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IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO. 07-428-CFFA

STATE OF FLORIDA,

Plaintiff,

vs.

RICHARD RUSSELL,

Defendant.

PLEA AND SENTENC

FILED IN THE OFFICE
CLERK OF COURT
VOLUSIA COUNTY, FLA.
2007 FEB 26 AM 11 27
BY [Signature]
PAPER NO. 27

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KIM C. HAMMOND
CIRCUIT COURT JUDGE

DATE TAKEN: November 13, 2007
TIME: COMMENCED AT 8:30 a.m.
PLACE: 1769 E. Moody Boulevard
Bunnell, Florida

STENOGRAPHICALLY
REPORTED BY: SANDRA NARUP
REGISTERED PROFESSIONAL REPORTER &
FLORIDA PROFESSIONAL REPORTER

VOLUSIA REPORTING COMPANY
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15 **ALSO PRESENT:**

16 RICHARD RUSSELL, DEFENDANT
17
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1 THE COURT: All right. You want to review with
2 me the Russell matter.

3 MR. CONNELLY: Yes, Your Honor. Ms. Nunnally's
4 here, but let me kind of start and then we'll let
5 her -- oh, she's here. I'm sorry.

6 It's basically, it's a plea of no contest, the
7 three years' probation, a possibility of an early
8 term, not to possess any firearms, which is
9 automatic.

10 THE DEFENDANT: I already sold the one already.

11 MR. CONNELLY: Yeah. And they're amending the
12 charge to delete the firearm. So it's aggravated
13 assault with a weapon, so there's no mandatory
14 minimum, three, 20 or life, depending on
15 the circumstances.

16 THE DEFENDANT: I never did -- I never
17 threatened --

18 MR. CONNELLY: Okay. Well, that's all right.
19 So it's no contest, which we talked about.

20 THE DEFENDANT: Yes, sir.

21 MR. CONNELLY: And then he was going to ask for
22 a withhold. The state's asking for an adjudication,
23 but it's up to the Court ultimately, after hearing
24 what everybody has to say, whether to impose
25 adjudication or not.

1 And that's pretty much it. So I'll let Ms.
2 Nunnally --

3 THE COURT: Ms. Nunnally, anything you need to
4 fill us in on?

5 MS. NUNNALLY: Basically, no. Mr. Connelly --

6 THE COURT: It's a plea of no contest?

7 MS. NUNNALLY: Yes, to be reduced --

8 THE COURT: -- three-year probationary sentence
9 to a lesser offense, an ag assault with a weapon,
10 not a firearm?

11 MS. NUNNALLY: Right. And --

12 THE COURT: And we're looking at three years
13 probation. What about an adjudication issue?

14 MS. NUNNALLY: He doesn't have any felonies,
15 Your Honor. This is his first felony. He has some
16 misdemeanors, but some have been dismissed and --

17 THE COURT: I'll probably withhold if it's his
18 first felony.

19 MR. GOSNEY: Your Honor, could the state
20 address that?

21 THE COURT: Sure.

22 MR. CONNELLY: The issues were, basically, this
23 is a firearm issue where there was some
24 disagreement. Basically, it was an alcohol, drug
25 thing, comes out with a firearm, shoots it into the

1 ground, evidently frightened the person that was
2 driving him to his friend's at that time. And so
3 it's -- and the problem is, we have a reckless
4 display of weapon.

5 Part of our conditions of probation is he
6 surrender all firearms and not have firearms. And
7 the issue -- and I'm not certain. I'll defer to the
8 Court on this, but the issue is that we want to make
9 sure that he doesn't have the ability to get
10 firearms, that he will not be -- possess firearms,
11 because obviously, that's a bad mix. He has a prior
12 reckless display of weapons, prior disorderly intox,
13 DUI. So this is kind of like part of a history, so
14 we really --

15 THE COURT: Well, if he's on probation, it
16 would be a violation of his probation to possess or
17 use a firearm.

18 MR. GOSNEY: But after he gets off probation,
19 we want to make sure that he does not get weapons,
20 because that's the main interest of the state here.
21 We could have been looking at a three-year min man
22 in prison because of the ag assault with a firearm
23 and discharge. But because of the fact that he's a
24 veteran and he's had -- it's really alcohol related
25 and, you know, if we get that -- I want to make --

1 the main issue here is, we want to make sure that he
2 doesn't get weapons in the future, firearms in the
3 future. That's something he should be avoiding with
4 the alcohol and drug issue.

