

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RUFUS JONES,
Petitioner,

v.

RICKY D. DIXON,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

**On Petition for Writ of Certiorari
to the Eleventh Circuit Court of Appeals**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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COUNSEL FOR THE PETITIONER

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-10251-A

RUFUS B. JONES,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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

ORDER:

Rufus B. Jones moves for a certificate of appealability to appeal the denial of his habeas corpus petition, filed pursuant to 28 U.S.C. § 2254. His motion is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

/s/ Charles R. Wilson
UNITED STATES CIRCUIT JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 14, 2021

Clerk - Northern District of Florida
U.S. District Court
111 N ADAMS ST
TALLAHASSEE, FL 32301

Appeal Number: 21-10251-C
Case Style: Rufus Jones v. Secretary, Florida Department
District Court Docket No: 4:20-cv-00035-AW-MAF

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Walter Pollard, C
Phone #: (404) 335-6186

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

RUFUS B. JONES,

Petitioner,

v.

Case No. 4:20-cv-35-AW-MAF

**SECRETARY, DEP'T OF
CORRECTIONS, STATE OF FLORIDA,**

Respondent.

/

ORDER ADOPTING REPORT AND RECOMMENDATION

Rufus Jones is serving a twenty-year sentence after a jury convicted him of attempted murder. He has petitioned for § 2254 habeas relief. After reviewing the Report and Recommendation (ECF No. 11), and considering de novo the issues in Jones's objections (ECF No. 14), I conclude Jones's petition must be denied.

Jones presents two claims, one alleging ineffective assistance of counsel and one alleging an Eighth Amendment violation. As the magistrate judge explains, neither can succeed.

First, as to the ineffective-assistance claim, Jones contends one of his two attorneys recommended he reject a plea offer. ECF No. 1 at 10. But that attorney (the lead trial counsel) testified at the state Rule 3.850 hearing that he recommended Jones *take* the deal but that Jones refused. ECF No. 5-8 at 182. The state postconviction court accepted that testimony and found that counsel advised Jones

to accept the plea offer. ECF No. 508 at 209 (trial judge in announcing ruling: “I accept Mr. Handfield’s [lead counsel’s] testimony that he recommended, as did Mr. Akbar [local counsel], that Mr. Jones take the plea.”).

Jones has not shown that this finding was “an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(2). Indeed, in neither his petition nor his objection has Jones made any effort to overcome the trial court’s finding. Instead, he points to testimony from his other trial counsel, who said the lead counsel told Jones’s family that he should reject the deal. ECF No. 14 at 2. Regardless of what lead counsel told the *family*, lead counsel told Jones to accept the deal. Or at least that is what the state postconviction court found based on the testimony. Jones’s ineffective-assistance claim cannot succeed.

Jones’s second claim is that his 20-year sentence violates the Eighth Amendment. He contends the sentence is unconstitutional as applied to the facts of his case, which he says involved self-defense. But the jury rejected the self-defense argument, so Jones’s contention is really that 20 years for attempted murder is more than the Eighth Amendment will allow. This was an exceedingly difficult argument in the first instance, when the Florida courts rejected it. It is even more difficult here, where the deferential § 2254 standard applies. As the magistrate judge correctly concludes, Jones falls well short of his burden.

The last issue is whether to issue a certificate of appealability. Because I conclude Jones has not made a “substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000), a COA will be denied.

It is now ORDERED:

1. The Report and Recommendation (ECF No. 11) is adopted and incorporated into this order.
2. The clerk will enter a judgment that says “The § 2254 petition is denied on the merits without an evidentiary hearing.”
3. A certificate of appealability is DENIED.
4. The clerk will close the file.

SO ORDERED on December 21, 2020.

s/ Allen Winsor
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

RUFUS B. JONES

v.

CASE NO.: 4:20-cv-35-AW-MAF

SECRETARY DEPARTMENT OF
CORRECTIONS STATE OF FLORIDA

JUDGMENT

The § 2254 petition is denied on the merits without an evidentiary hearing.

JESSICA J. LYUBLANOVITS
CLERK OF COURT

12/21/2020

DATE

s/ Chip Epperson

Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

RUFUS B. JONES,

Petitioner,

v.

Case No. 4:20cv35-AW/MAF

**SECRETARY, DEPARTMENT OF
CORRECTIONS, STATE OF
FLORIDA,**

Respondent.

/

REPORT AND RECOMMENDATION TO DENY § 2254 PETITION

On January 21, 2020, Petitioner, Rufus B. Jones, a prisoner in the custody of the Florida Department of Corrections, proceeding with counsel, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. Respondent filed an answer on April 15, 2020, with exhibits. ECF No. 5. Petitioner filed a reply on July 22, 2020. ECF No. 10.

The matter was referred to the undersigned United States Magistrate Judge for report and recommendation pursuant to 28 U.S.C. § 636 and Northern District of Florida Local Rule 72.2(B). After careful consideration of all the issues raised, the undersigned has determined that no evidentiary hearing is required for disposition of this case. See Rule 8(a), R. Gov.

§ 2254 Cases in U.S. Dist. Cts. For the reasons set forth herein, the pleadings and attachments before the Court show that Petitioner is not entitled to federal habeas relief and this § 2254 petition should be denied.

Procedural History

Petitioner Jones was charged by Information filed in Leon County, Florida, with the attempted first-degree premeditated murder of Tyrone Pleas with a firearm on or about December 25, 2010. Ex. A at 6.¹ Jury trial commenced on July 27, 2011, Exs. C, D, E, and the jury found Petitioner guilty of attempted second-degree murder, with findings that Petitioner discharged a firearm and that he used a firearm during the commission of the offense. Ex. A at 35-36; Ex. E at 358-59 (transcript pagination). Petitioner was sentenced on October 17, 2011, to a mandatory minimum term of 20 years in prison due to the discharge of a firearm during the offense, see § 775.087, Fla. Stat. (2011), with credit for 296 days. Ex. A at 37-46, 66.

Petitioner filed an appeal to the First District Court of Appeal, Ex. A at 49-50, and filed a counseled motion to correct sentencing error in the circuit court pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Ex. F at

¹ Hereinafter, citations to the state court record, "Ex. -," refer to exhibits A through W submitted in conjunction with Respondent's answer. See ECF No. 5.

71-77. He contended that his minimum mandatory sentence pursuant to the 10/20/Life statute was unconstitutional as applied to him and that the imposition of a fine, surcharge, and certain costs was error. The motion was denied on March 9, 2012, Ex. F at 78, and the direct appeal proceeded.² On February 28, 2013, the First District Court of Appeal affirmed the conviction and sentence but reversed and remanded the imposition of the fine and surcharge. Ex. K. See Jones v. State, 107 So. 3d 563 (Fla. 1st DCA 2013) (Mem). The mandate was issued March 18, 2013. Ex. K.

On December 9, 2013, Petitioner filed a pro se Petition for Writ of Habeas Corpus in the First District Court of Appeal alleging ineffective assistance of appellate counsel in the direct appeal. Ex. L. Petitioner contends that appellate counsel should have raised a claim of fundamental error based on the trial court's jury instruction on justifiable use of deadly force. *Id.* at 5-6. The First District Court of Appeal denied the petition "on the merits" without further discussion on January 8, 2014. Ex. M. See Jones v. State, 131 So. 3d 810 (1st DCA 2014) (Mem).

² The issues raised on direct appeal were: (1) trial court error in denying Petitioner's "Stand Your Ground" motion for immunity; (2) whether attempted second-degree murder is a cognizable offense under Florida law; (3) whether the minimum mandatory 20-year sentence under the 10/20/Life statute is unconstitutional as applied to Petitioner under the facts of this case; and (4) whether the procedure for imposing the fine was erroneous. Ex. H.

On March 13, 2014, Petitioner filed a counseled motion for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850.³ Ex. O at 4-14. After the State responded, an evidentiary hearing was held on August 23, 2017. Ex. O at 23, 67-199. The circuit court denied relief on the record and in a written order on August 23, 2017, adopting the reasons stated on the record. Ex. O at 57, 188-196. Petitioner appealed to the First District Court of Appeal, Ex. R, which affirmed on October 30, 2019, holding that the circuit court did not err in finding credible the testimony of both defense attorneys that Petitioner was advised to accept the plea offer of five years. Ex. V at 5. See Jones v. State, 283 So. 3d 429, 433 (Fla. 1st DCA 2019). The mandate was issued on November 20, 2019. Ex. V.

On January 21, 2020, Petitioner filed his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this Court raising two grounds for relief:

Ground One: Trial counsel rendered ineffective assistance by failing to properly advise the Defendant regarding the State's pre-verdict plea offer and by failing to properly investigate the victim's intended testimony or file a pretrial "Stand Your Ground" motion to apprise Petitioner of the proposed testimony; and

³ Petitioner claimed that trial counsel rendered ineffective assistance for failing to properly advise Petitioner regarding a pre-verdict plea offer and failing to file a "Stand Your Ground" motion. Ex. O at 4-7.

Ground Two: Defendant's minimum mandatory sentence under the 10/20/Life Statute is unconstitutionally applied to Defendant in light of the facts in this case.

Analysis

Pursuant to 28 U.S.C. § 2254, as amended by the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), federal courts may grant habeas corpus relief for persons in state custody only under certain specified circumstances. Section 2254(d) provides in pertinent part:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). See also Cullen v. Pinholster, 563 U.S. 170, 181 (2011); Gill v. Mecusker, 633 F.3d 1272, 1287 (11th Cir. 2011).

“Under the ‘contrary to’ clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts.” Williams

v. Taylor, 529 U.S. 362, 412-13 (2000) (O'Connor, J., concurring). “Under the ‘unreasonable application’ clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court’s decisions but unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* at 413 (O’Connor, J., concurring).

The Supreme Court has explained that “even a strong case for relief does not mean the state court’s contrary conclusion was unreasonable.” Harrington v. Richter, 562 U.S. 86, 102 (2011). The Court stated:

As amended by AEDPA, § 2254(d) stops short of imposing a complete bar on federal-court relitigation of claims already rejected in state proceedings. . . . It preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court’s decision conflicts with this Court’s precedents. It goes no further. Section 2254(d) reflects the view that habeas corpus is a “guard against extreme malfunctions in the state criminal justice systems,” not a substitute for ordinary error correction through appeal.

Jackson v. Virginia, 443 U.S. 307, 332, n.5 (1979) (Stevens, J., concurring in judgment). As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.

Id. at 102-03 (citation omitted). The federal court employs a “ ‘highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt.’ ” Pinholster, 563 U.S. at 181 (quoting Woodford v. Visciotti, 537 U.S. 19, 24 (2002)).

“Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court.” O’Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); 28 U.S.C. § 2254(b). The Petitioner must have apprised the state court of the federal constitutional claim, not just the underlying facts of the claim or a “somewhat similar state-law claim.” Snowden v. Singletary, 135 F.3d 732, 735 (11th Cir. 1998) (quoting Anderson v. Harless, 459 U.S. 4, 5-6 (1982)). In order for remedies to be exhausted, “the petitioner must have given the state courts a ‘meaningful opportunity’ to address his federal claim.” Preston v. Sec’y, Fla. Dep’t of Corr., 785 F.3d 449, 457 (11th Cir. 2015) (quoting McNair v. Campbell, 416 F.3d 1291, 1302 (11th Cir. 2005)). Petitioner must “fairly present” his claim in each appropriate state court in order to alert the state courts to the federal nature of the claim. Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 275 (1971); O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999). “[I]t is not sufficient merely that the federal habeas applicant has been through the state courts.” Picard, 404 U.S. at 275 (citation omitted)).

In regard to claims of ineffectiveness of trial counsel, the Petitioner must have presented those claims in state court “ ‘such that a reasonable reader would understand each claim’s particular legal basis and factual

foundation.’” Ogle v. Johnson, 488 F.3d 1364, 1368 (11th Cir. 2007) (citing McNair, 416 F.3d at 1302).

This Court’s review “is limited to the record that was before the state court that adjudicated the claim on the merits.” Pinholster, 563 U.S. at 181. The state court’s factual findings are entitled to a presumption of correctness and to rebut that presumption, the Petitioner must show by clear and convincing evidence that the state court determinations are not fairly supported by the record. See 28 U.S.C. § 2254(e)(1). Further, “it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions” and “[i]n conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States.” Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). See also Swarthout v. Cooke, 562 U.S. 216, 222 (2011) (“[W]e have long recognized that ‘a ‘mere error of state law’ is not a denial of due process.’” (quoting Engle v. Isaac, 456 U.S. 107, 121, n.21 (1982))).

Further, under § 2254(d), federal courts have “no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them.” Marshall v. Lonberger, 459 U.S. 422, 434 (1983). “Determining the credibility of witnesses is the province

and function of the state courts, not a federal court engaging in habeas review." Consalvo v. Sec'y, Dep't of Corr., 664 F.3d 842, 845 (11th Cir. 2011). Credibility and demeanor of a witness are considered to be questions of fact entitled to a presumption of correctness under the AEDPA and the Petitioner has the burden to overcome the presumption by clear and convincing evidence. *Id.*

For claims of ineffective assistance of counsel, the United States Supreme Court has adopted a two-part test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984). To demonstrate deficient performance, a "defendant must show that counsel's performance fell below an objective standard of reasonableness." *Id.* at 688. Counsel is "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."

Burt v. Titlow, 134 S. Ct. 10, 17 (2013) (quoting Strickland, 466 U.S. at 690). Federal courts are to afford "both the state court and the defense attorney the benefit of the doubt." *Id.* at 13. The reasonableness of

counsel's conduct must be viewed as of the time of counsel's conduct. See Maryland v. Kulbicki, 136 S. Ct. 2, 4 (2015) (citing Strickland, 466 U.S. at 690).

To demonstrate prejudice under Strickland, a 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." 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* For this Court's purposes, "[t]he question 'is not whether a federal court believes the state court's determination' under the Strickland standard 'was incorrect but whether that determination was unreasonable—a substantially higher threshold.' " Knowles v. Mirzayance, 556 U.S. 111, 123 (2009) (quoting Schriro v. Landigan, 550 U.S. 465, 473 (2007)). "And, because the Strickland standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard." Mirzayance, 556 U.S. at 123. It is a "doubly deferential judicial review that applies to a Strickland claim evaluated under the § 2254(d)(1) standard." *Id.* Both deficiency and prejudice must be shown to demonstrate a violation of the Sixth Amendment. Thus, the court need not address both prongs if the petitioner fails to prove one of the prongs. Strickland, 466 U.S. at 697.

Ground One: Ineffective Assistance of Counsel

Defendant first contends that his lead trial counsel rendered ineffective assistance by failing to properly advise him regarding the State's pre-verdict offer and by failing to properly investigate the victim's testimony or file a "Stand Your Ground" motion prior to trial to apprise Petitioner of what the victim intended to say at trial. ECF No. 1 at 8-12. He raised this issue in his Rule 3.850 motion in state court and was granted an evidentiary hearing.

At the evidentiary hearing, Petitioner, his lead trial counsel and co-counsel, and the trial prosecutor testified before the same judge who presided at Petitioner's trial. Ex. O at 67-199. Petitioner, represented by counsel, first presented the testimony of the defense attorney who acted as co-counsel. He testified that a plea offer of five to ten years, which he believes was also made prior to trial, was reduced to five years on the day of trial and was conveyed by him to lead defense counsel. Ex. O at 74-75, 88. Co-counsel testified that based on his experience practicing before this trial judge, he had no reason to believe the judge would have rejected the plea offer as a basis for sentencing. *Id.* at 75.

At the time the plea offer was made on the day of trial, there was an issue with a State's witness showing up, although when the offer was made

the defense knew the witness was coming. *Id.* at 75, 89. Co-counsel testified that lead counsel “implied to” Petitioner’s family that “I don’t think he should take this plea, I think I’m going to win this trial. . . . [a]nd he was pretty confident about winning the trial.” *Id.* at 76. Co-counsel testified that his memory was “vague,” but he recalled lead counsel advising Petitioner something to the effect that the victim’s testimony will be favorable to the defense. *Id.* at 77. He recalled that the victim, who himself was a convicted murderer, had been uncooperative prior to trial with both the defense and the State, and had indicated that he did not want Petitioner prosecuted. *Id.* at 82, 84. Co-counsel testified that when the plea offer was made prior to trial commencing, he personally encouraged Petitioner and his family to take the plea. *Id.* at 78. He said he personally informed Petitioner that the charge of attempted first-degree murder with a firearm carried the risk of life in prison with a minimum mandatory term of 20 years.⁴ *Id.* at 82-83. The evidence included a taped confession of Petitioner admitting to firing the gun that injured the victim. *Id.* at 86. Co-counsel testified that Petitioner never told him to reject the plea offer, but

⁴ Co-counsel testified that the plea offer also resolved a charge of battery on a law enforcement officer that arose when Petitioner was in jail prior to trial. Ex. O at 90.

indicated he would rely on his family's advice, and his family relied mostly on lead counsel. *Id.* at 83.

Petitioner testified next at the evidentiary hearing that his lead defense counsel was confident that he could win the case. *Id.* at 94. Petitioner testified that lead counsel told him the victim's testimony would be favorable to the defense, but he did not know if counsel ever deposed the witness. *Id.* Petitioner testified that lead counsel never gave him a transcript or information about what the victim would say at trial. *Id.* at 98. Petitioner testified that lead counsel advised him to reject the plea offer of five years because they were going to win. *Id.* at 95. Petitioner could not recall if co-counsel had advised him to accept the plea offer, although he remembered him "kind of saying something about it." *Id.* at 96. Petitioner testified that, once trial commenced, he did not hear any favorable testimony from the victim and, if he had known how the victim would testify, he would have accepted the plea offer of five years up to ten years. *Id.* at 97-98. Petitioner's theory of defense was self-defense, but he testified that nothing the victim said at trial supported that theory. *Id.*

On cross-examination, Petitioner conceded that the final decision whether to accept the plea offer was his, although he testified that lead counsel never told him that. *Id.* at 102, 103. Petitioner agreed that when

asked by the trial court if he rejected the plea offer, he confirmed that he did, but only because he was taking the advice of counsel. *Id.* at 103. He also agreed that his lead defense counsel was able to get the victim to testify that he did not know who shot him, that he did not know why he was in court, that he did not press charges, that he (the victim) was a convicted murderer, and that the victim had problems with Petitioner's mother. *Id.* at 100-02.

The trial prosecutor testified at the evidentiary hearing that he only recalled making a plea offer of five years, but was vague in his recollection of the timing.⁵ *Id.* at 107. He recalled that even though the case involved an obvious shooting in the back, the victim was somewhat uncooperative in the prosecution because he was dating Petitioner's mother. *Id.* at 109. The prosecutor could not say whether the judge would have accepted the plea offer made on the day of trial because it would have departed from his normal practice, but exceptions are always possible. *Id.* at 111.

The prosecutor testified that the victim was uncooperative at a preliminary hearing and had to be taken into custody. *Id.* at 117. On the

⁵ Lead counsel testified that prior to the day of trial, the plea offer had been ten years in prison and came down to five years only on the day of trial. Ex. O at 135. Co-counsel recalled the plea offer prior to the day of trial being between five and ten years. *Id.* at 88.

morning of trial, the victim was late arriving and when he appeared, he brought an attorney with him. *Id.* at 116. The prosecutor testified he made the offer of five years because of the difficult victim. *Id.* at 121. He recalled both defense counsel being given the offer and both counsel discussing it with Petitioner. *Id.* at 122. Both counsel rejected the offer on Petitioner's behalf, although co-counsel, who was local to Leon County, expressed the opinion to the prosecutor at some point that he thought Petitioner should have taken the plea offer. *Id.* at 124.

Petitioner's lead trial counsel testified at the evidentiary hearing that he was practicing law in Miami, Florida, when he was retained by Petitioner's family to represent him in this Leon County case. *Id.* at 129-30. Co-counsel was brought in as local counsel who was familiar with the jurisdiction. *Id.* at 131. Lead counsel recalled that the victim was very uncooperative and confrontational in a preliminary hearing. *Id.* at 132. He was aware that the victim had been to prison for murder, had expressed a desire not to prosecute, claimed he did not know who shot him, argued with Petitioner's mother, had driven around town looking for her, and had threatened her. *Id.* at 133.

Lead counsel testified that on the day of trial, when the plea offer of five years was made, he thought it was "substantially reasonable" and

“appropriate to take” in light of the risks. *Id.* at 135, 139, 153. He thought Petitioner “should have taken” the plea. *Id.* at 153. He testified he explained that to Petitioner’s family, “but he [Petitioner] made that call.” *Id.* at 154. Lead counsel stated: “And let me make this very, very clear. Under no circumstances did I tell him, turn down five years, let’s go to trial; under no circumstances do you take five years. Absolutely not. Didn’t happen. Will never happen as long as I’ve been practicing law.” *Id.* at 154-55. He testified that he advised Petitioner to accept the five-year plea offer because it was very reasonable, especially in light of the fact that it resolved a separate case, battery on a law enforcement officer, as well. *Id.* at 160, 162.

He testified even though the victim was late for trial, and did finally show up, Petitioner decided he did not want to accept the plea “[a]nd so that’s why we proceeded to trial.” *Id.* at 137. Lead counsel thought there was a good chance of a win, but there is always a risk and he would never guarantee an outcome. *Id.* at 138, 142. He testified that he believed the victim’s testimony would have provided favorable evidence to support a theory of use of force in defense of another—Petitioner’s mother. *Id.* at 146-47, 150.

Lead counsel testified that he could not recall if he spoke to the victim other than in deposition. *Id.* at 147. He could not recall if he or co-counsel conducted the deposition, and his memory was hazy concerning the details of a deposition.⁶ *Id.* at 148-49, 156. He said he could gather facts from reports and witness statements and that he discussed the case with Petitioner prior to trial. *Id.* at 156, 159.

Also presented as a joint exhibit was evidence that Petitioner's lead trial counsel was disciplined by the Florida Supreme Court in 2015, four years after the trial in this case, for having committed two federal misdemeanor offenses of tax evasion. *Id.* at 126-27. The disciplinary report also outlined numerous statements attesting to lead counsel's good character. See *id.* at 37-56

The circuit judge ruled on the record that he did not find a direct conflict between the testimony of lead counsel and co-counsel. *Id.* at 188. The postconviction court "accepted" lead counsel's testimony that he recommended Petitioner take the plea offer. *Id.* at 189. The court also accepted the testimony of both counsel that a five-year plea offer was

⁶ At the beginning of the jury trial, the prosecutor mentioned that "counsel took his [the victim's] deposition. Ex. C at 13 (transcript pagination). Lead counsel also mentioned to the court at the commencement of trial that the victim had appeared for deposition. *Id.* at 14. The substance of any deposition testimony does not appear in the record.

made for the first time on the day of trial and that it was made of record by the court at trial. *Id.* The postconviction judge stated:

I find that it [the plea offer] was presented to Mr. Jones and he made a decision. There was no deficient conduct. I do find based upon the testimony presented that the attorneys suggested to Mr. Jones that would be his best remedy and he rejected that. Again, as I say, it seems to me what was really happening is Mr. Jones was listening to family members, not his attorneys.

Id. at 192-93. The court also concluded that based on the facts of this case, it was not unreasonable for lead counsel to believe he had a winnable case. *Id.* at 194.

The court was “not convinced that the defendant would have accepted the plea offer, even if [lead counsel] was recommending it, as the defendant claims he was not.” *Id.* at 195. The court found it to be established that the prosecutor would not have withdrawn the offer. However, the judge—who was also the trial judge in the case—was not convinced that the court would have accepted the plea because, as the State pointed out, “the Court’s policy at that time was not to accept negotiated pleas after docket sounding, which had occurred on the Thursday prior to this trial.” *Id.* The judge refused to speculate what the court would have done if the plea had been accepted by Petitioner at that

point in the proceedings.⁷ *Id.* The court concluded Petitioner had not carried his burden to prove that the plea would have been accepted by the court. *Id.* at 198. For all these reasons, the court found Petitioner failed to show he received ineffective assistance or that he was prejudiced by any alleged deficiency, and denied the motion for postconviction relief. *Id.* at 57, 196.

The postconviction court also considered the record of the trial. *Id.* at 71-72, 193. Before opening statements at trial, the following discussion occurred:

MR. BAUER [prosecutor]: During the break, I made an offer to Mr. Handfield [lead counsel] of five years in prison, followed by ten years probation, that includes the case before the Court and it also includes another pending case which is keeping him in on -- with no bond, or revoked his bond on the other case, Case No. 2011-CF-1448. Mr. Handfield is not on that case, doesn't seem to be a concern of Mr. Handfield. Mr. Akbar [co-counsel] is on that case. But I have a good faith basis that I could get the five years on the 2011 case. That is battery on a law enforcement officer and resisting with violence.

⁷ Counsel for Petitioner objected after announcement of the ruling, contending that the judge had made himself a witness in the case and could not be cross-examined on the issue of whether the plea would have been accepted by the court. Ex. O at 196-97. The judge overruled the objection, stating that he did not make himself a witness, but was simply citing the policy noted by the prosecutor that the court did not normally accept plea agreements that occurred after docket sounding. *Id.* at 197-98. Petitioner unsuccessfully argued this objection on appeal from denial of postconviction relief. Ex. R at 8.

So I think if the Court makes an inquiry of Mr. Jones and that's rejected, we can go forward, but this is for both cases. Mr. Handfield is only on one case.

THE COURT: Who is speaking on this?

MR. AKBAR [co-counsel]: Your Honor, I did speak with Mr. Jones about the plea offer from the State. And I did let him know what he is facing in regards to this particular case that we're on trial for. And Mr. Jones did reject that plea offer.

THE COURT: Stand up please, Mr. Jones. Mr. Jones, stand up, please. Raise your right hand.

(Defendant Sworn)

THE COURT: State your name for the record.

THE DEFENDANT: Rufus Jones.

THE COURT: You heard what Mr. Bauer indicated, that they have made a plea offer of five years prison, followed by ten years probation to resolve both of your cases. It is my understanding -- has that offer been presented to you?

THE DEFENDANT: Yes, sir.

THE COURT: And you have rejected that offer; is that my understanding?

THE DEFENDANT: Yes, sir.

THE COURT: All right, thank you. All right. Ready for the jury?

Ex. C at 16-18.

The victim testified at trial that he dated Petitioner's mother, Maria, for almost three years and was living with her at her home along with Petitioner. *Id.* at 51, 55. He and Maria had an argument on Christmas day in 2010 and she left after he took her cell phone. *Id.* at 59. The victim rode around looking for her and returned home to find her there. *Id.* at 62-63.

Maria was in the den and the victim questioned her about where she had gone. It was not argumentative, he said, but he could not remember if he made any threats against anyone. *Id.* at 69-70. He testified no one made any threats against him. *Id.* at 70. He said he was not armed with a firearm. *Id.* at 69. He then testified:

A I was in the den and me and Maria was talking. And Brandon [Petitioner] was to [sic] the table. So when I got ready to leave the den and go into the room or whatever, I saw the screen door open. And once I passed by Rufus Jones or Brandon, I heard a scream, I heard Maria screaming. I made like I was going to open the screen - - the refrigerator door and took off down the hall.

Q You took off?

A After I heard her screaming, I mean, I took off down the hall and I heard a gunshot.

Q Now what happened first, the gunshots or Maria screaming?

A I don't remember.

Q Did you hear Mr. Jones say anything or make any noise?

A I don't remember because I guess the TV was up or something. I mean, I'm thinking it was a sporting event on.

Q What made you run?

A I had heard pretty much like a scream, something like that.

Q How many shots did you hear?

A I wasn't trying to count them.

Q More than one?

A I think the first one pinned me to the wall.

Ex. C at 70-71. The victim testified he ran out the back of the house. *Id.* at 75. He called Maria on his cell phone and was trying to reach a friend's house to be taken to the hospital, but he did not call 911, explaining, "I just don't believe in it." *Id.* at 77. He reached the house and his friend's mother came to the door and then called for help. *Id.* at 78.

The victim testified that when he was questioned by officers in the emergency room, he told them he did not want to press charges. Ex. D at 93. He was angry, however, and when asked if he wanted to kill his assailant, he answered yes, but never gave a name. *Id.* On cross-examination, the victim testified that he did not see who shot him. *Id.* at 94. He said, "If I didn't see who do the shooting, I mean, I didn't press no charges. I don't know why I'm here. I was subpoenaed to be here." *Id.* He did not believe Petitioner "should be sitting where he is sitting." *Id.* at 94-95. He agreed that prior to night of the shooting, he and Maria had problems and the police had been called to the home numerous times. *Id.* at 96. He also agreed that when he called one of Maria's friends to inquire where she was, he told the friend that he might kill Maria and himself, but explained that it was only because the friend was being "nosy" and asked whether he was planning to hurt Maria. *Id.* at 98-99. He denied threatening Petitioner that night but agreed in the past they argued

frequently. *Id.* at 103. He denied conveying any threats to Maria or to Petitioner that he would kill Maria and himself. *Id.* at 106. He testified that when he saw Petitioner on the night of the shooting, he did not give Petitioner any reason to fear him. *Id.* at 108. Evidence was presented that three bullet holes and spent bullets were found at the residence where the shooting occurred. *Id.* at 136-38.

The evidence also established that Petitioner turned himself in and told police where to find the firearm. Ex. D at 152-53, 167. He gave a statement to police that when he arrived at his mother's house, he heard her arguing with the victim. *Id.* at 173. He said the victim pulled a gun on him a year ago and has a history of violence. *Id.* at 174. He said when he went into the room, the victim gave him dirty looks and looked at him funny, which is when Petitioner went and got a gun that he knew was kept under the lawnmower. *Id.* at 175. When he came back with the gun, they argued further and, according to Petitioner, the victim said, "I got something for you, mother-fucker." *Id.* at 176. Petitioner then told the officer that's when he fired shots at the victim. *Id.* The evidence was unclear if Petitioner was indicating the victim hid guns around the house or Petitioner hid the guns

around the house.⁸ *Id.* at 183-84. The officer who interviewed Petitioner confirmed on cross-examination that Petitioner was cooperative and remorseful and believed he acted in self-defense. *Id.* at 186. He also confirmed his understanding that the victim had been uncooperative and had threatened to kill Petitioner and his mother, although he was not told that by Petitioner. *Id.* at 192, 196.

After the State presented its case at trial, defense counsel moved for a directed verdict under the “Stand Your Ground” law. Ex. D at 204-05. Counsel argued that the evidence showed Petitioner fired shots in his belief it was necessary for self-defense of himself or his mother. He argued that the victim testified he did not think Petitioner was responsible for the shooting, but that someone else was. *Id.* at 204. The trial court denied the motion, and denied a motion for judgment of acquittal, stating:

THE COURT: The judgment of acquittal, obviously, is, [I]s there a theory of the State’s case when taken in the light most favorable to the State at this time upon which a jury could find that Mr. Jones shot Mr. Pleas, and that it was not in self-defense. The immunity issue is a little bit different standard and generally presented pretrial, but I think it can be made during the course of the trial. Under that standard it is the defense’s

⁸ The officer testified that Petitioner said the gun under the lawnmower was put there by the victim, and later testified that Petitioner told him that he, Petitioner, hid guns around the house in hopes that the victim would be arrested for violation of probation. Ex. D at 175, 180-81. A portion of the video was played in the defense case in which Petitioner said he knew the victim had guns around the house and Petitioner “was trying to get multiple guns and everything so he could get time for it.” Ex. D at 215.

burden to prove by a preponderance of the evidence that the defendant did act in self-defense.

