>> NEXT CASE ON THE DOCKET WILL BE PETERSON VERSUS STATE OF FLORIDA.
>> JUST WAIT A COUPLE MINUTES FOR IT TO CLEAR OUT SO WE CAN HEAR YOU.
>> YOU GUYS CLEARED THE ROOM. I THINK WE GOT IT.
WHENEVER YOU ARE READY.
>> MAY IT PLEASE THE COURT AS COUNSEL?
MY NAME IS FRANK TASSONE.
I HAVE THE PLEASURE OF REPRESENTING ROBERT PETERSON IN THIS APPEAL FROM A POSTCONVICTION HEARING THAT OCCURRED IN 2 FALL COUNTY.
I THINK I SHOULD FIRST MENTION, IT IS MY HUMBLE OPINION THAT MISTER PETERSON FALLS WITHIN THE TIME PERIOD AND CATEGORY OF THOSE INDIVIDUALS WHO WOULD BE SUBJECT TO A NEW PENALTY PHASE.
UNLESS THERE ARE ANY QUESTIONS --
>> I WOULD POINT OUT THE STATE WILL TAKE THE SAME ARGUMENTS, THIS WAS 7-5, THERE ARE NO AGGREGATORS AND SEPARATE FACTUAL FINDINGS, THIS WAS THE SAME CATEGORY AS HURST.
THIS WENT UP TO THE US SUPREME COURT AND GRANTED CERTAIN HURSTS A COUPLE YEARS LATER.
>> CORRECT.
IT WAS RAISED ON DIRECT APPEAL.
AND WHETHER THEY GOT THEIR GUILT PHASE.
>> I WOULD LIKE TO TALK AND ESSENTIALLY FOCUS ON THE ISSUE OF NOT HAVING AN ATTORNEY-CLIENT RELATIONSHIP WITH MISTER PETERSON BEING AN EFFECTIVE ATTORNEY.
>> A CHRONIC CLAIM THE ATTORNEY DIDN'T FUNCTION AS EFFECTIVE COUNSEL AND PROOF OF THAT THAT THERE WERE FILES THAT WERE MISSING AND HAVING TROUBLE UNDERSTANDING HOW THAT WAS

DEVELOPED, THE HEARING ON IT, IS IT YOUR ARGUMENT THIS WOULD NOT BE BASED ON A STANDARD STRICKLAND ANALYSIS BUT CHRONIC?
>> NOT TRYING TO BACKPEDAL OR MOVE AWAY FROM THE COURT'S QUESTION.
THE FACTS ARE VERY CLOSE TO THE FACT IN WHICH STRICKLAND RESULTED FROM.
YOU HAVE AN ATTORNEY, THE SECOND OR THIRD ATTORNEY APPOINTED TO THE CASE AND I FORGET THE REASONS WHY.
HE WAS APPOINTED IN DECEMBER 12, 2008, HE RECEIVED 10 BOXES OF FILES ON MARCH 27, 2009.
HIS BILLING RECORD REFLECTS THAT HE CONTINUED TO READ WHAT WAS IN THOSE BOXES, MOSTLY STOPPING AROUND THE END OF MAY 2009 AND CONTINUING A FEW DAYS AFTER THE TRIAL.
THE COCOUNSEL HAD NOT BEEN DEATH PENALTY QUALIFIED.
>> YOU ARE SAYING THIS IS CLOSE TO STRICKLAND'S WHAT WAS THE EVIDENCE PRESENTED AT THE EVIDENTIARY HEARING AS TO WHAT DEFENSE COUNSEL FAILED TO DO IN THE GUILT PHASE, WHETHER THEY SHOULD HAVE PUT ON ADDITIONAL TESTIMONY, ADDITIONAL EXPERT WITNESSES, DON'T YOU HAVE TWO, SOMETHING THEY FAILED TO DO IN ORDER TO DEMONSTRATE BOTH DEFICIENCY AND PREJUDICE.
THERE WERE QUESTIONS REGARDING FAILING TO DO ANY REQUEST, BIOLOGICAL TESTING.
>> WHAT DID YOU PUT ON IN THIS HEARING AS TO THE TESTING? DON'T WE HAVE TO HAVE SOMETHING THAT WOULD SHOW IT UNDERMINES CONFIDENCE IN THE GUILT OF THIS DEFENDANT?
>> THE COUNCIL SAID THERE WERE ITEMS IN THE HOTEL ROOM AND OTHER ITEMS IN THE CAR THAT COULD HAVE BEEN TESTED.

