

23-7274

SPACE FOR DOCKET NUMBER

THE SUPREME COURT OF THE
UNITED STATES

IN RE, JOSEPH T. SWIFT,
(PETITIONER)

VS.

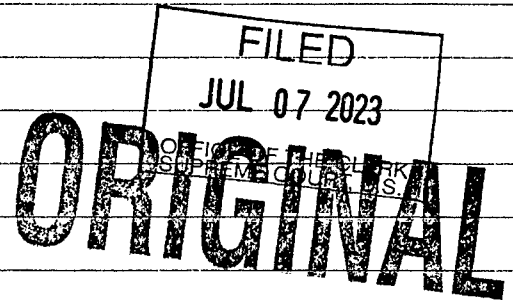
THE FLORIDA DEPARTMENT OF
CORRECTION

ON PETITION FOR A WRIT OF
HABEAS CORPUS IN THE SUPREME
COURT OF THE UNITED STATES

PETITION FOR A WRIT OF HABEAS CORPUS

JOSEPH T. SWIFT, PRO-SE

OKEECHOBEE CORRECTIONAL INSTITUTION
3420 N.E. 168TH ST. OKEECHOBEE,
FLORIDA, 34972



QUESTIONS PRESENTED

1.

FOR REVIEW

1. DO THE STATEMENTS MADE BY TAMEE JONES CONSTITUTE PERJURY IN ACCORDANCE WITH FS. CHAP. 837 AND SHOULD THAT TESTIMONY BE USED TO SUSTAIN MY CONVICTION ?
2. SHOULD THE 11TH JUDICIAL CIRCUIT COURT HAVE RULED POSITIVELY ON MY SECOND PRO-SE ARREST AFFIDAVIT ?
3. IS THE 11TH JUDICIAL CIRCUIT COURT'S DENIAL OF MY MOTION FOR DISCOVERY A VIOLATION OF THE U.S. CONSTITUTION'S 14TH AMENDMENT AND EITHER MY RIGHT TO SUBSTANTIVE OR PROCEDURAL DUE PROCESS ?
4. IS THE 3RD D.C.A.S. DENIAL OF MY APPEAL OF MY MOTION FOR SEVERANCE A VIOLATION OF THE FLORIDA RULES OF APPELLATE PROCEDURE AND THEREBY A VIOLATION THE RIGHT TO DUE PROCESS OF LAW, I.E., THE 14TH AMENDMENT ?
5. IS THE 3RD D.C.A.S. STRICKING OF MY PETITION FOR HABEAS CORPUS, (CASE No. 3021 - 1393) CONTRARY TO THE PRESENT SET BY THE FLORIDA SUPREME COURT ?
6. WAS THE 11TH JUDICIAL CIRCUIT COURT CORRECT IN DENYING MY 3,850 POST-CONVICTION MOTION ON THE GROUNDS THAT FS. 924.051 TERMS AND CONDITIONS OF APPEAL & COLLATERAL REVIEW, BARRED REVIEW OF 12 OUT OF 14 CLAIMS OF ERROR ?

A LIST OF ALL PARTIES TO THE ... 2.
PROCEEDINGS IN ACCORDANCE
WITH RULE 14

1. JOSEPH T. SWIFT, PRO-SE, AT THE OKEECHOBEE
CORRECTIONAL INSTITUTION, 3420 N.E. 168TH ST.
OKEECHOBEE, FL 34972.
2. FLORIDA DEPARTMENT OF CORRECTIONS 501 SOUTH
CALHOUN, ST. TALLAHASSEE, FL 32399.

A LIST OF ALL PROCEEDINGS IN STATE
AND FEDERAL TRIAL AND APPELLATE
COURT. SEE RULE 14.

1. IN THE 11TH JUDICIAL CIRCUIT COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA. # 13005321

CONVICTION JUDGEMENT: JANUARY 22, 2020

APPENDIX [No. 1]

2. IN THE 11TH JUDICIAL CIRCUIT COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA. # 13005321

SENTENCE JUDGEMENT: JULY 20TH, 2020

APPENDIX [No. 2]

3. IN THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA. # 13005321

MOTION FOR SEVERANCE JUD.: MARCH 12, 2020

APPENDIX [No. 3]

4. IN THE 3RD DISTRICT COURT OF APPEALS

ORDER STRICKING APPEAL OF MOTION FOR SEVERANCE
AS PRE-MATURE No. 3D20-0276 ✓

JUDGEMENT: MARCH 12, 2020 APPENDIX [No. 4]

5. IN THE THIRD DISTRICT COURT OF APPEALS

CONFIRMATION OF CONVICTION No. 3D20-1160

JUDGEMENT: APRIL 6, 2022 APPENDIX No. 5

6. IN THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA [No. 13005321]

ORDER DENYING MOTION FOR DISCOVERY

No. 8

JUDGEMENT:

APPENDIX

7. IN THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI
DADE COUNTY, FLORIDA [No. 13005321]

ORDER DENYING MISTRIAL

JUDGEMENT:

APPENDIX [No. 10]

