>>> NEXT CASE IS DEPARVINE V.
THE STATE OF FLORIDA.
WHEN YOU ARE READY?
>> MAY IT PLEASE THE COURT,
I'M DAVID GEMMER, I REPRESENT
MR.†DEPARVINE, MIDDLE REGION
IN TAMPA.
THIS IS A CASE WHERE THERE
ARE NUMEROUS FAILURES OF
TRIAL COUNSEL WHICH WERE
BROUGHT OUT IN THE
POST-CONVICTION HEARING, AND
IN THE BRIEF TO THE COURT
HERE, WHICH INDICATE THAT
THINGS COULD HAVE AND SHOULD
HAVE BEEN DIFFERENTLY DONE,
AND IF THEY HAD TO HAVE BEEN
DONE IN THAT MANNER, THERE
WOULD HAVE BEEN AN ACQUITTAL.
>> IT SEEMS LIKE MOST OF YOUR
CLAIMS, AND THERE WAS AN
EVIDENTIARY HEARING, ARE
CLASSIC SITUATIONS WHERE THE
TRIAL COURT AND THIS COURT
SAYS THIS IS A -- AN ISSUE OF
REASONABLE TRIAL STRATEGY.
ARE THERE -- AND I'M NOT --
IT APPEARS THAT THIS LAWYER
WASN'T LIKE -- DIDN'T FIND A
WITNESS.
HE DECIDED NOT TO USE THE
WITNESS.
ARE THERE ANY OTHER CLAIMS
THAT DEAL WITH THINGS THAT
BECAUSE HE, THE LAWYER,
DIDN'T INVESTIGATE, DIDN'T
FIND CRITICAL WITNESSES OR
DISCOVER SOMETHING?
YOU KNOW THE INVESTIGATION
WAS ADEQUATE OR WAS THIS
REALLY WHAT -- I KNOW YOU
DISAGREE, BUT IS A CLASSIC
SITUATION OF A LOT OF 20/20
HINDSIGHT.
WE'RE LOOKING AT IT NOW.
WE COULD HAVE DONE IT
DIFFERENTLY, AND IT WOULD
HAVE BEEN BETTER FOR
MR.†DEPARVINE?
>> I IDENTIFY IN THE BRIEF A

NUMBER OF INSTANCES.
WHAT WAS ORIGINALLY
IDENTIFIED AS STRATEGIC
DECISION WAS REBUTTED BY THE
FACTS OF THE CASE.
>> THAT'S THE JUROR -- ARE
THERE ANY THAT DON'T FALL
INTO THE CATEGORY, WHERE THE
LAWYER DID NOT KNOW ABOUT IT,
AND IT DIDN'T HAPPEN BECAUSE
HE MADE THE DECISION, BUT IT
WAS ABSENCE OF INFORMATION?
ANY CLAIMS THAT FALL INTO
THAT?
>> ABSENT INFORMATION IN THE
DE COSTA ISSUE.
MISS DE COSTA SAW A SECOND
RED TRUCK, AND MR.†SKY
TESTIFIED, AND THE COURT
FOUND A MEMO 14 MONTHS PRIOR
TO THE TRIAL WHERE MR.†SKY
WROTE THAT HE BELIEVED THAT
THE WITNESS, MISS DE COSTA
WOULD GET ON THE STAND AND
SAY SHE SAW THE VICTIM'S RED
TRUCK.
MR.†DEPARVINE TESTIFIED OVER
THE TIME OF THOSE 14 MONTHS,
HE HAD SEVERAL MORE
DISCUSSIONS WITH COUNSEL, AND
IN FACT, AT THE TIME OF THE
EVIDENTIARY HEARING, MR.†SKY
TESTIFIED HE WAS CONVINCED BY
THE TIME OF TRIAL THAT MISS
DE COSTA WOULD IDENTIFY
ANOTHER RED TRUCK; THAT IT
WOULD NOT BE THE VICTIM'S RED
TRUCK, WHICH UNDERMINES HIS
INITIAL STRATEGIC DECISION;
THAT INITIAL STRATEGIC
DECISION IS WHAT THE
EVIDENTIARY COURT HUNG ITS
HAT ON AS BEING A VALID
REASON.
AT THE TIME OF THE DISCUSSION
ACTUALLY 14 MONTHS PRIOR,
THERE WAS MEMORIALIZED IN THE
MEMO, MR.†DEPARVINE TESTIFIED
HE ASKED COUNSEL TO GO BACK
TO MISS DE COSTA AND SHOW HER

A MORE USEFUL PICTURE OF THE
VICTIM'S RED TRUCK, AND AT
THE HEARING, MISS DE COSTA
LOOKED AT THE PICTURES OF THE
VICTIM'S RED TRUCK INTRODUCED
AT TRIAL AND TESTIFIED
CONCLUSIVELY THAT WAS NOT THE
RED TRUCK SHE SAW.
INITIALLY THEY HAD SHOWN HER
A SIDE VIEW OF THE TRUCK
WHEN, IN FACT, HER ADVICE TO
THEM OR FACTS TO THEM AT THE
TIME, 14 MONTHS PRIOR, WERE
THAT SHE SAW THE TRUCK
BRIEFLY PULLING OUT RAPIDLY
AND FOLLOWED IT FOR A MILE OR
TWO DOWN THE ROAD.
HER VIEW WAS PROLONGED†--
>>†I'M SORRY, DE COSTA WAS
CALLED AT TRIAL?
I THOUGHT SHE WASN'T.
>> NO, SHE WASN'T.
AT THE EVIDENTIARY HEARING.
WE ESTABLISHED THROUGH
TESTIMONY AT THE EVIDENTIARY
HEARING†--
>>†SO THE ISSUE IS THAT
YOU'RE SAYING HE DIDN'T KNOW
SOME FACT ABOUT DE COSTA;
THAT IF HE HAD KNOWN IT, HE
WOULD HAVE CALLED HER.
IS THAT WHAT YOU'RE?
>> YES.
>> THAT COMES FROM, HE KNOWS
ABOUT A WITNESS, HE DECIDED
WHY HE WASN'T GOING TO CALL
THAT WITNESS, AND THE TRIAL
COURT FOUND THAT THE
ADDITIONAL INFORMATION REALLY
WASN'T GOING TO BE -- SHE
STILL WOULD NOT HAVE BEEN A
HELPFUL WITNESS FOR THE
DEFENSE.
ISN'T THAT WHAT THE TRIAL
COURT FOUND?
>> I DON'T BELIEVE THAT WAS
THE FINDING.
THERE MIGHT HAVE BEEN A
FINDING OF INSUFFICIENT
PREJUDICE TO JUSTIFY A NEW

