>> NEXT CASE FOR THE DAY IS
DAVIS VERSUS STATE OF FLORIDA.
>> MAY IT PLEASE THE COURT,
RICK SICHTA.
THE FIRST ISSUE I'D LIKE TO
SPEAK ABOUT TODAY IS DIRECT
APPEALS
>> JUST WANT TO MAKE PUT THAT
MICROPHONE A LITTLE HIGHER.
>> SORRY.
DIRECT APPELLATE COUNSEL'S
FAILURE TO SUPPLEMENT THE
RECORD TO THIS COURT AND THIS
COURT HAVING AN INADEQUATE
RECORD ON APPEAL FOR DIRECT
APPEAL REGARDING THE NELSON
ISSUE.
THERE WERE TWO LETTERS THAT
MR.†DAVIS FILED, ONE BEFORE
TRIAL AND ONE BEFORE THE
PENALTY PHASE THAT THIS COURT
NEVER HAD WHEN IT WAS
DETERMINING WHETHER A NELSON
HEARING SHOULD HAVE BEEN
GRANTED TO MR.†DAVIS.
SPECIFICALLY, THIS COURT HELD
THAT MR.†DAVIS' REQUEST WAS
NOT UNEQUIVOCAL BECAUSE HE
NEVER MADE A SPECIFIC REQUEST
TO DISCHARGE COUNSEL.
AND IF YOU LOOK AT THESE TWO
LETTERS, THE LETTERS ARE VERY,
VERY SPECIFIC AS TO MY COUNSEL
IS INEFFECTIVE AND, JUDGE, YOU
PROMISED ME IN OUR LAST
HEARING THAT YOU WOULD MAKE
SURE MY COUNSEL WAS GOING TO
BE EFFECTIVE AND I WANT HIM
DISCHARGED.
AND IF HE'S NOT, I'M GOING TO
FILE A BAR COMPLAINT.
I MEAN, THAT'S AS UNEQUIVOCAL
AS YOU CAN GET.
AND THIS COURT SPECIFICALLY
SAID THERE WASN'T ENOUGH
EVIDENCE IN THE RECORD TO MAKE
THAT DETERMINATION.
AND THEN WHEN MR.†DAVIS IS
CONVICTED AND FOUND GUILTY, HE
MAKES ANOTHER REQUEST OF THE

TRIAL COURT AND SPECIFICALLY SAYS MY COUNSEL IS INEFFECTIVE, HE FAILED TO CROSSEXAMINE WITNESSES, HE ALLOWED FALSE TESTIMONY TO BE PRESENTED AT TRIAL AND WILL YOU PLEASE DO SOMETHING ABOUT IT AND THIS LETTER, AGAIN, WAS IGNORED BY THE TRIAL COURT. IT WAS STUFFED IN THE CLERK'S FILE AND THESE TWO REQUESTS WERE NEVER BROUGHT UP.
AND IF YOU LOOK AT WHAT HAPPENED AT TRIAL, THIS IS THE PERFECT EXAMPLE OF WHY NELSON INQUIRIES AND THIS COURT ADOPTING NELSON IS SO IMPORTANT.
YOU HAVE AT TRIAL A DEFENSE COUNSEL ARGUING WITH HIS OWN CLIENT ABOUT WHAT DEFENSE SHOULD BE PRESENTED.
AND I UNDERSTAND JUSTICE QUINCE'S OPINION IN PUGLISI EARLIER IN THE YEAR SAYING THE DEFENDANT HAS CERTAIN RIGHTS TO PLEAD GUILTY AND WHAT NOT.
BUT JUSTICE QUINCE ALSO SAID THAT UNDOUBTEDLY THERE IS SOME DISCUSSION AS TO WHAT DEFENSE ONE SHOULD PRESENT AND THE DEFENDANT HAS A ROLE IN THAT.
AND IF YOU LOOK AT THE CLOSING ARGUMENTS AND THE OPENING STATEMENT ACTUALLY, THE OPENING STATEMENT IN THIS CASE WAS ONE PAGE LONG FROM DEFENSE COUNSEL.
AND HE ARGUED THE IMPOSSIBLE. HE ARGUED THAT MR.†DAVIS COULD NOT HAVE COMMITTED THIS CRIME BECAUSE HE DROPPED A BABY TWO FEET IN THE SHOWER.
THAT WAS COMPLETELY CONTRADICTORY TO ALL THE STATE'S EXPERTS, ALL THE EVIDENCE IN THE CASE AND EVEN HIS OWN EXPERT.
>> WELL, I DON'T WANT TO GET TOO FAR AFIELD OF YOUR

INEFFECTIVE ASSISTANCE OF
APPELLATE COUNSEL ISSUE.
SO WHERE IS IT THAT THE
DEFENDANT UNEQUIVOCALLY ASKED
THE COURT TO DISCHARGE HIS
COUNSEL?
BECAUSE AS I READ THAT, I
THOUGHT HE WAS BASICALLY
SAYING I'M GOING TO GO TO THE
BAR IF THIS GUY DOESN'T DO
WHAT I TELL HIM TO DO.
AND A LAWYER IS REALLY IN
CHARGE OF THE CASE, FOR THE
MOST PART.
I MEAN, THERE ARE SOME THINGS
THAT THE DEFENDANT HAS THE
RIGHT TO REQUIRE HIS LAWYER TO
DO.
BUT SO WHERE IS THE ACTUAL
REQUEST TO THE JUDGE, JUDGE, I
WANT YOU TO DISCHARGE THIS
ATTORNEY BECAUSE HE'S
INCOMPETENT AND DOESN'T KNOW
WHAT HE'S DOING.
>> YES, YOUR HONOR.
THE FIRST REQUEST IS MADE ON
JUNE 30 OF 1994.
IT'S FOUND IN THE SUPPLEMENTAL
RECORD ON APPEAL, VOLUME 1,
PAGE 34.
AND WHAT'S IMPORTANT ABOUT
THIS LETTER IS IT SPECIFICALLY
REMINDS THE COURT AGAIN,
THIS COURT WHEN IT DEALT WITH
THIS NELSON ISSUE ON DIRECT
APPEAL ONLY HAD THAT APRIL,
1994 HEARING WHERE DEFENSE
COUNSEL SAYS WHAT HE'S DOING
TO PREPARE THE CASE FOR TRIAL
AND THE DEFENDANT'S NEVER
ASKED, YOU KNOW, IF HE HAS ANY
OTHER FURTHER CONCERNS.
SO IN THIS LETTER
>> BUT IN A CASE WHERE YOU
WANT TO DISCHARGE COUNSEL,
WHAT DO YOU HAVE TO ALLEGE AND
SHOW?
I MEAN, IF AN ATTORNEY SAYS
I'M DOING THIS, I'M DOING
THIS, I'M WORKING ON THIS,

