>> NOW TO THE FOURTH CASE ON THE DOCKET WHICH IS CALHOUN V. THE STATE OF FLORIDA.
PLEASE PROCEED.
>> MAY IT PLEASE THE COURT, I'M STACY BIGGART WITH CCRC NORTH, AND WE REPRESENT JOHNNY CALHOUN IN HIS POST-CONVICTION CASE.
I WOULD LIKE TO RESERVE FIVE MINUTES FOR REBUTTAL, PLEASE, AND IN THE REMAINING AMOUNT OF TIME I HAVE TO TALK TO YOU, I WANT TO TALK ABOUT MR. CALHOUN'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, CLAIM FOUR IN HIS INITIAL BRIEF.
YOUR HONORS, THIS IS A CASE OF AN OVERWHELMED CAPITAL DEFENSE ATTORNEY WHO WAS TRYING A DIFFICULT CAPITAL MURDER TRIAL ESSENTIALLY BY HERSELF.
SHE HAS A SECOND CHAIR, BUT HER SECOND CHAIR IS NOT QUALIFIED TO HANDLE CAPITAL CASES, IS A MISDEMEANOR ATTORNEY AND DESCRIBES HIMSELF, NOT ME, AS A BAG HOLDER.
THIS IS ALSO A CASE WHERE THE DEFENSE COUNSEL HAD AN INVESTIGATOR, AN INVESTIGATOR WHO SEEMED DISINTERESTED OR UNMOTIVATED IN INVESTIGATING THIS CASE AND MADE SUCH STATEMENTS AT THE EVIDENTIARY HEARING AS I DON'T HAVE THE TIME OR THE ENERGY TO CHASE DOWN THOSE LEADS.
SO AS A RESULT OF THIS DEFENSE ATTORNEY ESSENTIALLY TRYING THIS CASE BY HERSELF, SHE FAILED TO CONDUCT AN ADEQUATE PRETRIAL INVESTIGATION OF THIS CASE INCLUDING INVESTIGATING HER ALTERNATE SUSPECT, SHE FAILED TO CHALLENGE THE STATE'S FORENSIC EVIDENCE, SHE FAILED TO CHALLENGE THE STATE'S IDENTIFICATION WITNESSES, SHE FAILED TO OBJECT TO HARMFUL HEARSAY THAT ALLOWED THE STATE

TO ARGUE CONSCIOUSNESS OF GUILT
IN THEIR CLOSING ARGUMENT, AND
SHE ALSO ELICITED HARMFUL
EVIDENCE IN HER CASE IN CHIEF
THROUGH NOT ONE, BUT TWO
WITNESSES.
AND THEN SHE ALLOWED THE STATE
TO MISSTATE THE EVIDENCE IN
CLOSING ARGUMENT WHICH AMOUNTED
TO AN ARGUMENT THAT MR. CALHOUN'S
GAVE A CONFESSION THAT HE DID
NOT GIVE.
THE CUMULATIVE EFFECT OF ALL HER
ERRORS PREJUDICES MR. CALHOUN'S,
BECAUSE BUT FOR THOSE ERRORS,
THE RESULT OF THE TRIAL PROBABLY
WOULD HAVE BEEN DIFFERENT.
TRIAL COUNSEL HAD A DUTY TO
CONDUCT A REASONABLE
INVESTIGATION, AND THIS COURT
HAS SAID IN FITZPATRICK V. STATE
THAT PRETRIAL PREPARATION,
BECAUSE IT PROVIDES A BASIS UPON
WHICH MOST OF THE DEFENSE MUST
REST, IS PERHAPS THE MOST
CRITICAL STAGE OF THE LAWYER'S
PREPARATION.
>> LET ME JUST ASK A QUICK
POINT.
WHERE IN YOUR BRIEF DID YOU
RAISE THE CUMULATIVE ERROR POINT
AND MAKE THAT ANALYSIS?
>> THE INITIAL BRIEF WAS NOT
DRAFTED BY MYSELF.
I THINK, THOUGH, THAT UNDER
STRICKLAND YOU HAVE TO LOOK AT
ALL OF THE ERRORS.
>> WELL, EVEN IF YOU WAIVE THE
ISSUE BY NOT RAISING IT?
>> I DON'T KNOW THAT THE ISSUE
IS WAIVED IN THE BRIEFS, YOUR
HONOR.
>> OKAY, MAYBE YOU CAN SHOW ME
THAT YOU--
>> YES, SIR.
IN REBUTTAL I WILL LOOK.
THANK YOU, SIR.
BUT IN THIS CASE WE DON'T HAVE
STRATEGY REASONS FOR COUNSEL'S
ERRORS.

