

No.

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IN THE SUPREME COURT OF THE UNITED STATES

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CATHERINE PILEGGI,

*Petitioner,*

v.

STATE OF FLORIDA,

*Respondent.*

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On Petition for a Writ of Certiorari  
to the Fourth District Court of Appeal  
For the State of Florida

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PETITION FOR A WRIT OF CERTIORARI

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Dane K. Chase, Esquire  
Florida Bar Number: 0076448  
Chase Law Florida, P.A.  
111 2<sup>nd</sup> Ave NE  
Suite 334  
Saint Petersburg, Florida 33701  
Direct: (727) 350-0361  
Facsimile: (866) 284-1306  
Email: dane@chaselawfloridapa.com

\* Counsel for Petitioner

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## **QUESTION PRESENTED**

Whether the due process clause of the United States Constitution requires a state court adjudicating a claim of ineffective assistance of counsel to accept the post-conviction movant's un rebutted factual allegations as true in the absence of an evidentiary hearing?

## **PARTIES TO THE PROCEEDING**

Parties to the proceeding include Catherine Pileggi (Appellant/Petitioner), Dane K. Chase, Esquire (Appellant/Petitioner's Counsel), and Ashley Moody, Esquire (Attorney General, State of Florida).

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## PETITION FOR WRIT OF CERTIORARI

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### OPINION BELOW

The decision of the Fourth District Court of Appeal, State of Florida, *infra*, is attached as Appendix A. The order denying Ms. Pileggi's motion for rehearing is attached as Appendix B. The order denying Ms. Pileggi's Fla. R. Crim. P. 3.850 Motion for Post-Conviction Relief is attached as Appendix C. The state's response to Ms. Pileggi's Fla. R. Crim. P. 3.850 Motion for Post-Conviction Relief is attached as Appendix D.

### JURISDICTION

The Judgment of the Fourth District Court of Appeal, State of Florida, was entered on July 1, 2021. A Motion for Rehearing, Written Opinion, and Certification was timely filed and denied on August 11, 2021. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1257(a).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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 offence 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.

U.S. Const. amend. VI.

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 to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

### **STATEMENT OF FACTS**

Ms. Pileggi was charged by Indictment in Broward County, Florida, with murder in the first degree. Ronald Vinci was the named victim. Ms. Pileggi ultimately proceeded to trial on said charge. Although the trial proceedings in Ms. Pileggi's case are voluminous, the facts germane to the instant petition can be briefly stated as follows.

At trial, the state called a medical examiner who testified he determined Ronald Vinci's cause of death to be complications from a gunshot wound to the head as well as sharp force injuries to the neck and trunk.

The state also called Aaron Brown, who testified that he worked for Ronald Vinci on his boats and came to know Catherine Pileggi through him. Additionally, Mr. Brown testified that Mr. Vinci was physically abusive towards him. On separate occasions Mr. Vinci pointed a pistol as well as an assault rifle at him. Additionally, on three (3) separate occasions Mr. Brown witnessed Mr. Vinci point a firearm at Ms. Pileggi. Mr. Brown also witnessed Mr. Vinci physically abuse Ms. Pileggi on multiple occasions.

Dr. Charles Ewing testified that he is a forensic psychologist and professor. Dr. Ewing was asked to perform a psychological evaluation on Catherine Pileggi. Dr.

Ewing came to the conclusion that Ms. Pileggi suffered from Battered Woman Syndrome. According to Dr. Ewing, it is not unusual for a Battered Woman to commit what he would call overkill like Ms. Pileggi. According to Dr. Ewing, the reason for this is that a battered woman will continue to think the person could recover and hurt them. Dr. Ewing testified the killing comes more from a place of fear than rage. In Dr. Ewing's opinion, Ms. Pileggi reasonably believed that if she did not kill Mr. Vinci that whenever he woke up, he would kill her.

