IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOHNATHAN ANDREW COLEMAN,

Petitioner, Case # _____

-versus-

SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS,

Respondent.
_____/

PETITION FOR A WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY PURSUANT TO 28 U.S.C. § 2254

COMES NOW the Petitioner, JOHNATHAN ANDREW COLEMAN, by and through undersigned counsel, and hereby moves this Court to vacate and set aside his conviction and sentence pursuant to 28 U.S.C. § 2254, because he is confined under a prison sentence which violates his Fifth, Sixth, and Fourteenth Amendment rights to present a defense, a fundamentally fair trial, and the effective assistance of counsel. The following documents are attached hereto as exhibits:

Exhibit A - Record on Appeal in Case # 5D15-3259

Exhibit B - First Supplemental Record on Appeal in Case # 5D15-3259

Exhibit C - Second Supplemental Record on Appeal in Case # 5D15-3259

Exhibit D - Initial Brief in Case # 5D15-3259

Exhibit E - Answer Brief in in Case # 5D15-3259

Exhibit F - Reply Brief in Case # 5D15-3259

Exhibit G - Order Affirming Conviction Per Curiam in Case # 5D15-3259

Exhibit H - Order Denying Motion for Rehearing and Written Opinion in Case # 5D15-3259 dated 5-4-2017

Exhibit I - Record on Appeal in Case # 5D19-2749

Exhibit J - Initial Brief in Case # 5D19-2749

Exhibit K - Answer Brief in Case # 5D19-2749

Exhibit L - Order Per Curiam Affirming Denial of Post-Conviction Relief in Case # 5D19-2749

Exhibit M - Order Denying Motion for Rehearing and Written Opinion in Case # 5D19-2749 dated 8-6-2020

I. JURISDICTION AND VENUE

1. Petitioner seeks relief from a judgment of conviction after a jury trial in the Circuit Court of the Ninth Judicial Circuit, Orange County, Florida, in Case # 2014-CF-007184 for the crimes of Aggravated Battery with a Firearm by special verdict (Count 1) and Shooting At, Within, or Into an Occupied Vehicle (Count 2), and sentences thereon.

2. Petitioner was sentenced and judgment was entered on September 4, 2015. He remains incarcerated pursuant to the judgment of conviction attacked herein within the custody of the Florida Department of Corrections.

3. This petition is brought pursuant to 28 U.S.C. § 2254, et seq. Venue is proper in the United States District Court for the Middle District of Florida because Orange County is located within the Middle District, Orlando Division. Additionally, this petition is brought within the 1-year statute of limitations with all applicable tolling periods, as indicated in the procedural history below.

II. PROCEDURAL HISTORY

4. Johnathan Andrew Coleman was arrested on May 29, 2014 and charged with Aggravated Battery with a Firearm, Florida Statutes § 784.045(1)(a)(2). He was subsequently charged in an Information with Shooting into an Occupied Vehicle, Florida Statutes § 790.19. (EXHIBIT J: 20-21). The State filed an Amended Information on March 13, 2015, charging Coleman with Aggravated Battery with a Firearm and Shooting At, Within, or Into an Occupied Vehicle, Florida Statutes Florida Statutes §§ 784.045(1)(a)(2) and 790.19, respectively. (EXHIBIT J: 21-22).

5. Coleman retained Josh Adams, Esq., who entered a notice of appearance on June 22, 2014, and Ernest Mullins, Esq., who entered a notice of appearance on February 5, 2015. (EXHIBIT J: 36-38).

6. On February 2, 2015, Coleman moved for immunity from prosecution pursuant to Florida Statutes §§ 776.012 and 776.032 was filed. (EXHIBIT J: 36-38).

7. A "Stand Your Ground" hearing pursuant to Florida law was held on March 6, 2015 and on March 13, 2015. On March 16, 2015 the trial court denied the defense motion.

8. The case was tried before the Orange County Circuit Court and a jury between June 22-24, 2015. The jury returned a verdict on June 24, 2015, finding Coleman guilty of Aggravated Battery with a Firearm by special verdict (Count 1) and Shooting At, Within, or Into an Occupied Vehicle (Count 2).

9. A motion for a new trial was filed on July 2, 2015 by Josh Adams, Esq. and Ernest Mullins Esq. The motion, alleged, among other issues ineffective assistance of counsel by Ernest Mullins, Esq.

10. A hearing was held on August 20, 2015 on the motion for a new trial, where Mr. Mullins testified as to his ineffectiveness during trial. Mr. Mullins filed a motion to withdraw as co-counsel on August 21, 2016. The motion for a new trial was subsequently denied on September 18, 2015, after sentencing.

11. Coleman was sentenced on September 4, 2015 to twenty-five (25) years as to Count 1 and fifteen (15) years as to Count 2 to run concurrent with Count 1. (EXHIBIT J: 36-38).

12. Coleman prosecuted the direct appeal to the Fifth District Court of Appeal, Case # 5D15-3259. In that appeal, he raised the following claims: 1) the trial court abused its discretion

in denying Coleman's motion to declare him immune from prosecution under Florida Statutes §776.032; 2) the trial court abused its discretion in granting the State's motion in limine to prevent the expert testimony of Charles Drago; 3) the trial court abused its discretion in denying Coleman a new trial on the basis that his trial attorney, Ernest Mullins, provided ineffective assistance of counsel; and 4) the trial court erred when it gave a confusing instruction on self-defense.

13. The Fifth District Court of Appeal per curiam affirmed the conviction without opinion on March 21, 2017 in Case # 5D15-3259.

14. Coleman timely filed a motion for rehearing and for issuance of a written opinion, which was denied by the Fifth District Court of Appeal on May 4, 2017.

15. On April 26, 2018, Coleman filed a motion for post-conviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure in the Orange County Circuit Court. In that motion, Coleman raised several claims of ineffective assistance of counsel, including (a) counsel failed to request a complete justifiable use of force jury instruction, (b) counsel failed to prepare a defense by consulting with and calling a medical expert to testify about Coleman's post-traumatic stress disorder as a result of his experiences during combat in Iraq, (c) counsel failed to elicit testimony of the complainant's prior violent criminal record, and (d) trial counsel failed to properly impeach the State's civilian witnesses.

16. On May 22, 2019, the Orange County Circuit Court issued an order denying the Rule 3.850 motion in part, finding Claim A was barred as it had been previously litigated in connection with his motion for a new trial. The court ordered an evidentiary hearing to be held on the remainder of the claims raised therein.

17. An evidentiary hearing was held before the Honorable Elaine A. Barbour on August 13, 2019. At the conclusion of the hearing, the court denied the motion on the record. A written order incorporating the oral ruling was entered on August 19, 2019.

18. Coleman thereafter timely filed appealed that order to the Florida Fifth District Court of Appeal in Case # 5D19-2749.

19. On July 21, 2020, the Fifth District Court of Appeal affirmed the denial of post-conviction relief without an opinion. Coleman filed a motion for rehearing and for a written opinion the same day, which was denied on August 6, 2020.

20. This petition is filed within one year of the date that Petitioner's conviction became final, with all applicable tolling provisions.

III. STATEMENT OF FACTS

Background

21. This case represents Johnathan Andrew Coleman's first and only contact with the criminal justice system. (EXHIBIT J:940). He had no understanding of a mental health defense in a criminal case, and was only vaguely familiar with the term Post-Traumatic Stress Disorder. (EXHIBIT J:941). His concept of a mental health disorder was "what you see on TV – you know, people in padded suits or padded rooms." Id.

