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Lamar Z. Brooks vs State of Florida

THE MARSHAL: PLEASE RISE. PLEASE BE SEATED.

NEXT CASE ON THE COURT'S CALENDAR IS LAMAR Z BROOKS VERSUS THE STATE OF FLORIDA. MR. FUNK.

MAY IT PLEASE THE COURT. GOOD MORNING. IN APRIL OF '96, MS. CARLSON AND MS. STEWART, MS. STUART IS MS. CARLSON'S DAUGHTER, WERE FOUND DEAD IN A CAR INCEST THE VIEW, FLORIDA. -- IN A CAR, INCEST THE VIEW -- IN CRESTVIEW, FLORIDA. WALKER DAVIS JR. AND LAMAR BROOKS WERE CHARGED. IN A TRIAL SEPARATE AND APART TO MR. BROOKS' TRIAL, THEY WERE BOTH CONVICTED OF THE MURDERS AND CONVICTED TO LIFE IN PRISON. SUBSEQUENTLY MR. BROOKS HAD HIS TRIAL AND HE, ALSO, WAS CONVICTED OF FIRST-DEGREE MURDER AND BOTH COUNTS FOR MS. CARLSON AND MISS STUART. THE JURY RECOMMENDED DEATH. IN SEPTEMBER 1998, MR. BROOKS WAS, IN FACT, SENTENCED TO DEATH. A REVERSAL IS WARRANTED IN THIS WE HAVE GOT LIMITED TIME HERE TODAY. WHAT I WOULD LIKE TO FOCUS ON WERE THE STATEMENTS OF THE NONIDENTIFYING CODEFENDANT MR. WALKER DAVIS JR.. THERE WERE MANY, MANY STATEMENTS ADMITTED IN THIS TRIAL OF MR. BROOKS ATTRIBUTED TO WALKER DAVIS Jr. THEY SAID THAT HE WAS BUGGING THEM AND THAT MEANS IRRITATING, I PRESUME, AND THAT HER AND THE LITTLE ZIP, AND I ASSUME THAT WAS THE CHILD, WERE DONE, AND WE SUBMIT THAT WAS A STATEMENT TO INTEND TO KILL THOSE PEOPLE. THAT WAS ADMITTED IN THE TRIAL OF WALKER DAVIS BROOKS, ADMITTED AS CODEFENDANT.

AS YOU GO THROUGH AND AMOUNT TO WHAT ARE HEARSAY OBJECTION ANSWER THAT A NUMBER OF EXCEPTIONS DON'T APPLY, COULD YOU TRY TO BALANCE THAT WITH EITHER THE OTHER EVIDENCE OF THE SAME FACTS AND CIRCUMSTANCES THAT WAS ADMITTED, OR THE LACK OF THAT, AND SO THAT WE HAVE SORT OF A TOTAL PICTURE, HERE, AND THAT WE ARE, ALSO, IN A POSITION TO EVALUATE ANY CLAIM OF HARMLESS ERROR IN THE ADMISSION. YOU UNDERSTAND WHAT I AM ASKING YOU TO DO?

YES, SIR. EVEN THOUGH LACK OF EVIDENCE IN THIS CASE, LACK OF PHYSICAL EVIDENCE LINKING MR. BROOKS TO THESE CRIMES, AND THERE WASN'T ANY. THERE WAS NUMEROUS TESTIMONY BY FORENSIC EVIDENCE, FDLE FOLKS, ALL OF WHICH, NONE OF WHICH POINTED TO MR. BROOKS, LINKING HIM TO THE ACTUAL CRIME.

WHAT WAS THE MOST CERTAIN EVIDENCE, DIRECTLY LINKING HIM TO THE CRIME? WE HAVE GOT A COUPLE OF WITNESSES. DO WE NOT? THAT HE MADE STATEMENTS TO?

YES, SIR. IF BELIEVED, AND APPARENTLY BELIEVED, WAS MR. GOODE MAN, THE JAILHOUSE SNITCH. THE STATE'S ARGUMENT WERE THAT THE TWO OF THEM WERE AS ONE. IN FACT HE CALLED THEM SIAMESE TWINS, I BELIEVE, IN HIS OPENING STATEMENT. ESSENTIALLY THE COURT RETRIED MR. DAVIS, AGAIN, IN ORDER TO CONVICT MR. BROOKS.

WAS THERE ANOTHER WITNESS, THOUGH, THAT HEARD BOTH OF THESE DEFENDANTS MAKE STATEMENTS DISCUSSING THE ANTICIPATED MURDER OF THIS YOUNG WOMAN AND HER CHILD?

I BELIEVE YOUR HONOR IS REFERS -- IS REFERRING TO MR. GILLIAM, WHO TESTIFIED IN NUMEROUS WAYS ON RECANTATION AND RECALL OF RECALLS, IN A JOKING MANNER OF WHICH MR. DAVIS AND MR. BROOKS WERE DISCUSSING, IN A JOKING MANNER, IN A

LIGHT-HEARTED WAY, THE COMMISSION OF A CRIME.

BUT WOULD YOU AGREE THAT HIS TESTIMONY, ALONG WITH THE TESTIMONY OF THE WITNESS THAT YOU CHARACTERIZE AS THE JAILHOUSE SNITCH, WERE THE TWO MAJOR WITNESSES AGAINST YOUR CLIENT?

NO, SIR. NO, SIR. I BELIEVE --

GO AHEAD.

I BELIEVE THAT THE STATEMENTS ATTRIBUTED TO WALKER DAVIS, BECAUSE I BELIEVE, AND I THINK THE RECORD REFLECTS, THAT MR. DAVIS IS AS CULPABLE A HUMAN BEING AS CAN BE FOR THESE TWO CRIMES. MR. DAVIS COMMITTED THESE HOMICIDES. MR. DAVIS HAD A MOTIVE TO COMMIT THESE CRIMES, AN OPPORTUNITY TO COMMIT THESE CRIMES AND EVENTUALLY CONFESSED TO COMMIT THESE CRIMES, AND THE PROSECUTOR KNEW THAT AND KNEW THAT THE STRONGERES EVIDENCE -- AND THAT THE STRONGEST EVIDENCE LINKING MR. BROOKS TO THE CRIME IS MR. DAVIS.

I AM TALKING ABOUT, SO WE HAVE THIS COMPLETE PICTURE AND CAN EVALUATE, AS WELL AS EVALUATING THE ADMISSION OF THIS EVIDENCE, OF HIS STATEMENTS AND THE STATEMENTS OF OTHERS, INCLUDING THE VICTIM, YOU HAVE CHALLENGED THE REPORTS OF THE STATEMENT 6 THE VICTIM. BUT I AM -- THE STATEMENT OF THE VICTIM, BUT I AM TALKING ABOUT OTHER EVIDENCE. IN OTHER WORDS IF WE TAKE AWAY THOSE STATEMENTS OF THE CODEFENDANT AND TAKE AWAY THE OTHER HEARSAY STATEMENTS THAT YOU ARE COMPLAINING ABOUT, NOW, ON APPEAL.

YES, SIR.

WHAT IS THE MAJOR EVIDENCE LEFT AGAINST YOUR CLIENT?

I AM NOT SURE. I THINK A JOA MAY HAVE BEEN ENTERED AT THAT TIME, JUSTICE. YES, SIR.

WAS THERE EVIDENCE -- WASN'T THERE SOME WITNESSES THAT SAW BROOKS WITH DAVIS IN CRESTVIEW TEMPORALLY TO THIS MURDER?

YES.

AND SO THAT WAS ONE PIECE OF THE EVIDENCE. THAT HE WAS, IN FACT, IN CRESTVIEW. WHERE DID HE LIVE?

HE IS FROM PENNSYLVANIA, SIR, AND CAME DOWN TO FLORIDA FOR THE FIRST TIME, TWO OR THREE DAYS PRIOR TO THE HOMICIDES.

WHERE DID HE COME TO, WHEN HE CAME TO FLORIDA?

HE CAME TO MR. DAVIS'S HOME.

WHERE WAS MR. DAVIS'S HOME?

NEAR EGGLAND AIR FORCE BASE NOT IN CRESTVIEW.

ABOUT HOW FAR WAS THAT? MY RECOLLECTION OF THE RECORD WAS SOME MILES AWAY, DRIVING DISTANCE, A REASONABLE DRIVING DISTANCE AWAY. WHAT WAS THE EVIDENCE AS TO THE TIME OF DAY THAT THE MURDER OCCURRED?

IN THE EVENING HOURS.

AND WHEN WAS BROOKS SEEN IN CRESTVIEW, IN RELATION TO THAT?

HE WAS SEEN IN THE CRESTVIEW AREA. I AM NOT DISPUTING THAT. THE EVIDENCE IS CLEAR.

WAS IT BEFORE THAT? WAS IT BEFORE THE MURDER?

I DON'T BELIEVE THE RECORD IS CLEAR ON EXACTLY WHETHER THAT HAPPENED. THERE IS NO TESTIMONY AT ALL THAT I FOUND AS TO WHEN THESE HOMICIDES ACTUALLY OCCURRED.

BUT AT THE TIME THAT HE WAS SEEN, HE WAS SEEN IN THE PRESENCE OF DAVIS?

YES, SIR.

IN THE STATEMENT THAT DAVIS MADE TO SAMS A MONTH BEFORE, THE STATE OF MIND OF DAVIS, CONCERNING HIS MOTIVE FOR A MURDER, YOUR CONTENTION IS IT COULD NOT COME IN, BECAUSE AT THAT POINT THERE WAS NO CONSPIRACY THAT HAD YET BEEN ENTERED. THE CONSPIRACY WOULD HAVE STARTED DURING THE TIME THAT GILLIAN WAS PRESENT WITH DAVIS AND BROOKS?

YES, MA'AM. OF COURSE I DON'T BELIEVE A CONSPIRACY EXISTED, BUT ASSUMING THAT ONE DID, YES. IT HAD TO HAVE STARTED AT THE VERY FIRST TIME IT COULD HAVE POSSIBLY STARTED, HIS ARRIVAL IN FLORIDA, WHICH IS CERTAINLY POST THE STATEMENTS TO SAMS, JOHNSTON SEEFERS AND --

LET ME ASK YOU ABOUT THE HARMLESS ERROR.

HIS STATEMENTS ABOUT HIS MOTIVE FOR KILLING THE VICTIM.

MR. DAVIS'S MOTOR SNIFF.

MR. DAVIS'S MOTIVE, AND AS FAR AS BEING HELPFUL TO BROOKS, AS FAR AS THAT DAVIS DIDN'T GET THE DEATH PENALTY THAT, BROOKS SHOULD NOT. HOW WAS IT, IN THE GUILT PHASE, HARMFUL TO YOU, TO HAVE STATEMENTS CONCERNING WHAT DAVIS SAID ABOUT HIS MOTIVE? WHY WAS THAT HARMFUL TO THE CASE AGAINST BROOKS?

