IN THE FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JOHNATHAN ANDREW COLEMAN,
Appellant.

v.

CASE NO: 5D19-2749
L.T. No.: 2014-CF-7184

STATE OF FLORIDA,
Appellee.
_____/

On Appeal to the Fifth District Court of Appeal
From the Circuit Court of the Ninth Judicial Circuit
In and for Orange County, Florida

APPELLANT'S INITIAL BRIEF

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PRELIMINARY STATEMENT

This is an appeal as of right from a Non-Final Order of the Ninth Judicial Circuit Court, entered May 22, 2019 (subsequently incorporated into the final order), denying Appellant's motion for post-conviction relief in part, and a Final Order of the Ninth Judicial Circuit Court, entered August 19, 2019, denying Appellant's motion for post-conviction relief following an evidentiary hearing.

Appellant timely filed and served a Notice of Appeal on September 17, 2019. (ROA III 855-856).[1] This Court has jurisdiction over this matter pursuant to Florida Statutes § 35.043 and Rule 9.030(b) and Rule 9.141(b) of the Florida Rules of Appellate Procedure.

Appellant remains incarcerated pursuant to the judgment of conviction that was the subject of the final order appealed herein, and is represented by Halscott Megaro, P.A., by Patrick Michael Megaro, Esq.

[1] References to the Record on Appeal will be made by "ROA" followed by the corresponding volume and page number in the record.

STATEMENT OF THE CASE

A. Procedural History

Johnathan Andrew Coleman was arrested on May 29, 2014 and charged with Aggravated Battery with a Firearm, Florida Statutes § 784.045(1)(a)(2). (ROA I 17-19). He was subsequently charged in an Information with Shooting into an Occupied Vehicle, Florida Statutes § 790.19. (ROA I 20-21). The State filed an Amended Information on March 13, 2015, charging Appellant 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. (ROA I 21-22).

Appellant 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. (ROA I 36-38).

On February 2, 2015 a motion for an order declaring the Appellant immune from prosecution pursuant to Florida Statutes §§ 776.012 and 776.032 was filed. (ROA I 36-38). A memorandum of law in support of the same motion was filed on March 4, 2015. (ROA I 36-38).

A Stand Your Ground hearing was held on March 6, 2015 and on March 13, 2015. (ROA I 36-38). On March 16, 2015 the trial court denied the defense motion. (ROA I 36-38).

The case was tried before this court and a jury between June 22-24, 2015. (ROA I 36-38). The jury returned a verdict on June 24, 2015, finding Appellant guilty of Aggravated Battery with a Firearm by special verdict (Count 1) and Shooting At, Within, or Into an Occupied Vehicle (Count 2). (ROA I 36-38).

A motion for a new trial was filed on July 2, 2015 by Josh Adams, Esq. and Ernest Mullins Esq. (ROA I 36-38). The motion, alleged, among other issues ineffective assistance of counsel by Ernest Mullins, Esq. (ROA I 36-38).

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. (ROA I 36-38). Mr. Mullins filed a motion to withdraw as co-counsel on August 21, 2016. (ROA I 36-38). The motion for a new trial was subsequently denied. (ROA I 36-38).

Appellant 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. (ROA I 36-38).

A timely Notice of Appeal was filed on September 4, 2015 by the Office of the Public Defender. Josh Adams subsequently filed a motion to withdraw. (ROA I 36-38).

The trial court denied the defense motion for a new trial on September 18, 2015. (ROA I 36-38).

On January 5, 2016 Appellant prosecuted the direct appeal to the Fifth District Court of Appeal, Case # 5D15-3259. (ROA I 36-38). Multiple issues were raised on appeal: 1) the trial court abused its discretion in denying Appellant'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 Appellant 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. (ROA I 36-38).

The Fifth District Court of Appeal per curiam affirmed the lower court judgment on March 21, 2017. (ROA I 36-38).

On April 5, 2017 Appellant 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. (ROA I 36-38).

On April 26, 2018, Appellant filed a motion for post-conviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. (ROA II 35-818). In that motion, Appellant 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 Appellant'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. Id.

On May 22, 2019, the court below issued an order denying the Rule 3.850 motion, finding Claim A was barred as it had been previously litigated in connection with his motion for a new trial. (ROA III 822). The court ordered an evidentiary hearing to be held on the remainder of the claims raised therein. (ROA III 822-823).

An evidentiary hearing was held before the Honorable Elaine A. Barbour on August 13, 2019. (ROA III 863-1014). At the conclusion of the hearing, the court below denied the motion on the record. (ROA III 1007-1013). A written order incorporating the oral ruling was entered on August 19, 2019. (ROA III 853).

