

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. CR96-088C
WRIT NO. WR-62,159-03

THE STATE OF TEXAS) IN THE DISTRICT COURT
)
VS.) COOKE COUNTY, TEXAS
)
MICHAEL JEROME NEWBERRY) 235TH JUDICIAL DISTRICT

PARTIAL TRANSCRIPT OF PROCEEDINGS

TESTIMONY OF WITNESSES ONLY

February 4, 2025

On the 4th day of February, 2025, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Lee Gabriel, Senior
Justice, Second Court of Appeals, held in Gainesville, Cooke
County, Texas;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

FOR THE STATE OF TEXAS:

JOHN DURHAM WARREN
DISTRICT ATTORNEY
ERIC ERLANDSON
FIRST ASSISTANT DISTRICT ATTORNEY
AUSTIN CALDWELL
ASSISTANT DISTRICT ATTORNEY
101 S. Dixon Street, Suite 309
Gainesville, Texas 76240
john.warren@co.cooke.tx.us

FOR THE APPLICANT:

MARK T. LASSITER
ELIZABETH EMANUEL
LAW OFFICE OF MARK T. LASSITER
3300 Oak Lawn Avenue, Suite 700
Dallas, Texas 75219
mark@lomtl.com

AMICUS CURIAE:

RICK HAGEN
JACKSON & HAGEN
The Texas Building
100 West Oak, Suite 302
Denton, Texas 76201
rick@jacksonhagenlaw.com

FOR THE HONORABLE JANELLE HAVERKAMP:

CARY PIEL
CARY PIEL LAW
608 East Hickory Street, Suite 128
Denton, Texas 76205
cary.piel@outlook.com

I N D E X

	DIRECT	CROSS
--	--------	-------

APPLICANT'S WITNESSES

HON. JANELLE HAVERKAMP	4	
------------------------	---	--

HON. JOHN MORRIS	41	
------------------	----	--

ERIC ERLANDSON	71	
----------------	----	--

Court Reporter's Certificate	82	
------------------------------	----	--

Applicant's Exhibits:OFFEREDADMITTED

1-56 Exhibits attached to writ		
--------------------------------	--	--

57 Amicus Curiae Brief		
------------------------	--	--

58 State's Compliance with Order for Discovery		
---	--	--

59 Letter		
-----------	--	--

60 Handwritten notes		
----------------------	--	--

61 Affidavit of John Morris	43	43
-----------------------------	----	----

1 THE COURT: All right. If everyone wants to
2 have a seat, let's get started.

3 You may proceed.

4 MR. LASSITER: Thank you, Your Honor.

5 HON. JANELLE HAVERKAMP,
6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. LASSITER:

9 Q. Judge Haverkamp, if you would, state your name for
10 the record, spelling your last name.

11 A. Judge Janelle Haverkamp, H-A-V-E-R-K-A-M-P.

12 Q. Judge, I see that you brought a bunch of notes with
13 you today. Are those the things that you reviewed in
14 preparation for your testimony?

15 A. They're the file. As you know, your writ was over
16 800 pages. Yes. And the District Attorney's Office refused to
17 allow me to review the District Attorney's files even though
18 they gave you a full copy of the file --

19 MR. LASSITER: I'm going to object to
20 nonresponsive.

21 THE COURT: Sustained. It's really a yes-or-no
22 question.

23 Q. (By Mr. Lassiter) Are those the documents that you
24 reviewed in preparation for your testimony?

25 A. Some of them are.

1 MR. LASSITER: Under the Rules of Evidence,
2 Judge, we'd ask to take a look at the documents that she
3 reviewed in preparation.

4 THE COURT: If you can give him what you
5 reviewed in preparation for your testimony.

6 THE WITNESS: Okay.

7 MR. LASSITER: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes.

10 MR. LASSITER: May I approach the witness again,
11 Your Honor?

12 THE COURT: Yes.

13 MR. LASSITER: On the record, I want to note
14 that I am tendering to Judge Haverkamp the application for a
15 show cause hearing as noted in my certificate of service. It
16 requires me to personally give it to Ms. Haverkamp, which I
17 knew she would be testifying today, so I'd like her to
18 acknowledge the receipt of that.

