>> PLEASE RISE.
HEAR YE HEAR YE HEAR YE.
THE FLORIDA SUPREME COURT IS NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR.
GIVE ATTENTION.
AND YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES, THIS GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT.
PLEASE BE SEATED.
>> GOOD MORNING, AND WELCOME TO THE FLORIDA SUPREME COURT.
THE FIRST CASE ON OUR DOCKET TODAY IS SMITH VERSUS THE STATE OF FLORIDA.
>> PLEASE THE COURT, MARTIN McCLAIN, I'M HERE REPRESENTING --
>> IF YOU, SPEAK UP.
>> I ALWAYS FORGET THAT.
FIRST, I WANT TO ADVISE THE COURT THAT THE 11th CIRCUIT HELD ORAL ARGUMENT FEBRUARY 3RD, MONTGOMERY, ALABAMA AND WE APPEARED BEFORE THE 11th CIRCUIT AND THERE WERE QUESTION ABOUT THIS APPEAL AND THE JUDGE SAID HE COULDN'T IMAGINE THE 11th CIRCUIT DECIDING THEIR APPEAL UNTIL HEAR FROM THIS COURT ABOUT THE BULLET... EVIDENCE.
>> I CAN'T IMAGINE DECIDING THIS WITHOUT THEM TELLING US HOW --
>> AND ON FEBRUARY 4TH, THE NEXT DAY, THEY ISSUED A MEMORANDUM INDICATING THEY WILL WITHHOLD THE DECISION IN THE CASE UNTIL THIS COURT HAD DECIDED THE BULLET ISSUE.
>> JUST ON THE BULLET LEAD.
>> YES, I MEAN -- THEY WANT TO

KNOW, BECAUSE THEY DON'T --
LEAVE THAT AS A FEDERAL
QUESTION, IT IS A STATE LAW,
EVIDENTIARY QUESTION.
>> LET'S GET TO THE LEAD
QUESTION.
I'M STRUGGLING, HAVING TROUBLE
WITH HOW IT COULD BE A GINGLIO
AND BRADY ISSUE.
>> IT IS NOT --
>> THAT HAS BEEN DISCUSSED.
>> AND THAT IS ONE OF THE CLAIMS
OF ERROR AS TO THE CIRCUIT COURT
RULING BECAUSE IT TREATED IT AS
A BRADY, AS OPPOSED --
>> DO YOU AGREE THAT THESE
LETTERS, I MEAN, THE GOVERNMENT
DIDN'T HAVE THEM --
>> THIS IS UNDER JONES VERSUS
STATE, 591, SOUTHERN 2ND --
OKAY.
>> THIS WAS THE CBLA ISSUE, HAS
BEEN DEVELOPING FOR SEVERAL
YEARS, STARTING WITH THE 2004
REPORT.
>> YES.
>> WHEN DID YOU FIRST FILE THE
CLAIM?
>> WELL, WHAT HAD HAPPENED IS
WHEN THE... FILED IN 2000, 2001,
AN INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM WAS FILED THAT
ALLEGED THE TRIAL ATTORNEY IN
1990 FAILED TO INVESTIGATE THE
ISSUE, DEVELOP THE EXPERTS AND
IN AN EF SHEN SHERRY HEARING
WHERE THE DOCTOR TESTIFIED
WITH... [INAUDIBLE] AND AND
PETERS FROM THE FBI TESTIFIED
AND THE FBI STOOD BEHIND HIS
TESTIMONY IN 2002 AND I THINK IT
-- AS A RESULT, HE APPEARED HERE
AND IN OTHER CASES AND 2004 IS
WHEN THE FBI DECIDED THEY NEEDED
TO LOOK INTO THIS FURTHER AND
2005, THE FBI WILL NO LONGER DO

IT IN THE FUTURE, NOT UNTIL --
>> AT THAT POINT, AT THAT POINT, IN 2005, DIDN'T YOU KNOW THAT -- DIDN'T COUNSEL KNOW WHAT COUNSEL NEEDED TO KNOW, TO BRING THE CLAIM THAT WAS BROUGHT YEARS LATER.
>> IN 2005, I WAS PENDING IN THIS COURT WITH THE IN EFFECTIVE ASSISTANCE OF COUNSEL AND THE FBI, WAS STANDING BY THEIR PRIOR TESTIMONY, SAYING, HENCE FORTH, WE'RE NOT GOING TO DO THAT ANYMORE.
AND, IT WASN'T UNTIL 2007, AND, THE ANNOUNCEMENT HAPPENED WITH THE "60 MINUTES" SHOW, THEY SAY, YES, NOT ONLY ARE WE NOT GOING TO DO IT IS ANYMORE, WE'RE NOW GOING TO LOOK INTO THE TESTIMONY THAT WAS PRESENTED IN THE PAST.
AND SO WHAT HAPPENED IS, I HAD SEEN THE "60 MINUTES" SHOW, AND... WAS INVOLVED AND I GOT IN TOUCH WITH THEM AND SINCE THEN THE RECORDS OF THE DEREK SMITH CASE I HAD CONCERNING THE AGENT'S TESTIMONY, PROVIDED IT TO THE JUSTICE DEPARTMENT AND THEY ISSUED A LETTER IN MAY OF 2008, WHICH IS THE FIRST TIME THEY SPECIFICALLY ADDRESSED MR. SMITH'S CASE, AND INDICATED THEY ARE NOT STANDING BY HAVERKOST'S TESTIMONY ANY MORE AND IN 2008 WE HAVE SPECIFIC INFORMATION FROM THE BE A I THEY WILL NOT STAND BY --
>> HIGHER TO THAT YOU HAD SPECIFIC INFORMATION THEY DID NOT BELIEVE THAT THE ANALYSIS COULD LEAD TO THE SELF OF CERTAINTY IN THE IDENTIFICATION OF THE SOURCE OF A BULLET.
THAT WAS... THAT WAS THE LEVEL THAT HAD BEEN TESTIFIED TO BY

THE WITNESS IN THIS CASE, IS
THAT CORRECT.
>> I DON'T THINK TECHNICALLY
THAT IS CORRECT.
>> NOT TECHNICALLY CORRECT WHY
MIGHT IT BE OTHERWISE CORRECT?
>> LET ME EXPLAIN.
WHAT HAPPENED IS, WE HAD THE
2002 HEARING.
AND WE HAVE PETERS AND RANDICH
AND THE JUDGE SAYS THIS IS A
BATTLE OF EXPERTS AND, BATTLE OF
EXPERT OPINIONS AND THE FBI RUNS
-- IN 2005 -- MAYBE 2006, IS
WHEN THEY SAY THEY ARE NOT DOING
IT ANYMORE BUT SPECIFICALLY SAY,
THEY ARE STANDING BY THEIR
TESTIMONY BUT ARE NOT ABANDONING
IT AND, AT THIS POINT, WE HAVE
NOT HAD AN EVIDENTIARY HEARING
TO HAVE SOMEONE FROM THE FBI
EXPLAIN THAT AND MY READING OF
THE ANNOUNCEMENT WAS SIMPLELY,
WE WILL NOT DO IT ANYMORE.
AND THERE HAS NOT BEEN A
[INAUDIBLE] NOT UNTIL THE LETTER
OF 2008 WE HAVE SOMETHING
SPECIFIC WHERE THEY SPECIFICALLY
REVIEW HOW --
>> IT SEEMS LIKE, TO ME, AT THAT
POINT, THERE WAS INFORMATION
AVAILABLE TO COUNSEL, WHICH
CALLED ALL OF THIS INTO
QUESTION.
IN THAT, WOULD BE TIMELY THAT
STARTED THE CLOCK RUNNING.
BECAUSE OBVIOUSLY, WHAT HAPPENED
IS, IN 2005, WAS SIGNIFICANT.
>> I THOUGHT SO AND I NOTIFIED
THE COURT.
>> NOTIFIED THE COURT, WHAT DID
YOU --
>> I BELIEVE -- I BELIEVE EVERY
STEP OF THE WAY I WAS FILING
THINGS, ATTACHING NOTICES OF
SUPPLEMENTAL AUTHORITY, WHAT IS