8. IN THE 11TH JUDICIAL CIRCUIT COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA [No. 13005321]

ORDER DENYING ACQUITTAL

JUDGEMENT: JULY 20TH, 2020

APPENDIX [No. 12]

9. IN THE 11TH JUDICIAL CIRCUIT COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA [No. 13005321]

ORDER DENYING 1ST ARREST AFFIDAVIT

JUDGEMENT: NOVEMBER 17, 2021

APPENDIX [No. 14]

10. IN THE 11TH JUDICIAL CIRCUIT COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA [No. 13005321]

PROCEEDINGS, IF ANY, DENYING 2ND ARREST AFFIDAVIT

JUDGEMENT: APRIL 27, 2022

APPENDIX [No. 16]

11. IN THE 11TH JUDICIAL CIRCUIT COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA [No. 13005321]

ORDER DENYING REHEARING OF SECOND ARREST
AFFIDAVIT

JUDGEMENT:

APPENDIX No. 18

12. IN THE 3RD DISTRICT COURT OF APPEALS
No. 3D22-0943

JUDGEMENT: SEPTEMBER 14, 2020

APPENDIX 20

13. THE FLORIDA SUPREME COURT No. S22-1360

DENYING JURISDICTION OF 2ND ARREST AFFIDAVIT

JUDGEMENT: 3D22-0943

APPENDIX No. 21

14. IN THE 3RD DISTRICT COURT OF APPEAL

ORDER DENYING HABEAS CORPUS CASE: 3D21-1393

JUDGEMENT: JULY 06, 2021

APPENDIX No. 23

15. THE FLORIDA SUPREME COURT No. SC21-1155

DENYING JURISDICTION ON HABEAS CORPUS

JUDGEMENT: SEPTEMBER 27, 2021

APPENDIX No. 24

16. IN THE 11TH JUDICIAL CIRCUIT COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA No. 13005321

ORDER DENYING POST-CONVICTION MOTION

JUDGEMENT: NOVEMBER 1, 2022 APPENDIX [26]

17. IN THE 3RD DISTRICT COURT OF APPEAL

PER CURIAM AFFIRMANCE, POST-CONVICTION

JUDGEMENT:

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1. THE OPINION OF THE HIGHEST STATE COURT TO REVIEW
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2. THE OPINION OF THE HIGHEST STATE COURT TO REVIEW
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3. THE OPINION OF THE HIGHEST STATE COURT TO REVIEW
THE MERITS APPEARS AT APPENDIX TO THE PETITION
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4. THE OPINION OF THE HIGHEST STATE COURT TO REVIEW
THE MERITS APPEARS AT APPENDIX TO THE PETITION
AND IS UNPUBLISHED, HABEAS CORPUS. CASE No.

5. THE OPINION OF THE HIGHEST STATE COURT TO REVIEW
THE MERITS APPEARS AT APPENDIX TO THE PETITION
AND IS UNPUBLISHED, HABEAS CORPUS. CASE No.

6. THE OPINION OF THE HIGHEST STATE COURT TO REVIEW
THE MERITS APPEARS AT APPENDIX TO THE PETITION
AND IS SWIFT VS. STATE, 338 So. 3d 389, (3RD D.C.A.
2022)

A CONCISE STATEMENT OF THE
BASIS OF JURISDICTION

14

STATE CASES

THE DATE ON WHICH THE HIGHEST STATE COURT
DEEMED MY CASE WAS APRIL 6, 2022.

A COPY OF THE DECISION APPEARS AT APPENDIX

NO TIMELY PETITION WAS FILED IN MY CASE.

NO PETITION FOR EXTENTION OF TIME WAS FILED.

THIS COURT HAS STATUTORY JURISDICTION IN
ACCORDANCE WITH THE STATUTES LISTED BELOW:

28 U.S.C.S. 1615. WRIT

28 U.S.C.S. 2104. REVIEW OF STATE COURTS
DECISIONS

28 U.S.C.S. 2241. POWER TO GRANT WRIT.

28 U.S.C.S. 2254. STATE CUSTODY, REMEDIES
IN FEDERAL COURTS

28 U.S.C.S. 1915. PROCEEDINGS IN FORMA
PAUPERIS.

AID OF APPELLATE JURISDICTION

THIS COURT HABEAS CORPUS REVIEW WILL AID ITS

APPELLATE JURISDICTION IN ACCORDANCE WITH 28 U.S.C.S.
2241 & 28 U.S.C.S. 1651. THIS COURT HAS PROPER
JURISDICTION AND MAY REVIEW AND CORRECT THE
ERRORS OF THE LOWER TRIBUNALS CONSISTANT WITH
28 U.S.C.S

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1. THE 14TH AMENDMENT TO THE U.S. CONSTITUTION
2. 28 U.S.C.S. 2254 STATE CUSTODY, REMEDIES, IN
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3. 28 U.S.C.S. 2241 POWER TO GRANT WRIT
4. 28 U.S.C.S. 2254. STATE CUSTODY; REMEDIES
IN FEDERAL COURTS
5. 28 U.S.C.S. 1915. PROCEEDINGS IN FORMA
PAUPERIS

