**Application No.: 25-_____**

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IN THE
SUPREME COURT OF THE UNITED STATES

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LAKE J. ROBINSON – PETITIONER

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS
FLORIDA ATTORNEY GENERAL - RESPONDENTS

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On Petition for Writ of Certiorari from denial orders of
The United States Court of Appeals for the 11th Circuit

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# APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Submitted by:

Lake J. Robinson, Pro Se
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# APPENDIX A

# In the
# United States Court of Appeals
## For the Eleventh Circuit

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No. 24-11889

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LAKE ROBINSON,

Petitioner-Appellant,

*versus*

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

---

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:23-cv-81298-KMM

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Before ROSENBAUM and ABUDU, Circuit Judges.

BY THE COURT:

Lake Robinson is a Florida prisoner seeking to appeal the district court's denial of his *pro se* 28 U.S.C. § 2254 petition. He now moves this Court to reconsider its December 31, 2024, order, in which this Court denied a certificate of appealability. After careful consideration, Robinson's motion for reconsideration is DENIED, as he has offered no new evidence or arguments of merit to warrant relief.

# APPENDIX B

In the

# United States Court of Appeals

## For the Eleventh Circuit

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No. 24-11889

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LAKE ROBINSON,

Petitioner-Appellant,

*versus*

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

---

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:23-cv-81298-KMM

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ORDER:

Lake Robinson is a Florida prisoner serving a 55-year total sentence for attempted first-degree murder with a firearm and for being a felon in possession of a firearm. He moves this Court for a certificate of appealability ("COA"), leave to file an out-of-time application for leave to proceed *in forma pauperis* ("IFP"), and leave to proceed IFP, in order to appeal the denial of his 28 U.S.C. § 2254 habeas petition. As an initial matter, to the extent that Robinson has moved for leave to file an out-of-time application for leave to proceed IFP, said motion is GRANTED.

To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which he can do by showing that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further," *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted). Here, reasonable jurists would not debate the district court's denial of Robinson's § 2254 petition. *See id.*

In Claim 1, Robinson argued that counsel was ineffective for failing to file a pre-trial motion to dismiss the charges based on a "stand-your-ground" defense. To establish ineffective assistance of counsel, a petitioner must show 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). As relevant, prejudice occurs when there is a "reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

Here, the jury found Robinson guilty of attempted first-degree murder, rejecting his self-defense argument beyond a reasonable doubt. Thus, under *Simmons v. State*, 337 So. 3d 470, 471 (Fla. 1st Dist. Ct. App. 2022), there was "no reasonable probability that a trial judge would have rendered a different judgment at a Stand-Your-Ground hearing with a lower standard of proof," meaning that Robinson could not establish that trial counsel's failure to file a pre-trial motion to dismiss prejudiced him under *Strickland*. *See Strickland*, 466 U.S. at 694.[1]

In Claim 2, Robinson argued that counsel was ineffective for failing to object to the state's motion *in limine* to exclude evidence of prior violent acts carried out by the victims. The record, however, refutes this claim, and thus, Robinson cannot show that his counsel was ineffective. *See Strickland*, 466 U.S. at 687.

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[1] In its consideration of Claim 1, the Court specifically rejects Robinson's argument in his COA motion that *Simmons*, a decision of the *First* District Court of Appeal of Florida, was not binding on the *Fourth* District Court of Appeal. *See, e.g., Pardo v. State*, 596 So. 2d 665, 665 (Fla. 1992) (noting that the "decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court," and thus, "in the absence of interdistrict conflict, district court decisions bind all Florida trial courts" (quotation marks omitted)). Notably, Florida's Fourth District Court of Appeal has recently cited approvingly to *Simmons* in a *per curiam* affirmance. *See Troutman v. State*, 356 So. 3d 256 (Fla. 4th Dist. Ct. App. 2023).

Finally, in Claim 3, Robinson argued that counsel was ineffective for failing to object to misleading and confusing jury instructions regarding self-defense. In Claim 4, he argued that the trial court erred in giving these same instructions.

Claim 4 turns on state law and is not reviewable, absent fundamental unfairness. *Jones v. Kemp*, 794 F.2d 1536, 1540 (11th Cir. 1986); *see also Henderson v. Kibbe*, 431 U.S. 145, 154 (1977) (noting that fundamental unfairness in the context of a challenge to jury instruction requires considering "whether the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process"). However, Robinson cannot establish fundamental unfairness, as Florida's Supreme Court has held that the jury instruction at issue is not confusing, misleading, or contradictory. *See State v. Floyd*, 186 So. 3d 1013, 1019-23 (2016); *Agan v. Vaughn*, 119 F.3d 1538, 1545 (11th Cir. 1997) (noting that due process "is not violated unless an erroneous instruction . . . was so misleading as to make the trial unfair."). That decision is binding on this Court. *See Bradshaw v. Richey*, 546 U.S. 74, 76 (2005).

Regarding Claim 3, because any objection to the instruction would have failed, counsel was not ineffective for failing to object. *See Bolender v. Singletary*, 16 F.3d 1547, 1573 (11th Cir. 1994). Accordingly, Robinson's motion for a COA is DENIED, and his motion for leave to proceed IFP is DENIED AS MOOT.

/s/ Nancy G. Abudu

UNITED STATES CIRCUIT JUDGE

# APPENDIX C

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

**LAKE ROBINSON,**
**Appellant,**

**Case No.: 24-11889-J**

**v.**

**U.S. Dist. Ct. No.: 9:23-CV-81298-KMM**

**RICKY D. DIXON, Secretary**
**FLORIDA DEPT. OF CORR., et al.**
**Appellee.**
_____/

## APPLICATION FOR CERTIFICATE OF APPEALABILITY

**COMES NOW** the Appellant, Lake Robinson, pro se and pursuant to Rules Governing Section §2254 Cases Rule 11(a) and Local Rule 22-1, respectfully moves this Court to issue a Certificate of Appealability ("COA") on the four issues raised in his 28 U.S.C. §2254 petition in this instant case. In support thereof, the Appellant does state:

1. On August 28, 2023, the Appellant delivered into hands of prison officials his *Federal Petition for Writ of Habeas Corpus* under 28 USC §2254 to be filed to the Southern District of Florida (West Palm Beach Division). (Case No.: 9:23-cv-81298-KMM)

