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Barry Hoffman vs State of Florida

NEXT CASE ON THE COURT'S SCHEDULE IS HOFFMAN VERSUS STATE.

MISS McDERMOTT, ARE YOU READY TO PROCEED, PLEASE.

MAY IT PLEASE THE COURT. MY NAME IS LINDA MCDERMOTT, AND ALONG WITH JOHN TOMASINO, I REPRESENT THE APPELLANT, BARRY HOFFMAN. BARRY HOFFMAN APPEALS THE DENIAL OF HIS POSTCONVICTION MOTION IN THE LOWER COURT. NOW, I WOULD PRIMARILY LIKE TO DISCUSS THE BRADY CLAIM, AND IF I HAVE TIME, THEN I WOULD LIKE TO, ALSO, DISCUSS THE INEFFECTIVE ASSISTANCE AT THE PENALTY PHASE CLAIM. IN 1987, THE LOWER COURT SUMMARILY DENIED MR. HOFFMAN'S RULE 3.850 MOTION. ON APPEAL, THIS COURT REMANDED THAT CASE TO THE LOWER COURT, IN ORDER TO HOLD AN EVIDENTIARY HEARING. AND DURING THOSE PROCEEDINGS, THIS COURT NOTED, IN ITS APPEAL THAT, THE STATE CONCEDED THAT, IF MR. HOFFMAN PROVED THAT WHAT HE MAINTAINED WAS WITHHELD, THAT WOULD CONSTITUTE A BRADY VIOLATION, AND HE WOULD BE ENTITLED TO RELIEF. THE STATE, NOW, DISPUTES THAT. IN DENYING MR. HOFFMAN POSTCONVICTION --

EXCUSE ME. THEY SAID NOT ONLY WOULD IT BE A BRADY VIOLATION, BUT THAT THE OTHER PRONG OF PREJUDICE WOULD, ALSO, BE MET. IS THAT WHAT YOU ARE SAYING?

THE OPINION FROM THE LOWER COURT SAID THAT HE WOULD BE -- THE STATE CONCEDED THAT HE WOULD BE ENTITLED TO RELIEF. NOW, THE LOWER COURT'S ORDER FAILED TO ADDRESS MUCH OF THE EVIDENCE THAT WAS PRESENTED TO IT, AND THE EVIDENCE IT DID PRESENT, IT MISCHARACTERIZED.

LET'S GET TO WHAT IS OF CONCERN TO ME, AND IN THE COURT'S, LOWER COURT'S ORDER AND IN THE BRIEFS, I WOULD LIKE TO MAKE SOME SENSE OUT OF, IF IT IS POSSIBLE, OUT OF THE EXPRESS FINDING OF THE TRIAL COURT THAT THE HAIR COMPLAINED OF SO VIGOROUSLY IN THE PETITION WAS NOT FROM THE HAND OF THE VICTIM, AS SET FORTH IN THE PETITION. NOW, WAS THEIR HAIR THAT WAS CONTESTED IN THIS EVIDENTIARY HEARING THAT, CAME FROM THE CARPET, OR WAS THE COURT JUST -- MISSED THE WHOLE FACTUAL POINT OR WHAT WAS THE SITUATION?

WHAT WE PRESENTED AT THE EVIDENTIARY HEARING WAS, RATHER THAN CALL EVERY FDLE AGENT WHO HAD ANYTHING TO DO WITH THE CASE, WE, THE STATE, AGREED THAT WE WOULD SUBMIT THE FDLE REPORTS AS EVIDENCE, AND WE SUBMITTED REPORTS THAT STATED THAT THE EVIDENCE FOUND AT THE SCENE OF THE CRIME WAS HAIR CLUTCHED IN THE FEMALE VICTIM'S HAND, AND THERE WAS, ALSO, HAIR IN OTHER OTHER RIGHT HAND. HOWEVER, IT WAS HAIR DESCRIBED IN HER LEFT HAND,Ni SO THERE WAS CLEARLY HAIR THAT WAS AT ISSUE IN THIS CASE AND WAS SIGNIFICANT, BECAUSE THE STATE'S THEORY WAS THAT THERE HAD BEEN A STRUGGLE DURING THE COURSE OF THE CRIME, SO THAT HAIR, CERTAINLY, WAS --

WAS THERE, ALSO, HAIR FROM THE HOTEL ROOM FLOOR?

NO. NONE THAT THERE WAS COLLECTED IN THOSE REPORTS. NO.

WAS THERE IN THE EVIDENCE? I AM TRYING TO GET TO WHERE THIS SENTENCE, OUT OF THIS ORDER, CAME FROM, AND I AM TRYING TO FIGURE WHETHER IT WAS SUBMITED IN THE BRISTS.

THE FL -- IN THE BRIEFS.

THE FDLE AGENTS,co THEIR REPORT STATES THAT THAT WAS FOUND IN THE VICTIM'S HANDS. WE DO NOT CHALLENGE THAT THERE WAS ANY SORT OF RANDOM HAIR THAT WAS FOUND IN THE HOTEL ROOM AND THEN MR. HOFFMAN WAS ARRESTED IT.

Ni THAT HAIR COULDN'T HAVE COME FROM ANOTHER PLACE? IS THERE ANY OTHER SOURCE?

THE ONLY THING IS THAT THE ASSISTANT STATE ATTORNEY WHO PROSECUTED MR. HOFFMAN DID TESTIFY AND SAY THAT IT WAS, COULD HAVE BEEN RANDOM HAIR. HOWEVER, THAT BELIES THE EVIDENCE THAT WAS PRESENTED THAT IT WAS CLUTCHED IN HER HAND.

NO, BUT, IN OTHER WORDS, HE DID SAY THAT COULD HAVE BEEN RANDOM HAIR IN THE ROOM?

THAT IS WHAT HE WAS SORT OF WORKING FROM THE ASSUMPTION THAT THE LOWER COURT WAS, THAT IT WAS JUST RANDOM HAIR, AND I DON'T THINK THAT THEY LOOKED AT THE EVIDENCE, WHICH IS THAT IT WASN'T RANDOM HAIR. IT WAS IN HER HAND.

WHETHER THERE WAS EVIDENCE TO SUPPORT, SO MUCH AS WE ARE, SOME RATIONAL EXPLANATION FOR WHY THE JUDGE WROTE THAT, BUT THE CLOSEST WE CAN COME TO THAT IS THAT THERE WAS A PROSECUTOR THAT TESTIFIED TO THE EFFECT --

RIGHT.

A -- THAT YOU JUST SAID, THAT THERE COULD HAVE BEEN SOME RANDOM HAIR. THERE MAY HAVE BEEN HAIR.

RIGHT, AND WE DID CLOSING ARGUMENTS THAT SHOWED THAT TO THE JUDGE, BUT THAT, AGAIN, IS NOT SUPPORTED BY THE EVIDENCE THAT WE SUBMITTED.

CAN YOU EXPLAIN ON THIS HAIR, OBVIOUSLY THEY EXPLAINED, THE STATE ASKED YOUR CLIENT, AT THE PRETRIAL PROCEEDING, FOR A HAIR SAMPLE.

CORRECT.

ALL RIGHT. AND AT SOME POINT THE NEW LAWYER ASKED FOR RESULTS OF ALL SCIENTIFIC TESTING.

CORRECT.

IS ITnr UNDISPUTED IN THIS RECORD THAT THE RESULTS OF THIS TEST THAT SHOWED THAT IT WAS NOT YOUR CLIENT'S HAIR? WAS THAT PRODUCED?