5 So that's what the state wants to see.

6 THE COURT: Okay. Well, I have to think about
7 that. I'll give him a chance to speak to that issue
8 if we get to it.

9 THE DEFENDANT: Yes, sir. I'd like to -- you
10 know, the whole situation was not like I got
11 charged. I never threatened anybody with a firearm.
12 I never have my whole life. I was just, you know,
13 defending my property. The boy had a gun in his
14 truck, and I was warning him down. But I never
15 threatened him. I never pointed a gun at him or
16 anything. I just capped one in my yard.

17 I sold the gun since then. One of my Nam
18 buddies bought it. It was a collector's item,
19 something I was going to pass down to my children.

20 All I've ever used that gun or pistol for is
21 to -- target range shooting, which I never been beat
22 beforehand in handgun competition, military,
23 civilian or whatever. It's a hobby. And I like to
24 hunt, and I've got two rifles I hunt with. And I
25 barely, rarely go hunting, you know.

1 But there's no problem. I already sold my
2 thousand dollar handgun. I've already sold it.
3 It's already been sold before it was in evidence.

4 THE COURT: What was it?

5 THE DEFENDANT: It's a King Cobra .357 Mag.
6 It's the one I target shoot with. And I sold it.

7 THE COURT: Colt?

8 THE DEFENDANT: Yes, sir, Baltimore Colt. And
9 I sold it for \$300 to one of my Nam buddies and
10 it's worth -- it's -- whatever, sir. I paid quite a
11 bit of money for that gun. Comes with a case and
12 the whole nine yards.

13 That's the only time I ever carried that gun
14 around was going to Hot Shots or whatever, target
15 shooting. And that's the first round I've ever
16 fired out of that gun besides not having my headset
17 on and being in firing range, sir.

18 And I didn't threaten the boy at all. I turned
19 around and walked back toward -- to go in my house
20 after capping that round. And I only put one bullet
21 in it because I didn't plan on shooting nobody. I
22 just wanted him gone.

23 And I know he had a nine-millimeter up under
24 underneath the front seat of his truck, and I just
25 wanted him off my property.

1 And my property's posted. And I have never,
2 ever, ever, ever threatened anybody with a weapon.

3 And I had enough of that mess when I was in
4 Cambodia for 15 months. You know what I'm saying,
5 sir, killing people. I've been a combat medic. I
6 felt I have saved more lives than I took. But I'm
7 not one of these kill crazy Vietnam vets. I've seen
8 a lot of them, but I'm not one of them.

9 I've got seven children. I'm going through a
10 lot of things with my Agent Orange. I've got three
11 diseases in my neck from it as far as disintegrated
12 about three discs in the right side of my neck seven
13 years ago. Shands is taking care of me now.

14 I've had four surgeries in the upper part of my
15 mouth in the last year and a half. They even had to
16 go in and sew a splint back in my steel nose. One
17 of my splints came loose and it was leaking down
18 into my sinuses. I had to go on and do that. I've
19 had a bunch of surgeries, sir.

20 I still have a hole in the upper part of my
21 mouth over here, and I'm waiting to get healed up so
22 I can actually wear some false teeth.

23 MS. NUNNALLY: -- convictions? You said that
24 you were involved with the VA, had some benefits.
25 Will a conviction hurt that?

1 THE DEFENDANT: As long as I don't put -- spend
2 90 days in jail, I don't think -- I been 30 years
3 total and permanent. If I went to prison, they'd
4 send me \$60 a month, but I don't care for that
5 route.

6 I mean, I've got seven children I'm trying to
7 take care of. I pay my child support every month.
8 And I still pay extra, you know, buy her extra
9 clothes and this and that. And my ex-wife's getting
10 a thousand a month between me and the government.
11 So whatever my little girl needs, I generally get it
12 for her, and I also help my older children that have
13 my grandchildren.

14 I mean, one of my boys just messed up on a job
15 he did and -- his own fault because they had signed
16 a contract. He loses three grand and ain't got no
17 groceries, I send him \$300 to buy groceries. I
18 don't want to watch my son and his wife and my three
19 grandchildren go hungry.

20 I mean, I'm not one that's kill crazy. I seen
21 a lot of them, Your Honor. I seen a lot of them and
22 I'm not one of them.

23 THE COURT: Any other issues in reference to
24 the plea that we need to discuss?

25 MS. NUNNALLY: Well, as to the facts, Your

1 Honor, the victim said that Mr. Russell pointed the
2 gun at him but didn't make any verbal threats,
3 didn't say a word or anything of that nature.

