

1 IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
2 IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA  
3 CRIMINAL JUSTICE DIVISION

4 STATE OF FLORIDA,

5 Plaintiff.

CASE NO: 00-CF-016798

6 vs.

DIVISION: J

7 DAVID LEE GREEN,

8 Defendant.  
9 \_\_\_\_\_/

10  
11 TRANSCRIPT OF PROCEEDINGS

12  
13 BEFORE:

HONORABLE SUSAN G. SEXTON

14 TAKEN AT:

Courtroom 8  
Courthouse Annex  
Tampa, Florida

15  
16 DATE AND TIME:

January 5, 2011  
1:30 p.m. docket

17  
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Taiheas Stubbs  
Electronic Court Reporter

19 TRANSCRIBED BY:

Randel Raison  
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## P R O C E E D I N G S

1  
2 THE COURT: I appreciate your patience. I guess you  
3 know, the first one went over a little bit. But we're here on  
4 the State of Florida v. David Lee Green, case 00-16798. And  
5 representing Mr. Green, would you state your name for the  
6 record?

7 MS. FRUSCIANTE: Crystal Frusciante.

8 THE COURT: And would you spell your last name?

9 MS. FRUSCIANTE: F-r-u-s-c-i-a-n-t-e.

10 THE COURT: Okay.

11 MR. UFFERMAN: And Michael Ufferman, Your Honor.

12 THE COURT: Okay.

13 MR. UFFERMAN: And I saw from the previous attorneys that  
14 everyone remained seated when they're addressing the Court.  
15 And I'm not used to doing that. Is that what you'd rather --

16 THE COURT: That's fine.

17 MR. UFFERMAN: -- we do?

18 THE COURT: That's fine.

19 MR. UFFERMAN: Okay.

20 THE COURT: All right. Mr. Green, would you state your  
21 name for the record, sir?

22 THE DEFENDANT: David Lee Green.

23 THE COURT: All right. And representing the State, Miss  
24 Carmona?

25 MS. CARMONA: Yes, Your Honor, Ada Carmona standing in.

1 for Miss Doherty.

2 THE COURT: Okay. Now, we have Mr. Green and we have two  
3 attorneys as witnesses or one? How many witnesses do we have  
4 for the -- it is the Defendant's burden to go forward as I  
5 know, and I'm not sure who's lead counsel in this.

6 MR. UFFERMAN: We're -- I think we're kind of co-counsel,  
7 Your Honor. I was going to address some preliminary matters  
8 and then our intention is to present one witness initially,  
9 who would be Mr. Pumphrey, who's an expert witness --

10 THE COURT: Okay.

11 MR. UFFERMAN: -- who we intend to call. And then I  
12 understand the State is going to call one witness who was Mr.  
13 Green's trial attorney, --

14 THE COURT: Okay.

15 MR. UFFERMAN: -- Mr. Tison.

16 THE COURT: Okay.

17 MR. UFFERMAN: And then we may have Mr. Green as a  
18 rebuttal witness after that.

19 THE COURT: All right. Let me have at this point all the  
20 witnesses, you can remain seated, just raise your right hands  
21 please. Do each of you solemnly swear or affirm the testimony  
22 you're about to give is the truth, the whole truth, and  
23 nothing but the truth?

24 (Multiple voices responded affirmatively.)

25 THE COURT: All right. Let the record reflect all the

1 witnesses agreed. All right, what were the matters that you  
2 needed?

3 MR. UFFERMAN: First, Your Honor, we would invoke the  
4 rule.

5 THE COURT: Okay. The expert is aware of testifying and  
6 what the rule -- invoking the rule means, is that correct,  
7 sir?

8 MR. PUMPHREY: Yes, ma'am.

9 THE COURT: Okay. If you would just step outside, both  
10 of you. Thank you. And counsel, since there's two of you,  
11 when you -- whoever's speaking, just state your name so the  
12 record's clear. So, --

13 MR. UFFERMAN: This is Michael Ufferman. Your Honor, the  
14 other matters I wanted to address, by way of background, I  
15 know you already know this, but just to set the table for  
16 today. Mr. Green had previously filed a --

17 THE COURT: Right. And this is reversed.

18 MR. UFFERMAN: -- pro se 3.850 motion. Correct. And  
19 some of the claims were summarily denied. There was  
20 previously an evidentiary hearing on one of the claims that --

21 THE COURT: And I forget. Who had that, Judge Black?

22 MR. UFFERMAN: It was Judge Black, Your Honor.

23 MS. CARMONA: It was Judge Black.

24 THE COURT: Okay. Excuse me.

25 MR. UFFERMAN: And the case went up on appeal.

1 THE COURT: Right. I knew that it had and it came back  
2 on this issue.

3 MR. UFFERMAN: It came back just on the --

4 THE COURT: -- ironically, entrapment, which is --

5 MR. UFFERMAN: Yes, Your Honor. So it's the second  
6 entrapment issue in front of you today. So the issue is --

7 THE COURT: Correct.

8 MR. UFFERMAN: -- whether or not Mr. Tison was  
9 ineffective for failing to present the entrapment defense.

10 THE COURT: Right.

11 MR. UFFERMAN: The only thing we intend to present Mr.  
12 Pumphrey. At the conclusion, we'd ask if we could make a  
13 short argument citing some case law.

14 THE COURT: We're fine. We don't have anything after  
15 this.

16 MR. UFFERMAN: And the only thing, I've talked to the  
17 State and we both agree and we'd ask the Court to take  
18 judicial notice of the record --

19 THE COURT: The court file.

20 MR. UFFERMAN: -- in this case. The court file.

21 THE COURT: Okay. Any objection to that?

22 MS. CARMONA: No.

23 THE COURT: Okay, I will. All right, so you're ready to  
24 proceed with your first witness?

25 MR. UFFERMAN: Yes, Your Honor. And then Miss Frusciante

1 is going to be presenting Mr. Pumphrey.

2 THE COURT: Okay. That's fine. Can you go get him?

3 THE BAILIFF: What's the name?

4 MR. UFFERMAN: Pumphrey.

5 THE COURT: Are you saying Pumphrey or?

6 MR. UFFERMAN: Pumphrey, Your Honor. I apologize.

7 THE COURT: Okay.

8 MR. UFFERMAN: It's P-u-m-p-h- --

9 THE COURT: Okay. I thought that's what you said.

10 MR. UFFERMAN: -- r-e-y.

11 THE COURT: And then I wasn't sure if I heard it  
12 correctly.

13 MR. PUMPHREY: Judge, may I come --

14 THE COURT: Yeah, that's fine. Come on up and take the  
15 stand. And if you'll, when you get settled, just state your  
16 name and spell your last name for the court reporter.

17 MR. PUMPHREY: My name is Don Pumphrey, Jr. Last name is  
18 spelled P as in Paul, u-m-p-h-r-e-y, --

19 THE COURT: Okay.

20 MR. PUMPHREY: -- Junior.

21 THE COURT: All right. And counsel, you're going to be  
22 cross? I mean direct.

23 MS. FRUSCIANTE: Yes.

24 **DON PUMPHREY,**

25 (Having been duly sworn, was examined, and testified as follows.)



## DIRECT EXAMINATION

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BY MS. FRUSCIANTE:

Q Mr. Pumphrey, would you tell us about your education, please?

A I finished my degree at Florida State University in 1989 with a Bachelor of Science in criminology. And after that, I went through the Pat Thomas Law En- -- which is now known as the Pat Thomas Law Enforcement Academy. I joined what formally was known as the Florida Marine Patrol and went through their academy, which was approximately five to six months. You had to live there and they had not only the basic criminal justice standards and training, they also had specialized training in drug interdiction, search and seizure, vessel safety, boating things like that. And so I spent those five months receiving all of that training and the criminal justice standards and training. And then I spent time as a law enforcement officer. I requested to go to South Florida and I was in law enforcement Dade and Broward County. I worked out of the Dade County office. I did that from 1989-1990 to about 1991 and did a number of cases. I worked with DEA, customs. I believe we worked with the FBI several times on drug interdiction cases, also search and seizure cases, things like that. A lot of drug stuff. I also worked an off duty detail with DEA at their lab and also their warehouse facility. So a lot of interaction with law enforcement during that period of time. I actually held my standards until 1999. But I left full-time status and took a job

1 clerking with a law firm. Applied to law school at Stetson  
2 University College of Law where I attended law school and  
3 participated in advanced trial advocacy. I knew I wanted to be a  
4 trial lawyer. And because of my law enforcement background, I had  
5 anticipated becoming a prosecutor. Went through all the advanced  
6 trial advocacy courses. I also tried out for and competed, and was  
7 accepted as an advocate on Stetson's trial team, which at that time  
8 was pretty well nationally known. And then afterwards, accepted a  
9 job with the Pinellas Pasco State Attorney's Office for Mr. Bernie  
10 McCabe where I worked as an Assistant State Attorney. And started  
11 out in the misdemeanor division. Worked my way up pretty quickly,  
12 to where I was what they called a lead trial attorney. I  
13 supervised an entire division of attorneys where during that period  
14 of time we were assigned a rotation for first appearances. I was  
15 on a DUI manslaughter task force. I was one of those guys that  
16 didn't, you know, work 38 hours. I had time sheets where I worked  
17 60 and 70 hours because I enjoyed what I was doing and I loved it.  
18 So reviewed thousands of cases during that period of time. Mr.  
19 McCabe's office has a three-year commitment. I gave them that  
20 three-year commitment and during that period of time I tried  
21 approximately, 75 jury trials, and I think about 45 of those were  
22 felonies. So, --

23 THE COURT: Are you -- what are -- are you offering him  
24 as an expert in what area is what I'm --

25 MS. FRUSCIANTE: Criminal --

1 THE COURT: -- you didn't say initially.

2 MS. FRUSCIANTE: -- defense trial work.

3 THE COURT: Criminal defense trial work?

4 MS. FRUSCIANTE: Yes, Your Honor.

5 THE COURT: Okay. Great. So after that, you left and  
6 you became a criminal defense lawyer?

7 MR. PUMPHREY: I did.

8 THE COURT: Okay.

9 BY MS. FRUSCIANTE:

10 A In 1999, I wanted to stay at the office, but I had a  
11 child at home, I had a wife that was a teacher and pregnant with  
12 our second child. And so I hung out a shingle and opened an office  
13 in Clearwater and also in my hometown in Tallassee. And ever since  
14 then, I've been busier than I know what to do with. I try a lot of  
15 cases. I probably try more cases than most of the attorneys in my  
16 circuit. I prefer to go to trial. Actually, my first defense  
17 entrapment case was done here in Hillsborough County. It was a  
18 2000 case and pretty heavy drug sting case. And since then, I've  
19 reviewed hundreds, if not thousands of cases. I've tried well in  
20 excess of a hundred trials. I haven't kept track of all of them,  
21 but it may even be close to 200 jury trials to verdict. I've had  
22 five murder cases, private murder cases, one of which was a plea to  
23 a lesser charge. The rest, ended up in acquittals. I've tried  
24 profile cases. Most recently, I represented a trooper on a case.  
25 I have pending -- a pending solicitation case where you see a lot

1 of entrapment issues. And so, I just have a lot of criminal  
2 defense trial work.