THE CLIENT SKATE STATED THAT HE DID NOT RECEIVE THE REPORT EXCULL PATING MR. HOFFMAN FOR THAT.

HE WAS AWARE THAT THE HAIR WAS FOUND IN THE HAND OF THE VICTIM. RIGHT?

HE SAID THAT HE WOULD NOT HAVE OVERLOOKED THE FACT THAT THERE WAS HAIR EVIDENCE WHICH COULD HAVE EXCULL PATED MR. HOFFMAN.

BUT YOU SAY IN YOUR BRIEF, THREE DAYS LATER, ON NOVEMBER 3, 1981, THE STATE FILED A MOTION TO COMPEL MR. HOFFMAN'S HAIR COMPOSITE. THE FEMALE WAS FOUND TO HAVE HAIR UNDERNEATH HER FINGERNAILS, AT THE TIME THAT THE AUTOPSY WAS PERFORMED BY THE MEDICAL EXAMINER. YOU SAID IN YOUR BRIEF THAT THE STATE AVERTED THAT PRIOR TO THE TRIAL, THAT THERE WAS HAIR UNDERNEATH HER FINGERNAILS, SO OBVIOUSLY EVERYBODY

KNEW THAT WAS READING ANY OF THESE DOCUMENTS, THAT WERE FILED, THAT THERE WAS HAIR, MALE CAUCASIAN HAIR, BENEATH HER FINGERNAILS, AT THE TIME THE AUTOPSY WAS PERFORMED. ISN'T THAT RIGHT?

THAT'S RIGHT. THAT WAS THE AUTOPSY REPORT, WHICH, APPARENTLY, THERE WAS ADDITIONAL HAIR FOUND. HOWEVER, THE FDLE REPORT THAT, FROM THE CRIME SCENE, WAS THAT HAIR WAS COLLECTED AT THE CRIME SCENE, AND THAT IS THE HAIR THAT IS AT ISSUE HERE, THE HAIR THAT WAS FOUND AT THE CRIME SCENE, CLUTCHED IN HER HAND, WHICH WAS, LATER, NOT UNTIL FEBRUARY OF 1982, TESTED AGAINST MR. HOFFMAN'S HAIR AND CONCLUDED THAT IT WAS NOT HIS HAIR.

BUT WHAT CONFUSES ME IS THAT THERE IS THIS PLEADING THAT IS FILED, WHICH SAYS THAT THIS WOMAN WAS FOUND TO HAVE MALE CAUCASIAN HAIR BENEATH HER FINGERNAILS, AND THEN WHY --

CORRECT.

-- ISN'T THAT --

ONCE THE REPORT ISSUED THAT THAT HAIR DIDN'T MATCH MR. HOFFMAN'S, THE STATE HAD AN INDEPENDENT OBLIGATION TO TURN IT OVER, AND THEY DIDN'T DO THAT, AND THE TRIAL ATTORNEY TESTIFIED, AT THE EVIDENTIARY HEARING, THAT HE DID NOT RECEIVE THAT REPORT. HE WOULD NOT HAVE OVERLOOKED SOMETHING THAT IMPORTANT TO THIS CASE, AND THAT HE COULD CATAGORICALLY STATE THAT HENi WAS NEVER INFORMED ABOUT THE HAIR, THAT THE REPORT --

WAS HE ASKED ABOUT THIS STATEMENT THAT APPEARED IN THIS PLEADING, THAT OBVIOUSLY THEY WERE DOING TESTS O'HARE? BECAUSE THEY WANTED A PIECE OF HIS HAIR.

HE WAS NOTNi ASKED ABOUT THAT DURING LOWER COURT PROCEEDINGS. THE STATE DIDN'T INQUIRE ABOUT WHAT HIS KNOWLEDGE WAS OF WHAT HAD HAPPENED. BUT REGARDLESS, THE LAW IS THAT, WHEN THE STATE UNCOVERS SOMETHING THAT IS EXCULPATORY, THEY HAVE THE BURDEN TO DISCLOSE THAT EVIDENCE TO THE DEFENDANT.

DID THE STATE SAY THAT THEY HAD THEY HAD -- THAT THEY HAD NOT DISCLOSED IT?

MR. ORINGER TESTIFIED THAT HIS PRACTICE WAS TO RECEIVE ALL OF THE REPORTS FROM LAW ENFORCEMENT, AND THAT, SO, HE WOULD HAVE HAD THOSE. HE COULDN'T REMEMBER, IN THIS CASE, IF HE TURNED THEM OVER OR NOT.

WHAT CAME OUT AND GOING BACK TO WHAT I WAS ASKING, WHAT CAME OUT AT TRIAL, THEN, WHEN, AS FAR AS THE TRIAL ATTORNEY CONCERNING THE LACK OF PHYSICAL EVIDENCE, THAT LINKED THIS PARTICULAR DEFENDANT TO THE CRIME SCENE? WAS ANYTHING MENTIONED, DURING THE TRIAL OF THIS CASE, CONCERNING THE HAIR SAMPLES AT ALL? DID ANY -- EITHER THE STATE OR THE DEFENSE ATTORNEY DISCUSS THE LACK OF PHYSICAL EVIDENCE?

THE DEFENSE ATTORNEY --

AND, NOW, I AM, REALLY, LOOK ING AT THE SECOND PRONG OF BRADY, AS FAR AS THIS ISSUE.

THE DEFENSE ATTORNEY DID ASK AGENT PLATT, WHO WAS THEROLOGIST, WHO THE STATE CALLED TO -- WHO WAS THE SEROLOGIST WHO WAS CALLED BY THE STATE AT THE HEARING, WHETHER THERE WAS ANY EXCUP ATORY EVIDENCE AGAINST MR. HOFFMAN. AND HE SAID I DON'T KNOW. HERE ARE THE OTHER IMPORTANT FACTS TO THIS CASE. THE STATE NEVER DID REVEAL TO DEFENSE COUNSEL WHO DID THE ANALYSIS OF THE HAIR. THEY NEVER HAD THAT --

DID YOU ASSERT BY THAT -- YOU DIDN'T ASSERT A GILIO CLAIM. ARE YOU SAYING THAT THERE WAS A CLAIM TO MISLEAD BY PUTTING ON THE WRONG TEST.

I THINK THE STATE HID THE FACT THAT HAIR EVIDENCE SHOWED THAT MR. HOFFMAN HAVE BEEN THE CONTRIBUTOR OF THAT SOURCE, FOUND IN THE VICTIM'S HANDS, AND THEY KNEW THAT IT DIDN'T COME FROM THE MALE VICTIM AND IT DIDN'T COME FROM THE CO-DEFENDANT, SO THE EVIDENCE, THEN, UNDERMINED MR. HOFFMAN'S CONFESSION AND UNDERMINED THE EVIDENCE THAT THE STATE PUT ON.

WHY DID THE ATTORNEY, THEN, DID THE ATTORNEY NOT ARGUE IN THE CLOSING ARGUMENT, THERE ARE HAIR SAMPLES FOUND, AND THERE WASN COMPLETE LACK OF ANY EVIDENCE THAT THE HAIR SAMPLES CAME FROM EITHER HIMSELF OR THE CO-DEFENDANT?

NO. HE DIDN'T ARGUE THAT. AT THAT POINT, AGAIN, HE WAS JUST AT THE POINT WHERE HE DIDN'T HAVE ANY INFORMATION THAT THERE HAD BEEN ANY TESTING DONE ON THE HAIR SAMPLES.