4 We did have an independent witness that was
5 across the street and said he heard a popping sound,
6 looked out the window, and he said he never saw Mr.
7 Russell point anything at him. He saw the guy
8 arguing with him, going back to his car, walking
9 back to his car, getting in and leaving.

10 So -- and that person was -- spoke -- you know,
11 that he did talk to the police that day. But my
12 investigator spoke to him at length about what he
13 saw and what he recalled. So there are disputes
14 there as to whether he pointed the gun.

15 But the key thing here is that the gun was
16 discharged. And I've been talking with the state.
17 We didn't want to go forward with the trial --

18 THE COURT: And his plea is an ag assault with
19 a weapon, so not a firearm, and discharging a
20 firearm in a public place. Is that right?

21 THE DEFENDANT: Was in my property, sir.

22 THE COURT: It doesn't sound like a public
23 place. But maybe they consider that to be likened
24 to -- within a certain distance of a residence and
25 so forth.

1 MS. NUNNALLY: Well, a trade off, because if it
2 is --

3 THE COURT: Which is it that he's pleading to?
4 That's what I'm trying to get.

5 MR. GOSNEY: There should be a first amended
6 information in the file, Your Honor.

7 MS. NUNNALLY: It's an aggravated --

8 MR. GOSNEY: Aggravated assault, deadly weapon.
9 It was a discharging firearm, and I think that's --
10 and then there's a third one, which is --

11 MS. NUNNALLY: No, I don't have the second --

12 MR. GOSNEY: Do you have the first amended
13 information?

14 MS. NUNNALLY: I just have this one.

15 THE COURT: Well, I'm not so concerned about
16 what he's charged with as to what he's actually
17 pleading to.

18 MR. GOSNEY: We filed an amended charge --
19 amended charging document so that he would plea
20 straight up to the amended information as pled.

21 I would note that the firing of a weapon, even
22 into the ground, with the intent to threaten
23 somebody and have them flee in fear is aggravated
24 assault. So it doesn't matter whether or not he put
25 the -- pointed the gun at the guy's head or not.

1 The fact is, if you're displaying a firearm,
2 shooting it into the ground with the intent for
3 somebody to flee, that's an aggravated assault.

4 So I'm -- Madam Clerk, do you have the -- which
5 information do you have?

6 THE CLERK: I have the initial one.

7 MR. GOSNEY: Is there an amended information?

8 THE CLERK: It hasn't made it to the file yet
9 because we just got it Friday or something. But I'm
10 making a copy..

11 THE DEFENDANT: Your Honor, my property is
12 posted, and it's been posted a long time. Police
13 told me to post it. I don't care what the --

14 THE COURT: Here's the only thing that's
15 holding us up here is, I want to make sure we have
16 an understanding of what he's actually pleading to.
17 And if I'm going to dispose of the matter, then I'll
18 take the plea and I'll decide. I have two charges.
19 One is ag -- well, it looks like amended is only one
20 charge.

21 MS. NUNNALLY: Right. I think that's the one.

22 THE COURT: Only one charge, the ag assault.

23 MS. NUNNALLY: It's ag assault firearm --

24 THE COURT: And I would be willing to go with a
25 withhold and three years' probation. I'll prohibit

1 him from having a firearm during the period of the
2 probation. But I think there's something to be said
3 about the right to bear arms and the right to
4 possess weapons, and he maybe learned the -- the
5 loss of -- the use of and possession of weapons, to
6 a gun owner, is probably enough -- three years is
7 enough reminder that he's not going to do that
8 again, going to protect that right.

9 THE DEFENDANT: No, sir. I won't do it again.
10 I'm used to living out there all by myself, Your
11 Honor, I mean, with no neighbors, no nothing, just
12 solid woods.

13 THE COURT: Got to get a big stick.

14 THE DEFENDANT: Yeah. Well, I got my 12-foot
15 fishing pole. It's got to be --

16 THE COURT: Use that if you get into a problem.

17 MR. GOSNEY: Your Honor, the surrendering of
18 firearms condition --

19 THE COURT: He's dispossessed himself. I'm not
20 going to order him to give the firearms to the
21 sheriff or any other agency or --

22 MR. GOSNEY: Well, those --

23 THE COURT: -- that anyone be forced to have
24 it, but he will dispose of them in compliance with
25 the probation order.

