No.

IN THE SUPREME COURT OF THE UNITED STATES

ANIBAL MUNIZ,

Petitioner,

v.

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.

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

APPENDIX

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INDEX TO APPENDIX

District Court Order Denying Petition ..... Appendix A

11th Circuit Order Denying Motion for a Certificate of Appealability ..... Appendix B

11th Circuit Order Denying Motion for Reconsideration ..... Appendix C

State Court Post-Conviction Hearing Transcripts ..... Appendix D

APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ANIBAL MUNIZ,

Petitioner,

v. **Case No.: 6:24-cv-1235-CEM-NWH**

SECRETARY DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

ORDER

THIS CAUSE is before the Court on Anibal Muniz's Amended Petition for Writ of Habeas Corpus ("Amended Petition," Doc. 8) and Memorandum in Support ("Memorandum," Doc. 2) filed by counsel pursuant to 28 U.S.C. § 2254. Respondents filed a Response to the Amended Petition ("Response," Doc. 12). Petitioner filed a Reply to the Response ("Reply," Doc. 13).

Petitioner asserts one ground for relief. For the reasons set forth below the Amended Petition will be denied.

I. PROCEDURAL HISTORY

The State charged Petitioner with second-degree murder with a firearm. (Doc. 12-1 at 5). A jury found Petitioner guilty as charged. (*Id.* at 998). The trial court sentenced Petitioner to life in prison. (*Id.* at 1053). Petitioner appealed, and the Fifth District Court of Appeal of Florida ("Fifth DCA") affirmed *per curiam*. (*Id*. at 1149).

Petitioner, through counsel, filed a motion for post-conviction relief pursuant to Florida Rule of Criminal Procedure 3.850, which he amended. (*Id.* at 1165-1231). The post-conviction court denied two of Petitioner's claims and held an evidentiary hearing on two claims after which it denied relief. (*Id.* at 1247-50, 1383). Petitioner appealed, and the Fifth DCA affirmed *per curiam*. (*Id.* at 1509).

II. GOVERNING LEGAL STANDARD

In *Strickland v. Washington*, the Supreme Court established a two-part test for determining whether a convicted person is entitled to relief because his counsel provided ineffective assistance. 466 U.S. 668, 687-88 (1984). To prevail under *Strickland*, a petitioner must demonstrate "(1) that his trial 'counsel's performance was deficient' and (2) that it 'prejudiced [his] defense.'" *Whatley*, 927 F.3d at 1175 (quoting *Strickland*, 466 U.S. at 687).

Prejudice "requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Strickland*, 466 U.S. at 687. That is, "[t]he [petitioner] must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Id.*

III. ANALYSIS

Petitioner asserts counsel rendered ineffective assistance by failing to "offer proper advice concerning the state's plea offer." (Doc. 8 at 5). According to

Petitioner,

> [t]o the best of [his] recollection, prior to trial the state offered him a plea agreement that called for him to plead guilty to the offense of second degree murder in exchange for a sentence of 30 years imprisonment followed by 10 years of probation. Trial counsel offered no advice to [him] concerning the offer, and [Petitioner] ultimately rejected the offer without ever having received the benefit of legal counsel's advice concerning the offer.
>
> Had trial counsel advised [him] of the overwhelming nature of the state's case against him and/or that it was in his best interest to accept the state's plea offer and/or to accept the state's plea offer he would have accepted the offer.

(*Id*. at 17-18).

Respondent maintains that this ground is procedurally barred from review because Petitioner did not raise it in the state court. (Doc. 12 at 7-14). Federal courts are precluded, absent exceptional circumstances, from granting habeas relief unless the petitioner has exhausted all means of available relief under state law. 28 U.S.C. § 2254(b); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842–44 (1999). To satisfy the exhaustion requirement, a "petitioner must 'fairly present[ ]' every issue raised in his federal petition to the state's highest court, either on direct appeal or on collateral review." *Isaac v. Augusta SMP Warden*, 470 F. App'x 816, 818 (11th Cir. 2012) (quoting *Castille v. Peoples*, 489 U.S. 346, 351 (1989)); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995) ("[E]xhaustion of state remedies requires that petitioners fairly present federal claims to the state courts in order to

give the State the opportunity to pass upon and correct alleged violations of its prisoners' federal rights.") (quotation omitted). Federal courts must dismiss those claims or portions of claims that have been denied on adequate and independent procedural grounds under state law. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991)*, holding modified by Martinez v. Ryan*, 566 U.S. 1 (2012).

Procedural default may be excused only in two narrow circumstances: if a petitioner can show (1) cause and prejudice or (2) actual innocence. *Murray v. Carrier*, 477 U.S. 478, 496 (1986); *Wright v. Hopper*, 169 F.3d 695, 703 (11th Cir. 1999). The Supreme Court of the United States has held that a prisoner may demonstrate cause for failing to raise a claim of ineffective assistance of trial counsel if (1) "the state courts did not appoint counsel in the initial-review collateral proceeding" or (2) "appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective" pursuant to *Strickland*. *Martinez*, 566 U.S. at 14. The petitioner, however, "must also demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit." *Id*.

Petitioner concedes that his ground is unexhausted. (Doc. 13). To overcome the procedural default, Petitioner relies on *Martinez* to establish cause and prejudice. (*Id.*).

When first decided, *Martinez* appeared to open a wide gateway for the

development of defaulted ineffective-assistance-of-trial-counsel ("IAC") claims in federal court. But the Supreme Court has substantially narrowed the case's usefulness for habeas petitioners. In *Shinn v. Ramirez*, 596 U.S. 366 (2022), the Court rejected a petitioner's request to interpret *Martinez* as permitting petitioners to expand the state court record to develop defaulted IAC claims in the federal habeas court. *Id*. at 387-88. The Court held that "under § 2254(e)(2), a federal habeas court may not conduct an evidentiary hearing or otherwise consider evidence beyond the state-court record based on ineffective assistance of state postconviction counsel."[1] *Id.* at 382.

Under *Shinn*, unless Petitioner's newly raised IAC claim is based on a new rule of constitutional law (not applicable here) or based on a factual predicate that could not have been previously discovered with diligence (also not applicable here), Petitioner may not present new evidence to support his unexhausted IAC ground and must rely solely on the state court record. Thus, in determining whether Petitioner's *Martinez* ground is substantial, the Court will not consider Petitioner's allegations, namely that counsel offered no advice concerning the plea offer and that Petitioner would have accepted the plea offer if counsel had advised him of the overwhelming evidence against him or that it was in his best interest to accept the offer, and instead

[1] Section 2254(e)(2) provides that if the petitioner did not develop the factual basis of the claim in state court, federal courts may not hold an evidentiary hearing on the claim unless the claim relies on "new rule of constitutional law, made retroactive to cases on collateral review" or "a factual predicate that could not have been previously discovered through the exercise of due diligence[.]" 28 U.S.C. § 2254(e)(2).

will only rely on the state court record.

The Sixth Amendment right to effective assistance of counsel extends to plea negotiations. *Lafler v. Cooper*, 566 U.S. 156, 162 (2012). Therefore, "[i]f a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it." *Id.* at 168. The two-part test enunciated in *Strickland* applies to claims that counsel was ineffective during plea negotiations. *See id.* at 163 (recognizing that *Strickland*'s two-part test applies to a federal habeas petitioner's claim that counsel was ineffective for advising him to reject a plea offer). "'[W]ithout evidence that [counsel] gave incorrect advice or evidence that he failed to give material advice, [a defendant] cannot establish that his lawyer's performance was deficient.'" *Mostowicz v. United States*, 625 F. App'x 489, 494 (11th Cir. 2015) (quoting *Burt v. Titlow*, 571 U.S. 12, 17 (2013)).

As to the prejudice inquiry in the context of a foregone guilty plea, defendants must demonstrate:

> a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.

Missouri v. Frye, 566 U.S. 134, 147 (2012).

The record reflects that at the Rule 3.850 evidentiary hearing, Petitioner testified that he and his trial counsel discussed the facts underlying his case, defense strategies, and the strength of his case before trial. (Doc. 12-1 at 1324-31). Trial counsel testified that Petitioner always maintained the shooting was an accident. (*Id*.). Counsel said that he carefully reviewed the plea offer with Petitioner, but he rejected it. (*Id*. at 1343). Regarding the strength of Petitioner's defense and the plea offer, counsel explained:

> I never say it's a good case or a bad case in that respect. I try to analyze what the possible outcomes could be. We do a risk reward about the plea bargain as it had been offered, which, in this case, was 30 years in prison, plus ten years probation, as it was, and that factor was weighed heavily in his decision to go to trial. That decision whether or not to plea or go to trial was clearly solely the defendant's.

