BAILIFF: PLEASE RICE. HERE -- PLEASE RISE. HERE YE HERE YE HERE YE. THE SUPREME COURT OF THE STATE OF FLORIDA IS NOW? IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT. BAILIFF: LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. FIRST CASE ON THE COURT'S CALENDAR IS ANTHONY BRADEN BRYAN VERSUS THE STATE OF FLORIDA, COMBINED WITH ANTHONY BRYAN VERSUS MICHAEL MOORE. MR. THOMAS, ARE YOU GOING TO PROCEED?

YES, YOUR HONOR.

YOU MAY.

MR. CHIEF JUSTICE, JUSTICES OF THE COURT. GOOD MORNING. ANTHONY BRADEN BRYAN IS SCHEDULED FOR EXECUTION IN LESS THAN 24 HOURS. LESS THAN TWO DAYS AGO, WE RECEIVED AN AFFIDAVIT FROM HIS TRIAL AND DIRECT APPEAL ATTORNEY INDICATING THAT HE SUFFERED FROM THE DISEASE OF ALCOHOLISM THROUGHOUT THE TIME THAT HE REPRESENTED MR. BRIAN. -- MR. BRYAN. THIS COURT HAS GONE TO GREAT LENGTHS TO ENSURE RELYANT IN -- RELIABILITY IN THE APPLICATION OF THE DEATH SENTENCE IN THE STATE OF FLORIDA. THERE IS NO INDICATION OF WHAT THE AFFIDAVIT OF MR. STOKES ACTUALLY MEANS AND HOW IT IMPACTS MR. BRYAN'S CASE. I SUBMIT TO THE COURT THAT WE FILED A 3850 BACK ON OCTOBER 15 AND 18 OF THIS MONTH, I MEAN OF THIS YEAR, ALONG -- ALLEGING SUBSTANTIAL CLAIMS OF INFORMATION THAT WAS PREVIOUSLY UNAVAILABLE TO US, AND AT THIS POINT THOSE CLAIMS ARE IMPACTED BY MR. STOKES' REVELATION, THE REASON WHY SOME OF THOSE CLAIMS ARE NOW BEING MADE EX-APPLICABLE.

DID YOU MAKE THIS CLAIM KNOWN WHEN YOU FILED YOUR 3.850?

THE CLAIM ABOUT MR. STOKES?

YEAH.

WE MADE IT KNOWN, AS SOON AS MR. STOKES MADE IT KNOWN TO ME.

WAS IT MADE KNOWN IN THE 3.850?

WE FILED A SUBSEQUENT 3.850 YESTERDAY, YOUR HONOR, THAT WAS DISMISSED BY THE TRIAL COURT SUBJECT TO THIS COURT VESTING HIM WITH JURISDICTION, BUT THE JUDGE SAID THAT HE HAD NO JURISDICTION TO ENTERTAIN THE 3.850 THAT WE FILED, YESTERDAY, WITH THE COPY OF THIS AFFIDAVIT.

DID YOU DISCLOSE, FOR THE TRIAL COURT, SIGNIFICANT CLAIMS THAT YOU HAD WHEN YOU FILED YOUR FIRST 3.850?

UP TO THAT POINT, BASED ON THE RECORDS THAT WE HAD RECEIVED AND WHAT WE HAD, YES, SIR, WE DISCLOSED THAT WE HAD RECEIVED AN AUDIOTAPE OF A CONVERSATION BETWEEN OUR CLIENT, SHARON COOPER, THE COOPERATING CODEFENDANT IN THE CASE, FOR THE FIRST TIME ON OCTOBER 13, 1999; THAT THAT AUDIOTAPE WAS MITIGATING. THAT THAT AUDIOTAPE WAS IMPEACHMENT EVIDENCE AGAINST SHARON COOPER. THAT WE HAD PROVIDED THAT AUDIOTAPE

TO DR. JAMES LARSEN, ALONG WITH SHARON COOPER'S STATEMENTS THAT SHE MADE RECENTLY, ALONG WITH OTHER INFORMATION, AND DR. LARSEN EXECUTED AN AFFIDAVIT SAYING THIS, COMBINED WITH WHAT I ALREADY KNEW, WOULD HAVE CHANGED MY OPINION IMMENSELY, BOTH AT THE TIME OF TRIAL AND AT THE TIME OF THE 1981 EVIDENTIARY HEARING. AT THAT TIME, HAD THIS COURT RELIED UPON, AS WELL DID THE TRIAL COURT IN THE 11th CIRCUIT SUBSEQUENTLY, THAT NO MENTAL HEALTH EXPERT CHANGED THEIR TESTIMONY, BASED ON NEW INFORMATION IN THE 1991 EVIDENTIARY HEARING. DR. LARSEN, NOW, SAYS "I AM CONS VINCED BOTH STATUTE -- I AM CONVINCED BOTH STATUTORY AND OTHER MITIGATING FACTORS APPLY IN THIS CASE. I AM CONVINCED THAT NONSTATUTORY MITIGATION, PERHAPS NOT DISCUSSED ORIGINALLY, APPLIES IN THIS CASE. I AM CONVINCED, BASED ON THIS EVIDENCE, THAT THE THREE MENTAL HEALTH ADVOCATES WOULD BE SUPERSEDED BY IN INFORMATION." THAT IS THE INFORMATION THAT WE PROVIDED, YOUR HONOR.

DO YOU QAUR HE WILL THAT YOU MOSES RECENTLY -- DO YOU QAUR HE WILL THAN QUARREL THAT YOU FILED A 3.850 SUBSEQUENTLY?

THAT IS INTERESTING AND I HAVEN'T HAD TIME TO LOOK AT IT. INTERESTINGLY ENOUGH, THE COURT CITES APPEAL CASES, BASED THAT HE DOES NOT HAVE JURISDICTION, BASED ON THE PENDING CASES ON APPEAL. THOSE CASES APPEAR TO BE ON POINT. NONETHELESS HE REFUSED OUR APPEAL CASES, IN 3.850, WHERE WE ARE ALLEGING THAT WE HAD SUFFICIENTLY ALLEGED NEW GROUNDS IN ORDER TO GET A NEW HEARING.

YOU CAN BE LITIGATING IN THE CIRCUIT COURT WHILE THE SUPREME COURT HAS JURISDICTION? IS THAT IT?

I DON'T BELIEVE SO, JUDGE. I AM GOING TO BE ASKING THIS COURT TO REMAND THE 3.850 WE FILED YESTERDAY OR TO REMAND THIS CASE ENTIRELY TO JUDGE BELL, FOR RECONSIDERATION IN LIGHT OF THE NEW INFORMATION. I BELIEVE THAT WOULD BE APPROPRIATE, AND I BELIEVE IT WOULD BE APPROPRIATE TO HOLD THE CONSOLIDATED PETITION IN HABEAS, IN ABEYANCE, PENDING EVIDENTIARY DEVELOPMENT OF WHAT THIS AFFIDAVIT MEANS.

SO YOU ARE SAYING THE ONLY REASON JUDGE BELL DISMISSED THE NEW 3.850 WAS BECAUSE THE APPEAL WAS PENDING IN THIS COURT?

THAT'S CORRECT, YOUR HONOR. THERE IS HIS ORDER THAT SPECIFICALLY SAYS "THIS ORDER IS WITHOUT PREJUDICE TO THE DEFENDANT REFILING HIS MOTION, SHOULD THE APPELLATE COURT VEST JURISDICTION IN THE TRIAL COURT COURT." HE DID NOT MAKE THE MERIT DETERMINATION. HE DID NOT SAY I HAVE JURISDICTION, BUT I WOULD BE HAPPY TO OBTAIN IT, IF THIS DOURT SAYS SO.