1 MR. GOSNEY: Well, first of all --

2 THE COURT: And the way he can do that is, he
3 can give them to his son or his daughter or his
4 family members, just as long as he doesn't possess
5 them.

6 MR. GOSNEY: Your Honor, the firearm that he's
7 alleging he sold is in evidence, in custody of FDLE.
8 It's been tested as a fired weapon. That's in our
9 custody. We also have other firearms that are in
10 the state's custody that --

11 THE COURT: Do you know (inaudible) as he
12 indicated?

13 MR. GOSNEY: I don't know what he's talking
14 about. We have a King Cobra .357 Magnum in -- FDLE
15 has tested. So that thing is in evidence, as well
16 as the other firearms from the previous convictions
17 are also in evidence. I know that the evidence
18 custodian would like to dispose of those firearms.
19 And that was a condition of our plea, Your Honor,
20 was that he surrender all firearms.

21 THE DEFENDANT: They released my weapons back
22 last time that boy accused me of sticking my gun up
23 to his head and telling him to get out of my
24 driveway.

25 MS. NUNNALLY: I think we're getting two

1 situations mixed.

2 THE DEFENDANT: That was a while back. That
3 was something else.

4 MS. NUNNALLY: Well, whatever --

5 THE COURT: I would not, probably, unless it's
6 agreed --

7 THE DEFENDANT: Yes, ma'am. I've already sold
8 my .357 Magnum. Get out of evidence, it goes to my
9 Nam buddy. He's already bought it. I got it
10 notarized, the whole nine yards.

11 MS. NUNNALLY: So what he did is that the one
12 that they have in evidence, he went on ahead
13 negotiated with a friend that, I'll sell it to you,
14 and once it's -- you can -- that's what he did.
15 That's what he meant. That's what he said, the one
16 that they have in evidence, he sold it to his
17 friend.

18 THE DEFENDANT: Yes, sir. It's sold and it's
19 got a notary seal on it and the whole nine yards.
20 It's already got no people (phonetic) in evidence.
21 And it's his gun as soon as it's released, to him,
22 not to me. It's his gun now.

23 MR. CONNELLY: Any other firearms in the house
24 have to be gone --

25 THE DEFENDANT: Yes, sir. I'm making

1 arrangements. I'm making arrangements. I've got
2 them put up now, don't know if I can get to them.
3 I'm making arrangements to -- one boy wants to buy
4 one, but I don't know if I want to sell it to him or
5 not.

6 MR. GOSNEY: Your Honor, the state will
7 withdraw its offer if we do not have surrender of
8 the firearms. That's a condition of the plea. That
9 was what we negotiated. If they are not willing to
10 go with that, then we'll withdraw our plea and go to
11 trial on it.

12 THE COURT: All right. Ready to go to trial?

13 MR. CONNELLY: No. He wants to plea.

14 THE DEFENDANT: I want to plea. I told him I'd
15 get rid of my firearms. That ain't no --

16 THE COURT: The dispute is not over whether I
17 wish to impose something more than the standard
18 condition of probation, but the state is
19 representing that that's a condition of their offer,
20 that he's to be disposed of, he's to surrender over
21 all of his weapons. And I'm probably not inclined
22 to do that unless that's agreed upon.

23 MS. NUNNALLY: Well, if --

24 MR. CONNELLY: I think he says that's agreed
25 upon.

1 THE DEFENDANT: Yes. I've got rid of that one
2 in evidence already. I've already sold it.

3 THE COURT: They're saying right now that I
4 guess they want to have the benefit of doing what
5 they want with the gun. What eventually happens to
6 the gun is, if they're holding it, they will turn it
7 over to the sheriff, and the sheriff, if it's usable
8 or has some value, they may do something else.
9 Otherwise, they can destroy them.

10 THE DEFENDANT: Yes, sir. Well, I had somebody
11 that was going to hold the others. All I got is
12 just two rifles that I hunt with, and they were
13 going to hold them for me. All the handgun is for,
14 like I said, sir --

15 THE COURT: According to the understanding that
16 the state's referring is, they want to take the guns
17 from you and do with it what they wish, destroy
18 them, do whatever they want to do. But they're
19 going to get the guns. It's not you dispose of your
20 own property and get something of value for it.
21 That's not what they want to do.

22 THE DEFENDANT: I wasn't going to get anything
23 for them, sir. I was going to get them to hold.

24 MS. NUNNALLY: Well, that's -- the state's
25 position is, at this point, you get rid of them to

1 them, whoever. I don't know who he has to give it
2 to --

3 THE COURT: Yeah. And they're not going to
4 give them back to you. They're going to take your
5 property, whatever it is.

