Joel Dale Wright v. State of Florida

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS WRIGHT VERSUS STATE.Ni MR. McCLAIN.

MAY IT PLEASE THE COURT. COUNSEL. MY NAME IS MARTIN McCLAIN. I AM HERE, TODAY, ON BEHALF OF JOEL DALE WRIGHT. I WANTED TO START OFF THE ARGUMENT, FIRST, BY ADDRESSING A FEW MATTERS FROM THE TRIAL THAT I THINK ARE IMPORTANT TO HAVE IN MI IN OER TO PERLY EVALUATE THE INFORMATION THAT CAME OUT DURING THE 3.850 PROCEEDINGS. FIRST, THE MEDICAL EXAMINER, DR. LATIMER, TESTIFIED THAT, TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, THE ASSAILANT WAS RIGHT-HANDED AND IN FRONT OF MS. SMITH, AND THAT THE TWELVE STAB WOUNDS ON THE LEFT SIDE OF HER FACE AND NECK WERE ADMINISTERED IN THAT WAY, AND HE REACHED THAT CONCLUSION, POINTING OUT THAT THERE WAS A CURVE TO THE STAB WOUNDS THAT WAS CONSISTENT WITH SOMEONE STANDING IN FRONT AND COMING DOWN. SO THERE WAS AN ANGLE AS OPPOSED TO THE OTHER OPTION WOULD BE A LEFT HAND PERSON STABBING FROM BEHIND, AND HE DIDN'T THINK THAT THAT WAS POSSIBLE. HE DID CONCEDE IT WAS POSSIBLE THAT HE WAS WRONG, IN THE REDIRECT EXAMINATION BY THE PROSECUTOR. AND THE STATE CONCEDED THAT MR. RIGHT WAS LEFTHANDED. -- THAT MR. WRIGHT WAS LEFTHANDED. ALSO DR. LATIMER TESTIFIED, ON CROSS-EXAMINATION, THAT TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, HIS BEST GUESS OF THE TIME OF DEATH WAS 5:00 P.M. TO 9 P.M. ON SATURDAY, FEBRUARY 5. HE ACKNOWLEDGED THAT THE STATE HAD COME TO HIM AFTER HE REACHED THAT ORIGINAL CONCLUSION, AND SUGGESTED THE POSSIBILITY OF IT BEING LATER. HE CONCEDED IT WAS POSSIBLE THAT IT COULD HAVE BEEN UP UNTIL 9:00 A.M. THE NEXT MORNING, BUT HIS BEST GUESS, WHAT HE SAID WAS 5-TO-9 P.M. SATURDAY, FEBRUARY 5. IN ADDITION, THERE WAS A HAIR EXPERT WHO WAS CALLED. MS. SMITH WAS FOUND WEARING TWO DRESSES, ONE DRESS ON TOP OF ANOTHER. AND ON THE TOP DRESS, THERE WERE TWO HEAD HAIRS THAT THE FORENSIC EXAMINER CONCLUDED WERE NOT MS. SMITH'S, AND THE FORENSIC EXAMINER CONCLUDED, SHE COMPARED THEM TO MR. WRIGHT AND TO MR. WESTBURY, AND THEY WERE NOT FROM EITHER OF THEM. THE STATE'S EXPLANATION FOR THAT WAS MS. SMITH WAS A SCHOOL TEACHER, AND THESE HEAD HAIRS COULD HAVE COME FROM SCHOOL. THAT WAS PRESENTED IN THE CLOSING ARGUMENT. IN ADDITION, THERE WAS A VAGINAL COMBING, PUBIC HAIR COMBING, THT PUCE A HAIR THAT THE EXAMINER SAID WAS NOT MS. SMITH'S PUBIC HAIR. WHEN IT WAS COMPARED TO MR. WRIGHT'S PUBIC HAIR AND MR. WESTBURY'S, THE SAME EXAMINER SAID THE PUBIC HAIR HAD INSUFFICIENT CHARACTERISTICS OF CAUCASIAN PUBIC HAIR FOR A COMPARISON TO BE MADE. AND SO HIS TESTIMONY WAS IT COULD NOT BE LINKED TO MR. WRIGHT. OR IT WAS HER TESTIMONY. THERE WAS, ALSO, A FINGERPRINT EXAMINER. THERE WERE ELEVEN LATENT FINGERPRINTS LIFTED FROM MS. SMITH'S HOUSE.

I AM SORRY. THE PUBIC HAIR WAS NOT, DID NOT HAVE WHAT KIND OF CHARACTERISTICS?

SHE TESTIFIED THAT IT DIDN'T HAVE SUFFICIENT CHARACTERISTICS OF CAUCASIAN PUBIC HAIR FOR A COMPARISON TO BE MADE TO MR. WRIGHT. EVEN THOUGH SHE HAD MADE A COMPARISON TO MS. SMITH AND CONCLUDED IT WAS NOT MS. SMITH'S SMITH'S. AND THERE WERE ELEVEN LATENT PRINTS LIFTED FROM THE HOUSE. OF THE ELEVEN LATENT PRINTS LIFTED FROM THE HOUSE, ONE WASNi ULTIMATELY MAFD -- MATCHED TO MR MR. WRIGHT. IT WAS ON A WOOD-BURNING STOVE IN THE HOUSE, AND ONE WAS MATCHED TO TAYLOR DOUGLAS, WHO WAS THE DEPUTY SHERIFF AT THE TIME AND PART OF THE LAW ENFORCEMENT PEOPLE WHO WERE THERE TO REMOVE THE BODY.

MR. McCLAIN, YOUR TIME IS GOING BY. LET ME MOVE YOU UP, IF I COULD, TO THIS COURT, IN, REVERSED THIS SENT IT BACK FOR A HEARING ON THE PEARL MATTER. NOW, AS I READ WHAT HAPPENED NEXT, IS THAT THERE WAS A DISCLOSURE OF OTHER INVESTIGATIVE MATERIALS, AFTER THE CASE WENT BACK.

CORRECT.

IS THAT CORRECT?

YES, SIR.

AND THAT WAS IN RESPONSE TO A REQUEST THAT YOU MADE?

YES.

OR CCR MADE? >S, YR HO. WHEN THIS COURT SENT THE CASE BACK, A REQUEST WAS MADE TO MAKE SURE AND DOUBLECHECK THAT YOU GAVE US EVERYTHING AT THAT TIME, AND AT THAT TIME, IN 1991, EXHIBIT 46 IN THE RECORD NOW ARE THE DOCUMENTS THAT WERE TURNED OVER IN 1991.

OKAY. NOW, IN THAT MATERIAL, THAT WAS TURNED OVER IN 1991, WAS SOME DOCUMENTS THAT FREDDIE WILLIAMS SAID THAT HE DID NOT RECEIVE; IS THAT CORRECT?

WELL, THAT IS TRUE, BUT LET ME BACK UP. ACTUALLY FREDDIE WILLIAMS, IN 1988, HAD TESTIFIED REGARDING THE ORIGINAL DOCUMENTS THAT HAD BEEN DISCLOSED.

NOW, HE TESTIFIED IN THE --

IN '88.

IN THE '88, 3.850 PROCEEDING.

ABSOLUTELY.

AND JUDGE PERRY MADE A FACTUAL FINDING.

BASED ON HIS TESTIMONY.

BASED ON HIS TESTIMONY. NOW, DID HIS TESTIMONY SPECIFICALLY CHANGE IN RESPECT TO DOCUMENTS, OR WAS HE NOT ASKED THE QUESTION, OR THAT IS WHERE I AM CONFUSED IN THE RECORD.