ISN'T THE JUDGE LIKELY TO SAY,
NO, I'M NOT GOING TO DISCHARGE
YOUR COUNSEL?
>> I AGREE.
IF THERE'S NOT SPECIFIC
ALLEGATIONS OF INCOMPETENCE
MADE.
BUT THE PROBLEM IN THIS CASE
IS DAVIS HAS NEVER WAS
NEVER ABLE TO SPEAK IN THAT
HEARING.
HE HAD THESE TWO LETTERS
BURIED.
AND TO ANSWER YOUR ORIGINAL
QUESTION, JUSTICE QUINCE,
DAVIS WRITES A FEW MONTHS AGO
 AND HE'S TALKING ABOUT THIS
APRIL†HEARING I REQUESTED
THAT I BE APPOINTED NEW
COUNSEL AND I WAS DENIED.
AND WHEN THIS COURT RULED UPON
THAT ONE HEARING
>> BUT IN ORDER TO GET NEW
COUNSEL, YOU'VE GOT TO
DEMONSTRATE THAT THERE WAS A
PROBLEM WITH YOUR ATTORNEY,
RIGHT?
>> YES.
AND IN THIS LETTER AND THE
OTHER LETTER AFTER THE PENALTY
PHASE, IF I MAY, YOUR HONOR,
HE SAYS I BELIEVE MY COUNSEL
IS INEFFECTIVE, HE'S NOT
AND I KNOW WHAT YOUR NEXT
QUESTION IS GOING TO BE AND
I'LL ANSWER THAT AND MY LIFE
HANGS IN THE BALANCE.
I'LL FILE WITH THE FLORIDA BAR
IF HE DOESN'T RESIGN AND I ASK
HE BE RESIGNED OR DISMISSED
FROM THE CASE.
THE ORIGINAL HEARING IN APRIL
WAS MADE BECAUSE MR.†DAVIS HAD
NOT SEEN HIS COUNSEL IN SOME
MONTHS.
AND WHEN THIS NEW LETTER COMES
OUT THREE MONTHS LATER, IT'S
NOW BEEN SEVEN MONTHS.
I UNDERSTAND THE CASE LAW SAYS
IF YOU DON'T SEE A CLIENT,

THAT'S NOT GOING TO BE ENOUGH
FOR INCOMPETENCE.
BUT DEFENSE COUNSEL HAD HIS
PHONE BLOCKED.
DAVIS COULDN'T EVEN CALL HIM,
MUCH LESS SEE HIM.
AND DAVIS IS, LIKE, I CAN'T
GET AHOLD OF HIM, I DON'T KNOW
WHAT MY DEFENSE IS GOING TO
BE, I CAN'T CALL HIM.
THE JUDGE RECOGNIZES THIS IN
THIS APRIL†HEARING AND SAYS
I'LL HAVE MR.†ADAMS SHOW UP
THE NEXT DAY.
MR.†ADAMS DOES NOT SHOW UP THE
NEXT DAY.
DAVIS IS WONDERING WHAT'S
GOING ON.
THE COURT SAYS I'LL BRING AN
INVESTIGATOR TO BRING HIM DOWN
HERE.
THEY HAVE AN OFF THE RECORD
DISCUSSION AND IT SAYS SO AS
MUCH ON THE RECORD AND DAVIS
IS NOT THERE.
SO DAVIS FILES THIS LETTER,
AGAIN PLEADING TO THE COURT,
HEY, MAY I BE HEARD ON THIS?
HE GETS CONVICTED AND THEN HE
FILES, JUSTICE QUINCE A
MORE SPECIFIC LETTER ABOUT THE
FAILURE TO IMPEACH, FILE
MOTIONS AND HE BECOMES
SPECIFIC ABOUT THE FALSE
TESTIMONY.
AND I WOULD LIKE TO DISCUSS
THE FALSE TESTIMONY.
>> BUT IN THAT LETTER IS THERE
ANYTHING THAT EVEN COMES CLOSE
TO ASKING FOR COUNSEL TO BE
DISCHARGED?
>> I'LL AGREE, YOUR HONOR, HE
DOESN'T SAY I WANT TO
DISCHARGE COUNSEL AT THIS
POINT.
BUT I THINK IF YOU LOOK AT THE
CONTEXT OF EVERYTHING, IT'S
PRETTY CLEAR HE'S ALWAYS ASKED

>> IT'S VERY CLEAR THAT

THROUGHOUT THIS HE IS UNHAPPY.
THERE'S NO QUESTION ABOUT
THAT.
THAT IS CLEAR.
BUT IT SEEMS TO ME THAT IN
NEITHER OF THESE LETTERS DOES
HE REALLY TELL THE JUDGE WHAT
THE JUDGE NEEDS TO HEAR TO
TRIGGER A HEARING.
I JUST DON'T I DON'T SEE IT
THERE.
>> ON THE ONE BEFORE THE
PENALTY PHASE, JUDGE, HE DOES
GIVE A LONG CRITIQUE.
HE DOESN'T SPECIFICALLY SAY I
WANT NEW COUNSEL, BUT IF YOU
READ THE CONTEXT OF THE TRIAL
HE'S SAYING MY COUNSEL IS NOT
DEFENDING ME RIGHT, THIS IS
WHAT I WANT.
THEY ACTUALLY CALLED WITNESSES
BACK IN REBUTTAL BECAUSE MR.
DAVIS WAS SAYING, HEY, YOU'RE
NOT CROSSEXAMINING THESE
PEOPLE CORRECTLY.
>> HERE'S MY PROBLEM WITH THIS
ARGUMENT, WHICH IS YOU'RE
RAISING THIS YOU'VE GONE
RIGHT TO YOUR HABEAS, BUT IT
SEEMS TO ME THAT THERE WERE
TWO LET'S JUST ASSUME THAT
THERE WASN'T A PROPER NELSON.
SO EITHER THE REMEDY WOULD
HAVE BEEN HE EITHER REPRESENTS
HIMSELF, WHICH WOULD HAVE BEEN
DISASTROUS, OR THERE'S NEW
COUNSEL.
BUT DON'T YOU NEED TO LOOK AT
 NOW THAT THE TRIAL DID TAKE
PLACE, WHY DOESN'T THE
STRICKLAND PREJUDICE PRONG
STILL APPLY?
WHICH IS YOU'RE SAYING, FOR
EXAMPLE, THAT HE ONLY HAD A
ONEPAGE CLOSING ARGUMENT.
SO THE ISSUE IS SO HE WAS
DEFICIENT IN NOT GIVING A
PROPER CLOSING ARGUMENT.
AND THEN YOU'VE GOT TO SHOW
THAT HOW THAT UNDERMINES