I'm going to deny both those requests. I think as to the immunity, I do not believe that the defense has proven at this point by a preponderance of the evidence that the defendant acted in self-defense. Mr. Pleas' testimony, although not crystal clear as to how things happened, would establish that he was -- that the shooting was unprovoked. I have understood the statement by the defendant which would suggest self-defense, but I think the fact that keeps me from finding that that has been established, frankly, is the fact that the shot is in the back, which is the physical back. That is undisputed.

Id. at 205-06.

To succeed on a claim of ineffective assistance of counsel, a petitioner must show both that (1) his counsel's performance was deficient; and (2) the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687 (1984). The Sixth Amendment's guarantee of effective assistance of counsel extends to plea bargaining. Lafler v. Cooper, 566 U.S. 156, 162 (2012); Turbi v. Sec'y, Dep't of Corr., 800 F. App'x 773, 774-75 (11th Cir. 2020) (unpublished).

The United States Supreme Court applied the Strickland test in the context of claims of deficient performance and prejudice regarding plea offers in Missouri v. Frye, 566 U.S. 133, 147 (2012), and Lafler, 566 U.S. at

164, and concluded Petitioner had not demonstrated entitlement to relief.⁹

Under Frye and Lafler, a defendant must demonstrate a reasonable probability that (1) he would have accepted a plea offer but for counsel's ineffective assistance; (2) the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it; and (3) the plea would have resulted in a lesser charge or a lower sentence. The state postconviction court analyzed the claim under the requirements of Strickland and addressed the Frye and Lafler factors necessary to show deficient performance and prejudice in the context of a plea offer. The state court found that trial counsel did inform Petitioner of the plea offer and did not advise him to reject it. Further, as the state court found, Petitioner failed to establish that he would have accepted the plea offer if he had known what the victim would say at trial and that the trial court would have accepted the plea offer of a five-year sentence for an offense carrying a minimum mandatory sentence of twenty years.

As part of this ground, Petitioner also contends that his trial counsel rendered ineffective assistance by failing to properly investigate the victim's

⁹ Because Lafler and Frye merely construe Strickland in a new context rather than creating a new rule, the Strickland standard as construed in the context of the plea process is the "clearly established federal law" with which state court adjudications must comport. See, e.g., In re Perez, 682 F.3d 930, 932 (11th Cir. 2012).

proposed testimony or file a “Stand Your Ground” motion seeking immunity from prosecution prior to trial, which would have apprised Petitioner of the proposed testimony. ECF No. 1 at 8-10. He contends: “Had such a motion been filed pretrial, then [the victim] would have been required to testify pretrial and Petitioner Jones would have been able to hear his testimony and verify [lead counsel’s] assertion that the alleged victim was going to be a ‘favorable’ witness for the defense. Had such a motion been filed and a pretrial immunity hearing conducted—and had Petitioner Jones seen at such a hearing that [the victim] was not a ‘favorable’ witness—then Petitioner Jones would have accepted the State’s plea offer of five years’ imprisonment.” ECF No. 1 at 9-10.

Petitioner’s trial prosecutor testified at the evidentiary hearing that at the time of Petitioner’s trial, no “Stand Your Ground” motion had been filed in any of his cases and none was filed in this case. Ex. O at 108. Petitioner did not present any evidence at the evidentiary hearing in support of his claim that counsel rendered ineffective assistance by failing to file a pretrial “Stand Your Ground” motion. Counsel simply argued to the postconviction court at the conclusion of the hearing that defense counsel had a tool to elicit the testimony expected from the victim—that of a “Stand Your Ground” motion. Ex. O at 176. Petitioner did not argue to the

postconviction court that he was entitled to receive immunity from prosecution by way of a “Stand Your Ground” motion, only that it would have been a discovery tool. Petitioner’s counsel argued to the postconviction court, “If they would have filed a stand your ground motion and if [the victim] would have given to same testimony at that point that he gave at trial, it would have clarified certainly that he’s going to show up, it would have clarified it’s not going to be favorable, and the plea offer still would have been on the table.” *Id.* at 180. This argument is speculative and conclusory concerning how the victim might have testified at a “Stand Your Ground” hearing. Further, it is conclusory and speculative that after hearing whatever the victim testified to at a “Stand Your Ground” hearing, Petitioner would have accepted a plea offer of from five to ten years.

At the conclusion of the evidentiary hearing, the court found that it was not unreasonable for lead counsel not to file a pretrial “Stand Your Ground” motion. Ex. O at 190, 192. The court also concluded that Petitioner had not proven that the victim was never deposed. *Id.* The court found, based on the testimony at the preliminary hearing, that the State “may well have been able . . . to defeat a stand your ground motion with that testimony, along with the physical fact that [the victim] was shot in the back. . . . I don’t think it’s for the Court to speculate on that.” *Id.* at 191.

The court noted that the “Stand Your Ground” law was evolving at the time of the trial in 2011 and it was not the norm to hold “Stand Your Ground” evidentiary hearings prior to trial. *Id.* at 192. The postconviction court also refused to speculate on what lead counsel or Petitioner would have done if they had heard the victim testify at a “Stand Your Ground” hearing. *Id.*

Petitioner appealed the denial of his Rule 3.850 motion and the First District Court of Appeal affirmed, holding in a written opinion that the circuit court did not err in finding credible the testimony of both defense attorneys that Petitioner was advised to accept the plea offer of five years. Ex. V at 5. The court explained in Jones v. State, 283 So. 3d 429 (Fla. 1st DCA 2019):

The postconviction court held Jones failed to show Attorney Handfield’s performance was deficient, concluding Jones had chosen not to accept his attorneys’ advice when he rejected the plea offer. In reaching this conclusion, the postconviction court found no conflict between Attorney Akbar’s and Attorney Handfield’s testimony with respect to both advising Jones to accept the offer. This is a finding of fact which this Court will not disturb if supported by competent, substantial evidence. Here, the record supports this conclusion. Both Attorneys Akbar and Handfield testified that they urged Jones to take the plea offer. Attorney Akbar acknowledged he was not present when Attorney Handfield spoke to Jones regarding whether he should take the plea offer. The postconviction court found the testimony of the attorneys that Jones was advised to accept the plea offer more credible than that of Jones. We will not disturb this factual finding on appeal.

Id. at 433 (citation omitted).

Nor should that factual finding be disturbed in this Court. Under § 2254(d), federal courts have “no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them.” Marshall v. Lonberger, 459 U.S. 422, 434 (1983). “Determining the credibility of witnesses is the province and function of the state courts, not a federal court engaging in habeas review.” Consalvo v. Sec'y, Dep't of Corr., 664 F.3d 842, 845 (11th Cir. 2011). Credibility and demeanor of a witness are considered to be questions of fact entitled to a presumption of correctness under the AEDPA and the Petitioner has the burden to overcome the presumption by clear and convincing evidence. *Id.* This burden has not been met.¹⁰

Based on the foregoing, Petitioner has not shown that the state courts’ rejection of this claim involved an unreasonable application of clearly established federal law or that it was based on an unreasonable determination of the facts. See 28 U.S.C. § 2254(d)(1)-(2). Accordingly, Ground One should be denied.

¹⁰ The First District Court of Appeal did not address the question of whether defense counsel should have filed a pretrial “Stand Your Ground” motion as a discovery tool to apprise Petitioner of the victim’s proposed testimony.

Ground Two: Constitutionality of Sentence

Defendant next contends that his minimum mandatory sentence imposed under the “10/20/Life” statute, section 775.087(2), Florida Statutes, is grossly disproportionate based on the facts that were presented at trial. ECF No. 1 at 12-14. He argues that imposing the minimum mandatory sentence on the “unusual facts” of this case constitutes cruel and unusual punishment because his defense at trial was self-defense or defense of others. Petitioner raised this claim in state court by filing a motion to correct sentencing error in the circuit court pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). Ex. F at 71-77. The motion was denied, Ex. F at 78, and he appealed the issue in his direct appeal from conviction and sentence. The First District Court of Appeal affirmed the conviction for attempted second-degree murder and the minimum mandatory sentence without reference to this sentencing claim. Ex. K. See Jones v. State, 107 So. 3d 563 (Fla. 1st DCA 2013) (Mem).

Section 775.087(2) provides that any person who is convicted of a felony or an attempt to commit a felony, including murder, and who during the offense discharged a firearm, “shall be sentenced to a minimum imprisonment of 20 years.” § 775.087(2)(a)1. & 2., Fla. Stat. (2010). Petitioner’s minimum mandatory sentence of twenty years for attempted

second-degree murder, with the finding that he discharged a firearm, is within the statutory limit, as determined in its broad authority by the state legislature.

This Court has explained:

The Eighth Amendment prohibits the imposition of cruel and unusual punishments. See U.S. Const. amend. VIII. “[T]he Eighth Amendment contains a ‘narrow proportionality principle’ that ‘applies to noncapital sentences.’” Ewing v. California, 538 U.S. 11, 20 (2003) (quoting Harmelin v. Michigan, 501 U.S. 957, 997 (1991) (Kennedy, J., concurring in part and concurring in judgment)⁸). A non-capital sentence violates the Eighth Amendment only if it is grossly disproportionate to the offense conduct. United States v. Farley, 607 F.3d 1294, 1343 (11th Cir. 2010).

Generally, sentences within the statutory limits are neither excessive, nor cruel and unusual under the Eighth Amendment. See United States v. Flores, 572 F.3d 1254, 1268 (11th Cir. 2009); United States v. Moriarity, 429 F.3d 1012, 1024 (11th Cir. 2005). This is so because courts accord substantial deference to the legislature, as it possesses “broad authority to determine the types and limits of punishments for crimes.” Solem v. Helm, 463 U.S. 277, 289 (1983); see also United States v. Mozie, 752 F.3d 1271, 1290 (11th Cir. 2014). Further, the Supreme Court has held that the mandatory nature of a sentence is irrelevant for Eighth Amendment purposes. Harmelin, 501 U.S. at 994-995; *id.* at 1006 (Kennedy, J., concurring); see also Farley, 607 F.3d at 1343 (the fact that a non-capital sentence is statutorily mandated is irrelevant to the proportionality analysis).

Owens v. Fla. Dep’t of Corr. Sec’y, No. 1:16cv254/WTH/EMT, 2018 WL 5794185, at *21-22 (N.D. Fla. May 1, 2018), *report and recommendation adopted*, No. 1:16cv254-MW/EMT, 2018 WL 5792820 (N.D. Fla. Nov. 5,

2018). Petitioner failed to show that the state court's denial of his claim of cruel and unusual punishment by imposition of a minimum mandatory sentence in this case was contrary to or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States. Nor has he demonstrated that the decision in the state court was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. See 28 U.S.C. § 2254(d).

Petitioner argues that his minimum mandatory sentence is grossly disproportionate because he argued self-defense or defense of others at trial. This contention asks the Court to assume that he proved self-defense or defense of others case at trial. The jury verdict belies that assumption, as he was convicted of attempted second-degree murder with discharge and use of a firearm. The trial judge denied his "Stand Your Ground" motion and motion for judgment of acquittal during trial and the state appellate court affirmed the conviction and sentence.

Petitioner has not demonstrated that his sentence is grossly disproportionate under the facts. Contrary to Petitioner's argument that the facts of the case are unusual, the evidence established that although the victim had conflicts with Petitioner's mother and had threatened her in the

past, and he argued with Petitioner, Petitioner told police that he did not like the looks the victim was giving him, so he retrieved a gun he knew was hidden under a lawnmower, returned to the house, and shot the victim in the back as he was walking down the hallway. None of these facts is extraordinary or unusual, and the facts do not support a finding that the legislatively-mandated sentence is “grossly disproportionate” to the crime. The jury rejected a claim of self-defense or defense of another. The fact that the trial judge may have imposed a lesser sentence if he had the discretion to do so¹¹ does not prove that the legislatively-mandated sentence is unconstitutional as applied to Petitioner. For all these reasons, habeas relief under Ground Two should be denied.

Conclusion

Based on the foregoing, Petitioner Rufus B. Jones is not entitled to federal habeas relief. Accordingly, the § 2254 petition (ECF No. 1) should be denied.

Certificate of Appealability

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides that “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the

¹¹ See Petitioner’s argument, ECF No. 1 at 14.

applicant,” and if a certificate is issued “the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C.

§ 2253(c)(2).” Rule 11(b) provides that a timely notice of appeal must still be filed, even if the court issues a certificate of appealability.

Petitioner fails to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (explaining substantial showing) (citation omitted).

Therefore, the Court should deny a certificate of appealability.

The second sentence of Rule 11(a) provides: “Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue.” The parties shall make any argument as to whether a certificate should issue by objections to this Report and Recommendation.

Leave to appeal in forma pauperis should also be denied. See Fed. R. App. P. 24(a)(3)(A) (providing that before or after notice of appeal is filed, the court may certify appeal is not in good faith or party is not otherwise entitled to appeal in forma pauperis).

Recommendation

It is therefore respectfully **RECOMMENDED** that the Court **DENY** the § 2254 petition (ECF No. 1). It is further **RECOMMENDED** that a certificate

of appealability be **DENIED** and that leave to appeal in forma pauperis be **DENIED**.

IN CHAMBERS at Tallahassee, Florida, on July 28, 2020.

s/ Martin A. Fitzpatrick
MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Within fourteen (14) days after being served with a copy of this Report and Recommendation, a party may serve and file specific written objections to these proposed findings and recommendations. Fed. R. Civ. P. 72(b)(2). A copy of the objections shall be served upon all other parties. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b)(2). Any different deadline that may appear on the electronic docket is for the Court's internal use only and does not control. If a party fails to object to the magistrate judge's findings or recommendations as to any particular claim or issue contained in a Report and Recommendation, that party waives the right to challenge on appeal the district court's order based on the unobjected-to factual and legal conclusions. See 11th Cir. R. 3-1; 28 U.S.C. § 636.

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO.: 2010-CF-4225

STATE OF FLORIDA

VS.

RUFUS B. JONES,

Defendant.

DIGITAL PROCEEDINGS: EVIDENTIARY HEARING

BEFORE: THE HONORABLE JAMES C. HANKINSON

DATE: August 23, 2017

LOCATION: Leon County Courthouse
Tallahassee, Florida

FOR THE STATE: EDDIE D. EVANS, ASSISTANT STATE ATTORNEY
OFFICE OF THE STATE ATTORNEY
LEON COUNTY COURTHOUSE
TALLAHASSEE, FLORIDA 32301

FOR THE DEFENDANT: DON PUMPHREY, JR., ESQUIRE
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TALLAHASSEE, FLORIDA 32308
AND
MICHAEL UFFERMAN, ESQUIRE
2022-1 RAYMOND DIEHL ROAD
TALLAHASSEE, FLORIDA 32308

TRANSCRIBED BY: JULIE L. DOHERTY, RMR
Notary Public in and for the
State of Florida at Large

JULIE L. DOHERTY, RMR
Official Court Reporter
Leon County Courthouse, Room 341
Tallahassee, FL 32301

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

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JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 PROCEEDINGS

2 THE COURT: Be seated, please, folks.

3 We're here in State of Florida v. Jones,
4 2010-CF-4225. Let the record reflect Mr. Jones is
5 present with his attorneys. The matter is set today for
6 evidentiary hearing. Is the defense ready to proceed?

7 MR. UFFERMAN: Yes, Your Honor.

8 THE COURT: Is the State ready to proceed?

9 MR. EVANS: Yes, Your Honor. There's one thing I
10 need to advise the Court. This hearing is scheduled for
11 all day and Mr. Handfield is scheduled to be here at
12 10:00 at the airport. So I've talked to Mr. Ufferman.
13 He thinks that will be well worked, that will work in the
14 schedule, assuming there are no delays. But since we
15 have it scheduled for all day, I'm assuming we thought we
16 would take a little bit more time than I think we
17 actually are.

18 THE COURT: Well, I don't want to get halfway into
19 it and find out we don't have our witness.

20 MR. EVANS: He has not called and not contacted us
21 that he did not get on the plane.

22 THE COURT: He said what?

23 MR. EVANS: He has not contacted us to let us know
24 there has been any trouble or any delays.

25 THE COURT: How much communication have you had with

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1 him?

2 MR. EVANS: My secretary wasn't up there this
3 morning, but I know we talked to him, finalized it
4 earlier -- today is Wednesday, I think it was either
5 Monday or Friday.

6 THE COURT: All right. Either side wish to invoke
7 the rule of sequestration?

8 MR. UFFERMAN: Yes, Your Honor. And if I may, Your
9 Honor, I have some housekeeping matters that I could
10 address before we begin.

11 THE COURT: Have what?

12 MR. UFFERMAN: Housekeeping matters that I'd like to
13 address before we begin.

14 THE COURT: I still didn't understand you.

15 MR. UFFERMAN: Let me --

16 THE COURT: Get to one of the microphones or you're
17 not going to be of record.

18 MR. UFFERMAN: I apologize, Your Honor. May it
19 please the Court. Michael Ufferman on behalf of
20 Mr. Jones. Seated with me at counsel table is Don
21 Pumphrey. This is Case No. 2010-CF-4225.

22 Before we begin, if I could address some
23 housekeeping matters, minor housekeeping matters with the
24 Court and maybe even give a brief opening as to where we
25 hope to go today.

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1 THE COURT: I don't feel the need for that, but if
2 you're dying to do so, you may. I've read your motion.
3 It looks to be pretty straightforward.

4 MR. UFFERMAN: Thank you, Your Honor.

5 THE COURT: All right. Go ahead.

6 MR. UFFERMAN: So we would like to invoke the rule.
7 I can tell you that the defense has -- the witnesses we
8 intend to call today are our client, Mr. Akbar, who was
9 one of the attorneys in the case, Mr. Bauer, who was the
10 prosecutor in the case, and then we have three members of
11 our client's family who, depending on when Mr. Handfield
12 gets here, may be rebuttal witnesses. If he's not here
13 on time, we may put them on early and we'll go over that
14 at that time, depending on whether or not Mr. Handfield
15 is in the courtroom.

16 You presided over this case, I'm sure you remember
17 the case. The issue in the case is whether or not
18 counsel was ineffective -- in particular, we're focusing
19 on Mr. Handfield, who was lead counsel in this case --
20 whether he was ineffective regarding providing our client
21 misinformation that induced him to reject a favorable
22 plea offer.

23 We would ask the Court to take judicial notice of
24 the record in this case, including the trial transcripts.
25 I don't think the State has any objection to that.

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1 Generally, in the 3.850 hearings that I conduct,
2 Your Honor, as you know, I'm an appellate post conviction
3 lawyer, I usually bring in trial counsel to assist me at
4 these hearings. So Mr. Pumphrey will be the one to
5 examine the witnesses and I'll be the one to make any
6 legal argument, Your Honor.

7 THE COURT: Okay. So when you say you want me to
8 take judicial notice of the file, are you talking about
9 the entire file?

10 MR. UFFERMAN: Yes, Your Honor.

11 THE COURT: So the entire file will be part of the
12 record, should there be an appeal by either side?

13 MR. UFFERMAN: Yes, Your Honor.

14 THE COURT: Is the State in agreement with that?

15 MR. EVANS: Yes, Your Honor.

16 MR. UFFERMAN: That's it, Your Honor. Thank you.

17 THE COURT: All right. Any potential witnesses,
18 please stand. Are there any witnesses?

19 The rule of sequestration has been invoked. That
20 means you need to remain outside the courtroom except
21 while you're testifying. While you're waiting to testify
22 and until you have been excused, you are not to discuss
23 the case among yourselves or with any other witness. An
24 important exception to this is you are free to talk to
25 the attorneys for either side, just not in the presence

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1 of any other witness.

2 I admonish counsel if there are witnesses not
3 present, it's your obligation to make them aware of the
4 Court's ruling.

5 who is going to be your first witness?

6 MR. PUMPHREY: Your Honor, it will be Attorney
7 Mutaquee Akbar.

8 THE COURT: All right. The other witnesses may step
9 out.

10 You can come forward, Mr. Akbar. If you'd face the
11 clerk and be sworn, please.

12 whereupon,

13 MUTAQEE AKBAR

14 was called as a witness, having been first duly sworn, was
15 examined and testified as follows:

16 THE COURT: Have a seat. slide up to the
17 microphone, please, sir.

18 MR. PUMPHREY: Your Honor, may I reposition the
19 podium?

20 THE COURT: Where do you want to put it?

21 MR. PUMPHREY: I just wanted to bring it back a
22 little bit --

23 THE COURT: Okay. All right.

24 MR. PUMPHREY: -- so State counsel will have plenty
25 of view. I tend to --

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1 THE COURT: All right. That would be good.

2 MR. PUMPHREY: May it please the Court.

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY MR. PUMPHREY:

6 Q Mr. Akbar, can you please state your full name and
7 spell your first name and your last name?

8 A Mutaquee Akbar, M-U-T-A-Q-E-E, A-K-B-A-R.

9 Q Mr. Akbar, the -- you were local counsel with an
10 attorney out of Miami, Mr. Handfield, on the Brandon Jones
11 case?

12 A Yes.

13 Q Okay.

14 THE COURT: Rufus Jones?

15 MR. PUMPHREY: It's Rufus Brandon Jones; yes, sir.

16 THE COURT: Okay. Just making sure we're clear.

17 MR. PUMPHREY: Yes, sir.

18 BY MR. PUMPHREY:

19 Q And, Mr. Akbar, how long have you been practicing
20 before this Court?

21 A Ten years.

22 Q And in practicing before Your Honor, in this
23 particular case, was there a plea offer made of five years?

24 A Yes.

25 Q Okay. And did you convey that to lead counsel?

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1 A Yes.

2 Q Did you convey that to Mr. Jones?

3 A Yes.

4 Q Okay. And when I say, "lead counsel," was your role
5 in the case to just be present here in Tallahassee in case
6 something happened, but Mr. Handfield is the one that made the
7 decisions on the case as far as trial, advising the client?

8 A Yes, for the most part, yes.

9 Q And the -- in practicing before this Judge, Judge
10 Hankinson, do you have any reason to believe that the Judge
11 would have rejected the plea offer, had Mr. Jones accepted it?

12 A No.

13 Q Okay. And that's based on your practicing before
14 Judge Hankinson?

15 A Yes.

16 Q And so the prosecutor in the case was Michael Bauer?

17 A Yes.

18 Q Okay. Now, when the five year offer was made, that
19 morning that you guys started the trial -- the offer had been
20 made previously, but was renewed the day of trial -- there was
21 an issue with a witness not showing up.

22 A Correct.

23 Q Okay. And you guys took a pretty -- a pretty long
24 recess so the State could try to find that witness?

25 A I don't remember the sequence of how it happened,

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1 but I do know when the offer was made, the witness was here.

2 We knew the witness was coming when the offer was made.

3 Q So when that five year plea offer -- did

4 Mr. Handfield talk separately with Mr. Jones after you

5 conveyed the offer to Mr. Handfield and to Mr. Jones?

6 A I don't know.

7 Q Okay. And so do you recall what Mr. Handfield

8 say -- what Mr. Handfield told Mr. Jones about whether to

9 accept or reject the offer?

10 THE COURT: Would you ask that question again,
11 please?

12 MR. PUMPHREY: Yes, sir.

13 THE COURT: It was kind of convoluted to me. I'm
14 sorry.

15 MR. PUMPHREY: My apologies, Judge.

16 BY MR. PUMPHREY:

17 Q Do you recall Mr. Handfield, whether he advised
18 Mr. Jones on the five year plea offer?

19 A I don't recall, but I can -- I can say I recall the
20 conversation with the family.

21 Q Okay.

22 A And the conversation with the family implied, y'all
23 can do what y'all want, but I don't think he should take this
24 plea, I think I'm going to win this trial. And he was pretty
25 confident about winning the trial.

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1 Q And was --

2 A And he relied -- and Brandon relied heavily on what
3 his family suggested and what they thought. And I don't
4 remember exactly, but I want to say that same conversation
5 took place with Brandon once we came back in court.

6 Q Okay. And we're talking about Rufus Brandon Jones?

7 A Rufus Brandon Jones, yes.

8 Q And do you recall Mr. Handfield advising Mr. Jones
9 that, quote, Tyrone Pleas' testimony will be favorable to the
10 defense?

11 A I'm not sure -- I'm not sure about those quotations,
12 but it was something similar, yes.

13 Q So he conveyed to Brandon Jones and the
14 determination of taking the five year plea offer that day of
15 trial, that it was his professional opinion that Tyrone --

16 THE COURT: I'm confused. I thought Mr. Akbar said
17 he didn't remember any conversation between Mr. Handfield
18 and Mr. Jones. So are we now going off of what somebody
19 else told him about what that conversation was?

20 THE WITNESS: Let me clarify. I don't remember the
21 exact conversation. I do remember Mr. Handfield going
22 over and talking to Brandon before the trial started.
23 And my -- my -- my memory, and again it's vague, is that
24 like the implication was, we will win this, I will win
25 this.

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1 THE COURT: And you were part of the conversation?

2 THE WITNESS: I was standing over it, yes.

3 THE COURT: Okay.

4 BY MR. PUMPHREY:

5 Q And do you recall whether or not Mr. Handfield made
6 any comment about whether the State's key witness would -- and
7 in this case it was Tyrone Pleas -- would give favorable
8 testimony to the defense?

9 A Yes.

10 MR. PUMPHREY: A moment, Your Honor.

11 (Attorneys confer.)

12 MR. PUMPHREY: Briefly, Your Honor.

13 BY MR. PUMPHREY:

14 Q Mr. Akbar, just as a matter of housekeeping, was the
15 five year plea offer made prior to the day of trial as well?

16 A I believe so. I'm not sure, I believe so. And the
17 reason why -- in my mind it was one plea offer before trial
18 that we, that I know I was encouraging Brandon to take. And
19 then the day of trial, once Mr. Pleas showed up, there was
20 another conversation between me, Mr. Pleas, Mr. Pleas'
21 attorney, and Mr. Bauer.

22 And I'm not sure -- I thought the plea offer even
23 went lower. It may or may not have went lower. And we had
24 that conversation at that point. And I personally talked to
25 Mr. Jones and his family about -- and encouraged them taking

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1 that plea.

2 Q Okay. And did Mr. Jones indicate to you he wanted
3 to speak to Mr. Handfield?

4 A He wanted his family's opinion.

5 Q Okay.

6 A And his family relied on Mr. Handfield.

7 Q Who talked to his family?

8 A Mr. Handfield.

9 Q And then after Mr. Handfield talked to the family,
10 who did Mr. Handfield talk to?

11 A He should have talked to Mr. Jones. He talked to
12 Mr. Jones at that point.

13 Q Okay. All right.

14 A Yeah.

15 MR. PUMPHREY: A moment, Your Honor.

16 THE COURT: You may.

17 MR. PUMPHREY: No further questions. Tender the
18 witness.

19 CROSS EXAMINATION

20 BY MR. EVANS:

21 Q Good morning, Mr. Akbar.

22 A Good morning.

23 Q We haven't gone over what your experience was. Can
24 you tell us at the time whenever this trial took place on
25 July 26th of 2011, how long you'd been practicing law and what

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1 kind of law you practiced?

2 A At that point, I'd been practicing for seven years,
3 and criminal law mainly.

4 Q And experience in trials?

5 A At that point I don't know how many, but lots of
6 trials in criminal defense.

7 Q Pleas, evaluating cases, and all that?

8 A Yes.

9 Q Now, you said Mr. Handfield was lead counsel, but
10 could you tell us exactly what your role was?

11 A Throughout the representation, most of the time I
12 met with Mr. Jones was with Mr. Handfield. It might have been
13 one or two times or a few times that I'd go out to the jail
14 and just kind of give him an update on what was going on. I
15 was a part of the preparation for the trial, but
16 Mr. Handfield, obviously, you know, kind of led the whole
17 thing. I think I might have questioned one witness during the
18 trial, maybe one or two witnesses during the trial.

19 Q And what do you mean by part of prepping for the
20 trial?

21 A Just like -- like kind of bouncing ideas, theory
22 ideas, you know, just kind of bouncing ideas, but not coming
23 up with the theory, not coming up with the theme, not coming
24 up with questions for witnesses or anything like that.

25 Mr. Handfield pretty much handled all of that.

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1 Q Do you remember what the plea offer -- the plea
2 offer was, the final plea offer?

3 A For some reason I had three years in my head, but
4 that might have been because he had enough credit where he
5 would get out in three years or it might have been a five year
6 with a three year mandatory minimum on it. But I just
7 remember three years being in my head. But I know it was at
8 least five -- five years.

9 Q All right. So five years in prison with maybe a
10 three year minimum mandatory?

11 A That might have been it.

12 Q But you're not sure?

13 A I'm not sure. I know it was five years, yeah.

14 Q And you mentioned something going on that seemed to
15 be a little bit unusual. Mr. Pleas had a -- an attorney?

16 A Correct.

17 Q And could you explain what you mean by when you said
18 that?

19 A He hired Barbara Hobbs to represent him. We
20 subpoenaed him a few times. I know it was like -- it was a --
21 I think an adversary preliminary hearing that we scheduled and
22 he either didn't show up or didn't want to testify when he did
23 show up. And eventually he hired Attorney Hobbs to represent
24 him and kind of advocate for him to say that he didn't want to
25 testify.

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1 Q And was -- sounds like he was being uncooperative,
2 but he was being uncooperative both with you and also with the
3 State; is that correct?

4 A Well, yes, yes. He didn't want to show up for
5 anything.

6 Q He, in fact, testified that he was not necessarily
7 wanting the defendant prosecuted?

8 A Correct.

9 Q And y'all knew that ahead of time; right?

10 A Yes.

11 Q Now, whenever y'all were discussing the plea and
12 whenever you said you actually had encouraged the defendant to
13 take the plea, the defendant at the time was charged with
14 attempted first degree murder; is that right?

15 A Yes.

16 Q And he had been charged with possessing a firearm
17 and discharging a firearm as part of that attempted first
18 degree murder?

19 A Yes.

20 Q So he had potential exposure of life in prison;
21 didn't he?

22 A Yes.

23 Q With a minimum mandatory of 20 years?

24 A Yes.

25 Q And that would have been explained to him; is that

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1 correct?

