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**James M. Dailey v. State of Florida**

**SC05-1512 | SC06-576**

THE FINAL CASE ON THE  
CALENDAR THIS MORNING IS  
DAILEY VERSUS THE STATE OF  
FLORIDA.

READY TO PROCEED?

>> MAY IT PLEASE THE COURT.

I AM DAVID IN MIDDLE REG GO  
IN TAMPA ALSO WITH ME IS  
CARLOS RODRIGUEZ WHO WAS THE  
LEAD INVESTIGATOR SINCE 2001  
IN THE CASE AND HAS A LOT OF  
THE EVIDENCE WE ARE RELYING  
ON, SO TODAY, WE ARE HERE TO  
TALK ABOUT OBVIOUSLY THE  
FACTS OF THE CASE.

THIS IS A FOREST.

THERE ARE A LOT OF TREES.

I NEED TO TALK ABOUT THE  
FOREST SO TO SPEAK.

WE HAVE A LOT OF FACT, SOME  
OF THEM ARE REFUTED OR  
DISPUTED BY THE STATE AS  
EITHER NOT BEING IN  
EFFECTIVE ASSISTANCE COUNSEL  
OR NOT BEING PRESERVED AND  
SO I WANT TO RUN THROUGH  
THIS QUICKLY AN SOME  
ELEMENTS WILL BE CHALLENGED  
OR ARE CHALLENGEABLE FROM  
THE STATE.

>> WE HAVE A LIMITED AMOUNT  
OF TIME.

I WISH WOULD YOU GIVE US  
SOME KIN OF A FOCUS HERE  
BEFORE YOU REALIZE WE ARE  
FAMILIAR EVERYTHING THAT YOU  
HAVE PROVIDED TO US, BUT IF  
YOU GIVE US SOME SORT OF A  
FOCUS AS IF AS THE MANNER IN  
WHICH YOU ARE GOING TO DRAW  
THE ISSUE OR ISSUES, THAT  
YOU ARE GOING TO ASK US TO  
FOCUS ON.

PART OF MY FOCUS WOULD BE  
THE USE OF MR. SKALNIK, THE  
SNITCH, THE WAY THE EVIDENCE

WAS PRESENTED AT TRIAL AN WITH A WAS SUBSEQUENTLY DISCOVERED OR WHAT WAS KNOWN TO DEFENSE COUNSEL AT TRIAL AN NOT USED AND HOW THAT ESTABLISHES THE FACT THAT MR. DAILEY COULD NOT HAVE BEEN AT THE SCENE OF THE MURD IR AT THE TIME THE VICTIM WAS KILLED AND THEN ACCUMULATIVE PROSECUTORIAL MISCONDUCT.

BEVERLY ANDREWS AT THE TIME OF TRIAL TRIAL LATER MARRIED THE DEFENSE COUNSEL AN LEFT THE CASE AFTER THAT.

SAID IN HER DEPOSITION WHICH WAS CONINCLUDE IN THE RECORD FOR POST CONVICTION.

SHE WAS ASKED WOULD YOU CALL MR. SKALNIK TO TESTIFY AFTER 19912348 SHE SAYS NO.

WOULD THAT BE BECAUSE YOU COULD NOT PUT IN ON THE STAND BELIEVING HE WOULD GIVE TRUTHFUL TESTIMONY. SHE SAYS YES.

>> WAS THAT THE PERTINENT TIME PERIOD?

IS YOUR POSITION THEY KNEW THESE ALL ALONG AND PUT ON THE TESTIMONY, IS THAT -- THERE SEEM TO BE SOME DISPUTE ABOUT THIS REALLY?

>> MR. SKALNIK AFTER THE END OF THIS TRIAL, MR. DAILEY'S TRIAL, HE ABSCONDED AND ULTIMATELY BY HIS OWN ADMISSION COMMITTED AN OFFENSE IN TEXAS THAT WAS ABOUT FIVE YEARS IN LENGTH AS FAR AS PUNISHMENT SO COULD SERVE THE TIME FOR THE FLOOR CAN SENTENCES AS WELL OUT IN TEXAS.

>> WE HAD A COUPLE OF OTHER INMATES THAT OFFERED TESTIMONY AGAINST YOUR CLIENT.

>> THE TWO OTHER SNITCHS?

>> TWO OTHER INMATES?

>> YES.

>> MR. DEJESUS WAS HEARSAY AN EXCLUDED FROM INSTRUCTION

FROM THE COURT AND  
MR. LEITNER TESTIFIED TO  
FACTS THAT WERE WIDELY  
AVAILABLE IN THE NEWSPAPER  
AND THE TV NEWS ABOUT THE  
CASE, THE ONLY UNIQUE FACT  
THAT HE TESTIFIED TO WAS  
WHEN SOMEBODY ASKED  
MR. DAILEY WHY DIDN'T YOU  
KNOCK HER OUT?  
WHY DID YOU HAVE TO KILL  
HER?  
REPORTEDLY MR. DAIEY SAID I  
JUST LOTTS IT.  
THAT OBVIOUSLY WOULD NOT BE  
IN THE NEWS BUT IT IS  
OBVIOUSLY -- OBVIOUS  
FABRICATION, BUT EVERYTHING  
ELSE THAT THAT WITNESS HAD  
WAS READILY AVAILABLE AND  
THEREFORE AS THE TESTIMONY  
FROM THE DETECTIVE IN THIS  
CASE IN THE POST CONVICTION  
PHASE SHOW YOU LOOK TO WHAT  
WAS AVAILABLE IN THE PUBLIC  
DOMAIN IN DETERMINING  
WHETHER, HOW MUCH WEIGHT,  
HOW MUCH RELIABILITY YOU  
WOULD BRACE ON IT TO GET A  
WITNESS OF MR. SNITCH AND  
OBVIOUSLY BOTH OF THESE MEN  
WORKED IN THE PRISON LIBRARY  
HAD ACCESS TO PLNTIVE MEDIA  
AND WOULD HAVE BEEN ABLE TO  
COME UP WITH A LOT OF  
INFORMATION, IN FACT, THE  
EVIDENCE SHOWS DETECTIVE  
HALLIDAY WENT OVER TO THE  
TRAIL IN DECEMBER BEFORE THE  
TRIAL IN MAY OF THE NEXT  
YEAR, WENT OVER IN DECEMBER  
BECAUSE THE STATE NEEDED TO  
FIND SNITCHS OR INFORMANTS.  
>> WHAT PROOF AT THE  
EVIDENCEARY HEARING OF THE  
NEWSPAPER ARTICLES WOULD  
ACCESS THE DEFENDANTS WOULD  
HAVE ACTUALLY HAD OTHER THAN  
THE ASSERTIONS, WHAT PROOF  
WAS GIVEN AT THE EVIDENTIARY  
HEARING?  
>> WELL, REPEATED.  
THE LAST WITNESS WAS A JAIL  
DEPUTY WHO TESTIFIED THAT

MEDIA WAS AVAILABLE TO TWO INMATES IN THE JAIL, THAT THE NEWSPAPER, THERE THE JUDGE, I THINK 474 IN THE POST CONVICTION TRANSCRIPT 494, AIM SR.RY, HE FINDS EVERYONE HAS ACCESS TO TELEVISION AN NEWSPAPERS AN TOLD CCRC COUNSEL TO MOVE ALONG, SO I THINK HE WAS ALREADY ACCEPTING THAT THERE IS NO QUESTION THAT THE SNITCH WITNESSES IN THIS CASE WERE -- WHAT PROOF WAS INTEREST OF WHAT THEY SAW? >> THE GENERAL ACCESS TO THE NEWS MEDIA.

>> WE HAVE THE EVIDENCE HAS SELF NEWSPAPER ARTICLES IN WHICH THE GENERAL FACTS OF THE CASE OR DETAILED FACTS ARE LAID OUT AND REFER TO YOU TO THE EXHIBITS FOR THAT PURPOSE.

>> THE CODEFENDANT CALLED THET EVIDENTIARY HEARING? >> MR. PEARCY WAS CALLED. HE EXERCISED HIS 5th AMENDMENT RIGHT TO REMAIN SILENT.

>> THE CODEFENDANT WAS CONVICTED OF FIRST-DEGREE MURDER AND SENTENCED TO LIFE?

>> CORRECT.

>> AND WAS THERE ANY FURTHER EXPLORATION OF HIS REFUSAL TO FIREFIGHTER, THAT IS -- TESTIFY, THAT HE HAD ANYTHING TO LOSE?

