

ORIGINAL

PROVIDED TO TOMOKA
CORRECTIONAL INSTITUTION
ON 11/19/21
FOR MAILING BY JD MMT

IN THE
UNITED STATES SUPREME COURT

CASE NO. 21-6536

FILED

NOV 19 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In re MICHAEL R. EVERETT,
PETITIONER,

VS.

THE STATE OF FLORIDA,
RESPONDENT.

ON REVIEW FROM THE ELEVENTH CIRCUIT COURT OF APPEAL
NO.: 19-10422-H

PETITION FOR AN EXTRAORDINARY WRIT
OF HABEAS CORPUS

MICHAEL R. EVERETT-KS1763
TOMOKA CORRECTIONAL INST.
3950 TIGER BAY ROAD
DAYTONA BEACH, FL 32124

QUESTION(S) PRESENTED

- (1) WHETHER COUNSEL WAS INEFFECTIVE WHEN FAILING TO PRESENT TO THE COURT DURING SUPPRESSION HEARING, THAT THE PETITIONER REVOKED MIRANDA WARNING WAIVER WHEN INVOKING HIS FIFTH AMENDMENT RIGHT TO REMAIN SILENT?
- (2) WHETHER COUNSEL WAS INEFFECTIVE WHEN FAILING TO CALL MR. AND MRS. GRAVENSTEIN AS A VIABLE DEFENSE WITNESSE(S) IN SUPPORT OF MOTION IN LIMINE AND IN OPPOSITION TO PRE-MEDITATED MURDER DURING TRIAL?
- (3) WHETHER COUNSEL WAS INEFFECTIVE WHEN FAILING TO DEMAND PHYSICAL EVIDENCE OR PROOF OF PHONE RECORDS FROM THE STATE, USED DURING PRE-TRIAL AND TRIAL TO ESTABLISH A TIMELINE AND INTENT TO COMMIT MURDER.⁷ INSTEAD, STIPULATING TO THE PHONE RECORD INVESTIGATION.

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

Those persons also having an interest in the outcome of the case but not included in Appellant's Certificate of Interested Persons are as follows:

Barksdale, Patricia D., Judge, U.S. District Court of Florida, State of Florida;

Berger, Wendy W., Judge, Fifth District Court of Appeals, State of Florida;

Bondi, Pamela J., Former Elected Attorney General, State of Florida;

Coffman, Paula C., Esq., Counsel for Defendant;

Cohen, Jay P., Judge, Fifth District Court of Appeals, State of Florida;

Corrigan, Timothy J., Judge, U.S. District Court of Florida; State of Florida;

Davenport, Kristen L., Esq., Assistant Attorney General;

Ferebee, Christopher, Esq., Assistant State Attorney;

Fox, Ben, Esq., Assistant State Attorney;

Griffin, J., Judge, Fifth District Court of Appeal, State of Florida;

Harris, C.M., Former Senior Judge, Fifth District Court of Appeals, State of Florida;

Jolley, Mary, Esq., Assistant Attorney General;

BRETT KOEISAN, Esq., COUNSEL FOR DEFENDANT.

Lawson, C. Alan, Former Judge, Fifth District Court of Appeal, State of Florida;

Mathis, Robert K., Senior Judge, Seventh Judicial Circuit Court, State of Florida;

McCollum, Bill, Former Elected Attorney General, State of Florida;

Moody, Ashley B., Elected Attorney General, State of Florida;

Morgan, David S., Esq., Assistant Public Defender

Nelson, Stephen M., Esq., Assistant State Attorney;

Orfinger, Former Chief Judge, Fifth District Court of Appeal, State of Florida;

Palmer, William D., Former Judge, Fifth District Court of Appeals, State of Florida;

Phillips, Matthew D., Esq., Assistant Public Defender;

Purdy, James S., Former Seventh Circuit Public Defender, State of Florida;

Sawaya, Thomas D., Former Judge, Fifth District Court of Appeals, State of Florida;

Zambrano, Raul A., Judge, Seventh Judicial Circuit Court, State of Florida;

I hereby certify that no publicly traded company or corporation has an interest in the outcome of this appeal.

LIST OF PROCEEDINGS

- ① SEVENTH JUDICIAL CIRCUIT COURT, FLAGLER COUNTY FLORIDA, CASE NO.: 2007-22-CFFA, EVERETT V. STATE, 164 So. 3d 747, (FLA. 5TH DCA 2015).
- ② FIFTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, EVERETT V. STATE, 7 So. 3d 544 (FLA. APP. 5TH DIST. 2009; EVERETT V. STATE, 114 So. 3d 956 (FLA. APP. 5TH DIST. 2011) CASE NO.: SD11-1418, EVERETT V. STATE, 111 So. 3d 202 (FLA. 5TH DCA 2013), EVERETT V. STATE, 164 So. 3d 747 (FLA. 5TH DCA 2015) - CASE NO.: SD14-1645.
- ③ U.S. DISTRICT COURT, MIDDLE DISTRICT, JACKSONVILLE DIVISION OF FLORIDA, CASE NO.: 3:13-CV-916-J-32PDB, DOC. NO.: 52, FILED 01/08/2019 - (PGS) 54, 55 AND 56). ALSO, DOC. 58 - FILED 03/04/2019.
- ④ U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, NO. 19-10472-H - 10/09/2019.
- ⑤ FLORIDA SUPREME COURT, TALLAHASSEE FLORIDA, CASE NO.: SC19-77 AND SC19-1964. - 06/29/2020.

TABLE OF CONTENTS

	<u>PAGES</u>
QUESTIONS PRESENTED	ii
CORPORATE DISCLOSURE STATEMENT	iii, iv
LIST OF PROCEEDINGS	v
TABLE OF CITATIONS	viii
INDEX TO APPENDIX	vii
OPINIONS BELOW	i
STATEMENT OF JURISDICTION	i
CONSTITUTIONAL AND STATUTORY PROVISIONS	4
STATEMENT OF CASE AND FACTS	5
REASONS FOR GRANTING A PETITION FOR EXTRAORDINARY WRIT	3, 4, 8, 13, 28
CONCLUSION	40
PROOF OF SERVICE	ENCLOSED WITH PETITION

APPENDIX INDEX

INDEX

PAGE(S)

APP.-A	(U.S. COURT OF APPEALS FOR ELEVENTH) CIRCUIT CASE NO.: 19-10472-H	1, 7
APP.-B	(RESENTENCING HEARING)	7
APP.-C	(FIFTH D.C.A. ORDER REVERSING BURGLARY) CONVICTION	7
APP.-D	(FIFTH D.C.A. ORDER DENYING INITIAL BRIEF)	1
APP.-E	(MICHAEL R. EVERETT - INTERROGATION pg. 29, PAGINATED pg. 39, LN(s) 13-16)	10
APP.-F	(MICHAEL R. EVERETT - INTERROGATION pg. 44, PAGINATED pg. 54, LN(s) 4-13)	10
APP.-G	(FLAGLER COUNTY PROPERTY APPRAISER'S LOT MAP AND SURVEY OF THE LOCATION OF THE GRAVENSTEINS CONDO IN CORRELATION TO VICTIM'S APARTMENT AND PARKING LOT.)	15, 23
APP.-H	(U.S. DIST. CT. MIDDLE DIST. JACKSONVILLE DIV. ORDER - DOC. 51, pg(s) 16-25; V-ANALYSIS GROUND ONE, TWO AND pg(s) 34-38, GROUND(S) SEVEN AND SEVENTEEN)	7, 9, 20, 2
APP.-I	(THE GRAVESTONES DEPOSITION)	13, 14, 16

TABLE OF CITATIONS

FLORIDA CASE(S)

PAGE(S)

EVERETT V. STATE, 7 SO. 3d 544 (FLA. APP. 5TH DIST. 2009) v. 1, 5	
EVERETT V. STATE, 111 SO. 3d 302 (FLA. 5TH DCA)-----	6
EVERETT V. STATE, 114 SO. 3d 956 (FLA. 5TH DCA 2011)-----	v. 7
EVERETT V. STATE, 164 SO. 3d 747 (FLA. 5TH DCA 2015)-----	v. 1

FEDERAL CASE(S)

HARRIS V. REED, 489 U.S. 255, 260, 109 S. Ct. 1038-----	28
MARTIN 182 F. 2d AT 227-----	14
MASSEY V. WARTEN, 2018 U.S. DIST. LEXIS 213476-----	33
MIRANDA V. ARIZONA, 384 U.S. 426 (1966)-----	8
MOSLEY, 423 U.S. AT 104, 96 S. Ct. 321-----	11
U.S. V. ABDALLAH, 911 F. 3d 201 (4TH CIR. 2018)-----	11
WIGGINS VS. SMITH, 539 U.S. 510, 520 (2003)-----	26, 27
WILKERSON V. TAYLOR, 529 U.S. 362, 389 (2000)-----	26, 27

FLORIDA RULES OF COURT

RULE 3.220 DISCOVERY PROCEDURES-----	33
VOL. CHAPTER 6 DISCOVERY § 6.01	

CITATIONS OF OFFICIAL AND UNOFFICIAL REPORTS OF THE
OPINIONS AND ORDERS BY COURTS.

