

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
GIVE ATTENTION, YOU SHALL
BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN,
THE SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA
SUPREME COURT.
THE FIRST CASE ON THE DOCKET
THIS MORNING IS SMITH V. STATE.
COUNSEL?
>> GOOD MORNING, YOUR HONORS.
MAY IT PLEASE THE COURT, MY NAME
IS CHARLES WHITE, AND I'M HERE
REPRESENTING COREY SMITH IN TWO
MATTERS BEFORE THE COURT.
ONE IS THE DENIAL OF MR. SMITH,
AS YOU ARE AWARE, HAS TWO DEATH
SENTENCES AGAINST HIM.
FOR THE MURDERS OF ANGEL WILSON
AND CYNTHIA BROWN.
THERE WAS A DENIAL OF HIS
3.851 MOTION.
THAT'S UP ON APPEAL BEFORE
THE COURT.
AND ALSO THERE'S A PETITION
FOR WRIT OF HABEAS CORPUS
ALLEGING INEFFECTIVE ASSISTANCE
OF COUNSEL.
AS A THRESHOLD ISSUE, I'D LIKE
TO ADDRESS THE AMENDED AND
SUPPLEMENTAL 3.851 MOTION
THAT WAS FILED BEFORE THE
CIRCUIT COURT HAD ISSUED THEIR
ORDER DENYING THE REMAINING
CLAIMS.
THERE WERE THREE ISSUES--
WELL, ACTUALLY, ONE NEW ISSUE
AND TWO RESTATED ISSUES THAT
WERE PRESENTED IN THAT
SUPPLEMENTAL--
[INAUDIBLE]
FILED IN OCTOBER.

>> THIS WAS FILED IN OCTOBER,
>> YES.
>> AND YOU HAVE-- YOU HAD
STATED TO THE TRIAL JUDGE
EARLIER THAT YOU WERE HAVING
SOME PROBLEMS SEEING YOUR CLIENT
AND THAT YOU NEEDED TO SEE
HIM IN ORDER TO DO THIS
SUPPLEMENTAL MOTION?

>> THAT'S CORRECT.
>> YOU SAW HIM IN AUGUST?
>> I DID SEE HIM IN AUGUST.
>> ABOUT TWO AND A HALF MONTHS
BEFORE YOU OR TWO MONTHS BEFORE
YOU FILED THE SUPPLEMENTAL
MOTION, AND I'M WONDERING WHY
THAT MOTION WASN'T MORE TIMELY
FILED.

>> IT'S EMBARRASSING FOR ME TO
HAVE TO ANYTIME TO THIS, BUT
SOMETIMES-- TO ADMIT TO THIS,
BUT SOMETIMES I HAD OTHER
MATTERS THAT WERE BEFORE THE
COURT.

I HAD A MEDICARE FRAUD TRIAL IN
AUGUST, I HAD A FIRST-DEGREE
MURDER CASE IN SEPTEMBER THAT
REQUIRED AN ENORMOUS AMOUNT OF
TIME, OBVIOUSLY, AT THE TRIAL
LEVEL.

IT WAS THE FIRST PHASE.
THERE WAS AN ENORMOUS AMOUNT OF
DEPOSITIONS AND PRETRIAL MOTIONS
THAT HAD TO BE LITIGATED JUST
BEFORE THAT, THEN RIGHT AFTER
THAT WAS FINISHED, WE HAD THE
EVIDENTIARY HEARING ON THIS CASE
THAT WAS FOCUSED ON THE ONE
ISSUE THAT HAD NOTHING TO DO
WITH ANY OF THE OTHER ISSUES
REALLY BECAUSE IT WAS INVOLVED
WITH THE MOTION OF-- IT WAS
NEWLY-DISCOVERED EVIDENCE.
ALMOST ALL OF THE OTHER ISSUES
THAT WERE RAISED IN THE ORIGINAL
3.851 MOTION HAD VARIOUS
ALLEGATIONS -- INEFFECTIVE
ASSISTANCE OF COUNSEL AND THINGS
OF THAT NATURE.

THOSE WERE THE KINDS OF ISSUES

IN THE SUPPLEMENTAL 3.851 MOTION I'D RAISE, I RESTATED TWO OF THOSE, AND THERE WAS ANOTHER ISSUE THAT HAD TO DO WITH THE GIGLIO VIOLATION ON THE PART OF THE STATE WHICH I THOUGHT WAS VERY IMPERATIVE AND VERY IMPORTANT FOR DEMETRIUS JONES WHO WAS A VERY IMPORTANT WITNESS.

>> SO ON THAT ONE, BECAUSE WE'RE STILL, YOU KNOW, YOU'RE NOW, YOU TOOK OVER, AND THE JUDGE SAID TO THE DEFENDANT THAT IT MAY BE A LONG TIME BEFORE IT GETS TO HAVE THIS RESOLVED.

