

>>> THE NEXT CASE IS JACKSON
VERSUS STATE OF FLORIDA.
YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT,
GOOD MORNING.

MY NAME IS RAHEELA AHMED AND I
ALONG WITH MY COCOUNSEL ARE
HERE ON BEHALF OF THE
APPELLANT, MR. TRAY JACKSON.
THIS APPEAL COMES BEFORE THIS
COURT AFTER AN EVIDENTIARY
HEARING WHEREBY THE
POSTCONVICTION COURT DENIED
OUR MOTION TO VACATE PURSUANT
TO RULE 3851.

I WOULD LIKE TO START BY
ARGUING THE FIRST ARGUMENT IN
MY BRIEF, STARTING WITH CLAIM
ONE, WHEREBY OUR ARGUMENT WAS
THAT TRIAL COUNSEL KEATING WAS
INEFFECTIVE FOR FAILING TO PUT
ON THE TESTIMONY OF CURTIS
LEWIS, WHO IS THE VICTIM'S
BROTHER IN THIS CASE.

>> BUT ON THAT, THE JUDGE MADE
FINDINGS.

HE HAD CURTIS LEWIS TESTIFIED,
AS YOU SAID.

THERE WAS AN EVIDENTIARY
HEARING.

AND THE JUDGE MADE FINDINGS
THAT THEY DID INVESTIGATE
CURTIS LEWIS AND THAT AT
CLOSER IN TIME TO THIS EVENT,
ALTHOUGH THERE HAD BEEN THOSE
MONTHS THAT THE VICTIM WAS
MISSING, AND THAT WHAT HE SAID
ABOUT WHEN HIS BIRTHDAY WAS
AND WHEN HE LAST SAW HIS
SISTER, RIGHT, WERE WAS NOT
CONFUSING AT BEST AND THE
TRIAL COUNSEL DECIDED THAT IT
WAS A REASONABLE THAT IT
WAS NOT A GOOD IDEA TO PUT HIM
ON.

SO IT'S NOT LIKE HE WAS A
WITNESS THAT WASN'T
DISCOVERED.

HE HAD BEEN DISCOVERED AND
THEY MADE A DECISION NOT TO

PUT HIM ON BASED ON AN INVESTIGATOR WHO ARE EXPERIENCED CONCLUSION. SO ON DEFICIENCIES I'VE GOT PROBABLES AND ON PREJUDICE DOESN'T SEEM THAT BASED ON THE SOMEWHAT EQUIVOCAL TESTIMONY, THAT THAT REALLY WOULD HAVE DONE MUCH TO HAVE UNDERMINED OUR CONFIDENCE IN THE OUTCOME.

>> LET ME BEGIN WITH THE DEFICIENCY PRONG.

IT IS OUR POSITION THAT THE COURT'S FINDING IS NOT SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.

AT THE EVIDENTIARY HEARING WHEN TRIAL ATTORNEY KEATING TESTIFIED HE RELIED ON THIS MEMO THAT HIS INVESTIGATOR HAD PRESENTED TO HIM.

OBVIOUSLY THIS MEMO IS A HEARSAY MEMO.

TRIAL COUNSEL KEATING PROVIDED NO DETAILS AS TO IF WE EVEN KNOW THAT MR. †LEWIS WAS SPOKEN TO, HOW HE WAS SPOKEN TO, WHETHER THAT STATEMENT, THAT SWORN STATEMENT HE HAD GIVEN LAW ENFORCEMENT, YOU KNOW, WAS SHOWN TO HIM.

>> YOU'RE SAYING THE MATERIALS IN MR. †KEATING'S FILE COULD NOT BE RELIED ON BY MR. KEATING?

YOU GET AN INVESTIGATOR'S REPORT, AND AS A AS A LAWYER WHO IS REPRESENTING SOMEONE THAT YOU HAVE AN EXPERIENCED INVESTIGATOR, THAT IT'S NOT REASONABLE TO RELY ON THE REPORT?

>> UNDER THE FACTS IN THIS CASE, I WOULD SAY IT'S UNREASONABLE BECAUSE

>> WHICH IS WHAT?

>> BECAUSE MR. †LEWIS WAS A STATE WITNESS, A LISTED STATE WITNESS, AND HIS SWORN TESTIMONY TO LAW ENFORCEMENT

SPECIFICALLY STATED THAT HE HAD SEEN HIS SISTER A WEEK AFTER

>> OKAY.

SO WE UNDERSTAND THIS. WHATEVER MR.†LEWIS SAID WAS SAID TO POLICE MONTHS AFTER HER DISAPPEARANCE.

>> RIGHT.

>> SO THE ISSUE OF WHETHER HE WAS CONFUSED ABOUT HIS BIRTHDAY WAS NOVEMBER†6, WHETHER HE HAD SEEN HER AFTER NOVEMBER†9, WAS NEVER AND HE'S HER BROTHER, YOU KNOW, YOU KNOW, NEVER GOING TO BE, YOU KNOW, LIKE I AM POSITIVE THIS IS THE LAST TIME I SAW HER.

AND SO I'M STILL NOT I'M STILL HAVING PROBLEMS WITH WHERE THE TRIAL LAWYER WAS DEFICIENT.

>> I MEAN, MR.†LEWIS IN THIS CASE ACTUALLY TESTIFIED AT THE EVIDENTIARY HEARING, AND HE GAVE GREAT DETAILS AS TO HOW CERTAIN HE WAS AS TO WHEN HE LAST SAW HIS SISTER.

HE WAS CERTAIN IT WASN'T ON HIS BIRTHDAY.

IT WASN'T THE DAY AFTER BECAUSE HE WENT TO CHURCH. HE WOULD NOT HAVE SEEN HIS SISTER DURING THE WORK WEEK BECAUSE HE WORKED.

AND BECAUSE OF WHERE HE'D SEEN HER IN THE PARK, HE KNEW IT WAS THAT SUNDAY THAT HE'D SEEN HER.

HE PROVIDED THE CONVERSATION HE HAD WHERE SHE APOLOGIZED FOR MISSING HIS BIRTHDAY, NOT BRINGING HIM A PRESENT.

AND HE GAVE GREAT DETAILS ABOUT, YOU KNOW, THE PERSON SHE WAS WITH, THE GENTLEMAN WITH THE DREADLOCKS, THE GREEN LUMINA HE WAS IN.

HE GAVE GREAT DETAILS AND HE

CONFIRMED, ASKED SEVERAL TIMES THAT HE'S ABSOLUTELY SURE THAT HE HAD SEEN HER AFTER THAT NOVEMBER+9, 2004 DATE THAT THE STATE PURPORTED TO BE THE DATE OF THE KIDNAPPING AND MURDER.

>> AGAIN, WHAT'S IMPORTANT ON DEFICIENCY IS WHAT MR.+KEATING REASONABLY THOUGHT AT THE TIME THAT HE WAS MAKING A DECISION WHETHER HE WAS GOING TO USE MR.+LEWIS OR NOT, WHICH WOULD BE IN 2004 RATHER THAN RETROSPECTIVELY AT THE TIME OF THE EVIDENTIARY HEARING, WHICH WAS NOT UNTIL WHEN?

>> 2011.

>> SEVEN YEARS LATER.

