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**Wayne Thomkins v. State of Florida**

**SC06-277**

77 77

>> ALL RISE.

HEAR HEAR.

THE SUPREME COURT OF THE  
STATE OF FLORIDA IS NOW IN  
SESSION.

ALL THOSE HAVING BUSINESS  
BEFORE THIS COURT, DRAW NEAR,  
GIVE ATTENTION, AND YOU  
SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,  
THE GREAT STATE OF FLORIDA  
AND THIS HONORABLE COURT.

>> GOOD MORNING.

LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

GOOD MORNING, FRIENDS AND  
WELCOME TO THE ORAL ARGUMENT  
SCHEDULE FOR MONDAY MARCH 5,  
2007.

WE'RE PLEASED THIS MORNING  
TO HAVE WITH US STUDENTS AND  
THE FACULTY I ASSUME FROM  
BROWARD COMMUNITY COLLEGE.  
ARE YOU HERE?

WE'RE GLAD YOU'RE HERE.

THANK YOU FOR JOINING US  
THIS MORNING.

A COUPLE OF HOUSEKEEPING  
MATTERS BEFORE WE PROCEED  
WITH OUR FIRST CASE.

THE ORDER OF THE LAST TWO  
CASES, THE CASE THREE WILL  
BE HEARD LAST ON THE  
CALENDAR THIS MORNING AND  
CASE NUMBER 4 WILL BE HEARD  
IMMEDIATELY AFTER OUR  
MORNING RECESS FOR COUNSEL  
THAT IS PREPARED FOR THAT.  
WITH THAT LET'S PROCEED TO  
OUR FIRST CASE THE CASE OF  
TOMPKINS VERSUS STATE OF

FLORIDA.

>> MAY IT PLEASE THE COURT  
COUNSEL FOR THE RECORD I'M  
MARTIN McCLAIN.

I'M HERE ON BEHALF OF WAYNE  
TOMPKINS AND HIS APPEAL FROM  
THE DENIAL OF HIS --

>> I BELIEVE WE'RE HAVING A  
LITTLE BIT OF TROUBLE HERE.  
IT'S USUALLY NOT A COMPLAINT  
ABOUT ME.

THANK YOU.

VERY SOFT THIS MORNING.

>> WELL, I WILL GET-GOING  
HERE.

IN THE 3.850

SPEND -- PENDING BEFORE THE  
COURT THE CLAIM IS A BRADY  
VIOLATION.

AND THE BRADY VIOLATION  
SPECIFICALLY RELATES TO THE  
POLICE REPORT THAT WAS  
DISCLOSED IN 2001 THAT  
CONTAINED THE INTERVIEWS OF  
MARINE SWEENEY AND MIKE  
WILLIS.

IN THOSE INTERVIEWS THERE  
WAS A DISCUSSION ABOUT  
CONVERSATIONS BOTH OF THOSE  
INDIVIDUALS THAT HAD WITH  
JUNIOR DAVIS OR JAMES  
DAVISER IS HIS FORMAL NAME.  
AS YOU DO THIS.

>> YES.

BECAUSE I KNOW ANOTHER  
MOTION WILL BE INVOLVED  
WITH.

SOMETIMES IT'S BRADY.

JONES STANDARD.

ISN'T THE ISSUE BEFORE US  
TODAY WHETHER THERE SHOULD  
BE AN EVIDENTIARY HEARING ON  
WHETHER THERE'S AN AFFIDAVIT  
MR. STEVENS INCURRED!!!!!!!!!!!!!!  
INCURRED -- -- INCURRED IN  
A EVIDENTIARY HEARING.

>> THAT'S THE QUESTION  
WHETHER THERE SHOULD BE A  
EVIDENTIARY HEARING ON THE  
AFFIDAVIT OBTAINED FROM  
JAMES DAVIS JUNIOR IN APRIL  
OF 2002.

BUT THE AFFIDAVIT RELATES TO  
AN UNDERLYING BRADY CLAIM.

A BRADY CLAIM WAS PRESENTED IN 2001 AFTER THE POLICE REPORT WAS DISCLOSED. AT THAT POINT IN TIME IN 2001 JAMES DAVIS JUNIOR OFTEN KNOWN AS JUNIOR DAVIS COULDN'T BE LOCATED. OUR COUNSEL -- THERE WAS A WARRENT IN 2001 A STAY OF EXECUTION. THERE WAS AN APPEAL FROM THE PRIOR 3.850 AND WHILE THAT APPEAL WAS SPENDING -- PENDING WE WERE ABLE TO LOCATE MR. DAVIS. AND WE OBTAINED AN AFFIDAVIT FROM HIM. THE AFFIDAVIT IS AS SOON AS WE FOUND HIM APRIL OF 2002 AND AT THAT POINT IN TIME WE FILED A MOTION TO RELINGUISH THE APPEAL THAT WAS PENDING BEFORE THIS COURT AND SOUGHT TO PRESENT THE AFFIDAVIT IN A 3.850. ALL OF THAT GOT DELAYED. THIS COURT AT THAT POINT IN TIME DIDN'T WANT TO RELINGUISH. AS SOON AS THE CASE GOT BACK TO THE CIRCUIT COURT, THAT'S WHEN WE WENT FORWARD WITH THE AFFIDAVIT FOR MR. DAVIS. THE AFFIDAVIT SHOWS THAT HAD THE INFORMATION MARINE SWEENEY AND MIKE WILLIS KNOWN HAD -- AND REVEALED TO THE STATE AND DISCLOSED TO THE DEFENSE ATTORNEY HE WOULD HAVE SHOWN THAT MR. DAVIS KNEW SOMETHING. ACCORDING TO THEIR STATEMENTS MR. DAVIS WAS VERY DISTRAUGHT OVER THE DISAPPEARANCE OF THE CAR. HE INDICATE HE HAD MADE REPEATED EFFORTS TO TRY TO FIND HER AND TO TALK TO HER FAMILY. AND THAT HE WAS VERY HURT BECAUSE HIS UNDERSTANDING AT THE TIME THAT SHE RUN AWAY HAD -- AND HAD GIVEN HIM NO INFORMATION AND NEVER

CONTACTED HIM.  
AND SO THAT HE WAS DONE WITH  
THE FAMILY.  
THAT INFORMATION IS  
GLARINGLY INCONSISTENT WITH  
WHAT STEVENS SAID ABOUT  
ABOUT WHAT BARBARA DECARR  
SAID ABOUT HIM.  
I'M UNDERSTANDING THIS AS  
BEING.

>> I'M UNDERSTANDING THIS AS  
BEING IMPEACHMENT OF ONE OF  
THE WITNESSES KATHY STEVENS.  
IS IT MORE THAN ONE OF  
ASPECT OR HER TESTIMONY?  
>> I WILL BE HAPPY TO TAKE  
THE ALLEGATIONS AS TRUE THAT  
SHE'S THE ONE THAT SAW  
MR. TOMPKINS ON SEVERAL  
OCCASIONS BEFORE AND  
THEN -- THEN ON THE DAY OF  
FIGHT OR SEXUAL SITUATION  
WITH THE VICTIM.

IS THAT AFFIDAVIT MORE THAN  
JUST IMPEACHMENT THAT SHE  
SAW JUNIOR EVEN --

[INAUDIBLE]

>> YES.  
ON THE DAY --

>> ON ONE LEVEL, YOUR HONOR  
THAT'S WHAT IT IS.  
IT IS IMPEACHMENT.

BUT BECAUSE THERE'S ALSO A  
QUESTION OF DILIGENCE IT'S  
ALSO IMPORTANT TO NOTE IT'S  
INCONSISTENT WITH WHAT  
BARBARA DECARR INDICATED.

>> LET'S ASSUME YOU GET OVER  
THE FIRST HURDLE.

I'M CONCERNED ABOUT  
HOW -- EVEN IN THE LIGHT  
MOST FAVORABLE TO YOUR  
CLIENT, HOW THIS SURVIVE  
JOANS THAT THERE WOULD BE A  
PROBABILITY OF AN ACQUITTAL  
ON TRIAL?

