2006)

The independent act doctrine triggers a special jury instruction when evidence is presented that the defendant, who previously participated in the co-felons acts that were alien to the original collaboration. "Under these limited circumstances, a defendant whose co-felon exceeds the scope of the original plan is exonerated from any punishment imposed as a result of the independent act" If any evidence supports the defendant's theory that the act resulted in the charged crime was independent of and not committed in furtherance of the joint felony, the instruction is mandated *Mills v. State*, 875 So.2d 823, 826 (Fla. 2d DCA 2004) A trial court must give an independent act jury instruction if there is any evidence supporting that defense *Rodriquez v. State*, 147 So.3d 1066, 1068 (Fla. 3d DCA 2014) *Goode v. State*, 856 So.2d

1101, 1104 (Fla. 1st DCA 2003) The eye witness Jean Aime, who was one of the victims in this case stated on June 20, 2016 during direct testimony of the jury trial “That’s when the shoot - - - when I closed the door” (T 199 12-15) in reference to the final shot fired by shooter Derilus after the appellant screamed “Let’s go, let’s go, you are doing dumb shit right now!” To demonstrate that the refusal to give a jury instruction constitutes reversible error, the complaining party must establish “(1) the requested instruction accurately states the applicable law, (2) the facts in the case support giving the instruction, and (3) the instruction was necessary to allow the jury to properly resolve all issues in the case.” See *Martin v. State*, 110 So.3d 936, 2013. Even if there was no common unlawful act contemplated by the defendant then a defendant would be entitled to both an instruction on principles and one on independent act in most, if not all, cases in which the principles instruction is given. *Williams v. State*, 34 So. 3d 768 (Fla. 2d DCA 2010). It is important to note that the victim Jean Aime stated during cross-examination by defense counsel that there was a disagreement between the shooter and the alleged driver. “And there was some type of disagreement or there was some type of conversation between the driver – the alleged driver and the shooter in this case. (T 251 1-4) The victim Jean Aime replied during cross-examination by Defense Counsel during trial, “Yes” (T 257 1-4) “All right. And you’re saying that and while I was unarmed there was a disagreement between me and the shooter and that I told the shooter “hurry up”. The victim Jean Aime stated “Yes” (253 1-4) These facts conflicted with the State’s argument that appellant had the conscious intent to

premeditatedly kill Jean Aime and Kason Lindor, who shouted at shooter “It’s kids over here, its kids in the car.” and intended to shoot into a vehicle occupied by a 2 year old girl. There was enough evidence from the trial record to support the giving of Independent Act Instruction. Evidence of what occurred on 903 South “G”: Street, of what occurred in Broward County involving rear-end accident and vehicle rollover and proof of appellant’s mental and physical health supported appellant’s theory that co-defendant was a madman and acted independently of appellant on March 25, 2016. The star witness stated during direct by the State that “It never really was a threat for me to be to - I didn’t feel like it as it’s broad daylight, I didn’t think it will be someone be that stupid enough to come over there and do something like that in broad daylight 11:00 O’clock in the morning and like there’s people outside (T 187 12-17) Kason Lindor another victim in the case found in Count 2 of Attempted First Degree (Premeditated) Murder stated “What are you doing? You are stupid!” after co-defendant fired first shot into a vehicle occupied by a 2 year old.

Independent Act Instruction went towards appellant’s defense that he was dealing with a lunatic on March 25, 2016 and corroborated appellant’s claim that he was unaware and did not have the conscious intent to commit crimes alleged on March 25, 2016. Detective Chapman also stated during trial that appellant was going out of consciousness when Detective Chapman arrived to appellant’s mother home 18 to 19 blocks from shooting on March 25, 2016 at 903 South G Street. (T 475 16-17)

ARGUMENT THREE

The Court should grant the appellant relief in this case in regards to claim that the trial court erred in denying Judgment of Acquittal where there was insufficient evidence to support conviction to charges as principal to crimes committed by co-defendant on March 25, 2016. The appellant was charged with 2 or two counts of Attempted First Degree (Premeditated) Murder with a Firearm (Count 1 and 2), Burglary while Armed (Count 3) 2 or two counts of Shooting into an Occupied Vehicle (Count 4 and 5) Aggravated Assault with a Firearm (Count 6) and Accessory after the Fact (Count 7) All Counts were alleged to have occurred on March 25, 2016. Appellant was found guilty on Counts 1 and 2, not guilty on Count 3 guilty on Count 4, 5, and 7. (R 127) The trial court granted a judgment of acquittal on Count 6 for Aggravated Assault with a Firearm. (T 603) The record evidence established the following in this attempted first degree premeditated murder case:

- 1.) Appellant was good friends with Jean Aime's brother. (T 231 16-17)
- 2.) There were no prior difficulties with the appellant Jeanbart and victim Jean Aime. (T 231 24-25)
- 3.) The appellant Jeanbart was a walker and not a driver. (T 231 14-15)
- 4.) There were no problems with Jean Aime and the alleged shooter prior to this incident on March 25, 2016 (T 235 6-8)
- 5.) 10 to 15 people were outside prior to the shooting. (212 23-24) (T 245 19)

- 6.) Shooter exited the vehicle and made several comments in regards to someone snitching on him and money being owed or debt owed. (T 233 22-25) (T 246 11-16)
- 7.) The initial shot fired by co-defendant Derilus was fired at a vehicle with only a 2 year old occupant. (178 9-22)
- 8.) Kason Lindor, second victim in case told shooter "What are you doing?" "You are stupid" (T 193 1-4)
- 9.) The passenger of the Tahoe, Kason Lindor, came out and stated "it's kids over here," it's kids in the car. (T 186 2-3)
- 10.) One shot was fired into the air. (T 193 14-16) (T 242-1)
- 11.) There was tussle between co-defendant Derilus and Kason Lindor inside Tahoe SUV. (T 194 15-17) (T 195 16-17)
- 12.) Kason Lindor sought to go toe to toe with co-defendant Derilus. (T 193 23-25) (T 238 9-11)

Jean Aime was unable to see what was going on outside of his mother's home once he entered and secured door. (T 234 11-14) (T 237 7-9)

When Jean Aime came back out of his mother's house he didn't see the driver. (T 236 16-17)

The appellant Jeanbart, who was the alleged driver, left the scene temporarily, came back and screamed at shooter "Let's go, let's go you are doing dumb shit right now!" (T 198 15-17)

After screaming at shooter out of lowered car window "Let's go, let's go you are doing dumb shit right now!" the co-defendant fired another shot at unoccupied vehicle. (T 199 12-15) (T 261 12-13)

During entire criminal episode the co-defendant Derilus never shot in Jean Aime's direction. (T 261 12-13)

The entire incident on March 25, 2016 took approximately 2 to 3 minutes. (T 203 24-25) Appellant was unarmed during the shooting incident (T 252 20-25)

The appellant in this case was charged with 2 or two counts of Attempted First Degree (Premeditated) Murder including Jean Aime, who was the only eye witness to testify and Kason Lindor, the second victim. The State was required to prove that appellant did some act intended to cause the death of both Jean Aime and Kason Lindor that went beyond just thinking or talking about it, that appellant acted with a premeditated design to kill both Jean Aime and Kason Lindor and that the act would have resulted in the death of Kason Lindor and Jean Aime except that someone prevented the appellant from killing both Jean Aime and Kason Lindor. The appellant was convicted in both Count 1 and Count 2 of Attempted First Degree (Premeditated) Murder of Jean Aime and Kason Lindor. The facts, circumstances and evidence at trial proved that the appellant neither had the conscious intent that the criminal act be done and nor did appellant do some act or say some word which was intended to and which did initiate, cause, encourage co-defendant to commit the crime. Mere knowledge that offense is being committed is not same as participation with

criminal intent, and mere presence at scene, including driving perpetrator to and from scene or display of questionable behavior after the fact, is insufficient to establish participation in offense See *Staten v. State*, 519 So.2d 622 (1988)

The appellant used facts in this case that came from victim's testimony support his theory of defense, which remained uncontradicted. There were no past disputes, no planning, no knowledge in advance, no discussion of crime before its inception, no knowledge of co-defendant Derilus carrying a gun and appellant never exited the vehicle used in shooting on March 25, 2016. Nothing in the evidence overcame the reasonable hypothesis that appellant had no knowledge of any plan to shoot the victim, that he offered no assistance or encouragement that led to the shooting and that this action after can possibly be consistent with someone who was an accessory after the fact. The jury in this case reached unconstitutional verdicts in regards to charges as principal. When the evidence is insufficient to warrant a conviction the trial court must enter a judgment of acquittal.