3 THE COURT: Okay.

4 BY MR. FRUSCIANTE:

5 Q At the State Attorney's Office were you -- oh, excuse me.

6 THE COURT: No, that's all right. I'm sorry.

7 BY MS. FRUSCIANTE:

8 Q Were you also exposed to entrapment issues?

9 A I was. The one that's the most, especially in the St.  
10 Pete area in Pinellas County, there's a lot of prostitution stings.  
11 A lot of prostitution activity. And that's where you -- you know,  
12 you really have to work with law enforcement on entrapment issues.  
13 And when I'm talking about entrapment, I'm talking about subjective  
14 entrapment. You don't see a lot of objective entrapment issues.

15 Q Okay. And have you also had further training since you  
16 went to law school?

17 A I have. And I also didn't mention too, I was asked to  
18 teach to the CLI program, certified legal intern, the State  
19 Attorney's that come in that aren't bar certified. I was asked to  
20 teach there. And I also spoke to law enforcement about various  
21 legal issues to assist them during my tenure there.

22 MS. FRUSCIANTE: Your Honor, I would offer Mr. Pumphrey  
23 as an expert in criminal defense trial work at this time.

24 THE COURT: Okay. Miss Carmona, any objection?

25 MS. CARMONA: No, ma'am.

1 THE COURT: All right, he'll be received. Go ahead.

2 BY MS. FRUSCIANTE:

3 Q Mr. Pumphrey, have you had the opportunity to review the  
4 records in this case?

5 A I have, regarding Mr. Green.

6 Q Yes. And after reviewing those records, were you able to  
7 formulate an opinion with regard the -- to the viability of an  
8 entrapment defense and the effectiveness of trial counsel?

9 A I have.

10 Q Okay. And what is that opinion?

11 A My opinion is that Mr. Tison, who was the defense  
12 attorney -- very nice guy, very able defense attorney -- but it is  
13 my opinion that he should have asserted the affirmative defense of  
14 entrapment. And in my opinion, it was clear that there was a whole  
15 -- there was a clear lack -- on the records that I reviewed -- of  
16 predisposition on the part of Mr. Green. The first red flag that I  
17 saw in reviewing the score sheet is that there was no prior record.  
18 And that's one of the first big red flags in an entrapment issue is  
19 to look to see -- or in the predisposition component of entrapment,  
20 is to see whether or not the individual had any prior record. And  
21 more specifically, whether or not he had any prior record related  
22 to the offense. Now, I went further, and in looking at the  
23 Department of Corrections recommendations sheet, the -- there was  
24 an indication that he had gone through a program on a minor issue,  
25 but nothing that was related to this. And his score sheet showed

1 he had no prior record. So that was a big red flag. The -- as far  
2 as the rest of it goes, I think then at that point, there's  
3 sufficient information in the record to shift the burden to the  
4 State so that the State would then have to carry the burden beyond  
5 a reasonable doubt as to whether or not he was indeed entrapped in  
6 this particular case.

7 Q And what would be the elements that would have to be  
8 present in order to shift the burden to the State?

9 MR. PUMPHREY: Your Honor, do you mind if I cite to the  
10 jury instruction? Because I'll just follow that.

11 THE COURT: No, go ahead.

12 BY MS. FRUSCIANTE:

13 Q The standard jury instruction in Florida is 3.6(j) and  
14 I'm looking at the 2010 West Florida Criminal Laws and Rules. It  
15 supersedes the 2009 pamphlet. And in the standard jury  
16 instructions that the Supreme Court recommends, the defense of  
17 entrapment, if asserted, it's an affirmative defense. If he or she  
18 was, for the purpose of obtaining evidence -- and this is talking  
19 about, I believe Mr. Bemis in this case -- evidence of the  
20 commission of a crime, induced or encouraged to or engage in a  
21 conduct constituting the crime charged, in this case solicitation  
22 for murder and that Mister -- that in this case the individual  
23 engaged in such conduct as a direct result of such inducement or  
24 encouragement. Now if I could stop there a minute and just go over  
25 what I reviewed. It's my understanding, from looking at the

1 record, that Mr. Bemis was first interviewed while in the  
2 Hillsborough County jail. And he sought out law enforcement to  
3 supposedly report something. And there was a clear red flag there  
4 that there's an indication that he's looking to get a deal or  
5 something else and not just being a good citizen, because of the  
6 timing of everything. Obviously, he's had time to be placed into a  
7 county jail facility. And so that creates a great level of being  
8 suspect. But we have to go further than that. And I also looked  
9 at what we know, and which isn't disputed, and that is a tape-  
10 recorded set of conversations. Now I didn't listen to the actual  
11 tape recording, but the transcript clearly shows what was in that  
12 tape recording. And you will see that -- and as Mr. Tison clearly  
13 argued, even in his opening statement -- that there was a lot of  
14 suggestion, persuasion, and the majority of the conversation was  
15 not Mr. Green, it was Mr. Bemis. And so again, that all goes to  
16 the instruction and getting the instruction, or trying to convince  
17 the judge to give the instruction and showing that level of proof,  
18 you know to a preponderance that there was indeed a lack of  
19 predisposition. And so we go on through the instruction, the  
20 person who induced or encouraged -- who in this case would be Mr.  
21 Bemis -- was a law enforcement, which Mr. Bemis wasn't -- or a  
22 person engaged in cooperating with or acting as an agent of law  
23 enforcement. And he clearly was that and I don't think that's a  
24 disputed issue. And I'm conjunctive, the person induced or  
25 encouraged. What I noticed when I first got the case and started

1 reading it is that Mr. Tison was arguing that -- a couple of  
2 issues. But the one that clearly stood out is that Mr. Green was  
3 persuaded and almost -- the record indicates they had known each  
4 other for some time. They were friends. They'd get together and  
5 they'd just talk about stuff and not necessarily anything specific.  
6 And so I took that into account as well. The -- but I was more  
7 focused on the suggestive nature of things. In other words, he  
8 didn't just go in and start talking about the basketball game or  
9 anything else. He went directly, as if he was trying to solicit or  
10 trying to, you know, encourage Mr. Green into something that  
11 clearly had a time delay element to it. And so -- and was clearly  
12 sent in there for law enforcement to gather certain specific  
13 information. If the record -- I believe the record reflects that  
14 law enforcement had an agenda that they wanted Mr. Bemis to  
15 accomplish. Almost like a mission. And so that was something that  
16 I looked at as well. The person who induced or encouraged him  
17 employed methods of persuasion. Which in my opinion, the record  
18 indicates. And which did create a substantial risk that Mr. Green  
19 would commit the crime he was charged with. Which is, I believe  
20 the mission Mr. Bemis was given. Now, --

21 THE COURT: So, I'm -- you're kind of losing me. So in  
22 other words, you took -- you looked at the record as an expert  
23 does. You took the jury instruction and you're looking at it  
24 in that light. Is that fair to say?

25 MR. PUMPHREY: Yes, ma'am.



1 THE COURT: Okay. All right.

2 MR. PUMPHREY: Yes, ma'am.

3 THE COURT: Next question?

4 BY MS. FRUSCIANTE:

5 Q Okay. Now you said based upon your evaluation that you  
6 saw that there was significant evidence of both inducement, but no  
7 evidence of predisposition, is that correct?

8 A Correct.

9 Q Okay.

10 A And the biggest indicator for that is that Mr. Green had  
11 no prior record.

12 Q Now in this situation do you believe that it would be  
13 unreasonable for an attorney to fail to raise the entrapment  
14 defense?

15 A Yes.

16 Q Would there be any detriment to him raising the  
17 entrapment defense in a case like this?

18 A I can see no detriment to it. And I too tried to find a  
19 strategic reason not to assert the affirmative defense and I could  
20 find no strategic reason not to assert that defense.

21 Q And when you read the record where it appears that  
22 defense counsel is referring to basically some of the elements  
23 required with regard to entrapment, is that correct?

24 A That is correct.

25 THE COURT: Run that by me again. I'm sorry. What were

1 you saying?

2 MS. FRUSCIANTE: That defense counsel made argument --

3 THE COURT: In the record of the trial transcript, you're  
4 talking about?

5 MS. FRUSCIANTE: Yes.

6 THE COURT: Okay. Mr. Tison brings up things that would  
7 allude to an entrapment?

8 MS. FRUSCIANTE: Yes.

9 THE COURT: Okay. But then never asserts it --

10 MS. FRUSCIANTE: No.

11 THE COURT: -- by asking for the jury instruction, --

12 MS. FRUSCIANTE: Yes, ma'am.

13 THE COURT: -- is that what you're saying? Okay. Is  
14 that correct?

15 MR. PUMPHREY: That is.

16 THE COURT: Okay.

17 BY MS. FRUSCIANTE:

18 Q Now, do you believe that there's a reasonable probability  
19 that if the entrapment defense had been raised that the result in  
20 this case would have been different?

21 A I do.

22 Q Why do you say that?

23 A I think there's a reasonable -- a reasonable probability  
24 that there would have been a different result because first of all  
25 the jury -- the jury wasn't directed as to entrapment and -- and

1 the elements, although discussed and argued and solicited from the  
2 witnesses, and showing what Mr. Bemis did in the record as far as  
3 the tape recording, in my opinion, there would be a reasonable  
4 probability that the jury would come to a different -- a different  
5 verdict because they would be focused on the affirmative defense,  
6 the lack of predisposition, the issues -- the disputed issues that  
7 were clearly disputed in the case would be given to the jury and --  
8 and the judge, in his or her discretion, would direct and instruct  
9 the jury on those particular elements. So, based on the record, my  
10 review of the record, the standard jury instruction, and my -- my  
11 experience in trying you know cases, including an entrapment case -  
12 - or entrapment cases, or evaluating cases that perhaps involved  
13 subjective entrapment, I do believe there's a reasonable  
14 probability there'd be a different outcome.

15 Q Now you're aware of the theory of the case that defense  
16 counsel did put forth during this case, correct?

17 A It -- it appeared that a component of his case, or -- or  
18 all -- although he was -- he was giving everything for entrapment,  
19 he -- he had a theory that, although the words were said, he just  
20 didn't mean them. But I think -- I think that is something that  
21 goes along with the entrapment because I think even in Mr. Bemis's  
22 testimony, or in a deposition, he -- he -- even Mr. Bemis wasn't  
23 sure whether he was serious about something or. You know, it  
24 seemed like a lot of vagueness. But what was very clear, was the  
25 suggestive nature and the mission of Mr. Bemis, and the fact that

1 Mr. Green, undisputed, had no prior record significant to this  
2 charge.

3 Q Okay. Now, would raising the entrapment defense have  
4 been inconsistent with the defense that was put forth by the  
5 defense attorney?

6 A Not at all. Not in my opinion.

7 MS. FRUSCIANTE: I have no further questions.

8 THE COURT: Okay. Any questions?

9 MS. CARMONA: Yes. Judge, and I'm old school. I can't  
10 sit down and direct the witness, so if the Court will allow  
11 me?