>> FIRST YOUR HONOR I  
DISAGREE JOANS WITH THE  
STANDARD.

I SUBMIT BRADY IS STANDARD  
AND THE QUESTION IS WHETHER  
THAT UNDERMINES COMPETENCE  
AND REASONABLE OF DIFFERENT  
SKWROEUTCOM WHICH IS MORE

LIKELY THAN NOT.

BUT GIVEN THAT, KATHY STEVENS ACCORDING TO THE CLOSING ARGUMENT AT TRIAL WAS THE LINCHPIN OF THE CASE.

HE INDICATED THE CONVICTION COULD BE BASED ON HER TESTIMONY ALONE.

AND WHAT'S IMPORTANT TO NOTE -- KNOW IS NOT JUST WHAT JUNIOR SAVES SAID PUT WHAT JUNIOR SAVES DAY IN CONJUNCTION WITH WHAT WAS PREVENTED IN 1989 AND 2001.

KATHY STEVENS HAD AN IMPORTANT ROLE IN THE HISTORY OF THE CASE IN THAT SHE WAS WITH LISA DECARR ON MARCH 23rd WHEN THEY WERE CAUGHT SMOKING OFF CAMPUS. THEY WERE SUSPENDED FROM SCHOOL AND EXPELLED.

THE SCHOOL RECORDS WHICH WERE DISCLOSED INDICATED THE PATIENTS CAME AND GOT THEM ON MARCH 23rd.

ACCORDING TO WHAT KATHY STEVENS TESTIFIED TO IN TRIAL SHE GO TO LISA DECARR'S HOUSE THEY TALKED ABOUT RUNNING TOGETHER BECAUSE THEY WERE SO UPSET ABOUT THE SCHOOL SUSPENSION. THIS IS NOT WHAT SHE ORIGINALLY SAID.

WHAT SHE ORIGINALLY SAID AT THE TIME WAS THAT LISA WARREN AWAY BECAUSE SHE WAS PREGNANT.

LET'S MAKE SURE THAT TESTIMONY IF SHE HAD GIVEN SOMETHING WALL STREET TKWEUPBT -- DIFFERENT AT THE TIME AND THEN SUBSEQUENTLY CAME FORWARD, THAT WAS ALL KNOWN AT THE FIRST TRIAL.

>> AT THE TIME OF THE TRIAL SHE ACKNOWLEDGED THAT SHE HAD ORIGINALLY TOLD EVERYONE THAT LISA RAN AWAY BECAUSE SHE WAS PREGNANT.

AND SO THAT DID COME OUT.

WHAT DID NOT COME OUT WHICH

IS SIGNIFICANT AND ALSO  
EVALUATING MR. DAVIS  
TESTIMONY IS THAT THERE WERE  
TWO MEMORANDUMS IN THE  
PROSECUTOR'S FILE FROM HIS  
INTERVIEWS OF KATHY STEVENS  
IN MARCH OF 195.  
THESE MEMORANDUMS INDICATED  
THAT WHEN HE FIRST BROUGHT  
HER IN TO INTERVIEW HER SHE  
STUCK TO HER STORY.  
SHE SAID LISA RAN AWAY  
BECAUSE SHE WAS PREGNANT.  
AND THAT AT THE END OF THAT  
INTERVIEW SHE WAS  
MAINTAINING THAT.  
AND THEN FOR THE WEEKEND SHE  
CALLED BACK AND THEN SHE  
CHANGED HER STORY.  
TO SOMETHING SIMILAR TO THE  
NEW VERSION ALTHOUGH THE  
VERSION WAS DIFFERENT IN THE  
MEMORANDUM THAT MR. BINITA  
HAD.

THOSE MEMORANDUMS THAT WERE  
ESTABLISHED WERE NOT  
DISCLOSED.

>> AND THAT WE DEALT WITH IN  
THE LAST --

>> AND THIS COURT DEALT WITH  
TO TO THE EXTENT THAT THIS  
COURT DIDN'T FIND THAT ALONE  
UNDERMINES CONFIDENCE IN THE  
OUTCOME.

AND SO THAT'S GOT TO BE  
CONSIDERED IN CONTEMPLATE  
SKRUFPRBGS WITH MR. DAVIS.  
AND WHAT MR. DAVIS ASKED IS  
THAT ARSTEVENS TESTIFIED AT  
THE TIME OF TRIAL THAT AFTER  
SEEING LISA DECARR IN THE  
HOUSE IN HER HOUSE AT  
APPROXIMATELY 9:00 A.M.,  
BEING SEXUALLY ASSAULTED BY  
WAYNE TOMPKINS AND OFFER  
LISA DECARR YELLED AT HIM,  
GO GET HELP.

CALL THE POLICE.

KATHY STEVENS LEFT FROM  
HEARING THAT, WENT TO THE  
CONVENIENT STORE NEARBY.  
RAN INTO JUNIOR DAVIS AND  
TOLD HIM WHAT WAS GOING ON.

>> DID SHE TESTIFY AT TRIAL

SHE HAD ACTUALLY SEEN HIM ON  
CROSS-EXAMINATION EARLY  
YESER IN THE MORNING?

>> SHEDY INDICATE THERE HAD  
BEEN AN ENCOUNTER WITH HIM  
AT 6:00 A.M. AT THE  
CONVENIENT STORE WHEN HE  
APPEARED TO BE DRUNK.

>> DID SHE TESTIFY THERE WAS  
TWO ENCOUNTER KWS HIM?

>> YES.

BECAUSE SHE SAYS ORTESTIMONY  
IS THAT BECAUSE JUNIOR DAVIS  
DIDN'T THINK IT WAS  
SIGNIFICANT THAT'S WHY I  
NEVER CONTACTED THE POLICE.  
DESPITE LISA DECARR'S PLEA  
THAT SHE CONTACT THE POLICE.

>> HELP ME OUT HERE.

YOU SAY THAT KATHY STEVENS  
WAS THE CRITICAL WITNESS.

>> YES.

>> AND WE KNOW HER  
CREDIBILITY IS IMPORTANT.

>> YES.

>> YOU KNEW ABOUT THE  
BOYFRIEND AT THE TIME SHE  
TESTIFIED; RIGHT?

>> SHE MENTIONED HIS NAME IN  
HER TESTIMONY, YES.

>> WHAT IN THE RECORD GIVES  
US -- WHAT DOES THE RECORD  
SHOW AS TO WHAT EFFORT WAS  
MADE BY THE DEFENSE TO FIND  
AND DEMOST AND BRING JUNIOR  
DAVIS IN AS A WITNESS.

>> JUNIOR DAVISES' NAME  
LIVED AS JUNIOR DAVIS IS  
MENTIONED IN A POLICE REPORT  
FROM 1984.

IN THAT POLICE REPORT THE  
POLICE OFFICER INDICATES HE  
HAS NO PHFGS.

THAT'S ALL THAT APPEARS.

JUNIOR DAVIS INTERVIEW HAS  
NO INFORMATION.

BARBARA DECARR ALSO SAY THAT  
JUNIOR DAVIS DIDN'T SEEM TO  
BE THAT UPSET.

THAT'S THE INFORMATION.

>> I MEAN FROM THE  
DEFENDANTS.

THE DEFENDANT NEW THAT  
JUNIOR DAVIS WAS THE

VICTIM'S BOYFRIEND.

>> CORRECT.

>> AND THAT THEY HAD FAULT.  
ACCORDING TO THE DEPOSITION.  
WASN'T THERE SOME TESTIMONY  
FROM MR. STEVENS THAT THEY  
HAD ARGUED?

>> NO -- I DON'T BELIEVE  
FROM KATHY STEVENS.

AS I RECALL FROM HER TRIAL  
TESTIMONY THAT SHE INDICATED  
SHE WAS NOT AWARE OF ANY  
FIGHT.