19 THE WITNESS: I acknowledge that I have received
20 a copy of their Application for Hearing to Show Cause.

21 Q. (By Ms. Lassiter) Judge Haverkamp, you stated just a
22 minute ago --

23 THE WITNESS: Your Honor, could I have my
24 documents back before --

25 MR. LASSITER: We've got to have a chance to

1 review them, Judge.

2 THE COURT: Well, if she needs them to answer
3 questions, she's entitled to have them back.

4 So if he asks you a question that you need
5 something back, then yes; otherwise, I'm going to let them
6 review them while we're going rather than taking a lengthy
7 break to let them review them before they start questioning
8 you. But if you need them back, just say you need them back.

9 THE WITNESS: Okay.

10 Q. (By Mr. Lassiter) Judge Haverkamp, you retained an
11 attorney by the name of Rick Hagen to file an amicus brief on
12 your behalf; is that correct?

13 A. I retained Rick Hagen.

14 Q. Did you have a chance to review the information
15 contained in the amicus brief prior to it being filed?

16 A. Yes.

17 Q. Is everything in the amicus brief, to the best of
18 your knowledge, true and correct?

19 A. Yes.

20 Q. And did you provide Mr. Hagen with the information in
21 which he then put it into the amicus brief form, at least
22 partially?

23 A. Yes. He reviewed the records also.

24 Q. Among those things, you stated that you asked the
25 District Attorney's Office for a copy of the prosecution file

1 in this case?

2 A. That is correct.

3 Q. Who did you ask?

4 A. Mr. Eric Erlandson right here in the courtroom.

5 Q. And how did you make that request?

6 A. I said -- I don't remember the exact words, but
7 something to the effect of, You turned over the entire District
8 Attorney's files to -- I don't know if I refer to you by name,
9 I guess -- to Mr. Lassiter. I'm assuming that you're going to
10 give me the same privilege and allow me to review the file.
11 And --

12 Q. What was his response?

13 A. His response was, I am not comfortable with that.

14 Q. Okay. So is it your testimony today that the
15 District Attorney's Office has prevented you from looking at
16 the file?

17 A. That is correct.

18 Q. Okay. And did you make any other attempts other than
19 with Eric -- and what's Eric's last name?

20 A. Erlandson.

21 Q. Okay. Did you make any other attempts other than to
22 ask Eric Erlandson for a copy of the file?

23 A. No. I didn't see the point.

24 Q. And you were the lead attorney in the Michael
25 Newberry case, correct?

1 A. I was the only attorney in that District Attorney's
2 Office at the time.

3 Q. So that's a yes?

4 A. Yes.

5 Q. And you were also the attorney that questioned Deon
6 Moore or Lilton Deon Moore in the grand jury; is that correct?

7 A. That is correct.

8 Q. So you're aware of all the contents of the grand
9 jury --

10 A. That is correct.

11 Q. -- the testimony contained within it?

12 A. That is correct.

13 Q. And you're aware of over 46 times where Lilton Deon
14 Moore testified to you that this was not a robbery?

15 A. I'm not aware of that. And I would need to -- well,
16 I would need to see the grand jury records.

17 Q. So I want to ask you very frankly. Did you give to
18 the defense attorney of Michael Newberry, which was John
19 Morris, a copy of the grand jury transcript at any time?

20 A. Okay. I'm going to need to see my records.

21 THE COURT: Okay. And you need to give them
22 back to her.

23 MS. EMANUEL: Permission to approach the
24 witness?

25 THE COURT: I'm sorry?

1 MS. EMANUEL: Permission to approach the
2 witness?

3 THE COURT: Sure.

4 THE WITNESS: Not having been allowed to review
5 the file --

6 Q. (By Mr. Lassiter) Let me make it very simple for
7 you. Judge Haverkamp, do you recall ever turning over a copy
8 of the grand jury transcript to Michael Newberry's defense
9 counsel, John Morris?

10 A. I don't know whether or not I did. Let me -- in
11 looking --

12 Q. Would it be fair to state, based on your
13 representation to the Court in your amicus brief where you
14 state there is simply no way of proving what evidence was or
15 was not provided, is that your stance regarding the grand jury
16 transcript?