22. Johnathan Andrew Coleman first entered military service in 1997 when he enlisted in the United States Marine Corps as an infantryman right out of high school. (EXHIBIT J: 911, 949). As an infantryman, he was trained to locate, engage, and destroy the enemy by fire and maneuver. (EXHIBIT J:912). After basic training, he attended infantry school, where he received additional training in the use of pistols, shotguns, rifles, grenades, grenade launchers,

and a small rocket system. (EXHIBIT J:914). That training included simulated battle scenarios, in which he learned threat assessment and how to react quickly to threats. (EXHIBIT J:916). He also received Military Operations over Urban Terrain (MOUT) training which involved control of the local population in urban areas and threat assessment there. (EXHIBIT J: 917). After completing his training, he was assigned to a battalion as a scout, described as the "tip of the spear," a forward operating unit. (EXHIBIT J: 917). While he was a Marine, he deployed overseas several times to Africa, where car bombings were common, and offered security to other Marines and the local population. (EXHIBIT J: 919-920). During those deployments, he routinely set up vehicular checkpoints. Id.

23. After he completed his enlistment with the United States Marines, Coleman re-enlisted in the United States Army National Guard in Washington State, again as an infantryman. (EXHIBIT J: 921-922). He first deployed to Iraq in February, 2004 with the 1st Brigade Combat Team, which arrived in Kuwait first. (EXHIBIT J: 922-923). His first assignment was to provide security for a convoy of military vehicles that moved from Kuwait to Baghdad, Iraq. (EXHIBIT J: 923). During that first road march, he encountered enemy resistance who ambushed his convoy with grenades and small-arms fire. (EXHIBIT J: 923-924).

24. During his deployment in Iraq, Coleman was tasked almost every day to set up stationary and roving patrols, and vehicle checkpoints. (EXHIBIT J: 923-924). Prior to each mission, he was informed of possible threats against him, which frequently included threats from drive-by shootings, car bombs, and vehicles being used as weapons. (EXHIBIT J: 926-929). In the 13 months he was in Iraq, he experienced at least 50 instances in which he had to stop a vehicle by lethal force to prevent it from being used to attack American troops. (EXHIBIT J:

927). He witnessed vehicles being used as bomb carriers where they would explode and vaporize anyone in their immediate vicinity. (EXHIBIT J: 929). On at least 20 occasions, he was personally attacked by vehicles who would try to run him over or blow him up. (EXHIBIT J: 929).

25. When Coleman left the military, he was screened by a military doctor who suggested he seek mental health treatment for possible Post Traumatic Stress Disorder. (EXHIBIT J: 931, 960). However, Coleman, like many other veterans, did not seek treatment because of the mentality of "suck it up; move on; you did what you had to do; and combat's a combat." (EXHIBIT J: 932, 963). As a result of those experiences in Iraq, when he left military service, he viewed vehicles that revved their engines and sped up toward him as threats; as a result, he was hyper-vigilant and scared when around vehicles, especially when walking through parking lots. (EXHIBIT J: 930, 933).

26. When he returned to civilian life, he was unable to deal with his experiences, started drinking heavily, and ended up getting a divorce and losing his family. (EXHIBIT J: 949). His career options were extremely limited as a result of his military occupation, the only civilian jobs the infantry prepared a person for were security, law enforcement, or corrections. (EXHIBIT J: 950, 973). Because he did not have any college credits, law enforcement was not an option. (EXHIBIT J: 950). He then began a career as an armed security guard, the only line of work that was available to him. (EXHIBIT J: 957, 973).

Underlying Incident and Arrest

27. On May 5, 2014, the complaining witness in this case, Aimee Guillory, was arrested and prosecuted in Orange County Case # 2014-MM-004628. (EXHIBIT J: 714-715). On that

date, Guillory attempted to run over Diandra Reeves with her car as Reeves was on foot. (EXHIBIT J: 714-715). When she failed to do so, Guillory got out of her car and started punching Reeves. (EXHIBIT J: 714-715). The incident was witnessed by an eyewitness, who gave a sworn statement to police to that effect. (EXHIBIT J: 714-715).

28. Three weeks later, while Case # 2014-MM-004628 was still pending, on May 28, 2014, Guillory drove her car through the Palm Grove Apartments located at 3955 WD Judge Drive, Orlando, Florida in the area of West Colonial Drive. (EXHIBIT J: 38). She started arguing with an individual named Vincent Johnson, who was on foot, and repeatedly attempted to run him over with her car. (EXHIBIT J: 38-39). Guillory struck Johnson at least one time with her car, throwing him onto the hood and causing him to fall onto the pavement. (EXHIBIT J: 38-40).

29. Johnathan Andrew Coleman was working as an armed security guard at the Palm Grove Apartments. (EXHIBIT J: 38). At approximately 8:15 p.m. Coleman heard a loud commotion and witnessed Guillory attacking Johnson. (EXHIBIT J: 38-39). Coleman responded and got out of his vehicle to aid Johnson and yelled at Guillory to stop her vehicle and get out of her car. (EXHIBIT J: 40).

30. Guillory stopped and exited her vehicle and started shouting at Johnson. (EXHIBIT J: 40). Several bystanders started yelling that Coleman, a "rent-a-cop," did not have the authority to detain the two individuals. (EXHIBIT A:T448, EXHIBIT J: 40). Shortly after hearing the bystanders yell those comments, Guillory got back in her vehicle and Coleman heard a car accelerate as he was talking with Johnson, aiming her car and both Johnson and Coleman. (EXHIBIT J: 40). When he heard the engine revving and the vehicle bearing down on him, it

immediately reminded him of numerous times in Iraq when vehicles ran over American soldiers and civilians. (EXHIBIT J: 972).

31. Coleman yelled for Guillory to stop her vehicle, but she proceeded to drive toward Coleman striking his lower leg and knee with the front driver side bumper and fender of the vehicle. (EXHIBIT J: 40). As the car struck Coleman, in fear of his life and to protect those around him, he drew his legally-owned firearm and fired at the vehicle, striking Guillory inside. (EXHIBIT J: 41). Police and emergency medical personnel arrived shortly thereafter, and transported Coleman and Guillory to a local hospital. (EXHIBIT J: 41). Following the incident, Coleman was arrested on May 29, 2014, for aggravated battery with a firearm and transported to the Orange County Booking and Release Center without incident. (EXHIBIT J: 41).

Retention of Counsel

32. After his arrest on the instant case, Coleman retained Joshua Adams, Esq. (EXHIBIT J: 936). He met with counsel at his office, and discussed his past employment history, and told him about his service in the Marine Corps, the Army National Guard, and his status as a certified pistol instructor by the National Rifle Association and licensed security guard. (EXHIBIT J: 938-941). Adams was a former Marine, and they discussed Coleman's combat experiences during that meeting. Id. Adams did not ask Coleman whether he suffered from any mental health conditions or had previously sought any mental health treatment as a result of his experiences in Iraq. (EXHIBIT J: 939).

32. At some point during the pendency of the case, Ernest Mullins, Esq., joined Adams as co-counsel. (EXHIBIT J: 942). Coleman met with Mullins and likewise discussed his military career and his combat experience in addition to relating his version of what occurred on

the night in question. (EXHIBIT J: 943). Like Adams, Mullins did not ask Coleman whether he had any mental health conditions or suffered any aftereffects as a result of his combat experiences in Iraq. Id. Neither Adams nor Mullins suggested retaining a mental health expert to evaluate Coleman. (EXHIBIT J: 943-944, 946-947).

33. During his criminal case, Coleman never denied his attorneys any funds for outside consultants; they hired Charles Drago, a ballistics expert, consulted with another expert, hired a private investigator, paid for transcripts for depositions, and conducted a mock trial with mock jurors. (EXHIBIT J: 944-946). Had they suggested he retain a mental health expert, he would have followed their advice as he had done with every other suggestion the attorneys made. (EXHIBIT J: 946).