SHE SAID, ON OCCASION THEY  
WOULD HAVE BRIEF ARGUMENTS  
BUT WITHIN FIVE MINUTES IT  
WAS OVER.

>> AT LEAST WE KNOW THAT SHE  
SAYS THAT SHE CALLED JUNIOR  
DAVIS.

WHY WOULDN'T THAT BE THE  
WITNESS OF THE DEFENSE KNEW  
ABOUT AND COULD

HAVE -- FIRST, YOUR HONOR.

I DID SEE IN THE ALTERNATIVE  
AS BOTH BRADY AND  
INEFFECTIVE ASSISTANCE OF  
TRIAL COUNSEL AND FAILING TO  
CONTACT JUNIOR DAVIS.

BUT THE STATE'S RESPONSE AND  
THEIR ANSWER BRIEF IS AS TO  
THE INEFFECTIVENESS CLAIM  
THEY SAID THERE'S NOTHING  
THERE TO CAUSE A DEFENSE  
ATTORNEY TO CONTACT JUNIOR  
DAVIS.

PAGE 31 OF THE ANSWER BRIEF  
"TRIAL COUNSEL CAN'T BE  
DEEMED INEFFECTIVE TO  
PERCEIVE JUNIOR DAVIS AS A  
WITNESS" IN ADDITION TO THE  
POLICE REPORT AND TAKING HIS  
DEPOSITION WHICH ELICITED  
DAVIS HAD NO INFORMATION  
ABOUT LISA DISAPPEARANCE OR  
DEATH TRIAL COUNSEL HAD  
REPORT FROM DETECTIVE BYRD  
OF JUNE 5th, 1984 THAT  
BARBARA DECARR STATED WHEN  
SHE TOLD THE BOYFRIEND LISA  
WAS MISSING HE DIDN'T SEEM  
TO BE CONCERNED.

WHAT THE DEFENSE ATTORNEY AT  
ANY TIME HAVE ARE THE POLICE

REPORTS THAT HAD THE INTERVIEW OF MARINE SWEENEY AND MIKE WILLIS WHICH GAVE A COMPLETELY DIFFERENT ACCOUNT OR DESCRIPTION OF JUNIOR DAVIS' REACTION TO DISAPPEARANCE OF LISS ADECARR.

AND IF THAT REPORT DIDN'T SERVICE UNTIL 2001, THAT PRECIPITATED LOOKING FOR HIM AGAIN IN 2001.

FOR THE RECORD, WE DID PLEA AGAIN THAT IN 1989 WHEN CCR GOT THIS CASE UNDER WARRENT WE MADE AN EFFORT TO FIND JUNIOR DAVIS BECAUSE HIS NAME IS MENTIONED.

AT THAT POINT IN TIME WE CALLED THE PHONE NUMBER THAT WAS LISTED IN THE POLICE REPORT AND YOU WERE TOLD THERE WAS NO DAVIS AT THAT PHONE NUMBER.

AND WE DIDN'T HAVE THE RESOURCES BACK IN 1989 TO DO THE COMPUTER SEARCHES THAT CAN BE DONE NOW.

WE MADE AN EFFORT TO LOCATE HIM.

WE PLEADED THAT.

BUT THERE WAS NOTHING BEYOND HIS NAME AS MENTIONED.

AND THE POLICE SAYING THAT HE HAD NO SIGNIFICANT INFORMATION TO CAUSE US TO BELIEVE THAT THERE WAS SOMETHING THERE.

AND AS THE STATE SAID IN THE ANSWER BRIEF TRIAL COUNCIL -- COUNSELS CAN'T BE DEFICIENT IN HIS PERFORMANCE BECAUSE THERE WAS NOTHING TO REALLY CAUSE HIM TO BELIEVE THAT JUNIOR DAVIS HAD ANY SIGNIFICANT INFORMATION. EVERYTHING INDICATED THE CONTRARY.

SO FIRST, THE CAR WAS DISPOSED OF IN 2001.

AND THE STATE IN THEIR ANSWER BRIEF SUPPORTS THAT. AS TO WHAT'S SIGNIFICANT THOSE POLICE REPORTS WHICH

PROVIDE INFORMATION THAT  
MAKES JUNIOR DAVIS  
SIGNIFICANT AND THEN WE  
CONTACTED JUNIOR DAVIS,  
JUNIOR DAVIS SAYS THAT  
DIDN'T JOE CURE.  
HAD SOMEONE COME TO HIM AND  
SAID THESE ARE THE -- LISA  
DECARR WAS BEING ATTACKED  
AND ASKED THE POLICE BE  
CALLED HE WOULD HAVE DONE  
SOMETHING.

>> IT'S STILL GOING BACK TO  
MY CONCERN, WHICH IS THAT IT  
WOULD BE IMPEACHMENT OF ONE  
OF THREE WITNESSES OF THE  
STATE.

THAT'S -- THAT DOESN'T  
INDEPENDENTLY POINT TO  
ANOTHER PERSON AS BEING  
PERPETRATOR OF THIS MURDER  
AND IT DOESN'T PROVIDE IN  
ITSELF INFORMATION THAT  
WOULD LEAD TO AN ACQUITTAL.  
IT WOULD BE THE QUESTION OF  
IMPOSED ON WHAT KATHY  
STEVENS TESTIFIED AT TRIAL  
WHETHER THAT IMPEACHMENT  
IS -- WOULD SO DESTROY HER  
CREDIT THABL THE JURY  
COULDN'T HAVE BELIEVED  
ANYTHING SHE SAID.  
ISN'T THAT HOW WE HAVE TO  
LOOK AT IT?

>> NOT QUITE.

AS TO ONE ASPECT THERE WAS  
BRADY MATERIAL PRESENTED IN  
1989 FOR BARBARA DECARR.  
AT THAT TIME IT WASN'T FOUND  
TO BE MATERIAL IN THE SENSE  
IT BY ITSELF WASN'T  
SUFFICIENT TO UNDERMINE  
CONFIDENCE IN THE OUTCOME IN  
AT THIS POINT IN TIME THAT  
HAS TO BE  
EVALUATE -- EVALUATED  
CUMULATIVELY.  
THE BRADY MATERIAL HAD BEEN  
PLED AS TO THE OTHER TWO  
WITNESSES THAT NEEDS TO BE  
EVALUATED UNDER THE STANDARD  
IN THE STATE.  
BUT BEYOND THAT AS TO KATHY  
STEVENS, THE STATE SAYS,

WELL, IT CAME OUT AT TRIAL  
SHE HAD LIED.

WHAT SHE HAD LIED ABOUT  
ACCORDING TO HER TESTIMONY  
WAS THAT SHE HAD FABRICATED  
THE STORY BECAUSE SHE  
THOUGHT LISA HAD RUN AWAY.  
THAT WAS CONSISTENT WITH  
LISA RUNNING A AWAY.  
AND WHAT JUNIOR DAVIS'  
TESTIMONY PROVIDES IS AN  
INDICATION THAT HER NEW  
STORE WORRY THAT STORY AT  
TRIAL SHE WAS SAYING WAS  
TRUE HAD FALSE INFORMATION  
IN IT.

AND IT'S SIGNIFICANTLY  
FALSE.

BECAUSE HER EXPLANATION FOR  
WHY SHE WOULD HAVE DONE THIS  
IS BECAUSE HER -- LISA  
DECARR'S BOYFRIEND WASN'T  
CONCERNED.

AND REMEMBER --

>> IT'S NOT QUITE WHAT SHE  
SAID.

SHE SAID WHY DIDN'T YOU CALL  
THE POLICE.

I GUESS I WAS A LITTLE BIT  
SCARED AND NOT KNOWING WHAT  
TO EXPECT WHEN THEY GOT  
THERE.

I JUST TOLD YOU JUNIOR NO  
WHAT WAS GOING ON.

HE WALKED AWAY LIKE IT WAS  
NOT IMAGE.

I JUST KIND OF SCARED AND  
WENT TO SCHOOL.