TRIAL COUNSEL'S STRATEGY WAS
GOING TO IMPLY DOUG MIXON'S
INVOLVEMENT.
TRIAL COUNSEL DID SOME
INVESTIGATION IN THIS CASE, BUT
SHE ONLY DID ENOUGH
INVESTIGATION TO KNOW THAT MORE
INVESTIGATION WAS NEEDED.
RUNNING INTO HEARSAY IS NOT A
REASON TO STOP INVESTIGATING.
RUNNING INTO HEARSAY MEANS THAT
YOU NEED TO INVESTIGATE FURTHER.
HEARSAY AND RUNNING INTO
DIFFICULT--
>> WHAT IS THE PARTICULAR
HEARSAY STATEMENT YOU'RE TALKING
ABOUT NOW?
>> COUNSEL TESTIFIED AT THE
EVIDENTIARY HEARING AS WELL AS
HER INVESTIGATOR THAT WHEN THEY
TRIED TO INVESTIGATE THE CASE,
THEY WOULD JUST RUN INTO HEARSAY
STATEMENTS, AND SO THEY COULDN'T
DEVELOP ANYTHING.
>> YOU'RE NOT TALKING ABOUT
THE--
>> NO, SIR, I'M NOT TALKING
ABOUT WHAT HAPPENED AT TRIAL.
I'M TALKING ABOUT THE PRETRIAL
INVESTIGATION.
RUNNING INTO HEARSAY IS
FRUSTRATING, BUT YOU DON'T STOP
INVESTIGATING YOUR CAPITAL
MURDER CASE BECAUSE YOU'RE
FRUSTRATED.
AND IN THIS CASE, SHE HAD A LEAD
IN HER CASE THAT WAS NOT
HEARSAY.
IT WAS ACTUALLY A LEAD THAT WAS
GIVEN TO HER WHENEVER SHE
DEPOSED HER ALTERNATIVE SUSPECT,
AND HE GAVE AN ALIBI WITNESS AND
SAID WHERE HE WAS ON THE NIGHT
THE VICTIM WENT MISSING IN THIS
CASE.
TRIAL COUNSEL NEVER TALKED TO
THE WITNESS, TRIAL COUNSEL NEVER
DEPOSED THIS WITNESS.
SHE NEVER DID ANY INVESTIGATION
OF THIS WITNESS.

AND WHENEVER HER INVESTIGATOR
TESTIFIED AT THE EVIDENTIARY
HEARING, HIS TESTIMONY WAS
FURTHER EVIDENCE OF HOW
DISJOINTED THIS DEFENSE TEAM
WAS.
THIS IS ESSENTIALLY A TWO-PERSON
DEFENSE TEAM, BECAUSE I THINK
YOU CAN'T COUNT THE SECOND CHAIR
AS MAKING ANY CONTRIBUTION.
>> WHAT DID THAT REPORTED ALIBI
WITNESS TESTIFY TO AT THE
EVIDENTIARY HEARING?
>> AT THE EVIDENTIARY HEARING,
HE TESTIFIED THAT MR. MIXON WAS
NOT WITH HIM.
>> IN THE TRIAL COURT,
THEY'LL--
[INAUDIBLE]
>> I THINK THIS COURT NEEDS TO
HAVE--
>> I NEED YOU TO ANSWER MY
QUESTION FIRST.
>> YES, SIR, HE DID.
>> IS THERE COMPETENT,
SUBSTANTIAL EVIDENCE SUPPORTING
THAT CREDIBILITY FINDING?
>> NO, SIR.
>> THERE'S NOT-- DIDN'T
MR. CANTRERAS SAY HE
SPECIFICALLY TALKED TO AN
OFFICER FROM ONE OF THE POLICE
DEPARTMENTS, AND THAT OFFICER
FROM THE POLICE DEPARTMENT-- I
THINK OFFICER MORGAN WAS HIS
NAME, TESTIFIED AT THE
HEARING-- AND OFFICER MORGAN
THAT WHAT HE SAID NEVER
HAPPENED?
WASN'T THAT ONE SIGNIFICANT
INCONSISTENCY?
>> YES, THAT DID HAPPEN.
>> ISN'T THAT COMPETENT,
SUBSTANTIAL BASIS FOR WHICH TO
FIND TESTIMONY TO BE FALSE?
>> IT COULD BE.
THE PROBLEM THAT YOU HAVE HERE
WITH--
>> ASSUMING THAT THERE IS
COMPETENT, SUBSTANTIAL EVIDENCE

FOR THE TRIAL COURT'S
DETERMINATION THAT IT'S FALSE--
AND WE'RE NOT GOING TO REWEIGH
THAT-- THERE'S NO PREJUDICE
WITH RESPECT TO THIS CLAIM,
CORRECT?
>> WELL, IT'S EVIDENCE OF, IT'S
FURTHER EVIDENCE OF--
>> YOU WOULD AGREE THAT THAT
WOULD MEAN THERE'S NO EVIDENCE
WITH RESPECT TO THAT CLAIM.
>> IF THIS COURT--
>> [INAUDIBLE]
>> IF THIS COURT ACCEPTED THE
TRIAL COURT'S FINDING.
>> RIGHT.
>> BUT I'M ASKING THIS--
>> OKAY.
IS THERE ANY LEGAL BASIS FOR NOT
ACCEPTING A CREDIBILITY FINDING
BY A TRIAL COURT UNDER THESE
CIRCUMSTANCES?
>> YES, SIR.
BECAUSE I THINK THAT YOU HAVE TO
LOOK AT THIS ORDER IN ITS
ENTIRETY, AND THERE ARE--
>> NO, I'M TALKING ABOUT
SPECIFICALLY THE CREDIBILITY
FINDING WITH RESPECT TO THIS
PARTICULAR WITNESS.
WHAT, WHAT LAW WOULD ALLOW US AS
AN APPELLATE JUDGE WHO WASN'T--
WHO WERE NOT IN THE COURTROOM TO
SAY THAT THAT CREDIBILITY
DETERMINATION IS INVALID,
PARTICULARLY IN LIGHT OF THE
EVIDENCE THAT WE JUST DISCUSSED?
>> IN THE JUDGE'S ORDER, THERE
ARE PORTIONS OF HIS DISCUSSION
AND HIS ANALYSIS OF THIS WITNESS
THAT COME STRAIGHT FROM THE
STATE'S CLOSING ARGUMENT.
AND PART OF THE CONCERN THAT I
THINK THIS COURT SHOULD HAVE
WITH THIS ORDER IS THAT-- AND I
UNDERSTAND THAT A COURT CAN
DRAFT AN ORDER, AND WE HAVE
SEVERAL TRIAL JUDGES ON THIS
BENCH CAN DRAFT AN ORDER HOWEVER
YOU WANT TO DRAFT THE ORDER.