ARE YOU, ALSO, BRINGING AN INEFFECTIVE ASSISTANCE OF GUILT-PHASE CLAIM AT THIS TIME, AS WELL?

YES. IT WAS PLEDALITYTIVELY, BUT I DO -- IT WAS PLED, ALTERNATIVELY, BUT I DO THINK THAT, BECAUSE BRADY IS INDEPENDENT OF A REQUEST OR THE TRIAL ATTORNEY'S KNOWLEDGE, HE DIDN'T HAVE EQUAL ACCESS TO THAT EVIDENCE, AND THE RESPONSIBILITY UNDER BRADY IS THAT, ONCE THE PROSECUTOR FINDS OUT THAT THERE IS EXCULPATORY EVIDENCE, IT HAS TO BE TURNED OVER.

LET ME ASK, ARE YOUco SAYING, THEN THAT, THE STATE IS INCORRECT, WHEN THEY MATT ARGUMENT, THAT, FIRST -- WHEN THEY MAKE THE ARGUMENT THAT, FIRST, THERE WERE TWO ATTORNEYS HERE. MR. NICHOLS WAS THE ORIGINALNi DPFS ATTORNEY AND THEN THERE WAS MR. -- DEFENSE ATTORNEY AND THEN THERE WAS MR. HARRIS, SO IF THE STATE ARGUES THAT MR. NICHOLS HAD KNOWLEDGE OF HAIR BEING PROCESSED AND THAT THE PROSECUTOR TOLD HIM ABOUT THAT, AND THEN HE PASSED ON THIS KNOWLEDGE TO MR. HARRIS, THAT WOULD BE INCORRECT.

> WELL, I STILL THINK THAT THAT IS NOT WHAT HAPPENED HERE.

THAT IS WHAT I AM ASKING. IS THAT NOT CORRECT? IF THAT IS WHAT THE STATE IS ALLEGING?

WELL, THE STATE HAS AN INDEPENDENFo BURDEN TO TURN THE EVIDENCE OVER.

I UNDERSTAND THAT.

IN THIS CASE, THEY DIDN'T DO. THAT.

I UNDERSTAND YOUR ARGUMENT THAT THAT, WHATEVER REPORT, WAS NOTNi TURNED OVER. BUT MY QUESTION TO YOU IS THAT, IS IT INCORRECT THAT THE -- THESE DEFENSE ATTORNEYS DID, IN FACT, HOWEVER THEY KNEW IT, KNOW ABOUT HAIR AND THE TESTING OF THE HAIRS?

I CERTAINLY THINK THAT THERE IS A DUTY, UNDER KIMMELMAN, FOR THE ATTORNEY TO INVESTIGATE HIS CASE, AND, CERTAINLY, IF HE HAD BEEN AWARE THAT THERE WAS HAIR EVIDENCE, HE SHOULD HAVE, IN MY OPINION, HE SHOULD HAVE, YOU KNOW, INVESTIGATED THAT. BUT, ALSO, THE STATE HAS THAT INDEPENDENT DUTY TO TURN IT OVER, AND THEY DIDN'T DO THAT, SO EITHER WAY, YOU KNOW, MR. HOFFMAN DIDN'T RECEIVE AN ADVERSARIAL TESTING IN THIS CASE.

BUT I AM REALLY STRUGGLING WITH THIS CONCEPT THAT YOU KEEP SAYING THAT THIS ATTORNEY DOESN'T HAVE ANY KNOWLEDGE THAT THERE ARE HAIR TESTS GOING ON, WHEN, IN FACT, THERE IS A MOTION TO COMPEL THE GETTING OF A HAIR SAMPLE FROM HIS FELLOW! FROMNi HIS CLIENT. AND HE KNEW THAT WAS GOING ON, DIDN'T HE?

PART OF THE, I THINK, PROBLEM THAT HAPPENED IN THIS CASE WAS BECAUSE OF THE CHANGE IN ATTORNEYS. THERE WAS NOT A LOT OF CONTINUITY IN THE EXCHANGE OF INFORMATION, AND EVEN MR. NICHOLS SAID HE DIDN'T KNOW IF HE HAD THAT EVIDENCE. HE TESTIFIED HE DIDN'T KNOW, AT THE EVIDENTIARY HEARING.

BUT THAT BOTHERS ME, ABOUT THE EXTENSIONco THAT WE ARE CONTINUALLY BEING ASKED TO MAKE BRADY, ON THE BASIS OF KILES AND STRICKLER, THERE HAS TO BE REMAINING SOME CONCEPT, HERE, OF SUPPRESSION BY THE STATE, AND SO IF THE TESTIMONY, HERE, WE DON'T KNOW WHETHER WE GOT IT OR NOT, THAT DOESN'T SEEM TO ME LIKE THAT CARRIES THE DAY, 20 YEARS LATER, OF WHETHER, IN FACT, IT WAS AVAILABLE.

WELL, HERE IS THE OTHER THING, THE REASON WHY I THINK IT CAN BE SEEN IN THIS CASE THAT THE STATE DID HIDE THIS EVIDENCE AND SUPPRESS IT, BECAUSE, WHEN THEY TURNED OVER DISCOVERY, THEY NEVER MENTIONED THIS ANALYSTco'S NAME, AND, IN FACT, AFTER MR. HARRIS FILED HIS DISCOVERY DEMAND, WHEN HE CAME INTO THE CASE AND HE SPECIFICALLY ASKED FOR ANY REPORTS ON PHYSICAL TESTING, SO HE ASKED FOR IT, AND THEN, SUBSEQUENTLY, THE STATE FILED FIVE RESPONSES TO DISCOVERY, AND NOT ONE OF THOSE CONTAINED THE REPORT OR THE NAME OF THE EXAMINER. SO I THINK IT IS CLEAR, IN THIS CASE, WANT THIS EVIDENCE TO COME OUT, BECAUSE IT WAS SO CRUCIAL TO MR. HOFFMAN'S DEFENSE.

THANK YOU. YOU ARE IN YOUR REBUTTAL TIME.

> A MAY IT PLEASE THE COURT. I AM BARBARA YATES, ASSISTANT ATTORNEY GENERAL, ON BEHALF OF THE STATE OF FLORIDA. THE HAIR --.

MISS YATES, LET ME START OFF, WITH YOU, WITH THE THING THAT, REALLY, BOTHERS ME, IN MY READING OF THE BRIEFS, HERE, IS THAT, IS THE STATE CONCEDING THAT THE JUDGE WAS JUST FLAT WRONG, IN THAT STATEMENT THAT I READ, ABOUT THE HAIR CAME FROM?

THE HAIR. RIGHT. CAME FROM THE FLOOR. AND NOT FROM HER HAND. I BELIEVE THE JUDGE ISSUED THE ORDER 11 MONTHS AND TWO WEEKS AT THE HEARING, AND I REMEMBER HIM WRITING FURIOUSLY. I BELIEVE THAT HE HAD THE TRANSCRIPTS WHEN HE WROTE THIS. I THINK HE HAS JUST MISSTATED A LITTLE BIT THAT THE HAIR IN HER HANDS CAME FROM THE FLOOR. THE COLLATERAL COUNSEL MAKES A STATEMENT, IN THE BRIEF, THAT --

WHO SAID THAT? I AM SORRY.

PARDON ME?

WHO -- WHAT WOULD HE HAVE BASED THAT ON, THAT THE HAIR IN HER HAND CAME FROM THE FLOOR?