The sole function of the trial court on motion for directed verdict in a circumstantial evidence case is to determine whether there is a prima facie inconsistency between (a) the evidence viewed in light must favorable to the State and (b) the defenses theory of theories. If there is such inconsistency then the question is for the finder of fact to resolve.

First-degree murder (Premeditated) is defined as the unlawful killing of a person when perpetrated from a premeditated design to effect the death of the person killed or any human being. § 782.04(1)(a)(1), Fla. Stat. (2016) It is clear

from the trial record that appellant sought not to premeditatedly kill either Jean Aime or Kason Lindor. The verdict reached by the jury in this case was not in harmony with the evidence presented during trial and trial court was required in this case to enter a judgment of acquittal. See Fla. R. Criminal P. 3.380(a) the Due Process Clause protects and accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. In re Winship, 397 U.S. 358 (1970); Jackson v. Virginia, 443 U.S. 307 (1979) The proof of a criminal charge beyond a reasonable doubt is constitutionally required. The purpose of a motion for judgment of acquittal is to test the legal sufficiency of the State's evidence. After the State of Florida closed its case the appellate moved for a JOA and stated "All right. All right, Your Honor I would like to put in for a Judgment of Acquittal at this moment in time based on the fact that the State has provided insufficient evidence to sustain a conviction. I have been charged with multiple offenses concerning this alleged incident that occurred on March 25th, 2016. I've been charged with Attempted Murder First Degree Premeditated. I've been charged with First - -.

The Court: It's okay, I know what the charges are. You don't need to say what the charges are; I have them right in front of me.

The appellant continues: And from the evidence Your Honor it's clearly shown that there is no premeditation. The victim in this case Jean Aime who came forward under oath and testified stated on direct and also during cross-examination that I was friends with his brother and that we had ran into no

difficulties prior to this incident. He also stated to the fact that this vehicle was allegedly driven by me and that I had temporarily left the exact location in which there was an initial stop, and from that point there was a verbal altercation between the alleged shooter in this case and not only Jean Aime, but the other victim in case.

At no time does he say that I was armed with a firearm. At no time did he say that I shot anyone. And it clearly explains that I engaged in no act of violence on this - - on the day of this alleged incident. But he also stated that he was just simply upset about the fact that this individual had come into the area and he began to fire away. He also stated during his testimony that Defendant Lensky Jeanbart had lowered his window and began to shoot or scream yell at the alleged shooter in this case while the shooter was armed telling the shooter to "Let's go, let's go, man you're doing dumb shit." according to his testimony. So there was - - and he specifically testified to the fact that there was a disagreement between the alleged driver and be that I - - the Court interrupts and states.

The Court: Let's do this, call yourself in the first person instead of the third person. Don't - - don't - - just say "I" or "me." The appellant in case continues: Yes, ma'am. He said that ah - - there was a disagreement between the shooting and I, your Honor. And that uhm - - from that point the shooting once again addressed the people involved in regards to snitching and money being owed. There is no evidence that can be provided according to what was testified that shows that there was some type of plan, careful plan or

prearranged design on the part of the Defendant in this case which is Lensky - which is me, Your Honor. There is nothing that establishes that I had knowledge that this was going to occur, that I took any actions to ensure that this shooting occurred. In fact, there testimony given by the victim that states that I tried to somehow prevent this from going any farther go which goes against the State's theory that they have provided to the jury that I was somehow a significant role or played a role, passive role whatever the role may be in this case, your Honor. And as I said there's not - - there's not enough evidence in this case to support a conviction if we go along with this theory. (T 570 22-25) (T571 1-25) (T572 1-25) (T573 1-11)

On June 30, 2016 Defense Counsel Travis Dunnington filed a Renewed Motion for Judgment of Acquittal requesting the Court to grant a post-verdict judgment of acquittal arguing that there wasn't any proof of involvement in either the planning or commission of the crime. The Second DCA found that mere knowledge that an offense is being committed is not the same as participation with criminal intent, and were presence at the scene, including driving the perpetrator to and from the scene or a display of questionable behavior after the fact, is not sufficient to establish participation. See *Staten v. State*, 519 So.2d 622 (1988)