IN CONNECTION WITH THE 3.850, WITH THE LARSEN CONNECTION, THE ONE, 3.850 DENIED BY THE TRIAL COURT WITHOUT AN EVIDENTIARY HEARING.

THAT'S CORRECT, YOUR HONOR.

HIS AFFIDAVIT WAS BASED ON THE TAPE BETWEEN COOPER AND BRYAN?

IT WAS BASED UPON A NUMBER OF THINGS. IT WAS BASED UPON THE AUDIOTAPE THAT WAS CENTRAL.

WASN'T THAT THE AUDIOTAPE THAT WAS USED IN THE, EITHER CROSS-EXAMINATION OR REDIRECT IN THE ORIGINAL TRIAL BY THE STATE?

THAT IS PART OF THE PROBLEM HERE. JUSTICE PARIENTE, IF WE LOOK AT MR. STOKES' AFFIDAVIT, WE REALIZE HE NEVER LISTENED TO THAT TAPE OR KNEW OF ITS EXISTENCE AT THE TIME OF

TRIAL. THAT IS, REALLY, THE FUNDAMENTAL CORD, THE STRUCTURAL DEFECT, THE FUNDAMENTAL UNFAIRNESS THAT RUNS THROUGH THIS CASE.

THIS IS BACK TO NOT THE NEW ALLEGATION CONCERNING MR. STOKES BUT DR. LARSEN'S AFFIDAVIT, I AM TRYING TO UNDERSTAND WHY THAT TAPE, SINCE IT WAS USED AT TRIAL BY THE STATE, USED AS THE BASIS FOR LARSEN'S NEW APPEAL AND ABOUT IT BEING TIME BARED BY 20 YEARS.

THE AUDIOTAPE WAS, WHEN WE PLED BACK IN 1990, ON OCTOBER OF 1990, WAS MR. BRYAN'S FIRST 3.850 FILED UNDER WARRANT. IN THAT 3.850, THERE WAS AN AMENDED PLEADING FILED IN DECEMBER OF 1990. THERE ARE TWO FOOTNOTES IN THAT PLAEING. ONE OF THOSE -- IN THAT PLEADING. ONE OF THOSE FOOTNOTES SAYS WE CANNOT FIND SHARON COOPER. WE HAVE CHECKED WITH NORTH CAROLINA AUTHORITIES. SHE HAS ABSCOND PD FROM SUPERVISION. WITH WE CANNOT LOCATE HER. THERE WAS A SECOND AUDIOTAPE WITH MR. BRYAN. WE, DESPITE DELAYING GENT EFFORTS HAVE -- DESPITE DILIGENT EFFORTS, HAVE NOT BEEN ABLE TO FIND THAT RECORDING. THE ABSENCE OF DUE DILIGENCE AND THE UNAVAILABILITY OF SHARON COOPER IN THE TAPE, WE GOT THE TAPE THROUGH THE 46789-3 PROCESS ON OCTOBER 13, 1999, FOR THE VERY FIRST TIME. I SUPPLIED THAT TO DR. LARSEN.

THROUGH A PUBLIC RECORDS REQUEST?

YES, YOUR HONOR.

WHY WASN'T THE PUBLIC RECORDS REQUEST MADE BACK IN 1990?

THERE WAS BELIEF, AND I THINK I CAN PROVE THIS, THAT WE REQUIRED PRIOR INVESTIGATORS A COPY OF INSPECTION AND ACTUALLY REQUESTED EVERYTHING THAT THE STATE ATTORNEY'S OFFICE HAD AND THE PUB DEFENDER'S OFFICE. ACTUALLY I HAVE PROOF THAT OUR INVESTIGATOR WENT IN THOSE OFFICES AND INSPECT SD THOSE FILES AND THERE WAS NO TAPE.

WHEN DID YOU FIRST LEARN ABOUT THIS TAPE? DID YOU KNOW ABOUT IT AT TRIAL?

MR. STOKES BECAME AWARE OF THE TAPE, ACCORDING TO THE RECORD, AT THE TIME MR. PATTERSON PULLED IT OUT AND BEGAN TO CROSS-EXAMINE TONY BRYAN DURING THE JURY TRIAL.

OKAY. SO YOU DID KNOW ABOUT IT AT THE TIME OF THE JURY TRIAL.

YES, SIR.

YOU KNEW ABOUT THE TAPE.

YES, YOUR HONOR.

DID YOU ATTEMPT TO SUBPOENA THE TAPE?

WHO?

I BEG YOUR PARDON.

AT THE TIME OF TRIAL?

DID YOU ATTEMPT TO GET IT IN ANY WAY, IF YOU KNEW ABOUT IT.

WE ATTEMPTED IT IN 1990 AND 1994, TO GET THE TAPE, UNDERSTANDING THAT, BACK WHETHER 24 WAS -- BACK WHEN THIS WAS BEING DONE, THERE WERE OLD WARRANTS BEING HANDLED BY

OUR OFFICE AT THE TIME. IN 1995, THEY FILED A MOTION TO RECALL MANDATE, ASKING THIS COURT TO ALLOW THEM TO GO AND GET INFORMATION THAT THEY APPARENTLY NOT HAD TIME OR RESOURCES TO OBTAIN. THAT WAS DENIED. THE LAW HAS CHANGED THREE TIMES DURING MR. BRYAN'S CASE, REGARDING PUBLIC RECORDS.

WHEN -- LET'S SEE. THE TRIAL WAS WHEN, NOW?

1986.

SO YOU HAVE KNOWN ABOUT THIS TAPE SINCE '86.

YES, SIR, BUT I HAVE NOT KNOWN THE CONTENTS OF THE TAPE. I HAVE HAD NO IDEA WHAT THE CONTENTS OF THE TAPE WERE. AND WHAT HAPPENS WHEN YOU GET THE TAPE AND YOU PUT IT IN THE CONTEXT WITH EXISTING FEDERAL CORRECTIONAL INSTITUTE RECORDS, WHAT WE KNOW, NOW, IS THAT TONY BRYAN HAD A PILLOWCASE OVER HIS HEAD AND A NOOSE AROUND HIS NECK AND WAS TRYING TO COMMIT SUICIDE AT THE TIME HIS FEDERAL OFFICER CAME TO GET HIM AND SAY YOUR WIFE IS ON THE PHONE. IT WASN'T HIS WIFE. IT WAS SHARON COOPER. SHE SAID SHE WAS CALLING FROM THE ADMIRAL BEN BOW INN IN JACKSONVILLE AND JUST WANTS TO TALK TO HIM, BUT IN REALITY SHE WAS SITTING IN THE FEDERAL PROSECUTOR'S OFFICE WITH HER PLEA AGREEMENT, BUT THIS TAPE IS CLEARLY EXPRESSIVE.

FROM WHAT YOU SAID, THIS MATTER HAVING TO DO WITH THIS TAPE WAS REFERENCED IN THE 19, WAS IT 1990 POST-CONVICTION MOTION?

THAT'S CORRECT, YOUR HONOR.

AND SO AS FAR AS THIS TAPE WAS CONCERNED, THIS MATTER WAS DEALT WITH THEN.

IT WAS NOT DEALT WITH, JUDGE, BECAUSE WHAT WAS ALLEGED AT THAT TIME IN THE FOOTNOTE WAS WE CANNOT GET THIS TAPE. WE DO NOT HAVE THIS TAPE. THERE WAS NO RESPONSE FROM THE STATE CONCERNING THAT ALLEGATION SAYING, NO, YOU CAN GET THE TAPE. OR HERE IS THE TAPE, BECAUSE WE HAVE GOT IT.