OBRINGER MENTIONED, IN THE EVIDENTIARY HEARING, AND I BELIEVE ROY DORN, THE INVESTIGATOR, ALSO, THAT THE HAIR WAS IN HER HANDS AND IT APPARENTLY CAME FROM THE FLOOR. AT THE TRIAL, THERE WAS TESTIMONY --

THEY SAID THAT SPECIFICALLY?

YES. I BELIEVE SO.

AND WHERE WOULD THAT BE FOUND?

LET ME GET TO MR. OBRINGER. ONE THING, ALSO, MR. KISSINGER WAS COLLATERAL COUNSEL AT THE TIME OF THE EVIDENTIARY HEARING. AT PAGE 254 AND 255 OF VOLUME FOUR OF THE TRANSCRIPT OF THE EVIDENTIARY HEARING, HE ASKED MR. HARRIS, DID HE KNOW ABOUT THE HAIRS? DID HE KNOW ABOUT THERE WAS A SPOT OF TYPE "O" BLOOD, MR. HARRIS ANSWERED YES. MR. HARRIS dE+TIFIED THAT HE GOT ALL OF THE FILES FROM MR. NICHOLS. MR. NICHOLS TESTIFIED THAT HE GAVE ALL OF HIS FILES TO MR. HARRIS. AND THEY ESTABLISHED THAT, YES, MR. HARRIS DID KNOW ABOUT THE HAIRS. IT IS APPARENT FROM THE TRIAL TRANSCRIPT, ALSO, THAT MR. --

YOU SAY "KNOW ABOUT THE HAIRS". IT IS ONE THING KNOWING THAT THEY ASKED FOR THEIR CLIENT'S HAIR. OF COURSE THEY WOULD KNOW ABOUT. THAT ARE YOU SAYING AFFIRMATIVELY THAT THIS RECORD WILL SHOW THAT MR. HARRIS SAID I KNEW ABOUT THE REPORT THAT SHOWED IT WASN'T MY CLIENT'S HAIR?

NO. HE TESTIFIED THAT HE DID NOT EVER -- HE HAD NO RECOLLECTION OF EVER RECEIVING THAT REPORT.

AND DO YOU AGREE THAT THERE WERE THESE DEMANDS FOR DISCOVERY AND THERE WERE FIVE SEPARATE SUPPLEMENTS, AND NOT ONE OF THEM MENTIONED THIS, THE EXAMER?

YES, AND THE WOMAN WHO WROTE THE REPORT, THE FDLE HAIR ANALYST WAS NAMED PATRICIA LASKO. SHE DID NOT TESTIFY AT TRIAL. SHE WAS NEVER ON A WITNESS LIST. HOWEVER THERE HAS BEEN NO BRADY ESTABLISHED. AT THE EVIDENTIARY HEARING, VOLUME FIVE, PAGE 196, THERE WERE SEVERAL HAIRS IN PARISH'S HAND, THAT THERN MALE,Ni CAUCASIAN HEAD AND TWO PUBIC HAIRS. I THINK THERE WERE TWO HEAD HAIRS IN ONE HAND AND A PUBIC HAIR ON THE OTHER ONE. I AM NOT EXACTLY SURE IF THEY WERE UNDER HER FINGERNAILS OR IN HER HAND OR WHAT. THERE WAS TESTIMONY AT TRIAL THAT THERE WAS A BIG POOL OF BLOOD AT THE DOOR THAT, THE DOOR COULD NOT OPEN BECAUSE LINDA PARISH'S HEAD AND BODY WERE IN THE WAY, THAT SHE WAS DRAGGED BACK FROM THE DOOR. THERE WAS PLATT, THE FDLEROLOGISTco -- SENi -- THE FDLEnr SEROLOGIST TESTIFIED, SAID THAT THERE WERE RUG BURNS ON HER FACE. THEY WERE POST MORTEM AND WERE CAUSED BY HER BEING DRAGGED ACROSS THE CARPET AND BACK. SHE WAS FOUND, FACEDOWN, WITH HER HANDS LIKE THIS. THE JUDGE'S ULTIMATE CONCLUSION, IN HERE THAT, THE MERE FACT THAT TWO OR THREE STRAY HAIRS WERE FOUND ON A BODY, IN A HEAVILY-USED MOTEL ROOM IN JACKSONVILLE BEACH, FLORIDA, AFTER A HOLIDAY WEEKEND, THERE IS NO SURPRISE TO THAT. IN -- RECENTLY, IN THOMPSON V STATE, WHICH IS MENTIONED IN THE REPLY BRIEF AND IN WAY V STATE, THIS COURT HATS REVISITED BRAID -- THIS COURT HAS REVISITEDNi BRADY. YOU HAVE DUMPED THE FOURTH REQUIREMENT OF DUE DILIGENCE, BUT THE REQUIREMENTS FOR ESTABLISHING A BRADY VIOLATION IS THE EVIDENCE MUST BE FAVORABLE. IT MUST HAVE BEEN SUPPRESSED AND PREJUDICE MUST HAVE ENSUED. IN WAY, YOU EXPLAINED THAT FURTHER. THE DEFENDANT MUST ESTABLISH THAT THE DEFENSE WAS PREJUDICED BY THE STATE SUPPRESSION OF EVIDENCE. IN OTHER WORDS THAT THE EVIDENCE WAS MATERIAL.

BEFORE WE GET TO THE PREJUDICE PRONG, I THINK WE RECOGNIZE THAT, IS THE STATE SAYING THAT, IF IT HAS TEST RUTS, THAT -- TEST RESULTS THAT CAN BE SAID TO EXCUP ATE THE DEFENDANTco, AND BOTH DEFENSE LAWYER AND THE STATE ARE AWARE THAT THERE IS HAIR PRESENT IN THE HANDS OF THE VICTIM, THAT THE STATE DOES NOT HAVE TO TURN THESE RESULTS OVER TO THE DEFENDANT? AS A RESULT OF DISCOVERY MOTIONS?

NO, JUDGE. I WILL NOT GO THAT FAR. IN FACT, I THINK THESE SHOULD HAVE BEEN TURNED OVER. YOU HAVE TO LOOK AT THE STATE OF THIS. THIS WAS A 1980 CASE. IT WAS A 1983 TRIAL. FRANKLY THE STATE IS DOING BETTER ABOUT THIS. IT HAS BEEN BEAT OVER THE HEAD OBVIOUS ENOUGH

ABOUT THIS. IT IS DOING BETTER NOW -- OFTEN ENOUGH ABOUT THIS. IT IS DOING BETTER NOW. EVEN IF THIS HAD BEEN TURNED OVER, THE FACT THAT IT DID NOT MATCH MR. HOFFMAN IS ESSENTIALLY OF NO CONSEQUENCE.

WAIT A MINUTE. BEFORE YOU TELL ME IT WASN'T OF ANY CONSEQUENCE, I WANT TO GET STRAIGHT THAT THE DEFENSE, IN NO WAY, KNEW, PRIOR TO TRIAL, THAT THE HAIR DID NOT MATCH MR. HOFFMAN.

