

II

Third District Court of Appeal

State of Florida

Opinion filed October 15, 2025.
Not final until disposition of timely filed motion for rehearing.

No. 3D24-0527
Lower Tribunal No. F03-20444

Alejandro Ferrer,
Appellant,

vs.

State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the Circuit Court for Miami-Dade County, Miguel M. de la O, Judge.

Carlos J. Martinez, Public Defender, and Susan S. Lerner, Assistant Public Defender, for appellant.

James Uthmeier, Attorney General, and Linda Katz, Assistant Attorney General, for appellee.

Before EMAS, LINDSEY, and LOBREE, JJ.

PER CURIAM.

Affirmed.

HI

DIVISION

CRIMINAL

JUDGMENT

- Probation Violator Retrial
 Community Control Violator Resentence

PLAINTIFF(S)

VS. DEFENDANT(S)

THE STATE OF FLORIDA

ALEJANDRO FERRER

CASE NUMBER: F03-020444

Alejandro Ferrero, Roberto Ferrero, Freddy Selinas

The Defendant, **ALEJANDRO FERRER**, being personally before this Court represented by **KHURRUM B WAHID, PCAC**, his/her attorney of record.

The State represented by, **JOHN PRIOVOLOS**, Assistant State's Attorney, and having:

- been tried and found guilty
 entered plea of guilty
 entered plea of nolo contendere

to the following crime(s):

FILED FOR RECORD
 2006 MAR 28 AM 9:21
 CLERK IN
 11TH JUDICIAL CIRCUIT COURT
 MIAMI-DADE COUNTY, FLORIDA

COUNT	CRIME	DEGREE	OFFENSE STATUTE NO.
1	MURDER 2ND DEGREE/DEADLY WEAPON/ATTEMPT	1/F	782.04(2) 777.04 775.087
2	FIREARM/WEAPON/POSN BY CONVICTED FELON/DELINQUENT	2/F	790.23(1)(A) 775.087
3	ASSAULT/AGGRAVATED/WITH A FIREARM	3/F	784.021(1)(A) 775.087
4	ASSAULT/AGGRAVATED/WITH A FIREARM	3/F	784.021(1)(A) 775.087
6	GRAND-THEFT 3RD DEGREE	3/F	812.014(2)(C) 812.014(1)
7	BATTERY/AGGRAVATED/WITH A DEADLY WEAPON	2/F	784.045(1)(A)2 775.087

and no cause being shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

DIVISION

CRIMINAL

CHARGES/COSTS/FEEES

CASE NUMBER: F03-020444

PLAINTIFF(S)

THE STATE OF FLORIDA

VS. DEFENDANT(S)

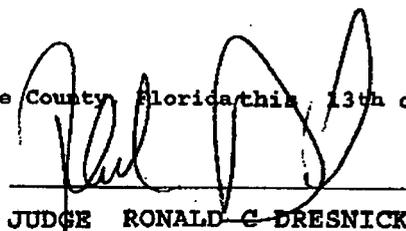
ALEJANDRO FERRER

, Alejandro Ferrero, Roberto Ferrero, Freddy Salinas

The Defendant is hereby ordered to pay the following sum indicated:

\$50.00	Pursuant to F.S. 938.03(4) (Crimes Compensation Trust Fund).
\$3.00	Three dollars as a court cost pursuant to F.S. 938.01 (1) \$3.00 (Criminal Justice Trust & Education Funds).
\$200.00	Pursuant to 938.05(1) (Local Government Criminal Justice Trust Fund).
\$40.00	Pursuant to F.S. 27.52(2) (Public Defender Application Fee).
\$3.00	Pursuant to F.S. 938.19 (Teen Courts).
\$50.00	Pursuant to F.S. 775.083(2) (Crime Prevention Programs).
\$2.00	Two dollars as a court cost pursuant to F.S. 938.15 \$2.00 (Criminal Justice Trust & Education Funds).
\$65.00	Pursuant to F.S. 939.185(1)(a) (Assessment of Additional Court Costs as adopted by Ordinance 04-116)
\$85.00	Pursuant to F.S. 939.185(1)(b) (Surcharge as adopted by Ordinance 05-123)
\$498.00 -	TOTAL

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this 13th day of March, 2006.



 JUDGE RONALD C DRESNICK

(W=WAIVED/S=SUSPENDED)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
 IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DIVISION

CRIMINAL
 OTHER

FINGERPRINTS OF DEFENDANT

THE STATE OF FLORIDA

VS.

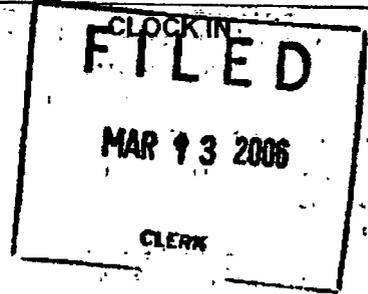
*Alexandro
Ferrer*

PLAINTIFF

DEFENDANT

CASE NUMBER: *F 03 - 20 644*

I herby certify that the foregoing fingerprints on this judgment are the fingerprints of the defendant named above, and that they were placed thereon by said defendant in my presence, in open court, on this date and that the defendant provided the below Social Security Number or was unable to provide said number as indicated.



I. LUMPUY

Fingerprints taken by:

V. Remetta
Name

Bailiff
Title

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
1. L. Thumb	2. L. Index	3. L. Middle	4. L. Ring	5. L. Little

Social Security Number of Defendant *595-84-5430*

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this day of **MAR 13 2006**, 20

Ronald C Dresnick
JUDGE

<u>DIVISION</u>	<u>SENTENCE</u>
<input checked="" type="checkbox"/> CRIMINAL	

AS TO COUNT: 1

<u>PLAINTIFF(S)</u>	<u>VS. DEFENDANT(S)</u>
THE STATE OF FLORIDA	ALEJANDRO FERRER

<u>CASE NUMBER: F03-020444</u>	<u>OBTS NUMBER</u> _____
--------------------------------	--------------------------

. Alejandro Ferrero, Roberto Ferrero, Freddy Selinas

The Defendant, being personally before this Court, accompanied by his/her attorney(s): KHURRUM B WAHID, PCAC and having been adjudicated guilty herein, and the Court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he/she should not be sentenced as provided by law, and no cause having been shown:

FILED FOR RECORD
 2008 MAR 28 AM 8:21
 CIRCUIT & COUNTY CLERK
 MIAMI-DADE COUNTY, FLORIDA

IT IS THE SENTENCE OF THE COURT that the defendant is hereby:
 Is hereby committed to the custody of the Florida Department of Corrections..
 TO BE IMPRISONED:
 For a term of Natural Life.

<u>DIVISION</u>	<u>SENTENCE</u>
<input checked="" type="checkbox"/> CRIMINAL	

AS TO COUNT: 2, 7

<u>PLAINTIFF(S)</u>	<u>VS. DEFENDANT(S)</u>
THE STATE OF FLORIDA	ALEJANDRO FERRER

CASE NUMBER: F03-020444	OBT'S NUMBER
-------------------------	--------------

, Alejandro Ferrero, Roberto Ferrero, Freddy Selinas

The Defendant, being personally before this Court, accompanied by his/her attorney(s): KHURRUM B WAHID, PCAC and having been adjudicated guilty herein, and the Court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he/she should not be sentenced as provided by law, and no cause having been shown:

FILED FOR RECORD
 2006 MAR 28 AM 8:21
 CIRCUIT 5 COURT
 MIAMI COUNTY
 CLERK (COURT)

LUMPY

IT IS THE SENTENCE OF THE COURT that the defendant is hereby:
 Is hereby committed to the custody of the Florida Department of Corrections..

TO BE IMPRISONED:
 For a term of 30.00 Year(s).

<u>DIVISION</u>	<u>SENTENCE</u>
<input checked="" type="checkbox"/> CRIMINAL	

AS TO COUNT: 3, 4, 6

<u>PLAINTIFF(S)</u>	<u>VS. DEFENDANT(S)</u>
THE STATE OF FLORIDA	ALEJANDRO FERRER

<u>CASE NUMBER:</u> F03-020444	<u>OBTS NUMBER</u> _____
--------------------------------	--------------------------

, Alejandro Ferrero, Roberto Ferrero, Freddy Selinas

<p>The Defendant, being personally before this Court, accompanied by his/her attorney(s): KHURRUM B WAHID, PCAC and having been adjudicated guilty herein, and the Court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he/she should not be sentenced as provided by law, and no cause having been shown:</p>	<p>FILED FOR RECORD 2006 MAR 28 AM 8:21 IN 11 CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA</p>
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IT IS THE SENTENCE OF THE COURT that the defendant is hereby:
 Is hereby committed to the custody of the Florida Department of Corrections..
 TO BE IMPRISONED:
 For a term of 10.00 Year(s).

IN REF: Defendant

ALEJANDRO FERRER

SPECIAL PROVISIONS

CASE NUMBER: F03-020444

AS TO COUNT: 1, 2, 3, 4, 6, 7

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY / MINIMUM PROVISIONS:

<u>CATEGORY</u>	<u>SPECIAL PROVISION DESCRIPTION</u>	<u>SPECIFICATION</u>
Firearm	Possession	3 YEARS MINIMUM MANDATORY AS TO COUNTS 3 & 4
Firearm	It is further ordered that the specified mandatory minimum imprisonment provisions of Florida Statute 775.087(2) are hereby imposed for the sentence specified in this count.	
Felony Offender	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084(4). A minimum term as specified above must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.	

IN REF: Defendant
ALEJANDRO FERRER

OTHER PROVISIONS

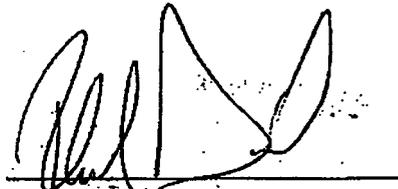
CASE NUMBER: F03-020444

<u>CATEGORY</u>	<u>OTHER PROVISION DESCRIPTION</u>	<u>SPECIFICATION</u>
Jail Credit	It is further ordered that the Defendant shall be allowed a total of the specified time as credit for time incarcerated prior to imposition of this sentence.	ALL CREDIT TIME SERVED PER COURT FROM 07/26/03
Consecutive/concurrent as to Other Counts	It is further ordered that the sentence imposed for counts specified shall run as indicated with the sentence set forth in counts specified of this case.	COUNTS 1,2,3,4,6 & 7 CONCURRENT WITH EACH OTHER

In the event the above sentence is to the Department of Corrections, the Sheriff of Dads County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing indigence.

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this 13th day of March, 2006.



JUDGE RONALD C DRESNICK

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
 IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DIVISION

CRIMINAL
 OTHER

FINGERPRINTS OF DEFENDANT

THE STATE OF FLORIDA VS.

Alejandro Ferrer

PLAINTIFF

DEFENDANT

CASE NUMBER: *05-39979*

I hereby certify that the foregoing fingerprints on this judgment are the fingerprints of the defendant named above, and that they were placed thereon by said defendant in my presence, in open court, on this date and that the defendant provided the below Social Security Number or was unable to provide said number as indicated.

FILED
CLOCK IN
APR 27 2006
CLERK

Fingerprints taken by: *Mencia COJ*
Name Title

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
1. L. Thumb	2. L. Index	3. L. Middle	4. L. Ring	5. L. Little
				

Social Security Number of Defendant _____

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this _____ day of _____, 20____

[Signature]
JUDGE

APR 27 2006
Ronald Dresnick
Circuit Court Judge

M05108

Defendant Ferrer, Alejandro

Case # 03-20744

I. you must do, each of the following:

1. not later than the fifth day of each month, unless otherwise directed you will make a full and truthful report to your officer on the form provided for that purpose.
2. you will promptly and truthfully answer all inquiries directed to you by the court or officer, and allow your officer to visit you in your home, place of employment or elsewhere.
3. follow carefully and faithfully both the letter and spirit of valid instructions given you by a duly authorized officer.
4. you will work diligently at a lawful occupation and advise your employer of your supervision status and support your dependents to the best of your ability.
5. you will submit to random testing at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances.
6. you will submit to a warrantless search to your person, residence and vehicle.
7. you will pay the sum of 300 per month plus 4% surcharge towards the cost of supervision unless otherwise exempt pursuant to F.S. 948.09.
8. you will pay all court ordered monetary obligations through the Probation Officer with money orders made payable to the Department of Corrections will disperse the monies as follows: (plus surcharge)
 - a) \$ _____ court costs
 - b) \$ _____ victim costs on counts
 - c) \$ _____ "trust fund" or 50.3 hours of community service (F.S. 27.3455)
 - d) \$ _____ assessment
 - e) \$ 30.00 drug testing fee
 - f) \$ _____ restitution payable to _____
 - g) \$ _____ SNI fee

1. YOU SHALL COMPLY WITH THE FOLLOWING SPECIAL CONDITIONS:

1. spend _____ in custody of Miami-Dade County Corrections and comply with all rules of the institution in which you were placed with credit for _____ days time served.
2. spend _____ weekends beginning _____ in the custody of the:
3. you will attend and successfully complete the following rehabilitation program to be selected by your officer or the court. Further, you will abide by all rules and regulations of the program, attend all appointments, and follow all lawful instructions and recommendations of the director and staff.
 - a) an inpatient/outpatient, _____ alcohol, _____ drug, _____ and or psychological program
 - b) the defendant is to be held in the custody of until released to a representative of _____ or otherwise as directed by the officer or the court.
4. not use or possess alcoholic beverages for any purpose.
5. not drive or operate a motor vehicle except _____
6. perform _____ hours of community service at a non-profit organization, as directed.
7. you will not associate, communicate or have any contact with _____
8. other: NONE

THE COURT RESERVES THE RIGHT TO RESCIND, MODIFY, REVOKE SUPERVISION TO THE EXTENT TO THE PROVIDED BY LAW. DONE AND ORDERED Miami-Dade County, Florida this 2nd day of August, 2006

Nunc Pro Tunc, _____

Judge, Circuit Court

[Signature]
Dresmet, Ronald

I have received a copy of the term and conditions of my supervision. I have read and understand these conditions and agree to report to the Department of Corrections Probation Office for further instructions. Also, I hereby consent to the disclosure of my alcohol and drug abuse patient records, the confidentiality of which is federally regulated under 42CFR, Part 11, for the duration of my supervision.

x Alejandro Ferrer
DEFENDANT

2-12-2015
DATE

[Signature]
INSTRUCTED BY
Sharrard

MS108

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

DIVISION <input checked="" type="checkbox"/> CRIMINAL <input type="checkbox"/> OTHER	ORDERS OF SUPERVISION	CASE NUMBER 03-20444
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STATE OF FLORIDA vs. <u>Ferrer, Alejandro</u> DEFENDANT	CLOCK IN
---	-----------------

Counts: 1, 2, 3, 4, 6+7
~~1. 1st Degree Murder~~
~~2. Unlawful Possn of Firearm~~
~~3+4 Agg Asslt w/ a Firearm~~
~~6 Grand Theft 30~~

ORDERS OF SUPERVISION

- PROBATION
- DRUG OFFENDER PROBATION (see addendum)
- SEX OFFENDER PROBATION (see addendum)
- COMMUNITY CONTROL (see addendum)
- ADMINISTRATIVE PROB
- FOLLOWED BY PROB DOP

THE DEFENDANT HAVING: 7 Agg Bch
D/W

- a. entered a plea of guilty/nolo contendere:
- b. been found guilty of:
- c. prior probation is hereby revoked:

THE COURT HEREBY:

- d. adjudges you guilty of count(s) 1, 2, 3, 4, 6+7
- e. withholds adjudication of guilt for count(s) _____

IT IS ORDERED AND ADJUDGED THAT, SUBJECT TO THE LAWS OF THIS STATE:

- f. you are hereby placed on _____ for a period of _____
- g. Followed by _____ for a period of: _____ supervised by the Department of Corrections.
- h. (split sentence) you shall be confined in:
 the custody of Miami-Dade County Corrections for a period of: _____
 the custody of Miami-Dade County Corrections for a period of: 10 years
 after which you shall be placed on PROB for a period of 24 months
 to commence upon release.
- i. (Administrative Probation) as defined in Ch948.001 F.S., After payment of a \$50.00 processing fee plus a 4% surcharge, all conditions, except (J)(4) will be deleted.

IT IS FURTHER ORDERED AND ADJUDGED THAT YOU WILL COMPLY WITH, AND CONFORM TO, CONDITIONS:

- j. you must report in person, immediately or on the next working day after release from confinement, to the Probation Office located at 990 SW 1st St as directed.
- k. you shall not do any of the following:
 1. you will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
 2. you will not possess, own, or carry any firearm, or weapon.
 3. associate with any person engaged in criminal activity.
 4. violate any law of any city, county, state or the United States (a conviction in a court of law is not necessary for you to be found in violation).
 5. you will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully, sold, dispensed, or used.

FILED FOR RECORD
 2019 SEP -9 AM 11:23
 CLERK, CIRCUIT COURT, DADE COUNTY, FLA., CIRCUIT CRIMINAL #15

IN REF: Defendant
ALEJANDRO FERRER

MITIGATED OTHER PROVISIONS

CASE NUMBER: F03-020444

<u>CATEGORY</u>	<u>OTHER PROVISION-DESCRIPTION</u>	<u>SPECIFICATION</u>
Jail Credit	It is further ordered that the Defendant shall be allowed a total of the specified time as credit for time incarcerated prior to imposition of this sentence.	943 DAYS
Consecutive/concurrent as to Other Counts	It is further ordered that the sentence imposed for counts specified shall run as indicated with the sentence set forth in counts specified of this case.	COUNTS 1,2,3,4,6 & 7 CONCURRENT WITH EACH OTHER

In the event the above sentence is to the Department of Corrections, the Sheriff of Dade County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing indigence.

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this 27th day of April, 2006.



JUDGE RONALD C DRESNICK

IN REF: Defendant

ALEJANDRO FERRER

MITIGATED SPECIAL PROVISIONS

CASE NUMBER: F03-020444

AS TO COUNT: 1, 2, 3, 4, 6, 7

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY / MINIMUM PROVISIONS:

<u>CATEGORY</u>	<u>SPECIAL PROVISION DESCRIPTION</u>	<u>SPECIFICATION</u>
Firearm	Possession	3 YEARS MINIMUM MANDATORY AS TO COUNTS 3 & 4
Firearm	It is further ordered that the specified mandatory minimum imprisonment provisions of Florida Statute 775.087(2) are hereby imposed for the sentence specified in this count.	
Felony Offender	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084(4). A minimum term as specified above must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.	10 YEARS MINIMUM MANDATORY AS TO COUNT 7 MINIMUM MANDATORIES TO RUN CONCURRENT

III

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

ALEJANDRO FERRER,

Defendant.

CASE NO: F03-20444

SECTION 60

JUDGE: MIGUEL M. DE LA O

**ORDER REVOKING
PROBATION AND IMPOSING SENTENCE**

THIS CAUSE came before the Court for a violation of probation hearing on October 10, 11, 17, and 20, 2023 ("Hearing"). After carefully considering the evidence presented during the Hearing, the testimony of the seven witnesses who testified, and argument of counsel, the Court found on January 5, 2024 that Defendant, Alejandro Ferrer ("Ferrer"), violated his probation and set the matter for sentencing. On March 6, 2023, the Court held a sentencing hearing where it took testimony from four witnesses ("Sentencing"). Based on the Hearing and Sentencing, the Court makes the following factual findings and legal rulings, and imposes sentence.

I. BACKGROUND.

On March 13, 2006, Ferrer pled Guilty to Attempted Second Degree Murder, Possession of a Firearm by a Convicted Felon, two counts of Aggravated Assault with a Firearm, Grand Theft Third Degree, and Aggravated

Battery with a Deadly Weapon. On April 27, 2006, Ferrer was sentenced, pursuant to a negotiated plea, to ten years in State Prison with a ten-year firearm minimum mandatory, followed by two years of probation as a Habitual Felony Offender.

Ferrer completed his prison sentence on September 2, 2014. He was taken into ICE custody and released February 2, 2015. Following his release, Ferrer was instructed on the conditions of his probation. Because his prison sentence ended on September 2, 2014, unless tolled, Ferrer's probation was scheduled to terminate September 1, 2016.

On June 16, 2016, Ferrer's probation officer executed a probation violation affidavit ("PVA") alleging that Ferrer changed his residence without the consent of the probation officer, that his "whereabouts are unknown," and that he failed to report to probation for the month of June 2016.

The PVA was subsequently amended twice. On September 9, 2019, the PVA was amended to add the additional violation that Ferrer left Miami-Dade County and shot and killed Hasiel Gonzalez Rodriguez ("Rodriguez") in Vance County, North Carolina. On December 10, 2020, it was amended to allege that Ferrer left his county of residence without permission and went to Nicaragua.

At the Hearing, the State proceeded on the second amended PVA, which specifically alleged the following violations:

[#1]¹ Violation of Condition K-1, of the Order of Probation, by changing his residence without first procuring the consent of the probation officer, and as

¹ For ease of reference, the Court has numbered the violations.

grounds for belief that the offender violated his probation, Officer Casal states that on or about 5-24-2016, the offender did move from his last known residence at 2838 SW 2 Street Miami, FL. 33155 without the consent of the probation officer, as told to this officer by the subject's ex-girlfriend Amanda Perez on 6-13-2016 at 11:24 a.m. via text. The offender whereabouts are unknown.

[#2] Violation of Condition L-1, of the Order of Probation, by failing to make a full and truthful report to the probation officer on the form provided for that purpose and by failing to report to the probation office as directed, in that, the offender failed to report to the probation office between the first and the fifth day of June 2016, as of June 14, 2016, and as grounds for belief that the offender violated his probation, Officer Casal states that the offender failed to report as directed as of June 14, 2016. The offender whereabouts are unknown.

ADDITIONAL VIOLATION AS OF 10/30/2019

[#3] Violation of Condition K-4, of the Order of Probation, by failing to live and remain at liberty without violating any law, The defendant committed murder, by shooting and killing Hasiel Gonzalez Rodriguez, on or about January 22, 2017, in Vance County, North Carolina, in violation of North Carolina General Statutes, Section 14-17 [effective 2013]. An arrest warrant was issued for the defendant under North Carolina Case No. 17 CR 050448.

ADDITIONAL VIOLATIONS AS OF DECEMBER 8. 2020

[#4] Violation of Condition K-1, of the Order of Probation, by leaving his county of residence without first procuring the consent of the probation officer, and as grounds for belief that the offender violated his probation, Officer Casal states that on or about January 22, 2017 the offender did leave Miami Dade County, Florida, his county of residence, without the consent of the probation officer and did enter Vance County, North Carolina as evidenced by North

Carolina Case No. 17 CR 050448 where the subject is charged with murder.

