>> OKAY, AND THIS CASE IS ALSO DAVIS V. STATE AND DAVIS V. DIXON, 22-883.
>> THANK YOU, YOUR HONOR. THE SECOND CASE FOR ARGUMENT TODAY IS THE BP CASE.
AND I'M GOING TO FOCUS MY ARGUMENT ON ISSUE 3, WHICH IS MR. DAVIS' STRICKLAND CLAIM FOR TRIAL COUNSEL'S FAILURE TO CHALLENGE THE ONLY EVIDENCE THE STATE ACTUALLY HAD TO CONVICT MR. DAVIS OF THE BP CRIME.
THE BP CASE IS NOT THE HEADLEY CASE.
IT IS VERY IMPORTANT THAT YOU SEPARATE THE FACTS OF THESE CASES.
THE BP CASE IS A CIRCUMSTANTIAL EVIDENCE CASE.
IN BP THERE'S NO EYEWITNESS TESTIMONY THAT PLACES MR. DAVIS AT THE SCENE.
THERE'S NO FINGERPRINT EVIDENCE THAT PLACES MR. DAVIS AT THE SCENE.
THE ONLY DNA EVIDENCE OF RECORD CAME FROM A CIGARETTE THAT WAS FOUND AT THE SCENE, AND MR. DAVIS WAS EXCLUDED AS A CONTRIBUTOR.
IN FACT, THE STATE HAD NO CASE AGAINST DAVIS FOR THE BP MURDERS UNTIL MR. KWAN TESTIFIED THAT THE SAME GUN WAS USED AT BOTH HEADLEY AND BP, AND THEN THE STATE PUT UP WITNESSES AT THE BP TRIAL FROM THE HEADLEY CASE THAT PLACED THE GUN USED AT HEADLEY, THE VERY SAME GUN THAT MR. KWAN SAID WAS USED IN THE BP MURDERS AS WELL, IN MR. DAVIS' HAND.
THE CROSS-EXAMINATION OF MR. KWAN WAS CRITICAL FOR MR. DAVIS' DEFENSE.
TRIAL COUNSEL'S STATED STRATEGY FOR CROSS-EXAMINING MR. KWAN WAS TWOFOLD.
FIRST, HE WANTED TO SHOW THAT MR. KWAN COULD NOT ACTUALLY IDENTIFY MR. DAVIS AS THE SHOOTER.
SECOND, BECAUSE MR. DAVIS BOUGHT

A .357 MAGNUM FROM HIS COUSIN,
HE WANTED TO POINT OUT THAT
MR. KWAN COULD NOT DETERMINE IF
THE GUN USED AT BOTH CRIME
SCENES WAS A .357 MAGNUM OR A
.38 SPECIAL.
BOTH OF THESE STRATEGIES ARE
OBJECTIVELY UNREASONABLE IN THIS
CASE.
THE FIRST ONE, MR. KWAN IS A LAB
ANALYST.
HE SITS IN A LAB, AND HE
ANALYZES BULLETS AND FRAGMENTS
AND CASE JACKETS.
THERE'S NO WAY MR. KWAN WOULD BE
ABLE TO WALK INTO A COURTROOM
AND POINT AT MR. DAVIS AND SAY
THAT MR. DAVIS WAS NOT THE
SHOOTER.
MR. DAVIS WAS THE SHOOTER.
THE SECOND ONE, THE PROBLEM WITH
THE SECOND STRATEGY IS
ULTIMATELY IT DOESN'T MATTER
WHAT KIND OF GUN WAS USED IN
THESE TWO CASES.
WHATEVER TYPE OF GUN IT WAS, THE
SAME ONE ACCORDING TO MR. KWAN,
WAS USED AT BOTH CRIME SCENES,
AND EYEWITNESSES FROM ONE OF
THOSE SCENES PUT THAT GUN IN
MR. DAVIS' HAND.
THE ONLY REASONABLE STRATEGY TO
ACQUIT MR. DAVIS OF THE BP
MURDERS WAS TO CHALLENGE THE
BALLISTICS MATCH.
ONCE TRIAL COUNSEL DECIDED TO
CONCEDE THE BALLISTICS MATCH, IT
WAS GAME OVER FOR MR. DAVIS.
