

> NEXT CASE OF THE DAY IS
BROOKS VERSUS STATE OF FLORIDA.
TEST.

>> WE'RE READY WHEN YOU ARE,
COUNSEL.

>> GOOD MORNING.

LINDA McDERMOTT ON BEHALF OF
LAMAR BROOKS.

THIS CASE IS BEFORE THE COURT ON
THE 3.850 APPEAL FROM DENIAL OF
THE RELIEF AND THE CLAIM THAT I
WOULD LIKE TO PRESENT TO THE
COURT THIS MORNING IS REALLY
SORT OF A COMBINATION OF CLAIM
ONE AND TWO AND ALSO DRAWING ON
CLAIM FOUR, WHICH IS THE NEWLY
DISCOVERED EVIDENCE CLAIM.

AT BROOKS' TRIAL THERE WAS,
THERE WAS NO EVIDENCE, THIS
COURT FOUND THERE WAS NO
EVIDENCE ACTUALLY LINKING HIM TO
THE SCENE OF THE CRIME OR TO THE
VICTIM ON THE EVENING OF THE
CRIME.

THERE WAS SOME EVIDENCE PUTTING
HIM, EXCUSE ME, IN CRESTVIEW,
BUT THAT WAS THE EXTENT OF WHAT
THE STATE COULD DO IN TERMS OF
RELATION TO THE VICTIM.

>> THERE'S NO CONFESSION OR
EXCULPATORY STATEMENTS MADE BY
MR. BROOKS IN THIS CASE?

>> RIGHT.

>> WE HAVE THE EVIDENCE FROM ONE
OF THE INDIVIDUALS WHO HAD BEEN
IN THE CAR ABOUT DRY RUNS
PREVIOUSLY BUT NOT ON THE NIGHT
OF THE EVENT?

>> RIGHT.

>> THAT THEY HAD PLANNED TO DO A
MURDER BUT DIDN'T?

>> RIGHT.

>> OKAY.

>> HE OBVIOUSLY HAS THE ISSUE
WHERE HE HAD RECANTED.
HE WAS PUT IN JAIL, CHARGED WITH
PERJURY AND WHEN HE WAS FACING
A SIGNIFICANT PERIOD OF TIME HE
THEN CONTACTED THE STATE AND
SAID I CAN GIVE YOU ADDITIONAL

INFORMATION WHICH THEN RESULTED
IN HIM BEING RELEASED AND
RECEIVING PROBATION FOR THE
PERJURY CHARGES.

SO AT THE TRIAL THERE WAS MUCH
EVIDENCE THAT WAS DISCOVERED BY
THE LAW ENFORCEMENT THAT WASN'T
PRESENTED TO THE JURY AND WHAT
OCCURRED WAS THAT THE TRIAL
ATTORNEYS OPENED THE TRIAL BY
TELLING THE JURY THAT THEY WOULD
HEAR THIS EVIDENCE, THIS
BENEFICIAL, EXCULPATORY EVIDENCE
OF BROOKS.

IT CONCERNED ANOTHER SUSPECT.
IT CONCERNED THE PHYSICAL
EVIDENCE.

IT CONCERNED, AND ONE THING THEY
DIDN'T TELL THE JURY THEY WOULD
HEAR BUT THAT IS INCLUDED IN THE
CLAIM THE ISSUE ABOUT THE
TIMELINE.

NOW AT THE EVIDENTIARY
HEARING --

>> YOU SAID THEY SAID THERE
WOULD BE EVIDENCE OF ANOTHER
SUSPECT.

>> YES.

>> AND THIS IS MR. GUNDY?

>> MR. GUNDY, YES.

>> AND HAD THEY DEPOSED HIM OR
TALKED TO HIM OR WERE THERE ANY
STATEMENTS FROM HIM PRIOR TO THE
TRIAL?

>> NO, NOT AT THE TIME OF THE
TRIAL.

THE LAW ENFORCEMENT HAD SPOKEN
TO GUNDY AT THE TIME OF THE
TRIAL BECAUSE HE APPEARED ON
SORT OF THE RADAR WITHIN HOURS
OF --

>> WAS WHAT LAW ENFORCEMENT GOT FROM
HIM TURNED OVER TO THE DEFENSE?

>> YES.

THE MAJORITY OF THIS CLAIM,
OTHER THAN ONE PORTION OF IT
INEFFECTIVE ASSISTANCE OF
COUNSEL.

EVEN AS THE PORTION OF MELISSA
THOMAS.

TRIAL COURT FOUND YOU HAD THAT INFORMATION.

IT HAS BEEN OUR INTENTION THAT THIS IS BRADY AND GIGLIO EVIDENCE.

IN ANY EVENT THE MAJORITY WAS TESTIFIED TO AT THE EVIDENTIARY HEARING. KNEW ABOUT IT.

>> APPROACH ON HOW THIS ONE CAME DOWN WAS DIFFERENT PROCEDURALLY. AS I READ THE RECORD AND IT APPEARS COUNSEL WAS ANTICIPATING WHAT THE STATE WAS GOING TO PROVE AND WAS GOING TO USE STATE WITNESSES TO SOME OF THE EVIDENCE?

IS THAT A FAIR STATEMENT?

THEN THE STATE LIMITED WHAT THEY ACTUALLY PLACED BEFORE THE JURY AND EVEN LIMITED THE DEFENSE ATTORNEY AS YOU TRIED TO GO INTO SOME OF THESE THINGS?

>> RIGHT.

>> SAYING THAT IS BEYOND THE SCOPE?

>> YES.

>> DOESN'T THAT GIVE US A LITTLE DIFFERENT POSTURE THAN IF A LAWYER DIDN'T -- I MEAN IT IS CLEAR A LAWYER DOESN'T KNOW ANYTHING ABOUT THE FACTS AND DOES INVESTIGATE.

SO WE HAVE A LITTLE DIFFERENT TWIST.

>> CERTAINLY THERE IS MORE THAN JUST ONE ASPECT TO BEING AN EFFECTIVE TRIAL COUNSEL.

YOU HAVE TO HAVE THE EVIDENCE AND OBTAIN THE EVIDENCE AND THEN YOU HAVE TO EFFECTIVELY PRESENT THE EVIDENCE.

SO PRESENTING IT AT THE TRIAL WAS JUST AS CRITICAL AS KNOWING ABOUT IT BECAUSE --

>> AS I LOOK THROUGH SOME OF THE THINGS, I DON'T SEE THEY HAVE ANYTHING TO DO WITH ANYTHING LIKE THE GREEN NISSAN. I DON'T KNOW STILL AS WE SIT HERE HOW THAT WAS SUPPOSEDLY INVOLVED?

THE HAIR, I DON'T KNOW WHO'S
HAIR IT WAS.

I MEAN THERE IS NO EVIDENCE.
AND MAYBE IT WAS THE VICTIMS?
UNDERSTAND WHAT I'M SAYING?

>> YES.

>> THERE'S A LOT OF THESE THAT
ARE STILL REALLY NOT CONNECTED.

>> SURE.

>> YOU CAN SAY THIS IS THE
PREJUDICE BECAUSE THEY DIDN'T
PUT ON AN EYEWITNESS OR
SOMETHING LIKE THAT.

>> RIGHT.

WELL I MEAN I THINK WHEN YOU
LOOK AT IN COWLES VERSUS WHITLEY
THE U.S. SUPREME COURT TALKS
ABOUT A WAYS TO USE EXCULPATORY
EVIDENCE.

IN THIS IT WAS EXCULPATORY AND
TRIAL COUNSEL DIDN'T KNOW ABOUT.
SUPREME COURT TALKS ABOUT WAYS
YOU CAN USE IT IN YOUR CASE AND
SORT OF GIVES US ALL A LITTLE
BIT OF INSTRUCTION, YOU CAN PUT
WITNESSES ON WHO HAVE, FOR
EXAMPLE, FORENSIC EXAMINERS TO
TALK ABOUT THE EVIDENCE.