>> DID YOU REQUEST DNA TESTING?
>> WE DID NOT.
>> IT SEEMS THIS IS -- IT SEEMS YOUR CLAIM IS VERY SPECULATIVE AND THE ISSUE THAT THERE WERE THESE BOXES OF FILES THAT WERE NOT DELIVERED BUT SEEMS ON THAT, LOOKED LIKE THE EVIDENCE WAS THESE WERE COPIES OF THINGS SO I AM TRYING TO WRAP MY ARMS AROUND THE ESSENCE OF YOUR CLAIM.
>> LET ME SPEAK TO --
>> YOU ARE AN EXPERIENCED ATTORNEY.
YOU KNOW HOW DIFFICULT IT IS -- OR FAIL TO TEST THIS AND SHOWING THE TESTIMONY WOULD HAVE BEEN NOT THAT CREDIBLE.
SOMETHING TO PIN A DECISION ON.
>> TRIAL COURT FOUND IT WOULD BE COMPLETE SPECULATION TO RELY ON THE FACT THERE WOULD HAVE BEEN, 10 BOXES WOULD HAVE ASSISTED THE DEFENDANT.
MY POSITION IS, OUR POSITION IS THERE WOULD BE SPECULATION THE OTHERWISE.
>> THERE ARE TWO WAYS TO PROVE DEFICIENCY.
ONE IS TO LOOK AT THE DEFENDANT'S OWN FILES, THE OTHER IS TO SAY THIS IS WHAT THEY DID AND ARE PUTTING ON TESTIMONY, THIS IS WHAT THEY SHOULD HAVE DONE.
THERE IS NO TESTIMONY.
THE DEFENSE LAWYER DID WRONG.
>> I DIDN'T PUT ON TESTIMONY TO THAT EFFECT BUT MISTER FLETCHER ADMITTED HE DIDN'T PUT THAT ON AND WE FELT THAT WASN'T ENOUGH.
>> MISTER FLETCHER ADMITTED WHAT?
>> THERE WAS NO BIOLOGICAL TESTING.
>> WHICH CLAIM IS THE CLAIM, BIOLOGICAL TESTING?
>> I DON'T THINK WE HAD A SPECIFIC ISSUE ON BIOLOGICAL TESTING AND THE ISSUES WERE

DEALT WITH, FAILURE TO ESTABLISH ATTORNEY-CLIENT RELATIONSHIP, TRIAL COUNSEL IN ACTIVITY DURING CASE AND CONFLICT OF INTEREST BETWEEN COUNSEL AND CLIENT.
>> THIS IS THE FILES IN ALL THIS.
AND TELL ME WHERE IN YOUR GRIEF YOU DISCUSS WHAT BIOLOGICAL MATERIALS ARE YOU TALKING ABOUT THAT SHOULD HAVE BEEN TESTED AND YOU STILL HAVE TO SHOW THAT WOULD HAVE DONE CONFIDENCE INTO THE OUTCOME.
>> MISTER PETERSON ASKED US TO LOOK THROUGH THE RECORD THREE OR FOUR TIMES.
APPARENTLY THERE WAS A SIDE ACCORDING TO HIM, A SIDEBAR CONFERENCE ON ONE OF THE PRIOR ATTORNEYS WHERE THE COURT ALLOWED BIOLOGICAL TESTING.
WE NEVER FOUND THAT IN THE RECORD.
>> IS THERE MATERIAL YOU WANT TESTED FOR SOMETHING?
>> THERE WAS MATERIAL YOU FELT TRIAL COUNSEL SHOULD HAVE HAD TESTED.
>> WE ARE FRUSTRATED BY THIS AND MAYBE YOU ARE DOING WHAT MISTER PETERSON ASKED BUT THIS SEEMS LIKE A WHOLE LOT OF WHERE THE TRIAL JUDGE SAID IS SPECULATION.
AND SPECULATION, YOU ARE SHOWING COMPLETE ABSENCE OF COUNSEL FUNCTIONING, THE SPECULATION DOESN'T GO TO YOUR BENEFIT OR THE STATE BENEFIT.
>> THE SPECULATION RUNS BOTH WAYS.
>> THIS CONVERSATION -- IN YOUR EXPERIENCE --
>> IT IS -- WHEN YOU TALK ABOUT BIOLOGICAL MATERIAL, THE NORMAL FLOW, POSTCONVICTION CLAIMS, THERE IS X PIECE OF SOMETHING THE TRIAL LAWYER DIDN'T HAVE TESTED.
THIS IS WHAT WE WOULD HAVE