[#5] Violation of Condition K[-]1, of the Order of Probation, by leaving his county of residence without first procuring the consent of the probation officer, and as grounds for belief that the offender violated his probation, Officer Casal states the offender did leave Miami Dade County, Florida as evidenced by his extradition from Nicaragua back to Miami Dade County, Florida between the dates of July 2019 and August 2019.

The State's Memorandum in Support of Finding Defendant in Violation of Probation comprehensively recounts the evidence it introduced during the Hearing. There is no point in this Court recounting all the evidence which the State introduced, or the Defense's rebuttal testimony, and it will only do so to the extent needed to support its findings of fact.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

"Before a trial court can revoke probation, it must find that the probationer willfully and substantially violated a condition of probation." *Del Valle v. State*, 80 So. 3d 999, 1012 (Fla. 2011). The trial court must "consider each violation on a case-by-case basis for a determination of whether, under the facts and circumstances, a particular violation is willful and substantial and is supported by the greater weight of the evidence." *State v. Carter*, 835 So. 2d 259, 261 (Fla. 2002). "The burden is on the State to establish that the probationer willfully violated the terms of his probation." *Howard v. State*, 484 So. 2d 1232, 1233 (Fla. 1986).

Having heard from seven witnesses, and received and reviewed numerous exhibits in evidence, the Court concludes that the preponderance of the evidence demonstrates that on or about January 22, 2017, Ferrer murdered Rodriguez. In addition, the Court concludes that Ferrer left Miami-Dade County on or about June 2016 without the consent of his probation officer, thus absconding from supervision.

A. TOLLING OF PROBATION.

Relying on *Mobley v. State*, 197 So. 3d 572 (Fla. 4th DCA 2016), Ferrer argues that this Court lacks jurisdiction to violate his probation because his probationary term expired on September 1, 2016. Ferrer would be correct but for the fact his probationary term was tolled because he absconded from the jurisdiction and did not make himself available for supervision.

The evidence that Ferrer absconded is overwhelming. First, there's the circumstantial evidence. On May 5, 2016, Ferrer asked for permission to move to North Carolina with his girlfriend, Amanda Perez. 10-10-23 Hearing Transcript at 41. His request was denied. *Id.* Ferrer said he was going to move in with his father when Amanda Perez moves to North Carolina.² That was the last time Ferrer reported to his probation officer.

² Ferrer's father, Mario Ferrer, testified at the Hearing that Ferrer moved in with him in May 2016, and remained in Miami until October or November of 2016. This testimony is contradicted by Amanda Perez. Mario Ferrer also, quite incredibly, denied knowing where Amanda Perez was living after she left Miami, 10-10-23 Hearing Transcript at 157, and where Ferrer moved to after leaving his house, *id.*, even though Amanda Perez was working for him and Ferrer was living with her. 10-17-23 Hearing Transcript at 157. Moreover, Ferrer's father testified that he did not send money to Ferrer to leave North Carolina in January 2017, which is also contradicted by Amanda

The officer did a home visit on May 12, 2016, and saw Ferrer. When the officer did another home visit on May 17, 2016, he could not find Ferrer and Amanda Perez was uncooperative that day. When Ferrer did not report in June 2016, the probation officer reached out to Amanda Perez on June 13, 2016. She did not answer her cellphone but sent a text message to the officer claiming that Ferrer and she had split up and he had moved out. On June 23rd the Absconder Unit received a tip that Ferrer was in North Carolina breeding dogs with Amanda Perez, 10-10-23 Hearing Transcript at 51, which turned out to be exactly where Ferrer was living and what he was doing.

In addition, on May 18, 2016, the day after the probation officer did the home visit and tried to find out from Amanda Perez where Ferrer was located, Ferrer posted on his Facebook page "ON THE POINT OF NO RETURN." He made no other postings until September 2016 when he apparently (but incorrectly) believed his probation had expired. At that time, he started posting pictures from North Carolina of the dogs he was breeding.

On September 4, 2016, Ferrer informed a friend through Facebook that he was living in North Carolina breeding dogs. He messaged another friend that day that he had to lay low after he left Florida, and that he had purchased a 1.5-acre property.

Second, the direct evidence also establishes that Ferrer left Florida in May 2016 for North Carolina. Amanda Perez says she left for North Carolina

Perez. 10-17-23 Hearing Transcript at 47-48. Consequently, the Court does not credit his father's testimony.

before June 2016. *Id.* at 147. She knows this because she did not pay the June rent for her Little Havana apartment due to being in North Carolina working on purchasing the property at 240 Country Acres Drive.³ *Id.* Amanda Perez testified that Ferrer moved to North Carolina in one of her cars and she stayed behind in Miami. *Id.* at 24. This occurred *before* she moved to North Carolina. *Id.* at 27 (“Q. And you said that the defendant had gone up before you went up? A. Yes.”). Since we know Amanda Perez left Miami before June 2016, and the defendant left before her, we therefore know he left in May 2016 – which aligns perfectly with the circumstantial evidence.

It is also clearly established that on July 22, 2016, Ferrer was living in North Carolina. We know this because an eviction notice was posted that day on the apartment in Little Havana. When that occurred, Amanda Perez drove from North Carolina to Miami to pick up her daughter, Erica Perez, who was still living in the apartment. 10-17-23 Hearing Transcript at 146-47. During this time, Ferrer was living in North Carolina. *Id.* at 148-49.

The issue of this Court’s jurisdiction is controlled by the Fourth District Court of Appeal decision in *Williams v. State*, 202 So. 3d 917 (Fla. 4th DCA 2016). In *Williams*, the defendant argued that his probation expired before he was arrested and charged with new offenses. Pursuant to *Mobley v. State*, 197 So. 3d 572 (Fla. 4th DCA 2016), *Williams* argued that his probation had expired because the violations pending at the time his probationary term

³ Amanda Perez bought the property in North Carolina on July 1, 2016. 10-17-23 Hearing Transcript at 27-28.

expired did not accuse him of new law violations and thus his probationary term was not tolled. *Id.* at 918.

The Court in *Williams* distinguished *Mobley* from *Williams*' case because *Williams* had absconded.

Our supreme court and three of our sister courts have recognized that probation is tolled when a defendant absconds from supervision. *See Francois v. State*, 695 So. 2d 695, 697 (Fla. 1997) (“[A]bsconding from probation tolls the period.... One who absconds from supervision is no longer under the controlling arm of the state.”); *Kimball v. State*, 890 So. 2d 495, 496 (Fla. 5th DCA 2004) (“[W]hen a probationer absconds from supervision, the probationary period is tolled until the probationer is returned to supervision.”); *Williams v. State*, 529 So. 2d 366, 367 (Fla. 2d DCA 1988) (“[W]hen a probationer absconds from supervision, the probationary period is tolled until the probationer is once more placed under probationary supervision.”); *Ware v. State*, 474 So. 2d 332, 333 (Fla. 1st DCA 1985) (“[W]henever a probationer absconds from supervision his probationary period is tolled.”).

We follow our supreme court and our sister courts to hold that when a probationer absconds from supervision, the probationary period is tolled until the probationer is once more placed under probationary supervision.

The fact that the defendant here allegedly absconded from supervision distinguishes this case from *Mobley*. If the defendant in *Mobley* had been alleged to have absconded from supervision, then *Mobley's* reasoning would have been moot, as we would have concluded there, as we do here, that the probationary period was tolled until the defendant was once more placed under probationary supervision.

Id. at 920-21.

Ferrer argues that he was not charged with absconding, but this is simply incorrect. The PVA in Ferrer's case levels the same charge as in *Williams*.

Seven months before the defendant's probation term was set to expire absent any tolling, his probation officer filed an amended affidavit adding two more alleged VOPs: failure to make restitution payments and changing residence without the probation officer's consent. **The amended affidavit further alleged that the defendant's "current whereabouts is unknown."** The circuit court issued a second warrant based on the amended affidavit.

Id. at 918. *See Canchola v. State*, 255 So. 3d 442, 444 (Fla. 2d DCA 2018) ("a probationer absconds when he removes himself from 'the controlling arm of the state' by changing his residence without consent and leaving his probation officer without knowledge of his current whereabouts.").

Because Ferrer absconded from supervision prior to the expiration of his probationary term, his argument based on *Mobley v. State* is inapplicable. This Court has jurisdiction and the motion to dismiss the PVA is **DENIED**.

B. MOVING FROM LAST KNOWN RESIDENCE WITHOUT CONSENT.

Violation #1 charges that Ferrer moved out of Amanda Perez's home without the consent of his probationer officer. Ferrer claims he moved into his father's home after advising his probation officer he would be doing so. The State concedes that, after being told he could not move to North Carolina with Amanda Perez, Ferrer informed Officer Casal he was moving into his father's home and Officer Casal did not object. However, the Court concludes that

Ferrer did not in fact move in with his father. He moved to North Carolina instead – a move expressly forbidden by his probation officer. Therefore, the Court finds that Ferrer did substantially and willfully violate condition K-1 by moving to North Carolina.

C. FAILURE TO REPORT.

Violation # 2 accuses Ferrer of failing to report to his probation officer as of June 2016. This fact is undisputed by Ferrer. Therefore, the Court finds that Ferrer did substantially and willfully violate condition L-1 by failing to report to his probation officer.

D. LEAVING COUNTY OF RESIDENCE WITHOUT CONSENT.

It is undisputed that on or about January 22, 2017 Ferrer was in Vance County, North Carolina without the consent of his probation officer. Ferrer argues that because the probation officer was unaware of the precise date Ferrer left Miami-Dade County, and thus charged Ferrer with leaving on or about January 22, 2017 when the officer learned for a fact that Ferrer was in North Carolina, his probation cannot be violated. The Court disagrees.

It was established during the Hearing that on or about January 22, 2017, Ferrer was in North Carolina without the consent of his probation officer. He might have left Miami-Dade County that day, he might have left a week earlier, or he might have travelled back and forth. Yet, none of those possibilities make any difference. Ferrer is accused of being in another jurisdiction without the consent of his probation officer. The date when this

first happened is relevant only for purposes of tolling Ferrer's probationary period. The Court finds that Ferrer did substantially and willfully violate condition K-1 by going to Vance County North Carolina without the consent of his probation officer. *See* II.F, *infra*, for discussion of requirement that probationers be on notice of the alleged violations.

Ferrer concedes he committed violation #5. *See* Defense Argument On Why This Honorable Court Should Not Find The Defendant In Violation Of His Probation at 15. Therefore, the Court finds that Ferrer did substantially and willfully violate condition K-1 by going to Nicaragua.

E. MURDER OF HASIEL RODRIGUEZ.

As to Violation #3, the Court concedes that the evidence introduced at the Hearing would not suffice to convict Ferrer because it does not establish his guilt beyond a reasonable doubt. Unfortunately for Ferrer, that is not the standard which guides this Court. "Proof sufficient to allow a criminal conviction is not required to support a trial judge's discretionary order revoking probation; the state need only show by a preponderance of the evidence that the defendant committed the offense charged." *Amador v. State*, 713 So. 2d 1121, 1122 (Fla. 3d DCA 1998).

Although the evidence presented by the State is almost exclusively circumstantial, it is *strong* circumstantial evidence. Additionally, there is some direct evidence of Ferrer's responsibility for the murder of Rodriguez, and

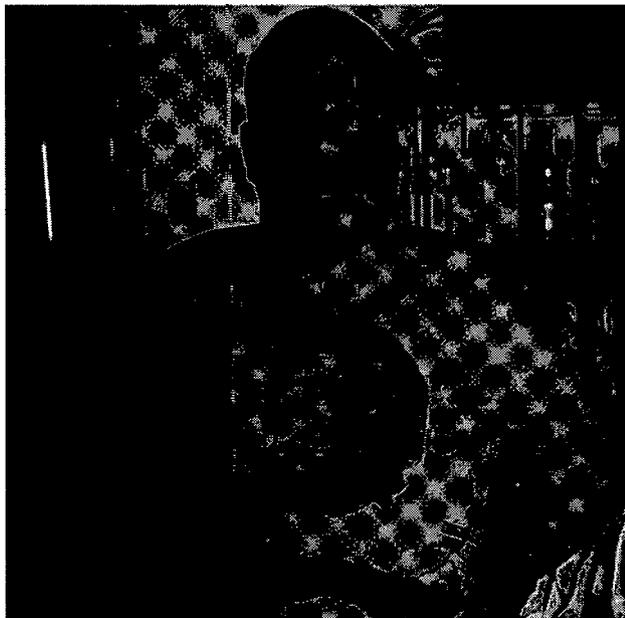
although challenged by the defense, it adds credibility to the strong circumstantial evidence in the record.

The Court relies specifically on the following facts to conclude that the State has proven by a preponderance of the evidence that Ferrer murdered Rodriguez:

- On the night of the murder, Ferrer's girlfriend specifically remembers him leaving their trailer, heading to the trailer where Rodriguez was staying, and returning about two hours later very drunk.
- *Immediately* upon returning to his trailer from Jorge Colinas' house (where Rodriguez was staying) on the night of the murder, Ferrer removed all his clothing and placed it in the washing machine along with his boots.
- *Immediately* after placing his clothing and boots in the washing machine, Ferrer took a shower.
- Ferrer went back outside after showering and Amanda Perez could smell that he was burning things in the burn barrel.
- The burn barrel on Ferrer's property contained the remnants of steel-toed boots and phones which most likely belonged to Rodriguez.
- A bag found on or near Ferrer's property contained the murder weapon.
- There are pictures on Facebook of Ferrer brandishing a similar-looking firearm posted on Ferrer's account about two weeks before the murder.



We know this is Ferrer by the distinctive chest tattoos:



- Ferrer ran away from police officers the day after Rodriguez's murder.
- Ferrer's flight from North Carolina the day after fleeing from police.
- Ferrer's flight from the United States to Nicaragua.

- None of the suspects which Ferrer points to fled the scene, much less the state or the country. They all stayed and cooperated with the police.
- Amanda Perez told police in the days after Rodriguez's murder that Ferrer was "hot headed" and could "become violent."
- Ferrer confessed to Amanda Perez that he killed Rodriguez.⁴

It is certainly possible that Ferrer did not himself shoot Rodriguez but was, instead, a principal in the homicide – a meaningless distinction under Florida law. See § 777.001, Fla. Stat. (2023). Ferrer complains that the PVA does not accuse him of being a principal in the murder of Rodriguez, but Florida law does not require that he be charged as a principal.

Under [section 777.011], therefore, a person is a principal in the first degree whether he actually commits the crime or merely aids, abets or procures its commission, and it is immaterial whether the indictment or information alleges that the defendant committed the crime or was merely aiding or abetting in its commission, so long as the proof establishes that he was guilty of one of the acts denounced by the statute.

State v. Roby, 246 So. 2d 566, 571 (Fla. 1971). See *Thomas v. State*, 634 So. 2d 276, 277 (Fla. 4th DCA 1994) (affidavit of violation alleging that probationer

⁴ The Court rejects the insinuation that having travelled to Nicaragua to reunite with her ex-boyfriend, Amanda Perez hallucinated that Ferrer admitting he murdered Rodriguez. It is far more likely that the discussion in Nicaragua turned to the very reasonable question of why Ferrer was now living in Nicaragua. The answer, of course, is that he was evading arrest for the murder of Rodriguez and he explained this to Amanda Perez. It is also far more likely that Erica Perez, in her misguided attempt to help Ferrer, has tried to convince Amanda Perez that she imagined the whole conversation. See *Gaslight* (1944) (trailer available at <https://www.youtube.com/watch?v=0ToLfQU2xmg>) (last visited March 5, 2024).

resisted arrest with violence, when he was actually convicted of resisting arrest without violence, did not preclude a finding that he was guilty of violating his probation). Nevertheless, the Court concludes that it is more likely than not that Ferrer committed the murder himself, with or without the assistance of others.

Ferrer argues vehemently that these circumstances can all be explained away. The difficulty for Ferrer is that at some point there are too many coincidences for it to all be a coincidence. For this Court to conclude that it is more likely that Ferrer did not murder, or assist in the murder of, Rodriguez this Court has to accept it is simply a coincidence that Rodriguez was staying in the trailer next door to Ferrer, that Ferrer left his trailer walking towards Rodriguez's trailer hours before the murder, that Ferrer was gone from his trailer for two hours, that he removed all his clothing and placed them directly into the washing machine (along with his boots) immediately upon returning home, that he immediately took a shower after placing his clothes in the washer, that he burned items in the burn barrel on his property after taking a shower, that a cellphone similar to Rodriguez's and a pair of steel-toed boots were found in the burn barrel, that Rodriguez bought steel-toed boots the day before, that a bag was found with the murder weapon near Ferrer's property, that the murder weapon looks very much like the one of the guns Ferrer is holding in a picture he posted to Facebook days before the murder, that he ran away from a police officer that came to the property inquiring about Rodriguez, and that his girlfriend says he admitted killing Rodriguez. It's possible

Rodriguez is the unluckiest man in the world and events have conspired to make him look guilty. Or maybe he did in fact murder Rodriguez, using one of the guns he flashed on Facebook, burned Rodriguez's belonging in the burn barrel, and fled from police (all the way to Nicaragua) to evade arrest. The Court concludes the latter is more likely – far more likely – than the former.

Ferrer also argues that neither Amanda nor Erica Perez heard a gunshot the night Rodriguez was murdered.⁵ This is hardly exculpatory. We know Rodriguez was shot – that neither of the Perez women heard the shot does not negate the sad fact that he was.

In addition, Ferrer relies on the testimony of Erica Perez in a failed attempt to establish an alibi for where he was for part of the time when he left his trailer the night of the murder. The alibi attempt fails because this Court does not find Erica Perez credible and the timeline she provides does not match the established facts.

Erica Perez claims she remembers the night Rodriguez was murdered because her bearded dragon had a near death experience and Ferrer helped revive it. However, she also says that Ferrer left North Carolina “maybe a week, a few weeks after” after that night. 10-20-23 Hearing Transcript at 67. *See also id.* at 71-72 (police came a week or two after the bearded dragon incident). Yet, it was undisputed that Ferrer left North Carolina on January 25, 2017,

⁵ It should be noted that some of the exhibits introduced into evidence at the Hearing depict a firearm with a silencer attached.

less than three days after Rodriguez was murdered in the late evening of January 22, 2017.

Another reason this Court gives little credence to Erica Perez's testimony is that even after the rule of sequestration was invoked by Ferrer's counsel, 10-10-23 Hearing Transcript at 10, Ferrer was on the telephone with her on October 12, 2023 relaying details about the testimony elicited during the October 10, 2023 hearing. 10-20-23 Hearing Transcript at 89-90. More to the point, he felt sufficiently confident that Erica Perez would do anything to help him that he told her what he needed Amanda Perez to say about the date he moved to North Carolina. *Id.* Setting aside the impropriety of telling a witness what others have testified to after the rule has been invoked, it is very telling that Erica Perez was the conduit for Ferrer's attempt to establish a beneficial timeline through Amanda Perez's testimony.

Finally, Erica Perez's repeated hedges, deflections, and outright unresponsiveness during the State's cross-examination reinforces this Court's conclusion that her testimony is not credible. Simply put, she will say anything to help Ferrer avoid the consequences of his actions.

F. POSSESSION OF A FIREARM.

The State suggests that the Court can also revoke Ferrer's probation because there was sufficient evidence to establish that he committed the offense of possession of a firearm by a convicted felon and that he possessed a firearm in violation of his conditions of probation. See State Memorandum in Support of Finding Defendant in Violation of Probation at 15. While this is all

true, the Court cannot violate Ferrer's probation on grounds not alleged in the PVA. Officer Casals' testimony that he did not amend the affidavit to include possession of the firearm because he believed it was subsumed by the allegation that Ferrer shot Rodriguez is unavailing under binding Third DCA precedent.

The evidence at the hearing showed that the defendant had been in possession of a firearm. It is evident that the trial court revoked his probation on the theory that as a convicted felon, it was illegal for the defendant to possess a firearm. *See* § 790.23, Florida Statutes (2002).

However, the affidavit of violation of probation did not make this charge. The affidavit charged that the defendant had committed the offense of grand theft of a firearm. At the revocation hearing, there was no evidence that the defendant stole the firearm, only that he possessed it. We therefore must reverse the finding that the defendant committed the offense of grand theft of a firearm.

Nadal v. State, 855 So. 2d 257, 257-58 (Fla. 3d DCA 2003).

There is, however, strong precedent from the Fourth DCA that would support this Court finding that Ferrer did violate his probation by possessing a firearm because he was on notice of the allegations concerning his involvement in the murder of Rodriguez. *See, e.g., Freiheit v. State*, 458 So. 2d 1172 (Fla. 4th DCA 1984).

In *Evans v. State*, 409 So. 2d 1078 (Fla. 4th DCA 1981), probationer was accused of violating his probation by committing two burglaries, but the trial court found him guilty of grand larceny and aiding and abetting instead – crimes which were not even lesser included offenses of burglary. *Id.* at 1079.

Regardless, the appellate court affirmed the revocation of the defendant's probation.

Appellant knew from the affidavit of probation violation that proof of a larceny would be adduced at the probation revocation hearing. The affidavit in question charged Evans, in both counts, with "unlawfully enter(ing) and remain(ing) in a structure ... with the intent to commit the offense of larceny therein." Consequently, Evans was not denied due process notice as to the facts and circumstances the trial judge would consider to determine whether probation should be revoked.

Id. Here, Ferrer was accused in the PVA of shooting Rodriguez.

In *Norris v. State*, 383 So. 2d 691 (Fla. 4th DCA 1980), Norris was accused of violating the special condition of probation "requiring him to live honorably, by committing a battery upon his wife on two separate occasions." *Id.* at 692. However, the affidavit of violation did not charge Norris with failing to live within the law. The Fourth DCA again affirmed the trial court's finding that the defendant had violated his probation.

[Norris] was expressly charged with violating his probation by committing two successive batteries upon his wife. The details of the batteries were set out in the charging affidavit. One of the conditions of appellant's probation specifically prohibited him from violating the law. Both the affidavits and proof showed that he had violated the law on two occasions and hence was in violation of his probation. No contention is made, nor is there any indication in the record, that appellant was prejudiced because, rather than the charging affidavit alleging that the misconduct in question constituted a violation of the condition of probation requiring the appellant to live within the law, the affidavit instead alleged that such conduct violated the condition requiring him to live honorably. We find that the appellant had specific notice of the actual

misconduct charged.

Id. at 693. By comparison, the PVA here specifically accused Ferrer of shooting Rodriguez and his order of probation specifically forbade Ferrer, both as a probationer and a convicted felon, from possessing a firearm.