YOU CAN ASK THE LEAD
INVESTIGATOR ABOUT WHETHER OR
NOT THAT WAS FOLLOWED UP ON.
AND I THINK THE GREEN NISSAN,
THAT WAS THE POINT OF THAT.
THAT WAS THERE WAS THIS
INFORMATION THAT WAS PROVIDED.
AND IT WAS SIGNIFICANT ENOUGH
FOR LAW ENFORCEMENT TO SEND OUT
A BOLO TO, YOU KNOW, CONSIDER
THAT, IT HAD SOME LINK TO THE
CRIME, YET THEY NEVER WENT AND
ACTUALLY INVESTIGATED IT.

>> YOU BILL HAVE -- YOU STILL
HAVE, WE DON'T KNOW, DO WE?

>> RIGHT.

BUT SORT OF, FOR DEFENSE
COUNSEL'S PERSPECTIVE THEY DON'T
HAVE TO BECAUSE THAT IS NOT
THEIR BURDEN.

IT IS THE STATE'S BURDEN.
SORT OF ONE OF THOSE ANGLES,

THIS IS A RUSH TO JUDGMENT.
LOOK AT ALL THE EVIDENCE THAT
WAS OUT THERE THAT NEVER GOT
INVESTIGATED.

>> HOW DO YOU CROSS INTO THE
PREJUDICE ARGUMENT IF YOU STILL
DON'T KNOW?

SOMEBODY BOUGHT TWINKIES AT THE
CONVENIENCE STORE THAT NIGHT.
SO WHAT?

THEY DIDN'T INVESTIGATE IT
BECAUSE THEY MAY HAVE FOUND THAT
THERE WAS SOME POISON OR
SOMETHING.

YOU KNOW WHAT I'M SAYING?

>> YES.

>> HOW DO WE CROSS THE BRIDGE TO
GET TO THE PREJUDICE?

I SEE THESE THINGS AND YOU
WOULD PROBABLY GO INVESTIGATE
THEM BUT TO WHAT RESULT?

>> I THINK WHAT HAPPENS IS, WHAT
HAPPENED AS THE POST-CONVICTION
COURT AND THE STATE TRIED TO
MAKE IT MR. BROOKS' BURDEN TO
SHOW THAT HE IS INNOCENT OR TO
SHOW THAT GUNDY ACTUALLY DID THE
CRIME, THAT IS NOT HIS BURDEN.
HIS BURDEN WAS TO SHOW THAT
CONFIDENCE IS UNDERMINED AND THE
TRIAL COUNSEL'S BURDEN WAS EVEN
LESS BUT --

>> WITNESS IS PART OF THAT.
NOT SPECULATION FOR WHAT IT COULD
BE.

THERE HAS TO BE SOMETHING THAT
SHOWS SOME PREJUDICE?

>> I THINK WHAT I'M TRYING TO
GET AT IS HE COULD HAVE PUT ALL
THESE THINGS ON TO SHOW
REASONABLE DOUBT.

THAT WOULD HAVE BEEN THE
PREJUDICE.

>> HOW DO YOU TEST THAT?
HOW DO YOU EVER HAVE A COURT
EVALUATE WHAT EFFECT?

YOU COULD HAVE A LIST A MILE
LONG.

HAS NOTHING TO DO, ACTUALLY,
WITH WHAT HAPPENED THAT EVENING

BUT THERE ARE PEOPLE WALKING AROUND, THERE ARE OTHER PEOPLE WALKING AROUND THE STREET THAT NIGHT.

I MEAN, SO WHAT?

THEY DIDN'T PUT IT ON BECAUSE THEY'RE NOT INVOLVED IN THIS.

YOU SEE WHAT MY CONCERN IS?

I SEE YOUR LONG LIST.

YOU HAVE 12 OR 13 THINGS.

>> RIGHT.

>> THAT THEY SHOULD HAVE USED AND BUT I DON'T, THAT'S WHERE I AM HAVING PROBLEMS.

>> IN TRYING THIS CASE WHAT I THINK TRIAL COUNSEL WAS TRYING TO DO IN THE OPENING STATEMENT, BECAUSE THEY MENTIONED THE GREEN PICKUP TRUCK AND PUT IT ON IN THE PROFFER.

WHAT THEY WERE TRYING TO DO IS TO SHOW THAT THE INVESTIGATION HADN'T BEEN ADEQUATE.

AND THAT THERE WAS NOTHING PUTTING BROOKS IN THAT CAR WITH THAT NIGHT OR WITH THE VICTIM THAT NIGHT.

THEREFORE WITH THE POLICE SHOULD HAVE DONE A BETTER JOB.

BECAUSE ALL THE THINGS WERE LEFT OUT, THE JURY, YOU CAN'T FEEL CONFIDENT THAT THIS IS THE RIGHT GUY.

SO THAT'S WHERE SORT OF OUR PREJUDICE COMES FROM, IS THAT THE SAME ARGUMENTS THERE THAT THE JURY WOULD HAVE BEEN GIVEN THINGS THAT COULD HAVE ESTABLISHED REASONABLE DOUBT.

NOW, IN TERMS OF THE SIGNIFICANCE OF THE GREEN PICKUP TRUCK OR THE CAB CALL, I THINK IF YOU'RE TRYING TO PRIORITIZE, OBVIOUSLY THE GUNDY INFORMATION WAS THE MOST SIGNIFICANT INFORMATION AND THEN THEY HAD A CONFIDENTIAL INFORMANT WITHIN HOURS SAYING THAT GUNDY WAS WITH THE VICTIM THAT NIGHT. WHEN THEY TALKED TO GUNDY, HE

DISPUTED THAT.
HE DISPUTED HE WAS AT THE CLUB,
CLUB RACHEL THAT EVENING EVEN
THOUGH THE INFORMATION HAD BEEN
THAT HE WAS THERE AND THAT
PEOPLE HAD SEEN HIM WITH THE
VICTIM.

PEOPLE HAD KNOWN THAT THIS WAS
HIS GIRLFRIEND.

AND THEN YOU HAVE THIS K-9
WHO TRACKS FROM THE CRIME
SCENE TO GUNDY'S RESIDENCE WHERE
HE IS STAYING WITH HIS
GRANDMOTHER.

THE JURY DOESN'T HEAR THIS.

>> YOU HATE TO PICK ON EACH ONE ---
IN THAT CASE THEY STARTED THE
DOG FROM A DIFFERENT AREA THAN
THE CRIME SCENE?

>> WELL THEY STARTED THE DOG
WHERE THEY COULD PICK UP THE
SHOE TRACK.

SO WHEN THEY COULD PICK UP THE
SHOE TRACK ---

>> EVIDENCE WAS YES, GUNDY DID
HAVE A WHITE GIRLFRIEND, NOT
THIS VICTIM BUT HE DID HAVE A
CAUCASIAN GIRLFRIEND WITH A
CHILD.

>> WHAT YOU'RE SAYING THE JURY
NEVER HAD THE OPPORTUNITY TO
WEIGH THIS, THE JURY NEVER HAD
OPPORTUNITY TO SAY HOW
SIGNIFICANT IS THIS K-9
INFORMATION.

>> SO THE CASE YOU CITED IS THE
ONE THAT WOULD STAND FOR THE
PROPOSITION THAT ALL OF THESE
DIFFERENT FACTORS THAT MAY OR
MAY NOT, AS A MATTER OF FACT
HAVE ANY CONNECTION, THAT THEY
HAVE TO BE THROWN BEFORE A JURY
AND IF A LAWYER DOES NOT, THEN
OUR LAW, U.S. SUPREME COURT LAW,
SAYS THAT UNDERMINES OUR
CONFIDENCE BECAUSE THAT COULD
CREATE REASONABLE DOUBT EVEN
THOUGH NEVER SHOWN IN THE
PREJUDICE PRONG THAT THOSE
THINGS HAVE SOME FACTUAL ---

>> WHAT I KYLE SHOWS YOU HOW YOU CAN PUT DIFFERENT EVIDENCE ON.

IT DOESN'T SAY YOU HAVE TO PUT EVERYTHING ON.