CONFIDENCE.
AND YOU'RE SO AREN'T YOU
TRYING TO BACK DOOR LIKE
EVERYTHING ABOUT THIS DEFENSE
ATTORNEY'S CONDUCT, BUT YET
YOU REALLY HAVEN'T RAISED
THOSE ALL THOSE SPECIFIC
ISSUES IN THE UNDERLYING
POSTCONVICTION?
YOU UNDERSTAND WHAT I'M
ASKING?
>> I BELIEVE SO, AND I THINK
CONFIDENCE IN THE OUTCOME IS
VERY UNDERMINED WHEN YOU LOOK
AT THE ENTIRE CASE AND WHAT
DEFENSE COUNSEL DID.
>> BUT I'M SAYING I DON'T KNOW
HOW YOU CAN JUST SAY BROADLY
THAT ISSUE ON A HABEAS AND
THEN RAISE, EVEN IF IT'S NOT
SPECIFICALLY RAISED AS AN
ISSUE, EVERYTHING ABOUT YOU
GOT TO READ THE WHOLE TRIAL,
ONCE YOU READ THE WHOLE TRIAL,
YOU KNOW THAT IT WAS NOT A
GOOD TRIAL.
I MEAN, I THINK YOU'VE GOT TO
RAISE THOSE AS SPECIFIC
INSTANCES OF DEFICIENCY.
THAT'S HIS REMEDY NOW.
NOT THAT SHOW THAT MR.
DAVIS WAS RIGHT.
THIS DEFENSE LAWYER WASN'T
PERFORMING AS CONSTITUTIONALLY
EFFECTIVE COUNSEL AND HERE'S
HOW HE WASN'T.
HE DIDN'T EVEN KNOW HOW TO
GIVE A CLOSING ARGUMENT.
>> TO ANSWER YOUR QUESTION, IN
THE HABEAS WE ALLEGE THAT HAD
HE SUPPLEMENTED THESE TWO
RECORDS THIS COURT WOULD HAVE
FOUND THAT A NELSON HEARING
WAS TRIGGERED AND A NEW TRIAL
WOULD HAVE BEEN GRANTED.
>> YOU'RE HEARING SKEPTICISM
ABOUT WHETHER THAT WOULD BE

>> BACK TO YOUR ORIGINAL
QUESTION, THAT JUNE 30, 1994

LETTER SPECIFICALLY SAYS A FEW MONTHS AGO I REQUESTED NEW COUNSEL AND I'M GOING TO FILE A BAR COMPLAINT IF HE DOESN'T RESIGN.
>> AGAIN, IT'S AN EXPRESSION OF DISSATISFACTION.
BUT AS FAR AS GIVING THE JUDGE WHAT THE JUDGE NEEDS TO HEAR TO ACTUALLY TRIGGER A HEARING, I'M SKEPTICAL.
>> ON THIS JUNE, 1994, YOUR HONOR, I RESPECTFULLY DISAGREE.
I BELIEVE HE'S DEFINITELY SAYING, JUDGE, THIS IS WHAT I MEANT IN THIS APRIL†HEARING.
I WANTED TO DISMISS COUNSEL FOR INEFFECTIVE ASSISTANCE.
>> LET'S SAY WE DISAGREE WITH YOU ON THIS.
LET'S GO TO
>> THE OTHER ISSUE IN THE HABEAS?
>> YOU DON'T WANT TO TALK ABOUT THE POSTCONVICTION DEFICIENCY?
>> ABSOLUTELY.
I'M TRYING
>> I GUESS THIS IS A WE SEE A LOT OF HORRIBLE CASES.
THIS IS A HORRIBLE CASE.
AND I DON'T GIVE ME YOUR STRONGEST ARGUMENT ABOUT THE GUILT PHASE AS TO IF YOU RAISE A LOT OF BRADY.
AND, AGAIN, APPRECIATE AND THIS WAS LITIGATED OR THIS WAS IN POSTCONVICTION FOR 15 YEARS OR SOME INORDINATE AMOUNT OF TIME.
>> SINCE IT WAS SO APPARENT THAT THIS TRIAL COUNSEL WAS DEFICIENT?
>> THERE'S THREE BIG ONES, YOUR HONOR.
THE POSTURAL MISCONDUCT, THAT IS RAISED IN THE HABEAS.
THIS COURT SAYS 1957 IN PAID V. STATE.

>> HOW ABOUT SOMETHING HE DIDN'T DO THAT YOU WOULD EXPECT A MINIMALLY COMPETENT ATTORNEY TO DO?
>> ABSOLUTELY, TWO OF THE MAIN WITNESSES IN THIS CASE WERE OLIVIA WILLIAMS AND JANET COTTON.
TO SAY THAT MR.†DAVIS NEVER CALLED HER AGAIN THAT DAY OF THE CRIME --
WHEN MR.†DAVIS TESTIFIED, HE GOT ON THE STAND SAYING I WAS GONE.
I WAS UPSTAIRS MAKING THE PHONE CALL.
I DIDN'T COMMIT THE CRIME, IT WAS THOMAS MOORE THAT COMMITTED THE CRIME.
THE STATE CALLED OLIVIA WILLIAMS TO SAY MR.†DAVIS NEVER CALLED ME THAT NIGHT.
ON HIS DIRECT TESTIMONY, HE SAID HE CALLED OLIVIA WILLIAMS WHEN HE WAS IN JAIL AND SAID I DIDN'T DO THIS CRIME.
SOMEBODY ELSE DID IT.
THE STATE CALLS OLIVIA WILLIAMS AND SAYS HE DIDN'T CALL ME TO COMPLETELY DISCREDIT HIS DEFENSE.
>> YOU THINK, REALLY, THE THOMAS MOORE DID IT DEFENSE -- HAVE YOU DEVELOPED EVIDENCE POST-CONVICTION THAT THOMAS MOORE WAS THE PERPETRATOR OF THIS HORRIBLE CRIME?
IT CAN'T BE JUST HE SAYS SOMEONE ELSE DID IT AND HE THOUGHT OF THAT RIGHT AWAY.
HAVE YOU DEVELOPED ANYTHING WHICH WOULD POINT TO THOMAS MOORE.
>> YOUR HONOR, IF YOU LOOK AT THE TIMELINE, THERE IS A GAP THERE.
I MENTIONED JANET COTTON.
THIS WILL ANSWER THE THOMAS

