IN THE SUPREME COURT OF THE UNITED STATES

APPENDIX OF EXHIBIT'S

VOLUME #1 - (Pre-Trial):

Ex.(A)- Original Arrest AFFidavit / Report
Ex.(B)- Pre-Trial Deposition of Deputy Heath SchaFFer
Ex.(C)- Court Order Disposition Report
Ex.(D)- Supplemental Report (Deputy Jonathan SeFFern Jr.'s Report)
Ex.(E)- Disciplinary Report (CCA Corr. Facility Employee, Daniel Greenwald's Report)
Ex(F)- Court Docket (Original Charges)
Ex.(G)- CCSO Property Reciept of stored Evidence (Evidence belonging to *Petitioner*
Ex.(H)- CCSO Property Reciept's of stored Evidence (Evidence belonging to the Co-Def., Jason Williams)
Ex.(I)- Combined Court Action Sheet
Ex.(J)- Announcement of No Information (State drop's charges against the Co-Def., Williams)
Ex.(K)- Announcement of No Info. & of Info. as to *Petitioner's* charges.
Ex.(L)- Plea Agreement
Ex.(M)- Work Order's to the FDLE
Ex.(N)- FDLE Laboratory Report
Ex.(O)- Supplemental Discovery Exhibit #1

VOLUME #2 - (Trial)

Ex.(A)- Jury Selection
Ex.(B)- Motion in Limine
Ex.(C)- Trial Transcripts
Ex.(D)- Motion For JOA
Ex.(E)- Motion For New Trial
Ex.(F)- Hearing Transcripts
Ex.(G)- Ander's Brief
Ex.(H)- Initial Brief
Ex.(I)- Answer Brief
Ex.(J)- Reply
Ex.(K)- Court Order.
Ex.(L)- Motion For Rehearing En Banc
Ex.(M)- Court Order Denying Rehearing

APPENDIX OF EXHIBITS

VOLUME #3- (Post Conviction in the State Court's):

Ex.(A)- 3.850 Motion For Post-Conviction Relief
Ex.(B)- Court Order on Post Conviction
Ex.(C)- First Evidentiary Hearing Transcript's (Orally Pronounced Legal Finding's, at 50-52)
Ex.(D)- Written Order Following First Evidentiary Hearing
Ex.(E)- Initial Brief on Appeal
Ex.(F)- States Answer on Appeal
Ex.(G)- Reply
Ex.(H)- Court (per curiam affirmed) Order as to but Ground Six: Remanded For 2ND Evid. Hear.
Ex.(I)- Motion For Rehearing
Ex.(J)- Court Order Denying Rehearing
Ex.(K)- Court Order Denying Suggestion of Non-Compliance
Ex.(L)- 2ND Evidentiary Hearing Transcript's (Orally Pronounced Legal Finding's, at 52-54)
Ex.(M)- Court Order Denying Relief Following 2ND Evid. Hear.
Ex.(N)- Motion For Rehearing
Ex.(O)- Court Order Denying Rehearing
Ex.(P)- Motion For Discretionary Review
Ex.(Q)- States Answer on Jurisdiction
Ex.(R)- Court Order Declining Jurisdiction
Ex.(S)- Initial Brief on Appeal
Ex.(T)- States Answer on Appeal
Ex.(U)- Reply

VOLUME #4- (Post-Conviction in the Federal Court's):

Ex.(A)- States Response to Habeas Corpus Petition under 28 U.S.C §2254
Ex.(B)- Court Order AFFirming the Trial Court's Findings; Denying Habeas Relief & C.O.A
Ex.(C)- Request For C.O.A
Ex.(D)- Initial Brief on Appeal
Ex.(E)- State's Answer on Appeal
Ex.(F)- Reply
Ex.(G)- Motion to Supplement the Record, and to Strike Appellee's Answer as in Non-Compliance
Ex.(H)- Court Order AFFirming the Trial Court's Findings, and Denying Relief

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-11997

Non-Argument Calendar

JEROMY SCHIEDENHELM,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:20-cv-00168-CEM-PRL

Before JILL PRYOR, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Jeromy Schiedenhelm, proceeding pro se, appeals the district court's denial of his 28 U.S.C. § 2254 petition raising an ineffective-assistance-of-counsel claim. As relevant here, a Florida state court convicted Schiedenhelm for the battery of a police officer while the officer was lawfully performing his official duties. On appeal, Schiedenhelm argues that (1) a Florida statute governing strip searches rendered the police encounter that gave rise to his battery conviction unlawful, and thus (2) his trial counsel was ineffective because she failed to explicitly raise that statute as part of his defense. After careful consideration, we **AFFIRM** the district court's order.[1]

I.