Dr. Lenore Walker testified that she is a clinical forensic psychologist and professor of psychology. Dr. Walker performed an analysis on Catherine Pileggi and determined she has Battered Women Syndrome. As a result of her syndrome, Ms. Pileggi was in no psychological condition to be able to leave that night. She was terrified of Mr. Vinci, and was sure that he was going to kill her. In Ms. Pileggi's mind, Mr. Vinci was going to get up, and he was going to kill her. Stated succinctly, Ms. Pileggi believed she was in danger of dying, and she acted in self-defense.

On or about July 7, 2015, Ms. Pileggi was adjudicated guilty of murder in the second degree, and sentenced to twenty-five (25) years imprisonment with a twenty-five (25) year mandatory minimum for discharging a firearm causing death.

Ms. Pileggi thereafter appealed to the Fourth District Court of Appeal, State of Florida, however, her Judgment and Sentence were ultimately affirmed on November 8, 2017.

Prior to trial, Ms. Pileggi explained to her trial counsel, Bruce L. Udolf, that prior to the night in question, the victim, Ronald Vinci, had previously physically,



emotionally, and sexually abused her. Ms. Pileggi explained, that on the night of the incident, Mr. Vinci was irate with Ms. Pileggi, and started yelling at her, as he blamed her for his condo not selling. Mr. Vinci then walked into the kitchen, took a firearm out of a drawer, pointed the firearm at Ms. Pileggi, had her kneel down before him, and told her that he was going to blow her head off. At this point, Ms. Pileggi began pleading with Mr. Vinci, and he told her she did not deserve to live. Ms. Pileggi then lost control of her bowels, and Mr. Vinci lowered the firearm. Ms. Pileggi stood up, and ran upstairs. Mr. Vinci chased after Ms. Pileggi saying he was not finished with her, and she should sleep with one eye open. After Mr. Vinci stopped yelling, Ms. Pileggi heard him fall down the stairs. Ms. Pileggi ran to the bottom of the stairs and, by the time she reached Mr. Vinci, he was sitting up. Ms. Pileggi helped Mr. Vinci to the downstairs bedroom. Once inside the bedroom, Mr. Vinci stood up, and entered the bed. Ms. Pileggi went upstairs to clean herself up.

Thereafter, Ms. Pileggi checked on Mr. Vinci, and, after checking on him, Ms. Pileggi walked out of the bedroom, and into the kitchen. Ms. Pileggi saw the firearm from earlier, and picked it up. Ms. Pileggi saw the firearm had bullets in it. She then went into the bedroom, and shot Mr. Vinci in the head with the firearm, because she believed Mr. Vinci would get up at any moment, and, as soon as he did, he would kill her. The next thing Ms. Pileggi remembers is she had a knife, and she was stabbing Mr. Vinci.

On February 11, 2020, Ms. Pileggi filed a Fla. R. Crim. P. 3.850 Motion for Post-Conviction Relief. In Ground I Ms. Pileggi argued she was deprived of her right

to the effective assistance of counsel by her trial counsel's failure to file a motion to dismiss based on Florida's "Stand Your Ground Law," as Ms. Pileggi's, Mr. Brown's, Dr. Ewing's, and Dr. Walker's testimony would have supported such a motion to dismiss.

More specifically, Ms. Pileggi argued that, prior to trial, she explained to her trial counsel that when she shot and stabbed Mr. Vinci she believed that at any moment he would get up and he would kill her. Ms. Pileggi further alleged that prior to trial, trial counsel knew, or should have known, that it was Dr. Charles Ewing's assessment that Ms. Pileggi suffered from Battered Woman Syndrome, and, as a result, Ms. Pileggi reasonably believed that if she did not kill Mr. Vinci whenever he woke up, he would kill her. Additionally, Ms. Pileggi alleged that prior to trial, trial counsel knew, or should have known that Dr. Lenore Walker would testify that she suffered from Battered Woman Syndrome, and was in no psychological condition to be able to leave that night. Moreover, Dr. Walker would testify that due to the syndrome, Ms. Pileggi believed Mr. Vinci was going to get up, and he was going to kill her. Stated succinctly, trial counsel knew, or should have known, Dr. Walker would testify that Ms. Pileggi believed at the time she killed Mr. Vinci, she was in imminent danger of dying, believed she had no escape, and she acted in self-defense. Finally, Ms. Pileggi alleged that prior to trial, trial counsel knew, or should have known, that Aaron Brown could corroborate her claim that she had been previously abused by Mr. Vinci, and had observed Mr. Vinci point a firearm at Ms. Pileggi before. Additionally, Mr. Brown could support Dr. Ewing's and Dr. Walker's assessments, as