TRIAL.
NO FINDING BY THE COURT THAT I CAN RECALL THAT IF MISS DE COSTA HAD TESTIFIED AT THE TRIAL AS SHE TESTIFIED AT THE EVIDENTIARY HEARING, THAT THE TRUCK SHE OBSERVED WAS DEFINITELY NOT THE VICTIM'S TRUCK.
THERE WAS A TONNEAU COVER ON ONE AND NOT ON THE OTHER, THE DESIGN OF THE REAR GATE -- TAILGATE WAS DIFFERENT, AND SO HER TESTIMONY WOULD HAVE ESTABLISHED THE EXISTENCE OF ANOTHER RED TRUCK OF THE SAME VINTAGE, COLOR, ET CETERA, WITHIN FEET OR YARDS OF THE JEEP, WHICH IS THE OTHER VEHICLE INVOLVED IN THE CASE.
>> YOU RAISED A LOT OF ISSUES HERE IN FOLLOWING UP ON JUSTICE PARIENTE'S QUESTION ABOUT THE MONDAY MORNING QUARTERBACKING.
YOU RAISED A LOT OF ISSUES IN THIS CASE.
ONE OF THEM, I'M JUST GOING TO PICK A COUPLE, YOU CLAIM INEFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HE DID NOT CALL DARRYL GIBSON AS AN ALIBI WITNESS.
DARRYL GIBSON GAVE THREE DIFFERENT STATEMENTS.
ONLY THE LAST ONE WAS EVEN CLOSELY EXCULPATORY.
HAD HE CALLED DARRYL GIBSON, YOU WOULD PROBABLY BE STANDING HERE TODAY SAYING IT WOULD BE FOOLISH TO CALL DARRYL GIBSON BECAUSE HE WOULD BE SEVERELY IMPEACHED.
THEN INEFFECTIVE ASSISTANCE OF COUNSEL FOR NOT CALLING NICHOLAS KLEIN OR BILL JAMISON'S WIDOW ABOUT THE ROLEX WATCH, IN CLAIMING THAT THIS BILL JAMISON WALKED AROUND PRISON WITH A ROLEX

WATCH.
HIS WIFE TESTIFIED HE NEVER
OWNED THAT WATCH.
HAD HE CALLED THESE PEOPLE,
YOU WOULD BE STANDING HERE
TELLING US FOOLISH TO CALL
THESE PEOPLE; THE WIFE
TESTIFIED HE NEVER HAD A
ROLEX WATCH.
ALL THE THINGS HERE, EITHER
WAY IS -- IT'S A CATCH-22 FOR
LAWYERS TRYING THESE CASES.
YOU RAISED A LOT OF THESE
ISSUES WHERE THE SAME THING
CAN BE ARGUED.
WHERE LAWYERS HAVE TO MAKE A
DECISION AS TO WHAT TO DO IN
THE CASE.
AND THAT DECISION IS NOW
SEVERELY QUESTIONED BY YOU.
>> WELL, MISS DE COSTA WAS A
DECISION BASED ON
INSUFFICIENT INVESTIGATION
PREMATURELY MADE AND
ABROGATED IN HIS OWN MIND BY
THE TIME THEY WENT TO TRIAL.
AS FAR AS JAMISON†--
>>†THEY ALLOW PRISONERS TO
WALK AROUND PRISON WITH ROLEX
WATCHES ON?
THAT WOULD SEEM TO ME†--
>>†MR.†KLEIN PROVIDED A REAL
INSIGHT INTO THE NATURE OF
THE PRISON WHERE THEY WERE
ALL CONFINED, WHERE THE WATCH
WAS TRANSFERRED AND POSSESSED
BY MR.†DEPARVINE.
AND THAT PRISON HAD A LOT OF
DRUG DEALERS.
THEY HAD A POLICY OF ALLOWING
EXPENSIVE JEWELRY IN THE
PRISON UNTIL A CRACKDOWN
WHERE, I THINK, THEY BACKED
IT OFF TO $50 WATCHES.
BUT A LOT OF PEOPLE WERE
GRANDFATHERED IN WITH
VALUABLE JEWELRY, AND PLUS,
YOU COULD PASS IT OFF AS A
$50 FAKE ROLEX.
THERE WAS AN EXPLANATION HOW