MOORE QUESTION.
JANET COTTON SPECIFICALLY HEARD THIS CHILD SCREAMING AND CRYING AND A VOICE, THAT WAS MR.†DAVIS', DOING THIS IN A CERTAIN TIME FRAME.
IN THE NOTES FOUND IN THE STATE ATTORNEY'S FILE, JANET COTTON SAYS IT WAS A MALE VOICE THAT ACTUALLY OCCURRED AT 11:00 TO 12:00, COMPLETELY WHEN IT WAS NOT SUPPOSED TO OCCUR, AND HER NEIGHBOR WAS WITH HER WHICH WAS ALSO NOT TRUE.
NOW, IN THE DEPOSITION OF JANET COTTON, SHE MENTIONED THAT IT'S A MALE VOICE, AND SHE'S A LITTLE OFF ON THE TIME, SO DEFENSE COUNSEL EASILY -- ANY REASONABLE COUNSEL WOULD HAVE IMPEACHED HER ON THAT INFORMATION SIMPLY BY SAYING WELL, MRS.†COTTON, YOU DIDN'T DESCRIBE MR.†DAVIS AS BEING THE PERPETRATOR AT FIRST.
YOU HAVE JANET COTTON WHO IS OFF ON THE TIME, AND THE STATE KNOWS IT, BUT PUTS HER ON ANYWAY.
YOU HAVE MS. WILLIAMS, IN THE STATE'S MEMORANDUM TO HIMSELF, HE SAYS WEDNESDAY DECEMBER 9TH, 1994, WHICH IS THE DAY OF THE INCIDENT, MR.†DAVIS CALLED MS. WILLIAMS AND STILL PUTS HER ON THE STAND RESPECTFULLY TO LIE, TO DEMEAN MR.†DAVIS' OWN DEFENSE.
IF YOU GO TO THE MOORE THEORY, I ARGUE TO THIS COURT, WOULD YOU RATHER HAVE A PLAUSIBLE DEFENSE -- HOWEVER IMPLAUSIBLE IT MAY BE -- VERSUS AN IMPOSSIBLE DEFENSE WHICH WAS PRESENTED AT TRIAL?
>> BUT DID THAT -- LET'S JUST

SAY HE SHOULD HAVE DONE A
BETTER JOB OF PRESENTING AN
IMPLAUSIBLE DEFENSE.
HOW DOES THAT -- DON'T WE
STILL HAVE TO LOOK AT THE
EVIDENCE OF THIS DEFENDANT'S
GUILT TO DETERMINE IF THE
PERFORMANCE UNDERMINES
COMPETENCE IN THE OUTCOME?
CAN YOU TELL ME THAT -- IN
OTHER WORDS, SOMEONE CAN
SLEEP THROUGH A TRIAL.
IF THE GUY'S GUILTY, THERE
COULD BE SOME EXTREME WHERE
NOTHING IS DONE, AND YOU SAY
YOU STILL -- THE SIXTH
AMENDMENT HAS TO BE HONORED.
HERE, IF WE LOOK AT THE BASIC
ASPECTS OF THE STATE'S CASE,
AND NONE OF THOSE ASPECTS
HAVE BEEN QUESTIONED IN A WAY
TO SHAKE OUR COMPETENCE, HOW
DO YOU ESTABLISH PREJUDICE?
>> YOUR HONOR, THE MOORE
DEFENSE COMPLETELY RENDERED
IN THIS CASE, 99% OF IT
INCONSEQUENTIAL, IF YOU HAVE
SOMEBODY DOING IT AND YOU
HAVE MS. COTTON SAYING IT WAS
A MALE VOICE, THEY CAN'T SAY
WHETHER IT WAS MR.†MOORE OR
DAVIS.
THE TIMELINE GOES UP, THERE
IS A WITNESS NAMED MR.†GORDON
WHO TESTIFIES THAT MR.†DAVIS
DID SPEND 12:30 TO 12:50 IN
HIS APARTMENT.
YOU HAVE MS. COTTON OFF BY
THREE HOURS.
WE DON'T KNOW WHEN THE MALE
VOICE IS HEARD, AND YOU HAVE
MR.†MOORE'S TESTIMONY AT
TRIAL, I DIDN'T HAVE A WATCH,
BUT I PROBABLY ARRIVED THERE
12:30, MAYBE 12:45, MAYBE A
LITTLE LATER THAN THAT.
>> BUT ALL OF THAT HAS TO BE
EVALUATED IN THE CONTEXT OF
WHAT MR.†DAVIS HIMSELF SAID
ABOUT ALL THIS, AND HIS STORY

ABOUT THE VICTIM CHOKING ON A
FRENCH FRY AND ALL OF THAT --
THAT STUFF.
>> YES, YOUR HONOR.
>> AND SO IT SEEMS TO ME THAT
WHEN YOU LOOK AT THE -- AT
THAT, THE LAWYER HERE WAS
FACED WITH A MIGHTY STEEP
MOUNTAIN TO CLIMB.
MR.†DAVIS HAD BOXED HIMSELF
IN AND MAYBE JUST REALITY
BOXED HIM IN, AND HE WAS --
AND ANYTHING THE LAWYER DID
WAS GOING TO BE CLIMBING A
VERY DIFFICULT MOUNTAIN.
>> MAY I ANSWER THAT QUESTION
AND SAVE THE REST FOR
REBUTTAL?
JUDGE, THE DEFENSE THAT
MR.†DAVIS PUT FORWARD IS NOT
THAT IMPROBABLE.
IF YOU THINK ABOUT WHAT HE
SAID AT TRIAL, HE GOES UP,
COMES BACK DOWNSTAIRS, AND
THE ONLY THING HE KNOWS IS
HE'S PREVIOUSLY FED THIS
CHILD FRENCH FRIES AND FINDS
THIS CHILD HAVING A HARD TIME
BREATHING -- OR NOT BREATHING
AND PUTS HER IN THE SHOWER.
IF YOU PUT IT IN DAVIS'
TESTIMONY, IT FITS TO A JURY,
IT'S NOT IMPLAUSIBLE, WHERE
HE COMES HOME AND TELLS THE
OFFICERS THE ONLY THING HE
KNOWS COULD HAVE HAPPENED.
I FED HER FRENCH FRIES.
I THINK SHE HAS ASTHMA.
EVEN THOUGH SHE WAS NEVER
DIAGNOSED WITH ASTHMA, SHE
HAS ASTHMATIC SYMPTOMS.
IT'S NOT THAT IMPLAUSIBLE
THAT HE SAYS, AS THE STATE
UNFORTUNATELY SAYS, THE
FRENCH FRY-MCDONALD THEORY.
IT'S NOT IMPLAUSIBLE.
HE GIVES THE OFFICERS THE
ONLY THING HE KNOWS.
THERE IS NOT THAT MUCH
VISIBLE INJURIES EXCEPT FOR