THE OPINION OF THE HIGHEST STATE COURT TO REVIEW THE MERITS APPEARS AT APPENDIX-A, TO THE PETITION AND IS REPORTED AT THE ELEVENTH CIRCUIT COURT OF APPEALS, CASE NO. 19-10472-M.

STATEMENT OF JURISDICTION

THE DATE OF WHICH THE HIGHEST STATE COURT DECIDED PETITIONER'S CASE WAS ON 10/09/2019. A COPY OF THAT DECISION APPEARS AT APPENDIX-A, FROM THE ELEVENTH CIRCUIT COURT OF APPEALS, DENYING PETITION FOR REVIEW. THIS COURT HAS JURISDICTION PURSUANT TO 28 U.S.C. § 1257(A).

• EXISTENCE OF JURISDICTION

THE U.S. SUPREME COURT HAS AN INDEPENDANT OBLIGATION TO DETERMINE WHETHER SUBJECT-MATTER JURISDICTION EXISTS, EVEN IN THE ABSENCE OF A CHALLENGE FROM ANY PARTY.

• INDEPENDENT AND ADEQUATE STATE GROUND

THE U.S. SUPREME COURT LACKS JURISDICTION TO ENTERTAIN A FEDERAL CLAIM ON REVIEW OF A STATE COURT JUDGMENT IF THAT JUDGMENT

RESTS ON A STATE LAW GROUND THAT IS BOTH "INDEPENDENT" OF THE MERITS OF THE FEDERAL CLAIM AND AN "ADEQUATE" BASIS FOR THE COURT'S DECISION.

- SUPREME COURT JURISDICTION - FEDERAL CONSTITUTIONAL RULING

WHEN APPLICATION OF A STATE LAW BAR DEPENDS ON A FEDERAL CONSTITUTIONAL RULING, THE STATE-LAW PRONG OF THE COURT'S HOLDING IS NOT INDEPENDENT OF FEDERAL LAW, AND THE U.S. SUPREME COURT'S JURISDICTION IS NOT PRECLUDED.

- INDEPENDENT AND ADEQUATE STATE GROUND

IT IS PERFECTLY CONSISTENT WITH THE U.S. SUPREME COURT'S PRACTICES TO REVIEW A LOWER COURT DECISION IN ORDER TO ASCERTAIN WHETHER A FEDERAL QUESTION MAY BE IMPLICATED IN AN UNREASONED SUMMARY ORDER FROM A HIGHER COURT. WHERE THE STATE COURT OPINION FAILS TO YIELD PRECISE ANSWERS AS TO THE GROUNDS OF DECISION, THE COURT MAY BE FORCED TO TURN TO OTHER PARTS OF THE RECORD, SUCH AS PLEADINGS, MOTIONS, AND TRIAL COURT RULINGS, TO DETERMINE IF A FEDERAL CLAIM IS SO CENTRAL TO THE CONTROVERSY AS TO PRECLUDE TESTING THE JUDGMENT ON INDEPENDENT AND ADEQUATE STATE GROUNDS.

SUPREME COURT JURISDICTION - STATE COURT - FEDERAL

WHETHER A STATE LAW DETERMINATION IS CHARACTERIZED AS "ENTIRELY DEPENDENT ON," "RESTING PRIMARILY ON," OR "INFLUENCED BY" A QUESTION OF FEDERAL LAW, THE RESULT IS THE SAME: THE STATE LAW DETERMINATION IS NOT INDEPENDENT OF FEDERAL LAW AND THUS POSES NO BAR TO THE U.S. SUPREME COURT'S JURISDICTION.

RELIEF SOUGHT THAT WILL BE IN AID OF THE COURT'S APPELLATE JURISDICTION

THE PETITIONER IS ASKING THIS COURT TO GRANT A NEW TRIAL BASED ON THE DISTRICT COURT COMMITTING A MANIFEST ERROR OF FACT AND LAW. BECAUSE, MR. EVERETT'S ENTIRE RECORD OF HIS INTERROGATION IS NOT PART OF THE RECORD ON APPEAL, DUE TO THE DECISION OF HIS TRIAL COUNSEL, THE COURT HAS TO RELY ON A RECORD DEVOID OF THE SECTION OF HIS TRANSCRIPT WHERE HE INVOKES HIS RIGHT TO REMAIN SILENT. COMPOUNDING THE ERROR, WHEN FAILING TO CALL THE GRAVESTIENS AS WITNESSES TO ESTABLISH THE BEGINNING OF THE TIMELINE, WHICH WOULD HAVE SHOWN A FOUR HOUR LAPSE IN TIME BEFORE THE MURDER OCCURRED. ALSO, THE STATES RECORD IS DEVOID OF ANY PHYSICAL PHONE RECORD(S), THIS IS NEWLY DISCOVERED EVIDENCE. WHEREIN, THE PHONE RECORDS WERE CRUCIAL TO THE PROSECUTOR'S CASE-N-CHIEF.

- WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT. RULE 20.1,

THE PETITIONER DECLARES THAT HE HAS RAISED CLAIM ONE AND TWO WITH THE DISTRICT COURT, MR. EVERETT DID APPEAL THE LOWER COURT'S DECISION, WHEREIN, WAS DENIED ON 10/09/2019. (APP.-A). AS TO QUESTION THREE, THE PETITIONER RAISED THIS CLAIM ON CERTIFICATE OF APPEALABILITY WITH THE ELEVENTH CIRCUIT COURT OF APPEALS. THIS CLAIM IS TIME BARRED BASED ON STATE LAW, BASED ON A CONSTITUTIONAL RULING, THE STATE-LAW PRONG OF THE COURT'S RULING IS NOT INDEPENDENT OF FEDERAL LAW, AND THE U.S. SUPREME COURT'S JURISDICTION IS NOT PRECLUDED. MR. EVERETT AS TO CLAIM THREE IS DECLARING THAT THE STATE'S PRE-TRIAL RECORD IS DEVOID OF ANY PHYSICAL EVIDENCE PERTAINING TO A PHONE RECORD(S), THIS IS NEWLY DISCOVERED EVIDENCE NOT KNOWN BY PETITIONER OR COUNSEL PRIOR TO TRIAL.

CONSTITUTIONAL AND STATUTORY PROVISIONS

SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION 8, 13

28 U.S.C. § 1257 (A) 1

STATEMENT OF CASE AND FACTS

PETITIONER HAVING BEEN SUBJECTED TO A MULTIPLE COUNT INDICTMENT, FILED BY THE RESPONDENTS, THE STATE OF FLORIDA (ROA VOL. I, PG. 3-4), PROCEEDED TO TRIAL AND WAS FOUND GUILTY BY A JURY OF FELONY MURDER AND BURGLARY OF A DWELLING, WITH A BATTERY WHILE ARMED WITH A DEADLY WEAPON, WITH THE INTENT TO MURDER (ROA VOL. I, PG. 153, 154), SEE, F.S. 782.04(1)(a)2; AND F.S. 810.02 (1) & (3) (2007), RESPECTFULLY. THE HONORABLE ROBERT K. MATHIS, ENTERED THE APPLICABLE JUDGMENT OF CONVICTION, AND SENTENCED THE PETITIONER TO TWO (02) NATURAL LIFE TERMS OF INCARCERATION TO BE SERVED CONCURRENTLY (ROA VOL. I, PG. 167-70).

PETITIONER PERFECTED A TIMELY NOTICE OF APPEAL, AND A DIRECT APPEAL WAS PROSECUTED IN THE INSTANT JUDICIUM, RESULTING IN THE AFFIRMATION OF THE JUDGMENT OF CONVICTION AND SENTENCING IMPOSED BY TRIAL COURT. SEE EVERETT V. STATE, 7 SO. 3d 544 (FLA. APP. 5TH DIST. 2009).

A RULE 3.850 POSTCONVICTION MOTION WAS FILED ON IN THE STATE COURT ON APRIL 21, 2010, CONTEMPORANEOUSLY WITH TOLLING MOTION. (SEE D.E. 14-1, AT 18). ON MAY 31, 2011 THE AMENDED MOTION WAS DOCKETED. (D.E. 14-1, AT 22).

THE CIRCUIT COURT DENIED RELIEF ON DECEMBER 30, 2011. ON FEBRUARY 24, 2012, THE CIRCUIT COURT DENIED THE MOTION FOR REHEARING. MR. EVERETT APPEALED, AND THE FIFTH DISTRICT COURT OF APPEAL ISSUED AN OPINION ON FEBRUARY 23, 2013. EVERETT V. STATE, 111 So. 3d 302 (FLA. 5TH DCA). ON MAY 1, 2013, THE DISTRICT COURT ENTERED ITS ORDER DENYING REHEARING, AND ON MAY 16, 2013 THE MANDATE ISSUED.