SEE RULE 14

1. BETWEEN JANUARY 14TH - 22ND OF 2020, I JOSEPH T. SWIFT, CHOSE TO REPRESENT MYSELF DURING TRIAL, FOR AMONGST OTHER CHARGES, FIRST DEGREE MURDER. SEE (ORDER OF CONVICTION. EXHIBIT 1 & 2)
2. BECAUSE THE OFFENSES I WAS CHARGED WITH STEM FROM TWO SEPARATE STRINGS OF EVENTS WHICH ARE SEPARATED TEMPORALLY, GEOGRAPHICALLY AND INVOLVE DIFFERENT VICTIMS, ONE OF MY FIRST PRE-TRIAL MOTIONS WAS A MOTION FOR SEVERANCE OF CHARGED OFFENSES. SEE (MOTION, EXHIBIT 3)
3. AFTER THE MOTION WAS DENIED AND AFTER TRIAL ENDED, I FILED AN APPEAL IN THE THIRD DISTRICT COURT OF APPEALS WHICH WAS STRICKEN AS PREMATURE. SEE (ORDER DENYING MOTION, EXH. NO. 4 & 5)
4. I FILED ANOTHER PRE-TRIAL MOTION FOR DISCOVERY IN ORDER TO HAVE ACCESS TO ALL RELEVANT EVIDENCE "BEFORE TRIAL". THIS WAS DENIED. (INITIALLY, I RAISED THE ISSUE DURING A PRE-TRIAL HEARING, THE TRIALS COURT ASSURED ME I WOULD SEE THE EVIDENCE, BUT FAILED TO FULFILL THAT PROMISE, "BEFORE TRIAL".) SEE (MOTION FOR DISCOVERY & ORDER DENYING EXH. NOS. 7 AND 8 & TRANS. JAN. 10TH 2020 EXHIBIT No. 28)
5. BECAUSE I COULD NOT INSPECT THE EVIDENCE "BEFORE" HEADING TO TRIAL, I DECIDED TO MOVE FOR A MISTRIAL, SAID MOTION WAS DENIED. (MOTION FOR MISTRIAL AND ORDER DENYING THE MOTION. EXH. 9 & 10)

6. AFTER MOVING FOR A MISTRIAL THE COURT ATTEMPTED TO LOCATE SOME OF THE MISSING EVIDENCE, (I.E. FOOTAGE FROM TWO SECURITY CAMERAS LOCATED ON THE HOUSES SITUATED ON THE SAME STREET THE HOMICIDES TOOK PLACE ON) WHEN THE FOOTAGE WAS LOCATED THE COURT ALLOWED IT TO BE PLAYED DURING TRIAL BUT WOULD NOT PERMIT ME TO COMMENT ON THE FOOTAGE IN THE PRESENCE OF THE JURY. SEE (TRANS. FROM JANUARY 21ST EXH. NO. 30)

7. - I WAS ABLE TO FILE A MOTION FOR ACQUITTAL IN OPEN COURT ON THE GROUNDS OF TAMEE'S "CONTRADICTION" STATEMENTS. (STATE WITNESS TAMEE JONES) I WOULD LATER FILE A WRITTEN MOTION FOR ACQUITTAL ON THE SAME GROUNDS. THE MOTION WAS DENIED. SEE (MOTION EXH. NO. 11)

8. I PLANNED ON REPRESENTING MYSELF DURING DIRECT APPEAL BUT COULD NOT BECAUSE DUE TO CLASSIFICATION CHANGES AFTER SENTENCING MY PROPERTY WAS CONFISCATED AND I WAS TRANSFERRED TO ANOTHER FACILITY. SEE (HABEAS CORPUS PETITION, EXH. NO. 29)

9. MY PUBLIC DEFENDER, SUSAN LEHNER, CHOSE NOT TO RAISE ANY OF THE FUNDAMENTAL ERRORS COMMITTED BOTH DURING AND BEFORE TRIAL, ON DIRECT APPEAL. (I.E. DISCOVERY VIOLATION, PERJURY, SEVERANCE ETC. ETC.) I THEN FILED A PETITION FOR HABEAS CORPUS DUE TO CONFLICT WITH AND INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. SEE (PETITION FOR HABEAS CORPUS EXH. NO. 22) THAT PETITION WAS STRICKEN AS UNAUTHORIZED SIMPLY BECAUSE IT WAS FILED BY A PRO-SE PETITIONER. SEE (EXH. NO. 23 ORDER)

10. THE PETITION FOR A WRIT OF HABEAS CORPUS CASE NO. 3021 - 1393, WAS FILED TO REPORT BOTH INEFFECTIVE ASSISTANCE OF AND CONFLICT WITH APPELLATE COUNSEL. SEE (PETITION FOR HABEAS CORPUS, EXH. NO. 22)