>> HE HAD A PENDING DNA MOTION THAT AT THE TIME OF THE EVIDENTIARY HEARING AN TESTIFIED THAT HE WOULD CONTINUE TO EXERCISE HIS 5th FINAL RIGHT AS LONG AS HE HAD THE PENDING DNA MOTION WITH SOME HOPE OF EX ON RACIAL.

>> HE DID NOT FIREFIGHTER AND EXONERATE YOUR CLIENT?

>> HE IN A DEPOSITION BEFORE HE DECIDED TO EXERCISE THIS

RIGHT TO SILENCE IN A DEPOSITION IN THIS CASE, IN THE POST-CONVICTION PHASE, HE TESTIFIED THAT EVENTUALLY CONFESSED TO THE CRIME, HE DIDN'T SAY, KILLED THE GIRL. HE SAID I LEFT THE HOUSE WITH THE GIRL AND WITH SHAW OFF AT THE PHONE BOOK WHERE MR. SHAW AS PROVEN BY THE PHONE RECORDS MR. SHAW MADE CALLS TO GIRLFRIEND AND TRIED TO CALL HIS WIFE BACK IN KANSAS.

MR. SHAW TESTIFIED IN EVIDENTIARY HEARING THAT HE TOLD MR. PEARCY, THE COEFFICIENT DEFERKTS AND SHAW TO GO ON WITHOUT HIM. MR. PEARCY THEN IN HIS STATEMENT THAT WAS ENTERED AS A STATEMENT AGAINST HIM SAID THAT HE CAME, HE CAME BACK TO THE HOUSE, WERE YOU ALONE, OR WAS THE GIRL WITH YOU?

HE SAID NO.

HE CAME AND GOT MR. DAILEY AND ACCORDING TO EVIDENCE FROM MR. DAILEYEN OH, THEY WENT OUT AND PLAYED WITH FRIZ BUY OR WHAT JEFF, HE ENDED UP GETTING THE PANTS WET ON THE WATER AS THEY WERE PLAYING ON THE BEACH AS HE RETRIEVED IT.

MR. PEARCY AND DAILEY RETURNED TO THE HOUSE AS WITNESSED BY GAYLE BAILEY AN MR. SHAW, WHO I BELIEVED MR. SHAW TESTIFIED HE WAS ASLEEP ON THE COACH AS A VISITOR TO THE HOUSE.

[LOW AUDIO]

IT APPEARED AT THE ORIGINAL TRIAL, THERE WAS EVIDENCE AT THE TRIAL --.

[LOW AUDIO]

I AM TRYING TO UNDERSTAND.

[LOW AUDIO]

TO WHAT SHAW SAID AT THE EVIDENCEARY HEARING AND THE TRIAL, IT LOOKS LIKE BOTH DIMES --.

[LOW AUDIO]

>> I BELIEVE MR. SHAW TESTIFIED IN THE POST-CONSTRUCTION HEARING THAT HE NEVER TESTIFIED THAT HE SAW MR. PEARCY COME BACK AND GET MR. DAILEY ALONE AND WITHOUT THE GIRL.

GAYLE BAILEY TESTIFIED THAT THEY HAD BEEN OUT PARTYING, GAYLE BAILEY, MR. PEARCY, OZA SHAWED A HAN SLEEPING ON THE COUCH.

>>.

[LOW AUDIO]

HE SAW THE CODEFENDANT.

[LOW AUDIO]

>> I WILL HAVE TO AGREE TO WHATEVER THE RECORD SAYS WHAT THE RECORD SAYS.

>> IT IS A PRETTY CRITICAL FACT.

>> BUT WHETHER HE SAW THEM TOGETHER ALONE, I JUST CAN'T

--

>> HE WAS DROPPED OFF.

[LOW AUDIO]

>> I JUST CAN'T RECALL.

IF YOU SAY IT IS TRUE.

I WILL STAND ON THE RECORD.

I WILL AGREE WITH THE RECORD.

>>.

[LOW AUDIO]

>> I WILL ASSUME HE SAID THAT, BUT WE ALSO HAVE AT THE TRIAL, GAYLE BAILEY'S TESTIMONY THAT WHEN SHE -- THEY ALL WENT BACK TO THE HOUSE, BEFORE MIDNIGHT, JUST BEFORE, SHE WENT DO THE BATHROOM.

SHE CAME OUT SHORTLY THEREAFTER, SHE SAID THEY WERE ALL GONE,.

>> WHY DID YOU PRESENT SHAW'S TESTIMONY AT THE EVIDENTIARY HEARING ON POST CONVICTION?

WHY DID WE?

>> NO, WHY DID YOU?

>> BECAUSE SHAW HAD ADDITIONAL EVIDENCE THAT ABOUT MR. PEARCY COMING HOME

WITHOUT THE GIRL AND  
MR. DAILEY.

>> PREPARE FOR US, IF YOU  
WILL, SHAW'S TESTIMONY AT  
THE ORIGINAL TRIAL, AND HIS  
TESTIMONY AT THE POST-CONVICTION  
HEARING, AND POINT OUT, FOR  
US, IF YOU WILL, WHAT THE  
DIFFERENCES WERE, IF ANY.

>> MY UNDERSTANDING OF THE  
PRIMARY DIFFERENCE WAS THAT  
THE ADDITIONAL TESTIMONY AT  
THE EVIDENTIARY HEARING WAS  
THAT HE HAD ALSO WITNESSED  
PEARCY COMING BACK ALONE  
WITHOUT THE GIRL AND GETTING  
MR. DAILEY AND MR. SHAW SAID  
AT THE EVIDENTIARY HEARING,  
HE HAD MENTIONED THAT.  
HE COULDN'T RECALL WHETHER  
IT WAS TO THE STATE OR TO  
THE DEFENSE, BUT HE HAD  
MENTIONED THAT BEFORE THE  
TRIAL, THAT NOBODY HAD EVER  
ASKED FOR IT AT TRIAL AND  
THE WAY THE QUESTIONING HAD  
GIVEN AT TRIAL, THERE WAS NOT  
AN OPPORTUNITY TO TALK ABOUT  
THAT AND THEN AFTER THE  
TRIAL HE REALIZED THE  
IMPORTANCE OF THAT  
PARTICULAR FACT AND WAS ABLE  
TO THEN PROVIDE THAT  
INFORMATION.

>> THAT INFORMATION PRODUCE  
ON A RETRIAL?

>> THAT INFORMATION IN  
CONJUNCTION THE OTHER FACTS,  
GAYLE BAILEY TESTIFIED  
AMBIGUOUSLY AT THE TRIAL  
SUGGESTING THAT HE HAD LEFT.  
HE SHE SAYS THEY WERE NOT  
THERE WHEN I CAME BACK OUT.  
SHE SAID OZA SHAW WAS STILL  
ON THE COUCH AND BUY ALL OF  
THE OTHER TESTIMONY.

>> SHE SAW PEARCY AND DAILEY  
RETURN TO THE HOUSE  
TOGETHER?

>> THEY RETURNED MUCH LATER  
IN THE NIGHT AND WE HAVE  
SLOBODAN MILOSEVIC FROM SOME  
ONE OTHER THAN OZA SHAW AT  
TRIAL THAT PEARCY AND DAILEY

RETURNED TO THE HOUSE  
TOGETHER LATE AT NIGHT.

>> YES.

>> BUT THE FACTS AT TRIAL  
FAILED TO SHOW THAT  
MR. DAILEY CAME ONLY TO BE  
WITH MR. PEARCE AFTER THE  
INITIAL DEPARTURE BY  
MR. PEARCY WITH THE GIRL AN  
OZA SHAW, THAT WAS NOT CLEAR  
AT ALL.

THE STATE, IN FACT, TOOK  
ADVANTAGE OF THE AMBIGUITY  
THERE AND ARGUED BASICALLY  
THAT MR. DAILEY,  
MR. PEARCY, OZA SHAW AND THE  
GIRL HAD RAN OFF TOGETHER.

>>.

[LOW AUDIO]

>> THESE PEOPLE LIVE  
SOMEWHAT ALTERNATIVE  
LIFESTYLE.

>>.

[LOW AUDIO]

>> I CAN NOT SPECULATE.  
I KNOW WHAT MY CLIENT SAID.

>>> LOTS OF EVIDENCE,  
PHYSICAL EVIDENCE LINKING  
ETH OF THESE TO THE  
CODEFENDANT --.

