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**James Eugene Hunter v. State of Florida**

**SC07-161**

>> ALL RISE.

O YE, O YE, O YE, THE SUPREME COURT OF FLORIDA IS NOW IN SESSION.

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

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

>> GOOD MORNING.

>> GOOD MORNING.

>> GOOD MORNING.

>> LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING, FRIENDS.

WELCOME TO THE FLORIDA SUPREME COURT FOR THE ORAL ARGUMENT ON THURSDAY, MAY 8th, 2008.

FIRST CASE, ONLY CASE THIS MORNING, HUNTER v. STATE.

READY TO PROCEED?

>> THANK YOU.

GOOD MORNING, MAY IT PLEASE THE COURT, MY NAME IS PAUL KALIL, ASSISTANT CCRC SOUTH.

WITH ME IS ANNA-LIISA NIXON, CCRC STAFF ATTORNEY.

WE REPRESENT THE APPELLANT JAMES HUNTER WHO IS APPEALING THE SUMMARY DENIAL OF HIS SUCCESSIVE RULE 313851 MOTION.

>> WOULD YOU GET RIGHT TO WHAT YOU CONSIDER THE MOST CRITICAL ALLEGATION OR MOST IMPORTANT ALLEGATION THAT YOU MADE THAT WOULD APPEAR TO BE THE MOST COMPELLING IN TERMS OF REQUIRING SOME EVIDENTIARY DEVELOPMENT?

>> THAT WOULD CERTAINLY BE THE STATEMENT OF THE CODEFENDANT, MR.^ERIC BOYD, WHO HAS COME FORWARD TO CCRC INVESTIGATORS

AND STATED THAT HE IN FACT IS THE PERSON WHO HAD THE REAL GUN, THE SOLE REAL GUN ON THE NIGHT OF THE CRIME.

>> DOES HE SAY THAT HE IS THE ONE THAT SHOT THE, THE PERSON THAT DIED, THE VICTIM?

>> HE HASN'T EXPLICITLY STATED THAT FACT; HOWEVER, CONSISTENT WITH THE EVIDENCE THAT WAS PRESENTED AT TRIAL AND IN POST-CONVICTION WITH THE STATE'S THEORY OF THE CASE, ALL ALONG THERE WAS ONLY ONE SHOOTER, ONE REAL GUN INVOLVED IN THIS CASE.

ALL ALONG --

>> I MEAN, PELLET GUNS ARE REAL GUNS, ARE THEY NOT?

>> I'M SORRY.

I DIDN'T HEAR.

>> PELLET GUNS ARE REAL GUN.

>> WHEN I SAY FIREARM, I MEAN A GUN THAT SHOOTS A PROJECTILE, A GUNPOWDER PROJECTILE, A FIREARM.

>> WHY ISN'T THIS SO COMPELLING?

WHY ISN'T IT REALLY AROUND THE EDGES SINCE WE HAD REALLY THE, THE A SUBSTANTIAL NUMBER OF WITNESSES THAT IDENTIFIED HUNTER AS THE SHOOTER IN TERMS OF THE DEATH THAT OCCURRED?

>> SURE.

>> NOW, OBVIOUSLY, THERE WERE, WHAT, THREE OTHER VICTIMS THAT WERE SHOT BUT SURVIVED.

>> THAT'S CORRECT.

>> AND SO IF WE HAVE A COMBINATION HERE OF NO ALLEGATION THAT THERE'S A CLAIM THAT THERE -- OR AN ADMISSION THAT, THAT, THAT THIS WITNESS CODEFENDANT SHOT THE VICTIM OF THE HOMICIDE, AND WE HAVE THE, A, A VERY LARGE NUMBER OF WITNESSES, BOTH INCLUDING THE SURVIVORS AND THE PEOPLE THAT WERE IN THE CAR.

>> SURE.

>> YOU KNOW, WITH YOUR CLIENT, YOU KNOW, WHY, WHY, WHY THEN IS THIS SO COMPEL FIGURE WE, IF

THIS -- IT ISN'T A CASE WHERE  
SOMEBODY'S COMING FORWARD AND  
SAYING WELL, YOU KNOW, I'VE GOT  
RELIGION OR SOMETHING AND I --  
NOW I WANT TO ADMIT THAT I WAS  
THE ONE THAT KILLED THE VICTIM.  
IT WASN'T THE DEFENDANT, AND HE  
OUGHT TO BE OFF OF DEATH ROW.

>> IT, IT MIGHT AS WELL BE  
BASED ON THE EVIDENCE THAT'S  
ALREADY BEEN PRESENTED BY THE  
STATE IN TRIAL AND IN  
POST-CONVICTION THAT THERE WAS  
ONLY ONE SHOOTER AND THAT THERE  
WAS ONLY ONE GUN, WHICH WAS  
NEVER RECOVERED.

ALL OF THE WITNESSES THAT  
YOU'VE MENTIONED THAT TESTIFIED  
HAD TO VARYING DEGREES  
IDENTIFICATION ISSUES WITH  
REGARD TO WHO WAS THE ACTUAL  
SHOOTER.

EITHER THEY WERE, THEY WERE,  
THEY WERE PRIOR STATEMENTS OF  
DEPOSITIONS GIVEN THAT WERE  
INCONSISTENT WITH THE TRIAL  
TESTIMONY, OR THERE WERE SOME  
REASON TO CAST THEIR TESTIMONY  
IN SOME DOUBT.

CERTAINLY THE KEY WITNESS WOULD  
BE TAURUS COOLEY, WHO ALSO --

>> WHY, WHY, WHY WOULD HE  
NECESSARILY BE A KEY WITNESS?

>> WELL, IF YOU LOOK --

>> HE'S ONE OF THE PEOPLE  
WOUNDED.

>> ONE OF THE SURVIVING  
VICTIMS, CORRECT.

THE 11TH CIRCUIT SAID THAT  
MR.^COOLEY WAS A KEY WITNESS,  
AND, AND RELIED HEAVILY ON HIS  
TESTIMONY.

HE WAS -- AT LEAST AT TRIAL, HE  
IDENTIFIED MR.^HUNTER.

THAT WAS INCONSISTENT WITH SOME  
OF THE STATEMENTS HE HAD GIVEN  
TO POLICE PRIOR TO THE TRIAL,  
WHERE HE SAID THAT HE COULDN'T  
IDENTIFY THE SHOOTER.

HE ALSO IDENTIFIED THE SHOOTER  
AS BEING DRESSED IN RED,  
WHEREAS THERE'S BEEN A  
CONTENTION ALL ALONG THAT  
MR.^HUNTER WAS WEARING WHITE.

>> SO WHAT WAS THE DEFENSE  
HERE?

BECAUSE HUNTER WAS AT THE  
SCENE, CORRECT?

>> THAT'S NOT -- THAT'S NOT AS  
ALLEGED NOW, NO.

THE NEW AND DISCOVERED EVIDENCE  
CLAIM --

>> NO, AT THE TRIAL, WHAT WAS  
HUNTER'S DEFENSE?

>> MISIDENTIFICATION ISSUE AND  
THAT HE WAS NOT IN THE  
IMMEDIATE AREA WHEN THE CRIME  
OCCURRED.

>> SO DID HE DENY BEING WITH  
THE FOLKS THAT WERE IN THE CAR  
AND EXITED THE CAR TO GO  
OVER --

>> NO, HE DIDN'T DENY THAT AT  
ALL.

>> SO HE WAS AT THE SCENE OF  
THE INCIDENT.

>> WELL, HIS CONTENTION NOW AND  
AT THAT TIME WAS THAT HE WAS  
NOT AT THE IMMEDIATE AREA WHERE  
THE ACTUAL SHOOTING TOOK PLACE.  
HE LAID BACK BEHIND.

THEY WERE APPROXIMATELY TWO  
BLOCKS AWAY IN, BY THE, BY THE  
CAR.

>> SO HE TESTIFIED AT THE, AT  
THE TRIAL?

>> NO, HE DID NOT.

>> WELL, THEN I'M HAVING  
DIFFICULTY THEN WITH YOUR  
CONTENTION THAT HE -- THAT HIS

--  
>> THE SENSE WAS THAT HE LAID  
BACK AND WHATEVER.

>> THAT'S WHAT --

>> YOU NEED TO HELP US WITH  
THAT.

>> SURE.

THAT'S WHAT TRIAL COUNSEL I  
THINK WAS TRYING TO SAY WAS  
THAT MR.^HUNTER WASN'T DIRECTLY  
INVOLVED AND THAT IF --

>> WELL, WHO TESTIFIED THAT HE  
LAID BACK?

>> I --

>> IN OTHER WORDS.

>> I DON'T RECALL --

>> EVIDENTIARY OR FACTUAL BASIS  
FOR HIM TO BE ABLE TO ASSERT A

DEFENSE THAT WHAT THEN -- AND  
WHAT WAS IT?

WAS IT THAT HE DIDN'T GET OUT  
OF THE CAR OR THAT HE GOT OUT  
OF THE CAR BUT, QUOTE, LAID  
BACK?

>> PART OF THE PROBLEM THAT WE  
HAVE HERE IS THAT THE  
ALLEGATION IN THE MOTION -- WE  
HAVEN'T HAD THE OPPORTUNITY TO  
SUPPORT THAT ALLEGATION --

>> BUT WE HAVE A RATHER  
EXTENSIVE TRIAL RECORD, AND,  
AND THE TESTIMONY OF NUMEROUS  
WITNESSES.

