No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

GREGORY MICHAEL NIERENBERG,
Petitioner,

v.

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,
Respondents.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER

TABLE OF CONTENTS

	Document	Page
1.	November 18, 2025, order of the Eleventh Circuit Court of Appeals	A-3
2.	February 27, 2025, judgment of the Middle District of Florida Court	A-6
3.	February 24, 2025, order of the Middle District of Florida Court	A-7
4.	Order Granting an Evidentiary Hearing on Defendant's Amended Motion for Postconviction Relief	A-29
5.	Transcript of January 17, 2020, Evidentiary Hearing	A-33
6.	June 22, 2020, Order Denying Defendant's Motion for Postconviction Relief	A-155
	Exhibit A - June 6, 2013, Negotiated Plea	A-169
	Exhibit B - April 29, 2015, Judgment and Sentence	A-171
	Exhibit C - October 7, 2015, Order Dismissing Direct Appeal	A-179
	Exhibit D - August 4, 2014 Order Granting Substitution of Counsel	A-180
	Exhibit E - May 10, 2015, Motion to Withdraw Plea and Withdraw as Counsel	A-182
	Exhibit F - May 13, 2015, Order Dismissing w/o Prejudice Motion to Withdraw Plea	A-187
	Exhibit G - May 13, 2015, Hearing Transcript	A-188
	Exhibit H - March 5, 2015, Hearing Transcript	A-224
	Exhibit I - June 6, 2013, Plea Hearing Transcript	A-236
	Exhibit J - April 24, 2015, Sentencing Hearing Transcript	A-250
	Exhibit K - May 23, 2019, Notice of Filing Codefendant Pace's Deposition Transcript	A-406
7.	Transcript of April 29, 2015, Sentencing Hearing	A-478
8.	Law Office of Charles L. Truncale, P.A., Contract for Legal Representation, Pages 1-2	A-629
9.	May 8, 2015, Letter to Judge Aho	A-631
10.	Excerpt of Transcript of Deposition of Jenny Lea Long, Pages 1-3 & 63-150	A-632
11.	Transcript of Deposition of Carl Sherman Harp	A-723

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11057

GREGORY MICHAEL NIERENBERG,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:22-cv-00176-WWB-SJH

ORDER:

Gregory Nierenberg, a Florida prisoner, appeals the denial of his 28 U.S.C. § 2254 petition, and moves this Court for a

certificate of appealability ("COA").[1] In order to obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Reasonable jurists would not debate the denial of any of Nierenberg's claims. With respect to Claim 1, the state post-conviction court reasonably determined that trial counsel advised Nierenberg that he had grounds to withdraw his guilty plea and investigated the drug use and inconsistent statements of the state's witnesses, and its conclusion that counsel was not ineffective was not an unreasonable application of federal law. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Turning to Claim 2, the state post-conviction court reasonably determined that counsel did not perform deficiently in advising Nierenberg that he did not have a valid self-defense to second-degree murder, given his statements that he was the aggressor. *See Strickland*, 466 U.S. at 687; *Harrington*, 562 U.S. at 105.

---

[1] Nierenberg seeks COA on only four of the claims that he raised in his petition. Accordingly, this Court "will not entertain the possibility of granting a certificate of appealability" on the additional claim that he raised below. *See Jones v. Sec'y, Dep't of Corr.*, 607 F.3d 1346, 1353-54 (11th Cir. 2010).

With respect to Claim 3, the state court did not unreasonably find that counsel had no reason to believe that Nierenberg suffered from PTSD, anxiety, and depression, meaning that its conclusion that counsel did not render deficient performance by not presenting evidence of these conditions was not an unreasonable application of *Strickland*. *See Strickland*, 466 U.S. at 687; *Harrington*, 562 U.S. at 105. As such, Nierenberg also was not entitled to an evidentiary hearing on this claim in the district court. *See Landers v. Warden, Att'y Gen. of Ala.*, 776 F.3d 1288, 1295 (11th Cir. 2015).

As to Claim 4, the state court's determination that counsel did not render ineffective assistance by failing to move to withdraw Nierenberg's guilty plea, in light of Ashley Pace's testimony, was not an unreasonable application of *Strickland*, as it reasonably concluded that Pace's testimony was not inconsistent on the question of whether she saw Nierenberg shoot at Carl Harp. Finally, to the extent that Nierenberg sought to assert a claim of actual innocence, such a claim is not cognizable in a non-capital habeas proceeding. *See Jordan v. Sec'y, Dep't of Corr.*, 485 F.3d 1351, 1356 (11th Cir. 2007).

Accordingly, Nierenberg's motion for a COA is DENIED.

/s/ Kevin C. Newsom

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

GREGORY MICHAEL NIERENBERG,

Petitioner,

Case No. 3:22-cv-176-WWB-SJH

v.

SECRETARY, DEPARTMENT OF CORRECTIONS and FLORIDA ATTORNEY GENERAL,

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That pursuant to the Courts Order entered on February 24, 2025, judgment entered dismissing this action with prejudice.

Any motions seeking an award of attorney's fees and/or costs must be filed within the time and in the manner prescribed in Local Rule 7.01, United States District Court Middle District of Florida.

Date: February 27, 2025

ELIZABETH M. WARREN,
CLERK

s/JR, Deputy Clerk

Copy to:

Counsel of Record
Unrepresented Parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

GREGORY MICHAEL NIERENBERG,

Petitioner,

v. Case No.: 3:22-cv-176-WWB-SJH

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, and FLORIDA ATTORNEY GENERAL,

Respondents.
_____/

ORDER

THIS CAUSE comes before the Court on Petitioner Gregory Michael Nierenberg's Petition for Writ of Habeas Corpus ("**Petition**," Doc. 1), filed pursuant to 28 U.S.C. § 2254; Respondents' Response to the Petition (Doc. 9); and Petitioner's Reply (Doc. 17).[1] Petitioner alleges five grounds for relief. Upon review, an evidentiary hearing is not warranted, because the Court can resolve the entire Petition on the basis of the record. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007). For the reasons set forth below, the Petition will be denied.

I. PROCEDURAL HISTORY

On October 28, 2010, the State of Florida charged Petitioner by Information with one count of second-degree murder for the deadly shooting of Frederick Stallings and one count of first-degree attempted murder for the attempted shooting of Carl Harp during

[1] For purposes of reference to pleadings and exhibits, the Court will cite the document page numbers assigned by the Court's electronic docketing system.

events that occurred on October 7, 2010, in Duval County, Florida. (Doc. 9-2 at 7–8). On June 6, 2013, while represented by Henry M. Coxe, III, Esq. ("**Primary Counsel**"[2]), Petitioner entered a negotiated plea of guilty on each count in exchange for a sentencing range of twenty-five to forty-five years imprisonment on both counts to run concurrently, with a twenty-five-year minimum mandatory sentence. (Doc. 9-6 at 5, 10, 16–17). On July 14, 2014, Petitioner retained Charles L. Truncale, Esq. ("**Secondary Counsel**"), in place of Primary Counsel, to represent him "at sentencing" and to provide "advice concerning whether to pursue a withdrawal of the guilty pleas." (Doc. 9-8 at 2; Doc. 9-31 at 262). The trial court conducted a sentencing hearing on April 24 and 29, 2015, and sentenced Petitioner to forty years imprisonment with a twenty-five-year minimum mandatory sentence on Count One, and twenty-five years imprisonment with a twenty-year minimum mandatory sentence on Count Two to run concurrent to the sentence on Count One.[3] (Doc. 9-10; Doc. 9-12 at 148–49; Doc. 9-13 at 2–10).

On May 10, 2015, Secondary Counsel, on behalf of Petitioner, filed a motion to withdraw the guilty pleas and a motion to withdraw as attorney for Petitioner. (Doc. Nos. 9-14, 9-15). After a hearing on the motions on May 11 and 13, 2015, the trial court denied without prejudice the motion to withdraw the guilty pleas, permitted Secondary Counsel to withdraw from the case, and appointed Fred Gazaleh, Esq. ("**Tertiary Counsel**") to

[2] For consistency and ease of reference, the Court adopts the "primary," "secondary," and "tertiary" counsel designations that the trial court used.

[3] Petitioner timely appealed his judgments and sentences to Florida's First District Court of Appeal ("**First DCA**"), but subsequently voluntarily dismissed his direct appeal. (Doc. Nos. 9-21, 9-27, 9-28).

represent Petitioner for "all purposes" including post-sentencing motions and appeals. (Doc. 9-16; Doc. 9-17 at 17–18, 23–26, 29–33; Doc. 9-24 at 121, 127).

With help from postconviction attorney Michael Ufferman, Esq.,[4] Petitioner filed several motions for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850, which the trial court dismissed without prejudice. (Doc. 9-31 at 3–18, 30–48, 49–68, 71–73). Then, on October 30, 2018, Petitioner filed his second amended Rule 3.850 motion, raising eight grounds for relief. (*Id.* at 74–93). Following a January 17, 2020, evidentiary hearing on grounds one, two, and four of the second amended Rule 3.850 motion, as well as post-hearing briefing and argument, the trial court denied Petitioner's second amended Rule 3.850 motion on June 24, 2020. (Doc. 9-31 at 263–66; Doc. 9-34; Doc. 9-37; Doc. 9-38; Doc. 9-41 at 2–14). Petitioner appealed the denial of his second amended Rule 3.850 motion, which the First DCA per curiam affirmed without a written opinion in *Nierenberg v. State*, 327 So. 3d 267 (Fla. 1st DCA 2021) (table), and issued the mandate on November 17, 2021. (Doc. Nos. 9-42, 9-43, 9-44).

Petitioner filed his Petition in this Court on February 15, 2022. (Doc. 1).

II. LEGAL STANDARDS

A. Standard of Review Under the Antiterrorism Effective Death Penalty Act

Pursuant to the Antiterrorism Effective Death Penalty Act ("**AEDPA**"), a federal court may not grant federal habeas relief with respect to a claim adjudicated on the merits in state court unless the adjudication of the claim:

[4] Mr. Ufferman continued representing Petitioner at all subsequent stages, including the filing of this action.

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). The phrase "clearly established Federal law" encompasses only the holdings of the United States Supreme Court "as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. 362, 412 (2000).

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

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

244 F.3d 831, 835 (11th Cir. 2001) (quoting *Williams*, 529 U.S. at 412–13). Even if the federal court concludes that the state court applied federal law incorrectly, habeas relief is appropriate only if that application was "objectively unreasonable."[5] *Id.* (quotation omitted).

[5] In considering the "unreasonable application inquiry," the Court must determine "whether the state court's application of clearly established federal law was objectively unreasonable." *Williams*, 529 U.S. at 409. Whether a state court's decision was an

Finally, under § 2254(d)(2), a federal court may grant a writ of habeas corpus if the state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). However, the state court's "determination of a factual issue . . . shall be presumed correct," and the habeas petitioner "shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); *see also Parker*, 244 F.3d at 835–36.

B. Ineffective Assistance of Counsel Standard

In *Strickland v. Washington*, 466 U.S. 668 (1984), the Supreme Court of the United States established a two-part test for determining whether a convicted person is entitled to relief on the ground that his counsel rendered ineffective assistance: (1) whether counsel's performance was deficient and "fell below an objective standard of reasonableness"; and (2) whether the deficient performance prejudiced the defense. *Id*. at 687–88. A court must adhere to a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Id*. at 689–90. "Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id*. at 690; *Gates v. Zant*, 863 F.2d 1492, 1497 (11th Cir. 1989) (per curiam).

As observed by the Eleventh Circuit Court of Appeals:

---

unreasonable application of law must be assessed in light of the record before the state court. *Holland v. Jackson*, 542 U.S. 649, 652 (2004) (per curiam); *see also Bell v. Cone*, 535 U.S. 685, 697 n.4 (2002) (declining to consider evidence not presented to state court in determining whether the state court's decision was contrary to federal law).

> [The test for ineffective assistance of counsel] has nothing to do with what the best lawyers would have done. Nor is the test even what most good lawyers would have done. We ask only whether some reasonable lawyer at the trial could have acted, in the circumstances, as defense counsel acted at trial. Courts also should at the start presume effectiveness and should always avoid second guessing with the benefit of hindsight. *Strickland* encourages reviewing courts to allow lawyers broad discretion to represent their clients by pursuing their own strategy. We are not interested in grading lawyers' performances; we are interested in whether the adversarial process at trial, in fact, worked adequately.

White v. Singletary, 972 F.2d 1218, 1220–21 (11th Cir. 1992) (citation omitted). Under those rules and presumptions, "the cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between." *Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir. 1994).

The two-part *Strickland* test applies to challenges to the validity of guilty pleas based on ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). The petitioner must still demonstrate that counsel's performance was deficient. *See id.* at 56–59; *Lynch v. Sec'y Fla. Dep't of Corrs.*, 776 F.3d 1209, 1218 (11th Cir. 2015). However, to establish prejudice, the petitioner "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59 (footnote omitted); *Lynch*, 776 F.3d at 1218.

III. ANALYSIS

A. Ground One

In Ground One, Petitioner alleges:

> The state courts' denial(s) of the claims for which Petitioner Nierenberg was granted an evidentiary hearing are contrary to and an unreasonable application of Petitioner Nierenberg's Sixth Amendment right to the effective assistance of counsel and the state courts' rulings are based on an unreasonable determination of the facts in light of the evidence contained in the state court record.

(Doc. 1 at 10).

As stated previously, the trial court held an evidentiary hearing on grounds one, two, and four of Petitioner's second amended Rule 3.850 motion, and denied relief on these grounds as follows:

> **GROUNDS ONE & TWO**
>
> Defendant argues Secondary Counsel was ineffective for failing to advise him that a previously-undisclosed plea agreement between his codefendant, Ashley Pace ("Codefendant Pace"), and the State constituted a valid basis to withdraw his plea. Specifically, Defendant claims Codefendant Pace testified at her deposition that she had not entered into a plea deal with the State in exchange for testifying against Defendant. Defendant thereafter pleaded guilty. Before the sentencing hearing, however, Secondary Counsel became aware that Codefendant Pace had, in fact, agreed to testify against Defendant in exchange for no further prison time. Defendant claims that, had Secondary Counsel advised him of his right to withdraw his plea based on Codefendant Pace's previously-unknown plea deal, he would have directed Secondary Counsel to file a rule 3.170(f) motion to withdraw plea and proceeded to trial. Defendant claims that, at trial, he would argue self-defense and impeach the State's witnesses based on their prior inconsistent statements.
>
> At the evidentiary hearing, Secondary Counsel testified that he had many conversations—at least a dozen—with Defendant regarding withdrawing his plea. (EH at 18, 21). He further stated that he told Defendant that he had valid grounds to withdraw his plea. (*Id.* at 20, 43, 57–59). Secondary Counsel, however, advised Defendant that if he withdrew his plea he would not likely been [sic] offered another plea agreement and would likely be convicted at trial. (*Id.* at 19, 44, 57–59). Secondary Counsel also testified that he told Defendant that he would likely be given a harsher sentence if convicted at trial than the one agreed to in the plea agreement. (*Id.* at 19, 44). Secondary Counsel testified Defendant agreed with his advice until he received forty years on the twenty-five-to-forty-five-year range under the negotiated plea:
>
> > [O]n ever[y] single occasion that I asked him for his decision, he decided that it would not [be] a good decision to do so and instructed me not to file a motion to withdraw plea prior to sentencing. In fact, the only time he asked me to file a motion to withdraw his plea was after the sentence was imposed and it was, in my opinion, out of anger.

(*Id.* at 20). In contrast, Defendant testified that he asked Secondary Counsel to file a motion to withdraw plea on multiple occasions, but Secondary Counsel refused. (*Id.* at 86, 88). Defendant also testified that he never knew about any prior inconsistent statements by the State's witnesses. (*Id.* at 92). Defendant testified that, if allowed to withdraw his plea and proceed to trial, he would have argued self-defense and impeached the State's witnesses with their prior inconsistent statements. (*Id.* at 89–90, 90–92).

This Court finds Secondary Counsel's testimony more credible than Defendant's. Specifically, this Court believes that Secondary Counsel advised Defendant of his ability to withdraw his plea based on Codefendant Pace's previously-undisclosed plea deal, but advised against that course of action based upon the likelihood of Defendant being convicted at trial and receiving a harsher sentence than the range outlined in the plea agreement. This Court also believes Defendant agreed with Secondary Counsel's strategy up until the point he was sentenced to the upper end of the sentencing range allowed under the plea agreement.

This Court's credibility findings are supported by the surrounding circumstances. First, Defendant voluntarily agreed to withdraw Secondary Counsel's May 10, 2015, motion to withdraw plea, and Tertiary Counsel never filed a motion to withdraw plea thereafter. These facts suggest Defendant did not want to withdraw his plea. (Ex. F; Ex. G at 28–30). Second, at the March 5, 2015 hearing, Defendant agreed to be sentenced by a successor-judge and indicated his desire not with [sic] withdraw his guilty plea. (Ex. H at 7). This testimony supports the finding that Defendant never wanted to withdraw his plea until he received his forty-year sentence. Third, Defendant testified that both Primary Counsel and Secondary Counsel advised him against proceeding to trial using a self-defense strategy. (EH at 102–03). Specifically, Secondary Counsel testified the self-defense theory was "ludicrous." (*Id.* at 43). This testimony illustrates Defendant's awareness that he was unlikely to succeed at trial. *See Grosvenor v. State*, 874 So. 2d 1176, 1181–82 (Fla. 2004) (listing likelihood-of-a-particular-defense-succeeding-at-trial as a factor to consider "in determining whether a reasonable probability exists that the defendant would have insisted on going to trial"). Fourth, Defendant testified that he was never advised of the substance of (or the inconsistencies within) the testimony from any of the State's eyewitnesses at any point during the five years he was represented by Primary Counsel or Secondary Counsel. (EH at 114). This Court finds this testimony to be highly improbable, undermining the credibility of Defendant's testimony as a whole. Finally, the plea colloquy indicates Defendant knowingly and voluntarily entered the negotiated plea agreement. (Ex. I).

> Accordingly, because counsel did not perform deficiently, and because Defendant was not prejudiced, these claims are denied.
>
> **GROUND FOUR**
>
> Defendant maintains Secondary Counsel was ineffective for failing to investigate an "impeachment" defense, based on (i) all of the State's eyewitnesses being under the influence of illegal drugs at the time of the incident, and (ii) State eyewitness's prior inconsistent statements. Defendant claims that, had Secondary Counsel advised him of the ability to impeach witnesses for the above-listed reasons, he would have withdrawn his plea and proceeded to trial.
>
> To start, it is readily apparent that the State's eyewitnesses and Defendant were under the influence of illegal drugs at the time of the murder and attempted murder. To suggest that Secondary Counsel was unaware that these witnesses were on drugs (or that he could impeach these witnesses' credibility based on their drug use) is absurd. Moreover, as mentioned under Claims One and Two above, this Court finds it highly improbable that Defendant was never advised of the substance of (or the inconsistencies within) the testimony from any of the State's eyewitnesses at any point during the five years he was represented by Primary Counsel or Secondary Counsel—both of whom are very well-respected defense attorneys.
>
> In fact, Secondary Counsel testified that "I believe [Codefendant Pace] would have been very persuasive to a jury, notwithstanding the fact that at the time she was a drug addict, notwithstanding that she had had inconsistent statements . . . ." (EH at 44–45). As such, it is clear Secondary Counsel knew Codefendant Pace and the other eyewitnesses were on drugs and had made prior inconsistent statements; it is equally clear that Secondary Counsel did not believe impeachment on these issues would raise any reasonable doubt as to Defendant's guilt. This Court finds Secondary Counsel was reasonable in not pursuing an "impeachment" defense.
>
> Accordingly, because counsel did not perform deficiently, and because Defendant was not prejudiced, this claim is denied.

(Doc. 9-41 at 4–8 (internal citations modified)). The First DCA per curiam affirmed the trial court's denial without a written opinion. (Doc. 9-44).

Because the First DCA affirmed without a written opinion, the Court presumes the affirmance was based on the trial court's findings. *See Wilson v. Sellers*, 584 U.S. 122,

125–26 (2018) (holding that where the relevant state court decision on the merits does not provide any rationale for its decision, "the federal court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale" and "should then presume that the unexplained decision adopted the same reasoning"). As the trial court decided the claim on the merits, the Court addresses it in accordance with the deferential standard for federal court review of state court adjudications. Upon thorough review of the record and the applicable law, the Court concludes that the state court's decision to deny Petitioner's claim was neither contrary to nor an unreasonable application of *Strickland*, and it was not based on an unreasonable determination of the facts given the evidence presented to the state court. *See* 28 U.S.C. § 2254(d). In reaching this conclusion, the Court gives heightened deference to the state court's credibility determinations on habeas review. *See Gore v. Sec'y, Dept' of Corrs.*, 492 F.3d 1273, 1300 (11th Cir. 2007) ("A certain amount of deference is always given to a trial court's credibility determinations. That the case is before us on habeas review heightens that deference." (internal citations omitted)). And considering the evidence presented to the state court, there are no valid reasons to disturb the state court's credibility determinations.

For example, at the evidentiary hearing, Secondary Counsel addressed at length his discussions with Petitioner concerning his ability to withdraw the guilty pleas, as follows:

> I had many discussions with him about that. It was not a one-time discussion. I did advise him of the standard of the Florida rule of criminal procedure concerning withdrawal of a plea prior to sentencing and the fact that there [must be] . . . good cause for the withdrawal, and I discussed with him that . . . the mere existence of good cause to withdraw the plea was not

> the sole purpose of my representation, that . . . then he would have to decide whether it was . . . in his best interest to do so . . . .
>
> I explained to him that if we look at withdrawing the plea in a vacuum, I was confident that we could very well make an argument, the standard is not that difficult to reach, but . . . I remember telling him [I was] virtually certain that if his plea was withdrawn he would never, in all likelihood, even have another plea agreement, [and] that if convicted he would be subjected to considerably [harsher] sentencing.
>
> I explained to him that his prior counsel was a very prominent and very excellent attorney, Mr. Coxe. It appeared that he had negotiated a favorable . . . plea agreement . . . , and that based on the charges, he could reasonably expect to be sentenced to more than the maximum agreed.
>
> . . . [H]e and I met several times and reviewed at length the discovery material in the case, involving depositions, sworn statements of all the various witnesses.
>
> I will tell you . . . he was very, very clear minded. He was prepared. He would review the depositions and statements of all the witnesses. He would tell me . . . how effective they would be at a trial, for instance, and we discussed those matters. Again, this was not one time, it was repeatedly throughout the representation.
>
> . . . [On] every single occasion that I asked him for his decision, he decided that it was not a good decision . . . and instructed me not to file a motion to withdraw plea prior to sentencing. In fact, the only time he asked me to file a motion to withdraw his plea was after the sentence was imposed and it was, in my opinion, out of anger. He was not speaking. He was . . . emotionally upset at the time.

(Doc. 9-34 at 19–21). Secondary Counsel further testified that Petitioner was "diligent" and "industrious" during their meetings as:

> He read and outlined every deposition, every hearing, every statement. . . . [H]e was prepared when we discussed them. It wasn't a matter of me explaining things that . . . he was unaware of, no.

(*Id.* at 59–60; *see also id.* at 27 (stating that Petitioner was "always prepared with written pros and cons as to why [each] person's testimony might be rejected by a jury")).

Secondary Counsel then explained why he advised Petitioner that he did not have a valid self-defense claim:

> [H]e told me that he was the aggressor. He told me that his intent was to kill the man, . . . and I told him . . . we don't have self-defense . . . based on what you're telling me and based on what the other evidence is from . . . the other witnesses . . . .
>
> . . .
>
> Mr. Nierenberg attacked Mr. Stallings. Mr. Stallings resisted. Mr. Nierenberg was much younger than Mr. Stallings, overpowered Mr. Stallings, held him in a headlock and shot him. . . . I know he told me that he had overcome the guy in a headlock before he shot him, whether he shot him while in a headlock, I don't know, but I remember distinctly he overpowered him by means of a headlock. . . .
>
> I agreed with him at all times, except for the self-defense, I think that was a ludicrous one, but other than that, I agreed with him, he had grounds [for a motion to withdraw the guilty plea].

(*Id.* at 37–40, 44).

Secondary Counsel also addressed Petitioner's likelihood of success at trial. He opined that Petitioner "would not have made a good witness" and a jury would have likely rejected his version of the facts over Codefendant Pace's testimony:

> I believe Ms. Pace . . . would have been very persuasive to a jury, notwithstanding the fact that at the time she was a drug addict, notwithstanding that she had inconsistent statements. She, in my opinion, has presented herself . . . as a witness who . . . picked herself up from . . . the ground. I believe a jury would have liked her because her story, her version of the truth about his admission, which he told me happened, was going to be believed.

(*Id.* at 45–46). Significantly, Secondary Counsel testified that Codefendant Pace's undisclosed plea agreement would not have materially affected the outcome of the proceedings. He explained:

> [Petitioner] wasn't informed of such an agreement prior to the entry of his plea, . . . but is that grounds to withdraw the plea[?] [A]bsolutely yes. We'll

> win. We would win completely on the issue, but you have to consider, again, what will happen in a trial because you're not going to be given an opportunity of anymore plea agreements by the State. Will . . . this fact that she had a favorable plea agreement undisclosed, will that cause the jury to discredit her testimony in its entirety[?] [A]nd I said, hardly, no. . . . I believe a jury . . . will still find her testimony credible.

(*Id.* at 59).

Secondary Counsel also unequivocally testified that the one request they "always discussed," among Petitioner's "many weak requests," was using the State witnesses' drug use and inconsistent statements as grounds for impeachment or motions. (*Id.* at 48, 61). As the trial court found, Secondary Counsel was not deficient in failing to pursue an impeachment defense because impeachment on these issues would not have raised any reasonable doubt as to Petitioner's guilt. Indeed, the inconsistencies that Petitioner identified when he testified at the evidentiary hearing did not seem material enough to influence the outcome of the proceedings. (*Id.* at 91–92). In sum, Petitioner has not shown that if he had withdrawn his pleas and proceeded to trial, he "either would have been acquitted or, if convicted, would nevertheless have been given a shorter sentence than he actually received." *Hill*, 474 U.S. at 59 (citing *Evans v. Meyer*, 742 F.2d 371, 375 (7th Cir. 1984)). Therefore, Ground One is denied.

B. Ground Two

In Ground Two, Petitioner alleges:

> The state courts' denial(s) of Petitioner Nierenberg's claim that defense counsel rendered ineffective assistance of counsel by failing to investigate an available "self[-]defense" defense are contrary to and an unreasonable application of Petitioner Nierenberg's Sixth Amendment right to the effective assistance of counsel and the state courts' rulings are based on an unreasonable determination of the facts in light of the evidence contained in the state court record.

(Doc. 1 at 25).

Petitioner raised this claim as ground three in his second amended Rule 3.850 motion. (Doc. 9-31 at 83–84). The trial court summarily denied the claim as follows:

> Defendant contends Secondary Counsel was ineffective for failing to investigate the affirmative defense of self-defense. Defendant claims that, had counsel advised him of this viable affirmative defense, he would have withdrawn his plea and proceeded to trial.
>
> At the evidentiary hearing, Secondary Counsel testified that, based on his discussions with Defendant, self-defense was neither viable nor supported by the facts. Specifically, Secondary Counsel testified that "[Defendant] told me he attacked [the murder victim]. He went in there for the specific purpose of killing [the murder victim]." (EH at 34). Secondary Counsel further testified that Defendant had told him the murder victim had previously attacked him earlier in the night, but that Defendant continued to stay at the house and do drugs. (*Id.*). Secondary Counsel was also aware that the murder victim was physically larger than Defendant. (*Id.* at 35). Based on this testimony, it is clear that Secondary Counsel sufficiently investigated the potential for raising a self-defense claim. Therefore, Secondary Counsel did not perform deficiently.
>
> Furthermore, as mentioned in Claims One and Two above, this Court finds that Defendant was told—by both Primary Counsel and Secondary Counsel—that pursuing a self-defense strategy would almost inevitably fail at trial, and he agreed with the decision not to pursue self-defense. Therefore, Defendant was not prejudiced.
>
> Accordingly, because Secondary Counsel did not perform deficiently, and because Defendant was not prejudiced, this claim is denied.

(Doc. 9-41 at 7 (internal citations modified)). The First DCA per curiam affirmed the trial court's denial without a written opinion. (Doc. 9-44).

Because the First DCA affirmed without a written opinion, the Court presumes the affirmance was based on the trial court's findings. *See Wilson*, 584 U.S. at 125–26. As the trial court decided the claim on the merits, the Court addresses it in accordance with the deferential standard for federal court review of state court adjudications. Upon thorough review of the record and the applicable law, the Court finds that the state court's decision to deny Petitioner's claim was neither contrary to nor an unreasonable

application of *Strickland*, and it was not based on an unreasonable determination of the facts given the evidence presented to the state court. *See* 28 U.S.C. § 2254(d). Therefore, Ground Two is denied.

C. Ground Three

In Ground Three, Petitioner alleges:

> The state courts' denial(s) of Petitioner Nierenberg's claim that defense counsel rendered ineffective assistance of counsel by failing to properly present mitigation during the sentencing hearing are contrary to and an unreasonable application of Petitioner Nierenberg's Sixth Amendment right to the effective assistance of counsel and the state courts' rulings are based on an unreasonable determination of the facts in light of the evidence contained in the state court record.

(Doc. 1 at 30).

Petitioner raised this claim as ground five in his second amended Rule 3.850 motion. (Doc. 9-31 at 86–87). The trial court summarily denied the claim as follows:

> Defendant argues Secondary Counsel was ineffective for failing to present effective mitigation evidence during the sentencing hearing. Specifically, Defendant claims Secondary Counsel should have retained a mental health expert to testify regarding Defendant's post-traumatic stress disorder ("**PTSD**") and anxiety/depression.
>
> At the April 24, 2015, sentencing hearing, Secondary Counsel called Dr. Steven Bloomfield, a forensic psychologist, to present mental mitigation for Defendant. Dr. Bloomfield stated Defendant suffered from no cognitive or behavioral disorders other than substance dependence and substance abuse disorder. (Ex. J at 14, 16–17, 23). Dr. Bloomfield stated that Defendant suffered from poor impulse control as a result of his young age and extensive drug use. (*Id.* at 45). Dr. Bloomfield also testified that Defendant suffered from a learning disability (resulting in low self-esteem), had attempted suicide on multiple occasions, and had been sexually abused as a child. Dr. Bloomfield also testified about a psychological report by the State's expert forensic psychologist, Dr. William Meadows. (*Id.* at 20–29). Dr. Meadows'[s] report concluded that Defendant suffered from severe opiate use disorder and antisocial personality disorder. (*Id.* at 26).
>
> Defendant's claim that he suffers from PTSD is conclusively refuted by Dr. Bloomfield's testimony that neither he nor Dr. Meadows found Defendant

> suffered from PTSD. Therefore, Secondary Counsel had no reason to believe Defendant suffered from PTSD and did not perform deficiently by not retaining an expert to testify to Defendant suffering from PTSD.
>
> Likewise, Secondary Counsel did not perform deficiently for not presenting expert testimony about Defendant's anxiety and depression. Secondary Counsel elicited strong testimony from Dr. Bloomfield regarding Defendant's drug addiction, sexual abuse as a child, and multiple suicide attempts. Therefore, Secondary Counsel did not perform deficiently. This testimony is far more compelling than generic testimony about Defendant suffering from anxiety or depression. Therefore, it is highly unlikely this Court would have imposed a lesser sentence had Secondary Counsel elicited generic testimony about Defendant's anxiety or depression.
>
> Accordingly, because counsel did not perform deficiently, and because Defendant was not prejudiced, this claim is denied.

(Doc. 9-41 at 9–10 (internal citations modified; footnote omitted)). The First DCA per curiam affirmed the trial court's denial without a written opinion. (Doc. 9-44).

Because the First DCA affirmed without a written opinion, the Court presumes the affirmance was based on the trial court's findings. *See Wilson*, 584 U.S. at 125–26. As the trial court decided this claim on the merits, the Court addresses it in accordance with the deferential standard for federal court review of state court adjudications. Upon thorough review of the record and the applicable law, the Court finds that the state court's decision to deny Petitioner's claim was neither contrary to nor an unreasonable application of *Strickland*, and it was not based on an unreasonable determination of the facts given the evidence presented to the state court. *See* 28 U.S.C. § 2254(d). Even assuming that Secondary Counsel was somehow deficient for failing to present evidence of Petitioner's PTSD, depression, and anxiety as mitigation at the sentencing, Petitioner has not demonstrated a reasonable probability that he would have received a lower sentence based on such evidence. Ground Three is denied.

D. Ground Four

In Ground Four, Petitioner alleges:

> The state courts' denial(s) of Petitioner Nierenberg's claim that defense counsel rendered ineffective assistance of counsel by failing to properly advise Petitioner Nierenberg during the sentencing hearing and failing to move to withdraw the guilty plea in light of Ashley Pace's testimony during the sentencing hearing are contrary to and an unreasonable application of Petitioner Nierenberg's Sixth Amendment right to the effective assistance of counsel and the state courts' rulings are based on an unreasonable determination of the facts in light of the evidence contained in the state court record. Alternatively, Petitioner Nierenberg has presented new evidence of "actual innocence."

(Doc. 1 at 33).

Petitioner raised this claim as grounds six and eight in his second amended Rule 3.850 motion. (Doc. 9-31 at 87–90). The trial court addressed and summarily denied the combined claim as follows:

> Defendant claims Secondary Counsel was ineffective for failing to advise Defendant to withdraw his guilty plea in light of Codefendant Pace's testimony during the sentencing hearing. Namely, Defendant points to Codefendant Pace testifying that she did not know which direction Defendant was shooting (contradicting her deposition testimony suggesting Defendant fired toward Carl Harp), thereby negating the premeditation necessary to establish attempted first-degree murder.
>
> This claim is conclusively refuted by the record. At [her] deposition, Codefendant Pace testified to the following:
>
> > Q: Did you hear any shots fired afterwards [after the initial two shots]?
> >
> > A: Yes, sir, I saw Carl run outside the house toward the opposite side of the interstate, and then maybe 30 seconds later [Defendant] came out and shot at him.
> >
> > Q: When you say 'shot at him,' what do you mean?
> >
> > A: A shot in that direction, in that vicinity.

(Ex. K at 63). This testimony mirrors Codefendant Pace's testimony at Defendant's April 24, 2015, sentencing hearing:

> Q: Okay. And then in [the] five minutes [that Defendant had been inside the house with the victim] what did you hear?
>
> A: I heard one gunshot, and then about 30 seconds later, it might have been a minute later, another gunshot, and then I see Carl. He ran outside the opposite way towards the interstate. And about 30 seconds later I see [Defendant] step out, and point the gun at his direction, and he shot again twice, but it felt like 30 seconds apart. It might not have been that long, but . . . .
>
> Q: I understand. When you saw the defendant fire the gun twice, in the direction of Mr. Carl Harp [sic]?
>
> A: Uh-huh (affirmative).
>
> . . . .
>
> Q: But it was very clearly in the direction to where Mr. Harp was running, and not in the air, not in the ground, not over here, not over there?
>
> A: Oh, yes, sir.

(Ex. J at 81–82). Accordingly, this claim is conclusively refuted by the record and, therefore, denied.

(Doc. 9-41 at 10–11). The First DCA per curiam affirmed the trial court's denial without a written opinion. (Doc. 9-44).

Because the First DCA affirmed without a written opinion, the Court presumes the affirmance was based on the trial court's findings. *See Wilson*, 584 U.S. at 125–26. As the trial court decided this claim on the merits, the Court addresses it in accordance with the deferential standard for federal court review of state court adjudications. Upon thorough review of the record and the applicable law, the Court finds that the state court's decision to deny Petitioner's claim was neither contrary to nor an unreasonable

application of *Strickland*, and it was not based on an unreasonable determination of the facts given the evidence presented to the state court. *See* 28 U.S.C. § 2254(d). To the extent Petitioner claims actual innocence,[6] he has not shown evidence of actual, not just legal, innocence. *Johnson*, 256 F.3d at 1171; *see also Bousley v. United States*, 523 U.S. 614, 623 (1998) ("'Actual innocence' means factual innocence, not mere legal insufficiency."). As the record refutes his claim, (Doc. 9-5 at 64–65; Doc. 9-10 at 82–83, 106–08, 114–18), Petitioner has not shown "it is more likely than not that no reasonable juror would have convicted him." *Schlup*, 513 U.S. at 327; *Johnson*, 256 F.3d at 1171. Ground Four is denied.

E. Ground Five

In Ground Five, Petitioner alleges a claim of cumulative error as a result of Secondary Counsel's individual or combined errors. (Doc. 1 at 38). He raised this claim as ground seven in his second amended Rule 3.850 motion. (Doc. 9-31 at 89). The trial court summarily denied the claim as follows:

> Defendant maintains the cumulative effect of the above-listed errors warrant[s] the vacation of Defendant's convictions and sentences.
>
> "[W]here the individual claims of error alleged are either procedurally barred or without merit, the claim of cumulative error also necessarily fails.["] *Parker v. State*, 904 So. 2d 370, 380 (Fla. 2005) (citing *Downs v. State*, 740 So. 2d 506, 509 n.5 (Fla. 1999)). This Court has expressly found that neither Primary, Secondary, [n]or Tertiary Counsel rendered ineffective assistance of counsel under any of the claims asserted by Defendant. "[I]ndividual claims that fail to meet the *Strickland* standard for ineffective assistance of counsel are also insufficient to establish cumulative error." *Hall v. State*, 212 So. 3d 1001, 1031 (Fla. 2017) (citing *Israel v. State*, 985

[6] Although Petitioner raises an alternative claim of "actual innocence," he acknowledges that the Eleventh Circuit's "own precedent does not allow habeas relief on a freestanding innocence claim in non-capital cases." (Doc. 1 at 33, 35 n.18 (citing, inter alia, *Cunningham v. Dist. Att'y Off. for Escambia Cnty.*, 592 F.3d 1237, 1272 (11th Cir. 2010) and *Jordan v. Sec'y, Dep't of Corrs.*, 485 F.3d 1351, 1356 (11th Cir. 2007))).

> So. 2d 510, 520 (Fla. 2008)). Therefore, because all of Defendant's individual claims of ineffective assistance of counsel are without merit, so, too, is Defendant's claim of cumulative error. Accordingly, this claim is denied.

(Doc. 9-41 at 11–12 (internal citations modified)). The First DCA per curiam affirmed the trial court's denial without a written opinion. (Doc. 9-44).

Because the First DCA affirmed without a written opinion, the Court presumes the affirmance was based on the trial court's findings. *See Wilson*, 584 U.S. at 125–26. As the trial court decided this claim on the merits, the Court addresses it in accordance with the deferential standard for federal court review of state court adjudications. Upon thorough review of the record and the applicable law, the Court finds that the state court's decision to deny Petitioner's claim was neither contrary to nor an unreasonable application of *Strickland*, and it was not based on an unreasonable determination of the facts given the evidence presented to the state court. *See* 28 U.S.C. § 2254(d).

Nevertheless, even if the state court's adjudication is not entitled to deference, this claim must still be denied for the reasons that follow. As the United States Supreme Court has not yet held that distinct constitutional claims can be cumulated to grant habeas relief, the judgment of the state court cannot contravene § 2254(d). *See, e.g.*, *Wright v. Van Patten*, 552 U.S. 120, 126 (2008) (per curiam) ("Because our cases give no clear answer to the question presented . . . , 'it cannot be said that the state court unreasonabl[y] appli[ed] clearly established Federal law."). However, even if the claim of cumulative error is cognizable for federal habeas review, it must still be denied because each individual claim that Petitioner raises is "either meritless, procedurally barred, or [does] not meet the *Strickland* standard for ineffective assistance of counsel." *Schoenwetter v. State*, 46 So. 3d 535, 562 (Fla. 2010); *see also Morris v. Sec'y, Dep't of Corrs.*, 677 F.3d 1117, 1132

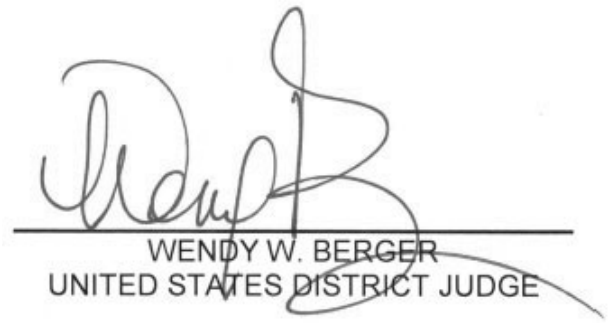
n.3 (11th Cir. 2012) ("We need not determine today whether, under the current state of Supreme Court precedent, cumulative error claims reviewed through the lens of AEDPA can ever succeed in showing that the state court's decision on the merits was contrary to or an unreasonable application of clearly established law. For our purposes, it is enough to say that Morris's cumulative error claim clearly fails in light of the absence of any individual errors to accumulate."). Therefore, Ground Five is denied.

For the foregoing reasons, it is **ORDERED** and **ADJUDGED** as follows:

1. The Petition (Doc. 1) is **DENIED**, and this action is **DISMISSED with prejudice**.
2. The Clerk of the Court is directed to enter judgment dismissing this action with prejudice and **CLOSE** this case.
3. If Petitioner appeals this Order, the Court denies a certificate of appealability.[7] Because the Court has determined that a certificate of appealability is not warranted, the Clerk of the Court shall terminate from the pending motions report any motion to proceed on appeal as a pauper that may be filed in this case. Such termination shall serve as a denial of the motion.

[7] The court should issue a certificate of appealability only if a petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this substantial showing, a petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further,'" *Miller–El v. Cockrell*, 537 U.S. 322, 335–36 (2003) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). Upon consideration of the record as a whole, this Court denies a certificate of appealability.

DONE AND ORDERED in Jacksonville, Florida on February 24, 2025.



Jax-11 2/10

c: Counsel of Record

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2010-CF-11363-AXXX

DIVISION: CR-H

STATE OF FLORIDA

v.

GREGORY MICHAEL NIERENBERG,
Defendant.
_____/

ORDER GRANTING AN EVIDENTIARY HEARING ON DEFENDANT'S AMENDED MOTION FOR POSTCONVICTION RELIEF

This matter came before the Court on Defendant's Amended Motion for Postconviction Relief, filed on October 29, 2018. Having considered Defendant's Amended Motion, the State's response filed on May 23, 2019, Defendant's reply filed on August 5, 2019, and the court records, this Court finds as follows:

On October 28, 2010, Defendant was charged with Count I: Murder in the Second Degree and Count II: Attempted Murder in the First Degree. On June 6, 2013, Defendant pled guilty to the charges in exchange for a negotiated sentencing range of between twenty-five and forty-five years in prison. On April 29, 2015, Defendant was sentenced as follows: on Count I, to forty (40) years in prison with a twenty-five (25) year mandatory minimum sentence, and on Count II, to twenty-five (25) years in prison with a 20 year mandatory minimum sentence. On May 10, 2015, Defendant filed a Motion to Withdraw Plea, which was subsequently denied as moot by this Court on May 13, 2015. Although Defendant appealed the denial of his motion, the appeal was voluntarily dismissed.

FILED AUG 21 '19 PM 3:20 RUSSELL

Defendant filed his initial Motion for Post Conviction Relief on October 5, 2016. After several amendments, Defendant ultimately filed the current Amended Motion for Postconviction Relief on October 29, 2018. Defendant's Amended Motion raises eight grounds for relief. On February 7, 2019, this Court directed the State to file a response to Grounds One, Two, Three, and Four of the Amended Motion. On May 23, 2019, the State filed its response, requesting that the Amended Motion be summarily denied without an evidentiary hearing. On August 5, 2019, Defendant filed his reply to the State's response, requesting an evidentiary hearing on Grounds One through Four.

In Grounds One and Two, Defendant alleges that his defense attorney, Charles Truncale, was ineffective for failing to advise him that his co-defendant's plea agreement with the State provided a valid basis for seeking to withdraw his plea prior to sentencing. Defendant claims that he decided to enter his plea based upon the potential that his co-defendant, Ms. Ashley Pace, would provide damaging testimony at his trial. However, he asserts that he would have withdrawn his plea and proceeded to trial, had he known he would have been able to impeach Ms. Pace with her plea agreement with the State. The State argues that this claim can be refuted by the record and is also procedurally barred. However, this Court finds that this claim warrants an evidentiary hearing, as the record does not conclusively refute Defendant's claim that Ms. Pace had an agreement with the State that was not known at the time of his plea. Furthermore, given that certain deposition testimony in the State's possession is not part of the court record,[1] this Court cannot summarily determine whether this impeachment evidence would have required the Court to allow a withdrawal of Defendant's plea. Therefore, an evidentiary hearing is necessary on Grounds One and Two. See Long v. State, 194 So. 3d 539 (Fla. 4th DCA 2016).

[1] The State attaches deposition transcripts to refute Defendant's claim. However, these depositions are not part of the court records and therefore cannot be used to summarily deny this claim. See Cruz v. State, 824 So. 2d 291, 293 (Fla. 4th DCA 2002).

In Ground Four, Defendant alleges that counsel was ineffective for failing to investigate and advise him of the available "impeachment" defense, specifically that the State's witnesses could be impeached with inconsistent statements and their drug use at the time of the offense. Defendant claims that, had counsel properly advised him, he would have withdrawn his guilty plea and proceeded to trial. Again, the Court finds that the current record[2] does not conclusive refute Defendant's claim. Therefore, an evidentiary hearing is warranted on Ground Four.

Accordingly, it is **ORDERED** that:

1. An evidentiary hearing is **GRANTED** on Grounds One, Two, and Four of Defendant's Amended Motion for Postconviction Relief, filed on October 29, 2018.
2. Defendant has no right to amend his pending Motion absent prior leave from this Court. See Fla. R. Crim. P. 3.850(e).
3. This is a nonfinal, nonappealable order, and Defendant has no right to appeal until a final order has been entered.

DONE AND ORDERED at Jacksonville, Duval County, Florida on August 20, 2019.

Marianne Lloyd Aho

MARIANNE L. AHO
Circuit Court Judge

[2] See Cruz, 824 So. 2d at 293.

Copies to:

Office of the State Attorney
Division CR-H
SAO4DuvalAppealOrder@coj.net

Michael Ufferman, Esq.
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, FL 32308

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished to all legal counsel for both parties via address listed above and/or Defendant by U.S. Mail this 23rd day of August, 2019.

J. Mack
Deputy Clerk

Case No.: 16-2010-CF-11363-AXXX
/jla

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2010-CF-11363-AXXX-MA
DIVISION: CR-H

STATE OF FLORIDA

vs.

GREGORY MICHAEL NIERENBERG,

Defendant.
_____/

TESTIMONY AND PROCEEDINGS before the Honorable MARIANNE L. AHO, Circuit Judge, Courtroom No. 305, at the Duval County Courthouse, Jacksonville, Duval County, Florida, on Friday, January 17th, 2020, commencing at 10:00 a.m., reported by Sharron A. McLendon, Court Reporter and Notary Public in and for the State of Florida.

- - -

FILED
FEB 03 2020
JOHN W. POWELL
CLERK CIRCUIT COURT

A P P E A R A N C E S

GARRETT HILL, Esquire

Office of the State Attorney

311 West Monroe Street
Jacksonville, Florida 32202

Attorney for the State of Florida.

MICHAEL UFFERMAN, Esquire

Michael Ufferman Law Firm, P. A.

2022-1 Raymond Diehl Road
Tallahassee, Florida 32038

Attorney for the Defendant.

DON PUMPHREY, JR.,

Pumphrey Law Firm

553 East Tennessee Street
Tallahassee, Florida 32308

Attorney for the Defendant.

I N D E X

CHARLES T. TRUNCALE
Direct Examination by Mr. Pumphrey, Jr. Page 14
Cross-Examination by Mr. Hill Page 55

GREGORY MICHAEL NIERENBERG
Direct Examination by Mr. Pumphrey, Jr. Page 66
Cross-Examination by Mr. Hill Page 96

E X H I B I T S

Defendant's Exhibit No. 1 Page 16

Defendant's Exhibit Nos. 2 through 7 Page 93

- - -

P R O C E E D I N G S

January 17th, 2020 10:00 a.m.

- - -

(Defendant present.)

THE COURT: Are we ready to go on the record?

Okay. So at this time we're going to go on the record. It's the case of the State versus Mr. Nierenberg, 2010-CF-11363. We are here on January 17, 2020, at 10:05 a.m.

Would all counsel please enter your appearances for the record?

MR. HILL: Garrett Hill on behalf of the State this morning, Your Honor.

MR. UFFERMAN: Good morning, Your Honor.

May it please the Court. Michael Ufferman on behalf of Mr. Nierenberg. Mr. Nierenberg has just walked into the courtroom and is seated at counsel table with us, and co-counsel is Don Pumphrey, Jr.

THE COURT: Very well.

Good morning and welcome.

I did spend quite a bit of time yesterday preparing for the hearing. I am, I believe, absolutely fully prepared to proceed. I did enter an order granting an evidentiary hearing on

defendant's amended motion for postconviction relief. That order was entered on August 20, 2019, granting an evidentiary hearing on grounds one, two and four. I reviewed the State's response. I reviewed the amended motion for postconviction relief again that had been e-filed October 29, 2018.

I did want to tell you the two things I purposely did not review. I did not review the sworn statement of Jenny Long. The State did enter a notice of filing as to that sworn statement on May 23, 2019, and I did not review the deposition of Ashley Pace that was e-filed May 23, 2019. I chose not to review them because they were not of record at the time, but I am aware that they're in the court file.

In addition, I wanted to place this on the record. This is a little bit unusual. When I was a practicing lawyer at the Marks Gray Law Firm and was seeking appointment to the bench, I had only practiced in civil, and so I gave myself the assignment of going and observing some criminal court proceedings. So one of the proceedings that I happened to observe was the sentencing of the co-defendant.

MR. UFFERMAN: Ms. Pace, yes, Your Honor.

THE COURT: Yes.

So I was in the audience that day because Judge Virginia Norton said that would be something that I could come observe, and it was an afternoon and I was available to make it. So I didn't have any communications with Judge Norton about the case. I came and observed. I communicated with her that it was scheduled and then I came and observed it. And I remember that Jeff Moody was there and Mr. Shorstein was there, and I remember saying hello to them, as professional colleagues, but we did not talk about the case from their perspective. So I just wanted to make it clear I was there, and I believe I placed that on the record at the time of the sentencing before.

MR. UFFERMAN: You did, Your Honor.

I, you know, I don't think we have any concerns about that. I guess if you'd give us one second so we can discuss that.

THE COURT: Oh, sure.

MR. UFFERMAN: You did, in fact, point that out during the original sentencing hearing.

(Mr. Ufferman conferring with the defendant.)

MR. UFFERMAN: Thank you for pointing that

out, Your Honor, and allowing us to discuss it. Of course, just as you indicated from the previous sentencing, we don't see any issue with that at all.

THE COURT: Very well.

So how would you like to proceed at this point?

MR. UFFERMAN: Your Honor, can I address some housekeeping matters?

THE COURT: Of course.

MR. UFFERMAN: Thank you.

The one thing I did want some clarification on, and I apologize if I should have sought this clarification earlier, in my mind it was a little confusing because of the first four claims raised in the motion, there is a ground three that talks about whether Mr. Truncale failed to investigate an available self-defense claim, and you did not grant an evidentiary hearing on that, but ground two is a more general claim that states that Mr. Truncale rendered ineffective assistance by failing to properly advise the defendant as to whether or not he had legal grounds to withdraw his plea, and one of the specific things mentioned in ground two is advising our client regarding whether he had a

viable self-defense defense.

We certainly intend to go into that today, and it was our belief that perhaps you were taking the position that he didn't need to investigate it further, but we would submit he still had to properly advise our client because that would be something relevant to whether or not our client should withdraw the plea. So we intend to address it just from the standpoint of any advice that Mr. Truncale gave our client about whether self-defense was viable, but we don't at all intend to go into what an investigation subsequent to that would have encompassed because you didn't grant a hearing on that, but I just wanted to at least let the Court know that's where we intend to go, and you'll hear some questions about that, and if there is an issue maybe we can discuss that before we get to those questions.

THE COURT: Does the State wish to be heard at this time on this?

MR. HILL: No, Your Honor. If it goes beyond what I think what the State would feel is appropriate in accordance with the Court's order, we'll raise an objection at that time.

THE COURT: And both sides may be heard at

that time.

MR. HILL: Yes, ma'am, absolutely.

MR. UFFERMAN: Thank you, Your Honor.

The other thing is, a couple of things to point out. I'm an appellate postconviction lawyer, I don't do any trial work, and I learned the hard way when I first started getting evidentiary hearings that it doesn't make sense for me, without having that experience, to be conducting these evidentiary hearings.

And Mr. Pumphrey is a colleague of mine, and about ten years ago he volunteered to assist me in any evidentiary hearings that I would be granted on our postconviction motions, and now he's done probably close to 50 of these with me around the State. So if it's okay with Your Honor, I'll be the one to make any legal argument, but I'll let Mr. Pumphrey be the one to question the witnesses today.

THE COURT: Absolutely.

MR. UFFERMAN: Thank you.

And I would ask the Court to take judicial notice of everything in the court file. I don't think the State has any objection to that. I think we're both going to be relying upon things that are

in the court file, and there are some transcripts of either pre -- some interviews with witnesses and/or depositions that we'll introduce as exhibits, but many of those are now in the court file as well because the State filed them with their response.

THE COURT: No objection from the State?

MR. HILL: That's correct, Judge. I was going to make the same request.

THE COURT: Okay. So I am taking judicial notice of the entire court file in 2010-CF-11363, and so I will now feel free to review everything.

Remember I gave myself a self-imposed limit and did not review the sworn statement or the deposition that I referenced a few minutes ago when I was preparing for the hearing?

MR. UFFERMAN: Thank you, Your Honor.

I think the only other thing is there are some dots that I'm hoping to connect in closing regarding some inconsistent statements, and I think it's just going to be easier for me to do that in writing. I know the State would prefer to give their closing argument orally, and I think we've agreed, if the Court will permit this, is that I'd be given some period of time, and we can discuss

that at the end of the hearing, to submit a written closing argument, and then the State will have sufficient time to review that and then we can set this for a hearing where maybe I can appear telephonically and the State can give their oral closing argument. We can talk about whether Mr. Nierenberg should be present for that or not and then that way we both get to accommodate our styles both in writing and orally and present our arguments to the Court.

THE COURT: That's absolutely fine with me. That's fine with the State?

MR. HILL: Yes, ma'am. I would defer to the Court on how that was to happen, and that's actually fine. The State would have no objection to that.

THE COURT: I think we've all learned that there are different ways to digest information in our brains. Some people like to -- they're auditory learners, some people are visual learners, and I -- my job is to learn it both ways. So it's absolutely fine with me that counsel proceed in the way that they prefer.

The only question I'll have, and we'll be able to work through this toward the end of the

hearing is, I don't want to house the defendant here in Jacksonville for an extended period of time because of the expense. So one option would be to return him to the Florida State Prison after the hearing today. My order to transport had the return language so he can go back. Then we could bring him back for that actual hearing.

MR. HILL: And, Judge, I'll defer to the defense. In the past I know that Mr. Sichta, who has employed the same procedure of that, has not needed the defendant back for the oral argument portion. Obviously, if they want him back, I'd -- the State has no objection to that, so I'll defer to the defense on what their request would be in that circumstance.

MR. UFFERMAN: And, Your Honor, my request would actually be that he does go back to DOC because I'll be able to have a confidential telephone call with him as I'm preparing my written response, and I won't be able to do that while he's at the jail.

THE COURT: So why don't we do this:

Officer Thomas, after today's proceeding, I'll address it at the end of the proceeding, likely he can go back.

OFFICER THOMAS: Yes, ma'am.

THE COURT: But I would be happy later to enter a similar order to bring him back for the hearing where the State presents their verbal argument, and you'll be by phone, as long as you're comfortable with Mr. Nierenberg being present in the courtroom, as long as he's silent, I don't see any harm in you appearing by phone.

MR. UFFERMAN: I don't either, Your Honor. I'll talk to him and we'll make sure we're on the same page, and then I'll get you an answer at the end of the hearing.

THE COURT: Wonderful.

Thank you.

You may proceed.

MR. UFFERMAN: And with that, Your Honor, I will sit down and we'll proceed with our first witness, who will be Mr. Truncale.

THE COURT: Very well.

MR. UFFERMAN: And I believe, is Mr. Truncale outside?

MR. HILL: Yes.

THE COURT: Good morning.

MR. TRUNCALE: Good morning, Your Honor.

THE COURT: If you'll please come forward,

Madam Clerk will swear you in, and then if you will please be seated.

And, Counsel, you're welcome to use this podium if you'd prefer.

MR. TRUNCALE: That's there. Thank you.

THE CLERK: Raise your right hand, sir.

CHARLES T. TRUNCALE,

having been produced and first duly sworn as a witness, testified as follows:

THE COURT: If you'll please be seated, and please watch your step on that edge of the courtroom.

You may proceed.

MR. PUMPHREY, JR.: May it please the Court.

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. PUMPHREY, JR.:

Q Good morning.

A Good morning.

Q Can you please state your full name and spell your first and last name for the record?

A Yes. Charles Truncale, C-H-A-R-L-E-S, T, as in Thomas, R-U-N-C-A-L-E.

Q Okay. Mr. Truncale, for the record, Don Pumphrey, Jr.

I want to ask you a couple of questions. Specifically, first of all, do you know Gregory Michael Nierenberg?

A Yes, sir.

Q Okay. How do you know him?

A He was a former client.

MR. PUMPHREY, JR.: All right. Your Honor, may I approach the witness?

THE COURT: Of course.

BY MR. PUMPHREY, JR.:

Q I'm showing you what's been premarked for identification as Defense Exhibit 1 and ask you to take a look at that.

A Yes.

Q Okay. Do you recognize it?

A Yes.

Q How do you recognize it?

A I recognize it to be a contract that I had drawn up. It's similar to other contracts that I've drawn up.

Q Okay. And is that a fair and accurate representation of the contract entered into with Mr. Nierenberg?

A Yes, sir.

MR. PUMPHREY, JR.: Okay. Your Honor, without

objection, I've previously shown what's been premarked as Defense Exhibit 1 to the State. I would now enter it into evidence as Defense Exhibit 1.

THE COURT: Very well, sir.

Defense Exhibit 1 is received into evidence.

(Whereupon, the document last-above referred to was received in evidence as Defendant's Exhibit No. 1.)

BY MR. PUMPHREY, JR.:

Q Now, what was the scope of your representation with Mr. Nierenberg once you were hired?

A I came on in representing him at sentencing, and in connection with that I would consider whether there were grounds to withdraw his plea of guilty and advise him about the pros and cons of persuing that.

Q Okay. Now, had you previously worked with Mr. Nierenberg? Prior to this contract, had you previously represented him or worked with him?

A No.

Q Okay. So prior to entering into the contract that's been introduced into evidence as Defense Exhibit 1, you had had no experience with Mr. Nierenberg?

A None.

Q Okay. Did you -- did you make inquiry once

you were retained and go over the withdrawal of the plea?

A At length, on many occasions.

Q Okay.

A With him and with various -- with prior counsel, Mr. Henry Coxe, former --

Q Okay.

A -- Florida Bar president and several witnesses.

Q Okay. And when he hired you regarding withdrawing the plea, did he indicate to you that he wanted to withdraw the plea?

A I understood it was for sentencing, and I explained that to him that -- and his father, that at this point he was scheduled for sentencing and if -- if he did wish to withdraw the plea, I would counsel him about that, that was part of it. That was not the sole purpose of representation. It was sentencing and considering withdrawal of the plea.

Q Okay. In fact, in your contract that we just introduced there is a specific section in there that talks about advising on withdrawal of plea?

A Absolutely, yes, that was an agreement.

Q And is that because Mr. Nierenberg brought that issue up?

A I believe both he and his father, yes.

Q Okay. And what did you specifically advise Mr. Nierenberg as to his legal ability to withdraw the plea?

A All right. I had many discussions with him about that. It was not a one-time discussion. I did advise him of the standard of the Florida rule of criminal procedure concerning withdrawal of a plea prior to sentencing and the fact that there -- that what would have to been shown is good cause for the withdrawal, and I discussed with him that -- that the mere existence of good cause to withdraw the plea was not the sole purpose of my representation, that if there were grounds, then he would have to decide whether it was the -- in his best interest to do so, and I told him that I would weigh the pros and cons of persuing that, to the point that if a Court, indeed, permitted him to withdraw, that he was making an informed decision and it was in his best interest.

And let me tell you this, that was a major part of my counseling with him, it was, and I likened it to a battle and a war. I explained to him that if we look at withdrawing the plea in a vacuum, I was confident that we could very well make an argument, the standard is not that difficult to reach, but that I

would require if I -- it was my obligation to make sure he was making an informed decision about doing so because he would, in all likelihood, and I remember telling him virtually certain that if his plea was withdrawn he would never, in all likelihood, ever have another plea agreement, that if convicted he would be subjected to considerably more harsh of a sentencing.

I explained to him that his prior counsel was a very prominent and very excellent attorney, Mr. Coxe. It appeared that he had negotiated a favorable negotiated sentence, a plea agreement, not negotiated sentence, but an agreement where his -- where Mr. Nierenberg's exposure to a term of years was limited to 45 years, so no less than 25 but no more than 45 years, and that based on the charges, he could reasonably expect to be sentenced to more than the maximum agreed.

I told him that I needed to review all of the discovery material to be able to counsel him on the matter, and that ultimately it would be his decision, but I have a moral and legal obligation to make sure he was informed about the steps he was taking. With that, with that instruction, he and I met several times and reviewed at length the discovery material in the case, involving depositions, sworn statements of all the

various witnesses.

I will tell you he was -- he was very, very clear minded. He was prepared. He would review the depositions and statements of all the witnesses. He would tell me what he thought about what they would -- how effective they would be at a trial, for instance, and we discussed those matters. Again, this was not one time, it was repeatedly throughout the representation.

I gave him my opinions and told him the likely -- you know, told him that he had to make a decision, and on more than one occasion it was my opinion that he had -- and I told him that we have grounds to withdraw the plea, but I wouldn't do so if I -- I would not -- I would not recommend it for these reasons, and in every, not one, not twice, but in every single occasion that I asked him for his decision, he decided that it was not a good decision to do so and instructed me not to file a motion to withdraw plea prior to sentencing. In fact, the only time he asked me to file a motion to withdraw his plea was after the sentence was imposed and it was, in my opinion, out of anger. He was not speaking. He was -- he was emotionally upset at the time.

Q So, Mr. Truncale, your advice to

Mr. Nierenberg was to not withdraw the plea?

A Sir, on many occasions, based on different circumstances, based on different questions posed by him, for instance, based on this witness' testimony should I, I would like your opinion, on every -- and I had to say there had to be at least a dozen times, at least a dozen times that we discussed the circumstances about withdrawing the plea. And I make -- if I might state, each and every ground raised in the 3.850 motion filed in this case --

Q Mr. Truncale --

A -- was discussed.

Q Can I just stop you a second? My question is very simple.

A Sure.

MR. HILL: Judge, I would pause because I don't think he heard him. Mr. Truncale was in the middle of answering the question as Mr. Truncale felt it appropriate towards counsel's question. I'd ask that he be allowed to finish his answer before counsel asks his next question.

THE COURT: Did you want to be heard at this point?

MR. PUMPHREY, JR.: Judge, I was just trying to get to the question. I think Mr. Truncale was

being nonresponsive, but I can -- I can let him continue like I did the first time. I was just trying to narrow him back to that one question.

THE COURT: That's fine.

I'll allow the witness to finish his answer, but this really is without prejudice. If you need to raise it again, I'm here to listen.

THE WITNESS: Sir, I did not want to be misunderstood. The answer to the simple question did I advise him in my opinion that it was not favorable for him to withdraw a guilty plea based on the circumstances presented at the time, the answer is yes, but it was not one time. It was numerous times --

BY MR. PUMPHREY, JR.:

Q So yes --

A -- with regards to --

Q So yes you advised him it would not be in his best interest to withdraw the plea?

A On many occasions, yes.

Q Okay. Now, you mentioned earlier that you knew Mr. Nierenberg. How -- how much actual time did you know Mr. Nierenberg, get to know him?

A I don't understand what you mean get to know him.

Q In other words, you met with him a number of times?

A Oh, yes.

Q And you went -- said, in fact, that you talked to him and went over documents and paperwork with him a number of times?

A Yes, sir.

Q And so was that a span of a few weeks, over...

A We -- I represented him for seven months prior to the initial sentencing date, which was in February, around February, late February of 2015. I -- I was -- I entered the case and I was -- you know, my motion to substitute as counsel was approved the very first week of August 2014. So for, if my math is correct, for approximately seven months prior to the first scheduled sentencing I met with him countless times and hours at a time. I don't know the total amount of time.

Q And, Mr. Truncale, you are a very well respected criminal defense attorney here in the community, are you not?

A I don't know that. I'm an attorney in the community.

Q Okay. If someone throws you a -- tosses you

a softball you --

A Yeah.

Q -- you put your -- you were a federal prosecutor for a number of years?

A I was, yes.

Q Okay. And as a criminal defense attorney, you want to get to know your client. You would agree with that?

A Absolutely, yes.

Q That's a -- and that's kind of critical to make sure, as you said earlier, you wanted to make sure you understand at each stage, right?

A Yes.

Q Okay. Tell me a little bit about Mr. Nierenberg, about his ability to process information.

A He was a bright kid, a bright young man.

Q But what -- where were his learning disabilities?

A I just believe --

MR. HILL: Judge, I'm going to object. It's outside the scope of the defense motion. The defense motion is as to whether or not Mr. Truncale advised the defendant regarding the grounds that we're here to discuss. This is getting far afield

from the factual grounds in the motion.

MR. PUMPHREY, JR.: May it please the Court.

THE COURT: Yes.

MR. PUMPHREY, JR.: We respectfully disagree with my colleague. I'm exploring whether or not the attorney actually understood his client's ability to process the information and understand what he was telling him.

THE COURT: Overruled.

You may proceed.

THE WITNESS: I'm sorry, I did not hear you, Your Honor.

THE COURT: Overruled.

You may answer, sir.

BY MR. PUMPHREY, JR.:

Q So, Mr. Truncale, tell me -- tell me about Mr. Nierenberg's learning disabilities.

A I believe he had dyslexia. I know that his mom test -- I spoke with her prior to the sentencing hearing, at which she testified, and on several occasions, and she described to me that he actually reads from right to left, and we actually joke -- joked about it, much like the Jewish culture the reading is -- the writing is from right to left and -- and she explained that to me. I know she used the term

dyslexia. That may be what I just described, I don't know, and that he had learning disabilities, but that he did fairly well. He functioned well despite that. That was my observation about him.

I tell you, I thought he was bright. I -- I was dealing with a person some time that -- I think four years after the alleged, you know, after the incident for which he was charged, so he would have been around 23, 24 years old. He was not plagued by drug abuse. I saw a guy, you know, pulling his life together. And I think he was actually quite intelligent because he -- the way he answered the question, the way we discussed it, he clearly understood, and always prepared with written pros and cons as to why this person's testimony might be rejected by a jury. I mean, I saw him as a bright kid, a 24 year old kid. It was actually uplifting. The kid I met and represented was not the 19 year old angry kind that was involved in the offense and it was -- I was happy for him, you know.

Q And were there any learning or processing deficits that you became aware of as you were representing him?

A Sir, I don't recall. Again, what I'm saying is I knew of the dyslexia, I knew of what his mom

explained to me. I didn't observe or encounter difficulties beyond that. Again I say, he was quite intelligent.

Q Okay. And I know you've mentioned that your observation was that he was quite intelligent. Have you had any training in determining processing or --

A No.

Q -- learning disabilities?

And so as you're going through this, you want to place in your contract specific things that are inquired about or asked about by the client, in this case the withdrawal of the plea?

A Oh, absolutely.

Q Okay.

A No question.

Q And so, and you said, if I heard you correctly, that Mr. Nierenberg, that issue came up a number of times during your representation?

A Yes, yeah.

Q Okay.

A That was, yeah.

Q And your advice was to not withdraw the plea?

A After discussion with regard to every particular subject matter, it wasn't one encompassing I want to withdraw my guilty plea, it was we literally

went over every witness' former testimony and proposed testimony if it were to go to a trial.

Q And why was he wanting to withdraw his plea?

A He was very -- he was very, very upset with his -- his representation by prior counsel and, you know, this -- that's not an uncommon thing that I've seen. He was upset. He didn't -- he didn't believe that his counsel assessed the evidence against him adequately when his counsel advised him that -- that he should plead guilty, that it was in his best interest, and that the agreement that he negotiated would be favorable to him. He just, he had reservations. He believed that Mr. Coxe did not effectively represent him.

Q What were the reservations, do you recall?

A Most of them were concerning the government, excuse me, I keep saying government, we're not in federal, the State's ability to obtain guilty verdicts. He didn't believe that the evidence was strong enough and that he -- he believed the plea, the sentencing arrangement, or agreement if you will, that -- that he accepted was not adequate. It should have been much, much more lenient.

Q Okay. But were there any other basis for withdrawing the plea that he inquired of you or that he

stated? In other words, I'm just trying to vet out the number of different reasons why he wanted to withdraw his plea prior to sentencing.

A I can tell you this, every -- I've read the 3.850 motion filed in the case, and he did raise every single issue in -- that appears in the motion, I know that, and the most -- I'll tell you, the most predominant reason was impeachment of the State's witnesses against him.

Q Okay. And so did he also bring up any issues about or did you discuss with him and explain to him what impeach is or the importance of it as to the State's burden of proof?

A Absolutely.

Q All right. And so what exactly did Mr. Nierenberg tell you happened that night as far as any shootings?

A Again, please, I'm just prefacing this with we -- we spoke on many occasions, okay, and on many of those occasions when the subject arose he indicated that he went to the -- a house, the residence of this Mr. Stallings, and he went there primarily to obtain drugs, that there were women there with Mr. Stallings, there was another -- and there were people in and out through the evening.

I know that he ended up getting -- that he, through Mr. Stallings, he purchased drugs throughout the evening. He indicated that the -- that he -- I mean, he said that he was partying, that he had sexual relations with one of the women there who he described as prostitutes who were being, for want of a better word, pimped out by -- by Mr. Stallings.

He advised he was there partying, that he was getting drugs all night. He indicated that -- he indicated to me that Mr. Stallings had apparently shorted him throughout the entire evening.

What is shorting him, what is that?

He explained that he would give Mr. Stallings $100 at a time on several occasions that evening to purchase drugs and that Mr. Stallings would either send somebody out or go out himself and come back with the drugs, but if it was a $100, it was always $100 given to Mr. Stalling -- Stallings, and that he would come back with less than one hundred dollar's worth of drugs that would be -- that he would consume, and then he would literally shortly thereafter that evening would give Mr. Stallings more money, and that what he explained was so many times in the evening that he gave Mr. Stallings money to purchase drugs that he wasn't getting the drugs that he believed was due for the

amount of money and that it infuriated him, and that he ultimately shot him in the head in a rage over the fact that he felt he was defrauded by Mr. Stallings of the drug money. It was that simple.

Q So he --

A And he --

Q And I apologize, I'm not trying to interrupt. Just prior to the shooting, what was Mr. Stallings attempting to do to Mr. Nierenberg based on what Mr. Nierenberg had relayed to you?

A He told me that he, he Mr. Nierenberg, went -- was in the car with his then girlfriend Ashley Pace, told her wait a minute, I'll be back. He said that he went into the home for the specific purpose of killing Mr. Stallings, that he went in there, that he initiated the contact, that he literally grabbed him and had the fellow in a headlock and then shot him in the head.

He indicated where the various ladies were in the house, and there was also a man, I believe his name was Carl Harp, he was also in the house. He discussed with me from a vantage point where Ms. Jenny, I think it was Jenny Long, the names are escaping me right now, I believe it was a Jenny, where she was. She was in the bedroom not far from where he was holding

Mr. Stallings and shot.

He tells me he ran out. He said that everybody ran out. He said everybody, the people were just -- he says they were terrified once he start -- once he shot, and he shot once or twice. He said he shot him in the head.

He then said, I came out, came out of the house after this fellow Harp had exited the front door. I think the ladies might have gone out another door and he says, I came out, I screamed, I shot. I -- my recollection is I shot in the direction of -- of where Mr. Harp had run.

And he was very detailed about this, and I remember asking him, were you shooting at him, and, well, I was shooting in his direction. I was just shooting. I wasn't really intending to kill him, but -- but, yes, I shot in his direction.

Then he went and he told me about how he then did, in fact, go into the car where Ms. Pace was sitting and that he told her what she has attributed to him, which was, no MF expletive steals money from me. And -- and what he was was referring to, and I asked him what is that, well, that's what he explained and was telling me about where he -- where he -- where he, Mr. Stallings, was cheating me throughout the night

of -- of the money that I gave him to purchase drugs.

He told me that he didn't put a gun to Ashley Pace's head, that was something that Ms. Pace said, that he put a gun to her head and said don't ever tell, if you tell anybody this I'll kill you or something to that effect, but he was very, very -- I mean he told me clearly that he committed the offense, clearly that there were eyewitnesses, clearly that he made an admission to Ms. Pace about it, clearly that he shot at this Mr. -- in the direction of Mr. Harp who had run down the street in panic over the threat of being harmed by Mr. Nierenberg.

Q So -- so let me -- and I want to focus on do you remember who Mr. Stallings was?

A Pardon?

Q Do you remember Mr. Stallings?

A Stallings was what he described to me as the owner of the house in which they were partying that evening.

Q And -- and maybe I didn't make this clear. So my question is very specific in time. What did he tell you Mr. Stallings was doing just prior to the shot being fired?

A I don't recall right off the top of my head. He was in the house. I truly don't recall.

Q And did you review the medical examiner's report?

A Yes, I did.

Q Okay. And so were you able to determine whether or not Mr. Stallings was attacking Mr. Nierenberg?

A Oh, no, no, absolutely not. Mr. Nierenberg told me he attacked Stallings. He went in there for the specific purpose of killing Mr. Stallings.

Q Okay. Did Mr. Nierenberg tell you how he got inside the steel door that was outside the front door?

A I don't recall that. I know he went inside. We never discussed that. We never discussed it. He went in the door. I had -- I never questioned him about that.

Q Okay. So you never advised him on self-defense?

A Oh, yes, I did. He told me that, you know, the guy attacked me earlier.

And I said, how much earlier?

Oh, a long time earlier.

So you continued to stay here with him and do drugs and party?

Yeah.

And then you went in and you attacked him and

had him in a headlock, and I explained to him.

Well, he was bigger than me.

Q Now, when you're asking him about the headlock situation, the -- were you able to use any of the forensics or any of the information that law enforcement gathered to see whether or not Mr. Nierenberg, who you would agree was dyslexic, right?

A Uh-huh.

Q Is that a yes?

A Yes.

Q I'm sorry. The court reporters have a hard time.

The -- were you able to determine whether or not there were any forensics that either contradicted what Mr. Nierenberg was telling you or corroborated it?

A Sir, it was never an issue that he did what he told me he did. The -- the discussion was whether the State's witnesses would be able to -- to convince a jury that he did so. Now, that wasn't -- that -- based on what he told me, there was no reason to do what you're asking.

Q I understand. I'm just vetting out this, this issue.

So was there ever a discussion concerning the

stand your ground law at the time of the incident? And you're smiling kind of.

A I'm laughing because --

Q Okay.

A -- there was no self-defense. I told him there has to be a -- a -- an eminent -- a reasonable belief of danger of death or serious bodily harm, and he told me that there was none, therefore -- and he told me that he was the aggressor. He told me that his intent was to kill the man, and -- and I told him we -- we don't have self-defense, a valid self-defense defense based on what you're telling me and based on what the other evidence is from what the other witnesses are.

Sir, I would say that that was just -- it was rejected out of hand based on the truth of the matter stated to me by Mr. Nierenberg.

Q And when you say rejected, rejected by you?

A That he did not have a viable self-defense defense.

Q And that was your advice to him?

A Absolutely. That would be my advice today. There was no self-defense. He admitted going in there to kill him, being the aggressor, the witnesses indicated, all of the evidence, the other evidence and

his admissions to me all pointed to it. No, sir, there was no self-defense, no.

Q At any time you said there were -- was an earlier incident Mr. Nierenberg had mentioned where Mr. Stallings attacked him?

A They'd fought, yeah, for a short while, and it wasn't -- and they continued -- he stayed there and they continued to party thereafter.

May I say this? It is very critical that every time I gave him an opinion I told him that I -- that that was merely my opinion, but that it was his choice and I would follow his instructions. I believe I gave him the absolute correct advice, but I told him, you need to make a decision based on the pros and cons, and in every instance he advised me that he did not wish to file a motion to withdraw the guilty plea.

Q Okay. So -- so back to the self-defense issue. What was the first contact he had with Mr. Stallings when he went inside the residence?

A I don't know what you're talking about. The first time that he went in at all?

Q You -- you just testified that he explained to you it was his intent to go in and kill Mr. Nierenberg, right?

A At the -- right before he went in and killed

him, after he left, when he was sitting in the car outside the house with Ms. Pace he said to her, they were going to leave and he said to her, I got to go inside for a minute. I'll be back. At that time he went in and killed Mr. Stallings.

Q When he first went in though, what were the circumstances, your understanding of the circumstances and their interactions specifically between Mr. Nierenberg and Mr. Stallings?

A That he went to Mr. Stallings and had words with him and they -- and attacked him. They struggled for a little bit. He had -- he got --

Q Who attacked who?

A Mr. Nierenberg attacked Mr. Stallings. Mr. Stalling resisted. Mr. Nierenberg was much younger than Mr. Stallings, overpowered Mr. Stallings, held him in a headlock and shot him.

Q Okay. And so what forensically were you able to establish that he had the man in a headlock and shot him at the same time? Was that your understanding of what happened?

A Yes. I don't recall, sir.

Q And do you recall whether or not the gunshot wound evidence would show that that would not be possible?

A I know he told me that he had overcome the guy in a headlock before he shot him, whether he shot him while in a headlock, I don't know, but I remember distinctly he overpowered him by means of a headlock.

I'm a former all American wrestler. I understand wrestling. I understand you take a person, you control them. I understood it as -- as what it was. He overpowered him before he shot him, whether he was in a headlock, which actually would be he would have had to hold him with one arm and shoot him with the other, it may have been he overpowered him, threw him and then shot him, but it was, I overpowered him by virtue of a headlock, common move in a wrestling situation, and a better question of wrestling ever, he overpowered him and then shot him.

Q How would you --

A There was no issue. There was no issue on this. It was an admission to me of what happened and that was never an issue.

Q So the going with you never was an issue. You -- you went through the medical examiner's report and were -- and you looked for -- and with the firearm you look for what's called blow back to show that it was a contact or near contact gunshot wound?

A Well, I don't know. Are you saying with

regard to the self-defense?

Q Yes, sir.

A I -- I -- sir, again, the self-defense, I advised him it was not a valid defense that any jury would ever believe, in my opinion.

Do you want to pursue it? And he -- and he's explaining to me, yes, I did this and -- and once a person says no, I am not going to pursue it and I agree that it's not valid. I -- no, I never dared to challenge his decision because it was the only sensible decision. Again, it was his decision not to pursue it. He raised every -- he raised many issues.

What do you think about this?

I don't think it's valid for this reason.

I agree.

I mean, that's -- that's a shorthand of the -- of what we're saying.

Do I recall going over the medical reports to determine whether he had shot the man, whether his admission to me about shooting the man was plausible and true, of course. He killed the man, as he told me went in there to do so.

Q Well, you would agree with me though that --

A I don't know that I agree with you with anything.

Q I'd like to finish the question.
A Okay.
Q So you would agree with me though that you looked at the gunshot to see if the science matched the story you're getting from your client? That's as...
A I -- I don't -- I don't recall. Candidly, I mean, I don't know whether my mind went through that process because there -- he never challenged that he didn't shoot the man. I don't understand. I don't.
Q So --
A I don't believe I made that conclusion because it was not an issue based on our discussions.
Q And so you never really looked into the forensics or the science of this particular case because your client is telling you what happened?
A No. I looked into -- I assure you I've read all of the evidence. Did I see an issue over -- over whether he had killed the man as he acknowledged to me? I never saw that as an issue, especially in light of our discussions and his agreement that it would not be a meaningful, valid, winnable defense at trial.
Q Which his --
A I did discuss it with him.
Q Okay. How far was the gun distance wise forensically when fired?

A I -- I do not remember. I'd have to get the report and go over it.

Q Okay. And did you question Mr. Nierenberg about the forensics and inconsistencies in the forensics in the story?

A What inconsistencies, I'm sorry?

Q Any of them.

A Inconsistencies of what, of their self. Were there internal inconsistencies? I didn't see any internal inconsistencies in any report that warranted my advice to him that there was, well, is this a self-defense defense? No, there -- I saw none that would warrant a self-defense.

Again, I gave my opinions based on what I read, based on what -- my discussions with Mr. Nierenberg, and I -- and I counseled with him on this and I gave him my opinions, and ultimately with a request, what is your opinion? What do you wish to do?

Q And you would agree that he was going by your legal advice based upon the facts being presented?

A I don't know. I hope he was. I don't know. I would presume he was listening to me. I know he had his independent opinion, and I say he was bright. He waited and he had his opinion. He would articulate why a -- why he might win at trial.

Again, you don't understand. There was no issue about whether there were grounds to withdraw to present to a court and whether there was good grounds to do so. I always told him there were grounds to withdraw, which would meet the good cause standard, but that he should not make a decision based on the -- the -- the likelihood of success of a motion to withdraw a guilty plea without considering the effects of a granted motion, that is, that he would have to go to trial, that in order for it to benefit him he would have to win or else he would, in all likelihood, and I told him almost certain virt -- almost certainty, which nothing is certain in life, but almost certainly, in my opinion, he would receive a sentence far in excess and of the sentence that was negotiated by Mr. Coxe, that is, the lowest 25 years, maximum 45 years. There was never an issue. I never told him that he did not have grounds, successful grounds to raise for a motion to withdraw the guilty plea.

I don't think I'm making it clear to you, there was never that issue, never. I agreed with him at all times, except for the self-defense, I think that was a ludicrous one, but other than that, I agreed with him, he had grounds. I just felt and expressed to him that -- that it was a very serious decision for him to

make because based on my many years with trial experience, my understanding of the law, my understanding of juries and how they respond to evidence, that the likelihood was very high that he was going to be convicted and the result, therefore, would be an after sentence far more harsh than the one to which he had initially agreed.