Although these Fourth DCA cases relied on the Florida Supreme Court precedent of *Hines v. State*, 358 So. 2d 183 (Fla. 1978), this Court feels constrained by *Nadal* due to its similarity to the issues in the instant matter and because it was decided 25 years after *Hines*. Although the Third DCA did not refer to *Hines* in *Nadal*, this Court must assume it was aware of it and determined that on the facts presented it was not controlling. Of course, the Third DCA could distinguish or recede from *Nadal* in this case.⁶

III. SENTENCE.

The only issue remaining is the appropriate sentence for such a substantial and willful violation of probation. Ferrer has crimes over the years and received second and third chances. Most relevantly, Ferrer was given probation on the underlying offenses in this case, despite the fact he had demonstrated an utter disregard for the victim's safety. Yet, less than two years after his release from prison, he violated probation by absconding and then murdered Rodriguez.

⁶ The State could also amend the probation affidavits as the Third DCA noted in *Nadal*. See *Nadal*, at 258 (“On remand the State is free to seek revocation of the defendant's probation on the correct charge. *Hodges v. State*, 370 So. 2d 78, 79 n.1 (Fla. 2d DCA 1979)”).

Nothing the criminal justice system has done to rehabilitate and deter Ferrer has worked. Nothing this Court can do will bring Rodriguez back to family. But this Court can appropriately punish Ferrer for the serious, violent offenses for which he was placed on probation and incapacitate him for a long period of time to protect others whom he would hurt.

The Court revokes Ferrer's probation due to his willful and substantial violation of conditions K-1, L-1, and K-4 of his probation. Based on the seriousness of the crimes for which Ferrer was on probation, and the manner in which he violated this probation, the Court revokes his probation and sentences Ferrer to credit time served for each count of aggravated assault with a firearm, 15 years state prison for possession of a firearm by a convicted felon, credit time served for the grand theft in the third degree, 15 years in state prison for aggravated battery with a deadly weapon, and life in prison for attempted second degree murder with a firearm. All counts to run concurrent but not coterminous, and with credit for all time Ferrer has already served in jail on this case.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on this 6th day of March 2024.



Miguel M. de la O
Circuit Judge

IV

Denial of
Rule 3.800(b)

V

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CASE NO: F03-20444

v.

SECTION 60

JUDGE: MIGUEL M. DE LA O

ALEJANDRO FERRER,

Defendant.

**ORDER DENYING RULE 3.800
MOTION TO SET ASIDE/CORRECT SENTENCE**

THIS CAUSE came before the Court on Defendant, Alejandro Ferrer's, Rule 3.800 Motion to Set Aside/Correct Sentence. The Court has reviewed the motion and is fully advised in the premises. The motion is **DENIED**.

Even if *Erlinger v. United States*, 602 U.S. 821 (2024), is one day deemed to apply to Florida's 10-20-Life law or the Habitual Felony Offender enhancement, both enhancements were applied when Ferrer was convicted in 2006. The precedents upon which *Erlinger* is grounded; *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and its progeny, are not given retroactive application. See *Hughes v. State*, 901 So. 2d 837, 847-48 (Fla. 2005).

Moreover, Ferrer entered a plea of guilty to the Information which contained the allegations which qualified Ferrer for sentencing under Florida's

10-20-Life statute.¹ It appears more than a little pointless to ask a jury to find that Ferrer committed attempted second degree murder with a firearm, causing serious bodily injury, when those are the facts to which Ferrer admitted when he pled guilty. A copy of the Amended Information and Judgment and Sentence are attached.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on this 4th day of December 2024.



Miguel M. de la O
Circuit Judge

¹ Erlinger entered a plea of guilty also, but the indictment did not contain the facts upon which the trial court increased his sentence.

IV

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

CASE NO. 3D24-0527

LOWER CASE NO. F03-20444

ALEJANDRO FERRER

Appellant

-vs.-

STATE OF FLORIDA,

Appellee.

INITIAL BRIEF OF APPELLANT

APPEAL FROM THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR MIAMI-DADE COUNTY

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MR. FERRER'S PROBATION ENDED SEPTEMBER 1, 2016. IT WAS NOT TOLLED. THE TRIAL COURT ERRED BY CONCLUDING OTHERWISE. IT LACKED JURISDICTION TO REVOKE AND SENTENCE HIM.

II

THERE WAS NO COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING THAT MR. FERRER COMMITTED, OR WAS A PRINCIPAL, IN THE MURDER.

III

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STATEMENT OF THE CASE AND FACTS

Alejandro Ferrer's probation was set to expire on September 1, 2016. (R 526). On June 15, 2016, his probation officer filed a violation of probation affidavit for failing to report in June 2016 and change of his address without permission from his probation officer. (R 526). In 2019, three years after the September 1, 2016 expiration date, amended affidavits were filed, alleging a new law violation for an alleged murder in January 2017 in North Carolina. (R 526).

The defense filed a motion to bifurcate the probation violation hearing and to dismiss the new law violation, arguing that Mr. Ferrer's probation period expired before the alleged commission of the new law violation and thus the trial court lacked jurisdiction to consider the new law violation. (R 114-117).

Probation Officer Benito Casal testified in deposition that around April and again in May of 2016, Mr. Ferrer told him that he was moving back in with his father in Miami because his girlfriend was moving to North Carolina. (R 382-284). At the probation violation hearing, Officer Casal admitted that his case notes from May reflected that "subject stated he will move back to his father's house." (T 79). On June 13, 2016, Officer Casal spoke to his

girlfriend who told him that Mr. Ferrer had moved out some weeks before. (R 387).

At the probation violation hearing, Officer Casal acknowledged that Mr. Ferrer told him he was going to move back in with his father and that he never attempted to contact Mr. Ferrer at his father's house after that. (T 86). The probation officer agreed that the change of residence without permission and failure to report allegations in the original June 2016 violation of probation were technical violations and that he had never violated him before June 2016. (T 70-73).

Mr. Ferrer's father testified and confirmed that his son moved back in with him sometime around May or June 2016 for about six months. (T 142-153). His son moved out around October or November 2016, around Thanksgiving, as the father recalled. (T 150-153). This was consistent with the testimony from Erica Perez, the daughter of Mr. Ferrer's then girlfriend who testified that Mr. Ferrer moved back in with his father and that while she moved from Miami to North Carolina to live with her mother sometime after summer school finished, that Mr. Ferrer moved up to North Carolina sometime in early November 2016, when the leaves turned

orange, “which was a bid deal for someone who hasn’t seen it.” (T 767; 810).

The sum of the testimony from Mr. Ferrer’s girlfriend, Amanda Perez as to when Mr. Ferrer moved up to North Carolina was that she was unable to say with any degree of certainty when she moved up to North Carolina, let alone when Mr. Ferrer moved up there. (T 684-669). She recalled that he moved out of their apartment and began living with his father and that she and her daughter stayed in the apartment through the summer so her daughter could finish summer school. (T 668-669). She recalled that that when they did move to North Carolina it was sometime after the start of the high school year there and that the daughter was upset about having to enroll there after the school year had already begun. (T 669).

The State presented no direct evidence to contradict that Mr. Ferrer continued to reside in Miami, at his father’s house after the eviction until sometime after his probation expired on September 1, 2016. Nonetheless, the trial court ultimately concluded, although the initial affidavit of violation of probation did not allege this, that Mr. Ferrer had absconded to North Carolina sometime before September 1, 2016, and thus the trial court concluded the

probation period was tolled. Its written order stated in pertinent

part:

Relying on *Mobley v. State*, 197 So. 3d 572 (Fla. 4th DCA 2016), Ferrer argues that this Court lacks jurisdiction to violate his probation because his probationary term expired on September 1, 2016. Ferrer would be correct but for the fact his probationary term was tolled because he absconded from the jurisdiction and did not make himself available for supervision.

(R 529).

The trial court denied the motion to dismiss. It then considered the 2019 amended affidavit of violation of probation that added allegations that Mr. Ferrer committed a new law violation by leaving the county without permission and murdering Hasiel Gonzalez Rodriguez on or about January 22, 2017 in January 2017 and later leaving the country without permission from his probation officer. (R 454-455).

In its order revoking probation, the trial court said this about the allegation pertaining to the new law violation for murder:

The Court concedes that the evidence introduced at the Hearing would not suffice to convict Ferrer because it does not establish his guilt beyond a reasonable doubt.

(R 535). The trial court then said that the circumstantial evidence sufficed for probation revocation to permit the court to find that Mr. Ferrer either did commit the murder or was somehow involved in it. (R 535-539). The facts that the trial court primarily cited in its order were:

(1) Proximity to the crime - Mr. Ferrer and his girlfriend were living in a trailer in rural North Carolina adjacent to people involved in the drug trade. The decedent had flown up from Miami and was working for the neighbor brokering drug deals. His body was eventually found in the area.

(2) Flight - When North Carolina law enforcement visited the property to follow up on a missing person's report, according to Mr. Ferrer's girlfriend, Mr. Ferrer and another man named Manny ran off into the woods; Mr. Ferrer later returned to the trailer, bought himself a bus ticket and left the area and eventually went to Nicaragua.

(3) a photo of Mr. Ferrer holding a similar-looking gun linked to the murder.

(4) testimony from his girlfriend about a purported confession she testified that while she told prosecutors that Mr. Ferrer

confessed to her while she was visiting him in Nicaragua, that she was suffering from a psychotic breakdown during that trip and was imagining that he confessed.

The trial court revoked Mr. Ferrer's probation on the F03-20444 probation case and sentenced him as follows: on the count of attempted second-degree murder with a firearm - a life sentence; possession of a firearm by a convicted felon -fifteen years; two counts of aggravated assault - CTS; one count of aggravated battery with a firearm - fifteen years; and grand theft - CTS. (R 62-64). The trial court announced that the HVO status remained. (R 764).

The life sentence was imposed on the attempted second-degree murder with a firearm offense. Such an offense is a second-degree felony punishable up to 15 years, unless reclassified under the felony reclassification statute, §775.087(2)(a)3, Florida Statutes, as a first-degree felony and provided that the convicted person discharged a firearm that caused death or great bodily injury. In that instance, the person convicted "shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison." *Id.*

Mr. Ferrer appealed, obtained a relinquishment and filed a motion to vacate the sentences, arguing among other things, that because no jury ever made a factual finding of this to support the reclassification, the life sentence was illegal under *Erlinger v. United States*, 602 U.S. 821, 825, 144 S. Ct. 1840, 1846, 219 L. Ed. 2d 451 (2024) (the imposition of the statutorily enhanced sentence of life without a jury determining the facts necessary to support the enhancement is unconstitutional and must be vacated.). The trial court summarily denied the motion.

SUMMARY OF THE ARGUMENT

The court lacked jurisdiction to violate his probation unless the probationary term set to have expired on September 1, 2016 was tolled. The trial court erroneously concluded that there had been a tolling upon its erroneous finding that Mr. Ferrer absconded before then. Even the probation officer Casal admitted that his initial affidavit alleged only two technical violations, to wit: failure to report and changing residences without permission. It was uncontroverted that sometime around May 2016 Mr. Ferrer told Probation Officer Casal that he was moving back in with his father and that Probation Officer Casal never contacted the father or went

to the father's house after being told of the switch to check on Mr. Ferrer there.

This Court need not reach the alleged new law violation as it should find that the probationary period was not tolled. It expired on September 1, 2016 and therefore the trial court therefore lacked jurisdiction to revoke based upon an alleged new law violation after the probation expired. Even so, the State's evidence, comprised almost entirely of circumstantial evidence of proximity to the crime scene and flight was legally insufficient.

Finally, the life sentence is illegal, based as it was upon statutory enhancements not proven by a jury beyond a reasonable doubt.

ARGUMENT

I

MR. FERRER'S PROBATION ENDED SEPTEMBER 1, 2016. IT WAS NOT TOLLED. THE TRIAL COURT ERRED BY CONCLUDING OTHERWISE. IT LACKED JURISDICTION TO REVOKE AND SENTENCE HIM.

The trial court correctly observed that Mr. Ferrer was correct that under *Mobley v. State*, 197 So. 3d 572 (Fla. 4th DCA 2016), that the court lacked jurisdiction to violate his probation unless his

probationary term set to have expired on September 1, 2016 was tolled. From there, however, the trial court erroneously concluded that there had been a tolling upon its erroneous finding that Mr. Ferrer had absconded. Even the probation officer Casal admitted that his initial affidavit had not alleged that he absconded.

Q. And he was actually within three months of terminating or less than three months when you filed your affidavit of violation of probation?

A. He was.

Q. Okay. And you filed the original] affidavit, had two technical] violations correct?

A. Failure to report and change of address without permission.

Q. Right. One failure to report?

A. One was changing residence.

Q. One was changing address without permission. That was the only two originally filed?

A. Yes.

(R 71-72).

It was uncontroverted that sometime around May 2016 Mr. Ferrer told Probation Officer Casal that he was moving back in with

his father and that Probation Officer Casal never contacted the father or went to the father's house after being told of the switch to check on Mr. Ferrer there.

The trial court's reliance on *Williams v. State*, 202 So. 3d 917 (Fla. 4th DCA 2016) was misplaced. The procedural posture was different. There, the defendant filed a petition for writ of prohibition from the denial of the motion to dismiss the probation proceedings, without any facts having been presented as to whether the probation officer knew of the probationer's whereabouts. The Fourth District denied the writ without prejudice for the trial court to conduct a hearing to determine whether the State could demonstrate that the defendant absconded.

Our case is more like *Young v. State*, 739 So. 2d 1179 (Fla. 4th DCA 1999) where the probation officer did not visit the probationer at her address before the probationary period expired. *Young v. State*, 739 So. 2d at 1180 ("Appellant was not hiding, nor had she departed from the jurisdiction of the state. She simply failed to make a report. Had her probation officer visited appellant at her listed address, she would have been able to find her, and an affidavit of violation could have been served on her at any time at

that location. We hold that appellant had not absconded from supervision by failing to file her monthly reports.”). See also: *Langley v. State*, 839 So. 2d 826, 827 (Fla. 4th DCA 2003) (“We reject the state's argument that the mere failure to file reports, without more, requires the court to toll the period of probation.”).

Finally, it was a denial of due process for the trial court to have sua sponte concluded that the probation period had been tolled based upon a finding that Mr. Ferrer absconded when there was no allegation of him having absconded from supervision beyond the two admittedly technical allegations in the initial affidavit of failing to report and change of address without permission. *Odom v. State*, 15 So. 3d 672 (Fla. 1st DCA 2009) (probation revocation based on a violation not alleged in the charging document is a deprivation of the right to due process, constituting fundamental error.)

II

THERE WAS NO COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT’S FINDING THAT MR. FERRER COMMITTED, OR WAS A PRINCIPAL, IN THE MURDER.

This Court need not reach this issue as it should find that the probationary period was not tolled. It expired on September 1, 2016

and therefore the trial court therefore lacked jurisdiction to revoke based upon an alleged new law violation after the probation expired. Even so, the State's case consisted of hearsay testimony and circumstantial evidence that added up to a showing that Mr. Ferrer was living in a rural area of North Carolina on property in the vicinity of where the body was discovered and fled the area. Proximity to a crime scene and flight even when coupled with knowledge that a crime is being committed is not legally sufficient proof to sustain a probation revocation. See e.g. *Crapps v. State*, 155 So. 3d 1242 (Fla. 4th DCA 2015) (evidence of proximity to crime was insufficient to establish new law violation); *Glover v. State*, 17 So. 3d 886 (Fla. 4th DCA 2009) (proximity and flight insufficient to establish new law violation).

The trial court alternatively concluded that Mr. Ferrer must have had something to do with the murder, either before or after, and thus found that he was a principal. The evidence was legally insufficient for that as well. *Smith v. State*, 502 So. 2d 77 (Fla. 3^d DCA 1987) (error to revoke probation where the evidence that the defendant was the driver of the car that sped off from police was

legally insufficient to prove that he was an aider and abettor to the crime of burglary or robbery).

Moreover, the amended affidavit of violation of probation did not allege the commission of the new law offense of accessory after the fact, so the trial court's alternative finding to that effect is unsustainable. *Smith v. State*, 502 So. 2d at 78 (just as the defendant cannot be convicted of a charged substantive offense based on evidence which proves involvement only as an accessory after the fact; "[l]ikewise probation cannot be revoked where the proof supports only an offense other than the one charged.").

III

THE LIFE SENTENCE IS AN ILLEGAL SENTENCE.

The life sentence was imposed on the F-03 attempted second-degree murder with a firearm offense. Such an offense is a second-degree felony punishable up to 15 years, unless reclassified under the felony reclassification statute, §775.087(2)(a)3, Florida Statutes, as a first-degree felony and provided that the convicted person discharged a firearm that caused death or great bodily injury. In that instance, the person convicted "shall be sentenced to a

minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.” *Id.*

No jury ever made a factual finding of this to support the reclassification. At the March 6, 2024 sentencing hearing following revocation of probation, defense counsel pointed out that while the victim of the F03 offense had been shot in the leg, moderate injury was checked off in the original guideline scoresheet. (R 749-750).

The trial court commented that if Mr. Ferrer did not admit to it during the plea, then there is no evidence unless there is some evidence. (R 751-752). The prosecution stated that it did not have the plea colloquy. (R 752). (Undersigned ordered the March 2006 plea colloquy, and the court reporter has filed an affidavit advising it is no longer available).

After the notice of appeal was filed from the 2024 revocation and sentencing, this Court relinquished jurisdiction for Mr. Ferrer to file a Rule 3.800 motion which he did, arguing *Erlinger v. United States*, 602 U.S. 821, 825, 144 S. Ct. 1840, 1846, 219 L. Ed. 2d 451 (2024), which held that the imposition of the statutorily enhanced sentence of life without a jury determining the facts

necessary to support the enhancement is unconstitutional and must be vacated.

In *Erlinger*, the defendant pled guilty and was eligible for an enhanced sentence under the Armed Career Criminal Act. The presiding district judge made fact findings for the enhancement. The Supreme Court held that under the Fifth and Sixth Amendments, his sentence could not be enhanced; any such enhancement required that a unanimous jury had to have found beyond a reasonable doubt the facts necessary for him to qualify for the statutory enhancement.

The Supreme Court held that only a jury may find facts that increase the prescribed range of penalties to which a criminal defendant is exposed. Judges may not assume the jury's factfinding function for themselves, let alone purport to perform it using a mere preponderance-of-the-evidence standard. *Erlinger's* rationale applies equally to the HFO adjudication that increased the prescribed range of penalties and upon which the trial court imposed minimum mandatory sentences on the other counts.

Mr. Ferrer's Rule 3.800 motion argued that the trial court should vacate the life sentence and the other enhanced sentences

and resentence without any reclassifications or enhancements, or alternatively, the prosecution could opt to impanel a jury to determine whether the State can prove beyond a reasonable doubt the predicate facts for reclassification and enhancement. *State v. Manago*, 375 So. 3d 190 (Fla. 2023).

The trial court summarily issued a written order denying the Rule 3.800 motion concluding that *Erlinger* was not retroactive and finding:

Ferrer entered a plea of guilty to the Information which contained the allegations which qualified Ferrer for sentencing under Florida's 10-20-Life statute. It appears more than a little pointless to ask a jury to find that Ferrer committed attempted second-degree murder with a firearm, causing serious bodily injury, when those are the facts to which Ferrer admitted when he pled guilty.

(S.R). Respectfully, the trial court was wrong on both accounts. *U.S. v. Harvin*, 2024 WL 456384 (11th Cir. 2024) (applying *Erlinger* to pending appeal and rendering a summary reversal); *State v. Carlton*, - A.3d -, 2024 WL 5240952 (N.J. App. 12/19/24) (giving *Erlinger* pipeline retroactive application to cases pending on direct appeal).

Nor is it pointless. There was no concession that there had been an admission of having caused serious bodily injury back in

2006 when the plea was taken. Defense counsel noted that the scoresheet reflected moderate injury. There is no transcript of the plea colloquy either.

CONCLUSION

This Court reverse and remand for dismissal of the probation violation proceedings for lack of jurisdiction.

Alternatively, this Court should reverse and remand with directions to vacate the revocation and/or sentences and remand for further proceedings consistent therewith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was emailed to CrimAppMIA@MyFloridaLegal.com and to the Office of the Attorney General, Criminal Division, One S.E. Third Avenue, Suite

900, Miami, Florida, 33131 this 10th day of January 2025.

Undersigned counsel hereby designates, pursuant to Rule 2.516, the following e-mail addresses for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding:

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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies the word count complies with the Florida Rules of Appellate Procedure and that the font used in this brief is Bookman Old Style 14 point.

Susan S. Lerner

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

CASE NO. 3D24-0527

ALEJANDRO FERRER,

Appellant,

-vs-

THE STATE OF FLORIDA,

Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR MIAMI-DADE COUNTY

ANSWER BRIEF OF APPELLEE

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Fla. Stat. § 777.001

STATEMENT OF THE CASE AND FACTS

Appellee accepts Appellant's facts as a generally accurate account of the proceedings below. Any corrections or additional facts which the Appellee seeks to bring to the attention of the Court are contained in the argument portion of the brief.

POINTS INVOLVED ON APPEAL

I. WHETHER THE TRIAL COURT HAD JURISDICTION TO REVOKE DEFENDANT'S PROBATION BASED ON THE AMENDED VIOLATION OF PROBATION AFFIDAVITS WHERE THE PROBATIONARY PERIOD WAS TOLLED DUE TO THE FACT THAT DEFENDANT ABSCONDED, AND BECAUSE A WARRANT WAS ISSUED? (REPHRASED).

II. WHETHER THERE WAS COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING OF DEFENDANT'S WILLFUL AND SUBSTANTIAL VIOLATION OF HIS PROBATION IN CONNECTION WITH THE NEW LAW VIOLATION FOR THE OFFENSE OF MURDER? (REPHRASED).

II. WHETHER THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO CORRECT SENTENCING ERROR AS ERLINGER DOES NOT APPLY RETROACTIVELY AND THE RECLASSIFICATION OF DEFENDANT'S OFFENSE AND SENTENCE RELATED BACK TO WHEN DEFENDANT ENTERED HIS GUILTY PLEA IN 2006 AND ANY OBJECTION TO SAME WAS WAIVED? (REPHRASED).

SUMMARY OF THE ARGUMENT

I. Defendant argues that the lower court lacked jurisdiction to hear the violation of his probation for those violations alleged in the amended affidavits of violation of probation because the probationary period expired on September 1, 2016, prior to the amendments, and was not tolled. The State maintains the trial court had subject matter jurisdiction to hear and rule on the probation violations set forth in the amended affidavits because the probationary period was tolled.

An affidavit of violation of probation was filed on June 15, 2016, which alleged that Defendant changed his residence without the consent of his probation officer, that his "whereabouts are unknown", and that he failed to file a report. The affidavit was first amended on September 9, 2019, to include the additional violation that Defendant left Miami-Dade County and shot and killed Hasiel Gonzalez Rodriguez in North Carolina, on or about January 22, 2017.

