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Thomas James Moore v. State of Florida

THE FINAL CASE ON THE ORAL ARGUMENT CALENDAR THIS MORNING ARE THE TWO CASES WHICH HAVE BEEN CONSOLIDATED, OF MORE VERSUS STATE AND MOORE -- MOORE VERSUS STATE AND MOORE VERSUS MOORE.

> GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS JOHN JACKSON. I AM AN ASSISTANT CAPITAL COLLATERAL COUNSEL FOR THE REGION AND WITH ME IS THE STAFF ATTORNEY AT OUR COLLATERAL OFFICE. I HAVE FIVE MINUTES OF REBUTTAL TIME RESERVED FOR THIS ARGUMENT. AT FIRST GLANCE, IT WOULD APPEAR THAT WE ARE UP HERE ON A SUMMARY DENIAL OF MR. MOORE'S POSITION BEFORE THE COURT, BUT THAT IS NOT THIS CASE. THE ISSUE THAT WE ARE UP HERE FOR IS FOR THIS COURT TO DETERMINE WHETHER IT IS GOING TO ALLOW THE LOWER COURT'S ORDER, STRIKING MR. MOORE'S THIRD MOTOR VEHICLES AND THEN SUMMARILY DENY HIS SECOND MOTION, TO GO AHEAD AND LET THAT ORDER STAND, DESPITE THE FACT THAT MR. MOORE NEVER GOT A CHANCE TO LOOK AT THE ACTUAL INVESTIGATIVE FILES THAT WERE CREATED BY THE INVESTIGATIVE AGENCY WHO INVESTIGATED THIS CRIME, AND WHETHER OR NOT THIS COURT IS GOING TO LET THE LOWER COURT'S ORDER STAND, DESPITE THERE ARE MANY ISSUES OUT THERE THAT THE LOWER COURT WOULD NEVER HAVE ADDRESSED AND JUST MOVED ON WITH THE CASE ANYWAY.

BUT THAT IS YOUR CHARACTERIZATION. THE TRIAL COURT CHARACTERIZED IT A LITTLE BIT DIFFERENTLY.

YES, YOUR HONOR.

HOW DID THE TRIAL COURT CHARACTERIZE IT?

ON WHICH PARTICULAR ISSUE?

ON WHETHER OR NOT YOU HAD AN OPPORTUNITY TO LOOK AT THE RECORD.

WE WOULD SUBMIT THAT THE LOWER COURT NEVER ACTUALLY ADDRESSED THAT ISSUE AT ALL. I MEAN, I BELIEVE THAT THE RECORD IS VERY CLEAR THAT THE LOWER COURT NEVER ADDRESSED THAT ISSUE. THERE WERE SEVERAL DIFFERENT MOTION TO SAY COMPEL FILED THROUGHOUT THE HISTORY OF THIS CASE IN THE LOWER COURT, BUT WHEN WE GOT TO THE THIRD HEARING THE FINAL HEARING WHERE THE THIRD AMEND MOTION WAS STRUCK AND WHERE THE SECOND AMENDEDc MOTION WAS SUMMARILY DENIED, THERE WERE TWO MOTION TO SAY COMPEL PENDING AT THAT TIME, IN FRONT OF THE LOWER COURT, AND THE LOWER COURT WOULD NOT ADDRESS THEM AT ALL. THE LOWER COURT, THE CLOSEST THE LOWER COURT CAME TO EVEN ADDRESSING ONE OF THE MOTION TO SAY COMPEL WAS SIMPLY SAYING SOMETHING ALONG THE LINES OF, WELL, THE STATE SAYS THAT THEY GAVE IT TO YOU. YOU SAID THAT YOU DON'T HAVE IT ALL. WHAT AM I SUPPOSED TO DO? HAVE A HEARING? AND THAT IS MR. MOORE'S CONTENTION. YES, YOU ARE SUPPOSED TO HAVE A HEARING, SO WE CAN DETERMINE WHETHER OR NOT THERE ARE MISSING RECORDS, BUT THAT WAS ONLY ONE MOTION TO COMPEL, BECAUSE THE LOWER COURT WOULD NOT EVEN ADDRESS THE OTHER MOTION TO COMPEL, WHICH IS MAINLY DIRECTED TO THE DUVAL SHARES AUDITS, WHO INVESTIGATED THIS CASE, THEIR INVESTIGATIVE FILE. I MEAN, IT IS IMPOSSIBLE FOR MR. MOORE TO INVESTIGATE ANY POSSIBLE POSTCONVICTION CLAIMS, WHEN HE DOES NOT HAVE ACCESS TO THE ACTUAL FILES AND RECORDS AND REPORTS, ET CETERA, GENERATED BY THE AGENCY THAT INVESTIGATED HIS

MURDER.

WHAT DID THEY -- AS I UNDERSTAND THIS CASE, THERE WAS, IN FACT, PUBLIC RECORD THAT WERE GIVEN BY THESE AGENCIES, THE STATE ATTORNEYS OFFICE, DUVAL COUNTY SHERIFFS OFFICE. WHAT DID THEY GET?

THEY GAVE, WELL, WHICH AGENCY ARE WE SPEAKING OF? REGARDLESS? I THINK I CAN ANSWER THE QUESTION ANYWAY. THEY GAVE A COUPLE OF REPORTS IS WHAT THEY GAVE. IN FACT, THE SHERIFFS DEPARTMENT GAVE A COUPLE OF REPORTS AND A DEPOSITION, AND SAID THIS IS WHAT WE -- THIS IS WHY WE -- THIS IS WHAT WE CREATED, WHEN WE INVESTIGATED MR. MOORE'S CASE AND ULTIMATELY PUT HIM ON DEATH ROW. THE SHERIFFS DEPARTMENT GAVE US THIS RIGHT HERE AND SAID THIS IS WHAT PUT YOUR CLIENT ON DEATH ROW. TAKE AWAY THIS DEPOSITION, WHICH IS ALMOST HALF THE MATERIALS IN HERE, THIS IS WHAT THEY SAY PUT MY CLIENT ON DEATH ROW. NOW, GRANTED THE CASE LAW FROM THIS COURT SAID THABS, JUST BECAUSE WE LOOK AT A FILE AND IT IS SMALL, THAT THAT DOESN'T MEAN THAT THERE IS STUFF MISSING. WE NEED TO PRESENT MORE THAN THAT AND WE DID TO THE LOWER COURT. WE TOLD THE LOWER COURT, IN THE MOTION TO CONNELL PELL, WHEN -- TO COMPEL, WHEN WE WERE REQUESTING A HEARING ON IT, EXACTLY WHAT WE DID NOT HAVE, AND I SAID THIS IN THE BRIEF AS WELL. WE ARE TALKING INVESTIGATORS NOTES, STATEMENTS BY CODEFENDANTS, WITNESS STATEMENTS ACROSS THE BOARD.

YOU ARE SAYING WE DON'T KNOW IF THESE THINGS ACTUALLY EXIST OR NOT?

CREATE.

BECAUSE THERE WASN'T -- CORRECT.

BECAUSE THERE WASN'T A HEARING.

CORRECT.

YOU COULD SAY YOU DON'T HAVE IT, BUT THERE IS NOTHING IN THE RECORD THAT SAYS THAT SUCH THINGS EXIST.

BECAUSE THE LOWER COURT WOULD NOT GIVE ME A HEARING ON IT AND LET ME ESTABLISH THEIR EXISTENCE. YES, THAT IS THE PROBLEM.

WHAT DO YOU -- JUSTICE SHAW HAD A QUESTION.

LET ME TRY TO GET MY FACTS STRAIGHT. DIDN'T THE STATE ATTORNEYS OFFICE, DIDN'T THE STATE SAY, WELL, COME ON IN. THESE ARE THE RECORDS WE HAVE, AND YOU CAN COME IN AND INSPECT THESE ANY TIME YOU WANT TO.