12 THE COURT: If you want to, I don't care.

13 MR. PUMPHREY: It makes me uncomfortable too when you sit  
14 down.

15 **CROSS-EXAMINATION**

16 BY MS. CARMONA:

17 Q Okay, so how many entrapment cases have you either  
18 defended as a prosecutor or put forward as a defense attorney?

19 A Actual jury verdict to trial, one. But I could not tell  
20 you how many I've evaluated or handled, either as a prosecutor or a  
21 defense attorney. There'd just be no way.

22 Q Because whenever you were evaluating a case as a defense  
23 attorney, you look at the facts that are presented?

24 A Uh-huh, (affirmative). Yes.

25 Q And your interview of your client?

1 A Yes.

2 Q What your client tells you the facts are, if in fact they  
3 give you all of the facts?

4 A Yes.

5 Q And then you apply your legal knowledge and see what  
6 potential defenses there may be?

7 A Yes.

8 Q Or what potential motions there may be?

9 A Yes.

10 Q The one case that you prosecuted, or defended, was the  
11 one here in Hillsborough County?

12 A It was.

13 Q And in that case, the defendant had been approached by a  
14 agent of the -- of law enforcement?

15 A Actually, the -- and this is going back almost ten years  
16 -- but the -- the individual, or individuals, because it was my  
17 belief there was a group, but the individual who had approached him  
18 had begun prior to law enforcement's involvement.

19 Q And at what point did law enforcement become involved in  
20 that case?

21 A At some point, it was an inmate and the individual was a  
22 corrections officer. And the inmate notified someone and it then  
23 led to what was the Inspector General's Office, which still exists  
24 --

25 Q And after -- I'm sorry. I didn't mean to interrupt.

1 Then after law enforcement got involved, there were several  
2 contacts between the defendant and the agent of the State?

3 A Yes, I believe so. And -- and please correct me if I'm  
4 wrong, somewhat similar to this case. I believe Mr. Bemis, there  
5 was some issue about some communications that law enforcement was  
6 unable to monitor, which --

7 Q Well, we'll --

8 A -- reminds me that that's an issue you want to look at is  
9 whether or not this person is acting -- after they've notified law  
10 enforcement, whether they're acting on their own.

11 Q What exactly was it that you reviewed in order to come to  
12 your assessment today that Mr. Tison was ineffective when he  
13 represented the defendant in 2002?

14 A The record at trial.

15 Q Just the record at trial?

16 A And the sentencing.

17 Q And the sentencing. Were you provided with any of the  
18 communications between Mr. Tison and the Defendant?

19 A No.

20 Q And you know that there was a prior hearing between -- in  
21 reference to ineffective assistance of counsel and --

22 A I think --

23 Q -- this Defendant?

24 A -- I was made aware of that. But I did not review that  
25 aspect of the case.

1 Q And you were -- you did not review any of the  
2 depositions?

3 A I did review a deposition of Mr. Tison, the sequence of  
4 it in trying to make a determination of whether or not his  
5 reasoning for not asserting an affirmative defense -- if there was  
6 a reason that I -- I could agree with.

7 Q And that was the deposition that was taken pursuant to  
8 the prior hearing on the grounds that the Court had originally  
9 granted the post-conviction motion and granted a hearing a some of  
10 those issues?

11 A I would assume so based on the questioning in the  
12 transcript. But I --

13 Q So you did not view any of the depositions that were  
14 taken by Mr. Tison or by Mr. Terrana during the representation of  
15 the Defendant?

16 A No, I did not.

17 Q And you did not read any of the police reports in a  
18 relation to the -- to this crime?

19 A That's correct.

20 Q Okay. When do you believe that law enforcement -- that  
21 law enforcement got involved in this case?

22 A As far as? I -- I'm not clear on what time you mean.

23 Q When was it that law enforcement first became involved in  
24 this case -- in the investigation of this case and of the activity  
25 that your client resulted in a potential entrapment defense?

1 A When Mr. Bemis wanted to make contact with them.

2 Q And --

3 A After he was arrested and in the -- I think it was the  
4 Hillsborough County jail.

5 Q And how soon -- do you know how soon after he first spoke  
6 to law enforcement, how soon it was that Mr. Bemis spoke to the  
7 Defendant?

8 A I think it was -- I think there was a gap period of time.  
9 Because if I remember correctly, there was an initial investigator  
10 who interviewed him at the jail facility I believe --

11 THE COURT: Interviewed who, Bemis or the Defendant?

12 MR. PUMPHREY: Mr. Bemis.

13 THE COURT: Mr. Bemis.

14 BY MS. CARMONA:

15 A Mr. Green was at home, or wherever he was. But Mr. Bemis  
16 notified, they interviewed him, and then there was a gap of time  
17 that he then was released. And I believe it was Detective Durantz  
18 (ph), if I'm cor- --

19 Q Durants (ph).

20 A -- Durants, then interviewed him again. And I think Mr.  
21 Bemis even said basically the same things. So there was a time  
22 delay and then I think it was Detective Durants who basically put a  
23 wire on him and said these are the things, you know, I need to get.

24 Q If the record reflects that your client can -- or that  
25 the Defendant and Mr. Bemis had an original conversation back in



1 July where the -- where Mr. Bemis alleges -- or Mr. Bemis stated  
2 that Mr. Green approached him with the offer to kill his wife, do  
3 you have any reason, or is there anything in the record that leads  
4 you to believe that that did not happen?

5 A Yes.

6 Q What in the record is there that leads you to believe  
7 that there was not a contact between Mr. Bemis and the Defendant in  
8 July?

9 A And let me clarify something, you're saying July. If I  
10 remember correctly, Mr. Bemis wasn't sure when this happened. He  
11 was trying to guess dates and times. So excuse the time line, but  
12 I think what you're trying to get to is, was there some  
13 communication with Mr. Bemis.

14 Q In the summer of 2000, based on the police reports?

15 A Right. I didn't review the police reports, but based on  
16 the transcript and the record at trial, it does appear that Mr.  
17 Bemis was alleging at some point in time, before he was arrested  
18 and placed in the jail, and what time distance I don't know and  
19 that's what I'm trying to be clear on.

20 Q If the record reflects that sometime during the summer of  
21 2000, Mr. Bemis was in jail and he had communications with Mr.  
22 Green, and Mr. Green agreed to bond him out, is there anything that  
23 leads you to believe that that did not happen, if that's what the  
24 record reflects?

25 A No, if that's what the record reflects, it is what it is.

1 Q And are you aware that Mr. Bemis testified that when the  
2 Defendant lent him the \$300, or bonded him out for \$300, that  
3 during that conversation in the summer the Defendant first broached  
4 the proposition that he -- meaning Mr. Green -- wanted Mr. Bemis to  
5 kill his ex-wife?

6 A According to Mr. Bemis's testimony in the trial  
7 transcript, there was some communication to that effect.

8 Q And that was prior to law enforcement involvement in July  
9 or the summer of 2000, if that's what the record reflects?

10 A If that's what the record reflects. But it -- the only  
11 reason I'm hesitating on that is because if you analyze that  
12 record, Mr. Bemis is very vague about when things occurred and --  
13 and -- and also, and that's an issue of fact for the jury to make,  
14 you know a determination on.

15 Q I understand that, sir, but --

16 A But I'm just trying -- I'm trying to be --

17 THE COURT: All right, hold on. Hold on. I -- go ahead  
18 and finish up and I -- what were you going to say? Because I  
19 don't want to get the record --

20 BY MS. CARMONA:

21 A No, I think what's throwing me off is you keep saying  
22 July and I'm -- I'm trying to just be specific as to --

23 Q It was the summer of 2000?

24 A Yes.

25 Q Okay, at --

1 A At some point.

2 Q Sometime in the summer of 200?

3 A Yes.

4 Q Okay. All right. And Mr. Bemis is then released from  
5 jail because Mr. Green lent him \$300 --

6 A I believe --

7 Q -- to bond him out?

8 A Yes, I believe you're correct.

9 Q And Mr. Bemis testified that shortly after he was  
10 released in the summer of 2000, that is when he goes to Mr. Green's  
11 house and Mr. Green first broaches the subject of, hey, I have a  
12 insurance job for you to do, I want you to off my wife?

13 A Something to that effect, yes.

14 Q The record reflects that?

15 A Yes.

16 Q That that happened in the summer of 2000?

17 A Yes.

18 Q And that at that time there was the conversation,  
19 according to Mr. Bemis, between Mr. Bemis and the Defendant where  
20 the Defendant tells Mr. Bemis that the Defendant has a \$50,000  
21 insurance policy on the wife and that he would give the Defendant -  
22 - that he would give Mr. Bemis half of it in order to kill his  
23 wife?

24 A Something to that effect, yes.

25 Q Right. And that is in July?

1 THE COURT: Well it's in the summer.

2 MS. CARMONA: Oh, well in the summer. I apologize.

3 THE COURT: Okay.

4 MR. PUMPHREY: No, and I --

5 THE COURT: Let me just -- let me just say this. We  
6 don't -- sometimes I think prosecutors think it's a jury  
7 trial. I'm going to review the record. So all we need from  
8 the expert is this is what I reviewed and this is basically my  
9 opinion. Do you have any other questions?

10 BY MS. CARMONA:

11 Q There was no law enforcement involvement in -- in those  
12 conversations?

13 THE COURT: He's already said that.

14 BY MS. CARMONA:

15 Q It's not until September -- or until September the 30th  
16 that the Defendant -- that Mr. Bemis meets with law enforcement?

17 A Right. You're right. And the -- and the point to that,  
18 what concerned me in reviewing the record is I couldn't establish  
19 the time -- I was trying to -- you always want to establish some  
20 type of time line to see when these things happened. But Mr.  
21 Bemis, if -- if I remember the record correctly, was very vague on  
22 when this happened and -- and suddenly he's back in jail, I believe  
23 on another offense, having just gotten out of jail, and then  
24 suddenly, rather than having gone to law enforcement when this  
25 alleged conversation that's so serious takes place, it then occurs

1 at the jail that he reaches out to law enforcement and says, hey.  
2 Something to that effect. But I think you're right. Sometime in  
3 the summer and then later on is when he's in custody again, he  
4 reaches -- if I'm following you correctly.

5 THE COURT: Okay. Anything else from the State?

6 BY MS. CARMONA:

7 Q The Defendant never admitted that he had in fact  
8 committed the offense of solicitation, correct?

9 THE COURT: First of all, question. Did the Defendant  
10 testify?

11 MS. CARMONA: Yes, ma'am, she did.

12 THE COURT: Okay.

13 MS. CARMONA: He did.

14 THE COURT: All right. So you talked to -- you reviewed  
15 the trial transcript, the Defendant's testimony. Did he ever  
16 admit, when he testified, that he in fact committed this?

17 MR. PUMPHREY: I think that's a mixed question, but I  
18 think I can clear it up this way. When -- on the tape -- when  
19 the tape is played, he clearly says the words, to be charged.  
20 And I think the defense's argument was he didn't mean it. And  
21 so I think that's what you're asking me. Am I right?