[LOW AUDIO]

>> AND IT WAS INCRIMINATING  
AT TRIAL BECAUSE THAT THIS  
IS WAY THE STATE WAS ABLE TO  
ARGUE THE FACTS, BUT WITHOUT  
THE CRITICAL EVIDENCE FROM  
MR. SHAW, THAT MR. DAILEY  
HAD BEEN IN HIS BEDROOM WHEN  
MR. PEARCY CAME BACK, THAT  
THEY HAD COME BACK, ALL OF  
THEM CAME BACK TO THE HOUSE,  
MR. PEARCY, THE GIRL,  
MR. SHAW WENT OUT, MR. SHAW  
GETS THE PHONE, SAYS SHELLEY  
AN PEARCY, YOU GO ON WITHOUT  
ME, A SUBSTANTIAL TIME  
LATER, BUT MR. SHAW SHOWN ON  
THE PHONE RECORD, SPENT 23  
MINUTES, AT LEAST, ON THE  
TELEPHONE, SO SOMETIME AFTER  
THAT, HE WALKS BACK TO THE  
HOUSE, AN WAS AFTER HIS  
RETURN TO THE HOUSE, SOME  
TIME LATER, WHEN MR. PEARCY

RETURNS ALONE, WITHOUT THE GIRL, AND GETS MR. DAILEY, THE TWO OF THEM LEAVE, THEN, MUCH LATER RETURN WITH MR. DAILEY.

>> DID YOUR CLIENT TVM AT THE POST CONVICTION HEARING? YES, HE DID.

THE TESTIMONY WAS THEY WENT OUT AND PLAYED WITH FRIZ BUY.

I DMONT WHAT HAPPENED.

OBVIOUSLY, IT LOOKS SUSPICIOUS.

MAYBE HE HAD SOME AFTER THE FACT INVOLVEMENT, BUT THE TESTIMONY, AND THERE IS NO TESTIMONY CONTRARY WAS AN INNOCENT FRIZ BUY EPISODE. THE CRITICAL FACT IS, HE WASN'T THERE WHEN THE MURDER OCCURRED.

AUM OF THE EVIDENCE SHOWS THAT.

>>.

[LOW AUDIO]

SHAW EVEN AT THE TIME OF THE TRIAL PLACE THE CODEFENDANT ALONE WITH VERY VICTIM --

>> I BELIEVE HE DID.

FROM THE RECORD ON APPEAL AT 999 WHEN YOU STATED THE GIRL LEFT THE HOUSE, WHERE WAS DAILEY.

I DIDN'T SEE HIM.

NO.

>> THE ORIGINAL TRIAL?

>> YES.

>> ALL RIGHT.

[LOW AUDIO]

BY THE CODEFENDANT AND THE VICTIM?

THEN I WOULD ARGUE THAT WAS EX CULL TORY EVIDENCE BUT THE JURY ALSO HEARD, GAYLE BAILEY TESTIFIED THAT IT LOOKED LIKE MR. DAILEY LEFT THE HOUSE WITH THEM.

>>.

[LOW AUDIO]

THAT WAS IN THE FOLLOW YOU UP AT THE EVIDENTIARY HEARING.

[LOW AUDIO]

[LOW AUDIO]

>> WHEN WE PREPARE NOW WE ARE VERY CONSCIOUS OF THE PROCEDURAL DEFAULT ARGUMENTS THE STATE MAKES AND FOR THOSE PURPOSES, WE TEND TO OVER INCLUSIVE SOMETIMES.

>>.

[LOW AUDIO]

>> I THINK THE TOTALITY OF THE FACTS THAT WERE ARGUED SHOW --

>>.

[LOW AUDIO]

>> GAYLE BAILEY TESTIFIED AT THE HEARING AN I CAN'T RECALL THE DETAILS ENOUGH TO KNOW HOW TO COMPARE SIDE-BY-SIDE, I KNOW THAT GAY LE BAILEY ETESTIMONY AND THE TESTIMONY OF THE TRIAL AND THE HEARING SHOW SHE DID NOT KNOW WHERE MR. DAILEY WAS WHEN SHE CAME OUT OF THE BATHROOM.

>>.

[LOW AUDIO]

ALL OF THE OTHER EVIDENCE REALLY POINTS TO A DIFFERENT CONCLUSION --.

[LOW AUDIO]

IF YOU DON'T PAINT A CLEAR PICTURE OF THAT, HOW DO YOU EXPECT US --.

[LOW AUDIO]

>> I WOULD SAY THE PICK TURN THE BRIEF, AND I PERSONALLY AM AT THE END OF THE LINE OF A NUMBER OF ATTORNEYS, I APOLOGIZE FOR NOT HAVING ALL OF THE FACTS AT MY FINGER TIPS, I READ EVERYTHING AN I AM 566.

>> SHAW TESTIFY THAT HE TOLD THE DEFENSE LAWYERS ABOUT HIS ADDITIONAL OBSERVATION IN TERMS OF YOUR CLIENT STILL BEING AT HOME?

>> HE TESTIFIED.

>> I TOLD THE LAWYERS ALL OF THAT?

>> HE TESTIFIED HE TOLD SOMEBODY THAT.

HE COULD NOT RECALL WHO HE

TOLD IT TO.

HE DID SAY, HE TOLD SOMEBODY  
THAT BEFORE THE GENERAL  
TRIAL.

>> SOMEBODY?

I MEAN, SOMEBODY RECALL?

>> DID HE TELL HIS MOTHER?

>> NO.

HE SAID --

>> SOMEBODY ON THE  
PROSECUTION SIDE.

>> IN OTHER WORDS, THE IDEA  
THAT YOU WOULD THEN TAKE  
THAT AND TURN IT INTO AN  
INEFFECTIVE ASSISTANCE OF  
COUNSEL CLAIM IS OBVIOUSLY

--

>> IF THERE WAS SUCH  
CRITICALLY IMPORTANT  
TESTIMONY THAT WAS AVAILABLE  
TO THE DEFENSE LAWYER AND  
THEY DIDN'T USE IT, THEN  
THAT WOULD, THEN, YOU KNOW,  
YOU A PEAR TO BE AT LEAST  
RELEVANT ISSUE, BUT HE JUST  
SAID HE TOLD SOMEBODY, BUT  
HE DIDN'T KNOW WHO.  
HE SAID HE TOLD EITHER  
DEFENSE COUNSEL OR THE STATE  
COUNSEL.

>> HE TOLD SOMEBODY, ONE OF  
THE PARTIES TO THE  
PROSECUTION.

HE COOPERATE RECALL WHICH  
SIDE IT WAS HE TOLD THAT TO.

>> YOU ARE WELL OVER  
REBUTTAL.

PLEASE TOUCH ON WHATEVER YOU  
WANT TO TOUCH ON SO BE SURE,  
YOU KNOW, THAT YOU HAVE  
COVERED WHAT YOU WANT TO  
COVER WITH US.

>> THE PROSECUTORIAL  
MISCONDUCT, THE ERRORS THAT  
WERE FOUND IN THE ORIGINAL  
OPINION IN COMBINATION WITH  
THE ADDITIONAL ONES THAT IN  
EFFECT OF THE ASSISTANCE OF  
COUNSEL OTHERWISE,  
ADDRESSED, ALL OF THEM NOW  
ADD UP, WE WOULD URGE TO  
REVERSIBLE ERROR ON THAT AND  
THE SKALNIK THING, WE DIDN'T  
GET A CHANCE TO ADDRESS

THAT, MR. SKALNIK IS COME LT  
LYNN CREDIBLE.

THE STATE ATTORNEY WHO  
HANDLED THE CASE SAYS HE IS  
UNKREBLD NOW.

HE CAN'T BE USED AFTER 1998,  
YET THE TRIAL COURT IN THE  
POST-CONVICTION MOTION FINDS  
MR. SKALNIK'S RERECAN  
TATIONS OF THE RECAN TATIONS  
TO BE CREDIBLE AND WE HAVE  
THE STATE SAYING HE IS NOT  
KREBLD ANY MORE, THE JUDGE  
SAYING, WELL, I BELIEVE HIM  
THIS TIME.

THANK YOU.

>>> MAY IT PLEASE THE COURT,  
MY NAME IS KATHERINE BLANCO  
WITH THE ATTORNEY GENERAL'S  
OFFICE.

>> TALK RIGHT TO IT?

>> THAT IS OKAY?

>> THANK YOU, YOUR HONOR.

>> COULD YOU START OUT BY  
HELPING US PLEASE IN SOME  
KIND OF ORDER THAT MAKES  
SOME SENSE, IF POSSIBLE,  
OKAY?

