

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEAD,
DRAW NEAR, GIVE ATTENTION, AND
YOU SHALL BE HEARD.

GOD SAVE THIS UNITED STATES,
THIS GREAT STATE OF FLORIDA,
AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.

THE FIRST CASE ON THE COURT'S
AGENDA TODAY IS SEIBERT VERSUS
STATE.

PARTIES READY?

>> GOOD MORNING.

MY NAME IS ROSEANNE ECKERT.

I'M HERE ON BEHALF OF MICHAEL
SEIBERT.

WE'RE FOLLOWING THE LOWER COURT
SUMMARY DENIAL OF SEIBERT'S
MOTION FOR POST-CONVICTION
RELIEF.

I WOULD LIKE TO FOCUS ON
INEFFECTIVE ASSISTANCE OF SELL
CLAIM WITH RESPECT TO THE
EXTENT OF THE SEARCH ONCE THE
POLICE OFFICERS ENTERED MY
CLIENT'S APARTMENT.

>> WHAT YOU'RE GOING TO TELL US WHAT
FACTUAL ISSUE, IF YOU COULD,
NEEDED TO BE DEVELOPED IN A

EVIDENTIARY HEARING?
BECAUSE THE TRIAL COURT
UNDERSTOOD THIS COURT REALLY
FAVORS AND THERE IS PRESUMPTION
IN FAVOR OF A EVIDENTIARY
HEARING.

WHAT FACTS NEED TO BE DEVELOPED
IN AN EVIDENTIARY HEARING THAT
MAKES THE TRIAL COURT'S DENIAL,
SUMMARY DENIAL ERRONEOUS?
IS THAT WHAT YOU'RE GOING TO
FOCUS ON?

>> YES.

AS THIS COURT KNOWS ON DIRECT
APPEAL THE APPELLATE COUNSEL
CHALLENGE, RAISED FOURTH
AMENDMENT CHALLENGE TO THE
INITIAL ENTRY INTO THE
APARTMENT AND EXTENT OF THE
SEARCH.

WE'RE FOCUSING ON THE EXTENT OF
THE SEARCH.

APPELLATE COUNSEL AND
MR. SEIBERT HAS ARGUED THAT
OFFICER BALES COULD NOT HAVE
SEEN INTO THE BATHROOM WHERE HE
WAS STANDING.

THIS COURT ACCEPTED THE STATE'S
ARGUMENT THIS WAS NOT A SEARCH.
IT WAS ACTUALLY PLAIN VIEW.

WE BELIEVE IF YOU LOOK AT FACTS
IN DISPUTE IT WAS IMPOSSIBLE
FOR OFFICER BALES TO SEE.

>> WE HAVE DIAGRAM AND
DIMENSIONS THAT IS PROBABLY
PRETTY CLOSE TO IT.

WE HAVE PHOTOGRAPHS.

AND WHAT FURTHER NEEDS TO BE DEVELOPED?

ALMOST COMMON SENSE APPROACH TO THIS. WHAT MORE IS THERE?

>> THIS COURT IN DURING ORAL ARGUMENT WAS QUESTIONING APPELLATE COUNSEL ABOUT THE DIMENSIONS OF THE APARTMENT.

NOWHERE IN THE RECORD ARE THE DIMENSIONS OF THE APARTMENT. UNFORTUNATELY THE STATE WHEN POLICE OFFICERS WENT IN AND TOOK PHOTOGRAPHS OF THE APARTMENT THEY NEVER MARK DOWN THE DIMENSIONS.

TRIAL COURT RELIED ON EXHIBIT 48 WHICH THIS COURT HAS IN POSTER SIZE SAYS NOT TO SCALE. WE CAN PROVE THIS DOCUMENT IS NOT IN ANY WAY THE REALITY IN TERMS OF WHAT THE APARTMENT ACTUALLY LOOKS LIKE.

WE HAVE THE BLUEPRINT NOT IN THE RECORD.

>> WHAT ABOUT THE PHOTOS?

>> THE PHOTOGRAPHS WERE TAKEN FROM THE PERSPECTIVE OF THE POLICE OFFICERS.

THE ONLY REASON --

>> I THOUGHT THEY WENT BOTH WAYS?

I THOUGHT THERE WERE PHOTOGRAPHS THAT CAPTURED THE FRONT ENTRY WAY FROM THE BATHROOMSIDE?

>> RIGHT THIS COURT ATTACHED PHOTOGRAPHS NUMBER 3 AND 10. AND THEY SAID THERE IS NO POCKET DOOR. THERE IS A HINGED DOOR. IT IS OUR POSITION THERE WAS A SEPARATE ROOM. I THINK THIS COURT ACTUALLY FOUND AS A FACT OR, RELIED ON THE STATE'S, STATE AND LOWER COURT FINDINGS THAT THE OFFICER DIDN'T SEARCH IN ANY OTHER ROOMS. SAID THERE WAS NOT EXTENSIVE SEARCH. THE POLICE OFFICER DID NOT OPEN ANY CONTAINERS AND DIDN'T EVEN ENTER ANY OTHER ROOMS. WHILE THIS IS A SMALL APARTMENT I WOULD NOT NECESSARILY CHARACTERIZE IT AS A TRUE STUDIO BECAUSE IF YOU LOOK AT PHOTOGRAPH THERE IS ACTUALLY A HALLWAY YOU HAVE TO GO DOWN IN HALLWAY TO SEE THE POCKET DOOR.

>> WHERE WAS THE OFFICER POSITIONED IN THIS ROOM? OR IS HE IN WHAT LOOKS LIKE THE MAIN ROOM OF THE APARTMENT?

>> IT IS MY POSITION IF WE WERE GRANTED AN EVIDENTIARY HEARING WE WOULD SHOW HE WOULD HAVE HAD TO HAVE BEEN IN THE HALLWAY.

>> WHAT WAS ALLEGED IN THE MOTION TO SUPPRESS?

>> THAT HE COULD NOT SEE, THAT

HE COULD NOT SEE THE BATHROOM.

>> WHAT WAS ALLEGED ABOUT HIS VANTAGE POINT AND WHERE HE WAS IN THE MOTION TO SUPPRESS?

>> THE ACTUAL MOTION TO SUPPRESS DID NOT GO INTO DETAIL IN TERMS OF WHERE THE OFFICER WAS.

THE MOTION TO SUPPRESS REALLY JUST SAID, BASED ON, I THINK AT THAT TIME TRIAL COUNSEL WAS JUST FOCUSING ON THE EXTENT OF THE SEARCH AND WHETHER OR NOT THE OFFICER EVEN HAD A THE RIGHT TO DO A SEARCH.

BELOW THE STATE AND THE OFFICERS TOOK THE POSITIONS THEY WERE CONDUCTING A PROTECTIVE SWEEP THAT THEY HAD A RIGHT TO GO AROUND THE APARTMENT, AFTER THE HEARING ON THE MOTION TO SUPPRESS THE ISSUE REALLY WAS AND TRIAL COURT FOUND IT WAS NOT ACTUALLY A SEARCH.

I MEAN I THINK THIS COURT AGREED THAT WITH APPELLATE COUNSEL A PROTECTIVE SWEEP IN TERMS OF GOING INTO ALL THE OTHER ROOMS OF THE APARTMENT WOULD NOT HAVE BEEN APPROPRIATE UNDER THESE CIRCUMSTANCES.