22 MS. CARMONA: Correct.

23 MR. PUMPHREY: Okay.

24 BY MS. CARMONA:

25 Q Did he ever admit that he intended to solicit Mr. Bemis

1 to kill his ex-wife?

2 A I don't think he ever admitted that he in- -- that he  
3 meant the words that he said.

4 Q And --

5 A I don't think the words he said are disputed.

6 Q And in order for there to be an entrapment defense --

7 THE COURT: We'll hear that on -- we'll hear that on  
8 argument.

9 MS. CARMONA: All right. I don't have any more  
10 questions, Judge.

11 THE COURT: All right. Anything further?

12 MS. FRUSCIANTE: No, Your Honor.

13 THE COURT: Is this witness excused?

14 MR. UFFERMAN: Yes, Your Honor.

15 THE COURT: Thank you.

16 MR. PUMPHREY: Thank you.

17 THE COURT: Thank you, sir.

18 MR. PUMPHREY: Thank you, Your Honor. It was very nice  
19 to meet you.

20 THE COURT: Thank you. All right, any other witnesses?

21 MR. UFFERMAN: No, Your Honor. Defense rests.

22 THE COURT: All right.

23 MS. CARMONA: Mr. Tison.

24 THE COURT: Mr. Tison. Okay. All right, Mr. Tison.

25 Because we are going to review -- we're going to review the

1 entire trial transcript. The entire trial transcript will be  
2 read. It has been already. And all the hearings. So it's  
3 not as if it's with a jury. Just wanted --

4 MS. CARMONA: Please forgive me, Judge, I --

5 THE COURT: Just wanted to cover the bases. All right,  
6 Mr. Tison, if you'll take the stand. You've been placed under  
7 oath. The State is calling you.

8 MR. TISON: Yes, Your Honor.

9 THE COURT: And Miss Carmona.

10 **WILLIAM W. TISON, III,**

11 (Having been duly sworn, was examined, and testified as follows.)

12 **DIRECT EXAMINATION**

13 BY MS. CARMONA:

14 Q Mr. Tison, could you please tell us your name and spell  
15 your last name for purposes of the record?

16 A My legal name is William W. Tison, III, and it's T as in  
17 Tango, I as in India, Sierra, Oscar, Nevada.

18 Q And how are you employed, sir?

19 A I'm an attorney here in Tampa doing --

20 Q How --

21 A -- criminal defense work and personal injury.

22 Q How long, and obviously, you're a member of the Florida  
23 Bar?

24 A Yes.

25 Q And how long have you been a member of the Florida Bar?

1 A I think since 1990, '90, '91. Somewhere in there.

2 Q When did you first become a criminal defense attorney?

3 A 1998.

4 Q What did you do between 1990 and 1998?

5 A I think in 1990 I was finishing up with a insurance  
6 defense firm up in Atlanta and I resigned and sought the job of  
7 being a prosecutor and Mr. James -- Bill James was the State  
8 Attorney at the time, he gave me a job and I prosecuted from  
9 approximately '91 to '98.

10 Q And during your tenure with the State Attorney's Office,  
11 did you handle any felony cases?

12 A Yes.

13 Q And how -- and how many jury trials did you have as a  
14 prosecutor?

15 A Over a hundred pretty easy.

16 Q And did you handle any cases that involved, or did you  
17 evaluate any cases as a prosecutor that raised issues of  
18 entrapment?

19 A Yes.

20 Q Did you have to defend any cases as a prosecutor where  
21 the entrapment defense had been raised?

22 A Yes.

23 Q When you became a private -- private lawyer, what does  
24 the majority of your caseload consist of, criminal versus non-  
25 criminal?



1 A I'm sorry. Could you repeat the question?

2 Q What percentage of your work is criminal, Mr. Tison?

3 A Currently, probably if I had to guess, I would say 50/50.

4 Q And how many cases do you think -- criminal cases do you  
5 think you handled during your tenure as a defense attorney?

6 A Over a thousand I'm sure. I mean, I'm -- I'm  
7 approximating. I'm doing this off the top of my head, but I'm  
8 pretty certain.

9 Q Have you ever reviewed any cases in which you thought  
10 that entrapment may be a potential defense?

11 A Yes.

12 Q Have you discarded that defense after evaluating the  
13 case?

14 A Yes.

15 Q Have you gone forward on entrapment cases in which you  
16 felt that the facts merited it?

17 A I have not, only because I have not had a case where I  
18 thought entrapment was the best defense.

19 Q Okay. Now let's talk about this case in particular.  
20 When did you first begin representing Mr. Green? At what process?

21 A I think it was probably in 2001 when the case was set for  
22 trial.

23 Q Did you take the case over from a prior attorney, Mr.  
24 Terrana?

25 A Yes.

1 Q And was Mr. Terrana appointed to represent Mr. Green?

2 A I don't remember if he was appointed or privately  
3 retained.

4 Q When you took over the case, had some depositions already  
5 been taken?

6 A Yes.

7 Q Did you continue to take the depositions in this matter?

8 A Yes.

9 Q Did you meet with the Defendant while you were  
10 representing him about the facts of your case?

11 A Absolutely.

12 Q About the facts of his case. How many times or how often  
13 do you think that you spoke to the Defendant on this case about the  
14 facts of this case?

15 A Just about the facts of the case, as opposed to trial  
16 prep? Just about the facts of the case?

17 Q Both.

18 A I don't know, but when we -- I mean the case was set for  
19 trial and there was a lot of work to be done. I probably talked to  
20 him just about -- I mean him or a family member, somebody  
21 pertaining to this case, just about every day. As to speaking with  
22 Mr. Green himself, 20 times. That's -- now that -- and I'm  
23 guessing, but probably 20 times or more pretty easily I would  
24 suspect. And in terms of actual trial prep, in terms of prepping  
25 him as a potential witness where we spent a lot of time with him,

1 that was probably I would say four times, approximating.

2 Q Prior to you taking on the case -- or after you took the  
3 case, did you have any discussions with Mr. Terrana about what the  
4 potential defenses that Mr. Terrana and the client had spoken  
5 about?

6 A Mr. Terrana and I had spoken, but I don't remember going  
7 through an inventory of, you know, his specific thoughts about the  
8 case. He just was prepared to try it on the day of trial and I  
9 understand that he was terminated on the day of trial. And I think  
10 it was a -- I'm pretty certain that it was based on lack of intent  
11 at the time.

12 Q Lack of intent to commit the crime --

13 A Correct.

14 Q -- of solicitation?

15 A Correct.

16 Q When you took over the case, did there come a time, or at  
17 any point, did you consider what the potential defenses may be for  
18 this case?

19 A Yes.

20 Q And did you ever consider whether or not entrapment was a  
21 potential defense --

22 A Yes.

23 Q -- in this case? And why did you consider, or why did  
24 you even give entrapment a thought about in this case?

25 A Because I -- my job is to zealously represent my client

1 and I was going to do whatever I could within ethical boundaries  
2 and legal boundaries to try to get him off.

3 Q Okay. And what about this case lead you to believe that  
4 perhaps entrapment may be a viable -- or may be something that you  
5 needed to look at?

6 A Well it came up, David had asked me -- or Mr. Green had  
7 asked me, and obviously, it was something that in reviewing the  
8 file, you're obviously looking for anything that you can find is a  
9 viable defense. I didn't really think it was a viable defense  
10 based on my conversations with Mr. Green and a bunch of other  
11 things. And so, but he had specifically asked me one time, you  
12 know, what about entrapment and I just told him that I didn't think  
13 that that was a viable defense, that was going to apply.

14 Q Why was entrapment not a viable defense in this case?

15 A I believed that entrapment was not a viable defense in  
16 this case based on all the facts at that point in time, as I knew  
17 them to be. Primarily that there was some pretty -- well first of  
18 all, the conduct of law enforcement in terms of putting a wire on a  
19 guy and having him go in and talk to his friend. I didn't see  
20 anything in that that was particularly egregious that I thought  
21 reached the level that would be necessary to put that on as a  
22 viable defense.

23 Q And -- or that you're talking about filing a motion to  
24 dismiss on objective entrapment based on the actions of law  
25 enforcement?

1 MR. UFFERMAN: Your Honor, this is direct examination.

2 That's getting very close to a leading question.

3 THE COURT: All right. I'll sustain it.

4 BY MS. CARMONA:

5 A I didn't see anything that I thought that a motion to  
6 dismiss the case, based on entrapment, was warranted. I didn't  
7 think it was warranted factually and I just -- I didn't see that as  
8 a viable defense. And so I didn't -- I didn't think that the facts  
9 supported it.

10 Q That now -- at when we're talking --

11 A As to a motion to dismiss.

12 Q As to a motion to dismiss. Now when we're talking about  
13 the trial tactics and the defense actually in trial.

14 A The subjective entrapment.

15 Q Did you think about a subjective entrapment defense?

16 A I thought about it.

17 Q And why --

18 A I didn't --

19 Q -- did you not pursue it?

20 A I didn't think that was viable. The -- the, again going  
21 back to conduct of law enforcement, we've already discussed that,  
22 but the -- there was evidence; there was testimony that Mr. Green  
23 had gone through a divorce. That as part of the divorce there was  
24 a point in time where he was ordered by a Hillsborough County judge  
25 to cancel a life insurance policy that he had on his ex-wife and he

1 had made some statements apparently -- he -- I guess she'd called  
2 to see if that had been done. It had not been cancelled. And the  
3 family law court, I think didn't have jurisdiction anymore to do  
4 anything about it, so I think she was advised you've got to file a  
5 separate lawsuit or something. I don't know if she filed a  
6 separate lawsuit. I don't know if she went back to the family  
7 court judge. But there was a point in time where she went back and  
8 I think it was Judge Ficarrotta said that, you know, you've got to  
9 get rid of this policy on your wife. And she couldn't do it  
10 because she didn't own the policy so the insurance company wouldn't  
11 allow her to do it. So Judge Ficarrotta apparently told him, you  
12 know you've got to cancel it. And he had made some statements as  
13 he was leaving the courtroom. I think it was attributed to him  
14 that he wasn't going to get rid of that policy, and in fact, he  
15 intended to collect on that. So that was a problem.

16 Q Was there any evidence of -- or any testimony that  
17 would've come out that he had made this type of statement that he  
18 was going to collect on that life insurance on more than one --  
19 that one occasion?

20 A In terms of --

21 Q Not through -- not that came out at trial, but that came  
22 up in depositions and other investigative manner?

23 A I think that he had -- there was evidence from -- and I'm  
24 sorry, I think the victim's name -- alleged victim was Ginger. I  
25 can't remember her name. But she had said that the Defendant, Mr.

1 Green, had made calls to her family saying that is she dead yet?  
2 You know, I want to collect on this policy, or whatever. Just  
3 following up on that kind of thing.

4 Q Now that --

5 A Either it was her family or her or those sorts of  
6 communications.

7 Q That testimony did not come out at trial?

8 A I don't believe that it did.

9 Q Would that have been damning to your client if --

10 A Yes.

11 Q And does -- do you believe, or did -- was that because  
12 you thought that that went to his predisposition to have the crime  
13 committed?