>> MM-HMM.

>> IDENTIFYING HUNTER.

YOU KNOW, WHICH YOU'RE, YOU'RE  
UP AGAINST, SO TO SPEAK.

>> SURE.

>> THAT'S WHY I ASK, YOU KNOW,  
REALLY FOR THE MOST COMPELLING  
ASPECT OF YOUR, YOUR  
ALLEGATIONS HERE.

REALLY WHAT --

EVIDENTIARY-WISE, DID HUNTER  
PRESENT ANY DEFENSE AT THE  
TRIAL?

>> NO.

HE DIDN'T PRESENT ANY  
AFFIRMATIVE DEFENSE OR PRESENT  
ANY WITNESSES.

>> I'D LIKE TO ASK A COUPLE OF  
QUESTIONS.

YOU SAY THAT YOU WOULD NEED THE  
OPPORTUNITY TO DEVELOP AT AN  
EVIDENTIARY HEARING WHAT IN  
FACT ERIC BOYD WOULD NOW SAY.  
BUT, AND THIS IS WHERE I THINK  
THE TRIAL JUDGE WAS TRYING TO  
REALLY UNDERSTAND WHAT IT WAS  
THAT YOU WERE PREPARED TO  
ASSERT IF BOYD WOULD TESTIFY  
TO.

THERE'S A MOTION FROM YOUR  
CLIENT THAT WAS FILED SAYING  
THERE'S A NINE-PAGE SWORN  
AFFIDAVIT FROM ERIC BOYD.

IS THERE SUCH AN AFFIDAVIT?

>> TO ADDRESS THAT, I WOULD  
HAVE TO GO OUTSIDE OF THE  
RECORD.

>> RIGHT BUT THE POINT IS, I  
GUESS, WHAT IS THE -- WHAT DO

WE HAVE BEFORE US THAT GIVES US AN INDICATION OF WHAT ERIC BOYD WOULD STATE?

>> THE ORIGINAL 3850 MOTION OR 3851 MOTION WAS VERY SPECIFIC AS TO WHAT MR.^BOYD NOW CLAIMING THAT HE WAS THE PARTY RESPONSIBLE FOR SHOOTING TAURUS COOLEY.

AND THAT HE HAD AN UNDERSTANDING WITH THE STATE THAT IF HE WERE TO STAY QUIET AND NOT MAKE ANY WAVES, SO TO SPEAK, THE STATE WOULD COME BACK AT A LATER TIME AND CLEAR THE WHOLE CASE UP.

>> BUT YOU KNOW FROM EXPERIENCE THAT ALMOST ALL THE TIME THIS IDEA THAT SOMEHOW THE STATE HAS TRIED TO SUPPORT PERJURY, I MEAN, I'M NOT SAYING THAT WE'RE NOT NAIVE BUT GENERALLY SPEAKING, THE PROSECUTOR WOULD COME IN AND SAY WELL NOW THAT NEVER HAPPENED.

SO IF, IF, BUT YOU'RE SAYING THAT HE'S PREPARED TO STATE FOR WHATEVER REASON THAT HE WAS THE SHOOTER BECAUSE HE'S -- BECAUSE THAT'S WHERE, AND I REALIZE THAT THIS PUTS YOU IN A DIFFICULT POSITION BUT IS THERE EVIDENCE THAT YOU'VE OBTAINED THAT WOULD CAST DOUBT ON WHO THE SHOOTER IS?

>> THE SIMPLE ANSWER IS YES, ABSOLUTELY.

I BELIEVE THAT MR.^--

>> ALL RIGHT.

THE OTHER QUESTION THAT I HAVE ABOUT THE -- MR.^, MR.^COOLEY,.

>> MM-HMM.

>> ONE OF THE VICTIMS, IS THAT WAS THERE EVER AN ALLEGATION AT THE ORIGINAL TRIAL THAT THERE WAS A, THAT THE PEOPLE THAT WERE RESPONSIBLE FOR SHOOTING THE VICTIMS INCLUDING HUNTER AND BOYD HAD A RELATIONSHIP WITH THESE FOUR MEN OR NOT? OR WERE THEY JUST RANDOM VICTIMS?

>> THAT, I DON'T BELIEVE THAT THAT DEFENSE OR THAT EVIDENCE

WAS OFFERED AT THE TRIAL.

>> SO THE IDEA WAS THE JURY  
THAT THIS WAS JUST A RANDOM  
SHOOTING.

>> A RANDOM ROBBERY AND  
SHOOTING.

>> SO WHAT IS THIS ISSUE NOW  
THAT IN FACT COOLEY HAD A  
CRIMINAL RECORD AND I AM GOING  
TO ASK THE STATE ABOUT THAT  
BECAUSE IT'S TO ME IT'S VERY  
DISTURBING THAT THIS EVIDENCE  
APPARENTLY WAS THERE AND WE  
BASED OUR LAST OPINION ON  
SOMETHING THAT'S NOT TRUE.  
THAT THERE -- WAS THERE -- IS  
THERE EVIDENCE THAT YOU'RE  
PREPARED TO PRESENT THAT THERE  
WAS A RELATIONSHIP BETWEEN BOYD  
AND COOLEY?

>> I THINK CERTAINLY, MR.^BOYD  
WOULD TESTIFY TO THAT.

>> THAT HE KNEW COOLEY.

>> THAT HE KNEW, KNEW COOLEY,  
THAT COOLEY HAD PROVIDED,  
FRONTED SO TO SPEAK, DRUGS,  
MARIJUANA SPECIFICALLY, I  
BELIEVE.

>> TO ME THAT'S THE MORE  
SIGNIFICANT ASPECT OF WHAT  
SHOULD BE DEVELOPED BECAUSE IF  
YOU GO -- AT LEAST JUST FROM MY  
POINT OF VIEW, IF YOU GO FROM  
SOMETHING WHERE THESE ARE  
RANDOM VICTIMS, TO SOMETHING  
WHERE SOMEBODY MIGHT'VE HAD A  
MOTIVE, THAT MAYBE IT STILL  
DOESN'T MEAN THE JONES STANDARD  
BUT IT TRISTE IT GETS CLOSER TO  
SAY -- AT LEAST IT GETS CLOSER  
TO SAYING MAYBE THIS SHOULD BE  
EXPLORED AT AN EVIDENTIARY  
HEARING.

>> I SHARE THAT.

I THINK THAT BEFORE WE EVEN  
REACH A DETERMINATION OF THE  
JONES STANDARD IN A  
CIRCUMSTANCE LIKE THIS WE  
REALLY DO NEED TO HAVE  
EVIDENTIARY DEVELOPMENT.

>> IN THESE CIRCUMSTANCES, THIS  
IS A SUCCESSIVE 3.851 MOTION.

>> CORRECT.

>> AND WHEN YOU HAVE A

SUCCESSFUL 3.850 MOTION YOUR  
PLEADING REQUIREMENTS ARE MUCH  
MORE STRINGENT THAN WHEN YOU  
HAVE YOUR INITIAL 3.851 MOTION  
SO IT TO -- SEEMS TO ME THAT  
YOU HAVE THE HEAVY BURDEN OF  
PLEADING A LOT OF INFORMATION,  
WITNESSES, WHAT THEY'RE GOING  
TO SAY, ALL OF THIS KIND OF  
INFORMATION.

YET YOU GET TO THE HEARING AND,  
AS I UNDERSTAND IT, YOU SAY WE  
DON'T HAVE ANY EVIDENCE THAT  
THIS MAN IS GOING TO SAY HE  
SHOT THE PERSON WHO WAS DEAD.  
THE ONE THAT WE'RE HERE ON THE  
DEATH PENALTY FOR.

>> AND --

>> AND SO THAT'S PRETTY  
DISTURBING TO ME THAT YOU DON'T  
HAVE EVIDENCE, YOU, FROM, FROM  
MR.^BOYD THAT HE SHOT  
MR.^SIMPSON.

>> UNDER JONES, WE HAVE TO LOOK  
AT THE CASE, ALL THE EVIDENCE  
FROM THE TRIAL ALL THE WAY UP  
THROUGH WHERE WE ARE TODAY.  
I THINK IF YOU LOOK AT ALL OF  
THAT EVIDENCE, CUMULATIVELY,  
THE FACT THAT THE STATE HAS  
ALWAYS CONTENDED THAT THERE WAS  
ONLY ONE SHOOTER AND NOW WE  
HAVE MR.^BOYD SAYING  
ESSENTIALLY I WAS THAT SHOOTER.

>> NOW DO YOU HAVE MR.^BOYD  
SAYING THAT OR DO YOU HAVE THE  
PRIOR COUNSEL FOR MR.^HUNTER  
SAYING THAT BOYD SAID THAT TO  
HIM?

>> AGAIN, WE WOULD HAVE TO GO  
OUTSIDE THE RECORD.

I UNDERSTAND IT'S BEEN STRUCK  
AND I DON'T WANT TO DO THAT.