HE COULD HAVE COME INTO
POSSESSION OF AN EXPENSIVE
GOLD WATCH.
MR.†JAMISON, THE WIDOW†--
>>†SHE TESTIFIED SHE HAD TO
GO AND PUT MONEY IN HIS FUND
SO HE COULD SURVIVE IN
PRISON.
A GUY WITH A ROLEX WATCH YOU
WOULD THINK WOULDN'T NEED THE
MONEY.
>> SHE KNEW SHE HAD A ROLEX
WATCH.
SHE SAID GIVE ME THE WATCH.
I AIN'T GIVING YOU MORE MONEY
UNTIL I GET THE WATCH.
HE WOULD CONCEAL THAT FROM
HIS WIFE, LOGICALLY.
I DEAL WITH A LOT OF INMATES.
YOU DON'T WANT TO LET PEOPLE
KNOW -- WE'RE GETTING FAR
AFIELD, I'M SORRY.
HE KNEW IT WAS AN EXPENSIVE
WATCH, AND ULTIMATELY
IDENTIFIED AS A GOLD ROLEX
FROM A MAGAZINE AD THAT WAS
NOT SUFFICIENTLY FOLLOWED UP
BY COUNSEL.
MR.†GIBSON, THOUGH,
MR.†GIBSON, HIS FIRST
STATEMENT WAS AT THE FIRST
REVIEW, OF OTHER PEOPLE WHO
LIVED IN THE APARTMENT
BUILDING, BY THE POLICE.
MR.†DEPARVINE WAS NOT UNDER
ARREST AT THE TIME AND NOT
GOING TO BE UNDER ARREST.
YOU WOULDN'T CONTINUE AT THE
TIME.
HE WAS NOT UNDER ARREST.
MR.†GIBSON WAS NOT INCLINED
TO GET INVOLVED IN IT AND,
THEREFORE, DENIED KNOWLEDGE.
WHEN THE STATE WENT BACK AND
SPOKE TO HIM IN THE PINELLAS
COUNTY JAIL, HE SAID, WELL, I
DID SEE SOMETHING.
I SAW MR.†DEPARVINE GO DOWN
AND SPEAK WITH THE VICTIMS
AND HE HAD A BACKPACK.

AND ULTIMATELY ON ANOTHER
INTERVIEW WITH THE STATE, AND
HE SAID, AND THEN LATER IN
THE EVENING, I SAW HIM
STANDING OUTSIDE AROUND DUSK
AT THE APARTMENT BUILDING,
WHICH IS COMPLETELY
INCONSISTENT WITH THE STATE'S
THEORY OF THE CASE, WHICH IS
MR.†DEPARVINE AT THAT MOMENT
AT DUSK WOULD BE FAR NORTH IN
THE NORTH PART OF PINELLAS
COUNTY OR THE HILLSBOROUGH
COUNTY AREA.
AND THEREFORE IT WAS ABSOLUTE
ALIBI.
MR.†SKY SAID HE WAS WORRIED
IF MR.†GIBSON GOT ON THE
STAND AND SAID HE HAD A
BACKPACK, PEOPLE WOULD INFER
THAT WAS HIS KILL PACK.
BUT IF YOU HAVE AN ALIBI AND
THERE WAS NO EVIDENCE THAT
THAT WAS A KILL PACK, IT WAS
EXPLAINED†--
>>†AND PART OF THE PROBLEM IS
THAT GENTLEMAN HAD BEEN ALL
OVER THE PLACE, WHAT HE TOLD
POLICE.
AND FURTHERMORE, THERE'S A
PROBLEM WITH -- WHAT HE SAID
ABOUT WHEN HE SAW HIM AROUND
DUSK WAS INCONSISTENT WITH
THE TESTIMONY OF THE FEMALE
VICTIM'S MOTHER, ISN'T THAT
CORRECT?
WHAT SHE WAS TOLD?
>> SHE WAS TOLD BY THE
VICTIM, THE FEMALE VICTIM --
THE WIFE, THAT SHE WAS
FOLLOWING HER HUSBAND IN THE
RED TRUCK AND THE MAN WHO
BOUGHT THE TRUCK.
HOWEVER, SHE TESTIFIED THAT
OCCURRED VERY EARLY IN THE
CONVERSATION.
THE CONVERSATION WAS
INITIATED WHILE THEY WERE IN
DOWNTOWN ST. PETE OFF A TOWER
THAT PLACED THEM AT THE

APARTMENT BUILDING, AND WOULD
IT BE CONSISTENT WITH
MRS.†VAN DUSEN TELLING HER
MOTHER SHE WAS FOLLOWING THEM
AROUND TO THE BACK OF THE
APARTMENT BUILDING, FOLLOWING
THE GUY WHO BOUGHT THE TRUCK.
HE PAID CASH.
AND THAT WOULD BE, THEREFORE,
CONSISTENT WITH
MR.†DEPARVINE'S FACTS, WHICH
HE TOLD THE POLICE FROM THE
START WAS THAT THEY†--
>>†I THOUGHT THEY WERE GOING
SOMEWHERE TO GET PAPERWORK
DONE?
I THOUGHT THAT WAS PART OF
THE CONVERSATION.
AM I WRONG ABOUT THAT?
>> THAT WAS THE CONVERSATION.
>> THAT WAS IN THE
CONVERSATION, I'M NOT SURE
THAT WAS -- I THINK THAT WAS
EXCLUDED.
THAT WAS NOT THE ONE THAT
EXCLUDED.
YOU WROTE THE DEFENSE --
EXCELLENT DEFENSE BY THE WAY.
[ LAUGHTER ]
>> THEY WERE GOING TO GET THE
PAPERWORK DONE, THAT ALL
TRENDS OVER, THEY WERE
FOLLOWING THE OTHER RED TRUCK
BECAUSE, AS MR.†DEPARVINE
TESTIFIED, THAT OTHER RED
TRUCK CONTAINED ANOTHER MAN
WHO HAD AN SUV THAT THEY WERE
INTERESTED IN PERHAPS GOING
TO GO AHEAD AND BUY.
THE PAPERWORK COULD HAVE BEEN
REFERRING TO THE SUV THAT WAS
FOR SALE.
MR.†GIBSON, AND YOU SAY
MR.†GIBSON WAS ALL OVER THE
PLACE.
HE SAID FIRST, I DON'T WANT
TO GET INVOLVED.
I KNOW NOTHING.
THEN HE TOLD PART OF WHAT HE
OBSERVED AND ADDED THE FINAL