HAPPENING, NEWSPAPER ARTICLES...
[INAUDIBLE] I DIDN'T HAVE
ANYTHING BEYOND THAT.
BEYOND THE REPORTING.
AND I KEPT TRYING TO ADVISE
EVERYBODY OF THESE DEVELOPMENTS.
>> THE QUESTION WOULD BE, WHEN
IN GOOD FAITH -- SINCE YOU WERE
REPRESENTING MR. SMITH
THROUGHOUT, DO NOT FEEL THAT IN
GOOD FAITH THAT YOU COULD FILE A
SEPARATE MOTION FOR NEW TRIAL,
ON THE REPORT OR JUST TRY TO --
AND THEN THE RELATED QUESTION
IS, DID THE JUDGE HOLD AN
EVIDENTIARY HEARING ON WHETHER
YOU EXERCISED DUE DILIGENCE.
>> NO, AN EVIDENTIARY HEARING
HAS NOT BEEN HELD.
AND, LET ME CORRECT MYSELF.
THIS COURT'S OPINION CAME OUT
MARCH 9, 2006.
MOTION FOR REHEARING WAS DONE,
AND SO JURISDICTION WAS NOT IN
THE CIRCUIT COURT AT THAT POINT
IN TIME.
WAS IN THIS COURT AND I KNOW
THAT BECAUSE OF THE ONE-YEAR
FEDERAL CLOCK I HAD TO FILE THE
FEDERAL HABEAS A CERTAIN TIME
AFTER THIS.
I DON'T REMEMBER WHEN THE
REHEARING WAS DENIED
SPECIFICALLY.
I FILED THE FEDERAL HABEAS AND
FILED THE 30th AT THE SAME TIME
AND -- THE 3850 AT THE SAME
TIME, BEFORE THE "60 MINUTES"
STORY I INCLUDED THE CLAIM BASED
ON WHAT I HAD WHICH WAS SIMPLY,
THE ANNOUNCEMENT THEY WEREN'T
DOING IT ANYMORE AND THIS STATE
RESPONDED, SAYING, THAT DOESN'T
MEAN ANYTHING AND THE JUDGE
RULED, THAT DOESN'T MEAN
ANYTHING.

AND, IN FACT, THERE'S AN ORDER DENYING THE 3850 WITH THE CLAIM PLED ON THE BASIS OF SIMPLY THE FBI IS NOT DOING THE TEST ANYMORE.
NOVEMBER, I THINK NOVEMBER 7, OF 2007.
WE WERE -- THE JUDGE ANNOUNCED THE RULING.
AT THAT POINT IN TIME, I WAS SURPRISED, I ASKED FOR 30 DAYS, BECAUSE I NEEDED SOME TIME -- OTHER STUFF WAS GOING ON TO DO A REHEARING AND IN THE 30 DAY PERIOD WHILE WORKING ON THE REHEARING, THE "60 MINUTES" STORY HAPPENED AND SO I HAVE PLED, PRIOR TO "60 MINUTES" STORY, WHAT YOUR HONOR ASKED ABOUT, THE FBI IS NOT DOING THE TESTING ANYMORE.
BUT, SAYS... [INAUDIBLE] THE JUDGE RULED IT DOESN'T MEAN ANYTHING AND THE 60 MINUTES STORY HAPPENED AND I THEN ON DECEMBER 4TH, OF 2007, PLEAD THE "60 MINUTES" AND ASK FOR THE OPPORTUNITY TO AMEND THE 3850 TO INCLUDE THIS INFORMATION.
ULTIMATELY THE JUDGE GRANTS ME THE OPPORTUNITY TO AMEND, AND THE AMENDMENT IS DUE AT THE END OF MAY AND I GET COPIES OF THESE LETTERS, THAT ARE ISSUED BY THE FBI, MAY 27, 28, 200 8 AND INCLUDE THEM IN THE 3850 FILED AT THE END OF MAY, 2008.
EVERY STEP OF THE WAY I WAS TRYING TO BRING THE ISSUE UP.
AND THE STATE MAINTAINED, DIFFERENCE OF EXPERTS UNTIL THE LETTER ACTUALLY SHOWED UP, FROM THE FBI AND THOSE ARE --
>> SINCE YOU HAVE LIMITED TIME, LET'S -- YOU DIDN'T HAVE AN EVIDENTIARY HEARING IN THIS CASE

ON THE BULLET ANALYSIS BUT IF
YOU BRING IT AS A MOTION FOR
RETRIAL UNDER JONES, THE
STANDARD IS A HIGHER STANDARD
THAN A... BRADY AND CERTAINLY
GIGLIO WHICH IS A PROBABILITY OF
AN ACQUITTAL.
IS THAT CORRECT.
>> NORMALLY EXCEPT THE COURT --
INDICATED WHEN YOU HAVE BOTH THE
BRADY GAME AND THE NEWLY
DISCOVERED EVIDENCE CLAIM YOU
USE THE BRADY STANDARD.
>> LET'S GO ON THE NEWLY
DISCOVERED EVIDENCE.
SO THE JUDGE, IF WE WERE TO SEND
IT BACK FOR AN EVIDENTIARY
HEARING, FIRST THE QUESTION
WOULD BE, EVALUATE THE NATURE OF
THIS EVIDENCE.
AND, THEN WHAT YOU ARE SAYING
THE SECOND STEP WOULD BE, WHAT
WOULD THE JUDGE EVALUATE
REGARDING WHICH PART -- BRADY
CLAIMS ARE YOU TALKING ABOUT?
AND REALLY, FOR THIS COURT, FOR
ME, GIVE ME YOUR THREE STRONGEST
BRADY CLAIMS THAT YOU THINK
WOULD NEED TO BE LOOKED AT
CUMULATIVELY.
>> FIRST LET ME ADDRESS IN TERMS
OF SENDING IT BACK FOR
EVIDENTIARY HEARING.
WE'RE IN AN UNUSUAL POSTURE IN
TERMS OF NEWLY DISCOVERED
EVIDENCE BECAUSE WE HAVE THESE
LETTERS.
MY CONTENTIOUS IS THESE LETTERS
ESTABLISH THE EVIDENCE DOESN'T
MEET THE TEST AND THE TESTIMONY
-- THIS IS A SITUATION WHERE --
[INAUDIBLE] NEW EVIDENCE WOULD
BE ADMISSIBLE --
>> GO BACK TO THE STANDARD.
WE UNDERSTAND THAT.
GO TO THE PREJUDICIAL ASPECT.