BECAUSE THOSE OUT OF COURT STATEMENTS ATTRIBUTED TO WALKER DAVIS PROVIDED THE MOTIVE FOR THE HOMICIDES. BUT FOR THOSE OUT OF COURT STATEMENTS, THE STATE IMPROPERLY BROUGHT THAT INADMISSIBLE HEARSAY IN TO PROVIDE THE MOTIVE FOR THE HOME SIDE. SOME OF THE STATEMENTS INCLUDED SHOPING FOR A \$32,000 VEHICLE: DON'T WORRY ABOUT THE LOAN. I AM COMING INTO SOME MONEY.

DID HE ACTUALLY TAKE OUT A LIFE INSURANCE POLICY?

APPARENTLY SO AND HE BELIEVED THERE WAS AN INSURANCE POLICY NAMING HIMSELF AS THE PRIMARY BENEFICIARY OF THE DEATH OF ALEXIS STUART.

ALL OF THOSE, GOING TO LOOK FOR A \$32,000 VEHICLE, APPLYING FOR A LIFE INSURANCE POLICY, AS WELL AS THE STATEMENT TO SAMS, ALL FIT INTO THE SAME ANALYSIS, THAT THEY ARE ALL INADMISSIBLE FOR THE SAME REASON, OR IS IT POSSIBLE THAT SOME OF THEM WOULD COME IN AS NONHEARSAY STATEMENTS SUCH AS OBSERVATIONS OF SOMEONE GOING TO PURCHASE A CAR?

THE STATEMENTS ATTRIBUTED TO WALKER DAVIS, TO MR. SAMS, MR. JOHNSTON, MR. SIEVERS, MR. MANTHENIE, WERE ALL ADMITTED THROUGH 8.033, STATE OF MIND CONTENTIONS. IT IS MY CONTENTION THAT THE ANALYSIS FOR ALL OF THESE ARE THE SAME. YES. WHAT THE STATE DID

WAS ATTEMPT TO PROVE THE MOTIVE AND SUBSEQUENT FUTURE ACTS OF MR. BROOKS, AND AS FOR 8.033, AS THE COURT KNOWS, THE ONLY WAY THAT COMES IN IS TO PROVE THE SUBSEQUENT ACT OF THE DECLAREANT OR THE DECLAREANT, HIMSELF. THAT IS MR. DAVIS.

THAT WOULD OBLITERATE THE COME CONSPIRACY, THE STATE OF MIND, PRIOR TO THE TIME THAT THIS SENTENCE WAS IMPOSED.

THESE WERE ADMITTED AS COME CONSPIRATOR STATEMENTS AGAINST -- AS COCONSPIRATOR STATEMENTS AGAINST INTEREST AND THEY ARE COMPLETELY IGNORING THE COCONSPIRATOR STATEMENTS BEING FURTHER ENDURANCE OF A CONSPIRACY, AND I AM ASSUMING THAT IT EXISTED. THERE IS NO POSSIBLE WAY THAT THESE STATEMENTS MADE BY MR. DAVIS WERE IN FURTHERANCE OF AND/OR DURING ANY CONSPIRACY. THEY OFFERED THEM TO PROVE THE MOTIVE AND FUTURE SUBSEQUENT ACTS OF WALKER DAVIS.

THE STATEMENTS MADE TO MR. GILLIAM, MR. BROOKS WAS PRESENT, AND HE ACTUALLY MADE SOME STATEMENTS, DIRECT ADMISSIONS DURING THAT CONVERSATION, AND HE, ALSO, SAT SILENTLY, AS OTHER STATEMENTS WERE MADE. WHY WOULDN'T OUR DECISION IN NELSON, REALLY, ALLOW ALL OF THOSE STATEMENTS TO COME IN?

ALL OF THE STATEMENTS ATTRIBUTED TO GILLIAM?

TO DAVIS DURING THAT CONVERSATION.

THE COURT HAS TO GET OVER THE HURDLE OF WHETHER THERE WAS ANY INDEPENDENT EVIDENCE THAT A CONSPIRACY ACTUALLY EXISTED, WHICH, OF COURSE, MY BRIEF ADDRESSED AND SUGGESTED THAT IT IS IMPOSSIBLE, FROM THE RECORD, TO FIND WHEN A CONSPIRACY BEGAN, WHO WAS A PARTICIPANT IN THE CONSPIRACY, WHEN THE CONSPIRACY ENDED. THE TRIAL COURT, UNDER 9.105, WAS SUPPOSED TO SIT AS A FINDER OF FACT PRIOR TO THE ADMISSION AND FIND THAT A CONSPIRACY EXISTED, AND IN OUR BRIEF THERE, IS NO WAY TO EVALUATE THAT. WE CAN SPECULATE ALL DAY, AND --

WHY WOULDN'T GILLIAM'S TESTIMONY, ITSELF, BE SUFFICIENT TO LAY THE PREDICATE, NOW, FOR PROOF THAT THERE WAS A CONSPIRACY?

BECAUSE I BELIEVE THAT THE TRIAL COURT DID JUST WHAT YOU ARE SAYING. HE CONSIDERED THE STATEMENT, ITSELF, IN FINDING THAT THE PREDICATE WAS LAID THAT A CONSPIRACY EXISTED.

WHY WASN'T THAT ENOUGH, IN YOUR CLIENT'S STATEMENTS AND CONDUCT, TO ESTABLISH THE PREDICATE OF THE TERMS OF A THE ESTABLISHMENT OF A CONSPIRACY, AND THEN, OF COURSE, WHETHER OR NOT OTHER STATEMENTS WERE MADE, YOU KNOW, DURING THE COURSE AND TO FURTHER THE CONSPIRACY, OR THAT THEY WERE MADE WAY BEFORE? THAT IS A DIFFERENT ISSUE, BUT NOW YOU ARE CHALLENGING WHETHER OR NOT THERE WAS EVEN A PREDICATE LAID THAT THE TRIAL COURT HAD EVIDENCE THAT YOU CAN POINT TO, TO SAY, WELL, HERE IS EVIDENCE, INDEPENDENT EVIDENCE, OF A CONSPIRACY. WHY ISN'T GILLIAM'S TESTIMONY, ITSELF, THAT, SUFFICIENT FOR THAT PREDICATE?

GIVEN THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING AND ATTENDANT CIRCUMSTANCES SURROUNDING THAT CONVERSATION, THERE WAS NO MEETING OF THE MINDS. THERE AT LEAST HAS TO BE A MEETING OF THE MINDS TWRX THE COSPRT -- BETWEEN THE CO-CONSPIRATOR, IN THIS CASE TO CONSPIRE TO COMMIT A HOMICIDE.

ACTIONS DIRECTLY MADE BY YOUR CLIENT WOULD BE THE STRONGEST EVIDENCE OF A CONSPIRACY, WOULD THEY NOT? ASSUMING THEY ARE MADE AND WERE MADE, YOU KNOW, ABOUT THIS.

I BELIEVE THERE WAS. GIVEN THE CIRCUMSTANCES SURROUNDING ANY STATEMENTS ATTRIBUTED TO MY CLIENT AND/OR MR. GILLIAM AND/OR MR. DAVIS, THAT THERE WAS NO MEETING OF THE MINDS. THAT THERE WAS NO CONSPIRACY FORMED. WE HAVE O'CLOCK TO -- WE HAVE TO FIRST, GET OVER THE HURDLE THAT THESE THREE FOLKS ACTUALLY CONSPIRED AND HAD SOME SORT OF AGREEMENT TO COMMIT HOMICIDE ON THESE TWO INDIVIDUALS.

WASN'T THAT THE WHOLE, ENTIRE CONVERSATION THAT THIS WITNESS TESTIFIED TOOK PLACE? IF I UNDERSTAND IT CORRECTLY, HE SAID, WELL, GEE, I THOUGHT THEY WERE KIDDING. BUT THAT IS THE GLOSS THAT HE PUT ON IT. BUT THEY SAID ALL OF THESE THINGS ABOUT WHAT THEY WERE GOING TO DO.

THERE IS NO QUESTION THERE WAS DISCUSSION OF CRIMES. WHETHER IS THERE A MEETING OF THE MINDS --

NOT JUST CRIMES. THE SPECIFIC CRIME. WAS IT NOT?

THE EVIDENCE SUGGESTS --

THE KILLING OF THIS WOMAN AND HER CHILD?

I DON'T BELIEVE THERE IS ANY TESTIMONY OR ANY DISCUSSION ABOUT KILL AGO CHILD ANYWHERE EVER DISCUSSED, BETWEEN -- EVEN IF BELIEVED IT IS TRUE AND NOT IN A JOKING MANNER, I DON'T BELIEVE THAT WAS EVER DISCUSSED. THE INDICATION, SINCE MR. GILLIAM WASN'T THERE, TO DRIVE HIS, QUOTE, GETAWAY CAR, IF WE BELIEVE THEY WEREN'T JOKING, HIS LACK OF BEING THERE IS INDICIA, I WOULD SUGGEST, THAT THIS WAS A BIG JOKE.

WHO TESTIFIED ABOUT YOUR CLIENT RECEIVING SOME PAY FOR HIS ROLE IN THIS?

WELL, MR. GILLIAM DID, BUT MR. GILLIAM, ALSO, TESTIFIED THAT IT WAS A JOKE AND THAT MR. BROOKS NEVER AGREED TO BE PAID FOR ANY ACTION. MR. GILLIAM'S TESTIMONY NEEDS TO BE CLOSELY READ.

WHAT DID MR. GILLIAM TESTIFY TO IN THAT REGARD?

THAT THEY JOKED ABOUT RECEIVING MONEY FOR PARTICIPATION IN A CRIME.

DID HE TALK ABOUT THE SPECIFIC AMOUNT THAT YOUR CLIENT WAS TO RECEIVE?

THERE IS SOME CONTRADICTIONS IN THE RECORD ABOUT HOW MUCH, WHETHER THERE WAS \$400 TO \$400, \$4-8,000.

THAT WAS GILLIAM'S TESTIMONY.

THAT IS TRUE.

DID HE TESTIFY AS TO THE SOURCE OF THAT MONEY?

NOT ONLY. IT IS ONE OF MY POINTS THAT MR. BROOKS DIDN'T KNOW THAT THIS LIFE INSURANCE POLICY EVER EXISTED.

AND GILLIAM DIDN'T TESTIFY ABOUT THAT, AS PART OF THAT CONVERSATION THAT TOOK PLACE.