AND SO THE JUDGE FOUND IT WAS REASONABLE TO RELY ON THE PRIVATE INVESTIGATOR, THAT HE HAD GREAT CONFIDENCE IN, AND THEN THAT THE STATE HAD VERY PERSUASIVE EVIDENCE BEFORE THE JURY THAT THE DISAPPEARANCE DATE OF THE VICTIM WAS NOVEMBER+9 BECAUSE OF THE TRAFFIC STOP AND ARREST OF MR. THOMAS, WHICH WAS CLEARLY NOVEMBER+9, AND THAT BEING THE DAY THAT THE VICTIM WAS PLACED IN THE TRUNK OF THE CAR AND LAST SEEN ALIVE.

SO HE THE COURT FOUND THERE WAS STRONG EVIDENCE THAT IT COULD REASONABLY ACCEPT THAT DATE, SO THAT THE PREJUDICE PRONG WASN'T MET.

SO THE JUDGE'S FINDINGS ON THIS ARE THAT EVALUATING ALL OF THE EVIDENCE, STILL, WHATEVER MR.+LEWIS SAID, IT STILL DOESN'T UNDERMINE CONFIDENCE IN THE FACT THAT IT WAS MR.+JACKSON THAT KIDNAPPED AND PLACED THE VICTIM IN THE TRUNK ON NOVEMBER+9.

>> AND THAT GOES TO THE KIDNAPPING.

WHAT WE DON'T KNOW IS ABOUT THE MURDER AND WHAT MR.†LEWIS' TESTIMONY DOES IS CAST DOUBT AS TO WHEN THE MURDER OCCURRED BECAUSE HE SAW HIS SISTER, AS HE STATED

>> WAS HE IMPEACHED AT ALL ABOUT WHAT HE HAD SAID IN 2011 VERSUS WHAT HE SAID IN 2004? WAS THERE ANY IMPEACHMENT BY THE STATE OF MR.†LEWIS ON THIS POINT?

>> HE DIDN'T TESTIFY AT THE TRIAL.

>> NO.

IMPEACHMENT AT THE EVIDENTIARY HEARING, WHEN HE SAID HE WAS SO CERTAIN THAT HE SAW HIS SISTER AFTER NOVEMBER†9.

>> NO.

I MEAN, AS TO STATEMENTS, NO.

>> THE STATE DIDN'T QUESTION MR.†LEWIS?

>> THEY DID QUESTION HIM, BUT THEY WEREN'T ABLE TO IMPEACH HIM.

HE WAS ABSOLUTELY CERTAIN ABOUT THE DATE THAT HE LAST SAW HIS SISTER, AND HE WAS CERTAIN ABOUT THE DETAILS. AND HE EVEN TESTIFIED THAT HE SPOKE TO THE PROSECUTION IN THIS CASE, PARTICULARLY MR. DAVIS, AND HE WENT OVER THAT STATEMENT WITH HIM AND HE MADE NO CHANGES BACK THEN.

HE HAD NO DIFFERENCE IN HIS TESTIMONY.

HE'S ALWAYS MAINTAINED THAT. HE EVEN SAID THAT AT THE EVIDENTIARY HEARING, THAT HE'S MAINTAINED THE DATES THAT HE SAW HIS SISTER IN THAT SWORN STATEMENT HE GAVE IN 2005, ABOUT SIX MONTHS AFTER THE PURPORTED DISAPPEARANCE OF MISS†PALLIS PAULK.

>> SO YOU'RE SAYING IT WOULD HAVE BEEN POSSIBLE TO HAVE KIDNAPPED HER ON NOVEMBER†9,

BUT SOMEHOW THE VICTIM WAS
THEN LET GO AND MURDERED AT
ANOTHER TIME?

IS THAT THE THEORY?

>> RIGHT.

AND THAT IS ACTUALLY ONE OF
THE MANY DEFENSE THEORIES AT
TRIAL, WAS THIS CATCH AND
RELEASE THEORY, THAT IF YOU
LOOK IN THE EVIDENCE IN THE
LIGHT FAVORABLE TO THE STATE,
THAT THE KIDNAPPING
PURPORTEDLY HAD OCCURRED AND
THEN HE LET HER GO AFTER
TEACHING HER A LESSON.
THAT WAS ONE OF THE DEFENSE'S
THEORIES THAT THEY PRESENTED
DURING CLOSING ARGUMENT.
AND THAT WOULD HAVE SUPPORTED
THAT.

>> YES, I AM.

>> YOU'RE SAYING HE SHOULDN'T
HAVE APPOINTED ANYONE OR JUST
THAT HE APPOINTED THE WRONG
LAWYER?

>> ALTHOUGH THIS COURT STATES
IN MOHAMMED YOU DIDN'T DEAL
WITH IT, YOU DIDN'T HAVE TO
DEAL WITH THE SITUATION WHERE
THE DEFENDANT OBJECTS TO THE
APPOINTMENT OF STANDBY
COUNSEL.

MOST CASES THAT COME BEFORE
THIS COURT IS THE APPOINTMENT
OF SPECIAL COUNSEL.

>> BUT THE STANDBY COUNSEL,
YOU'RE SAYING THERE WAS SOME
VIOLATION OF THE
ATTORNEYCLIENT PRIVILEGE?

>> MMHMM.

>> IN EVERY SITUATION WHERE
UNDER COON, WHERE THERE IS A
LAWYER WHO'S BEEN REPRESENTING
SOMEBODY, AND WE REQUIRE THE
LAWYER TO ADVISE THE COURT
OVER THE DEFENDANT'S OBJECTION
WHAT THE MITIGATION IS, ISN'T
IT AT THAT POINT THEY ARE
DISCLOSING CONFIDENTIAL

INFORMATION ABOUT THE
INFORMATION THEY'VE
DISCOVERED?

AND WE DECIDE ALL OF THESE
PROCEDURES ARE IMPORTANT
BECAUSE THE DEFENDANT DOESN'T
HAVE THE RIGHT TO JUST HAVE
THE STATE KILL THEM JUST
BECAUSE THE DEFENDANT WANTS TO
BE KILLED.

IT HAS TO GO THROUGH THE
PROCESSES THAT WE'VE SET OUT.

>> AND I UNDERSTAND WHAT THIS
COURT IS SAYING.

>> AND IN THIS CASE IT WAS
STANDBY COUNSEL.

IT WASN'T HIS COUNSEL.

>> RIGHT.

>> THAT HE THEN APPOINTED TO
PURSUE

>> BUT IT WAS ALSO HIS
INVESTIGATOR, TOO.

>> WELL, ISN'T IT THE CASE
THAT HE HAD BEEN HIS COUNSEL
IN AN EARLIER POINT.

>> YES.

>> SO THERE HAD ACTUALLY BEEN
AN ATTORNEYCLIENT THE
ORDINARY ATTORNEYCLIENT
RELATIONSHIP WITH THAT LAWYER
AND THE DEFENDANT IN THIS
CASE.

>> YES.

>> AT AN EARLIER POINT.

>> YES.

YES.

AND ONCE HE BECAME STANDBY, I
DON'T THINK THAT THAT
DESTROYED THE ATTORNEY CLIENT
PRIVILEGE, EITHER.

AND THE INVESTIGATOR WAS
CLEARLY HIS INVESTIGATOR.
APPOINTED TO ONLY ASSIST HIM.

>> LET ME ASK YOU THIS
QUESTION.