11. I FILED THE PETITION FOR HABEAS CORPUS CONTEMPORANEOUSLY WITH MY APPELLATE COUNSELS DIRECT APPEAL BRIEF. I BELIEVE THAT I WAS JUSTIFIED BECAUSE OF THE FLA. SUPREME COURTS DECISION IN LOGAN VS. STATE, WHICH EXPLAINS THAT A PRO-SE LITIGANT DOES NOT ORDINARILY HAVE THE RIGHT TO PETITION THE COURT PRO-SE, WHILE BEING REPRESENTED BY AN ATTORNEY, BUT, MAY DO SO IF THE PRO-SE PETITIONER IS REPORTING EITHER CONFLICT WITH OR INEFFECTIVE ASSISTANCE OF COUNSEL. I BELIEVE THAT MY PETITION FULFILLED ALL THE REQUIREMENTS OF LOGAN VS. STATE, WHICH SHOULD CONSTITUTE THE ESTABLISHED LAW OF THE LAND. SEE (PETITION FOR HABEAS CORPUS EXH. NO. 22)

12. THE PETITION WAS FINALLY DENIED ON OR ABOUT SEPTEMBER 27TH, 2021. SEE (FINAL DENIAL, EXH. NO. 24), AFTER I ATTEMPTED TO USE A PETITION FOR MANDAMUS TO COMPEL THE FLORIDA SUPREME COURT TO ORDER THE LOWER FLORIDA TO RULE ON THE PETITION.

13. ORIGINALLY, THE FLA. SUPREME COURTS ORDER STATED THAT THE 3RD D.C.A.S. ORDER DID NOT ELABORATE, BUT MERELY CITED CASE LAW AND THEREFORE COULD NOT BE REVIEWED. SEE (3RD D.C.A. ORDER EXH. NO.)

14. I CHOSE TO FILE TWO PRO-SE ARREST AFFIDAVITS FOR STATES WITNESS TAMEE JONES, ON THE GROUNDS OF PERJURY. I STARTED FILING THESE AFFIDAVITS BECAUSE I MOST OBVIOUS ERROR THAT MY APPELLATE ATTORNEY CHOSE TO ABANDON. SEE (ARREST AFFIDAVIT # 1 EXH. No. 13 & ARREST AFFIDAVIT # 2 EXH. No. 15)

15. THE FIRST AFFIDAVIT SHOWED HOW TAMEES STATEMENTS CONTRADICTED THE TESTIMONY OF OFFICER CARMENETY, (THE FIRST PERSON SHE SPOKE TO ON THE NIGHT SHE WAS ATTACKED.) THE TRIALS JUDGE DENIED THE AFFIDAVIT BECAUSE HE SAID THAT IT ONLY SHOWED HOW TAMEES TESTIMONY ONLY CONTRADICTED THAT OF OTHER WITNESSES, EVEN THOUGH IT WAS BY WITNESS TESTIMONY I.E. OFFICER CARMENETY, THAT I WAS ATTEMPTING TO SHOW THAT TAMEE CONTRADICTED HERSELF.

I DID NOT ATTEMPT TO APPEAL THE DENIAL OF THIS AFFIDAVIT. SEE (AFFIDAVIT & ORDER EXH. NOS 13, 14)

16. NOW THE SECOND AFFIDAVIT WHICH INCLUDED DEPOSITIONS, AS DID THE FIRST, SHOWED HOW TAMEES STATEMENTS MADE DURING TRIAL, WERE CONTRARY TO OTHER STATEMENTS SHE MADE DURING TRIAL. (EXH. No. 15)

I DID APPEAL THE DENIAL TO THE 3RD D.C.A. BECAUSE THE TRIAL JUDGE CONTENDED THAT HE LACKED THE "POWER" TO DO AS THE AFFIDAVIT REQUESTED. SEE (ORDER DENYING AFFIDAVIT EXH. No. 16) THE MOTION FOR REHEARING AND APPELLATE BRIEF CONTENDED THAT THE TRIALS JUDGE IS MORE THAN VESTED WITH "POWER" TO GRANT SUCH A REQUEST. SEE REHEARING & APPELLATE BRIEF EXH. NOS. 17 & 19

17. THE DENIAL (OR AFFIRMANCE) IN THE 3RD D.C.A. WAS ADDRESSED IN THE FLA. SUPREME COURT. THE STATE SUPREME COURT DID NOT EXCEPT JURISDICTION, EVEN AFTER I FILED A PETITION FOR MANDAMUS TO COMPEL THE 3RD D.C.A. TO FILE AN OPINION. SEE (EXHIBIT NO. 21)

18. THE POST-CONVICTION MOTION WAS FILED ON NOVEMBER 1, 2022, AND DENIED ON FEBRUARY 17, 2023, WAS USED TO ADDRESS THE ISSUE OF THE ILLEGAL SEARCH WARRANT BECAUSE DUE TO THE DISCOVERY VIOLATION EXPLAINED IN THE STATEMENT OF THE CASE, IN THIS VERY DOCUMENT, I HAD NOT SEEN THE SEARCH WARRANT USED TO OBTAIN EVIDENCE FROM MY MOTHERS APARTMENT, OR ITS AFFIDAVIT, BEFORE OR DURING TRIAL. I GAINED ACCESS TO THE SEARCH WARRANT WHEN MY APPELLATE COUNSEL SHARED SOME OF THE RECORD WITH ME DURING DIRECT APPEAL. THE ATTORNEY THEN NEGLECTED THE ISSUE IN HER BELIEF. SEE (PETITION FOR HABEAS CORPUS EXH. NO. 22 ALSO SEARCH WARRANT AND AFFIDAVIT EXH. NOS. 31 & 32)