2 A Correct.

3 Q And now did every time you have a conversation with
4 the defendant about taking the plea, was Mr. Handfield there?

5 A No.

6 Q All right. Now, why were you telling him to take
7 the plea?

8 A Because of his exposure and because I thought I was
9 more familiar with Leon County jurors than Mr. Handfield was.

10 Q Now -- and you were telling the defendant this; is
11 that correct?

12 A Yes.

13 Q Were you also telling his family this?

14 A Yes.

15 Q Now why was the defendant telling you he did not
16 want to take the plea? If Mr. Handfield wasn't there, you
17 were explaining to him based upon your experience with Leon
18 County jurors, his exposure, why you thought he ought to take
19 the plea, why was he saying no?

20 A He never really said no to me. He really said, what
21 does my family think? And they really -- I think I was really
22 looked at as the help and not necessarily the attorney. And
23 they relied mostly on Mr. Handfield.

24 Q Is it fair to say the defendant was not really
25 wanting to make the decision himself?

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1 A He wanted input from his family.

2 Q And you talked to the family without Mr. Handfield
3 there?

4 A I don't know if all at one time. I know I pulled a
5 couple of people aside and said, Look, y'all really need to
6 think about this.

7 Q And how did they respond?

8 A Really nonresponsive; and again, kind of relied on
9 what Mr. Handfield was saying.

10 Q But in the end, this was a case where the person who
11 was shot was not wanting this case prosecuted and was
12 resisting attempts to come to court?

13 A Yes.

14 Q And, in fact, had testified at court that he was a
15 convicted murderer, that he did not want the defendant
16 prosecuted for this crime; is that correct?

17 A Yes.

18 Q Thank you.

19 MR. EVANS: No further questions.

20 THE COURT: Redirect.

21 MR. PUMPHREY: Just briefly.

22 REDIRECT EXAMINATION

23 BY MR. PUMPHREY:

24 Q Mr. Akbar, the -- do you recall ever having an
25 opportunity to actually depose Tyrone Pleas?

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1 A That's something I don't remember. I know we tried
2 to, but I don't remember if he actually showed up.

3 Q And you advised Mr. Jones to take the plea?

4 A I told him I thought he should take the plea.

5 Q But he then said, I want to see what my family says?

6 A Correct.

7 Q And Mr. Handfield is the one who talked with the
8 whole family, there were about 20 people?

9 A Yes.

10 Q And talked to them down the hall in this courthouse?

11 A Yes. I think we went into the depo room on the
12 third floor.

13 Q And then Mr. Handfield conveyed that information and
14 his recommendation to Rufus Brandon Jones?

15 A Yes.

16 Q Okay.

17 A And just to clarify, I mean, it's kind of coming
18 back. When -- when Mr. Bauer made the plea offer, I went to
19 Mr. Handfield and I said, it's a good offer on the table. So
20 Mr. Handfield wasn't a part of that conversation with myself,
21 Mr. Bauer and now Judge Hobbs. I went and told Mr. Handfield.
22 Mr. Handfield was kind of like, well, you can go talk to him
23 about it if you want to.

24 I went and talked to Mr. Jones about it. And
25 Mr. Jones' response was always, you know, what does my family

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1 think, and relied on Mr. Handfield. And then when I went
2 back, that's when they had the conversation with the whole
3 family. And it was, he can take it, but I'm pretty confident
4 I'm going to walk him out of here.

5 Q Now, this -- the State got into a little bit of the
6 case. This was a case of self-defense by Mr. Jones?

7 A Yes.

8 Q But this is also a case where there's no dispute
9 about him firing a gun because he had a taped confession?

10 A Yes.

11 Q And that came out in the trial?

12 A Yes.

13 Q And in that case, in order for there to be favorable
14 testimony, that would mean Mr. Pleas would have to get up and
15 admit that he was trying to kill or seriously injure Mr. Rufus
16 Brandon Jones?

17 MR. EVANS: Objection, I think it's argumentative as
18 to what favorable testimony is.

19 THE COURT: I agree. I'll sustain the objection.

20 BY MR. PUMPHREY:

21 Q Let me ask you this: Had Mr. Pleas, to your
22 knowledge, ever testified or told you that he was going to say
23 anything that would support the self-defense case?

24 A No.

25 MR. PUMPHREY: A moment, Your Honor.

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1 THE COURT: Mr. Akbar, would you read -- I don't
2 know if you've read the transcript. Would you read
3 Page 16 through 18 there about what was going on that
4 morning? And then I have a question or two.

5 (Witness complies.)

6 THE WITNESS: Yes, sir.

7 THE COURT: Had you read that?

8 THE WITNESS: I had not previously, no.

9 THE COURT: Maybe that helps clarify what was going
10 on there that morning a little bit.

11 THE WITNESS: Yes.

12 THE COURT: Apparently we started, I don't know,
13 8:30 or 9:00, 8:30 according to the transcript, and
14 Mr. Pleas was a no show. Is that what you recall?

15 THE WITNESS: Yes, sir.

16 THE COURT: And Mr. Bauer asked for some time to see
17 if his witness would show up; is that correct?

18 THE WITNESS: Correct.

19 THE COURT: So what was going on between that and I
20 guess we start back, it was -- it looks like we broke at
21 9:07 and came back at 10:30, reading Page 16. What was
22 going on in the meantime?

23 THE WITNESS: That would have been when I -- me,
24 myself, and Judge Hobbs, Attorney Hobbs at the time, had
25 the conversation with Mr. Bauer about the plea, like

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1 about getting the plea down as low as possible.

2 And I think that's when we got it to five years. It
3 might have been ten before that or seven. It might have
4 been more than that before that. We got it down to the
5 five years. And that's where the three years come in
6 because I believe he had enough credit where he would
7 probably get out in three with gain time and everything.

8 At that time, Mr. Handfield I believe was speaking
9 to the family. I then came back out and said, hey, here
10 is what the plea offer is. Mr. Handfield said, well, you
11 can go talk to Mr. Jones about it; I still don't think
12 it's a good deal. I came back and talked to Mr. Jones
13 about it. He said, let me talk to the family. Well, he
14 said, what does the family think?

15 I went back out, kind of was a part of the
16 conversation with the family, but Mr. Handfield kind of
17 ran the conversation. And in between that time, like I
18 said, like I think -- I know I pulled I think his uncle
19 aside and said, look, I really think you need to take
20 this.

21 And then Mr. Handfield came back in, I believe, and
22 spoke to Mr. Jones. And I don't remember the exact words
23 of the conversation, but I know it was always, I'm
24 confident that we can walk -- we can walk out of here,
25 even with Mr. Pleas showing up.

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1 And then he said he didn't want it. And then -- but
2 I handled the whole, the colloquy on it.

3 THE COURT: But apparently Judge Hobbs had told you
4 her client was going to show up?

5 THE WITNESS: Yes. Well, he was here that morning.

6 THE COURT: Well, I know, but he wasn't here at
7 8:30, apparently.

8 THE WITNESS: When he -- when Ms. Hobbs came, they
9 showed up together.

10 THE COURT: Okay.

11 THE WITNESS: Yeah, they showed up together. So he
12 was outside when all the conversations were going on.

13 THE COURT: So Mr. Bauer made this offer, knowing --
14 and y'all knew at that point that Pleas was present?

15 THE WITNESS: Correct. We didn't know what he was
16 going to testify to, but we knew he was here.

17 THE COURT: Right, you knew he was present.

18 THE WITNESS: Yeah.

19 THE COURT: And apparently from this transcript, and
20 I had not had a recollection of that, apparently there
21 was another case involved in the plea offer?

22 THE WITNESS: Yes, it was a battery on law
23 enforcement officer that took place.

24 THE COURT: And you were representing Mr. Jones by
25 yourself on that one; correct?

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1 THE WITNESS: Correct.

2 THE COURT: Mr. Handfield wasn't counsel of record
3 on that one?

4 THE WITNESS: Correct.

5 THE COURT: What did that involve?

6 THE WITNESS: That was a fight at the jail with a
7 corrections officer at the jail. I think it was on video
8 as well.

9 THE COURT: So as I read the transcript, the plea
10 involved resolving both cases; is that correct?

11 THE WITNESS: Correct, correct.

12 THE COURT: Was the other case very defensible?

13 THE WITNESS: There were some issues there, but not,
14 not really. But I think if it was separated from the
15 attempted murder, we probably could have worked out
16 something better than five years. And I think that's
17 what they were banking on.

18 THE COURT: But it may well have involved a prison
19 sentence?

20 THE WITNESS: It could have, yes.

21 THE COURT: And you say it was videotaped?

22 THE WITNESS: It was on video, yes.

23 THE COURT: I mean, most of what happens at the jail
24 is on video.

25 THE WITNESS: Yes, correct. I think they had a body

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1 cam -- no, the Taser had a camera on it. And so you were
2 able to see what happened right before he was Tased.

3 THE COURT: I made some inquiry. Any further
4 inquiry on that, Mr. Pumphrey?

5 MR. PUMPHREY: Briefly.

6 FURTHER EXAMINATION

7 BY MR. PUMPHREY:

8 Q So, Mr. Akbar, there were ongoing plea negotiations
9 with Mr. Bauer concerning resolving Mr. Jones' case prior to
10 the date of trial?

11 A Yes.

12 Q And on the day of trial, I think what the Court
13 brought out is that Mr. Bauer on the day of trial offered to
14 combine concurrent sentences for five years that would be
15 non-minimum mandatory?

16 A Yes.

17 Q okay.

18 A Yes.

19 Q Okay. All right.

20 THE COURT: Anything further, Mr. Evans?

21 MR. EVANS: No, Your Honor.

22 THE COURT: All right. You can step down.

23 THE WITNESS: All right. Thank you, Your Honor.

24 THE COURT: Do we need to keep Mr. Akbar any
25 further?

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1 MR. PUMPHREY: I don't think so.

2 THE COURT: Do you need him for any reason,

3 Mr. Evans?

4 MR. EVANS: No, Your Honor.

5 THE COURT: All right. You're excused. Thank you
6 for being here.

7 Call your next witness.

8 MR. UFFERMAN: Your Honor, I believe our next
9 witness is going to be Mr. Bauer. I was told by the
10 bailiff that he is here. I went out a little bit ago and
11 I didn't see him right outside the courtroom. Can I go
12 out and look for him, please?

13 THE COURT: You may.

14 MR. UFFERMAN: Thank you. We were trying to take
15 the attorneys first so we can let them move on with their
16 day.

17 (Pause.)

18 MR. UFFERMAN: Your Honor, I don't see him out there
19 so I don't want to waste any time. We'll call Mr. Jones
20 next and then hopefully Mr. Bauer will be available as
21 soon as Mr. Jones' testimony is over.

22 THE COURT: Okay.

23 MR. PUMPHREY: Your Honor, I call Brandon Rufus
24 Jones [sic].

25 THE COURT: If you'd face the clerk and be sworn,

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1 please, sir.

2 Whereupon,

3 RUFUS BRANDON JONES

4 was called as a witness, having been first duly sworn, was
5 examined and testified as follows:

6 MR. PUMPHREY: May it please the Court.

7 THE COURT: You may.

8 DIRECT EXAMINATION

9 BY MR. PUMPHREY:

10 Q Can you please state your full name, spell your
11 first, middle, and last name for the record? And, if you
12 would, lean forward a little bit or pull that mike closer to
13 you so we have a good record.

14 A Rufus Brandon Jones, sir.

15 MR. PUMPHREY: Judge, can you hear that? It doesn't
16 sound like it's --

17 THE DEFENDANT: Rufus Brandon Jones, sir.

18 MR. PUMPHREY: Hold on a second.

19 THE COURT: Go ahead.

20 THE WITNESS: Rufus Brandon Jones, sir.

21 MR. PUMPHREY: There we go.

22 BY MR. PUMPHREY:

23 Q We have to make sure that this is capturing
24 everything we're saying so.

25 A okay.

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1 Q Mr. Jones, you just saw Attorney Akbar testify?

2 A Yes, sir.

3 Q And the -- was Mr. Akbar accurate in his description
4 of his position in the case?

5 A Yes, sir.

6 Q Okay. You had a lead attorney, Mr. Handfield?

7 A Yes, sir.

8 Q And where was he from?

9 A Miami, Florida.

10 Q And describe Mr. Handfield on the day of trial.

11 A Confident, confident that we was going to win.

12 Q Did he convey that to you on a number of occasions
13 while you were here in the courtroom and during the break?

14 A Yes, sir.

15 Q And what did Mr. Handfield -- first of all, had
16 Mr. Handfield ever talked to you prior to that day in court
17 about Tyrone Pleas' testimony?

18 A Yes, sir. He told me that his testimony will be
19 favorable in my behalf.

20 Q Okay. Did he ever tell you whether he ever actually
21 talked to Mr. Pleas?

22 A I can't recall, sir.

23 Q Okay. Do you know whether or not he ever gave you a
24 transcript or a deposition?

25 A No, sir.

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1 Q And how many times on the day of trial did he tell
2 you what his impression of Tyrone Pleas' testimony would be
3 regarding your defense?

4 A He just -- he said that his testimony will be
5 favorable on my behalf.

6 Q And are you an attorney?

7 A No, sir.

8 Q Have you ever been to law school?

9 A No, sir.

10 Q Okay. At that time, had you ever been to prison?

11 A No, sir.

12 Q You've been in trouble before?

13 A No, sir, not in serious trouble before.

14 Q Okay. But not -- not facing prison --

15 A No, sir.

16 Q -- and being in custody for murder?

17 A No, sir.

18 Q And your defense was self-defense; is that your
19 understanding?

20 A Yes, sir.

21 Q And what did your attorney say about taking the five
22 year plea the day of trial?

23 A He told me to reject it, the five year plea offer,
24 Larry Handfield, my former attorney.

25 Q What did he tell you about the outcome of the case?

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1 A He said that it's going to be a win.

2 Q Did you follow your attorney's advice when the Court
3 questioned you about whether to accept or reject the plea?

4 A Of course.

5 MR. PUMPHREY: A moment, Your Honor.

6 (Attorneys confer.)

7 BY MR. PUMPHREY:

8 Q Mr. Jones, prior to that day of trial -- I want to
9 back up. You were placed in custody and arrested and stayed
10 in custody until your trial date?

11 A Yes, sir.

12 Q And during that period of time, did your attorney
13 indicate to you that you should take any plea offers?

14 A No, sir, not at all.

15 Q And when I say, "your attorney," Mr. Handfield.

16 A Larry Handfield, yes, sir.

17 Q Now, Mr. Akbar had shared with you he thought you
18 should take the offer the day of trial?

19 A I can't recall. I remember him kind of saying
20 something about it. I can't really recall.

21 Q Now, you sat through the trial?

22 A Yes, sir.

23 Q And you heard Mr. Pleas' testimony?

24 A Yes, sir.

25 Q And prior to sitting through the trial, what did

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1 your attorney tell you that Mr. Pleas' testimony would be
2 regarding your defense?

3 A He said his testimony should be favorable, will be
4 favorable.

5 Q When you sat through the trial, did you hear
6 favorable testimony from Mr. Pleas?

7 A No, sir.

8 Q Had you known prior to the trial that Mr. Pleas was
9 going to testify the way he did at trial, what would you have
10 done concerning the five year plea offer?

11 A I would -- I would have accepted, sir.

12 Q Why?

13 A Because he was not favorable for me.

14 Q Was there anything he testified to that supported
15 self-defense?

16 A No, sir.

17 Q Did you understand the technicalities and preparing
18 and putting on a self-defense case?

19 A No, sir.

20 MR. BAUER: Your Honor, did you wish for me?

21 THE COURT: You can step outside and we'll get to
22 you in a minute. Wait outside, please.

23 MR. PUMPHREY: May I have just a moment, please?

24 THE COURT: You may.

25 (Attorneys confer.)

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1 MR. PUMPHREY: I appreciate the Court's patience.

2 very briefly.

3 THE COURT: okay.

4 BY MR. PUMPHREY:

5 Q Mr. Jones, you heard Mr. Akbar say there were
6 ongoing negotiations prior to the trial date.

7 A Yes, sir.

8 Q Okay. And had Mr. Akbar or Mr. Handfield told you
9 exactly what Mr. Pleas was going to testify to?

10 A No -- repeat the question, sir.

11 Q Sure. Did they give you a transcript or go over
12 what Mr. Pleas' testimony would be at trial?

13 A No, sir.

14 Q And had you known what his testimony was during the
15 trial, when even the offer -- Mr. Akbar said there was a ten
16 year offer, maybe a seven year offer, what would you have done
17 to those offers if you had known what Mr. Pleas was going to
18 say?

19 A I would have -- I would have accepted.

20 MR. PUMPHREY: No further questions, Your Honor.

21 THE COURT: Cross.

22 MR. EVANS: Yes, Your Honor.

23 CROSS EXAMINATION

24 BY MR. EVANS:

25 Q Mr. Jones, you've been convicted of the second --

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1 attempted second degree murder that we're here on this case
2 on; is that correct?

3 A Yes, sir.

4 Q And the battery of a law enforcement officer,
5 resisting without violence, did you enter pleas to those
6 cases?

7 A Did I -- can you repeat the question, sir?

8 Q Did you enter pleas to those cases?

9 A Yes, sir; yes, sir.

10 Q And are there any other felony convictions besides
11 those three?

12 A No, sir.

13 Q Now, the -- Mr. Handfield was hired to represent you
14 on this case, the attempted murder case; is that right?

15 A Yes, sir.

16 Q And then Mr. Akbar was hired on the other case, the
17 battery on law enforcement, resisting without violence,
18 solely, to represent you?

19 A Mr. -- Mr. Akbar was hired for both cases. He was
20 the assistant in the first case and he was hired on the second
21 case.

22 Q As primary on the second case?

23 A Yes, sir.

24 Q Now, why was Mr. Handfield hired for the first case?

25 A To represent me, sir.

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1 Q And why not just go with Mr. Akbar?
2 A Because that's the lawyer my family chose, sir.
3 Q So your family was the person who chose
4 Mr. Handfield and to -- and was paying Mr. Handfield; is that
5 right?

6 A Yes, sir.

7 Q Now, were you aware of Mr. Handfield's experience?

8 A No, sir.

9 Q Do you know why your family hired him?
10 A No, sir.

11 Q And what kind of relationship did you have with
12 Mr. Handfield?

13 A Regular client and lawyer relationship.

14 Q And did you value Mr. Handfield's advice?

15 A Of course, sir.

16 Q Now, he said that Mr. Pleas' testimony would be
17 favorable; is that right?

18 A Yes, sir.

19 Q Now, Mr. Pleas on cross-examination testified he
20 didn't see who shot him; didn't he?

21 A Repeat the question, sir.

22 Q Didn't Mr. Pleas testify on cross-examination -- did
23 Mr. Handfield get out of Mr. Pleas that he didn't see who
24 actually shot him?

25 A Yes, sir.

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1 Q And he also got out of him that he didn't press any
2 charges; is that right?

3 A Yes, sir.

4 Q Also got him to say, I don't know why I'm here?

5 A Yes, sir.

6 Q And that he didn't press any charges against you?

7 A Yes, sir.

8 Q And that he didn't believe that you should be
9 sitting there in trial?

10 A Yes, sir.

11 Q Is that right?

12 A Yes, sir.

13 Q Also got him to admit that Mr. Pleas had previously
14 been convicted of murder; is that right?

15 A Yes, sir.

16 Q And that he had -- there had been numerous problems
17 between Mr. Pleas and it was your mother; is that right?

18 A Yes, sir.

19 Q And so there was, in fact, some testimony that
20 seemed to be favorable to you. He didn't know who shot him,
21 couldn't identify who was being shot, didn't think you should
22 be charged with a crime, and that he was having trouble with
23 your mother, and he had previously been convicted of murder.
24 So all that was favorable testimony; wasn't it?

25 A No, sir.

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1 Q So you thought that all implicated you and that was
2 hurtful to your case that the person who got shot says, I
3 can't say that man shot me, I don't think that man should be
4 sitting here in court, I'm a murderer, and I have been having
5 problems with his mom. You don't believe that was favorable?

6 A No, sir.

7 Q Why did you reject the plea offer?

8 A Handfield advised me to, Larry Handfield advised me
9 to.

10 Q Because he said based upon his training and
11 experience he didn't believe -- he thought you had a good
12 chance of being acquitted; is that right?

13 A Yes. Well, he said he think -- he's confident that
14 he's going to win.

15 Q Now -- but in the end, it was your choice; wasn't
16 it?

17 A I was taking my lawyer advice, sir.

18 Q That wasn't the question. You said -- you already
19 told us you took your lawyer's advice, but in the end it was
20 your choice to make; wasn't it?

21 A Yes, sir.

22 Q And you were told you could take the plea offer, but
23 Mr. Handfield said he thought he could win?

24 A Can you repeat the question, sir?

25 Q In the end, you were told that it was your choice to

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1 make; that you could take the plea offer, but Mr. Handfield
2 thought he could win the case?

3 A Mr. Handfield advised me to not take the plea offer.
4 He said that he's confident that he's going to win.

5 Q But in the end, it was still said that it was your
6 decision?

7 A No, it wasn't said that it was my decision. He
8 said, don't take the plea offer, I'm confident that I can win.
9 He advised me not to take the five years.

10 Q Advising you not -- but you were asked by the Court
11 whether or not you -- not Mr. Handfield, not Mr. Akbar, not
12 your parents, not your family -- whether you wanted to reject
13 the offer or not. And you decided to reject the offer; isn't
14 that correct?

15 A I'm kind of confused, sir. I don't want to, you
16 know, confuse myself. Can you repeat the question, sir,
17 please?

18 Q In the end, the Court asked you whether or not you
19 rejected the offer; is that right?

20 A Yes, due to my counsel advice, yes, sir.

21 Q But in the end, it was your decision to make, not
22 your counselor's advice.

23 A Technically, by law, I guess so. I don't know. I
24 mean, yes, sir.

25 Q We all know from what your testimony is that you

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1 took Mr. Handfield's advice.

2 A Yes, sir.

3 Q But in the end, it was your decision to make. And
4 you made the decision to follow his advice as opposed to
5 following Mr. Akbar's advice; is that right?

6 A I followed my -- yes, sir, I followed my lawyer's
7 advice, sir.

8 Q Well, you had two lawyers. Mr. Akbar was saying,
9 take this plea?

10 A I don't really recall Mr. Akbar saying take the
11 plea, but I remember Handfield -- my focus was on Larry
12 Handfield because he was the lead attorney in this case, sir.
13 So that's --

14 Q What about the other case, was Mr. Akbar telling you
15 to take the plea in that case?

16 A Yeah, he was -- he was actually the lead attorney in
17 the case, sir. That's why I listened to him.

18 Q And so he was telling you to take the five years
19 that would include both cases; is that right?

20 A Yes, sir, and I took it.

21 MR. EVANS: No further questions, Your Honor.

22 THE COURT: Redirect.

23 MR. PUMPHREY: None, Your Honor.

24 THE COURT: All right. You can step down.

25 MR. PUMPHREY: Your Honor, next we'd call -- does

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1 the Court want to take a recess?

2 THE COURT: No, we're good.

3 MR. PUMPHREY: We'd call Mr. Bauer.

4 THE COURT: Unless somebody needs a recess.

5 MR. PUMPHREY: No, sir.

6 THE COURT: If you'd face the clerk and be sworn,
7 please, sir.

8 whereupon,

9 MICHAEL JOHN BAUER

10 was called as a witness, having been first duly sworn, was
11 examined and testified as follows:

12 THE COURT: Slide up to the microphone, please, sir.

13 DIRECT EXAMINATION

14 BY MR. PUMPHREY:

15 Q Good morning, Mr. Bauer.

16 A Good morning.

17 MR. PUMPHREY: May it please the Court.

18 BY MR. PUMPHREY:

19 Q Mr. Bauer, can you please state your full name for
20 the record?

21 A Michael John Bauer.

22 Q All right. In the case of State of Florida v. Rufus
23 Brandon Jones, you were the prosecutor over two cases?

24 A I remember one case, it was an attempted first
25 degree murder.

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1 Q Okay. There was -- do you recall also there was a
2 pending separate case, not in the same charging document,
3 battery on a law enforcement officer?

4 A You could refresh my memory; I don't recall that,
5 though.

6 MR. PUMPHREY: Your Honor, may I refresh the
7 witness's memory?

8 THE COURT: Yes.

9 MR. PUMPHREY: Your Honor, for Court and counsel,
10 the sentencing hearing transcript. If I may approach?

11 THE COURT: You may.

12 (Document shown to the witness.)

13 THE WITNESS: I see the transcript and there appears
14 to be a matter where he may have been Tased and it may
15 have resulted in a charge of battery on a law enforcement
16 officer. I don't really recall that, but I see it in the
17 transcript.

18 BY MR. PUMPHREY:

19 Q All right. Does that refresh your recollection?

20 A It does. I mean, I'll submit to the transcript as
21 being correct.

22 Q And so prior to the day of trial on the murder case,
23 there had been ongoing negotiations to resolve the murder case
24 with you and Mr. Akbar?

25 A Yes. Well, there was another gentleman, I think

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1 Larry Handfield from Miami. I knew Mr. Akbar pretty well. He
2 and I spoke. Mr. Handfield, from my impression, I could be
3 wrong, but he seemed to take the lead on matters.

4 And here's what I recall: Making an offer of five
5 years, the record can correct me if I'm wrong. There were
6 some problems with the case. Tyrone Pleas, I believe it was,
7 was the victim. Jack Poitinger had convicted him of murder
8 and he had a 15-year sentence under his belt. But then when
9 you look at the case, Mr. Pleas was shot in the back and the
10 bullet came out through the front. I do remember that very
11 clearly. He went out on the porch and felt his flesh in the
12 front. He thought he was dying.

13 So looking at all that, I made an offer, I recall,
14 of five years. Somebody said I made an offer of three years;
15 I do not recall that. I recall making an offer of five years
16 prior to trial.

17 Q Okay. And, Mr. Bauer, prior to the trial date, on
18 the ongoing negotiations, do you recall making a plea offer of
19 ten years at one point, seven years, and then five years
20 without combining the two cases?

21 A I don't recall anything but the five, but the record
22 will speak if there is anything else out there. I remember
23 making an offer of five years.

24 Q So, and permission with the State, on the day of
25 trial though, you made a plea offer of five years to resolve

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1 both cases?

2 A I don't know when it was, but I remember the number.

3 And I remember it was rejected. Obviously, we went to trial.

4 Q And, Mr. Bauer, was there ever a stand your ground
5 motion filed in this case?

6 A No. I looked this up, this is a 2010 case. And
7 frankly, believe it or not, I've never had one of those
8 motions filed in any of my cases. So, no, I know it wasn't
9 filed in this case.

10 Q If Mr. Handsfield had, or Handfield, had decided to
11 run a stand your ground motion, would that have caused you to
12 pull the plea offer off the table at any time?

13 A Now that's a hypothetical, which didn't happen.

14 Q Agreed.

15 A But if you're asking me what my policy on plea
16 offers would have been -- and I came up under Jack Poitinger.
17 If you picked a jury, there was no plea offer. And there
18 would still be exceptions to that. If the case was going
19 south and the Court would accept it, there's always room, you
20 know, to avoid a strict -- very strict policy. But the policy
21 was if you bothered the jurors and had the jurors come in,
22 there would not be a negotiated plea.

23 Q Even setting all of that aside, there were
24 sufficient problems, you did make a plea to resolve both cases
25 on the morning of trial.

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1 A I don't know when it was, but the problems, from
2 what I recall -- and this case stands out. I've tried over
3 200 cases, but this case stands out because I believe Tyrone
4 Pleas was placed in handcuffs by the Court at one time. If
5 I'm not mistaken, he was uncooperative. He was dating the
6 defendant's mother. He wanted to keep the peace with the
7 mother.

8 And it seemed to be an argument over who was kind of
9 the man of the house, whether the son was the man or -- Tyrone
10 was the man or the son was the man. And there was an obvious
11 shooting in the back. There was some claim that Mr. Pleas was
12 going to get a weapon. I think Mr. Pleas says something, and
13 I recall this, I've got something for you. But we didn't know
14 what he was referring to, whether it was the holiday season,
15 if it was a present. And the defense argued it was a gun.

16 With all that being said and Mr. Pleas not being
17 very cooperative, I remember making, I thought, a very
18 generous plea offer for shooting somebody in the back of five
19 years. Mr. Handfield rejected it. I remember discussing this
20 with Mr. Akbar. And our discussion was he should have taken
21 the five years, but Mr. Akbar was not really in charge of, you
22 know, getting the plea offer to the defendant. Mr. Handfield
23 was in charge; he took the lead.

24 Q okay. And so I gave you the hypothetical of the
25 stand your ground. Let's back up to the pretrial where the

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1 jurors are not selected or inconvenienced. Whatever plea
2 offer you made pretrial, had they run any motions or anything
3 else, what was your practice as far as the plea offer?

4 A Again, this is a hypothetical --

5 Q Yes, sir.

6 A -- so it didn't happen. If someone filed a motion
7 on me, I guess I would have the justification for pulling a
8 plea offer. What my practice that I recall was, you know, I
9 took the oath to support the Constitution. If somebody wanted
10 to test a case, I would not really give them a hard time. I
11 do understand the policy if you take a deposition, if you file
12 a motion, there's no plea offer. I wouldn't have to make any
13 plea offer. What would I have done? I don't know.

14 But I would tell you that if we picked a jury, I
15 probably would not have made a plea offer. Unless the case
16 was going completely south and Tyrone was in handcuffs again,
17 I generally would not make a plea offer, if the jury was
18 selected. Anything else, I just don't know.

19 Q Now you, yourself, have practiced before Judge
20 Hankinson and this Court for how many years?

21 A I practiced as a prosecutor for 17 years, so.

22 Q And you now practice as a criminal defense attorney?

23 A Yes. I do general practice. I do civil law also.

24 Q And based upon your practicing in front of Judge
25 Hankinson, did you have any reason to believe that had Brandon

1 Rufus Jones accepted the five year plea offer, that the Judge
2 would have rejected it for any reason?

3 THE COURT: You need to put a time frame on that.

4 THE WITNESS: Yeah, which time? At which point?

5 BY MR. PUMPHREY:

6 Q At trial, the day of trial.

7 A The day of trial? From my understanding of the
8 Court's practice, there was a cutoff date of when you could
9 take a plea and that was generally the last pretrial. Could
10 the Court make exceptions, yes, but the Court didn't like to
11 make exceptions, didn't want a practice of it. And you'd
12 probably get the Court to make an exception under specific
13 circumstances, you'd explained it to the Court.

14 And it sure is nice to resolve a case rather than
15 spend a day or two days or even three days in trial, but
16 that's really up to the Court.

17 Q And understood. But based upon your experience and
18 exceptions and all the issues you listed out with Mr. Pleas,
19 is it your -- do you believe the Court would have accepted the
20 offer?

21 A Well, I can't answer what the Court would do. That
22 wouldn't be fair. I don't know.

23 Q Prior to the trial date, whatever offer was on the
24 table pretrial, do you have any reason to believe that there
25 was any circumstance that would cause the Court to reject the

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1 plea offer?

2 A Before the pretrial, no. If the case resolved
3 pretrial, that's the way I think over 90 percent of the cases,
4 95 percent of the cases go.

