APPENDIX

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APPENDIX A — OPINION OF THE FLORIDA SUPREME COURT FILED ON MAY 28, 2024

Supreme Court of Florida
TUESDAY, MAY 28, 2024

Christina Paylan, Petitioner(s)	SC2024-0216 Lower Tribunal No(s).:
v.	2D2022-0304; 292014CF005764000AHC
State of Florida, Respondent(s)	

The petition for writ of prohibition is hereby denied. *See Fischer v. Knuck*, 497 So. 2d 240, 243 (Fla. 1986) ("A motion for recusal is considered untimely when delayed until after the moving party has suffered an adverse ruling unless good cause for delay is shown."). All other motions or requests are denied, and no rehearing will be entertained by the Court.

LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

APPENDIX B — OPINION OF THE FLORIDA SUPREME COURT FILED ON MAY 28, 2024

Supreme Court of Florida
TUESDAY, MAY 28, 2024

Christina Paylan, Petitioner(s)	SC2024-0222 Lower Tribunal No(s).:
v.	2D2022-0304; 292014CF005764000AHC
State of Florida, Respondent(s)	

The petition for writ of prohibition is hereby denied. *See Fischer v. Knuck*, 497 So. 2d 240, 243 (Fla. 1986) ("A motion for recusal is considered untimely when delayed until after the moving party has suffered an adverse ruling unless good cause for delay is shown."). All other motions or requests are denied, and no rehearing will be entertained by the Court.

LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

APPENDIX C- ORDER BY APPELLATE COURT RE: RECUSAL MOTION AS TO JUDGE ANTHONY BLACK

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT
1700 N. TAMPA STREET, SUITE 300, TAMPA, FL 33602

January 31, 2024

CASE NO.: 2D22-0304
L.T. No.: 14-CF-5764-A

CHRISTINA PAYLAN v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's "motion to disqualify Judge Anthony Black based on prior recusal order of May 12, 2015" is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

jr

Mary Elizabeth Kuenzel

APPENDIX D- ORDER BY APPELLATE COURT RE: RECUSAL MOTION AS TO JUDGE DANIEL SLEET

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT
1700 N. TAMPA STREET, SUITE 300, TAMPA, FL 33602

January 31, 2024

CASE NO.: 2D22-0304
L.T. No.: 14-CF-5764-A

CHRISTINA PAYLAN v. STATE OF FLORIDA

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion to disqualify Judge Daniel H. Sleet is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

jr

Mary Elizabeth Kuenzel

APPENDIX E: LIST OF 49 STATES WITH APPELLATE MECHANISM FOR DISQUALIFICATION OF APPELLATE JUDGES

ALABAMA

Rule 26, Rule of Procedure for the Alabama Court of Judiciary

ALASKA

Alaska Jud. Cond. 3

ARIZONA

Ariz. Co. Jud. Cond. 2.11

ARKANSAS

Ark. Code Ann. § 16-11-108

CALIFORNIA

Oral Advice Summary 2018-023- California Supreme Court on Committee on Judicial Ethics Opinions

COLORADO

Colo. Code. Jud. Cond. 2.11

CONNECTICUT

General Statutes of Connecticut, Section 51-39

DELAWARE

Del. Sup. Ct. Int. Opp. P. XIX

FLORIDA

None

GEORGIA

Ga. Ct. App. R. 44

HAWAII

Haw. R. App. P. 5

IDAHO

Idaho Criminal Rule 25.