The Retention of Expert Charles Drago and the State's Motion in Limine

34. Before trial, counsel filed a motion seeking to have Coleman declared immune from prosecution under Florida's "Stand Your Ground" law, Florida Statutes §§ 776.012 and 776.032. In preparation of raising self-defense, Coleman's counsel retained Charles Drago, an expert on ballistics and the use of force, to testify at the hearing, and at trial, if necessary.

35. The prosecution moved in limine to preclude Drago's testimony prior to the "Stand Your Ground" hearing. (EXHIBIT A:126-129, 140-143).

Stand Your Ground Hearing and the Preclusion of Defense Expert Witness Testimony

36. The "Stand Your Ground" hearing was held on the motion on March 6, 2015 and March 13, 2015. (EXHIBIT B:473, EXHIBIT J:41). Prior to that hearing, Coleman was prepared by his counsel to testify only to his experience and proficiency in handling weapons. (EXHIBIT J: 946-947). At the hearing, Guillory and Coleman testified, and provided

diametrically opposed accounts of what transpired on the night in question. (EXHIBIT J:41-44). At no point in time during his testimony at the hearing was Coleman asked about whether he suffered from any mental health issues. (EXHIBIT J: 948).

37. Charles Drago was permitted to testify, over the prosecution objection, at the "Stand Your Ground" hearing for the purpose of proffering his testimony to determine the State's motion in limine to preclude his testimony. (EXHIBIT B:471)

38. Drago spent thirty years with the Fort Lauderdale Police Department in a number of different positions including field training and as an instructor. 475. He has advanced firearms training including SWAT training. (EXHIBIT B:476). He also has advanced training in understanding reaction times dealing with weapons and how much time a person might have to defend themselves if another was using deadly force. (EXHIBIT B:477).

39. After retiring from law enforcement, Drago became an expert consultant to police departments, law firms and the media in the areas of police practices, specifically the use of deadly force, vehicle pursuits and criminal investigations. (EXHIBIT B:478). He has been qualified as an expert three times in the area of use of force in Florida and has also been qualified in the same area in federal court. Id., at 479-80. He has never testified before as an expert in a situation where a security guard has been charged or sued for excessive force. (EXHIBIT B:496).

40. In Coleman's case, he was retained to analyze the incident and determine if Coleman was, in fact, acting in self-defense. As part of his review, Drago examined the discovery in the case, photographs, witness statements, medical records, and the deposition transcript of Ms. Hudson. He also reviewed a reaction times study from the Force Science Institute. (EXHIBIT

B:48). He said reaction time studies generally examine how long it takes an officer to react to a certain stimulus. (EXHIBIT B:484). Under control situations, he said, where an officer is expecting the stimulus, the reaction time is shorter than an officer in the field who was caught off guard and was not expecting the stimulus. Id.

41. Drago testified he has taken part in several similar studies and the science, he said, supports that under control situations, where an officer is expecting the stimulus to appear and is expected to react, it will take one-third of a second to realize there is a threat and to pull the trigger. See SR at 486. For someone unprepared and not expecting the stimulus to appear, it can take more than a second to recognize the threat and make a decision about what to do. Id. He said if a weapon is holstered, it can take one and one-quarter seconds to almost two full seconds to "recognize the threat, realize they need to use their weapon, pull the gun from the holster, point the gun at the target and pull the trigger." (EXHIBIT B: 487).

42. Drago said the purpose of the studies was to show that a person can point a gun at an officer, for example, and even when the officer recognizes the threat, "by the time he can draw his weapon - - even if he has it out - - by the time he can raise it up and fire, the person making the threat can easily be turned around." (EXHIBIT B:487). This is the reason, he explained, why there are cases of a suspect being shot in the back or moving away from the officer but the officer is cleared of wrongdoing. (EXHIBIT B:488). Drago said in the mind of the officer, he is "still dealing on the initial threat." Id.

43. Drago said based upon his review of the material he was provided and his specialized knowledge, in Coleman's case, Drago concluded Coleman had a reasonable fear that he would "suffer great bodily harm" at the time he fired into the vehicle. (EXHIBIT B:490). He concluded

the fact that there was one shot identified behind a tight group of three others indicated the car was moving. (EXHIBIT B:491). "Even if he recognized the threat early on it can take a second and a half for a person to recognize the threat is no longer there and make a decision what to do and then stop shooting." (EXHIBIT B:491-492).

44. At the conclusion of the "Stand Your Ground" hearing, the trial court granted the motion in limine as it related to testimony about reaction times and also excluded his testimony that Coleman was justified in using force because it impermissible passes on guilt or innocence which is exclusively the province of the jury. The testimony was not considered in denying Coleman's "Stand Your Ground" motion. The motion was denied, and the case was set for trial.

The Trial

45. The case was tried before a jury from June 22, 2015 until June 24, 2015. During a pre-trial hearing on a motion in limine the State moved in limine to preclude any testimony "any type of awards, accolades; for instance, purple hearts, bronze stars, anything like that" because the State argued they were not relevant. (Exhibit A:T15). Both defense counsel responded:

> MR. ADAMS: And I don't know that necessarily any of his awards are going to be specifically relevant, but it's possible -- **it's possible that they could**. I think he -- **I think he has a -- a purple heart from being wounded, from a firearm**, possibly. I mean --
> MR. MULLINS: **He's got quite a few awards**, but --
> MR. ADAMS: That -- that could -- I don't know, **perhaps that could become relevant at some point.**

(Exhibit A:T15-16).

46. On the same date, with respect to testimony concerning the Diandra Reeves incident the following ensued:

> **MR. ARCKEY:** Yes, Your Honor. My last motion in limine is in regards to the Williams Rule evidence and the witness of the – Diandra Reeves. She was subpoenaed for a deposition. She failed to appear for that deposition. They also are using Williams Rule evidence as a – essentially, a propensity argument. I believe it's not relevant under 401 and under 403, as it involves a battery case that victim is involved in against a Diandra Reeves. Their claim is, is that it was done in a similar fashion by using a car to basically accost the victim in that case, who is Ms. Reeves. The State's position on that is that that is not relevant to this case. There's different factual
> circumstances. She's also only charged with battery in that case. I think the facts of that case are substantially different than what we have here at hand. And that because the State wasn't able to do a depo, the State can't really contest what's going to be said in that, and that this also was not in the mind of the – of Mr. Coleman at the time, so, therefore, it does not go to any self-defense theory because that is not a – a case that he was aware of at the time of this incident.
> **THE COURT:** Defense?
> **MR. ADAMS:** Judge, we haven't had any contact with Diandra Reeves. We had tried several times to subpoena her and we've made other efforts to communicate with her also. I think the – I'd ask the Court to reserve. I think the most likely scenario that we would use her, if we hypothetically found her during this trial, would be as a potential rebuttal witness. I don't think we're going –
> **THE COURT:** For what purpose?
> **MR. ADAMS:** A rebuttal witness. I think we're – we have a motion in limine we're going to address next. We are – we do think we're allowed to ask – ask Aimee Guillory about the fact that she does have pending criminal charges with the Orange County State Attorney's Office; probably limited to that. If she were to answer that a certain way, or if she were to open the door at some point during her testimony, we – we think that Diandra's testimony could be relevant.

(EXHIBIT J: 286-287).

47. At trial, Guillory testified for the prosecution, claiming she was an innocent victim. She was not impeached with the incident concerning Diandra Reeves. The trial court precluded

the expert witness testimony of Charles Drago upon the State's motion in limine. (EXHIBIT J: 56).