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

**LAKE ROBINSON,**
**Appellant,**

**Case No.: 24-11889-J**
**U.S. Dist. Ct. No.: 9:23-cv-81298-KMM**

**v.**

**RICKY D. DIXON, Secretary**
**FLA. DEPT. OF CORR., et al.**
**Appellee.**
_____/

# APPLICATION FOR CERTIFICATE OF APPEALABILITY

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2. On November 13, 2023, the State of Florida filed its response to the U. S. District Court's show cause order.
3. On March 25, 2024, Hon. U.S. District Court Judge K. Michael Moore issued his Order denying the Petition and denying a Certificate of Appealability.
4. On April 19, 2024, Appellant filed his Notice of Appeal.
5. On April 19, 2024, the Appellant also filed Certificate of Interested Parties (CIP), Request to Proceed in Forma Pauperis, and Certificate of No Transcripts Ordered.
6. The initial notice of appeal was filed on the 19th day of April, 2024. In the same envelope with the notice of appeal, the petitioner filed CIP, motion to proceed in forma pauperis, and certificate of no filing of transcripts.
7. On May 31, 2024, the petitioner filed a notice of inquiry with a second motion to proceed in forma pauperis after the first motion to proceed in forma pauperis was denied as moot on May 6, 2024.
8. On May 29, 2024, the clerk responded returning the CIP and entering the Motion for leave to proceed in forma pauperis on appeal, stating no notice of appeal had been filed.

9. On June 6, 2024, the Petitioner filed a second notice of appeal attaching the April 19, 2024, stamped dated notice of appeal, CIP, and certificate of no filing of transcripts.

10. The petitioner requested that the notice of appeal reflect the timely date placed in the hands of prison officials for mailing on April 19, 2024. Also, AAG Deborah Koenig, Office of the Florida Attorney General, was served with copies of the April 19, 2024 and June 6, 2024 stamp dated mailings.

11. On June 12, 2024, Appellant received new case number from the U. S. 11th Circuit Court of Appeals.

12. This timely application for certificate of appealability follows:

In accordance with Local Rule 22-1(b), the Appellant is seeking a Certificate of Appealability from this Honorable Court on the issue of whether or not the U.S. District Court abused its discretion when it denied the four issues raised in Robinson's Petition and declined to issue a COA regarding them.

In accordance with Local Rule 22-1(b), the Appellant is seeking a Certificate of Appealability from this Honorable Court on the following issues.

## STANDARD OF REVIEW

In order for this Honorable Court to issue the requested Certificate of Appealability ("COA"), it is necessary for the Appellant to establish a substantial showing of the denial of a constitutional right. The standard of review for granting

a "Certificate of Appealability" is set forth in *Slack v. McDaniel*, 120 S.Ct. 1595, 1596 (2000) which states in pertinent part:

> "When the district court denies a habeas petition .... a certificate of appealability should issue, and an appeal of the district court's order may be taken, if the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

The United States Supreme Court expounded on the standard for the granting of a COA in *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029, 1040, 154 L.Ed.2d 931 (2003) stating:

> "[W]e do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail."

The appellant contends that the issues raised in his §2254 Petition reflects a substantial showing of the denial of his constitutional rights by the State courts. The Appellant claims that reasonable jurists would find the District Court's assessment of his constitutional claim debatable or wrong.

## BRIEF STATEMENT OF THE CASE FACTS

In Palm Beach County criminal case number 13-CF-003460 the State charged Petitioner by information with two counts of premeditated attempted first-degree murder in violation of Fla. Stat. § 777.04(1), Fla. Stat. § 775.082(1) (b) (1) and with being a felon in possession of a firearm or ammunition in violation of Fla. Stat. §§ 790.23(1) (a) (c) (d); 775.087(2) on April 19, 2013.

On Count 1, the appellant was sentenced to a 25 year mandatory minimum in Department of Corrections for a firearm, Count 2 appellant was sentenced to mandatory minimum sentence of 25 years to run consecutive to Count 1, and on Count 3 appellant was sentenced for a firearm to 5 years in DOC with a 3 year mandatory minimum to run consecutive to Count 2 on the 2nd day of June 2015.

August 28, 2023, the Appellant filed his timely *Federal Petition for Writ of Habeas Corpus* under 28 USC §2254 with the Southern District of Florida (West Palm Beach Division).

On March 25, 2024, Hon. U.S. District Court Judge K. Michael Moore issued his Order denying the Petition and denying a Certificate of Appealability. That Order included a denial of a COA on the four issues raised in the Petition that Robinson believes should be reviewed further on appeal by this Honorable Court. Robinson's application for a COA follows.

## ISSUE ONE

**Ground 1: Raised on Rule 3.850 Motion for Postconviction Relief-Defense Counsel was ineffective for failing to request a pretrial immunity hearing based on erroneous reasoning that Appellant was not entitled to the Florida Stand Your Ground immunity laws in violation of the 6th and 14th Amendments of the US Constitution.**

### Facts in Support of Issuing a COA

In Count one the State of Florida filed information charging the Lake J. Robinson on or about March 31, 2013, in the County of Palm Beach and State of Florida did unlawfully from a premeditated design attempt to commit First Degree Murder, an offense prohibited by law, and in such attempt did act toward the commission of such offense by shooting Herbertha Lavern Buckle, but Lake J. Robinson failed in the perpetration or was intercepted or prevented in the execution of said offense, and during the commission or attempt to commit any offense listed in Florida Statute 775.087(2)(a)1, Lake J. Robinson actually possessed a firearm or destructive device as those terms are defined in section 790.001, Florida Statutes, and further during the course of committing or attempting to commit any offense listed in Florida Statute 775.087(2)(a)1, Lake J. Robinson discharged a firearm or destructive device as defined in section 790.001, Florida Statutes, and, as the result of the discharge, death or great bodily harm was

inflicted upon Herbertha Lavern Buckle, contrary to Florida Statutes 777.04(1) and 782.04(1)(a)(1) and 775.087(1) and (2).

In Count 2 of the charging information, the State filed that Lake J. Robinson on or about March 31, 2013, in the County of Palm Beach and State of Florida did unlawfully from a premeditated design attempt to commit First Degree Murder, an offense prohibited by law, and in such attempt did act toward the commission of such offense by shooting James Williams, but Lake J. Robinson failed in the perpetration or was intercepted or prevented in the execution of said offense, and during the commission or attempt to commit any offense listed in Florida Statute 775.087(2)(a)1, Lake J. Robinson actually possessed a firearm or destructive device as those terms are defined in section 790.001, Florida Statutes, and further during the course of committing or attempting to commit any offense listed in Florida Statute 775.087(2)(a)1, Lake J. Robinson discharged a firearm or destructive device as defined in section 790.001, Florida Statutes, and, as the result of the discharge, death or great bodily harm was inflicted upon James Williams, contrary to Florida Statutes 777.04(1) and 782.04(1)(a)(1) and 775.087(1) and (2).