ILLINOIS

Ill. Sup. Ct. R. 2.11

INDIANA

Ind. Code. Jud. Cond. 2.11

IOWA

Iowa Code. Jud. Cond. 51:2.11

KANSAS

Appellate Procedure § 3.11

KENTUCKY

Ky. R. Sup. Ct. 2.11

LOUISIANA

La. R. Sup. Ct. 27

MAINE

Me. Code. Jud. Cond. 2.11

MARYLAND

Md. R. Civ. P. Dist. Ct. 3-505

MASSACHUSSETTS

Rule 2.11, Massachusetts Code of Judicial Conduct

MICHIGAN

Mich. Ct. R. 2.003

MISSISSIPPI

Miss. R. App. P. 48C

MISSOURI

Mo. R. Ord. Viol. & Viol. Bureau. 37.53

MINNESOTA

63.03, Civil Procedure

MONTANA

3-1-803, Montana Code Annotated 2023

NEBRASKA

2020 Nebraska R.S. 24-739

NEVADA

Nev. R. App. P. 35

NEW HAMPSHIRE

Supreme Court Rule 21A

NEW MEXICO

N.M. Code. Jud. Cond. 21-211

NEW YORK

N.Y. Jud. Law § 14

NEW JERSEY

N.j. Ct. R. 1:12-2

NORTH CAROLINA

Rule 37 of the North Carolina Rules of Appellate Procedure

NORTH DAKOTA

North Dakota Code of Judicial Conduct, Rule 2.11

OKLAHOMA

Okla. Stat. tit. 12, app 1 R. 1.175

OHIO

R.C. 2701.03 and S.Ct.Prac.R. 21.

OREGON

ORS 14.210

PENNSYLVANIA

207 Pa. Code § 15-4

RHODE ISLAND

Rhode Island Code of Judicial Conduct, Rule 2.11

SOUTH CAROLINA

Canon 3E, South Carolina Code of Judicial Conduct

SOUTH DAKOTA

SDCL 15-12-26

TENNESSEE

Rule 10B, Section 3.01, Appellate Procedure

TEXAS

Tex. R. App. P. 16.3

UTAH

Rule of Civil Procedure, Court 63(b)

VERMONT

Vt. R. App. P. 27.1

APPENDIX F-TRANSCRIPT OF ORAL ARGUMENT

SECOND DISTRICT COURT OF APPEAL
HILLSBOROUGH

CASE NO. 2022-304

STATE OF FLORIDA,
vs.
CHRISTINA PAYLAN,

CHRISTINA PAYLAN,
vs.
STATE OF FLORIDA.

TRANSCRIPTION OF RECORDED HEARING
DECEMBER 12, 2023

JUDGE SLEET: Madam, proceed.

DR. PAYLAN: Thank you, Your Honor. I would like five minutes for rebuttal, please, Your Honor.

Good morning, Your Honors. My name is Christina Paylan, and I'm the appellant in this case. May it please the court. This is an appeal from denial of amended and successive post-conviction motions raising nine claims of ineffective assistance and one Brady violation.

The case involves a single prescription for injectable Demerol for use as anesthetic for office surgery relating to liposuction and fat transfer for patient Carol Morales. Typical standard of review on appeal from denial of a post-conviction motion is mixed standard of review with deference to post-conviction court on facts and de novo review on post-conviction court's legal conclusions, but that is provided that the lower court exercises an independent decision making in rendering the final order, which is at issue in this appeal. Also at issue in this appeal is the wrong legal standard relied upon by the post-conviction court, rendering the court's factual findings unreliable. I submit to this court that where the post-conviction court believes that a defendant has to put on evidence of exculpatory nature, where this is not the Strickland standard, the factual conclusion of the post-conviction court cannot enjoy a deference. In this appeal, irrefutable evidence demonstrates that

the Strickland standard has been satisfied because trial counsel, William Barzee, rendered ineffective assistance of counsel that caused significant prejudice in this case. Trial counsel's own affidavit admitting to his ineptitude combined with undeniable facts presented in the trial transcripts, facts presented at the evidentiary hearing, and other concrete information documented as noted -- documentation as noted in my brief conclusively affirmed that he was not functioning as the counsel guaranteed by the Sixth Amendment. Basically, William Barzee showed up from Miami with no documents, no witnesses, no knowledge of the law, and only after signing on to the case 12 days prior to trial and left the entire case at home. I will argue four critical areas where trial counsel's performance was glaringly subpar and constitutionally inadequate.

First, I'll argue trial counsel's lack of any knowledge of the applicable law pursuant to Chapter 893.05, otherwise also referred to as the practitioner's privilege. Next, I will argue trial counsel's failure to introduce key documentary evidence, like the irrefutable cell phone records, the patient's medical chart, my medical license, and pivotal emails, as well as trial counsel's failure to introduce live witnesses like Lauren Adams, my office manager, Douglas Ditto, the medical expert, and myself, all of which were crucial to tip the scales in defense's favor. Then I will go over trial counsel's failure to request a trial continuance to properly prepare for trial. And, finally, I will go over trial counsel's failure to request a Richardson hearing when the state committed a discovery violation. Following recap on these

ineffective assistance claims, then I will discuss the Brady violation separately.

