>> WE'LL NOW MOVE TO THE FINAL CASE ON TODAY'S TOGETHER, SMITH V. THE STATE OF FLORIDA.
>> GOOD MORNING.
>> MORNING.
>> MAY IT PLEASE THE COURT, MY NAME IS KAREN MOORE, AND ELIZABETH SPIAGGI AND I REPRESENT TERRY SMITH IN THIS APPEAL OF THE DENIAL OF HIS POST-CONVICTION GUILT-PHASE CLAIMS OUT OF DUVAL COUNTY, FLORIDA.
WE'RE ASKING THIS COURT TO REVERSE THE CIRCUIT COURT'S RULING ON THE GUILT PHASE CLAIMS AND REMAND MR. SMITH'S CASE FOR A NEW TRIAL BASED UPON THE SHEER NUMBER AND SEVERITY OF ERRORS BY TRIAL COUNSEL THAT RENDERS MR. SMITH'S TRIAL UNRELIABLE UNDER STRICKLAND.
TRIAL COUNSEL WAS APPOINTED TO REPRESENT MR. SMITH ON NOVEMBER 30, 2009.
HE NEGLECTED TO GET AN INVESTIGATOR APPOINTED UNTIL MARCH OF 2010.
HE FORGOT TO GET SECOND CHAIR APPOINTED UNTIL AUGUST OF 2010 WHEN THIS CAPITAL MURDER CASE WAS LESS THAN TWO MONTHS OUT FROM TRIAL.
HE BILLED 2300 HOURS IN OTHER APPOINTED CASES DURING THE TIME HE REPRESENTED MR. SMITH, AND HE TESTIFIED THAT HIS PRIVATE CASES WERE MORE THAN HALF OF HIS CASELOAD.
IN THE FEW MONTHS BEFORE MR. SMITH'S TRIAL, HE TRIED FOUR MURDER CASES INCLUDING TWO CAPITAL MURDER CASES WHILE HE WAS REPRESENTING MR. SMITH.
AND A SECOND-DEGREE MURDER CASE LESS THAN TWO WEEKS BEFORE MR. SMITH'S TRIAL, RESOLVED NUMEROUS OTHER CAPITAL CASES DURING THE PENDENCY OF HIS REPRESENTATION OF MR. SMITH.

AS A RESULT, HE WAS NOT PROPERLY
PREPARED FOR TRIAL AND MADE
OBJECTIVELY UNREASONABLE
STRATEGY CALLS, PROBABLY THE
MOST EGREGIOUS IS THAT HE
OFFERED TESTIMONY-- OR OFFERED
PORTIONS OF VIDEOTAPE
INTERROGATION OF MR. SMITH WHERE
THE DETECTIVES ACCUSED HIM AT
LEAST 26 TIMES BY MY COUNT OF
LACKING REMORSE.
AND I'D LIKE TO GIVE YOU A
SAMPLE OF SOME OF THE THINGS
THAT COUNSEL OFFERED.
DETECTIVE NELSON: YOU BETTER
FIND SOMEWHERE IN YOUR HEART TO
FIND SOME TYPE OF REMORSE,
BECAUSE IF NOT, THE ONLY WAY,
THE ONLY THING THEY CAN PORTRAY
OF YOU IS THAT YOU'RE A GUY WHO
COLD-BLOODEDLY KILLED THREE
PEOPLE.
DETECTIVE NELSON: CAN YOU PLEASE
SHOW SOME REMORSE FOR THE PEOPLE
YOU KILLED?
>> AND AM I CORRECT THAT THE
DEFENSE WAS THAT THE DEFENDANT
WAS NOT THERE AND DID NOT COMMIT
THE MURDER?
>> YES, YOUR HONOR.
>> OKAY.
AND TESTIMONY OF COUNSEL AT THE
EVIDENTIARY HEARING WAS THAT
THERE WAS-- HE MADE A SPECIFIC
DECISION, A STRATEGY DECISION TO
PLAY THESE PORTIONS THAT YOU'RE
TALKING ABOUT BECAUSE THE
DETECTIVE, HE HAD A LOT OF
EXPERIENCE IN CROSS-EXAMINING
THESE-- THE DETECTIVE CAME OFF
AS VERY KIND, VERY THOROUGH,
VERY NICE, VERY POLITE TO A
JURY.
AND THESE PORTIONS, ACCORDING TO
COUNSEL, SHOWED HIM IN A
DIFFERENT LIGHT; SHOWED HIM AS
BADGERING, BULLYING, AGGRESSIVE
AND AS VIOLATING THE DEFENDANT'S
CONSTITUTIONAL RIGHTS BY NOT
ENDING THE INTERROGATION WHEN