PHILLIPS, SO TO SPEAK, THE
ALIBI.
SO IT WASN'T TOTALLY
INCONSISTENT, IT WAS
BUILDING.
MORE AND MORE INFORMATION.
NONE OF IT, EXCEPT FOR THE
DENIAL, THE FIRST TIME I SAW
NOTHING, IT WAS NOT OTHERWISE
INCONSISTENT.
FIRST, I SAW MR.†DEPARVINE
OVER THERE AND OVER THERE.
IT'S NOT LIKE THAT KIND OF
INCONSISTENCY.
IT'S NOT UNCOMMON, I DON'T
BELIEVE FOR PEOPLE TO BUILD
ON THEIR†--
>>†EXTEND THE STORY.
>> TO BUILD THEIR FACTS, YES.
SO, AND MR.†SKY, OF COURSE,
TESTIFIED THAT, A, THE PACK
WOULD BE CONSIDERED A KILL
PACK WHEN, IN FACT, THE
DEPARTMENT SAID IT WAS THE
CHAIN AND LOCKS HE PUT ON THE
TRUCK, THAT THE POLICE FOUND
THE LOCKS AND CHAIN ON THE
TRUCK AND OBVIOUSLY WOULD
HAVE HAD THEM IN THE PACK.
OBVIOUSLY, HE WOULD HAVE HAD
THEM IN THE PACK.
AND, OF COURSE, REGARDLESS OF
THE BEHAVIOR, THE ALIBI CURES
ANY POSSIBLE NEGATIVE INFERENCES
COULD HAVE BEEN DRAWN FROM
ANYTHING THAT MR. GIBSON SAW
BEFORE THAT POINT.
ON THE FINGERPRINT ISSUE -- AND
THIS ALSO GOES -- MR. SKYE
CONTRADICTED HIMSELF.
ON THE FINGERPRINT ISSUE,
MR. SKYE TESTIFIED THAT HE
WANTED TO HAVE A MYSTERY PRINT.
AND AT THE EVIDENTIARY HEARING,
WE SHOWED HIM THE EVIDENCE THAT
WAS PRESENTED AT TRIAL.
ONE SHOWED THE ID CARD FROM THE
OTHER GENTLEMAN, THE OTHER
SUSPECT, AND THEN ANOTHER PIECE
OF EVIDENCE WAS THE PICTURE OF

THE ID CARD WITH HIS THUMBS
PLANTED SQUARELY IN THE MIDDLE
OF THE ID CARD.
AND AT THE EVIDENTIARY HEARING,
MR. SKYE SAID HE WASN'T SURE
THAT HE REMEMBERED THAT, BUT IT
WAS INTRODUCED IN EVIDENCE, AND
IN CROSS-EXAMINATION HE
SPECIFICALLY DREW ATTENTION --
>> IS THAT THE PRINT THAT ENDED
UP BEING THE FINGERPRINT OR THE
THUMBPRINT OF A DEPUTY?
>> YES.
>> SO FINISH.
[INAUDIBLE]
>> I'M SORRY?
>> SO WHAT GOOD WOULD THAT HAVE
DONE TO YOUR CLIENT?
>> BECAUSE THE MYSTERY PRINTS
WERE SMUDGED BY THE DEPUTY'S
PRINTS.
THEY WERE UNIDENTIFIED, UNUSABLE
PRINTS.
>> FROM THAT STANDPOINT I CAN
SEE A LAWYER ARGUING IN CLOSING
ARGUMENT THAT THERE WAS A PRINT
THAT DIDN'T DEVELOP THAT COULD
HAVE BEEN THE KILLER, THERE'S
REASONABLE DOUBT.
>> THAT'S WHAT HE SAID HE WAS
GOING TO DO, AND HE DIDN'T DO
THAT.
>> WELL --
>> HE DID NOT ARGUE THAT IN THE
CLOSE BECAUSE IT WAS DESTROYED,
THE THUMBPRINT AT THE TRIAL.
AND HE DID IT HIMSELF IN THE
CROSS-EXAMINATION.
TOTALLY EVAPORATED, DIMINISHED
OR DESTROYED HIS STRATEGY.
ALL HE HAD TO DO, YOU KNOW, AND
HE KNEW THAT THE DEPUTIES HAD
NOT BEEN COMPARED AT THE SCENE.
THAT ALSO FEEDS INTO THE FACT
THAT THE TWO REPORTS, POLICE
REPORTS ON THAT ID CLAIMED THAT
THE CARD HAD NOT BEEN TOUCHED
ANYWHERE OTHER THAN ON THE
EDGES.
AND SO THAT WOULD HAVE ALSO

BROUGHT INTO QUESTION THE
LEGITIMACY AND ACCURACY OF THE
COURTS BY THE INVESTIGATORS.
>> I STILL HAVE THE BASIC
PROBLEM I ASKED AT THE BEGINNING
AND FOLLOWED UP WITH THE
QUESTIONS THAT WHEN WE TALK
ABOUT A COUNSEL NOT PERFORMING
AS NECESSARY UNDER THE SIXTH
AMENDMENT -- AND WE DO EXPECT A
FAIRLY HIGH LEVEL OF COMPETENCY,
BUT WE DON'T EXPECT PERFECTION.
AND I DON'T, YOU KNOW, LOOKING
AT THE TOTALITY OF THIS
COUNSEL'S PERFORMANCE -- BECAUSE
THAT'S WHAT WE REALLY NEED TO DO
AS YOU PICK EACH THING -- I'M
STILL TRYING TO SEE WHERE THE,
WHERE COUNSEL'S PERFORMANCE WAS
SUCH THAT IT MEETS THE
STRICKLAND STANDARD FOR EITHER
THE FIRST PRONG, OR THEN
ASSUMING HE DID THESE THINGS AS
JUSTICE LABARGA SAYS, A LOT OF
THEM COULD HAVE BACKFIRED, AND
YOU'D BE STANDING SAYING HE
SHOULD HAVE DONE THE OTHER
THING.
SO IS THERE ANY CASE THAT WE
HAVE WHERE WE'VE REVERSED WITH
THIS KIND OF RECORD AS OPPOSED,
YOU KNOW, TO A DEFENSE LAWYER
WHO DOES NOTHING, SHOWS UP TWO
DAYS BEFORE THE PENALTY PHASE,
DOESN'T TALK TO THE WITNESSES?
THAT DOESN'T SEEM LIKE THIS CASE
AT ALL.
>> I DON'T KNOW CASE NAMES, BUT
I'M SURE YOU HAVE SOME CASES --
I BELIEVE IT'S WIGGINS, CORRECT
ME IF I'M WRONG --
>> [INAUDIBLE]
>> I'M SORRY.
THE ATTORNEY HAS TO DO ENOUGH,
THEY HAVEN'T DONE ENOUGH EVEN
THOUGH THEY'VE DONE --
>> THAT'S WIGGINS OUT OF THE
UNITED STATES SUPREME COURT, OF
COURSE.
AND I AGREE WITH THAT.