6 THE DEFENDANT: No, I'm not getting them back.
7 Somebody's going to put them up and ain't going to
8 let me touch them. That's my hunting rifles. You
9 know, ain't no -- the pistol was the strongest
10 weapon I had, and that's the one that I shoot target
11 practice with and I shoot handgun competition.
12 That's the one I sold.

13 THE COURT: For the time being, according to my
14 understanding, that's out of the picture.

15 THE DEFENDANT: Yes, sir. I sold it.

16 THE COURT: And the fact that they may be even
17 requiring me or asking me to impose adjudication,
18 which means you won't ever probably have a firearm,
19 so whatever pleasure that brought to you is -- it
20 would be a foregone conclusion.

21 I don't think we have an agreement, frankly.
22 And if we don't have an agreement, we need to refine
23 our negotiations a little bit more fully and come to
24 one or set the matter down for trial.

25 MR. GOSNEY: Your Honor --

1 MR. CONNELLY: He said -- he said was going to
2 be giving up the firearms --

3 THE DEFENDANT: My firearms --

4 MR. CONNELLY: -- giving up the firearm.

5 THE DEFENDANT: Yes, sir. I don't have no
6 problem with that.

7 MS. NUNNALLY: Who we give it to up -- I mean,
8 the state needs to explain who is -- in order for us
9 to explain to Mr. Russell, if he's going to give up
10 his firearms, who does the state want him to give it
11 to? Because he's under the impression he's going to
12 dispose of them by giving them to his friends, that
13 they'll hold it, get them out of the way. That's
14 what way he's agreeing to dispose it. Now, we --

15 MR. CONNELLY: -- give it up to whoever the
16 state says. They just need to tell us.

17 MS. NUNNALLY: Well, that's what I'm saying --

18 THE COURT: He thinks he's going to get them
19 back --

20 MS. NUNNALLY: He's not going to get them back,
21 so the state needs to clarify, who does he want him
22 to give it to. If it's not the --

23 THE COURT: I think the sheriff is the one who
24 gets the possession of all firearms.

25 MS. NUNNALLY: Okay. So he gives it to the

1 deputy.

2 MR. BAILIFF: Bring it to the sheriff for
3 safekeeping.

4 THE DEFENDANT: Yeah. So all I've got to do --

5 THE COURT: They're talking about dispossessing
6 him of those weapons. And they may be worth
7 thousands of dollars or a few hundred dollars'
8 worth. So that's a substantial -- that's a
9 substantial sanction.

10 MS. NUNNALLY: So what's the time when -- so if
11 he's on probation now, the stipulation goes into
12 effect now. So if he -- is the deputy going to come
13 and get them at the house? Because if he puts them
14 in the car and go ride up the street and he get
15 pulled, then he's going to be violated.

16 THE COURT: Well, that's the problem. So they
17 would need to work out some arrangements to get
18 possession of the weapons.

19 That's going to be the deal. If he dispossess
20 himself of ownership to those, turn them over to the
21 sheriff, the sheriff is the one who possesses them
22 and disposes of them and uses them if they have
23 value, and if they don't, for law enforcement
24 purposes, ordinarily they're destroyed. They throw
25 them out in the ocean somewhere.

1 MR. CONNELLY: He'll be put on probation, so
2 I'd say just to await instruction from his probation
3 officer, don't touch them, just leave them where
4 they are. His probation officer will tell him what
5 to do next.

6 THE COURT: That probably is a good way to do
7 it, so long as everybody seizes their
8 responsibility.

9 MR. CONNELLY: We're on record.
10 He's in full agreement. All he needs to be
11 told is what to do --

12 THE COURT: Now all I got to know is what he's
13 in full agreement for. He needs to understand that.

14 MR. GOSNEY: Could we pass this up to the
15 Court? This is our plea, our written plea offer
16 to --

17 THE COURT: Well, why don't you read it in the
18 record.

19 MR. GOSNEY: Because it would be clearer if we
20 basically --

21 MS. NUNNALLY: I mean, the plea --

22 MR. GOSNEY: Excuse me. Plea to aggravated
23 assault, deadly weapon, third degree felony, with
24 adjudication.

25 Plea to discharge of a firearm in public, first

1 degree misdemeanor.

2 Plea to use of firearm under the influence of
3 alcohol, second degree misdemeanor.

4 Sentencing recommendation, three years'
5 probation with early term after two. No victim
6 contact, surrender all firearms, not to possess
7 firearms.