BUT THEN AT SOME POINT THE JUDGE HAS SET THE HEARING.

YOU'RE JUST-- ARE YOU SORT OF CONFESSING THAT YOU JUST WERE NOT, YOU WERE NOT DILIGENT IN PROSECUTING THIS, AND DOESN'T THAT PUT US IN A DIFFICULT POSITION BECAUSE WE DON'T HAVE CLAIMS OF INEFFECTIVE ASSISTANCE OF POSTCONVICTION COUNSEL?

SO LET ME JUST ASK YOU ABOUT THE ISSUE OF THE-- SO ARE YOU HERE TODAY JUST TO TALK ABOUT THESE SUPPLEMENTAL ISSUES THAT YOU BELIEVE SHOULD HAVE BEEN HEARD BY THE TRIAL COURT?

I MEAN, I KNOW YOU HAVE--

>> I'M HERE FOR ALL OF THE ISSUES, OBVIOUSLY, BUT I THINK THAT I WOULD JUST LIKE TO ADDRESS--

>> BUT LET ME ASK YOU THIS. ON THE ONE THAT SAYS VERY SERIOUS ABOUT THE ALLEGEDLY FALSE TESTIMONY, WHEN WAS THE FIRST TIME THAT YOU REALIZED THAT WAS A CLAIM THAT THE COURT NEEDED TO ADJUDICATE?

>> WHEN I WAS REVIEWING ALL OF THE FILES ABOUT DEMETRIUS JONES AND ALSO REVEALING THE FEDERAL TRIAL THAT HAD PRECEDED THIS TRIAL.

>> AND THAT DIDN'T HAPPEN UNTIL

AFTER THE EVIDENTIARY HEARING,
OR WAS IT RIGHT AFTER YOU TOOK
OVER THE REPRESENTATION?

>> I WAS LOOKING INTO THAT,
OBVIOUSLY, THROUGHOUT THE WHOLE
PROCESS.

I'M NOT ASKING THIS COURT TO
MAKE A DECISION ABOUT
INEFFECTIVE ASSISTANCE OF
COLLATERAL COUNSEL.

WHEN I ASSUMED THE
RESPONSIBILITY OF THE
APPOINTMENT IN THIS CASE, I KNEW
IT WAS GOING TO BE A BIG CASE.
BUT I HAD THOUGHT AT THAT TIME
THAT I WOULD JUST BE REVIEWING
WHAT HAD ALREADY BEEN FILED.
IT WAS WHEN I-- AS SOON AS I
REALIZED THAT THIS WAS SOMETHING
THAT WAS MUCH BIGGER THAN THAT,
THAT I HAD TO GO BACK, I HAD TO
GO SEE THE CLIENT, I HAD TO GO
REVIEW ADDITIONAL THINGS BECAUSE
THERE WAS, BECAUSE ACCORDING TO
CCRC, ONE OF THE REASONS WHY IT
WAS RULED IS BECAUSE THERE WERE
ADDITIONAL CLAIMS THAT NEEDED TO
BE RESOLVED.

SO I BROUGHT THAT TO THE
ATTENTION OF THE CIRCUIT COURT
RIGHT AWAY, AND I SAID I NEED
MORE TIME.

WE HAVE TO POSTPONE THE HARP
HEARING.

I HAVE TO HAVE THE TIME TO
REVIEW ALL THE 50 BOXES AND
STUFF THAT WENT INTO IT.
SOMETIME IN THE MIDDLE OF ALL
THAT REVIEW, WHICH I WAS DOING
WHILE I WAS DOING EVERYTHING
ELSE, I WAS ABLE TO ASCERTAIN
THAT DELAWARE MEET ROUSE JONES
HAD, IN FACT, COMMITTED PERJURY
IN THE FEDERAL TRIAL, AND THERE
WAS NO INDICATION IN ANY OF THE
PROCEEDINGS THAT HAD TAKEN PLACE
IN THIS CASE--

[INAUDIBLE]

>> HE VERY OBVIOUSLY COMMITTED
PERJURY BECAUSE HE--

>> NO.

I'M SAYING WAS THERE A FINDING THAT HE HAD COMMITTED PERJURY?

>> NO.

NO.

BUT HE HAD, WITHOUT A DOUBT, LIED WHEN HE PUT TRAVIS--

[INAUDIBLE]

AND COREY SMITH IN AN APARTMENT MAKING PLANS AND ENGAGING AN INTENT TO MURDER MARK HADLEY.

HE WAS IN JAIL AT THAT TIME.

THERE WAS NO WAY HE HAD FABRICATED THAT ENTIRE PIECE OF TESTIMONY.

>> AND HOW HE-- THAT'S-- BUT YOU'RE SAYING THAT'S MANAGER THE STATE KNEW?

>> THE STATE KNEW THAT, YES. THIS WAS A JOINT FEDERAL/STATE PROSECUTION.