ADDITIONALLY, MR. EVERETT'S RESENTENCING ON MARCH 24, 2014 RESET THE LIMITATIONS PERIOD. THE CIRCUIT COURT RESENTENCED MR. EVERETT BECAUSE THE COURT OF APPEAL REVERSED THE BURGLARY CONVICTION AND VACATED THE SENTENCE FOR THAT COUNT, AND ORDERED THAT A NEW JUDGMENT OF SECOND DEGREE BURGLARY RUN CONCURRENT WITH COUNT ONE. (D.E. 14-1, AT 74). THE COURT ISSUED A SINGLE JUDGMENT ON BOTH COUNTS ON APRIL 17, 2008, WHICH WAS AMENDED BY THE "CORRECTED ORDER OF CONVICTION AND SENTENCE" ISSUED ON JANUARY 18, 2012. A REHEARING SUBMITTED AND GRANTED DUE TO PETITIONER NOT BEING PRESENT DURING RESENTENCING ON JANUARY 18, 2012.

ON MARCH 24TH, 2014, MR. EVERETT WAS

REPRESENTING. (APP-B). THE SENTENCE WAS VACATED IN PART AND REMANDED TO TRIAL COURT FOR REPRESENTING ON THE BURGULARY CHARGE. EVERETT V. STATE, 114 So. 3d 956 (Fla. 5th DCA 2011). (APP-C). A TIMELY NOTICE OF APPEAL WAS FILED CHALLENGING HIS NEW JUDGMENT. THE FIFTH DCA AFFIRMED THE CIRCUIT COURT'S REPRESENTING ON MAY 22, 2015, AND ISSUED THE MANDATE ON JUNE 15, 2015. ON JUNE 1, 2015, EVERETT FILED HIS SECOND RULE 3.850 MOTION, TOLLING THE AEDPA STATUTE OF LIMITATIONS. DESP. EX. W, X, Y, Z. THAT TOLLING CONTINUED UNTIL THE FIFTH DCA PER CUREAM AFFIRMED THE CIRCUIT COURT'S DENIAL OF HIS AMENDED SECOND RULE 3.850 MOTION IN A MANDATE ISSUED ON APRIL 29, 2016. DESP. EX. BB. EVERETT FILED THE AMENDED PETITION ON AUGUST 22, 2016, DOC. 30, WELL WITHIN ONE YEAR FROM THE TIME HIS NEW JUDGMENT BECAME FINAL. THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION DENIED PETITION ON 1/17/2019 DOC. 51, PAGES 16-25 AND 34-38. (APP-I). THE UNITED STATES COURT OF APPEALS FOR THE 11TH CIRCUIT DENIED THE COA. ON AUGUST 08, 2019. MR. EVERETT FILED A MOTION FOR RECONSIDERATION PURSUANT TO THE 11TH CIR. CT. R OF CT. 21-2 OF THE DENIAL OF COA, WHEREIN, WAS DENIED ON 10/09/2019. THE PETITIONER HAS 90 DAYS FROM THE DENIAL TO FILE A WRIT OF HABEAS CORPUS WITH THIS COURT.

① WHETHER COUNSEL WAS INEFFECTIVE WHEN FAILING TO PRESENT TO THE COURT DURING SUPPRESSION HEARING THAT THE PETITIONER REVOKED MIRANDA WARNING WAIVER WHEN INVOKING HIS FIFTH AMENDMENT RIGHT TO REMAIN SILENT?

COUNSEL DID NOT RENDER EFFECTIVE ASSISTANCE OF COUNSEL, FALLING UNDER PREVAILING PROFESSIONAL NORMS WHEN FAILING TO INVESTIGATE A LEGAL ARGUMENT IN SUPPORT OF PETITIONER'S MOTION TO SUPPRESS STATEMENT.

MR. PHILLIPS WEAKLY ARGUED THAT THE DETECTIVES OFFERED A "QUID PRO QUO" SCENARIO DURING MR. EVERETT'S INTERROGATION ON SEVERAL DIFFERENT OCCASIONS.

SIGNIFICANTLY, IF DEFENSE COUNSEL WOULD HAVE IN ADDITION TO THE "QUID PRO QUO" LEGAL ANALYSIS,^② PRESENTED TO THE COURT THE FACT THAT MR. EVERETT REVOKED THE PRIOR MIRANDA WARNINGS WAIVER WHEN INVOKING HIS FIFTH AMENDMENT RIGHT TO REMAIN SILENT DURING THE INTERROGATION, PRIOR TO INCRIMINATING STATEMENTS, REASONABLE JURIST COULD CONCLUDE THAT BUT FOR COUNSEL'S DEFICIENT PERFORMANCE THE OUTCOME OF THE HEARING AND/OR TRIAL WOULD HAVE BEEN DIFFERENT.

IN THE ORDER PRESENTED BY THE UNITED STATES DISTRICT COURT, THE JUDGE DELINEATED THAT THE "RESPONDENTS PROVIDED THE COURT WITH TRANSCRIPTS FROM THE PRE-TRIAL SUPPRESSION HEARING AND THE TRIAL, WHICH BOTH INCLUDED RELEVANT PORTIONS OF THE TRANSCRIBED

^② MIRANDA V. ARIZONA, 384 U.S. 426 (1966).

INTERROGATION. SEE RESP. EX. B AT 144-235, EX. M,

APPENDIX D AT 56-104. ACCORDINGLY, THE COURT HAD THE RELEVANT RECORDS TO PROPERLY ANALYZE PETITIONERS CLAIMS. (DOC 58 FILED 03/04/19 PAGE 1 OF 4 PAGEID 2301). (SEE APP.-I (GROUND TWO).

IN ORDER DENYING PETITIONERS AMENDED JOINT THE JUDGE STATES: "REGARDING EVERETT'S CLAIMS HE ATTEMPTED TO INVOKE HIS RIGHT TO REMAIN SILENT WHEN HE

STATED "TURN OFF THE RECORDER," THE TRANSCRIBED RECORDING OF THE INTERROGATION AT THE SUPPRESSION HEARING AND AT TRIAL DOES NOT INCLUDE ANY REFERENCE TO THE CONVERSATION EVERETT ALLEGES OCCURRED ON

PAGE FIFTEEN OF HIS AMENDED PETITION. RESP. EX. B AT 144-235, M, APP. D AT 56-104. NOR DOES EVERETT PROVIDE ANY PAGE NUMBERS OR CITATIONS TO WHERE THIS ALLEGED CONVERSATION CAN BE LOCATED. THE PETITIONER RELIED ON THE U.S. DISTRICT COURT

TO BE NOW REVIEW HIS RECORD BEFORE MAKING A REASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE RECORD BEFORE THE COURT. IF THE COURT WOULD HAVE VIEWED THE RECORD THEY WOULD HAVE DISCOVERED THAT ON PAGE(S)

31 THE PETITIONER ON THE TOP OF PAGE 20 CITED THE CORRECT PAGE NUMBER, (204 VOL. I, PG. 54) OF HIS AMENDED PETITION.

29 AND 44 OF THE TRANSCRIPT OF MR. EVERETT'S INTERROGATION OR THE PAGINATED T.O.A. PAGES 39 AND 54. WHEREIN, THE PETITIONER INVOKED HIS FIFTH AMENDMENT RIGHT TO REMAIN SILENT, WHERE ON PAGE 29, PAGINATED PAGE 39, LINE(S) 13-16; HE DECLARED, MICHAEL EVERETT: "TURN THAT THING OFF, MAN."
OFFICER SMITH: "IT'S NOT ON."
MICHAEL EVERETT: "YEAH, IT IS. I SEE THE LIGHT."
OFFICER SMITH: "THEY'RE NOT RECORDING." (~~AP-E~~).

THEN ON PAGE 44, PAGINATED PAGE 54, LINE(S) 4-13;
OFFICER SMITH: "DON'T TOUCH THAT, MAN."
MICHAEL EVERETT: "TURN IT OFF."
OFFICER SMITH: "IT'S NOT MINE TO TOUCH. WHY DO YOU WANT IT OFF, DUDE?"
MICHAEL EVERETT: "I MEAN, WHY IS IT ON, IS WHAT I DON'T UNDERSTAND."
OFFICER SMITH: "I DON'T KNOW. I DON'T KNOW, MAN. THIS ISN'T MY CUP OF TEA."
MICHAEL EVERETT: "SHIT. (UNINTELLIGIBLE)--
BULLSHIT. (~~AP-F~~).

- ON PAGE 103, LINES 21-23 DETECTIVE WILLIAMS:
WHAT'S NUTS IS THAT YOU'RE JUST HANGING YOURSELF
SO BAD. BECAUSE ALL OF YOUR STATEMENTS ARE BEING
RECORDED.
- MICHAEL EVERETT: IT IS?