SO MR. KWAN'S BALLISTICS MATCH
COUPLED WITH THE WITNESS
TESTIMONY FROM THE HEADLEY
WITNESSES AT THE BP TRIAL
CONVICTED HIM.
A REASONABLE ATTORNEY WOULD NOT
CONCEDE THE STATE'S ONLY
EVIDENCE AGAINST THEIR CLIENT.
A REASONABLE ATTORNEY WOULD NOT
STOP INVESTIGATING ONCE HE
LEARNED THE STATE'S EXPERTS
TESTIFIED THAT THE BULLETS WILL
MATCH.
AND A REASONABLE ATTORNEY WOULD
INVESTIGATE FURTHER AS HE'S
REQUIRED BY WIGGINS.

>> I'M SORRY TO INTERRUPT YOU,
BUT THERE WAS TESTIMONY FROM THE
TRIAL COUNSEL THAT HE DID
CONSULT HIS OWN EXPERT AND THAT
THE EVIDENCE WAS UNFAVORABLE TO
MR. DAVIS, IS THAT RIGHT?
>> YES, SIR, HE DID.
HE CONSULTED A SIMILAR EXPERT.
HE CONSULTED ANOTHER AFT THEORY
OF IDENTIFICATION EXPERT.
BUT TRIAL COUNSEL CAN'T JUST
CONCEDE.
THERE ARE WAYS THAT TRIAL
COUNSEL COULD HAVE CHALLENGED
THIS EVIDENCE.
DEFENSE ATTORNEYS DO IT ALL THE
TIME EVEN WHEN WE HAVE A DNA
MATCH.
WE MAY QUESTION THE DNA ANALYST
ON CONTAMINATION IN THE LAB.
WE MAY CROSS-EXAMINE THEM ON
CHAIN OF CUSTODY ISSUES.
WE MAY CROSS-EXAMINE THEM ON
ARTIFACTS IN THE DNA REPORTS
THAT COULD ALSO AFFECT A MATCH.
>> BUT IF AT THE END OF THE DAY,
I MEAN, IF IT ALL COLLAPSES AND
GOING, JUMPING THROUGH THOSE
HOOPS DOESN'T PRODUCE ANYTHING,
IT SEEMS A LIKE IT'S JUST AN
EXERCISE IN FUTILITY.
>> WELL, YOUR HONOR --
>> I MEAN, AND WE DON'T, BUT
PEOPLE DON'T -- THERE'S NO
PREJUDICE IF IT'S AN EXERCISE IN
FUTILITY.
AND WE, AND PEOPLE DON'T GET
POST-CONVICTION RELIEF BECAUSE
THE LAWYER FAILED TO DO
SOMETHING THAT WASN'T PRODUCING
THE DESIRED RESULT.
SOMETIMES THEY'VE JUST GOT YOU,
AND THERE'S NOTHING CREDIBLE YOU
CAN COME UP WITH TO REFUTE THE
GOTCHA.
ISN'T THAT CORRECT?
>> NO, SIR.
>> I MEAN, I'M -- PUT ASIDE
WHETHER THAT APPLIES TO THIS
CASE.
THERE ARE CASES LIKE THAT,
RIGHT?
>> YES, SIR, THERE ARE CASES
LIKE THAT.

BUT IN THIS CASE, HE COULD HAVE CHALLENGED THIS FORENSIC EVIDENCE.
IT DOESN'T MATTER WHAT HE PERSONALLY BELIEVES ABOUT THE AFT THEORY OF IDENTIFICATION.
THIS WAS CIRCUMSTANTIAL EVIDENCE WHERE THE ONLY THING THEY HAD TO CONNECT MR. DAVIS TO THE TWO BP MURDERS WAS THAT BALLISTICS MATCH.
THAT'S IT.
THAT'S ALL THEY HAD.
>> THAT DEFICIENCY, BECAUSE YOU KIND OF, WHEN YOU WERE TALKING BEFORE, YOU KIND OF TRANSITIONED FROM THE CROSS-EXAMINATION DEFICIENCY ARGUMENT TO THE NOT DOING ENOUGH TO INVESTIGATE KIND OF FACTUALLY.
AND I JUST WANT TO KIND OF CLARIFY THOUGH THAT ARE YOU SAYING THAT HE DIDN'T -- I MEAN, IT'S CLEAR THAT YOU'RE ARGUING THAT THE CROSS-EXAMINATION WAS DEFICIENT, BUT ARE YOU SAYING WHAT COUNSEL DID IN TERMS OF CONSULTING HIS OWN EXPERT AND GETTING THE FEEDBACK THAT HE DID, THAT THAT WAS ALSO KIND OF A DEFICIENCY?