IF YOU READ MY CLOSING ARGUMENT
AND THE STATE'S CLOSING ARGUMENT
AND YOU HAVE ANALYZED THE
EVIDENCE AND YOU HAVE MADE A
FINDING THAT IS CONSISTENT WITH
WHAT THAT ONE PARTY MAY SAY, YOU
MAY PLUCK THAT PARAGRAPH OUT AND
PUT IT IN YOUR ORDER, BECAUSE
WHY SHOULD YOU REINVENT THE
WHEEL.
THE CONCERN YOU SHOULD HAVE WITH
THIS ORDER IS THIS ORDER
MISSTATES-- IT'S FACTUALLY
INACCURATE IN MANY PLACES, IT
MISSTATES THE LAW IN MANY
PLACES, AND THIS IS A PRODUCT OF
COPYING AND PASTING THE STATE'S
CLOSING ARGUMENT.
THE STRICKLAND LEGAL ANALYSIS,
IT IS 100% FROM THE STATE'S
CLOSING ARGUMENT.
AND IN THAT THE JUDGE MISSTATES
THE STRICKLAND STANDARD.
HE SAYS THAT THE DEFENDANT
PROBABLY WOULD HAVE BEEN FOUND
NOT GUILTY OR GOTTEN A LIFE
SENTENCE.
THAT'S NOT STRICKLAND.
AND SO EITHER THE COURT IS
HAVING-- IS INATTENTIVE AND
HE'S NOT PAYING ATTENTION TO
WHAT HE'S PUTTING IN HIS ORDER
BECAUSE HE'S JUST TAKING IT
DIRECTLY FROM THE STATE'S BRIEF,
OR THE COURT IS, DOESN'T
UNDERSTAND THE LAW.
AND EITHER ONE OF THOSE IS
SOMETHING THIS COURT SHOULD BE
CONCERNED ABOUT.
THERE'S ANOTHER INCIDENT, AND IT
IS THE CLAIM WHERE COUNSEL PUT
ON, RECALLED GLENDA BROOKS TO
TESTIFY THAT BEFORE MR.
CALHOUN'S WAS AT HER HOUSE--
>> I'M HEARING EVERYTHING YOU'RE
SAYING.
I'M HAVING A HARD TIME FOLLOWING
THE LOGIC OF WHATEVER YOU'RE
SAYING GIVES US A LEGAL BASIS
FOR OVERRULING THE CREDIBILITY

DETERMINATION OF THE TRIAL JUDGE
ON THIS PARTICULAR WITNESS, THE
FACT THAT HE GOT THE STRICKLAND
STANDARD WRONG AND TOOK IT FROM
THE STATE'S BRIEF.
I DON'T-- I'M HAVING A
DISCONNECT WITH HOW THAT
REFLECTS--
>> BECAUSE THAT'S NOT THE ONLY
ERROR IN THIS BRIEF, FACTUAL
MISSTATEMENT OF THE LAW.
AND THE PORTION ABOUT
MR. CANTRERAS, THE DISCUSSION IS
OFFICER MORGAN, AND IT'S ALSO
THIS DISCUSSION THAT COMES
DIRECTLY FROM THE STATE'S BRIEF
THAT DOESN'T REALLY MAKE A LOT
OF SENSE, THAT HE ASKED FOR AN
INTERPRETER AT THE HEARING, AND
HE ACTUALLY DOES SPEAK ENGLISH.
SO, THEREFORE, HE'S NOT BEING
HONEST.
BUT THAT'S NOT TRUE.
HE TESTIFIED AT THE HEARING THAT
HE DOES SPEAK ENGLISH, HE DOES
SPEAK BROKEN ENGLISH.
THAT WHEN HE SPOKE TO MY
PREDECESSOR, HE COULD UNDERSTAND
HER, BUT FOR THE PURPOSES OF
THIS HEARING HE WANTED AN
INTERPRETER.
SO THERE'S ANALYSIS THAT IS,
AGAIN, CUT AND PASTED FROM THE
STATE'S ORDER, THAT HE MUST BE
DISHONEST, AND THAT'S NOT TRUE.
AND GLENDA BROOKS, THIS IS VERY
IMPORTANT BECAUSE THIS IS
FURTHER HARMFUL EVIDENCE THAT
WAS ELICITED.
THE ANALYSIS OF WHY SHE WAS
CALLED IS, AGAIN, CUT AND PASTED
FROM THE STATE'S ORDER, AND IT'S
FACTUALLY WRONG.
IN THIS SITUATION DEFENSE
COUNSEL CALLED GLENDA BROOKS,
AND TESTIFIED-- SHE ASKED HER
WHENEVER YOU GOT THE PHONE CALL,
WERE YOU THEN UNCOMFORTABLE WITH
HAVING HIM IN YOUR HOME?
AND THE QUESTIONS CONTINUED, DID