>> OTHER THAN YOUR ALLEGATION  
IN THE MOTION WAS THERE ANY  
ALLEGATION OR ATTACHMENT TO THE  
MOTION OF A DIRECT STATEMENT TO  
YOU OR TO YOUR INVESTIGATOR  
THAT MR.^BOYD ADMITTED THIS OR  
WAS IT SIMPLY BASED UPON THE  
ALLEGED STATEMENT TO PRIOR  
COUNSEL FOR MR.^HUNTER.

>> YEAH, JUST SO WE'RE CLEAR,  
POST CONVICTION, IT WAS CCR

MIDDLE BUT THE ALLEGATION IN THE MOTION WAS THAT MR.^BOYD HAD COME FORWARD AND STATED TO CCR MIDDLE INVESTIGATORS AND I BELIEVE COUNSEL AS WELL THAT THE MOTION WILL SPEAK FOR ITSELF.

THAT HE WAS IN FACT THE PERSON WHO SHOT MR.^COOLEY.

>> DID YOU GET ON THE CASE AFTER THE MOTION WAS FILED?

>> I'M SORRY?

>> YOU CAME INDO THE CASE AFTER THE MOTION WAS FILED.

>> THAT IS CORRECT.

>> OKAY SO YOU WEREN'T PART OF DEVELOPING THE AFFIDAVITS OR, OR THE, THE INFORMATION THAT THE ALLEGATIONS ARE BASED ON?

>> NO, AT THE TIME THAT I CAME ONTO THE CASE PERSONALLY, IT WAS JUST, THE CASE WAS PROGRESSING TO WHERE THE CASE MANAGEMENT CONFERENCE.

THERE WAS AN ISSUE RAISED AS TO -- WITH REGARD TO WHETHER OR NOT PREVIOUS COUNSEL WAS GOING TO BE A WITNESS.

>> JUSTICE CANTERO HAD A QUESTION.

>> YES?

>> GETTING TO THE SECOND PRONG, WEREN'T THERE SEVERAL WITNESSES AT TRIAL WHO IDENTIFIED YOUR CLIENT AS THE SHOOTER AND THEREFORE HOW CAN WE CONCLUDE THAT THIS NEW EVIDENCE WOULD PUT THE CASE IN SUCH A DIFFERENT LIGHT AS TO CHANGE THE OUTCOME?

>> AGAIN, I THINK VIEWING THE CASE CUMULATIVELY IN ALL THE EVIDENCE THAT'S PRESENTED WHEN YOU LOOK BACK AT THE TESTIMONY AT TRIAL, THESE IDENTIFICATIONS WERE NOT POSITIVE, I KNOW THAT MAN AND I, YOU KNOW.

>> WELL, THEY WERE POSITIVE THAT'S THE GUY WHO SHOT HIM.

>> CORRECT.

>> THAT WAS PRETTY POSITIVE BUT THEN THERE WAS AT LEAST WITH REGARD TO MR.^COOLEY THERE WAS IMPEACHING MR.^COOLEY THAT HE

WAS UNABLE TO.

>> MR.^COOLEY WASN'T THE  
DECENDENT, RIGHT?  
>> SO WHAT ABOUT REGARDING THE  
DECEDENT MR.^SIMPSON.

WASN'T THERE SUBSTANTIAL  
EVIDENCE PRESENTED THAT YOUR  
CLIENT WAS THE SHOOTER?  
WE'RE HERE ON THE MURDER TRIAL.

>> THERE WAS EVIDENCE  
PRESENTED.  
THE, BUT SPECIFICALLY WITH  
REGARD TO THE IDENTIFICATION  
ISSUE, THAT HAS BEEN AN ISSUE  
THROUGHOUT.

>> WELL, I UNDERSTAND IT'S AN  
ISSUE.

I UNDERSTAND YOU CONTESTED IT.  
MY QUESTION IS, THERE WAS,  
THERE WERE SEVERAL WITNESSES  
THAT TESTIFIED CONTRARY TO WHAT  
YOU'RE SAYING.

SO HOW WOULD A CODEFENDANT NOW  
STATEMENT YEARS AFTER THE FACT  
WHEN HE HE COULD'VE STATED IT  
AT TRIAL IF HE HAD WANTED TO,  
HOW IS THAT GOING TO CHANGE THE  
DYNAMIC OF THE TRIAL SO MUCH  
THAT ALL THESE WITNESSES THAT  
BEFORE TESTIFIED IT WAS YOUR  
CLIENT NOW ARE GOING TO BE BE  
DISREGARDED BECAUSE ONE  
CODEFENDANT NOW SAYS, OH, NO,  
IT WAS ME.

>> I COULD ONLY ASK THAT THE  
COURT REVIEW THAT TESTIMONY  
AND, AND THE INCONSISTENCIES IN  
THE TESTIMONY BY THOSE PREVIOUS  
WITNESSES.

THERE WAS IDENTIFICATION BY  
SEVERAL OF THE WITNESSES  
HOWEVER THAT WAS CHALLENGED AT  
TRIAL.

I THINK THAT THERE WAS SOME  
REASON TO QUESTION IT.

>> THERE WAS CHALLENGE AT  
TRIAL.

THERE WAS A POST-CONVICTION  
HEARING.

POPE TESTIFIED THAT YOUR CLIENT  
HAD A PISTOL.

I MEAN, AND WHAT SEEMS TO ME IS  
THAT WHAT WE ARE ENDING UP WITH  
HERE IN A SUCCESSIVE MOTION IS

AN ATTEMPT JUST TO PUT ON SOME ADDITIONAL CONFLICT EVIDENCE THAT, THAT AT SOME POINT, YOU RUN THE STRING OUT BECAUSE THAT WAS EVIDENCE THAT THERE'S PLENTY OF EVIDENCE IN THIS RECORD THAT HUNTER WAS AIMING THE WEAPON AT THE, THE INDIVIDUALS THAT WERE SHOT, INCLUDING THE ONE THAT WAS MURDERED.

>> YOU BRING UP, FOR EXAMPLE, MR.^POPE TESTIFYING. MR.^POPE GOT A DEAL ESSENTIALLY AGREED TO TESTIFY, THE DEATH PENALTY WAS OFF THE TABLE AGAINST MR.^POPE.

AGAIN THAT WAS BROUGHT OUT AT TRIAL AND THE JURY KNEW THAT BUT AGAIN REVIEWING THE CASE CUMULATIVELY, ALL OF THIS EVIDENCE, IF YOU CONSIDER THE FACT THAT EACH OF THOSE WITNESSES' TESTIMONY COULD BE CALLED INTO QUESTION I BELIEVE THAT THE NEW EVIDENCE THAT BOYD NOW ADMITS TO SHOOTING COOLEY DOES BRING THE CASE INTO A WHOLE NEW LIGHT.

>> DOES BOYD IDENTIFY THE STATE ACTOR THAT PROMISED HIM IF HE'D JUST BE QUIET, EVERYTHING WOULD BE ALL RIGHT?

>> YES, THAT WOULD BE THE, THE TWO PROSECUTORS ON THE CASE AT THE TIME, AND I BELIEVE ONE OF THE LAW ENFORCEMENT OFFICERS AS WELL.

>> IN OTHER WORDS HE NAMED MORE THAN ONE PERSON?

>> YES.

ELIZABETH BLACKBURN, THE STATE ATTORNEY, AND STEVEN ALEXANDER, THE STATE ATTORNEY AT THE TIME.

>> AND DOES HE ACTUALLY PUT IN HIS -- IT IS AN AFFIDAVIT THAT HE HAS HERE?

>> WELL, AGAIN, IT'S NOT IN THE RECORD BUT YES, ESSENTIALLY YES.

>> AND DOES HE SAY WHAT THEY SAID?

>> YES.

HE SAYS THAT THEY SAID THAT HE

MUST COOPERATE, THAT HE MUST  
ESSENTIALLY NOT MAKE ANY NOISE,  
MAY NOT MAKE ANY WAVES.

>> IF YOU HAVE THAT IN AN  
AFFIDAVIT, WHY ISN'T IT -- DID  
YOU ATTACH IT TO THE MOTION?  
I THOUGHT IT WAS NOT IN THE  
RECORD.

>> IT ISN'T IN THE RECORD, AND  
THAT'S WHY I'VE BEEN RELUCTANT.

>> WHY WASN'T IT?  
OR?

>> UM.

>> SEE, THAT I SEE A PROBLEM  
BECAUSE IT SEEMS TO ME THAT  
THIS WAS NOT PLED IN THE WAY  
THAT WE CONTEMPLATE DECEPTIVE  
MOTIONS TO BE PLED, AND EVEN  
THOUGH YOU WERE NOT THE  
ORIGINAL ATTORNEY ON THIS, DID  
YOU -- YOU HAD AN OPPORTUNITY,  
I WOULD ASSUME, TO ADMIT THAT  
AND DO WHATEVER IS NECESSARY TO  
MEET THOSE PLEADING  
REQUIREMENTS.

>> I THINK THE, THE AFFIDAVIT  
ITSELF COMPARES --

>> IN ORDER TO GET TO WHETHER  
OR NOT YOU ARE GOING TO HAVE  
LIVE TESTIMONY, WE NEED THE  
WELL-PLEAD 3.851 MOTION TO  
DETERMINE WHETHER OR NOT WE  
NEED TO HAVE THAT LIVE  
TESTIMONY.