(*Id.* at 1361).

On the record before the Court, trial counsel advised Petitioner about the plea offer and the strengths and weaknesses of his case. Petitioner, therefore, knew the evidence that the State intended to present at trial and the terms of the thirty-year plea offer. Petitioner, however, rejected the plea offer, mainly because he was unwilling to accept a thirty-year sentence. Petitioner, therefore, has not shown that his claim is substantial because there is nothing establishing that counsel was deficient or that a reasonable probability existed that Petitioner would have accepted the plea offer but for defense counsel's purported deficient performance.

Accordingly, Petitioner's ground is procedurally barred and will be denied. Any allegations not addressed are without merit.

IV. CERTIFICATE OF APPEALABILITY

This Court should grant an application for certificate of appealability only if the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Lamarca v. Sec'y, Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). When a district court dismisses a federal habeas petition on procedural grounds without reaching the underlying constitutional claim, a certificate of appealability should issue only when a petitioner shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*; *Lamarca*, 568 F.3d at 934. However, a prisoner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

Petitioner has not demonstrated that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. Moreover, Petitioner cannot show that jurists of reason would find this Court's procedural rulings debatable. Petitioner has failed to make a substantial showing of the denial

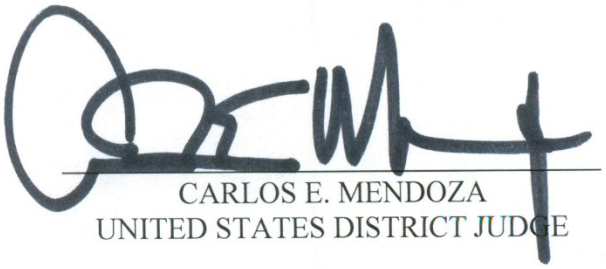
of a constitutional right. Thus, the Court will deny Petitioner a certificate of appealability.

V. CONCLUSION

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

1. The Amended Petition (Doc. 8) is **DENIED**, and this case is **DISMISSED with prejudice**.
2. Petitioner is **DENIED** a Certificate of Appealability.
3. The Clerk of the Court shall enter judgment accordingly and is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on November 24, 2025.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

APPENDIX B

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-14476

ANIBAL MUNIZ,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:24-cv-01235-CEM-NWH

ORDER:

Anibal Muniz, a Florida prisoner serving a life sentence for second-degree murder with a firearm, filed a pro se 28 U.S.C. § 2254 petition, claiming that trial counsel was ineffective for failing to properly advise him on the state's plea offer. As background, Mr. Muniz was convicted after a jury trial, and the Florida Fifth District Court of Appeal ("DCA") affirmed his conviction and sentence on appeal.

Mr. Muniz then filed a Fla. R. Crim. P. 3.850 motion, which raised four claims of ineffective assistance, but did not argue that counsel was ineffective with respect to the state's plea offer. The post-conviction court denied two of his claims and ordered an evidentiary hearing on the others.

At the hearing, Mr. Muniz testified that he and his trial counsel had discussed his case and defense strategies before trial. Counsel testified that he reviewed the plea offer, 30 years in prison plus 10 years' probation, with Mr. Muniz, who rejected it largely because of the length of the prison term. Counsel explained that he performed a risk-reward evaluation about the plea offer, discussed it with Mr. Muniz, and the decision to reject it was solely Mr. Muniz's.

After the hearing, the post-conviction court denied Mr. Muniz's remaining claims. The DCA affirmed. Mr. Muniz then filed an amended § 2254 petition, claiming that counsel was ineffective for failing to offer proper advice about the plea offer. Mr. Muniz conceded that he did not raise the claim in state court, but argued that he was entitled to relief under *Martinez v. Ryan*, 566 U.S. 1 (2012), because his post-conviction counsel was ineffective in failing to raise it.

The district court denied his petition as procedurally defaulted because he failed to exhaust his claim in state court, and denied a certificate of appealability ("COA"). Mr. Muniz now moves for a COA. To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28

U.S.C. § 2253(c)(2). Where the district court denied the constitutional claim on procedural grounds, the petitioner must show that reasonable jurists would debate (1) whether the petition states a valid claim alleging the denial of a constitutional right, and (2) whether the district court's procedural ruling was correct. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, reasonable jurists would not debate the district court's conclusion that Mr. Muniz's claim was procedurally defaulted because he failed to raise it in state court. *See Smith v. Jones*, 256 F.3d 1135, 1138 (11th Cir. 2001). Mr. Muniz is not entitled to relief under *Martinez* because he failed to diligently pursue his claim in state court and failed to satisfy the requirements of 28 U.S.C. § 2254(e). *See Shinn v. Ramirez*, 596 U.S. 366, 382 (2022). Thus, the district court properly limited its review to the state court record.

Based on this record, the court properly found that counsel was not deficient in advising him about the plea offer because he advised Mr. Muniz about the strengths of his case and the plea offer, and Mr. Muniz rejected it because it contained a 30-year prison sentence. *See Missouri v. Frye*, 566 U.S. 134, 140 (2012). Because his underlying ineffective assistance claim is without merit, he cannot excuse his procedural default. *See Martinez*, 566 U.S. at 9, 13.

Accordingly, Mr. Muniz's COA motion is DENIED.



UNITED STATES CIRCUIT JUDGE

APPENDIX C

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-14476

ANIBAL MUNIZ,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:24-cv-01235-CEM-NWH

Before JILL PRYOR and GRANT, Circuit Judges.

BY THE COURT:

Anibal Muniz, a Florida prisoner, moved for a certificate of appealability ("COA") to appeal the district court's order denying his 28 U.S.C. § 2254 petition as procedurally defaulted. On July 31, 2026, this Court denied a COA.

Muniz now moves for reconsideration. After careful review, his motion is DENIED, as he has provided no new evidence or arguments of merit to warrant relief.

APPENDIX D

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA COUNTY, FLORIDA

CASE NO.: 2015-CF-305367

STATE OF FLORIDA,,

EVIDENTIARY HEARING - APPEAL

vs.

ANIBAL MUNIZ,

Defendant.

* *

TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING BEFORE THE HONORABLE LEAH R. CASE,
CIRCUIT COURT JUDGE

(STENOGRAPHICALLY TRANSCRIBED VIA DIGITAL RECORDING)

* *

DATE TAKEN: FEBRUARY 6, 2023

TIME: AUDIO BEGINS: 9:05 A.M.
AUDIO CONCLUDES: 10:17 A.M.

PLACE: S. JAMES FOXMAN JUSTICE CENTER
251 N. RIDGEWOOD AVENUE
DAYTONA BEACH, FLORIDA

STENOGRAPHICALLY
TRANSCRIBED BY: PAMELA S. UNDERWOOD, RPR
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INDEX OF PROCEEDINGS

	Page
DEFENSE WITNESS:	
TESTIMONY OF ANIBAL MUNIZ	
Direct Examination by Ms. Reese	5
Cross-examination by Ms. Trigones	16
Redirect Examination by Ms. Reese	18
STATE'S WITNESS:	
TESTIMONY OF JOHN SELDEN	
Direct Examination by Ms. Trigones	19
Cross-Examination by Ms. Reese	36
Redirect Examination by Ms. Trigones	44
ARGUMENT BY MS. REESE	50
ARGUMENT BY MS. TRIGONES	55
COURT RULING	59
CERTIFICATE OF REPORTER	63

P R O C E E D I N G S

THE COURT: All right. This is case number 2015-305367-CFDB, State of Florida versus Anibal Muniz.

Let's get names for the record.

MS. TRIGONES: Heatha Trigones, for the State of Florida.

MS. REESE: Good morning, Your Honor. Rachel Reese, on behalf of the defendant, Mr. Muniz.

THE COURT: All right. This is a 3.850 motion where we are looking at solely claim 1 and claim 4.

Ms. Reese, call your first witness.

MS. REESE: Your Honor, our first witness is going to be the defendant, Mr. Muniz.

THE COURT: I can't hear you.