>> WELL, IT'S -- HE DIDN'T PREPARE FOR TRIAL.
HE DIDN'T PREPARE FOR HIS CROSS-EXAMINATION.
AND, YOUR HONOR, HE DIDN'T EVEN HAVE TO NECESSARILY RETAIN AN EXPERT TO HELP HIM CROSS-EXAMINE THIS WITNESS.
HE MENTIONED THAT HE WAS AWARE THAT THERE WERE OTHER ATTORNEYS WHO WERE CHALLENGING BALLISTICS MATCHES, AND HE SAID THAT HE WAS AWARE OF THE NATIONAL RESEARCH COUNCIL'S 2008 BALLISTICS IMAGING REPORT.
THERE ARE THINGS THAT HE COULD HAVE DONE TO RESEARCH AND INVESTIGATE AND PREPARE TO PUT HOLES IN THE STATE'S LINCHPIN EVIDENCE AT THIS TRIAL.
AND INSTEAD HE CONCEDED IT.
AND ONCE HE CONCEDED IT, I MEAN, THERE WAS NO HOPE FOR MR. DAVIS

IN THE BP CASE.
EVEN THOUGH THERE WAS NO OTHER EVIDENCE THAT COULD PLACE HIM AT THE SCENE.
>> THIS IS, IN THE TIME THAT I'VE BEEN ON THE COURT AND WE HEAR THESE POST-CONVICTION CASES CONSTANTLY AND THIS I'LL CALL IT MONDAY MORNING QUARTERBACKING THAT I GUESS IS A NECESSITY IN POST-CONVICTION ARGUMENTS, IT'S SOMETHING DIFFICULT TO DEAL WITH.
BECAUSE THE CONDITIONS THAT EXIST AT THE TIME THE CASE WAS BEING TRIED CANNOT BE DUPLICATED, WHAT WENT ON THROUGH THE LAWYER'S MIND AT THE TIME AND THE MOOD OF THE JURY, THE WHOLE ESSENCE OF THE COURTROOM THAT IS THERE AT THE TIME.
SO IT'S HARD TO COME BACK HERE SO MANY YEARS LATER AND SAY YOU SHOULD HAVE DONE THIS, YOU SHOULD HAVE DONE THAT, YOU SHOULD NOT HAVE DONE THIS.
AND THAT SEEMS TO ME WHAT WE DO CONSTANTLY IN THESE CASES.
BUT LET ME JUST ASK YOU THIS QUESTION, WAS IT THE STRATEGY OF THE STATE IN THIS CASE THAT THE SAME GUN USED IN THE BP KILLING WAS ALSO USED IN THE OTHER CASE WHERE THE LADY WAS SHOT THROUGH THE HAND?
>> YES, SIR.
>> AND IT WAS A .357 MAGNUM?
>> IT WAS NEVER DETERMINED EXACTLY WHAT KIND OF GUN.
THE GUN WAS NEVER RECOVERED.
>> HE HAD BOUGHT A GUN FROM HIS COUSIN THE DAY OF THE BP KILLING --
>> NO, SIR.
I'M SORRY TO INTERRUPT YOU.
HE BOUGHT THE GUN FROM HIS COUSIN A FEW WEEKS BEFORE THE BP MURDERS TOOK PLACE.
>> OKAY.
>> SO IT WAS NOT COMPLETELY TEMPORAL, IT WAS A FEW WEEKS BEFORE THE BP MURDERS TOOK PLACE.
>> DIDN'T MR. NORGARD, THE

COUNSEL, DEFENSE COUNSEL, DIDN'T
HE -- WASN'T HE ABLE DURING
CROSS-EXAMINATION TO GET THE
EXPERT TO SAY THAT A .9 MM COULD
HAVE SHOT -- COULD HAVE BEEN
USED?
>> NO, HE DID NOT DO THAT AT
TRIAL.
THAT WAS DONE AT EVIDENTIARY
HEARING.
BUT MY ARGUMENT WAS IT DOESN'T
MATTER WHAT KIND OF GUN IT WAS
PRESENT IF THE SAME GUN WAS USED
AT BOTH SCENES.