THE TRIAL TESTIMONY, OF  
MR. SHAW, AND HIS POST-  
CONVICTION TESTIMONY, AND  
THEN GIVING US THE  
BACKGROUND OF WHO IS  
MR. SHAW, YOU KNOW, IS THIS  
JUST A PERSON STANDING ON  
THE STREET CORNER, YOU KNOW?  
A CITIZEN WITNESSING  
SOMETHING?

BUT GIVE US THIS COMPARE ARE  
ATIVE ANALYSIS OF WHAT WOULD  
APPEAR TO BE CRITICAL  
TESTIMONY ABOUT, YOU KNOW,  
WHERE THE DEFENDANT WAS  
WHILE ALL OF THIS WAS GOING  
ON AND THEN APPARENTLY,  
THOUGH LEFT OUT IF YOU  
ACCEPT MR. SHAW, YOU KNOW,  
CURRENT TESTIMONY, SO I AM  
FILLING IN TOO MANY OF THE  
BLANKS MYSELF, BUT WOULD YOU  
GIVE US AN ACCOUNT OF  
MR. SHAW'S EVIDENCE  
PRESENTED AT ANY TIME IN  
THESE SPREADINGS?

>> CERTAINLY, YOUR HONOR.  
> WHO IS MR. SHAW, FIRST OF ALL?

>> MR. SHAW, OZA SHAW IS A FRIEND OF THE DEFENDANT AN CODEFENDANT FROM KANSAS. HE HAD ARAID OF FROM KANSAS WITH THEM JUST A FEW DAYS EARLIER AND WAS STAYING AT THE RESIDENCE THAT WAS RENTED BY PEARCY AT THIS HOME IN SEMINOLE, FLORIDA, YOU HAVE PEARCY WHO IS LIVING WITH THE LIVE-IN GIRLFRIEND GAYLE BAILEY AND YOU HAVE JAMES BAILEY AND DWAIN SHAW AND OZA SHAW WHO IS SLEEPING IN THE COUCH, SEW SPEND THAENS TIRE DAY WITH BOTH BAILEY AN PEARCY, UM, THEY WENT TO THE BEACH THAT DAY, THERE WAS HEAVY DRINKING GOING ON, HE WAS WITH THEM WHEN THEY PICKED UP THE THREE TEENAGE GIRL, THE VICTIM IN THE CASE WAS 14 YEARS OLD, SHE HAD A TWIN SISTER AND ANOTHER GIRLFRIEND WAS ALONG WITH THEM.

SO HE WAS WITH THEM THROUGHOUT THE DAY DRINKING HEAVILY, QUITE FRANKLY, AT SOME POINT AND TIME, HE PASSED OUT ON THE COUCH, HE ADMITS THAT HE DIDN'T WANT TO OUT WITH THEM THAT EVENING WHERE THE CONTINUED TO DRINK AND SMOKE MARIJUANA AND GO OUT FOR FURTHER PARTYING, SO IN HIS TRIAL TESTIMONY, HE SAYS THAT, YOU KNOW, HE, IN FACT, PASS OUT ON THE COUCH, THERE IS, INDEED, A REFERENCE IN THE TRIAL RECORD AS JUSTICE PARIENTE ASKED ABOUT WHERE OZA SHAW AND VOLUME 9 OF THE TRIAL RECORD CONFIRMS THAT AT ONE POINT PEARCY WAS LEAVING WITH SHELLEY, SHE ULS THE 14-YEAR-OLD VICTIM,, SHELLEY AND IT WAS NOT MENTIONEDP AT TRIAL.

IN 1987.

NEARLY 20 YEARS AFTERWARDS, HE TESTIFIED THAT THE EVIDENCIARY HEARING THAT SUDDENLY HIS MEMORY HAS BEEN JOGGED, AND NOW HE REMEMBERS THAT THERE WAS A TIME THAT FIRST HE CAME BACK ALONE.

NEVER ASKED.

>> THERE WERE FOUR OTHER TIMES WHEN HE WAS GIVING STATEMENTS BOTH UNDER OATH AND NOT UNDER OATH.

>> STATEMENT.

I DO NOT BELIEVE THAT WAS STATEMENT UNDER OELT I BELIEVE THAT WAS AN INTERVIEW, YOUR HONOR BUT TWO OTHER PRETRIAL DEPOSITIONS OFTENING HIS TRIAL TESTIMONY THEN HE COMES IN POSTCONVICTION TESTIFIES I JUST REMEMBERED THERE WAS AN INCIDENT, PEARCY CAME BACK ALONE BUT IN FACT THE DEFENSE ARGUED THAT THERE WAS AN OPPORTUNITY FOR PEARCY, TO BE WITH THE VICTIM ALONE, DURING THEIR CLOSING ARGUMENTS, AS DEMONSTRATED BY OZA SHAW WITH RESPECT TO THE GAYLE BAILEY CLAIM, GAIL BAILEY AFFIRMATIVE SHE TESTIMONY AFTER SHE TESTIFIED THIS IS A BENCH CONFERENCE, AFTER SHE TESTIFIED SHE CONTACTED DEF COUNCIL ABOUT HER TESTIMONY, TO THE EFFECT THAT IT WAS SOMEWHAT DIFFERENT THAN \$\$ SHAW'S, AND, THEY -- DO NOT THE -- THE DEFENSE COUNSEL PUTS IT ON THE RECORD DOESN'T CALL BAILEY BACK AS WITNESS BUT ICHL PIECHEES HER TESTIMONY THAT SHAW NEVER LEFT THE RESIDENCE THAT NIGHT IN FACT, BAILEY DID AT MYTH IN HER TESTIMONY THAT SHAW HAD GONE TO THE TO USE THE PHONE, AT ONE POINT AND TIME. WHEN ASKED WHEN THEY RETURNED, GAYLE WAS ASKED SHE SAID SHAW WAS AT THE HOUSE WHETHER THEY RENDER FROM DISCO A BILL BELIEVED SHAW JUST GOT BACK

FROM USE DMEEG PAY PHONE YOUR  
HONOR THAT IS VOLUME 8 PAGE  
970, AND # 53 OF THE TRIAL  
RECORD.

SO -- 953.

>> -- HE SAID THAT -- THAT --  
SHELLEY LEFT THE -- BAILEY AND  
HER -- [INAUDIBLE]

TWO MEN HEARD THAT -- SELF O  
HOURS LATER, AND --.

>> THAT IS --

>> -- LEFT IN THE CAR, BAILEY  
AND PEARCY, WHERE AT TRIAL IS  
THAT STATEMENT?

>> IT COMES FROM GAIL BAILEY  
WHEN THEY RETURNED.

>> -- SAID SHE -- SOMETHING,  
TO SHE DIDN'T ACTUALLY SEE AT  
-- TRIAL THE DEFENDANT --

CO-DEFENDANT!!\$\$!!!!!!!!!!!!!!!!!!!!  
CO-DEFENDANT -- VICTIM -- THAT  
SHAW -- [INAUDIBLE]

TO SHOW THAT.

AND UNCONTRADICTED THAT IN  
FACT -- THAT -- IT WAS ONLY  
THE VICTIM, AND THE --

DEFENDANTS THAT HAD TAKEN SHAW!!\$\$!!!!!!  
SHAW --

>> WHAT -- DISPELS THAT YOUR  
HONOR SHE IS ALSO ASKED AT  
TRIAL WERE THEY ALWAYS  
TOGETHER.

BAILEY AND PEARCY WITH SHELLEY  
THERE ARE TWO PHONE CALLS THAT  
SHOW UP ON THE PHONE RECORDS,

ONE AT 10:16 KANSAS TIME ONE  
AT 12:16 KANSAS TIME AT MITTED!!\$\$!!!!!!!!!!!!

MITTEDLY EVERYONE HAD BEEN  
DRINKING HALFLY WAS CONFUSED  
ABOUT THE TIMES SAW MAKES TWO

PHONE CALLS TWO HOURS APART  
YOUR HONOR, NOW SIGNIFICANTLY  
IN FERSY -- FIRST TWO --

PEARCY STATEMENTS TO LAW  
ENFORCEMENT OF COURSE A PART  
OF THE -- COURT EXHIBIT IN

THIS CASE AND PEARCY'S  
STATEMENT IN LAW ENFORCEMENT  
ADMITS THAT HE WENT BACK TO

THE HOUSE, AND PICKED UP  
DAILEY THAT THE POINT IN TIME  
AND THE THREE OF THEM LEFT

TOGETHER.

>> -- THAT -- THAT THAT DID

NOT COME INTO EVIDENCE AT TRIAL.

>> BUT --

>> -- RIGHT.

>> WHAT.