I THINK, IF YOU LOOK AT THE TRANSCRIPT, THE BEST EXPLANATION THAT I HAVE IS IF YOU LOOK AT THE TRANSCRIPT. HIS TESTIMONY, IN 1988, WAS, WHEN HE WAS SHOWN THESE DOCUMENTS, THE ONLY TIME I HAVE SEEN THEM BEFORE WAS IN THE STATE ATTORNEYS OFFICE. THE NEXT PAGE OF THE TRANSCRIPT HE IS EXPLAINING THAT WAS LAST WEEK, THE WEEK BEFORE THE EVIDENTIARY HEARING, WHICH IS FIVE YEARS AFTER THE TRIAL. WHEN JUDGE PERRY ENTERS HIS ORDER, HE REALIZED, ON THE ONE PAGE THAT SAYS I SAW THE DOCUMENTS IN THE PROSECUTORS OFFICE, AND DOES NOT INCLUDE REFERENCE TO THE NEXT PAGE, THAT SAYS LAST WEE. SO THEY ARE SEPARATED. THEY ARE ON DIFFERENT PAGES OF THE TRANSCRIPT, SO I DON'T THINK HIS TESTIMONY HAS CHANGED. HOWEVER, JUDGE PERRY SPECIFICALLY RELIED ON THE ONE PAGE. I ARGUED TO THIS COURT JUDGE PERRY WAS WRONG. THIS COURT, IN ITS RULING, IN ADOPTING JUDGEPERRY'S ORDER, I THINK, SAID THERE WERE SUBSTANTIAL EVIDENCE TO SUPPORT JUDGE PERRY'S CONCLUSION. I, THEN, IN 1997, WHEN I HAD MR. WILLIAMS ON THE STAND, ATTEMPTED OELT FROM HIM THAT JUDGE PERRY'S FACTUAL DETERMINATION WAS

WRONG. HE HAD NOT SEEN THOSE DOCUMENTS UNTIL FIVE YEARS AFTER THE TRIAL AND IT IS THAT POINT THAT THE STATE OBJECTS AND SAYS, WELL, WHETHER JUDGE PERRY'S RULING WAS RIGHT OR WRONG, WE ARE BOUND BY IT.

IN EFFECT, THE TESTIMONY THAT FREDDIE WILLIAMS GAVE, WAS THAT, WAS IT DIFFERENT? WHAT I AM TRYING TO UNDERSTAND IS HOW THIS MATTER IS NOW BACK IN THIS CASE. BEFORE US.

WELL, PART OF IT IS MY CONTENTION IS THAT, TO THE EXTENT THAT JUDGE PERRY'S FACTUAL DETERMINATION IS WRONG, I WAS ENTITLED TO HAVE JUDGE NICHOLS CONSIDER THAT, AND TO PRESENT FREDDIE WILLIAMS'S TESTIMONY THAT THAT FACTUAL DETERMINATION WAS WRONG, THAT HE HAD NOT SEEN THOSE DOCUMENTS. THE STATE OBJECTED AND SAID THIS IS CONCLUSIVELY DECIDED BY JUDGE PERRY'S 1988 ORDER. YOU CAN'T PRESENT IT, AND JUDGE NICHOLS AGREED, SO HE REFUSED TO CONSIDER FREDDIE WILLIAMS'S TESTIMONY. I ONLY GOT TO PROFFER IT, SO MY CONTENTION IS THAT IT IS ONE OF A COUPLE OF REASONS WHY JUDGE NICHOLS WS WRONG IN FAILING TO DO THE CUMULATIVE ANALYSIS OF THE ENTIRE SCOPE OF THE BRADY CLAIM.

FREDDIE WILLIAMS'S TESTIMONY RELATES TO THE HOPE BROWN AND THE LOOSE STATEMENTS?

THAT'S CORRECT, YOUR HONOR.

SO THERE IS NOTHING ABOUT THOSE STATEMENTS IN THIS PROCEEDING, THAT IS NEWLY-DISCOVERED. IT IS JUST THAT WHAT YOU ARE SAYING IS THOSE STATEMENTS HAVE NEVER BEEN ANALYZED AS TO WHAT EFFECT THEY WOULD HAVE HAD.

THEY HAVE NEVER BEEN PROPERLY ANALYZED AS BRADY MATERIAL, BECAUSE JUDGE PERRY SAID THEY ARE NOT BRADY MATERIAL. FREDDIE WILLIAMS KNEW ABOUT. AND FREDDIE WILLIAMS SAYS SCIFICALLY HE DID NOT KNOW ABOUT THEM.

WHAT IS NEW IN THIS CASE THAT WE SHOULD BE CONSIDERING, IN THE QUESTION ABOUT WHETHER YOU ARE TRYING TO RESUSCITATE THINGS THAT HAVE ALREADY BEEN DETERMINED?

MY CONTENTION IS THAT THAT HAS TO BE CONSIDERED, BUT IN ADDITION, THERE WERE THE DOCUMENTS THAT ARE EXHIBIT 46, WHICH WERE DISCLOSED IN 1991, AND THE DOCUMENTS IN EXHIBIT 47, WHICH WERE DISCLOSED IN 1996 AND 1997.

THESE RELATE TO HIS PRIOR POLICE REPORTS?

THESE ARE POLICE REPORTS. THE '91 DOCUMENTS ARE POLICE REPORTS CONCERNING STRICKLAND AND JACKSON.

BUT THOSE ARE POLICE REPORTS FROM SOME THING THAT IS THEY DID OTHER INCIDENTS.

OTHER INCIDENTS.

THEY HAD NOTHING TO DO WITH THIS CASE.

NOT TO DO WITH THIS CASE BUT SIMILAR CONDUCT THAT ARGUABLY WOULD HAVE BEEN ADMISSIBLE. IF THE ATTORNEY HAD KNOWN ABOUT STRICKLAND AND JACKSON, HE COULD HAVE USED EVIDENCE TO SUPPORT THE NOTION THAT THESE GUYS COMMITTED MURDER, AS OPPOSED TO MR. WRIGHT.

WAS THAT CONDUCT SUBMITTED AFTER THE TRIAL?

IT WAS, SO I RECOGNIZE THAT IT HAS TO BE ANALYZED UNDER NEWLY-DISCOVERED EVIDENCE.

THAT COULDN'T HAVE BEEN DISCOVERED AT THE TIME OF TRIAL, BECAUSE IT HADN'T TAKEN PLACE YET.

I SUBMIT THAT THAT STILL HAS TO BE CONSIDERED UNDER THE NEWLY-DISCOVERED EVIDENCE OF INNOCENCE STANDARD. I RECOGNIZE THAT. BUT MORE IMPORTANT STUFF IS THE STUFF THAT CAME OUT IN '96, '97, WHICH IS EXHIBIT 47, AND IN THERE ARE POLICE REPORTS. WHAT IT IS, IN 1980, WALTER PERKINS HAD TAKEN A POLICE REPORT AND THERE IS A COMPLAINT BY A WOMAN WITH A DOMESTIC DISTURBANCE, AND SHE INDICATED THAT MR. PERKINS, DEPUTY PERKINS HAD LIED, AND SUBMIT ADD FALSE REPORT. THIS WOULD -- AND SUBMITTED A FALSE REPORT. THIS WOULD HAVE BEEN VERY INTERESTING TO HAVE IN TERMS OF WALTER PERKINS'S TESTIMONY. IT CORROBORATED MR. PERKINS'S TESTIMONY, BECAUSE HE SAID THAT MR. WGHTID IF I TALK TO YOU I WILL DIE IN THE ELECTRIC CHAIR AND IT WAS ARGUED THAT THAT WAS TANTAMOUNT TO A CONFESSION AND CORROBORATED MR. WESTBURY, AND WE, ALSO, KNOW THAT THERE WAS BAD BLOOD BETWEEN MR. PERKINS AND WRIGHT FAMILY. HE HAD TOLD MR. WRIGHT'S MOTHER THAT HE WAS GOING TO MAKE HER SORRY SHE HAD THOSE BOYS.

WHEN WAS THAT DISCOVERED?