HAVEN'T WE IN CASES WHERE A
DEFENDANT IS REPRESENTED BY
COUNSEL AND A DEFENDANT SAYS I
DON'T WANT ANY MITIGATION,
REQUIRE THAT THAT ATTORNEY

INVESTIGATE MITIGATION AND
WHAT WAS FOUND AND WHAT WAS
KNOWN AS PART OF THE WHOLE
PROCESS?

>> YES.

>> SO THEN YOUR ARGUMENT IS
THROUGHOUT ALL OF OUR CASE LAW
WITH REGARD TO WHEN

>> NO.

>> WELL

>> WE HAVE A VERY, VERY
SPECIFIC OBJECTION HERE.
HE SAID WEREN'T THEY MY
INVESTIGATING I MEAN, IT'S
AN INVOCATION OF THE
ATTORNEYCLIENT PRIVILEGE.

>> IT WOULD ALWAYS BE WITH
THAT WAY.

>> IN THE OTHER CASES WHERE
THEY JUST SAID I DON'T WANT
ANY MITIGATION PRESENTED

>> MY POINT IS THAT WOULD BE A
VIOLATION OF THE
ATTORNEYCLIENT PRIVILEGE IN
EVERY CASE.

>> I THINK IF IT'S OBJECTED
TO, YES, IT WOULD BE.

>> THAT'S WHAT I'M SAYING.

>> YEAH.

>> BUT THE OTHER CASES YOU'VE
DECIDED ON I DON'T RECALL
THERE BEING AN OBJECTION.

>> I THINK YOU'RE CORRECT ON
THAT.

>> I'M SORRY.

I MISUNDERSTOOD.

>> THIS COURT WOULD EVER
ESTABLISH A RULE OF LAW THAT
ITS OPERATION WAS CLEARLY THAT
IT WOULD VIOLATE THE
ATTORNEYCLIENT PRIVILEGE AT
THE OUTSET.

I MEAN, DOESN'T THAT SEEM VERY
STRANGE IF THAT WERE THE CASE?

>> WELL, I THINK IT IS.

AND THAT'S WHY I THINK THE
BETTER RULE WOULD BE TO
APPOINT SPECIAL COUNSEL
UNRELATED, UNCONNECTED TO THE

DEFENDANT.

>> AND EVEN THOUGH EVEN
THOUGH THE WHOLE POINT IS TO
LET THE COURT KNOW WHAT THE
MITIGATION IS AND THE PERSON
IN THE BEST POSITION TO
PROBABLY GIVE THAT IS SOMEONE
WHO'S BEEN THERE FOR A LONGER
HAUL IS THAT WE SHOULD DO IT
JUST IN NAME ONLY, SPECIAL
COUNSEL, BECAUSE WE'RE
CONCERNED THAT THERE'S A
VIOLATION OF THE
ATTORNEYCLIENT PRIVILEGE.
I MEAN, THAT'S WHAT THAT WOULD
BE SAYING.

>> WELL,

>> I UNDERSTAND.

>> THE ATTORNEYCLIENT
PRIVILEGE IS SUCH A WELL
ENTRENCHED

>> IT IS WELLENTRENCHED AND
WELLRESPECTED.

>> ACTUALLY, I'M AS CONCERNED
WITH CALLING THE INVESTIGATOR,
BECAUSE IT'S MUCH MORE LIKELY
THAT THE INVESTIGATOR
UNCOVERED UNSAVORY THINGS
ABOUT THE DEFENDANT.

>> IS THERE THE SAME
PROTECTION TO AN INVESTIGATOR?

>> YES.

I BELIEVE THERE IS.

I CITED IN MY BRIEF A CASE IT
WAS EXTENDED TO THE
INVESTIGATOR.

I BELIEVE IT WAS A CIVIL CASE,
BUT I THINK THAT APPLIES
EQUALLY.

>> COULD I ASK YOU WHAT IS THE
I UNDERSTAND THERE WAS AN
OBJECTION HERE.

>> YES.

>> TO THE USE OF THE ATTORNEY.

>> MMHMM.

>> WHAT WAS THE SPECIFIC BASIS
THAT WAS ARTICULATED FOR THAT
OBJECTION?

>> WELL, HE JUST SAID THAT
THEY HAD BEEN MINE FIRST AND

WERE WORKING FOR ME AND, YOU KNOW, THEY WOULD BE DOING SOMETHING I DON'T WANT THEM TO DO AND THAT WAS BASICALLY IT.

>> WHICH IS THE DOING WHICH WAS TO ATTEMPT TO SAVE HIS LIFE, WHICH HE DIDN'T WANT SAVED.

I MEAN, YOU SAID THAT THERE'S A CHANCE THAT THE INVESTIGATOR COULD HAVE SHOWN BAD INFORMATION.

WHAT DID YOU YOU USED A TERM.

>> UNSAVORY.

>> UNSAVORY INFORMATION.

WELL, HOW MUCH WORSE IS HE GOING TO BE OFF WITH A DOUBLE MURDER THAN, YOU KNOW, WHERE HE DOESN'T WANT HIS LIFE TO BE SAVED, TO HAVE SOME UNSAVORY THINGS COME OUT?

WHERE'S THE PREJUDICE, I GUESS, IN ANY OF THIS?

ABSOLUTE THERE'S SOME ABSOLUTE PRIVILEGE THAT

>> NO.

I THINK PART OF THE PROBLEM IS IF IT'S TOTALLY UNRELATED, THEY'RE APPROACHING IT FROM A TOTALLY DIFFERENT ANGLE, TOO. THEY WON'T ALREADY HAVE THE BUILTIN BIASES AND FEELINGS THAT THE INVESTIGATOR HAS BEEN INVESTIGATING IT ALL ALONG HAVE.

>> BUT THEY ALSO WOULD NOT HAVE THAT KNOWLEDGE THAT A PRIOR ATTORNEY OR PRIOR INVESTIGATOR'S ALREADY GATHERED ON THIS CASE.

AND SO YOU'RE SAYING THAT WE NEED TO START FROM SCRATCH, THAT ALL THAT INFORMATION BY THE WAYSIDE.

WE GET SOMEONE IN NEW AND START FROM SCRATCH.

>> YES.

>> OKAY.

>> AND I THINK IN A CAPITAL

CASE THAT'S NOT TOO MUCH TO
ASK, QUITE FRANKLY.

>> YOU'RE IN YOUR REBUTTAL
TIME.

>> YEAH.

I WISH TO RELY ON THE BRIEF
RELY ON MY BRIEF ON THE OTHER
ISSUES, BUT URGE YOU TO
REVERSE THE JUDGMENT OF
SENTENCE.
THANK YOU.

>> MAY IT PLEASE THE COURT, MY
NAME IS MITCH BISHOP ON BEHALF
OF THE STATE OF FLORIDA.
IN TERMS OF THE FIRST ISSUE
WITH REGARD TO THE DEFENDANT'S
MOTION TO SUPPRESS THE REQUEST
FOR AN EVIDENTIARY HEARING,
WE'VE ARGUED THAT THE
COLLATERAL ESTOPPEL DOCTRINE
WOULD APPLY HERE.

>> YOU'VE READS THE SAME CASES
WE HAVE READ.

>> YES.

>> FLORIDA REQUIRES IDENTITY
OF PARTIES, DOESN'T IT?

>> YES, YOUR HONOR.

>> WHERE'S THE IDENTITY OF
PARTIES?

>> WHAT WE HAVE HERE, AS THE
COURT SAID IN ECHOS, THE
PURPOSE OF THE RULE IS TO
DETER POLICE MISCONDUCT.