>> THE WHERE THE -- THAT SHOWED UP IN FRONT OF BAILEY -- COME FROM --

>> IT COMES FROM GAIL BAILEY, O GAIL BASICALLY.

>> BASICALLY SHE DOESN'T -- SEE, THEN, SHE WAKES UP, AND SHE I THINK HES NO ONE IS THERE.

SNOOM YOUR HONOR SHE IS POINT-BLANK ASKED WERE THEY TOGETHER DID THEY LEAVE TOGETHER DID THEY COME TOGETHER DID THEY LEAVE TOGETHER DID THEY COME TOGETHER THEY CAME BACK ONE POINT IN TIME THEY LEFT TOGETHER THEY CAME BACK TOGETHER.

SO SHE IS ASKED TO CLARIFY THAT, AND IT IS UNDERSTAND BELIEVE THAT ANY OF US WOULD BE CONFUSED, BY THE WAY THAT -- TESTIMONY WAS DEVELOPING.

>> AT THAT POINT, THAT -- COMES BACK, ALONE, THAT PAILLY -- WITNESSED -- VICTIM COMES BACK AND --

>> SHE IS IN THE CAR, HIS TESTIMONY CERTAINLY IS THAT HIS -- LAW ENFORCEMENT PERFECTSY STATEMENT TO LANGUAGE THEREIN ADMITTEDLY DID NOT COME UT OF BAILEY NOW THAT SHELLEY WAS IN THE CAR WHEN HE CAME BACK AND THE LIFT -- LEFT TOGETHER CAME BACK TOGETHER THEY LEFT TOGETHER THEY CAME BACK TOGETHER.

>> -- YOU KNOW -- WAS -- BUT, IT SEEMS -- -- [INAUDIBLE]

WHAT IS THE DEFENDANT -- PERPETRATED!!\$\$!!!!!!!!!!!!!!!!!!!!!! PERPETRATED, BATTERY, AND --

>> I WOULD BE HAPPY TO DISCUSS EVIDENCE OF COURSE, THE DEFEND HAS ATTEMPTED TO RESURRECT A INSUFRY OF THE EVIDENCE, THIS COURT DID FIND ON DIRECT

APPEAL SUBSTANTIAL EVIDENCE OF THE DEFENDANT'S GUILTY.

-- GUILT, SEPARATE SUFFICIENCY EVIDENCE CLAIM WAS NOT RAISED ON DIRECT APPEAL THAT HAS TO DO WITH THE THIS COURT'S COMMENTARY WITH REGARD TO THE SUBSTANTIAL EVIDENCE OF GUILT, I BELIEVE, WAS -- WITH RESPECT TO THE AGGRAVATING FACTOR OF THE ATTEMPTED SEXUAL BATTERY.

>> LET ME ASK YOU A QUESTION.

>> YES YOUR HONOR.

>> ON PAGE 46 AND 47 OF THE TRIAL COURT'S ORDER, HE SAYS AT TRIAL, MISS BAILEY TESTIFIED TO THE APPEARANCE OF MR. BAILEY AND JACK PEARCY WHAT THEY RETURNED HOME IN THEIR EARLY HOURS OF MAY 16, 1985 DURING THE FOLLOWING THEN ON PAGE 47, IT -- FROM THE TRIAL TRANSCRIBED THE DESCRIPTION OF BOTH OF THESE TWO GENTLEMEN.

WHEN THEY RUSHED.

>> SO THERE WAS THE DIRECT TESTIMONY, FROM HER, THAT BOTH OF THEM RETURNED AND THAT PARTICULARLY MR. DAILEYED THAT -- ET CETERA.

>> THAT WAS NOT ONLY FROM GAYLE BAILEY BUT ALSO FROM OZA SHAW.

>> BOTH OF THEM.

>> MISS BAILEY DID TESTIFY TO THAT.

>> TESTIFIED THAT WHEN THEY RUSHED!!\$!!!!!!!!!!!!

RUSHED, IN THE EARLY MORNING HOURS, THAT THE INDIVIDUAL, THAT CAME IN WITH THE PANTS WET BELOW THE WAIST WAS THE DEFENDANT JAMES DAILY NOT WEARING A SHIRT, JACK PEARCY WAS STILL DRESSED THE SAME WAY HE WAS DRESSED EARLIER.

AND IF I MAY RETURN TO JUSTICE'S PARENTS QUESTION WITH REGARD TO ESSENTIALLY RECAP OF THE EVIDENCE PRESENT!!\$!!!!!!!!!!!! PRESENTED.

>> STRONG CIRCUMSTANTIAL EVIDENCE THAT -- CASE THAT

STEMS FOUR TO FIVE --  
FORTIFIED WITH THE STRAIGHT  
STATEMENTS, AND TWO OF THESE  
STATEMENTS TWO OF THE INMATE  
ONCE -- WITNESSES REMAIN  
UNASSAILED IN POSTCONVICTION.  
>> WHAT IT IS THE -- FORTIFIED  
BY THE -- BY THE -- INMATE --  
>> YOU HAVE THREE, YOU KNOW,  
YOUR HONOR GOOD EVIDENCE CAN  
COME FROM SOMETIMES UNSAVORY  
WITNESSES.  
>> -- STRONG CIRCUMSTANTIAL --  
FORTIFIED!!\$\$!!!!!!!!!!!!!!!  
FORTIFIED -- WITH THE STRONG  
CIRCUMSTANTIAL EVIDENCE.  
>> YES YOUR HONOR, ON THE DAY  
OF THE MURDER THE DAY  
PRECEDING THE MURDER YOU HAVE  
THE DEFENDANTS AS THE PARTIES  
THAT ARE IDENTIFIED WITH THE  
VICTIM.  
THEY ARE IDENTIFIED BY THAT!!\$\$!!!!!!  
THAT DURING THAT ENTIRE DAY.  
BOTH BY THE VICTIM'S SISTER,  
BY THE VICTIM'S COMPANION BY  
OZA SHAW, BY GAIL BAILEY THAT  
NIGHT THERE IS ALSO TESTIMONY  
THAT -- JAMES BAILEY WAS THE  
ONE THAT WAS MAKING OVERTURES  
TOWARDS THE VICTIM THAT SHE RE!!\$\$!!  
REBEFORE YOUED INDEED IF THIS \$\$  
COURT'S OPINION YOU DISCUSS  
THAT FACTOR.  
NOW, THAT PARTICULAR NIGHT  
WHEN THEY GO OUT, OF COURSE IT  
IS A -- LATE INTO THE  
EVENING -- EARLY MORNING, WHAT  
THEY WHEN THEY LEAVE GAYLE  
BAILEY IS THE ONE THAT PLACES  
THE THREE OF THEM LEAVING  
WITHOUT HER SHE IS NONE TOO  
HAPPEN ABOUT THAT SHE ADMITS  
THAT SHE IS VERY ANGRY ABOUT  
THAT.  
AND THEN IN THE MORNING, THE  
INDIVIDUAL, THAT HAS RETURNED,  
WHO RETURNED WEALTH OF COURSE  
HE HASN'T BEEN -- PEARCY AS  
TOS STORY NOW NEARLY 20 YEARS  
THAT LATER WAS THE VERSION  
THAT HE WANTED TO OFFER AT  
TRIAL -- TOLD HIM WOULD NOT BE  
WELL RECEIVED -- INDEED HE IS

THE ONLY ONE THAT COMES BACK  
TO THE HOUSE, IN THAT TYPE OF  
CONDITION.

AND THIS IS VERY SIGNIFICANT  
BEING BECAUSE THIS VICTIM WAS  
NOT ONLY STABBED NOT ONLY  
STRANGLER BUT IN ORDER TO  
FINALLY KILL HER SHE WAS HER  
BOD WAS SUBMERGED HER HEAD HAD  
TO BE ASK YOU ABOUT MEJED  
UNDER WATER TOTAL 48 STAB  
WOUNDS 31 ACTUALLY STAB WOUNDS  
17 RICKING WOUNDS OR -- VERY  
DEEP GASHES IN BACK -- A  
WHITTLE -- A LITTLE THING.

>> IS THERE -- THE WATER THAT  
WAS IN HER LUNGS WAS THE SAME  
WATER THAT WAS ON BAILEY'S  
PANTS OR WAS THERE THAT KIND  
OF EVIDENCE BACK THERE SO IF  
THAT COULD NOT HAVE BEEN --  
BECAUSE THEY TOOK OFF, THESE  
DEFENDANTS TOOK OFF THE NEXT  
MORNING.