BUT WHAT SELLING IT ABOUT THIS THE TRIAL COUNSEL OBVIOUSLY THOUGHT THIS INFORMATION WAS SIGNIFICANT ENOUGH TO TELL THE JURY YOU'RE GOING TO HEAR ABOUT THIS.

BECAUSE THEIR THEORY WAS THAT THERE IS REASONABLE DOUBT. AND SO TRIAL COUNSEL, PUTTING OURSELF IN TRIAL COUNSEL'S SHOES THOUGHT THE JURY SHOULD HAVE THIS INFORMATION.

THAT IT WOULD PROVIDE THEM WITH REASONABLE DOUBT.

THAT THE INVESTIGATION WAS NOT ADEQUATE AND THAT IT WAS A RUSH TO JUDGMENT TO, AS SOON AS, AS SOON AS THEY LINKED WALKER DAVIS WITH RACHEL CARLSON TO STOP LOOKING INTO THESE OTHER THINGS. THEY TOOK THE PERSON'S WORD FOR IT, THE PERSON WHO TOOK THE CAB TO THEIR HOME. THEY JUST STOPPED. THEY STOPPED ON THE GREEN PICKUP TRUCK.

AND STOPPED WITH GUNDY EVEN THOUGH THEY HAD THE LIST, THE MEMO FROM LAW ENFORCEMENT, THAT TALKED ABOUT ALL THE EVIDENCE THAT THEY HAD OF GUNDY WITH THE CIGARETTES, WITH INCONSISTENT STATEMENTS AND WITH THE WITNESSES WHO PUT THEM WITH THE VICTIM THE NIGHT AND THE DOG TRAIL.

SO TRIAL COUNSEL CLEARLY THOUGHT ALL OF THESE THINGS WERE SIGNIFICANT AND THAT THEY COULD MAKE A CASE TO SHOW THE JURY, THERE WAS REASONABLE DOUBT ABOUT MR. BROOKS' GUILT.

WHAT TRIAL COUNSEL DID, THEY TOLD THE JURY, YOU'RE GOING TO HEAR THIS AND THE JURY DIDN'T HEAR IT.

THAT IS, THAT IS, THE JUDGE
MAKES THE POINT IN DENYING
MR. BROOKS THAT YOU WOULD LOSE
CREDIBILITY WITH THE JURY IF YOU
PUT SOMETHING UP THAT CAN BE
COMPLETELY REBUTTED BUT HERE
THEY TOLD THE JURY, HERE ARE ALL
THESE THINGS.

CLEARLY THEY KNEW THERE WAS SOME
PROBLEMS WITH SOME OF THE
EVIDENCE OR SOME THINGS THAT
MIGHT BE REBUTTABLE BUT THEY
WERE STILL GOING TO PRESENT IT.
WHEN THEY DIDN'T DO THAT THE
JURY, TALKING ABOUT LOSING
CREDIBILITY WITH THE JURY, THAT
WOULD BE VERY SIGNIFICANT IF THE
JURY HEARS WHAT YOU'RE GOING TO
HEAR THIS EVIDENCE AND THEN THEY
DON'T GET IT.

>> ON THAT POINT THEY THOUGHT
THEY COULD GET SOME OF THE
EVIDENCE IN CROSS-EXAMINATION?
IS THAT WHAT HAPPENED?
THAT THEY COULD GET IN
CROSS-EXAMINATION?

>> ON POST-CONVICTION THEY SAY
THAT WAS THEIR INTENT, THEY
WOULD CROSS-EXAMINE THE
WITNESSES AND GET THAT EVIDENCE
FROM THEM.

>> OKAY.

AND WHEN THEY DIDN'T, WHEN THEY
WEREN'T ABLE TO GET IT IN
CROSS-EXAMINATION, THEN THE
DECISION, AT SOME POINT THE
DECISION WAS MADE THAT THEY WERE
NOT GOING TO PUT ON EVIDENCE IN
THEIR CASE?

>> CORRECT.

>> AND THAT WAS THE SOLE REASON
FOR THAT, WAS THE SOLE REASON
FOR THAT, THEY WANTED TO HAVE A
SECOND CLOSING ARGUMENT?

>> WELL, THAT IS CERTAINLY THE
REASON THAT IT BECOMES WHAT
THEY'RE SAYING AT THE
POST-CONVICTION HEARING.

THERE WAS, FOR EXAMPLE, THEY
START TALKING ABOUT HOW WITH

GUNDY, ONE OF THE TRIAL ATTORNEYS SAYS, OH, WELL, YOU KNOW THERE WAS, HAD THIS OTHER GIRLFRIEND AND IT COULD HAVE BEEN REBUTTED BUT IF THAT WERE TRUE, THEN THEY WOULDN'T HAVE PROFFERED IT AND THEY WOULDN'T HAVE EVEN MENTIONED IT IN THEIR OPENING STATEMENT.

>> THAT GOES TO WHETHER THEIR STRATEGY WAS WISE.

BUT ON THE OTHER HAND, AREN'T THERE A LOT OF REASONS THAT GUNDY IS NOT REALLY A VIABLE ALTERNATIVE SUSPECT?

>> NOT AT ALL.

I MEAN HE IS NOT ACCOUNTED FOR. IN FACT WHAT HE SAYS, WHERE HE SAYS HE WAS, THE NEXT DAY, ONE OF THE STATE'S WITNESSES COMES BACK TO LAW ENFORCEMENT AND SAYS, I DID SEE GUNDY.

HE WAS AT THE CLUB.

HE GIVES THEM A TIME FRAME OF ABOUT 8:30.

WHICH PUTS HIM EXACTLY IN THE AREA AND PUTS HIM AT THE CLUB WHICH IS INCONSISTENT WITH GUNDY'S OWN STATEMENT.

AND THEN THIS IS WHERE I THINK IRA FERGUSON BECOMES IMPORTANT, THE NEWLY DISCOVERED EVIDENCE BECAUSE FERGUSON IS FOUND NOT TO BE CREDIBLE BY THE CIRCUIT COURT BUT IF YOU LOOK WHAT FERGUSON SAYS, HE IS COMPLETELY CORROBORATED BY ALL THE EVIDENCE THAT THERE WAS AT THE TIME OF TRIAL ABOUT GUNDY IN TERMS OF HAVING THE GIRLFRIEND WITH THE CHILD, AND SEEING HIM SPEAK TO THAT WOMAN THE NIGHT, HAVING MET GUNDY AT CLUB RACHEL'S AND SEEING GUNDY GO TALK WITH THE VICTIM THAT NIGHT.

SO, FERGUSON ACTUALLY CORROBORATES EVIDENCE FROM CHARLES TUCKER AND THE K-9 AND ALL OF THESE THINGS, THE CIGARETTE BUTTS, THEY ALL

CORROBORATE THE GUNDY
INFORMATION.

>> I THOUGHT, RESPECTFULLY I
THOUGHT THROUGH THIS
POST-CONVICTION THAT THERE WAS
EVIDENCE THAT GUNDY DID NOT REALLY
KNOW ANY OF THESE PEOPLE.
THIS WAS TOTALLY SEPARATE, THE
CAUCASIAN FEMALE WAS NOT THIS
VICTIM.

>> THE ONLY PERSON WHO SAYS THAT
WAS GUNDY.

GUNDY TESTIFIES THAT AT
POST-CONVICTION HEARING.

>> I THOUGHT THAT THERE WERE
OTHER WITNESSES OR OTHER
EVIDENCE THAT HIS CREDIBILITY
WAS JUST DESTROYED, WAS -- IN
GOING THROUGH IT.

AND THAT'S INCORRECT?

YOU THINK IT WAS NOT BY HIM?

>> I -- THE WITNESSES PRESENTED
AT THAT NEWLY-DISCOVERED
EVIDENCE HEARING WERE FERGUSON --

>> RIGHT.

>>> THERE WAS A WOMAN NAMED
MICHELLE HUTCHINSON.