BUT OBVIOUSLY, AND, OF COURSE I WASN'T HERE ON THIS COURT IN 1990. THIS COURT ISSUED A OPINION OUT OF HAVING TO DO WITH POST-CONVICTION, AND COMING OUT OF THAT PROCEEDING.

IN 1994, THAT'S CORRECT, YOUR HONOR, AND THEN IT WAS IN THE APPELLATE POSTURE IN THE FEDERAL COURTS THROUGHOUT AND AFTER THAT TIME. THEN WE HAVE A NEW 3.85 H-3 THAT SAYS I CAN ONLY ASK FOR RECORDS UNDER THAT WARRANT. THE WARRANT PREINCLUDES ME FROM --

BUT THIS TAPE HAS BEEN KNOWN.

THE TAPE HAS BEEN KNOWN BUT NOT IN OUR POSSESSION. THE TAPE HAS NOT BEEN AVAILABLE FOR OUR REVIEW. DR. LARSEN DID NOT RELY STRICTLY ON THE AUDIOTAPE, EITHER, JUDGE. HE RELIED UPON SHARON COOPER'S STATEMENTS, AND I BELIEVE WE PLED, WITH GREAT SPECIFICITY MRX IN THIS 3.850, WHY WE DID NOT FIND SHARON COOPER.

SHE DID TESTIFY AT TRIAL.

SHE TESTIFIED AT TRIAL, BUT SHE WAS NOT ASKED IN DEPOSITION, OUTSIDE OF ONE QUESTION THAT MR. STOKES ASKED HER DO YOU THINK HE WAS INSANE AT THE TIME, NO, HE WASN'T INSANE. HE KNEW WHAT HE WAS DOING. THAT IS ABOUT THE EXTENT OF THE INQUIRY BY MR. STOKES INTO OUR CLIENT'S MIND BY SHARON COOPER.

THIS IS THE PREVIOUS ISSUE THAT WE DEALT WITH, CONCERNING THE WITNESS MILLS O.

IT IS IN A WAY, JUDGE, BUT IT IS IN A DIFFERENT WAY, BECAUSE THIS WITNESS WE CAN DOCUMENT. WE CAN ABSOLUTELY DOCUMENT THIS WITNESS WAS TOTALLY UNAVAILABLE DURING THIS PERIOD OF TIME. HER PLEA AGREEMENT OR HER PLEA TO FALSE IMPRISONMENT FOR PROBATION, PROBATION HAD A SPECIFIC PROVISION, DON'T TELL ANYBODY WHERE SHE IS WITHOUT ORDER OF COURT.

WAS HER DEPOSITION TAKEN?

SIR?

WAS HER DEPOSITION TAKEN?

YES, SIR. HER DEPOSITION WAS TAKEN IN 199 -- EXCUSE ME -- 1985, IN NORTH CAROLINA, AFTER SHE TRANSFERRED HER PROBATION, AND AT THAT POINT IN TIME MR. STOKES SAYS HIS AFFIDAVIT, "DUE TO MY ALCOHOLISM I DIDN'T ASK THE QUESTIONS I SHOULD HAVE ASKED." WE HAVE BEEN WANTING ON TO ASK THOSE QUESTIONS ALL THESE YEARS. HOW CAN WHAT THE STATE HAS PRESENTED IN THIS CASE AND THE WAY THIS CASE HAS BEEN PRESENTED HOW CAN THAT BE TRUE, WITH WHAT WE KNOW ABOUT ANTHONY BRYAN? HOW CAN A MAN WHO LIVES A LAW-ABIDING LIFE TURN INTO SOMETHING TOTALLY CONTRARY TO HIS NATURE FOR THREE MONTHS, AND EVEN ON ESCAPE STATUS WHILE IN ARIZONA, BE A LAW-ABIDING CITIZEN? HOW IS THAT POSSIBLE, WITHOUT US KNOWING IT?

WASN'T THAT THE WHOLE PURPOSE OF HAVING THE MENTAL HEALTH EXPERT EXAMINE HIM AT AND AROUND THE TIME OF HIS TRIAL?

THAT'S CORRECT, YOUR HONOR, AND WHAT WE FOUND IS THAT MR. BRYAN HAS POTENTIAL -- WELL, WE KNOW HE HAS ORGANIC PERSONALITY SYNDROME. WE KNOW HE HAS MAJOR DEPRESSIVE DISORDER. WE KNOW THAT HE HAS A NUMBER OF -- HE HAS BORDERLINE INTELLECT OF 77 IQ, BUT THE POINT IS THAT ALL OF THAT WAS THOROUGHLY INVESTIGATED AT THE TIME OF TRIAL. WAS IT NOT?

YOUR HONOR, IT CANNOT BE THOROUGHLY INVESTIGATED AT THE TIME OF TRIAL --

ANY MENTAL HEALTH EXPERTS EXAMINED HIM BEFORE OR AT THE TIME OF TRIAL?

THERE IS DISPUTE. THERE IS SEVEN THAT THEY SAY, I BELIEVE, IN STATE COURT AND TWO IN FEDERAL COURT. THERE WAS FEDERAL LITIGATION GOING ON AT THE TIME WITH REFERENCE TO THE PROPERTY.

SO THAT OVERLAPPED, IN TERMS OF THE MENTAL HEALTH ISSUE.

AND IF YOU LOOK AT THE MENTAL HEALTH REPORTS, JUDGE, THEY ARE A HODGEPODGE. THEY ARE A HODGEPODGE BECAUSE NOBODY HAD ADEQUATE INFORMATION TO LOOK INTO TONY BRYAN'S MIND. THE REASON FOR THAT IS BECAUSE HE COULDN'T TELL THEM. THE REASON FOR THAT IS THE STATE ADOPTED THAT, WELL, HE WAS JUST LYING. HE WAS AVOIDING THE TRUTH. HE IS A MALINGERER. HE FAKES AND ET CETERA. THEY OVERLOOKED THAT HE SUFFERS FROM GANZER SYNDROME, WHICH IS A DISSACHLT SSOCIATIVE THAT MAKES HIM INCAPABLE AND UNABLE TO DISCLOSE TO HIS ATTORNEY ANY RELEVANT INFORMATION.

BUT, AGAIN, IS THERE ANY REASONABLE INFORMATION FOR WHY THAT COULDN'T HAVE BEEN BROUGHT OUT AND DISCLOSED AT TRIAL, OTHER THAN THE PENALTY PHASE?

MR. STOKES' ALCOHOLISM AND THE FACT THAT HE WAS SUFFERING FROM A MENTAL DEFECT,

HIMSELF, WHEN HE WAS TRYING TO REPRESENT A MENTALLY DEFECTIVE CLIENT.

WE HAVE TO SEPARATE OUT, NOW, YOUR NEW MOTION AND YOUR OLD ONE. LET ME COME BACK TO MR. STOKES FOR A MINUTE, WITH REFERENCE TO THE TAPE. DOESN'T THE RECORD SHOW THAT THE STATE OFFERED THE TAPE TO MR. STOKES AT THE TIME OF TRIAL?

WHAT THE RECORD SHOWS, YES, YOUR HONOR.

SO IN TERMS OF THAT TAPE BEING AVAILABLE TO A REPRESENTATIVE OF THE DEFENDANT, THE RECORD AFFIRMATIVELY DEMONSTRATES, IN THIS COURT'S OPINION, ALSO, REFERRED TO THAT, DID IT NOT?

REGARDING THE RICHARDSON HEARING.