REGARDING --

AND, WHAT, SIX MONTHS, SO FORT, WENT BY, AND YOU NEVER WENT IN TO LOOK AT THEM? IS THAT CORRECT?

THAT IS WHAT HAPPENED WITH THE STATE ATTORNEY FILE. UNFORTUNATELY THE STATE ATTORNEY'S REPRESENTATION IN ITS BRIEF IS NOT EXACTLY HOW IT OCCURRED. NUMBER ONE, IT WAS REQUESTED UNDER THE OLD 3.856-92. IN FACT IT WAS ONE MONTH BEFORE THE STATUTE CHANGED. WE WROTE BACK AND SAID WE WAIVE REVIEW OF THE FILE. COME BACK AND SHOW IT TO THE RECORDS REPOSITORY. THEY CAME BACK AND SAID IT ISN'T CORRECT. WE SAID OUR RELIANCE IS CORRECT. THAT CREATED A SITUATION FOR THE LOWER COURT TO DETERMINE.

WHEN HE SAID IF YOU REALLY WANT THEM, THE SAFEST THING IS TO COME ON IN AND LOOK AT THEM. HOW DO YOU GET AWAY WITH THAT? THEY WERE AVAILABLE TO YOU.

THE ONLY THING THAT THE STATE WAS COMPLAINING ABOUT IS THAT THEY WOULD HAVE HAD TO PAY TO PROVIDE US THAT FILE,, TO BEGIN WITH, BUT WE ASKED THEM TO SEND US THAT FI. WE ARE NOT IN A POSITION TO BE ABLE TO GO TO EVERY SINGLE AGENCY ACROSS THIS STATE AND TAKE A LOOK AT THEIR FILE.

YOU ARE SAYING YOU COULD NOT HAVE GONE TO THEIR OFFICE.

WE COULD NOT HAVE -- WE CHOSE TO -- WE KMOS TO WAIVE THE REVIEW OF THE -- WE CHOSE TO WAIVE THE REVIEW OF THE FILE AND ASKED THEM TO SEND IT TO US. THEY REFUSED TO DO IT, AND WITH THE STATE ATTORNEYS FILE, THAT WAS AN ISSUE THAT WE SUBMIT SHOULD HAVE BEEN SOLVED BY THE TRIAL ATTORNEY, EXCUSE ME, BY THE LOWER COURT, SOMETHING THE LOWER COURT DIDN'T EVEN ADDRESS UNTIL SEVERAL MONTHS LATER. HOWEVER, THE SHERIFFS FILE IS A COMPLETELY DIFFERENT STORY. THE SHERIFF'S FILE, THE ACTUAL INVESTIGATIVE AGENTS THAT -- AGENCY THAT QUESTIONED THE WITNESSES THAT LOOKED FOR THE MURDERER FOR A WEEK BEFORE THEY ACTUALLY MADE A QRTION THE SHERIFFS OFFICE NEVER VEN RESPONDED TO OUR ORIGINAL REQUEST. NO OBJECTION. NOTHING. THEY HAD NO RESPONSE WHATSOEVER. EIGHT MONTHS LATER, WHEN WE FINALLY GET TO THE HEARING, THE REPRESENTATIVE -- AND THIS IS ALL IN THE TRANSCRIPT, THE REPRESENTATIVE OF THE SHERIFFS DEPARTMENT SAID OH, I AM SORRY. I THOUGHT WE GAVE YOU THAT FI. OKAY. WE WILL GET THAT YOU FILE.

DO YOU AGREE THAT, IF THE STATE HAS A -- FILE POLICY AND YOU FAIL TO AVAIL YOURSELF OF THAT POLICY, YOU ARE FORECLOSED FROM COMING IN LATER AND SAYING THAT, WELL, THE STATE DIDN'T SEND US THIS IN RESPONSE. THEY DIDN'T PHYSICALLY SEND IT TO US. THEY TOLD US TO COME ON IN AND LOOK AT IT. WE DIDN'T HAVE TIME TO LOOK AT IT. WE HAVE GOT A LOT OF CASES.

I DO NOT BELIEVE THAT WOULD --

DO YOU TAKE THAT POSITION REALLY?

I DO NOT BELIEVE THAT WOULD FORECLOSE US, BUT THAT IS NOT REALLY THE ISSUE THAT WE ARE DEALING WITH HERE. IT IS NOT THE STATE ATTORNEYS FILE THAT WE ARE TAKING ISSUE WITH. IT IS THE SHERIFFS DEPARTMENT FILE THAT WE ARE TAKING ISSUE W IT IS THE SHERIFFS DEPARTMENT THAT TOOK A YEAR AND SEVEN OR EIGHT MONTHS TO PROVIDE US WITH THIS, AFTER SEVERAL TIMES BEING ORDERED BY THE LOWER COURT TO DO SO.

BUT THE QUESTION IS, TO ME, IS DID YOU, AS I UNDERSTAND IT, THERE WAS ARGUMENT MADE, CONCERNING THE SHERIFFS FILE ON MARCH 8. IS THAT CORRECT?

OF 1999?

OF 2000.

YES. AN ARGUMENT CONCERNING THE SHERIFF'S FILE.

AND THE COURT ISSUED AN ORDER DIRECTING THE SHERIFFS TO PROVIDE ANY FILES TO MOORE NO LATER THAN MARCH 7.

CORRECT. MARCH 7.

MARCH 17.

YES. CORRECT.

AND, NOW, WAS THAT DONE?

NO. IT WAS NOT DONE. NUMBER ONE, IT WAS NOT PROVIDED TO US BY MARCH 17. IT WAS NINE DAYS LATE. NUMBER TWO, IT WAS WHOLLY INCOMPLETE. THE LOWER COURT GAVE US 20 DAYS TO AMEND, WITH THE ACTUAL INVESTIGATIVE FILE, WITHOUT EVEN ADDRESSING POSSIBLE ADDITIONAL RECORDS REQUESTS, BASED ON THE CONTENTS, BUT THE FILE WAS LATE AND WHOLLY --

BUT BECAUSE ARE SAYING TO IS US IS THAT, AFTER ALL THIS TIME WITH RESPECT TO THE SHERIFFS FILE, THAT YOU DID NOT GO TO THE SHERIFF'S OFFICE.

WE FILED SEVERAL MOTIONS WITH THE LOWER COURT, ASKING THEM TO ENFORCE THEIR ORDER, ASKING THEM TO GET THE SHERIFFS DEPARTMENT TO SEND US THE FILE, WHICH THEY WOULD DO, IN THE TIME OF ANOTHER YEAR. BETWEEN THE TIME OF THE FIRST HEARING AND THE TIME THE SHERIFFS OFFICE SAID THEY WOULD PROVIDE US WITH THE FILE, AND THE SECOND HEARING, WHERE THE LOWER COURT FINALLY ADDRESSED THE FACT THAT THE SHERIFFS OFFICE HAD WAITED A YEAR, THE FIFTH TIME WE PUT THE LOWER COURT ON NOTICE THAT THEY HAD NOT GIVEN US THE RECORDS WHICH YOU ORDERED THEM TO GIVE US. FIVE TIMES WE ASKED THE COURT TO HOLD A HEARING ON IT, THROUGH MOTION TO SAY COMPEL, THROUGH JUST A GENERAL HEARING REQUEST ON ALL PUBLIC RECORDS, ANYTHING. WE KEPT ASKING THE COURT FOR THE FILE. WE NEVER GOT IT, UNTIL MARCH OF 2000, ONE YEAR AND SEVEN MONTHS AFTER MR. MOORE'S CASE ENTERED POSTCONVICTION, ALREADY PAST HIS ONE-YEAR DATE, AND THEN FINALLY THE SHERIFFS DEPARTMENT GIVES US A COUPLE OF THINGS THAT THEY SAY IS THEIR FILE AND IT IS CLEARLY MISSING, CLEARLY INCOMPLETE. IT IS NOT EVEN CLOSE, AND WE WANTED A HEARING ON IT. WE ARE ENTITLED TO A HEARING ON IT. WE DID NOT GET A HEARING FROM THE LOWER COURT, AND BECAUSE OF THAT THEN THE LOWER COURT STRIKES THE THIRD AMENDMENT. THE LOWER COURT SUMMARILY DENIES A SECOND AMENDMENT, A SECOND AMENDMENT THAT WAS FILED WITHOUT THE BENEFIT OF THAT RECORD OR ANY OF THE RECORDS.