SHE WAS PRESENTED TO SAY SHE DID
KNOW FERGUSON IN 1996 FROM
CRESTVIEW. AND KNEW GUNDY.

SHE COULDN'T SAY THEY KNEW EACH
OTHER BUT KNEW THE MEN FERGUSON
HUNG OUT WITH, ONE WAS THE
FATHER OF HER CHILD AND SHE KNEW
THOSE MEN KNEW GUNDY.

IT WAS SORT OF LIKE, NOT A VERY
DIRECT CONNECTION BUT SHE
CERTAINLY SUPPORTED WHAT
FERGUSON WAS SAYING, WHICH WAS I
USED TO COME UP IN 1996.

THE OTHER WITNESSES AT THAT
PORTION OF THE HEARING WERE
WITNESSES RELATED TO HOW THE
INFORMATION CAME ABOUT FROM THE
PRISON SYSTEM AND THEN
THE --

>> SAME PLACE AND THAT KIND OF
THING.

>> RIGHT. THEN THE STATE PUT GUNDY ON
TO SAY, I DIDN'T KNOW THIS

PERSON AND DIDN'T HAVE ANYTHING TO DO WITH THIS AND I DON'T KNOW FERGUSON.

SO THAT WAS THE ONLY EVIDENCE THE STATE PRESENTED TO REBUT MR. BROOKS' CLAIM.

I SEE THAT I'M IN REBUTTAL. IF I COULD RESERVE THE REST.

>> MAY IT PLEASE THE COURT.

OF THE ASSISTANT ATTORNEY CHARMAINE MILLSAPS.

STRICKLAND IS WHAT GOVERNS HERE. UNDER STRICKLAND YOU MUST PROVE DEFICIENT PERFORMANCE.

COWLES IS THE CASE SHE IS RELYING ON IS THROUGH STRICKLAND IS INEFFECTIVENESS.

THAT IS THE BRADY LINE OF CASES.

KYLE IS HOW YOU PRESENT STUFF AND WHAT YOU PRESENT.

THAT IS NOT WHAT WE'RE HERE TO DO TODAY.

THIS IS A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL.

THIS COURT KNOWS AS WELL AS ANYBODY COULD, THAT THERE ARE TWO PRONGS TO STRICKLAND AND THE SECOND PRONG OF PREJUDICE REQUIRES THAT YOU LINK THIS STUFF ALL UP.

>> PREJUDICE UNDER STRICKLAND IS THE SAME AS PREJUDICE UNDER BRADY.

>> WELL, NOT SAYING THE STANDARDS AREN'T BUT YOU HAVE TO PROVE PREJUDICE.

SHE IS FOCUSING ON THE FIRST PRONGS.

SHE IS NOT, SHE IS TELLING YOU HOW COWLES TOLD YOU COULD HAVE DONE SOME THINGS.

THAT DOESN'T PROVE PREJUDICE.

THEY DID NOT USE THAT PART OF COWLES, IT IS NOT PART OF THE BRADY --

>> I GUESS I THOUGHT THE ARGUMENT WAS, AND IT MAY NOT HAVE HOLD WATER, IS FIRST OF ALL THE DEFENSE LAWYER SAYS, I'M GOING TO PRESENT EVIDENCE.

I MEAN THEIR STRATEGY WAS REASONABLE.
THEY DON'T PRESENT EVIDENCE AND MISS McDERMOTT IS SAYING THAT THERE WAS EVIDENCE THEY COULD HAVE PRESENTED THAT WOULD HAVE CREATED A REASONABLE DOUBT?
>> THAT IS NOT WHAT THEY SAID IN OPENING.
THEY SAID, YOU WILL LEARN, YOU WILL HEAR, YOU WILL BE SHOWN. THEY DIDN'T SAY FOLLOWING 13 WITNESSES TO PROVE MR. GUNDY WAS THAT.
THEY DIDN'T SAY THAT.
THEY SAID --
>> WELL THEY DID TALK ABOUT THE SUBSTANCE OF WHAT THAT IS. THEY DIDN'T SAY, I'M GOING TO DO IT.
THEY DID --
>> REASONABLE DOUBT.
>> YOU WOULD EXPECT TO HEAR SOMETHING ABOUT THAT.
>> AND THEY DID SOME ABOUT SOME OF THIS.
SOME OF THIS DID COME OUT IN CROSS.
NOW A LOT OF IT, THEY WERE GOING TO, THEY TESTIFIED AT THE EVIDENTIARY HEARING THAT WE HAD NOT MADE THE DECISION YET WHETHER WE WERE GOING TO PRESENT OUR OWN DEFENSE?
>> WHAT WE WERE GOING TO DO, EVEN IF WE DIDN'T PRESENT OUR OWN DEFENSE, WE WOULD GET A LOT OF THIS THROUGH CROSS-EXAMINATION. AND INCIDENTALLY, YOUR HONOR, IN THE END THEY ARGUED REASONABLE DOUBT, SAYING THINGS ALONG LINES OF, YOU HEARD ALL OF THESE FDLE EXPERTS AND THEY COULD NOT TIE ANY OF THIS BLOODY CRIME SCENE BACK TO MY CLIENT. YOUR HONOR, THEY DID PRESENT AND ARGUED REASONABLE DOUBT.
>> NO DOUBT. NO DOUBT.
THAT IS THE NOT COMPLAINT.
THE COMPLAINT IS THEY DID NOT

HAVE WITNESSES UNDER SUBPOENA TO PLACE EVIDENCE BEFORE THE JURY THAT WOULD SUPPORT THE REASONABLE DOUBT THEORY.

THAT IS WHY I'M ASKING QUESTIONS ABOUT THE PREJUDICE.

WAS THERE TRULY EVIDENCE?

>> THEY TESTIFIED AT THE POST-EVIDENTIARY HEARING THAT THEY WERE FAMILIAR WITH THIS JUDGE'S PRACTICE.

IF THE STATE HAD WITNESSES UNDER SUBPOENA, THAT THEY HAD ASKED BEFORE THEY WERE LET GO.

IN OTHER WORDS, THEY DIDN'T THINK THEY HAD TO INDEPENDENTLY SUBPOENA THESE, THE STATE'S EXPERT WITNESSES.

THEY DIRECTLY TESTIFIED TO THAT. ONCE MORE, YOUR HONOR, I WOULD LIKE TO TELL YOU WHAT THEY TESTIFIED REGARDING THE SANDWICH.

THEY DID SAY THEY LIKE THE SANDWICH AND WOULD LIKE TO RETAIN IT AND ALL THAT BUT THEIR DECISION NOT TO PRESENT THEIR OWN DEFENSE CASE, I'M READING FROM MR. FUNK'S TESTIMONY, WAS NOT BASED SOLELY ON THE REROUTING THE SANDWICH.

IF THERE WAS A WITNESS COULD HAVE PUT A HOLE IN THE STATE'S CASE.

WHILE RETAINING THE SANDWICH CAN BE GREAT, SOMETIMES CRIMINAL DEFENSE LAWYERS GIVE THEMSELVES RETAINING THE SANDWICH IS GOING TO WIN THE DAY.

IT IS NOT FAIR, READING OF THEIR TESTIMONY THAT RETAINING THE SANDWICH WAS SOME OVERWHELMING MOTIVATION OF THEIRS.

IF THEY, IF THEY HAD HAD A WITNESS THEY THOUGHT COULD PUT A HOLE IN THE STATE'S CASE THEY WOULD HAVE.

>> I GUESS THIS WAS TRIED TWICE. WAS THIS AN IRONCLAD CASE? OR WAS THERE ROOM FOR DOUBT AS

TO WHETHER MR. BROOKS WAS INDEED
THE PERSON THAT DID THE,
COMMITTED THE MURDER?

WE KNOW THE CODEFENDANT HAD THE
MOTIVE BECAUSE IT WAS HIS
GIRLFRIEND, PREGNANT --

>> HE WAS THE FATHER OF THE
CHILD.