Q Now, you said that self-defense was ludicrous. Was that was you said?

A I -- based on what he said to me, okay, based on what he said to me, and the fact that a jury would have had to believe his testimony concerning that defense, that it was a foolhardy decision to proceed on that, that a jury would likely reject it. Absolutely, yes, I say that and I say that now. He would not have made a good witness.

Q And why is that?

A Because what he said made no sense, that he, in light of the other evidence, he was going to have to withstand cross-examination, and I don't believe he was able. I believe he did not have a more persuasive argument -- a more persuasive version of the facts than, for instance, Ms. Pace. I believe Ms. Pace -- and I believe Ms. Pace when I cross-examined at the first sentencing hearing, I believe she would have been

very persuasive to a jury, notwithstanding the fact that at the time she was a drug addict, notwithstanding that she had inconsistent statements. She, in my opinion, has presented herself with a -- as a witness who -- who picked herself up from -- from the ground. I believe a jury would have liked her, right, and would have believed her because her story, her version of the truth about his admission, which he told me happened, was going to be believed.

Q This is -- you said earlier, I want to clarify this, you were talking about Mr. Nierenberg when you said what -- what he was asking made -- or what he was asserting made no sense. I think you were referencing self-defense.

A I think so, yes.

Q Okay. And so --

A I believe that's what I said.

Q Right. When you were saying what Mr. Nierenberg was telling you there was some inconsistencies and --

A And, sir, it's inconsistent with -- with the fact that he's in the car about to leave and then says to his girlfriend, I will be back in a minute or two, goes in there, shoots Mr. Stallings, his people run out, he comes, he shoots at -- at another individual,

Mr. Harp, he gets in the car, makes an admission of having just killed Mr. Stallings, stating the reason why. Sir, I -- I --

Q Well, I'm trying to understand what was inconsistent.

A I don't understand. That's the -- his statement of -- there was self-defense. And -- and he didn't say there was self-defense. Let's get this straight. It was, do you think I have a self-defense defense, you know, and my answer was, no, for many reasons.

Q As we sit here, you don't remember every fact he presented to you, do you, other than what was just --

A Oh, of course no, of course not.

Q Okay. And in not remembering all the specific facts, you do remember though you did not or you did go over stand your ground and self defense?

A I went over self-defense with him, I know I did because he asked me about it.

Q And how many times did he ask you about it?

A Oh, heavens, I don't recall.

Q And how many times --

A Probably I think --

THE COURT: One person at a time please.

MR. PUMPHREY, JR.: My apologies.

THE WITNESS: Once or twice, because we -- we -- it -- it wasn't -- it wasn't the primary request. I mean, I call it a request, not a complaint, a request.

Do you think this would be -- be worthwhile?

Do you think this would be helpful?

And that was what was, I believe, the most logical and perhaps the strongest of many weak requests, all of them were weak, many. The strongest of his requests focused on the -- the drug use all of the witnesses, inconsistent statements by the various witnesses. That was the strongest. That was always discussed, always. Every time we met, that was the primary, primary, if I had to give it a best word, a hope for a change of circumstance, that is, a motion to withdraw guilty plea that would be granted, that would be followed up by not guilty verdicts.

BY MR. PUMPHREY, JR.:

Q So what -- what was it that he was saying though that made no sense? I'm trying to just delve into and --

A Oh, I would --

Q -- what were the inconsistencies?

A Okay. Self-defense, the self-defense.
Q And do you remember specifically why?
A Because there was no eminent danger of death or serious body harm and, A-N-D, he was the aggressor. And the way he explained it to me, Mr. Stallings never, even with the resistance after he initiated the contact, the -- Stallings never, never posed a -- a threat. He overcame him very quickly. It was a -- there was no -- how can you present a self-defense when there is not eminent danger of death or serious or bodily harm? That's the core of it.

And no person would believe that based on what he's telling me and I don't have the option of telling him to make up facts. What he told me as a matter of law would not justify a self-defense defense. He went in. He attacked. He easily overcame the victim before he shot him to death. That's not self-defense under any, any basis of the law, any basis. And such a -- a -- I could not counsel him that that was a prudent -- a prudent strategy.

Q Did you explore the -- the actual actions of him inside the house and interactions with Mr. Stallings prior to any physical contact?
A What do you mean explore, I'm sorry?
Q Did you ask him?

A Of course I did.
Q And what did he tell you?
A He went in, he saw Stallings, who he went in to attack and kill, and then he proceeded to attack and kill him. I don't understand how that could constitute self-defense. I'm sorry. I stand on my advice to him. It was the proper advice. I would give him the same advice today.
Q So other those generalities, you don't recall the specifics step by step?
A Oh, yes, I do. Specific step by step: I went in. He was standing there. I went and I grabbed him. I attacked him. He fought back. I overcame him. I got him in a headlock. I overpowered him and then I killed him. I shot him. I'm sorry. There was no --
Q No problem. You --
A I answered all of your --
THE COURT: One person at a time, but the witness may finish his answer.
THE WITNESS: I asked him did he ever -- did he -- did he overcome you.
No, not at all. He offered -- he offered no resistance, I overpowered him, got him in a headlock and -- and that was the end. I then shot him. He...

BY MR. PUMPHREY, JR.:

Q One moment.

A I -- were you in a -- did -- I'm sure I would have asked him element by element, were you in eminent, so there was no eminent danger of death or -- or serious bodily harm from Mr. Stallings to you. I'm sure I asked him all these in the course of going over defenses, of course I did.

Q And you say you're sure. You don't recall the specifics, but you're saying generally --

A I -- I know that I discussed in detail my reasons why the self-defense wasn't there, and the most obvious that I remember is the reasonable leap of the eminence, eminent danger of death or serious bodily harm, yes, I know I discussed that with him.

MR. PUMPHREY, JR.: One moment, Your Honor.

THE WITNESS: And he agreed with me after I was -- you've got to understand, there was no circumstance where I made him a -- a -- a legal opinion and told him he must accept that. In every instance I told him these are the reasons why I wouldn't if I were you, and it always went to because I don't believe once you go to trial it will change the outcome, which is likely to be a guilty verdict, which is likely to result in a

sentence greater than 45 years. It was always, always that discussion.

He always informed me at the -- at our meetings his decision, whether for me to file a motion or not. They were always his decision and they were informed, because I made sure they were informed. I -- there has never been a question that I could have filed and won a motion on a motion to withdraw the guilty plea. I stated that to him repeatedly. The serious issue was whether he would be in a better position as a result of a successful motion to withdraw guilty plea. He always, every time, told me after weighing the arguments in our discussions that he chose not to. All right.

BY MR. PUMPHREY, JR.:

Q Why did you have to state the same thing to him repeatedly? We're talking about Mr. Nierenberg.

A Because every time a client asks for advice, I give them advice, and in this instance because it was always whether or not to withdraw a -- to file a motion to withdraw a guilty plea, the same thought process was addressed by me; first, is it valid at all, is it likely to prevail, in almost all circumstances, other than the self-defense, my conclusion was, we have good

cause here under the Florida Rules of Criminal Procedure where a judge would likely find good cause to withdraw your guilty plea, but it doesn't end there. You have to make an informed decision. You have to consider the results of such action. Of course I went through it every time that thought process. That's why I did it not once but every time.

Q And when you say -- and so in his repeated requests, his repeated requests for about withdrawing the plea, you would have to go back through --

A Yes, the --

THE COURT REPORTER: Wait.

MR. PUMPHREY, JR.: -- the same process?

THE WITNESS: I'm sorry, yes.

BY MR. PUMPHREY, JR.:

Q Okay. And -- and -- and so the record shows, I mean, you're very adamant about this repeatedly you went through the same process with him about why he should not withdraw the plea, correct?

A Yes, sir, because it would relate to different factual circumstances. He would on one occasion address the testimony of one particular witness Ashley Pace and ask me about that, and then sometimes two witnesses cumulatively, do you think this is a good reason, and all of the witnesses, and I would

go, I would have to go through the analysis each time.

Q And each of these repeated --

A It wasn't the same request. Am I making myself clear? He didn't come with the same identical request every time, no.

Q So each time it was a different request, but always about withdrawing the plea?

A Oh, yes, sir, that's exactly it.

Q All right. And on all of these repeated attempts after you went through everything with him he would agree with you?

A Yes.

Q Okay. And so he was relying on your legal counsel, your counsel with your experience on making his decisions?

A I don't know what was in his mind. I know that I discussed with him my opinions and I -- I would hope that -- in part my analysis, but it was ultimately his decision, it was very clear and, again, I saw him as a bright kid, and it's just a travesty that he was impaired with drugs with all this. It's just a real travesty.

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

THE COURT: Certainly.

(Mr. Pumphrey conferring with Mr. Ufferman and the defendant.)

THE COURT: I would say to counsel, once something is in evidence it goes into the possession of the clerk and I don't have physical access to it. So can a copy of Defense 1 be just sent by e-mail to my judicial assistant, maybe?

MR. HILL: I will, Your Honor, yes. Also, it's attached to the reply that was filed in the case.

THE COURT: Exactly. That's what I thought. Okay. Thank you.

So you don't need to send it then.

MR. PUMPHREY, JR.: Your Honor, I have no further question of Mr. Truncale.

Thank you.

THE COURT: Very well.

Thank you.

The State may inquire.

MR. HILL: Thank you, Your Honor.

THE COURT: And just for the record, we're referring to the contract, the legal representation, Law Office of Charles L. Truncale, P. A., dated July 14, 2014, it's two pages, and it's signed by Mr. Truncale and it's in evidence.

MR. HILL: And, Your Honor, I guess just to be clear, it may have only been the first page that's attached, attached to the reply. I can get you a complete version if you'd like via e-mail or to your --

THE COURT: Okay. Just so I have what's in evidence.

MR. HILL: Yes, ma'am.

THE COURT: But I don't need a cover letter or anything. If it's just sent as a PDF to my judicial assistant at your convenience, copy to the State, that's absolutely sufficient.

MR. PUMPHREY, JR.: Thank you, Your Honor.

MR. HILL: May I proceed, Your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. HILL:

Q Mr. Truncale --

THE COURT: And the State has no objection to that happening?

MR. HILL: No.

THE COURT: Okay.

BY MR. HILL:

Q Mr. Truncale, I think we've discussed ground two significantly, but I want to focus on ground one

and ground four for a moment. Specifically --

A It's ground two, the self-defense.

Q It's one of the mentioned. Ground two is actually kind of like a catchall, it restates all the other grounds --

A Thank you.

Q -- in my opinion.

Ground one refers specifically to, excuse me, the advising the defendant regarding co-defendant Ashley Pace's plea deal or accused plea deal, alleged plea deal and her sentencing.

Did you, as counsel for Mr. Nierenberg, discuss Ashley Pace's sentencing and any information that was learned through that sentencing in regards to a motion to withdraw plea?

A Absolutely. We -- we obtained the transcript of Ms. Pace's sentencing, which I believe occurred March 27, 2014, a couple months before I came into the case. Mr. Nierenberg and I read -- read the transcript, and it was among the discussions we had and, in fact, I remember being rather upset that the -- what the State was presenting to the Court that Ms. Pace was a truthful witness in regards to all that she said, and I was upset because in the sentencing hearing Ms. Pace had took the position that she

repeatedly lied. I remember that bothering me pretty much and I was -- anyway, that was a wonderful tool for discussing the withdrawal of plea with Mr. Nierenberg because the State had set out, also the impeachment of -- of Ms. Pace, all right, of the many inconsistent statements she made. So we -- we discussed that at length.

We also discussed that there was a very important factor that in the sentencing transcript of Ms. Pace the prosecutor indicated that he was -- it was on Page 61 of the -- of my agreement with -- my agreement in this case was for her to have no more incarceration but I can still argue for probation and if -- and when I looked at the blue form it had nothing. It had nothing about -- about the State agreeing to no further incarceration. That was a significant face. I mean, I discussed it with Mr. Nierenberg that it appears that the State never told us that they had an agreement to ask for no -- no -- no -- no further incarceration.

And I -- I believe or I know we discussed did you know this at the time you entered a plea, you know, counseled by Mr. -- Mr. Coxe. And so I think technically it could, I hate to say this, but it could be viewed as a -- I think it's Brady, perhaps a Brady

violation that he wasn't informed of it. He wasn't informed of such an agreement prior to the entry of his plea, but then I remember we discussed it but, again, but -- but is that grounds to withdraw the plea, not yes, absolutely yes. We'll win. We would win completely on the issue, but you have to consider, again, what will happen in a trial because you're not going to be given an opportunity of anymore plea agreements by the State. Will -- will this fact that she had a favorable plea agreement undisclosed, will that cause the jury to discredit her testimony in its entirety, and I said, hardly, no. I mean, she's -- I believe a jury will -- will still find her testimony credible.

Q And so, Mr. Truncale, that issue was, in fact, discussed --

A Oh, absolutely.

Q -- at length with this defendant?

A Absolutely and, again, this man, this young man was diligent. He read and outlined every deposition, every hearing, every statement. He -- he -- I'm telling you, he was industrious. We discussed so that when I'm telling you we discussed these matters, he was prepared when we discussed them. It wasn't a matter of me explaining things that he

had -- that he was unaware of, no. And again, I discussed that fact with him, and he agreed with me that it was not likely that a jury would reject Ashley Pace's testimony based on the, I'll call it undisclosed agreement with the State.

Q And, Mr. Truncale, the defendant declined, after discussing it with you, to have you file a motion to withdraw his plea based upon everything that you had discussed with him on Ashley Pace?

A I'm sorry, I have a hearing difficulty and I couldn't follow that part.

Q Did, based upon those discussions about a potential motion to withdraw plea, the defendant declined to have you file a motion to withdraw plea based upon any alleged agreement with Ms. Pace; is that correct?

A Yes, he did, he declined.

Q Moving on to ground four, the defendant claims in his motion a general ineffective assistance of counsel claim for failing to investigate an impeachment defense of essentially all the State's witnesses for various grounds listed herein.

Did you discuss any potential impeachment of State witnesses or witnesses who would have testified against him for drug use or inconsistencies or things

of that nature?

A Yes, sir, and as I stated on direct, that was the primary complaint, if you would call it a complaint, was his entry of his guilty plea, you know, looking at all of the -- the -- the drug use, the inconsistent statements, the impeachment, that was the subject matter of every discussion that we ever had for motions, for a motion to withdraw guilty plea. That was the standard. It was based on perhaps the statements of Jenny, I forget her name, Jenny and Renee, some of the ladies who were at that -- at the house that evening. That was always discussed.

Q And it -- and as part of that discussion, did you also discuss whether that would serve as a valid defense were you to withdraw the plea and ultimately get the trial?

A Yes. Again, it -- yes, sir, yes. And in -- in those instances when I discussed that with him, I gave him my opinion, which -- which -- which was facts specific to what -- what we were -- what he raised, you know, the inconsistent statements and drug use of this witness and these witnesses collectively, and I would give him my opinion, which was always that it was -- it was not in his best interest to -- to proceed with a motion to withdraw guilty plea because I believe he

would have been granted the motion and ultimately would not have prevailed at trial and would not have had the benefit of a sentencing agreement that -- that in my opinion was -- was favorable to them.

Q Mr. Truncale, I apologize for embarrassing you and asking you this question, but I think it's relevant for record purposes. Can you detail to the Court and for the record your experience, your work as an attorney throughout your career that helped you in forming your advice and in analyzing the legal issues that effected this defendant's case?

A I do not -- I don't like to. If I may, I'm an attorney, a trial attorney, trial appellate attorney. I'm licensed in three states. I was first admitted to the Georgia Bar in June of 1978 and then the Alabama Bar in October 1978. I promptly after law school was hired as an assistant district attorney in Montgomery, Alabama. District attorneys are equal to the state attorney in Florida. I was in -- I was second in command. I was in charge of white collar crimes for about two years, two years and three months. I had a pretty extensive big cases, a very, very high profile frauds and bribery cases.

And then I was picked up, I was offered as a job as an Assistant United States Attorney in 1981 at

30 years old, it was -- it was an honor, and I was promptly promoted I think within a year to chief of the criminal division. I -- I've tried -- tried, my gosh, that's 1981. Since 1978 I believe I've tried certainly in excess of 100 jury trials.

I was a federal prosecutor in Alabama for, I don't know, six years, and I came to Jacksonville, Florida. I was a federal prosecutor there from 1987 till -- I was an assistant U. S. Attorney till 19 -- 2004, and I had many, many very big, you know, the federal -- some of the cases that I prosecuted were like in the top ten cases of the Justice Department.

I was given many awards for performance, some very, very, very high level awards in the Justice Department for trial of some of the cases. And I began handling, at my request, I handled federal appeals for six years, six or seven years. It was just a -- it was like a sabbatical. It was just what a wonderful experience just arguing the law. And I had some cases go up to the Supreme Court, some -- some -- a real significant one in federal criminal law.

In any event, I retired from the Justice Department in 2004 after 23 years. So I had 23 years a as a federal assistant U. S. attorney, 2 years as a state attorney, and so 25 years. And then I've been --

served as defense counsel, I have my own firm, for about 14, 15 years. I do trial work.

At present I -- I -- I win a high percentage of my cases. I've always done well with the jurors. I win between 40 to 50 percent of the felony trials that I have. I -- I pride myself in the ability to -- to read juries and under -- you know, everybody has their own talent. My skill set is trial, is trial.

I've done about 300 appeals, about 250 federal appeals that either I was an author or a reviewer. At the Justice Department they did about 50 or so appeals as a private counsel. All -- most of them, but not all of them but most of them have been in the state or federal criminal law. I'm -- I'm nothing big. I'm rated an A, B by Martindale Hubble Law Director in his eyes.

But I -- I -- I love practicing law. I love representing defendants now. I enjoyed my duties as -- for the State and federal government. I felt it to be an honor to do that and I feel like it's an honor to represent the defendants now and that's -- that's it. I -- I -- I try.

MR. HILL: Thank you, sir.

Your Honor, I have no further questions at this time.

THE COURT: Thank you, Mr. Hill.

Any further questions?

MR. PUMPHREY, JR.: No, Your Honor.

I'd just ask for a five-minute break.

THE COURT: Sure.

Why don't we take a few more minutes more than that.

So Mr. Truncale may be excused?

MR. HILL: Yes, Your Honor.

MR. PUMPHREY, JR.: Yes, Your Honor.

THE COURT: Thank you so much for your time.

You are excused.

(Witness excused.)

THE COURT: It's 11:31. Do you want to take a recess until 11:45?

MR. UFFERMAN: We're still hopeful we can finish by 1:00, Your Honor. We maybe only have one more witness.

THE COURT: Okay. That's fine.

So let's call it 11:40. We'll be in recess until 11:40, just shy of ten minutes.

MR. UFFERMAN: Thank you.

OFFICER THOMAS: Court is in recess until 11:40.

THE COURT: Thank you.

(Whereupon, a short recess was had, after which the proceedings were resumed as follows:)

(Defendant present.)

THE COURT: Good morning.

Counsel who have entered their appearances are present, the defendant is present.

How would you like to proceed at this time?

MR. UFFERMAN: Your Honor, our next witness will be our client.

THE COURT: Very well.

Mr. Nierenberg, if you'll please come forward.

Your client has a choice. He's welcome to be seated in the witness box or he can stand at the podium, whatever is easier.

THE DEFENDANT: I think I'll be seated.

THE COURT: Very well.

Sir, if you'll please come forward, Madam Clerk will swear you in, and then if you'll please be seated.

GREGORY MICHAEL NIERENBERG,

having been produced and first duly sworn as a witness, testified as follows:

THE COURT: If you'll please be seated, sir, and please watch your step on the edge of the

courtroom.

MR. PUMPHREY, JR.: May it please the Court.

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. PUMPHREY, JR.:

Q Can you please state your full name and spell your first, middle and last name for the court reporter?

A Gregory Michael Nierenberg, G-R-E-G-O-R-Y, Michael, M-I-C-H-A-E-L, Nierbeberg, N-I-E-R-E-N-B-E-R-G.

Q Okay. Now, Mr. Nierenberg, for the record, Don Pumphrey, Jr. I'm going to ask you some questions concerning Mr. Truncale and your representation.

A Yes, sir.

Q All right. Do you have a learning disability?

A Yes, sir.

Q Okay. And what is that?

A At first I had a speech impediment from first to second grade, and from that point forward I was in ESE classes from third grade to fifth grade, and I had slight problems with a speech impediment and I was reading from left to -- or right to left and I would reverse numbers and certain letters of words, usually

in pairs, and they -- I guess they diagnosed me with auditory processing disorder, that I couldn't understand things better than other kids. It took me a long time to learn how to read and other things.

Q Okay. So before we go into testimony I want to put something before this Court. In your words, okay, do you remember that we discussed that if the Court were to grant any relief on any ground, even one, do you know what you would be facing?

A Yes, sir.

Q What is it?

A A death sentence.

Q Okay. But what else did we talk about? Did we talk about the fact that what you pled to could be enhanced by the State?

A Yes.

Q Okay. And when I say enhanced by the State, the State could charge you with first degree murder?

A Right, yes.

Q And which would mean life in prison, no parole, you don't get out.

A Yes, sir.

Q You understand that, equally, should they chose to, it's their function, they could charge you with the death penalty?

A Yes, sir.
Q Okay. And we went through all of that; is that right?
A Yes, sir.
Q Okay. And knowing all of that, what was your request of Mr. Ufferman and myself?
A Can you reword that?
Q Sure.
We -- did you ask us to continue forward with the motion?
A Yes, sir.
Q Even knowing that regardless of what the Judge's decision is, whether she grants you relief, the State could increase the charges against you?
A Yes, sir.
Q Okay. And you're familiar with Mr. Truncale?
A Yes, sir.
Q Okay. And what was -- what was the purpose or what was the main concern, what did you want Mr. Truncale to do for you when he started representing you?
A Withdraw my plea.
Q Okay. Why would you want to do that?
A I wasn't satisfied with my last counsel and I wanted to withdraw my plea.

Q So let's talk a little bit about your case, okay?
A Yes, sir.
Q What were the circumstances that first caused you -- after you hired Mr. Truncale, did you actually have anything put in the contract, do you recall?
A Yes, advice and determination of whether to pursue a withdrawal of guilty plea.
Q Okay. And so that was the main -- the main reason or one, one of the main reasons for hiring him?
A Yes, sir.
Q Okay. And did you tell -- at any time did you tell Mr. Truncale what happened the night of the incident?
A Yes, sir.
Q Okay. Can you go over the details of that incident as it occurred?
A Yes, sir.
Q Okay.
A I was partying at Frederick Stallings' house that evening. I had a previous warrant for a misdemeanor and I was hanging out and getting high and partying and obviously engaged in prostitution with one of the witnesses at the house, and I was sharing my drugs with everybody and hanging out, had a party

atmosphere, you know. I sent Freddie on multiple drug runs to purchase drugs for me.

Q Okay. When you say "Freddie," you're talking about Frederick Stallings?

A Stallings, the victim, yes.

Q Okay. And this house you described, was there any significant security or barriers?

A Yes. Frederick Stallings and Carl Harp were prostituting these two women out and he had a burglar bar door that he was keeping locked and had locked from the inside and the outside, so every time you came in it -- it was necessary to have a key to enter and leave the door.

Q Okay. And so in this particular circumstance, did you gain access to a key of have a key?

A No, sir.

Q And so on the night of the incident the only way you got in or left?

A Was either Carl Harp or Mr. Stallings himself.

Q Okay. And so at some point your -- you gained access to this house; is that right?

A Yes, sir.

Q Who let you in?

A At first it was Carl Harp let me through the door in to see Freddie.

Q Okay. And when you say "Freddie," that means Mr. Stallings?

A The victim, yeah, yes, sir.

Q Okay. And so when -- just prior to you having to -- or you utilizing a firearm, do you recall what happened prior, just prior to that?

A Yes, sir.

Q Can you tell us what happened?

A Before I went to leave the house, Ashley Pace informed me that she befriended a prostitute by the name of Jenny Long and she wanted to give a ride to her because she -- her circumstances of inside the crack house, and I guess my co-defendant offered to give her a ride. So when I went to leave --

Q When you say "your co-defendant," Ashley Pace?

A Yes, sir.

Q Okay.

A And when I went to actually leave, I totally forgot to ask Jenny if she wanted a ride home. So I went back into the house and went into the room where everyone was at in Freddie's bedroom and there was -- I want to say there was Renee, Little Mamba, Carl Harp

and Frederick Stallings.

Q And when you say Renee, Renee Sturdivant?

A Yes.

Q And let me spell that, S-T-U-R-D-I-V-A-N-T.

A Yes, sir.

Q Okay. And Jenny, J-E-N-N-Y, last name Long, L-O-N-G?

A Yes, sir.

Q Okay. And then Ashley that you mentioned that was in the car, that was Ashley, A-S-H-L-E-Y, Pace, P-A-C-E?

A Yes, sir.

Q Okay. And so the purpose for going back in the house was what reason?

A To give Jenny Long a ride home.

Q Okay. And so when you went into the house, who let you into the house?

A Carl Harp.

Q Okay. And how did he let you into the house?

A Unlocked the burglar bar door and let me inside.

Q Okay. Now, as you're entering this particular house, is this like a normal residential house where people are just hanging out or are there serious crimes being committed inside the house?

A Prostitution, drug abuse, drugs sales.
Q Okay. And were all the people in there, including yourself, had -- were they on some kind of drug or doing drugs?
A Yes, sir.
Q And so there were drugs there?
A Yes, sir.
Q There were people you don't know there?
A Yes, sir.
Q Okay. Now, once you walk inside the house after leaving Ashley Pace to get Jenny Long or ask if she wanted a ride home, did the door shut behind you?
A Yes, sir.
Q Okay. Now, this is the door that's made of steel that you have to have a key to get out?
A Yes, sir.
Q Okay. And at this point, what's the only way you're getting out of this house?
A Either contact Carl Harp or Frederick Stallings.
Q Okay. So when you go in the house, where do you go? What's the first thing you -- where do you go? Describe that for us.
A I walk into the house. Frederick Stallings' room is on the left-hand side, and I walked to the

doorway, and I asked everybody in the room where is Jenny Long at, and I think Carl Harp replied that she's in the back room, and at that time Freddie says, here, let me show you.

Q Okay. Now, hold on, sir.

So you -- you're armed at this point, you've been armed the whole time, right, with a firearm?

A Yes, sir.

Q Okay. And this was a pistol?

A Yes, sir.

Q Okay. And so you had identified where Frederick Stallings was at some point after you've entered after Carl has locked the door back, right?

A Yes, sir.

Q Okay. And so did you have an opportunity to -- to get up on him and shoot him if you wanted to?

A Yes, sir.

Q Okay. But what's your purpose at this point?

A To give Jenny a ride home.

Q Okay. And so did you -- after you inquired about where she was located, and this is Jenny, what did you do next?

A Freddie says, let me show you, and that's when he came out into the hallway with me.

Q Now, he walked in front of you?

A Yes, sir.
Q And you walked behind him?
A Yes, sir.
Q And you had access to your firearm at all times right now?
A Yes, sir.
Q Okay. So if you wanted to kill him, a pretty good opportunity?
A Yes, sir.
Q He wasn't looking?
A No.
Q Okay. Did you ever pull out your firearm?
A No.
Q Why not, what was your purpose?
A To give Jenny a ride home.
Q Okay. So as you're following behind him down this hallway, where does he take you?
A He takes me to a back bedroom off to the left-hand side. It's dark in the room and there is a few furniture items around that I can remember, and Jenny Long was sitting in the corner on a pillow smoking crack cocaine.
Q Okay. So this door was closed and then --
A No, it was open.
Q It was open. All right.

And did Freddie walk into the room?
A Yes, sir.
Q Okay. And had you pulled your firearm at this point?
A No.
Q Okay. And did you identify Jenny Long?
A Yes, but before this he, Frederick Stallings, asked me what I wanted with Jenny Long in a very aggressive manner.
Q Okay. Like she was a piece of property?
A Yes, sir.
Q Okay. And is this what started a problem?
A It wasn't real blown out, but it was like an issue, you know what I'm saying, and I just, I looked at him and I said, man, just let me tell her bye.
Q So at this point, and I want to stop right here at this point in time, is it your belief that Jenny is -- is being used or raped either by coercion or by threat against her will?
A Yes.
Q Do you believe she's being given drugs so that she can continually be brutalized?
A Yes, sir.
Q Okay. And what's your purpose there as regards to Jenny?

A Can you reword that again?
Q Sure.
What, at this point in time, what was your purpose being in that room? You have Mr. Stallings inquiring about what you want with Jenny, okay, you have a firearm on you.
A Yes, sir.
Q And so what's your whole purpose, what's your focus on doing?
A To try to get Jenny out of the house.
Q Okay. And so what do you do to attempt to get her out of the house?
A Well, Frederick Stallings was really mocking me when I asked him to let me tell her bye, and he says, go ahead, go shake her hand and tell her bye, real like aggressive in a mocking manner.
Q Controlling?
A Yes, sir.
Q All right. Now, were you afraid of Frederick Stallings?
A Yes, sir.
Q Okay. Now, prior to this, Frederick Stallings and you had gotten into a fight?
A Yes, sir.
Q Okay. And so -- and this is a drug house?

A Yes, sir.
Q And the only way you can get out of the drug house is if somebody has a key?
A Yes, sir.
Q Okay. And why did you ask if you could go over and say good-bye to Jenny Long? Were you going to try to do something?
A Really it was for Ashley Pace wanted to give her a ride, wanted to make sure she got home to her kids safe.
Q Okay. And did Mr. Stallings become more and more agitated the more you asked about Jenny?
A That one time, yes, sir.
Q Okay. And so did he make threats to you at any time?
A Well, it was more in a mocking manner, you know what I'm saying, the way he was like, go ahead, and shake her hand bye, tell her bye, and he was really like daring me to -- to have her come with me.
Q Okay. And how did this make you feel?
A Well, I was -- I was scared at first, but I really wanted to -- to help her out, you know what I'm saying, and get her out of the house.
Q Okay. And did you do anything to further try to get her out of that situation and out of the house?

A Well, I went to shake her hand bye and she -- I got -- I was trying to move my eyebrows to let her know that I was leaving, and I said, Jenny, I'm leaving, and trying to use facial expressions to let her know I was leaving, and she went back to smoking crack, sir.

Q Okay. And what did you do next?

A At that time I went to leave.

Q Okay. And when you went to leave, what happened?

A Frederick Stallings grabbed me with one arm around me and at the same time was reaching for the back of my pants.

Q Okay. And what was located in the back of your pants where he was reaching?

A My pistol and my wallet full of money.

Q Okay. So at this point Mr. Stallings has physically grabbed your arm now. Now, can you describe Mr. Stallings? Was he a very weak person, a very strong person?

A No he's a very, very muscular black man.

Q Okay. And when he grabbed your arm, did you have a grip on it? Did you break it?

A Well, it was, he didn't grab my arm physically. He had his arm draped over me, you know

what I'm saying, over my chest.
Q Okay. And so how did you feel at this point?
A I was scared.
Q Okay. Did you feel like that he was about to take something from you by force?
A I didn't know if he was trying to reach for my gun or my wallet. I don't know what his intentions were at that time.
Q So either one of these though he's -- he's taking -- he's using physical force to try to take something from you?
A Yes, sir.
Q And what were you concerned about most, your wallet or the pistol?
A The pistol.
Q And why?
A Because if he got that he could shoot me.
Q Okay. And so Mr. -- so Mr. Stallings has his arm draped over you. Is he bigger than you, smaller than you?
A Bigger.
Q All right. And what was your first reaction to this when he's grabbed you?
A To get him off me.
Q Okay. And what did you do?

A I, in a forward motion, I went out of the door that Jenny was in and I pushed off of him to get him off of me.

Q Okay.

A And that's when he went back a few feet.

Q Okay. And so was he able to either get -- take your wallet from you or the pistol?

A No, sir.

Q Okay. So when you pushed off of him, did you get separation from him?

A Yes, sir.

Q Okay. So now why don't you just run out the door?

A I don't know if it's locked or not.

Q Okay. To your knowledge, was it locked the last time you saw it?

A I don't know.

Q Okay. But when you walked in you said Mr. Carl let you in?

A Locked -- he unlocked the door, but I didn't see him lock the door prior to me coming in.

Q Okay. And I want to back up in time just a little bit. When you walked in, Mr. Carl shut the door and it automatically locked behind you when you first came to the house?

MR. HILL: Objection, Your Honor. Leading.

THE COURT: Sustained, but you may certainly rephrase.

MR. PUMPHREY, JR.: Sure.

BY MR. PUMPHREY, JR.:

Q Backing up in time, okay, when you walked into the house, do you recall Mr. Carl shutting the door behind you?

A Yes.

Q Okay. So was that the last time you had -- you had knowledge of whether the door was shut or not shut?

A All I know is I definitely heard the door shut. I don't know if it was locked.

Q Okay. And so now coming back to this situation with Mr. -- with Mr. Stallings. Did you believe you had the ability to get out without a key?

A No, sir.

Q Okay. So now you're in a situation confronted by Mr. Stallings?

A Yes, sir.

Q When you pushed off, how much separation were you able to get away from Mr. Stallings?

A About three feet, and then I stepped back a couple of feet.

Q Okay. So now at this point in your mind are you still thinking about what's going on with Jenny?
A No, sir.
Q Okay. Are you thinking about your own life?
A Yes, sir.
Q Okay. And -- and Mr. Stallings and what he's done to this point, you're thinking about that?
A Yes, sir.
Q Okay. And so were you in fear of your life?
A Yes, sir.
Q Okay. When you got separation from Mr. Stallings, did he back away or did he aggressively come at you?
A He aggressively charged at me with his head down.
Q Okay. And what was the only thing you could think to do at that point?
A Pull the pistol from the small of my back.
Q Okay. And did you fire a round?
A Yes, sir.
Q Okay. How many rounds were in the firearm?
A I'm not even sure.
Q Did it have more than one round?
A Yes, sir.
Q Did it have more than ten rounds?

A Yes, sir.
Q Okay. And so you could have pulled the trigger as many times as you needed, right?
A Yes, sir.
Q When you pulled the trigger the one time, what happened as far as Mr. Stallings becoming a threat to you?
A He was no longer a threat. He -- he dropped to the ground. I remember his head hitting the wood floor, the plywood.
Q Okay. And did you fire anymore rounds at him?
A No, sir.
Q So once the threat was gone, what did you do?
A I turned around and took off running outside the house.
Q Okay. And so when you got to the steel door, were you able to get out?
A It was wide open.
Q Okay. And so when you ran out, were you worried about anybody else being outside?
A Of my co-defendant inside the car.
Q Okay. You still -- you still have the pistol at this point?
A Yes, sir.

Q Did you fire the pistol?
A Yes, sir.
Q Why?
A Because I was scared. I didn't know who was outside that door.
Q Okay. What -- what was, when you were firing the pistol, what was the purpose you were firing for?
A To make sure nobody attacked me or Ashley inside the car.
Q What direction was the pistol pointed when you fired it?
A If you say between 11:00 and 1:00 o'clock, like if you were hunting, I guess, in the air, you know what I'm saying, and shooting like dove or duck or whatever.
Q Okay. So what -- where was the gun pointed? Was it pointed at --
A In the air.
Q Okay. When you ran, where did you run to?
A Straight to the car.
Q Okay. And what did you do when you got to the car?
A I was screaming to Ashley, go, go, go, and jumped in the passenger's seat.
Q Okay. Now, when you hired Mr. Truncale

you -- you weren't satisfied with your prior attorney Mr. Coxe after your -- after you entered your plea; is that right?

A Yes, sir.

Q Okay. And so when you hired Mr. Truncale, what were you wanting to do at that point?

A I wanted to withdraw my plea and go to trial in self-defense.

Q Okay. Now, did you tell your attorney, Mr. Truncale, that you wanted to withdraw your plea on more than one occasion?

A Yes, sir.

Q Did you ask him repeatedly to withdraw your plea?

A On multiple occasions.

Q Okay. And each time did he advise you not to withdraw your plea?

A Yes, and he also told me I couldn't go to trial on a self-defense defense.

Q Okay. And so over the seven month period of time since he represented you till sentencing you -- you still continually asked him to do what?

A To withdraw my plea.

Q And that's because you wanted to do what?

A Go to trial on self-defense.

Q Okay. And so prior to meeting Mr. Ufferman or me myself, after you were sentenced did you have some time to go through all of the documents and everything in great detail?

A Yes, sir.

Q Okay. Now, your reading is still not as fast as it should be, is it?

A It's not as fast. I have to read case law over and over and over to get any understanding.

Q Okay. And so after you started going through everything, did you have access to a law library?

A Yes, sir.

Q Now, prior to this incident, at any time had you ever studied the law?

A No.

Q Okay. Did you have trouble just studying anything?

A Reading period.

Q Okay. And also as far as going through everything with your attorney, were you -- were you able to convey to him why you wanted to withdraw the plea?

A Yes.

Q Okay. And so if you were to -- knowing what you know now, after having reviewed everything and gone

through everything, if you -- if you knew what you know now back then, even before Mr. Coxe, what would you have wanted to do?

A I would have went to trial. I would have never taken the plea in the first place.

Q Okay. And so once you had entered a plea, what was the purpose you had of hiring Mr. Truncale?

A To withdraw my plea.

Q And each time, these multiple times you brought it up, what was his position?

A To not withdraw my plea.

Q And you heard Mr. Truncale's testimony here today?

A Yes, sir.

Q And your repeated requests were met with his repeating the same thing again to you about whether or not you had a viable self-defense, right?

A Yes, sir.

Q And did he ever agree to withdraw the plea for you?

A No, sir.

Q Tell the Court what your educational background is.

A I completed high school and I started college and I completed two semesters in college with failing

one of the classes, and one of the classes that I took I had to take intermediate math to even qualify to start college classes, so I had to take pre-algebra again, you know what I'm saying, before, you know, I started my other college classes.

Q Okay. During the entire period of time Mr. Truncale represented you, did you ever understand the word impeachment?

A No, sir.

Q Did you understand what that word even meant?

A No, sir.

Q Okay. And did you understand prior inconsistent statements and how impeachment --

A No, sir.

Q Okay. So you weren't able to apply how that would benefit you should you go to trial?

A No, sir.

Q But even withstanding that, you still wanted to go to trial?

A Yes, sir.

Q Did Mr. Truncale tell you about the key witnesses for the State, did he talk to you about them?

A No, sir.

Q Okay. And you heard Mr. Truncale testify here today that -- that -- his feelings about your

self-defense, right?
A Yes, sir.
Q And you were also present at the sentencing when he argued self-defense?
A Yes, sir.
Q Okay. And did that make sense to you?
A No, sir, not at all.
Q Okay. And as far as Jenny Long and Renee Sturdivant and Ashley Pace, did Mr. Truncale ever identify the inconsistent statements and sit down and explain to you how those would be used at trial?
A No, sir.
Q Okay. So beginning with Jenny Long, can you give some examples that you didn't know then but that you've learned now as you sit here today that would be important for a jury to hear?
A Yes, sir.
Q Okay. What would that be?
A Jenny was inconsistent on the amount of money I spent on drugs, she was inconsistent on whether the argument was over money or over her, giving her a ride home, and in her first statement she doesn't say anything about me pushing off of Frederick Stallings before the shot was fired.
Q Okay. And -- and Jenny Long was doing drugs

at the time?
A Yes, sir.
Q Okay. And then -- and you actually presented or have a list of these inconsistencies that you've written out since you've been incarcerated?
A Yes, sir.
Q All right. And so I want to go to Renee, Renee Sturdivant. Do you have a list of inconsistences that you believe a jury should hear?
A Yes, sir.
Q And do you recall off the top of your head any of those?
A She said that I ran inside the house and I killed Frederick Stallings out of anger and made him beg for his life. She said three different stories about begging for the life which never happened. All the other witnesses, Carl Harp and Ashley Pace says there was no arguments period. Carl Harp was very specific on saying there was no arguments throughout the entire evening over drugs or anything.
Q Okay. And you feel that those would be very important things in a trial?
A Yes, sir.
Q Even understanding that you -- the State could turn around and seek the death penalty?

A Yes, sir.
Q Okay. Are these inconsistencies that you knew about at any time when you were going through the case with Mr. Truncale?
A No, sir.
Q Did you ever understand or was it ever explained to you, to your memory, on how those inconsistencies would or would not be applied?
A No, sir.
Q So over the period of time that you in making these lists of inconsistencies of things, has that been because you've had a longer period of time to go through and understand what's being said in time, on a timeline?
A Oh, yes, sir. And I didn't have my paperwork for the first four and a half years incarcerated.
MR. PUMPHREY, JR.: And, Your Honor, I believe the State has stipulated, the defense stipulates to the introduction of the depositions and transcripts and those have been premarked and already agreed to by the State.
MR. UFFERMAN: And, Your Honor, I can announce that if it's a good time. We -- Defense Exhibit 2 we have the sworn statement of Ms. Long. As Defense Exhibit 3, I can hardly see that, I put

them out of order, Defense Exhibit 3 we have the deposition of Ms. Pace. As Defense Exhibit 4 we have the sworn statement of Carl Harp. As Defense Exhibit 5 we have the deposition of Carl Harp. As Defense Exhibit 6 we have the -- it's an interview of Ms. Pace, and finally as Defense Exhibit 7 we have the deposition of Ms. Pace.

THE COURT: No objection from the State for Defense Exhibits 2 through 7?

MR. HILL: No, Your Honor.

THE COURT: Defense Exhibits 2 through 7 are received into evidence.

(Whereupon, the documents last-above referred to were received in evidence as Defendant's Exhibit Nos. 2 through 7.)

THE COURT: Now, let's talk about what, if anything, needs to go to my judicial assistant. If -- what I would say is, ordinary course of business, it's not a rush, if you determine that any or all of those items are now visible in the court file I would need courtesy copies.

MR. UFFERMAN: I will send them to you anyways, Your Honor. I'd rather that you have them twice than not have them at all.

THE COURT: Very well.

MR. UFFERMAN: And I just realized I didn't properly announce what Defense Exhibit 3 was. Defense Exhibit 3 is, in fact, the deposition of Ms. Long.

THE COURT: Very well.

Thank you.

All of those items are now received into received.

MR. PUMPHREY, JR.: Thank you, Your Honor.

BY MR. PUMPHREY, JR.:

Q Now, Mr. Nierenberg, knowing what you know now as opposed to back when Mr. Truncale represented you, do you feel even stronger about your desire to go to trial?

A Yes, sir.

Q Okay. And over the seven months and your repeated requests to withdraw your entry of a guilty plea, did Mr. Truncale ever explain to you the specific standard for that?

A No, sir.

Q Okay.

A He explained to me that I waived my defense when I pled guilty.

Q Okay. And did you continue to ask him, and I say repeatedly, multiple times over the seven months

before your sentencing the same thing, to withdraw your plea?

A Yes, sir.

Q Okay. Do you feel that he adequately advised you and you adequately understood that you had the ability to withdraw your plea?

A At the time he didn't -- you know, now I know, you know what I'm saying, what he should have advised me.

Q Well, knowing what you know today, had he advised you of it back then, what would you have done?

A I would have withdrew my plea and went to trial.

Q So you never wavered in your request to withdraw your plea over the entire time he's representing you?

A No, sir.

Q And that became even stronger as you've had time to go through all the documents that have been entered into the record?

A Yes, sir.

Q Among other documents?

A (Defendant moves head up and down.)

Q Is that a yes?

A Yes, sir.

MR. PUMPHREY, JR.: All right. A moment, Your Honor?

THE COURT: Of course.

MR. PUMPHREY, JR.: No further questions.

Thank you, Mr. Nierenberg.

I tender the witness.

THE COURT: Thank you, Counsel.

The State may inquire.

MR. HILL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HILL:

Q Mr. Nierenberg, why did you plead in the first place?

A Because I realized it was my word versus Ashley Pace's word that I fired shots at another man, and the attempted murder was going to give me a life sentence.

Q So you knew that you faced life regardless of whatever happened on the murder, you knew you were going to get life, or had at least a very strong possibility of it; isn't that true?

A A chance.

Q Okay. And based upon your counsel not with Mr. Truncale but with Mr. Coxe, you decided to enter a guilty plea to these two charges, not just the

attempted murder of Mr. Harp, but also the murder of Mr. Nierenberg, or excuse me, of Mr. Stallings; is that correct?

A Yes, sir.

Q Okay. And you didn't come to that decision quickly; is that correct?

A It was pretty quick.

Q Pretty quick, your case had been pending for three years --

A Because --

Q -- by the time you entered a plea.

A The plea came very quickly and it was after Ashley Pace's deposition. It wasn't like the plea existed for the five years.

Q You had no idea what Ms. Pace was going to testify to? Despite the fact that she had spoken with police, had provided a sworn statement, you had no idea that she was going to implicate you in the attempted murder of Carl Harp until the very last minute?

A I knew she was implicating me.

Q Okay. So you knew she was going to testify against you and implicate you in this murder and in this shooting and attempted murder; isn't that true?

A Yes, sir.

Q And you had three years to consider what was

going to happen with the counsel of a well-respected, high-price defense attorney in town Mr. Hank Coxe; isn't that true?

A Yes, sir.

Q What did you do for a living at the time?

A I worked for Winn-Dixie.

Q So who hired Mr. Coxe for you?

A My family.

Q And Mr. Coxe brought with him not just himself but his entire firm, he had other counsel work on your case as well; isn't that true?

A I think he had a partner, yes, sir.

Q Okay. And so you've had some very respected attorneys working on your case advising you about what was going on in the discovery process; isn't that true?

A No, sir.

Q They never spoke to you about your case?

A He never came to see me except probably maybe three times.

Q Never came to see you, never talked to you about what was going on?

A No, sir.

Q Never told you about the depositions?

A I read the depositions one time and that was it.

Q So you had copies of them?
A Only until after I had a plea. I never had them the entire time.
Q Never read the police reports?
A One time.
Q Before or after your plea?
A Before.
Q Never discussed anything that was going on, for three whole years you sat there just having no idea what was going on, that's what you're telling this Court?
A I had a clue, but he didn't discuss with me any defenses, you know what I'm saying? I discussed with him my self-defense and, you know, I mean it was always up to Ashley Pace's testimony at the very end.
Q Ashley Pace wasn't even inside, but you're telling me that you thought that your self-defense claim on the murder hinged on Ms. Ashley Pace's testimony?
A It was the attempted murder that got me to plea, sir.
Q Okay. And so you ultimately made the decision to enter a plea of guilty to these charges knowing in your mind you think you've acted in self-defense, that's what you want the Court to

believe?
A Yes, sir.
Q And you told -- certainly told your very experienced, very high-priced attorneys Mr. Coxe and Mr. Coughlin about your claim of self-defense; isn't that true?
A Yes, sir.
Q Okay. You made sure, you wanted them to know that you were innocent of these charges, I've acted in self-defense?
A Yes, sir.
Q But yet you took a plea?
A Yes, sir.
Q And then you fire Mr. Coxe?
A Yes, sir.
Q Why did you do that?
A I wasn't satisfied with his counsel.
Q Why not?
A Because he hardly ever came to see me. He didn't discuss hardly anything with me. I wasn't satisfied. I believe I could have went to trial on self-defense and won.
Q Okay. So you think you could have went to trial on self-defense and won, but yet you pled guilty?
A Yes, sir.

Q So you fire that attorney, you hire another attorney and you bring up this claim to him; isn't that true?

THE COURT: And, Mr. Hill, if you don't mind using the microphone, sir. You can -- you can carry it around.

MR. HILL: I'm not quite sure I can, Judge.

THE COURT: Okay. Officer Thomas was indicating there was an issue with the microphone.

OFFICER THOMAS: Because he's having a hard time hearing.

MR. HILL: Judge --

THE COURT: There is a -- there is a person who is in the gallery observing who is using a hearing assisted device, so that's why the microphone is an issue.

I'll just ask you how you wish to proceed.

MR. HILL: Judge, and I will try to be respectful of that but, quite frankly, I'm not sure I physically am able to stand behind it or to --

THE COURT: I'm not going to restrict your movement. I just thought we should be aware of that, that's fine, but I'm not restricting your movement. You may use the courtroom as you wish. Both sides certainly may.

MR. HILL: Thank you, Your Honor.

I appreciate that.

BY MR. HILL:

Q Mr. Nierenberg, your testimony is that you raised your self-defense claim to not one, but two attorneys, before you pled guilty, and yet despite that you believe that you acted in self-defense you pled guilty to these charges; that's correct?

A Yes, sir.

Q Did they advise you about the self-defense claim before you pled guilty?

A On some aspects, yes.

Q So you admit they talked to you about it and, ultimately, their advice to you was no, you do not have sufficient -- a sufficient claim of self-defense?

A Yes.

Q And you knew that that was their advice?

A Yes, sir.

Q You knew they were very good defense attorneys, high-priced, very expensive?

A Yes.

Q Your parents got you the best?

A I mean, if you call them that.

Q I'm asking you, sir. You knew your parents went out and got you the best of the best and their

advice to you was you do not have a valid self-defense claim?

A Yes.

Q And you entered a plea of guilty?

A Yes.

Q But yet you fired that defense attorney and hired another one; that's true?

A Yes.

Q And he gave you the same advice?

A Yes, on self-defense, yes.

Q Even though you gave him the same story that -- or you were going to tell this Court you gave him the same story; isn't that true?

A Yes.

Q And your testimony here today is Mr. Truncale essentially ignored you; is that correct?

A Yes, sir.

Q He didn't hear anything you had to say?

A No, sir.

Q Didn't follow your directions at all?

A No. He talked me out of withdrawing my plea.

Q Every time you met with him, I want to withdraw my plea, I want to withdraw my plea, I want to withdraw my plea?

A Not every single time, but several.

Q Okay. And yet you didn't raise that whenever you got in court; fair to say?

A Yes.

Q Okay. And you ultimately went forward with a sentencing hearing without ever filing this much desired motion to withdraw plea, that's correct?

A It was under Truncale's advice.

Q You followed his advice, even though you discussed it with him and he discussed it with you, that's correct?

A He discussed that I did not have a viable defense of self-defense.

Q Okay. And after you received his advice, after discussing your self-defense claim that you laid out to him and Mr. Truncale giving you his learned opinion about the viability of that self-defense claim, you decided, you know what, I agree, I don't want a motion to withdraw plea, I want to be sentenced, that's correct?

A No.

Q Well, then why did you go forward with the sentencing?

A Because he told me to. He told me I couldn't withdraw my plea.

Q Why didn't you fire him?

A It was my second attorney, you know what I'm saying. I really didn't believe I had any way to withdraw my plea, you know.

Q So you're telling this Court that Mr. Truncale told you it was there was no legal way for you to even raise the issue?

A None.

Q Then why did you even think to bring it up in the first place?

A Because it's what happened, sir.

Q No, I'm asking with Mr. Truncale. In your meetings with Mr. Truncale, why did you even bring up potentially having a motion to withdraw plea?

A To Truncale?

Q Yes, sir.

A Because I wanted to go forward on a self-defense defense.

Q Where did you learn that you could potentially have your plea withdrawn?

A All I know is that you can withdraw the plea, you know what I'm saying, I don't -- you know, that's all I know.

Q You knew that to be true then just as the same as you do now; isn't that correct?

A More in-depth. I know the whole process now.

Q You've had a lot of time to think about today's hearing; isn't that true?
A Yes, sir.
Q Because you've got a lot on the line, correct?
A Yes.
Q You're doing, is it -- it's 40 years in Florida State Prison for killing someone and attempting to kill another person; that's correct?
A Yes, sir.
Q And you don't want to do that 40 years in Florida State Prison?
A Of course not.
Q You have buyer's remorse for the sentences you got?
A No. I wish I would have went to trial in the first place.
Q You knew at the time you could file a motion to withdraw your plea?
A Truncale advised me I couldn't.
Q But you knew that you could because you kept raising the issue?
A He kept denying me down every single time.
Q But apparently you didn't believe him because you kept raising the issue over and over again?

A I was seeing if he would change his mind or, you know what I'm saying, or if I could, you know what I'm saying. I was adamant about going to trial on self-defense.

Q And you never explored hiring anyone else because now you've rejected one defense attorney and you don't think this one is doing a good job for you. You never wanted a third attorney?

A I would imagine what my people would say to a third attorney.

Q Well, actually, you did get a third attorney, didn't you?

A Yes, sir.

Q You had Mr. Fred Gazaleh, another well respected attorney here?

A Who?

Q Mr. Fred Gazaleh with the Public Defender's Office.

A Was not paid.

Q I understand that, sir, still another well respected attorney here in the Fourth Judicial Circuit, you had him as well working on your behalf. You had Mr. Hank Coxe, Mr. Brian Coughlin, Mr. Charles Truncale, Mr. Fred Gazaleh, with over 100 years of experience in the legal community combined working on

your behalf, and yet still no motion to withdraw plea was filed and kept; isn't that correct, sir?

A Yes, sir.

Q Even though you say you had been raising and beating this drum the entire time?

A Yes, sir.

Q How much cocaine did you do that night?

A A large amount.

Q A large amount.

We can't trust your memory, can we?

A I recall pretty much everything.

Q You recall everything, even though you took a large amount of cocaine?

A Cocaine really doesn't cloud your memory, you know what I'm saying, it, you know, I was aware of my surroundings.

Q You know what was going. Did that make you paramour -- paranoid? Does it make you excited?

A If anything, that makes me more aware of my surroundings, the paranoia.

Q Does it make you excited?

A Yes.

Q Does it make you feel things or see things that aren't really there?

A No, sir.

Q Does it make you feel any pressures where there were no pressures before?
A No, sir.
Q Does it make you question yourself in any way, shape or form?
A No, sir.
Q You're on this large amount of cocaine. Did you do anything else that night?
A Besides shooting and smoking crack cocaine. I wasn't drinking, so, no, sir.
Q You talked about Jenny Long and wanted this Court to believe that you felt she was in danger of being raped. That's what you said on direct examination, right?
A No. I was scared of mistreatment, you know what I'm saying, not exactly rape, you know what I'm saying, I didn't know if she was being raped. I seen her get snatched by the hair and mistreated by Frederick Stallings.
Q Okay. So you weren't concerned about a rape. That was an overstatement of your concern for her that night?
A You know, I was concerned, you know what I'm saying, but I didn't know if she was being raped.
Q Okay. Was she the prostitute you had sex

with earlier that night?

A No, sir.

Q Who was?

A Renee Sturdivant.

Q Okay. You weren't concerned about her safety in any way, shape or form even though you felt she was being used for human trafficking?

A She really didn't show the same signs as -- to my co-defendant as Jenny did.

Q Okay. So you were much more willing with her, she was the one that had sex with you, but Jenny, even though she's in the same circumstances wasn't as willing as Ms. Renee was?

A Renee was more into, you know what I'm saying, the grips of addiction and prostitution and, you know, she didn't have kids and everything else that Jenny did.

Q And you think that because that makes you look better, as opposed to you also mistreating these females who were stuck in this lifestyle; isn't that true?

A I get -- for paying, yes. I guess I was wrong for soliciting prostitution too.

Q You told Mr. Truncale your version of events through your fog of cocaine about what happened; isn't

that true?

A Yes, sir.

Q And he advised you that he did not believe that was a valid self-defense claim; isn't that true?

A Yes.

Q Regardless of whether or not you could have a motion to withdraw plea or not, you knew Mr. Truncale's advice that that's not self-defense what you did; isn't that correct?

A He told me that I waived my viable defense when I pled guilty.

Q That's not what you just said, Mr. Nierenberg. Just a minute ago you said Mr. Truncale told you that was not a viable self-defense claim; isn't that true?

A He told me that too.

Q Okay. And that's what I want to get at. You spoke with your counsel about these issues and learned that was not, in his opinion, his advice to you, a viable self-defense defense?

A Yes.

Q And that is what impacted your decision not to request a motion to withdraw; isn't that true?

A It wasn't my decision. I asked him to withdraw the plea and he told me I couldn't.

Q Mr. Stallings was unarmed, wasn't he?
A Yes, sir.
Q He didn't have any weapons?
A No, sir.
Q Where did you shoot him at?
A The head.
Q What part of the head?
A Fore -- forehead.
Q Okay. Because he was bent over charging at you?
A Yes, sir.
Q He leaned over, stuck his head out for you to fire into his forehead?
A Not really lean down, but he was coming at me with his head down, yes, sir.
Q Okay. And that made it where you shot him in his forehead?
A Yes, sir.
Q Pointblank range?
A No, sir.
Q Okay. You had a little distance there?
A Yes, sir.
Q You're a good shot.
A I mean, I've hunted before, but --
Q You didn't use a hunting rifle in this

incident, did you?
A No, sir.
Q That's a little bit different than a firearm, isn't it?
A Yes, sir.
Q You're a pretty good shot; isn't that true?
A I really wasn't aiming, sir. It was spontaneous. I didn't have time to really aim. I just fired.
Q Lucky shot?
A I wouldn't -- you know, I wouldn't say lucky. I just fired.
Q You were aiming to kill someone you're telling this Court was attacking you, even though you're under the distorting effects of cocaine, with one shot clean to the forehead, even though it wasn't that close of a shot, and you're not even aiming; that's what you want this Court to believe?
A It was three feet away. He was charging at me. It's a little hard not to, you know, hit what I was pointing at.
Q Your speech impediment, which I'm very sorry about, I understand completely, didn't affect your decision in this case in any way, shape or form; isn't that true?

A My decision for what?
Q Whether to withdraw --
A What decision are you talking about?
Q Whether to withdraw your plea or not.
A I asked him to withdraw my plea, but it wasn't my decision.
Q Your speech impediment did not impact that?
A Truncale's advice, you're right.
Q During the seven months or so of Mr. Truncale's representation of you, did you discuss witnesses and their testimony in any way, shape or form?
A No, sir.
Q You had been in custody for almost five years; is that fair to say?
A Yes, sir.
Q And despite having both Mr. Truncale, Mr. Coxe and his partner Mr. Coughlin working on your case, you're telling this Court you had no idea what any of the witness would say?
A No, sir.
Q That's your testimony?
A Yes, sir.
Q You didn't go to the police following this incident, did you?

A No, sir.
Q Didn't call 911?
A No, sir.
Q Didn't go seek the help of someone you knew to be in law enforcement?
A No.
Q Didn't report yourself in any way, shape or form?
A No, sir.
Q You threatened Ms. Pace?
A I did not.
Q Told her not to call the police?
A I did not.
Q Whether or not you had the firearm or not, you told her not to contact the police?
A I never said any of that.
Q Did you think she was?
A Excuse me?
Q Did you think she was going to?
A I didn't know.
MR. HILL: Judge, may I have one moment? I apologize.
THE COURT: You certainly may.
MR. HILL: Thank you, Your Honor.
BY MR. HILL:

Q Mr. Nierenberg, you knew about Ashley Pace's sentencing hearing; isn't that true?
A Yes, sir.
Q And you discussed that with Mr. Truncale, you admit that?
A I discussed the gun to the head.
Q You didn't discuss --
A I never mentioned threat. I was upset about that.
Q You didn't discuss anything to do with Ms. Pace's sentencing hearing in regards to what her sentence ultimately was?
A Just in regards to the gun to the head.
Q Fair to say Mr. Truncale was upset about Ms. Pace's sentencing and brought that up in front of Her Honor; isn't that true?
A Yes, sir.
Q Raised that issue in your presence?
A Yes, sir.
Q Prior to going forward with your sentencing?
A Yes, sir.
Q But he never discussed that with you, per your testimony?
A He discussed the gun to the head, I expressed to him that it was a lie, and that the prosecutor said

that she was lying at another proceeding, but I did -- I did say that. I was upset.

Q In regards to the alleged agreement though, you're telling that -- you're telling this Court that Mr. Truncale never discussed that with you even though he certainly brought it up in open court?

A The agreement, no.

MR. HILL: Okay. Your Honor, I have no further questions.

THE COURT: Thank you, Counsel.

MR. PUMPHREY, JR.: No questions.

Any further questions?

Thank you, Mr. Nierenberg.

You may return to counsel table with your attorneys.

How would counsel like to proceed from here?

MR. UFFERMAN: Your Honor, at this point the defense rests.

THE COURT: Very well.

And so you would like to submit closings in writing?

MR. UFFERMAN: Yes, Your Honor.

If I could order a transcript.

THE COURT: I've already done that. I've already ordered it.

MR. UFFERMAN: Oh, thank you. Okay.

THE COURT: I ordered it this morning because I thought it would be of assistance to the Court in analyzing the issues.

MR. UFFERMAN: Thank you.

So if I could have a reasonable time after we get the transcript to prepare my written closing argument. Next week I'm out of town. I'm actually -- my wife and I are moving our oldest child into a dorm in New York for his first semester of college, so I'm going to be a little behind when I get back, but it will probably take a week or two weeks to get the transcript, so if I could have maybe 15 or 30 days after that to submit my written.

THE COURT: Why don't we just speak at sidebar about the schedule that works best for counsel, so we can just speak right now.

MR. PUMPHREY, JR.: Oh, certainly.

Thank you.

THE COURT: I don't believe we need the court reporter. This is just scheduling.

MR. PUMPHREY, JR.: Thank you.

(Whereupon, a sidebar conference was had out of the hearing of the court reporter, after which

the proceedings were resumed as follows:)

THE COURT: Okay. So I was able to speak with counsel at sidebar and I believe the following schedule is acceptable to both sides, that the defense will submit a written closing.

Do you want me to give you a page limit or do you want me to just leave it open? I would rather just let --

MR. UFFERMAN: I will certainly not try to be excessive. I'll do my best to be as to the point as possible.

THE COURT: Just something reasonable.

MR. UFFERMAN: Yes, Your Honor.

THE COURT: And I won't give you a set page limit.

So Friday, Friday 28, to file something, and I won't give you a time, just at some point that day, that's the last business day in February.

And then, Madam Clerk, I'm actually going to set a court date of March 4 for status.

Now, Officer Thomas, the defendant may go back, and in my experience if I set a court date defendants do not get transported back. So I think what I should do is announce right now no court date, then my office will watch, and once the

defendant has been transported back then we will set the court date for a status hearing on March 4. Defense counsel may appear by phone. And I understand you'd be waiving Mr. Nierenberg's appearance for that purely scheduling hearing?

MR. UFFERMAN: Yes, Your Honor.

THE COURT: And so I'm not actually going to announce the 4th, Madam Clerk. I'm going to announce right now there is no court date set.

Officer Thomas, I'll indicate you may have the defendant sent back, but counsel will not be surprised that once the defendant is sent back you will be notified by my judicial assistant that she set that March 4 status hearing.

MR. UFFERMAN: Yes, Your Honor.

MR. HILL: Yes, ma'am.

THE COURT: And then at that hearing we'll talk about the best schedule for the State to give their closing verbally on the record and we can talk about whether at that point you would like me to enter an order to have the defendant transported back.

MR. UFFERMAN: Yes, Your Honor.

THE COURT: So I have one last question for counsel at sidebar and then we're done for today.

(Whereupon, a sidebar conference was had out of the presence of the court reporter, after which the proceedings were resumed as follow.)

THE COURT: I think that out of an abundance of caution it would be appropriate that Mr. Nierenberg be here when the State gives their verbal argument. So what I will plan to do is to have the defendant brought back at that point in time, but we will talk about it when we have the status scheduling hearing.

MR. UFFERMAN: Very good, Your Honor.

And if by chance we can work on a date I happen to be somewhere in the area, I may just come and attend and be with him anyways.

THE COURT: And we can be flexible with the schedule that works with counsel's schedules.

So is there anything else today on behalf of the State of Florida?

MR. HILL: No, Your Honor.

THE COURT: Anything else today on behalf of Mr. Nierenberg?

MR. UFFERMAN: Just that I, as I mentioned, I am going out of town next week, but I will get with -- I will leave an e-mail for my assistance Lindsey to e-mail your judicial assistant next week

with copies of all the exhibits that were submitted today.

THE COURT: That's fine, copied to the State.

MR. UFFERMAN: Great.

MR. HILL: Thank you, Your Honor.

THE COURT: And there is no specific deadline, just whenever that works out in terms of workflow.

Thank you all for working so hard. Thank you to the lawyers for your outstanding skill and efforts on behalf of your respective clients.

We are in recess until Tuesday morning. Monday the courthouse will be closed for the holiday. And we do have a 8:40 start on Tuesday, and so we are in recess until Tuesday, January 21, 2020, at 8:40 a.m. There is no court date set. One will be set after the defendant has been transported back. We're in recess.

Thank you.

MR. PUMPHREY, JR.: Thank you, Your Honor.

(Whereupon, the proceedings were concluded.)

- - -

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2010-CF-11363-AXXX

DIVISION: CR-H

STATE OF FLORIDA

v.

GREGORY M. NIERENBERG,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

This cause comes before this Court on Defendant's "Amended Motion for Postconviction Relief," filed on October 29, 2018, pursuant to Florida Rule of Criminal Procedure 3.850. This Court held an evidentiary hearing on January 17, 2020.

On June 6, 2013, Defendant entered a negotiated plea to Second Degree Murder (Count One) and Attempted First Degree Murder (Count Two). (Ex. A.) On April 29, 2015, this Court sentenced Defendant to a forty-year term of imprisonment, with a twenty-five year minimum mandatory pursuant to section 775.087(2)(a), Florida Statutes (2010), as to Count One, and a concurrent twenty-five-year term of imprisonment, with a twenty-year minimum mandatory pursuant to section 775.087(2)(a), as to Count Two. (Ex. B at 4-7.) On October 7, 2015, the First District Court of Appeal dismissed Defendant's direct appeal. (Ex. C.)

To prevail on a claim of ineffective assistance of counsel, the defendant must show counsel's performance was outside the range of reasonable professional standards and that counsel's deficiency prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687 (1984); Cherry v. State, 659 So. 2d 1069, 1072 (Fla. 1995). As to the first prong, counsel's

FILED JUN 24 2020 PM 2:55 RUSSELL DARLENE S. MIZE

performance need not be perfect, but must not fall below the requisite, reasonableness standard. Bruno v. State, 807 So. 2d 55, 68 (Fla. 2001). This involves a "context-dependent consideration of the challenged conduct as seen from counsel's perspective at the time." Jones v. State, 928 So. 2d 1178, 1186 (Fla. 2006) (citing Wiggins v. Smith, 539 U.S. 510, 523 (2003)); see also Strickland, 466 U.S. at 689. A defendant making an ineffective assistance of counsel claim must identify with specificity the acts or omissions alleged to be outside the range of reasonable professional conduct and bear the burden of overcoming the presumption that the challenged conduct "might be considered sound trial strategy." Strickland, 466 U.S. at 690.

Additionally, a defendant must establish prejudice. Id. at 687; Stephens v. State, 748 So. 2d 1028, 1033 (Fla. 1999). Generally, to establish prejudice, a defendant must show there is a reasonable probability that, but for counsel's deficiency, the outcome of the proceeding would have been different. Strickland, 466 U.S. at 694.

In the context of guilty pleas, however, the prejudice prong focuses on "whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

> [I]n determining whether a reasonable probability exists that the defendant would have insisted on going to trial, a court should consider the totality of the circumstances surrounding the plea, including such factors as whether a particular defense was likely to succeed at trial, the colloquy between the defendant and the trial court at the time of the plea, and the difference between the sentence imposed under the plea and the maximum possible sentence the defendant faced at trial.

Grosvenor v. State, 874 So. 2d 1176, 1181-82 (Fla. 2004).

RELEVANT FACTUAL BACKGROUND

Defendant was represented by Hank Coxe ("Primary Counsel") at his June 6, 2013, plea hearing. On August 4, 2014, this Court granted Defendant's unopposed motion to substitute Charles Truncale ("Secondary Counsel") to represent Defendant at his April 25 & 29, 2015, sentencing hearings. (Ex. D.) On May 10, 2015, after Defendant was sentenced, Secondary Counsel filed a rule 3.170(*l*) motion to withdraw plea, alleging Defendant's plea was involuntary as well as a contemporaneous motion to withdraw as counsel. (Ex. E.) On May 13, 2015, this Court denied without prejudice Defendant's motion to withdraw plea (based on Defendant's expressed desire to withdraw the motion), allowed Secondary Counsel to withdraw as counsel, and appointed Assistant Public Defender, Fred Gazelah ("Tertiary Counsel"). (Exs. F; G at 28-30.) Thereafter, Tertiary Counsel did not file a renewed motion to withdraw plea.

GROUNDS ONE & TWO

Defendant argues Secondary Counsel was ineffective for failing to advise him that a previously-undisclosed plea agreement between his codefendant, Ashley Pace ("Codefendant Pace"), and the State constituted a valid basis to withdraw his plea. Specifically, Defendant claims Codefendant Pace testified at her deposition that she had not entered into a plea deal with the State in exchange for testifying against Defendant. Defendant thereafter pleaded guilty. Before the sentencing hearing, however, Secondary Counsel became aware that Codefendant Pace had, in fact, agreed to testify against Defendant in exchange for no further prison time. Defendant claims that, had Secondary Counsel advised him of his right to withdraw his plea based on Codefendant Pace's previously-unknown plea deal, he would have directed Secondary Counsel to file a rule 3.170(f) motion to withdraw plea and proceeded to trial. Defendant claims

that, at trial, he would argue self-defense and impeach the State's witnesses based on their prior inconsistent statements.

At the evidentiary hearing, Secondary Counsel testified that he had many conversations—at least a dozen—with Defendant regarding withdrawing his plea. (EH at 18, 21.) He further stated that he told Defendant that he had valid grounds to withdraw his plea. (EH at 20, 43, 57-59.) Secondary Counsel, however, advised Defendant that if he withdrew his plea he would not likely been offered another plea agreement and would likely be convicted at trial. (EH at 19, 44, 57-59.) Secondary Counsel also testified that he told Defendant that he would likely be given a harsher sentence if convicted at trial than the one agreed to in the plea agreement. (EH at 19, 44.) Secondary Counsel testified Defendant agreed with his advice until he received forty years on the twenty-five-to-forty-five-year range under the negotiated plea:

> [I]n ever single occasion that I asked him for his decision, he decided that it would not a good decision to do so and instructed me not to file a motion to withdraw plea prior to sentencing. In fact, the only time he asked me to file a motion to withdraw his plea was after the sentence was imposed and it was, in my opinion, out of anger.

(EH at 20.) In contrast, Defendant testified that he asked Secondary Counsel to file a motion to withdraw plea on multiple occasions, but Secondary Counsel refused. (EH at 86. 88.) Defendant also testified that he never knew about any prior inconsistent statements by the State's witnesses. (EH at 92.) Defendant testified that, if allowed to withdraw his plea and proceed to trial, he would have argued self-defense and impeached the State's witnesses with their prior inconsistent statements. (EH at 89-90, 90-92.)

This Court finds Secondary Counsel's testimony more credible than Defendant's. Specifically, this Court believes that Secondary Counsel advised Defendant of his ability to withdraw his plea based on Codefendant Pace's previously-undisclosed plea deal, but advised

against that course of action based upon the likelihood of Defendant being convicted at trial and receiving a harsher sentence than the range outlined in the plea agreement. This Court also believes Defendant agreed with Secondary Counsel's strategy up until the point he was sentenced to the upper end of the sentencing range allowed under the plea agreement.

This Court's credibility findings are supported by the surrounding circumstances. First, Defendant voluntarily agreed to withdraw Secondary Counsel's May 10, 2015, motion to withdraw plea, and Tertiary Counsel never filed a motion to withdraw plea thereafter. These facts suggest Defendant did not want to withdraw his plea. (Exs. F; G at 28-30.) Second, at the March 5, 2015 hearing, Defendant agreed to be sentenced by a successor-judge and indicated his desire not with withdraw his guilty plea. (Ex. H at 7.) This testimony supports the finding that Defendant never wanted to withdraw his plea until he received his forty-year sentence. Third, Defendant testified that both Primary Counsel and Secondary Counsel advised him against proceeding to trial using a self-defense strategy. (EH at 102-03.) Specifically, Secondary Counsel testified the self-defense theory was "ludicrous." (EH at 43.) This testimony illustrates Defendant's awareness that he was unlikely to succeed at trial. See Grosvenor, 874 So. 2d at 1181-82 (listing likelihood-of-a-particular-defense-succeeding-at-trial as a factor to consider "in determining whether a reasonable probability exists that the defendant would have insisted on going to trial"). Fourth, Defendant testified that he was never advised of the substance of (or the inconsistencies within) the testimony from any of the State's eyewitnesses at any point during the five years he was represented by Primary Counsel or Secondary Counsel. (EH at 114.) This Court finds this testimony to be highly improbable, undermining the credibility of Defendant's testimony as a whole. Finally, the plea colloquy indicates Defendant knowingly and voluntarily entered the negotiated plea agreement. (Ex. I.)

Accordingly, because counsel did not perform deficiently, and because Defendant was not prejudiced, these claims are denied.

GROUND THREE

Defendant contends Secondary Counsel was ineffective for failing to investigate the affirmative defense of self-defense. Defendant claims that, had counsel advised him of this viable affirmative defense, he would have withdrawn his plea and proceeded to trial.

At the evidentiary hearing, Secondary Counsel testified that, based on his discussions with Defendant, self-defense was neither viable nor supported by the facts. Specifically, Secondary Counsel testified that "[Defendant] told me he attacked [the murder victim]. He went in there for the specific purpose of killing [the murder victim]." (EH at 34.) Secondary Counsel further testified that Defendant had told him the murder victim had previously attacked him earlier in the night, but that Defendant continued to stay at the house and do drugs. (EH at 34.) Secondary Counsel was also aware that the murder victim was physically larger than Defendant. (EH at 35.) Based on this testimony, it is clear that Secondary Counsel sufficiently investigated the potential for raising a self-defense claim. Therefore, Secondary Counsel did not perform deficiently.

Furthermore, as mentioned in Claims One and Two above, this Court finds that Defendant was told—by both Primary Counsel and Secondary Counsel—that pursuing a self-defense strategy would almost inevitably fail at trial, and he agreed with the decision not to pursue self-defense. Therefore, Defendant was not prejudiced.

Accordingly, because Secondary Counsel did not perform deficiently, and because Defendant was not prejudiced, this claim is denied.

GROUND FOUR

Defendant maintains Secondary Counsel was ineffective for failing to investigate an "impeachment" defense, based on (i) all of the State's eyewitnesses being under the influence of illegal drugs at the time of the incident, and (ii) State eyewitness's prior inconsistent statements. Defendant claims that, had Secondary Counsel advised him of the ability to impeach witnesses for the above-listed reasons, he would have withdrawn his plea and proceeded to trial.

To start, it is readily apparent that the State's eyewitnesses and Defendant were under the influence of illegal drugs at the time of the murder and attempted murder. To suggest that Secondary Counsel was unaware that these witnesses were on drugs (or that he could impeach these witnesses' credibility based on their drug use) is absurd. Moreover, as mentioned under Claims One and Two above, this Court finds it highly improbable that Defendant was never advised of the substance of (or the inconsistencies within) the testimony from any of the State's eyewitnesses at any point during the five years he was represented by Primary Counsel or Secondary Counsel—both of whom are very well-respected defense attorneys.

In fact, Secondary Counsel testified that "I believe [Codefendant Pace] would have been very persuasive to a jury, notwithstanding the fact that at the time she was a drug addict, notwithstanding that she had had inconsistent statements . . . ." (EH at 44-45.) As such, it is clear Secondary Counsel knew Codefendant Pace and the other eyewitnesses were on drugs and had made prior inconsistent statements; it is equally clear that Secondary Counsel did not believe impeachment on these issues would raise any reasonable doubt as to Defendant's guilt. This Court finds Secondary Counsel was reasonable in not pursuing an "impeachment" defense.

Accordingly, because counsel did not perform deficiently, and because Defendant was not prejudiced, this claim is denied.

GROUND FIVE

Defendant argues Secondary Counsel was ineffective for failing to present effective mitigation evidence during the sentencing hearing. Specifically, Defendant claims Secondary Counsel should have retained a mental health expert to testify regarding Defendant's post-traumatic stress disorder ("PTSD") and anxiety/depression.

At the April 24, 2015,[1] sentencing hearing, Secondary Counsel called Dr. Steven Bloomfield, a forensic psychologist, to present mental mitigation for Defendant. Dr. Bloomfield stated Defendant suffered from no cognitive or behavioral disorders other than substance dependence and substance abuse disorder. (Ex. J at 14, 16-17, 23.) Dr. Bloomfield stated that Defendant suffered from poor impulse control as a result of his young age and extensive drug use. (Ex. J at 45.) Dr. Bloomfield also testified that Defendant suffered from a learning disability (resulting in low self-esteem), had attempted suicide on multiple occasions, and had been sexually abused as a child. Dr. Bloomfield also testified about a psychological report by the State's expert forensic psychologist, Dr. William Meadows. (Ex. J at 20-29.) Dr. Meadows' report concluded that Defendant suffered from severe opiate use disorder and antisocial personality disorder. (Ex. J at 26.)

Defendant's claim that he suffers from PTSD is conclusively refuted by Dr. Bloomfield's testimony that neither he nor Dr. Meadows found Defendant suffered from PTSD. Therefore, Secondary Counsel had no reason to believe Defendant suffered from PTSD and did not perform deficiently by not retaining an expert to testify to Defendant suffering from PTSD.

Likewise, Secondary Counsel did not perform deficiently for not presenting expert testimony about Defendant's anxiety and depression. Secondary Counsel elicited strong

[1] Defendant's sentencing hearing occurred on April 24 and 29, 2015. Only the transcript from April 24, 2015, is attached to this Order. The April 29, 2015, transcript is inapplicable to the instant Motion.

testimony from Dr. Bloomfield regarding Defendant's drug addiction, sexual abuse as a child, and multiple suicide attempts. Therefore, Secondary Counsel did not perform deficiently. This testimony is far more compelling than generic testimony about Defendant suffering from anxiety or depression. Therefore, it is highly unlikely this Court would have imposed a lesser sentence had Secondary Counsel elicited generic testimony about Defendant's anxiety or depression.

Accordingly, because counsel did not perform deficiently, and because Defendant was not prejudiced, this claim is denied.

GROUND SIX & EIGHT[2]

Defendant claims Secondary counsel was ineffective for failing to advise Defendant to withdraw his guilty plea in light of Codefendant Pace's testimony during the sentencing hearing. Namely, Defendant points to Codefendant Pace testifying that she did not know which direction Defendant was shooting (contradicting her deposition testimony suggesting Defendant fired toward Carl Harp), thereby negating the premeditation necessary to establish attempted first-degree murder.

This claim is conclusively refuted by the record. At deposition, Codefendant Pace testified to the following:

Q: Did you hear any shots fired afterwards [after the initial two shots]?

A: Yes, sir, I saw Carl run outside the house toward the opposite side of the interstate, and then maybe 30 seconds later [Defendant] came out and shot at him.

Q: When you say 'shot at him,' what do you mean?

A: A shot in that direction, in that vicinity.

[2] Defendant asserts a related claim in Ground Eight of the instant Motion, alleging that Codefendant Pace's testimony at the sentencing constitutes newly-discovered evidence. Claims Six and Eight will be analyzed together.

(Ex. K at 63.) This testimony mirrors Codefendant Pace's testimony at Defendant's April 24, 2015, sentencing hearing:

> Q: Okay. And then in [the] five minutes [that Defendant had been inside the house with the victim] what did you hear?
>
> A: I heard one gunshot, and then about 30 seconds later, it might have been a minute later, another gunshot, and then I see Carl. He ran outside the opposite way towards the interstate. And about 30 seconds later I see [Defendant] step out, and point the gun at his direction, and he shot again twice, but it felt like 30 seconds apart. It might not have been that long, but . . .
>
> Q: I understand. When you saw the defendant fire the gun twice, in the direction of Mr. Carl Harp?
>
> A: Uh-huh (affirmative).
>
> . . .
>
> Q: But it was very clearly in the direction to where Mr. Harp was running, and not in the air, not in the ground, not over here, not over there?
>
> A: Oh, yes, sir.

(Ex. J at 81-82.)

Accordingly, this claim is conclusively refuted by the record and, therefore, denied.

GROUND SEVEN

Defendant maintains the cumulative effect of the above-listed errors warrant the vacation of Defendant's convictions and sentences.

"[W]here the individual claims of error alleged are either procedurally barred or without merit, the claim of cumulative error also necessarily fails. Parker v. State, 904 So. 2d 370, 380 (Fla. 2005) (citing Downs v. State, 740 So. 2d 506, 509 n.5 (Fla. 1999)). This Court has expressly found that neither Primary, Secondary, or Tertiary Counsel rendered ineffective assistance of counsel under any of the claims asserted by Defendant. "[I]ndividual claims that

fail to meet the Strickland standard for ineffective assistance of counsel are also insufficient to establish to establish cumulative error." Hall v. State, 212 So. 3d 1001, 1031 (Fla. 2017) (citing Israel v. State, 985 So. 2d 510, 520 (Fla. 2008)). Therefore, because all of Defendant's individual claims of ineffective assistance of counsel are without merit, so, too, is Defendant's claim of cumulative error. Accordingly, this claim is denied.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant's "Amended Motion for Postconviction Relief," filed on October 29, 2018, is **DENIED**. This is a final Order, and Defendant shall have thirty (30) days from the date this Order is filed to taken an appeal by filing a Notice of Appeal with the Clerk of the Court.

DONE AND ORDERED in Jacksonville, Duval County, Florida on June 22, 2020.

Marianne Lloyd Aho

MARIANNE L. AHO
Circuit Judge

Copies to:

Office of the State Attorney (SAO4DuvalAppealOrder@coj.net)
Garrett Hill (garrettth@coj.net)
Division CR-H

Michael R. Ufferman (ufferman@uffermanlaw.com)
Michael Ufferman Law Firm, P.A.
2022 Raymond Diehl Rd. #1
Tallahassee, FL 32308-3881
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished to all legal counsel for both parties via the addresses listed above on JUNE 25TH, 2020.

Deputy Clerk

Case No.: 16-2010-CF-11363-AXXX
Attachments: Exhibits A-K
/tbc

Copies to:

Office of the State Attorney (SAO4DuvalAppealOrder@coj.net)
Garrett Hill (garretth@coj.net)
Division CR-H

Michael R. Ufferman (ufferman@uffermanlaw.com)
Michael Ufferman Law Firm, P.A.
2022 Raymond Diehl Rd. #1
Tallahassee, FL 32308-3881
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished to all legal counsel for both parties via the addresses listed above on July 9, 2020.