YOU ASK HIM TO LEAVE?
AND THEN THERE ARE A FEW MORE QUESTIONS, AND THEN SHE SAYS, YOU HAVE A GRANDDAUGHTER, DON'T YOU?
AND SHE SAYS, YES.
SHE ELICITED HARMFUL HEARSAY.
THEREFORE, HE NEEDED TO LEAVE HER HOUSE.
DEFENSE COUNSEL DIDN'T WITHDRAWAL WHY SHE DID THIS IN HER CLOSING-- I'M SORRY, IN THE EVIDENTIARY HEARING.
BUT THEN SHE SAID, OH, YEAH, I THINK IT WAS BECAUSE SHE HAD TOO MANY PEOPLE IN HER HOUSE.
>> DIDN'T THE STATE FIRST PUT ON EVIDENCE ABOUT THE MISSING PERSONS FLIER?
THAT WAS ALREADY IN FRONT OF THE JURY.
>> THAT'S NOT THE PROBLEM IN THIS CASE, YOUR HONOR.
THE PROBLEM IS THAT SHE ELICITED INFORMATION THAT HE WAS DANGEROUS, AND THEN THE COURT COPIED FROM THE STATE'S BRIEF THE IDEA THAT THIS-- SHE ACTUALLY DID HAVE A STRATEGY.
THEY CREATED A STRATEGY FOR HER.
SHE CALLED HER TO SHOW HER INCONSISTENT STATEMENTS ABOUT THE FLIER AND WHAT MR. CALHOUN SAID WHEN HE HEARD ABOUT IT.
BUT THAT'S NOT TRUE, THAT'S FACTUALLY INACCURATE.
THAT'S NOT WHAT HAPPENED IN THE DEFENSE CASE IN CHIEF.
WHAT HAPPENED IN THE DEFENSE CASE IN CHIEF WAS SHE WAS IMPEACHED ABOUT HER PRIOR INCONSISTENT STATEMENTS ABOUT WHAT MR. CALHOUN SAID ABOUT THE VICTIM, WHETHER OR NOT HE SAID I DON'T KNOW HER OR THAT WAS THE PERSON THAT WAS SUPPOSED TO PICK ME UP.
SO THE COURT, BY COPYING EXACTLY WHAT THE STATE WROTE IN THEIR BRIEF, CREATED A STRATEGY REASON

THAT'S FACTUALLY WRONG.
BECAUSE THAT'S NOT WHAT HAPPENED
IN THE DEFENSE CASE IN CHIEF,
AND THE DEFENSE CASE IN CHIEF--
AGAIN, BECAUSE THIS LAWYER WAS
OVERWHELMED-- SHE DID TRY A
SEVEN-DAY GUILT PHASE BY
HERSELF, A WEEK AND A HALF WITH
NO HELP.
SHE DID NOT HAVE A COGENT
STRATEGY.
THEY HADN'T THOROUGHLY
INVESTIGATED THIS CASE, SO SHE
PUTS ON A WITNESS AND JUST KIND
OF FORGETS WHY SHE DID IT.
AND SO SHE NEVER CLEARED THAT UP
WITH THE JURY OF WHY, WHY SHE
PUT THIS WITNESS UP TO TALK
ABOUT HOW SHE WANTED MR. CALHOUN
TO LEAVE.
AND SO IT IS PROBLEMATIC
WHENEVER THE COURT-- AND THIS
COURT SHOULD BE CONCERNED--
THAT WHENEVER A COURT JUST
COPIES AND PASTES FROM ANOTHER
BRIEF, ANOTHER CLOSING ARGUMENT,
THAT IF IT'S FACTUALLY WRONG,
COMPLETELY FACTUALLY WRONG, IT'S
NOT SHOWING THAT THEY'RE DOING
ANY TYPE OF REAL ANALYSIS.
AND THAT'S CONCERNING IN THIS
CASE.
THAT'S NOT WHAT HAPPENED IN
THOSE TWO PHASES.
IT'S COMPLETELY WRONG.
THE OTHER ISSUE THAT WAS BROUGHT
IN ON, IN HER GUILT-- IN HER
CASE IN CHIEF WAS SHE RECALLED
THE INVESTIGATOR IN THIS CASE.
AND SHE RECALLED THE
INVESTIGATOR IN THIS CASE TO
TESTIFY ABOUT SOME ITEMS THAT
WERE CONSISTENT WITH THE
VICTIM'S CAR THAT WERE FOUND ON
PROPERTY BELONGING TO
MR. CALHOUN'S FAMILY.
IT WAS A TAG BRACKET FROM A CAR
THAT WAS CONSISTENT WITH THE
VICTIM'S CAR BECAUSE IT WAS FROM
THE SAME DEALERSHIP.

AND THERE WAS ALSO A PIECE OF CARDBOARD THAT HAD AN OIL STAIN ON IT THAT THEY'D FOUND IN THEIR INVESTIGATION THAT THE VICTIM'S CAR HAD AN OIL STAIN.
IT WAS NOT BROUGHT IN IN THE STATE'S CASE IN CHIEF BECAUSE THE INVESTIGATOR SAID THAT HE COULDN'T SAY THAT WAS DEFINITELY HER TAG.
I ASSUME THIS DEALERSHIP SOLD A LOT OF CARS IN SOUTH ALABAMA AND NORTH FLORIDA, AND HE COULDN'T SAY FOR SURE THERE WAS THIS OIL STAIN, SO IT WASN'T BROUGHT IN.
SO SHE CALLED HIM TO TESTIFY ABOUT THOSE THINGS.
NOW, WHAT SHE SAYS THAT SHE CALLED HIM FOR WAS TO SHOW THAT IT WAS JUST A LITTLE TOO MADE UP, AND EVERYTHING IS FALLING ON MR. CALHOUN'S PROPERTY.
SHE NEVER ARGUED THIS TO THE JURY.
INSTEAD, SHE ADDED MORE EVIDENCE FOR THE STATE.
SO THEN WHAT THE STATE DID WITH THIS EVIDENCE WAS THEY BOLSTERED THEIR OFFICER'S CREDIBILITY THAT HE, OF COURSE, WOULDN'T BRING IN EVIDENCE AGAINST A DEFENDANT IF HE DIDN'T HAVE GOOD PROOF OF IT.
AND THEN IN CLOSING ARGUMENT, THE STATE USED THAT EVIDENCE TO SAY, WELL, YOU KNOW, WE DIDN'T BRING IT IN BECAUSE WE COULDN'T PROVE IT, BUT IT'S ABSOLUTELY CONSISTENT WITH MR. CALHOUN HAVING DONE THIS.
SO IT'S, AGAIN, NOT DOING A THOROUGH INVESTIGATION, NOT PUTTING-- AND NOT HAVING A PLAN FOR YOUR DEFENSE AND THEN SCATTER-SHOOTING YOUR DEFENSE AND PUTTING IN VERY HARMFUL EVIDENCE THAT HURTS YOUR CLIENT.
SHE ALSO FAILED TO CHALLENGE THE STATE'S FORENSIC EVIDENCE.
AND WHAT SHE SAID WAS IN A LETTER TO MR. CALHOUN, I THINK