AND HE TOOK OUT A LIFE INSURANCE
POLICY ON, WHAT AT THE TIME WAS
A ONE-MONTH OLD AND WITHIN TWO
MONTHS THE CHILD IS

100,000-DOLLAR LIFE INSURANCE
POLICY.

>> AS FAR AS BROOKS, SO THE
QUESTION ABOUT UNDERMINING ABOUT
UNDERMINING CONFIDENCE ON THE
GUILT, I'M ASKING IS THIS CASE
OF OVERWHELMING GUILT AGAINST
MR. BROOKS?

>> INSTEAD OF MY LABELING IT,
LET ME TELL YOU WHAT I THOUGHT
THE MOST IMPORTANT PARTS OF OUR
EVIDENCE WERE.

FIRST OF ALL MR. BROOKS LIED
ABOUT HIS WHEREABOUTS THAT NIGHT
AND SAID HE WAS NOT IN
CRESTVIEW.

WE PUT HIM NOT ONLY IN
CRESTVIEW, YOUR HONOR, WE PUT
HIM 1.6, HALF A MILE AWAY FROM
THIS MURDER SCENE, AT 9:22 EXACTLY.

HE IS AT MELISSA THOMAS' HOUSE,
HALF A MILE FROM THIS MURDER.
AND THEY DIDN'T USE THE PHONE.
THEY GET HER PHONE RECORDS AT.

>> OBVIOUSLY A LOT OF PEOPLE
WERE IN THAT, SO THAT IS ONE
POINT BUT YOU'RE SAYING GUNDY
WAS IN THAT SAME AREA AND THAT
TIME?

>> THERE IS NIGHTCLUB, YOUR
HONOR, AROUND THAT AREA.
LOTS OF PEOPLE IN THE AREA.
THAT IS REALLY WHAT SHE WAS
RELYING ON.

THERE ARE LOTS OF PEOPLE.
THERE ARE NOT LOTS OF PEOPLE WHO
ARE COUSIN OF SOMEBODY WITH A
100,000-DOLLAR LIFE INSURANCE.

GUNDY DOESN'T KNOW THE WOMAN AND ABSOLUTELY HAS NO MOTIVE.

>> HOW DO WE KNOW THAT OTHER THAN GUNDY'S TESTIMONY?

THE REAL INTERESTING PART OF HER ARGUMENT TO ME IS THE EVIDENCE ABOUT GUNDY AND THE TRACKING OF THE DOG AND ALL THAT.

SO HOW, WHY WASN'T THAT SOMETHING THAT WOULD HAVE IN FACT MAY HAVE LED A JURY TO QUESTION WHETHER OR NOT SOMEONE ELSE MAY HAVE WOULD HAVE --

>> YOUR HONOR, IT IS VERY DANGEROUS.

AN EMPTY CHAIR DEFENSE DEPENDS ON IT BEING AN EMPTY CHAIR.

>> JUST TELL US WHY THAT EVIDENCE ABOUT OR THE INFORMATION ABOUT GUNDY IS NOT SIGNIFICANT?

>> GUNDY ONLY COMES UP, YES, THE DOG DID TRACK TO HIS GRANDMOTHER'S HOUSE BUT, AND THAT WAS --

>> WHERE HE LIVED OR WAS --

>> HE WAS STAYING THERE.

>> OKAY.

>> YES.

>> DID HE GO FROM THE SCENE OR GO FROM SOME OTHER LOCATION?

>> YOUR HONOR, I DON'T KNOW.

I THINK HE, HE IS NOT DISPUTING HE WAS AT HIS GRANDMOTHER'S HOUSE.

>> NO, NO.

I MEAN TO THE PIECE OF EVIDENCE OF THE DOG, WHERE DID THE DOG BEGIN THE SNIFFING?

WAS THE DOG REALLY FOLLOWING SOMEBODY FROM THE CRIME SCENE OR FROM SOMEWHERE ELSE?

>> HE WAS BY THE RAILROAD TRACKS WHEN THEY PICKED IT UP.

YOUR HONOR, THEY TALK IN THAT WAY LIKE FROM THE RAILROAD TRACKS AND STUFF LIKE THAT.

DISCUSS NOT SEEM POINT OF ORIGIN WAS THIS CAR.

>> THAT'S ALL I ASK.

IT WAS A FRIENDLY QUESTION
ACTUALLY.

>> OKAY.

THIS WOMAN WAS FOUND MURDERED IN
HER CAR WITH THE CAR RUNNING AND
THE BABY WAS IN THE BACK SEAT.

OKAY?

BUT THERE'S A GREAT DEAL OF
PROBLEMS, IF YOU REALLY ARE
GOING TO POINT TO A PARTICULAR
PERSON. FIRST OF ALL, MR. GUNDY,
WE BASICALLY LOOKED
AT GUNDY AND WHY WE THOUGHT
GUNDY CAME UP WAS REALLY BECAUSE
HE HAD A WHITE GIRLFRIEND WHO
HAD A LITTLE RED CAR.

THIS WOMAN WAS RACHEL CARLSON,
THE VICTIM, HAD A LITTLE RED
CAR.

SO THE ONLY CONNECTION BETWEEN
THEM.

JUST LIKE IN POST-CONVICTION --

>> WHY DON'T YOU FINISH ON
JUSTICE QUINCE'S QUESTION AS TO
WHAT YOU SAY ALL OF THE EVIDENCE
THAT POINTS TO THIS DEFENDANT.

>> OKAY.

>> THAT'S, WHEN I INTERRUPTED.
I APOLOGIZE FOR THAT.

>> OKAY.

SO WE HAVE HIM LYING ABOUT NOT
ONLY BEING IN CRESTVIEW BUT
BEING VERY CLOSE AT 9:22, THE
RECORDS SAY THAT HE WAS AT
MELISSA THOMAS'.

SHE IDENTIFIES HIM BEING AT
MELISSA THOMAS'.

HIS DNA IS FOUND ON A CIGARETTE
INSIDE OF MELISSA THOMAS' HOUSE.
HE IS DEFINITELY WITHIN THE AREA
AND LYING ABOUT HIS WHEREABOUTS.
WHAT'S MORE IS, THERE WERE, A
FRIEND OF HIS, THEY HAD DONE DRY
RUNS ON THIS.

YOUR HONOR, REALLY THE STATE HAD
A CASE OF, THIS WAS A CONSPIRACY
TO COMMIT FIRST DEGREE LIFE
INSURANCE MURDER AND WE HAD A
WITNESS TESTIFYING THEY WERE
DOING DRY RUNS.

THIS CRIME HAPPENED ON
WEDNESDAY.

BUT, AND HIS FRIEND CAME --
BROOKS AND HIS FRIEND CAME DOWN
TO EGLIN AIR FORCE BASE WHERE
WALKER DAVIS LIVED ON THAT
SUNDAY BEFORE THAT WEDNESDAY AND
ON BOTH MONDAY AND TUESDAY NIGHT
THEY DID DRY RUNS, INCLUDING HOW
THEY WERE GOING TO TRACK THE
VICTIM AND FOLLOWING THE VICTIM.

>> THIS IS THE TESTIMONY FROM
MARK GILLIAM, RIGHT?

>> IT IS.

>> WHAT WAS HIS RELATIONSHIP TO
THESE PEOPLE?

>> HE WAS FRIENDS.

>> WAS HE, A COCONSPIRATOR?
WAS HE PART OF THIS WHOLE GROUP?

>> WELL, THAT IS NO, YOUR HONOR.
BY THE TIME OF THIS CRIME WE
HAVE HIM DEFINITELY BACK AT HIS
AIR FORCE, AT HIS BASE IN
GEORGIA.

HE WAS DEFINITELY NOT INVOLVED
IN THIS MURDER.

THAT'S THE PROBLEM.

HE IS PRETTY CREDIBLE BECAUSE
HE'S NOT TRYING TO GET HIMSELF
OUT FROM UNDER THIS MURDER.
WE HAVE MILITARY RECORDS WHERE
THIS MAN IS AT THE TIME OF THIS
MURDER.

HE IS BACK AT THE BASE.