MR. HARRIS IS THE BEST EVIDENCE OF THAT. HE TESTIFIED AT THE EVIDENTIARY HEARING THAT HE COULD NOTnjT8S& HAVING BEEN GIVEN MS. LASKO'S REPORT. THERE IS NOTHING IN ANY OF THE DISCOVERY RESPONSE THAT SHOWS THAT THAT REPORT WAS TURNED OVER. SO, NO. I THINK IT IS A VALID CONCLUSION THAT HE DID NOT KNOW THAT THE HAIR ANALYSIS OF THE HAIRS FOUND ON MS. PARISH'S BODY ELIMINATED HIS CLIENT AS A PRODUCER OF THOSE HAIRS. HOWEVER, HE DID KNOW THAT HAIRS HAD BEEN FOUND ON HER HANDS. HE QUESTIONED MR. PLAT, WHO WASNi THEROLOGIST. WERE THERE HAIRS FOUND? YES. -- WHO WAS THE SEROLOGIST. WERE THERENico HAIRS FOUND? YES. THERE WERE HAIRS FOUND. IS THERE ANY PHYSICAL EVIDENCE TO PLACE MY CLIENT IN THAT ROOM? THE ANSWER IS NO. NOW, THERE WAS MR. HOFFMAN'S CONFESSIONS, WHEN HE WAS ARRESTED AND AFTERWARDS. THERE WAS, ALSO, HIS FINGERPRINT ON A PACK OF CIGARETTES. IN ARGUMENT, IN CLOSING ARGUMENT, MR. HARRIS ARGUED HOFFMAN WAS OUT WITH THE VICTIMS THE NIGHT BEFORE, THE DAY BEFORE, WHATEVER. THEY WERE SITTING AROUND A TABLE SMOKING. IT IS POSSIBLE HE HANDLED A PACK OF CIGARETTES AND IT WOUND UP BACK IN THE ROOM, EVEN THOUGH HE WAS NEVER THERE. HOWEVER, WE HAVE HIS CONFESSION. HIS NUMEROUS CONFESSIONS, BOTH IN MICHIGAN AND IN FLORIDA, IN ACCORDANCE WITH HIS PLEA AGREEMENT, WHICH HE WAS ALLOWED TO WITHDRAW LATER, WHEN HE CHANGED HIS MIND, HE GAVE SOMETHING LIKE 20 HOURS OF DEPOSITIONS, UNDER OATH, TO THE ATTORNEYS FROM ZARA AND POLITE, HIS CODEFENDANTS IN THE MURDER CHARGES.

WAS THAT INTRODUCED INTO EVIDENCE?

THAT WAS NEVER INTRODUCED INTO EVIDENCE. HOWEVER, THEY DO EXIST.

HOW ARE WE TO EVALUATE -- ARE YOU SAYING THAT, ON RETRIAL, THE STATE COULD BRING IN THE 20 HOURS, OR ARE YOU JUST SAYING THAT FROM OUR LEVEL OF FEELING LIKE WE ARE OKAY THAT THE STATE GOT THE RIGHT GUY, THAT WE SHOULD CONSIDER WHAT THOSE DEPOSITIONS FOR THAT PURPOSE?

NONE OF HIS POST -- HIS NEGOTIATED PLEA DISCUSSIONS, DEPOSITIONS, NONE OF THAT INFORMATION WAS INTRODUCED AT TRIAL. THE STATE SAID WE ARE NOT GOING TO INTRODUCE IT. HOWEVER, I THINK IT DOES HAVE AN EFFECT ON YOUR CONSIDERATION NOW. MR. OBRINGER TESTIFIED, AT THE EVIDENTIARY HEARING, THAT THERE WERE 20 HOURS' WORTH OF DEPOSITIONS, THAT, UNDER OATH, MR. HOFFMAN GAVE TO HIS CODEFENDANTS, WHITE AND MAZARA'S COUNSEL. THOSE DEPOSITION WERE PROVIDED TO MR. HARRIS. IN THOSE DEPOSITIONS, MR. OBRINGER TESTIFIED THAT THEY WERE ENTIRELY CONSISTENT WITH THE CONFESSIONS THAT MR. HOFFMAN HAD GIVEN TO THE FBI AGENTS AND TO DORN AND MAXWELL, AND THAT THEY WERE INCONSISTENT WITH HIS SUPPRESSION HEARING TESTIMONY THAT HE WAS TOO DOPD UP TO KNOW WHAT HE WAS DOING.

BUT YOU ARE CLAIM HAD GONE THAT THERE WAS NO PREJUDICE, IN THE FACE OF ALL OF THAT.

THERE IS NO PREJUDICE IN ANY OF THIS.

WHILE YOU ARE THERE, AND YOU MAY NOT BE FINISHED ON THAT ISSUE, BUT WOULD YOU ADDRESS THE ISSUES ABOUT THE OTHER CONFESSIONS. IN OTHER WORDS THE CLAIM THAT THE STATE HAD EVIDENCE THAT OTHER PERSONS HAD CONFESSED TO THESE MURDERS AND NEVER

PROVIDED THAT EVIDENCE TO THE DEFENDANT.

MR. HARRIS KNEW ABOUT BONES MERRILL. HE KNEW ABOUT BUBBA JACKSON. THOSE ARE THE TWO THAT THEY PRESENTED EVIDENCE ABOUT IN THE EVIDENTIARY HEARING.

WHAT I AM ASKING, IN OTHER WORDS, DOES THE RECORD SHOW THAT THE CONFESSIONS GIVEN BY THOSE OTHER PEOPLE WERE TURNED OVER TO THE DEFENSE LAWYERS?

NO. I DON'T BELIEVE THEY WERE.

NOT TALKING ABOUT WHETHER THE LAWYERS KNEW ABOUT THOSE PEOPLE. I AM TALKING ABOUT WHETHER OR NOT -- ANOTHER ACTUAL STATEMENTS THAT WERE IN THE POLICE REPORTS, NO, I DON'T THINK THEY WERE.

RIGHT. HOW DO WE DEAL WITH THAT?

AGAIN, THERE HAS BEEN NO BRADY VIOLATION SHOWN. EVEN IF THERE WAS SUPPRESSION, THERE HAS BEEN NO PREJUDICE DEMONSTRATED.

I MEAN, BASED ON THE SAME ARGUMENT THAT THE EVIDENCE WAS OVERWHELMING AGAINST THE DEFENDANT?

YES. YES. PLUS DORN AND OBRINGER TESTIFIED, AT THE EVIDENTIARY HEARING, THAT THEY INVESTIGATED BONES MERRILL AND BUBBA JACKSON THOROUGHLY. THE INFORMATION ABOUT BUBBA JACKSON CAME FROM CONFIDENTIAL INFORMANTS. AT THE HEARING, MR. KISSINGER ASKED MR. OBRINGER, WELL, ISN'T HIS CONFESSION TO THESE PEOPLE ENOUGH TO GO TO TRIAL ON? MR. OBRINGER SAID, NO, I WOULD NOT GO TO TRIAL ON SOMEBODY, WHERE THE ONLY EVIDENCE I HAVE IS THE UNSUBSTANTIATED --

HE DOESN'T NEED TO GO TO TRIAL. IF HE HAS GOT A CONFESSION FROM ANOTHER PERSON, AND THE OTHER PERSON, APPARENTLY, WAS INVOLVED IN SOME WAY WITH THIS SAME GROUP OF PEOPLE, DOESN'T -- DO YOU AGREE, THEN THAT, THE STATE HAD AN OBLIGATION TO TURN OVER THAT EVIDENCE? YOU ARE JUST SAYING IT WASN'T PREJUDICIAL?

YES.

OKAY.

