

WE NOW MOVE TO THE THIRD CASE
ON TODAY'S DOCKET, MATTHEWS
VERSUS THE STATE OF FLORIDA.

>> GOOD MORNING, MAY IT PLEASE
THE COURT, MY NAME IS JULISSA
FONTAN AND WE RECOGNIZE DOUGLAS
MATTHEWS WHO IS BEFORE THIS
COURT ON APPEAL FROM 3851 WITH
CLAIMS OF INEFFECTIVE
ASSISTANCE AND NEWLY DISCOVERED
EVIDENCE, MAINLY WITH RESPECT
TO FINGERPRINTS THAT WERE
DISCOVERED IN POSTCONVICTION IN
THE CONTENTS OF THE VICTIMS
WALLET THAT DO NOT BELONG TO
MISTER MATTHEWS BUT
SPECIFICALLY BELONG TO THE
STATE STAR WITNESS IN THE CASE,
MISTER JUSTIN WAGNER.

TRIAL COUNSEL IS INEFFECTIVE
AND PREJUDICE MISTER MATTHEWS
BY FAILING TO INVESTIGATE THE
EVIDENCE IN THIS CASE AND
CONSULT WITH FORENSIC EXPERTS
TO PRESENT EVIDENCE OF
SUPPORTED MISTER MATTHEWS'S.
SELF-DEFENSE AT TRIAL.

THE REASON THESE THINK OF
PRINTS ARE SO --

>> DO WE HAVE ANY SELF-DEFENSE
CASES IN OUR LAW THAT INVOLVE
24 STAB WOUNDS?

>> IT IS POSSIBLE THAT THERE
ARE CASES OF THAT.

I CANNOT NAME THAT AT THIS
TIME.

HOWEVER, SPECIFICALLY,
FINGERPRINTS IN THIS CASE ARE
ARGUED BECAUSE THE STATE ARGUED
THE PREMEDITATION AND FELONY
MURDER ASPECT OF THIS CASE
RESTED UPON THE THEFT OF THE
VICTIMS WALLET IN THIS MATTER.
THEY ARGUED IT TO THE JURY.
THERE ARE NO FINGERPRINT OF
MISTER MATTHEWS ON THIS WHILE
OR CONTENTS OF THIS WALL BUT
FINGERPRINTS OF JUSTIN WAGNER
ALLEGED THE ONLY ONCE IN --
WITNESS IN THIS CASE IS WHAT

OCCURRED, HIS FIGURE PRINTS ARE WITHIN THE CONTENTS OF THE WALL, HIS MIDDLE AND RING FINGER.

IT APPEARS FROM WHERE THEY ARE PLACED IN THE CONTENTS OF THE WALL, A POST IT NOTE IN THE WALLET THAT HAD TO BE FROM GOING THROUGH THE WALLET, PULLING OUT CONTENTS AS HE WENT THROUGH IT.

TO GIVE YOU A BRIEF BACKGROUND ON THIS CASE MISTER MATTHEWS HAS ALWAYS CONTENDED WHAT HAPPENED IN THIS CASE WAS SELF DEFENSE WHICH HE DID NOT KILL DONNA TRUJILLO BUT MISTER ZOELLER -- KIRK ZOELLER CONFRONT HIM IN THE ATTACK ENSUED FROM THERE AND HE ACTED IN SELF-DEFENSE.

THE FINDING OF THE PRINTS UNDERMINES THE STATE'S. OF MISTER MATTHEWS PREMEDITATED THIS CRIME AND MURDERED KIRK ZOELLER AND DONNA TRUJILLO BECAUSE THEY CANNOT PROVE THE THEFT OF THE WALLET WAS BY MISTER MATTHEWS.

IT WAS FOUND AFTER THE CRIME IN A DR. SEUSS BAG THAT HAD CONTENTS THAT BELONG TO MISTER WAGNER, ADDRESSED TO MISTER WAGNER.

THIS BAG WAS NOT TIED TO MISTER MATTHEWS.

IT WAS DISCOVERED IN A COMMON AREA BUT OTHER WITNESSES, MISTER WAGNER ACTUALLY TOLD THE POLICE SEVERAL TIMES AFTER THE CRIME.

FURTHER, COUNSEL WAS INEFFECTIVE BECAUSE THEY DID NOT ACTUALLY TRULY INVESTIGATE THE EVIDENCE IN THIS CRIME. ONLY TIME THEY WENT TO INVESTIGATE THE EVIDENCE WAS TO GET FOLKS NUMBERS FOR MISTER MATTHEWS'S CLAIM THAT HE NEEDED.

THEY NEVER CONSIDERED WHETHER TO USE FORENSIC EXPERTS IN THIS CASE.

I BELIEVE THE USE OF FORENSIC EXPERTS WOULD HAVE SUPPORTED MISTER MATTHEWS'S CLAIMS OF SELF-DEFENSE SO SUPPORTED THEM. SPECIFICALLY THEY FAIL TO GET A CRIME SCENE EXPERT TO EXAMINE THE CRIME SCENE EVIDENCE, THE EVIDENCE FROM THE CRIME AS WELL AS TO ACTUALLY REVIEW THE CRIME SCENE.

THE EVIDENCE FROM THE CRIME SCENE, SPECIFICALLY PHOTOGRAPHS FROM THE CRIME SCENE REVEAL WHERE DONNA TRUJILLO DIED IS NO EVIDENCE OF THE STRANGLE HE HEARD IN THE ROOM.