CLEARLY MR. EVERETT ~~RENDERED~~ THE MIRANDA WARNING
WAIVER WHEN INVOKING HIS 5TH AMEND. RIGHT TO REMAIN
SILENT DURING INTERROGATION. THIS ERROR ALONE WARRANTS
HIS STATEMENT INADMISSIBLE, THE COMBINATION
OF THE OFFICER'S CONSTANT PROMISES OF LENIENCY,
LATENESS OF THE HOUR, THE PETITIONER'S LEVEL OF
INTOXICATION AND INVOKING HIS FIFTH AMENDMENT
RIGHT TO REMAIN SILENT ONLY COMPOUNDS
THE SITUATION, BASED UPON THE TOTALITY OF
THE CIRCUMSTANCES, THE CONFESSION IS
INVOLUNTARY AND DUE PROCESS REQUIREMENTS
RENDER THE STATEMENT INADMISSIBLE.

SUBSEQUENT STATEMENTS ARE INADMISSIBLE
IF THE OFFICERS CONTINUE QUESTIONING THE
SUSPECT. MOGLEY, 423 U.S. AT 104, 96 S. Ct. 321,
SEE, U.S. v. ABDALLAH, 911 F.3d. 201 (4TH CIR. 2018).

THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT. WHERE IN, IF COUNSEL MADE A DECISION TO REQUEST THAT THE COURT EXCLUDE PORTIONS OF PETITIONER'S INTERVIEW, THAT DECISION PREJUDICED MR. EVERETT, BECAUSE THE RECORD ON APPEAL IS DEVOID OF RELEVANT PORTIONS OF THE INTERVIEW THAT WOULD HAVE ESTABLISHED THAT THE PETITIONER DID IN FACT INVOKE HIS FIFTH AMENDMENT RIGHT TO REMAIN SILENT DURING INTERROGATION PRIOR TO INCRIMINATING STATEMENTS.

② WHETHER COUNSEL WAS INEFFECTIVE WHEN FAILING TO CALL MR. AND MRS. GRAVENSTEIN AS VIABLE DEFENSE WITNESSES IN SUPPORT OF MOTION IN LIMINE AND IN OPPOSITION TO PRE-MEDITATED MURDER?

COUNSEL DID NOT RENDER EFFECTIVE ASSISTANCE OF COUNSEL, FALLING UNDER PREVAILING PROFESSIONAL NORMS WHEN FAILING TO CALL VIABLE DEFENSE WITNESSES MR. AND MRS. GRAVENSTEIN IN SUPPORT OF PETITIONER'S MOTION IN LIMINE AND AT TRIAL AS A DEFENSE AGAINST PRE-MEDITATED MURDER.

MR. PHILLIPS ARGUED THAT ALTHOUGH THE STATE PROVIDED A TIMELINE OF THE LAST ENCOUNTER BETWEEN MRS. BROWN AND MR. EVERETT, THE BURDEN WAS ON THE STATE TO PROVIDE EVIDENCE OF THE BEGINNING OF THE TIMELINE TO PROVE THAT THE VICTIM DID NOT HAVE TIME BETWEEN THE FIRST AND SECOND ENCOUNTER TO CONTRIVE AND MISREPRESENT WHAT SHE WOULD TELL HER FRIENDS WHEN SHE CALLED.

THE STATE DID NOT MEET THE BURDEN, BUT, IF MR. PHILLIPS WOULD HAVE PRESENTED TO THE COURT THE CONTENTS OF THE GRAVENSTEIN'S TESTIMONY, IT WOULD HAVE COMPLEMENTED COUNSEL'S ARGUMENT. BY ESTABLISHING THE BEGINNING OF THE TIMELINE AT 6:00 P.M. (APJ), SHEDDING LIGHT ON THE POSSIBILITY OF THE VICTIM HAVING FOUR HOURS OF REFLECTIVE THOUGHT BEFORE CALLING HER FRIENDS.

THIS TESTIMONY SHOULD HAVE BEEN BROUGHT FORTH TO AID IN IMPEACHING HARMFUL HEARSAY STATEMENTS OF THREATS TO KILL WHEN PREPARING A DEFENSE AGAINST PRE-MEDITATED MURDER.

- (MRS. GRAVENSTEIN'S DEPOSITION - VOL. V, PG. 5, LNS 9-12) (APP. J)

AS I WAS ENTERING MY APARTMENT THAT AFTERNOON,
I SAW A GENTLEMAN LEAVING THE WOMAN'S APARTMENT.
AND HE SAID "THAT HER BITCH" AND THEN MUMBLED
SOMETHING AND SAID "WHEN I COME BACK".

(VOL. V, PG 6, LNS 19-23)

Q. OKAY. AND DO YOU RECALL ABOUT WHAT TIME
THIS WAS?

A. OH, GOSH PROBABLY MID TO LATE AFTERNOON.

Q. SO IT WAS STILL DAYLIGHT OUT?

A. YES, YES IT WAS.

- (VOL. V, PG(S) 6-7, PG. 6, LN(S) 24-25, PG. 7, LN(S) 1-12).

MS. GRAVENSTEIN STATING SHE TALKED TO DETECTIVES
ONCE, THAT THE OBSERVATION OCCURED AT APPROXIMATELY
SIX O'CLOCK IN THE EVENING.

- (VOL. V, PG(S) 7, LN(S) 21-25).

Q. WHERE WAS THE INDIVIDUAL LOCATED WHEN
HE MADE THE STATEMENT? . . .

A. YES - HE WAS WALKING DOWN THE STAIRCASE FROM
HER APARTMENT.

- (VOL. V, PG(S) 8, LN(S) 1-6).

Q. AND WAS THIS THE STAIRCASE THAT GOES TO
THE PARKING LOT OR GOES TO THE COURTYARD?

A. THAT GOES TO THE PARKING LOT, THAT LEADS
DIRECTLY IN HER FRONT DOOR.

- (VOL. III, PG(S) 19, LN(S) 17-20 - JOCELYN MOORE).

. . . AND SHE SAID MICHAEL HAD BEEN THERE AND
HE HAD COME TO HER BACK DOOR.

SHE ALWAYS KEPT IT OPEN FOR THE SEA BREEZE (EASTSIDE), AND HE HAD JUST COME TO THE BACK DOOR AND STARTED YELLING AT HER AND TOLD HER TO MOVE.

• (VOL. III, pg. 20, LN(S) 3-16) .

Q. AND THIS DOOR YOU'RE DESCRIBING, IS THAT THE DOOR THAT ENTERS THE COURTYARD AREA OF THIS APARTMENT?

A. NO. THE DOOR LINDSAY... HAD WHAT COULD BE DESCRIBED AS HER FRONT DOOR, WHICH WAS THE ONE THAT LED INTO THE LIVING ROOM OF HER APARTMENT, AND THEN SHE HAD A BACK, WHAT I REFERRED TO AS THE BACK DOOR THAT GOES TO THE DIRT PARKING LOT ALONGSIDE THE APARTMENT, THE ONE THAT FACES EAST. (DIRECTLY TOWARDS THE GRAVENSTEIN'S PARKING LOT- SEE MAP OF LOTS- APP.-G).

Q. SO THAT IS THE ONE SHE LEAVES OPEN FOR THE SEA BREEZE.

A. YES, YES IT WAS WELL LIT BACK THERE BECAUSE THERE'S AN APARTMENT BUILDING, SO SHE NEVER MINDED HAVING THAT OPEN. THE SCREEN DOOR WAS CLOSED, BUT THE BACK DOOR WAS USUALLY OPEN FOR BREEZE.

• (VOL. III, pg. 20, LN(S) 21-25)

... SHE TOLD ME THAT HE LEFT, THAT HE WALKED OUT OF THE DOOR OR AWAY FROM THE DOOR. I DON'T EVEN KNOW IF HE CAME IN THE APARTMENT. BUT SHE WAS UPSET AND SHE HEARD A NOISE FROM THE PARKING LOT AND SHE LOOKED OUT AND I GUESS HE HAD THROWN HIS BIKE AT HER CAR.

• (VOL. III, pg. 21, LN(S) 1-4).

Q. HIS BIKE, OKAY.

A. I BELIEVE SO. SHE SAID HE HAD THROWN THE BIKE AT HER CAR.

• (VOL. VI, PG(S) 4, LN(S) 19-25 - MR. GRAVENSTEIN) (APP.-J)

Q. DO YOU RECALL WHAT YOUR ADDRESS WAS AT THE TIME?

A. OH, BOY. MAN, I SHOULD BE ABLE TO.

Q. WELL, I TELL YOU WHAT, IF YOU DON'T REMEMBER THE EXACT NUMBER, CAN YOU DESCRIBE THE PLACE AND LIKE IN RELATION TO LINDSAY BROWN'S APARTMENT?

A. YEAH. SURE. IT WAS A CONDO, A GREEN (PG. 5, LN(S) 1-25) BUILDING. WE LIVED IN THE FAR -- I BELIEVE OUR APARTMENT WAS -- I BELIEVE IT WAS 412, BUT THAT COULD BE VERY WRONG. AND IT WAS ACROSS THE STREET FROM THE PLACE OF THE INCIDENT.

Q. WHAT YOU OBSERVED. WHAT DO YOU REMEMBER OBSERVING THAT DAY?

A. WELL, THAT DAY I DO REMEMBER THE -- BOYFRIEND GOING IN. I DO REMEMBER SEEING THE BOYFRIEND EARLIER THAT DAY GO IN THE HOUSE. I DO REMEMBER SEEING THEM ARGUE.