MR. PEARL KNEW THAT THERE WAS SOME PROBLEM BETWEEN DEPUTY PERKINS AND THE WRIGHT FAMILY AND MADE MENTION OF IT BRIEFLY, DURING THE TRIAL, AND THEN APOLOGIZED TO PERKINS, WHEN HE DENIED IT. AND I HAVE ALWAYS ALLEGED THAT MR. PEARL WAS INEFFECTIVE IN NOTco ADEQUATELY INVESTIGATING WITH THE FAMILY, THE EXACT NATURE OF THE PROBLEM, AND NOT PRESENTING IT, AND I HAVE, ALSO, CONTENDED THAT THAT IS KIND OF CONNECTED WITH HIS STATUS AS A SPECIAL DEPUTY.

I AM STILL HAVING TROUBLE. LET'S SEE. I THOUGHT THAT THE PART ABOUT PERKINS, ALSO, CAME OUT AFTER THE TRIAL IN THIS CASE. IS THAT NOT CORRECT?

THERE IS TWO PARTS TO PERKINS. THERE IS THE POLICE REPORT REGARDING THE WOMAN SAYING PERKINS FALSIFIED DOULTS. THAT WAS TWO YEARS PRIOR TO THE TRIAL. AND THEN THERE IS PERKINS --

WHAT ARE YOU CONTENDING THAT IS? ARE YOU CONTEND HAS GONE THAT IS NEWLY-DISCOVERED EVIDENCE?

I AM CONTENDING THAT WOULD BE IMPEACHMENT EVIDENCE OF MR. PERKINS, WHO WAS A STATE'S WITNESS.

HOW DO WE GET THAT IN THIS PROCEEDING?

IT WASN'T DISCLOSED UNTIL '97.

YOU ARE SAYING IT IS NEWLY-DISCOVERED EVIDENCE. BRAIDY?

A BRADY VIOLATION. YES, YOUR HONOR. IT WASN'T DISCLOSED UNTIL '97, AND THEN THE ADDITIONAL THING IS WHILE THE DIRECT APPEAL WAS PENDING, PERKINS WAS FIRED BY THE SHERIFFS DEPARTMENT FOR BEING UNTRUSTWORTHY AND UNRELIABLE AND A BAD COP.

BUT, AGAIN, THAT WOULD NOT, IF IT IS NOT AVAILABLE AT THE TIME OF THE TRIAL, YOU ARE --

GRANTED, UNDER STATE V MILLS, NEWLY-DISCOVERED EVIDENCE OF IMPEACHMENT EVIDENCE, MAY QUALIFY, UNDER THE JONES TEST, AS WARRANTING A NEW TRIAL. AND CERTAINLY A POLICE REPORT INDICATING THAT THIS POLICE OFFICER IS UNTRUSTWORTHY IS EVIDENCE THAT

WOULD BE IMPEACHMENT, AND THEN HE WAS FIRED.

WHAT DID PERKINS ACTUALLY DO, IN RELATIONSHIP TO THIS CASE?

PERKINS PARTICIPATED IN THE ARREST OF MR. WRIGHT IN APRIL.

HE WAS ARRESTED AFTER MS. WESTBURY CAME IN AND TOLD --

CORRECT.

-- WHAT HER HUSBAND SAID.

CORRECT. AND THEN HE WAS AT THE STATION. THERE WERE TWO OFFICERS WHO INTERVIEWED MR. WRIGHT BEFORE. HE DENIED MR. WRIGHT, AND I DON'T KNOW ANYTHING ABOUT THIS, IT WASN'T ME, THEN PERKINS GOES IN, AND IF YOU LOOK AT THE TRIAL TESTIMONY, ACTUALLY THERE WAS DEPOSITION BEFORE TRIAL, AND IN THE COURSE OF IT, PERKINS'S TESTIMONY CHANGES, BUT AT TRIAL HE SAYS I GO IN, AND ALL I REMEMBER HAPPENING IS THAT MR. WRIGHT SAID, IF I TALK TO YOU, I WILL DIE IN THE ELECTRIC CHAIR, AND HE DWNT REMEMBER WHAT HE -- AND HE DIDN'T REMEMBER WHAT HE HAD SAID IN THE DEPOSITION, MR. WRIGHT DENIED BEING THE PERSON, BEFORE THAT STATEMENT WAS MADE. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME.

I WOULD LIKE TO RESERVE THE REST OF MY TIME FOR REBUTTAL, UNLESS THERE ARE SPECIFIC QUESTIONS. MR. CHIEF JUSTICE

THANK YOU. MS. RUSH.

MAY IT PLEASE THE COURT. MY NAME IS JUDY TAYLOR RUSH. I AM AN ASSISTANT ATTORNEY GENERAL REPRESENTING THE STATE IN THIS CASE. IN REGARD TO WHAT WE HAVE HEARD ABOUT CLAIM ONE IN THIS CASE, I WOULD LIKE SAY --

I AM SORRY? WHO?

CLAIM ONE. REGARD TO CLAIM ONE THAT HE RAISED IN HIS BRIEF, THE BRADY VIOLATION CLAIM. IT IS STUFF THAT THIS COURT HAS HEARD BEFORE. NOTHING IS NEW THERE.

THAT IS THE BROWN, LOOSE, AND -- LOOS, AND HOLT STATEMENTS?

THE BROWN, LOOS AND HOLT STATEMENTS WERE PRESENTED AT THE FIRST, THE ORIGINAL 3.850 IN 1988. THEY WERE CONSIDERED THEN.

I THOUGHT THOSE WERE THE ONES AND THIS IS THE PROBLEM, I GUESS IS THAT IT WAS RULED, THOSE WERE NOT EVERONERED TO BE, THOSE STATEMENTS WERE NEVER CONSIDERED TO BE BRADY MATERIAL IN THIS CASE?

THEY WEREN'T DETERMINED TO BE BRADY MATERIAL, BECAUSE THE DEFENSE COULD HAVE FOUND THEM ON THEIR OWN. IN OTHER WORDS IT WASN'T SOMETHING THE STATE WITHHELD FROM THEM. AND IN THE TRIAL JUDGE'S ORDER --

WAIT A MINUTE. FINDING THEM ON THEIR OWN AND WHETHER THE STATE WITHHELD THEM ARE TWO DIFFERENT THINGS. NOW, DIDN'T THE PROSECUTOR IN THIS CASE TESTIFY ABOUT THESE THREE STATEMENTS, AND DIDN'T THE PROSECUTOR SAY THAT THESE ARE THINGS THAT SHOULD HAVE BEEN TURNED OVER, AND I DON'T RECALL DOING IT, OR WORDS TO THAT EFFECT?

AT THE HEARING THAT WE ARE HERE FOR, THERE WAS NO TESTIMONY BY THE PROSECUTOR

ALONG THOSE LINES.

THE PROSECUTOR TESTIFIED AT THE FIRST 3.850 HEARING, CORRECT?

ARE YOU --

THAT WAS HIS TESTIMONY.

MR. DONING?

YES. MR. DUNNING. YES. THAT WAS HIS TESTIMONY AT THE HEARING.

THAT THESE THREE POLICE REPORTS WERE NOT TURNED OVER, CORRECT, BUT THAT IS NOT THE SAME THING AS SAYING THAT THEY DIDN'T ALREADY HAVE THE INFORMATION, AND IN FACT WHAT JUDGE PERRY FOUND IN HIS ORDER, IN REGARD TO THIS ISSUE, AND IT IS QUOTED IN THIS COURT'S OPINION ON THE 3.850, IS THAT MR MR. FREDDIE WILLIAMS TESTIFIED HE WAS AWARE OF THE STATEMENTS MADE BY BROWN AND LOOS. THAT IS NOT THE SAME THING AS SAYING I HAVE SEEN THE POLICE REPORT, WHICH IS WHAT HE TESTIFIED TO IN THE 1997 PROCEEDING. THERE HE TESTIFIED HE WAS NOT GIVEN A STATEMENT OF MS. BROWN, NOT, ALSO, MISS LOOS, BUT MISS BROWN BUT SAW IT, FIRST, AT THE HEARING, SO WHAT THE JUDGE WROTE IN HIS ORDER, AND THIS COURT QUOTED IN ITS OPINION ON THE FIRST 3.850, IS NOT INCONSISTENT WITH WHAT MR. WILLIAMS TESTIFIED TO IN THE '97 EVIDENTIARY HEARING.