Charlene Smith
Deputy Clerk

Case No.: 16-2010-CF-11363-AXXX
Attachments: Exhibits A-K
/tbc

EXHIBIT LIST

- Exhibit A – June 6, 2013 Negotiated Plea Form
- Exhibit B – April 29, 2015 Judgment and Sentence Form
- Exhibit C – October 7, 2015 First DCA Order Dismissing Direct Appeal
- Exhibit D – August 4, 2014 Order Granting Substitution of Counsel
- Exhibit E – May 10, 2015 Motion to Withdraw Plea and Withdraw as Counsel
- Exhibit F – May 13, 2015 Order Dismissing w/o Prejudice Motion to Withdraw Plea
- Exhibit G – May 13, 2015 Hearing Transcript
- Exhibit H – March 5, 2015 Hearing Transcript
- Exhibit I – June 6, 2013 Plea Hearing Transcript
- Exhibit J – April 24, 2015 Sentencing Hearing Transcript
- Exhibit K – May 23, 2019 Notice of Filing Codefendant Pace's Deposition Transcript

STATE OF FLORIDA

vs.

Gregory M. Nierenberg
Defendant

FILED
JUN 06 2013
RONNIE W. FOMELL
CLERK CIRCUIT COURT

IN THE CIRCUIT COURT,
FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY,
FLORIDA

CASE #: 16 - 2010 - CF - 11363

DIVISION: CR - H

PLEA OF GUILTY AND NEGOTIATED SENTENCE

I hereby enter my plea of guilty because I am guilty. Before entering such plea of guilty, I was advised of the nature of all the charges against me, the statutory offenses included within such charges, the range of maximum allowable punishments for each charge, all the possible defenses to each charge, and all circumstances in mitigation of such charges. I have been advised of all other facts essential to a full and complete understanding of all offenses with which I have been charged, and of all offenses to which I am entering this plea. I have been advised of all direct consequences of the sentence to be imposed.

Specific Terms of Negotiated Sentence:
My sentence has been negotiated in this case, and I understand that it is as follows:

THIS INSTRUMENT IS COMPUTER GENERATED

PG to Cts 1 and 2. Negotiated range for sentencing purposes 25 yrs - 45 yrs, with 25 yr. minimum mandatory FSP. Sentencing hearing to be held before Judge Norton to determine sentence within negotiated range. Sentences to be concurrent.

Mandatory $50 ea. to count costs to be assessed. Restitution to be reserved 90 days.

I consider this negotiated sentence to be to my advantage, and I have freely and voluntarily entered my plea of guilty. I have not been offered any hope of reward, better treatment, or certain type of sentence to get me to enter this plea, other than the sentence set forth above. I have not been promised by anyone, including my attorney, that I would actually serve any less time than set forth above, and I understand that any early release of any sort is not a part of this plea agreement and is entirely within the discretion of governmental agencies other than this Court. I have not been threatened, coerced, or intimidated by any person, including my attorney, in any way in order to get me to enter this plea.

Advice of Rights:
I understand that by pleading guilty I give up the following constitutional rights: the right to trial by judge or jury (including, if I am charged with a capital offense, the right to a jury of twelve persons), the right to be represented by counsel at trial, the right to have counsel appointed to represent me if I cannot afford to retain counsel, the right to present witnesses in my own behalf and to compel the attendance of those witnesses, the right to confront the witnesses against me, the right to require the State to prove its case against me beyond a reasonable doubt and, for purposes of this plea hearing, my right against self-incrimination. I further understand that if I am not a citizen of the United States that this plea may subject me to deportation. I also understand that by entering this plea I give up the right to appeal all matters relating to the judgement, including the issue of guilt or innocence.

EXHIBIT A

Consultation with Attorney:
I have had ample time to discuss this agreement with my attorney. My attorney and I have read this agreement regarding my guilty plea together in private, and my attorney has explained all portions of this agreement to my complete understanding and satisfaction. We have fully discussed all aspects of the case, including all possible defenses to all charges, including self-defense and any defense based upon any disability, disease, insanity, or intoxication. My attorney has given me the opportunity to ask questions and has answered all of my questions fully and completely. My attorney has taken all actions requested by me, or has explained to my satisfaction and agreement why such actions should not be taken, and I concur with my attorney's decisions in that regard. I am completely satisfied with the services rendered by my attorney on my behalf in this case.

Time for Consideration and Reflection:
I have had sufficient time to consider all charges against me, all possible defenses and circumstances in mitigation, the advice of my attorney, the constitutional rights forfeited by entering into this plea agreement, and the potential consequences that the plea of guilty may have upon me. I have been provided with the opportunity for additional time to consider and reflect upon these matters, and I specifically state that I do not require any additional time to do so. I wish to proceed with the entry of my guilty plea.

Acknowledged in Open Court:
In open court I have under oath acknowledged to the Judge of this Court that:

A. I have read and understood this entire plea agreement, including the rights I am giving up by entering into it;
B. I am not under the influence of any substance, drug or condition (physical, mental, or emotional), which interferes with my appreciation of the entire plea agreement into which I am entering and all consequences thereof;
C. I have not been deprived of, and am properly taking, any medication which is essential to my full, complete and unimpaired understanding of the plea agreement and these proceedings;
D. I have entered into and signed this plea of guilty and negotiated sentence freely and voluntarily;
E. This plea of guilty and negotiated sentence form is true and correct in all respects; and
F. This form represents the sole and complete agreement between myself and the State. No other agreements, representations, or promises have been made by myself, my attorney, the Court, or any representative of the State.

Both my attorney and I have signed this plea agreement in open Court at Jacksonville, Duval County, Florida, this 12 day of June, 2013.

Attorney for Defendant

Assistant State Attorney

Gregory Wierzbicki
Defendant

Witness, Deputy Clerk

Circuit Judge

My signature as Judge of this court is certification that I have discussed this plea agreement with Defendant and Defendant's attorney in open court on this date and have asked Defendant questions, considered Defendant's responses, and observed Defendant's demeanor. I find that Defendant has the intelligence to comprehend these constitutional rights, the terms of this plea agreement, the contents of this written agreement, and these proceedings. I further find that Defendant has entered this plea freely and voluntarily and is not under the influence of any disability, substance, drug or condition which would interfere with Defendant's ability to understand and appreciate the terms of this plea agreement and its consequences.

Revised May 2010

Doc # 2015098437, OR BK 19 Page 2368, Number Pages: 8, corded 04/30/2015 11:12 AM, Ronnie Fussell CLERK CIRCUIT COURT DUVAL COUNTY RECORDING $0.00

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NUMBER: 16-2010-CF-011363-AXXX-MA
DIVISION: CR-H

STATE OF FLORIDA

vs.
GREGORY MICHAEL NIERENBERG, DEFENDANT

☐ Probation Violator
☑ Community Control Violator
☐ Retrial
☐ Resentence

JUDGMENT

The Defendant, **GREGORY** MICHAEL NIERENBERG, being personally before this Court, represented by C. Truncale, Rtd., the attorney of record, and the State being represented by J. Moody, and having:

☐ been tried and found guilty by jury/by court of the following crime(s)
☒ entered a plea of guilty to the following crime(s)
☐ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree Of Crime
1	MURDER IN THE SECOND DEGREE	782.04(2) &	Life
		775.087(1) &	
		775.087(2)(A)3	
2	ATTEMPTED MURDER IN THE FIRST DEGREE	782.04(1)(A) &	Life
		775.087(1) &	
		777.04(1)	
		EXHIBIT B	

☒ 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).

☐ being a qualified offender pursuant to F.S. 943.325, the defendant shall be required to submit a DNA sample as required by law.

☐ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

FILED
APR 29 2015
CLERK CIRCUIT COURT

Page 1 of 8

STATE OF FLORIDA
vs.
GREGORY MICHAEL NIERENBERG, DEFENDANT

CASE NUMBER: 16-2010-CF-011363-AXXX-MA

FINGERPRINTS OF DEFENDANT				
1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: Name: J. Hiller 73720 Title: Bailiff

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, GREGORY MICHAEL NIERENBERG, and that they were placed thereon by the defendant in my presence in open court on this date.

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this 24th day of April, 2015.

Judge

Page 2 of 8

STATE OF FLORIDA

vs.

GREGORY MICHAEL NIERENBERG, DEFENDANT

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NUMBER: 16-2010-CF-011383-AXXX-MA
DIVISION: CR-I

COURT ORDERED COSTS/FINES/FEES

The defendant is hereby ordered to pay the following sums if checked:

☑ A sum of $3.00 as a court cost pursuant to section 938.01, Florida Statutes, (Additional Court Cost Clearing Trust Fund).

☑ A sum of $50.00 pursuant to section 938.03, Florida Statutes, (Crimes Compensation Trust Fund).

☑ A sum of $225.00 pursuant to section 938.05, Florida Statutes, (Local Government Criminal Justice Trust Fund).

☑ A sum of $3.00 pursuant to section 938.19, Florida Statutes, and section 634.108, Ordinance Code, (Assessment of Additional Court Costs-Duval County Teen Court Trust Fund).

☑ A sum of $65.00 pursuant to section 939.185, Florida Statutes, and section 111.385, Ordinance Code, (Assessment of Additional Court Costs to be used for innovations, legal aid, law library, teen court programs).

☐ A sum of $100.00 pursuant to section 938.25, Florida Statutes, (FDLE Operating Trust Fund).

☐ A sum of $100.00 pursuant to section 938.27, Florida Statutes, (Sheriff's Office Investigative Cost).

☐ A sum of $100.00 pursuant to section 938.27, Florida Statutes, (Prosecution Investigative Cost).

☑ A sum of $20.00 pursuant to section 938.06, Florida Statutes, (Assessment of Additional Court Costs for Crime Stoppers Trust Fund).

☐ A sum of $_____ pursuant to section 938.29, Florida Statutes, (Court Appointed Counsel Fees).

☐ A sum of $151.00 pursuant to section 938.10, Florida Statutes, (Crimes Against Minors).

☐ A sum of $201.00 pursuant to section 938.08, Florida Statutes, (Funding Programs in Domestic Violence).

☐ A sum of $151.00 pursuant to section 938.085, Florida Statutes, (Rape Crisis Trust Fund).

☐ A sum of $50.00 pursuant to section 775.083(2), Florida Statutes, (Cost).

☐ A fine in the sum of $_____ pursuant to section 775.0835, Florida Statutes, (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed. Fines imposed as a part of a sentence to section 775.083, Florida Statutes, are to be recorded on the sentence page(s)).

☐ A sum of $_____ pursuant to section 938.04, Florida Statutes, (additional cost 5% of fine).

☐ A sum of $2.00 as a court cost pursuant to section 938.15, Florida Statutes, (Criminal Justice Education by Municipalities and Counties).

☐ A sum of $15.00 pursuant to section 938.13, Florida Statutes, (Misd. convictions involving drugs or alcohol).

☐ A sum of $135.00 pursuant to section 938.07, Florida Statutes, (EMS – DUI/BUI cases).

☐ A sum of $30.00 pursuant to section 318.18(13), Florida Statutes, (CHT - State Court Facilities).

☐ A sum of $3.00 pursuant to section 318.18(17), Florida Statutes, (State Radio System (SRS)).

☐ A sum of $_____ for the cost of collecting the DNA sample required by section 943.325, Florida Statutes.

☐ Restitution in accordance with attached order.

☐ Other _____.

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this 29th day of April, 2015.

29th MM

Marianne Long Aho
Judge

Page 3 of 8

GREGORY MICHAEL NIERENBERG, DEFENDANT CASE NUMBER: 16-2010-CF-011363-AXXX-MA
OBTS # _____

SENTENCE

(As to Count(s) 1)

The defendant, being personally before this court, accompanied by the defendant's attorney of record C. Truscale, Rtd, and the adjudication/withhold having been determined, 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 the defendant should not be sentenced as provided by law, and no cause being shown:

☐ and the court having on _____ deferred imposition of sentence until this date.
☐ and the court having previously entered a judgment in this case on _____ now resentences the defendant.
☐ and the court having placed the defendant on probation/community control, and having subsequently revoked the defendant's probation/community control;

It Is The Sentence Of The Court That (check all that are applicable; unmarked sections are inapplicable):

☐ The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes plus $_____ at the 5% surcharge required by section 938.04, Florida Statutes.
☑ The defendant is hereby committed to the custody of the Department of Corrections.
☐ The defendant is hereby committed to the custody of the Sheriff of Duval County, Florida.
☐ The defendant is sentenced as a Youthful Offender in accordance with section 958.04, Florida Statutes.

To be Imprisoned (check one; unmarked sections are inapplicable):

☐ For a term of natural life.
☑ For a term of 40 Years.
☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.
☐ Youthful Offender Sentence:
Pursuant to the Florida Youthful Offender Act, the defendant shall be imprisoned for a period of _____, of which _____ shall be served by imprisonment followed by _____ in a Community Control Program according to the terms and conditions set forth in a separate order.

☐ Split Sentence (complete the appropriate paragraph):
☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order.
☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under the supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Imposition of Sentence Stayed and Withheld (check one; unmarked sections are inapplicable):

☐ The court hereby stays and withholds the imposition of sentence and places the defendant on:
☐ Probation/community control for a period of _____ under the supervision of the Department of Corrections with a special condition that the defendant serve _____ in Duval County Jail, with credit for _____ days.
☐ Unsupervised probation for a period of _____ with the special condition that the defendant serve _____ days in Duval County Jail, with credit for _____ days. Unsupervised probation will terminate upon completion of special condition.
(All other general/special conditions of probation/community control shall be set forth in a separate order.)

GREGORY MICHAEL NIERENBERG, DEFENDANT CASE NUMBER: 16-2010-CF-011363-AXXX-MA

OBTS # 1603042190

SENTENCE

(As to Count (s) 2)

The defendant, being personally before this court, accompanied by the defendant's attorney of record C. Truncale, Rtd, and the adjudication/withhold having been determined, 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 the defendant should not be sentenced as provided by law, and no cause being shown:

- ☐ and the court having on _____ deferred imposition of sentence until this date.
- ☐ and the court having previously entered a judgment in this case on _____ now resentences the defendant.
- ☐ and the court having placed the defendant on probation/community control, and having subsequently revoked the defendant's probation/community control;

It is The Sentence Of The Court That (check all that are applicable; unmarked sections are inapplicable):

- ☐ The defendant pay a fine of $_____, pursuant to section 775.083, Florida Statutes plus $_____ at the 5% surcharge required by section 938.04, Florida Statutes.
- ☑ The defendant is hereby committed to the custody of the Department of Corrections.
- ☐ The defendant is hereby committed to the custody of the Sheriff of Duval County, Florida.
- ☐ The defendant is sentenced as a Youthful Offender in accordance with section 958.04, Florida Statutes.

To be Imprisoned (check one; unmarked sections are inapplicable):

- ☐ For a term of natural life.
- ☑ For a term of 25 Years.
- ☐ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.
- ☐ Youthful Offender Sentence:
  Pursuant to the Florida Youthful Offender Act, the defendant shall be imprisoned for a period of _____, of which _____ shall be served by imprisonment followed by _____ in a Community Control Program according to the terms and conditions set forth in a separate order.
- ☐ Split Sentence (complete the appropriate paragraph):
  - ☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order.
  - ☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under the supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

Imposition of Sentence Stayed and Withheld (check one; unmarked sections are inapplicable):

- ☐ The court hereby stays and withholds the imposition of sentence and places the defendant on:
  - ☐ Probation/community control for a period of _____ under the supervision of the Department of Corrections with a special condition that the defendant serve _____ in Duval County Jail, with credit for _____ days.
  - ☐ Unsupervised probation for a period of _____ with the special condition that the defendant serve _____ days in Duval County Jail, with credit for _____ days. Unsupervised probation will terminate upon completion of special condition.

(All other general/special conditions of probation/community control shall be set forth in a separate order.)

GREGORY MICHAEL NIERENBERG, DEFENDANT CASE NUMBER: 16-2010-CF-011363-AXXX-MA
OBTS # _____

OTHER PROVISIONS

(As to Count(s) 1 + 2)

Current Jail Credit Time:
☑ It is further ordered that the defendant shall be allowed a total of 4 yrs 6 mos 22 days as credit for time incarcerated on this case / count before imposition of this sentence.

Credit for Time Served on Violation of Probation / Community Control:
(check one)

☐ It is further ordered that the defendant shall be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on count(s) _____. **(Offenses committed on or after January 1, 1994.)**

☐ It is further ordered that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on count(s) _____. **(Offenses committed before October 1, 1989.)**

☐ It is further ordered that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) _____. **(Offenses committed between October 1, 1989, and December 31, 1993.)**

Prior Prison Credit:
☐ It is further ordered that the defendant shall be allowed _____ days time served between date of the original sentence being vacated to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) _____.

Forfeiture of Prior Gain/Good Time:
(check one)

☐ The court deems the unforfeited gain time previously awarded on the above count(s) forfeited under section 948.06(7)

OR

☐ The court allows unforfeited gain time previously awarded on the above count(s).
(Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1))

~~Consecutive/~~ Concurrent As to Other Counts:
(if Applicable)

☑ It is further ordered that the sentence imposed for count(s) 2 shall run (check one)
☐ consecutive to ☑ concurrent with the sentence set forth in count 1 of this case.

Consecutive/ Concurrent As To Other Sentences:
(if Applicable)

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) ☐ consecutive to ☐ concurrent with the following: (check one)

☐ any active sentence being served.
☐ specific sentences: _____

Retention of Jurisdiction:
☐ The court retains jurisdiction over the defendant pursuant to section 947.16(4), Florida Statutes.

GREGORY MICHAEL NIERENBERG, DEFENDANT CASE NUMBER: 16-2010-CF-011363-AXXX-MA

SPECIAL PROVISIONS

(As to Count(s) 1+2)

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

☑ **Firearm:** It is further ordered that the 25 Yr. mandatory minimum imprisonment provisions of section 775.087(2)(a), Florida Statutes, is hereby imposed for the sentence specified in this count. As to Count 1 and a 20 Yr. min. man. imposed as to Count 2 - Both Counts Concurrent.

☐ **Controlled Substance Within 1,000 Feet of School:** It is further ordered that the 3-year mandatory minimum imprisonment provision of section 893.13(1)(c)1, Florida Statutes, is hereby imposed for the sentence specified in this count.

☐ **Habitual Felony Offender:** The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

☐ **Habitual Violent 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 section 775.084(4)(b), Florida Statutes. A mandatory minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

☐ **Violent Career Criminal:** The defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(d), Florida Statutes. A mandatory minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

☐ **Prison Releasee Reoffender:** The defendant is adjudicated a prison releasee reoffender in accordance with the provisions of section 775.082(9), and is sentenced to serve 100 percent of the maximum sentence provided by law for the offense of which the defendant has been convicted. A mandatory minimum term of _____ year(s) imposed as PRR in accordance with the provisions of this section.

☐ **Law Enforcement Protection Act:** It is further ordered that the defendant shall serve a minimum of _____ year(s) before release in accordance with section 775.0823, Florida Statutes (offenses committed before January 1, 1994).

☐ **Capital Offense (Excluding First Degree Murder and s. 790.161):** It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes (offenses committed before October 1, 1995).

☐ **Short-Barreled Rifle, Shotgun, Machine Gun:** It is further ordered that the 5-year mandatory minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count (offenses committed before January 1, 1994).

☐ **Continuing Criminal Enterprise:** It is further ordered that the 25-year mandatory minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count (offenses committed before January 1, 1994).

☐ **DUI Manslaughter:** It is further ordered that the 4 year mandatory minimum sentence provision pursuant to section 316.193(3)(c)3, Florida Statutes, is hereby imposed for the sentence specified in this count.

☐ **Dangerous Sexual Felony Offender:** The defendant is adjudicated a dangerous sexual felony offender and has been sentenced to an extended term in accordance with the provisions of section 794.0115, Florida Statutes. A mandatory minimum term of _____ year(s) must be served. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

☐ **Criminal Gang Activity:** The felony conviction is for an offense that was found, pursuant to section 874.04, Florida Statutes, to have been committed for the purpose of benefiting, promoting or furthering the interests of a criminal gang.

☐ **Sexual Offender:** The defendant is adjudicated a Sexual Offender in accordance with the provisions of section 943.0435(1)(a), Florida Statutes.

☐ **Sexual Predator:** The defendant is adjudicated a Sexual Predator in accordance with the provisions of section 775.21(4)(a), Florida Statutes.

☐ **Youthful Offender:** The defendant is adjudicated a Youthful Offender in accordance with the provisions of section 958.04(1)(a), Florida Statutes.

☐ **Taking a Law Enforcement Officer's Firearm:** It is further ordered that the 3-year mandatory minimum imprisonment provision of section 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count (offenses committed before January 1, 1994).

GREGORY MICHAEL NIERENBERG, DEFENDANT
AXXX-MA

CASE NUMBER: 16-2010-CF-011363-

OBTS # _____

In the event the defendant is sentenced to a period of incarceration in state prison, the Sheriff of Duval County, Florida, is hereby ordered and directed to deliver the defendant to the Florida 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 Statute.

In open court, the defendant was advised of the right to appeal from this sentence by filing a notice of appeal with the clerk of this court within 30 days from this date and the right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends / adjudges:

DONE AND ORDERED in open court in Jacksonville, Duval County, Florida, this 29th day of April, 2015.

4-29-15

Judge

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

October 07, 2015

CASE NO.: 1D15-2291
L.T. No.: 16-2010-CF-011363-AXXX

CR-H

Gregory Michael Nierenberg v. State of Florida

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

BY ORDER OF THE COURT:

Appeal dismissed pursuant to Florida Rule of Appellate Procedure 9.350(b).

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

Served:

Hon. Pamela Jo Bondi, A. G. Michael Ufferman Hon. Ronnie Fussell, Clerk

co

JOEL S. WHEELER, CLERK

FILED: 10/07/2015 10:03:55 AM EDT

EXHIBIT C

FILED0804"14PM0255 R FUSSELL

IN THE CIRCUIT COURT,
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,

v. CASE NO.: 16-2010-CF-11363

GREGORY MICHAEL NIERENBERG,

Defendant.
_____/

ORDER GRANTING UNOPPOSED MOTION FOR SUBSTITUTION OF COUNSEL

This cause has come before the Court on defendant's Unopposed Motion for Substitution of Counsel. The motion indicates that the defendant currently is represented by the firm of Bedell, Dittmar, Devault, Pillans & Coxe, but that the defendant now has retained the services of Charles L. Truncale of Charles L. Truncale, P.A. to represent the defendant in this case. The motion seeks an order permitting the Bedell firm to withdraw from representation and substituting Mr. Truncale as counsel of record for the defendant. The motion indicates that the relief sought will not prejudice the State in any manner, nor will the relief cause any delay or adverse consequence to the administration of justice.

After careful consideration, the motion is due to be GRANTED.

THEREFORE, it is ORDERED and ADJUDGED that:

(1) The firm of Bedell, Dittmar, Devault, Pillans & Coxe is discharged from the duties as counsel of record for the defendant; and

(2) Charles L. Truncale of Charles L. Truncale, P.A., 233 East Bay Street, Suite 1101, Jacksonville, FL 32202 is substituted as counsel of record for the defendant.

EXHIBIT D

PAGE # 798

DONE AND ORDERED in Chambers in Jacksonville, Florida, on this the 4 day of August, 2014.

CIRCUIT JUDGE

cc: Gregory Michael Nierenberg at Duval County Pretrial Detention Center
Charles L. Truncale at clt_law@live.com
Henry Matson Coxe, III at hmc@bedellfirm.com
Brian T. Coughlin at btc@bedellfirm.com
Jeffrey M. Moody, Assistant State Attorney at jmoody@coj.net

Filing # 27098730 E-Filed 05/10/2015 02:50:08 PM

IN THE COUNTY COURT,
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,

v. CASE NO.: 16-2010-CF-11363

GREGORY MICHAEL NIERENBERG,
Defendant.
_____/

MOTION TO WITHDRAW GUILTY PLEAS

Defendant, GREGORY MICHAEL NIERENBERG (hereinafter "defendant" or "Mr. Nierenberg"), by and through the undersigned counsel, moves this Court to permit the defendant to withdraw the guilty pleas previously entered in this case, stating as follows:

1. On June 6, 2013, Mr. Nierenberg entered into a plea agreement in which he agreed to plead guilty to second degree murder (count one) and attempted first degree murder (count two) in return for a negotiated sentence of no less than 25 years' mandatory imprisonment and up to 45 years' imprisonment with sentences to run concurrently.

2. On April 29, 2015, this Court orally sentenced Mr. Nierenberg on both counts and subsequently entered a written judgment of conviction and sentence on April 30, 2015.

3. On May 7, 2015, Mr. Nierenberg instructed the undersigned counsel to file on Mr. Nierenberg's behalf a motion to withdraw his guilty pleas on the basis that his guilty pleas were involuntary.

4. A motion to withdraw a guilty plea after sentencing is a critical stage of a criminal proceeding to which the defendant is entitled to conflict-free counsel.

5. In order to preserve Mr. Nierenberg's right to appeal the issue of his involuntary

EXHIBIT E

FILED: DUVAL COUNTY, RONNIE FUSSELL, CLERK, 05/11/2015 02:31:53 PM

guilty pleas, the undersigned files this motion to withdraw guilty pleas. However, the undersigned cannot represent Mr. Nierenberg on this motion to withdraw Mr. Nierenberg's guilty pleas due to an actual conflict of interest. Therefore, simultaneously with the filing of this motion to withdraw guilty pleas, the undersigned counsel is filing a motion to withdraw as counsel due to an actual conflict-of-interest in order to guarantee Mr. Nierenberg's right to conflict-free counsel at all critical stages of the criminal proceeding.

6. This Court should enter an order permitting the undersigned to withdraw as counsel due to an actual conflict of interest and should appoint the Public Defender as counsel for Mr. Nierenberg. Thereafter, Mr. Nierenberg should be given the opportunity to amend or supplement this motion to withdraw his guilty pleas, through conflict-free counsel, to substantiate the allegation of the entry of involuntary guilty pleas.

7. This motion is made in good faith and for no purpose of delay.

WHEREFORE, based on the foregoing facts and following authorities, the defendant respectfully requests this Honorable Court to enter an order permitting the undersigned to withdraw as counsel due to a conflict of interest and to appoint the Public Defender as counsel for Mr. Nierenberg to litigate Mr. Nierenberg's claim that he should be permitted to withdraw his guilty pleas on grounds that they were involuntary and to represent Mr. Nierenberg on direct appeal.

Memorandum of Law

Fla. R. Crim. P. 3.170(l) provides:

> A defendant who pleads guilty or nolo contendere without expressly reserving the right to appeal a legally dispositive issue may file a motion to withdraw the plea within thirty days after rendition of the sentence, but only upon the grounds

> specified in Florida Rule of Appellate Procedure 9.140(b)(2)(A)(ii)(a)–(e) except as provided by law.

In the instant case, this Court rendered the sentence on April 30, 2015. Therefore, Mr. Nierenberg, through the undersigned counsel, has filed the motion to withdraw the guilty pleas within the thirty days of rendition of the sentence. The filing of the motion to withdraw the guilty pleas is necessary for Mr. Nierenberg to preserve for appeal the issue of the involuntariness of the guilty pleas, pursuant to Fla. R. App. P. 9.140(b)(2)(A)(ii)(a)–(e). In this regard, said appellate rule provides as follows:

> A defendant who pleads guilty or nolo contendere may otherwise directly appeal only
>
> a. the lower tribunal's lack of subject matter jurisdiction;
>
> b. a violation of the plea agreement, if preserved by a motion to withdraw plea;
>
> c. ***an involuntary plea, if preserved by a motion to withdraw plea;***
>
> d. a sentencing error, if preserved; or
>
> e. as otherwise provided by law.

Id. (Emphasis added).

Therefore, this Court is required to appoint new, conflict-free, counsel for Mr. Nierenberg, because a hearing on a motion-to-withdraw-plea is a critical stage of the criminal proceedings. *See Jones v. State*, 827 So.2d 1086, 1087 (Fla. 1st DCA 2002) ("At a hearing on a motion to withdraw plea, once it becomes clear a defendant and his counsel have taken adversarial positions concerning what actually happened while counsel was advising his client concerning the plea, the defendant is entitled to conflict-free counsel"); *Padgett v. State,* 743 So.2d 70, 73 (Fla. 4th DCA 1999) (same); *Rodgers v. State,* 765 So.2d 195, 196 (Fla. 1st DCA

2000) (indicating reversal required where trial court failed to appoint conflict-free counsel at hearing on motion to withdraw plea, because hearing was critical stage in criminal proceedings); *Lewis v. State*, 812 So.2d 597, 598 (Fla. 1st DCA 2002) (indicating defendant entitled to appointment of conflict-free counsel to assist in pursuing motion to withdraw plea); *Wofford v. State*, 819 So.2d 891 (Fla. 1st DCA 2002) (same).

Conclusion

This Honorable Court should enter an order permitting the undersigned to withdraw as counsel due to a conflict of interest and should appoint the Public Defender as counsel for Mr. Nierenberg to litigate Mr. Nierenberg's claim that he should be permitted to withdraw his guilty pleas on grounds that they were involuntary and to represent Mr. Nierenberg on direct appeal.

Respectfully submitted on this the 10th day of May, 2015.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 10, 2015, I forwarded the above motion by electronic delivery email transmission and e-filing to the attention of

Jeffrey M. Moody
Assistant State Attorney
311 West Monroe Street
Jacksonville, FL 32202

Office of the Public Defender
407 No. Laura Street
Jacksonville, FL 32202
E-mail: pd4efile@pd4.coj.net

s/ Charles L. Truncale
CHARLES L. TRUNCALE
Fla. Bar No.: 0786381
CHARLES L. TRUNCALE, P.A.
233 East Bay Street, Suite 1101
Jacksonville, FL 32202
Telephone: (904) 673-7412
Facsimile: (904) 485-8259
E-mail: clt_law@live.com

5-13

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE: 16-2010-CF-011363-AXXX-MA

DIVISION: CR-H (Circuit)

STATE OF FLORIDA

vs.

GREGORY MICHAEL NIERENBERG, DEFENDANT

ORDER

THIS CAUSE COMING ON BEFORE THE COURT UPON THE ☒DEFENDANT'S ☐STATE'S

MOTION TO WITHDRAW GUILTY PLEAS

FILED HEREIN ON THE 10TH day of MAY, 2015 AND THE COURT HAVING HEARD ARGUMENTS OF THE STATE'S ATTORNEY AND OF COUNSEL FOR DEFENSE, AND BEING FULLY ADVISED IN THE PREMESIS, IT IS THEREUPON

ORDERED AND ADJUDGED THAT THE AFORESAID MOTION SHALL BE AND THE SAME IS HEREBY: Denied without prejudice.

DONE AND ORDERED IN OPEN COURT AT JACKSONVILLE, DUVAL COUNTY, FLORIDA, THIS 13th day of May, 2015.

Circuit Judge

FILED
MAY 13 2015
RONNIE W. DANIELL
CLERK CIRCUIT COURT

FILED IN COMPUTER DARLENE

EXHIBIT F

Filing # 28575849 E-Filed 06/17/2015 08:52:09 AM

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2010-CF-011363
DIVISION: CR-H

STATE OF FLORIDA

-vs-

GREGORY MICHAEL NIERENBERG,

Defendant.

STATE OF FLORIDA)
COUNTY OF DUVAL)

COURT PROCEEDINGS held before the Honorable Marianne Aho, Circuit Court Judge, in the above-entitled action, held on May 13, 2015, at 8:30 a.m., at the Duval County Courthouse, 501 West Adams Street, Courtroom Number 408, and taken down stenographically by Ashley Whitehair, Certified Court Reporter and Notary Public, in and for the State of Florida at Large.

Ashley Whitehair
Official Reporters, Inc.
421 West Church Street, Suite 430
Jacksonville, Florida 32202
(904) 358-2090

Official Reporters, Inc.

EXHIBIT G1

FILED: DUVAL COUNTY, RONNIE FUSSELL, CLERK, 06/17/2015 09:22:08 AM

A P P E A R A N C E S

JEFFREY M. MOODY, Esquire

Assistant State Attorney

Office of the State Attorney
Ed Austin Building
311 West Monroe Street
Jacksonville, Florida, 32202

Attorney on behalf of the State of Florida.

CHARLES L. TRUNCALE, Esquire

At the Law Office of

Charles L. Truncale, P.A.
233 East Bay Street, Suite 1101
Jacksonville, Florida 32202

Attorney on behalf of the Defendant.

FRED C. GAZALEH, Esquire

Assistant Public Defender

Office of the Public Defender
407 North Laura Street
Jacksonville, Florida 32202

Attorney on behalf of the Defendant.

Also Present:

Gregory Michael Nierenberg, the Defendant.

I N D E X

Page No.

COURT PROCEEDINGS 05/13/15.....5

CERTIFICATE OF REPORTER.....36

E X H I B I T S

Page No.

Court

(None Entered/Admitted.)

State

(None Entered/Admitted.)

Defense

(None Entered/Admitted.)

May 13, 2015 8:57 a.m.

PROCEEDINGS

* * * * *

MR. MOODY: Good morning, Your Honor.

MR. TRUNCALE: Good morning, Your Honor.

THE COURT: Good morning.

MR. MOODY: Judge, if we can call the case of Gregory Nierenberg, I believe, it is on the top of Page 12.

(Defendant enters the courtroom.)

MR. TRUNCALE: Your Honor, Mr. Nierenberg is here. I would like to state that I think the issue before the Court is going to be rendered moot.

THE DEFENDANT: Your Honor?

MR. TRUNCALE: Based on a discussion that I had with Mr. Nierenberg.

THE COURT: Okay. So I know the defendant's indicating he wants to speak, but I need to speak with your lawyer first, sir.

So what I have here is a motion to withdraw as attorney, and I also have a motion to withdraw guilty pleas.

And when you say the issue before the

Court may be rendered moot, do you have a motion to withdraw at this point?

MR. TRUNCALE: Moot on the concern of the withdrawal of the guilty plea. I have just spoken with my client, and he tells me that it was apparently filed in error, that he didn't mean to have me file that, and that he is in the process of hiring different retained counsel, his family is, and he asks to speak to the Court on that matter.

THE COURT: Okay. And I intend to hear from the State, before I talk to the defendant, but I just want to place on the record that I have received a letter, that I had spoke about on the record previously from Mr. Nierenberg, that was received in my office on or about May 8th, 2015, last Friday, which is what caused me to place the case on the calendar this past Monday for a status hearing -- Monday or earlier this week -- that was Monday.

Now, I received a second letter from the defendant. It came in on May 12th. And I don't know if counsel have seen this (indicating)?

MR. TRUNCALE: No, I haven't, Judge.

MR. MOODY: No, Your Honor.

THE COURT: I will pass this to madam clerk, so both of you can see it. I'll pass them both down, so you can see both of them.

(Tenders instruments.)

MR. TRUNCALE: Judge, I will read them and pass them to Mr. Nierenberg -- I mean, Mr. Moody.

(Pause.)

MR. TRUNCALE: (Reviews documents.) I was unaware of that. I was unaware of that.

(Tenders instrument.)

MR. MOODY: (Reviews documents.)

THE COURT: Madam clerk, for the record, my computer is being very slow: Do you have both of those letters in Core? I know the first one, I believe, is in Core, because I asked for it to be filed on Friday. The second one may not be there, although, it should be in process.

The first one shows a receipt stamp of May 8th; that one you have, correct?

THE CLERK: Yes.

THE COURT: And that one is in Core.

What about the one that shows a receipt dated May 12th?

THE CLERK: Not yet.

THE COURT: Okay. So that one -- the original's been sent down for filing, but for the record, counsel have now seen both letters?

MR. TRUNCALE: Yes, Your Honor.

MR. MOODY: Yes, Your Honor. Thank you.

THE COURT: So what I want to ask you, and I will hear from the State: Are you stating on the record that you're proceeding with your motion to withdraw as attorney, but you're withdrawing your motion to withdraw guilty pleas?

MR. TRUNCALE: Judge, it appears to me, first of all, that that letter received on May 8th occurred after I had met with him on May 7th.

THE DEFENDANT: No, ma'am.

MR. TRUNCALE: On May 7th I was directed to file the motion to withdraw the guilty plea. I went there for the purpose of having him fill out an affidavit to obtain

the public defender, an affidavit for indigency. I asked him to get it notarized. And I filled it out with him. I asked him to get it notarized. And then, what was confusing to me, is he indicated that he wasn't sure that he was going to do that.

My understanding was that he said I want to file a motion to withdraw the guilty plea, and I will stand on that. There's no question.

So the statements in the first letter had to have occurred after I saw him on Thursday, May 7th. And I filed that motion, I did some research on Friday, May 8th, spoke with bar counsel, and filed it over the weekend.

I had no idea that the status conference was based on a letter indicating that he wanted no longer to have my services. That would have resolved everything. I would have never filed the motion on his behalf, the motion to withdraw the guilty plea.

It is only because I filed that motion to withdraw the guilty plea, that I filed the motion to withdraw as counsel, based on that.

There is no longer -- that concern no longer exists. He has told me today that, indeed, his parents are seeking to hire private counsel. And I asked him who it was, and he said he's not allowed, you know, he said, I can't state yet, but the counsel will be retained before the 30th day period runs out for filing a notice of appeal or, you know, if another counsel decides to file a motion to withdraw guilty plea, based on conversations with Mr. Nierenberg, so be it.

My concern is this, Judge: Under the rules of procedure, I am required to stay with him until, you know, and file the notice of appeal in certain documents, appeal-related documents, before the Court could even appoint the public defender.

I mean, that's my understanding of the rules, that I would have to, you know, there's certain things I need to do. And I would ask if he doesn't have the retained counsel yet, to have another status conference.

Because, again, I -- he needs to know that there's a time limit. And if he is

hiring this other counsel, I can't just withdraw without anybody there.

And if he -- unless the Court wants to allow me to withdraw, since he doesn't want my services any more, and appoint the public defender for purposes of dealing with post trial issues, motions, and an appeal.

THE COURT: Do you have a preference? Do you have a request?

MR. TRUNCALE: I would, since Mr. Nierenberg told me that his parents are in the process of obtaining another attorney, I think it would be better to allow me to withdraw now, and have the public defender appointed, just in case the parents dealings or attempts to hire a retained counsel don't come to pass.

You know, there's only about another 16 days left in the 30 day period. I really think he needs protection of counsel. Now, I would like that.

Ordinarily, if there's no post -- not post trial, but post sentencing motion, for a person who has pled guilty, there's only five areas that can be appealed. And a public

defender would be well, you know, well competent to discuss that with him, and if there is none, to file the notice of appeal, that is necessary.

But he needs counsel now. He can't just say I don't want Mr. Truncale any more and do nothing. So I really think we should get him the public defender, because until -- you know, he can't say I don't -- as he said there, I don't want him representing me any more, but he doesn't have retained counsel.

So I really think its got to go to the public defender, Judge.

THE COURT: And in both of these letters he indicated he basically that he would like the public defender appointed. I am going to hear from the State.

One other issue, and it's just housekeeping, is we have the form that he can fill out.

MR. TRUNCALE: I think he has it right here (indicating). He just doesn't have it notarized. Perhaps you could have it --

THE COURT: It could just be handed into the clerk.

Does the State have anything at this point?

MR. MOODY: Judge, those letters do obviously change the posture for what we came in here for.

Obviously, this is the first I'm hearing of any of this. I did not discuss this with Mr. Truncale, this change in circumstances. And obviously, I guess, he did know about one of the letters.

So, to that extent, the State doesn't really have a dog in the fight for that. The only thing I do disagree with, a couple of things, and I guess I just want to safeguard, again, what I foresee coming down the pike: If Mr. Truncale is retained, it is my understanding that at any point in time his client can say I don't want your services any more, I'm the one who's paying for you, my parents are paying for you, and if I don't want you, I don't want you.

But that is what it is, and that's for this Court to determine, whether or not how you relay that or not, but that reason versus what I thought we were coming here for today,

was he wanted out because there was a conflict. And my concern was that conflict is going to go directly to the merits of this motion to withdraw plea.

As it stands right now, I still foresee that it's going to be an issue, because whether he gets the public defender, or whether or not he retains private counsel, I anticipate there will be a motion to withdraw the plea.

And if there is a motion to withdraw the plea, then this conflict issue is going to come up, because Mr. Truncale is probably going to be one of the witnesses I would be calling at that hearing directly regarding any conversations that he had with Mr. Nierenberg prior to the sentencing about wanting his plea withdrawn or wanting to go forward with a sentencing, because that goes directly to the heart of whether his pleas were involuntary or coerced, as it lingered for a year-and-a-half before the sentencing actually happened.

So the only reason I bring that up is however you let Mr. Truncale out, whether it

be today, whether it be next week, or whoever you have appointed, or whether they get retained counsel, that's still going to be an issue that we're going to have to deal with.

MR. TRUNCALE: Your Honor, first of all, I did not know of the contents of the letter. I did not know that a letter was filed. First time I read the May 8th letter was today.

THE COURT: And just for purposes of the record, we're calling it -- and I understand that, and I accept what you're saying -- the May 8th letter was stamped by my assistant as received on May 8th.

So, presumably, if came in by U.S. mail, it must have been sent no later than May 7th. But I don't think any of that really matters.

MR. TRUNCALE: The other thing is Mr. Moody's concern about the conflict issue.

Once this motion is -- both motions are withdrawn, I move to withdraw them, based on the client's instructions and it's appropriate, but it's almost laughable to suggest that he's going to call me to testify

in a future hearing to testify as to confidences of my client. I would say to put it straight, laughable, if not shocking. I will assert the privilege for my client.

THE COURT: Well, the bottom-line is I just need to rule on what's in front of me today, so...

THE DEFENDANT: (Hand raised.)

THE COURT: And I see Mr. Nierenberg gesturing he wants to speak. So I'm not going to rule, until we address the fact that Mr. Nierenberg wants to speak.

But what I believe I need to do right now is to rule on the motion to withdraw as attorney. And I hear you saying that you are withdrawing your motion to withdraw guilty pleas.

MR. TRUNCALE: And the motion to withdraw based on that filing.

THE COURT: So these motions are withdrawn, so --

MR. TRUNCALE: And I ask that they both -- I mean, the motion to withdraw the guilty plea be withdrawn without prejudice to Mr. Nierenberg presenting it through some

other attorney.

THE COURT: That's fine. That's deemed -- the motion to withdraw guilty pleas is deemed withdrawn. It's basically denied as moot without prejudice to it being raised again in a timely fashion.

MR. TRUNCALE: Thank you, Your Honor.

THE COURT: Very well.

So, madam clerk, I will need a cover order on that. So that takes care of that.

Now, on the motion to withdraw as attorney. If Mr. Nierenberg has the application form, madam clerk can look at it right now, and tell us if he qualifies.

MR. TRUNCALE: May I present it to her? Again, it is not signed or notarized, but he can attest to it and to the Court.

THE COURT: He can sign it.

MR. MOODY: Your Honor, if you would like to just swear him in right now, that that's what he signed, I would be fine with that.

THE COURT: Very well.

Madam clerk, would you please swear the defendant in.

THE CLERK: Raise your right hand.

THE DEFENDANT: (Complies.)

THE CLERK: Do you solemnly swear or affirm, to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE CLERK: Thank you.

(Defendant was duly sworn in by the clerk.)

THE COURT: And, madam clerk, before I ask him any questions, can you just tell me if he qualifies, based on what you're looking at?

THE CLERK: He does.

THE COURT: Okay. If I can please have that.

(Tenders instrument.)

THE COURT: Good morning, sir. Would you please state your full legal name?

THE DEFENDANT: Gregory Michael Nierenberg.

THE COURT: And, sir, I have been handed an application for criminal indigent status, which has just been handed to me.

Sir, is everything in this document

true and correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: Very well.

I think, for purposes of the record, he probably ought to sign this.

Do you have any objection to that?

MR. TRUNCALE: (Shakes head from side to side.)

THE COURT: Let me hand you a pen.

THE BAILIFF: I have one (indicating).

THE COURT: Okay.

(Tenders instrument.)

THE DEFENDANT: (Complies.)

THE COURT: For the record, the defendant is signing the application right now. Sir, I see you're signing the application right now. Is the application true and correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. So the defendant does qualify as indigent.

So what I can do right now, I'm not doing it yet, but what I can do, is I can grant the motion to withdraw as attorney, and I could appoint the Public Defender's Office

right now.

THE DEFENDANT: (Raise hand.)

THE COURT: Mr. Nierenberg, I see that you're gesturing you want to speak to me. I want to encourage you to talk to Mr. Truncale for a moment, to see if your issues have been resolved, and if you do not need to speak.

(Off-the-record discussion was held between the Defendant and his Counsel.)

MR. TRUNCALE: Yes, he tells me other than that.

THE COURT: So he still wants to speak?

MR. TRUNCALE: He wishes to speak, Judge.

THE COURT: Okay. Very well.

So, Mr. Nierenberg, I want to make sure you understand. We are here in open court.

Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that the court reporter is right here (indicating), taking down everything that you say?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. What I can tell you is, it looks like you're about to get a new lawyer. Do you want to wait until you have this new lawyer, to decide if you want to speak in open court?

THE DEFENDANT: No, I'd like to speak right now.

THE COURT: Okay. Let me ask the State and counsel: Do you have anything you want to say right now?

MR. MOODY: No, ma'am.

THE COURT: Okay.

MR. MOODY: I would love to hear what he has to say.

MR. TRUNCALE: Your Honor, I've asked him to advise me of the substance of the matter, but he refuses to tell me, but he says he wishes to talk to you.

THE COURT: Okay. So let me ask you this, Mr. Nierenberg: Are you in agreement with Mr. Truncale withdrawing, and the public defender being appointed to represent you?

THE DEFENDANT: Yes, ma'am, but...

THE COURT: I really want you to be represented by counsel, and not out going

counsel before you speak, because it's important when you speak in open court with the court reporter and everything.

So, at this time, just in an abundance of caution, I am granting -- is there an ore tenus motion to withdraw?

I know that you said that your motion to withdraw as attorney on this basis is withdrawn. So are you moving ore tenus to withdraw?

MR. TRUNCALE: Yes, I am, on the basis that he needs counsel. There is no conflict issue, but he just needs counsel, because he wants new counsel.

And that is -- there's a critical stage of the proceeding, if he files a motion to withdraw his guilty plea, and the right to counsel for appeal.

So on those basis, his desire for new counsel, specifically, the public defender, I move to withdraw.

THE COURT: Okay. Your motion to withdraw is granted. You and your law firm, sir, are hereby relieved of any further responsibility, and you are discharged at

this time.

MR. TRUNCALE: May I step out?

THE COURT: You may.

MR. TRUNCALE: Thank you, Your Honor.

THE COURT: Now, the Public Defender's Office is hereby appointed as counsel for Mr. Nierenberg.

Would you please state your appearance, sir?

MR. GAZALEH: Good morning, Your Honor. Fred Gazaleh from the Public Defender's Office.

THE COURT: Mr. Gazaleh, would you like me to pause just for a moment, for you to speak to your client, to see if he still needs to speak in open court right now?

MR. GAZALEH: Yes, I would. I would ask that it's passed temporarily, so that I can talk to him in the conference room.

THE COURT: Very well. This case is pass temporarily.

MR. GAZALEH: Thank you, Your Honor.

(Case temporarily passed.)

MR. MOODY: Your Honor, if we can go ahead and recall the case of Gregory

Nierenberg. I believe that case was on Page 12. And good morning again.

THE COURT: Good morning.

MR. GAZALEH: Good morning again, Your Honor.

THE COURT: Good morning.

(Defendant enters the courtroom.)

MR. GAZALEH: Your Honor, Mr. Nierenberg is coming before the Court.

I've had a chance to talk to him, and I've advised him that I don't think it's wise that he address the Court at this time, but he insists that he does have something to say, and if he limits it to what he told me he was going to say, then I think the Court ought to let him speak, if he wants to, but it's over my objection or beyond my advice.

THE COURT: Does the State have anything regarding the issue of whether the defendant should be aloud to speak in court?

MR. MOODY: No, ma'am. I think he has that right. I just would ask that he be reminded that he's under oath.

THE COURT: Okay. So, Mr. Nierenberg, I understand from Mr. Gazaleh that you still

would like to address the Court. I am going to permit you to do that, but I want to again caution you, that the court reporter is taking down everything that you say, that I say, that the attorneys, or anyone else says in your hearing.

Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. And, sir, would you please state your name for the record?

THE DEFENDANT: Gregory Michael Nierenberg.

THE COURT: And, Mr. Gazaleh, I know that you are really a very humble person, but I'm not asking for humility, I'm just asking for the facts right now: Are you, in fact, the Division Chief for homicide cases for the Public Defender's Office for the Fourth Judicial Circuit?

MR. GAZALEH: I'm the Director of Felony Court, and I am --

THE COURT: Which would even be a higher position; is that correct?

MR. GAZALEH: I hope so.

THE COURT: Okay. Well, I was just

asking you for the facts.

MR. GAZALEH: Yes.

THE COURT: So you're the Director of Felony Court?

MR. GAZALEH: Yes.

THE COURT: For the entire Fourth Judicial Circuit --

MR. GAZALEH: Correct.

THE COURT: -- Public Defender's Office; is that correct?

MR. GAZALEH: Correct. And I am on the homicide team, and I am death qualified, and I have been for several years.

THE COURT: Okay. So, Mr. Nierenberg, I just wanted you to have the benefit of that information regarding your newly appointed attorney's background and experience.

Do you still want to speak in open court, or do you --

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. You may speak.

THE DEFENDANT: You'll have to excuse me, because my mind's been ineffective the past few weeks, along with a lot of other things.

On Monday, when Charles filed that motion, I did not know I was going to court, and they pulled me out. So I didn't even know I had a court date, Your Honor.

And on -- from last week, I wrote you a later, and stated in the letter that he was not my attorney no more, and my parents said he wasn't representing me any more.

I did not -- he explained to me the appeal form and everything. I told him you would have to speak with my parents. I did not tell him to file the motion on Monday.

So I was baffled in court, and I really didn't understand what was going on. So I just wanted to state that for the record.

Another thing is I am very ignorant to the law, and I put in a lot of requests to the law library, and they obviously won't let me go.

I would like to do a court order for me at least to get one visit to the law library every week until my time limit is up, if I decide to withdraw my plea.

THE COURT: Okay. Sir, you are represented by extremely capable and

well-respected counsel, and he would have access to all legal materials.

Mr. Gazaleh, is there anything that you would like to say regarding this request. And your client is not proceeding pro se. He is represented by you.

MR. GAZALEH: That's correct, Your Honor, and I don't know whether he ought to be allowed to go to the library or not, but we do have access to all of the -- all of the materials that we would need.

But we have to be advised what he wants us to do. And it's my understanding that at this point he does not want to withdraw his plea, but that he wants our office appointed for the purpose of appeal, and that would mean that another person would be handling it, and that we would not need to set another court date in front of Your Honor at this time.

So if he could make that clear to us?

THE DEFENDANT: Also, I have already retained counsel, my parents have, they have a piece of paper saying that they have, Your Honor. So I could technically --

THE COURT: Well, what I'm going to do -- does the State have anything you want to place on the record right now?

MR. MOODY: No, ma'am, other than I just want to make sure that the record was clear, since I believe the letter stated that, and I believe Mr. Nierenberg has stated that, he just said I didn't want the motion filed. There were two different motions.

Just so that the record is clear, and I know Mr. Gazaleh is trying to clear it up, at this point in time it sounds as though the defendant is saying he never instructed Mr. Truncale to file a motion to withdraw his plea.

THE DEFENDANT: That's all I'm saying, Your Honor. I'm not saying I don't want to in the future. If I do or if I don't, I would have to be legally advised of whether I want to or not, Your Honor, and he didn't give me that representation.

THE COURT: I understand. And for purposes of the record, there -- I still have before me this motion to withdraw guilty pleas, which I understood that Mr. Truncale

was withdrawing.

So I am just going to state here that it's denied without prejudiced, which means it can still be brought timely, but that way it's not pending before the Court.

There's no motion to withdraw guilty pleas pending at this time.

Do you understand that, sir?

THE DEFENDANT: Thank you, Your Honor.

THE COURT: And but you can certainly work with your attorney, Mr. Gazaleh, or if you end up with a different attorney, you can work with that attorney.

But the time limits as set forth under Florida law are the same, and that 30 day window to appeal is rapidly closing.

Do you understand that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. So what I'm going to do, in light of the events today, is I've already appointed the Public Defender's Office. Perhaps we don't need another court date, unless, Mr. Gazaleh, do you want another court date, to see if there's going to be private counsel to file any applicable

motion or notice of appeal?

MR. GAZALEH: No, Your Honor, I don't think we need one. He can file -- he or she can file a notice of appearance and substitution of counsel, and we can get out on that basis. But just to be --

THE COURT: Very well.

MR. GAZALEH: But just to be clear, as I understand it, our office has been appointed for the purpose of appeal only at this point?

THE COURT: Actually, I'm appointing your office for purposes of any post sentencing motions and the trial court --

MR. GAZALEH: Okay.

THE COURT: -- and for purposes of appeal, for all purposes.

MR. GAZALEH: That's fine.

THE COURT: And I'm stating it on the record right now.

Madam clerk, the order that I signed appointing the Public Defender's Office, does it need to say anything else?

THE CLERK: I probably just need to enter this other order for appeal.

THE COURT: Okay. So I'll enter two written orders, so it's clear the Public Defender's Office is appointed for any post sentencing motions and the trial court and for purposes of appeal.

And, Mr. Nierenberg, I understand you're asking for access to the law library. I am not going to order that right now. You're represented by counsel, and they have access to all legal materials.

THE DEFENDANT: All right.

THE COURT: You're not asking me to let you represent yourself, are you?

THE DEFENDANT: No, I would just like access to the law library. I thought it was my right.

MR. MOODY: I believe that is something actually that is prescribed by the jail.

THE COURT: It's really up to the jail, what their procedures are.

Officer Chambers?

THE BAILIFF: Yes, ma'am, that's correct, Your Honor. No order from your behalf would be necessary. They can make the necessary arrangements at the jail.

THE COURT: I mean, can you, without my ordering it, can you request that the defendant be permitted access to the --

THE BAILIFF: Yes, ma'am, I can put some documentation on his paperwork to that effect.

THE COURT: Very well.

So Officer Chambers is going to note, our bailiff, that you're requesting to go to the library --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- in the jail.

I don't have any objection to your going to the library, but I'm not going to order the jail to do that.

Do you understand that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. So that really concludes this matter for today.

MR. GAZALEH: Thank you, Your Honor.

THE COURT: And, Mr. Gazaleh, I have it memorized what your title is.

MR. GAZALEH: Thank you.

THE COURT: As well as yours, Mr. Moody.

MR. MOODY: Thank you.

THE COURT: Thank you.

MR. GAZALEH: Your Honor, one last thing: I don't know if he's here on -- if Mr. Nierenberg is in Jacksonville or in the Duval County Jail because of a transport order, but if he is, I would ask that he not be transported back immediately.

THE COURT: I don't know that we have any control over that. I already signed the guidelines.

Officer Chambers, is there any way to keep the defendant here, so that Mr. Gazaleh and/or his designee would have the ability to meet directly with the defendant regarding any issues they need to address?

THE BAILIFF: I think he has a pending cases in another division, in a misdemeanor division.

THE COURT: Well, he has pending matters in a misdemeanor division, so...

MR. GAZALEH: Okay. That's fine. And he tells me he's not been transported to Lake Butler already. So he's still in the jail. He has never been designated to go to the

state prison yet.

THE COURT: Does he have a court date in his misdemeanor case?

THE DEFENDANT: Yes, I do.

MR. GAZALEH: The 27th of May is when it's scheduled.

THE BAILIFF: Yes, ma'am. That's correct.

THE COURT: Very well. So he would need to be here for that.

MR. GAZALEH: That's fine. We have plenty of time.

THE COURT: Is there anything else for today?

MR. GAZALEH: No, Your Honor.

THE COURT: Thank you, very much.

MR. GAZALEH: Thank you.

THE DEFENDANT: Thank you.

MR. MOODY: Thank you.

* * * * *

(Whereupon, the proceedings for this defendant were adjourned at 10:19 a.m.)

- - -

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Ashley Whitehair, Certified Court Reporter, certify that I was authorized to and did personally stenographically report the foregoing proceedings on May 13, 2015, and that the transcript is a true and complete record of my stenographic notes.

/s/ Ashley Whitehair
Ashley Whitehair
Certified Court Reporter

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 2010-CF-11363-AXX

DIVISION: CR-H

STATE OF FLORIDA

-vs-

GREGORY MICHAEL NIERENBERG,

Defendant.

STATE OF FLORIDA)

COUNTY OF DUVAL)

TESTIMONY AND PROCEEDINGS taken before the Honorable MARIANNE L. AHO, Judge of the Circuit Court, Division CR-H, in the Duval County Courthouse, Jacksonville, Florida, on Thursday, March 5, 2015, at 9:31 a.m., and as reported by Colleen S. David, a Notary Public in and for the State of Florida at Large and Court Reporter.

FILED
FEB 03 2020
CLERK CIRCUIT COURT

OFFICIAL REPORTERS, INC.
421 WEST CHURCH STREET, SUITE 701
JACKSONVILLE, FL 32202
(904) 358-2090

EXHIBIT H

APPEARANCES:

JEFFERY M. MOODY, Esquire,
Assistant State Attorney, appearing on behalf of the State of Florida.

CHARLES L. TRUNCALE, Esquire,
appearing on behalf of the Defendant.

PROCEEDINGS

March 5, 2015 9:31 a.m.

MR. MOODY: Judge, can we call the case of Gregory Nierenberg, I believe that was on page 11 of the Court's calendar.

THE COURT: We are here for a status hearing.

MR. TRUNCALE: Yes, Your Honor.

MR. MOODY: Your Honor, my understanding is we are here today because a motion was filed by defense counsel to disqualify Judge Norton, it was reassigned to this Court, so this Court will now have jurisdiction over this defendant, and we need to have a sentencing hearing. In speaking with Mr. Truncale we were thinking approximately one month down the road, if you could give us a date that you think you can do it, because I need to contact Dr. Meadows to make sure he is available, and the defense needs to contact Dr. Bloomfield to make sure he is available for whatever day the Court chooses. So, that's kind of where we are at.

THE COURT: I think a Friday is most realistic, because -- how much time -- well, let's talk about a couple of things. I didn't accept your plea, so your client has the right to be sentenced by the Judge who accepted the plea, or

that can be waived and I can conduct the sentencing.

MR. TRUNCALE: We will waive it, Your Honor.

MR. MOODY: They would have to waive it, Your Honor, because they waived it by filing a motion to disqualify the Judge who took the plea.

MR. TRUNCALE: Technically, Judge Norton disqualified herself. I filed the motion, but then she entered the order, so it was on her motion.

THE COURT: Okay. So, just in terms of being technically proper, do I need to place the defendant -- have him placed under oath and ask him if he is waiving the right to be sentenced by the Judge that accepted the plea?

MR. MOODY: So, that there's not an issue for the record we can always do that. But essentially, for the record though, I believe the motion to disqualify Judge Norton was filed, and based upon the filing of that motion she granted it. So, Judge Norton didn't do this on her on, we were going forward with the sentencing hearing, and the day we were supposed to have the sentencing hearing is the day this got filed. So, I think Judge Norton wanted to go forward with the sentencing.

THE COURT: Well, I think there's a very easy

way to address it right now. So, why don't we do that just do that right now.

MR. MOODY: Yes, ma'am.

THE COURT: So, Madam Clerk, will you please swear the defendant in.

(Defendant sworn in.)

THE DEFENDANT: Yes, ma'am.

THE COURT: Good morning, sir. Would you please state your full legal name.

THE DEFENDANT: Gregory Michael Nierenberg.

THE COURT: And I am going to pull up the plea form, counsel, so I can refer to it specifically. Was it in approximately 2013?

MR. MOODY: Yes, ma'am. It would have been, yes, ma'am, the end of 2013, I believe.

THE COURT: I have it in front of me, a plea of guilty and negotiated sentence, and it's dated on or about June 6, 2013, does that sound like the right time frame?

MR. MOODY: Yes, ma'am.

THE COURT: Okay. It is signed by Judge Norton, as we anticipated. Sir, I'm looking at a plea of guilty and negotiated sentence, on or about the date of June 6, 2013, you would have entered a plea in front of Judge Virginia Norton, do you

remember that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: And counsel, you recall that that, in fact, occurred, correct?

MR. TRUNCALE: I'm sorry, Your Honor?

THE COURT: You were there with your client?

MR. TRUNCALE: No. Different counsel, Mr. Henry Coxe was there. I came into the case six months ago.

THE COURT: Okay. But you were there, sir, with your attorney on that day, do you remember that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now sir, you have the right to be sentenced by the Judge to whom you entered the plea, and you entered a plea with a range of 25 years to 45 years in the Florida State Prison. You have the right to be sentenced by Judge Norton. But Judge Norton has entered an order disqualifying herself, so she's no longer involved in your case. So, are you waiving your right to be sentenced by Judge Norton, and do you want me to work with your attorney to schedule a sentencing date, and what would happen is we would have a sentencing hearing, I would listen to everything presented by the

attorneys for both sides, and then I would consider what's a proper under Florida law, and I would impose sentence within the range that you agreed upon. Are you waiving the right to be sentenced by Judge Norton, and are you willing to be sentenced by this Court?

THE DEFENDANT: Yes, ma'am. And I definitely want you to sentence me.

THE COURT: All right. So, that's been placed on the record. And I think in terms of trying to give you a time certain about a month out, a Friday is probably the most realistic. What I propose to do is give you a Friday, and maybe pass the case for two or three weeks. I don't know how you want to handle this, if you're having problems with that date do you want to just notify my judicial assistant?

MR. MOODY: Judge, two things real quick. One, again, just for the record, and in going over the colloquy that you just had with the defendant, I just wanted to make sure it was clear, and I know that defense knows this, it is a 25 year minimum mandatory to 45 years. It should not make much of a big difference, but I wanted to --

THE COURT: But I want the record to be clear.

So, it does say here, it says the sentencing range is 25 years to 45 years, with a 25 year minimum mandatory. Do you understand that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you're still in agreement with proceeding with my working with your attorney to set a sentencing hearing, and then I would impose the appropriate sentence, you agree with that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And thank you very much, I want a very proper and complete record.

MR. MOODY: Yes, ma'am. I would suggest to the Court and defense if we can target perhaps April 10, which is approximately a month from now. And then pass this to the end of next week, Wednesday or Thursday, so that Mr Truncale has a chance to get in touch with his doctor, I can get in touch with Dr. Meadows, and we can come back and let you know if that date is a good date or not.

THE COURT: That seems very reasonable. Is that acceptable?

MR. TRUNCALE: It is acceptable, Your Honor.

THE COURT: Okay. Now, how much time would you like for the sentencing hearing?

MR. MOODY: I believe, based on the fact that

there's probably going to be at least two experts, as well as some witnesses, we were looking in the three hour range.

THE COURT: Would you like for me to reserve four hours, just because -- you think three hours is really enough? I just want to make sure that we have plenty of time and no one is rushed.

MR. MOODY: I cannot speak for how long the defense will be. The State will not be that long. Dr. Meadows will be about the amount of time you would expect Dr. Meadows to take. I don't know how many witnesses or who they plan on calling, I just know we had discussed before with Judge Norton looking at around the three hour range.

THE COURT: Is three hours sufficient?

MR. TRUNCALE: Your Honor, I like the Court's idea of perhaps adding another hour, just in case.

THE COURT: If it doesn't take four hours, that's fine. But that way, I'm just trying to make sure we finish it, hopefully, in one hearing.

MR. TRUNCALE: And Your Honor, I expect to file a sentencing memorandum, because there will be some evidentiary issues on the expert testimony. I think it could all be handled at a hearing, but I think it would be advisable and helpful to the

Court to address an issue that I know will take some time, so I'll put that in a memorandum ahead of time.

THE COURT: So, I can give you either 9:00 to 1:00, or 1:00 to 5:00, so it would be a four hour window. Do you have a preference?

MR. MOODY: Whatever pleases the Court.

MR. TRUNCALE: I'd suggest 1:00 to 5:00.

THE COURT: I think 1:00 to 5:00 is fine.

MR. MOODY: I like 1:00 to 5:00, because then if we get out early, we get out early.

THE COURT: Very well. And at the moment I'm going to hold the day open for you, because if you run into issues where the witness is only available a.m. or p.m., I don't want you to have a problem, so I'm just reserving the day at the moment. And we'll address that next week. So, next week will be Thursday, March 12, and I'm actually going to call it a sentencing to be set. So, this case is passed to Thursday, March 12, 2015, 9:00 a.m., courtroom 408, for sentencing to be set.

MR. MOODY: Judge, I apologize. I've got grand jury on the 12th in the morning, can we do the 11th?

THE COURT: Sure. Is that acceptable to the

defense?

MR. TRUNCALE: That's fine, Your Honor.

THE COURT: Very well.

MR. MOODY: Thank you, Judge.

THE COURT: Certainly. This case is passed to Wednesday, March 11, 2015, 9:00 a.m., courtroom 408, to be set for sentencing. And at the moment I'm holding the day of April 10 open, but we'll address that on March 11. Thank you very much, counsel.

MR. MOODY: Thank you, ma'am.

MR. TRUNCALE: May I be excused?

THE COURT: Of course. Have a great day.

MR. TRUNCALE: Thank you.

(Proceedings concluded at 9:41 a.m.)

- - -

C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Colleen S. David, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 3rd day of February, 2020.

/s/ Colleen S. David
COLLEEN S. DAVID

Filing # 27471094 E-Filed 05/19/2015 02:44:13 PM

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 2010-CF-011363
DIVISION: CR-H

STATE OF FLORIDA

VS.

GREGORY MICHAEL NIERENBERG,

Defendant.

_____/

STATE OF FLORIDA)

COUNTY OF DUVAL)

Transcript of Plea Proceedings before the HONORABLE VIRGINIA B. NORTON, Circuit Court Judge, in open court, at the Duval County Courthouse, Jacksonville, Florida, on the 6th day of June, 2013, commencing at 9:25 a.m., as reported by Gretchen Lee Chatley, Florida Professional Reporter Notary Public in and for the State of Florida at Large.

OFFICIAL REPORTERS
241 WEST CHURCH STREET, SUITE 430
JACKSONVILLE, FLORIDA 32202

EXHIBIT I

FILED: DUVAL COUNTY, RONNIE FUSSELL, CLERK, 05/19/2015 02:59:29 PM

A P P E A R A N C E S

JEFFERY M. MOODY, Esquire

Assistant State Attorney
Fourth Judicial Circuit
Jacksonville, Florida 32202

Attorney for the State of Florida.

HENRY M. COXE, III, Esquire

of the Law Offices of Bedell, Dittmar,
Devault, Pillans & Coxe, P.A.
Bedell Building
101 East Adams Street
Jacksonville, Florida 32202

Attorney for the Defendant.

- - -

I N D E X

WITNESS	PAGE NO.
CERTIFICATE OF REPORTER	14

(N O E X H I B I T S)

P R O C E E D I N G S

June 6, 2013 9:25 a.m.

THE COURT: When the State is ready to call its next case, please.

MR. MOODY: Gregory Nierenberg, found on Page 19 of the Court's calendar.

(The Defendant is present in open court.)

MR. COXE: Good morning, Your Honor.

THE COURT: Good morning.

MR. COXE: Your Honor, Mr. Nierenberg is present before the Court. There is a 2-count information charging murder in the second-degree and attempted murder in the first-degree.

Mr. Nierenberg and I have executed as has Mr. Moody a plea of guilty and negotiated sentence and I'll define the terms that have been hand-written in.

These pleas are pleas of guilty in Counts 1 and 2. That there would be a range agreed upon for sentencing purposes and a sentencing hearing before this Court of 25 to 45 years; 25 being the mandatory minimum of the statute and the 45 years being maximum.

The sentences would run concurrently. We would waive the Pre-Sentence Investigation. I

don't know where the forms are, if they still use them. In any event, and the Court would determine the sentence.

We would agree to reserve restitution for 60 days in the event there is any and recognize that there are mandatory court costs that need to be assessed.

May I have one moment?

THE COURT: Yes.

(Defense counsel is consulting with the defendant and signing plea form.)

THE COURT: Madam Clerk, $566 are the costs?

THE CLERK: Yes, ma'am.

(Document tendered.)

THE COURT: And Mr. Coxe, are you aware of any DNA evidence that would exonerate your client?

MR. COXE: No, Your Honor.

MR. MOODY: The State is not aware of any DNA evidence that would exonerate the defendant.

THE COURT: Mr. Coxe, do you stipulate to a factual basis for purpose of the plea?

MR. COXE: We will.

THE COURT: Madam Clerk, please put Mr. Nierenberg under oath.

THE CLERK: Raise your right hand, please. Do

you solemnly swear or affirm the testimony you shall give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE CLERK: Thank you.

THE COURT: Mr. Nierenberg, I am now going to take your plea and if at any time, sir, you have any questions, please let me know, all right?

THE DEFENDANT: Yes, ma'am.

THE COURT: Sir, are you Gregory Nierenberg?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you a citizen of the United States of America?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you read and understand the English language?

THE DEFENDANT: Yes, ma'am.

THE COURT: Sir, did you have the opportunity to read this green form entitled Waiver of Pre-Sentence Investigation Report.

THE DEFENDANT: Yes, ma'am.

THE COURT: Is this your signature I'm pointing to, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: And, sir, is it your request today

to waive your right to a Pre-Sentence Investigation Report?

THE DEFENDANT: Yes, ma'am.

THE COURT: Mr. Nierenberg, I will find your waiver of a Pre-Sentence Investigation Report is being given freely and voluntarily and knowingly and I'll approve and accept same.

Sir, did you also have the opportunity to review this two-sided form entitled Plea of Guilty and Negotiate Sentence?

THE DEFENDANT: Yes, ma'am.

THE COURT: After reading it did you discuss with your lawyer?

THE DEFENDANT: Yes, ma'am.

THE COURT: And did he explain it to you completely, including any possible defenses you may have, as well as discussing the implications of your plea?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you fully satisfied with his representation of you?

THE DEFENDANT: Yes, ma'am.

THE COURT: And Mr. Nierenberg, is this your signature on the bottom of the blue form?

THE DEFENDANT: Yes, ma'am.

THE COURT: Mr. Nierenberg, do you understand that you have the right to plead not guilty?

THE DEFENDANT: Yes, ma'am.

THE COURT: Sir, are you pleading guilty today, because you are, in fact, guilty or because it is in your best interest to do so?

THE DEFENDANT: I'm guilty. I'm going to man up to my mistake.

THE COURT: Thank you, sir.

Sir, do you understand that there will be no trial in this case?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. You're also giving up the following important rights: The right to call witnesses; to examine and cross-examine witness; as well as the right to remain silent. This means if you're asked about this matter under oath, you must answer fully and truthfully.

You're also giving up the right to appeal all matters relating to the judgment, including the issue of guilt or innocence.

Do you understand that, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: And, Mr. Moody, if you please announce what Mr. Nierenberg is pleading to today

and his maximum prison exposure.

MR. MOODY: Yes, ma'am. In regards to Count 1, he is pleading to murder in the second-degree. That is a charge, which can be sentenced up to life, however based upon the negotiated plea, it is 25 to 45.

As far as Count 2, attempted first-degree murder, again, that is a PBL, but, again, based upon the plea, it would be a sentencing range 25 to 45, so 25 is minimum mandatory.

In regards to Count 2, it would typically carry a 20-year minimum mandatory and capped at a 20-year minimum mandatory.

In regards to Count 1, it's a 25 to life minimum mandatory. Based upon negotiation by the State and Defense, the 25 year is a min man.

The remainder of the min man is up to the Court; i.e., you could sentence him up to 45 years minimum mandatory or just leave it at 25 or 45. You have that discretion.

THE COURT: Mr. Nierenberg, do you understand the nature of the charges and the prison exposure?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Before proceeding further has your lawyer done everything you've

requested?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Is there anything else, sir, that you would like done in this case before proceeding further?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand, Mr. Nierenberg, with your plea of guilty on Counts 1 and 2, I'll adjudicate you guilty with the negotiated range for sentencing purposes of 25 to 45 years with the 25-year minimum mandatory.

There will be a full sentencing hearing held to determine the sentence within the negotiated range. The sentences will be concurrent. I will also order $566 in court costs and I'll reserve for restitution as well.

Do you understand that, Mr. Nierenberg?

THE DEFENDANT: Yes, ma'am.

THE COURT: And obviously, sir, I will comply with this agreement by Florida law and listen to all the information that will be given to me during the sentence hearing.

Sir, did you understand that ultimately it would be my discretion and my determination as to your sentence?

THE DEFENDANT: Yes, ma'am.
THE COURT: And you and Mr. Coxe have discussed that?
MR. COXE: Yes, we have.
THE COURT: Sir, has anyone threatened or coerced you into entering this plea?
THE DEFENDANT: No, ma'am.
THE COURT: Has anyone promised you anything in order to get you to enter this plea?
THE DEFENDANT: No, ma'am.
THE COURT: Are you entering this plea freely, willingly, and voluntarily?
THE DEFENDANT: Yes, ma'am.
THE COURT: Sir, do you have any questions?
THE DEFENDANT: No, ma'am.
THE COURT: Are you currently under the influence of any alcohol, drugs, or medication?
THE DEFENDANT: No, ma'am.
THE COURT: I will find there is a factual basis exists your plea and accept it at this time.
Do we wish to go ahead now and set date and time certain for the sentencing hearing?
MR. COXE: I think we could. I talked to Mr. Moody and we would ask for six or seven weeks.
THE COURT: Okay. And that's fine. How about

-- how much time do you think you will need for Mr. Nierenberg?

MR. COXE: It's our practice to submit everything, almost everything in writing beforehand and afford the Court the opportunity to absorb it and make the actual sentencing hearing more counsel talking.

THE COURT: Okay.

MR. COXE: But I don't know what Mr. Moody says, but maybe two hours tops.

MR. MOODY: I certainly won't be very long, Judge.

THE COURT: So you think maybe an hour?

MR. COXE: I would prefer if the Court would reserve two.

THE COURT: That's fine.

MR. MOODY: That's probably wise. I think Mr. Coxe and I could be rather long-winded at times.

THE COURT: How about we reserve Friday, July 26, from 9 to 11:00?

MR. COXE: That would be fine, Judge.

MR. MOODY: Judge, I'm fine. I'm sorry. I actually have motions in front of Judge Hulsey. We have a hearing on motion to suppress in a death

penalty case.

THE COURT: Would --

MR. MOODY: I can do the afternoon.

THE COURT: That's fine by me. I'll be here. How about 2 o'clock? I'll mark off to the end of the day make it the end. How does that sound?

MR. COXE: That's fine.

THE COURT: All right. I'll see you, Mr. Nierenberg, on July 26 at 2 o'clock.

MR. COXE: Thank you, Your Honor.

THE COURT: Have good day. Thank you.

(The proceedings were adjourned at 9:34 a.m.)

- - -

C E R T I F I C A T E O F R E P O R T E R

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Gretchen Lee Chatley, Florida Professional Reporter, certify that I was authorized to and did stenographically report the proceeding; and that the foregoing pages are a true and complete record of my stenographic notes taken during said proceeding.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 6th day of June, 2013.

/s/ Gretchen Lee Chatley
GRETCHEN LEE CHATLEY, FPR

* * *

Filing # 28575849 E-Filed 06/17/2015 08:52:09 AM

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2010-CF-011363
DIVISION: CR-H

STATE OF FLORIDA

-vs-

GREGORY MICHAEL NIERENBERG,

Defendant.

STATE OF FLORIDA)
COUNTY OF DUVAL)

TESTIMONY AND COURT PROCEEDINGS held before the Honorable Marianne Aho, Circuit Court Judge, in the above-entitled action, held on April 24, 2015, at 1:00 p.m., at the Duval County Courthouse, 501 West Adams Street, Courtroom Number 408, and taken down stenographically by Ashley Whitehair, Certified Court Reporter and Notary Public, in and for the State of Florida at Large.



Ashley Whitehair
Official Reporters, Inc.
421 West Church Street, Suite 430
Jacksonville, Florida 32202
(904) 358-2090

Official Reporters, Inc.

FILED: DUVAL COUNTY, RONNIE FUSSELL, CLERK, 06/17/2015 09:22:08 AM

A P P E A R A N C E S

JEFFREY M. MOODY, Esquire

Assistant State Attorney

Office of the State Attorney
Ed Austin Building
311 West Monroe Street
Jacksonville, Florida, 32202

Attorney on behalf of the State of Florida.

CHARLES L. TRUNCALE, Esquire

At the Law Office of

Charles L. Truncale, P.A.
233 East Bay Street, Suite 1101
Jacksonville, Florida 32202

Attorney on behalf of the Defendant.

Also Present:

Gregory Michael Nierenberg, the Defendant.

I N D E X

Page No.

COURT PROCEEDINGS 04/24/15.....5

DEFENSE'S WITNESS:

Dr. Stephen Bloomfield
Direct Examination by Mr. Moody.....13
Cross-Examination by Mr. Truncale.....30
Redirect Examination by Mr. Moody.....50
Recross-Examination by Mr. Truncale.....53

STATE'S WITNESS:

Ashley Pace
Direct Examination by Mr. Moody.....62
Cross-Examination by Mr. Truncale.....95
Redirect Examination by Mr. Moody.....110
Recross-Examination by Mr. Truncale.....114

CERTIFICATE OF REPORTER.....156

E X H I B I T S

Page No.

Court

(None Entered/Admitted.)

State

State's Exhibit No. 1.....8

Defense

Defense's Composite Exhibit No. 1.....8

April 24, 2015 1:00 p.m.

P R O C E E D I N G S

* * * * *

THE BAILIFF: All rise.

(Everyone complies.)

THE BAILIFF: Court is back in session.

THE COURT: Please be seated everyone.

MR. MOODY: Good afternoon, Your Honor.

THE COURT: Good afternoon. You can call the case at this time for the record.

MR. MOODY: Judge, if we can go ahead and call the case of Gregory Nierenberg. I believe we're on for sentencing this afternoon.

(Defendant enters the courtroom.)

THE COURT: All right. And this is Case 10 on Page 5 of the Court's calendar, Case 16-2010-CF-011363-AXXX-MA.

If counsel would please state your appearances for the record.

MR. TRUNCALE: Charles Truncale for the defendant, Gregory Nierenberg.

MR. MOODY: Your Honor, Jeff Moody, for the State of Florida.

THE COURT: Very well. We are here for

sentencing. How would counsel like to proceed?

MR. MOODY: Your Honor, I have discussed with Mr. Truncale probably what would be the most effective and easiest way for us to proceed.

We anticipate what the Court would be entertaining this afternoon is one doctor from the defense, as well as one doctor from the State.

Since the State would not be presenting Dr. Meadows on behalf of the State of Florida but for the defendant putting on a doctor, he, therefore, kind of needs to go first.

So what we were going to suggest, if the Court would be amenable, is to have Dr. Bloomfield testify.

After Dr. Bloomfield testifies, I will go ahead and then put on Dr. Meadows to testify as to whatever he can testify to, and then we'll go ahead and let the two doctors go about their business.

At that point, since this Court is not familiar with the facts of the case, as Judge Norton was, it would probably make more sense

for me to go ahead and put on Ashley Pace. She is the co-defendant in this case. So that she is going to layout kind of the facts that night, so the Court can become aware of what it is allegedly that happened.

And then, I believe, Mr. Truncale will then be putting on family members, just to speak on what family members speak on.

MR. TRUNCALE: I agree with that. I think that's the best way to proceed.

THE COURT: Very well. So we will proceed in that manner.

MR. MOODY: Yes, ma'am. Before we get started, I had shown defense counsel State's Exhibit 1. It's actually marked as State's Exhibit A for identification. We would move it in as State's Exhibit 1 without objection.

It will be the autopsy photo of the victim in this case, Fredrick Stallings. I don't know if the Court would like to go ahead and view it?

MR. TRUNCALE: Yeah, and I do stipulate to its admission, Your Honor.

THE COURT: Very well. So State's Exhibit 1 is received into evidence.

(State's Exhibit No. 1 was received into evidence.)

MR. MOODY: Likewise, Your Honor, I believe, Mr. Truncale had some photos that he showed me prior to the Court coming out.

MR. TRUNCALE: I was going to make this a composite and Defense Exhibit No. 1. It's photos of the family that will be introduced through Mr. Nierenberg's mom.

MR. MOODY: And, likewise, Judge, I have no objection to those.

THE COURT: Very well. Defense's Composite Exhibit 1 is received into evidence.

(Defense's Composite Exhibit No. 1 was received into evidence.)

THE COURT: Would you like me to just look at the pictures very briefly?

MR. TRUNCALE: Yeah, and then she'll get on, and she will refer to them.

THE COURT: That's fine.

(Tenders instrument.)

MR. TRUNCALE: Just for the Court's edification, Mr. Nierenberg was just almost 20-years-old. He was 19-years-old right

before his 20th birthday at the date of the offenses, Your Honor.

THE COURT: Thank you for that information.

MR. MOODY: And, Your Honor, I think that is probably all the housekeeping matters that we were going to go through, prior to the testimony.

THE COURT: For purposes of the record, I have reviewed every single photograph and every caption on every page of Defense's Exhibit 1.

MR. TRUNCALE: Thank you, Your Honor.

THE COURT: Thank you.

MR. TRUNCALE: I think the only other thing is I believe the parties were invoking the rule.

MR. MOODY: Yes, ma'am.

THE COURT: Okay.

MR. TRUNCALE: May we sit down?

THE COURT: You may. You certainly may. So are there any witnesses who need to be instructed regarding the invocation of the rule of sequestration?

MR. MOODY: No, ma'am, not from the

State.

THE COURT: Very well.

MR. TRUNCALE: With the Court's permission --

MR. MOODY: I believe Mr. Truncale, he's already discussed with his family, and I trust that that was taken care of.

THE COURT: For the record that has been done already through counsel, correct?

MR. TRUNCALE: Yes.

THE COURT: And, madam clerk, I will hand you these exhibits, so that they're available to counsel in their presentations. Thank you.

(Tenders instruments.)

MR. TRUNCALE: And, Your Honor, then, if the Court is ready, I would ask the bailiff to call in Dr. Steven Bloomfield as our witness.

THE COURT: All right. Very well. You may proceed.

(Witness enters the courtroom.)

THE WITNESS: Good afternoon.

THE COURT: Good afternoon, sir. The clerk will swear you in right now, and then

if you will please be seated.

THE CLERK: Raise your right hand.

THE WITNESS: (Complies.)

THE CLERK: Do you solemnly swear or affirm, the testimony you give, shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you.

(Witness was duly sworn in by the clerk, and takes a seat in the witness stand.)