>> I CAN ONLY SAY THAT THAT  
THAT I THINK THAT THE LANGUAGE  
IN THE 3.851 MOTION IS  
CONSISTENT WITH THE, WITH THE  
AFT THAT'S NOT IN THE RECORD.  
I'M SORRY.

>> ARE YOU REPREPARED TO --  
PREPARED TO PLEAD THIS MORE?  
I MEAN, BECAUSE WE DO HAVE A  
SITUATION WHERE ERIC PINKARD  
WHO WAS THE PRIOR CCRC WHO  
APPARENTLY AT LEAST DROPPED THE  
BALL ON ONE LARGE RESPECT HERE  
IF, ABOUT THIS CRIMINAL  
BACKGROUND ON COOLEY, SO YOU'RE  
-- ARE YOU PREPARED THAT IF WE  
SENT THIS BACK THAT YOU COULD  
REPLEAD IT AND ATTACH THE  
AFFIDAVIT OR IS THERE SOMETHING  
ELSE THAT'S -- AFFIDAVIT THAT

IS NOT SOMETHING THAT YOU WANT  
THE COURT TO SEE?

>> WELL --

>> I MEAN WE NEED TO KNOW THIS  
AS AN OFFICER OF THE COURT  
BECAUSE HE WAS TAKEN OFF THE  
CASE BECAUSE HE WAS GOING TO BE  
A MATERIAL WITNESS.

>> I THINK THAT THE -- YEAH, HE  
WAS GOING TO BE A MATERIAL  
WITNESS SPECIFICALLY WITH  
REGARD TO THE CONFLICT ISSUE.  
BUT THERE -- IN ORDER TO, TO  
SHOW THE JONES NEWLY DISCOVERED  
EVIDENCE STANDARD WE WOULD HAVE  
TO SHOW HE WAS DILIGENT.

MR.^PINKARD WOULD BE ABLE TO  
TESTIFY TO THAT AS WELL.

BUT WITH REGARD --

>> SO WHAT ABOUT THIS  
AFFIDAVIT?

ARE YOU -- IS THAT SOMETHING  
THAT COULD BE PUT INTO THE  
RECORD OR NOT?

>> I BELIEVE THE RIGHT WAY TO  
DO THAT WOULD BE TO BRING IN  
MR.^BOYD AND HAVE HIM  
AUTHENTICATE THE AFFIDAVIT AND  
TESTIFY --

>> WHAT IS THE PROBLEM WITH  
FILING IT -- JUST FILING IT AS  
AN ATTACHMENT?

>> I DON'T -- I CAN'T SPEAK TO  
WHY IT WASN'T ATTACHED  
ORIGINALLY.

>> I'M ASKING NOW IS THERE ANY  
REASON THAT IT COULDNT BE  
BROUGHT BEFORE THE COURT?

YOU UNDERSTAND?

>> I UNDERSTAND WHAT YOU'RE  
SAYING.

>> -- PUTTING YOU IN A  
DIFFICULT POSITION AND THERE'S  
OTHER THINGS GOING ON BUT TO  
ME, AND I THINK TO A COUPLE OF  
THE OTHER JUSTICES I THINK WE  
ARE THINING WELL IF THERE IS  
DIRECT EVIDENCE THAT HE IS  
GOING TO SAY THIS IS  
SUCH-AND-SUCH, WE OUGHT TO KNOW  
THIS BECAUSE THIS IS A  
SUCCESSIVE 3.851.

>> RIGHT.

OBVIOUSLY, THE AFFIDAVIT IS

BEFORE THE COURT AT THIS  
TIME --

>> LET ME MAKE IT CLEAR.

C3 OF THE RULE SAYS IF  
EVIDENTIARY SUPPORT IS IN A  
FORM OF A DOCUMENT, COPIES OF  
ALL DOCUMENTS SHALL BE  
ATTACHED, INCLUDING ANY  
AFFIDAVITS OBTAINED.

>> RIGHT.

>> AND WHAT YOU ARE TELLING ME  
IS WE HAVE AN AFFIDAVIT THAT  
HAS NEVER BEEN ATTACHED, NOT  
PRESENTED AT AN EVIDENTIARY  
HEARING, SO THAT CONDITION OF  
THE RULE IS NOT SATISFIED.

>> THAT'S CORRECT.

WE NEVER ALLEGED IN THE MOTION  
THAT THERE WAS AN AFFIDAVIT.  
WE ALLEGED IN THE MOTION, OR  
PREVIOUS COUNSEL ALLEGED IN THE  
MOTION THAT MR.^BOYD WOULD  
TESTIFY TO THESE FACTS.

>> WELL, DO ALL WE HAVE IS  
MR.^PINKARD SAYING THAT  
MR.^BOYD TOLD HIM?

OR DO WE HAVE SOMETHING ELSE?

>> THE MOTION STATES, THE 3851  
MOTION STATES THAT MR.^PINKARD  
AND INVESTIGATORS FROM CCRC  
SOUTH OBTAINED THE STATEMENT  
FROM, FROM MR.^BOYD.

AND AGAIN, IT'S NOT --

>> BUT THAT'S NOT AN AFFIDAVIT  
EITHER.

YOU DON'T EVEN HAVE AN  
AFFIDAVIT FROM THE ATTORNEY  
SAYING THAT MR.^BOYD.

>> ONLY IN THE FORM OF THE 3851  
MOTION, WHICH --

>> THAT'S NOT AN AFFIDAVIT.

THAT'S JUST A MOTION.

>> WE SEEM TO BE TALKING AROUND  
SOMETHING HERE.

I'M SITTING HERE, AND I'M, IT'S  
LIKE THERE'S SOMETHING GOING ON  
HERE THAT'S NOT BEING DISCUSSED  
LIKE SOMETHING -- YOU ASK A  
VERY SIMPLE QUESTION AND  
ALTHOUGH SOMETHING WAS NOT  
ATTACHED TO THE PLEADING.

>> MM-HMM.

>> I THOUGHT I HEARD SOMEONE ON  
THIS BENCH ASK IF, IF IT DOES

EXIST, WHERE IS IT?

WHY WASN'T IT?

I MEAN, THAT'S WHAT WAS BEING ASKED AND IT MAY BE BEYOND THE RECORD BUT I THINK I HEARD SOME OF MY COLLEAGUES ASKING THAT QUESTION, AND YOU SEEM TO BE TRYING TO AVOID ANSWERING IT.

>> I UNDERSTAND YOUR CONCERN WITH THAT, AND I'M --, THE, THE VERY SIMPLE ANSWER TO THAT IS, MR.^BOYD WOULD'VE PREPARED THAT AFFIDAVIT IN A PRISON SETTING WHERE IT COULD NOT HAVE BEEN AUTHENTICATED, NOTARIZED.

>> SO THERE'S NOT AN AFFIDAVIT THEN, IS THAT WHAT YOU ARE SAYING?

>> I'VE NEVER ALLEGED THAT THERE WAS AN AFFIDAVIT. THE AFFIDAVIT WAS PUT -- WAS FILED WITH THE COURT BY MR.^HUNTER PRO SE.

I'VE NEVER MADE AN ALLEGATION NOR DID CCRC MIDDLE MAKE AN ALLEGATION THAT THERE'S AN AFFIDAVIT TO WHAT'S THERE.

>> YOU'RE WELL OVER YOUR TIME. I'LL GIVE YOU A COUPLE OF MINUTES REBUTTAL.

>> I APPRECIATE IT.  
THANK YOU.

>> MAY IT PLEASE THE COURT.  
KEN NUNNELLEY I REPRESENT THE STATE OF FLORIDA.  
LET ME TRY -- LET ME MAKE SURE I'M SURE WHAT WE'RE TALKING ABOUT WITH THIS AFFIDAVIT.  
BECAUSE THERE IS A 8 OR 9-PAGE WRITTEN STATEMENT FROM ERIC BOYD THAT BEGINS AT PAGE 167 OF THE RECORD.

THIS STATEMENT IS DATED OCTOBER 19 OF 2004.

IT WAS NOT FILED ANYWHERE AND DID NOT SEE THE LIGHT OF DAY UNTIL DECEMBER OF 2006.

WHEN MR.^HUNTER IN A PRO SE FILING ATTACHED THIS WRITTEN DOCUMENT THAT PRUPORTS TO BE FROM ERIC BOYD THAT IS NOT UNDER OATH, IT'S NOT NOTARIZED, IT'S --

>> WHO WAS THIS SENT TO IN

2004?

>> I HAVE NO IDEA.

>> DO YOU HAVE ANY IDEA?

>> I HAVE ABSOLUTELY NO IDEA,  
JUSTICE CONVINCE.

>> YOU SAID IT WAS IN THE  
RECORD AT SOME PAGE.

HOW DID IT GET IN THE RECORD.

>> BECAUSE WHAT HAPPENED,  
MR.^HUNTER, SOME 35 OR 40 DAYS  
AFTER THE JUDGE ENTERED HER  
ORDER DENYING RELIEF,

MR.^HUNTER FILE ADPRO SE MOTION  
FOR REHEARING, AND TWO THAT PRO  
SE MOTION FOR REHEARING, THAT  
WAS FILED IN DECEMBER 22nd, I  
BELIEVE, OF 2006, HE ATTACHEDS  
THIS 2004 WRITTEN STATEMENT,  
AND I SAY 2004 WITH SOME DEGREE  
OF RELUCTANCE BECAUSE THAT'S  
THE ONLY DATE I CAN FIND ON IT.