>> WERE THE OFFICERS TOLD AT ANY POINT, PRIOR TO THEIR ENTRY INTO THE APARTMENT HOW MANY PEOPLE WERE IN THE APARTMENT?

>> NO.

>> SO THEY ONLY KNEW THAT PERSON THAT ALLEGEDLY WAS GOING TO COMMIT SUICIDE WAS IN THE APARTMENT?

>> CORRECT.

>> SO YOU'RE NOT CONTENDING THAT THEY WERE SEARCHING FOR, THAT THEY HAD REASON TO BELIEVE SOME OTHER PERSON WAS THERE?

>> CORRECT. AND --

>> GO AHEAD.

>> I THINK IF THE TRIAL COURT ATTACHED, ONE OF THE BIG ISSUES WHETHER OR NOT THERE WAS A POCKET DOOR.

AND I DON'T THINK THAT'S A MAKE OR BREAK DEAL IN TERMS OF A POCKET DOOR.

I THINK THE POCKET DOOR WAS OUR WAY OF SHOWING HE HAD TO GO THROUGH, GO TO A HALLWAY IN ORDER TO GET INTO THE BATHROOM AND THE CIRCUIT COURT --

>> IF THERE WAS A POCKET DOOR, WOULDN'T, YOU'D HAVE TO DECIDE WHETHER IT WAS OPEN OR CLOSED.

I MEAN THAT IS THE KIND OF DOOR THAT SLIDES INTO THE WALL, CORRECT?

>> CORRECT.

>> SO IF IT WAS OPEN, IT WOULDN'T HELP ANY, CORRECT?

>> WELL, IF IT WAS OPEN THERE IS STILL THE FACT IT ENTERS INTO A HALLWAY.

I THINK IF YOU LOOK AT THIS

COURT'S OPINION ON DIRECT APPEAL THERE WAS A PERCEPTION THAT THERE WAS NO KIND OF HALLWAY. IT WAS REALLY KIND OF ONE BIG ROOM AND YOU COULD SEE INTO THE BATHROOM FROM THE MAIN APARTMENT. AND THE CIRCUIT COURT WITHOUT HAVING THE BENEFIT OF A EVIDENTIARY HEARING DECIDED THERE WAS NOT A POCKET DOOR. AS A MATTER OF FACT, ATTACHED PHOTOGRAPHS FROM EXHIBIT 3 AND 10 AND SAID THAT THIS IS A HINGED DOOR, NOT A POCKET DOOR. SO I THINK IT WAS REALLY JUST THE CIRCUIT COURT MISUNDERSTOOD. >> WERE THEY OR WERE THEY NOT, WAS IT OR WAS IT NOT A HINGED DOOR AS COMPARED TO A POCKET DOOR? YOU DON'T NEED FACTS TO ESTABLISH THAT, IF THE TRIAL COURT HAS A PHOTOGRAPH OF THE DOOR, CORRECT? >> IF YOU LOOK AT EXHIBIT 32 THERE IS IN FACT, IT SHOWS PART OF A POCKET DOOR. THAT WAS MY POINT IN TERMS OF THE PHOTOGRAPHS WERE NOT TAKEN FOR PURPOSES OF A MOTION TO SUPPRESS. THEY WERE TAKEN JUST TO SHOW WHERE THE POLICE OFFICERS FOUND

CERTAIN PIECES OF EVIDENCE.

IF YOU LOOK CAREFULLY --

>> DID YOU ANSWER MY QUESTION WITH REGARD WHETHER THERE PHOTOGRAPHS IN THE RECORD FROM PERSPECTIVE OF BATHROOM TO FRONT DOOR?

>> NOT DIRECTLY FROM THE BATHROOM.

THERE IS, THERE ARE PHOTOGRAPHS THAT I THINK IT IS EXHIBIT, PHOTOGRAPH 32, EXHIBIT 3 THAT'S FROM THE HALLWAY LOOKING OUT THE POCKET DOOR.

>> STANDING IN FRONT OF THE BATHROOM DOOR LOOKING TOWARDS THE FRONT DOOR?

>> CORRECT.

WOULD HAVE HAD TO BE INSIDE THE HALLWAY AGAIN, I MEAN THE POINT IS, IS IT NOT, WHETHER THERE IS A STRAIGHT LINE TO IT, AS I RECALL THE TESTIMONY, AND HAVING HEARD THIS CASE, IS THAT AN OFFICER STEPPED INTO WHAT WOULD BE THE LIVING ROOM, TOOK A STEP OR TWO BACK, IN LOOKING, STAYING IN THAT SAME LOCATION, SAW THE SEVERED LEG OR FOOT IN THE BATHROOM.

THAT'S THE WAY I UNDERSTOOD EVIDENCE VERY CLEARLY.

I DON'T THINK THAT WAS DISPUTED.

SO WHAT IS IT, I'M STILL, EVEN IF IT WAS ACROSS, WHAT YOU

DESCRIBE AS A HALLWAY, THE
DIRECT LINE OF SIGHT, I'M
TRYING TO UNDERSTAND WHAT IT AS
JUSTICE PARIENTE ASKED, THAT
YOU'RE GOING TO SHOW AT A
EVIDENTIARY HEARING THAT NEEDS
TO BE EVALUATED FROM A FACTUAL
BASIS?

>> WELL THE TRIAL ATTORNEYS DID
NOT OBTAIN BLUEPRINTS OR THE
EXACT DIMENSIONS OF THIS
APARTMENT.

THAT IS SOMETHING SHOULD BE
SHOWN.

>> ARE WE TALKING ABOUT
SOMETHING SO BIG A MAN CAN'T
SEE ACROSS A ROOM?

IS THAT WHAT YOU'RE --

>> IT IS ANGLE, YOUR HONOR.

IF YOU, BASED ON THE ANGLES OF
THE APARTMENT IT WOULD HAVE
BEEN PHYSICALLY IMPOSSIBLE TO
SEE INTO THE BATHROOM.

>> SO WHAT YOU'RE, LET ME, WHAT
YOU'RE SAYING IS BALES THAT YOU
WOULD, POLICE OFFICER TESTIFIED
AT TRIAL AND WHO WAS RELIED ON,
YOU WOULD SHOW BY EVIDENCE AT
AN EVIDENTIARY HEARING THAT
THAT POLICE OFFICER WAS NOT
TRUTHFUL?

>> CORRECT. OR AT LEAST EXAGGERATED.

>> EXCUSE ME?

>> OR AT LEAST HE EXAGGERATED
HIS MOVEMENTS.

>> BUT THE FACTS THAT YOU RELY

ON WHERE YOU WOULD ASK, FOR THE EVIDENTIARY HEARING, AT LEAST I'M LOOKING AT JUDGE BLAKE'S ORDER AFTER HE GOES THROUGH EVERYTHING, SAYS, COUNSEL CONTENDS, DEFENDANT CONTENDS COUNSEL SHOULD HAVE FILED A MOTION SUGGESTING A WALK-THROUGH OF THE CRIME SCENE.

>> THAT'S ONE ISSUE, YES.

>> AND NOW IT SAYS THE WALK-THROUGH WOULD HAVE SHOWN THE TESTIMONY WASN'T TRUTHFUL. AND THEN ALSO IT WOULD HAVE SHOWN, IF THERE WAS A POCKET DOOR, IT WOULD HAVE BEEN VISIBLE AND IT WASN'T.