LET'S ASSUME THAT THERE ARE SOME RECORDS OUT HERE THAT MIGHT AFFECT LIABILITY, THE GUILT PHASE. A GOOD DEAL OF THIS --c OF THE HEARINGS NORMALLY ARE HELD ON THE PENALTY PHASE MITIGATION, WHICH WOULDN'T BE INFORMATION WITHIN THE SHERIFFS DEPARTMENT OR THE STATE ATTORNEY, SO AS TO THOSE CLAIMS THAT THERE HAS BEEN A SUMMARY DENIAL, HAVE YOU EVER ALLEGED ANYTHING THAT WOULD, REALLY, GIVE RISE TO AN EVIDENTIARY HEARING REQUIREMENT, AS TO THE MENTAL HEALTH ISSUES?

WELL, I WOULD RESPECTIVELY DISAGREE WITH YOUR HONOR, THAT NOTHING IN THE SHERIFF'S FILE USE HAVE ANY BEARING -- FILE COULD HAVE ANY BEARING ON ANY PENALTY PHASE CLAIMS, JUST LIKE MR. MOORE'S INEFFECTIVE ASSISTANCE OF PENALTY PHASE CLAIM. I WILL ADDRESS THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM ALONE. WHEN YOU ARE INVESTIGATING THE TRIAL ATTORNEY'S JOB THAT HE DID IN THE PENALTY PHASE, AND YOU HAVE, YOU KNOW, DEALING WITH YOU ARE GOING TO HAVE TO CHALLENGE WHAT MAY BE REFERRED TO AS A STRATEGIC DECISION ON HIS PART OR ANYTHING ALONG THOSE LINES. IF YOU ARE CHALLENGING THE WORK THAEDZ OR IF YOU ARE SAYING THAT YOUR CLIENT HA MENTAL DEFICIENCY THAT HE FAILED TO DETECTOR FAILED TO USE TO MR. MOORE'S DEFENSE, HAVING THE ACTUAL WITNESS STATEMENTS OF THE PEOPLE THAT WERE AROUND MR. MOORE ON THE DAY THE CRIME OCCURRED, THAT WERE AROUND MR. MOORE, LEADING UP TO THE CRIME AND THAT WERE AROUND MR. MOORE FOR THE WEEK AFTER THE CRIME, ACTUAL STATEMENTS THAT COULD GO TO HIS STATE OF MIND THAT COULD GO TO JUST HOW HE WAS ACTING, WOULD BE VERY RELEVANT TO A DOCTOR WHO WAS TRYING TO FIGURE OUT WHAT HE WAS FEELING AT THE TIME. I MEAN, WE ARE DEALING WITH A CASE TEN YEARS LATER, AND IT IS ONE THING FOR US TO

GO OUT AND FIND A WITNESS WHO SAID, YEAH, MR. MOORE'S EYES WERE GLAZED AND RED AND HE WAS ON DRUGS AND OUT OF HIS MIND. TEN YEARS DOWN THE ROAD IT IS ANOTHER THING TO HAVE A WITNESS STATEMENT SAYING, YES, HIS WATERS WERE -- HIS EYES WERE ALWAYS RED AND WEARING.

BUT YOU HAVE GOT EVIDENCE THAT YOU COULD PUT ON IN REFERENCE TO A VOLUNTARY INTOXICATION CLAIM, HAVE YOU?

I BELIEVE THAT WE HAVE, BUT AS FAR AS PUBLIC RECORDS IT IS NOT THRILL WHETHER OR NOT IT IS A POSTCONVICTION CLAIM BUT COULD TLEED POSTCONVICTION CLAIMS, AND IF WE KNEW EVERYONE THAT THE DUVAL SHERIFFS DEPARTMENT TALKED TO AROUND THE TIME OF THE CRIME, THOSE WOULD BE THE FIRST PEOPLE WHO WERE IN CONTACT WITH MR. MOORE. THOSE WOULD BE THE FIRST PEOPLE TO TALK TO ABOUT WHETHER OR NOT THEY COULD TELL US ANYTHING ABOUT MR. MOORE'S STATE OF MIND AT THE TIME, BUT WE DON'T KNOW WHO THEY WERE. WE HAVE NO IDEA WHO THE SHERIFFS DEPARTMENT TALKED TO. THIS IS THE CASE OF TWO CODEFENDANTS. THIS IS A CASE WITH A JAILHOUSE SNITCH WHO ALSO HAPPENED TO HAVE A PREVIOUS STATEMENT AND FINALLY ENDED UP BEING DRUG DEALER THAT MR. MOORE OWED MONEY TO. THERE ARE SEVERAL STREET WITNESSES THAT ARE TALKING ALL OVER THE PLACE, SEVERAL STREET WITNESSES.

WAS THE SNITCH DEPOSED AT THE TRIAL?

CERTAINLY.

AND DID YOU HAVE THE ENTIRE FILE OF THE DEFENDANT THAT WAS DEVELOPED BY DEFENSE COUNSEL?

TO OUR KNOWLEDGE, YES, WE DID.

OKAY.

BUT ONCE AGAIN, THE TRIAL ATTORNEY FILE IS NOT ENOUGH. HOW CAN I POSSIBLY DO ANY REVIEW FOR ANY BRADY MATERIALS OR, EXCUSE ME, ANY BRADY CLAIMS, IF I HAVE NO IDEA WHAT THE POLICE ORIGINALLY HAD AND WHETHER OR NOT IT WITHHELD ANYTHING, WHETHER THE STATE WITHHELD ANYTHING FROM MR. MOORE'S ATTORNEY, IF I DON'T KNOW WHAT THE STATE HAD. I CAN'T MAKE THAT DETERMINATION, AND THAT, OF COURSE, GOES BOTH TO GUILT PHASE AND PENALTY PHASE AND THAT IS JUST ONE EXAMPLE. IT, ALSO, WOULD BE VERY DIFFICULT TO ASSESS WHETHER OR NOT THERE IS INEFFECTIVE ASSISTANCE OF COUNSEL, BECAUSE ONCE YOU FIND OUT WHAT THE STATE HAD AND IF THE DEFENSE ATTORNEY DID HAVE IT IN HIS FILE, THAT DOESN'T MEAN THAT HE WASN'T GRANTED ACCESS TO, IT ALL OF WHICH WOULD HAVE TO BE DETERMINED IN AN EVIDENTIARY HEARING FOR THAT MATTER.

YOUR REQUEST, THEN, AS I UNDERSTAND BECAUSE ARE SAYING HERE TODAY, YOUR REQUEST FOR THE ADDITIONAL INFORMATION FROM THE SHERIFFS OFFICE AND THE STATE ATTORNEYS OFFICE IS BASED ON WHAT WAS NORMALLY BE IN A FILE, AS OPPOSED TO WHAT YOU ENDED UP GETTING?