The events giving rise to this ineffective-assistance-of-counsel appeal concern the initial traffic stop and subsequent jailing of Schiedenhelm. During a run-of-the-mill traffic stop, a Florida state police officer patted down Schiedenhelm. While doing so, the officer felt a hard, blunt object between Schiedenhelm's thighs. After the officer informed Schiedenhelm that he had something between

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[1] Schiedenhelm has also moved for leave to supplement the record and to strike the state's brief as moot. We conclude that these motions are unnecessary or meritless, so we **DENY** them without further discussion.

his legs, Schiedenhelm became aggressive and uncooperative, clenching his thighs and legs. The officers proceeded to arrest Schiedenhelm and took him to jail.

Upon arriving at the jail, officers conducted an additional pat down and clothing search. Schiedenhelm continued to behave uncooperatively, so officers took him into a jail bathroom. There, he was instructed to remove his clothing and underwear. While doing so, Schiedenhelm pulled out a plastic bag and sought to flush it down the toilet. As an officer attempted to intervene, Schiedenhelm pushed the officer up against the wall. The officers successfully retrieved the small bag, which contained fourteen smaller bags of narcotics.

As relevant here, Schiedenhelm's pushing of the officer in the bathroom led to his conviction for battery on a law enforcement officer while in the lawful performance of his official duties. Fla. Stat. §§ 784.03(1)(a), 784.07(2). In his state post-conviction proceedings, Schiedenhelm, proceeding pro se, argued—among other things—that his trial counsel was ineffective. After an evidentiary hearing, the state post-conviction court disagreed in a reasoned opinion. Schiedenhelm subsequently appealed, but a state court affirmed in a per curiam opinion. *Schiedenhelm v. State*, 286 So. 3d 278 (Fla. Dist. Ct. App. 2019).

After exhausting his state remedies, Schiedenhelm filed a § 2254 petition in federal district court, making the same ineffective-

assistance-of-counsel argument. The district court denied his petition, and this appeal followed.[2]

II.

We review de novo a district court's denial of a federal habeas petition raising an ineffective-assistance-of-counsel claim. *Johnson v. Sec'y, Dep't of Corr.*, 643 F.3d 907, 929 (11th Cir. 2011). Crucially, though, the Antiterrorism and Effective Death Penalty Act imposes a "highly deferential standard for evaluating state-court rulings . . . and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotation marks and citation omitted); *see also* 28 U.S.C. §§ 2241–55. Thus, we review the district court's decision de novo but review the state court's decision with deference. *Reed v. Sec'y, Fla. Dep't of Corr.*, 593 F.3d 1217, 1239 (11th Cir. 2010).

If a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the decision of the state court was (1) contrary to, or an unreasonable application of, clearly established federal law, as determined by the Supreme Court, or (2) 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)(1), (2). A federal habeas court making the unreasonable-application inquiry "should ask [itself] whether the state court's application of clearly established federal law was objectively

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[2] Schiedenhelm raised other grounds for relief in his § 2254 petition, but we granted a certificate of appealability covering only the single ineffective assistance of counsel claim discussed here.

unreasonable." *Williams v. Taylor*, 529 U.S. 362, 409 (2000). "[A]n *unreasonable* application of federal law is different from an *incorrect* application of federal law." *Id.* at 410 (emphasis in original). When demonstrating that a state court unreasonably applied federal law, a state prisoner seeking federal habeas relief "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." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

To succeed on an ineffective-assistance claim, a movant must show that (1) his attorney's conduct was deficient and (2) the deficient conduct prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish prejudice, the petitioner must show "that, but for his counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different." *Johnson*, 643 F.3d at 928.

"[A]lthough the issue of ineffective assistance—even when based on the failure of counsel to raise a state law claim—is one of constitutional dimension, we must defer to the state's construction of its own law when the validity of the claim . . . turns on state law." *Pinkney v. Sec'y, Dep't of Corr.*, 876 F.3d 1290, 1295 (11th Cir. 2017) (quotation marks omitted). Relatedly, we have recognized that establishing that a state court's application of *Strickland* was unreasonable under 28 U.S.C. § 2254(d) is all the more difficult because the standards created by § 2254(d) and *Strickland* are both highly

deferential. *Jenkins v. Commissioner, Ala. Dep't of Corr.*, 963 F.3d 1248, 1265 (11th Cir. 2020) (quotation marks omitted). Thus, when reviewing state-court determinations about the application of *Strickland*'s performance prong, our deference is "doubly so." *Id.*

III.