THE DEFENDANT SAID THAT HE
WANTED TO END THE INTERROGATION.
NOW, THAT-- THE TRIAL COURT
CREDITED THAT AND DETERMINED IT
TO BE REASONABLE STRATEGY.
AND SO THE ISSUE FOR US IS WHY
IS THE TRIAL COURT'S RULING
WRONG.
>> WELL --
>> AND LET ME JUST ADD TO THAT,
THAT-- IT IS A LONG QUESTION, I
APOLOGIZE.
BUT IT SEEMS LIKE TELLING HIM
HE'S SHOWING NO REMORSE WOULD
NOT BE PREJUDICIAL IF THERE WAS
A DEFENSE THAT IT WASN'T EVEN
HIM THAT WAS DOING IT.
I MEAN, IT SEEMS LIKE IT WOULD
SHOW THE DETECTIVE AS BEING A
BULLYING, BADGERING POSITION.
>> LET ME TRY AND ANSWER YOUR
QUESTION.
>> OKAY.
SORRY.
>> MR. KURTZ, THREE DAYS BEFORE
THE JURY SELECTION AT THE LAST
PRETRIAL CONFERENCE IN THIS
CASE, TOLD THE TRIAL COURT,
LOOK, I'VE BEEN REVIEWING THIS
INTERROGATION, AND I'M THINKING
ABOUT FILING A MOTION IN LIMINE
ON THIS.
I DON'T EVEN SEE WHERE THERE'S
ANY RELEVANCE.
ALL THE POLICE ARE DOING IS
ACCUSING YOU OF BEING GUILTY,
AND HE'S DENYING IT.
THE STATE RECOGNIZED AT THAT
SAME HEARING THAT THE
INTERROGATIONS-- LITTLE
RELEVANT EVIDENCE, AND I WOULD
SAY THE ONLY RELEVANT EVIDENCE
WAS MR. SMITH AND I BEING IN THE
HOME OR KNOWING ANYTHING ABOUT
THE MURDERS.
MR. KURTZ COULD HAVE SIMPLY
CONFRONTED DETECTIVE NELSON WITH
THE NUMBER OF TIMES THAT TERRY
SMITH ASKED TO BE RETURNED TO
HIS CELL.

THERE WAS A WRITTEN TRANSCRIPT
OF THESE INTERROGATIONS--
>> AND WHAT DID HE TESTIFY TO AS
TO HIS REASON FOR ACTUALLY
PLAYING THE TAPE INSTEAD OF
CONFRONTING HIM IN
CROSS-EXAMINATION WITH WHAT HE
DID IN THE INTERROGATION?
>> WELL, HIS EXPLANATION WAS
THAT HE WANTED TO SHOW THE BAD
CONDUCT OF THE OFFICER.
BUT WHEN I CONFRONTED HIM WITH,
WELL, YOU OFFERED 26 EXAMPLES OF
THE LACK OF REMORSE, YOU OFFERED
A NUMBER OF ACCUSATIONS BY THE
DETECTIVES THAT-- OR THE
DETECTIVE'S THEORY OF, OPINIONS
OF HIS GUILT.
AND HE SAID, WELL, I THOUGHT I
FILED A MOTION IN LIMINE ON
THAT.
I THOUGHT I MOVED TO EXCLUDE
THAT.
THE TRIAL COURT'S FINDINGS THAT
IT WAS REASONABLE ARE BELIED BY
WHAT MR. KURTZ SAID.
HE SAID I THOUGHT I FILED A
MOTION IN LIMINE ON THIS.
AND BECAUSE OF THE EGREGIOUS
NATURE OF THIS EVIDENCE, LACK OF
REMORSE CAN BE REVERSIBLE ERROR,
ACCUSATIONS OR OPINIONS BY THE
POLICE OFFICERS THAT THE
DEFENDANT IS GUILTY REVERSIBLE
ERROR IF OFFERED BY THE STATE
OVER THE DEFENSE OBJECTION.
MR. KURTZ OFFERED DAMNING
EVIDENCE AGAINST HIS OWN CLIENT.
IT WOULD HAVE BEEN MUCH SIMPLER
AND CLEANER JUST TO IMPEACH HIM
FROM THE WRITTEN TRANSCRIPT OF
THE NUMBER OF TIMES THAT KURTZ
DID THIS.
AND-- OR THE NUMBER OF TIMES
THAT DETECTIVE NELSON DID THIS.
AND KURTZ DID TRY TO BRING THAT
OUT THROUGH THE, NELSON'S
INTERROGATION OF THE OTHER
WITNESSES IN THE CASE.
WE ALREADY ESTABLISHED SOME OF