YOU DECIDED NOT TO GET UP  
INVOLVED.

>> YES.

>> IT'S NOT QUITE THAT SHE  
ONLY DIDN'T SAY ANYTHING  
BECAUSER DAVIS DIDN'T.  
ISN'T THAT CORRECT?

>> THERE'S TESTIMONY TO THAT  
EFFECT.

BUT I BELIEVE I -- I DON'T  
REMEMBER WHETHER YOU ARE  
READING FROM CROSS OR  
REDIRECT OR THE DIRECT.

BUT AT DIFFERENT TIMES THE  
SIGNIFICANCE OF JUNIOR DAVIS  
MAY HAVE WAXED AND WAYNED A

LITTLE BIT.

IT IS IMPORTANT TO HER STORY THAT SHE GOES TO HIM AFTER LISA HAS SAID TO CALL THE POLICE AND HE DOESN'T SEEM TO BE CONCERNED.

AND THAT'S THE TURNING POINT IN HER VERSION OF THE EVENTS AS TO WHEN SHE NO LONGER PURSUES IT.

>> THAT SEEMS SOMEWHAT INCREDIBLE STATEMENT TO ME. FROM THE SERVICE.

THE DEFENSE COUNSEL JUMP ON THAT.

>> THE DEFENSE

COUNSEL -- ATTEMPTED TO.

BUT I SUBMIT HE DIDN'T HAVE ALL THE TOOLS TO GO FURTHER. IN ADDITION WHAT THE DEFENSE DIDN'T KNOW WHICH CAME OUT IN THE MEMORANDUM IN 1989 ASKED THAT WE INTERVIEW BARB KATHY STEVENS IN 199 AND DURING THE INTERVIEW SHE REVEALED WHAT HAPPENED THAT WEEKEND BEFORE SHE CHANGED HER STORY WAS THAT SHE HAD A BOYFRIEND IN JAIL AND SHE WANTED TO GET IN TO SEE HIM.

MR. BO ANY -- BONITA MADE ARRANGEMENT FOR HER TO BE ABLE TO SEE THE BOYFRIEND. KATHY STEVENS REMEMBERED IN CONTACT WAS IN AN EMOTIONALLY TROUBLED CLASS WITH LISA DECARR.

THEY WERE BOTH EMOTIONALLY TROUBLED STUDENTS WITH PROBLEMS.

IT SEEMS THAT IN ORDER TO BE ABLE TO FULLY CONVEY THAT THIS GIRL WHO IS CLAIM I THINK SHE SAW THIS ATTACK, AT THE TIME THAT THE MURDER WAS OCCURRING, THE STORY WAS JUST NOT TRUE.

AND THE BEST WAY TO DO THAT WAS TO SHOW THAT SOME ASPECT OF IT WE CAN SHOW WASN'T TRUE.

FOR CONVERSATION WITH JUNIOR DAVIS DIDN'T HAPPEN.

>> ARE THERE OTHER THINGS?

DIDN'T SHE SAY THERE WAS  
SOMEBODY WATCHING IT WHILE  
IT WAS OCCURRING?

>> ABSOLUTELY.

HE DID SAY THAT.

DID SHE SAY ANOTHER FRIEND  
CALLED HER AFTERWARDS?

>> YEAH.

BUT, AGAIN, TRIAL COUNSEL  
DIDN'T HAVE BONITA'S  
MEMORANDUM WHICH GAVE  
DIFFERENT VERSIONS OF THE  
EVENT.

THE MEMORANDUM WHEN SHE  
INITIALLY TOLD THE STORY SHE  
NEVER MENTIONED THE THIRD  
PERSON BEING PRESENT AND  
THAT MEMORANDUM SHE HAS THE  
ORDER OF THE TRIPS AND WHO  
WAS PRESENT TO THE DIFFERENT  
TRIPS DIFFERENT A AND SHE  
SAID IN THAT MEMORANDUM SHE  
NEVER SPOKE TO WAYNE  
TOMPKINS HERSELF.

THEN AT THE TRIAL THAT FLIPS  
AGAIN TRIAL COUNSEL DID HAVE  
THAT MEMORANDUM FROM MARCH  
OF 1985 AT THE TIME OF  
TRIAL.

YOU'RE WELL INTO YOUR  
REBUTTAL.

I WOULD LIKE TO RESERVE THE  
REST OF MY TIME.

>> THANK YOU.

>> MAY IT PLEASE THE COURT.  
I'M BOB LANDRY REPRESENTING  
THE STATE.

THE TRIAL COURT FOUND ON  
THIS LATEST POST CONVICTION  
LIT TKPAEUGS.

>> WOULD YOU PULL THE  
MICROPHONE DOWN A LITTLE  
BIT.

>> THE TRIAL COURT FOUND  
THAT MR. DAVIS WAS KNOWN TO  
THE DEFENDANT AS FAR BACK AS  
1989 AS FAR BACK AT THE TIME  
OF TRIAL IN 194 AND 985.

--

>> WELL AS FAR AS THIS IS  
SUMMARY DENIAL.

>> YES, MA'AM.

>> IF WE WILL GET INTO WHAT  
THE TRIAL COURT FOUND, DON'T

WE HAVE TO REALLY TAKE THIS INTO LIGHT MOST FAVORABLY TO THE DEFENDANT AND HAVE -- DO IT ON SOMETHING LIKE A TIME BAR OR HAVE AN EVIDENTIARY HEARING ON THIS?

>> NOT FOR THIS PARTICULAR FACT.

BECAUSE IT'S A MATTER OF RECORD IN THE FILES.

THE -- FOR EXAMPLE GOING TO HIS CLAIM OF THE BRADY VIOLATION THE STATE DID NOT WITHHOLD OR SUPPRESS ANY INFORMATION.

MR. DAVIS GAVE A STATEMENT TO DETECTIVE BETTER -- BURKE IN WHICH HE SAID -- BURKE INTERVIEWED HIM AND THE INFORMATION IN THAT WAS HE DIDN'T KNOW ANYTHING ABOUT HER DISAPPEARANCE IN THE LAST TIME HE HAD SEEN LISA WAS A WEEK BEFORE HAND AND THAT INFORMATION WAS GIVEN TO THE DEFENSE.

AT THE TIME OF TRIAL KATHY STEVENS CAME FORWARD AND GAVE HER STATEMENT ABOUT HER RECK HREBGION OF SEEING!!!!!!!!!!!!!! SEEING -- RECOLLECTION OF SEEING JUNIOR DAVIS AT THE CONVENIENT STORE.

SHE WAS CROSS-EXAMINED. EVERYBODY KNEW AT THE TIME OF TRIAL AND EVEN BEFORE TRIAL WHO JUNIOR DAVIS, WHAT HIS RELATIONSHIP WAS TO EVERYBODY AND IF THE DEFENSE WANTED TO GO OFF AND INTERVIEW HIM.

THEY COULD.

THE COMPLAINT I GUESS THAT THE DEFENSE IS MAKING HERE IS THAT THE STATE NEVER -- THE STATE SOMEHOW SUPPRESSED OR WITHHELD JUNIOR DAVIS.

I DON'T SEE HOW THAT HAPPENED.

I THINK THAT WHAT IF I'M UNDERSTANDING IS THAT THIS GOES BACK TOCK THE INTERVIEW WITH SWEENEY AND WILLI IS

THAT WOULD HAVE PAVED THE -- MADE THE DEFENSE KNOW THAT JUNIOR DAVIS WAS MORE SIGNIFICANT THAN THEY MIGHT HAVE THOUGHT ORIGINALLY. >> WELL, THE ONLY THING THE BASICALLY SAID IN THAT INTERVIEW WITH SWEENEY AND WILLIS IS THAT AFTER THE DISAPPEARANCE DAVIS IS APPARENTLY TALKING TO SWEENEY AND WILLIS AND TRYING TO MAKE INQUIRY ABOUT WHETHER OR NOT THEY HEARD ANY INFORMATION AND HOW UPSET HE IS OR ALLEGEDLY UPSET THAT SHE DIDN'T CONTACT HIM FOLLOWING HER DISAPPEARANCE WHEN EVERYONE WAS UNDER THE IMPRESSION SHE RAN AWAY.