On appeal, Schiedenhelm argues that his trial counsel was ineffective because she failed to raise a statute relevant to his defense. Specifically, Schiedenhelm asserts that his counsel did not mention Fla. Stat. § 901.211(5) when defending him against the charge that he battered a police officer lawfully performing his duties. That statute says that "[n]o law enforcement officer shall order a strip search within the agency or facility without obtaining the written authorization of the supervising officer on duty." Fla. Stat. § 901.211(5). Because no supervising officer authorized his strip search while at the jail in writing, Schiedenhelm contends that the entire search giving rise to his battery conviction was unlawful. Additionally, and as pertinent here, Schiedenhelm argues that his counsel's failure to directly raise Fla. Stat. § 901.211(5) when she asked for a judgment of acquittal for the relevant battery count was (1) ineffective assistance of counsel under *Strickland* and (2) the state post-conviction's court decision to the contrary was an unreasonable application of *Strickland*.

We conclude the district court did not err in denying Schiedenhelm's § 2254 petition. When denying his request for post-conviction relief, the state post-conviction court concluded that §

901.211(5) was inapplicable to the facts of Schiedenhelm's case.[3] Its reasoning emphasized a distinction in Florida law between seizing previously discovered evidence and searching for new evidence. And when determining if that legal distinction applied to Schiedenhelm's case, the court relied on testimony by police officers that the strip search at the jail directly flowed from concerns arising during the traffic stop that Schiedenhelm was hiding something in his groin area. Thus, according to the state post-conviction court, the strip search at the jail was not a new search falling under § 901.211(5)'s purview but rather the seizing of previous evidence discovered during the traffic stop.

The state post-conviction court's distinction between searches and seizures is consistent with prior case law in Florida. *State v. Days*, 751 So. 2d 87, 88 (Fla. Dist. Ct. App. 1999). Likewise, we conclude that officers' testimony at Schiedenhelm's trial that the jail search was motivated by initial concerns raised during the traffic stop about a hard, blunt object concealed between Schiedenhelm's legs reasonably supports the state court's legal application in this case.

Given that the state post-conviction court reasonably applied state law to the specific facts of Schiedenhelm's case, we must

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[3] Because a state appellate court affirmed the denial of Schiedenhelm's relevant motion for post-conviction relief per curiam without providing a reasoned opinion, we "look through" the un-explained decision to the state post-conviction court's reasoned denial, presuming that the unexplained appellate court decision adopted the reasoning. *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018).

defer to the state court's determination. *Pinkney*, 876 F.3d at 1295. Because that court determined § 901.211(5) was inapplicable to his case, Schiedenhelm cannot demonstrate his counsel's performance "fell below an objective standard of reasonableness" or "was outside the wide range of professionally competent assistance." *Johnson*, 643 F.3d at 928 (quotation marks omitted). For the same reason, Schiedenhelm cannot show his counsel's failure to raise this argument prejudiced him in any way. *Id.* at 928–29. Accordingly, the district court did not err in denying his § 2254 petition.

* * *

In sum, Schiedenhelm's pending motions are **DENIED,** and the district court's denial of his 28 U.S.C. § 2254 petition is **AFFIRMED**.

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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March 21, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 22-11997-JJ
Case Style: Jeromy Schiedenhelm v. Secretary, Florida Department of Corrections, et al
District Court Docket No: 5:20-cv-00168-CEM-PRL

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing is timely only if received in the clerk's office within the time specified in the rules. **A petition for rehearing must include a Certificate of Interested Persons and a copy of the opinion sought to be reheard.** See 11th Cir. R. 35-5(k) and 40-1.

Costs
No costs are taxed.

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or

cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
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CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

JEROMY SCHIEDENHELM,

Petitioner,

v. **Case No. 5:20-cv-168-CEM-PRL**

SECRETARY, DEPARTMENT OF CORRECTIONS and FLORIDA ATTORNEY GENERAL,

Respondents.