MISTER WAGNER SPECIFIED AT TRIAL THAT HE HEARD SOME NOISES IN DONNA TRUJILLO'S BEDROOM AND ONLY AFTER THAT KIRK ZOELLER ZOOMED OUT AND IN PURSUIT AND STABBED HIM BUT THE CRIME SCENE EVIDENCE DOES NOT REVEAL ANY SIGNS OF A STRUGGLE THAT WOULD ACCOUNT FOR THE NOISES MISTER WAGNER TESTIFIED TO AT TRIAL. FURTHER OF THE CRIME SCENE PHOTOS REVEAL AS WELL THERE IS BLOOD STAINS THROUGHOUT THE KITCHEN AREA WHERE MISTER MATTHEWS SAYS KIRK ZOELLER CONFRONTED HIM AND IT SUPPORTS THERE WAS A STRUGGLE NOT JUST RUNNING THROUGH THE HOUSE BUT AN ACTUAL STRUGGLE THAT HURT. FURTHER --

>> THERE IS NO EVIDENCE OF ANY INJURY ON MISTER MATTHEWS AT ALL.

>> THERE WERE A COUPLE SMALL SCRATCHES.

TRIAL COUNSEL DID NOT OBTAIN AN EXPERT TO TRY TO EXPLAIN HOW THOSE SCRATCHES MAY HAVE BEEN FROM THE ATTACK.

THEY TRIED TO RELY ON THE DETECTIVES WHO HAD NO EXPERTISE

AND ADMITTED THEY DID NOT.

>> I'M STRUGGLING TO UNDERSTAND HOW THE FINGERPRINT ON THE NOSE IN THE WALLET IN ANY WAY IS PARTICULARLY RELEVANT TO THE SELF-DEFENSE CLAIM.

>> IT IS RELEVANT BECAUSE THE STATE AT TRIAL SPECIFICALLY SAID THIS WAS MOTIVATED BY THEFT, SPECIFICALLY OF THIS WALLET AND THE STATE MADE A BIG DEAL OUT OF IT AND IN THE CLOSING ARGUMENT, THE WHOLE MOTIVE WAS THIS WALLET, THIS WALLET.

THAT'S WHY THESE PEOPLE DIED AND I AM PARAPHRASING A LITTLE BIT THE STATE'S ARGUMENT BUT THEY WERE VERY FOCUSED THAT THIS WALLET IS THE REASON THIS CRIME HAPPENED.

>> MISTER MATTHEWS ADMITTED THE KILLING.

>> HE ADMITTED TO HAVING A FIGHT WITH KIRK ZOELLER, TO KILLING MISTER KIRK ZOELLER ONLY.

>> THE MODE OF KILLING DOES SEEM LOGICALLY INCONSISTENT WITH SELF DEFENSE AND THE CRIME SCENE EVIDENCE -- I AM STILL STRUGGLING.

>> I UNDERSTAND AND THE CRIME SCENE EVIDENCE DOES DEMONSTRATE THAT A STRUGGLE HAD TO HAVE OCCURRED IN THAT HOUSE AND IT DID NOT HAPPEN THE WAY MISTER WAGNER SAID.

HE SAID KIRK ZOELLER WAS RUNNING OUT AND IT OCCURRED AS THEY WERE RUNNING.

HOWEVER THAT IS NOT THE CASE. THERE IS EVIDENCE OF BLOOD SPATTER THROUGHOUT THE KITCHEN, IT HAPPENS OPPOSITE THE KITCHEN ALL OVER THE PLACE.

IT WOULD INDICATE THEY WERE IN A PHYSICAL STRUGGLE AND THERE WERE SLASHES AND NOT EVERYTHING ELSE.

WHAT WOULD BE USEFUL WAS HAD COUNSEL ACTUALLY USED A MEDICAL EXAMINER AS WELL TO LOOK AT THE WOUNDS KIRK ZOELLER SEVERED. IT WASN'T JUST CONSISTENT STAB WOUNDS.

KIRK ZOELLER HAD/WOUNDS AND OTHER WOUNDS CONSISTENT WITH TWO PEOPLE STRUGGLING OVER A KNIFE AND GOING AT EACH OTHER.

>> WAS THE BLADE BROKEN OFF OF THE SKULL IN THE VICTIM'S GO?

>> A SMALL PORTION OF THE TIP, SIR.

EVEN THOUGH THIS CRIME MAY APPEAR TO HAVE OCCURRED IN A FRENZY IT DOES NOT DISCOUNT THAT IT STARTED AS A CASE OF SELF-DEFENSE.

OBVIOUSLY DURING PENALTY PHASE WHICH WE ARE NOT DISCUSSING HERE BECAUSE THAT IS NOT PART OF THIS APPEAL THERE WOULD HAVE BEEN EVIDENCE TO POINT OUT MISTER MATTHEWS'S MENTAL STATE AND HOW IT AFFECTED HIS ACTIONS DURING THE CRIME, WHEN IT GOT TO A PENALTY PHASE.

>> AND I TALK TO YOU ABOUT THAT FOR A MOMENT, THE FACT THAT WE ARE NOT DISCUSSING ANY PENALTY PHASE ISSUES AND I ASK ABOUT JURISDICTION.

FOR THE QUESTIONS I'M ABOUT TO ASK A PUT ASIDE OUR PRIOR PRECEDENT, DON'T ASSUME IT EXISTENCE UNTIL TODAY'S DATE. THE CONSTITUTION AS I READ IT AND I AM READING FROM ARTICLE 5 SECTION 3 SUBSECTION B1 STATES WE SHALL HEAR APPEALS FROM FINAL JUDGMENTS OF TRIAL COURTS IMPOSING THE DEATH PENALTY SO FIRST OF ALL, THE ORDER WE HAVE A FINAL JUDGMENT.

>> IT IS.