14 A Yes.

15 Q Prior to law enforcement's involvement in this case, was  
16 there communications -- was there evidence that there had been  
17 communications between your client and Mr. Bemis where your client  
18 had in fact sought out Mr. Bemis to kill his ex-wife?

19 A Yes. Mr. Bemis was going to testify that he had had  
20 conversations with him from the jail; I think once when he was  
21 trying to get bonded out. And that he got out and then I think  
22 that he -- he talked to him again at some point after he got out of  
23 jail. Had a follow up discussion with him about what it, his  
24 actual intent, you know what did you want me to do, kill your wife,  
25 of whatever the job was. And then he got arrested again. Bemis

1 got arrested again I think three or four months later he's in jail.  
2 And there's another phone call. And then eventually he gets out,  
3 meets with law enforcement, and then he goes and talks to David.  
4 But there was testimony I believe that Mr. Green had had  
5 conversations with Mr. Bemis from the jail and out of the jail,  
6 before we get to a point where they send him in with the wire,  
7 about killing his wife.

8 Q Now, --

9 THE COURT: Does Bemis -- Bemis testified at trial?

10 MR. TISON: Yes.

11 THE COURT: Okay. So he testifies -- this is what he's  
12 telling the jury that before the wire comes in that the  
13 Defendant had called him?

14 MR. TISON: That they'd had a -- I don't know who called  
15 who -- but that he'd had a conversation with Mr. Green from  
16 the jail. Mr. Bemis was in jail on other charges.

17 THE COURT: Okay.

18 MR. TISON: But they had had a conversation on the phone  
19 and then I think he said that when he got out -- when he  
20 bonded out, he went and met with Mr. Green and they had some  
21 other conversation where there was more clarification about  
22 what he meant about the job that he wanted done. And then he  
23 leaves him alone for about four months, Bemis ignores it.  
24 Bemis gets arrested against on another charge. There's  
25 another phone call from the jail and another discussion about



1 some job. And by this time, he kind of knows what it is based  
2 on prior conversations.

3 THE COURT: But then Bemis goes to law enforcement and  
4 says, by the way, I got the skinny on this. They put a wire  
5 on him. But all this comes out in front of the jury, in other  
6 words, Bemis's motive for testifying essentially?

7 MR. TISON: I believe so. Judge, I have -- Your Honor, I  
8 have not read the trial transcript. So I --

9 THE COURT: Well we're going to. I've already said we're  
10 going to.

11 MR. TISON: I don't know, but either it did come out or  
12 heading into trial that was one of the things we had to deal  
13 with in making a decision as to what defense. Because you  
14 never know exactly what's going to be testified to at trial.  
15 But that was -- those were facts that were -- they -- whether  
16 they got into evidence at trial or not, that was something to  
17 be considered heading in to deciding what type of defense  
18 we're going to present. Because there had been testimony to  
19 that effect or police reports to that effect. Some evidence  
20 to that effect.

21 THE COURT: Okay.

22 MR. TISON: I think it also came out at trial -- whether  
23 it came out just like that, I don't know -- but I know that  
24 there was testimony about that, that there were prior  
25 communications.

1 THE COURT: That there was stuff before the police get  
2 involved?

3 MR. TISON: Correct. And then there was some stuff on  
4 the tape that's a different issue.

5 THE COURT: All right.

6 BY MS. CARMONA:

7 Q Now, law enforcement -- Mr. Bemis does not become an  
8 agent of the State until after he -- well on September the 30th, if  
9 that is the date that is reflected in -- in the record, he con- --  
10 is contacts law enforcement while Mr. Bemis is still in jail,  
11 correct?

12 THE COURT: He, who?

13 MS. CARMONA: Mr. Bemis contacts law enforcement --

14 THE COURT: Contacts.

15 MS. CARMONA: -- while in jail to say, hey, I have the  
16 skinny on Mr. Green who wants me to kill his wife?

17 BY MR. CARMONA:

18 A Yes, I want to talk to a law enforcement officer.

19 Q And law enforcement --

20 A This is the second time that he's in jail.

21 Q This is the second time he's in jail, but he's already  
22 had the prior communications with Mr. Green?

23 A Correct.

24 Q And he wasn't an agent of the State when Mr. Green made  
25 the first solicitation?

1 A Correct.

2 MR. UFFERMAN: Judge, again --

3 THE COURT: Yeah. I mean it's -- it's -- okay, let's let  
4 Mr. Tison. We -- I've got that down. I've cleared that up in  
5 my mind in terms of the communication as far as what Mr. Tison  
6 is saying had -- the information --

7 MS. CARMONA: I just want to make sure of that.

8 THE COURT: -- he had. I've got it.

9 MS. CARMONA: Law enforcement, he does not become an  
10 agent of the State until after he gets bonded out a second  
11 time, two days before he gets (indiscernible).

12 THE COURT: We -- I've got that. It's the second.

13 MR. UFFERMAN: Judge, the record is what it is. But  
14 we've now had the State several times --

15 THE COURT: All right. I --

16 MR. UFFERMAN: -- try to tell the witness what she wants  
17 him to say.

18 THE COURT: All right. And I --

19 MS. CARMONA: I apologize, Judge.

20 THE COURT: -- I understand. No, no, no. I understand.  
21 The only thing that I would put on the record, and I say this  
22 because is that, we don't have a jury here, and it is me. And  
23 I have done both State and defense, so I can filter it out.  
24 But I just try to -- want to get in my own mind the sequence  
25 and I think I have it now.

1 MR. UFFERMAN: Yes, Your Honor.

2 THE COURT: As far as what you're saying.

3 MR. TISON: Yes, Your Honor.

4 THE COURT: All right. Go ahead.

5 BY MS. CARMONA:

6 Q Did the Defendant ever admit that he solicited Mr. Bemis  
7 to commit a first-degree murder on his ex-wife?

8 A Absolutely not.

9 Q During the entire time that you were representing him,  
10 other than saying, hey, is entrapment a defense, did he ever tell  
11 you that he in any way, shape, or form, committed the offense of  
12 solicitation?

13 A No.

14 Q What was his defense the entire time?

15 A That he spoke the words, but he had no intent to have his  
16 wife killed. That this was a big joke and that they used to play a  
17 game called "What If" and they would make up these crazy scenarios  
18 and it was like a big joke, you know. And so -- but he never, to  
19 this day, pretrial, trial, appeals, post convictions, to this day,  
20 I'm not aware of him ever saying that he meant to kill his wife and  
21 that somehow law enforcement induced him to do that. I've never  
22 heard him say that.

23 Q Isn't -- is that a -- an element of entrapment?

24 A Yes.

25 Q Now during trial, you -- well, what was your defense at

1 trial?

2 A That he didn't intend to commit the crime of  
3 solicitation. He didn't intend to have his wife killed. That when  
4 he spoke the words they were not earnest, they were not sincere.  
5 They were just simply words that he is blabbering on with a drug  
6 addict who has no credibility and he's just trying to keep the  
7 conversation going and get him out of the house because he's got to  
8 go pick up his child, go to work, whatever.

9 Q And was there any corroborating evidence that you could  
10 bring out to the jury that perhaps your client's explanation of  
11 what's on the tape was in fact just that, talk?

12 A I'm sorry. Could you repeat that?

13 Q Was there any other corroboration -- or was there any  
14 corroboration that you attempted to bring up to the jury -- to the  
15 jury that in fact the conversation on the tape was just that, talk?

16 A There was no -- I don't remember there being direct  
17 evidence that it was all just a bunch of talk. But through the  
18 cross-examination of law enforcement, I tried to establish that  
19 that's all it was because he didn't take any actions.

20 Q And how about through the cross-examination of Mr. Bemis?

21 A Yes. Yes, absolutely I asked him all that. And he, Mr.  
22 Bemis conceded I think that they played "What If" and I think I  
23 even got him to say that even though he knew Mr. Green and they  
24 were friends or acquaintances, that he'd known him for a long time,  
25 that he, in his opinion -- I think I even got it out that it was a

1 50/50 thing as to whether Mr. Green was serious in Mr. Bemis's  
2 opinion. So I tried to use that as corroboration of what his  
3 statement ultimately was.

4 Q Did you try to put the blame of this entire conversation  
5 on Mr. Bemis by saying, well so I'm not leading.

6 A The blame? I'm confused by what you mean the blame of  
7 his convers- -- this conversation?

8 Q The-- the conversation about the killing, that it was  
9 all Bemis's idea?

10 A Yeah. I mean Bemis was the one that came. Bemis is the  
11 one that initiated the conversation. So, you know I -- I was  
12 certainly in a position to question him and argue that. And that  
13 he's trying to keep the conversation going to get Mr. Green to  
14 talking and make some form of incriminating statement.

15 Q Would you have been able to argue to the jury that I  
16 didn't -- I didn't mean it. It was not intended. I never intended  
17 to kill my wife. But if you think I did it, I was entrapped.  
18 Would that have been a viable defense to argue out of both sides of  
19 your mouth?

20 A I don't -- I -- I would not have done that. You know,  
21 there's -- there's what we call a shotgun defense where you throw  
22 it all up on the wall and hopefully the jury gets confused and you  
23 let them, you know you don't care why he's found not guilty. And  
24 so you can do a shotgun defense. But here, I didn't want to just  
25 throw it up on the wall and based on everything Mr. Green had told

1 me, I thought that the most viable defense, based on the evidence,  
2 from a strategic standpoint, a tactical standpoint was lack of  
3 intent. I -- David Green was not going to take the stand and say I  
4 intended when I spoke those words to have my wife killed. And he  
5 never said that that's what he would say. In fact, he denied it.

6 Q And did that --

7 A So I couldn't get that into evidence. Somehow I was  
8 going to have to try to argue that without, you know I mean it's  
9 just such a reach that I felt that the best defense, based on  
10 everything we had, was the evidence that we put on, which was lack  
11 of intent.

12 Q And would that have been an element of the entrapment  
13 defense if you had to go forward on that he in fact committed this?

14 A Yeah.

15 MS. CARMONA: I don't have any other questions, Judge.

16 THE COURT: Okay. Cross?

17 MR. UFFERMAN: Can we have two minutes, Your Honor?

18 THE COURT: Absolutely.

19 MR. UFFERMAN: Thank you.

20 THE COURT: We can take -- I'm going to talk to my  
21 secretary. We'll take a five-minute recess.

22 MR. UFFERMAN: Thank you, Your Honor.

23 THE BAILIFF: Court stand in five-minute recess.

24 MR. UFFERMAN: Your Honor, may I even stand just to walk  
25 around?

1 THE COURT: Sure.

2 (There was a recess after which the proceedings resumed.)

3 (Proceedings in progress when recording begins.)

4 THE COURT: -- to discuss. Are you ready to proceed?

5 MR. UFFERMAN: Yes. Thank you, Your Honor. I have just  
6 one or two questions for Mr. Tison.

7 THE COURT: That's fine. Whatever you want to do.

8 **CROSS-EXAMINATION**

9 BY MR. UFFERMAN:

10 Q Mr. Tison, isn't it true that during your conversations  
11 with Mr. Green you became aware that his ex-wife, Ginger, had  
12 suffered from or was suffering from cancer?