_____/

ORDER

THIS CAUSE is before the Court on an Amended Petition for Writ of Habeas ("Amended Petition," Doc. 8) filed under 28 U.S.C. § 2254. In compliance with the Court's Order (Doc. 3), Respondents filed a Response to the Amended Petition. ("Response," Doc. 18). Petitioner filed a Second Amended Reply ("Reply," Doc. 32), and it is ripe for review.

Petitioner asserts five claims for relief in the Amended Petition. For the reasons set forth below, the Amended Petition will be denied

I. PROCEDURAL HISTORY

The State Attorney's Office for the Fifth Judicial Circuit in and for Citrus County, Florida, charged Petitioner by information with possession of

methamphetamine with intent to sell or deliver (Count I), resisting a law enforcement officer with violence (Count II), battery on a law enforcement or other officer (Count III), and evidence tampering (Count IV). ("Appendix," Doc. 20-1 at 30-31). A jury found Petitioner guilty on all counts as charged. (Doc. 20-1 at 84-87). The state court sentenced Petitioner to 15 years as to Count I, and to one year and one day each as to Counts II, III, and IV, with all counts running consecutively. (*Id.* at 115-27). Petitioner appealed, and the Fifth District Court of Appeal of Florida ("Fifth DCA") *per curiam* affirmed. (*Id.* at 438); *Schiedenhelm v. State*, 197 So. 3d 57 (Fla. 5th DCA 2016).

On June 15, 2017, Petitioner filed a motion for postconviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. (Doc. 20-1 at 450-94). On August 2, 2017, the trial court entered a non-final, non-appealable order denying five of Petitioner's claims and reserving ruling on three grounds until an evidentiary hearing was held. (*Id.* at 588-659). On November 1, 2017, the evidentiary hearing was held. (*Id.* at 717-70). On November 7, 2017, the trial court entered a final order denying the motion. (*Id.* at 681-91). Petitioner appealed, and the Fifth DCA affirmed in part; reversed in part, and remanded ground six for either an evidentiary hearing or for the court to attach portions of the record that conclusively refute the claim. (*Id.* at 868-69). An evidentiary hearing was held on February 13, 2019, and an order denying the remanded ground was entered on February 21, 2019. (*Id.* at 1270-92).

Petitioner appealed, and the Fifth DCA *per curiam* affirmed. (*Id.* at 1426); *Schiedenhelm v. State*, 286 So. 3d 278 (Fla. 5th DCA 2019). Mandate issued on January 3, 2020. (*Id.* at 1427).

II. LEGAL STANDARDS

A. Standard of Review Under the Antiterrorism Effective Death Penalty Act ("AEDPA")

Pursuant to the AEDPA, federal habeas relief may not be granted with respect to a claim adjudicated on the merits in state court 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). The phrase "clearly established Federal law," encompasses only the holdings of the United States Supreme Court "as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. 362, 412 (2000).

"[S]ection 2254(d)(1) provides two separate bases for reviewing state court decisions; the 'contrary to' and 'unreasonable application' clauses articulate independent considerations a federal court must consider." *Maharaj v. Sec'y for Dep't of Corr.*, 432 F.3d 1292, 1308 (11th Cir. 2005). The meaning of the clauses

was discussed by the Eleventh Circuit Court of Appeals in *Parker v. Head*, 244 F.3d 831, 835 (11th Cir. 2001):

> Under the "contrary to" clause, a federal court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the United States Supreme Court] on a question of law or if the state court decides a case differently that [the United States Supreme Court] has on a set of materially indistinguishable facts. Under the 'unreasonable application' clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from [the United States Supreme Court's] decisions but unreasonably applies that principle to the facts of the prisoner's case.

Even if the federal court concludes that the state court applied federal law incorrectly, habeas relief is appropriate only if that application was "objectively unreasonable."[1] *Id.* Finally, under § 2254(d)(2), a federal court may grant a writ of habeas corpus if the state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." A determination of a factual issue made by a state court, however, shall be presumed correct, and the habeas petitioner shall have the burden of rebutting the

[1] In considering the "unreasonable application" inquiry, the Court must determine "whether the state court's application of clearly established federal law was objectively unreasonable." *Williams*, 529 U.S. at 409. Whether a state court's decision was an unreasonable application of law must be assessed in light of the record before the state court. *Holland v. Jackson*, 542 U.S. 649, 652 (2004) (*per curiam*); *cf. Bell v. Cone*, 535 U.S. 685, 697 n. 4 (2002) (declining to consider evidence not presented to state court in determining whether its decision was contrary to federal law).

presumption of correctness by clear and convincing evidence. *See Parker*, 244 F.3d at 835-36; 28 U.S.C. § 2254(e)(1).

