

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEAD,
DRAW NEAR, GIVE ATTENTION, AND
YOU SHALL BE HEARD.

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

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING, WELCOME TO
THIS FEBRUARY --, OH, MARCH 1st
SESSION OF THE FLORIDA SUPREME
COURT ORAL ARGUMENT CALENDAR.

THE FIRST CASE ON OUR AGENDA IS
EVERETT VERSUS STATE.

AND EVERETT VERSUS McNEIL.

ARE YOU READY TO PROCEED?

>> READY, YOUR HONOR.

EVERETT.

>> MAY IT PLEASE THIS COURT.

THANK YOU FOR THE OPPORTUNITY
OF PRESENTING MY ARGUMENTS TO
YOU THIS MORNING IN PERSON.

WITH RESPECT TO THE CAUSE OF
PAUL GLEN EVERETT, NUMEROUS --

>> MR.LYKES, ARE YOU

A REGISTRY ATTORNEY

OR CCRC?

>> REGISTRY ATTORNEY, YOUR
HONOR.

NUMEROUS CLAIMS HAVE BEEN MADE
IN THIS CASE.

MOST OF THEM BEGIN AROUND THE CONCEPT OF WHETHER OR NOT MR. EVERETT PROPERLY RECEIVED HIS MIRANDA WARNINGS AND WHETHER HE PROPERLY MADE A STATEMENT WHICH COULD BE USED AGAINST HIM.

>> NOW THIS WAS AN ISSUE THAT WAS IN FACT RAISED AND EXPLORED AND THIS COURT ISSUED AN OPINION ON IT ON DIRECT APPEAL, CORRECT?

>> YES, YOUR HONOR, THAT IS ABSOLUTELY TRUE BUT WHAT IS ALSO TRUE IS THAT, ONE OF THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS WAS THAT THE TRIAL COUNSEL WHO PREPARED THE ARGUMENT AND WHO ATTEMPTED TO SUPPRESS THESE STATEMENTS THAT WERE MADE AT THE TIME FAILED TO PROPERLY PREPARE THE CASE BY NOT HAVING DETECTIVE MURPHY FROM BALDWIN COUNTY PRESENT FOR THE HEARING AND BY NOT PRESENTING APPROPRIATE ARGUMENTS THAT OUGHT TO HAVE BEEN MADE AT THE TIME.

>> WELL, WHAT WAS IT THAT DETECTIVE MURPHY, DID HE NOW TESTIFY BY PHONE OR SOMETHING?

>> HE TESTIFIED AT THE EVIDENTIARY HEARING, AND HE ACKNOWLEDGED THAT, IN, TO LAY THE BACKGROUND --

>> WHAT I, WHAT MY QUESTION IS,

LET ME GET MY QUESTION IN.

IS, WHAT IF DOES HE SAID NOW
THAT WOULD HAVE RESULTED IN THE
SUPPRESSION OF THE STATEMENTS?

>> HE ACKNOWLEDGED THAT
CONTACTS WERE INITIATED BETWEEN
LAW ENFORCEMENT AND MR.^EVERETT
FOLLOWING HIS FIRST INVOCATION
HIS RIGHT TO COUNSEL, WHICH
SHOULD NOT HAVE HAPPENED UNLESS
MR.^EVERETT HIMSELF APPROACHED
THE OFFICERS IN QUESTION.

>> IS THIS WHAT YOU'RE, IS THIS
BEGINNING OF A DNA?

IS THAT WHAT YOU'RE GETTING AT,
THE REQUEST TO TAKE A DNA
SAMPLE?

>> YOUR HONOR, WE'RE ACTUALLY
NOT EVEN ASKING TO SUPPRESS
THAT WE'RE MORE CONCERNED WITH
THE THAT WERE MADE BECAUSE
THERE WERE THREE SEPARATE
ENCOUNTERS.

>> WHAT I'M ASKING IS, THE
QUESTION IS, DID HE TESTIFY TO
ADDITIONAL CONTACTS THAT WERE
MADE WITH THE DEFENDANT OTHER
THAN THE DNA AND THE SERVICE OF
THE ARREST WARRANT?

>> YES, HE DID, YOUR HONOR.
HE ACKNOWLEDGED THAT IN BETWEEN
VISITS HE, IN FACT HE SAID
THAT, PHOTOGRAPHS WERE SENT TO
HIM AND THAT HE PRESENTED THE
PHOTOGRAPHS TO MR.^EDWARD,
MR.^EVERETT IN BETWEEN THE

SECOND AND THIRD INTERVIEW.

WELL, IF I CAN THOUGH, I WAS TRYING TO GET TO A LARGER ISSUE HERE, YOUR HONOR AND I RAISED IT IN THE HABEAS PETITION, AND THE MORE I THINK ABOUT AND MORE I WORKED WITH THIS CASE THE MORE IT SEEMS TO ME THE MOST SIGNIFICANT ISSUE AND THAT IS THE FACT THAT MR.^EVERETT DID NOT HAVE THE BENEFIT OF APPOINTED COUNSEL UNTIL HE WAS BROUGHT TO FLORIDA IN FEBRUARY. IN FACT THE PUBLIC DEFENDER WHO EVENTUALLY REPRESENTED HIM FOUND OUT ABOUT HE WAS GOING TO BE REPRESENTING MR.^EVERETT FROM MR.^EVERETT'S MOTHER WHO APPARENTLY GOTTEN WORD OF THAT FROM EXAMINING THE COURT DOCKET OR SOME OTHER WAY.

>> WHAT DO YOU CONTEND SHOULD HAVE BEEN DONE?

HE WAS ARRESTED IN ALABAMA, CORRECT ON AN ALABAMA CHARGE?

>> YES, YOUR HONOR.

>> AND WHEN THEY WENT TO TALK TO HIM HE INVOKED HIS RIGHT TO COUNSEL AND THEY STOPPED TALKING TO HIM ABOUT THE FLORIDA INCIDENT, CORRECT?