>> I'M UNDERSTANDING THEY FELT THAT INFORMATION WHICH WAS THE CLAIM WAS NOT DISCLOSED WOULD HAVE PUT THEM ON NOTICE THAT THEY REALLY NEEDED TIME OF JUNIOR DAVIS TO SET OUT TO TO. LET'S -- I GUESS -- LET'S UNRAVEL THIS MIGHT TAKE A WHILE.

LET ME -- YOU KNOW, I'VE READ KATHY STEVEN'S TESTIMONY AT TRIAL. AND SHE'S NOT THE STRONGEST WITNESS.

I MEAN, A LOT OF INCONSISTANCIES IN HER STATEMENT. WHY WOULDN'T BIT A BETTER THING TO HAVE AN EVIDENTIARY HEARING ON TO HEAR WHAT JUNIOR DAVIS HAS TO SAY WHAT THE TRIAL JUDGE REALLY EVALUATE THIS IS SIGNIFICANT IMPEACHMENT OF KATHY STEVENS OR NOT.

>> WELL, WE KNOW WHAT HE HAS TO SAY IN TERMS OF HIS KNOWLEDGE OF THE CRIME AND THAT IS NOTHING. ALL HE SAYS IN HIS AFFIDAVIT BASICALLY IS THAT HE HAD DISAGREEMENT WITH KATHY

STEVEN'S TESTIMONY ABOUT MEETING AT THE CONVENIENT STORE AT THAT -- AT THAT DAY OF THAT INCIDENT.

AND ALL THAT IS JUST MINOR -- A MINOR INCONSISTENCY WITH THE REST OF -- HE DOESN'T IMPEACH HER TESTIMONY AT ALL ABOUT WHAT SHE SAW AT THE HOUSE THAT DAY.

IT DOESN'T IMPEACH DECARR.

>> IT DOESN'T IMPEACH DECARR!!!!!!!!!!!!!!

DECARR -- THE MOTHER OR THE JAILHOUSE PERFORMANCE.

BUT IT'S KIND OF SHE TESTIFIED AT TRIAL THAT THE BOYFRIEND AND EVEN THE TESTIMONY SHE WAS A LITTLE BIT STRANGE.

SHE TOLD HIM WHAT HAPPENED AND HE GOES, WELL THAT'S NO BIG DEAL OR WALKS AWAY.

AND THAT'S A DETAIL THAT HAS TO DO WITH HER WHOLE RECOLLECTION OF WHAT HAPPENED.

SHE NEVER SAW HIM AND WHAT!!!!!!!!!!

WHAT -- THEN SHE WAS WHINING AT TRIAL.

-- LYING AT TRIAL.

IF SHE WAS LYING ABOUT THAT WHY WASN'T SHE LYING ABOUT SOMETHING ELSE.

>> NOT NECESSARILY LYING.

SOMEONE IS MISTAKEN OR FORGETTING WHAT IT MAY BE.

BUT THE POINT OF IT IS IT DOESN'T --

>> I'M TRYING TO PLAY -- I'M NOT SURE ABOUT WHETHER AN EVIDENTIARY HEARING IS NEEDED.

I WANTED TO PLAY DEVIL'S ADVOCATE HERE ON HOW -- WHETHER THIS IS REALLY HOW SIGNIFICANT THIS IMPEACHMENT WOULD BE AND IS IT NOT BETTER TO LET A TRIAL JUDGE ACTUALLY LISTEN TO THE TESTIMONY?

>> I THINK THE TRIAL JUDGE IN DENYING RELIEF -- WHAT THE ALLEGATIONS WERE THAT

WERE PRESENTED IN THE  
AFFIDAVIT AND REVIEWED THE  
RECORD EVIDENCE, THE  
TESTIMONY AND DETERMINE THAT  
IT WAS NOT THE KIND OF  
THAT WOULD HAVE MADE ANY  
DIFFERENCE IN THIS CASE.

>> LET ME ASK YOU THIS ONE  
QUESTION MR. LANDRY.  
IF WE LOOK AT THE TOTAL  
PICTURE.

AND THERE IS AN EXPLANATION  
OF A YOUNG WOMAN COMING TO A  
HOME AND SEEING SOME TYPE OF!!!!  
OF -- LET'S TAKE KNIT THE  
LIGHT OF THE ATTACK  
OCCURRING -- AND THEN  
EXPLAINS THAT SHE DIDN'T DO  
ANYTHING EVEN AFTER BEING  
REQUESTED TO DO SO BECAUSE  
SHE WENT AND TALKED WITH  
SOMEONE ELSE.

AND THAT EXPLAINS THE WAY  
THE ENACTION.

WOULD THAT PLACE KNIT A  
DIFFERENT LIGHT FOR THE  
IMPEACHMENT?

OR IS THAT STILL ALONG THE  
LINES OF JUST A MORE -- JUST  
A FACTOR THAT IS REALLY NOT  
VERY SIGNIFICANT AND JUST A  
MATTER OF A SMALL  
IMPEACHMENT UNDER THE  
SCENARIO WE'RE DEALING WITH.

>> I'M NOT SURE I UNDERSTAND  
THE QUESTION.

BECAUSE --

>> THE QUESTION IS THAT IF  
SHE -- AS I UNDERSTAND THE  
FACT THIS WITNESS TESTIFIED  
THAT SHE OBSERVED SYSTEM  
TYPE OF ATTACK OR WRESTLING  
OR SOMETHING GOING ON.  
AND ALSO SAID THAT SHE'S  
REQUESTED TO SEEK HELP.  
THAT'S CORRECT.

>> IS THAT A FAIR STATEMENT?

>> IT ATTEMPTS TO EXPLAIN  
WHY SHE DID NOT SEEK ANY  
HELP BY VIRTUE OF MEETING  
WITH THE BOYFRIEND AS TO THE  
CONVENIENT STORE OR 711 AND  
THAT HE WASN'T CONCERNED SO  
MAYBE THIS WAS NO BIG DEAL.

DOES THAT PLACE THE  
IMPEACHMENT IN A DIFFERENT  
LIGHT THAN AS IT JUST  
HAPPENS TO BE AS A PART OF  
THE SCENARIO THAT'S  
IMPEACHED.

ONE FACT.

WELL, I DON'T KNOW THAT -- I  
DON'T KNOW HER TESTIMONY WAS  
THAT SHE DID NOT GO TO THE  
POLICE BECAUSE SHE TALKED TO  
HIM.

I MEAN, MAYBE YOU COULD DRAW  
THAT CONCLUSION OR DRAW THAT  
INFERENCE FROM IT.

I THINK SHE IS REPORTING THE  
CHRONOLOGY GIVE OF EVENTS  
THAT OCCURRED IN HER  
RECOLLECTION.

THAT AFTER JULIA DAVIS  
APPARENTLY SEEMED TO BE  
DISINTERESTED OR WHATEVER,  
AND -- I MEAN JUNIOR DAVIS'  
STATEMENT TO THE POLICE WAS  
THE FAMILY WAS A MESS.

THERE WAS CONFLICT AND SO  
IT'S QUITE -- HIS REACTION  
IS QUITE UNDERSTANDABLE FROM  
HER PERSPECTIVE.

BUT SHE THEN TESTIFIED THAT  
AFTER JUNIOR DAVIS  
APPARENTLY WALKED AWAY OR  
EXPRESSED HIS INTEREST THEN  
SHE DIDN'T KNOW WHAT TO DO  
AS SHE JUST WENT OFF TO  
SCHOOL AND DIDN'T THINK IT  
WAS IMPORTANT ENOUGH TO GO  
TO THE POLICE AT THAT POINT.