8 That was the written plea agreement that I
9 thought we had coming here today.

10 Now, now everything is getting changed around.
11 Now, we've been -- given on the withhold
12 adjudication, and now we're scrolling around with
13 the firearm case.

14 MR. CONNELLY: Nobody is disagreeing. He is
15 agreeing to giving up his firearms.

16 COURT REPORTER: One at a time, please.

17 THE COURT: Here's -- excuse me. Excuse me.
18 Let me have everybody stop talking, and if you speak
19 up again, I'm going to have to hold you in contempt.
20 I don't want anybody talking over each other.

21 It's nice that you all have come to some
22 agreement, but that -- I should have heard that
23 read, spelled out in more detail what the agreement
24 was so he knows. And then I've got to make sure I
25 know that he knows what he's agreeing to, because

1 he's giving up the right to ever possess firearms,
2 or at least or until and unless the matter of
3 sanction would be set aside.

4 He's giving up some valuable property, which
5 are weapons. He's talking about a King Cobra. I
6 don't know, that may be \$600, it may be \$1,500.
7 He's giving up his rights to have any access to any
8 weapons or possess them in any way.

9 He may not understand that, and he's going to
10 have to understand that before I'm going to take the
11 plea.

12 THE DEFENDANT: Yes.

13 THE COURT: So now, Mr. Gosney's read over what
14 he believes the offer was. Is that offer agreeable?
15 And if it is, I've got to go through and inquire
16 about that.

17 MR. CONNELLY: Can I just say one thing. That
18 offer is agreeable. The only thing that changed
19 was, this morning, the state said that adjudication
20 would be up to the judge. Everything else is agreed
21 upon. And if the Court withholds, that's acceptable
22 to the state if that's how you exercise your
23 discretion.

24 MR. GOSNEY: That's also my understanding.

25 MR. CONNELLY: Yes.

1 THE COURT: Okay. Now, wait a minute. So the
2 condition of this thing is not that he has
3 to automatically be adjudicated by accepting the
4 plea, but that it's up to me to decide that.

5 MR. CONNELLY: Yes.

6 MS. NUNNALLY: Yes.

7 THE COURT: All right. And I'm saying that
8 there's a possibility I'm not going to require him
9 to be adjudicated to be a convicted felon.

10 MR. CONNELLY: That does not botch the deal.

11 MS. NUNNALLY: Right.

12 MR. GOSNEY: That's correct. And that was an
13 oral modification.

14 THE COURT: And that's usually the plan that we
15 go by. Adjudication is generally something that I
16 have my discretion involved in. All right. If
17 that's the rules we're playing by, let me inquire of
18 the defendant.

19 So would you go ahead and swear Mr. Russell for
20 me.

21 THE CLERK: Do you swear or affirm that the
22 testimony you're about to give is the truth, the
23 whole truth and nothing but the truth, so help you
24 God?

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Thank you.

2 THE COURT: All right. Tell us your full name
3 for the record.

4 THE DEFENDANT: I hate my full name. Richard
5 Luther Russell, Jr.

6 THE COURT: All right. Not a bad name.

7 Mr. Russell, my job in part is to make sure
8 that you are willingly and understandingly and
9 voluntarily agreeing to the terms and condition of
10 the plea that has been described, so I've got to
11 make sure I go through that with you and make sure
12 there's no misunderstanding.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How old are you, Mr. Russell?

15 THE DEFENDANT: Close to being 55, but I'm 54
16 right now.

17 THE COURT: Have you been under the influence
18 of alcohol or narcotics in the last 24 hours?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you ever been treated for a
21 mental problem?

22 THE DEFENDANT: Back when I first came back
23 from Cambodia.

24 THE COURT: Okay. Are you having some problems
25 with your military experience?

1 THE DEFENDANT: Not anymore, just when I first
2 came home.

3 THE COURT: You're not taking any medication or
4 anything?

5 THE DEFENDANT: No. I'm taking a lot of
6 medication for my Agent Orange, you know, chemical
7 poison.

8 THE COURT: Okay. And where are you taking
9 that treatment?

10 THE DEFENDANT: Shands is the one giving me my
11 Botox, too, in my neck. You know, my neurosurgeon's
12 giving me shots in my neck of Botox. At Shands for
13 five years -- seven years now, and Daytona Beach
14 clinic. And I have some private surgeon the VA pays
15 for in Palm Coast.