>> IT REQUIRES THEM LOOKING AT THIS CASE, WITH HAVERKOST'S TESTIMONY STRUCK OUT AND NOT JUST LOOKING AT THE TRIAL BUT ALSO LOOKING AT WHAT HAPPENED WHEN THE COURT WAS CONSIDERING THE BRADY CLAIM AND, THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.
EVERY STEP OF THE WAY THE STATE AN COURTS RELIED UPON THE TESTIMONY IN AFFIRMING THE CONVICTION AND IF DENYING THE BRADY CLAIM.
BECAUSE, THIS WAS THE -- BECAUSE THE BRADY MATERIAL GOES TO IM IMPEACH ALL THE OTHER WITNESSES AND THE ONLY THING KEEPS -- BY... [INAUDIBLE] BRADY.
AND TURNING TO THE BRADY, THERE IS -- THERE IS JOHNSON AND, [INAUDIBLE] WITH MELVIN JOINS WHICH HAS NOT BEEN CLOSED AND MELVIN JONES, CALLING THE PROSECUTOR PRIOR TO THE SECOND TRIAL AND, SAID HE WAS AFRAID HE'D BE CHARGED WITH SEXUAL ASSAULT BECAUSE THE STEPDAUGHTERS --
>> HOW IS THIS -- THIS IS WHERE THE CHESS BOARD SITUATION CONCERNS ME.
WE HAD HELD THAT FACT OF JONES BEING CONCERNED ABOUT BEING CHARGED IS NOT --
>> YES.
YES.
>> THE 11th CIRCUIT SAID, WE WERE WRONG.
THAT WAS BRADY AND THEY SENT IT BACK TO THE TRIAL COURT TO EVALUATE ALL OF THIS BRADY EVIDENCE.
>> YES.
>> AND THAT'S NOW PENDING BEFORE THE 11th CIRCUIT.

>> YES.
>> THEY'LL WAIT FOR US...
>> YES.
>> BUT IN TERMS OF THE LAW OF OUR CASE, WE WOULDN'T BE CONSIDERING THAT AS BRADY.
SO, IN TERMS OF US GETTING YOU IN A WHIPSAW SITUATION, WOULD IT BE -- WOULD THE BEST BE TO SAY THIS IS NEWLY DISCOVERED EVIDENCE, SHOULD BE REMANDED FOR AN EVIDENTIARY HEARING AND THE TRIAL COURT SHOULD WAIT UNTIL THE 11th CIRCUIT RULES?
>> I MEAN, BECAUSE OTHERWISE, THIS IS NEVER -- I DON'T I DON'T RECALL A SITUATION WHERE THIS -- THESE PARALLEL TRACKS HAVE BEEN OCCURRING OR SHOULD WE LOOK AT WHAT HAS BEEN SAID BY THE 11th CIRCUIT AND MAKE OUR OWN DETERMINATION AS TO WHAT SHOULD BE LOOKED AT IN THE CUMULATIVE ANALYSIS.
>> FIRST OF ALL, IF IT HELPS, WHAT I THINK THE 11th CIRCUIT'S POINTS OF VIEW IS IN DECIDING WHETHER REASONABLE PROBABILITY OF A DIFFERENT OUTCOME UNDER BRADY THEY NEED TO KNOW WITH HAVERKOST TESTIMONY, UNDER STATE LAW IS ADMISSIBLE AND THAT WILL --
>> WE CANNOT DECIDE IN THE APPEAL WHETHER THE TESTIMONY WOULD BE ADMISSIBLE.
WE SAY THE NEWLY DISCOVERED EVIDENCE THAT CERTAINLY IT WOULD UNDERMINE HIS TESTIMONY.
SIGNIFICANTLY BUT WHETHER IT IS -- ARE YOU SAYING WE NOW SHOULD BE DECIDING WHETHER IT SHOULD HAVE BEEN FRYE TESTED BACK THEN WHEN IT --
>> MY POSITION IS THE COURT COULD SAY THE NEW INFORMATION

FROM THE FBI MEANS IT DOESN'T
MEET THE TEST AND THE EVIDENCE
SHOWS IT WAS NOT ADMISSIBLE --
BUT I UNDERSTAND THE COURT COULD
SAY WE'RE NOT PREPARED TO GO
THAT FAR AND WE HADN'T AN
EVIDENTIARY HEARING FIRST.
>> BUT AS FAR AS -- THIS DOESN'T
GO INTO THE NEXT DECADE, YOU
THINK THAT -- MENTIONED THAT THE
ISSUE WITH MELVIN JONES IS
BRADY.
>> YES.
>> ALL THE JONES INFORMATION,
AND HE WAS A WITNESS, AN
EYEWITNESS TO MURDER, THAT WAS
-- RELIED ON.
>> YES.
AND BRADY... MELVIN JOHNSON AND
McGRUDER --
>> DOES ANY OF IT GO TO THE
GUILT PHASE OR THE PRESIDENT --
>> GUILT PHASE, YOUR HONOR.
>> WHAT SAYS, IF HE WASN'T
INVOLVED IN THE SHOOTING AS
OPPOSED TO MAYBE NOT THE
SHOOTER.
>> THIS IS... [INAUDIBLE] YOUR
HONOR.
IT WAS ONLY DERRECK JOHNSON, THE
QUESTION WAS WHAT WAS THE DEGREE
OF HIS INVOLVEMENT.
>> JOHNSON AND THEN -- BUT YOU
HAVE -- YOU WOULD AGREE, OTHER
EVIDENCE OF HIM HAVING THE SAME
GUN.
>> THE GUN WAS NEVER FOUND.
>> CANADIAN TOURIST.
>> A GUN THE CANADIAN TOURIST
SAW BUT THE GUN WAS NEVER FOUND
AND SO ALL THE RELYING UPON ARE
DERRICK JOHNSON, MELVIN JONES,
IDENTIFICATION OR DESCRIPTION OF
A GUN AND THAT IS WHY THE BULLET
LEAD TESTIMONY BECOMES SO
IMPORTANT.