WAIT. LET'S GO BACK TO WHAT MR. WILLIAMS TESTIFIED TOco AT THE ORIGINAL EVIDENTIARY HEARING. ASI UNDERSTAND IT, HE CATAGORICALLY SAYS HE NEVER SAW THE HOLT STATEMENT, ALTHOUGH HE SAYS THAT HE, IN FACT, TALKED AND INTERVIEWED MS. HOLT. IS THAT A CORRECT STATEMENT OF WHAT HE SAID?

THAT'S CORRECT. THAT'S CORRECT.

AND THEN DOES HE, ALSO, SAY THAT HE NEVER SAW THE BROWN STATEMENT EXCEPT IN THE STATE ATTORNEYS OFFICE, AND DOES HE CLARIFY WHEN HE WAS IN THE STATE ATTORNEYS OFFICE AND SAW THE BROWN STATEMENT?

I DON'T KNOW THAT HE WAS ASKED THAT SPECIFICALLY. WHAT HE SAID, WHAT JUDGE PERRY FOUND AS A FACT, HE SAID, AND THIS COURT AFFIRMED, AFTER HAVING THIS ISSUE, THIS EXACT ISSUE BEFORE IT IN THIS FIRST 3.850, WAS THAT MR. WILLIAMS WAS AWARE OF THE STATEMENTS. NOW, THE TESTIMONY WAS THAT WILLIAMS, WHO WAS PART OF THE DEFENSE TEAM, WENT INTO ALL THE NEIGHBORHOOD. ALL THESE PEOPLE LIVED IN THE SAME NEIGHBORHOOD THERE, TOGETHER, AND HE TALKED TO PEOPLE. WENT DOOR TO DOOR, TALKING TO PEOPLE, SO HE MAY HAVE BEEN WELL AWARE THAT A STATEMENT HAD BEEN GIVEN OR MADE BY THESE PEOPLE BUT JUST HAD NEVER SEEN THE DOCUMENT.

THE QUESTION THAT COMES DOWN TO ME IS THIS, AS FAR AS THE HOLT STATEMENT IS CONCERNED SHE SAID THE STATEMENT TO THE POLICE IN THE STATEMENT TO THE POLICE, SHE SAYS, THAT MR. JACKSON TALKED TO HER ABOUT THIS MURDER AT 4:30. OKAY. AND THAT THE MURDER WAS ACTUALLY DISCOVERED AT 4:15, AND SO WHETHER THEY KNEW THAT SHE HAD MADE A STATEMENT TO THE POLICE BUT THEY DIDN'T HAVE THE PARTICULARS OF THE STATEMENT THAT SHE MADE TO THE POLICE, IS THE IMPORTANT PART, TO ME. WHY ISN'T THAT BRADY?

WELL, IT IS NOT BRADY, BECAUSE THIS COURT AFFIRMED JUDGE PERRY'S ORDER FINDING THAT IT WASN'T BRADY. IN THIS VERY SAME CASE, WHEN THESE VERY SAME ARGUMENTS WERE MADE, BACKN 1991, THAT IS ONE REASON IT IS NOT BRADY.

YOU DON'T THINK THAT --

I DON'T THINK WE GO BACK. PARDON ME?

YOU DON'T THINK THAT, IN THE INTEREST OF JUSTICE, AND THIS BEING A, YOU KNOW, A CAPITAL CASE, SOMEONE'S LIFE IS AT STAKE HERE, THAT WE SHOULD LOOK AT THAT AGAIN?

I DON'T MEAN. I DON'T THINK WE SHOULD GO BACK AND RECONSIDER THE ISSUES THAT HAVE BEEN RAISED IN THIS CASE BEFORE, THOROUGHLY BROUGHT TO THE ATTENTION OF THIS COURT, VERY SPECIFICALLY AS JUDGE NICHOLS FOUND IN THE 1997 EVIDENTIARY HEARING, AND HELD THAT THE QUICHE EW WAS PROBABLY -- THAT THE ISSUE WAS PROCEDURALLY BARRED, BECAUSE IT HAD VERBATIM IN SOME CASES, LIFTED OUT OF MR. McCLAIN'S BRIEF TO THIS COURT.

LET'S LOOK AT THIS. EVEN BEFORE THE 1988 EVIDENTIARY HEARING, WE DO KNOW THAT THAT STATEMENT WAS NOT GIVEN TO THE DEFENSE, RIGHT?

WE DO KNOW THAT THE POLICE REPORT OF WHAT SHE SAID WAS NOT. WE, HOWEVER, ALSO KNOW THAT MR. PEARL AND MR. WILLIAMS SPOKE TO MS. HOLT IN PERSON AND QUESTIONED HER ABOUT THE EVENTS AND GOT HER VERSION OF EVENTS FROM HER AT THAT TIME.

OKAY.

THEY TESTIFIED TO THAT.

SO THE FIRST PRONG OF BRADY HAS BEEN MET, AS FAR AS THE HOLT STATEMENT IS CONCERNED, BECAUSE IT WAS, IN FACT, NOT GIVEN TO THE DEFENSE. CORRECT?

THE STATE DID NOT GIVE THE REPORT TO THE DEFENSE. THAT'S CORRECT.

NOW, YOUR ARGUMENT IS THAT THE SOND PRONG IS NOT MET?

DEFINITELY THE SECOND PRONG IS NOT MET.

AND THAT IS BECAUSE THEY KNEW OF HER AS A WITNESS?

YES. THEY NOT ONLY KNEW OF MS. HOLT. THEY INTERVIEWED MS. HOLT BEFORE TRIAL, AGE JUDGE PERRY FOUND THAT, VERY SPECIFICALLY IN HIS ORDER,, SO THEY HAVE KNOWN ABOUT HER, AND THEY HAVE KNOWN ABOUT THE CLAIMS THAT WHAT THESE WOMEN HAD TO SAY SOMEHOW IMPLICATED MR MR. JACKSON IN THIS CRIME, AND IT HAS BEEN THOROUGHLY AIRED TO JUDGE PERRY, IN A LENGTHY EVIDENTIARY HEARING, THAT WAS THOROUGHLY ARGUED IN FRONT OF THIS COURT, BACK IN '91. THIS COURT RESOLVED ALL THOSE ISSUES, CONTRARY TO HIM, SENT IT BACK ON A VERY LIMITED NARROW ISSUE.

I JUST HAVE ONE OTHER QUESTION, THOUGH, ABOUT THIS. IT SEEMS LIKE THERE ARE TWO VERY VIABLE SUSPECTS IN THIS CASE OTHER THAN MR. WRIGHT, AND I UNDERSTAND, AND I, JUST BE PATIENT HERE, AND WHAT YOU ARE SAYING IS THAT MR. PEARL, WHO HANDLED THIS CASE, KNEW OF THESE TWO VIABLE SUSPECTS THAT THEY HAD HAD INCIDENTS WITH THIS, WITH THE VICTIM, THAT SAME DAY OR THE DAY BEFORE, THAT THEY WERE DRUNK AND KNEW ALL OF THAT, AND NEVER TRIED TO PUT THAT EVIDENCE BEFORE THE JURY?