Appellant thereafter timely filed a Notice of Appeal on September 12, 2019. (ROA III 855-856). This appeal follows.

B. Statement of the Facts

Background

This case represents Johnathan Andrew Coleman's first and only contact with the criminal justice system. (ROA III 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. (ROA III 941). His concept of a mental health disorder was "what you see on TV – you know, people in padded suits or padded rooms." Id.

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. (ROA III 911, 949). As an infantryman, he was trained to locate, engage, and destroy the enemy by fire and maneuver. (ROA III 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. (ROA III 914). That training included simulated battle scenarios, in which he learned threat assessment and how to react quickly to threats. (ROA III 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. (ROA III 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. (ROA III 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. (ROA III 919-920). During those deployments, he routinely set up vehicular checkpoints. Id.

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. (ROA III 921-922). He first deployed to Iraq in February, 2004 with the 1st Brigade Combat Team, which arrived in Kuwait first. (ROA III 922-923). His first assignment was to provide security for a convoy of military vehicles that moved from Kuwait to Baghdad, Iraq. (ROA III 923). During that first road march, he encountered enemy resistance who ambushed his convoy with grenades and small-arms fire. (ROA III 923-924).

During his deployment in Iraq, Coleman was tasked almost every day to set up stationary and roving patrols, and vehicle checkpoints. (ROA III 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. (ROA III 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. (ROA III 927). He witnessed vehicles being used as bomb carriers where they would explode and vaporize anyone in their immediate vicinity. (ROA III 929). On at least 20 occasions, he was personally attacked by vehicles who would try to run him over or blow him up. (ROA III 929).

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. (ROA III 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." (ROA III 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. (ROA III 930, 933). 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. (ROA III 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. (ROA III 950, 973). Because he did not have any college credits, law enforcement was not an option. (ROA III 950). He then began a career as an armed security guard, the only line of work that was available to him. (ROA III 957, 973).

Underlying Incident and Arrest

On May 5, 2014, the complaining witness in this case, Aimee Guillory, was arrested and prosecuted in Orange County Case # 2014-MM-004628. (ROA II 714-715). On that date, Guillory attempted to run over Diandra Reeves with her car as

Reeves was on foot. (ROA II 714-715). When she failed to do so, Guillory got out of her car and started punching Reeves. (ROA II 714-715). The incident was witnessed by an eyewitness, who gave a sworn statement to police to that effect. (ROA II 714-715).

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. (ROA II 38). She started arguing with an individual named Vincent Johnson, who was on foot, and repeatedly attempted to run him over with her car. (ROA II 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. (ROA II 38-40).

Johnathan Andrew Coleman was working as an armed security guard at the Palm Grove Apartments. (ROA II 38). At approximately 8:15 p.m. Coleman heard a loud commotion and witnessed Guillory attacking Johnson. (ROA II 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. (ROA II 40).

Guillory stopped and exited her vehicle and started shouting at Johnson. (ROA II 40). Several bystanders started yelling that Coleman did not have the authority to detain the two individuals. (ROA II 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. (ROA II 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. (ROA III 972).

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. (ROA II 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. (ROA II 41). Police and emergency medical personnel arrived shortly thereafter, and transported Coleman and Guillory to a local hospital. (ROA II 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. (ROA II 41).

Retention of Counsel

After his arrest on the instant case, Coleman retained Joshua Adams, Esq. (ROA III 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. (ROA III 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. (ROA III 939).

At some point during the pendency of the case, Ernest Mullins, Esq., joined Adams as co-counsel. (ROA III 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. (ROA III 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. (ROA III 943-944, 946-947).

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. (ROA III 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. (ROA III 946).

Stand Your Ground Hearing

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. A hearing was held on the motion on March 6, 2015 and March 13, 2015. (ROA VOL II 41). At the hearing, Guillory and Coleman testified, and provided diametrically opposed accounts of what transpired on the night in question. (ROA VOL II 41-44). Prior to that hearing, Coleman was prepared by his counsel to testify only to his experience and proficiency in handling weapons. (ROA III 946-947). At no point in time during his testimony at the hearing was he asked about whether he suffered from any mental health issues. (ROA III 948). The motion was denied, and the case proceeded to trial.

The Trial

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 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.

(ROA II 286-287).

At trial, Guillory testified. 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. (ROA II 56). Coleman also testified in his own defense. (ROA II 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. (ROA I 23).

Appellant was sentenced following an unsuccessful motion for a new trial[2] on September 4, 2015 to 25 years imprisonment, concurrently with 15 years imprisonment. (ROA I 25-31).