B. Standard for Ineffective Assistance of Counsel

In *Strickland v. Washington*, the Supreme Court established a two-part test for determining whether a convicted person is entitled to relief on the ground that his counsel rendered ineffective assistance. 466 U.S. 668, 687-88 (1984). A petitioner must establish that counsel's performance was deficient and fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense. *Id.* This is a "doubly deferential" standard of review that gives both the state court and the petitioner's attorney the benefit of the doubt. *Burt v. Titlow*, 571 U.S. 12, 15 (2013) (citing *Cullen v. Pinholster*, 536 U.S. 170, 190 (2011)).

The focus of inquiry under *Strickland*'s performance prong is "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688-89. In reviewing counsel's performance, a court must adhere to a strong presumption that "counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. The petitioner must "prove, by a preponderance of the evidence, that counsel's performance was unreasonable[.]" *Jones v. Campbell*, 436 F.3d 1285, 1293 (11th Cir. 2006). A court must "judge the reasonableness of counsel's conduct on the facts of the particular case, viewed as of the time of counsel's conduct," applying a

"highly deferential" level of judicial scrutiny. *Roe v. Flores-Ortega*, 528 U.S. 470, 477 (2000) (quoting *Strickland*, 466 U.S. at 690).

Petitioner's burden to demonstrate *Strickland* prejudice is also high. *Wellington v. Moore*, 314 F.3d 1256, 1260 (11th Cir. 2002). Prejudice "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*, 466 U.S. at 687. That is, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

III. ANALYSIS

A. Grounds One and Two

Petitioner asserts his trial counsel rendered ineffective assistance by failing file a pretrial motion to suppress the drugs discovered as a result of his illegal detention because the traffic stop extended beyond the time necessary and because the second search was unlawful. (Doc. 8 at 4-10). In Ground One, Petitioner claims that the traffic stop was unlawfully prolonged to allow for a K-9 unit to arrive. (*Id.* at 4). In Ground Two, Petitioner claims that he was initially searched for weapons but then after the K-9 alerted, he was searched again for weapons. (*Id.* at 7). Petitioner states "there is a reasonable probability that the trial court would have

granted the motion, excluding all evidence as a result of the unlawful detention, resulting in the charges being dropped." (*Id.* at 5). The state court denied this ineffective assistance claim[2] on the merits, and the Fifth DCA *per curiam* affirmed. As the postconviction court explained:

> Ms. Charity Braddock, the Defendant's trial counsel testified that she was aware of the statute and case law. In reviewing the case law, the best way to approach the issues was through a motion for judgment of acquittal (JOA) rather than a motion to suppress. Ms. Braddock further testified she spoke with the Defendant regarding the law and case law and her decision to make legal arguments as the end of the trial through the motion for JOA. The Defendant was aware of the trial strategy and she stated to the Court prior to trial that a motion to suppress would not be filed. Ms. Braddock further testified that she decided on the JOA because an element of the crime of resisting law enforcement with violence is that the law enforcement was in lawful execution of his duties; however, his acts towards the Defendant was not lawful. Ultimately, her motion for JOA was denied by the Court and she filed a renewed Motion for Judgment of Acquittal and Motion for New Trial after the trial. The motions were subsequently denied by the Court.
>
> ...

[2] Petitioner also raised this claim on direct appeal. *See* Doc. 20-1 at 394-414. In response, the State argued that the Florida Statutes and case law supported counsel's decision to not file a motion to suppress based on the facts of this case. To support its position, the State cited *Motes v. State*, 37 So. 3d 301, 302-03 (Fla. 4th DCA 2010) (Where violence occurs during an arrest, and the defendant is charged with resisting an officer with violence, the State is not required to prove that the arrest was lawful.); Fla. Stat. § 776.051(1) (2007) ("A person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer."); and *State v. Green*, 721 So. 2d 1258, 1259 (Fla. 5th DCA 1998) ("Where there objectively exists probable cause to charge one with the crime of resisting arrest with violence, a search conducted incident to an arrest for resisting without violence is valid even if the officer improperly stopped the subject."). The Fifth DCA *per curiam* affirmed. (Doc. 20-1 at 438).