AND YOU THINK THIS IS, MEETS THE WIGGINS DEFICIENCY, THIS CASE MEETS THAT STANDARD?
>> YES.
BECAUSE HE DIDN'T DO ENOUGH.
HE DIDN'T FOLLOW UP WITH DECOSTA, MADE A PREMATURE DECISION WHICH HE EVEN ADMITS THAT HE WOULD COME AROUND ON BEFORE -- BY THE TIME OF TRIAL.
>> I THINK THE PROBLEM I ALWAYS HAD WITH THESE CASES EVEN AS A TRIAL JUDGE IS THESE LAWYERS REPRESENT THESE FOLKS, AND THERE'S A GUILTY VERDICT AND A DEATH SENTENCE, AND MAYBE TEN YEARS LATER THEY'RE CALLED TO COME INTO COURT AND TESTIFY AND EXPLAIN WHY THEY DIDN'T CALL THIS WITNESS OR DIDN'T CALL THIS WITNESS OR DIDN'T DO THIS AND DIDN'T DO THAT.
AND, YOU KNOW, BY THAT POINT IN TIME, THEY CAN BE MADE TO LOOK LIKE FOOLISH FOR NOT HAVING DONE SOMETHING.
AND IT BOTHERS ME THAT LAWYERS HAVE TO GO THROUGH THAT.
BUT I UNDERSTAND THE REASON FOR IT.
BUT IN THIS PARTICULAR CASE, I MEAN, THIS LAWYER DID MORE THAN ENOUGH, IT SEEMS TO ME.
HE MADE DECISIONS.
HE COULD HAVE GONE ONE WAY OR THE OTHER ON THOSE DECISIONS, AND EITHER WAY HE WENT YOU WOULD BE STANDING HERE SAYING IT WAS THE WRONG WAY.
THERE ARE STRATEGY DECISIONS THAT WE AS LAWYERS MAKE ALL THE TIME.
AND SOMETIMES THEY WORK, SOMETIMES THEY DON'T WORK.
I DON'T KNOW WHAT ELSE LAWYERS CAN DO.
>> BUT HE SHOT HIMSELF IN THE FOOT ON THE STRATEGY CLAIMS THAT HE MADE.
THE FINGERPRINT WHERE, YOU KNOW,

HE DIDN'T EVEN ARGUE IT BECAUSE
HE DIDN'T HAVE A MYSTERY PRINT.
>> MAYBE THINGS CAME UP THAT HE
FOUND MORE IMPORTANT.
>> BUT HE BLEW HIS MYSTERY PRINT
WHEN HE -- BECAUSE THEY PUT THE
EVIDENCE IN THAT IT WASN'T A
MYSTERY.
I MEAN, YOU DIDN'T KNOW WHICH
DEPUTY, BUT IT CERTAINLY WASN'T
THE KILLER HOLDING THE PICTURE
FOR THE INVESTIGATOR.
AND ANOTHER EXAMPLE BEING THE
CARJACKING.
HE CLAIMED THAT HE DID NOT WANT
TO CLEAR UP WHICH VEHICLE WAS
THE SUBJECT OF THE CARJACKING BY
FILING A MOTION OF PARTICULARS
BEFORE TRIAL BECAUSE HE DIDN'T
WANT TO GIVE THE STATE A CHANCE
TO GO BACK AND EXAMINE THE
INDICTMENT AND DISCOVER THE
BOGUS CLAIM THAT IT WAS
INSUFFICIENT, IT WAS --
FIRST-DEGREE MURDER WAS NOT
SUFFICIENTLY ALLEGED BECAUSE
THEY DIDN'T ALLEGE PREMEDITATED
VERSUS FELONY MURDER BASED ON A
CASE FROM THE s.
AND, IN FACT, AND THIS COURT I
BELIEVE IN FIVE WAYS SHOWED HOW
THAT WAS A COMPLETELY INCORRECT
ASSUMPTION, OR IT'S IMPOSSIBLE.
AND THE FIRST THING IS IT CURES.
YOU CITE THE STATUTE, AND YOU'VE
CURED EVERYTHING.
SAW THAT THE FIRST TIME I SAW
IT, YOU KNOW?
AND YOU ALL SAW IT, TOO, AS WELL
AS THE OTHER REASONS, FAILURE TO
PRESERVE, ETC.
BUT, SO HE HAD A STRATEGY ON THE
CARJACKING.
I DON'T WANT TO FILE BECAUSE IT
MIGHT CATCH THE MISTAKE THAT I'M
REALLY GOING TO HANG MY HAT ON,
BUT THEN HE WENT AND FILED A
STATEMENT FOR PARTICULARS ON A
NUMBER OF ISSUES LATER.
SO HE DESTROYED THAT STATUTE.