The attorney Travis Dunnington also cited *Hall v. State*, 100 So.3d 288, 289 (Fla. 4th DCA 2012), which further offered the proof necessary if the State is to survive a sufficiency argument when a defendant merely drives a co-defendant to and from the scene of a crime - yet no proof exists as to

knowledge that a crime is about to be committed. Hall had driven his co-defendants to a CVS pharmacy where they committed a theft. He had backed into a parking space awaiting their return and drove them away after the theft. There was a question as to whether Hall had prior knowledge of what his co-defendants were going to do inside the CVS, however the State suggested that based on Hall backing his vehicle into a parking spot and waiting for his co-defendants he must have known what was intended inside. Drawing the distinction with Staten, the Fourth DCA found evidence insufficient: “Neither mere knowledge that an offense is being committed nor presence at the scene of the crime, including driving perpetrator to and from scene or display of questionable behavior after the fact is sufficient to establish participation with the requisite criminal intent.” *Sanders v. State*, 563 So.2d 781, 782 (Fla. 1st DCA 1990) (quoting *Saffer v. State*, 558 So.2d 69, 71 (Fla. 1st DCA 1990). The Fourth held that Hall backing his vehicle into a parking space was equally consistent with normal behavior as it was indicative of his intention to make a quick getaway. Hall at 288. The fact that the license plates were removed from Hall’s vehicle shortly after the crime were found to be of no relevance to this legal question – this did not act to prove Hall’s prior knowledge of the theft and his intent that it be committed.” See Appendix C.

Defense counsel, Travis Dunnington argued on Renewed Motion for Judgment of Acquittal that the facts in this case at bar are remarkably similar to those of Hall. In the instant case there is no evidence that Mr. Jeanbart had any past disputes with the victims in this case or planned with his co-

defendant to commit the crime. The only evidence the State can point to as to Mr. Jeanbart's involvement is that the car was said to have passed the house, turned around, then came back before stopping. Nonetheless, as with Hall's backing his vehicle into a space, driving past a residence before stopping is equally consistent with the innocent behavior of looking for an unfamiliar residence or even that a driver unfamiliar with the area or particular person being directed by a passenger.

Also, as with Hall, the State here attempts to point to Mr. Jeanbart's actions after the shooting as further evidence of his prior knowledge of the shooting and his intent that it be committed. Much like Hall removing the license plates, Mr. Jeanbart's actions after the shooting with regard to a car accident in Broward County also involving Derilus are a possible connection to an unrelated firearm are of no relevance as to his knowledge prior to the shooting that a crime was about to be committed by Derilus. There was a lack of any evidence that is not also consistent with innocent behavior to prove the defendant's involvement with planning or even any knowledge of Derilus' intentions prior to this shooting. Defense counsel, Travis Dunnington, argued that based on the lack of evidence, the motion for judgment of acquittal should be granted. See Appendix C. During closing argument the appellant stated "The Defendant in this case cannot control another human being, and it was made clear during Jean Aime's testimony. He even stated that after the shooting the shooter was still armed and approached the vehicle with a high level hostility. He was - - he was full of rage and continued to engage in a verbal altercation

between both victims". Defense counsel incorporated persons argument that there's a limited amount of facts of any kind that would support Mr. Jeanbart's involvement in this case on July 14, 2016 prior to sentencing in his oral presentation of Renewed Motion for Judgment of Acquittal. The Defense Counsel stated on July 14, 2016 that "They are very simply that a car drove passed the victim's home, the victim's mother's home a couple of times according to the victim in the case. It eventually stopped, the passenger exits the car, one of the victims yells "What are you doing, there's kids around here," but the shooter yells back "I don't give a fuck" and continues to shoot. After this the only - - Mr. Jeanbart's identified as the driver, never exits the car, at no time was he armed according to the victim in the case. According to the victim, the only thing that happens is that the window is rolled down and Mr. Jeanbart shouts out "Let's go, you're doing dumb shit right now." That was Mr. - - that encapsulates Mr. Jeanbart's involvement in this case. So the Court here is determining whether in the light most favorable to the State, a rational trier of fact should find the existence of all of the elements of this crime proven beyond a reasonable doubt. So the main issue is did Mr. Jeanbart have a conscious intent that the criminal act of the co-defendant Derilus be done. In other words, did he know that Derilus was going to attempt to commit premeditated murder. Interestingly enough, the State made the argument at trial that this premeditation that Derilus had according to them could have been formed in an instant by Derilus. Uhm, that didn't have to be something that Derilus planned out. But that argument doesn't hold true for Mr. Jeanbart