Direct Appeal

Coleman prosecuted a direct appeal to this Court in Case # 5D15-3259. (ROA II 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. (ROA II 55-56).

On March 21, 2017 this Court affirmed the conviction without opinion. (ROA II 55-56). A motion for rehearing and issuance of a written opinion was denied on May 4, 2017. (ROA II 55-56).

[2] The motion for a new trial was based upon ineffective assistance. Trial counsel admitted in those proceedings that he had rendered ineffective assistance, but the motion was nevertheless denied.

The Evidentiary Hearing Upon Appellant's Rule 3.850 Motion

An evidentiary hearing was held before the Honorable Elaine A. Barbour on August 13, 2019. (ROA III 863-1014). At the hearing Dr. Jeffrey Danziger, M.D., a recognized expert in the area of forensic psychiatry, testified for the defense. (ROA III 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. (ROA III 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. (ROA III 868-870).

The intrusion symptoms were persistent and unwanted bad memories that Coleman could not dismiss from his consciousness, triggered by cues and stimuli. (ROA III 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. (ROA III 870-871). Referring to the heightened arousal and reactivity, Coleman exhibited hypervigilance, which was characterized as a constant sense of danger and watchfulness. (ROA III 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. (ROA III 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. (ROA III 873). Both tests indicated that Coleman genuinely suffered from PTSD for at least 10 years. (ROA III 873). In addition, Dr. Danziger diagnosed Coleman with recurring major depressive disorder with anxious distress. (ROA III 874). Dr. Danziger's diagnoses were corroborated by Coleman's family members. (ROA III 878). 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. (ROA III 876-877).

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.

(ROA III 881).

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

The State called Ernest Mullins at the evidentiary hearing. Mullins testified that neither he nor Joshua Adams ever put Diandra Reeves on the defense witness list, or called her to testify at trial. (ROA III 986). He admitted that Coleman never denied him funds for expert witnesses, private investigators, etc. (ROA III 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. (ROA III 989-990). He also knew that Coleman had been the recipient of a Purple Heart, a Bronze Star, and a Silver Star as a result of his military service.[3] 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. (ROA III 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

[3] A Purple Heart is awarded to a military servicemember who is wounded during combat. 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. The Silver Star Medal is the military's third-highest personal decoration for valor in combat. The Silver Star Medal is awarded primarily to members of the military for gallantry in action against an enemy of the United States

> 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.

(ROA III 993-994).

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

At the conclusion of the evidence, the court below 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.

(ROA III 1009, 1011)

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. (ROA III 1012).

A written order incorporating the oral ruling was entered on August 19, 2019. (ROA III 853). Appellant thereafter timely filed a Notice of Appeal on September 12, 2019. (ROA III 855-856). This appeal follows.

SUMMARY OF THE ARGUMENT

In this self-defense case, the trial court's denial of post-conviction relief was clearly erroneous and contrary to clearly-established Federal Constitutional law where Appellant's trial counsel previously admitted on the record that he rendered ineffective assistance of counsel, failed to investigate or present a mental health defense where he knew that Appellant was an Iraq war veteran who had seen extensive combat, had been wounded in battle, and decorated for valor in combat; and failed to properly impeach the complainant with a prior instance of violence that was committing using the same modus operandi as the incident that gave rise to the charges.

ARGUMENT

POINT I – BECAUSE TRIAL COUNSEL FAILED TO INVESTIGATE A MENTAL HEALTH DEFENSE IN SPITE OF A FLURRY OF RED FLAGS AND WARNING SIGNS THAT APPELLANT WAS SUFFERING FROM POST-TRAUMATIC STRESS DISORDER AS A RESULT OF HIS COMBAT EXPERIENCE IN IRAQ, AND AS A RESULT OF THOSE EXPERIENCES, REASONABLY PERCEIVED A THREAT OF DEATH FROM THE COMPLAINANT WHO TRIED TO RUN HIM OVER WITH HER VEHICLE, AND BECAUSE TRIAL COUNSEL FAILED TO IMPEACH THE COMPLAINANT WITH A PRIOR CHARGED INSTANCE WHERE SHE ATTEMPTED TO RUN OVER ANOTHER PERSON WITH A VEHICLE, THE TRIAL COURT'S DETERMINATION THAT APPELLANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL WAS ERROR

A. Standard of Review

Because both prongs of the Strickland test present mixed questions of law and fact, this Court employs a mixed standard of review, deferring to the Circuit Court's factual findings that are supported by competent, substantial evidence, but reviewing the Circuit Court's legal conclusions de novo. Derrick v. State, 983 So.2d 443, 456 (Fla. 2008), Jeantilus v. State, 944 So.2d 500, 501 (Fla. 4th DCA 2006).