>> DOES THAT CHANGE THE  
IMPORTANCE OF THE NEED FOR  
AN EVIDENTIARY HEARING THEN  
IT WAS RAINING THAT DAY OR  
WASN'T RAINING.

JUST THE NATURE OF WHAT THE  
TESTIMONY IS IMPORTANT FOR  
US TO LOOK AT AND THEN WHAT  
IS THE SIGNIFICANCE?

>> WELL, YEAH.

I MEAN, CERTAINLY THERE WILL  
BE DEGREES OF IMPORTANCE AND  
ALL OF THAT.

BUT I DON'T SEE THAT THIS  
RISES TO THE EVENT OF  
CHANGING ANYTHING.

BECAUSE JUNIOR DAVIS STILL HAS NOTHING TO SAY ABOUT THE CRIME OCCURRING.

HE DOESN'T KNOW WHETHER KATHY STEVENS WAS THERE OR NOT AND WHETHER THERE WAS A FIGHT OR A STRUGGLE OR NOT.

HE HAS NOTHING TO SAY TO IMPEACH MR. TOKO WHO SAID THE -- MR. TURCO --

>> I'M HAVING DIFFICULT WITH YOUR RESPONSE TO THE CHIEF'S QUESTION.

BECAUSE ON THE ONE HAND, YOU SEEMED TO SAY, YES IT IS VERY SIGNIFICANT.

THE -- AND THEN ON THE OTHER HAND YOU LOOK TO THE TESTIMONY OF THESE OTHER 22 WITNESSES ASIDE FROM STEVENS.

WE'RE DOING THIS WITH OUT ANY KIND OF A HEARING, YOU KNOW THAT WOULD HAVE SORTED IT OUT.

I WOULD LIKE TO SORT OF REASK THE SAME QUESTION THAT THE CHIEF HAS ASKED YOU.

AND THAT IS THAT ONE OF THE GLARING THINGS IN THIS CASE IS ABOUT MISS STEVENS AND THAT IS THAT SHE REALLY VIVIDLY DESCRIBES SOMETHING VERY TERRIBLE GOING ON, THAT IS THAT HER FRIEND IS BEING ATTACKED.

AND THAT IS SHE NOT ONLY -- SHE NOT ONLY IS BEING I TACKED BY SHE'S CRYING OUT FOR HELP.

AND SO ONE OF THE GLARING ISSUES IN THIS CASE WITH MISS STEPHENS IS, WELL, MY GOSH, YOU KNOW, YOU'RE THIS GIRL'S BEST FRIEND AND YOU ARE WATCHING HER BEING SEXUALLY ASSAULTED AND CRYING OUT FOR HELP WHY IN THE WORLD DIDN'T YOU IMMEDIATELY CALL THE POLICE OR GO TO -- YOU KNOW, GO GET SOME HELP.

AND YOU KNOW, PERHAPS PREVENT THIS TERRIBLE

TRAGEDY FROM OCCURRING.  
AND SO WHAT HER EXPLANATION  
IS FOR NOT DOING IS VERY  
IMPORTANT TO THE CASE IT  
SEEMS.  
AND I THINK YOU ACKNOWLEDGE  
THAT.  
AND TAKING ON YOUR ARGUMENT  
HEAD ON I WISH YOU WOULD  
RESPOND AGAIN AND SAY  
ASSUMING THAT THE ARGUMENT  
IS THAT, THAT'S WHAT  
HAPPENED.  
THAT'S -- AND HERE SHE IS  
AFTER HAVING WITNESSED THAT  
AND AFTER BEING APPEALED TO  
GET HELP THAT SHE SAYS, WELL,  
AND NOW THIS IS REALLY  
ALMOST A HYPOTHETICAL,  
BECAUSE I'M NOT CERTAIN THAT  
THIS IS SUPPORTED BUT YOUR  
OPPONENT IS SAYING THAT IN  
ESSENCE SHE SAYS WELL, HER  
BOYFRIEND WHOM I SAW RIGHT  
AWAY AFTER THAT SAID'S NO  
BIG DEAL AND AS A RESULT OF  
THE BOYFRIEND REALLY MAKING  
SAYING IT'S NO BIG DEAL,  
THAT, THAT'S THE REASON I  
DIDN'T GO FOR HELP.  
SO HELP US WITH WHY IT  
WOULDN'T BE IMPORTANT THEN  
TO KNOW WHAT THE BOYFRIEND  
HAS TO SAY AS TO WHETHER OR  
NOT HE WAS THE CAUSE OR  
EXCUSE THAT SHE HAS FOR NOT  
SEEKING HELP OR NOT.  
>> WELL, I MEAN, APPARENTLY  
MR. DAVIS' AFFIDAVIT IS  
BASICALLY, I DIDN'T SEE  
KATHY STEVENS THAT DAY.  
ASSUMING THAT SHE SAYS THAT  
THE REASON SHE DIDN'T GO FOR  
HELP IS HIM, THAT'S NO  
LONGER AVAILABLE TO HER.  
TO BE ABLE TO SAY THAT THE  
REASON I DIDN'T GO FOR HELP  
WAS BECAUSE OF SEEING AND  
TALKING TO THE BOYFRIEND AND  
HIM SAYING IT'S NO BIG DEAL.  
SHE DOESN'T HAVE THAT ANY  
MORE AS AN EXCUSE.  
FOR NOT SEEKING HELP.  
AND SO ISN'T THAT CRITICAL

TO HER CREDIBILITY AS TO WHY SHE DIDN'T SEEK HELP, IF SHE INDEED WITNESSED ALL THIS, IF THERE'S A REAL INCONTEMPLE GREWITY WITH HAVING WITNESSED THIS ATTACK AND THE CRY FOR HELP AND THEN NOT DOING SOMETHING ABOUT IT.

>> I DON'T THINK IT'S CRITICAL.

AND IF YOU LOOK AT THE CLOSING ARGUMENT OF DEFENSE COUNSEL HE WAS POINTING OUT WHAT HE THOUGHT WERE THE ALLEGED INCONSISTANCY IN KATHY STEVENS TESTIMONY.

HE SAID FIRST OF ALL SHE ADMITTED ABOUT HAVING LIED TO MR. PONITA THE FIRST TIME SHE CALLED AND ALL THAT. AND ALSO THE INFORMATION ABOUT KATHY STEVENS TALKING TO PROSECUTOR BONIATA. HE DEPOSED HER BEFORE HAND. HE KNEW ALL ABOUT AND QUESTIONED.

HE GOT HER TO ACKNOWLEDGE THAT SHE LIVE -- LIED TO MR. BONITA.

HE ACKNOWLEDGED TO ACKNOWLEDGE THAT SHE HAD LIED TO MISS DECARR, THE MOTHER ABOUT WHETHER THE LISA HAD RUN AWAY OR NOT. HE ALSO POINTED OUT IT DIDN'T -- THE UNUSUAL NATURE OF WHY DIDN'T KATHY STEVENS COME FORWARD EARLIER.

STEVENS APPARENTLY HAD EARLIER SAID THAT SHE INITIALLY THOUGHT THAT KATHY HAD RUN AWAY.

AT LEAST HAD RUN AWAY. AND THEN WHEN -- IT WAS A YEAR LATER THAT THE BODY WAS DISCOVERED.

AND STEVENS AT ANY TIME COME FORWARD THEN AND EVEN THEN UNTIL MARCH OF 1985.

ALL OF THIS --

>> AFTER THE CRIME; IS THAT CORRECT?

>> COUPLE OF YEARS AFTER THE

CRIME.

THAT'S HOW LONG AFTER THE  
CRIME BEFORE SHE CAME  
FORWARD?

>> I WOULD THINK ABOUT A  
YEAR AND A HALF.

IT WAS -- IT WAS ABOUT A  
YEAR AFTER THE DISAPPEARANCE  
OF THE BODIES DISCOVERED,  
MR. TOMPKINS WAS ARRESTED OR  
INDICTED IN SEPTEMBER OF '84  
AND THEN SHE CAME FORWARD IN  
MARCH OF '85.