THE 3851 MOTION, BUT IN A LETTER
TO HIM, SHE MADE IT VERY CLEAR
THAT IN A REASONABLE DOUBT
DEFENSE, WHAT YOU DO IS YOU
ATTACK THE STATE'S CASE, AND YOU
DO IT THROUGH EFFECTIVE
CROSS-EXAMINATION OF THE STATE'S
WITNESSES.
SO SHE HAD A DIFFICULT CASE, AND
SHE WAS GOING TO PROVE HER CASE
BY CHALLENGING THE STATE'S
EVIDENCE.
THAT MEANS ADVERSARIAL TESTING
OF THEIR IDENTIFICATION
WITNESSES, THEIR FORENSIC
EVIDENCE.
SHE WAS GOING TO TEST ALL OF
THIS EVIDENCE, AND SHE FAILED TO
DO THAT AS WELL.
SO SHE FAILED TO ASK THE DNA
EXPERT, ISN'T IT TRUE THAT THEY
DNA TESTED AN ALTERNATIVE
SUSPECT.
ISN'T IT TRUE THAT HE COULDN'T
BE EXCLUDED AS A CONTRIBUTOR?
SHE FAILED TO TEST THE STATE'S
CASE.
AND I HAVE FIVE MINUTES LEFT FOR
REBUTTAL, IF I MAY RESERVE?
>> MAY IT PLEASE THE COURT, MY
NAME IS LISA HOPKINS, AND I
REPRESENT THE STATE IN THIS
MATTER.
I'D LIKE TO START WITH THE
ARGUMENT THAT TRIAL COUNSEL DID
NOT DO AN ADEQUATE INVESTIGATION
PRETRIAL.
IN THIS CASE SHE HAD HER
INVESTIGATOR, MR. JORDAN-- WHO
ALSO TESTIFIED AT THE
EVIDENTIARY HEARING-- THAT THEY
FOLLOWED AS MANY LEADS AS THEY
COULD.
THEY-- SHE EVEN DESCRIBED
HAVING DOORS SLAMMED IN HER FACE
IN TERMS OF TRYING TO FIND
CONNECTIONS TO PUT DOUG MIXON AS
THE ALTERNATIVE SUSPECT.
SHE TESTIFIED AT THE EVIDENTIARY
HEARING THAT HER STRATEGY WAS TO

POKE HOLES TO CAUSE REASONABLE
DOUBT IN THE STATE'S CASE,
MAINTAIN THE CREDIBILITY WITH
THE JURY AND ALSO TRY TO PUT
DOUG MIXON AS THE ALTERNATIVE
SUSPECT.
AT TRIAL SHE HAD MR. MIXON
SUBPOENA'D TO TRIAL.
HE WAS THERE THAT DAY, BUT WITH
THE DEFENDANT TELLING HER DO NOT
CALL HIM, I DON'T WANT HIM
CALLED AS A WITNESS ALONG WITH
HER OBSERVATIONS THAT HE
APPEARED TO BE UNDER THE
INFLUENCE OF SOME TYPE OF DRUG.
SHE MADE THE ULTIMATE DECISION
NOT TO CALL HIM DURING HER CASE
IN CHIEF.
MR. MIXON DID TESTIFY AT THE
EVIDENTIARY HEARING.
HE TESTIFIED THAT
MR. CANTRERAS-- WHILE HE WAS AT
HIS HOUSE, MR. CANTRERAS WAS NOT
THERE.
THE JUDGE WAS ABLE TO HEAR
MR. MIXON'S TESTIMONY AND WAS
ABLE TO MAKE CREDIBILITY
DETERMINATIONS BASED ON THEIR
STATEMENTS.
HE FOUND MS. SIMMONS TO BE
COMPLETELY INCONSISTENT.
HE FOUND MR. CANTRERAS TO BE
INCONSISTENT AS WELL.
MR. CANTRERAS TESTIFIED THAT HE
ONLY KNEW MR. MIXON THROUGH
WORK, THAT THEY NEVER SPENT ANY
TIME OUTSIDE OF WORK TOGETHER,
AND SO IT'S WHOLLY INCREDIBLE
THAT MR. MIXON WOULD GO TO
SOMEONE HE BARELY KNOWS AND
CONFESS TO A MURDER.
MR. MIXON TESTIFIED THAT-- HE
WAS ADAMANT, I HAVE NEVER
CONFESSED TO THIS CRIME.
I BELIEVE THE DEFENDANT IS THE
ONE GOING AROUND TELLING PEOPLE
THAT I WAS INVOLVED.
NOW, AS FAR AS THE FORENSIC
EVIDENCE, TRIAL COUNSEL
TESTIFIED THAT SHE WAS ABLE TO