17 A. If you'll allow me.

18 Q. I've asked a question. If you could just answer the
19 question.

20 A. I'm trying --

21 THE COURT: You don't instruct the witness to do
22 anything. That's my responsibility.

23 MR. LASSITER: Certainly, Judge.

24 THE WITNESS: Judge Woodlock's order on that --
25 and I was always very careful to follow Judge Woodlock's order.

1 Judge Woodlock's order on that was -- if I can find it.
2 Motion -- the defense Motion and Discovery and Inspection of
3 Grand Jury Testimony of Co-Defendant Lilton Deon Moore. Judge
4 Woodlock, in his handwriting, wrote -- and that was how he did
5 his orders -- "Granted, if he testifies. Jerry Woodlock."
6 Lilton Deon Moore did not testify. That being said, if I
7 thought the grand jury testimony was exculpatory, I would have
8 turned it over. Just because it was not documented doesn't
9 mean I did not turn it over. I was the only prosecutor. Two
10 months before that, I tried another very high-profile case. I
11 was very busy. Oftentimes, discovery was turned over and it
12 wasn't documented. After 28 years, I couldn't tell you for
13 sure if it was turned over or it wasn't turned over.

14 Q. (By Mr. Lassiter) So the answer to my question is,
15 you cannot testify affirmatively that you provided the grand
16 jury transcript to Mr. Newberry's attorney, John Morris?

17 A. My answer is I can't say that I did or I didn't. I
18 can say there is nothing in the grand jury testimony that is
19 exculpatory.

20 Q. I see.

21 MR. LASSITER: Judge, may I approach the bench
22 real quick?

23 THE COURT: Yes.

24 MR. LASSITER: And see Exhibit No. 27, which is
25 right here. This one. Thank you. May I approach the witness?

1 THE COURT: Yes.

2 Q. (By Mr. Lassiter) You agree that you were present on
3 January 2nd, 1997, when a pretrial hearing was conducted in
4 which the Court, Judge Woodlock, ruled on a Motion for
5 Disclosure of Favorable Evidence?

6 A. Yes, sir.

7 Q. Okay. Looks like you have that in front of you. Do
8 you see where it states under Roman numeral category -- or
9 point number one, "Statements of any witness interviewed by the
10 prosecution who identified any other individual other than the
11 defendant who fired a shot in this case or possessed a firearm
12 in this case"?

13 A. I do see that.

14 Q. Okay. Would you agree with me that Judge Woodlock
15 ordered you to turn over to the defense any statement of any
16 witness whom your office interviewed that claimed that they
17 had -- or that had knowledge that someone else possessed a
18 firearm?

19 A. I would agree that what that says is statements --
20 "Statements of any witness interviewed by the prosecution," and
21 if you will look at my compliance with discovery, the one file
22 marked July 3rd, 1997, I say, "Witnesses who identified any
23 other individual other than the defendant as having possessed a
24 firearm in this case: Louie Ray Sheppeard and Douglas Wilson
25 said Deon Moore had a gun."

1 Q. Is it your testimony that in the grand jury, Deon
2 Moore does not admit to possessing the firearm that night?

3 A. No.

4 MR. LASSITER: May I approach the witness? She
5 has some information contained within her notes that we need to
6 use for cross-examination at this time.

7 THE COURT: Okay.

8 Q. (By Mr. Lassiter) Judge Haverkamp, I'm going to need
9 those notes back that we just gave you back. Sorry. Those.
10 All of them.

11 A. But you're forgetting this defendant confessed twice.

12 THE COURT: There's not a question in front of
13 you, ma'am. You've got to follow the rules.

14 MR. LASSITER: Thank you, Your Honor.

15 Q. (By Mr. Lassiter) Judge Haverkamp, based on your
16 outburst there, does it appear that you believe that the ends
17 justify the means?

18 A. Absolutely not.

19 Q. So you believe that --

20 MR. LASSITER: May I approach the witness?

21 THE COURT: Yes.

22 Q. (By Mr. Lassiter) You stated just a minute ago that
23 you couldn't state whether or not the grand jury transcript was
24 turned over, right?