B. Argument on the Merits

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).

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.

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.

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.

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.

1. Deficient Performance

It is well-settled that under the United States and Florida Constitutions, effective assistance of counsel requires that trial counsel conduct a reasonable investigation into the facts of the case. Shelito v. State, 121 So.3d 445 (Fla. 2013); Davis v. State, 928 So.2d 1089 (Fla. 2005); Freemen v. State, 858 So.2d 319, 325 (Fla. 2003); see also Coles v. Peyton, 389 F.2d 224, 226 (4th Cir. 1968) (holding "the defendant's right to representation does entitle him to have counsel conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation

for trial"); Scott v. Wainwright, 698 F.2d 427, 429–30 (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). Moreover, "[t]rial counsel has a duty to investigate any potential . . . exculpatory evidence that may assist his or her client." Bell v. State, 965 So.2d 48, 62 (Fla. 2007).

In setting forth a claim of ineffective assistance of counsel, a defendant must demonstrate that trial counsel's conduct was unsound trial strategy. Dufour v. State, 905 So.2d 42, 51 (Fla. 2005) (citing Strickland, 466 U.S. at 689). "Judicial scrutiny of counsel's performance must be highly deferential." Id. (citing Strickland, 466 U.S. at 689). However, "a trial strategy to do nothing . . . is not an acceptable one." Williams v. State, 507 So.2d 1122, 1124 (Fla. 5th DCA), rev. denied, 513 So. 2d 1063 (Fla. 1987).

In a long line of cases, Florida courts have consistently held that an attorney's failure to present evidence of a defendant's mental illness, either as a defense to the charges, or as mitigation for sentencing, constitutes ineffective assistance of counsel. See Rose v. State, 675 So. 2d at 567, 572 (Fla. 1996) (counsel ineffective at penalty phase for failing to present evidence of severe mental disturbance, alcoholism and

mistreatment as a child); Phillips v. State, 608 So. 2d 778, 783 (Fla. 1992) (ineffective assistance of penalty-phase found where, although counsel presented some evidence in mitigation, he did not present lay testimony concerning defendant's childhood riddled with abuse, and expert testimony describing defendant's mental and emotional deficiencies); Stevens v. State, 552 So. 2d 1082, 1087 (Fla. 1989) (counsel's failure to investigate defendant's background, to present mitigating evidence during the penalty phase, and to argue mental health mitigation at penalty phase was ineffective).

In Medrano v. State, 892 So. 2d 508 (Fla. 3d DCA 2004), the Third District Court of Appeal reversed an order adjudicating the defendant guilty of violating his probation. In that case, the defendant was charged with a violation of probation after trespassing upon his ex-wife's home in violation of a full "stay-away" order of protection in favor of the ex-wife. At the guilt phase of the hearing, counsel did not present any psychiatric or psychological evidence, but did present such evidence at the sentencing phase. The Court concluded that such testimony should have been presented at the initial probation hearing as a defense to the charge, and the failure to do so constituted ineffective assistance, requiring reversal.

In Wilkinson v. State, 750 So.2d 723 (Fla. 1st DCA 2000), the First District Court of Appeal reversed the summary denial of a Rule 3.850 motion where the defendant claimed that his attorney was ineffective in failing to investigate and

pursue a voluntary intoxication defense. There, the Court held that counsel had information which indicated that the defendant suffered from both a mental illness and substance abuse, which could have established an affirmative defense at trial, and remanded for an evidentiary hearing.

In Cotto v. State, 89 So.3d 1025 (Fla. 3d DCA 2012), the defendant claimed in a Rule 3.850 motion that his attorney was ineffective for failing to even investigate the applicability of an insanity defense, much less present one. The trial court summarily denied the motion. The Third District Court of Appeal reversed, holding that evidence in the record regarding the defendant's mental infirmities, coupled with counsel's admission that he failed to investigate an insanity defense, was sufficient to warrant an evidentiary hearing since those allegations would entitle the defendant to relief.

The clearest guidance can be found in this Court's precedent. In State v. Jackson, 204 So. 3d 958 (Fla. 5th DCA 2016), this Court specifically held that "[t]he defenses of insanity and self-defense can be presented together if the evidence of insanity helps to explain why the defendant believed his or her life was in imminent danger." Id. at 963, citing Martin v. State, 110 So. 3d 936, 939 (Fla. 1st DCA 2013); Wallace v. State, 766 So. 2d 364, 371 (Fla. 3d DCA 2000).