BECAUSE, THERE IS NO GUN.
AND, IT IS THE BULLET LEAD IS WHAT PROVIDES THE LINK BETWEEN THE VICTIM, THE BULLET FRAGMENT NEXT TO THE VICTIM AND DERRICK SMITH'S --
>> IN SENDING ALL OF THAT, THOUGH, IS PAST BRADY.
IS THERE ANYTHING ELSE IN THE CASE NOW THE 11th CIRCUIT HAS NOT CONSIDERED AS BEING BRADY.
>> PRISCILLA WALKER.
THERE IS AN ASPECT OF PRISCILLA WALKER BEFORE THE -- THE IMPORTANT ASPECT INCLUDED IN THE 3850, WHEN PREPARING THE FEDERAL HABEAS I DISCOVERED HE WAS PATRICIA SUGGS, AT THE TIME SHE TESTIFIED IN 1990 AND THEY CHANGED HER INTO STREET CLOTHES AND BRING HER IN AND DO NOT DISCLOSE SHE'S IN JAIL ON A PROBATION REVOCATION.
DOESN'T KNOW THAT.
AND SHE'S ARRESTED MAY 4TH, APPEARS IN COURT MAY 8TH, ENTER IS A NOT GUILTY PLEA, MAY TENTH TESTIFIES AGAINST SMITH UNDER A DIFFERENT NAME AND MAY 11th BONDS OUT OF JAIL.
>> ISN'T IT A PUBLIC RECORD -- WASN'T THAT INFORMATION THERE, THAT WOULD HAVE --
>> WHAT WAS THERE --
>> LET YOU KNOW WHAT YOU -- IF YOU NEEDED TO LOOK INTO THAT.
>> WE DID LOOK INTO IT AND WHAT WERE THERE WERE FOUR NAMES THAT, SOME -- ONE OF THOSE FOUR NAMES WAS USING OTHER NAMES AS ALIASES.
THE INFORMATION ON PATRICIA SUGGS HAD A DIFFERENT DATE OF BIRTH AND SOCIAL SECURITY NUMBER THAN PRISCILLA WALKER AND IF THERE WAS A REAL PRISCILLA

SUGGS, IT IS -- [INAUDIBLE] WE
DIDN'T KNOW.
ALL WE KNEW IS [INAUDIBLE] WE
TALK TO PRISCILLA WALKER.
AND SHE TELLS US, I'M NOT
PROSECUTE ATTORNEY SUGGS AND
NEVER HAD THE WELFARE FRAUD CASE
AND WHAT ARE WE SUPPOSED TO DO
AND WE HAVE THE NAMES AND LOOK
INTO IT AND NOT UNTIL I DISCOVER
IN '06, WHEN -- WITH THE FEDERAL
HABEAS IN 1992, PRISCILLA WALKER
HAD A SENTENCING AND THEY TRIED
TO FIGURE OUT THE SCORE SHEETS
ON THE SENTENCING GUIDELINES AND
DID A FINGERPRINT ANALYSIS OF
THE PATRICIA SUGGS CASE AND SAID
IT IS THE SAME PERSON.
IT'S NOT AS THOUGH WE HAVE THE
NOTATION.
AND, RELY ON BANKS, AND THE
SUPREME COURT AND WHEN THE STATE
HIDES INFORMATION LIKE THIS,
THEY CAN'T DROP BREAD CRUMBS AND
SAY, OH, YOU ARE SO...
[INAUDIBLE] NOW, THEY HAD AN
OBLIGATION TO SAY, HEY, SHE WAS
IN JAIL.
>> IS THIS A GIGLIO VIOLATION.
>> I BELIEVE SO, YOUR HONOR AND
THAT IS ALSO IN THE CURRENT 3850
--
>> THAT HAS NOT GONE TO AN
EVIDENTIARY HEARING.
>> THAT'S CORRECT.
IT HAS NOT GONE TO AN
EVIDENTIARY HEARING AND THE 11th
CIRCUIT SAID THAT IS NOT GOING
TO BE EXHAUSTED IN STATE COURT
AND SO WE WILL NOT CONSIDER
THAT.
>> YOU ARE DOWN TO 2 MINUTES.
WE'VE HELPED YOU USE YOUR TIME
SO MUCH, I'LL GIVE YOU AN
ADDITIONAL COUPLE OF MINUTES.
>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THIS HONORABLE COURT, KATHERINE BRONCO WITH THE ATTORNEY GENERAL'S OFFICE, I WANT TO BREAK A BRIEF COMMENT, ACCUSATION HAVE BEEN MADE IN OPPOSING COUNSEL'S REPLY BRIEF ALLEGING DISHONESTY WITH RESPECT TO MY ANSWER BRIEF AND I DENY THE ACCUSATION AND STAND BY MY ANSWER BRIEF AND WAS DEPEND ON THE OPINIONS AN ORDERS ISSUED BY THE DISTRICT AND 11th CIRCUIT.
NOW MOVING ONTO MY ARGUMENT, YOUR HONORS.
THIS IS A SUCCESSIVE POSTCONVICTION MOTION INVOLVING COMPARATIVE BULLET LEAD ANALYSIS TESTIMONY AND IS MISLEADING TO SAY THERE WAS NO EVIDENTIARY HEARING EVER ON BULLET LEAD ANALYSIS TESTIMONY BASS INDEED THERE WAS --
>> THAT WAS THE ONE, THOUGH, WHEN FBI WAS STANDING BY THE AGENT'S TESTIMONY, AND, THEY DIDN'T DISOWN -- I MEAN, IT IS A DRAMATIC CHANGE AND I -- YOU HAVE TO GIVE THE FBI CREDIT FOR COMING FORTH AND NOT TRYING TO CONTINUE TO STONEWALL, BUT NOT ONLY THEY DECIDE THEY WILL NOT USE IT ANYMORE, BUT COMMITTED TO GO BACK, EVERY CASE, AND MAKE SPECIFIC FINDINGS.
SO, 2002 EVIDENTIARY HEARING, WE RELIED ON AND -- IN AFFIRMING THIS QUICK HAD TESTIMONY THAT THE FBI, AT THAT POINT, IT WAS THEIR POSITION, BUT, IS DRAMATICALLY CHANGED NOW.
>> WHAT THEIR POSITION IS, YOUR HONOR, IS SET OUT IN THEIR LETTER AND IT SAYS -- AND THE LETTERS ARE VERY SPECIFIC AND WE HAVE -- EXCUSE ME.
AND THERE ARE A TOTAL OF THREE

LETTERS.
LETTERS THAT WERE ISSUED ON MAY 27th AND MAY 28th, 2008.
THERE WAS A THIRD LETTER THAT WAS ISSUED IN JANUARY OF 2009.
THE LETTER IN THE FBI LETTERS AND YOUR HONOR, BRIEFLY READING, BECAUSE I DON'T WANT TO MISSPEAK, FROM THE JANUARY 12, 2009 -- ALL THREE LETTERS ARE IN THE FILE AND WE HAVE CITED THEM IN OUR ANSWER BRIEF AS WELL AND THE FBI STATES IN THEIR JANUARY LETTER, REFERRING TO THE MAY 27th AND 28th, 2008 LETTERS.
IN THOSE LEGISLATORS THE FBI CONCLUDED THE TESTIMONY PROVIDED BY THE FBI LABORATORY EXAMINER, AT THE 1990 TRIAL OVERSTATED THE SIGNIFICANCE OF THE EXAMINATIONS CONDUCTED, POSSIBLY LEADING THE JURY TO BELIEVE THE RESULTS WERE MORE MEANINGFUL THAN THEY WERE AND ADDITION THE OPINION OF THE FBI LABORATORY THE TESTIMONY PROVIDED BY FBI LABORATORY EXAMINER CHARLES PETERS AND THE 2002 POSTCONVICTION PROCEEDINGS, CONFORMED WITH THE APPROPRIATE STANDARDS.
SINCE ISSUING THESE LETTERS, THE FBI HAS BEEN ASKED BY THE INNOCENCE PROJECT TO CLARIFY ITS ASSESSMENT OF MR. PETERS' TESTIMONY AND YOUR HONOR, THERE IS ONLY ONE MORE PARAGRAPH IF I MAY TO MAKE SURE I DO NOT MISSPEAK.
THE FBI'S OPINION MR. PETERS' TESTIMONY WAS APPROPRIATE WAS BASED ON THE SPECIFIC QUESTIONS ASKED BY THE COURT REGARDING WHETHER BASED ON THE SCIENTIFIC DATA AVAILABLE DURING THE APPELLATE PROCEEDING, IT WAS MR. PETERS' OPINION THAT