>> HOW THAT FINAL JUDGMENT?

>> IT IS A FINAL ORDER FOR THE PROCEEDING AFTER A MOTION 3.8.

>> IT IS IN ORDER, NOT A

JUDGMENT.

>> WE ARE NOT HERE ON THE
JUDGMENT PER SE BECAUSE WE ARE
HERE ON THE FINAL 3851 WHICH IS
A DIRECT APPEAL TO THIS COURT.

>> BESIDE PRIOR PRECEDENT AND
THAT IS WHAT WE SAID IN THE
PAST.

I'M MERELY ASKING THESE
QUESTIONS.

PUT ASIDE THE JUDGMENT ORDER
ISSUE.

IS IT AN ORDER OF THE TRIAL
COURT IMPOSING THE DEATH
PENALTY?

DID THIS ORDER IMPOSE THE DEATH
PENALTY?

>> IT DID NOT.

>> LET'S ASSUME FOR THE MOMENT
WE REWIND TO 1988 WHERE THERE
IS PRECEDENT WHICH SAYS FOR
POSTCONVICTION ORDERS WE REVIEW
THOSE.

IS THERE CURRENTLY A JUDGMENT
THAT IMPOSES THE DEATH PENALTY?

>> MISTER MATTHEWS, HIS DEATH
SENTENCE WAS VACATED.

>> THERE IS NO CURRENT JUDGMENT
AT ALL ANYWHERE IN THE HISTORY
OF THIS CASE THAT EXISTS
IMPOSING THE DEATH PENALTY.

>> THAT A CONVICTION FOR
FIRST-DEGREE MURDER.

>> NORMALLY CONVICTIONS THE
FIRST AGREEMENT WITHOUT
IMPOSING THE PENALTY ARE
APPEALED TO WEAR?

>> THE MATTHEW CONIGLIARO INs.
THIS BEGAN AS A DEATH CASE AND
THE STATE WILL BE SEEKING DEATH
ON MISTER MATTHEWS IT IS A
DEATH CASE.

>> LET'S ASSUME THAT IS AND THE
JURISDICTIONAL DEFECT.

DOES THAT TELL US WE SHOULD
WAIT TO SEE BEFORE DECIDING?

LET'S SEE WHAT HAPPENS IF THE
JURY COMES BACK 11-1?

I SAY WHICH WAY BUT DOESN'T
THAT MEAN THE CASE NO LONGER IS

A, QUOTE, DEATH CASE OR CAPITAL CASE?

SHOULD WE WAIT TO SEE WHAT HAPPENS?

>> I DON'T THINK WE SHOULD WAIT TO REVIEW THE CLAIMS BECAUSE THERE ARE VALID CLAIMS.

IF WE HAVE AN OPPORTUNITY TO RESOLVE THEM BEFORE IT GOES BACK TO A TRY COURT IT IS MORE JUDICIALLY ECONOMICAL TO DO SO RATHER THAN HAVE IT HANGING OUT THERE, GO THROUGH THE PROCEEDINGS AGAIN AND BRING UP THE OLD GUILT PHASE ISSUES FROM THE FIRST TRIAL.

>> IF WE LOOK AT INEFFICIENCY ISN'T PIECEMEAL LITIGATION WHICH THIS WOULD BE ASSUMING JURY COMES BACK TO IMPOSE THE DEATH PENALTY WE WOULD HAVE TO LITIGATE CLAIMS THAT HAPPEN AFTER HAVING LITIGATED IN THE SAME POSTCONVICTION SITTING THE GUILT PHASE CLAIMS?

>> IT IS FROWNED UPON BUT I DON'T BELIEVE IN THIS SITUATION IT IS PEACE MAIL LITIGATION BECAUSE WE BRING THE FINAL RESULT OF THE POSTCONVICTION TO THIS COURT IN ORDER TO BE RESOLVED.

BEFORE IT GOES BACK TO TRIAL COURT, BRAND-NEW.

>> MY LAST QUESTION, BACK TO WHAT YOU ARE TALKING ABOUT BECAUSE YOU BROUGHT UP WHAT HAPPENS WITH THE SENTENCE. PUTTING PRESIDENT ASIDE WOULD YOU AGREE READING IT COLD WITH THE QUESTIONS I ANSWERED THAT WE DON'T HAVE JURISDICTION IN THIS CASE?

PUTTING ALL PRESIDENT ASIDE?

>> I WOULD STILL DISAGREE.

>> TELL ME YOUR BEST READING WHY THE FACT SITUATION WE'RE IN RIGHT NOW WOULD FIT WITHIN WHAT THE CONSTITUTION ALLOWS AND REQUIRES?

>> MY BEST READING OF THIS IS
ALTHOUGH MISTER MATTHEWS'S
SENTENCE IS VACATED THIS TO
MATTHEWS IS STILL ON DEATH ROW
SUFFERING CONSEQUENCES OF THAT
JUDGMENT EVEN THOUGH IT WAS
VACANT.

HE HAS NOT BEEN MOVED IT IS
UNDER THE SENTENCE WAS AS FAR
AS ANYBODY IS CONCERNED UNTIL
THE CIRCUIT COURT REVIEWS THIS.

>> DOC CLASSIFIES IN SOME WAY
GIVING US THE JURISDICTION.

>> THE STATE IS STILL SEEKING
DEATH ON MY CLIENT.

>> THANK YOU.