Q. DO YOU REMEMBER WHERE WERE THEY LOCATED WHEN YOU SAW THIS ARGUMENT YOU'RE DESCRIBING? (VOL. VI, PG. 6, LN(S) 1-3).

A. THE GIRLFRIEND WAS AT THE TOP OF THE STAIRS, AND THE BOYFRIEND WAS AT THE BOTTOM OF THE STAIRS.

Q. OKAY. AND WAS THIS --

A. AND HE WAS LEAVING AT THAT TIME.

Q. HE WAS LEAVING. OKAY. AND I GUESS THIS WAS LIKE DAYTIME, LIKE WHAT THE MIDDLE OF THE AFTERNOON?

A. YES, YEAH, IT WAS -- I THINK IT WAS -- YEAH, IT WAS IN THE MIDDLE OF THE AFTERNOON I BELIEVE.

Q. OKAY. WELL, WHAT DO YOU RECALL OBSERVING LATER ON THAT DAY?

A. WELL, AS FAR AS ANYTHING ELSE THAT DAY, I DO NOT -- I DO REMEMBER -- I KNOW MY WIFE SAW THEM ARGUE AS WELL. AND I BELIEVE SHE SAID SHE -- I'M SURE YOU HAVE ALREADY TALKED TO HER. SHE SAID HE SAID THAT HE SAID SOMETHING LIKE I CAN'T WAIT -- YOU WAIT TILL I GET BACK, SORT OF THING.

• (PG. 11, LNS 15-25) (STEPHEN NELSON - A.S.A. - CROSS-EXAMINATION)

Q. DID YOU EVER SEE THE INDIVIDUAL THAT YOU'RE DESCRIBING DRIVE A CAR?

A. I BELIEVE SO. AND I -- THERE AGAIN, I DON'T REMEMBER IF IT WAS -- IF IT WAS THE GIRLFRIEND'S CAR THAT I REMEMBER SEEING OR HIS, I DO -- I REMEMBER TWO CARS. AND I BELIEVE ONE WAS A RED CAR AND ONE WAS A GREEN CAR. I COULD -- I REMEMBER WHERE HE PARKED. I CAN REMEMBER THE LOCATION WHERE HE PARKED EVERYDAY. BUT AS FAR AS, YOU KNOW, TELL -- EXACTLY TO DIFFERENTIATE BETWEEN THE GIRLFRIEND'S CAR AND THE BOYFRIENDS CAR, I COULD NOT TELL EXACTLY WHICH ONE WAS WHICH AT THE TIME.

• (VOL. VI, PG. 12, LNS 1-2)

Q. NOW, YOU INDICATED YOU REMEMBER WHERE HE

PARKED EVERYDAY. ARE YOU MEANING THAT HE PARKED AT THE LOCATION YOU SAW THIS INCIDENT AT EVERYDAY?

A. YEAH, I BELIEVE -- I BELIEVE SO. I BELIEVE I REMEMBER SEEING HIS CAR IN A CERTAIN SPOT, BUT THEN I ALSO THINK ABOUT IT, I ALSO REMEMBER HIM HE ALSO DROVE A BIKE AS WELL.

• (Pg. 14, LNS 23-25, Pg. 15, LN 1).

Q. OKAY. WHAT COLOR CAR WAS IT -- AND I CAN'T REMEMBER IF I ASKED YOU THIS. WHAT COLOR CAR DID THE WOMAN DRIVE?

A. IT WAS EITHER A RED CAR OR A GREEN CAR.

• (Pg. 16, LNS 19-25)

Q. AND AT THE TIME YOU MADE THESE OBSERVATIONS WERE YOU INSIDE OR OUTSIDE YOUR RESIDENCE?

A. I WAS INSIDE MY CAR.

Q. INSIDE YOUR CAR. SITTING IN THE PARKING LOT OF YOUR CONDO AREA?

A. THAT'S CORRECT, WHICH FACES DIRECTLY OVER TO THEIR, TO -- TO WHERE THE LADY LIVED?

• (Pg. 17, LNS 1-25)

Q. DID YOU SEE HIM WALK UP THE STEPS?

A. NO, I DID NOT. I WAS COMING OUT AND

COMING DOWN THE STEPS BY THE TIME THAT HE WAS COMING DOWN.

Q. WAS YOUR FIRST OBSERVATION OF HIM WHEN HE WAS DOWN THE STAIRCASE APPROXIMATELY ONE QUARTER OF THE WAY?

A. YES. YES, HE WAS WHEN -- AS I WAS WALKING DOWN, I LOOKED OVER AND SAW THAT HE WAS COMING DOWN, I CONTINUED TO LOOK DOWN, YOU KNOW, MY STEPS SO I DIDN'T FALL AND WHEN I GOT -- WHEN I -- AS I WALKED TO MY CAR, I OBVIOUSLY -- MY BODY WAS FACING HER APARTMENT CAUSE THAT'S WHERE MY CAR WAS AT. AND I COULD NOTICE AT THE TIME HE WAS AT THE BOTTOM OF THE STEPS AND THEY WERE IN SOME SORT OF ARGUMENT.

Q. DID YOU LEAVE BEFORE HE DID?

A. YES, I DID.

Q. OKAY. SO DID YOU -- WHERE WAS YOUR LAST MEMORY OF WHERE YOU SAW HIM?

A. MY LAST CONSTANT MEMORY WOULD BE WHERE HE WAS AT THE BOTTOM OF THE STEPS, TALKING OR ARGUING OR JUST BEING RUDE TO THE LADY WHILE I WAS DRIVING -- WHILE I WAS IN MY CAR.

Q. AND DO YOU RECALL WHERE YOU WERE GOING?

A. I BELIEVE I WAS GOING TO CHURCH TO GET SOME THINGS DONE.

Q. OKAY. AND IF I'M CORRECT THIS WAS DAYLIGHT HOURS, (pg. 18, LNS 1-5) IN THE AFTERNOON, BUT YOU'RE NOT SURE EXACTLY WHEN?

A. YES, THAT'S CORRECT. IT WAS DAYLIGHT HOURS IT WAS AFTERNOON. I DO KNOW THAT.

Q. YOU'RE SURE IT'S AFTER LUNCH TIME?

A. YEAH, I'M PRETTY SURE IT WAS AFTER LUNCH TIME. AND I KNOW THAT I CHANGED FROM ONE WORD TO THE OTHER WORD, BUT I'M PRETTY SURE IT WAS AFTER LUNCH TIME.

• (VOL. VI, LNS 9-20) (REDIRECT EXAMINATION)
(MATTHEW PHILLIPS)

Q. DID YOU ACTUALLY SEE THE MAN DRIVING A CAR TO THAT APARTMENT?

A. NO. BUT I REMEMBER SEEING A CAR THAT WAS THERE DURING SOME POINTS AND THEN SEEING A CAR THAT WAS THERE NOT DURING SOME POINTS. AND IT WAS USUALLY WHENEVER HE WAS THERE THAT THAT CAR WAS THERE. SO AS FAR AS KIND OF COMING TO THE CONCLUSION THAT THAT WAS HIS CAR IS ONE OF THE THINGS --

I NEVER -- I CAN'T REMEMBER -- RIGHT NOW I CANNOT REMEMBER SPECIFICALLY HIM GETTING IN THE CAR, BUT COMING TO THE CONCLUSION THAT AS FAR AS HIM BEING THERE AND THAT CAR WAS THERE AND/OR A BICYCLE WAS THERE.

• (VOL. I - INTERVIEW OF MICHAEL EVERETT)

(pg. 21, LNS 10-24) INVESTIGATOR MCGUIRE:

Q. WHICH DOOR DID YOU GO IN?

A. I WENT IN THE SIDE DOOR, OVER ON THE SIDE.

Q. THE ONE -- THE ONE THAT'S -- OKAY. THERE'S THE --

A. THE EAST DOOR, I GUESS, YOU WOULD CALL IT.

Q. YOU WENT -- YOU WENT IN THE EAST DOOR?

A. YEAM.

Q. DID YOU GO --

A. AND IT WAS OPEN.

Q. DID YOU COME -- DID YOU GO OUT THE EAST DOOR?

A. YES. I THINK SO.

• (pg(s). 21-25 / DISTINGUISHES THE NORTH AND EAST DOOR TO MS. BROWN'S APARTMENT)

• (pg. 62, LNS 16-21) ... I WENT TO LINDSAY'S EARLY BEFORE THE FIRST FOOTBALL GAME WAS ON, BECAUSE I WENT BACK TO POOR WALT'S (THIS IS WHEN

EVERETT FIRST APPEARS ON THE DIGITAL VIDEO FROM POOR WALT'S LOUNGE AT 6:00-6:30 P.M.)