SHOWN.
>> WE DID NOT DO THAT.
>> THAT IS WHAT WE WANT.
HOW CAN YOU ESTABLISH THAT LEVEL
OF PROOF OUT OF EVIDENCE TO GET
RELIEF IN THIS?
>> I SAID THIS POORLY AND MAYBE
POORLY AGAIN BUT THAT IS MISTER
FLETCHER ADMITTED IN HIS
TESTIMONY, BIOLOGICAL EVIDENCE
THAT COULD HAVE BEEN TESTING AND
CHOSE NOT TO DO SO.
>> IT GOES BACK IN A CASE AND
HAS TO DO -- SOMEBODY HAS TO PUT
UP THE MONEY.
WE WILL NEVER HAVE ANYTHING LIKE
THAT.
>> THERE IS NO MATERIAL, THAT
YOU OR ANY OTHER COULD FIND.
>> NOT IN THE RECORD.
>> THERE IS STRONG EVIDENCE OF
GUILT.
THIS IS NOT THE CASE, HE MADE
STATEMENTS TO MISTER JACKSON
THAT WERE PRETTY GRAPHIC.
WHAT HE DID WITH HIS STEPFATHER,
STACKING THEM DOUBLE.
I AM NOT SURE WHAT WAS TO SAY,
ANOTHER DEFENDANT.
AND FAILURE TO TEST AN
IDENTIFIED BIOLOGICAL EVIDENCE
THAT WOULD POINT TO ACTUAL
DEFICIENCIES ON THE PART OF
TRIAL COUNSEL.
>> I SUGGEST AN ATTORNEY WHO
IMMEDIATELY MAKE THE DECISION
NOT TO PUT ON ANY MITIGATION
EVIDENCE WHATSOEVER OR MENTAL
HEALTH MITIGATION EVIDENCE
BEFORE HE OR SHE EXPLORES THE
ISSUE IS BEING INEFFECTIVE.
>> YOU ARE TALKING ABOUT A
PENALTY PHASE ISSUE.
WHATEVER THEY DID IN THE PENALTY
PHASE, 7 TO 5 JURY VERDICT, THEY
WERE ONE JUROR AWAY FROM LIFE
SENTENCE.
>> I AGREE.
THAT IS THE DIFFICULT PART OF
THE ARGUMENT I AM MAKING.

>> JUSTICE LEWIS, I WAS
FOLLOWING HIS LINE OF
QUESTIONING.
>> ANYTHING MORE ON THE GUILT,
BIOLOGICAL EVIDENCE?
>> NO, YOUR HONOR.
I DO FEEL THIS COURT SHOULD LOOK
AT OUR MOTION TO RECUSE THE
TRIAL JUDGE ON THE BASIS OF WHAT
HE SAID WITH REGARD TO THE
MITIGATION EVIDENCE AND I CAN
REPEAT THAT FOR YOU.
>> WHEN WAS THAT SAID?
WHEN TODAY JUDGE SAY THAT
STATEMENT?
IS THAT BEFORE?
>> THE COURT ENTERED AN ORDER.
>> YOU MADE THE REMARKS, MADE
THOSE REMARKS BEFORE ABOUT THE
EXPERT YOU WANT TO TESTIFY,
MENTIONED PARALEGALS CREATED A
COTTAGE INDUSTRY.
>> WHILE HE DID --
>> WHEN DID HE MAKE THOSE
STATEMENTS?
DID HE MAKE THE STATEMENT IN
THIS CASE OR WERE THOSE QUOTES
FROM PREVIOUS CASES HAD SIMPLE
REMARKS?
>> HE MADE THEM IN THE PREVIOUS
CASE PENDING BEFORE THIS COURT
AND TO MY RECOLLECTION ALSO MADE
THEM IN THIS CASE, HE BELIEVES
MITIGATION EXPERTS ARE OVERPAID
AND DO THE SAME FUNCTION AS
PARALEGALS OR SECRETARIES.
>> TRYING TO PICTURE WHEN THIS
HAPPENED IN YOUR TRIAL.
THE GUILT PHASE WAS COMPLETED.
>> THE COURT SAID IN ITS ORDER
DENYING THE COURT ACCEPTED --
THIS IS NOT VERBATIM, ACCEPTED
THE TESTIMONY PRESENTED BY THE
MITIGATION EXPERT, BASICALLY IT
STILL FEELS PARALEGALS,
SECRETARIES OR INVESTIGATORS CAN
DO THE SAME THING.
>> BUT I THOUGHT THE STATEMENT
WAS MADE NOT IN THIS CASE.
THE STATEMENT, WHAT STATEMENT

DID HE MAKE IN THIS CASE?
>> THE FIRST STATEMENT, THE STATEMENT WAS MADE IN THE OTHER CASE, THE BEVEL CASE.
BECAUSE --
>> GOING BACK, THERE WAS NO STATEMENT IN THIS CASE THAT WAS MADE THAT YOUR ALLIANCE AND THE MOTION TO RECUSE WHICH CAME UP HERE WAS BASED ON A STATEMENT IN ANOTHER CASE.
>> HE HAS MADE THOSE STATEMENTS IN OTHER CASES SO I TAKE IT THE FEELING, THAT WAS HIS POSITION, WAS A REQUEST EVER MADE FOR THIS WITNESS,ED MITIGATION EXPERT TESTIFY IN THIS CASE?
>> THE MITIGATION EXPERT PROFFERED TESTIMONY IN THIS CASE AND I DON'T RECALL IF IT TESTIFIED IN THIS CASE, DON'T BELIEVE SHE DID.
>> IF HE MENTIONED OR SAID ANYTHING ABOUT FEELINGS ABOUT MITIGATION.
>> HE DID NOT.
>> YOU ASSUME, EVERYONE ASSUMED HE DID NOT LIKE THIS.
WAS HER EMOTION TO RECRUIT HIM BASED ON THAT GROUND?
>> YES, BASED ON WHAT HE SAID IN A PRIOR CASE.
>> ALL RIGHT.
>> I WOULD LIKE TO ADDRESS ANOTHER ISSUE.
>> YOU ARE NOT EVEN CHALLENGING THE LEGAL SUFFICIENCY OF THE MOTION, YOU ARE CHALLENGING WHAT HE SAID IN THE DENIAL WAS MAKING STATEMENTS ON THE TRUTH OF THE ALLEGATIONS.
>> IN THE PRIOR CASE, THE TRIAL COURT SAID THE WORK COULD BE DONE BY PARALEGALS, INVESTIGATORS AT A CHEAPER PRICE AND THIS WAS A BURGEONING COTTAGE INDUSTRY, ESSENTIALLY ANTI-DEATH PENALTY INDIVIDUALS TAKING MONEY FROM THE STATE.
THAT IS MY SUMMARY.