MR. MOODY: Your Honor, I just discussed with Mr. Truncale, the State would be more than willing to stipulate to Dr. Bloomfield as an expert in forensic psychology, so that we can kind of get our cows up to the buckets.

In exchange, I believe, Mr. Truncale is likewise going to be stipulating that Dr. Meadows, who we will call, is an expert in the same field of forensic psychology.

MR. TRUNCALE: Yes, Your Honor. I still may have an objection to some of Dr. Meadows' testimony for relevancy and

reliability, but I do not question -- I stipulate to his expert credentials.

THE COURT: Very well. So for purposes of the record, both Dr. Bloomfield and Dr. Meadows are received today as experts, both in forensic psychology. Counsel has agreed with that, for the record you both are in agreement, correct?

MR. TRUNCALE: Yes, ma'am.

MR. MOODY: Yes, ma'am.

THE COURT: Thank you.

MR. TRUNCALE: I just need to get a copy of Dr. Bloomfield's --

THE COURT: Take your time. We have all afternoon.

MR. TRUNCALE: Yes, Your Honor.

THE COURT: We have plenty of time.

MR. TRUNCALE: And do you wish that we stand at the podiums?

THE COURT: If it would be easier for you to be at this podium (indicating), so you're closer to the witness, that would be fine.

MR. TRUNCALE: All right. Thank you, Judge.

DIRECT EXAMINATION

BY MR. TRUNCALE:

Q Okay. Would you state your name, please?

A Stephen I. Bloomfield.

Q And would you state your profession?

A Yes, I'm a licensed psychologist with a speciality in clinical and forensic psychology.

Q And, sir, how long have you been practicing in that area?

A I have been practicing as a licensed Florida psychologist for approximately 22 years, and I practiced previously in Massachusetts, beginning in -- as a licensed psychologist with the same specialties in 1984. So I think that's 30 years, unless I'm doing the math wrong.

Q And, Doctor, with regard to your practice, did you have an occasion to perform an evaluation of the defendant in this case, Gregory Nierenberg, Jr.?

A Yes, I did.

Q And do you recognize him today in the courtroom?

A Yes, seated at the defense table.

Q Okay. And I -- just so that the Court would know, did you know his or did he identify himself also by the nickname of JR Nierenberg, perhaps?

A Yes.

Q Okay. Could you please, if you would, present to the Court the evaluation that you did, and any opinions that you may have come to with regard to the evaluation in connection with the sentencing -- for mitigation of sentencing in this case?

A Yes, certainly. I prepared a report to Brian Coughlin, who was his attorney at the time, that report was dated August 28th, 2003. I interviewed Mr. Nierenberg extensively.

He also completed a quick view social history, and Minnesota Multiphasic Personality Inventory, Second Edition, RF Form, various tests of mental control and mental status, an inquiry into competence, and an inquiry into sanity.

From a general mental status perspective, I found no evidence or signs of a thought disorder or a cognitive disorder or a behavioral disorder.

To -- it's all in the report, but to cut that part kind of short, there was no problems in terms of mental status or mental control.

Next, I looked at general psycho-legal issues. I found that he was competent to proceed, and that he did not meet the criteria for a defense of not guilty by reason of insanity, and I also opined that he was not malingering. And that's in the section called psycho-legal issues.

The next part of my report is background information, which followed by biopsychosocial history, which is information that I gathered from Mr. Nierenberg both directly, as well as him completing some questionnaires, but those two sections are for the most part his self-report about himself.

That's followed by a section called psychological testing. I administered the Minnesota Multiphasic Personality Inventory, and on that instrument he indicated some significant emotional distress, a lack of positive emotional experiences, but there was no disordered mentation.

He had some impulse control, but -- and doesn't trust people, and believes that other people are using him.

You have to remember that it was several years ago. So his age at that time, I don't know exact -- I can't give you an exact date. I could look it up, but his impulse control and some of his thought process, although not psychotic in nature, are a result of young adult brain development.

Brains don't develop until 23 to 25. And earlier from late adolescence to early adulthood, they are impulsive and lack some ability for consequences.

I reviewed a number of records. He had documented a learning disability while in school, several suicide attempts, but no inpatient treatment.

There was one time when his parents attempted to Baker Act him in 2008, but he didn't want to be Baker Acted, and he ran away. He tried to overdose on alcohol and medication.

In middle school he tried to overdose on Xanax bars, but refused inpatient medication. He disclosed sexual abuse as a child, which he

said had never been disclosed before. And he was embarrassed to disclose that to me as well.

Q And who was that with regarding did he --

A I think it was a relative, an older relative.

I concluded that he has no psychosis; that there was no sense of malingering; that drugs are a critical fact -- drug abuse, drugs, are a critical factor in his life, and lead to most of his difficulties; that he is the kind of person that is easily led and easily manipulated.

He's used drugs significantly and severely. Drugs have had a debilitative effect on his life. And I suggested that if he were incarcerated, that he should engage in psychotherapy, particularly the issues related to any residual issues regarding sexual abuse, as well as his drug abuse.

And those were pretty much the opinions that I formed.

Q Well, Doctor, with regard to your conclusion that he was not malingering, were you, as a result of your examination of him,

required to conduct any type of testing formally for malingering?

A No.

Q Why is that?

A Well, there's a protocol, a decision tree that one uses in terms of malingering.

So the first question that's asked -- matter of fact, it was referenced in another psychologist's report, that I didn't do any malingering testing, and the reason I didn't do any malingering testing, was because there was absolutely no need to do malingering testing.

So the decision tree goes as follows: First, is the person claiming or exhibiting signs or symptoms of mental illness? That's first. There's no reason to see if they're telling the truth about it, if they're not presenting it, and he didn't present any.

The second thing is --

Q Is that your opinion, no mental illness?

A Right.

Q Okay.

A The second thing is that if someone presents, is there a reason to suspect that the

person is exaggerating, feigning, or malingering? All three of those things exist on a continuum. And the way to tell that is that there are certain things that people do when they exaggerate or feign or malinger. There's a sudden onset of a symptom.

So I'll be sitting with someone who is acting pretty normal. All of a sudden, they'll start having a symptom that came out of the blue. Improbable combinations of symptoms, things that usually don't go together. Absurd symptoms, like my friend Johnny is sitting here next to me in a striped hat and an orange outfit, and he's giving me the answers. Those are kind of absurd symptoms. And then extreme symptoms.

So, first, it has to be a mental illness; second, it has to be reason to suspect the person is feigning, exaggerating, or malingering; and then what you do third is that you -- you administer personality inventory, which I did, I gave the MMPI II RF to see if he exaggerates on the clinical scales, the psychopathology scales, and he didn't. He didn't exaggerate. He didn't present as having

a significant psychopathology.

Q Excuse me. Was that as a result of the testing of the MMPI?

A Minnesota Multiphasic Personality Inventory is -- I gave it, not the test is malingering, but you were doing -- I'm separating what I did and what a malingering assessment -- how a malingering assessment is done.

So, again, there has to be signs and symptoms of mental health. There has to be a reason to suspect malingering because of sudden onset, improbably combination, absurd symptoms, extreme symptoms.

And then you would have a personality inventory to see if the person exaggerates on that. And then you would get -- you would try to look at some records, does this person have a history of it. You might give a malingering screen.

Q What is that?

A One that's commonly used that was used actually by Dr. Meadows is called The Structured Interview of Malingered Symptomatology. It's abbreviated S-I-M-S, SIMS. And if the screen

shows malingering, then you use a more comprehensive malingering evaluation.

Typically, the structured interview of reported symptoms, known as the SIRS, S-I-R-S, or a test of memory malingering known as the TOMM, T-O-M-M. And then you form a conclusion.

Q Let me interrupt. You wouldn't do those subsequent more advanced testing on malingering if the SIMS test does not show malingering?

A Right, you wouldn't do the SIMS test, unless you suspected malingering, and you wouldn't suspect malingering, unless the person was presenting with exaggerated symptoms.

Q Would you, for the benefit of the Court, explain how one would pass or fail the SIMS test? That is, I guess, pass would be that the test would indicate there's not malingering. Is there a cut off? Is there a numeric cut off or whatever?

A There's a cut off of the score of 14, sometimes used as 16, but generally 14. There are five areas. There's -- I believe there are 100 -- trying to remember exactly. I think -- how many questions exactly. There are 75

questions, items. It's a self-report test. The person answers true or false. If they answer out of the ordinary for over 14 of the 75, they get a cut off score of more than 14, 15, or higher, then you suspect -- then you might -- one might expect malingering. If the score is under that, then it's screened out malingering.

So it's really a screen. But again, you only use a screen if you have a suspicion. You only have a suspicion, if there's a presentation of absurd symptoms. And you only present absurd symptoms, if you present any symptoms.

So it's all logical and sequential of how this should go. So the cut off that the SIMS recommends is 14, and the SIMS itself says that it's a useful screening measure for malingering, and that if someone scores above that score, a more comprehensive evaluation should be done.

Many people use what's called the SIRS, which I referenced before, which is a -- God, I think it's about a 200-question test and measures different -- different combinations. And it's much more sophisticated. It's not a

screen. It's an actual instrument. Or if there's an issue of memory or cognitive abilities, somebody screening -- somebody feigning mental retardation, one might use the test of memory malingering.

But none of those were necessary with Mr. Nierenberg, because he didn't present with any of those, with any major psychopathology, except substance disorder, substance abuse, maybe substance dependance.

He didn't present with any personality disorders in my evaluation, no antisocial personality disorder, no character logical disorders, and no major psychopathologies.

Q If I may, sir, you referenced reviewing a report of another expert, Dr. William Meadows?

A Right.

Q And that was prepared for the State. And do you recall whether the -- whether he did give a SIMS test to Mr. Nierenberg?

A He did.

Q And what was the score, if you remember?

A Ten.

Q Ten. Based on that, what would that -- would that mean there was no malingering?

A Yes.

Q Okay. And you also mentioned that -- that I guess the first issue is, is there a mental --

A Is there a presentation, not is there a mental illness.

Q What is that?

A The first step is, is the examinee presenting with mental illness. And the second step is, is the presentation likely to make me think that there's feigning, exaggerating, or malingering.

For example, sudden onset of symptoms, improbable combination of symptoms, absurd symptoms, or extreme symptoms. So if those two first steps don't get met, there's really no reason to go on.

Q And do you recall or by chance do you have before you Dr. Meadows' report?

A I have Dr. Meadows' report.

Q Would you just refer, I want you to look at Page 5 of 7, just to confirm that, in fact, the SIMS test that he administered

resulted in a total test score of ten?

A Ten, yes.

Q And that is not indicative of malingering or psychiatric problems?

A Say that again?

Q Do you agree that that is not indicative of malingering or psychiatric problems?

A That's correct.

Q Right after, there is a statement by Dr. Meadows that nevertheless or but they suggest that Mr. Nierenberg may be exaggerating emotional problems for secondary gain, would his score of ten establish that?

A I don't believe so. The definition of malingering is exaggerating or feigning problems for secondary gain. Dr. Meadows is using the definition of malingering by saying and also saying he is not malingering.

Q Is there any authoritative treatises or publications to support a statement that a score of less than 14 on this screening test could support an opinion or a belief that there would nevertheless be exaggerating despite no malingering?

A I don't believe so. First of all, you have to really -- one must really remember that it's a screening test, not a comprehensive evaluation. It's a sound screening test. It's been validated as a screening test, but it didn't pass the screen, it didn't break the ceiling, so...

Q Okay. You made yourself clear. The next thing I just needed to know, sir, is on Page 5 of Dr. Meadows' report, it indicates that in his opinion Mr. Nierenberg met the DSM-5 Diagnostic Criteria for the following two disorders: One, opiate use disorder, severe; and, two, antisocial personality disorder.

My question is: Would the presence of those two disorders allow for a screening under the SIMS test for malingering? Would they be the type of problems that wouldn't cause an expert, such as yourself and Dr. Meadows, in pursuing a malingering issue?

A I don't think so. It's like apples and oranges. One has really nothing to do with the other. The substance dependance disorder based on his report of his substance use and abuse, SIMS has nothing to do with measuring

that.

The antisocial personality disorder, on the other hand, Dr. Meadows quotes that he used some of the information in my report, which I fail to see it being there. I don't see where I suggested an antisocial personality disorder or antisocial qualities.

But, nonetheless, even the antisocial personality disorder has a decision which starts off with pre-18-years-old having a conduct disorder or signs and symptoms of a conduct disorder, and then moving through a whole diagnostic scheme.

So I don't think that the SIMS is useful in those two instances in any case, but...

Q Well, did either you or Dr. Meadows find a pre-18 history of the disorders?

A Not that I recall, no.

Q Well, then, in any event, once, if in the field of forensic psychology, once a person, I would say, passes the SIMS screening test by a score of less than 14 or less, then there is no basis for a finding of malingering or exaggerating; is that correct?

A There was no basis before the SIMS test.

Q Okay.

A The SIMS test just confirmed that there was no basis. There was no basis before, because Mr. Nierenberg was not presenting with malingered symptoms. So there was no reason to measure them, because he wasn't presenting with them.

He never told us -- anyone -- Dr. Meadows, in his report, says there's no psychosis, there's no psychopathology. And then -- and me too. So why would I measure malingering, if there was no malingering to start with?

I mean, you don't measure it -- you don't give tests to measure things that aren't reported. The purpose of a malingering screen is to screen in or out people who might be malingering, based upon their own presentation.

His presentation was not that he had a mental illness, or that he was exaggerating a mental illness. I would have to answer your question that the SIMS just confirmed that there was no malingering.

The only -- the SIMS has several five or six subtests, and he scored a six, where the cut off was five.

MR. MOODY: Judge, I didn't want to interrupt him. I appreciate it.

THE WITNESS: That's all right.

MR. MOODY: Judge, at this time, I'm going to object. One, it's repetitive. We've gone over this at least four different times, and I've tried not to object.

They keep talking about the same test, showing that he's not malingering. We agree. I don't understand why we keep talking about it. So I would object to repetitive, nonresponsive.

He's now going on a narrative about some other. I just think we don't --

MR. TRUNCALE: I have no problem, Judge. I'll move on.

THE COURT: That's fine.

BY MR. TRUNCALE:

Q What I did want to know, sir, is you mentioned briefly that Mr. Nierenberg's age at the time of the offenses was under 20, and that something to the effect was the brain for such a

person is not fully developed until 25?

A Right.

Q Would these other disorders that you mentioned, the drug abuse disorder, further complicate the ability to make good decisions?

A Yeah. Yes.

Q And, lastly, did Mr. Nierenberg, to your understanding, didn't he have -- plead guilty to the charges in the case, the second degree murder, and the attempted first degree murder?

A That was my understanding, yes.

Q Okay.

MR. TRUNCALE: And then I have no further questions.

THE COURT: Thank you.

Cross-examination?

CROSS-EXAMINATION

BY MR. MOODY:

Q Good afternoon, Doctor.

A Good afternoon.

Q I think you guys spent the better part of 30 minutes going over this malingering thing.

A Sure.

Q So we all agree he's not malingering,

correct?

A I think so.

Q Because, likewise, we all agree your finding is he has no mental psychosis?

A No psychosis.

Q No psychosis?

A In my opinion, no major axis one diagnosis.

Q No mental illness?

A No.

Q Because, obviously, I mean, malingering comes in if you're saying, for instance, he suffers from paranoid schizophrenia?

A Correct.

Q And we have to determine whether or not they're faking it or not?

A Exactly.

Q Well, we know he's not faking anything like that: One, because he's not malingering; and, two, because he's not suffering from anything like that, correct?

A Exactly.

Q Which kind of proves the point that he knew exactly what he was doing the day he picked

up a gun and killed somebody, correct?

A I don't think it was impaired from a mental illness. I think -- my opinion was of the impairment was from drugs or, you know, impulsivity. But not -- I found -- I wrote in my report, in fact, that he was competent and not -- no criteria for insanity.

Q Absolutely. As a matter of fact, I want to go over your report, because I agree with almost 99 percent of it. So we'll just break it down real quick, because I know -- I thought you guys were going to do it earlier, and then I heard you say, well, let's just cut it short. I don't want to cut it short.

A Okay.

Q We would agree that there is no evidence whatsoever of thought disorder, correct?

A I would, yes.

Q It was your opinion there was no evidence whatsoever of no cognitive disorder?

A That's correct.

Q No evidence of behavioral disorder?

A That's correct.

Q You examined him and found that he

does not have any type of unusual thinking?
A Correct.
Q Doesn't have any kinds of logic or strange associations?
A That's correct.
Q No indications of psychosis or hallucinations?
A Correct.
Q He experiences his thoughts in a spontaneous and normal manner, as any of us would?
A Correct.
Q While remaining lucid and coherent, again, as any of us would?
A Correct.
Q His intention and concentration and task persistence were within normal limits?
A That is correct.
Q From a general mental status and mental control perspective, he presents within normal limits, without any major psychotic disorders or indicants of disabling psychiatric illness?
A That's right.
Q And you actually went into -- so and I

guess really what I'm coming to at the end of the day, and you have to forgive me, I speak pretty blunt: Ain't nothing wrong with him working upstairs?

A Correct.

Q So we're not blaming that?

A That's right.

Q For his actions that night?

A Right.

Q And then you go into his history and his background, and you talk about what you believe you perceive to be possible mitigating factors of why he turned out the way he did, correct?

A Yes.

Q For instance, you talk about him having a learning disability?

A I have, from his records, right.

Q From his records between first and fifth grade?

A Correct.

Q Okay.

A That's typically when we see learning disabilities diagnosis.

Q And after that learning disability,

which I believe you had phrased it -- how did you -- he has problems remembering numbers and has auditory processing speed --

A I don't want to cut you off. I was just repeating what was -- what the records showed from first to fifth grade.

Q Okay. Now, that was first through fifth grade. We also agree that he graduated high school, correct?

A Correct.

Q And normal classes, not he has classes for slow classes, regular classes?

A Regular classes.

Q Regular classes, around regular people, and I believe in your report you even stated the fact that he went and graduated high school in regular courses, showed that he knows how to act reasonable around normal people?

A I don't know if I say that, but, yes.

Q It's actually in your report. Do you want to see it?

A I believe you. I believe you.

Q Not only did he graduate from high school and normal graduation in normal classes, he then went to junior college, and I believe

passed seven out of eight of his courses, didn't he?

A I think so.

Q So really not that much of a learning disability, because clearly, not only could he function and pass high school, pass college courses, I believe he also said that he was working while going to college, and was getting ready to get a managerial position.

So we're not talking about a guy who really has a learning disability, that he doesn't know what's going on around him, he's functional, correct?

A Was there a question there?

Q Yeah, he's functional?

A He's functional, yes. He has a learning --

Q His learning disability did not keep him from understanding what was going on around him?

A I'm not willing to say that. I'm willing to say that he is functional. I'm willing to agree with everything that he accomplished. I still -- it would be irresponsible to say he didn't have a learning

disability. He had a learning disability. It's just factual. Whether -- what the impact of the learning disability is, is something else.

But people with learning disabilities compensate and go on to be psychologists, lawyers, everything.

Q Okay. You have a sentence in here, and I want to make sure, since you just attributed a sentence to some records, I want to make sure that this sentence is from you, and not some records.

A Yes.

Q It's on Page 3 of your report.

A Yes.

Q About the fourth paragraph down.

A Yes.

Q You stated -- I'll read the third one, so it makes sense in context. The third one is: "He attended R.L. Brown magnet school from one to fifth grade. He had problems remembering numbers, and he had an auditory processing speed problem." That's the sentence you said --

A That's from -- yeah, well --

Q The next sentence --

A I was summarizing in that sentence

what the records said.

Q Yes, sir.

A Because I didn't know him when he was that age.

Q Yes, sir. The next sentence says, "This is a mitigating circumstance, since the specific learning disability seems to have held him back socially and productively and produced low self-esteem."

A Correct. That's my opinion.

Q Okay. So it held him back, even though he was able to graduate high school, graduate college, become a manager -- or was about to become a manager of Winn-Dixie?

A I don't think he graduated college.

Q No, I said, graduated high school. I'm sorry. Passed college courses?

A Yes, he did.

Q Seven out of eight of them?

A Right.

Q And was about to become a manager of Winn-Dixie. And you believe that held him back?

A Absolutely. Without it, he would have been more successful.

Q And created low self-esteem?

A I think he has low self-esteem, yeah, and I think part of it is his learning disability, and part of it is accommodating to the learning disability, and part of it is trying to overcome the learning disability.

Again, I'll now say what I said before, people with learning disabilities can succeed. There are some mitigating things that come out of learning disabilities, and we can't denigrate it. I mean, it's true. I mean, I didn't -- I didn't make up --

Q Doctor, no offense, but I didn't ask you a question, and you keep going.

A Oh, I thought you did ask me a question?

Q I did, but you're not answering it any more.

MR. MOODY: And I will object again --

THE WITNESS: I'm fine. I'll stop. I'll stop. I thought you were --

MR. MOODY: -- as to nonresponsive.

THE WITNESS: All right. I'll stop.

THE COURT: Okay. We'll move on.

BY MR. MOODY:

Q You mentioned low self-esteem?

A Correct.

Q But, also, then you talk about his interview. You stated that he told you he was very popular in elementary school and very popular in high school?

A Uh-huh (affirmative.)

Q Does that sound like somebody who has low self-esteem? That's a little inconsistent, isn't it?

A I don't believe it's inconsistent.

Q You don't believe that somebody who has self-esteem of themselves, would say that everybody else likes him, I'm a popular guy in high school, and I'm a popular guy in elementary school?

A Your question, I want to make sure I answer your question, and not tell you what my feelings are and opinions are. So tell me what the question is, and I'll answer it.

Q My question would be: Isn't that a little inconsistent?

A No.

Q Okay.

A I can tell you why.

Q I didn't ask you.

A I know.
Q He will. I'm not.
A I understand.
Q I mean...
A It's not inconsistent. That's what you asked me.
Q I am not here to argue with you. I was just simply asking if a guy who goes around and tells you in his interview that he was popular in elementary, that he was popular in high school, how that somebody is somebody who has low self-esteem. Go ahead and tell us, Doctor.
A Because he demonstrates low self-esteem about how he thinks about himself. He overcomes it, becomes in his mind what he thinks is popular, and he does pretty good. Do I still think he can have so low self-esteem? Certainly. Not -- psychology, like the law, doesn't always make linear sense.

Because it seems contradictory on the face of it, it may not be contradictory, and when I -- based upon my interviews with him, that's the opinion I formulated.

I attribute it to -- I attributed it

to a couple of things, and one being his -- his learning disorder, as well as a couple other things.

But so just because it's -- it appears common sense to be contradictory, my field doesn't live in the world of common sense all the time. It lives in the world of understanding peoples' psychology and what's behind it. And so that's my opinion.

Q And you live in a world of opinions, would you not agree, your feeling, your world, your world is a world of opinions? You look at something, you look at a test, and then base your opinion on it, correct?

A I never framed it that way. I'd have to give that a lot of thought to think -- I think that my role as an expert allows me to give opinions, based upon my understanding of the human condition, the human being, and psychological testing.

But -- so when I testify what differentiates me from other mental health professionals, is I at some times am declared an expert, and because of being an expert, I'm allowed to offer opinions, but I don't think

that's all my field does, no.

Q Well, I guess, what I'm trying to get at is, you can look at -- and today is a perfect example: You can look at one set of tests, one set of examples, one set of school records, your interviews, and you take all that information in. Dr. Meadows can look at the exact same thing, the exact same tests, the exact same facts, the exact same interviews, and based on his opinion, it can be different, correct?

A It's possible.

Q Happens all the time, that's why we usually have one defense expert and one State expert, isn't it?

A Uh-huh (affirmative). Often.

Q I guess, that's all I was getting at is it's basically your opinion what we're discussing now, but at the end of the day, we will at least agree he was not suffering from a psychosis, correct?

A I agree.

Q Mental illness?

A Agree.

Q He had, according to you, low self-esteem?

A Correct.
Q Does low self-esteem keep you from knowing what's right and wrong?
A Not usually.
Q Do people with low self-esteem necessarily have to pick up a gun and blow somebody's head off?
A No.
Q Does low self-esteem keep you from understanding whether you pick up a gun, hold somebody in a headlock, and put a gun to their head and shoot, that they're going to die?
A No.
Q What would cause that is something that you did talk about, and that was basically Mr. Nierenberg suffers from poor impulse control?
A Well, he suffers from poor impulse control, yes.
Q And, again, I'm not going to go through a litany, but poor impulse control doesn't mean he didn't know right from wrong?
A That's correct.
Q And that poor impulse control, you would agree with me, it's not based on a

psychotic disorder?

A That's correct.

Q His poor impulse control is not based on a mental illness?

A That's correct.

Q His poor impulse control is not based on any neurocognitive disorder?

A Correct.

Q Okay. Not based on any intellectual disorders?

A Cognitive disorder, correct.

Q It's basically just a characteristic trait?

A I don't agree.

Q Okay. Well, could we go it's based on a mental disorder?

A No.

Q Okay. It's part of his personality though, characteristic trait, he has poor pulse control?

A I think it's a product of his age, his development, and his drug use. That's what I think.

Q Yeah, and again, we could get into the drug use, because I believe we all agree that he

did suffer from some type of drug abuse disorder?

A Yeah, I think this -- agree. I mean, it could be narrow disagreements, but I think that generally we all agree, yes.

Q Would you agree with me though when it comes to drug abuse, that was still his choice to go out and get the drugs?

A Initially. I'm sorry. Maybe I missed --

Q Wasn't initially, every single time --

A I actually think I didn't hear the last part of your question.

Q It would be a conscious decision to go seek out drugs?

A Conscious to seek out drugs?

Q I mean, he had a drug problem?

A Yeah, once you become dependant and addicted, it becomes less of a conscious decision than an addictive problem or a dependence.

You know, he's diagnosed -- Dr. Meadows diagnosed him with opium dependance. I could certainly agree with that. That's different than opium use and abuse.

So once you have dependance, it's hard to say if it's -- if it was a conscious decision to go out and get more drugs or --

Q Really? It's a hard decision to say whether somebody gets in a car, goes and makes contact --

A No, it's hard to define what you mean by conscious, I think.

Q Well, I guess, I'm sorry. I thought we would just use the normal Webster Dictionary definition of conscious.

A What would that be?

Q You make a choice, a conscious choice to do something. I don't think people subconsciously all of a sudden go out and find drug dealers --

MR. TRUNCALE: Objection to testifying by the prosecutor.

THE COURT: Sustained.

BY MR. MOODY:

Q Would you agree with me that the typical, normal, conscious decision would probably be someone who intentionally made the choice to do something, correct?

A From a psychological perspective his

conscious decision is impaired by his addiction and his dependance. That's what I would say.

Q I understand you're saying it's impaired, but it's still a conscious decision.

A It's an impaired conscious decision.

Q Okay. Did he know --

A I also don't want to argue about the semantics of it, but you're using Webster Dictionary, I'm using volumes of psychological literature and research.

Q Well, I guess, we'll just throw all of that out, and I'll ask it real simple.

A Okay.

Q The night that he was out -- you obviously read everything, correct?

A I read what I had.

Q You read the police reports?

A Yes.

Q And in the police reports, you are aware that on October 7th of 2010, he made a conscious decision to go purchase drugs?

A I would say he made a decision to go purchase drugs, yes.

Q Even if it was an impaired conscious decision?

A Yes.
Q He made a conscious decision?
A Yes.
Q He made a conscious decision to pick up a gun?
A Probably.
Q He made a conscious decision to pull the trigger killing Fred Stallings?
A That's what he pled to, so I guess that's what he did.
Q And then he made a conscious decision to take that gun, and chase Carl Harp out of the door, and shoot at him as well?
A Yeah, I'm not arguing the fact that he pled to that, and that's what he pled to, and that's what he did, yeah.
Q And I understand, and I appreciate that. He also, you would agree, made a conscious decision to get in the car and drive away?
A Yeah.
Q And you would agree, psychologically, there is no -- there is no basis whatsoever, be it psychosis or mental disorder, that would give him any type of defense that he was unaware of

what he was doing?

A Correct. And I stated that in the report.

Q I'm just trying to make sure it's very clear.

A Yeah.

MR. MOODY: I don't have any other questions.

THE COURT: Thank you. And redirect?

MR. TRUNCALE: May I have one very brief?

THE COURT: Certainly. I have all afternoon. You have plenty of time.

REDIRECT EXAMINATION

BY MR. TRUNCALE:

Q Okay. Dr. Bloomfield, there was one question summing up the factors that bore on his actions that evening, when he shot Mr. Stallings. You indicated age, the drug -- the age 19, that would be the brain development five years from maturity?

A Right.

Q The drug, the severe drug disorder?

A Yes.

Q The low self-esteem?

A Yes.
Q The impulse disorder?
A I didn't say it was a disorder, but his impulse control.
Q His own impulsivity, you said?
A Yes.
Q I just need a correction or clarification: Were you limiting the low self-esteem to the learning disability, or did that include the prior sexual abuse history as well?
A No, it included a number of things, including the sexual abuse. Probably one of the major factors and the learning disability, among other things.
Q And isn't it odd in your practice --
A He attempted suicide in middle school.
Q Okay. And was the sexual abuse based on the history he provided you at that time?
A About that time, yeah.
Q And there has been a question concerning why he waited until your interview of him to disclose the prior sexual abuse history, and my question to you, in keeping with your practice and your experience, is it common or

uncommon for a sexual abuse victim, be it male or female, to hesitate about disclosing the violations of their person?

A Often sexual abuse victims wait to disclose. I don't know if it's common or not common. I don't have the statistics on it, but it's not out of the ordinary. I don't have -- I can't back it up with any statistics or scientific data, but anecdotally people disclose all the time for different reasons.

We see a patent for him, you know, of suicide attempts, overdoses in middle school, and then later on, even in -- I think he was 17.

Q Would they be -- would those acts be corroborative of perhaps a prior sexual abuse history?

A They could be. You can't go backwards. But you can't say because someone tried to killed themselves that they're sexually abused. But if you are sexually abused, then suicide attempts are not uncommon, but you can't say because he attempted suicide, that he was sexually abused. But if you're doing a diagnostic workup on sexual abuse, you would certainly consider it, and you would consider it

a symptom, and you would consider it a risk factor.

MR. TRUNCALE: I have no further questions. Thank you, Doctor.

THE COURT: Any recross?

MR. MOODY: Just briefly.

RECROSS-EXAMINATION

BY MR. MOODY:

Q Since he brought up the sexual abuse thing again, would you agree with me, I didn't see it, perhaps I was wrong, that you have not diagnosed him, Mr. Nierenberg, as suffering from PTSD?

A I didn't. No, I didn't.

Q Because he is not showing the normal known or complaining of the normal known characteristics of someone who is suffering from a diagnosis of post traumatic stress disorder, correct?

A Correct.

Q So just to elaborate then, what the heck does him, whether he was or wasn't, because obviously it has been brought into question, whether that's factually true or not --

A Correct.

Q -- what does that really have to do with what happened on the night of October 7th, 2010?

A Well, it goes into --

Q Because you would agree with me, he never had flashbacks, he never complained that I shot the man because all of a sudden I thought about being molested when I was five?

A That's true. I'm not saying -- I'm not necessarily saying it does. I just said it was a mitigating factor in terms of him as a human being and his -- and looking at him as a person.

I didn't see symptoms of PTSD. I certainly, if I had seen symptoms of PTSD around the instant offense, I wouldn't have said there is no NGI. I would have raised -- I would have made a suggestion to his lawyer to explore that more, but I didn't see that, so I don't think -- I think you're correct that he wasn't having flashbacks or re-experiencing or all of that stuff, all the symptoms of PTSD at the time of the instant offense.

My testimony, I think, goes to the fact that it's something in his personalty, in

his life, in his being, that can be considered by the Court in making a disposition. That's all.

Q Okay. Because we would agree, and the reason that I bring that up is, there are lots of people who live normal healthy lives, who went through being molested, correct?

A Yeah.

Q Well, let me rephrase it a different way that you don't think it's funny. And so --

A I don't think it's funny. I think the question --

Q Just because -- let me ask you a question: Just because someone is sexually molested, doesn't mean that that person is going to go pick up a gun and kill somebody?

A That's absolutely true.

Q There are lots of people who are sexually molested that don't go kill people?

A That's correct. The reason I was laughing, was not to denigrate people with PTSD, but because we were going to disagree about what's normal.

Q No, and I understood that.

A Okay.

Q I asked the question again --
A I just wanted to be clear.
Q -- because I wasn't going to give you a chance to just go run with your thoughts of psychology --
A And I didn't want --
Q -- and how the world works --
A -- to do that.
Q We can't talk at the same time.
A Okay.
Q And I knew that's where you were going, and what I didn't want to go down that road. All I'm trying to make very clear is, you, Mr. Truncale, you guys are the ones who are bringing up that he has been allegedly molested as a child, as some mitigating factor that the Court should consider to cut him a break for killing somebody, because he was molested.

And the point that I'm trying to make is, there's no connection about him being molested and that night?
A I think you're right.
Q Okay. Because, again, same thing with the drugs, there's no connection that just because he was molested, now all of a sudden he

has to be addicted to drugs, and it changes his whole life?

A It doesn't have to be. That's right. I agree with that.

Q And there are lots of people, and I think where you and I were going to disagree was, I say, who live healthy lives?

A Right.

Q Obviously, anyone who has suffered something like that?

A Exactly.

Q You have to look at what you would consider healthy?

A (Nods head up and down.)

Q But, I guess, what I was trying to say is maybe productive lives. People can get pass what has happened to them as a child?

A Right. I would use functional, but productive is fine.

Q Functional or productive.

A Right.

Q Because at the end of the day, it's up to us, the individual, to decide what we do with our lives, correct?

A It's kind of philosophical, but I

would think that's probably true.

Q That's what we are here for, we're talking about, it's philosophical.

A No, we're talking about --

Q You philosophically believe just because he's been molested as a child, that's a mitigating factor. I would ask you philosophically --

A No, I would think --

Q -- is it okay for me to believe --

A I'm testifying as a psychologist, not as a philosopher.

MR. TRUNCALE: That's not in evidence. This is not a philosophical --

THE COURT: Sustained. I think we're about done with re-crossing. Do you have anything else?

MR. MOODY: No, ma'am.

THE COURT: Very well.

May this witness be excused?

MR. TRUNCALE: I was going to ask him just to wait until Dr. Meadows testifies.

THE COURT: Would you like him to be excused, subject to recall?

MR. TRUNCALE: Yeah.

THE COURT: And to remain in the courthouse?

MR. TRUNCALE: Yeah.

THE COURT: Doctor, you are subject to recall, and please remain in the courthouse.

THE WITNESS: When Dr. Meadows is done, does that mean I'm excuse, or will...

MR. TRUNCALE: Yeah, I would ask that you --

THE WITNESS: Okay.

MR. MOODY: I can actually tell the Court, I think I can make this real easy: Based on how Dr. Bloomfield has testified, I don't plan on calling Dr. Meadows.

THE COURT: Very well. So, with that, may this witness be excused?

MR. TRUNCALE: He can be excused.

THE COURT: Doctor, you are excused at this time.

THE WITNESS: Thank you.

THE COURT: If the Court will grant me a little indulgence, since Dr. Meadows did anticipate he would testify, may I have 30 seconds to go explain to him what's going on?

THE COURT: Absolutely.

(Mr. Moody exits the courtroom.)

THE COURT: So, for the record, Doctor, you're excused. You are free to leave the Duval County Courthouse.

THE WITNESS: Thank you.

MR. TRUNCALE: And thank you for your efforts and participation.

THE WITNESS: Thank you.

(Witness exits the courtroom.)

MR. TRUNCALE: Your Honor, when Mr. Moody comes bock, I think Mr. Moody is going to take over with the State's witnesses.

THE COURT: Thank you.

(Mr. Moody enters the courtroom.)

MR. MOODY: Thank you. I will do anything trying to save some time, if we need to.

THE COURT: How would you like to proceed, Counsel, at this point? How would you both like to proceed at this point?

MR. MOODY: Judge, I think what we'll do is call Ms. Pace, so that she can kind of lay out the facts of what occurred that night.

MR. TRUNCALE: And anybody else the State wishes to call, I think we should just call them, and then we'll put our character witnesses on.

MR. MOODY: That'S the only person I intend to call, Judge.

THE COURT: Very well.

MR. MOODY: Like I said, I do what I can, to just make it as quick as we need to.

THE COURT: Very well. If the State will call its next witness.

MR. MOODY: Your Honor, the State would call Ashley Pace.

(Witness enters the courtroom.)

THE COURT: Good afternoon. Please come forward.

THE WITNESS: (Complies.)

THE COURT: Madam clerk will swear you in, and then you will be seated over here (indicating).

THE CLERK: Raise your right hand.

THE WITNESS: (Complies.)

THE CLERK: Do you solemnly swear or affirm, the testimony you shall give, shall be the truth, the whole truth, and nothing

but the truth, so help you God?

THE WITNESS: Yes, ma'am.

THE CLERK: Thank you.

(Witness was duly sworn in by the clerk.)

DIRECT EXAMINATION

BY MR. MOODY:

Q Good afternoon.

A Good afternoon.

MR. MOODY: May I proceed, Your Honor?

THE COURT: You may.

BY MR. MOODY:

Q Can you please state your name for the record?

A Ashley Pace.

Q Now, Ms. Pace, I know I've had a chance to speak with you before, and you are kind of soft spoken. So I want the Judge to be able to hear everything you say. So, if you can, make sure you speak into the microphone. You might want to pull it down to you, or scoot up a little bit. Got it?

A Okay.

Q Okay. Ms. Pace, how old are you?

A I'm 31.

Q Okay. And do you currently reside here in Duval County?
A I do.
Q How long have you lived in Duval County?
A My whole life.
Q Okay. Who do you live here with?
A My mother and my son.
Q Okay. And how old is your son?
A He's eight.
Q And what is his name?
A Hunter Taylor.
Q Okay. And you say that -- I'm sorry, you said, I think you told me how old he was, but I didn't hear it.
A Eight.
Q He's eight-years-old?
A Yes, sir.
Q Are you currently employed, or are you going to school?
A I go to college.
Q And where do you go?
A FSCJ.
Q And what is it, what degree are you trying to obtain, intend to obtain?

A I'm trying to get a paralegal studies degree.

Q Ms. Pace, I want to go ahead and ask you: Do you know an individual by the name of Gregory Nierenberg?

A Yes, sir.

Q And just for the record, do you see him here in this courtroom?

A Yes, sir.

Q Can you point him out, and let the Judge know which one he is?

A (Indicating.)

Q Can you describe an article of clothing he's wearing?

A A green jumpsuit and glasses.

MR. MOODY: Your Honor, I would ask that the record reflect that she's identified the defendant.

THE COURT: The record will so reflect.

BY MR. MOODY:

Q Okay. Ms. Pace, how long have you known Mr. Nierenberg?

A Including this time?

Q From the first time you ever met him.

A Six years, roughly.

Q Okay. And in those six years that you've known Mr. Nierenberg, how close would you say, or what kind of relationship did you have with him?

A We were friends, and we dated briefly after -- in the beginning, but after that we were just friends.

Q Okay. And how long did you date?

A About four months, roughly.

Q Okay. And by dating, just so we can understand the nature of the relationship, would this be boyfriend-girlfriend type of dating?

A Yes, sir.

Q Okay. Someone that you were dating exclusively, that you cared for?

A Yes.

Q Okay. And did you believe through your communications that he cared for you?

A Yes.

Q And approximately when would that relationship or that dating have taken place, what year?

A Oh, 2010.

Q Okay. And, obviously, you know you are here today to discuss an incident which

occurred on October 7th of 2010, correct?
A Yes, sir.
Q So in relations to that date, October of 2010, were you still in that boyfriend-girlfriend type of relationship with Mr. Nierenberg on that night?
A No, sir.
Q Okay. How long had you-all been broken up?
A Maybe five months.
Q Okay. Did you still consider him a friend though, even though you weren't boyfriend and girlfriend?
A Yes, sir.
Q Did you speak often?
A Yes.
Q Would you guys talk on the phone?
A Yes.
Q Would you see him out socially?
A To buy marijuana and stuff like that, occasionally, not too much.
Q Okay. And, I guess, that's part of what we need to get into, is kind of the lifestyle that you led back in 2010, okay?
A Yes, sir.

Q Would you agree with me, back in 2010, that you were addicted to drugs?

A Yes, sir, I was.

Q And, specifically, what kind of drug or what was your main drug that you were addicted to?

A Painkillers, Methadone, Adderall, Xanax, marijuana.

Q Okay. And I think you have told at least Judge Norton previously, and that's kind of why we're going over this now, is because you never met Judge Aho. You had gotten addicted to those painkillers, because you had been in a car accident, correct?

A Yes, sir, that's correct.

Q You had been injured to the point to where those originally had started being prescribed to you, and then unfortunately, you got addicted to them?

A Yes, sir. That's correct.

Q And would it be fair to say after you got addicted to them, and they stopped being prescribed to you, you would still do pretty much whatever you could to obtain painkillers?

A Yes.

MR. TRUNCALE: I object to leading, Your Honor.

THE COURT: Sustained.

MR. TRUNCALE: It's getting to the point of he's testifying. I don't mind a little bit, but I think he's going too much.

MR. MOODY: I'm sorry, Judge.

THE COURT: Sustained. You may proceed.

MR. MOODY: I thought it was foundational.

BY MR. MOODY:

Q Did you try and obtain more painkillers?

A Yes, sir, I did.

Q Is that something that you would do on a daily basis?

A Yes, at the time it was a vicious cycle. It was a monthly thing that I would go through.

Q Okay. And in regards to not only your drug use, but you mentioned previously that you would use drugs with the defendant, Gregory Nierenberg?

A Yes, sir.

Q What kind of drugs did you see him using?

A Marijuana, pain pills, and cocaine.

Q Okay. And did he do this in your presence?

A Yes, sir.

Q Would you and him actually go out and look for these drugs?

A Occasionally, yes, sir.

Q Would he help you find drugs to use?

A Yes, sir.

Q Occasionally, did you help him find drugs to use, or allow him to use your drugs?

A Yes, sir.

Q So, on October 7th, and we are going to get into the details of it, but that night, when you and Mr. Nierenberg went on this search for drugs, was that unusual at all?

A The timing of it was. I didn't usually stay out that late doing something like that, but -- it wasn't a common thing for me to do, go off with him to find that.

Q It wasn't an uncommon thing?

A It wasn't a common thing. We didn't do it regularly. If he had something, he

usually had it on him. I didn't usually go with him to purchase it or anything.

Q And, likewise, whenever you were around Mr. Nierenberg, did you ever see him with guns?

A Yes.

Q Was it often that you would see him with guns?

A Every time I saw him, he had weapons with him, guns.

Q And do you know the difference between pistols and rifles?

A Yes, sir.

Q Do you know the difference between semiautomatic and revolvers?

A Yes, sir.

Q When you would see Mr. Nierenberg, did you see him with assault rifles?

A Yes.

Q Did you see him with semiautomatic pistols?

A Yes.

Q And on the night of October 7th, 2010, did you see him with an automatic rifle?

A Yes, sir.

Q And did you see him with a semiautomatic pistol?

A Well...

MR. TRUNCALE: Object to the reference to automatic rifles. I don't believe that's -- I'd like to see if she's qualified to see if she knows --

THE WITNESS: Well, JR --

MR. MOODY: Hold on. Hold on.

THE COURT: Don't answer quite yet.

Do you want to move on?

MR. MOODY: Let me ask you --

MR. TRUNCALE: It's not supportive evidence.

MR. MOODY: I'll ask it a different way, Your Honor.

THE COURT: Okay. That's fine.

BY MR. MOODY:

Q What kind of rifle did you see him with?

A From what JR told me, it was an AK-47.

Q Is it your understanding that that's an assault rifle?

A Yes, it is.

MR. MOODY: That's all I was asking,

Judge.

BY MR. MOODY:

Q So I want to specifically talk about October 7th. Where were you that evening, whenever the defendant first contacted you?

A I was at home.

Q And how did he contact you?

A He called me and texted me.

Q And what was the purpose, or what was the contents of that text?

A He told me that he had a flat tire and needed help changing it, so I have a five lug tire, and also a spare tire that he could use.

Q And did you go attempt to help him?

A Yes, I did.

Q Did you go try and locate him?

A I did.

Q And where was it that he told you he was?

A He told me he was off of Phoenix Avenue. So I drove up and down there. I didn't see him. So, at that point, I came back over the bridge, and at that time, I was trying to get Methadone for myself, and then I met him at -- I received that and met him at Angela's

Italian Restaurant.

Q Whenever you met with the defendant, did you and the defendant attempt to go change his tire?

A We tried. We could not get my spare tire out of the car in the trunk.

Q And when you were unsuccessful in being able to change his tire, did you and the defendant go somewhere?

A We did.

Q Where did you guys go?

A We went back over to -- by his house. He was meeting someone to sell marijuana to. At that time, I didn't know who it was. And when we arrived, I knew it was a mutual friend, Andrew, that we knew.

Q Okay. And after selling marijuana, did you and the defendant then go somewhere else to obtain drugs?

A We did. We returned back to Phoenix Avenue at that time.

Q And, specifically, did you return to the area of, I believe, of 2417 Phoenix Avenue, where ultimately you would meet a number of individuals?

A Yes, sir.

Q Do you recall the names of the individuals that you and the defendant met that night?

A I believe the gentleman's name -- his name was Carl, Freddy, Jenny, Little Mama, and Renee. There was another lady there, but I don't remember her name.

Q Okay. Now, had you met any of these individuals before that night?

A No.

Q And what was the purpose, not only for you, but in your conversations with the defendant, what was the purpose for going over there?

A He was trying to obtain powder cocaine.

Q Okay. And was there some reason he was trying to party that night?

A He was intending on turning himself in for a warrant he had.

Q Okay. Then, I believe, for the next day, or he was going to turn himself in for the next day, you would say?

A I believe so.

Q So you and him go to this location to try and obtain powder cocaine. Tell the Judge, basically, what happened, or how you guys were able to go get drugs? What did you-all do?

A Well, I sat and waited inside my car. He didn't want me to go in, because it was a crackhouse and a whorehouse, and he said the guy would make the females get naked. So I stayed out in the car.

And around 3:30 Freddy and Jenny approached me, saying they needed a ride, and I said I couldn't go anywhere without getting JR's okay. So he came out and said it was okay. We left, went to the gas station.

Q Hold on real quick.

A Okay.

Q And I understand you're trying to go. When you say 3:30, we're talking about 3:30 in the morning?

A Yes, sir.

Q Okay. And you get in your car, and you go to leave with certain people?

A Right.

Q Was the defendant among the people who left with you?

A No, he never went.
Q He stayed at the crackhouse?
A Yes.
Q Who did you leave with?
A Jenny and Freddy.
Q And Freddy would ultimately be the defendant who was shot by the defendant, correct?
A Yes, sir.
Q So you, Freddy, and Jenny leave to go somewhere. Did you know where you were going?
A Not specifically, no, sir.
Q But you knew the purpose for what you were going?
A Yes, sir.
Q And that was?
A To get powder cocaine.
Q All right. And at some point did Mr. Stallings tell you to stop somewhere so he could go inside and get powder cocaine?
A Well, I had to come back to the house, because the gas station's bathroom wasn't working. So I used the restroom. We were there for maybe five minutes and left again. And we went to a gentleman's house, and where Freddy

had bought ten pieces of crack, and that was around 4:00, 4:30, I believe.

Q Okay. Now, crack cocaine is hard, correct?

A Yes, it looked like -- I had never seen it before, but it looked like Doublemint gum sliced up in pieces.

Q So that would be different than powder?

A Yes, sir.

Q And powder is what the defendant wanted, correct?

A Correct.

Q And, ultimately, did you, Mr. Stallings, and Jenny go back to the crackhouse, where the defendant was waiting?

A Yes, sir. After we left that house, Jenny asked me to pull over, and she was gone maybe two minutes, and came back in the car, and said she was ready to go. So then we head back to the house, which took us approximately maybe 15 minutes to get back there.

Q Now, when Jenny went in the second house, was it your impression, or did you think Jenny had gone in to get the powder cocaine that

the defendant had wanted?

A I thought that, I assumed she went to go get the powder cocaine.

Q When you guys get back to the crackhouse, where the defendant is waiting, were the drugs provided to the defendant?

A JR and Freddy went in the back room and spoke, and I was just with the other girls and the other gentleman out in the front area in a bedroom, I think, it was.

Q Okay. Would it be fair to say that while all of this was going on, that even though this was the first time that you had met the women that were there, you got along with them?

A Yes.

Q And I think you guys even exchanged phone numbers, correct?

A Yes, that's correct.

Q Did you offer to help them if they ever needed help, and they offer to help you, if you ever needed help?

A I talked a lot with Jenny, and I told her that she didn't need to live a life like that. She had five kids and that, yes, I offered her -- to help her.

Q And at some point did the defendant and Mr. Stallings come out? Did you ever see them?

A They did. I think they were in there maybe five or ten minutes.

Q Could you tell, or did you hear anything that made you believe that the defendant was upset or mad?

A No, not at all.

Q Everything seemed fine to you, correct?

A Yes, sir.

Q Did you stay inside the house, or did you end up going back outside?

A At that point we told everybody bye and proceeded to leave.

Q When you say "we," who is we?

A Me and the defendant, JR.

Q You call him JR?

A Yes, sir.

Q So when you and the defendant go outside, you get into your vehicle, correct?

A Yes, sir.

Q Who gets in the driver's side, who gets in the passenger's side?

A JR is in the driver's side, and I'm in the passenger's side.

Q Now, I want to back up, because I meant to ask this when we were talking about the AK-47, and you talked about seeing it.

You've seen him with those kind of guns before, correct?

A All the time.

Q That night, when you went to go pick the defendant up, and you found his car, and he got in your car, did he put anything in your car?

A He had a bookbag and that AK-47 with him.

Q So you saw him put the AK-47 in your vehicle, correct?

A Yes, sir.

Q And, again, did that alarm you or make you nervous in any way as it being unusual?

A No, he had guns like with him every time I've seen him.

Q Okay. I just wanted to make sure. So that night he had an AK-47, right?

A Yes, sir.

Q Okay. Did you know that he had

semiautomatic pistols with him as well?

A I did not see them at that point, no.

Q You get in the passengers's seat, I believe, you said?

A Yes.

Q And the defendant gets in the driver's seat. Did you guys drive off?

A No, he started the car, and then stepped out and said -- tapped both his pockets, and said, "Oh, I forgot something. I'll be right back." And I told him to hurry up, I need to get home to my son, and he said he would.

Q Did he go back inside the same house where Mr. Stallings and Jenny and Renee and Carl were?

A Yes.

Q And how long was he in that house before something caught your attention?

A Maybe five minutes.

Q Okay. And then in five minutes what did you hear?

A I heard one gunshot, and then about 30 seconds later, it might have been a minute later, another gunshot, and then I see Carl. He ran outside the opposite way towards the

interstate. And about 30 seconds later I see JR step out, and point the gun at his direction, and he shot again twice, but it felt like 30 seconds apart. It might not have been that long, but...

Q I understand. When you say you saw the defendant fire the gun twice, in the direction of Mr. Carl Harp?

A Uh-huh (affirmative).

Q Can you demonstrate for the Court how he was holding that gun?

A He just stood and held it and pointed it straight out and shot one shot, and then another one (demonstrating). It might have been 30 seconds in between.

Q But it was very clearly in the direction to where Mr. Harp was running, and not in the air, not in the ground, not over here, not over there?

A Oh, yes, sir.

Q And did you happen to notice or see if Mr. Harp got hit?

A I didn't. I didn't see where he went after he left the house. I didn't see.

Q The gun that you saw the defendant

firing, was it a pistol or a rifle?

A It was a pistol.

Q Okay. And did he, after firing those two shots, go back inside, or did he go into the car with you?

A He went to the car.

Q When he got inside, what did you say, what happened?

A Well, he sped off, and I just kept saying what happened, what happened? And he wasn't saying anything at first. So when we got on the Matthews Bridge, he said he shot him in the head, and he was raging at this point, and he said "Nobody mother-fucking takes money from me, nobody." And I told him, you know, I don't think you realize what you've done. And at that point he proceeded to point the gun at me, and said that he was going to shoot my mom, my son, and then myself, if I said anything. So at that point I just didn't say anything.

THE COURT: Would counsel please approach at sidebar with the court reporter.

(On the record at sidebar as follows:)

THE COURT: At this time I want to disclose some information. I have been a

sitting Judge for approximately nine months. During the time that I was seeking employment to the bench, because I was a civil litigation attorney, not a criminal law attorney, I went and observed a number of court proceedings.

I remember going to a court proceeding where Judge Norton was the presiding Judge, and Mr. Moody was the prosecutor, and Mr. Shorstein was the defense attorney.

Some of these facts are sounding very familiar. Do you think that was the --

MR. TRUNCALE: That's probably her sentencing.

THE COURT: Okay. So --

MR. MOODY: It was her.

THE COURT: And so -- and I think it was about whether community control was going to be terminated or probation was going to be terminated. I'm not even asking you, but I just wanted to let you-all know I was probably present for --

MR. TRUNCALE: It doesn't matter.

THE COURT: -- 30 minutes. It probably does not matter, but I very much believe that

because of my obligation to be fair and impartial, and for you-all to know what I know, what I don't know, everything I know, I've learned today or from my review of the court file. And those facts, I think it was whether the current witness who was at school, was doing well, and whether her sentence should be terminated.

MR. TRUNCALE: Right. Right.

MR. MOODY: Actually, that's it -- no, no, it's very close.

THE COURT: Okay.

MR. MOODY: It was actually the sentencing hearing and --

MR. TRUNCALE: She was being sentenced.

MR. MOODY: -- the issue with which you remember was the State had recommended to Judge Norton that she be put on probation, and the defense was arguing for just a straight time served disposition.

MR. TRUNCALE: And that's what happened, the straight time served.

THE COURT: And I even left before the hearing was concluded. So I never was there when sentence was imposed.

MR. TRUNCALE: Your Honor, that would in no way affect your ability to be fair. Absolutely not.

THE COURT: Okay.

MR. TRUNCALE: I have no objection to it.

THE COURT: Okay. I do think that because the defendant is not present here at sidebar, that he has the right to be made aware of this.

MR. MOODY: He does.

MR. TRUNCALE: Okay.

THE COURT: So how would you like to proceed, sir? Do you want to talk to your client? I don't think it needs to be disclosed in the presence of the witness. Do you want the witness to step away?

MR. TRUNCALE: Let me tell him, and then can I report to the Court what he says?

MR. MOODY: He can just whisper. It probably wouldn't be a long conversation, unless Mr. Nierenberg doesn't want to go through this, and then we would have to argue whether it --

THE COURT: Okay. So how do you want

to proceed? Do you want me to remain here, and you come back to the bench?

MR. TRUNCALE: Yes, if I could?

THE COURT: All right.

(Pause.)

THE COURT: Counsel, for the record, my judicial assist has walked in the courtroom, and she needs to speak with me in private for about four or five minutes. So we're going to take a four or five minute recess.

(Recess.)

(Off-the-record discussion was held between the Defendant and his Counsel.)

(Continued sidebar discussion:)

THE COURT: We are on the record.

MR. TRUNCALE: Judge, I spoke to my client fully about the fact that you were present during that, and he agreed with me, and, you know, independently, he spontaneously said that's not a problem at all, not a problem at all.

THE COURT: Okay. And is it an issue for the State of Florida?

MR. MOODY: No, ma'am.

THE COURT: Okay.

MR. MOODY: The only thing that, just for completeness of the record.

THE COURT: Yes.

MR. MOODY: And I think you've already done it, I just want to make sure that you would, so that a claim cannot be made later.

MR. TRUNCALE: Yeah.

MR. MOODY: That nothing you do today, what you observe, would be factored into anything that you do today in regards to sentencing.

THE COURT: That's right.

MR. TRUNCALE: We agree to that, and we would waive any claim to that effect.

THE COURT: Very well. And I want to state that on the record. For the record, anything I learned at that other sentencing proceeding, which is very minimal, as said to me was what sentence this witness would receive, in fact, I did not even know until today that it was a sentencing proceeding, but it makes sense that it was, and I was not present through the conclusion, I was not there when sentence was imposed, will not be considered by me, and has not been considered

by me. But I am very happy that we've had this discussion, because I believe in full disclosure, so that everything is very clear.

And the next step is the defendant needs to be -- that this needs to be said in front of the defendant in open court. I think we can wait until the witness is concluded.

MR. TRUNCALE: Yeah, and we'd ask for the witness to, you know --

THE COURT: Step out?

MR. TRUNCALE: Either step out and address him right now.

THE COURT: Or we could finish the witness?

MR. MOODY: After.

MR. TRUNCALE: After she finishes.

THE COURT: Let's finish the witness and then do it, okay.

MR. MOODY: Yes, Your Honor.

MR. TRUNCALE: Yes, Your Honor.

THE COURT: Thank you.

(End of sidebar discussion.)

THE COURT: All right. Thank you, Counsel. You may proceed.

BY MR. MOODY:

Q Ms. Pace, I believe where we had left off, we were talking about after you saw Mr. Nierenberg fire at Carl Harp, get into the car, you made it to the bridge, and he had made the statements to you, that you had previously said?

A Yes, sir.

Q And after he made those statements, you said that Mr. Nierenberg did what?

A He proceeded to drive to my house.

Q No, no. What did he do? You said that he told you nobody steals my MF'ing money, and something along those lines, and you said I don't think you understand what you've done. What did he do while you were in the car?

A He pulled a gun, and held it to my head, and said that if I said anything, that he would shoot my mom, my son, and then myself. So at that point I quit crying, and I didn't say anything else to him.

Q Were you in fear?

A Very much so.

Q Did you --

A I was traumatized. It was very

traumatic.

Q Did you believe him?

A Yes.

Q And since he was driving, where did the defendant drive to?

A He proceeded to go to my house, and when we got there, he tried to shoot up the crack cocaine.

Q How? What do you mean? Crack cocaine, obviously, you know is usually smoked?

A Right.

Q What do you mean? What did he do?

A He however you try to break it down into the needle or whatever, he tried to do that, shoot it up.

Q Okay. And after you observed him trying to shoot up this crack cocaine, what were you doing at that time?

A I checked on my son, and went to my mom, and told her that I needed to take him home, and we were there maybe 10 or 15 minutes, and then immediately left, and I took him home.

Q Okay. And after you took him home, did you come back to your residence?

A I did. I stopped and got gas, and

then I went back home.

Q Okay. Now, ultimately, at some point, you're aware that the police began to investigate this, the police actually come and find you, and you were actually interviewed by the police, correct?

A Yes, sir. Yes, sir.

Q And, specifically, I believe, you were interviewed by a Detective Bowers?

A Yes, sir. That's correct.

Q Would it be fair to say that you lied during your interview with Detective Bowers at certain points?

A I wouldn't very much say lie. I just said that -- I asked Detective Bowers three or four times why I was there, and he wouldn't answer me. So at that point I said I would like to speak with an attorney.

Q Okay.

A I wasn't forthcoming in any way.

Q And, I guess, that's where -- we'll go ahead, and I'll rephrase it. Would you agree with me, you were not open and honest and forthcoming, and told him what you had seen?

A Yes, I would agree with you.

Q Would you also agree, understanding that you were back then addicted to drugs, you were a drug addict, in a bad situation, would you agree you were also pretty nasty to Detective Bowers?

A Yes, sir. I would agree with that.

Q You were a different person than you are right now?

A Absolutely. Yes, sir. That's correct.

Q And, ultimately, you were arrested for this crime or a crime associated with this murder, correct?

A Yes, sir.

Q You ultimately ended up pleading guilty to accessory after the fact?

A Yes, sir.

Q And you were represented, and at that point in time after you pled guilty, correct?

A Yes, sir, I did.

Q And by pleading guilty, there was no deal with the State of Florida, it was -- you were just pleading up to Judge Norton at the time, and it was going to be 100 percent within her discretion, correct?

A Yes, sir. That's correct.
Q And, ultimately, that sentencing hearing was held, and Judge Norton sentenced you?
A Yes.
Q And the sentence that Judge Norton gave you actually was not the recommendation from the State. I believe I had actually recommended that you at least be put on probation, correct?
A Yes, sir. That's correct.
Q Okay. But Judge Norton felt as though you have been able to successfully -- well, let's just say, for her own reasons, Judge Norton felt that time served was more appropriate, correct?
A Yes, sir.
Q And approximately how long did you stay in jail?
A In jail, I was a week shy from two years, and then after that I wore the ankle monitor for three months, and then I reported into pretrial services on a weekly basis for a year, I believe.
Q And while going through all of this,

have you been able to kick the drug habit?

A Oh, absolutely.

Q Did you have any idea when Mr. Nierenberg went back inside that house that he was going to pull a gun and kill Fred Stallings?

A Absolutely not.

Q Did you have any idea that when you met up with him, that by the end of the night, he would put a gun to your head, and threaten to kill you, your mother, and your child?

A No.

MR. MOODY: I have no other questions, Judge.

THE COURT: Thank you.

Cross-examination?

CROSS-EXAMINATION

BY MR. TRUNCALE:

Q Good afternoon, Ms. Pace.

A Good afternoon.

Q My examination is not going to be lengthy, but I'd just like to cover a few points. You said you're 31-years-old?

A Yes, sir.

Q And you have been -- you have known

Mr. Nierenberg for six years now?

A Well, yes, at the time previous to the incarceration, it was probably nine months I've known him. So, including that time, about six years. Yes, sir.

Q Okay. So nine months prior to this October 7th, 2010, evening, you have known Mr. Nierenberg?

A Yes, sir.

Q And you had dated him as boyfriend and girlfriend for how long?

A About four months approximately.

Q Okay. And how did y'all meet?

A We meet through mutual friends.

Q Okay. And were -- let me see -- at that time he was 19-years-old?

A Yes, sir.

Q And how old were you?

A I believe I was 26.

Q Okay. You mentioned that you're in college now. And you wern't in college then?

A No, sir.

Q What were you doing for a living?

A I wasn't doing anything.

Q Well, weren't you working at a

nightclub dance -- stripping?

A I briefly did that for three weeks, yes, sir, but --

Q Was that while you were dating him?

A Towards the end I started dating him.

Q Okay. And you were heavily addicted to drugs at the time?

A Yes, sir.

Q All right. And that was pre-dating your affiliation and association with Mr. Nierenberg, correct?

A Yes, sir.

Q How long -- or how long had you been severely addicted, prior to meeting Mr. Nierenberg?

A Severely addicted, I would say at least a year, if not, like a year-and-a-half.

Q So Mr. Nierenberg did not bring you into the life that you had described?

A Oh, no, sir. I made my own decisions and choices.

Q And you did mention, and this is very unfortunate, you mentioned that the drug addiction was a probable result of a legitimate use of drugs as a -- for painkillers for a car

accident?

A Yes, sir.

Q When you began dating Mr. Nierenberg, he was severely addicted, was he not?

A On pain pills, I don't --

Q Was he or, I mean, I'm asking you?

A I don't know if he was addicted at that point, but he started taking them a lot frequently.

Q Okay. Do you know or had he told you that he had been in an accident as well, just like you, and as a result was taking prescription medications?

A I remember him saying that he broke his arm or something, when he was younger.

Q Yeah, what I'm driving at, right to cut to the chase, Ms. Pace: Was it your understanding that he also had a drug problem, after having an accident and taking prescription drugs, or not? I'm asking.

A I don't know that to be accurate to say, because I didn't know that he was in a car accident. But, yes, he did have a serious drug problem.

Q But you know he never told you that?

A I don't remember a car accident. I remember him saying that he broke his arm.

Q Oh, I'm sorry, not a car accident, but what I'm asking is, had he ever told you that the drug use for him started after an injury?

A Yes, sir, after he broke his arm, he said that he got addicted, I believe.

Q Okay. So, in a sense, there was a bond there, both of you had a similar experience?

A Yes, sir.

Q Okay. During the course of the nine month period that you knew each other, and prior to this incident, did you both assist each other, I guess, enable each other in the drug usage?

A Sure.

Q I'm sorry. It wasn't -- you weren't -- let's call you a drug addict; is that a fair statement?

A I'm sure at the time I was, yes, sir.

Q Right. You were not a drug addict because of hanging around with JR, Mr. Nierenberg?

A No, I made my own decisions and

choices at that time.

Q And would you feel it's the same way with regard to him and you?

A Sure.

Q That you didn't have any influence on him?

A No, people --

Q I mean, more so than his own decisions?

A At the end of the day, you make your own decisions, so...

Q All right.

A I don't blame anybody on my drug addiction except for myself.

Q All right. So the drug addiction between both of you was sort of like an individual thing, but you played on each other for that?

A (No response.)

Q I mean, what I'm saying is, you both had a lifestyle of drug use?

A Yes, sir.

Q Okay. You mentioned that JR had guns often when he was with you?

A Every time I've seen him, he had some

kind of weapon, gun.

Q Did he ever tell you that he had been a victim of a robbery, an armed robbery? I'm asking, did he ever tell you that?

A If he did, I don't remember. I don't have a recollection of that.

Q Okay. And you mentioned an AK-47 that he had on one or more occasion?

A Yes, sir.

Q You don't know whether an AK-47 is an automatic rifle or a semiautomatic, do you?

A I do. It's a semiautomatic, and that's from JR's version, that's what he told me.

Q Right, but it's not an automatic, which would be a full machine gun?

A No, it just had a clip on it.

Q Yes. Yes.

A Yes.

Q Had he ever given you -- have you ever accepted a firearm from him for your own use or for your own personal --

A No, sir.

Q No. Okay. When -- on this evening you mentioned that you went to the house on

Phoenix Avenue, the house of Mr. Stallings, and that most of the night you were outside in your car; is that correct?

A Yes, sir, that's correct.

Q Or travelling with Mr. Stallings in order to get drugs?

A The travelling was more so an hour, but the rest of the time I was sitting in my car the whole evening.

Q How long were you in Mr. Stallings' house?

A Altogether maybe 15 or 20 minutes tops.

Q And you mentioned that Mr. Nierenberg didn't want you going in, because he indicated it was a crackhouse, and a whorehouse, and the women would take their clothes off; is that correct?

A Yes, sir.

Q And did you understand -- how old is Mr. Stallings, approximately, if you can give us an idea?

A Maybe 40. I'm not sure.

Q Okay. And did you know whether, in fact, he was a convicted sex offender?

A No, sir.

MR. MOODY: Judge, objection; relevance, other than to try and dismear the victim, who had been shot in the head, whether he's a sexual predator or not --

MR. TRUNCALE: Well --

MR. MOODY: -- I really don't understand the relevance of that in his (indicating) sentencing hearing.

MR. TRUNCALE: I think it's -- well, I'm asking if she knows about the house, where she was entering the house.

THE COURT: Sustained as to relevance, but you can proceed.

BY MR. TRUNCALE:

Q Okay. And then you got along with these women?

A Yes, sir.

Q Okay. And did you undergo -- were you informed by them or anybody that they were prostitutes for Mr. Stallings?

A Yes, sir.

Q Okay. By whom?

A Jenny said that.

Q Oh, one of the ladies in the house

that you went out with?
A Yes, sir, that's correct.
Q Okay. You mentioned that there came a point in time where Mr. Nierenberg was in the car with you, and said, "I forgot something"?
A That's correct.
Q And then he went back in the house for about five minutes?
A Yes, sir.
Q And, I'm asking, was it about five minutes?
A I believe so, yes, five minutes.
Q And did you say you heard two shots?
A I did.
Q Okay. And you know that from the this investigation that Mr. Stallings was shot?
A Yes, sir.
Q Do you know the circumstances, whether it was a struggle or what?
A No, sir, I did not. I don't know any of --
Q You just don't know?
A I don't know, no, sir.
Q Okay. And then you said you heard two shots, and that one of the occupants,

Mr. Stallings' cohabitant, a co-occupant, Carl Harp, ran outside toward the interstate?

A No, on the opposite end of the interstate, my car was parked this way (demonstrating), facing the interstate, and he turned back this way (indicating), and went off to the back direction.

Q And how far did he run?

A I'm not sure. I didn't see how far he went.

Q Was he running fast?

A He was running fast, yes, sir.

Q Okay. Did you say that 30 seconds after Mr. Harp ran, okay, down the street, away from the interstate, 30 seconds later Mr. Nierenberg came out?

A It might have been a minute. But, yes, sir, it was very soon after.

Q And shot in the direction of where you had first seen Mr. Harp running 30 seconds to a minute earlier?

A Yes, sir, that's correct.

Q Okay. And you don't know how far Mr. Harp went?

A No, sir, I do not.

Q So you don't even know if Mr. Harp was present on the street anywhere at the time that you saw Mr. Nierenberg shoot the pistol?

A That is true, I don't.

Q So would it be fair to state that you just don't know where Mr. Harp was?

A Yes, that is fair to say.

Q And that he had -- and that the last you saw of him, was him running at a very high speed away from the house a minute before Mr. Nierenberg shot the pistol?

A Twice, in the same direction, yes, sir.

Q And then did you say -- did he shoot again after that, Mr. Nierenberg, I'm talking about?

A He shot twice.

Q Were they rapid fire, or were they --

A No, it was one shot, it might have been 30 seconds or a minute later, time was slowing down at that point, but it was bam, bam.

Q And did you look in the direction of where he shot at any time on either of the two shots?

A I could see which way he was shooting.

I couldn't see back behind there. It was still dark outside.

Q So you don't know actually who he shot at, if he shot at anyone?

A That's fair to say.

Q All right. And then did he -- was it then that Mr. Nierenberg came in the car and took the driver's seat and drove away?

A Yes.

Q And that is when you asked him what had happened?

A Right.

Q And then, if I wrote correctly, after a while, he said something to the effect of, "No MF takes money from me"?

A Yes, that's correct.

Q I mean, those were the words?

A Yes, sir.

Q To that effect?

A Uh-huh (affirmative).

Q Did you further ask him what it was about?

A No, he just was banging the steering wheel in a rage, and he was just saying that nobody mother-fucking takes money from me.

Q Okay. And then you say at some point in time he put a gun to your head while he, I guess, while he was driving?

A Yes, sir, we were on the bridge at that point.

Q And threatened you and your family, that if you were to repeat what he said?

A Yes, sir.

Q Okay. And then you went to his -- he drove you to your house?

A Yes, sir.

Q Okay. And are you telling me that you were in fear at that time, that he was going to hurt you and your family?

A Yes, sir, I was.

Q And how long did -- were you in his presence, from that point on, or I think you mentioned he had to turn himself in for a misdemeanor offense?

A I was in his presence until I dropped him off at his house. I got gas, and I later met up with him to give him his money back, because I didn't want to make him angry with me about the money.

Q Okay. And, now, I think you mentioned

that you initially had not told the police anything that you had known?

A Right. Yes, sir.

Q Did you tell them that it was -- that you were close to him, and that he was your boyfriend, and that you didn't want to talk about it?

A No, sir, I never said that.

Q Is it your preface that you were still afraid for your family?

A Yes.

Q Okay. And when was the first time you ever told anyone that Mr. Nierenberg put a gun to your head?

A I told my mom, and when I spoke with Detective Bowers the second time, I told him as well.

Q The second time? When was that?

A I believe it was maybe five days later. I'm not sure on the exact date. Maybe it was the 14th. I don't know. I don't want to say a specific date. I don't know.

MR. TRUNCALE: Your Honor, may I please speak to Mr. Nierenberg?

THE COURT: Certainly. We have plenty

of time.

(Off-the-record discussion was held between the Defendant and his Counsel.)

MR. TRUNCALE: I'm finished with the witness, Your Honor.

THE COURT: Very well. Anything further? Thank you, Counsel.

MR. MOODY: Yes, ma'am.

REDIRECT EXAMINATION

BY MR. MOODY:

Q Ms. Pace?

A Yes, sir?

Q I want you to do me a favor. You described it a couple times now, and I think it's been fairly consistent, because I've watched you a couple of times.

I asked you once, and Mr. Truncale asked you: Describe how you saw, and by "how," I mean, when you saw Mr. Nierenberg shoot the gun at Carl Harp, you said there were two shots, correct?

A Do you want me to stand up and do it?

Q No, ma'am. Do the timing of those --

A Okay.

Q -- right now, like, hold on real

quick, like was it pow, pow, or give us that length of time --

A Okay.

Q -- that you think was between there?

A I saw him run out, and then JR came out, and he stood there, and shot once, pow, and then it was pow, so...

Q Okay. Now, hold on.

A Okay.

Q Do you realize that that was four seconds, not 30 seconds?

A Time was going by really slow, so it could have been quicker.

Q And that's the point that I'm trying to make.

A Right.

Q Do you realize how long 30 seconds really is?

A At that time it could have been quicker. Yes, that's correct.

Q Okay. Well, let's do this: First gunshot is now. Second gunshot is now. Was it that long in between the gunshots?

A No, sir.

Q Okay. And the reason I'm asking that,

is because, can you agree, a grown man can run a really long way?

A Yes, sir.

Q In that span of time?

A Yes, sir.

THE COURT: And, for the record, that was 30 seconds, approximately.

MR. MOODY: Thank you, Your Honor.

THE COURT: Okay.

BY MR. MOODY:

Q That's a really long time, correct?

A Yes, sir.

Q Versus how far a man can run in four seconds?

A Right.

Q And whenever Mr. Truncale was asking you where exactly was Mr. Harp, and you said you couldn't tell where he was --

A (Nods head up and down.)

Q -- or, actually, he said, Mr. Harp was down the street, you didn't know where he was, something along those lines, would it be fair to say, and you tell me if I'm wrong, you didn't know where Mr. Harp was, simply because of the darkness and the angle, not because --

MR. TRUNCALE: Objection to leading, Your Honor, that is such a clearly improper question.

MR. MOODY: Actually, Judge, that's why I give them an option, and say, you tell me if I'm right or wrong.

THE COURT: If you'll please just rephrase it, and we will move along.

BY MR. MOODY:

Q All right. Well, let me ask you: Do you think you didn't know where Mr. Harp was, because he had been able to run a mile-and-a-half down the street, and was out of danger; or did you believe, from what you were observing, that Mr. Harp was still in danger?

MR. TRUNCALE: Objection to the compound question, Your Honor.

THE COURT: Sustained.

BY MR. MOODY:

Q Did you believe Mr. Harp was in danger?

A I did, once he shot twice at him.

Q Did you think he was aiming at him, and thought he might hit him?

A I absolutely thought he was aiming at

him.

Q Okay.

MR. MOODY: I don't have anything further, Your Honor.

THE COURT: Anything further from this witness?

RECROSS-EXAMINATION

BY MR. TRUNCALE:

Q I did not put words in your mouth, did I, when I asked you if you had -- if you knew where Mr. Harp was at the time the shots were made?

A No, you didn't.

Q That was your answer to my -- the fact of the matter is, you don't know where Mr. Harp was --

A No, it was --

Q -- when you saw Mr. Nierenberg shoot a pistol?

A When I answered your question originally, I said it was dark, because it was still dark.

Q You need to answer my question now.

MR. MOODY: Judge, I believe, she's trying to.

THE COURT: Okay. If you'll just let each of you -- we don't have any time pressure this afternoon.

THE WITNESS: Okay.

THE COURT: We have plenty of time.

THE WITNESS: Yes, ma'am.

THE COURT: So if you'll just finish your answers, and if you'll finish your questions, we'll have a nice clean record.

THE WITNESS: Yes, ma'am.

THE COURT: Okay. Just so the record is clear, were you -- I think you were not quite finish with your answer?

THE WITNESS: I was not, but...

THE COURT: Okay. You may finish.

THE WITNESS: Okay.

THE COURT: And then, Counsel, you may certainly proceed.

THE WITNESS: Originally, I said that it was dark outside. I did not see exactly where Mr. Harp was at that time.

I know for a fact the direction he was running in was the opposite side. My car was parked facing towards the interstate (indicating). He ran back over here

(indicating). And that is the vicinity in which Mr. Nierenberg shot at twice.

BY MR. TRUNCALE:

Q But now it's not 30 seconds, it's less than 30 seconds?

A No, at that time, it slowed down a lot, at that specific time. But since Mr. Moody did that process, it was not that length of time, no, sir.

Q How long was it?

A Maybe five seconds. It was pow, pow. I mean, it --

Q How long after you saw Carl Harp running, was it that Mr. Nierenberg came out?

A Maybe ten seconds later. He got out the fence, and down there, and then Mr. Nierenberg --

Q Well, that's what I'm trying to get at.

A Yes, sir.

Q So you saw Carl Harp running?

A Yes.

Q Fast?

A He left the gate, and two seconds later Mr. Nierenberg came out and pointed his

gun --

Q Excuse me?

THE COURT: Okay. Let her finish.

MR. TRUNCALE: Was that two or ten? I'm just trying to -- was it two or ten?

THE WITNESS: Two seconds. It was he ran that way (indicating), and then Mr. Nierenberg came out. He wasn't too far passed the fence, before Mr. Nierenberg came out.

BY MR. TRUNCALE:

Q Ma'am, do you agree, that you have given several different times for the same event? You said Mr. Nierenberg came out 30 seconds after Carl Harp was running at a fast speed in a different direction, and then ten seconds, and then two seconds?

A Yes, sir, but when Mr. Moody stated the 30 seconds, and played it out, it wasn't that long.

Q Well, is it 30, two, or ten?

A I would say, approximately, ten. I don't know. I didn't have a stopwatch with me. I'm sorry.

Q Remember the sentencing that you were

at?

A Yes, sir.

Q Your sentencing?

A Yes, sir.

Q At that sentencing, didn't both Mr. Bowers and Mr. Moody on several occasions argue for you to get probation, because you had been lying so much to them about the alleged events?

A I'm not sure if that was their statements. I know Detective Bowers said that a few times.

Q That you were lying?

A No, I don't believe I was lying. I never came forth and said anything.

Q All right. I'm asking you: Wasn't it a contention of Mr. Moody that you have been lying throughout the investigative process?

A I believe he might have said that.

Q And wasn't it Mr. Bowers' contention as well?

A Yes, sir, I believe so.

Q And didn't you -- do you remember Mr. Bowers saying that the whole concept of Mr. Nierenberg having a gun to your head, just

didn't make sense, because you went and you stayed with him after the event, and he concluded that you were lying about that too?

A I --

MR. MOODY: Objection.

THE COURT: Okay. Before you answer, there's an objection.

MR. MOODY: Judge, at this point, I would say we are getting into irrelevant and improper, because he's actually trying to, I guess, cross-examine her on hearsay statements made by the detective about her credibility. The credibility is up to you to judge at this point --

MR. TRUNCALE: Your Honor?

MR. MOODY: -- and not having another witness comment on credibility of her, which is what he is basically is trying to do.

Mr. Moody says you're a liar. The detective says you're a liar. So, therefore, you are a liar. That's the cross that's going on right now, Judge.

MR. TRUNCALE: Your Honor, this is a -- this is prosecutorial misconduct to try to leave you with the -- with the idea of a

false idea, that the government in one setting on the very, very same identical account calls her a liar, says, as a -- says, we cannot give her an informateur on what she said, specifically about what he's having her say today before a second Judge.

You can't do that without violating a person's basic due process of law rights. That is prosecutorial misconduct of the highest order. It's either if -- there has to be a good-faith basis for him to present the same witness with a different view.

If she's not lying, then he was lying, that Mr. Bowers and Mr. Moody were lying to Judge Norton.

And, if not, they can't leave you with the impression that she is to be believed, when they're -- the government doesn't get the -- they are not allowed to take a different position.

If there's something that has come -- come about since her sentencing, I believe, in August of 2013, that has caused them to have a different change of mind, that's fine, but this is the prosecutor, this is the

State, the State can't do that.

His due process rights are being violated. Either they withdraw the false testimony that she was telling the truth, or they explain the good-faith basis for the change.

THE COURT: Okay. I'm going to hear from the State, and no one is going to interrupt.

MR. TRUNCALE: It's false.

MR. MOODY: I just wanted to make sure he was done with his rant about how unethical the State is.

MR. TRUNCALE: You can't have it both ways, Your Honor.

THE COURT: Okay. No, no, we're not going to argue with each other.

Really, what's in front -- I'll hear from you, Mr. Moody, but what's in front of me is an objection to a particular question. It's really that narrow.

MR. MOODY: Your Honor, unlike Mr. Truncale, I'm not going to sit here and cast character aspersions and call him unethical.

I will try my hardest to remain as professional as I can right now, despite the fact that it seems as though in every single, every single -- you know I am the division chief of homicide.

Do you know how many different homicide prosecutors have had to have a case where Mr. Truncale has called them unethical and prosecutorial misconduct --

MR. TRUNCALE: Your Honor?

THE COURT: Okay, both of you, we're going to stop.

MR. MOODY: -- in every single hearing?

MR. TRUNCALE: Your Honor, this is uncalled for. He either has a --

THE COURT: Okay, this is what we're going to do, this is what we're going to do: Because, for the record, counsel are understandably having emotions, it's a very important hearing.

What I am going to do, is we are going to take a two minute break, so everyone can just take a little calm down time.

It's 3:44. I have all afternoon, all evening. So I'm available. I'm just going

to come out in about three or four minutes, so everybody can just calm down.

And I'm going to ask the court reporter to pull up the last question. Why don't you read it, so we can be thinking about what's actually in front of me to rule on. I'm going to rule when I come back.

All I want to have right now is for the court reporter to read the question, and we're going to take a three or four minute break, and then we're going to come back.

MR. MOODY: I'm fine, Judge. I would actually like to go ahead and answer and proceed forward now. I'm quite fine.

THE COURT: Nobody wants to take a break?

MR. MOODY: I don't need one, Judge.

THE COURT: Do you want to take a break?

MR. TRUNCALE: I don't need one, Your Honor.

THE COURT: Okay. So we won't take a break, but I still want the question read back. For the record, everybody in this courtroom is a human being, and everyone is

entitled to have emotions, but I would just ask that everyone proceed forward in a professional manner, and we'll proceed as it needs to happen.

MR. MOODY: Yes, ma'am. I would like to be able to respond for the record --

THE COURT: You will. No, you will be able to.

MR. MOODY: -- of these accusations.

THE COURT: But I just want to hear the question, the pending question.

(Last question read back by the court reporter.)

THE COURT: Okay. You may respond, sir.

MR. MOODY: Okay. In regards to the accusation of prosecutorial misconduct, for what I can only assume would be, I guess, endorsing perjured testimony and/or me committing a fraud upon the Court, of Judge Norton, as well as this Court, I will simply state this: There has been no change in the position of the State, of me, that has handled both of these cases from their inception.

Ms. Pace was arrested by Detective Bowers for accessory after the fact, because in his experience and opinion, he believed she was not being truthful.