25 A. Yes.

1 Q. Okay. Are these your notes that you made on this
2 document in red?

3 A. I just -- I did that just today.

4 Q. And if I may, what it states is, "what they said, not
5 transcript"?

6 A. That was my interpretation of what Judge Woodlock
7 ordered.

8 Q. So your interpretation was that the statements made
9 by Deon Moore in the grand jury were not statements?

10 A. No.

11 Q. That was your interpretation?

12 A. No.

13 Q. Your interpretation was his transcript does not
14 constitute a statement that requires you to turn it over? Was
15 that your belief?

16 A. I'm not understanding your question.

17 Q. Okay. My question is, did you believe that because
18 it was a grand jury transcript, that somehow the title of
19 "transcript" means it's not a statement?

20 A. No, sir.

21 Q. Okay. So you would agree with me that inside the
22 grand jury transcript are specific statements made by Lilton
23 Deon Moore?

24 A. Certainly.

25 Q. And within those statements, he made a definitive

1 statement multiple times that he possessed the gun that night?

2 A. Yes, he did.

3 Q. And that then under the law would trigger the
4 judicial order for you to turn over those statements because it
5 is a statement of a witness interviewed by you, the
6 prosecution, who identified another individual themselves other
7 than the defendant as having possessed a firearm in this case.
8 That is the literal order that you were given, and what you are
9 saying is you can't remember if you followed this judicial
10 order, correct?

11 A. I don't know if the grand jury testimony was turned
12 over, but --

13 Q. Ms. Haverkamp -- Judge Haverkamp, you knew that
14 Detective Williams had spoke to and recorded statements from
15 multiple witnesses, including Deon Moore, correct?

16 A. Yes.

17 Q. There were about nine of these witnesses, correct?

18 A. Yes.

19 Q. Okay. Did you turn over to defense counsel, John
20 Morris, any of those nine witness statements?

21 A. I need to have my notes back.

22 MR. LASSITER: Approach the witness, Your Honor?

23 THE COURT: Yes.

24 THE WITNESS: Including the one that you left on
25 the table there.

1 In the Motion for Discovery, it says, after
2 direct examination by the prosecution --

3 MR. LASSITER: I'm going to object to
4 nonresponsive, Your Honor.

5 THE COURT: Sustained. The question was, did
6 you turn over any of those nine witnesses' statements?

7 THE WITNESS: In compliance with Judge
8 Woodlock's order, after they testified, yes, sir.

9 Q. (By Mr. Lassiter) So is it your testimony today that
10 you turned over the testimony or the recorded statements of
11 Douglas Wilson and Louie Ray Sheppeard and Sidney Perry as all
12 of them testified in the trial?

13 A. I believe that I did. It was 28 years ago.

14 MR. LASSITER: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes.

17 Q. (By Mr. Lassiter) You listed a Compliance With
18 Discovery. Do you have your Compliance With Discovery motions
19 in front of you in which you specifically notated that you had
20 told defense attorney, John Morris, that both Louie Ray
21 Sheppeard and Douglas Wilson had provided you information that
22 somebody else had the gun, i.e., Deon Moore?

23 A. Yes.

24 Q. Do you recall that?

25 A. Yes.

1 Q. And you put that in your Compliance With Discovery
2 motion, correct, showing Judge Woodlock that you were complying
3 with his order, correct?

4 A. That was in compliance with the one that asked for
5 the statements, not in compliance with the one that asked for
6 the copies of statements after they testified.

7 Q. I understand that there's a difference.

8 MR. LASSITER: Judge, may I look at No. 57?
9 Should be that bottom one. Sorry. 58. It's that one. May I
10 approach the witness?

11 THE COURT: Yes.

12 Q. (By Mr. Lassiter) The statement that you're
13 referring to is located in the court record No. 220, and this
14 is your Compliance With Discovery motion, correct?

15 A. Yes.

16 Q. You signed it?

17 A. Yes.

18 Q. You certified that you gave it to John Morris, right?

19 A. Yes.

20 Q. Does it state -- or I'll read it for you. It says,
21 "Witnesses who identified any other individual other than the
22 Defendant as having possessed a firearm in this case: Louie Ray
23 Sheppeard and Douglas Wilson said Deon Moore had a gun." Did I
24 read that correctly?