THERE WAS, IN THE FEDERAL TRIAL THERE WAS A DETECTIVE, MIAMI-DADE POLICE DETECTIVE, WHO SAT AT COUNSEL TABLE WITH THE U.S. ATTORNEY.

THEY WERE, THIS WAS A STATE AND FEDERAL--

>> OKAY.

SO WHAT HAD-- YOU BROUGHT, WHAT WAS-- JUST GOING TO THAT PARTICULAR CLAIM, WHEN'S THE FIRST TIME YOU BROUGHT THAT TO THE ATTENTION OF THE TRIAL COURT IN THIS CASE?

>> THAT WAS IN MY SUPPLEMENTAL--

>> AND THAT WAS FILED BEFORE THE EVIDENTIARY HEARING OR AFTER IT?

>> THAT WAS FILED THE WEEK AFTER THE EVIDENTIARY HEARING, BUT BEFORE THE ORDER HAD BEEN ENTERED.

>> AND THE JUDGE JUST SIMPLY DENIED IT, OR DID THE JUDGE INQUIRE AS TO WHY YOU HAD BELATEDLY FILE IT?

>> THE JUDGE JUST DENIED IT.

>> OKAY.

SO YOU'RE SAYING REALLY TO GO

BACK TO THIS THAT WE COULD
DECIDE THAT ISSUE JUST ON SAYING
THE JUDGE-- SINCE THE FINAL
HEARING, I MEAN, THE ORDER HAD
NOT BEEN ENTERED, THAT THAT
CLAIM WAS SERIOUS ENOUGH THAT IT
SHOULD BE ADJUDICATED?

>> YES, YOUR HONOR.

>> OKAY.

IS THE OTHER ONE YOUR SPEEDY
TRIAL ISSUE?

>> WELL, THERE WAS ONE, THE
SPEEDY TRIAL ISSUE WAS ONE OF
THE ONES THAT WAS MODIFIED
BECAUSE OF WHAT MR. SMITH
EXPLAINED TO ME WHEN I WENT TO
SEE HIM.

>> BUT I'M ASKING YOU, IS IT
BASICALLY-- I MEAN, THAT ONE,
IT SEEMS TO ME, FRANKLY, WE
COULD DECIDE THAT WHETHER IT HAS
MERIT OR NOT WITHOUT THERE BEING
AN EVIDENTIARY HEARING.

WOULD YOU AGREE WITH THAT?

>> WELL, I THINK THAT THE ISSUE,
THE EVIDENTIARY ISSUE THAT WOULD
NEED TO BE EXPLAINED AT A
HEARING IS WHETHER OR NOT
MR. SMITH HAD AUTHORIZED HIS
ATTORNEYS TO WAIVE THE SPEEDY
TRIAL ISSUE AT ALL.

>> BUT HERE IS THE ISSUE ON
THAT, YOU'RE TALKING ABOUT A
RULE.

YOU'RE NOT TALKING ABOUT A
CONSTITUTIONAL SPEEDY TRIAL
ISSUE.

WE'RE IN POSTCONVICTION, AND IT
SEEMS TO ME THAT THAT-- UNLESS
YOU COULD SHOW THERE WAS SOME
CONSTITUTIONAL VIOLATION, AND IN
THAT REGARD, I GUESS, IT'S
INEFFECTIVE ASSISTANCE OF
APPELLATE COUNSEL FOR NOT
BRINGING IT UP.

THAT WOULD NOT BE SOMETHING THAT
WE WOULD DETERMINE WOULD BE,
WOULD ENTITLE HIM TO RELIEF.

ARE YOU ASSERTING A
CONSTITUTIONAL VIOLATION?

>> NO.

IT'S A VIOLATION OF THE RULE.
WE'RE TALKING ABOUT THE RULE
VIOLATION.

WE'RE TALKING ABOUT WHETHER OR
NOT IN THE FACE OF A DEMAND FOR
SPEEDY TRIAL HIS ATTORNEYS WERE
AUTHORIZED TO--

[INAUDIBLE]

IT FOR ANY REASON.

HE SAYS, NO, IT WAS REPRESENTED
ORIGINALLY THAT HE HAD AGREED TO
A TOLLING, AND THAT, HE SAYS
THAT WAS NOT TRUE.

I THINK THAT'S AN IMPORTANT
ISSUE OF FACT FOR THE COURT TO
DECIDE BEFORE THEY REACH THE
ISSUE THAT YOU'RE TALKING ABOUT.
THAT'S WHY I INCLUDED THAT IN
THE SUPPLEMENTAL MOTION.