She has stated she was not being forthcoming. We, as lawyers, are well aware of impeachment by omission.

Someone in this case, Ms. Pace, spent nearly two years of her life in the Duval County Jail, because she was charged with accessory after the fact, because when she was interviewed, she did not come forward and say what she knew, basically.

It was the State's position then, it was the State's position, and I argued it in front of Judge Norton, and it's my position right now, that she was convicted of accessory after the fact, because she should have come forward. First of all, she should have come forward voluntarily.

Whenever he (indicating), was away from her (indicating), so she wasn't in fear for her life, or the life of her child, or the life of her mother, she should have called the police and said what she knew. That's

one of the arguments I made. It doesn't mean that she's guilty, but it was an argument I made.

But, specifically, when Detective Bowers said, "what happened that night," and tried to interview her, and she basically said, "I don't know what you're talking about, and I don't know nothing about nothing." That assisted this man at the time in eluding prosecution, and that's all accessory after the fact is, it is to either assertively or indirectly assist an individual to avoid prosecution.

And it was the State's belief, and the detective's belief, that by failing to give us the information we needed, that she was helping him avoid prosecution, so she was arrested for that.

When you --

THE COURT: And just for the record, has she been adjudicated of that felony?

MR. MOODY: She was adjudicated and spent 714 days, if I remember correctly, in jail for it.

THE COURT: And what degree felony is

that?

MR. MOODY: That would have been a second-degree felony, I believe, Your Honor.

THE COURT: Okay. So she is -- I understand. She is an adjudicated -- she's been adjudicated --

MR. MOODY: She's a convicted felon.

THE COURT: -- and guilty of a second-degree felony. I understand. Okay.

MR. MOODY: It was the State's argument, in front of Judge Norton, that she needed, it was my argument, that she needed to be put on probation.

Because, candidly, as she has tried to testify, I would submit to you, as truthfully as she can, and as openly and honest, she was a raging drug addict at the time. That's what she was.

She has admitted, it was a horrible way to live, but she was addicted to any kind of painkillers she could get her hands on, and she would do what she could do, to do so.

And I argued that she had spent years in jail, she needed to be on probation, so that she could get drug treatment, she could

get a drug counselor, so that she would be supervised. That was the intent from the very beginning when the State asked for -- for probation. That's what I wanted.

Judge Norton disagreed with it. She's entitled to do that. One of the arguments I made for why she shouldn't just be time served and let go was because she wasn't forthcoming.

Maybe it's semantics that we say she wasn't truthful. She says, "I didn't lie." And, I guess, technically, she's right, because she just didn't tell us.

Is that being untruthful, in the eyes of the law, I believe it was, yes. And I argued that it was, yes.

She's telling you what she says now, and I have -- unless Mr. Nierenberg -- or, excuse me, unless Mr. Truncale has something that I don't remember, that he's going to be able to produce a transcript that shows I say what she is saying right now is a lie, I don't remember what it is.

Because what I'm hearing now, is what I heard when we proffered with her, is what I

heard when we talked with Mr. Shorstein, it's what I heard when she was in her sentencing hearing. She has been consistent ever since she pled guilty, this was the story that she has given --

THE COURT: I think this --

MR. MOODY: -- that I remember.

THE COURT: Okay. And I think this would be a good time, and I'll certainly hear from you again, sir, but this would probably be an appropriate time for me to place on the record a discussion that I had at sidebar some time ago earlier today during this hearing with counsel during the testimony of this witness.

I have now heard that that sentencing hearing was approximately August of 2013. I did not remember when it had taken place, but I attended a short portion of a hearing in front of Judge Norton, during the time that I was seeking to prepare myself to hopefully be appointed by the governor to the circuit court bench.

And because I was a very experienced civil litigation lawyer, but I had not been a

criminal law attorney, I would make time and go and observe criminal court proceedings, and I realized, during the course of the hearing today, that I thought some of the facts were sounding similar to facts that I had heard at a proceeding that I attended a portion of, not the end, a portion of, in front of Judge Norton, where Mr. Moody was the prosecutor, and Mr. Shorstein was the defense attorney.

And I immediately, in an effort to be very ethical and candid and upright about it, I immediately called counsel to sidebar, and said I wanted to make this disclosure.

And I did not even realize, until I was told today, that I actually had been at this witness's sentencing hearing. I did not stay for the end of the hearing. I had some reason I had to leave.

So I did not even remember that it had been a sentencing hearing. And anything that I heard at that hearing absolutely is not being considered by me at this time.

All I remember from it was that there was some testimony of this witness's mother,

really about how she was doing, and that she was, I think, at school, and was doing better for her drug problem.

And after everything I've heard today, I realize the issue was whether or not she would be on probation. I did not even remember that today. So I did not remember the specifics of that. In fact, I thought it had been community control.

But the point is, Mr. Truncale, we then took a break, and you spoke with your client, and if you would just state on the record that you did have that discussion with him?

MR. TRUNCALE: I did.

THE COURT: And is there any request from either side that I step away from this case, based on that information?

MR. MOODY: Not from the State, Judge.

MR. TRUNCALE: Not from the defense either.

THE COURT: Okay. So, now, let's -- now that everything has been aired out very, very openly, I understand the position of the defense, and I understand the position of the State.

MR. TRUNCALE: May I respond still?

THE COURT: You may respond.

MR. TRUNCALE: Your Honor, I did not expect -- I am surprised by the position that the State is taking now. I tell you it is diametrically opposite to the position they took at her sentencing.

Not merely on the fact that -- the fact that she was an accessory after the fact had no bearing whatsoever on my objection.

My objection was I'm testing her on her credibility. She's lying about this. She's saying she didn't lie.

And I'm saying the agent to whom she made all the statements said she was lying, lying about a very important statement that was admitted today, about putting a gun to -- that Mr. Nierenberg put a gun to her head, and Mr. Bowers, I tell you, testified, and I want to supplement this with the copy of the transcript of that proceeding.

I have no idea, if necessary, I'll ask for a continuance, so that I can supplement this, because I want to perfect the record, that they have -- that the State has changed

its position, and I believe it's a Constitutional violation to my client under those things.

THE COURT: Okay. So --

MR. TRUNCALE: So I would like to ask the Court to take judicial notice of the deposition -- excuse me -- of the transcript of the sentencing proceedings of Ms. Ashley Pace, the entire sentencing proceedings, about which you spoke, where Mr. Bowers testified, and when Mr. Moody advanced arguments against her for a more stringent sentence.

THE COURT: Well, and I would want -- I'll hear from the State, but I don't even have that transcript in front of me.

So we probably would not finish the hearing today, if we're going to do that.

MR. TRUNCALE: I would like to.

MR. MOODY: Judge, if I may?

THE COURT: And that's okay.

MR. MOODY: I guess, the point -- I guess, what I'm lost in, the objection is, and I don't even see why it's -- what relevancy that has to do. If you look at the

objection, this is the most easiest black letter issue.

A defense attorney does not get to look at a witness and go, isn't it true the detective thinks you're lying? Isn't it true that Joe Blow thinks you're lying? That's not permissible cross-examination.

If he wants to call Detective Bowers, so that Detective Bowers gets up there and says, "I don't believe Ashley Pace." He's allowed to do that.

But you don't get to sit there during a trial, hearing, or anything else, and go, "Ma'am, isn't it true that George Washington thinks you're a liar, and not telling the truth today?" That is not proper cross-examination.

THE COURT: Okay. So the bottom-line is --

MR. TRUNCALE: Your Honor, it's not a cross-examination issue.

THE COURT: No, no, let me talk. Let me talk. The bottom-line is there is an objection that I need to rule on, and we've had a lot of discussions, but I'm ready to

rule.

MR. MOODY: Yes, ma'am.

MR. TRUNCALE: Your Honor?

THE COURT: On the objection.

MR. TRUNCALE: Your Honor, what the objection he claims a cross-examination question is not my -- my statement is that her testimony should be stricken, because of prosecutorial misconduct. That's a whole different thing.

And I need time, because this is a surprise, I was told by Mr. Moody that Ms. Pace was not going to testify, there was no need to.

MR. MOODY: That is not true.

THE COURT: No, no, no, listen.

MR. MOODY: Are you --

THE COURT: Listen.

MR. MOODY: Your Honor, I think we do need to take that three minute break now.

THE COURT: Well, let's take a three minute break.

MR. TRUNCALE: Let's take a break.

THE COURT: And when we come back, I'm going to rule on the objection. That's all

that's in front of me to rule on.

MR. MOODY: All right.

THE COURT: We're going to take a three -- actually, we're going to take five minutes.

Do you need a break? I'm addressing the witness.

THE WITNESS: (Shakes head from side to side.)

THE COURT: No. Okay. Counsel?

MR. MOODY: Your Honor, before that five minute break, because I do think it will be needed, I have emails that I would be more than happy to produce.

There was a discussion where point blank Mr. Truncale said, you will need to have Ms. Pace here to testify --

THE COURT: Okay, stop, stop, stop, stop.

MR. MOODY: -- because --

THE COURT: Let's take our break. I think everybody needs to calm down.

We're going to take -- we're going to take seven minutes, and then I'm going to rule on this objection.

MR. TRUNCALE: It's not.
THE COURT: And we'll --
MR. TRUNCALE: It's a motion.
THE COURT: No, actually -- well, we'll talk about it in seven minutes.
So we're in -- we're on a recess.
MR. MOODY: Thank you, Judge.
THE COURT: Okay.
(Recess held.)
(Defendant not present in the courtroom.)
THE BAILIFF: All rise.
(Everyone complies.)
THE BAILIFF: Circuit Court Division CR-H is back in session.
Thank you. You may be seated.
(Everyone complies.)
THE COURT: Okay. For the record, counsel is present. The defendant is not present. We'll wait for the defendant.
MR. TRUNCALE: Your Honor, I've got the transcript (indicating).
THE COURT: If you could just wait.
(Defendant enters the courtroom.)
THE COURT: For the record, counsel are

present, and the defendant is before the Court.

Without going into any details, or any specifics, I am going to stop the hearing. I have the discretion to do that, and we are going to finish, I'm going to give you an option of finishing it next week or another day, but emotions have been running high, and this is a very important matter, and I just want to give everyone a little bit of time to calm down. So that is what I am doing.

So I am excusing the witness. You are not done with your testimony.

THE WITNESS: Yes, ma'am.

THE COURT: You are not to discuss it.

THE WITNESS: Yes, ma'am.

THE COURT: And if you could please just step out into the hallway, because I'm going to give Mr. Moody a chance to talk to you about scheduling.

THE WITNESS: Okay.

THE COURT: So if you could please just step into the hallway.

THE WITNESS: Yes, ma'am.

(Witness exits the courtroom.)

THE COURT: And I want to know if you-all would be available. I have a lot of time available next week. I don't know what counsels' schedules are like next week, but I have no trials next week.

MR. TRUNCALE: Your Honor, I don't need a continuance, because I have the transcript.

THE COURT: I am, of my own, continuing the hearing.

MR. TRUNCALE: Oh, okay.

THE COURT: And so it's being continued.

MR. TRUNCALE: But may I first admit this transcript?

THE COURT: Well, you can address that in a moment. First, I want to talk about scheduling. So, and I'll be happy to address that in a moment. Would counsel be available on Wednesday afternoon?

MR. MOODY: Yes, ma'am.

MR. TRUNCALE: May I check my calendar, Your Honor?

THE COURT: Sure. I have plenty of time.

(Pause.)

THE COURT: I can give you from 2:00 to 5:00 on Wednesday. I can give you Thursday afternoon.

MR. TRUNCALE: Wednesday is fine for me, if it's fine for Mr. Moody.

THE COURT: Okay. Would you like from, I think 2:00 to 5:00 should be enough time to finish. Do you agree that three hours is sufficient? I can give you 2:00 to 6:00, 2:00 until the end of the day.

MR. MOODY: I will be here whenever the Court would like.

THE COURT: Okay. Well, 2:00 on Wednesday, it sounds like is reasonable.

And I really think probably the best thing to do is just calm down.

I know you want to admit that, but there's actually a pending objection, and I've excused the witness.

So, I think, just to keep a very proper record, I'm just going to stop right here, and whatever you want me to review, you can bring it on Wednesday.

MR. TRUNCALE: Yeah, I'm making a motion to exclude her testimony, based on

perjury, and the State knowingly presenting it as such.

THE COURT: That's fine. And if you choose to prepare any sort of written motion, you're welcome to do that. I'll leave that in your discretion.

I don't think there's anything else we need to do today. We have actually, even though, for the record, even though there have been emotions toward the end of the hearing, we have accomplished quite a bit today.

I've heard from Dr. Bloomfield, and I know a great deal more about this case today, then I did when I walked in here today. So a lot has been accomplished.

And is there anything else that counsel feels like we absolutely have to do right now?

MR. MOODY: Yes, ma'am. There is one thing.

THE COURT: Okay.

MR. MOODY: Since this is going to be an issue, and since I believe Mr. Truncale is in the possession of the transcript, and no

one else is, at this time, I would ask, because I don't believe I have a copy of it, and since this is going to be such a -- the only thing I know, is he was running around reading pages of it, while we were on break.

THE COURT: Okay. So wait a minute.

MR. MOODY: But I would like to go make a copy.

THE COURT: Okay. So this is a transcript. Could you just state for the record what transcript it is?

MR. TRUNCALE: It is the transcript of the sentencing proceedings of Ms. Pace.

THE COURT: And the date is August?

MR. TRUNCALE: Oh, I'm sorry, Judge. It is, no, it is March 27th, 2014. Apparently, August was her deposition date.

THE COURT: Okay.

MR. TRUNCALE: This was the sentencing date.

THE COURT: March 27th, 2014, and that's in line with my memory, so...

MR. MOODY: I was just simply asking if we can go ahead and make copies of it now, so

that the Court can read it in between now and then, and I would be able to read it in between now and then.

THE COURT: Isn't --

MR. MOODY: Because, clearly, we will be addressing this whenever we come back.

THE COURT: Okay. So everyone wants to read it. But isn't there a rule from the court reporter that the State has to pay for a copy?

MR. MOODY: I don't know.

THE COURT: I think so.

MR. MOODY: I have no idea what the court reporter administrative rule is.

THE COURT: I think that there's a rule about that.

MR. MOODY: If you would like me to order from them, that's fine, but the only problem is we're dealing with, what, three or four days?

THE COURT: I'll just ask our court reporter: Do you think there will be any problem with them making a copy?

MR. MOODY: That's okay, we'll take care of it.

THE REPORTER: No, Your Honor, I don't believe so.

THE COURT: Our court reporter has indicated there's no problem.

MR. MOODY: We'll take care of it, Your Honor. Your Honor, we'll take care of it.

THE COURT: Okay. And if a copy -- if you would like me to review a copy of this, in advance of the next hearing, if it could be emailed to my judicial assistant Monday or Tuesday, I will take it home. I will read it.

MR. TRUNCALE: If it's proper, I'll email it to both, both you and Mr. Moody today.

THE COURT: I think that's fine.

Do you agree, Mr. Moody?

MR. MOODY: I'm asking for it, so, yes, ma'am, I do.

THE COURT: Very well. And that way we'll have it. I'll read it over the weekend.

MR. MOODY: Yes, ma'am.

MR. TRUNCALE: May I suggest something? It might be wise to have Ms. Pace come back

at the sentencing, after I make this motion.

THE COURT: Oh, her testimony is not concluded. That's --

MR. TRUNCALE: Oh, okay.

THE COURT: I agree. She has to come back. That's why I asked her to stay in the hallway to talk about scheduling.

Why don't we just bring her back here, and on the record talk about the scheduling together?

I mean, we can do that, because she's technically still on the stand.

MR. TRUNCALE: Yes, Your Honor.

THE COURT: And we'll do this in open court, on the record, to make sure that everything is fair and accurate.

Just so you know, I intend to ask her if she can be here on Wednesday at 2:00.

Was she under a subpoena for today?

MR. MOODY: No, ma'am. If it was, it would have been a very long time ago.

Her appearance had been originally coordinated with Mr. Shorstein, and then each time it had been moved, I believe, he just contacted and asked her to be here.

THE COURT: Okay.

(Witness enters the courtroom.)

THE COURT: Okay. So, Ms. Pace, you're still under oath. You're here in the courtroom.

THE WITNESS: Yes, ma'am.

THE COURT: And we're working on scheduling, to try to proceed forward with the hearing.

Would you be available to be here next week on Wednesday at 2:00?

THE WITNESS: I just tried to call Mr. Shorstein, because I think I would feel more comfortable if he was here. That works for me, as far as that goes, so...

THE COURT: Okay. That's fine.

If she'd like to have her lawyer here, she's certainly entitled to do that.

And so I don't want you to say anything else, because I understand that you have that request.

Counsel, Mr. Moody, could you contact Mr. Shorstein?

MR. MOODY: Oh, I would be more than happy to, Your Honor.

THE COURT: A call to Mr. Shorstein, perhaps, just to ask if he could be here on Wednesday at 2:00.

MR. MOODY: Yes, ma'am.

THE COURT: And if he cannot, can you possibly come back Monday on a to be set?

MR. TRUNCALE: Yes, Your Honor.

THE COURT: Okay. Why don't we do this: Why don't we just pass the case to Monday on a to be set, and I'm going to save that time for you on Wednesday from 2:00 to 6:00. I am not going to schedule anything else.

But if we find out that's not available for Mr. Shorstein, if someone could please email my judicial assistant, so that I can open that time.

MR. MOODY: Yes, ma'am.

THE COURT: Okay.

MR. TRUNCALE: 9:00 here Monday morning, Your Honor?

THE COURT: Right. Well, actually, Monday is very unusual. I have juror qualification responsibility for the first time, and they want me there at 9:00.

So I have been telling people my calendar will start at 11:00, but I'm actually hoping for 10:30. I don't know how long it takes.

Do you have any experience in that, Counsel?

MR. MOODY: I know that the Judges that do that, generally, I think, they only come about 30 to 45 minutes late. I don't know if --

THE COURT: Okay. So if they've asked me to be there at 9:00, I may be done at 10:00? I may be here at 10:15.

Why don't we just call it 10:30 or 11:00, so that you're not waiting?

I've been calling the calendar 11:00 a.m. for Monday. It's usually 9:00.

MR. TRUNCALE: Okay.

MR. MOODY: I just -- I'm just going by memory. I don't remember. Every Judge is --

THE COURT: I think every time it's different, and it is the first time that I'm actually doing it, so...

MR. MOODY: Which, I wasn't sure.

THE COURT: It might take a little bit

longer.

MR. MOODY: It might take a little bit longer, since it's the first time.

THE COURT: Okay. So let's try for 11:00 a.m. on Monday.

MR. MOODY: Yes, ma'am.

THE COURT: Okay. And that way you can contact your lawyer, but, also, these attorneys can contact your lawyer.

THE WITNESS: Sure.

MR. MOODY: If the Court can inquire, just to make sure Ms. Pace understands, that she does not need to be here Monday at 11:00.

THE COURT: Right. You do not need to be here Monday --

THE WITNESS: Okay.

THE COURT: -- at 11:00.

THE WITNESS: Okay.

THE COURT: But the Monday hearing is a scheduling hearing --

THE WITNESS: Okay.

THE COURT: -- to work on another date.

THE WITNESS: Okay.

THE COURT: And I'm offering to everyone that I'm available Wednesday from

2:00 until 6:00 or whenever.

But since you've indicated you would like to have Mr. Shorstein here, which is certainly fine, we have to find out if he's available.

THE WITNESS: Okay. Yes, ma'am.

THE COURT: Very well.

MR. MOODY: Thank you.

THE COURT: And I'm just instructing you: You are not to discuss your testimony with other people.

THE WITNESS: Yes, ma'am.

THE COURT: Your testimony is not complete.

THE WITNESS: Yes, ma'am.

THE COURT: Okay?

THE WITNESS: I understand.

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: Although, you can talk to your lawyer. She can always talk to her lawyer. Everyone agrees with that, right?

MR. MOODY: Yes, ma'am. She can talk to Mr. Shorstein.

THE COURT: Right.

MR. MOODY: Yes, she can.

THE COURT: And, for the record, Mr. Truncale, you agree, she can talk to Mr. Shorstein?

MR. TRUNCALE: Oh, absolutely, Judge.

THE COURT: You can talk to your lawyer, but you can't talk to your family or anyone else.

THE WITNESS: Yes, ma'am.

THE COURT: Okay. Thank you, very much. You're excused for the day.

THE WITNESS: Yes, ma'am.

THE COURT: Thank you.

(Witness exits the courtroom.)

THE COURT: Does anyone -- would anyone like us to just call? Do you want to step out in the hallway and call Mr. Shorstein, and see if he's available?

MR. MOODY: I have his number. I'll be more than happy to, Your Honor.

THE COURT: I think, if we can avoid the to-be-set hearing, it would be efficient.

MR. TRUNCALE: That would be great, Judge.

MR. MOODY: If you would allow me?

THE COURT: That's fine.

(Mr. Moody steps out of the courtroom.)

MR. TRUNCALE: Your Honor?

THE COURT: I don't even want you to say anything else while he's out.

MR. TRUNCALE: May I go over there just a minute (indicating)?

THE COURT: (Nods head up and down.)

(Mr. Moody enters the courtroom.)

MR. MOODY: Your Honor, I contacted Mr. Shorstein's cell phone, that is, the number that I had, and it went to voicemail.

I've left him a voicemail asking if he could contact me, and to check his availability for Wednesday at 2:00 p.m.

THE COURT: Very well. And just for the record, Mr. Truncale is present in the courtroom, with his client.

As an alternative, I'm available Thursday from 3:00 to the end of the day, that's a backup option. And I'm available Friday afternoon.

So you really have your choice of three afternoons.

MR. MOODY: I can tell the Court, I was

actually supposed to be in a murder trial next week, but because of the kidney stones, and the issues that I have been going through, Judge Daniel continued it, in case I end up back in the hospital. So my entire week had been left open. So I am open every day next week.

THE COURT: And --

MR. MOODY: And as long as I am not in the hospital, I will be here.

THE COURT: Okay. And just for the record, just because you've placed it on the record, Mr. Moody did meet briefly at sidebar with Mr. Truncale and me, to let us know that he has had some medical issues this week, and has been in the hospital, and that he was well enough to proceed today, but he is certainly addressing that issue right now, which is actually ongoing, but he wanted to -- he felt like he could work today, and he has been working.

MR. TRUNCALE: If anything arises with him in that regard, then I have no objection to any request that he has for a continuance.

THE COURT: Absolutely. Okay.

MR. TRUNCALE: And I have no conflicts with any day that you want to set it before the Court, as long as it would be 11:00 or later.

THE COURT: It would be in the afternoon.

MR. TRUNCALE: Okay.

THE COURT: Tuesday at -- Wednesday would be at 2:00. Thursday at 2:30 or 3:00. And Friday you can have 1:00 on.

MR. TRUNCALE: Any day, Your Honor.

THE COURT: Okay.

MR. TRUNCALE: So I would be available.

THE COURT: So, for purposes of the record, I'm going to pass this case to Monday as a to be set.

If, in the intervening weekend, a time is agreed upon, and you-all want to skip the to-be-set hearing, if you'd just email Linda Maldonado, you won't have to come on Monday. I'm trying to save you time.

MR. MOODY: Yes, ma'am. And if I hear from Mr. Shorstein over the weekend, I will email the Judge and Mr. Truncale.

MR. TRUNCALE: And whatever day is good

for him, I will agree, too.

THE COURT: Okay. And, I believe, you have Ms. Maldonado's email? She always handles all my scheduling, so...

MR. MOODY: I do.

MR. TRUNCALE: I do, Judge.

THE COURT: Very well.

So, for purposes of the record, is there anything else we must do today?

MR. MOODY: No, Your Honor.

MR. TRUNCALE: No, Your Honor.

THE COURT: Okay. So, for purposes of the record, this case is passed to Monday, April 27th, 2015, 11:00 a.m., Courtroom 408, during the regular calendar, to be set for continuation of sentencing and proceedings.

Thank you, very much.

MR. MOODY: Yes, ma'am. Thank you.

MR. TRUNCALE: Thank you, Your Honor.

* * * * *

(Whereupon, the proceedings for this defendant were adjourned at 4:19 p.m.)

- - -

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Ashley Whitehair, Certified Court Reporter, certify that I was authorized to and did personally stenographically report the foregoing proceedings on April 24, 2015, and that the transcript is a true and complete record of my stenographic notes.

/s/ Ashley Whitehair
Ashley Whitehair
Certified Court Reporter

Filing # 90044704 E-Filed 05/23/2019 03:55:44 PM

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA

v.

GREGORY MICHAEL NIERENBERG /

CASE NO.: 162010CF0011363AXXX

DIVISION: CR H

STATE'S NOTICE OF FILING THE DEPOSITION OF ASHLEY PACE

NOTICE OF NO CONFIDENTIAL INFORMATION WITHIN COURT FILING

Pursuant to Florida Rule of Judicial Administration 2.420(d)(2), the filer of the document attached, to-wit: State's Notice of Filing the Deposition of Ashley Pace, indicates that there is no confidential information included within the document being filed.

Comes now the State of Florida, by and through the undersigned assistant state attorney, and gives notice of the filing of the deposition of Ashley Pace, which was taken in this case on May 31, 2013. It is necessary for the State to file Ashley Pace's deposition in order to be able to accurately and completely argue the facts of the case relative to the Defendant's Motion because this case resulted in a plea rather than a trial making the record more limited. In support of the filing of Ashley Pace's deposition, the State would argue as follows:

1. A pre-trial deposition must be filed in order to make the deposition part of the record so that the trial court may consider the deposition when it rules upon a post-conviction motion. *Harrell v. State*, 79 So.3d 231 (Fla. 2nd DCA 2012).
2. If the trial court references a document in its order that is not part of the record, the court would need to supplement the record with the referenced document. *Harvester v. State*, 817 So.2d 1048 (Fla. 2nd DCA 2002).

EXHIBIT K

ACCEPTED: DUVAL COUNTY, RONNIE FUSSELL, CLERK, 05/28/2019 11:43:40 AM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing notice, along with the deposition, was e-mailed to Michael Ufferman at ufferman@uffermanlaw.com, on this 23rd day of May, 2019.

Respectfully submitted,

MELISSA W. NELSON
STATE ATTORNEY

By : /s/ Sheila Ann Loizos
Sheila Ann Loizos
Assistant State Attorney
Florida Bar No. 0849294
311 West Monroe Street
Jacksonville, Florida 32202
(904) 255-2903
sloizos@coj.net

IN THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.:
16-2010-CF-011363-AXXX

DIVISION: CR-H

STATE OF FLORIDA

vs.

GREGORY MICHAEL NIERENBERG

DEPOSITION

OF

ASHLEY PACE

Taken on behalf of the Defendant

DATE TAKEN: May 31, 2013

TIME: 1:45 p.m. - 2:55 p.m.

PLACE: Duval County Courthouse
501 W. Adams Street
Room 2422
Jacksonville, FL 32202

Examination of the witness taken before:

Dena Miller
Certified Court Reporters
One Independent Drive, Suite 3210
Jacksonville, FL 32202
904-356-4467

A P P E A R A N C E S

APPEARING FOR THE STATE

Jeff Moody, Assistant State Attorney
Office of the State Attorney
220 East Bay Street, 13th Floor
Jacksonville, FL 32202

- - -

APPEARING FOR THE DEFENDANT

Hank M. Coxe, III
Bedell Dittmar Devault Pillans & Coxe
The Bedell Building
101 East Adams Street
Jacksonville, FL 32202
904-353-0211

- - -

APPEARING FOR THE WITNESS ASHLEY PACE

Harry L. Shorstein, Esquire
Shorstein & Lasnetski, LLC
6550 St. Augustine Road, Suite 303
Jacksonville, FL 32217

- - -

I N D E X

WITNESS:	PAGE
ASHLEY PACE	
Direct Examination by Mr. Coxe	4

- - -

N O E X H I B I T S

- - -

ASHLEY PACE,

having been produced and first duly sworn as a witness, testified as follows:

THE WITNESS: Yes, ma'am.

DIRECT EXAMINATION

BY MR. COXE:

Q Would you tell me your full name, please?

A Ashley Lorraine Pace.

Q Ms. Pace, I'm going to assume that Mr. Shorstein -- Harry Shorstein, this Mr. Shorstein -- and Mr. Moody explained to you what we're doing today?

A Yes, sir.

Q Which is essentially for me, on Mr. Nierenberg's behalf, to ask you questions.

A Yes, sir.

Q Do you have any questions about this process before we start?

A No, sir.

Q Have you ever had your deposition taken before?

A No, sir.

Q In any situation?

A I've had a deposition for a car accident but not pertaining to this case.

Q One thing I may do is be a little faster than

usual just because of scheduling that we have here, but if that becomes an issue to you, just say so, just say time out, it's going too fast, or I'm not giving you time to answer the question, or something like that.

A Okay.

Q Okay? So where do you live?

A I live at 1903 Sutton Lakes Boulevard.

Q Do you live with anyone else?

A Yes. My mother, my son.

Q Your mother's name is?

A Linda Pace.

Q And your son's name is?

A Hunter Taylor.

Q How old is Hunter?

A Six.

Q And who's the father of Hunter?

A Scott Taylor.

Q Is Scott Taylor in Jacksonville?

A No, sir.

Q Does Scott Taylor have any relationship with Hunter?

A Yes, sir.

Q Where does Scott Taylor live?

A He's incarcerated.

Q Where?

A He's at Marion Correctional Institute.
Q Marion?
A Marion, yes, sir.
Q Is it a federal charge?
A No, sir.
Q What is he incarcerated for?
A Robbery.
Q And did that robbery take place in Jacksonville?
A Yes, sir.
Q How long ago?
A I believe in 2010 is when that incident occurred.
Q 2010?
A Yes, sir.
Q All right. Were you married to him?
A No, sir.
Q How long did you have a relationship with him?
A We were together for six years, but I've known him for ten years.
Q What is your date of birth?
A January 1st, 1984.
Q How long have you lived in Jacksonville?
A My whole life.
Q Can you tell me in your own words, Ms. Pace,

just your personal history, in terms of where you grew up, where you went to school, work, jobs, all that stuff?

A Sure.

Q And then I'll stop you if that's all right.

A Okay. I grew up in Jacksonville on the southside. I attended Greenfield Elementary, and then we relocated to Arlington area, where I went to Fort Caroline Middle School and then went to Terry Parker High School. And I started working when I was 15. I started working as an intern at Barbizon Modeling company.

Q Were you still in school?

A Yes, sir. And when I was 16, I got another job, so I was working two jobs, at Cato's clothing store. And then at age 18 I started waitressing at Bono's Barbecue, and from there went to Woody's Barbecue and Jax Barbecue and back to Bono's. And then I worked for Citibank as a collection agent. I was there for two years.

Q Let me stop you just so I get a good perspective.

A Sure.

Q When you first went to the first Bono's, you were 18?

A Yes, sir.
Q How old were you when you went to Citibank?
A Let's see. I was 22, 23, maybe.
Q Okay. All right. So you're at Citibank.
A Yes, sir. I injured my back, so I wasn't able to work.
Q How did you do that?
A I was in a car accident.
Q Was that the same car accident you mentioned where you had your deposition?
A Yes, sir.
Q Who represented you in that case?
A Farah & Farah. Lloyd Manukian was my attorney.
Q Was there a trial?
A No, sir.
Q How long had you been at Citibank before your back got injured?
A Two years.
Q What'd you do after you got injured?
A I wasn't able to work.
Q Is that true up to today?
A Yes, sir.
Q Do you remember how old you were when you left -- or when the accident happened?

A Well, I had the accident, and I reinjured my back, and that's when I was not able to work anymore. And that happened probably five years ago.

Q How do you support yourself?

A My mother supports me.

Q What does your mother do?

A She is a computer programmer at Blue Cross and Blue Shield of Florida.

Q Have you ever been arrested?

A Previous to this time?

Q Anytime. Just even if you want to include this time. However you want to do it.

A Just for this incident.

Q On each of the places you told me you worked, going backwards from Citibank and Bono's, Jax Barbecue, Woody's, Bono's, had you ever been terminated from any of those jobs?

A No, sir.

MR. COXE: Off the record.

(Discussion off the record.)

BY MR. COXE:

Q Had you ever been involved in any other lawsuits other than that accident you told me about?

A No, sir.

Q And did you settle the lawsuit?

A Not as of yet, no, sir.
Q Oh, it's still going on?
A Yes, sir.
Q Since five, six years ago?
A Yes, sir.
Q What's the status of it right now?
A I'm waiting to hear back from the defendant's attorneys.
Q I'm just curious. Is it an accident against an insurance company, or is it against other people?
A It's against the insurance company.
Q Just taking that time frame from the age of 18 at Bono's up until the accident, were you living with your mother then?
A Not always, no, sir.
Q Where would you have been living?
A I had two separate apartments and two houses.
Q When in this series of events did Scott Taylor come into the picture?
A I've known him since the age of 18 or 19.
Q And is there a period of time which you dated him, or how did that work?
A Yes. I've dated him from the age of 18, 19. We were together for six years.
Q You know Mr. Nierenberg?

A Yes, sir.
Q And how do you know him? What name do you know him by?
A I know him as JR.
Q And how long have you known him?
A Approximately nine months.
Q When's that nine-months time frame you're talking about?
A Before the incident occurred.
Q From the -- what you call the incident is when the man died?
A Yes, sir.
Q And you back that up nine months?
A Yes, sir.
Q All right. How did you first meet him?
A I met him through a group of friends we had in common.
Q Who are those friends?
A Bobby and Ben.
Q And do they have last names?
A I'm not sure what the last names are.
Q And were they friends of his or friends of yours or both?
A Both.
Q And when you first met him, what were you

doing workwise or livingwise?
A I was living in a house on Derringer, and I was not working at the time.
Q So you were not living with your mother?
A No.
Q So you have not been living continuously with your mother for the last six years?
A No. No, sir.
Q How many other places have you lived besides with your mother in the last -- or since the automobile accident?
A Since the automobile accident? An apartment, and a house, two houses.
Q Were you living with other people in those places?
A Yes.
Q All right. Where was the apartment?
A The apartment was at Coopers Hawk in Mandarin.
Q And who were you living with there?
A Scott Taylor.
Q What about the two houses?
A The first house I was living there, it was just me and my son.
Q Where was that, what house?
A That was off of -- I believe it's Loretto

Road.

Q Uh-huh.

A And the second house, I lived with Kimmy Taylor.

Q With who?

A Kimmy.

Q K?

A Yes, sir. And her son.

Q Is that the order in which you did it: Coopers Hawk, Loretto Road, and then Kimmy Taylor?

A Yes, sir.

Q Where was that?

A The last house was on Derringer.

Q When you're living at these -- is there any other places you lived besides with your mother and these three places?

A I lived at another apartment when I was 18. It's off of Baymeadows Road. I'm not really sure what the name of it is.

Q The three places you mentioned, Coopers Hawk, Loretto, Derringer Road, were all those since your accident?

A Yes, sir.

Q And how were you supporting yourself when you lived at those places?

A I worked for Citibank, so that's when I lived at Coopers Hawk. And then the first house on Loretto Road I also worked at Citibank and was getting disability.

Q Do you collect disability now?

A No, sir.

Q You mentioned earlier that since your accident your mother supported you?

A Yes, sir.

Q How does she do that?

A She makes good money. She's able to do so.

Q Does she give you a certain amount of money a week or month or...

A No, sir.

Q How does she do it?

A She supplies me with the house and food, and if I need something, she gets it for me.

Q When you said that Scott Taylor was convicted of armed robbery --

A I believe it was just robbery.

Q Robbery. Do you know anything about the facts of that case?

A A little bit.

Q What do you know?

A That he robbed a CVS pharmacy.

Q And do you know what CVS pharmacy was robbed of?
A I believe -- do you mean what he took?
Q Uh-huh.
A Prescription medication.
Q Do you know what kind?
A I believe it was Oxycontin. I'm not exactly sure, but I believe that's what it was.
Q Did Scott Taylor, as long as you knew him, ever own any firearms?
A No.
Q Were you at all involved in the prosecution of him?
A No, not at all. We were not together at the time.
Q Tell me about meeting JR Nierenberg. You say you had friends, mutual friends.
A That's correct.
Q You mentioned two of them. Any others?
A Yeah. My neighbor at the time was Sammy Green, and I became friends with him. And those were his friends, as well.
Q And is this a party you met him or...
A I would call it a get-together. I wouldn't necessarily call it a party.

Q Did you talk to him at all that first time?
A I believe so.
Q What did you understand from him or anybody else that he was doing at the time?
A He sold marijuana.
Q Is that something he told you?
A Yes.
Q And did he tell you the first time you met?
A Yes, I believe.
Q All right. Is there anything else he told you the first time you met?
A Not to my recollection.
Q And do you remember how it would come up that he told you he sold marijuana when he had never met you before?
A We were smoking marijuana, and someone was purchasing it from him.
Q While you were there?
A Yes, sir.
Q And where was this taking place?
A At Bobby and Shay's house.
Q Shay?
A Yes.
Q Who's Shay?
A That's Bobby's girlfriend.

Q What's Shay's last name?
A I'm not sure.
Q Did you or Mr. Nierenberg or anybody else at that time use any other drugs besides marijuana?
A I did.
Q What did you use?
A I had prescriptions for Methadone, Adderall, and Xanax.
Q And why would you have prescriptions for Methadone?
A It was due to my car accident.
Q Did a physician prescribe Methadone for you as a result of the car accident?
A Yes, sir.
Q What physician is that?
A Dr. Formosa was the first physician who prescribed it to me.
Q Formosa?
A Formoso. F-o-r-s-o-m-o (sic), I believe.
Q Okay. And is he a family practitioner? What is he?
A He's a pain management doctor.
Q And did any other doctors prescribe Methadone for you?
A Yes, they did.

Q Who?
A Dr. -- I believe his name is -- last name is Michael.
Q Anyone else?
A And the doctor at Shands. I don't remember his name.
Q And the Methadone was for what purpose?
A For pain.
Q You said that -- did you have prescriptions from one or more of these doctors for Xanax?
A Yes, sir.
Q Which of those doctors?
A That would probably be the same doctors.
Q And what was the purpose of the Xanax?
A I suffer from posttraumatic stress disorder, and I have high anxiety.
Q And the post traumatic stress disorder comes from what?
A I lost my first son. He passed away from SIDS.
Q At what age?
A He was four months at the time.
Q And how old were you at that time?
A I was 20 when he passed away.
Q And who's the father of that child?

A Scott Taylor.
Q And then the third -- you mentioned a third drug, Adderall.
A Adderall, yes, sir.
Q What is the Adderall for?
A ADHD.
Q So let's go back to Mr. Nierenberg. You meet him nine months before these events we're here for today. Tell me in your own words, over the next period of time, when you saw him, under what circumstances did you see him.
A I would purchase marijuana from him, and we became friends and dated briefly for about four months.
Q When in that nine-month period was that four months?
A In the beginning.
Q When you dated him for four months, what would you do?
A We would just hang out.
Q What did he do? Did he work, go to school?
A At the time, no, he wasn't working or going to school.
Q During the entire four months?
A Correct.
Q Did you meet anyone else in his family?

A Yes, I did.
Q Who did you meet?
A I met his father, mother and sister, and I believe an aunt and uncle, as well.
Q And did Mr. Nierenberg meet anyone in your family?
A Yes.
Q Who did he meet?
A He met my mom and my son.
Q During that four months -- and if I understand correctly, that's the first four months of the nine months?
A Yes, sir.
Q -- did you live together?
A No.
Q Did the two of you use any drugs other than marijuana?
A Yes.
Q What'd you use?
A We used cocaine.
Q Did both of you?
A Yes, sir.
Q And where would you or he or both of you get the cocaine from?
A He would get it.

Q Where?
A I'm not sure.
Q Did you ever get it?
A No.
Q And how frequently did you use cocaine?
A Not frequent at all.
Q What does that mean?
A Throughout the time I've known him, maybe twice.
Q Throughout the time you've known him?
A Yes.
Q The nine months?
A Correct.
Q How often did you use cocaine during that nine months?
A Twice.
Q The same two times?
A Yes.
Q Any other drugs?
A Not besides my prescription and marijuana.
Q Did you ever share any of your prescriptions with him?
A Yes.
Q Which ones?
A All of them.

Q Huh?
A All of them.
Q And why would you do that?
A He would ask for it, and I would give it to him.
Q Were you able to get refills of those prescriptions when you needed them?
A When I went to the doctor, yes.
Q In the automobile accident you mentioned earlier, what injuries did you have?
A I had a herniated disc, five bulging discs, tears in my tailbone, muscle spasms, 40 percent permanent nerve damage.
Q Were you the driver in that accident?
A I was.
Q Go back to Mr. Nierenberg. How often would you see other members of his family?
A Maybe once a week.
Q Under what circumstances?
A Eating dinner or just going by his house.
Q At the time you weren't employed?
A I'm sorry?
Q You were not employed?
A No.
Q You said he wasn't employed?

A That's correct.
Q Were you together every day?
A Not every day but most of the time.
Q You mentioned that Mr. Nierenberg would get cocaine. Did you ever go with him to do that?
A Yes.
Q Tell me about that.
A He would -- I would sit in a car, and he would go out and meet someone.
Q Where?
A Somewhere downtown. I'm not really sure.
Q How often did that happen?
A Not often.
Q Were you using drugs each time you got together?
MR. MOODY: I'm sorry. Just for clarification. When you say not so often, not so often you guys would go use cocaine, or not so often you would go off with him when he goes to get it?
THE WITNESS: I would not go off with him to get it.
MR. MOODY: I'm sorry.
BY MR. COXE:
Q How many times did you?

A How many times --
Q Did you go with him.
A Maybe twice.
Q Were you using any other drugs other than the cocaine and the prescription drugs and marijuana --
A No, sir.
Q -- at this time?
Have you ever been treated for any problems with respect to substance abuse?
A I took Suboxene before I took Methadone.
Q Is that prescribed?
A Yes, it was.
Q You said you -- I think you used the word "dated" Mr. Nierenberg for four months?
A That's correct.
Q What brought that to an end, or why did you stop?
A We were riding in a car one day, and he got violent with me and I ended it.
Q And violent how?
A He went into a rage and slammed the car and hit me, and my head went forward and hit the windshield of the car.
Q By his hitting the brakes?
A Yes, and then he pushed me as well.

Q And who did you report that to?
A I spoke -- I told my mother about it.
Q Anyone else?
A Maybe a few friends at the time.
Q And do you remember who they were?
A Her name was Michelle. I'm not sure what her last name was.
Q And do you know her phone number?
A No, I don't.
Q And to your knowledge was Mr. Nierenberg using any other drugs?
A Yes. He used cocaine quite frequently.
Q How do you know that if you weren't with him?
A Because he would use it around me.
Q So he would use cocaine when you were with him but you wouldn't?
A Correct.
Q Why?
A I don't like cocaine.
Q Were you using something else when he was using cocaine?
A Just marijuana and my prescription medications.
Q So you would prefer the marijuana?
A Yes, at the time.

Q After that event in the car, after the four months, did you see Mr. Nierenberg over the next five months of this nine-month period?

A Yes, I did.

Q How often?

A Maybe once a week.

Q And why would that be?

A To purchase marijuana.

Q So if you wanted more marijuana, you would go see him?

A That's correct.

Q And is that -- would you go to his house? Where'd you go? Meet him somewhere?

A I would meet him somewhere, or he would come by my house.

Q At any time in the nine-month period, to your recollection did he work, go to school?

A He did work at Winn-Dixie, and he was starting to go to college.

Q When you say starting to go to college, was he beginning college or --

A He was in classes.

Q During what period of time was this?

A Maybe three months before the incident happened, to the best of my recollection.

Q Is that because he told you he was doing that?
A Yes.
Q Did you ever see books or...
A No, sir.
Q If I understood you correctly, in that period of time in the nine months after the first four months, when you say you broke up or quit dating, you would see him once a week?
A Yes, sir.
Q Was it ever more frequent than once a week?
A Maybe sometimes, but not often.
Q Were you dating someone else?
A Yes, I was.
Q Who's that?
A Josh Ervin.
Q How do you spell his last name?
A I believe it's E-r-i-v-i-n.
Q E-r-i-v-i-n?
A I believe so.
Q Are you still dating him now?
A No.
Q When did you stop dating him?
A When I was arrested.
Q Now, did you use these same drugs with him?
A Yes.

Q And did that include cocaine?
A No.
Q Include marijuana?
A Yes.
Q And the marijuana Josh used, did he get it from you?
A Sometimes.
Q Have you ever in the past owned any firearms?
A No.
Q Do you know anything about firearms?
A A little bit, not much.
Q What little do you know, and how do you know it?
A I know the difference between a rifle or a handgun.
Q Uh-huh.
A And that's about it.
Q Can you tell me what, if anything, you looked at, read or reviewed before this deposition?
A I haven't read or reviewed anything.
Q And your lawyers haven't given you anything to read or --
A No. No, sir.
Q Have you looked back at all over anything you said previously?

A No.
Q Do you remember what you've said previously?
A Yes, sir.
Q Go back to the week, the first week of October 2010, okay. Were you still seeing Mr. Nierenberg once a week or so?
A Yes, sir.
Q And it was to get marijuana?
A Yes, sir.
Q And were you using any other drugs with Mr. Nierenberg or...
A No.
Q Were you using any drugs yourself during that period of time?
A Just my prescription medications and marijuana.
Q Has the Methadone and the Xanax been prescribed for you continuously since this accident?
A Yes.
Q Any one of those doctors you mentioned, like Dr. Formoso, ever say, I'm going to stop prescribing this for you, and you went to another doctor?
A Yes.
Q Is that what happened?
A Yes.

Q And then after you finished with that second doctor, whose name you mentioned -- you mentioned a Shands doctor?

A That's correct.

Q Did you stop the second doctor because he wouldn't prescribe you any more?

A No, sir. I lost my insurance with Aetna because the disability through Citibank ended, so I had to get on Medicaid.

Q I think you said it was Dr. Michael?

A Yes, sir.

Q Is that the second doctor?

A Yes, sir.

Q Did you tell Dr. Michael that Dr. Formoso had not prescribed any more for you?

A No, sir.

Q So getting back to the fist week of October 2010. That resulted in you being arrested; right?

A Yes, sir.

Q And what were you arrested for?

A I believe it was attempted murder at the time.

Q Anything else?

A I think accessory after the fact.

Q To?

A To a life felony, I think. I'm not sure.

Q Murder?
A Not originally, because the victim had not passed away yet.
Q And were you eventually charged by the state attorney?
A Yes, I was.
Q What crimes were you charged with?
A I was charged with second-degree murder.
Q Anything else?
A No, sir.
Q And you went through, I don't want to say a series, but you had different lawyers?
A Yes, sir.
Q Who was your first lawyer?
A Andrea Busey, I believe.
Q Andrea...
A Busey, I believe.
Q Okay.
MR. MOODY: She's a public defender.
Q And then you had another lawyer?
A That's correct.
Q And who's that?
A James Nolan.
Q And then you had another lawyer?
A That's correct.

Q And who was that?
A Gropper.
Q Who?
A I'm not sure his first name, but --
MR. MOODY: Jason Gropper.
THE WITNESS: Jason Gropper.
Q He worked for Mr. Nolan's office?
A Yes, sir.
MR. MOODY: He took over for Mr. Nolan when Mr. Nolan passed away.
Q And then after Mr. Gropper, you had another lawyer?
A That's correct.
Q And who is that?
A Mr. Harry Shorstein.
Q And why did you change lawyers from Gropper to Mr. Shorstein?
A I believed it was in my best interest.
Q Now, when you were represented by Mr. Gropper, at that time you were charged with second-degree murder?
A That's correct.
Q And were you charged with accessory after the fact of murder by the state attorney?
A I believe so.
Q Now, after Mr. Shorstein took over, is there

still a murder charge pending?
A No. It was abandoned, and I was charged with accessory after the fact.
Q Okay. Now, did you know at the time you were charged with murder that if you were convicted you were -- could have been sentenced to life in prison?
A Yes.
Q What is the most you understand somebody could be sentenced to for accessory after the fact?
A I'm facing up to 15 years in prison.
Q So that would be the most you'd be facing right now?
A That's correct.
Q And did you plead guilty to accessory after the fact?
A I did.
Q Did you do it because you are guilty?
A Yes, I did.
Q What did you do that made you an accessory after the fact?
A I was aware that a crime had took place, and I took him home and did not report it to the police.
Q Is that what your understanding is as to why you would be guilty of accessory after the fact?
A Yes, sir.

Q Did that opportunity -- was that opportunity presented to you to do that when Mr. Gropper was representing you?

A No, sir. I went for a bond hearing, and Mr. Moody had dropped the accessory after the fact and left it as a murder charge.

Q Who did?

A Mr. Moody.

Q Mr. Moody?

A (Nods head.)

Q Okay. Now, you have not been sentenced yet?

A No, I have not.

Q What is your understanding as to what the sentence will be?

A I haven't been promised anything. The discretion is left up to the judge because I pled guilty. So I'm still facing up to 15 years.

Q I understand you haven't been promised anything. What's your understanding as to what the sentence will be?

A I don't have an understanding.

Q Has anybody from any source suggested to you that you would get less than 15 years?

A No.

MR. MOODY: Just for the record, I don't

object for any -- if you want to ask her any conversations she's had with me, it's fine, but any conversations she may have had with Mr. Shorstein is obviously privileged, so I would just object to that for the record.

BY MR. COXE:

Q When is your sentencing?

A It's scheduled for June 19th.

Q Can you tell me in your own words what events took place leading up to the death of Mr. Stallings? And when I say start at the beginning, I'll let you decide what the beginning is and just...

A JR had called and text me, I believe, around 10:30 or 10:45, stating that he had a flat tire and he needed to change -- he needed help to change a tire.

Q Would this have been the same day as Mr. Stallings was shot?

A Earlier in the evening, yes, sir.

Q Okay. So -- and what was your phone number?

A I believe it was 418-2268.

Q And what was Mr. Nierenberg's number?

A I'm not sure. I know it started with 444.

Q You said it started with what?

A With 444.

Q I'm not going to hold you to this. Could it

have been 444-3215?

A Yes, that sounds correct.

Q And when, prior to that day, was the most recent time you'd talked to or met with Mr. Nierenberg?

A Maybe two or three days prior.

Q What was that about?

A I believe I had got marijuana.

Q Tell me, again, on the day or the events leading up to Mr. Stallings death, who first contacted who?

A JR contacted me.

Q By calling you or texting?

A I believe he called and texted me.

Q Why?

A To get help with changing his flat tire. He needed a five-lug tire iron.

Q What kind of car did he have?

A What kind of car did I have?

Q Did he have.

A I think it was an Impala. I'm not sure.

Q What kind of car did you have?

A I had a Toyota Celica at the time.

Q And did you respond to the call and the text?

A Yes.

Q What did you do?

A I told him I would help him change it, that I had a tire iron or a five-lug tire that he could use.
Q What did you do?
A I got in my car and drove to meet him.
Q Where did you meet him?
A I went over the bridge, I believe it was -- I forgot the road.
Q What bridge?
A Matthews Bridge, and then the MLK Expressway. And I went down the road he told me to go, and he was using a different cell phone at the time, as well, and I tried --
Q When you say "different cell phone", what do you mean?
A A different number. He said he got another phone.
Q Do you remember that number?
A No, sir, I don't.
Q All right. Go ahead.
A He wasn't answering, so I drove up and down the street looking for him. And he didn't answer, so I headed back over the Matthews Bridge. And by that time he called me and stated that he still needed the tire, that he was going to drive over the Matthews Bridge himself.

Q With a flat tire?
A Yes, sir.
Q What time was this?
A I'm not exactly sure. Probably, if I had to guess, it'd be 11:15, 11:30.
Q Morning, night?
A At night.
Q And what happened?
A I had to go get Methadone for myself, so I went to go get Methadone and met him in the Angelo's Italian Restaurant parking lot.
Q On University Boulevard?
A Yes, sir.
Q And when you say you had to get your Methadone, from where?
A From this person I usually get it from.
Q So this wasn't a prescription you were filling from a doctor?
A No, it was not.
Q And can you tell me how much Methadone you were using during this period of time?
A On a day, 30 milligrams.
Q A day?
A Yes.
Q And is it by tablet?

A Yes.
Q And how many milligrams in a tablet?
A Ten milligrams.
Q So you'd be using three Methadone pills a day?
A That's correct.
Q How long had you been doing that?
A At that time probably a couple months.
Q What were you paying for each pill?
A $5.
Q Where's that money coming from?
A I guess my mother.
Q Getting money from selling any drugs to other people?
A I would.
Q What were you selling?
A I would sell my Methadone and my Adderall.
Q And what would you sell a Methadone pill for?
A $5.
Q And what would you sell an Adderall for?
A $5.
Q If I understood you, you were taking three Methadone pills a day?
A That's correct.
Q But you would also be selling Methadone pills?
A That's correct.

Q Where are you getting the other Methadone pills to sell?
A I would sell my own prescription.
Q When you got a prescription filled for Methadone, how many tablets would you get in a prescription?
A I believe it was 90 a month at the time.
Q Did you ever fill any prescriptions or have a pharmacy fill it that were not prescriptions that a doctor had given you?
A I'm sorry. Can you say that again?
Q Did you ever fill any prescription at a pharmacy with prescriptions that were not given to you by a doctor?
A No.
Q So going back, I understand that Mr. Nierenberg says to you he's gonna go ahead and come across the bridge?
A That's correct.
Q And meet you somewhere?
A That's correct.
Q And you met at Angelo's?
A Yes, sir.
Q What happened?
A I saw that he had a flat tire. And we tried

to get my tire out, but we were unable to do that.
Q Tried to get your tire out?
A Yes, the spare tire.
Q Would your spare tire fit on his car?
A Yes. It was five lug.
Q Okay. Go ahead. Couldn't do it?
A No, we couldn't get it off.
Q Couldn't get the wheel off his car, or couldn't get the spare out of your car?
A We couldn't get the spare out of my car.
Q Then what happened?
A He got his things and got in my vehicle, and he drove towards his house.
Q Got in your car?
A Yes, sir.
Q He drove?
A Yes, sir.
Q To your house?
A To his house.
Q Where were you living at that time?
A I was living at my mother's house.
Q Where is your mother's house in relation to Angelo's Restaurant?
A It's close to St. Johns Bluff. It's about 20 minutes away, I would estimate.

Q Where is your son at this point?
A He's with my mother at my mom's house.
Q You said you drove to Mr. Nierenberg's house?
A He drove.
Q He drove?
A (Nods head.)
Q But you were with him?
A That's correct.
Q And where was Mr. Nierenberg's house?
A Off of University Boulevard.
Q All right. That goes from --
A More north, University North.
Q Past Angelo's?
A Past Fort Carolina, yes, sir.
Q And did you go to his house?
A Yes.
Q What happened then?
A He was selling marijuana to our -- his friend. I believe his real name is Carl Smith, but we called him Andrew.
Q Did you know him?
A Yes.
Q How did you know him?
A I met him through him.
Q Do you know where that marijuana came from

that you said he sold to Andrew Smith?

A He went inside and got it. I'm not sure where it came from.

Q Went inside his house?

A Yes, sir.

Q You'd been to that house before; right?

A Yes, sir.

Q And did you go in with him?

A No, I did not.

Q Was Smith already there when you got there?

A Well, he just lives right down the street. He wasn't there immediately, but it didn't take him long to get there.

Q Did Mr. Nierenberg say that's the reason he was going to his house, to sell marijuana?

A To sell marijuana. He didn't say to whom.

Q Then what happened?

A I was in the car, and he and Andrew were talking. And JR went inside his house to get the marijuana and Andrew came and spoke with me.

Q What did you talk about?

A I was just saying, hey, Andrew, how are you doin', general conversation.

Q Were you or he smoking any dope at the time?

A No.

Q Had you smoked any dope that day before you met with JR?
A Yes.
Q When?
A Probably in the evening time.
Q Was that with other people?
A No, sir.
Q Was it at home, your home?
A Yes, sir.
Q Was your son there?
A Yes, he was.
Q Was your mother there?
A Yes, she was.
Q Did your mother know you were smoking dope?
A Yes.
Q And where's the child -- is your mother smoking dope with you?
A No.
Q Where's the child while you're -- how old is the child at this point?
A At this point I believe he's three.
Q And where is he while you're smoking dope?
A In his bed asleep.
Q Then what happened? You go back. You're talking to Andrew.

A I was talking to Andrew, and then JR came out and they continued to have a conversation.
Q Could you hear it?
A No.
Q Then what happened?
A JR got back into the car and drove back downtown.
Q What time was this?
A I believe it was around midnight.
Q This is in your car?
A That's correct.
Q Where is his car now?
A It's still at Angelo's.
Q Now, you've left your home to see if you could give the spare tire from your car to Mr. Nierenberg's; right?
A Yes, sir.
Q And both cars are at Angelo's; right?
A Yes, sir.
Q And then you leave, you go to Mr. Nierenberg's house, and then the two of you go downtown?
A That's correct.
Q Why?
A He was trying to get cocaine.
Q Why'd you go with him?

A Because it was my car.
Q All right. Then what happened?
A When we arrived at the house, we parked on the side of the house.
Q What house?
A Where the incident took place.
Q About what time is this?
A I'm not sure. Probably after midnight sometime.
Q What happened?
A I stayed in the car and he went in.
Q Had you ever been in this house before?
A No, sir.
Q Did Mr. Nierenberg say if he'd ever been in the house before?
A No, he didn't say.
Q And I assume that he's told you he wanted to get cocaine?
A That's correct.
Q Now, at this point did you know anything about a warrant being out for Mr. Nierenberg's arrest?
A Yes, I did.
Q When did you learn that?
A He told me on the phone, I believe, a couple days earlier.

Q Did he tell you what it was for?
A Yes, he did.
Q What did he tell you it was for?
A He said that he pulled a gun out and waved it at a lady at McDonald's.
Q Had you ever seen him with any guns before?
A He always had guns.
Q You mentioned earlier you know the difference between a handgun and a rifle. When you say he always had guns, what kind of guns are you talking about?
A He's always carried handguns, and he's had rifles, too, so...
Q When you say "always", what do you mean?
A He was never without a gun.
Q And you would see the gun?
A Yes, sir.
Q And where would the gun be when you saw it?
A He would keep it on him or in his car.
Q Did you see him take a gun from his car to your car when you left his car back at Angelo's?
A Yes. He had a rifle-type gun.
Q And what do you mean, a rifle-type?
A He had a larger gun.
Q Did it look like a rifle?
A It was a bigger gun.

Q Looking like rifle, or -- you said bigger gun?
A He said that it was an AK-47.
Q He told you that?
A Yes, he did.
Q Had you ever seen it before?
A Yes, I have.
Q Where had you seen it before?
A In his car when I was buying marijuana.
Q Did he ever tell you why he had an AK-47?
A No.
Q All right. Well, did you see that gun in the car this night when you went to this house you've never been to before?
A Yes. It was in my car.
Q Where?
A In my backseat.
Q And did you see him get it from his car and put it in your car?
A Yes, I did.
Q Did you see any other firearms?
A No, I did not see any firearms.
MR. MOODY: Do you mean at that time or --
MR. COXE: Yeah, I mean at that time.
THE WITNESS: At that time, no.

BY MR. COXE:

Q I'm talking about moving from his car that's left at Angelo's to your car?

A No, sir, I did not.

Q So you go to a house where what happens?

A You're saying at -- where the incident took place?

Q Uh-huh.

A I was in the car, and he told me not to go into the house because it was a crack and whorehouse and they made the women get naked.

Q This is what he told you?

A This is what he told me why I couldn't go in. So I waited in the car, and for a few hours, and he said that he still hadn't heard anything.

Q You waited in the car for a few hours?

A Yes, sir.

Q Where is Mr. Nierenberg during this time?

A He's inside.

Q For a few hours?

A Yes, sir.

Q Is there any communication going on between the two of you?

A Yes. I would text him or call him and ask him had he heard anything.

Q And this few hours is roughly what time frame now?
A Probably about till 3:30 I was waiting in the car.
Q Until 3:30?
A Yes.
Q 3:30 in the morning?
A Yes, sir. And he came out to tell me that he still hadn't heard anything, so I waited and he went back inside.
Q And you're by yourself?
A Yes, that's correct.
Q And when he went back inside the second time, how long was he in?
A I'm not sure. Freddy and Jenny came out --
Q Who?
A Freddy and Jenny.
Q Do you know their last names?
A No, sir, not --
Q Had you ever met them before?
A No, I didn't.
Q How'd you know their names were Freddy and Jenny?
A I learned them going on in the evening.
Q Okay. Well, for -- okay. So a guy and a girl

come out?
A That's correct.
Q A man and a woman come out?
A Yes, sir.
Q You don't know who they are at the time?
A No, I don't.
Q And what happened?
A They said that I needed to give them a ride, and I told them that I didn't know them and I wasn't gonna go anywhere unless he -- JR said it was okay.
Q Did he come out with them?
A Not at first.
Q So these people are total strangers to you?
A Yes, sir.
Q And they walk up to your car?
A Yes, sir.
Q And they say, we need a ride?
A Yes, sir.
Q What did they say they needed a ride for?
A I don't think they gave me a specific reason or why. And JR came out and told me that they needed a ride to go get his cocaine.
Q To get JR's cocaine?
A That's correct.
Q And did JR say he was going to go with you?

A He said he was gonna stay there.
Q Did he say why he would stay there and have you go off with two total strangers to get cocaine?
A No, sir, he didn't.
Q So what'd you do?
A I drove them. We stopped at a gas station because I needed gas and Jenny needed cigarettes and I needed to use the restroom. The restroom wasn't working, so we got the gas and cigarettes, and we went back by the house so I could use the restroom.
Q What house?
A The house that the incident took place.
Q And how long had you been gone all that time?
A At that point we had been gone maybe 15 minutes just to go up the street and get gas and cigarettes.
Q You go back to the house?
A That's correct.
Q You go in?
A Yes, sir.
Q To use the restroom?
A That's correct.
Q Did Freddy and Jenny go in?
A Yes, they did.
Q And when you went in with Freddy and Jenny,

who else was in that house?
A I believe there was four women and another man.
Q These are people in addition to Freddy and Jenny and JR?
A No. There's altogether four women and two men and me and JR.
Q Altogether JR, you, Freddy and Jenny, and who else?
A Three other women and another gentleman.
Q Do you know any of their names?
A Not right off.
Q Had you ever seen or met any of them before?
A No, I have not.
Q Did you use the restroom?
A Yes, I did.
Q And then what happened?
A We got back in the car, me and Jenny and Freddy.
Q When you had gone in the house, was anyone using any drugs?
A Not that I seen.
Q What were people doing when you went in?
A They were just sitting around.
Q Did you talk to JR when you were in there?

A Yes.
Q What'd you talk about?
A He asked me if we were back already, and I told him we just went to the store and I had to use the restroom.
Q Then what happened?
A And then we, me, Jenny and Freddy, left and went to another house.
Q Where?
A It was about five minutes away. I'm not sure.
Q Go ahead.
A Freddy got out, went inside, but then he came back out to get me and Jenny. And I saw him purchase crack cocaine from a gentleman. And then we went into their garage, where we met this gentleman, his name was Red. He said his real name was John, I believe. And Freddy and Jenny, there was about ten pieces of crack cocaine, and they smoked at that time. And we left after that.
Q So you go to this other place that Freddy told you to go to?
A Yes.
Q And Freddy buys crack cocaine?
A That's correct.
Q And you see that?

A Yes, I do.
Q And does the person selling the crack cocaine say, who's this girl, or, what is she doing?
A Not that I heard.
Q Had you ever seen that person before who sold the crack cocaine?
A No, sir.
Q And Freddy is African-American, white?
A He's African-American.
Q What about Jenny?
A Jenny, she's white.
Q And the person selling it is?
A African-American.
Q And then you go into this person's garage?
A Yeah. Yes, sir.
Q And did you smoke crack?
A No.
Q What'd you do while --
MR. MOODY: I'm sorry. You need to answer out loud.
THE WITNESS: Oh, I'm sorry.
MR. COXE: She said no.
MR. MOODY: Oh, I thought she said hmm.
THE WITNESS: No.
MR. COXE: She said no.

THE WITNESS: I said no.
BY MR. COXE:
Q What were you doing when these other people were smoking crack?
A I was just sitting down.
Q Do you know where Freddy got any money to buy the crack cocaine from?
A No, sir, I don't.
Q Do you know if JR had any money on him earlier in the evening?
A He usually always carries money around with him.
Q My question was do you know if he had any money that evening?
A No. At that point I did not know for sure.
Q So by the time these other people smoked the crack cocaine in the garage, what time is it?
A I would assume around 4:00, in between 4:00 and 4:30.
Q A.m.; right?
A A.m., yes, sir.
Q Then what did you do?
A We got back in the car, and we headed back. They made me stop, or they told me to stop. So Jenny got out and said that she was going to purchase powdered

cocaine. And she was gone maybe two minutes, at the most, and got back in the car.

Q Where was that?

A It was on the way back to the house. I'm not sure.

Q Do you know what street?

A No, sir, I don't know what street.

Q Okay. And she gets back in the car?

A Yes, sir.

Q What'd she say?

A She said that they're ready to head back.

Q Did she say she got the powder cocaine?

A I don't -- I'm not sure if she stated that.

Q Then what'd you do?

A We went back to the house, and Freddy told me to park in front of the house. And we all got out and went back inside.

Q Same people still in there?

A Yes, sir.

Q Anybody new?

A Not that I saw.

Q Anybody gone from who was there the last time?

A No, sir.

Q All right. What happened? What were they doing when you got there?

A They were just sitting around.
Q Okay.
A And Freddy and JR went back and talked, and I was just saying I really -- I gotta get home, and it was nice to meet you, and proceeded to leave.
Q Did you talk to JR about leaving?
A Yes, I did. I told him I needed to get home.
Q What did he say?
A He said okay.
Q All right. And what happened?
A I got in the car, and he got into the driver's side, started the car, and stepped out, tapped on his pocket and said, oh, I forgot something, I'll be right back. I just told him to hurry up, that I needed to get home. And he went inside, and about five minutes later I heard two gunshots and saw the other gentleman, I believe his name is Carl, run the opposite side of the interstate.
Q How did you learn his name?
A He told me earlier in the evening that his name was Carl.
Q All right. Do you now know everybody's name who was in the house?
A Just Jenny; and Little Momma, one of the females; and René, I believe.

Q Uh-huh. And Little Momma is African-American, white?
A She's African-American.
Q Okay. Carl is?
A He's African-American. René is white.
Q You heard two gunshots?
A That's correct.
Q Did JR say anything before he went in the house?
A That he just forgot something, I'll be right back.
Q When you went into the house, when you got back from this leaving to go and you were in the garage with these people, and you go back to the house and went in, was there any conversation between JR and the person who stopped to get the powder cocaine? Did they talk to each other?
A He went off and talked to Freddy in the back. And that's it, I believe.
Q All right.
A Do you mind if I take a restroom break?
MR. COXE: No.
THE WITNESS: Okay.
(Short break.)
MR. COXE: Ms. Pace, we're gonna -- I'm just

going to ask you a few more questions for now, and if we need to reconvene at another time soon -- there's just a whole lot more.

THE WITNESS: Sure.

BY MR. COXE:

Q Can you help me with how much Methadone, Xanax, or whatever you consumed these early-morning hours and the night before?

A Sure. I wasn't taking Xanax at the time. I had quit taking Xanax at this time. Methadone, probably 30 milligrams. And Adderall, probably took one Adderall.

Q Were you high or -- I don't know what phrase to use -- you know, blown out or wiped out, anything?

A No, sir.

Q Were you messed up?

A No, sir.

Q Are you aware of what was going on completely around you?

A Yes, sir.

Q All right. You remember Jenny?

A Yes, I do.

Q Did you give her any drugs?

A Yes, I did.

Q What did you give her?

A I gave her Adderall.
Q What color are Adderall?
A Those were pink.
Q Did you take any Adderall?
A Yes, I did.
Q And how many Adderall did you take?
A I believe I took one.
Q Do you remember when you took it?
A No, sir.
Q Did you know, other than JR, any of these people before this event?
A No, sir, I did not.
Q Had you ever met them or seen them anywhere?
A No, sir.
Q Okay. In your conversations with Freddy, did Freddy ever tell you that there had been a restraining order issued against him?
A No, sir.
Q Does that mean anything to you?
A No, sir.
Q Had you ever heard JR talk about Freddy before?
A No, sir.
Q And you'd never seen him --
A No, I hadn't.

Q -- from what you're saying?
Okay. When you got into Mr. Nierenberg -- or he got into your car at Angelo's restaurant --
A Yes, sir.
Q -- what is it you remember him taking out of his car?
A Just the AK-47 and a book bag, I think, and his self.
Q Anything else?
A No, sir, not that I can remember.
Q Had JR ever discussed with you these particular -- during these hours of October 6th, October 7th, that he had had any prior problems with any other African-American male?
A No, sir.
Q If I understand it correctly, you went in the house where this event took place twice?
A That's correct.
Q You went in and left on two separate occasions?
A That's correct.
Q How long were you in the house the first time?
A Five minutes.
Q How about the second time?
A Maybe ten, fifteen minutes, if that.

Q And the second visit, did you give anybody any drugs then?
A In the house?
Q Uh-huh.
A No.
Q Had you given them to anybody in the car?
A I gave Jenny Adderall.
Q Had you given anybody else anything?
A No.
Q If I understood you to say, you heard two shots fired?
A That's correct.
Q Is that the total number of shots you heard fired?
A Inside the house, yes.
Q Did you hear any shots fired afterwards?
A Yes, sir. I saw Carl run outside the house towards the opposite side of the interstate, and then maybe 30 seconds later JR came out and shot at him.
Q When you say "shot at him", what do you mean?
A A shot in that direction, in that vicinity.
Q And how was he holding the gun when he did it?
A Like that.
Q And what light --
MR. MOODY: For the record, you were holding

your right hand out, and you were holding it directly in front of you?

THE WITNESS: That's correct.

BY MR. COXE:

Q And where was the lighting coming from at this hour that you can see that?

A I believe from inside the house, and I believe the sun was coming up, as well.

Q When JR got back in the car, what did he say?

A He didn't say anything. He just drove off and the tires squeaked, squealed. And I was asking him, what happened, what happened. And at first he wouldn't tell me, and then when we were going on the Matthew's Bridge, he went into a rage and said that, "I shot him in the head". And he proceeded to say that "nobody motherfuckin' takes money from me".

Q Did you say something in response to that?

A I did. I said, I don't think you realize what you did. And I started crying. And at that point he pointed the gun to me and said that if I said anything that he was gonna kill my mom, my son, and then me.

Q And where did you go?

A He drove to my house.

Q Then what happened?

A He tried to shoot up crack cocaine.

Q Crack cocaine?
A Yes.
Q He did?
A Yes.
Q When you say "he tried to", what do you mean?
A Well, I guess he did, I'm assuming.
Q Well, tell me what you saw.
A I saw him crush up a crack cocaine piece and try to put it in the needle and put the needle in his arm.
Q Where'd the needle come from?
A I guess he had it.
Q In your experience with JR, did he ever use crack cocaine?
A Not crack cocaine, no.
Q Had you ever seen him with a needle before?
A Yes.
Q What was the needle for?
A To shoot up powder cocaine.
Q Did you have a needle, too?
A No.
Q So you say he put a gun to your head and said, if you say anything, I'll kill you, your mom and your son?
A That's correct.

Q He took you home; right?
A Well, we drove -- he drove back to my house, and then after that we left and I took him home.
Q Did he say anything more about it?
A No.
Q You took him home and dropped him off?
A That's correct.
Q Now, when you took him home and dropped him off, did he take anything out of your car?
A Just the gun that he had.
Q Did you --
A I believe he had a book bag with him, as well.
Q The next day did you communicate with him throughout the day?
A Yes, I did.
Q What were you communicating about?
A I was trying to get marijuana. And he gave me money to purchase gas with, and I was trying to give him his money back.
Q So it's business as usual, I mean, you going to contact him to buy marijuana; right?
A Yes, sir.
Q Nothing that happened at this house changed anything?
A I was just really scared.

Q You were really scared?
A I didn't want to do anything to make him more upset.
Q We're going to break in two seconds and come back to this, but when you were picked up by the police -- and we can go into details about your mother's call and all that stuff -- did you lie to the police?
A I was really messed up at that time.
Q Messed up on what? What do you mean?
A I had tooken pills and smoked marijuana.
Q What pills?
A I believe Methadone and Adderall.
Q And smoked marijuana?
A Yes.
Q And this is before you went down to be questioned by the police?
A That's correct. It was throughout the day. And I believe I tried to get Xanax, as well.
Q And is that what you were doing most every day, Methadone, Adderall, smoke dope?
A Yes, sir, at the time.
Q And when you say at the time, had that been going on for a long time, that that's what you were doing every day?
A Yes, sir.

Q And how does Adderall affect your perception?
A It makes me think clearly.
Q Clearly?
How about marijuana?
A It relaxed me.
Q Does it make you think clearly?
A Probably not so much.
Q What about Methadone?
A If you -- if I took a lot, it would affect my thinking ability.
MR. COXE: We're going to quit.
(Deposition adjourned at 2:55 p.m.)
- - -

CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, the undersigned authority, certify that ASHLEY PACE personally appeared before me and was duly sworn.

Witness my hand and official seal this 3rd day of July, 2013.

Dena Miller
Certified Court Reporters
One Independent Drive
Suite 3210
Jacksonville, FL 32202
904-356-4467

CERTIFICATE

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Dena Miller, certify that I was authorized to and did stenographically report the deposition of ASHLEY PACE; that a review of the transcript was not requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 3rd day of July, 2013.

Dena Miller
Certified Court Reporters
One Independent Drive
Suite 3210
Jacksonville, FL 32202
904-356-4467

Filing # 28704829 E-Filed 06/19/2015 12:20:18 PM

IN THE CIRCUIT COURT,
FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16 2010-CF-011363-AXXX-MA

DIVISION: CR-H

STATE OF FLORIDA

-VS-

GREGORY MICHAEL NIERENBERG,

Defendant.

TESTIMONY AND PROCEEDINGS

taken on **Wednesday, April 29, 2015,** before **The Honorable Marianne Aho,** Judge of the Circuit Court, Division CR-H, in the Duval County Courthouse, Jacksonville, Florida, and as reported by Jayne Foreman, FPR, Court Reporter and Notary Public in and for the State of Florida at Large.

- - -

FILED: DUVAL COUNTY, RONNIE FUSSELL, CLERK, 06/19/2015 01:28:54 PM

APPEARANCES:

JEFFREY MOODY, Esquire,

Appearing on behalf of the State.

CHARLES TRUNCALE, Esquire,

Appearing on behalf of the Defendant.

HARRY SHORSTEIN, Esquire,

Appearing on behalf of Ashley Pace.

I N D E X

PAGE

DEFENDANT'S WITNESSES

RUTH NIERENBERG

Direct Examination by Mr. Truncale.....38
Cross-Examination by Mr. Moody.....51

STEPHANIE NIERENBERG

Direct Examination by Mr. Truncale.....69

LINDA SYKES

Direct Examination by Mr. Truncale.....75
Cross-Examination by Mr. Moody.....78

GREGORY MICHAEL NIERENBERG

Direct Examination by Mr. Truncale.....85

- - -

E X H I B I T S

PAGE

Defendant's In Evidence

No. 2.....31

Composite No. 3.....36

Composite No. 4.....95

PROCEEDINGS

April 29, 2015 2:24 p.m.

THE COURT: The Court calls the case of the State of Florida versus Gregory Michael Nierenberg, Case No. 2010-CF-11363.

If counsel for the parties and for the witness, would you please state your appearances for the record.

MR. MOODY: Yes, ma'am. Jeff Moody on behalf of the State of Florida.

MR. TRUNCALE: Charles Truncale for the defendant, Mr. Nierenberg, who is in the courtroom.

THE COURT: Mr. Shorstein, did you want to state your appearance for the witness.

MR. SHORSTEIN: I'm Mr. Shorstein. I represent Ashley Pace.

THE COURT: Thank you, sir.

When we left off at this hearing last week, Ms. Pace was on the witness stand. There was an objection that was pending I had not yet ruled on.

I'll hear from you, Mr. Truncale.

MR. TRUNCALE: Your Honor, if I may, I would like to withdraw the question, the cross-examining question which may meet the objection and ruling on it if the government has no objection to that.

MR. MOODY: Yes, ma'am. If he wants to withdraw the question, then obviously I would not have an objection.

THE COURT: Very well. So the objection is moot.

And so are there any further questions for Ms. Pace?

MR. TRUNCALE: Yes, Your Honor. First of all, I would say in light of that, there is no need for further cross-examination of Ms. Pace. That was really the last area of inquiry that I cared to do, and the purpose for which was to make -- to make a motion, the likes of which I articulated and filed, essentially an identical argument today. So she is done. I would ask that she be excused. I don't see there is any -- if she wishes to be excused. Second, if that is okay with the state.

THE COURT: And is there any redirect?

MR. MOODY: I have no redirect for her, Your Honor.

THE COURT: Very well. So she can be excused.

MR. SHORSTEIN: Excuse me, Your Honor. Do you want me to bring her in? You tell her or would you like me to tell her?

THE COURT: I have no preference. Whichever

way counsel would prefer.

MR. TRUNCALE: Thank you.

THE COURT: Thank you. And I'm sorry for not thinking logically but there could have been redirect. I apologize for that.

MR. TRUNCALE: With that I do ask that the Court consider both the oral and written motions, which are identical, that deal with the matter of your consideration of her testimony. Essentially, I have moved to strike all or at least a portion of her testimony for the reasons stated, and I don't know how the Court wants to handle that. Would you want me to briefly summarize it first and then go to Mr. Moody. Or do you want, since I did already articulate it, do you want Mr. Moody to make a statement first? However the Court decides.

THE COURT: Well, for purposes of the record, I have reviewed the motion to strike sentencing hearing testimony of state witness due to prosecutorial misconduct. I am listening very closely to everything that is said by everyone, and I did hear you say, Mr. Truncale, that your motion is to strike either in whole or in part the testimony of Ms. Pace.

If you could just please place on the record

if the motion were to be construed as a motion to strike her testimony in part, which part of her testimony are you focused upon?

MR. TRUNCALE: Precisely the testimony concerning being threatened at gunpoint by my client during the course of leaving the scene of the offenses that evening or that early morning in October (inaudible)...

THE COURT: Very well. I am going to hear from the state, but, for the record, Mr. Shorstein has returned to the courtroom. Is there anything that -- you are welcome to stay, Mr. Shorstein, but did you return for any reason that we needed to hear from you?

MR. SHORSTEIN: No, Your Honor. I have no participation in these proceedings.

THE COURT: Very well. Thank you, sir.

I'll hear from the state.

MR. MOODY: Your Honor, Mr. Truncale may have sent his motion to strike based on prosecutorial misconduct at some other time; I received it literally about 2:57. I had a chance just to glance at it. From what I have seen, I believe it simply just echoes the argument that he made Friday, and some of the argument that we have made today, so

there is quite a bit that I probably need to cover and justify so that this Court could understand truly what really happened in this case because, obviously, the things that I was accused of, which, you know, I would be more than happy to put on the record that I do apologize for becoming so upset Friday, there is a lot of things people can call me, but a liar and prosecutorial misconduct is probably about the worst thing anybody could every call a prosecutor who loves what he does and believes in what he does.

So when I have a situation where that takes place, it got the better of me, so I do apologize for not handling it in a more professional manner.

That being said, Your Honor, this case has from its very inception been like trying to hold a bag of water, the way that every single witness that we dealt with would change their testimony, you would have no idea, since you did not hear the testimony and would not know of the different witnesses that were involved in this case.

We are dealing with a crack house. We are dealing with drug dealers, drug addicts and people who don't want to cooperate, did want to cooperate. They would give one story. The next story would

change. Then they would give another story. And this is what I have been dealing with on this case from the very beginning.

And with Ms. Pace there was no difference. I argued in Ms. Pace's sentencing hearing exactly what I would have argued Friday and what I will argue today, and that is that Ms. Pace lied whenever she was contacted by the police.

Mr. Truncale said that I can't take two positions where I'm calling her a liar in one and then vouching for her credibility in the other, but that transcript that he kept raising up and showing you and the transcript that is now attached as part of this record, I would argue, shows exactly that I didn't do that, because in that transcript what I said continuously was she lied continuously when she was contacted by the police, because when she was contacted by the police they questioned her, and they really, really, really questioned her, What do you know, we know you know what happened, we know you were there, we know this. And she played dumb, I don't know what you are talking about, I don't know nothing about nothing basically was her attitude. It wasn't a simple, hey, can you tell us about that night, oh, I don't know anything, okay,

great, thanks. We were dealing and --

THE COURT: Let me just place something on the record. In preparation for the hearing today I did review the transcript of the sentencing proceedings that took place before Judge Virginia Norton on Thursday, March 27, 2014. That came... via Mr. Truncale and my judicial assistant over the weekend, and I did review the transcript in full.

MR. MOODY: Yes, ma'am. And in that transcript you will see where I said she lied from the beginning and she lied with -- I think I used she lied with every breath she could continuously while they were trying to get that from her. And then approximately five days later she contacted Detective Bowers and she told her version of what happened.

I tell the Court, at least from my memory and recollection, after she gave that version of what happened, I met with her once during a proffer, and she gave essentially the exact same version. She was given a deposition. It's the exact same version you heard the other day. At her sentencing hearing she gave that version. And then the other day when she testified she gave that version. It has been consistent what she has said that occurred to her.

Now, what I did argue, you have to remember with all respect to Mr. Shorstein, who is actually here, I had a very seasoned defense attorney arguing that, candidly, he didn't think his client did anything wrong and he really didn't even understand how she should be charged, but it was in her best interest to go ahead and plea and do what she did.

And what I was trying to argue was, no, she did do something wrong. She lied when she lied to the police. That could have caused Mr. Nierenberg to get away. That was the basis for her charges.

I also stated, and I believe, again, it is on there, one of the pages, Mr. Truncale points out, I said it is true, it is uncontroverted what she says about having a gun pointed at her head, there is no evidence one way or the other no matter how hard I try to shake her, there is no evidence to disprove that. That is what she said happened to her.

And you will also note in that transcript that I made a couple of other comments about how if that really happened, you wouldn't drive somebody to your child, you wouldn't take them to your house. You would have to shoot and kill me.