The appellant was prosecuted for two counts of attempted first-degree murder after shooting his girlfriend Herbertha Buckle (Scooby) and her son, James Williams (Scrappy) at a barbecue on Easter Sunday of 2013. The Appellant discharged his shotgun which was loaded with birdshot and struck Buckle in the

abdomen and Williams in the hand. The appellant who is a convicted felon testified and maintained that he acted in self defense after Buckle approached with a metal bar and Williams brandished a firearm. The discharge of the birdshot hitting Buckle and Williams was in self defense. Earlier in the day Williams had assaulted the appellant rendering him severely beaten and unconscious. Ms. Buckle testified that her son and his father, her ex-husband came to the house she shared with the appellant for a barbecue on March 31, 2013. Buckle testified that she was in the kitchen when she heard an argument between appellant and her son. She denied seeing the fight, but saw appellant lying on the ground semi-conscious. Buckle testified that the appellant complained about the ex-husband being inside the house.

Mr. Williams testified he got upset when he heard the appellant arguing with his mother about his father being in the house. Williams began the fight by throwing punches at the appellant who was beaten to the ground and kicked unconscious by Williams. He testified that his mother came outside and broke up the fight. Photographs of the appellant's injuries and evidence of him losing consciousness and experiencing dizziness was introduced at trial.

After the fight Ms. Buckle and Mr. Williams moved the party down the street to Mr. William's house. The appellant after gaining consciousness drove down the street to Mr. William's house but remained in his truck.

After a couple of hours Williams, Ms. Buckle and Albert Buckle returned to where the appellant resided to pick up Williams' car, which he had not been able to start earlier in the day. The appellant was outside talking with a neighbor by the name of Curtis Bell when Williams and Buckle approached. Williams got into the car and brandished a firearm and an argument ensued. Ms. Buckle picked up a three foot metal bar and Williams brandished the firearm while in the car. Ms. Buckle stated she picked up the metal bar because she knew the appellant had a bat in the truck and she wanted to protect her son. After seeing the metal bar and the firearm the appellant went to his truck and retrieved a shotgun. The appellant fired the birdshot into the car and then turned and fired a round of birdshot at Ms. Buckle who was running towards him with the metal bar. The appellant fired a second shot in the direction of Williams who was in possession of the .38 and then left the premises. The appellant turned himself into law enforcement later that evening. The appellant testified he was in fear for his life as he had already been beaten severely earlier in the day by Williams who now was brandishing a .38 caliber firearm with his mother running at him with a 3 foot metal bar. The appellant testified he felt "it was either them or me." The appellant testified that he fired three rapid shots in self defense. He would not have fired if he had not felt threatened.

Prior to trial Mr. Williams pled guilty to three drug charges including possession of cocaine, after negotiating with the same prosecutor who would try the instant attempted murder case. Although he faced a potential sentence of 16 years in prison, Williams received an actual sentence of only two days.

The State trial court errors were unconstitutional and the deficiency and prejudice of State trial counsel was constitutionally ineffective. Jurists of reason based on the facts presented to the State Court and Federal District would find it debatable whether the District Court was correct in its ruling.

The U.S. District Court has decided the Petitioner's case differently than the United States Supreme Court has on a set of materially indistinguishable facts. Because jurists of reason would find it debatable whether the District Court was correct in its ruling, this application should be granted and a COA should issue.

## ISSUE ONE

**Ground 1: Raised on Rule 3.850 Motion for Postconviction Relief-Defense Counsel was ineffective for failing to request a pretrial immunity hearing based on erroneous reasoning that Appellant was not entitled to the Florida Stand Your Ground immunity laws in violation of the 6th and 14th Amendments of the US Constitution.**

### Argument in Support of Issuing a COA

The appellant alleged in the State courts and in his Federal Habeas Corpus that trial counsel was ineffective for failure to research the existing laws enforce

that supported the appellant's request for a pretrial hearing for immunity his case. Trial counsel erroneously reasoned that the appellant was not eligible because he was a convicted felon. The appellant presented facts and the State and Federal courts have agreed that James Williams prior to the shooting had dragged the appellant outside, knocked him out and kicked him unconscious. (Doc. #11, pg. 3).

The State and Federal District Court erroneously applies a 2022 State case to deny the appellants issues that transpired in April of 2013. Both courts in their denial orders cite and rely on *Simmons v. State*, 337 So. 3d 470, 471 (Fla. 1st DCA 2022), a case that is not binding precedent on the case under review in the Florida Fourth District Court of Appeal or Circuits Courts within its jurisdiction. Also the State of Florida does not allow retroactive application of this case by the Courts, State or Defendants unless approved by the Florida Supreme Court. The Florida Supreme Court has not approved retroactive application of the Simmons case. However the courts in the case at bar has erroneously applied retroaction that is constitutionally illegal in the State of Florida. Article X, section 9 of the Florida Constitution strictly forbids applying retroactive application in criminal cases. The District Court has misapplied the law by agreeing with an erroneous decision of the State trial court.

The Court never addresses the issue as to whether the appellant as a convicted felon was entitled to a pretrial stand your ground hearing. Trial counsel

told the appellant that he did not qualify because he was a convicted felon. The issue has never been whether the trial court would have granted a motion to stand your ground in hindsight.

Pursuant to the Florida Statue at the time of the appellant's trial, a criminal defendant may raise his claim of self-defense immunity from criminal prosecution at a pretrial immunity hearing. See F.S. § 776.032(4). The entire purpose of this immunity hearing is to provide a mechanism by which a person who is asserting a lawful self-defense may have the defense heard early in the process to avoid the time and expense of a trial. Pursuant to F.S. § 776.032 and F.S. § 776.012(1) even a convicted felon in possession of a firearm may raise his claim of self-defense immunity from prosecution at a pretrial immunity hearing.

In the case at bar, Trial Counsel told the Appellant he was not entitled to a pretrial immunity hearing from prosecution because he was a convicted felon in possession of a firearm. No trial counsel operating on the standards set forth in *Strickland* would have made that determination based on case laws decided on this issue prior to the appellant's trial.

In the same jurisdiction the State Fourth District Court of appeal had previously held in ***Hill v. State***, 143 So.3d 981 (Fla. 4th DCA 2014) that *Hill*, a convicted felon in possession of a firearm, was not precluded from claiming

justifiable use of force under § 776.012(1) or from seeking immunity from prosecution pursuant to § 776.032.