SO GILLIAM IS NOT GOING TO BE,
YOU KNOW, HE IS NOT TRYING, THE
JURY WOULD HAVE FOUND HIM HIGHLY
CREDIBLE IN TERSE OF HE WAS NOT
INVOLVED IN THE ACTUAL MURDER
BUT HIS OWN TESTIMONY WAS, HE
WAS INVOLVED IN THESE DRY RUNS.

AND NOW --

>> THERE IS DOCUMENTATION FOR
THOSE FOLKS BEING STOPPED IN
THAT AREA ON THOSE DRY RUNS?

>> YES, YOUR HONOR, THERE IS.

>> THERE IS DIRECT EVIDENCE OF
THAT, WHY BOTH TIMES THERE IS --

>> AND THERE ARE TWO SPEEDING
TICKETS IN THIS CASE.

SO YOU HAVE TO BE, ON THE WAY
BACK ON THE NIGHT OF THE MURDER
AN OFFICER STOPS RACHEL JONES ON
10:20.

THAT IS DIFFERENT SPEEDING
TICKET.

ON THESE DRY RUNS THERE ARE IS
SPEEDING TICKET AS WELL AND WE
HAVE AN OFFICER TESTIFYING.
WE CAN VERIFY WITH THIS
INDEPENDENT RECORD, WHEN MARK
GILLIAM WAS FOLLOWING ROCHELLE,
THE VICTIM'S CAR THAT NIGHT, WE
HAVE AN INDEPENDENT OFFICER
VERIFYING THAT IN FACT HAPPENED.
AND YOUR HONOR, WE CRITICALLY,
AND WE ALSO HAVE INDEPENDENT
MEDICAL, MILITARY RECORDS
VERIFYING THAT THAT GILLIAM WAS
NOT PART OF THE ACTUAL MURDER.
HE IS BACK AT THE BASE.

TO A JURY, WHY IN THE WORLD
WOULD YOU WHY WOULD YOU SAY YOU
WERE PART OF DRY RUNS OF MURDER
UNLESS YOU WERE?

THERE IS NO WAY THE STATE IS NOT
GOING TO PROSECUTE YOU.

>> WAS THERE ANYTHING IN THE
CAR, ANY WEAPONS, ANYTHING WITH
REGARD TO BLOOD, FOOTPRINTS,
ANYTHING LIKE THAT.

>> IN THE VICTIM'S CAR?

>> YES.

>> THERE WAS MASSIVE AMOUNTS OF
BLOOD.

>> ANY THAT CONNECTS IT WITH
THIS DEFENDANT?

OF COURSE THERE WAS BLOOD.
THE QUESTION IS, DOES IT CONNECT
THIS DEFENDANT?

YOU'RE HAVING OPPORTUNITY TO
TELL THE COURT WHAT THE EVIDENCE IS
AND I'M TRYING TO PULL IT OUT.

>> THERE WAS NO SCIENTIFIC
EVIDENCE FROM INSIDE THE CAR
THAT WOULD DEFINITELY CONNECT
BROOKS.

THERE WAS NONE OF HIS BLOOD OR
HIS DNA.

YOUR HONOR, THIS CRIME ALSO

OCCURRED IN 1996 SO OUR ABILITY TO, SO OUR ABILITY TO DO DNA TESTING WAS MUCH MORE LIMITED BACK THEN.

WE NEEDED LARGER SAMPLES AND THINGS LIKE THAT.

SO, YOU KNOW, THAT IS NOT AS TELLING AS IT MAY SEEM NOW, BUT, NO, YOUR HONOR, THERE WAS NOTHING FROM INSIDE THE CAR CONNECTING MR. BROOKS TO THE ACTUAL CRIMES.

>> SO SEEMS TO ME THAT WHAT YOU'VE TOLD US SO FAR IS THAT MR. BROOKS WAS IN THE VICINITY AND WE KNOW THAT BECAUSE HIS DNA WAS ON A CIGARETTE AT THIS LADY'S HOUSE WHO LIVED NEAR THE SCENE.

AND WE HAVE EVIDENCE FROM SOMEONE ELSE THAT MR. BROOKS WAS INVOLVED IN THE TWO DRY RUNS WHEN THEY TRIED TO KILL HER BEFORE.

WHAT ELSE?

SEEMS TO ME THAT THAT NIGHT WE HAVE NOTHING THAT REALLY PUTS MR. BROOKS AT THE SCENE.

WHAT DO WE HAVE THAT PUTS HIM AT THE SCENE THAT NIGHT?

NOT THE DRY RUNS, AND NOT AT THE LADY'S HOUSE BUT HERE AT THE MURDER?

>> WELL WE ALSO HAVE EYEWITNESSES, WE DON'T HAVE AN EYEWITNESS TO THE MURDER, NO, YOUR HONOR, WE DO NOT HAVE AN EYEWITNESS?

>> ISN'T THERE EVIDENCE OF CHANGING CLOTHES, CHANGING, AT LEAST THE INFERENCE OF CHANGING CLOTHES AFTER THE EVENT, AT THE THOMAS RESIDENCE?

>> WELL THAT, THAT TESTIMONY BECAME VERY AMBIGUOUS. BUT HE HAD, HE HAD A, HE HAD A BACKPACK WITH HIM AND EVERYBODY SAID HE ALWAYS CARRIED THE BACKPACK, OKAY?

SO WE DON'T KNOW WHERE THEY

CHANGED CLOTHES.
BUT WE ALSO HAVE EYEWITNESSES --
HERE'S NORTH THING, YOUR HONOR.
THEY GET THERE SOMEHOW BUT YET
THEY HAVE TO CALL ROCHELLE
JONES --
>> GET WHERE SOMEHOW?
>> GET FROM EGLIN TO CRESTVIEW.
>> OKAY.
>> STATE'S THEORY IS IN THE
VICTIM'S CAR.
THAT'S WHO DROVE THEM.
>> THE PROBLEM WITH THAT IS,
YOU'VE JUST SAID THAT HIS,
NOTHING CONNECTED HIM TO THAT
CAR, RIGHT?
THERE WAS NO DNA, NONE MUCH HIS
BLOOD, NONE OF THOSE KIND OF
THINGS CONNECTED HIM TO THE CAR,
RIGHT?
>> INSIDE THE CAR.
WE DO NOT HAVE FINGERPRINTS
INSIDE THE CAR.
>> SO HE GETS FROM EGLIN TO
CRESTVIEW. AND THEN WHAT?
>> THEY HAVE TO CALL ROCHELLE
JONES TO COME PICK THEM UP.
SO THAT IS VERY TELLING TOO.
THAT THEIR TRANSPORTATION HAS
DISAPPEARED.
SO --
>> SUPPOSE, MAYBE THEY
HITCHHIKED.
I MEAN, I'M JUST LOOKING FOR
SOMETHING THAT IS GOING TO HELP
ME UNDERSTAND THAT THIS MAN WAS
THERE AT THE SCENE PARTICIPATING
IN A MURDER?
>> AND, YOUR HONOR, WE NEED TO
NOT OVERLOOK MOTIVE.
HIS, BECAUSE IN HERE --
>> I KNOW THE COUSIN HAD A
MOTIVE.
THE COUSIN WAS SUPPOSEDLY THE
FATHER OF THE CHILD.
DID IT END UP EVEN THE COUSIN
WAS NOT THE FATHER OF THE CHILD?
>> THEY DID THE DNA --
>> THE COUSIN WHO OBVIOUSLY HAD
A MOTIVE IF HE BELIEVED HE WAS

THE FATHER OF THE CHILD AND HE WAS ALREADY MARRIED AND ALL THAT, RIGHT?

>> WELL HE HAS \$100,000 MOTIVE. YOUR HONOR, IT IS A VERY DAMNING FOR YOU TO TAKE OUT, NUMBER ONE, \$100,000 OF LIFE INSURANCE ON AN INFANT.

YOU KNOW, THIS IS NOT A BURIAL POLICY.

THAT FACT ITSELF AND TWO MONTHS LATER THIS CHILD ENDS UP DEAD.