As argued in my brief, the IAC claims individually and collectively establish that trial counsel's representation is a stark deviation from the competent and effective counsel that the Sixth Amendment guarantees. It is not just one thing. It is a series of blunders that no reasonable attorney would make.

In the court's evaluation, the court should be mindful that the state does not dispute on the statement of material facts. A preliminary housekeeping matter I would like to refer to for the court is for the court to use the amended supplemental one filed on August 18, 2022, as the record on appeal by the clerk, because there were multiple record on appeal filed, and that's the one that seems to be the most comprehensive and easiest to refer to. First, turning the court's attention to trial counsel's complete lack of any knowledge of the applicable one, undisputed trial transcripts show irrefutable evidence that trial counsel William Barzee did not know the applicable law pursuant to Chapter 893.05, the practitioner's privilege. This is comprehensively laid out in my answer brief in my -- excuse me, in my initial brief on as I lay out on Page 37 of my initial brief, Barzee admitted to the trial court he did not know what practitioner's privilege was.

When the state insisted that it be given as a jury instruction, Barzee then asked, Well, where can I find it? And once he was provided with the statute,

he read it right then and there at the charge conference. And then concluded, oh, he liked it, and asked the judge, the trial judge, to actually read Chapter 893.05 as a jury instruction. Again, on Page 37, I've laid this out with record reference to the trial transcripts.

But Barzee, not knowing the law, he did not realize that practitioner's privilege is actually an affirmative defense. It actually requires defense counsel to put in, move in evidence, call live witnesses. By the time he read the law, the horse was out of the barn. He had already rested and not introduced any evidence. This caused complete dismantling of the defense requesting an affirmative defense without putting on evidence. To support that affirmative defense is per se ineffective assistance of counsel. It's like saying stand your ground and you're not going to call the person to say why he was standing his ground.

JUDGE ROTHSTEIN-YOUAKIM: Dr. Paylan.

DR. PAYLAN: Yes?

JUDGE ROTHSTEIN-YOUAKIM: Mr. Barzee testified at the evidentiary hearing on this 38 50 giving reasons for effectively not pursuing that defense. And the concern was about the Williams Rule evidence. So could you -- a lot of this I think turned on credibility at that evidentiary hearing; credibility of Mr. Barzee in terms of his strategy, credibility of the other witnesses, and, of course, we're not in a position

to revisit that credibility determination. So based on his testimony that he pursued the defense strategy that he did because of the Williams Rule evidence, could you discuss that, please? Because everyone keeps referring to the Williams Rule evidence, but no one really specifies what it is. And going through the record, it seemed to me -- and it's a voluminous record, so if I've missed something, please bring it to my attention. The court, the previous trial judge, had ruled that the Williams Rule evidence concerning the trash pull at your residence and the potential testimony of Patient C.G. would not come in. But it seemed to me that the Williams Rule testimony that Mr. Barzee was concerned about had to do with patient L.B., which was the prosecution that had, you know, fallen by the wayside on speedy trial grounds. So, you know, it seemed like a pretty good explanation for why he didn't pursue that defense, because that would bring your intent into question, and that would open the door to this other evidence coming in, which he said you both agreed would be very detrimental. So can you please speak to that, and, you know, what he said at the evidentiary hearing?

DR. PAYLAN: Okay. Just starting from the last point, Your Honor, there was -- I never agreed to anything being detrimental. I had been fully vetted by the Florida Board of Medicine and the DEA on all the issues, not just this patient Carol Morales, but patient L.B., the subject of the case that was discharged on speedy trial grounds, and I was found to have done no wrongdoing. So there would have been no way -- and my medical expert testified to that at the evidentiary hearing, that there would have been no way for me to

be scared of anything. That's number one. Number two, it does not -- this is a case in the chief. The state unequivocally said they are not going to do a Williams Rule. They didn't give notice for a Williams Rule.

JUDGE ROTHSTEIN-YOUAKIM: But that would be in your case in chief, right?

DR. PAYLAN: That would be in their case in their chief.

JUDGE ROTHSTEIN-YOUAKIM: In their case in chief, I'm sorry. But if you came forward with the affirmative defense that put your intent squarely at issue, then it wouldn't matter if they had filed notice, would it?