13 A I don't remember that. I can't admit it or deny it.

14 Q Okay. It's possible?

15 A It's possible.

16 Q Okay.

17 MR. UFFERMAN: I have no further questions, Your Honor.

18 THE COURT: Hmm. Is Mr. Tison excused?

19 MS. CARMONA: Yes, Judge. I don't think I can rebut  
20 anything.

21 THE COURT: Okay. All right. Thank you. Thank you, Mr.  
22 Tison.

23 MR. TISON: Thank you, Judge.

24 THE COURT: All right. Oh, we were on the State. No  
25 other witnesses from the State?



1 MS. CARMONA: Not from the State.

2 THE COURT: Any rebuttal by the Defense?

3 MR. UFFERMAN: We're trying to decide that, Your Honor.

4 THE COURT: Oh. Well, --

5 MR. UFFERMAN: If we could have just 30 seconds to -- to  
6 make this decision?

7 THE COURT: Okay.

8 MS. CARMONA: And in that case, I don't want Mr. Tison  
9 excused --

10 THE COURT: Okay.

11 MS. CARMONA: -- until after --

12 THE COURT: All right.

13 MS. CARMONA: -- whatever decision.

14 THE COURT: Then if you'll just -- I guess they invoked  
15 the rule. Did they invoke the rule?

16 MS. CARMONA: Yes, Judge.

17 THE COURT: Okay. So you'll --

18 MS. CARMONA: They -- they just need to decide --

19 THE COURT: -- have to wait outside.

20 MR. TISON: I'll wait.

21 MS. CARMONA: -- what they're doing --

22 THE COURT: Thank you, Mr. Tison.

23 MS. CARMONA: -- so that I can excuse him or not.

24 THE COURT: All right. Thank you.

25 MR. UFFERMAN: Okay.

1 MS. FRUSCIANTE: Okay.

2 MR. UFFERMAN: Your Honor, I think we have decided that  
3 we would call Mr. Green as a rebuttal witness.

4 THE COURT: All right. He can remain there because it's  
5 easier for the defendants. All right. Go ahead.

6 MR. UFFERMAN: Thank you, Your Honor.

7 THE COURT: And, oh, Mr. Green has been through this  
8 process before, so he understands that testifying is being  
9 taken down if in fact he does get a new trial or whatever,  
10 that any of the information can be used by the State. Do you  
11 -- are you aware of that, Mr. Green?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. And you are choosing to testify? I  
14 mean it's not the same because it's not a crim- -- you're the  
15 moving party, but I like to cover that on the record just so  
16 we don't have -- I know they don't do ineffective for 3.850's,  
17 but I'm anticip- -- I just want to cover the bases. So in any  
18 event, you know that Mr. Green. Go ahead.

19 MR. UFFERMAN: Thank you, Your Honor.

20 **DAVID GREEN,**

21 (Having been duly sworn, was examined, and testified as follows.)

22 **REBUTTAL DIRECT EXAMINATION**

23 BY MR. UFFERMAN:

24 Q Mr. Green, will you please state your name for the  
25 record?

1 A David Lee Green.

2 Q And are you the defendant in this case?

3 A Yes.

4 Q There was some testimony from -- at trial and that Mr.  
5 Tison referred to about a comment that you made to your ex-wife  
6 about you collecting on her insurance policy. Do you -- do you  
7 recall that testimony?

8 A Yes.

9 Q And what -- did you in fact make that comment to her at  
10 following a divorce proceeding that you had in the case?

11 A Yes, I did.

12 Q And what did you mean when you made that comment?

13 A Going into the marriage, we knew that she had cancer when  
14 she was younger. Knew she has a limited life expectancy on it.  
15 And the meaning behind that is this -- or when you pay your policy  
16 -- you keep your policy, you put in so much money, you collect at  
17 the end. Even if she lived another 20 years and I paid on the  
18 policy, it would still be a benefit versus the premiums.

19 Q And when you made that comment to her, what was your  
20 emotional state at the time? Were you angry? Happy?

21 A What I -- it was -- it was at the divorce. I was upset  
22 on it. You know I'd married her with all -- all the knowledge of  
23 everything, and missing her.

24 Q So was the comment made as the result of your emotional  
25 state to in essence to kind of get back at her?

1 A Yes.

2 MR. UFFERMAN: I have no further questions, Your Honor.

3 THE COURT: Any cross?

4 **CROSS-EXAMINATION**

5 BY MS. CARMONA:

6 Q Are you telling this Court that you intended to have Mr.  
7 Bemis kill your wife when you made those statements on the tape?

8 MR. UFFERMAN: Your Honor, beyond the scope.

9 THE COURT: It is beyond the scope. I'll sustain it.

10 BY MS. CARMONA:

11 Q Did you testify to the fact that you made those  
12 statements to your wife in anger during the trial?

13 A Yes.

14 Q So that came out in trial?

15 A Yes.

16 MS. CARMONA: I don't have any more questions, Judge.

17 THE COURT: Okay. All right. Did you have any argument,  
18 counsel?

19 MR. UFFERMAN: Yes, Your Honor.

20 THE COURT: Okay. And if you have any case law, do you?  
21 I can give it to my staff attorney.

22 MR. UFFERMAN: I do. Okay, can I -- can I kind of give  
23 you the cases as I'm addressing them?

24 THE COURT: Yeah, that's fine. That's fine.

25 MR. UFFERMAN: And I have copies for the State.

1 THE COURT: Okay.

2 MR. UFFERMAN: The only -- there's one case that I don't  
3 have a -- it's not stapled. If I could ask to borrow a  
4 stapler, if someone has one in the courtroom, so I'm not  
5 giving you an unstapled copy of a case.

6 THE COURT: I do.

7 MR. UFFERMAN: Thank you.

8 **CLOSING ARGUMENT**

9 MR. UFFERMAN: May it please the Court? The issue in  
10 front of the Court today is whether or not Mr. Tison was  
11 ineffective for failing to present the entrapment defense. I  
12 think I would note that during the trial, there were several  
13 statements made by Mr. Tison that would seemingly allege that  
14 there was an -- or insinuate that there was an entrapment  
15 defense in this case. And I know you're going to review the  
16 entire record.

17 If you look through his opening statements, he tells the  
18 jury -- and I'm referring to page 27 -- he is insinuating that  
19 it's Bemis that initiates the conversation. Bemis brings it  
20 up. Bemis suggests the motive [sic] of death. He's making  
21 all the arguments for the inducement element of entrapment.  
22 During the cross-examination, and in particular on page 56 and  
23 page 58, and also the cross-examination of Mr. Bemis, Mr.  
24 Tison continues to hit home that point. I think the State, in  
25 their examination of Mr. Tison today, hit home that point.

1 That there were several times throughout this trial that Mr.  
2 Tison was saying this was a setup. This was initiated by Mr.  
3 Bemis. Mr. Green was only responding to what Mr. Bemis was  
4 first doing in this case.

5 So the inducement element, I submit is established. Or  
6 Mr. Tison was certainly aware of it and actually argued it to  
7 the jury. That there were facts in this record that would've  
8 supported that. He was so much aware of that, that he  
9 actually presented that and made argument surrounding that.

10 The -- there's two types of entrapment in Florida, as the  
11 Court is well aware. There's objective entrapment and  
12 subjective entrapment. Mr. Tison referred to objective  
13 entrapment, which in essence deals with egregious law  
14 enforcement conduct. He said that he didn't believe that  
15 this, the facts of this case, wiring an agent, would meet that  
16 standard. And we're not alleging that this is an objective  
17 entrapment case.

18 Your Honor, if I could approach or provide a copy of the  
19 Jimenez case. It's Jimenez 993 So. 2d 553.

20 MS. CARMONA: I have a copy, counsel.

21 MR. UFFERMAN: Thank you. And I only submit Jimenez for  
22 the proposition of the elements that are necessary to  
23 establish subjective entrapment. And to establish subjective  
24 entrapment there's basically two parts. One, you have to show  
25 that there was inducement by an agent who's acting on behalf

1 of the state. And two, that there is lack of predisposition.  
2 The Defendant has a low burden of showing the second element,  
3 lack of predisposition. And once the Defendant meets that  
4 burden, the burden then shifts to the State to prove beyond a  
5 reasonable doubt that there was predisposition.

6 The second case I want to rely upon, Your Honor, is the  
7 Farley case. It's 848 So. 2d 393. And in the Farley case,  
8 the 4th DCA said predisposition is "not present when one has  
9 no prior criminal history related to the offense at issue."  
10 "no prior criminal history related to the offense at issue."  
11 You've heard testimony from Mr. Pumphrey. There is testimony  
12 in the record that there is no criminal history in this case.  
13 I think there's an allegation of a DUI. The score sheet shows  
14 that there were no crimes that were scored.

15 During the sentencing hearing, Mr. Tison argued for a  
16 downward departure based on the sophisticated --  
17 unsophisticated manner and isolated incident. And in arguing  
18 that this was an isolated incident, he acknowledged the DUI.  
19 But he said that there was nothing else in Mr. Green's  
20 background.

21 I submit that in light of the fact that he has no  
22 criminal history, certainly no criminal history relating to  
23 this particular incident, that in and of itself would be  
24 enough under the Farley case to -- for the Defendant to meet  
25 his burden of lack of predisposition. At that point, the

1 burden would shift to the State to show beyond a reasonable  
2 doubt that there was predisposition. So I submit that the two  
3 elements that we need -- or that would need to be established  
4 for an entrapment defense are inducement and lack of  
5 predisposition.

6 Clearly, there is inducement. And of course, the Court's  
7 going to review the record, the best argument as to why there  
8 is inducement in this case is the tape itself. And that's --  
9 those are all the things that Mr. Tison was referring to  
10 during the trial. The case -- or the tape starts out with Mr.  
11 Bemis showing up at Mr. Green's house unannounced, saying I  
12 called you from the jail, but you hung up on me. So it's  
13 Bemis reaching out to Green. Green hanging up on him. And  
14 then Bemis saying, are you still interested in that deal, or  
15 still interested in what we were talking about? And Mr. Green  
16 says what are you talking about? And it's Bemis that says the  
17 one about your wife.

18 And then throughout the conversation, it strays to other  
19 subjects, you know drinking beer, this, that, and the other,  
20 and it's Bemis who keeps coming back, trying to -- because he  
21 knows he's wearing a wire -- trying to get Mr. Green to go  
22 along with this supposed plan for Mr. Bemis to supposedly kill  
23 Mr. Green's wife. And it's Bemis that keeps saying, man,  
24 let's go through with this. I need the money and I'm ready to  
25 go through with this. I need the money. He is doing



1 everything he can to induce Mr. Green to say the things that  
2 he needed him to say on that tape.

3 And I submit, a review of that tape -- and that's what  
4 Mr. Pumphrey alluded to during his testimony -- that any  
5 reasonable defense attorney, when being presented with that  
6 tape, would know that we are looking at an entrapment issue in  
7 this case. The inducement is all over that tape. And Mr.  
8 Tison said it repeatedly. He said it in his opening  
9 statement. He said it during his examination of the  
10 witnesses.