THAT.
BUT, I MEAN, YOU HAVE TO-- A
REASONABLE TRIAL LAWYER WOULD
WEIGH THE DANGER, OKAY?
I CAN CLEANLY IMPEACH HIM WITH A
WRITTEN TRANSCRIPT, OR I CAN PUT
IN FRONT OF THIS JURY 26
ACCUSATIONS THAT HE LACKED
REMORSE, THAT HE KILLED THESE
PEOPLE IN COLD BLOOD.
AND OUR OPINION, THE DETECTIVE'S
OPINIONS THAT TERRY SMITH WAS
GUILTY.
I DON'T FIND THAT REASONABLE,
AND I DON'T FIND THE TRIAL
COURT'S FINDING THAT IT WAS
SUBSTANTIAL OR THAT IT WAS A
REASONABLE STRATEGY DECISION
BASED ON THE NATURE OF THE
EVIDENCE OFFERED BY COUNSEL.
AND HIS OWN STATEMENT, I THOUGHT
I FILED A MOTION IN LIMINE ON
THAT.
SO THAT'S VERY DISTURBING.
SOME-- ANOTHER STATEMENT,
OPINIONS OF GUILT AND
ACCUSATIONS OF LYING.
WHAT DID THAT UNARMED YOUNG
WOMAN DO TO CAUSE YOU TO TAKE
HER LIFE OTHER THAN SEEING YOU
TAKE SOMEBODY ELSE'S LIFE?
THAT WAS THE ONLY THING THAT SHE
WAS GUILTY OF, STANDING THERE
WATCHING YOU TAKE SOMEBODY
ELSE'S LIFE.
THE NEXT BEST THING FOR YOU, YOU
TOOK HERS.
THROUGHOUT THE INTERROGATION,
WHICH IS AN AGONIZING THING TO
WATCH, THESE TWO DETECTIVES ARE
STANDING OVER MR. SMITH, AND
HE'S SLOUCHED AND HE'S MUMBLING
AND HE'S CURSING.
AND THERE WAS NOT A SYMPATHETIC
PORTRAYAL OF MR. SMITH AT ALL.
I THINK IT WAS JUST A REALLY BAD
STRATEGY, AND I DON'T KNOW ANY
OTHER LAWYER WHO WOULD HAVE DONE
THAT.
THERE WOULD HAVE BEEN A CLEAN

WAY TO DO IT, AND IT DIDN'T DO
THAT.
NOT ONLY DID COUNSEL OFFER
DAMNING EVIDENCE, OUTRAGEOUS
EVIDENCE AGAINST HIS CLIENT, HE
STIPULATED TO MUG SHOTS.
MUG SHOTS ARE INADMISSIBLE.
THIS WAS NOT AN EYEWITNESS
IDENTIFICATION CASE, THIS WAS
NOT A CASE WHERE THE DEFENDANT
WAS IN JAIL AND THE JURY WOULD
NECESSARILY KNOW THAT HE WAS AN
INMATE.
THE MUG SHOT SHOWED BRION
WILLIAMS, CLEARLY VISIBLE,
"INMATE, DEPARTMENT OF
CORRECTIONS."
TWO OTHER MUG SHOTS ENTERED
THROUGH TWO OTHER WITNESSES.
THESE WENT BACK TO THE JURY.
THE JURY COULD HAVE EASILY
INFERRED THAT MR. SMITH HAD BEEN
ARRESTED OR CONVICTED FOR THREE
CRIMES PRIOR TO THIS.
IT WAS, IT SHOULD HAVE BEEN
OBJECTED TO.
FAILING TO INVESTIGATE YOUR CASE
AND FAILING TO RESEARCH THE LAW
APPLICABLE TO THE FACTS IS
QUINTESSENTIAL INEFFECTIVE
ASSISTANCE OF COUNSEL.
MR. KURTZ FAILED TO CHALLENGE--
>> DO YOU HAVE A CLAIM OF
INEFFECTIVE ASSISTANCE OF
COUNSEL FOR FAILURE TO PROPERLY
INVESTIGATE?
WHICH CLAIM IS THAT?
>> IT'S THROUGHOUT.
I PLED IT THROUGHOUT, THAT HE
FAILED TO PROPERLY INVESTIGATE
THE EVIDENCE IN THE CASE, THE
FORENSIC EVIDENCE, FAILED TO
CHALLENGE THE-- DO THE
RUDIMENTARY RESEARCH ON
SOMEBODY'S HEARSAY AND
INFLAMMATORY EVIDENCE ISSUES.
IT'S THROUGHOUT MY--
>> OKAY.
>> YES, SIR.
HE STIPULATED TO WRITTEN