SO, YOU KNOW, HE HAS.

THE COUSIN HAS MOTIVE.

>> I UNDERSTAND THAT COMPLETELY MUCH THE COUSIN HAS MOTIVE.

HE GOT A LIFE SENTENCE.

DIDN'T HE GET LIFE?

>> YES, THE COUSIN GOT LIFE.

>> WAS THAT DISCUSSED IN ANY OF THE PROCEEDINGS?

WHAT WAS THE TIMING ON THE CONVICTION FOR THE COUSIN AND WHEN THE COUSIN GOT LIFE?

>> CODEFENDANT WALKER DAVIS WAS TRIED FIRST.

BROOKS' FIRST TRIAL --

>> THIS WASN'T EVEN PRESENTED IN MITIGATION AT, AT THE, AT THE PENALTY PHASE IN THIS CASE THEN.

>> NO.

HE WAIVED ALL MITIGATION INCLUDING THAT.

BUT, YOUR HONOR, IF YOU'RE TALKING ABOUT THE HABEAS, I REALLY THINK THAT SHOULD HAVE BEEN BROUGHT OUT.

BRADSHAW VERSUS STUMPF AND CLAIMS LIKE THAT SHOULD NOT BE RAISED IN HABEAS PETITIONS.

IT SHOULD HAVE BEEN RAISED IN A 3.851 AND WE COULD HAVE ASKED THE PROSECUTOR ABOUT IT.

SO, NO, NOT ONLY DID HE WAIVE INCLUDING THE LIFE SENTENCE OF HIS CODEFENDANT, THAT WAS SPECIFICALLY MENTIONED IN THE KUH COLLOQUY AS ONE OF THE THINGS --

>> I GUESS WHAT I'M HEARING, IS

THERE OVERWHELMING EVIDENCE?
THERE IS CERTAINLY OVERWHELMING
EVIDENCE THAT DAVIS HAD THE
MOTIVE AND WHAT YOU'RE SAYING
BROOKS AS THE COUSIN MAKES SENSE
BUT DOES IT REALLY ANSWER
THE QUESTION AS TO
WHETHER THE EVIDENCE BEING
SUGGESTED SHOULD HAVE BEEN
PRESENTED, EITHER THAT THEY
DECIDED NOT TO, THAT WAS BAD
STRATEGY?

OR DIDN'T KNOW ABOUT WHETHER
THAT WOULD HAVE HELPED TO
ESTABLISH REASONABLE DOUBT, OR
IF WHAT YOU'RE SAYING NONE OF IT
WOULD BECAUSE THE THEORY WAS,
LISTEN, ONCE WE HAD THE LIFE
INSURANCE POLICY MOTIVE AND WE
HAD BROOKS AND DAVIS AS
CO-CONSPIRATORS, REALLY THE JURY
WAS NOT GOING TO BELIEVE THAT
THERE WAS THIS OTHER, YOU KNOW,
UNCONNECTED SUSPECT?

IS THAT YOUR ARGUMENT?

>> YES, THAT'S PART OF IT, BUT I
DO WANT TO, I DO WANT TO SAY
THAT WHAT JUSTICE QUINCE
AND I HAVE BEEN TALKING ABOUT
THE NO EVIDENCE INSIDE THE CAR
EVEN THOUGH THIS IS VERY BRIGHT,
THAT ARGUMENT WAS MADE TO THE
JURY.

UNDERSTAND SOMETHING.

WHAT SHE IS SAYING THEY SHOULD
HAVE HAD MORE EXPERTS, CALLED
THEIR EXPERTS THE SAME BUT WHAT
THEY WOULD TELL YOU AND WHAT
THEY DID DO AT THE EVIDENTIARY
HEARING WAS SAY, LOOK WE WERE
ABLE TO MAKE THAT ARGUMENT
ANYWAY WITHOUT CALLING ANYONE
WHY LOSE THE SANDWICH WHEN
WE CAN, THE ARGUMENT ABOUT
THERE BEING NO SCIENTIFIC
EVIDENCE RIGHT AT THE CRIME
SCENE, THAT WAS THEIR, THAT WAS
THEIR DEFENSE.

IT'S, YOUR HONOR, IT IS
IMPOSSIBLE TO SAY COUNSEL WAS

INEFFECTIVE OR NOT DOING X WHEN
COUNSEL DID X.

THAT WAS THEIR ARGUMENT.

WHAT SHE IS SAYING IT SHOULD
HAVE BEEN SUPPORTED WITH MORE
INDEPENDENT EXPERTS.

NOW I PERSONALLY SEE THIS CASE A
LOT MORE AS THE END OF WHAT YOU
SAID, JUSTICE PARIENTE.

I THINK ONCE THE JURY HEARS YOU
HAVE A \$100,000 LIFE
INSURANCE POLICY AND MR. GUNDY
HAS NO CONNECTION TO THE CHILD.
YOU CAN POINT YOUR FINGER ALL
YOU WANT AT MR. GUNDY, YOU'RE
STILL GOING TO BE CONVICTED OF
FIRST-DEGREE MURDER.

THANK YOU FOR YOUR TIME, IF
THERE ARE NO FURTHER QUESTIONS.
I ASK YOU TO AFFIRM THE TRIAL
COURT'S DENIAL OF
POST-CONVICTION RELIEF AND DENY
THE HABEAS PETITION.

>> THANK YOU.

REBUTTAL?

>> JUST TWO QUICK POINTS ABOUT
DEFICIENT PERFORMANCE.

FIRST OF ALL, THE STATE DIDN'T
HAVE ANY WITNESSES UNDER
SUBPOENA AND CERTAINLY, I'M
SORRY, THE STATE, THE DEFENSE
DIDN'T HAVE ANY WITNESSES
SUBPOENA.

SO EVEN IF THE JUDGE HAD A
PRACTICE OF SAYING, CAN THIS
WITNESS BE RELEASED, IF THE
STATE WASN'T CALLING THAT
WITNESS, THE DEFENSE WOULDN'T
HAVE HAD THE OPPORTUNITY TO PUT
THAT WITNESS ON.

SO THEY WERE, THEY WERE CAUGHT,
SORT OF FLAT-FOOTED WHEN THEY
WEREN'T ALLOWED TO PRESENT THE
EVIDENCE THEY WANTED TO PRESENT
THROUGH CROSS-EXAMINATION.

AND SECOND OF ALL, IN THAT SAME
VEIN, WHEN YOU MAKE
A DECISION, A TACTICAL DECISION
IT HAS TO BE REASONABLE.

THE WAY THEY SET THE CASE UP AND

THE EVIDENCE THAT THEY HAD TO TELL THE JURY THEY WOULD HEAR IT, TO THINK THAT IT WAS SIGNIFICANT ENOUGH THAT YOU WANTED THE JURY TO HEAR IT TO ESTABLISH REASONABLE DOUBT AND THEN NOT PRESENT IT, THAT WAS NOT REASONABLE.

>> BUT THE --

>> IT WAS A DECISION THAT THEY MADE.

>> THE TRIAL JUDGE REALLY, IN, IN THE DENIAL OF RELIEF HERE WAS BALANCED, THE EVIDENCE WITH THE CLOSING ARGUMENT SCENARIO AND SEEMED TO THINK THAT THE EVIDENCE WAS REALLY MARGINAL EVIDENCE AT BEST.

>> WELL, THE CLOSING ARGUMENT, OBVIOUSLY THAT IS NOT EVIDENCE.

>> WELL OF COURSE IT IS NOT. OF COURSE IT NOT --

>> THAT IS WHAT THE JURY IS TOLD.

>> BUT TRIAL JUDGE HERE, IN THIS PROCEEDING, AFTER HEARING EVERYTHING, SEEMED TO SAY THAT THE RIGHT TO HAVE THAT CLOSING OUTWEIGHED JUST VERY MARGINAL EVIDENCE.

I MEAN CERTAINLY YOU HAVE TO LOOK AT WHAT THE EVIDENCE IS AND HOW DOES IT CONNECT SOMEBODY.