48. Coleman testified in his own defense. (EXHIBIT J: 159-267). At no time during the trial was Coleman's combat experiences and how they impacted his perception of the May 28, 2014 events ever presented; likewise, no mental health defense was presented. Following summations and jury deliberations, Coleman was found guilty as charged on both counts. (EXHIBIT J: 23).

The Motion for a New Trial

49. After his trial, but before sentencing, Petitioner filed a motion for a new trial through his original trial counsel. (EXHIBIT B:543-544). The motion alleged ineffective assistance of trial counsel, among other grounds. (EXHIBIT A:256-265).

50. Represented by a new lawyer, a hearing was held upon the motion on August 20, 2015. (EXHIBIT B: 511-565). At the hearing, trial counsel Ernest Mullins testified that after the trial, he filed a motion for a new trial and alleged ineffective assistance of counsel against himself. (EXHIBIT B:532-533). Mullins testified that when he tried the case, he proceeded on a theory of self-defense only, and did not prepare a defense based upon the authorized use of force in effecting a citizen's arrest. Id. The reason he did not prepare or present this defense was because he did not think it applied in this case, and acknowledged that statutory and case law specifically allows for this defense under the circumstances of the case. (EXHIBIT B:533-534). Had he known of this body of law, he would have requested a jury instruction on the authorized use of force in effecting a citizen's arrest. (EXHIBIT B:534). Mullins testified unequivocally

that this failure was not due to tactical or strategic considerations, but was based solely on his ignorance of the law. (EXHIBIT B:534-535).

51. Counsel testified that he never discussed the possibility of that defense with Petitioner, and would have developed additional facts in the trial record to support the defense, although he believed that the facts as developed still supported such a defense and a jury instruction thereon. (EXHIBIT B:535-537). After the trial, he conducted research after being tipped off as to the possibility of the defense by another attorney, and found the seminal case on the defense in about 5 minutes. (EXHIBIT B:535, 536, 540). Mullins repeatedly admitted that he had rendered ineffective assistance of counsel. (EXHIBIT B:534-540).

52. Following the hearing and additional argument, the trial court denied the motion for a new trial in a written order on September 18, 2015. (EXHIBIT A:303-321). In the portion of the order concerning Petitioner's ineffective assistance claim, the trial court ruled, in pertinent part:

Sentencing

53. Coleman was sentenced following the unsuccessful motion for a new trial on September 4, 2015 to 25 years imprisonment, concurrently with 15 years imprisonment. (EXHIBIT J: 25-31).

Direct Appeal

54. Coleman prosecuted a direct appeal to the Florida Fifth District Court of Appeal in Case # 5D15-3259. (EXHIBIT J: 55-56). In that appeal, Coleman argued that 1) the trial court abused its discretion in denying Coleman's motion to declare him immune from prosecutions, 2) that the trial court abused its discretion in granting the state's motion in limine to prevent the expert testimony of Charles Drago, 3) that the trial court abused its discretion by denying Coleman a new trial on the basis that his trial attorney provided ineffective assistance of counsel, and 4) that the trial court erred when it gave a confusing instruction on self-defense. (EXHIBIT J: 55-56).

54. On March 21, 2017 the Florida Fifth District Court of Appeal affirmed the conviction without opinion. (EXHIBIT J: 55-56). A motion for rehearing and issuance of a written opinion was denied on May 4, 2017. (EXHIBIT J: 55-56).

The Evidentiary Hearing Upon Coleman's Rule 3.850 Motion

56. An evidentiary hearing was held in the Ninth Judicial Circuit Court for Orange County on August 13, 2019. (EXHIBIT J: 863-1014). At the hearing Dr. Jeffrey Danziger, M.D., a recognized expert in the area of forensic psychiatry, testified for the defense. (EXHIBIT J: 867-868). Dr. Danziger testified that Coleman suffered from Post-Traumatic Stress Disorder based upon his exposure to constant danger and threats, witnessing death and serious injury to others in connection with his military service in Iraq. (EXHIBIT J: 868-869). He demonstrated "intrusion symptoms, avoidance behaviors, negative alterations in cognition and mood, and heightened arousal and reactivity" all of which were consistent with PTSD. (EXHIBIT J: 868-870).

57. The intrusion symptoms were persistent and unwanted bad memories that Coleman could not dismiss from his consciousness, triggered by cues and stimuli. (EXHIBIT J: 870). Intrusion symptoms produced psychological distress, such as anxiety, tension and panic, as well as physical manifestations, such as heart pounding or shortness of breath. (EXHIBIT J: 870-871). Referring to the heightened arousal and reactivity, Coleman exhibited hypervigilance, which was characterized as a constant sense of danger and watchfulness. (EXHIBIT J: 872). Dr. Danziger arrived at this conclusion after administering the CAPS-5 test, a psychological test developed by the United States Veteran's Administration and the National Center for PTSD, considered the "gold standard" in diagnosing PTSD. (EXHIBIT J: 872-873). In addition, Dr. Danziger administered Coleman the Miller Forensic Assessment of Symptoms Test, a screening test to separate the genuinely psychiatrically ill from those feigning mental illness. (EXHIBIT J: 873). Both tests indicated that Coleman genuinely suffered from PTSD for at least 10 years. (EXHIBIT J: 873). In addition, Dr. Danziger diagnosed Coleman with recurring major depressive disorder with anxious distress. (EXHIBIT J: 874).

58. Dr. Danziger explained that it is common for PTSD and associated psychological disorders to go unnoticed in military personnel because individuals such as Coleman are reluctant to acknowledge weakness and feel shame from acknowledging psychological problems. (EXHIBIT J: 876-877). Dr. Danziger's diagnoses were corroborated by Coleman's family members. (EXHIBIT J: 878).

59. Dr. Danziger testified that because of Coleman's PTSD and specifically because of his experience with vehicles as a threat in Iraq, his mindset and perception of danger were impaired:

> And, in that moment, with his post-traumatic stress disorder, his wartime combat, the hypervigilance, the sense of heightened danger, and actually being struck by a vehicle, in the context of his wartime experiences and the intense danger that a motor vehicle could present, as he was struck by the vehicle, my opinion is that he perceived himself to be in imminent danger of harm -- being struck, run over, dragged by the vehicle -- and his actions in firing his weapon were a response to that.
>
> So my opinion would be that his post-traumatic stress disorder, particularly the experience with motor vehicles in Iraq, substantially impacted his thinking and mental state on that day in May 2014, when he was struck by the vehicle, and he reasonably believed, at that moment, in my opinion, that he was in imminent danger of death and serious bodily injury.

(EXHIBIT J: 881).

60. Coleman testified for the defense consistently with the facts set forth above.

61. The State called attorney Ernest Mullins at the evidentiary hearing. Mullins testified that neither he nor Joshua Adams ever put Diandra Reeves on the defense witness list, nor called her to testify at trial. (EXHIBIT J: 986). He admitted that Coleman never denied him funds for expert witnesses, private investigators, etc. (EXHIBIT J: 988). Mullins also admitted that when he came into the case, he knew that Coleman was an infantryman who had deployed to Iraq and had seen combat. (EXHIBIT J: 989-990).

62. Significantly, counsel also testified that knew prior to trial that Coleman had been the recipient of a Purple Heart, a Bronze Star, and a Silver Star as a result of his military service. (Exhibit J:990).