AND, OF COURSE, THE STATE DIDN'T
CATCH IT BECAUSE THEY DIDN'T
NEED TO, THERE WAS NOTHING TO
CATCH.
AND SO THERE'S ANOTHER EXAMPLE
OF WHERE HE CLAIMS ADVANTAGE,
BUT THE STRATEGY IS OBVIOUSLY
POST HOC BECAUSE HE DID NOT
CARRY OUT THAT STRATEGY.
>> YOU'VE EXHAUSTED YOUR TIME.
I'LL GIVE YOU --
[INAUDIBLE]
>> THANK YOU, YOUR HONORS.
>> MAY IT PLEASE THE COURT,
STEPHEN AKE ON BEHALF OF THE
STATE OF FLORIDA.
>> MAY I ASK A QUICK QUESTION
BEFORE YOU BEGIN?
>> SURE.
>> I'M A LITTLE CONFUSED
ABOUT -- THERE WERE ABOUT FIVE
SAMPLES OF DNA FILED ON THE
STEERING WHEEL.
>> CORRECT, YOUR HONOR.
>> SIX?
ONE OF THE SAMPLES CONTAIN A
MIXTURE OF DNA OF VICTIM RICK
VAN DUSEN AND THE DEFENDANT.
>> CORRECT.
>> CAN YOU EXPLAIN TO ME HOW
THAT CAME ABOUT?
>> THERE WERE, AS I SAID, SIX
SPOTS OF DEFENDANTS' BLOOD, ONE
OF WHICH CONTAINED A MIXTURE.
I BELIEVE THAT MIXTURE WAS AT
THE POSITION ON THE
STEERING WHEEL.
SOME OF THE OTHER ONES THEY
TESTIFIED TO WERE LIKE THE
POSITION.
THE DEFENDANT HAD HIS STORY AS
TO HOW HIS BLOOD GOT INTO THE
JEEP WHICH WAS REBUTTED BY OTHER
EVIDENCE, BUT THE STATE'S
THEORY, OBVIOUSLY, WAS WHEN HE
COMMITTED THIS MURDER, THAT HE
LEFT IT AND DROVE THAT JEEP FROM
WHERE HE DUMPED THE BODIES.
HE DROVE THE JEEP ABOUT .
MILES TO ARTISTIC DOORS AND,

THEN EXITED THE JEEP AT THAT
TIME AND THAT HIS BLOOD GOT ON
IT AT THAT TIME WITH A MIXTURE
OF THE VICTIMS.
BOTH VICTIMS WERE KILLED IN THE
JEEP.
>> WAS THAT DNA SAMPLE
CONTAINING THE MIXTURE A MAJOR
FEATURE OF THE STATE'S CASE?
>> IT WAS CERTAINLY A FEATURE,
YES, YOUR HONOR.
YOU KNOW, THIS WAS A
CIRCUMSTANTIAL EVIDENCE CASE,
AND THAT WAS THE ONLY REALLY
DIRECT EVIDENCE TYING THE
DEFENDANT THERE.
IT WAS, YOU KNOW, ASTRONOMICAL
ODDS, IN BILLION OR,
ACTUALLY, TRILLION, IN
TRILLION THAT IT WAS THE
DEFENDANT'S DNA, AND THE MIXTURE
WAS ONE IN $570 BILLION.
SO IT WAS CERTAINLY KEY EVIDENCE
TO THE STATE'S CASE, YES.
>> OKAY.
>> BUT THERE WAS, CERTAINLY,
QUITE A BIT MORE.
AND I REALIZE THIS IS A VERY
FACTUALLY-INTENSIVE CASE, AND
IT'S DIFFICULT WITH SO MANY
ISSUES THAT THIS COURT'S
IDENTIFIED THAT THIS IS A TWENTY/TWENTY
HINDSIGHT THEY'RE ALLEGING THAT
VERY EXPERIENCED TRIAL COUNSEL,
BASICALLY, EVEN THOUGH HE
INVESTIGATED THINGS, THAT HE
CHOSE ONE WAY TO GO WITH IT, AND
THEY'RE NOW SECOND GUESSING THAT
AND SAYING --
>> BUT, SO WE HAVE THAT PICTURE
FOR, YOU KNOW, JUST TO MAKE SURE
HE'S -- WHAT TYPE LAWYER
EXPERIENCE?
>> YES, YOUR HONOR?
>> DID THE RECORD REVEAL OF THAT
INVESTIGATION THAT HE CONDUCTED
OR HAD HIS INVESTIGATOR CONDUCT?
>> THE LEAD ATTORNEY THAT
TESTIFIED AT THE EVIDENTIARY
HEARING WAS JOHN SKYE WHO HAD

SPENT I DON'T KNOW THE EXACT
NUMBER OF YEARS AT THE STATE
ATTORNEY'S OFFICE WHERE HE WAS
FELONY BUREAU CHIEF FOR -- I
IMAGINE IT WAS CLOSE TO 15
YEARS.
AND THEN HE WENT TO THE PD'S
OFFICE WHERE HE WAS THERE FOR
ABOUT AN EQUAL AMOUNT OF TIME,
ABOUT 13 YEARS, AND HE TESTIFIED
HE'D DONE OVER 20 HOMICIDE
CASES.
VERY EXPERIENCED ATTORNEY.
HE ALSO HAD THREE OTHER
ATTORNEYS WORKING FOR HIM AND AN
INVESTIGATOR FROM THE PD'S --
>> SO THIS WAS THROUGH THE
PUBLIC DEFENDER.
>> CORRECT.
>> AND THIS IS WHERE HE'D HAVE
THE RESOURCES AND NOT A PRIVATE
ATTORNEY.
>> RIGHT.
HE HAD TWO OTHER PDs ASSISTING
HIM ALONG WITH THE DEDICATED
INVESTIGATOR THAT WORKED ON THIS
CASE, AND THERE'S AN ABUNDANCE
OF MEMOS IN THE STATE
POSTCONVICTION RECORD BECAUSE
MR. DEPARVINE HAD A LEGAL
DEGREE, SO --
>> HE HAD WHAT?
>> HE HAD A LEGAL DEGREE.
HE GRADUATED LAW SCHOOL.
THE DEFENDANT IN THIS CASE?
>> THAT'S WHY HE WAS WORKING IN
THE LAW LIBRARY?
>> YES.
AND HE'D WRITTEN --
>> MAYBE THAT'S NOT WHY, BUT WHY
HE WAS ABLE TO --
>> RIGHT.
HE WROTE HIS TRIAL ATTORNEY
NUMEROUS, NUMEROUS, NUMEROUS
LETTERS, VERY DETAILED, AND HE
WROTE BACK.
AND A LOT OF THOSE ARE IN THE
RECORD THAT WE, AS THEY WERE
RELEVANT TO VARIOUS CLAIMS, ONE
OF WHICH WAS THIS DECOSTA