By alleging that Defendant changed his residence without the consent of the probation officer, and that his whereabouts are unknown, the initial affidavit sufficiently alleged that Defendant had absconded, which is a common law basis to toll the probationary

period. Also, because a warrant was issued after the affidavit of probation violation was filed, the probationary period was tolled under § 948.06(1)(g). Thus, the trial court had jurisdiction to hear the violations of his probation alleged in the amended affidavits of violation of probation.

II. Based on the evidence established over the course of the four day hearing on the revocation of probation, there was no competent, substantial evidence to support the trial court's finding that Defendant willfully and substantially violated his probation by committing, or acting as a principal, in the murder. Thus, the trial court did not abuse its discretion in revoking Defendant's probation.

III. Based on Erlinger v. United States, Defendant argues that his life sentence for attempted second degree murder, which was statutorily reclassified from a second degree felony to a first degree felony, is illegal. Defendant's argument is without merit. In 2006, Defendant entered a plea to the charged offense, which was properly reclassified from a second degree felony to a first degree felony, based on Defendant's discharge of the firearm. As a first degree felony, Defendant was subject to the maximum sentence of life in prison.

STANDARD OF REVIEW

I. A trial court's determination of its subject matter jurisdiction is subject to de novo review. Canchola v. State, 255 So. 3d 442, 444 (Fla. 2d DCA 2018).

II. When reviewing an order revoking probation, the appellate court first assesses whether the finding by the trial court of a willful and substantial violation is supported by competent substantial evidence. If the reviewing court finds that competent, substantial evidence exists, then the standard of review for the trial court's decision to revoke probation is abuse of discretion. Savage v. State, 120 So. 3d 619, 621, 623 (Fla. 2d DCA 2013), Facen v. State, 386 So. 3d 991, 993 (Fla. 3d DCA 2023).

III. The legality of a sentence is a question of law, which is subject to de novo review. Similarly, the appellate court's review of the constitutionality of a sentence is de novo. Simmons v. State, 273 So. 3d 116, 119 (Fla. 3d DCA 2019).

ARGUMENT

I. THE TRIAL COURT HAD JURISDICTION TO REVOKE DEFENDANT'S PROBATION BASED ON THE AMENDED VIOLATION OF PROBATION AFFIDAVITS WHERE THE PROBATIONARY PERIOD WAS TOLLED DUE TO THE FACT THAT DEFENDANT ABSCONDED, AND BECAUSE A WARRANT WAS ISSUED. (REPHRASED).

Defendant argues that the lower lacked jurisdiction to hear the violation of his probation for those violations alleged in the amended affidavits of violation of probation because the probationary period expired on September 1, 2016, prior to the amendments, and was not tolled. Defendant's argument is without merit.

On March 13, 2006, Defendant pled guilty to Attempted Second Degree Murder, Possession of a Firearm by a convicted Felon, two counts of Aggravated Assault with a Firearm, Grand Theft Third Degree, and Aggravated Battery with a Deadly Weapon, in case no. F03-020444. Pursuant to the plea, on April 7, 2006, Defendant was sentenced to ten years in prison, followed by two years of probation as a Habitual Felony Offender. Defendant's probation began on September 2, 2014, and was scheduled to expire on September 1, 2016. (R. 53-66).

An affidavit of violation of probation was filed on June 15, 2016, which alleged that Defendant changed his residence without the consent of his probation officer, that his “whereabouts are unknown”, and that he failed to file a report to his probation officer on the required dates in June of 2016. (R. 14). The probation violation affidavit was subsequently amended twice. First, on September 9, 2019, the affidavit was amended to include the additional violation that Defendant left Miami-Dade County and shot and killed Hasiel Gonzalez Rodriguez in Vance County, North Carolina, on or about January 22, 2017. Second, on December 10, 2020, the affidavit was amended again to allege that Defendant left his county of residence without permission and went to Nicaragua. (R. 67-68).

Absent a statutory or common law basis to toll the probationary period, the trial court loses subject matter jurisdiction over a defendant's probation when the probationary term expires. The State maintains that the case at bar presented both a statutory and common law basis to toll the probationary period. Florida Statute § 948.06(1)(g) provides in pertinent part: “[u]pon the filing of an affidavit alleging a violation of probation or community control and

following issuance of a warrant for such violation, a warrantless arrest under this section, or a notice to appear under this section, the probationary period is tolled until the court enters a ruling on the violation.” Additionally, under common law, a probationary period is tolled when a probationer absconds from supervision. When a probationer absconds from supervision, the probationary term is tolled until the probationer is placed back under probationary supervision. Francois v. State, 695 So.2d 695, 697 (Fla. 1997); Kimball v. State, 890 So.2d 495, 496 (Fla. 5th DCA 2004); Williams v. State, 529 So.2d 366, 367 (Fla. 2d DCA 1988); Williams v. State, 202 So.3d 917, 921 (Fla. 4th DCA 2016); Canchola v. State, 255 So. 3d 442, 445 (Fla. 2d DCA 2018).

In support of his position that the trial court lacked jurisdiction over the violation of probation proceedings alleged in the amended affidavits because his probationary period expired and was not tolled, Defendant cites to Young v. State, 739 So.2d 1179 (Fla. 4th DCA 1999), and Langley v. State, 839 So.2d 826 (Fla. 4th DCA 2003). Just as the Fourth District found in Williams, the case at bar is distinguishable from Young and Langley because in those cases there

was a finding that the defendant had not absconded from supervision simply by failing to file a monthly report.

In the subject case, the initial affidavit of violation of probation, which was filed on or about June 15, 2016, alleged that Defendant changed his residence without the consent of the probation officer, that his whereabouts are unknown, and that he failed to report to probation for the month of June 2016. (R. 67-68). Clearly, **the initial affidavit alleged more than simply failing to file a monthly report. Instead, by alleging that Defendant changed his residence without the consent of the probation officer, and that his whereabouts are unknown, it sufficiently alleged that Defendant had absconded.**¹ A probationer absconds when he removes himself from “the controlling arm of the state” by changing his residence without consent and leaving his probation officer without knowledge of his current whereabouts. Francois at 697 (Fla. 1997). Canchola at 444.

¹ The affidavit of probation raised the same allegations as in Williams at 918.

The probation officer, Benito Casal, testified at the violation hearing that he conducted a home visit on May 12, 2016, and saw Defendant. However, when he conducted another home visit on May 17, 2016, he could not find Defendant, and Amanda Perez was not cooperative at that time. Subsequently, when Defendant did not report during the scheduled time frame in early June of 2016, the probation officer reached out to Amanda Perez on June 13, 2016. She did not answer her cellphone, but sent a text message claiming that she and Defendant broke up and he moved out several weeks ago. (T. 45-53, R. 227-228).

Casal testified that after Amanda Perez informed him that Defendant moved out of her residence in late May of 2016, he submitted an affidavit of violation of probation charging Defendant with changing residence without permission and received a probation warrant. When a probation warrant is issued for someone changing their residence/absconding, the Absconder Unit in Tallahassee attempts to locate the person. On June 23, 2016, the Absconder Unit received a tip that Defendant was in North Carolina with Amanda

Perez, breeding dogs. (Transcript of October 10, 2023, hearing p. 43-51).

Based on this testimony, it is not only clear that Defendant absconded, which is a common law basis to toll the probationary period, but also that a warrant was issued after the affidavit of probation violation was filed. Accordingly, the probationary period was also tolled under § 948.06(1)(g). Defendant's two year probation period began on September 2, 2014, and was scheduled to expire on September 1, 2016. The first probation violation affidavit was filed on or about June 15, 2016, which was during the probationary period, and effectively tolled his probationary term. Thereafter, amended notices were filed on or about September 9, 2019, for the new law violation, and on December 8, 2020. The State maintains that Petitioner's probationary period was properly tolled based on Defendant absconding, as well as a violation of probation affidavit being filed and the issuance of a warrant. Accordingly, the trial court had subject matter jurisdiction to hear and rule on the probation violations set forth in the amended affidavits.

II. THERE WAS COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING OF DEFENDANT'S WILLFUL AND SUBSTANTIAL VIOLATION OF HIS PROBATION IN CONNECTION WITH THE NEW LAW VIOLATION FOR THE OFFENSE OF MURDER. (REPHRASED).

Defendant argues that there was no competent, substantial evidence to support the trial court's finding that Defendant committed, or was a principal, in the murder. Defendant's argument is without merit.

Trial courts are afforded broad discretion in probation revocation proceedings. Russell v. State, 982 So. 2d 642, 646 (Fla. 2008). In reviewing a probation revocation, the appellate court must first assess whether the trial court's finding of a willful and substantial violation is supported by competent, substantial evidence. Savage v. State, 120 So. 3d 619, 621 (Fla. 2d DCA 2013). If the appellate court's examination yields competent, substantial evidence, then the standard of review for the trial court's decision to revoke probation is abuse of discretion. Id. at 623, Facen v. State, 386 So.3d 991,993 (Fla. 3d DCA 2023).

The level of proof required for a criminal conviction, i.e. guilt beyond a reasonable doubt, is greater than what is necessary to

support a trial judge's discretionary order revoking probation. In probation revocation proceedings, the State only needs to show by a preponderance of the evidence that the defendant committed the offense charged.² Amador v. State, 713 So. 2d 1121, 1122 (Fla. 3d DCA 1998), Robertson v. State, 800 So.2d 338, 339 (Fla. 3d DCA 2001). Accordingly, the standard for finding a new law violation is whether a preponderance of the evidence establishes that the probationer committed the charged offense or offenses. Robinson v. State, 907 So. 2d 1284, 1287 (Fla. 2d DCA 2005); Torres v. State, 2025 WL 610370, (Fla. 3d DCA Feb. 26, 2025), Sims v. State, 354 So. 3d 1159, 1161 (Fla. 1st DCA 2023). Additionally, hearsay evidence is admissible in violation of probation hearings and can sustain a violation when corroborated by direct evidence. Robertson at 339, Bresile v. State, 343 So.3d 665 (Fla. 3d 2022).

Defendant initially argued that the Court does not need to reach this issue because it should find that the probation period was not tolled, therefore the trial court lacked jurisdiction to revoke probation

² A preponderance of the evidence is also referred to as the greater weight of the evidence. Russell at 646-647.

based on an alleged new law violation which occurred after the probationary term expired. The State disagrees and relies on its argument on the first claim, which established that Defendant's probationary term was tolled by the June 15, 2016, probation violation affidavit, which sufficiently alleged that Defendant had absconded, and that fact that a warrant had issued. Therefore, the trial court had jurisdiction to revoke probation based upon the alleged new violation of law, as set forth in the September 9, 2019, amended affidavit of probation violation.

Defendant went on to argue that the State's case consisted of hearsay testimony and circumstantial evidence which resulted in a showing that Defendant was living in a rural area of North Carolina in the vicinity of where the victim's body was discovered and fled the area. A probation revocation hearing is more informal than the original criminal proceeding. Therefore, the strict rules of evidence can be deviated from and the admission of hearsay is not error. While probation may not be revoked based on hearsay alone, non-hearsay evidence does not have to directly link the probationer to the alleged violation. Instead, the non-hearsay evidence should be sufficient to

support the hearsay allegation. Thompson v State, 994 So.2d 468,471 (Fla. 3d DCA 2008); Sims at 1163 (Fla. 1st DCA 2023).

Nevertheless, Defendant cites to Crapps v. State, 155 So.3d 1242 (Fla. 4th DCA 2015) and Glover v. State, 17 So.3d 886 (Fla. 4th DCA 2009), for the proposition that evidence of proximity to a crime scene and flight were insufficient to establish a new law violation. The present case consists of much more than evidence of proximity to the crime scene and flight therefrom. This can be seen from the following facts which the trial court listed in its Order Revoking Probation and Imposing Sentence, and which the court relied on to conclude that the State proved by a preponderance of the evidence that Defendant murdered Rodriguez:

On the night of the murder, Ferrer's girlfriend specifically remembers him leaving their trailer, heading to the trailer where Rodriguez was staying, and returning about two hours later very drunk.

Immediately upon returning to his trailer from Jorge Colinas' house (where Rodriguez was staying) on the night of the murder, Ferrer removed all of his clothing and placed it in the washing machine along with his boots.

Immediately after placing his clothing and boots in the washing machine, Ferrer took a shower.

Ferrer went back outside after showering and Amanda Perez could smell that he was burning things in the burn barrel.

The burn barrel on Ferrer's property contained the remnants of steel-toed boots and phone which most likely belonged to Rodriguez.

A bag found on or near Ferrer's property contained the murder weapon.

There are pictures on Facebook of Ferrer brandishing a similar firearm posted on Ferrer's account about two weeks before the murder.

Ferrer ran away from police officers the day after Rodriguez's murder.

Ferrer's flight from North Carolina the day after fleeing from police.

Ferrer's flight from the United States to Nicaragua.

None of the suspects which Ferrer points to fled the scene, much less the state or the country. They all stayed and cooperated with the police.

Amanda Perez told police in the days after Rodriguez's murder that Ferrer was "hot headed" and could "become violent."

Ferrer confessed to Amanda Perez that he killed Rodriguez.³

³ In footnote 4 of its Order, the trial court rejected "the insinuation that having travelled to Nicaragua to reunite with her ex-boyfriend, Amanda Perez hallucinated that Ferrer admitted he murdered Rodriguez. It is far more likely that the discussion in Nicaragua

(R. 536-538).

Thus, the State's testimony and circumstantial evidence added up to quite more than merely showing that Defendant was living in a rural area of North Carolina on a property in the vicinity of where the body was discovered and fled the area. In fact, Amanda Perez testified that after Defendant left North Carolina, they kept in touch and she went to visit him in Nicaragua. While she was there, he confessed to her that he killed Rodriguez. (T. 644-652). Thus, in addition to the great amount of strong circumstantial evidence, there is also direct evidence of Defendant's responsibility for the murder. Although the evidence was challenged by the defense, it added credibility to the strong circumstantial evidence. (R. 535-536).

Despite the strength of the State's evidence, Defendant also takes issue with the trial court's alternative conclusion that Defendant was a principal, as he had something to do with the

turned to the very reasonable question of why Ferrer was now living in Nicaragua. The answer, of course, is that he was evading arrest for the murder of Rodriguez and he explained that to Amanda Perez. It is also far more likely that Erica Perez, in her misguided attempt to help Ferrer, has tried to convince Amanda Perez that she imagined the whole conversation." (R. 538)

murder before or after. Defendant argues that the evidence was legally insufficient to establish that he was a principal. Further, Defendant argues that because the amended affidavit of violation of probation did not allege the commission of the new law offense of accessory after the fact, the trial court's alternative finding is not sufficient.

The trial court's order acknowledged that it was *possible* that Defendant did not personally shoot Rodriguez, but was a principal in the homicide. However, such a distinction was meaningless under Fla. Stat. § 777.001, which provides a person is a principal in the first degree whether he actually commits the crime or merely aids, abets or procures its commission. Further, as long as the proof establishes that the defendant was guilty of one of the acts which would constitute a principal, it is immaterial whether the indictment or information alleged that the defendant committed the crime or was merely aiding or abetting in its commission. State v. Ruby, 246 So.2d 566, 571 (Fla. 1971). Thomas v. State, 634 So.2d 276, 277 (Fla. 4th DCA 1994). Still, the court concluded that it was more likely than not

that Defendant committed the murder himself, with or without the assistance of others. (R. 538-539).

As the court stated in its Order; “Ferrer argues vehemently that these circumstances can all be explained away. The difficulty for Ferrer is that at some point there are too many coincidences for it all to be a coincidence.” (R. 539). Based on the evidence established over the course of the four day hearing on the revocation of probation, there was no competent, substantial evidence to support the trial court’s finding that Defendant a willfully and substantial violated his probation by committing, or acting as a principal, in the murder. Thus, the trial court did not abuse its discretion in revoking Defendant’s probation.

III. THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO CORRECT SENTENCING ERROR AS ERLINGER DOES NOT APPLY RETROACTIVELY AND THE RECLASSIFICATION OF DEFENDANT'S OFFENSE AND SENTENCE RELATED BACK TO WHEN DEFENDANT ENTERED HIS GUILTY PLEA IN 2006 AND ANY OBJECTION TO SAME WAS WIAVED. (REPHRASED).

Defendant argues that his life sentence for attempted second degree murder with a firearm is an illegal sentence. Defendant's argument is without merit.

On March 13, 2006, Defendant pled guilty to Attempted Second Degree Murder with a firearm, in addition to other offenses, in case no. F03-020444. Pursuant to the plea, on April 7, 2006, Defendant was sentenced to ten years in prison, followed by two years of probation as a Habitual Felony Offender. Defendant's probation began on September 2, 2014, and was scheduled to expire on September 1, 2016. (R. 53-66, S.R. 15-17).

On March 6, 2024, after revoking Defendant's violation, the trial court sentenced Defendant to life in prison for the attempted second degree murder with a firearm conviction.⁴ (R. 545, t. 671-766). On

⁴ The plea colloquy from the March 13, 2006, guilty plea is not contained within the subject Record On Appeal. (T. 752).

November 8, 2024, prior to filing its initial brief in the subject case, counsel for Defendant filed Defendant's Rule 3.800 Motion to Set Aside/Correct Sentence, the pertinent portion of which is in connection with the life sentence imposed on his conviction for attempted second degree murder, which is a second degree felony.

The Amended Information in case no. F03-020444 alleged that Defendant attempted to commit Murder in the Second Degree upon Jose Luis Rodriguez by Shooting at him, and that during the course of the commission of the offense, Defendant discharged a firearm or destructive device, which inflicted great bodily harm upon the victim. (S.R. 7). Pursuant to Florida Statute § 775.087(1)(b), the second degree felony was properly reclassified as a first degree felony, based on Defendant's use of a firearm. Based on the discharge of the firearm causing great bodily harm, § 775.087(2)(a)3 provides for a maximum sentence of life in prison. On March 13, 2006, Defendant entered a plea of guilty to the charged first degree felony offense. (S.R. 15-16).

Defendant's motion takes issue with the reclassification because the factual findings to support the reclassification were not made by a jury. Defendant cites to Erlinger v. United States, 144 S.

Ct. 1840 (2024), in support of his argument that the imposition of the statutorily enhanced life sentence, without a jury determining the facts necessary to support the enhancement, is unconstitutional and must be vacated.⁵

On December 4, 2024, the trial court entered an Order Denying Rule 3.800 Motion To Set Aside/Correct Sentence. (S.R. 4-5). The court pointed out that the subject enhancement was applied when Defendant was convicted in 2006. The court held that precedents upon which Erlinger is grounded, Apprendi v. New Jersey, 530 U.S. 466 (2000), and its progeny are not retroactive, and cited to Hughes v. State, 901 So.2d 837, 847-48 (Fla. 2005). The court further noted that it would be pointless to ask a jury to find that Defendant committed attempted second degree murder with a firearm, causing great bodily injury, when those are the facts which Defendant admitted to when he pled guilty.

⁵ In Erlinger, the Court concluded that the Fifth and Sixth Amendments to the U.S. Constitution require a jury to find beyond a reasonable doubt “[v]irtually” any fact that increases a defendant’s “prescribed range of penalties.”

The trial court properly identified that the basis for the reclassification of the offense occurred when Defendant entered his guilty plea in 2006, which necessarily included Defendant's admitting the facts as to the discharge of the firearm/ causing great bodily harm at the time he entered the plea. As there is no assertion that Defendant objected to the factual basis of the plea, he has waived the right to do so eighteen years later when the subject sentence was imposed after his probation was revoked. Despite the new sentence which was imposed after the revocation of probation, the basis for the reclassification of the subject offense relates back to the original 2006 conviction. See Smith v. State, 174 So. 3d 1025, 1028 (Fla. 2d DCA 2015); Dixon v. State, 76 So. 3d 351, 352-53 (Fla. 3d DCA 2011).

Lastly, the case at bar is controlled by the recent case of Wainwright v. State, No. SC2025-0708, 2025 WL 1561151, (Fla. June 3, 2025). Wainwright involved a death sentence where the defendant filed a motion to stay execution. The motion argued, inter alia, that pursuant to Erlinger, his death sentence was unconstitutional because a judge and not a jury made the findings necessary to impose death. On June 3, 2025, the Florida Supreme

Court issued an opinion which applied a thorough retroactivity analysis and found that Erlinger does not apply retroactively. Wainwright at 5-6. Thus, pursuant to Wainwright, Defendant is not entitled to relief based on Erlinger. Accordingly, the denial of Defendant's motion should be affirmed.

CONCLUSION

Defendant's revocation of probation and sentence should be affirmed.

Respectfully Submitted,

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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
CASE NO. 3D24-0527
LOWER CASE NO. F03-20444

ALEJANDRO FERRER

Appellant

-vs.-

STATE OF FLORIDA,

Appellee.

REPLY BRIEF OF APPELLANT

APPEAL FROM THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR MIAMI-DADE COUNTY

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REPLY ARGUMENT

The State overlooks the critical error that the trial court made when it erroneously concluded that the September 1, 2016 probation termination date was tolled and thus concluded it did have jurisdiction. The trial court found that Mr. Ferrer went to North Carolina in June 2016 thereby absconding from supervision and thus violated his probation before the September 1, 2016 termination date, tolling the termination. The fatal flaw in the trial court's ruling was that this allegation was never in the original affidavit of probation filed before the probation period ended September 1, 2016.

Significantly, k-1 of the order of probation stated, "You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer." (R 65). The probation officer candidly admitted that he never alleged Mr. Ferrer left the county without permission to go to North Carolina until after the September 1, 2016 probation termination. (T 69). When asked to confirm that his original affidavit had nothing about North Carolina, he said, "Right." (T 69).

The original affidavit of violation of probation that was filed on June 15, 2016 did not allege Ferrer absconded by leaving to go to North Carolina. It alleged that Mr. Ferrer changed residences without consent. At the probation violation hearing, the probation officer candidly admitted that in May 2016 Mr. Ferrer told him that he was moving out of his girlfriend's apartment in Miami-Dade back into his father's house in Miami-Dade. The probation file notes contained a May 5, 2016 notation that, "Subject will move back to his father's house." (T 57-60). The probation officer also admitted that he never visited Mr. Ferrer at his father's address before September to find him either. (T:86-87). There was no violation. Thus, the probation set to end on September 1, 2016, ended without a tolling.