THE BUMP ON THE HEAD THAT, OF COURSE, GETS WORSE AS TIME GOES ON.
HE'S SAYING I DROPPED HER IN THE SHOWER.
THERE ARE NO INJURIES THERE.
EVEN THE EMT'S AT THE SCENE SAY THERE ARE NO INJURIES.
A BRUISE ON THE BACK AND BRUISE ON THE BACK OF THE EAR.
THIS DEFENSE IS THE ONLY DEFENSE THAT SHOULD HAVE BEEN PRESENTED.
I HAVE NO IDEA WHY MR.†ADAMS DID NOT PRESENT THIS DEFENSE?
I'M ASSUMING HE NEVER TALKED TO COUNSEL AND BLOCKED HIS PHONE, AND THE STATE COMPLETELY CREAMED THIS DEFENSE IN CLOSING ARGUMENT AND MADE CLOSING ARGUMENT COMMENTS THAT THIS COURT, AGAIN, HAS FOUND IMPROPER AND EGREGIOUS FOR THE LAST 50 YEARS.
I'D LIKE TO SAVE THE LAST FOR REBUTTAL.
THANK YOU.
>> THANK YOU.
>> THE COURT'S IDENTIFIED THE -- EXCUSE ME.
I'M STEVE WHITE REPRESENTING APPELLEE.
THE COURT IS IDENTIFYING THE PROBLEM FACING CHARLIE ADAMS, TOLD CAPTAIN WADE, TOLD DETECTIVE HICKSON, DETECTIVE HALLUM, HIS STORY ABOUT THE FRENCH FRY AND THE ASTHMA, DIDN'T MENTION MR.†MOORE AT ALL THE FIRST PART OF THE DAY.
HE THEN COMES UP WITH THIS STORY THAT HE SUPPOSEDLY TELLS OLIVIA WILLIAMS, WHETHER IT'S THAT NIGHT OR EARLY THE NEXT MORNING, HEY, ANOTHER GUY DID IT.
HE'S NOW CONFRONTED TO THE

SERIOUSNESS OF THE INJURIES
AND THE IMPLAUSIBILITY OF THE
STORY.
NOW HE'S COMING UP.
HIS STORY IS NOW EVOLVING TO
PLAN B, IF YOU WOULD, THAT
ANOTHER DUDE DID IT, BUT
DOESN'T MENTION MR.†MOORE TO
MS. WILLIAMS.
SO HE'S STILL EVOLVING.
HE DOESN'T MENTION MR.†MOORE
UNTIL THE TRIAL, IN TERMS OF
WHAT THE PROSECUTOR KNEW OR
WHAT'S IN THIS RECORD.
SO IN FACT, THE PROSECUTOR
WAS ACCURATE IN ARGUING THAT
MR.†DAVIS CAME UP WITH
MR.†MOORE AS THE OTHER DUDE
WHODUNNIT, AND, IN FACT, AT
THE TRIAL, 2†1/2 YEARS LATER.
AND IN FACT, THAT'S EXACTLY
WHAT THE PROSECUTOR ARGUED.
THE PROSECUTOR DID NOT ARGUE
THAT THE DEFENDANT FIRST CAME
UP WITH "ANOTHER DUDE DID IT"
THEORY, IN GENERAL TERMS,
2†1/2 YEARS LATER.
SO THE OLIVIA WILLIAMS
DEPOSITION, THEY RAISED IT
BOTH AS THE GIGLIO CLAIM AND
THE IOC CLAIM, BUT DIDN'T PUT
MS. WILLIAMS ON THE STAND,
NUMBER ONE.
NUMBER TWO IS THAT HER
DEPOSITION TESTIMONY, OF
COURSE, WAS AVAILABLE AND TO
TAKE AND GENERATE BY DEFENSE
COUNSEL, AND THE PROSECUTORS'
ARGUMENT, BASED ON WHAT
EVIDENCE WAS EDUCED -- IF YOU
ACCEPT FOR THE SAKE OF
ARGUMENT THAT DEPOSITION
TESTIMONY IS TRUE, THE
PROSECUTOR'S ARGUMENT WAS, IN
FACT, ACCURATE AND BASED ON
THE EVIDENCE.
>> I KNOW, BUT THE ISSUE IN
THIS CASE THAT IS OF INTEREST
TO ME IS ONE OF THE BRADY
ISSUES, AND THAT CONCERNS THE

MOTHER'S STATEMENT TO OTHER PEOPLE THAT A COUPLE OF DAYS BEFORE THIS INCIDENT, THAT THE CHILD HAD SOME KIND OF BUMP ON THE HEAD, AND VAGINAL BLEEDING, AND SO I KNOW THAT, IN THIS CASE, THE DEFENDANT WAS ALSO CONVICTED OF SEXUAL BATTERY, BASED ON THE, I GUESS, HEMORRHAGING OR BRUISING OF HER VAGINAL AREA, SO IT SEEMED TO ME THAT IF THERE WAS A STATEMENT OUT THERE THAT THE MOTHER HAD MADE THAT SHE HAD THESE KINDS OF INJURIES PRIOR TO DECEMBER 9TH, I GUESS IT WAS, THEN THAT CERTAINLY IS SOMETHING THAT A DEFENSE ATTORNEY WOULD WANT TO KNOW AND POSSIBLY LEAD TO SOME OTHER -- SOME OTHER INFORMATION.
>> YOUR HONOR, I BELIEVE YOU'RE REFERRING TO THE FIRST PART OF THE FIRST ISSUE.
>> YES, MS. CUNNINGHAM, THAT WAS THE CHILD'S MOTHER; IS THAT RIGHT?
>> YES, MA'AM.
>> AND SHE ALLEGEDLY MADE THESE STATEMENTS TO SOMEONE AT THE HOSPITAL.
>> THE ALLEGATION AND THE CLAIM IS THAT GWEN CUNNINGHAM TOLD MELISSA TAYLOR WHO TOLD DETECTIVE HALLUM STATEMENTS REGARDING THE PREVIOUS VAGINAL BLEEDING, QUOTE, SMALL AMOUNT, WHICH WAS A FEW DAYS AGO.
YOU HAVE MULTIPLE PROBLEMS WITH THIS CLAIM.
THEY NEVER PROVED ANYTHING WAS ADMISSIBLE REGARDING MS. CUNNINGHAM'S STATEMENT TO MELISSA TAYLOR.
>> IN ORDER TO TURN IT OVER TO THE DEFENSE, THE DEFENSE, EVEN IF IT'S NOT ADMISSIBLE, COULDN'T THE DEFENSE USE IT