DR. PAYLAN: Well, if that would be on -- yes, that would be on rebuttal, and there would be no question -- Barzee had to identify what that was, how that was damaging. It was, as you say, Your Honor, it was never identified. What was so -- what was going to torpedo my
case if that happened? He has to identify -- if he has a strategy that that is going to torpedo my case, as you indicate, he has to say what it was. What about L.B.? What about any of this? All of this was vetted. I had no --
I had clean hands. I had no worries going into trial. Even if that came up, I could have called DEA agent to say that all of the drug logs were accounted for. I would have called the medical board. My expert was ready to testify. I had

full active license, active DEA registration at the time of the trial. If any of these things that supposedly occurred in 2011, the trial was in 2014, Barzee coming on 12 days before 2014 trial. Not knowing, not reviewing. In 2011 I went through rigorous, rigorous investigation by both DEA and medical board, and nothing was found. If he had reviewed that, he would have known that there's nothing to worry about, if that's what he was worried about. But, again, I submit to the court that the post-conviction court cannot just speculate what it was that Barzee was concerned about. He doesn't make it clear on the record, at all. He just kind of randomly says these things that somehow you were supposed to make the connection that somehow trash pool, just saying trash pool and these things are going to somehow damage me. There was nothing to damage, because if I got up and I made that affirmative defense and they brought that in, then I would've just said, hey, this happened, and I was completely exonerated, and I'm practicing and there's nothing wrong. But he didn't know any of this because he had only come on 12 days. That's a post hoc concoction.

JUDGE SLEET: You keep saying that, but you hired him. You hired him at that time, and you were told by Judge Barber no more continuances. Did you inform Judge Barber that you had talked to Mr. Barzee when Judge Barber unequivocally said to you, no more
continuances?

DR. PAYLAN: I informed --

JUDGE SLEET: Is that a yes or a no?

DR. PAYLAN: Yes.

JUDGE SLEET: Because you only have 20 minutes and it's not apparent.

DR. PAYLAN: Yes, Your Honor.

JUDGE SLEET: So, secondly, Mr. Barzee, do you understand the attorney-client privilege is waived?

DR. PAYLAN: Yes.

JUDGE SLEET: In post-conviction Mr. Barzee testified under oath he was very concerned about you and your office manager perjuring yourselves. Whether that's true or not, the trial court believed it. But you perjured yourselves by padding the medical records, adding notes, postdating notes. That could be one reason why you decided not to testify. I don't know. But you went through a colloquy and you unequivocally told the judge, I don't want to testify. You also told Judge Barber this is not anything that Mr. Barzee has done or forced me to do. So, we're looking at his defense. You have a video of you on that video. You agree, correct?

DR. PAYLAN: Yes, Your Honor, and --

JUDGE SLEET: You're on there.

DR. PAYLAN: Yes, Your Honor.

JUDGE SLEET: So the defense would be you're passing someone else's prescription other than Mrs. Morales, right? Right?

DR. PAYLAN: Well, no, that would not be the defense because the truth was that I didn't have anything in my hand.

JUDGE SLEET: You never made it clear to the court that you never agreed?

DR. PAYLAN: Oh, no, I -- I – my testimony was clear that there was --

JUDGE SLEET: No, you didn't testify at trial.

DR. PAYLAN: Oh, at trial.

JUDGE SLEET: Let's go back to trial because you're telling us Barzee was ineffective at trial.

DR. PAYLAN: Yes.

JUDGE SLEET: Okay. He made certain decisions. It's really hard to believe, as educated and sophisticated as you are, that you were not involved in every decision at every crucial stage. The trial court believed that. It's not for us to go inside her mind, pull that out, review it, and say, No, we think it's different, we disagree. We don't do that.

DR. PAYLAN: Yes, Your Honor, I –

JUDGE SLEET: This is a 64-page order. Okay? It's not a term paper where we (audio distortion). It's 64 pages. But what I'm saying is, is there anywhere in there where the trial court recites the testimony that it is in error, that is inconsistent with the record evidence? Any of the testimony recited by the trial court, is it inconsistent with that record evidence?

DR. PAYLAN: Yes, Your Honor.

JUDGE SLEET: Where?

DR. PAYLAN: Your honor, first of all, the order, the 64-page order, is a copy verbatim of the first post-conviction's judge order. There's no independent use for it --

JUDGE SLEET: But you haven't raised an issue that it's not an independent decision. So that's not an issue --

DR. PAYLAN: I --

JUDGE SLEET: We're not here to argue that the judge copied anything.