> On cross-examination, Ms. Braddock admitted not giving a legal basis to the Court for not filing a motion to suppress. She testified she did review her decision not to file a motion to suppress with the defendant, the Defendant wanted her to file the motion, and her decision was a strategic trial decision. Ms. Braddock also testified she met with the Defendant at least twice to go over the case and trial strategy.
>
> ...
>
> The Court finds that based on the testimony of the Defendant and Ms. Braddock; and review of the court files, the Defendant's claims are without merit. First, Ms. Braddock's decision not to file a Motion to Suppress was a on [sic] trial strategy based on statute, case law, and her 12 years of experience as a criminal attorney.

(Doc. 20-1 at 683-84). Petitioner has not shown that the state court's denial of this ineffective assistance of counsel claim was contrary to, or an unreasonable application of, clearly established federal law, or based on an unreasonable determination of the facts.

Petitioner was charged in with battery on an officer and resisting with violence in addition to a drug charge. The defense strategy, to show that the officers were not engaged in a lawful duty, if successful, could have resulted in all of the charges being dropped. Counsel reviewed the facts of this case, the law that restricts resistance against officers, and considered a suppression motion before deciding on the defense strategy. It is a cardinal tenet of the Supreme Court's ineffective assistance jurisprudence that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Strickland*, 466

U.S. at 690. This "highly deferential" standard is necessary because it is "all too easy" to second guess counsel's efforts after they have proven unsuccessful. *Id.* at 689. Since adverse outcomes can make perfectly reasonable judgments look questionable in retrospect, "every effort [must] be made to eliminate the distorting effects of hindsight." *Id.* at 689. The state court found that a motion to suppress lacked a legal basis under Florida law and the strategy to attack the issue via a motion for judgment of acquittal was proper. Petitioner has failed to meet his burden. Accordingly, Grounds One and Two will be denied pursuant to § 2254(d).

B. Ground Three

Petitioner asserts counsel rendered ineffective assistance by failing to apprise the state court of Florida Statute 901.211(5) during the argument for a judgment of acquittal of the battery on a law enforcement officer. (Doc. 8 at 10-12). The statute provides that "[n]o law enforcement officer shall order a strip search with the agency or facility without obtaining the written authorization of the supervising officer." Petitioner states that written authorization was neither requested nor provided prior to him being strip searched by jail personnel. (*Id.* at 10). While counsel argued for a judgment of acquittal on this charge, she failed to make an argument based on that statute. The state court rejected this claim during the evidentiary hearing:

> The Court's ruling is as follows, I find nothing to support the contention that anything other than Charity Braddock at the JOA argument was in any way deficient. She presented herself and the testimony to the best of her

> ability -- the best of anybody's ability -- to the jury. The misunderstanding that your client has about searches and strip searches and things like that is merely his to ponder for the rest of his sentence, because there is nothing deficient in the argument that was made by Attorney Braddock in is trying to get a JOA argument.
>
> The simple truth is I disagreed with Ms. Braddock. I heard all the testimony, every way, shape, or form, and I made the determination that there was sufficient evidence to go to the jury. The fact that you have picked -- cherry-picked a statute out, one sentence, about 201.211 (sic) in saying that in order a strip search -- I think to be beyond the parameters of what the statute is all about. He was arrested. This was not the errant officer requesting a strip search of somebody out in the street. Your client had been lawfully arrested for resisting with violence, and I don't care if Mr. Schiedenhelm doesn't like the statutes or the Court's ruling. It makes no difference to me.
>
> The fact of the matter is he was in lawful custody of the sheriff's department when they saw the bulge, when the bulge was brought to the attention of the law enforcement officers and Mr. Schiedenhelm. That's just too bad. So the argument having been made by Ms. Braddock, she did do everything earthly possibly to make that position. I heard all the argument. I made the ruling. It went to the jury. He's convicted. He's sentenced. And that's the end of the case.

(Doc. 20-1 at 1371-73). The court expanded on its reasoning in the written order:

> In the instant case, trial counsel argued judgment of acquittal as to count I by challenging the State's evidence. *See* attached hereto Trial Tr., 141-43. Trial counsel then continued with arguments highlighting the charge for resisting officer with violence. *Id.* at 143:20-23. The main argument was that the officers were not acting in a "lawful duty." *Id.* During trial counsel's arguments she argued

> in determining whether an officer was lawfully executing a legal duty as an element of battery on a law enforcement officer or resisting an officer with violence related to conduct–conduct outside the (indiscernible) area, courts must apply the legal standards governing the duty undertaken by the law enforcement officer at the point that the assault, battery or act of violent resistance occurred.