5 Q You brought up earlier that at the preliminary
6 hearing, Mr. Pleas -- I believe you said this on -- I've read
7 the transcript and I'm going by your -- what I think you said,
8 I want to clarify, that Mr. Pleas was placed in handcuffs by
9 the Court?

10 A I remember it. I remember him sitting -- I think it
11 was in this courtroom, I remember him being handcuffed. And I
12 remember thinking, because this is why it impresses me after
13 so many years, boy, is my case going south. I don't remember
14 when that was.

15 Q The circumstances concerning Mr. Pleas -- and also
16 the morning of trial, Mr. Pleas was supposed to be there at
17 8:30.

18 A This, I don't remember. I don't remember those
19 specifics. I remember difficulties with Mr. Pleas.

20 Q I'll rely on the record.

21 MR. PUMPHREY: A moment, Your Honor.

22 THE COURT: You may.

23 (Attorneys confer.)

24 MR. PUMPHREY: No further questions. Thank you,
25 Mr. Bauer. Tender the witness.

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1 THE COURT: Cross.

2 MR. EVANS: Yes, Your Honor.

3 CROSS EXAMINATION

4 BY MR. EVANS:

5 Q Mr. Bauer, I'd like you to take a look at the
6 transcript and see if this will refresh your recollection,
7 since you're having trouble remembering what occurred that
8 morning.

9 A Yes, sir. And I've seen no other paperwork other
10 than what Mr. Pumphrey provided so I was looking at the -- I
11 tried to look at this online before I came in here.

12 Q If you'll glance at Page 3 and part of Page 4 and
13 then go on to I think 11 through 18.

14 A If you give me a second, yes, sir.

15 Q Or if you want to glance at three through 18, that's
16 fine.

17 A (Witness complies.) You said three through five?

18 Q If you'll -- three through -- if you want to go
19 ahead and look at it through, I believe it was Page 17.

20 A Okay.

21 (Pause.)

22 THE COURT: We're probably about due for a break.
23 why don't we take ten minutes and then he can read
24 anything he wants to read.

25 (Recess taken from 9:59 a.m. to 10:10 a.m.)

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1 THE COURT: Be seated, please.

2 You may proceed, Mr. Evans.

3 MR. EVANS: All right. Thank you, Your Honor.

4 BY MR. EVANS:

5 Q Mr. Bauer, how long have you been an attorney?

6 A Since '95; so 22 years, 23 years almost.

7 Q And what type of law have you practiced?

8 A I was a -- I was in civil practice when I first
9 started, did some insurance defense. And I wanted to be a
10 prosecutor and I prosecuted cases for 17 years for Mr. Meggs.
11 And then I wanted to do other areas of the law, which I'm
12 doing now. I do civil, I do business, I do a lot of family
13 law, and I still do some criminal law quite a bit.

14 Q And what type of experience did you have back in
15 2000 -- July of 2011 when this case was tried?

16 A 2011, I was -- I would have been board certified at
17 that time. I was board certified in criminal trial law back
18 in 2003. So I had a lot of -- a lot of experience.

19 Q And you had been a prosecutor a long time and had a
20 long time of evaluating cases; is that correct?

21 A Oh, yes.

22 Q Now, in this case, let's talk about the plea offer
23 that was made at the morning of trial. Was there a plea offer
24 that was made the morning of trial?

25 A From looking at the record, there appears to be a

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1 plea offer. And it looks like the plea offer was made, I
2 believe, after Mr. Pleas came to court. And I don't want to
3 speculate, but my practice would have been to confer with the
4 victim in the case. And he was represented by Barbara Hobbs,
5 who is a judge now, who was then an attorney for Mr. Pleas.
6 And I probably conferred with both of them and then it looks
7 like I made a plea offer.

8 Q Now -- and the plea offer was five years in prison
9 followed by ten years of probation, is what the record
10 reflects. Is that correct?

11 A Yes.

12 Q Now, Ms. Hobbs, not unheard of, but very -- but
13 fairly unusual to have a witness, a victim in a crime, be
14 represented by a lawyer in order for him to talk to a
15 prosecutor; is that correct?

16 A It could be. And I remember, you know, he had an
17 attorney, Ms. Hobbs. I know, and from what I recall, she
18 didn't really have the pressure on her at that time. She was
19 representing a witness. She wasn't about to do an opening
20 statement. The defense and I were both either going to work
21 this case out or try the case. The pressure was on us.

22 So Ms. Hobbs was kind of a third party, just kind of
23 interesting looking on. And she would then confer with, I
24 guess, Mr. Pleas, ask him about the plea offer. And I made
25 the plea offer.

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1 Q Okay. Now --

2 A It would have been my decision to make the plea
3 offer, but I would want the victim involved in that.

4 Q And I understand that. The focus of my question is
5 not why you made a plea or anything like that. The focus of
6 the question was it's somewhat unusual for a victim to have a
7 lawyer present and with them whenever they're talking to the
8 prosecutor and with the defense?

9 A Yes. It's not in many cases.

10 Q Now, Mr. Pleas didn't show up for trial that
11 morning; did he?

12 A He was late and that was worrisome because my
13 subpoena would have said 8:15. I would have liked the
14 witnesses to come to my office, the State Attorney's Office,
15 meet with me, express whatever they wanted to express. We
16 might give them instruction on what they could say or what
17 they couldn't say, not to run afoul of the Court, and just to
18 tell them how to be respectful in court.

19 I didn't -- I didn't coach victims or witnesses. I
20 would tell them how to behave and just to tell the truth. But
21 I never had that meeting. So I came down, I'm in court, and I
22 don't have my victim.

23 Q Now it was also the situation where you, in fact, at
24 some point had to ask for a continuance and was requesting an
25 order to show cause for Mr. Pleas; is that correct?

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1 A I mentioned it, I guess I didn't have to, but that's
2 something I would highlight for the Court. Judge, we don't
3 know how this is going to go and I know the Court wants to be
4 advised of what may be coming up in the future. I don't want
5 to ambush the Court with something new.

6 So I do recall, and the transcript shows, I
7 mentioned a continuance and I mentioned doing an order to show
8 cause if Mr. Pleas wasn't here. Because we still had a jury,
9 we had everything ready to go, except for Mr. Pleas.

10 Q And you wound up having to request the Court delay
11 it until 10:30 in order to try to secure the presence of
12 Mr. Pleas; is that correct?

13 A I believe so.

14 Q And eventually he did show up?

15 A He was here.

16 Q Now, had you previously had issues with him at a --
17 the Arthur hearing, pretrial motion hearing, bond hearing?

18 A Yes. There was a preliminary adversarial hearing
19 Mr. Handfield had conducted and Mr. Pleas was my first
20 witness. And I remember this, I have a visual memory of this.
21 Mr. Pleas could not get past the oath and kept wanting to ask
22 questions of the Court. And the Court simply wanted to put
23 him under oath. He would not cooperate and he was taken into
24 custody.

25 Q Did he wind up testifying at the hearing?

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1 A I don't believe he did.

2 Q Now, he was not being cooperative at that stage; was
3 he?

4 A I don't know what question he wanted to ask, but he
5 was not doing what the Court told him to do. He was not
6 cooperating with the Court.

7 Q Now, at the bond hearing, you also had the testimony
8 of Investigator Lewis; is that correct?

9 A Yes. It looks like the first officer was Azevedo,
10 and then Mark Lewis also testified.

11 Q All right. With the testimony of those officers,
12 Mr. Pleas had made a statement to them; hadn't he?

13 A Yes. It looks like all the statements came in
14 through the adversary hearing. I remember the Court's
15 instruction was the Court couldn't base bond on hearsay, but
16 hearsay was still admissible. So it looks like the statements
17 came in in the hearing.

18 Q And some of those statements that came in indicated
19 that Mr. Jones had been, in fact, threatened by Mr. Pleas; is
20 that right?

21 A That was Mr. Handfield's position. I remember the
22 statement, I've got something for you. I don't remember the
23 part where it said, wait, wait, wait. But I remember this, I
24 didn't need a transcript to remember that.

25 Q Did you look over Investigator Lewis' testimony?

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1 A I remember something, in looking at this, there was
2 an argument over how the mother was being treated by
3 Mr. Pleas. Like Mr. Pleas didn't put gas in the mother's
4 truck, there was some bad blood between Mr. Pleas and the
5 defendant.

6 Now, thinking back just on my memory, I remember
7 Mr. Jones was armed with a firearm. Mr. Pleas was not armed
8 with a firearm. And correct me if I'm wrong, I thought there
9 was another firearm in a stove somewhere. There was another
10 firearm somewhere that Mr. Jones had access to. I do remember
11 something like that.

12 Q All right. But I'm not asking any of that. What
13 I'm asking you is whether or not that Investigator Lewis
14 testified that the victim had made threats against the
15 defendant?

16 A I know what Mr. Pleas said was placed in the record.
17 whether that's a threat or not, I don't know.

18 Q Let me ask you a question --

19 A I mean, if you want to point to something, I can
20 agree with it, but I do remember he said, I've got something
21 for you, wait, wait. He turned his back, and he went to the
22 back room; that's when he was shot.

23 Q Go to the bottom of Page 29, top of Page 30.

24 A That sounds like a threat that may have been given
25 to me that he wanted to take care of matters himself, instead

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1 of having a plea offer or a trial.

2 Q Okay. Was that made to you or is that Investigator
3 Lewis testifying?

4 A Okay. This is -- okay, this is Mr. Lewis,
5 Investigator Lewis. I do recall that. Officer Lewis then
6 asked Mr. Pleas questions and it looks like Mr. Pleas told
7 Investigator Lewis that he wanted to take care of it himself.
8 And Officer Lewis says he wanted to kill Mr. Jones, I guess
9 street justice.

10 Q So there was a lot of testimony about what Mr. Pleas
11 had said and threats he had made and the relationship that was
12 made between the defendant's mother, Mr. Pleas, and Mr. Pleas
13 and the defendant, that indicated threats had been made and --
14 was that correct?

15 A There was threats. I guess the question, I did look
16 at the transcript to remember, and the question in my mind was
17 what did Mr. Jones know. And that was an issue in the trial.
18 But, yeah, there were threats made; no doubt.

19 Q And none of that was terribly helpful for your case;
20 was it?

21 A No, it was a difficult case.

22 Q And is that the reason, after somebody gets shot in
23 the chest, you charge them with attempted first degree murder,
24 have a 10-20-Life minimum mandatory, that you're offering five
25 years in prison even --

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1 A Yeah.

2 Q And that includes the fact that when the defendant
3 got to the jail, he wound up getting charged with
4 additional -- a battery on a law enforcement officer and
5 resisting with violence once he's there?

6 A I didn't recall that second case until today, but I
7 would have made the offer based on the difficulty of the
8 victim. And then still said, this is not a case I can drop.
9 Somebody was shot and almost killed. And, you know, if
10 somebody has a criminal history, do they have a death
11 sentence? You know, that's the issue that you look at as a
12 prosecutor. No, he's entitled to the enjoyment and protection
13 of the law as anybody else. I made the best offer, I thought,
14 and they didn't take it.

15 Looking at the transcript, I will tell you that both
16 attorneys spoke to Mr. Jones. He didn't want it. He had a
17 good chance to win the case.

18 MR. EVANS: Thank you. No further questions.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MR. PUMPHREY:

22 Q Mr. Bauer, I believe your testimony earlier on
23 direct examination was that with the difficulties with
24 Mr. Pleas on May 2nd, your case started going south; is that
25 accurate?

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1 A I don't know if it started going south, but things
2 were obvious in the record where it was before that day. We
3 obviously did get Mr. Pleas to come to court, he was placed in
4 handcuffs, it was a very unusual situation.

5 Q Okay. And so -- and based upon your
6 cross-examination, your evaluation of your own case was you
7 had some pretty severe difficulties, considering how Mr. Pleas
8 acted before the court?

9 A Yes. And then another concern I guess, looking at
10 officer Lewis' testimony, do I want Mr. Pleas to go out and
11 take care of this himself? Absolutely not. I'm supposed to
12 be keeping the peace.

13 Q So after that testimony on that day on May 2nd,
14 understanding you have problems with the case but somebody has
15 been shot, do you recall making a plea offer to Mr. Akbar?

16 A Oh, yes. I made a plea offer to both counsel.

17 Q Okay.

18 A Five years, followed by ten years. And it looks
19 like even on the day of trial after Mr. Pleas showed up, I
20 made the plea offer. And it looks like both Mr. Handfield and
21 Mr. Akbar both confer with Mr. Jones. He did not want the
22 plea offer.

23 Q When they conferred with Mr. Jones, did they confer
24 separately? Do you recall the sequence?

25 A I think the record shows that both counsel addressed

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1 the Court and they both -- I don't know if they both took
2 turns with him separately or they were together, but I know
3 the record shows they both told the Court that he did not want
4 the offer.

5 Q And just for clarification, after the
6 May 2nd hearing when you made a plea offer prior to trial,
7 prior to jury selection, was that plea offer only as to the
8 murder case?

9 A It probably would have been a package deal, but I
10 can't -- I can't answer that. I know the murder case was the
11 one we were trying; we weren't trying the other case. So I
12 can't be sure on that.

13 Q And just so the record is clear, that was a separate
14 charging document, a separate incident that occurred at the
15 jail --

16 A Right.

17 Q -- after some point?

18 A It appears to be two separate -- entirely separate,
19 separately charged cases.

20 Q But you -- you definitely know that you made the
21 plea offer after May 2nd, or shortly thereafter, to try to
22 resolve the case?

23 A It looks like I made the plea offer before the jury
24 would have come in for opening statements.

25 Q Right, but I'm talking about before you ever picked

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1 a jury, after the May 2nd when your case starts going south.

2 A Right, I made -- I think it was probably the same
3 plea offer I made before. And I think -- I don't know if they
4 even talked to me about coming down. What I recall is I made
5 five years and there was no way Mr. Jones was going to take
6 anything near five years. I didn't think the case was worth
7 less than that, and then we would let a jury and a Court
8 decide what should happen.

9 Q And when you say Mr. Jones would take nothing, you
10 were communicating with his attorneys, not him directly;
11 right?

12 A Right, but they were adamant. He would not take
13 five years, this was going to be a trial.

14 Q And so we delineate Mr. Akbar and Mr. Handfield.
15 Was Mr. Handfield the one that was being adamant?

16 A Mr. Handfield was in charge. He seemed to be kind
17 of a big presence. He was from Miami and here he was in our
18 small town and he was going to take over, but Mr. Akbar knew
19 the ropes of the local community. They were both involved.
20 Mr. Handfield kind of took over; they both participated. I
21 remember speaking with Mr. Akbar and it was kind of, he should
22 have taken the five years. But I know they were both
23 involved. Mr. --

24 Q Did --

25 A Go ahead.

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1 Q -- did Mr. Handfield ever indicate to you at any
2 time that he believed that Mr. Jones should take the plea
3 offer? And I understand what you said about Mr. Akbar.

4 A No, they didn't want the plea offer. And from what
5 I was told, this was coming from Mr. Jones. He didn't want to
6 plea. Maybe he thought what he did was correct or he didn't
7 think I could get a conviction, but there's no way they were
8 taking five years.

9 Q And that came from Mr. Handfield?

10 A Well, apparently from both counsel as they addressed
11 the Court.

12 Q All right.

13 MR. PUMPHREY: A moment, Your Honor.

14 No further questions.

15 THE COURT: All right. You can step down. Do we
16 need to keep Mr. Bauer any further?

17 MR. PUMPHREY: No, Your Honor.

18 MR. UFFERMAN: No, Your Honor.

19 MR. EVANS: No, Your Honor.

20 THE COURT: You're free to go. Thank you for being
21 here.

22 MR. UFFERMAN: May we confer for one moment, Your
23 Honor?

24 THE COURT: You may.

25 MR. UFFERMAN: Thank you.

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1 (Attorneys confer.)

2 MR. PUMPHREY: Judge, based upon the State's --
3 Mr. Handfield, I don't believe he is here yet. The State
4 and the defense have stipulated to go ahead and put on
5 the other witnesses we were going to save for rebuttal,
6 get the testimony on. It shouldn't be too long.

7 I also have -- we also have two joint documents that
8 the State is stipulating to be entered into the record as
9 part of the evidentiary portion of this case. So I'd
10 move those into evidence without objection.

11 THE COURT: This is the Bar referee reports on
12 Mr. Handfield. Is that what you're referring to?

13 MR. PUMPHREY: Yes, sir. Mr. Handfield was
14 convicted of misdemeanor tax evasion. And I believe the
15 State agrees that that is a crimen falsi. There were two
16 convictions.

17 THE COURT: Agrees what?

18 MR. EVANS: Those are impeachable offenses, Your
19 Honor.

20 THE COURT: Well, it's a little unusual to put
21 anything in the record other than whether someone has
22 been convicted of a crime of dishonesty. Why would we
23 make an exception in this case?

24 MR. EVANS: Your Honor, one of the reasons agreeing
25 to putting it in, it also includes there that he had

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1 exemplary conduct otherwise and that -- and his
2 reputation as a lawyer is in there as well. Basically
3 that's the reason I agreed to it was because of the
4 findings.

5 THE COURT: So it's Joint Exhibit 1 and 2 and the
6 parties are stipulating to its admission?

7 MR. PUMPHREY: Yes, sir, Your Honor.

8 THE COURT: All right. It will be admitted.

9 (Joint Exhibit Nos. 1 and 2 received in evidence.)

10 MR. EVANS: And, Your Honor, I've been told
11 Mr. Handfield has, in fact, landed and is headed toward
12 the courthouse. So that looks good on that part. But if
13 we call the other witnesses out of order, it will be fine
14 with me because we would move things along.

15 THE COURT: Well, I mean, I hate to call somebody if
16 it's going to be unnecessary. That's the only thing. If
17 you're just trying to fill time, let's not just fill
18 time.

19 MR. PUMPHREY: May I have a moment, Your Honor?

20 (Attorneys confer.)

21 MR. PUMPHREY: Judge, after conferring with
22 cocounsel, that's exactly what we were going to do is try
23 to fill the time. And so if the Court wants to take a
24 recess or an early lunch --

25 MR. UFFERMAN: Your Honor, we will announce on the

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1 record then that we rest.

2 THE COURT: All right. Let's not just call somebody
3 just for the purposes of filling time. I know y'all try
4 not to incur my displeasure, but it's not going to assist
5 by just filling time. If we need the rebuttal, we will.

6 Do you have an ETA on Mr. Handfield, Mr. Evans?

7 MR. EVANS: I got the e-mail a few minutes ago. I'm
8 hoping he is going to be here in the next 20 minutes so
9 if we want to break --

10 THE COURT: Break until 11:00?

11 MR. EVANS: Yes, sir.

12 THE COURT: Do you think he'll be here by 11:00?

13 MR. EVANS: Yes, sir.

14 THE COURT: Would that suit everybody?

15 MR. PUMPHREY: Yes, sir.

16 THE COURT: I can read over what you've just handed
17 me. And I was reading back over some of the transcripts
18 anyway. If y'all have any case law you're going to be
19 relying upon, it would help me to get it now, too. I'd
20 have a chance to read over that.

21 MR. UFFERMAN: May I approach, Your Honor?

22 THE COURT: You may.

23 MR. UFFERMAN: I'll provide a copy to opposing
24 counsel as well.

25 THE COURT: Thank you. All right. Let's adjourn

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1 until 11:00. Do you have anything you want me to read?

2 All right. We'll be in recess until 11:00.

3 (Recess taken from 10:30 a.m. to 11:00 a.m.)

4 THE COURT: Be seated, please, folks.

5 If you'd face the clerk and be sworn, please, sir.

6 whereupon,

7 LARRY R. HANDFIELD

8 was called as a witness, having been first duly sworn, was

9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. EVANS:

12 Q Would you state your name for the record, please,

13 sir?

14 A Larry R. Handfield, H-A-N-D-F-I-E-L-D.

15 THE COURT: Let me make a preliminary comment before
16 we proceed. Mr. Handfield, the matters we're going to be
17 discussing here today normally would be privileged
18 matters. However, Mr. Jones has asserted ineffective
19 assistance of counsel against you. Therefore, he has
20 waived the attorney-client privilege. I'm going to ask
21 that you answer any questions related to the topics here,
22 please.

23 THE WITNESS: Yes, thank you.

24 BY MR. EVANS:

25 Q Mr. Handfield, what is your profession?

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1 A I'm an attorney.

2 Q And how long have you been an attorney?

3 A About 36 years.

4 Q And what type of -- have you had experience in
5 criminal law?

6 A I specialize in complex criminal cases.

7 Q And how long have you specialized in complex
8 criminal cases?

9 A Well over 30 years.

10 Q And have you had jury trials before?

11 A Hundreds.

12 Q And have you had cases where pleas were entered?

13 A Hundreds.

14 Q Now, do you recall representing Mr. Jones?

15 A Yes.

16 Q And do you recall how you came about to represent
17 him?

18 A Yes. A family member contacted me, I believe Pamela
19 Jones, who was a person that lives in Miami. I have
20 represented other family members; specifically, I recall
21 Leonzie or Cornelius Jones, who was charged with first degree
22 murder in Miami, and went to trial and won that case. So I --
23 the family members knew me. I knew some of them, I didn't
24 know Mr. Jones. But to answer your question, I was retained
25 by virtue of the family members in Miami.

1 Q Okay. And so you had a track record with the family
2 members --

3 A Yes.

4 Q -- that wound up hiring you --

5 A Yes.

6 Q -- including one where there was an acquittal in a
7 first degree murder case?

8 A Yes.

9 Q Now, Mr. Akbar was brought on as local counsel; do
10 you recall?

11 A Yes.

12 Q And do you know why he was brought on as local
13 counsel?

14 A Basically to assist me. By virtue of the fact that
15 even though I try cases pretty much in different jurisdictions
16 all over the state of Florida and other states as well, as
17 well as federal, by the client being in Tallahassee, I thought
18 it would be beneficial for purposes of having Akbar on to
19 assist. And that was the reason.

20 Q Now, in this case, do you recall a person by the
21 name of Tyrone Pleas?

22 A He was the victim.

23 Q And do you recall whether or not Mr. Pleas was a
24 cooperative victim?

25 A No, he was not.

1 Q And, in fact, do you recall at a -- the bond motion
2 hearing whether or not he was --

3 THE COURT: I think it was an adversary preliminary
4 hearing is what we're talking about.

5 BY MR. EVANS:

6 Q Okay. The May 2nd, 2011, hearing, the adversarial
7 probable cause hearing.

8 A Yes.

9 Q Do you recall having one of those?

10 A Yes.

11 Q Do you recall whether or not Mr. Pleas wound up
12 showing up to that?

13 A Yes. He may have been late, but he did appear.

14 And, obviously, from what I recall, his conduct in court
15 became confrontational with both the prosecutors, the Judge,
16 and myself. That was -- would be the extent of what I recall.
17 But he was not cooperative. He was -- he was inconsistent.
18 So he was not a cooperative person.

19 Q In fact, the Court took him into custody and took a
20 recess before they started calling other witnesses; is that
21 right?

22 A Now that you mention that, that is correct.

23 Q And even in his statement to the police, had he been
24 cooperative with the police in telling what was going on?

25 A No. As a matter of fact, when this incident first

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1 happened, I believe when the police located him, victim of a
2 gunshot wound, he claimed different things. He said he didn't
3 want to prosecute, first claimed that he didn't see who shot
4 him, didn't know anything. So he was very adversarial, at
5 best, even with law enforcement.

6 As a matter of fact, if my memory recall, they were
7 going to leave. And I felt that probably because they knew
8 his background, that he had been to prison for murder, and
9 that it was one of those situations, you know what, I don't
10 need this. You know, considering in their minds, I'm
11 assuming, you're already a bad guy and you've given us grief,
12 you don't want to cooperate, you're playing games with us, I'm
13 leaving.

14 And then apparently what happened as they were
15 walking out, he apparently called them back. And then that's
16 when he indicated information that directed and led to the
17 arrest of Rufus Jones. But it was clear he indicated that he
18 didn't see the shooting and that he didn't want to prosecute.
19 And so obviously that would be, as a defense attorney,
20 favorable evidence to even bring in front of a jury.

21 Q And do you recall at the time of trial whether or
22 not you were able to get that type of evidence out?

23 A Yes.

24 Q And what type of evidence were you able to get out?

25 A I was able to get out that he had been to prison for

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1 murder. I was able to get out that he indicated he didn't see
2 the shooting. I was able to get out that he indicated to the
3 detective that he did not want to prosecute the case. I was
4 able to get out that he was -- in my mind, had been stalking
5 Ms. Jones' mother, who was the victim, Mr. Pleas', girlfriend
6 at the time.

7 He admitted that they had had an argument. He
8 admitted that police was called to that location previously.
9 And that they had an argument to the point that he took -- she
10 left that day, and he took her phone, and he was driving
11 around town looking for her. And the fact that I was able to
12 get out that he had indicated to at least one person as he
13 drove around, as I call it hunting for Mr. Jones' mother, that
14 he was -- to one person he indicated that he was going to take
15 her life and his life.

16 Q Okay. And you knew about this information before
17 trial, before you asked the questions at trial; is that
18 correct?

19 A Yes.

20 Q So at some stage, the State made the defendant a
21 plea offer; is that right?

22 A Yes. What happened was although he was looking he
23 at the minimum mandatory, I believe 25 at the time, if he was
24 found guilty, I felt that a lower jail sentence was
25 appropriate, only based upon three factors. And then I'll

1 tell you what I did as a result of those factors, why.

2 I felt because the victim -- although he was shot in
3 the back, the victim, it was clear, had a bad record; two, had
4 been to prison for murder; three, had evidenced hostility,
5 arrogance towards the police, disrespect towards law
6 enforcement, and the fact that he admitted that he had been
7 looking for my client, and the lack of criminal involvement
8 compared to Mr. Jones.

9 what I did and with Mr. Akbar, we sought out
10 meetings with the State Attorney's Office trying to get a plea
11 offer, a very low plea offer of prison, obviously, but, you
12 know, getting the 25 year minimum mandatory waived. And so
13 the best we had gotten was down to ten. And although ten is
14 better than the possibility of 25 years, ten was, based upon
15 the facts of this case, I mean, I felt was unreasonable.

16 But at some point in time we got down to five. Now
17 that was only at the day of trial. Well, now at five years,
18 coupled with the fact that Mr. Jones had picked up a new
19 charge while in jail where his exposure was five, I thought,
20 as well as Akbar, I thought, but I was the lead counsel, that
21 five years with the time that he was already serving, because
22 he didn't get a bond, was a substantially reasonable plea
23 offer in light of the potential. And let me explain that.

24 Q Okay.

25 A I have tried hundreds, 300, 400 trials. I mean, I

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1 am a trial lawyer. When I was a prosecutor, I've tried cases.
2 But I have enough sense to know that you can never guarantee
3 what a jury is going to do. No matter how good the evidence
4 is, when it's all said and done, I go home, the client
5 doesn't, if it doesn't go his way. So I'm never going to make
6 a decision for the client because it's not fair, I'm going to
7 go home.

8 Q. Yes, sir.

9 A. However, if five years, where he would have done
10 let's say three more with time, you know, five years, I
11 believe, would be a substantial victory. I believe that the
12 reason why Mr. Jones turned it down was based upon the fact he
13 was aware in his mind, rightfully so, that, one, he saw the
14 conduct of the witness, Mr. Pleas, how he acted, both in the
15 preliminary hearing where he was taken into custody by the
16 Judge, as well as he knew the evidence. He knew the facts of
17 the case.

18 And although the five years came about when we were
19 outside when, again, Mr. Pleas was supposed to be in court, he
20 wasn't in court, the State had indicated that they could not
21 proceed, I knew they could not proceed without -- they had
22 other evidence, but the most important evidence is if you
23 don't have a victim, you cannot prosecute a case.

24 I objected. It was clear that the Judge was not
25 going to force the State hands, as oftentimes, your witness

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1 was scheduled to be here at 10:30 -- scheduled to be here at
2 9:00, it's 9:05, do you have an announcement. That was not
3 the case.

4 Because my client did not -- was not able to get a
5 bond because he was being held no bond, the only thing that
6 the Judge said, well -- even though I objected, the Judge
7 said, well, I'll give the State until 10:30. We've wasted all
8 this time before picking a jury. If I can -- at that point, I
9 would grant a continuance but give -- readdress the bond issue
10 so that there is not an additional punishment to my client
11 being in jail because they have a cooperating -- an
12 uncooperating victim who has just refused to cooperate with
13 the prosecution.

14 And so at that point, we were in recess. I
15 objected, I didn't like it. The clock is in my favor. He's
16 not here -- meaning "he" for the record, Mr. Pleas. So we go
17 out there. And at this point, trying to get -- again, the ten
18 years is now down to five. Then all of a sudden, the State
19 indicates that he's here; meaning, Mr. Pleas, but they still
20 was going to allow us to take the five years.

21 It was at that time that Mr. Jones decided that, no,
22 he wasn't -- he was not going to take the five years and he
23 wanted to proceed at trial. And so that's why we proceeded at
24 trial.

25 Now, did I think with all the background that we had

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1 a good chance of winning? Yes, I sure did. Did I guarantee?
2 I would never do so. I've never done so in my 36 years. I've
3 had cases where the evidence was -- it was almost impossible,
4 in my opinion, for the state to prove a case. And even then I
5 would say, I can't -- I tell every client, there are only two
6 things you guarantee in life, death and taxes.

7 So it was one of those situations where, okay,
8 you're turning down five years which is a sure thing for the
9 possibility of walking out the door? On that case. He still
10 had the other one. It's one of those situations where you can
11 understand if a client choose that decision. And there are
12 sometimes they make that, and you say, you're making a
13 mistake. But in that, he has to make that. He has to make
14 that call. No lawyer should ever make that call because,
15 again, I go home, regardless of the verdict.

16 Q Yes, sir.

17 A So I just gave you the analysis of what happened
18 during that interim out in the hallway with the prosecutor and
19 myself.

20 Q Okay. Would you have advised your client what you
21 went through as part of the analysis beforehand, whenever he
22 was considering whether or not to accept a plea -- the plea
23 offer of ten years or not to start off, the first plea, about
24 whether or not Mr. Pleas would even show up for trial?

25 A Well, I mean, I don't know if he was going to show

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1 up. I don't know if he was going to show up for the -- for
2 the first hearing that we had. He was late then. If he
3 didn't show up, I believe that the Judge would have granted --
4 given my client a bond.

5 But, when he showed up, even though he was
6 confrontational, the Judge made the decision, I assume based
7 upon the allegations, and decided not to grant the bond.

8 Q Now, going back to -- I guess the focus of my
9 question more is would you have advised your client if the
10 State's witness doesn't show up, then they're going to have a
11 hard time, if not impossible time, proving their case?

12 A I don't know whether I -- well, if you're asking a
13 question, if he doesn't -- if he doesn't show up -- let me
14 make it very, very clear. The five years offer came --
15 initially came during that break when they did not have. At
16 that point, the five year offer was very, very reasonable and
17 it would be appropriate to take.

