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IN THE COUNTY COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN
AND FOR DUVAL COUNTY, FLORIDA.

CASE NO: 2015-CT-5948

DIVISION: I

STATE OF FLORIDA

-vs-

HOWARD RENTSCHLER,

Defendant.

STATE OF FLORIDA)
COUNTY OF DUVAL)

Audio Recording before the Honorable Paulene

Drake, Judge of the County Court, Division I, as cause
in this matter was recorded on the 13th of August,
2015.

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1 APPEARANCES:

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FRANK GAULDEN, Esquire,

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Assistant State Attorney,

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Appearing on behalf of the State of Florida.

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SLADE SERMOS, Esquire,

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Assistant Public Defender,

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Appearing on behalf of the Defendant.

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I N D E X

1		
2		PAGE
3	JOHN HOLZBAUR.....	5
4	DIRECT EXAMINATION BY MR. SERMOS.....	5
5	CROSS EXAMINATION BY MR. GAULDEN.....	16
6	REDIRECT EXAMINATION BY MR. SERMOS.....	18
7	HOWARD RENTSCHLER.....	19
8	DIRECT EXAMINATION BY MR. SERMOS.....	19
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 THE COURT: Okay. Now we are ready for the
3 hearing. I do apologize. We are 15 minutes late.
4 I don't like being late.

5 Okay. We had this morning which was very -- a
6 good thing. We had a case this morning of an
7 individual who just completed the Veterans Program
8 and he came in and the certificate was in fact
9 filed without a problem.

10 The program that he was under apparently he
11 benefitted from and without any problems, and the
12 name of that individual was Matt Lions and we
13 passed it for a status hearing. He completed all
14 the V A courses and he passed it and we discharged
15 it, and his case was 4/27/2013 case and of course
16 we are in August of 2015 and he successfully
17 completed the program and it was signed off by a
18 Magistrate.

19 So it works, and it's just a coincidence, I
20 guess, that this one was placed on the calendar.
21 So there is a track record for that.

22 Now a motion has been filed in this case and
23 the state is entitled to be heard. There is a
24 statute in place with directives and a legislative
25 history that goes behind this if the person is not

1 comply with those standards then -- he has already
2 completed MADD and there is a Motion for Pretrial
3 Diversion which is filed at line 41 titled Motion
4 to Refer to Veterans Court. This is case number
5 2015-CT-5948 in and for Division I.

6 Apparently there are representatives from
7 Veterans Court here at this time.

8 MR. SERMOS: That's correct, Your Honor.

9 THE COURT: Okay. And would you come forward
10 then and sit at the table. Please raise your right
11 hand.

12 JOHN HOLZBAUR,
13 having been produced and first duly sworn as a witness
14 on behalf of the Defendant, testified as follows:

15 THE WITNESS: I do.

16 THE COURT: Okay. So we will proceed with his
17 testimony first.

18 THE WITNESS: (Unintelligible).

19 THE COURT: So everybody can look at you.

20 THE WITNESS: My name is John Holzbaur,
21 H-O-L-Z-B-A-U-R.

22 DIRECT EXAMINATION

23 BY MR. SERMOS:

24 Q Mr. Holzbaur -- (Unintelligible).

25 A I work for the Office of the Public Defender

1 for the Fourth Circuit in the capacity as director of
2 military veterans affairs. I am also administrative
3 lead for the Duval County Veterans Treatment Court.

4 Q Okay. Would you please explain to the Court
5 exactly what Veterans Court Treatment Program is?

6 A Sure. It's a hybrid drug court.

7 THE COURT: Back up a little bit. You are
8 echoing?

9 THE WITNESS: It's built on the drug court
10 model which has been used here successfully in the
11 Fourth Circuit since the early 90's, was found
12 approximately four years ago as an adjunct to adult
13 drug court, and we became our own separate division
14 a little over two years ago.

15 The main differences between drug court and
16 mental health court is that we incorporate the U S
17 the Department of Veterans Affairs along with the
18 best practices and ten key components in a drug
19 court model in a rigorous year-long minimum court
20 supervised program that requires abstinence,
21 honesty and restore the military virtues of
22 integrity and character on individuals who desire
23 and are amenable to treatment and overcome service
24 related issues that have resulted with them being
25 in the criminal justice system.

1 (REPORTER'S NOTE: Defense attorney not
2 speaking into recording system.)

3 BY MR. SERMOS:

4 Q And what -- (Unintelligible)?

5 A In the present case or what we typically see?

6 Q In the present case.

7 A In the present case substance abuse.

8 MR. GAULDEN: **Objection.** There is no
9 foundation for this testimony. We don't know how
10 he learned about this, if he is back dooring in
11 stuff from other medical records or other doctors
12 or hearsay testimony from the defendant himself.