DR. PAYLAN: I did raise that issue, Your Honor.

JUDGE SLEET: I don't think that's an issue where it's not an independent decision.

DR. PAYLAN: No, I ra -- it is copy and paste verbatim. Whatever the first judge, first –

JUDGE SLEET: The courts are allowed to copy and paste record citations and record findings of predecessor judges and even themselves. So where's the error with that?

DR. PAYLAN: But, Your Honor, here is the thing, if, in fact, Barzee was truly, as Judge Rothstein-Youakim says, was concerned about any of the medical chart being padded, any of that, why did he file a Notice of Intent to Rely on Business Records literally days before the trial and included in that the medical chart, the emails, everything that basically I wanted to –

JUDGE SLEET: Because I'm sure that if he didn't do that, that would be one of your claims that he didn't seek to introduce your business records.

DR. PAYLAN: But, Your Honor --

JUDGE SLEET: He does that because you are allowed to do that. You can list many, many things on a pretrial conference order that you may not intend to introduce, but yet, you don't want to waive the right to introduce them.

DR. PAYLAN: But, Your Honor, respectfully, if he's doing that, I have text messages with him, I'm talking to him, he's filing notice of intent. I'm sitting there as a client thinking all this is going to come in. I pay thousands of dollars for witnesses to secure their

presence. Why would I, why would anyone in their right mind, as you said as an intelligent person, why would I go spend thousands of dollars on Dr. Dedo, buy a plane ticket for him on July 29th in the middle of the trial?

JUDGE SLEET: But Dr. Dedo, you have to admit, Dr. Dedo, when he was asked, that if that was indeed you passing Mrs. Morales's prescription, that would be a violation of the law.

DR. PAYLAN: No, Your Honor, he did not testify –

JUDGE SLEET: I have read it in here. I can pull it out for you.

DR. PAYLAN: Yes, Your Honor, you would need to reread it because he testified only to this, that it's a hypothetical.

JUDGE SLEET: If you tried to pass Mrs. Morales's prescription after she canceled the surgery, that would be improper in violation of the law. Do you agree?

DR. PAYLAN: After she canceled –

JUDGE SLEET: Yes or no?

DR. PAYLAN: Yes, that would be hypothetically –

JUDGE SLEET: (Inaudible) your –

DR. PAYLAN: But there was no evidence, your Honor.

JUDGE SLEET: Your rebuttal time, so use your time as you wish. You have five minutes. You can keep going if you want.

DR. PAYLAN: So I'm done with my direct, is it?

JUDGE SLEET: No. No. No. No. I'm not cutting it off. I'm just telling you, you have five minutes left now.

DR. PAYLAN: Okay.

JUDGE SLEET: You can use it the way you want.

DR. PAYLAN: But five minutes -- I'm done with my 15 minutes, is that what –

JUDGE SLEET: Yes.

DR. PAYLAN: Okay. I would just like to go back and say that there was absolutely -- the only reason I agreed not to testify was because he said that as the affidavit shows from the person who was at the meeting with us that he said that the case was basically not proven by the state. I would have absolutely testified there is no way on this record that this man comes up and I have everything clean and clear that I'm not going to testify. That just simply does not make sense. And my office manager would

have testified. Her emails specifically show that there was 100 percent contact after June 22nd. The surgery was not cancelled, it was rescheduled. She wanted to add to her buttock liposuction. She wanted to add the chin and arms. And there is an email in Lauren Adams's emails saying as late as July 11th, she wants that surgery added. That does not make the July 1 prescription illegitimate at all in any way. And going to -- the one thing that I do want to point out to the court is one thing, that the court -- if the court heavily -- should heavily consider, these two glaring facts. One is the fact that the post-conviction court, if it was not a copy and paste, the post-conviction court would then evaluate the practitioner's privilege. No one talks about the practitioner's privilege at all. I'm raising it. The state doesn't respond. The post-conviction court does not respond. Even when trial transcripts show that Barzee admits that he did not know the practitioner's privilege, it's not because he did not -- he was worried about William's evidence. The trial transcript showed he didn't know something he asked the court to give us a jury transcript. The other glaringly missing information from the brief is the jail recorded conversation between the father and the son that goes into the Brady violation. As he says, Papi was working his wheels in the background for you. And that along with the August 21st email, shows that disclosures needed to be made so I can impeach state star witnesses. Carol and Luis Morales because they had an interest in the outcome of the surgery. They had an interest in saying that they cancelled their surgery when their surgery was not cancelled.