THAT'S CORRECT. WHERE THIS MONEY CAME FROM, I DON'T BELIEVE, WAS EVER DISCUSSED. THOSE FOUR STATEMENTS THAT WERE ATTRIBUTED TO WALKER DAVIS FOR THOSE FOUR WITNESSES, I BELIEVE, UNDER THE ANALYSIS, I SUBMIT THAT THEY WERE IMPROPERLY

ADMITTED AS THE MOTIVE FOR THE HOMICIDES.

THERE IS NO EVIDENCE THAT MR. BROOKS KNEW ANYTHING ABOUT THOSE PRIOR TRANSACTIONS, IF THAT IS WHAT WE WOULD CALL THEM.

MR. BROOKS NEVER KNEW THAT MR. DAVIS WAS THE FATHER, ALTHOUGH HE WASN'T BELIEVED THAT HE WAS THE FATHER OF THIS CHILD. THERE IS NO EVIDENCE THAT MR. BROOKS KNEW WHO RACHEL CARLSON WAS. THERE WAS NO EVIDENCE THAT MR. BROOKS KNEW WHO THE BABY WAS OR WHO THE FATHER WAS OR WHETHER THERE WAS AN INSURANCE POLICY.

THAT IS WHY YOU ARE SAYING THAT THE STATE OF MIND OF DAVIS, PRIOR TO THE TIME OF THE CONSPIRACY BEING FORMED, ASSUMING THAT WE DISAGREE WITH YOU THAT THE GILLIAM CONVERSATION WAS IMPROPERLY ADMITTED, THAT THOSE STATEMENTS, BEFORE, YOU SAY, WOULD HAVE BEEN INADMISSIBLE.

YES, MA'AM.

NOW, WHY ISN'T IT -- I KNOW THAT RACHEL CARLSON'S STATEMENT OF HER INTENT TO GO TO CRESTVIEW THAT NIGHT, WHY ISN'T THAT ADMISSIBLE, UNDER THAT OLD EXCEPTION THAT --

THE BONE CASE.

THAT A -- THE BOWEN CASE.

THAT A DECEASED PERSON CAN MAKE STATEMENTS ABOUT THE PURPOSE AND DEFINITION AFTER TRIP AND THAT THAT WAS APPROPRIATELY ADMISSIBLE.

THERE NEEDS TO BE AN ISSUE OF THAT AT THE TRIAL, FIRST OF ALL, AND IT IS NOT AN ISSUE IN THE LAMAR BROOKS TRIAL, THAT MS. CARLSON WENT TO CREST SCREW VOOU. -- TO CRESTVIEW. REMEMBER, NOW, THERE NEEDS TO BE A CLOSE READING OF SIX WITNESSES OF THE VICTIM'S HEARSAY. THEY DIDN'T JUST INCLUDE STATEMENTS OF DRIVING TO CRESTVIEW. IT IS NOT AS INNOCENT OF THAT, AND THE PROSECUTOR KNEW WHAT THOSE STATEMENTS INCLUDED. THEY, ALSO, PROVIDED MOTIVE FOR THE HOMICIDE. INCLUDED IN THOSE STATEMENTS, ADMITTED UNDER 8.033, INCLUDED DISCUSSION OF HIS PATERNITY PAPERS BEING SIGNED, CHILD SUPPORT, AND WHAT I AM SAYING IS READ MOTIVE WHEN YOU HEAR THAT. I NEED GAS MONEY. I AM BROKE. I NEED CHILD SUPPORT. WALKER DAVIS JR. IS THE FATHER OF THIS CHILD. THESE AREN'T STATEMENTS, EVEN IF YOU -- AND I THINK THE STATE HANGS THEIR HAT ON BOWEN. EVEN IF THAT IS TRUE AND EVEN IF YOU DON'T BELIEVE THAT, AND I DON'T BELIEVE THAT IS A MATERIAL ISSUE WHETHER SHE WAS IN CRESTVIEW OR NOT. IT IS NOT DISPUTED THAT SHE WAS FOUND DEAD IN CRESTVIEW. WE KNOW THAT, AND WALKER DAVIS ADMITTED BEING WITH HER AT THE TIME OF HER DEATH. IT IS NOT AN ISSUE IN THE LAMAR BROOKS TRIAL. WHETHER IT IS AN ISSUE IN THE DAVIS TRIAL, I WILL SAVE FOR MR. DAVIS'S ATTORNEY. BUT THOSE STATEMENTS INCLUDED HEARSAY THAT PROVIDED THE MOTIVE FOR THE HOMICIDES, AND THAT IS WHY THE PROSECUTOR PUT THEM FORWARD, NOT TO SHOW THAT MISS CARLSON WENT TO CRESTVIEW WITH BALKER -- WITH WALKER DAVIS.

BUT THE ISSUE OF PATERNITY, ISN'T THERE A BIRTH CERTIFICATE THAT SHOWS DAVIS AS BEING THE FATHER OF THIS CHILD?

THEN THERE IS A CHILD SUPPORT OBLIGATION. IF THERE IS A CHILD SUPPORT OBLIGATION, WALKER DAVIS JR. NOW HAS CHILD SUPPORT PROBLEMS IN HIS LIFE. HE NEEDS TO ELIMINATE THIS CHILD QUOTE/UNQUOTE, FOR HIS LIFE. THIS GOES TO THE VERY HEART AND NOT THE POINT THAT THE PROSECUTOR MADE. THIS GOES TO THE VERY HEART AND THEORY OF THE STATE'S CASE, PUTTING FORTH WALKER DAVIS'S MOTIVE FOR THE HOMICIDES, IN THE TRIAL OF LAMAR BROOKS. THEREIN LIES THE PREJUDICE, AND THAT, COUPLED WITH THE STATEMENT OF THE

NONTESTIFYING CODEFENDANT WALKER DAVIS STATEMENT, MADE TO DETECTIVE WORLEY ON HIS CONFESSION, HIS CONFESSION THAT WAS TWO AND-A-HALF HOURS LONG, THAT IMPLICATED LAMAR BROOKS, EVEN IF YOU BELIEVE THERE IS A CONSPIRACY, THE CONSPIRACY CERTAINLY ENDED AT THAT POINT, THAT HE IS TRYING TO SHIFT BLAME TO LAMAR BROOKS.

BUT ALL THAT TESTIMONY, YOU WOULD AGREE, YOU WOULD WANT TO HAVE IN THE PENALTY PHASE.

THE TESTIMONY OF DAYS, YOU WOULD WANT THAT IN THE PENALTY PHASE, WOULD YOU NOT? WE CAN OTHERWISE NOT DO A PROPORTIONALITY ANALYSIS WITHOUT IT, CAN WE?

AGREED. THE PREJUDICE WAS COMPOUNDED. I DON'T WANT TO MINIMIZE THAT CONFESSION BY WALKER DAVIS. BECAUSE, BOY, TO ME THAT IS THE MOST EGREGIOUS STATEMENT BY A NONIDENTIFYING CODEFENDANT, ONE THAT INculpATES, IN THIS CASE, WALKER BROOKS. THE CONFESSION TIME ON THE 29th TO JEROME WORLEY, THE PURPOSE OF WHICH WAS TO SHIFT BLAME TO LAMAR BROOKS. THE STATE, IN ITS BRIEF, TRIES TO SUGGEST THAT THAT STATEMENT, THE SHIFTING BLAME CONFESSION, THAT THAT IS PART OF THE CONSPIRACY. THAT THAT IS PART OF THE CONSPIRACY

INculpATEING YOUR CO-CONSPIRATOR, IT IS BEYOND ME QUITE FRANKLY, HOW THAT HAPPENS. I THINK THE STATE KNOWS THERE IS TROUBLE WITH IT. I THINK THEY UNDERSTAND THE PREJUDICE, GIVEN ALL OF THE CIRCUMSTANCES AND LACK OF EVIDENCE IN THE CASE AGAINST LAMAR BROOKS. THE PREJUDICE IS OBVIOUS. IT DOESN'T STOP THERE, THOUGH. IT DOESN'T STOP THERE. THE PROSECUTOR, AFTER ADMITTING THE TWO AND-A-HALF HOUR -- HE DIDN'T ADMIT ALL OF THE TWO AND-A-HALF HOUR CONFESSION. ADMITTING THE STATEMENTS OF WALKER DAVIS THAT INculpATED MR. BROOKS, ASKS THE QUESTION TO DETECTIVE WORLEY. WHAT DID YOU DO NEXT? AFTER HEARING THIS TWO AND-A-HALF HOUR CONFESSION, AND HIS ANSWER WAS AN ARREST WARRANT WAS PREPARED TO GO GET MR. BROOKS. THE INFERENCE IS OBVIOUS, AND IT WAS INTENTIONAL. HOW DO WE KNOW THAT? IT WAS OBVIOUS ON ITS FACE. HOW DO WE KNOW IS INTENTIONAL? LOOK AT HIS CLOSING ARGUMENT? THE PROSECUTION'S CLOSING ARGUMENT SAID, TO THIS JURY, I KNOW YOU WILL REMEMBER THAT CONFESSION BY MR. DAVIS, AND OH, BY THE WAY, YOU DIDN'T GET TO HEAR ALL OF WHAT HE SAID IN HIS CONFESSION. THAT MEANS SOMETHING. THE INFERENCE IS INTENTIONAL. IT IS OBVIOUS THAT --

THERE WAS AN OBJECTION MADE. THAT WAS SUSTAINED.

YES, MA'AM.

BUT YOU ARE SAYING THAT, IF -- BECAUSE DAVIS'S STATEMENT SHOULD NOT HAVE COME IN AT ALL, IF IT HADN'T COME IN AT ALL, THERE WOULDN'T HAVE EVEN BEEN THAT INFERENCE THAT WOULD HAVE BEEN ABLE TO HAVE BEEN DRAWN.

THE PROSECUTOR DID WELL IN PROSECUTING WALKER DAVIS, BECAUSE WALKER DAVIS IS THE ONE WHO COMMITTED THE HOMICIDES, AND HE REPROSECUTED WALKER DAVIS IN THE TRIAL OF LAMAR BROOKS. IN THAT SENSE, HE DID A PHENOMENAL JOB OF PROSECUTING MR. BROOKS, BY REPROSECUTING WALKER DAVIS. AND THAT IS WHAT HE DID. THE PROBLEM IS WHAT WE ARE HERE ON IS LAMAR BROOKS NOT WALKER DAVIS, AND THE EVIDENCE AGAINST LAMAR BROOKS WAS MINISCULE. THE STATEMENTS ATTRIBUTED TO WALKER DAVIS, THAT LINKAGE, WAS AT THE HEART OF THE STATE'S CASE AT THE HEART OF THE STATE'S THEORY. WITHOUT WALKER DAVIS, MOTIVATION IS ADHERENT. I WOULD LIKE TO RESERVE WHAT LITTLE TIME I HAVE LEFT. THANK YOU.