YOU CAN FIND THAT.
>> YOU ARE INTO REBUTTAL TIME.
>> IF I COULD HAVE ONE MORE ITEM.
I ASKED THE COURT TO REVIEW, ONE OF THE CLAIMS, IT'S POSITION ON NONSTATUTORY MITIGATING IS.
A BIT -- I WOULD SUGGEST THIS WOULD BE SOME TYPE OF SCALE, DON'T KNOW, AS LITTLE COUPLE MORE THAN SLIGHT IS MORE THAN SOME OR WHATEVER IT IS.
THE SCALE OF WHAT THOSE NONSTATUTORY MITIGATING IS OUR.
>> DO YOU AGREE THAT WITH RESPECT TO ALL THE DIFFERENT POTENTIAL CLAIMS UNDER THE CLAIM 7 ARE WAIVED BECAUSE YOU'D BRIEF THEM?
>> I WILL STIPULATE, WE AGREE WE DIDN'T DO A GOOD JOB PUTTING ON EVIDENCE OF MANY OF THOSE CLAIMS.
>> YOU HAVE TO ESTABLISH ERROR IN A BRIEF AT THE APPELLATE LEVEL AND TRY TO DO THAT UNDER CLAIM 7.
>> IF I CAN REVIEW WHAT CLAIM 7 IS.
>> YOU LIST TRIAL COUNSEL WAS INEFFECTIVE AND IN DEFICIENT FOR POTENTIAL JURORS.
>> I DO WAIVE THOSE.
>> AND INEFFECTIVE ASSISTANCE, BY HEAVIEST PETITION.
>> CORRECT.
>> THANK YOU.
>> MAY IT PLEASE THE COURT?
I'M JENNIFER KEEGAN, ATTORNEY GENERAL REPRESENTING THE STATE IN THIS MATTER.
I WOULD LIKE TO BEGIN WITH DENIAL OF A MOTION TO DISQUALIFY.
THE LANGUAGE, JUSTICE. HE WAS REQUESTING, THE QUOTE THAT WAS AT ISSUE TO DISQUALIFY WAS, AND I QUOTE, THIS COURT WILL NOT CODIFY OR INSTITUTIONALIZE THE COTTAGE INDUSTRY OF FORMER

PARALEGALS OR SOCIAL WORKERS WHO
ARE ARDENT DEATH PENALTY
OPPONENT TO DECLARE THEMSELVES
MITIGATION EXPERTS AND DEMAND
EXORBITANT FEES FROM THE
JUDICIAL SYSTEM FOR DOING WORK
ANY COMPETENT PARALEGAL OR
INVESTIGATOR COULD DO FOR ONE
THIRD OF THE COST.
I DON'T THINK THERE IS ANY
DEBATE LEGALLY ABOUT THE FACT
THAT NOT HIRING A MITIGATION
ORDINATOR MITIGATION SPECIALIST
IS AUTOMATICALLY NECESSARY BASIS
FOR INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM, DOES NOT REQUIRE
A TRIAL LAWYER HIRE A MITIGATION
SPECIALIST, THE JUDGE'S COMMENTS
IN THIS BEVEL CASE DON'T
TRANSLATE TO THE INSTANT CASE,
TO MISTER PETERSON'S CASE
BECAUSE THEY WERE NOT
PREJUDICIAL.
THIS WAS PART OF A LEGAL RULING
THAT HAD A LEGAL BASIS, DENYING
A 3851 CLAIM.
STRICKLAND CLAIMED ESSENTIALLY
--
>> BEFORE YOU GO ON IS THERE
MITIGATION SPECIALIST IN THIS
CASE?
>> THERE WAS.
>> I ASSUME THEY WENT FOR THE
JUDGE AND ASKED TO HAVE ONE
APPOINTED, HOW DID THAT WORK?
>> YOU ARE REFERRING TO MISTER
PETERSON.
>> YOU HAVE A MITIGATION
SPECIALIST.
>> MISTER PETERSON'S
POSTCONVICTION CASE THE TRIAL
COURT ALLOWED THEM TO HAVE A
MITIGATION SPECIALIST, SHE DID
COME TO TESTIFY THE
POSTCONVICTION HEARING AT
LENGTH.
THIS PARTICULAR COMMENT AT ISSUE
HERE WAS THE TRIAL COURT
ATTEMPTING TO EXPLAIN THE BASIS
FOR WHY HE DID NOT BELIEVE THERE