19. IN THE ORDER DENYING MY POST-CONVICTION MOTION FILED ON NOVEMBER 1, 2022, THE CIRCUIT COURT JUDGE SAYS THAT HE DID NOT HAVE TO REVIEW 12 OUT OF 14 OF THE ISSUES RAISED BECAUSE F.S. 924.051 SAYS THAT HE IS NOT REQUIRED TO. HE DID NOT REVIEW 12 OF THE RAISED DESPITE THE FACT THAT THE MOTION WARNS THAT A MANIFEST INJUSTICE HAS OCCURRED. SEE (POST-CONVICTION 3,850 MOTION, EXH. NO.

I FOUND IT NECESSARY TO PETITION THIS COURT FOR A WRIT OF HABEAS CORPUS BECAUSE DESPITE MY BEST EFFORTS THE FLORIDA DEPARTMENT OF CORRECTIONS WOULD NOT ANSWER MY REQUEST FOR A 6 MONTH PRINTOUT OF MY FINANCIAL HISTORY, AS IS REQUIRED BY FEDERAL DISTRICT COURTS.

THE U.S. SUPREME COURT ONLY REQUIRES PROOF OF PRIOR INDIGENCE, OR INSOLVENCE, WHICH SHOULD ACCOMPANY THIS PETITION.

STATEMENT INVOKING 28 U.S.C.S. 2254 (F)

I AM ASKING THIS, THE U.S. SUPREME COURT, TO DIRECT THE APPROPRIATE FLORIDA COURT, TO SEND THIS COURT CERTIFIED COPIES OF THE RECORDS REQUIRED FOR REVIEW.

CONCISE ARGUMENT

23.

SEE RULE 14

DISCOVERY VIOLATION

THE DISCOVERY VIOLATION EXPLAINED IN STATEMENTS

4 AND 5, ON PAGE 17, OF THIS DOCUMENT, CONSISTS OF

THE TRIAL JUDGE NOT INSURING THAT I HAD ACCESS TO

THE REQUESTED EVIDENCE, 'BEFORE TRIAL', AS THE FLORIDA

RULES OF CRIMINAL PROCEDURE RULE 3.220 REQUIRES.

QUOTING RULE 3.220, IN PART, -

" WITHIN 15 DAYS AFTER SERVICE OF THE NOTICE OF
DISCOVERY, THE PROSECUTOR SHALL SERVE A WRITTEN DISCOVERY
EXHIBIT WHICH SHALL DISCLOSE TO THE DEFENDANT AND
PERMIT THE DEFENDANT TO INSPECT, COPY, TEST, AND
PHOTOGRAPH THE FOLLOWING INFORMATION AND MATERIAL
WITHIN THE STATES POSSESSION OR CONTROL."

— FLA. R. CRIM. P. RULE 3.220

THIS WOULD MEAN THAT I HAD TO PROCEED TO

TRIAL, AS A PRO-SE DEFENDANT, WITHOUT HAVING ACCESS

TO MANY IMPORTANT PIECES OF EVIDENCE 'BEFORE TRIAL',

WHICH WOULD HAVE GIVEN ME AN OPPORTUNITY TO

BETTER PREPARE AND PLAN OUT MY DEFENSE, THE

REQUESTED EVIDENCE CONSISTS MANY OF FOOTAGE FROM

TWO HOMES LOCATED ON THE SAME STREET THAT THE

CHARGED OFFENSES OCCURRED, ALL OF THE PICTURES SHOWN

TO THE JURY DURING TRIAL INCLUDING THE AUTOPSIES OF THE

VICTIMS AND FROM THE CRIME SCENE ITSELF, AND OTHER

MISCELLANEOUS PORTIONS OF THE RECORD SUCH AS THE

SEARCH WARRANT AND AFFIDAVIT. SEE (MOTION FOR DISCOVERY

EXH. NO. 7) I BELIEVE THAT THIS ERROR DID HARM TO

MY RIGHT TO A FAIR TRIAL. PLEASE SEE (WILKINSON, 545

U.S. 2334 [2003] AND MATTHEWS VS. ELDREDGE 424 U.S.

319, S. CT. 893 [1976])

MY ARGUMENT IS TWO-FOLD (1ST) THE TRIALS

JUDGES CONTRAVENTION OF THE FLA. N. CRIM. P. RULE

3.220 CONSTITUTES A CONVENTION OF THE 14TH AMENDMENTS

DUE PROCESS OF LAW CLAUSE, AND (2ND), THE JUDGES

EMBODIED LED TO A VIOLATION OF MY RIGHT TO A FAIR

TRIAL. SEE (MATTHEWS VS. ELDREDGE 424 U.S. 319, S.C.T.