IT'S ON A -- IN A PARENTHESIS

UNDER WHERE MR.^BOYD  
PURPORTEDLY SIGNED HIS  
SIGNATURE OR MADE HIS  
SIGNATURE.

>> WAS ANYTHING LIKE THAT  
ALLUDED TO EARLIER, LIKE AT THE  
HUFF HEARING, FOR INSTANCE?

>> NO.

>> THAT A WRITTEN DOCUMENT LIKE  
THAT EXISTED?

>> ABSOLUTELY NOT.

THE ALLEGATION IN THE 3851  
SUCCESSIVE MOTION PAGE 1 OF THE  
RECORD, PARAGRAPH 3 AND I'M  
QUOTING, ERIC BOYD INFORMED  
UNDERSIGNED COUNSEL WITHIN THE  
LAST YEAR THAT HE SHOT TAURUS  
COOLEY.

THAT IS THE EXTENT OF THE  
ALLEGATION ABOUT WHAT MR.^BOYD  
MIGHT OR MIGHT NOT COME INTO  
COURT AND SAY IF THERE WERE IN  
FACT AN EVIDENTIARY HEARING  
TODAY.

>> THAT WAS BEFORE THE TRIAL  
COURT JUDGE AT THE TIME OF THE  
HUFF HEARING AND AT THE TIME OF  
DENIAL OF RELIEF?

>> YES, SIR.

>> SO WHAT I'M CONFUSED ABOUT  
IS THAT ERIC PINKARD IS THE  
ONE, I GUESS THAT COULD SAY

WHEN HE BEGAN -- WHEN HE KNEW THIS AND ALSO ON THE NCIC RECORD WHY HE WASN'T AWARE OF IT AND OUR WHOLE OPINION WAS BASED ON THERE BEING NO EVIDENCE THAT THE, YOU KNOW, THAT THE TRIAL COUNSEL KNEW ABOUT COOLEY'S CRIMINAL RECORD, AND SO WE GO THROUGH THIS WHOLE EFFORT, NOT WE, I GUESS, BELOW, OF TAKING PINKARD OFF THE CASE AND HAVING CCRC SOUTH, AND THEN NOW -- THEN THERE WAS NO EVIDENTIARY HEARING, WHICH COULD TAKE LIKE IT SEEMS LIKE A COUPLE OF HOURS JUST TO FIND OUT WHAT'S GOING ON, WHY IS -- WAS, WHY DID THE PROSECUTOR AND THE DEFENSE LAWYER SAY THEY HAD NO IDEA ABOUT A CRIMINAL RECORD ON COOLEY WHEN IT SHOWED THAT IT WAS GIVEN TO DEFENSE COUNSEL BEFORE THE TRIAL?

AND OUR PRIOR OPINION IS LIKE A, IT'S A, IT'S NOT TRUE. BECAUSE WE SAY THAT THE REASON HE COULDN'T HAVE EXAMINED HIM ON IT IS BECAUSE HE DIDN'T HAVE IT, AND NOW WE KNOW OR WE THINK WE KNOW THAT HE SAID IT, SO MY CONCERN IS IT LOOKS LIKE EVERYTHING WAS WAS PUT IN PLACE SO THAT THIS COULD BE DEVELOPED SO WE COULD HEAR FROM MR.^PINKARD, HEAR FROM MR.^BOYD IF HE WAS GOING TO TESTIFY, HEAR FROM THE PROSECUTOR AGAIN, HEAR FROM THE DEFENSE LAWYER TO GET THIS IRONED OUT AND THEN IT WAS SUMARRILY DENIED.

SO WHY WAS PINKARD REMOVED IF THERE WASN'T GOING TO BE AN EVIDENTIARY HEARING?

>> LET ME TRY TO THINK -- LET ME THINK ABOUT THE WAY -- THE WAY TO ANSWER THAT QUESTION. WHEN THIS MOTION CAME IN, IT WAS VERY CLEAR TO ME, AND I, YOU KNOW, I DON'T GUESS Y'ALL ARE ALL THAT INTEREST IN MY THOUGHT PROCESSES ABOUT THIS BUT WHEN THIS MOTION CAME IN, I'M READING THIS THING, I GET TO THE FIRST PAGE AND I'M

THINKING, WITE A MINUTE?

WHAT'S GOING ON.

I'VE GOT COUNSEL MAKING HIMSELF  
A POTENTIAL WITNESS, AND IS IN  
FACT COUNSEL HAS MADE HIMSELF  
THE ONLY WITNESS AS TO A NUMBER  
OF CLAIMS CONTAINED WITHIN THE  
MOTION.

AT THAT POINT, --

>> WOULDNT THAT BE HEARSAY  
ANYWAY?

>> WELL, YES, SIR, IT WOULD BE.  
IT WOULD BE HEARSAY.

>> SO HE WOULDNT BE ABLE TO  
TESTIFY ABOUT THOSE BECAUSE YOU  
SAY, OBJECTION, THAT'S HEARSAY  
SO YOU GOT A WITNESS WHO'S NOT  
GOING TO BE ABLE TO TESTIFY  
ANYWAY SO WHY REMOVE HIM?

>> BECAUSE, THE MOTION IS SO  
THINLY PLED, I DIDN'T KNOW WHAT  
ELSE I WAS GOING TO RUN INTO IF  
I GOT TO AN EVIDENTIARY HEARING  
WITH WITNESSES POPPLING OUT OF  
THE WOODWORK OR WHATEVER.

>> BUT IF YOU KNOW WHAT YOU'RE  
ASSERTING NOW, WHICH IS THAT  
THIS WAS REALLY AN IRONCLAD  
CASE AGAINST MR.^HUNTER BECAUSE  
EVERYBODY AND THE, THAT  
TESTIFIED CLEARLY IDENTIFIED  
HUNTER AS NOT ONLY BEING THERE  
BUT BEING THE SHOOTER, THEN YOU  
WOULDNT BE ABLE TO SAY,  
LISTEN, IT DOESN'T MATTER WHAT  
MR.^PINKARD HAS TO SAY, THIS IS  
SORT OF WHAT YOU ARE TELLING US  
NOW, IT'S IRRELEVANT BECAUSE IT  
COULDNT POSSIBLY CHANGE THE  
OUTCOME OF THE CASE OR, OR  
UNDER JONES PRODUCE THE  
LIKELIHOOD OF AN ACQUITTAL.

>> WELL, AND THAT'S TRUE AND  
THAT WAS THE, WAS AND STILL IS  
THE STATE'S POSITION.

BUT AT THE SAME TIME, IF THE  
TRIAL JUDGE DOESN'T AGREE WITH  
ME AND ORDERS AN EVIDENTIARY  
HEARING, IT'S BETTER TO GET THE  
POTENTIAL COUNSEL WITNESS OUT  
OF THE CASE EARLY ON.

THAN IT IS TO GO THROUGH THE  
HUFF HEARING, HAVE AN  
EVIDENTIARY HEARING ORDERED AND

THEN RUNNING AND THINKING, WAIT  
A MINUTE, THEY MAY WANT TO PUT  
COUNSEL ON THE STAND.

IT WAS A JUDGMENT CALL.

MAYBE I DIDN'T HAVE TO MOVE TO  
DISQUALIFY HIM BUT ULTIMATELY,  
HE MOVED TO WITHDRAW ON HIS OWN  
AND WAS ALLOW TODAY WITHDRAW.

>> WELL, NOW -- ALLOWED TO  
WITHDRAW, WELL NOW ON THE ISSUE  
OF WHAT HE WOULD BE A WITNESS  
TO, COULD YOU ADDRESS BECAUSE  
WE REALLY DIDN'T DISCUSS COOLEY  
AND WHETHER THERE WAS AN ACTUAL  
CONFLICT OF INTEREST.

HERE -- COOLEY WOULD YOU AGREE  
THAT IF COOLEY DID HAVE A  
RELATIONSHIP WITH BOYD AND HE  
WOULD BE THE OMONE THAT WOULD  
HAVE A RELATION -- ONLY ONE  
THAT WOULD HAVE A RELATIONSHIP,  
THAT THAT WOULD BE A DIFFERENT  
PICTURE THAN WHAT WAS PRESENTED  
AT THE ORIGINAL TRIAL?

>> LET ME ANSWER THAT QUESTION  
IN THIS CASE -- WAY, AND HELP  
ME MAY REMEMBER THAT QUESTION  
BECAUSE I MAY FORGET IT --

>> IT GOES BETTER JUST TO  
ANSWER THE QUESTION.

>> OKAY.

IF ONE ASSUMES THAT COOLEY AND  
BOYD HAD SOME RELATIONSHIP, AT  
THE OUTSET, THAT WOULD BE  
EVIDENCE THAT WAS KNOWN IT'S OF  
TRIAL TO MR.^HUNTER AND COULD  
HAVE BEEN DISCOVERED AT  
EITHER --

>> HOW WOULD HE KNOW IF BOYD  
AND COOLEY HAD A RELATIONSHIP?

>> BECAUSE --

>> IN OTHER WORDS, THAT'S --

LET'S JUST ASSUME HE DIDN'T  
KNOW.