Buckles, Williams, and Buckles' brother show up later in the day at appellant's residence, Buckle arms herself with a three foot metal bar, and her son Williams is brandishing a .38 caliber firearm. The appellant retrieves his shotgun loaded with bird shot rounds and fires at the aggressors to make away of escape from the possible harm or death he felt was about to happen.

The appellant contends that reasonable jurists would find it debatable whether the appellant (a convicted felon) was entitled to a pre-trial stand your ground hearing. At the stand your ground hearing the appellant would have been able to present his visible injuries and neighbor witnesses as to the propensity for violence that Buckles and Williams exhibited in the community. It must be noted that at trial the court granted the State's motion to preclude any mention of their past records of violence.

The trial court and the U.S. District Court in their denial relied on *Simmons v. State*, 337 So. 3d 470 (Fla. 1st DCA 2022) which held that "When a jury rejects a claim of self-defense at trial *beyond a reasonable doubt*, there is no reasonable probability that a trial judge would have rendered a different judgment at a Stand-Your-Ground hearing with a lower standard of proof".

However, the pretrial hearing would have precluded the alleged victims (all close relatives) from corroborating their statements as presented at trial. The trial was put off for over 2½ years which allowed the near relatives to rehearse their story prior to jury trial. The issue here is not what a trial judge would have ruled on in hindsight but that the appellant was entitled to the pretrial stand your ground hearing when trial counsel stated he was not. Neither the State Courts nor the U. S. District Court addresses this fact.

The deficiency and prejudice to the Defendant was harmful. Jurists of reason based on the facts presented would find it debatable whether the Federal District Court was correct in its reasoning adopting an inapplicable State case to deny this issue. The failure of trial counsel to file the pretrial motion to stand your ground based on the rationale that the defendant was a convicted felon was deficient and prejudicial in violation of *Strickland.*

Because jurists of reason would find it debatable whether the district court was correct in its ruling, the application on this issue should be granted and a COA should issue.

## ISSUE TWO

**Ground 2: Raised on Rule 3.850 Motion for Postconviction Relief-Defense Counsel was ineffective for failure to object to State's motion in limine to exclude victims violent past records in violation of 6th and 14th Amendments.**

**Facts and Argument in Support of Issuing a COA**

After being erroneously denied a pretrial immunity hearing trial counsel opted for a self defense theory. The trial counsel did not object to the State's motion to exclude the victim's past records of violence. The character traits of the victims were critical in this self defense case. The appellant had to show why he was in such fear of great bodily harm or death. The prior violent past of the victims would have shown the jury the appellant's state of mind when confronted by Buckles and Williams a second time later the same day. Both victims did have felony records for assault and battery.

The Defendant and Trial Counsel had several discussions prior to trial regarding both the alleged victims' aggression and prior felonies reflecting their propensity towards violence.

Prior to trial, the State filed a Motion in Limine to exclude the alleged victims' violent past records. The legal jurisprudence in the State of Florida requires trial attorneys to make a contemporaneous objection to preserve trial issues in dispute. See ***F.B. v. State***, 852 So.2d 226 (Fla. 2003). Simply stated, Trial Counsel must object at the time of the error to go on record and the state case law to support that objection. Trial Counsel in the case at bar remained silent.

Trial Counsel had a few cases that supported an exception to the rule that character evidence is admissible and permits an accused person to use character

evidence to show that the victim of a crime was the aggressor and the accused acted in self-defense. See ***Williams v. State***, 982 So.2d 1190, 1193 (Fla. 4th DCA 2008). The Fourth DCA also held in ***Antoine v. State***, 138 So.3d 1064 (Fla. 4th DCA 2014) that the reputation of the victim for violence is admissible when a defendant is asserting self-defense to demonstrate that the victim was the aggressor and not the defendant.

The evidence showed that the Defendant had been choked and beaten into unconsciousness and the alleged victims had returned to the residence to continue their assault on the Defendant. Both, the alleged victims were known for violence in the neighborhood. The woman had a steel pipe in her hand and the son is known in the neighborhood to always carry a firearm. Trial Counsel knew all these facts prior to the filing of the State's Motion in Limine but failed to object or do any research into the alleged victims' character and reputation. The Florida Supreme Court requires that a proper predicate be laid where reputation evidence must be based on discussions among a broad group of people so that it reflects the person's character accurately. See ***Larzelere v. State***, 676 So.2d 394, 399 (Fla. 1996).

Counsel's failures deprived the defendant of the opportunity to present to the jury that the victims in this case were the aggressors, and that he was acting in self-defense. The failure also deprived the Defendant of any appellate review on this issue.

The State Court and Federal District Court has overlooked the fact in this issue, the appellant did not raise an issue as to whether counsel argued against the motion in limine but asserts she failed to make a contemporaneous objection on the record to preserve issue for direct appellate review (See Doc. #11, pg.9). Mere arguing a point has never been viewed as a contemporaneous objection needed to preserve an issue for appellate review in the State of Florida. The reasoning for denial of this issue is flawed by both State and Federal District Courts. The Florida Fourth District Court of Appeal and the Florida Supreme Court as shown in the cases cited above, had this issue been preserved by contemporaneous objection it would have been reversed on appellate review. Mere arguing a point has never been viewed as a contemporaneous objection needed to preserve an issue for appellate review in the State of Florida. Reasonable jurists would find it debatable whether trial counsel arguments or whether a contemporaneous objection was required to preserve this issue for appellate review. The deficiency and prejudice to the Defendant was harmful and violated *Strickland*. Jurists of reason based on the facts present would find it debatable whether the Federal District Court was correct in its ruling that a mere argument by counsel was sufficient to preserve the issue for appellate review.

Because jurists of reason would find it debatable whether the district court was correct in its ruling, this application should be granted and a COA should issue.

## ISSUE THREE

**Ground 3: Raised on Rule 3.850 Motion for Postconviction Relief-Defense Counsel was ineffective for failure to object to confusing and misleading jury instructions which negated the sole defense of self defense in violation of 6th and 14th Amendments.**

### Facts and Argument in Support of Issuing a COA

Trial counsel failed to object when the jury was instructed that "the use of deadly force was not justifiable if the jury found that the defendant provoked the use of force and exhausted every reasonable means to escape other than using deadly force". The jury was also instructed that "defendant had no duty to retreat and had a right to meet force with force if he was attacked in any place where he had a right to be". The appellant was in his front yard.