>> YES, YOUR HONOR.

>> AND SO WHAT SHOULD HAVE HAPPENED AT THAT POINT THAT DID NOT HAPPEN?

>> I HAVE SOME IDEAS, YOUR

HONOR, AND I --

>> NO, I'M TALKING ABOUT ACCORDING TO OUR CASE LAW AND WHAT SHOULD HAVE HAPPENED AT THAT POINT THAT DID NOT HAPPEN?

>> PLEASE GIVE ME A MOMENT TO RESPOND BECAUSE THAT'S A VERY IMPORTANT QUESTION.

AND I MAY NOT BE THE MOST THOROUGH LEGAL RESEARCHER IN THE WORLD BUT I DID SEEK ALL FEDERAL AND STATE JURISDICTIONS TO TRY TO FIND SOME GUIDANCE WITH THIS THE ONLY GUIDANCE I COULD FIND IN OUR OWN FEDERAL RULE OF CRIMINAL PROCEDURE, 3.111-A SAYS COUNSEL SHOULD BE APPOINTED AS SOON AS POSSIBLE AFTER A CUSTODIAL SITUATION HAS ARISEN.

CERTAINLY A CUSTODIAL SITUATION WAS IN EFFECT THE FIRST TIME THEY WENT TO SEE HIM IN NOVEMBER, I BELIEVE 14th.

HE HAD BEEN IDENTIFIED.

HE WAS IN ALABAMA.

SO NOW MR. ^EVERETT IS IN A SITUATION WHERE HE'S IN A FOREIGN JURISDICTION, AND HE IS SUBJECTED TO MULTIPLE VISITS BY FLORIDA LAW ENFORCEMENT, TWO OF WHICH CAME AFTER HE HAD INVOKED HIS RIGHT TO COUNSEL.

>> THAT SOUND LIKE SOMETHING THAT SHOULD HAVE BEEN RAISED ON DIRECT APPEAL BECAUSE IF YOU'RE

SAYING THAT SOMEHOW HE WAS,
THROUGH THE ALABAMA PROCESS HE
SHOULD HAVE BEEN APPOINTED
COUNSEL, THAT'S, THAT WOULD BE
AN ARGUMENT THAT WOULD HAVE
BEEN SUBJECT TO BEING RAISED
BOTH IN THE MOTION TO SUPPRESS
AND ALSO ON APPEAL, NOT ON AN
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM.

>> WHICH IS WHY I BELIEVE I
MADE THAT ARGUMENT IN PETITION
FOR HABEAS CORPUS WHICH CAN BE
AVAILABLE TO A CLAIMANT TO
RAISE CLAIMS OF INEFFECTIVE
ASSISTANCE OF APPELLATE
COUNSEL.

THE, AND THE POINT HERE, YOUR
HONOR, IS, IS HOW CAN OUR
SYSTEM WORK -- ONE WOULD
PRESUME THAT WHEN DEFENSE
COUNSEL IS PROVIDED TO A
DEFENDANT, THAT WOULD BE A
POSITIVE SITUATION FOR BOTH,
FOR EVERYONE BECAUSE --

>> WHO EXACTLY SHOULD HAVE BEEN
APPOINTED AT THAT POINT?

HE WAS IN CUSTODY IN
ALABAMA ON A ALABAMA CHARGE.
HE WAS QUESTIONED ABOUT THE
FLORIDA MURDER AND HE INVOKED
HIS RIGHT TO COUNSEL.

SO AT THAT POINT HE SHOULD HAVE
BEEN APPOINTED A FLORIDA
ATTORNEY, IS THAT WHAT YOU'RE
SAYING?

OR AN ALABAMA ATTORNEY?

>> YOUR HONOR, I FULLY
ACKNOWLEDGING THIS IS A CASE OF
FIRST IMPRESSION, AND FULLY
ACKNOWLEDGING THAT I MAY BE
ASKING THE COURT TO ESTABLISH
SOME RIGHT THAT HAS NOT BEEN
ESTABLISHED ANYWHERE BEFORE, I
WOULD STILL SUBMIT AND MAINTAIN
THAT IN THE SITUATION WHERE YOU
HAVE SOMEONE WHO HAS BEEN
POSTIVELY IDENTIFIED IN A
CAPITAL FELONY AND IS IN
CUSTODY IN A FOREIGN
JURISDICTION, COUNSEL SHOULD BE
MADE AVAILABLE TO THAT PERSON
FROM THE STATE OF FLORIDA.
AND THE RULE SHOULD BE THAT IF
THEY'RE GOING TO INTERROGATE
THIS INDIVIDUAL, INTERVIEW THIS
INDIVIDUAL, OR TAKE SAMPLES
FROM HIM, HE SHOULD BE BROUGHT
TO FLORIDA, OR SHOULD BE LEFT
ALONE UNTIL HE HAS THE
OPPORTUNITY FOR FLORIDA
COUNSEL.

OTHERWISE, SIXTH AMENDMENT
DOESN'T MEAN ANYTHING FOR THAT
DEFENDANT FOR THOSE THREE
CRITICAL MONTHS.

THAT IS EXACTLY WHAT HAPPENED
HERE.

THE REASON I SUGGESTED IT, AND
MAYBE THE MOST IMPORTANT ISSUE
OF THE CASES BECAUSE IT GAVE
RISE TO JUST ABOUT EVERY OTHER

CLAIM IN THIS CASE.

IT GAVE RISE TO THE INEFFECTIVE
COMMUNICATION BETWEEN THE
ATTORNEY AND CLIENT BECAUSE BY
THE TIME --

>> LET'S EXPLORE THIS A LITTLE
BIT.