IN ADDITION, YOUR HONOR THERE  
IS A PHOTOGRAPH THAT WAS -- IN  
IT WAS PHOTOGRAPH OF DAILEY AT  
THE LOCATION WHERE HE WHERE  
THE VICTIM'S BAND WAS FOUND,  
BECAUSE YU PHOTO OF HIM  
FINISHING AT THAT LOCATION  
FAMILIAR WITH THAT LOCATION --  
FISHING!!\$!!!!!!!!!!!!!!

FISHING, SO INCIDENTALLY GAYLE  
BAILEY HAD THAT PHOTOGRAPH,  
AND SO WHEN PRESSORS  
DISCUSSING TOTO AT TRIAL LOOK  
AT BACKGROUND YOU CAN SEE  
WHERE IT IS IT IS THE SAME  
LITTLE LOVER'S LANE --

>> YOU DO RECALL WHETHER AT  
THE TRIAL THE PROSECUTION,  
ARGUED THAT GAYLE BAILEY SAW !!\$!!!!!!  
SAW JIM DAILEY AND PEARCY  
LEAVING WITH THE VICTIM?

>> -- THE -- GAYLE BAILEY  
TESTIFIES WHEN SHE CAME OUT  
THE THREE OF THEM WERE GONE  
PEARCY!!\$!!!!!!!!!!!!!!  
PEARCY, DAILEY AND SHELLEY,  
SHE WAS ASKED ON  
CROSS-EXAMINATION!!\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!  
CROSS-EXAMINATION, DID YOU  
LOOK IN \$DAILEY'S BEDROOM, NO I

DIDN'T.  
SO THE DEFENSE AT THAT POINT  
IN TIME IS TRYING TO MAKE  
INROADS!!\$\$!!!!!!!!!!!!!!  
INROADS, TO UNDER CUT THAT  
TESTIMONY, OF GALL BAILEY\$\$S  
BUT IN FACT THEY LEFT, THE  
THREE OF THEM LEFT AT THAT  
TIME AND TRYING TO CONNECT IT,  
WITH THE PHONE.

THIS IS NOT A PARTICULARLY NEW  
ARGUMENT THAT PEARCY'S ALONE  
WOULD HAVE TRIED TO COMMIT THE  
MURDER I I MEAN IS ARGUMENT  
DEFENSE ARGUED AT TRIAL.

>> SHE TESTIFIED SO THAT SAID  
SHAW WAS --

>> SHE MAINTAINED THAT SHAW  
DID NOT LEAVE, AFTER EE SHE  
DID HAVE TESTIMONY IN THERE I  
THINK SHAW JUST GOT BACK FROM  
MAKING A PHONE CALL.

AND SO SHE TESTIFIED AT TRIAL  
SHAW WAS THERE ALL NIGHT WHEN  
SHAW TESTIFIED HE SAID NO I  
WASN'T THERE ALL NIGHT,  
BECAUSE I LEFT GO MAKE A HE  
MAKE A PHONE CALL WE NOW KNOW  
THERE WERE TWO SEPARATE PHONE  
CALLS SHAW MADE THAT NIGHT.

>> WHAT IS SHAW'S EXPLANATION  
BIRTHS THE WAY, OF THESE TWOS  
SAY IT -- EXPLANATION OF TWO  
SEPARATE PHONE CALLS WHAT HE  
WAS DOING WAS HE TAKEN TO THE  
PHONE BOOTH TO MAKE FIRST CALL  
THEN DID HE RETURN?

AND THEN DID HE GO OUT AGAIN  
ON HIS OWN TO MAKE THE SECOND  
CALL?

OR WHAT?

IN OTHER WORDS WHAT WAS SHAW'S  
EXPLANATION.

>> QUITE HONESTLY JUSTICE IN  
POSTCONVICTION IT HAS NOT  
DEVELOPED SO MUCH WITH RESPECT  
TO THE TWO PHONE CALLS THEY  
JUST HAVE PHONE RECORDS, HE  
SAID THAT HE WAS CALLING HIS  
GIRLFRIEND AND HIS WIFE WITH  
THE PHONE RECORDS ONLY -- ONLY  
SHOW CALLS TO THE HOLIDAY INN,  
WHERE BETTY WOULD HAVE WORKED,  
HIS GIRLFRIEND AT THE TIME.

SHE ALSO SAID THAT SHE HEARD  
WHEN SHE WAS ON THE PHONE SHE  
HEARD HONKING IN THE  
BACKGROUND SHE WAS TESTIFIED  
THAT POSTCONVICTION HEARING,  
AND -- AND IT WAS -- RELAYED  
TO HER, BY SHAW, THAT THAT WAS  
PEARCY!!\$\$!!!!!!!!!!!!  
PEARCY, YOU KNOW --  
>> DID SHE HAVE A TWO-HOUR  
DPAP BETWEEN.  
>> YOU HAVE A TWO-HOUR GAP IN  
THE PHONE RECORDS.  
>> THERE IS REALIZE NO  
EXPLANATION -- REALLY NO  
EXPLANATION.  
>> THERE IS NOT YOUR HONOR  
JUST THOSE POSTCONVICTION  
RECORDS EXCUSE ME, THE --  
TELEPHONE RECORDS, AND -- HAD  
ARGUED THAT THOSE SHOULD HAVE  
BEEN USED TO I AM PIECH GAYLE  
BAILEY!!\$\$!!!!!!!!!!!!  
BAILEY'S TRIAL TESTIMONY BUT  
AT TRIAL, HER TESTIMONY WAS  
IMPEACHED BY SHAW WHO SAYS NO  
I WASN'T HOME THE WHOLE NIGHT  
I LEFT TO MAKE PHONE CALLS.  
>> --  
>> -- GET MADE FROM THE SAME  
TELEPHONE.  
>> YES.  
>> YES, IT WAS IT WAS PAY  
PHONE YOUR HONOR.  
>> SHAW'S TESTIMONY HE ONLY  
MADE ONE PHONE CALL.  
>> NO HE ACTUALLY SAID THAT HE  
CALLED HIS WIFE AND HIS  
GIRLFRIEND!!\$\$!!!!!!!!!!!!!!!!!!!!  
GIRLFRIEND.  
SO HE --  
>> BUT NOT AT SEPARATE TIMES  
HE JUST SAID --  
>> WHEN HE WENT TO THE PHONE  
BOOTH -- HE WENT TO MAKE PHONE  
CALLS TO BOTH BETTY AND ROSE,  
IN ADDITION -- TO WHAT I  
PREVIOUSLY SUMMARIZED YOUR  
HONOR YOU ALSO HAVE THE THREE  
SEPARATE INMATES, WHO HAVE  
TESTIFIED, AND, AGAIN, GOOD  
EVIDENCE CAN AS I -- PREVIOUS!!\$\$!!!!!!!!!!!!!!!!!!!!  
PREVIOUSLY -- CAN COME FROM  
UNSAVORY WITNESSES SOMETIMES,

MR. -- REMITTED THE TEST OF DE  
JESUS WAS REJECTED AS PURE  
HEARSAY I WOULD DISPUTE THAT  
NOT ONLY DISPUTE THAT, IT IS  
NOT MY RECOLLECTION THAT THAT  
IS WHAT HAPPENED.  
IN ANY WAY SHAPE OR FORM.  
AS TO LIGHT NER THERE IS A 5  
MONTH GAP BETWEEN THE  
TESTIMONY BETWEEN THE MEETINGS!!\$\$!!!!!!!!!!!!!!!  
MEETINGS, WITH BETWEEN LIGHT  
NER -- AND DE JESUS AND PAUL  
SKALNICK!!\$\$!!!!!!!!!!!!!!!  
SKALNICK, NOW -- WITH RESPECT  
TO LIGHT NER, LIGHT NER IS  
WORKING AS A TRUSTEE WORKING  
AS A LAW LIBRARIAN IN DECEMBER  
DAILEY ASKED LIGHT NER IF HE  
KNEW PEARCY COULD GET MESSAGES  
TO HIM, SO OF YOU DAILEY  
INITIATE\$\$!!!!!!ING THAT INQUIRY TO  
LIGHT NER, THEY PASS WHAT IS A  
REFERRED TO AS KITES, NOTES  
FROM BETWEEN THE INMATES, AND  
L!!\$\$  
LEITNERA CONDUIT FOR THAT DIE  
HIGH SAUCE A CONDUIT FOR THAT  
THEY ALSO FOR THE COPIED THAT  
AT TIME OF TRIAL ASKED WHY  
THEY CAME FORWARD APPARENTLY  
IT DREW SOME TYPE OF RESPONSE  
FROM THE JURY WHEN ONE SAYS  
HIS MORALS GOT TO HIM YOU SAY  
WELL -- THERE IS A HIGHER --  
HIERARCHY IN THE PRISON SFRJS  
SOME TYPE OF -- REVULSION  
AMONG EVEN HARDENED CRIMINALS  
AS TO CRIMES OF THIS NATURE,  
YOU HAVE LEITNER, WHO IS IN  
FOR CONSPIRACY TO TRAFFIC IN  
COCAINE!!\$\$!!!!!!!!!!!!!!!  
COCAINE, YOU HAVE GOT THE SAME  
SENTENCE THAT HE ENTERED A  
FIVE-YEAR PLEA WHICH IS THE  
SAME SENTENCED HIS CODEFLT WAS  
GETTING HE HE TESTIFIED TO  
CONVERSATIONS WITH THE  
DEFENDANT, IN THE LAW LIBRARY,  
SPECIFICALLY!!\$\$!!!!!!!!!!!!!!!  
SPECIFICALLY, THAT HE WOULD  
GIVE THE LETTERS BACK AND  
FORTH, AND MOST IMPORTANTLY,  
THAT DAILEY SAYS -- SAID TO  
TELL PEARCY TO STAY OFF THE