>> YOU'RE GOING OFF ON A
DIFFERENT TACT HERE.

I'M NOT SO SURE THAT THAT CASE
IS A COLLATERAL ESTOPPEL
BASIS.

SO I DON'T KNOW.

IT CERTAINLY IS NOT EXPRESSED,
IS IT?

>> NOT EXPRESSLY SO, YOUR
HONOR.

>> THAT'S WHERE YOU RUN INTO
PROBLEMS.

IF WE START TRYING TO GET INTO
CREATING A DIFFERENT RULE FOR
COLLATERAL ESTOPPEL IN THESE

CASES, I DON'T KNOW WHERE THIS GOES.

I MEAN, THAT'S WE NEED SOME STABILITY IN THE LAW.

WHAT THAT DOCTRINE MEANS.

>> CERTAINLY.

AND IF I'LL SORT OF BACK UP A LITTLE BIT.

SERIAL KILLERS AND KITCHEN SINK THEORIES OF THE DEFENSE THEY HAD.

IN THIS CASE IT MATTERS BECAUSE IT DOES SHOW THAT SHE WAS ALIVE AFTER THE STATE'S CASE THAT IS SAYING THAT THE MURDER DATE IS ALSO NOVEMBER.

NOVEMBER 9th, 2004.

WHEN YOU LOOK AT MR. LEWIS'S TESTIMONY VERSUS THE TESTIMONY OF THE OTHER WITNESSES AT TRIAL IT'S SO MUCH MORE POWERFUL AND COMPELLING IN TERMS OF THE JURY AND IT DOES CAST THAT DOUBT.

>> THE PROBLEM THAT WE GET INTO, YOU KNOW, WE ACCEPT WHAT YOU SAY IS THAT'S THE EVIDENCE THAT WAS PRESENTED AT THIS EVIDENTIARY HEARING BUT IS THERE NOT ALSO THE OTHER TESTIMONY THAT THE LAWYER SENT INVESTIGATOR, SPOKE WITH THIS WITNESS, AND THAT THERE WAS A DIFFERENT STORY AT THAT TIME?

>> THE LAWYERS NEVER SPOKE TO THIS WITNESS.

>> I UNDERSTAND.

THE INVESTIGATOR DID.

THAT'S WHAT YOU KEEP SAYING.

THAT IT IS ALMOST A NAIVE IMPRESSION THAT THE LAWYER HAS TO SPEAK WITH EVERY PERSON WHO MAY HAVE BEEN A WITNESS.

ARE YOU SUGGESTING THAT LAWYERS CAN NOT RELY UPON EXPERIENCED INVESTIGATORS AND ACCEPT WHAT THEY SAY IN PLANNING A CASE?

>> NOT AS A GENERAL CONCEPT BUT IN THIS CASE --

>> NOT AS A GENERAL CONCEPT?

>> YES BECAUSE IN THIS CASE YOU

HAVE A WITNESS WHO HAS GIVEN A SWORN STATEMENT, SWORN STATEMENT AS MR. KEATING RECOGNIZED HELPS YOUR CASE TREMENDOUSLY --

>> AND YOU SENT AN INVESTIGATOR TO GO TALK TO THE WITNESS, CORRECT.

>> RIGHT.

>> AND DID THEY, IS THERE EVIDENCE THAT HAPPENED?

>> PER MR. KEATING'S TESTIMONY.

>> IS THAT, OKAY, SO YOU CAN'T ACCEPT HIS TESTIMONY?

>> WELL, YES, CERTAINLY THE COURT RULED IT CAN.

>> THERE IS EVIDENCE THAT A LAWYER SENT AN EXPERIENCED INVESTIGATOR TO GO SPEAK WITH THIS WITNESS.

IS THAT A FAIR STATEMENT?

>> PER MR. KEATING'S TESTIMONY, YES.

>> WE, ARE YOU SAYING HE IS A LIAR AND WE CAN'T ACCEPT HIS TESTIMONY.

>> NO, YOUR HONOR.

>> BASED ON, THAT WE HAVE THAT EVIDENCE, I'M TRYING TO GET TO WHERE WE ARE.

YOU MAKE A GREAT ARGUMENT DURING THE TRIAL.

THIS IS A DIFFERENT LEVEL.

YOU'RE EVALUATING WHAT THIS LAWYER DID IS BASICALLY ON REASONABLE, UNACCEPTABLE.

>> YES, YOUR HONOR.

AND HE COULD --

>> SO HE SENT AN INVESTIGATOR.

>> YES.

>> INVESTIGATOR CAME BACK AND REPORTED TO HIM OR GAVE HIM A MEMO, CORRECT?

>> YES.

>> AND THAT MEMO PLACED QUESTIONS ON THIS WITNESSES TESTIMONY, DID IT NOT?

>> YES.

BASED ON THE MEMO HE SAID, THIS IS, ASSUMING THE MEMO'S CORRECT --

>> WELL, AGAIN, WE HAVE TO,
THERE IS, EVIDENCE IS THERE.
IT IS NOT MADE UP.
IT'S THERE.

>> IT IS CLEAR IN MR. KEATING
WASN'T THERE FOR INTERVIEW BUT
BASED ON THE MEMO HE SAID, MAYBE
TWO OR THREE DAYS.

WE'RE SORT OF GOING INTO
NOVEMBER 9th, THAT WOULD
SORT OF TRIGGER A QUESTION FOR
TRIAL COUNSEL IN THIS CASE.
WELL, NOVEMBER 9th, BASED ON
CALVIN MORRIS, THE COUSIN WHO
PICKED HER UP THE MORNING OF THE
EVENT, HE SAYS HE SAW HER AT
9:00 IN THE MORNING OR NOON.
IT DOESN'T JIBE.

IT DOESN'T MAKE SENSE.
SO TRIAL COUNSEL SHOULD HAVE
TAKEN THE OPPORTUNITY TO DEPOSE
OR SPEAK TO MR. LEWIS TO
RECONCILE THOSE DATES BECAUSE THOSE
DATES HADN'T BEEN RECONCILED.
WHAT TRIAL COUNSEL TESTIFIED TO
IN TERMS OF WHY HE DIDN'T, YOU
KNOW, GO FORWARD WITH
INTERVIEWING MR. LEWIS,
ASSESSING CREDIBILITY OF
MR. LEWIS HIMSELF, HE TALKED
ABOUT, YOU KNOW, THE EFFECT OF
THE RULE OF SEQUESTRATION,
VICTIM IMPACT, NOT TRYING TO
TREAD LIGHTLY WITH THE FAMILY
BUT HE ADMITTED THAT HE DID
DEPOSE EVERYONE.

EVEN MADE A PHONE CALL WITH
MR. PAULK WHO WAS ONE OF THE
WITNESSES WHO WAS UNSURE ABOUT
DATES TO CONFIRM THE DATE BUT
YET HE MISSED MR. LEWIS.

>> LET'S ASSUME HE PUT MR. LEWIS
ON AND MR. LEWIS SAID HE WAS
CERTAIN THAT, OR ALMOST CERTAIN
HE SAW PALLIS, ON
NOVEMBER 14th.