I'M WONDERING HOW THIS
TECHNICALLY WOULD TAKE PLACE.
HE'S IN A ALABAMA JAIL IN THE
CUSTODY OF THE ALABAMA
AUTHORITIES AND SO WOULD THEY
BE, THAT IS THE ALABAMA
AUTHORITIES, BE
COMING TO FLORIDA OR SOMEHOW
GETTING IN CONTACT WITH SOMEONE
HERE IN FLORIDA TO TELL THEM
THAT HE NEEDS AN ATTORNEY?
I'M JUST TRYING TO FIGURE OUT
HOW WE, THIS WOULD WORK IN
PRACTICAL TERMS.

>> I WOULD SUBMIT, YOUR HONOR,
AND I WOULD SUGGEST IT WOULD BE
INCUMBENT UPON THE STATE OF
FLORIDA WHEN THEY SUSPECT THAT
SOMEONE, AND HAVE BUILT A CASE
ON SOMEONE IN A FOREIGN
JURISDICTION AND THEY WISH TO
INTERVIEW OR INTERROGATE THAT
PERSON, THAT THEY BE REQUIRED
TO MAKE THAT KNOWN TO THE COURT
AND ASK THE COURT TO TAKE SOME
ACTION TO IDENTIFY COUNSEL, TO
APPOINT COUNSEL FOR THAT PERSON
TO DETERMINE WHETHER THEY'RE
INDIGENT OR NOT.

>> WELL, WHAT WOULD HAPPEN IF THIS OCCURRED IN FLORIDA? HE'S IN CUSTODY, SAY ON UNRELATED CHARGE. I MEAN HE WAS IN CUSTODY ON AN UNRELATED CHARGE. THEY'RE NOT YET ARRESTING HIM FOR THE FLORIDA, FOR THIS MURDER, AND THEY'RE QUESTIONING HIM AND THEN HE SAYS, HE DOESN'T WANT TO TALK. WITHOUT BENEFIT OF AN ATTORNEY. UNDER OUR CASE LAW DOES AN ATTORNEY THEN HAVE TO BE APPOINTED FOR HIM AT THAT TIME?

>> I WOULD, I WOULD ASK, YOUR HONOR, TO CONSIDER THE SITUATION WHERE EVERYTHING IN THIS CASE WAS EXACTLY THE SAME, EXCEPT INSTEAD OF IN BALDWIN COUNTY, HE WAS IN SOME OTHER COUNTY IN THE STATE OF FLORIDA. HE WOULD BE, BASED UPON WHAT HE WAS ARRESTED FOR, WHICH WERE ALABAMA FELONIES. HE WOULD BE ACCORDED A PUBLIC DEFENDER. AND HE WOULD HAVE FLORIDA COUNSEL THAT HE WOULD BE IN COMMUNICATION WITH AT THE TIME.

>> EVEN THOUGH HE, EVEN IN CUSTODY ON ALABAMA CHARGES, IS THAT WHAT YOU SAID?

>> NO, I'M SAYING, CONSIDERING EVERYTHING EXACTLY THE SAME EXCEPT WHERE HE WAS TAKEN TO

WAS NOT ALABAMA BUT SOMEPLACE
IN FLORIDA, SOME OTHER COUNTY
IN FLORIDA WHERE HE HAD
WARRANTS OUTSTANDING.
HE WOULD BE USHERED TO A
FLORIDA PUBLIC DEFENDER, IF HE
WAS INDIGENT, WHICH HE WAS,
AND, THEN WHEN BAY COUNTY
POLICE OFFICERS WENT TO TALK
HIM ABOUT ANOTHER FLORIDA
FELONY, AT LEAST THE PUBLIC
DEFENDER IN THE OTHER COUNTY
WOULD BE A FLORIDA ATTORNEY AND
WOULD BE ABLE TO TELL THIS
PERSON AND ADVISE THIS PERSON
WHETHER HE OR SHE SHOULD MAKE A
STATEMENT AND WOULD GET IN
TOUCH WITH THE PUBLIC DEFENDER
IN THE APPROPRIATE COUNTY,
WHICH IN THIS CASE WAS BAY
COUNTY, AND NOW, WE WOULD HAVE
A DEFENDANT WHO WAS PROCEEDING
WITH THE ADVICE OF COUNSEL WHO
WOULD KNOW WHETHER OR NOT IT
WOULD BE IN HIS BEST INTEREST
TO SPEAK, WHO WOULD IN THE BE
MAKING MULTIPLE INCONSISTENT
STATEMENTS OUT OF FEAR AND
WITHOUT COUNSEL, EVEN THOUGH HE
ASKED ON TWO OCCASIONS BEFORE
THE THIRD STATEMENT, HE SAID I
WANT HAVE A LAWYER.

>> THAT'S WHAT I WAS ASKING
YOU.

UNDER THE LAW HERE IN FLORIDA,
IF SOMEONE SAYS, AFTER THEY

HAVE BEEN TOLD THAT THEY, AFTER
THEY HAVE BEEN.

READ THEIR MIRANDA RIGHTS AND
SAY I WOULD LIKE A LAWYER, IS,
UNDER THE WAY WE'VE INTERPRETED
MIRANDA, IS THE DEFENDANT THEN
HAVE A RIGHT TO AN ATTORNEY FOR
THE QUESTIONING?

OR DO THEY JUST, ARE THEY OKAY
AS LONG AS THEY DON'T CONTINUE
SPEAK TO THE DEFENDANT?

>> THAT'S A VERY GOOD QUESTION,
AND I FEEL LIKE I'M TREADING A
LITTLE BIT ON THIN ICE RIGHT
NOW.

I WAS AWARE THAT THE SUPREME
COURT OF THE UNITED STATES HAD
UNDER REVIEW THE POWELL CASE
AND I DID NOT CITE POWELL IN MY
BRIEF AND I WAS HOPING THAT
DECISION WOULD BE MADE IN TIME
IT WOULD BE SUPPLEMENTAL
AUTHORITY IN THIS CASE.

THE DECISION WAS MADE LATE LAST
WEEK.