YOU MAY DO SO. THANK YOU.

MAY IT PLEASE THE COURT. I AM BARBARA YATES, ASSISTANT ATTORNEY GENERAL ON BEHALF

OF THE STATE OF FLORIDA. AS YOU PROBABLY NOTICED, THE INTRODUCTION OF CO-CONSPIRATOR'S HEARSAY STATEMENTS IS THE MAIN ISSUE IN THIS CASE. I WOULD LIKE TO SET OUT, IF I MAY, A FEW OF THE RULES DEALING WITH CO-CONSPIRATOR'S HEARSAY STATEMENTS. IN ROMANI V STATE, THE COURT SAID THAT, UNLIKE THE FEDERAL SYSTEM, YOU MUST INTRODUCE EVIDENCE EXCLUDING THE CO-CONSPIRATOR'S HEARSAY STATEMENTS, TO ESTABLISH THAT A CONSPIRACY EXISTS. THE ESTABLISHMENT OF A CONSPIRACY IS BY A PREPONDERANCE OF THE EVIDENCE. JUSTICE ANSTEAD, JUSTICE PARIENTE, YOU ASKED WHAT IS THE EVIDENCE THAT GOES TO SHOW THAT A CONSPIRACY EXISTS? CONTRARY TO MR. BROOKS, THE STATE CONTENDS THAT A CONSPIRACY WAS DEMONSTRATED. LEAVING OUT OF THE EQUATION EVERYTHING THAT WAS ATTRIBUTED TO WALKER DAVIS AND HIS STATEMENTS, WE HAVE THE FOLLOWING THINGS INTRODUCED, PRIOR TO MARK GILLIAM'S TESTIMONY, AND MARK GILLIAM IS THE WITNESS WHO ESTABLISHEST FINAL COMPONENTS OF THE CONSPIRACY. WE HAVE THE FACT THAT THE VICTIMS ARE FOUND DEAD IN CRESTVIEW. THEY DO NOT LIVE IN CRESTVIEW. THEY HAVE NO REASON TO BE IN CRESTVIEW AT THE NIGHT. WE HAVE TESTIMONY FROM LAW ENFORCEMENT OFFICERS AND MEDICAL EXAMINER AS TO THE FINDING OF THE BODIES, THE STATE OF THE BODIES. WE HAVE THE MEDICAL EXAMINER'S TESTIMONY THAT THESE ARE HOMICIDES. THEY ARE NOT SUICIDE. THEY ARE NOT ACCIDENTS. THEY ARE HOMICIDES. WE HAVE THE MEDICAL EXAMINER'S TESTIMONY THAT, IN HER OPINION, THE BLOWS TO RACHEL CARLSON, WHO WAS IN THE FRONT SEAT, WERE ADMINISTERED BY A RIGHT-HANDED PERSON WHO WAS IN THE BACKSEAT. WE HAVE 75 STAB WOUNDS TO RACHEL CARLSON, INCLUDING 18 DEFENSIVE WOUNDS TO HER HANDS. PRIOR TO GETTING TO GILLIAM, WE HAVE TESTIMONY FROM KAREN GARCIA OF OSI, AND MIKE COLLINS, HEAD STATE ATTORNEY INVESTIGATOR, OF CONVERSATIONS THAT THEY HAD WITH BROOKS.

EXCUSE ME. WHAT ARE THE ELEMENTS OF A CONSPIRACY?

WE DON'T HAVE TO PROVE A CONSPIRACY ON THIS. THIS IS -- CO-CONSPIRATOR'S HEARSAY TESTIMONY COMES UNDER A RULE OF EVIDENCE. IT IS NOT A RULE OF LAW. HE WAS NOT CHARGED WITH CONSPIRACY.

IT SOUNDS TO ME LIKE YOU ARE GOING THROUGH EVIDENCE THAT WOULD CERTAINLY POINT TO THE FACT THAT THERE WAS A HOMICIDE INVOLVED HERE.

YES.

BUT YOU, YOU KNOW, I AM HAVING A HARD TIME TRYING TO FIGURE OUT HOW THIS DEMONSTRATES THAT THESE PEOPLE HAD COME TOGETHER AND AGREED TO COMMIT THIS MURDER.

OKAY. WE ARE GETTING THERE. IT TAKES A WHILE. A CONSPIRACY IS AN AGREEMENT AMONG TWO OR MORE PEOPLE TO COMMIT AN ILLEGAL ACT. WE HAVE THE FACT THAT AN ILLEGAL ACT WAS ESTABLISHED. YOU KNOW. THE MURDERS. THAT IS AN ILLEGAL ACT. AND WE ARE GETTING TO THIS. IN THE STATEMENTS TO KAREN GARCIA, I BELIEVE, ON THE 24th, AND TO MIKE HOLLINGS HEAD ON THE 24th AND THE 26th, INCIDENTALLY, BROOKS AND DAVIS WERE COUSINS. DAVIS WAS IN THE AIR FORCE. HE WAS STATIONED AT EGG LUND. BROOKS WAS A FORMER ARMY VETERAN LIVEING IN PHILADELPHIA WITH HIS FAMILY. THEY MET AT FREAKNIK IN ATLANTA ON THE 19th OR 20th.

HOW ABOUT GOING RIGHT TO THE JUGULAR AND TELLING US ABOUT THE EVIDENCE OF THE CONSPIRACY.

THE EVIDENCE OF THE CONSPIRACY. WE HAVE BROOKS' STATEMENTS. I NEED TO PUT IN A FEW MORE OF BROOKS' STATEMENTS, PRIOR TO GETTING THAT, AND THIS IS WHAT GARCIA AND HOLLINGS HEAD HAD TESTIFIED TO. THEY TESTIFIED THAT BROOKS SAID, ON THE EVENING OF THE 24th, WE PUT TOGETHER A WATER BED. WE WATCHED SOME MOVIES. WE WALKED THE DOG. WE DID NOT GO TO THE CRESTVIEW. MELISSA THOMAS TESTIFIED BETWEEN NINE AND 9:30 P.M.

ON THE 24th, DAVIS AND BROOKS SHOWED UP AT MY HOUSE AND MADE A PHONE CALL. I LIVE IN CRESTVIEW. THEN WE HAVE --

YOU ARE OUTLINING EVIDENCE, SOME CIRCUMSTANTIAL AND CORPUS DELECTI AND THAT, BUT HOW ABOUT GOING BACK TO JUSTICE QUINCE'S QUESTION ABOUT THE ELEMENTS OF CONSPIRACY, AND THEN SAYING HERE IS ELEMENT ONE AND HERE IS WHAT THE EVIDENCE WAS AS TO ELEMENT ONE. WHAT ARE THE ELEMENTS OF A CONSPIRACY?

IT IS THE AGREEMENT, AMONG TWO OR MORE PERSONS, TO COMMIT AN ILLEGAL ACT OR CRIME. AND NOW WE ARE READY TO GET TO, WITH THIS BACK GROUJD I AM GIVING YOU -- BACKGROUND I AM GIVING YOU, WE ARE READY TO GET TO GILLIAM'S STATEMENTS, BAUB GILLIAM IS THE ONE WHO PUTS THE FINISHING TOUCHES ON THE CONSPIRACY.

YOU SAID CONSPIRACY WITHOUT GILLIAM AS TESTIMONY.

NO. YOU LEAVE OUT EVERYTHING THAT WALKER DAVIS SAYS.

SO YOU DON'T CONTEND, YOU DO NOT CONTEND THAT THE STATE WAS ABLE TO PUT ON EVIDENCE OF A CONSPIRACY WITHOUT GILLIAM'S TESTIMONY.

NO. I THINK HE IS CENTRAL TO IT THE. GILLIAM TESTIFIES THAT, ON MONDAY, HE MET UP WITH THE TWO COUSINS AT FREAKNIK. HE WAS IN THE ARMY, STATIONED AT FORT BENNING, GEORGIA. HE MET THEM IN ATLANTA AND ON THE 21st, SUNDAY, HE TRAVELED TO YOU GO LAND AIR FORCE BASE -- TO EGGLAND AIR FORCE BASE, TO WALKER DAVIS'S HOME. GILLIAM TESTIFIED THAT THEY WERE SITTING AROUND TALKING, AND HE SAID THAT A DISCUSSION CAME UP ABOUT KILLING CARLSON.

SO BECAUSE I WANT TO UNDERSTAND SOMETHING, DIDN'T THE CONSPIRACY, IS THE STATE ALLEGING THAT THE CONSPIRACY HAD STARTED BEFORE THAT

WALKER DAVIS HAD INTENT BUT WE DON'T GET TO INTENT UNTIL A CONSPIRACY IS ESTABLISHED. IT IS STARTED ON THE 22nd AND CONFIRMED ON THE 23th AND ACTED UPON ON THE 24th.

THE LIFE INSURANCE AND ALL OF THAT, DON'T THE STATEMENTS, ALSO HAVE TO BE IN FURTHERANCE OF A CONSPIRACY?

WE NEED TO TAKE THIS IN STEPS BECAUSE WE NEED TO ESTABLISH THE CONSPIRACY FIRST. GILLIAM TESTIFIED THAT, ON THE EVENING OF MONDAY, THE 21st, BROOKS SAID WE SHOULD SHOOT CARLSON. THIS IS AN ADMISSION. IT IS ADMISSIBLE AGAINST A PARTY AT INTEREST IN THE THING. GILLIAM SAYS, WELL, I SAID, NO, WE SHOULD STAB HER. THE NEXT EVENING, GILLIAM DESCRIBES MORE DISCUSSIONS. THE SUBJECT OF PAYMENT COMES UP.

DID GILLIAM SAY HE WAS PART OF THE CONSPIRACY?

NO, AND I AM NOT SURE THAT GILLIAM WAS PART OF THE CONSPIRACY, BECAUSE HE LEFT TOWN BEFORE THE MURDER ACTUALLY HAPPENED.

SO HE DID NOT TESTIFY THAT HE WAS PART OF ANY CONSPIRACY.

NO. HE NEVER SAID THOSE WORDS. OF COURSE HE NEVER SAID THE WORDS I WASN'T PART OF THE CONSPIRACY, EITHER.

WELL, THE STATE DOESN'T TAKE THE POSITION THAT HE WAS PART OF THE CONSPIRACY.

THE STATE DOESN'T TAKE A POSITION AS REGARDS TO GILLIAM, BECAUSE FRANKLY WE DON'T

NEED TO. THE CONSPIRACY WAS BROOKS AND WALKER. ON TUESDAY EVENING, THE 23th, GILLIAM --

HE WASN'T SUPPOSED TO BE THE DRIVER OR SOMETHING?