CONSULT WITH MR. WALTER SMITH
AND MR. WHITE BOTH IN HER
OFFICE.
THEY WERE EXPERIENCED ATTORNEYS.
AFTER CONSULTING WITH THEM ABOUT
THE EXPERTS, THEY MADE THE
DECISION NOT TO CALL AN EXPERT
FOR THE DIGITAL FORENSIC
EVIDENCE AS WELL AS THE
SCRATCHES THAT WERE COVERED--
THAT COVERED THE DEFENDANT.
MS. JEWELL TESTIFIED AT THE
EVIDENTIARY HEARING SHE STILL
WOULD NOT HAVE CALLED AN EXPERT
ON THOSE SCRATCHES, AND THE
COURT SHOULD BE AWARE THAT THE
STATE DID NOT CALL AN EXPERT ON
THE SCRATCHES.
THE JURY WAS ABLE TO HEAR THE
ARGUMENT.
THE STATE THOUGHT IT WAS CAUSED
BY FINGERNAILS.
THE DEFENSE ARGUED IT WAS CAUSED
BY RUNNING THROUGH THE WOODS
THAT THE DEFENDANT WAS
ADMITTEDLY IN AS EVIDENCED BY
HIM SHOWING UP AT THE BROOKS'
HOME ABOUT A MILE AND A HALF
FROM THE SITE OF WHERE THE CAR
WAS ULTIMATELY FOUND.
NOW, AS FAR AS CALLING
MS. BROOKS DURING HER CASE IN
CHIEF, MS. JEWELL DID TESTIFY
THAT INITIALLY SHE WAS-- SHE
COULD NOT REMEMBER WHY SHE HAD
CALL MS. BROOKS.
AND THEN AFTER REFRESHING HER
MEMORY, SHE WAS ABLE TO SAY I
BELIEVE IT WAS BASED ON A
CONVERSATION I HAD WITH THE
DEFENDANT.
I WAS TRYING TO GET OUT THAT IT
WASN'T THAT SHE DIDN'T WANT THE
DEFENDANT IN THE HOUSE, IT WAS
THAT SHE DIDN'T WANT ANYBODY IN
THE HOUSE BASED ON THE FLIER.
AND SOMETIMES WHEN YOU PUT A
WITNESS ON THE STAND, YOU CAN'T
ALWAYS GET THEM TO SAY WHAT YOU
WANT THEM TO SAY.

AND SHE DID ADMIT THAT
MS. BROOKS WAS A VERY DIFFICULT
WITNESS FOR HER.
AS FAR AS INVESTIGATOR RAYLEIGH,
SHE TESTIFIED THAT SHE COMMONLY
PUTS ON THE LAW ENFORCEMENT
WITNESSES DURING HER CASE IN
CHIEF TO POINT OUT THAT SHE,
THAT THEY WERE NOT FORTHCOMING
TO THE JURY.
SHE TRIED TO BRING OUT THAT
THERE WAS AN UNKNOWN SHOE PRINT
THAT WAS RECOVERED THAT COULD
HAVE SHOWN A POSSIBLE
ALTERNATIVE SUSPECT THAT
INVESTIGATION DID NOT, THAT THE
INVESTIGATION DID NOT GO INTO.
AND, AGAIN, HER ULTIMATE
STRATEGY WAS TO POINT OUT THE
INCONSISTENCIES, PLAY OFF THE
IDENTIFICATION EVIDENCE.
BUT THE EVIDENCE THAT WAS
PRESENTED AT THE EVIDENTIARY
HEARING DOES NOT NEGATE THE DNA
EVIDENCE THAT WAS FOUND IN THE
DEFENDANT'S TRAILER 1 IN 38
QUADRILLION.
THAT IS THE DNA OF THE VICTIM.
HER BLOOD ON THE DUCT TAPE AND
ON THE WHITE QUILT THAT WAS
RECOVERED FROM THE TRAILER.
1 IN 27 QUADRILLION, BLOOD FOUND
IN THAT TRAILER.
NOW ALSO MR. MIXON'S DAUGHTER
BRITNEY, WHO WAS A WITNESS IN
THE CASE.
MS. JEWELL TESTIFIED THERE WAS
AN IMPLICATION THAT SHE WAS
INVOLVED IN THIS CASE AND THAT
BECAUSE HER DNA WAS FOUND IN
THAT TRAILER, IT WAS IMPLIED
THAT MR. MIXON'S BLOOD WAS ALSO
FOUND BECAUSE IT WAS ONLY 1 IN
800.
IT WAS A LOW AMOUNT THAT THEY
COULD NOT CONNECT MR. MIXON TO
THE FORENSIC EVIDENCE RECOVER
TOED.
>> LET ME ASK YOU ABOUT A FAIRLY
MINOR POINT IN ONE OF THE

CLAIMS.
THE CLAIM REGARDING WHAT PETITIONER TERMS CLASSIC HEARSAY, THE FAILURE TO OBJECT TO CLASSIC HEARSAY WHEN TIFFANY BROOKS TESTIFIED THAT HER BOYFRIEND ON THE PHONE, STEVEN BLEDSOE, TOLD HER ABOUT THE FLIER, AND THE CLAIM IS THAT THAT ALLOWED FOR THE FAILURE TO OBJECT TO THAT TESTIMONY.
I SAW A FLIER, BOTH OF THESE PEOPLE ARE MISSING.
ALLOWED THE CONSCIOUSNESS OF GUILT TESTIMONY THAT BROOKS GAVE ABOUT CALHOUN SAYING THAT HE DID NOT KNOW THE VICTIM?
SO THAT'S THE CLAIM.
AND MY SORT OF MINOR POINT IS YOU SEEM TO ACCEPT THAT THAT IS HEARSAY, AND I'M HAVING A HARD TIME UNDERSTANDING WHY THAT STATEMENT BY BLEDSOE, THAT I SAW A FLIER WITH THESE TWO PEOPLE ON IT, WAS OFFERED TO PROVE THE TRUTH OF THE MATTER ASSERTED.
AT ISSUE IN THE CASE WAS NOT WHETHER HE SAW A FLIER OR NOT.
IT WOULD SEEM TO ME THAT THAT WOULD BE OFFERED TO SHOW CONTEXT OF THE RELEVANT AND ADMISSIBLE CONVERSATION BETWEEN THE WITNESS AND THE DEFENDANT.
SO WHY IS THAT HEARSAY, I GUESS, IS MY QUESTION.
I MEAN, THE CLAIM IS SHE FAILED TO OBJECT TO CLASSIC HEARSAY, AND I DON'T SEE THAT AS HEARSAY.
WHAT AM I MISSING.
>> I DON'T THINK YOU'RE MISSING ANYTHING, YOUR HONOR.
I BELIEVE THAT THE EVIDENCE OF THE FLIER HAD ALREADY COME IN THROUGH OTHER WITNESSES, THAT THEY TESTIFIED THAT BOTH THE DEFENDANT AND MS. BROWN WERE BOTH ON THAT MISSING PERSONS FLIER.
THIS WOULD BE MORE OF AN EFFECT ON THE LISTENER RATHER THAN A