WAS A LEGAL BASIS FOR ASSERTING
STRICKLAND'S CLAIM WAS SATISFIED
BECAUSE A TRIAL COURT OR TRIAL
COUNSEL DID NOT HIRE A
MITIGATION SPECIALIST OR
MITIGATION COORDINATOR.
THAT GIVES EXPLANATION TO HIS
COMMENTS AS HE WAS EXPLAINING
ESSENTIALLY AN INVESTIGATOR OR
PARALEGAL COULD DO THE SUBSTANCE
OF THE WORK A MITIGATION
SPECIALIST MAY DO.
THAT DOES NOT NECESSARILY IMPUGN
A TRIAL LAWYER WHO CHOOSES A
MITIGATION SPECIALIST AND IS NOT
IMPUGN A TRIAL LAWYER WHO
CHOOSES NOT TO.
THE ISSUE THAT WE HAVE HERE IS
THIS IS A RULING BY THE TRIAL
COURT IN AN ASSOCIATED CASE THAT
WAS A LEGAL RULING AND THAT WAS
NOT A BASIS FOR A MOTION TO
DISQUALIFY OR RECRUITS.
>> IT COULD BE.
>> IT DOES NOT RISE TO THE
STANDARD NECESSARY TO
DEMONSTRATE A REASONABLE PERSON
WOULD HAVE AN OBJECTIVE BASIS TO
BELIEVE THERE TRIAL WAS UNFAIRLY
HANDLED OR POSTCONVICTION WOULD
BE UNFAIRLY HANDLED.
IF THERE ARE NO FOR THE
OCCASIONS TO THIS QUESTION ON
THAT ISSUE I MOVED INEFFECTIVE
ASSISTANCE OF COUNSEL.
THIS WAS RAISED IN TWO PARTS IN
MISTER PETERSON'S INITIAL BRIEF.
FIRSTLY ISSUE 3 WITH IN RELATION
TO 11 BOXES AND TRIAL RECORDS
THAT WERE UNABLE TO BE LOCATED
FOR HIS POSTCONVICTION HEARING.
THE SECOND PART WAS A MORE
GENERAL INEFFECTIVE ASSISTANCE
OF COUNSEL CLAIM UNDER ISSUE 4.
I START WITH ISSUE 3.
THESE RECORDS WERE DROPPED OFF
BY MISTER FLETCHER, THE TRIAL
LAWYER AT ISSUE IN THIS CASE, TO
THE OFFICE OF REGIONAL CONFLICT
COUNSEL.

THIS IS PURSUANT TO THE TRIAL COURT'S ORDER, THE TRIAL COURT ORDERED HIM IF I RECALL CORRECTLY, IT WAS BEFORE HIS ACTUAL SENTENCING HEARING BUT WAS ON THE RECORD AFTER THE GUILT PHASE WAS COMPLETED THAT HE NEEDED TO DELIVER THOSE RECORDS TO THE RCC OFFICE.
THEY ARE UNABLE TO LOCATE THOSE RECORDS.
THAT DOES NOT DEMONSTRATE THAT THERE WAS ANY SORT OF STRICKLAND DEFICIENCY ON THE PART OF MISTER FLETCHER OR ANYONE ELSE.
THE OFFICES IN THE OFFICE OF MOVING LOCATIONS WHEN THESE WERE DROPPED OFF IN REASONABLE EXPLANATIONS IN THE RECORD FOR WHY THEY COULD HAVE GONE MISSING.
OBVIOUSLY WE KNOW MOVING IS CHAOTIC AND THINGS CAN GO MISSING.
THERE IS NO DEMONSTRATION IN THE EVIDENCE PRODUCED IN THE POSTCONVICTION HEARING OR ANY EVIDENCE OF THE TRIAL COURT RECORD THAT DEMONSTRATES ANY STRICKLAND DEFICIENCY FOR THE REASON THOSE BOXES WENT MISSING OR WERE UNABLE TO BE ACTIVATED.
THERE IS A SUB CLAIM RAISED IN ISSUE 3 REGARDING DUE PROCESS AND JONES VERSUS STATE VERY CLEARLY STATES FROM THIS COURT THAT INABILITY TO PRODUCE TRIAL RECORDS IS NOT A DUE PROCESS VIOLATION.
YOU HAVE TO ARTICULATE SPECIFIC PREJUDICE.
NO SPECIFIC PREJUDICE WAS DEMONSTRATED ON THE RECORD IN THE POSTCONVICTION HEARING OR IN THE TRIAL COURT.
>> JUSTICE LEWIS HAS AWAKENED COFFEE LIKE THAT AND WILL BE BACK IN THE CONFERENCE ROOM LISTENING IN AND WILL PARTICIPATE IN THIS CASE.