APPARENTLY THE SUPREME COURT
AGREED WITH THIS COURT THAT IT
IS IMPORTANT FOR A DEFENDANT TO
KNOW THROUGHOUT THE PERIOD OF
QUESTIONING THAT THEY COULD
STOP AT ANY TIME AND HAVE THE
RIGHT TO COUNSEL DURING
QUESTIONING.

HOWEVER, THE UNITED STATES
SUPREME COURT DECIDED THAT THE
WARNINGS GIVEN IN TAMPA WERE

SUFFICIENT, BUT STILL THEY
AGREE WITH THIS COURT AND WITH
THIS COURT'S POWELL DECISION AT
LEAST TO THE EFFECT THAT
DEFENDANTS OUGHT TO KNOW THEY
HAVE THE RIGHT TO COUNSEL
DURING QUESTIONING.

>> BUT I DON'T THINK THAT
ACTUALLY ANSWERS THE QUESTION.
THE QUESTION IS, ONCE YOU
INVOKE YOUR RIGHT TO COUNSEL,
WHAT DOES, THE STATE HAVE TO
IMMEDIATELY THEN GIVE YOU
COUNSEL, OR, IS, AS LONG AS THE
STATE DOES NOT CONTINUE TO
QUESTION YOU, THAT YOU GET
COUNSEL AT FIRST APPEARANCE OR
WHENEVER IT IS YOU FINALLY
COME BEFORE THE COURT?

>> YOUR HONOR I BELIEVE THE
TIME-HONORED RULE HAS BEEN,
ONCE A DEFENDANT SAYS, I WANT
COUNSEL, EVERYTHING STOPS.

>> EVERYTHING HAS STOPPED.
AND AS LONG AS YOU DON'T --

>> BUT IT DIDN'T STOP HERE.
THEY CAME, FROM PANAMA CITY ON
TWO SEPARATE OCCASIONS
AFTERWARDS.

AND OF COURSE THE INEFFECTIVE
ASSISTANCE OF COUNSEL ISSUE WAS
HOW MUCH MR.^MURPHY HAD TO DO
WITH THAT BECAUSE HE WAS MAKING
CONTACT WITH MR.^EVERETT IN
BETWEEN THESE VISITS.

FOR INSTANCE, HE ACKNOWLEDGED

IN THE EVIDENTIARY HEARING HE
HAD BEEN SENT PHOTOGRAPHS
SHOWED THOSE PHOTOGRAPHS TO
MR. EVERETT.

SO IT CAN'T REALLY BE SAID THAT
MR. EVERETT INITIATED THAT
CONTACT.

>> BUT NOW, OKAY, IN TERMS OF
INEFFECTIVE ASSISTANCE OF
COUNSEL, TRIAL COUNSEL,
ATTORNEY SMITH, HAD NOT BEEN
APPOINTED AT THE POINT THAT WAS
GOING ON, IS THAT CORRECT?

>> YES, SIR.

>> NOW, YOU ARGUED TO THE TRIAL
COURT THAT ATTORNEY SMITH WAS
INEFFECTIVE ON THIS POINT,
CORRECT?

>> YES, SIR.

>> THERE IS KIND OF A LOGICAL
PROBLEM THERE IF HE IS NOT BEEN
APPOINTED HOW CAN HE BE
INEFFECTIVE?

>> YOUR HONOR --

>> YOU'RE HERE REALLY TALKING
ABOUT A DIFFERENT POINT IT
SEEMS TO ME.

YOU'RE ARGUING THAT HE HAD,
THAT THERE WAS A RIGHT TO
FLORIDA COUNSEL WHILE HE WAS
INCARCERATED OR IN JAIL IN
ALABAMA.

BUT DID YOU EVER ACTUALLY RAISE
THAT POINT IN THE
POST-CONVICTION PROCEEDINGS
BELOW.

>> NO, YOUR HONOR.

MY ARGUMENT AND MY REQUEST OF THIS COURT IS I DID PROPERLY RAISE IT IN THE PETITION FOR HABEAS CORPUS, WHICH IS DESIGNED TO PER MET THOSE CLAIMS WHICH COULD NOT BE PROPERLY RAISED.

>> I DON'T UNDERSTAND WHY THAT COULD NOT HAVE BEEN PROPERLY RAISES BEFORE?

IT COULD HAVE BEEN RAISED IN THE TRIAL COURT HERE.

IT COULD HAVE BEEN RAISED IN THE, OR IN THE APPELLATE PROCEEDINGS, THE DIRECT APPEAL.

I DON'T UNDERSTAND WHY THAT'S SOMETHING THAT CAN ONLY BE RAISED IN THE --

>> PERHAPS IT --

>> I GUESS IT COULD HAVE BEEN FRAMED IN THIS PROCEEDING AS AN INEFFECTIVENESS CLAIM BECAUSE TRIAL COUNSEL FAILED TO BRING THAT ISSUE UP AS THE, AS A RIGHT THAT THE DEFENDANT HAD. YOU SEE WHAT I'M SAYING?

>> YES, YOUR HONOR, I SEE WHAT YOU'RE SAYING.

>> BUT HE DID NOT PRESENT IT THAT WAY.

>> I PRESENTED IT THAT WAY AT THE EVIDENTIARY HEARING BECAUSE I FELT CONSTRAINED THAT WAS THE WAY THAT I HAD TO PRESENT IT AT THAT TIME.

BUT I NOW FEEL EMPOWERED AS IT WERE PURSUANT TO HABEAS CORPUS THAT I COULD RAISE THAT ISSUE NOW UNDER EITHER INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, OR I'M SORRY, APPELLATE COUNSEL OR AS A NEW CLAIM WHICH SIMPLY DIDN'T BECOME APPARENT OR MANIFEST TO ME UNTIL --

>> THE POINT IS, IF I UNDERSTAND IT CORRECTLY, AND CORRECT ME IF I'M WRONG, YOU NEVER ARGUED IN THE POST-CONVICTION TRIAL COURT PROCEEDINGS THAT ATTORNEY SMITH WAS INEFFECTIVE BECAUSE HE FAILED TO, TO RAISE A CLAIM THAT THE DEFENDANT WAS ENTITLED TO COUNSEL, FLORIDA COUNSEL WHILE HE WAS IN JAIL IN ALABAMA?