13 THE COURT: Okay. Well, we can answer that.

14 MR. GAULDEN: Overruled for hearsay, Your
15 Honor?

16 THE COURT: He can clarify it if you are
17 saying it's hearsay.

18 MR. GAULDEN: I would ask --

19 THE COURT: He can ask how --

20 MR. GAULDEN: Ask the defense --

21 THE COURT: How -- how did you learn about it?

22 BY MR. SERMOS:

23 Q Well, if we can go just generally the issues

24 --

25 A Generally part of the Veterans Treatment

1 Court team here in Duval County consists of a
2 partnership with the U S Department of Veterans
3 Affairs, specifically a licensed clinical social worker
4 assigned to Veterans Treatment Court Ms. Wendy Sneed
5 and in the course of her -- (unintelligible) -- as a
6 business records custodian she interviews a client,
7 looks at their military data that we get, if there are
8 any military -- relevant military information but also
9 she is qualified to conduct her own independent
10 diagnoses, and she passes that information along to the
11 other team members as well as counsel obviously for the
12 purposes of advocating for her client.

13 Q And is Mrs. Sneed a busy woman?

14 A She is indeed. In fact she is in the Clay
15 County Veterans Treatment Court.

16 Q And she is the only person in the Circuit
17 that's qualified to do this -- (Unintelligible)?

18 A At this time --

19 MR. GAULDEN: Your Honor, I would object to a
20 conclusory statement. There has been no -- other
21 than the conclusory assertion of the witness that
22 the person is qualified, there have not been any
23 Daubert factors that have been laid or anything
24 that would establish that -- the witness in
25 question is not even here -- is able to render

1 expert opinions in a court of law.

2 THE COURT: I don't think at this point we are
3 talking about expert opinion. We are just talking
4 about the scope of her job and if her scope of her
5 job is basically she is the only one who can do the
6 investigation here then we can take notice of that,
7 that she is the only one hired --

8 MR. GAULDEN: Yes, Your Honor.

9 THE COURT: -- to do that. Okay. Continue.

10 BY MR. SERMOS:

11 Q So in your capacity at the risk of sounding
12 blase' -- (Unintelligible) -- are you familiar with the
13 defendant in this case?

14 A I am.

15 Q How so?

16 A I was tasked we identified him as a veteran
17 who is in the criminal justice system who is
18 interviewed by the U S Department of Veterans Affairs.
19 We obtained Mr. Rentschler's military record. We
20 interpreted the D D 214 to -- to determine that he is a
21 bonafide veteran per the statute for consideration
22 ultimately for Veterans Treatment Court.

23 We interpreted those military records and we
24 also at the same time the licensed clinical social
25 worker arranged the opportunity to arrange a meeting

1 with Mr. Rentschler to make that determination on the
2 clinical side of the house to determine amenability and
3 eligibility and suitability for consideration for
4 Veterans Treatment Court.

5 Q So based on your understanding Mr. Rentschler
6 is suitable and eligible?

7 A That is the opinion of the Veteran's Court
8 Team, yes.

9 Q You understand what the possible penalties
10 are for first DUI? Are you familiar?

11 A I am aware. In pretrial we have 20 veterans
12 in Veterans Treatment Court charged with DUI.

13 Q Are you saying the requirements in the
14 Veteran Treatment Court Program are more stringent and
15 not necessarily penal but tougher than the sentence he
16 would receive on a first DUI?

17 A The Veterans Treatment Court is a one year
18 minimum rigorous --

19 THE COURT: Okay. I would like to hear
20 perhaps at this point not withstanding what the
21 offer is here, could you please as administrator in
22 your capacity please tell this Court what the
23 veterans are specifically required to do?

24 THE WITNESS: Yes, Your Honor. There are a
25 minimum of two random drug tests per week.

1 THE COURT: That's per week?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Two random drug tests per week?

4 THE WITNESS: Per week.

5 THE COURT: Okay.

6 THE WITNESS: Seven days a week, Your Honor.

7 THE COURT: So that's a minimum?

8 THE WITNESS: A minimum.

9 THE COURT: Okay. And what else?

10 THE WITNESS: Weekly court appearances for at
11 least the first three months.

12 THE COURT: So they have to come to your
13 Veterans Court every --

14 THE WITNESS: Every Wednesday.

15 THE COURT: Every Wednesday?

16 THE WITNESS: Every Wednesday.

17 THE COURT: For -- and then do they appear
18 before a magistrate?

19 THE WITNESS: They appear before Magistrate
20 Sampson, Your Honor.

21 THE COURT: Magistrate Sampson. Okay. And
22 what do they have to do at those court appearances?

23 THE WITNESS: In addition to that there is
24 required individual and group therapy three times a
25 week for the group therapy, three hours a day.