16 THE COURT: Okay. You satisfied with the
17 services of your attorney?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Your staff of attorneys. You had
20 several --

21 THE DEFENDANT: Yes, sir. Yes, sir. Yes, sir.

22 THE COURT: You understand that by entering
23 your plea, you're giving up or waiving your right to
24 have a trial by jury, your right to be presumed
25 innocent, your right to remain silent, your right to

1 examine and cross-examine the witnesses, and perhaps
2 even the right to an appeal, you're giving up.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And I presume nobody's tricked you
5 or forced you or made you to do this?

6 THE DEFENDANT: No, sir.

7 THE COURT: Make the plea of your own free
8 will?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Factual basis, please --

11 MR. GOSNEY: State would --

12 THE COURT: -- that were agreed to for the
13 purpose of the plea.

14 MR. GOSNEY: State would stipulate to the facts
15 contained in the 798 and the information are
16 sufficient for the plea and would ask the defense to
17 so stipulate.

18 THE COURT: And that's the amended information
19 we're particularly referring to?

20 MR. GOSNEY: Well, the amended information is
21 actually ag assault firearm. The state is willing
22 to orally amend that to ag assault, deadly weapon,
23 discharge firearm in public, use of firearm under
24 the influence of alcohol.

25 THE COURT: Okay. So ag assault --

1 MR. GOSNEY: Deadly weapon.

2 THE COURT: -- with a weapon --

3 MR. GOSNEY: Deadly weapon.

4 THE COURT: Deadly weapon. And that is a what,
5 third degree felony?

6 MR. GOSNEY: Third degree. Discharge of
7 firearm in public is a first degree misdemeanor.
8 Use of firearm under the influence of alcohol,
9 second degree misdemeanor.

10 MS. NUNNALLY: You understand that?

11 THE COURT: No. Say that again.

12 MR. GOSNEY: The aggravated assault, deadly
13 weapon is a third degree felony, but it does not
14 contain the three-year minimum mandatory with a
15 firearm, discharge of firearm. Discharge of firearm
16 in public is a first degree misdemeanor. Use of --

17 THE COURT: Where is the discharge in public
18 charge?

19 MR. GOSNEY: That is part of the plea that
20 we're --

21 MS. NUNNALLY: It's not on the information that
22 you're looking at.

23 THE COURT: Okay. And it was on the original
24 or some related such charge on the original
25 information?

1 MS. NUNNALLY: No. That's -- no, it wasn't.

2 MR. GOSNEY: No, Your Honor. It should have
3 been -- there should be a first amended and I have
4 it on my computer, but you should have that. Is
5 there a first amended information?

6 THE CLERK: No.

7 MR. GOSNEY: There's not. Okay. Your Honor, I
8 guess we're going to drop those two because it
9 should have been in the clerk's file. I know it got
10 done real late on Friday.

11 THE COURT: The amended information only has
12 the ag assault with a firearm charge in the
13 information, and I understand you're pleading it
14 down to deadly weapon.

15 MR. GOSNEY: There should be a first amended
16 information, but if not, I guess we'll have to go
17 with what we have in the file. Maybe there is.

18 THE COURT: The original first information in
19 the case, and I'm looking at alleged one count and
20 that's the with a firearm, the ag assault with a
21 firearm. I see the discharging on the 798, but I
22 don't see it in an information anywhere.

23 MR. GOSNEY: That's correct, Your Honor.

24 THE COURT: And the amended information
25 likewise singularly made as to ag assault with a

1 firearm.

2 MR. GOSNEY: Right. What would be the law on
3 that, Your Honor, because it probably has not -- it
4 did not get done. I did amend my petition or my
5 information to include those charges, but since
6 they're now not included in the court's file, that's
7 not what's before you.

8 THE COURT: Well, as long as I've got knowledge
9 that there is a charge somewhere --

10 MR. GOSNEY: Right.

11 THE COURT: -- it doesn't offend me. But I'm a
12 little reluctant, and if we -- and if we agree, then
13 perhaps I can comply with the agreement, but I want
14 to make certain of which way it is.

15 MR. GOSNEY: Well, in the 798, he is charged
16 with a misdemeanor discharge of firearm in public.
17 And since the information would be sufficient for
18 the -- for a -- as a misdemeanor, an information --
19 or, it would not be required. 798 would be
20 sufficient. We would rely on the information
21 contained in the 798 for discharge of firearm in
22 public. We would be striking use of firearm under
23 the influence of alcohol.