HE'S ALREADY BEEN CONVICTED OF
HEADLEY, SO THE BP IS THE SECOND
TRIAL, AND THERE ARE HEADLEY
WITNESSES WHO TESTIFY THAT IT
WAS MR. DAVIS AT HEADLEY, AND
MR. DAVIS HAD THE GUN.
SO ULTIMATELY WHATEVER KIND OF
GUN IT WAS, IT WAS PUT IN
MR. DAVIS' HAND.
>> WHAT IF A .357 MAGNUM WAS
USED IN THE HEADLEY KILLINGS AND
A .9 MM WAS USED IN THE OTHER
CASE?
THAT WOULD BE A DIFFERENT
PERSON.
>> THAT'S TRUE, YOUR HONOR.
BUT HE COULDN'T DETERMINE THAT.
THERE WAS NO GUN RECOVERED, SO
HE COULD NOT DO TEST FIRES, AND
A LOT OF THE BULLETS THAT HE WAS
ACTUALLY REVIEWING WERE
FRAGMENTS.
>> BUT EVEN THOUGH A GUN WAS NOT
RECOVERED, JUST BRINGING THAT
OUT IN CROSS-EXAMINATION, THAT A
DIFFERENT GUN WAS USED IN ONE OF
THE KILLINGS, THAT GIVES SOME
ARGUMENT TO MAKE TO THE JURY
EVEN THOUGH HE CAN'T PRECISELY
PROVE IT.
>> RIGHT.
BUT HE COULD DO MORE.
HE COULD TALK ABOUT ERROR RATES,
REPEATABILITY, THE SUBJECTIVE
NATURE OF THE MATCH, THE FACT
THAT THERE'S NO DATABASE THAT
THESE EXAMINERS USE.
IT'S NOT LIKE FINGERPRINTS OR
DNA WHERE THERE'S DATABASES.
IT'S THEIR HEAD.

IT'S LIKE THEIR MEMORY OF ALL
THE DIFFERENT MATCHES THAT
THEY'VE DONE OVER TIME.
THE FACT THAT THERE WAS NO GUN
RECOVERED IS IMPORTANT HERE
BECAUSE TEST FIRES ARE VERY
IMPORTANT TO THE DISCIPLINE.
HE COULD ALSO HAVE
CROSSES-EXAMINED HIM ABOUT THE
FACT THAT HE DIDN'T TAKE --
THERE'S NO MEASUREMENTS.
YOU LOOK UNDER A MICROSCOPE AT
STRIATIONS AND MARKS AND
VISUALLY MEASURE THEM.
YES, SIR.
>> DIDN'T MR. NORGARD
SUCCESSFULLY ELICIT A STATEMENT
FROM MR. KWAN THAT THERE ARE AT
LEAST 21 TYPES OF FIREARMS THAT
WOULD --
[INAUDIBLE]
IS THAT AN ACCURATE STATEMENT OF
THE RECORD?
>> I DON'T HAVE IT IN FRONT OF
ME, BUT I BELIEVE SO, SIR.
>> OKAY.
SO IF THAT'S ACCURATE AND THE
THESIS OF YOUR ARGUMENT HERE IS
THAT THE COUNSEL, THAT
MR. NORGARD WAS CONSTITUTIONALLY
INADEQUATE UNDER STRICKLAND
BECAUSE HE DIDN'T MAKE THE POINT
OR ESTABLISH THE EVIDENCE THAT
IS CENTRAL TO THE DEFENSE THAT
IT COULD HAVE BEEN ANY NUMBER OF
FIREARMS, HOW DOES THAT ARGUMENT
SURVIVE THE FACT THAT, IN FACT,
MR. NORGARD ON CROSS ELICITED A
CONCESSION FROM THE EXPERT THAT,
INDEED, THERE ARE AT LEAST 21
DIFFERENT FIREARMS THAT MIGHT
HAVE PRODUCED THIS EVIDENCE?
>> I UNDERSTAND THAT, SIR.
BUT MY ARGUMENT IS IT DOESN'T
MATTER WHAT TYPE OF GUN IT WAS
IF MR.-- IF THE WITNESSES PUT
WHATEVER GUN IT WAS IN HIS HAND
AT HEADLEY AND MR. KWAN SAYS
THAT IT WAS THE SAME ONE, THEN
YOU HAVE TO CONTEST THE MATCH.