The law is clear. A trial court cannot find a violation of a bail condition of probation that was not alleged in the affidavit. *Perkins v. State*, 842 So. 2d 275 (Fla. 2d DCA 2003) is just one example of this legal principle and compels reversal. There, the probation officer alleged in his April 18, 2001 affidavit that Perkins violated condition three of his probation for "[f]ailure to notify officer of change of address his current whereabouts are currently

unknown.” *Perkins v. State*, 842 So. 2d at 277. The Second District held that trial court's revocation of Perkins' probation was based upon conduct not charged in the officer's affidavit. “The affidavit did not allege that appellant violated his probation by absconding during the months of May through November. Therefore, the trial court could not revoke appellant's probation on this basis.” *Perkins v. State*, 842 So. 2d at 278. Plain and simple, “[a] trial court is not permitted to revoke probation on conduct not charged in the affidavit. *Perkins v. State*, 842 So. 2d at 277.

The State's reliance on the probation officer's hearsay testimony about a note from the Absconders Unit in Tallahassee that it received a tip about Mr. Ferrer being in North Carolina at the end of June 2016 is misguided. The probation officer read this after he filed his affidavit, and he also said that “was as far as the tip went.” (T 51-52). Moreover, there was no amended affidavit filed to allege an additional violation of leaving county of residence without permission before the September 1, 2016 probation termination date either.

Likewise, the law does not permit a tolling based on the alleged failure to make a report in June 2016 alleged in the June

2016 affidavit. The order of probation provided, in pertinent part, I 1. "You must do each of the following: 1. Not later than the 5th day of each month, unless otherwise directed you will make a full and truthful report to your officer on the form provided for that purpose." (R 66). The law is clear that failing to file a report is not the same as absconding and such an alleged violation did not toll the probationary term either. *Francois v. State*, 695 So. 2d 695 (Fla. 1997); *Young v. State*, 739 So. 2d 1179 (Fla. 4th DCA 1999). The probation set to end on September 1, 2016 ended without a tolling.

The State's argument that a probation violation warrant tolled the September 1, 2016 probation termination date is wrong. The statute in effect in 2016 and applicable to our case was the same statute in existence and applied *Mobley v. State*, 197 So. 3d 572 (Fla. 4th DCA 2016). It provided, "Upon the filing of an affidavit alleging a violation of probation or community control and following issuance of a warrant under s. 901.02, a warrantless arrest under this section, or a notice to appear under this section, the probationary period is tolled until the court enters a ruling on the violation." § 948.06(1)(f), Fla. Stat. (2015).

As the Fourth District correctly observed, “The statute is very specific on the warrant required: “a warrant under s.901.02.” Section 901.02 requires that a judge be “satisfied that probable cause exists for the issuance of an arrest warrant for any crime committed” § 901.02.

The only warrant issued before the September 1, 2016 expiration date was one that the probation officer said he obtained for the June 2016 affidavit of violation of probation that had not alleged a crime had been committed. Thus, the statutory tolling provision in effect at the time did not apply and the State’s reliance on it is wrong.

The trial court correctly observed that Mr. Ferrer was correct that under *Mobley v. State*, 197 So. 3d 572 (Fla. 4th DCA 2016), the court lacked jurisdiction to violate his probation unless his probationary term set to have expired on September 1, 2016 was tolled. There was nothing alleged in the June 2016 affidavit of violation of probation and proved that tolled it. The trial court lacked jurisdiction to revoke the already terminated probation based on later filed affidavits. This Court should reverse with directions to vacate the probation revocation and sentence.

On the remaining issues, Appellant relies on the arguments set forth in the initial brief.

CONCLUSION

This Court reverse and remand for dismissal of the probation violation proceedings for lack of jurisdiction.

Alternatively, this Court should reverse and remand with directions to vacate the revocation and/or sentences and remand for further proceedings consistent therewith.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was emailed to CrimAppMIA@MyFloridaLegal.com and to the Office of the Attorney General, Criminal Division, One S.E. Third Avenue, Suite

900, Miami, Florida, 33131 this 10th day of August 2025.

Undersigned counsel hereby designates, pursuant to Rule 2.516, the following e-mail addresses for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding:

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Susan S. Lerner

SUSAN S. LERNER

Assistant Public Defender

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies the word count complies with the Florida Rules of Appellate Procedure and that the font used in this brief is Bookman Old Style 14 point.

Susan S. Lerner

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IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO.: F03020444

JUDGE MIGUEL DE LA O

PD TRACKING: 4840501

STATE OF FLORIDA,)
)
Plaintiff,)
)
vs)
)
ALEJANDRO FERRER,)
)
Defendant.)
)
_____)

RICHARD E. GERSTEIN JUSTICE BUILDING
1350 Northwest 12th Street
Miami, Florida 33125
March 6, 2024

SENTENCING

The above-entitled case came on for
hearing before the Honorable MIGUEL DE LA O,
Circuit Court Judge, pursuant to notice

1 APPEARANCES:

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Certified Court Interpreter:
 Bladimir Barrera

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1 THE COURT: We're on the record on the
2 matter of the State of Florida v. Alejandro
3 Ferrer. Please make your appearances.

4 MS. PITCHIK: Vivian Pitchik, on
5 behalf of Mr. Ferrer, who is also present
6 and Ms. Zamora who will be joining me.

7 THE COURT: Good afternoon, Mr.
8 Ferrer.

9 MS. DIAMOND: And Christina Diamond on
10 behalf of the State.

11 THE COURT: After you all left, I
12 reached out to Doctor Klein through AOC. I
13 didn't speak to her, but she said if we do
14 it right at 2:00, we can have 15 minutes.

15 MS. PITCHIK: Yes, Judge, I also did
16 speak to Doctor Klein and just to lay my
17 record, I am still asking for a bifurcation
18 of the hearing. I will still be ready to
19 proceed on everything else but for Doctor
20 Klein's testimony. The reason why I'm
21 asking for a reset just for the purposes of
22 Doctor Klein to testify is I think one, as
23 I explained earlier today, Doctor Klein was
24 only able to see Mr. Ferrer this Monday
25 night. We are now on Wednesday. So she's

1 had sort of a dayish and a half maybe to
2 process her interview with Mr. Ferrer and
3 to gather her thoughts. She had not yet
4 had the opportunity to write a written
5 report, and I have only had two brief
6 conversations with her one yesterday and
7 one today.

8 In addition, she was very clear with
9 me over the phone that she really only had
10 15 minutes of her time to give us a
11 briefing today from 2:00 to 2:15, and I
12 don't want to be limited incase there is
13 more information that I want to illicit
14 from her then she has the time to reveal in
15 just 15 minutes, especially because we
16 don't have a recent report, which I can
17 submit and then rely on if she's not able
18 to say everything that she needs to say.
19 So for all of those reasons, I am still
20 requesting that we do a reset on the second
21 part of this hearing just for the purposes
22 of her testimony.

23 THE COURT: Okay.

24 I'm going to deny that request without
25 prejudice. Let me hear from her and then

1 if I think I need more information or if
2 there's something that would be helpful to
3 the Defense, then I may rule differently.

4 MS. PITCHIK: Understood.

5 MS. DIAMOND: Is the Defense also
6 relying upon the evaluation that a prior
7 public defender obtained from Doctor Marla
8 Rodriguez for the purposes of mitigation?

9 MS. PITCHIK: So Doctor Rodriguez has
10 passed away which is partly why I hired
11 Doctor Klein because I do think it's much
12 more impactful to have a doctor testify
13 live. There were a couple things in that
14 evaluation that I would have wished to have
15 spoken to Doctor Rodriguez about. So I
16 would be mostly relying on Doctor Klein's
17 testimony.

18 THE COURT: Okay.

19 MS. DIAMOND: Because I have no
20 objection to them filing that report.

21 THE COURT: I haven't seen it. If you
22 want me to see it, I'll evaluate it?

23 MS. DIAMOND: Is it in the court
24 records?

25 MS. PITCHIK: I don't think it was

1 ever filed. I think --

2 THE COURT: I haven't seen it yet. So
3 would you like me to review it?

4 MS. PITCHIK: Not at this time, let's
5 see what happens with Doctor Klein and
6 then --

7 THE COURT: Fair enough. Alright.
8 State, ready to proceed with
9 sentencing?

10 MS. DIAMOND: Yes, your Honor.

11 THE COURT: And is the Defense ready
12 other than the one objection you have?

13 MS. PITCHIK: Yes, Judge, if I could
14 just make sure, are you on the Division 60
15 Zoom?

16 THE COURT: Yes.

17 MS. PITCHIK: I would just like to
18 provide that link to one additional person
19 who would like to be here for Mr. Ferrer.

20 THE COURT: Sure.
21 You need the number?

22 MS. PITCHIK: I think I have it.

23 THE COURT: Okay.

24 So I finished my order finding him in
25 violation, but I haven't typed in a

1 sentence yet since that's what we're gonna
2 do today. So when we're done with the
3 presentation, I'll take a short recess.
4 I'll finish that part of the order, and
5 then I'll bring copies for everybody.

6 MS. PITCHIK: Thank you.

7 MS. DIAMOND: Thank you, your Honor.

8 THE COURT: Assuming we finish today,
9 after I hear from Doctor Klein, we'll see.
10 Alright. Are we ready?

11 MS. PITCHIK: We're ready, Judge.

12 THE COURT: Okay.

13 State, you may proceed.

14 MS. DIAMOND: Yes, your Honor.

15 So the defendant scores 157.95 months
16 in state person which is 13.16 years to
17 life. There's a 25 year firearm minimum
18 mandatory and a 15 year minimum mandatory
19 as a habitual violent offender.

20 On March 13 of 2006, the defendant
21 pled guilty to one count of attempted
22 second-degree murder with a firearm,
23 possession with a firearm by a convicted
24 felon, two counts of aggravated assault
25 with a firearm, grand theft in the

1 third-degree, and aggravated battery with a
2 deadly weapon. That weapon would be a
3 firearm. He, I believe, got a furlough so
4 he was sentenced to life with a mitigation
5 date on April 27 of 2006 where he
6 surrendered. He was sentenced. He
7 accepted a plea of ten years in state
8 prison with a ten year firearm minimum
9 mandatory followed by two years of
10 reporting probation.

11 That stems from the underlying case on
12 July 18 of 2018. So around 1:00 a.m., the
13 defendant was seen burglarizing the
14 residence of Jose Perez. Around 9:00 p.m.,
15 that same day, this happened in a trailer
16 park, where I believe Mr. Ferrer also lived
17 at the time, so the parties were known to
18 one another. So around 9:00 p.m. that same
19 day, the defendant came up upon a fight
20 between the individuals, who saw him and
21 the other people he was with, burglarizing
22 the residence, and the owner, Jose Perez,
23 of that residence. So the defendant pulled
24 a gun of Jose Perez, Jose Rodriguez,
25 Francisco Miranda, and Rolando Culaoe and

1 threatened to kill them all. Then he used
2 the gun he was holding to batter Francisco
3 Miranda on the right side of his face
4 causing lacerations to the right side of
5 his chin. That is where the aggravated
6 battery account arises from. The defendant
7 then pointed the gun at Jose Rodriguez'
8 head and again, he said he was going to
9 kill everyone who was present there. Jose
10 Rodriguez was able to run away a short
11 distance to the entry of his own trailer
12 and as he shut the door, the defendant
13 fired into the trailer, striking him in the
14 left leg, and going through his left leg.
15 So that is the basis of the attempted
16 murder.

17 Inside the trailer, Dolce Diaz was
18 inside there. I believe that's the mother
19 of Jose Rodriguez calling 911, and I do
20 have -- unfortunately, I would play, your
21 Honor, that tape but it's a cassette tape.
22 I do have a copy of the certified court
23 translation from that.

24 THE COURT: Sure.

25 MS. DIAMOND: I'll pass this up.

1 Essentially, it's just detailing that her
2 son was shot through the door of the
3 trailer. So as a result of that, so those
4 are all the charges that the defendant did
5 plead guilty for and was placed on
6 probation in this case.

7 During his incarceration, I believe we
8 are trying to get the prior exhibits right
9 now. The State previously filed the
10 defendant's disciplinary reports and the
11 time of crime reports from his prison
12 sentence with the court. I don't know if,
13 you Honor, I don't think you've had a
14 chance to review that?

15 THE COURT: I have not.

16 MS. DIAMOND: So I'm going to just
17 pass up the certification of records
18 showing those disciplinary reports, which I
19 believe has already been filed, but I have
20 another certified copy as well. During his
21 incarceration, he was disciplined for
22 possession of a weapon on three occasions
23 and possession of a cellphone on seven
24 occasions. He was charged criminally with
25 two of those possessions, one of which he

1 was held after his initial release date in
2 this case which, your Honor's, aware of
3 since there was a discussion of when his
4 probation started, whether it was in
5 September or in February when he was
6 ultimately released from that possession of
7 cellphone case. In addition, he also
8 obtained disciplinary violations for
9 fighting, narcotics, lying, and mail
10 violations as well as just refusing to
11 listen, L & L's in custody.

12 I think most important and what's
13 relevant to the case here are both the
14 possession of a weapon and the cellphone.
15 And the cellphone is relevant here since
16 part of the testimony that was elicited
17 here through Amanda Perez was that the
18 defendant was part through the gang he was
19 apart of, his friends, in sending these
20 cellphones to prison and they were found in
21 a hollowed out book along with the murder
22 weapon. So the defendant was actively
23 engaged in this during his time in prison
24 so this corroborates what Amanda Perez
25 testified to here as well.

1 I'm not going to go through everything
2 again. Your Honor, has already found him
3 in violation and made your findings and is
4 well aware of the facts leading up to
5 Hacı's murder. So I do have --

6 THE COURT: Does he have any priors
7 other than the ones he's on probation for?

8 MS. DIAMOND: Yes, I can pass up his
9 local priors. Just for the record, I have
10 highlighted the ones he was actually
11 convicted of as an adult -- no, actually,
12 convicted of not just the arrests.

13 THE COURT: Okay.

14 MS. DIAMOND: And then I blocked out
15 this date. So he has a number of juvenile
16 arrests and then his adult ones as well but
17 the juvenile ones don't -- I think it's
18 important to note that he was often in
19 possession of a firearm both based on his
20 priors and the testimony in this case.

21 THE COURT: Got it.

22 MS. DIAMOND: So despite being a
23 convicted felon at the time of this case
24 that he pled guilty to in 2003, despite
25 being a convicted felon, having already

1 been to prison for a strong armed robbery,
2 he was carrying a firearm that he used and
3 threatened to shoot multiple people and
4 actually did shoot Jose Rodriguez.

5 Then we have 13 years after that
6 incident, after he served ten years in
7 prison, is when he was seen posting on his
8 own Facebook account, having his friends
9 take pictures of him, holding what
10 ultimately became the murder weapon in this
11 case. So I think it is particularly
12 important to show the defendant does not
13 follow the rules. He has no -- he
14 disregards the law at all times. He knew
15 he was not allowed to be in possession of a
16 firearm. That can't even be something he
17 could say he was mistaken about having
18 already been sentenced for that exact count
19 and despite that, he was known to have
20 firearms, known to hide them on property,
21 and --

22 THE COURT: I just want to make
23 something clear for the record. You're
24 making the argument about the firearms.
25 Solely for the purposes of sentencing, I

1 cannot violate him based on the firearms.

2 MS. DIAMOND: Yes, no, no --

3 THE COURT: There's a whole section in
4 my order about that.

5 MS. DIAMOND: You have already found
6 his violations.

7 THE COURT: Right.

8 MS. DIAMOND: This is purely to show
9 he's a danger and that going forward, there
10 is nothing to show that he would not get --
11 if he was to get out of prison, obtain a
12 firearm and use it again because he's
13 already done this on at least two
14 occasions.

15 THE COURT: I just wanted the record
16 to be clear there's a section in my order
17 about that.

18 MS. DIAMOND: So, at this time, would
19 you like to proceed with Defense or the
20 victim's family members?

21 THE COURT: Put on whatever you --
22 finish your presentation.

23 MS. DIAMOND: So coming forward, we
24 have the victim's daughter, mother, and
25 sister.

1 THE COURT: So all I need you to is
2 state your name and after you say your
3 name, you can say anything you'd like and
4 take your time. If you'd like some water,
5 we can get you some water. Take your time.

6 MS. GONZALEZ: My name is Erica
7 Gonzalez. I'm the victim's daughter. For
8 years, I've been thinking about what I
9 would say to you when I got the opportunity
10 to speak to you face to face. I know the
11 emotions that I feel run through my mind.
12 I think the biggest question I have is why.
13 I sat and pictured every different scenario
14 and try to understand why as a result was
15 my father losing his life.

16 Do you know how traumatizing it is for
17 a 17 year old to constantly think about
18 what my father's last moments were from a
19 possible disagreement between friends to
20 changing my family's life forever. Why do
21 you believe it was better to cause us so
22 much pain rather than to speak your truth.
23 I have had so much hate and anger in my
24 heart because of you. I struggle with so
25 many things that haven't gone away. The

1 feeling that has taken over is envy. I'm
2 envious of your children who can still hear
3 your voice. I'm envious that you get to
4 wake up and see another day and my father
5 can't. I hope you feel his presence so
6 much today and everyday after today,
7 everyday to fill you with remorse. I hope
8 you will have sleepless, restless nights
9 where you're up with thoughts about what
10 we've felt for the last several years.

11 We have been effected by this tragedy.
12 My father was somebody's child, a brother,
13 a cousin, and lastly, a friend, and he was
14 loved by so many. All I have are memories
15 of him. I will never be able to call my
16 father, as an adult, for anything. He
17 won't be able to walk me down the aisle, or
18 see me graduate school, or to see me
19 graduate college. He won't get to meet my
20 children or be here for every birthday.

21 My father's opportunity to be present
22 in this lifetime has been tragically taken
23 from him. You decided that it was okay to
24 take someone from us. All I ask in return
25 is you find it in yourself to say the whole

1 truth and give my father and his family
2 justice. I believe we deserve that much.
3 We deserve to feel some sort of peace and
4 closure although nothing will ever be able
5 to replace him, our love for him, we will
6 feel in his absence. This isn't over until
7 you get what you deserve. My family and I
8 will not stop until justice is severed.
9 That's it. Thank you.

10 MS. DIAMOND: Thank you.

11 THE COURT: Thank you.

12 MS. DIAMOND: I don't think anyone
13 else wishes to speak at this time. I would
14 just add at the risk of repeating
15 everything that has been elicited at this
16 hearing, this is someone who not only fled
17 from Miami, then committed a homicide, then
18 fled back to Miami, and fled to Nicaragua
19 where he remained as an absconder from
20 probation, absconding from a homicide,
21 remaining hidden from the world. This is
22 someone who doesn't hesitate to take
23 matters into his own hands. By the
24 testimony elicited during the hearing, has
25 quite a temper and doesn't hesitate to find

1 a firearm and use a firearm. So I think he
2 is a huge huge danger to the community. He
3 was already enhanced as a habitual violent
4 offender on this case originally. He has
5 already served time in prison.

6 THE COURT: Twice.

7 MS. DIAMOND: Yeah, twice --

8 THE COURT: Well, three times I guess.

9 MS. DIAMOND: And his prison sentences
10 were close in time. This isn't something
11 that deterred him from committing violent
12 acts after having served a prison sentence.
13 For these reasons, the State is asking that
14 he is sentenced to life for his violations.

15 THE COURT: Okay.

16 Ms. Pitchik, I want to keep a close
17 eye on the time.

18 MS. PITCHIK: Yes, I was looking at
19 the time as well. I do have two witnesses
20 that I intend to call in addition to Doctor
21 Klein.

22 THE COURT: Okay.

23 MS. PITCHIK: Would you permit me just
24 to text Doctor Klein to see if she happens
25 to be ready now?

1 THE COURT: Yes, tell her whenever she
2 comes on, I'll take her. I'll pause
3 whatever we're doing.

4 (Whereupon, a discussion was had off
5 the record, after which the following
6 proceedings were held:)

7 MS. PITCHIK: And Ms. Zamora just
8 reminded me that in addition, we're going
9 to need a Spanish interpreter for one of
10 the other two witnesses I have.

11 THE COURT: Okay.

12 Ray, if we can get the interpreter and
13 I just turned on the waiting room so when
14 Doctor Klein comes on, I will be notified.

15 MS. PITCHIK: Okay.

16 I have texted Doctor Klein to let her
17 know to go on Zoom and whenever we see her,
18 we will start with her testimony.

19 THE COURT: Okay.

20 MS. PITCHIK: And in the meantime, I
21 would like to call Erica Perez.

22 THE COURT: Sure.

23 Come on up, Ms. Perez.

24 MS. PITCHIK: Would you prefer her to
25 take the witness stand or just stand beside

1 me? Just stand right there.

2 THE COURT: Let's swear her in.

3 THE CLERK: Raise your right hand.

4 Do you solemnly swear or affirm the
5 testimony you're about to give will be the
6 truth, the whole truth, and nothing but the
7 truth?

8 THE WITNESS: Yes, ma'am.

9 DIRECT EXAMINATION

10 BY MS. PITCHIK:

11 Q. Good afternoon.

12 Could you please start by introducing
13 yourself again to the Judge on record?

14 A. Yes, my name is Erica Perez. I am
15 Alejandro Perez' daughter.

16 Q. When you say, "Daughter," are you his
17 biological daughter?

18 A. I might as well be. I'm his
19 stepdaughter but that's the only dad I've ever
20 had.

21 Q. Could you let the Judge know when you
22 first learned of Mr. Ferrer? When he came into
23 your life? When was that?

24 A. Yes, so we first got introduced
25 through my mom a few years that was like 2011 to

1 2013 and we would talk on the phone a lot when I
2 was a preadolescent. That's when he first got
3 into my life.

4 Q. When your mom first began a
5 relationship with Mr. Ferrer, was Mr. Ferrer in
6 custody at that time?

7 A. He was.

8 Q. Okay.

9 And then what happened once Mr. Ferrer
10 got out of custody?

11 A. Once he got out of custody, I believe
12 I was -- I'm not understanding your question?

13 Q. Was Mr. Ferrer living with you at some
14 point after he was released from custody?

15 A. I would say yeah we saw him a lot.

16 Q. And I know that you testified at the
17 Probation Violation Hearing and the Judge has
18 heard a lot about the allegations in that
19 hearing. So I want to focus on what you know of
20 Mr. Ferrer as a person outside of those
21 allegations. Is there one specific memory that
22 you can share with the Judge about how important
23 Mr. Ferrer has been to you in your life?

24 A. Yes, I can share a lot of memories
25 that we had but for the purpose of it to show

1 you his character and what he was, when we had
2 first met, my family was in complete poverty. I
3 was 14, 15 years old sleeping on the floor with
4 a broken air mattress with like blankets. That
5 I would wake up at 15 bruised all over the side
6 of my body and we were really struggling and
7 then he -- even though I wasn't his child, at
8 the time, the bond was strong but it wasn't like
9 strong strong. I was very young. He was fairly
10 new to our family, and he saw how distraught
11 that made me of just me being like 14, 15
12 without a bed, all my friends had all this
13 stuff. And so he goes out of his way to -- he
14 bought me a Panama Jack bed set with like a
15 dresser and a vanity. It might not seem like
16 much but for someone who never had that, it was
17 extremely impactful to my childhood.