24 So, basically, we have a plea to an ag assault,
25 amended, deadly weapon, and then a discharge of

1 firearm in public, first degree misdemeanor, as
2 contained in the 798.

3 THE COURT: Is that agreed?

4 MS. NUNNALLY: Yes.

5 THE COURT: One is a third degree felony,
6 punishable by up to five years in the state prison.
7 That's the worse that could happen for that. And
8 other one is a misdemeanor, punishable by up to a
9 year in the county jail. Is that understood?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. You understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And the pleas are no contest pleas.
14 Is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. I'll accept the pleas, find
17 that they're given voluntarily.

18 Madam Clerk, the only record we'll have of this
19 secondary shadow charge that is unfiled on this
20 information will be plea that's been addressed in
21 open court and the 798, so please note what this
22 misdemeanor charge is, as well, please.

23 THE CLERK: Okay.

24 THE COURT: Because that will be the only
25 record of that.

1 THE CLERK: Yes, sir.

2 THE COURT: The plea is a no contest plea.
3 I'll accept the plea, find it's given voluntarily,
4 and we'll proceed to a disposition.

5 Is there anything to be said in mitigation of
6 sentence or why sentence should not be imposed,
7 other than what we've already talked about?

8 MS. NUNNALLY: No, sir.

9 THE COURT: Okay. On the felony charge, I'm
10 going to withhold adjudication, place the defendant
11 on three years' probation. He's to forfeit the
12 firearms that have already been seized and
13 dispossess himself of any other weapons, and he
14 needs to do that under the supervision of his
15 probation officer.

16 On the misdemeanor charge, I'm going to
17 adjudicate, time served on the misdemeanor, and that
18 will dispose of that.

19 The standard conditions of probation on the
20 felony charge will be imposed. It's real important
21 that you don't violate your probation, that you
22 don't use substances, that you don't violate the
23 law, that you dispossess yourself of those weapons
24 during the probation. And they can come and inspect
25 your home and make sure you've done those things, so

1 you've got to make sure that you don't have any
2 weapons.

3 THE DEFENDANT: Yes, sir. I've already sold
4 that one they got in evidence.

5 THE COURT: Okay. Well, I'm not so sure that
6 you've done that, because the state is claiming that
7 that's their property, in effect, and they're going
8 to turn that over to the sheriff for disposing of.

9 MR. GOSNEY: Your Honor, also, the no victim
10 contact.

11 THE COURT: And, of course, no victim contact.

12 So I don't know what you've got to deal with
13 there, but the gun is -- I think the gun that was
14 used in the assault charge is really a lost cause.
15 You lose that one. The rest of them, you got to
16 make sure you dispossess yourself of them. They're
17 not in your possession in any way. And you do it
18 like your probation officer says you got to do it.

19 But that gives you a chance down the road, if
20 you're a hunter and you're avid and you're a
21 marksman, to perhaps have another gun.

22 Now, they'll ask you, when you fill out a
23 purchase from a gun person, a registered gun owner,
24 a lot of personal questions about your mental
25 health, about other offenses that may include things

1 that would limit who you could buy and obtain a
2 weapon from. But you need to -- don't worry about
3 that until you get your three years behind you, and
4 do what the law says if you're going to get another
5 weapon.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Otherwise, standard conditions are
8 to be imposed. And I think that's about all we can
9 do right now.

10 MR. GOSNEY: Thank you, Your Honor.

11 THE COURT: Thank you. Good luck to you, sir.

12 THE DEFENDANT: Thank you. I'm glad it's
13 finally over, and I'm sorry. It was my mistake to
14 call that boy up for a ride.

15 THE COURT: Well, that happens. Just be
16 careful.

17 THE DEFENDANT: And my son and children and my
18 five grandchildren are more important to me than a
19 hunting rifle and pistols. (Inaudible.)

20 THE COURT: I tell you, the laws that pertain
21 to firearms are so complicated that just about
22 anything you do inadvertently, you got to check
23 yourself --

24 THE DEFENDANT: Yes, sir.

25 THE COURT: -- laws are complicated.

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THE DEFENDANT: Where I lived outside Atlanta,
we always checked our gun, and it's an armory at
Fort Gill.

(Thereupon the hearing was concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)
)
COUNTY OF VOLUSIA)

I, Sandra Narup, Registered Professional Reporter and Florida Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 20th day of December, 2007.



SANDRA NARUP
Registered Professional Reporter &
Florida Professional Reporter

(This signature is valid only
if signed in blue ink.)