NO. AS FAR AS THE MOTION TO COMPEL, YES, IT IS BASED ON WHAT WE GOT AND WHAT INFORMATION WE HAVE FROM OTHER SOURCES THAT TELL US THAT THIS IS NOT A COMPLETE FILE.

OKAY. SO AND YOU --

THERE IS NOT EVEN STATEMENTS IN HERE FROM ALL OF THE WITNESSES -- THERE IS NOT EVEN STATEMENTS HERE FROM ALL OF THE WITNESSES WHO ACTUALLY TESTIFIED TESTIFIED.

SO IN YOUR REQUEST TO THE TRIAL JUDGE FOR ADDITIONAL DISCOVERY, DID YOU INDICATE HOW YOU KNEW THIS INFORMATION WAS AVAILABLE?

IF YOU ARE SPEAKING OF THE MOTION TO COMPEL, WHERE WE ADDRESSED, LISTED OUT THE THINGS THAT WE COULD TELL FOR CERTAIN WERE MISSING, NO, WE DID NOT PUT IN THE MOTION HOW WE KNEW IT. THAT, I WOULD ASSUME, WOULD BE WHAT THE HEARING WOULD BE FOR. YOU KNOW, WE PUT OUT SPECIFIC THINGS OF WHAT WE BELIEVE ARE MISSING, AND THEN WE GO TO A HEARING, AND WE SHOW WHY WE KNOW IS MISSING. MR. CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL.

THANK YOU. MR. CHIEF JUSTICE: MR. WHITE.

STEVE WHITE, ASSISTANT ATTORNEY GENERAL AND THE RESPONDENT. FIRST LET ME TAKE ISSUE THAT THE FILE WAS DEFINED LATE UNDER THE TRIAL COURT'S ORDER, AND IT WAS CLEARLY COMPLETE. IN HIS WORDS, ON MARCH 28, 2000. THERE WAS A HEARING. CCRCs WAS FULLY HEARD ON THE ISSUE OF WHETHER THE FILE WAS COMPLETE. THE ASSISTANT STATE ATTORNEY, ANGELA CORY, TOLD JUDGE SOUTHWOOD, YOUR HONOR, I LOOKED AT THE FILE AS IT IS HELD BY THE JSO. IN FACT, I COMPARED THAT FILE WITH THE COPY OF WHAT I THOUGHT I HAD IN MY FILE, OF THE JSO'S INVESTIGATIVE FILE. THEY WERE THE SAME. WE GAVE THEM EVERYTHING WE HAD. SHE PERSONALLY LOOKED AT THE JSO INVESTIGATIVE FILE, WHICH APPEARS TO BE THE PRIMARY COMPLAINT HERE, AND THAT ENTIRE FILE HAS BEEN PROVIDED TO CCRCs.

HOW DOES CCRCs RESPOND TO THAT PRESENTATION TO THE TRIAL JUDGE?

IT IS MY UNDERSTANDING THAT THERE USUALLY IS DETECTIVE'S HANDWRITTEN NOTES AND OTHER NOTES FILE. I HAVE NEVER SEEN ANYTHING CONCRETE TO THE FACT THAT THIS FILE VER CONTAINED ANYTHING LIKE. THAT.

WELL, I GUESS THEIR POSITION WOULD BE, THEN, THAT THE TRIAL JUDGE IS REALLY THE ONE WHO HAS TO MAKE A DETERMINATION AS TO WHETHER OR NOT THERE IS ADDITIONAL THINGS IN THE FILE, AS OPPOSED TO THE STATE ATTORNEY LOOKING AT THE POLICE FILE AND MAKING THAT DETERMINATION.

YES, YOUR HONOR. IN FACT, ON APRIL 20, 2000, THE NEXT HEARING DATE, THIS WAS ALL DISCUSSED, AND THE TRIAL COURT EXPRESSLY FOUND "I AM SATISFIED THAT EVERYBODY HAS DONE THE BEST THEY CAN DO. THIS IS AFTER ANGELA CORY REPRESENTED TO THE COURT THAT SHE LOOKED AT THE INVESTIGATIVE FILE AND COMPARED IT WITH WHAT SHE HAD OF THE INVESTIGATIVE FILE AND FOUND THEM IDENTICAL.

HOW WAS THE TRIAL JUDGE SATISFIED THAT THAT WAS THE CASE?

BASED ON THOSE REPRESENTATIONS, YOUR HONOR. THAT THERE HAD BEEN NOTHING CONCRETE PRESENTED TO THE TRIAL COURT THAT ANYTHING HAD BEEN WITHHELD AT THAT PINT. -- AT THAT POINT, AND IN FACT, IF WE GET TO THE THIRD AMENDED 3.850, IN TERMS OF WHAT DOES THIS ALL MEAN REGARDING ANY KOINGNIZEABLE CLAIMS, AT THE EDITION OF -- COGNIZABLE CLAIMS, THEY HAVE HAD EVERYTHING THAT WE CAN GIVE THEM, AND OF COURSE FOR MONTHS AND MONTHS AND MONTHS THE SAO FILE WAS AVAILABLE AND THEY DIDN'T LOOK AT IT. THERE ARE A COUPLE o+3c LETTERS THAT THE JSO WROTE TO THE CCRCs ON THAT, BUT IF YOU LOOK AT THE CLAIMS THERE, AND I TRIED TO TAKE GREAT PAINS IN THE ANSWER BRIEF TO THIS COURT, IN ADDRESSING WHAT IS DIFFERENT IN THE THIRD AMENDED WITH THE SECOND AMENDED, AND I WOULD CONTEND THAT I HAVEN'T FOUND ANYTHING THAT IS BASED ON ANY BE LATEEDLY-PROVIDED RECORDS, AND SO AT THAT POINT, THEY HAVE HAD EVERYTHING WE HAVE GOT, IN TERMS OF WHAT THEY ARE ENTITLED TO, AND THEY STILL CAN'T COME UP -- CAN'T COME UP WITH A COGNIZABLE CLAIM.

IT IS IN DISPUTE AS TO WHETHER OR NOT THE STATE HAS TURNED OVER A COMPLETE FILE. ARE YOU SAYING THAT THE TRIAL JUDGE HAS FULFILLED HIS DUTY, IF HE PERFUNCTORY ASKS IS THIS EVERYTHING IN YOUR FILE, AND THE STATE ATTORNEY SAYS, WELL, THAT IS IT. AND THE DEFENDANT IS THERE, SCREAMING ON THE OTHER SIDE, SAYING WAIT A MINUTE. I HAVE BEEN THROUGH HUNDREDS OF FILES, AND THERE ARE ALWAYS THESE NOTES IN THEM, AND ALL OF THIS IS MISSING. THIS SEEMS TO BE A COLD FILE. ISN'T THERE AN OBLIGATION FOR ADD EVIDENTIARY HEARING, IF THAT TYPE OF THING OCCURS?

YOUR HONOR, INITIALLY I WOULD CONTEND THAT THE REPRESENTATION MADE BY COLLATERAL COUNSEL WASN'T THAT STRONG. IT WAS MORE ALONG THE LINES OF THAT THESE FILES ROUTINELY HAVE DETECTIVE'S HANDWRITTEN NOTES AND ROUTINELY HAVE STATEMENTS BY WITNESSES. BUT NEVERTHELESS, THE ASSISTANT STATE ATTORNEY, AS AN OFFICER OF THE COURT, SAID I LOOKED AT THE WHOLE FILE, YOUR HONOR, AND I HAVEN'T SEEN ANYTHING ELSE, AND THERE ARE -- THERE IS AN INDICATION IN THE TRIAL, I THINK MR. CLEMONS HAD A STATEMENT THAT WAS ACTUALLY USED IN THE TRIAL, AND OF COURSE HAS BEEN PART OF THE TRIAL RECORD FOR YEARS AND YEARS.