Well, candidly, Judge, I was wrong whenever you look at that factually, because that was one of

the things when I made that argument 14 months ago when we did that, by that point in time I had been dealing with this, I had been talking with Mr. Shorstein, I had been talking with her, and candidly speaking, you saw I tried crossing her, and no matter how much I crossed her, it really wasn't going anywhere because I wasn't there and I can't tell you that's absolutely what happened. She says that is what happened, and I have no evidence whatsoever to prove that it isn't what happened.

But what I can say is what I did go back and do because it was my opinion that Judge Norton believed her because that whole sentencing hearing was over probation. That is what we argued over was whether she should be put on probation or just given time served. I felt she should be on probation because she had been addicted to drugs. I wanted her on supervision.

THE COURT: And for purposes of the record, it appeared to me in the sentencing transcript that Ms. Pace had served just shy of two years in the Duval County Jail, just two weeks shy, plus or minus.

MR. MOODY: Yes, ma'am.

THE COURT: And then a period of about a year

and a half had passed before the actual sentencing hearing.

MR. MOODY: Yes, ma'am.

THE COURT: So there had been quite a bit of time since she had been released from custody and the sentencing hearing.

MR. MOODY: And I believe during that time period she had been on certain forms of supervision, which is why I wanted to continue her on supervision and of course --

THE COURT: And she had made certain accomplishments, community service, schooling, and so forth.

MR. MOODY: Yes, ma'am.

So one of the things that I went back and I was looking at was my argument, you would not drive somebody to your child.

I remembered as I was going through this that there was a witness who actually said, I saw a car parked out there that had a white male and a white female in it. That gentleman's name was Zachary Holder.

I went back and I was looking through Detective Bowers' notes because I was trying to figure out did it say who was in the driver's seat

and who was in the passenger seat? And all it simply said in Detective Bowers' report was -- and for the record this is going to be his supp No. 9, page 11 of 22.

THE COURT: Is that document in the record?

MR. MOODY: Just in case later it becomes an issue, I want to know what page -- I want the record to show what page I'm reading from.

It said, Detective Oliver and I travelled and met with Zachary Charles Holder, a black male, regarding what he had seen on the morning of the shooting. Mr. Holder said he saw a white female with black shoulder length hair, wearing a black shirt sitting in a black two-door car, parked on the north side of 15th Street just east of Phoenix Avenue. When asked, he said that the time was approximately 3:00 a.m. Mr. Holder recalled that about 20 minutes later he saw the driver's door open and a white male was sitting in the car with the female, but it didn't really say -- it implied with the driver's door being opened that the male has gone into the driver's door, but it didn't say.

So then I went on further and looked through the reports, and there was actually in supplement one it actually does specifically say an entry by

Detective Margaret Rhatigan -- and for the record that is going to be on supp No. 1. It's on page 4. Detective Rhatigan notes, I was dispatched with these officers. It then goes down and says, I spoke with Zachary Holder, who had approached the perimeter with some information and advised that around 5:00 a.m. in the morning he saw a small black vehicle parked at the stop sign of East 15th Street and Phoenix Avenue. When he first observed the vehicle, there was a white female sitting alone in the passenger side. About 30 minutes later he noticed a white male sitting in the driver's side seat.

Mr. Holder said he approached the vehicle because he thought they were broken down. He asked the driver and the passenger if they were okay. They said they were, and then the vehicle drove off.

So that specifically showed that Mr. Nierenberg was the driver, not Ms. Pace. When I started going back trying to either corroborate what she had said or find ways to, I guess, not believe what she said, the more and more that I looked at it, I started thinking, you know what, she might be telling the truth because the other thing in that transcript that you will note is one of the things

Judge Norton asked me, do you believe that she has told you everything? 14 months ago I said, no, I don't.

The reason that I said that was because there was another witness by the name of Andrew Smith. This was a witness that the state -- had came forth, and I had put a lot of credibility into his statement of how things came about. I can tell this Court his version of what occurred basically was that he saw --

MR. TRUNCALE: Your Honor, I would really object to this because it's going to cause another problem because if we're going to go into Carl Smith and --

MR. MOODY: I would be more than happy not to go into the details. I would just simply say that he gave one version, and then he came into his depo and completely changed it and said, Oh, no, it didn't happen anything like I told the police to begin with, and I mean diametrically different. And then when Ms. Pace ended up getting -- I believe her charges went from a principal to murder, down to accessory after the fact, Mr. Smith then contacted her office again and said, hey, I need to let you know I lied in my deposition, what I told the police

at first really is what happened.

So I have all of this going on, and I was sitting there having a judge ask me, Well, do you think she's told you everything? And at that point in time I didn't know. I said, No, I don't think so, I think there is more out there, but that is for Mr. Nierenberg's sentencing, not for one to really be discussed here.

So I tell you all of this because what Mr. Truncale has accused me of is basically arguing, which I don't believe I did. The transcript speaks for itself. I did say she lied when she first met with the police. I did say that she continuously lied when they tried to talk with her about what happened, and then she got arrested. Then she gave testimony that is uncontroverted one way or the other whether I liked it or not. Just because I don't necessarily believe somebody doesn't mean it's not true. That's a harsh thing that I had to learn a long time ago, but that is the reality of the situation.

And as I have gone through this case, over four years of dealing with this case, I can tell this Court I'm more and more starting to believe that what she has said was true, but it doesn't

matter because the part that we're arguing over here is whether this man held a gun to her head whenever he was driving back when he was the one driving to her house, which, of course, begot my argument that you wouldn't drive him to your house.

Well, one, I really didn't think about the fact, they'd known each other, they dated each other. He knew exactly where she lived. If he wanted to get to her house, he could, whether she drove or not. But that night he was the one driving, not her.

So, again, this is all stuff that after the fact I'm looking at because I did put her on the stand because I do believe what she has said is true, certain portions of it, I do. I will sit there and say I absolutely believe this happened. There is other portions of it that I would say that is up for you to decide, Judge. You are the one who is here to determine her credibility and what you choose to believe and what you don't choose to believe.

If I had any evidence whatsoever that what she has said was untrue, that is when I would be suborning perjury. There is no evidence out there in four years. I have looked. Trust me, if I had

evidence to prove that what she had said was a lie, you would have read about it in that transcript. And instead I ended up, for lack of a better terminology, using the ninny, ninny, liar, liar, pants on fire cross because there is nothing.

So the only thing I would say, Judge, is there has been not, by any stretch of the imagination, any prosecutorial misconduct whatsoever. And as far as the part that we are over here arguing about, because the only part that Mr. Truncale tells you he takes issue with is whether or not his client held a gun to her head, and he doesn't want this Court to use that as aggravation.

I don't even care about that part. I never had any intention of arguing that part. We wouldn't know that because Mr. Truncale had an issue with it before we got to that. All I wanted to argue, Judge, was they put on a forensic psychologist to tell you that somehow him being molested as a child was a mitigating factor for what he did that night and somehow him having a learning disability from grades 1 to 5, even though he was able to go through high school, even though he was able to go to college, even though he had a job and was about to be a manager, somehow a learning disability was

mitigation for what he did that night.

There is one sentence in her testimony that I put her on for, to show really what was going through his mind that night, and that was when she has testified he said, I shot him in the head because nobody steals my M F-ing money.

And the argument that I wanted to be able to make to this Court and the only way I could make it was to call her to the witness stand because otherwise that would not come in front of you was that he did it out of anger because he was high on every single kind of drug he could get his hands on that night and he was upset.

So I have no intentions of arguing that portion. If the Court would like to disregard that portion so that it doesn't in any way, shape or form cloud the record, I don't have a problem with that.

THE COURT: In fact let me just place on the record that I am going to disregard that portion of Ms. Pace's testimony about the defendant having placed a gun to her head. I am not rendering judgment on whether that testimony was credible or not. It's not required for me to reach that issue. That is not really anything that is front of me. I'm here to sentence Mr. Nierenberg on his two

counts that he's pled guilty to. The state is not arguing that that testimony should be used for the Court to consider on whether that is an aggravating factor. It is not being suggested by the state that it is, and I am disregarding it. And I want the record to be crystal clear on that point.

And, Mr. Truncale, if I understand your concern and by my stating here in open court that I will be disregarding it, will that take care of your concern?

MR. TRUNCALE: Yes. When it comes down to it, that's... But with this proviso, just as Mr. Moody mentioned, if I heard him correctly, that, you know, been a lot of problems with Ms. -- inconsistent statements. But he still believes that it may have happened, but it just doesn't matter. Well, to me I seriously believe that it matters because if it were true, that is evidence of a pretty serious uncharged crime that a reasonable juror or jurist, a reasonable fact finder would and should use for aggravation, and that is why it concerns me so much.

So I'd like to at least state that I do believe that that was not true. I'm not putting my client on the stand to testify as to that, but I will tell you that that is the only position I've

ever had, and that's the primary problem with her testimony from our standpoint. That's primary.

And, Judge, I will also just ask you to think about that so that I don't -- I need also this Court to understand I don't enjoy making a motion like this. I try in ways not to make it. That's why I asked a technically improper cross-examination question, hoping to flesh out that, you know, that there was what I saw to be a use by the prosecutor of that statement against her statements and then a use of that statement to enhance his. I felt it couldn't be both ways. I will tell you --

THE COURT: And for the record, you don't represent Ms. Pace; Mr. Shorstein does.

MR. TRUNCALE: Yes. Oh, I know. That is just -- I didn't want an inconsistent position. And, Judge, I -- the problem that I have with her testifying to that is that Mr. Moody did argue to Judge Norton that actions speak louder than words, that particular testimony is not true because actions speak louder than words. Well, I was expecting -- candidly, I was expecting to read this statement as my rebuttal to that if necessary.

But when it all comes down to it, I made the motion in good faith. I understand Mr. Moody's

explanation. The fact is that the Court is not going to use the testimony, I believe...

THE COURT: And I'm not going to. I said I'm not going to. I'm not going to use that portion of her testimony. I want the record to be crystal clear, I'm not disregarding all of her testimony. I'm disregarding that one portion about the defendant having placed a gun to her head and threatened her, that part.

MR. TRUNCALE: I would intend to argue about her credibility. In fact I intend to argue some inferences based on statements she made, Judge, and that is for later. But as long as that statement is not deemed in any way adverse to my client, as if it were a non event, of course, then I believe we can continue. I believe that is the relief I need.

MR. MOODY: Actually, Judge, the relief that the state needs is for this Court to rule that you denied his motion because you do not believe what he has specifically stated, and that is that I as the prosecutor made objections to intentionally conceal my lies to you and my inconsistent position. That is in his motion; that I objected to continue to perpetrate the fraud upon this Court or to conceal my inconsistent positions, which, candidly, Judge, I

would respectfully request this Court to make a ruling on the record that the Court does not believe that that is what transpired. I -- and we'll leave it at that.

THE COURT: Well, I'm ready to rule. I'm ready to rule unless there is anything else anyone wants me to consider. I'm ready to rule specifically on the motion to strike sentencing hearing testimony and state witness due to prosecutorial misconduct filed by Mr. Truncale on April 29, 2015, earlier today.

MR. TRUNCALE: I would say it was that I stand on it, that that was a miss -- by -- it is not the defendant's counsel's duty to bring to the Court's attention a prior position on specific testimony that has -- that is material. It would be material to this Court if this Court considered it true and enhanced his sentence one minute more than 25 years.

So for that purpose the motion is made in good faith. The fact is there is no -- the Court can deny the motion based on the no harm, no foul. I will tell you it bothered me that I had to make the motion to get the evidence in front of the Court.

MR. MOODY: And I can tell the Court that I would not be doing my job as a prosecutor if I

didn't spend the last 14 months looking at different pieces of evidence and I just simply stuck my head in the ground on my first assumption of something and just said, well, that is what I believe now and I'm never going to change my mind, because that is not realistic, Judge.

So as different things came to light, I am a prosecutor who is -- my job is to seek the truth. It doesn't stop just because somebody makes an arrest as each new piece of evidence comes up, as each new hearing came about, as arguments that Mr. Shorstein came and made to me that made sense to me, as arguments that Ashley said when I would meet her, as arguments or statements that (background coughing) other witnesses that corroborated things.

First of all, I would tell you that telling Judge Norton -- and I believe the way I put it was there is uncontroverted self-serving statements that I would ask Judge Norton to look at and have to judge the credibility of whether or not she wants to believe it or not.

I never -- if I remember correctly, you can say that I made insinuations. I never said that she was lying during that. I insinuated that her credibility needed to be looked at by Judge Norton.

I didn't have any evidence to prove that she was lying to say that. I said she was lying whenever she lied to the police because she did lie to the police, and she lied over and over and over again. At that point I said she was lying, and that is what I made the statements about.

So I'm not going to stand here and say that I didn't make argument to Judge Norton, insinuating, hey, this thing where she says the gun was held to her head, it's pretty self-serving, look at her actions, but it was in that transcript, whatever page it's on, I said it is technically uncontroverted evidence. That is absolutely correct to say. I said it then and I say it now, so...

THE COURT: And so I think we're reaching the ending point. I'll let you respond, Mr. Truncale, but I think we're reaching the ending portion of this portion of today's hearing, but I'll hear from you.

MR. TRUNCALE: I have nothing else to add. I stand on what is said in the motion, the plain reading of the excerpt that I have referred to in paragraph six. And technically I believe the motion is technically moot now because I'm pleading on the... on the relief.

THE COURT: Very well. So at this point the motion to strike sentencing hearing testimony of state witness due to prosecutorial misconduct is denied. It is denied on a number of bases. Number one, it is moot because I'm not going to be considering any of the testimony of Ms. Pace regarding the gun placed to her head by the defendant. I'm just not going to consider that at all.

But I want to place on the record I'm denying it for more reasons than that it is moot. I'm denying it because the Court recognizes that the discovery process is a very fluid, ever changing process of seeking facts by both the prosecutor and by the defense attorney, and human beings are very complicated and witnesses say things that change from time to time, and it is constantly a process where the attorney is using their intelligence and their judgment to seek the truth on behalf of their clients in terms of vigorously representing the side that it is their duty to pursue and to represent to the Court.

So the Court finds that both attorneys here are very, very well respected, very high-caliber attorneys who have enjoyed excellent, excellent

reputations in the Jacksonville, Florida, North-based Florida area and beyond, and I guess I know them from Northeast Florida, not beyond Northeast Florida.

But the bottom line is I do not find that there is any record evidence of any prosecutorial misconduct. If anything, there is just the reality that we all face in litigation, that witnesses sometimes say things differently at different times, and I'm not saying that is Ms. Pace. I'm just saying that is a reality of litigation.

So the motion is denied.

Do either of you request anything further on that?

MR. MOODY: No, ma'am.

MR. TRUNCALE: No, Your Honor.

THE COURT: So now we'll continue forward with the sentencing hearing. I have a little bit of housekeeping I want to take care of. I noticed on the plea of guilty and negotiated sentence document, which was dated in 2013, that it indicated the court costs were $566, which is lower than they are now. So I asked my judicial assistant to check in with the clerk and make sure that $566 could be imposed and how that would be done, and that has been done,

so we'll just go with that.

MR. MOODY: Yes, ma'am.

THE COURT: Typically court costs in this division are $616, but they are going to be $566. I'm not... more witnesses, but at the time that I do impose sentence, which I intend to do later today, would your client be asking for those to be converted to a civil judgment?

MR. TRUNCALE: Would I be asking for them to be...

THE COURT: In other words, when I impose them, I can convert them to a civil judgment if your client wants. I know it is a housekeeping matter and it is extraneous, but I wanted to just address it now so I know the...

MR. TRUNCALE: Your Honor, I just need to talk real quick.

THE COURT: Of course.

(Mr. Truncale confers with the defendant.)

MR. TRUNCALE: I believe based on my explanation to Mr. Nierenberg, we wouldn't have an opposition to that.

THE COURT: To them being converted to a civil judgment?

MR. TRUNCALE: Right.

THE COURT: Very well.

How did counsel wish to proceed with respect to the presentation of further witnesses?

MR. MOODY: Your Honor, the state didn't have any other witnesses to call. I believe Mr. Truncale would.

THE COURT: Very well.

MR. TRUNCALE: Judge, there was one other thing I just wanted to ask about. I guess it would be now. I have copies of -- I'm asking the Court to take judicial notice of certain things.

THE COURT: Very well.

MR. TRUNCALE: I actually marked that as government's Exhibit 2, the transcript of the sentencing hearing of Ms. Pace, and I just think it makes sense to the whole record that the Court accept that under judicial notice of actions of the same court, not the same judge, but the same --

THE COURT: And you said government, but you meant defense exhibit?

MR. TRUNCALE: Did I say government? I'm sorry, Judge.

THE COURT: For the record, Mr. Truncale was previously an Assistant United States Attorney.

MR. TRUNCALE: For 25 years, Judge.

THE COURT: And he's very used to saying the government exhibit. Not a problem.

MR. TRUNCALE: It is a common error, and I didn't mean to be...

THE COURT: It is extraneous to anything. I just want the record to be clear.

Does the state have any objection to my taking judicial notice of the sentencing proceeding before Judge Norton on Thursday, March 27, 2014, which I've indicated on the record I've actually read this twice since the last hearing? It's 70 pages in length.

MR. MOODY: No.

THE COURT: The Court hereby takes judicial notice of that transcript.

(Defendant's Exhibit No. 2 was received in evidence.)

MR. TRUNCALE: Your Honor, there are just a few other documents that I would ask that you take judicial notice of, and they bore in on my decision to no longer cross-examine Ms. Pace. Just so that the record is absolutely clear, I would ask the Court to take judicial notice of the fact that she was initially charged with -- as a principal in the second-degree murder of Mr. Stallings. It was a

simple one count... There was a one count information in that matter, and that some more than two years later when Mr. Shorstein represented her -- I am not privy -- I can't state to the Court what the circumstances were, but there was an agreement or an understanding that led to a plea of guilty to an amended information. I would ask the Court to take judicial notice of the initial information, the amended information to which she entered a plea of guilty, and indeed they were mentioned in the transcript of Ms. Pace's sentencing.

And it also makes -- it gives meaning to Mr. Moody's, you know, explanation to the Court today. I think indeed it helps Mr. Moody as much as it helps anything, and that I guess the ultimate sentence, which is undisputed, was time served of the just shy of two years, but some...

THE COURT: I'd like to pull up her court file if it is still open. Do you know her case number?

MR. TRUNCALE: I have copies of those documents.

THE COURT: Oh, very well. Does the state have any objection?

MR. MOODY: I don't, Your Honor, and I can

explain to you that, as you will recall me discussing a minute ago, the testimony of the gentleman by the name of Andy Smith, who gave the statement, came in his depo and lied, and then came back later and admitted to lying, that was a part of the reason why initially she was charged as a principal because we were being told and believed, based on what we were told, that she drove him away from the scene, that she was aware he was going to do what he did, and as different things came to light, it became more apparent that perhaps she did not in fact drive him away from the scene, she was a passenger from the scene. She ultimately pled to accessory after.

So that is kind of where all of, as I said, the ocean was turned.

THE COURT: And it's also in the sentencing transcript that Mr. Shorstein placed on the record that he believed that he had a defense for his client of duress and he... the two elements of duress and he discusses that, but that his client was basically proceeding with a plea because she believed it to be in her best interest at that point in time.

MR. MOODY: Correct.

MR. TRUNCALE: Judge, and that is why I prefaced my... I really didn't -- I was unaware of the specific circumstances of it. It's just that there was a better... And so that I have -- if I may show Mr. Moody --

THE COURT: Yes.

MR. TRUNCALE: -- I guess the judgment itself, the information, the initial information, the amended information, the simple plea of guilty, which really is silent on terms, and I guess the guideline computations for Ms. Pace. If you have no objection to them, I'll tender them to the Court.

MR. MOODY: I don't have any objection.

THE COURT: Very well. I'm going to take judicial notice of these documents. I'm going to place on the record what each one is so the record is very clear. I am taking judicial notice of the following documents: The first is a six-page judgment as to Ashley Lorraine Pace for accessory after the fact, a second-degree felony. And then it is dated March 27, 2014, and signed by Judge Virginia Norton.

Next is an information for murder in the second degree as to Ashley Lorraine Pace, in Case 16-2010-CF-0114578-XXX-MA. So when you were using

the word "principal," you were using that as a legal... not a charging name --

MR. TRUNCALE: Yes.

THE COURT: -- charging -- understood.

And then also an amended information for accessory after the fact as to Ashley Lorraine Pace, also in Case No. 16-2010-CF-011457-AXXX-MA. I'm also taking judicial notice of the plea of guilty, and it says, In my best interest, signed by Judge Norton and by Ms. Pace and by her attorney Mr. Shorstein on September 20 -- it says 2012.

MR. MOODY: That is probably accurate.

THE COURT: Right, because the sentencing was in March 2013.

And then I'm taking judicial notice of the guideline score sheet as to Ashley Pace, which is signed by Judge Norton. For whatever reason this document is not dated. However, it does reference the 48 months as the lowest permissible guideline range for Ms. Pace. It indicates that the guidelines were waived, and I read about that when I read the sentencing transcript as to Ms. Pace.

For purposes of the record, all of these documents I'm taking judicial notice of them right now. I'm going to hand them to Madam Clerk.

Do you want me to -- how do you want them to be marked, as a court exhibit?

MR. TRUNCALE: A composite, Defendant's Composite Exhibit 3 as --

THE COURT: Very well.

MR. TRUNCALE: -- representing Ms. Pace.

THE COURT: These will be marked as Defendant's Composite Exhibit 3. Let me place them in the order that we...

MR. TRUNCALE: Did I say Defendant's, Judge? I said Defendant's?

THE COURT: You certainly did. All of these documents shall be marked and received into evidence as Defendant's Composite Exhibit 3.

(Defendant's Composite Exhibit No. 3 was received in evidence.)

THE COURT: Do we need to -- in order to make sure the record is clear, address admission into evidence Defendant's Composite Exhibits 1 and 2? Is that already done?

MR. TRUNCALE: Yes, I would, please, Your Honor.

THE COURT: Okay, anything further before we proceed with further testimony?

MR. TRUNCALE: Not from the defendant, Your

Honor.

MR. MOODY: No, ma'am.

THE COURT: Okay. Well, you may call your next witness, sir.

MR. TRUNCALE: I would call Ms. Nierenberg, the mother of the defendant.

THE COURT: Very well. And if you would like to have her seated for her testimony, and you can use the podium, or she can stand, whatever is more comfortable.

MR. TRUNCALE: I think it would probably be -- excuse me, Your Honor.

(Mr. Truncale confers with Ms. Nierenberg.)

MR. TRUNCALE: I think it probably would be better if she sat down.

THE COURT: Very well.

MR. TRUNCALE: If you don't mind.

THE COURT: That would be fine.

Good afternoon. If you would please come forward and Madam Clerk will swear you in right here. If you'll come forward to Madam Clerk, and after she swears you in, you're going to be seated over here.

THE CLERK: Raise your right hand. Do you solemnly swear or affirm the testimony you shall

give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE COURT: If you'll please be seated.

MR. TRUNCALE: Your Honor, should I stay here over at the podium?

THE COURT: Whichever you prefer. If it's easier for you at the podium, that's fine. You proceed as you wish.

MR. TRUNCALE: I will probably use the podium.

RUTH NIERENBERG,

having been produced and first duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

BY MR. TRUNCALE:

Q Good afternoon. Did you state your name?

A No, I didn't.

Q What is that?

A It is Ruth Nierenberg. I'm Gregory's mother.

Q And when you say Gregory, is that the defendant in the case here?

A Yes, it is.

Q And do you see him seated at the table?

A Yes, I do.

Q Ma'am --

A I love you.
Q -- what I'd like you to do is just testify, and I will ask you some questions and allow you to -- if the Court will allow -- speak in the narrative. I'll ask you some specific questions and then of some general questions about the background of your son, your upbringing of him.
Are you married?
A No. My husband and I are divorced.
Q And who is the father of the defendant?
A Gregory Senior.
Q Yes, ma'am. And with your union with Mr. Nierenberg, did you have any children other than Gregory Junior?
A Yes. Gregory has an older sister, two and a half years older, Stephanie.
Q You stated I guess the name or nickname of JR. Is that a nickname of...
A Yes. It's JR because it's Junior.
Q And so when you're speaking of a JR, you're speaking of --
A Speaking of my son, yes.
Q And he has an older sibling?
A Yes, Stephanie.
Q And is that from you and Mr. Nierenberg?

A Yes, it is.
Q Any other children?
A No.
Q And so how long were you married to Mr. Nierenberg?
A I don't know exactly. 21 years.
Q And was the divorce during the pendency of this case?
A I'm afraid so. I moved out June 23rd of '09. JR graduated from high school the first week of June of '09.
Q And would you state that based on, you know, based on the fact that your son, who you refer to as JR, was charged in this case, did that have a -- did that have an effect or a bearing on, I guess, the dissolution of your marriage?
A No. No, not really. I'd already moved out and I had an attorney. I was living in Largo at the time, so I moved out June of '09 and...
Q This happened in 2010?
A You know, yes, just a little over a year.
Q Do you know whether your son -- how he took the separation?
A Oh, dear, he was devastated. I was a stay-at-home mom. I gave up my career as a line

supervisor, all lines, and I was a latchkey kid myself, and I wanted to be the best mom possible, so I stayed home with him. And he, I guess, idolized me. I was -- he called me mom and daddy, and I was there for him. You know, and when I left, he wouldn't speak to me, wouldn't answer the phone. He was just devastated. He thought I had abandoned him.

I have a letter in my thing, that I wrote him a couple of letters, and was going through his closet and I found he had saved it.

MR. MOODY: Judge, I would object to hearsay.

THE COURT: Sustained.

You can move on.

MR. TRUNCALE:

Q Ma'am, try to answer my questions without stating what other people said, so what I'll do is --

A I mean I have the letter over there.

Q If you also would try to speak at all times into that microphone because you're fading in and out, ma'am.

A Okay.

Q Let me ask you, did you -- when was he born and how old is he?

A JR was born October 21st, 1990.

Q So then with this offense for which he's --

A He was 19.
Q He was just shy of 20 years old, 19?
A He was 19.
Q Why don't you tell us about his upbringing and where did he go to school and any parental concerns that you had as he developed?
A Okay, JR was born, literally pushed out of me. He was blue. He had the cord wrapped around his neck, so I didn't get him like I got my daughter. It was, you know, hours before they brought him to me.

Anyway JR I noticed right away besides having physical problems with his feet and the doctor diagnosed his undescended testicle... he actually had an atrophy, testicle (inaudible). He had to have (inaudible)...

JR had a speech impediment problem real early, and I also realized he had learning problems. My daughter had -- I was I -- I had a teaching degree, so I taught my daughter how to read and her alphabet before she ever went to kindergarten.

Q And did you have --
A And I spent a lot of time with JR. He was extremely frustrated. So I spent a lot of time with JR in the woods. We caught frogs and snakes, and he learned about animals and plants, and we went fishing, and he built a turtle pond. And JR was very good with

athletics, okay. So I found something he was really good at.

Q And what was that?

A Baseball. He was in baseball for years. And he played football, junior varsity, and he got hurt so he didn't get to play the next year.

Q Let me ask you this: Where did he go to elementary and high school?

A Okay, I first started him -- because he has an October birthday, that forced him to be almost a whole year older than everybody else, okay. So I took him to Terry Parker Baptist Preschool, and he was in the two-year-old class. He had just turned three, and he went all the way through there. When he was five -- I mean he was closer to -- well, a year older than everybody else and much bigger. Then I put him in St. Andrew's Episcopal private school.

Q Is that an elementary school?

A For, yes, elementary, private elementary school, and he was over there in kindergarten, and my daughter was over there too. And I transferred him to R. L. Brown for the magnet program. I had him started to be tested, okay, in kindergarten because of speech problems and because he had problems with memory, and he could not -- like he couldn't even form the letter A.

He wrote things backwards. In other words, he was just like a good Hebrew child. He wrote right to left. I had to train him by covering up the whole word and sentences.

Q So that's dyslexia?

A He was never diagnosed with that, but I had him started to be tested, okay, in kindergarten. His kindergarten teacher was pregnant when she went out... it just fell through. So first grade at R. L. Brown, I had to continue and get him tested, but they didn't.

By second grade he had Ms. Driggers, and I told her when I went to meet her if she didn't want to be called Ms. Diggers all year, she would get him to speech. So they did get him to speech, and so he had speech therapy for about a year.

And it wasn't until third grade they followed it up, you know, because I insisted. I said he needs more testing, okay. I said this boy who (inaudible) four numbers on his bicycle lock, okay.

So we had problems to this day. I don't know if he was properly diagnosed. They diagnosed him with an auditory processing, speech problem. Well -- and he was in special ed, but they didn't offer anything really. He was supposed to have gone out and... Anyway I was his special ed teacher at home, and we had some

very hard times.

Q Did these difficulties, these learning difficulties cause him any social problems that you may have observed?

A Well, yes, he didn't feel good about himself. That's for sure. Unlike JR, his sister is a straight A student, went to college on a full scholarship that was paid, got a doctorate degree.

Q Was there ever any tension in the family because of the --

A Well, no, because, you know, when she started talking about her grades when we were coming over the Matthews Bridge, I told her, you know, took her aside and told her that I don't care if she's student of the month, I'm proud of her but that it made JR feel bad, so when she got her report card and it was straight A's, to come home and tell me about it, you know, but we weren't going to brag in front of her brother.

Q Did your son ever have a car accident or something where he was, I guess, prescribed opiate medication?

A Yes. JR had an auto accident. He was -- JR has always been about three years immature emotionally, so we didn't let him drive a car until he was 16 and a half, but I don't think he was driving more than, um,

six months, since he was 17. It was July? I don't know -- seven -- and he got T-boned and ended up rupturing a disc in his thoracic area. And he was going to Dr. Green, and Dr. Green put him on hydrocodone.

Q How long was he on that?

A I'm thinking a year, and then he went to a pain clinic, and I can't remember the doctor's name, and he put him on Lyrica. It's really strong stuff. Anyway...

Q Did you notice a difference in his socializing after the accident while on these prescribed medications?

A Yes. I mean when he was on Lyrica, it knocked him out. It was just -- he would just lay on the sofa doing nothing. It was like he was drunk. And that's a bad mess right there. I think it was too strong to put a young kid on, but --

Q Despite that was he working?

A JR got a job when he was 15 over at Blue Cypress Golf Course on his own. He was -- learned how to drive a standard truck to pick up the golf balls and everything, and he cleaned carts and things.

Q Was that before the accident?

A Yes. That was before.

Q After the accident did you notice a difference

once he -- did you -- were you aware of any dependency on these prescribed opiates?

A I wouldn't say it was dependency. I think that he liked them, but who wouldn't if it's relieving pain in your back, you know, and his neck. So I didn't think of him as being addicted to them or anything, you know.

Q Had you realized that there was an addiction that had set in, would you have done anything differently?

A Oh, yes. I mean JR, JR experimented with marijuana, and we caught him, and we told him it was a gateway drug, that this is -- you know, I didn't care what state makes it legal but it wasn't legal here and that it was bad. And he -- you know, we went through his room and looked for stuff constantly, made sure he didn't have anything.

Q When did you find out that he had -- he eventually had a serious drug problem, didn't he?

A Yes, apparently, it was when he was doing the stuff. It was after -- well, after I moved out because I never knew -- apparently, he shot up drugs in his feet so we wouldn't see it.

Q And so you left in 2009, and you know the offenses that he's been charged in... occurred in late

2010?

A Uh-huh (affirmative).

THE COURT: You have to answer yes or no.

A Yes.

Q Ma'am, so were you actually living away from Jacksonville then at that time?

A Yes, in Largo. JR came down to see me July of ten -- 4th of July. That is when I saw him.

Q Let me just ask this. Do you realize that the Judge has no discretion in the matter; that she must sentence him to no less than 25 years for which it would be day to day in prison, do you understand that, and that she could sentence in her discretion up to 45 years?

A I'm aware. I'm the one that --

Q If I may ask a... question, what is your age?

A I'll be 67 in December.

Q And how old is your son now? Is it 24?

A Yes, almost 27 -- let's see, 24 -- 25 this year.

Q Absent a long, a very long life, have you come to grips with the fact that you probably will never see him as a free person again?

MR. MOODY: Judge, I would object.

THE COURT: Sustained. Sustained.

BY MR. TRUNCALE:

Q You know what, let me do this: Let me ask you if you have anything that you'd like to tell the Court in his behalf and petition for mercy or anything, and then anything that you wish to say on that, and I would -- then Mr. Moody will be permitted to...

THE WITNESS: Okay. Your Honor, the night this happened, he made a phone call to me, and it's -- I had the same phone number for seven or eight years or since 09, and he was beside himself. He told me he had a flat tire --

MR. MOODY: Judge, I would object. This is all hearsay. If they want to put him on the stand so I can cross him, then he can get into it.

MR. TRUNCALE: Yes, I don't --

THE COURT: Sustained.

MR. TRUNCALE: I agree, Your Honor. You cannot --

THE WITNESS: Oh, okay.

MR. TRUNCALE: -- go over what Mr. -- what your conversations were, what he said to you, no.

BY MR. TRUNCALE:

Q Ma'am, do you have anything that you would like the Judge to consider from your person on behalf of your son?

THE WITNESS: Yes, I do. My son was always loving and caring. This is a boy that took turtle eggs out of a golf course and things so that they wouldn't be killed. He's always befriended, when we were on vacation, a little boy who was retarded and no one else was playing with him in the swimming pool. JR has a kind heart.

His friend Chad Stockwell moved when he was in high school, and JR -- he had no way to get to school and JR made sure that he went over and picked him up off of Monument Road and took him to high school so he would graduate. Right now he's getting his engineering degree because of that. Otherwise, he wouldn't have got to school to finish high school.

JR has a kind, kind heart. What he did that night was just not like him. I know that it was the drugs that did it. It wasn't my son. And I want so much for him to have a second chance.

I love my boy. We were so close, always, always so close. I love him so much. I just -- I can't believe half of what was said. I know that there's inconsistencies, and I know what he told me is different --

THE COURT: Don't tell me what he told you.

THE WITNESS: But I love him. We've been here to support him. I want -- I want you to be as merciful as you could possibly be for him. I know that he'll have his sister. She'll be there by his side, even if we don't make it for him because we're older, you know, and I do understand. I love him. I love him so much.

MR. TRUNCALE: I would tender Ms. Nierenberg.

THE COURT: Very well.

He may have some questions for you.

CROSS-EXAMINATION

BY MR. MOODY:

Q Ms. Nierenberg, do you know the name of the man that your son killed?

A Yes.

Q What is his name?

A Freddie is what they called him, Stallings.

Q Fred Stallings. Do you think Mr. Stallings would like to have a second chance?

A I'm sure.

Q Yes, because he'd be alive then, wouldn't he?

A Uh-huh (affirmative), yes.

Q But you would agree and understand that Mr. Stallings doesn't get to have a second chance because your son intentionally and has pled guilty to

murdering him.

MR. TRUNCALE: Your Honor --

A I don't think it's intentional. I don't think he did that.

THE COURT: Hold on a second.

MR. TRUNCALE: I respectfully object as beyond the scope of cross. I...

THE COURT: Sustained.

Just ask her another question.

MR. TRUNCALE: Beyond the scope of direct I meant to say, Judge.

THE COURT: I understand that, but thank you for clearing that for the record. I understand that.

BY MR. MOODY:

Q Ms. Nierenberg, you say that you stayed home with your son, correct?

A Yes, I did.

Q And I know you talked a lot about him having such difficulty learning and speech impediments and things of that nature, but we've already heard from Dr. Bloomfield, so you would agree with me that you must have done a great job with your son because he was able to graduate from high school, correct?

A Well, let's put it this way: If you want to

call it a high school. I put him where he was going to school because... he was not able to pass the FCAT.

Q Ms. --

A If he couldn't pass the FCAT, he wouldn't get his diploma.

Q Ms. Nierenberg, did your son graduate from high school?

A A high school.

Q Did your son graduate from high school. He received a diploma from high school, correct?

A Not a public one.

Q Did your son --

A A private school.

Q It's really a very simple yes or no question. Did your son --

A No, it isn't because --

THE COURT: Let him finish the question.

Q Did your son graduate from high school?

A A private high school that he didn't have to pass the FCAT, yes.

Q Okay. Well, did he also enroll in junior college?

A Yes, he did.

Q And he passed those courses as well, didn't he?

A Well, no, unfortunately, he didn't pass any entrance courses. They made him take remedial reading and remedial math before he could get enrolled in regular course.

Q Dr. Bloomfield has already testified. We know about his academic record, that he passed seven out of eight of his college courses, so again --

A That is not true. He didn't even take eight courses, and he made an F, even though I wrote the report for him in humanities. I don't know where you're getting your information from.

Q From the doctor that you guys called.

A Well, he didn't take eight courses.

Q So he --

A And he made an F in humanities. And his sister can tell you he -- I believe he was only allowed to take two courses. I told him to take it slow because of his learning problems, and he only took two courses a semester.

Q I wasn't actually going to go down this road, but since you threw it out there... So what you're saying is your son was enrolled in college courses, and you were doing his work for him so he could turn it in?

A I came up here to help him write a report, yes. Yes, I helped him all through high school. Yes, I

did. I did a lot of stuff for him.

Q Ma'am, can I ask you a question, and I am in no way, shape or form trying to be ugly, but have you had anything to drink today?

A No.

Q Have you taken any --

A I'm nervous and I have a dry mouth.

Q Okay.

THE COURT: And we'll just pause for a minute. Perhaps somebody, the bailiffs could possibly get her a drink of some water.

MR. MOODY: I'll be more than happy to pour a glass, Judge.

(The witness is handed some water.)

THE COURT: We don't rush in this courtroom. We have plenty of time, so you just take your time.

THE WITNESS: Okay.

BY MR. MOODY:

Q Are you ready?

A Yes.

Q I just really kind of actually -- and I'm going to go back because really all I wanted to find out about is you've described the childhood for Mr. Nierenberg, and I know the Judge has already seen some photos. I thought he would see them through you,

but I guess maybe he'll see them through his dad, of Mr. Nierenberg playing T-ball, and you've described basically having what would in essence be a good family?

A Yes, he a -- well, he had a pretty good, normal childhood, he really did. We took care of him and gave him anything he needed and actually probably spoiled him a bit, you know, because like everybody buys their kids cars.

Q And that is 100 percent exactly where I was going was it sounds like you obviously loved your son?

A I do. I love him to death.

Q And you did everything you could to stay home with him, take care of him, help him along?

A Yes, I did.

Q So he had that opportunity. And your husband was there. He provided. I'm assuming that Mr. Nierenberg, the defendant in this case, didn't go without food, didn't go without clothes. He had those things, didn't he?

A Yes, but we had a difficult marriage. And I can't say that he didn't hear us argue and fight because we did, and I'm ashamed of it, but it is true.

Q I don't really remember asking you about that. I remember asking you if he had food and clothing.

A That's not normal. I don't think that is

normal.

Q You don't think it's normal for people to hear parents argue?

A No. I think that most parents don't argue in front of their kids. I did I'm afraid.

Q Well, let me ask you this: Has he ever told you that his {sic} arguing is the reason he took a gun and shot somebody in the head?

A You mean our arguing and the way he was raised? Of course not.

Q Has he ever told you your arguing is what made him take drugs?

A No.

Q Has he ever told you your arguing is what made him go get crack cocaine?

A Of course not.

Q Has he ever told you your arguing is what made him go get powder cocaine?

A No.

Q Go do pills?

A No.

Q Go do marijuana?

A No.

Q Okay. Because you do agree and understand that that was the lifestyle that he was living at the

time this happened, correct?

A Yes. I understand that he had gotten in with this girl.

Q Yes. Would that be the one that -- do you remember what you called her as she walked up --

A The big liar.

Q No, no, ma'am. Do you remember the exact name you called her in the hallway as she walked away?

A I called her a liar.

Q Are you sure you didn't call her anything else?

A I did not.

MR. TRUNCALE: Objection.

MR. MOODY: I didn't put the specific thing out there. I can just tell the Court that Ms. Pace and Ms. Pace's mother approached me because things were said in the hallways. They left. I'll leave it at that. I just simply asked if she made it --

THE WITNESS: Oh, I called her -- the mother a drug addict.

MR. MOODY: I believe it was drug dealing b-i-t-c-h.

THE WITNESS: I certainly did not. Well, that is more of her lies, okay. She came to my house. I fed her food. I moved out in June.

THE COURT: Just stop. You need to stop. You need to stop. Let's just stop right here. I'm going to disregard what I just heard about this exchange between this witness and other people in the hallway because it's really extraneous to what I'm considering today.

MR. MOODY: Yes, ma'am.

THE COURT: And you can ask another question.

MR. MOODY: Yes, ma'am.

BY MR. MOODY:

Q Where I was trying to go with that originally when I talked about the lifestyle he was leading, and I know you say you want to go blame Ashley, but the fact of the matter is you would agree with me as you were raising your son, you taught him right from wrong?

A Yes, I did.

Q You talked about -- you said -- I even wrote it down -- he's learned about a lot of things. He's learned about animals, and he's learned about snakes, and he's learned about frogs. Well, he learned about right from wrong as well, didn't he?

A Yes.

Q He's learned about --

A I wasn't any good at taking him to church. I'm sorry.

Q Well, I don't think --
A He knew right from wrong, yes, he sure did. I taught him right from wrong. He also made bad choices.
Q Yes, ma'am, and, unfortunately, sometimes those bad choices can lead us to kill people, don't they?
A Not me.
Q No, ma'am, your son. That is what we're here to talk about. I'm not asking you.
MR. TRUNCALE: Your Honor, it's beyond the scope of direct --
THE COURT: Sustained.
MR. TRUNCALE: -- on that issue --
THE COURT: Please ask another question.
BY MR. MOODY:
Q Does your son know about the difference between life and death?
A As much as you and I do. I guess everybody does, don't they?
Q So when he was 19, despite all of the learning disabilities that you talked about, you would agree with me at 19 years old he knew the difference between life and death?
MR. TRUNCALE: I object to the form of the question, specifically the use of the term, "you

agree with me." It is irrelevant whether she agrees with the prosecutor or not. So for all of -- so I would have a continuing objection to the form of the question.

MR. MOODY: Judge, I'll rephrase it. It's a simple question.

BY MR. MOODY:

Q You knew your son at 19, correct?

A Yes, I did.

Q Did he know the difference between life and death?

A Of course he did.

Q Did he know the difference between right and wrong?

MR. TRUNCALE: Your Honor, I would ask --

A I would --

THE COURT: Stop, listen, listen. Mr. Truncale is making an objection, so I have to listen. I can listen to one person at a time, okay.

MR. TRUNCALE: I would respectfully request that Mr. Moody train his voice down. This is a mere character witness, a mother. She doesn't need to be badgered with heavy-handed cross-examination. She is not a fact witness.

MR. MOODY: Judge, for the record, I think,

and I would like for the Court to note, I'm speaking in a normal tone of voice. I have not badgered anyone. I have actually tried to be patient as I ask a question, and this witness goes on talking and talking, and I've tried not to talk over her because I understand the court reporter can only take down one at a time. I have done nothing of what he has just sat there and tried to lay out the record.

THE COURT: Okay. So just for the record, obviously, this is a difficult day, and it is a difficult day for this witness and for her family and for the parties involved, but we have all afternoon. I have plenty of time.

And so I would just ask you to listen to the question and only answer the question, not give any other information.

And we'll just proceed in an orderly and methodical, calm manner.

It is 3:38 p.m., plus or minus. We have hours if we need it. We have plenty of time.

MR. MOODY: Yes, ma'am. I would like the Court, since there has been so much on the record already, if the Court doesn't mind, could at least state on the record that I was -- I think he said yelling or raising my voice. I was speaking in a

normal tone of voice.

THE COURT: Everyone is speaking in a normal tone of voice, and everyone is here representing their clients and doing their job, and we'll just proceed from there.

BY MR. MOODY:

Q Ms. Nierenberg, you mentioned something previously that at one point in time -- I don't know if it was you or your husband -- somebody caught your son using marijuana, correct?

A Correct. He actually -- we didn't catch him. He was at high school and went on a lunch break with three or four guys from high school. He was in his car at the time. He had a joint, and the police wanted to search his car. He refused. They brought in a dog to go around the car. They didn't find anything, but they searched it anyway. I think they let all of the boys go and...

Q Ms. Nierenberg, the only -- I really wasn't even going to get that far in depth. The only thing I wanted to ask you was you then said you had --

A Yes, yes --

THE COURT: Let him finish the question, okay.

THE WITNESS: I answered that question.

THE COURT: Even if you think you know what

question he's about to ask you --

THE WITNESS: Well, that was his first question.

THE COURT: Well, let's just do one at a time. You have to let him finish, and he has to let you finish, and we're all very methodical. I know that you may think you know what the question is going to be, but let's just let him finish it because this is all being typed up by the court reporter, and it needs to be really clear. It's almost like a script. If you think about Shakespeare and a play, and there is one line and then the next, and it needs to be clear in the record who said what.

So you may proceed, sir.

BY MR. MOODY:

Q Ma'am, the question that I was trying to ask was so when that happened, you had a discussion, you or your husband or both of you had a discussion with your son about drugs and the dangers of drugs, correct?

A Yes, we did.

Q Again, trying to educate him so that he didn't go down that path, correct?

A Correct.

Q Again, giving him knowledge and opportunity that a lot of kids don't have to try and do something

with his life?

A (Shrugs.)

Q Yes?

A Yes what? Was there a question?

Q Yes. Was the purpose of you trying to educate him on drugs so that he would not make the mistakes that he made?

A Yes. I mean, obviously, I told him drugs are bad.

Q And after you caught him or after he was caught with that marijuana, were you aware of any other drug use?

A No.

Q Did you have any idea this was going on?

A No. I had no idea.

Q Let me ask you about guns. Were you aware that he had guns?

A No.

Q Okay.

A His dad had a lot of guns. Boys like guns. He wanted a rifle and all the stuff. His dad didn't give him his guns, but he was fascinated with them.

Q He was fascinated with guns?

A Well, he liked them, you know.

Q Were you aware, did you ever know of him

owning his own guns?

A No.

Q Pistols?

A No.

Q Assault rifles?

A No.

Q Anything along those lines?

A (Shakes head negatively.)

Q How about after you moved out and left, were you ever aware, did he ever talk to you about, oh, I've got a pistol, oh, I've got a gun, oh, I've got anything along those lines?

MR. TRUNCALE: May I just pose an objection. This has gone extraordinarily beyond the scope of direct exam. It seems we could be forever -- or it's almost like she is now a witness of the prosecution, a new witness. I don't --

THE COURT: It is beyond the scope.

MR. MOODY: Actually, Judge, I'm not going to argue with you, but, respectfully, it is actually right in the scope because he asked her a ton of questions about his upbringing and what she saw and how she taught him and how they lived, so I'm asking questions about those very things.

At this point, just because I don't want it to

last forever, I won't ask anymore questions, but I would respectfully disagree, and I think it is directly relevant to what he was asking; that I can bring out other points that she sits there and talks about, you know, how he was such a good kid, I can bring out the bad things, too, and that is all I was doing, Judge.

THE COURT: Well, that is fine. I haven't actually ruled on the objection.

MR. MOODY: You said it is sustained, Judge.

THE COURT: I didn't say it was sustained. I said I thought it was outside of the scope, but I haven't actually ruled to be hyper, hyper technical about it.

Do you want to proceed forward with that question?

MR. MOODY: Actually, Judge, I'm --

MR. TRUNCALE: I'll withdraw...

THE COURT: You'll withdraw the objection?

You can ask it.

MR. MOODY: Judge, to be honest with you, I think I've gotten everything I can get out of this witness. Thank you.

MR. TRUNCALE: I have no further questions. Thank you.

THE COURT: So may this witness be excused?

MR. TRUNCALE: Yes. And I would ask that she could sit in the --

THE COURT: She certainly can.

THE WITNESS: Can I make a comment?

THE COURT: No, you can't. No, not really. Unless you have any questions for her on redirect?

THE WITNESS: (Inaudible)

THE COURT: Hold on.

MR. TRUNCALE: I have no questions, Judge.

THE COURT: Okay, no.

THE WITNESS: No?

THE COURT: No.

MR. TRUNCALE: If she may sit in the courtroom?

THE COURT: She may certainly sit in the courtroom.

MR. TRUNCALE: Could I then call Ms. Stephanie Nierenberg, his sister?

THE COURT: You may.

Stephanie Nierenberg.

Good afternoon. If you would please come forward and Madam Clerk will swear you in. You have to raise your right hand. And then after you are sworn in, you will be seated over here.

THE CLERK: Do you solemnly swear or affirm the testimony you shall give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: Please be seated.

STEPHANIE NIERENBERG,

having been produced and first duly sworn as a witness on behalf of the defendant, testified as follows.

DIRECT EXAMINATION

BY MR. TRUNCALE:

Q Will you please state your name.

A Stephanie Nierenberg.

Q Okay. And, Stephanie, how old are you?

A 27.

Q And are you related to the defendant in this case?

A Yes.

Q And how?

A I'm his older sister.

Q And do you see your brother in the courtroom?

A Uh-huh (affirmative).

Q And is that...

A Uh-huh (affirmative).

Q And what I'd like you to do is simply tell the

Judge in the narrative, if you would, your relationship with your brother growing up and then to simply if you have any particular request of the Court in the nature of mercy, you could state that, if you can, so that things will go quicker if you do it that way. So tell about how you know your brother.

A Can I just read what I have prepared a while back?

THE COURT: Certainly.

A All right. So, obviously, I'm his sister. I feel like I'm probably one of the closest people to my brother and was one of his biggest like confidantes throughout our childhood, especially being there for each other whenever my parents weren't getting along.

There is no greater bond than family. I love my brother so much (crying). And we've had our fair share of ups and downs like any siblings do, but I have so much love and respect for my brother. He has always been there for me, and we've shared a bond like no other.

I can vividly remember a brief period of time that we spent at daycare when my mom thought she might go back to work and they separated the older kids from the younger kids. And I just remember on the playground there being like a chain link fence, and we just held

each other through the chain link fence and cried because we didn't want to be separated.

And this period of time, it kills me. I moved away in 2013 and came back, and I moved to South Carolina. I came back every single month to visit my brother, and it killed me, you know --

Q Is that in jail?

A Uh-huh (affirmative). I came back once a month to make sure that he got his visitation. And then I could see and spend some time with him. We would talk on the phone, but, you know, I haven't touched him in like four and a half years. It just kills me not to be able to hug him and see him.

And he quickly outgrew me, and he became my protector when we were growing up, and he's one of my best friends.

I know he feels remorse for what he's done, and I just -- I know that -- and I'll always be a support system. And I hope -- I just hope that you do have mercy on him and give him a second chance at life and that I'll always be there for him no matter what, even if my parents aren't around.

Q And what do you do for a living?

A I'm a physical therapist.

Q And where do you work?

A I'm a home health physical therapist but I travel, but I work here in town.
Q How long have you been doing that?
A I have been working for this company since I moved back in October.
Q Do you have a college education?
A Yes. I have a doctorate in physical therapy.
Q A doctorate in physical therapy?
A Uh-huh (affirmative).
Q Where did you all go to school?
A I went to school here in Jacksonville, and I went to high school at Stanton, and then I pursued my bachelor's at the University of North Florida here in town and got a doctorate at the University of North Florida as well.
Q Did you -- I guess growing up you did better than your brother did in education?
A Just a little bit, but he beat me out in whole athletics.
Q And are you married?
A No.
Q Are you church going?
A Uh-huh (affirmative).
Q Where do you attend?
A Church of 11-22.

Q Okay. And are you finished with regard to your...

MR. MOODY: Judge, I apologize, but this evidence, I mean whether she goes to church, whether she's married, I don't understand what it has to do with Mr. Nierenberg's sentencing.

MR. TRUNCALE: I would say that part of my argument at the end is that to request a sentencing at the lower end is that while his parents will probably be deceased, there is a loving sister that would be there to support him. He will be -- if he got the minimum, he would be, I guess, in his late forties. And if it were the maximum, he would be in his sixties or 62, I think.

So I just want to show that we have a stable, good person to support him upon return to the community.

THE COURT: As I understand the point, and I understand your argument, and you can certainly make the argument later, but whether or not his sister is married and whether or not she goes to church is really irrelevant and extraneous information.

MR. TRUNCALE: Well, then I have nothing else, Judge.

THE COURT: Okay. But I have listened very

closely to your testimony today.

Mr. Moody, did you want to inquire?

MR. MOODY: Judge, I have no questions for this witness.

THE COURT: Very well.

MR. TRUNCALE: Your Honor, if I may -- I'm sorry. If I may, could I get a short, two-minute break, five-minute break before the next witness.

THE COURT: Do you want to take a ten-minute break?

MR. TRUNCALE: Sure, Judge, if you wouldn't mind.

THE COURT: That's fine. We'll take a ten-minute break. For purposes of the record, this witness is excused, and you're welcome to remain in the courtroom or leave as you choose.

THE WITNESS: Okay.

THE COURT: So right now it is 3:51. We'll take a nine minute break and we'll be in recess until 4:00.

MR. MOODY: Yes, ma'am. Thank you.

THE COURT: Thank you.

(Discussion off record and recess.)

MR. TRUNCALE: Your Honor, I said one witness. There will be two. One is Ms. Linda Sykes. And

could you allow those who testified earlier to come back in...

THE COURT: That is fine.

Good afternoon. If you will please come forward, and Madam Clerk is going to swear you in. You are going to come all of the way to the front.

THE CLERK: Do you solemnly swear or affirm the testimony you give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

LINDA SYKES,

having been produced and first duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

BY MR. TRUNCALE:

Q Would you state your name, please.

A My name is Linda Sykes.

Q Is that S-y-k-e-s?

A Yes, it is.

Q And, ma'am, would you please identify yourself as to -- you know, and how you know the defendant in this case?

A Sure.

Q And if you have prepared statement --

A That's all right. It's probably more informal

if I just kind of speak randomly. But my name is Linda Sykes, and I'm a registered nurse. And I met JR. We refer to him as JR when my daughters were in school at R. L. Brown Elementary.

Q What I'd like you to do is just tell the Judge your feelings towards him based on knowing him since then, and if you have any particular requests of the Judge with regard to sentencing.

A Sure. Well, like I said, I've known JR for many, many years. He had a little crush on my daughter, but long after the crush dissolved, he stayed in touch with our family.

We are a religious family, and every Wednesday and all day Sunday we would go to church, and so we would always invite JR to go to church with us to the First Baptist. I can remember many a times him being in the back seat with the girls as we headed off to church.

So that is really where my foundation is, is bringing JR to church and his fellowship with my daughters, his crush on my daughter Tiffany. And one of the things that I've written in this letter that is old and antiquated is that I'd have done anything in the world to change the things that have changed, you know, that happened in my life since then.

My daughter Tiffany that he had the crush on

was herself murdered with her daughter six years ago, and during that time JR took it very hard, but he's been very supportive to our family since then. Even in jail he continues to support my younger daughter. It has been a terrible loss, and I understand that it is terrible to be on both sides of this. But it was a tragedy that I still have not been able to adjust to, and I try every day to move forward. But JR has been very supportive to our family as we go through this process.

Q How does he communicate with you?

A Pardon?

Q How does he communicate with you?

A My younger daughter writes, they write, so they -- and she visits him regularly down at the jail.

Q And are you appreciative of that?

A I think I am, and we know that we're happy to see him when he is there.

Q And did you have any particular request for mercy or anything?

A Well, of course I do. And it is terrible when you are on both sides of this. But I know that JR built a foundation of faith as we brought him to our church, and I know that he is sorrowful for the things that have put him in this predicament, and I know that he is

repentive, and I do plead that you have some mercy on him.

I can't have any more contact with my daughter and my grand baby. I will see them in good time, but now I feel like I've lost my son too, kind of a son, and I wish that you will have some mercy on him. Thank you.

MR. TRUNCALE: Ma'am, Mr. Moody, the prosecutor, may have some questions.

THE COURT: You have to stay seated until we see if Mr. Moody has any questions.

THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. MOODY:

Q I just have a few questions, ma'am.

A Yes, sir.

Q You know, obviously, I also have no idea about your background. I give you my deepest sympathies and condolences.

You had mentioned though that your daughter and your granddaughter were murdered, correct?

A Yes, sir.

Q And what year would that have been, ma'am?

A July 7th -- I mean July 8th, 2009, 7/8/9.

Q So I know that you said that Mr. Nierenberg was close to your daughter?

A Yes, sir.
Q So he had felt that loss of somebody being murdered almost over a year before he himself actually murdered somebody?
A Yes, sir.
Q And you had mentioned that you had built a foundation of faith through your church with Mr. Nierenberg?
A I prayed that that absorbed in him, yes.
Q When do you think -- and I understand it was a long time ago.
A Uh-huh (affirmative).
Q When do you think would have been the last time that Mr. Nierenberg actually attended church with you before he murdered Mr. Stallings?
A That would have been sometime. When we took JR to church, it was when the children were young, and they probably stopped in their teens.
Q And that is because I, listening to you, kind of got the impression that it kind of continued on and on and on maybe up until the time he did this?
A No.
Q Okay. So when would you say -- let me back up. Let me ask it this way: We know that Mr. Nierenberg has pled guilty to murdering

Mr. Stallings on October 7th, 2010, okay?

A Yes, sir.

Q How often would you say that you were around Mr. Nierenberg that year before he actually murdered Mr. Stallings?

A It's hard for me to say, but after we stopped our usual church kind of thing, as the kids were teenagers, because, unfortunately, some teenagers are just dragging, kicking and screaming into a church. My girls all went, some of them kicking, some screaming.

Q Yes, ma'am.

A But then JR always stayed in touch with our family, and he might, because we live in the same area of town, he would drop by unannounced, which was fine with me, and he would sit and visit. He entered and we were friends, and we would visit for hours, even if my children weren't there.

Q So, again, my question --

A I'd say a couple -- maybe I would see him after that regular fellowship, maybe like six times a year or something.

Q So my question was how many times you saw him the year before he committed this murder, you would say about six times that year? And I'm not holding you down to a specific number.

A Guesstimate.
Q I'm just trying to get an understanding for how often you actually had a chance to interact with him as close to the time that he did this?
A Just a guesstimate.
Q Okay. In those six times that you had a chance to visit with him one year prior to him committing this murder --
A Uh-huh (affirmative).
Q -- did you ever notice him being on drugs?
A Absolutely not. And I did write in this original letter I hadn't noticed anything. I mean because I am a woman of faith.
Q Yes, ma'am.
A I was a single parent, and I had to be the father and the mother to my children.
Q Yes, ma'am.
A If I had any issue with JR, I would have taken it up with JR.
Q And that is kind of where I'm going is, so you would agree with me, in every conceivable way that you had an opportunity to observe, he seemed to be a normal, healthy, happy --
A Neighborhood kid.
Q -- neighborhood kid, not maybe perhaps how

other people have described him; that is how you saw him, correct?

A That is how I saw him.

MR. MOODY: Thank you, ma'am.

THE COURT: Any redirect?

MR. TRUNCALE: I have none, Your Honor.

THE COURT: May the witness be excused?

MR. TRUNCALE: May she be excused and remain in the court?

THE COURT: She may.

You are excused. You are welcome to remain in the courtroom or to leave as you choose.

THE WITNESS: Thank you.

MR. TRUNCALE: Our next witness will be Mr. Nierenberg Senior.

THE COURT: Good afternoon. Please come forward and Madam Clerk will swear you in right here in the front.

THE WITNESS: I can't hear a word you're saying.

THE COURT: May we have a hearing device that will help.

THE WITNESS: Yes, I need that. I can't hear too well.

THE COURT: We'll get you something right now.

THE WITNESS: Thank you. I had hearing aids, but all I can hear is the wind, and I can't hear what you're saying anyway.

THE COURT: Why don't you see if this helps.

THE BAILIFF: It may not work in the jury box.

THE COURT: Can you hear me better right now?

THE WITNESS: No.

THE COURT: No?

THE WITNESS: No, it doesn't help.

THE COURT: Why don't you switch it backwards, officer.

THE BAILIFF: I don't think it works unless you're actually in the gallery.

THE WITNESS: I'll do my best to hear you. It's on now.

THE COURT: Well, I'll ask counsel. Although it's very customary that witnesses are in the box, we can move around. I can even move around in the courtroom.

MR. TRUNCALE: Judge, if it's okay with Mr. Moody, could he just...

THE COURT: I think what happens is this device that he has to connect with that piece of equipment that is up by the ceiling, so I think it works better if he is towards the back; is that

correct? So...

MR. MOODY: Your Honor, either that or when Mr. Truncale speaks into the microphone, I'm assuming you'd be able to hear that?

THE WITNESS: I can hear that.

THE COURT: Perfect.

MR. TRUNCALE: Or even better, maybe let Mr. Nierenberg testify in the narrative. What he wanted to do is testify, but essentially just identify himself and tell us, you know, his love of his son and to seek mercy.

THE COURT: He may. So if Madam Clerk would please swear you in.

THE WITNESS: Okay.

THE CLERK: Raise your right hand. Do you solemnly swear or affirm the testimony you shall give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: And, sir, for purposes of the record, can you hear me now?

THE WITNESS: Yes, I can.

THE COURT: Very well. And I'll let Mr. Truncale proceed. Do you want to use the microphone?

MR. TRUNCALE: Oh, no, I'm close enough I believe. You can hear me now?

THE WITNESS: No. This is breaking up.

THE COURT: That's okay. Perhaps he can stand next to you at the podium for the testimony.

MR. TRUNCALE: Yes.

THE WITNESS: When I turn that way...

THE COURT: So it seems better for you this way?

THE WITNESS: This way.

MR. TRUNCALE: So I should stand...

THE COURT: Yes, you should.

For purposes of the record, we're just working out the logistics so the witness can hear everything.

THE WITNESS: Thank you.

MR. TRUNCALE: Can you hear me now?

THE WITNESS: Absolutely.

GREGORY MICHAEL NIERENBERG,

having been produced and first duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION

BY MR. TRUNCALE:

Q Mr. Nierenberg, would you state your full name.

A Gregory Michael Nierenberg.

Q And are you the father of the defendant in the case?

A Yes, I am.

MR. TRUNCALE: And, sir, I would ask you to please tell the Court your feelings about your son and whatever you believe would be able to convey any request for mercy. The only thing I would ask, will you please not state what -- anything that your son told you that would be hearsay, and it would just require an objection. So if you could give your thoughts about your son and his upbringing by you and Ms. Ruth Nierenberg.

THE WITNESS: Your Honor, we worked hard, we worked hard with my son. He's been a good kid. His whole life all he's ever tried to do is help other people. He even -- when he was really small, he tried to help everybody. In the neighborhood there was a bunch of older people in the neighborhood when he was four or five years old. He'd wind up over at their house helping in the yards, helping do things. He's always, always up until this incident, always done the right thing. He's helped people his entire life, he truly has.

He's tried to acquire things on his own. When

he was small, he wanted to buy -- I bought him a bicycle for one of his birthdays, and he wanted another bicycle. When he was this big (indicating), he went out and cut yards so he could get that fancy bicycle he wanted.

He went to school like he was supposed to. He graduated. He tried. He was in college, taking preparatory courses to get into college and doing the best he can.

I tried to watch over him. We've done a lot of things together. We fished and we vacationed together. I had to work a lot, so I couldn't be at home as much as his mother has, but I tried to make sure that he had a good home, a good place to live and for him to be taken care of.

He always had been -- even just to be with me, he would go to my office with me and work and sweep, and I could show you contracts where he had written when he was a child that I'll do this for this. I mean he's always been loving to everybody. I've never heard anybody say anything bad about my son.

I know that this last deal that he got messed up with the wrong people and he got messed up with the drug situation. It was a short period of time. He -- when I found out that he was having some

problems, when I -- when we got on him and got him straight, he stopped. I didn't see any problems, issues. This just popped up at the last -- like I say, he went back in school. He was doing what he was supposed to do. He's always been a loving child.

God willing that I'll be living long enough to see him come out. I know that he needs -- he has to receive punishment for what he did, but I also think that he could be new again.

I ask please that you have some -- have mercy on him. I hope that -- like I say, if I can't be here, my daughter -- we will have a support system for him. No matter what I'll make sure that he has some form of life when he comes out and has a chance at life.

I hope that he does have a chance at life, Your Honor. I love him with all of my heart.

MR. TRUNCALE: Thank you, Mr. Nierenberg.

At this time I'm going to tender you as a witness. Mr. Moody may have questions of you.

THE WITNESS: All right.

Your Honor, I have to have surgery on my knee coming up.

THE COURT: Do you need to sit down?

THE WITNESS: Would you mind if I do?

THE COURT: That is fine.

MR. MOODY: Judge, I have no questions.

THE COURT: You have no questions. Oh, very well.

So your testimony is complete, sir. I've listened very carefully. Thank you. And you are welcome -- you are excused. You are welcome to remain in the courtroom or to leave. If you choose to remain in the courtroom, you can keep using the hearing --

THE WITNESS: Oh, I can keep these?

THE COURT: As long as you don't leave the courtroom. You can wear it while you are here if you would like.

THE WITNESS: Thank you very much.

THE COURT: Very well.

MR. TRUNCALE: Your Honor, that would conclude my presentation. I do have letters from people who have the same general sentiments of asking for mercy, again, persons like this, about three or four witnesses who were here at the last hearing and didn't come back, letters from them are in here, but there is an additional set of letters. Would it be -- I have tendered --

THE COURT: Has Mr. Moody seen them?

MR. TRUNCALE: Mr. Moody saw them and has told me that I can present them to the Court.

THE COURT: I can read them right now.

MR. TRUNCALE: If you wouldn't mind, Judge. They don't even need to be an exhibit, but just...

THE COURT: Any objection from the state to my reading these...

MR. MOODY: Judge, they were provided to me during the nine-minute break and I have read all of them. I have no objection.

THE COURT: Okay. We'll just pause for a moment so I can read these.

Does anyone need a break? We can go into a recess. We'll just take about a six-minute break. I'm going to remain on the bench while I read these, but that way the courtroom personnel can take a break.

MR. TRUNCALE: Judge, before we go to break, how will we be presenting after this. Is it the Court's practice that the government will make an argument or the defense or... I would just ask the order of the presentation.

THE COURT: I actually don't have a preference. Do counsel have a preference?

MR. MOODY: Your Honor, based on the unusual history of what happened in the last court hearing, as well as this hearing, I actually think it might be more prudent to have the defense go first in case there is some argument that I would need to respond to specifically in any regard.

THE COURT: I don't know anything about -- well, let's just address just one question, the very simple question. Would you have any objection to going first or would you like the state to go first?

MR. TRUNCALE: I was kind of going to ask if I could go last so that I could...

THE COURT: Well, the state can go first. The state has the burden. That's fine. The state can go first, and the defendant may argue, and then I'll hear from the state, and then I'll probably take about a short recess, and then I'll come back and impose sentence.

Let's talk about a quick housekeeping matter. I want to make sure that I have this correct. Both charges to which the defendant has pled are life felonies, correct?

MR. MOODY: The attempted -- I believe it was charged as an attempted first, Your Honor. I don't have that in front of me.

THE COURT: Right.

MR. MOODY: Then that would be a PBL, yes, ma'am.

THE COURT: A life, so it would be a first-degree felony punishable by life.

MR. MOODY: Yes, ma'am, I believe so.

MR. TRUNCALE: Attempted murder?

THE COURT: Because I'm looking at a printout on Core.

MR. MOODY: Your Honor, if you'll allow me to get the...

MR. TRUNCALE: A second-degree murder is a life felony. I think that a first-degree murder is -- the first degree -- the attempted --

THE COURT: The attempted first-degree murder.

MR. TRUNCALE: The attempted drops down --

THE COURT: To a first-degree murder punishable by up to life.

MR. MOODY: That is why I believe it's a PBL.

MR. TRUNCALE: ...docket sheet too.

MR. MOODY: Well, the back of the information says life, but, candidly, I believe it's a first PBL. Typically up to life, but, obviously, with the agreement, he is only subject to an exposure of up to 45 years.

THE COURT: I understand that. My concern is that I just want to make sure when I adjudicate him, that I adjudicate him with the proper degree felony of attempted murder in the first degree, and it will be a first-degree murder -- first-degree felony.

MR. TRUNCALE: It is, Your Honor. I think if it were murder first degree, of course, it would be life. Because of the attempt, it drops it down to an F-1.

MR. MOODY: Actually, I think it's a PBL.

THE COURT: So in terms of the...

MR. MOODY: It's punishable up to life.

THE COURT: It's a first-degree felony, punishable by up to life.

MR. MOODY: Correct.

THE COURT: He'll be adjudicated --

MR. MOODY: And that one would only be 30 years.

THE COURT: Okay. So the proper language would be he would be adjudicated guilty of a --

MR. TRUNCALE: Life felony.

THE COURT: -- life felony, or of a first -- I think of a first-degree felony. I just want to --

MR. MOODY: It seems it may be semantics. I believe it is actually a first-degree felony,

punishable by life is the way that they phrase it. It is a first PBL versus straight life.

MR. TRUNCALE: That's it, Judge.

THE COURT: And just to close the topic down to make sure that I'm doing this properly, count 1 will be an adjudication of guilt on the life felony of murder in the second degree. Count 2 will be an adjudication of guilt on the first-degree felony, which is punishable by life of attempted first-degree murder.

MR. TRUNCALE: Right.

MR. MOODY: Yes, ma'am.

THE COURT: Very well. So we'll be in a short recess to allow me time to review these letters, so anyone can take a break.

Does your client need a break?

MR. TRUNCALE: No, but thank you, Your Honor.

THE COURT: Thank you. The Court is in recess. I'll just remain here, but you are welcome to come and go as you wish.

(Discussion off record and recess.)

(The defendant is present.)

THE COURT: Please be seated.

I want to place on the record all of the letters that I have reviewed. Would you like them

to be placed in the court file?

MR. TRUNCALE: I guess we could as the --

THE COURT: Does the state have any objection to that?

MR. MOODY: No, ma'am.

MR. TRUNCALE: -- as the next defendant's exhibit. It may be...

THE COURT: Composite 4.

MR. TRUNCALE: 4.

THE COURT: So all of these letters will be received into evidence as Defendant's Composite 4.

(Defendant's Exhibit No. 4 was received in evidence.)

THE COURT: But I want to list specifically what they are. I've reviewed all of these letters. The first one is from Fran Holleman, H-o-l-l-e-m-a-n, dated July 15, 2013. The next is from Kenneth Chadwick Sockwell, S-o-c-k-w-e-l-l, dated July 20, 2013. The next is from Alexander Frennett, F-r-e-n-n-e-t-t, dated July 14, 2013. The next is from L. Frennett, F-r-e-n-n-e-t-t. This is three pages in length. It looks like it's L-u-v-v-i-m-i-n-d-a (inaudible) -- I'm probably spelling that incorrectly -- F-r-e-n-n-e-t-t. I've reviewed this letter of three pages in full.

There is a letter from Joseph Frennett, F-r-e-n-n-e-t-t, which is three pages in length that I've reviewed. There is a letter from James Frennett, F-r-e-n-n-e-t-t, which is three pages in length. I've reviewed a letter from Marlene Sierra, S-i-e-r-r-a, of June 29, 2013, two pages in length. And I've reviewed the letter of Janice Alfonso, A-l-f-o-n-s-o, dated July 28, 2013. And, lastly, I've reviewed the letter of Marlene Sierra, June 29, 2013.

And for the record, we did take a recess, and I did go back and I read all of these letters in their entirety, and I'm handing them all to the clerk via the bailiff right now for filing as Defense Composite Exhibit D.

MR. TRUNCALE: Thank you, Your Honor.

THE COURT: Is there anything further before we proceed with argument?

MR. TRUNCALE: No, Your Honor.

MR. MOODY: No, ma'am.

THE COURT: Very well. I'll hear from the state.

MR. MOODY: Your Honor, on the early morning hours of October 7th, 2010, this defendant took a .40 caliber semiautomatic pistol, intentionally

placed it to the head of Fred Stallings and pulled the trigger and murdered him in cold blood. He was 51 years old, never to live another minute. This defendant then chased Carl Harp out of the house and fired two more shots in an attempt to kill him. And on the night that this defendant did that he was 19. He was a 19-year-old young man, two weeks shy of being a 20-year-old young man.

And I bring that up, Judge, because we're not talking about a 14-year-old or a 15-year-old, and we hear all about how their brains haven't developed and they really don't know the consequences of their actions. You're dealing with in essence a 20-year-old young man who knew exactly what he was doing and who knew exactly what would happen when he did it.

I think it's First Corinthians, the saying, When I was a child, I spoke as a child, I thought as a child, I understood as a child. When I became a man, I put down childish things. Well, I would submit to you when this 20-year-old man picked up a gun --

THE COURT: And just for the record, I'll acknowledge he was close to 20, but he was 19.

MR. MOODY: When this 19-year-old man with two

weeks left before he was 20 picked up a gun and pulled the trigger as it was almost pressed against the forehead of Mr. Stallings, the picture I've given you, the medical examiner talked about the stippling around the bullet point, showing that it was a close-range wound. He knew exactly what would happen.

THE COURT: And has that actually been admitted into evidence that photograph? I know I saw it on Friday.

MR. MOODY: Yes, ma'am, it should have been. I believe it was admitted as State's Exhibit 1. I thought we --

THE COURT: I think it was.

MR. MOODY: -- we moved it in at the same time.

THE COURT: It is in evidence. That is fine. And there was a medical examiner testimony, but I understand your point.

MR. MOODY: Yes, ma'am. And, actually, since you bring up that photograph, you know, there is a reason that I introduced that one solitary photograph because you know Mr. Truncale introduced a photograph, and nobody talked about it. I remember seeing it. I think it had ten or so

childhood pictures of Mr. -- I'm assuming Mr. Nierenberg. Nobody talked about it. I assume that's who it was, playing T-ball, having a good childhood. Those were the pictures that you got to see of Mr. Nierenberg.

But the only picture that we have -- well, we have a lot of pictures, actually, of Mr. Stallings, but that's about the last picture of Mr. Stallings as he laid on an autopsy table after having his brains blown out by this defendant, and I mean that literally, as he was shot through the brain.

You know, Mr. Truncale had a number of witnesses come up here, and those pictures that I'm talking about of the defendant, they show you this defendant had a good childhood. They -- they -- I guess they're introduced -- those witnesses came to you and they asked for mercy, and Mr. Truncale has put them up there so that they can ask for mercy and somehow that's mitigation.

I would submit to you it is aggravation because with each and every witness you learn that this defendant, unlike most of the defendants who are sitting over there in the Duval County Jail or the Florida State Prison system, had every opportunity in the world. He had an incredible

support system. You heard from his mother, his father, his sister, his neighbors. He had food. He had clothing. He had a good home. He had parents that loved him. He had a sister that loved him. He had neighbors that took him and ushered him to church so that he could learn right from wrong. He had opportunity that most of the people we have in this courtroom would dream of having, and instead he threw it all away to go get high.

You know, they come in here asking you for mercy. To be honest with you, the easiest thing for me to be able to say really would be like something along the lines of how about giving him the same mercy he gave Mr. Stallings as he held him and blew his head off. He didn't have any mercy for Mr. Stallings that night.

The defense is asking you to give more regard to them than that man gave regard to them because that night he didn't care about them. He didn't care about the lessons, about the sacrifices that his family went through. All he cared about, I would submit to you, is getting high and getting even.

And I say that because you heard from Dr. Bloomfield. I had Dr. Meadows outside waiting

to testify. There was no need for me to call him. Dr. Bloomfield said everything. Their own witness told you he has no mental disorder. He has no mental illness. He was competent when he was in here today being prosecuted. He was competent the night that he did this. There is no not guilty by reason of insanity defense.

The only two mitigating factors Dr. Bloomfield could even come up with was that he disclosed that he was allegedly molested as a child, and that was supposed to be a mitigating factor. But yet when I asked Dr. Bloomfield, okay, well, if that is true, that is a pretty traumatic experience, did he exhibit any characteristics of posttraumatic stress disorder? No. Did he tell you he was having any flashbacks the night this happened so that we would know somehow it's related? No. Do you have anything which tells you the fact that he was or was not molested has anything to do with his actions that night, either the drug dependency or the murders? He was very honest, no, I don't. Okay, well, I would submit to you that is not really a very mitigating factor for his actions that night.

The other mitigating factor Dr. Bloomfield talked about was the learning disability. I would

just submit to you that the learning disability that Dr. Bloomfield talked about seems to be very different than the one disability, apparently, Ms. Nierenberg talked about.

Dr. Bloomfield talked about there being some learning disability that the records reflected between first and fifth grade, but then yet Mr. Nierenberg was able to successfully complete high school. He got a high school diploma. He was not in special ed classes. He was not in special need classes. There is no record evidence whatsoever that he had difficulty.

According to his own statements to Dr. Bloomfield, he felt as though he was a popular student, he felt as though people liked him. Those were the statements that came out in my cross. I asked him pointblank, You said he has low self-esteem, Dr. Bloomfield. He told you he felt as though he was popular in middle school. He felt as though he was popular in high school. Is that normal for people with low self-esteem to think they are popular? And then we got into a little debate about whether it is typical or not typical. I'm hoping and assuming the Court remembers this.

THE COURT: I remember it thoroughly. I

remember the testimony of Dr. Bloomfield very clearly.

MR. MOODY: So as far as the learning disability goes for a mitigating factor, what we really have is an individual who successfully completed middle school, successfully completed high school, was in college and completing college while working at the same time and tells Dr. Bloomfield he was about to get a managerial position.

That is very different than people who have had real learning disabilities that cause them to be held behind in society to where they may turn to drugs or they may turn to violence.

Dr. Bloomfield said what this case was about. It's the one thing -- and this is why I didn't need to call Dr. Meadows, this defendant has a drug problem and an impulse control problem, and that is what this case is. It was the fact that Mr. Nierenberg that night intentionally went out seeking drugs. He was about to turn himself in on a warrant or that other case that he had where he got into some kind of dispute in a McDonald's parking lot and he wanted to have one last party. And he went out looking for drugs, and during that situation...

And I won't go into too much detail because I didn't put on a full trial for you when normally (background coughing) in a sentencing hearing bring in all of the people who are in the crack house and all of the witnesses to tell you every detail. All I need to tell you is he wanted drugs and he kept sending Mr. Stallings out to go get drugs and he felt like he was getting cheated and he wasn't getting the drugs he wanted.

MR. TRUNCALE: Judge, there is not any evidence --

MR. MOODY: Actually, Judge... I'm sorry, go ahead and finish.

MR. TRUNCALE: I object to reference...

MR. MOODY: Ms. Pace testified that they were supposed to get powder, but Mr. Stallings only brought back crack, so it is in the record, Judge.

MR. TRUNCALE: (Inaudible) to getting cheated.

THE COURT: Okay. Well, this is argument, and argument is allowed a wide berth. I'm going to overrule the objection, but I want it to be placed on the record that I remember the testimony of Ms. Pace.

MR. MOODY: He wanted powder cocaine and he wasn't getting it. He was getting crack cocaine,

and he was frustrated. And they took multiple trips. You heard Ms. Pace talk about they stopped at one place, they stopped at another place.

At the end of the day what it came down to was he was angry and he was mad and he was high. You heard he tried shooting up crack. He was mad, and he told Ms. Pace, Hold on, I'll be right back, and he went and he finished business.

He came back in the car. And, again, all of this coming about from Ms. Pace was for one sentence, to show you what the state believes was going through the defendant's mind that night, why he did what he did. She said, What happened, what did you do? And he said, I shot him in the head because nobody steals my M F-ing money. That is not molestation. That is not a learning disability. That is anger. He was high. He felt disrespected. He was angry and he killed him for it. It is that simple.

This is not a whodunit. This is not a why did he do it. He pled guilty to killing Fred Stallings. There is no evidence that this was in self-defense. There is no evidence of why he did anything other than make a choice to pull out a gun and kill him. And at the end of the day that is really what we're

here for are the choices that we make. I mean they say life is the sum of the choices that we make. We are all a sum of those choices.

What were his choices that night? To go look for drugs. He could have been home with his loving family, the people who were taking care of him, or at church or at his job or anywhere else other than over in a crack house off of Phoenix Street looking for drugs. But that is what he wanted to do. That was his intentional choice that night, just like it was his intentional choice to carry a gun when he went over there.

You heard testimony that he actually had an AK-47 and a pistol. He intentionally carried a gun. He intentionally pulled that gun out. He intentionally racked that gun. He intentionally made sure that it was loaded. He intentionally pulled the trigger, and he intentionally put it to a part of Mr. Stallings' body that it would kill him. Every act that he made that night was intentional.

You know, I actually -- I also read those letters as well, and going into -- I thought it was kind of interesting because, again, it goes right into what I'm saying in regards to the aggravation for why this ever had to happen. There is some

letter in there from, I believe, a Ms. Holleman, who talks about the fact that he {sic} used to hang out with his son, who was a law enforcement officer with fish and game and that how fond he was of him and he spent time with him. That was the reason I asked the simple questions that I asked. He knows right from wrong, doesn't he? He knew what he was doing that night, didn't he? Yes, he knows right from wrong. Yes, he was raised better than that. He knows life and death.

The fact that he had a minimal record, to be honest with you, Judge, the State of Florida took that into consideration. I can't tell you how many times I've stood and how many different judges and I've told them, Judge, he has taken a man's life and he has forfeited his right to walk amongst us and the State of Florida asks you to sentence him to life, which, candidly, the more I got into this case, I really think after I made this agreement, that might have been the right thing for me to be recommending. But the fact of the matter is based on proof issues with all of the issues that we've had to bring up and based on the fact that he did have a minimal record --

THE COURT: Would you please place that

record...

MR. MOODY: Your Honor, the only thing I was aware of was the fact that he had either an outstanding warrant or he had some kind of -- I think it was a -- I believe it was an assault or a battery at a McDonald's parking lot. I never really looked that far into it because, candidly --

THE COURT: There was a misdemeanor warrant that happened to exist at the time of the incident?

MR. TRUNCALE: Yes.

MR. MOODY: Yes, ma'am. And which is why --

THE COURT: But there had never been an arrest at the time of the incident and there has never been any mention of any crime.

MR. MOODY: Correct. He just knew that there was a warrant outstanding, and he himself had said that's why he was going out to party because he knew he was turning himself in, he was going to have to go to jail.

THE COURT: I understand. I just wanted it to be clear on the record.

MR. MOODY: But the State of Florida has already taken into account his minimal record, which is why I agreed to limit the top end of this deal to 45 years. If you were to look at the normal

10-20-life law, if you look at this, what he pled guilty to doing, it is a 25 year minimum mandatory, which by law is required to run consecutive to a 20 year discharge under 10-20-Life.