I AM SAYING THAT MR. PEARL KNEW ABOUT MS. HOLT, HAD TALKED TO MS. HOLT ABOUT WHAT SHE HAD OBSERVED IN HER TELLER LINE, I MEAN IN HER CHECKOUT LINE AT THE WINN-DIXIE THAT MORNING. WHETHER HE KNEW ABOUT WHAT LOOS AND BROWN TESTIFIED TO OR WROTE IN THEIR POLICE REPORT, SPECIFICALLY, I DON'T KNOW. THEY DIDN'T ASK, WHEN THEY HAD THE OPPORTUNITY TO ASK.

WASN'T THERE SOMETHING, SINCE WE ARE INVESTIGATING, OR THIS WAS THE SUBJECT OF THIS REMAND, WHETHER MR. PEARL'S REPRESENTATION WAS IMPAIRED BY HIS STATUS AS SPECIAL DEPUTY. WASN'T THERE SOMETHING IN THIS RECORD ABOUT THAT THERE WERE CERTAIN STATEMENTS OR THINGS THAT HE WOULD HAVE TO SIGN FOR AND THAT IT WAS HIS PRACTICE NOT TO SIGN FOR THAT, AND COULD YOU GO INTO THAT A LITTLE BIT, WHETHER HIS RELATIONSHIP WITH THE POLICE IN THIS SITUATION MAY HAVE WORKED TO THE DETRIMENT OF MR. WRIGHT, AS FAR AS REALLY VIGOROUSLY PURSUING THE KINDS OF LEADS THAT IT WOULD SEEM THAT A REASONABLY COMPETENT DEFENSE ATTORNEY WOULD WANT TO PURSUE?

WELL, OF COURSE JUDGE NICHOLS WHO HEARD ALL THE EVIDENCE AND SAW MR. PEARL TESTIFY, CONCLUDED THAT THERE WAS NO IMPAIRMENT OF M. PEARL'S REPRESENTATION OF MR MR. WRIGHT THAT WAS RELATED TO ANY RELATIONSHIP HE HAD WITH THE LAW ENFORCEMENT, BY VIRTUE OF A SPECIAL DEPUTY CARD. AS FAR AS THE REFERENCE TO HE HAD AN AGREEMENT WITH SOMEONE ABOUT EVIDENCE THAT HE OBTAINED AND LOOKED AT, THAT AGREEMENT WAS WITH THE PROSECUTOR, MR. DUNNING, AND MR. PEARL TESTIFIED THAT WHAT IT CONSISTED OF WAS HE WAS FIND FOR -- HE WAS TO SIGN FOR ALL OF THE DISCOVERY THAT HE GOT FROM THE PROSECUTOR, FROM THE ASSISTANT STATE ATTORNEY, AND HE WAS TO BRIEFLY DESCRIBE WHAT IT WAS, AS WELL AS SIGN THAT HE HAD RECEIVED IT. AND THAT THEY DID THIS, IN THIS CASE. NOW, MR. PEARL, ALSO, TESTIFIED THAT HE WENT TO TALK TO CAPTAIN MILLER, WHO WAS AN OFFICER AT THE POLICE DEPARTMENT, WHO WAS AN INVOLVED INVESTIGATING THIS CASE. HE WASN'T EMPLOYED BY THE STATE ATTORNEYS OFFICE, AND HE ASKED CAPTAIN MILLER ABOUT THE STATEMENTS OF LOOS AND BROWN AND HOLT, AND CAPTAIN MILLER PULLED RICH BACK BEHIND HIM AND PULLED OUT A BIG BINDER AND SAT IT DOWN ON THE DESK, I THINK HE SAID AN INCH AND-A-HALF OR TWO INCHES, AND INDICATED THAT THAT WAS EVERYTHING THAT THE POLICE HAD, IN TERMS OF THE INVESTIGATION. HERE. TAKE IT WITH YOU. IT HAD THE SUSPECTS THAT THEY HAD CONSIDERED AND HAD DECIDED WERE NOT VIABLE, AND HE, ALSO, FURTHER TOLD HIM THAT THESE WERE NOT SENT TO THE STATE ATTORNEYS OFFICE. THESE ARE THE DEAD LEADS, BUT HERE IT IS. TAKE IT WITH YOU. MR. PEARL TESTIFIED THAT HE DID NOT ACCEPT THAT OFFER, BECAUSE HE, AND HIS REASON WAS HE THOUGHT THAT HE NEEDED TO, I GUESS, OBTAIN IT THROUGH THE ASSISTANT STATE ATTORNEY, BECAUSE OF THE AGREEMENT THAT HE HAD WITH HIM.

WAS THAT, DID THAT NOTEBOOK HAVE THE JACKSON AND THE --

IT WAS MY UNDERSTANDING IT, DID AND THAT UNDERSTANDING IS BASEON TIR PLEADINGS.

WHAT ABOUT THE INFORMATION THAT THE REASON THAT STRICKLAND AND JACKSON WERE NOT PURSUED AS SUSPECTS WAS BECAUSE THEY HAD PASSED A LIE DETECTOR TEST AND IS THERE, NOW, AGAIN, I UNDERSTAND THAT WE HAVE TO LOOK AT THIS HERE, AND WAS THERE EVIDENCE, THEN, PRESENTED, THAT THERE, IN FACT, WAS NOT A LIE DETECTOR TEST DONE OF THESE TWO PARTICULAR INDIVIDUALS?

THE EVIDENCE THAT THE DEFENSE QUOTES IN ITS 3.850, IS TO THE EFFECT THAT THERE WERE LIE DETECTOR TESTS, AND THAT THEY WERE PASSED, THEY WERE BEGIN AND THEY WERE PASSED. ONE OF THEM, I BELIEVE, IS FROM CAPTAIN MILLER, AND ONE OF THEM WAS FROM SOMEONE ELSE. THERE, ALSO, WAS TESTIMONY ON PAGE 28 OF HIS REPLY BRIEF, MR. McCLAIN QUOTES TESTIMONY THAT HE CLAIMS IS FALSE, AND IT IS, AND THIS IS PARAPHRASING SLIGHTLY. DID THE COPS CONSIDER STRICKLAND MAY HAVE LIED FOR JACKSON, AND THE REFERENCE TO LYING WAS PROVIDING ALIBI FOR HIM AT THE TIME OF THE MURDER, AND THE ANSWER WAS ALWAYS A POSSIBILITY. THEY BOTH AGREED TO THE POLYGRAPH, AND THERE WAS NO PROBLEM WITH THAT. THEY RAN VERY CLEAN ON THE POLYGRAPH, BUT NEITHER ONE OF THEM WAS INVOLVED IN MS. SMITH'S MURDER.

WHO ARE WE TALKING ABOUT? WHO IS MAKING THESE STATEMENTS?

CAPTAIN MILLER, ACCORDING TO THE DEFENSE'S REPLY BRIEF. I BELIEVE IT WAS CAPTAIN MILLER. QUESTION, WERE THESE POLYGRAPHS RELIABLE? ANSWER IS YES. SO WHAT THEY HAVE PLED IN THEIR PLEADINGS IS TO THE EFFECT THAT THERE WERE POLYGRAPHS GIVEN TO THESE MEN, AND THESE MEN PASSED THOSE TESTS. HOWEVER --

IS THERE NO RECORD OF THESE POLYGRAPHS?