Id. at 145:1-9. Thereafter, trial counsel cites cases. *Id.* at 145-147. When asked by the Court if there will be any arguments to the other counts she states, "No, not to the other counts, Your Honor. I believe that would be–we'd move for a judgment of acquittal, but I believe that that–that would be a question for the jury." *Id.* at 147.

The Court finds the Defendant's reliance on 901.211(5), Florida Statutes is misplaced. The Defendant at the time of arrest was for resisting with violence. *See* attached Arrest Affidavit. Specifically, the Court finds although not artfully argued trial counsel's argument for JOA was sufficient for the Court to consider all counts. Ms. Braddock's arguments included the assertion that the officers were not in lawful execution of a legal duty. Ultimately, trial court denied the judgment of acquittal on all four counts. *See* attached hereto Trial Tr., 147:14-15; & 149:1. Trial counsel also argued at the evidentiary that section 901.211, Florida Statutes may not have been applicable because the officers were attempting to seize evidence. Therefore, the Defendant has failed to show that trial counsel's actions were "so serious that counsel was not functioning as the counsel guaranteed by the Sixth Amendment." *Strickland*, 466 U.S. at 667. Furthermore, the Defendant has failed to demonstrate prejudice from trial counsel's acts or omissions would have produced an acquittal. *Id.*

(Doc. 20-1 at 1274-75). Additionally, the state court also addressed the applicability of Section 901.211(5):

> Under Section 901.211(5), Florida Statutes (2014), "[n]o law enforcement officer shall order a strip search within the agency or facility without obtaining the written authorization of the supervising officer on duty." A strip search is defined as "having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in case of a female; or undergarments of such person." *See* § 910.211(1), Fla. Stat. (2014). A "seizure" is distinguishable from a "strip search" because search includes inspection or examination "closed from public or general view and requires some measure of force or intrusion," and a seizure is "the act of taking custody of evidence or contraband." *State v. Ashby*, 245 So. 2d 225, 227 (Fla. 1971). In other words, the seizing of evidence already observed is distinguishable from conducting an "inspection" to find evidence (a strip search). *See Jenkins v. State*, 924 So. 2d 20 (Fla. 2d DCA 2006) (citation omitted).

(Doc. 20-1 at 1273-74).

The state court's denial of this ground is not contrary to, nor an unreasonable application of, *Strickland*. The evidence established that a "large lump" was "felt" in Petitioner's groin area during a search. *See* Doc. 20-1 at 1367. Petitioner then resisted with violence causing the search to stop and he was placed under arrest. Upon arrival at the jail, the arresting officers informed jail staff that there was an unknown object in his groin area. Thus the search by the jail staff was reasonable

and did not violate Petitioner's Fourth Amendment rights.[3] Accordingly, Ground Three will be denied pursuant to § 2254(d).

C. Ground Four

Petitioner asserts counsel rendered ineffective assistance by failing to move for a judgment of acquittal based on the State's failure to establish the intent to sell element of Count I. (Doc. 8 at 12-13). Specifically, Petitioner claims "she did not move for a judgment of acquittal based on the State's failure to establish that the baggies contained an illegal drug in order to support the intent to sell element of Count One." (*Id.* at 12). The state court rejected this claim:

> Next, in Grounds Two and Six, the Defendant alleges his trial counsel was ineffective for failing to seek a judgment of acquittal. He contends the State did not prove all elements as to count I thus trial counsel should have properly moved for judgment of acquittal. The Defendant argues the State failed to show that each baggie contained illegal substances. ... These claims are without merit. Trial counsel argued at trial that the evidence presented failed to demonstrate a prima facie case of possession ... *See* attached hereto Trial Transcript pp. 141-

[3] *See United States v. Robinson*, 414 U.S. 218, 235 (1973) (A police officer's determination as to how and where to search the person of a suspect whom he has arrested is necessarily a quick ad hoc judgment which the Fourth Amendment does not require to be broken down in each instance into an analysis of each step in the search. The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment.).

> 47. Moreover, trial counsel filed a written Motion for New Trial and Motion for Judgment of Acquittal which were denied. *See* attached hereto Motion for New Trial; Motion for Judgment of Acquittal; Motion Hearing Transcript pp. 7-10; 13-14; and Court Order entered February 9, 2015. Therefore, the Defendant has failed to demonstrate trial counsel acted outside the broad range of reasonably competent performance under prevailing standards.