1 THE COURT: Okay.

2 THE WITNESS: And that's just to address the
3 substance abuse issues and or the mental health
4 issues. There is also physical appointments that
5 are required with our partner the U S Department of
6 Veterans Affairs. Those clinicians are present in
7 court to report directly to the magistrate the
8 individual' progress or lack thereof.

9 THE COURT: Okay. So if an individual were to
10 go to Veterans Court and everyone is there and if
11 they were to say to the Judge this person is not in
12 compliance or the like, are there sanctions based
13 on what you have observed as administrator that
14 have happened?

15 THE WITNESS: Yes.

16 THE COURT: Can you give us an example of that
17 generally?

18 THE WITNESS: Sanctions range from community
19 service to phasing back with more rigorous
20 appearances, more rigorous testing schedule,
21 alcohol monitoring bracelets, jail time and
22 including up to and including Matrix has been used
23 successfully as a tool in Veterans Treatment Court
24 and ultimately rejection from the program for
25 non-compliance.

1 THE COURT: Okay. So if an individual were
2 phasing back that would involve more time, jail
3 time, Matrix, community service hours or you
4 mentioned something about an alcohol monitoring
5 bracelet or is it a bracelet or is it GPS?

6 THE WITNESS: It's the alcohol monitoring
7 bracelet.

8 THE COURT: So SCRAM?

9 THE WITNESS: A SCRAM, yes, Your Honor.

10 THE COURT: Okay. So a veteran would not go
11 untreated? In other words, if someone is referred
12 to the program and if they are in the program they
13 -- they are to be in compliance but it's not
14 without consequences?

15 THE WITNESS: Yes, Your Honor. That is an
16 accurate characterization.

17 THE COURT: Okay. All right. Are there any
18 other requirements that the individual in Veterans
19 Court must go through?

20 THE WITNESS: Depending on the case
21 restitution, anything the Court sees fit to assign
22 to the defendant the Veterans Court is happy to
23 insure compliance.

24 THE COURT: So would the Veterans Court be
25 characterized -- is it a judicial proceeding as you

1 know of as administrator?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Okay. And how would the Veterans
4 Court handle for example if there was another
5 arrest or something like that, for example if the
6 defendant were picked up for driving while license
7 suspended or another DUI? In your experience have
8 you seen how this is handled?

9 THE WITNESS: Yes, Your Honor. We have had
10 that happen exactly once in Veterans Court and that
11 client was immediately rejected and returned to the
12 original criminal division.

13 THE COURT: They are arrested and everybody is
14 advised that there is like a violation and the
15 person is out of the program so it's not like he is
16 out -- we divert the person and that's it?

17 THE WITNESS: No, ma'am. There is a rigorous
18 oversight.

19 THE COURT: Okay. So there is accountability
20 back to the original presiding judge and at that
21 point the Judge or the state can make a
22 recommendation for appropriate sanctions?

23 THE WITNESS: Yes, Your Honor. That is
24 correct.

25 THE COURT: Okay. So a person is not released

1 from the program without the knowledge of all
2 participants?

3 THE WITNESS: No, ma'am.

4 THE COURT: Okay. And not going into what the
5 evaluation was, I need to know from you this
6 defendant in this case how Robert Rentschler, he
7 has been screened, is that correct?

8 THE WITNESS: That is correct, Your Honor.

9 THE COURT: And as an administrator are you
10 representing that he has been or will be accepted
11 into the program?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And that he will be subject to the
14 same kind of restrictions and consequences if the
15 program is not met?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Okay. And as general to date how
18 many people have you had successfully complete this
19 program?

20 THE WITNESS: 34 graduates, Your Honor.

21 THE COURT: 34 graduates. All right. And out
22 of that 34 graduates have you had the opportunity
23 -- you said the program was two years to either
24 calculate or look at whether or not there has been
25 any recidivism?

1 THE WITNESS: There has been one felony
2 drug-related rearrest out of all of our graduates.

3 THE COURT: Out of 34 you have had one felony
4 rearrest?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Okay. I have no further
7 questions.

8 MR. GAULDEN: May I inquire, Your Honor?

9 THE COURT: You may.

10 CROSS EXAMINATION

11 BY MR. GAULDEN:

12 Q Have you had anybody in your program that had
13 been convicted of DUI and sentenced as part of a
14 probationary sentence to essentially do the Veterans
15 Court Program?