YOU HAVE TO CONTEST THE ACTUAL
MATCH.
AND IN ORDER TO FIND FOR
MR. DAVIS HERE, THIS COURT

DOESN'T HAVE TO MAKE SOME
SWEEPING DECISION --
>> I GUESS YOU'RE GOING TO HAVE
TO HELP ME UNDERSTAND HOW DOES
THIS NOT CONTEST THE ACTUAL
MATCH FROM A STRICKLAND
STANDPOINT.
AGAIN, YOU KNOW, LET'S KEEP IN
MIND THE STANDARD HERE.
YOU'RE SAYING THAT THE
CONCESSION I JUST READ TO YOU IS
EQUIVALENT TO THIS DEFENDANT
HAVING HAD NO CROSS-EXAMINATION
OR NO COUNSEL WITH RESPECT TO
MR. KWAN'S TESTIMONY.
I FIND THAT HARD TO UNDERSTAND.
>> BECAUSE HE GOT ONE CONCESSION
OUT OF HIM, HE COVERED ONE ISSUE
WHEN IF HE HAD INVESTIGATED
FURTHER AS HE WAS REQUIRED TO
DO, HE WOULD HAVE BEEN ACTUALLY
BEEN ABLE TO POKE HOLES IN THE
COMPARISON AND EXPLAIN WHY THERE
ARE FLAWS WITHIN THE DISCIPLINE
THAT CAN RAISE -- HE HAS TO
RAISE REASONABLE DOUBT.
THAT'S WHAT HE HAS TO DO.
THAT'S HOW YOU ACQUIT A
DEFENDANT, YOU RAISE REASONABLE
DOUBT.
AND BY POKING HOLES IN THAT
EVIDENCE JUST LIKE WE DO WITH
ALL FORENSICS EVIDENCE WHENEVER
WE'RE UP AGAINST A WALL AND WE
HAVE TO FIGHT A DNA MATCH OR ANY
OTHER THING, YOU POKE HOLES IN
THE DISCIPLINE.
YOU DO EVERYTHING YOU CAN TO
RAISE REASONABLE DOUBT, AND THAT
IS NOT WHAT HE DID.
IF THERE ARE NO FURTHER
QUESTIONS, YOUR HONOR, I WOULD
ASK THAT YOU PLEASE REMAND THIS
CASE FOR A NEW TRIAL.
THANK YOU.
>> MAY IT PLEASE THE COURT, THE
ARGUMENT ON POST-CONVICTION WITH
REFERENCE TO THE BALLISTICS IS
ESSENTIALLY THIS: MR. NORGARD
DIDN'T HIRE THE EXPERT THAT
POST-CONVICTION COUNSEL HIRED.
THAT'S ESSENTIALLY WHAT THE
ARGUMENT IS.
MR. NORGARD TESTIFIED AT THE

EVIDENTIARY HEARING --
>> WELL, WAS THAT EXPERT EVEN AN EXPERT IN THE SUBJECT?
>> NO, YOUR HONOR, HE WAS NOT.
HE'S NOT A BALLISTICS EXPERT.
HE IS A RESPECTED SCIENTIST.
HE DID HAVE A NUMBER OF QUESTIONS AND CONCERNS ABOUT THE SCIENTIFIC UNDERPINNINGS OF BALLISTICS, BUT MR. NORGARD TESTIFIED THAT HE LOOKED FOR A VIABLE EXPERT THAT COULD ATTACK THE UNDERPINNING, THE SCIENTIFIC UNDERPINNINGS OF BALLISTICS EVIDENCE, AND HE WASN'T ABLE TO FIND ONE THAT HE THOUGHT HE COULD PRESENT AT TRIAL.
AND ARGUABLY, HE WOULDN'T HAVE BEEN ABLE TO PRESENT THE POST-CONVICTION EXPERT BECAUSE THE POST-CONVICTION EXPERT COULD NOT COMMENT -- HE WAS NOT AN EXPERT IN BALLISTICS.
SO HE PROBABLY WOULD NOT HAVE BEEN ABLE TO TESTIFY WITH REFERENCE TO WHAT MR. KWAN'S CONCLUSIONS WERE.