63. A Purple Heart is awarded to a military servicemember who is wounded during combat. (United States Army Regulations 600-8-22, § 2-8; 670-1, Department of Defense Manual 1348.33, Volume 3). The Bronze Star Medal is awarded to members of the military for

either heroic achievement, heroic service, meritorious achievement, or meritorious service in a combat zone. (United States Army Regulations 600-8-22, § 3-16; 670-1, Department of Defense Manual 1348.33, Volume 3). The Silver Star Medal is the military's third-highest personal decoration for valor in combat. (United States Army Regulations 600-8-22, § 3-12; 670-1, Department of Defense Manual 1348.33, Volume 3). The Silver Star Medal is awarded primarily to members of the military for gallantry in action against an enemy of the United States. Id.

64. Nevertheless, Mullins never asked Coleman whether he had any lasting mental effects as a result of his combat service, and never even considered having Coleman evaluated for any mental health issues. (EXHIBIT J: 990-991). He further testified:

> Q And -- and you -- and -- and I think you said in direct that anybody would react the way that he did; right?
> A That was our defense; that he -- he -- he -- he -- he took out his -- his firearm and he fired it because that was the only way he could see to -- to stop this woman from -- from driving her car into people.
> Q And -- because anybody would react the way that he did, especially somebody who has seen combat, seen people get run over, shot at by cars -- especially him -- that would even make it even more plausible; right?
> A Counsel, that's one way to look at it -- yeah -- especially somebody who's got PTSD. But if -- do you want to really tell a jury that he's got PT -- here's a guy who has a gun and PTSD. I -- you know, that's dangerous. I -- I wouldn't have gone there, even if -- had I known anything about the PTSD.
> Q Well, that -- that's a determination that you're making here in 2019.
> A I would make it -- we would make it in consultation with my client and with co-counsel. That's right.
> Q Okay. That determination was never made in 2015, though, was it?
> A It was never made.

(EXHIBIT J: 993-994).

65. Mullins testified that he knew Dr. Danziger was an expert in psychology, and had actually used his services in other cases in the past. (EXHIBIT J: 996). He agreed that Dr. Danziger had the ability to assist a jury in making a determination. Id.

66. At the conclusion of the evidence, the trial court ruled:

> I can't find, sir, that your counsel's been ineffective. They had a mock trial. They had a focus group; came back favorably for you. And counsel testified that -- that, had in fact he even explored or knew of a possibility that you may have a PTSD diagnosis or may have had one back then, he would've made a strategic decision not to go down that path, and he very articulately told the Court that it was because he wanted the jury to understand the unreasonableness of Ms. Guillory's actions and wanted them to believe and understand that you acted reasonably under those circumstances and you, just as anybody else, were entitled to use self-defense at that point in time.
>
> ...
>
> So, sir, to say that he should have explored that and that no reasonable attorney would not, I -- I just can't agree with that. And on top of that, Mr. Mullins has testified that, again, had he known of the PTSD, he simply would not strategically have gone down that path. He said that focus would've been shifted away from the victim in this case and the unreasonableness of her actions to you, and I can understand that. I can understand that strategy. So, sir, for all of those reasons, I do not find ineffective assistance and if I did, I don't find that -- I can understand Mr. Mullins' point of view and I don't find that there would've been any prejudice that you've established.

(EXHIBIT J: 1009, 1011)

67. As to the ground related to failing to impeach Guillory with the prior incident concerning Diandra Reeves, the court ruled that because Reeves was unavailable during the trial, and because counsel "attempted to impeach" Guillory in other ways at the trial, the defense failed to establish ineffectiveness. (EXHIBIT J: 1012).

68. A written order incorporating the oral ruling was entered on August 19, 2019. (EXHIBIT J: 853). Coleman appealed the denial of post-conviction relief to the Florida Fifth District Court of Appeal, which again affirmed without a written opinion *per curiam* on July 21, 2020.

69. Johnathan Coleman has now exhausted all possible avenues for relief in the Florida state courts.

GROUNDS FOR THE UNCONSTITUTIONALITY OF PETITIONER'S CONVICTION

70. In order to obtain habeas relief under 28 U.S.C. § 2254, Federal law requires that the state court's prior adjudication of the habeas petitioner's Federal claims:

> (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)(1).

71. The Eleventh Circuit has held:

> A state court decision is "contrary to" clearly established federal law if either (1) the state court applied a rule that contradicts the governing law set forth by Supreme Court case law, or (2) when faced with materially indistinguishable facts, the state court arrived at a result different from that reached in a Supreme Court case.
> A state court conducts an "unreasonable application" of clearly established federal law if it identifies the correct legal rule from Supreme Court case law but unreasonably applies that rule to the facts of the petitioner's case. An unreasonable application may also occur if a state court unreasonably extends, or unreasonably declines to extend, a legal principle from Supreme Court case law to a new context. **Notably, an "unreasonable application" is an "objectively unreasonable" application**.

Isaacs v. Head, 300 F.3d 1232, 1251 (11th Cir. 2002) (emphasis added).

POINT I – THE STATE COURT'S DETERMINATION THAT PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL IS CONTRARY TO, AND AN UNREASONABLE APPLICATION OF FEDERAL LAW AND ALSO WAS AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED BY PETITIONER WITH HIS POST-CONVICTION RELIEF MOTION AND THE LACK OF EVIDENCE TO THE CONTRARY

72. It is axiomatic that both the United States Constitution and the Florida Constitution guarantee each defendant in a criminal prosecution the right to the effective assistance of counsel. The fundamental right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive due process of law in an adversarial system of justice. United States v. Cronic, 466 U.S. 648, 658 (1984).

73. The United States Supreme Court has held that "[t]he benchmark of judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial [court] cannot be relied on having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). Under the Strickland standard, ineffective assistance of counsel is made out when the defendant shows that (i) trial counsel's performance was deficient, i.e., that he or she made errors so egregious that they failed to function as the "counsel guaranteed the defendant by the Sixth Amendment;" and (ii) the deficient performance prejudiced the defendant enough to deprive him of the due process of law. Id. at 687.

74. A court deciding a claim of ineffective assistance of counsel 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. "The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally

competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland at 690.

75. Under Strickland, a defendant must establish the following two components to demonstrate that counsel was ineffective: (1) counsel's performance was deficient and (2) counsel's deficient performance prejudiced the defense. Strickland, 466 U.S. at 686.

76. Under the deficiency prong, the defendant must establish that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. To prove the prejudice prong, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 686. A reasonable probability is a probability sufficient to undermine the confidence in the outcome. Id. at 694.

A. Deficient Performance

77. It is well-settled that under the United States Constitution, effective assistance of counsel requires that trial counsel conduct a reasonable investigation into the facts of the case. Wiggins v. Smith, 539 U.S. 510, 521-523 (2003), quoting Strickland at 690-691; Daniel v. Commissioner, Alabama Department of Corrections, 822 F.2d 1248 (11th Cir. 2016); Scott v. Wainwright, 698 F.2d 427, 429-430 (11th Cir. 1983) (defense counsel's failure to familiarize himself with the facts and relevant law made him so ineffective that the petitioner's guilty plea was involuntarily entered); Washington v. Strickland, 693 F.2d 1243, 1257 (5th Cir. 1982) (when counsel fails to conduct a substantial investigation into any of his client's plausible lines of defense, the attorney has failed to render effective assistance of counsel); Young v. Zant, 677

F.2d 792, 798 (11th Cir. 1982) (where counsel is so ill prepared that he fails to understand his client's factual claims or the legal significance of those claims, counsel fails to provide service within the expected range of competency); Nealy v. Cabana, 764 F.2d 1173, 1178-79 (5th Cir. 1985) (counsel has a duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case, interview potential witnesses, and to make an independent investigation of the facts and circumstances of the case).