STATEMENTS ON THE MUG SHOTS THAT
WENT BACK TO THE JURY.
HE FAILED TO CHALLENGE--
>> ON THAT, HAD THE PERSON WHO
HAD WRITTEN THE STATEMENT ON THE
EXHIBIT ALREADY TESTIFIED,
WILLIAMS, HASN'T HE ALREADY
TESTIFIED THAT HE WITNESSED
SMITH SHOOT ROBINSON?
>> YES, HE DID.
HE DID--
>> SO THIS CAME IN AFTER THE
FACT.
IT WAS ALREADY--
>> MR. WILLIAMS TESTIFIED TO
WHAT HE SAW, AND HE RECOUNTED
THE ADMISSIONS SMITH ALLEGEDLY
MADE TO HIM.
>> BUT THE WRITTEN, BUT THEN THE
WRITTEN--
>> THEN THE WRITTEN STATEMENT.
>> THE WRITTEN STATEMENT ON THE
PHOTO CAME IN, SO IT'S JUST
DUPLICATIVE OF WHAT HE'S, IN A
WAY, WHAT HE'S ALREADY TESTIFIED
TO.
>> WELL, IT BOLSTERS TOO.
BECAUSE THROUGHOUT THIS CASE THE
STATE WAS WORRIED ABOUT THE
CREDIBILITY OF THEIR WITNESSES.
THEY ALL HAD FELONY CONVICTIONS
WITH THE EXCEPTION OF ULYSSES
JOHNSON.
THE STATE PAINTED THEM AS NOT
ANGELS.
SO IT WAS BOLSTERING.
OKAY?
IT WAS BOLSTERING THAT WITNESS'
TESTIMONY.
HE'S ALREADY TESTIFIED TO IT.
NOW HE'S SHOWN THE MUG SHOT WITH
A WRITTEN STATEMENT ON IT, AND
HE READS IT VERBATIM.
AND THEN IT GOES BACK TO THE
JURY FOR THEM TO READ AND READ
AND READ.
IT'S HEARSAY.
IT'S AN OUT-OF-COURT STATEMENT
OFFERED TO BOLSTER THAT WITNESS'
TESTIMONY AND THE WITNESSES

BEFORE AND AFTER HIM.
AND THEY DID IT WITH EACH.
SO SHOULDN'T HAVE COME IN.
AND, AGAIN, IT'S A FAILURE TO DO
BASIC RESEARCH.
THE DEFENSE ALSO FAILED TO
CHALLENGE THE FORENSIC EVIDENCE
IN THE CASE.
THE NIGHT BEFORE THE TRIAL AFTER
JURY SELECTION AT 8:10 P.M.,
MR. KURTZ SENT AN E-MAIL TO HIS
CO-COUNSEL WHO WAS PRIMARILY
RESPONSIBLE FOR THE PENALTY
PHASE AND HANDED OFF FOUR
WITNESSES.
SAID I'M TIRED, WOULD YOU PLEASE
TAKE, YOU KNOW, FDLE EXAMINER
SHAD WHO DID THE DNA EVIDENCE,
FDLE FIREARMS WALDMAN AND
DR. GILES, THE MEDICAL EXAMINER.
PAY ATTENTION SO I DON'T HAVE
TO, AND THERE AREN'T MANY
QUESTIONS, IF ANY.
AND THEN MR. KURTZ TOLD OR WROTE
MR. HERNANDEZ THAT THE CASINGS
FOUND IN THE HOUSE WERE ALL FROM
THE SAME GUN.
THAT WASN'T CORRECT.
NO ATTACHMENT OF SUGGESTED
CROSS-QUESTIONS, SENT LITTLE TO
NO QUESTIONS FOR ANY OF THESE.
DEFENSE COUNSEL, MR. HERNANDEZ,
DID NOT CROSS-EXAMINE DR. GILES,
ASK ABOUT TOUCH DNA WITH
MS. SHAD, DID NOT CHALLENGE
WARDMAN'S TESTIMONY AS TO WHERE
THE CASINGS WERE FOUND HOUSED,
IF THEY WERE EVER TEST FIRED.
THERE WAS LIVE AMMO FOUND IN THE
BACK BEDROOM THAT COULD HAVE
BEEN TEST FIRED IN THE GUN TAKEN
FROM MR. GIBSON'S HAND, NEVER
HAPPENED.
THAT WASN'T CHALLENGED AT ALL.
AND THERE'S REALLY GREAT
PREJUDICE HERE.
THE TRIAL COURT FOUND AND USED
AS AN AGGRAVATOR-- I KNOW WE'RE
NOT HERE ON THAT-- BUT THE
TRIAL COURT FOUND AND THE STATE