SECONDARILY, MR. NORGARD TESTIFIED THAT HE DID NOT BELIEVE THAT IF HE COULD NOT ACTUALLY SAY THAT MR. KWAN'S CONCLUSIONS WERE INCORRECT, THAT IT WOULD NOT BE FRUITFUL FOR HIM TO START PLACING OTHER EXPERTS ON THE STAND.
HIS TACTIC AND STRATEGY TO HELP MR. DAVIS WITH THE GUILT PHASE OF THE BP TRIAL WAS TO SHOW THAT THERE ARE A NUMBER OF FIREARMS THAT COULD HAVE MATCHED THIS, THAT THERE WAS NO FIREARM THAT WAS ACTUALLY OBTAINED THAT HE COULD COMPARE IT TO AND THAT HE COULD NOT PUT THAT FIREARM IN MR. DAVIS' HAND.
AND THAT IS THE ARGUMENT THAT HE MADE.
AND THAT WAS THE ARGUMENT THAT WAS AVAILABLE TO HIM BASED ON EVIDENCE THAT WAS PRESENTED BY THE STATE.
I WOULD ARGUE THAT THE BALLISTICS IS NOT, QUOTE-UNQUOTE, THE ONLY

EVIDENCE.
THERE WERE WITNESSES WHO SAW A CAR THAT MATCHED MR. DAVIS' CAR THAT WAS PARKED NEARBY THE BP GAS STATION, KIND OF BACKED INTO A PADDLE GATE.
THERE WERE A NUMBER OF WITNESSES WHO SAW THAT CAR.
THE TIRES WERE CONSISTENT, TIRE MARKS WERE CONSISTENT WITH THE TIRES THAT WERE ON THE CAR THAT MR. DAVIS WAS DRIVING.
IT'S ANOTHER CIRCUMSTANCE, CERTAINLY, THAT ADDS TO THE PROOF OF HIS GUILT.
BUT MR. NORGARD IS A VERY EXPERIENCED CRIMINAL DEFENSE ATTORNEY.
HE TESTIFIED THAT HE IS NEVER AFRAID TO ATTACK THE FORENSIC EVIDENCE WHEN HE CAN.
HE DID THE INVESTIGATION, HE MADE DETERMINATION ON THE BEST WAY TO ATTACK THE STATE'S EVIDENCE, AND HIS DECISION WAS TO CROSS-EXAMINE MR. KWAN REGARDING THE NUMBER OF FIREARMS THAT THAT COULD HAVE BEEN AND THAT THEY COULD NOT PUT ANY FIREARM IN MR. DAVIS' HAND.
AND ULTIMATELY, HIS DEFENSE WAS ONE OF MISIDENTIFICATION.
SO IN SOME RESPECTS, FOR THAT DEFENSE IT DIDN'T REALLY MATTER WHETHER THE BULLETS MATCHED OR NOT BECAUSE MR. NORGARD'S DEFENSE OF MR. DAVIS WAS WHOEVER HAD THAT GUN, IT WASN'T MR. DAVIS.
AND THOSE ARE REASONABLE DECISIONS THAT ATTORNEYS MAKE ALL THE TIME.
>> DO YOU AGREE OR DISAGREE WITH THE CHARACTERIZATION OF COUNSEL HAVING CONCEDED THAT THE SAME WEAPON WAS FIRED AT BOTH LOCATIONS?
>> NO, I DON'T THINK HE DID CONCEDE THAT BECAUSE HIS WHOLE THEORY WAS YOU CAN'T TELL ME THAT IT'S NOT ONE OF THESE 21 OTHER FIREARMS THAT HAVE 6 LANCING GROOVES AND A RIGHT TWIST.

SO HE CAN'T CONCEDE THAT
NECESSARILY.
BUT, OBVIOUSLY, HIS THEORY WAS
IT DOESN'T REALLY MATTER WHETHER
THEY MATCHED OR NOT, BECAUSE IT
WASN'T MR. DAVIS.
HE DIDN'T DO THIS.
IF THERE ARE NO OTHER
QUESTIONS --
>> AND YOU THINK THAT'S
OBJECTIVELY --
[LAUGHTER]
AN OBJECTIVELY REASONABLE
DEFENSE?
>> ABSOLUTELY, YOUR HONOR.
ABSOLUTELY.
AS I SAID, MR. NORGARD'S A VERY
EXPERIENCED ATTORNEY.