1. Failure to Investigate a Potential Psychological Defense

78. "Trial counsel has a duty to investigate a defendant's mental state if there is evidence to suggest that the defendant is impaired." Douglas v. Woodford 316 F.3d 1079, 1085 (9th Cir. 2003). In Woodford, trial counsel became aware that a psychiatric defense could be helpful early in the case. Id. The defendant had some tests conducted initially and counsel instructed experts to determine if there was a defense of a psychological nature. Id. Counsel was told by the doctors that there was not an indication of a major mental disorder, but additional testing could be done. Id. Counsel requested and received $35,000 for additional mental health testing. Id. No further tests were performed. Id. The defendant advised counsel he should not pursue any further testing. Id. In one of the defendant's prior criminal matters, a doctor opined that defendant was "confused, his thought process chaotic, and that he suffered from severe paranoia." Id. at 1086. The court held that counsel's performance was deficient because even after he was told by the client not to pursue psychological issues at trial, counsel **still** should have investigated leads to prior mental health information. Id. at 1086 (emphasis added).

79. When determining whether trial counsel conducted a reasonable investigation, this Court must undertake a multi-part inquiry. First, "it must be determined whether a reasonable

investigation should have uncovered the mitigating evidence. If so, then a determination must be made whether the failure to put this evidence before the jury was a tactical choice by trial counsel." Blanco v. Singletary, 943 F.2d 1477, 1500 (11th Cir. 1991); see also Middleton v. Dugger, 849 F.2d 491, 493 (11th Cir. 1998). If the decision is tactical or strategic, that decision is afforded a "strong presumption of correctness." Blanco, 943 F.2d at 1500. Otherwise, the court must make a harmlessness review "to determine if there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Middleton, 849 F.2d at 493. The question of whether a decision was a strategic decision is a question of fact. Horton v. Zant, 941 F.2d 1449, 1462 (11th Cir. 1991); see also 28 U.S.C. § 2254(d). However, whether the strategy was reasonable is a question of law subject to de novo review. Horton v. Zant, 941 F.2d 1449, 1462 (11th Cir. 1991).

80. Woodford is analogous to this case. Here, the record of the state court proceedings conclusively establish that both trial counsel had plenty of resources to retain expert witnesses, and were actually aware of the potential psychological issues prior to trial. By now in the American experience, any reasonable person would deduce that if a person served combat operations in Iraq, were wounded in battle, and received a number of awards for a display of courage under fire, there would be a likelihood of resulting psychological trauma.

81. Nevertheless, neither counsel chose to investigate this matter any further or explore the possibility that Johnathan Coleman suffered lasting psychological effects due to his extensive combat experience in Iraq, and how those psychological effects manifested themselves in the instant case. This was not a decision based upon facts or a strategic determination to pursue one avenue of defense over another; as counsel admitted in the post-conviction evidentiary hearing,

they never made any such determination. Thus, this was an unreasonable strategy – to simply do nothing.

2. Failure to Secure Services of and Present Expert Witnesses Which Would Have Established a Viable Claim of Self-Defense and Challenged the State's Theory

82. Florida law recognizes a claim of self-defense as the justifiable use of force. Florida law also recognizes a claim of "imperfect self-defense," which is defined as [t]he use of force by one who makes an honest but unreasonable mistake that force is necessary to repel an attack." Hill v. State, 979 So. 2d 1134 (Fla. 3d DCA 2008). In cases involving a homicide, imperfect self-defense allows a jury to "reasonably reject the theory of self-defense in a case involving a defendant's impulsive overreaction to a victim's attack," and reduce what might otherwise be a conviction for second degree murder to a conviction for manslaughter, a lesser-included charge.[1] See Dorsey v. State 74 So.3d 521, 524 (Fla. 4th DCA 2011).

83. Rule 702 of the Federal Rules of Evidence, mirrored in the State of Florida pursuant to Florida Statutes § 90.702 governs the admissibility of expert testimony:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

See Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 588 (1993).

84. Whether the testimony will assist the trier of fact is essentially a determination concerning relevance. Id. at 591; see also United States v. Downing, 753 F.2d 1224, 1242 (3d Cir. 1985) (whether expert testimony proffered in the case is sufficiently tied to the facts of the case that will aid the jury in resolving a factual dispute.) The proponent of expert testimony always bears the burden to demonstrate, therefore, that the expert is qualified to testify, the matters upon which he wishes to opine are relevant and the basis for the opinion is

[1] Manslaughter is a second degree felony in Florida, punishable by up to 15 years imprisonment.

reliable, and that his testimony will help the jury understand some fact at issue because it is beyond the understanding of an average lay person. See United States v. Frazier, 387 F.3d 1244, 1260 (11th Cir. 2004).

85. In Florida, expert testimony offered to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of the defendant's actions in defending himself is admissible evidence. State v. Hickson 630 So.2d 172 (1993), Hawthorne v. State, 408 So.2d 801, 806 (Fla. 1st DCA 1982). The Court in Hawthorne distinguished expert testimony to support a theory of self-defense from expert testimony in insanity or diminished capacity defenses.

86. In Hawthorne, the defendant shot her husband and sought the testimony of a clinical psychologist who would have testified as an expert on battered woman syndrome. Id. at 805. "The purpose of such testimony would have been to give the jury a basis for considering whether appellant suffered from the battered-woman syndrome, not in order to establish a novel defense, but as it related to her claim of self-defense. Id. The Court stated:

> We think there is a difference between offering expert testimony as to the mental state of an accused in order to directly "explain and justify criminal conduct," and the purpose for which the expert testimony was offered in the instant case. In this case, a defective mental state on the part of the accused is not offered as a defense as such. Rather, the specific defense is self-defense which requires a showing that the accused reasonably believed it was necessary to use deadly force to prevent imminent death or great bodily harm to herself or her children. **The expert testimony would have been offered in order to aid the jury in interpreting the surrounding circumstances as they affected the reasonableness of her belief**. The factor upon which the expert testimony would be offered was secondary to the defense asserted. Appellant did not seek to show through the expert testimony that the mental and physical mistreatment of her affected her mental state so that she could not

> be responsible for her actions; rather, the testimony would be offered to show that because she suffered from the syndrome, it was reasonable for her to have remained in the home and, at the pertinent time, to have believed that her life and the lives of her children were in imminent danger.

Id. at 806-807 (citations omitted).

87. Despite having both the funds and the knowledge that experts would be necessary to present such a defense to a jury, trial counsel failed to retain any experts, much less present any such evidence to the jury, even though he attempted to present a claim of self defense.

88. To succeed with a self-defense claim in this case, the most crucial aspects were Petitioner's perception of the complainant's actions, Petitioner's state of mind, and why he fired at the vehicle. Among other things Petitioner had to establish that he reasonably believed he was in danger of being run over, just as he had been in Iraq numerous times, and that belief justified firing at the vehicle. The only way to explain Petitioner's justification was through expert opinion.

89. In Paine v. Massie, 339 F.3d 1194 (10th Cir. 2003) defense counsel's performance was found to be deficient where he did not offer expert testimony on battered woman syndrome to support a claim of self-defense. In Massie the defendant shot her husband at their home. Id. at 1196. Her attorney called witnesses who testified that she was verbally, mentally, and physically abused by the husband. Id. Her attorney offered an expert psychologist who gave an opinion that Paine was in genuine fear for her life at the time of the shooting, but did not offer expert testimony regarding the effects of battered woman's syndrome or "how such a condition might have affected the objective reasonableness of her subjective fear." Id. at 1197.

90. In this case, trial counsel argued self-defense through Petitioner's actions, but like Massie failed to show Petitioner's fear in the context of his extensive combat experiences in Africa and in Iraq. Petitioner's mental state was thus **vital** to his defense.

91. Again, this expert witness testimony was never presented not because of a strategic or tactical consideration, but merely because counsel was negligent. This was deficient performance.