THAT DAILY WOULD STAY OFF THE  
STAND AND TELL PEARCY THAT IF  
HE GETS A RETRIAL, AT A DAILEY  
WILL TELL WHAT REALLY HAPPENED  
THAT I'M THE ONE THAT DID IT,  
BEING DAILEY.

YOU HAVE DE JESUS YOU ALSO  
HAVE DEJESUS WHO ASKED DAILEY  
IN LEITNER'S PRESENCE, WHY DID  
YOU HAVE TO KILL HER, SHE WAS  
ONLY 14.

AND DAILEY'S RESPONSE IS MAN I  
JUST LOST IT.

DIE HIGH SAUCE SAID THAT HE  
WAS THE FLAGGER CAME FORWARD  
BECAUSE -- FATHER CAME FORWARD  
BECAUSE HE DID NOT BELIEVE  
THAT THAT WAS RIGHT FOR THIS  
DEFENDANT TO BE LAUGHING AT  
DEFENDANTS TO BE HAUFING AND  
JOKING ABOUT -- SUCH A  
HORRIFIC CRIME.

AGAINST A 14-YEAR-OLD YOUNG  
GIRL.

>> -- DID THE COULD DEFT GET  
-- JURY.

>> IT WAS JURY RECOMMENDATION  
OF LIFE YOUR HONOR THE COULD  
DEFT WAS TRIED FIRST.

AND IT WAS THE SAME TRIAL,  
JUDGE, IN THE TRIAL, AND  
DIRECT APPEAL EXCUSE ME, TRIAL  
AND RESENTENCING, WE HAVE A  
SUCCESSOR POSTCONVICTION  
JUDGE, HILLSBOROUGH COUNTY  
JUDGE, JUDGES PINOSA REPREYOU  
SEE ED OVER POST CONVICTIONS I  
SEE THE RED LIGHT FLASHING I  
DON'T WANT TO AWARE OUT MY  
WELCOME IF NO FURTHER  
QUESTIONS I WOULD ASK THE  
COURT TO AFFIRM THIS  
COMPREHENS I NEED WELL  
REASONED ORDER OF THE TRIAL  
COURT.

>> YOU HAVE USED YOUR TIME BUT  
I WOULD AFFORD YOU A COUPLE  
MINUTES, TO ADDRESS THE  
QUESTIONS THAT MAYBE HAVE THE  
OPPORTUNITY NOW, JUSTICE  
ANSTEAD!!\$\$!!!!!!!!!!!!!!  
ANSTEAD, JUSTICE -- INQUIRING  
ABOUT THESE FACTS AND THE  
CRITICAL FACTS IN THE CASE, TO

GIVE YOU AN OPPORTUNITY, VERY BRIEFLY TO ADDRESS THOSE, OKAY.

>> MY -- UNDERSTANDING THE THRUST OF JUSTICE PARENT'S QUESTIONS ABOUT WHAT IT IS NEW, IF IT IS NOT NEW THEN IT WAS IN THE CASE ORIGINALLY AND THIS COURT FUNDAMENTALLY ERRED IN HOLDING THE THREE OF THEM WENT OFF TOGETHER, THE STATEMENT AT THE BEGINNING OF THE FACTS OF THE CASE, WHERE THIS COURT SAYS DAILEY, AND PEARCY!!\$!!\$!!!!!! PEARCY, AND THE GIRL WENT OFF ALONE TOGETHER.

AND IF IT WAS IN THE RECORD ORIGINALLY THEN THAT IS A MISSTATEMENT.

-- OF THE IF A, THAT WERE IN THE RECORD THEN, I THINK THE COURT, THOUGH, SUFFERED THE SAME MISAPPREHENSION THAT THE JURY DID IN THAT LOOKING AT THE FATALITY OF THE TESTIMONY THAT YOU ALL HAD TO LOOK AT IN THE TESTIMONY OF THE TRIAL, IT LOOKED LIKE THEY ALL THREE WENT OFF TOGETHER.

>> LET ME ASK YOU TWO QUESTIONS AND THEN WE WILL RELIEVE YOU, ONE IS YOU DO AGREE WITH THE STATE THAT SHAW HAD GIVE I THINK IT WAS FOUR PREVIOUS STATEMENTS IN WHICH, THIS ACCOUNT OF THE COMING BACK, OR WHATEVER, WAS NOT INCLUDED, THERE WERE STATEMENTS TO THE POLICE, AND THEN, A COUPLE OF DEPOSITIONS, AND THE TRIAL TESTIMONY, AS OUTLINED BY THE STATE.

YOU DO AGREE WITH THE STATE'S ACCOUNT OF THAT.

>> I AGREE THE RECORD WAS SILENT!!\$!!\$!!!!!!

SILENT, FROM MR. SHAW, UNTIL THE POSTCONVICTION PHASE, AS FAR AS THE ADDITIONAL RETURN.

>> AND COULD YOU SHED ANY FURTHER LIGHT IN TERMS OF SHAW'S EXPLANATION ABOUT THIS GAP IN THE TELEPHONE CALLS

BEING MADE AND THAT IS THAT  
THE PICTURE BEING APPEARING TO  
BE THAT HE HAS TAKEN TO THE  
TELEPHONE BOOTH AND THAT HE  
MAKES A TELEPHONE CALL OR  
CALLS!!\$\$!!!!!!!!!!

CALLS, ALL RIGHT BUT THEN THAT  
HE GOES BACK TO THE HOUSE AND  
GOES TO SLEEP ON THE COUCH,  
CAN YOU ACCOUNT FOR THEIR  
APPARENTLY IS A COUPLE HOUR  
GAP, AND SO, THE SHAW -- DOES  
SHAW SAY HE SAT ON PARK BENCH  
OR SOMETHING AND THEN MADE  
ANOTHER TELEPHONE CALL TWO  
HOURS LATER?

IN OTHER WORDS, I'M ASKING  
THAT, WHAT -- WHAT IS THE  
EXPLANATION.

>> IF THERE IS ONE.

>> I THINK, YOU KNOW MY --  
RECOLLECTION OF MY  
UNDERSTANDING WOULD BE THAT IT  
WOULD BE EXPLAINED THEY THE  
FACT SHAW WAS HOME ALONE WAKES  
UP GOES AND CALLS, BEFORE THEY  
RETURN BACK TO THE HOUSE, AND  
I THINK THE TIMING ON.

>> IN OTHER WORDS THAT HE  
AFTER HE MADE THE FIRST CALL,  
AFTER BEING DROPPED OFF, THAT  
HE WENT BACK TO THE HOUSE.

>> NO HE WAS NEVER DROPPED OFF  
IN THE FIRST CALL THEY WERE  
STILL AT PARTYING I SAY THAT  
BOE A GOOD REASONABLE  
EXPLANATION.

OF HOW SHAW CAN MAKE THAT  
FIRST PHONE CALL.

>> WHAT HE WAS DROPPED OFF.

>> HE WAS DROPPED OFF IN THE  
MIDNIGHT CALL THE TESTIMONY  
ALL ADDS UP TO THAT.

THAT IT WAS THE LATE NIGHT  
CALL THAT BETTY ANDERSON THE  
GIRLFRIEND!!\$\$!!!!!!!!!!!!!!!!!!!!