AND, YOU KNOW, OBRINGER EXPLAINED --

BUT YOU AGREE THAT THE STATE DID NOT TURN OVER THOSE STATEMENTS, AND AS FAR AS THAT PRONG OF BRADY IS CONCERNED, THAT WAS DEMONSTRATED.

YES, SIR. BUT AS THIS COURT HAS RECENTLY HELD, IN BOTH WAY AND THOMPSON, WHERE IT FOUND THERE WAS, IN THOMPSON, IF FOUND THAT THERE WAS NO BRADY VIOLATION, BECAUSE THEY -- THE STATE, REALLY, DOESN'T CAUSE THE WITNESS NOT TO APPEAR. IN WADE, THE COURT FOUND THAT THERE WAS A BRADY VIOLATION, BECAUSE THE SUBJECT PHOTOGRAPHS WERE NOT TURNED OVER. FOUND IN BOTH CASES THAT THERE WAS NO PREJUDICE. IT IS THE SAME THING HERE. BONES MERRILL WORKED WITH HOFFMAN IN A LAWN SERVICE BUSINESS. BONES MERRILL STARTED SELLING DRUGS FOR THE PROVOST, MAZARO ORGANIZATION THAT HE GOT FROM MERRILL. MERRILL TESTIFIED THAT HOFFMAN CAME TO HIM, COMPLAINING WHY ARE YOU GIVING BONES JOBS AND GIVING HIM MONEY? I WANT IN ON THIS, TOO.

BUT IN A CASE LIKE THIS, WHERE, ESSENTIALLY, ALL WE, REALLY, HAVE, IS HIS CONFESSIONS, BECAUSE, EVEN YOU ARE -- ACKNOWLEDGED THAT THERE WAS AN ARGUMENT THAT CAN BE

MADE ABOUT CIGARETTE PACK.

SURE. THAT DOESN'T MEAN THE ARGUMENT HAS ANY VALIDITY.

AND THE FINGERPRINT ON IT. SO, BUT, IN A SITUATION LIKE THIS, WITH THIS KIND OF EVIDENCE, HOW CAN WE SAY THAT THERE IS NO PREJUDICE TO THE DEFENDANT, IF WE HAVE SOMEONE ELSE, NOT JUST SOMEONE ELSE, BUT, IT SEEMS TO ME, THAT MR. JACK AND HIS WIFE INDICATED THAT BUBBA JACKSON CONFESSED TO THEM, THAT HE HAD COMMITTED THIS MURDER. I MEAN, IN THE FACE OF THAT KIND OF EVIDENCE, HOW CAN WE SAY THAT THAT IS NOT PREJUDICIAL?

THAT IS HEARSAY ON TOP OF HEARSAY. IT WOULDN'T HAVE BEEN ADMISSIBLE AT TRIAL, FOR MRS. JACKS TO COME IN AND IN AND SAY OH, BUBBA CONFESSED TO ME. TAKE A LOOK AT SIMS, IN 754, 756, ONE OF THE EXACT CLAIMS IT THAT WAS REJECTED BY THIS -- EXACT CLAIMS THAT WAS REJECTED BY THIS COURT WAS, IN THAT CASE, AFFIDAVITS THAT THE STATE STIPULATED COULD COME IN. WE DIDN'T STIPULATE ANYTHING TO THIS -- TO THE VERACITY OR ANYTHING ABOUT MS. JACK'S STATEMENTS, AND THIS COURT FOUND THAT IT WAS DOUBLE HEARSAY AND WOULDN'T BE ADMISSIBLE. IT IS THE EXACT SAME THING HERE. THEY DID NOT PRODUCE WHAT MRS. JACKS AND MR. MERRILL SAID.

WOULDN'T THAT HEARING HAVE AT LEAST BEEN -- WOULDN'T THAT HEARSAY AT LEAST HAVE BEEN RELEVANT TO TRYING TO GET BUBBA JACKSON OR SOMEONE -- IT IS NOT SO MUCH THAT THIS PARTICULAR EVIDENCE MAY HAVE BEENNi EXCLUDEABLEok, BUT COULD -- WOULD IT HAVE BEEN IMPORTANT TO LEAD TO OTHER THINGS?

NO. BECAUSE THERE WASN'T ANYTHING ELSE EXCEPT THE STATEMENT, BY THE JACKS, THAT BUBBA --

HOW DO WE KNOW THAT THERE WAS NOTHING ELSE?

THAT IS ALL THEY HAVE CLAIMED. THAT IS ALL THEY HAVE PRESENTED. OBRINGER AND DORN TESTIFIED, AT THE EVIDENTIARY HEARING, THAT BUBBA AND BONES WERE TWO OF THE FIRST PEOPLE THEY CENTERED ON IN THIS THING. THEY INVESTIGATED THEM THOROUGHLY, AND THEY WEREN'T THE ONES THAT DID T THEY EVENTUALLY FOUND WHITE, AND THROUGH HIM, THEY FOUND MARSHAL, AND MARSHAL GAVE UP HOFFMAN.

SO WE JUST TAKE THEIR WORD THAT THERE WAS NOTHING TO THESE TWO SUSPECTS.

I THINK YOU HAVE TO, BECAUSE THE DEFENSE, THIS POINT, HAS PRODUCED NOTHING MORE THAN THE MERE MENTIONS, IN THE POLICE REPORTS, ABOUT THESE STATEMENTS, THESE TWO STATEMENTS, ONE ABOUT BONES AND ONE ABOUT BULB A THEY PROVED ABSOLUTELY NOTHING ELSE AT THE HEARING. THE STATE HAS NO OBLIGATION TO DISCLOSE EVERYTHING THAT IT FINDS ABOUT EVERY PERSON THAT IT MAY INVESTIGATE IN A CRIME. BOTH DORN AND OBRINGER TESTIFIED, LOOK, WE DIDN'T HAVE A CLUE WHEN WE STARTED OUT ON THIS. WE WERE LOOKING AT EVERYBODY.

I THOUGHT YOU WERE CONCEDING THAT THAT ELEMENT OF BRADY HAD BEEN PROVEN HERE, AND THAT IS THAT THE STATE VIOLATED THAT ELEMENT.

NO, YOUR HONOR, WE ARE NOT.

SO YOU, NOW, ARE NOT CONCEDING THAT.

YES.

WHEN YOU TOLD ME, A MINUTE AGO, THAT YOU AGREED THAT THAT PRONG OF BRADY HAD BEEN

PROVEN.

I MISSPOKE.

SO THE STATE HAD CONFESSIONS. OKAY.

NO. THE STATE DID NOT HAVE CONFESSIONS.

WHAT WERE THESE STATEMENTS BY THESE WITNESSES? TWO WITNESSES.

THEY WERE MAERL HEARSAY.

TWO WITNESSES, AS JUSTICE QUINCE SAID, THAT THIS OTHER PERSON HAD CONFESSED TO TWO OTHER PEEP HE WILL.

-- PEOPLE.

NO.

THE STATE DID HAVE THESE TWO OTHER CONFESSS, RIGHT?

NO. THEY HAD A STATEMENT FROM MRS. JACKS THAT SHE OVERHEARD BUBBA JACKSON SAY "I KILLED THEM". THEY HAD A STATEMENT FROM --co

NOT HER HUSBAND?

NO. THEY WERE RELYING ON MRS. JACKS. I DON'T REMEMBER. I THINK DAVID JACKS, HER HUSBAND, WAS THE ACTUAL CI.

THEY HAD, AT LEAST, THE STATEMENT OF A WITNESS, WHO SAID THAT THIS BUBBA CONFESSED.