ARGUED THAT AFTER SMITH KILLED
MR. ROBINSON IN THE FRONT OF THE
HOUSE, HE STEPPED OVER HIS BODY
AND WALKED TO THE OPPOSITE END
OF THE HOUSE AND ELIMINATED,
EXECUTED BERTHAM GIBSON AND--
KEENAN.
ANY CURSORY REVIEW OF THE CRIME
SCENE PHOTOS WOULD LEAD COUNSEL
TO HIRE HELP FOR THIS.
THIS WAS A SMALL HOUSE, CONCRETE
BLOCK HOUSE.
THE HALLWAY STRAIGHT DOWN INTO
THE BEDROOM WHERE BERTHAM GIBSON
WAS FOUND RIGHT IN THE DOORWAY
LEANING UP AGAINST THE BED WITH
AN AK-47 IN HIS HANDS.
THERE WAS LIVE AK-47 AMMO ON THE
BED, SOME FULL METAL JACKET,
SOME SOFT CORE.
MS. KEENAN WAS FOUND IN THE LEFT
CORNER OF THE BEDROOM ACCORDING
TO DETECTIVE KICKLEITER WHO DID
PART OF THE CRIME SCENE
INVESTIGATION.
SHE SHOT ONCE.
NO PROJECTILE IS EVER FOUND IN
THAT ROOM FROM A .10 MM.
THERE ARE AK-47 SHELL CASINGS BY
HER HIP AND LEG FROM FULL METAL
JACKET THAT INDICATE, CERTAINLY
COULD HAVE BEEN ARGUED THAT
BERTHAM GIBSON SHOT MS. KEENAN.
>> LET ME ASK YOU ABOUT THE
POST-CONVICTION EXPERTS.
>> YES, SIR.
>> DID ANY OF THEM TESTIFY THAT
THE STATE'S THEORY OF THE CASE
WAS INCONSISTENT WITH THE CRIME
SCENE EVIDENCE?
>> YES, SIR.
BOTH DID, DR. PANERI AND
MR. ROBINSON.
THEY BOTH SAID THAT THE EVIDENCE
THAT THEY VIEWED WAS CONSISTENT
WITH MR. GIBSON SHOOTING MS.
KEENAN.
NOW ON DIRECT-- I MEAN, ON
CROSS-EXAMINATION THEY DIDN'T
RULE OUT THE POSSIBILITY--

>> WELL, THAT WAS MY QUESTION TO YOU THOUGH.
>> RIGHT.
>> THEY DIDN'T RULE OUT THAT POSSIBILITY.
>> MY QUESTION WAS DID THEY SAY THAT THE EVIDENCE WAS INCONSISTENT WITH THE STATE'S THEORY OF THE CASE.
>> I'M SORRY.
WELL, IT COULD HAVE BEEN EITHER WAY.
THAT WAS THE POINT.
THEY COULD RULE OUT EITHER.
AND WHICH WOULD LEAD COUNSEL, REASONABLE COUNSEL TO ARGUE REASONABLE DOUBT.
CASE NOT PROVED.
THE STATE HASN'T PROVED WHAT HAPPENED HERE.
AND IF YOU LOOK AT THE BULLET DAMAGE IN THAT HOUSE, YOUR HONOR, AK-47-- THE PERSON WITH THE RIFLE WAS BACKING DOWN THE HALLWAY, SHOT THROUGH A WALL.
FULL METAL JACKET ROUND GOES THROUGH THE WALL AND THROUGH THE REFRIGERATOR AND COMES OUT INTACT.
RIFLE SHOT GOES, AS HE'S BACKING UP, RIFLE SHOT GOES THROUGH THE CEMENT-- THE DRYWALL AND THE CEMENT CINDERBLOCK WALL.
DOESN'T COME OUT THE OTHER SIDE.
I MEAN, THESE-- FULL METAL JACKET WHICH THE EXPERTS, OUR EXPERTS DESCRIBE CAN CAUSE THE SAME TYPE OF INJURY THAT A .10 MM ROUND WOULD.
THEY DON'T LOSE VELOCITY, THEY'RE NOT SOFT, THEY DON'T START TO WOBBLE UNTIL THEY'VE GONE THROUGH THE BODY, AND IT'S VERY EASY TO MISTAKE AT AN AUTOPSY WHAT A .10 MM ROUND CAN DO VERSUS A FULL METAL JACKET AK-47.
THIS WAS NEVER INVESTIGATED BY ANYBODY.
AND THESE WITNESSES WERE HANDED