TRUE HEARSAY, BECAUSE ONCE THEY HEARD ABOUT THE FLIER, THEY-- THAT CAUSED THEIR ACTIONS TO ASK HIM ABOUT IT, AND THEN THEY ULTIMATELY DROPPED HIM OFF ON THE ROAD ON THE WAY BACK TO FLORIDA AND HAD HIM LEAVE THE HOUSE.
IT'S MORE OF AN EFFECT ON THE LISTENER THAN IT IS TRUTH OF THE MATTER ASSERTED--
[INAUDIBLE]
>> AND THE LISTENER WOULD BE RELEVANT BECAUSE THAT EXPLAINS WHY SHE ASKED THE QUESTION OF THE DEFENDANT, AND WITHOUT THAT CONTEXT, IT WOULDN'T MAKE ANY SENSE.
>> CORRECT.
>> OKAY.
>> COUNSEL, DO YOU HAVE A POSITION ON THE WAIVER QUESTION THAT JUSTICE LAWSON ASKED OPPOSING COUNSEL AT THE BEGINNING OF HER ARGUMENT?
>> I WOULD ARGUE THAT IT WAS WAIVED ON APPEAL.
IT WAS RAISED IN THE INITIAL POST-CONVICTION MOTION, BUT IT WAS NOT RAISED AS A CLAIM IN THE INITIAL BRIEF.
AND IT, AS FAR AS CUMULATIVE ERROR, I DON'T BELIEVE-- THE COURT DID SPECIFICALLY ALSO FIND THAT BECAUSE THERE WAS NO ERRORS IN THE INDIVIDUAL CLAIMS, THERE WAS NO CUMULATIVE ERROR.
SO THAT CLAIM EVEN ON APPEAL WOULD BE MERITLESS.
SO IF THERE ARE NO FURTHER QUESTIONS, I'M-- THE STATE IS ASKING THAT YOU AFFIRM THE POST-CONVICTION COURT'S ORDER AND ALSO DENY THE PETITION FOR HABEAS.
THANK YOU.
>> THE FIRST THING THAT I'D LIKE TO ADDRESS, VERY QUICKLY, IN REBUTTAL IS COUNSEL DISCUSSED THE CREDIBILITY OF DOUG MIXON

FINDING WHAT THE JUDGE FOUND.
SO THE CREDIBILITY OF DOUG MIXON
AT THE EVIDENTIARY HEARING IS
ALSO, ANOTHER PARAGRAPH IS ON
THE LAST PAGE OF THE ORDER
THAT'S CUT AND PASTED FROM THE
STATE'S ORDER.
AND THE ONLY PERSON, THE ONLY
THING THAT REALLY ANYONE AGREES
IN THIS CASE-- DEFENSE
ATTORNEYS, STATE ATTORNEYS, LAY
WITNESSES, PEOPLE INVOLVED IN
THIS CASE-- IS THAT DOUG MIXON
IS A LIAR, A PATHOLOGICAL LIAR.
IT'S WOVEN THROUGHOUT ALL THE
TESTIMONY AT THE EVIDENTIARY
HEARING.
YET THE ONE PERSON THAT EVERYONE
CAN COME TO THE CIRCUIT COURT
AND TELL YOU IS A LIAR IS
ANOTHER PERSON THAT HE FINDS
CREDIBLE.
AND THAT, AGAIN, IS A
CREDIBILITY FINDING THAT'S TAKEN
STRAIGHT, LIKE, VERBATIM FROM
THE STATE'S CLOSING ARGUMENT.
>> WASN'T THAT, TOO, SUPPORTED
BY COMPETENT, SUBSTANTIAL
EVIDENCE?
>> THAT DOUG MIXON WAS TELLING
THE TRUTH?
>> YES.
>> I DON'T UNDERSTAND, SIR.
>> DOUG MIXON TESTIFIED.
>> HE DID TESTIFY.
>> THE TRIAL COURT SAW HIM
TESTIFY.
>> HE DID.
>> AND DOUG MIXON TESTIFIED I
WAS NOT INVOLVED IN AND DID NOT
MURDER THE VICTIM IN THIS CASE,
CORRECT?
>> THAT IS CORRECT.
>> ISN'T THAT A BASIS OF
COMPETENT, SUBSTANTIAL EVIDENCE
FOR A CREDIBILITY FINDING IN
FAVOR OF DOUG MIXON?
>> THAT CAN BE A BASIS, BUT ALSO
ALL THE OTHER PEOPLE THAT
TESTIFIED THAT HE'S A LIAR,