Mr. Brown had previously witnessed Mr. Vinci abuse Ms. Pileggi. Accordingly, Ms. Pileggi argued she was entitled to have her Judgment and Sentence vacated or to an evidentiary hearing to resolve her claim.

In response, the state argued there was no evidence to support a motion to dismiss based on Florida's "Stand Your Ground Law." The state court then summarily denied the motion "for reasons set forth in the state's response." Ms. Pileggi appealed arguing that her testimony, Mr. Brown's testimony, Dr. Ewing's testimony, and Dr. Walker's testimony were known to trial counsel prior to trial, and would have been evidence supporting a motion to dismiss based on Florida's "Stand Your Ground Law." Ms. Pileggi further argued that in the absence of an evidentiary hearing her allegations had to be accepted as true, and, as such she was entitled to have her Judgment and Sentence vacated. However, the Fourth District Court of Appeal ultimately affirmed on July 1, 2021, without a written opinion.

On July 16, 2021, Ms. Pileggi filed a motion for rehearing, written opinion, and certification. On August 11, 2021, the motion was denied.

This Petition follows.

## REASONS FOR GRANTING THE PETITION

### I. THIS COURT SHOULD TAKE JURISDICTION TO ESTABLISH THAT DUE PROCESS REQUIRES A STATE COURT ADJUDICATING A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL TO ACCEPT THE POST-CONVICTION MOVANT'S UNREBUTTED FACTUAL ALLEGATIONS AS TRUE IN THE ABSENCE OF AN EVIDENTIARY HEARING.

At issue in this Petition is whether the due process clause of the United States Constitution requires a state court adjudicating a claim of ineffective assistance of counsel to accept the post-conviction movant's unrebutted factual allegations as true in the absence of an evidentiary hearing.

In *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), this Court explained that to be entitled to relief on a claim of ineffective assistance of counsel, the defendant must first show that counsel's performance was deficient, and second that the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687, 104 S. Ct. at 2064. To demonstrate deficient performance, a defendant must show that his trial counsel's representation "fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065. To demonstrate prejudice "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* This Court has explained that the *Strickland* prejudice prong does not "require a defendant to show 'that counsel's deficient conduct more likely than not altered the outcome' of his...proceeding, but rather that he establish 'a probability

sufficient to undermine confidence in [that] outcome." *Porter v. McCollum*, 558 U.S. 30, 44, 130 S. Ct. 447, 455-56, 175 L. Ed. 2d 398 (2009) (quoting, *Strickland*, 466 U.S. at 693-694, 104 S.Ct. 2052).

In *Porter v. Wainwright*, 805 F.2d 930 (11th Cir. 1986), a Florida post-conviction court failed to hold an evidentiary hearing on the defendant's motion alleging ineffective assistance of counsel, and summarily denied the motion. Thereafter the defendant brought the claim in a Federal Petition for Writ of Habeas Corpus arguing, in relevant part, that he was entitled to an evidentiary hearing on his claim of ineffective assistance of counsel. *Id.* at 932. The 11th Circuit Court of Appeals found an evidentiary hearing is necessary whenever a defendant "allege(s) facts which, if proved, would entitle him to relief, and because the state did not hold an evidentiary hearing on (the defendant's) issue, the district court was required to hold an evidentiary hearing and find facts relevant to (the defendant's) claim." *Id.* at 936-37. The Court further found that in the absence of an evidentiary hearing the court on review must accept all of the defendant's alleged facts as true, and determine whether the petitioner has set forth a valid claim. *See, Id.; Agan v. Dugger*, 835 F.2d 1337, 1338 (11th Cir. 1987).