11 In fact, Judge Black, when he summarily denied this claim  
12 actually said that Mr. Tison did present an entrapment  
13 defense, he alluded to it throughout the trial. And of  
14 course, that's what the 2nd DCA reversed on. But the -- all  
15 of the argument to support entrapment was there, inducement,  
16 lack of predisposition.

17 So then it comes down to why didn't he present it? And I  
18 think he's acknowledged that. The State was questioning him  
19 on that. Because the State and Mr. Tison said that for him to  
20 present entrapment it would require Mr. Green to admit that he  
21 did in fact want to solicit Mr. Bemis to kill his wife, and  
22 that's an element -- I think they referred to it as an element  
23 of the entrapment defense.

24 And that's where I submit that the State, and more  
25 importantly, Mr. Tison, were wrong. And the case we're

1 relying upon is Rokos, which I have here, and it's 771 So. 2d  
2 47. Actually, if I could rely upon that one.

3 At the very end of the Rokos opinion, Your Honor, the 4th  
4 DCA is quoting from the Florida Supreme Court, the Wilson case  
5 from the Florida Supreme Court, and they say, "[W]here the  
6 circumstances are such that there is no inherent inconsistency  
7 between claiming entrapment and yet not admitting commission  
8 of the criminal acts, certainly the defendant must be allowed  
9 to raise the defense of entrapment without admitting the crime  
10 . . . Asserting the entrapment defense is not necessarily  
11 inconsistent with denial of the crime even when it is admitted  
12 that the requisite acts occurred, for the defendant might  
13 nonetheless claim that he lacked the requisite bad state of  
14 mind."

15 That's exactly what happened here, Your Honor. His  
16 defense at trial was, these words were said, but these words  
17 lacked the intent or the requisite state of mind. And that's  
18 a valid defense. We're not disputing that Mr. Tison should've  
19 presented the defense that he did present. But he -- there  
20 would have been nothing inconsistent, and in fact, as Mr.  
21 Pumphrey testified to, based on the facts of this case, the  
22 inducement and the lack of predisposition, it would be  
23 unreasonable for any criminal defense lawyer to not also  
24 present entrapment. And we know the reason why he didn't,  
25 because he thought it was inconsistent with the theory he was

1 presenting.

2 He thought it would've required Mr. Green to get up on  
3 the stand and somehow admit that I did intend to solicit Mr.  
4 Bemis to kill my wife. And that's simply contrary to the law.  
5 It's contrary to Rokos. It's contrary to Wilson. And that's  
6 why Mr. Tison's alleged strategy for not pursuing the  
7 entrapment defense is not a reasonable strategy. And for that  
8 proposition, Your Honor, I'd cite to federal case law from the  
9 Eleventh Circuit. A case that came out recently, it's called  
10 Lawhorn v. Allen. It's 519 F. 3d 1272. And in that case, the  
11 Eleventh Circuit cites to other cases that say, or not --  
12 actually they say, "Tactical or strategic decisions based on a  
13 misunderstanding of the law are unreasonable."

14 That's exactly what we have here, Your Honor. We have  
15 Mr. Tison deciding not to present entrapment because he  
16 believed that he couldn't both present entrapment and the  
17 theory that he did present. He was wrong. He had a  
18 misunderstanding of the law. We're not challenging whether or  
19 not Mr. Tison is a good attorney or a bad attorney. He sounds  
20 like he's a great attorney. Every attorney has a bad day.

21 And if he misunderstood the law -- and I think it's a  
22 common misperception to be honest with you that attorneys  
23 somehow think, oh, I can't both deny that I didn't intend the  
24 crime, but also claim entrapment. I bet if you surveyed most  
25 criminal defense lawyers, they would agree that that's the

1 state of the law. And they'd be wrong.

2 And Rokos specifically said, and Wilson, and the Florida  
3 Supreme Court specifically said you can both present  
4 entrapment and also present some other theory of defense if  
5 you -- that would deny that you had the requisite state of  
6 mind or intent to follow through with the underlying act. And  
7 therefore, his understanding or reasons -- strategic reason  
8 for not presenting the defense was based on a misunderstanding  
9 of the law. Therefore, it cannot be a strategic or reasonable  
10 strategy.

11 And then, of course the Court knows there's two prongs  
12 that we must allege in this particular case to be successful.  
13 We must show, number one, that his -- Mr. Tison's performance  
14 was deficient, and number two, that there's a reasonable  
15 probability that but for his deficiency, the result of the  
16 proceeding would have been different.

17 I submit that we've clearly established, based on his  
18 misunderstanding of the law, that he was deficient in not  
19 asking for -- presenting an entrapment defense, arguing  
20 entrapment to the jury, and requesting an entrapment  
21 instruction.

22 I think it's clear, based on the facts of the case and  
23 what the standard is for subjective entrapment, which is both  
24 inducement and lack of predisposition, that although it may  
25 have been a factual issue for the jury to decide, had Mr.

1 Tison at trial requested an entrapment instruction, the court  
2 would have been required to give it. I think the Florida case  
3 law is if there's any, even a scintilla of evidence that  
4 supports a defendant's theory of defense, the court is  
5 required to give an instruction on that theory. There's far  
6 more than a scintilla of evidence in this case. He was  
7 actually arguing inducement throughout the case.

8 So I think we can show, or have shown that Mr. Tison was  
9 ineffective or there's deficient performance for his failure  
10 to present entrapment, argue entrapment, and request an  
11 entrapment instruction. And I submit that in light of the  
12 facts of this case, there is a reasonable probability, as Mr.  
13 Pumphrey opined, that the result of the proceeding would have  
14 been different. The jury would have had a legal basis, with  
15 an entrapment instruction. And Mr. Pumphrey was referring to  
16 the entrapment instruction, which is 3.6(j), that had that  
17 instruction been given and read to the jury, they would've  
18 been reading that, and had a legal basis to find that all  
19 those elements had been established, and they could've come  
20 back with a not guilty verdict based on entrapment in this  
21 case.

22 Now there's been talk by the State of predisposition. My  
23 initial argument would be that whether there was or was not  
24 predisposition is a factual issue that ultimately would've  
25 been up to the jury to decide. And we submit that based on

1 the record that there's a reasonable probability the jury  
2 would've found lack of predisposition. The State seems to be  
3 arguing two particular things. Or maybe not even the State.  
4 Mr. Tison focused on two particular things that in his opinion  
5 may have shown predisposition.

6 The first is this alleged comment that Mr. Green made to  
7 his ex-wife after the divorce proceeding that he had this  
8 insurance policy and he claimed or said that I'll collect on  
9 it. Again, as he testified here today, he was angry at the  
10 time. There was a reason that he said it. He knew that she  
11 had a previous illness and, you know a reasonable explanation  
12 as to why he made that comment was just what he explained  
13 today. That he knew, you know he was mad and it was a jab at  
14 her because he was saying, you know you may pass away because  
15 of this and I'll collect at that time. It's not very nice.  
16 He acknowledges it was not very nice.

17 As the State pointed out at trial, he admitted that at  
18 the time that he said it he was angry. Today he said that  
19 it's -- it was a combination of both anger and hurt and he was  
20 saying it as a jab to get back at her. But I submit that  
21 that's a reasonable explanation that had this issue been  
22 presented and had that been a focus of the State's argument  
23 for predisposition, he certainly would've had a defense to  
24 that.

25 The other argument is this alleged prior call from -- or

1 prior conversation, let me put it that way, between Mr. Bemis  
2 and Mr. Green. And from a time line standpoint I think it's  
3 important to know what we have here, and the record is not  
4 very clear -- Mr. Pumphrey said that a number of times -- and  
5 it's not very clear because Mr. Bemis's time frames were not  
6 very clear. But I think what we have, without giving you  
7 particular dates because I don't think the dates are  
8 necessarily clear, we have Mr. Bemis at a time when he's not  
9 nec- -- not acting as an agent of the State -- because he  
10 hasn't approached any law enforcement officers at that time --  
11 being arrested and needing to be bonded out. And Mr. Green  
12 did bond him out.

13 And Mr. Bemis then claims that there was a call, or a  
14 conversation, whether in person or over the phone, I don't  
15 know if the record is necessarily clear, where Bemis is  
16 claiming that he said, oh, now I've got to pay you back  
17 because you paid \$300 to bond me out on my charge. And to pay  
18 you back, what do you want me to do? And Bemis says that my  
19 client, Mr. Green, said oh, I know how you can pay me back.  
20 And then Bemis claims that he told him about this alleged plan  
21 to kill his wife. Bemis is the one claiming that.

22 Mr. Green, when he testified at trial, said that -- I  
23 don't recall that conversation ever taking place. He was  
24 aware that I was divorced from my wife. But I deny that we  
25 ever had that previous conversation. So number one, there's a

1 factual issue as to whether or not that conversation did take  
2 place. Yes, Mr. Bemis alleged it. But Mr. Green denied that  
3 it occurred.

4 And again, Mr. Bemis is not the most credible witness  
5 appearing in front of the jury. The best thing for the State  
6 in this case was they had a tape, which they could play for  
7 the jury. But beyond that, Bemis was back and forth. He was  
8 a convicted felon. He was working off current charges. So I  
9 submit that there was a factual issue and I don't think the  
10 State could've proven beyond a reasonable doubt that that  
11 previous conversation even occurred to show predisposition  
12 relating to that previous conversation.

13 But even if that previous conversation occurred, or the  
14 jury would've believed Mr. Bemis, then the question becomes,  
15 number one, was there predisposition at the time of the  
16 conversation? And number two, what was Mr. Bemis's motive at  
17 the time that he approached Mr. Green?

18 Regarding the first factor, what was -- was there  
19 predisposition at the time of the conversation, well, you know  
20 Bemis can say, when there's no tape to back him up or refute  
21 him, that oh, this is the way it went down. I was the one  
22 saying oh, how can I pay you back. And Mr. Green was the one  
23 that was saying, oh, I've got the plan for you. Why don't you  
24 go ahead and murder my wife. But we know from the tape that  
25 was played on October 3rd, it's Mr. Bemis who is pulling teeth



1 out of Mr. Green to try to get him to even talk about this  
2 alleged plan.

3 So there had been a very strong argument for the defense  
4 to make that it's very likely that if there was such a first  
5 conversation, the first conversation mirrored the taped  
6 conversation and didn't go down the way that Bemis claimed  
7 that it went down. And if in fact, Bemis conducted the first  
8 conversation as the one that was taped, and he was the one  
9 that was saying, hey, I've got an idea, I could pay you back  
10 this way. Let me -- aren't you divorcing your wife? Aren't  
11 you upset about that? Why don't I, you know take your wife  
12 out? Isn't that a good idea? And then if Mr. Green is, you  
13 know doing his best to change the subject and you offer him a  
14 beer. And it's Bemis that's pushing that idea, clearly,  
15 there's a strong argument that no, there's not predisposition  
16 even at that time because it's Bemis that's pushing this.