>> IF I MAY HAVE A MOMENT.
GOING BACK TO THE INEFFECTIVE
ASSISTANCE OF COUNSEL ON THIS
CASE, COUNSEL WAS FURTHER
INEFFECTIVE, DID NOT QUESTION
MISTER WAGNER ON A VARIETY OF
POINTS THEY COULD HAVE BEEN
ABLE TO QUESTION HAD THEY
REALLY TRULY REVIEWED THE
EVIDENCE ON THIS CASE AND NOT
JUST THE FINGERPRINTS, WHICH
ARE EVIDENCE IN THIS CASE BUT
ALSO EVIDENCE THAT WAS ALREADY
AVAILABLE TO THEM, SPECIFICALLY
MISTER WAGNER CAME TWO
VIDEOTAPED STATEMENTS TO THE
POLICE AND IN THOSE VIDEOTAPE
STATEMENTS MISTER WAGNER LIED A
LOT TO THE POLICE BUT MORE
SPECIFICALLY IN HIS SECOND
VIDEOTAPED INTERVIEW WITH THE
POLICE WHICH IS POST EXHIBIT
NUMBER 66.

MISTER WAGNER WAS ASKED BY THE
POLICE YOU NEED TO BE A WITNESS
OR YOU'RE GOING TO BE A
DEFENDANT KIND OF CONVERSATION
AND WHY DON'T YOU JUST SAY THIS
WAS A ROBBERY GONE WRONG AND
MISTER WAGNER TOLD THE POLICE
AT THAT POINT HE WOULD SAY THAT
AND TO QUOTE TO SAVE MY ASS I
WILL.

HE WOULD BASICALLY SAY WHATEVER

THE POLICE TOLD HIM AND MISTER WAGNER REITERATED THIS POSTCONVICTION HE WANTED TO GET BACK OUT AND GET BACK ON DRUGS. HE DID NOT WANT TO BE LOCKED UP.

HE DID NOT WANT TO BE BLAMED FOR THIS AND HE SAID I WOULD SAY ANYTHING I WANT AT THIS POINT AND HE DID TESTIFY TO THE SUPPOSED CONVICTION.

THIS IS A WEALTH OF INFORMATION THAT WOULD HAVE BEEN USEFUL AT TRIAL OF PREVENTING TO A JURY THAT YOUR CLIENT ACTED IN SELF DEFENSE AND THE ONLY WITNESS YOU HAVE IS A LIAR.

A COMPLETE DRUG ADDICTED LIAR WHO LIED CONSISTENTLY TO THE POLICE AND PROBABLY STILL LYING AT THE POINT OF TRIAL.

THIS EVIDENCE WAS IMPORTANT AND SOMETHING TRIAL COUNSEL SIMPLY DID NOT DO AND DID NOT CONFRONT MISTER WAGNER WITH THIS.

FURTHER, BECAUSE THEY FAILED TO INVESTIGATE AND DID NOT FIND THESE FINGERPRINTS THEY FAILED TO CONFRONT MISTER WAGNER WITH THE FACT THAT THESE PRINTS ARE INSIDE THE WALLET, CLEARLY IN A POSITION IT LOOKS LIKE HE WAS THE ONE WHO WENT THROUGH THE WALLET AND NOTABLY THE WALLET IS WITHOUT MONEY WHEN IT IS DISCOVERED AND NO MONEY IS DISCOVERED ON MISTER MATTHEWS AT THE TIME OF ARREST WHICH GOES TO SHOW TRIAL COUNSEL IN THEIR ERRORS DID UNDERMINE COMPLETELY AND PREJUDICE MISTER MATTHEWS AT TRIAL BY NOT PRESENTING ALL THE SUPPORT RATHER THAN DETRACT FROM SELF-DEFENSE CASE.

MISTER MATTHEWS IS CONSISTENT.

>> ON THE INEFFECTIVE ASSISTANCE CLAIM RELATED TO THE FINGERPRINT GIVEN THE HIGH STANDARDS COUNSEL'S TESTIMONY

WAS MY CLIENT TOLD ME THAT HE COMMITTED THE CRIME AND DIDN'T SAY THIS WITNESS WAS INVOLVED IN ANY WAY SO I DIDN'T SEE ANY POINT IN CONDUCTING THAT LEVEL OF INVESTIGATION IN FINGERPRINTS ON THE CONTENTS OF THE WALLET IN LIGHT OF WHAT MY CLIENT TOLD ME.

HOW IS THAT UNREASONABLE?

>> IT IS UNREASONABLE IN THIS CASE WHEN THE STATE IS ARGUING, PREMEDITATION AND FELONY MURDER THE WHOLE MOTIVATION IS THEFT, THAT IN ACTUALITY THIS IS SOME SORT OF THEFT GONE WRONG IN THE CONTEXT OF A DRUG DEAL.

THE DEFENSE WHEN DEATH IS ON THE TABLE NEEDS TO ACTUALLY INVESTIGATE AND TRY TO COMBAT CLAIMS OF THEFT.

OF MY CLIENT IS TELLING ME I DIDN'T TAKE THAT WALLET I ACTED IN SELF DEFENSE I WOULD TRY AS MUCH AS I CAN TO DEMONSTRATE TO A JURY THAT WALLET HAS NOTHING TO DO WITH MY CLIENT AND THAT WAS TAKEN IS AN OPPORTUNISTIC THING BY THE WITNESS.

DURING THE COMBAT MISTER MATTHEWS IS NOT GOING TO KNOW WHERE THE WALLET WENT AND HAD NO IDEA THAT WALLET WAS IN THE DR. SEUSS BAG BECAUSE POLICE QUESTIONED HIM ON THAT AND HE'S NEVER BEEN ABLE TO SAY I DON'T KNOW HOW I GOT THERE WHEREAS MISTER WAGNER CONSISTENTLY WON'T ADMIT HE TOUCHED THE WALLET THAT WE DO SITTING IN A BAG WITH CORRESPONDENCE ADDRESSED TO HIM AND THAT IS VITALLY IMPORTANT AND AT THIS TIME I RESERVE MY LAST 3 MINUTES FOR REBUTTAL.

