

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

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
DECEDENT, 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 COULDN'T 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 THINGING 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 PRUPTS 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 CONVINCED.

>> 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 FILED A PRO SE MOTION
FOR REHEARING, AND TWO THAT PRO
SE MOTION FOR REHEARING, THAT
WAS FILED IN DECEMBER 22nd, I
BELIEVE, OF 2006, HE ATTACHED
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 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, --

>> WOULDN'T THAT BE HEARSAY
ANYWAY?

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

>> SO HE WOULDN'T 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
WOULDN'T 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
COULDN'T 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 ALLOWED 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 ONE 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 RECORD
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 OWED 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 HUNTSEY 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
ADVISEISEMENT.

>> THANK YOU VERY MUCH.

>> THE COURT WILL STAND IN
RECESS.

>> ALL RISE.