MS. REESE: It's going to be the defendant.

THE COURT: Okay. Have him come up.

THE CLERK: Please raise your right hand.

Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: I do.

THE BAILIFF: Do you want him up here, Your Honor?

THE COURT: Yes, I want him up here.

MS. REESE: I apologize, Judge, normally I'm the loudest one in the courtroom, but I'm getting over a lost voice over here. I didn't realize until I opened my mouth how, actually, raspy I was.

THE COURT: I don't hear well. So that's why we have all the mics in here.

All right, sir, make sure you speak into the mic. Okay?

THE DEFENDANT: Yes, ma'am.

THE COURT: Go ahead.

MS. REESE: Thank you, Your Honor.

THEREUPON,

ANIBAL MUNIZ,

having been duly sworn by the court clerk, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MS. REESE:

Q Will you please state your full name for the record.

A Anibal Muniz.

Q And, Mr. Muniz, are you currently serving a prison sentence in the Florida Department of Corrections?

A I am.

Q How long's your sentence for?

A Life sentence.
Q And did you receive that sentence after you went to a jury trial here in Volusia County?
A That is correct.
Q And who represented you at your trial?
A I'm sorry?
Q Who was your attorney that represented you at your trial?
A I can't recall his name.
Q John Selden?
A John. John. Yes, yes. That's correct.
Q And was Mr. Selden your attorney the entire time that your case was pending?
A Yes.
Q And he was appointed to you?
A Yes.
Q Do you remember, approximately, how long between when you were arrested and when you, ultimately, went to trial?
A Approximately, about a year and a half.
Q And were you housed in the county jail during that period of time?
A Yes.
Q Did you have the opportunity, over that year and a half, to meet with your attorney and go over the

facts of your case?

A Yes.

Q Okay. During the initial meetings, were you ever asked to discuss, from your perspective, what happened?

A Yes.

Q And did you go over that with him?

A I did.

Q Okay. And you had previously given a statement to law enforcement; is that right?

A That is correct.

Q And was your discussions with your attorney, were they similar to the admissions you made in that statement?

A Yes.

Q And was that statement, ultimately, used at your trial?

A I'm sorry?

Q Was that statement, ultimately, used at your trial?

A Yes.

Q The entirety of the statement?

A No.

Q Okay. Can you explain what was not included, if you recall?

A There were just certain things that were changed, that were not my state of facts or of what I recall.

Q Okay. What do you mean by that? Do you remember how long the interrogation was?

A Interrogation went on for a while. I would say at least 10 to 12 hours.

Q Okay. Now, you mentioned that there was portions that were introduced and then some that were not. And you said the ones that were introduced were not your recollection of the facts. What do you mean by that?

A Well, they claimed that I changed my story to situations that -- the way they pronounced it was that the only possible way it could have occurred, it wasn't my recollection.

Q Okay. So you -- did you offer a different set of circumstances then at first?

A No.

Q Okay. And did you ever change your story from the beginning of the interrogation through the end of your case?

A No.

Q Now, the portions that you're referring to, law enforcement advised you that the only way that this

could have happened was X and your version was Y?

A Correct.

Q And that was played at your trial?

A Yes.

Q Did you discuss that with your attorney?

A I did.

Q And did you discuss any sort of strategy on how to deal with that?

A Not really. We just -- you know, we just pretty much played it by ear.

Q At some point, did you discuss, or did you come to an agreement, about what your strategy was going to be whatsoever in your case?

A I don't recall.

Q Okay. Did you talk about the term self-defense in your case?

A Yes.

Q Is that something that you spoke with your attorney about from the very beginning?

A Yes.

Q Did you -- while you were here in the county jail -- actually, let me ask you this.

Have you ever been convicted of a felony before this?

A No.

Q Was this the first time that you were ever going to trial?

A Yes.

Q So were you relying on the advice that you were getting from your attorney in terms of his representation?

A Yes, that is correct.

Q Did you know anything really about the law, at that point in time, about a motion to dismiss or stand your ground?

A No, not at all. That was, actually, the first time I've gotten in trouble, so I really didn't know anything about the law.

Q Okay. Did you ever discuss the possibility of filing any pretrial motions with your attorney?

A I don't recall.

Q Now, when you originally gave your interrogation, your statement to law enforcement, over this long period of time, at some point in time, they asked you if you wanted to do -- basically, help them out with a stress test. Can you explain kind of how that came up?

A Well, he told me that if I could possibly -- if I was willing to take a VSA, voice stress analyzer, that this could help him out, and I agreed to it.

Q Okay. When he said he felt that it could help you out, did you ask any questions following up as to what that meant, or did he ever explain that to you?

A No, he did not.

Q Okay. So you agreed to take the stress test. Had you been completely cooperative up to that point as well?

A Yes.

Q And was that your intention throughout the interrogation?

A Correct. Yes.

Q Now, the test that was administered, you were asked several questions about your case. Do you remember if you passed or failed, off the top of your head?

A I recall, I said passed? He said there was one that came up, I guess, unconclusive, I guess, maybe.

Q Okay. So you were asked a question, the first one was: Did you tell the truth about the shooting?

And you said: Yes.

A Yes.

Q And were you told that that statement was -- do you recall if that's one of the ones that he stated you passed on?

A Yes. That was truthful.

Q Okay. And you were asked: Did Jeanette get the gun from the drawer?

And you answered: Yes.

And that, I believe, was the -- do you recall if that was the question that they said that there was -- that was inconclusive?

A Correct.

Q The third question was: Did the gun fire accidentally?

You answered: Yes.

A That was truthful.

Q That was true. And you were advised you passed that portion?

A Yes.

Q And then, the last set -- the last question of relevance was: Did you shoot Jeanette?

And you said: No.

And you also passed that one?

A Correct.

Q So you had an understanding as to the four questions that you were asked and the outcome of those?

A Yes.

Q Did the questions ever come up later in your interrogation? Did they ever bring them up again and question you about why you had failed or why it was

inconclusive?

A No.

Q Did you ever -- did you ever discuss the stress test with your attorney before trial?

A Yes.

Q And how did that come up during your conversations?

A I was told it was inadmissible. It wouldn't be allowed in trial.

Q Okay. Did he ever explain to you as to why that was his position?

A No.

Q Did he ever go over with you any sort of exception to the rule that would allow that to be admissible?

A No.

Q Did you discuss whether he thought that that would, actually, be helpful or harmful to your case?

A No.

Q Now, in your case, would you agree that your version of -- your testimony, your recollection of events, was some of the main evidence?

A Yes.

Q Now, during your trial, did you have the opportunity to ask questions of your attorney and kind

of discuss the case as it went on?

A Yes.

Q At any point in time, either before your trial -- well, let me separate the questions.

Did you ever talk about the strength of your case, before you went to trial, with your attorney?

A I think we might have spoken once or twice about it.

Q And did he advise you whether he felt that you had a decent chance of success or that the State's case was relatively strong?

A He said we had a decent chance.

Q Okay. And did that ever change throughout the trial? Did he ever express anything different to you?

A No.

Q Did he advise you, during the trial, that he still felt that you had a strong chance of being successful?

A Yes.

Q Now, at your trial, do you recall if the State argued that you were not telling the truth, or that you were not a credible witness, as to your story of what happened?

A Yes.

Q And was that something that you discussed with

your attorney about a possible concern?

A I did.

Q And did he have an explanation or a strategy on how to overcome that?

A No.

Q And, again, you have never gone to a trial previous to this? This was your first time in trouble?

A That is correct.

MS. TRIGONES: In trouble or trial?

MS. REESE: In trouble. I apologize.

THE WITNESS: Trial. Trial.

BY MS. REESE:

Q First time you'd ever been arrested?

A Yes.

Q How would you describe your relationship with your attorney? Was it a good relationship? Was it a --

A It was a good relationship.

Q Were you able to freely communicate and discuss things without any sort of issues?

A Yes.

Q Did you feel like you could confide in him and never really had -- you never felt like you needed to speak up and tell the Judge otherwise?

A No.

Q And did you trust his advice and his

representation at the time?

A I did.

Q Did you feel like he believed your story from the beginning?

A Yes.

MS. REESE: I have nothing further, Your Honor.

THE COURT: Okay. Ms. Trigones?

MS. TRIGONES: Thank you, Judge.