AND HE IS TALKING ABOUT THIS POCKET DOOR BECAUSE, IT WAS ALLEGED, APPARENTLY OFFICER BALES TESTIMONY WAS NOT TRUTHFUL AS THERE WAS A POCKET DOOR BLOCKING ACCESS.

SO WHAT HE'S SAYING IS, I CAN LOOK AT THESE PICTURES AND SEE THAT ACCESS WASN'T BLOCKED BY A POCKET DOOR.

THE JUDGE IS SAYING THAT.

>> RIGHT.

>> LET'S JUST, YOU WOULD SHOW A REAL, WOULD YOU ASK THE JUDGE TO GO FOR A WALK-THROUGH OF THE APARTMENT TO SHOW THAT OFFICER BALES'S TESTIMONY WAS NOT TRUTHFUL?

I'M TRYING TO FIGURE OUT --

>> THAT IS ONE EXAMPLE.

>> WHERE YOU WERE PREJUDICED BY THE LACK OF AN EVIDENTIARY HEARING?

>> ONE THING IMPORTANT IS THAT THE TRIAL COURT, THIS IS A DE NOVO REVIEW BECAUSE THE TRIAL COURT BASICALLY FOUND AS A FACT THERE WAS NO POCKET DOOR.

>> I AGREE WITH YOU, WE HAVE TO GIVE YOU THE BENEFIT OF EVERY DOUBT AND I THINK JUDGE BLAKE ALSO UNDERSTOOD THAT.

>> RIGHT.

>> BUT I GUESS THE REAL QUESTION HERE IS, WHETHER IF THE DIAGRAM WAS TO SCALE, WOULD THE JURY TRIAL COURT HAVE FOUND OFFICER BALES'S TESTIMONY NOT TO BE TRUTHFUL.

IF YOU ACCEPT WHAT OFFICER BALES SAYS, IT DOESN'T MATTER IF DIAGRAM WAS NOT TO SCALE.

>> CORRECT.

WHETHER HE WAS NOT TRUTHFUL OR WHETHER HE SIMPLY EXAGGERATED, I MEAN IF YOU LOOK AT HIS STATEMENTS FROM THE TIME OF THE INITIAL POLICE REPORT TO THE DEPOSITION TO THE TIME OF THE TRIAL IT DOES VARY SOMEWHAT SO IT IS NOT NECESSARILY THAT HE WAS NOT TRUTHFUL.

IT MIGHT BE THAT HE WAS EXAGGERATING.

IF YOU LOOK AT ACTUAL
PHOTOGRAPHS IN THE RECORD.
IN MY REPLY BRIEF I LIST OUT
THE PHOTOGRAPHS THAT WERE
ENTERED INTO EVIDENCE BY MOTION
TO SUPPRESS BY THE STATE AND
DURING THE COURSE OF THE TRIAL.
THOSE PHOTOGRAPHS DIDN'T HAVE
TO DO WITH THE MOTION TO
SUPPRESS.

>> LET ME ASK YOU THIS.
ASSUMING THAT OFFICER BALES
EXAGGERATED SOMEWHAT, WHAT IS
ULTIMATELY, WHAT IS IT
ULTIMATELY THAT YOU'RE TRYING
TO SAY?

THAT, YOU'RE TRYING TO SAY THAT
OFFICER BALES COULD NOT HAVE
SEEN THE SEVERED FOOT,
IS THAT --

>> CORRECT.

>> AND THEN WHAT?

>> WITHOUT EXCEEDING SCOPE WHAT
WOULD BE ALLOWED UNDER A PLAIN
VIEW SEARCH.

I'M ALSO ALLEGING THAT --

>> THEY HAD A CALL THAT
THIS, SOMEONE IN THIS APARTMENT
WAS ABOUT TO COMMIT SUICIDE,
RIGHT.

>> CORRECT.

>> WHAT ARE YOU ALLEGING WAS
OUTSIDE OF THEIR SCOPE AT THAT
POINT, IF IN FACT THEY COME
INTO AN APARTMENT, THINKING
SOMEONE IS ABOUT TO COMMIT

SUICIDE?

COULD THEY GO MAKE SURE THERE IS NOTHING AROUND THAT THE PERSON HAD DO THAT WITH?

WHAT IS IT?

WHAT IS IT THAT THEY COULD NOT DO THAT THEY DID HERE?

>> THEY COULD NOT GO INTO OTHER ROOMS OR OPEN OTHER CONTAINERS.

I THINK THE COURT --

>> HAVE YOU ALLEGED THAT THEY WENT INTO OTHER ROOMS?

>> YES.

>> OR THEY WENT INTO OTHER CONTAINERS?

>> THEY WENT INTO ANOTHER ROOM.

I WOULD ARGUE THAT HALLWAY IS REALLY MORE OF ANOTHER ROOM.

IT IS KIND OF A HALLWAY CLOSET AREA.

AND THOSE KIND OF FACTS ARE SOMETHING THAT WOULD COME OUT AT AN EVIDENTIARY HEARING.

I THINK JUDGE BLAKE, LOOKING AT THE RECORD REALLY DID MAKE AN EFFORT TO UNDERSTAND WHAT THE ALLEGATIONS WERE.

I THINK THE ERROR THAT LOWER COURT MADE IS AN EXAMPLE OF WHY IT'S SO IMPORTANT TO HAVE AN EVIDENTIARY HEARING.

I BELIEVE IT WAS SIMPLY AN ERROR.

WHEN YOU LOOK AT PHOTOGRAPH NUMBER 3 AND 10 THAT HE ATTACHED TO HIS ORDER, DENYING

RELIEF, HE SAID THIS SHOWS
THERE IS NO POCKET DOOR.
WE KNOW THAT.

THOSE ARE PICTURES OF THE
HINGED DOOR.

THERE ARE TWO DOORS, FROM THE
MAIN APARTMENT, THERE'S A
POCKET DOOR AND WHEN YOU GO
INTO THE BATHROOM THERE'S A
HINGED DOOR AND YOU WOULD HAVE
HAD TO BE WELL INTO THE HALLWAY
CLOSEST IN ORDER TO SEE THROUGH
THAT HINGED DOOR, TO SEE WHAT
WAS GOING ON IN THE BATHROOM.

>> AND WHAT CASE DO YOU RELY ON
FOR YOUR PREMISE THAT WHEN LAW
ENFORCEMENT RESPONDS TO AN
EMERGENCY CALL, THAT THEY CAN
NOT CHECK AND SEE IF THERE IS
OTHER PEOPLE AROUND FOR THE
SAFETY OF THE OFFICERS?

>> WELL, THE STATE RAISED
MARILYN v. BOUY ALLOWING
PROTECTIVE SEARCH.

IF YOU LOOK AT MY REPLY BRIEF,
I WENT THROUGH AND
DISTINGUISHED IN THAT CASE THERE
WAS NO ARREST.

THERE WAS NO ARREST WARRANT.
THERE WAS NO REASON TO BELIEVE
THERE WAS SOMEONE ELSE IN THE
APARTMENT, SO THERE ARE A
NUMBER OF REASONS WHY ONCE
YOU'RE IN SOMEONE'S HOME I
STILL CAN NOT GO ON, GO BEYOND
THE SCOPE OF THE SEARCH IN

TERMS OF WHAT YOU'RE THERE FOR,
WHICH IS TO CHECK AND MAKE SURE
THAT MR. ASEIBERT WAS NOT GOING
TO KILL HIMSELF.