IN YOUR OPINION, WHAT WOULD THE DEFENSE HAVE TO DO TO ENTITLE THEM TO AN EVIDENTIARY HEARING? WHAT WOULD THEY HAVE TO PRESENT?

IN TERMS OF PUBLIC RECORDS, ONCE THEY -- AND I BELIEVE THIS COURT HAS HELD THIS, THAT ONCE THE AGENCY MAKES A REPRESENTATION THAT YOU HAVE BEEN GIVEN WHAT WE HAVE, THERE IS A REBUTTABLE PRESUMPTION, AND THE BURDEN SHE WAS TO COLLATERAL -- BURDEN SHIFTS TO COLLATERAL COUNSEL OF THE DEFENDANT TO TRY TO REBUT THAT, EITHER BY CALL AGO CUSTODIAN OR WHATEVER, BUT AT THAT POINT THE REPRESENTATION STANDS THAT WE HAVE GIVEN YOU WHAT WE HAVE. WE HAVE GIVEN YOU --

I HIM SORRY.

I AM THROUGH.

-- I AM SORRY. WASN'T THERE A CUSTODIAN'S RECORDS BROUGHT TO THE COURT THAT, IN OTHER WORDS, HERE WE ARE, HOWEVER MANY MONTHS OR YEARS AFTER THIS, AND WE ARE TALKING ABOUT SOMETHING THAT IS LESS -- THAT IS EASILY KNOWABLE, IN THE SENSE THAT OBVIOUSLY THERE MUST BE SOMEBODY AT THE SHERIFFS OFFICE THAT IS IN CHARGE OF RECORDS AND WOULD BE ABLE TO SAY AFFIRMATIVELY, LIKE WITH THE RECORDS THAT HAVE BEEN HELD UP HERE, THAT THE SHERIFF OFFICE MAINTAINS FILES ON THIS CASE. THESE ARE ALL FILES, AND THEY ARE EXACT COPIES THAT HAVE BEEN GIVEN TO THE DEFENDANT, HIS LAWYERS, AND IT SEEMS LIKE A VERY STRAIGHTFORWARD KIND OF A PROPOSITION. ARE YOU REPRESENTING TO THE COURT THAT THAT IS REALLY WHAT THAT, WHAT HAS HAPPENED HERE? THAT IS THAT IT IS A STRAIGHTFORWARD PROPOSITION, IN THAT THIS RECORD THAT WE CAN HAVE CONFIDENCE IN THIS RECORD THAT THERE ARE NO ADDITIONAL RECORDS IN THE SHERIFFS OFFICE THAT WE HAVE TO WORRY ABOUT EXISTING, THAT WEREN'T PROVIDED. CAN YOU ASSURE THIS COURT THAT THAT IS NOT A PROBLEM HERE?

WELL, YOUR HONOR, I HAVE TO ADMIT I HAVEN'T GONE AND LOOKED AT THE SHERIFF'S FILE, MYSELF, BUT BASED ON MISS CORY'S REPRESENTATION THAT SHE LOOKED AT IT, IT IS THE STATE'S POSITION --

ISN'T IT A SIMPLE PROPOSITION TO HAVE THE RECORDS CUSTODIAN OR WHATEVER, EITHER FILE AN AFFIDAVIT?

THAT SIMPLY APPLIES TO THE PARTY WHICH HAS THE BURDEN, WHICH THE STATE CONTENDS THAT WOULD BE THE PARTY WHO IS ATTEMPTING TO ATTACK THE REPRESENTATION.

SHOULD WE BE DOING, SHOULD WE BE HAVING THIS THING ABOUT THE BURDEN OR WHATEVER? SHOULD WE BE ACTING IN A WAY THAT ASSURES THE INTEGRITY OF THE RECORD HERE AND LAYS TO REST ANY ISSUE ABOUT THAT, IN JUST THE WAY THAT I DESCRIBED? THAT IS THAT THERE IS SOMEBODY THAT IS OFFICIALLY IN CHARGE OF RECORDS, AND THEY ARE GOING TO SAY, UNDER OATH IN AN AFFIDAVIT, OR UNDER OATH TO THE COURT, THAT WE CAN THEN BE ASSURED, RIGHT, THAT THERE IS NOT -- THAT THAT IS IT. SOMEBODY HAS PUT THEMSELVES AT GREAT RISK, YOU KNOW, BY DOING THAT. AND IF I UNDERSTAND IT, WHAT WE DO HAVE IS AN ASSISTANT STATE ATTORNEY THAT SAYS THAT SHE HAS PERSONALLY INSPECTED THE SHERIFF'S FILES, AND THAT SHE WILL PUT HERSELF AT-RISK THAT NOTHING ELSE EXISTS IN THOSE SHERIFFS FILES, OTHER THAN WHAT HAS BEEN PROVIDED TO COUNSEL.

YES, YOUR HONOR, AND IT IS THE STATE'S POSITION AT THAT POINT, IN TERMS OF WHO HAD THE BURDEN OF GETTING THE AFFIDAVIT OR CALLING THE CUSTODIAN TO SAY THAT THERE SHOULD BE SOMETHING ELSE HERE, THAT BURDEN, AT THAT POINT, FELL ON CCRCs, AND THEY DIDN'T CARRY THE BURDEN. YOUR HONOR, I WOULD POINT OUT THAT JUDGE SOUTHWOOD HELD A HEARING THAT MORNING, AND SAID THERE ARE STILL RECORDS NOT IN THIS CASE, AND I WILL BE BACK AT ONE THIRTY IN THE AFTERNOON, AND WHOEVER'S DISPUTES HAVE NOT BEEN RESOLVED, COME BACK AT THAT HEARING AND WE WILL HEAR THESE DISPUTES, AND ON THE NEXT HEARING ON APRIL 20 OF 2000, IT WAS STATED THAT JUDGE SOUTHWOOD RECEIVED A MESSAGE THAT THERE WERE NO OUTSTANDING DISPUTES, SO AT THAT POINT, CCRC, COLLATERAL COUNSEL KNEW -- THEY SAID THEY DIDN'T HAVE THE INFORMATION THAT THEY WANTED, AND YET THEY DIDN'T PURSUE IT ANY FURTHER WITH JUDGE SOUTHWOOD ON MARCH 8. I AM SURE THAT COUNSEL IS GOING TO REPRESENT THAT, WELL, IT WAS BASED ON THE REPRESENTATIONS OF WHATEVER. THAT WE THOUGHT WE WERE GETTING THEM. BUT AT THAT POINT, IT IS THE STATE'S CONTENTION THAT, IF THIS MATERIAL IS SO IMPORTANT, GO LOOK AT THE FILE WHILE YOU ARE THERE IN JACKSONVILLE. ON MARCH 8. JUST LIKE ON APRIL 29, 1999, THERE WAS A HEARING WHERE -- 1999, THERE WAS A HEARING WHERE JUDGE SOUTHWOOD LOOKED AT COLLATERAL COUNSEL AND SAID THERE ARE TWO ASSISTANT CCRC'S HERE RIGHT NOW. YOU GUYS GO LOOK AT THE STATE ATTORNEYS FILE RIGHT NOW. WE ARE IN THE COURTHOUSE MUCH THE STATE ATTORNEYS OFFICE IS IN THE COURTHOUSE. GEE LOOK AT IT. THAT WAS IN APRIL -- GO LOOK AT IT. AND THAT WAS IN APRIL 1999, AND YET THEY DIDN'T GO AND GET THE INFORMATION UNTIL JULY 1999, SOME THREE MONTHS LATER. IT IS ALSO NOTED THAT THEY DO HAVE THE ENTIRE TRIAL DEFENSE COUNSEL'S FILE, AND GIVEN LIBERAL DISCOVERY IN FLORIDA, I HAVEN'T HEARD ANY REPRESENTATION OF WHAT, IN THE DEFENSE COUNSEL'S FILE, THEY DID NOT HAVE THAT THEY STILL CLAIM THAT THEY ARE ENTITLED TO. THERE WAS SOME ARGUMENT IN THE --

BUT THAT PRESUPPOSES THE DEFENSE COUNSEL HAD WHAT IT IS THAT THEY SAY THAT HAS NEVER BEEN PRODUCED.