I THINK THE OTHER ISSUE, THOUGH,
ABOUT THE ONE ABOUT THE MEDICAL
EXAMINER, DEFENSE MEDICAL
EXAMINER WAS AN IMPORTANT ISSUE
THAT NEEDED TO BE SUPPLEMENTED.
AND THE ORIGINAL MOTION, 3.851
MOTION THAT WAS FILED, THE CCRC
HAD ALLEGED THAT THERE WAS NO
MEDICAL EXAMINER WHO HAD BEEN
RETAINED AND, THEREFORE, THAT
WAS INEFFECTIVE ASSISTANCE OF
COUNSEL.

IT WAS POINTED OUT BY THE STATE
IN THE RESPONSE AND, IN FACT,
THERE WAS A MEDICAL-- A DEFENSE
MEDICAL EXAMINER WHO WAS
APPOINTED SO THAT AS FAR AS THEY
WERE CONCERNED, THAT WAS THE END
OF THAT ISSUE.

AFTER I SPOKE WITH MR. SMITH
THOUGH AND THEY WENT BACK AND
REVIEWED AND THE STATEMENTS MADE
BY THE PROSECUTOR AND ALSO HIS
DEFENSE LAWYER AT TRIAL, IT
BECAME CLEAR THAT WHAT WAS
REALLY HAPPENING HERE WAS THAT
HIS LAWYERS HAD MADE COMPLETELY
RIDICULOUS STATEMENTS ABOUT WHAT
THEY WERE GOING TO PROVE KNOWING
THAT THEY WOULD NOT BE ABLE TO

PROVE IT AND THAT THIS TYPE OF ARGUMENT DISCREDITED THEM AND DISCREDITED HIS DEFENSE IN TERMS OF THE CAUSE OF DEATH FOR CYNTHIA BROWN.

AND THAT WAS SOMETHING WHICH I THINK THAT THE COURT NEEDS TO, NEEDED TO EVALUATE AND TO DETERMINE IN AN EVIDENTIARY HEARING WHAT WAS THE STRATEGY. IF THERE WAS ANY POSSIBLE STRATEGY THAT COULD HAVE BEEN PURSUED BY CLAIMING THAT SEXUAL ASPHYXIATION WAS THE CAUSE OF DEATH.

WHEN THE MEDICAL EXAMINER FOR THE STATE WAS NOT GOING TO SAY THAT THAT WAS THE CASE.

AND, IN FACT, THERE WAS NO DEFENSE MEDICAL EXAMINER WHO WAS GOING TO OFFER THAT OPINION EITHER.

AND I THINK THAT TYPE OF ARGUMENT TO BE MADE THAT RESULTS, THAT CAN'T BE SUPPORTED BY ANY FACTS AT ALL OR ANY EVIDENCE WHICH IS THEN USED--

>> I THOUGHT THAT THERE WAS A QUESTION OF USE OF DRUGS AND HAVING SEXUAL ACTIVITY AND THAT BEING A POSSIBLE WAY THAT THE DEATH HAD OCCURRED.

AND I THOUGHT THE EXAMINER SAID THAT THAT WAS POSSIBLE.

>> WELL, I MEAN, MY UNDERSTANDING-- MY RECOLLECTION WAS THAT THE TRIAL COUNSEL WAS FORBIDDEN TO GO INTO THAT UNLESS THEY HAD SOME SORT OF BACKUP, IF YOU WILL, TO MAKE THAT SORT OF ACCUSATION.

>> WELL, BUT HE WAS FORBIDDEN TO GO INTO HOW THAT SEXUAL THING ALL TOOK PLACE WITHOUT HIS WHOLE, HIS OWN WITNESS, BUT HE DID, IN FACT, ASK THE EXAMINER THAT KIND OF QUESTION, DIDN'T HE?

AND THE EXAMINER WAS ALLOWED TO ANSWER THAT.

>> WELL, THAT QUESTION WAS ALLOWED AS TO WHAT IS POSSIBLE, CERTAINLY.

THAT WAS NOT SUFFICIENT TO PREVENT THE STATE FROM DOING WHAT THEY DID WHICH WAS TO GET UP AND SAY THAT YOU HEARD THIS ACCUSATION, AND YOU HEARD NO EVIDENCE TO SUBSTANTIATE IT, AND HE USED THAT ARGUMENT-- WHICH IS A VERY EFFECTIVE ARGUMENT-- TO DISCREDIT DEFENSE COUNSEL AND DISCREDIT THEIR ARGUMENT IN A VERY IMPORTANT ASPECT OF THE CASE WHICH WAS THE CYNTHIA BROWN HOMICIDE FOR WHICH MR., FOR WHICH MR. SMITH IS ONE OF THE DEATH SENTENCES THAT HE'S FACING NOW.

I ALSO WANTED TO ADDRESS THE, MR. DAVIS AND THE EVIDENTIARY HEARING THAT WE DID HAVE.

THE COURT-- MR. DAVIS, HE BASICALLY SAID RELUCTANTLY AS HE COULD ABOUT HIS INVOLVEMENT WITH KILLING CYNTHIA BROWN.

HE DENIED THAT HE ENGAGED IN ANY CONSPIRACY WITH COREY SMITH TO DO IT.