AND THOSE ISSUES I THINK WERE
RAISED, ARGUED AND ACCEPTED BY
THIS COURT ON DIRECT APPEAL.
SO ONLY THE ISSUE HERE, DID THIS GO
BEYOND THE SCOPE OF A PLAIN
VIEW SEARCH.

AND OUR POSITION IS THAT AT
EVIDENTIARY HEARING WE COULD
ESTABLISH THAT.

AND OBVIOUSLY THIS COURT HAS A
PREVIOUS FOR EVIDENTIARY
HEARINGS.

>> DOES THE FACT THAT THIS WAS
SUCH A SMALL APARTMENT REALLY
CHANGE THIS?

BECAUSE IF THERE IS, I MEAN IF
YOU'VE GOT A PLACE THAT LOOKS
LIKE THIS, AND THERE IS JUST
ONE PLACE WHERE SOMEBODY ELSE
COULD POSSIBLY BE OR HIDING OR
SOMETHING LIKE THAT, YOU DON'T
THINK THAT IN THIS CIRCUMSTANCE
THE OFFICER WOULD HAVE SOME
LEEWAY, AT LEAST LOOKING AROUND
THE DOOR, OR THAT YOU MAINTAIN
IS A POCKET DOOR TO MAKE SURE
NO ONE ELSE IS THERE?

>> POSSIBLY BUT THAT IS
HYPOTHETICAL ISSUE AND IN THIS
CASE WE ALLEGED THAT TRIAL
COUNSEL WAS INEFFECTIVE IN NOT
SHOWING TO THE LOWER COURT AND

TO THIS COURT THE EXACT DIMENSIONS
OF THE APARTMENT.

WE CAN DISCUSS --

>> WHAT IS THE ULTIMATE
PREJUDICE, ASSUMING THAT TRIAL
COUNSEL WAS INEFFECTIVE AND
SHOULD HAVE IN FACT GONE MORE
INTO THE DIMENSIONS OF THIS
APARTMENT AND WHERE THE OFFICER
WAS LOCATED AND THE DOOR AND
ALL THESE FACTORS THAT YOU'RE
TALKING ABOUT, WHAT WAS, IS THE
ULTIMATE PREJUDICE FROM THAT?

>> IF TRIAL COUNSEL HAD DONE
WHAT HE SHOULD HAVE, THE
BASICS, GET THE ACTUAL
DIMENSIONS, GET PHOTOGRAPHS
FROM DEFENSE COUNSEL'S
PERSPECTIVE OR EVEN ASK THE
TRIAL JUDGE TO COME OUT THERE,
THE COURT, LOWER COURT WOULD
NOT HAVE FOUND THAT THIS WAS
SIMPLY A PLAIN VIEW SEARCH.
THEN THE WHOLE ISSUE, IF, AND
MOTION TO SUPPRESS SHOULD HAVE
BEEN GRANTED.

IF IT HAD BEEN DENIED, THEN THE
ISSUE ON DIRECT APPEAL WOULD
HAVE BEEN VERY DIFFERENT AND
WOULDN'T HAVE BEEN A PLAIN VIEW
SEARCH.

IT WOULD HAVE BEEN EXTENT.

>> I KNOW YOU'RE INTO REBUTTAL,
STARTING TO BE.

I'M LOOKING AT THE PART OF THE
COURT'S OPINION THAT THE JUDGE

CITED.

I HAVEN'T GONE BACK AND I'M SURE WE WILL, IT LOOKED TO ME LIKE WE SAID, THE OFFICER'S QUICK LOOK THE APARTMENT WAS NOT AN EXTENSIVE SEARCH BECAUSE THEY DIDN'T OPEN ANY CONTAINERS OR EVEN ENTER ANY OTHER ROOMS. THERE WAS NO EVIDENCE AT ANY PRETENSE EXISTED.

IT WAS OBJECTIVELY REASONABLE FOR THEM TO GLANCE AROUND TO ASSURE THAT THE APARTMENT AND SEIBERT WERE SECURE.

I DON'T SEE, THAT WE DECIDED THIS SIMPLY ON, IT WAS PLAIN VIEW FROM BACK, YOU KNOW, AT THE OFFICER'S VIEWPOINT.

IS THERE SOMETHING I'M MISSING IN WHAT I JUST SAID?

>> I THINK THE MAIN, THE MAIN STATEMENT THAT I WAS FOCUSING WAS THE FACT THAT HE DID NOT ENTER ANY OTHER ROOMS.

I WOULD DISPUTE THAT.

I WOULD ARGUE, HALLWAY, THE BATHROOM AREA EXCEEDED SCOPE OF WHAT COULD BE CONSIDERED PLAIN VIEW UNDER THIS COURT'S CASE LAW AND CASE LAW IN FEDERAL COURTS BASED ON THE PLAIN VIEW EXCEPTION.

BUT AGAIN, THAT WASN'T THE ARGUMENT BECAUSE I THINK THIS COURT, AND THE STATE, THIS COURT ACCEPTED THAT IT WAS JUST

A PLAIN VIEW SEARCH.

THAT THEY DIDN'T, THE FOCUS, ON
DIRECT APPEAL, HE DIDN'T GO
INTO ANOTHER ROOM.

I BELIEVE WE COULD SHOW HE DID.
IN HE HAD DONE WHAT HE SAID HE
COULD HAVE DONE, EVEN LOOKING
AT PHOTOGRAPHS, THERE WERE SO
MANY, THE ROOM WAS MUCH, THE
FURNITURE WAS SET UP IN SUCH A
WAY IF HE HAD JUST WALKED BACK
THE WAY HE DID, THERE WAS A
TABLE IN THE WAY, THERE WERE
SHOES IN THE WAY, IT WAS
IMPOSSIBLE FOR HIM TO TAKE A
COUPLE STEPS BACK AND ENDED UP
IN THAT HALLWAY.

I THINK THIS WAS MUCH MORE
EXTENSIVE SEARCH.

NOW AS JUSTICE QUINCE, YOU
ASKED ME ABOUT, WELL, HOW FAR
CAN THAT SEARCH EXTEND, AND I
THINK THAT'S THE SECOND STEP.
ONCE THIS COURT OR AT LEAST
LOWER COURT HAS ALL THE FACTS,
WE DON'T HAVE THOSE FACTS AT
ALL.

BECAUSE THE TRIAL ATTORNEY
DIDN'T GET THE BASICS AND I'M
NOT SUGGESTING THAT TRIAL
COUNSEL JUST DIDN'T ASK THIS
QUESTION OR THAT QUESTION AND,
YOU KNOW --

>> EVEN IF YOU ASSUME THAT HE
BACKED UP, MORE THAN HE SAID HE
BACKED UP, WHERE DOES THAT

LEAVE YOU?

>> THAT LEADS TO ANOTHER
ISSUE WHETHER OR NOT THIS WAS
NOT SOMETHING IN PLAIN VIEW.
WHETHER OR NOT IT WAS ACTUALLY
A SEARCH THAT EXCEEDED THE
SCOPE OF WHAT WOULD BE ALLOWED
UNDER A PLAIN VIEW SEARCH.