>> NO, SIR, I DID NOT RAISE THAT CLAIM AT THAT TIME.

>> OKAY.

>> I, WHETHER YOUR HONOR WILL ENTERTAIN --

>> TYPICALLY WE DON'T, IF YOU HAVE AN OPPORTUNITY TO RAISE IT AND YOU DON'T RAISE IT, WE DON'T GET INTO THINGS THAT HAVEN'T BEEN ARGUED BELOW. THAT'S NOT THE WAY THIS WORKS.

>> BUT ARE YOU SAYING THAT, IF WE LOOK AT YOUR HABEAS PETITION THAT YOU RAISED IT AS AN INEFFECTIVE ASSISTANCE OF

APPELLATE COUNSEL FOR NOT
RAISING IT AS A GROUND FOR, ON
APPEAL?

>> I BELIEVE I RAISED IT AS A
SIXTH AMENDMENT ISSUE, YOUR
HONOR.

I BELIEVE I DID NOT RAISE IT AS
INEFFECTIVE ASSISTANCE OF
APPELLATE COUNSEL ALTHOUGH I
COULD HAVE.

>> I REVIEWED YOUR BRIEF LAST
NIGHT.

THAT'S WHY I'M CONCERNED ABOUT
WHAT YOU'RE ARGUING THIS
MORNING.

>> I DID NOT RAISE IT ON THAT
BASIS BUT I WOULD SUBMIT AND I
WOULD ASK THE COURT TO CONSIDER
THAT IT CAN BE PROPERLY RAISED
AT THIS TIME UNDER HABEAS
CORPUS.

>> YOU ARE WELL INTO YOUR
REBUTTAL.

IF YOU WANT TO SAVE ANY TIME.

>> I'D LIKE TO SAVE TIME.

>> YOU CAN CONTINUE IF YOU WANT
TO.

>> IF I COULD SAVE THE BALANCE
OF MY TIME, YOUR HONOR.

THANK YOU.

>> GOOD MORNING.

STEVE WHITE, REPRESENTING
APPELLEE, STATE OF FLORIDA.

AS --

>> TELL US EXACTLY, THE STATE'S
POSITION IS ON WHAT WAS RAISED

BEFORE THE TRIAL COURT IN THIS POST-CONVICTION CONCERNING INEFFECTIVE ASSISTANCE OF COUNSEL AND, OF FAILURE, OR TO HAVE COUNSEL APPOINTED RIGHT AFTER, AS SOON AS HE INVOKED HIS RIGHT TO COUNSEL.

>> YOUR HONOR, BELOW IN THE EVIDENTIARY HEARING AS WELL AS IN THE 3851 HEARING.

THERE ARE A NUMBERS OF CLAIMS MADE IN THIS AREA, A SUBSTANTIAL PORTION OF THEM ARE ACTUALLY SUBSTANTIVE MIRANDA CLAIMS WHICH WERE FULLY LITIGATED ON THE DIRECT APPEAL. BASICALLY THE STATE'S POSITION IS THAT MR. ^EVERETT, AT THIS POINT PARTICULAR PHASE OF THE PROCEEDINGS IS REPACKAGING WHAT'S ALREADY BEEN LITIGATED BEFORE THIS COURT.

NOW HE IS PUTTING A BIT DIFFERENT TWIST ON IT AND HE IS TRYING TO THOUGH IN NOW AN INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, WHICH I'M LOOKING AT THE HABEAS AS COUNSEL CONCEDES CORRECTLY, IT IS NOT RAISED AS IAC APPELLATE COUNSEL CLAIM.

IT IS RAISED AS ANOTHER REPACKAGED SUBSTANTIVE MIRANDA CLAIM WITH A TWIST OF SIXTH AMENDMENT, WHICH BY THE WAY THE INDICTMENT WASN'T RENDERED

UNTIL JANUARY 28th, 2002.

SO DURING THESE PROCEEDINGS THE CRIMINAL PROCEEDINGS HAD NOT BEGUN IN TERMS OF THE SIXTH AMENDMENT AS TO THIS PARTICULAR CHARGE.

>> WELL, BUT HIS ARGUMENT REALLY IS, BASICALLY I ASSUME HE IS SAYING IT HAD.

DETECTIVES FROM FLORIDA 12 CAME TO ALABAMA AND WAS QUESTIONING HIM.

>> WELL, AGAIN, YOUR HONOR, THIS WAS FULLY EXPLORED IN THE DIRECT APPEAL AND AS THIS COURT FOUND, IT WAS MR. EVERETT WHO REINITIATED THE DISCUSSION REGARDING THE MURDER.

ON THE NOVEMBER THE 19th STATEMENT, DETECTIVE, AND AGAIN, WE'RE RETREADING OLD GROUND FROM THE DIRECT APPEAL, DETECTIVE TILLY IS GOING TO ALABAMA. IF ALABAMA GOT DNA FROM THE DEFENDANT. HE IS NOT GOING THERE TO INTERROGATE THE DEFENDANT. THE DEFENDANT TELLS THE DETECTIVE MURPHY, THE ALABAMA DETECTIVE, LOOK, I WANT TO GET YOU GUYS ON THE RIGHT TRACK. THE DETECTIVE -- DEFENDANT BRINGS IT UP.

IT WAS FULLY ARGUED ON DIRECT APPEAL.

>> I KNOW IT WAS.

YOU'RE SAYING WHAT MR. ^LYKES
CONCEDED THIS WAS NOT FULLY
DEVELOPED.

DETECTIVE MURPHY WHO DID NOT
TESTIFY AT THE ORIGINAL TRIAL,
THE SUPPRESSION HEARING, AND --

>> HE DID TESTIFY TO A PROFFER,
YOUR HONOR, DURING THE TRIAL.