18 Now, when -- once the State announced that Mr. Pleas
19 was here, and we saw him, they still left the five years on
20 the table. It was at that time -- so there was never a
21 discussion -- in other words, there was a short window. There
22 was never a discussion, take the five years and -- even though
23 the State does not have a case, a victim. Because I know, and
24 I knew, that without the victim, the State could not have
25 proceeded to verdict, period.

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1 Q Yes, sir.

2 A And it would be the same situation, for an example,
3 just flip it. I know as an officer of the court that the
4 State cannot proceed at verdict. I then tell a client, you
5 should take a plea offer to prison, knowing as an officer of
6 the court that I'm suggesting that he take a plea, knowing
7 that the State has no case.

8 Then the flip side, I can see me having to answer to
9 that because how as an officer of the court and as a trial
10 lawyer you knew that the State could never go forward, but yet
11 you still -- you convince your client to take a plea. Then,
12 clearly, there's going to be an issue.

13 So that was not the situation here, but I just want
14 to give you the flip side. In this situation, I didn't know
15 what was going to happen with Mr. Pleas. There were family
16 members who thought that he was not going to show up. But
17 based upon his conduct the day -- not the day before, but at
18 that prior hearing, I just did not know what to believe.

19 Period.

20 But when he showed up, at that point there is a game
21 changer. Why? As you look at the transcript, factually, this
22 is the type of case -- I mean, you're never -- one thing we
23 know in this business, you never know what a jury is going to
24 do.

25 Q Correct.

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1 A But, factually, this is the type of case that from a
2 prosecutor's point of view, it's a nightmare. It's just --
3 it's a nightmare. But the situation is, unfortunately, the
4 jury -- I disagreed with the jury's verdict. I respected it,
5 but to this day I disagree.

6 I don't believe he should have been sentenced to
7 what he was sentenced to, based upon the facts of the case
8 because I don't believe he was looking for trouble. I
9 believe, you know -- but, as a lawyer, I'm bound by the law.
10 We accept it, you know, through the good and the bad.

11 Q Well, let me jump in here. The family had hired you
12 because of the experiences that -- and dealings with you that
13 they had down in south Florida?

14 A Yes.

15 Q Now, did -- and you mentioned that some of the
16 family had, in fact -- was not believing that Mr. Pleas was
17 going to show up.

18 A And there were family members who were telling him
19 and was mentioning -- I don't know what they said to him --
20 but that he shouldn't take five years, you know. But, again,
21 he has to make that decision.

22 Q Right. But I understand he has to make that
23 decision, but was Mr. Jones getting information and soliciting
24 advice from his family?

25 A Yes.

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1 Q And did he appear to you to be taking that into
2 consideration in what decision he reached?

3 A Well, it was obvious; it's his family, yes.

4 Q Now, at the end, you told him -- did you tell him it
5 was ultimately his decision to make?

6 A Oh, without a doubt.

7 Q And were family members talking to you about the
8 case and giving you their opinions about the case?

9 A Yes.

10 Q And were they asking you your opinion about the
11 case?

12 A Yes.

13 Q And did you give them your opinion about the case?

14 A Yes. And that is, basically, it's a triable case,
15 it's a good case, but you don't know what a jury is going to
16 do. I have not, and nor will I ever, guarantee an outcome.
17 If I can do that, I would play the Powerball this week and I
18 would leave this profession that I have been blessed to enjoy
19 as quick as time would allow.

20 Q Okay. All right. Thank you.

21 MR. EVANS: No further questions, Your Honor.

22 THE COURT: Cross.

23 CROSS EXAMINATION

24 BY MR. PUMPHREY:

25 Q Mr. Handfield, good afternoon.

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1 A Good morning, sir.

2 Q or good morning; we're still in the morning.

3 A Yes.

4 Q Mr. Handfield, the state started out and you went
5 through a number of things you brought out in
6 cross-examination of Mr. Pleas.

7 A Yes.

8 Q And is that what you would consider in your 36 years
9 of experience as a trial attorney favorable testimony?

10 A Without a doubt.

11 Q Okay. And you advised Rufus Brandon Jones, prior to
12 Mr. Pleas testifying, that you believed that Mr. Pleas would
13 give favorable testimony?

14 A No, no, no. Favorable testimony -- no. What I
15 advised as far as factually because we -- I mean, you had
16 depositions, you had reports, statements that he made to the
17 police. All of those things would be, in my view, things that
18 would be favorable in front of a jury for purposes of giving
19 us a winnable chance at trial in front of a jury.

20 And I say that because you know as a trial lawyer,
21 there are some facts that are terrible. And on the issue of
22 showing that the victim in this case really should be the
23 defendant, those facts that came out would -- clearly pointed
24 to that; and, specifically, he didn't want to prosecute, he
25 indicated he didn't see the shooting, he admitted that he went

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1 to prison for murder.

2 Those are the favorable facts that any -- I think
3 any lawyer would say, if you're representing someone who
4 you're trying to get a jury to see that this person should not
5 be held criminally responsible, those are the type of facts
6 that you would like to have on your side.

7 Q Favorable things?

8 A Yes.

9 Q And did you express this to your client?

10 A Yes, I expressed that those were -- would be some of
11 the facts that would be favorable at trial to our defense.

12 Q Now, your defense in this case was what?

13 A It's been a long time. The defense was that he
14 acted in self-defense, that he -- that --

15 Q You answered.

16 A Yeah.

17 Q You answered. So this is a self-defense case -- and
18 I'm talking pretrial, not during trial. It's a self-defense
19 case pretrial.

20 A Well, more than that. It was a situation where at
21 pretrial the issue is he didn't know -- we don't know who did
22 the shooting because the victim, you've got to realize,
23 indicated he didn't see who did the shooting.

24 Q Well, I'm sorry, was it --

25 A The victim --

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1 Q Wasn't there a confession by your client that he
2 shot him?

3 A Yeah, but -- yeah, but, still my client --

4 Q Well, hold on a minute.

5 THE COURT: Don't interrupt him, please,
6 Mr. Pumphrey, when he's answering the question.

7 MR. PUMPHREY: Oh, my apology, Judge.

8 THE COURT: You've done it twice.

9 Go ahead, Mr. Handfield, finish your answer.

10 THE WITNESS: Although my client had confessed,
11 there was still deficient evidence, in my opinion, on
12 establishing as relates to the victim's position as to
13 what happened, considering from the victim's point of
14 view.

15 BY MR. PUMPHREY:

16 Q So you're familiar with the self-defense
17 instruction?

18 A Yes.

19 Q Okay. And the Court -- you requested and the
20 Court -- or the Court gave the self-defense instruction?

21 A I assume as much, yes.

22 Q And self-defense requires that you show or you bring
23 out in cross-examination that certain things happened so the
24 jury can find that this is a self-defense case; right?

25 A I mean, I take no issue with that.

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1 Q And so talking to a nonlawyer, it would be favorable
2 and beneficial if you were able to bring out evidence through
3 cross-examination or in direct testimony that deadly force was
4 justified; is that correct?

5 A Yes.

6 Q Did Mr. Pleas give any favorable testimony as to the
7 self-defense instruction?

8 A I mean, I don't recall.

9 Q Okay. Well, let me -- let me ask you specifically.
10 Was there any testimony from Mr. Pleas or did it come out
11 during the trial -- let's stay specifically as to Mr. Pleas --
12 that he placed your client, Brandon Rufus Jones, in
13 imminent -- in danger of imminent death or great bodily harm?

14 A I think on the issue of self-defense, you have a
15 right to use it if you have reason to believe that you or
16 another is in danger of imminent bodily harm. And the other
17 would have been clearly the defendant's mother, who was the
18 person that the defendant would have been concerned with.

19 so under the self-defense in the state of Florida,
20 you have a right to use deadly force to defend yourself or
21 another who you reasonably believe that's in danger.

22 Q So that would be favorable testimony to support your
23 defense?

24 A Among, yes.

25 Q Okay. Also, too, and correctly stated, if he were

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1 defending another person who was in imminent fear or
2 possibility of death or great bodily harm?

3 A Yes.

4 Q And it could also be in an attempt to resist those
5 actions, it could be for Mr. Pleas to admit he was committing
6 an aggravated battery or some other crime of violence against
7 your client?

8 A Yeah, I mean --

9 Q And were you able -- was any of that testimony --
10 did any of that testimony come out from Mr. Pleas in
11 deposition?

12 A I mean, I don't recall right now whether any of that
13 did or not.

14 Q Okay. Do you -- did you ever interview Mr. Pleas?

15 A You mean take his deposition?

16 Q No, sir, I'm just talking about --

17 A You mean before?

18 Q -- just pick up the phone and call him?

19 A No.

20 Q Did you talk to him face-to-face?

21 A I know I would not have met with him other than
22 depo. Whether I talked to him or whatever, I would not -- all
23 I know that I did not meet with him in person other -- prior
24 to the deposition.

25 Q Now, do you know, in fact, if -- whether or not

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1 Mr. Pleas ever showed up for a deposition?

2 A Yes.

3 Q Okay. And who took that deposition?

4 A Well, it would either be me or Mr. Akbar. I can't
5 recall which one.

6 Q And you would agree, given what happened with
7 Mr. Pleas at the preliminary hearing and the information
8 you've testified to here today, you would want to issue a
9 subpoena for Mr. Pleas?

10 A What do you mean?

11 Q To be deposed.

12 A Yeah.

13 Q Okay. And the -- there were subpoenas issued by
14 Mr. Akbar in this case for deposition. Are you aware of that?

15 A Yes.

16 Q And who's -- who was actually subpoenaed for
17 depositions?

18 A I mean, I would have no -- I wouldn't have no
19 independent knowledge of that.

20 Q So we'll rely on the record. But you would agree
21 that the subpoenas for the depositions would be filed with the
22 Court?

23 A If subpoenas were issued and a witness showed or
24 didn't show, there should be a record of it.

25 Q And so in the deposition, if one took place -- do

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1 you know whether or not one actually took place?

2 A Well, I don't want to misspeak because I'm trying to
3 go by memory.

4 Q And I'm not trying to trick you either.

5 A No, that's what I'm saying. I'm trying to go by
6 memory.

7 Q And I apologize, you may have answered the question
8 and I didn't catch it. Do you know whether or not there
9 actually was a deposition of Tyrone Pleas?

10 A I believe there was some interview of the -- of
11 Mr. Pleas. Whether that was through Mr. Akbar or myself, I
12 don't independently have a recollection right now.

13 Q And if there was, in fact, an interview of
14 Mr. Pleas, or even if you or Mr. Akbar talked to Mr. Pleas,
15 did Mr. Pleas admit to you or to Mr. Akbar or to anyone to
16 your knowledge that he was attempting to inflict death or
17 great bodily harm either to Mr. Jones or his mother?

18 A I don't believe so.

19 Q Did Mr. Pleas ever --

20 A I think he tried to dance around the issue of trying
21 to inflict harm to the mother.

22 Q Did he ever admit to attempting to commit an
23 aggravated battery upon either Mr. Jones or his mother?

24 A No.

25 Q So none of the issues that are read in the jury

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1 instruction were acquired from Mr. Pleas to be used at trial;
2 is that true?

3 A Beg your pardon?

4 Q You never got anything to support the self-defense
5 theory from Mr. Pleas prior to trial.

6 A Well, I mean, I can't say that. I mean, the
7 whole -- there was -- there was sufficient evidence to support
8 our belief that Mr. Jones was acting out of protection of
9 his -- of a belief of danger to his mom at the hands of
10 Mr. Pleas.

11 Q You can understand that a non-attorney being told
12 that a key witness for the State is going to give favorable
13 testimony, that would be pretty significant; wouldn't it?

14 A Well, I guess I would disagree due to the fact that
15 I would not be relying upon Mr. Pleas to make my case. The
16 easiest way for him to make my case is for him not to be a
17 witness against my client. I mean, that's the way you make
18 the case.

19 Q Understood.

20 A Because if he shows up, I'm not -- I don't just have
21 the good part to deal with, I've got to deal with -- I have
22 the bad part to deal with. And so, therefore, if that was the
23 situation, it would never be a concern as far as of trying to
24 get the case dismissed because he was not present at the time
25 he was supposed to be in court at 9:00 that morning.

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1 So Mr. Pleas was never, if you are inferring that he
2 was going to be the defense case, no, he was not the defense
3 case. He was the victim and I was not relying upon him to
4 make our case.

5 Q In other words, Mr. Pleas was not going to be
6 favorable as to the self-defense instruction?

7 A No, no. What I'm saying is there are certain things
8 that Mr. Pleas had stated that was documented that would be
9 beneficial on the issue of who was going to -- who was the
10 aggressor.

11 And I believed that those factors were the fact that
12 he had threatened -- it came out he had threatened to take my
13 client's mother's life, he had threatened also to take his own
14 life, the fact that he had been to prison for murder, and all
15 of those factors I thought would be -- if we had to deal with
16 it, that in front of a jury would be beneficial information
17 that we can take away from it. But, trust me, I was not
18 relying upon him to do -- to make the defense case.

19 Q Understood. But as an officer of the court with 36
20 years' experience, telling a non-attorney, a client, that the
21 key witness is going to give favorable testimony, you would
22 agree that would have great effect on someone relying on your
23 consultation?

24 A I don't know what great effect it would have. I
25 know that I would tell my client, as I told him, these are the

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1 things that we have that we believe will come out. But as far
2 as what he will actually say once he get on the stand, you
3 never know what a witness is going to say. And so me telling
4 him, whether he's a lawyer or nonlawyer, basically is
5 presenting him the facts. These are the things that the facts
6 going to show.

7 But as far as when you say favorable evidence, I
8 mean, I think it is favorable factual evidence if the -- one
9 of the factors are that he was stalking or he was looking to
10 do -- he was looking to do harm to the defendant's mother. I
11 think that is favorable. I think the fact that he went to
12 prison for murder, that is something that would be favorable
13 as relates to showing that my client was not the aggressor and
14 that my client knew about this.

15 So, I mean, when you say me telling him -- sure, all
16 that information was discussed with my client, rightfully so.
17 But as far as -- I mean, I don't understand. There is no
18 question that that information was discussed with Mr. Jones.

19 Q And I can only go by -- you've been doing this much
20 longer than I have. As a trial attorney, did you, when
21 Mr. Jones is making a determination about taking a plea
22 offer -- and I want to separate that a minute.

23 A Okay.

24 Q First, there were plea negotiations and a plea offer
25 made pretrial. Were you aware of that?

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1 A Yeah, there was a plea offer that was made, ten
2 years. And both Mr. Akbar, myself, I thought that was totally
3 unreasonable in light of the circumstances. That was
4 communicated to Mr. Jones. And under no circumstances did he
5 say he would even consider something like that, even though
6 ten years is better than 25 years.

7 But I don't think that it was unreasonable for him
8 to turn it down because, again, as I always do and as I did in
9 his situation, that decision is made by him. I don't make
10 that decision. I never have and I never will.

11 However, now, when it got down to five years, and
12 learning about the fact that he picked up another case where
13 his exposure was five years, I thought that five years was a
14 very reasonable plea and a plea that he should have taken.
15 However, if he made that decision, which he did, that he was
16 not going to take it, then, okay, fine, we do battle with what
17 we have.

18 But there's a big difference between five years
19 where he would do another, at that point, three-and-a-half
20 years, versus taking a gamble and you get 25 years. Any time
21 you go to trial, there is a gamble, and I say that. Every
22 time. All the cases that I've tried, all the cases that I've
23 won, I tell all -- every single one of them, you don't know
24 what a jury is going to do. Period.

25 And any lawyer that tells somebody that they know

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1 what the jury is going to do, something is wrong with them
2 because you don't. That's something that we have no control
3 over.

4 Q Did you, when you talked to the family -- and my
5 understanding, and please correct me and the record, my
6 understanding is that you went and met with the family here in
7 the courthouse, about 20 people?

8 A Yes.

9 Q Okay. And when you met with them, did you go over
10 your impression of what was going on at that time?

11 A Yes. And I felt, and I told them -- what you had,
12 you had some who wanted him to take the five, and this I
13 recall specifically, thought that that was very, very
14 reasonable. And I think the five came down only -- they were
15 stuck on ten. And I'll be honest with you, I thought ten was
16 unreasonable under the circumstances, but when it got to five,
17 five -- Akbar said, hey, that's something he shouldn't turn
18 away. I felt the same way, explained to the family, but he
19 made that call.

20 You have family members who said, I wouldn't take
21 that chance. So you had other family members, for whatever
22 reason, who disagreed. But the bottom line is he made that
23 decision. He made that call on his own. And let me make it
24 very, very clear. Under no circumstances did I tell him, turn
25 down five years, let's go to trial; under no circumstances do

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1 you take five years. Absolutely not. Didn't happen. Will
2 never happen as long as I've been practicing law.

3 Q Did you ever use the word "reject" with either the
4 family or Mr. Jones?

5 A Use the word what?

6 Q Reject.

7 A I don't know what you mean. Reject in what sense?

8 Q Reject plea offers.

9 A Well, he has to accept it or reject it. So whether
10 I used that terminology or not, I mean, I don't remember if I
11 used that terminology. But the bottom line is that he makes
12 the decision.

13 Q Now, you would agree that Attorney Akbar was
14 assisting you in the case, but you were the lead counsel?

15 A I was lead counsel, he was cocounsel.

16 Q And you were directing the case and you were lead
17 attorney at trial?

18 A I was the lead attorney at trial, yeah.

19 Q So you weren't directing the case?

20 A I don't know what you mean by "directing the case."
21 He was cocounsel, I was lead counsel. Period.

22 Q And were you lead counsel the whole time?

23 A Yes.

24 Q Okay. During the entire representation?

25 A Yes.

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1 Q Okay. And were you directing Attorney Akbar on what
2 to do as far as interviews, depositions, that type of thing?

3 A Stuff like that, he was the one who had the
4 meetings, we had meetings. He had several meetings. He even
5 went as far as one point with the State Attorney himself in
6 trying to get a plea offer. But, you know, for whatever
7 reason, they were stuck on ten until the five years was
8 offered the day of -- of trial.

9 Q And did you ever share with Mr. Jones any transcript
10 of deposition or any interviews or anything with Mr. Pleas
11 prior to trial?

12 A I mean, I don't recall. I'm not going to just
13 say -- I don't independently have any recollection.

14 Q And in your practice for 36 years, why do you do a
15 deposition?

16 A Well, you do a deposition to find out what a witness
17 is going to say. In federal court, we don't have depositions.
18 You rely solely on the police reports. So the whole purpose
19 of deposition is to learn how -- to learn what a witness is
20 going to say. You can learn what a witness is going to say if
21 there is -- if there's a statement. You don't necessarily
22 have to do the deposition.

23 It depends on a case-by-case basis. And that's how
24 come in federal court, which I have tried almost as many
25 cases, you know, we don't have depositions at all.

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1 Q In this case, and I like to use the analogy of a
2 surgeon, but you do the deposition much like a doctor who's a
3 surgeon has an MRI or some other thing so they kind of know
4 where they're headed and what to expect, whether good or bad?

5 A Well, I mean, you can look at it, if you want to
6 look at it in that way. Sometimes I've had cases where it has
7 been to the detriment to take the depo because the other side
8 learned information that you don't want them to know, such as
9 the prosecutor. So it depends. If you have detailed reports,
10 detailed sworn statements, things that's not going to change,
11 it's on a case-by-case basis.

12 Q Let's talk about this case.

13 A In this case, it depends on what other information
14 you have. The whole purpose is to find out what you want to
15 find out about the witness' testimony. In this case, you're
16 dealing with three components. One, the background of the
17 victim. Does this victim have a background? That was
18 documented.

19 Q But that first one you said, I apologize, that first
20 one you said, does that support self-defense?

21 A What do you mean?

22 Q You said about --

23 A What first one?

24 Q -- the victim's background. Does that support the
25 self-defense theory?

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1 A Well, it depends. I mean, it depends.

2 Q Okay. Does it support -- anything you mentioned --
3 and I know -- and I know that goes toward the person's
4 credibility and their background. And a component of
5 self-defense is the defendant's knowledge of prior bad acts.

6 A Right.

7 Q I think that's what you're talking about; is that
8 right?

9 A Right.

10 Q But aside from that, was there anything favorable to
11 support self-defense that was going to come from Tyrone Pleas?

12 A I mean, I don't know, it depends on hindsight. I
13 mean, there are a lot of things that can happen when a person
14 is on the witness stand, the way they conduct themselves.

15 Clearly, if he conducted himself in the manner that
16 he did at that initial hearing in front of a jury, he -- you
17 never still don't know what a jury going to do, but I think
18 that he would lose total credibility because the way he
19 conducted himself that caused the Judge to lock him up, I
20 mean, truth be told, in all my years, that's the first time
21 I've seen a victim being handcuffed and locked up inside a
22 courtroom.

23 So these are the type of things that can happen
24 because you just don't know what's going to happen once the
25 person take the stand.

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1 Q Did you have any knowledge that Tyrone Pleas would
2 give favorable testimony as to what you're required to prove
3 on the self-defense instruction, prior to trial?

4 THE COURT: Seems like we're just repeating
5 ourselves, Mr. Pumphrey.

6 MR. PUMPHREY: I apologize, Judge. I'm trying to
7 track it.

8 THE COURT: Move on.

9 BY MR. PUMPHREY:

10 Q Were you able to get anything from Mr. Pleas out of
11 depositions or preinterviews, other than the police reports?

12 A I don't have any independent recollection right now.

13 Q And do you recall whether or not you went over those
14 things with Mr. Jones when he was considering the offer prior
15 to selection of the jury?

16 A I mean, we discussed the case, even the three of us.
17 I mean, but the bottom line is -- I mean, we discussed the
18 case. Simple as that.

19 Q Okay. In that discussion of the case, did you give
20 an opinion to your client as to whether or not Mr. Pleas was
21 going to give favorable testimony prior to jury selection?

22 THE COURT: I said move on, Mr. Pumphrey. Get on
23 with it.

24 MR. PUMPHREY: My apology, Judge.

25 THE COURT: We're hitting it. Favorable, favorable,

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1 favorable. I've heard it about 15 times. I think he's
2 answered it about 15 times. Let's move on.

3 MR. PUMPHREY: okay.

4 BY MR. PUMPHREY:

5 Q What was your discussion with your client for the
6 pretrial offer?

7 A For the what?

8 Q The pretrial offer.

9 A The five years offer?

10 Q Yes, sir.

11 A That he should take it.

12 Q Okay. Now when I say "pretrial," I'm talking about
13 before jury selection. There was an offer made after the
14 May 2nd, obviously for the reasons observed.

15 A Whatever offer that was made by the State was being
16 unreasonable at that time. I don't even know if they even had
17 come down to ten. They were very unreasonable. So,
18 therefore, Mr. Jones knew that. The only time that it became
19 reasonable was the day of trial.

20 MR. PUMPHREY: A moment, Your Honor.

21 (Attorneys confer.)

22 MR. PUMPHREY: Mr. Handfield, thank you very much.

23 Your Honor, I tender the witness.

24 THE COURT: Redirect.

25 MR. EVANS: Yes, Your Honor.

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1 REDIRECT EXAMINATION

2 BY MR. EVANS:

3 Q Mr. Handfield, would it be fair to say that with the
4 defense of self-defense, you don't -- you didn't solely rely
5 on what Mr. Pleas' testimony was going to be to be your sole
6 basis for a self-defense claim; is that correct?

7 A Correct.

8 Q In fact, you put on evidence and brought out on
9 cross-examination through other witnesses a basis for
10 self-defense; is that correct?

11 A Yes.

12 Q Including the fact that I believe you called
13 Ms. Daisy Porter, who, in fact, established that the defendant
14 [sic] threatened to kill the defendant's mother?

15 A Yes.

16 Q You, in fact, asked the defendant about that?

17 A Yes.

18 Q I mean -- excuse me, asked Mr. Pleas about that?

19 A Yes.

20 Q And you got a self-defense instruction; is that
21 correct?

22 A Yes.

23 Q In order to get a self-defense instruction, the
24 Court has to find that there is a factual basis in the
25 evidence in order to justify --

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1 A To support it.

2 Q -- the instruction?

3 A Absolutely.

4 Q And on cross-examination through Mr. Pleas, did you
5 get information you believed that helped support your claim of
6 self-defense?

7 A Yes.

8 MR. EVANS: No further questions, Your Honor.

9 THE COURT: The lawyers seem to be dancing around
10 it, Mr. Handfield, so let me just ask you directly. I
11 don't know why they don't want to ask you directly. But
12 do you remember what you told Mr. Jones about the five
13 year plea, or the essence of what you told him?

14 THE WITNESS: Yes.

15 THE COURT: What do you recall you told him?

16 THE WITNESS: Five years is reasonable, considering
17 that he's looking at five on the other case as well. So
18 with five years, I thought it was a very, very reasonable
19 and I thought it was a plea that he should take.

20 THE COURT: That's what you told him?

21 THE WITNESS: Yeah. But he made the final decision.
22 He had family members who also agreed the five years was
23 very, very good, but that had never been offered before.
24 I would have strongly recommended, if they had offered
25 five years when Mr. Akbar was meeting with the State,

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1 that's something you would jump on.

2 So -- but the bottom line is that he made the
3 decision. I respected any decision he made. If he chose
4 the five years, I thought he would have been making a
5 very smart decision. When he decided that he wanted to
6 go to trial, based upon what he saw and believed, you
7 know, I respected it as well.

8 THE COURT: Thank you, sir.

9 THE WITNESS: Thank you. May I be excused?

10 THE COURT: Do we need to keep him any further?

11 MR. PUMPHREY: No, Your Honor.

12 MR. UFFERMAN: No, Your Honor.

13 MR. EVANS: No, Your Honor.

14 THE COURT: You can step down. You're free to go.

15 Thank you for being here.

16 Does the State have further testimony?

17 MR. EVANS: No, Your Honor.

18 THE COURT: Are you going to have rebuttal?

19 MR. PUMPHREY: Your Honor, can we have just a
20 moment?

21 THE COURT: What's that?

22 MR. PUMPHREY: May we have just a moment?

23 THE COURT: Sure, sure.

24 (Attorneys confer.)

25 MR. EVANS: Your Honor, I think I have your copy of

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1 the May 2nd motion hearing.

2 And, Your Honor, do you have a copy of -- a spare
3 copy of the Volume I of the jury trial transcript? I
4 seem to be missing it.

5 THE COURT: Say what?

6 MR. EVANS: I'm missing my copy of the jury trial
7 transcript Volume I. It didn't wind up getting up there
8 with you? Mr. Ufferman, will you check and see if you
9 wound up with it?

10 MR. UFFERMAN: I've got my copy of Volume I. I
11 don't have a second copy here.

12 MR. EVANS: Here it is; I found it. Sorry.

13 THE COURT: To answer your question, no, I do not
14 have an extra one.

15 MR. EVANS: It was one I was missing. When I said
16 "extra," I meant my copy.

17 (Defendant confers with counsel.)

18 THE COURT: We're about due to take a lunch break.
19 If you want to have a little more time to talk, why don't
20 we take a lunch break.

21 MR. UFFERMAN: Actually, Your Honor, we want to -- I
22 apologize to begin with that we are not going to take as
23 long as we originally planned. Hopefully that won't be
24 an inconvenience to you to have an open afternoon.

25 We were going to rest at this point. We will not

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1 call rebuttal. If you would like to take a lunch break
2 before closings, we're open to that. If you'd like us to
3 go into closing right now, we'll do that, too. Whatever
4 Your Honor would like.

5 THE COURT: It truthfully doesn't matter too much to
6 me. If we're going to do it now, I want to take a real
7 quick break. Mr. Evans, do have a preference?

8 MR. EVANS: No, Your Honor. I don't think closings
9 will be very long.

10 THE COURT: What's your preference?

11 MR. UFFERMAN: Your Honor, I defer to you. I'm
12 ready to go if you're ready to go.

13 Your Honor, the rebuttal witnesses are outside. Now
14 that we're not going to call them, can I invite them to
15 come into the courtroom?

16 THE COURT: You may, you may.

17 MR. PUMPHREY: Your Honor, did you say we're going
18 to take a brief break?

19 THE COURT: I guess -- I guess I was -- I should
20 have asked Mr. Ufferman how long he's going to be.

21 MR. PUMPHREY: Judge, if we could just take ten
22 minutes.

23 THE COURT: Why don't we take five minutes.

24 MR. PUMPHREY: Five minutes. Thank you, Your Honor.

25 (Recess taken from 11:57 a.m. to 12:04 p.m.)

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1 THE COURT: Be seated, please.

2 Mr. Ufferman.

3 MR. UFFERMAN: Thank you, Your Honor. May it please
4 the Court. Your Honor, I'll start by addressing the
5 testimony you heard today and then I'll present my
6 argument regarding that testimony and why I believe
7 Mr. Jones is entitled to relief.

8 There was conflict in the testimony today between
9 what Mr. Akbar said and what Mr. Handfield said, and even
10 what Mr. Bauer said. Our client testified to his version
11 as well.

12 And I understand there is case law that talks about
13 the difference between testimony by a defendant and
14 testimony by an attorney. And generally a court will
15 find credible the testimony of the attorney when there's
16 nothing else otherwise to show the defendant is telling
17 the truth. But, in this case, we have actual conflicts
18 between different attorneys. And I would submit that
19 Mr. Akbar is the most credible witness of all the
20 witnesses you've heard today.

21 The most important conflict, I believe, that you
22 heard, and it's in stark contrast to the first witness
23 and what you just heard from Mr. Handfield, is Mr. Akbar
24 said when there was a plea offer discussed on the day of
25 the trial, that he was in favor of it. He was in favor

1 of trying to resolve this case with a plea offer all
2 along.

3 And certainly at that point there is some dispute,
4 and I'll address that in a second, about what the amount
5 was previously and what it was on that day, but no doubt
6 on that day it was five years. The Court is aware of
7 that because you addressed it on the record. It was a
8 five year offer that would have covered both cases at
9 that time.

10 Mr. Akbar said, unequivocally, I was in favor of him
11 taking that. But he also said Mr. Handfield was not.
12 And Mr. Handfield was of the opinion that we can beat
13 this case and advised Mr. Jones not to accept the plea
14 offer.

15 Now I'm not -- the issue here isn't did
16 Mr. Handfield tie that in with a guarantee or we're
17 definitely going to win. I'm not making that argument.
18 I understand Mr. Handfield was adamant that he didn't say
19 that it's a guarantee that we can win at trial. That's
20 not what I'm trying to argue.

21 But I think it is clearly in conflict between
22 Mr. Akbar and Mr. Handfield as to who was taking the
23 position that he should accept the deal or reject it.
24 And I believe you should find Mr. Akbar credible -- and I
25 hate to rely upon this -- but for no other reason

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1 Mr. Handfield doesn't come in front of this Court without
2 his own credibility issues in light of the exhibits that
3 we've introduced. Mr. Akbar certainly has none of those
4 credibility issues. And you've known Mr. Akbar for at
5 least ten years, Your Honor.