>> RIGHT.

>> THAT, ISN'T THAT THE BASIS THOUGH OF THE TRIAL COURT'S RULING FOR WHY NO RELIEF HERE.

>> YES.

THAT'S WHY I'M SAYING THAT HE WAS RELYING ON TRIAL COUNSEL'S TESTIMONY THAT IS NOT SUPPORTED BY WHAT THEY DID BECAUSE THEY PROFFERED IT ALL.

THEY SAID, WE WANT TO PUT THIS ON AND THEN THEY COME BACK IN POST-CONVICTION AND SAYING IT WASN'T THAT BIG OF A DEAL.

THAT IS WHEN THE CIRCUIT COURT SAYS, OH, YEAH, THAT WASN'T THAT BIG OF A DEAL.

SO THEY JUST ARGUED IT.
IT WASN'T SUPPORTED BY WHAT THEY
DID.

BUT AS TO THE PREJUDICE, JUST
TRYING TO RECAP HERE, WE HAVE
ALL THE GUNDY STUFF WHICH I
AGREE IS PROBABLY THE MOST
SIGNIFICANT BUT I THINK THE
TIMELINE ISSUES WITH TIMOTHY
CLARK AND SHANNON CHAMBERS WHO
SEE MISS CARLSON AFTER THE TIME
WHEN WE KNOW BROOKS AND DAVIS
ARE WITH ROCHELLE JONES AND
TIMOTHY CLARK WHO IS AT THE
CREDIT UNION, BOTH OF THESE
PEOPLE SAY THEY SEE ONE BLACK
MALE WITH THE VICTIM AND IT'S
AFTER THE 9:30, I'M SORRY,
TIMOTHY CLARK IS 9:00 TO
10:00 AND SHANNON CHAMBERS --
>> WHAT DID THE JUDGE SAY AS TO
THE CREDIBILITY OF THOSE.

>> HE PICKED UP AGAIN ON WHAT
THE TRIAL COUNSEL SAID, THOSE
THINGS COULD HAVE BEEN REBUTTED
THEY FELT LIKE AND SO THEY
DIDN'T THINK, AND THEY WERE
INTERESTED -- I.

>> I GUESS HERE'S THE THING.
IS THE MURDER OF THIS CHILD,
WHICH IS JUST SO, SO HORRIBLE,
THE IDEA OF WHO WOULD DO THAT,
OTHER THAN THE PERSON THAT'S,
WHO'S, HAD THE LIFE INSURANCE
POLICY, AND WHO ELSE IS
RELATED, AND EVERYTHING THAT
RELATES BROOKS.

SO I THINK IT'S THE MOTIVE,
BEING IF IT WAS JUST LIKE A
RANDOM, OR JUST A, YOU KNOW,
SOME KIND OF DOMESTIC VIOLENCE
THING BUT HOW DO YOU, HOW DO YOU
TAKE THE LIFE INSURANCE POLICY
OUT OF THIS EQUATION --

>> YOU SAID ON DIRECT APPEAL
WHEN YOU DISSENTED, THAT SHOULD
HAVE NEVER COME IN.

>> OH.

>> THAT IS DAVIS' MOTIVE.
THERE WAS NO EVIDENCE EVEN

ESTABLISHING BROOKS KNEW OF THE LIFE INSURANCE POLICY. THE STATE PUT IT IN AT THE TRIAL BY SAYING THIS IS WHERE THE MONEY WOULD HAVE COME FROM AND THEREFORE IT SHOULD BE ADMISSIBLE.

AND THE TRIAL COURT SAID, I'M GOING TO ALLOW IT TO BE INTRODUCED FOR THAT, AND THAT ONLY.

BUT THEN AS YOU POINT OUT IN YOUR DISSENT, THAT WAS NOT THE WAY IT WAS USED.

IT WAS USED TO ESTABLISH THE MOTIVES, THE MOTIVE OF BROOKS. YET THERE WAS NO EVIDENCE THAT EVEN KNEW ABOUT IT.

SO --

>> BUT THERE WAS EVIDENCE THAT HE WENT THROUGH DRY RUNS.

>> THAT'S --

>> THAT'S REALLY PRETTY CLEARLY ESTABLISHED BY THEY AND THE VICTIM HAD BEEN STOPPED IN CRESTVIEW AND ON THE DRY RUN THE DEFENDANT AND THE COHORTS PULLED UP BEHIND -- AN OFFICER CAME TO THEM TO SAY, WHY ARE YOU PULLING UP BEHIND THE VICTIM'S CAR? THAT IS PRETTY WELL-ESTABLISHED. YOU'RE SAYING THAT IS NOT ENOUGH TO CONNECT THEM.

>> I THINK GILLIAM HAS HIS ISSUES BUT SIGNIFICANTLY WHEN BROOKS WAS ORIGINALLY SPOKEN TO BY LAW ENFORCEMENT AND ASKED, WHAT HAVE YOU BEEN DOING THESE LAST FEW DAYS?

HE PUT HIMSELF IN CRESTVIEW. HE SAID WE WENT TO BUY DRUGS ONE NIGHT.

AND THE OTHER NIGHT THEY STAYED HOME.

WE KNOW SUNDAY NIGHT THEY WERE IN CRESTVIEW.

THEY WERE AT THE BAR.

>> AND POLICE PLACED THEM FOLLOWING THIS VICTIM.

>> THIS STORY --

>> YOU'RE SAYING, NO, THAT DIDN'T HAPPEN?

THERE IS EVIDENCE FROM A POLICE OFFICER OF STOPPING THESE INDIVIDUALS BEHIND THE VICTIM'S CAR BEFORE THIS ACCIDENT.

>> RIGHT.

>> ON DAYS BEFORE THE EVENT.

>> BUT BROOKS' EXPLANATION FOR GOING TO CRESTVIEW WAS WE WENT THERE TO BUY DRUGS.

>> AND HAPPENED TO BE BEHIND THE VICTIM AND FOLLOWING HER.

>> I DON'T KNOW EXACTLY HOW IT CAME ABOUT.

>> HE TESTIFIED.

THERE WERE WITNESSES.

>> GILLIAM TESTIFIED.

GILLIAM IS THE ONLY PERSON WHO --

>> DID THEY NOT PRESENT EVIDENCE OF THE STOP?

>> RIGHT.

>> OKAY.

WELL THAT'S EVIDENCE.

>> RIGHT, BUT BROOKS DOESN'T DENY THEY WENT TO CRESTVIEW TO BUY DRUGS.

>> AND BEHIND THE VICTIM.

>> HE NEVER SAID HOW THEY GOT THERE OR --

>> POLICE OFFICER PLACED HIM BEHIND HER.

>> BEFORE HE KNEW ABOUT THE TRAFFIC TICKET THAT HE HAD GONE TO CRESTVIEW IN THE DAYS BEFORE WEDNESDAY.

I WOULD POINT OUT ABOUT DAVIS, THE ONLY TIME THIS STORY SURFACED IS WHEN HE WAS FACING A SIGNIFICANT AMOUNT OF TIME FOR CHARGES OF PERJURY AND THEN HE, HE DIDN'T HAVE ANYTHING TO BARGAIN WITH BECAUSE HE HAD ALREADY TAKEN BACK.

THEN HE SAID, CALLS THE STATE, OKAY, I CAN GIVE YOU SOME OTHER EVIDENCE.

THAT WAS THE ONLY POINT.

HE DID NOT TELL LAW ENFORCEMENT

THIS ORIGINALLY WHEN HE WAS
ARRESTED.

SO I THINK THAT'S CERTAINLY
SHOULD BE SOMETHING TO CONSIDER
IN HOW WE ARE GOING TO JUDGE HIS
CREDIBILITY AND HOW IT WEIGHS IN
THE PREJUDICE ANALYSIS.

SO I WOULD RESPECTFULLY REQUEST
THAT YOU REVERSE THE CIRCUIT
COURT'S ORDER AND GRANT RELIEF.
>> THANK YOU FOR YOUR ARGUMENTS.