3. Failure to Request a Complete Self-Defense Instruction

92. In Florida, a private citizen may arrest a person who commits a felony in his presence, which includes the right to prevent the felon's escape. Phoenix v. State, 455 So.2d 1024, 1025 (Fla. 1984) (citing Collins v. State, 143 So.2d 700, 703 (Fla. 2d DCA 1962); Nelson By and Through Bowens v. Howell, 455 So.2d 608, 610 (Fla. 2d DCA 1984); State v. Sills, 852 So.l2d 390, 392 (Fla. 4th DCA 2003). A private citizen attempting to make a felony arrest may use such force as is necessary, including deadly force, to prevent a felon from escaping. See Fitzgerald v. McDonnell, 833 F.2d 1516, 1519 (11th Cir. 1987). Deadly force is defined by statute as force likely to cause death or great bodily harm. Florida Statutes § 776.06(1).

93. Here, the facts of the case establish that Petitioner had two available defenses to him: (1) self-defense under Florida law when Aimee Guillory drove her car in an attempt to run over Coleman after she had struck her boyfriend, and (2) that Coleman, a private security guard, was effecting a citizen's arrest and was justified in using force to prevent Guillory from escaping after Coleman had witnessed her commit a felony battery in striking her boyfriend with her car. Both defenses were overlapped perfectly with both Johnathan Coleman's testimony, the testimony of the witnesses, the independent facts of the case, and even the prosecutor's closing argument:

> She complies, gets out of the car, someone drives by and says he's not a real cop, you don't have to stay, and she decides to get back in the car.
> …
> Their argument at that point was just leave, he's not a cop, he's a security guard. Now defense did bring up that it's the State's burden to prove beyond a reasonable doubt that self-defense didn't apply. You can also find that self-defense didn't apply straight out.
> …
> He drove over into that complex because he saw two people continuing to have an argument. He got involved in something he shouldn't have. He drives a car that has "canine" on the back of it, he dresses like a police officer, he wears a police officer's belt, turns on his lights, pulls over a car, pulls someone out of the car, and then when she doesn't do exactly what he says and gets back in the car, he continues to yell stop, stop, stop, stop, stop, not ouch, my foot, ouch I can't walk.

(EXHIBIT A:T533, 537, 573)

94. This case is highly analogous to McCree v. Secretary, Department of Corrections, 663 F.Supp.2d 1316 (M.D.F.L. 2009) (Presnell, J). In McCree, the petitioner was a driver for his co-defendant and his cousin, who planned to commit a robbery. McCree believed he was driving them to consummate a drug deal, not a robbery. As the two co-defendants attempted to rob the victim, her boyfriend, who was a police officer, struggled with the two robbers, and one of the robbers was killed in the process. McCree drove away, and after his arrest, told police he had no idea the co-defendants were going to commit a robbery. At his trial, McCree testified consistently with the above facts. His attorney did not request a jury instruction under Florida's "independent act" defense. Under Florida law, the independent act doctrine applies "when one cofelon, who previously participated in a common plan, does not participate in acts committed by his cofelon, 'which fall outside of, and are foreign to, the common design of the original collaboration.'" Ray v. State, 755 So. 2d 604, 609 (Fla. 2000) (quoting Ward v. State, 568 So. 2d

452, 453 (Fla. 3d DCA 1990)). Under these limited circumstances, "a defendant whose cofelon exceeds the scope of the original plan is exonerated from any punishment imposed as a result of the independent act." Id. This Court held an evidentiary hearing, at which McCree's trial counsel testified that while he had looked into the possibility of the defense, his assessment of the law was the defense did not apply.

95. This Court granted the writ of habeas corpus, finding that McCree would have been entitled to a jury instruction on the defense. In spite of McCree's trial counsel testifying at a hearing that he had researched the defense, this Court held that counsel's action in failing to develop the defense and request a jury instruction was objectively unreasonable under Strickland. This Court further held that the failure to provide the instruction was prejudicial because the instruction "was crucial in this case to inform the jury how to properly resolve the issue of Petitioner's criminal liability" and that as a result, counsel's failure to request the instruction rendered the conviction unreliable. Id. at 1333.

96. Here, Petitioner's trial counsel advanced only one theory of defense. However, there was ample evidence in this case that the "victim" had In this case, the victim had committed a violent felony by striking another man with her vehicle and then initially stopped, but refused Coleman's command to remain on the scene until police arrived, attempting to run him over as well. Thus, Coleman would have been entitled to a jury instruction on the use of force in effecting a citizen's arrest, given his testimony and the other evidence in the case.

97. Finally, the prejudice is palpable. Without the instruction, the prosecutor was able to effectively argue to the jury that Petitioner was acting outside the bounds of the law, and to reject his self-defense claim.

4. Counsel's Failures Were Based Upon Lack of Due Diligence

98. Here, "counsel's behavior was not colorably based on tactical considerations but merely upon a lack of diligence." United States v. Gray, 878 F.2d 702, 712 (3d Cir. 1989). In this case, as in Lloyd v. Whitley, counsel "did not choose, strategically or otherwise, to pursue one line of defense over another. Instead, [he] simply abdicated his responsibility to advocate his client's cause." 977 F.2d 149, 159 (5th Cir. 1992).

99. Concerning the failure to investigate and present a psychological defense, counsel disregarded a flurry of warning flags that Petitioner was suffering from psychological issues associated with his extensive combat experience. As counsel testified at the post-conviction hearing, the determination was never made to forego this defense in favor of another; he simply failed to recognize it as a possible issue.

100. It is also clear from the state court record that counsel's failure to pursue the defense of justifiable use of force in effecting a citizen's arrest request such a jury instruction, which "was crucial in this case to inform the jury how to properly resolve the issue of Petitioner's criminal liability" was not based on any tactical or strategic consideration, but ignorance of the law and negligence in preparing a defense for trial.

101. The fact remains that counsel utterly failed to investigate and put himself in a position where he could make an independent, objectively reasonable decision.

102. Because counsel's decision was not made after a thorough investigation of the facts relevant to plausible avenues of defense, the trial court's determination otherwise is contrary to clearly-established Federal Constitutional law as determined by the United States Supreme Court. Thus, this Court should find that counsel's several failures identified above constituted

deficient performance, satisfying the first Strickland prong.

B. Petitioner Suffered Actual Prejudice As a Result of Counsel's Failure to Investigate and Call Expert Witnesses to Testify

103. To demonstrate prejudice under Strickland, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability has been defined as a probability sufficient to undermine confidence in the outcome.

104. Similarly, counsel's failure to consult with and call experts to provide admissible, relevant and beneficial testimony to corroborate Petitioner's self-defense claim also changed the result in the case. Without an adequate explanation as to Petitioner's then-existing mental state, without Petitioner's actions in the proper context of Petitioner's extensive and traumatic combat experience and military training, and without providing other expert testimony that called into question the evidence and the State's theory of prosecution, Petitioner's self-defense claim was dead on arrival.

105. Had counsel presented that evidence to a jury, the equation would have been radically different and would have altered the outcome of the case.

106. Additionally, had counsel developed a defense and requested a jury instruction on the justifiable use of force in effecting a citizen's arrest, that likewise would have altered the outcome of the case in Petitioner's favor.

107. As a result of the foregoing, Petitioner has established prejudice resulting from counsel's failures.

CONCLUSION AND RELIEF REQUESTED

108. Johnathan Coleman served his country honorably and with distinction. The United States of America ordered Johnathan Coleman to serve in a combat zone. He was involuntarily placed in a position where every day, he saw his friends killed in a brutal manner. Every day, enemy forces tried to kill him by shooting at him, trying to run him over with vehicles, and trying to blow him up with explosive-laden vehicles.