CROSS-EXAMINATION

BY MS. TRIGONES:

Q Counsel asked you, is that the first time you got in trouble, and you said yes. Are you sure about that?

A Well, she meant trial, first time I've ever been in trial for any case. In trouble before, yes.

Q Okay. So you did have some criminal charges before, this was just the first time you went to trial?

A Correct.

Q All right. I just have a few other questions for you.

You never told the police that you intentionally shot Jeanette, right, your wife?

A No.

Q You told them it was an accident, correct?

A Correct.

Q The first time you shot her and the second time you shot her, you said both of those were accidental, correct?

A I said the first shot was accidental, the second shot was not intentional at all. I don't even recall a second shot being fired.

Q Right. So it wasn't that you shot your wife in self-defense, it was, I accidentally shot my wife, correct?

A Correct.

Q I just want to ask a question about the voice stress analysis. You indicated that there was one question that was inconclusive, and that question would have been, Did Jeanette get the gun from the drawer, correct?

A I believe so, yes.

Q All right. Now, you said it was inconclusive. But isn't it true that you showed deception?

A No.

Q No? That's not your recollection?

A That's not my recollection, no.

MS. TRIGONES: All right. No further questions, Judge.

THE COURT: Any redirect?

MS. REESE: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. REESE:

Q Mr. Muniz, you just testified that you accidentally shot your wife. Is it fair to say, I believe, that your -- the evidence showed that you acted with intention, though, of trying to retrieve the gun from her. Is that fair?

A Yes.

Q And then what happened after that, that was the accident?

A That was the accident.

Q And, now, when you intentionally sought the gun from her, were you afraid for your life?

A Yes, I was.

MS. REESE: Nothing further, Judge.

THE COURT: Okay. You may step down.

Do you have any other witnesses?

MS. REESE: No, Your Honor. I apologize, I should have preliminarily mentioned this. I would ask the Court to take judicial notice of the court file --

THE COURT: Okay.

MS. REESE: -- and trial transcripts. But I have no other witnesses.

THE COURT: All right. Yes, ma'am. Thank you.

Ms. Trigones.

MS. TRIGONES: And the State was going to ask you to take judicial notice of the entire court file.

I know you said, specifically, the trial transcripts, but you mean everything, right?

MS. REESE: Yes.

MS. TRIGONES: Okay. The only other additional evidence, Judge, would be State would call John Selden.

THE COURT: Okay.

THE CLERK: Please raise your right hand.

Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: Go ahead.

MS. TRIGONES: Thank you, Judge.

THEREUPON,

JOHN SELDEN,

having been duly sworn by the court clerk, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MS. TRIGONES:

Q Good morning, sir.

A Good morning.

Q Let me know when you're ready.

A I'm ready.

Q Okay. Can you please state your name for the Court?

A John M. Selden. S-e-l-d-e-n.

Q And are you licensed to practice law in the state of Florida?

A Yes, I am.

Q How long?

A In the state of Florida, since 1991, and previously, in New York and New Jersey, since 1982 and 1983. So a little over 40 years now.

Q Are you currently a member of the Florida Bar in good standing?

A Yes.

Q Can you please summarize your work experience for the Court?

A My first several years, approximately eight years, after some clerkships, were in private practice in New York and New Jersey as I indicated. I was in a small firm where we did some civil, but principally criminal defense work.

When I moved south, I was living, for one year, in Atlanta, did not practice during that year, contemplating the Georgia Bar exam, instead moved to Tampa.

And in Tampa, I sat for the 1990 Bar and was admitted and went to work in the Public Defender's Office in Tampa for several years. I was there about four, four and a half years. Conducted some private practice for a few years in between, after that, and then came here to Daytona Beach in 1999, joined the Office of the Public Defender for the Seventh Judicial Circuit, and I've been there ever since.

Q Approximately, how many jury trials have you tried?

A I don't have an exact number. I didn't keep track like that. But I would say in the neighborhood of a hundred overall, come and gone.

Q And how long -- well, do you focus mainly on murder cases?

A I have since, approximately, 2015. Prior thereto, I had served for 14 years as the only assistant public defender, for the four counties of this circuit, doing sexually violent predator cases. Jimmy Ryce commitments. And I had served as appeals counsel as well. So when I left the civil commitment matters, I

went to appeal -- went back to appeals, but doing capital death penalty appeals. So there came a time when the office needed someone to return to try first-degree murder cases, and I had the experience previously as well, so I was asked to do that.

Q Can you estimate, approximately -- I know you're just estimating the number of total jury trials. But, approximately, how many of those would have been murder cases, not just first degree, but second degree, even manslaughter cases?

A Only probably about -- and, again, I don't have an exact figure. I'd say in the neighborhood of 10 to 20, roughly.

Q Did you represent the defendant in this case?

A Yes, I did.

Q Were you on the case from the beginning?

A No. He had private counsel, I believe, privately retained counsel, initially, and he liked her quite a bit, and she liked the case, but they had some reason between them that -- probably financial likely, where the Office of the Public Defender was appointed to represent him instead.

Q Were you on his case for quite some time before it went to trial?

A Oh, yes. That was early on. I met her and --

shortly after he was arrested. And, as I say, that relationship was brief for them, and I came into it early.

Q And you were his lawyer at the trial that began on July 18th, 2017?

A Yes, I was.

Q And then, were you his lawyer at his sentencing on September 26th, 2017?

A Yes, I was.

Q In preparation for today's hearing, did you have a chance to review your case file?

A Yes. I took the entire Bankers Box -- I did not bring that all with me. But I took a look through, and I culled out a few things that I thought were relevant.

Q And how about any of the post-conviction pleadings, did you have a chance to review any of those?

A Yes, I did.

Q And do you recall trying this case?

A Yes.

Q What was the defendant charged with?

A Charged with second-degree murder for the intentional -- well, not intentional shooting, but the act of a depraved mind in causing the death of his wife.

Q So second-degree murder?

A Second-degree murder.

Q And was a firearm enhancement also charged?

A That's what made it a life felony or punishable by life.

Q What was he convicted of?

A He was convicted as charged.

Q Can you summarize the facts of this case for the Court and then what your defense was at trial?

A The facts, in a short summary -- it would take a long time. But a short summary would be that Mr. Muniz and his then wife were a later-in-life couple. They had met later. She had a child who was, I believe, at the time, 17 or 18 years old, from a previous relationship. They were both from pretty much the same area previously. They got along well. They moved down, they were here. And I believe she moved down to be with him here, and the relationship was in a honeymoon stage. Apparently, it was a very good relationship initially.

There was evidence adduced at trial that Mr. Muniz was still in contact occasionally, though, with a former girlfriend and that contact appeared to have been increasing, as time went on a bit, because his wife found out about that information and was very distressed. In fact, the theme of my statements at trial, my opening and closing, were hell hath no fury

like a woman scorned.

Because what, eventually, occurred was she had gone through some of his phone, or whatever, and made contact -- she contacted that young lady. There was, obviously, a domestic blow up. And, in the course of the arguments, Mr. Muniz' position had always been consistently that they were arguing in the bedroom, that the revolver was in the bedroom drawer, to be by the bedside, in case of self-defense.

They -- as part of the physical nature of the argument then, his indication was she went to the drawer and tried to remove the gun. She got the gun, he got it about the same time, they struggled with the gun, and, at that point, the gun went off, and he indicated accidentally. He said that he -- if my memory is right, that in the shock of all of the things that were going on, he went back and got back against the wall of her dresser and the gun went off a second time accidentally.

Through the course of the interrogation that was mentioned previously, he detailed that extensively, and he acted it out, he reenacted that occurrence.

So then, those were, essentially, the facts. We can move on from there.

Q Okay. And so, what was your defense? What was the defense at trial?

A The defense at trial was self-defense and accident in the course of self-defense. The most important element, I believed, and I did note that, you know, he had some prior contact with the law, but he did not have prior convictions that would impede his credibility as a witness. And what was key in his case was credibility, his credibility. The nature of the statement that he gave to the police, right from the very outset of the case, though, was consistent and it was understandable.

It seemed to me -- I mean, the lynchpin, in this case, was the unfortunate nature of the accident, in that if the second shot was an accident, and if it was first or second, but one of the shots was relatively close and at the base of the brain, indicating that it could be something other than an accident. And I believe that's the lynchpin, as I said, that the jury relied upon.

