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

JOHNATHAN ANDREW COLEMAN,

Petitioner, Case # 6:20-CV-01460-WWB-EJK

-versus-

SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS,

Respondent.
_____/

REPLY TO RESPONDENT'S SUPPLEMENTAL RESPONSE

COMES NOW the Petitioner, JOHNATHAN ANDREW COLEMAN, by and through undersigned counsel, and hereby submits this Reply to the Respondent's Supplemental Response (Docket # 17) and in support of his petition pursuant to 28 U.S.C. § 2254, and respectfully states as follows:

1. On May 5, 2021, this Court entered an order directing the Respondent to file a supplemental response as to whether Claims # 1 and # 2 of the original petition for writ of habeas corpus were procedurally barred, and meritorious. (Docket # 16).

2. The Respondent filed a supplemental response to that Order on June 4, 2021. (Docket # 17). In the supplemental response, Respondent concedes that Claims # 1 and # 2 are exhausted as they were either raised in the motion for post-conviction relief or at the evidentiary hearing, as well as on appeal. (Docket # 17, Page 7 of 21, PageID 7115). Respondent further concedes that Claim # 3 is exhausted, as it was raised in the motion for new trial and on direct appeal. (Id.).

3. Based on Respondent's concession, and for the reasons set forth in Petitioner's Reply filed January 19, 2021 (Docket # 13), this Court should find that Claims # 1 and # 2 were fully exhausted and fairly presented to the post-conviction court.

4. To address the Court's concern that Petitioner fails to succinctly and clearly specify in Grounds # 1 and # 2 what psychological defense trial counsel failed to investigate and present, or what expert witnesses counsel failed to call, the Court is respectfully directed to the following.

5. Florida Statutes § 775.027 define the insanity defense as follows, in pertinent part:

> 775.027 Insanity defense.—
> (1) AFFIRMATIVE DEFENSE.—All persons are presumed to be sane. It is an affirmative defense to a criminal prosecution that, at the time of the commission of the acts constituting the offense, the defendant was insane. Insanity is established when:
> (a) The defendant had a mental infirmity, disease, or defect; and
> (b) Because of this condition, the defendant:
> 1. Did not know what he or she was doing or its consequences; or
> 2. Although the defendant knew what he or she was doing and its consequences, the defendant did not know that what he or she was doing was wrong.

6. Florida recognizes Post-Traumatic Stress Disorder, and evidence thereof, as "state-of-mind evidence, quite analogous to battered spouse syndrome (BSS) testimony that has in fact been approved many times. State v. Mizell, 773 So.2d 618, 619 (Fla. 1st DCA 2000); see also Faber v. State, 157 So.3d 429 (Fla. 2nd DCA 2015) (implicitly recognizing Post-Traumatic Stress Disorder to form the basis of an anticipated insanity defense). In addition, and on a related note, Post-Traumatic Stress Disorder evidence is relevant and admissible under Florida law on the question of self-defense. Id. at 621; see also Filomeno v. State, 930 So.2d 821, 822-823 (Fla. 5th DCA 2006) (error to exclude psychologist's testimony about the characteristics of the "fight or

flight" response where the defendant's state-of-mind was relevant to establish "the reasonableness of the use of force in self-defense").

7. On the merits, Petitioner urgers this Court to find ineffective assistance of counsel based upon trial counsel's failure to consult with a psychological expert, such as Dr. Jeffrey Danziger, M.D., and present a defense based upon his testimony. That defense would be that Petitioner suffered from Post-Traumatic Stress Disorder based upon his extensive combat experience in Iraq, and that mental condition affected his ability to perceive the events in the instant case, which almost mirrored his experiences in Iraq.

8. This evidence would have supported both a self-defense claim and a defense that Petitioner did not have the criminal intent to assault the complainant in this case because he suffered from Post-Traumatic Stress Disorder that impaired his ability to perceive his actions as wrong. Rather, he did exactly what the United States Government trained him to do.

9. Respondent places significant emphasis on Petitioner's candid testimony that he never specifically informed his attorney that he suffered from PTSD. But Respondent forgets several important, unchallenged facts that when viewed in context, show that Petitioner's attorney was still ineffective.