MR. HAVEERKOST EXAGGERATED THE
EVIDENCE... [INAUDIBLE] AT THAT
TIME, TWO YEARS BEFORE THE
RESULTS OF THE NATIONAL RESEARCH
COUNSEL REVIEW OF THE CBLE
TECHNIQUES WERE ESTABLISHED,
MR. PETERS' TESTIMONY WOULD HAVE
BEEN APPROPRIATE AND APPLYING TO
TODAY'S STANDARD OF REVIEW AND
THE EXTENT THE APPELLATE
TESTIMONY OF MR. PETERS IS
PROFFERED TO DEMONSTRATE THE
APPROPRIATENESS OF
MR. HAVEERKOST'S TESTIMONY, THE
TESTIMONY OF MR. HAVERKOST'S
TESTIMONY WAS INAPPROPRIATE FOR
THE REASONS STATED AND IN0
WORDS, AT THE TIME OF THE TRIAL,
THE FBI AND BY VIRTUE OF THESE
LETTERS, HAS ANNOUNCED HE
OVERSTATED THE SIGNIFICANCE, IN
OTHER WORDS, DRAWING THE
DEFENDANT TO....
THE NRC --
>> DRAW --
>> OVERSTATING THE LINK.
>> THE LINK.
>> YOU HAVE -- ICP TESTIMONY.
>> ESSENTIALLY HE SAID IT
COULDN'T BE COINCIDENCE.
THE MATCH.
>> IN LIGHT OF THE TEN-YEAR
SPAN, BETWEEN THE PURCHASE OF
THE BULLETS WHICH WAS 1973, OR
1972, OR 1973, AND, FINDING THE
COMPOSITION.
BY THE MATCH THEY ARE TALKING
ABOUT THE PORTIONS OF THE
ELEMENTS, NOT THAT YOU HAVE FIVE
ELEMENTS AND SAY THESE FIVE
ELEMENTS ARE WHAT MAKES THE
MATCH, WHAT WOULD MAKE THE MATCH
WOULD BE THE PROPORTIONS THAT
YOU HAVE.
SO THE ODDS OF FINDING THOSE AND
THE TESTIMONY WAS NOT ACTUALLY

TO THE BOX, WHEN HE -- IT WAS
LINKING TO A COMMON SOURCE,
INDEED, AND WE CITED IN OUR
BRIEF, HAVERKOST SAID, SURE YOU
WILL GET BOXES WITH SIMILAR
BULLETS AND DIFFERENT BULLETS
BUT WHAT HAPPENS WHEN YOU HAVE
THIS LEAD FRAGMENT THAT IS
MATCHED TO BULLETS PURCHASED TEN
YEARS EARLIER, THE CHANCES
BECOME MORE AND MORE REMOTE AND
IT IS ESSENTIALLY OVERSTATING
THE SIGNIFICANCE OF THE CHANCES
OF FINDING AN UNSHOT BOX OF
BULLETS OR UNSHOT BOX OF BULLETS
WITH THAT COMMON SOURCE.
NOW, AGENT ASBURY TESTIFIED TO
THE -- ASBERY TESTIFIED TO
THE... ANALYSIS AND THAT
TESTIMONY HAS NEVER BEEN
CHALLENGED AND HE TESTIFIED AT
THE SAME HEARING AND TRIAL, 1990
TO THE MATCH OF THREE AND AGAIN,
EXPLAINED BY "MATCH", THIS IS
WHAT I MEAN BY "MATCH" AND SAID
IT WAS CONSISTENT WITH.
NOW, THE IDENTIFICATION OF THE
COMPARATIVE -- THE LEAD, THE
COMPARATIVE BULLET LEAD
ANALYSIS, IS NOT WHAT IDENTIFIES
SMITH AS THE SHOOTER.
AS A MATTER OF FACT, IN CLOSING
ARGUMENTS, DEFENSE COUNSEL
ARGUED AND I'M READING FROM
CLOSING ARGUMENT, VOLUME 8, OF
THIS COURT'S RECORD CASE 76491,
RECORD PAGE 1326 AND DEFENSE
COUNSEL SPEAKING TALKING ABOUT
THE WITNESSES...
>> BEFORE YOU GO INTO THAT, ARE
YOU AT THIS POINT -- SINCE IT
WAS DENIED -- THE EVIDENTIARY
HEARING, THIS TIME, ARE YOU
GOING TO THE THIRD -- PREJUDICE
OR THE.
>> LIKELIHOOD OF ACQUITTAL.

>> WHAT DO YOU SAY, THOUGH, ABOUT... AND DID YOU ARGUE IN FRONT OF THE 11th CIRCUIT.
>> I DID.
>> THEY ARE WAITING FOR US TO SAY WHETHER THIS IS -- COUNTS AS NEWLY DISCOVERED EVIDENCE. BEFORE THEY CAN THEN LOOK AT ALL OF THESE OTHER AREAS THEY THINK ARE BRADY.
AND THEN WE'VE GOT A POSSIBILITY OF THE -- PRISCILLA WALKER ISSUE.
HOW, BASED ON OUR CASE LAW, CAN WE -- I MIGHT AGREE WITH YOU THAT IF ALL WE WERE LOOKING AT RIGHT NOW, WAS NOTHING ELSE, FOR OR PENDING, YOU JUST TOOK -- TAKE THIS ANALYSIS OF JONES, THEY ARE NOT GOING TO MEET THE STANDARD OF PROBABILITY. ACQUITTAL, BASED ON THIS, SO I -- BUT, WHAT I'M HEARING, WOULD YOU ADDRESS HOW, EITHER THIS COURT OR THE TRIAL COURT, IS APPROPRIATELY ANALYZED, CUMULATIVE NATURE OF WHAT HAS BEEN DISCOVERED.
>> WITH RESPECT TO WHAT IS NEWLY DISCOVERED, THE DEFENSE RELIED ON MORDENTE IF YOU ARE -- [INAUDIBLE] MR. McCLAIN SAYS HE IS NOT RAISING A BRADY CLAIM, HE IS RAISING A STRAIGHT-UP JONES CLAIM AND WHEN WE LOOK AT THIS CASE, WHAT WE HAVE BEFORE US IS THE TRIAL COURT'S RULING ON A SUCCESSIVELY RULE 3.85 MOTION, RAISING THE CBLA TESTIMONY AND, TO A LESSER EXTENT, CERTAINLY THERE WAS AN ALLEGATION WITH RESPECT TO PRISCILLA WALKER THAT HAS BEEN FOUND BY THE 11TH CIRCUIT TO BE PROCEDURALLY BARRED AND THE --
>> PRISCILLA WALKER, IF THAT IS