SO THE DEFENSE HAD AMPLE  
OPPORTUNITY TO IMPEACH HER  
CREDIBILITY IN HIS CLOSING  
ARGUE.

I SAY THAT THIS JUNIOR  
AFFIDAVIT ADDS VERY LITTLE  
TO THAT.

AND IF YOU WANT TO MAKE THE  
ULTIMATE -- BECAUSE HE WAS  
INEFFECTIVE FOR NOT HAVING  
CALLED JUNIOR DAVIS THE  
ANSWER TO THAT WOULD BE THAT  
HE WOULD THEN HAVE TO MAKE A  
DECISION TO FORFEIT OPEN  
OPENING AND CLOSING ARGUMENT  
BY THE IMPORTANCE OF  
OPENING A CLOSING ARGUMENT  
IS WELL AS IMPORTANT AS THIS  
COURT'S DECISION.

DID YOU TAKE ON HIS ARGUMENT  
THAT.

>>> DID YOU TAKE ON THE  
ARGUMENT THAT KATHY STEVENS  
DID USE HER CONVERSATION  
WITH THE BOYFRIEND AS AN  
EXCUSE FOR NOT COMING  
FORWARD?

IS HE CORRECT ABOUT THAT?  
OR DOES THE RECORD NOT  
SUPPORT THAT?

IN OTHER WORDS WHAT DID  
KATHY STEVENS SAY IN HER  
DEPOSITION AND THEN IN HER  
TRIAL TESTIMONY?

DID SHE REALLY USE THE  
MEETING WITH THE BOYFRIEND  
AS THE REASON THAT SHE  
DIDN'T COME FORWARD?

>> WHAT'S HER CLAIM ON THAT?

>> I'M NOT SURE WHETHER SHE  
SAID IT'S THE REASON.

I THINK CERTAINLY SHE DESCRIBED THE CHRONOLOGY OF WHAT HAPPENED.

SHE SAW THE ATTACK AT THE HOUSE.

SHE GOES TO THE CONVENIENT STORE AND RUNS INTO JUNIOR DAVIS.

TELLS HIM OR TRIES TO TELL HIM WHAT'S GOING ON.

HE'S EITHER DISINTERESTED OR NOT RESPONDING TO HER CONCERNS AT THAT POINT.

AND THEN SHE DECIDES AT THAT POINT, WELL, YOU KNOW, I DON'T KNOW IF IT WILL WORK OUT OR I SHOULD CALL THE POLICE.

SHE GOES OFF TO SCHOOL THAT DAY AND DOESN'T CALL THE POLICE.

I MEAN, I DON'T.

>> THE ANSWER OF -- BECAUSE I READ THE PART IN THE -- FROM THE TRIAL TRANSCRIPT.

IT SOUNDS LIKE SHE DOES USE -- SHE WAS SCARED AND SHE ALSO TOLDER AND JUST WALKED A -- TOLD JUNIOR AND HE JUST WALKED AWAY AND DECIDED NOT TO GET INVOLVED. IT'S A FACTOR IN WHAT SHE TESTIFIED AT TRIAL AS TO WHY SHE DIDN'T TELL POLICE.

>> YEAH.

BUT I DON'T KNOW WHETHER OR NOT SHE'S SAYING THAT UPON SEEING JUNIOR'S RESPONSE AND THEN IT ACTUALLY WASN'T AS SERIOUS AS I WAS INITIALLY LED TO BELIEVE.

THAT MAY HAVE BEEN THE REACTION SHE HAD GOTTEN FROM IT.

TESTIMONY IS WHAT THE TESTIMONY IS.

THE JURY NEW AND ASSUMING WE HAVE TO ASSUME ON THIS THAT JUNIOR DAVIS IS CREDIBLE, THAT HE MADE UP THIS WHOLE INTERACTION WITH JUNIOR DAVIS.

>> UH-HUH.

AND THEN THE -- TO ME THAT  
IS A PRETTY SIGNIFICANT  
IMPEACHMENT.

I'M JUST WITH YOU ON THE  
FACT THAT I'VE READ HER  
TESTIMONY.

I THINK SHE'S PRETTY  
IMPEACHED AS IT IS AT TRIAL.  
NOW HOW MUCH MORE  
IMPEACHMENT IT IS.

WHAT IS THE STORY WITH HER  
SAYING THAT THERE WAS A MAN  
IN THE ROOM AT THE TIME THAT  
SHE WITNESSED THIS?

>> THAT WAS HER TESTIMONY AT  
TRIAL.

>> AND WAS THAT IMPEACHED?  
OR WAS THERE ANY -- DID THE  
STATE ASSERT THERE WAS AN  
ADDITIONAL PERSON THAT WAS  
WITNESSING THIS ATTACK, A  
MAN?

DID WE EVER FIND OUT WHO  
THAT WAS?

>> NO.  
NO.

THE DEFENSE AND THE DEFENSE  
CROSS-EXAMINED HER ON THAT.  
YOU MEAN THERE WAS ANOTHER  
PERSON WHO WAS THERE AND  
WASN'T AND BLAH, BLAH, BLAH.  
SHE MAY HAVE BEEN ASKED WHO  
IT WAS OR SHE KNEW HIM.

>> WHAT WAS THE STATE'S  
POSITION ABOUT WHETHER THERE  
WAS AN ADDITIONAL INDIVIDUAL  
WHO WAS SOMEHOW INVOLVED IN  
THIS WHOLE ODD SEQUENCE OF  
EVENTS THAT DAY.

>> THE STATE HAD THE  
POSITION THAT HER TESTIMONY  
WAS THAT SHE SAW THAT TOTAL  
OF TWO PEOPLE IN THE ROOM.  
ONE WAS SIMPLY THERE  
WATCHING.

AND YOU KNOW THE STATE NEVER  
FOUND OUT OR LEARNED WHO THE  
OTHER PERSON WAS ALLEGEDLY.  
THAT'S JUST HER TESTIMONY.

BUT YOU HAVE -- THE STATE  
HAS GOTTEN A CONVICTION IN  
THIS STATE BASED ON THE  
TESTIMONY OF THE JAILHOUSE  
INFORMANT AS WELL AS BARBARA

DECARR.

SHE IN FACT, THE MOST  
CRITICAL WITNESS IN THE  
STATE'S CASE?

>> I DON'T KNOW IF SHE WAS  
THE MOST CRITICAL WITNESS.  
APPARENTLY SHE CERTAINLY GOT  
AN INDICTMENT WITH KATHY  
STEVENS.

SHE CAME FORWARD AFTER HE  
WAS INDICTED AND ARRESTED.

>> READING THE WHOLE TRIAL  
TRANSCRIPT WHERE SHE  
TESTIFIED THE PRIOR INCIDENT  
WHERE HE EXPOSES HIMSELF TO  
BOTH OF THEM AND SOME PRETTY  
GRAPHIC TESTIMONY.

DO YOU RAISE HER AS BEING  
THE MOST CRITICAL WITNESS?

>> I THINK THE -- SHE WAS AN  
IMPORTANT WITNESS.

IN ADDITION TO THE CELLMATE  
AND IN ADDITION TO ROBERT  
DECARR'S TESTIMONY.

YOU HAVE ADMISSION OF THE  
DEFENDANT.

HE HASN'T RECANTED HIS  
TESTIMONY NOR HAS LISA OR  
KATHY STEPHENS.

THERE IS NO CHANGE IN WHAT  
THEY'VE HAD TO SAY.

>> THERE'S NO RECAMP OF  
ANYONE'S TESTIMONY IN THIS  
CASE.

ALL WE HAVE A JUNIOR DAVIS  
SAYING I DIDN'T MEET WITH  
KATHY STEVENS AT THE STORE.  
I DON'T KNOW ANYTHING MORE  
ABOUT THE CASE.

THAT'S BASICALLY IT.