18 The embrace after that to be --
19 embrace after that to be just like things that
20 you don't forget. You don't forget the first
21 time you have a bed and a vanity and it's your
22 first time you've ever had a dad do that for
23 you. And we have so many memories of just us
24 being by the lake. I even pray that maybe we
25 can sit by the lake again. I haven't even

1 hugged him since I was 17 years old. I'm 24
2 now. We've been through a lot like a lot.

3 Q. I know one of the things that you
4 testified to at the Probation Violation Hearing
5 had to do with the bearded dragon that you had
6 as a pet. Can you tell the Judge a little bit
7 more about the circumstance with how you came to
8 get that bearded dragon?

9 A. Yes and I know that if things come
10 full circle, that dragon was bought at the time
11 where I was also -- it actually came before the
12 bed set and I was extremely just depressed.
13 Being in poverty so young and all your friends
14 they have all these regular things. And he saw
15 I just crying my eyes were so swollen and he
16 goes and he says, "What's wrong little?" And I
17 said, "I don't think that things are gonna get
18 better for us, just financially," and he says,
19 "I think you need a pet," and he takes me to the
20 pet shop, and we go over looking. When I picked
21 out a bearded dragon, he was so disappointed
22 that out of all the pets, that's what I chose
23 but I loved him very much and it was the first
24 one the pet shop holder put inside my hands and
25 it was just so perfect and so that actually,

1 I -- it just showed that when I was truly down,
2 the compassion that he had for me as his
3 daughter. At the time, remember, they just
4 started dating but just introducing the
5 compassion that not only started so massively
6 but nobody had to do that for us. We were
7 sleeping on the floor. We had nothing. It was
8 just us and our notebooks drawing plans for
9 better days of life and he changed my life for
10 the better. I really do hope that -- I think it
11 would be a mass disservice to sentence somebody
12 who also was given really bad cards growing up,
13 a life sentence for things that are just so not
14 only unclear, but it's just not fair. I really
15 do pray pretty much everyday. I pray everyday
16 and I pray many many nights for the day that we
17 can sit again at the lake and actually live the
18 life of a peaceful family. There is no
19 possibility that when he gets out that he would
20 go back to crime. I am a very decently
21 established woman and I am his backbone and his
22 support and I am thorough when I say that it
23 would be a very -- a disservice to the community
24 to just put someone's past of 20 years ago given
25 such bad cards. I don't know how much everyone

1 knows about being in poverty in the hood and the
2 things --

3 THE COURT: I'm going to ask you to
4 pause right there only because we have
5 Doctor Klein, and we need to get her
6 testimony, and then I want you to finish
7 and then I have some questions. Alright.
8 Doctor Klein, I've made you a cohost and
9 you can turn on your camera.

10 THE WITNESS: Hi.

11 THE COURT: Thank you so much. I
12 appreciate you taking the time but we're
13 gonna get right to it. If you'll raise
14 your right hand. Do you swear the
15 testimony you're going to give is true and
16 correct?

17 THE WITNESS: I do.

18 THE COURT: Thank you. You may
19 inquire, Ms. Pitchik.

20 DIRECT EXAMINATION

21 BY MS. PITCHIK:

22 Q. Thank you so much.

23 Good afternoon, Doctor Klein. Can you
24 just introduce yourself for the record?

25 A. Yes, of course, first name is Sandra,

1 middle initial is M, as in Mary, last name
2 Klein, K, as in kite, L, as in Larry, E, I, and
3 N, as in Nancy.

4 MS. PITCHIK: Will the State stipulate
5 that Doctor Klein is an expert in her
6 field?

7 MS. DIAMOND: Yes.

8 BY MS. PITCHIK:

9 Q. Thank you very much.

10 Doctor Klein, when did you first meet
11 with Mr. Ferrer?

12 A. I met with Mr. Ferrer this past Monday
13 evening on March 4.

14 Q. Do you recall approximately how long
15 you met with him, for?

16 A. We met for about an hour.

17 Q. Did you review any documents prior to
18 meeting with him?

19 A. Yes, I have been privy to Mr. Ferrer's
20 Arrest Affidavit from 2003. I have been made
21 privy to the probation of violation that was
22 filed. I had also been made privy to an
23 evaluation that was from 2022 by Doctor Marla
24 Rodriguez. That, I can recall.

25 Q. Thank you.

1 When you first met with Mr. Ferrer,
2 did you learn any information about his
3 background about the early years of his life?

4 A. Well, yes, in performing the
5 evaluation, I did query as to Mr. Ferrer's
6 background. He indicated that he was exposed to
7 numerous evidence of physical abuse, of sexual
8 victimization, of domestic violence, of physical
9 neglect. He had been primarily raised by his
10 maternal grandmother as his mother used illicit
11 substances. His grandmother passed away when he
12 was 17 years old of age. His father had been
13 incarcerated. He was in and out of prison. And
14 he eventually does meet up with his mother.
15 Again, she's misusing substances, introducing
16 him to substances, sexually victimizes him.
17 There is an encounter, an adolescent encounter
18 that describes with what I call adverse
19 childhood experiences. It is something that
20 occurs primary to the age of 17 and any
21 individuals that are assessed and Mr. Ferrer
22 presents with every single adverse childhood
23 experience on the questionnaire. He scores 100
24 out of 100 -- the questionnaire doesn't have 100
25 questions but he scores 100 percent as having

1 been exposed to every adverse childhood
2 experience.

3 I was made privy to a previous
4 psychological examination. The information that
5 I presented with Mr. Ferrer on Monday was very
6 consistent with the information that had been
7 reported two years prior. It was extreme. It
8 was almost like as if Mr. Ferrer never had an
9 opportunity to rise above these difficulties.
10 And what happens is that when you experience
11 these adverse childhood experiences, your body
12 is in complete arousal because you never know
13 when there is going to be abuse. It's almost
14 like a bear in the woods where you constantly
15 don't know what to do or if you were in the
16 woods and you were being attacked, you just
17 don't know what to do. And over time, through
18 childhood and adolescence, that stress creates
19 difficulty in your child and brain development.
20 And the act that effects most of the brain tends
21 to do with your cerebral cortex when you're
22 making decisions. You tend to be impulsive.
23 You don't think about consequences. And it is
24 my clinical impression that all of these
25 experiences contributed to Mr. Ferrer's

1 difficulties, prior incarcerations,
2 imprisonment, behaviors that have effected him
3 because he's never received treatment before.

4 Q. So it sounds like essentially the
5 early adverse childhood experiences that he had,
6 effected his development as an individual in
7 terms of his brain chemistry. Is that accurate?

8 A. That is correct and that could be
9 childhood and adolescence.

10 Q. You mentioned a little bit about the
11 sexual abuse that he suffered at the hand of his
12 mother, and then I heard you also mentioned that
13 he suffered abuse at the hands of his farther.
14 Could you just elaborate a little bit more on
15 the abuse that you learned of having to do with
16 his dad?

17 A. Well, certainly, the abuse -- I'll go
18 back the mother. The sexual victimization, Mr.
19 Ferrer, indicated that his mother would become
20 under the influence of various substances and
21 she would force him to perform sexual favors on
22 her. That happened multiple times.

23 Additionally, Mr. Ferrer indicated
24 that when he was growing up under the care of
25 his grandmother, his grandmother had multiple

1 paramours and that she would engage in sexual
2 acts in the presence of him. It made him very
3 uncomfortable but that is also considered a
4 sexual victimization as well. He was a child,
5 also.

6 The physical abuse at the hands of his
7 father, in a sense, Mr. Ferrer, describes it as
8 almost torture. His father also suffered from
9 substances. His father had been imprisoned many
10 times. He was struck with anything that the
11 father could get his hands on. And then Mr.
12 Ferrer describes one incident where his
13 then stepmother or the individual that his
14 father was with, tried to protect him from the
15 father's abuse and he split her head open for
16 protecting him. He feels remorse over that. He
17 also indicated that when he would go to school,
18 he would have cuts and bruises. They didn't
19 investigate them and he would be afraid. He
20 never reported the abuse because he was in fear
21 of his father. So the sexual abuse, the
22 physical abuse, the exposure to the domestic
23 disturbance were all factors that Mr. Ferrer
24 lead and was exposed to growing up.

25 Q. And I think I heard you say that his

1 maternal grandmother, who was the main
2 individual who raised him, passed away when he
3 was 17. Did I hear you correctly?

4 A. Yes, that is correct.

5 Q. Was there any other parental figure
6 that was a positive influence on Mr. Ferrer that
7 you're aware of that sort of was there after his
8 maternal grandmother passed away?

9 A. There was no other positive influence.
10 As I mentioned, Mr. Ferrer had a stepmother that
11 would try to protect him. However, she wasn't
12 there as much or as often and he felt a lot of
13 remorse when the father would take out -- when
14 she would try to protect him, the father would
15 then take it out on her because of all of these
16 difficulties and exposures, it is my impression
17 that Mr. Ferrer does suffer from a
18 post-traumatic stress disorder as a result.

19 In addition to that, I would diagnose
20 him with something called unrelated bipolar
21 disorder which really is -- it's just a mood
22 disorder. When the DCA came out with a mood
23 disorder as a substitute to unrelated bipolar
24 disorder, a very similar descendant of a bipolar
25 disorder. In addition to that, is my impression

1 that this disorder presents with psychotic
2 features. Mr. Ferrer indicated that he often
3 suffers from auditory hallucinations and visions
4 of his mother when his mother would victimize
5 him. So I believe that it also intertwines with
6 the post-traumatic stress disorder. He is
7 currently treated in the prison system for
8 schizophrenia and for depression.

9 Q. Are there any other diagnoses that you
10 would be able to testify to other than the
11 unrelated bipolar disorder and the PTSD that you
12 just mentioned?

13 A. And there is also substance misuse
14 disorder. Mr. Ferrer would primarily use
15 alcohol and crack cocaine. It's actually a
16 multitude. So I would diagnose him with what we
17 call a polysubstance disorder which means it's
18 more than three. If there's more than three
19 disorders, he meets criteria for such as well.

20 Also, with his childhood, you know,
21 the destruction of his childhood, the PTSD
22 diagnosis, the fact that he was incarcerated,
23 would be a diagnosis as well but the primary one
24 would be the unrelated bipolar disorder with
25 psychotic features, the post-traumatic stress

1 disorder, and the substance abuse disorder.

2 Q. Did Mr. Ferrer share with you, at any
3 point, who first introduced him to illicit
4 substances?

5 A. I know that he began using at a very
6 young age, however, I know that he did use
7 illicit substances with his mother.

8 Q. Okay.

9 Was there any testing that you
10 conducted with Mr. Ferrer when you visited him?

11 A. Yes, I did. I performed a depression
12 inventory which is what allowed me to know that
13 he is suffering from depression, substance abuse
14 inventory which allows me to assign the
15 diagnosis of a polysubstance disorder along with
16 a trauma inventory which allowed me to diagnosis
17 him with a post-traumatic stress disorder.

18 Q. Can you speak a little bit on the
19 effect of age with recidivism?

20 A. Yes, over time, as an individual
21 becomes more mature, the recidivism rate does
22 decline. Individuals who have been older, I
23 mean I know, at the time, Mr. Ferrer now is in
24 his 40s, however, I'm not certain about what the
25 timeframe may be perhaps when he may be

1 released. Like over time as your age increases,
2 so does your recidivism rate.

3 Q. Give me one moment.

4 THE COURT: And Doctor Klein, I took
5 it to mean as you got older the recidivism
6 rate drops?

7 THE WITNESS: Yes, I apologize.

8 THE COURT: I know what you meant but
9 the record would not.

10 THE WITNESS: Thank you.

11 BY MS. PITCHIK:

12 Q. Is there anything else, Doctor Klein,
13 that you can think of that I missed in my
14 questioning of you?

15 A. I understand that there are
16 consequences for everything. I do believe, you
17 know, true traumas always marking an individual
18 but my thoughts for Mr. Ferrer is that he would
19 be able to receive certain things that he never
20 had. My concern is that he -- his mental
21 conditions would be exasperated by prison, they
22 will be exasperated by prison. And so in a
23 prison setting, it's not made to try to resolve
24 the physical abuse or the sexual abuse all of
25 these difficulties because if anything, you're

1 more vulnerable in a prison setting and you
2 don't trust and you put your guard up.

3 So again, I know that there are
4 consequences for behaviors and I understand
5 that. Just I hope that the consideration of,
6 you know, what Mr. Ferrer has been through with
7 his dysfunctional lifestyle should be considered
8 when upon imposing possibilities in the
9 sanctions.

10 Q. Thank you very much. I just have one
11 last question for you Dr. Klein.

12 A. Yes?

13 Q. Through your interactions with Mr.
14 Ferrer, your review of the records, was there
15 anything that stood out to you that suggest that
16 Mr. Ferrer would be someone who would not be
17 able to be reintegrated successfully into
18 society at a later date?

19 A. No, there is nothing. Again, one of
20 Mr. Ferrer's difficulties is that he hasn't
21 received intervention as a treatment that he
22 really so badly needs and requires. And
23 unfortunately, just in our prison system, the
24 type of treatment that he would require isn't
25 operable in the prison system. And so he

1 requested services. He would like to receive
2 the services. He experiences these auditory
3 hallucinations, however, there is nothing to
4 indicate that he would not be available or
5 appropriate to reinterrogated back into the
6 community.

7 MS. PITCHIK: Those are all my
8 questions for you. The State might have
9 some questions and the Judge might have
10 some questions.

11 THE COURT: Do you have any questions,
12 Ms. Diamond?

13 MS. DIAMOND: Does your Honor have a
14 question first because I know her time is
15 limited?

16 THE COURT: I have one but I can ask
17 it at the end.

18 CROSS-EXAMINATION

19 BY MS. DIAMOND:

20 Q. Doctor Klein, were you aware that Mr.
21 Ferrer has been to prison two times in the past?

22 A. Yes, I believe the first time occurred
23 in -- yes, I am aware of it. The first time was
24 in 1998. He was released three years later and
25 then in 2003, he was sentenced to ten years

1 Florida State Prison and then two years
2 probation. And now, he's been in since 2019.

3 Q. So you mentioned that recidivism
4 declines with age. So in this case, there is a
5 25 year minimum sentence, however, he has served
6 approximately 15 years of that which would make
7 him about 55 years old if he got out with the
8 minimum sentence the court could give him --

9 A. Okay.

10 Q. -- what sort of age are you talking
11 about that it declines with age but is there a
12 specific age you're talking about or is it more
13 like physical abilities, mental abilities?

14 A. It could be a combination of both, you
15 know, Mr. Ferrer would be maybe in 50 then. At
16 the time, he would be released, a 50 year old,
17 you know, definitely will have a different
18 mindset then you do when you're 20 or when
19 you're 30 but it has to do with developmental
20 maturity, Counselor or then it would have to do
21 with sometimes there's physical, you know,
22 attribute's begin to decline when you're into
23 your 50s as well, also, your emotional maturity.
24 It's just how they interact over time with
25 different elements of maturity.

1 Q. So in terms of Mr. Ferrer's maturity,
2 what is your opinion based on meeting with him
3 in terms of his emotional maturity?

4 A. In my opinion, Counselor, that he
5 actually has an underdeveloped brain
6 advancement. Nothing like because he's 44 years
7 of age or when his body might wait for him to
8 mature, it's because at the time when his brain
9 should have been developing like many
10 individuals, it never got to that point and that
11 was associated with the trauma. Like I
12 mentioned, when your brain is under stress and
13 arousal, it actually prevents the prefrontal
14 cortex from developing. And so he needs
15 assistance with the intervention to help him get
16 through the emotional difficulties. I don't
17 have a timeframe to say okay, in seven years,
18 Mr. Ferrer will be mature developmental or for
19 that type of thing. That is very idiosyncratic
20 and it doesn't equal being mature as it would
21 with others but I don't have specific year
22 scheduled except to know that whether or not Mr.
23 Ferrer receives 25 years or two years, in the
24 absence of intervention, he is going to need to
25 be able to deal it. Even if he gets out at 55,

1 Counselor, it doesn't mean that all of that
2 trauma that he experienced goes away. So I
3 don't have a specific number. I really would be
4 more in favor of him receiving as much
5 intervention as he could possibly when he
6 becomes became released. He could undergo
7 treatment, follow that treatment, would be my
8 thought for him.

9 Q. And what sort of treatment do you
10 think he needs?

11 A. Mr. Ferrer needs a dual diagnosis
12 program that would offer him cognitive behavior
13 therapy that is trauma focused so that he could
14 learn that how the thoughts that he receives so
15 he could modify those thoughts because he in
16 a -- mentally, Counselor, he is in a very bad
17 place right now because he suffers from
18 psychosis and he's treated for that. I mean
19 even prior to me even seeing him on Monday, you
20 know, it's not my diagnosis, but I concur, I
21 adopt but this is the diagnosis, Counselor, that
22 he has had for years and he would benefit from a
23 dual diagnosis treatment, poly developmental
24 therapy that focuses on trauma and illicit
25 substance use.

1 Q. If he does not maintain his
2 medication, would he become, in your opinion,
3 how would that effect him if he's off of his
4 medication?

5 A. I would have some concerns. Mr.
6 Ferrer needs to follow the psychotropic
7 medication regimen and he need to reframe from
8 illicit substance use including alcohol. I know
9 alcohol is not considered an illicit substance,
10 but Mr. Ferrer needs to refrain from alcohol as
11 well.

12 MS. DIAMOND: I don't have any further
13 questions. Thank you.

14 THE COURT: Okay.

15 If you were to have written a report
16 in this case, Dr. Klein, would it be
17 consistent with all of the testimony that
18 you just gave?

19 THE WITNESS: It would be and, your
20 Honor, I apologize for the timeframe,
21 however, if your Honor, would like for me,
22 at some point, to present something in
23 writing to you so that you could review it,
24 I could make --

25 THE COURT: That's not necessary.

1 Thank you for your time. That was my only
2 question.

3 MS. DIAMOND: I would just ask -- and
4 sorry Doctor Klein, you said you reviewed
5 Doctor Marla Rodriguez' report?

6 THE WITNESS: Correct.

7 MS. DIAMOND: And is there anything in
8 her report that you disagreed with?

9 THE WITNESS: No, Doctor Rodriguez'
10 report was very similar with reference to
11 indicating the same types of abuse that I
12 also received from Mr. Ferrer. It was very
13 consistent. I believe that Doctor
14 Rodriguez diagnoses Mr. Ferrer with a major
15 depression disorder. I believe it's
16 psychotic features. I don't have it right
17 in front of me at the moment, but yes, we
18 were very consistent.

19 THE COURT: Okay.

20 Anything else, Ms. Pitchik?

21 MS. PITCHIK: No, Judge.

22 THE COURT: Alright.

23 Doctor Klein, thank you for your time.
24 We went over by two minutes. I apologize.

25 THE WITNESS: Thank you. Everything

1 was great. I appreciate it. Have a good
2 day.

3 THE COURT: You too. Okay.

4 Ms. Perez, if you wanna come back up,
5 so you can finish. You can continue
6 wherever you wish.

7 DIRECT EXAMINATION CONTINUED

8 BY MS. PITCHIK:

9 Q. So I think the last thing that you
10 were talking about was the memory of when Mr.
11 Ferrer purchased the bearded dragon for you even
12 though it wasn't his choice of animal. Is that
13 right?

14 A. Yeah and --

15 Q. I did want to ask you one other
16 question. So you mentioned the lake a couple of
17 times that you just hoped that Mr. Ferrer was
18 able to get out of custody so that you could go
19 back to the lake with him. What is the lake?

20 A. Me and my dad would go hiking because
21 even a lot because even though -- it's a lot.
22 We would spend a lot of time outside and
23 there -- I'm so sorry. I just heard a whole lot
24 of things about my dad that I didn't know
25 extremely horrible things. I knew partially

1 about -- I'm so sorry. In his timing, it was
2 snowing pretty hard and it never -- I had never
3 seen snow before this and so me and some
4 mentioned you about my dog but it was also my
5 dog's first day in the snow. My first winter
6 and we go to this lake and he -- it's a
7 beautiful thing to see snow for the first time.
8 So it's actually a lot more than the story with
9 my dog. We go and he says that my dog should
10 learn how to swim. It was way to cold for that.
11 So we had some banter and that's about it. We
12 just take out dogs out to go play in the snow.
13 A very beautiful thing. Once again, I'm so
14 sorry. That, what the Doctor had said, was
15 extremely horrible. I think it was getting to
16 the point of what I'm saying when people have
17 cards stacked against them, no control over it,
18 but now it's different. Now he generally has
19 somebody who loves him and would never hurt him
20 and ensure that all the therapy in the world
21 because you don't go through things like that
22 and are the same after you know.

23 Q. Yes, was there anything specific that
24 you wanted to share with this Judge?

25 A. I love him very much and I understand,

1 especially on paper, about the circumstances and
2 it looks like he's a bad person. I see him for
3 what he is, a victim of circumstance and he's
4 very old now. He's very old now and he's gonna
5 get older.

6 THE COURT: Let me object, I mean I'm
7 older than him so go slow.

8 THE WITNESS: I know it's just this
9 time around he has somebody who -- I was so
10 deeply hurt to hear all of that and I 100
11 percent sure that the life he will have
12 once he is released will be everything he
13 ever dreamed. And that's all.

14 MS. PITCHIK: I'm done but the Judge
15 and the State might have some questions.

16 CROSS-EXAMINATION

17 BY MS. DIAMOND:

18 Q. Good afternoon, Ms. Perez. Do you
19 remember how long -- when did you first start
20 considering Alejandro Ferrer to be your father?

21 A. Really I would say probably after
22 like -- maybe like -- it was while he was still
23 incarcerated when we were going phone calls. I
24 don't know if I was young. I always wanted a
25 dad, you know, and just when he got out and just

1 had so much more in common but I would say maybe
2 during the first maybe year of talking with him
3 on the phone with my mom.

4 Q. And once he got out of prison, do you
5 know what he did for a living? What did he do
6 for work?

7 A. What did he do for a living?

8 I believe he was working with his dad
9 and I wouldn't know. I was very young.

10 Q. How young?

11 A. The thing is that I don't want to say
12 an age and it's not correct. I was very young.
13 I was barely a teenager.