THEY HAVE A HEARSAY STATEMENT OF --

LET'S JUST GET WHAT IT IS, FIRST OF ALL. THEY HAVE A WITNESS THAT THEY INTERVIEWED THAT SAID THIS OTHER PERSON CONFESSED TO ME THAT HE DID THIS CRIME. IS THAT CORRECT?

NO. SHE OVERHEARD HIM CONFESS TO HER HUSBAND. SO IF WE ARE GOING TO BE PRECISE, LET'S BE PRECISE.

WE HAVE A STATEMENT OF A WITNESS THAT SAID SHE HEARD, OUT OF THE MOUTH OF ANOTHER PERSON, THAT HE HAD DONE THIS CRIME.

RIGHT.

OKAY. AND ARE YOU SAYING THE STATE HAD NO OBLIGATION TO TURN THAT INFORMATION OVER TO THE DEFENSE?

AFTER THEY INVESTIGATED IT THOROUGHLY AND FOUND THAT THERE WAS NO MERIT TO IT, I THINK NO.

LET'S JUST STOP RIGHT AT THE BEGINNING, WHEN THEY GOT THAT --

THERE WAS NO OBLIGATION. ANOTHER STATE HAD NO OBLIGATION TO TURN THAT OVER. IN OTHER WORDS IT WAS THE STATE'S EVALUATION OF IT THAT IS GOING TO DETERMINE. IF THE STATE DECIDES, NO, WE DON'T THINK HE DID IT. WE THINK THE DEFENDANT WE GOT DID IT, THEN THEY DON'T HAVE TO TURN OVER STATEMENTS LIKE THAT.

I DON'T THINK THIS COURT HAS EVER HELD THAT, YOUR HONOR, AND I DON'T THINK THAT THIS IS THE CASE TO DO IT IN. AS MR. OBRINGER TESTIFIED, HE WAS ASKED, SPECIFICALLY, BY MR. KISSINGER, WELL, ISN'T THIS ENOUGH CENTRAL WHY DIDN'T YOU ARREST MR. JACKSON, AND HE SAID, WELL, ALL I HAD WAS THE WORD OF A CONFIDENTIAL INFORMANT. SOME OF THEM ARE MORE RELIABLE THAN OTHERS. WE CHECK THIS OUT, UP ONE SIDE, DOWN THE OTHER, AND IT DID NOT PROVE OUT TO BE TRUE, AND IF YOU WILL NOTICE IN ALL OF THIS, THEY HAVEN'T, AS IN SO MANY CASES, COME IN WITH AN AFFIDAVIT AT THIS POINT IN THE GAME, WHERE SOMEBODY ELSE SAYS OH, NO, YOUR DEFENDANT DIDN'T DO IT. I DID IT. THEY HAVE ABSOLUTELY NOTHING LIKE THAT IN THIS RECORD.

WHAT HAPPENED, BY THE WAY, IN THIS CASE, THE PERSON, THE KINGPIN, WHO ALLEGEDLY HIRED PEOPLE WHO KILL THESE PEOPLE WHAT HAPPENED TO THAT PERSON?

PROVOST IS THE ACTUAL PERSON WHO WAS RUNNING -- WHO WAS THE MAJOR PLAYER IN THE DRUG RING, FROM WHAT I CAN UNDERSTAND FROM THE RECORD. HE LIVED IN BOTH ORLANDO, FLORIDA, AND NORTH CAROLINA. AFTER THESE MURDERS, HOFFMAN TESTIFIED THAT HE WENT TO WORK FOR PROVOST, HIMSELF, ESSENTIALLY BECAME HIS GONE-FEHR.

WHAT HAPPENED TO PROES FOR, HIMSELF? WAS HE CONVICTED OR DID HE DIE OR WHAT?

HE WAS CONVICTED. HE HAD MULTIPLE -- NO. HE HAD MULTIPLE MEDICAL PROBLEMS.

WHAT HAPPENED TO HIM?

HE DIED.

WAS HE NEVER CHARGED?

NOT THIS MURDER. HE MAY HAVE BEEN TRIED FOR SOME FEDERAL DRUG CHARGES.

WHAT HAPPENED TO THE ONE IMMEDIATELY DOWN FROM HIM?

MAZARE WAS CHARGED WITH TWO COUNTS EVER FIRST-DEGREE MURDER AND ONE COUNT OF CONSPIRACY. HE WAS CONVICTED OF TWO COUNTS OF FIRST-DEGREE MURDER AND -- HE WAS GIVEN LIFE SENTENCES. I THINK HE IS STILL IN JILL.

WAS THERE ANOTHER -- STILL? JAIL.

WAS THERE ANOTHER MAN?

YES. JAMES HOFFMAN KILLED LINDA PARISH AND HELPED KILL IHLENFELD. HE WAS CHARGED WITH TWO COUNTS OF FIRST-DEGREE MURDER AND ONE COUNT OF CONSPIRACY. I BELIEVE HE WAS CONVICTED -- IT IS DIFFICULT TO TELL, BECAUSE HE GOT A PCA OPINION. BY THE TIME I GOT INTO THIS CASE, HIS RECORDS HAVE BEEN DESTROYED, BUT IT LOOKS LIKE HE GOT AT LEAST ONE LIFE SENTENCE, POSSIBLY TWO, OUT OF THOSE THREE CHARGES. HIS JURY, HOWEVER, RECOMMENDED LIFE IN PRISON.

ANY OTHER?

NO. THOSE WERE THE ONLY THREE. ROCKO MARSHAL IS THE ONE WHO SOLICITED HOFFMAN AND WHITE AT MAZARA'S BEHEST, TO KILL IHLENFELD.

WHAT HAPPENED TO HIM?

HE WAS GIVEN TOTAL IMMUNITY, IN EXCHANGE FOR HIS TRUTHFUL TESTIMONY.

HE TESTIFIED?

HE TESTIFIED, AND IF YOU, WHEN YOU READ HIS TESTIMONY, AT THE TRIAL, AND THE CROSS-EXAMINATION, THEY ARE COMPLAINING THAT, OH, HE WAS, ALSO, GIVEN IMMUNITY FOR ANY TESTIMONY AGAINST PROVOST. THAT NEVER CAME ABOUT. MR. HARRIS IMPEACHED HIM THOROUGHLY. HE BROUGHT OUT THAT ALL OF HIS MOTIVES IN TESTIFYING, ONE, TO WIPE OUT HIS WIFE'S $10,000 DRUG DEBT. HE HAD A BAND. TO GET POSSESSION OF THE PA SYSTEM AND NOT TO HAVE TO PAY FOR IT. TO COVER HIS OWN NECK ON THIS STUFF, THAT HE WAS GETTING A WALK-ON THIS CHARGE.

ALL OF THESE PEOPLE WERE INVOLVED IN A BIG DRUG RING?

PRETTY EXTENSIVE, YES, YOUR HONOR.

THANK YOU, MS. YATES.

THE COURT WOULD ASK YOU TO RMPL AFFIRM THE COURT'S DENIAL 6 RELIEF. -- THE COURT WOULD ASK YOU TO AFFIRM THE COURT'S DENIAL OF RELIEF.