DOES THAT AT THAT POINT, THAT
PIECE OF EVIDENCE TOGETHER WITH
EVERYTHING ELSE IN THE TRIAL,
HOW DOES THAT UNDERMINE OUR

CONFIDENCE IN THE OUTCOME, IF WE LOOK AT IT AND SAY, ALL THE OTHER FAMILY MEMBERS WERE TRYING TO PIECE TOGETHER WHEN THEY LAST SAW THEIR SISTER AND NOBODY REPORTED SHE WAS MISSING FOR MONTHS.

I MEAN FOR MONTHS AND MONTHS AND MONTHS AND SO IT'S LIKE EVERYBODY ELSE TRYING TO PIECE IT TOGETHER.

HE THINK HE'S CERTAIN, HE IS CERTAIN IT WAS NOVEMBER 14th AS OPPOSED TO WHETHER IT WAS NOVEMBER 7th THAT HE LAST SAW HER.

IT DOESN'T SEEM TO ME THAT IS GOING TO GET YOUR CLIENT A NEW TRIAL ON THE ISSUE OF WHETHER HE IS GUILTY NOT ONLY OF KIDNAPPING BUT ALSO MURDERING THIS VICTIM.

>> IF I MAY.

WITH RESPECT TO THE FAMILY, THE FLYER AND REPORTED HER MISSING THANKSGIVING, 2004, NOVEMBER 26th I BELIEVE THE DETECTIVE, SUZANNE RAINES WAS INFORMED MISSING.

>> IT WAS ONLY THREE WEEKS.

>> RIGHT.

>> BUT IT WASN'T SHE WAS NOT FOUND THEN FOR MONTHS?

>> THEY WERE WORRIED AND NOT AT THE FOOTBALL GAME AND DIDN'T SHOW UP FOR THANKSGIVING AT GRANDMA'S.

THEY GOT WORRIED AT THAT POINT. WITH RESPECT TO MR. LEWIS, HE IS HER FLESH AND BLOOD.

WHAT WE HAD AT TRIAL, WITNESSES ALL WHO HAD MOTIVES, IT IS LAID OUT IN MY BELIEF HAD MOTIVES TO LIE, HAD THEIR OWN SKIN TO SAVE. WHAT'S VERY TELLING IS THE MAIN TWO WITNESSES HERE ARE OBVIOUSLY LATEISHA ALLEN AND FRED HUNT.

THEY WERE THE STATE'S STAR WITNESSES AND THEY, FRED HUNT AND LATEISHA ALLEN COME OUT OF THE WOODWORKS AFTER THE REMAINS

ARE FOUND VERY SHORTLY
THEREAFTER.

ALLEN SAYS FRED HUNT APPROACHES
HER BECAUSE HE IS UPSET ABOUT
MONEY OWED.

FRED HUNT SAYS HE FOUND GOD AND
ONCE REMAINS WERE FOUND HE KNEW
THAT WERE PALLIS PAULK'S
REMAINS.

THEY WENT TO THE POLICE.
TO BE THE FIRST THERE TO SAVE
THEIR OWN SKIN AND, IF, FRED
HUNT'S POSITION, LATEISHA
ALLEN'S POSITION THEY DON'T KNOW
WHAT HAPPENED AFTER THE NIGHT OF
THE KIDNAPPING HOW DO THEY KNOW
ONCE THESE REMAINS ARE FOUND?
HOW DO THEY SHOW QUICKLY UP AT
THE POLICE STATION EVEN AS
CAPTAIN SKIPPER TALKED ABOUT IT,
UNLESS THEY KNEW ABOUT THE BODY,
UNLESS THEY KNEW MORE THAN WHAT
THEY WERE SAYING?

THEIR MOTIVES COME INTO
QUESTION.

OBVIOUSLY DURING TRIAL
MR. HUNT, THE MAIN STAR, HE WAS
IMPEACHED NUMEROUS TIMES.
HE HAS GIVEN DIFFERENT STORIES
TRYING TO ABSOLVE HIS OWN
CULPABILITY AND THEN GET CAUGHT.
SO THESE ARE WITNESSES WITH
REASONS, YOU KNOW, MOTIVES TO
LIE AND SAVE THEIR OWN SKIN.
THE OTHER TESTIMONY, THERE IS
SOME DISCREPANCY BETWEEN, YOU
KNOW THE, THE MOTIVES AND ALSO
WHETHER OR NOT MR. HUNT WAS EVEN
THERE DURING THAT MEETING IN
FRONT OF THE BATHROOM BECAUSE
LATEISHA ALLEN SAYS HE WASN'T,
FRED HUNT SAYS HE WAS.
AGAIN BRINGS INTO QUESTIONS OF
THINGS.

EVEN FRED HUNT I BELIEVE
REDIRECT OF CROSS-EXAMINATION
SAYS HE KIND OF STARTED
PIECING, GETTING DETAILS FROM
TALKING TO OTHER PEOPLE, YOU
KNOW THAT WERE SUPPOSEDLY THERE

EVEN TRIED TO BRING IN BRENT THOMAS AS ONE OF THE PEOPLE WHO TRIED TO SHUT THE TRUNK DOWN. THOMAS DIDN'T MAKE IT PAST THE ROOM UPSTAIRS BY THE KITCHEN. SO THERE IS A LOT OF PROBLEMS WITH THESE WITNESSES AND THEIR MOTIVES.

THESE ARE ALSO CONVICTED FELONS AND PEOPLE HAVE THEIR OWN SKIN TO SAVE VERSUS HER FLESH AND BLOOD AND I THINK HIS TESTIMONY WOULD JUST RESOUND MORE SO WITH THE JURY THAN THESE PEOPLE WHO ALL HAVE SOMETHING TO HIDE, SOME REASON TO LIE.

THEY HAVE MAJOR CREDIBILITY ISSUES.

>> YOU'RE IN YOUR REBUTTAL TIME.

>> AS FOR THE REST OF MY ISSUES, THEY ARE PRESENTED IN MY BRIEF AND ASK THE COURT TO LOOK AT THE RECORD AND APPEAL THE POST-CONVICTION RECORD APPEAL TO SEE THAT TRIAL COUNSEL IN THIS CASE FAILED HIS CLIENT AND DID PRESENT INEFFECTIVE ASSISTANCE OF COUNSEL AND WE ASK THE COURT TO GIVE RELIEF TO MR. JACKSON.

>> MAY IT PLEASE THE COURT.

LISA-MARIE LERNER WITH THE ATTORNEY GENERAL'S OFFICE WITH THE STATE, ADDRESSING THE FIRST ISSUE OF WHETHER OR NOT MR. KEATING SHOULD HAVE INTERVIEWED MR. LOUIS OR CALLED HIM AT TRIAL, THE FOCUS AS THE COURT KNOWS IS ON MR. KEATING'S STATE OF MIND IN RUNNING THE INVESTIGATION AND WHETHER OR NOT HE COULD RELY ON HIS INVESTIGATOR.

HE DID TESTIFY HE SENT HIS INVESTIGATOR OUT TO SPEAK WITH MR. LEWIS.

THERE IS A MEMO ABOUT THAT IN THE DEFENSE FILE AND HE RELIED ON HIS INVESTIGATOR SAYING THAT MR. LEWIS'S TIME FRAME WAS VERY AMORPHOUS AND HE ACTUALLY RECONCILED IT.

MR. LEWIS ALSO TESTIFIED AT THE EVIDENTIARY HEARING, AND ON CROSS-EXAMINATION HE ADMITTED HE DID SPEAK TO THE DEFENSE INVESTIGATORS AND MAY HAVE TOLD THEM THAT HE SAW HIS SISTER TWO OR THREE DAYS AFTER.