16 A Post plea, yes.

17 Q And that's part of your successful graduates?

18 A Yes.

19 Q Okay. So a person can be -- can enter a plea
20 to the charge and a court can order as part of a
21 probationary sentence to do all the things that you
22 just mentioned?

23 A That is correct.

24 MR. GAULDEN: I have no further questions.

25 THE COURT: Okay. I have a follow up. If --

1 can you as an administrator is the purpose of the
2 program to have the person rehabilitated or have
3 you noticed any differences between the ones who
4 have entered a plea and the ones who have been
5 referred?

6 For example, if a person enters a plea to a
7 case this is DUI, 50 hours community service, I
8 suppose, DUI school and the like, okay, associated
9 with this. The Veterans Program it would seem that
10 they are still getting the drug treatment. They
11 are still coming more so that's on top of what they
12 are supposed to be doing?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Okay. And what have you seen as
15 an administrator in terms of the effectiveness of
16 that if you remember?

17 THE WITNESS: It's much more comprehensive and
18 it involved treatment. We have had veterans who
19 have been charged with multiple DUI's and they have
20 commented in other courtrooms when they have
21 appeared after successfully completing the Veterans
22 Treatment Court Program that it was the duration
23 and intensity of Veterans Court that provided them
24 the opportunity to truly address the underlying
25 causes of the criminal charges.

1 THE COURT: Okay. Any follow up?

2 MR. GAULDEN: No, Your Honor.

3 THE COURT: Okay. Any questions?

4 MR. SERMOS: One or two.

5 REDIRECT EXAMINATION

6 BY MR. SERMOS:

7 Q As administrator of the program have you had
8 any cases, successful graduates where the person
9 participating was in service say in the 70's or early
10 80's?

11 A Yes.

12 Q And their disorder surfaced then based on
13 y'all's understanding and they successfully completed
14 the program?

15 A That's correct. We have had Vietnam era
16 veterans successfully complete the program.

17 MR. SERMOS: Nothing further, Your Honor.

18 THE COURT: Okay. You may step down, sir.

19 (Witness excused.)

20 THE COURT: Okay. Now I have heard the
21 testimony and -- of the administrator and you
22 provided me cases. Would you like to present your
23 argument first and then I will proceed with
24 Mr. Gaulden's?

25 MR. SERMOS: Your Honor -- (Unintelligible) --

1 testimony.

2 THE COURT: Oh, did he want to testify? Would
3 you like to testify? Okay.

4 MR. SERMOS: Very briefly, Your Honor.

5 THE COURT: Okay. With understanding that we
6 are not going to talk about the underlying facts of
7 the case per se but we will be talking about, you
8 know, we will see how it goes. Please raise your
9 right hand, Mr. Rentschler.

10 HOWARD RENTSCHLER,
11 having been produced and first duly sworn as a witness
12 on his own behalf, testified as follows:

13 THE DEFENDANT: I do.

14 THE COURT: Okay. Would you please have a
15 seat on the witness stand? Okay.

16 DIRECT EXAMINATION

17 BY MR. SERMOS:

18 Q Mr. Rentschler, did you serve in the
19 military?

20 A Yes.

21 Q What branch?

22 A United States Army 82nd Airborne.

23 Q When did you serve in the Army?

24 A October, 1992 till January, 1996.

25 Q Okay. Were you injured during your term of

1 service?

2 A Yes. I was injured in a parachute operation
3 while assigned to the 775th Ranger Training Battalion.

4 Q Okay. How did that affect your service?

5 A I was removed to combat arms and placed in
6 medical hold after surgery for a year.

7 Q Prior to your injury did you drink alcohol?

8 A Socially and comrade with other soldiers.

9 Q And after your injury did your consumption of
10 alcohol change?

11 A Yes. I began a daily routine of drinking.

12 Q How long did that continue?

13 A Up until June -- June 11th, 2015.

14 Q Okay. Did you -- have you previously sought
15 treatment for alcoholism?

16 A Yes. 2011 I went to a detoxification
17 facility with no follow up and then in 2012, summer of
18 2012 I self-detoxed with no follow up.

19 Q Okay. And you currently in treatment?

20 A Yes, with the Veterans Administration.

21 Q Okay. And you understand the stringent
22 conditions of the Veterans Court Program?

23 A Yes. I have spoken to alumni and have read
24 the requirements of the program.

25 Q And is it your testimony that you would like

1 to voluntarily admit yourself to that program?

2 A Yes.

3 Q Do you believe you can successfully complete
4 it?

5 A Yes.

6 MR. SERMOS: Nothing further, Your Honor.

7 MR. GAULDEN: No further -- no questions, Your
8 Honor.

9 THE COURT: Okay. And I just have one. You
10 said you voluntarily admitted. Was that a program
11 outside of the court that you are in currently?