WHAT WAS PRESENTED IN THE DEPOSITIONS BELOW, THE STATE PRESENTED MR., WELL, FIRST, I THINK IT WAS CAPTAIN MILLER TESTIFIED THAT, IF THE STATE ADMINISTERED A POLYGRAPH TO JACKSON AND STRICKLAND, IT WOULD HAVE BEEN DONE BY MR. DEAD MAN, AND THEN MR. DEAD MAN TESTIFIED THAT HE DID NOT SPECIFICALLY REMEMBER THEM, BUT THAT HE COULD ONLY SPECIFICALLY REMEMBER ONE, AND POSSIBLY ANOTHER ONE THAT HE HAD GIVEN IN THE CASE, THAT HE HAD GIVEN A LOT OVER HIS CAREER AND HE JUST DIDN'T REMEMBER THE INDIVIDUALS. HE SAID THAT THE SHERIFF HAD DIRECTED HIM, IN '89 OR '90, TO DISCARD ALL THOSE KINDS OF RECORDS THAT THEY HAD SINCE 1984 SO JUDGE NICHOLS FOUND THAT IT APPEARED THAT THE POLYGRAPHS WERE DESTROYED. HE FOUND THAT IN HIS ORDER, BUT THE EVIDENCE, AND THEIR PLEADINGS IS THAT THESE MEN TOOK POLYGRAPHS AND PASSED THEM. THEY, ALSO, CLAIM THAT MR. WRIGHT TOOK A POLYGRAPH AND PASSED IT. THAT IS IN THE REPLY BRIEF. HOWEVER, WHEN YOU LOOK AT THE ORIGINAL 3.850, THEY SAID THAT THE RESULTS OF WRIGHT'S POLYGRAPH WAS INCLUSIVE, AND THEY ALSO STATED, IN ANOTHER ONE OF THEIR PLEADINGS, THAT THE STATE GAVE HIM A SECOND POLYGRAPH, WHICH WAS, ALSO, INCLUSIVE, AND THAT THE ONLY ONE THEY CLAIM HE MAY HAVE PASSED WAS ONE THAT THE DEFENSE GAVE HIM.

WHEN WE, WE ARE LOOKING AT WHAT WE HAVE IN THIS CASE, ONE OF THE THINGS THAT I GUESS STRUCK ME, IS THAT YOU HAD A WITNESS, CATHY WATERS, WHO WAS EXCLUDED BECAUSE OF THE VIOLATION OF THE SEQUESTRATION RULE. WE FOUND THAT, THIS COURT FOUND THAT TO BE HARMLESS BEYOND A REASONABLE DOUBT, BASED ON THE STATUE -- THE STATUS OF THAT RECORD. WOULD YOU AGREE THAT, IF ANY OF THIS OTHER EVIDENCE THAT HAS COME OUT SINCE TRIAL CONSTITUTED BRADY MATERIAL, THAT WE HAVE AN OBLIGATION, UNDER OURc"PRIOR CASE LAW, TO LOOK AT IT AND TO REANALYZE THE ORIGINAL HARMLESS-ERROR ANALYSIS, BECAUSE IF THERE IS OTHER EVIDENCE THAT HAD BEEN THERE, THAT MAY NOT HAVE MADE, WHAT CATHY WATERS HD TO SAY OR THAT THE JURY DIDN'T HEAR,HARESS YONA REASONABLE DOUBT, AND THAT IS, I GUESS, THE CONCERN IN THIS CASE, IS THAT THIS IS NOT -- WE DON'T HAVE AN IRONCLAD CASE AGAINST MR MR. WRIGHT. THERE IS SOME REAL CONCERNS IF HE IS LEFTHANDED, AND THIS WAS DONE BY SOMEONE RIGHT-HANDED, THAT THERE IS ALL THIS EVIDENCE AT THE SCENE THAT DOESN'T MATCH UP TO MR. WRIGHT. YOU KNOW, DO WE, IS THIS PERSON POTENTIALLY INNOCENT, AND SHOULDN'T WE BE PARTICULARLY CONCERNED IN THIS CASE, WITH WHAT THE JURY, THIS ORIGINAL JURY NEVER HEARD?

WELL, JUSTICE PARIENTE, ALL OF THAT WAS PRESENTED IN VARIOUS PLEADINGS THAT HAVE BEEN BROUGHT BEFORE THIS COURT, AND NONE OF IT WAS FOUND TO HAVE ANY MERIT. I DO KNOW CATHY WATERS, THIS COURT SAID, WELL, THAT REALLY SHOULD HAVE, SHE SHOULD HAVE BEEN ALLOWED TO TESTIFY, BUT WHAT WOULD SHE HAVE TESTIFIED TO? SHE WOULD HAVE SAID I SAW A MAN WHO LOOKED LIKE, COULD HAVE POSSIBLY BEEN MR. WRIGHT WALKING ALONG THE ROADSIDE IN THE GENERAL DIRECTION HE SAID HE WOULD HAVE BEEN WALKING IN THE GENERAL TIME FRAME HE SAID HE WOULD HAVE BEEN WALKING THERE. THAT PLACES, ASSUMING THAT THAT IS A SUFFICIENT IDENTIFICATION OF MR. WRIGHT, WHICH I WOULD SAY IT WAS NOT, BASED ON HER ADDITIONAL TESTIMONY THAT SHE KNEW MR. WRIGHT AND WOULD HAVE STOPPED AND PICKED THIS MAN UP, HAD SHE BELIEVED IT WAS MR. WRIGHT, BUT LET'S SAY THAT IT DID IDENTIFY HIM. IT PLACES HIM AT THE, CLOSE TO THE SCENE OF THE CRIME AT ABOUT THE TIME THAT THE CRIME WAS COMMITTED, SO IT CUTS BOTH WAYS, IN ANY EVENT.

AS FAR AS THE TIME IS CONCERNED, I MEAN, ISN'T THERE A REAL QUESTION HERE, ABOUT WHAT THE TIME OF DEATH WAS? AS MR. McCLAIN JUST ARGUED, DIDN'T THE MEDICAL EXAMINER

INITIALLY SAY, ONE TIME, WHICH WAS NOWHERE NEAR 1:00 A.M. IN THE MORNING, AND THEN INCREASED THE TIME THAT IT COULD POSSIBLY HAVE HAPPENED? ISN'T THERE, I MEAN, YOU PUT THAT TOGETHER, THAT SORT OF QUESTION --

AT TRIAL IT WAS RESOLVED AGAIT MR. WRIGHT AT THAT TIME. ALL OF THAT WAS BEFORE THE JURY. THAT IS HOW IT CAME OUT, BEFORE THE JURY.

HOW WHAT CAME OUT?

THIS CHANGE IN THE TIME HAS ALL BEEN PRESENTED BEFORE. WE DON'T GO BACK IN THESE PROCEEDINGS, AND LOOK AT EVERY LITTLE THING THAT HAS OCCURRED OCCURRED, ALL THE WAY THROUGH THE PROCESS, AT EACH STEP.

ISN'T THAT WHAT WE SAY IN GUNSBY AND OTHER CASES, THAT YOU HAVE TO DO, WHEN YOU HAVE MATERIAL THAT IS BRADY, WHEN YOU HAVE NEWLY-DISCOVERED EVIDENCE, WHEN YOU HAVE ITEMS OF EVIDENCE THAT DEFENSE COUNSEL SHOULD HAVE PRESENTED AND DID NOT PRESENT, WHEN YOU PUT THOSE ALL TOGETHER, AND YOU, ALSO, LOOK AT WHAT WAS, IN FACT, PRESENTED AT TRIAL, THAT THAT IS WHAT WE HAVE TO DO? AN ANALYSIS OF ALL THE EVIDENCE THAT COULD HAVE BEEN BROUGHT BEFORE THE JURY.