TO DO FURTHER INVESTIGATION
ON THE CASE?
>> THEY DIDN'T PROVE
ANYTHING, YOUR HONOR AT THE
POST-CONVICTION HEARING IF
THE NOTES WERE TURNED OVER TO
THE DEFENSE.
>> IT SEEMS TO ME IT'S
MATERIAL.
THE QUESTION IS WHETHER --
LET'S SEE, IT WAS FAVORABLE.
SHOULD HAVE BEEN TURNED OVER,
IN MY VIEW, BUT I THINK THEY
FAILED.
WHAT YOU'RE SAYING IS THEY
FAIL ON THE MATERIALITY AND
THE PRONG THAT WOULD SAY THAT
THEY HAVE TO SHOW THAT IT†--
>>†IF IT'S MATERIALITY, IT'S
MARGINAL.
IF IT'S A FEW DAYS EARLIER --
>> IT'S FAVORABLE.
COME ON.
THE MOTHER SAYING THAT IT MAY
HAVE BEEN THE FATHER A FEW
DAYS EARLIER THAT MIGHT HAVE
BEEN RESPONSIBLE FOR SEXUAL
BATTERY WOULDN'T BE SOMETHING
THAT A DEFENSE LAWYER WOULD
WANT TO FOLLOW UP ON?
>> AND, OF COURSE, WE DON'T
KNOW WHAT THE RESULTS ARE.
>> SO YOU'RE SAYING THERE'S A
LACK OF PROOF AS TO EFFECT.
BUT IT STILL SHOULD HAVE BEEN
TURNED OVER.
>> I THINK BETTER PRACTICE
WOULD HAVE BEEN TO TURN IT
OVER, YES, MA'AM.
BUT COMPARE THAT WITH CAPTAIN
WADE OBSERVING BLOOD COMING
OUT OF THE VICTIM'S VAGINA,
AT THE SCENE, WHEN CAPTAIN
WADE IS RESPONDING TO THE 911
CALL JUST MOMENTS AFTER
MR.†MOORE, THE SUPPOSED OTHER
SUSPECT WHO CALLS 911,
RETURNS TO THE SCENE, FLAGS
DOWN THE OFFICER, HANGS
AROUND THE SCENE.

BUT ANYWAY, CAPTAIN WADE SEES
BLOOD COMING OUT OF THE
VICTIM'S VAGINA AT THE SCENE
AS THE VICTIM IS LAYING ON
THE FLOOR.
COMPARE THAT WITH THE FOUR
CLAIMS OF INJURY TO THE
VICTIM'S HEAD, REALLY SEVERE
TRAUMA, INDICATING
BLUNT-FORCE INJURY, THAT THE
MEDICAL EXPERTS TESTIFIED TO.
>> AGAIN, I UNDERSTAND, BUT
THE MOTHER WAS VERY CLEAR,
WHEN I LEFT MY CHILD TO GO DO
WHAT I WAS GOING TO DO, SHE
WAS IN -- AND THIS IS A
TWO-YEAR-OLD.
>> YES, MA'AM.
>> SHE WAS 100% FINE.
NOW IF THAT SAME MOTHER HAD
BEEN SAYING THERE WAS A --
THAT'S PRETTY SERIOUS FOR A
LITTLE TWO-YEAR-OLD TO HAVE
VAGINAL BLEEDING AT ALL.
SO IF SHE HAD HAD THAT,
AGAIN, IT'S NOT, IF I'M
HAVING A DEFENSE, I'D RATHER
HAVE THAT DEFENSE THAN THE
THOMAS MOORE DEFENSE, BUT
YOU'RE SAYING AGAIN, IN
POST-CONVICTION, NONE OF THAT
WAS ESTABLISHED.
NOTHING TO SHOW THAT WHATEVER
THIS STATEMENT WAS EVEN THAT
THERE'S ANY ACCURACY THAT SHE
COMPLAINED TO SOMEONE ELSE.
SHE'S NOT PUT ON THE STAND.
SO THERE'S NOTHING DEVELOPED
ABOUT IT.
>> AND, OF COURSE, WE HAVE TO
AT LEAST SUSPECT THE
RELIABILITY OF THE STATEMENT
GIVEN THE DOUBLE HEARSAY
NATURE.
>> I KNOW YOU SAY THE DOUBLE
HEARSAY, IT SHOULD HAVE BEEN
TURNED OVER.
BUT NOTHING WAS DONE WITH IT
IN POST-CONVICTION TO REALLY
GIVE IT ANYTHING THAT WOULD

HAVE LEGS.
>> IN POST-CONVICTION, IN TERMS OF THE SIGNIFICANCE OF THESE NOTES, THE STATE CALLED DR.†ALEXANDER AS AN EXPERT TO REBUTT DR. WILLEY.
AND DR.†ALEXANDER, I TENDED THE COURT SEVERAL PAGES OF INCREDIBLE CREDENTIALS AND SUPPORTED DR.†WHITWORTH'S CONCLUSION THAT THE VICTIM SUSTAINED RECENT -- I BELIEVE LESS THAN 18 HOURS OR SO -- INJURY TO HER VAGINA, IN COMPARISON WITH A FEW DAYS IN THESE NOTES.
IN TERMS OF -- I DO WANT TO TALK A LITTLE BIT ABOUT THE HABEAS ISSUE, THE LETTER.
A COUPLE OF POINTS ON IT IS THE TRIAL COURT DID CONDUCT A NELSON HEARING.
DID INQUIRE OF DEFENSE COUNSEL, WHAT ARE YOU DOING IN THIS CASE, IN QUITE SOME DETAIL, AND THE DEFENSE COUNSEL EXPLAINED THE EFFORTS HE WAS UNDERTAKING.
>> WELL, I THINK HE ACKNOWLEDGED THAT THE DEFENSE ATTORNEY GAVE THE COURT THIS INFORMATION.
WAS THE DEFENDANT PREVENTED FROM PRESENTING ANYTHING?
>> THE DEFENDANT, THROUGHOUT THIS CASE, PRETRIAL, TRIAL AND POST-CONVICTION HAS TRIED TO MICROMANAGE COUNSEL.
IN FACT, YOU'LL SEE IN THE POST-CONVICTION RECORD, HE FILES COMPLAINTS, LETTERS AGAINST POST-CONVICTION COUNSEL.
NOT MR.†SICHTA.
PREDECESSOR COUNSEL.
SO HE HAS ALWAYS BEEN TRYING MICROMANAGE EXACTLY WHAT'S GOING TO BE PRESENTED, AND IN FACT, HE WANTED TO BE -- AND THIS IS TELL-TALE.

MAY 11TH, 1995, DEFENDANT
REALLY DISCLOSES WHAT HE'S UP
TO.
HE WANTS TO BE CO-COUNSEL.
HE SAYS THAT, IN SO MANY
WORDS, HE WANTS TO BE
CO-COUNSEL.
THIS IS TOWARDS THE END OF
THE TRIAL AND AFTER THE
SUPPOSEDLY NEW LETTERS.
SO IF YOU LOOK THROUGH THE
RECORD, BASICALLY, I WANT HIM
TO DO THIS.
I WANT HIM TO DO THAT.
I WANT HIM TO ASK ABOUT THIS
AND THAT.
I WANT HIM TO TESTIFY AND
ENDS UP COMING UP TO TESTIFY
AND COMING UP WITH THE OTHER
INCREDULOUS STORY DETAILING
ABOUT MR.†MOORE NOW.
NOW HE'S WILLING TO NAME THE
OTHER CULPRIT, SUPPOSEDLY.
MAY 11TH, 1995, HE DISCLOSES
WHAT HE'S REALLY UP TO, HE
WANTS TO BE CO-COUNSEL, AND I
BELIEVE, UNDER THIS COURT'S
CASE LAW, IF THE DEFENDANT
AFTER WANTS TO DISCHARGE
COUNSEL, SUBSEQUENTLY
BASICALLY AGREES TO COUNSEL,
THAT HE, IN ESSENCE, RENDERS
THE PREVIOUS REQUEST MOOT OR
WAIVES IT.
THIS IS EXACTLY WHAT HE DID
HERE.
>> I DON'T THINK I REALLY
HEARD AN ANSWER TO WHETHER OR
NOT HE WAS GIVEN AN
OPPORTUNITY TO PRESENT HIS
SIDE OF THE -- OF WHY COUNSEL
SHOULD BE DISCHARGED?
>>†YES, MA'AM.
HE -- THE RECORD IS RIDDLED
WITH EXAMPLES OF HIM PIPING
UP AND COMPLAINING.
DURING THIS COLLOQUY OR THIS
EXCHANGE WITH THE COURT
DURING THE TRIAL WHERE HE
SAYS HE WANTS TO BE