>> MAY IT PLEASE THE COURT. LISA-MARIE LERNER ADDRESSING THE EVIDENCE CLAIM, THE COURT NEEDS TO FOCUS ON THE TWO PRONGS, THE TRIAL COURT FOUND

THE DEFENSE MET THE FIRST PRONG, IT WAS NEWLY DISCOVERED AND THEY WOULD NOT HAVE DISCOVERED IT WITH DUE DILIGENCE, THE STATE MAY DISAGREE WITH THAT BUT WE WILL TAKE THE TRIAL COURT'S RULING AS IT IS.

HOWEVER, THE SECOND PORTION OF THE NEWLY DISCOVERED EVIDENCE CLAIM IS IT WOULD LIKELY PRODUCE AN ACQUITTAL AT TRIAL AND THERE IS NO WAY THE DEFENSE CAN'T MEET THAT BURDEN.

MISTER MATTHEWS ADMITTED TO KILLING KIRK ZOELLER.

ACQUITTAL DOES NOT MEAN CONVICTION FOR LESSER IS THE DEFENSE PUTS IN THEIR BRIEFS A POSSIBLE LIFE SENTENCE.

THE DEFENSE CANNOT MEET THAT BURDEN.

THE TRIAL COURT FULLY ANALYZED THIS AND NOTED THAT MISTER MATTHEWS ADMITTED TO KILLING KIRK ZOELLER.

MISTER MATTHEWS HAD NO DEFENSIVE WOUNDS ON HIM.

MY COUNSEL SAID HE HAD SCRATCHES.

THE TESTIMONY AT TRIAL WAS THAT HE HAD NO SCRATCHES, THERE WAS NO BROKEN SKIN.

THE POLICE OFFICER TESTIFIED HE HAD A SLIGHT RED MARK SIMILAR TO A RED MARK A PERSON WOULD GET IF THEY WERE LAYING ON A PILLOW AND THE PILLOW WAS GREASED.

THE POLICE OFFICERS TOOK PHOTOGRAPHS OF HIS HANDS WHICH WERE ADMITTED TO THE JURY.

HE HAD NO SCRATCHES AND NO MARKS ON HIS HANDS WHICH COMPLETELY BELIED A SELF-DEFENSE CLAIM.

IF THERE WAS A STRUGGLE OVER A KNIFE AND MISTER KIRK ZOELLER WAS WIELDING THIS LIFE TRYING TO ATTACK MISTER MATTHEWS,

MISTER MATTHEWS WOULD HAVE HAD DEFENSIVE WOUNDS ON HIS HANDS OR HIS FOREARMS.

HE DID NOT.

HOWEVER, MISTER KIRK ZOELLER DID HAVE DEFENSIVE WOUNDS ON HIS FOREARMS.

WHAT MISTER WAGNER TESTIFIED AT TRIAL WAS MISTER MATTHEWS AND DONNA TRUJILLO WENT BACK TO HER BEDROOM AND WERE BACK THERE FOR APPROXIMATELY 15-20 MINUTES BEFORE MISTER KIRK ZOELLER WAS CALLED BACK IN.

HE WAS THERE FOR A FEW MOMENTS BEFORE, AS HE PUT IT, EVERYONE STARTED FREAKING OUT AND HE HEARD A BANG AND THEN SCREAMING.

IMMEDIATELY ON THAT KIRK ZOELLER CAME OUT OF THE BEDROOM WITH MISTER MATTHEWS ESSENTIALLY ON HIS BACK.

MISTER MATTHEWS WAS STABBING HIM IN THE BACK AND THE HEAD. KIRK ZOELLER HAD 24 STAB WOUNDS INCLUDING A WOUND TO HIS FACE BY THE EYE AREA THAT WENT THROUGH AND CUT THE VEINS AND ARTERIES IN HIS NECK.

MISTER WAGNER TESTIFIED THAT WHEN KIRK ZOELLER CAME OUT MISTER MATTHEWS WAS STABBING HIM AND KIRK ZOELLER TRIPPED. THIS WAS A VERY SMALL APARTMENT.

AND THE KITCHEN AND THE LIVING ROOM WERE ESSENTIALLY ONE AREA. IT WAS VERY SMALL IN THE KITCHEN LEAD INTO THE BEDROOM. KIRK ZOELLER TRIPPED AND FELL IN THE AREA BETWEEN THE KITCHEN AND THE LIVING ROOM.

ALMOST ON MISTER WAGGONER. GIVEN THE NECK INJURIES AND GUSHING OF BLOOD, THAT WOULD EXPLAIN THE BLOOD SPATTER IN THE KITCHEN AND LIVING ROOM AREA.

MISTER WAGGONER TESTIFIED AT

THAT POINT HE TOOK OFF AND ALSO TESTIFIED WHEN HE LOOKED BEHIND HIM KIRK ZOELLER HAD ATTEMPTED TO GET TO THE DOOR BUT MISTER MATTHEWS WAS PULLING THEM BACK AND STABBING HIM.

ALL OF THAT IS EVIDENCE OF PREMEDITATION.

EVEN IF THIS FINGERPRINT HAD DISCOVERED IT WOULD NOT NEGATE STAB WOUNDS AND THE FACT THAT MISTER MATTHEWS WAS ATTEMPTING TO GET KIRK ZOELLER, CONTINUE TO STAB HIM RATHER THAN LETTING MISTER KIRK ZOELLER LEAVE IF IT IS TRUE SELF-DEFENSE.