SO HOW DO YOU OVERCOME THE FACT THAT THE TAPE WAS AVAILABLE TO THE DEFENDANT AT THAT TIME?

MR. STOKES' AFFIDAVIT, YOUR HONOR. THE FACT OF THE MATTER IS THAT TRIAL COUNSEL, NUMBER ONE, BECAUSE OF HIS CONDITION, WHEN MR. PATTERSON STOOD UP AND SAID "I HAVE OFFERED YOU THIS TAPE BEFORE", HE COULDN'T REBUT IT. HE HAD NO MEMORY. HE COULDN'T SAY, YOU KNOW, THAT NEVER HAPPENED, BECAUSE WHAT WE KNOW IS IN THE FILES. THE STATE DID A DISCOVERY RESPONSE, SAYING WE DON'T HAVE ANY ELECTRONIC SURVEILLANCE, BUT THEN MR. STOKES SEES THIS PLEA AGREEMENT, WHERE COOPER AGREES TO MAKE A PHONE CALL. HE WRITES A LETTER TO MR. PATTERSON AND SAYS IF YOU HAVE GOT IT, GIVE IT TO ME. MR. PATTERSON NEVER GAVE HIM A COPY OF THE TAPE, BUT AT SOME PRETRIAL HEARING HE SAYS, IN FRONT OF JUDGE LOWERY, PATTERSON SAYS I OFFERED IT TO MR. STOKES. HE DIDN'T LISTEN TO IT. HE DIDN'T GET A COPY. MR. STOKES CANNOT CONTEST THAT IN THE MIDST OF THE TRIAL, BECAUSE HE HAS NO MEMORY OF THE EVENT, BUT HE ARGUES AT THAT TIME, THIS IS A DISCOVERY VIOLATION. I HAVE ASKED FOR IT AND I HAVEN'T GOTTEN THE TAPE. HE IS, THEN, OFFERED THE TAPE, IN THE MIDST OF TRIAL. IF YOU WANT TO LISTEN TO IT, LISTEN TO IT OVER THE RECESS. HE STILL DOESN'T LISTEN TO IT. I DON'T KNOW THE EXPLANATION FOR THAT, WITHOUT SOME TYPE OF EVIDENTIARY DEVELOPMENT OF WHAT WAS GOING ON WITH WHAT --

IF HE HAS NO MEMORY, IT COULD HAVE BEEN A TRIAL TACTIC AT THE TIME. THE TAPE COULD BE DAMAGING TO THE DEFENSE, ALSO. THERE WERE SOME DAMAGING PORTIONS OF IT.

IF THE TAPE IS DAMAGING, YES.

SO AT THE TIME OF THE TRIAL, IF HE HAS NO MEMORY, PRO OR CON, HE COULD HAVE DONE IT AS A TRIAL TACTIC, A VERY GOOD TRIAL TACTIC QUITE FRANKLY, BECAUSE THE TAPE IS QUITE GOOD AND BAD. IT CUTS BOTH WAYS.

THAT IS CORRECT, JUDGE, BUT YOU CAN'T MAKE A TACTICAL DECISION IF YOU DON'T LISTEN TO THE TAPE. TACTICS ARE A PREMISE UPON YOU KNOW YOU HAVE INVESTIGATED. YOU KNOW THE PROS AND CONS, AND THEN YOU MAKE THE DECISION. ONE CANNOT MAKE A DECISION ON A TACTICAL BASIS, WHEN YOU DON'T KNOW THE PREDICATE UPON WHICH IT IS BASED.

YOU HAVE USED A GREAT DEAL OF YOUR REBUTTAL. IF YOU WISH TO SAVE SOME, YOU MAY.

YOUR HONOR, I AM SORRY I GOT OFF. THE ANALYSIS AT THIS TIME IS, IN APPLYING PROCEDURAL BARS, WHICH HAVE BEEN DONE IN THIS CASE CONSISTENTLY, I THINK WE SHOULD QUESTION THE BASIS OF THAT. THE WHOLE IDEA OF A PROCEDURAL BAR OR AN ABUSIVE WRIT IS THAT YOU HAVE A COMPETENT REPRESENTATIVE REPRESENTING A CRIMINAL DEFENDANT, PARTICULARLY A DEFENDANT WHO IS MAKING TACTICAL DECISIONS AND IS PRESERVING THAT WHICH HE OR SHE THINKS IS IMPORTANT. THIS COURT CAN'T MAKE THAT DETERMINATION ANYMORE. THE VERY

HEART OF THIS CASE IS UNDERMINED BY WHAT MR. STOKES HAS TOLD US. HOW CAN YOU APPLY A PROCEDURAL BAR AND SAY, WELL, HE DIDN'T OBAT TRIAL, WHEN WE DON'T KNOW IF THAT WAS BECAUSE HE WAS WANTING ANOTHER DRINK OR BECAUSE HE MADE A TACTICAL DECISION. AND TO HIS CREDIT, THIS MAN HAS COME FORWARD AND SAID THIS AFFECTED MY PROFESSIONAL RESPONSIBILITIES. AND I ADVISED TONY BRYAN THAT THE STATE OF FLORIDA DID NOT HAVE AN AUDIOTAPE OF ANY CONVERSATION OF HIM WHILE I WAS UNDER THE INFLUENCE OF ALCOHOL, AT THE JAIL THE NIGHT BEFORE HE TESTIFIED, AND I AM, ALSO, THE ONE THAT, WHEN TONY BRYAN TOLD ME, I STILL DON'T REMEMBER A LOT OF THIS. WHAT AM I SUPPOSED TO SAY IF SOMEBODY ASKS ME SOMETHING? SAY YOU DON'T REMEMBER. AND THAT HAS BEEN HELD AGAINST TONY BRIAN FOR ON THE ENTIRE HISTORY OF THIS CASE, AND HE HAD AN IMPAIRED ATTORNEY ADVISING HIM OF THAT.

BRYAN TESTIFIED THAT HE DID NOT COMMIT THE MURDER. IS THAT CORRECT?

THAT IS CORRECT, YOUR HONOR, AND HE HAD, EARLY ON, IN ONE OF THE MENTAL HEALTH REPORTS, MADE THE STATEMENT SHARON COOPER WAS THERE. I WASN'T THERE. SHE MUST HAVE DONE IT. I DON'T KNOW WHAT HAPPENED, AND THERE IS NO QUESTION THAT THERE IS DOCUMENTED MENTAL HEALTH EVIDENCE THAT HE DOES HAVE MEMORY LAPSES. THE QUESTION IS WHETHER THAT IS INTENTIONAL OR WHETHER THAT IS A DISASSOCIATETIVE STATE. I WILL RESERVE WHAT I HAVE REMAINING NOW. THANK YOU.

THANK YOU. MR. MARTELL.

GOOD MORNING. MAY IT PLEASE THE COURT. RICHARD MARTELL ON BEHALF OF THE STATE OF FLORIDA IN THIS CASE. THE STATE WOULD ASK YOUR HONORS TO AFFIRM JUDGE BELL'S RULING ON BRYAN'S SECOND CONVICTION MOTION TO DENY THE EXTRAORDINARY WRIT FILED YESTERDAY BEFORE THIS COURT AND, ALSO, TO PASS UPON THE ILLEGAL SUFFICIENCY I OF THE THIRD 3.850 MOTION WHICH HAS BEEN PROVIDED TO THIS COURT. GIVEN THE URGENCY OF TIME, WE WOULD SUGGEST THERE IS NO NEED FOR THIS COURT TO REMAND THE MATTER TO JUDGE BELL, IF THE COURT AGREES THAT ALL MATTERS CONTAINED THERE IN ARE NOT PROCEDURALLY BARED OR DO NOT CONSTITUTE A BASIS FOR RELIEF. THAT IS OUR POSITION. THIS AFFIDAVIT IS SHOCKING, IN THE SENSE THAT ATTORNEY STOKES HAS NOW CHOSEN TO DISCUSS HIS ALCOHOLISM WHICH HE HAS BEEN SILENCE ABOUT SINCE AT LEAST 1981, WHEN HE SAYS HE COMPLETED HIS TREATMENT 80 DAYS AGO, AND HE SAYS IT DOESN'T COMPLETE AN IN EFFICIENT REPRESENTATION. ALL IT DOES IS COUNTERTHE CASE. YOU WILL SEE THE CLAIMS WHICH THE COUNSEL HAS BEEN LITIGATING SINCE 1990.