So he's pled guilty to what in essence would have required him to have the minimal of 45 years day for day. These are what I took into consideration when I looked at what it was that he -- I would be willing for him to plead to.

Based on his actions, Judge, it is the State of Florida's recommendation that he be sentenced to 45 years. That is an appropriate disposition for a 19, almost 20-year-old man who intentionally killed one human being and fires twice, not really caring if he kills another.

You know, it is easy for family members -- and I don't blame them. I mean in all honesty in this job I see the people who are hurt the worst are the family members, and they come in here and they beg for forgiveness for his actions. And it is easy to say can he have a second chance. The fact of the matter is Mr. Stallings doesn't get a second chance.

Mr. Nierenberg's sister said something -- I wrote it down -- I haven't touched him in four and a half years. Mr. Stallings' family will never touch

him again. They don't get to talk to him. They don't get to go visit him in jail.

Judge, I would submit to you that 45 years Florida State Prison would be an appropriate disposition.

THE COURT: I understand your position, sir. I have a very technical, legal question directed to both counsel. I heard what you just said that typically on count 2, attempted murder in the first degree, that there would be a 20 year minimum mandatory under the 10-20-life law.

MR. MOODY: Yes, ma'am.

THE COURT: I'm looking at the plea of guilty and negotiated sentence document, and it says -- under the negotiated range, it says he did plead guilty to counts 1 and 2, negotiated range for sentencing purposes, 25 years to 45 years with 25 year minimum mandatory Florida State Prison. Is the 25 year minimum mandatory only on count 1?

MR. TRUNCALE: Yes, Your Honor.

MR. MOODY: Your Honor, the way that it would work, the state agreed that we would run these concurrent, basically waiving, so to speak, the requirement that they run consecutive. I actually believe the proper technical way is that he would

receive a 20 year sentence under a 20 year minimum mandatory under count 2, a 25 year minimum mandatory under count 1. That would be run consecutive -- or, excuse me, concurrent.

So he is not doing any more time, but the 20 year minimum mandatory would still apply. It doesn't affect his gain time because he already has the 25 year minimum mandatory. I likewise had discussed with Mr. Cox the fact that the state would not be asking you to run any more of the sentence as a day for day minimum mandatory other than 25 years.

So you would not -- we would not be asking for 30 years minimum mandatory or 35 years or 40 or there such. So he would be eligible for gain time anytime after the 25 year minimum mandatory.

MR. TRUNCALE: Your Honor, I wasn't aware of the fact that the 25 year minimum mandatory included a 20 year minimum for the second count, so I'll have to rely on Mr. Moody's representation. I was not counsel at that time.

For purposes of the actual judgment, if that was the agreement -- I'm sure Mr. Moody is telling the truth. I don't question that. But the bottom line is the range is a 20 year discretionary range after that.

THE COURT: I understand. The range is the 25 to 45 years, but, technically, on count 2, the minimum mandatory portion of that sentence would be a 20 year minimum mandatory.

MR. TRUNCALE: Yes, Your Honor.

THE COURT: The sentence could be no less than the 25 years.

MR. MOODY: Yes, ma'am. And I just need to state on the record on behalf of the State of Florida that we do agree to allow it to be run concurrent because the case law would require it to be run consecutive.

THE COURT: Very well. And even though it doesn't say 20 year minimum mandatory on the plea form, both sides are in agreement that that would be appropriate on count 2, given everything that has just been stated on the record, correct?

MR. MOODY: I can tell you my discussions with Mr. Cox. I believe that we -- it was not written down there. It was merely implied by the fact he was getting a 25 minimum mandatory anyway, so it has absolutely no effect whatsoever to the sentence.

THE COURT: Right. It is a distinction to some degree without a difference, but I'm paying attention to the details here, and I want to make

sure I announce sentence properly.

I'll hear from the defense.

MR. TRUNCALE: Judge, thank you for the opportunity to speak with you. And there are some differences, reasonable differences, differences that a person can have based on -- based on the facts and what we saw, and I'm going to point some of them out.

But it is of paramount importance that Mr. Nierenberg pled guilty to two charges pursuant to a negotiated sentence, as described by Mr. Moody, and that the decision to enter those pleas was made knowingly, and it is an affirmative act of an acceptance of responsibility. And I don't believe there has been any testimony to the contrary that he was remorseful, that he is indeed remorseful.

So indeed his dad said to Your Honor of course punishment is necessary in this case. And, essentially, if you would take the theme of all of the witnesses for him, I would cite Micah -- First Corinthians was cited by the government -- but I would also cite to Micah, that I would ask that punishment be tempered with mercy because justice cannot be justice if it isn't tempered by mercy. And mercy can't be mercy if there isn't justice in

it. I mean it is necessary. We recognize that, and we thank -- and thank the Lord that Ms. Pace was shown mercy for her part in this.

Indeed, if you'll see the two -- the sentencing transcript, it was pretty clear that with regard to these guns, Ms. Pace was -- knew the guns were there and hadn't spoke with Mr. Smith about a -- Smith, don't -- you know, if you all -- you know, it's no good for you going back there and taking them there. He took them there. She knew what was happening.

But you know what, we're happy because the person that took part in that crime, Ms. Pace, today -- yesterday that you saw is a different person. She is no longer the hopeless addict. She is attending church. She is thinking about marriage. She is really a mother to her child, and thank the Lord that is happening, and that happened because mercy was -- the justice in her case was tempered by mercy. So, yes, I will -- I start with it, and I will end with it.

And there are valid reasons for our request. It isn't like Mr. Nierenberg is a cold-blooded killer that the state argues that he is, Judge.

First of all, again, there is no question that

a 19-year-old, just shy of 20 years old, with a horrific drug problem, a drug problem that just like the witness -- and I thank the Lord that this witness received mercy, but just as she became a hopeless drug addict, unintentionally, after being addicted to prescribed medication, she became addicted, and she fell from grace, fell to the lowest steps.

He did too. At 17 he got in an accident. He is in pain. He didn't say, oh, boy, let me think about becoming an opiate addict.

That is how, unfortunately, so many people this happens to because if you are harmed, as a practical matter if the drugs are doing what they are designed to do, you're going to be physically addicted to them.

In fact Chief Justice Rehnquist of the U.S. Supreme Court was addicted to painkillers. Of course he didn't -- he had a support system that presented --

MR. MOODY: Judge --

MR. TRUNCALE: Judge, this is -- I'm talking about -- I'm asking the Court to take judicial notice of facts.

MR. MOODY: I'm sorry, I wasn't aware that

Chief Justice Rehnquist was addicted to painkillers.

MR. TRUNCALE: Yes, he was. He was.

THE COURT: I don't want to take -- I'm uncomfortable taking judicial notice of that. I don't have any knowledge of it.

MR. TRUNCALE: In any event, it is not uncommon that that occurs, that people get addicted to drugs and go to other sources when the prescriptions end.

And that is what happened to a 17-year-old kid who spiralled downward just like Ms. Pace did. The same event, but you know what, he was a lot younger. In fact that evening the youngest person was JR Nierenberg, the defendant here.

In a perfect world wouldn't it have been wonderful if his 26-year-old girlfriend said, JR, we don't need to be doing this, we don't need to be going out and finding drugs. Wouldn't it have been wonderful if Frederick Stallings, the guy who likes women, the guy who, you know, he has a whore house and a crack house, it's undisputed, wouldn't it have been wonderful if the 51-year-old man said, Kid, get out of here, I'm not selling you drugs. I mean that would have been the wonderful thing if all of these people, Mr. Harp, all these adults -- most of them

were in their forties or so -- why didn't they -- wouldn't that have been a wonderful thing.

And we're not saying that they are wrong, but in a perfect world that would have been great. No, the kid who is 20 -- not even 20 years old, whose brain is not developed -- your brain is not fully developed, the judgment portion of your brain is not fully developed until 25. It would have been wonderful for that.

He's responsible for what he did. What did he do? He shot a man in the head, in the head after a struggle, right, and we know he did it because he told Ms. Pace, I shot him in the head; no M F is going to take my money, right. And those are the exact words from -- look at page 17 of the government's exhibit, the sentencing hearing of Pace, and it was essentially the identical testimony today.

I submit to you where Mr. Moody is saying, oh, there is no question that it was an intent, as if it was a first-degree murder, there's intent to kill. No, second-degree murder is not an intent to kill. And based on what he said to Ms. Pace, that nobody takes my money, I see it that there was a struggle, which Mr. Moody advised the Court.

There was an inference, too, that he had been in there five minutes after he had went to the car, said, I'm going inside. Five minutes later the shots.

It could be that this 51-year-old man, this -- he missed -- decided to take -- indeed take his money. It is very possible that that is the event that would happen, and that is what I -- so to suggest that he just -- that he -- that there was no self-defense, this isn't a possible for a lesser charge, like what I believe it really should be, people get in a fight, people are drunk or high as heck. Everybody is high as heck, and the man that you would think would bring order, Mr. Stallings, gets in a fight with him and gets shot.

You don't act normally. You don't use your gray matter when you're in a fight, on drugs. What happened is you do things that you would never have done otherwise. You act in an aberrational manner, aberrational behavior.

It was an aberration for a kid -- when I say kid, when I say a 20-year-old, even if he were 20 years old, who had never ever had anything but a misdemeanor charge for which he was being arrested, to act in the manner he did, you -- to just conclude

that there was a cold blooded intent to kill, I say not.

And I will also say this: While reasonable persons may differ, and Mr. Moody and I are reasonable persons, and I differ with him on the premise that this perfectly normal child had nothing better to do than to kill somebody, Judge, it just wasn't like that.

There are -- first of all, he wasn't a totally wonderful, normal child. Dr. Bloomfield -- and I respectfully disagree with Mr. Moody -- Dr. Bloomfield gave a whole confluence of reasons why he acted as he did, and one of them was the low self-esteem from the reading of the reports, from the learning disabilities. He also indicated there was the -- there was the report of sexual abuse.

And I remember Mr. Moody asking him, Well, you know, what steps -- you know, what acts would show corroboration of that, and I remember Dr. Bloomfield just very quickly saying, Well, in his middle school years there were two suicide attempts. And I remember asking, Does that mean there was sexual abuse? And he said it doesn't mean it, but certainly, certainly you can connect the dots.

You can't say -- and I am not going to suggest

to Your Honor that everybody who twice at middle school age attempts suicide, that they have been sexually molested. I'm not saying -- that doesn't logically follow, but it does logically follow, as Dr. Bloomfield said, that those attempts at suicide in middle school years indeed could have -- you know, it would be a corroborative fact.

And I'm not asking for sympathy. I'm just asking that you consider he wasn't the normal kid portrayed by the state. And if he was a normal kid engaged in totally cold-blooded behavior to kill someone, yes, that is repulsive. But that is not what it was.

We had a kid who, unfortunately, fell victim to drugs, and, darn it, that is what happened after a serious back injury from a car accident.

We have a kid who wasn't -- didn't have a normal life, and he was -- he had people who loved him very much. But Dr. Bloomfield's report says, no, he had problems growing up. And I believe his mother adequately expressed what she observed and the problems that she saw in his thinking and his dyslexia, essentially dyslexia, all of the problems with his --

THE COURT: And just for purposes of the

record, she did say there had never been a diagnosis dyslexia, but there was an auditory processing disorder or some other related disorder.

MR. TRUNCALE: I'm saying that it was in the nature of dyslexia where he read from right to left and, you know --

THE COURT: There are very specific medical diagnoses for those things, so I want it to be clear on the record, it is something in the nature of --

MR. TRUNCALE: Yes, in the nature of --

THE COURT: -- processing, auditory processing disorder.

MR. TRUNCALE: Yes. I'm not trying to mislead the Court.

THE COURT: I know. I just want the record to be clear.

MR. TRUNCALE: I will rely on what she said there.

Now, also, Mr. Moody said he chased this other fellow out of the house and then tried to shoot him down. As I recall the testimony, there was no -- Ms. Pace never was in the house. The only thing we hear about that is from Ms. Pace says he went in the house, said he had forgotten something, came back about five minutes later and -- oh, no, five

minutes later I heard some shots, I saw a fellow run out of the house, he was running real fast in another direction. And then remember it was ten seconds or 30 seconds or a minute, whatever period of time, then Mr. Nierenberg comes out to say that he was chasing down another man to kill him, I would say is, looking at it in a light most favorable to the state, without regard to supportive evidence.

The fact of the matter is Mr. Moody pled this case to a range that gives the young man hope, gives the loved ones and the family hope. Based on what Mr. Moody said -- I didn't say this -- he advised the Court that the witnesses in the case had all contradicted themselves so many times it was -- it was such -- it was difficult to determine at any given time, including today, what is the truth, what is the truth as to what happened. The witnesses would continually, continually have different accounts.

I respectfully say this, with regards to Ms. Pace, for instance, that there were quite a bit of inconsistencies other than the -- other than -- well, other than our challenge to the one -- the gun pointed threats, which are not -- which are not before the Court now. But even --

THE COURT: For the record, that is right --

MR. TRUNCALE: Yes, even on the other facts, her testimony had some inconsistencies. And, you know what, it could be because she was a horrific drug addict at the time. And I would submit that the proof in this was so bad because everybody in that whore house, crack house, owned and operated by Mr. Stallings, were hopeless addicts.

So, you know what, in that milieu there is a fight and someone is killed by the youngest person, least able to make the best of all judgments.

MR. MOODY: Judge, I apologize. Since Mr. Truncale has tried to point out that we don't know what happened inside that house, for him to be up here arguing it was a fight, I would say is not in record evidence since --

MR. TRUNCALE: Judge, his own words, I'm using Mr. Moody's --

MR. MOODY: I'm sorry, there is no record --

THE COURT: One person at a time, one person at a time.

MR. TRUNCALE: I'm responding to his -- his statements that there was a struggle in the house, and that -- and the evidence that after the struggle, he tells -- Mr. Nierenberg tells

Ashley Pace, No MF takes my money from me. I read that as a fight, and him believing the man is taking his money from him. That is a reasonable inference.

THE COURT: Okay, so Mr. Moody --

MR. TRUNCALE: Still, if there is -- I still think he's committed the murder.

THE COURT: I understand. That is the bottom line is that he has pled to counts 1 and 2, and Mr. Moody did argue that basically there were differences between the decedent and the defendant regarding crack or powder cocaine.

MR. MOODY: Just to respond -- I know that you said I'll have an opportunity to respond. I'll wait until he is done.

THE COURT: You will. Okay.

MR. TRUNCALE: And so what I'm saying is there are proof issues, and those proof issues bear on Mr. Moody's vigorous argument that there was nothing but an intent to kill in this man's mind, a cold blooded, first-degree murder intent to kill, and that is not what this case -- it's not what he pled guilty to, and he has been given a range, which is reasonable based on the circumstances.

The Lord knows what the truth is. Mr. Nierenberg knows what the truth is.

Mr. Stallings knows what the truth -- he knew what the truth was, and we can only -- we can only see for what it is.

But we have a man who has said I committed a second-degree murder, I used the gun, and if it was -- if it was less than murder, he pled to murder. If it was self-defense, if it was manslaughter, he pled to second-degree murder. He didn't plead to first-degree murder. It wasn't first-degree murder, and we would submit that as the logical inference from the agreement, Mr. -- you know, that the state attorney, Mr. Moody, is very experienced. He knows how to assess what would be a fair range, and that is what I'm getting at, Judge.

There is a range in this plea, and I would ask the Court not to disregard the discretion that the Court does have under the agreement -- I didn't want to say disregard -- I mean not to disregard that it starts from 25 years minimum mandatory to 45.

I would also like to say this, that a 25 year minimum mandatory term, if you do the algebraic equation, it would be more than a 29 year actual sentence, it being that he would serve 85 percent. If 25 was 85 percent of a sentence, then the sentence was a little bit over -- would be a little

bit over 29, and then there is another 20 years on top of that. What we're looking -- and we're asking that a --

THE COURT: There is another 20 years on top of that --

MR. TRUNCALE: On top of that.

THE COURT: If you ran it.

MR. TRUNCALE: Pardon? To be imposed -- that can be imposed based on the agreement.

THE COURT: Based upon the agreement.

MR. TRUNCALE: Based on the agreement, Judge. I mean that is what I'm saying.

And, you know, when you really come down to it, he is 19, almost 20 years old. He is not thinking -- he's not the same. You can see he is not the same person he was, just like Ms. Pace is, thank the Lord, not the same person she was. He is -- for both of them, just by being incarcerated, they necessarily become cured of the problem, all right, and they can start thinking like normal human beings.

You know, he is still not even 25. He won't be 25 -- his brain won't be fully developed until October of this year. And he is facing a sentence at the minimum, you think for a person almost

20 years old, he's facing at the very minimum a sentence of 25 years day for day, which is -- which is more than he has lived on this earth and then another -- if he were to get the high end, the high end, the 45 year term, it is like -- it is like two -- more than twice, more than twice his days on earth.

I would say, Judge, that is -- that is not individualizing a sentence. I would respectfully say if you look at the legitimate purposes of sentencing, you will look at the nature of the offense, the facts, the background of the defendant, I would say except for this downward spiral after he got addicted to drugs, he comes from a wonderful family, a family that if he were to get out in 25 years, that at least his sister would be there. She obviously loves him. The family -- I -- you hardly see so much love and family support in cases like this, so that is there.

You look at is a 25 year mandatory minimum term sufficient to serve the legitimate purposes of sentencing like deterrence. Absolutely. A 19-year-old to be sentenced to 25 years day for day, would that be sufficient to serve just punishment while tempering with mercy and still having

deterrence? Yes. And I'll say it until I die, justice is not justice unless it is tempered by mercy, and there is nothing -- I'm not afraid of asking for that.

We heard why didn't JR give mercy to Mr. Stallings, all right, because a 19-year-old hopeless drug addict in a whore house with the owner and operator of the whore house, crack house ain't thinking in a Christian manner, you know, the milieu, you don't think mercy then.

But, you know what, right now we're looking at a different person that you are sentencing, Judge. And I echo what Mr. Nierenberg Senior said, we're not saying don't punish him; we're just saying -- we're asking respectfully for a chance, and you have the discretion to deny our request or to allow it. You have the discretion, and it would be -- and if you want to give the 45 years, you have that authority and power.

I'm just saying is it really necessary in this case? After a point in time is it not just senseless warehousing? 25 years day for day would serve legitimate purposes of sentencing.

For heavens sakes, if he were to get a 45 year sentence, then he should have gone to trial and put

the state to its burden of proof, and it would have been hard with -- I really think there was something noble in him saying I did it, and just let me get back on to the road of a life, hopefully a life, not a life beginning at age 45, rather than a life beginning at age 62 or 63.

Judge, that is what we're asking for here, and I think it is worth the -- and I would submit to you I believe it is worth the exercise of discretion. A maximum sentence does not automatically -- it isn't required for justice.

Judge, a minimum sentence when it is 25 years day for day, the functional equivalent of a 29 year sentence on a 19-year-old who committed a crime is appropriate, and I thank you and leave it with you.

THE COURT: I understand your position.

I'll hear from the state.

MR. MOODY: Judge, he killed a man. We are not talking about a dealing in stolen property. We are not talking about attempted robbery. We are not talking about attempted murder. He killed someone, and I wish he had gone to trial, too, to be honest with you. I really wish he had gone to trial because then maybe you would have been able to hear the real facts of what had happened and not have to

sit here and play these little games about what came out or what didn't come out and that I have, with all due respect, an individual who last court hearing accuses me of trying to slant things, but yet I could tell you, and I can only assume, since I know Mr. Truncale is a great defense attorney who would thoroughly go through all of the materials in this case, if he were to go through the materials, go through the depositions, go through the reports, I would submit to you it is pretty consistent with what happened.

MR. TRUNCALE: Object to matters not in evidence.

MR. MOODY: I have argued what is in evidence.

THE COURT: The objection is overruled.

MR. MOODY: I wish it had gone to trial so you could have really heard, because I'm just going to throw out maybe -- since Mr. Truncale gets to throw out in a perfect world I use this and this sounds to me like it could be a fight so I take it as a fight -- let me throw out a little example of what I may think it is.

I may think that maybe Mr. Nierenberg walked back into that house while there were prostitutes in there, looked at one of the prostitutes and said,

You might want to leave now and get out of this room; you're not going to want to see this. And I think --

MR. TRUNCALE: Objection, Your Honor. There is no reasonable inference --

THE COURT: Okay, that is not in front of me.

MR. MOODY: I'm just making argument of what could have happened in that house, Judge.

MR. TRUNCALE: It's got to be a reasonable inference, Your Honor, and that is --

MR. MOODY: I'd love to hand you the transcript and we can quit playing this reasonable inference game and you could know what the witnesses really said, or we can continue this hearing and I'll bring them in, because I know what was said in those depos and so does he. And you want to talk about perpetrating a fraud in the court, I can tell you what those witnesses said --

THE COURT: (Inaudible)

MR. TRUNCALE: Object right now. I object to where he is going.

THE COURT: Would you please approach the side bar with the court reporter.

(Side-bar conference held outside the hearing of the courtroom.)

THE COURT: Okay, first of all, I actually want to start with compliments. Believe it or not --

MR. TRUNCALE: May I ask is there a problem?

THE COURT: There is no problem. First of all, believe it or not, the first thing I want to do is start with compliments. It's 5:30, 6:00 p.m., and both attorneys have been extremely, extremely eloquent in the way that they have presented their sides. Both attorneys here have been basically showing and demonstrating extraordinarily a high level of professionalism, skill, expertise in advocating for their client, and I have appreciated very much the opportunity to listen to everything today.

So I am prepared to proceed forward to imposition of sentence, but I am not necessarily in any hurry. I don't have any trials next week. If you want, Mr. Moody, to bring in more witnesses, I would give you that opportunity. But without this other testimony being in front of me, I'm really not in a position to hear it. I will give you that opportunity if you would like it. I happen to have no trials next week, so I have time. I have some time available this Friday. Or if you want to give

me depositions to read, I can read them, but I would still want to come back. Or if you want to pull the depositions and read them to me now --

MR. MOODY: Well, the problem -- Judge, the problem with the depositions are I feel quite certain that Mr. Truncale will not stipulate to the use of the depositions, and he will want those witnesses called in so that he can try and cross-examine them, unless he is willing to stipulate to them.

THE COURT: (Inaudible)

MR. MOODY: Right, which is what -- I don't want to prolong this anymore.

THE COURT: I understand. But when you think about a 25 year minimum mandatory sentence at the bottom end of a range of 25 years to 45 years, if we came back in another week, that is fine. I'm seeking to do justice and do the right thing. If you want me to consider anything that is not in front of me, I need to hear from people and read depositions.

MR. MOODY: Then, Judge, that being the case, because I would not normally do this, but based on the argument that was made, I want to make --

THE COURT: Do you all want to step over there

and talk to each other for a minute? I'll wait. You can all talk to each other for a second.

(Counsel confer.)

MR. TRUNCALE: Judge, I think we've come to --

MR. MOODY: The agreement that we have been able to come to --

THE COURT: And for purposes of the record, counsel stepped into the corner and spoke in private, and I was not listening.

MR. MOODY: The agreement that we came to is I will basically lay out what these witnesses have said, specifically where I was going with that, but I will also for the record state that, obviously, Mr. Truncale wasn't able to cross-examine them, that there are inconsistencies that could be considered one way or the other, but that that is what the state's argument is and that is why we are saying things went the way they did because that's what the witnesses say, and none of them say it was a fight.

MR. TRUNCALE: If there was only one person that talked about what happened, I think that was --

MR. MOODY: There was one --

(Inaudible, overlapping voices.)

MR. TRUNCALE: Only one of them -- and all I want you to know, Judge, is all of the witnesses,

including, I believe it was Renee Sturdivant, talking about unbelievable, what do you call it, credibility issues, that's all. Just as long as he acknowledges that there would be cross-examination.

MR. MOODY: I don't have a problem.

THE COURT: You're acknowledging it right now.

MR. MOODY: They were crack heads.

MR. TRUNCALE: That is all.

THE COURT: That is fine. That's the way we will proceed forward today.

MR. MOODY: Thank you. Yes, ma'am.

THE COURT: Counsel, why don't you place on the record about the discussions because, obviously, the defendant did not hear the side bar and I want him to be advised.

MR. TRUNCALE: Sure.

(Side-bar conference concluded; proceedings resume in open court.)

MR. MOODY: Your Honor, what we were discussing at side bar and what Mr. Truncale and I have been able to agree so that we can get this over with one way or the other because, obviously, the family and the defendant don't want to prolong this anymore, but neither does the state. It has been around for five years now. It's time for this to be

taken care of.

What we agreed to and what I was arguing was and Mr. Truncale was willing to agree that this is what these witnesses would say because it is what they have come in and said in their depo, and I will agree that there are multiple issues that Mr. Truncale can cross-examine them about, their credibility because they are, as I said, they were crack heads, they were prostitutes, they themselves were on drugs that night.

So there is all of the cross-examination issues that he could have gone into, but what they said and specifically -- and to the life of me right now I cannot remember if it was Jenny Tumlin or if it was Renee Sturdivant -- what really happened, according to the one witness who was actually there, is that this man walked into a house, walked into the room and told her, You want to leave, you are not going to want to see this. And as she had seen JR all night long, she says with two guns getting high, and basically I believe she described him as a time bomb waiting to go off, when he came inside that room and said, You might want to get out of here, you're not going to want to see this, she got out of there. But as she looked back, she would

have testified that she saw this man take Fred Stallings in a headlock, put the gun against his head and shoot him. That is why the state has made the argument.

And the reason that we did not charge him with first-degree murder is because for me to have done that, we would have had to indict him. And if I had to indict him, then we're dealing with 12 jurors. And if we're dealing with 12 jurors, Judge, if we're dealing with 12 jurors to get a life sentence and I can get that same life sentence at second-degree murder with six jurors, I am a seasoned prosecutor.

MR. TRUNCALE: As long as there was -- Mr. Moody said that there would be cross-examination.

MR. MOODY: I one hundred percent agree. However, and I think Mr. Truncale would agree, she was never inconsistent on that point. Where she has her inconsistencies is the fact that she was high and she can't remember exactly where she went or who went there or who was in where, things of that nature because they were out doing drugs all night long.

MR. TRUNCALE: And the other things, like I know all of the witnesses got together and talked

that evening together before -- you know, compared notes, if you will. That is all.

MR. MOODY: So that, Judge, is why I've made the argument, and that is why I was so upset when you try and make the argument that that statement, Nobody steals my M F-ing money, I shot him in the head, it wasn't because Fred Stallings tried to take his money, it wasn't because they got in a fight. It's because Fred Stallings ripped off a white boy, and that is exactly how they were talking out there that night, so we might as well just really bring it down to what it is, he was a white boy in a crack house and the black man was taking advantage of him and he stole probably about $400 of his money is what ended up happening because he was sending him out $200 at a time to go get drugs. The problem is Mr. Stallings was only bringing him back about $50 and he was keeping the rest of it, and he was mad. He wasn't stupid. He knew what was going on, and he went to go tell Mr. Stallings exactly what he felt about it, and he killed him. That is what happened.

And for Mr. Truncale to also say that is wrong for the government to argue that he intentionally tried to kill Mr. Harp, there is no record evidence of it, that is exactly -- I wrote it down, there is

no record evidence to prove he intentionally tried to kill Mr. Harp, there is record evidence. He pled guilty to it, first-degree, attempted first-degree murder.

I would read to the Court, as you already know, would a premeditated design to effect the death --

MR. TRUNCALE: I just have to object. When I was arguing -- this was before -- on what was presented here today, at the time I believe I argued it correctly, okay, I did based on what there was. We have made an agreement, as he said, so it's not to have to call back, but for -- I don't want the Court to say that I accept his argument as it being the truth, no.

MR. MOODY: I've moved on, Judge. I'm sorry. I'm on a different issue, and that was when he talked about the fact that I said he chased Mr. Harp out of the house and fired at him twice, he intentionally tried to -- I believe I actually said he couldn't care less if he killed him or not when you shoot at somebody like that. Well, the fact of the matter is -- and then he said, well, there is no record evidence that he tried to intentionally kill him. There is record evidence --

THE COURT: Let me just say this: I would expect that when Judge Norton accepted the plea, that she would have found on the record that there was a sufficient factual basis --

MR. MOODY: Absolutely. He pled guilty to intentionally trying to kill him. I'm not making up some argument. That is what he pled guilty to doing. And it is really -- and, you know, to sit here and go, well, the 25 minimum mandatory, it is appropriate. The 25 minimum mandatory is what people get if you shoot somebody in the arm. If you shoot somebody in the toe, they get 25 minimum mandatory. Those people lived. He killed a man. You don't get a 25 year minimum mandatory when you kill someone. That's the same argument.

MR. TRUNCALE: Object. That is not -- that is a fact not in evidence.

THE COURT: I'll disregard that because for the purposes of the record, there is an agreement between the parties to this range of 25 to 45 years. I'll just disregard it.

MR. MOODY: Judge, all I'm simply saying is you know the law. In any 10-20-Life discharge case, if somebody is shot and it causes great bodily harm, whether that be a through and through in the arm,

whether it be in the leg, whether it be in the side, whether it be in the toe, whatever, according to the law, it is a 25-year minimum mandatory. That is all I'm saying.

I think personally it's ridiculous to give somebody who killed someone the same 25 minimum mandatory that somebody is going to get if they just winged a guy, forgetting the fact that after he killed someone, he intentionally tried to kill someone else.

Those are aggravating factors that cannot be overlooked just because, hey, he was a really nice kid growing up. I'm sorry. I bet he was. You can't read all of the stuff that people have brought in and listen to this family -- I bet he was a great kid. I bet he was a great friend. I bet he was a great neighbor. There is no doubt about that. The problem is there are just some mistakes you don't get to say, oops, I'd like a second chance. Killing someone happens to be one of them.

So, again, based on those aggravating factors, based on the fact he not only killed somebody, he tried to kill somebody else, it was completely intentional, it is the state's argument that 45 years is appropriate for the actions that he took

that night. I'm sorry that he is a great guy. I'm sorry that he intentionally chose to take drugs.

You know, Mr. Truncale said in a perfect world isn't it funny that the youngest guy here, you know, Mr. Nierenberg, the youngest guy, maybe it should have been Mr. Stallings who was telling them what to do. Well, the fact of the matter is it is not a perfect world. In a perfect world we wouldn't have drugs. In a perfect world we wouldn't have drug dealers. In a perfect world we wouldn't have murderers. We live in reality, and we live in a society of law. When we break those laws, there are consequences to them. And murder, I would submit to you, absent rape is probably the worst crime you could possibly commit.

I'm sorry, but punishment, 45 years is appropriate, Judge. I'll just leave it at that.

THE COURT: I understand your position.

One other housekeeping matter, it does indicate on the plea of guilty and negotiated sentence document that restitution is to be reserved for 60 days. Is the state seeking restitution?

MR. MOODY: No, ma'am.

THE COURT: And the defendant has no prior felony convictions. Did he waive his right to a

presentence investigation report?

MR. MOODY: I believe he did, Your Honor.

MR. TRUNCALE: Yes.

MR. MOODY: It was stated on the record by Mr. Cox, his previous attorney. There's been an agreement --

MR. TRUNCALE: Yes, that is so, Judge.

MR. MOODY: -- an intentional decision.

THE COURT: Very well. Is there anything else from the defense?

MR. TRUNCALE: Any other argument?

THE COURT: Any other argument, anything I've not -- you want me to consider that you've not already...

MR. TRUNCALE: The only other --

THE COURT: I think both of you have been very, very thorough. Is there anything else?

MR. TRUNCALE: The only other thing that I can think of is that... extraordinary delay in the sentencing, other than the last six months, this man was attempting to cooperate with the government, and that shows an affirmative, again, decision to change in ones thinking and outlook. It shows a decision to be -- to assist authority, and he took legitimate, diligent attempts, told the state of --

MR. MOODY: Judge --

MR. TRUNCALE: -- circumstances for which -- for which it didn't rise to the level of any request, that is, a request for leniency, and I'm not suggesting that it is stupid, but the effort was there.

MR. MOODY: Then why bring it up, Judge? That is just it because I would submit to you that those prosecutors -- I think he was trying to cooperate federally, and there were reasons that they didn't use him, so there are reasons they didn't use him.

THE COURT: So there wasn't -- there actually wasn't any cooperation that will be before me for consideration?

MR. TRUNCALE: Right.

THE COURT: Okay.

Now, Madam Clerk, I need to know -- I know I have this note from you -- which ones of these are the cost of prosecution and the cost of investigation?

THE CLERK: The two $100, the ones that I marked.

THE COURT: Okay. So, Counsel, I understand you have both agreed to $566.

For purposes of the record, it looks to me

from Madam Clerk that the $566 includes a $100 cost of prosecution and a $100 cost of investigation.

Is that correct, Mr. Moody?

MR. MOODY: Your Honor, if that is typically what is in there. I, candidly, don't remember specifically asking for that.

THE COURT: Well, are you asking for it now? There have been some cases that have been coming back from the appellate court when that is not specifically asked for, and I'm just asking -- it looks like it's already agreed to by the defense. Are you asking for the cost of investigation and cost of prosecution?

MR. MOODY: I'm going to say no at this time because I do not want that to be an issue to make it come back and then we would have to get Mr. Cox, and I honestly don't remember asking for it.

THE COURT: So what I'm going to do is I'm going to take them off and the court costs are going to be --

MR. MOODY: I apologize. I don't want to make things harder, but I don't recall asking for that.

THE COURT: So I'll just indicate that the court costs are $466. Is that acceptable to the defense?

MR. TRUNCALE: It is, Your Honor.

THE COURT: So, Madam Clerk, when I impose sentence shortly, the court costs are going to be $466, and that will be to make sure that everything is done in a fair manner.

Mr. Truncale, is there any legal reason why sentence cannot be imposed?

MR. TRUNCALE: No, Your Honor.

THE COURT: Very well.

The defendant please stand.

MR. TRUNCALE: Here or at the podium, Judge?

THE COURT: I don't have a preference. You can stand. That is fine.

Mr. Nierenberg, I want you to know that I very, very carefully considered everything that has been presented to me both today and at the prior sentencing hearing. I have listened very, very carefully to the testimony of all of the witnesses. I took time today to review all of the letters that were presented on your behalf. I've spent time over the weekend and earlier this week reading the sentencing transcript as to Ms. Pace, and I do -- even though I'm the last Judge involved in this case, and this case has gone on for a long time, I feel like I have benefitted from the excellent work

and presentations of the attorneys, Mr. Moody and Mr. Truncale, and I do feel like I'm very fully advised at this time and I'm ready to proceed with sentencing.

Sir, it's a very sad day for your family and you are very fortunate to have a family that loves you as much as they do. Their testimony was heart felt, and you're very fortunate to have them.

The sentence, just so you know what it's going to be, it's going to be a sentence of 40 years with a 25 year minimum mandatory on count 1 and a 20 year minimum mandatory on count 2, and they are going to run concurrent, and I will more formally announce it on the record right now.

As to count 1, the defendant is adjudicated guilty of the life felony of murder in the second degree. The sentence is he will serve 40 years in the Florida State Prison with a 25 year minimum mandatory included within that 40 year sentence. He is given credit for four years, six months and 22 days of time that he has already served.

As to count 2, the defendant is adjudicated guilty of the first-degree felony of attempted murder in the first degree. The sentence is -- actually, the sentence is 25 years on count 2 with a

20 year minimum mandatory.

The sentences on counts 1 and 2 shall run concurrent with one another.

The Court imposes court costs of $466, which are hereby converted to a civil judgment.

The state is not seeking restitution. There will be no need for the Court to reserve jurisdiction on the issue of restitution.

Sir, you have 30 days from today within which to appeal --

MR. MOODY: Judge, I apologize. I didn't want to interrupt you, but before you went any further, I believe you said that count 2 was a first...

THE COURT: First.

MR. MOODY: You said first punishable by life, Judge.

THE COURT: First-degree felony punishable by life.

MR. MOODY: Yes, ma'am.

THE COURT: So I want the record to be very clear. Thank you, sir.

As to count 2, the defendant is adjudicated guilty of the first-degree felony, which is punishable by up to life, of attempted murder in the first degree. The sentence that he will serve,

25 years in the Florida State Prison with 20 years of that as a minimum mandatory sentence.

And counts 1 and 2 will run concurrent with one another.

Sir, you have 30 days from today within which to appeal the legality of this sentence and the legality of these proceedings, as well as the legality of the earlier sentencing proceedings, as well as the legality of the earlier proceedings at which time Judge Norton accepted your plea of guilty.

If you wish to file an appeal and cannot afford a lawyer, this Court will appoint a lawyer for you.

Would you like me to appoint the office of the public defender at this time for purposes of the appeal?

THE DEFENDANT: I'll have -- I'll have legal counsel.

THE COURT: Okay, so --

MR. TRUNCALE: If that is necessary, I will do what is necessary for him.

THE COURT: Very well. And if that should change at any point and there is a request for me to appoint the office of public defender, Mr. Truncale,

if you would just let me -- make me aware of that in court.

MR. TRUNCALE: Yes, Judge.

THE COURT: Very well.

Counsel, is there anything further?

MR. MOODY: Nothing from the state, Judge.

MR. TRUNCALE: Nothing.

THE COURT: Thank you very much. This hearing is concluded.

The court is in recess until 8:30 a.m. tomorrow.

Although we will be in recess, I will remain on the bench in the courtroom while Mr. Nierenberg is fingerprinted.

(The proceedings were concluded at 5:58 p.m.)

- - -

COURT CERTIFICATE

STATE OF FLORIDA)
)
COUNTY OF DUVAL)

I, Jayne Foreman, Professional Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

I further certify the original transcript herein will be delivered to Elizabeth Webb, Esq., attorney for defendant, Appeal Department, Duval County Courthouse.

DATED this 19th day of June 2015.

/S/ Jayne Foreman
Jayne Foreman
Notary Public, State of Florida
My Comm. expires June 16, 2018
Commission No. FF120878

LAW OFFICE OF
CHARLES L. TRUNCALE, P.A.

CONTRACT FOR LEGAL REPRESENTATION

This Agreement between the LAW OFFICE OF CHARLES L. TRUNCALE, P.A. and Gregory Michael Nierenberg is made for the purposes of obtaining legal representation for his son, Gregory Nierenberg, Jr. at sentencing in a pending criminal matter, State of Florida v. Gregory Nierenberg, Duval County Circuit Court.

TERMS AND CONDITIONS

1. Gregory Michael Nierenberg (hereinafter referred to as "the client") retains the Law Office of Charles L. Truncale, P.A. (hereinafter referred to as "the Attorney") to represent client in regard to the matter identified above.

2. In consideration of the services rendered and to be rendered by the Attorney, the client agrees to pay an attorney's fee of $10,000 to be paid in two installments of $5000 with the first to be paid on execution of this contract and the second payment due on August 7, 2014.

3. Client is responsible for only the following costs: the payment for services of the psychologist's testimony at sentencing and the costs of obtaining a transcript of the guilty plea hearing in Gregory Jr.'s case.

4. The representation by the Attorney in the above referenced criminal matter will include a determination and advice concerning whether to pursue a withdrawal of the guilty pleas. If such withdrawal is obtained and Gregory Jr. decides to proceed to trial then a new contract will be necessary. No additional fee will be required if the case is resolved by settlement short of trial.

5. The Attorney agrees to be available for consultation and advice to client at reasonable times upon reasonable notice.

Dated: July 14, 2014

Filed in Evidence
as
Defendant's
Exhibit 1 Date 1.17.20
Case 2010 CF 11303

I HAVE READ AND FULLY UNDERSTAND AND AGREE TO EACH OF THE ABOVE TERMS AND CONDITIONS.

GREGORY NIERENBERG

CHARLES L. TRUNCALE
Florida Bar ID No. 0786381
233 East Bay Street, Suite 1101
Jacksonville, FL 32202
(904) 355-3885 (phone)
(904) 208-5148 (fax)
clt_law@live.com

2010-CF-1963

Dear Judge A-Ho,

I'm writing because my family is no longer able to retain an appeal attorney due to money issues. Mr. Truncale is no longer representing me. I'am in desperate need of a public defender as soon as possible due to the 30 day guideline of withdrawlling my plea. I would appriciate it if you could assign me an attorey at your earliest convience. With all due respect.

Sincerely,

Gregory Nierenberg

RECEIVED
MAY 08 2015
/s/ MARIANNE AHO

FILED
IN COMPUTER
DARLENE

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY, FLORIDA.

CASE NO: 16-2010-CF-011457-AXXX-MA

DIVISION: CR-H

Filed In Evidence as Defendant's Exhibit 3 Date 1-17-20 Case 2010CF11303

STATE OF FLORIDA

-vs-

ASHLEY LORRAINE PACE,

Defendant.

STATE OF FLORIDA)
COUNTY OF DUVAL)

Depositions of BOBBY FRANK BOWERS, SR., and JENNY LEA LONG, witnesses on behalf of the Defendant, taken at address, Jacksonville, Duval County, Florida, on Thursday, November 3, 2011, commencing at 1:26 p.m., before Karen B. Strollo, a Notary Public in and for the State of Florida at Large and Registered Professional Reporter.

OFFICIAL REPORTERS, INC.
201 EAST ADAMS STREET
JACKSONVILLE, FL 32202
(904) 358-2090

APPEARANCES:

JEFFREY M. MOODY, Esquire, Assistant State Attorney, appearing on behalf of the State of Florida.

JAMES FRANCIS NOLAN, IV, Esquire, appearing on behalf of the Defendant.

BRIAN T. COUGHLIN, Esquire, appearing on behalf of the Co-Defendant.

INDEX

WITNESS	PAGE
BOBBY FRANK BOWERS, SR.	
DIRECT EXAMINATION BY MR. NOLAN	4
CROSS EXAMINATION BY MR. COUGHLIN	39
REDIRECT EXAMINATION BY MR. NOLAN	54
RECROSS EXAMINATION BY MR. MOODY	61
JENNY LEA LONG	
DIRECT EXAMINATION BY MR. COUGHLIN	63
CROSS EXAMINATION BY MR. NOLAN	107
CROSS EXAMINATION BY MR. MOODY	147
REDIRECT EXAMINATION BY MR. NOLAN	150

- - -

E X H I B I T S

(None marked.)

(Witness excused.)

- - -

JENNY LEA LONG,

having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION

BY MR. COUGHLIN:

Q Ma'am, what is your full name, please?

A Jenny Lea Long. And it's still Tumlin but I'm not -- he passed.

Q Who's "he"?

A My ex-husband. He died.

Q So legally you're --

A We're still -- we were still together but he never divorced me. He passed away.

Q Okay. What's your date of birth?

A 3-15-83.

Q What's your place of birth?

A Fort Hood, Texas.

Q Fort Hood?

A Fort Hood, Texas.

Q Have you lived in any other states other than Texas and Florida?

A Not that I'm aware of.

Q Not that you're aware?

A I don't know what you're meaning by that.
Q I mean, have you ever lived in any other state besides Florida and Texas?
A Parts -- I don't --
Q Have you ever lived --
A I've lived in Yulee, Fernandina, Callahan, Hilliard.
Q Okay. Those are all in Florida.
A Okay.
Q I'm just asking if you've lived in Georgia.
A Not that I'm aware -- yeah, I've lived in Georgia.
Q Okay. You have lived in Georgia. Okay.
Any other states withins the United States of America that you've lived in?
A Not that I'm aware of. That's it.
Q Okay. What's your current address?
A Don't have one.
Q Okay. Where are you living?
A Homeless, in the woods, parks.
Q What is your most recent address that you lived at?
A 305 Sago Avenue.
Q Can you spell that?
A S-A-G-O Avenue.

Q Is that here in Jacksonville?
A Yes, sir, Oceanway.
Q Have you ever been arrested?
A Yes.
Q Have you ever been arrested in Florida?
A Yes.
Q Have you ever been arrested in Georgia?
A No.
Q How about Texas?
A No.
Q All right. Do you know how many times you've been arrested in Florida?
A Three that I'm aware of.
Q Does that mean that you remember? Is that what you're saying, three that you remember?
A Once was drunk. Once was on private property. And then once was for something about stealing at a Wal-Mart.
Q You remember what happened with those cases, whether you served time for them or were convicted of --
A I served time and then they let me go on one.
Q Okay. What about the theft case, the Wal-Mart theft case?
A That's the one they let me go on.

Q Were any of the three arrests felonies?
A No.
Q Have you ever been treated for any mental health problems?
A Yes.
Q And do you remember when and where?
A Sutton Place, in Fernandina.
Q How about when?
A Maybe four years ago. That's when my kids got sick, and that's when I want to say it was.
Q Do you have a diagnosis for mental health illness?
A Bipolar and anxiety and something else they were saying.
Q Other than Sutton Place, have you received treatment anywhere else for mental health problems?
A Fernandina. He gave me anxiety medicine and some other medicine, depression medicine, I don't know what it was.
Q And who is it that you're referring to?
A Dr. Rho, in Fernandina.
Q Dr. Rho?
A Uh-huh, R-H-O.
Q Are you currently taking any medication?
A No.

Q Are you currently under the influence of any illegal drugs?
A Not at the time.
Q How about right now?
A No.
Q When was the most recent time you took any kind of drugs?
A Last night, about 2:00 o'clock in the morning.
Q And what drugs were those?
A Crack cocaine, weed and alcohol. Oh, and Xanax.
Q All at the same time, 2:00 o'clock?
A Uh-huh. That was the last time I quit taking all that, yeah.
Q Are you feeling the effects of any of those substances now?
A No, sir.
Q Is there anything that you feel that you should have taken in order to be able to understand what's going on here today?
A No.
Q Is there anything you're without right now? Any reason why you're uncomfortable or anything at all?
A No, sir.

Q Going back to the medication that you were prescribed for some of the mental health issues, when was the last time you were on any of those meds?

A My last child I got pregnant with, it was six months after -- I was six months pregnant with her, and he found out I was pregnant. He quit giving them to me.

Q And when was that child born?

A August 2nd of 2006, I think. He'd be four right now.

Q All right. So it's been more than four years since you last took any medication.

A Oh, from him. But I take -- get them on the street.

Q You take -- what do you take?

A Lortabs, OxyContin, whatever I get.

Q Is that to get high or is that to help --

A To get high.

Q Okay. So you're not -- as you sit here today, you don't need any medication?

A Anxiety, I need it.

Q Are you anxious right now?

A Yeah. I was starting to sweat.

Q You have any -- but are you otherwise in a position to be truthful with us and to do so without

having whatever medication you might like to have?
A I didn't understand that. I got lost.
Q All I want to make sure is that you have what you need to understand why we're --
A Yes, I'm --
Q -- understand why we're here --
A Yes, sir.
Q -- and to know how important it is for you to be honest.
A Yes, yes.
Q Okay.
MR. MOODY: Do me a favor, too. You've been doing well, but remember what I told you before about letting him finish before you answer. She can't take it down when both of you guys are talking at the same time.
THE WITNESS: Okay.
MR. MOODY: So even you know where he's going with a question, let him finish it before you answer. Okay?
BY MR. COUGHLIN:
Q All right. Miss Long, you know why we're all here. We're here to talk about something that happened back in October of 2010 on Phoenix Avenue when there was a shooting.

A Yes, sir.
Q Before we get into details of that, I'm going to ask you about some of the other people who we understand were involved. Okay?
A Okay.
Q The person who was shot, his name is Frederick Stallings. Did you know Mr. Stallings?
A Yes.
Q And when is it that you first met him?
A When I -- huh...
Q Again, this happened in October.
A When I first started hanging on Phoenix, I guess.
Q Okay. Tell me when that was.
A I couldn't tell you. I don't remember.
Q Was it years before the shooting took place? Was it months before?
A Possibly could have been.
Q Yeah? How old are you now?
A 28.
Q And do you remember approximately how old you were when you started hanging out on Phoenix?
A Probably in my 20s, when I hit 20.
Q And as long as you were hanging out on Phoenix, Mr. Stallings was around?

A Yes.
Q Did you come across him in your pursuit of drugs?
A No. I met him through Kenny Burch. He was renting a place from me.
Q Okay.
A Kenny Burch Welding Shop.
Q So you met Mr. Stallings through Mr. Burch.
A Uh-huh.
Q And how often would you see Mr. Stallings?
A He let me take a shower over there one time, and then he moved to that other place. And that's the only two times I actually really hung out at his place. I mean, other than that, I -- how are you doing and I'd be on my way.
Q Okay. So you weren't friends with him really?
A No.
Q And you'd only hung out with him once prior to the night of the shooting, meaning you'd only spent time socially with him --
A Twice.
Q Okay. Did you know him as somebody who had access to drugs, could help get drugs? Was he known as that sort of a person?

A Yeah.
Q Did you buy drugs from him?
A No.
MR. MOODY: At any point in time or that night?
BY MR. COUGHLIN:
Q At any point in time, did you ever buy drugs from him?
A No. He'd take your money. I knew better.
Q And how it is that you knew that he would take your money?
A A lot of people in the neighborhood know Freddie wasn't the type you'd go to get him to get you drugs. Everybody knew that.
Q Carl Harp, do you know Carl?
A I've met him, the night I stayed there.
Q Is that the only night that you met him?
A Yes, sir.
Q Have you talked to Carl since?
A No, sir.
Q Renee Sturdivant, you know Renee?
A I met her that night.
Q Okay. Have you seen her since?
A Nope.
Q The woman who everybody calls Little Mama.

A I met her that night, over there at somebody else's house. I can't -- to this day, I want to say the name but I can't think. He went by a drug name. I can't think of it.

Q So you met Little Mama at a house other than the one on Phoenix?

A Yes, sir.

Q And was that while you were trying to get drugs?

A Yes, sir.

Q And she followed you back to Phoenix?

A Yes, sir.

Q Why did she come with you?

A 'Cause she knew I could get drugs easily.

Q Have you seen Little Mama since?

A No, sir.

Q You know what her real name is?

A No, sir.

Q You know Denise Sikes?

A Yes.

Q How do you know Denise Sikes?

A Through Robin Shores, which is my ex-boyfriend.

Q What's -- what's Mr. Shores' relationship to Miss Sikes? Friends?

A That's his -- I couldn't really tell you. They're related in some way.

Q Have you seen Denise Sikes since the night of the shooting?

A I've seen her a while back.

Q You talk to her about this case at all?

A No. She told me y'all were subpoenaing her. That's all she said to me. I ain't -- and I told her I didn't care. She says: Well, you know you brought me into this.

And I told her: Well, it wasn't my fault. I just gave her a piece of paper with a phone number on it.

Q Was Denise hanging out with you-all at the Phoenix residence --

A No, sir.

Q -- that night?

A No, sir.

Q She just came -- you just came across her afterwards?

A That's who I ran to and hid under her laundry after the shooting happened and a camper.

Q I know you were here yesterday.

A Yes, sir.

Q You're here today. Have you spoken with

anybody from law enforcement, including the State Attorney's Office, since you were interviewed by the police right after all this happened?

A No, sir.

Q No contact with anybody?

A Nope.

Q Did you know Gregory Nierenberg, who people call JR? Had you ever met him until the night that all this happened?

A Nope.

Q How about the girl he was with, Ashley Pace? Had you ever met her before?

A Nope.

Q All right. What initially brought you to the place on Phoenix Avenue the night of --

A I rented a room.

Q From who?

A Me and Glenn paid Freddie $10 worth of crack to rent the room so we could smoke and not be walking the streets smoking.

Q You paid Freddie in crack?

A Yes, sir.

Q What time of day was it that you first --

A 5:30 in the afternoon.

Q Were you homeless at the time?

A Pretty much, yeah, bouncing.
Q What about Mr. Shores?
A He was staying at Debbie's and Wayne's, which is his nieces -- I think that's his niece, some kind of family member to him.
Q Did Mr. Shores use crack that day?
A Yes, sir.
Q Did he use it inside the Phoenix Avenue house?
A Yes, sir.
Q So did y'all begin smoking shortly after renting the room?
A Yes, sir.
Q Who were you smoking with other than Mr. Shores and Mr. Stallings?
A Who's Mr. Stallings?
Q Freddie.
A Oh.
MR. MOODY: I was going to say, I'd object. I don't think at this point she said that she smoked with Mr. Stallings. I think she just said she paid him $10 in crack to rent the room.
BY MR. COUGHLIN:
Q Did you watch Mr. Stallings smoke the crack

that you paid him with?
A No.
Q Do you know if he did?
A I don't know. He had a room hisself there.
Q So once you rented the room, where within the house was the room you rented?
A It's by the -- well, it's not a kitchen. It's like a dining room. Here is the room (demonstrating). It was a big old, open, wooded spot, like, I guess supposed to be dining room. And the kitchen was, like, over here. And the bathroom --
Q Can I stop you? Only because over here doesn't mean anything when we go back and read this again. I know there was a room at the front of the house.
A Yes, sir. There was a living room.
Q And then if you walked through the front door and went left, there was another room over there that was like a little bedroom. Am I right about that?
A There was a room on this side (demonstrating). There was a room on this side, I think which belonged to Carl. Then you walk through a little doorway thing, and it's -- the little doorway, there's a room. And here's the kitchen and the bathroom was right in the front of the doorway of the

dining room kind of sort of thing.
Q What I'm asking you is where within the house was the room that you rented?
A Right where Freddie got murdered at, right -- he got murdered right out the front side of my door.
Q The door that he rented --
A He got shot -- like, they got him out and as soon as he got out of my room where I got rented at, pop.
Q Okay. And we'll get there. You and Mr. Shores rent the room, smoke crack by yourselves.
A Yes, sir.
Q Okay. Who else is inside the house aside from Freddie?
A Carl, Renee, me, Glenn, JR and I think that was it.
Q Okay. I'm only talking about --
A Some black dude was coming in and out, too, at the time.
Q I'm only talking about when you first get there.
A Yeah.
Q All those people are there.
A There was black dude coming in and out with a light blue beanie, I think. I'm not positive.

Q Okay.
A But I know there was a black dude coming in and out but he never specifically stayed. He'd come in and then leave.
Q Okay.
MR. MOODY: I would like to -- I thought you were getting ready to; you started to --
THE WITNESS: And I think that was their drug dealer.
MR. MOODY: -- clarify. Hold on. Hold on. Clarify --
THE WITNESS: At first.
MR. MOODY: Are you saying that JR was there at 5:30 when you rented the room or were you talking about --
THE WITNESS: Yes. He come at the same time. We rented the room. He was -- him and Freddie was coming around that corner building, and he had a white sweatshirt on. And he was walking towards the house with Freddie, and then me and Glenn was headed to the motel. And Freddie -- we stopped and Freddie said something about: Well, just rent room from me.
And Glenn goes: Ha-ha.

And he goes: For real, $10. Give me a rock and I'll let y'all rent it.

And JR come in the house then, and then JR didn't leave until 5:30 the next morning.

BY MR. COUGHLIN:

Q So when you first laid eyes on JR, he was with Freddie.

A Yes, sir.

Q Was Ashley Pace --

A Nowhere seen, no car, no nothing at that time.

Q All right.

A 'Cause me and Glen was headed this way.

MR. MOODY: Wait until he asks you a question. You're doing okay.

BY MR. COUGHLIN:

Q Did -- eventually you become aware, from what I've seen, that JR wants assistance getting drugs for himself, is that right?

A Say that one more time.

Q JR wanted to get drugs.

A Yes, sir.

Q Who did he ask to get drugs?

A Freddie.

Q Okay. Were you there at that point, or is

that something that you heard happened?
A No. We was there the whole time.
Q Okay.
A From when the time 5:30 come, we seen Freddie come around the corner with JR. We got to the house. He said y'all could rent a room. We got the room. JR gave Freddie money at that time, on the porch right there, where the gate was. We went on in the room. JR took off. And then Freddie was suppose do what he was doing. Renee was yelling at him at that time.
Q Why was Renee yelling at him?
A Something about -- something about she wanted a hit now, and she wanted to do the prostitution later.
Q Did you -- did you see Renee smoking crack that night?
A Yes, sir. I was holding her hair when she was barfing in the toilet.
Q Why was she barfing?
A I guess all the stress. Because they kept saying that Freddie had -- telling Freddie that JR has got guns. And Freddie kept going: Fuck. They got guns. Whatever they going to do to me, them bullets ain't going to stop me. Never has and never will. I've run this Phoenix Avenue around here.
Q How many times did you watch Renee smoke

crack that night?

A Probably from 7:00 to the next morning. She was smoking prior to that but I didn't see. She -- she was smoking it prior to that because when she come out of the room, you could tell she -- she just smoking at the toilet. It was making her sick.

But I didn't start seeing her till about 7:00 really smoking it 'cause then they offered me to come in the room.

Q Was Renee -- I don't know how else to put this other than was she anybody's girlfriend? Was she Freddie's girlfriend or was she Carl's girlfriend?

A No. She was Freddie's girlfriend. Freddie was her pimp, though, and JR was her dude that she -- she's supposed to sleep with JR for money. And Freddie was like Freddie said, it was his girlfriend but he was her pimp. And JR was the one that Renee knew for a long time or something. And they was ongoing getting paid to have sex.

Q Did they have sex that night?

A I don't know.

Q Was it your understanding that JR and Renee had had sex in the past?

A That's what I've heard when I was there, yeah.

Q Was Renee --
A He was a good paying customer.
Q Of Renee's.
A Yes.
Q Is that what Freddie was saying, or is that what Renee was saying?
A They was both saying it.
Q Is that why JR was over there?
A Yes, sir. 'Cause she was supposed to sleep with him and make some money. But he was also there for the drugs, too. Don't make sense. I know.
Q How many times do you remember Freddie going off to try and get drugs for JR that night?
A He left probably four times prior to that before I got drug in the middle. Because he was coming back empty-handed every time. And he'd be gone for hours.
Q And every time that Freddie came back, would there be an argument about him coming back empty-handed?
A Yeah.
Q Did he ever give JR any money back after he came back empty-handed?
A No.
Q Did they ever physically come to blows or

fight?

A Words.

Q Words?

A (Nods head.)

Q But not physically?

A No.

Q You said before you got dragged into all of it. How did you get dragged into all of it?

A Because I had to go with Freddie to bring the package back and carry it in my bra. We had to hop -- hope one of them big old things where semi trucks and stuff go. We go had to go to the end of the road. We had to jump these concrete brick things, two of them, to get to the other side to go get them.

Q To go get what?

A The crack. And he was wanting to shooting up stuff but Freddie said, fuck that. He was getting what he wanted.

Q And what is it that Freddie wanted?

A Crack.

Q But JR wanted powder.

A Yeah.

Q I don't think I asked you this before. What -- other than smoking crack, were you using any other sort of drugs or alcohol?

A I took some pills from Ashley. She called them happy pills.
Q What time of the night did you take the pills?
A Maybe 3:00-something, maybe 4:00.
Q Before the shooting?
A Yep.
Q Do you know exactly what those pills were?
A She called them red happy pills.
Q Did you use any other drugs that night?
A I drank brandy but that was it.
Q Brandy?
A Uh-huh.
Q How much?
A It was one of them little pints you get from the liquor boy.
Q Anything else?
A I might have smoked weed that day but I don't recall. And I could have possibly been on pain pills from Debbie but I don't know. And more than likely I probably was because when I'm with her, I've always got them.
Q Who is Debbie?
A The lady that Glenn stayed with.
Q All right. The four times that you remember

Freddie going out to buy drugs, before you went with him, were you always left behind with Mr. Nierenberg, JR?

A Well, no. He stayed in that room with Renee, and Carl was in the room where I was at 'cause after that, Glenn left. That's when me and Glenn got into it 'cause I wouldn't get him more crack. We was running short on money, and me and him got in an argument, so it was best for him to take off.

Q You got in an argument because you weren't going to give Glenn more crack.

A Yeah.

Q All right. So back to my question, did you spend much time in the same room as JR during the course of the night when Freddie was off on these different drugs runs?

A Say that one more time.

Q Did you spend any time talking with JR during that night while Freddie was off trying to find drugs?

A There was twice I talked to JR. One time he thought I was -- how do you say it? I'm not supposed to cuss. Messing with him to where he couldn't get his drugs, was I basically taking his money. And I looked at him. I said: No. I said: I've I got four fucking kids. You think I'm busting with you 'cause I'm trying

to get crack (inaudible) --

MR. MOODY: Hold on. Hold on. I know I asked you to try and cut down on the cussing, but if Mr. Nierenberg actually used a cuss word, then you need to let these gentlemen know what was actually said. Okay?

THE WITNESS: Okay.

MR. MOODY: You can do that. I don't want you to change anything.

THE WITNESS: Okay.

MR. MOODY: You just don't need to cuss gratuitously for no --

THE WITNESS: Well, he -- the dude looked at me. He said: Don't fucking play with me.

BY MR. COUGHLIN:

Q Who are you talking about, JR?

A JR.

Q Okay.

A And then he did his eyes like -- like he did when he shot Freddie. I ain't going to lie. Them eyebrows, I'll never forget them. And then I walked off after he said that. And then later on that night, Freddie made me go in the room and get undressed, but it didn't go no further than that.

Q And why did he have you get undressed?
A Something JR wanted.
Q But nothing ever happened.
A No. All the girls got undressed there. I had to sit in the middle of the floor with a strobe light. I don't know. I couldn't explain it. That was some time during the night. I don't recall, though.
Q You say all the girls. That would be Renee, yourself --
A Little Mama, Renee, me and I think that was all the women because Ashley was never in the house until the very last. She was not supposed to know what was going on in there.
Q Were you paid to have sex with anyone that night?
A No, sir.
Q Do you know if Renee was?
A Yes, sir, she was.
Q Who paid Renee?
A Freddie -- Freddie got the money from JR right when he got there, few minutes late. That's when JR stayed there and Freddie took off. 'Cause when we rented the room -- at the time me and Glenn went in the room, I -- we went in our room and cleaned it. Renee and JR did their thing in the room. You could hear

them in there. I mean, you know what sex sounds like. And then they come out. Freddie took off and JR stayed there.

Q The first time JR gave Freddie money --

A That was to pay her. The rest of it was for him to get his drugs, and he wasn't getting what he wanted.

Q Okay. Do you recall JR leaving the house at any time before the shooting actually took place, between 5:30, when you first saw him, and the time of the shooting?

A Once to unload the guns out of the car.

Q You say to unload the guns. You mean to bring them inside the house or --

A Yes, sir.

Q Okay. Do you know -- how is it that you know that's what he was doing outside?

A 'Cause me, Ashley and Freddie was going to the hole to get some drugs, and we stopped off at the Shell station right there by -- close to Phoenix.

Q And?

A We got -- I went inside to get something. Freddie gave me money. Then he gave Ashley money. Then I gave him his money back, and then we got in an argument there. 'Cause I told him: Well, here's your

receipt.

And he was telling me: You don't have to bring me a receipt every fucking time I give you money, Jenny.

It was pissing him off. I don't know why but --

Q All right. Well, I'm asking you how you -- why you told me that JR went to unload guns. Did you see him unload the guns?

A Yes.

Q Okay. And how many guns?

A I just seen one long one at that time, and then I walked over there to the side 'cause I already knew something wasn't right at the time, being that when I seen all them guns coming out, it was -- he had a bunch of them. They were saying something about four of them and then I seen that one. And I don't like guns. I walked to the side of the building, right there where that little building is. And then Ashley says: Well, I still got one under my seat.

And JR told her: Keep that there 'cause -- 'cause something might happen.

I don't know what that meant.

Q All right. So where was the one long gun that you saw? In the trunk?

A In that raise-up thing. It's not -- it's, like -- it's your trunk but it's got a glass on it for a trunk.

Q All right. Did you ever see JR with guns on him, on his person?

A He had two bulgy things right here, but I didn't see what they were.

Q Did he tell you they were guns?

A No. Renee was. Renee was telling Freddie they were guns. And he was going to use them if he kept messing around with his money.

Q So other than the time he went out -- JR went out to the car, he never left.

A Huh-uh.

MR. MOODY: Are you talking about -- does that include the time that -- are you talking about including the time he went with them to go get drugs?

MR. COUGHLIN: JR?

MR. MOODY: Yes.

THE WITNESS: JR never went with us.

MR. MOODY: Okay.

BY MR. COUGHLIN:

Q Who did go the time you went to get drugs? Who did go on that -- that run?

A Me and Freddie went a couple of times. Then me, Ashley and Freddie went one time, I think, in that car. Yeah, it was one time because he got murdered after that. That was the very last. They had to go get the kids -- the kids were out of school. They was arguing about that, him and Ashley. And then that's when she finally come in the house. And that was on the last run.

Q All right. After the last run, when you-all get back to the house, tell me what happens.

A We go and -- I go to Renee's room and I get her to get the aluminum foil (inaudible), get it out.

Q I'm sorry. Say that again.

A Aluminum foil out my bra. I opened my shirt. She grabs the aluminum foil out. Freddie grabs it from her. Then Freddie walks toward the kitchen. JR's chasing him in the kitchen. And then I hear JR: That ain't what the fuck I wanted.

And then I go -- I'm standing in the pathway, like, the doorway. I mean, there's -- kind of angle it. That's where I'm standing. I feel -- I come back out. I'm standing right there. Then finally I say: Well, can I get my hit of crack so I can go to my room?

That's when I got my hit of crack, went to my room. My (inaudible) ball, sit there. And the next

thing I know, they -- a few minutes later they come to my room. That's when JR gave me that look. He walked, like, this way and he goes -- and about that time, I'm going, oh, I'm fixing to die. About that time, he grabs Freddie like a football player because there's a closet here, pulls him in, goes out the door. And I seen JR's finger. I can't tell you which one. And I seen it go to his stomach.

When they went out the door, I hear pow. Freddie drops to the floor. I see Freddie shoes. Freddie's not moving. Everybody's screaming, and I -- then I hear another gunshot, after I seen that girl's hand, with the rings on.

Q You lost me at the end with the girl's hand with the ring on.

A Freddie got shot. Then I seen some girl's hand coming over like this (demonstrating), and she had some rings on this hand.

Q You saw -- near Freddie, you saw a girl's hand?

A Coming over the thing where Freddie was laying, there was a girl, where I seen out my doorway. When it scared the shit out of me, I looked again, making sure the gunman wasn't after me, and I seen a girl with some rings on her fingers.

Q You don't know who that was, though?
A It had to be Ashley. She's the only one that night that was wearing rings and only one with the white hands besides Renee and Renee's hands look like man's.

They were pretty girl hands, like young girl fingers with rings on. And I know what Renee's hands look like, and I know it wasn't Renee's fingers. She always bites her fingers. They ain't pretty. They're dingy-looking.

Q How many total shots did you hear?
A Two.
Q How closely together?
A Very, very close. I went through the wall.
Q And you didn't hear any other shots.
A No, sir.
Q You went through the wall that --
A It was back to back, bam, bam, both gunshots. And, boy, I'm looking at the door. That's when I seen that girl's hand, and I'm going to try to get through the wall. I bounced off the first time. I got through it the second time.
Q That dropped you out onto the front porch?
A No. That brought me into Renee's room.
Q All right.

A And then I'm going -- (demonstrating). I didn't know which way to run.

Q Which way did you run?

A I see Renee and she's screaming. And I seen her run out the room, and I'm running behind her because I'm going to use her for my vest. I'm not stupid. If anything would come my way, I'd have grabbed her in front of me. I'm not getting shot. I've got four kids. That was -- whew.

So I ran out the front and then she runs in there. She checks Freddie and she starts screaming. And I'm running out the door. And then she's trying to grab me by my hair and my thing because I'm already down the road trying to cut up by Kenneth Burch's shop and run to Denise's camper. And she's pulling me by the shirt, my jacket, shirt and was grabbing my hair at the same time.

Q Were there any words back and forth between JR and Freddie before the shots ended up getting fired?

A Yeah. They was arguing over the drugs --

Q Do you remember --

A -- and about him taking all his $800 and he wanted his f'ing money at that time.

Q What was Freddie saying to him?

A I don't know what to tell you. You got my

girl.

Q Did you see guns at that point?

A No, sir.

Q Just heard them.

A When he come in the room and gave me them eyes, right there is when I knew what time it was 'cause he gave me them same eyes when I told him to shoot me at the time he thought I was taking him.

And Freddie said -- hold up. Freddie's exact words was -- 'cause they was leaving. And Freddie said: Are you going tell her bye?

And he did his eyes like that. Freddie said: You ain't going to say nothing.

And then that's when he grabbed him, pulled him in and pop, right out my door.

'Cause they had to go get that kid from school. They was coming in there and they was arguing over the drugs, in my room, too. And then JR's doing this, (demonstrating), walking back and forth. And Freddie was laughing and ha-ha-ha. And then that's when he grabbed him because Freddie goes: Well, are you going to tell her bye or are y'all still enemies?

And that's when JR gave me that look and grabbed Freddie, and right there, boy, I knew what time it was.

Q Did JR have the bulges in his pants --
A I thought he was going to beat him up. I really didn't know he was going to shoot him, but as soon as he went out the room, I watched it all happen. As soon as he grabbed him, he went out the door, pow. Talking about me.
MR. MOODY: Jenny, just answer his questions.
THE WITNESS: Yes, sir.
BY MR. COUGHLIN:
Q Were -- the bulges that you referred to that JR had in his pants, were they there the whole time, from the first time you saw him until the end?
A Yes, sir. At one time, they ended up falling down to his shoes. He had to get them out but he went to the bathroom to pick them back up off his shoes.
Had his pants leg over his shoes to where if the gun fell, it would stay in his shoe, like, right there in the thing. Because you could see something by his feet because we thought he was lying, and then I guess Renee pushed him at the time or something because the guns fell. And he went to the bathroom to fix them.
Q Did the guns fall before or after Ashley was there?

A Before Ashley was there.
Q Did you see JR at all from the time the shots were fired and you went through the wall? Did you ever see him again?
A No.
Q Where was Carl Harp at the time the shots were fired, if you know?
A I don't recall.
Q Okay. But he wasn't in that room with you guys.
A No.
There was me, Freddie. And Renee was walking around pissed. She was going from my room to the kitchen to the dining room, crying like a chicken, for real.
Q Why was -- what was she mad about?
A She was -- because she didn't get no crack.
Q But she had smoked cracked earlier that night?
A Every time they got it, she got some. That time she didn't get none and Freddie popped her.
Q He punched her?
A Yeah.
Q Did Freddie punch anybody else that night?
A No, sir.

Q You said earlier that after this happened you ran to Denise's house?

A Yes, sir.

Q Once you got there, what did you do?

A Hide under her -- she got a closed camper and she wasn't there. I'm screaming: Denise, Denise.

I was furious. I didn't know what was going on at that time. That just blew my mind. So I ran under there. No one was there. Shut her camper door and I seen all them dirty clothes. And I crawled under there and kind of moved them around and I'm laying there.

And then a few minutes later, I hear her come up in the camper. I'm going: Renee and all them just got -- Freddie just got murdered. Someone shot him. I don't know who it was.

And then that's when she said: Well, they're standing out there, Carl and Renee.

I said: Oh, shit. They're going to come to kill me.

She said: Calm down. I won't tell them you're in here. What's going on?

And that's when she said: Get back where you were. Let me find out what's going on.

Q Were you --

A And they was asking where I was at.
Q Who was asking?
A Renee and Carl.
Q Why?
A I don't know.
Q Okay. Were you afraid of them?
A Yes.
Q Why?
A 'Cause I heard from the whole time, that whole night, Renee, JR and Freddie had that thing going on, and the tables was going to end up turning on Freddie. And Renee already knew it. 'Cause Renee, Ashley and JR are supposed to have been in cahoots against Freddie, something about 'cause Freddie was prostituting her out or something.
Q And you heard that from who?
A Honestly I couldn't tell you who I heard it from. I just heard it that night. I couldn't tell you who I heard it from. I really can't recall that.
Q And was Carl a part of that, also?
A No, sir.
Q No? But Carl was out in the street with Renee.
A They kept -- Carl kept telling them through all this (inaudible) got to stop because he was living

there, renting a room. He was kind of mad about the whole situation but Freddie stood the grounds there. Freddie told people what to do. If he didn't like it, get his shit and get out.

But what I also heard, now, when I come back from with them, JR gave Carl money to go get something because Freddie was taking too long, which me, Ashley and Freddie was gone for over two or three hours.

Q The last run, you mean?

A Uh-huh.

Q Two or three hours?

A I'd say about two hours. Could have been three. Had to have been at least two. And he gave Carl money. And then he took -- Carl took JR's money.

Q Who told you that?

A Freddie told somebody that and that's how I heard.

Q Where did you go when you left?

A Because when we walked in, somebody come running and told Freddie: Carl's gone and he took JR's money.

And Freddie goes: Are you a dumb motherfucker to give him your money? Carl ain't coming back. Carl is gone. You can hang that one up.

'Cause Freddie was pissed about that. Gave

him a hundred-something dollars.

Q Carl did come back.

A Carl come back but didn't have the money or something, gave it to Freddie. Freddie took it. He told JR he didn't have the money and Freddie really had it. 'Cause Freddie goes, look, I've got the money, talking to me and Renee.

Q How much was it?

A I don't know. I just seen 20s. It was a lot of money. Carl did what Freddie said. Everybody did what Freddie said.

Q You mentioned $800 before. Is that what your recollection is, that over the course of the night --

A Yeah.

Q -- JR handed out $800?

A Yes, sir.

Q How much -- for his $800, how much drugs did he get?

A The only time I seen him do anything is one time he shot up, hit that crack, and that's right when it went down.

Q Right before the shooting went down?

A Yeah. 'Cause he wanted something so he melted the crack instead, shot that in his skin. Then he hit that crack and it made him a dynamite bomb.

Q Did his behavior change after?
A Yeah. That's when he got red-looking in the face. He was pissed. He didn't give a shit. And he kept saying: Give me -- give me some stuff to shoot up with.
And they're going: There ain't nothing.
MR. MOODY: You keep saying "he." Who was it you saw shoot up, that melted the crack?
THE WITNESS: JR.
MR. MOODY: Okay. You just keep saying "he" and for the record, we need to make sure --
THE WITNESS: JR.
BY MR. COUGHLIN:
Q And up until that point, you hadn't seen him do any drugs?
A No. He hit that crack and shot up that last time and that made him -- he wasn't hisself anymore. He went from being pissed to "pissed-er-off-er." I ain't going to lie. Those two don't mix.
Q Did you see Ashley use any drugs that night?
A She took pills. And I think she did some crack but I'm not positive or held it for Freddie or something. But I know she was taking pills.

Q When you left Denise's house, where did you go after the shooting had taken place?

A Went to Dwayne and Debbie's house, where Glenn was at. And I told him, I said Freddie: Just got shot.

And they're laughing. And Denise said: I don't even know if it's true.

And then Glenn's going: Hold on. I'm trying to wake up here.

And I'm screaming and -- they're coming to get me.

And Glenn goes: Well, we've got walk to the pay phone.

And I said: Oh, no, the hell we ain't. And I said: They're going to come and get me.

He said: Well, if you don't go call 911 and let them know that you didn't have nothing to do with it, they're going to come get you, Jenny. He said: Is anybody left at the house?

I said: Everybody scattered like bugs.

Q So you did go the pay phone to make a phone call?

A Yes.

Q And did you wait at the pay phone for --

A Yeah. They told me not to move. Then they

seen that he was shot coming down there, told me to get in the back of the cop car. Someone is shot. Get on the ground, talking to me.

MR. MOODY: Jenny, wait for him to finish his question. Okay? You're talking over everybody.

THE WITNESS: I'm getting my anxiety.

MR. MOODY: I know. You need to wait for him to finish his question.

THE WITNESS: I'm ready for a cigarette.

BY MR. COUGHLIN:

Q Did the police order both you and Glenn onto the ground when they showed up there?

A Not Glenn, just me.

Q Just you?

Did you ever -- were you ever brought back to that house to look at -- inside the house?

A No, sir.

Q My understanding is that the police kind of kept you with them for a while after that.

A Oh, yes.

Q And you gave both interviews to law enforcement and then an interview --

A I gave it to several. I was pretty messed up that morning. I talked to a lot of people, and I

cussed out a lot of people.

Q What do you mean you were messed up?

A I was tired. Them pills and that liquor gave me a headache. I was like the -- that druggy, ill feeling. Everything just -- it just -- it was a bad night. I felt real "uckth."

Q You think your memory, though, was okay?

A Yes. My memory was fine, honey.

Them pills --

Q You were both tired and under the influence of drugs and alcohol --

A Yes, sir.

Q -- when you were doing all that stuff --

A Yes, sir.

Q -- talking to people.

A Yes, sir.

Might I say, I was hitting my crack pipe right when JR shot Freddie 'cause I dropped my crack pipe in my lap, burnt my leg.

Q You mentioned earlier that Freddie would make statements about how he ran Phoenix Avenue and was a big shot. Was he saying those sorts of things to JR over the course of the night?

A Yeah.

Q Yeah?

MR. COUGHLIN: Mr. Nolan, you want to ask her questions?

MR. NOLAN: Yes.

CROSS EXAMINATION

BY MR. NOLAN:

Q Jenny, my name is James Nolan. I represent Ashley.

A Okay.

Q She's been charged with second-degree murder in this case, as well. Okay?

I guess the way I'm going to phrase the questions is going to be kind of pre Ashley being there as far as you know it and then post Ashley, meaning when you knew she was there. Okay?

You get to Freddie's house about 5:30 in the afternoon?

A Yes, sir.

Q All right. Who's with you when you get there?

A Just me and Glenn.

Q Okay. Now, when you say Glenn, that's Robin Shores, right?

A Yes, sir.

Q So you and Robin get over to Freddie's house about 5:30, right?

A Yes, sir.
Q Renee Sturdivant is already there.
A Yes.
Q Little Mama's already there.
A No.
Q When did she show up?
A She showed up after me and Glenn got -- already met. And I left Freddie, went down there to my -- to get my own drugs to my people 'cause I didn't let Freddie get my stuff. I went to my own people, got drugs. And then Little Mama come back with me.
Q All right. So Little Mama's not --
A But she knows Freddie.
Q She's not there yet, right?
A No.
Q But Carl's there.
A Yes, sir.
Q Is Freddie there at the time you get there?
A Yes. He's the one that said we could rent the room. Him and JR come around the corner.
Q When you say come around the corner, where are they coming around the corner from?
A From this little building, this brick building up by the house.
Q All right. So are they getting there around

the same time that you get there?
A Well, I was -- me and Glenn was headed out to go to the motel. And Freddie and JR was coming around that corner.
Q Okay.
A And then we -- Freddie talked to us. That's how we started.
Q Talking about renting the room.
A Yes.
Q And JR was present for that.
A Yes.
Q And the deal was you were supposed to exchange crack cocaine for the room?
A Yes. He wanted another rock.
Q $10 rock. So not money, not $10 but a $10 piece of cocaine.
A Rock.
Q And you and Glenn agreed to that.
A Yes.
Q All right. And so y'all went inside the house after that?
A Yes, sir.
Q Okay. Through some other depositions that we've taken, we heard that there was an unknown black gentleman who was with JR when he came to the house,

who introduced him to everybody. Do you know anything about that?

A No. That dude was the one that I was talking about with the beanie on his head.

Q Okay.

A He had come there and dropped some drugs off, soon as JR showed up.

Q Okay. So he dropped some drugs off --

A To JR.

Q So he gave those to JR.

A Yes.

Q So the guy in the beanie dropped some drugs off for JR.

A Yes.

Q Okay. What happens with those drugs?

A Don't know. I went to my room shortly after that 'cause Renee was like: Okay. Y'all got to clear out the hallway.

Q All right. So how do you know the gentleman -- the black gentleman in the beanie gives JR --

A Because I was sitting in the chair and watched him get hand it to JR.

Q Okay.

A And he would come to the house on his

bicycle.

Q How many times did that gentleman with -- the black gentleman with the beanie show up at the house?

A Twice maybe.

Q Okay. All right.

A In the very beginning, maybe three.

Q So he showed up --

A Two or three times.

Q Two or three times?

A At the first. And then nobody ever seen him ever again after that.

Q All right.

A And that was, like, from -- we got there at 5:30. I'd say about 6:15 was the last time he come. He come back, back, back, at least three times.

Q Okay. And you're sure he didn't go there with JR?

A Huh-uh.

Q Is that a "no"?

A The only one --

Q Is that a "no"? When you said huh-uh, that's a "no."

A No. JR and Freddie come around the corner. They was playing together before anybody got caught up in anything.

Q All right. So you never see JR smoke any drugs at this time.
A No.
Q All right. So you don't know whether he did or not.
A He was already shooting up, though, because he already had a band on and he was -- (demonstrating) -- doing that.
Q Okay. But you didn't actually see him shoot up.
A No. He got the glass of water --
MR. MOODY: For the record, you were hitting your arm like somebody --
THE WITNESS: He was doing this (demonstrating) and then taking that band --
BY MR. NOLAN:
Q Right.
A -- tied it around his thing.
Q Okay.
A He was shooting up prior to that, though. Everybody knows that. I mean, you could tell. His eyes were big and bulky and --
Q Okay. I understand. Where is Ashley at this time?
A Ashley didn't come in until the very dark

time, about --

Q So about when --

A About 8:30, 9:00 o'clock that night.

Q Okay.

A We seen her one time.

Q All right.

A Then she stayed in the car the rest of the night.

Q So you don't know whether she was there in the car or outside the car or anything at this time, do you?

A No.

Q Okay.

A And it had to have been later because I only got up with Ashley one time, went and got the drugs and that was the last run. So could have probably been real, real late.

Q Okay. I understand.

A The streets were cold and nobody was on the streets.

Q Now, you're all in the house.

A Yes.

Q And Freddie makes a couple of drug runs for JR but comes back empty-handed.

A Yes, sir.

Q Okay. And JR --
A He don't come back empty-handed. He brings crack back but not what what's-his-name wanted.
Q Okay. Does JR ever smoke any of that crack that Freddie brings back?
A The very last.
Q But not before -- this is -- we're talking pre Ashley.
A Not that I'm aware of, not at the beginning, no.
Q Okay. And then you leave.
A Uh-huh.
Q Is that a "yes"?
A Yes.
Q And you go to a place where you know where you can get crack cocaine.
A Yes.
Q And who goes with you?
A Nobody. I went by myself.
Q Okay. Carl doesn't go -- I mean, Glenn doesn't go with you?
A No. Glenn took off. Glenn went back to Debbie and Wayne's house.
Q When does he leave?
A Maybe about after two or three hours of us

being there.

Q Okay. Is there ever a point in time when you and Carl -- I'm sorry -- you and Glenn go to try to get cocaine and bring it back to -- well, did you ever go to get cocaine and --

A No. We had already had ours.

Q -- and Glenn's looking for you?

A No. We already had ours.

Q Okay.

A That I'm aware of.