OF COURSE, THIS WAS THE BASIS OF SOME OF THE WITNESSES THAT CAME IN AND SAID THAT THEY KNEW OR THEY HAD HEARD THAT MR. SMITH HAD WANTED THIS TO HAPPEN AND HAD ASKED DAVIS TO DO IT.

DEMETRIUS JONES, I BELIEVE, WAS ONE OF THE WITNESSES WHO WAS PART OF THAT TESTIMONY.

CARLOS WALKER, THE WITNESS WHO ON DEPOSITION SAID HE DIDN'T KNOW ANYTHING ABOUT ANYTHING AND THEN HE CAME INTO COURT AND SUDDENLY HE REMEMBERED AND SAID EVERYTHING.

MR. DAVIS ALSO HAD SOMETHING TO SAY ABOUT HIM AND THE FACT THAT THERE WAS SOME RIVALRIES, SOME JEALOUSY GOING ON AND SOME PERSONAL BIAS THAT MIGHT HAVE INFLUENCED THE TRIER OF FACT IN

DECIDING THAT ISSUE.
BUT REALLY WHAT WE HAVE HERE IS
THAT THE CIRCUIT COURT REALLY--
AND I THINK THEY TOOK THE EASY
ROAD.

THEY BASICALLY SAID, WELL, YOU
KNOW, WHAT DAVIS IS SAYING NOW
IS CONTRADICTED BY WHAT THE
DETECTIVES THINK AND THE VERDICT
AND SO, THEREFORE, WE'RE JUST
NOT GOING TO ACCEPT ANYTHING
THAT HE HAS TO SAY WITHOUT
REALLY CONSIDERING WHAT THE
IMPACT OF THAT KIND OF TESTIMONY
WOULD BE ON THE TRIER OF FACT.

>> NOW, WAIT.

DAVIS-- THIS IS A
NEWLY-DISCOVERED EVIDENCE CLAIM?

>> YES.

>> AND SO YOU HAVE TO SHOW A
PROBABILITY OF AN ACQUITTAL.
WHAT, I MEAN, SMITH HAD THE
ABSOLUTE MOTIVE, I MEAN, THERE'S
SO MUCH, I GUESS, CIRCUMSTANTIAL
EVIDENCE THAT THIS, HIS FORMER
GIRLFRIEND WAS KILLED A WEEK
BEFORE TRIAL, HE WAS SUPPOSED TO
GO ON TRIAL FOR MURDER.

AND SHE WAS, ESSENTIALLY, THE
SOLE WITNESS, IS THAT, IS THAT
WHAT THE EVIDENCE SHOWED?

>> THAT WAS THE EVIDENCE, YES.

>> AND THERE IS JUST, I'M SURE
YOU'RE FAMILIAR WITH IT, IT'S
JUST THAT IT SEEMS THAT THE
DAVIS WHO IS, WAS SUPPOSEDLY THE
ONE THAT SMITH ASKED TO KILL HIS
GIRLFRIEND, THE TESTIMONY ITSELF
IS, HAS SOME VERY GREAT
CREDIBILITY PROBLEMS, AND SO I'M
NOT SURE I UNDERSTAND HOW DO YOU
THINK THE JUDGE COULD GO WRONG
ON THE PRONG OF JONES THAT SAYS
THERE'S GOT TO BE A PROBABILITY
OF ACQUITTAL?

>> WELL, I THINK THAT THERE WAS
SOME SECOND DISTRICT CASES.

I THINK LIGHT AND TYSON, WHERE
THEY TALK ABOUT-- WHICH I CITED
IN MY BRIEF-- AND THEY TALK

ABOUT THE DIFFERENCE IN LOOKING AT NEWLY-DISCOVERED EVIDENCE OR THE IMPACT OR TRYING TO EVALUATE THE IMPACT OF WITNESSES WHO WERE NOT CALLED TO TRIAL ON THE PROSPECTS OF A NEW TRIAL.

AND JUST SAYING THAT, WELL, I DON'T BELIEVE WHAT THEY HAVE TO SAY IS A WAY OF REALLY, IT'S RAISING AN INSURMOUNTABLE BARRIER TO NEW EVIDENCE COMING FORWARD THAT'S NOT DNA EVIDENCE OR SOMETHING--

>> NO, BUT YOU'RE GOING TO LOOK AT WHO THE PERSON IS THAT IS NOW COMING FORWARD.

WHY, YOU KNOW, HIS MOTIVATION WERE NOT COMING FORWARD EARLIER AND THEN ALL THE OTHER EVIDENCE THAT IS ADMISSIBLE EVIDENCE THAT WOULD STILL BE THERE.

SO IT'S NOT JUST ONE ISSUE THAT IT'S ONLY IF IT'S DNA EVIDENCE, BUT THIS WAS THE PERSON THAT IS-- ISN'T HE SERVING A--

>> I THINK HE GOT A 40-YEAR SENTENCE.