>> WELL, YOU ARE NOW WELL INTO
YOUR REBUTTAL IF YOU WANT TO
SAVE ANY TIME.

>> THANK YOU.

>> ALL RIGHT.

>> MAY IT PLEASE THE COURT,
SANDRA JAGGARD, ASSISTANT
ATTORNEY GENERAL ON BEHALF OF
THE STATE.

THE FIRST PROBLEM WE HAVE WE
HAVE NO DEFICIENCY BECAUSE
COUNSEL ACTUALLY MADE THIS
ARGUMENT AT PAGES 1309 THROUGH
1311 OF THE TRIAL RECORD.

COUNSEL ATTEMPTED TO SHOW THAT
THEY HAD TO SEARCH THE
APARTMENT.

>> LET ME ASK YOU THIS.

WHEN YOU LOOK AT THIS
PHOTOGRAPH THAT IS OR IS NOT TO
SCALE, AND YOU COME INTO THIS
APARTMENT, IT DOES APPEAR THAT
THERE IS SOME KIND OF WALL THAT
SEPARATES THE BATHROOM FROM THE
REST OF THE ROOM.

THERE IS SOME SMALL HALLWAY
THAT YOU HAVE TO GO DOWN IN
ORDER TO ENTER INTO THE

BATHROOM.

AND SO FROM WHAT VANTAGE POINT
WAS OFFICER, WAS THE OFFICER IN
THAT ROOM?

HOW CAN SEE THE SEVERED FOOT
WHICH WAS SUPPOSEDLY AT THE
VERY END OF THE BATHTUB FROM
ANY SPOT IN THIS LIVING ROOM?

>> YOU HAVE TAKEN THE
DEFENDANT AND,

THEY HAVE COME IN THE FRONT
DOOR AND THEY HAVE PUT HIM IN
THE CHAIR RIGHT NEXT TO THAT
HALLWAY.

HE IS SITTING ON A CHAIR THAT
THE BED, THAT IS RIGHT THERE AT
THAT CORNER WHERE THAT HALLWAY
OPENS.

THERE WERE PICTURES IN THE
RECORD THAT SHOW FROM THE FRONT
DOOR AND YOU CAN SEE THE LITTLE
HALLWAY.

THE TRIAL COURT HAD THIS
INFORMATION IN FRONT OF IT.

>> YOU CAN SEE THE HALLWAY FROM
THE FRONT DOOR, NOT INTO THE
BATHROOM?

>> WELL, BUT HE HAD GONE BACK,
HE IS STANDING RIGHT IN FRONT
OF THE DEFENDANT WHO IS SITTING
AGAINST THE BACK WALL.

HE'S NOT STANDING AT THE FRONT
DOOR AT THIS POINT.

THEY HAVE PUT THE DEFENDANT
DOWN.

THEY'RE ABOUT TO START TALKING

TO HIM.

THEY ASK IF THERE IS ANYBODY ELSE IN THE APARTMENT AND, AS OFFICER BALES TESTIFIED, HE BEEN JUMPED OUT AT BEFORE. SO HE TOOK AND STARTED LOOKING AROUND HIMSELF.

AND HE SAW THE FOOT.

>> SAID HE BACKED UP OR SOMETHING?

>> BACKED UP AND SAW THE FOOT. BUT HE'S RIGHT THERE AT THE CORNER OF THE HALLWAY AS IT IS.

>> BUT AS YOU, WELL KNOW, SINCE WE ADOPTED 3.851, WE ALMOST ALWAYS SAY, IF THERE'S ANY POTENTIAL FACTUAL ISSUE THAT IS BEING ALLEGED, SHOULD, THERE SHOULD BE EVIDENTIARY HEARING. SO WHAT I AM HEARING COUNSEL SAYING, I JUST WANT TO MAKE SURE, IS THAT, THE DEFICIENCY, THERE WAS NO DEFICIENCY, NOT THAT IT WAS NOT ARGUED.

GOT A TRUE TO SCALE DRAWING OR REQUESTED A WALKTHROUGH OR, THOSE ARE FACTS THAT ARE NOT, THEY, THAT WASN'T DONE.

SO WHY WOULDN'T WE AL AN EVIDENTIARY HEARING ON THAT LIMITED ISSUE?

WE HAVEN'T GOTTEN TO THE OTHER, WHATEVER ELSE IS CLAIMED BUT JUST ON THIS ISSUE?

>> BECAUSE YOU HAD THE OFFICER TESTIFYING ABOUT HOW FAR HE WAS

FROM THE DOOR.

>> WHAT YOU'RE SAYING IS NO
MATTER WHAT THE REAL TO SCALE
DIAGRAM SHOWED, NO REASONABLE
PERSON WOULD JUST, WOULD FIND
THE OFFICER'S TESTIMONY NOT TO
BE CREDIBLE OR TO BE
UNREASONABLE?

IS THAT WHAT WE'RE SAYING?

>> YES. PARTICULARLY WHEN
YOU HAVE THE
PICTURE SITTING THERE OF THE
VANTAGE POINT DOWN THE LITTLE
HALLWAY AND YOU HAVE, THE WHOLE
SCENE LAID OUT IN PICTURES.

YOU HAVE QUESTIONING OF THE
OFFICER, ATTEMPTING TO GET
HIMSELF, TO SAY HE WENT DOWN
THE HALLWAY.

AND HE SAYS, NO, I JUST BACKED
UP A COUPLE STEPS AND LOOKING
AROUND MYSELF FOR OFFICER
SAFETY, WHICH HE'S ABSOLUTELY
ENTITLED TO DO.

AND HE SAW THE SEVERED FOOT.
HE WAS COMPLETELY SHOCKED.
YOU READ HIS TESTIMONY ON THE
RECORD AND YOU CAN TELL YEARS
LATER HE IS STILL COMPLETELY
SHOCKED AND SHOOK UP.

HE HAD NO EXPECTATION THERE WAS
A CRIME GOING ON IN THERE AT
ALL.

HE THOUGHT HE WAS RESPONDING TO
A SUICIDE.

>> SO WHAT WE HAVE, THERE'S,

PLAIN VIEW.

IT MAY NOT BE PLAIN VIEW.

BUT HE IS SAYING, PROTECTIVE,
PROTECTIVE SEARCH.

WASN'T THERE ALSO AGAIN, AND
JUSTICE QUINCE POINTED THIS OUT,
WASN'T THERE QUESTION ABOUT
WHETHER THERE MIGHT HAVE BEEN
ANOTHER PERSON IN THIS -- DID
OFFICER BALES TALK ABOUT THAT?

>> OFFICER BALES TESTIFIED HE
JUST HAD ENTERED, KEEP IN MIND
THE DEFENDANT DOESN'T
IMMEDIATELY OPEN THE DOOR.
HE'S GOT THE DOOR BARRICADED
WITH ONE OF THE SOFAS.
THEY HAD TO PUSH THEIR WAY IN.
THEY GET THE DEFENDANT SEATED.
AS HE IS ABOUT TO START TALKING
TO HIM HE ASKS, "IS THERE
ANYBODY ELSE?" AND LOOKS AROUND
HIMSELF BECAUSE HE TESTIFIES, I
HAVE PREVIOUSLY BEEN JUMPED OUT AT
IN AN APARTMENT LIKE THIS.