25 A. Yes. Again --

1 Q. Does it state that you gave them the witness
2 statement, or does it state these are the people who
3 identified?

4 A. It says these are the people that are identified.

5 Q. Do you have any evidence whatsoever in a Compliance
6 With Discovery motion that shows that you gave the statements
7 of Douglas Wilson and Louie Ray Sheppard to John Morris?

8 A. I do have something because I had to -- because I
9 wasn't allowed to see the DA's file, I went through the court's
10 file. I thought I had it up here, but maybe I don't. I went
11 through and looked at the attorneys' bills to see if I could
12 glean anything from Mr. Morris and Mr. Robertson's. I had that
13 somewhere. Mr. Robertson was on the case for a while and --

14 MR. LASSITER: I'm going to object to
15 nonresponsive.

16 THE WITNESS: I'm getting to the answer.

17 THE COURT: You can't get there in your way.
18 You just have to answer the question asked.

19 THE WITNESS: You asked if I do have
20 something --

21 Q. (By Mr. Lassiter) Did you file a Compliance With
22 Discovery motion showing that you gave the witness statements
23 of Douglas Wilson and Louie Ray Sheppard to John Morris? Did
24 you file a Compliance With Discovery for that?

25 A. I thought you said do I have any information that I

1 did.

2 Q. No, ma'am.

3 A. Okay. I don't have any compliance in that form.

4 Q. Did you file a letter, which you have done with
5 Mr. Newberry's statements, showing that you disclosed to John
6 Morris the statements of Douglas Wilson and Louie Ray
7 Sheppeard?

8 A. I don't have a letter.

9 Q. In the trial transcripts, after the witness was
10 passed -- let me ask it this way. During your interviews of
11 Douglas Wilson and Louie Ray Sheppeard prior to trial, that is
12 when you became aware that they had identified Deon Moore as
13 possessing the gun that night; is that true?

14 A. Can you repeat that?

15 Q. Sure. During your interviews of Douglas Wilson and
16 Louie Ray Sheppeard, that is when you became aware that each of
17 them had told you that Deon Moore possessed a gun that night,
18 correct?

19 A. During my interviews with them?

20 Q. Yes.

21 A. I believe they had told law enforcement that.

22 Q. And then law enforcement told you, and that's why you
23 filed the Compliance With Discovery motion, or do you recall?

24 A. I don't recall.

25 Q. Okay.

1 A. It was no secret that Deon Moore possessed the gun.

2 Q. You as the lead attorney in the case determined what
3 evidence to provide to the defense counsel, correct?

4 A. Correct.

5 Q. And when you disclosed things, in your normal course
6 of business, you would file a Compliance With Discovery motion,
7 right? That's how you disclosed items?

8 A. Not always.

9 Q. Sometimes you would do it in letter form, correct?

10 A. Sometimes I just hand it to them.

11 Q. Okay. In this case, there is -- well, let me ask it
12 this way. Would you agree that nowhere in the record does it
13 indicate that you handed any of the witness statements in this
14 case to John Morris?

15 A. Well, no, there's nothing in the record, but --

16 Q. Would you agree with me that nowhere in the record
17 does it have any evidence that you disclosed the grand jury
18 transcript of Deon Moore that you say everybody knows proves he
19 had a gun?

20 A. Say that again.

21 Q. Nowhere in the record does it show that you disclosed
22 the grand jury transcript of Lilton Deon Moore to John Morris?

23 A. Are you talking about the trial transcript?

24 Q. The record. The court's record. Nowhere in the
25 record does it show anything that indicates the grand jury

1 transcript of Deon Moore was turned over to John Morris,
2 correct?

3 A. Correct.

4 Q. And you did not submit anything to Judge Woodlock for
5 an in-camera review, correct?

6 A. I don't recall.

7 Q. Would you agree with me there is nothing in the
8 record to indicate that Judge Woodlock conducted any type of
9 in-camera review in this case?

10 A. I don't know that there would be a record of that,
11 but you're correct.

12 Q. Would you agree with me that you were ordered by the
13 trial court to disclose the statements of Lilton Deon Moore
14 because he admitted he had a gun; Douglas Wilson because he
15 stated that Deon Moore had a gun; and Louie Ray Sheppeard
16 because he stated Deon Moore had a gun? Would you agree with
17 me that Judge Woodlock ordered you to disclose those
18 statements?