>> AS A, ESSENTIALLY, A CO-DEFENDANT OF MR. SMITH. CORRECT?

>> WELL--

>> I MEAN--

>> AGAIN, THE ISSUE, THERE'S AN ISSUE HERE ABOUT ALL OF THESE DIFFERENT HOMICIDES AND HOW THEY CONNECT--

>> RIGHT.

IT'S A VERY TOUGH CASE FOR YOU. I GUESS WHAT I'M SAYING ABOUT IT IS THAT I AGREE, WE DON'T PICK OUT AND SAY JUST BECAUSE IT'S NOT DNA, BUT YOU'D HAVE TO ADMIT THAT THE TOTALITY OF THIS EVIDENCE IS STILL EXTREMELY STRONG AGAINST YOUR CLIENT FOR THIS--

>> THERE WERE A LOT OF CORROBORATING WITNESSES WHO HAD A LOT OF BAD THINGS TO SAY ABOUT MR. SMITH'S INVOLVEMENT IN THIS

CASE, YES.

I WILL ACKNOWLEDGE THAT.

>> AND IN THIS CASE DEPOSE THE OFFICER AND ASK HIM ABOUT MR. DAVIS' STATEMENTS?

>> I BELIEVE THAT THERE WAS--

>> AND THE OFFICER CLEARLY SAYS THAT MR. DAVIS MADE NO-- DENIED INVOLVEMENT, DENIED ANY INVOLVEMENT OF, WITH MR. SMITH IN THIS MURDER ALSO, DIDN'T HE?

>> HE DID.

HE DID DO THAT.

>> YOU'RE INTO YOUR REBUTTAL.

>> OH, OKAY.

IN THAT CASE, I'LL SAVE WHATEVER TIME I HAVE REMAINING.

THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT, SANDRA JAGGER, ASSISTANT ATTORNEY ON BEHALF OF THE STATE. PURSUANT TO-- PRIOR TO RULE OF CRIMINAL PROCEED YOU ARE 3.851F4, A MOTION TO LEAVE TO AMEND CAN ONLY BE GRANTED IF IT'S FILED MORE THAN 30 DAYS IN ADVANCE OF THE EVIDENTIARY HEARING--

>> WE KNOW THAT.

HERE'S THE PROBLEM THAT I HAVE. YOU'VE GOT A VERY COMPLICATED CASE FOR SOMEBODY COMING IN. I'M NOT SURE THAT, YOU KNOW, ONCE-- THAT THERE WASN'T AN EARLIER MOTION TO CONTINUE, BUT WE'VE GOT ISSUES.

LET'S JUST TAKE THE DEMETRIUS JONES.

>> OKAY.

>> WE DON'T WANT TO CREATE A RIGHT TO EFFECTIVE ASSISTANCE OF POSTCONVICTION COUNSEL, BUT WE'VE GOT THE MARTINEZ CASE OUT THERE.

IF THERE'S-- IF THIS WERE, AND I'M NOT EVALUATING.

I GUESS MY QUESTION IS WHAT IS THE-- DON'T WE HARM THE PROCESS MORE IF WE DON'T AT LEAST ALLOW THAT DEMETRIUS JONES CLAIM TO GO

BACK FOR AN EVIDENTIARY HEARING?

>> NO, BECAUSE IT'S REFUTED BY THE RECORD.

>> WELL, THAT'S ANOTHER-- IS THAT WHAT THE JUDGE--

>> THE JUDGE SAID IT WAS TOO LATE.

>> OKAY.

SO YOU'RE--

[INAUDIBLE CONVERSATIONS]

>> IT IS ALSO REFUTED BY THE RECORD WHICH THIS COURT HAS, YOU KNOW, IT'S JUST LOOKING AT THE RECORD.

MR. JONES NEVER TESTIFIED ABOUT ANYTHING TO DO WITH THE LEON HADLEY MURDER AT ALL IN THIS TRIAL.

HE ONLY TESTIFIED ABOUT THAT IN FEDERAL TRIAL.

MR. SMITH WAS, OF COURSE, PRESENT AT HIS OWN FEDERAL TRIAL AND HAD HIS OWN COPY OF THE TRANSCRIPT.

THE STATE THEN PROVIDED A COPY OF THAT TRANSCRIPT IN PRETRIAL DISCOVERY, AND MR. SMITH'S ATTORNEYS ACTUALLY QUESTIONED MR. JONES ABOUT THE FACT THAT HE HAD LIED TO THE PEOPLE WHO OFFERED HIM A PLEA WHICH HE ADMITTED, AND HE DIDN'T EXPECT TO BE CHARGED WITH ANYTHING ELSE, AND THIS COURT ON DIRECT APPEAL HELD THAT THEY COULD NOT GO FURTHER INTO THE SPECIFIC ACTS OF MISCONDUCT OF MR. JONES. SO WE HAVE NO VIOLATION, NO GIGLIO VIOLATION.