OFF AT THE LAST MINUTE BY
MR. KURTZ TO MR. HERNANDEZ.
MR. KURTZ'S EXPLANATIONS, TOO,
NEED TO BE CLOSELY LOOKED AT.
WHEN I--
>> COUNSEL, I JUST, I WANT TO
LET YOU KNOW YOU ARE IN YOUR
REBUTTAL TIME.
SO YOU CAN KEEP GOING, BUT
YOU'RE CONSUMING TIME.
>> YOUR HONOR, SIGNIFICANT
PREJUDICE CAUSED BY THE FAILURE
OF COUNSEL TO PREPARE FOR TRIAL
AND TO PRESENT A COGENT DEFENSE
PUTTING ON THIS EVIDENCE THAT
CLIENT LACKED REMORSE AND
OPINIONS BY THE DETECTIVES THAT
HE WAS GUILTY WAS OUTRAGEOUS.
THE FORENSIC EVIDENCE SHOULD
HAVE BEEN INVESTIGATED, AND
COUNSEL DID NOT ADVANCE
MR. SMITH'S VERSION OF THE
EVENTS.
I KNOW THE DEFERENCE IS DUE TO
TRIAL COUNSEL, BUT THE TRIAL
COURT FAILED TO--
>> WELL, YOU SAID COUNSEL DIDN'T
ADVANCE MR. SMITH'S VERSION OF
EVENTS.
DIDN'T COUNSEL TESTIFY THAT
MR. SMITH TOLD HIM AT THE TIME
OF TRIAL THAT IT HAPPENED
EXACTLY THE WAY THE STATE'S
EVIDENCE SAID THAT IT HAPPENED?
>> AFTER MR. KURTZ READ THE--
>> SO, BUT YOU'RE TALKING ABOUT
HIS POST-CONVICTION TESTIMONY.
>> YES, SIR.
>> OKAY.
>> YES, SIR, I AM.
HERE'S THE PROBLEM WITH
MR. KURTZ'S-- GIVING DEFERENCE
TO TRIAL COUNSEL HERE.
FAILED TO WEIGH KURTZ'S
TESTIMONY AGAINST CO-COUNSEL,
MR. HERNANDEZ, SAID THAT HE
WOULD NOT HAVE OFFERED THE
INTERROGATION INFORMATION, THAT
HE WOULD HAVE CHALLENGED
EVERYTHING THAT HE COULD IN THE

CRIME SCENE AND THE BALLISTICS
AND THAT HE WASN'T AN EXPERT.
WE PUT ON THE TESTIMONY OF
MICHAEL HURST, THEIR FACT
INVESTIGATOR.
MR. KURTZ SAID THAT MR. HURST IS
A GUN GUY, HE WORKED NASSAU
COUNTY SHERIFF'S OFFICE, HE
KNOWS EVERYTHING.
WENT OVER ALL THE EVIDENCE.
MR. HURST SAID, NO, THAT NEVER
HAPPENED.
I NEVER REVIEWED THE EVIDENCE
WITH MR. KURTZ.
WE WOULD CALL FDLE WHEN WE HAD
SERIOUS CRIME SCENES.
MR. KURTZ CONTRADICTED HIMSELF
IN HIS OWN TESTIMONY.
FIRST, HE DIDN'T INVESTIGATE THE
FORENSIC EVIDENCE BECAUSE HE
DIDN'T NEED TO.
THEN HE DIDN'T INVESTIGATE THE
FORENSIC EVIDENCE BECAUSE
MR. HURST TOLD HIM ALL ABOUT IT.
THEN HE DIDN'T INVESTIGATE THE
FORENSIC EVIDENCE BECAUSE
MR. SMITH ADMITTED TO HIM.
BUT MR. SMITH, ACCORDING TO HIS
TESTIMONY, ADMITTED DAYS, MAYBE
AS LONG AS TWO WEEKS RIGHT AFTER
THE SECOND-DEGREE MURDER TRIAL.
WHAT WAS MR. KURTZ DOING FOR THE
NINE-- OR FOR THE 15 MONTHS
BEFORE THAT TO INVESTIGATE ALL
THIS EVIDENCE?
IT COULDN'T ABSOLVE HIM OF THAT.
BUT MR. KURTZ HAS MADE
INCONSISTENT STATEMENTS, AND THE
TRIAL COURT'S RELIANCE IS JUST
NOT FOUNDED.
AND THIS COURT'S NOT BOUND-- I
MEAN, I KNOW YOU HUE
SUBSTANTIAL, COMPETENT EVIDENCE,
BUT IT'S GOT TO BE REASONABLE
FINDINGS.
AND IN DORSEY THIS COURT
REVERSED THE TRIAL COURT'S
FINDING THAT WAS DUE GREAT
DEFERENCE ON STATED RACE-NEUTRAL
REASON FOR STRIKING A WITNESS