Here, trial counsel was presented with a number of red flags that any reasonable attorney would have recognized as indicators that Coleman suffered from

a mental illness that directly explained why he believed his life was in imminent danger.

At the Rule 3.850 evidentiary hearing, trial counsel admitted that he knew several key facts prior to trial: (1) that Coleman had seen extensive combat in Iraq, (2) the nature of that combat experience; (3) that Coleman had actually received several military decorations for valor in combat and wounds in combat, (4) that Coleman believed that his life was in danger when the complainant sped her car towards him (5) that before attempting to run over Coleman, the complainant had attempted to run over at least two different people on two prior occasions and thus had a demonstrated history of using her car as a weapon.

Despite these red flags, counsel never even had Coleman evaluated by a mental health specialist to assess whether he did suffer from a mental illness that impacted his ability to perceive danger. Had counsel done so, he would have been in a position to make a reasonable tactical or strategic decision, and the posture of this case would be quite different. 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). 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 set forth in Strickland v. Washington and its progeny and must be reversed.

Additionally, counsel never impeached the complainant with her prior documented history of using her car as a weapon in an attempt to run people over. This also constituted deficient performance.

The Florida Supreme Court has defined "reverse Williams Rule" evidence as evidence "that an accused may show his or her innocence by proof of the guilt of another." Rivera v. State, 561 So.2d 536, 539 (Fla. 1990). Such evidence is admissible by a defendant when introduced to prove a relevant character trait of the complaining witness. See Florida Statutes § 90.404(1)(b)(1), "For example, evidence that a victim is violent may be admitted in a case where self-defense is an issue." State v. Storer, 920 So.2d 754, 757 (Fla. 2d DCA 2006).

Failure to impeach a witness is a ground for a claim of ineffective assistance of counsel. Isidore v. State, 181 So.3d 1227 (Fla. 3d DCA 2015); see also Kelly v. State, 198 So.3d 1077 (Fla. 5th DCA 2016) (holding failure to impeach a witness may amount to ineffective assistance of counsel, warranting relief). A failure to impeach a witness is especially crucial when the credibility of witnesses becomes central to the trial. Id. at 1078.

In Kegler v. State, 712 So.2d 1167 (Fla. 2d DCA 1998), trial counsel failed to impeach two crucial state witnesses, whose testimonies, led to the conviction of the defendant. The testimony of one of the witnesses significantly contradicted their statement that was given during the night of the murder. The court found that the trial counsel's failure to impeach one of the witnesses that testified was not reasonable under the circumstances of this case. Id. at 1169.

Here, the jury was presented with two diametrically opposed accounts of what occurred on May 28, 2014. Aimee Guillory testified she was a victim of an unprovoked attack. Johnathan Andrew Coleman testified that he acted in self-defense as a person tried to run him over with her car after she had already intentionally struck another man right before his eyes. Thus, credibility was the central issue in the case. The failure to impeach the complainant with her documented history of using her car as a weapon against people constituted deficient performance.

2. Prejudice

To demonstrate prejudice under Strickland, "[t]he 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 is a probability sufficient to undermine confidence in the outcome." Thompson v. State, 990 So.2d 482, 487 (Fla. 2008). As the Florida Supreme Court has repeatedly held, "this standard requires a demonstration that the result of the proceeding has been rendered unreliable, and our confidence in the outcome of a proceeding has been undermined by counsel's deficiency." Id. at 490.

Here, the court below never made any findings with respect to prejudice. However, it is clear that had counsel investigated and presented a mental defense along with self-defense, the jury would have had additional information to assess whether Coleman had formed the criminal intent to unlawfully attack the victim. That information would have been expert witness testimony by a licensed psychiatrist, whose testimony would have been corroborated by Coleman's military record. Additionally, had the jury been presented with relevant information that the complainant had a proclivity for violence using her vehicle as a weapon, and thus a violent characteristic trait, the jury would have assessed her credibility quite differently.

Because of counsel's failures, the jury was deprived of this relevant evidence that would have placed the allegations against Coleman in a completely different light. The result of the trial would have been different had such testimony been presented, thus satisfying the second prong of Strickland. Accordingly, reversal is required.

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, Johnathan Andrew Coleman respectfully asks this Court to reverse and vacate the lower court's order denying his Rule 3.850 motion, and grant the same. Appellant respectfully requests the judgment and sentence entered against Johnathan Andrew Coleman on September 4, 2015 be vacated and set aside as it is in violation of the United States and Florida Constitutions, and grant such other and further relief as this Court may deem just, proper and equitable.

Dated: January 13, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and Florida E-Filing on January 13, 2020

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Initial Brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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