HE WASN'T SURE.

HE COULDN'T REMEMBER.

>> TWO OR THREE DAYS AFTER WHAT?

>> AFTER HIS BIRTHDAY.

HIS BIRTHDAY IS

NOVEMBER 6th.

>> OKAY.

>> AND THAT WOULD BE CONSISTENT WITH HER DISAPPEARING ON NOVEMBER 9th.

AND THERE'S --

>> SO AT THE TIME THE INVESTIGATOR INTERVIEWED MR. LEWIS --

>> WHEN WAS THE BIRTHDAY?

>> NOVEMBER 6th.

>> DID MR. LEWIS --

>> WAS IT DECEMBER OR NOVEMBER, I'M SORRY?

>> SAY ANYTHING ABOUT HIS BIRTHDAY AND HOW HE WAS SURE OF ANY TIMES BECAUSE SHE, THIS WAS A CELEBRATION OF HIS BIRTHDAY?

>> NO.

IT WASN'T, HIS BIRTHDAY IS NOVEMBER 6th AND SHE DISAPPEARED NOVEMBER 9th.

IT WASN'T A CELEBRATION OF HIS BIRTHDAY.

HE HAD HIS BIRTHDAY.

HE DID NOT SEE HIS SISTER ON HIS BIRTHDAY.

HE SAID HE RAN INTO HER TWO OR THREE DAYS LATER AT A PARK. AND HE THOUGHT IT WAS A SUNDAY. AND THAT WOULD BE CONSISTENT WITH HER DISAPPEARING ON NOVEMBER 9th, WHICH WAS A MONDAY.

AND SO --

>> IN OTHER WORDS, WHAT HE WAS CERTAIN OF IS THAT HE SAW HER IN A PARK?

>> RIGHT.

>> THE QUESTION IS BUT HE SEEMED TO BECOME CERTAIN AT THE EVIDENTIARY HEARING SEVERAL YEARS LATER THAT THAT WAS NOVEMBER, NOVEMBER 14th AND NOT THE WEEK BEFORE.

WAS HE, I MEAN, THE THING THAT'S INTERESTING ABOUT THIS IS THAT HE BECOMES MORE CERTAIN, AGAIN HE IS CERTAINLY NOT BIASED IN FAVOR OF THE DEFENSE, WITH THE PASSAGE OF TIME AND IN CONFORMITY WITH HIS INITIAL STATEMENT TO THE POLICE THAT HE DID SEE HER ALIVE AFTER NOVEMBER 9th, CORRECT?

>> YES.

AND ON DIRECT HE WAS CERTAIN THAT IT WAS THE 14th BUT AS HE SAID ON CROSS HE ADMITTED THAT HE COULD HAVE TOLD THE INVESTIGATOR IT WAS TWO OR THREE DAYS AFTER HIS BIRTHDAY INSTEAD OF A WEEK LATER.

>> BUT THE MAIN THING TO FOCUS ON I GUESS AT THIS POINT IS THAT THE TRIAL COUNSEL WAS, WHETHER THE TRIAL COUNSEL WAS REASONABLE, KNOWING THAT HE HAD MADE ONE STATEMENT IN RELYING ON AN EXPERIENCED INVESTIGATOR WHO SAID, YOU KNOW, THIS IS NOT FIRM AS FAR AS WHAT DATE HE SAW, HE SAW HIS SISTER ALIVE.

THEN YOU ALSO HAVE THE TOUCHY ISSUE THAT IT IS HIS SISTER SO IT MIGHT BECOME EMOTIONAL TO PUT THIS WITNESS ON.

SO HOW DOES THAT FIT? DID, YOU KNOW, IT DOES LOOK LIKE YOU SAY WHY WOULDN'T YOU PUT SOMEBODY ON THAT TOLD THE POLICE HE HAS SEEN HER AFTER THE DATE OF THE ALLEGED DISAPPEARANCE?

>> BECAUSE HIS TIME FRAME WAS, AS I SAID, AMORPHOUS AND, AND HE --

>> WHAT IS THE EXPLANATION FOR BECOMING VERY DEFINITE SO MANY

YEARS LATER?

>> I DON'T KNOW.

I MEAN --

>> NO EXPLANATION WHAT THE STATE ELICITED ON CROSS-EXAMINATION?

>> WELL, NO, THE STATE WAS, SAID HE MAY HAVE TALKED TO THE INVESTIGATOR AND TOLD HIM HE SAW HER LESS THAN A WEEK AFTER, MAYBE TWO OR THREE DAYS. THAT IS WHAT THEY ELICITED.

MR. LEWIS ESSENTIALLY ADMITTED HE MAY HAVE TOLD THE INVESTIGATOR EXACTLY WHAT THE DEFENSE ATTORNEY SAID THE INVESTIGATOR TOLD HIM.

IF THAT IS THE CASE, ESPECIALLY GIVEN ALL THE OTHER WITNESSES WHO SAID THAT SHE DISAPPEARED ON THE 9th, THAT SHE WAS PUT IN THE CAR, THEY HAD THE FACT THAT MR. THOMAS WAS ARRESTED THAT DAY.

THEY HAD THE ARREST RECORD.

AND ALL OF THIS CAME IN TO EVIDENCE AT TRIAL.

THE DEFENSE ATTORNEY KNEW THAT EVIDENCE WAS GOING TO COME IN AT TRIAL.

>> THE ISSUE OF NOVEMBER 9th AND ARRESTING NOVEMBER 9th, ARRESTING MR. THOMAS, EXPLAIN WHY THAT WAS VERY SIGNIFICANT TO THE STATE AND TO THE THEORY OF WHAT HAPPENED?

>> BECAUSE THAT TIED THE DATE OF HER DISAPPEARANCE.

BECAUSE MR. THOMAS AND MS. ALLEN AND ALL OF THE PEOPLE IN THAT APARTMENT KNEW MR. THOMAS WAS ARRESTED THE SAME DAY THAT MISS PAULK DISAPPEARED.

THAT IS HOW IT WAS CONFIRMED.

>> I GUESS THEIR THEORY, THEY'RE ACCEPTING THAT SHE DISAPPEARED BUT THEN THEY'RE SAYING THAT SHE REAPPEARED AND SOMEONE ELSE KILLED HER?

>> YEAH.

THAT IS THEIR THEORY.

>> AND MR. LEWIS IS, AS I UNDERSTAND IT, THE ONLY FAMILY MEMBER WHO SAID THEY SAW HER, HE SAW HIM, HER, AFTER NOVEMBER 9th?

>> THAT'S CORRECT.

HER UNCLE WHO HAD CUSTODY OF HER DAUGHTER SAID THAT HE DIDN'T SEE HER AND SHE WAS SUPPOSED TO COME OVER AND SEE HER DAUGHTER.

HER BEST FRIEND WHO SHE SAW EVERY DAY AND HER COUSIN, I FORGET HIS NAME, SAW HER EVERY DAY.

THEY TESTIFIED AT TRIAL THAT THEY DIDN'T SEE HER AFTER THE 9th.

HER COUSIN WAS WITH HER WHEN SHE WENT OVER TO TRY AND GET SOME DRUGS AND SAW MR. JACKSON PUT HER IN A CAR.

AND HE SAID THAT HE DIDN'T SEE HER AFTER SHE DROVE OFF WITH JACKSON.