AND SAID-- OR A JUROR AND SAID
IT'S NOT BLIND DEFERENCE, AND
IT'S NOT BLIND ALLEGIANCE.
WE CAN'T ABANDON OUR DUTY TO
REVIEW THESE CASES.
SO I WOULD ASK THE COURT TO
ALLOW ME A FEW MORE SECONDS IN
REBUTTAL.
THANK YOU.
>> YOU HAVE USED ALMOST ALL YOUR
TIME.
I WILL AFFORD YOU ONE MINUTE FOR
REBUTTAL.
>> THANK YOU, SIR.
>> GOOD MORNING.
MAW IT PLEASE THE COURT, MY NAME
IS LISA HOPKINS.
I REPRESENT THE STATE IN THIS
MATTER.
WE ARE HERE FOR THE TRIPLE
HOMICIDE OF DESMOND ROBINSON,
KANETHIA KEENAN AND BERTHUNE
GIBSON.
AT THE EVIDENTIARY HEARING,
MR. KURTZ TESTIFIED, "MY CLIENT
ADMITTED TO ME WHAT HAPPENED."
"HE ADMITTED HE WAS THE
SHOOTER."
HE ALSO TESTIFIED THAT ONE OF
THE WITNESSES, EVERETT HANEY,
WHO AT ISSUE WAS A RECANTATION,
BEFORE TRIAL ADMITTED
MR. HANEY'S STATEMENTS AT
DEPOSITION TO POLICE ARE TRUE.
NOW, I'D LIKE TO START WITH THE
VIDEO OF MR. SMITH AND
MR. KURTZ'S STRATEGY IN
ADMITTING THAT VIDEO.
A COLD RECORD IS VERY DIFFERENT
FROM A VIDEO AND A TAPE.
MR. KURTZ TESTIFIED THAT HE
WANTED TO SHOW THE JURY THE
COERCIVE TACTICS OF DETECTIVE
NELSON, AND HE DID SO WITH THE
VIDEO OF MR. SMITH AND AS WELL
WITH BRION WILLIAMS.
HE MADE-- HE HIGHLIGHTED
MULTIPLE TIMES DURING HIS
CLOSING ARGUMENT, DURING
CROSS-EXAMINATION SHOWING THAT

DETECTIVE NELSON REPEATEDLY
IGNORED THE REQUEST TO END THE
INTERROGATIONS.
IT SHOWED DETECTIVE NELSON AS
AGGRESSIVE.
IT SHOWED HIM AS CONFRONTING
THESE WITNESSES.
IT WENT TOWARDS THE CREDIBILITY
OF EACH OF THESE WITNESSES
SUGGESTING THAT DETECTIVE NELSON
FED THEM THE INFORMATION ABOUT
WHAT HAPPENED THE NIGHT OF THE
TRIPLE HOMICIDE, AND HIS
STRATEGY WAS TO SHOW THE JURY
WHAT DETECTIVE NELSON WAS
ACTUALLY ENGAGING IN.
NOW, MUG SHOTS, THE MUG SHOTS.
DURING TRIAL THESE PHOTOS WERE
NEVER IDENTIFIED AS MUG SHOTS.
THEY WERE NEVER IDENTIFIED AS
BOOKING PHOTOS.
THERE WAS THE ONE PHOTO WITH
BRION WILLIAMS THAT JACKSONVILLE
SHERIFF'S OFFICE INSIGNIA WAS
NOTICEABLE.
HOWEVER, WITH THE OTHER TWO IT
WAS NOT.
ADDITIONALLY, AS WAS POINTED
OUT, THE STATEMENTS-- THE
WITNESSES FOR EACH OF THESE
PHOTOS HAD ALREADY TESTIFIED TO
WHAT HAPPENED.
THE POST-CONVICTION COURT JUDGE
WHO WAS ALSO THE TRIAL JUDGE IN
THIS CASE RULED THAT THE OVERALL
USE OF THESE STATEMENTS WAS NOT
PREJUDICIAL, WAS ULTIMATELY NOT
PREJUDICIAL TO MR. SMITH GIVEN
THAT THE WITNESSES WERE
AVAILABLE FOR CROSS-EXAMINATION,
THEIR STATEMENTS-- MR. KURTZ
ACTUALLY BROUGHT OUT THAT ALL OF
THESE WITNESSES INITIALLY DENIED
KNOWING ANYTHING ABOUT THE CASE,
DENIED ANY INVOLVEMENT.
AND, AGAIN, ALL POINTING OUT TO
THE TACTICS OF THE DETECTIVES,
INSINUATING THAT THESE WITNESSES
HAD MADE UP THEIR STATEMENTS TO
COMPLY WITH WHATEVER THE