993 [1976] GIVING AN EXPLANATION OF THE DENIAL OF

DUE PROCESS AND FAIRNESS) ALSO SEE (KENNEDY, 34

LIED. 519, 136 U.S. 436 [1880]; DUNCAN VS. MISSOURI, 39

LIED. 485, 152 U.S. 377 [1894]; BUNKLEY VS. FLORIDA, 123

S.C.T. 2020 AND BUSH VS. GORE 531, U.S. 98, 121 S.C.T.

835 [ALL CONCERNING DUE PROCESS OF LAW]) AND ALSO

(WILKINSON, 545 U.S. 2384 [2003] CONCERNING DUE PROCESS

AND FAIRNESS)

ONE EXAMPLE OF A DENIAL (OR HARM) TO MY RIGHT

TO FAIRNESS AND DUE PROCESS IS EXPLAIN IN STATEMENT

NO. 5 PAGE 17 -, OF THIS DOCUMENT. THE TRIALS JUDGE

ALLOWED FOOTAGE TO BE PLAYED IN COURT BUT WOULD

NOT ALLOW ME TO POINT OUT HOW THE FOOTAGE CONSISTS

OF EXCULPATORY EVIDENCE. THE DESCRIPTION OF THE

ATTACKED (ON SUSPECT) AS SEEN ON THE FOOTAGE IS

DIFFERENT FROM THE DESCRIPTION GIVEN BY THE STATES

WITNESS, TAMER JONES. MY INTENTION WAS TO HIGHLIGHT

THE DIFFERENCE IN APPEARANCE. I THEREFORE THE

FOOTAGE CONSISTS OF EXCULPATORY EVIDENCE. SEE (BRADY

VS. MARYLAND, 93 S.Ct. 1194, 10 L.Ed. 2D 215, 373

U.S. 93 [1963]).

ARGUMENTS IN ACCORDANCE
WITH RULE

27.

SEVERANCE OF CHARGES

IN KEEPING WITH THE REQUIREMENTS OF DUE PROCESS

AS EXPRESSED BY THE FOURTEENTH AMEND. TO THE U.S.

CONSTITUTION, THE THIRD DISTRICT COURT OF APPEALS SHOULD

HAVE ENTERTAINED MY DIRECT APPELLATE BRIEF FILED IN

RESPONSE TO THE DENIAL OF MY MOTION FOR SEVERANCE

BECAUSE IT WAS FILED AFTER THE ORDER OF CONVICTION

WAS ISSUED AND THEREFORE, WAS NOT PRE-MATURE. SEE

THE FLORIDA RULES OF APPELLATE PROCEDURE RULE, IN

PART, —

"EXCEPT AS PROVIDED IN 9.020 (4), IF A NOTICE ON
APPEAL IS FILED BEFORE rendition of a final order, THE
APPEAL SHALL BE SUBJECT TO DISMISSAL AS PREMATURE."

— FLA. R. APP. P. RULE 9.110 SEC (1)

ALSO SEE, RULE 9.140 (b), (1), (d);

(1) APPEAL PERMITTED. A DEFENDANT MAY APPEAL (d)

"ORDER ENTERED AFTER FINAL JUDGEMENT OR FINDING OF

"GUILT"

IN SHORT, THE STATES DECISION NOT TO FOLLOW THE
RULES OF PROCEDURE SHOULD CONSTITUTE A VIOLATION OF
THE 14TH AMENDMENTS DUE PROCESS OF LAW CLAUSE.

SEE (KEMMLER, 34 L.ED 519, 136 U.S. 436 [1890], DUNCAN
VS. MISSOURI, 38 L.ED 485, 152 U.S. 377 [1894], BUNKEY
VS. FLORIDA, 123 S.CT. 2020 [2003] AND BUSH VS. GOME,
531, U.S. 98, 121 S.CT 525 [CONCERNING DUE PROCESS OF
LAW]) AND THE BASIC REQUIREMENTS OF PROCEDURAL DUE
PROCESS EXPLAINED BY THIS COURT IN WILKINSON, 123 S.CT.
2384 (2003) AND MATTHEWS, 96 S.CT. 893.

EITHER PROCEDURAL OR SUBSTANTIVE THIS VIOLATION
OF MY RIGHT TO FUNDAMENTAL DUE PROCESS SHOULD
WARRANT A REVERSAL OF CONVICTION.

PETITION FOR HABEAS CORPUS

THE U.S. SUPREME COURT'S DECISION IN *FARETTA VS CALIFORNIA* (1970), REQUIRED EACH STATE TO DETERMINE FOR THEMSELVES WHETHER AN INDIVIDUAL MAY PROCEED PRO-SE DURING DIRECT APPEAL OR NOT. SEE (*FARETTA VS CALIFORNIA*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 562 1970 AND *LOGAN VS. STATE*, 546 So. 2d 472 (2003)) THE FLORIDA SUPREME COURT'S DECISION IN *LOGAN VS. STATE* EXPLAINS THAT THE RIGHT TO SELF-REPRESENTATION ON DIRECT APPEAL GENERALLY DOESN'T EXIST, EXCEPT TO REPORT CONFLICT WITH OR INEFFECTIVE ASSISTANCE OF COUNSEL. QUOTING *LOGAN*, -