(Doc. 20-1 at 590-91). Notably, at the hearing addressing the post-trial motions, counsel restated that 14 of the 15 baggies were not tested by the FDLE and presented case law in support of her motion for judgment of acquittal including a case that held that individually-packaged narcotics does not automatically establish an intent to sell. (*Id.* at 609-10).

The state court's denial of this ground is not contrary to, or an unreasonable application of, *Strickland.* The state court rejected counsel's arguments and ruled that the evidence presented at trial–the testimony of deputy who had narcotics-type training and the individual packages that were precisely weighed out–were "issues classically for the triers of fact to decide" regarding the intent to sell element. (*Id.* at 617). Accordingly, Ground Four will be denied pursuant to § 2254(d).

D. Ground Five

Petitioner asserts counsel rendered ineffective assistance by failing to object to Officer Schaffer's opinion testimony regarding the element of intent to sell. (Doc. 8 at 16-18). Petitioner claims that Officer Schaffer's testimony was "pure opinion testimony" and was inadmissible under Florida law. (*Id.* at 16). Petitioner states that

without Officer Schaffer's testimony there was no other evidence to support the intent to sell element of Count I. (*Id.*). The state court rejected this claim:

> Moreover, in Ground Three, the Defendant alleges trial counsel was ineffective for failing to object to Deputy Heath Schaffer's testimony regarding drug dealers and the Defendant's intent to sell. He claims portions of his testimony included practices of drug dealing and the Defendant's possible personal use.
>
> In a claim of ineffective assistance of counsel for failing to object to improper testimony or evidence at trial it is necessary to determine whether an objection was warranted and whether it would have made a difference in the outcome of the trial or appeal. *State v. Bouchard*, 922 So. 2d 424, 430-43 (Fla. 2d DCA 2006). Pursuant to § 90.701(2), Florida Statutes (2010), a "lay witness" may testify as to "what he or she perceived ... in the form of inference and opinion when, the opinions and inferences do not require a special knowledge, skill, experience, or training." However, a witness qualified as an expert may testify as to opinion based on "scientific, technical, or other specialized knowledge [that] will assist the trier of fact in understanding the evidence or in determining a fact in issue." § 90.702, Fla. Stat. (2010).
>
> In the instant case, Deputy Schaffer testified as to his training and education involving traffic and narcotics. *See* attached hereto Trial Transcript, pp. 36-37. He further testified as to items recovered during the search and his opinion about the number of packets found. *Id.* at 52-24. Deputy Schaffer's testimony was based on his experience and observations which is allowable. Therefore, trial counsel had no basis to object to the testimony.

(Doc. 20-1 at 591-92). Because the trial court found that the deputy's statements were admissible under Florida law, counsel was not deficient for failing to object.

See Chandler v. Moore, 240 F.3d 907, 917 (11th Cir. 2001) (a lawyer cannot be deficient for failing to raise a meritless claim). Accordingly, Ground Five will be denied pursuant to § 2254(d).

IV. CERTIFICATE OF APPEALABILITY

This Court should grant an application for certificate of appealability only if Petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Lamarca v. Sec'y Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). However, a prisoner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

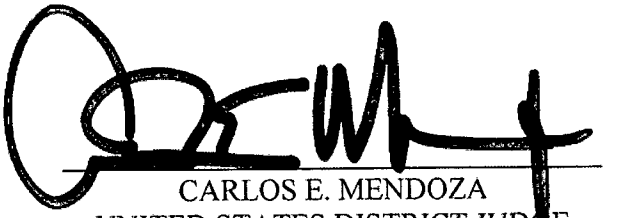
Petitioner has not demonstrated that reasonable jurists would find the district court's assessment of the constitutional claims and procedural rulings debatable or wrong. Further, Petitioner has failed to make a substantial showing of the denial of a constitutional right. Thus, the Court will deny Petitioner a certificate of appealability.

V. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The Amended Petition for Writ of Habeas Corpus (Doc. 8) is **DENIED**, and this case is **DISMISSED with prejudice**.
2. Petitioner is **DENIED** a certificate appealability.
3. The Clerk of Court shall enter judgment accordingly and is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on May 23, 2022.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party

Additional material from this filing is available in the Clerk's Office.