>> PLUS THERE IS OTHER STATEMENTS THAT JACKSON MADE BUT I DO HAVE ONE QUESTION NOT RELATED TO THIS ISSUE AND MAYBE IT'S NOT A BIG DEAL BUT ONE OF THE THINGS THAT HAPPENED AT TRIAL WAS THAT HUNT WAS EXPLAINING WHY HE DIDN'T COME FORTH UNTIL MUCH LATER.

AND IT WAS BASED ON A HEARSAY STATEMENT THAT JACKSON'S EX-WIFE MADE THAT, SOMETHING ABOUT A THREAT TO, A THREAT, CORRECT? THEY HAD, YOU KNOW, THE EX-WIFE, JACKSON, AVAILABLE TO TESTIFY AT THE EVIDENTIARY HEARING AND THE JUDGE, FOR SOME REASON EVEN THOUGH HE GRANTED AN EVIDENTIARY HEARING ON MANY ISSUES, DID NOT ALLOW THEM TO PUT ON THAT CLAIM INVOLVING THE EX-WIFE AND WHAT SHE ACTUALLY TOLD HUNT.

I AM, I'VE GOT SOME PROBLEMS WITH WHY THAT WOULD HAVE, WHY THERE WASN'T AN EVIDENTIARY HEARING ON THAT ISSUE.

SO WHAT I WOULD LIKE FOR YOU TO DO IS ASSUME THAT THERE WOULD HAVE BEEN, SHE WOULD HAVE TESTIFIED CONSISTENTLY WITH WHAT THEY SAID.

TELL ME WHY THAT'S NOT A PROBLEM IN THIS CASE?

>> WELL, IT'S SORT OF ANCILLARY IMPEACHMENT OF MR. HUNT AND NOWHERE IN THE MOTION DID THEY, DID DEFENSE ALLEGE WHAT SHE WOULD HAVE SAID AND IF SHE WOULD HAVE TESTIFIED THAT --

>> BUT WASN'T SHE THERE?

I THOUGHT SHE, THAT THERE WAS SOME, WASN'T SHE THERE AT THE TIME OF THE EVIDENTIARY HEARING?

>> I FRANKLY DON'T REMEMBER, YOUR HONOR.

>> YOU HAD A LOT TODAY.

I THOUGHT SHE WAS THERE AND MAYBE I JUST GOT TO GO BACK BECAUSE THERE ARE SOME POINTS RAISED BUT AS FAR AS ANCILLARY, I MEAN IT, THE IDEA IS WHAT CAME IN THROUGH HUNT IS THAT JACKSON MADE A THREAT.

SO SORT OF A BAD ACT SITUATION. SO IF IN FACT SHE NEVER TOLD HUNT THAT, THAT COULD BE SOME SERIOUS IMPEACHMENT OF HUNT?

>> BUT HUNT WAS IMPEACHED UP ONE SIDE, DOWN THE OTHER, ABOUT HIM NOT BEING STRAIGHT WITH THE POLICE AND HIM DELAYING BOEING TO THE POLICE AND ALSO THE FACT THAT HE WAS ACTIVELY INVOLVED IN THE KIDNAPPING AND THE TRIAL. SO ALL OF THAT CAME OUT AT THE, AT THE TRIAL ITSELF.

THAT, YOU KNOW, HUNT CHANGED HIS STORIES TO THE POLICE AND THAT, YOU KNOW, HE DID RUSH OVER THERE, SHORTLY AFTER THE BODY WAS FOUND.

AND THE DEFENSE BROUGHT ALL OF THAT OUT ON THEIR CROSS-EXAMINATION OF MR. HUNT. SO WHETHER OR NOT TONYA JACKSON ACTUALLY DID SAY, YOU KNOW, RAY

SAID SOMETHING ABOUT GETTING YOU, THAT WOULD NOT HAVE IMPEACHED MORE THAN HE WAS ALREADY IMPEACHED GIVEN THE FACT THAT, OF HIS OWN CONDUCT.

>> EXCEPT THAT THE STATEMENT IS FAIRLY, IS HIGHLY PREJUDICIAL SAYING THAT TONYA HAD ALLEGEDLY TOLD HUNT THAT JACKSON THREATENED TO KILL HUNT. THAT WAS THE STATEMENT THAT HUNT MADE.

AND THAT IS FAIRLY, HIGHLY PREJUDICIAL STATEMENT.

>> IT'S SOMEWHAT PREJUDICIAL BUT IN THE LIGHT OF THIS WHOLE TRIAL IT'S NOT.

I MEAN THERE WAS TESTIMONY ABOUT OTHER WITNESSES BEING THREATENED.

A WITNESS WAS ACTUALLY THREATENED IN COURT IN FRONT OF THE JURY.

THERE WAS TESTIMONY ABOUT THAT. SO, IF THIS WERE THE ONLY STATEMENT IN ABOUT A THREAT IN THIS CASE, IT MIGHT HAVE BEEN MORE PREJUDICIAL BUT GIVEN OVERALL WAY THIS TRIAL HAPPENED, IT WAS NOT PREJUDICIAL. AND IT WOULD NOT HAVE CHANGED THE OUT COME OF THE -- OUTCOME OF THE TRIAL.

IN TERMS OF THE REST OF THE IAC CLAIMS ON ISSUE 1, MR. KEATING TESTIFIED THAT HE DELIBERATELY HAD A STRATEGY TO TRY AND BLAME A THIRD PARTY AND A SERIAL KILLER WAS AN OPPORTUNITY HE THOUGHT WAS RISKY BUT WORTHWHILE.

THAT IS WHY HE DID IT. AND HE ALSO MADE IT, DETERMINED DECISION TO FOCUS ON MR. JACKSON'S MENTAL HEALTH RATHER THAN SUBSTANCE ABUSE IN THE PENALTY PHASE. AND IN TERMS OF FINDING OUT WHETHER OR NOT MISS PALLIS WAS AN INFORTH IN ORLANDO.

SHE WASN'T AN INFORMANT.
AN INVESTIGATOR DID GO TO
ORLANDO TO TALK TO HER
ASSOCIATES AND MR. KEATING
BROUGHT OUT THE FACT THAT SHE,
OF HER LIFE-STYLE IN ORLANDO AND
THE FACT THAT SHE HAD ROBBED
PEOPLE BEFORE AND HAD BEEN
BEATEN FOR IT.

SO, AGAIN, HE RELIED ON HIS
INVESTIGATOR AND UNLESS THE
COURT HAS ANY OTHER QUESTIONS I
WOULD ASK YOU TO AFFIRM.

>> THANK YOU.

REBUTTAL?

>> WITH RESPECT TO JUSTICE
PARIENTE'S QUESTIONS REGARDING
MISS TONYA JACKSON, WHICH WOULD
PRESENT THIS ARGUMENT THREE IN
OUR INITIAL BRIEF, CLOSE TO
CLAIM 12.

THE COURT DID NOT GRANT US AN
EVIDENTIARY HEARING TO PRESENT
MISS TONYA JACKSON WHO TESTIFIED
AT THE EVIDENTIARY HEARING.

>> THIS IS WHAT I UNDERSTAND.
SHE TESTIFIED AND WAS QUESTIONED
AS TO HER EX-HUSBAND'S DRUG USE.

>> CORRECT.