SO I LOOKED AROUND MYSELF TO
MAKE SURE THAT WASN'T GOING TO
HAPPEN.

AND AS I'M DOING THIS, I SEE
THE SEVERED FOOT.

AND HE WASN'T LOOKING FOR
EVIDENCE OF A CRIME.

HE WASN'T LOOKING FOR ANYTHING.

>> IS THERE ANY MENTION BY IN
GREEN TO THE POLICE OFFICERS
THERE WAS A KNIFE THAT MIGHT
HAVE AIDED --

[INAUDIBLE]

>> THERE IS CONFLICT IN THE TESTIMONY
AT TRIAL AND SUPPRESSION
HEARING.

AT THE SUPPRESSION HEARING
THERE WAS EVIDENCE, I BELIEVE,
THERE MAY HAVE BEEN A KNIFE BUT
AT TRIAL THERE WAS EVIDENCE
THAT THAT HE HAD SAID THERE WAS
NO WEAPONS OR VICE VERSA.

I DON'T RECALL EXACTLY WHICH
ONE IT WAS.

BUT THERE WAS ONE AT ONE POINT
THAT THE TESTIMONY THAT THE
DEFENDANT MAY HAVE HAD A KNIFE.
OF COURSE IT IS AN APARTMENT,
SO YOU HAVE COOKING UTENSILS ET
CETERA, ET CETERA, IN THE
HOUSE.

YOU ALSO HAVE THE POSSIBILITY
THAT SOMEBODY COMMITS SUICIDE
USING CHEMICALS AND SO YOU WANT
TO TALK TO THE PERSON, MAKE
SURE THEIR SPEECH ISN'T
SLURRED.

SURE THEY'RE NOT INCOHERENT
BEFORE YOU WALK OUT EVEN IF YOU
DON'T SEE ANY PHYSICAL INJURY
ON HIM.

THAT IS WHAT OFFICER BALES WAS
TRYING TO DO.

BUT BEFORE HE DID THAT HE
SIMPLY ASKED, IS THERE ANYONE
ELSE HERE?

AND LOOKS AROUND HIMSELF.
AS HE DOES THAT TO MAKE SURE HE

IS NOT GETTING JUMPED OUT AT.

>> DID THE DRAWING ON THE SKETCH DESCRIBE AS NOT TO SCALE BUT I THINK THROUGH TESTIMONY DESCRIBED AS BEING TO SCALE --

>> YES.

>> -- DID THAT REFLECT OR IS THERE DISPUTE OR EVIDENCE ARE THEY SAYING IN THIS CASE THAT THEY WILL PROVE THAT'S WRONG? THAT THIS DRAWING IS COMPLETELY WRONG?

IS THAT WHAT WE'RE --

>> I HAVE NO IDEA WHAT THEY'RE TRYING TO PROVE OTHER THAN THERE IS THIS LITTLE HALLWAY.

>> IT SHOWED THAT AREA, CORRECT, FROM THE PHOTOGRAPHS? IS THERE AN INCONSISTENCY ON THE FACE OF THE PHOTOGRAPHS AND DRAWING THAT'S BEEN DISCUSSED?

>> NO. YOU CAN SEE, YOU CAN SEE THE LITTLE HALLWAY IN THE PHOTOGRAPHS.

>> BUT IF THEY ALLEGE, AGAIN WE'RE TALKING HERE NOT ABOUT THE JUDGE HAVING DENIED IT AFTER THERE BEING A LIMITED EVIDENTIARY HEARING, THEY SAY THAT THEY, I THOUGHT, MISS ECKERT SAID THAT THEY HAVE NOW A DRAWING TO SCALE THAT WOULD SHOW, WHAT WAS INTRODUCED INTO EVIDENCE IS NOT ACCURATE AND IT WOULD, IT WOULD SIGNIFICANTLY, I MEAN IN THE LIGHT MOST

FAVORABLE TO THEM, IMPEACH WHAT OFFICER BALES WAS SAYING.

THIS ISN'T WHAT THE APARTMENT REALLY LOOKS LIKE.

NOW, IF --

>> YOU HAVE ACTUAL PHOTOGRAPHS OF WHAT THE APARTMENT REALLY LOOKED LIKE.

YOU HAVE ONE THAT'S TAKEN FROM THE FRONT DOOR RIGHT TOWARDS WHERE OFFICER BALES, THE DEFENDANT WAS SITTING AND OFFICER BALES WAS LOOKING.

YOU HAVE ONE LOOKING DOWN THE HALL.

>> YOU KNOW, BECAUSE YOU DO SO MUCH LITIGATION, THERE'S A LOT OF TIME WHERE YOU SAY, LISTEN, YOU DON'T NEED THIS NEW EXPERT TO TESTIFY BECAUSE YOU ALREADY HAD THAT AND WE REALLY, I THINK THE RULE SAYS, IF THERE'S A FACTUAL DISPUTE ALLEGED, THERE NEEDS TO BE AN EVIDENTIARY HEARING.

SO ALL I'M ASKING YOU IS THAT, I THOUGHT SHE ALLEGED SHE HAD A SCALED DRAWING THAT WOULD SHOW THE, NOT TO SCALE DRAWING TO NOT BE COMPLETELY ACCURATE?

I HAVE BAD COPIES OF THE ACTUAL PHOTOGRAPHS BUT SHE IS SAYING, NO, YOU COULDN'T SEE FROM WHERE HE WAS.

YOU COULDN'T SEE INTO THE BATHROOM.

>> AND YOU HAVE PICTURES SHOWING THE VANTAGE POINT SO THE TRIAL COURT COULD SEE HOW LARGE THIS APARTMENT WAS, REGARDLESS OF A DRAWING TO SCALE OR NOT TO SCALE. YOU SEE THE APARTMENT. YOU SEE THE LITTLE HALLWAY. AND YOU HAVE THIS EXACT ARGUMENT BEING MADE BASED ON THOSE PHOTOGRAPHS THAT HE HAD TO HAVE WALKED DOWN THAT HALLWAY.

>> SO YOU HAVE, YOU'RE ESSENTIALLY SAYING IT COULD BE A FACT IN DISPUTE AS WHETHER IT WAS TO SCALE BUT IT IS A NON-ISSUE BECAUSE OF PHOTOGRAPH.

>> YES. YOU HAVE PHOTOGRAPHS. YOU HAVE THIS ARGUMENT BEING MADE.

COUNSEL MADE EXACT ARGUMENT, THAT HE HAD TO GO DOWN THAT HALL.

>> WELL, AND I HAVE A PROBLEM WITH IT BECAUSE WHEN I LOOK AT THIS PICTURE, AND I'M NOT SURE WHICH ONE IT IS, BUT, IT HAS THE DOOR TO BATHROOM OPEN AND YOU CAN SEE A SINK AND TOILET. BUT WITH THE DOOR OPEN YOU CAN'T REALLY SEE THE TUB. SO I'M HAVING A PROBLEM WITH HOW YOU WOULD SEE, EVEN IF JUST AT THE BEGINNING OF THAT

HALLWAY, HOW YOU WOULD SEE A SEVERED FOOT, WHEN YOU CAN'T EVEN SEE THE TUB FROM THIS PICTURE?

>> KEEP IN MIND HE IS NOT LOOKING THROUGH THE FRONT OF THE DOOR, BECAUSE THE DOOR WASN'T ALL THE WAY OPEN AT THE TIME HE SAW IT.