- (pg. 63, LNS 1-11) ... IT WAS EARLY. I WENT OVER THERE. IT WAS EARLIER. HER DOOR WAS OPEN. THE SIDE DOOR WAS OPEN AND I KNOCKED ON THE DOOR.
- (SPECIAL AGENT SMITH - VOL. I, PG. 108, LNS 6-15)

Q. YOU CAME -- MICHAEL, THE WITNESSES SAW YOU LEAVE.

A. WHO? WHAT WITNESSES?

Q. THEY SAW YOU COME BACK. I'M NOT GOING TO TELL YOU WHO THE WITNESSES ARE, BUT THERE ARE WITNESSES THAT SAW YOU COME AND GO. AND THEY SAW YOU LEAVE THE SECOND TIME, GOING OUT THE -- THE SIDE DOOR TO THE PARKING LOT.

A. THAT'S WHEN I LEFT THE FIRST TIME.

- (EVIDENTIARY HEARING - A.S.A. FOX - PG. 104, LN 16)

THE FIRST THING IS, AS MR. PHILLIPS HIMSELF SAID, THE INCIDENT THAT IS THE SUBJECT OF THE PHONE CALL HAD TO DO WITH THE BICYCLE BEING THROWN. ⁽⁴⁾ THERE WAS NO REFERENCE TO ANY BICYCLE BEING THROWN. WHAT THE GRAVENSTEINS SAW WAS SOMETHING THAT HAPPENED AT THE FRONT DOOR RATHER THAN AT THE BACK DOOR, WHICH IS WHERE THE TESTIMONY RELATED WHAT HAPPENED COMING UP THE BACK DOOR. (MAP OF MR. AND MRS. GRAVENSTEINS LOT CORRELATING WITH MS. BROWN'S LOT ~~AP-6~~).

- (SEE ALSO; MS. GRAVENSTEINS DEPOSITION VOL. V. PG. 5, LNS 9-12; PG. 53, LNS 8-16, SUPRA. AND JOCELYN MOORE'S TESTIMONY - VOL. III, PG(S) 19, LNS 17-20; PG 20, LNS 3-16; 21-25. IN ADDITION, MR. GRAVENSTEIN'S DEPOSITION, VOL. VI, PG 4, LNS 19-25; PG. 6, LNS 1-3. DESCRIBING WHERE MR. EVERETT WAS STANDING AND WHAT DOOR HE USED DURING ARGUMENT)).
- (EVIDENTIARY HEARING - PG. 112, LNS 13-25; PG. 173, LNS 1-13)
- PAULA COFFMAN:

I THINK IF THE STATE COULD HAVE SHOWN THAT MR. EVERETT HAD BEEN TO THIS DECEDENT'S HOUSE TWO OTHER TIMES ON THE DAY SHE DIED, THEY WOULD HAVE USED THIS EVIDENCE THEMSELVES.

11 MR. GRAVENSTEIN LEFT WHILE MR. EVERETT & MS. BROWN WERE STILL ARGUING AT THE BOTTOM OF THE EAST SIDE DOOR STAIRCASE LEADING TO THE DIRT PARKING LOT, BEFORE THE BICYCLE WAS THROWN. (VOL. VI, PGS 4, LNS 19-25).

THE TESTIMONY OF ASHLEY BRAVENSTEIN WAS THAT WHEN SHE OBSERVED MR. EVERETT LEAVING MS. BROWN'S HOUSE, HE WAS MUMBLING ABOUT "THE BITCH AND WHEN I GET BACK," HER HUSBAND, WHO WAS A YOUTH MINISTER, SAID HE OBSERVED THE TWO OF THEM ARGUING AND HE COULD TELL THAT THEY WERE BECAUSE VOICES WERE RAISED, THEY WERE YELLING AND THEY WERE GESTICULATING. IF THE STATE THOUGHT THAT THOSE EVENTS WERE IN ADDITION TO THE TWO OTHER INSTANCES OF CONTACT THAT THEY PRESENTED FOR THE JURY'S CONSIDERATION AT TRIAL, I CAN'T IMAGINE ANY REASON WHY THEY WOULDN'T HAVE PRESENTED THAT. THE ISSUE AS TO THIS CLAIM OF ERROR, THIS CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, IS COULD THE STATE HAVE ESTABLISHED AN EXCEPTION TO THE RULE AGAINST HEARSAY TO ADMIT THESE TWO STATEMENTS WHICH WENT DIRECTLY TO WHETHER THIS WAS FIRST-DEGREE MURDER OR AN ACCIDENT? COULD THE STATE HAVE DONE THAT IF THE TESTIMONY OF THESE TWO WITNESSES HAD BEEN PRESENTED? AND I DON'T THINK IT MAKES ANY DIFFERENCE WHAT MR. EVERETT TOLD HIS ATTORNEY WITH RESPECT TO THIS COURT'S CORRECT RESOLUTION OF THIS ISSUE. THANK YOU.

► ((VOL. XI, R.O.A. pg. 166, LNS 4-11))

► (ARGUMENTS LEADING UP TO JUDGE MATHIS RULING ON HEARSAY STATEMENTS ADMISSIBILITY)

• (MR. PHILLIPS) WELL, YOUR HONOR, WITH ALL RESPECT, I HAVE TO DISAGREE WITH THAT. THERE'S BEEN NO PROOF ABOUT WHEN MR. EVERETT WAS THERE EARLIER IN THE DAY. THERE SIMPLY JUST HASN'T BEEN ANY PROOF. THERE'S NO WITNESSES THAT CAN GIVE A TIME OF WHEN HE WAS AT HER RESIDENCE OR LEAVING HER RESIDENCE. THIS VIDEO DOESN'T PROVE THAT. I HAVE TO DISAGREE WITH THAT.

COUNSEL WAS NOT EFFECTIVE WHEN DECIDING NOT TO CALL THE GRAVENSTEIN'S IN SUPPORT OF HIS MOTION IN LIMINE ARGUMENT, WHEREIN, BOTH OF THE GRAVENSTEIN'S IN THEIR DEPOSITIONS TESTIFIED TO; (1) WHEN MR. EVERETT WAS THERE EARLIER IN THE DAY; (2) THEY GAVE A SPECIFIC TIME OF WHEN MR. EVERETT WAS AT MS. BROWN'S RESIDENCE ON THE FIRST ENCOUNTER; AND WHEN HE LEFT HER RESIDENCE. (VOL. V, pg. 5, LNS 9-12, pg. 53, LNS 8-16, VOL. VI, pg. 4, LNS 19-25, pg. 6, LNS 1-3).

- A FEDERAL COURT MAY GRANT HABEAS RELIEF IF A STATE COURT IDENTIFIES CORRECT GOVERNING LEGAL PRINCIPLES FROM THE SUPREME COURT'S DECISIONS, BUT UNREASONABLY APPLIES THOSE PRINCIPLES TO THE PETITIONER'S CASE. E.g. WIGGINS VS. SMITH, 539 U.S. 510, 520 (2003). THE STATE COURT'S APPLICATION MUST BE OBJECTIVELY UNREASONABLE, NOT MERELY INCORRECT. Id.

ALTHOUGH, THE COURT OF APPEALS CORRECTLY IDENTIFIED STRICKLAND AS THE GOVERNING LAW, ITS APPLICATION THEREOF WAS OBJECTIVELY UNREASONABLE BECAUSE IT CONCLUDED THAT COUNSEL DID NOT RENDER DEFICIENT PERFORMANCE BY FAILING TO CALL DEFENSE WITNESSES THE GRAENSTEINS. (APP. I GROUNDS SEVEN & SEVENTEEN).

ALTHOUGH, § 2254 (a)(1) REQUIRES DEFERENCE TO THE STATE COURT'S CONCLUSIONS OF LAW, IT DOES NOT REQUIRE A FEDERAL COURT "TO DEFER TO THE OPINION OF EVERY REASONABLE STATE JUDGE ON THE CONTENT OF FEDERAL LAW." WILKERSON VS.

TAYLOR, 529 U.S. 362, 389 (2000). "IF AFTER CAREFULLY WEIGHING ALL OF THE REASONS FOR ACCEPTING A STATE COURT'S JUDGMENT, A FEDERAL COURT IS CONVINCED THAT A PRISONER'S CUSTODY... VIOLATES THE CONSTITUTION, THAT INDEPENDENT JUDGMENT SHOULD PREVAIL." Id. CLEARLY ESTABLISHED FEDERAL LAW IMPOSES ON COUNSEL A DUTY TO MAKE REASONABLE INVESTIGATIONS, OR TO MAKE A REASONABLE DECISION THAT MAKES A PARTICULAR INVESTIGATION UNNECESSARY. STRICKLAND v. WASHINGTON, 466 U.S. 668, 691 (1984). ANY PARTICULAR DECISION NOT TO INVESTIGATE MUST BE ASSESSED FOR REASONABLENESS, WITH REFERENCE TO WHETHER THE EVIDENCE WOULD HAVE LED A REASONABLE ATTORNEY TO INVESTIGATE FURTHER. WIGGINS, 539 U.S. at 527. COUNSEL FAILED TO INVESTIGATE SUFFICIENTLY THE CONTENTS OF THEIR TESTIMONY AS A VIABLE DEFENSE TO IMPEACH HARMFUL HEARSAY STATEMENTS OF THREATS TO KILL WHEN PREPARING A DEFENSE FOR FIRST-DEGREE MURDER. (APP. - I; GROUND ONE).