HE'S BEEN A DEFENSE ATTORNEY FOR
OVER 30 YEARS.
HE'S BOARD CERTIFIED.
HE WAS INVOLVED IN THE
DEVELOPMENT OF MINIMUM STANDARDS
FOR ATTORNEYS WHO REPRESENT
DEATH PENALTY DEFENDANTS.
HE INVESTIGATED THIS ISSUE
THOROUGHLY.
AND HE MADE A REASONABLE
DECISION BASED ON THE
INFORMATION THAT WAS AVAILABLE
TO HIM.
THANK YOU.
>> FIRST, YOUR HONORS, I WOULD
LIKE TO ADDRESS THE STATE'S
CHARACTERIZATION OF THE OTHER
EVIDENCE AGAINST MR. DAVIS IN
THE BP CASE.
SEVERAL DAYS AFTER THE MURDER
HAPPENED, THEY SET UP A
ROADBLOCK NEAR THERE AND TALKED
TO DRIVERS WHO HAD DRIVEN BY,
AND THERE WAS NO ONE WHO SAID
THAT THAT CAR THAT THEY SAW
PARKED INTO THE BACK MATCHED
MR. DAVIS' CAR.
THEY SAID THAT IT WAS SIMILAR
AND THAT -- BUT THEY COULDN'T
SAY FOR SURE THAT THAT WAS HIS
CAR.
THAT WOULD NOT BE ENOUGH TO
CONVICT MR. DAVIS.
THE OTHER ISSUE THAT SHE TALKED
ABOUT, THE NISSAN ULTIMA TIRES.
THERE WAS AN EXPERT WHO

TESTIFIED AT THE TRIAL WHO
LOOKED AT THE TIRE IMPRESSIONS
AND GAVE THE TYPE OF TIRE --
SORRY, I DON'T HAVE IT IN FRONT
OF ME -- THAT WAS USED AND THAT
IT WAS A VERY COMMON TIRE.
AND IT COULD HAVE BEEN ON MANY
DIFFERENT CARS INCLUDING A
NISSAN ULTIMA.
SO ONCE AGAIN, THAT EVIDENCE
WOULD NOT HAVE BEEN ENOUGH TO
CONVICT MR. DAVIS.
AND ALSO MR.-- TRIAL COUNSEL DID
NOT HAVE TO HIRE THE SAME KIND
OF SCIENCE EXPERT THAT COUNSEL
BROUGHT TO THE POST-CONVICTION
HEARING.
HE DIDN'T HAVE TO HIRE AN EXPERT
AT ALL.
HE DIDN'T INVESTIGATE THOROUGHLY
BECAUSE IF HE HAD, HE WOULDN'T
HAVE FELT LIKE THE ONLY THING
THAT HE COULD DO WAS TALK ABOUT
THE TYPE OF GUN.
THERE WERE LOTS OF OTHER THINGS
THAT HE COULD HAVE DONE TO POKE
HOLES IN THIS TYPE OF EVIDENCE.
AND THIS IS THE ONLY, THIS IS
THE ONLY -- THIS WAS THE ONLY,
LIKE, FORENSICS EVIDENCE THAT
LINKED HIS CLIENT TO THE CASE.
AND JUST ONE OTHER POINT THAT I
WOULD LIKE TO MAKE, I WANT TO
MAKE SURE THAT WE'RE NOT
CONSTRUING CHRONIC WITH
STRICKLAND BECAUSE THE
STRICKLAND STANDARD IS WHETHER
THE REPRESENTATION WAS
REASONABLE IN LIGHT OF
PREVAILING PROFESSIONAL NORMS.
AND IN THIS CASE, NOT
CHALLENGING THE STATE'S -- OR
NOT THOROUGHLY CHALLENGING THE
STATE'S ONLY EVIDENCE AGAINST
YOUR CLIENT IN A CRIMINAL
DEFENSE CASE, IN A CAPITAL CASE
WITH TWO MURDERS IS NOT
REASONABLE IN LIGHT OF
PREVAILING PROFESSIONAL NORMS.
YOUR HONORS, I ASK THAT YOU,
PLEASE, REMAND THIS CASE TO THE
TRIAL COURT AND GRANT MR. DAVIS
A NEW TRAIL IN THE BP CASE.
THANK YOU VERY MUCH.

>> THANK YOU VERY MUCH.