GIRLFRIEND, TESTIFIED THAT  
THAT WAS THE CALL WHEN SHE  
HEARD THE HONKING IN THE  
BACKGROUND THAT MR. SHAW  
SAYING GOING WITHOUT ME.  
JUDGE SAYS THE CIRCUMSTANCES  
-- CIRCUMSTANTIAL CASE WAS  
WEAK WOULD NOT HAVE SURVIVED

MJOA, AND THERE IS NO EVIDENCE SHE DIDN'T DROWN FROM LYING FACE GOWN FACE DOWN IN THE WATER.

>> I DO HAVE ONE QUESTION THAT PERTAINS TO I'M CONCERNED WHEN YOU MADE THE STATEMENT EARLIER, I'M JUST THE ATTORNEY AT THE END OF THE LINE THERE IS A PROBLEM WITH CCRC\$\$!! THAT WE NEED TO DISCUSS.

>> NO YOUR HONOR I'M JUST -- YOU KNOW I READING IT ALL -- I READ IT ALL CAN'T MEMORIZE IT ALL.

>> I UNDERSTAND.

>> PLENTY OF TIME ON THIS.

>> -- YOU ARE APPELLATE LAWYER DID NOT HANDLE THE TRIAL FALLS INTO THAT CATEGORY RATHER THAN THESE THINGS ARE JUST BEING THROWN OH, OF THE TABLE ON -- NIGHT BEFORE SOMETHING TO WORK ON.

>> NO, NO I'VE BEEN WORKING ON THIS FOR MONTHS, MR. --

>> OKAY.

>> THAT IS THAT IS ALL I NEED KNOW.

>> I ONLY WENT TO THE LAST HEARING I WAS NOT I JOINED THE FIRM SO TO SPEAK, RIGHT AT THE END OF THE EVIDENCIARY HEARING.

>> FINE, I AND THAT.

>> MR. PINGER LEFT I TOOK OVER.

>> OKAY.

>> THANK YOU VERY MUCH.

>> WITH THAT YOU HAVE USED ALL YOUR TIME THE COURT WILL STAND IN RECESS UNTIL 9:00 TOMORROW MORNING.

>> ALL RISE.

>> THE FOLLOWING IS A PRESENTATION OF THE FLORIDA STATE UNIVERSITY COMMUNICATIONS GROUP.

77 77

>>> COMING UP ON "FSU HEADLINES":

A PAIR OF ALUMNI TAKE CENTER STAGE IN THE STATE OF FLORIDA.

A NOVEL CONCEPT HELPS FSU  
SOLVE ITS CLASSROOM CRUNCH.  
AND A HALF TON OF FUN  
ARRIVES AT THE MARINE LAB.  
STAY TUNED FOR THESE STORIES  
AND MORE.

"FSU HEADLINES" STARTS NOW!  
DENNIS: HELLO, EVERYBODY.  
I'M DENNIS SCHNITTKER.  
WELCOME TO "FSU HEADLINES."  
"

THE NEW YEAR STARTED WITH A  
BANG FOR FLORIDA STATE, AS  
ALUMNUS CHARLIE CRIST WAS  
SWORN IN AS THE 44TH  
GOVERNOR OF THE STATE OF  
FLORIDA.

>> I WILL AND FAITHFULLY  
PERFORM.

>> WILL WELL AND FAITHFULLY  
PERFORM.

>> THE DUTIES OF THE OFFICE  
OF GOVERNOR.

>> THE DUTIES OF THE OFFICE  
OF GOVERNOR ON WHICH I'M NOW  
ABOUT TO ENTER.

>> ON WHICH I AM NOW ABOUT  
TO ENTER.

>> SO HELP ME GOD.

DENNIS: THE 50-YEAR-OLD  
CRIST BECOMES THE SECOND FSU  
GRADUATE TO SERVE AS  
GOVERNOR.

CRIST EARNED A BACHELORS  
DEGREE IN GOVERNMENT FROM  
FLORIDA STATE IN THE LATE  
1970S, AND HAS RISEN THROUGH  
THE POLITICAL RANKS OVER THE  
YEARS, SERVING AS  
COMMISSIONER OF EDUCATION  
AND MOST RECENTLY AS  
ATTORNEY GENERAL.

NOW HE CONTINUES TO SERVE  
THE PEOPLE OF FLORIDA, IN  
THE HIGHEST OFFICE POSSIBLE.

GOVERNOR CRIST: THIS IS THE  
TIME TO PLOT NEW COURSES,  
EMBRACE NEW POSSIBILITIES  
AND EVEN RISK NEW SOLUTIONS.  
WE FACE NO OBSTACLE GREATER  
THAN OUR ABILITIES, NO  
PROBLEM THAT CANNOT BE  
SOLVED, OUR CHALLENGE IS TO  
RECOGNIZE OUR COMMON FUTURE

AND OUR COMMON DESTINY.  
DENNIS: A FLORIDA STATE  
ALUMNUS NOW  
OCCUPIES THE TOP POLITICAL  
SPOT IN FLORIDA, HE'S NOT  
ALONE AT THE TO.

ANOTHER FLORIDA STATE  
GRADUATE IS SERVING AS  
LIEUTENANT GOVERNOR.  
HEADLINES REPORTER JOHN  
ROGERS HAS MORE ON THE PAIR  
OF HISTORY-MAKING LEADERS  
FROM FSU.

IS 77 77.

WE WAS BEFORE GRADUATING IN  
FSU IN 197.

WHO KNEW THE STAR OF FLORIDA  
STATE'S HOMECOMING PARADE  
WOULD BE THE STAR OF  
FLORIDA'S NUG RAL PARADE  
NEARLY 30 YEARS LATER  
GOVERNOR CRIST: I'VE BEEN  
PRIVILEGED TO SERVE IN THIS  
STATE CALLED FLORIDA.  
SHE'S A BEAUTIFUL STATE, AND  
I LOVE HER.

AND IT IS WITH A SERVANT'S  
HEART THAT I'VE TAKEN THIS  
OATH TODAY TO PROTECT AND  
DEFEND HER.

>> ALSO TAKE THE OATH WAS  
LIEUTENANT GOVERNOR JEFF  
KOTTKAMP BE A 1984 GRADUATE  
OF FSU.

GOVERNOR KOTTKAMP: I WILL  
WELL AND FAITHFULLY PERFORM.

JUDGE: THE DUTIES OF THE  
OFFICE.  
FSU.

OF LIEUTENANT GOVERNOR.

JOHN: THIS MARKS THE FIRST  
TIME IN HISTORY THAT A PAIR  
OF FSU ALUMNI HOLD THE  
STATE'S TOP TWO OFFICES.  
AND IT MARKS THE FIRST TIME  
IN A LONG TIME THAT A  
FLORIDA STATE ALUMNUS IS  
SERVING AS GOVERNOR OF  
FLORIDA.

>> YEAH, ITS BEEN TOO LONG.

JOHN: FORMER GOVERNOR REUBEN  
ASKEW GRADUATED FROM FSU IN  
1951.

HE LATER SERVED AS FLORIDA'S

GOVERNOR FROM 1971 TO 1979.

>> WE'RE PROUD OF HAVING FSU GRADUATES BOTH OF GOVERNOR AND LIEUTENANT GOVERNOR. IT MAKES US FEEL LIKE THAT OUR PROGRAM IS FAIRLY SUCK SUCCESSFUL BECAUSE WE'VE PRODUCED A SUCCESSFUL POLITICAL FIGURES.

JOHN: LIKE FORMER FLORIDA SPEAKER OF THE HOUSE T. K.

WETHERELL.

THE CURRENT FSU PRESIDENT SEES CRIST AND KOTTKAMP'S SUCCESS AS GREAT EXPOSURE FOR THE UNIVERSITY.

WETHERELL: IT'S A FEATHER IN YOUR CAP, AND IT'S A WAY TO SHOWCASE YOUR UNIVERSITY. TO HAVE THE GOVERNOR AND LIEUTENANT GOVERNOR OF THE FASTEST GROWING STATE IN THE NATION.

JOHN: THE EXECUTIVE OFFICES HERE IN THE FLORIDA CAPITOL ARE JUST A FEW BLOCKS AWAY FROM THE FSU MAIN CAMPUS, A FITTING BASE OF OPERATIONS FOR A PAIR OF ALUMNI WITH SUCH A SOLID UNDERSTANDING OF THE STATE UNIVERSITY SYSTEM.

>> BOTH HE AND JEFF, ARE VERY SENSITIVE TO HIGHER EDUCATION AND THEY WANT TO SEE FLORIDA STATE DO WELL, THEY WANT TO SEE THE UNIVERSITY SYSTEM DO WELL.