>> WHAT?

>> DETECTIVE MURPHY TESTIFIED
AT PROFFER DURING THE TRIAL,
WHEN THE DEFENSE CONFESSION WAS
INTRODUCED INTO EVIDENCE,
BEFORE IT WAS INTRODUCED, THERE
WAS A PROFFER AT WHICH
DETECTIVE MURPHY TESTIFIED.

>> LET ME ASK YOU THIS
QUESTION.

DID HE TESTIFY TO ADDITIONAL
CONTACTS TO THE DEFENDANT?

>> AT THE POST-CONVICTION
HEARING, AT PAGE 83, WHICH
COUNSEL CITES, OF THE
TRANSCRIPT, DETECTIVE MURPHY
DOES BRING UP ANOTHER CONTACT
BUT IT IS NOT IN BETWEEN THE
FIRST AND STATEMENT.

IT IS AFTER, HE SAID IT WAS ONE
LASTING, THIS WAS AFTER THE
CONFESSION THAT WAS INTRODUCED.

AND DETECTIVE MURPHY SAYS THAT
DETECTIVE TILLEY SAYS, WILL
YOU SHOW HIM THE CRIME SCENE
PHOTOGRAPHS AND SEE WHAT HE
SAYS ABOUT THEM?

THIS WAS AFTER THE NOVEMBER

27th CONFESSION THAT WAS
INTRODUCED INTO EVIDENCE.
SO IT IS IRRELEVANT TO THE
ADMISSIBILITY OF THAT
STATEMENT.

>> LET ME ASK YOU, JUST ON THE
FACTS OF WHAT HAPPENED, HE'S IN
ALABAMA IN CUSTODY.

>> YES, SIR.

>> THE FLORIDA AUTHORITIES
REQUEST ALABAMA POLICE TO
RETRIEVE THE DNA SAMPLES FROM
MR. EVERETT.

>> TO ASK HIM IF HE WILL
CONSENT.

>> OKAY.

WHEN THEY WENT TO MEET WITH
EVERETT ABOUT THE DNA SAMPLES,
THE OFFICER, EVERETT TELLS
THEM, I WANT TO TELL YOU
SOMETHING ABOUT THE FLORIDA
CASE.

AT THAT TIME THE OFFICER FROM
ALABAMA READ HIM HIS
CONSTITUTIONAL MIRANDA
RIGHTS, AM I CORRECT --

>> TWICE.

>> HANG ON I'M GETTING THERE.
THE OFFICER FROM ALABAMA READ
HIM THE MIRANDA RIGHTS, AM I
CORRECT?

>> CORRECT.

AFTER THE DEFENDANT BROUGHT UP
HE WANTED TO MAKE A STATEMENT,
OFF THE RECORD.

>> RIGHT.

EVENTUALLY THE PANAMA POLICE OFFICER ARRIVED IN ALABAMA TO COLLECT THE DNA SAMPLES. HE WAS TOLD THAT EVERETT WANTED TO TALK.

AGAIN, THE PANAMA POLICE OFFICER READ MR. EVERETT HIS MIRANDA RIGHTS.

>> I BELIEVE AT THAT STAGE, YOUR HONOR, THE DISCUSSION BETWEEN MURPHY, THE ALABAMA DETECTIVE, AND THE DEFENDANT HAD ALREADY BEGUN.

TILLEY FROM PANAMA CITY ARRIVED AFTER THE INTERVIEW HAD ALREADY BEGUN, AFTER THE DEFENDANT WAS MIRANDIZED AGAIN TWICE, INDICATED HE STILL WANTED TO GIVE A STATEMENT AND SET THE POLICE IN THE RIGHT DIRECTION.

>> IN ACTUALITY, HE WAS ADVISED OF HIS MIRANDA RIGHTS THREE TIMES?

THE FIRST TIME, THE SECOND TIME DURING DNA SAMPLES AND THIRD TIME WHEN THE PANAMA POLICE OFFICERS ARRIVED?

>> THE FIRST TIME, NOVEMBER 14th, NOVEMBER 19th IN WRITING IN A FORM, AND ORALLY BY DETECTIVE MURPHY.

AND DETECTIVE TILLEY GET THERE IS AFTER THE INTERVIEW HAS ALREADY BEGUN.

NOW THE THIRD TIME WHEN HE ACTUALLY CONFESSED IS NOVEMBER

27th.

DETECTIVE MURPHY IS GOING THERE
JUST TO SERVE THE WARRANT.

AND DEFENDANT STARTS TALKING
BEFORE, BEFORE TILLEY CAN EVEN,
HE SAYS WELL, WAIT A MINUTE
NOW, I'VE GOT TO START THE TAPE
RECORDER.

YOU KNOW YOU HAVE A RIGHT TO
STOP AT ANY TIME.

YOU HAVE A RIGHT TO A LAWYER.
HE GIVES HIM AN ABBREVIATED,
NOT THE FULL FORM AN
ABBREVIATED FORM.

YOU HAVE ALL THE RIGHTS YOU HAD
BEFORE, YOU UNDERSTAND THAT?

>> MY QUESTION, I GUESS, AND
THIS IS WHERE I THOUGHT
MR.^LYKES WAS GOING, WHEN HE
WAS GIVEN HIS MIRANDA WARNINGS
ON THE 14th HE ABRUPTLY SAID I
WISH TO HAVE A LAWYER PRESENT.
I MEAN I WANT A LAWYER AND THEY
STOP THE QUESTIONING.

MY QUESTION GOES BACK TO WHAT I
ASKED MR.^LYKES.

ASSUME THIS HAPPENED IN
FLORIDA.

LAWYERS UNDER MIRANDA, EVEN
THOUGH IT SAYS YOU HAVE THE
RIGHT TO HAVE A LAWYER
APPOINTED, THEY DON'T REALLY
HAVE A RIGHT TO GET THAT LAWYER
APPOINTED AT THAT POINT.