"THE SUPPOSED RULE THAT ALL PRO-SE FILING BY REPRESENTED DEFENDANTS ARE A NULLITY THIS MAKES NO SENSE, AT LEAST IN THE CIRCUMSTANCES OF INEFFECTIVE ASSISTANCE OF COUNSEL, AND MAY LEAD TO A MANIFEST INJUSTICE"

"IT SHOULD BE NOTED, HOWEVER, THAT THE REQUIREMENTS OF NELSON DEPEND UPON A CLEAR AND UNEQUIVOCAL STATEMENT FROM THE CRIMINAL DEFENDANT THAT HE WISHES

UNEQUIVOCAL STATEMENT FROM THE CRIMINAL DEFENDANT THAT HE WISHES TO DISCHARGE COUNSEL, IN MORRISON VS. STATE, 818 SO.2D 432 FLA. CERT. DENIED, 537, 957, 123 S.C.T. 406, 154 L.ED. 2D 308 [2002].

LOGAN VS. STATE, 846 SO.2D 472 (2003)

MY PETITION FULFILLED ALL THE REQUIREMENTS OF LOGAN VS. STATE, BOTH ALLEGING INEFFECTIVE ASSISTANCE OF AND CONFLICT WITH COUNSEL, WHILE EXPRESSING A DESIRE TO DISCHARGE APPOINTED COUNSEL. SEE (EXHIBIT 22 PETITION).

THE DECISION OF THE FLORIDA SUPREME COURT SHOULD CONSTITUTE THE RULE OF LAW AND THE 3RD D.C.A.S ORDER SHOULD BE CONSIDERED A CONTRAVENTION OF THE ESTABLISHED RULE OF LAW, A THEREFORE A VIOLATION OF THE RIGHT TO "DUE PROCESS OF LAW", SEE (THE 14TH AMENDMENT TO THE U.S.

CONSTITUTION, KEMMLER, 34 L.ED. 519 136 U.S. 436 [1880]

DUNCAN VS. MISSOURI, 38 L.ED. 485, 152 U.S. 377 [1894],

BUNKLEY VS. FLORIDA, 123 S.C.T. 2020 [2003] AND BUSH VS.

GOBE, U.S. 98, 121 S.C.T. 525

PERJURY. INSUFFICIENT EVIDENCE.

THE STATEMENTS MADE BY STATES WITNESS TAMEE

JONES SHOULD CONSTITUTE PERJURY UNDER FLORIDA LAW.

SEE (F.S. CHAP. 837, SPECIFICLY F.S. 837.021 PERJURY OF

CONTRADICTORY STATEMENTS ALSO MOTION FOR ACQUITTAL EXH. 6)

BECAUSE F.S. CHAP. 837.021 CONSTITUTION THE ESTABLISHED

"LAW OF THE LAND", FOR THE 11TH JUD. CIR. CT., FLORIDAS 3RD

D.C.A. OR THE FLORIDA SUPREME CT. NOT TO ACKNOWLEDGE

THAT HER TESTIMONY CONSTITUTES PERJURY, EITHER DURING OR

AFTER TRIAL IS A CONTRAVENTION AND OR DEPRIVAL OF THE

ESTABLISHED "LAW OF THE LAND", AND THE 14TH AMEND., SEE

(KEMMLER, 34 LEO., 519, 126 U.S. 436 [1880]; DUNCAN VS.

MISSOURI, 38 LEO. 485, 152 U.S. 377 [1894]; AND BUNKLEY VS.

FLORIDA, 123 S.CT. 2020 [2003])

PERJURY SHOULD NEVER BE USED TO ATTAIN AND

SUSTAIN A CRIMINAL CONVICTION EITHER BY FEDERAL OR STATE

ARGUMENTS

32.

STANDARDS. SEE (BRADY VS. MARYLAND, 93 S.C.T. 1194, [1963]),

ALSO, BECAUSE OF THE STATES USE OF PERJURED
TESTIMONY, THE STATE HAS FAILED TO PROVIDE THE JURY WITH
SUFFICIENT EVIDENCE TO ESTABLISH EACH ELEMENT OF THE
CHARGED OFFENSES OF MURDER OR BURGLARY. SEE (BUNKLEY
VS. FLORIDA, 123 S.C.T. 2020 [2003]). ALL CONVICTIONS THAT

REST UPON MS. JONES FLAWED AND CONTRADICTIONARY TESTIMONY
SHOULD BE VACATED OR REVERSED.

ARGUMENTS

ILLEGAL EXECUTION OF
SEARCH WARRANT

IN ACCORDANCE WITH F.S. 933.08 "SEARCH WARRANTS
TO BE SERVED BY OFFICERS MENTIONED THEREIN" AND F.S.
933.11 "DUPLICATE TO BE DELIVERED WHEN WARRANT SERVED",

THE POLICE OFFICER WHO SIGNED AND IS MENTIONED IN
THE WARRANT MUST BE PRESENT AT THE RESIDENCE OR

LOCATION BEFORE THE RESIDENCE IS SEARCHED AND A COPY OF THE WARRANT MUST BE GIVEN TO A RESIDENT OR THE SUBJECT OF THE ARREST. IN ANY EVENT, IF THE SUBJECT OF THE ARREST IS NOT GIVEN A COPY OF SAID WARRANT THEN THE WARRANT MUST BE READ TO THE SUBJECT OF THE ARREST.