>> SO WHY WOULDN'T SOMEBODY
BRING UP AT THE TIME, BECAUSE I
DON'T KNOW WHEN THE HUFF HEARING
WAS HELD, AT THE TIME, JUDGE,
WELL WE JUST WANT TO ASK HER AN
ADDITIONAL QUESTION ABOUT THIS
ONE ISSUE?

>> AT THE CASE MANAGEMENT
CONFERENCE THE COURT DENIED US A
HEARING ON THAT ISSUE AND WE HAD
FULLY ARGUED AT AN EVIDENTIARY
HEARING AS TO THAT ISSUE BECAUSE
IT WAS NOT ONLY HER BUT ALSO
IMPEACHMENT OF MILES.

>> THIS IS STRANGE AND KIND OF
THING WE USED TO SEE YEARS AGO
WHERE THEY WOULDN'T GRANT ANY
EVIDENTIARY HEARING AND HERE YOU
HAVE ONE AND LIKE ONE OTHER
ADDITIONAL QUESTION.

DID YOU BRING, I REALIZE, IT IS

NOT REQUIRED BUT DID YOU ALERT THE JUDGE THAT THIS IS THE SAME TONYA JACKSON WHO CAN TESTIFY THAT SHE DIDN'T TELL HUNT THAT JACKSON THREATENED TO KILL HIM?

>> YES.

THE CASE MANAGEMENT CONFERENCE, OBVIOUS THAT WE WANTED TO PUT ON THE TESTIMONY OF MISS JACKSON TO IMPEACH FRED HUNT'S STATEMENTS GOING TO CHURCH WITH HER AND MAKING THESE THREATS AND ALSO PART AND PARCEL WITH THAT --

>> I'M ASKING WAS THERE ANY PROFFER ON THE RECORD OF HER, RENEW IT?

I'M NOT SAYING YOU'RE REQUIRED SO THAT WE WOULD BE SURE, IF THERE WAS A PROFFER AND WE KNEW THAT IS WHAT SHE SAID WE THEN COULD EVALUATE IT BASED ON THE PROFFER?

>> THERE WAS NO PROFFER BECAUSE WE WERE DENIED --

>> EVIDENTIARY HEARING WAS WRONGLY DENIED WE HAVE GOT TO ASSUME SHE WOULD TESTIFY THAT SHE DID NOT TELL HUNT THAT?

>> AND THAT WAS OUR BELIEF. THAT IS WHY WE READ THE MOTION HAVING SPOKEN TO HER AND THE OTHER PART OF IT WAS, V'SHAWN MILES'S TESTIMONY, THAT OTHER WITNESS WHO SAID MR. JACKSON TOLD HER, NO BODY, NO CRIME. THERE WAS A TRANSCRIBED RECORDING OF HER TESTIMONY. AGAIN AT THE CASE MANAGEMENT CONFERENCE WE WISHED TO PUT THAT RECORDING IN TO IMPEACH HER WHEREBY HE SAID HE TOLD HER HE DIDN'T KNOW WHAT HAPPENED TO HER.

THAT WAS ALL PART OF THAT SAME ARGUMENT AND WE WERE DENIED A HEARING BOTH IMPEACHING THOSE VERY, YOU KNOW, PREJUDICIAL STATEMENT AS TO CULPABILITY AND THREATS. SO, BUT, THE COURT HAVING DENIED

THEM WE COULDN'T GO FORWARD ON THAT.

WITH RESPECT TO THE THREAT THAT WAS IN COURT, I JUST WANT TO CLARIFY, THAT WAS A THREAT REGARDING CODEFENDANT, MICHAEL WOOTEN.

IT WASN'T DIRECTED AT MR. JACKSON.

I UNDERSTAND THEY WERE TRIED TOGETHER BUT JUST TO CLARIFY FOR THE COURT IT WAS DIRECTED TOWARDS MR. WOOTEN MAKING THE THREATS.

WITH RESPECT TO MR. LEWIS, DURING CROSS-EXAMINATION HE DID TESTIFY THAT HE WAS UNSURE WHETHER HE HAD SPOKEN TO PERSON NAMED O'MALLEY.

HE MADE IT CLEAR HE DIDN'T RECALL WHETHER OR NOT HE DID OR DID NOT HOWEVER HE WENT ON TO STATE DURING HIS TESTIMONY THAT HE DIDN'T RECALL TALKING TO DEFENSE INVESTIGATOR AND THAT HE WAS GETTING QUESTIONS FROM A LOT OF PEOPLE WHICH INCLUDED THE POLICE, FAITH, PALLIS'S DAUGHTER FATHER AND INVESTIGATOR THAT PALLI SYSTEM'S, HER DAUGHTER'S FATHER HAD HIRED.

SO HE WAS GETTING QUESTIONS FROM A LOT OF PEOPLE BUT, AT A POINT HE WAS VERY FIRM AS TO WHAT HIS TESTIMONY WAS AND WHEN HE LAST SAW HER.

WHICH COINCIDE IN 2005 IN A SWORN STATEMENT TO THE POLICE. AND WITH RESPECT TO THE OTHER FAMILY MEMBERS, MR. PAULK, LARRY PAULK, THE UNCLE, AT THE END OF THE DAY HE WASN'T SURE WHEN HE LAST SAW HER BECAUSE HE WAS CONFUSED OF BIRTHDAYS OF HIS NIECES.

THE COUSIN SAW HER AT A CLUB ON NOVEMBER 7th, 2004 AND JESSICA SMITH SAID SHE SAW HER LAST MONDAY NIGHT AT A CLUB AS WELL IN EARLY NOVEMBER.

MONDAY BEING NOVEMBER 2nd,
NOVEMBER 9th, 2004.
SO, THEY'RE ALL CLOSE IN TIME IN
TERMS OF WHEN, YOU KNOW, AND
THEY DON'T REFUTE MR. LEWIS'S
POSITION AS TO WHEN HE LAST SAW
HIS SISTER IN REGARDS TO THE
MURDER.

>> YOU'RE OUT OF TIME.

IF YOU WOULD SUM UP.

>> SURE.

THANK YOU, YOUR HONOR.

IN CONCLUSION, YOUR HONORS,
SOMETIMES WHEN INVESTIGATORS,
PARTICULARLY IN THIS CASE, GO
OUT AND BRING YOU BACK
INFORMATION, HOWEVER IT IS ON
THE ATTORNEY TO FOLLOW UP ON
THAT INFORMATION, TRY TO SPEAK
TO THE WITNESSES, TO ADDRESS
THEIR CREDIBILITY.

THAT IS OUR POSITION IN THIS
CASE BECAUSE HOW IMPORTANT
MR. LEWIS WAS.

BASED ON THE OTHER GUILT PHASE
CLAIM INCLUDING THAT POOR THEORY
OF DEFENSE, FAILING TO GET THOSE
MBI RECORDS, AND LEARNING ABOUT
THE COOPERATIVE WITNESS THAT
MISS PALLIS COULD HAVE BEEN AND
THE OTHER ISSUES BEFORE THE
COURT THAT WE GRANTED HEARING
AND WE ALSO WERE NOT GRANTED
HEARING, MR. JACKSON WAS GIVEN
INEFFECTIVE ASSISTANCE OF
COUNSEL AND IT PREJUDICED TO HIS
DETRIMENT AND WE ASK THE COURT
TO GRANT RELIEF.

>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT WILL BE IN RECESS FOR
10 MINUTES.

ALL RISE.