I WOULD LIKE TO ASK YOU TO GO BACK TO THE TAPE ISSUE.

YES, MA'AM.

WAS ONE OF THE BASIS FOR THE 1990 INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM THE WAY TRIAL COUNSEL HANDLED THE ISSUE OF THE TAPE?

YES, IT WAS.

WAS THERE A FOOTNOTE STATING, IN THAT MOTION, THAT THE DEFENDANT WAS UNABLE TO, AT THAT TIME, OBTAIN A COPY OF THE TAPE?

THERE WAS A FOOTNOTE IN THE MOTION, SAYING THAT THEY HAVE REQUESTED THE TAPE. THEY DON'T SAY HOW. AND THAT THEY HAVE NOT YET RECEIVED IT. THAT IS IT.

SO DO YOU, ON BEHALF OF THE STATE, CONTEST THAT, EVEN THOUGH THE TAPE MAY HAVE BEEN AVAILABLE TO MR. STOKES AT THE TIME OF TRIAL, THAT AT THE TIME OF THE 1990 POST CONVICTION MOTION, THEY DID NOT HAVE, AVAILABLE TO THEM, IN ORDER TO LITIGATE THE

QUESTION OF THE TAPE, THE CONTENTS, AND WHATEVER THEY WOULD HAVE DONE WITH IT AT THAT TIME?

I THINK THERE ARE A NUMBER OF DIFFERENT WAIVERS OR BARS, BUT ONE OF THEM DEFINITELY RELATES TO MR. STOKES' KNOWLEDGE OF THIS MATTER AT TRIAL AND THE DEFENSE'S FAILURE TO RAISE ANYTHING MORE ABOUT IT AT THE TIME, BUT --

BUT THAT IS MR. STOKES' DEFICIENCY. YOU WOULDN'T PUT YOUR CLIENT ON THE STAND, IF YOU KNOW THERE IS A TAPE THAT SAYS THE OPPOSITE OF WHAT THAT CLIENT IS GOING TO TESTIFY TO.

WELL, THE TAPE IS SEVERAL WEEKS AFTER THE MURDER.

BUT YOU WOULDN'T, IF -- NO COMPETENT ATTORNEY WOULD PUT A CLIENT ON THE STAND TO SAY SOMETHING OPPOSITE THAN WHAT IS IN A TAPE RECORDING.

WHY ARE WE ASSUMING THAT THE TAPE IS OPPOSITE FROM HIS TESTIMONY?

I THOUGHT THAT HE GOES THROUGH AN ALIBI THAT IS DIFFERENT FROM WHAT HIS TESTIMONY WAS AT THE TIME OF TRIAL. I MEAN IT SHOWS --

THE FACT THAT --

YOU WOULD CERTAINLY WANT TO GO OVER THE TAPE WITH YOUR CLIENT BEFORE PUTTING A CLIENT ON THE STAND.

WELL, THE TAPE WASN'T THE ONLY HINT THAT MR. STOKES HAD THAT THERE WAS GOING TO BE TESTIMONY THAT MR. BRYAN CONCOCTED A FALSE ALIBI, BECAUSE MARK HART TESTIFIED AT THE TRIAL THAT HE MEETS MR. BRYAN WHILE THEY ARE BEING EVALUATED WHILE THEY WERE IN THE HOSPITAL, AND HE TESTIFIES THAT BRYAN SOLICITED A FALSE ALIBI FROM HIM AND INTRODUCED A HAND-WRITTEN NOTE WITH MR. BRYAN'S FINGERPRINTS ON IT, AND WHEN THAT CAME IN AND DIRECTLY ON APPEAL, YOU WOULD KNOW THAT IT WAS HARMLESS OR HUMAN, BECAUSE OTHER TESTIMONY COME IN, BECAUSE HART ALWAYS KNEW THAT STOKES WAS -- BECAUSE STOKES ALWAYS KNEW THAT HAR. IT WAS GOING TO TESTIFY TO THIS, BECAUSE HE HAD IT AT THE TIME OF TRIAL.

THAT WAS NOT TO DO WITH THE TAPE THAT WAS NOT IN ISSUE. I AM JUST TRYING TO UNDERSTAND IF THIS TAPE, NOW, IN TRYING TO, IT CONCERNS ME THAT THERE IS AN ALLEGATION, A GOOD FAITH ALLEGATION THAT THIS POST POST-CONVICTION COUNSEL ONLY CAME INTO POSSESSION OF THE TAPE IN 1999, THROUGH PUBLIC RECORDS REQUESTS, AND WHY, GOOD 1990 AND 1999, THE STATE DID NOT MAKE IT AVAILABLE TO POST-CONVICTION COUNSEL.

OKAY. IN THE 1990 POST-CONVICTION MOTION, THERE IS A CLAIM OF INEFFECTIVE ASSISTANCE AT TRIAL COUNSEL, AND THERE IS AN INDEPENDENT CLAIM THAT THIS TAPE CONSTITUTED A BRADY, MESSIAH VIOLATION, DUE TO THE FACT THAT SHARON COOPER WAS ALLEGEDLY A STATE AGENT WHEN SHE WAS SOLICITING THESE COMMENTS. THOSE ARE CLAIMS THREE AND FOUR IN THE ORIGINAL MOTION. WE ATTACHED THEM AS AN APPENDIX TO OUR RESPONSE. NOW, WE HAVE HEARD A LOT ABOUT THE FACT THAT THE CASE ORIGINALLY AROSE IN '90 DURING A WARRANT. HOWEVER, IT WAS IMMEDIATELY STATED BY JUDGE GILLIAM. NOW, WHEN SHE STATED, SHE GAVE CCR LEAVE TO AMEND CLAIM THREE ABOUT INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL. THEY DID THAT 60 DAYS LATER, TWO MONTHS LATER, AND THEY REPEAT THE SAME FOOTNOTE, SAYING WE HAVE ASKED FOR THE TAPE. WE DON'T HAVE IT. THAT IS NOT DILIGENCE. IF THEY THOUGHT THEY NEEDED THE TAPE AND THE COURT HAS GIVEN THE SPECIFIC OPPORTUNITY TO REPLAY THE CLAIM RELATED TO THE TAPE, THEY SHOULD HAVE SAID OR DONE SOMETHING TO GET THE TAPE THEN. THEY DIDN'T. THEY KNOW HOW TO MAKE A MOTION TO COMPEL. NOW, MR.