19 A. I disagree.

20 Q. Would you agree with me that John Morris was Michael
21 Newberry's attorney?

22 A. I absolutely -- are you saying John Morris was Deon
23 Moore's attorney?

24 Q. I said, would you agree with me that John Morris was
25 Michael Newberry's attorney?

1 A. Okay. I agree with that.

2 Q. Would you agree with me that if John Morris had been
3 Deon Moore's attorney prior to being Michael Newberry's
4 attorney at the time that he made his May 31st, 1996,
5 statement, there would be an actual conflict of interest which
6 would need to be disclosed to the trial court?

7 A. If that had been true, that would be a correct
8 statement.

9 MR. LASSITER: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes.

12 Q. (By Mr. Lassiter) I'm showing you the applicant's
13 Exhibit No. 60, which is also contained in the writ. These are
14 your notes, correct?

15 A. I don't know.

16 Q. You don't know? I don't blame you. Would you agree
17 with me that it states, "John Morris let him talk"?

18 A. Yes.

19 Q. Okay. Is there some reason why you told the Court
20 that you filed an amicus brief that contains true and correct
21 information that states these are your notes and that you wrote
22 "John Morris let him talk," and now under oath you are telling
23 this judge that you don't know if those are your notes?

24 A. Where did I file an amicus brief that said, "John
25 Morris let him talk"?

1 Q. I'll show you in just a second, but is it your
2 testimony that the amicus brief then would be incorrect or this
3 would be incorrect?

4 A. Okay. That's what it says. Those are -- probably
5 are my notes, but --

6 Q. Do you recognize your own handwriting, Judge
7 Haverkamp?

8 A. Some of this is my handwriting. Some of this is not
9 my handwriting.

10 Q. Do you recognize your handwriting there where it
11 says, "John Morris let him talk"?

12 A. That could be my handwriting.

13 Q. Do you recognize underneath it where it says, "Made
14 incriminating statements"?

15 A. Yes.

16 Q. Do you recognize your handwriting on the second page
17 on a sticky note that was on Deon Moore's statement, "In
18 relation to other statements what time is this statement
19 given?" And "Should he have been suspect?" Are those your
20 notes?

21 A. I recognize that handwriting.

22 Q. Is that your handwriting?

23 A. Yes. I don't know that that's where it was posted
24 since, again --

25 Q. There are three pages here of handwriting. Are those

1 your handwriting? The next three pages. Just those three.

2 A. This -- these next three, not the last one?

3 Q. Are those your handwriting?

4 A. They could be. They look similar.

5 Q. In that handwriting, there's a statement -- this is
6 in relation to Deon Moore. We found this in Deon Moore's file.
7 It says, "handled gun that night." That's referencing Deon
8 Moore?

9 A. This was in Deon Moore's file?

10 Q. Correct. So it references "handled the gun that
11 night," referencing Mr. Moore. And you knew that, right?

12 A. Absolutely.

13 Q. You said he was "selling crack cocaine," and you knew
14 that, right?

15 A. Absolutely.

16 Q. Wasn't there to do robbery, was there to sell crack
17 cocaine?

18 A. Not -- no, no, no. We all knew they were selling
19 crack cocaine.

20 Q. Robbed people 12 to 13 times?

21 A. Absolutely.

22 Q. He had done a drive-by shooting in Oklahoma --

23 A. Absolutely.

24 Q. -- at 13 years old?

25 A. Absolutely. They were bad guys.

1 Q. All day, every day he sold drugs?

2 A. Absolutely.

3 Q. Two times he was caught with a gun?

4 A. Absolutely.

5 Q. And you don't think that -- he "thought robbery was
6 funny"?

7 A. Absolutely.

8 Q. You didn't think any of that was exculpatory, right?

9 A. No.

10 Q. Okay.

11 A. Both of these people were indicted for capital
12 murder.

13 Q. Is it your opinion that just because another person
14 is indicted for capital murder, that any statement that they
15 make cannot then be exculpatory? Is that your position?

16 A. I don't understand.

17 Q. Let me make it simple for you. If you and I are
18 co-defendants and I say you didn't do anything, is that
19 exculpatory?