>> AS I WAS SAYING THERE'S NO DEMONSTRATION OF SPECIFIC PREJUDICE RELATED TO THESE RECORDS.
THERE WAS TESTIMONY BY MISTER FLETCHER AT THE POSTCONVICTION HEARING THAT THE VAST MAJORITY OF THESE RECORDS WHERE DISCOVERY WHICH IS REPRODUCIBLE.
THERE WAS NO EVIDENCE ELICITED AT TRIAL THAT THERE WAS ANYTHING IN THOSE BOXES AT ALL THAT COULD NOT BE REPRODUCED.
HE DIDN'T SAY ANY NOTES OR ANYTHING OF THAT NATURE WAS LOST OR IN THOSE BOXES.
TO HIS MEMORY THOSE BOXES CONTAINED TRIAL DISCOVERY AND THE LIKE.
>> AM I CORRECT THAT AS TO THOSE CLAIMS, NOT CLAIM 7 BUT CLAIMS ABOUT LOST BOXES AND THE ATTORNEY-CLIENT RELATIONSHIP, THERE WAS NO EVIDENCE OR ARGUMENT MADE AS TO SPECIFIC ACTS OF DEFICIENCY.
SO WHAT ABOUT THIS THAT WE SPENT SOME TIME ON, THE FIRST PART OF THE ARGUMENT, THE BIOLOGICAL MATERIAL.
WHAT IS THAT ABOUT?
>> THERE WAS SOME DNA TESTING BY THE STATE IN THIS CASE RELATED TO BIOLOGICAL MATERIAL TAKEN FROM THE BODY OF THE VICTIM.
THE DNA TESTING IS FAVORABLE TO MISTER PETERSON.
THEY WERE UNABLE TO ASSIGN THE DNA PROFILE TO MISTER PETERSON OR MISTER ANDREWS, THAT FACTOR HAD SOME HAIRS WHERE THE SOURCE OF THE DNA PROFILE WERE UNABLE TO ASSOCIATE THAT WITH EITHER THE DEFENDANT OR THE VICTIM SO THAT WENT TOWARDS MISTER FLETCHER'S THEORY OF DEFENSE IS SOMEONE ELSE COMMITTED THIS CRIME AND HE WAS THE PERPETRATOR OF THE CRIME.
>> THERE WOULD BE STRATEGIC

REASONS NOT TO WANT FURTHER
TESTING BECAUSE IT MIGHT SHOW
PETERSON'S DNA WAS THERE.
>> HE EVEN TESTIFIED TO THAT
FACT.
INTENDED NOT TO DO DNA TESTING
BECAUSE WHAT WE HAD ALREADY WAS
FAVORABLE AND TO DO ADDITIONAL
TESTING --
>> MISTER FLETCHER TESTIFIED TO
THAT IN THE EVIDENTIARY HEARING.
>> YES.
THERE WAS NO OTHER DNA TESTING
APPARENT IN THE RECORD ANYWAY.
DONE BY THE STATE OR ANYONE ELSE
REGARDING THE BIOLOGICAL
MATERIAL, AND ANY EVIDENCE
WORTHY OF BIOLOGICAL TESTING OF
ANY SORT.
AS FAR AS THAT IS CONCERNED
THERE IS NO DEFICIENCY HERE
BECAUSE ANY CHOICE NOT TO DO DNA
TESTING WAS INTENTIONAL AND
STRATEGIC AND BASED ON
REASONABLE RATIONAL PROCESS,
THERE IS NO PREJUDICE IN THE
CHOICES THAT HE MADE.
>> THIS WASN'T RAISED AS A
SEPARATE CLAIM.
>> IT WAS NOT.
THE CLAIM FOR INEFFECTIVE
ASSISTANCE OF COUNSEL ISSUE FOR
IS MOSTLY A GENERAL CLAIM
REGARDING FAILURE OF MISTER
FLETCHER TO ESTABLISH AN
APPROPRIATE ATTORNEY-CLIENT
RELATIONSHIP WITH THE DEFENDANT.
I WOULD LIKE TO REMIND THE COURT
THAT MISTER FLETCHER WAS
APPOINTED APRIL FOUR YEARS INTO
THE PROGRESSION OF THIS CASE.
THIS CASE ORIGINATED IN
AUGUST 2005.
HE WAS APPOINTED IN
FEBRUARY 2009 AND THE CASE WENT
TO TRIAL IN AUGUST OF 2009.
HE WAS ONLY REPRESENTING MISTER
PETERSON FOR A SHORT TIME UNTIL
THE CASE WENT TO TRIAL.
THE REASON IT WENT TO TRIAL