14 THE COURT: It was 2015.

15 THE WITNESS: 2015, then I was --

16 MS. DIAMOND: The spring.

17 THE WITNESS: The spring, then I was
18 15 to 16.

19 BY MS. DIAMOND:

20 Q. But you don't remember what his job
21 was at the time?

22 A. I think it was something with
23 shoveling.

24 Q. And so you said the thing that stands
25 out is he bought you a bedroom set?

1 A. Yes.

2 Q. Now you previously testified that you
3 all moved to North Carolina and that you said
4 sometime in the fall of 2016. At that time,
5 were you living as a family?

6 A. Yeah.

7 Q. How often would you see Mr. Ferrer?

8 A. When we lived in North Carolina?

9 Q. Yeah?

10 A. Every single day.

11 Q. And what was your relationship with
12 him like?

13 A. It was fun and loving and I say fun
14 because we had a lot of time outdoors and
15 animals and we loved watching documentaries. It
16 was fun.

17 Q. So on a day to day basis, did you see
18 him everyday?

19 A. I was a teenager. I was minding my
20 business a lot, but I mean my relationship with
21 him it was fun.

22 Q. And you said you went hiking a lot,
23 was that in North Carolina?

24 A. Yes.

25 Q. Was that on the property you were

1 living on?

2 A. We actually have a -- if was really
3 anywhere. It was in the middle of just -- it's
4 North Caroline. There's actually hiking trails
5 where the horses would run up. So we would
6 follow those.

7 Q. Like going off your property or you
8 would go somewhere else?

9 A. For the most part, I was driving on
10 the property.

11 Q. Now you said if he was to get out, you
12 would be his backbone and his support. What do
13 you do for a living?

14 A. I'm a concierge and I just got a
15 second day job in a place that I don't want to
16 expose because of the family.

17 Q. Do you have your own place?

18 A. I do have my own place. I do have my
19 own place.

20 Q. Do you live with anyone?

21 A. At the moment, it is just me on my
22 lease where I am. At the moment, just me on my
23 lease.

24 Q. Are you able to afford your own
25 apartment?

1 A. I would say so. I'm working a lot
2 more too. I have a nonprofit and a bakery that
3 I'm working on. I project big differences
4 coming for me.

5 Q. I guess what I'm looking for is if he
6 were to get out of prison, at the time, he would
7 be, at minimum, 55 years of age and he may not
8 have a job right away but you said you would be
9 his backbone and support. So I guess what I'm
10 looking at is do you pay your own rent right
11 now?

12 A. Wait. You said 55 years old?

13 Q. He would be.

14 A. How old would I be?

15 Q. In 11 years?

16 A. Oh, 11 years.

17 Q. Currently, what do you do? Currently,
18 do you pay your own rent by yourself or do you
19 have any help?

20 A. I would like to say that --

21 Q. No, it's yes or no. Do you pay your
22 own rent or does your mom help you? Does someone
23 help you?

24 A. I would like to decline at that point.
25 We're talking about 55 so 11 years later. It's

1 very different.

2 THE COURT: Let it go. It is
3 consistent with the way that she testified
4 at the Probation Violation Hearing.

5 BY MS. DIAMOND:

6 Q. Okay.

7 So you would like to say -- okay. And
8 do you have any support from anyone else at this
9 time? You don't have to say who?

10 A. I'm not really understanding the
11 purpose of this question.

12 Q. Do you financially support yourself?
13 Pay your own rent, your car, your food? It's
14 okay if you don't. It's just my question?

15 A. No, I know it's just it doesn't seem
16 like a relevant question but I pay my bills,
17 yes.

18 MS. DIAMOND: I don't have any other
19 questions.

20 THE COURT: I have to tell you I'm a
21 little baffled by this whole idea that you
22 were living in destitution until Mr. Ferrer
23 came along.

24 THE WITNESS: It was actually really
25 bad.

1 THE COURT: Let me tell you why, your
2 mom always worked because she testified. I
3 know what she did. He gets out of prison
4 every probation report shows he's not
5 working. He doesn't have a job. He helps
6 his father out once in a while and yet, by
7 the summer of 2016, your mom, not him, your
8 mom owns two Cadillacs that we're about two
9 to three years old. So I don't understand
10 how he's the one that pulled your mom out
11 of poverty. She seems like a very
12 hardworking woman. He wasn't even employed
13 in North Carolina. He was just breeding
14 the dogs. She was the one working all this
15 time.

16 THE WITNESS: I understand. I never
17 said he got us out of poverty. He did an
18 act of kindness for me.

19 THE COURT: That's not the way your
20 testimony started and it just felt like you
21 were throwing your mom under the bus.

22 THE WITNESS: Absolutely not.

23 THE COURT: Okay.

24 Well, I'm just telling you the way it
25 sounds like to me. I guess I'm just

1 defending her because she struck me as a
2 very hardworking woman.

3 THE WITNESS: She has apologized to me
4 many times for all the times where we had
5 suffered because of her own actions and I
6 am actually hurt that you would insinuate
7 that we didn't go through those things --

8 THE COURT: I didn't say. You're
9 misunderstanding. I'm not doubting that
10 you were living in poverty. I'm saying she
11 was very hardworking, and he's not the one
12 that pulled you out. She may have pulled
13 you out but it wasn't him.

14 THE WITNESS: He definitely was the
15 one who did that for me.

16 THE COURT: With what money?

17 THE DEFENDANT: Can I say something?

18 THE COURT: You'll get the chance.

19 THE WITNESS: I wouldn't -- as a
20 child, I guess, I wasn't really focusing on
21 everyone else's finances. All I know is my
22 circumstance as a teenager and how it
23 impacted my life but I see. So that's
24 okay.

25 THE COURT: Alright.

1 So anyway, at the end of the day, that
2 doesn't make a big difference. I just
3 think sometimes we don't always appreciate
4 what our parents do for us.

5 THE WITNESS: I love my mom --

6 THE COURT: Sure and that's all I
7 wanted to enforce.

8 THE WITNESS: You might have to do
9 that with someone else but as for me, I
10 appreciated my mom my whole life.
11 Actually, it's way deeper than I could even
12 express. My mom also felt so much lack of
13 love in her life and I was the child who
14 gave. I love my mom. I appreciate
15 everything.

16 THE COURT: That's what I wanted to
17 make sure --

18 THE WITNESS: I don't always see her
19 everyday that that might give that
20 impression but I'm not that.

21 THE COURT: It wasn't. It was just
22 the way -- anyway, I said my peace. Do you
23 have anything else?

24 MS. DIAMOND: I have no further
25 questions.

1 THE COURT: I guess that's it.

2 THE DEFENDANT: I could clear that up
3 for you.

4 THE COURT: That's alright. You can
5 clear it up if you want when it's your
6 turn. Ms. Pitchik?

7 MS. PITCHIK: I would next like to
8 call Ms. Martinez who is on Zoom, and she
9 is the witness that speaks Spanish.

10 THE COURT: Ask her to turn on her
11 camera and her video. Please raise your
12 right hand. Do you swear the testimony
13 you're about to give is true and correct?

14 THE WITNESS: Yes.

15 THE COURT: You may enquire.

16 DIRECT EXAMINATION

17 BY MS. ZAMORA:

18 Q. Good afternoon, your Honor. For the
19 record, Assistant Public Defender Yanelis Zamora
20 on behalf of Mr. Alejandro Ferrer.

21 A. Yes.

22 Q. Ms. Martinez, how do you know Mr.
23 Alejandro Ferrer?

24 A. I met him at a restaurant and we just
25 met like that.

1 THE COURT: And she said in Managua.
2 I happen to know he was in Nicaragua at
3 that time.

4 THE INTERPRETER: Okay, in Managua.
5 Your Honor, may I go upstairs to be on
6 Zoom --

7 THE COURT: Yes, I didn't know she was
8 gonna be on Zoom. I apologize. I guess I
9 should have guess.

10 THE INTERPRETER: I was gonna get
11 there --

12 THE COURT: I agree. Let her know
13 we're doing that.

14 (Thereupon, a discussion was had off
15 the record, after which the following
16 proceedings were held:)

17 THE COURT: Okay.

18 Now you may inquire.

19 DIRECT EXAMINATION

20 BY MS. ZAMORA:

21 Q. Thank you.

22 Ms. Martinez, you had advised the
23 Court that you met Mr. Ferrer at a restaurant in
24 Managua. Is that right?

25 A. Yes.

1 Q. When was it that you met him? What
2 year?

3 A. Well, I think it was in 2016 or 2017
4 of around August.

5 Q. And when you met Mr. Ferrer, did your
6 and his relationship turn into a romantic
7 relationship?

8 A. At the beginning, it was like a
9 friendship. We were into each other and then
10 after a couple of weeks -- and after one week of
11 having met and having had like a friendship, a
12 very close friendship together, after that week,
13 we started living together.

14 Q. Did you and Mr. Ferrer ever get
15 officially married?

16 A. No, we just lived together.

17 Q. Did you and Mr. Ferrer ever have a
18 child in common?

19 A. Yes, we have a five year old child.

20 Q. What is the name of the child that you
21 have in common with Mr. Ferrer?

22 A. Huey Alexander Martinez.

23 Q. And when was Huey Alexander Martinez
24 born?

25 A. September 26, 2018.

1 Q. Was Mr. Ferrer around for the birth of
2 your son?

3 A. Yes, he was with me during the
4 pregnancy. We were together all the time until
5 he was six months old when he was taken from me.

6 Q. So was Mr. Ferrer only apart of Huey's
7 life for the first six months?

8 A. Yes, even after he was taken, for my
9 son, his father is his number one, even though
10 it was six month mark that they were separated,
11 he's always had communications with him. His
12 father calls his son all the time. So they get
13 along something strange because before they used
14 to see him on video calls but not anymore but
15 the phone call was continuous and so they are so
16 close together that that for my son everything.
17 Even what his father eats, my son just wants to
18 be like his father.

19 Q. During those six months that Mr.
20 Ferrer was physically present with Huey, what
21 was his relationship with Huey as a father?

22 A. Well, at the beginning, the child was
23 mostly sleeping. The interaction is usually
24 closer with the mom but he was always want him
25 to interact with the older child. He would play

1 music for him and all that. He always been the
2 best with him in that regard or at least, that's
3 how I felt as a mother that he always wanted to
4 be with his child and play music for him and do
5 things with him. He was a baby and he was just
6 attentive to all those things.

7 Q. Do you ever a daughter from a previous
8 relationship prior to your relationship with Mr.
9 Ferrer?

10 A. Yes, that is correct. My daughter, my
11 14 year old daughter. When I met Alex, she was
12 eight and we would go visit with her. She
13 wasn't living with us and yeah, he would help me
14 financially with her, and we would go out from
15 time to time to the park, to the zoo. On the
16 days he calls for his son, he asks about
17 Alandra, that's her name and, you know, he
18 calls, they have conversation. My daughter
19 never had a father or a paternal figure or a
20 male figure at the time. So, with her, he was
21 just like a father, you know. My son thinks
22 that his father is the father of my daughter as
23 well.

24 Q. And you said her name was Alandra.
25 Can you provide your daughter's full name for

1 the record?

2 A. Yes, it is Stacy Alandra.

3 Q. And aside from the relationship that
4 he had with Huey and with Ms. Stacy Alandra, how
5 is your relationship with Mr. Ferrer?

6 A. Well, we always were with dogs and --
7 to me, it was fine. From the moment we moved in
8 together, after a week of meeting each other, so
9 the interaction we had, besides being a couple,
10 we were more friends than anything, you know.
11 We were always have -- what's the word? We were
12 always having fun and just we would get along so
13 well. We were just keeping with each other one
14 way or the other.

15 Q. Do you still maintain contact with Mr.
16 Ferrer through today?

17 A. Yes, still.

18 Q. How frequently?

19 A. Everyday, everyday, we call and yeah.

20 THE INTERPRETER: Sorry, Counsel, this
21 is the interpreter, I couldn't out the last
22 question you were saying something?

23 BY MS. ZAMORA:

24 Q. I said how frequently, but you answered
25 it or she answered it.

1 In terms of work, when Mr. Ferrer was
2 living with you, was he working at that time?

3 A. Yes, he worked at call centers. He
4 had advised at several of them. One of them was
5 at sales or something, I, honestly, don't know.
6 One of them was like a for a pharmaceutical
7 thing or something like that, it was sales
8 basically. And also, we would try to salvage
9 the business. We would send animals from here
10 that it wasn't -- it wasn't -- we didn't have an
11 issue because of those permits that we would get
12 in our country if we had -- we had like a saving
13 for the future because I was already pregnant
14 and we wanted to have a resource. We wanted to
15 have a business. We wanted to open up a bar.
16 We had the intention to be able to save money
17 for a house. We needed to have our own business
18 and he liked animals and so here, presently, we
19 have animals that are discarded over there and
20 they're not here. He has that love of animals.

21 Q. And I know you said that this business
22 was something that you had an idea for the
23 future but did you actually take any steps in
24 starting to get the permits for these
25 businesses?

1 A. Yes, we were in the process of taking
2 the steps for it but the sort of animals that we
3 wanted to send were them so we weren't able to
4 do any other processes other than that. So we
5 always had dogs and yeah, sometimes we would
6 sell some of them and things like that.

7 MS. ZAMORA: Your Honor, if I could
8 have one moment to confer?

9 THE COURT: Of course.

10 MS. ZAMORA: Your Honor, we have no
11 further questions at this time.

12 THE COURT: Do you have any questions
13 Ms. Diamond?

14 CROSS-EXAMINATION

15 BY MS. DIAMOND:

16 Q. Just a few. Good afternoon.

17 A. Good afternoon.

18 Q. You mentioned that you and Mr. Ferrer
19 moved in about a week of knowing each other.
20 Did he move in with you or did he have his own
21 place at the time?

22 A. At that time, we were at a rental
23 place. It didn't belong to any of us. It was a
24 room. It was room.

25 Q. So after knowing him about a week, did

1 he tell you why he had come to Nicaragua?

2 A. No, no, honestly not at all.

3 Q. Did you ever talk to him about his
4 past relationship?

5 A. Yes, of course because he -- well, he
6 always expressed a nice way about his ex and his
7 children. His stepchildren, have always been
8 for him like his own children. Like for
9 example, my daughter, you know, and the other
10 two from a previous relationship before mine.
11 And so yeah, we would talk about his previous
12 partners and so and more so, the children
13 because they were mostly like his and they still
14 are.

15 Q. Did you meet one of his ex's by the
16 name Amanda Perez?

17 A. Yes.

18 Q. Do you remember when that was? .

19 A. From a visit that was made as I was
20 pregnant, it was like she came on a trip or
21 something like that. So it was a brief got
22 conversation. We got along really well and then
23 everyone just went about their own business. I
24 had my own child with him and so it was mostly
25 just us.

1 Q. Did Amanda Perez stay with you when
2 she came to visit?

3 A. No, she was out of town.

4 Q. Did Alejandro ever stay with her while
5 she was there?

6 A. No, most of the time, we would all go
7 on out. I was one who would go get her.

8 Q. You mentioned you all had dogs. What
9 type of dogs?

10 A. There were many, three different types
11 of dogs that he had there and he brought them
12 here and it was pit bulls.

13 Q. Did he breed those pit bulls?

14 A. Yes, here in Nicaragua, it's more --
15 the breeding's done a lot more. We breed them
16 here.

17 Q. Did he ever engage in fighting with
18 those pit bulls?

19 A. No, not at no point. It was more --
20 what's the name they call that? I still have
21 one of them. It's house dogs, dogs for the
22 house, you know. My child is so little and
23 loves these dogs. He had them for the longest.
24 They're super loving and no fight. They were
25 never in a fight maybe between them here for

1 food or something like that but no, not any
2 other sort of fight.

3 Q. Now you mentioned that you met
4 Alejandro Ferrer at a restaurant. Do you know
5 were you working at that restaurant or you just
6 met at the restaurant?

7 A. No, well, he was with another person
8 with a friend of his and I was by myself at the
9 place and he was -- we were like flirting with
10 each other, and then I was the one who
11 introduced myself to him, and we started a
12 conversation about things and that but no, I
13 wasn't working there. I was there.

14 Q. When you started dating, what was
15 Alejandro Ferrer doing for work?

16 A. The call center like I mentioned
17 before. The call centers.

18 Q. Like a call center in Nicaragua?

19 A. Well, specifically, I'm the type of
20 person who doesn't ask a lot of questions but,
21 yes, I think that, at the time, he was -- yes,
22 he was involved in something for like fixing
23 deliveries or something like that but I'm not
24 entirely sure.

25 Q. Did he financially support your

1. family?;

2. A. No, not at all. My family, they were
3. on and he did help me with me and my daughter
4. but I also had a job that wasn't as steady. I
5. had moved in with him, so it wasn't just like I
6. was able to support my daughter, so he would
7. help me with my daughter at home.

8. MS. DIAMOND: Thank you. I don't have
9. any other questions.

10. THE COURT: Anything else, Ms. Zamora?

11. MS. ZAMORA: Yes, your Honor, Ms.
12. Pitchik provided three photographs of Mr.
13. Ferrer with his son that have been
14. premarked for identification. If Ms.
15. Diamond does not have an objection, we can
16. stipulate to the objection or I can lay the
17. record with Ms. Martinez, if necessary?;

18. MS. DIAMOND: I don't have an
19. objection.

20. THE COURT: Okay;

21. Anything else for Ms. Martinez?

22. MS. ZAMORA: No, your Honor, with no
23. objection, if we can move these --

24. THE COURT: Yes, they come in without
25. objection.

1 THE CLERK: A-1, A-2, A-3, is Defense
2 Exhibit A, B, and C.

3 (Thereupon, Defendant's Exhibit # A,
4 B, & C were marked and received in
5 evidence.)

6 THE COURT: Thank you, Mr. Barrera.

7 THE INTERPRETER: Thank you, your
8 Honor.

9 THE COURT: Do you have any other
10 witnesses other than potentially --

11 MS. PITCHIK: The only thing I have
12 left is potentially Mr. Ferrer. I would
13 like a moment to talk to him about that
14 decision.

15 THE COURT: Sure, I'll turn on the --
16 to give you some privacy.

17 (Whereupon, a discussion was had off
18 the record, after which the following
19 proceedings were held:)

20 THE COURT: You have no other
21 witnesses, correct?

22 MS. PITCHIK: No.

23 MS. DIAMOND: That's correct.

24 THE COURT: Alright.

25 Mr. Ferrer, this is the moment in the

1 hearing where if you wish to testify, you
2 have the absolute right to testify. You
3 also have the right not to testify. If you
4 choose to say something, I will take that
5 into account. It could increase your
6 sentence. It could reduce your sentence
7 and it might make no difference at all. If
8 you choose not to testify, I am not going
9 to hold that against you. Understand? So
10 it's your decision on what you wish to say.
11 Your lawyers came sidebar telling me there
12 are some things you want to make sure that
13 you preserve. I think I can probably list
14 them for you and I will make sure you have
15 it. Your motion to disqualify has been
16 reserved. Your motion to dismiss based on
17 Mobley is addressed extensively in my order
18 and it has been preserved. I denied it
19 before. I'll be denying it again in
20 writing. All of those things will be right
21 for appeal but if there is anything else
22 you want to say here about the case or any
23 grievances you have, you're certainly
24 welcomed, too, the only thing is I have to
25 put you under oath. Alright. Are you

1 going to want to say something, otherwise,
2 I won't put you under oath?

3 THE DEFENDANT: Let me talk to them
4 please.

5 THE COURT: Of course, take your time.

6 (Thereupon, a discussion was had off
7 the record, after which the following
8 proceedings were held:)

9 MS. PITCHIK: We're ready.

10 THE COURT: What do you wish to do?

11 MS. ZAMORA: Mr. Ferrer would like to
12 clear some things up, your Honor, during
13 the testimony here, I know he was trying to
14 interject and I think those are the things
15 that he wants to --

16 THE COURT: Understood.

17 Keisha, let's swear him in.

18 THE CLERK: Raise your right hand.

19 Do you solemnly swear or affirm the
20 testimony you're about to give is the
21 truth, the whole truth, and nothing but the
22 truth?

23 THE DEFENDANT: Yes.

24 THE COURT: Alright.

25 You can say anything you'd like.

1 THE DEFENDANT: Judge, I initially,
2 you know, I had wrote but I wanted to
3 address some things but, you know, there
4 are certain things in there I'm honest to a
5 fault. So, you know, I have to save this
6 but I know that there are certain things
7 here that were questionable about and would
8 bother you and that's not advised.

9 THE COURT: I have thick skin. You
10 can say anything you'd like.

11 THE DEFENDANT: I know but it's like I
12 have like two people in here. One's like
13 don't do that and one is saying, yes, you
14 better do that, you know. So it's like --
15 and I just don't know what to do.

16 THE COURT: You're saying you have two
17 people. You mean your lawyers?

18 THE DEFENDANT: No, inside like --

19 THE COURT: Little angel and the
20 devil?

21 THE DEFENDANT: I wouldn't call them
22 devils, I just they oppose each other, you
23 know.

24 THE COURT: Yeah.

25 THE DEFENDANT: And you know, one is

1 like do it and the other one's like no and
2 the other one's like you better do it
3 because you're gonna regret it later. So
4 you know that little doubt, right, but I
5 have two good attorney's and they're like
6 no because you know --

7 THE COURT: You do.

8 THE DEFENDANT: -- I do acknowledge
9 that because I did mention the word basis
10 and stuff like that nobody likes to be
11 called that, you know, or accused of, you
12 know, and that's exactly what I did and I
13 pulled case law and stuff like that but I
14 do want to clear out something about Erica
15 Perez because first and foremost, she's
16 really really private. So I know her
17 better than Ms. Diamond and you, of course,
18 and that's why she -- and she's really
19 really really strong, you know, so to me,
20 she's always gonna be a little girl. She's
21 a woman now but to me, she's always gonna
22 be a little girl. So that's why she's like
23 when you ask even me, I cannot ask her some
24 questions that are private because she will
25 not like that and she won't say it. I know

1 her but when Ms. Diamond was asking her
2 certain questions, I knew she was not gonna
3 do it. As to what she was saying that,
4 yes, they were very very poor and you know
5 but to answer the question is that, when I
6 came into her life, how I impact it. Her
7 mother, yes, she's hardworking and she was
8 an excellent woman to me. She has -- like
9 me and her, we have whatever but what
10 happened she was more like a wifey over a
11 mom. Do you know what I mean by that? So
12 when I came into her life, you know, I had
13 a little influence over her I told her
14 Amanda Perez I would have her put her money
15 towards her children. So that's where she
16 started to see a difference in the poverty.
17 I guess you would say. And something that
18 she failed to reveal when I came into their
19 life, they had none because it's not only
20 her, she's the smallest one. There's an
21 older one and they were totally like chaos
22 in the house. They did not like their
23 mother at all and when I came into --
24 first, initially, it was very very hard but
25 in time, I unite them, you know, and part

1 of it was because they were little too and
2 they had the history with their mom before
3 I came into their life and it took me a
4 little while but as they started to grow,
5 you know, and with my help, I had to have a
6 lot of patience especially with her because
7 she was really really really babied. The
8 other one was a little bit more -- she was
9 really really really babied when she was
10 little but that was the one that I ended up
11 having like a real bond and I really don't
12 like nobody to say she's my step children.
13 I don't like. To me, my blood is her
14 blood, you know, and she is forever -- we
15 are bonded said for life. I love her and
16 she loves me. I love her mom, you know, I
17 know she came her and she said certain
18 things that were like Whoa, you know, but I
19 do. She was a real good woman to me and I
20 appreciate her. I wish that I could talk
21 to her but she just don't have no right for
22 me. I know she was hurt behind, you know,
23 he was being born and whatnot. Damn,
24 that's how things had played out, you know.
25 I'm not gonna read this. I know later on

1 my other half is gonna be like damn, but I
2 really don't wanna -- even though I spoke
3 great about you here to, I expressed that I
4 do, even though we don't agree, I don't
5 agree with your findings. I do respect you
6 and your ruling. I did mention that. I
7 just pull up some case laws and stuff like
8 that. I really just want to put it on
9 record, but I'm just gonna go along with
10 it. I don't want to bother you, you know.