WE HAVE INFORMATION THAT WAS DISCLOSED AND USED TO THE EXTENT IT COULD BE.

>> WELL, THAT'S, I MEAN, FOR THIS PARTICULAR ISSUE, SO YOU WOULD SAY THAT WE COULD AFFIRM ON AN ALTERNATIVE GROUND?

>> I WOULD SAY YOU CAN AFFIRM ON THE FACT THAT IT WAS UNTIMELY. I WOULD SAY THAT YOU COULD AFFIRM ON THE FACT THAT THERE

WAS NO GOOD CAUSE.
THIS INFORMATION WAS AVAILABLE
IF THEY WANTED TO MARRY THE
CLAIM, THEY COULD HAVE WHEN THEY
FILED THE FIRST MOTION, SO THERE
WAS NO CAUSE TO AMEND, AND THE
CLAIM IS PRECEDED BY THE RECORD.
AND AS FAR AS MR. DAVIS, THE
TRIAL COURT FOUND HIM TO BE
INCREDIBLE.

THIS COURT DOESN'T--

[INAUDIBLE]

THE MOTION TO AMEND--

>> YES.

>> THE OTHER ISSUE IS AN ISSUE
OF--

>> THE SPEEDY TRIAL.

>>-- THE SPEEDY TRIAL.

AND I WOULD ASSUME THAT ONCE THE
DEFENSE ATTORNEY ASKED ABOUT THE
SPEEDY TRIAL, I THOUGHT I READ
SOMEPLACE THAT HE, THAT THE
DEFENSE ATTORNEY SAID THAT HE
WAS ON THE PHONE WITH MR. SMITH
AT THE TIME THEY WERE DISCUSSING
THIS, AND MR. SMITH ESSENTIALLY
AGREED TO THE THE TOLLING.

NOW, DID MR. SMITH AGREE TO 30
DAYS OR 45 DAYS OR-- WHAT'S THE
ISSUE HERE?

>> WELL, IN THE ORIGINAL MOTION,
THE ISSUE WAS WHETHER HE AGREED
TO 30 OR 45.

HE'S NOW SAYING HE AGREED TO
NOTHING, BUT NONE OF THAT
MATTERS BECAUSE WE DON'T NEED
HIS AGREEMENT TO TOLL SPEEDIES,
PARTICULARLY IN A SITUATION LIKE
THIS WHERE THE MOTION FOR-- THE
DEMAND FOR SPEEDY TRIAL WAS
FILED IN A SITUATION WHERE THE
DEFENSE WAS TRYING TO HAVE A
MOTION TO DISMISS ON THE
INTERSTATE AGREEMENT IN
DETAINERS HEARD BEFORE THE STATE
GETS TRANSCRIPTS SHOWING THAT
THE DEFENDANT HAD PREVIOUSLY
WAIVED THAT, WAIVED THAT SPEEDY
TRIAL PERIOD.

SO YOU HAVE A BAD FAITH DEMAND

AND, OF COURSE, THE TRIAL COURT-- IF IT NEEDS ADDITIONAL TIME TO HEAR PRETRIAL MOTIONS-- CAN TOLL IT--

>> THAT IT WAS A BAD FAITH DEMAND?

>> WHAT?

>> WAS THERE A FINDING--

>> NO.

BECAUSE THIS ONLY COMES UP, BUT IF YOU LOOK AT THE CIRCUMSTANCES OF THE DEMAND, THE DEFENSE ATTORNEY FILED HIS MOTION TO DISMISS UNDER THE IAD.

HE SETS IT FOR HEARING.

THE TRIAL COURT-- STATE SAYS WE NEED TIME TO RESPOND BECAUSE WE HAVE TO GET THESE TRANSCRIPTS BECAUSE WE BELIEVE HE'S WAIVED IT.

THE TRIAL COURT SAYS, FINE, I'M RESETTING THE MOTION.

THE DEFENSE ATTORNEY SAYS, NO, I WANT MY MOTION HEARD RIGHT NOW.

THE TRIAL ATTORNEY SAYS I'M NOT ALLOWING YOU TO CONTROL MY CALENDAR, WE'RE CONTINUING THIS HEARING.

AND AT THAT POINT THE DEFENSE ATTORNEY THEN ON THE RECORD FILES THE DEMAND FOR SPEEDY TRIAL.

BUT HE STILL WANTS THE MOTION HEARD.

HE'S NOT REALLY READY FOR TRIAL. HE'S TRYING TO FORCE AN EARLY RULING BEFORE THE STATE CAN RULE ON HIS MOTION TO DISCHARGE UNDER THE IAD IS FRIVOLOUS.