So the only -- and I did review also the plea agreements, or plea offers that had been made, and we reviewed those carefully, but they were declined. And when we went to trial, it was focused on the witness's credibility. His credibility as a witness.

Q And did you have an expert to assist you in that regard?

A Yes. We --

THE COURT: Hold on. The people on Zoom need to mute their mic.

THE WITNESS: So to answer, yes. We retained a firearm expert, out of Georgia, named Chris Robinson who was previously with the Georgia Bureau of Investigation and several other levels of experience that made him a very good witness, I thought. And he was able to present, in almost a crime re-enactment sense, a version of the events that helped support our case.

We had to deal with the fact -- and the State and -- we both tested the firearm, that the trigger pull on the firearm, being a little over 10 pounds, was not indicative of an easy accident. It certainly wasn't a hair trigger. It was the opposite. It was difficult to pull. So -- and Chris Robinson did help us address that to the best of his ability.

BY MS. TRIGONES:

Q The first claim that we're going to discuss, that's been set for a hearing, is you were ineffective for failing to file a pretrial motion to dismiss based on self-defense or stand your ground.

Were there strategic reasons that you did not

litigate a stand-your-ground motion?

A Yes, there were several. Well, first, before the strategic, there was the -- I thought, the important legal reason, and, that is, to the best of my research at the time, there are two distinct different situations. It's apples and oranges.

Stand your ground, as an immunity, is for the -- the purpose is to explain that you committed the act intentionally for the purpose of defending yourself. That's when you would get immunity from any prosecution. However, an accident, in the course of a scuffle, or something like this, did not entitle you to stand your ground as an immunity. It creates a self-defense argument to present to a jury at trial.

So what was the second half of your question?

Q My question was strategic reasons. So I understand, you're saying, legally, you didn't think you had the grounds legally to file and litigate a stand-your-ground motion?

A Just as important, if not more so, the strategic point was, in order to assert a stand-your-ground defense, at that time -- and I was aware of the burden shifting to the State away from the Defense. Even so, in order to present, or even claim, a stand your ground, the defendant must assert a prima

facia case, a probability at least that it applies. To do so, he would have to testify, and that would give the State an opportunity to cross-examine him fully and to perhaps get some tidbit of conflicting testimony from either his story or what he would possibly testify to at trial. So the risk of the testimony being asserted there and challenging his essential credibility on the issue of accident was not a good strategy to go and try to have testimony taken. Even if we could, it was my position that -- that was part B, and the secondary reason why not to. Principally, it was not available to us legally. So why take the risk even to try to argue it of putting a defendant on the stand to have testimony taken.

Q You indicated that, in order to establish a prime facie case, you would have called the defendant. Let's assume that a pleading would have been sufficient to establish a prime facia case and then put the burden on the State. Do you still feel that it would have been necessary to call your client to establish that it was done in self-defense?

A Well, absolutely. Because, according to the State's theory of the case, they would adduce the evidence of the nature of the gun itself, the trigger pull, and the nature of the two shots, not one, but two,

and the -- I refer to it as the second shot, or they refer to it as a kill shot, the shot being to the base of the head at close range. And it was not -- it was not contact. It was not very close. I believe our expert indicated it could be up to two to three feet away, in that range. So it was not, you know, an immediate contact shot. So that would -- that would have affected our ability to assert our appropriate self-defense.

Q And at trial, you've already indicated, you argued that it was justified, it was self-defense, correct?

A Yes. We argued that throughout the case, and we requested the instructions that were appropriate instructions and received them.

Q After he's convicted, did you file the motion for judgment notwithstanding the verdict and/or motion for a new trial?

A Yes, I did.

Q And as those grounds -- well, you tell the Court, what were your grounds there?

A Well, the grounds were, at that stage of the proceedings -- and the Judge went through the motion for judgment notwithstanding the verdict, arguing that the Court should serve as the seventh juror to reassess

the -- not just the weight, but the sufficiency of the evidence. And I challenged that according to not just his testimony, but to the inability of the State to refute the lack of intent at all, that -- and the defensive accident being pretty much unrefuted as well, I thought those were grounds, for at least a new trial, if not for a motion for judgment notwithstanding the verdict.

Q And at that hearing -- this was his sentencing, but we heard the motion for a new trial or motion for verdict notwithstanding the verdict. That was heard before the defendant was sentenced; is that right?

A Yes, that's right.

Q And that was on September 26th, 2017?

A Yes, it was.

Q And at that hearing, did the Judge deny your motion?

A Yes. The Judge recited all the arguments with respect thereto and denied that motion.

Q Okay. I'd like to address claim 4. The allegation is that you were ineffective by failing to attempt to introduce evidence that supported the defendant's theory of self-defense, specifically the voice stress analysis.

Was there a voice stress analysis that was used by the police when they were interviewing the defendant?

A Yes, there was. And you heard testimony just a few moments ago about redactions of the lengthy interview the client went through. The portions concerning the voice stress analysis were redacted from the videotaped interview.

Q And did the police tell him that he showed deception to any of the questions?

A Yes. And it wasn't -- I'd say certainly it wasn't the most important question, but -- and if I may refer to notes here, which include the report of the examination itself.

MS. TRIGONES: Your Honor, may the witness --

THE COURT: Yes.

MS. TRIGONES: -- refresh his recollection?

THE WITNESS: The -- yeah, here we go. The question was, I believe it was number six, Did Jeanette get the gun from the drawer? He answered, Yes. And they ruled that deceptive. It's a matter of interpretation. There was no black or white. But the investigator who conducted this was deposed concerning his experience and training and all of that, and the CS -- the VSA, I should say, voice

stress analysis, was overall very favorable, that's true. But in one question, they determined deception. And they used that as an interrogation technique. They wanted to see if they could break him based on that, that's what they did, and that portion of the video was accepted.

BY MS. TRIGONES:

Q And your opinion for the defense of the case, who went for the gun, was that important?

A Well, it was very important, because, from the outset, his statements and then his testimony and everything we prepared, for his testimony, was that, in the course of their dispute, Jeanette went to the dresser, the nightstand, opened the drawer and got the gun. He had to go and grab it, so that she would not hurt him with it, and then the tussle began. So that was -- as part of the intent, as part of the entire argument, supporting self-defense, we had to address that.

Q Did you attempt to introduce the voice stress analysis into evidence?

A I did not make a motion to the Court or anything along those lines. I did discuss it with the State, yourself, in terms of our awareness, our mutual awareness, that like polygraph testing, these are not

admissible unless they are agreed to by both parties. It would have to be stipulated to by both parties to be admissible. And it was clearly the State's position that they were not stipulating to the admission of the VSA. I addressed that with Mr. Muniz, in our several discussions on the subject, that first we did not have a stipulation to admit it. Second, the law did not support admission -- admitting it. I could find no case that would say, Oh, yes, you can -- under any circumstances, under any conditions, without a stipulation, you can move to introduce this kind of evidence. It's inadmissible. It's known as inadmissible evidence.

So the third step then was -- I'm sorry, let me see. Well, I think that will be sufficient for that part of the question.

Q Okay. So one of the reasons it sounds like that you didn't move to try to introduce it was you didn't think you had a legal reason, that they're not admissible?

A Right. I knew that I would be faced with trying to submit inadmissible evidence. And against adequate opposition, that would clearly be shot down. But the other, perhaps more important element -- the other perhaps more important element, is that be careful

what you wish for, because you may get it. If you want to put that voice stress analysis test in --

THE COURT: I'm going to just mute them. I don't know if I can do it all. Give me a second.

THE BAILIFF: They just signed off.

THE COURT: I did what?

THE BAILIFF: They just signed off, so....

THE COURT: Did they?

THE BAILIFF: Whoever it was.

THE WITNESS: All right. I'll try to continue. Thank you.

If you would be, for any reason, successful in admitting that voice stress analysis test, just to get the positive responses that suggested you're telling the truth, when you didn't mean to kill her and you didn't mean to shoot her and all those things, that's nice, but it would give the State one piece of important evidence, which is deception on an essential question.

As I indicated earlier, from the beginning of preparing his case, his credibility was essential, because his story -- or his version of the events, I should say, from the beginning never changed. It was consistent and it was sincere. I worked with it. I took it as the defense, and I believed in

it. Okay. So I understand and I'm sympathetic.