>> YOU DO ARGUE IN YOUR ANSWER BRIEF THE COURT DOES NOT HAVE JURISDICTION TO HEAR THIS CASE.

>> THAT IS CORRECT AND IT STATES THE POSITION THIS COURT SHOULD NOT BE ENTERTAINING CASES IN THIS POSTURE, AND PREVIOUSLY IN OTHER CASES.

>> YOUR ARGUMENT, BECAUSE THE JUDGMENT ENTERING A DEATH SENTENCE HAS BEEN VACATED, WE DON'T HAVE JURISDICTION TO HEAR POSTCONVICTION MATTERS.

>> IT WOULD PROBABLY BE A BETTER PROCEDURE TO GO AHEAD AND DO THE PENALTY PHASE TRIAL. AND WHETHER IT IS A LIFE SENTENCE OR DEATH SENTENCE AT THAT POINT IN ORDER TO KEEP POST CONVICTION CLAIMS TOGETHER.

>> YOUR POSITION IS WE HOLD THIS IN ABEYANCE UNTIL AFTER --

>> YES.

>> IT IS NOT YOUR POSITION THE LANGUAGE AND THE CONSTITUTION DOES NOT ALLOW US TO HEAR POSTCONVICTION CLAIMS IN NORMAL DEATH PENALTY CASE WHERE JUDGMENT ENTERING THE DEATH PENALTY IS INTACT.

>> IT IS.

THERE ARE TWO DIFFERENT THINGS.

>> THE POSTCONVICTION IN THE

FOURTH DCA AND DO IT THAT WAY BUT IT WOULD BE IN OUR OPINION A CLEANER POSTCONVICTION MATTER IF IT WERE HELD IN ABEYANCE AND WAITING FOR THE RETRIAL ON THE PENALTY PHASE, BUT IT IS THE STATE'S POSITION THAT CASES SHOULD NOT BE ENTERTAINED BY THIS COURT UNTIL THERE IS A JUDGMENT FOR DEATH.

>> THERE WAS DNA EVIDENCE, WAS THERE NOT?

>> THERE WAS DNA EVIDENCE FOUND ON MISTER MATTHEW'S BODY AND IN ADDITION ON HIS CLOTHES. THERE WAS DNA EVIDENCE ON THE T-SHIRT WHICH WAS FOUND ON THIS PLASTIC BAG IN MISS TEAGUE'S APARTMENT.

IT WAS ON A SHELF IN A LIVING ROOM NEXT TO THE BEDROOM WHERE MISTER MATTHEWS WAS HIDDEN. THE DNA WAS FOUND ON HIS JEANS NEXT TO THE BED AND ON HIS SNEAKERS.

THE DNA ON THE CLOTHING BELONGED TO KIRK ZOELLER BUT THERE WAS ALSO DNA FOUND ON MISTER MATTHEWS UNDER HIS NAILS.

THERE WAS EVIDENCE THAT MISTER MATTHEWS TRIED TO CLEAN UP WHEN HE ENTERED MISS TEAGUE'S APPOINTMENTS AND WASHED IN THE SHOWER BUT KIRK ZOELLER'S DNA AND BLOOD, DNA FROM HIS BLOOD WAS FOUND UNDER HIS FINGERNAILS AND INTERESTINGLY ENOUGH, DONNA TRUJILLO'S DNA WAS ALSO FOUND UNDER MISTER MATTHEWS'S FINGERNAILS ON HIS LEFT RING FINGER.

IT WAS A MIXTURE BUT HER DNA WAS FOUND THERE AND I BELIEVE THE EXCLUSION RATE WAS ONE IN 26,000.

MISTER MATTHEWS HAD DNA FROM BOTH VICTIMS ON HIM AND THE JURY HEARD THAT. THEY ALSO HEARD THE REST OF

THIS EVIDENCE WHEN THEY REJECTED THE SELF DEFENSE CLAIM.

IN TERMS OF THE IAC, IN TERMS OF FINGERPRINTS, THE TRIAL COURT FOUND NO DEFICIENT PERFORMANCE, IN ITS ORDER EVEN THOUGH HE DIDN'T MENTION IT, THE TRIAL COURT DID A PREJUDICE ANALYSIS AND FOUND MISTER MATTHEWS COULD NOT MEET THE PREJUDICE PRONG OF THE INEFFECTIVENESS.

THE TRIAL COURT FOUND THE FINGERPRINT HAD LITTLE EVIDENTIARY VALUE GIVEN THE FACT HISTORY MATTHEWS ADMITTED TO MISTER -- TO KILLING KIRK ZOELLER.

THE WALLET WAS FOUND IN HIS POSSESSION.

THE WALLET WAS FOUND IN THIS PLASTIC BAG UNDER HIS SHIRT WITH THE VICTIM'S BLOOD ON IT. MISTER WAGGONER PROVIDED A HYPOTHETICAL POSSIBILITY AT THE POSTCONVICTION, HOW HIS DNA, HOW HIS FINGERPRINT GOT ON THIS POST-IT NOTE.

HE SAID HE WAS FRIENDS WITH KIRK ZOELLER, THEY HAD GOTTEN TOGETHER PREVIOUSLY FOR A NUMBER OF OCCASIONS TO DIVVY UP DRUGS AND CUT UP COCAINE AND TO SCOOP IT UP, COCAINE OR OTHER POWDERED DRUGS, USE A PIECE OF PAPER OR CARD OR SOMETHING, OTHERWISE IT WOULD DISSOLVE ON YOUR FINGERS AND THAT WAS HIS EXPLANATION OF HOW HIS FINGERPRINT COULD HAVE GOTTEN ON HIS POST IT NOTE.