HE IS LOOKING THROUGH THE EDGE, THE CRACK BY THE HINGE.

>> WELL THE CRACK BY THE HINGE, CERTAINLY SEEMS TO ME MEAN YOU WOULD HAVE TO BE IN THAT HALLWAY?

>> AND THAT'S, THEY HAD THAT ARGUMENT MADE.

THEY BROUGHT OUT THE DOOR ISN'T ALL THE WAY OPEN.

THE PHOTOGRAPH SHOWS THE DOOR MORE OPEN THAN IT WAS AT THE TIME.

THEY BROUGHT ALL THIS OUT AT THE SUPPRESSION HEARING.

AND THE TRIAL COURT STILL FOUND THE OFFICER CREDIBLE.

>> SO YOU'RE TELLING US THAT, THE ARGUMENT WAS MADE, AT THE SUPPRESSION HEARING THAT THE OFFICER'S VIEW WAS OBSCURED BY THE DOOR, AND THAT THE OFFICER COULD NOT HAVE SEEN THAT SEVERED FOOT FROM A VANTAGE POINT THAT WAS, NOT IN THE BATHROOM ITSELF?

>> DURING CLOSING ARGUMENT AT

THE SUPPRESSION HEARING,
COUNSEL DIRECTLY SAYS, ASSUMING
THAT --

>> SPEAKE INTO THE MIKE,
PLEASE.

>> WHAT?

>> MAKE SURE YOU SPEAK INTO THE
MIKE. I COULDN'T HEAR YOU.

>> BUT ASSUMING IF YOU FIND
THEY COULD EITHER ENTER, THESE
OFFICER BALES SAID I COULD NOT
SEE THE BATHROOM CRACK AS HE
DESCRIBED IT TO YOU UNTIL HE
WENT BACK THERE.

HE COULDN'T SEE IT FROM WHERE
HE WAS.

SO EVEN IF YOU FIND THE ENTRY
LAWFUL, IT DOES NOT HOLD THE
FACTS IN OUR CASE AND THESE
CASES ARE VERY, VERY SPECIFIC,
OFFICER BALES WENT FURTHER.

ZEIFMAN WENT FURTHER.

THEY MADE A EXPLORATORY SEARCH
FOR EVIDENCE.

OKAY, OFFICER BALES IS WALKING
BACK, ALBEIT, SMALL APARTMENT,
STUDIO APARTMENT AS EVIDENCE
HERE.

HE COULDN'T SEE ANYTHING IN
THERE UNTIL HE ACTUALLY WALKS
PRETTY MUCH BACK IN THERE.

THE ARGUMENT WAS MADE.

COUNSEL MADE THIS EXACT
ARGUMENT.

>> I DO HAVE TO ASK THIS
QUESTION BECAUSE I KNOW THAT

THEY BROUGHT OUT, I'M NOT SURE HOW TO THIS WOULD BE A FACT IN DISPUTE, BECAUSE I DON'T KNOW THEY WOULD BRING IN AN EXPERT, BUT IF HE'S WALKING BACKWARDS, HOW DOES HE THEN SEE THE BODY -- HE WOULD HAVE TO TURN AROUND.

MAKE SURE I UNDERSTAND THAT?

>> HIS TESTIMONY WAS HE STEPPED BACK AND WAS LOOKING AROUND HIMSELF, IS HIS TESTIMONY.

>> AS HE WAS STEPPING BACK INTO THE HALLWAY?

THAT IS ONLY WAY THAT IS REALLY POSSIBLE?

>> WELL, I DON'T KNOW WHERE HE STEPPED BACK.

HIS TESTIMONY IS HE STEPPED BACK. THE HALLWAY IS NEXT TO HIM AS HE IS STANDING IN FRONT OF THE DEFENDANT.

PERHAPS HE DID STEP BACK INTO THE ENTRANCE INTO THE HALLWAY. STILL, HE HAS A RIGHT TO LOOK AROUND HIMSELF TO MAKE SURE HE'S NOT BEING JUMPED OUT AT. AND THAT HALLWAY IS WHERE SOMEBODY IS GOING TO COME FROM. AND THIS VERY ARGUMENT WAS MADE.

SO COUNSEL CAN'T BE INEFFECTIVE FOR FAILING TO MAKE THE ARGUMENT. HE MADE IT.

>> SO I GUESS THE QUESTION, THEIR ARGUMENT ISN'T THAT HE

DIDN'T MAKE THE ARGUMENT.

I GUESS.

IT IS MORE HE HAD NOTHING TO
SUBSTANTIATE THAT ARGUMENT
BECAUSE HE DIDN'T HAVE THE ROOM
TO SCALE AND HE DIDN'T HAVE
THE JUDGE COME AND TAKE A TAKE
A PERSONAL VIEW OF THE ROOM.

>> EXCEPT HE HAD THE PICTURES
SHOWING THIS AREA AND HE MADE
IT FROM THE PICTURES.

AND OF COURSE, WE'RE TALKING
ABOUT SEVERAL YEARS LATER,
GOING INTO AN APARTMENT THAT
WAS NOT ACTUALLY THE DEFENDANT'S
APARTMENT.

IT WAS RENTED TO SOMEBODY ELSE
AND THAT PERSON WAS ALLOWING
THE DEFENDANT TO LIVE THERE.
AND SO YOU'RE TALKING ABOUT
GOING INTO AN APARTMENT THAT'S
PROBABLY OCCUPIED AND HAS
CHANGED YEARS LATER WHEN YOU'RE
TALKING ABOUT GOING BACK THERE.
SO YOU HAVE THE PICTURES AND
YOU USE THE PICTURES TO MAKE
THIS VERY ARGUMENT BECAUSE YOU
CAN SEE THIS IN THE PICTURES.

>> DIDN'T THE CRIME SCENE
INVESTIGATOR, MARCIA KNOWLES,
WHO INVESTIGATED THIS, TESTIFY
THAT EXHIBIT 48, WHICH IS A
DRAWING OF THE APARTMENT, WAS
ACTUALLY DRAWN TO SCALE?

>> YES, SHE DID AT TRIAL.

THAT WASN'T PRESENTED AT THE

SUPPRESSION HEARING BECAUSE
THEY USED THE PICTURES AND THEY
CROSS-EXAMINED OFFICER BALES,
ATTEMPTING TO GET HIM TO SAY
THAT HE MADE THIS PROTECTIVE
SWEEP AND HE KEPT SAYING NO.
A GENERAL SEARCH.

HE SAID, NO, I WAS MAKING A
PROTECTIVE SWEEP.

I'VE BEEN JUMPED OUT AT BEFORE.
I WAS JUST MAKING SURE NOBODY
WAS GOING TO JUMP OUT AT ME
AGAIN.

THIS IS ALL HAPPENING VERY
QUICKLY. I SAT HIM DOWN.

I DIDN'T EVEN HEAR HIS ANSWER,
I ASKED HIM, "IS THERE ANYBODY
ELSE IN THE APARTMENT?" AND
LOOKED SIMULTANEOUSLY AND
THAT'S WHEN I SEE THE FOOT.

WHEN I SEE THE FOOT, I'M SO
DISTURBED BY SEEING FOOT, I
CAN'T EVEN GET OUT THE RIDE
CODE FOR HOMICIDE.