A BRADY CLAIM, BRADY DOESN'T HAVE A -- YOU KNOW, THERE MAY BE OTHER ISSUES.
EQUALLY AVAILABLE TO BOTH SIDES AND THAT WOULD BE A -- BUT AS FAR AS ACTUAL, DUE DILIGENCE ON BRADY, WHAT I'M HEARING MR. McCLAIN SAY IS THAT THE -- WHEN THE STATE PUT ON THE WITNESS, THE WITNESS WAS ACTUALLY IN JAIL ON CHARGES AND VIOLATION OF PROBATION, IS THAT CORRECT.
>> THE ALLEGATION IS THAT PRISCILLA WALKER HAS AN ALIAS OF PATRICIA SUGGS.
THE STATE'S RESPONSE, THIS WAS RAISED EARLY ON IN THE PRIOR 3851 WITH RESPECT TO A PRISCILLA WALKER CLAIM AND THE STATE'S PUBLIC RECORDS DISCLOSURES AND THE PRIOR CASE PROVIDED THE ALIAS INFORMATION, I WOULD SAY I PERSONAL DON'T KNOW IF PRISCILLA WALKER IS PATRICIA SUGGS AND I UNDERSTAND THE REPRESENTATION AND THE ARGUMENTS MR. McCLAIN MADE BEFORE BUT THE FINDING WAS THAT THAT IS PROCEDURALLY BARD. YOU HAVE A DUE DILIGENCE PRONG TO HAVE USED THAT INFORMATION. YOU HAD IT BACK AT LEAST IN 2000 AS THE TRIAL COURT FINDS --
>> WHAT IS THAT INFORMATION -- WHAT IF THE INFORMATION SHOWS THEY ARE NOT THE SAME PEOPLE, DIFFERENT SOCIAL SECURITY NUMBERS AND DIFFERENT DATES OF BIRTH AND SHOWS THESE AREN'T THE SAME PEOPLE?
>> YOUR HONOR I CANNOT TELL YOU ANYTHING OTHER THAN WHAT THE RECORDS WERE PROVIDED.
THEY PROVIDED AN ALIAS BY THAT NAME.
>> THAT IS -- EXCUSE ME, THAT IS

NOT WHAT I ASKED.
IF THE STATE GIVES DEFENSE COUNSEL INFORMATION THAT FACIALLY SHOWS THESE TWO PEOPLE ARE NOT THE SAME PERSON, LOOK AT DATES OF BIRTH AND EVERYTHING ON THERE AND LATER SOMETHING DEVELOPS AND DEMONSTRATES, YES, THEY WERE, HOW DO WE DEAL WITH THAT?
THE STATE CAN JUST WALK AWAY FROM THAT?
WHEN THEY ARE PULLING SOMEONE OUT OF A JILL CELL?
I DON'T KNOW IF IT IS TRUE OR NOT.
THERE IS NO HEARING ON IT.
BUT IF THAT IS THE CASE, WHO IS HIS ARGUMENT INCORRECT.
>> I THINK IT IS INCORRECT, YOUR HONOR, BECAUSE THE ALLEGATION IS THAT SOMEHOW THE STATE WAS WITHHOLDING INFORMATION AND HE COULD NOT HAVE DISCOVERED IT EARLIER.
>> I JUST -- HOW CAN YOU DISCOVER, IF IN FACT THESE ARE THE TRUE FACTS, WITNESS IN JAIL UNDER A DIFFERENT NAME, BRING HER INTO THE COURTROOM, NEVER DISCLOSES AND WHEN WE DISCLOSE IT IS INCORRECT INFORMATION, NEVER CONNECTS THE TWO, DOES NOT CONNECT THE TWO, DATES OF BIRTH, ALL OF THESE THINGS ARE DIFFERENT.
HOW CAN WE LOOK AT THAT?
ARE YOU SAYING THE STATE SATISFIES ITS BURDEN, IF IT GIVES INFORMATION THAT IS INCORRECT, YET, PULLS SOMEBODY OUT OF A JAIL CELL TO TESTIFY, AND NEVER DISCLOSES.
>> YOUR HONOR, I'M SAYING THE CONVERSE OF THAT.
THE INFORMATION THE STATE GAVE

WAS NOT INCORRECT.
>> WE HAVEN'T HAD A HEARING ON
THAT.
WE DON'T KNOW.
AM I CORRECT -- THERE HAS NOT
BEEN AN EVIDENTIARY HEARING.
THESE ARE ALLEGATIONS.
I AGREE, WE DON'T KNOW FOR SURE.
BUT THOSE ARE THE ALLEGATION.
>> AND THAT WAS THE CLAIM THAT
WAS... ALLEGATIONS REGARDING
PRISCILLA WALKER WERE ALLEGED IN
THE ORIGINAL POSTCONVICTION
PLEAD PROCEEDING AND WERE NOT
PURSUED --
>> I UNDERSTAND THEY FOUND OUT
ABOUT HER BEING PULLED OUT OF A
JAIL CELL MUCH LATER.
AM I WRONG --
>> THOSE ARE MR. McCLAIN'S
ALLEGATION.
WHAT WE ARE RELYING ON ARE THE
FACE OF THE DOCUMENTS.
THAT WERE PROVIDED TO THE
DEFENSE.
AND IN THE CASE --
>> YOU SEE, THE PROBLEM WE HAVE
IS THIS IS SOMEWHAT, SOMEWHAT A
JIGSAW PUZZLE AND IT IS SORT OF
ALWAYS INTERESTING HOW SOMEHOW,
MR. McCLAIN EITHER GETS THESE
CASES OR IS ABLE TO PULL ALL OF
THIS TOGETHER.
BUT, IN DOING THAT, AND WITHOUT
-- THE RECORD, RIGHT NOW, IS --
ARE THESE ALLEGATIONS BUT WHAT
I'M CONCERNED ABOUT AND WHAT I
HEAR JUSTICE LEWIS SAYING IS
THAT RIGHT NOW, THERE IS A
POTENTIAL CLAIM THAT AS TO
PRISCILLA WALKER, THAT THE
STATE, THROUGH ITS AGENTS TOOK
HER OUT OF JAIL, TO TESTIFY.
NOW, IT MAY BE THAT IS NOT THE
CASE.
IT MAY BE.