YES. HE WAS SUPPOSED TO BE BUT HE DIDN'T. HE LEFT TOWN BEFORE HE DROVE.

BUT I MEAN, IF THE DISCUSSION INCLUDED HIM BEING THE DRIVER, HE WOULD, IN FACT, BE A PART OF THE CONSPIRACY.

YES. AND HE PROBABLY IS. BUT THAT POINT, AS TO EXACTLY WHO IS IN THE CONSPIRACY, IS NOT NECESSARILY, IT IS NOT NECESSARY THAT THE STATE SHOW THAT BROOKS WAS A PART OF A CONSPIRACY.

DIDN'T GILLIAM TESTIFY, THOUGH, THAT THIS WAS ALL A JOKE?

HE SAID THAT OVER AND OVER AND OVER, THAT HE THOUGHT WE WERE JUST JOKING, BUT HE NEVER CAME OFF THAT, THAT THIS IS WHAT EVERYBODY SAID, AND WHEN HE FINALLY GETS THROUGH HIS RECENT RECENTING AND HIS RECENTATION OF HIS RECENTATION, BECAUSE HIS MOTHER TOLD HIM TO TELL THE TRUTH, HE NEVER SAYS ANYTHING BUT OERX I JUST THOUGHT -- BUT OH, I THOUGHT WE WERE JOKING. EXCUSE ME, BUT THESE TWO PEOPLE WOUND UP DEAD.

CAN YOU USE PROOF THAT THEY WOUND UP DEAD TO PROVE A CONSPIRACY?

I THINK YOU HAVE TO, BECAUSE IT IS A CRIME. THAT THEY ARE DEAD IS A CRIME, AND THE OBJECT OF THE CONSPIRACY IS TO COMMIT A CRIME.

WOULD YOU ORDINARILY ASSUME THAT THERE WERE CONVERSATIONS THAT OCCURRED A YEAR OR TWO YEARS OR WHATEVER THAT WERE ADMITTEDLY JOKING CONVERSATIONS ABOUT SHE MAKES ME SO MAD, SOMETIMES I THINK I WOULD KILL HER, A AND THAT EVERYBODY SAYS THAT WAS A JOKE. WOULD TESTIMONY LIKE THAT BE ADMISSIBLE?

IT WOULD DEPEND ON WHETHER THE SHE YOU ARE REFERRING TO WINDS UP DEAD. BECAUSE LOTS OF PEOPLE MAKE STATEMENTS ABOUT THAT.

PEOPLE MADE STATEMENTS LIKE THAT, EVEN THOUGH EVERYBODY AGREED THAT THEY WERE JOKES AT THE TIME. THEY COULD BE ADMITTED AGAINST THE PERSON LATER.

IT WOULD DEPEND ON THE TIMING TIMING. IT WOULD DEPEND ON THE CIRCUMSTANCES OF THE CASE. ALL OF THIS DOES. THAT IS NOT THE SITUATION WE HAVE HERE. GILLIAM SAID THAT, ON TUESDAY NIGHT, HE WAS GOING TO GET \$500 FOR DRIVING THE CAR AND BROOKS WAS GOING TO GET \$4,000 TO \$8 HOW TO FOR KILLING HER. NOW, AT THAT POINT, THIS IS WHERE TREZVANT, BRENNAN AND NELSON, THE ACQUIESCEENS BY SILENCE COMES N.

YOU HAVE ADMISSIONS BY BROOKS AND YOU HAVE GOT ADMISSIONS BY SILENCE UNDER THE ADMISSIONS THEORY. YOU DON'T NEED FOR ANYTHING ABOUT GILLIAM'S CONVERSATION FOR THE CO-CONSPIRATOR. RIGHT?

RIGHT.

LET'S ASSUME THAT THOSE ALL PROPERLY WERE ADMISSIBLE.

RIGHT.

CAN YOU PLEASE TELL ME HOW STATEMENTS MADE BEFORE A CONSPIRACY STARTED RK, BY DAVIS, IN TERMS OF THE COMMENTS THAT HE MADE TO HIS FRIEND SAMS.

YES.

HOW IS THAT -- UNDER WHAT THEREY IS THE STATE SAYING THOSE STATEMENTS WERE PROPERLY ADMISSIBLE?

THE STATE HAS ESTABLISHED A CONSPIRACY THROUGH GILLIAM'S TESTIMONY. AT THAT POINT, ONCE A CONSPIRACY EXISTS, ANYTHING THAT IS SAID BY A CO-CONSPIRATOR CAN COME IN, AS AN EXCEPTION UNDER 8.03.18-E, BECAUSE THE COCONSPIRATORS ARE ESSENTIALLY --

HOW FAR BACK CAN YOU TAKE THAT? THESE STATEMENTS HAD BEEN MADE BY DAVIS A YEAR AGO? WE COULD USE THOSE AS PART OF THIS CONSPIRACY?

PROBABLY NOT. IS THERE A TIMELINESS ELEMENT HERE.

THERE HAS GOT TO BE STATEMENTS MADE IN FURTHERANCE OF A CONSPIRACY.

IN FURTHERANCE OF A CONSPIRACY. YES. THE STATEMENTS MADE BY A COCONSPIRATOR, SOMEWHERE BEFORE A CONSPIRACY IS FORMED, WHAT CASES CAN SAY THOSE TYPES OF STATES? I DON'T HAVE THE EXACT LANGUAGE, BUT I SOMEHOW REMEMBER IT HAVING TO BE IN FURTHERANCE OF A CONSPIRACY, AND THAT IS WHY IT IS SORT OF ADOPTION BY ADMISSION. ONCE TWO PEOPLE FORM A CONSPIRACY, THEN ANYTHING ONE OF THEM SAYS AFTER THAT CONSPIRACY IS FORMED, EVEN IF THE PERSON IS NOT PRESENT, IS DEEMED, IF IT IS DEEMED TO BE IN FURTHERANCE, BUT I DON'T KNOW OF ANY PRINCIPLE THAT ALLOWS STATEMENTS PRIOR TO THE TIME OF CONSPIRACY BEING FORMED, TO BE ADMISSIBLE, UNDER THAT CO-CONSPIRATOR'S EXCEPTION. MAYBE UNDER SOMETHING ELSE, BUT DO YOU HAVE ANY AUTHORITY FOR THAT?

WELL, I WOULD CITE BOWEN VERSUS KEENAN DEALING WITH RACHEL CARLSON'S STATEMENTS ABOUT HER --

I MEAN ABOUT DAVIS'S STATEMENTS.

LOOK AT TREZVANT.

THAT HAS NOTHING TO DO WITH A COCONSPIRACY.

ABOUT DAVIS'S PRIOR STATEMENTS, BUT THERE HIS CASE LAW THAT WOULD TEND TO SAY THIS IS A STATEMENT OF INTENT. BROOKS NOW SAYS WELL --

LET ME STOP YOU FOR A SECOND. YOU HAVE GONE TO GREAT LENGTHS, TELLING US ABOUT A CONSPIRACY BEING FORMED. USING THE CO-CONSPIRATOR EXCEPTION TO THE HEARSAY RULE, WHAT STATEMENTS ARE YOU CONTENDING WOULD FALL UNDER THAT NOT WHETHER THERE IS, NOW, ANOTHER INDEPENDENT BASIS FOR RACHEL CARLSON'S STATES. WHAT STATEMENTS ARE, THEN, PROPERLY ADMISSIBLE, UNDER THE CO-CONSPIRATOR'S EXCEPTION TO THE HEARSAY RULE?

ALL OF THE STATEMENTS THAT WERE ADMITTED AGAINST WALKER DAVIS, BECAUSE THEY SHOW HIS MOTIVE FOR FORMING THE CONSPIRACY IN -- MANTHENIE TESTIFIED, THE INSURANCE AGENTS, TESTIFIED THAT WALKER IDENTIFIED HIMSELF TO MANTHENIE AS THE BABY'S FATHER.

LET'S TAKE THE CLASSIC EXAMPLE, WHERE TWO OR MORE PEOPLE GET TOGETHER, AND THEY ARE GOING TO DO A BANK ROBBERY, FOR INSTANCE, AND THEY GET TOGETHER AND SAY WOULDN'T IT BE A GREAT IDEA, IF WE GO AND KNOCK OFF THIS BANK OR SOMETHING, AND THEN WE WILL ALL SHARE IT, HOWEVER MANY THERE ARE EQUALLY, AND WE ARE GOING TO HAVE TEN MEETINGS, BETWEEN NOW AND THE DAY THAT WE ROB THE BANK, AND THEY HAVE THOSE TEN

MEETINGS, AND THEY TALK ABOUT WHAT THEY ARE GOING TO DO THAT DAY OR WHO IS GOING TO GET THE GUNS AND WHO IS GOING TO DRIVE THE GETAWAY CAR, AND THEY HAVE ALL OF THOSE CONVERSATION, AND CLASSICALLY THOSE CONVERSATIONS ARE ADMITTED EVEN THOUGH THEY ARE HEARSAY, OUT OF COURT STATEMENTS OR WHATEVER, AS EXCEPTIONS TO THE HEARSAY RULE, UNDER THE CO-CONSPIRATOR'S EXCEPTION. BUT STATEMENTS THAT ANY OF THOSE INDIVIDUALS MAY HAVE MADE A YEAR BEFORE OR SIX MONTHS OR A YEAR BEFORE THEY GOT TOGETHER, AND INITIALLY AGREED TO FORM A CONSPIRACY, ARE CLASSICALLY NOT ADMITTED, AND SO I THINK THAT IS THE QUESTION WE ARE ASKING YOU, NOW, IS THAT, SINCE THAT IS THE CLASSIC SITUATION, YOU GET TOGETHER. YOU FORM A CONSPIRACY. NOW YOU START TALKING ABOUT IT. AND THEN YOU DO IT. THOSE STATEMENTS MAY BE ADMISSIBLE. BUT THE THINGS THAT AN INDIVIDUAL SAID BEFORE THAT TIME SUCH AS I AM THE ONE THAT CAME UP WITH THE IDEA FOR THE BANK ROBBERY,, TO BEGIN WITH. ACTUALLY I THOUGHT ABOUT THIS A YEAR BEFORE THIS. AND I WAS JUST THINKING ABOUT WHO I WAS GOING TO GET TO DO IT WITH ME. ALL OF THOSE THINGS WOULDN'T BE ADMITTED, ORD EARL. -- ORDINARILY. THEY ARE OUTSIDE THE CONSPIRACY, BECAUSE THEY WERE SAID BEFORE THE CONSPIRACY WAS FORMED AND THEY ARE NOT MADE IN FURTHERANCE OF THE CONSPIRACY, SO I THINK WE ARE ASKING YOU TO EXPLAIN HOW THESE STATEMENTS THAT WERE MADE BY DAVIS WAY BEFORE HE GOT TOGETHER WITH BROOKS COME WITHIN THIS CO-CONSPIRATOR EXCEPTION.