>> CORRECT.

>> THE POLICE HAVE A, IF THEY

STOP QUESTIONING, AND AVOID
RENICHING CONTACT --

>> THIS IS WHAT EDWARDS SAYS.

>> YOU DON'T GET THE LAWYER.

>> CORRECT.

>> AND THAT WOULD HAPPEN
WHETHER IT WAS IN FLORIDA OR
ALABAMA.

>> CORRECT.

HE IS MISS MATCHING SIXTH
AMENDMENT WITH FIFTH AMENDMENT.
IS WHAT HE IS DOING.

SIXTH AMENDMENT IS CHARGED
SPECIFIC AND ONLY APPLIES WHEN
CRIMINAL PROCEEDINGS HAVE BEGUN
AND INDICTMENT AT FIRST
APPEARANCE.

SIXTH AMENDMENT CLEARLY DOESN'T
APPLY BUT HE IS BLURRING THAT.

>> EVEN IF HE RAISED THAT ISSUE
ON APPEAL.

>> YOU WOULD HAVE REJECTED IT.

>> WE WOULD HAVE REJECTED IT?

>> THAT'S CORRECT, YOUR HONOR.

THAT IS THE STATE'S POSITION
ABSOLUTELY.

>> ON DETECTIVE MURPHY YOUR
POINT IS THERE WASN'T
ADDITIONAL CONTACT BUT IT WAS
AFTER THE CONFESSION?

>> THIS IS WHAT DETECTIVE
MURPHY TESTIFY TO AT THE
EVIDENTIARY HEARING.

THE TRIAL COURT SPECIFICALLY
FOUND THERE WERE NO OTHER
HIDDEN INTERVIEWS.

DETECTIVE MURPHY SAID I NEVER
THREATENED HIM CONTRARY TO WHAT
THE DEFENDANT SAID.

TRIAL COURT REJECTED.

EVERY TIME THEY TALKED THEY
ALWAYS TURNED OFF THE TAPE
RECORDER AND THREATENED ME,
EITHER YOU CONFESS, YOU KNOW,
YOU'RE GOING TO GET THE NEEDLE.

NOW HE RAISES THROUGH A
DEPOSITION IN THE HABEAS,
DETECTIVE LINDSEY OR LIEUTENANT
LINDSEY, WHICH HAS SEVERE
PROCEDURAL PROBLEMS. IT WAS
INITIALLY RAISED THROUGH A PRO
SE PLEADING AFTER THE APPEAL
WAS TAKEN TO THE COURT.

NO JURISDICTION BELOW.

HASN'T BEEN RULED ON BY THE
TRIAL COURT.

BUT ALSO, THAT PARTICULAR
STATEMENT BY LINDSEY WAS THE
14th, WHICH WAS A COUPLE WEEKS
BEFORE THE CONFESSION.

HE HAD BEEN MIRANDIZED, RE, RE,
MIRANDIZED, RE, RE,
REMIRANDIZED AND INITIATED
CONTACT COUPLE TIMES.

THERE ARE PROBLEMS WITH THAT
CLAIM.

THAT DEPOSITION HAS BEEN PART
OF THE RECORD SINCE 2003.

BUT IN ANY EVENT, IN TERMS OF
THE STATEMENT BY DETECTIVE
MURPHY ABOUT THE THIRD
STATEMENT AGAIN, IT WAS AFTER

THE CONFESSION.

THE RECORD COULD BE CLEAR.

I MEAN BUT IF YOU READ PAGE 83
OF THE TRANSCRIPT, HE SAYS, IF
THERE WAS, AT THE LAST MEETING
AFTER HE HAD ALREADY GIVEN,
MADE THE STATEMENTS.

DIDN'T MAKE ANY FURTHER
STATEMENTS AFTER THAT.

AND BASICALLY THE DEFENDANT
REFUSED TO TALK ABOUT IT AT
THAT POINT.

BUT, THEY BORE THE BURDEN.
FAILED TO MEET THE BURDEN.

IF THERE ARE NO OTHER QUESTIONS
THE STATE WOULD RESPECTFULLY
ASK THE STATE TO AFFIRM THE
TRIAL COURT'S DENIAL OF THE
3851 AND DENY THE HABEAS
PETITION.

>> MR. ^LYKES?

>> BRIEFLY, YOUR HONOR.

I DID RAISE SOME OTHER ISSUES
IN THIS APPEAL WHICH RELATE TO
THAT.

AND AGAIN, IT JUST, MORE I
EXAMINE THIS CASE THE MORE IT
SEEMS THAT THE ENTIRE --

>> WHAT IS IT THAT YOU ARE
ASKING US TO DO ON THIS MIRANDA
ISSUE?

WHAT IS IT THAT YOU THINK
SHOULD HAPPEN HERE?

>> WELL, WITH RESPECT TO THE
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM, THAT HE SHOULD

BE ACCORD AD NEW TRIAL IN WHICH
CASE THE STATEMENTS NOT BE
USED.

>> AND THIS IS BECAUSE HE
FAILED TO CALL THE DEFENDANT OR
BECAUSE HE FAILED TO CALL
LIEUTENANT MURPHY IN THIS
PROCEEDINGS?

IF HE CALLED THESE PEOPLE, WHAT
WOULD HAVE BEEN, ARE YOU
ALLEGING THERE WOULD HAVE BEEN
A DIFFERENT OUTCOME OF THE
MOTION TO SUPPRESS HEARING?

>> WELL, TO DROP ALL THE WAY
BACK, I WOULD SUGGEST THIS IF
MR.^EVERETT HAD RECEIVED AN
EFFECTIVE APPOINTMENT OF
COUNSEL, A TO BE ABLE TO TALK
WITH COUNSEL BEFORE QUESTIONING
HAD BEGAN WE WOULD BE IN WHOLE
DIFFERENT PLACE.