THOMAS IS TESTIFYING FOR THE FIRST TIME THAT, WHEN THEY HAD ACCESS TO THE STATE FILES, AND WE KNOW THEY HAD ACCESS IN '94 BECAUSE THEY MADE A PUBLIC RECORDS REQUEST AND THE STATE ATTORNEY SAID COME AND SEE THEM, HE SAID IT WASN'T THERE. IT HAS ALWAYS BEEN THEIR POSITION THAT THE STATE HAD THE TAPE. HOW CAN HE POSSIBLY EXPLAIN THEIR FAILURE TO MOVE TO COMPEL, WHEN THERE IS SOMETHING IN THE FILES THAT THEY SAY WASN'T THERE. THERE IS NO WAY AROUND THIS CONUNDRUM, BUT EVEN IF HE SAYS IS NOT TRUE, THE CASE DOES NOT MEET WITH THE PLEA. THERE IS NOTHING TO IT.

I AM NOT QUITE CLEAR WHETHER THE TRIAL COURT DENIED THE MOTION OLT BASIS THAT IT WAS -- THE MOTION ON THE BASIS THAT IT WAS FACIALLY INCONSISTENT, THAT IS THAT IT DIDN'T STATE A LEGAL CLAIM, OR ON THE BASIS THAT THE RECORD AFFIRMATIVELY REFUTED ALLEGATION PASS IN THERE. CAN YOU CLEAR THAT UP FOR US.

HE FOUND EVERYTHING IN THE MOTION, THE SECOND MOTION, PROCEDURALLY BARRED. HE FOUND THAT NO CAUSE HAD BEEN SHOWN FOR WHY THE MATERS WEREN'T ASSERTED WITHIN ONE YEAR PRIOR TO ITS FILING OR IN THE PRIOR 3.850, AND HE FOUND ALL THE CLAIMS, EVEN IF PROPERLY PRESENTED, TO BE LEGALLY INSUFFICIENT AND NOT TO PRESENT A VALID BASIS FOR RELEAVE. -- FOR RELIEF.

SO NONE OF THE DENIAL WAS BASED ON LOOKING AT THE RECORD AND SAYING THAT THE RECORD AFFIRMATIVELY REBUTTED THE CLAIMS.

WELL, HE UTILIZED PORTIONS OF THE RECORD. HE REFERS TO THEM IN HIS ORDER.

WELL, IS THAT PROPER TO DO IF YOU ARE GOING TO DENY IT BECAUSE IT IS PROCEDURALLY BARRED OR BECAUSE IT IS FACIALLY INSUFFICIENT? AREN'T WE SORT OF NICKSING APPLES AND -- MIXING APPLES AND ORANGES, NOW, IF WE ARE GOING TO DO BOTH, AND IF YOU ARE GOING TO REFER TO THE RECORD, DON'T YOU HAVE TO STATE THAT THE RECORD AFFIRMATIVELY SHOWS TO THE CONTRARY AND ATTACH PORTIONS OF THE RECORD, YOU KNOW, THAT REFUTE THE CLAIM CONCLUSIVELY? I AM SOMEWHAT CONFUSED ABOUT THE TRIAL COURT BEING ABLE TO DO ALL OF THAT WITHOUT ATTACHING PORTIONS OF THE RECORD.

WELL, IN THE MILLS CASE, WHICH WE WOULD AGREE IS DECEMBER POSITIVE, THE DEFENDANT MADE -- IS DESPOSITIVE, THE DEFENDANT MADE THE SAME CLAIM, IN REGARD TO THE SUMMARY DENIAL, THE COURT ATTACHED PORTIONS OF THE RECORD, AND THIS COURT HELD THAT THAT WASN'T MANDATORY, WHEN THE JUDGE SET FORTH IN HIS ORDER THE RATIONALE AND LEGAL BASIS FOR HIS HOLDING --

THE RATIONALE HAS TO BE THAT THE RECORD AFFIRMATIVELY DEMONSTRATES TO ON THE CONTRARY, THEN, DON'T YOU HAVE TO, IN SOME WAY, THEN, ATTACH PORTIONS OF THE RECORD OR, IN SOME OTHER EFFICIENT WAY, MAKE REFERENCE, SPECIFICALLY, TO THOSE PORTIONS OF THE RECORD?

WELL, THE JUDGE FOUND THAT ALL OF THE CLAIMS WHICH ARE NOW BEING ASSERTED, AS BEST WE CAN TELL, RELATE TO CONTENTION THAT IS ANTHONY BRYAN HAD A MENTAL DEFECTOR WAS INTOXICATED AT THE TIME OF THE MURDER, AND HE FOUND THAT THAT WAS -- OR HAD A MENTAL DEFECT AT THE TIME OF THE MURDER AND HE FOUND THAT THAT WAS REFUTED AT THE TIME OF THE MURDER OR BEFORE THE MURDER WHEN THEY RESIGNED HIS OWN HABIOUS CORPUS CASE. HE -- HABEAS CORPUS CASE. HE FOUND CONTRARY TO THE DEFENSE. HE FOUND, CONTRARY TO THEIR ALLEGATIONS, THAT STOKES DID, IN FACT, ASK SHARON COOPER ABOUT BRYAN'S MENTAL STATE OR ALLEGED INTOXTATIONCATION AND THAT -- INTOXICATION AND THAT SHE REFUTED THAT. HE ALLEGED MORE THAN WHAT IS BEING ALLEGED, BECAUSE THE DEPOSITION IS LONG, AND SHE SAID AT ONE POINT THAT SHE THOUGHT IT WAS KIND OF CRAZY ABOUT THE WAY HE DISPOSED OF A CAR, BECAUSE HE HAD BEEN SO IF I CANLAR ABOUT TAKING IT TO A SPOT -- SO PARTICULAR ABOUT TAKING IT TO A SPOT AND RUNNING IT OFF THE ROAD AT

30 MILES AN HOUR.

THIS IS CLOSE TO THE LINE IN WHAT WE ARE REFERRING, NOW, TO FACTUAL MATTERS, WE ARE GETTING VERY CLOSE TO THE LINE OF WHERE AN EVIDENTIARY HEARING WOULD BE REQUIRED TO RESOLVE THOSE. WOULD YOU COME BACK, YOU SAID THE TRIAL COURT DENIED IT BECAUSE IT WAS PROCEDURALLY BARRED.

RIGHT.

AND THEN I BELIEVE YOU SAID THAT YOU ALSO FOUND IT TO BE FACIALLY INSUFFICIENT, AND THEN, ONLY AS A THIRD GROUND, DID HE FIND THAT IT WAS REFUTED BY THE RECORD. HOW ABOUT COMING BACK AND ADDRESS THOSE FIRST TWO, THAT IS THE PROCEDURAL BAR AND THE FACIAL IN SUFFICIENCYY IS OF THE CLAIM.

OKAY. WHEN WE HAD OUR EVIDENTIARY HEAR HAD GONE IN 1990, WE HAD IT ON ATTORNEY STOKES' HANDLING OF MENTAL HEALTH ISSUES PERTAINING TO ANTHONY BRYAN, AND ATTORNEY STOKES WAS CALLED AS A WITNESS, AND ATTORNEY STOKES WENT THROUGH DURING THE COURSE OF HIS TESTIMONY, EVERYTHING HE DID TO HELP THE DEFENSE AT THIS POINT, ALL OF THE EXAMINATIONS AND EVERYTHING. EVERYTHING WE ARE HEARING NOW IS JUST ANOTHER LAYER OF THIS, WHICH COULD HAVE BEEN DEVELOPED EARLIER, AND, AGAIN, THEY ARE SAYING SHARON COOPER WAS SO CRITICAL. WELL, THEY NEVER SAID, IN 1990, THAT WE CAN'T HAVE THE EVIDENTIARY HEARING ON THESE CLAIMS WITHOUT SHARON COOPER. THEY NEVER SAID WE CAN'T HAVE THE EVIDENTIARY HEARING ABOUT THE MENTAL HEALTH ISSUE WITHOUT THE TAPE RECORDING, SO THESE WERE MATTERS THAT WERE ALWAYS AVAILABLE TO COUNSEL, AND WHICH THEY DID NOT ASSERT IN A TIMELY MATTER, SO THEY ARE NOW BARRED. BUT, AGAIN --

SO THIS IS THE EXCESSIVE MOTION ARGUMENT.