In regards to the failure to object to the jury instructions, the U.S. Supreme Court decisions in ***Brecht v. Abrahamson***, 507 U.S. 619, 623 (1993) and *Stombers v. California*, 283 U.S. 359 (1931) govern whether the flaw in the jury instructions had substantial and injurious effect, or influence on the jury and whether in considering the alternative theories presented did the jury rely on an invalid theory. An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance of the *Strickland* rule.

The Appellant's sole defense at trial was self-defense. The jury instructions in this case were critical to the outcome. The jury was instructed with circular, conflicting and confusing points of law. In one sentence, the Appellant had to exhaust every reasonable means of escape if he provoked the use of force and in the next sentence instructed the jury that the Petitioner had no duty to retreat and had the right to meet force with force, if he was attacked in any place where he had a right to be.

Here again, Counsel's failure to research case law amounted to a failure to object to a fundamental error. The Fourth District Court of Appeal in ***Cruz v. State***, 189 So.3d 822 (Fla. 4th DCA 2015) held "When an issue is unpreserved by an objection below it can be raised on appeal only if fundamental error occurred. Fundamental error exists where the defendant's sole defense at trial was he acted in self-defense and incorrect jury instructions on the duty to retreat effectively negate that defense." The appellant's whole case was self-defense, however, failure to object to instructing the jury that he had to exhaust every reasonable means of escape, if he provoked the use of force, with no evidence of provocation effectively negated his sole theory of self-defense. The appellant had no duty to retreat. See ***Rios v. State***, 143 So.3d 1167, 1170 (Fla. 4th DCA 2014).

The critical case laws previously decided prior to the Appellant's trial clearly show that Trial Counsel did no research in the "Stand Your Ground" laws and jury instructions need to defend this case.

The Federal District Court denies this issue as not being cognizable in a federal habeas action. The ailing instruction by itself so infected the entire trial that the resulting conviction violates due process quoting *Estelle v. McGuire*, 502 U.S. 62, 75 (1991). In regards to the failure to object to the jury instructions, the U.S. Supreme Court decisions in ***Brecht v. Abrahamson***, 507 U.S. 619, 623 (1993) and *Stombers v. California*, 283 U.S. 359 (1931) govern whether the flaw in the jury instructions had substantial and injurious effect, or influence on the jury and whether in considering the alternative theories presented did the jury rely on an invalid theory. The issue here is clearly one with U.S. Constitutional implications and not just a State issue.

The deficiency and prejudice to the Defendant was harmful. Jurists of reason based on the facts presented would find it debatable whether the Federal District Court was correct in its ruling that the flawed jury instructions are State evidentiary issues.

The U.S. District Court has decided the Appellant's case differently than the United States Supreme Court has on a set of materially indistinguishable facts. Because jurists of reason would find it debatable whether the Federal District

Court was correct in its ruling, the application on this issue should be granted and a COA should issue.

## ISSUE FOUR

**Ground 4: Raised on Rule 3.850 Motion for Postconviction Relief Defense Counsel was ineffective for failure to object to erroneous jury instructions on self defense in violation of 6th and 14th Amendments**

### Facts and Argument in Support of Issuing a COA

The Defendant informed counsel that he was entitled to a pretrial stand your ground hearing and was pursuing a self defense theory in compliance with the 2012 version of § 776.012(1) or from seeking immunity from prosecution pursuant to § 776.032. At the charge conference the court was well aware that the defendant was pursuing a stand your ground self defense theory pursuant to the 2012 version of F.S. 776. 012(1). However when instructing the jury, the trial court instructed "...however the defendant cannot justify the use of deadly force if after arming himself he renewed his difficulty with Herbertha Buckle when he could have avoided the difficulty". Counsel failed to object where the instruction clearly imposed a duty upon the defendant to avoid difficulty after arming himself and prior to using deadly force. The instruction was confusing and misleading and negated the appellant's sole defense that he had no duty to retreat in the place he had legal right to be. The jury's confusion was expressed in their question: "Can one shot be in self-defense and the second shot be premeditated?" This question

shows the jury was considering self-defense but needed clarification on whether the second shot was justifiable. Trial counsel must object to preserve this reversible error for appellate review. The failure is deficient and prejudicial in violation of *Strickland.*

The deficiency and prejudice to the Defendant was harmful. Jurists of reason based on the facts presented would find it debatable whether the District Court was correct in its ruling that this issue is based purely on State evidentiary law.

The U.S. District Court has decided the Petitioner's case differently than the United States Supreme Court has on a set of materially indistinguishable facts. See U.S. Supreme Court decisions in *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993) and *Stombers v. California*, 283 U.S. 359 (1931) which govern whether the flaw in the jury instructions had substantial and injurious effect, or influence on the jury and whether in considering the alternative theories presented did the jury rely on an invalid theory.

Because jurists of reason would find it debatable whether the District Court was correct in its ruling on this issue, this application should be granted and a COA should issue.

## CONCLUSION

WHEREFORE, this Honorable Court should grant this motion and issue the Appellant a Certificate of Appealability because jurists of reason would find it debatable whether the Appellant states valid claims of the denial of a constitutional right(s). Further, jurists of reason would find it debatable whether the district court was correct in its procedural rulings.

## OATH

Under the penalties of perjury, I declare that I have read the foregoing document and that the facts contained herein are true and correct.

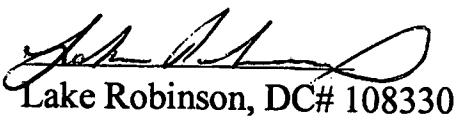
Lake Robinson, DC# 108330

## PROOF OF SERVICE

I am an inmate confined in an institution. Today, the 9th day of July 2024, I am handing this document to a prison official for mailing U.S. Mail to:

Clerk of Court
U.S. Court of Appeals
Eleventh Circuit
56 Forsyth St., NW
Atlanta, GA 30303-2218

Office of Attorney General
AAG Deborah Koenig
1515 North Flagler Drive., Ste. 900
West Palm Beach, FL. 33401



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## CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

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/s/ Lake Robinson, DC# 108330

# APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: 9:23-cv-81298-KMM

LAKE ROBINSON,

Petitioner,

v.

SECRETARY FLORIDA DEPARTMENT OF CORRECTIONS, *Ricky Dixon*,

Respondent.
_____/

**ORDER**

THIS CAUSE came before the Court upon Lake Robinson's ("Petitioner") *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, ("Pet.") (ECF No. 1), attacking the constitutionality of his convictions and sentences entered in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, in *State of Florida v. Robinson*, No. 2013CF003460 (Fla. 15th Cir. Ct. 2015). The State of Florida ("State") filed a Response, ("Resp.") (ECF No. 8), to the Court's Order to Show Cause, (ECF No. 5), along with a supporting appendix, (ECF No. 9), and state court transcripts, (ECF No. 10). The matter is now ripe for review.