THE FACT THAT FINGERPRINT WAS ON THE POST-IT NOTE IS NOT EVIDENCE OF RIFLING THROUGH THE WALLET.

THE WALLET CONTAINS TEN ITEMS AND THE FINGERPRINT EXPERTS INDICATED THERE WERE FINGERPRINTS ALL THROUGH THE

WALLET.

HOWEVER, THEY WERE NOT IDENTIFIABLE.

THIS IS THE ONLY IDENTIFIABLE PRINT.

SO THERE WERE PRINTS OTHER THAN MISTER WAGGONER'S BUT THEY WERE NOT IDENTIFIABLE.

IN TERMS OF THE CRIME SCENE EXPERT, WHILE THE TRIAL COURT SUMMARILY DENIED THIS, THERE WAS TESTIMONY AT THE EVIDENTIARY HEARING AND THE TRIAL COURT'S DENIAL OF THIS IN HIS WRITTEN ORDER WAS ALSO INFORMED BY TESTIMONY AT THE EVIDENTIARY HEARING.

BOTH COUNSEL, THE STATE AND DEFENSE QUESTIONS MISTER NIELSEN AS TO WHETHER HE CONSIDERED HIRING FORENSIC EXPERTS.

MISTER NIELSEN TESTIFIED THAT HE REVIEWED THE EVIDENCE THAT THE SHERIFF STATION, MADE AN APPOINTMENT WITH THE DETECTIVES AND WENT THROUGH ALL THE EVIDENCE.

BUT GIVEN THE FACT THAT HE WAS STUCK WITH A SELF DEFENSE DEFENSE, SINCE MISTER MATTHEWS HAD GIVEN A STATEMENT TO THE EFFECT TO THE POLICE AND IT WAS TAPE-RECORDED AND THAT IS WHAT HE TOLD MISTER NIELSEN, THAT WAS GOING TO BE THE DEFENSE AT TRIAL.

MISTER NIELSEN TESTIFIED THE PHYSICAL EVIDENCE OF THE STRUGGLE IN THE HOUSE, THE BLOOD ON THE SHIRT WAS CONSISTENT WITH SELF DEFENSE. HE CONSIDERED HIRING FORENSIC EXPERTS BUT DECIDED NOT TO DO SO.

HE DID NOT HAVE SPECIFIC MEMORY CONSIDERING A FINGERPRINT EXPERT BUT HE DID AS HE DID IN ALL CASES CONSIDER FOREIGN SICK EXPERTS WHETHER THEY WOULD BE

HELPFUL BUT HAD A SELF DEFENSE ISSUE, NONE OF THE PHYSICAL EVIDENCE CONTRADICTED THAT SO HE DECIDED NOT TO HIRE SELF-DEFENSE.

IN TERMS OF INEFFECTIVE ASSISTANCE OF COUNSEL OF INTERVIEWING THE WITNESSES, AGAIN, WHILE THE TRIAL COURT SUMMARILY DENIED THIS, THERE WAS TESTIMONY AT THE EVIDENTIARY HEARING BY BOTH MISTER NIELSEN AND MISTER DOWDY ABOUT THEIR PREPARATION FOR CROSS-EXAMINATION OF MISTER WAGNER.

THEY TESTIFIED THAT THEY DID GO THROUGH AND THE RECORD REFLECTS THIS IN THE TRIAL COURT, MENTIONS, DETAILS THIS IN ITS ORDER, THEY DID GO THROUGH AND IMPEACH HIM BY HIS PRIOR CONVICTIONS BY THE FACT THAT HE LIED TO THE POLICE ON A NUMBER OF OCCASIONS.

MISTER WAGGONER DURING HIS STATEMENT AND AT THE EVIDENTIARY HEARING TESTIFIED HE DID NOT SAY HE WOULD NOT SAY ANYTHING THEY WANTED.

THE TAPE OF MISTER WAGNER HAS HIM SAYING I WILL SAY THAT IF IT WILL GET MY ASS OUT OF TROUBLE.

THE DETECTIVE THEN SAID WE DON'T WANT YOU TO SAY IT, WE WANT YOU TO TELL THE TRUTH. THAT IS ON THE TAPE.

AT THE POSTCONVICTION HEARING, MISTER WAGGONER TESTIFIED, HE SAID I WASN'T SAYING I WAS GOING TO LIE.

I SAID I WOULD TELL THEM EVERYTHING THAT HAPPENED AND WHAT I SAID WAS THE TRUTH AND WHAT I TESTIFIED WAS TO THE TRUTH.

SO COUNSEL'S INSINUATION THAT MISTER WAGGONER WOULD LIE TO GET HIMSELF OUT OF TROUBLE WAS

NOT ACCURATE.

MISTER WAGNER TESTIFIED AT TRIAL THAT THE STATE AND THE POLICE DID NOT ASSIST HIM IN ANY PENDING CASE.

HE WAS QUESTIONS ON A CASE HE WAS GOING TO COURT FOR AT THE TIME.

IN TERMS OF HIS STATEMENT HIS STATEMENT AT TRIAL WAS CONSISTENT WITH HIS STATEMENT TO THE POLICE WHICH IS VIDEOTAPED AND HE HAD NO PENDING CHARGES WHEN HE GAVE THE STATEMENT TO THE POLICE WHICH WAS CONSISTENT WITH HIS TRIAL TESTIMONY.

THE DEFENSE IN ITS BRIEF MENTIONS THE FACT THAT HE WAS ARRESTED FOR DOMESTIC BATTERY CHARGE BUT HE WAS NOT ARRESTED ON THAT AND NO CHARGES WERE FILED AT THE TIME HE TESTIFIED. CHARGES WERE LATER FILED AFTER THE TRIAL.