AND, OF COURSE, THE TRIAL COURT HAS THE AUTHORITY TO TOLL SPEEDIES ALL ON ITS OWN WHEN THERE'S A NEED TO HAVE ADDITIONAL TIME TO HEAR DISPOSITIVE MOTIONS AS THERE WAS WITH THIS MOTION TO DISMISS.

AND AS FAR AS THE MEDICAL EXAMINER, WHAT THEY'RE CLAIMING IS THE DEFENDANT COMMITTED PERJURY IN FILING THAT FIRST

3.851 BECAUSE HE SWORE THAT
THERE WAS NO MEDICAL EXAMINER,
AND NOW THEY'D LIKE TO SAY,
WELL, THERE WAS A MEDICAL
EXAMINER, HE JUST DIDN'T HELP
THEM.

BUT, OF COURSE, THEY GOT OUR
MEDICAL EXAMINER TO AGREE THAT
THEIR THEORY OF DEFENSE WAS
POSSIBLE.

WHAT THEY WERE PRECLUDED FROM
DOING WAS HAVING OUR MEDICAL
EXAMINER EXPLAIN HOW AUTOEROTIC
ASPHYXIATION WORKS.

BUT THEY GOT OUT THAT THERE WAS
A POSSIBILITY THAT SHE DIED
ACCIDENTALLY WHICH WOULD HAVE
EXCULPATED MR. SMITH OF THIS
MURDER.

IF THE COURT HAS NO FURTHER
QUESTIONS, THE STATE
RESPECTFULLY REQUESTS YOU
AFFIRM.

>> YOU'VE GOT 13 SECONDS.

>> HOPEFULLY, I WON'T EVEN NEED
THAT.

I JUST WANTED TO POINT OUT THAT
WE AGREE WITH WHAT THE COURT'S
SUGGESTED.

THE RULING THAT THE STATE IS
ASKING THE COURT TO MAKE WAS NOD
MADE BY THE CIRCUIT COURT JUDGE.
THERE WAS NO RECORD, NO RULING
ON THE MERITS.

IF THAT, IF THIS CASE, IF THAT
ISSUE WAS TO BE RESOLVED AS
SUGGESTED, THAT WOULD HAVE TO BE
DONE BY THE CIRCUIT COURT.

I THINK THERE'S NOT ENOUGH
EVIDENCE IN THIS RECORD THAT
WOULD ALLOW THIS COURT TO AFFIRM
ON THAT ALTERNATIVE BASIS.

THE SPEEDIES--

[INAUDIBLE]

DEFENSE ATTORNEY?

>> THE INFORMATION WAS AVAILABLE
IN TERMS OF WHAT MR. JONES SAID.

THE ISSUE, THOUGH, WAS WHY
WASN'T HE PROSECUTED?

AND WHY WAS-- WHAT WAS THE

DECISION THAT WAS MADE BY THE STATE AND THE FEDERAL PROSECUTORS TO ALLOW HIM TO CONTINUE TO COOPERATE DESPITE THE FACT THAT HE HAD MADE A-- HE HAD FABRICATED TESTIMONY IN THE CASE?

THE FACT THAT THEY DIDN'T ASK HIM ANY QUESTIONS ABOUT LEON HADLEY CASE WAS JUST A WAY OF AVOIDING THE ISSUE OR TRYING TO PROTECT HIM AND PROTECT HIS CREDIBILITY FROM ATTACK. BUT THE FACT OF THE MATTER IS THAT THE STATE NEVER REVEALED TO THE DEFENSE IN THIS CASE WHY THEY DIDN'T PROSECUTE HIM, ESPECIALLY IN A CASE WHERE YOU HAVE SO MANY CORROBORATING WITNESSES.

ALL OF THEM HAVE THE SAME STORY TO TELL WHICH IS THAT, YES, I'M GETTING A BENEFIT FROM THIS, BUT I'M GOING TO MAKE SURE THAT I TELL THE TRUTH BECAUSE THAT'S ALL I'M HERE TO DO IS TO TELL THE TRUTH, AND I'M GOING TO BE PUNISHED BY THE PROSECUTION IF I DON'T TELL THE TRUTH.

WELL, THIS ONE DIDN'T TELL THE TRUTH.

HE WASN'T PUNISHED.

AND I THINK IN A CASE LIKE THIS, THIS IS A VERY BIG ISSUE THAT NEEDS TO BE EXPLORED ON THE MERITS.

THE ISSUE ABOUT THE SPEEDIES, THE CONJECTURE THAT WAS JUST MADE THAT THE DEFENSE WAS TRYING TO GET A RULING ON A MOTION TO DISMISS AND THEY WERE FILING THIS IN BAD FAITH IS NOT A FINDING THAT WAS MADE BY THE COURT BELOW, AND IT'S COMPLETELY THE CONJECTURE OF THE PROSECUTOR.

THANK YOU.

I HAVE NO FURTHER QUESTIONS.

>> THANK YOU, COUNSEL.