12 THE WITNESS: What I am currently in I went to
13 the intensive out-patient program with the Veterans
14 Administration. That's the three day a week
15 program that I will have to repeat if allowed into
16 Veterans Court, and currently I am in the relapse
17 prevention program which is one day a week.

18 THE COURT: And how long have you been in
19 that?

20 THE WITNESS: The intervention in patient --
21 intervention out patient program was five weeks and
22 then we just had the first meeting of the relapse
23 program this past Tuesday.

24 THE COURT: Okay. Without talking about your
25 case at all, do you believe that you would benefit

1 from a more intensive program or do you think what
2 you are doing now is taking care of it?

3 THE WITNESS: I would --

4 MR. GAULDEN: Your Honor, I am going to object
5 at this time. I understand the Court is asking
6 questions but they don't seem to be clarifying
7 questions. They seem to be questions that would be
8 to bolster the defense's argument about his --

9 THE COURT: Well, I am going to say this: I
10 take issue with the way you have indicated that I
11 am asking the questions. It is my responsibility
12 to determine what's appropriate under the
13 circumstances and I think it's a very valid
14 question to ask as to whether or not he needs
15 additional treatment, particularly since you asked
16 the question whether or not there are any
17 individuals in this program who have entered a plea
18 and successfully completed the program. So I take
19 exception to your objection, Mr. Gaulden. So
20 please answer the question, sir.

21 THE WITNESS: Can you repeat the question?

22 THE COURT: Whether or not you think that you
23 need more extensive kind of treatment than the
24 Veterans Program would offer you.

25 THE WITNESS: Yes. I believe the structure as

1 I understand it the Veterans Program would benefit
2 me greatly.

3 THE COURT: Okay. Thank you, sir, for your
4 answer.

5 MR. SERMOS: I have nothing, Your Honor.

6 THE COURT: Mr. Gaulden, you may inquire.

7 MR. GAULDEN: I have no further follow up,
8 Your Honor.

9 THE COURT: Okay. You may step down, sir.
10 Thank you.

11 (Witness excused.)

12 THE COURT: Okay. Now are you ready for legal
13 argument?

14 MR. SERMOS: Yes, Your Honor.

15 THE COURT: Okay. Please proceed,
16 Mr. Sirmons.

17 MR. SERMOS: Your Honor, you have heard
18 testimony that Mr. Rentschler was in the service.
19 He was honorably discharged.

20 MR. GAULDEN: **Objection.** That's facts not in
21 evidence. He never testified to an honorable
22 discharge.

23 MR. SERMOS: It was testified to by
24 Mr. Holzbaur.

25 MR. GAULDEN: I don't believe so. Maybe I

1 heard wrong.

2 THE COURT: Well, I didn't hear that so he is
3 here. We can move on. Go ahead.

4 MR. SERMOS: Based on Mr. Holzbaur's testimony
5 and Mr. Rentschler meets the requirement of the
6 program, you heard testimony from Mr. Rentschler
7 that his alcohol consumption changed and while
8 there has not been a clinician here to decide he
9 has a substance abuse-related disorder it seems
10 clear based on his testimony.

11 Your Honor, the statute says essentially that
12 the choices on the veteran that they meet the
13 eligibility requirements to voluntarily admit
14 themselves in the program.

15 You heard testimony from Mr. Rentschler that's
16 indeed what he wants to do -- you have heard
17 testimony that, you know, if he does this, if he
18 messes up the punishment will be more severe than
19 -- (Unintelligible).

20 THE COURT: Okay. All right. Mr. Gaulden,
21 you may proceed.

22 MR. GAULDEN: Your Honor, first of all, I
23 think there seems to be a belief that it's either a
24 conviction or Veterans Court, and one of the
25 reasons why it was the only real question that I

1 asked the member from Veterans Court whether or not
2 there are people that have successfully completed
3 it and entered pleas is because I don't think it's
4 an either or proposition. I think a person can be
5 held accountable for their actions which in this
6 case Your Honor has the arrest report on CORE,
7 somebody who is driving with pedestrians present in
8 a parking lot in a very aggressive manner and blew
9 over four times the legal limit. A .36 is one of
10 the highest blows I have ever seen in my life.

11 You know, there is a situation sometimes, Your
12 Honor, where I think there are some people that
13 need treatment and then there are other people that
14 realize they need treatment but they also want to
15 get out of something that probably no one else in
16 society would be able to get out of under these
17 circumstances and that is, you know, insuring the
18 safety of the community with an interlock device
19 and getting a criminal conviction like anybody else
20 in his -- under these facts would likely get.