>> WELL, BUT -- BUT THE READSEN  
I'M ASSUMING HE DOES IS BECAUSE  
THAT'S WHAT BOYD SAYS IN HIS  
STATEMENT, THAT IT WAS KNOWN  
THAT THE PURPOSE OF GOING TO  
DAYTONA BEACH WAS TO DEAL WITH  
MR.^COOLEY, WHO OWD BOYD  
ACCORDING TO BOYD EITHER MONEY  
OR DRUGS.

AND IF THAT IN FACT WAS THE

PURPOSE FOR BOGUE TO DAYTONA BEACH, THEN APPARENTLY IT WAS KNOWN TO THE MEMBERS OF THIS PARTY THAT WERE GOING TO DAYTONA BEACH AND YOU HAVE THE OTHER ADDED ISSUE IN THERE, THAT IF THAT IS TRUE, THEN COOLEY PRESUMABLY, AND I KNOW I'M ADDING AN INFERENCE HERE BUT THERE'S A WHOLE BUNCH OF INFERENCES ALREADY STACKED UP SO I GET TO ADD ONE HERE, COOLEY PRESUMABLY WOULD HAVE KNOWN BOYD ON SIGHT.

IF BOYD SHOT COOLEY, RATHER THAN MR.^HUNTER, WHAT BENEFIT IS THERE TO MR.^COOLEY TO IDENTIFY THE WRONG PERSON AS HAVING SHOT HIM?

>> I THOUGHT HE --

>> WHY WOULD HE CARE WHO SHOT HIM.

>> WELL, MAYBE -- WELL, HOW BADLY WAS MR.^COOLEY SHOT?

>> HE WAS SHOT IN THE CHEST, AND I WOULD PRESUME THAT -- I WOULD CONSIDER IT A SERIOUS GUN SHOT WOUND IF IT WAS ME.

>> RIGHT, THAT'S WHY -- AND DIDN'T HE IDENTIFY THE PERSON AS WEARING RED?

>> YES, MA'AM, WE WENT ALL THROUGH THIS JUSTICE WELLS JUST ANSTEAD I IMAGINE YOU REMEMBER THIS BECAUSE WE GOT INTO IT ON DIRECT APPEAL AND AS ARE I RECALL WE ACTUALLY KIND OF CAME BACK AFTER THE INITIAL ARGUMENT WITH SUPPLEMENTAL BRIEFING OR MAYBE EVEN HAD SUPPLEMENTAL ARGUMENT.

>> THERE WERE SOME PHOTOGRAPHS.

>> YES, SIR, OVER THE PHOTOGRAPHS, AND THOSE ISSUES, THOSE PHOTOGRAPHS HAVE BEEN AN ISSUE ALL ALONG AS EARLY IN THE CASE THEY WERE AGAIN AN ISSUE IN THE FIRST CIRCUIT HEARING IN COURT, NOW SINCE THE PHOTOGRAPHS HAVEN'T WORKED THEY ARE TRY SOMETHING ELSE. LET ME GO BACK TO TRIAL. BOYD AND HUNTER WERE TRIED TOGETHER.

COOLEY AMONG OTHER PEOPLE IDENTIFIED MR.^HUNTER AS THE SHOOTER WHEN THESE TWO FOLKS ARE SITTING HERE SIDE BY SIDE. WE GET UP ON POST-CONVICTION THE ALLEGATION IS THAT OH, COOLEY HAS NOW RECANTED AND HE SAID THAT MR.^BOYD IS THE ONE THAT SHOT HIM.  
SO WE GET TO THE POST-CONVICTION HEARING, AND MR.^COOLEY IS HAVING NONE OF THAT DESPITE COUNSEL STANDING IN FRONT OF HIM WITH A PHOTOGRAPH OF BOYD POINTING AT THE PICTURE AND NODDING AT HIM. AS IF TO SAY AND I BELIEVE THE JUDGE ATTACHED IT TO HER ORDER, COUNSEL WAS TRYING TO COACH MR.^COOLEY INTO IDENTIFYING BOYD, AND HE STILL WOULDN'T DO IT.

AND THAT COMES BACK TO WHERE PINKARD WOULD BE A WITNESS IN THIS CASE, AND THAT GOES TO THE CONFLICT OF ISSUE.

>> WAIT A MINUTE.

BEFORE YOU GO TO CONFLICT, WOULD YOU PLEASE GO AHEAD AND ANSWER JUSTICE PARIENTE'S QUESTION THAT SHE LAID OUT AND YOU WENT AROUND, DOES IT CHANGE THE POSTURE.

JUST ANSWER HER QUESTION.

>> THE SHORT ANSWER, NO, IT DOES NOT CHANGE THE POSTURE. THIS CASE IS JUST AS SOLID NOW AS IT WAS WHEN MR.^HUNTER WAS CONVICTED IN 1993.

IT HAS NOT --

>> YOU DON'T THINK THAT IT WOULD BE -- THAT THE JURY -- IF THE JURY UNDERSTOOD THAT COOLEY WAS A DRUG DEALER, AND THAT BOYD AND HE, I MEAN, AGAIN, AND THIS IS LIKE, HAD A PRIOR RELATIONSHIPSHIP, THAT THE ISSUE -- BECAUSE WE'RE REALLY TALKING ABOUT NOT REALLY, AT LEAST FROM MY POINT OF VIEW, NOT WHETHER HUNTER INNOCENT OF BEING A PRINCIPAL IN THE MURDER BUT BOYD GOT LIFE WHETHER THE, THE JURY WHO HEARD THIS MIGHT

HAVE DETERMINED SOMETHING  
DIFFERENTLY ABOUT MR.^HUNTER IF  
THEY UNDERSTOOD THAT THE DRUG  
DEALING AND THE MOTIVE, THE  
PRIMARY MOTIVE CAME FROM BOYD.

>> BUT IT DOESN'T CHANGE THE  
FACT -- AND AGAIN, THE ANSWER  
NO, IT DOESN'T CHANGE ANYTHING  
AND THE ANSWER IS BECAUSE THE  
WAY THIS OFFENSE WENT DOWN,  
THESE FOUR VICTIMS, AND THERE  
ARE FOUR OF THEM, SMALL CALIBER  
HANDGUN AND THREE OF THEM  
SURVIVED, THESE VICTIMS WERE  
LAID DOWN ON THE GROUND --  
LAYING DOWN ON THE GROUND  
RELIEVED OF THEIR CLOTHING,  
THEIR MONEY, THEIR JEWELRY, AND  
THEN MR.^HUNTER WENT DOWN THE  
LINE SHOOTING THEM.

THAT IS WHAT ALL OF THE  
TESTIMONY IS AND HAS BEEN.  
COOLEY WHEN HE WAS -- COOLEY  
WAS THE ONE WHO WAS STANDING UP  
WHEN HE WAS SHOT.

HE WAS SHOT AT POINT-BLANK  
RANGE IN THE CHEST WITH A .25  
CALIBER PISTOL.

HE WAS FACE TO FACE WITH THE  
MAN WHO PULLED THE TRIGGER, AND  
HE HAS AT ALL TIMES NEVER  
WAVERED IN IDENTIFYING THE  
PERSON WHO SHOT HIM AS  
JAMES HUNTER.

>> THE TESTIMONY IN, FROM TRIAL  
IS ABSOLUTELY CRYSTAL CLEAR  
THAT MR.^HUNTER IS THE ONE WHO  
PULLED THE TRIGGER AND FIRED  
THE SHOT THAT KILLED WAYNE  
SIMPSON, AND THAT IS ULTIMATELY  
WHAT WE ARE HERE ABOUT.

AND AGAIN, AS TO THE BOYD  
ISSUE, THE CONFLICT OF INTEREST  
ISSUE, THIS IS KIND OF BALLED  
UP WITH PINKARD'S INVOLVEMENT  
IN THE CASE.

>> MR.^PINKARD REPRESENTED  
MR.^HUNTER IN THE FIRST  
POST-CONVICTION PROCEEDING IN  
VOLUSIA COUNTY CIRCUIT COURT.  
THE CONFLICT ISSUE AGAIN HAS  
BEEN A PART OF THIS CASE IN  
THIS COURT'S POST-CONVICTION  
PROCEEDINGS AND IN THE 11th

CIRCUITS POST-CONVICTION  
PROCEEDINGS AND YOU KIND OF --  
THAT ONE SORT OF DROPS OUT I  
WOULD SUGGEST WITH TRIAL  
COUNSEL GEORGE BURDEN'S  
TESTIMONY THAT I DIDN'T KNOW  
ABOUT IT AND ULTIMATELY THE  
COURTS HAVE ALL CONCLUDED IF  
COURT DOESN'T KNOW ABOUT FACT  
IT CAN'T TRIGGER A CONFLICT OF  
INTEREST.

NOW WHETHER OR NOT, AND WELL,  
AND BACK TO PINKARD, WHICH IS  
REALLY WHERE WE ARE GOING WITH  
THE CONFLICT ABOUT -- OF  
INTEREST ISSUE.

THERE IS NO QUESTION, NO DOUBT,  
NO DISPUTE THAT THE EVIDENCE  
CLAIMED EVIDENCE UPON WHICH  
THIS CONFLICT IS NOW PREDICATED  
WAS PRODUCED TO DEFENSE COUNSEL  
IN 1999 AT THE ABSOLUTE LATEST.