③

• STIPULATION TO PHONE RECORDS INVESTIGATION

THE RECORD IS DEVOID OF ALL PHONE RECORDS TESTIFIED TO DURING ALL CRIMINAL PROCEEDINGS. DEFENSE ATTORNEY MATTHEW PHILLIPS STIPULATED TO ALL PHONE RECORDS TESTIMONY THROUGHOUT MR. EVERETT'S DUE PROCESS PROCEEDINGS. THE STATE NEVER ONCE SUBMITS ANY PHYSICAL EVIDENCE FOR AUTHENTICATION PURPOSES OF ANY PHONE CALLS TESTIFIED TO DURING INTERROGATION, PRE-TRIAL MOTION IN LIMINE, PRE-TRIAL MOTION TO SUPPRESS, DURING TRIAL, AND AT EVIDENTIARY HEARING(S). THE STATE HUNG THEIR HAT ON THIS TESTIMONY AND WAS KEY TESTIMONY TO THE STATES CASE-IN-CHIEF. THESE PHONE CALLS BY THE VICTIM TO JOCELYN MOORE AND LEIF MALVORSEN WERE ADMITTED AS ADMISSIBLE HEARSAY STATEMENTS. THE STATE ATTEMPTED TO ESTABLISH A TIMELINE BY CORRELATING SECTIONS OF DIGITAL VIDEO FROM POOR WALT'S LOUNGE SHOWING TIMES OF MR. EVERETT ARRIVING AND LEAVING WITH ALLEGED PHONE CALLS FROM VICTIM TO JOCELYN MOORE AND LIEF MALVORSEN. THE PETITIONER

WAS SEVERLY PREJUDICED BY THE TESTIMONY OF THESE PHONE CALLS AND IN SUPPORT DECLARES THE FOLLOWING:

- (a) THE STATEMENTS OF PURPORTED PHONE CALLS PROVIDED TO LOCAL FLAGLER BEACH POLICE DEPARTMENT AND DETECTIVES WAS THE CRUX OF INFORMATION TO ASSIST IN NAMING MR. EVERETT AS A PRIME SUSPECT PROVIDING PROBABLE CAUSE TO ARREST MR. EVERETT;
- (b) THE STATEMENTS OF PURPORTED PHONE CALLS WERE USED DURING INTERROGATION BY DETECTIVES TO COERCE MR. EVERETT INTO INCRIMINATING HIMSELF IN THE UNFORTUNATE DEATH OF MS. BROWN.
- INTERVIEW OF MICHAEL EVERETT (VOL. I, PGS 005-153).
(pg. 8, LNS 9-21)... FUNNY THING IS SHE WAS ON THE PHONE WITH SOME FRIENDS... THEN SHE CALLED THEM BACK... SHE WAS ON THE PHONE WITH THEM DIFFERENT TIMES TONIGHT...
(pg. 11, LNS 16-21)... SHE'S ON THE PHONE WITH HER FRIENDS... AND THIS JOCELYN AND RICHARD GUY, SHE'S ON THE PHONE WITH THEM...

(pg. 12, LNS 1-8) MICHAEL EVERETT: I TALKED TO HER,
BUT IT -- IT WASN'T LIKE THAT. I MEAN, WE
NEVER ARGUED.

• INVESTIGATOR MCGUIRE: SO YOU WERE THERE TONIGHT?
WE KNOW YOU WERE THERE. YOU MIGHT AS WELL AT
LEAST TELL ME ABOUT --

• MICHAEL EVERETT: YEAH. BUT IT WASN'T LIKE THAT,
THOUGH I MEAN --
(pg. 14, LNS 5-6) ... WHY DID SHE CALL HER FRIENDS ...
(pg. 20, LN 25) ... DID YOU SEE HER ON THE PHONE
WITH ANYBODY ...

(pg. 25, LNS 13-14) ... AND SHE'S ON THE PHONE ...

(pg. 26, LNS 8-9) ... THEY HEAR HER ON THE PHONE ...

(LN 23) ... SHE'S ON THE PHONE TELLING HER FRIENDS ...

(pg. 37) (LNS 13-14) ... AFTER PEOPLE ARE ON THE PHONE
WITH HER ...

(pg. 48, LN 12) ... SHE SAYS SHE'S ON THE PHONE AT
9:40 TONIGHT --

(pg. 91, LNS 23-25) YOU KNOW, THEY'VE GOT WITNESSES
THAT SPOKE TO HER AND SAID YOU WERE THERE
AND HAD JUST COME BACK. AND YOU GOT 40

MINUTES BETWEEN THE TIME OF THAT PHONE CALL
(pg. 92, LN 1) AND THE TIME THE POLICE WERE CALLED.

(pg. 93, LNS 8-14) EVERETT: I WAS THERE -- WHEN THE
GAME --

• DETECTIVE WILLIAMS: AT 9:40, WE'VE GOT IT DOCUMENTED
OF WHEN THAT PHONE CALL CAME IN AT 9:40. SHE
SAID, HE'S BACK. MICHAELS BACK. AND THAT
YOU HAD ALREADY BEEN THERE AND YOU ALL HAD
ALREADY FUSSED. AND SO THAT WAS AT 9:40.

(pg. 96, LNS 9-10) SPECIAL AGENT SMITH: SHE'S ON
THE CELL PHONE WHEN YOU CAME IN.

(pg. 98, LNS 20-22) DETECTIVE WILLIAMS: BUT WE
ALSO HAVE HER ON THE PHONE WITH SOMEONE
SAYING, HE'S BACK, AT 9:40.

(pg. 106, LNS 2-3) SPECIAL AGENT SMITH: CELL PHONE
RECORDS. SHE WAS ON THE PHONE.

(pg. 106, LN 25) SPECIAL AGENT SMITH: SHE WAS ON
THE PHONE WHEN (pg. 107, LN 14) YOU CAME BACK
AT 9:40. THAT'S HOW WE KNOW, SHE WAS ON
THE PHONE. WE HAVE THE CELL RECORDS.
THE PERSON THAT WAS ON THE OTHER LINE --
IT'S ALL THERE. (LNS 19-28) IT'S ALL THERE.

• SPECIAL AGENT SMITH: I HEARD THE WHOLE THING. THE PHONE WAS SITTING JUST LIKE THIS ON THE FLOOR. SHE'S ON THE PHONE. IT FELL FROM HER HAND AND LANDED RIGHT THERE. HE'S HERE. MICHAEL.

• MICHAEL EVERETT: WHAT?

(pg. 110, LNS 21-23) SPECIAL AGENT SMITH: ... BECAUSE SHE CALLED PEOPLE AFTER THE FIRST TIME AND SHE WAS ON THE PHONE THE SECOND TIME.

• MICHAEL EVERETT: RIGHT.

• SPECIAL AGENT SMITH: YOU BUSTED IN THE DOOR. THE (pg. 111, LNS 1-2) PHONE LANDED LIKE THIS.

• MICHAEL EVERETT: RIGHT.

(pg. 121, LNS 15-17) SPECIAL AGENT SMITH: SHE HAD BEEN TALKING TO HER BUDDY ON THE PHONE AT LENGTH ABOUT WHAT'S BEEN GOING ON TONIGHT.

• (c) THE TESTIMONY OF PURPORTED PHONE CALLS DURING MOTION IN LIMINE HEARING ASSISTED THE STATE WHEN ARGUING THE TIMELINE OF PHONE CALLS IN CORRELATION WITH TIMES OF DEFENDANT ARRIVING AND LEAVING POOR WALT'S LOUNGE TO AID WITH THE LACK OF

TIME FOR MS. BROWN TO HAVE REFLECTIVE THOUGHT FROM THE TIME OF THE ARGUMENT WITH PETITIONER AND THE PHONE CALLS MADE TO HER FRIENDS, ASSISTING THE JUDGE WHEN DETERMINING THAT THE STATEMENTS WERE ADMISSIBLE HEARSAY UNDER THE EXCEPTIONS TO THE HEARSAY RULE F.S. 903.803 (1) AND (2). MATTHEW PHILLIPS; DEFENSE COUNSEL, FAILED TO COMPEL PHONE RECORDS OUTSET OF DISCOVERY. (VOL. CHAPTER 6 DISCOVERY § 6.01) (RULE 3.220 DISCOVERY PROCEDURES). (MASSEY V. WARREN, 2018 U.S. DIST. LEXIS 213476, DISTINGUISHABLE TO EVERETT)

• (VOL. VIII - MOTION IN LIMINE)

(pg. 4, LNS 23-24) ... THEY RECEIVED PHONE CALLS FROM THE ULTIMATE VICTIM OF THE HOMICIDE, LINDSAY BROWN ... (LN 25) THE TESTIMONY WE HEARD WAS THAT SHE TOLD THESE WITNESSES THAT MR. ~~EVERETT~~ HAD BEEN TO HER RESIDENCE EARLIER IN THE EVENING AND MADE WHAT SHE DESCRIBED TO BE THREATENING STATEMENTS TO HER.