BUT SOMEBODY HAS TO EVALUATE
THAT.
AND HE'S TELLING ME -- AND WE
CAN LOOK AT THIS, THE 11th
CIRCUIT SAID, AS TO THAT
PARTICULAR CLAIM, OF WHETHER
PATRICIA WALKER WAS IN JAIL,
THAT THAT IS STILL THE STATE
SUPPORT CLAIM AND... I DON'T
KNOW, I THOUGHT I HEARD HIM SAY
THAT.
IF WE FEEL THE CBLA EVIDENCE HAS
NOT BEEN EVALUATED BY THE TRIAL
COURT, AS NEWLY DISCOVERED
EVIDENCE CLAIMS, BUT THAT THERE
ARE OTHER CLAIMS OF BRADY, THE
11th CIRCUIT HAS SAID, BRADY,
THE MELVIN JONES ISSUE, WHICH IS
SIGNIFICANT.
HE WAS AN EYEWITNESS, AND SAID
IT WAS MR. SMITH, THAT WAS THE
SHOOTER AND INVOLVED IN THE
CASE.
HOW DO YOU SAY THAT THE TRIAL
COURT SHOULDN'T BE DOING A
CUMULATIVE ANALYSIS OF ALL OF
THIS BRADY NEWLY DISCOVERED
EVIDENCE CLAIM AND MAYBE GIGLIO?
>> BECAUSE YOUR HONOR WHEN YOU
HAVE A VALID PROCEDURAL BAR THAT
SHOULD BE ENFORCED, AND THE 11th
CIRCUIT IN THEIR OPINION ON
REMAND MADE THAT POINT OF,
ADDRESSING BRADY CLAIMS AND THEY
SAY, WE WILL NOT CONSIDER CLAIMS
THAT ARE PROCEDURALLY BARD.
>> WHICH BRADY CLAIMS DID THEY
SAY WERE PROCEDURALLY BARRED.
I ALWAYS UNDERSTOOD IF THE STATE
HAS FAVORABLE INFORMATION THAT
IS EXCULPATORY, UNLIKE THE
OTHER, BRINGING INEFFECTIVE
ASSISTANCE CLAIMS OR NEWLY
DISCOVERED EVIDENCE CLAIMS,
BRADY IMPOSES THE OBLIGATION ON
THE STATE, THEY CAN'T SAY, WELL,

YOU SHOULD HAVE FOUND IT OUT.
IT IS UP TO THE STATE TO MAKE SURE THAT THE ACCURATE INFORMATION IS -- AND EXCULPATORY INFORMATION IS PROVIDED TO THE DEFENDANT.
>> WHEN YOU ARE DISCUSSING BRADY, CERTAINLY, YOUR HONOR, THE STATE HAS AN OBLIGATION NOT TO SUPPRESS INFORMATION THAT IS IMPEACHMENT OR EXCULPATORY AND THEN IT BECOMES A MATERIALITY ANALYSIS.
OF WHAT CONSTITUTES BRADY, INFORMATION IS EQUALLY ACTIONSIBLE TO THE DEFENSE, IT DOES NOT QUALIFY AS EVIDENCE WHICH IS -- UNDER BRADY.
>> THAT IS NOT A PROCEDURALLY BAR, AND IT IS -- WE HAVE A CASE WHERE SOMEONE SAYS THEY SHOULD HAVE DISCLOSED THEY FAILED A LIE DETECTOR TEST, AND THEY EITHER KNOW THEY DID OR DIDN'T AND KNOW THEIR MEDICAL HISTORY AND THERE ARE SOME THINGS PECULIARLY IN THE INFORMATION OF THE DEFENDANT.
BUT, HERE, ARE YOU SAYING THE -- PRISCILLA WALKER, IS CLEAR, THAT WAS EQUALLY AVAILABLE AND THE STATE DIDN'T HAVE SUPERIOR INFORMATION THAT SHE WAS PULLED OUT OF JAIL TO TESTIFY, IF THAT IS THE ALLEGATION?
>> WITH RESPECT TO THE ALLEGATION OF HER BEING PULLED OUT OF JAIL, THAT... IS AN ALLEGATION THAT MR. McCLAIN HAS MADE IN HIS SUCCESSIVE POST QUICK MOTION AND THE TRIAL COURT MADE A FINDING WITH RESPECT TO THE INFORMATION IDENTIFYING AN ALIAS OR VARIOUS ALIASES FOR SOMEONE BY THE NAME OF PATRICIA WALKER, THAT WAS INFORMATION

THAT WAS AVAILABLE ON THE PUBLIC RECORDS, THAT WAS INFORMATION THAT WAS DISCLOSED IN THE PRIOR POSTCONVICTION PROCEEDINGS, AND INFORMATION THAT IS PROCEDURALLY BARD.
>> ARE YOU TELLING ME IF THE STATE PUTS SOMEBODY ON THE STAND, BECAUSE WE SANCTIONED A LAWYER, THAT PUT ON SOMEBODY AND ACTUALLY USED A FALSE NAME.
THAT THE STATE PUTS ON SOMEBODY THAT IS ACTUALLY KNOWN BY SOMEBODY ELSE, IN THE TRIAL, NOT AFTERWARDS, THAT THEY DON'T HAVE A DUTY TO FIND OUT THE CORRECT IDENTITY OF THE PERSON THEY ARE PUTTING ON?
AT THE TIME THEY PUT THAT WITNESS ON THE STAND?
>> YOUR HONOR, I DON'T BELIEVE THERE HAS BEEN ANY ALLEGATION THAT THIS INDIVIDUAL DID NOT TESTIFY WITH THEIR TRUE NAME.
I ALSO CALL THAT -- I DON'T RECALL BEING ANY ALLEGATION THAT THIS WITNESS TESTIFIED UNDER A FALSE NAME.
THE WITNESS MAY HAVE HAD OTHER CHARGES UNDER OTHER NAMES.
I BELIEVE IS THE ALLEGATION AND YOU MAY WANT TO ASK MR. McCLAIN ON REBUTTAL.
TO CLARIFY THAT.
BUT, IT IS MY UNDERSTANDING, THEY HAVE NEVER ALLEGED PRISCILLA WALKER IS NOT PRISCILLA WALKER WHO TESTIFIED AS PRISCILLA WALKER.
>> LET ME ASK YOU, ARE YOU REPRESENTING TO THE COURT THAT A TRIAL JUDGE ALREADY LOOK AT THIS INFORMATION ABOUT THIS WITNESS BEING REMOVED FROM A JAIL TO COME AND TESTIFY AND HAS FACTORED THAT INTO ANY ANALYSIS.

>> NO, YOUR HONOR.
>> OKAY.
ALL RIGHT, THANK YOU.
>> [INAUDIBLE].
>> NOT AS TO THAT.
>> NO, YOUR HONOR.
>> OKAY.
>> THANK YOU.
WITH RESPECT TO THE -- IF I MAY GET BACK TO THE LINKING DERRICK TYRONE SMITH AS THE SHOOTER, I WAS GOING TO BRIEFLY DIRECT THE COURT'S ATTENTION TO THE CLOSING ARGUMENT THAT WAS PRESENTED AT THE RETRIAL.
AND, THIS IS DEFENSE COUNSEL TALKING ABOUT THE FINGERPRINT EXPERT --
>> LET ME ASK --
>> WHAT DO THEY TELL YOU AT PAGE 1326.
THEY DON'T TELL YOU WHO SHOT JEFFREY SONGER, THEY DON'T KNOW.
THEY SIMPLY DON'T KNOW.
HOW DO WE GET THE TESTIMONY AS TO WHO SHOT JEFFREY SONGER?
AND YOU GET IT FROM FOUR PIECES OF DIRECT EVIDENCE.
YOU GET IT FROM THE CO-DEFENDANT'S TESTIMONY, JOHNSON, FROM MELVIN JONES, YOU GET IT FROM THE ADMISSIONS TO PRISCILLA WALKER, FROM THE ADMISSIONS TO JAMES MATHEWS.
YOU GET IT FROM HIS SEPARATE ADMISSION.
YOU ALSO GET INDEPENDENT WITNESSES CIRCUMSTANTIALLY PLACING THE GUN IN THE HANDS --
>> THE -- I... [INAUDIBLE] THE CHART HERE, THERE ARE ISSUES POTENTIALLY AS TO EACH OF THOSE WITNESSES, SO -- THOSE ARE MELVIN JONES...
>> [INAUDIBLE].
>> ACTUALLY -- APPARENTLY...