Here, Ms. Pileggi was charged by Indictment with Murder in the First Degree. At the time of her offense § 776.032, Fla. Stat., (Florida's "Stand Your Ground Law") provided, in relevant part, as follows:

A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force.

*See*, § 776.032, Fla. Stat.

At the time of Ms. Pileggi's offense, § 776.012, Fla. Stat., provided, in relevant part, as follows:

A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if:

- (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.

*See*, § 776.012, Fla. Stat.

Accepting Ms. Pileggi's allegations as true, *i.e.*, that Ms. Pileggi would testify that she believed deadly force was necessary to prevent imminent death or great bodily harm to herself, that Dr. Ewing and Dr. Walker would testify that due to her Battered Woman's Syndrome Ms. Pileggi reasonably believed deadly force was necessary to prevent imminent death or great bodily harm to herself, and that Mr. Brown would testify that Ms. Pileggi had been a "Battered Woman" and had observed Mr. Vinci point a firearm at her, Ms. Pileggi would be entitled to dismissal of the charges against her under Florida's "Stand Your Ground Law", as the allegations, if true, establish Ms. Pileggi reasonably believed that such force was necessary to prevent imminent death or great bodily injury to herself. *See*, § 776.032, Fla. Stat.;

§ 776.012, Fla. Stat. Accordingly, accepting Ms. Pileggi's allegations as true, she would be entitled to relief on her ineffective assistance of counsel claim. *See, Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065; *See also, United States v. Palomba*, 31 F.3d 1456 (9th Cir. 1994)(Trial counsel ineffective for failing to file what would have been a successful motion to dismiss charges.).

Under *Porter* and *Agan*, Ms. Pileggi would be entitled to reversal for an evidentiary hearing, ostensibly to afford her her due process right to be heard. *Rock v. Arkansas*, 483 U.S. 44, 51, 107 S. Ct. 2704, 2709, 97 L. Ed. 2d 37 (1987) ("The necessary ingredients of the Fourteenth Amendment's guarantee that no one shall be deprived of liberty without due process of law include a right to be heard and to offer testimony.").

Accordingly, this court should accept jurisdiction to establish that the due process clause of the United States Constitution requires a state court adjudicating a claim of ineffective assistance of counsel to accept the post-conviction movant's un rebutted factual allegations as true in the absence of an evidentiary hearing, just as the federal courts are required to do, to ensure state litigants enjoy the same rights under the federal constitution as federal litigants do.

Additionally, Ms. Pileggi's case is the ideal vehicle for resolving this issue. The state did not argue, and the post-conviction court did not find, that even if her allegations were true counsel was not ineffective. Instead, the court simply rejected her allegations without holding a hearing and permitting her the chance to prove them. The facts are straightforward and the legal question presented is clear cut:

Does the due process clause of the United States Constitution require a state court adjudicating a claim of ineffective assistance of counsel to accept the post-conviction movant's un rebutted factual allegations as true in the absence of an evidentiary hearing?

Consequently, because the issue is of vital importance – impacting virtually every state post-conviction proceeding nationwide – and Ms. Pileggi's case provides the Court with a clean record upon which to decide the issue, this Court should grant review, and establish that the due process clause of the United States Constitution requires a state court adjudicating a claim of ineffective assistance of counsel to accept the post-conviction movant's un rebutted factual allegations as true in the absence of an evidentiary hearing.



## CONCLUSION

For the reasons stated above, this Court should grant Ms. Pileggi's Petition for Writ of Certiorari, establish that the due process clause of the United States Constitution requires a state court adjudicating a claim of ineffective assistance of counsel to accept the post-conviction movant's un rebutted factual allegations as true in the absence of an evidentiary hearing, quash the decision below, and grant relief accordingly.