YES, YOUR HONOR, BUT THAT GETS BACK, AGAIN, TO THE BURDEN. WHO HAS THE BURDEN HERE. I MEAN, WE KNOW FROM LIBERAL DISCOVERY, AND GIVEN 3.220, WHAT THEY ARE ENTITLED TO, INCLUDING STATEMENTS OF ALL WITNESSES. I HAVEN'T HEARD ANY ALLEGATION OF A VIOLATION OF DISCOVERY. EITHER FROM THE DIRECT APPEAL OR NOW, SO THERE IS A REASONABLE PRESUMPTION THAT THEY, THAT DEFENSE COUNSEL HAD THE STATEMENTS OF THE WITNESSES.

ARE THERE STATEMENTS OF WITNESSES?

THE ONE THAT I KNOW OF IS MR. GWYNN LIEN'S, AND THE -- MR. QUINLAN'S, AND THE REASON I KNOW THAT IS IT WAS IN THE TRIAL COURT.

IF WE LOOK --

AS A CONSISTENT STATEMENT.

IF WE LOOK AT THIS FILE AND THERE ARE NO -- AT THIS FILE AND THERE ARE NO STATEMENTS OF WITNESSES, DOES THAT BRING UP A RED FLAG THAT YOU CAN'T DO AN INVESTIGATION WITHOUT STATES OF WITNESSES? IS THERE SOMETHING MISSING? AND I GUESS THE KEY IS THAT IT GOES BACK TO, WHEN AN AGENCY IS PRODUCING SOMETHING, SHOULDN'T THEY HAVE TO CERTIFY THAT THEY HAVE PRODUCED THE COMPLETE FILE, AND THAT WASN'T DONE HERE, AND THAT IS SORT OF WE STILL ARE SORT OF THINKING MAYBE THERE IS SOMETHING, AND THEN YOUR FRUSTRATION, IT LOOKS LIKE THEY HAD CHANCES TO HAVE LOOKED AND THEY DIDN'T, BUT NOW WE HAVE HAD SO WHO DO WE PUT THE BURDEN ON? DOES MR. MOORE GET THE -- IF HIS COUNSEL SHOULD HAVE GONE OVER TO THAT SHERIFFS OFFICE AND DIDN'T, SHOULD THAT, THEN, DOES MR. MOORE LOSE OUT, IF THERE IS SOMETHING THERE? OR ARE WE JUST TALKING ABOUT SOMETHING THAT DOESN'T EXIST, AND THAT IS FRUSTRATING FOR US?

WE KNOW THAT THERE IS A REPRESENTATION BY AN OFFICER OF THE COURT THAT WE GAVE YOU EVERYTHING WE HAVE. WE KNOW THAT THEY LOOKED AT THE SAO FILE FINALLY, AND GOT A COPY OF IT. WE KNOW THAT THE ASSISTANT STATE ATTORNEY REPRESENTED THAT POLICE REPORTS ARE ROUTINELY KEPT IN THAT FILE. WE KNOW THAT THERE WAS A WITNESS'S STATEMENT THAT WAS ACTUALLY INTRODUCED INTO EVIDENCE AT THE TRIAL WHICH, OF COURSE, THEY HAVE KNOWLEDGE OF. WE KNOW THAT FLORIDA HAS VERY LIBERAL DISCOVERY, UNDER 3.220 AND THERE HAS BEEN NO CLAIM OF VIOLATION OF THAT DISCOVERY, AND PART OF THAT DISCOVERY ARE THE STATEMENTS OF WITNESSES, SO THERE IS A REASONABLE ASSUMPTION THAT ANY STATEMENTS WERE PROVIDED TO DEFENSE COUNSEL.

THAT IS NOT IN OUR RECORD. IF OUR CASE LAW WAS WE STARTED OUT ASSUMING THAT THE DEFENDANT GOT EVERYTHING THAT THEY WERE SUPPOSED TO GET, WE WOULDN'T EVER HAVE CASES INVOLVING BRADY CLAIMS, AND WE SEE, UNFORTUNATELY WE SEE THOSE NOT TOO OFTEN BUT WE DO SEE THEM, AND SO WE CAN'T REALLY ASSUME, BECAUSE AS JUSTICE WILLIS SAID, BECAUSE WE HAVE LIBERAL DISCOVERY, THAT MEANS THE SHERIFFS OFFICE GAVE THIS CCR OFFICE EVERYTHING THAT THEY HAD IN THEIR FILE.

BUT NEVERTHELESS, YOUR HONOR, IT SUPPORTS THE REASONABLENESS OF WHO HAS THE BURDEN HERE. IN TERMS OF ESTABLISHING THAT THERE WAS SOMETHING THAT YOU DIDN'T GET. THOSE SEVERAL FACTORS THAT I LISTED. AND YOUR HONOR, IF WE GET DOWN TO THE NITTY-GRITTY, WE HAVE THE THIRD AMENDED 3.850. WE KNOW OF NOTHING ELSE TO GIVE THEM. THEY HAVE NOW LOOKED AT THE ENTIRE SA FILE. THEY HAVE LOOKED AT THE -- WHAT WE HAVE OF THE INVESTIGATIVE FILE, AND THEY STILL DON'T HAVE A COGNIZABLE FILE.

ON THE THIRD MOTION, AND I HAVE NOT COMPARED THE TWO, BUT I GUESS THE SECOND MOTION WAS PRETTY MUCH OF A SHELL. THE THIRD MOTION, THEY STILL HADN'T GONT THESE RECORDS, BUT AS TO THE CLAIMS ON THE PENALTY PHASE -- GOTTEN THESE RECORDS, BUT AS TO THE CLAIMS OF THE PENALTY PHASE OF INEFFECTIVE ASSISTANCE, IS THAT MORE COMPLETELY COMPLAINED IN THE THIRD MOTION?

YOUR HONOR, AGAIN, FOR PREPARATION FOR THIS CASE AT THIS LEVEL, I COMPARED THE TWO. NOW, GETTING READY TO THE HUFF HEARING, I ARGUED TO THE TRIAL COURT THAT IT SHOULDN'T BE THE STATE'S BURDEN TO COMPARE A 100-PLUS PAGE DOCUMENT WITH A 100-PLUS PAGE DOCUMENT AND DETERMINE EVERY LIKE THAT -- EVERY LINE THAT MAY BE DIFFERENT BETWEEN THE TWO IN A WEEK'S NOTICE, BUT NOT AN ENTIRELY NEW DOCUMENT. IN OTHER WORDS TELL ME WHAT THE AMENDMENTS ARE AND HOW THEY ARE BASED ON NEWLY-DISCLOSED EVIDENCE, BUT IN COMPARING THE TWO AND GIVEN ALL OF THAT, THE THIRD CLAIM OF THE SECOND SECOND-AMENDED 3.850 CONCERNING HAZARDOUS WASTE, AS DID THE THIRD CHRA. THE THIRD-AMEND. THE THIRD CLAIM OF THE SECOND-AMENDED ALLEGED, IN VERY CONCLUSORY TERMS THAT, THIS HAZARDOUS WASTE AFFECTED HIS LEARNINGABILITY AND DAMAGED HIS CENTRAL NERVOUS SYSTEM AND IMPACTED HIS ABILITY TO PREMEDITATE, ALL IN VERY CONCLUSORY TERMS AND ALL OVERWHELMINGLY REBUTTED BY THE EVIDENCE THAT WAS