IT WAS NOT A SITUATION WHERE THE STATE WAS GIVING HIM ANY BENEFIT BECAUSE NO CHARGES HAD BEEN FILED AT THE TIME.

MISTER WAGNER TESTIFIED AT THE EVIDENTIARY HEARING THAT HE NEVER RECEIVED ANY HELP ON ANY CASES FROM THE STATE.

HE DID HIS TIME.

HE WAS CHARGED, AND HE WENT TO PRISON.

IF THE COURT HAS NO FURTHER QUESTIONS I ASK THIS COURT TO AFFIRM THE DENIAL OF POSTCONVICTION RELIEF.

>> TO ADDRESS THE STATE'S ARGUMENTS ON REBUTTAL, THERE IS A LOT TO UNPACK THERE.

FIRST OFF THE STATE ALLEGES THAT WE CANNOT MEET THE BURDEN FOR NEWLY DISCOVERED EVIDENCE FOR NEWLY DISCOVERED EVIDENCE THE STANDARD IS OBVIOUSLY THE EVIDENCE IS NEWLY DISCOVERED AND HAS THE PROBABILITY OF

RESULTING IN A DIFFERENT
OUTCOME IN THIS CASE.

I BELIEVE THE NEWLY DISCOVERED
EVIDENCE WOULD ASSIST IN
POTENTIALLY GIVING A DIFFERENT
OUTCOME IN THIS CASE.

THERE ARE ISSUES IN THIS CASE
AND THE JURY HAD ISSUES WITH
MISTER WAGGONER'S TESTIMONY
WITH THE DEATH OF DONNA
TRUJILLO.

MISTER MATTHEWS WAS CHARGED
WITH FIRST-DEGREE MATTER
PREMEDITATED AND FELONY MURDER
AS WELL FOR THE DEATH OF DONNA
TRUJILLO BUT THE JURY FOUND
MANSLAUGHTER INSTEAD, WHICH
SHOWS THEY TOOK SOME --

>> THE ARGUMENT, QUOTING FROM
DOUG OR THIS COURT, THE NEWLY
DISCOVERED EVIDENCE MUST BE OF
SUCH NATURE THAT WOULD PRODUCE
AND ACQUITTAL ON RETRIAL WHICH
IS DIFFERENT FROM THE LANGUAGE
YOU USE, YOU SAID A DIFFERENT
OUTCOME.

HOW WOULD THIS RESULT IN
ACQUITTAL?

OR IS THAT THE WRONG STANDARD?
ARE YOU ARGUING THAT IS AN
INCORRECT STANDARD?

>> KNOW.

IN SOME CASES TO RESULT IN
ACQUITTAL, IT WOULD RESULT IN A
PROBABILITY OF A DIFFERENT
OUTCOME WHICH IS A LITTLE
STRANGE BUT THE MOST AND RECENT
CASE LAW AS YOU WERE QUOTING IT
WOULD RESULT IN ACQUITTAL AND I
BELIEVE IT WOULD RESULT IN
ACQUITTAL BECAUSE PREMEDITATION
AND FELONY MURDER ASPECT OF
THIS CASE ESPECIALLY WITH
RESPECT TO KIRK ZOELLER IS THE
LINCHPIN IS THE WHOLE THING IS
MOTIVATED BY A THEFT AND IF YOU
CAN ILLUMINATE THE MOTIVE
ENTIRELY IN THE MINOR JURY, YOU
ARE LEFT WITH WHAT IS LEFT AND

--

>> WHAT IS LEFT, 24 STAB WOUNDS, TESTIMONY THAT HE IS DRAGGING THEM AND WHEN HE'S TRYING TO GET AWAY.

>> AND ALTERNATING TESTIMONY THAT THAT IS NOT WHAT OCCURRED EVEN THOUGH THERE ARE 24 STAB WOUNDS, THIS WAS AN INSULT DEFENSE AND IF COUNSEL HAD DONE THE JOB APPROPRIATELY, THEY COULD DEMONSTRATE THIS DRAGGING BACK DID NOT OCCUR BECAUSE THE BLOOD EVIDENCE DOES NOT MATCH UP TO THAT.

THE BLOOD EVIDENCE DEMONSTRATES THERE IS DRAGGING BACK.

MOST IS IN THE KITCHEN AREA TO THE BACK OF THIS TINY APARTMENT.

THERE IS NO BLOOD WHERE THE FOOD IS.

IF YOU LOOK CLOSELY AT THE CRIME SCENE EVIDENCE MISTER WAGNER TESTIFIED AT TRIAL, WHEN MISTER KIRK ZOELLER TRIXIE PRACTICALLY LANDED IN HIS LAP BUT THERE'S NO POSITION THAT THIS COULD HAVE OCCURRED AND IT WASN'T CROSS-EXAMINED ARE PROPERLY ARGUED IN FRONT OF A JERRY AND THIS WHOLE THING WITH NEWLY DISCOVERED EVIDENCE.

>> I WILL GIVE YOU A MINUTE TO SUM UP.

>> WHEN YOU EXAMINE THIS THE WAY YOU HAVE TO IS CUMULATIVE IN POSTCONVICTION, THIS WOULD RESULT IN ACQUITTAL AND WE NOT ONLY HAVE THE DISCOVERED EVIDENCE THAT MEET THE ASSISTANCE OF COUNSEL.

>> WE THANK YOU BOTH FOR YOUR ARGUMENT, THE COURT WILL STAND IN RECESS FOR TEN MINUTES.