WITNESS WHERE THE INVESTIGATOR HAD GONE OUT AND SHOWN HER PHOTOGRAPHS OF THIS TRUCK.
AND I WANTED TO POINT OUT TO THIS COURT TO CORRECT SOME OF THE THINGS THAT MR. GEMMER WAS SAYING.
ON PAGE 33 OF MY BRIEF, I PUT FORTH SOME QUOTES FROM THAT MEMO WHERE, BASICALLY, TRIAL COUNSEL IS SAYING MS. DECOSTA THINKS SHE SAW THIS TRUCK.
SHE CAN'T BE CORRECT BECAUSE, ACCORDING TO DEPARVINE'S STORY, THE TRUCK'S SITTING AT HIS APARTMENT.
SO HE KNOWS THAT SHE'S WRONG ON SEEING THAT TRUCK.
SO HE SAYS, WELL, MAYBE SHE SAW A SECOND RED TRUCK.
AND DEPARVINE HIMSELF POINTS OUT THAT'S NOT REALLY THAT BIG A DEAL BECAUSE OF THE FACT THAT SHE SEES ANOTHER RED TRUCK AT THAT TIME OF DAY JUST DOESN'T REALLY -- THERE'S NO WAY TO TIE THAT UP TO ANYTHING.
THAT'S ALL IN THE MEMO, AND HE SAID, BASICALLY, HE THOUGHT IT'D BE GRASPING AT STRAWS IF HE TRIED TO PRESENT THAT TO THE JURY --
>> DID MR. DEPARVINE WANT HIM TO CALL DECOSTA?
>> ACCORDING TO HIS MEMO, HE TALKED ABOUT IT WITH DEPARVINE, AND I QUOTE HOWEVER, THE DEFENDANT HIMSELF WAS THE FIRST ONE TO MENTION THERE WAS NO WAY TO TELL AND WHETHER OR NOT THAT WAS ANY PARTICULAR PICKUP TRUCK.
NOW DEPARVINE COMES IN POSTCONVICTION AND SAYS, OH, YES, I WANTED HIM TO CALL, BUT AT THE TIME --
>> THE JUDGE MADE CREDIBILITY FINDINGS ON THIS.
>> CORRECT.
>> AGAIN, SO WHAT WE'RE REALLY LOOKING AT HERE IS THAT THE

INVESTIGATION, THERE REALLY
ISN'T ANYTHING INADEQUATE ABOUT
THE INVESTIGATION.
THE, EVERY DECISION THAT'S BEEN
POINTED OUT WAS MADE AFTER
GIVING IT SOME THOUGHT.
MAYBE SOME THINGS DIDN'T WORK
OUT QUITE LIKE THEY WANTED, BUT,
HEY, THAT'S REALLY -- THIS WOULD
BE NO PERFECT CASE.
>> YOUR HONOR, I THINK WITH THE
VAST MAJORITY OF THINGS HAD HE
PRESENTED THOSE, THEY WOULD
DEFINITELY BE BACK HERE SAYING
THAT WAS INEFFECTIVE.
FOR EXAMPLE, THOSE INMATE
WITNESSES WERE TERRIBLE
WITNESSES, AND THEY HAD THESE
INCREDIBLE STORIES ABOUT THE
ROLEX.
>> I GUESS WHAT MY POINT WAS,
AND I THINK IT'S IMPORTANT TO
UNDERSTAND, SOMETIMES WE GO,
WELL, THIS WASN'T, YOU KNOW,
THIS WAS DECISION, BUT THERE WAS
NO PREJUDICE.
AND WE LOOK AT EACH THING IN A
VACUUM.
HERE EVEN WHEN WE LOOK AT
EVERYTHING IN A VACUUM, THERE'S
NO DEFICIENCY.
BUT IF YOU LOOK AT THE COMPLETE
TRIAL, THIS DEFENDANT RECEIVED
COMPETENT --
>> MOST DEFINITELY, YOUR HONOR.
>> [INAUDIBLE]
>> YES, EXCELLENT REPRESENTATION
FROM MR. SKYE.
>> TO YOUR KNOWLEDGE, ARE
PRISONERS ALLOWED TO WEAR
JEWELRY IN PRISON?
I MEAN, I GET THIS THING ABOUT
THE MOVIES WHERE THEY HOSE YOU
DOWN WHEN YOU COME IN, TAKE
EVERYTHING YOU'VE GOT AND PUT IT
IN AN ENVELOPE, AND YOU GET IT
WHEN YOU COME OUT.
>> I HONESTLY DON'T KNOW -- I DO
KNOW THAT THE STATE PRESENTED A
WITNESS AT THE TIME OF TRIAL

THAT THERE'S NO WAY HE WOULD
HAVE HAD A ROLEX IN PRISON AT
THE TIME, AND ESPECIALLY HIS
STORY OF HIDING IT AND BURYING
IT UNDERGROUND OUTSIDE THE
VISITORS' CENTER, WHAT HAVE YOU,
THAT THAT WOULD HAVE NEVER
HAPPENED.
THEY PRESENTED TESTIMONY THAT,
APPARENTLY, AT THIS CORRECTIONAL
INSTITUTION THEY DID ALLOW THEM
TO DO IT UP TO A CERTAIN POINT
OF TIME, AND THEN THEY
INSTITUTED A POLICY AS TO
MONETARY VALUE --
>> A WATCH.
THIS WAS BEFORE, HE WAS IN FOR,
WHAT, SOMETHING ELSE AT THE
TIME?
>> YES.
I THINK HE SERVED ABOUT
YEARS' SENTENCE ON -- BASICALLY,
IT WAS VERY MUCH SIMILAR TO
THIS.
HE WAS TRYING TO SELL A HARLEY
DAVIDSON THAT HE DIDN'T OWN, AND
HE WAS CAUGHT WITH A GUN IN HIS
BACKPACK BY UNDERCOVER COPS, AND
THAT'S WHAT THE SENTENCE WAS HE
WAS SERVING AT THAT TIME.
SO HE WAS SERVING THAT, AND HIS
TESTIMONY AT TRIAL WAS BASICALLY
HE HAD RECEIVED THIS ROLEX FROM
THIS DEATHLY ILL PRISONER --
>> AND YOU SAY "TRIAL."
AT EVIDENTIARY?
>> NO, NO.
AT TRIAL DEPARVINE TESTIFIED AS
TO HOW HE RECEIVED THE ROLEX,
AND IT WAS -- HE HAD BURIED IT
OUTSIDE.
IT WAS VERY OUT THERE, YOUR
HONOR.
>> SO NOW WE'RE SAYING IT WAS,
THAT THEORY WAS SO GREAT, WE
SHOULD HAVE HAD OTHER PEOPLE TO
COME IN AND SUPPORT --
>> AND THE TWO INMATES DIDN'T
EVEN IDENTIFY THE WATCH.
THEY JUST SAID, YOU KNOW, HE HAD