CO-COUNSEL.
>> DURING THE POINT, I'M TALKING ABOUT THE POINT WHERE THE DEFENSE ATTORNEY SAYS I'M DOING THIS, THIS, THIS AND THIS.
>> AND HE'S THERE, AND HE DOES NOT REBUTT WHAT DEFENSE COUNSEL IS SAYING.
OF COURSE, A LOT OF WHAT'S GOING ON IS THE INVESTIGATOR FOR DEFENSE COUNSEL IS GOING OUT AND INTERVIEWING WITNESSES AND WRITING A PLETHORA OF MEMOS TO DEFENSE COUNSEL WHAT HE'S FINDING AND NOT FINDING.
BUT YES, MA'AM, HE'S THERE AND HE DOES NOT -- HE'S BEEN HURT EVERY TIME HE WANTS TO BE HEARD.
THE TRIAL COURT NEVER TELLS HIM TO BE QUIET.
I'M NOT GOING TO LISTEN TO YOU.
I HAVEN'T FOUND ANYTHING LIKE THAT IN THE RECORD.
IN FACT, HE IS MORE THAN WILLING TO PIPE UP AND THE TRIAL COURT GAVE HIM EVERY OPPORTUNITY TO EXPRESS HIMSELF.
>> COULD YOU EXPLAIN -- THIS IS -- I THINK YOU ADEQUATELY RESPONDED TO WHAT WAS RAISED HERE.
THIS CASE WAS AFFIRMED ON APPEAL IN 1997.
APPARENTLY, THERE'S A SHELL MOTION BUT THE LAST MOTION IS FILED IN 2006.
IS THIS A PRODUCT OF DIFFERENT -- THIS IS -- THE CCRC IS DISSOLVED, DIFFERENT JUDGES?
IS THERE ANY EXPLANATION FOR THIS TYPE OF DELAY THAT OCCURRED IN THIS CASE?
>> THERE ARE A LOT OF REASONS FOR DELAY, YOUR HONOR.

ANTICIPATING THE COURT'S
QUESTION, I WENT THROUGH THE
ATTORNEY GENERAL'S PLEADING
FILE, AND CURIOUS MYSELF WHAT
WERE THE CAUSES OF THE DELAY?
OF COURSE, THE DEFENDANT'S
COMPLAINTS ABOUT COUNSEL,
THAT SLOWED THINGS UP
SOMEWHERE.
NELSON-FARRETA DOESN'T
TECHNICALLY CALL IT
POST-CONVICTION, BUT TRIAL
COURT IS HEARING THAT IN
TERMS OF COMPLAINTS OF
POST-CONVICTION COUNSEL.
>> WHO WAS THE
POST-CONVICTION COUNSEL?
WAS IT ONE OF THE CCRC
OFFICERS?
>> I THINK VERY EARLY ON IT
MAY NOT HAVE BEEN WAYNE
HENDERSON.
HENDERSON WAS POST-CONVICTION
COUNSEL.
>> HE'S THE CCRC?
>> NO, REGISTRY COUNSEL.
>> REGISTRY COUNSEL.
>> SO THIS CASE PROBABLY GOT
CAUGHT UP IN THE BREAKUP OF
THE NORTHERN DISTRICT, I
WOULD ASSUME.
SOMEWHERE IT PROBABLY STARTED
OUT WITH REGISTRY COUNSEL,
AND THEN WHEN IT WAS
DISBANDED, MAYBE THE --
ANYWAY, I'M PRETTY SURE IT
STARTED IN 1997.
I KNOW THERE WAS A NORTHERN
DISTRICT IN 1997, SO†--
>>†AND I CAN'T SAY THAT FOR A
FACT, YOUR HONOR.
>> YOU'RE SAYING SO IT WAS
ALL THE DEFENDANT?
IT IS THEIR RESPONSIBILITY TO
GETTING THE CASES TO A TIMELY
HEARING?
>>†I'VE GOT A LIST WHAT I SEE
IS THE CAUSES OF THE DELAY.
THERE WERE HIS COMPLAINTS
ABOUT COUNSEL IN THE

RESULTING HEARINGS.
THERE WAS PUBLIC RECORDS
LITIGATION THAT WENT ON FOR
QUITE SOME TIME.
THE STATE ATTORNEY SENT
DOCUMENTS TO THE REPOSITORY
AND SUBSEQUENT LITIGATION
ABOUT THAT, AND THE STATE
ATTORNEY SAID JUST UNSEAL
THEM.
LET'S FORGET THE LITIGATION
AND TAKE THAT OFF THE TABLE.
THERE'S DNA TESTING.
THAT TOOK QUITE AWHILE.
THERE WERE THREE VERSIONS OF
POST-CONVICTION MOTION AND
STATE RESPONSES.
THERE WAS A 2008 EVIDENTIARY
HEARING, AND AT THAT HEARING,
THE DEFENSE PRODUCED SOME
DOCUMENTS THAT DR. WILLEY
USED THAT HADN'T BEEN
DISCLOSED AND THE STATE
WANTED MORE TIME TO EXAMINE
THE DOCUMENTS AND GET THE
STATE'S EXPERT TO LOOK AT
THEM.
SO THERE WAS A PART 2 OF THE
EVIDENTIARY HEARING.
THERE WERE A COUPLE OF
MOTIONS FOR CONTINUANCE THAT
WERE JOINT.
I THINK HIS WIFE -- EXCUSE
ME, A FAMILY MEMBER, WAS VERY
SERIOUSLY ILL AT ONE TIME,
AND THAT WAS THE CAUSE FOR
SOME DELAY.
YES, YOUR HONOR, THE STATE
HAS AN INTEREST IN MOVING
THESE CASES ALONG, AND, IN
FACT, THE STATE ATTORNEY
ASKED -- OR FILED A LETTER
SAYING THE CASE HAD BEEN
SITTING AROUND TOO LONG AND
THAT RESULTED IN THE CASE
MOVING ALONG AGAIN, BUT THERE
WERE A LOT OF REASONS FOR THE
DELAY IN THIS CASE, YOUR
HONOR, BUT†--
IN TERMS OF JANET COTTON, IF