21 You know, far too often we see cases with
22 people with multiple priors who have been out of
23 the service for years and years and years all of a
24 sudden they get a really serious case and now is
25 when they want Veterans Court.

1 So I agree with everything that the Court has
2 brought out during the testimony and also that the
3 Veterans Court representative has testified to,
4 that the Veterans Court program is an extremely
5 good and effective program.

6 I a hundred percent agree with that and there
7 have been many cases in the past that I have agreed
8 to have someone go into Veterans Court without so
9 much as a hearing.

10 This case involves special facts, and I am not
11 just in a situation where we are going to object to
12 every time somebody wants to go in Veterans Court.
13 This is over and above and all we are asking is he
14 be held accountable.

15 The problem with the Veterans Court if the
16 Court refers it there is that this Court has zero
17 discretion if he successfully completes to whether
18 or not anything goes on his record for him to be
19 held accountable with his actions. This Court must
20 dismiss the charges when he is finished.

21 The state believes that Veterans Court would
22 be very appropriate for the defendant. We would be
23 willing to forego any of the first time minimum
24 penalties as part of a DUI conviction so he can do
25 Veterans Court.

1 THE COURT: Let me say this, okay? I cannot
2 do that because the statute for DUI is clear that
3 the Court is not free to withhold, suspend or defer
4 so let's correct the law.

5 If he enters a plea of no contest or guilty to
6 a DUI then the statutory minimums must be imposed.
7 There will be an adjudication and those -- the
8 minimum mandatory or whatever will be imposed, so I
9 don't have the freedom to do that.

10 The drivers license suspension would be there.
11 A minimum of the 180 days or something else, so I
12 am not at liberty to do that so let's make it
13 clear, and I understand what you are saying. I
14 read it.

15 I was, too, impressed by the .36. He should
16 have been out, comatose or whatever, but what I
17 also looked at -- and I do respect your argument
18 that somebody who blows a .36 and is still standing
19 has developed over the years a substantial alcohol
20 tolerance, something. You know, I would probably
21 be out with much less than that but I understand
22 what you are saying.

23 I understand that there is an interest to
24 protect the public. I understand that. I mean I
25 don't have anything locally because I look at all

1 these cases, Mr. Gaulden. It appears that this was
2 his only arrest in the parking lot. Yes, he should
3 not have been doing that. Yes, he should not have
4 been spinning his wheels. He arrested him for DUI
5 and he blew.

6 Of course he could have refused the blow and
7 none of us would know anything about whether he
8 blew a .36. He could have refused. He could have
9 said I am not doing field sobriety exercises. I am
10 not going to blow.

11 You know, we would be looking at a double
12 refusal, and if we had that fact then perhaps it
13 would be easier to say, well, he has an alcohol
14 problem but because he did blow what is abundantly
15 clear on the facts is that he has a problem.

16 He definitely has a problem, and I am certain
17 that above and beyond, like, okay, maybe, okay,
18 let's hammer him. Let's make sure he gets an
19 adjudication because he could have harmed someone
20 or let's do this because this could have happened.
21 I understand that and I understand that.

22 I don't think you want to set a precedent to
23 get a .36 you can just run and get away with it,
24 but the record doesn't support from what I see that
25 he is attempting to run or hide. In fact, it shows

1 that .36 is a definite problem and if it weren't
2 for Veterans Court and only thing happened where we
3 say, okay, let's do some jail time, let's do this
4 or whatever we wouldn't have that great of control.
5 We just wouldn't, and I am not saying I have a bias
6 one way or another. That's why I ask questions so
7 I can get all of the facts.

8 I do understand your position. I am not
9 unsympathetic. I know that there are individuals
10 who try to skirt the system. The system is what it
11 is, and we all know that there are cases with
12 almost exact same facts that the state can either
13 drop, break down or whatever. This is one of the
14 few instances because there is a statute in place,
15 because there is a law that says if the person does
16 what they are supposed to do then it takes away the
17 Court's discretion.

18 Well, I have been on the bench 17 years.
19 There are a lot of things that Judges just don't
20 have any discretion on. We take that as a part of
21 what we do. There are minimum mandatories that we
22 must do. There are certain things that we have to
23 consider. The law falls there and that's what we
24 have to do. We recognize that, so it doesn't
25 trouble me that there is another statute that says

1 if someone completes what they should be doing as
2 required by law that I don't have any discretion.
3 That doesn't trouble me. It may have troubled me
4 17 years ago but if the legislature who we elect
5 makes certain decisions as to what we have to do
6 under the law I don't have a problem with that.