11 THE COURT: Listen, it's not a bother
12 but your issues are preserved once you
13 raise them. If you have cited a particular
14 case, that doesn't waive it. I'm sure
15 they've told you that. So if you don't
16 need to cite the cases, you have more and
17 you've done it before with five of them.
18 You made your argument on Mobley, the Third
19 DCA will decide who's right, the factual
20 findings will be what they be and the
21 disqualification motion was filed and I
22 ruled upon them, those issues are
23 preserved.

24 THE DEFENDANT: But I was thinking
25 more on the motion I got because remember

1 once you gave me -- you granted me pro se
2 now I have full fledge I can get from the
3 library boom boom and I learned a little
4 bit more. Oh, I also thank you, you know,
5 in the -- for the learning experience, this
6 year has been, even though, you know, I am
7 going to prison for a little while. It's
8 up to you of course. It's still gonna be a
9 long time whether it's at the bottom or not
10 but it's a learning experience and I
11 realize that I really like law, you know,
12 and --

13 THE COURT: I told you I think you
14 have a career as a paralegal in the prison.

15 THE DEFENDANT: I talk about my -- I
16 want to explain about -- that's why I
17 brought this with me but this is me, pretty
18 much in Cuba, this is why I'm so obsessed
19 with that, you know, with that. These are
20 little kids in Cuba but of course, it's
21 part of what I wanted to write you because
22 I even wanted to talk in front of you with
23 something that I even expressed in here.
24 I'm glad my father is not here because that
25 really really bothers me and even though we

1 don't have a good father and son
2 relationship, you know, I don't want to say
3 this but we went many many years without
4 talking. I couldn't even get ahold of him.
5 He's just -- that's why he's not here. I
6 don't know if he would have come anyway but
7 even though I read this, I'm still telling
8 you certain little things to satisfy my
9 other half you could say but yeah --

10 THE COURT: If you want, you could
11 mail it to me afterwards.

12 THE DEFENDANT: Okay.

13 I'll do that --

14 THE COURT: Therefore, it will not
15 affect you in this case.

16 THE DEFENDANT: I kind of wanted it on
17 the record but --

18 THE COURT: That's up to you and your
19 lawyers.

20 THE DEFENDANT: But I guess, let me
21 see, as for the objections and stuff like
22 that, your Honor, you didn't let me object.
23 I had many objections but --

24 THE COURT: During the hearing?

25 THE DEFENDANT: During the hearing.

1 THE COURT: You're not a lawyer.

2 THE DEFENDANT: I know but when my
3 lawyer wasn't doing it, when I felt like,
4 you know, there was grounds for an
5 objection and he wasn't doing it. That's a
6 problem, your Honor, you know, and I have
7 many many e-mails where I told him to get
8 off my case this is something you don't
9 know. I had told him get off and I have
10 them still get off my case. He wouldn't
11 get off my case.

12 THE COURT: Mr. Ferrer, you and I
13 aren't gonna have this discussion yet
14 again. How many times did I tell you fire
15 him. This is not like a 50 divorce where
16 somebody has to agree to divorce you. If
17 you didn't want him on your case, I told
18 you time and again, you fire him.

19 THE DEFENDANT: But, your Honor, I'm
20 explaining why right there in the hearing.
21 I was gonna tell him, yes, get off and you
22 know, I didn't because I'm not a lawyer. I
23 don't know what to do. So what am I gonna
24 do without him. I was kind of like --

25 THE COURT: You know I would have put

1 a Public Defender on your case.

2 THE DEFENDANT: Yes, but during the
3 hearing, you did tell me no matter what
4 because you even told me, without him,
5 we're going through with this. You made me
6 feel like you were thinking I was trying to
7 prolong the hearing. I wasn't trying to
8 prolong the hearing. I wasn't even okay
9 with the bifurcation today. I want to get
10 this over with. You gave me the little
11 vibe that's what you thought I was
12 thinking, but no, I wanted closure to this,
13 too, you know.

14 THE COURT: Anything else about the
15 sentence that you want to share? You don't
16 have to say anything but is there anything
17 you want to say?

18 THE DEFENDANT: As for sentencing, I
19 don't know nothing about that, your Honor,
20 I mean that's up to you.

21 THE COURT: So let me take a recess, I
22 just need about ten minutes. --

23 MS. DIAMOND: I would like to make
24 argument.

25 THE COURT: Oh, you're right. He had

1 been on so long, I didn't realize.

2 MS. DIAMOND: That's okay.

3 THE DEFENDANT: Your Honor, can I say
4 one thing?

5 THE COURT: Yeah.

6 THE DEFENDANT: It has to do with
7 Richard Gregg and which I mentioned here.
8 Richard Gregg said in his closing arguments
9 to you, he basically said that, I quoted it
10 in here word for word from his thing, that
11 I absconded. The very basis, you know, the
12 very reason or exception to the Mobley
13 Rule. He wrote you that.

14 THE COURT: I honestly don't recall
15 that --

16 THE DEFENDANT: Can I read that at
17 least?

18 THE COURT: No, that won't matter
19 because in the end --

20 THE DEFENDANT: I know I --

21 THE COURT: -- either he did or he
22 didn't but I assure you my order is not
23 based on him saying you absconded --

24 THE DEFENDANT: But I don't think a
25 defense attorney should be doing that, your

1 Honor.

2 THE COURT: Well, you fired him. Your
3 remedy to that is somewhere else. It's
4 not going to effect this.

5 THE DEFENDANT: I know and then in his
6 motion to bifurcate?

7 THE COURT: Yes.

8 THE DEFENDANT: He said I committed
9 murder. I told him about it. He reviewed
10 it. He was the one when we reviewed it, he
11 was like, "Whoa, I'll change it up."

12 THE COURT: Once again, I did not find
13 a violation because of anything he said.

14 THE DEFENDANT: I know.

15 THE COURT: I based it on the
16 testimony I received during the hearing.
17 My order is up to about 20 something pages.
18 You're gonna see in detail about what I
19 thought about all of the evidence.

20 THE DEFENDANT: I know. I totally
21 understand that. I'm just saying that
22 damn, with defense like that, you really
23 don't need no prosecutors, your Honor.

24 THE COURT: Okay.

25 Argument, Ms. Diamond? Is there

1 anything else you wish to say? What is
2 your position on the matter?

3 MS. DIAMOND: Just that I don't know
4 if the Defense is gonna file Doctor Marla
5 Rodriguez' report otherwise I would like to
6 file, at this time, since Doctor Klein did
7 rely on it so, your Honor, could review it.

8 THE COURT: Any objections?

9 MS. PITCHIK: I would not be seeking
10 to introduce it on my own but I have no
11 objections.

12 THE COURT: Okay.

13 So it will come in without objection.

14 THE CLERK: Marked for identification
15 1-A is State's Exhibit 1.

16 (Thereupon, State's Exhibit # 1 was
17 marked and received in evidence.)

18 THE COURT: Alright.

19 Ms. Pitchik?

20 MS. PITCHIK: Yes, Judge, you've now
21 heard from all of our witnesses and I'm
22 gonna start with what we're requesting.
23 We're just requesting that, your Honor,
24 sentence Mr. Ferrer to the minimum
25 mandatory in this case and nothing further.

1 The State has put on the record that they
2 believe the minimum mandatory is 25 years.
3 I think there is an argument that that
4 minimum mandatory should be 20 years. The
5 reason why there's a 25 year mid-man is
6 because of the discharge of the firearm but
7 in addition, there has to be proof of great
8 bodily harm --

9 THE COURT: Right.

10 MS. PITCHIK: -- in the underlying
11 case which did plea to which is why he's on
12 probation. In the original score sheet,
13 the State only checked off moderate injury
14 and the evidence was just that. I think
15 the individual was shot in the leg through
16 the door. So without more, I think there
17 is an argument that it should just be the
18 20 year mid-man instead of the five for the
19 possession and discharge of the firearm,
20 without the proof of great bodily harm.

21 THE COURT: I think there is also case
22 law that says if he doesn't admit to it
23 during the plea then there is no evidence
24 unless there's some evidence, I think
25 you're probably right that he would get a

1 20 year minimum mandatory.

2 MS. DIAMOND: So that is, in this
3 case, evidence that was turned over in
4 discovery is that he --

5 THE COURT: I'm not gonna disagree
6 with you. You already had proved it at
7 trial. My point is, I'm almost sure, I
8 think the case law that says it has to do
9 with like a premeditated episode. If he
10 doesn't admit to it at the plea, it's
11 something I've heard that sometimes I need
12 to make certain findings at the plea stage
13 that it hasn't established -- even though
14 in the trial you might have proved it.

15 MS. DIAMOND: I do not have the plea
16 colloquy on this underlying case.
17 However --

18 THE COURT: Maybe it wasn't --

19 MS DIAMOND: It was a through and
20 through on his leg so the bullet entered
21 his body, exited his body, a bullet caused
22 great bodily harm. Medical records were
23 obtained in that case and turned over to
24 Defense there are photos of the bullet hole
25 going through his body and we know that

1 would leave a permanent scar.

2 THE COURT: Sure.

3 But your argument is noted.

4 MS. PITCHIK: Yeah, and so whether you
5 believe that's a 20 year -- Mr. Ferrer
6 would like to say something to me.

7 THE COURT: Sure.

8 MS. PITCHIK: In regards to the
9 argument that it should be a 20 year
10 mid-man, Mr. Ferrer would like me to let
11 you know that the victim of that case
12 didn't even go to the hospital so --

13 THE DEFENDANT: He didn't.

14 MS. PITCHIK: Regardless of whether,
15 your Honor, finds that it should be the 20
16 year or the 25 mid-man, we are asking for
17 the minimum mandatory and no more. That is
18 our request.

19 THE COURT: Okay.

20 MS. PITCHIK: As, your Honor, knows
21 Mr. Ferrer was born in Cuba. He had a very
22 very difficult early childhood that was
23 marked with horrible abuse at the hands of
24 all the parental figures in his life, his
25 maternal grandmother, his mother, and his

1 father. I think the most striking to me
2 was the sexual abuse that he suffered at
3 the hands of his mother that Doctor Klein
4 testified to which was especially troubling
5 because it was his mother and it was sexual
6 abuse. If you could downward depart, this
7 is a situation where there was no mid-man
8 and we were facing guidelines that you
9 could not downward depart from sexual abuse
10 is a recognized grounds for departurous
11 way.

12 I think that is important to know.
13 Despite the very difficult upbringing that
14 Mr. Ferrer had, despite the very very
15 difficult parental figures that he had in
16 his life, Mr. Ferrer had had times in his
17 life when he was not in prison, when he was
18 a productive law abiding citizen, who was a
19 father, who made very deep and strong
20 connection with people like Erica Perez who
21 is here today, who has been here before,
22 who is not a blood relative but who sees
23 him as a father figure and I think that is
24 important because it shows part of who Mr.
25 Ferrer is as an individual. He is someone

1 who is out in the world is able to make
2 very strong connections and have a very
3 strong impact that is positive on people
4 who he has no biological tie to. You also
5 heard from Wendy Martinez who was another
6 individual who Mr. Ferrer met while he was
7 out of custody, who he has his only
8 biological child with who has remained in
9 contact with him, who still communicates
10 with him, who is willing to show up today
11 to testify on his behalf even though Mr.
12 Ferrer has been in custody in Miami-Dade
13 County for the last over four years. And
14 Mr. Ferrer has remained involved heavily
15 with his son Clay which I think shows again
16 side of Mr. Ferrer that, your Honor, did
17 not hear at the probation violation, a side
18 of Mr. Ferrer that shows that he is able to
19 be a loving father who is present for the
20 people in his life, who does deserve a
21 chance of walking out of jail and not
22 coming out of jail in a pine box because
23 you sentence him to life on this Probation
24 Violation Hearing. I think -- as your
25 Honor knows, the underlying case is from

1 2003, that is when Mr. Ferrer was just 23
2 years old. If you look at the DR's that
3 the State introduced, the first one is in
4 1999. Mr. Ferrer is an entirely different
5 person today at 44 years old then he was
6 back in 1999 over 25 years ago. If you
7 look at that year of record, I think what's
8 interesting to note is that there is only
9 two DR's where he actually served time, all
10 that received zero days which I think goes
11 to maybe the ability of the prison to
12 actually substantiate those allegations are
13 what they thought was the appropriate
14 punishment based on the behavior.

15 You heard from Doctor Klein today
16 about the effect of that early childhood
17 that Mr. Ferrer had on his brain
18 development, on his development as an
19 individual, and I think what was striking
20 to me was despite the trauma that Mr.
21 Ferrer endured there were still those
22 moments in his life when he was able to be
23 a productive member of society and Doctor
24 Klein testified that he had been given the
25 adverse childhood that he had and the way

1 that he grew up, there was nothing that she
2 was aware of that would prevent him from
3 being a productive member of society in the
4 future. This is not someone who has no
5 hope to be rehabilitated. This is not
6 someone who is incapable of functioning in
7 the world without committing a new crime.
8 If you were to sentence Mr. Ferrer to just
9 the mid-man whether it's 20 or 25, if it's
10 25 that means that Mr. Ferrer won't walk
11 out of prison until he is around 55 years
12 old, perhaps a little bit later. After, a
13 55 year old man walking out of prison is a
14 very different individual from someone who
15 is 44 who's walking out of prison or
16 someone who's 40 walking out of prison, or
17 someone who's 35 who's walking out of
18 prison. I think Mr. Ferrer, through this
19 case, has learned that there is a lot more
20 out there in the world that he is very
21 interested in, that he wants to pursue if
22 you were to sentence him to a term of years
23 which would enable him to get out of
24 custody. I think, your Honor, is very well
25 aware that Mr. Ferrer has become very very

1 interested in the law and he has spent a
2 lot of time reading and studying and
3 actually corrected me interpreting it. So
4 it is not a passion that he is pursuing that
5 he is not fulling engaged in. He is fully
6 engaged and is getting the law right. So
7 that is something that Mr. Ferrer did not
8 know about himself in part because when he
9 was a child growing up, he did not have any
10 adults in his life who could steer him in
11 the right direction, who could steer him to
12 a profession like being a lawyer that
13 perhaps he would have pursued if he had
14 someone in his life early on to some him
15 that was an option for him.

16 As far I'm aware, today, that North
17 Carolina case is still open. It's just an
18 open case that has never been litigated.
19 What's troubling to me is Mr. Ferrer has
20 never been brought to North Carolina during
21 the pendency of the years that he's been
22 held in Miami to face those charges and to
23 have a jury of his peers see, evaluate the
24 evidence, and determine whether or not the
25 State can meet their burden of proof beyond

1 a reasonable doubt. Your Honor knows the
2 standard of proof at a probation violation
3 is very different. We are completely
4 sympathetic to the next of kin. I think we
5 have the Defense, whether it's my office or
6 Mr. Gregg's, has been this, murder didn't
7 happen it was just that Mr. Ferrer was not
8 the one who committed the murder and at
9 this stage, we completely respect, your
10 Honor's ruling but I think it is troubling
11 that Mr. Ferrer could be sentenced for life
12 on this probation violation where the
13 standard of proof is just the preponderance
14 of evidence. When that North Carolina case
15 is still open and if your Honor does
16 sentence him to a term of years, it doesn't
17 mean that North Carolina is not any
18 disadvantage. He is still able to be
19 brought to trial there and the State in
20 North Carolina can still seek life on the
21 case if he does go to trial, if he loses
22 the trial, and if a jury of his peers finds
23 him guilty beyond a reasonable doubt.

24 Another thing that Mr. Ferrer would
25 like, your Honor, to know is that he has,

1 in the time that he's been in custody,
2 worked hard to try to investigate that
3 North Carolina case on his own and by
4 filing motions to compel and speedy demands
5 to try to move along that case because he
6 did want to have an opportunity to go first
7 to trial on the North Carolina case before
8 having this probation violation heard.

9 So now Mr. Ferrer is before you today
10 for the sentencing. You've found him in
11 violation at that standard of the
12 preponderance of the evidence and we are
13 asking that, your Honor, sentence him to
14 the term of years to the minimum mandatory
15 whether it's the 20 year or the 25, that
16 decision is not again gonna affect North
17 Carolina's ability to sentence him to life
18 if he is, in fact, found guilty over there
19 beyond a reasonable doubt.

20 THE COURT: Understood.

21 MS. DIAMOND: Can I just respond?

22 THE COURT: Sure.

23 MS. DIAMOND: To one thing, in terms
24 of the reason why we are here in March of
25 2024, when the defendant was extradited to

1 Miami-Dade County in August of 2019, the
2 part of this is when COVID occurred in
3 2020, Mr. Ferrer objected to his Public
4 Defender taking depositions via Zoom
5 instead he wanted all depositions done
6 before the Probation Violation Hearing.
7 Even when the State reproduced all of those
8 witnesses over Zoom and furthermore,
9 produced just the witnesses who were going
10 to testify, those depositions had initially
11 been in the work prior to COVID and we
12 should have been going to a Probation
13 Violation Hearing in early 2020 so.

14 THE COURT: Okay.

15 Give me about ten minutes and I'll be
16 back.

17 THE BAILIFF: All rise.

18 (Thereupon, a recess was had, after
19 which the following proceedings were held:)

20 THE COURT: Anything else? Are we
21 ready to proceed?

22 MS. PITCHIK: Nothing further, Judge.

23 THE COURT: Let me first say to
24 Hacil's family that I'm sorry I can't
25 return him to you. I hope that these

1 proceedings and maybe there will be
2 something else in North Carolina, I hope it
3 gives you some peace. It's not gonna bring
4 you closure but hopefully it just gives you
5 some peace that at least some justice is
6 done for your family member.

7 I acknowledge that apparently you had
8 a terrible childhood Mr. Ferrer. I mean
9 that's the way you reported it to both of
10 your doctors but that wasn't Hacil's fault.
11 You have now done three prison sentences
12 and they haven't changed you and you were
13 out less than two years before and I know
14 you and I disagree but I believe you
15 murdered Mr. Rodriguez and while I
16 appreciate Doctor Klein's testimony, it
17 isn't a prison's job to fix you. The job
18 of the judicial system, the criminal
19 justice system is to punish and not to fix
20 you. And the truth is I don't see how
21 anything, how the prison sentence,
22 regardless of it's length, would fix you or
23 what would possibly fix a 44 year old man
24 who continues to commit violent offenses.
25 You've spent a lot of time in prison

1 already and it hasn't had any effect on
2 you. The bottom line is I don't see why
3 anybody else should pay for this. Haci
4 already paid the ultimate price after you
5 came out of prison where it didn't make any
6 difference to you.

7 THE DEFENDANT: It has nothing to do
8 with this hearing, your Honor.

9 THE COURT: Whether North Carolina
10 prosecutes you or not, I'm gonna sentence
11 you today on the whole of your criminal
12 history. So at this time, I am revoking
13 your probation and I'm sentencing you as
14 follows, I'm sentencing you for credit time
15 served for each count of aggravated assault
16 with a firearm, 15 years state prison for
17 possession of a firearm by a convicted
18 felon, credit time served for the grand
19 theft in the third-degree, 15 years in
20 state prison for aggravated battery with a
21 deadly weapon, and life in prison for
22 attempted second degree murder with a
23 firearm. All counts are to run concurrent
24 but not coterminous and you will get credit
25 for all the time you served in jail.

1 Should I appoint for Public Defender's
2 Office for Appellate purposes?

3 MS. PITCHIK: Yes please, Judge.

4 THE COURT: Okay.

5 There is an order, Keisha?

6 MS. PITCHIK: The only additional
7 request I have, Judge, is I would like to
8 be able to make a copy of the order so I
9 can provide it --

10 THE COURT: We'll give you a copy.
11 There's a copy for Mr. Ferrer, there's a
12 copy for you all, and there's a copy for
13 Ms. Diamond.

14 MS. PITCHIK: Okay. Excellent.

15 Thank you so much.

16 MS. DIAMOND: And on this matter, does
17 he remain sentenced as a habitual violent
18 offender?

19 THE COURT: Yes.

20 Anything else today?

21 THE DEFENDANT: Your Honor?

22 THE COURT: Yes?

23 MS. DIAMOND: I'm passing up the score
24 sheet.

25 THE DEFENDANT: Does this say what --

1 out of the violations investigated, which
2 ones you found me in violation of?

3 THE COURT: I assure you it does.

4 THE DEFENDANT: Alright. Thank you.

5 THE COURT: Good luck to you all.

6 THE BAILIFF: Judge, the family has a
7 question for you.

8 THE COURT: Yes?

9 AUDIENCE MEMBER: You gave him life?

10 THE COURT: Yes.

11 AUDIENCE MEMBER: Okay. Good.

12 THE BAILIFF: All rise.

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CERTIFICATE

STATE OF FLORIDA)
) ss
COUNTY OF MIAMI-DADE)

I, AMBER LISENBEE, Court Reporter
and Notary Public, duly qualified in and for the
State of Florida at Large.

DO HEREBY CERTIFY that the foregoing
proceedings were taken before me at the place
therein designated; and the foregoing pages one
through 96, inclusive, are a true and correct
record of the testimony given by the witness.

I FURTHER CERTIFY that I am not a
relative or employee of any of the parties, nor
relative or employee of such attorney or
counsel, or financially interested in the
foregoing action.

WITNESS my HAND AND SEAL this 17 day
of JUNE, 2024, in the City of Miami, County of
Miami-Dade, State of Florida.

Amber Lisenbee
Amber Lisenbee, Court Reporter
Notary Public
State of Florida at Large
Commission #HH488424
Expires: February 4, 2028