The reality is, though, once his credibility could be impinged, by having a failed question on a test, if the jury hears something like the technical support of this VSA, voice stress analysis, they're going to think it's real, they're going to think it's serious. This is kind of like CSI, on television, stuff. They might not know better. It would be a hard obstacle to overcome.

BY MS. TRIGONES:

Q You mentioned trying to obtain a stipulation with the State and that the State declined to stipulate to the admission of the VSA. Did you also mention that in court at the day of his sentencing on September 26th, 2017?

A Yes. I was glancing at that earlier, and I think I still have it in front of me. At the motion, or sentencing hearing, I did outline -- that was, I believe, Judge Perkins at the time. I did outline, at page 27 of that transcript, that the State declined to stipulate, they refused to agree to that, and that I had researched the voice stress analysis and it is not sufficiently reliable to be admissible without the agreement of the parties.

MS. TRIGONES: Thank you, sir.

No further questions, Judge.

THE COURT: Ma'am, would you like to cross-examine?

MS. REESE: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. REESE:

Q Good morning, sir. How are you?

A Good morning. Thank you.

Q Just starting from the fourth -- the claim number 4, go backwards.

Now, correct me if I'm wrong, when you first started discussing the facts of the case, what was your description of how the firearm was retrieved? Can you just go over that briefly of -- kind of like the events right before and then when it was, actually, removed from the drawer?

A It's -- again, to the best of my recollection, because there weren't too many conflicts in testimony, but I have not reread all the testimony exactly. But it was pretty straightforward that there was movement around -- tussling movement around the bed, in the bedroom itself. It was a small room. And that, by way of body position, Mrs. Muniz was near the night table and Mr. Muniz was towards a dresser, or a wall, behind him, and that's when she, to his description of events,

reached for the dresser drawer, opened it and retrieved -- or began to retrieve the gun.

Q And how quickly, from your recollection, was his response to her? Was it -- what I'm trying to ask is, was it simultaneous that they were almost at the drawer at the same time, or was it one after the other?

A Well, that would be a prime question for dispute in the VSA. Because he would have -- and when we discussed it, he indicated that he thought he might have had a deceptive response on that, because he wasn't sure who, actually, grabbed the gun first. In other words, that's specific -- and this is lightening fast. That specific sequence of events, of if the drawer gets opened and if she's reaching and he's reaching -- you know, it wasn't clear, even in his best descriptions of it, I believe, exactly how, you know, one hand and the other hand worked. But he was clear that he understood that she was going for that and that he needed to involve physically before she got control of that.

Q Okay. So fair to say then, I think you had mentioned this, that it was possible that he might have been deceptive because of the -- kind of the certainty with just, like, the specifics of the hands and it, actually, being removed physically from the drawer in that moment?

A Well, yeah. That's a hypothetical in terms of it could have been. The problem would be that we would have to face the State's well-respected or long-experienced investigator, as an expert in that field, saying, No, this shows deception.

Q And you mentioned that you did discuss, with the State, the possibility of introducing the stress analysis. What was their reasoning for not wanting to agree to that? I mean, if you were --

A Well, clearly, the State would not want that evidence in. They would not volunteer that evidence, because it would support his defense and, in respect to the other questions of, Did you intend to shoot her? Did you intend this harm? So -- and if you'd like, I can just refresh my memory with the correct questions.

MS. REESE: Of course.

Your Honor, may he refresh his memory?

THE COURT: What?

MS. REESE: Would the Court allow him to refresh his memory?

THE COURT: Yes.

THE WITNESS: Well, specifically, some of the questions you're aiming at there is, Did the gun fire accidentally? His answer was, Yes. Did you shoot Jeanette? His answer was, No. Those two

questions did not show deception per the agent giving that test. So those -- the State certainly would not let that evidence in as a tactical or strategic matter.

BY MS. REESE:

Q Because that supports, specifically, the fact that this was an accidental shooting in self-defense, correct?

A Correct.

Q And in your history -- in your experience, you've never filed a motion -- again, I understand your position about the strategic reasons with the law. You've never had a situation where you have sought an exception beyond that and asked the Court to introduce that sort of analysis?

A With respect to VSA, specifically, no. So I had to read several articles and refresh and educate myself about VSA, and I made them part of my file, numerous articles about its reliability. However, I had encountered that in long years of practice, with respect to polygraphs or some other perhaps less than scientifically established or reliable evidence, because they've been Fry'd hearing or they've been Dauberted hearing, depending upon the circumstances, and they're just not reliable unless agreed upon.

Q Now, in terms of your strategy, I know you mentioned, throughout your questioning today, that the strategy was, essentially, whether or not the jury believed Mr. Muniz' recollection of the events. His credibility was critical to your defense, correct?

A Yes.

Q And one of the reasons you chose not to -- one of the many reasons that you chose not to file a motion to dismiss was the fact that you did not want the State to have an opportunity to cross-examine him and open up the door for additional inconsistencies?

A That was an important consideration. And when we discussed the case, both from that perspective and from trial, I advised him, in advance, that his testimony -- if he chose to testify, his testimony would be very important. And it would seriously put at risk his testimony if the State were able to get some conflicting evidence.

Q And at trial, you agree that the State wasn't really able to get too much conflicting evidence, correct?

A Well, he was consistent with his statement. As I said, the only thing, prior to trial, was his recorded statement the night of the incident with law enforcement, and there was nothing to refute that and no

inconsistent statement made otherwise. So, yes.

Q Now, in your experience -- do you recall how long his interview was with law enforcement? I think it was around eight hours.

A I don't recall the length of time overall. Because, when you say that, there are periods in those interviews where they intentionally leave a suspect sitting in the room for 20, 30 minutes, 40 minutes, or even an hour, and they'll come back, and then they'll come back again and come back again. So I don't recall -- I recall that it was lengthy. Even when we excerpted it to -- and redacted it to show the jury, it was a lengthy statement.

Q And, in your experience, not that it's rare, but Mr. Muniz remained consistent from the very beginning of the interview to the end, correct?

A Yes. And, you know, I strongly argued the voluntary nature, because he waived Miranda knowingly and voluntarily, for the purpose of that statement, and the extent -- not just the extent, but the quality of his cooperation seemed very sincere. You know, he -- throughout the entire lengthy interview, he really tried to cooperate and tell them anything they wanted to know.

Q Would you agree that he is a good witness? He comes off as someone that is telling the truth?

A He was a good witness, to the extent of a minor failing, I would perhaps call it, in that he has, by his nature, by his personality, a rather -- some call it a flat affect. He's not very emotional. He does not get excited too easily. And he was not either high or low in emotional response. And particularly in the interview, as well as with his testimony before the jury, he remained calm and sedate and that may have had some effect.

Q And in terms of that, would you -- wouldn't you agree, though, that that could have possibly helped, with any testimony in a pretrial hearing, he has the ability to maintain his calmness and, in a sense, that's why he is consistent, correct?

A I don't think that risk is really worth it, because a skilled examiner, in almost a game of cat and mouse -- he's indicated he has not been on the stand very much at all in his life. A skilled examiner would be able to turn him around.

Q And how did you feel personally -- not personally, professionally about the strength of your defense? I mean, it appears that, based on the evidence, is it fair to say that you felt the self-defense with the accidental shooting was strong?

A I never rank them. I never give percentages.

I never say it's a good case or a bad case in that respect. I try to analyze what the possible outcomes could be. We do a risk reward about the plea bargain as it had been offered, which, in this case, was 30 years in prison, plus ten years probation, as it was, and that factor was weighed heavily in his decision to go to trial. That decision whether or not to plea or go to trial was clearly solely the defendant's.

Q And you mentioned again, just so the record's clear, the story that was given from -- literally, from the moment of the interrogation through the end of trial, would you agree that the story given by Mr. Muniz was consistent?

A I believed it. So I think so.

MS. REESE: I don't have anything further, Your Honor.

THE COURT: Do you have any redirect?

MS. TRIGONES: Please, Judge.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MS. TRIGONES:

Q I want to talk a bit about some evidence that's inconsistent with the defendant's version.

Now, did the defendant tell the police he had no idea why his wife was accusing him of cheating on

her?

A You know, I don't recall that, specifically. It's possible. And I know that there were -- there was reluctance initially to disclose the paramour in that relationship. He tried to keep that out of that interview. You may be correct about that.

Q And then, do the police find calls and e-mails, text messages that lead them to the other woman, Lindsey Lord?

A Oh, yes. I recall that, certainly.