PRESENTED AT TRIAL, IN TERMS OF THIS DEFENDANT TESTIFYING IN DETAIL AS TO WHERE HE WAS INCORRECT, THE PROSECUTOR, AND THE DEFENSE EVIDENCE THAT HE WAS VERY SMART, NO LEARNING DISABILITIES, NO ABNORMAL DISCIPLINARY PROBLEMS, ET CETERA, WITNESS AFTER WITNESS AFTER WITNESS, TRYING TO HUMANIZE AND NORMALIZE THE PICTURE OF THIS DEFENDANT, AND THE THIRD-AMENDED, THEY ADDED A REFERENCE TO THAT WE FOUND THIS IN A NEWSPAPER ARTICLE IN JULY 1999. THAT IS HOW WE DISCOVERED T THEY ADDED HEADACHES AND VOMITING TO THIS PARTICULAR CLAIM. BY THE WAY, THAT WAS ALREADY TESTIFIED TO BY THE MOTHER, IN THE PENALTY PHASE, THAT THE DEFENDANT DID HAVE HEADACHES AND VOMITED AS A CHILD, SO THAT WAS NOT NEW AT ALL. AND THOSE ARE THE ONLY DIFFERENCES THAT I FOUND BETWEEN THE TWO.

EVEN IF WE WERE TO LOOK AT THE THIRD-AMEND COMPLAINT, EVEN IF THAT WAS IMPROPERLY STRICKEN, THAT THE DENIAL OF AN EVIDENTIARY HEARING ON THE GROUNDS THAT WERE --

EXACTLY. IF NOTHING ELSE, IT GOES TO THE HARMLESSNESS OF THAT PARTICULAR TRIAL COURT RULING, THAT TECHNICALLY THE TRIAL COURT DID NOT GRANT MY MOTION TO STRIKE. IT SAID THIS IS UNAUTHORIZED. I AM NOT GOING TO LOOK AT T BUT I REALIZE THAT IS A FINE TECHNICAL DISTINCTION WITHOUT A REAL DIFFERENCE, BUT --

IS THERE ANY PREJUDICE OR IS, EVEN IF THAT IS THE STANDARD, AND IN LOOKING AT THAT THIRD AMENDED COMPLAINT, SINCE THERE HAD NOT BEEN ANY KIND OF HUFF HEARING OR ANY KIND OF DETERMINATION PRIOR TO THE FILING OF THIS AMENDED MOTION, THERE HAD BEEN NO DETERMINATION OF ANYTHING BEING INSUFFICIENTLY PLED OR WHATEVER, SO WHAT IS THE HARM OR THE PREJUDICE, IN ACCEPTING THIS AMENDED MOTION. ANOTHER TRIAL COURT RULED THAT IT WASN'T AUTHORIZED. I TOLD YOU THAT YOU CAN AMEND. I WILL ALLOW YOU TO AMEND FOR POST AMENDMENTS, BASED ON BE LATEEDLY-DISCLOSED INFORMATION. AND YOU DIDN'T DO. THAT INSTEAD YOU FILED A WHOLE NEW PLEADING. AND YOU HAVEN'T SPECIFIED WHAT THE DIFFERENCES ARE. AND SO THIS PARTICULAR PLEADING IS UNAUTHORIZED, AND I AM NOT GOING TO CONSIDER IT. BUT IF YOU GET DOWN TO, I MEAN, I WAS GOING THROUGH THE DIFFERENT CLAIMS, THERE STILL ISN'T ANY CLAIM ON WHICH RELIEF COULD BE GRANTED ON THE THIRD-AMENDED. I MEAN, IF I MAY CONTINUE TO GO DOWN THE DIFFERENT CLAIMS, A VOLUNTARY INTOXICATION, MENTAL HEALTH EXPERTS, IS CLAIM SEVEN IN THE SECOND-AMENDED, IT IS CLAIM FOUR IN THE THIRD-AMENDED. IT LOOSE TO MAE THEY ARE IDENTICAL. THERE IS NO DIFFERENCE WHATSOEVER, AND CERTAINLY NOT BASED ON ANY NEW PUBLIC RECORDS. SAME WITH, BY THE WAY, THE HAZARDOUS WASTE CLAIM. IS THERE NOTHING THAT I SAW THERE THAT COULD BE BASED ON ANY LATE DISCLOSED PUBLIC RECORDS. THE EIGHTH CLAIM IN THE SECOND AMENDED WAS CLAIM EIGHT. IT MOVED TO CLAIM FIVE IN THE THIRD-AMENDED. IN THE SECOND-AMENDED, IT WAS OBVIOUSLY A SHELL NO. DETAIL WHATSOEVER. IN THE -- SHELL. NO DETAIL WHATSOEVER. IN THE THIRD-AMENDED, THE CCRC NOT ONLY SPECIFIED THAT DR. CROPP HAS NOT PROVIDED CERTAIN INFORMATION, SUCH AS THE TOXIC WASTE, BUT STILL THEY DIDN'T TELL US, WELL, HOW DOES THIS RELATE TO ANYTHING THAT HAPPENED IN THE CASE. WOULD DR. CROPP'S OPINION BE DIFFERENT? THAT IS NOT EVEN ALLEGED. WAS THIS INFORMATION, WHICH, BY THE WAY, DOESN'T GO TO THE PUBLIC RECORDS AGAIN, WOULD THIS INFORMATION MAKE A DIFFERENCE, IN TERMS OF HIS OPINION? THAT IS NOT EVEN ALLEGED. IT JUST SAYS, WELL, HE IS NOT AWARE OF THE TOXIC WASTE. THEREFORE WE ARE ENTITLED TO AN EVIDENTIARY HEARING.

LET ME ASK YOU THIS. IF THERE IS A PUBLIC RECORDS REQUEST, PURSUANT TO THE 3.852 FOR SPECIFIC RECORDS, CAN THE STATE COMPLY WITH THAT BY SAYING COME ON OVER TO OUR OFFICE AND LOOK AT ALL OF OUR FILES? IS THAT COMPLIANCE WITH IT, WITHOUT SAYING, NO, WE DON'T HAVE THESE RECORDS. THESE ARE ALL OF THE RECORDS THAT WE HAVE OR THESE ARE OUR COMPLETE RECORDS. CAN THE STATE THROW IT OPEN AND SAY COME ON OVER AND LOOK AT OUR FILES.

YOUR HONOR, UNDER THE OLD RULE, THAT IS THE WAY IT WAS DONE. NOW WE SEND IT OVER TO

THE REPOSITORY. THESE RECORDS WERE REQUESTED PREVIOUS TO THE DEMANDS OF THE JO, THE SAO, ETC CETERA.

ARE YOU AGREEING THAT THAT IS NOT COMPLIANCE? I AM NOT TOO SURE THAT IS YOUR ANSWER.

UNDER THE DEMANDS THAT WERE FILED IN THIS CASE, IT WAS COMPLIANCE, YOUR HONOR. DEFINITELY. UNDER THE NEW RULE, WE WOULD HAVE TO SEND THEM TO THE REPOSITORY, BUT THIS IS NOT A NEW RULE CASE, IN TERMS OF THESE DEMANDS. MR. CHIEF JUSTICE: THANK YOU. MR. WHITE. MR. JACKSON, REBUTTAL.