THE WARRANT WAS NEITHER GIVEN TO ME AT THE TIME OF ARREST, NOR READ TO ME. THE OFFICER WHO SIGNED AND IS MENTIONED IN THE WARRANT WAS NOT PRESENT WHEN I WAS ARRESTED OR WHEN THE RESIDENCE WAS INITIALLY.

SEARCH. SEE (POST-CONVICTION MOTION EXHIBIT No. 25 PGS.

8-9)

ONCE AGAIN, THE "LAW OF THE LAND" BEING ESTABLISHED (I.E. 933.08 & 933.11) THE TRIALS JUDGE SHOULD HAVE RULED POSITIVELY ON MY MOTION. NOT TO DO SO,

IS A CONTRAVENTION OF THE "LAW OF THE LAND" AND THEREBY THE 14TH AMENDMENT TO THE U.S. CONSTITUTION. SEE (KENNEDY,

34.

34 L.ED. 519, 136 U.S. 436 [1880]; DUNCAN VS. MISSOURI,

38 L.ED. 485, 152 U.S. 377 [1894]; BUNKLEY VS. FLORIDA, 123

S. CT. 2020 [2003] AND BUSH VS. GORE, U.S. 98, 121 S. CT.

525

MANIFEST INJUSTICE STANDARD OF REVIEW

THE 11TH JUDICIAL CIRCUIT COURT DECIDED IT WAS NOT OBLIGATED TO REVIEW 12 OUT OF 14 OF THE GROUNDS LISTED IN MY 3,850 POST-CONVICTION MOTION AND MEMORANDUM OF LAW DESPITE THE FACT THAT THOSE GROUNDS ALLEGE THAT MANIFEST INJUSTICES HAVE OCCURRED.

SEE (POST-CONVICTION EXH. NO. 25 & THE CIRCUIT COURT ORDER EXH. NO. 26)

THE CASE FOR THE MANIFEST INJUSTICE STANDARD OF REVIEW IS MORE THAN FULLY MADE IN THE MOTION, ON PAGE 21-24, IN THE SECTION ENTITLED "TIMELINESS". THAT SECTION LIST SEVERAL CASES WHEN THE COURTS OF FLORIDA HAVE "BRUSHED ASIDE" PROCEDURAL BARS (OR 'DEFAULTS') IN ORDER TO CORRECT OR PREVENT MANIFESTLY UNJUST RESULTS, I.E. BAKER VS. STATE, 878 SO. 2D 1236,

1240 (FLA. SUPREME CT 2004), D.H. VS. ADEPT COMMUNITY

SERVICE, 371 SO.3D 970 FLA. 2018 AND ADAMS VS. FLORIDA,

957 SO.2D 1183 FLA. 2006,

THE STATE COURT COMMITMENT TO CORRECTING

MANIFEST INJUSTICE INJUSTICES EXPLAINED BY THE FLORIDA

SUPREME COURT IN BAKER VS. STATE, SEEMS TO MIMIC

THE FEDERAL POLICY OF EXCLUDING PROCEDURAL DEFAULTS

IN ORDER TO DO THE SAME. (UNITED STATES VS. BAGWELL,

972 F.2D 30 [2D CIR. 1992] AND ARTHUR VS. KING, 500

F.3D 1335, 1343 [11TH. CIR. 2007])

THE TRIALS JUDGE CHOSE NOT TO ADDRESS THE

ERRORS LISTED IN 12 OUT 14 OF THE CLAIMS OF ERROR

STATING THE F.S. 924.051 TERMS AND CONDITIONS OF APPEAL

& COLLATERAL REVIEW PREVENTED THE COURT. I BELIEVE

THIS TO BE AN ERROR WHICH HARMED MY RIGHT TO

CORRECT MY CONVICTION AND SENTENCE. SEE (ORDER OF

THE CIRCUIT COURT EXH. NO. 26)

I BELIEVE THAT IN LIGHT OF THE AFFORMENTIONED
DECISIONS CONCERNING CORRECTING MANIFEST INJUSTICES
THE JUDICIAL CIRCUIT COURTS INTERPRETATION OF F.S.
924.051 IS INCORRECT AND THE COURT SHOULD HAVE REVIEWED
MY 3,850 MOTION & MEMORANDUM ON THE MERITS.

CONCLUSION

DO TO THE FACT THE COURTS OF THE STATE OF
FLORIDA DID NOT REGARD MY RIGHT TO DUE PROCESS A
LAW, EQUAL PROTECTION OF THE LAW AND BASIC FAIRNESS
DURING TRIAL AND COURT PROCEEDINGS MY CONVICTIONS
SHOULD BE VACATED AND REVERSED.