6 So I would ask that you find him credible in that
7 regard about what Mr. Handfield's position was about
8 accepting or rejecting the plea offer.

9 Another key thing that he said is one of the
10 reasons, if not the main reason as to why he was
11 advocating to reject the plea offer, was that Mr. Pleas'
12 testimony was going to be favorable. At some point, it
13 was even that Mr. Pleas may not even show up. But we
14 know at the time that the plea offer is being discussed
15 at trial, Mr. Pleas was there. And obviously Mr. Jones
16 still decided to reject the plea offer.

17 So that even more so supports that obviously it
18 wasn't just whether he was going to be there or not.
19 Because if the statement to him to get him to reject the
20 plea offer was, look, he's not even going to come, at
21 that point he was there and he was still making the
22 decision not to accept the plea offer, something that
23 Mr. Akbar said Mr. Handfield was telling him not to
24 accept the plea offer.

25 So I submit it is reasonable when Mr. -- or when

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1 Mr. -- yes, when Mr. Akbar says, don't take the plea
2 offer because Mr. Pleas is going to give favorable
3 testimony for the defense. So I ask you to find that
4 conflict to be resolved in favor of what Mr. Akbar said.

5 The other conflict, and it's not as clear, I think
6 it's clear that there was a plea offer shortly after the
7 May adversarial probable cause hearing. Mr. Bauer said
8 that he saw that his case wasn't as strong at the point
9 in time, that he saw that he had an alleged victim who
10 was not being helpful to the Court and he was put in
11 handcuffs. And that makes sense.

12 And he said -- he said, after that, I offered a five
13 year plea deal. And he said, that same five year plea
14 deal was reoffered during the trial. And --

15 THE COURT: You're saying Bauer said that?

16 MR. UFFERMAN: He did say that. I believe --

17 THE COURT: Anyway, go ahead.

18 MR. UFFERMAN: And Mr. Pumphrey on redirect
19 specifically said to him, did you extend a five year plea
20 deal after the May 2nd hearing? And he said, yes. And
21 then he said, I re-extended that offer during the trial.

22 And whether or not the offer got sweeter during the
23 trial by combining the two cases and perhaps prior to
24 that time it had not been five years, I submit that
25 Mr. Bauer was specific that there was a five year deal;

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1 and specifically pointing to what Mr. Pumphrey went over
2 with Mr. Bauer on redirect is that after that May
3 hearing, there was a five year plea offer extended.

4 So Mr. Handfield says, no, prior to trial it was ten
5 at best, and only became five at trial. And then
6 Mr. Akbar isn't clear, couldn't remember if it was five
7 before trial, said certainly it was five at trial, maybe
8 even three at trial, and maybe -- he acknowledged, maybe
9 I was thinking that would be a three year min man or he
10 would only have three left to serve with the credit for
11 time served that he had.

12 But he said prior to that, at the very least, there
13 was a ten and then a seven year deal. So we're in the
14 range of somewhere either ten or seven or five. I think
15 Mr. Bauer did specify and make -- cleared that up that he
16 said it was five after the May hearing. At the very
17 least, there's no dispute that there was a plea offer
18 after the May hearing and that plea offer was no worse
19 than ten years and could have gone down to seven. And we
20 would ask you to find that it was five.

21 I will point out, however, that our client
22 specifically testified that had he known what Mr. Pleas
23 was actually going to say, after he heard it at trial,
24 and being faced -- being -- knowing that even if the plea
25 offer at that point was more than five, even if it was

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1 seven or ten, he still would have taken that offer as
2 opposed to facing a potential 25 year minimum mandatory.

3 Now, the way this case was charged, and Your Honor
4 is aware of this, there's case law that says simply by
5 alleging shooting someone, that is sufficient to allege
6 great bodily harm. So certainly from the information, he
7 was looking at a min man of 25.

8 Mr. Bauer did not request that the jury make a
9 finding of great bodily harm so it ultimately became a 20
10 year case and not a 25 year case, but up until the point
11 that the verdict was being written and submitted to the
12 jury, it could have been a 25 and probably should have
13 been.

14 So the correct advice to him is, and Mr. Handfield
15 acknowledged that, you're looking at a 25 year min man.
16 It's certainly reasonable that Mr. Jones would say, if
17 I'm going to go to trial and lose on self-defense on a
18 case where I confessed to shooting the individual in
19 question, I had an adversarial probable cause hearing and
20 the Judge said, I'm not finding -- I find there is
21 probable cause because this person was shot in the back,
22 that things aren't looking good for him winning a
23 self-defense case.

24 And if he can get his case down to seven years,
25 certainly five years, even ten years -- ten years for

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1 someone who is 25 years old is far better than 25 years,
2 a minimum mandatory where the Court has no discretion
3 whatsoever.

4 So, again, I would ask you to resolve the conflict
5 and find that there was -- there's no doubt there was a
6 pretrial plea offer. I submit it was five years and
7 Mr. Bauer made that clear. At the very least, we submit
8 it got down to seven pretrial, at the very least.

9 So what were Mr. Handfield's reasons for telling
10 Mr. Jones to reject the plea offer, whether it's pretrial
11 or during trial? What were those reasons? He said them.
12 He said there's two important things. One of them was, I
13 don't think he's even going to show up. And if he
14 doesn't show up, that's the end of the case. So he's
15 telling the client that this alleged victim may not even
16 show up.

17 The other thing is, he goes further. If he shows
18 up, the testimony he's going to give is still going to be
19 favorable to you. Look at what he was referring to as
20 being favorable testimony. One of the things, he said it
21 a couple times, is Mr. Pleas didn't know who shot him.

22 Now, Your Honor is aware, that goes nowhere in this
23 case where the State, as part of their case in chief, put
24 on the statement of Mr. Jones where he acknowledged
25 shooting Mr. Pleas. So this idea that Mr. Pleas didn't

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1 know who shot him would in no way support the defense in
2 this case. It's not helpful.

3 This was a self-defense case. Mr. Jones locked in
4 what happened in this case when he gave that statement.
5 The prosecution knew that. The only way Mr. Pleas could
6 give favorable testimony is just what Mr. Pumphrey was
7 going through with Mr. Handfield. Did you threaten or
8 were you in the process of inflicting great bodily harm
9 or death on Mr. Jones or even his mother?

10 And if you look at Mr. Pleas' testimony at trial;
11 specifically, Your Honor -- may I have a moment? I'm
12 going to grab Volume I.

13 Mr. Pleas begins to testify on Page 51. It's
14 somewhere around the late 60s that he gets into what
15 happened. And specifically on Page 69 and 70, he goes
16 through the exact sequence of events. I'd ask Your Honor
17 to review that.

18 There is nothing that he says on Pages 69, 70, 71,
19 that would in any way support that he was in the process
20 of inflicting great bodily harm or death, or even
21 threatening great bodily harm or death on Mr. Jones or
22 his mother. He's asked, were there any threats made?
23 And he says, I don't know.

24 Beyond that, he in no way talks about actions that
25 he was taking at that time that would support Mr. Jones'

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1 theory that this was shooting someone in response to them
2 getting ready to shoot or commit an aggravated battery or
3 inflict great bodily harm or death on him. Mr. Pleas'
4 testimony doesn't support that.

5 And the best example as to how it clearly doesn't
6 support it is simply look at Mr. Bauer's closing
7 argument. In his closing argument, the initial closing
8 argument, he gets into directly what Mr. Pleas says.
9 This is Page 311 of the transcripts.

10 And he starts talking about, this is a person who is
11 unarmed, a person who was not trying to murder him. This
12 person was not trying to commit an aggravated battery on
13 him. There was no attempt to commit an aggravated
14 battery upon or in any dwelling, residence or vehicle --
15 vehicle occupied by him. Did Tyrone Pleas intentionally
16 touch or strike Rufus Jones or Maria Jones? There's no
17 injuries, there's no bruises, there's no scratches.
18 There's no tussling.

19 Mr. Bauer is simply able to cite to Mr. Pleas'
20 testimony and say, believe him, don't believe Mr. Jones,
21 this is not self-defense.

22 Now Mr. Jones knew what his theory was, but he's
23 being told to reject a very favorable plea offer in a
24 case where the Court will have no discretion if he's
25 convicted, on the idea that, A, he may not show, or, B,

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1 if he shows, he's going to give favorable testimony to
2 you.

3 And, again, the things that he thought would be
4 favorable, oh, he can't say who shot him, he doesn't want
5 this case to be prosecuted. As the Court well knows,
6 that's not something that the alleged victim gets to
7 decide, whether the case is prosecuted.

8 That's not something that's going to ultimately
9 decide the legal issue in this case, which is, was
10 Mr. Jones justified in shooting Mr. Pleas in the back.
11 Those two things were not favorable at all. Nothing
12 Mr. Pleas said was favorable for the specific issue in
13 this case, which is self-defense.

14 And that's the key to this case. And the reason why
15 Mr. Jones is entitled to relief is this, Your Honor, just
16 as alleged in our motion. If a defense attorney in a
17 case like this is given pretrial a favorable plea offer,
18 whatever that might be, if it's ten years, if it's seven
19 years, if it's five years, knowing that you're looking at
20 a minimum mandatory of 25 years, and your reason for
21 rejecting that plea offer is Mr. Pleas either isn't going
22 to show or he's going to give favorable testimony,
23 defense counsel doesn't have to guess what Mr. Pleas is
24 going to say.

25 Now on the one hand, they could easily depose him.

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1 And I don't think there's any evidence that they deposed
2 him, but if you look in the record, there's a notice of
3 depositions. Mr. Pleas is listed as one of those people,
4 but there's only one return executed service of subpoena
5 for a deposition and it's not Mr. Pleas.

6 Mr. Akbar said that to the best of his memory,
7 Mr. Pleas didn't show for the deposition. I think when
8 Mr. Handfield was pressed on this, he couldn't remember
9 anything about a deposition. If you look throughout the
10 transcripts, there's not a single mention of some
11 previous testimony that Mr. Pleas had given that would be
12 used against him in any type of cross-examination.

13 So I believe the best evidence in the record is he
14 wasn't deposed. Certainly if he was deposed, he didn't
15 say anything different than what he said at trial or
16 clearly they would have used it against him in
17 cross-examination to try to impeach him.

18 But forget the deposition for a second. As we've
19 alleged in our motion, they had the tool at the time of
20 this trial to file a stand your ground motion. That
21 would have solved everything in this case. They didn't
22 have to wait until the point in time when a jury was
23 impaneled. And at that point the bus has left the
24 station and he's either going to be found guilty, or he's
25 not going to be found guilty. And if he's found guilty,

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1 he's looking at a min man of either 20 or 25 years.

2 They could have filed a stand your ground motion
3 pretrial. And if he didn't show, then they win, and
4 that's the end of the case. All the benefits that he was
5 talking about would have been the same benefits they
6 could have relied upon for a stand your ground motion.

7 And if he does show and he gives this great
8 favorable testimony how Mr. -- he agrees that Mr. Jones
9 acted in self-defense, again, they win the stand your
10 ground pretrial and that's the end of it.

11 But the real benefit of that is if defense counsel
12 was wrong and he was going to show and he was going to
13 show and give favorable testimony for the State, now,
14 when you're making that decision as to whether or not I
15 should risk this minimum mandatory sentence or accept
16 this plea offer, you can make a knowing, intelligent and
17 voluntary decision knowing exactly what Mr. Pleas is
18 going to say because you just heard him say it at the
19 stand your ground hearing. And if it was not favorable
20 to you, if it didn't support self-defense, then you take
21 that plea offer.

22 And you heard Mr. Jones say on the stand today, if
23 he would have known at the time that he was rejecting the
24 plea offer that this was going to be Mr. Pleas'
25 testimony, he would have accepted the plea offer;

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1 whatever, five, certainly, seven, ten. He would have
2 accepted that as opposed to looking at mandatory 20 or
3 25.

4 Now I'm sure Your Honor remembers, there was a
5 judgment of acquittal motion that was made during this
6 case. And it was in the form of a stand your ground
7 defense. And Your Honor pointed out that this is a
8 little unusual; that normally those types of arguments
9 are made pretrial.

10 But you nevertheless said that you suppose it could
11 be considered in the middle of trial and you would
12 consider it. And you ultimately rejected it. And you
13 rejected it based on the evidence that Mr. Pleas gave
14 during the trial, the testimony he gave.

15 Those are all the same reasons that if Mr. Jones had
16 been aware of what Mr. Pleas' testimony was going to be,
17 then he would have been able to say, no, you're wrong,
18 he's not going to give favorable testimony. I will
19 accept that plea offer because it's far better than
20 looking at this mandatory minimum sentence where the
21 Judge has no discretion.

22 Now I've given you a couple of cases, Your Honor.
23 The Alcorn case, which is the lead Florida case, which
24 simply applies the Lafler case from the U.S. Supreme
25 Court regarding ineffective assistance, mis-advice

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1 concerning a plea offer.

2 I've also given you the Steele case from the Fourth
3 DCA, which is an older case, but it's been cited many
4 times and it's still good law. It was actually -- the
5 idea was affirmed in a case called Morgan from the
6 Florida Supreme Court.

7 In this Fourth DCA case that was written by -- it
8 was then Judge Pariente, she said that a claim -- that
9 misinformation supplied by counsel induced the defendant
10 to reject a favorable plea offer can constitute
11 actionable ineffective assistance of counsel. That's
12 exactly what we have here.

13 We have misinformation to Mr. Jones that Mr. Pleas
14 either isn't going to show up or if he shows up, he's
15 going to give favorable testimony. And that induced him
16 to reject the plea offer. And they wouldn't have had to
17 guess about what that was if they simply would have filed
18 the stand your ground motion. They would have known
19 pretrial exactly what Mr. Pleas would have said.

20 And then this is huge. Mr. Bauer acknowledged that
21 it was his policy, generally, that if someone pursued a
22 Constitutional right pretrial and a plea offer was on the
23 table, such as a motion to suppress or a stand your
24 ground motion, and that person ended up being
25 unsuccessful, he generally wouldn't give them a hard

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1 time. Meaning, generally, he wasn't going to pull the
2 plea offer simply because they were pursuing that
3 pretrial motion.

4 If they would have filed a stand your ground motion
5 and if Mr. Pleas would have given the same testimony at
6 that point that he gave at trial, it would have clarified
7 certainly he's going to show up, it would have clarified
8 it's not going to be favorable, and the plea offer still
9 would have been on the table. And Mr. Jones said,
10 unequivocally, I would have accepted that plea offer.

11 Now you know the standard from Lafler, Your Honor,
12 is that No. 1, was there a plea offer, we've established
13 that; No. 2, it wouldn't have been pulled; No. 3, the
14 defendant would have accepted it; and No. 4, the Court
15 would have accepted it. I think the testimony is
16 unrefuted regarding all those factors.

17 And then here's the other thing I want to point out,
18 Your Honor. In Lafler, although you would think that the
19 remedy would be that the defendant automatically gets the
20 plea offer that he didn't get the benefit of initially,
21 that's not the remedy that the U.S. Supreme Court
22 imposed.

23 And I know this, I just had a case that the Eleventh
24 Circuit granted relief on one of these, but they sent it
25 back not to say, okay, now you get the benefit of the

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1 pretrial plea offer, but the remedy that the U.S. Supreme
2 Court imposes is the State does have to re-extend the
3 plea offer, but at that point, it goes back to the judge
4 and the judge gets to consider all of the factors in the
5 case and the judge gets to decide what's an appropriate
6 sentence.

7 So by us winning on this issue, it doesn't
8 automatically mean that he's getting five, seven or even
9 ten. It means that this simply goes back into a
10 resentencing posture where you get to decide what the
11 appropriate sentence is.

12 And I would point out, and I'm sure you're aware of
13 this, Your Honor, at sentencing when it was being
14 discussed what sentence would be imposed, you said:
15 "Frankly, I hit Mr. Jones a little harder on the
16 mandatories than I would have otherwise done, everything
17 being equal. I think I've said that before. I
18 thought -- I understand he shot a man and I don't have
19 any quarrel with the jury verdict. I think it was a
20 proper jury verdict. But under all the circumstances,
21 probably 20 years in prison is probably stiff, pretty
22 stiff for the facts of this case."

23 By granting relief, Your Honor, you'll have the
24 opportunity to impose whatever sentence would be a fair
25 sentence. I believe we've established that there was

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1 ineffectiveness. The ineffectiveness here is the fail --
2 they didn't have to guess. They were guessing as to what
3 Mr. Pleas was going to do.

4 If they would have filed a stand your ground motion,
5 they would have known for sure. And there would be no
6 guessing. And if it wasn't favorable, like it ended up
7 being at trial, he would have gotten that plea offer and
8 he wouldn't be serving a minimum mandatory sentence
9 today. Thank you, Your Honor.

10 THE COURT: You may.

11 Mr. Evans.

12 MR. EVANS: Your Honor, I think this -- the issue
13 really is controlled by the test that was set forth in
14 the two cases the State gave, which was Millan,
15 M-I-L-L-A-N, v. State at 55 So.3d 694, a Third DCA case
16 from 2011, and -- which was a pre-Alcorn case, and a
17 post-Alcorn case, Drakus, D-R-A-K-U-S, v. State at 219
18 So.3d 979, a 2017 case out of the Florida First DCA. And
19 it pretty much set forth the test to determine whether or
20 not counsel was ineffective for advising a defendant to
21 reject.

22 I'm going to assume at this point, for the sake of
23 argument, the facts most favorable to the defendant;
24 that -- that there was a less severe offer and that
25 Mr. Handfield advised the defendant to reject the offer

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1 because he was confident that he could, in fact, get --
2 that an acquittal was likely in the case.

3 And those two cases set out the test for determining
4 ineffective assistance of counsel, determining whether
5 there was deficient conduct for the defendant to reject
6 the plea because counsel was confident he could win at
7 trial.

8 The question really boils down to is whether
9 counsel's assessment of the chances of success at trial
10 was unreasonable under the facts and circumstances of
11 this case. It doesn't fall under the second part about
12 whether or not the counsel had not investigated or was
13 otherwise not familiar with the case, which is sort of
14 the Steele case that defense counsel cited.

15 And I don't think Steele applies and is very
16 different from this case. In that case, counsel confused
17 two cases and was thinking a threat or a solicitation had
18 been made, and that was the basis of trying to prove the
19 self-defense claim. And basically he got his facts
20 wrong. We don't have that.

21 In this case, I think it's very clear that counsel
22 investigated the case, was familiar with the case. The
23 trial transcript supports this, as well as the
24 adversarial probable cause hearing supports it as well.
25 We know we have the statement that Mr. Pleas had made to

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1 the police that had been reviewed.

2 In this case, I don't think anybody -- you know, I
3 don't think you can say that Mr. Handfield's assessment
4 of the likelihood of winning this case, that it was a
5 favorable case to the defense, can really be questioned.

6 This was a situation where you have a victim who is
7 being very uncooperative. He shows up at one
8 preliminary -- well, he has difficulty talking to the
9 police, doesn't want to talk to the police and finally
10 says something to them and is still being uncooperative.
11 Continued to be uncooperative. They didn't know whether
12 he was going to show up at the adversarial probable cause
13 hearing. He does, but when he does, the first thing he
14 does is get himself put into cuffs and he winds up not
15 testifying because he's arguing with the Court.

16 Then, come trial time, nobody knows if he's going to
17 show up. Well, when he does finally show up after being
18 two hours late, the State was -- felt compelled to make a
19 plea offer, to lower the plea offer in the case because
20 nobody knew how and what he was going to say and how he
21 was going to react.

22 And then you have the fact of not only is he
23 uncooperative, he's made threats to kill the defendant's
24 mother and himself. You have him in a situation of
25 having previously committed a murder; him not identifying

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1 who did the shooting; him saying, I didn't want -- you
2 know, I didn't ask that this guy be arrested or be
3 charged or anything else. That was somebody else, it
4 wasn't me, I didn't have anything to do with it. And him
5 not being the greatest witness on the stand.

6 And I think -- Your Honor was here, was the trial
7 judge so you could assess how he came across. And the
8 fact that in light of all the other evidence, this was
9 not a bad case for the defense. This was, in fact, as
10 Mr. -- I think both Mr. Handfield and also Mr. Bauer
11 acknowledged, this was a very favorable case for the
12 defense.

13 So -- and that was one of the reasons Mr. Bauer used
14 for justifying him going -- coming down for such a low
15 plea offer and coming off the minimum mandatory when a
16 guy got shot in the back and the chest.

17 So I think basically given the situation, you cannot
18 say that, even if you take it in the light most favorable
19 to the defense, Mr. Handfield's conduct was deficient.
20 His assessment about -- about whether or not this case
21 was winnable and -- by the defense was entirely
22 reasonable. You know, cases don't get much better than
23 this for the defense. And in a lot of situations and a
24 lot of times juries come back not guilty, given what
25 we've got here.

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1 So I don't believe there is any deficient conduct
2 shown in this case. And that his advice was, in fact,
3 reasonable. And as it put -- the defendant was listening
4 to other members of his family. They were going both
5 ways; some saying, no, let's roll the dice, others not.

6 The defendant was, you know, actually asked by the
7 Court in this case about whether or not he rejected it --
8 rejected the plea offer. He, in fact, did. That he even
9 had his attorneys, if you believe him, going two ways.
10 Mr. Akbar saying, take the plea; Mr. Handfield saying,
11 no, I think we could win this. The family was in the
12 same split; he made the decision. I don't think anything
13 was unreasonable.

14 They went to trial. As they said, you never know
15 what a jury is going to do. This jury convicted. And I
16 don't believe there has been any deficient conduct that
17 has been shown in this case.

18 And we know the answer to the issue of the stand
19 your ground hearing. It would not have made a
20 difference. And we kind of know that by the fact of
21 whenever he had the adversarial probable cause hearing,
22 probable cause was found to go forward in order to hold
23 the defendant -- hold him without bond.

24 THE COURT: Anything further, Mr. Ufferman?

25 MR. UFFERMAN: Briefly, Your Honor. Thank you. May

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1 it please the Court.

2 Your Honor, I would submit Mr. Evans' argument,
3 respectfully, is dodging the main focus of my argument,
4 and he only mentioned it briefly at the very end. And,
5 that is, the key to this case, as specifically alleged in
6 our motion, is the failure to file the stand your ground
7 motion.

8 His advice about rejecting the plea offer because of
9 what he suspected or speculated Mr. Pleas may or may not
10 do was unreasonable because he would have known exactly
11 what Mr. Pleas was going to do if he would have simply
12 filed the stand your ground motion.

13 If he was right that he wasn't going to show up, he
14 would have won the stand your ground motion. If he was
15 right that he was going to support self-defense, then
16 they would have won the stand your ground motion. But if
17 he was wrong, they would have had -- Mr. Jones would have
18 had the opportunity to see that and then make a knowing,
19 intelligent and voluntary decision regarding the plea
20 offer.

21 He did not know what Mr. Pleas was going to do
22 because he failed to file a stand your ground motion. I
23 submit no reasonable attorney under these facts -- and
24 maybe he didn't understand the law, maybe he didn't know
25 that the law allowed him to file a pretrial stand your

1 ground motion. It clearly did. The Legislature had
2 passed stand your ground at that point.

3 No reasonable attorney, knowing Florida law at that
4 point in time, would have failed to file a stand your
5 ground motion in this case. He didn't provide any
6 strategic reason for failing to do so. And, I submit,
7 that's the key to this case. That's why Mr. Jones is
8 entitled to relief, Your Honor.

9 (Pause.)

10 THE COURT: All right. Anything else from either
11 side? I'm prepared to announce a ruling.

12 MR. EVANS: No, Your Honor.

13 MR. UFFERMAN: No, Your Honor.

14 THE COURT: All right. Let me address a couple of
15 the things the defense has asserted as factual conflicts.

16 I don't find that there's a direct conflict between
17 the testimony of Mr. Akbar and Mr. Handfield. Mr. Akbar
18 was certain about certain parts of his testimony, which
19 was that he recommended to Mr. Jones that he take the
20 plea. He was less confident about having heard
21 everything that was said between Mr. Handfield and
22 Mr. Jones; and, in fact, had indicated he did not hear
23 all the conversations. I don't think there's a direct
24 conflict there.

25 He did say -- Mr. Akbar said that Mr. Handfield

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1 believed this was a winnable case. I think that's
2 supported by Mr. Handfield's testimony, but I accept
3 Mr. Handfield's testimony that he recommended, as did
4 Mr. Akbar, that Mr. Jones take the plea.

5 For whatever reason, Mr. Jones decided to ignore
6 their advice. I suspect what was happening, and
7 unfortunate, but I suspect Mr. Jones was listening to
8 family members more so than he was listening to his
9 attorneys. But, anyway, to the extent it's asserted of a
10 direct conflict there, I don't find that to be the case.

11 I also don't find the assertion that Mr. Bauer had a
12 clear recollection of a five year deal prior to trial to
13 be accurate. I don't believe that was his testimony. He
14 was -- he was not clear exactly when the plea offers were
15 made. He did have a clear recollection of a five year
16 deal. That was made of record by the Court at trial. I
17 accept the testimony of both Mr. Akbar and Mr. Handfield
18 that that was the first time there was a five year deal
19 on the table. So I'm not sure the significance of that,
20 but that's my finding.

21 I also want to make sure it's clear. The defense
22 has essentially been arguing here that this was a 25 year
23 to life mandatory minimum. That's not accurate. Yes,
24 factually it could be, but based upon the allegations in
25 the information, it was not legally permissible. And

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1 that's why the Court did not instruct on the discharge
2 with great bodily harm, which would have required the 25
3 year to life mandatory.

4 Again, I'm not sure that's terribly significant, but
5 I don't want to leave that unanswered. If you look at
6 the information, there was no mention of great bodily
7 harm as part of the discharge. So, therefore, the State
8 could not proceed on that theory.

9 The defense says the key to their argument is that
10 it was unreasonable for Mr. Handfield not to file a stand
11 your ground motion. I don't find that to be the case at
12 all. I don't find that to be unreasonable. I guess the
13 theory the defense has is if we'd done that, that would
14 be a way to get Mr. Pleas to testify.

15 Well, that was unnecessary. Simply enough, could
16 have asked for Mr. Pleas' deposition. The defense wants
17 to leave it unanswered here as to whether Mr. Pleas was
18 deposed or not. I would remind them that on each of
19 these things, it's their burden of proof. It's not the
20 State's burden of proof. And they have not proven that
21 Mr. Pleas was not deposed.

22 They ask the Court to speculate that if the motion
23 had been filed, Mr. Pleas would have testified. I don't
24 know that that's necessarily the case. Looking over the
25 testimony from the adversary preliminary hearing, I think

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1 the state may well have been able to establish a stand
2 your ground -- defeat a stand your ground motion simply
3 with that testimony, along with the physical fact that
4 Mr. Pleas was shot in the back. Again, I don't think
5 it's for the Court to speculate on that.

6 Again, the defense asks me to speculate that that
7 testimony, had it been given, would have changed
8 Mr. Handfield's mind or would have changed the
9 defendant's mind about what they were doing. Again,
10 that's pure speculation. I don't find that necessarily
11 to be the case.

12 I think we do have to put it in context. This trial
13 was July of 2011. We really were in the infancy of the
14 stand your ground proceedings at that point in time. I
15 would agree with the defense, it was legally acceptable
16 at that point in time to have insisted on a pretrial
17 hearing, but again, the law evolves.

18 I was trying to figure out when it was made clear
19 that they were entitled to an evidentiary hearing prior
20 to trial. I guess the Dennis case by the Florida Supreme
21 Court in December, 2010, probably laid that to rest in
22 determining that 3.190(b) was the proper vehicle rather
23 than 3.190(c)(4), which was in conflict up to the Dennis
24 case. But I would agree with the defense case that it
25 was a legally available remedy at that point in time.

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1 However, as Mr. Bauer had indicated, he'd never had
2 an evidentiary hearing prior to trial. It was not the
3 norm at that point in time. It was the norm to file the
4 motion prior to trial, if there was one going to be
5 sought, but it was not the norm to have an evidentiary
6 hearing prior to trial.

7 My recollection may be -- may be faulty, but I seem
8 to remember having had a trial with Mr. Pumphrey even,
9 somewhere along this time frame, where we did it as part
10 of the testimony at trial. That was certainly not set in
11 stone at that point in time that there would be a
12 pretrial evidentiary hearing.

13 I don't find it's unreasonable not to do that,
14 particularly under the facts of this case where it's
15 pretty much a clear loser on your stand your ground if
16 the only purpose was to get the victim's testimony. I
17 don't find it to be unreasonable for an attorney not to
18 do that.

19 We then get to the plea offer. I find that it was
20 presented to Mr. Jones and he made a decision. There was
21 no deficient conduct. I do find based upon the testimony
22 presented that the attorneys suggested to Mr. Jones that
23 would be his best remedy and he rejected that. Again, as
24 I say, it seems to me what was really happening is
25 Mr. Jones was listening to family members, not his

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1 attorneys.

2 There is some dispute in the evidence about exactly
3 what was presented to Mr. Jones in the way of
4 recommendation. I think the State has kind of approached
5 it by arguing assuming Mr. Handfield did say that it was
6 a winnable case and that he should reject the plea offer,
7 that that was not an unreasonable position. I would
8 certainly agree with that.

9 I don't remember all these cases and, frankly, just
10 the name didn't bring it to mind, but when I heard the
11 facts of the case, I do have a pretty clear recollection
12 of the facts of this case. And I've reviewed the
13 transcript enough to remember it.

14 Certainly I see, as the defense would point to, an
15 imperfect self-defense case, if you look just strictly at
16 the wording of the self-defense instruction. But it was
17 a perfect case for putting the victim on trial. As I
18 often mentor with young attorneys, juries generally make
19 equitable decisions, not legally technical decisions, as
20 has been posited here.

21 I think you can try this case ten times, and eight
22 or nine out of ten times, a jury would acquit on these
23 facts, not because self-defense is established, but
24 because you have a victim who has expressed no interest
25 in the prosecution, who is obnoxious, who's been out --

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1 just gotten out of prison on a murder charge, who did not
2 engender sympathy with the jury. And I think many jurors
3 would simply decide he probably got what he deserved.

4 However, this was kind of unique in this case. We
5 had an attorney on the jury. And I believe, although I
6 can't read his handwriting on the verdict form, I believe
7 the attorney ended up being the foreperson. And I
8 believe that that ultimately made a jury that was willing
9 to look strictly at the letter of the law and come back
10 with a conviction in this case.

11 I don't think it was unreasonable at all for
12 Mr. Handfield to believe that he had a winnable case. I
13 think under many circumstances, that would be what
14 occurred in this case.

15 In terms of the prejudice, as Mr. Evans has pointed
16 out, there are a couple of DCA cases that say that even
17 though the attorney said it was probably winnable, it's
18 not ineffective assistance of counsel.