Thank you, Your Honor.

JUDGE SLEET: All right. You have three minutes. Thank you.

MS. WINTERKORN: Good morning, Your Honors. My name is Alicia Winterkorn and I represent the State of Florida, the appellee in this case. Beginning with appellant's first issues, I do want to address her allegation regarding the judge's order. I would like to point out to this court that there was a motion to disqualify Judge Fernandez, who issued that second order below. Then appellate – which was denied. Appellate then filed a petition for writ prohibition before this court after briefing had concluded. Which this court had denied on September 21st, 2023. It's important to note that in her petition she raises the same allegation regarding this verbatim adoption of the orders, both in her petition and then now on appeal. All of which the state's position is have no merit.

Moving on to appellant's second issue regarding the practitioner's privilege affirmative defense, and I believe that Your Honor had some questions regarding what Williams Rule evidence would have been brought out by the state. And I believe, and I'm not exactly sure where in the record, but I believe the state has said that they were prepared at trial, they had witnesses in the event that the Williams Rule evidence came out regarding her prior trips, specifically the L.B. case, which the state said was factually similar to what happened in this case regarding presenting the prescription to the

pharmacy without having a surgery schedule. And the state said that they had witnesses prepared to testify from the DEA and an inventory service regarding the record keeping at the appellate's doctor office.

JUDGE ROTHSTEIN-YOUAKIM: So the second evidentiary hearing, I think one of the prosecutors testified that the defense that Mr. Barzee put on precluded the state from bringing in any of that evidence. Is that correct?

MS. WINTERKORN: That's correct, Your Honor. Because Mr. Barzee went forward with the defense that the prescription that she handed over to the pharmacy was not for Carol Morales and not putting on the affirmative defense, they were precluded from introducing anything that would have negated her intent. Moving on to the various emails, and phone records and witnesses that appellant now argues on appeal that her counsel was ineffective for failing to introduce at trial. It's the state's position that none of these people or documents would have furthered the defense that Attorney Barzee had presented at trial. And he cannot be said to be ineffective for failing to present evidence that would not have helped defend their case. Additionally, appellant has not shown how she was prejudiced for the failure to introduce these various witnesses and documents, particularly the phone records regarding the Morales's and appellant's office, which also relates to the greedy allegation that appellant raised. These phone records, the existence of phone calls after

the July 1st time break does not negate the fact that Luis Morales and Carol Morales had testified that they had canceled the surgery, and informed appellate and her office that their intent was to cancel the surgery.

JUDGE ROTHSTEIN-YOUAKIM: Let me ask you this because you refer to them collectively.

MS. WINTERKORN: Yes, Your Honor.

JUDGE ROTHSTEIN-YOUAKIM: Who actually communicated with Dr. Paylan's office that the surgery was being canceled?

MS. WINTERKORN: Yes, Your Honor. I believe the way the testimony shows is Luis Morales originally saw an unfavorable newspaper article regarding appellant's medical practice and told his wife Carol Morales that they were not doing the surgery. At that point, Carol Morales and Luis Morales agreed that they did not want to have the surgery. I believe Luis Morales was handling most of the communication between appellant's office at the Morales's. I believe Luis Morales testified that he distinctly told her, appellant, and Ms. Adams before July 1st that they wanted to cancel the surgery. Carol Morales's testimony was a little less clear because she was unsure whether there was more communication. She didn't believe that there were any calls on her phone, but then later testified that she had to change her phone number because there were so many calls. But regardless of any communication after July 1st, they both testified that the communication to the office was made prior to

July 1st, that they were not going forward with any more surgeries. Moving to issue number four, appellant's allegation that her counsel was ineffective for failing to advise her to -- or misadvise for not testifying at trial. As this court noted, this court deferred to the credibility determinations that were made by the post-conviction court below. Below, Attorney Barzee had testified that he did not tell appellant that it was not in her best interest to testify. Attorney Barzee testified that the conversation about whether she would testify was ongoing up until the point that she made the decision in the plea colloquy not to testify. There was extensive -- there was extensive testimony at the post-conviction hearing about whether or not Attorney Barzee had properly prepared her to testify, or what those conversations looked like. And he said that during their conversations, every step of the way was determining what evidence would they present, what testimony would they present, including appellant's. And, ultimately, the plea colloquy does show that appellant made the choice not to testify to become a witness in her defense. For the remaining issues, the state will rest on the merits of its brief. If this court has no further questions, the state will ask that this court affirm the post-conviction court's ruling. Thank you very much.