THOMPSON IN JAIL, SOMETHING
ABOUT THAT... [INAUDIBLE]
LISTING OF JONES AS THE POSSIBLE
SUSPECT.
SO WE HAVE THAT, NOW WE HAVE THE
PRISCILLA WALKER AND THE
QUESTION ABOUT HER AND JOHNSON,
THE CO-DEFENDANT, OBVIOUSLY
ANYTHING HE TOLD OTHER PEOPLE,
LARRY MARTIN, THE CAB DRIVER,
SO, THIS -- THIS STRONG CASE
THAT YOU ARE SAYING, YOU KNOW,
THESE WERE -- DOESN'T REALLY
MATTER WHAT THE CBLE WAS, THERE
ARE ALL OF THESE OTHER WITNESSES
HE IS CALLING INTO QUESTION,
OTHER WITNESSES.
>> CERTAINLY HE'S CALLING INTO
QUESTION THE OTHER WITNESSES,
BUT I DON'T BELIEVE HE CALLED
INTO QUESTION MATHEWS AT ALL BUT
YOU ALSO HAVE IN ADDITION TO THE
DIRECT EVIDENCE AND YES, HAVE
THEY BEEN IMPEACHED?
YES, DOES THAT MEAN WE THROW OUT
THEIR TESTIMONY ENTIRELY?
NO, IT MEANS YOU LOOK AT THE
EVIDENCE THAT HAS BEEN USED TO
CHALLENGE THEM.
BUT YOU ALSO HAVE THE WITNESSES
BEFORE, DURING AND AFTER THE
MURDER PLACING THE ONLY WOULDN'T
WITH THE SIMILARLY DESCRIBED
BLUE/BLACK HANDGUN IN THE
POSSESSION OF THE DEFENDANT,
DERRICK TYRONE SMITH AND YOU
HAVE, STILL MR. CONE SAYING IT
MATCHED THE -- MR. CONE -- OTHER
WITNESSES DESCRIBING IT AS
MR. CONE MATCHED THE DESCRIPTION
AND, I SEE I HAVE RUN OUT OF
TIME.
>> [INAUDIBLE].
>> THANK YOU VERY MUCH, YOUR
HONOR.
APPRECIATE THAT.

THE STATE WOULD ARGUE THAT --
STILL, THAT THE EVIDENCE THAT
WAS PRESENTED AS TO THE
COMPARATIVE BULLET LEAD, THE
TESTING OF THOSE QUANTIFIABLE
SAMPLES WOULD STILL BE
ADMISSIBLE.
THE ONLY THING YOU WOULD FIND
RIGHT NOW, IS OKAY.
THE DEFINITENESS OF THE
CONCLUSION THAT THE FBI WOULD
SAY YOU KNOW THAT THAT
CONCLUSION THAT MATCHING THE
COMMON SOURCE AND, ACTUALLY IN
POSTCONVICTION DR. RANDICH
TESTIFIED THERE WERE MELT
POURERS, THAT COULD POUR FROM
THE BULL LIT AND YOU CAN HAVE
DIFFERENT BULLETS MATCHING AND
SO REALLY, HIS TESTIMONY HELPED
THE STATE MORE THAN ANYTHING
BECAUSE YOU SAY, IF YOU HAVE ALL
DIFFERENT SORTS OF COMPOSITIONS
OF BULLETS, HERE YOU FIND A LEAD
FRAGMENT THAT MATCHES TWO
BULLETS THAT WERE PURCHASED IN
1972.
SO HIS TESTIMONY ACTUALLY WAS --
THE DEFENSE TESTIMONY OF
DR. RANDICH WOULD STRENGTHEN THE
STATE'S ARGUMENT.
THANK YOU, YOUR HONORS.
>> DR. RANDICH WOULD NOT...
[INAUDIBLE] THE TESTIMONY WAS,
THIS IS JUNK SCIENCE AND
SHOULDN'T BE CONSIDERED.
AS TO ASBERY'S TESTIMONY THE
CLAIM IS, HE DIDN'T REACH THE
CONCLUSION, ALL HE DID WAS SAY
HE DID THE TEST AND THERE'S A
DIFFERENCE BETWEEN LOOKING AT
BULLETS AND DETERMINING THE
ELEMENTAL ANALYSIS AND, THAT
CAME FROM HAVERKOST AND THIS
TESTIMONY OF EVERYBODY ELSE
INVOLVED --

IT'S NOT RELEVANT AND ONLY
BECOMES RELEVANT WITH HIS
TESTIMONY AND IT DOESN'T,
DOESN'T MEET... [INAUDIBLE].
>> IS THE STATE TELLS US, OKAY.
SO WHAT?
WE STILL HAVE DIRECT EVIDENCE,
SUFFICIENT EVIDENCE THAT -- AS
TO WHAT HAPPENED HERE, WITH THE
WITNESSES AND, THOSE WHO -- THIS
IS WHAT THE EVIDENCE IS AND IT
WILL NOT MAKE A DIFFERENCE.
>> THE PROBLEM IS, IT GETS TO
THE ARGUMENT THAT WAS MADE.
THAT -- I'M SAYING, A STRAIGHT
UP... [INAUDIBLE].
NO, I'M SAYING THERE HAS TO BE A
-- [INAUDIBLE].
>> I THINK SHE SAID EVEN IF YOU
LOOK AT IT, LOOK AT ALL THE
OTHER WITNESSES, THIS IS WHERE
THE EVIDENCE IS, THAT IS THE
ARGUMENT OF THE STATE.
RESPOND TO THAT ONE.
>> AND, THAT EACH OF THE
INDIVIDUALS ON WHICH THE STATE
RELIES, UNDISCLOSED BRADY...
[INAUDIBLE].
>> ALL OF THEM.
>> ALL OF THEM.
EVEN MATHEWS, MATHEWS WAS THE...
[INAUDIBLE] TO THE EXTENT WALKER
CALLED INTO QUESTION MATHEWS WAS
CALLED INTO QUESTION AND MATHEWS
DOESN'T TESTIFY TO WHAT WALKER
TESTIFIED TO, HIS MEMORY IS
VAGUE AND HE'S VERY WEAK AND DID
NOT MENTION IN -- IS NOT
MENTIONED IN THE CLOSING
ARGUMENT AND THE BEST PLACE TO
LOOK TO SEE WHAT THIS IS STATE'S
CONTENTIOUS AND WHAT ARE THEY
RELYING ON WOULD BE THE STATE'S
CLOSING ARGUMENT, INITIAL
CLOSING AND REBUTTAL AND I
SUBMIT YOU LOOK THERE AND SEE

HOW THESE PIECES FIT TOGETHER
AND A... [INAUDIBLE] TRIAL.
AND AT THE LEAST, AN EVIDENTIARY
HEARING.
>> THANK YOU BOTH FOR YOUR
ARGUMENTS.