>> THIS IS WHAT I'LL CONCERNED  
ABOUT.

THEREFORE, WHOEVER WAS  
REPRESENTING THE STATE AT THE  
TIME WAS AWARE THAT IN FACT  
TRIAL COUNSEL HAD EVIDENCE OF  
COOLEY'S CRIMINAL BACKGROUND  
AND THE PROSECUTOR GETS ON THE  
STAND AND EVEN THOUGH IT'S  
THERE AND IN, I GUESS THE  
PROSECUTOR'S FILE, SAYS NO, WE  
DIDN'T KNOW ABOUT IT.

WE DIDN'T KNOW ABOUT HIS  
CRIMINAL BACKGROUND, AND EVERY  
-- IT'S JUST, THE WHOLE THING  
IS, A CHARADE.

SO NOW WE'RE SAYING WELL,  
PINKARD, PINKARD SHOULD'VE  
KNOWN ABOUT IT BUT WHAT I WANT  
TO KNOW IS WHY DID THE STATE  
NOT ADVISE THE COURT THAT THIS  
WAS NOT THE CASE AND SHOULDN'T  
THAT BE AT LEAST FROM MY POINT  
OF VIEW, THAT CONCERNS ME THAT  
WE'VE GOT AN OPINION OUT THERE  
THAT SAYS SOMETHING THAT MAY  
NOT BE CORRECT.

>> AND NOW JUSTICE PARIENTE IN  
ANSWERING THIS I'M REALLY  
HAVING TO DREDGE MY MEMORY  
ABOUT WHAT WENT ON AT THIS BACK  
THAT FAR.

>> WELL, LET'S GO BACK.  
BUT IT'S PRETTY EASY.  
BOTH THE PROSECUTOR AND THE  
DEFENSE LAWYER SAID WE HAD NO  
IDEA THAT COOLEY HAD THIS  
CRIMINAL HISTORY.  
NO IDEA.  
AND THAT'S WHY HE WASN'T  
CROSS-EXAMINED ABOUT IT.  
THAT'S WHY I DIDN'T KNOW THERE  
WAS A CONFLICT.  
THAT'S WHY NOBODY BROUGHT IT  
UP.  
THAT'S WHAT THE OPINION IN  
2002 SPEAKS ABOUT.  
WHAT I NOW UNDERSTAND FROM THIS  
RECORD IS THAT THAT'S NOT TRUE.  
THAT IT SHOWS THAT THE REPORT  
OF COOLEY'S CRIMINAL BACKGROUND  
WAS IN THE STATE'S POSSESSION  
AND IT WAS DELIVER TODAY TRIAL  
COUN PRIOR TO THE TRIAL  
BEGINNING SO NOW I'M THINKING  
ELWELL, YOU'RE, YOU KNOW, THE  
ARGUMENT IS MR.^PINKARD  
SHOULD'VE BEEN AWARE OF THAT  
BUT IT WAS THE PROSECUTOR WHO  
TOOK THE STAND IN THE  
POST-CONVICTION WHO WOULD'VE  
BEEN IN THE BEST POSITION TO  
KNOW WHAT WAS IN THEIR FILE AS  
WELL AS WHOEVER FROM THE  
ATTORNEY GENERAL'S OFFICE  
HANDLED IT, AND I DON'T  
UNDERSTAND WHY THAT SHOULD NOT  
BE FLESHED OUT.  
IT MAY BE THAT IT DOESN'T  
MATTER THAT WHETHER COOLEY WAS  
CROSS-EXAMINED ABOUT HIS  
CRIMINAL BACKGROUND OR NOT.  
MAYBE IT ALL BECAUSE WHAT YOU  
SAID IS EVERYBODY AGREES THAT  
HUNTER DID THE SHOOTING AND  
THIS IS ALL SOMETHING.  
BUT WHEN WE TALK ABOUT CONFLICT  
OF INTEREST AND DENY THE CLAIM  
BASED ON A FACT THAT'S NOT  
TRUE, IT SEEMS TO ME THE  
INTEGRITY OF THE PROCESS IS, IS  
CALLED INTO QUESTION.  
>> WELL, I THINK THE TESTIMONY  
-- I THINK THE CASE WAS  
RESOLVED AND I DON'T MEAN TO  
ARGUE WITH YOU JUSTICE PARIENTE

BUT I BELIEVE THE CASE WAS  
RESOLVED BASED UPON COUNSEL'S  
TESTIMONY THAT HE DID NOT KNOW  
OF THE CONFLICT.

WHICH --

>> LET ME -- LET ME SEE IF I  
UNDERSTAND THIS CLEARLY.  
WAS THE QUESTION WHETHER OR NOT  
MR.^COOLEY HAD A CRIMINAL  
HISTORY OR WAS IT QUESTION  
WHETHER OR NOT MR.^COOLEY WAS  
BEING REPRESENTED BY THE PUBLIC  
DEFENDER'S OFFICE?

OR --

>> THAT WAS THE QUESTION.  
THE QUESTION WAS NOT WHETHER HE  
HAD A CRIMINAL HISTORY OR NOT.  
THE QUESTION WAS WHETHER OR NOT  
COOLEY WAS REPRESENTED BY THE  
PUBLIC DEFENDER'S OFFICE IN  
VOLUSIA COUNTY AT ANY POINT IN  
TIME THAT WOULD GIVE RISE TO AN  
APPROPRIATE CONFLICT CLAIM.

>> WAS COOLEY IMPEACHED BY HIS  
CRIMINAL RECORD AT THE TRIAL?

>> MY MEMORY IS THAT IT CAME  
OUT SOMEWHERE IN THE PROCESS.  
I DO NOT REMEMBER PRECISELY  
WHERE, JUSTICE ANSTEAD.

>> WELL, JUSTICE --

>> THEN THIS IS ALL ABOUT  
NOTHING.

I MEAN I THOUGHT THE WHOLE IDEA  
WAS IS HE WASN'T CROSS-EXAMINED  
ABOUT HIS CRIMINAL HISTORY AND  
THE QUESTION BECAME WHY AND  
THEN IT WAS WELL, HE, YOU KNOW,  
THEY DIDN'T KNOW ABOUT IT.

SO NOW YOU'RE SAYING NO, HE WAS  
QUESTIONED ABOUT IT THEN THE  
WHOLE THING BECOMES --

>> WELL THE CRIMINAL HISTORY  
DOESN'T SHOW BY WHOM HE WAS  
REPRESENTED.

>> IF I'M A LAWYER IF I'M GOT  
THE CRIMINAL HISTORY BECAUSE IT  
WAS GIVEN TO ME BY THE STATE,  
WHY WOULDN'T I BE -- THEN I  
WOULD BE QUESTIONING HIM ABOUT  
IT, CORRECT?

>> I CERTAINLY WOULD BE AND WHY  
MR.^BURDEN HANDLED THE CASE AS  
HE DID, I CAN'T ANSWER IT BUT  
THE FACT REMAINS THAT, THAT THE

ISSUE FOR CONFLICT PURPOSES WAS WHETHER OR NOT BURDEN KNEW THAT COOLEY HAD BEEN REPRESENTED BY THE PUBLIC DEFENDER.

BURDEN TESTIFIED AND HAS NEVER WAVERED THAT HE DID NOT KNOW THAT.

NOW WHETHER HE DIDN'T LOOK AT THE -- AT THE DISCOVERY OR FORGOT THE DISCOVERY OR WHATEVER, I DON'T KNOW.

BUT THAT SHIP SAILED A VERY, VERY LONG TIME AGO.

AS FAR AS AGAIN --

>> WHAT DID THE TRIAL JUDGE DO SINCE TIME IS RUNNING HERE, WITH THE PRO SE MOTION FOR REHEARING.

>> STRUCK IT -- SHE STRUCK IT AS UNTIMELY.

IT WAS FILED MORE THAN 15 DAYS AFTER THE RENDITION OF THE FINAL ORDER.

AND ACTUALLY, THOUGH THE TRIAL JUDGE DID NOT KNOW IT, NOTICE OF APPEAL HAD BEEN ALSO FILED BEFORE THE PRO SE REHEARING MOTION CAME IN.

LIKE I SAID, SHE WOULD'VE HAD NO WAY OF KNOWING THAT, I DON'T BELIEVE.

BUT THE COURT HAD ACTUALLY LOST JURISDICTION ANYWAY, AND WITH THAT I WOULD -- OUT OF TIME AND WOULD ASK THE COURT TO AFFIRM THE SUMMARY DENIAL OF THE MOTION.

>> OKAY.

GIVE YOU A COUPLE OF MINUTES.

>> THANK YOU.

I JUST WANT TO BE PERFECTLY CLEAR WITH THIS AFFIDAVIT ISSUE.

THE AFFIDAVIT IS NOT PART OF THE RECORD.

I CAN'T SPEAK TO WHY --

>> YOU KEEP TALKING ABOUT THE AFFIDAVIT.

JUST THE USE OF THAT WORD CONJURES UP IN ALL OF OUR MINDS, YOU KNOW, A PARTICULAR, YOUR, YOUR OPPONENT HAS READ FROM THE MOTION.

OKAY?