Respectfully Submitted,



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Dane K. Chase, Esq.  
Florida Bar No. 0076448  
Chase Law Florida, P.A.  
111 2<sup>nd</sup> Ave Ne  
Suite 334  
Direct: (727) 350-0361  
Email: dane@chaselawfloridapa.com  
Counsel for Petitioner

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# APPENDIX A

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**CATHERINE PILEGGI,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D21-880

[July 1, 2021]

Appeal of order denying rule 3.850 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Mariya Weekes, Judge; L.T. Case No. 11-11540CF10A.

Brett S. Chase of Chase Law Florida, P.A., Saint Petersburg, for appellant.

No appearance required for appellee.

PER CURIAM.

*Affirmed.*

CONNER, C.J., GROSS and KLINGENSMITH, JJ., concur.

\* \* \*

***Not final until disposition of timely filed motion for rehearing.***

# APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

August 11, 2021

**CASE NO.: 4D21-0880**

L.T. No.: 11-11540CF10A

CATHERINE PILEGGI

v. STATE OF FLORIDA

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Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that appellant's July 16, 2021 motion for rehearing, written opinion, and certification is denied.

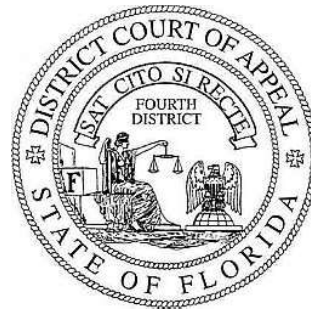
Served:

cc: Attorney General-W.P.B.      Brett Spencer Chase

kr



**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal



# APPENDIX C

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT,  
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 11-011540 CF10A

Plaintiff,

JUDGE: MARIYA WEEKES

vs.

DIVISION: FG

CATHERINE PILEGGI,

Defendant.

\_\_\_\_\_ /

**ORDER DENYING DEFENDANT'S  
MOTION FOR POST-CONVICTION RELIEF**

THIS CAUSE having come before this Court upon the Defendant's Motion for Post-Conviction Relief dated February 11, 2020, filed pursuant to Florida Rules of Criminal Procedure 3.850, and this Court having considered same, along with the State's Response dated January 22, 2021, thereto, and being fully advised in the premises, it is hereby,

ORDERED AND ADJUDGED that the Defendant's Motion for Post-Conviction Relief is hereby **denied**, for reasons set forth in the State's Response, which are incorporated by reference herein. As a result of the voluminous nature of the State's Response and because a copy of said Response has already been supplied to all parties, including the Defendant on January 22, 2021, as indicated by Assistant State Attorney Joel Silvershein, Esq., an additional copy of the Response is not attached to the instant Order.

Defendant has thirty (30) days to appeal from the rendition of this Order.

DONE AND ORDERED on January 25, 2021, at Fort Lauderdale, Broward County, Florida.

*Mariya Weekes*  
\_\_\_\_\_  
MARIYA WEEKES, Circuit Judge



Copies furnished:

Joel Silvershein, Esq., Assistant State Attorney, Appeals Division

Brett S. Chase, Esq., Attorney for the Defendant  
[brett@chaselawfloridapa.com](mailto:brett@chaselawfloridapa.com)

# APPENDIX D

IN THE CIRCUIT COURT OF  
THE SEVENTEENTH JUDICIAL  
CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

STATE OF FLORIDA

v.

CATHERINE PILEGGI

Defendant

CASE NO.: 11-11540 CF10A

JUDGE: WEEKES

**RESPONSE TO DEFENDANT'S MOTION FOR  
POST-CONVICTION RELIEF**

**COMES NOW**, the State of Florida, by and through the undersigned Assistant State Attorney, and responds to the Defendant's Motion for Post-Conviction Relief, pursuant to Fla.R.Crim.P. 3.850, and the Order of this Honorable Court, as follows:

1. The defendant in this matter was convicted at trial of murder in the second degree, and was sentenced to life imprisonment (Exhibits I and II). The judgment and sentence was affirmed on appeal by the Fourth DCA in a written opinion (Exhibit III). *Pileggi v. State*, 232 So.3d 415 (Fla. 4th DCA 2017).