I THINK IT IS EXHIBIT NO. 33, AND WHAT THIS IS ROY DORN SWORE OUT AN AFFIDAVIT, WHICH WAS, THEN, A JUDGE AGREED TO ISSUE A SEARCH WARRANT FOR JAMES, BUBBA, JACKSON, AND IN HIS AFFIDAVIT, ROY DORN SAIDNi THAT THREE PEOPLE, A CONFIDENTIAL INFORMANT, AND THIS IS INDEPENDENT, A CONFIDENTIAL INFORMANT TOLDNi HIM THAT BUBBA JACKSON HAD CONFESSED TO THE CRIME AND KNEW THAT A BLACK BOOK HAD BEEN TAKEN FROM THE CRIME SCENE THAT HAD LENNY MAZARA'S PHONE NUMBER IN IT AND VARIOUS --

HOW WOULD YOU USE THAT IN A RETRIAL? IT GOES TO WHETHER -- HAS GOT TO BE ADMISSIBLE EVIDENCE. OF COURSE, AT THE TIME, IT WOULD LEAD TO FURTHER EVIDENCE, BUT HOW WOULD YOU USE THAT, IF THE COURT GRANTED A NEW TRIAL. HOW WOULD THAT EVIDENCE COME IN.

ONE WAY THAT I THINK IT COULD COME IN IS THEY COULD CALL BUBBA JACKSON TO THE STAND, THE DEFENSE COULD, IF HE, EITHER, TOOK THE FIFTH AMENDMENT OR DENIED HIS INVOLVEMENT, THEN I THINK THEY COULD CALL THESE INDIVIDUALS TO IMPEACH HIM.

DID YOU PRESENT THESE INDIVIDUALS AT THE EVIDENTIARY HEARING, TO SHOW THAT THEY WOULD SAY WHATEVER WAS ALLEGED IN THE REPORT? DO YOU KNOW THAT?

WE DIDN'T PRESENT THOSE INDIVIDUALS.

DON'T YOU THINK, BEFORE WE ARE GOING TO GO AHEAD, I MEAN, YOU ARE ASKING HERE, FOR A NEW TRIAL.

THAT'S CORRECT.

DON'T YOU THINK THERE SHOULD BE A GREATER RESPONSIBILITY FOR US TO KNOW WHETHER THIS COULD BE ADMISSIBLE EVIDENCE, BECAUSE IT IS NOT ADMISSIBLE IN ITS PRESENT FORM, IS IT?

I THINK, IT IF IT WAS BEING ADMITED FOR THE TRUTH OF THE MATTER ASSERTED, CERTAINLY IT WOULD WOULD QUALIFY AS HEARSAY, BUT I THINK IT COULD GO TO THE FACT THAT OTHER PEOPLE, OTHER INDIVIDUALS, HAD OTHER INFORMATION REGARDING THIS CRIME THAT NO ONE HAD, THAT THE POLICE DID NOT -- DID NOT GIVE TO THE PUBLIC OR THE MEDIA, AND THAT -- AND, ALSO, I MEAN, THIS IS ROY DORN'S AFFIDAVIT, DISCUSSING THESE INDIVIDUALS' TESTIMONY, SO YOU KNOW, I DON'T THINK THAT -- I THINK WE SHOULD BE ABLE TO RELY ON MR. CORN'S REPRESENTATION THAT THIS IS -- MR. DORN'S REPRESENTATION THAT THIS IS WHAT THESE

PEOPLE WOULD TESTIFY TO.

DORN IDENTIFIED THREE PEOPLE THAT WOULD GIVE THIS TESTIMONY?

DORN GAVE THE BLACK BOOK, WHICH HAD THESE THREE INDIVIDUALS, TO THE MEDIA, AND THEN MR. DORN FOLLOWED UP AND MRS. JACKSON, BOTH THEY SAID THAT THE KNIFE WAS STUCK IN THE MALE VICTIM'S BACK, AND THAT ISco ONE DETAIL THAT EVEN MR. HOFFMAN DIDN'T PROVIDE TO -- WHEN YOU COMPARE MR. HOFFMAN'S GENERAL SORT OF CONFESSION THAT HE ALLEGEDLY MADE, TO BUBBA JACKSON'S STATEMENTS THAT HE ALLEGEDLY MADE, BUBBA JACKSON'S STATEMENTS ARE MUCH MORE DETAILED AND HAVE THINGS IN THEM THAT WERE NOT RELEASED TO THE MEDIA. IN FACT, ROY DORN SAYS, IN HIS AFFIDAVIT, THAT THESE WERE ONLY KNOWN TO LAW ENFORCEMENT, SO THE WAY THAT BUBBA JACKSON GOT THIS INFORMATION, EITHER HE WAS PRESENT AT THAT CRIME SCENE OR HE, SOMEHOW, KNEW SOMEONE IN LAW ENFORCEMENT WHO WAS ABLE TO GIVE HIM THAT INFORMATION.

DO WE KNOW IF A SEARCH WARRANT WASISH ISSUED, AS A RESULTco -- WAS ISSUED, AS A RESULT --

I CAN'T MAKE OUT JUDGE'S NAME, BUT IT WAS ISSUED, AND I AM NOT SURE WHAT HAPPENED THEREAFTER, BUT I THINK THAT UNDER KILS, -- UNDER KYLES, CERTAINLY THE HUMAN HAIR ANALYSIS IS CREDIBLE. AND CERTAINLY THE ANALYSIS THAT COMBINES, UNDERMINING MR. HOFFMAN'S CONFESSION AND OTHER DETAILS THAT WE CITED IN THE BRIEF, MR. HOFFMAN IS ENTITLED TO A NEW TRIAL, AND THE LOWER COURT, ON THE OTHER ISSUE OF THE OTHER SUSPECTS, NEVER ADDRESSED THAT ISSUE, SO THERE IS NO FACTUAL FINDING ON WHICH TO RELY, SO WE ARE RESPECTFULLY REQUESTING THAT THIS COURT REVERSE THE LOWER COURT'S DECISION AND GIVE MR. HOFFMAN A NEW TRIAL, AND I GUESS, SINCE I HAVE A MOMENT, I JUST WANT TO, ALSO, POINT OUT THAT, WHEN THIS CASE BECAUSE REMANDED IN 1990, THIS COURT TOLD JUDGE WHO HAD AC -- HADDOCK TO HOLD A HEARING ON WHETHER OR NOT MR. NICHOLS, THE FIRST TRIAL ATTORNEY IN THIS CASE, WAS INEFFECTIVE FOR NOT BEING WITH MR. HOFFMAN WHEN HE WAS SUPPOSED TO TEST FINE AGAINST MR. MAZARA, AND THE LOWER COURT DENIED A HEARING ON THAT CLAIM, AND IT HAS NEVER BEEN HEARD, SO THIS COURT SHOULD SEND THAT ISSUE BACK, IN ACCORDANCE WITH THE LOWER 1990 COURT ISSUE, AND THAT ISSUE SHOULD BE HEARD.

WHAT ABOUT THE ORDEAL? DO YOU AGREE WITH MRS. YATES THAT THERE WAS CONSIDERABLE IMPEACHMENT OF THE WITNESS, AND THE LAWYER KNEW WHAT HE NEEDED TO KNOW, IN ORDER TO IMPEACH HIM?

NO. I CERTAINLY AGREE. HE DID KNOW THAT HE DID IMPEACH HIM. HE WAS GETTING IMMUNITY ON THE MURDER CHARGE.

THAT IS PRETTY POWERFUL.

THE MURDER CHARGE. HOWEVER, HE DIDN'T KNOW THE EXTENT OF THE CASE, AND I THINK THAT AQUAR SAYS THAT, KNOWING PART OF THE DE