Q And then she gave a statement to the police, and she testified at trial?

A Yes, indeed.

Q Did the -- do you recall the defendant testifying that he didn't know where he shot her or whether he shot her or how many times that she was shot, and that's what he had told the police as well? Do you remember that?

A Yes. And he tried to describe the frenzy, I guess is a good word, of the moment -- the heat-of-the-moment incident. So, yes, he didn't ever disclose anything that suggested an intent to harm her.

Q And then, do you remember the State introduced the 911 call the defendant placed where he says his wife was shot more than once?

A Vaguely. I didn't reread, as I said, all of the transcript for it. But we had obstacles in the defense of the case and that was one of several of them.

Q And do you recall the defendant claiming to the police that Jeanette, the victim, she repeatedly hit him in his face, his arm and his leg?

A That was during the scuffle, before reaching for the gun, yes. And she was -- he was describing her as being quite hot under the collar.

Q And do you recall that the defendant had no injuries, no visible injuries?

A I don't, specifically, recall, from the facts, enough to testify about it right now.

Q Okay. And you indicated the defendant said there was a struggle occurring in the room?

A Yes.

Q Do you recall that there was no disturbance in the room, of course, other than somebody got shot in there? But aside from that, the bed wasn't askew. In fact, the nightstand drawer was closed.

A I recall nothing major. I believe there was testimony that when he bumped backwards against perhaps a dresser or something, something may have dislodged, but not torn the place apart.

Q Do you recall that the holster to the firearm

was found right there on the defendant's nightstand?

A Yes. I recall that the State suggested, or argued, that it was, like, placed there, as opposed to accidentally falling, when you get the gun out of the holster, or however that works. There was a theoretical argument on both sides.

Q Sure. And did the defendant say that he called the police right away and then he waited for the police outside and he's there when the police pull up? Do you remember that?

A I don't remember the immediacy of it. But I remember that he was -- he remained on the scene. He called the police, I believe, and that's vaguely now, as I say, not having read every word of the transcript.

Q Sure. Do you remember the defendant changing his shirt?

A As we sit here, I don't have the specific recollection. It's possible, though.

Q Now, I want to talk about the defendant's claims about the first shot, likely the one in the chest, what we presume from the medical examiner's testimony and the circumstances. The defendant, does he -- did he claim that all four hands, his two hands and her two hands, were all on the firearm?

A That's, generally, my recollection. You know,

at any given time that they're grappling, it could change. But, yes, I recall that both were trying to grab the gun.

Q And then, do you recall Florida Department of Law Enforcement, their analyst, and, in fact, even your own expert, testified that you would expect to see injuries on someone's hand when it's covering the cylinder gap of that firearm?

A Well, theoretically, again, there could be pinches, injuries resulting from contact in that regard. But it's just as possible that there might not be unless you were in the wrong place at the wrong time.

Q Do you remember, specifically, your expert saying it would be likely, because of the heat coming out of that cylinder gap, the explosion, you would likely see it?

A Yes. If the gun discharged with the hands on it. Of course, what's commonly tested as gunshot residue would be one thing, or the heat, if it's by the barrel, could cause some marking.

Q And then, do you recall that there was no injury to either the defendant's hands or to Jeanette's hands?

A Again, I don't recall. And I'm not recalling, specifically, the GSR results when it comes to that.

But there wasn't sufficient evidence, I thought, to either prove or disprove either theory of the case.

Q Do you recall the medical examiner's testimony that the muzzle of the gun to the victim's chest, which it was her left breast where the bullet entered, that it was at least 30 inches.

A Yes. I recall -- and we -- I recall that we went with our defense expert to a gun range with that specific gun and tested it to determine the pattern -- the spray of that pattern, and it supported that evidence. Medically, it supported the evidence from the wound that it would have been about that distance.

Q Did the State argue at trial that the fact that the muzzle of the gun is at least 30 inches from her left breast would be inconsistent with her hands being on the firearm at the time the first shot is fired?

A I remember something about the argument, but, specifically, I don't have a sharp recollection.

Q Now, as far as the second shot, the defendant told the police, and he testified at trial, that her hand was -- he could feel her hand firmly on his hand when that second shot went off. Do you remember that?

A The facts of those I don't recall, specifically, each step in the chain, quite honestly.

And I did not -- as I indicated, I did not review the entire transcript of the trial as I prepared the appeal or for -- other than the motions concerning this purpose.

MS. TRIGONES: Okay. No further questions, Your Honor.

THE COURT: All right. Thank you, sir. You may step down.

THE WITNESS: Thank you.

THE COURT: Any other witness?

MS. TRIGONES: No, Your Honor.

THE COURT: Okay. All right. Ms. Reese, argument?

MS. REESE: Yes, Your Honor.

As Your Honor knows, from the emotion and the precedent that is common in these hearings, we have the burden, obviously, under the defense to prove under Strickland two things. Number one, under either claim, that counsel was somehow deficient. And then, number two, that had counsel acted differently, that there is a reasonable probability that the outcome of the case would have been different.

So, obviously, with these two different grounds, they're, actually, different standards,

because we have one that is a motion to dismiss issue and one that is an actual trial.

So starting with issue number one. The argument that was raised was that counsel was ineffective for failing to file a motion to dismiss, prior to trial, based on the theory that was presented at trial. And this is an interesting hearing, because nothing that came out today was inconsistent, so I don't believe that there's any sort of credibility findings for Your Honor to make, which, again, is not the norm. So I think it's just purely a legal issue as to whether or not any reasonable counsel would have acted in the same manner.

And one thing that I thought was extremely telling, in the testimony from Mr. Selden, was -- and I think I wrote it down as a quote. There was not enough evidence for the State to prove -- to either prove or disprove its case. I thought that was important, because of the fact that the burden had just changed, prior to the start of Mr. Muniz' trial, and the State would have been required to prove that he did not act in self-defense in committing the offense. And although there were inconsistencies, the majority of the testimony that

was presented at the trial, which would have otherwise been presented pretrial, was consistent enough for the Court to have found the State was not able to prove that.

So our position is that, regardless of any strategy that would not have been reasonable and that any reasonable counsel would have filed that motion and there would have been no need to even go to trial.

Obviously, I anticipate the State will argue, at least in part, that counsel strategically chose not to perform this -- file this motion, because of the fact that Mr. Muniz' testimony was so critical to the strength of the case against the State, and he did not want to subject him to additional cross-examination with the possibility of him making an inconsistent statement.

And I would submit to the Court that maybe, with a different kind of witness, that might have been something that was reasonable, but in light of the trial testimony and the testimony that was given today, I think Your Honor can make that sort of -- I guess we are making a credibility determination that he was not -- there was nothing really inconsistent about his story whatsoever at

trial and his story's been consistent since day one.

So our position, as to that, is, that is not reasonable in light of the fact that there would have been no trial necessary had one of those motions been filed and granted.

In terms of ground number 4, which is the stress analysis, obviously, at trial, a significant -- again, this all comes out of the testimony of Mr. Muniz whether or not the jury believes him. Pursuant to the testimony today, I would be putting forth an argument that it's not made in good faith, if I said that it was not reasonable for him not to file a motion, if, obviously, he didn't have the agreement of the State. And per that, I don't think that he could have filed a motion in good faith on that basis.

THE COURT: Do you have case law that says VSAs are admissible outside the State's agreement? Because I've never heard of it.

MS. REESE: I have not either.

THE COURT: So it would have been -- as a lawyer, you have a responsibility --

MS. REESE: Absolutely. You cannot file something in good faith -- without good faith.

THE COURT: Right. So if you don't -- because I was wondering why we even had this ground on here.

MS. REESE: I think it was just to establish that the State was not willing. So I cannot -- I would not submit that to the Court, that I can make that argument in good faith either, because I don't think that there is a dispute in that. And I don't think, without the State's agreement, that he could not have made that argument whatsoever.

THE COURT: Right. Okay.

MS. REESE: Which is unfortunate, but --

THE COURT: Okay.

MS. REESE: -- unfortunately, that is a decision that they are entitled to make.

But regardless, I think the issue in ground number 1, I would ask that Your Honor grant Mr. Muniz' motion and grant him a new trial.

THE COURT: Okay. Thank you, ma'am.

MS. REESE: Thank you.

THE COURT: Ms. Trigones.

MS. TRIGONES: Yes, Judge.