AFTER HE WAS APPOINTED BECAUSE
EVERYTHING THAT NEEDED TO BE
DONE DEPOSITIONS AND THE LIKE
HAD LONG SINCE BEEN COMPLETED.
HE INDEPENDENT REVIEWED THE
EVIDENCE AND DETERMINE
EVERYTHING THAT WAS REASONABLE
AND SHOULD HAVE BEEN DONE IS
DONE ALREADY.
>> NOT ABLE TO POINT TO ANYTHING
ADDITIONAL THAT SHOULD HAVE
BEEN.
>> THERE WAS NOTHING
DEMONSTRATED IN THE EVIDENTIARY
HEARING AND NOTHING IN THE TRIAL
RECORD.
>> WHAT WAS THE REASON THERE
WERE SO MANY LAWYERS.
WAS THIS A DIFFICULT DEFENDANT?
>> THE RECORD IS NOT
PARTICULARLY DETAILED.
ALAN SCHIPPERFIELD WAS ONE AND
GONZALO, I BELIEVE ALAN
SCHIPPERFIELD, THEY ARE ALL
STATE EMPLOYEES.
NONE OF THEM WERE OPERATING AS
PRIVATE LAWYERS AT THE TIME.
IT WAS A MATTER OF CONFLICT.
I KNOW FOR ONE OF THOSE LAWYERS,
THAT WAS ABSOLUTELY CONFLICT
WITHDRAWAL.
THERE IS NOTHING TO DEMONSTRATE,
SOME REASON OF THE USUAL
PROGRESS FOR THESE CASES.
ESSENTIALLY WHAT WE HAVE IS THIS
CLAIM IS THE ALLEGATION IS
MISTER FLETCHER DID NOT DO THE
THINGS HE SHOULD HAVE DONE AS A
LAWYER AND THAT IS NOT THE CASE,
AND THE CIRCUMSTANCES HE HAD, HE
WENT AND SAW MISTER PETERSON
OVER THE ROUGHLY 5 MONTHS HE WAS
REPRESENTING HIM, SAW HIM AT THE
JAIL 5 OR 6 TIMES HE DOCUMENTED
AND SAW HIM OR THAN FAT AND HE
MADE SURE HE WAS FAMILIAR WITH
ALL THE ASPECTS OF HIS CASE AND
DISCUSSED AT LENGTH THE
APPROPRIATE TRIAL STRATEGY GOING
FORWARD.

MISTER FLETCHER ALSO TESTIFIED
THE MAJORITY OF WHAT HE DID IN
THIS CASE WAS GUIDED BY MISTER
PETERSON APT DESIRE TO TESTIFY.
MISTER PETERSON HAD ALREADY
DECIDED HE WAS GOING TO TESTIFY
ON THE NATURE OF HIS TESTIMONY,
THAT NECESSARILY GUIDED HOW
MISTER FLETCHER DEVELOPED THE
CASE THAT CONFLICT WITH WHAT
MISTER PETERSON WAS GOING TO
TALK ABOUT.
I BELIEVE IT WAS MENTIONED
EARLIER, THERE HAVE BEEN A
COUPLE MENTIONS IN ISSUE 3 AND
ISSUE 4 AND ACTUAL CONFLICT, USB
CHRONIC IS INFORMATIVE ON AN
ACTUAL CONFLICT WHICH WOULD
JUSTIFY AN EXCUSE FOR NOT
DEMONSTRATING PREJUDICE.
ONLY WHEN EXTERNAL FACTOR
JUSTIFIES THE PRESUMPTION OF
INEFFECTIVENESS CAN A SIXTH
AMENDMENT CLAIM BE SUFFICIENT
WITHOUT INQUIRY INTO THE
LAWYER'S PERFORMANCE SO WE WOULD
NEED DEMONSTRATION OF SPECIFIC
ACTUAL CONFLICT THAT INTERFERED
WITH HIS REPRESENTATION, THAT IS
ABSOLUTELY LACKING IN THIS CASE.
INABILITY TO DEMONSTRATE
PREJUDICE IS NECESSARILY FATAL
TO THE STRICKLAND CLAIMS.
I DO WANT TO ADDRESS QUICKLY THE
MENTION JUST RECENTLY OF
NONSTATUTORY MITIGATION SCALE
THAT OPPOSING COUNSEL
RECOMMENDED THE COURT LOOK AT.
THE REGULATION ON HOW TRIAL
LAWYERS APPLY NONSTATUTORY
MITIGATION WOULD BE
UNNECESSARILY RESTRICTIVE TO THE
TRIAL COURT'S.
CAMPBELL, AS WE ALL KNOW,
EXPLAINS VERY CLEARLY THAT IT IS
NECESSARY FOR A TRIAL COURT TO
MAKE IT CLEAR.
THE BASIS OF THEIR RULINGS AND
WHAT THEY ARE ASSIGNING WE DO
HAVE LONG AS THE NATURE OF THEIR