because he's charged with principle. In other words, it can't happen that Derilus formed that premeditation as the State posits within an instant. (T 748 4-25) (T 749 1-8) (T 749 23-25) (T 750 1-25) "Your Honor, the premeditation that the State's arguing and I think their exact argument was 'it could have been formed in an instant' in other words it didn't have to be planned out by Derilus. But what we're saying is that under the principle theory it did have to be planned out by Mr. Jeanbart, so how can Mr. Jeanbart know and have knowledge about something that Mr. Derilus only formed after Mr. Derilus exited the car? So under the State's own theory of how premeditation could have come about in this case is an instant during the time after which Mr. Derilus exited the car how in the world could they have proven that Mr. Jeanbart had knowledge about something that hadn't yet happened when the co-defendant exited the car? So absolutely no proof that Mr. Jeanbart intended or had knowledge that Derilus was going to commit First Degree Murder. And again, what's in the motion through is really there's no proof that Jeanbart even know that Derilus was going to even start shooting or committing a crime at all. And your Honor - - and as Your Honor's reviewed from Collins and from finally from the Fourth District Court of Appeals the controlling Appellate Court in this situation "neither mere knowledge of an offense being committed nor presence at the scene and flight are sufficient to establish participation with the requisite criminal intent." What we have is a car that drives back a couple of different times consistent with someone that's sort of casing a possible crime scene, but also consistent with somebody who's looking for a residence

possibly for innocent reasons. We've all driven past residents a couple of different times without having any criminal intent to do so just we're trying to figure out where it is we're going. So again, on all fours with the Hall case where Hall is backed into a parking lot at Walgreens while his co-defendant's going in and committing a theft within. So yeah, that looks pretty bad as Hall's backing in. So yeah, that looks pretty bad as Hall's backing in. It looks like he knows he's going to have to make a quick getaway. But it's also consistent with innocent behavior just like the behavior of Mr. Jeanbart in driving the car is consistent with innocent behavior. So again, where on all points with Hall; a Judgment of Acquittal should be granted, the Renewed Judgment of Acquittal should be granted in accordance with Hall.

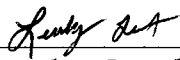
(T 749 23-25) (T 750 1-25) (T 751 1-18)

The appellant argues that Judgment of Acquittal made by the pro se litigant should have been granted, that Renewed Judgment of Acquittal should have been granted, special review of JOA Direct Appeal should have been granted and that this petition should be granted based on this ground raised in Writ of Certiorari. Although State is not required, in order to survive Motion for Acquittal in circumstantial evidence case, to rebut conclusively every possible variation of events which could be inferred from the evidence, it must introduce competent evidence which is inconsistent with defendant's theory of events. See *Garcia v. State*, 899 So.2d 447 (2005) A motion for judgment of acquittal should be granted is a circumstantial evidence case is the State fails to present

evidence from which the jury can exclude every reasonable hypothesis except that of guilt. State v. Law, 559 So.2d 187, 188 (Fla. 1989)

Evidence which furnishes nothing more than a suspicion that defendant committed the crime is not sufficient to uphold a conviction. Rocker v. State, 122 So.3d 898; 2013. Flight from the scene is insufficient to support a conviction of an accused as a principal. Staten v. State, 519 So.2d 622, 524 (Fla. 1988)(finding that mere presence at the scene or display of questionable behavior after the fact, is not sufficient to establish participation as a principal (quoting Collins v. State, 438 So.2d 1036, 1038 (Fla. 2d DCA 1983) the ineffectiveness of appellate counsel.

UNDER PENALTIES OF PERJURY, I declare that I have read the foregoing petition and that the facts stated therein are true and correct.

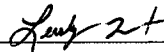


Lensky Jeanbart, DC# A-W28646

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,


Lensky Jeanbart, DC# A-W28646

Date: April 9, 2018

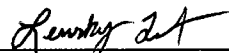
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing petition has been placed in the hands of an institution official for mailing to be furnished and forwarded by prepaid First Class United States Mail delivery the parties listed below on this 9th day of April, 2018.

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Office of the Attorney General
1515 N. Flagler Drive, Suite 900
West Palm Beach, Florida 33401-3432

Respectfully submitted,


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Mailbox Rule

This petition is filed in accordance to the "mail Box" Rule defined in Haag v. State, 591 So. 2d 614 (Fla. 1992) on this 9th day of April, 2018.