>> WE ALREADY GOT TO THE POINT
WHERE YOU PROBABLY HAVE A
UPHILL BATTLE.

I THINK WHAT JUSTICE QUINCE
ASKED IF EVERETT AND MURPHY
TESTIFIED, HOW WOULD THE
STATEMENTS BEEN SUPPRESSED?

MR.^WHITE JUST SAID THAT THERE
WAS AN ADDITIONAL CONTACT BUT
IT WAS ONLY AFTER THE
CONFESSION.

IS THAT NOT, IS YOUR POSITION
DIFFERENT THAN THAT?

>> I DON'T THINK IT'S CLEAR
FROM THE RECORD THE CASE.

ACTUALLY THAT WAS NOT MY UNDERSTANDING.

MY UNDERSTANDING WAS THAT THIS APPROACH WITH THE PICTURES OCCURRED BETWEEN THE SECOND AND THIRD --

>> BUT IT IS YOUR BURDEN, WHEN YOU SAY IT IS NOT CLEAR.

IF IT IS NOT CLEAR, WE CAN'T CONSTRUE IT IN LIGHT MOST FAVOR TO YOU.

>> IT IS NOT CLEAR FROM THE TESTIMONY OF MR.^MURPHY, DETECTIVE MURPHY BUT I BELIEVE THE PETITIONER TESTIFIED THAT HE WAS APPROACHED WITH PICTURES AND THINGS BETWEEN, BEFORE HE MADE THE LAST STATEMENT. THAT WOULD BE AT PAGE 48. THROUGH 50 OF THE RECORD. AND HE TALKS ABOUT THESE ENCOUNTERS WITH MR.^MURPHY AND IN BETWEEN ENCOUNTERS WITH MR.^TILLEY WHICH HE MENTIONED ON PAGE 50 OF THE RECORD. AND THAT WAS MY UNDERSTANDING OF WHEN, OF WHEN THAT OCCURRED AND THERE WAS ACTUALLY SOME RECORD SUPPORT FOR THAT.

, I WOULD SUGGEST THAT IF THE EVIDENTIARY HEARING ORIGINALLY, ON THE MOTION TO -- WHEN YOU GO BACK AND LOOK AT THE RECORD OF THE EVIDENTIARY HEARING THAT HE HAD ON THE MOTION TO SUPPRESS, THERE

ACTUALLY WERE NO WITNESSES.
IT WAS ESSENTIALLY DECIDED
BASED ON POLICE REPORTS AND
MR.^MURPHY'S PARTICIPATION WAS
SIMPLY HIS POLICE REPORT.
AND ONCE THAT DECISION IS MADE
IN AN EVIDENTIARY HEARING
BEFORE TRIAL, THEN, YOU KNOW, A
TRIAL COURT'S GOING TO WANT TO
STICK WITH THAT DECISION.
AND THE PROFFER THAT OCCURRED,
THAT MR.^WHITE REFERRED TO WAS
REALLY NOT THOROUGH AT ALL AND
THE DECISION HAD ALREADY BEEN
MADE.
FROM THE RECORD OF THE
SUPPRESSION HEARING YOU CAN'T
ON A SAY FOR SURE THAT
MR.^EVERETT WAS EVEN PRESENT,
BECAUSE THE RECORD SHOWS THAT
THEY STARTED THE HEARING, AND
THEN THEY MADE NOTE OF THE FACT
THAT, MR.^EVERETT WASN'T THERE
AND SHOULDN'T WE DO SOMETHING
ABOUT IT.
WHEN THEY CAME BACK ON THE
RECORD, THERE IS NO EVIDENCE ON
THE RECORD THAT MR.^EVERETT WAS
THERE ALTHOUGH HE TESTIFIED THE
AT EVIDENTIARY HEARING HE WAS.
BUT WHAT HE DID SAY WAS THAT HE
DIDN'T UNDERSTAND THE
SIGNIFICANCE OF HIS
PARTICIPATION IN HIS TESTIMONY.
I'M SUGGESTING THERE IS A
MULTIPLICITY OF ERRORS HERE AND

WRONGS, CONSTITUTIONAL WRONGS,
THAT STARTED WHEN HE WAS FIRST
APPROACHED IN NOVEMBER IN
BALDWIN COUNTY AND HE DID GIVE
SOMETHING OF A STATEMENT THEN.
HE WAS MIRANDIZED.

BUT WHEN HE GOT FRIGHTFUL OF
WHAT WAS HAPPENING, HE SAID I
WANT COUNSEL, AND QUESTIONING
DID APPROPRIATELY STOP.

UNNATALIE THE CON -- CONTACTS
TO HIM CONTINUED THROUGH
DETECTIVE MURPHY AND THEY
SHOULDN'T HAVE.

AND I CITED THE HUNTER CASE IN
MY APPEAL BRIEF AND I ALSO
CITED IT TO THE COURT IN THE
EVIDENTIARY HEARING WHICH SAYS
YOU CAN'T, YOU CAN'T ALLOW THIS
MISSION OF CONTACT TO GET ALONG
HE HAD WITH WARDS TO OCCUR
THROUGH A SURROGATE.

INITIATION.

THAT WOULD BE PERMITTED HERE IF
WE WERE NOT TO BE ALLOWED OR
REQUIRE THESE STATEMENTS TO BE
SUPPRESSED WOULD BE THEY WOULD
BE THE INITIATION OF CONTACT BY
THE DEFENDANT WOULD BE THROUGH
THE SURROGATE OF DETECTIVE
MURPHY WHO WE KNOW WAS KEEPING
STEADY CONTACT WITH HIM.

>> WITH THAT, MR. ^LYKES, YOU'VE
USED MORE THAN YOUR TIME.

WE THANK YOU VERY MUCH FOR YOUR
ARGUMENT HERE TODAY.

THANK YOU ALSO, MR.^WHITE.

>> THANK YOU, YOUR HONOR