10. First, Petitioner testified that he was trained to "suck it up" and not voice complaints as to any mental problems he faced. This is by now common knowledge. Thousands of years of recorded history is replete with examples of military veterans who conceal the true extent of their psychological injuries for a host of reasons, least of all is the reluctance to exhibit what could be perceived as signs of weakness. This is hardly news. Petitioner again did what the United States Government trained him to do – bury his psychological problems and exhibit what he was taught

was a sign of weakness. He was undiagnosed at the time he was represented, which begs the question – how could Johnathan Coleman, a layperson, diagnose himself and tell his attorney that he suffered from PTSD when that ran counter to everything which had been instilled and reinforced in him?

11. Second, counsel admitted that he knew prior to trial that Coleman was an infantryman who had deployed to Iraq and had seen combat, and had been the recipient of a Purple Heart, a Bronze Star, and a Silver Star as a result of his military service. (Exhibit J:989-990). The criteria for recommendation and award of those ribbons and medals is outlined in Paragraph # 63 of the Petition (Docket # 1). Prior to trial, Petitioner's military record was the subject of a motion in limine.

12. One does not need experience in the United States Army to make the simple deduction that an infantryman who saw such extensive combat in Iraq so as to receive these types of decorations is virtually guaranteed to suffer from some lasting psychological effects from those experiences. To fail to make that connection is unreasonable.

13. But that is exactly what counsel admittedly failed to do – was to make any determination in 2015 as to whether to not to pursue such an inquiry or line of defense. (Exhibit J J: 993-994). It simply never registered in his mind. This, in and of itself, was unreasonable. Contrary to Respondent's assertion, counsel had every reason to suspect that Petitioner had some form of mental illness. If there ever was a flurry of red warning flags that a lawyer's client might be suffering from some form of mental illness, this was it.

14. Respondent also places significant stock in counsel's testimony that even if he had known about the PTSD evidence, he would not have used it at trial. The reasons counsel gave,

and relied upon by the state court, is that the focus would have shifted away from the victim's misconduct and placed the emphasis on a hypothetical inquiry in the jury's mind whether Coleman's version of events was accurate and what he (a licensed armed security guard on duty) was doing with a gun if he was "prone to violently over-reacting." (Docket # 17, Page 13 of 21 PageID 7121).

15. These reasons are unreasonable and illogical. As set forth above, PTSD evidence is recognized in Florida s highly relevant on the question of self-defense. Those cases establish that this is the type of evidence defense attorneys want to introduce in order to corroborate and buttress self-defense, and what prosecutors want to keep out of evidence.

16. Not only is PTSD evidence relevant for self-defense, it is also independently admissible as proof of legal insanity. Given Coleman's and Dr. Danziger's testimony that at the time of the incident, he acted as though he believed he was in combat in Iraq, this would have clearly met the legal requirements in Florida for admission as relevant evidence. With this evidence, a successful defense based thereon would have resulted in an acquittal.

17. The stated reason that the focus would have shifted away from the victim's misconduct in trying to run over and kill at least two people with a vehicle simply makes no sense. If anything, PTSD evidence would have enhanced the victim's misconduct and placed it in the context of Petitioner's perception. It would not have drawn away from it; PTSD would have highlighted and amplified it.

18. Nor would it have detracted from Coleman's credibility as a witness. There were other witnesses who saw the victim strike her ex-boyfriend with her vehicle immediately prior to the incident with Petitioner. There was documentary evidence that the victim had a violent

history of trying to run over other people with cars, and witnesses to those prior incidents. If anything, it would have enhanced Coleman's credibility as a witness to the jury. Hearing about his experiences and the trauma it caused from a mental health expert would have placed his actions in an entirely different, and humanizing, light. Any reasonable juror would have shown lenity to a man who reacted exactly as he was trained to do and who was suffering from mental problems as a result of his deployment.

19. Nor is it reasonable to assume the jury might have speculated that Johnathan Coleman had no business owning a firearm because he was "prone to violently over-reacting." He was prone to nothing of the kind; this was his first and only arrest or contact with the criminal justice system. If he had a violent past, that argument might be valid. In the absence thereof, it is nothing but rank, unsupported speculation. It is certainly not a reasonable tactical or strategic consideration.

20. In sum, counsel's stated reasons and the state court's reliance thereon for failing to pursue this defense fly in the face of logic and reason. They were not the product of reasoned reflection and tactical or strategic considerations, but a failure to recognize the red flags and the gravity of the Petitioner's history.

9. Petitioner relies upon the arguments set forth in his original Petition and his original Reply and urges this Court to grant him the relief requested therein.

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 15, 2021

Respectfully Submitted,

/s/ Patrick Michael Megaro
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon counsel of record via CM/ECF on August 15, 2021:

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