I FINALLY MANAGED TO GET IT
OUT.

BY THE TIME I EVEN TURN AROUND
THE DEFENDANT HAS RUN OUT OF
THE APARTMENT.

THIS, IT'S A SMALL LITTLE
APARTMENT.

AND COUNSEL MADE THIS ARGUMENT
AND COUNSEL USED THE
PHOTOGRAPHS AND CROSS-EXAM
INATION TO SHOW HE HAD TO GO
DOWN THAT HALLWAY.

THAT IS NOT DEFICIENT
CONDUCT.

THAT IS NOT SOMEONE NOT
FUNCTIONING UNDER COUNSEL ON
SIXTH AMENDMENT.

IF THE COURT HAS NO FURTHER
QUESTIONS, THE STATE RESPECTFULLY
REQUESTS YOU AFFIRM.

>> THANK YOU.

>> FEW POINTS.

NOT TRUE THAT TRIAL COUNSEL
USED PHOTOGRAPHS.

THAT IS ONE OF THE MAIN ISSUES
THAT THE WHILE TRIAL COUNSEL
MADE THE ARGUMENT, THE OFFICER
HAD TO GO IN THE HALLWAY.

AT NO POINT WAS THE OFFICER
ACTUALLY CONFRONTED WITH THE
PHOTOGRAPHS THAT WOULD HAVE
MADE HIS POINT.

>> PHOTOGRAPHS USED AT ALL AT
THE EVIDENTIARY HEARING?

>> THE STATE ENTERED A FEW OF
THE PHOTOGRAPHS IN A MOTION TO
IS UP BUT ACTUALLY TWO OF
PHOTOGRAPHS, STATE EXHIBIT'S 56
WAS ENTERED INTO AT TRIAL, AND
STATE 32 WAS ALSO ENTERED INTO
AT TRIAL.

THOSE PHOTOGRAPHS WOULD SHOW
THE VANTAGE POINT YOU COULD SEE
THE HALLWAY.

THOSE WERE NOT EVEN ENTERED
INTO EVIDENCE AT MOTION TO
SUPPRESS BECAUSE THEY WEREN'T
EVEN CONSIDERED.

>> I DON'T THINK THIS WOULD BE A VERY SUCCESSFUL ARGUMENT IN FRONT OF THE JURY.

>> RIGHT.

>> SO YOU EITHER WON THIS AT A MOTION TO SUPPRESS, BECAUSE, I DON'T THINK THE JURY PARTICULARLY CARES, ONCE YOU HEAR SEVERED FOOT, THAT IS KIND OF --

>> POINT IS PHOTOGRAPHS WERE ENTERED INTO EVIDENCE AT TRIAL WOULD HAVE BEEN AVAILABLE TO DEFENSE COUNSEL TO USE AND HE DIDN'T.

>> WHAT IF WE WERE NOW TO GO BACK AND LOOK AT THE RECORD YOU SAY, I'M ASSUMING THOUGH THAT JUDGE BLAKE HAD THEM, WHAT ARE THE NUMBERS THAT WERE WOULD SHOW THAT SUPPORT YOUR ARGUMENT?

>> YOUR HONOR, I BELIEVE THE COURT SHOULD HAVE ALL THE PHOTOGRAPHS INCLUDING THE POSTERS.

I WOULD LOOK AT EXHIBIT 56 AND EXHIBIT 32.

AND ON PAGES 5 AND 6 OF MY REPLY BRIEF I LISTED OUT AT LEAST 10 EXHIBITS THAT I THINK ARE PERTINENT TO THIS ARGUMENT.

>> DIDN'T YOU, SO, DIDN'T JUDGE BLAKE HAVE THOSE WHEN HE DECIDED THAT YOUR ARGUMENT THAT IS STILL NOT, DOES NOT RISE TO

A FACTUAL DISPUTE REQUIRING AN EVIDENTIARY HEARING?

>> BUT, YES, YET HE USED, HE USED PHOTOGRAPHS THAT DID NOT MAKE THE POINT, WHICH I THINK REALLY MAKING THE POINT THERE IS FACTUAL DISPUTE.

THE FACT THAT MARCIA KNOWLES SAID THIS DRAWING WAS DRAWN TO SCALE, YET WE HAVE BLUEPRINTS SHOW THAT'S NOT TRUE --

>> YOU HAVE BLUEPRINTS YOU WOULD BE PREPARED TO PUT INTO EVIDENCE?

>> CORRECT. SO THAT'S A FACT IN DISPUTE.

SO WE'RE ENTITLED TO A HEARING.

OTHERWISE, WE'RE JUST TALKING ABOUT A HYPOTHETICAL SITUATION.

OF COURSE THE TRIAL JUDGE HAD THE PHOTOGRAPHS, ALL OF THE PHOTOGRAPHS --

>> DOES YOUR BLUEPRINTS INDICATE WHILE THAT MAY BE NOT TO SCALE, THAT IS IN ESSENCE HOW THAT APARTMENT IS SET UP?

>> I DISAGREE REGARDING THE, THE WAY THAT THE FURNITURE WAS SET UP, I THINK YOU COULD LOOK AT THE PHOTOGRAPHS AND TELL THAT THEY HAVE --

>> NOT TALKING ABOUT THE FURNITURE.

I'M TALKING ABOUT THE APARTMENT ITSELF IS LAID OUT IN THAT MANNER?

A LARGE, BASICALLY LARGE ROOM,

LOOKS LIKE A KITCHEN, OVER,
AREA OVER IN ONE CORNER, A
SMALL HALLWAY AND THE BATHROOM
OVER HERE?

>> YES. BUT I THINK THAT
THE IMPORTANT THING IS TO KNOW THE
DIMENSIONS.

THAT WAY TO TELL THE ANGLES THE
OFFICER WAS LOOKING AT.

THE TRUTH IS THE STATE, NO ONE
KNOWS AT WHAT VANTAGE
POINT THE OFFICER WAS WHEN HE
SAW INTO THAT BATHROOM.

>> GOING BACK TO THAT QUESTION,
ARE THERE BLUEPRINTS THAT
DEMONSTRATE THAT THE
MEASUREMENTS ARE SUBSTANTIALLY
INCORRECT WITH THE DRAWING?

>> I'M SORRY?

>> DO THE BLUEPRINTS SHOW THAT
THE DRAWING IS SUBSTANTIALLY
INCORRECT?

>> I WOULD SAY THAT THE IN
TERMS OF THE WIDTH AND LENGTH,
I WOULD ARGUE YES.

>> OKAY.

>> JUST ONE FINAL POINT.

I WOULD ASK THE COURT LOOK AT
CASE RUNGE, AND GONZALEZ
V. STATE.

THOSE ARE CASES WITHOUT
DIMENSION OF THE APARTMENTS AND
WITHOUT SPECIFIC FACTS THE
OFFICERS CAN EXCEED SCOPE OF A
PROTECTIVE SWEEP.

I ARGUED THOSE IN MY BRIEF.

EVEN IF IT WASN'T PLAIN VIEW
THE OFFICERS WERE WITHIN THEIR
RIGHTS AND CASE LAW IN FLORIDA
DOES NOT SHOW THAT TO BE THE
CASE.

>> THANK YOU VERY MUCH.

WE APPRECIATE THE ARGUMENTS OF
BOTH OF YOU.