INCLUDING PEOPLE THAT THE JUDGE FOUND CREDIBLE AS WELL, HE'S A LIAR.
>> WE DON'T HAVE LAW THAT SAYS BECAUSE SOMEBODY'S A LIAR AND THEY'RE KNOWN TO BE A LIAR, THAT WITH RESPECT TO SPECIFIC TESTIMONY THAT A JUDGE CANNOT CREDIT THAT TESTIMONY AS TRUTHFUL, DO WE?
DO YOU KNOW OF CASES WHERE WE'VE SAID, OH, WELL, WE THINK-- THE JUDGE CREDITED THAT TESTIMONY, HEARD HIM TESTIFY, BUT BECAUSE WE KNOW THAT PERSON'S A LIAR FROM OTHER THINGS, WE'RE NOT GOING TO UPHOLD THAT DETERMINATION OF THE TRIAL COURT ON THE CREDIBILITY OF THE WITNESS?
>> NO, SIR, I DON'T KNOW--
>> SO YOU WANT US TO, YOU WANT US TO CHART A NEW PATH ON THIS.
>> NO, SIR.
I WANT YOU TO BE CONCERNED ABOUT THE ORDER AND THE FINDINGS THAT THE COURT MADE BECAUSE THEY DON'T NECESSARILY SHOW THAT HE DID ANY INDEPENDENT CONSIDERATION.
THAT'S WHAT I WOULD LIKE FOR YOU TO DO.
BECAUSE I DO THINK WHEN HE MISSTATES FACTS, AND I DO THINK WHENEVER HE MISSTATES LAW, THAT IS CONCERNING.
BECAUSE THAT, TO ME, SHOWS THAT HE HAS NOT SERIOUSLY GIVEN CONSIDERATION TO WHAT HE IS PUTTING IN HIS ORDER.
AND I THINK THAT'S CONCERNING.
AND I THINK THAT'S CONCERNING THROUGHOUT ALL OF HIS FINDINGS IN THIS CASE.
ALSO I DON'T AGREE THAT TRIAL COUNSEL SAID THAT SHE WANTED, THAT MS. BROOKS SAID-- AND THIS IS DEALING WITH THE DEFENSE CASE IN CHIEF ISSUE WITH MS. BROOKS.
I DON'T AGREE THAT BECAUSE OF

THE FLIER, SHE JUST DIDN'T WANT
ANYBODY IN HER HOUSE.
THAT'S NOT THE CASE.
WHAT SHE WAS ASKED, WHEN YOU
LEARNED ABOUT THE FLIER, WERE
YOU UNCOMFORTABLE WITH HAVING
MR. CALHOUN IN YOUR HOUSE?
THE ANSWER WAS, YES.
IT WASN'T I WAS KICKING
EVERYBODY OUT, IT WAS I WANT
THIS ONE PERSON OUT.
>> BUT TRIAL COUNSEL TESTIFIED
THAT WAS THE BASIS FOR WHY SHE
RECALLED MS. BROOKS, RIGHT?
>> IF THAT WAS THE, IF THAT IS
THE BASIS FOR WHY SHE DID IT,
THEN SHE HAD A STRATEGY THAT SHE
DID NOT EXECUTE.
AND SO, YOU KNOW, YOU CANNOT
HAVE-- REASONABLE STRATEGY IS
BASED ON REASONABLE
INVESTIGATION AND REASONABLE
CHOICE.
SO SHE MAY HAVE HAD A STATED
STRATEGY, BUT SHE DIDN'T FOLLOW
HER STRATEGY, WHICH IS AS GOOD
AS NOT HAVING A STRATEGY AT ALL.
>> BUT SHE ASKED ABOUT THE FLIER
AND ABOUT THE GRANDDAUGHTER
BEING HOME, RIGHT?
>> RIGHT.
SO THAT MAKES IT SOUND LIKE I
HAVE A GRANDDAUGHTER IN MY
HOUSE, THIS PERSON'S ON A
MISSING PERSONS FLIER, I WANT
HIM OUT.
>> OR THAT SHE DIDN'T WANT
ANYBODY ELSE IN HER HOUSE,
RIGHT?
>> I DON'T THINK THAT'S A
REASONABLE INTERPRETATION OF THE
EVIDENCE, AND I DON'T THINK THE
JURY TOOK IT THAT WAY.
AND SHE CERTAINLY DIDN'T ARGUE
IT THAT WAY IN HER CLOSING
ARGUMENT.
SHE DIDN'T ADDRESS IT.
SO I THINK THAT THERE'S A SPIN
YOU CAN PUT ON THAT, BUT I DON'T
THINK-- BUT WHAT SHE ASKED, I

MEAN, THE RECORD IS CLEAR.
WERE YOU UNCOMFORTABLE WITH
HAVING HIM THERE, YES.
DID YOU ASK HIM TO LEAVE, YES.
DO YOU HAVE A GRANDDAUGHTER IN
YOUR HOUSE?
YES.
SO THE REASONABLE INFERENCE OF
THAT LINE OF QUESTIONING IS THIS
PERSON'S ON A MISSING PERSONS
FLIER, YOU'RE NOT COMFORTABLE
WITH HAVING THIS PERSON IN YOUR
HOME, YOU HAVE A GRANDDAUGHTER
IN YOUR HOME, THEREFORE, YOU
WANT HIM TO LEAVE.
THAT'S THE REASONABLE INFERENCE
FROM THE JURY.
THAT IS WHY THAT IS HARMFUL
EVIDENCE ELICITED IN HER CASE.
SO SHE MAY HAVE HAD A STRATEGY,
BUT IT WASN'T A WELL THOUGHT
OUT, WELL INVESTIGATED STRATEGY,
AND IT CERTAINLY WASN'T A WELL
EXECUTED STRATEGY, AND I AM OUT
OF TIME.
PLEASE, REVERSE THE CIRCUIT
COURT'S ORDER AND GRANT
MR. CALHOUN A NEW GUILT PHASE IN
HIS TRIAL.
THANK YOU VERY MUCH.
>> ALL RIGHT.
WELL, WE THANK YOU BOTH FOR YOUR
ARGUMENTS, AND COURT WILL NOW BE
ADJOURNED.
THANK YOU.