(pg. 5, 14-16) ... THERE'S NO TESTIMONY TO SHOW THAT MS. BROWN DIDN'T ENGAGE IN REFLECTIVE

THOUGHT BEFORE MAKING THOSE PHONE CALLS TO HER FRIENDS...

• LIGF HALVORSEN: (pg. 20, LNS 22-25)

Q. IN THE EVENING HOURS SOMEWHERE RIGHT AROUND 9:50, DID YOU HAVE A TELEPHONE CONVERSATION WITH HER?

A. YES I DID.

(pg. 21, LNS 6-9) Q. WHAT APPROXIMATE TIME OF THE DAY DID YOU HAVE A CONVERSATION ON THE TELEPHONE WITH HER IN THE EVENING?

A. IT WAS IN THE EVENING AROUND 9:30, 9:40, 50, SOMETHING. JUST BEFORE 10.

(LNS 14-24) Q. WHAT WAS THE SUBSTANCE OF THE CONVERSATION OF THE CALL?

A. LINDSAY CALLED AND SHE TOLD ME THAT SHE WAS HAVING TROUBLE WITH SOMEBODY, AND THAT IT WAS A DRUNKEN GUY, AND THAT HE HAD THROWN HIS BICYCLE OR A BICYCLE AGAINST HER CAR. SHE WAS UPSET ABOUT THAT AND SHE WAS CRYING. AND SHE WAS WONDERING WHETHER OR NOT SHE SHOULD CALL THE POLICE. AND WE DISCUSSED

IT AND IT WAS DECIDED THAT SHE WOULD DO THAT. AND AT THE END OF THE CALL, THAT'S WHAT SHE SAID SHE WAS GOING TO DO. AND SHE SAID THAT HE'D COME BACK AND THAT SHE WAS GOING TO CALL THE POLICE.

(pg. 24, LNS 2-4) Q. NOW I THINK YOU JUST DESCRIBED YOU'RE AWAKENED FROM SLEEP WITH A PHONE CALL. IS THIS ON YOUR CELL PHONE?

A. YES.

(pg. 28, LNS 6-14) OKAY - AND DID SHE EVER INDICATE TO YOU HOW MUCH -- LIKE THE TIMEFRAME WHEN HE HAD BEEN THERE COMPARED TO WHEN SHE'S CALLING YOU?

A. NO. ONLY THAT HE HAD BEEN THERE AND THAT HE HAD COME BACK.

Q. BUT SHE NEVER INDICATED TO YOU HOW MUCH -- WHEN HE HAD BEEN THERE COMPARED TO THE PHONE CALL YOU'RE RECEIVING. IS THAT CORRECT?

A. NO, SHE DIDN'T SAY.

• (Pg. 31, LN 25) JOCELYN MOORE:

Q. WHAT HAPPENED IN THE PHONE CALL? WHAT DID SHE SAY?

(Pg. 32, LNS 1-4) A. SHE -- IT WAS A CELL PHONE CALL BECAUSE WE DON'T HAVE A LANDLINE. I SAW THAT IT WAS HER NUMBER, SO I KNEW IT WAS ...

(Pg. 36, LNS 10-12) Q. WAS THAT CALL FROM LINDSAY BROWN TO YOU AT APPROXIMATELY 9:38 p.m. IN THE EVENING?

A. YES

• (Pg. 51, LNS 9-13) MATTHEW PHILLIPS:

IT'S JUST NOT CLEAR THAT THERE WASN'T TIME FOR MS. BROWN TO ENGAGE IN REFLECTED THOUGHT BETWEEN THE TIME OF HER CONVERSATION WITH MR. EVERETT AND THE PHONE CALL TO JOCELYN MOORE. I THINK THAT'S THE CRUX OF THE MATTER, YOUR HONOR.

• (Pg. 53, LNS 12-15) A.S.A. STEVE NELSON:

AND FROM THE EVIDENCE BEFORE THE COURT

AT THIS TIME, THIS ENTIRE TRANSACTION WITH REGARD TO THE STATEMENTS WE'VE HEARD, ARE FROM RIGHT AROUND 9:38 P.M. IN THE EVENING TO 9:50 WHEN THE CALL WAS MADE TO MR. HALVORSEN...

▶ (d) THE TESTIMONY OF PURPORTED PHONE CALLS WERE USED DURING MOTION TO SUPPRESS STATEMENTS HEARING ASSISTING THE STATE WITH THE DENIAL OF MOTION TO SUPPRESS STATEMENT.

• (VOL. VII - TRANSCRIPT -- MOTION TO SUPPRESS)

(pg. 24, LNS 1-4) ... THAT SHE HAD BEEN TALKING TO HIM WHILE SHE WAS TALKING TO SOMEONE ON THE PHONE, AND THAT PERSON HAD INDICATED HE'S HERE AND HE'S GOING TO COME BACK AND HURT ME, ...

• (pg. 57-114) INTERVIEW OF MICHAEL EVERETT (FIRST 14 MINUTES - 1 CD); (47TH MINUTE - 2 CD), AND (THE 1 HOUR 9 MINUTE - 2 CD),

▶ (e) THE TESTIMONY OF PURPORTED PHONE CALLS WERE USED BY THE STATE AND NEVER CHALLENGED BY DEFENSE ATTORNEY MATTHEW PHILLIPS THROUGHOUT THE TRIAL PROCEEDINGS.

THE FAILURE OF THE STATE TO PRODUCE PHONE RECORDS SHOULD HAVE ALERTED DEFENSE COUNSEL OF A POSSIBLE DEFENSE TO PREMEDITATED MURDER AND ARMED BURGLARY. DUE TO THE ZEAL TO PROSECUTE TO THE FULLEST EXTENT OF THE LAW BY THE STATE, IT IS FEASIBLE TO THINK THAT IF HE POSSESSED ANY PHYSICAL EVIDENCE OF PHONE RECORDS, MR. NELSEN WOULD HAVE PRESENTED THEM TO THE JURY AS EVIDENCE OF PREMEDITATION.

THE PHONE RECORDS COULD HAVE BEEN A VIABLE DEFENSE TO REFUTE IMPEACHABLE TESTIMONY FROM JOCELYN MOORE AND LEIF HALVORSEN. THIS EVIDENCE WOULD HAVE ESTABLISHED THE EXACT TIMINGS OF SAID PHONE CALLS, COUPLED WITH THE GRAVENSTEIN'S TESTIMONY OF AN EARLIER ENCOUNTER WITH MR. EVERETT AND MRS. BROWN, WHERE IN, SHOWING TIME FOR REFLECTIVE THOUGHT BEFORE CALLING HER FRIENDS. PROVING MRS. BROWN HAD FOUR HOURS TO CONTRIVE AND MISREPRESENT - WHAT SHE WOULD TELL HER FRIENDS. MAKING WAY FOR THE POSSIBILITY THAT THE JUDGE WOULD HAVE DEEMED MS. MOORE AND MR. HALVERSEN'S STATEMENTS INADMISSIBLE HEARSAY TESTIMONY, THIS EVIDENCE WOULD HAVE CHANGED THE OUTCOME OF THE TRIAL.

THE PETITIONER HAS PROVEN CONFLICT WITH THIS COURT BY WAY OF THE ARGUMENTS AND AUTHORITIES IN THE ABOVE STYLED CAUSE. MR. EVERETT WAS DENIED DUE PROCESS AND EFFECTIVE ASSISTANCE OF COUNSEL AT A CRITICAL STAGE OF THE CRIMINAL PROCEEDINGS. COUNSEL ACTIONS OR THE LACK THERE OF MET THE TWO PRONGS OF STRICKLAND, COUPLED WITH THE COURT'S RULING, SUPRA, ARE IN CONFLICT WITH RELEVANT DECISIONS OF THIS COURT.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE ELEVENTH CIRCUIT COURT OF APPEALS, DENYING PETITIONER RELIEF ON HIS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM(S). THIS COURT CANNOT ASCERTAIN THE GROUNDS FOR THAT UNELABORATED JUDGMENT, THERE IS NO INDICATION THAT IT RESTED ON A STATE LAW GROUND THAT IS BOTH "INDEPENDANT OF MERITS" OF EVERETT'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM AND AN "ADEQUATE BASIS" FOR THAT DECISION, SO AS TO PRECLUDE JURISDICTION.

HARRIS V. REED, 489 U.S. 255, 260, 109 S. Ct. 1038, 103 L. Ed. 2d 308.

CONCLUSION

WHEREFORE, BASED ON THE FOREGOING FACTS,
ARGUMENT, AND CITED AUTHORITIES, THE PETITIONER
PRAYS THAT THIS COURT WILL GRANT THIS EXTRAORDINARY
WRIT OF HABEAS CORPUS.

DATE: 11/19/2021

RESPECTFULLY SUBMITTED,

Michael R. Everett

MICHAEL R. EVERETT - KSM63
TOMOKA CORRECTIONAL INST.
3950 TIGER BAY ROAD
DAYTONA BEACH, FL 32124