## I. BACKGROUND

The State charged Petitioner by information with two counts of premeditated attempted first-degree murder in violation of Fla. Stat. § 777.04(1) and with being a felon in possession of a firearm or ammunition in violation of Fla. Stat. § 775.087(2). *See* (ECF No. 9-1) at 11–12.

Petitioner proceeded to trial where the State presented eyewitness testimony and evidence to establish the following facts. *See generally* (ECF No. 10-2). At the time of the incident, Herbertha Buckle ("Buckle") was in a relationship and lived with Petitioner. *Id.* at 21, 23. Her

son, James, lived a few blocks away. *Id.* at 21–22. Petitioner was angry at Buckle for leaving the house without telling him where she was going. *Id.* at 25–26. After Buckle returned, several people, including James, came to the house for an Easter party. *Id.* at 27–28, 67–68. James and Petitioner got in an argument during which Petitioner threatened Buckle. *Id.* at 29, 69–70, 117. The fight turned physical when James punched Petitioner. *Id.* at 70. Buckle heard the commotion and broke up the fight. *Id.* at 70–75.

The party then moved to James's home. *Id.* at 31–32, 79. Buckle drove to the new location and went inside. *Id.* at 31–32. Shortly thereafter, Petitioner followed her and waited in his car in front of James's house. *Id.* at 33–34, 80–81. Eventually, Petitioner drove back to the house he shared with Buckle. *Id.* at 39–40.

Subsequently, Buckle drove home with her brother in the front passenger's seat. *Id.* at 41. Around the same time, James arrived on foot to retrieve his car. *Id.* at 84. Petitioner and Buckle were in the middle of a verbal argument. *Id.* at 87. Petitioner then went to his truck and retrieved a gun. *Id.* at 87, 138. Meanwhile, Buckle armed herself with a pipe. *Id.* at 43, 47. James was in his car trying to get it to start. *Id.* at 89. Petitioner stated he was going to kill James. *Id.* at 44. Petitioner then shot James and after saying, "you too bitch," he shot Buckle. *Id.* at 47–49, 91–94, 121–22, 139–40. Petitioner fired a total of three shots. *Id.* at 48–49.

Petitioner testified to the following facts in support of his self-defense argument. *Id.* at 215–73. On the date of the incident, Petitioner was confused by all the people at his house as he wanted to rest. *Id.* at 232–33. He left briefly and when he returned, James confronted him. *Id.* at 234–35. Petitioner blacked out and woke up on the ground in front of his house with no memory of being hit. *Id.* at 235. Later, Petitioner was in front of the house when the others drove up. *Id.* at 243–44. James got out of the car and started threatening Petitioner. *Id.* at 245. Petitioner saw

a gun in the car James exited. *Id.* Buckle retrieved a long pipe. *Id.* at 246. Petitioner believed he needed to defend himself and he got his gun from his car. *Id.* at 246–47. Because he was in fear for his life, he fired three shots. *Id.* at 272–73. A defense witness who was at the party testified that he observed James and Buckle drag Petitioner outside, knock him out, and kick him while he was unconscious. *Id.* at 279–80.

The jury found Petitioner guilty as charged. (ECF No. 9-1) at 14–15. The trial court sentenced Petitioner to 25 years on counts one and count two, and five years in prison on count three, all sentences to run consecutive to each other. *Id.* at 17–28.

Petitioner appealed in Florida's Fourth District Court of Appeal ("Fourth DCA"). *Id.* at 30–32. Petitioner alleged that the trial court erred in providing the jury with confusing and contradictory instructions on self-defense. *Id.* at 51–52. Petitioner raises the same argument here under Claim Four. *See* Pet. at 10. On November 17, 2016, the Fourth DCA *per curiam* affirmed without written opinion in *Robinson v. State*, 206 So. 3d 56 (Fla. Dist. Ct. App. 2016). Petitioner filed a motion for rehearing, which the Fourth DCA denied. (ECF No. 9-1) at 108–21. Mandate issued January 20, 2017. *Id.* at 123.

Petitioner returned to the state trial court on October 27, 2017, by filing a motion for post-conviction relief pursuant to Fla. R. Crim. P. 3.850. *Id.* at 128–39. Petitioner alleged in pertinent part that his counsel was ineffective in failing to research the law regarding pretrial immunity, object to the State's motion in limine to exclude the victim's past record of violence, and object to misleading and confusing jury instructions. *Id.* Petitioner raises the same arguments here under Claims One, Two, and Three. *See* Pet. at 5, 7–8. The State filed a response. (ECF No. 9-1) at 218–31. The trial court issued an order denying Petitioner's motion for post-conviction relief. *Id.* at 237–38.

Petitioner appealed. *Id.* at 243. The Fourth DCA *per curiam* affirmed without written opinion in *Robinson v. State*, 357 So. 3d 1218 (Fla. Dist. Ct. App. 2023). Petitioner filed a motion for rehearing, (ECF No. 9-1) at 254–63, which the Fourth DCA denied, *id.* at 267. Mandate issued May 5, 2023. *Id.* at 269.

Petitioner returned to the trial court to file a motion to correct illegal sentence, *id.* at 271–86, which the court denied, (ECF No. 9-2) at 2–5. Petitioner filed a petition for writ of mandamus in the Fourth DCA, *id.* at 103–07, which the Fourth DCA dismissed as moot, *id.* at 115.

On September 15, 2023, Petitioner initiated the instant proceedings under § 2254. *See generally* Pet. Construing the Petition liberally, consistent with *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972), the Petitioner presents the following claims for relief:

> Claim One: Ineffective assistance of counsel for failing to research the law regarding pretrial immunity. Pet. at 5.
>
> Claim Two: Ineffective assistance of counsel for failing to object to the State's motion in limine to exclude evidence of prior violent acts carried out by the victims. *Id.* at 7.
>
> Claim Three: Ineffective assistance of counsel for failing to object to misleading and confusing jury instructions regarding self-defense. *Id.* at 8.
>
> Claim Four: The trial court erred in giving the jury misleading and confusing jury instructions regarding self-defense. *Id.* at 10.