CORRECT.

THIS IS JUST A REPACKAGING OF THE SAME CLAIM THAT WAS MADE IN 1990 OR A BEEFING UP OF THE SAME CLAIM?

IT IS AN ALTERATION OF IT. IT WAS FOCUSED MORE ON PENALTY IN 1990 AND NOW IT IS BEING SHIFTED TO THE GUILT PHASE, BUT DR. LARSEN COULD HAVE SAID EVERYTHING THAT THEY ARE NOW ATTRIBUTING TO HIM WHEN HE TESTIFIED IN '91, AND IT IS OUR POSITION THAT, IN FACT, HE DID SAY A LOT OF IT. WE NOTE THAT, WHEN HE GAVE HIS REPORT IN '86, WHICH WAS ATTACHED TO THE JUDGE'SORD ONER DENYING THE FIRST.850, HE SAID THAT PROOIN WAS ESSENTIALLY A MALINGERER. HE SAID THAT HE IS ONLY PICKING AND CHOOSING AND THE FACT THAT IT IS SUSPICIOUS THAT IT IS CONTRIVED, IN THAT HE REMEMBERS SOME THINGS AND NOT OTHERS. THIS IS RELYING UPON THE STATEMENT IN 1999. THAT IS WHAT THEY SAID IN 1986, AND HE NEVER INDICATED THAT HE WAS SHORT OF ANY INFORMATION TO MAKE THESE DIAGNOSIS. AFTER WE HAD THE STATE, TRIAL COUNSEL GAVE ALL OF THE EXPERTS ALL OF THE INFORMATION THAT THEY THOUGHT THEY NEEDED TO REACH THEIR DIAGNOSIS, AND, AGAIN, THEY GAVE THEIR TESTIMONY. THEY TOOK THEIR SHOT. THEY FAILED.

BUT THE PROCEDURAL BAR IS BASED ON THE FACT THAT THIS IS JUST ANOTHER VARIATION OF THE SAME CLAIM AND THAT THIS IS A IMPROPER SUCCESS I FEEL CLAIM. IS THAT CORRECT?

THAT IS PART OF IT, BUT, ALSO UNDER MILLS, ALL OF THIS STUFF IS ARISING FROM PEOPLE WHO WERE TRIAL WITNESSES, AND WITH HE READ MILLS AS SAYING THAT YOU CAN NOT RAISE A CLAIM OF NEW MATT% FROM A TRIAL WITNESS, WHEN THESE MATTERS COULD HAVE BEEN EXPLORED AT THE TIME OF TRIAL, SO THERE IS A TRIAL DEFAULT AND THERE IS A COLLATERAL DEFAULT. THERE ARE TWO OF THEM. THERE ARE TWO LAYERS HERE. YES, NANCY BRIAN FACES

EXECUTION TOMORROW, BUT HE HAS HAD COMPETENT COUNSEL LITIGATING HIS CASE FOR 16 YEARS SINCE THIS MURDER. HE GOT A STAY. HE GOT THE EVIDENTIARY HEARING THAT HE ASKED FOR. HE VYING REDUCELY ASSERTED EVERY CLAIM THAT WAS -- HE VIGOROUSLY ASSERTED EVERY CLAIM MADE ON HIS BEHALF, AND KNOWING THEY ARE UNSUCCESSFUL AND PUTTING ANOTHER SPIN ON THEM, HE IS NOT ALLOWED TO DO THAT UNDER THE LAW. HE SHOULDN'T BE ALLOWED TO PURSUE YET A THIRD 3.850, THIS TIME BASED NOT ON A TRIAL WITNESS BUT FROM A PRIOR COLLATERAL HEARING WITNESS, AS I SAY MR. STOKES, EVEN THOUGH WE ACCEPT EVERYTHING THAT HE SAYS AS TRUE, HE DOESN'T TELL US ANYTHING ALL THAT SIGNIFICANT IN TERMS OF THIS CASE, BECAUSE AS I SAID, WE LITIGATED ALL OF THESE ALLEGED DEFICIENCIES, AND THEY HAVE NOT BEEN LITIGATED BY THIS COURT, THE PRESENT COURT OR THE COURT OF APPEAL, AND PUTTING A DIFFERENT SPIN ON THAT THEORY DOESN'T CHANGE THINGS. THIS MAN COMMITTED MURDER. SHARON COOPER'S TESTIMONY HAS NEVER BEEN SHAKEN. THEY SAY THEY HAVE SOMETHING NEW FROM SHARON COOPER BUT THEY DON'T. THEY HAVE AFFIDAVITS FROM PEOPLE SITTING IN THE ROOM AND SHARON COOPER WON'T GIVE THEM AN AFFIDAVIT. HOW CAN THEY SAY THEY HAVE AN AFFIDAVIT, WHEN SHARON COOPER WON'T COOPERATE? SHE WON'T COME FORWARD AND TESTIFY. SHE DOESN'T WANT TO TALK ABOUT IT ANYMORE.

WHAT SHOULD WE DO WITH THE NEW CLAIM? SHOULD WE IGNORE THAT AND LET THAT PROCEED ON COURSE AND LIMIT OURSELVES TO ON THE APPEAL OF THE SUMMARY DENIAL OF THE 3.851?

NO. YOU SHOULD REACH IT IN THE COURSE OF THIS OPINION. THERE SHOULD BE ONE OPINION ON NANCY BRYAN. IF YOU DECIDE, CONTRARY TO OUR ARGUMENTS, THAT IT SHOULD BE REMANDED, THEN IT SHOULD BE REMANDED ALL TOGETHER, BUT GIVEN THE CIRCUMSTANCES HERE, I THINK YOU SHOULD DECIDE WHETHER THAT THIRD MOTION COULD CONSTITUTE A BASIS FOR RELIEF AND WHETHER OR NOT IT IS LEGALLY BARRED, AND IT IS OUR POSITION THAT IT IS LEGALLY BARRED AND IT CANNOT CONSTITUTE A BASIS FOR RELIEF, BASED UPON --

WHY IS IT LEGALLY BARRED?