19 I think there's another problem with the defense
20 prejudice argument, as has been announced here. Alcorn
21 involves four prongs that the defendant -- except for the
22 mis-advice, the defendant would have accepted the plea
23 offer. First, I've said I don't think there was
24 mis-advice. But I don't think that I'm convinced that
25 the defendant would have accepted the plea offer, even if

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1 Mr. Handfield was recommending it, as the defendant
2 claims he was not.

3 The prosecutor would not have withdrawn the offer,
4 that appears to be established.

5 I think their biggest problem is it said the Court
6 would have accepted the plea. I think Mr. Bauer made
7 clear that the Court's policy at that time was not to
8 accept negotiated pleas after docket sounding, which had
9 occurred on the Thursday prior to this trial.

10 You may wonder why there's discussion of the plea.
11 There's discussion of the plea just because of 3.850
12 hearings, as we're having here, where defendants contend
13 that they were not presented with plea offers that were
14 made. We were trying to -- I was trying to make a record
15 that whatever plea offers had been made had been
16 presented to Mr. Jones.

17 I don't think you'll find anywhere in this record
18 where I said I was going to accept the plea. Basically
19 my policy is not to accept a plea after docket sounding,
20 absent exceptional circumstances. Frankly, I don't know
21 what I would have done had that been presented to me. I
22 wasn't asked to make that decision. I would have
23 consulted with the attorneys and asked why this was last
24 minute. But I don't think it's appropriate at this point
25 to speculate what I would have done. And, therefore, the

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1 defense has not proven that prong of Alcorn.

2 The sentence would have been less severe has been
3 established.

4 For those reasons, I'm going to deny the motion for
5 post conviction relief.

6 Mr. Jones, you have 30 days to file a notice of
7 appeal. If you can't afford an attorney, I would
8 consider appointing one to you.

9 Are you going to be prepared to continue to
10 represent him, Mr. Ufferman?

11 MR. UFFERMAN: I'll consult with him. And I'll file
12 the notice of appeal regardless, if that's what his
13 indication is. But if he asks that counsel be appointed
14 and it's not me, then I'll file an appropriate motion
15 nevertheless. I think the case law requires that I
16 follow through and file the notice of appeal regardless
17 so I'll do that.

18 THE COURT: Okay. I'm sure that you're aware of it.
19 I'm going to do a simple order stating: For the reasons
20 stated on the record, the motion is denied. Anybody have
21 a problem with that procedure?

22 MR. EVANS: No, Your Honor.

23 MR. UFFERMAN: I don't, Your Honor.

24 I do need to put something on the record. I wasn't
25 anticipating this and I apologize. I've never been in

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1 this position.

2 I told you before that I had a Lafler case and one
3 of the issues in that case was how do you prove the final
4 prong that the Judge would have accepted the plea. In
5 this case, I would say for the record that Mr. Bauer said
6 that there were exceptions to your policy.

7 And my only concern now is that the Court has made
8 itself a witness in this case and made a finding
9 regarding something that -- you're not taking the
10 witnesses as presented as to whether or not you would
11 have accepted the plea. You're actually looking into
12 your own mind and trying to apply your own policy,
13 something that we weren't aware you were going to do.

14 I don't think it's appropriate in these cases to
15 ever call a sitting judge to try to be a witness, even if
16 you weren't presiding over this case, to ask that
17 question. But I do need to note an objection to the
18 record because I think you've just made yourself a
19 witness that we were unable to cross-examine you on
20 regarding that last prong.

21 THE COURT: Well, I don't think I've made myself a
22 witness. I think I've related what Mr. Bauer has said
23 the Court's policy was, which, frankly, I would agree,
24 that is my policy. But I think what I said was it would
25 be speculation and the defense has the burden of proof.

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1 And you have not carried that burden of proof.

2 So I don't think I've made myself a witness. But,
3 anyway, I note your objection. I'll overrule your
4 objection. Yes, it's a little bit of an odd situation,
5 but, anyway, that's where we are.

6 Anything else?

7 MR. UFFERMAN: No, Your Honor.

8 THE COURT: All right. We'll be in recess.

9 Mr. Jones can be returned to the Department of
10 Corrections.

11 (Proceedings concluded at 12:56 p.m.)

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1 TYRONE PLEAS

2 was called as a witness, having been first duly sworn, was
3 examined and testified as follows:

4 THE COURT: Have a seat, please, sir. Slide up to
5 the microphone.

6 DIRECT EXAMINATION

7 BY MR. BAUER:

8 Q Would you please tell us your name?

9 A Tyrone Pleas.

10 Q How do you spell your last name?

11 A P-L-E-A-S.

12 Q Okay. And how old are you?

13 A Huh?

14 Q What's your age?

15 A Forty.

16 Q Forty? Let me ask you, do you know Maria Jones? Do
17 you know Maria Jones?

18 A Yes.

19 Q And if you, sir, if you could slide forward, we want
20 to hear you and I want to make sure you can hear me. And how
21 do you know Maria Jones?

22 A We was dating.

23 Q Y'all were dating? Okay. How long were y'all
24 dating?

25 A Close to three years.

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1 Q Three years? And did y'all live together?
2 A At the time, yes.
3 Q At the time? And you were working, she was working?
4 A Yes.
5 Q You had a household together?
6 A Yes.
7 Q Did y'all contribute together to the household?
8 A Yes.
9 Q And what kind of work were you doing?
10 A I work at a tire shop.
11 Q I want to ask you if -- where was she working?
12 A She work at the post office.
13 Q Now I want ask you, do you know I believe Brandon
14 Jones, but Rufus Brandon Jones?
15 A Me and her was dating; yes, I know her son, yes.
16 Q You know her son?
17 A Yes.
18 Q And do you see -- how do you refer to him? Do you
19 go by Rufus or Brandon?
20 A Brandon.
21 Q He was called Brandon?
22 A Yes.
23 Q And for court purposes we're going to say Mr. Jones.
24 Do you see Mr. Jones in the courtroom today?
25 A Yes.

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1 Q Can you point him out for us and describe an article
2 of his clothing for the record, please?

3 A Sitting right over there.

4 Q By Mr. Handfield?

5 A Yes.

6 Q Or where? In between Mr. Handfield and Mr. Akbar?

7 A Yes.

8 MR. BAUER: Let the record reflect the witness has
9 identified Mr. Jones.

10 BY MR. BAUER:

11 Q Now how long have you known Mr. Jones?

12 A Same time.

13 Q Same, about three years, same amount of time?

14 A Yes.

15 Q Okay. And where were y'all staying at the time?

16 THE COURT: That's ambiguous.

17 BY MR. BAUER:

18 Q Let me ask you: Where were you living back on
19 December 25th, 2010?

20 A 846 South Bahama Drive.

21 Q And whose house was that?

22 A Maria Jones.

23 MR. BAUER: May I approach?

24 THE COURT: You may.

25 BY MR. BAUER:

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1 Q I want to show you what's been marked as State's No.

2 1. Are you familiar with Bahama Drive?

3 A Yes.

4 Q Do you see that map and can you identify that map?

5 A Uh-uh.

6 Q You're allowed to read it. I can't read it to you,
7 but do you see Bahama Drive on there?

8 A Yes, I see Bahama Drive.

9 Q And if I were to show you on the second page of this
10 the balloon A, do you see that address there?

11 A That's the same address I just told you.

12 Q 846 Bahama Drive? And do you see that depicted on
13 this map?

14 A Yes.

15 Q Is that consistent with where you were staying on
16 December 25th, 2010?

17 A Yes, sir.

18 Q Okay. And I'll ask you something about this in the
19 future, but hold on a second.

20 Was anybody else living there with you? Who else
21 was staying in the house?

22 A Me, her and her son pretty much.

23 Q Now, were you there every night or did you stay
24 anywhere else?

25 A I was there.

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1 Q You were there every night?

2 A Yes.

3 Q What about Maria Jones, was she there every night or
4 would she stay anywhere else?

5 A Yes.

6 Q Which one?

7 A She was there every night.

8 Q Okay. Now what about Mr. Jones, the defendant,
9 would he be there every night or would he stay somewhere else?

10 A I mean, unless he out with a friend girl or
11 whatever, yes, he be there every night, too.

12 Q And at the time how were you getting along with him
13 back on Christmas, 2010?

14 A I mean, I know we here because of the bad, but we
15 had great times, too. I mean, I know where you're going with
16 your question. So just as well as bad times we had good
17 times. We used to go cut grass together and everything.

18 Q Good and bad times?

19 A Yes.

20 Q Let me ask you then going to Christmas, did anybody
21 else live in the residence? It was just you three; right?

22 A I mean, family members come up from out of town. I
23 don't know where you're going with this.

24 Q How many bedrooms is the house?

25 A Three.

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1 Q Three bedrooms? And who stayed where? You and
2 Maria were in one bedroom or you had separate bedrooms?

3 A Same bedroom.

4 Q You and Maria were in one bedroom. And then where
5 was Mr. Jones when he stayed there?

6 A He had his own room.

7 Q And then what was the third room? What was that
8 for?

9 A I think that was her brother Chauncey room.

10 Q It was like a spare room unless he was there?

11 A Yes.

12 Q And can you tell us, that spare room, was that blue
13 in color? Is that the spare room?

14 MR. HANDFIELD: Leading. Objection, leading.

15 THE COURT: Sustained.

16 BY MR. BAUER:

17 Q Was there a room that was blue?

18 A Huh?

19 Q Was there a room that was blue in color?

20 A Yes.

21 Q Blue paint? Which room was that?

22 A I think they call it the guestroom or her brother's
23 room or something like that. I don't know.

24 Q And did any rooms have a TV? And there is a reason
25 I'm asking this. But do you remember any rooms having a TV?

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1 A Yes.

2 Q Which room had a TV?

3 A Me and her room, and her son room.

4 Q So there is two televisions, okay; is that correct?

5 A No, there was more than that.

6 Q There were two TVs that were in the rooms, one in
7 each room?

8 A Yes.

9 Q Okay. Let me ask you this then, going back to
10 Christmas day, 2010, how did your Christmas go that morning?

11 Did y'all celebrate Christmas? What did y'all do?

12 A It just was a normal Christmas. I mean, I had
13 bought her a pillow or whatever. Me and her was going through
14 it about what she wanted for Christmas, I didn't get her what
15 she wanted for Christmas, but it was just a normal Christmas.

16 Q You bought her a pillow?

17 A Yes.

18 Q And what did she want?

19 A She wanted an iPad.

20 Q How did that go then that morning? Was it a good
21 Christmas or a bad Christmas?

22 A Yes, it was a good Christmas.

23 Q It was good? What happened after you celebrated
24 Christmas? Did y'all stay there or did you go anywhere?

25 A I rode over to a couple cookouts and stuff like

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1 that.

2 Q And was that in town or out of town?

3 A In town.

4 Q Going back to 846 South Bahama Drive, I have to ask
5 you this question for the record, that is in Leon County;
6 correct?

7 A Yes, sir.

8 Q Now was there a time when you didn't see Maria
9 Jones?

10 A We started going through it because my phone was
11 left on the charger and she grabbed my phone and she went
12 through it. And my cousin --

13 Q Tell me about this so we understand. You have a
14 cellphone and does she have a cellphone?

15 A Exactly.

16 Q And you're saying she got a hold of your cellphone?

17 A Right. And she went through my phone because me and
18 my cousin was riding. His phone had died. He texted a girl.
19 So when Maria went through my phone, she found this text. She
20 asked me about this text. I said, why don't you just call --

21 MR. HANDFIELD: Objection, hearsay.

22 MR. BAUER: It is not used to --

23 THE COURT: Ask another question. I'll sustain the
24 objection.

25 BY MR. BAUER:

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1 Q When she looked through your phone, she found a
2 text?

3 A Right.

4 Q What was her reaction to the text?

5 A She was hot.

6 Q What does that mean?

7 A She was upset about the text.

8 Q And you tried to explain that to her?

9 MR. HANDFIELD: Objection, leading.

10 THE WITNESS: No.

11 THE COURT: Overruled.

12 BY MR. BAUER:

13 Q Did y'all discuss that at all?

14 A No, sir. I grabbed her phone, but I couldn't get in
15 her phone.

16 Q Hold on. You grabbed her phone?

17 A Yes, because we was arguing. I grabbed her phone,
18 but I couldn't get in her phone because she got a special code
19 to get in her phone. So I kept her phone, but she gave me
20 back my phone. And she said, why you keeping my phone? I
21 said, well, I want to see do it ring. So she left the house
22 and whatever and she went to cancel service on her phone.

23 That was pretty much it.

24 She kept calling me. She called me from friends'
25 phones and whatever to ask me about the text. I said, why

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1 don't you just call the number? That's how it pretty much
2 started.

3 Q Were you trying to hide the number in any way?

4 MR. HANDFIELD: Objection, leading.

5 THE COURT: Overruled.

6 BY MR. BAUER:

7 Q Were you trying to hide the number in any way?

8 A At one time, yes, I was.

9 Q But then she was aware of the number and if she
10 wanted to call, she could call it?

11 A I can't hear you.

12 Q The number that was at issue, she could do her own
13 investigation if she wanted to?

14 A Right, but she didn't believe me.

15 Q So do you know where she went after that?

16 A I know the first thing she was going to do is pretty
17 much -- she pretty much going to cancel service on the phone.
18 I couldn't get her phone on. The only thing I could do is
19 wait on her phone to ring.

20 Q Now did she tell you she was going to do that or you
21 know she did that?

22 A No, I didn't use -- she gave me back my phone. I
23 used my phone to call her phone. And then it say, at
24 subscriber's request, service has been canceled.

25 Q And where was she at that time?

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 A I didn't know because I had her phone. So I messed
2 up twice.

3 Q You couldn't call her then?

4 A Right.

5 THE COURT: Mr. Bauer, let's move on, please. We're
6 just talking about foolishness. Move on.

7 BY MR. BAUER:

8 Q I want to know, was that the dispute that you had
9 that day? Was there any other dispute that you had that day?

10 A I couldn't get in touch with her because I had her
11 phone.

12 Q And when is the next time you saw her that day?

13 A I had made about three or four phone calls because I
14 had her phone, I was going through her phone. And I had
15 called three or four people in her phone. I pretty much
16 called her brother and then I called three or four people
17 trying to get in contact with her. I couldn't get in contact
18 with her.

19 Q Okay. Did you leave messages with them or did you
20 speak to them?

21 A Eventually I had talked to her. And she said, you
22 would know where I was if you wouldn't have took my phone.

23 Q So this argument was still going on?

24 A It wasn't no argument, you know.

25 Q Then when is the next time you saw her? That day?

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 A She was at the house.

2 Q Were you there when she came back or did you leave
3 and come back?

4 A No, I had left. And then I was riding around, I had
5 went to the pool hall, riding around. But she was there at
6 the house when I got there.

7 Q How did things go when you came in the house?

8 A When I first got out -- I had her truck because my
9 truck was tore up. When I first got out of the truck, and I
10 went in the house, she said, well, don't lock the door,
11 Brandon is coming. I said, well, how you know Brandon is
12 coming? She said, said I just got off the phone --

13 MR. HANDFIELD: Objection.

14 THE COURT: Your legal objection?

15 MR. HANDFIELD: Hearsay.

16 THE COURT: Overruled.

17 BY MR. BAUER:

18 Q Go ahead, you can answer that.

19 A I mean, then she pretty much --

20 Q Hold on. You said, how did you know Brandon was
21 coming. Brandon meaning Mr. Jones?

22 A Right.

23 Q What did she say?

24 A She said, I just got off the phone with him. He got
25 me looking for some kind of paper or something. So it was

1 night. So when I got in the house, I said, I'm fixing to go
2 lock the door. When he get here, I'll unlock it. So I locked
3 the screen door and locked the door and I went over there to
4 the den. And she was sitting in the den. I asked her, I
5 said, man, where you been? She was like -- again, she kept
6 saying, if you wouldn't have took my phone, you would know
7 where I've been. She told me she was out to a cookout in
8 Midway.

9 Q Had you been out to Midway with her? Or do you know
10 who lived out there?

11 A I been out there before, but I didn't go out there
12 then.

13 Q So you did lock the door? You ended up locking the
14 door; correct?

15 A Yes.

16 Q Was there then a knock on the door?

17 A Yes.

18 Q Do you know about what time that was?

19 A Like it had to be like ten, 12 minutes at the most.

20 Q Between ten and 12?

21 A At the most, at the most.

22 Q And what did you do when you heard the knock on the
23 door?

24 A She told me, she said, well, open the door, it is
25 Brandon. So when I went to the door, I said, who is it? He

1 said, it is, Brandon, your stepson, let me in. So I opened
2 the door -- unlocked the screen door and let him in.

3 Q Did you do anything to prevent him from coming in
4 before that?

5 A No.

6 Q Did y'all say anything other than that exchange, any
7 words exchanged?

8 A No.

9 Q How did it go when Mr. Jones came in the house?

10 A He came in, everything was normal. He came in, he
11 was talking to his mom.

12 Q Were you there when he was talking to his mom?

13 A Yes. When I unlocked the door, I had gone back in
14 the den where she was.

15 Q Was there anything of substance, anything about you,
16 anything argumentative?

17 A When I unlocked the door for him, I went back down
18 to the den where she was. And me and her continued our
19 conversation because I was asking her about where she was and
20 stuff. And then he said, mom, where is my food? Which one of
21 these is mine? Then he went to the stove and fixed him a
22 plate. And then he went to the table.

23 Q Do you know where she got food from?

24 A She said she had brought it from a cookout in
25 Midway.

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 Q I want to ask you while we're there, I want to show
2 you three photographs -- four photographs.

3 MR. BAUER: These have been provided to counsel.

4 These will be two through five. I'm showing counsel
5 before showing to the witness.

6 May I approach?

7 THE COURT: You may.

8 BY MR. BAUER:

9 Q Let me go to what would be State's No. 2, change
10 that from 25. And this will be No. 3. Do you recognize
11 those?

12 A Yes.

13 Q That's the front of 846 Bahama Drive?

14 A Yes.

15 Q And does that materially represent how the house
16 looked at that time? whose cars are those; do you know?

17 A The white car is mine, and the blue truck is mine.
18 I don't know about nothing else.

19 Q Okay. Let me ask you to look at No. 4 and No. 5.
20 And do you recognize these photographs, 4 and 5? Is that your
21 kitchen?

22 MR. HANDFIELD: Objection, leading.

23 THE COURT: Sustained.

24 BY MR. BAUER:

25 Q If you don't recognize it, tell me. If you do, tell

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 me.

2 A That's the kitchen, yes.

3 Q Can you tell me in No. 5, do you recognize what's on
4 the stove? No. 5 is right here, I'm sorry. On top of the
5 stove?

6 A I didn't -- when I got to the house, I went straight
7 to the den. I didn't look at the stove to see what was on the
8 stove.

9 Q So you didn't have any of the food?

10 A No, sir.

11 Q But is this how the kitchen looked that night, 4 and
12 5?

13 A When I got in the house, I went straight to the den.

14 Q When you were there earlier that day, do you
15 recognize your kitchen?

16 A The kitchen the same. I lived there for three
17 years.

18 MR. BAUER: Judge, I would ask that 2, 3, 4 and 5 be
19 admitted.

20 THE COURT: Is there an objection?

21 MR. HANDFIELD: I would object. The witness
22 indicated that he --

23 THE COURT: Don't repeat testimony. Just state your
24 legal objection.

25 MR. HANDFIELD: I don't believe the proper

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 foundation has been laid, Judge.

2 THE COURT: Overruled, they will be admitted. Two
3 through 5 are admitted.

4 (State's Exhibit Nos. 2-5 received in evidence.)

5 MR. BAUER: May I publish?

6 THE COURT: You may.

7 "Publish" just means we'll show them to you. Go
8 ahead, Mr. Bauer. You don't need to memorize them now,
9 though. You'll have them during your deliberations.

10 We'll just show you some of these things momentarily.

11 BY MR. BAUER:

12 Q Let me ask you this: Then you did not have any of
13 the food that she brought back from Midway?

14 A No, sir.

15 Q In order for Mr. Jones to get that food that he was
16 talking about, where in the house would he go? In the dining
17 room? In the kitchen? In one of the back rooms? Where?

18 A He would have to go to the kitchen to fix him a
19 plate.

20 Q Okay. It may sound like a silly question. So he
21 would be in the kitchen getting the food?

22 A Yes.

23 Q Is that where he went?

24 A When he first came in, he was conversating with his
25 mom.

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 Q Where was that?

2 A She was pretty much in the den area there.

3 Q Now what was going on in the den?

4 A Me and her was talking. There was a knock on the
5 door, I answered the door. Then once I opened the door back,
6 I went back to the den where she was.

7 Q Did he get involved -- did Mr. Jones get involved in
8 your conversation?

9 A He was asking his mom about a rental car.

10 Q Was the TV on in the den?

11 A I don't know, probably was.

12 Q Are you aware of anything special going on? Was
13 there a game or a sports game or something; do you recall? If
14 you know, say. If you don't, tell us.

15 A I don't remember. I think it was some kind of
16 sports was on.

17 Q Say again?

18 A Some kind of sports was on.

19 Q Is Ms. Jones into sports or watching sports on TV?

20 A Yes, she like Miami Heat and she like the Boston
21 Celtics.

22 Q You were not interested in what was going on on the
23 TV?

24 A No, I was trying to see where she was.

25 Q Now how did that go then as that conversation went

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 on?

2 A I don't know. I was just asking a question about
3 how -- you know, where she was or whatever. I never felt that
4 I had to talk to her outside of her family presence because, I
5 mean, there was no -- there was no violent conversation.

6 Q Did anybody at any time during that conversation
7 call the police or threaten to call the police?

8 A Not that I can remember.

9 Q To your knowledge?

10 A Not that I remember.

11 Q All right. You didn't feel the need to call the
12 police at that time?

13 A Call the police?

14 Q Okay. Yes or no?

15 A No.

16 Q Then were you aware at that time or any time after
17 that that Mr. Jones was armed with a firearm?

18 A I had nothing -- no knowledge about no firearm.

19 Q Did you have a firearm?

20 A No.

21 Q Did you have any weapon on you?

22 A No.

23 Q Did you make any threats against anybody with any
24 weapon?

25 A I don't remember.

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 Q Do you know if you could have threatened somebody or
2 made idle threats or anything?

3 MR. HANDFIELD: It's been asked and answered, Judge.

4 THE COURT: Sustained.

5 THE WITNESS: I don't remember.

6 BY MR. BAUER:

7 Q Did anybody make threats to you?

8 A No, sir.

9 Q Tell me how you got shot. What happened?

10 A I was in the den and me and Maria was talking. And
11 Brandon was to the table. So when I got ready to leave the
12 den and go into the room or whatever, I saw the screen door
13 open. And once I passed by Rufus Jones or Brandon, I heard a
14 scream, I heard Maria screaming. I made like I was going to
15 open the screen -- the refrigerator door and took off down the
16 hall.

17 Q You took off?

18 A After I heard her screaming, I mean, I took off down
19 the hall and I heard a gunshot.

20 Q Now what happened first, the gunshots or Maria
21 screaming?

22 A I don't remember.

23 Q Did you hear Mr. Jones say anything or make any
24 noise?

25 A I don't remember because I guess the TV was up or

1 something. I mean, I'm thinking it was a sporting event on.

2 Q What made you run?

3 A I had heard pretty much like a scream, something
4 like that.

5 Q How many shots did you hear?

6 A I wasn't trying to count them.

7 Q More than one?

8 A I think the first one pinned me to the wall.

9 Q Say again?

10 A I think the first shot pinned me to the wall.

11 Q And then what happened?

12 A I mean, I turned down the hallway and I ran sideways
13 until I got into the room. And once I got in the room, I shut
14 the door. And I opened up my jacket because it was real cold.
15 And I had a wound on the left -- on the right side of my
16 chest. When I shut the door, I opened the dresser like I was
17 fixing to get a weapon or something out of it, and then I shut
18 the dresser drawer real hard because there wasn't really
19 nothing in there. But just in case somebody was coming down
20 the hall behind me, I shut the drawer on the dresser.

21 And I looked down and I pressed down like this right
22 here because it was bleeding so hard. And in the house you
23 can pretty much go through one bathroom and come out the other
24 one. I mean, we lock the one door, but it still left myself
25 open by the other door. So I went out the back door and I

1 jumped the wooden fence.

2 Q Did you have any weapon in that back room?

3 A If I had it, I would have used it.

4 Q If you had it, you would have used it?

5 A I would have, yeah.

6 Q And, Mr. Pleas, you've been in trouble before --

7 A Yes.

8 Q -- correct? How many times have you been convicted
9 of a felony?

10 A Three.

11 Q Three times? I want to ask you about one case in
12 particular back in 1993. That was a pretty serious charge?

13 A Yes.

14 Q What charge was that?

15 A Second degree murder.

16 Q Second degree murder?

17 A Yes.

18 Q Did you go to trial on that case?

19 A Yes.

20 Q And that case ended up with a plea or what happened?

21 A After like three days, the prosecutor, Jack

22 Poitinger, he found out that two guys --

23 MR. HANDFIELD: Judge, Judge --

24 MR. BAUER: Don't get into the facts of the case.

25 THE WITNESS: Yes, after two days of trial.

1 BY MR. BAUER:

2 Q And what did you plea to?

3 A Fifteen, three mandatory.

4 Q Fifteen years in a second degree murder?

5 A Yes, three mandatory.

6 Q And that was after the Court had heard testimony and
7 the prosecutor had put on all of its case or half of its case
8 or what?

9 A Not even a third.

10 Q And you got out in 2001?

11 A Yes.

12 Q And nothing since then? No convictions since
13 then --

14 MR. HANDFIELD: Objection.

15 BY MR. BAUER:

16 Q -- is that correct?

17 THE COURT: I'm sorry -- is there an objection?

18 MR. HANDFIELD: No relevance.

19 THE COURT: Sustained. Mr. Handfield, all you have
20 to do is stand up and state, objection, and your legal
21 basis and I'll rule.

22 MR. HANDFIELD: I understand, Judge. Thank you.

23 THE COURT: All right.

24 BY MR. BAUER:

25 Q Were you aware of any guns in that house that you

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 had access to --

2 A No.

3 Q -- or that you could use?

4 A No, sir. I know sometimes we pretty much have
5 domino games over to the house. And when I was in the
6 hospital I had talked to Maria and she had asked me about a
7 gun in the stove.

8 MR. HANDFIELD: Objection.

9 THE COURT: Sustained.

10 BY MR. BAUER:

11 Q Don't get into hearsay. Just were you aware of any
12 guns in that house or around that house?

13 A No.

14 Q what precautions, if any, were you taking to think
15 that anybody else could get a gun?

16 MR. HANDFIELD: Objection.

17 THE COURT: I couldn't hear you, Mr. Bauer. Don't
18 answer the question until I've made a ruling. State your
19 question again. Don't answer until I rule.

20 MR. BAUER: Did you have any indication anybody else
21 in the house could have a gun, before you were shot?

22 MR. HANDFIELD: Judge, I object, speculation.

23 THE COURT: Sustained, speculation.

24 BY MR. BAUER:

25 Q Did you use the oven that day?

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 A No, sir.

2 Q Do you know if anybody else did use the oven while
3 they were in your presence?

4 A No, sir.

5 Q Okay. Give me one second. You didn't see the
6 inside of that house after you left it, after you got shot?
7 Did you go back into the house after you got shot?

8 A Yes.

9 Q That same day?

10 A No.

11 Q Okay. That's what I'm asking. On that same day
12 when you left the house, where did you go?

13 A I went to a couple cookouts, like I said.

14 Q I'm sorry, let me make sure you understand my
15 question. I'm at the point where you've been shot and you
16 said you went out where, what part of the house?

17 A I went out the back -- out of her back room glass
18 door.

19 Q And where does that lead to, into the backyard?

20 A To a screened-in porch on the backyard.

21 Q Were you able to get outside that way?

22 A Yes.

23 Q Where did you go after you said you jumped the
24 fence?

25 A I went around the pool and jumped the fence.

1 Q What were you thinking at that point? Why were you
2 going that way?

3 MR. HANDFIELD: Objection, relevance.

4 THE COURT: Sustained.

5 BY MR. BAUER:

6 Q Where did you end up going?

7 A I jumped that fence, then there is two more fences
8 behind that, I jumped both of those. And then I grabbed my
9 cellphone and the first call I made was to Maria.

10 Q You called Maria?

11 A Yes.

12 Q What did y'all talk about?

13 MR. HANDFIELD: Objection.

14 THE COURT: Sustained.

15 BY MR. BAUER:

16 Q Did you tell her what had happened to you?

17 THE COURT: I sustained the objection. Move on,

18 Mr. Bauer.

19 BY MR. BAUER:

20 Q Okay, as to this witness.

21 How long did you talk on the phone with Maria?

22 A I don't know, about three minutes -- two, two or
23 three minutes.

24 Q And then where did you go?

25 A There is a guy lived pretty much around the corner

1 from her. I pretty much seen him in passing. I was trying to
2 get him to take me to the hospital because I didn't want to
3 call 911.

4 Q You didn't?

5 A (Indicates negatively.)

6 Q Why not?

7 A I mean, I just don't believe in it.

8 Q You don't believe in it?

9 A Uh-uh.

10 Q So what did you do?

11 A When I knocked on the door -- when I got to where I
12 was going, I knocked on the door and his mom came to the door.
13 And she said -- well, she opened the door. When she opened
14 the door, I told her, I been shot. She slammed the door. And
15 she opened it again and she said, I'm going to call you some
16 help. But that was my purpose of going there, hoping he was
17 home so he could run me to the hospital and not call 911.

18 Q Did you know the woman that had slammed the door?

19 A I knew her son.

20 Q You didn't really know her?

21 A No.

22 Q And what did she do when --

23 THE COURT REPORTER: I'm sorry, what?

24 BY MR. BAUER:

25 Q What did you ask her to do for you, if anything?

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 A I said -- she didn't really open the door at first,
2 I had asked for her son or whatever. And she said, he is not
3 here. And when she opened the door, I said, I've been shot.
4 And she slammed the door, and then that's when she opened --
5 she said, I'm going to call you some help. And that's when
6 she opened her curtain.

7 Q And did help arrive for you?

8 A Yes.

9 Q Where were you when help arrived?

10 A She had told me to take a seat on her porch.

11 Q So you were sitting on her porch then?

12 A Yes.

13 Q And do you know if that's 807 Bahama or do you know
14 the address?

15 A I don't know the address.

16 Q You don't know the address? How long did it take
17 help to get there?

18 MR. HANDFIELD: That's been asked and answered,
19 Judge, objection.

20 A Not long.

21 THE COURT: Overruled.

22 BY MR. BAUER:

23 Q What happened when they got there?

24 A They -- it was like 40 to 50 yards back. And all of
25 them had their guns out. And I said, man -- it looked like

1 the closest one to me was a fire chief. And I looked over, he
2 had on like a gray shirt. I said, man, I need help, you know
3 what I mean. So when he took off towards me, that's when all
4 the rest of them put their guns up and started coming towards
5 me.