17 But then going to the other factor, which is, what is  
18 Bemis's motivation even at that time when this first alleged  
19 conversation took place? And Mr. Bemis, I think in his trial  
20 testimony said that this first conversation took place about  
21 three weeks before the taped conversation. So even there, we  
22 have all these disputes because the State was saying July and  
23 I think there's another place in the record where there's an  
24 allegation that that conversation took place in July. But  
25 then at trial, Bemis said that conversation took place three

1 weeks before the October, which obviously would've been  
2 September not July. When did it take place, Mr. Bemis? Well  
3 are you even telling the truth that it ever took place?

4 But what was his motivation? We know that at that time  
5 he had just been arrested and then he also, he has current  
6 charges against him. We know the second time he got arrested  
7 and he has additional charges against him, what's his motive?  
8 I bet I can get a better deal for these charges if I can  
9 somehow implicate someone else and tell the police -- and of  
10 course, people in prison, especially people who have previous  
11 histories, know that the best way to get a reduced sentence is  
12 to work out a deal with the State. And what's the best way to  
13 work out a deal with the State? Make yourself useful that you  
14 can give them someone else. A bigger fish to fry who's, you  
15 know allegedly involved in a much bigger scheme than grand  
16 theft and shoplifting that Mr. Bemis was involved in.

17 So his motive for going to Mr. Green the first time -- if  
18 there was a first conversation -- was again, to try to set him  
19 up. To try to get him to say something about an alleged plan.  
20 Because he knows, he can then take that to some law  
21 enforcement officer and use it to get his own charges reduced,  
22 and get either the charges dropped or a better sentence. He's  
23 in essence a de facto agent because although he hasn't --

24 THE COURT: So you're saying factually this would support  
25 the -- at the first time, if it did happen, that he was an

1 agent of the State, therefore?

2 MR. UFFERMAN: At least in his mind, he had the  
3 motivation to take that information, go to law enforcement,  
4 and become an agent of the State. Because what happens when  
5 he's arrested the second time? He does just that. He goes  
6 immediately to law enforcement and says I've got this guy --  
7 by the way, I've already talked to him, and if you wire me up  
8 I bet I can get him to say it again. And again --

9 THE COURT: Okay.

10 MR. UFFERMAN: -- I think if you review the tape, you'll  
11 see it's pulling teeth. It wasn't easy for him to get Mr.  
12 Green to even talk about it. But I submit that it would be a  
13 very strong argument for defense counsel to say there's no  
14 predisposition, Mr. Bemis was a de facto agent, even if there  
15 was an alleged first conversation.

16 We don't think there was a first conversation. And if  
17 there was a first conversation, it most likely went down the  
18 same way that the taped conversation went down, which is Bemis  
19 inducing Mr. Green. Not Mr. Green being willing or coming up  
20 with the idea for the plan.

21 THE COURT: Okay. Thank you.

22 MR. UFFERMAN: Thank you.

23 THE COURT: All right. State?

24 **CLOSING ARGUMENT**

25 MS. CARMONA: Well, Judge, I did not object to a lot of

1 counsel's arguments because I realize that the Court will be  
2 able to ferret out that which is supported by the record,  
3 either during the first trial, or during the testimony here.  
4 Because none of that beautiful argument about well the first  
5 conversation must've gone down the same as the taped  
6 conversation is in evidence. And I'd ask the Court to -- I  
7 know you've been around long enough and you can listen to  
8 argument of both counsel, who have a tendency of getting  
9 passionate about the case that they're arguing in front of the  
10 Court.

11 The State's position, Judge, is that the Defendant has  
12 not met its burden at all. There has been no inducement.  
13 What we have is a tape in which a individual, who has been  
14 wired by the -- the -- by law enforcement, is trying to get  
15 the Defendant to tell him what it is that he wants done. The  
16 Defen- -- the -- Mr. Bemis and the Defendant know each other  
17 for a long time and they have a conversation. And on -- and  
18 you will read the tape. I -- I mean you will read the  
19 transcript. I'm not asking you to go by my memory and that  
20 not -- not by counsel's memory.

21 And there is conversation and it is obvious in that  
22 conversation that Mr. Bemis is asking Mr. Green, hey, you had  
23 a job for me. Do you still -- are you still se- -- are you --  
24 if you're serious about me killing your wife, I'm serious.  
25 And the conversation goes on. And the Defendant never says

1 what the heck are you talking about or I never asked you to  
2 kill my wife, or anything like that. The only thing the  
3 Defendant says, yeah, it must be pretty freaky, or words to  
4 that effect, meaning it has to be done in a way in which meets  
5 whatever conversations they had before.

6 The Defendant never denied the conversation happened.  
7 Mr. Bemis stated that there was a prior conversation. But if  
8 you read the transcript, it is obvious based on that  
9 transcript that that conversation did in fact take place. Do  
10 you still want me to do the job? Which one? The one about  
11 your wife. When they're talking about killing the wife, Mr.  
12 Bemis asks him about the insurance. How much was it? Fifty  
13 thousand. So I'm going to get half? Meaning this is what you  
14 promised me before. And it comes out that okay; well it's not  
15 really half because I have to pay you back the \$300 that I  
16 owed you from when you bonded me out the first time. So I'm  
17 going to get \$24,700.

18 The conversation continues. Yes, there are other aspects  
19 of the conversation because it shows that it is a conversation  
20 between two individuals who know each other and this is how  
21 they talk to each other. Hey, are we still going to do that?  
22 Yeah. Man, what did you -- what is that? They see the  
23 Defendant -- Mr. Bemis, I'm sorry, sees that the Defendant had  
24 purchased some screwdrivers. I think there's conversation in  
25 there as to whether he got them at a flea market or at The

1 Home Depot. I don't remember. And all I know is that he got  
2 just zillions for very little money.

3 And then Mr. Bemis says, hey, you know maybe I can stick  
4 the screw in her ear and whatever. Mr. Bemis makes certain  
5 suggestions as to how he can kill the ex-wife. What does the  
6 Defendant say on the tape? He doesn't say what are you  
7 talking about? No. He says, no, you cannot do the drugs  
8 because she doesn't do drugs. Maybe you just should shoot  
9 her. I mean the Defendant is participating in this  
10 conversation.

11 There is no scintilla of inducement. Just because Mr.  
12 Bemis is asking the questions, there is no scintilla of  
13 inducement. If there is any scintilla of inducement, it is  
14 the fact that the Defendant had offered the -- Mr. Bemis half  
15 of the insurance money in order for him to commit the crime.  
16 That is the only evidence of inducement.

17 Mr. Tison evaluated the case and based on the best  
18 evidence that he knew would come out at trial, and based of  
19 his experience, he determined that entrapment was not a viable  
20 defense. Because what we have is a person, whether he had an  
21 explanation or not -- and by the way, he -- Mr. Tison did  
22 bring it out not exactly about the fact that she had the  
23 cancer or whatever, but the fact that the statement, I didn't  
24 mean it when I said that I was going to collect on the  
25 insurance -- would negate part of the jury instruction. What

1 we have is a defendant that has failed to establish that there  
2 is an inducement just because there is conversation.

3 And furthermore, there is a predisposition. Regardless  
4 of what counsel wants to -- to -- to say, Monday morning  
5 quarterbacking, there -- there was a predisposition because we  
6 have a prior conversation between the Defendant and Mr. Bemis  
7 in which Mr. Bemis says, hey, you know we -- he talked to me  
8 about killing his wife and I wasn't sure and I kind of stayed  
9 away from her or from him, and you know, I did talk to my  
10 girlfriend about it and she told me to stay away from him.

11 Granted, Mr. Bemis is not someone you want to take home  
12 to mother and marry your sister. But that's not what we're  
13 here all about. It's whether or not there was evidence that  
14 there was a predisposition.

15 There was a statement made to Mr. Bemis by the Defendant  
16 prior to any law enforcement involvement. There is your  
17 predisposition. Predisposition doesn't mean that you have to  
18 have a prior conviction or a prior record of the similar type  
19 of -- of crime. Predisposition means whether or not you would  
20 be more inclined to commit the crime than not, based on the  
21 evidence.

22 And we have the best type of evidence, if you will,  
23 Williams-type evidence that he had made this type of request  
24 of the same individual before. Based -- and the fact that the  
25 Defendant takes a defense that hey, I never meant it. We all

1 are BS'ers. That's what we do. I never meant it and Bemis  
2 should've known that I didn't never meant it. Which was  
3 supported halfway by Mr. Bemis's testimony at trial and at  
4 deposition that he really wasn't sure whether Mr. Green was  
5 serious about it and that as best as he could, maybe 50/50  
6 whether he meant it. And that was a more viable defense to  
7 present to the jury. He never meant it. And even the person  
8 who is here telling you that this is what the Defendant said  
9 and what the Defendant said on the record and on the tape,  
10 even he had a 50/50 concern as to whether he meant it.

11 Just because there might have been another defense,  
12 doesn't meant that Mr. Tison was ineffective. Counsel is  
13 misinterpreting Mr. Tison's statement that the only reason he  
14 did not put on that defense is because the Defendant was not  
15 admitting to the offense. Counsel said that there was  
16 predisposition and that they had this tape. And that's what -  
17 - and that's some of the reasons he did not present the  
18 entrapment defense.

19 I asked him are they incompatible? And he said, well,  
20 you know you could have. I just am not of the style, or  
21 that's not my style or I -- I'm rewording him. I do not throw  
22 things to see what sticks. I rather go with the defense that  
23 I think I can prove the best.

24 He knows who the judge is. He knows who the attorneys  
25 are. And based on his evaluation of the case, and based on



1 the fact that the Defendant has failed to establish that there  
2 was any -- was any, any inducement whatsoever, or that there  
3 was a lack of predisposition, counsel cannot be blamed for not  
4 presenting that defense as in -- in representing -- in the  
5 representation of Mr. Green. Thank you (indiscernible),  
6 Judge.

7 THE COURT: Okay. Thank you. All right, and I did go  
8 over with Mr. Green the fact that if this does start over  
9 that, you know he still faces the same charges. He's aware of  
10 that. He's been through this process before. But for  
11 purposes of the record, since this is my first time having  
12 this case, I -- this case is going to be taken under  
13 advisement. It will be reviewed. The transcript will be  
14 reviewed. Part of it has been already.

15 But, and then I get the transcript typed up and an order  
16 is entered, and it goes one of two ways. If you do prevail on  
17 the motion, you come back to start from square one with the  
18 same charge. If you do not prevail on the motion, and you've  
19 done this before and you've taken it up on appeal. You have  
20 the right to apply for an attorney or you can hire your own  
21 attorney.

22 I know we have people from the victim's family. The  
23 order will come out. It will be entered in the court file and  
24 the -- all the attorneys get a copy, the family does not  
25 necessarily. But I would suggest that if you want to keep

1 tabs on it, then you can contact the State Attorney's Office  
2 or check with the clerk's office. We do not send copies other  
3 than to the attorneys.

4 So with that, we will be in recess. Thank you, counsel.

5 And --

6 (The proceedings were concluded.)  
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STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Randel Raison, certify that the foregoing transcription is true and correct of the proceedings in this matter, taken by way of electronic recording.

  
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Randel Raison, Electronic Court Reporter  
Record Transcripts Incorporated

Dated this January 26, 2011