I THINK THERE IS ONE THING THAT HAS TO BE MADE VERY CLEAR TO THIS COURT. REGARDING THE THIRD-AMENDED, THAT WAS EITHER STRUCK OR JUST NOT CONSIDERED BY THE COURT, THE STATE'S ASSERTION IS THAT NOTHING IN THE THIRD-AMENDED POINTED TO ANY RECORDS THAT WERE PROVIDED TO US LIKE WE WERE SUPPOSED TO, WHICH I DON'T EVEN AGREE WITH THAT, BUT YOU HAVE TO REMEMBER THAT IS, FOR ALL PRACTICAL PURPOSES, WE WERE GIVEN NOTHING BETWEEN THE SECOND AND THIRD-AMENDED, AND WHAT LITTLE WE WERE GIVEN, WHICH I HAVE SHOWED THE COURT HERE, 13 DAYS TO INVESTIGATE THE CONTENTS OF THE ACTUAL INVESTIGATIVE FILE THAT PUT MY CLIENT ON DEATH ROW IS INSUFFICIENT. IT IS UNREASONABLE.

GO AHEAD.

THEN WHAT WAS THE PURPOSE OF THE THIRD-AMENDED COMPLAINT?

THE THIRD-AMENDED COMPLAINT. OR THIRD-AMENDED MOTION.

WHY DID I FILE IT AT ALL?

RIGHT.

JUST FROM MEMORY, THE TWO OBVIOUS REASONS I HAD TO FILE IT NUMBER ONE BECAUSE THAT IS THE DATE THE COURT GAVE ME, AND NUMBER TWO, THERE IS AN AMENDMENT IN THAT, BASED ON THE RECORDS THAT WE GOT, AND IN THAT THERE IS THE PUBLIC RECORDS CLAIM IN THE 3.850 THAT IS BASED ON WHAT WE WERE GIVEN.

IN REFERENCE TO YOUR EIGHTH CLAIM OR HAZARDOUS WASTE CLAIM, AS FAR AS ANY PREJUDICE THAT YOU HAVE SUFFERED BY THIS TRIAL COURT NOT CONSIDERING IT, IF IT WASN'T SUFFICIENT FOR AN EVIDENTIARY HEARING AT THE SECOND AMENDED, IT IS NOT GOING TO BE MORE PARTICULARLY PLED IN THE THIRD-AMENDED?

WITH NOTHING, WITH NO RECORDS TO GO ON, I MEAN --

FOR EXAMPLE, HE JUST MENTIONS MR. WHITE MENTIONED DR. CROPP AND WHETHER DR. CROPP'S TESTIMONY WOULD BE ANY DIFFERENT IF HE HAD ANY INFORMATION THAT WAS SUPPOSEDLY GIVEN TO HIM. YOUR COMPLAINT DOESN'T SAY THAT HIS OPINION WOULD HAVE CHANGED. IF YOU HAD HAD AN EVIDENTIARY HEARING, DID YOU SAY, AT THE HUFF HEARING, THAT YOU WERE PREPARED TO HAVE DR. CROPP SAY HIS OPINION WOULD HAVE BEEN DIFFERENT?

NO. I DON'T BELIEVE I --

SO WE GET TO THE MENTAL HEALTH ISSUES, WE REALLY DON'T HAVE ANYTHING TO GO ON, THAT AN EVIDENTIARY HEARING SHOULD HAVE BEEN GRANTED ON. RIGHT? YOUR POSITION IS, UNLESS YOU GET THESE OTHER RECORDS THAT MAY OR MAY NOT EXIST, WHAT YOU HAVE HERE IS ALL YOU CAN PLEAD.

THE SECOND-AMEND, WHICH THE HUFF HEARING WAS HELD ON, OKAY, WAS INCOMPLETE THERE. IS NO QUESTION ABOUT IT. I WILL ADMIT TO. THAT WE ADMITTED TO IT IN THE HEARING. IT WAS INCOMPLETE FOR SEVERAL DIFFERENT REASONS, AND STATED IN THE ACTUAL AMENDMENT, ITSELF.

BUT IT IS ALL INCOMPLETE BECAUSE THESE RECORDS THAT YOU ALLEGED YOU DIDN'T GET --.

NO. THERE ARE OTHER ALLEGATION INS THE SECOND-AMENDED MOTION WHY IT IS INCOMPLETE. IT IS INCOMPLETE BECAUSE, IN THE CASE OF A TOXIC WASTE CLAIM, IT IS BECAUSE IT IS A VERY DETAILED AND VERY, VERY COMPLICATED CLAIM AND WE WERE NOT ABLE TO GET THROUGH IT, AND WE ASKED FOR AN EXTENSION OF TIME JUST ON THAT CLAIM ALONE. IT WAS, ALSO, INCOMPLETE, BASED ON FOUR MONTHS OF NO FUNDING, WHICH DIDN'T ALLOW ME TO SEND ANY INVESTIGATOR ON THE ROAD, WHICH DIDN'T ALLOW ME TO HIRE ANY DOCTORS OR ANYTHING.

SO NOW YOU ALLEGE IN YOUR THIRD-AMENDED COMPLAINT --

BASICALLY NOTHING HAS CHANGED. EXCUSE ME.

I THOUGHT ON HAZARDOUS WASTE, DID YOU THEN HAVE THE OPPORTUNITY TO MORE SPECIFICALLY PLEAD THAT CLAIM?

SOMEWHAT. BUT WE STILL CONTEND, WITHOUT QUESTION, THAT STATEMENTS FROM PEOPLE WHO COULD GIVE US MR. MOORE'S STATE OF MIND AT THE TIME.

WHAT IS IT THAT YOU REALLY WANT HERE?

THE ONLY WAY TO MAKE, PUT MR. MOORE IN THE PLACE WHERE HE WOULD BE, IF EVERYTHING HAD BEEN DONE PROPERLY, THE ONLY THING THAT CAN BE DONE IS IT HAS TO BE SENT BACK TO THE LOWER COURT, AND WE HAVE TO HAVE A HEARING ON PUBLIC RECORDS, MISSING PUBLIC RECORDS THAT WERE NEVER GIVEN TO US, NOT ONLY MISSING RECORDS MAKE THE FILE INCOMPLETE, WHICH WE FEEL WE CAN ESTABLISH, BUT, ALSO, FILES THAT WERE ORDERED TO BE TURNED OVER TO US BY THE LOWER COURT, AND THEN THE AGENCY REFUSED TO TURN THEM OVER, THE COURT REFUSED TO --

WHAT ABOUT WHAT MR. WHITE SAID, IN THE HEARING BEFORE THE JUDGE, MR. WHITE SAYS THAT, IN OUR STATE ATTORNEY RECORDS, WHICH WE TOLD YOU YOU CAN SEE, WE HAVE THE INFORMATION FROM THE JACKSONVILLE SHERIFFS OFFICE, AND THAT FILE CONTAINS NO MORE INFORMATION THAN WHAT WE HAVE SAID YOU CAN LOOK AT. WHAT WAS THE CCRC'S RESPONSE TO THAT PRESENTATION BEFORE THE JUDGE?

THAT THE ASSISTANT STATE ATTORNEY WHO MADE THAT STATEMENT IS NOT THE CUSTODIAN OF RECORDS FOR THE SHERIFFS DEPARTMENT. I MEAN, JUST OUT OF NOWHERE, ASKING FOR THIS FILE, WE HAVE BEEN OVER AND OVER ASKING THE LOWER COURT FOR THE FILE FOR A YEAR AND SEVEN MONTHS, AND THEN AT THAT POINT, THE STATE ATTORNEY SAYS OH, WELL, WE HAVE GOT THAT FILE AND TAKE MY WORD FOR IT, YOUR HONOR, IT IS OKAY. IT IS EVERYTHING. WHAT THEY GOT IS EVERYTHING. MR. CHIEF JUSTICE: THANK YOU, MR. JACKSON. COUNSEL, APPRECIATE YOUR ASSISTANCE IN THIS CASE. THE COURT WILL BE IN RECESS.