WE DON'T HAVE ANY BRADY EVIDENCE HERE. THERE IS NOTHING NEW THAT THEY HAVE PRESENTED THAT WASN'T CONSIDERED IN THE 1988 PROCEEDING. THEIR CLAIM THAT, ON PAGE 30 OF THE REPLY BRIEF, FOOTNOTE 19, THEY LIST TWO THINGS WHICH THEY SAY ARE ALL THAT WAS PREVIOUSLY UNDISCLOSED EVIDENCE, THAT THEY GOT AFTER THE ORIGINAL PROCEEDING, AND THOSE TWO THINGS ACCORDING TO THEM, ARE THE POLICE REPORT INDICATING OFFICER PERKINS PREVIOUSLY FALSIFIED A POLICE REPORT, AND WAS FIRED BECAUSE HE WAS UNTRUSTWORTHY. NOW, THEY SAY THAT IS NEWLY-DISCOVERED, THAT WE ONLY GOT THIS AFTER THE FIRST 3.850. YOU GO AND LOOK AT THE FIRST 3.850, AND READ THAT. WHEN YOU LOOK AT THAT, YOU SEE THAT NOT ONLY DID THEY KNOW THAT MR., OR OFFICER PERKINS HAD BEEN DESIGNATED UNTRUSTWORTHY AND THAT HE HAD BEEN FIRED BECAUSE HE WAS UNTRUSTWORTHY, AND SPECIFICALLY PLEADED THAT IN THE FIRST 3.850. THEY QUOTED FROM A MEMORANDUM FROM A LIEUTENANT IN THE POLICE DEPARTMENT, THAT I DON'T WANT HIM TRANSFERRED TO MY DEPARTMENT. I WOULDN'T WORK WITH THE GUY. HE, YOU KNOW, HAD VARIOUS AND SUNDRY PROBLEMS. SO ON THE ONE HAND IN THE REPLY BRIEF, THEY ARE TELLING THIS COURT THAT THIS IS NEW. I ONLY HEARD ABOUT THIS AFTER THE 3.850, BUT YOU GO LOOK AT THE 3.850 AND IT IS THERE! AND THEN THE OTHER THING THAT THEY SAY THAT IS NEW THAT THEY ONLY HEARD ABOUT AFTER THE FIRST 3.850, IS THE NUMEROUS POLICE REPORTS DETAILING VIOLENT MISCONDUCT COMMITTED BY HENRY JACKSON AND OTHER PEOPLE THAT HAVE, AS FAR AS I CAN TELL, ABSOLUTELY NOTHING TO DO WITH THIS CASE. CONNIE RAYEZ, AND BOBBIE HUGHES, BUT IF YOU WILL LOOK AT THE ORIGINAL 3.850, THERE WERE NUMEROUS POLICE REPORTS BROUGHT OUT THEN, ABOUT THE MISCONDUCT OF MR. JACKSON. IT WAS CLEAR THAT MR. JACKSON WAS INVOLVED IN DOMESTIC DISPUTES. HE WAS INVOLVED IN DISTURBANCES OF THE PUBLIC. HE WAS AN ALCOHOLIC. HE WOULD GET LOUD AND BOISTEROUS. HE WOULD OCCURS HIS NEIGHBORS. THERE WERE TONS OF POLICE REPORTS ALONG THOSE LINES, AND THEY WERE SUBMITTED PREVIOUSLY. THIS IS NOT REALLY ANYTHING NEW! THOSE KIND OF THINGS WERE ALREADY CONSIDERED, AND THE LAW OUT OF THIS COURT INVENTION, IS THAT KIND OF INFORMATION WOULD ONLY BE RELEVANT, IF IT IS SUCH THAT IF IT WERE GOING TO TRIAL, IT WOULD BE ADMISSIBLE AS EVIDENCE, AND THAT IS ISN'T THE CASE. THERE ISN'T ANYTHING NEW THIS CASE.

COULD I ASK ONE QUESTION? COULD YOU TELL US, ON THE BASIS OF THE EXISTING RECORD HERE, WHETHER OR NOT THE RECORD TELLS US ANYTHING ABOUT WHETHER EVIDENCE HAS BEEN PRESERVED THAT COULD BE USED FOR A DNA EVALUATION OR ANYTHING OF THAT NATURE, IN THIS PARTICULAR CASE? IN OTHER WORDS WHERE, IF I RECALL, THE CIRCUMSTANCES

OF THE KILLING, THERE WAS AKIGD THERE IS A SEXUAL BATTERY, ALSO. IS THAT CORRECT?

THAT IS CORRECT.

AND COULD YOU TELL US --

HE WAS CONVICTED OF A SEXUAL BATTERY, AND IN ONE OF THE DEFENSE'S PREVIOUS PLEADINGS, I NOTICE THAT THERE WAS A CLAIM THAT THEY HAD MADE THAT THERE WAS SEMEN FOUND ON THE VICTIM AND A USED PROPHYLACTIC FOUND NEARBY, AND I LOOKED FOR THIS A COUPLE OF TYPES, YOUR HONOR. I DIDN'T SEE ANYTHING ABOUT DNA. I DON'T KNOW WHY THERE WASN'T ANYTHING ABOUT DNA. BUT I DO KNOW THAT, IF THAT WAS AN ISSUE, MR. McCLAIN WOULD HAVE BROUGHT IT TO THIS COURT'S ATTENTION. SOMETHING LIKE THAT WOULD NOT HAVE SLIPPED BY HIM.

THANK YOU. MR. CHIEF JUSTICE

THANK YOU. THANK YOU, MS. RUSH. REBUTTAL?

YES, YOUR HONOR. FIRST, IN REFERENCE TO DNA, THERE WAS A REQUEST FOR DNA TESTING. THE TESTING OCCURRED BACK IN, LIKE, 1994 AND 1995. THE RESULTS WERE INCLUSIVE. WHAT WAS NOT OF TESTED, BECAUSE WE COULDN'T TEST IT AT THAT TIME WAS THE HAIR, THE MITOCHONDRIAL, AND THAT IS SOMETHING THAT IS AVAILABLE NOW FOR DNA TESTING. PRESUMABLY WE WOULD BE ABLE TO FIND RESULTS ON THE HAIR THAT WAS FOUND IN THE PUBIC HAIR COMBING, WHICH COULD NOT HAVE BEEN TESTED BEFORE.

DOES THE RECORD TELL US WHETHER THE OTHER MATERIAL, THOUGH, WAS PRESERVED FOR ADDITIONAL TEST SOMETHING.

I REPORTED THAT THE RESULTS WERE THAT IT WAS INCLUSIVE AND INDICATED ON THE RECORD THAT IT WAS BECAUSE OF THE STORAGE, ET CETERA, THAT WE COULDN'T REACH ANY CONCLUSION ON SORT OF THE BIOLOGICAL EVIDENCE. I ACTUALLY HAVE NOT GONE BACK TO VERIFY THAT THE PRESENCE OF THE HAIR HAS BEEN PRESERVED. I JUST SIMPLY HAVE NOTED IT IN THE COURSE OF PREPARING FOR THIS THAT THAT HAS BEEN MENTIONED AND PRESUMABLY IT WOULD BE THERE AND PERHAPS TO BE TESTED. IN ADDITION, WITH ALL DUE RESPECT TO OPPOSING COUNSEL, I THINK THAT SHE WAS CONFUSED ABOUT CERTAIN THINGS. THE 3.850 THAT SHE WAS REFERRING TO THAT HAD THE STUFF PLED IN IT WAS THE AMENDED 3.850 THAT WAS FILED IN 1997, AFTER THE DISCLOSURES HAD BEEN MADE. IT WAS NOT THE ORIGINAL 19883.850, SO THERE WERE A SERIES OF 3.850s. IT IS THE 3.850 AFTER THE DISCLOSURES WERE MADE THAT CONCLUDED THAT.

IN THE BRIEF TIME THAT YOU HAVE REMAINING, COULD YOU HIT ONE, TWO, THREE, FOUR, FIVE, OR IF THERE IS THAT, OF WHAT YOU CONSIDER THE RECORD WOULD CLEARLY SHOW TO BE NEW OR BRADY OR WHATEVER, THAT, CONSIDERED WITH THE, WHAT IS ALREADY THERE, OKAY, WOULD CAST A WHOLE NEW LIGHT ON THIS CASE? IN OTHER WORDS ONE, TWO, THREE, FOUR, FIVE. WHAT ARE THEY?