DETECTIVES WANTED THEM TO SAY.
AND ULTIMATELY, THESE STATEMENTS
WERE USED AS PRIOR CONSISTENT
STATEMENTS IN THE CASE OF
MR. PETERSON.
HE HAD MADE HIS STATEMENT SIX
MONTHS PRIOR TO ENGAGING IN A
PLEA DEAL THAT WAS BROUGHT TO
THE, THAT WAS PUT BEFORE THE
JURY TO SUGGEST THAT HE HAD A
BIAS TO TESTIFY ABOUT-- TO
TESTIFY THE WAY THE STATE WANTED
HIM TO IN ORDER TO GET A BETTER
SENTENCE FROM THE STATE FOR HIS
PENDING CASES.
NOW, REGARDING THE FORENSIC
EVIDENCE, EACH OF THE EXPERTS
CALLED AT THE EVIDENTIARY
HEARING TESTIFIED THAT THE
STATE'S THEORY WAS NOT WRONG
WITH WHAT THE EVIDENCE SHOWED.
THEY MAY HAVE HAD A DIFFERENT
THEORY OF WHAT THE EVIDENCE
SHOWED, BUT ULTIMATELY ARE ALSO
CONCLUDED THAT-- AND EVEN IN
THE CASE OF MR. ROBINSON WHO,
WHEN ASKED IF THE STATE'S THEORY
WAS CONSISTENT WITH WHAT THE
EVIDENCE SHOWED, HE RESPONDED,
"ABSOLUTELY."
THESE FORENSIC WITNESSES WOULD
HAVE MERELY SERVED AS AN
ALTERNATIVE THEORY WHICH
MR. KURTZ TESTIFIED HIS STRATEGY
WAS TO POINT TO IT WAS SOMEONE
ELSE, THAT BRAYLON JOHNSON AND
ULYSSES WERE BROTHERS, THEY--
SUGGESTING THAT THEY WERE TRYING
TO PUT IT ON MR. SMITH TO
PROTECT EACH OTHER, THAT IN THIS
CASE IT WAS UNDISPUTED THAT THE
VICTIMS ALL DIED FROM GUNSHOT
WOUNDS.
IT WAS ALL THE SAME SERIES OF
EVENTS IN WHICH MR. ROBINSON WAS
KILLED FIRST, AND THEN THE OTHER
TWO VICTIMS WERE KILLED IN THE
BACK BEDROOM.
IN REGARDING TO SMITH'S VERSION
OF EVENTS, ON DIRECT APPEAL IT

WAS ARGUED THAT THIS WAS
ACTUALLY SELF-DEFENSE.
AND THEN AT THE EVIDENTIARY
HEARING, MR. SMITH NOW CLAIMS IT
WAS A LIGHT BROWN-SKINNED MALE
WITH DREADLOCKS WHO IS ACTUALLY
THE ONE WHO COMMITTED THIS
MURDER, AND I DIDN'T SAY
ANYTHING AT FIRST BECAUSE I
DIDN'T KNOW WHO HE WAS, AND I
DIDN'T WANT TO BE A SNITCH.
THESE ARE WHOLLY INCONSISTENT
VERSIONS OF EVENTS, AND
MR. KURTZ IS UNDER NO OBLIGATION
TO PRESENT A THEORY OF
DEFENSE-- A THEORY OF VERSIONS
THAT HE DOES NOT AGREE WITH.
ESPECIALLY GIVEN IN LIGHT OF THE
DEFENDANT'S ADMISSION TO
COMMITTING THESE THREE MURDERS.
THERE SHOULD BE DEFERENCE GIVEN
TO JUDGE SOWD AGAIN AS HE WAS
THE TRIAL JUDGE AND BOTH THE
POST-CONVICTION COURT JUDGE.
HE IS ABLE TO OBSERVE THE
DEMEANOR OF EACH OF THE
WITNESSES, HE'S ABLE TO HEAR
ALL-- HE HEARD ALL OF THE
EVIDENCE AT THE TRIAL AS WELL AS
AT THE EVIDENTIARY HEARING, AND
HE RELIED ON THE TESTIMONY OF
MR. KURTZ.
THAT IS COMPETENT, SUBSTANTIAL
EVIDENCE, AND DEFERENCE SHOULD
BE GIVEN TO THE TRIAL COURT'S
ORDER.
IF THERE ARE NO QUESTIONS, THE
STATE IS ASKING THAT YOU AFFIRM
THE DENIAL OF THE GUILT PHASE
CLAIMS AND DENY THE HABEAS
PETITION.
THANK YOU.
>> FIRST, DO NO HARM.
COUNSEL OFFERED INFLAMMATORY,
OUTRAGEOUS EVIDENCE AGAINST HIS
OWN CLIENT THAT CREATED
SUBSTANTIAL PREJUDICE.
THAT WOULD HAVE BEEN REVERSIBLE
ERROR HAD THE STATE OFFERED IT
OVER DEFENSE COUNSEL'S

OBJECTION.
MR. KURTZ'S OBLIGATION TO
MR. SMITH WAS TO HOLD THE STATE
TO ITS BURDEN OF PROOF.
ESPECIALLY AS HE CLAIMS SINCE
THE CLIENT ADMITTED TO HIM.
UNDER CHRONIC, WHAT HE MUST DO
AT THAT POINT IS TEST THE
STATE'S CASE.
INSTEAD, HE STIPULATED 96 ITEMS
OF EVIDENCE, OFFERED TERRIBLE
EVIDENCE AGAINST HIS CLIENT,
STIPULATED TO MUG SHOTS.
THIS WAS NOT THE ADVERSARIAL
PROCESS ENVISIONED UNDER
STRICKLAND, AND MR. SMITH SHOULD
BE GRANTED A NEW TRIAL.
THANK YOU.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS.
AND THE COURT NOW ADJOURNED FOR
THE DAY.