SURE. IT IS THE STATE'S CONTENTION THAT THESE WERE NOT AS UNTIMELY AS YOU MAY THINK. THEY WERE NOT A YEAR BEFORE. THEY WERE A FEW WEEKS BEFORE. AT THE MOST A MONTH BEFORE THIS ACTUALLY HAPPENED.

WHEN DID HE GETS THE INSURANCE?

LATE FEBRUARY. SO TWO MONTHS.

HOW MANY MONTHS BEFORE OR WEEKS?

TWO MONTHS.

NOW, HOW WOULD THE STATEMENTS ABOUT HIM GOING AND TALKING TO AN INSURANCE AGENT, THIS IS CLEARLY BEFORE HE EVER GOT TOGETHER WITH BROOKS. HOW COULD THOSE STATEMENTS BE ADMITTED?

IT GOES TO SHOW THAT HE HAS A MOTIVE FOR KILLING THE CHILD.

NOW WE ARE TALKING ABOUT THE CO-CONSPIRATOR EXCEPTION. THESE ARE STATEMENTS THAT HAVE TO BE MADE AFTER THE CONSPIRACY IS FORMED

YOU AGO DWREE THAT THEY WERE NOT FORMED -- BUT YOU AGREE THAT THEY WERE MADE AFTER THE CONSPIRACY WAS FORMED?

WHY HE HAD THE MONEY, WHY HE HAS THE MOTIVE.

IS 9.03.18-E IS THE PARTICULAR EXCEPTION, AND IT SETS A STATEMENT BY A PERSON WHO IS A CO-CONSPIRATOR TO THE PARTY THAT IS MADE IN THE COURSE AND FURTHERANCE OF THE CONSPIRACY. AND THREE ELEMENTS, THAT YOU HAVE GOT TO PROVE THE CONSPIRACY EXISTED, THAT THE DECLAREANT AND THE DEFENDANT WERE MEMBERS OF THE CONSPIRACY, AND THAT, THREE, THE STATEMENTS WERE MADE DURING THE COURSE AND FURTHERANCE OF THE CONSPIRACY. CLEARLY THESE PRIOR STATEMENTS DON'T COME ABOUT THAT, SO YOU HAVE GOT TO POINT TUESDAY TO SOME OTHER BASIS THAT THEY COULD HAVE COME INTO EVIDENCE, BECAUSE UNLESS WE REWRITE 9.03.18-E, THE PLAIN LANGUAGE EXCLUDES THOSE STATEMENTS.

I THINK HE, ALSO, PUT THEM IN AS EXPLAINING THE INTENT THAT WAS GOING ON, SIMILAR TO

THE INTENT THAT CARLSON EXPRESSED IN WHY SHE WAS GOING TO CRESTVIEW THE NIGHT OF THE MURDER.

NOW YOU ARE GOING BACK TO THE STATE OF MIND. HOW IS WALTER DAVIS'S STATE OF MIND ADMISSIBLE AGAINST BROOKS?

BECAUSE THEY ARE CO-CONSPIRATORS, AND ANYTHING THAT ONE DOES IS ATTRIBUTED TO THE OTHER. AS COUNSEL HAS ADMITTED RIGHT NOW, THE CONSPIRACY DID NOT END UNTIL LATE-NIGHT APRIL 29, EARLY MORNING APRIL 30, WHEN WALKER DAVIS ROLLED OVER AND SAID BROOKS KILLED THEM.

IF THE CONSPIRACY ENDED THEN, HOW WERE THE CODEFENDANTS' LATER STATES TO THE POLICE ADMITTED?

IT WAS ONLY THE STATEMENTS THAT WALKER DAVIS MADE BEFORE ROLLING OVER ON BROOKS THAT WERE ADMITTED, AND THOSE WERE THAT, WHEN WALKER DAVIS FINALLY ADMITTED, HE WAS CONFRONTED WITH EVIDENCE ON THE 29th, THAT MELISSA THOMAS PUT HIM IN CRESTVIEW AT THE TIME OF THE MURDER.

IS THIS AFTER THE CRIME WAS COMMITTED?

YES.

DO YOU AGREE THAT, IN TERMS OF THE CONSPIRACY, THAT WAS IT?

WHAT? WHEN THE CRIME WAS COMMITTED? NO. I DON'T AGREE AT ALL. THE CONSPIRACY DID NOT END --

EXPLAIN, AGAIN, HOW HIS CONFESSION TO POLICE FIT UNDER THE CO-CONSPIRATOR'S CONFESSION? ANOTHER CONSPIRACY DID NOT END UNTIL BROOKS ROLLED OVER AND SAID SAID HE KILLED HIM. UP UNTIL THAT POINT IN TIME --

I UNDERSTOOD YOUR ARGUMENT TO BE THAT THE CONSPIRACY ENDED WHEN THE CRIME WAS COMPLETED.

NO, YOUR HONOR.

IS THERE A CASE THAT SAYS THAT?

YES.

WHAT DO THE CASES SAY, ABOUT WHEN THE CONSPIRACY SNENDZ.

THE EASIEST THING I HAVE GOT, HERE, FOR YOU, IS OUT OF JUSTICE -- PROFFER EARHART, ON EVIDENCE, AND -- PROFESSOR EARHART, ON EVIDENCE, AND IT SAYS THAT THE ACTUAL TIME FRAME OF A CONSPIRACY IS HARD TO ESTABLISH. UP UNTIL THE 29th, WHEN DAVIS SAID BROOKS KILLED THEM, THEIR STORY HAD BEEN CONSISTENT. WEDNESDAY EVENING, WE PUT UP THE WATER BED.

JUSTICE PARIENTE READ THE DEFINITION OF CO-CONSPIRATOR EXCEPTION. RIGHT?

YES.

HOW DO YOU FIT A CODEFENDANT'S CONFESSION INTO WHAT SHE JUST READ?

BECAUSE YOU HAVE TO LOOK AT THE FACTS OF THIS CASE AND WHAT THE TRIAL JUDGE

LISTENED TO AND WHAT HE ALLOWED IN AND WHAT HE DID NOT ALLOW IN. HE ALLOWED IN, FROM DAVIS'S LAST STATEMENT ON THE 29th, THE FACT THAT THEY WENT TO CRESTVIEW. HE AND BROOKS WENT TO CRESTVIEW WITH CARLSON, AND THEY GOT TO CRESTVIEW ABOUT 9 P.M. THAT IS FULLY SUPPORTED BY THE TESTIMONY OF MELISSA THOMAS, WHO SAID THEY CAME TO MY HOUSE BETWEEN NINE AND NINE-THIRTY IN CRESTVIEW. KIA BESTESTFIES I WAS DRIVING DOWN BOOKER STREET, BETWEEN NINE AND NINE-THIRTY THE EVENING OF THE 24th, AND I SAW WALKER DAVIS AND ANOTHER BLACK MALE HOOFING IT DOWN THE STREET. IT LOOKED LIKE THEY WOULD HAVE BEEN RUNNING BUT WALKER DAVIS WAS WEARING A CAST.

DID WALKER DAVIS TESTIFY?

NO. THEY PUT HIM ON THE STAND AND HE REFUSED TO ANSWER.

HASN'T THE U.S. SUPREME COURT TOLD US THAT THE ORDINARY RULE IS THAT A CODEFENDANT'S STATEMENT IMPLINT INDICATING A DEFENDANT WILL NOT BE -- IMPLICATING A DEFENDANT WILL NOT BE ADMISSIBLE, BECAUSE IT VIOLATES THE RIGHT TO CONFRONTATION CHRAUFS THE U.S. CONSTITUTION?

NOT IN THE CONTEXT OF COCONSPIRATORS, BECAUSE THEY ARE ON ONE -- THEY ARE ONE.

HASN'T THE SUPREME COURT SAID WHAT I JUST SAID?

NO, YOUR HONOR.

YOU ARE NOT AWARE OF ANY CASE LAW OUT OF THE SUPREME COURT THAT SAYS A CODEFENDANT'S STATEMENTS IMPLICATE AGO DEFENDANT ARE IN ADMISSIBILITY AS A VIOLATION OF THE CONFRONTATION CLAUSE?

NO, YOUR HONOR, BECAUSE THAT IS THE BASIS OF THE CONSPIRACY.

I BELIEVE THAT JUSTICE ANSTEAD IS PROBABLY REFERRING TO THE IDAHO LINE OF CASES, IT IS CITED IN THE BRIEFS.

I CAN'T THINK OF WHAT THAT IS NOW, YOUR HONOR.

THIS COURT DEALT WITH THAT ISSUE IN FRANKIE, AND THE ISSUE OF WHEN A CODEFENDANT, WHO CONFESSES TO A CRIME, WHEN THAT CAN BE ADMISSIBLE. AND THE -- IT -- ISN'T IT -- WHAT YOU ARE ATTEMPTING TO DO IS TO GET THIS WITHIN THE HEARSAY EXCEPTION, UNDER 90.803. IS THAT CORRECT?

YES, YOUR HONOR.

I THINK THE ISSUE THAT WE ARE CONFRONTED WITH IS HOW TO -- EVEN IF YOU ACCEPT THAT THIS IS A CONSPIRACY, AND SOME OF THIS EVIDENCE OF HEARSAY COULD COME IN WITHIN THAT EXCEPTION, HOW DOES IT FIT WITHIN THAT LINE OF CASES OUT OF THE U.S. SUPREME COURT, WHICH SAYS THAT THERE IS A RIGHT OF CONFRONTATION, AND YOU ARE NOT -- YOU ARE GOING TO HAVE TO ACCEPT THE FACT THAT ONE DEFENDANT CASTING BLAME ON ANOTHER MAKES IT LESS RELIABLE NOT MORE RELIABLE.

THIS JURY NEVER HEARD ANYTHING ABOUT WALKER DAVIS CASTING BLAME ON BROOKS. THAT INFORMATION WAS NOT ALLOWED TO BE PRESENTED IN THIS TRIAL. THE ONLY THING IN THIS RECORD, GOING TO SHOW THAT, IS THE STATEMENT THAT COUNSEL REFERRED TO, WHEN THE STATE ATTORNEY SAID AND HE SAID THINGS YOU DIDN'T HEAR ABOUT. THAT IS EXACTLY WHAT HAPPENED. THE JURY, IN BROOKS' TRIAL, NEVER HEARD THAT WALKER DAVIS ROLLED OVER AND BLAMED BROOKS FOR THE ACTUAL MURDERS.

WHAT WAS THE INCULPATORY STATEMENT THAT WAS OFFERED, AND IF IT WASN'T INCULPATORY, WHY DID THE STATE OFFER IT?