Q All right. So when --

A When he was looking for me -- I probably know what you're talking about -- is when I was in the house hiding, and they kept telling him: Jenny is down there getting her crack from the other crack man.

Q Right. Tell me about that. What's that about?

A That's when Glenn left 'cause me and him argued. He was wanting me to get him more crack. Well, I took off so I wouldn't have to keep feeding him. I got tired, trying to do my own thing and him trying to take it right when I'm trying to hit it. So I left him and that's when I went down there. And he come --

Q Down where?

A Down there to the other dope house where I picked Little Mama up.

Q Right.

A And Glenn come there looking for me and Freddie told him -- 'cause Freddie was wanting me and I told Freddie no. It was nothing like that, no.

Q Okay.

A 'Cause that come during the whole time of being there, and I kept telling Freddie no. He tried me and I hit him. I wasn't scared of Freddie. Try me if you want to.

Q So the time that you meet Little Mama at the dope house where you go to, Robin comes looking for you there.

A Yes, yes. 'Cause Carl told me that when I got back.

Q All right. So you come back with Little Mama?

A Uh-huh.

Q Right? Yes?

A Yes.

Q Then he comes -- Robin comes back looking for you.

A Yes.

Q And they tell him you're not there.

A Yes.
Q And then he leaves?
A Yes.
Q Okay.
A He come back one time, too, and then they said I wasn't there and I was hiding behind a table. There was a table lifted up in my room, and I was slithering it like that (demonstrating), like a snake behind it.
Q Okay. And what time --
A In case he come in the house.
Q And what time of day are we talking about now?
A Daytime.
Q Still light outside?
A Yes.
Q Now, so Freddie makes a couple trips, comes back with just crack cocaine, right?
A Yes.
Q You go and leave to your -- where you can get --
A Crack house.
Q Your crack house and you come back.
A Yes.
Q Robin leaves.

A Yes.
Q So now it's just you, Little Mama, Carl, Renee and Freddie in the house.
A Yes.
Q Okay. Tell me, when is it that Ashley comes into the picture for the first time?
A It was late. She -- at the very -- I mean, it had to probably -- I'd say 8:00 -- couldn't have been 8:00 because we was only gone two hours. So I'm assuming it had to been at least 2:00 or 3:00 o'clock in the morning because we leave. We go pick up our package. We was gone two hours. And that's when we get back and Carl was messing with JR's money.
Q All right. So let me just stop you there. So you think it was around 2:00 in the morning when you learned about Ashley for the first time.
A Yes.
Q All right. Now, you said something earlier that Ashley's not supposed to know what was going on inside, right?
A Yeah.
Q Well, tell me, what that's about?
A Renee and Freddie told me to shut my mouth and I was going outside. We was getting a ride and don't let the girl in the car know shit that was going

on inside the house.
Q Meaning that there was drugs?
A The prostitution and the drugs, anything.
Q There wasn't any prostitution yet, was there?
A Yeah.
Q Okay. With who?
A Renee.
Q Renee?
MR. MOODY: She's already testified --
BY MR. NOLAN:
Q Renee and JR.
A Renee slept with JR right when he got there.
Q Okay. Now, how does -- what is your understanding of how Ashley even knows where to go or how she gets to the house?
A 'Cause they told me that was JR's girlfriend.
Q How do you know she's there? What's your understanding of how she got there?
A 'Cause JR said: She's outside around the corner. Y'all walk down there and tell her I said give y'all the car.
Q Okay. So is it your understanding she had been there since 5:30 in the afternoon?
A Yes. She was out -- we kept seeing the car because when me and Freddie kept going to the hole,

there was a black car sitting right there. I want to say it was black, and it had this patch on it, this funky patch.

Q Did you know that --

A And she was sitting in there smoking cigarettes the whole time. Every time we passed by her, she's in the car, and she kept messing with the radio every time I'd walk past.

Q Did you know that was Ashley?

A No, not at the time. No.

Q So who did you think that was in the black car?

A Just a normal person sitting on the side of the road, waiting on her boyfriend or somebody to get back with the drugs. Because, I mean, that's all down Phoenix Avenue.

Q Did you ever take a look at the woman in the car?

A Yes.

Q All right.

A Every time you walk down Phoenix, you want to know your surroundings. You never trust nobody.

Q All right. So you -- when you finally met her, you recognized her as being the woman in the car that you had seen a couple times.

A Yes.
Q Now, does JR ever leave the house, saying that he had a flat tire or he had to go to Mandarin or anything like that during the course of the night?
A No. JR never left.
Q He never left the house at all.
A Never left the house.
Q So after Freddie makes his runs, you make your run and come back. You're saying it's still kind of light outside when that happens.
A Uh-huh.
Q Right? Yes?
A Yes.
Q But it's not until, like, 1:00 or 2:00 in the morning that Ashley actually comes into the picture where you make a drug run with her.
A Yes.
Q What happens in the house between, say, 7:00, 8:00 o'clock at night and 1:00 in the morning? What's going on there?
A I don't know. I can't recall that.
Q Why can't you recall that?
A Because like I'm telling you, I -- that's how I remember it. That's how I know it is. I don't understand what you're telling me basically. Maybe

you're not -- you've got to go to smaller words for me. I only finished the sixth grade.

Q I -- all right. After you come back from making your dope run --

A Okay.

Q -- are you in your room the whole time until 2:00 a.m.?

A No.

Q Where --

A In my room -- I sat in my room. I hit mine. Then they kept telling me, come on out in the dining room, Renee and Freddie. And Renee would talk to me a few minutes, and then she'd go back to her room. Then Carl wanted to holler at me, said I have to walk up there to see what Carl wanted. And, of course, he was wanting to do something for money. But I wasn't interested in it.

Q Is it possible that JR could have left the house for, say, and hour or so and you -- but you didn't know about it?

A No.

Q That's not -- that would not be possible.

A No. Unless the time I left and went to the dope house.

Q Well, that would have been when it was still

light outside.

A Yeah.

Q Okay.

A He could have left when I -- but I heard he never went nowhere that night, and when I come back, he was still in the same place, the same room and nothing's changed so --

Q So when you come back after your drug run, does --

A I was only gone about probably an hour.

Q Does anybody go on any other drug runs before you get into Ashley's car?

A Say that one more time.

Q After you come back from your drug run -- right?

A Yes.

Q -- there comes a point in time when you go into Ashley's car with Freddie, looking for drugs.

A Yes.

Q In between the time where you come back and then you go out on drug run with Ashley, does anybody go out for any drug runs whatsoever?

A You're confusing me. I don't understand what you're saying.

MR. MOODY: That one actually confused

me, too.
BY MR. NOLAN:
Q All right. You come back from your drug run about -- it's still light outside.
A Yes, sir.
Q Okay. Then several hours later, you go in Ashley's car with Freddie, looking for drugs.
A After I got back, it was very, very late, and we went for that last drug run in Ashley's car because something about we couldn't walk because they had to go get that kid, that kid, whatever that kid is, from school. Mama daddy wasn't dealing with the shit.
Q Okay. All right. So when you leave on your drug run, you're a couple hours?
A I was gone an hour at the most.
Q An hour? And you come back and it's still light outside?
A No. When I got back, it was just getting dark.
Q Okay. All right. So tell me about the --
A It was still kind of light, but you could tell it was getting dark.
Q Tell me about the drug run that you take with Ashley and Freddie.
A We go to -- right to the same house we was

jumping the things with.

Q Yeah. But who sets that up?

A JR did.

Q JR says: My girlfriend's outside --

A Y'all go out there -- and that's when Ashley said she wasn't going nowhere -- to go get JR and make JR let her know it was okay to take us.

Q Does that happen?

A Yes. That's when JR unloaded these guns out the car. I seen that one long one, that very long one, and it's got a telescope thing on it.

Q So it's when you go into Ashley's car to make your drug run with Ashley, that's when he takes the guns out of the car.

A Yes.

Q All right. And you see that with your own eyes.

A Yes.

Q And how many guns --

MR. MOODY: You keep saying -- thank you. I was going to say, you keep saying guns. She has only said one gun.

THE WITNESS: There's guns in the back but I turned and walked away. When there's guns, I don't play with fire. There was some

in there. I could hear him moving them out. But I seen him move one gun out with that telescope thing on it.

BY MR. NOLAN:

Q Okay.

A And then after that, I walked by the building, and you could still hear him shuffle, here, here, here. Who he was handing them to, I don't know. I walked away. I really didn't want to go in.

Q So you only seen one gun.

A Yes.

Q It was a long gun with a scope on it.

A Scope on it, one of them black things you look through.

Q And did you see what he did with it?

A Handed that to Freddie.

Q He handed the gun to Freddie. And what did Freddie do with it?

A I don't know. I walked by the building. I sat there until they got done and said: Come on, Jenny.

Q Did you -- did you see any, like, handguns, pistols or revolvers or semiautomatics?

A No.

Q Had you ever seen any the whole night?

A No.
Q So --
A I can't honestly say I didn't see it when he got shot because when I seen his hand, there was something black in his hand. But I can't say if it was a gun or not and that's when he got shot. So apparently, to my knowledge, that's a damn gun.
Q Right.
A You ain't going to have something blank in your hand to shoot with.
Q I'm just asking what you've seen.
A I can't really say that was a gun there. I just seen --
Q So up until this --
A His finger's like this (demonstrating) and I seen something black in between them, when he grabbed Freddie and said, pow.
Q Up until this point, you've only seen one rifle with a scope on it.
A Uh-huh.
Q Is that a "yes"?
A Yes.
Q So now after JR removes the one gun that you've seen out of the car -- right? -- tell me where you, Freddie and Ashley go.

A We went to the same house me and Freddie had been going to all night. Instead of hopping the brick walls, we road around there. We pulled up. There was this big old garage in the back, a dog, with a fence and a house. But the fence didn't go all the way around the house. You go through the fence and you've got to tell the dog to back off. They called it something so it wouldn't bite you. I don't remember.

Then we go up there and he said: See that right there? Don't touch that. That's where he keeps his drugs. You see that camera right there? He's watching you. You've got a red target on your head. Touch it if you want. You'll get shot.

Q Who says that?

A Freddie. Because I said: Ooh, I'm going to grab me some.

He said: You better not. He's watching you right through that camera. He'll shoot you.

Q Where is Ashley when this happens?

A Ashley was standing right there with us.

Q So she gets out of the car.

A We all got out of the car with him.

Q Do you ever go to a gas station first? Tell me, you mentioned something about a gas station.

A Yeah, we went to a gas station.

Q Okay. What was the purpose of going to the gas station?
A Cigarettes.
Q So you got cigarettes?
A Because I wanted cigarettes.
Q Okay. Did you go back to the house afterwards?
A No. We went straight to the dope house. We was taking a very long time. Went to the store. We wasn't supposed to stop there but we did anyway. Then we went from there to the dope house. Then we stayed there, I'd say, about two hours. Then we went back to the house, and they was arguing all the way. Freddie and Ashley was arguing all the way back there.
Q Let me stop you for a minute. Let me stop you. You said you're at the drug house for two hours?
A Yes.
Q Do you go inside?
A We sat in the garage.
Q Say that again?
A We sat in the garage.
Q Okay. You, Freddie and Ashley?
A Yes.
Q Did you do any drugs there?
A And that other dude that was from inside the

house.
Q With the beanie?
A No. This was a total different black dude.
Q Okay.
A It wasn't the same one that was serving the dope. This is a total different dude.
Q Okay. So you guys are doing drugs in the garage?
A I was. Ashley was taking pills. Freddie was hitting and he was talking to that black dude at the same time. And that black dude was hitting on me and Ashley, and me and Ash kept telling him to leave us alone. And then finally the drugs got there and we left and that black dude said, I'll holler at you again some time, talking about me.
Q Did you and Ashley ever exchange phone numbers?
A He gave me a piece of paper while we were sitting there. That's how I had her number.
Q Okay. And what was the purpose of doing that?
A 'Cause she said she would like to become my friend.
Q Okay.
A Because we sat there and we talked. And she

said -- she said I didn't need that kind of life like I was living.

Q She said that to you?

A Yes.

Q Okay. So she was trying to help you.

A Yes.

Q After the two hours, you go back to the Phoenix house, Phoenix Street house?

A Yes.

Q You, Freddie and Ashley?

A Yes.

Q Nobody else.

A Nobody else.

Q You don't pick anybody up.

A No.

Q Okay. Now, prior -- then y'all go inside the house, right?

A Yes, sir. I told you I went straight to Renee's room and let her get the package out.

Q Prior to this time, Ashley has not been in the house whatsoever.

A No, sir.

Q All right. So when she comes in the house at this time, this is the first time she comes in the house.

A Uh-huh. She goes straight to the room. She knew where it was and all.

Q Ashley went straight to the room.

A Yeah. No one showed her where the room was. JR, I don't know where he went off to. When we all got in there, he gets off somewhere in there. And she was standing there and when I went -- where I went. And a few minutes later, she knew that was Renee's room because she goes in and says: Hey, Renee, how you doing?

And Renee's like: I'm doing all right.

That kind of stunned me, too, on that night.

Q Okay.

A 'Cause she never come in the house at all.

Q All right. What happens next?

A They're over arguing over drugs. Freddie's using my drugs. I go to my room and then that's when I told you, it went from that to when I got mine, I sat down trying to hit it. They're in there arguing and going back and forth, JR, Freddie and, I mean, like chickens, all three.

Q Now, let me ask --

A I don't see Ashley nowhere, though. She was supposedly in Renee's room because she was still in there. I could hear going: JR, you coming? We've got

to get that kid.

Q Does Ashley ever leave the house -- do you ever see her leave the house once she comes in the house, for any reason?

A No.

Q Do you and Ashley ever have any conversations regarding you wanted her to take you home --

A Yes.

Q -- so you can see your kids?

A I did tell her that. No, I told her I wanted her to take me home that night because it was getting too hectic there.

Q All right.

A And I said: I think something bad's going to happen.

Q And what did she say?

A She said she would take me home.

Q And --

A And then JR told her no because Freddie said: She ain't going no fucking where.

Q Freddie said that?

A I wasn't going no fucking where.

Q Did Carl ever let Ashley out of the house?

A Not that I'm aware of, no, sir.

Q You never heard that?

A No. He possibly could have when I went to my room, after I got my -- like I said, I hit. I was ready for a hit after all that stuff. And I did ask her to take me home, and Freddie said no, what could I do?

Q Okay.

A (Inaudible).

Q But you never heard -- you never heard that Carl lets Ashley out of the house?

A No, sir.

Q I'm asking you that --

A When she come in the house, my thing is --

Q Right.

A -- I don't think she left the house until JR ran out the house, after he shot Freddie.

Q Well, let me get to that in a minute. And I'm just going to ask you just regarding a statement that you had given.

A Did I keep up with Ashley after we come in the house? No, I didn't.

Q But you gave a statement with another prosecutor.

A Okay.

Q You remember that?

A Yes.

Q All right. During that statement -- and I'll let you read it -- Miss Klingensmith says: Okay. So does Ashley go to the door and Carl lets her out?

And you answer: That's what I heard. I never seen it happen.

Okay. So Renee leaves your room?

Yes.

And I'm just asking you --

A Okay. Well, maybe so. But I've never seen Ashley leave the house, no.

Q Okay. But when you say, I heard that's what happened; that's what I heard, who did you hear that from?

A I don't know. It's been so long ago. I couldn't tell you.

Q Okay. And that's fine. That's fine. I just want to know what you were referring to when you gave that statement.

A Yeah. I really don't know, sir.

MR. MOODY: While he's thinking of his next question, slow down a little bit. I'll get you some more water. You guys have been going. You're really starting to pick up your speed. She's trying to keep up.

THE WITNESS: Okay.

MR. NOLAN: You want me to wait?
MR. MOODY: If you don't mind.
(Mr. Moody exits the deposition room and subsequently re-enters.)
BY MR. NOLAN:
Q All right. So you never see Ashley leave the house.
A Huh-uh.
Q You don't whether -- is that a "no"?
A No.
Q You don't know whether she did or not, but you never did see her leave.
A I never seen her leave.
Q All right. So when the shooting takes place, you're actually in your room.
A Uh-huh.
Q Is that a "yes"?
A Yes.
Q And you say after the shooting happens, you see a hand with nails.
A Yes, with rings.
Q With rings. I'm sorry. With rings. I apologize. You don't know who that is.
A It had -- I don't know who it is. But I know it wasn't Renee's hand and I know it wasn't mine. And

the only other girl that was in the house at that time is a black lady named Little Mama and Renee. So the only hand it could have been was Renee's -- I mean, Ashley. 'Cause Renee's hands look real grimy-looking. She bites her nails. And they weren't black. They were white.

Q And then afterwards, you run out of the house, right?

A No. I jumped through a wall, bounced off, then got through, stood there in Renee's room. Like, I don't know which -- I couldn't go where the fire was. I didn't know if I ran out to Renee's room if I was going to -- but I couldn't go out mine.

Q So how did you get out of the house?

A Jumped through the bedroom wall 'cause I couldn't go out the window during the -- there was no way out the window. I tried to run and jump through it, bounced off it. So I ran and jumped through a wall and it gave through.

Q Okay.

A And there was a table there. I remember --

Q And you ran --

A -- a nail going through my leg.

Q You ran right to Denise's house.

A Yep.

Q You never saw Carl run out of the house?
A No. Everybody was scattered. The only one that was left in the house when -- 'cause like I said, I stopped in the room. The only ones that was left in the house was me and Renee and Freddie, dead on the floor.
Q How do you know Renee was in the house?
A She ran to Freddie 'cause I'm going: Renee, what do I do?
'Cause I'm screaming 'cause she's the only one I hung around mostly.
Q You didn't see anybody run out of the house; you just saw that Renee was the only other person in the house, right?
A Me and Renee was the last ones in the house when Freddie was dead.
Q You didn't see who drove Ashley's car away, for example.
A No.
Q You didn't see any shot --
A I didn't see none of that. I heard shots. I got through that wall. I looked at Renee. She was the only one in there. She acted like everything was normal. And then when I'm panicking, then she started panicking. So that's how I know Renee had something to

do with that shit. I don't care what y'all say.
Q And that's going to be --
A 'Cause she had that on look on her face --
MR. MOODY: Jenny, just wait. Just answer.
THE WITNESS: It was all three of them.
BY MR. NOLAN:
Q Now, you say Renee, Ashley and JR were all in cahoots against Freddie.
A I know it 'cause, I mean, she --
Q "She" being who?
A Renee. She didn't scream. She didn't do shit. When I come through that wall and I was panicking, she tried to act, oh, Freddie died.
Q Other than --
A But that was way time-delayed to fucking, oh, Freddie's dead. Bitch, that happened, like, 30 God damn minutes ago. I'm trying get through this wall.
MR. MOODY: Remember when I asked you to try and hold off on the cussing?
THE WITNESS: I'm getting aggravated. I'm getting hot.
BY MR. NOLAN:
Q Other than that fact --
A Yes.

Q -- what else leads you to believe that Renee was in cahoots with JR and Ashley and --

A 'Cause she knew everything that was going on that night, where the guns were, what time JR was getting there, all that. And I heard them talk that whole night. Her and Freddie was going to the side, making little comments and talking. And then when Freddie wasn't around -- 'cause Freddie left and I told you I was there with Renee and sat there and talked to Renee in that house with Freddie in the bedroom.

Q Right.

A And her and JR was sitting there cahooting [sic]. I mean, you could hear, like -- when something ain't right.

Q Now, why do you think that Ashley was in cahoots? If she was -- this was the only time she was in the house, we're talking only a few minutes.

A Because Ashley said something about Freddie. She didn't like him and she had a gun in her God damn seat and the bullet belonged to him to begin with. Over what, I don't know.

Q Who said that?

A Ashley, when me Freddie and her was in the car. She said: Freddie, you touch me and I'll pull this gun out and blow your fucking head off, and don't

think twice I won't do it.

Q She said that.

A She had a gun under her seat, yes, sir.

Q Did you see the gun?

A No.

Q And what did Freddie say when she said this?

A I know. Ha-ha-ha-ha. But I still win. Bullets don't stop me.

Q But you never saw a gun.

A No, sir.

And then when me and Ashley was talking --

MR. MOODY: Jenny --

THE WITNESS: -- she had a restraining order against him.

MR. MOODY: You need to wait until they ask you a question. Okay? Look at me. You understand?

THE WITNESS: Yes, sir.

MR. MOODY: This isn't a place where you can just start spouting out stuff. You need to wait until they ask you a question and answer the question.

THE WITNESS: I'm ready for a cigarette.

MR. MOODY: I know. We'll be done here in a second. I don't believe it will be too

much longer.
BY MR. NOLAN:
Q What makes you think there were other guns in the house?
A 'Cause he unloaded them. They never put them back in there.
Q But you said you only saw one.
A Yes.
Q What makes you think there were other guns?
A 'Cause JR had two things here (indicating). I seen that long rifle and I hear JR going, take this; take this; take this, constantly. So there had to be more guns than one. He ain't carrying them all.
MR. MOODY: By here, you were pointing, for the record, to your waistband?
THE WITNESS: Yes. Then they ended up in his shoes before that night was over 'cause they fell.
MR. COUGHLIN: Do you -- I'm sorry, Jim.
Do you -- do you think -- did you see the big long gun go into the house?
THE WITNESS: No. I can't say they went inside. I seen him grabbing them out and I walked to the building. And I'm going like this on the curb (demonstrating). Come on,

dah-dah-dah. I'm aggravated. Like I said, I was ready for some more crack.

I had my money and couldn't go and Freddie wouldn't let me go no damn where. He was starting to get antsy with me. And me and Freddie started to where I wanted to kill him my damn self 'cause he -- but, yeah, he was trying to tell me what I was going to do. And me and Freddie was not on good terms, and he's dragging me by my hair going to the crack house right before we left with Ashley to go in her car.

And I was literally went to bed at that time, trying to lay down, trying to go to sleep. And he goes: I don't fucking think so.

Comes in there and snatches me up by my hair.

MR. COUGHLIN: So guns.

THE WITNESS: Yes, I can't tell you how many there was. I only seen one rifle with the scope thing --

MR. MOODY: Jenny, if you'd let him ask his question --

THE WITNESS: -- besides the black thing

in the hand.

MR. MOODY: If you'd stop, if you'll let him ask his question --

THE WITNESS: I'm starting to get aggravated.

MR. MOODY: Look at me. Hey, Miss Long?

THE WITNESS: I'm hot.

MR. MOODY: I understand.

THE WITNESS: My anxiety.

MR. MOODY: You're going to be here a lot longer if you don't just let them ask their question so you can answer it. You understand?

THE WITNESS: Yes.

BY MR. NOLAN:

Q I think all the two of us are trying to get at is is that you only, yourself, with your own eyes, saw one gun --

A Yes.

Q -- that was longer, like a rifle, with a scope on it.

A I think I seen that handgun. It was a black thing.

Q Okay. And you think you saw that.

A When Freddie died.

Q Okay. All right.
A And I seen the telescope one when we went to go pick up the drugs.
Q All right. So there's -- that's an important thing that I don't think I heard from you before, which is that you thought you saw a gun right before Freddie died.
MR. MOODY: No. She said that --
THE WITNESS: When he grabbed him, I seen his hand go like this (demonstrating) and I seen something black. When he got out the doorway, pow. So what would you think that would have been?
BY MR. NOLAN:
Q Did you see it at any time before that?
A No.
Q You just saw some bumps --
A I still can't say that was a gun but it had to have been. It said pow when he dropped to the ground.
Q And the bumps are on his hips at his waistband. They were there the whole night, but you never saw what whose bumps were.
A No. He said, my guns fell, and went to the bathroom and fixed them.

MR. COUGHLIN: Sorry to interrupt you.

MR. NOLAN: That's all right.

BY MR. NOLAN:

Q Earlier in the night, you mentioned something about everybody had to go in front of a strobe light?

A Yes.

Q What was that about?

A I don't know. Freddie come in there and started yelling: All the girls get in the room and take your clothes off. JR wants to see everybody.

And then he turns strobe light on. JR didn't want the strobe light but Freddie wanted the strobe light.

Q So did everybody take their clothes off?

A Yes.

Q Why?

A I don't know. We're in a crack house, smoking crack. I mean, we do as we're told, I guess. There's door. What are you going to do? Tell him no and then start more shit? You don't look at them and tell them no. Go ahead right if you want to. I ain't stupid, baby.

Q What would happen if you said no?

MR. MOODY: Objection --

THE WITNESS: Probably --

MR. MOODY: Objection --
THE WITNESS: -- more than likely --
MR. MOODY: -- speculation. Jenny --
THE WITNESS: -- get your ass beat.
BY MR. NOLAN:
Q By Freddie.
A Yeah.
Q Was there ever a point in time where somebody told JR to put the guns back in the car?
A No.
Q That never happened?
A No.
MR. NOLAN: That's all that I have.
MR. COUGHLIN: Me, too.
MR. MOODY: Do you mind?

CROSS EXAMINATION

BY MR. MOODY:
Q I just want to clarify something. You keep saying guns in house and put guns back in the car. Let me ask you, 'cause I didn't hear it, have you ever testified that you watched somebody take guns from the car and put them in the house? I thought you just said you saw them moving guns in the vehicle.
A Out of the car and they were supposed to take them -- I never seen them go in the house. I never

went back in the house. I sat on the curb until they got done.

MR. COUGHLIN: I think the confusion is she used the word unload, and we're not sure what you mean by "unload."

BY MR. MOODY:

Q Did they move it somewhere else in the vehicle? Did they --

A No. They were supposed to unload them in that house.

MR. NOLAN: Did you ever see that happen?

THE WITNESS: I seen them take that one out, but where they went with it, they was going towards the house. I did see them go towards the house because it was the brick building right here (demonstrating). You walk up a little bit. Then you go right into their house.

MR. COUGHLIN: But you didn't see them go towards the house with the big gun.

THE WITNESS: Yeah.

MR. COUGHLIN: You did?

THE WITNESS: He was walking towards the house with it. JR had one. Freddie had one.

Ashley was still gathering at that time. And someone else walked out there and I really couldn't tell you who that was.

BY MR. MOODY:

Q Are you saying now that JR and Freddie both had rifles? Or are you saying only --

A JR come out to let Ashley know that he could take us. And JR took the one out and he was carrying that one. Freddie grabs some and was going thataway. I went over here on the curb because I wasn't going to sit there. Yes, there was guns in there. I can't tell you how many. I looked in. That's all I wanted to see. When I started seeing more than one --

Q Miss Long, do you mind if I finish the question?

A Yes, sir.

Q How many long guns did you actually see?

A Three that I'm aware of.

Q So now you say you saw three long rifles?

A I didn't wanted to "look" look to see, but when I looked in, there was some long metal things, some little things and then that one that he was holding with that big old, long eyeball thing that looked like this (demonstrating). JR was walking up to the house with it.

MR. COUGHLIN: Freddie had a gun, too?

THE WITNESS: Yeah. He helped him unload them.

REDIRECT EXAMINATION

BY MR. NOLAN:

Q Did you know Renee prior to this night?

A No.

Q You never met her before.

A No.

MR. MOODY: Did you guys have anything else?

MR. COUGHLIN: I don't.

MR. NOLAN: Hold on. No, that's all I have.

MR. MOODY: She'll waive.

(Whereupon the depositions concluded at 4:42 p.m.)

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2010-CF-011363-AXXX
DIVISION: CR-H

STATE OF FLORIDA

vs.

GREGORY MICHAEL NIERENBERG
_____/

DEPOSITION OF

CARL SHERMAN HARP

Taken on behalf of the Defendant

DATE TAKEN: Thursday, July 26, 2012

TIME: 2:05 p.m. - 3:36 p.m.

PLACE: State Attorney's Office
220 East Bay Street
First Floor
Jacksonville, Florida 32202

REPORTED BY: Marianne Branson, RPR, FPR

- - -

CERTIFIED COPY

Filed In Evidence as Defendant's Exhibit 53 Date 1-17-20 Case 2010CF11363

Certified Court Reporters, Inc.
(904)356-4467

A P P E A R A N C E S

JEFF MOODY, Esquire
Office of the State Attorney
220 East Bay Street
14th Floor
Jacksonville, Florida 32202

Attorney for the State of Florida.

BRIAN T. COUGHLIN, Esquire
Bedell, Dittmar, DeVault,
Pillans & Coxe
101 East Adams Street
Jacksonville, Florida 32202

Attorney for the Defendant.

HARRY L. SHORSTEIN, Esquire
Shorstein & Lasnetski, LLC
6550 St. Augustine Road
Suite 303
Jacksonville, Florida 32217

Attorney for Ashley Lorraine Pace.

I N D E X

CARL SHERMAN HARP PAGE

DIRECT BY MR. COUGHLIN 4
CROSS BY MR. SHORSTEIN 42
REDIRECT BY MR. COUGHLIN 70
RECROSS BY MR. SHORSTEIN 72
RECROSS BY MR. MOODY 73
FURTHER REDIRECT BY MR. COUGHLIN . . 75

- - -

N O E X H I B I T S

- - -

STIPULATION

It is stipulated and agreed by and between counsel for the respective parties, and the witness, that the reading and signing of the transcript by the witness be waived.

- - -

CARL SHERMAN HARP,

having been produced and first duly sworn as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. COUGHLIN:

Q Mr. Harp?

A Yes, sir.

Q Can you tell us your full name, please?

A Carl Sherman Harp.

Q Date of birth?

A 3-23-58.

Q Current address?

A Well, my current address is I'm homeless.

Q What's your last address, your last firm address?

A 1110 15th Street, I believe it was.

Q You're going to have to speak up.

A 1110 15th Street, I believe it was. I believe that's the last address.

Q Have you ever been arrested, Mr. Harp?
A Yes, sir.
Q Where?
A I was arrested in Tift County.
Q Say that again?
A Tift County. Tift County, Georgia. Tifton, Georgia.
Q Okay. Just the one arrest?
A No.
Q No?
A There was two -- maybe two or three, as a matter of fact.
Q All of them in Tift County, Georgia?
A No. I was arrested in Pompano, Florida.
Q Are those the only two places you've ever been arrested?
A Yes, sir.
Q What were the charges?
A I was arrested on a marijuana charge in Georgia, a speeding ticket in Georgia, and a child molestation case in Georgia.
Q Was the marijuana a felony or a misdemeanor?
A Misdemeanor.
Q Were you convicted of a felony in the

child molestation case?

A I was put on probation, and they violated my probation and I went down for five years.

Q Have you been designated a sex offender?

A Yes, sir.

Q Where were you born, Mr. Harp?

A Tifton, Georgia.

Q When did you first move to Jacksonville?

A In 2009.

Q 2009?

A Yes, sir.

Q Are you working right now?

A Well, I do odds and ends, work for a church.

Q What church?

A Zarephath.

MR. MOODY: Can you spell that for the court reporter, if you know how?

THE WITNESS: I don't.

MR. MOODY: I tried.

BY MR. COUGHLIN:

Q Where is the church located addresswise?

A On East 10th Street.

Q East 10th?

A Yes, sir. I think the address is 1028

East 10th Street.

Q You've got crutches. Have you been in an accident?

A Yes, sir.

Q When was the accident?

A Last Tuesday.

Q What happened to you?

A I fell off a ladder.

Q Did you break bones?

A Yes, sir.

Q Have you taken any medication?

A Yes, sir.

Q What are you taking?

A Oxycodone.

Q When was the last time you took an oxycodone?

A Last night.

Q You feel okay right now?

A Yes, sir. A little pain, but I'm all right.

Q Having no problem understanding --

A No, sir.

Q You haven't taken any other drugs or alcohol today, have you?

A No, sir.

Q All right. Mr. Harp, we're here to take your deposition because you've been listed as a witness in the criminal cases of my client and Mr. Shorstein's client. This is an incident that happened back in 2010 on the Phoenix Avenue address. Do you know what I'm talking about?

A Yes, sir.

Q Do you remember it?

A Yes, sir.

Q What did you do to prepare for today's deposition? Did you look over any reports or speak to anybody?

A I really didn't know exactly what it was about until I talked to him this morning.

Q Who did you talk to?

A The detective that came and picked me up.

Q What did y'all talk about?

A I asked him -- I asked him this morning was it about Freddy. He said yeah. That's the extent of the conversation.

Q Okay. Have you been shown any documents since you've been here?

A No.

Q You mentioned Freddy. Who was Freddy to you?

A Just my roommate.

Q Okay. For how long?

A Well, when he first moved to Jacksonville, he moved to the house where I was; that's 14th Street. Then he moved out -- well, I moved out, and then he moved out. Then we moved back together just before this incident happened.

Q The two of you lived together on Phoenix Avenue?

A Yes, sir.

Q Did anybody else live in that --

A No, sir. We were two lease holders.

Q Who did you rent it from?

A What was his name? Sheriff -- what was his name? I can't think of his name.

Q That's all right. The time all this happened, do you remember what you did that day?

A Yes, sir. Pretty much.

Q What did you do?

A Well, I went to work, first of all. Then I came home, and I was helping a friend pass out fliers for his business. And we went downtown, and I passed out fliers till 9:00, come home.

Q Who was home when you came back from passing out fliers?

A Freddy was there. Lil Mama was there, Renee was there, JR was there. I forget the other girl's name. I can't think of her name for nothing, but there was another girl there.

Q Now, these -- the names you just read off, Freddy or Lil Mama, Renee, JR, and the other girl, are these people that you had known before, aside from Freddy, of course?

A I didn't know JR. That was my first time meeting JR was that day.

Q Okay. What about the rest of them?

A Well, I'd met them in my passings in the street.

Q All right. Let's start with the order you stated them. Lil Mama, do you know Lil Mama's name?

A No, I don't. That's all I ever knew, Lil Mama.

Q Have you seen her since that night?

A No, sir.

Q Have you heard about where she went or what's happened to her?

A No, sir.

Q How about Renee, do you know Renee's full name?

A No, I don't.

Q Had you known Renee prior to that night?
A Yes, sir.
Q Tell me about Renee.
A Well, I've known her from around about the neighborhood, you know, just around about the neighborhood.
Q Is she a drug user?
A Yes.
Q Is she a prostitute?
A Per se, yes.
Q Did you say partially?
A I said per se, yes.
Q The other girl that was there whose name you forgot, is that a neighborhood girl or is that somebody who was with JR?
A No. She was -- she was a neighborhood girl.
Q Jenny?
A Jenny, that's her name. That's her name. That's her name.
Q What can you tell me about Jenny?
A Well, she was new in the neighborhood to me. And, like I said, I just got to know her from passing about in the neighborhood.
Q Was Jenny a drug user?

A As far as I know, yes.
Q And what was everybody doing when you returned home from your passing out the fliers?
A Drinking and having a, what you would say, party.
Q Everybody getting along?
A Pretty much everybody was getting along.
Q Were you introduced to JR, or did you start talking to him at all?
A I was introduced to JR.
Q Who introduced you to him?
A Freddy did.
Q What did he tell you?
A He said to me, Just one of my partners here, his name's JR. That's the extent of me being introduced.
Q Did you know why JR was there?
A No.
Q Did you know how JR got there?
A No.
Q So did you basically just join the party?
A Pretty much just joined the party.
Q Okay. Was there -- were there drugs being used at that time?
A Yes, sir.

Q What kind of drugs?
A Cocaine.
Q And who was using the drugs?
A Everybody.
Q Powder cocaine?
A Well, some had powder, some had crack.
Q Do you know how the cocaine was obtained?
A Freddy was obtaining it. Freddy was going to get it.
Q Is this before JR started giving Freddy money or --
A I don't know when he started -- I don't know nothing about the money until he gave me a hundred bucks. That's the only thing I know about the money.
MR. MOODY: And you said he. Who did you mean by "he"?
THE WITNESS: Who? JR. He gave me a hundred bucks to go get change.
BY MR. COUGHLIN:
Q Early on when you said everybody was using cocaine, did you use cocaine early on as well?
A Yes.
Q And did there come a time where some members of the party had to leave for some reason?

A Yes, sir.

Q And who left and why did they leave?

MR. SHORSTEIN: Can I interrupt you, Mr. Coughlin, and just say, can you try to remember the times? I'm very interested in the time of day or night that these things occurred, if you know.

THE WITNESS: All this happened at night. This all happened at night, from 7:00 on up into the night. Nothing happened during the day, because I worked elsewhere during the day. I'm gone pretty much all day every day.

BY MR. COUGHLIN:

Q So you came home at, you said, about 9:00? Didn't you say 9:00?

A Yes.

Q And how long, approximately, did the party go on before anybody left?

A Maybe an hour or so, couple hours. I don't know, I can't rightfully pinpoint exact time, how long this went on, that went on. All I can say is it went on in that time span.

Q Okay. An hour or two go by and then somebody leaves. Who leaves?

A Mostly it would be Freddy and one of the

girls. Whosoever they was riding around with at that time, you know, I didn't know. But they leave, come back. They stay gone awhile and come back.

Q Okay. Well, we're going to try and walk through each of these departures and returns the best we can.

A Okay.

Q So if you can, tell us throughout the course of the night the first time somebody left, who it was.

A Freddy and Jenny.

Q Freddy and Jenny?

A (Nods head)

Q And do you know why it was that they left?

A Well, to my knowledge, it was to obtain more cocaine, to replenish the party in drugs.

Q And at that point, do you know who was funding the purchase of the cocaine?

A No.

Q That left behind yourself, JR, Renee?

A And Lil Mama.

Q And Lil Mama.

A Right.

Q What did y'all do while they were gone?

A Sit around. Sit around and talked, that's

all.

Q No sex?

A No.

Q Renee didn't have sex with anybody?

A I don't -- I don't know. They was in one room, and me and the other girl was in the other room.

Q Is that right?

A Yes.

Q So Renee and JR in one room?

A Right.

Q And you and Lil Mama in another room?

A Right.

Q Which room within the home was yours?

A The room where Jenny was sleeping, in the back room.

Q Back room?

A Yes.

Q Furthest from Phoenix Avenue?

A Yes.

Q If I were to walk through the front door, that would be the back right?

A Back -- right, left.

Q Back left?

A No. Let me go in the house. Let me go in

the house, okay. I had a room over here, but the biggest room was in the back, and that's mostly where I stayed, in the back room. My clothes was in the front, but I stayed in the back because it was a bigger room.

Q Okay. And Freddy's room was?

A Straight across the hall. Right across the hall. Right across the living room hall. Walk in the living room, his room was right off to the left-hand side. Mine was off to the right-hand side.

Q How long were Freddy and Jenny gone the first time?

A Maybe an hour.

Q Did they return with more drugs?

A Yes, sir.

Q What kind of drugs?

A Cocaine.

Q Powder cocaine?

A Both.

Q Both?

A Both.

MR. MOODY: Mr. Coughlin, I apologize. If you don't mind, before we get too far afield so we don't have to retrack, I just want to go

ahead and ask: At some point in time -- and I don't want to -- the most general way I can ask this is, Did you see some girl that you now know as Ashley?

THE WITNESS: No, I didn't see her.

MR. MOODY: You hadn't seen her yet?

THE WITNESS: She hadn't come in the house.

MR. MOODY: Okay. Then go ahead.

BY MR. COUGHLIN:

Q Freddy and Jenny return; there's more cocaine. Does everybody use cocaine again?

A Yes.

Q Is there anybody that doesn't use cocaine?

A No. Everybody. Everybody.

Q Everybody still getting along pretty well?

A Everybody is still getting along pretty well.

Q What happens next?

A Like I say, then Freddy and Jenny left again. And when they left this time, Renee came in and told me that JR had two pistols on him. So when Freddy came back, I told Freddy, because it was his company. I told Freddy.

And they talked back and forth between the

two of them, and JR left the house and come back. So I assumed he went and put the pistols wherever. I don't know.

Q Did you ever see the pistols at all?

A Yes, I seen them.

Q Did you see them at that time when Renee first pointed them out to you?

A No. When Freddy came back and confronted him about it, he showed them to him, pulled up his waist -- his shirt, showed them to him.

Q And then JR left the house?

A Left the house.

Q Did you go outside with him?

A No.

Q Did anybody?

A No.

Q Then he came right back in?

A Came right back in.

Q Did you overhear the discussion between Freddy and JR about the --

A No.

Q You didn't hear what was said?

A No.

Q When you informed Freddy about the guns, did he say anything about it? Did he say, I'm going

to tell him to do something with the guns?

A Yes.

Q What did he say?

A He said, Man, what's going on? You know: What you mean with the pistols in my house?

He said: Oh, they just -- I just had them.

He said: Well, you got to get them out of the house. So he took them out of the house.

Q I'm sorry if this is repetitive, but you don't know what he did with them --

A No.

Q -- or even if he got rid of them at all?

A No.

Q When Freddy and Jenny came back the second time when you -- the time when you informed Freddy about --

A The pistols.

Q -- the pistols, did they come back with anything? Did they come back with drugs?

A No. They came back empty handed. They came back walking that time. They came back empty handed.

Q And we still haven't gotten to the time where JR gave you a hundred dollars; right?

A Yeah, we -- right around that same time, when they left, they wanted to get some change so he could talk to Renee. But where they went they wouldn't give him change for a hundred, so I told him I knew where I could get a hundred dollars changed.

So I left and was gone a minute, because the guy that I went to, he couldn't change it, so I waited around, because he got enough change, which was about an hour. And I came back.

When I came back, I had $91 and some change. The guy charged me $9 for changing it. So be it. I let them know.

When I got back, Freddy snatched it. Freddy had come back. He snatched the money, and he took it in to JR. That's the last of the hundred dollars I seen.

Q But you said that -- did I hear you say that at some point JR and Renee left the house together?

A Yeah.

Q And this was after the second return of Freddy and Jenny?

A Yes, sir.

Q The purpose, according to what you said,

JR and Renee wanted to go find change?

A Right.

Q They were unsuccessful?

A Right.

Q So he gave you the hundred bucks?

A Right.

Q You went by yourself to go try and change it?

A Right.

Q How long -- you said you were gone about an hour?

A About an hour.

Q What happened with the $91, tell me again, when you got back?

A Freddy grabbed it, said: What you doing messing with my people?

I said: He asked me to go get some change. I said: Here it is right here.

So he grabbed it out my hand and took it in to JR.

Q How was Freddy's behavior that night? Was he -- how was he attitudewise?

A Drunk and arrogant.

Q Did that get worse and worse as the night went on?

A Sort of, more so.
Q Were there any problems at that time?
A No.
Q No?
A Not to my knowledge.
Q What did Freddy do with the $91?
A He took it in to JR. He said: What you mean giving him money? You dealing with me.
That's the extent of that.
Q That's what he told JR?
A Right.
Q Did this lead to another trip outside the house by anyone?
A Yes, it did.
Q Who left this time?
A That's when Ashley come in the picture.
Q Okay. Have you ever met Ashley before? Have you ever met her before?
A No, no, I hadn't met her before either.
Q Okay.
A They said: Well, we know where some at further away, but we need a way to go. Like I said, that's when Ashley come into the picture. That's when I met her the first time.
And they stayed gone a long time, and then

they come back. When they come back, she --

Q Who is "they"? Sorry to cut you off.

A Freddy, Jenny, Ashley.

Q And how did they go wherever they went?

A I assume she had a car, because they said that she would take them.

And so they left and come back. When they come back, she left -- she went back outside, Ashley did. And she came back in the house one more time, and that's when they was saying something, but anyway, that's the extent I remember of Ashley. I only seen her twice.

Q So once again, left behind would have been yourself, Lil Mama, JR, and Renee?

A Right.

Q Still just --

A Just hanging out.

Q Hanging out? JR, how was his demeanor at that point?

A Still just -- he seemed a little agitated with Freddy, but other than that, he was good people to me.

Q When Ashley first came in, did anybody explain to you who she was?

A Yeah.

Q How was that explained?
A This is his girlfriend.
Q When Freddy, Ashley, and Jenny came back, did they return with anything?
A Yes.
Q What did they have?
A Cocaine, powder and crack.
Q Did they return with any money?
A That I don't know.
Q Do you know if the $91 was --
A I don't even know. Once I relinquished it; it was gone out of my hand.
Q Any sense of what time of night it was at this point?
A 4:00, 4:30, 5:00.
MR. SHORSTEIN: I'm sorry?
THE WITNESS: 4:30, 5:00 in the morning when this all rolled around. It was late. Real late.
BY MR. COUGHLIN:
Q Did everyone again use the cocaine that Freddy returned with that time?
A No. Only a few select people out of the group got it that time.
Q Who was that?

A JR, Freddy, Renee, Jenny, I think. I ain't for sure. Not for sure. I asked for some, but wasn't any given.

Q Any problems that time with the amount of drugs that came back or the money or anything?

A Didn't nobody show me no signs of having any problems with it.

Q All right. What do you remember happening next?

A After they last returned and everything went off the way it did, I remember him and Freddy walking around in the house talking, JR and Freddy walking around in the house talking.

Q Talking how? Talking friendly, talking not friendly?

A I mean I wasn't in earshot of them talking. All I can do is, they was walking about talking, that's all. I didn't know whether they was arresting or -- they had a way of keeping things under control, you know, as far as me seeing, wouldn't know if they were arguing. I'm never for that, never. In my presence you ain't going to cut the fool. No. I won't have it.

Q Okay. So they're walking around talking?

A In other words, trying to keep me out of

their business.

Q Okay. And what happens?

A And from the way -- the last I understood it is when JR asked, Well, where the girl named Jenny at, Freddy said, Well, she in the back room. He said: Well, show me.

And after that, that's the shot.

Q Back there is where --

A Yes, sir.

Q And you couldn't see in that room?

A No, sir.

Q Where were you exactly when the --

A Standing in Freddy's bedroom door talking to Renee. She was sitting on the bed. I was standing in the door talking to her, talking to Renee

MR. SHORSTEIN: I'm sorry. You're at whose door?

THE WITNESS: I was standing in Freddy's door.

MR. SHORSTEIN: Okay. Thank you.

BY MR. COUGHLIN:

Q To account for everybody that we've discussed so far, you and Renee are in the same room?

A Right.
Q Jenny, Freddy, and JR are in another room?
A Right.
Q And where is Lil Mama?
A Where was she at? Was she in the back room with them or was she in the room with us? I just can't rightfully remember.
Q And what about Ashley?
A Ashley wasn't even in the house.
Q How many gunshots?
A One. Inside the house.
Q Had JR left the house between the time he went outside after being confronted by Freddy about the pistols and the time you heard the gunshot?
A Yes.
Q Okay. And I don't -- I may not have asked you that before, but tell us --
A The last time that Freddy, Jenny, and Ashley came back, he went outside in between that time -- in between that time when they came back and the gunshot.
Q By himself?
A By himself.
Q Was he angry at the time he went out by himself?

A He -- I'm not a good judgment as far as angry in a person. I try not to see it in a person. I try --

Q Was he speaking as if -- was he saying anything?

A He seemed a little agitated, seemed a little agitated.

Q What makes you say that?

A Well, the way he pushed on out the door.

Q What had led to that happening?

A I -- that's what I don't know, see. By him and Freddy walking around talking, I don't know.

Q Did any -- did Renee or Lil Mama or Jenny, did any of them tell you that there was a problem?

A No. If they told me there was a problem, I don't remember. It was one of those kind of nights.

Q What makes you say that, just from the drug use and everything?

A Yes.

Q Had you drank alcohol as well that night?

A I'm not an alcohol drinker.

Q No?

A No.

Q Any other drugs?

A No.
Q No marijuana, nothing?
A No.
Q What about the other people, was there alcohol --
A Yeah.
Q -- drinking going on?
A Yeah. Plenty of that, yeah. Plenty of beer. Much, much beer.
Q Who would you say had the most to drink?
A Well, I really can't say. I really can't.
Q Because you don't know?
A I don't know.
Q Was Freddy drinking beer?
A Yes.
Q Was Freddy drinking anything else other than beer?
A Not that I know of.
Q Beer and cocaine for Freddy?
A Pretty much. Pretty much for everybody, except for me. I'm not a beer drinker.
Q All right. When you heard the -- you said how many gunshots in the back room?
A One.
Q One. What happened next?

A I bolted for the front door. Out the front door (indicates).

Q Were you the first one out of the house?

A First one out of the house. I didn't care who was in the house. I was the first one out of the house.

Q We're going to talk more about what happened, but did you -- was that the last time you were in that house until the next morning when you -- next day when you came back and saw the police?

A Yes, yes.

Q All right. Did you see -- ever see Freddy again?

A No.

Q No?

A (Shakes head)

Q And you couldn't see into the room where Freddy was?

A No.

Q Did you hear anybody yell, say anything, at the time you were running out of the house?

A No. I'm running -- I'm pretty much running for life. Bullet like that shot inside the house usually get everything in the house. I've

been in very close scrapes before.

Q Was anybody near you doing the same thing?

A I think everybody else was so stunned still that they couldn't move.

Q So the answer is no, nobody else ran out of the house with you?

A No. The shot was deafening.

Q Did you hear any other gunshots?

A Only other gunshots was when he come outside. There was two fired in my direction.

Q Who are you talking about?

A JR.

Q Came outside?

A Yes, sir.

Q Tell me about what -- tell me about that.

A The two shots when I -- I could hear them. Because I run up the street and turned left, right up the street. And I could see him come out the house, because the house is right across the church yard. I could see him come out the house. Two shots rang out in my direction.

Q Did you see a gun?

A No.

Q You didn't see a gun?

A No. I couldn't see. It was dark.

Q What makes you say in your direction?
A Because I could see where the fire was coming toward me.
Q You could see fire coming toward you?
A Yeah. The bullet shots.
Q How far away were you?
A From here to that building (indicates).
Q I can't see the building you're talking about.
MR. MOODY: He's talking about the Hyatt. If you look up above you, are you talking about the Hyatt, sir?
THE WITNESS: That building.
MR. MOODY: So you would say that approximate -- defense counsel, if you agree, with this estimation --
MR. COUGHLIN: I'm more concerned with whether he agrees with it.
MR. MOODY: Well, he's the one pointing it out.
BY MR. COUGHLIN:
Q How far do you think that is?
MR. MOODY: I know what he's talking about. Do you want to guess at how long that is for the record?

MR. COUGHLIN: I was about to --

THE WITNESS: As far as feet, I don't know, but it's about that distance.

It's right up to the corner, right around the corner.

BY MR. COUGHLIN:

Q Mr. Harp, I understand what you're saying, everybody in the room does, but our court reporter has a hard time estimating -- she can't guess at how far that building is.

A Well, I'm not a good guesser, either. I can only tell you what -- the distance in my mind is from here to that building. If you can come up with a number, I have to agree with you.

Q 40 yards? What do you think?

A Maybe so.

MR. MOODY: For the record, my opinion was going to be somewhere between 30 and 40 yards.

BY MR. COUGHLIN:

Q Did you see Ashley outside?

A Yes.

Q Where was she?

A Sitting right in front of the house, car running.

Q You said that the gunshots were fired in

your direction; right?

A Right.

Q Can you tell me what you mean? I mean do you think he was trying to shoot you?

A I don't know. I don't know what was his intention. Maybe it was to scare me away, maybe to make me think that he was trying to kill me. I can't even fathom or try to judge what was in his head.

All I know is they was in my direction. That's all I can say. No more, no less. That's all I can say.

Q At the time you say that you heard the gunshots outside, where exactly was Mr. -- was JR? Where was he?

A Coming out of the house.

Q Was he running --

A Yes, sir.

Q -- or was he standing still? Do you see what I mean?

A Running.

Q He was running?

A Coming out of the house.

Q Okay. And if you were standing on the front porch of the house, you would have been

located off to the left?
A If I was standing on the front porch?
Q Yeah. When he was on the front porch facing out, where were you --
A Up the street and to the left.
Q Okay. So he would have had to turn to his left to see you?
A Yeah. I was running.
Q Was it into the sky, gunshots?
A I wasn't per se looking at the angle. All I seen is the fire in my direction. That's it.
Q Where did you run off to?
A Down the street.
Q Did you see anyone else from inside the house later that night?
A Yes, I did.
Q Who did you see?
A Renee.
Q Did you watch where JR went after he ran off the porch?
A I -- I heard a car peel away. That's all.
Q Did you see the car peel away?
A Yeah. I told you I was right down the street looking at the house.
Q Did you stop and turn around and look

back?

A No.

Q No. This was while you were running?

A Yeah.

Q Okay. When is it that you came back in contact with Renee?

A Oh, she met me on the road. She come out the house shaking, and we just walked right on off, just walked away.

Q So sounds like this wasn't much longer?

A No, wasn't much longer.

Q You watched Renee come out of the house?

A No, I didn't watch her come out of the house. When I seen her again, she was out of the house. We just walked away.

Q Did you talk about what happened?

A What was there to talk about?

Q What did she tell you --

A She was shaking so bad she couldn't talk. It wasn't a time for talking. It was just a time for consoling then. Because I mean a friend of both of ours had got killed, or shot, or whatever the case might be. I mean what was there to talk about?

Q How much time did you spend with her? Were you there together for hours after that?

A We stayed together till almost 1:00 the next afternoon.

Q At no point did she talk to you about what she saw happen?

A She didn't see nothing happen. She was in the room with me, remember.

Q And she stayed behind in the house until after --

A She was in the house. She wasn't behind the house. She was in the house.

Q I said she stayed behind in the house.

A Yes, sir. When I ran out of that room, she was still sitting on the bed.

Q Did you come back into contact with anyone else from inside the house later that day or night?

A No.

Q No?

A No.

Q Did you and Renee call the police?

A No.

Q Why not?

A First of all, my phone was inside, and I didn't have no money. That was my first -- that's -- that's where they got my phone from, inside.

I didn't have no cash. Thinking right then wasn't on my priority list as far as I'll go call 911. I'm trying to stay away from the street just in case he out looking. If I had went to the phone booth, I would have been on the corner.

Q Do you remember what the guns looked like, the ones you saw earlier in the night?

A One was black and one was silver, is all I can say. That's the best description I can give you. They were both big. One was black and one was silver. That's all I can remember.

Q Did you see any other guns that night on him or anyone else?

A No.

Q Did anyone tell you about other guns?

A No.

Q Anyone tell you about other guns in the vehicle?

A No.

MR. MOODY: Doing all right?

THE WITNESS: Starting to get real agitated.

MR. COUGHLIN: We can take a break if you need to.

MR. MOODY: Would you like a glass of

water, or do you need to stand up?

THE WITNESS: No, no. Let's do this.

MR. MOODY: Maybe when we finish with Mr. Coughlin -- I know Mr. Shorstein is going to ask questions --

THE WITNESS: As long as it takes, it takes.

MR. MOODY: Well, if you need to, I think both of these gentlemen would be more than happy to let you take a break, if you need to.

THE WITNESS: I understand. I know they got like other stuff, I know they do.

BY MR. COUGHLIN:

Q Mr. Harp, when is it that you first came in contact with law enforcement?

A I told you --

Q No, no, I'm sorry, related to what we're talking about.

A Related to this? That next day.

Q Where were you?

A I was at the house.

Q You went back to the house?

A Yes, sir.

Q Was Renee with you?

A No.

Q Did you give a statement to the police that day?

A Yes, sir.

Q Where was that?

A Well, they said that they wanted a statement, so they brought me somewhere, downtown here somewhere, made a statement.

Q Have you read over that statement that you previously gave?

A No, I haven't.

Q Some --

A And I'm not trying to be arrogant by saying yes and no, it's just -- I mean yes, sir and no, sir, at all cost.

MR. SHORSTEIN: That's fine.

BY MR. COUGHLIN:

Q After you gave the statement, wherever they brought you, have you given a statement since then?

A No.

Q No?

A No.

Q You tell me -- I'm going to make a statement, and you tell me if I have it wrong or right, okay?

A Okay.

Q You can't say whether there was any fight or trouble or argument or anything in the room where the shot was fired?

A No.

Q Is that correct?

A I can't tell you.

Q You can't tell me?

A No.

Q Were you told -- do you know why Ashley was not inside that house?

A No.

Q Throughout the course of that night, other than what I believe you characterized as some agitation that JR had with Freddy, he was otherwise okay?

A Okay.

Q Not angry, not mad?

A No, sir.

Q No major problems?

A No, sir.

MR. COUGHLIN: Mr. Shorstein, why don't you jump in here?

CROSS EXAMINATION

BY MR. SHORSTEIN:

Q Are you all right, or do you need a break?
A I'm fine. Let's go with it.
Q Okay. I'm going to go over some of the questions that Mr. Coughlin asked you, and then I'll start from the beginning again, if that's all right with you. If you ever get confused as to where I'm coming from as far as times or people, just tell me, and, you know, I'll clarify.
A Okay.
Q When you left and ran down the street, JR came out, and you said he fired two rounds in your direction, or fired two rounds-
Based on the sound of those two rounds and the sound inside the house, did you believe they were fired from the same gun, or could you tell?
A Well, there's a difference inside and outside, automatically.
Q Right.
A So inside has got a big boom captivated sound, see. Outside it's air-ish then. It's a whole lot different. I'm military -- I'm ex-military, so I know automatically, you know. It's not that per se I could say it came from the same gun. I could say there was two shots fired.
Q Are you pretty certain about the number of

shots, that is one inside the house and two at you?
A Yes, sir.
Q That no other shots were fired?
A Positive about that part.
Q Nor any lesser number?
A Huh-uh, huh-uh. Neither way.
Q When you ran out of the house before JR came back out, did you see Ashley at that time?
A No, sir -- when I ran out of the house?
Q Yes, sir.
A She was sitting right out front in the -- in a car.
Q In the car. Was the car directly in front of the house?
A Right directly in front of the house.
Q And you said that after the two shots were fired at you, you heard the car leaving?
A Yes, sir.
Q What would be the amount of time between when the two shots were fired and the car left?
A Two minutes tops.
Q Did you see JR enter the car?
A No. I was running.
Q I'm sorry?
A I was running. No.

Q So you didn't see whether JR entered the car from the passenger side or the driver side?

A No, sir.

Q So do you know from your observation who was driving the car, or are you just assuming?

A I assume Ashley was driving, because the car was running. When I come out the door, the car was running. So I don't know whether he ran around and got in the car, or she was driving the car, who was driving the car. All I know, it was running when I come out the door.

Q And at that point, how long had it been since the shot inside the house was fired?

A Like I said, sir, a rough -- shot fired, I turn and come out, turned to go up the street, turned -- rough two minutes, whole thing. Rough.

Q I think you said you moved quickly after the shot was fired?

A Yes. Most definitely.

Q I'm going backwards over my notes. When that last group came with -- back in the house, last time the group returned prior to the shooting?

A Okay.

Q How long was it between the time that group came back the last time and the shot in the

house?

A Per se putting time -- putting things in perspective as far as time, I can't.

Q Okay.

A As far as half an hour, hour, I can't really grasp that kind of time. All I can say is it wasn't three hours and it wasn't 30 minutes.

Q Well --

A So it was in between the swing.

Q Okay. You were asked if you reviewed your statement that you gave, and you said you didn't, the statement you gave that night.

You gave a statement to the police, and then with a court reporter like this young lady here --

A Yes.

Q -- you gave a statement to a woman who was an assistant State attorney.

A Yes.

Q Do you recall that?

A Yes.

Q And that statement was given at 1705 or 5:05 that afternoon?

A Yes, sir.

Q You said today that you arrived at

Freddy's house at about 9:00.

A It was my house as well.

Q At your house, your and Freddy's house at 9:00?

A Yes.

Q During the statement you said you got there about 5:30 or 6:00. Do you remember which was --

A That's coming in from work, getting off from my other job, getting dressed, leaving. When I came back to the house, it was around 9:00. I came home.

Q Okay. And when you came home, JR and Freddy were there?

A Yes, sir.

Q Did you see them arrive?

A No.

Q When you first saw JR and Freddy --

A They was in the house.

Q They were in the house and you were in the house?

A They was in the house.

MR. MOODY: Do me a favor. Make sure that you let him finish his question.

THE WITNESS: Yes.

MR. MOODY: I mean you can tell, obviously, when you talk where people are going, but she can only take one of you guys down at a time, and you're kind of guessing his questions, so you're jumping on his words.

THE WITNESS: Okay.

BY MR. SHORSTEIN:

Q You said that JR showed the pistols and then Freddy was told about the pistols?

A Yes, sir.

Q Is that correct? When Freddy talked to JR about the pistols, or about not wanting the pistols in his house, was there any threat between either one of them towards the other?

A I don't know. I don't know.

Q Did you ever see JR threaten Freddy with the pistols?

A No, I didn't.

Q Did you ever see -- you said they were talking, and you didn't say if it was an argument.

Was there ever loud talk between Freddy and JR?

A I wasn't paying attention as far as anger in the situation. I wasn't paying attention for that.

Q Well, during -- were you finished?

A Yes.

Q During the time that you were able to observe Freddy and JR talking to each other, I'm talking about any time between the time that you first saw them that night and the shooting, did you ever see JR appear to be angry at Freddy, like if this gentleman and I -- let me finish.

A Okay.

Q If this gentleman and I were arguing, sometimes you could tell by the language I used or he used, or by my raising my voice or his raising his voice, that we're not happy with each other.

Did you ever observe that at any time between JR and Freddy?

A When I brought the hundred dollars back, he snatched it, the $91; they had a few words then.

Q But did that argument subside? My understanding is that was fairly early in the evening; correct?

A Yes, sir. It wasn't a big blown-out issue, but it wasn't happy.

Q You testified earlier that you had lived with Freddy, then y'all separated, then y'all came back to be roommates together at that house.

A Yes.
Q At any time before that night, either during the first time that you and Freddy were roommates or when you and Freddy became roommates again, did you ever see Freddy and JR together?
A No.
Q Freddy sold drugs, didn't he?
A No.
Q Freddy didn't sell drugs?
A No.
Q Freddy just used drugs with his friends?
A (Nods head)
Q That's yes?
A Yes.
Q To your knowledge --
A That's to my knowledge.
Q Okay. To your knowledge, prior to that evening, had Freddy ever indicated or were you otherwise aware of any hard feelings between Freddy and JR?
A I didn't know JR, period, until that night.
Q And there was no mention on Freddy's part of JR?
A No, sir.

Q Okay. Now, starting when JR and Freddy were first seen by you, did Freddy at that time introduce JR to you and to the others?

A He introduced him to me, because I was the only one that came up.

Q I'm sorry?

A I was the only somebody that came up. When I came, I was the only somebody that came up. The rest of them was there.

Q But to your knowledge, did any of the others, Renee or Jenny or Lil Mama, know JR?

A Not that I know of.

Q Okay. At the time that you first saw JR and Freddy, did they appear to be friends?

A I'm not a good judge of character when it comes to friends. When you're doing drugs, you're in it socially, that's it. I can't spell it neither way.

Q That was my second question, was going to be: Did they say or do anything with each other to indicate that there were hard feelings between the two of them?

A No, sir.

Q Okay. Freddy and Jenny left walking to -- the first time, that was the first leaving of the

house by anyone after that group got together; is that correct?

A Yes, sir.

Q And they were gone for how long?

A Approximately an hour. I can't pinpoint a time.

Q And when they got -- you said they came back and had not gotten change; is that correct?

A No, no, no. I said they came back with drugs when they left walking the first time.

Q Okay, I'm sorry. They came back with drugs. And do you know whether JR used any of the drugs that they came back with the first time?

A I'm quite sure he did.

Q I'm sorry?

A I'm quite sure he did.

Q Did he say anything or do anything to indicate that he was unhappy with Freddy about the drugs that were brought back at that time?

A They didn't talk to me none about that situation, period.

Q How were they acting when JR -- how were JR and Freddy acting and talking with each other after that first time that he returned with the drugs?

A I wasn't in the room to per se partake of that conversation or that activity.

Q Do you know when Ashley first arrived, not in the house, but in the area?

A No.

Q Your first knowledge of Ashley being in the area was when you talked about her coming in the house?

A Right.

Q Can you give me an estimate of the time?

A When she came in?

Q Yeah, the time --

A Oh, oh.

Q Let me just stop you for a second. Let me help you. You testified that you thought you came back at 9:00. The shooting, I think, was at -- 7:00 the next morning?

A Yeah.

Q So using that as a time frame, I guess we're talking about 12 hours.

MR. MOODY: Actually, it wasn't that late. It wasn't quite 7:00 in the morning. But I agree it was the next morning.

MR. SHORSTEIN: I think the shooting was somewhere around 6:00.

MR. MOODY: It was somewhere in that neighborhood.

BY MR. SHORSTEIN:

Q So we're talking about the period from late afternoon the day before until relatively early morning.

A I had been home, I'll say, hour, hour and a half, two hours, before she came -- before I seen her face, before I even seen her face.

MR. MOODY: And that would have been the second time you came home?

THE WITNESS: No.

MR. MOODY: Because didn't you say you came home --

THE WITNESS: I came home and got dressed --

MR. MOODY: And you came home at like 9:00?

THE WITNESS: 9:00, right.

MR. MOODY: So it would have been two hours after the 9:00?

THE WITNESS: Two hours after the 9:00.

MR. MOODY: Does that help clarify, Mr. Shorstein?

MR. SHORSTEIN: Not really.

MR. MOODY: Well, I'm not saying you're going to agree with it, but I'm saying does it at least clarify what he's trying to say?

BY MR. SHORSTEIN:

Q If you -- you sound as if you recall the events pretty clearly. You gave your sworn statement to that woman assistant state attorney about 10 to 12 hours after the shooting. Now we're a year and a half or more after the shooting.

If there are differences, do you think that you would have been more accurate at the time you gave your sworn statement?

A Rightfully, I can't really say. Rightfully, I can't say. Because right then it was like it was brought right back into my head, and now time has elapsed on it, and it's hard to bring it all back into direct focus, what you're trying to get me to say. I can't pinpoint it exactly.

Q When Freddy -- let me go -- the last trip was by Freddy, Jenny, and Ashley in the car; is that correct?

A Right.

Q Okay. What would be your best estimate using just -- I'm going to ask you to assume, if you don't remember, that the shooting was somewhere

around 6:00 in the morning, give or take a half an hour.

If you'd just assume that, if you can't remember, just for the purpose of my question, assume that I'm accurate with that, when in time would they have left to go for the -- on that last trip to get drugs? Or if you could just say -- estimate how long before the shooting do you think it was?

A I can't. Honestly, I can't. So much transpired that night, it was unreal.

Q Do you know what led to Ashley driving Jenny and Freddy --

A By it being so late.

Q I'm sorry?

A By it being so late and the place being far away.

Q Were you aware of any reluctance or any problem getting Ashley to drive, anything about a driver's license?

A No, no.

Q Do you know -- no?

A No.

Q Do you know whether JR went and told her to drive?

A That -- that would be my only assumption.
Q But you don't know?
A Because Jenny wasn't in the house for them to ask her to drive.
Q I'm sorry?
A Jenny wasn't in the house for them to ask her to drive.
MR. MOODY: Jenny or --
THE WITNESS: Not Jenny, but --
MR. MOODY: -- Ashley?
THE WITNESS: I mean Ashley wasn't in the house for them to ask her to drive, would you take me here or would you take me there.
BY MR. SHORSTEIN:
Q At the time that they left, prior to that time, do you recall any physical fighting of any sort between JR and Freddy?
A No.
Q Do you -- I've asked you this before, but this covers any time prior to them coming back, do you know of any complaints, arguments, bad words in either direction between JR and Freddy?
A No, sir.
Q When you said that there was talk between Freddy and JR about the guns, Freddy telling JR to

take them out of the house, do you know whether -- or were you ever present when Ashley would have been able to see JR with the guns?

A No.

Q Did you ever hear anybody indicate, Ashley or anyone else, that she was aware that JR had the two pistols?

A No.

Q Okay. Then they come back the last time, and you said that -- or am I correct that when they come back, Freddy, Jenny, and Ashley come into the house?

A Correct.

Q And Jenny goes into the back bedroom, JR and Freddy go to the kitchen first, and then back to Freddy's room; is that correct?

A Right.

Q And you said JR then asked Freddy: Where is Jenny?

A Yes, sir.

Q Do you know why, why he was --

A This part I don't know. I don't know. Like I said, they were all there before I got there. I don't know what was said, what was done.

Q No, no, I don't mean to interrupt you.

I'm talking about when they returned the last time.

A I know. That's what I'm saying. But there might have been something said before I got there at 9:00. I don't know. I don't know what the issue was, but he asked for Jenny personally.

He said: Well, where is Jenny?

Freddy said: She's in the back room.

Q You said Ashley came in but left?

A Ashley.

Q Was Ashley present when you heard JR ask, Where is Jenny?

A No. She was already outside.

Q At the time that JR asked for Jenny, how long had it been prior to that when Ashley had left the house?

A I don't know. I can't say. I wasn't trying to keep a time frame of who's leaving, who's going. All I know, she wasn't in the house.

Q Can you give me an idea? Are we talking more than 30 minutes, more than an hour, more than 10 minutes, whatever?

A Maybe 30 minutes. Maybe.

Q Okay. So that would have put Jenny outside the house 30 minutes or more before the shooting?

MR. MOODY: No, no. Ashley.
BY MR. SHORSTEIN:
Q I'm sorry. Ashley? I'm sorry.
A Ashley.
MR. MOODY: Between the two of you guys.
THE WITNESS: It would put Ashley outside the house about 30 minutes before the shooting.
BY MR. SHORSTEIN:
Q Okay. In your statement that you gave, your earlier statement, you said that you ran out of the house, same as you said today, and ran to the corner, but that you saw no one else when you ran out of the house.
A When I turned the corner, I --
Q No. From the time you bolted the house, the time you leave the house until JR shoots you -- shoots at you, or you think JR shoots at you.
A Well, I mean per se seeing anyone outside the house, but the car was sitting there.
Q Were you just assuming that Ashley was in the car?
A No, no, no. I could see Ashley in the car.
Q So if they asked you a question, And there was no one else outside, and your answer was, Nobody

else, that was in your sworn statement --

A I mean -- I mean nobody else was outside. They didn't ask me whether the car was there or not.

Q Okay.

A I mean I wasn't per se trying to pick nobody out. I'm running for life. Bullets flying. I'm running for life.

Q I may have asked you this before, but how long would it have been between the shot inside the house and the two shots outside the house?

A Time enough for him to walk or run, however he got from the back room to the front of the house and out the door.

I don't know whether he ran out. I don't know whether he walked out. I can't say.

Q Are you aware of whether or not Ashley and JR, from the time you got there, left the house together?

A Ashley and JR?

Q Yes.

A No, sir.

Q I'm sorry?

A No, sir.

Q They never left together?

A No, sir. I told you I didn't see her

until late that night.

Q And you don't know how she arrived?

A Don't know how she arrived.

Q So she was only in the house for a very, very short period of time on two occasions; is that correct?

A Yes, sir.

Q And other than that period of time that you saw her in the house on those two occasions, do you know where she was, or are you just assuming that she was in --

A I don't know where she was. But the last time when I come out, you could see her -- when you come out the door, you could see her in the car.

Q After the shooting?

A Right. You could see her in the car.

MR. MOODY: Where?

THE WITNESS: In the front of the house.

MR. MOODY: No. Where in the car?

THE WITNESS: Like I say, I can't say whether she was on the driver side or the passenger side. All I know is when I run out, I see her in the car, I turn and go. I'm not trying to judge whether she's sitting in the middle of the seat, on the passenger side or --

I'm not trying to judge that. All I know is that she was there.

MR. MOODY: That's fine.

BY MR. SHORSTEIN:

Q When they came back the last time, that group, when Ashley was with them, you said Jenny went to her room, and Freddy and --

A Jenny went to the back room.

Q Okay, went to the back room, okay. And Freddy and JR first go to the kitchen and then go to Freddy's room. Had Ashley already left?

A Yes, sir.

Q Yes?

A Yes, sir.

Q Did you ever see a rifle that night or a long gun?

A No.

Q You said you've been in the military, and so you do know the difference?

A I do know the difference.

Q Did you ever hear any talk about a rifle?

A No, sir.

Q Or some long gun with a scope on it?

A No, sir. All this is new to me.

Q Okay. Was Ashley ever arguing or having

words with Freddy in those short periods of time when she was in the house?

A Not that I know anything about. She was real nice. She spoke, and that's it.

MR. MOODY: She what?

THE WITNESS: She spoke.

BY MR. SHORSTEIN:

Q You said that you weren't aware of JR and Ashley ever leaving together during that whole night?

A Right.

Q If they had left, it, then, would have been at a time where you didn't see them?

A Right.

Q Do you know what time they could have left together?

A I don't have the foggiest idea. If they left, I don't know. I haven't the foggiest idea.

MR. MOODY: Were you doing drugs that night?

THE WITNESS: Yes, sir.

MR. MOODY: When you do drugs, do you pass out sometimes?

THE WITNESS: No, sir.

MR. MOODY: Did you pass out that night or

something?

THE WITNESS: No, sir. There wasn't enough drugs did to pass out.

BY MR. SHORSTEIN:

Q During the time that Ashley was in the house, did you ever -- did Ashley ever do anything to indicate that she wanted Freddy shot?

A No, not that I know of.

Q Did she ever do anything or say anything that indicated she wanted JR to shoot him?

A Not that I know of.

Q Do you know whether Ashley ever said or did anything to encourage or cause JR to shoot him?

A No.

Q Did you ever see Ashley in the presence of any guns?

A No, sir.

Q In relation to the time you got there, do you know, if you know, when JR and Renee had sex?

A No.

Q Did JR appear to be high on drugs after that first amount he took when Freddy came back the first time and gave him drugs?

A No.

Q Did you see JR take the crack and the

powder right before or very close in time before the shooting?

A No.

Q Somebody described him as taking it together and having a dynamite blast right before the shooting. Did you see any of that?

A No, sir.

Q Did you ever tell the investigators, any of the police when they questioned you, that Ashley was present throughout the whole evening and night?

A Yes, sir. She was. She was -- no, no, no, no, no. I keep getting Jenny mixed in with Ashley.

Q No. Ashley.

A Ashley, no.

Q Because Ashley was only there those --

A Couple times, couple times. When they got ready to leave, then when they came back, that's the only two times I seen her, other than when I seen her when I run out the door.

Q How long was it between the last time you saw JR and Freddy and the shot that we'll assume was the shot that killed Freddy?

A When they walked from Freddy's room, they walked in the kitchen, walked back to where Jenny

was in the back room. That's when they walked out of the front room where we were and walked in the back room where Jenny was.

Q Okay. You could see that; is that right?

A No, no.

Q I'm sorry?

A No.

Q When was the last time that you were at -- you were able to see both of them, when they left the kitchen or --

A No, no. When they left the room where I was. They were standing talking in the door right where I was. They walked out of my eyesight, down the hall, to the room where Jenny was.

Q And how long was that before the shot?

A Maybe a minute.

Q I'm sorry?

A Maybe a minute.

Q All right. So you neither saw, nor heard, nor have had anyone tell you what, if anything, occurred between JR and Freddy prior to the shooting?

A No, sir.

Q Did Renee ever say anything about it?

A Renee was sitting right next to me right

there. She was sitting on the bed. I was standing in the door.

Q So she couldn't have seen any more than you saw?

A She couldn't have seen it.

Q Could Jenny have seen more than you saw?

A Yeah. Jenny was in the back room.

Q Was Jenny pretty well strung out on drugs?

A Rightfully, I couldn't say that either. I don't know how much she had consumed. I know everybody had consumed some, but I don't know how much they had consumed.

I don't know. I can't say what she saw, how she perceived it, when she saw it.

Q Again in time -- and I want you to try to be as exact as you can be -- the time between the shot in the house and the two shots at you, would it be under a minute?

A Like I said the first time, I don't know whether he walked out or ran out. All I know is when he shot, I come out.

It wasn't -- it wasn't no eon of time. It wasn't a long time. It wasn't, boom, and I seen him. It wasn't like that. It was a -- give it a minute, minute and a half tops.

Q Okay. Can it help you if you think about the amount of time it took you from the time you bolted out of the door until the shots were fired, forgetting about him, just --

A I'm running for life now. There's a difference. Total difference. Absolute difference.

Q And you only got 40 -- approximately 40 yards away?

A I'm running for life. There's no speed, no nothing that's governing that.

Q And you were at the corner at the time the two shots were fired, or not?

A Yes.

Q Where were you in relation to the corner at the time the car -- you heard the car leave?

A Maybe a couple feet down the road. Just right down the road.

Q So you had only run a couple feet from the time the two shots were fired at you and the time the car left?

A Right.

Q Do you know what, if anything, JR said or did to Ashley between the time of the two shots and the time of the car leaving?

A No.

Q And you're assuming that Ashley was driving. You didn't see her drive?

A I don't know who was driving.

Q Okay. And you have no idea who was driving -- if you assume that Ashley and JR came to that area earlier in the evening, you don't know who would have been driving then?

A No, sir.

MR. SHORSTEIN: I think that's all I have.

MR. COUGHLIN: Just one or two clarifying questions, Mr. Harp.

REDIRECT EXAMINATION

BY MR. COUGHLIN:

Q When JR and Renee went out looking for change, had you seen Ashley yet that night?

A No.

Q Other than that time JR left the house and the time that he went outside after talking about the pistols with Freddy for a very short period, did you see JR leave the house at all, other than those two times?

A Let's see. I can't remember. I can't. I sure can't.

Q Approximately how long did you share a residence with Freddy? Not necessarily this one,

but --

A Maybe a couple months at the other place, maybe a couple months there. Then I moved on. He stayed there for a while, and then he moved on. Then we talked about getting a place together.

Q How long did you live together at the Phoenix address before this happened?

A Couple weeks.

Q So would you -- for lack of a better word, would you party like this with him often?

A No.

Q No?

A No.

Q Did you spend a lot of time with him otherwise?

A No.

Q No?

A (Shakes head)

Q Did you see - did you spend enough time with him to see whether he got into arguments with people?

A No.

Q Was he a troublemaker?

A Not to me, he wasn't.

Q No? With other people?

A Well, I don't per se hang around like that.

Q I mean what you saw.

A I don't hang around like that. I don't -- I try not to get into other folks' affairs, at all costs. I try with all my might not to get in other people's affairs.

Q I understand that. But if you're at your house and Freddy's at your house, would Freddy have problems with people inside y'all's house?

A No, no. Like I said, we had just moved together. Like I said at first, I don't get into that. I try to keep it away from me at all cost. I try to keep it away from me.

MR. COUGHLIN: Do you have any questions, Mr. Moody?

MR. MOODY: I do. I only have one --

MR. SHORSTEIN: I have one question. Do you want me to go or wait till you go?

MR. MOODY: No, because I only want to focus on one thing.

RECROSS EXAMINATION

BY MR. SHORSTEIN:

Q Okay. Let's -- I'm going to right before the shooting when JR and Freddy leave your sight to

go in the back, right before the shooting, would it have been possible for Ashley to have come back in and be at the shooting, at the same place as --

A No, sir.

Q -- JR or --

MR. MOODY: Hold on. Let him finish.

BY MR. SHORSTEIN:

Q Be at the same place that JR and Freddy were when Freddy was shot?

MR. MOODY: Hold on. I'm going to -- I want to object to speculation.

Now you can answer.

THE WITNESS: Impossible.

BY MR. SHORSTEIN:

Q She would have had to come past you?

A Right.

MR. SHORSTEIN: Thank you.

MR. MOODY: We're almost done.

RECROSS EXAMINATION

BY MR. MOODY:

Q I want to focus on one and one point only, okay. You mentioned that there were lots of comings and goings, but the last time that the gang came back with drugs, you said at some point Ashley came in and then she left; correct?

A Right.
Q After Ashley walked outside, you mentioned that JR walked outside as well just prior -- and then came back in prior to the shooting. You described to Mr. Coughlin as he seemed agitated by pushing the door.
A Okay, yeah.
Q Okay?
A He did.
Q When he went back outside --
A I don't know what he did or where he went.
Q Okay. That was one of the things I wanted to ask you, is: Did you see where he went?
A I don't know.
Q Did you hear anything he did?
A I -- no.
Q Did you know if he went to the car?
A I don't know.
Q Do you remember how long he was out there?
A No.
Q But when he came back in, was it right after he came back in --
A The shot?
Q -- that he approached Freddy and that's when the shot took place?

A Right. That's when -- that's when it all went on. I remember saying that he -- that he was agitated.

MR. MOODY: Do you have any follow-up?

MR. COUGHLIN: I might.

MR. MOODY: Well, it's kind of important for you, so I thought you might.

He might ask you one or two questions about that, but that's -- at this point, that's it. We're done with everything else. I know you need to get out of here.

The investigators are blowing my phone up right now because we're longer than they thought we might be.

THE WITNESS: That's a lot of phone to blow up.

MR. MOODY: Hold on.

While he's doing that, I'm going to go ahead and explain something to you.

We can go off the record.

(Off-the-record discussion)

FURTHER REDIRECT EXAMINATION

BY MR. COUGHLIN:

Q Mr. Harp?

A Yes, sir.

Q The time that JR came back into the house before the shooting, when he reentered the home?
A Yes, sir.
Q How did he look to you?
A Looked like JR.
Q Did he look any different than he had throughout the rest of the night?
A I mean he didn't per se seem like he had no problem with me. That's, you know, pretty much the issue.
Q Did you have a suspicion there would be a problem at that point?
A No.
Q With anybody?
A No.
Q Was he red in color?
A It's late at night, everybody was up late. Looked like everything was red, everything was black, everything was just all mushed up. You know, you don't have no perception of color. You don't have no perception of color at that time.
Q How about sweating, was he sweating?
A Late at night, he had on a sweatshirt. He had a long-sleeved sweatshirt on, big sweatshirt. Now, I don't know. I can't say if he was sweating

or not.

Q What color was the sweatshirt?

A White.

Q And how about the rest of his attire?

A He had on some pants. I can't say whether it was jeans or slacks. I can't say. All I know, he had a big white shirt, like a letterman sweater. He had on a big, thick sweater.

Q Did that ever come off that night?

A No.

Q Never?

A (Shakes head). Only way I remember that is when the pistols was showed the first time (indicates).

Q He pulled up the sweater, the sweatshirt?

A Yeah.

MR. COUGHLIN: All right. That's all I have.

MR. MOODY: He'll waive, as you heard.

(Whereupon, at 3:36 p.m., the deposition was concluded.)

- - -

CERTIFICATE OF OATH

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, the undersigned authority, certify that CARL SHERMAN HARP personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 13th day of September 2012.

MARIANNE BRANSON
Commission # DD 948085
Expires January 25, 2014
Bonded Thru Troy Fain Insurance 800-385-7019

Certified Court Reporters, Inc.
(904)356-4467

C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Marianne Branson, RPR-CP, certify that I was authorized to and did stenographically report the deposition of CARL SHERMAN HARP; that a review of the transcript was not requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 13th day of September 2012.

Marianne Branson, RPR-CP
Court Reporter

Certified Court Reporters, Inc.
(904)356-4467