JUDGE SLEET: Dr. Paylan, you have about three minutes.

DR. PAYLAN: Thank you, Your Honor. Even if we put away, put aside the practitioner's privilege, I was entitled to impeach these witnesses, Carol and

Luis Morales. How I would have impeached them without? Even if, let's assume that somehow it's not a post hoc conclusion that really bars these validly concerned about some door opening. Why would he not introduce the cell phone records? To at least raise reasonable doubt that they said affirmatively they stopped contacting me on June 22nd, and their cell phone records show a 17-minute conversation with my office on July 1st. Why would he not call Lauren Adams to simply be as the record custodian? The emails of Lauren Adams was authenticated by a computer forensic expert who looked at the metadata. Even if she just said, these are my records and this was forensically examined, those records show they have continuously contacted Lauren from starting from their initial consultation to all the way July 11th, wanting to add surgical procedures. Why was I not entitled to that impeachment of the witnesses? That is not even a -- there is no – the reason for that they're saying is, oh, he had a single defense theory. His single defense theory got out of the door got shot as soon as the Richardson violation was committed. When Brooks got on the testimony and said all of a sudden changes her pretrial testimony. And he had already in his opening statement said to the jury no one's going to get up here and say, Dr. Paylan was in the Habana Pharmacy with the prescription.

JUDGE ROTHSTEIN-YOUAKIM: And that was based on her deposition testimony, right?

DR. PAYLAN: Right.

JUDGE ROTHSTEIN-YOUAKIM: So he was entitled to rely on that (inaudible) in his defense.

DR. PAYLAN: Absolutely, except when she completely reversed it he had to ask for a Richardson hearing.

JUDGE ROTHSTEIN-YOUAKIM: Yeah, but he did a lot --

JUDGE SLEET: (Inaudible).

DR. PAYLAN: But he could have pulled the opening statement back, it's very clear that I lost -- he lost credibility with the jury. He couldn't take back the opening statement from the jury. There had to be a side hearing to determine why that was done. First of all, if you read the whole other testimony of other witnesses, categorically nobody, including the subpoena duces tecum that was issued to Havana Pharmacy, there was evidence that July 1 prescription was never presented. They don't have possession of it. And the video that you're talking about, Your Honor, there is no hand movement. I was there for a meeting. There is nothing over the counter that I'm somehow doing this (indicating). Everybody just talks about the video, but no one looks inside the video to see that I'm just sitting waiting in the lobby of the pharmacy. I'm not even trying to negotiate or tender a prescription. So I think that -- and also to go back to the Williams Rule, Barzee kept saying it would sink. It would sink. Well, what would sink? What would sink my case? How can the post-conviction court speculate –

JUDGE SLEET: You have (inaudible).

DR. PAYLAN: Thank you, Your Honor. And, also, one other thing on the credibility of Ruth Caballero, which was the biological mother of Luis Jr, that was a cold transcript. If the post-conviction judge copies and pastes exactly a credibility of a witness who doesn't testify live before him, I don't understand how that's not independent. There's no independent decision making there. She copied and pasted former judge's conclusions on Ruth Caballero, who was live before the former judge, but not live before her.

JUDGE SLEET: Okay.

DR. PAYLAN: Thank you, Your Honor.

JUDGE SLEET: Thank you very much.

MS. WINTERKORN: Thank you.

(End of recording.)

CERTIFICATE

I, ERINN GREEN, Professional Court Reporter/Transcriptionist, do hereby certify that I was authorized to transcribe the foregoing recorded proceeding, and that the transcript is a true and accurate transcription of my shorthand notes, to the best of my ability, taken while listening to the provided recording.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the events of this cause, and that I am not related to any of the parties thereto.

Dated this 24th day of January, 2024.

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ERINN L. GREEN, Court Reporter
Notary Public, State of Florida
Expires: January 23, 2028