THE STATE WANTED, ALL ALONG, BROOKS AND DAVIS WERE GIVING EVERYBODY WHO INTERVIEWED THEM THE SAME STORY. THE EVENING OF THE MURDERS WE WERE NOT IN CRESTVIEW. WE WERE AT DAVIS'S HOUSE. WE PUT TOGETHER THE WATER BED. WE WATCHED SOME MOVIES. WE WALKED THE DOG. WE WERE NOT IN CRESTVIEW. AT THE VERY END, ON THE 2929th, WHEN WALKER DAVIS WAS CONFRONTED WITH THE EVIDENCE THAT WE SHOWED THAT ROCHELLE JONES, CAN I A BEST -- KIA BEST, BOTH OF THEM PLACED THEM BOTH IN CRESTVIEW ON THE EVENING OF THE 24th, HE SAID OKAY, WE RODE TO CRESTVIEW. BROOKS AND I RODE TO CRESTVIEW WITH THE VICTIM, AND WE GOT THERE ABOUT NINE O'CLOCK. THOSE ARE THE THREE ITEMS OF INFORMATION. BROOKS AND ME, WITH THE VICTIM, TO CRESTVIEW ABOUT NINE O'CLOCK. THOSE ARE THE LAST HEARSAY STATEMENTS OF WALKER DAVIS THAT ARE INTRODUCED.

AND YOU DON'T THINK THOSE WERE INCULPATORY OF THIS DEFENDANT?

OF COURSE THEY ARE INCULPATORY, BUT THEY ARE, ALSO, WITHIN THE CONSPIRACY. THE CONSPIRACY ENDS AFTER HE SAYS THOSE THINGS AND STARTS SAY SAYING "AND BROOKS WAS THE ONE WHO STABBED HER."

SO YOU WOULD ASK FOR US TO ADOPT A RULE THAT WOULD ALLOW CONFESSIONS OF CODEFENDANTS IN, WHEN THERE IS A CONSPIRACY, AND THE JUDGE WOULD HAVE TO DECIDE IN EVERY CASE AT WHAT POINT THE BLAME STARTED GOING FROM WE WERE IN THIS TOGETHER TO POINTING FINGERS.

NO. YOUR HONOR, THIS IS NOT A CONFESSION. ALL HE SAID IS WE WENT TO CRESTVIEW WITH THE VICTIM AT NINE O'CLOCK. THIS IS NOT A CONFESSION THAT HE DID ANYTHING WRONG. THIS IS NOT A CONFESSION THAT BROOKS DID ANYTHING WRONG. THE JURY NEVER HEARS ANY OF THAT.

WHAT CONSPIRACY WAS EXISTING AT THE TIME -- THE CONSPIRACY WAS ONE TO KILL THE VICTIM AND HER SON.

DAUGHTER.

AND HER DAUGHTER. I AM SORRY.

THAT IS THE CONSPIRACY. ONCE THAT IS OVER, AND THEY ARE, NOW, BEING QUESTIONED BY POLICE, ARE YOU SAYING A SEPARATE CONSPIRACY --

THE CONSPIRACY ENDS, THE IDEA WITH THIS, YOU COMMIT A CRIME. YOU WANT TO GET AWAY WITH IT. YOU DON'T EXPECT TO BE ARRESTED. THE CONSPIRACY ENDS, WHENEVER THEY HAVE ACCOMPLISHED THEIR GOAL OF GETTING AWAY WITH IT OR IT IS PROVEN THAT THEY CAN'T GET AWAY WITH IT. THEY ACTIVELY TRIED TO CONCEAL THEIR COMPLICIT IN THIS CRIME.

WHAT CASES DO YOU HAVE THAT EXPANDS THE CO-CONSPIRATOR CONFESSION TO POST-ARREST CASES.

THIS IS NOT POST ARREST. ISUM IS A FIFTH DCA CASE, AND THE COURT SAID IN THAT POST ARREST STATEMENT, THAT IS TOO LATE. THESE ARE PRE-ARREST STATEMENTS, AND THEY STOP BEFORE DAVIS IMPLICATES BROOKS FORM ALL ALONG THEY HAVE CONCOCTED THIS STORY ABOUT WHAT THEY DID ON THE EVENING OF THE 24th, AND THEY STUCK TO THAT, AFTER THE EVENING OF THE 24th. THEY WERE TRYING TO COVER UP THEIR COMPLICIT IN THIS CRIME. THE CONSPIRACY ENDED WHEN THAT FELL APART. SO EVEN AFTER THE CRIME --

WHAT CASE --

-- YOU CAN HAVE A CONSPIRACY EXTENDING.

DO WE HAVE CASES THAT TALK ABOUT --

GOSH. LET ME LOOK THROUGH THIS. I DID NOT PICK OUT ONE IN FACT, BUT I STRONGLY SUGGEST YOU READ PROFFER EARHART ON THIS. HE MAKES SOME -- YOU READ PROFESSOR EARHART ON THIS. HE MAKES SOME SENSE OUT OF WHAT IS A VERY CONFUSING AREA.

THE CONFUSING AREA IS THIS. YOU DON'T WANT TO HAVE A DEFENDANT TRIED ON THE BASIS OF STATEMENTS THAT OTHER INDIVIDUALS HAVE MADE THAT THAT DEFENDANT CANNOT CROSS-EXAMINE, AND HERE WHAT I AM CONCERNED ABOUT IS THAT THERE ARE MANY, MANY STATEMENTS, ESPECIALLY THOSE OF DAVIS'S, THAT, AS TO WHAT HIS MOTIVE WAS FOR THE LIFE INSURANCE, THE VEHICLE PURCHASE, WHEN HE TALKED TO SAMS, THAT THIS DEFENDANT WAS COMPLETELY DEPRIVED OF THE ABILITY TO CROSS-EXAMINE, AND SO THAT IS WHY WE LOOK TO MAKE SURE THAT THIS IS NOT JUST -- THESE AREN'T TECHNICALITIES HERE. THIS GOES TO THE ESSENCE OF THE SIXTH AMENDMENT RIGHT TO CROSS-EXAMINE, SO WHEREAS GILLIAM, THE STATEMENTS THERE ARE OF A DIFFERENT NATURE, THE BEFORE AND AFTER STATEMENTS OF DAVIS ARE THE ONES THAT CONCERN ME THE MOST.

IT IS THE NATURE OF THE BEAST WITH COSPRTS OR HEARSAY TEST -- WITH CO-CONSPIRATOR HEARSAY TESTIMONY. YOU HAVE TO ESTABLISH --

THAT IS WHY IT IS NARROWLY DRAWN, BECAUSE IT IS NOT THE KIND OF RELIABLE STATEMENTS, AS OPPOSED TO DYING DECLARATION OR SPONTANEOUS UTTERANCES THAT WE CAN HAVE INDEPENDENT.

IT IS NARROWLY DRAWN, WANDER WHEN YOU READ THE RECORD IN THIS CASE, YOU WILL SEE THAT THE TRIAL COURT WAS VERY MUCH AWARE OF THAT. ALL OF THE PARTIES WERE. THE PROBLEM IS THAT THERE IS NO BRIGHT-LINE FOR WHEN A CONSPIRACY ENDS. WHEN IT BEGINS. THAT DEPENDS ON THE FACTS OF EACH INDIVIDUAL CONSPIRACY. WHEN YOU LOOK AT THE MAJOR DISCUSSIONS THAT WENT ON, IN TRYING TO INTRODUCE THE STATE TRYING TO INTRODUCE, STATEMENTS THAT DAVIS MADE ON THE 29th, THERE WERE SIX ITEMS THAT THE STATE WANTED TO INTRODUCE. AFTER LISTENING TO EVERYTHING, DOING RESEARCH, THE JUDGE SAID, OKAY. FINE. YOU CAN INTRODUCE BROOKS AND I WENT TO CRESTVIEW AROUND NINE O'CLOCK WITH THE VICTIM. YOU CAN'T INTRODUCE THESE OTHER THINGS, BECAUSE THEY ARE THINGS THAT DAVIS SAID, AFTER HE STARTED BLAMING BROOKS FOR THE KILLING. IT WAS DAVIS ADMITS THAT HE WAS IN THE CAR, WHEN THE KILLINGS TOOK PLACE. HE ADMITS THE GLOVES WERE WORN. AT THAT POINT, THE JUDGE SAYS, THE INDICIA OF RELIABILITY NO LONGER EXISTS AS TO THOSE LATER STATEMENTS. IT IS TOTALLY DIFFERENT WITH THESE UP HERE, BECAUSE THEY ARE WITHIN THE CONSPIRACY, AND THAT IS THE DEFINING END POINT OF THE CONSPIRACY. THIS IS VERY NARROWLY DRAWN. THERE WAS A LOT OF STUFF, BUT YOU KNOW, THIS IS THE NATURE OF THE BEAST WITH CONSPIRACY.

WHAT DO YOU SAY ABOUT THE PROSECUTOR, THEN, SAYING, AFTER JUST HAVING THIS ONE STATEMENT COME IN, WHAT DID YOU DO AFTER THE STATEMENTS OF DAVIS, I WENT AHEAD AN ARRESTED BROOKS? IS THERE A PROBLEM WITH THAT?

NO. NO. I WENT AHEAD AN ARRESTED DAVIS, AND I HAD AN ARREST WARRANT DRAWN UP ON BROOKS.

WHAT IS THE IMPLICATION OF THAT STATEMENT?

BECAUSE ALL ALONG, THEY HAVE FOUND -- THEY HAVE SHOWN THAT BROOKS AND DAVIS WERE

TOGETHER. BROOKS AND DAVIS WERE IN CRESTVIEW. DAVIS FINALLY ADMITS THAT BROOKS AND DAVIS WERE IN CRESTVIEW, AROUND NINE O'CLOCK, WITH THE VICTIMS. THE VICTIMS ARE DEAD. THEY ARRESTED DAVIS FOR THIS MURDER. WHY -- OF COURSE THEY HAD ENOUGH EVIDENCE FOR AN ARREST WARRANT ON BROOKS. BECAUSE IT IS SHOWING THE TWO OF THEM TOGETHER, AT THE SAME TIME. AND THIS IS A DIFFICULT SUBJECT. IT IS VERY TECHNICAL. YOU HAVE TO REALLY LOOK AT THE FACTS THAT ARE PRESENTED IN THIS. I THINK IF YOU DO THAT, YOU WILL SEE THAT THE STATE DID ESTABLISH THAT A CONSPIRACY EXISTED AND THAT THE STATEMENTS WERE ALLOWED IN. ALSO I WOULD LIKE TO TAKE A SECOND TO COMMENT ON THE DEATH SENTENCE. IT IS PROPORTIONATE IN THIS CASE. IT IS APPROPRIATE. THE TRIAL COURT WROTE A GOOD ORDER. HE CONSIDERED EVERY SCRAP OF PROPOSED MITIGATION. HE DID CONSIDER THE AGGRAVATORS IN A PROPER MANNER, AND DEATH IS BOTH APPROPRIATE AND PROPORTIONATE IN THIS CASE. THANK YOU.