IT IS LEGALLY BARRED BECAUSE IT IS A THIRD SUGGESTIVE MOTION, BECAUSE WHEN THEY FILED THEIR AMENDED MOTION TO RECALL MANDATE IN 1995, THEY ATTACHED TWO BAR DISCIPLINARY ACTIONS AGAINST MR. STOKES FROM 1991 AND 1994, WHICH INDICATED THAT EVEN THOUGH THE EVIDENTIARY HEARING WAS OVER THEY WERE STILL CONTINUING TO INVESTIGATOR FOLLOW-UP IN THE PROCEEDINGS THAT RELATED TO HIM, SO ASSUMING THAT THESE MATTERS DIDN'T RELATE TO ALCOHOLISM ON OR NEGLECT OF DUTY, I SUSPECT THEY DID BUT I DON'T KNOW THAT, THEY CERTAINLY COULD HAVE KEPT INVESTIGATING. THE REASON WE HAVE THEIR EXISTENCE AND THE REASON WE FUND THEM IS THAT THEY ARE SUPPOSED TO BE REPRESENTING THESE PEOPLE FOR YEARS. THEY HAD NINE YEARS TO DO THIS. EVERYTHING THEY ARE RAISING NOW EXISTED AT THE TIME OF TRIAL. THERE IS NO EXCUSE FOR THAT. AND THERE IS NO QUESTION THAT THIS MAN IS INNOCENT. HE IS NOT INNOCENT. AND BASICALLY WHAT THIS CLAIM COMES DOWN TO IS I HAVE NEVER SEEN THIS BEFORE. THIS DEFENDANT TOOK THE STAND AT TRIAL AND GAVE HIS DEFENSE THEORY. PRESUMABLY HE DIDN'T PERJURE HIMSELF. IF YOU ACCEPT THEIR THEORY, HE DID PERJURE HIMSELF, BECAUSE NOW THEY HAVE ANOTHER DEFENSE THEORY I. THEY ARE ARGUING THAT THIS MAN SHOULD GET ANOTHER SHOT, WHEN HE TESTIFIED AT TRIAL AND STATED, UNDER OATH, HIS VERSION OF THE CASE, WHICH IS SQUARELY CONTRARY TO THEIR CURRENT ALLEGATIONS. THERE IS NO PRECEDENT FROM ANY COURT IN THE COUNTRY THAT AUTHORIZES THAT, AND I DON'T THINK THAT THIS CASE SHOULD BE THE FIRST ONE, BUT, AGAIN, WE HAVE BEEN LITIGATING THIS CASE. IT IS A VERY STRONG ONE. THE EVIDENCE OF GUILT IS UNQUESTIONED. THE APPROPRIATE OF THE DEATH SENTENCE IS UNQUESTIONED. WE HAD AN EVIDENTIARY HEARING ON THAT. IT HAS BEEN ANALYZED FROM EVERY POINT OF VIEW FROM EVERY COURT TO RESOLVE IT. WE ARE IN THE SUCCESSIVE MODE. WE ARE IN THE PREEXECUTION MODE, BUT NOTHING HE HAS PRESENTED NOW CAN CONSTITUTE A BASIS FOR RELIEF, BOTH ON PROCEDURAL BAR AND ON LACK OF VIABLE MERIT.

HAS STOKES' ALCOHOLISM BEEN RAISED AS AN ISSUE BEFORE?

I AM SORRY?

HAS STOKES' ALCOHOLISM BEEN RAISED AS A CLAIM OR AN ISSUE BEFORE?

NOT PER SE, BUT HIS FAILURE TO DO THE THINGS THAT THEY SAY HE SHOULD HAVE DONE WAS RAISED. WE JUST DIDN'T HAVE THE REASON. THEY SAID HE SHOULD HAVE CALLED THESE MENTAL HEALTH EXPERTS. NOW HE IS SAYING OH, THE REASON HE DIDN'T CALL THESE MENTAL HEALTH EXPERTS IS BECAUSE HE WAS AN ALCOHOLIC, BUT WE DON'T NEED TO KNOW THAT, BECAUSE WE HAVE ALWAYS FOUND LACK OF PREJUDICE, AND THANK IS IMPORTANT, BECAUSE WHEN THEY CAME IN THIS 1990 AND THEY GOT THEIR STAY AND THEY GOT THEIR EVIDENTIARY HEARING THERX SAID STOKES IS AN EXPERT, AND IF YOU PUT HIM ON THE STAND, WE WILL PROVE OUR CASE AND WE WILL PROVE THAT THIS DEATH SENTENCE IS UNRELIABLE. WELL, AS THE 11th CIRCUIT POINTED OUTMOST CLEARLY, THEY PROVED THE OPPOSITE. STOKES ARGUED, DESPITE HIS PRESENT DEFICIENCIES, THAT THEIR REPORT WHICH THEY GAVE TO THE JURY CONSTITUTED MENTAL MITIGATIONS. HE ARGUED THAT THEY CONSTITUTED THREE MENTAL MITIGATE ORZO. HE PUT ON BRYAN'S AUNT'S SCHIZOPHRENIA AND STOKES PUT ON THAT BRYAN'S MOTHER HAD BEEN IN A CAR ACCIDENT AND HAD BEEN DRINKING WHILE SHE WAS PREGNANT WITH HIM. HE PUT ALL OF THAT ON AND GOT FIVE VOTES. THEY CALLED THE EXPERTS. THEY CALLED LARSON AND GETNER AND MAZARIAN. THEY SAID TELL US ABOUT THE MITIGATEORS THAT YOU FIND. THEY DON'T FIND ANY. HE SAYS I DON'T FEEL COMFORTABLE SAYING CIRCUMSTANCE B APPLIES. I DON'T FEEL COMFORTABLE SAYING CIRCUMSTANCE F APPLIES. MAZARIAN GIVES HIM ONE. THAT IS THAT HIS CONDUCT WAS BETTER THAN THEIR COLLATERAL REPRESENTATION, BUT WE CAN'T JUST GO THERE AGAIN. WE ARE JUST BEING FED THEORIES, AND IT IS SIMPLY TOO LATE IN THE DAY FOR THAT, SO WE ASK THIS COURT TO DENY ALL REQUESTED RELIEF. THANK YOU.

DR. LARSON ALSO TESTIFIED IN THAT 1991 HEARING THAT HE COULD ONLY TESTIFY TO ONE STATUTORY MITIGATE OR AND THAT HE COULDN'T FIND THE SECOND MENTAL HEALTH STATUTORY MITIGATE OR AND HE DID NOT ADDRESS THE AGGRAVATION AND HE DID NOT ADDRESS STATE OF MIND. HE HAS, NOW, GIVEN US AN AFFIDAVIT SAYING THIS NEW INFORMATION DOES CHANGE MY MIND. THIS IS NOT ABUSE OF THE WRIT SITUATION. THIS IS INFORMATION. THIS IS NOT STUFF WE FORGOT THAT WE FILED IN 1990 AND WE HAD AND WE JUST DECIDED WE WOULD HOLD IT OR WE FORGOT ABOUT IT. THIS IS INFORMATION THAT ONLY BECAME AVAILABLE RECENTLY. ADDITIONALLY WITH MR. STOKES, THERE HAS NEVER BEEN A CUMULATIVE ANALYSIS WITH THE NEW INFORMATION, WITH MR. STOKES, WITH THE '91 HEARING, WITH WHAT HAPPENED AT TRIAL. THERE HAS NEVER BEEN AN ANALYSIS WHEREBY SOMEONE SAYS, WELL, DID MR. STOKES REALLY MAKE A TACTICAL DECISION NOT TO PUT ON MENTAL HEALTH EXPERTS, SO THAT THEY COULDN'T BE CROSS-EXAMINED? NOW, THAT IS WHAT EVERYBODY HAS FOUND. UNFORTUNATELY THE TESTIMONY AT THE EVIDENTIARY HEARING WAS HE DIDN'T TALK TO DR. LARSON UNTIL ABOUT 30 SECONDS BEFORE THE DAVE THE PENALTY PHASE. HE DIDN'T KNOW THAT DR. MAZARIAN WAS EVEN PRESENT, AND HE COULD NOT OBTAIN THE ATTENDANCE OF DR. GENTNER. ARE THOSE TACTICAL DECISIONS OR ARE THOSE LABORING WITH A DISEASE AND STAGGERED? HE SAID THAT TONY WILLS ON ONE WAS WITH SHARON COOPER AND BRYAN AND THEY WERE ALL HAVING A GOOD TIME DRINKING IN BAR TOGETHER IN ALABAMA. HE WANTED TO GET HIM TO GUILT PHASE BUT HE WANTED TO GET HIM TO TRIAL. IS THAT MORE INDICATIVE OF A TACTICAL DECISION OR MENTAL DISEASE?

THANK YOU VERY MUCH.