7 My job is to interpret the law that the people
8 that were elected passed and to use those facts and
9 circumstances in the cases to apply that law. This
10 law gives me the ability to listen to both sides
11 and to make a determination that gives the state an
12 opportunity to object which is why we are having a
13 hearing.

14 ~~So I am not troubled by that at all. The .36~~
15 is troubling. There is a problem. Had it not been
16 that I have had individuals who have had hearings
17 on and said, okay, you know, let them go in the
18 program, the once I put in there that were
19 objectionable or whatever, the ones from this have
20 been successful as far as I know.

21 I mean -- and there have been a few and they
22 haven't come back non-compliance. I can assure
23 you, however, that if there is someone that I
24 placed in the program that comes back
25 non-compliance that perhaps minimums will not be

1 something that this Court is inclined to do.

2 New arrest, violations, I will take those very
3 seriously. That's because we have to set a
4 precedent that if you go in this program you are
5 responsible. You are accountable and there are
6 things that you must do and your performance in the
7 program gives the judges and everyone else enough
8 to see whether the program is successful or not so
9 I don't think they are getting away with anything,
10 okay?

11 Maybe with two or three arrests here or
12 whatever, resisting. There is nothing associated
13 with this case that say he resisted or was not
14 cooperative. He wasn't conscious of how impaired
15 he was and I would venture to say, and I am no
16 fool, that he's attempted to drive before and
17 probably didn't even know how he got home. You
18 understand what I am saying? And I think that it's
19 probably happened before.

20 He just didn't get caught. In this particular
21 scenario he got caught but -- okay. So you want me
22 to sentence him and then put him in the Veterans
23 Program so he is accountable, okay? That's one
24 option.

25 The other option is to put him in the Veterans

1 Program, an intensive program and see what happens.
2 I am going to be candid with you based on what I
3 have seen, based on what I have heard, based on
4 prior experience with other individuals in the
5 program I do what I say I am going to do.

6 If he is referred to the Veterans Program he
7 is going to be accountable and he is going to have
8 to have a sense of the fact that on his shoulders
9 are other veterans who are also trying to get in
10 the program and his success in the program further
11 strengthens the Veterans Program.

12 I don't know how long it's going to be around.
13 They might pull this program, but I think in all
14 fairness they should have an opportunity to develop
15 some type of track record one way or another.

16 Again be it prior DUI's, prior record I see
17 none. I don't see any violence or anything else.
18 I see this case he blew, did what he could with the
19 field sobriety exercises, although pitiful, did not
20 recognize the fact that he had a problem, testified
21 on the stand that he had a problem.

22 Frankly I don't see him as a person that's
23 trying to get away with anything or take advantage
24 of anything. If he wanted to do that he would have
25 done it a long time ago. It is what it is.

1 If this is one thing that we can do, if you
2 are right you are right, come back and ask for six
3 months jail time. I don't know. You can do that
4 but I want to give you an opportunity to make this
5 work with the understanding that if it doesn't work
6 for you the consequences for you will be severely
7 beyond a minimum DUI.

8 So are you willing to go into the program with
9 the understanding that from this point forward
10 there is no minimum offer that will be offered to
11 you in consideration for you going to this program?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. GAULDEN: Your Honor, do I get -- can I
15 finish my argument?

16 THE COURT: I have your case law here and your
17 case law is the first one that you have involves --

18 MR. GAULDEN: Your Honor, those are
19 evidentiary issues.

20 THE COURT: Evidentiary issues.

21 MR. GAULDEN: They don't necessarily have to
22 do with my argument.

23 THE COURT: And then you have medical
24 treatment, diagnosis and then you have another one
25 goes to evidentiary issues and then you have

1 another issue for evidentiary issues and then you
2 have even a civil case based on hearsay, and I know
3 you have a Daubert case scientific -- I am not
4 thinking anybody is going to offer any scientific
5 evidence in here so that wouldn't be applicable in
6 this case.

7 Certainly was not noticed for a Daubert
8 hearing or the like. I didn't know anyone was
9 offering any scientific evidence to rebut or the
10 like, so with the facts you object because you
11 believe he should be accountable.

12 MR. GAULDEN: That's not it. I haven't been
13 allowed to finish the rest of my argument. That
14 was kind of the introduction to my argument. I
15 didn't even get to argue.

16 THE COURT: Okay. So let's get to the point.
17 The facts are what they are. What is your
18 underlying objection?

19 MR. GAULDEN: My underlying objection -- I was
20 giving the reason I was objecting but my legal
21 reason for objecting is that the statute -- the
22 terms that the statute required have not been met.