AS WE PARTED OUT IN  
THE -- AS WE POINTED OUT IN  
THE BRIEF THERE'S NO CLAIM  
OF THERE CAN BE NO  
LEGITIMATE CONTINGENT OF A  
BRADY VIOLATION -- WHATEVER  
DAVIS TOLD DETECTIVE WAS  
GIVEN TO THE DEFENSE.

ONCE KATHY STEVENS COMES  
FORWARD AND ARGUEABLY IF SHE  
MAKES STATEMENT WHICH ARE  
INCONSISTENT WITH WHAT DAVIS  
TOLD BURKE THEN THE DEFENSE  
HAD THAT OPPORTUNITY TO GO

AND INVESTIGATE THAT IF HE  
WANTED TO.  
THERE'S NO VIOLATION.  
NO ONE HAS GIVEN PURGING  
TESTIMONY OR FALSE  
TESTIMONY.  
HAD IT GONE UNCORRECTED AT  
MOST YOU HAVE HERE  
ARGUENTIABLY IS A CLAIM  
POSSIBLY EVEN INEFFECTIVE  
ASSISTANCE OF COUNSEL  
BECAUSE MR. McKELVIN THOUGHT  
A DIFFERENT ATTORNEY WOULD  
HAVE DONE SOMETHING  
DIFFERENT.  
THIS COURT IN THE FEDERAL  
COURTS DENIED RELIEF ON  
THAT.  
WE SHOULD NOT BE HAVING  
PIECEMEAL LITIGATION OF  
INEFFECTIVE COUNSEL CLAIMS.  
THERE'S NO FURTHER QUESTIONS  
I WOULD ASK THE COURT TO  
AFFIRM.

>> AM I IN REBUTTAL?

>> THE 1989 EVIDENTIARY  
HEARING IT WASN'T PERMITTED  
TO KAGT KATHY STEVENS.  
THERE WASN'T A HEARING ON  
HER.

SHE WASN'T CALLED.  
HER ACCOUNT IS A VIVID  
ACCOUNT.

AND --

>> WHY WERE YOU NOT  
PERMITTED TO CALL HER?

>> THE JUDGE -- THE  
PROSECUTOR OBJECTED AND THE  
JUDGE SAID, NO, YOU CAN'T  
CALL HER.

>> WHY?

WAS THERE AN ISSUE RAISED?

>> IT WAS RAISED.

THE MEMORANDUM WERE UP  
DEUCED.

I CALLED THE PROSECUTOR.  
HE SAID, YES HE WROTE THE  
MEMORANDUMS BASE ODEN WHAT  
SHE SAID.

HE ARGUED SHE WOULD BE TOO  
EMOTIONALLY UPSET AND THE  
JUDGE ABSTAINED THE  
OBJECTION AND I COULDN'T  
CALL HER.

BUT HER IN -- ACCOUNT WAS  
VERY VIVID.

>> AS WE PUT THIS TOGETHER  
WE MUST LOOK TO THE STANDARD  
THAT WE'RE UPON BEFORE WE  
CAN REALLY COME TO A  
CONCLUSION AS TO WHERE THIS  
RECORD EXCLUSIVELY  
DEMONSTRATES.

>> OKAY.

>> AND YOU'RE TRYING TO NOT  
ONLY WHO DISCOVERED BUT  
BRADY.

>> THAT'S CORRECT, YOUR  
HONOR.

>> AND CAPTURE FOR US 11:00  
SINKLY AS POSSIBLE WHAT THAT  
BRADY VIOLATION IS.

I KNOW YOU TRY TO ARGUE AND  
BRING BACK IN THERE'S A  
COUPLE OF FOLKS THAT TALKED  
WITH THE INVESTIGATOR THAT  
SAID WHAT HAS REALLY PLACED  
THIS TO UNDERMINE THE  
CONFIDENCE IF YOU HAVE AN  
EVIDENTIARY HEARING THAT'S  
NOT REVIEWED.

>> YOUR HONOR IN 2001 THE  
POLICE REPORT THAT WAS FIRST  
DISCLOSED INVOLVED THE  
INTERVIEW OF MARINE SWEENEY  
AND WILLIS THEY NOT ONLY  
GAVE INFORMATION ABOUT  
BARBARA DECARR GIVING A  
DIFFERENT VERSION OF THE  
CRIME INDICATING LISA WARREN  
AWAY AFTER A FIGHT OVER  
MR. TOMPKINS MOVING BACK IN  
THE HOUSE.

THEY ALSO SAID THEY SPOKE TO  
JUNIOR DAVIS AND THE  
INFORMATION THAT HE GAVE IS  
INCONSISTENT WITH WHAT WAS  
REPRESENTED AT TRIAL  
REGARDING JUNIOR DAVIS.  
THAT LEAVES TO HIS AFFIDAVIT  
WHICH I SUBMIT IF YOU  
HAVE --

>> THE  
SUBSTANTIATE -- SUBSTANCE  
NOT THE EVIDENCE.  
WE'RE LOOKING AT WHAT THE  
OTHER PEOPLE HAD TO SAY.  
THAT'S GOING TO BE THE BRADY

VIOLATION.

>> THE BRADY VIOLATION IS  
THEY HAVE INFORMATION THAT  
SHOWED THAT JUNIOR DAVIS HAD  
GIVEN HIM A COUNT  
INCONSISTENT WITH KATHY  
STEVENS AND WOULD CAUSE AN  
ATTORNEY TO FIND HIM AND  
ELLIS SEURT MORE INFORMATION  
FROM HIM.

WE LOOK -- WE KNOW WHAT'S IN  
THE RECORD.

IS THERE NOT THE ADMISSION  
OR STATEMENTS FROM THE  
DEFENDANT WITH REGARD TO THE  
RUN AWAY DESCRIBING THE  
CLOTHE!!ING THIS CLOTHING THAT  
SHE ALLEGEDLY DESCRIBES BY  
THE DEFENDANT THIS RUNNING  
AWAY IN WAS FOUND VERY?

>> ONLY THE BERN.

THE CLOTHING WAS FOUND WITH  
A PINK BATHROBE.

IT WASN'T THE CLOTHING.

>> I KNOW THE BATHROBE WAS  
THERE.

>> NO.

THE MARINE TOP WAS NOT.  
THERE'S OTHER WITNESSES.  
THERE WAS GLADDIEST DAILY  
WHO SAID THEY SAW MARINE  
TOP.

THE RELATIONSHIP BETWEEN  
JUNIOR DAVIS AS THIS COURT  
ACKNOWLEDGED, THERE'S  
SOMETHING STRANGE ABOUT HER  
TESTIMONY.

YOU READ THE TESTIMONY AND  
IT'S LIKE THIS IS A BIZARRE  
REACTION TO WHAT SHE HAS  
JUST SEEN.

AND THE STATE'S EXPLANATION  
IS JUNIOR DAVIS THE  
BOYFRIEND DIDN'T HAVE ANY  
DIFFERENT REACTION.

AND IT SORT OF MAKES IT SEEM  
LIKE THIS REACTION IS MORE  
NORMAL THAN IT IS.

AND, IN FACT, HAD THE  
DEFENSE KNOWN ABOUT JUNIOR  
DAVIS THE REASON TO CALL HIM  
IS TO SHOW WHAT KIND OF  
REACTION A NORMAL PERSON  
WOULD HAVE TO HEARING OR

SEEING WHAT KATHY STEVENS  
SAID SHE SAW.  
AND SO IF IT'S MORE THAN  
JUST IMPEACHING HER.  
IT'S ALSO IMPEACHING THE WAY  
THE STATE USED HER.  
AS IF THE SORT OF NORMAL  
REACTION.  
PHAPBG THIS CASE WITHOUT HER  
TESTIMONY.  
-- IMAGINE THIS CASE  
WITHOUT HER TESTIMONY IT  
CHANGES THE CASE.  
>> THAT'S ALL YOUR TILE.  
THANK YOU BOTH FOR YOUR  
EXCELLENT PRESENTATIONS.  
THE COURT WILL TAKE THE CASE  
UNDER ADVISEMENT.  
>>