2. The allegation of the defendant that trial counsel, Bruce Udolf, was ineffective for failing to dismiss her case pursuant F.S.

§ 776.032 (stand your ground law) is without merit. The facts in this case clearly demonstrate that trial counsel could not use a stand your ground defense, because there was no evidence that there was a justifiable use of force based on the facts in this case. Nothing in the evidence presented at trial demonstrates that there was an imminent threat of death or great bodily harm at the time she killed the victim. As noted in the testimony of the medical examiner, there were multiple injuries including a gunshot wound in the back of the head, stab wounds to the heart, both of which were fatal (Exhibit IV, pp. 570-585). Furthermore, there were blunt force trauma wounds found on the body of the defendant (Exhibit IV, pp. 585-590). In fact the testimony of the defendant indicated that the victim was passed out in bed when she killed the victim (Exhibit V, pp. 1174-1180; 1227-1231). Trial counsel attempted to use a self-defense based on battered woman's syndrome (Exhibit VI), which was appropriate based on the testimony of the defendant (Exhibit V). Since the record clearly indicates there would be no success in a stand your ground motion, this ground must be summarily denied. *Fields v. State*, 281 So.3d 573 (Fla. 5th DCA 2019).

2. The allegation of the defendant that trial counsel was ineffective in failing to object to the jury instruction on second degree murder. Initially, the defendant fails to demonstrate how an allegedly defective jury instruction could not have been raised on

appeal. Regardless, there was neither a deficiency on the part of counsel, nor prejudice to the defendant where the Court properly instructed the jury on murder in the second degree, including the instruction on heat of passion (Exhibit VII, pp. 1546-1551). By approving the standard jury instruction which was read in this matter, the Supreme Court set the standard as to what constitutes the elements of the affirmative defense of heat of passion. Furthermore, there was no prejudice, because self-defense based on battered woman's syndrome was the defense in this matter, not heat of passion. A heat of passion defense conflicts with a self defense as argued in this matter, because heat of passion implicates an offensive move in rage on the part of the defendant, as opposed to a defensive action to prevent death or great bodily harm. Furthermore trial counsel correctly chose not to argue "heat of passion" where there clearly was time to cool off based on the testimony of the defendant (Exhibit V). In fact, the closing argument of the defense, noted more than 20 minutes expired before the defendant got a gun and shot the victim, who was unconscious, in the head (Exhibit VI, pp. 1498-1499). As noted by the Florida Supreme Court in *Lusk v. State*, 498 So.2d 902 (Fla. 1986), a heat of passion defense requires a "moment of rage" none of which was testified to by the defendant. Since the standard jury instruction correctly reflects the law, the heat of passion defense countered the battered woman's syndrome

defense, and a lack of a basis for a heat of passion defense, there was neither a deficiency on the part of counsel, nor prejudice to the defendant. Consequently, this ground must be summarily denied.

**WHEREFORE**, the State of Florida respectfully requests this Honorable Court to deny the Defendant's Motion for Post-Conviction Relief.

**I HEREBY CERTIFY** that a copy of the foregoing was furnished by e-mail to Brett S. Chase, Esquire, Attorney for the Defendant, Catherine Pileggi (brett@chaselawfloridapa.com), this 22<sup>nd</sup> day of January, 2021.

HAROLD F. PRYOR  
State Attorney

By: 

JOEL SILVERSHEIN  
Assistant State Attorney  
Florida Bar No. 608092  
Room 07130  
Broward County Courthouse  
West Building  
201 S.E. 6th Street  
Fort Lauderdale, Florida 33301  
Telephone: (954)831-7913  
courtdocs@saol7.state.fl.us  
jsilvershein@saol7.state.fl.us