23 At this point the evidence is closed. The
24 defendant has had an opportunity to testify and
25 present any evidence he has before this Court. He

1 has not been -- he did not testify to being
2 honorably discharged which is what is required to
3 be a veteran under the statute and therefore apply,
4 but secondly the second condition is that there has
5 to be evidence of military service-related mental
6 illness, traumatic brain injury, substance abuse
7 disorder or psychological problem. That has not
8 been established by any evidence whatsoever.

9 What we have is the defendant's own
10 self-serving testimony of the fact that 20 years
11 ago he had something that caused him to start
12 drinking.

13 THE COURT: This is what I will do then, I
14 will postpone my decision. I know we have the
15 administrative -- usually the state doesn't object
16 to the administrator being present. This is the
17 first time I have had an argument, the first time
18 that I had an argument from the state that they
19 wanted to see the evidence of whatever the mental
20 illness and the like. The person who has this is
21 in Clay County.

22 MR. SERMOS: Yes, Your Honor.

23 THE COURT: And what is her name?

24 MR. SERMOS: Ms. Wendy Sneed --

25 (Unintelligible).

1 THE COURT: Okay. Wendy Sneed.

2 MR. GAULDEN: Your Honor, I have had hearings
3 with Ms. Sneed before. We would enter an objection
4 because -- I understand. I am just letting the
5 Court know so it's not surprised next time.

6 We don't believe she is qualified as an expert
7 to testify in court to any conditions. Certainly
8 if the defendant is being treated now which he said
9 he is he has access to people that could testify
10 about that.

11 Honestly, Your Honor, if I might have an
12 opportunity to talk with these people I might
13 change my objection. The problem is I had a
14 meeting with defense counsel set up last week that
15 wasn't able to happen so if I had a meeting, if I
16 had known more specifics, if I had known --

17 THE COURT: Stop. We are going to continue
18 this. We will come back for a hearing. Provide
19 him with any information in terms of whether it was
20 a dishonorable discharge, whether or not there was
21 a diagnosis.

22 I understand that is required by the statute.
23 I understand that with this particular grant there
24 are certain requirements. I understand that there
25 is a court. I have been to those courts here. I

1 know the kinds of questions that they ask.

2 I know that all individuals who are screened
3 for this program do not qualify for the program. I
4 have had a hearing before where the Veterans
5 Administration has come in and said on at least a
6 couple of occasions when defense attorneys wanted
7 to get them in that, you know, the person was
8 dishonorably discharged. The service doesn't count
9 or does not have a disability, so we are going to
10 pass this for 9/8 at 9:00 o'clock to be set.

11 And again let me say this: There are some
12 things that have true factual evidentiary
13 boundaries. When there is a court program that's
14 administered by the Fourth Judicial Circuit and
15 other circuits, particularly in the Fourth Judicial
16 Circuit where there are requirements that are
17 presided over by men and women who are sworn as a
18 part of judiciary to make sure that there is
19 compliance, that there is a great weight of
20 consideration that those individuals involved in
21 that program making those determinations and the
22 judges presiding over them go forward with some
23 writ of credibility.

24 Now I know it is what it is in some cases.
25 Evidence is evidence and there are certain ways

1 that things come in, but let's be mindful of where
2 this program is, why it was administered and who we
3 have administrating the program before we start
4 attacking specifics of whether or not it's hearsay,
5 whether or not this person is qualified. We have
6 to be very careful about that. We really do. So
7 9/8 at 9:00 to be set. Thank you.

8 MR. GAULDEN: Your Honor did make mention of
9 whether there was a notice of a Daubert hearing. I
10 would say if they do plan on calling Ms. Snead --

11 THE COURT: I am not doing a Daubert hearing
12 in this case. I am very much aware of what Daubert
13 is for.

14 MR. GAULDEN: Yes, Your Honor.

15 THE COURT: To be quite honest I think the
16 objection has more to do with the kind of case this
17 is whether it's scientific. If the Veterans Court
18 have met the standards of the statute that he was
19 honorably discharge, that he has something that's
20 already been established there is a great weight of
21 presumption.

22 MR. GAULDEN: I understand. I am going to
23 raise the objection --

24 THE COURT: Mr. Gaulden, say one more word I
25 am going to hold you in contempt. Thank you.

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Court's adjourned.

(The proceedings were concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Melanie D. Simpkins, Certified Realtime Reporter and Registered Professional Reporter, certify that I was authorized to and did transcribe the foregoing proceedings and that the transcript is a true and complete record to the best of my ability of the recording.

DATED this 28th day of August, 2015.

/s/ Melanie Simpkins
MELANIE D. SIMPKINS
Certified Realtime Reporter
Registered Professional Reporter