So just so the record's clear, claim 4 is being withdrawn?

MS. REESE: Judge, I'm not in the position to

withdraw it. I would just --

THE COURT: That's fine. I think -- I can rule on it. I think she just --

MS. REESE: I'm just relying on the evidence.

THE COURT: I think she's agreed that there was no basis in law to get in a voice stress analysis without the State's agreement. And at first, I wasn't sure why we had number 4 set for a hearing, but then I realized that I didn't know yet, and I hadn't read the whole transcript of the sentencing whether you had agreed or not agreed. So now that I know that, I'm going to deny that.

MS. TRIGONES: Okay.

MS. REESE: Thank you, Judge.

MS. TRIGONES: So as far as ground 1, being ineffective for failing to file a pretrial motion, Your Honor, you heard several reasons why Mr. Selden, who is an experienced trial attorney, why he didn't file it. One of the most important reasons was strategically for him. And I know that Defense counsel's saying that Mr. Selden should have known that the defendant was going to testify well. Which, of course, if you read the trial transcript, of course, the State sees the case and the defendant's testimony differently than the

Defense attorney.

But even let's assume that the defendant did hold up well and he testified convincingly, well, the Defense attorney -- the trial attorney didn't have the benefit of seeing the defendant testify before trial. So it's in hindsight that the post-conviction lawyer can now look back and say, Look, he would have made a good witness. And so Mr. Selden made a strategic decision, when he decided, you know what, I'm not going to give the State an opportunity -- and, Judge, that makes sense. Why give the -- unless you think you have a really good shot of winning, why file a stand-your-ground motion and let the State hear your arguments, get a crack at the defendant, and be able to use that statement in trial. And I submit to the Court, every time the defendant talks, there's a chance that he's going to say something that's inconsistent and that can hurt him. So there was a valid strategic reason why Mr. Selden decided the benefits did not outweigh the risk, so he was not going to file it.

Another reason you heard him say is legally, he didn't think he had the grounds to do it. And, Judge, when you're relying on an accident, it is

difficult to say also it is self-defense. So he had a legal reason why he thought, under 776.032, the stand your ground, justifiable use of deadly force, why he did not file that motion.

Now, it's the State's position, either way, it doesn't much matter, because he makes all the -- it's, essentially, self-defense. That was their defense at trial. He argued it. He got the jury instruction. So the jury heard all of that, and the jury found the defendant not guilty [verbatim]. So what they're asking you to do is speculate that pretrial, the Judge would have dismissed the case and given the defendant immunity. And you -- we had the benefit of the jury saying otherwise. They found him guilty as charged. It wasn't excusable. It wasn't justifiable. It wasn't self-defense. All of those arguments and instructions were made to the jury.

But, Your Honor, you don't even have to speculate what the Judge would have done, because, after the trial, Mr. Selden filed a motion for a judgment notwithstanding the verdict and/or, in the alternative, a motion for a new trial, and that was heard, before he was sentenced, on September 26th, 2017.

But not only that, after the defendant was found guilty, before the sentencing, Mr. Carlus Haynes filed a motion, essentially, saying the same thing, and he filed a limited notice of appearance -- and this is all in the sentencing transcript. But, yes, that's what -- he filed an amended motion for judgment of acquittal, or, in the alternative, motion for a new trial, essentially making the same arguments. So at the sentencing, ultimately, Mr. Haynes did not come on the case, so the Court found it was a nullity, but still said, on the face of the motion, looking at the merits, the Judge still would deny it.

So the Judge had arguments from both Mr. Haynes and Mr. Selden on this issue, and the Judge, specifically, found -- specifically denied both of them. And he said, I looked at it -- when -- he was talking about the motion. I looked at it when it came in -- and I'm looking at page -- reading from page 32. I also looked at it in the context of the arguments that were made during the course of the trial, specifically the motion for judgment of acquittal. And the reason that the Judge denied it, he says, at the bottom of page 32, going on to 33, But I think there were some things

that were kind of clear, one was the lack of any stippling or gunshot residue, with regard to the fatal injury, which was the gunshot wound to the back of the head. There was not evidence of injury on the hands that would be consistent with the defendant's version of the incident.

And I think, when the jury heard all of the evidence, and the context in which this fight occurred, and how it occurred, particularly with regard to the gunshot wound to the rear -- because, Your Honor, she was shot, like, right, essentially, in the back of her head. With regard to the gunshot wound to the rear, at a time that even Mr. Muniz indicated that they were not wrestling for the gun, but this happened after -- and was at least 48 inches away at the time that the gun was discharged the second time, striking Jeanette Ramos. And I think that there was more than sufficient evidence for the jury -- for which the jury could support the verdict that they rendered in this motion. So I'll deny the motion.

So my point is the Judge did look at the sufficiency of the evidence, as it related to the defendant's claims, as it relates to justifiable use of deadly force.

So, strategically -- it was strategically sound. But either way, there was no prejudice, even if he were ineffective, because they would not have been -- he would not have been successful on that motion regardless. So we'd ask you to deny the motion.

THE COURT: All right. Thank you.

Ms. Reese, do you want to -- do you have any other argument?

MS. REESE: No, Your Honor.

THE COURT: All right. I'm going to start with claim 4. I'm denying claim 4. There was no legal basis to get a voice stress analysis into evidence. It is absolutely inadmissible. I've never, in 30 years, had a trial where it was admissible. It can be admissible if the State -- if both parties agree to it. Both parties did not agree to it. So it's inadmissible.

In addition, the strategic decision not to get it in, I find, was reasonable, especially given what the defense was in this case. That question of who got the gun out of the drawer, and the investigator testifying that the defendant was deceptive in that question, very well might have, had the jury heard that, undermined the defendant's

credibility in any other area. So claim 4 is denied.

Claim 1 is the self-defense motion. I do find that it's reasonable for a lawyer to not file one in these circumstances. This is a situation where it is not clearly self-defense. If it's not clearly self-defense and you're entitled to immunity, then the risk not only of the defendant taking the stand and having to dispute what the State would have entered into these -- into evidence in this case, which would have been the number of shots, where -- how far away the gun was when the shots were fired, the trigger pull on the firearm, which is 10 pounds, which is not an easy trigger pull to -- it's not what we call a hair trigger.

The fact that the defendant was communicating with an ex-girlfriend and not being forthcoming about it, as far as to the police, all of those things that the State would have presented would have required the defendant to take the stand, in order to overcome a pleading that would have been filed for a prima facia case, because he would have to answer to those. He would have to respond to those.

So, one, if a pleading was filed, the defendant did not testify, it would have been not granted. That's an easy call to make, given what I've read that the State has in evidence. Two, strategically, the Defense attorney did not want to subject the defendant to the cross-examination by the State. And just reading the trial transcript is one thing, but even hearing the State ask the questions regarding the distance of the shot, did he lie to the police about if he knew why his wife was mad, all those things cause someone -- or there's a chance that someone is going to say something that's not in their best interest. And what is clear, from Mr. Selden's testimony, is that he -- that the defendant, in this case, gave a consistent statement throughout this lengthy interrogation of the police. So it was crucial that he remain conflict free, so to speak, not have the State -- to not give the State any ammunition or inconsistency to further their ability to cross-examine the defendant. In addition, the State points out that, you know, the State hears the defendant's arguments, sort of gets an idea of what's going on and can better plan for further testimony at trial.

So I find that, strategically, it was reasonable to make that call. But in addition, I find that even if there was one found, that it wouldn't have been granted. There was no prejudice. So I'm denying claim 1.

Claim 2 and 3 were summarily denied.

MS. REESE: Yes, Your Honor.

THE COURT: So the defendant's 3.850 motion is denied in its entirety, and I'll do the order.

MS. REESE: Thank you, Your Honor.

THE COURT: All right. Thank you.

THE CLERK: And, Judge, he can go back to DOC?

THE COURT: He can.

(The proceedings were concluded at 10:17 a.m.)

REPORTER'S CERTIFICATE

STATE OF FLORIDA)

COUNTY OF VOLUSIA)

I, Pamela S. Underwood, RPR, hereby certify that the foregoing pages constitute a true and complete transcript of the proceedings transcribed via digital recording by me to the best of my ability in the aforementioned cause at the time and place herein set forth.

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 10th day of July, 2023.

S/PAMELA S. UNDERWOOD, RPR
COURT REPORTER