I COULD TALK A SECOND ABOUT
THAT BECAUSE SHE WAS A PRETTY
DARN IMPORTANT WITNESS.
SHE HEARD THE BANGING AND SO
ON.
THE STATE DISPUTES
POST-CONVICTION COUNSEL'S
INTERPRETATION OF THE RECORD
THAT HER DEPOSITION
CONFLICTED WITH HER TRIAL
TESTIMONY.
HER DEPOSITION DID NOT
INCLUDE EVERYTHING THAT A
TRIAL TESTIMONY INCLUDED, BUT
SHE DID NOT SAY THEY HEARD --
I DID NOT HEAR THE
DEFENDANT'S VOICE NEXT DOOR.
SHE DID NOT SAY THAT IN THE
DEPOSITION.
IN FACT, HER DEPOSITION
BASICALLY†-- -EVEN THOUGH SHE
WASN'T SURE OF THE TIME,
SHE'S NOT SURE OF THE EXACT
TIME, I DON'T THINK, AT ANY
POINT.
SHE THOUGHT IT WAS 12:00 TO
12:30; DEPOSITION SAID COULD
HAVE BEEN AS EARLY AS 11:00.
DEPOSITION IS LARGELY
CONSISTENT WITH HER TRIAL
TESTIMONY, AND SHE DIDN'T
TESTIFY TO ANYTHING AT TRIAL
SHE DENIED AT THE DEPOSITION.
THERE WAS NO DIRECT CONFLICT.
AND IF THERE ARE NO OTHER
QUESTIONS, THE STATE WOULD
REQUEST THAT THE COURT AFFIRM
THE TRIAL OF POST-CONVICTION.
>> THANK YOU.
REBUTTAL?
>> I'M GOING TO RUN THROUGH
AS QUICK AS I CAN.
FIRST ISSUE, THE STATE IS
RESPECTFULLY WRONG WHEN THEY
SAY THEY DIDN'T KNOW ABOUT
DAVIS PUTTING ON MOORE AS THE
DEFENSE BEFORE TRIAL.
IN THEIR OWN DISCOVERY
EXHIBIT, THEY LISTED THE FACT
THAT DAVIS SPOKE WITH

CUNNINGHAM AND SAID IT HAD TO
BE MOORE BECAUSE I WASN'T
THERE.
>> ISN'T IT A FACT MOORE'S
NAME WAS NEVER MENTIONED
DURING THE COURSE OF HIS
STATEMENT TO VARIOUS POLICE
OFFICERS?
>> THE POLICE OFFICER IS
CORRECT, BUT THE SAME DAY TO
GWEN CUNNINGHAM, HE DID SAY
IT WAS MOORE THE SAME DAY.
>> AFTER HE WAS IN JAIL.
>> CORRECT, AFTER HE WAS IN
JAIL, AND REALIZED THE
SEVERITY OF THE INJURIES.
NOBODY TOLD HIM.
HE REQUESTED TO GO BACK TO
THE HOSPITAL THAT NIGHT.
ANOTHER THING, THE SEXUAL
BATTERY THAT JUSTICE PARIENTE
BROUGHT UP.
GWEN CUNNINGHAM WAS DECEASED
AT THAT TIME, AND THE COUNSEL
COULDN'T REMEMBER†-- -THE
DEFENSE COULDN'T PUT ON THE
EVIDENCE BECAUSE, IN THE
EVIDENCE, THE WITNESS DIED.
IN REGARDS TO THE PENALTY
PHASE, AGAIN, DEFENSE COUNSEL
ARGUED†--
>>†THEY PUT ON THE FATHER.
DID THEY PUT ON THE FATHER AT
THE EVIDENTIARY HEARING?
>>†I DON'T RECALL, YOUR
HONOR.
>> I THOUGHT THERE WAS
SOMETHING ABOUT THE FATHER
OFFERED IN REBUTTAL.
>> AND WHEN THE STATE TALKS
ABOUT MS. COTTON, AGAIN, THE
EVIDENCE THAT WAS SUPPRESSED
SHOWS MS. COTTON SAID IT WAS
BETWEEN 11:00 AND 12:00, AND
IN THE SUPPRESSED NOTES SAID
IT WAS A MALE VOICE.
AND ALSO IN THE SUPPRESSED
NOTES, WHICH IS ONE OF THE
REASONS THE CASE TOOK SO LONG
-- AND FOR THE RECORD, THAT

WAS NOT ME.
IN THE NOTES IT SAYS JANET WILEY, HER FRIEND, DIDN'T HEAR A MALE VOICE.
NOT ONLY DO YOU HAVE GREAT IMPEACHMENT EVIDENCE THAT ONE OF THE WITNESSES SAID IT WAS THE MAIN WITNESS.
>> IS THERE SOME QUESTION WHETHER THIS WAS THE 8TH OR THE 9TH, THAT THIS WHOLE NOTION OF HEARING THE VOICES AND SOMEONE CRYING TOOK PLACE?
>> YES, YOUR HONOR, THE TRIAL COURT DENIED THIS IN PART BECAUSE THEY SAID ALLEGATIONS OF PRIOR ABUSE MIGHT HAVE COME IN.
THAT WAS NOT COMPETENT AND SUBSTANTIAL EVIDENCE.
THERE WAS NO CLAIM IT WAS MR.†DAVIS, THERE WAS NO CLAIM IT WAS THE GIRL.
THERE ARE A LOT OF ISSUES IN THE TRIAL COURT'S ORDER WHERE HE MAKES INTERESTING LEAPS OF LOGIC THAT WERE NOT IN THE FACTS IN THIS CASE.
DEALING WITH WILLIAMS, AGAIN, AND MS. COTTON AGAIN, HE MAKES ASSERTIONS, AND BY THE WAY, DEFENSE COUNSEL SAID AT THIS EVIDENTIARY HEARING HE PROBABLY SHOULD HAVE IMPEACHED THESE PEOPLE.
AND BACK TO JUSTICE PARIENTE'S SEXUAL BATTERY ISSUE, THAT WAS A HUGE, HUGE ISSUE.
IF THERE WAS NOT A SEXUAL BATTERER THIS WOULD NOT BE A FELONY CASE AS WELL.
AND THE STATE KNOWING THIS, USED THIS EVIDENCE, HID IT, AND USED IT AGAINST DAVIS TO SAY HE MADE THE DEFENSE UP IN TRIAL WHEN WE ALL KNOW, AND IT'S CLEAR IN THE RECORD, THAT WAS COMPLETELY,

COMPLETELY FALSE.
I SEE I'M A MINUTE AND 42
SECONDS OVER.
THANK YOU.
>> THANK YOU FOR YOUR
ARGUMENTS.
COURT IS ADJOURNED.
>>†ALL RISE.