A WATCH.
THAT'S ALL THEY HAD TO THAT.
THAT'S WHY COUNSEL DOESN'T CALL THEM, NOT TO MENTION OTHER FACTORS, THAT THEY HAD A BAD RECORD, AND THEY WERE BENDING OVER BACKWARDS TRYING TO TAILOR THEIR TESTIMONY TRYING TO HELP DEPARVINE.
THEY WERE WRITING LETTERS ABOUT -- REQUESTING INFORMATION FROM TRIAL COUNSEL SAYING WE REALLY NEED TO KNOW EVERYTHING ABOUT THIS CASE SO THAT WE CAN HELP MR. DEPARVINE WHEN WE TESTIFY ABOUT THIS WATCH.
AND DOMBROUSKY --
>> AND THE WATCH, THAT WAS TO SHOW THAT HE HAD ENOUGH MONEY TO BUY THE TRUCK?
>> THAT WAS HIS THEORY.
HE SOLD THIS ROLEX WATCH WHEN HE WAS RELEASED FROM PRISON AND HAD THOSE FUNDS AVAILABLE.
>> HE GOT $7 FOR IT.
>> RIGHT.
HE PUT A ONE-DAY AD IN THE NEWSPAPER, ACCORDING TO HIM, AND THE VERY FIRST PEOPLE WHO CAME TO HIS APARTMENT BOUGHT IT.
>> THOSE HISPANIC GUYS.
>> YES.
FOR $7, YES.
AND THE STATE INTRODUCED HIS BANK RECORDS, AND HE HAD NEVER HAD MORE THAN $8 IN HIS --
>> CRITICIZING COUNSEL FOR PUTTING THEM ON OR SHOULD HAVE PUT ON MORE WITNESSES TO HAVE -- I DON'T WANT TO GET -- IT COULD HAVE HAPPENED, BUT IT SEEMS PRETTY CRAZY THAT SOMEBODY'S GOING TO BE WALKING AROUND PRISON WITH A ROLEX WATCH EVEN IF THEY ALLOWED IT.
>> CORRECT, CORRECT.
SO THAT WAS -- AND THAT'S THE ISSUE ON ALL THESE.
AND THE SAME THING WITH MR. GIBSON.

AND MR. GIBSON WAS UNAVAILABLE.
HE WASN'T GOING TO TESTIFY.
HE HAD NUMEROUS STATEMENTS, AS
THIS COURT'S POINTED OUT
FROM "I KNOW NOTHING" TO, YOU
KNOW, MUCH DIFFERENT STATEMENT
AT THE END.
I THINK THIS COURT IS WELL AWARE
THAT THIS IS A HINDSIGHT TYPE OF
ARGUMENT, THAT THE TRIAL JUDGE
CORRECTLY FOUND THAT THERE WAS
NO DEFICIENT PERFORMANCE OR
PREJUDICE IN THIS CASE, AND WE
WOULD ASK THAT THIS COURT
AFFIRM, IF THERE'S NO FURTHER
QUESTIONS.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.
REBUTTAL?
>> YOUR HONORS, ON THE DNA
EVIDENCE OF THE BLOOD, ONE OF
THE CRIME SCENE TECHNICIANS WHO
DID THE BLOOD WORK TESTIFIED --
I BELIEVE IT WAS THE EVIDENTIARY
HEARING, MIGHT HAVE BEEN
TRIAL -- THAT IT WOULD HAVE BEEN
IMPOSSIBLE TO DETERMINE WHETHER
THOSE TWO BLOOD SPOTS WERE
PLACED THERE SIMULTANEOUSLY OR,
AS MR. DEPARVINE TESTIFIED, ON
THE SUNDAY PRIOR AND THEN ON THE
TUESDAY OF THE MURDER BY THE
VICTIM.
AND SO IT'S IMPOSSIBLE TO DO
THAT.
COULD HAVE GONE EITHER WAY.
THIS COURT HELD THAT A
REASONABLE JURY COULD INFER BOTH
MEN WERE BLEEDING AT THE SAME
TIME, BUT THAT DOESN'T OVERCOME
THE CIRCUMSTANTIAL EVIDENCE RULE
THAT HAS TO ELIMINATE THE THEORY
OF INNOCENCE WHICH WOULD BE
THAT, AS MR. DEPARVINE TESTIFIED
AND TRIED TO TELL THE POLICE, HE
HAD A CUT FINGER FROM WORK THAT
WAS REOPENED AND LEFT SMALL
BLOOD SPOTS.
AS THE TECHNICIAN TESTIFIED AT
THE EVIDENTIARY HEARING, THEY

WERE IMPOSSIBLE TO SEE UNLESS
ONE GOT UP VERY CLOSE USING A
FLASHLIGHT TO LOOK FOR.
THE -- I'M OUT OF TIME.
>> THANK YOU FOR YOUR ARGUMENTS.
COURT WILL BE IN RECESS FOR TEN
MINUTES.
>> ALL RISE.