## II. EXHAUSTION AND STATUTE OF LIMITATIONS

The State asserts that the Petition appears to be timely. Resp. at 4–7. The State argues that Petitioner failed to fully exhaust Claim Three and that Claim Four is procedurally defaulted. *Id.* at 7–9. However, the State addresses the claims on the merits. *Id.* at 9–22. The Court shall do the same, without making a specific ruling on exhaustion. *See Smith v. Crosby*, 159 F. App'x 76, 79 n. 1 (11th Cir. 2005) (per curiam) (holding that a § 2254 petition "may be denied on the merits,

notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the state.").

## III. LEGAL STANDARD

This Court's review of a state prisoner's federal petition for habeas corpus is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214. *See Ledford v. Warden, GDCP*, 818 F.3d 600, 642 (11th Cir. 2016), *abrogation recognized on other grounds by Smith v. Comm'r, Ala. Dep't of Corr.*, 67 F.4th 1335, 1348 (11th Cir. 2023). "The purpose of [the] AEDPA is to ensure that federal habeas relief functions as a guard against extreme malfunctions in the state criminal justice systems, and not as a means of error correction." *Id.* (quoting *Greene v. Fisher*, 565 U.S. 34, 38 (2011)). Federal habeas corpus review of final state court decisions is "'greatly circumscribed' and 'highly deferential,'" *id.* (quoting *Hill v. Humphrey*, 662 F.3d 1335, 1343 (11th Cir. 2011)), and is generally limited to the record that was before the state court that adjudicated the claim on the merits, *id.* (citing *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011)).

The federal habeas court is first tasked with identifying the last state court decision, if any, that adjudicated the claim on the merits. *See Marshall v. Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1277, 1285 (11th Cir. 2016). The state court is not required to issue an opinion explaining its rationale, because even the summary rejection of a claim, without explanation, qualifies as an adjudication on the merits which warrants deference. *See Harrington v. Richter*, 562 U.S. 86, 100 (2011); *Ferguson v. Culliver*, 527 F.3d 1144, 1146 (11th Cir. 2008); *see also Wilson v. Sellers*, 584 U.S. 122, 125 (2018); *Sexton v. Beaudreaux*, 585 U.S. 861, 964–65 (2018).

Where the claim was "adjudicated on the merits" in the state forum, § 2254(d) prohibits relitigation of the claim unless the state court's decision was (1) "contrary to, or involved an

unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;" [1] 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); *Harrington*, 562 U.S. at 97–98; *see also Williams v. Taylor*, 529 U.S. 362, 412–13 (2000). When relying on § 2254(d)(2), a federal court can grant relief if the state court rendered an erroneous factual determination. *Tharpe v. Warden*, 834 F.3d 1323, 1337 (11th Cir. 2016).

Because the "AEDPA erects a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court," *Burt v. Titlow*, 571 U.S. 12, 19 (2013), "federal courts may grant habeas relief only when a state court blundered in a manner so 'well understood and comprehended in existing law' and 'was so lacking in justification' that 'there is no possibility fairminded jurists could disagree,'" *Tharpe*, 834 F.3d at 1338 (11th Cir. 2016) (quoting *Harrington*, 562 U.S. at 102). This standard is intentionally difficult to meet. *Harrington*, 562 U.S. at 102.

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to the assistance of counsel during criminal proceedings against them. *Strickland v. Washington*, 466 U.S. 668, 684–85 (1984). When assessing counsel's performance under *Strickland*, the court employs a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690.

To prevail on a claim of ineffective assistance of counsel, the petitioner must demonstrate that: (1) counsel's performance was deficient and (2) the petitioner suffered prejudice as a result of that deficiency. *Id.* at 687.

[1] "Clearly established Federal law" consists of the governing legal principles, rather than the dicta, set forth in the decisions of the Supreme Court at the time the state court issues its decision. *White v. Woodall*, 572 U.S. 415, 419 (2014) (citing *Williams*, 529 U.S. at 412).

To establish deficient performance, the petitioner must show that, in light of all the circumstances, counsel's performance was outside the wide range of professional competence and "fell below an objective standard of reasonableness." *Id.* at 687–88; *see also Cummings v. Sec'y for Dep't of Corr.*, 588 F.3d 1331, 1356 (11th Cir. 2009). The review of counsel's performance should not focus on what is possible, prudent, or appropriate but should focus on "what is constitutionally compelled." *Burger v. Kemp*, 483 U.S. 776, 794 (1987).

Regarding the prejudice component, the Supreme Court has explained "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. A court need not address both prongs of *Strickland* if the defendant makes an insufficient showing on one of the prongs. *Id.* at 697. Further, counsel is not ineffective for failing to raise non-meritorious issues. *Chandler v. Moore*, 240 F.3d 907, 917 (11th Cir. 2001). Nor is counsel required to present every non-frivolous argument. *Dell v. United States*, 710 F.3d 1267, 1282 (11th Cir. 2013).

Furthermore, a § 2254 Petitioner must provide factual support for his or her contentions regarding counsel's performance. *Smith v. White*, 815 F.2d 1401, 1406–07 (11th Cir. 1987). Bare, conclusory allegations of ineffective assistance are insufficient to satisfy the *Strickland* test. *See Boyd v. Comm'r, Ala. Dep't of Corr.*, 697 F.3d 1320, 1332–34 (11th Cir. 2012).

## IV. DISCUSSION

Under **Claim One**, Petitioner alleges that his counsel was ineffective for failing to research the law regarding pretrial immunity. *See* Pet. at 5. Specifically, Petitioner asserts that his trial counsel should have filed a pre-trial motion to dismiss based on a Stand-Your-Ground defense. *Id.*

Florida's First District Court of Appeal recently held that where "a jury rejects a claim of self-defense at trial *beyond a reasonable doubt*, there is no reasonable probability that a trial judge would have rendered a different judgment at a Stand-Your-Ground hearing with a lower standard of proof." *Simmons v. State*, 337 So. 3d 470, 471 (Fla. Dist. Ct. App. 2022) (emphasis in original). Under these circumstances, a jury conviction "precludes a finding of prejudice under *Strickland*." *Id.*

In denying the same claim in Petitioner's Rule 3.850 motion, the trial court concluded that Petitioner failed to establish prejudice in light of *Simmons*. (ECF No. 9-1) at 226–27, 237–38. The Fourth DCA affirmed. *Robinson*, 357 So. 3d 1218. Like the state courts, this Court finds that Petitioner cannot establish prejudice in light of the jury's rejection of Petitioner's self-defense argument beyond a reasonable doubt. *See Simmons*, 337 So. 3d at 471. *See also Briner v. Sec'y, Fla. Dep't of Corr.*, No. 6:15–cv–1117–Orl–40TBS, 2018 WL 560609, *4 (M.D. Fla. Jan. 25, 2018) (denying a § 2254 ineffective assistance of counsel claim where the petitioner's self-defense claim had been rejected by the jury at a higher standard than the one that the trial court would have applied to a pre-trial motion to dismiss based on a Stand-Your-Ground argument).