6 Q And were these fire department, EMS, or police, or
7 all of the above?

8 A I didn't even --

9 Q Did you get taken to the hospital?

10 A Yes.

11 Q Where did you go, TMH or Capital Regional?

12 A Yes, TMH.

13 Q TMH?

14 THE COURT: Do you have more questions, Mr. Bauer?

15 MR. BAUER: Yes, sir.

16 THE COURT: Let's move it along, we're dragging
17 here. We're talking about details that have no
18 significance. Move on.

19 MR. BAUER: Thank you, Judge.

20 I have State's Exhibit Nos. 6 and 7 that counsel has
21 been provided. I'm showing counsel prior to showing the
22 witness. May I approach?

23 THE COURT: You may.

24 BY MR. BAUER:

25 Q Do you recognize No. 6?

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 A Yes.

2 Q Is that you?

3 A Yes.

4 Q And what is that a picture of you doing?

5 A That's me in the hospital, in the emergency room.

6 Q Does that show the gunshot to your chest?

7 A Yes.

8 Q And then looking at No. 7, do you see that?

9 A Yes.

10 Q Is that where you got shot in your back?

11 A Yes.

12 Q I'm going to show you another series of photographs.

13 MR. BAUER: We'll do 8 and 9, I believe that was.

14 Let me make sure. Six, seven -- the next will be, for

15 the record, eight and nine. Counsel, again, has been

16 shown these photographs I'm currently showing the

17 witness.

18 BY MR. BAUER:

19 Q Let me show you 8 and 9. Do you recognize that

20 article of clothing?

21 A Yes.

22 Q What is that?

23 A It is my leather jacket.

24 Q That's the leather jacket you were wearing when you
25 were shot?

1 A Yes.

2 Q And does that indicate the bullet hole where you
3 were shot, in each photograph?

4 THE COURT: I thought we had the evidence marked
5 before court, Mr. Bauer.

6 MR. BAUER: It is marked. I'm renumbering it.

7 THE COURT: We'll take a break, lunch break. Don't
8 discuss the case among yourselves. You can step out, be
9 back at 1:00. We will be in recess until then.

10 Get your evidence marked, Mr. Bauer.

11 MR. BAUER: I'm ready now, Judge.

12 THE COURT: You can step out.

13 (Luncheon recess taken at 12:01 p.m. Proceedings
14 continued in volume II.)

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1 CERTIFICATE

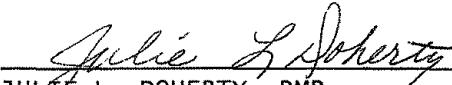
2 STATE OF FLORIDA:

3 COUNTY OF LEON:

4 I, JULIE L. DOHERTY, Registered Merit Reporter, do
5 hereby certify that the foregoing proceedings were taken
6 before me at the time and place therein designated; that my
7 shorthand notes were thereafter translated under my
8 supervision; and the foregoing pages are a true and correct
9 record of the aforesaid proceedings.

10 I FURTHER CERTIFY that I am not a relative,
11 employee, attorney or counsel of any of the parties, nor
12 relative or employee of such attorney or counsel, or
13 financially interested in the foregoing action.

14 DATED this 12 day of December, 2011.
15

16 
17 JULIE L. DOHERTY, RMR
18 OFFICIAL COURT REPORTER
19 LEON COUNTY COURTHOUSE
20 TALLAHASSEE, FLORIDA 32301

21

22

23

24

25

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

EXHIBIT

D

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO.: 2010-CF-4225

STATE OF FLORIDA

VS.

VOLUME II
(Pages 83-283)

RUFUS JONES,

Defendant.

PROCEEDINGS: JURY TRIAL
BEFORE: THE HONORABLE JAMES C. HANKINSON
DATE: July 26, 2011
TIME: Commencing at 1:00 p.m.
Concluding at 5:55 p.m.
LOCATION: Leon County Courthouse
Tallahassee, Florida
REPORTED BY: JULIE L. DOHERTY, RMR
Notary Public in and for the
State of Florida at Large

ORIGINAL

JULIE L. DOHERTY, RMR
Official Court Reporter
Leon County Courthouse, Room 341
Tallahassee, FL 32301

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

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12

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9 MARIA JONES

10 Direct Examination By Mr. Bauer 262

11

12 EXHIBITS: RECEIVED:

13 STATE'S:

14 6 and 7 87
8 and 9 88
15 10-12 89
1
16 13-15 121
16 125
17 4A-4I 131
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18

19 DEFENDANT'S:

20 1 213

21

22 Certificate of Reporter 283

23

24

25

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 PROCEEDINGS

2 THE COURT: Be seated, please, folks.

3 Ready for the jury?

4 MR. BAUER: Yes, sir.

5 THE COURT: Let's have the jury, please. You can
6 resume your seat, Mr. Pleas. Come on up.

7 (Jury returned to the courtroom at 1:01 p.m.)

8 THE COURT: Everybody be seated.

9 You may proceed, Mr. Bauer.

10 MR. BAUER: Thank you, Your Honor.

11 DIRECT EXAMINATION (Continued)

12 BY MR. BAUER:

13 Q Mr. Pleas, I think I was up to 7 and 8 and I wanted
14 to approach.

15 (Off-the-record discussion.)

16 MR. BAUER: Based on the previous testimony, let me
17 go ahead and admit 6 and 7.

18 THE COURT: Is there an objection to State's
19 Exhibit 6 or 7?

20 MR. HANDFIELD: No objection.

21 THE COURT: They will be admitted.

22 (State's Exhibit Nos. 6 and 7 received in evidence.)

23 MR. BAUER: And the jacket, 8 and 9, Your Honor, I
24 would seek to admit 8 and 9.

25 THE COURT: Is there an objection?

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1 MR. HANDFIELD: No objection.

2 THE COURT: They will be admitted.

3 (State's Exhibit Nos. 8 and 9 received in evidence.)

4 BY MR. BAUER:

5 Q Mr. Pleas, I'm going to show you Nos. 10, 11, and
6 12.

7 MR. BAUER: Showing counsel concurrent with the
8 witness. May I approach?

9 THE COURT: You may.

10 BY MR. BAUER:

11 Q Do you see No. 10?

12 A Yes, sir.

13 Q Does that show your undershirt and the hole in your
14 undershirt from the shooting?

15 A This was the shirt I had over my undershirt.

16 Q Okay.

17 A Yes, sir.

18 Q How many shirts did you have on?

19 A Two or three probably, T-shirt or whatever.

20 Q This was over the shirt touching your skin?

21 A Yes.

22 Q Okay. And that's No. 10. Let me go to the
23 undershirt you just mentioned, 11 and 12. Do you recognize
24 that as your undershirt?

25 A Yes, sir.

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1 Q And that looks to be -- you correct me if I'm wrong.
2 Is that a regular -- is that a v-neck or a crew neck? What is
3 that?

4 A Looked like a v-neck.

5 Q And so the v-neck would be shown in State's No. 12
6 and that would be the front of your shirt. And that shows
7 where you were hit --

8 A Yes.

9 Q -- as far as the shirt goes?

10 A Yes.

11 Q Okay. And then No. 11 would be the back showing the
12 hole in the back?

13 A Yes.

14 Q And there is two blood spots where that shirt may
15 have come into contact with that wound.

16 MR. HANDFIELD: Objection, leading.

17 THE COURT: Sustained.

18 MR. BAUER: I'll withdraw that.

19 Let me admit 10, 11 and 12, Your Honor.

20 THE COURT: Is there an objection?

21 MR. HANDFIELD: Let me see it again, please.

22 No objection, Judge.

23 THE COURT: They will be admitted.

24 (State's Exhibit Nos. 10-12 received in evidence.)

25 MR. BAUER: Your Honor, may I publish 8 and 9?

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 THE COURT: You may.

2 MR. BAUER: The jacket.

3 BY MR. BAUER:

4 Q After you went to the hospital, you received
5 treatment; correct?

6 A Yes.

7 Q Do you know what they did to treat you?

8 A When you say, know what they did to treat me, what
9 you mean?

10 Q What kind of treatment did you receive? Did you
11 have to go to surgery, did you have to. Tell us about that?

12 A When I first got in the ambulance, I was surrounded
13 by police officers or whatever. And they closed down the
14 emergency room and got me in the emergency room. They
15 wouldn't let nobody in the emergency room or whatever. And
16 the detectives, they wouldn't even let the doctor get to me.
17 Dr. Crooms, I believe that was the doctor.

18 Q Dr. Crooms? All right.

19 A And they dyed my fingers for gunshot residue and
20 whatever.

21 Q In fact, they tested you to see if you had fired a
22 gun?

23 A Right.

24 Q And you had not fired a gun?

25 A Right.

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 Q Okay.

2 A And when they was dying my hands or whatever, one of
3 the female police officers, she said, well --

4 THE COURT: Don't go into what people said.

5 Ask your question again, Mr. Bauer.

6 BY MR. BAUER:

7 Q So you're getting treatment, there is people around
8 you. What are the doctors doing?

9 A The doctor had to wait until they finished up their
10 ballistics and whatever. And they cut the clothes off of me,
11 upper body clothes up off of me. And it wasn't until the
12 doctor said, well, we need to put him to sleep --

13 MR. HANDFIELD: Objection.

14 THE COURT: Sustained.

15 BY MR. BAUER:

16 Q Let me ask you this then: When they cut the clothes
17 off, the exhibits that we have entered into evidence, those
18 weren't cut when you had them on, the doctor did that?

19 A No, I think the nurses or whatever.

20 Q Did you go to sleep or were you given medicine?

21 A They put me to sleep, yes.

22 Q You went to sleep? What I want to ask you, and the
23 reason I'm asking you that is did you come into contact with
24 law enforcement who asked you about this case before you went
25 to sleep?

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1 A Yes.

2 Q How were you feeling during that time?

3 A How was I feeling about that?

4 Q How were you feeling at that time? Were you in
5 pain? Were you not in pain?

6 A I was in pain, I was angry.

7 Q You were mad?

8 A Yes.

9 Q And did you tell the officer what you wanted to do
10 to Mr. Jones?

11 MR. HANDFIELD: Objection, leading.

12 THE WITNESS: No, sir, that was --

13 THE COURT: I'll overrule that objection.

14 MR. BAUER: I'm sorry, Judge?

15 THE COURT: I said I overruled the objection.

16 BY MR. BAUER:

17 Q You're allowed to answer that.

18 A I never said nobody name.

19 Q Okay. How did you say it?

20 A He came in the room or whatever and he was talking
21 to the little white female officer, which was I guess guarding
22 the room or whatever. And he had his back to me. He said, do
23 you want to press charges, yes or no. He said, it really
24 doesn't matter to me because I can go back home and get in my
25 bed.

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1 And I am swallowing my blood at that time to
2 survive. For him to say that, you know, me and him got in an
3 argument about that. He said, it don't matter to me, I can go
4 home and get back in my bed, just plain and simple. Yes or
5 no, do you want to press charges? I said, no. He said, well,
6 due to the Florida law, there is enough evidence, I got to
7 press charges. If he beat it at trial, he beat it at trial.

8 And he turned around and looked at me and he said,
9 well, so, whoever responsible, do you want to kill him
10 yourself? And I said, yeah, you're mother-fucking right I
11 want to kill him myself. I never gave a name.

12 So when he head back to the headquarters -- well,
13 while he was in the room, he told the female officer that was
14 there with him, he patted on his side, he said, well, I left
15 my radio in the car. But on the way to the hospital, somebody
16 already turned theirself in concerning the situation or
17 whatever.

18 Q Don't get into any hearsay. I'm just asking you, is
19 that how you felt at the time, that you would want to do
20 something?

21 A who wouldn't feel like that?

22 Q But you responded to a subpoena in this case and
23 you're under oath right now.

24 A Right.

25 MR. BAUER: Give me one second.

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1 That's all I have, Judge.

2 THE COURT: Cross?

3 MR. HANDFIELD: May it please the Court.

4 CROSS EXAMINATION

5 BY MR. HANDFIELD:

6 Q Good afternoon, sir. Mr. Pleas, I want to start off
7 with this question. Do you believe that Brandon Rufus Jones
8 is the person responsible for your injury today?

9 A I didn't see who was doing the shooting.

10 Q Do you think he should be the one prosecuted in this
11 case?

12 A If I didn't see who do the shooting, I mean, I
13 didn't press no charges. I don't know why I'm here. I was
14 subpoenaed to be here.

15 Q So you didn't press any charges against Rufus Jones?

16 A No, sir, never made an affidavit.

17 Q Never made an affidavit?

18 A No, sir.

19 Q And you don't think he should be responsible as the
20 defendant in this case?

21 MR. BAUER: That's not what he said, Judge,
22 objection.

23 THE COURT: Overruled.

24 BY MR. HANDFIELD:

25 Q You don't believe he should be sitting where he is

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1 sitting; isn't that correct?

2 A That's correct.

3 Q Now, let me go over a couple of things. The
4 prosecutor brought up on direct examination that you had been
5 to prison before for murder; is that correct?

6 A Yes, sir.

7 Q On the night of the shooting, isn't it true that you
8 also told the detective that you had been to prison before for
9 murder?

10 A That wasn't the night of the shooting.

11 Q Well, I mean, when you were at the hospital and you
12 met Detective Lewis. Do you remember Detective Lewis, the
13 investigator?

14 A No, he said, I ran Rufus Jones' background and I ran
15 yours, Tyrone Pleas. He said, I pretty much -- he ran both
16 backgrounds or whatever. He said, Rufus Jones don't have a
17 bad background, but, you know, you don't have a clean slate.

18 Q And at that time did you tell him --

19 A If he ran my background, I mean, he have access to
20 it, I guess when he went down to headquarters or whatever.

21 Q That's when he learned that you had been to prison
22 for murder?

23 A I mean, I don't know when he learned it, but as far
24 as me telling him, no, I don't remember that.

25 Q Now let's break it down. First of all, the house

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1 where this incident happened, where you were shot, that house
2 belonged to Maria Jones, your girlfriend; right?

3 A Yes.

4 Q And you had been living there. Basically you and
5 her were the primary occupants of that house; right?

6 A Whatever she -- whatever she said, yes.

7 Q But it was really her home?

8 A Yes.

9 Q But by being the boyfriend, you were staying there
10 as well?

11 A Yeah, with her permission, yes.

12 Q During the course of that relationship leading up to
13 the fateful night which you were talking about, y'all had had
14 some off-and-on problems; right?

15 A Numerous problems.

16 Q The police had been called to come out to the house?

17 A Numerous of times, yes.

18 Q Now prior to the date of December 25th, Christmas
19 day, there had been a previous incident where you had had an
20 altercation with Rufus Jones where you had pulled out a gun
21 and threatened to shoot him; correct?

22 A No.

23 Q On the date of December 25th, at some point in time
24 you woke up and you indicated that you and Maria had an
25 argument; right?

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1 A We had an argument probably a day and a half, two
2 days before Christmas because she was arguing with me pretty
3 much about the text, you know. And then it lingered on into
4 Christmas.

5 Q But on Christmas day Maria left the house and you
6 didn't know where she was; correct?

7 A Through my own fault, yes. It was my own fault.

8 Q It was your fault?

9 A Because I took her cellphone.

10 Q You went driving around town looking for her;
11 correct?

12 A No. I had her phone, I called a couple of her
13 friends. And then I called one which I thought had the
14 biggest mouth that I know I can relay the message to her
15 because she pretty much know how to get in touch with her.

16 Q But you were upset; correct?

17 A I mean, if I was upset, I wouldn't have let her
18 leave the house. I wasn't that upset as far as -- no.

19 Q Well, didn't you speak to a person by the name of
20 Tiffany Hadley when you were looking for Maria and you told
21 Tiffany Hadley that --

22 THE COURT: I think we need to break that question
23 down. I guess the first question is did he talk to
24 tiffany Hadley. Let's not --

25 BY MR. HANDFIELD:

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1 Q Did you talk to Tiffany Hadley that day when you
2 were looking for Maria?

3 A It was night; yes, I did.

4 Q When I say "that day" I mean December 25th, that
5 night?

6 A Yes.

7 Q When you talked to Tiffany Hadley, you had not been
8 able to contact Maria by that time; right?

9 A That's right.

10 Q And when you spoke to Tiffany Hadley, isn't it
11 correct that you told Tiffany that you had been looking for
12 Maria; right?

13 A When she answered my phone call, I said, well, is
14 Maria with you? She said, no. She said, why, you looking for
15 her? You ain't going to hurt her or nothing, is you? I said,
16 I don't know, I might kill her, kill myself. What is it to
17 you? Have you seen Maria? I didn't say -- you know what I
18 mean --

19 Q So you agree that you did tell Maria that you
20 were --

21 A No, I didn't tell Maria that.

22 Q You just said that you told --

23 A That was Tiffany.

24 Q I mean, I'm sorry. You agree that you told Tiffany
25 that you might kill Maria and yourself?

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1 A Yes, because she was asking me, she said, well, what
2 you looking for her for? You ain't going to hurt her or
3 nothing, is you? And I know how nosy she is or whatever so I
4 just wanted to relay the message.

5 Q And the message you want her to know is that --

6 A No, it was pretty much I was trying to find her.

7 Q And eventually at some point in time you return back
8 to the house; right?

9 A Yes.

10 Q And when you came back to the house this time it's
11 nighttime, Maria is there; right?

12 A Yes, sir.

13 Q Now prior to leaving the house you were the one that
14 was home all day; right?

15 A No.

16 Q Who was there?

17 A Before night fell, me and Brandon was there.

18 Q But Brandon left; right?

19 A I don't remember how because, I mean, everybody was
20 there, I mean.

21 Q At some point in time --

22 A I was not the only one there, no, sir.

23 Q But at some point in time --

24 A Right.

25 Q -- you were looking for Maria because if she was

1 home you would have no reason to be calling around looking for
2 her; would you agree?

3 A I was upset with myself because I couldn't find her
4 because I had took her phone. And then she said when she
5 did -- when Tiffany got in touch with her, called me and
6 blocked the number out. She said, you would know where I was
7 if you wouldn't have took my phone.

8 Q You took Maria's phone?

9 A Yes, sir.

10 Q And Maria was not at the house; correct?

11 A Yes.

12 Q You were at the house; right?

13 A Yes.

14 Q And at some point in time that night, later on,
15 Maria returned back to the house; right?

16 A Yes.

17 Q When Maria returned back to the house, Brandon, her
18 son, was not at the house; right?

19 A I wasn't at the house either.

20 Q Okay. But what I'm saying is prior to --

21 A Yes, sir, Brandon wasn't there.

22 Q Okay. So Maria comes back to the house. And when
23 Maria Jones comes back to the house, you're still upset;
24 right?

25 A No. When I left the pool room, which is in the

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1 neighborhood, and came to the house, I saw pretty much there
2 was a vehicle in the driveway. So I pulled up behind the
3 vehicle because I had her truck that night because my truck
4 was broke. I had her vehicle. So I really was wondering
5 where she was because I had her vehicle. And I done took her
6 phone. So she was in I guess a rental car or whatever.

7 Q I guess my basic question that I'm trying to
8 establish is would it be fair to say that when Maria came back
9 to the house that night, you were upset because you couldn't
10 find her?

11 A I was upset.

12 Q You didn't know where she was?

13 A The first hour or two I was upset, but when I talked
14 to her or whatever and she told me, if you wouldn't have took
15 my phone, you would know where I was.

16 Q Y'all got into an argument; right?

17 A When?

18 Q When she came back to the house that night.

19 A We got in a verbal argument, yes.

20 Q And some threats were made; right?

21 A I don't remember. Probably, yes.

22 Q And at some point in time Brandon Rufus came in the
23 house; right?

24 A No, she had told me to unlock the door, then he came
25 in. But we wasn't -- we wasn't arguing.

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1 Q You don't know exactly what Brandon would have
2 overheard prior to him coming into the house; correct?
3 A Right. With the TV on and me and her sitting right
4 there, I mean.

5 Q But you don't know?

6 A Who could say, yes.

7 Q And so once now you are into the house, you and
8 Brandon get into an argument; right?

9 A When he came into the house, he was talking to his
10 mamma. And the only two words I said to him, I said, who is
11 it, at the door. That's it.

12 Q And he was concerned about his mamma's -- his
13 mother's safety?

14 A He said, mom, let me hold the rental car or
15 something. They went to talking. They went to talking, him
16 and his mom. Only two words I said to him -- when she said
17 Brandon was coming, I had locked the screen door and locked
18 the door. When he knocked on the door, she said, open the
19 door, it's Brandon. When I opened -- I went to the door, I
20 said, who is it? He said, Brandon, your stepson, let me in.
21 That's the only conversation we had.

22 Q You had -- isn't it correct you had threatened
23 Brandon before during your relationship?

24 A We had had numerous of arguments. I don't know
25 which one you want to hear, but we had numerous of arguments.

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1 Q And during those arguments you had threatened him;
2 correct?

3 A No, it went both ways, yes.

4 Q On the night in question when Brandon was in the
5 house, isn't it a fact that you threatened Brandon?

6 A The only two words I said to him, I said, who is it,
7 at the door.

8 Q Now on direct examination you said that Brandon was
9 sitting down eating and then all of a sudden you heard the
10 door, the screen door open; right?

11 A Right, Maria was in the den. Brandon was -- I guess
12 he had -- because he said asked his mom which one of those
13 plates on the stove was his. So after he fixed his plate, he
14 went to the table. And me and Maria was right there in his
15 sight talking. So I never felt like I couldn't be in the room
16 or something. I felt like I always could talk to her right in
17 front of him or any other one of the family members. But it
18 was never nothing like that.

19 Q And so at the time in which you were shot is when,
20 your testimony, that door, the screen door opened and that's
21 when you were shot?

22 A Right, right. I mean, I had my back turned so I
23 don't know.

24 Q And based upon your testimony it definitely did not
25 come from Brandon's direction?

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1 A I mean, when I got hit, it is low. And then the
2 bullet exploded, broke my rib. But the bullet was low and it
3 exploded.

4 Q Now you told Detective Lewis several times when he
5 was trying to interview you that you did not want to press
6 charges against Brandon; right?

7 MR. BAUER: Objection. That's a misstatement,
8 Judge.

9 MR. HANDFIELD: I'm asking a question.

10 THE COURT: Overruled.

11 BY MR. HANDFIELD:

12 Q You told Detective Lewis --

13 A I told him that night at the hospital and when he
14 asked me, you know, do you want to press charges or who, yes
15 or no, I said, no. He said, well, he was going to go ahead
16 and try to go down to the station and get a confession or
17 whatever. And, you know, but I had no idea he was going to go
18 to the station and lie.

19 Q Who was it that lied?

20 A He, when he left, the detective.

21 Q The detective lied?

22 A Well, I guess he was in plainclothes. Because when
23 he left the hospital and got to the headquarters, Maria, his
24 mom, said, well, did you say you were going to kill my son?
25 The detective told me you said you were going to kill my son.

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1 I never mentioned her son name.

2 Q So when you say that you didn't know he was going to
3 lie, you're referring to the detective?

4 A Well, when he got to the -- yes. When he got to the
5 headquarters, that's when he said he is going to kill your
6 son. She only have one child.

7 Q So you believe the detective lied on you?

8 A I mean, I didn't tell him that. He asked me whoever
9 responsible, you know -- you know what I mean, you going to
10 kill him yourself or whatever? Whoever responsible, you going
11 to take care of yourself? And I told him, MF right, but I
12 never gave a name.

13 Q You said, MF right. You didn't say MF, you said the
14 actual words to the detective?

15 A Right, right.

16 Q Was it at that time that you also told the detective
17 that you had been to prison for murder?

18 MR. BAUER: Asked and answered.

19 THE COURT: Sustained. You don't need to answer
20 that.

21 Move on, Mr. Handfield.

22 MR. HANDFIELD: Yes, Your Honor.

23 (Pause.)

24 BY MR. HANDFIELD:

25 Q Had you ever indicated to Maria Jones that you

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1 would -- during the time that you would be arguing with her,
2 did you ever at any time mention to Maria Jones -- threaten to
3 kill her and then kill yourself?

4 A No.

5 Q Did you ever mention that to Brandon Rufus Jones?

6 A Mention that I was going -- no. The only time I
7 mentioned that was when I called Tiffany that night.

8 Q But you did tell Tiffany that?

9 A Yes.

10 MR. HANDFIELD: Thank you, Judge.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. BAUER:

14 Q You had mentioned that you were calling some folks.
15 And you mentioned somebody who -- I'm trying to see how you
16 put it. They were, did you say loud, that they would get the
17 word out you were looking for Maria?

18 A Right.

19 Q What was the word you used, I'm sorry?

20 A Loudmouth, I mean --

21 Q Loudmouth.

22 A -- she pretty much -- if she knew it, she'll tell
23 it. That's why I called her.

24 Q Is that Tiffany?

25 A Yes.

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1 Q Okay. So that's the same person. And when you said
2 to Tiffany -- what she said, why, are you going to hurt her or
3 something?

4 A Yeah. When I called her phone because --

5 Q Did you say anything before that to give her --

6 A No. I said, is Maria with you? She said, what, you
7 looking for her to hurt her or something?

8 Q And then when you said, yeah, I might kill her and
9 kill myself, what's it to you, were you being serious?

10 A I mean -- I mean, I was upset so I don't know if I
11 was serious or not.

12 Q Did anybody call the police on you?

13 A For what?

14 Q Did you see a police officer at any time in the next
15 hour after that?

16 A No, sir.

17 Q Now --

18 A After that she had -- she had got in contact with
19 Maria and that's when Maria had called me on a blocked phone
20 number.

21 Q And did she blame you for not knowing where she was?

22 MR. HANDFIELD: Objection.

23 THE COURT: Sustained.

24 BY MR. BAUER:

25 Q Okay. What -- what do you mean when you say, it was

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1 my own fault?

2 THE COURT: Sustained. We've already gone over this
3 twice, Mr. Bauer. Move on.

4 BY MR. BAUER:

5 Q Now when counsel asked you if threats were made by
6 you or Brandon, do you remember any -- when you say Mr. Jones,
7 do you remember any threats that he made to you?

8 A I mean, it go both ways. I can't sit up here and
9 say left or right because that's what guys do. You argue
10 about sports, you argue, you argue, you know what I mean. So
11 I don't remember. But, yes, it been both ways; yes, sir.

12 Q When he came over that night did he appear in any
13 way, shape, or form afraid of you?

14 A No.

15 MR. HANDFIELD: I can't hear, Judge.

16 THE COURT: I couldn't hear your question.

17 BY MR. BAUER:

18 Q When Mr. Jones came over that Christmas night, did
19 he appear to be afraid of you?

20 A No.

21 Q Did you give him any reason to be afraid of you?

22 A I mean, his whole thing is crazy. I mean, because
23 when he knocked on the door, I said, who is it? He said,
24 Brandon, your stepson. So there is no reason for me to throw
25 my guard up at him.

JULIE L. DOHERTY, RMR, OFFICIAL COURT REPORTER

1 Q Now counsel asked you questions and you mentioned
2 something about the screen door opening before shots were
3 fired?

4 A When I was coming out the den, and once I had passed
5 Brandon at the table, I pretty much heard the screen -- saw
6 the screen door open or whatever. And then I had asked Maria
7 about that also.

8 Q I want to ask you -- and you're under oath, you
9 acknowledge that; right?

10 A Yes, sir.

11 Q You've been served with a subpoena, you're under
12 oath?

13 A Yes, sir.

14 Q Do you want to help Mr. Jones out?

15 A If the truth help him, yeah.

16 Q You do want to help him?

17 A If the truth help him, yes.

18 Q But you're saying you didn't see who shot you? You
19 can't tell us anything about that?

20 A I'm by the refrigerator and I hear somebody
21 screaming and take off running. And then the evidence showed
22 I got shot in the back. I spent four days fighting for my
23 life. You going to tell me -- I don't understand.

24 Q The shot was from the refrigerator? From near the
25 refrigerator area?

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1 A No, it came from like the door area.

2 MR. BAUER: Give me one second.

3 BY MR. BAUER:

4 Q I'm going to show you what's marked as State's
5 No. 4. If we're looking at the refrigerator, would the door
6 be behind the camera or in front of the camera? Does that
7 make sense? If you are looking at the refrigerator, I know it
8 is two dimensional, but think three dimensional, would you
9 step back from the fridge and come this way to go outside?

10 A Yes.

11 Q So the door would be, not to scale, but the door
12 would be in this area here looking toward the refrigerator?

13 A Yes.

14 Q And you're saying the shots came from this
15 direction?

16 A Yes.

17 Q Do you see that bullet hole right there?

18 A Yes.

19 Q That wasn't there before; was it?

20 A Before what?

21 Q That's from this night; right?

22 MR. HANDFIELD: Objection, leading.

23 THE COURT: Sustained.

24 THE WITNESS: Coming through that hall, right,
25 right. It wasn't there. It wasn't there.

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1 BY MR. BAUER:

2 Q Which hallway did you run down?

3 A There is only one hallway. Right here by the
4 refrigerator is a hallway there.

5 Q Put an X on that hallway. Let's an put an X on the
6 hallway.

7 A Can you do it for me?

8 Q I can't mark the evidence. I have to ask you to do
9 that.

10 MR. HANDFIELD: Objection, argumentative.

11 THE COURT: Overruled.

12 BY MR. BAUER:

13 Q Okay. You mentioned in the hospital that you wanted
14 to take care of the person responsible yourself?

15 THE COURT: We've gone over that at least twice. Do
16 you have any other questions that haven't been gone over,
17 Mr. Bauer?

18 MR. BAUER: That was my question, Judge.

19 THE COURT: I'm not going to allow you to ask that
20 again.

21 MR. BAUER: May I proffer? Do you have any --

22 THE COURT: No, I'm not going to take a proffer. Do
23 you have another question on a new area, Mr. Bauer?

24 MR. BAUER: That's it.

25 THE COURT: Okay, thank you. Does any juror have a

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1 question of this witness? You can step down, Mr. Pleas.
2 Call your next witness.

3 MR. BAUER: Judge, I'm going to call officer Kevin
4 Guimaraes.

5 THE COURT: Do we need to keep him any further?

6 MR. HANDFIELD: No, Your Honor.

7 MR. BAUER: He is still under subpoena.

8 THE COURT: You want him to stay here?

9 MR. BAUER: Subject to recall.

10 THE COURT: You need to wait outside.

11 Who is your next witness?

12 MR. BAUER: Kevin Guimaraes.

13 THE COURT: Come on up here, please, sir. If you
14 will face the clerk and be sworn, please.

15 whereupon,

16 KEVIN GUIMARAES

17 was called as a witness, having been first duly sworn, was
18 examined and testified as follows:

19 THE COURT: Have a seat. slide up to the
20 microphone, please, sir.

21 MR. BAUER: May I proceed?

22 THE COURT: You may.

23 DIRECT EXAMINATION

24 BY MR. BAUER:

25 Q Would you introduce yourself to the jury, please?

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