THANK YOU, MS. YATES. MR. FUNG.

-- MR. FUNK.

THE BIGGEST CASE IS THAT MR. BROOKS NEVER CLAIMED AN ALIBI. WHAT THE STATE WAS TRYING TO EXPLAIN TO YOU WAS WHY THIS STUFF WAS ADMITTED. BECAUSE DAVIS AND BROOKS WERE TOGETHER AND CONCOCTED AND PUT FORTH THIS ALIBI. MR. DAVIS NEVER CLAIMED AN ALIBI AND THAT IS IN THE BRIEF THAT I WROTE.

HE DIDN'T CLAIM A DEFENSE THAT HE WAS AT HOME THAT NIGHT?

HE DIDN'T CLAIM A DEFENSE OF AN ALIBI. IT WAS NEVER RAISED BY MR. BROOKS. MR. BROOKS' DEFENSE WAS NOT THAT AT THE TIME OF THESE HOMICIDES HE WAS PUTTING A WATER BED TOGETHER. HIS DEFENSE WAS I DIDN'T COMMIT THESE CRIMES. THAT WAS HIS DEFENSE. THAT IS A IMPORTANT POINT THAT I BELIEVE THE STATE HAS NEGLECTED TO DISCUSS WITH YOU. ABOUT THE CASES, IN TERMS OF THE NOT TESTIFYING CODEFENDANT, INCULPATEING THE LILY AND U.S. SUPREME COURT, THE LILY CASE, THE BIG CASE, WHAT I WENT TO GREAT LENGTHS TO EXPLAIN THE HISTORY OF IN MY BRIEF, I DON'T THINK IT IS A DIFFICULT ISSUE. I THINK IT IS PRETTY CLEAR THAT IS A NO-NO, AND THAT IS A BIG NO-NO, AND THE PREJUDICE AND INABILITY TO CONFRONT AND CROSS-EXAMINATION THOSE WITNESSES, THE PREJUDICE IS INHERENT AND FUNDAMENTAL.

WHERE DO YOU BELIEVE THE LAW ESTABLISHEST BEGINNING POINT FOR EVIDENCE TO COME IN, SUCH AS THIS? WHERE IS THE EXCEPTION BEGINNING ON THE CREATING OF THE CONSPIRACY? FOR EXAMPLE, IF THE BANK ROBBERY THAT JUSTICE ANSTEAD MENTIONS, THAT THE MEASURE WHO -- THAT THE PERSON WHO IS ORGANIZING THIS OBTAINS THE FIRST MEMBER AND THEY ARE IN THE PLANNING STAGES AND THEN, SOMEWHERE DOWN THE LINE, ANOTHER PERSON BECOMES INVOLVED. WHAT IS THE LAW AND WHAT DO YOU SAY, AS FAR AS THE BEGINNING LIMITS OF THAT EXCEPTION, AS YOU SEE THEM?

WHEN THE CONSPIRACY BEGINS IS WHEN WE HAVE AT LEAST TWO PEOPLE THAT HAVE A MEETING OF THE MINDS.

YOU HAVE TO HAVE A MEETING OF THE MINDS AS YOUR POSITION. IT CAN NEVER BE BEFORE THEN.

CORRECT. WE NEED THAT. ALSO THE STATE SEEMS TO MINIMIZE THE INCULPATORY NATURE OF THE STATEMENT MADE AGAINST MR. BROOKS. I DON'T BELIEVE THE CASE LAW SUGGESTS THAT YOU HAVE TOLL NAME THAT DEFENDANT BY NAME. I BELIEVE THERE IS A GRAY CASE OUT THERE THAT SAYS THE INFERENCE IS OBVIOUS THERE. IT IS WHY THE PROSECUTOR ASKED THE QUESTION. THE INFERENCE IS THAT IT IS A TWO AND-A-HALF HOUR INTERVIEW. IN HIS OPENING STATEMENT, HE PROMISED THEM THAT MR. DAVIS HAD CONFESSED THAT HE WAS WITH THEM AT THE TIME OF THE HOMICIDES AND WAS, IN FACT, IN CRESTVIEW AT THE TIME, NINE O'CLOCK, AT

THE TIME OF THE HOMICIDES, AND THEN SET UP MR. DAVIS'S ALIBI, MR. BROOKS NEVER CLAIMED AN ALIBI, AND THEN CHOPPED IT DOWN BY PUTTING FORTH THE CONFESSION AND OH, BY THE WAY, WHAT HAPPENED? WE ASKED FOR AN ARREST WARRANT FOR MR. BROOKS. WHAT HAPPENED NEXT? BY THE WAY, YOU DIDN'T GET TO HEAR ALL OF THOSE THINGS. THE CONSPIRACY ENDS, BY THE WAY, TO ANSWER THE COURT'S QUESTION, THE CALVERT CASE, I BELIEVE, IS THE CASE, AND THAT IS OUT OF THE FIFTH FOR MY NECK OF THE WOODS. THE CALVERT CASE TALKED ABOUT STATEMENTS MADE AFTER THE OBJECT OF THE CONSPIRACY, ONCE THAT OBJECT OF THE CONSPIRACY IS COMPLETED, THE CONSPIRACY IS ENDED. I DON'T THINK THERE IS ANY QUESTION THAT HIS BLAME-SHIFTING STATEMENT TO THE POLICE OFFICER IS PART OF A CONSPIRACY. I HAVE ARGUED IT AND I AM NOT GOING TO REPEAT MYSELF. I JUST DON'T THINK IT IS EVEN CLOSE TO BEING ANY PART OF A CONSPIRACY. THE PROSECUTOR SAID, THIS IS IMPORTANT FROM MY PERSPECTIVE, THAT THE MEDICAL EXAMINER SAID THAT THIS WAS CAUSED BY A PERSON IN THE BACKSEAT. I EMPLOYE YOU TO -- I IMPLORE YOU TO READ. THAT IS NOT WHAT IT SAID. IT WAS THE BLOOD SPATTER PERSON, NOT THE PROSECUTOR. THE BLOOD SPATTER PERSON DISCUSSED THE POSSIBLE SCENARIOS OF HOW THIS CRIME COULD HAVE BEEN COMMITTED. NONE OF THEROLOGIST OR THE BLOOD SPLATTER EXPERT SAID THIS, OH, YES, HAPPENED BY THE PERSON IN THE BACKSEAT. THAT IS POSSIBLE.

IS GOODMAN THE ONLY PERSON THAT PUTS THE DEFENDANT IN THE BACKSEAT?

I DON'T BELIEVE HE DID PUT AM IN THE BACKSEAT.

LET'S ASSUME, AS YOU CONSTRUE IT. HE IS THE ONLY ONE THAT TALKED ABOUT, WAS THERE ANY OTHER EVIDENCE AS TO WHO WAS DRIVING AND WHO WAS IN THE BACKSEAT?

NO, MA'AM. THE ONLY EVIDENCE OF WHO WAS IN THE CAR WAS WALKER DAVIS'S CONFESSION THAT HE WAS IN THE CAR WITH RACHEL CARLSON AND HE WAS WITH HER AT THE TIME OF HER DEATH.

IT WAS TESTIFIED THAT IT WAS YOUR CLIENT WHO DID THE ACTUAL MURDER. LET'S ASSUME IT WAS BASED ON WHAT GOODMAN SAID. LET'S ASSUME THAT THE TRIAL COURT CAN MAKE THAT FINDING. DO YOU HAVE ANY CASES WHERE IT IS THE DEFENDANT WHO IS THE ACTUAL MURDERER AND WHERE THE CODEFENDANT WHO GETS LIFE IS FOUND -- IS EQUALLY CULPABLE, AS FAR AS WHERE WE -- WERE WE TO OVERRIDE THE JUDGE ON THAT, BECAUSE OF THE SITUATION HERE, WHERE THIS CODEFENDANT IS CLEARLY THE ONE WHO HAS THE MOTIVE AND WAS AT LEAST PRESENT AT THE TIME? ARE THERE ANY CASES?

GIVEN THAT ASSUMES, AND THAT IS A PREMISE -- GIVEN THAT ASSUMPTION, AND THAT, OF COURSE, IS A PREMISE THAT I DON'T AGREE WITH.

AT ASSUMPTION?

THAT MR. BROOKS IS THE ACTUAL KILLER. I THINK THE SENTENCE WOULD BE DISPROPORTIONATE.

IS THAT A FINDING OF FACT THAT THE TRIAL JUDGE IS ENTITLED TO MAKE?

IT HAS GOT TO BE BASED ON THE SUFFICIENCY OF THE EVIDENCE THAT IT IS THERE FOR HIM TO HANG HIS HAT ON AND THIS IS, IN FACT, WHAT HAPPENED. IT IS JUST NOT THERE. HE USED THE WORD IN HIS ORDER. CONCLUSIVELY. THERE IS NO EVIDENCE OF THAT. IT WAS ONE OF POSSIBLE SCENARIOS THAT COULD HAVE HAPPENED.

WHAT DID THE JAILHOUSE SNITCH SAY IN THAT REGARD?

WELL, THE JAILHOUSE SNITCH SAID, IMPORTANTLY, WHEN HE PREMISED ALL OF HIS ANSWERS

UNDER QUESTIONING, WITH I NEVER DISCUSSED THE FACTS OF THE HOMICIDE, HE SAID, I DON'T KNOW HOW NO HOMICIDE OR HOW NO MURDER OCCURRED. ALL MR. BROOKS WAS TALKED ABOUT WAS A DEFENSE, AND I CALLED IT, IF BELIEVED, THAT MR. BROOKS TALKED ABOUT BEING IN THE BACKSEAT, IT WAS MISS PLEASE PLAYSED SOMEHOW, MIGHT -- IT WAS MISPLACED SOMEHOW, MITIGATING HIS ROLE. I WAS IN THE BACKSEAT, AND THAT WOULD BE HIS DEFENSE, THAT HE WAS IN THE BACKSEAT AND DIDN'T ACTUALLY DO ANY OF THE KILLINGS. BUT MR. GOODMAN, JAILHOUSE SNITCH, IT WAS IMPORTANT THAT HE SAID "HE NEVER TALKED TO ME ABOUT HOW NO MURDER OCCURRED." THAT WAS WHAT THE JAILHOUSE SNITCH SAID. I KNOW MY TIME IS UP. THANK YOU.

THANK YOU BOTH FOR YOUR ASSISTANCE.