DECISIONMAKING IS APPARENT THERE
IS NO PROBLEM HERE.
THERE ARE CASES ON THE BOOK SUCH
AS CAMPBELL THAT HAVE METHOD FOR
HANDLING AN ISSUE SHOULD A
SENTENCING ORDER BE UNCLEAR.
THE STATE'S POSITION IS THAT IS
NOT NECESSARY IN THIS CASE OR
ANY OTHER TO REQUIRE COURTS TO
USE SPECIFIC WORDS TO
DEMONSTRATE SPECIFIC WEIGHT AND
THE LIKE.
FINALLY, THE STATE WOULD LIKE TO
ADDRESS THE HEARST MATTER VERY
BRIEFLY.
THE STATE RECOGNIZES THIS CASE
DOES PATTERN AFTER HEARST AND WE
CERTAINLY RECOGNIZE THAT AND
RECOGNIZE THE VOTE THAT OCCURRED
IN THIS CASE.
HOWEVER, THE STATE'S POSITION IS
A HARMLESS ERROR TEST REQUIRES
AN OBJECTIVE APPROACH AS YOU
ALREADY HEARD.
AND OBJECTIVE APPROACH REQUIRES
US TO STEP BACK FROM ASKING WHAT
SPECIFIC JURY DID OR SPECIFIC
FINDINGS THEY MADE AND PUT
OURSELVES INTO A THEORETICAL
POSTURE WHERE WE ASK WHAT WOULD
A RATIONAL JURY DO INSTEAD.
IT IS ESPECIALLY INFORMATIVE,
EXPLAINING THIS TEST GOES BACK
TO CHAPMAN.
IT REQUIRES WE USE A METHOD OF
OBJECTIVE THIS INSTEAD OF ASKING
WHAT DID THE SPECIFIC JURY DO,
WHAT WAS THE FINDING, CAN WE
DEMONSTRATE FROM THE RECORD THEY
FOUND X, WHY AND THE, WITH A
RATIONAL JURY MAKE THE FINDING
NECESSARY?
THE STATE POSITION IS IT WOULD
BE CLEAR BEYOND REASONABLE DOUBT
THAT A RATIONAL JURY WOULD HAVE
RENTED THE FINDINGS IN HEARST
VERSUS STATE, THEY WOULD FIND HS
A CCT ESTABLISHED IN THIS CASE
WAS THE CASE INVOLVING A
RECORDED BRAGGING CONFESSION IF

YOU WILL FROM MISTER PETERSON SAYING HE NOT ONLY COMMITTED THE CRIME BUT PLANNED IT OUT AND ESSENTIALLY LAUDED THE PAIN THE VICTIM WENT THROUGH IN THE PROCESS.
THERE IS NO REASON, CERTAINLY THE RECORD DEMONSTRATES ANY REASONABLE JURY WOULD ABSOLUTELY LOOK AT THAT EVIDENCE AND IF THEY WERE INSTRUCTED TO FIND THOSE FACTORS UNANIMOUSLY THEY WOULD HAVE RENDERED A UNANIMOUS JURY FINDING.
IF THERE ARE NO FURTHER QUESTIONS ON ANY OF THOSE POINTS I ASKED THE COURT TO AFFIRM THE RULINGS OF THE TRIAL COURT, THANK YOU.
>> I KNOW WE GIVE ONE MORE SHOT AT TRYING TO PRESENT WHAT HAPPENED IN THIS CASE, MISTER FLETCHER MET WITH MISTER PETERSON THREE TIMES AT THE JAIL.
HE TALKED TO HIM IN THE SHOOT WHICH IS THE OLD DUVAL COUNTY COURTHOUSE, TALKING TO SOMEONE IN THE SHOOT WAS AKIN TO TALKING TO SOMEONE IN A SUBWAY STATION WHEN THE TRAIN IS SCREECHING BY. THERE IS NO PRIVACY, THERE IS NO ANYTHING.
APART FROM THE FAILURE TO PUT ON MITIGATION EVIDENCE, WHAT I SUGGEST TO THE COURT, MISTER NOLAN WHO HAD NO PRIOR DEATH PENALTY EXPERIENCE, NO PRIOR EXPERIENCE HANDLING DEATH PENALTY CASES, THERE IS NO INDICATION MISTER FLETCHER MET WITH HIM EXCEPT FOR ONE TIME ALTHOUGH THEY MET OFTEN TIMES ON THE SECOND FLOOR OF THE DUVAL COUNTY COURTHOUSE WHERE MANY FELONY COURTS WERE LOCATED AND HE TALKS ABOUT THE HEARING, TALKED ABOUT SMALL THINGS AND TALKED TO OTHER LAWYERS, HE SPOKE TO MISTER AND DUCKS,

DOESN'T RESPOND TO THIS RECALL
SPEAKING TO MISTER CHIPPERFIELD.
WITH REGARD TO THE BOXES, RCC
REPRESENTATIVE SAYS SHE HAD NO
RECOLLECTION OF EVER RECEIVING
THOSE BOXES.
IF THE COURT HAS NOT, IT WILL
FIND THERE IS ANOTHER CASE THAT
EITHER IS PENDING BEFORE THE
COURT OR WILL SOON BE FILED
BEFORE THE COURT WHERE THE SAME
THING HAPPENED WITH REGARD TO
INABILITY TO FIND BOXES IN
ANOTHER CASE AND MISTER FLETCHER
ALSO DETERMINED MISTER
PETERSON'S DEFENSE, WHEN HE
PROCLAIMED TO PUT ON WAS HUFF
AND PUFF, A NO-WIN SITUATION AND
HE DEFINED IT AS ABSURD BUT
PRESENTED NO OTHER ALTERNATIVES.
IF THERE ARE NO OTHER QUESTIONS?
>> THANK YOU FOR THE ARGUMENTS.
COURT IS IN RECESS UNTIL
TOMORROW.