DO YOU AGREE THAT IT WAS ONLY THAT ALLEGATION THAT WAS BEFORE THE TRIAL COURT AT THE TIME OF BOTH THE HUFF HEARING AND THE DENIAL OF RELIEF?

>> THAT'S CORRECT.

>> THERE WAS ONLY IN A PRO SE ATTEMPT AT REHEARING THAT, THAT SOME DOCUMENT WAS ACTUALLY ATTACHED?

>> THAT'S CORRECT.

>> OKAY.

AND WHEN YOU REFER TO AN AFFIDAVIT, IS THAT THE DOCUMENT YOU'RE REFERRING TO?

>> I'M REFERRING TO THE 9-PAGE WRITTEN STATEMENT BY ERIC BOYD THAT WAS ATTACHED TO THE MOTION FOR REHEARING.

>> YOU ARE CALLING IT AN AFFIDAVIT.

WAS IT SWORN TO?

>> YEAH, I HAVE TO APOLOGIZE. I'M CALLING IT AN AFFIDAVIT BECAUSE EVERYBODY'S BEEN CALLING -- SEVERAL OF US HAVE BEEN CALLING IT AN AFFIDAVIT. IT IS WHAT I WOULD REFER TO AS A WRITTEN SWORN STATEMENT.

>> YOU SAY SWORN, IT WAS SWORN TO BY A NOTARY PUBLIC.

>> NO, AND THIS IS --

>> WELL, THEN IT'S NOT AN AFFIDAVIT OR A SWORN STATEMENT.

>> I UNDERSTAND, AND THIS IS WHY I BELIEVE --

>> IT'S JUST A STATEMENT.

>> THIS IS WHY I BELIEVE THAT COUNSEL PREVIOUS COUNSEL DIDN'T ATTACH IT TO THE MOTION.

BECAUSE IT'S NOT AUTHENTICATED. THE RIGHT COURSE OF ACTION WOULD BE TO BRING MR.^BOYD IN AND SAY DID YOU WRITE THIS AND ARE THESE FACTS TRUE?

YOU KNOW, MR.^BOYD IS IN A PRISON SETTING.

I DON'T KNOW THAT HE UNDERSTANDS THE INTRICACIES OF --

>> WELL, POST-CONVICTION COUNSEL DOES AND DOESN'T THE RULE REQUIRE THAT YOU ATTACH ANY AFFIDAVIT NOT A STATEMENT,

AN AFFIDAVIT TO THE MOTION,  
ESPECIALLY WHEN IT'S A  
SUCCESSIVE MOTION.

>> YES, BUT AGAIN IT'S NOT AN  
AFFIDAVIT.

>> SO THAT'S WHY YOU DIDN'T  
ATTACH IT.

IT CAME -- AND NOW WE  
UNDERSTAND IT CAME OUT BECAUSE  
MR.^HUNTER PRO SE FILED IT AS  
PART OF A PRO SE MOTION FOR  
REHEARING, AND YOU COULDN'T IN  
GOOD FAITH ATTACH IT BECAUSE  
IT'S NOT EITHER AN AFFIDAVIT OR  
A PROPER SWORN STATEMENT.

CORRECT?

>> I COULDN'T IN GOOD FAITH BUT  
I THINK MORE IMPORTANTLY, I  
COULDN'T BASED ON THE PROCEDURE  
AND WHERE WE WERE.

AT AN EVIDENTIARY HEARING I  
WOULD'VE SOUGHT TO HAVE  
INTRODUCED THAT EVIDENCE OF THE  
STATEMENT THROUGH MR.^BOYD.

>> BUT DIDN'T THAT SAME EXIST  
FOR SOME -- TWO YEARS --  
STATEMENT EXIST FOR SOME TWO  
YEARS BEFORE THE DEFENDANT  
FILED IT PRO SE.

>> THERE'S A PROBLEM WITH THIS  
BECAUSE AGAIN THIS WOULD  
REQUIRE A SHOWING OF DILIGENCE  
ON THE PART OF CCRC MIDDLE.  
WHICH IS A FACTUAL DISPUTE THAT  
WAS WOULD HAVE TO BE RESOLVED.  
THE STATEMENT IS DATED 2004.

ACCORDING TO THE STATEMENT, HE  
HAD SENT OUT PREVIOUS  
STATEMENTS TO THE COURTS AND TO  
THE OFFICE OF THE STATE  
ATTORNEY, OF WHICH I'VE NEVER  
RECEIVED -- I HAVEN'T SEEN.

I HONESTLY I DO NOT KNOW WHEN  
THIS STATEMENT WAS MADE  
AVAILABLE TO PREVIOUS COUNSEL.

>> DID YOU APPEAR AT THE HUFF  
HEARING ON BEHALF OF  
MR.^HUNTER?

>> I DID.

>> WELL, LIKE --, THERE'S --  
DOES THE RECORD SHOW ANY  
FURTHER DEVELOPMENT IN TERMS OF  
AN ATTEMPT TO GET AN AFFIDAVIT,  
FOR INSTANCE, FROM THIS

CODEFENDANT BEFORE THE HUFF  
HEARING?

>> NO.

THE RECORD DOESN'T.  
REFLECT THAT.

>> SO YOU ALL APPARENTLY JUST  
TOOK THE CASE THE WAY THAT IT  
WAS WHEN YOU CAME INTO THE  
CASE?

>> THAT'S CORRECT.

>> NO FURTHER EVIDENTIARY  
DEVELOPMENT?

>> WELL, YES, THE EVIDENCE THAT  
WE WOULD'VE PUT ON WAS,  
ESSENTIALLY, OUTLINED IN THE  
MOTION.

>> WHAT'S THAT?

>> WHAT EVIDENCE WOULD YOU HAVE  
PUT ON.

>> SPECIFICALLY WITH REGARD TO  
BOYD'S STATEMENT.

>> NOT WHAT THE CONTENT OF IT  
WAS, WHAT WITNESSED WOULD YOU  
HAVE CALLED?

>> MR.^BOYD HIMSELF, TO BEGIN  
WITH.

>> AND WITHOUT TALKING TO  
MR.^BOYD?

>> CCR MIDDLE HAD SPOKEN TO  
MR.^BOYD CERTAINLY.

I DIDN'T PERSONALLY SPEAK TO  
HIM, BUT CCRC MIDDLE HAD SPOKEN  
TO HIM.

MY UNDERSTANDING AND AGAIN THIS  
IS,, THIS WOULD REQUIRE  
EVIDENTIARY DEVELOPMENT, MY  
UNDERSTANDING IS THAT --

>> THEY HAD SPOKEN TO HIM.

>> CORRECT.

>> BUT THE ONLY ALLEGATION THEY  
APPARENTLY WERE WILLING TO MAKE  
AFTER SPEAKING TO HIM WAS WHAT  
WAS IN THE MOTION.

>> RIGHT, WHICH WAS CONSISTENT  
WITH THE WRITTEN STATEMENT BUT  
THE WRITTEN STATEMENT ISN'T IN  
EVIDENCE.

>> WHAT WAS READ TO US WAS THAT  
HE SAID THAT HE SHOT THIS  
PARTICULAR, THE WINS THAT WE'RE  
TALKING ABOUT.

>> MR.^COOLEY.

>> WAS IT ALSO ELABORATED IN  
THE MOTION THAT THERE WAS THIS

PREVIOUS RELATIONSHIP AND ABOUT  
THE PURPOSE OF THE TRIP.

>> YES, IT WAS.

>> AND WAS THAT ALL DETAILED?  
AND WAS THAT ATTRIBUTED THEN TO  
MR.^BOYD.

>> YES, IT WAS, IT STATED IF I  
RECALL CORRECTLY, IT STATED  
THAT THERE WAS A, A  
RELATIONSHIP BASED ON A DRUG  
DEAL OR DRUG DEALING THAT MR.^,  
MR.^COOLEY HAD TAKEN DRUGS FROM  
MR.^BOYD AND HAD NOT PAID FOR  
THEM.

AND THAT THE PURPOSE OF GOING  
TO DAYTONA BEACH WAS TO COLLECT  
ON THAT DEBT.

>> AND WAS THERE ANYTHING IN  
THERE ABOUT MR.^HUNTER WAS NOT  
AWARE OF ALL THAT?

>> THE MOTION WOULD HAVE TO  
SPEAK FOR ITSELF.  
BUT EVEN IF, EVEN IF ASSUMING  
THAT THAT WERE TRUE, IT PUTS  
THE CASE IN AN ENTIRELY  
DIFFERENT LIGHT WITH REGARD TO  
THE STATE'S CASE OF, OF MOTIVE  
AND WHO WAS RESPONSIBLE AND  
THAT WOULD BE EVIDENCE THAT THE  
JURY WOULD, WOULD WANT TO HEAR,  
I WOULD THINK IN DETERMINING  
WHO'S MOST AT FAULT.

>> THANK YOU.

>> NO OTHER QUESTIONS.

YOU'VE EXHAUSTED YOUR TIME.  
FOR THE SECOND TIME SO WE THANK  
YOU BOTH.

WE WILL TAKE THE CASE UNDER  
ADVISEVISEMENT.

>> THANK YOU VERY MUCH.

>> THE COURT WILL STAND IN  
RECESS.

>> ALL RISE.