Furthermore, Petitioner cannot establish that his counsel's performance was deficient for failing to file a meritless pre-trial motion. *See Denson v. United States*, 804 F.3d 1339, 1342 (11th Cir. 2015) (noting that defense counsel cannot be deficient for failing to raise a meritless claim).

The state courts' rejection of this claim is not contrary to or an unreasonable application of federal constitutional principles and should not be disturbed here. *See Williams*, 529 U.S. at 413. Thus, the Court finds Claim One of the Petition to be without merit.

Under **Claim Two**, Petitioner alleges that his trial counsel provided ineffective assistance by failing to object to the State's motion in limine to exclude evidence of prior violent acts carried out by the victims. Pet. at 7.

Petitioner's claim is refuted by the record. Defense counsel did in fact argue against the State's motion in limine at the outset of trial. *See* (ECF No. 10-1) at 14–20, 24. Specifically, counsel argued that the certified convictions against any victim as well as evidence of prior violence carried out by the victims was admissible. *Id.* at 17–20, 24. During the trial, counsel again argued in support of admitting evidence of a victim's violent prior acts. (ECF No. 10-2) at 220–29. Finally, Petitioner testified that one of the victims had pushed Petitioner in the past. *Id.* at 229. Because defense counsel made the arguments Petitioner now claims were omitted, Petitioner cannot establish deficient performance. *See Strickland*, 466 U.S. at 687.

The state courts' rejection of this claim is not contrary to or an unreasonable application of federal constitutional principles and should not be disturbed here. *See Williams*, 529 U.S. at 413. Thus, the Court finds Claim Two of the Petition to be without merit.

Under **Claim Three**, Petitioner alleges that his trial counsel provided ineffective assistance by failing to object to misleading and confusing jury instructions regarding self-defense. Pet. at 8. Under **Claim Four**, Petitioner alleges that the trial court erred in giving the jury confusing and contradictory instructions regarding self-defense. Pet. at 10. Under both claims, Petitioner is challenging the jury instructions regarding the justifiable use of deadly force.

Petitioner's argument under Claim Four is based purely on state evidentiary law and, as such, is not cognizable in a § 2254 proceeding. *See Branan v. Booth*, 861 F.2d 1507, 1508 (11th Cir. 1988) (affirming the dismissal of a state law claim as not cognizable in a federal habeas action and stating that "a habeas petition grounded on issues of state law provides no basis for habeas

relief."). Errors of state evidentiary law are not a basis for federal habeas relief unless they result in constitutional error. *See Taylor v. Sec'y, Fla. Dep't of Corr.*, 760 F.3d 1284, 1295 (11th Cir. 2014). "[F]ederal courts will not generally review state trial courts' evidentiary determinations." *Id.* (citation omitted). Habeas relief is warranted only when the error "so infused the trial with unfairness as to deny due process of law." *Id.* (quoting *Estelle v. McGuire*, 502 U.S. 62, 75 (1991)).

Even assuming the claim is cognizable, it still fails. A jury instruction that is erroneous under state law is not a basis for federal habeas relief unless "the ailing instruction by itself so infected the entire trial that the resulting conviction violates due process." *Estelle*, 502 U.S. at 71–72; *see also Jones v. Kemp*, 794 F.2d 1536, 1540 (11th Cir. 1986) ("State court jury instructions ordinarily comprise issues of state law and are not subject to federal habeas corpus review absent fundamental unfairness.").

Here, the trial court instructed the jury using the standard jury instructions regarding the justifiable use of deadly force and the duty to retreat. *See* (ECF No. 10-2) at 374–78. Florida courts have held that these specific jury instructions are not confusing or misleading. *See State v. Floyd*, 186 So. 3d 1013 (Fla. 2016); *Brown v. State*, 194 So. 3d 507 (Fla. Dist. Ct. App. 2016).

Because the court instructed the jury using the standard instructions and Florida courts agree that the standard self-defense instructions are not confusing and/or misleading, Petitioner cannot overcome his burden of showing that the instruction so infected the entire trial that Petitioner's conviction violated due process. *See Taylor*, 760 F.3d at 1295; *Estelle*, 502 U.S. at 71–72. The Fourth DCA's rejection of this claim on direct appeal is not contrary to or an unreasonable application of federal constitutional principles and should not be disturbed here. *See Williams*, 529 U.S. at 413. Thus, the Court finds Claim Four to be without merit.

Having concluded that the trial court did not err in reading the standard self-defense jury instruction to the jury, counsel cannot be deemed ineffective in failing to object to the instruction. *See Chandler*, 240 F.3d at 917 (holding that counsel is not ineffective for failing to raise non-meritorious issues); *Denson*, 804 F.3d at 1342 (defense counsel cannot be deficient for failing to raise a meritless claim). The state courts' rejection of this claim is not contrary to or an unreasonable application of federal constitutional principles and should not be disturbed here. *See Williams*, 529 U.S. at 413. Petitioner is not entitled to relief under Claim Three.

## V. CERTIFICATE OF APPEALABILITY

As amended effective December 1, 2009, § 2254 Rule 11(a) provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the 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)." A timely notice of appeal must still be filed, even if the court issues a certificate of appealability. *See* Rules Governing § 2254 Proceedings, Rule 11(b), 28 U.S.C. § 2254.

After review of the record, the Court finds that Petitioner is not entitled to a certificate of appealability. "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To merit a certificate of appealability, Petitioner must show that reasonable jurists would find debatable both (1) the merits of the underlying claims and (2) the procedural issues he seeks to raise. *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *see also Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). Because the claims raised are clearly without merit, Petitioner cannot satisfy the *Slack* test and the Court, therefore, finds that a certificate of appealability shall not issue as to the claims asserted in the Petition.

## VI. CONCLUSION

Petitioner has failed to set forth an entitlement to *habeas* relief.[2] Accordingly, UPON CONSIDERATION of the Petition, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (ECF No. 1) is DENIED. No certificate of appealability shall issue. The Clerk of Court is INSTRUCTED to CLOSE this case. All pending motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 25th day of March, 2024.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

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[2] Because the Court can "adequately assess [Petitioner's] claim[s] without further factual development," *Turner v. Crosby*, 339 F.3d 1247, 1275 (11th Cir. 2003), an evidentiary hearing is not required.