QUICKLY, ONE THING THAT SHE RELIED ON, WITH THE REPLY BRIEF, IN SAYING THAT I HAD QUOTED THE TESTIMONY OF THE POLYGRAPH BEING ADMINISTERED TO MR. JACKSON. ACTUALLY IN THE REPLY BRIEF I EXPLAINED WHAT I AM QUOTING IS THE 1988 TESTIMONY THAT THERE WAS POLYGRAPH DONE ON STRICKLAND AND JACKSON AND THAT IS HOW THEY WERE ELIMINATED. IN 1997, TAYLOR DOUGLAS, THAT IS THE PERSON WHO IS INVOLVED WHO IS NOW THE SCHER ANY OF 1997, TESTIFIED ULTIMATELY, THAT THE POLYGRAPH WASN'T DONE, SO THIS IS NEW EVIDENCE, INDICATING THAT THE EVIDENCE THAT WAS PRESENTED IN --

IS THAT WHAT HE ACTUALLY SAID? I MEAN, HE CATAGORICALLY SAID THAT IT WAS NOT DONE

OR HE DOESN'T REMEMBER?

IN THE DEPOSITION, HE SAYS, HE IDENTIFIES THE PEOPLE THAT HE BELIEVES POLYGRAPH WAS DONE ON, AND THOSE WERE THE ONLY PEOPLE, WESTBURY, WRIGHT, AND WESTBURY'S GIRLFRIEND, I FORGET HER NAME OFF THE TOP OF MY HEAD, AND THAT DOES NOT INCLUDE STRICKLAND AND JACKSON AND IT WAS A DEPOT IN LIEU OF LIVE TESTIMONY AND THERE WAS NO OBJECTION TO THAT. I DON'T REMEMBER, OFF THE TOP OF MY HEAD, THE EXHIBIT NO., BUT IT IS IN THE RECORD. THAT IS NEW. IN ADDITION, I AM, ALSO,, I SUBMIT THAT THE COURT HAS TO CONSIDER THE FACT THAT FREDDIE WILLIAMS IS SPECIFICALLY SAYING JUDGE PERRY GOT IT WRONG. I DIDN'T SEE THIS STUFF BEFORE TRIAL, AND THERE IS NO EVIDENCE THAT ANY OF THE STUFF WAS PLENTYED BEFORE -- WAS PRESENTED BEFORE TRIAL, AND I WANT TO CLARIFY IT IN TERMS OF HOLT. SHE WAS TALKED TO BY THE DEFENSE YOU BUT IT WAS FIVE MONTHS AFTER SHE HAD GIVEN A SWORN STATEMENT TO THE POLICE, IDENTIFYING THE DAY THAT SHE HAD SEEN MR. JACKSON AND IN THE TIME SINCE, HOWARD PEARL SAID, SHE DIDN'T REMEMBER THE DAY, SO IT COULD HAVE BEEN EASILY AFTER IT WAS PUBLIC KNOWLEDGE, AND SO HE WENT AND CONFRONTED CAPTAIN MILLER, AND THAT IS WHEN CAPTAIN MILLER SAID, AND, AGAIN, MY RECOLLECTION OF THE TESTIMONY IS A BIT DIFFERENT. CAPTAIN MILLER DIDN'T SPECIFICALLY IDENTIFY A NOTEBOOK. HE JUST SAID WE HAVE TONS OF STUFF. I WILL BE HAPPY TO SHOW IT TO YOU. MR. PEARL SAID THAT IS NOT HOW DISCOVERY IS OCCURRING IN THIS CASE. I HAVE TO SIGN FOR EVERYTHING. THE PROSECUTOR WANTS AN ACCOUNTING TO KNOW EXACTLY WHAT HAS BEEN PROVIDED TO ME, SO WE NEED TO GO THAT ROUTE, SO HE DID NOT TAKE CAPTAIN MILLER UP ON HIS OFFER TO LOOK AT OTHER STUFF AND THE STUFF WASN'T DISCLOSED. IN ADDITION THERE, IS THE WALTER PERKINS DEPOSITION THAT HAD NOT BEEN DISCLOSED -- WALTER PERKINS TESTIMONY, PRIOR TO 1977 -- 1997 WHERE THE DEPONENT IMPLIED THAT HE FILLED OUT A FALSE POLICE REPORT. AND TRYING TO GET JOHNNY RAY ISRAEL TO CONFESS TO THIS, NEVER SEEN THAT BEFORE. THERE IS NEW INFORMATION ON BOBBIE HACKMAN.

WHAT WAS THE SIGNIFICANCE OF THAT? EYE DIDN'T KNOW THAT CONNIE RAY ISRAEL WAS A SUSPECT IN THIS CASE, AND CERTAINLY HE, DURING THE TIME PERIOD --

NOW, WHO IS THE PERSON --

JOHNNY McCLENDON. THIS HANDWRITTEN NOTE IS HARD TO READ. IT INDICATES THE SIGNATURE OF JOHNNY McCLENDON AND APPEARS TO BE TO CAPTAIN MILLER AND REGARDING HIS EVENTS EFFORTS TO TALK TO RAY ABOUT THE CASE AND GETTING HIM TO ADMIT THAT HE DID THIS, AND THAT WAS DISCLOSED IN THE 119 MATERIALS THAT ARE PART OF EXHIBIT 47. AND THE OVERRIDING THING IS THAT BEN FOX, THE ASSISTANT STATE ATTORNEY, IN ARGUING IN DECEMBER OF 1997, HE SAID, WELL, THE NEW STUFF, THE NEWSCLURES ARE MINUTE, COMPARED TO THE OLD STUFF, AND THE OLD STUFF HAS ALREADY BEEN DETERMINED NOT TO BE BRADY, SO YOU CAN'T CONSIDER THAT, AND IF THAT DIDN'T, IF THAT DIDN'T CONSTITUTE BRADY, THIS NEW LITTLE STUFF DOESN'T MATTER, AND JUDGE NICHOLS NEVER CONDUCTED A TIMETIVE ANALYSIS. THAT SON OF MY COMPLAINTS. -- THAT IS ONE OF MY COMPLAINTS. HE CRITIQUED THE NEW STUFF AND ADDED TO THE OLD, BIG STUFF, AND YOU LOOK AT IT, I MEAN, THE JURY DIDN'T KNOW ANY OF THIS. YES, THE JURY WAS AWARE THAT DR. LATIMER WAS CONCERNED ABOUT THE TIME OF DEATH, AND THAT PROBLEM, BUT THEY DIDN'T HAVE THE INFORMATION REGARDING EARLIER IN THE DAY, THE MAIL CARRIER SEEING THE DISPUTE BETWEEN JACKSON, STRICKLAND AND MS. SMITH, OR WILLIAM BARTLY SEEING THEM IN THE EMPTY LOT NEXT DOOR, DURING THE TIME PERIOD THAT THE SUPPOSED TO BE WHEN THE MURDER OCCURRED.

AGAIN, THE DEFENSE HAVE THE INFORMATION ABOUT THOSE OBSERVATIONS?

NO. THE DEFENSE, HOWARD PEARL TESTIFIED THAT THE ONLY THING HE KNEW ABOUT WAS KIM HOLT, AND SHE WASN'T SURE SURE, WHEN HE TALKED TO HER IN AUGUST, WHEN SHE HAD SEEN MR. JACKSON IN FEBRUARY.

SO THE FACT THAT THEY, THE, AGAIN, THE JURY NEVER HEARD THAT STRICKLAND AND JACKSON WERE ARGUING WITH THE VICTIM, IS IT EARLIER THAT SAME DAY?

NO. IT WAS SATURDAY, FEBRUARY 5. MR. CHIEF JUSTICE

BUT THAT BRINGS -- YOUR TIME IS UP. THANK YOU VERY MUCH.

I WOULD ASK FOR A NEW TRIAL. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. THE COURT WILL BE IN RECESS FOR 15 MINUTES.