109. It is indisputable that being in combat has lasting, deleterious psychological impacts upon soldiers. This is not a new phenomenon; this is common knowledge that has been recognized for well over 100 years. In World War I, it was called "shell shock." In World War II, it was called "battle fatigue." Modern psychology has identified this phenomenon as Post-Traumatic Stress Disorder with a number of related, identified conditions and characteristics.

110. In this case, he was involuntarily placed in the same exact position as he was placed in during his deployment to Iraq – a hostile individual attempted to kill another person before his eyes, and then attempted to run him over and kill him.

111. Having involuntarily placed Johnathan Coleman in a position where it was virtually certain that he would suffer psychological injury, the State of Florida has thanked him for his service with a sentence of 25 years in prison. The State of Florida has also shown its gratitude by violating his right to present a defense, his right to a fundamentally fair trial, and by giving its stamp of approval to clearly ineffective assistance of counsel. To add insult to injury, the State of Florida has also thanked him by twice deciding his appeal without even the courtesy of an explanation.

112. This case is a gross injustice of the highest magnitude and cries out for justice.

113. Strickland cautions courts to refrain from second-guessing counsel's strategic decisions from the superior vantage point of hindsight. Id. at 689. "Strategic choices made **after a thorough investigation of law and facts relevant to plausible options** are virtually unchallengeable." Id. at 690-691. (emphasis added). At the same time, "virtually unchallengeable" does not mean wholly unchallengeable. See Pavel v. Hollins, 261 F.3d 210, 218 (2d Cir. 2001); see also Phoenix v. Matesanz, 233 F.3d 77, 82 (1st Cir. 2000). As the Eleventh Circuit has held, "[c]ertain defense strategies, however, may be so 'ill-chosen' as to render counsel's overall representation constitutionally defective." Adams v. Balkcom, 688 F.2d 734, 738 (11th Cir. 1982).

114. "Ineffectiveness is generally clear in the context of a complete failure to investigate because counsel can hardly be said to have made a strategic choice against pursuing a certain line of investigation when s/he has not yet obtained the facts in which such a decision can be made." United States v. Gray, 878 F.2d 702, 711 (3d Cir. 1989).

115. In resolving Petitioner's ineffectiveness claim based on the failure to present a justifiable use of force defense, the trial court ruled "[w]hether Mr. Mullins knew of the defense but failed to thoroughly investigate its viability or was completely ignorant of the defense doesn't really matter much." (EXHIBIT A:308). This is an unreasonable application of the clear mandate of Strickland and its progeny, which clearly states that counsel has a constitutional duty to investigate defenses, and to be sufficiently competent enough to recognize legal issues in a criminal case such as the ones presented here.

116. Instead of conducting its own analysis, the trial court block-quoted extensively from a Tenth Circuit case, Bullock v. Carver, 297 F.3d 1036 (10th Cir. 2002) for six pages out of a twenty-age decision.

117. However, in block quoting that case, the trial court acknowledged several other controlling Supreme Court decisions that undercut its denial of relief:

> In many cases, a lawyer's unawareness of relevant law will also result in a finding that counsel performed in an objectively deficient manner. See, e.g., Kimmelman, 477 U.S. at 385-86, 106 S.Ct. 2574 (explaining that counsel's failure to conduct pretrial discovery was objectively unreasonable because counsel had a "startling ignorance of the law" and mistakenly believed "that the State was obliged to take the initiative and tum over all of its inculpatory evidence to the defense and that the victim's preferences would determine whether the State proceeded to trial after an indictment had been returned"); Magana v. Hofbauer, 263 F.3d 542, 550 (6th Cir.2001) ("[Counsel's] complete ignorance of the relevant law under which his client was charged, and his consequent gross misadvice to his client regarding the client's potential prison sentence, certainly fell below an objective standard of reasonableness under prevailing professional norms."); Baker v. Barbo, 177 FJd 149, 154 (3d Cir.1999) (holding that "a trial attorney's error with respect to his ignorance of the sentencing law [at issue in the case] has satisfied the first prong of the Strickland test"); United States v. Glover, 97 F.3d 1345, 1349 (10th Cir.1996) ("The illegal-sentence issue counsel failed to raise was clearly meritorious under the existing [United States Sentencing] [G]uidelines and elementary burden-of-proof principles, surely both matters within the requisite expertise of a practicing member of the criminal defense bar."); United States v. Kissick, 69 F.3d 1048, 1056 (10th Cir.1995) ("An attorney's failure to challenge the use of a prior conviction to classify the defendant as a career offender when that prior conviction is facially insufficient to satisfy the definition of a 'controlled substance offense' under USSG § 4B1.2 therefore constitutes deficient performance under Strickland."); see also LaFave et al., Criminal Procedure § 11.l0(c) at 720 (explaining that "clearly negligent treatment of a crucial deficiency in the prosecution's case or an obvious strength of the defense" will render an attorney's overall performance inadequate).

(EXHIBIT A:316-317).

118. Thus, the trial court recognized that the United States Supreme Court has held that a lawyer's ignorance of the law pertaining to their client's case can easily result in a finding of ineffectiveness. But then the trial court ignored that controlling authority in ruling that the presentation of a self-defense claim was reasonable. The court ruled "counsel's unawareness of relevant law concerning another potential defense at the time he decided to pursue a theory of self-defense at trial does not, in and of itself, render his performance constitutionally deficient." (EXHIBIT A:319)

119. That was not the question presented. The question was whether the failure to recognize, and present a closely-related defense that was supported by the facts of the case was objectively reasonable. This is precisely where the trial court, and the Florida Fifth District Court of Appeal in affirming without opinion, failed. In so ruling, the state court was contrary to, and an unreasonable application of, controlling Supreme Court authority on this Federal Constitutional question of law.

120. Concerning Petitioner's ineffectiveness claim as to the failure to recognize a potential psychological issue and present defense evidence thereon, the post-conviction court rested its decision on trial counsel's testimony that had counsel explored Post-Traumatic Stress Disorder, he would have made a strategic decision not to present it – a determination he never originally made, but only made after he was called as a State's witness. (EXHIBIT J:1009, 1011). The post-conviction court then read into the record a portion of the same prior decision

from the trial court denying Petitioner's motion for a new trial, and incorporated that ruling into the new ruling. (EXHIBIT J:1011-1012).

121. The post-conviction court never identified the relevant Strickland standard, nor conducted any analysis into the two Strickland prongs. Thus, that decision, and the Fifth District Court of Appeal's summary affirmance thereof, were contrary to and an unreasonable application of clearly-established Supreme Court law.

122. Strickland only requires courts to give deference to counsel's decisions only when "**made after a thorough investigation of law and facts relevant to plausible options**." Strickland at 690-691 (emphasis added). Counsel's decisions are accorded no deference when made without at least a cursory investigation into the law and facts of the case.

123. Because the state court's determination was an unreasonable application of clearly-established Supreme Court precedent, this Court should grant the instant petition.

124. For the reasons set forth above, Petitioner respectfully requests that this petition be granted in its entirety.

WHEREFORE, Petitioner prays that this Court:

(A) Issue a Writ of Habeas Corpus ordering that the Petitioner be released from his confinement upon a personal recognizance bond; or in the alternative,

(B) Issue a Writ of Habeas Corpus ordering that the Petitioner be released from his confinement unless the judgment of conviction and sentence are vacated, and he be restored to pre-trial status if he is not retried within sixty days; or in the alternative,

(C) Grant such other and further relief as this Court may deem just, proper and equitable.

Dated: August 12, 2020

Respectfully Submitted,

/s/ Patrick Michael Megaro
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