20 A. (Pausing) I guess. But --

21 Q. So similarly --

22 A. -- Deon Moore's criminal history was provided --

23 MR. LASSITER: I'm going to object to the
24 narrative answer, Your Honor.

25 THE COURT: Sustained. It was just a yes-or-no

1 question.

2 Q. (By Mr. Lassiter) Similarly, you have a co-defendant
3 Deon Moore in this case and you have Michael Newberry. Those
4 are the two co-defendants for capital murder, correct?

5 A. Yes, sir.

6 Q. For which initially you set -- you were looking for
7 the death penalty initially, correct?

8 A. Yes.

9 Q. So it would behoove you to make sure that every I is
10 dotted, every T is crossed, do everything by the book and
11 ethically, right?

12 A. Yes.

13 Q. And robbery is the aggravating element that you were
14 using to try and convict Michael Newberry of capital murder,
15 right?

16 A. Yes.

17 Q. So anything that tended to negate that a robbery
18 happened is by definition exculpatory because it could have
19 been used to disprove an element of the offense, right?

20 A. Yes.

21 Q. There we go. Now going back to --

22 MR. LASSITER: May I approach the witness again,
23 Your Honor?

24 THE COURT: Yes.

25 Q. (By Mr. Lassiter) Defense exhibit -- applicant's

1 Exhibit No. 60. When it says "John Morris let him talk," and
2 this is in reference to Deon Moore, would you agree with me
3 that if John Morris took the affirmative action of allowing
4 someone to talk, he would be doing so as that person's counsel?

5 A. What I would -- when I'm taking note -- can I
6 explain?

7 Q. No, Your Honor. You need to answer the question.

8 A. Well, I'm not saying John Morris is his attorney.
9 I'm saying that's what the statement said. I'm making notes of
10 what the statement says, and I'm just making notes. I'm not
11 saying John Morris was his attorney. I'm saying --

12 MR. LASSITER: I'm going to object to
13 nonresponsive.

14 THE COURT: Ask the question again.

15 MR. LASSITER: Certainly.

16 THE COURT: Listen carefully to the question.

17 Q. (By Mr. Lassiter) Would you agree with me that when
18 a statement says "John Morris let him talk" in reference to
19 Deon making a statement, that establishes an attorney-client
20 relationship in which John Morris affirmatively let his client
21 do something, in this case, that's make a statement?

22 A. I'm not saying -- I'm not agreeing that John Morris
23 was his attorney.

24 Q. That wasn't my question.

25 THE COURT: I think that answered your question.

1 MR. LASSITER: Thank you very much.

2 Q. (By Mr. Lassiter) Would you agree with me that you
3 believed Detective Williams to be an ethical detective?

4 A. Yes, sir.

5 Q. Okay. And you believed Detective Williams did not
6 make any errors in this case while he was investigating it?

7 A. I don't --

8 Q. To your knowledge, he made no errors while
9 investigating the case?

10 A. I don't know.

11 Q. So, to your knowledge, that's a yes, he did not make
12 any errors that you're aware of?

13 THE COURT: That's an "I don't know." That's
14 what she said.

15 Q. (By Mr. Lassiter) And you will agree with me that
16 you had access to the police report in this case prior to
17 trial?

18 A. Yes.

19 Q. You would agree with me that you went over in detail
20 what happened with Detective Williams?

21 A. I'm sure -- I'm sure I went over it.

22 Q. You would agree with me that if you were made aware
23 that John Morris had, in fact, represented Deon Moore during
24 the investigation of this case, it would be your ethical
25 obligation to bring that to the attention of Judge Woodlock?

1 A. I'm not sure that I'd agree with that, but if you'll
2 let me see the offense report, I can tell you what that offense
3 report --

4 MR. LASSITER: I'm going to object to
5 nonresponsive, Judge.

6 THE WITNESS: You're asking me about the offense
7 report. The offense report doesn't say that Deon Moore said
8 John Morris was his attorney. It says that Willie Hennesy
9 said --

10 THE COURT: Okay. You've exceeded the question,
11 and you didn't give me a chance to rule on the objection. So
12 go ahead and state another question.

13 MR. LASSITER: Yes. May I approach the witness?

14 THE COURT: Yes.

15 Q. (By Mr. Lassiter) In the police report for this
16 case -- I'm going to read it out loud. You tell me if I've
17 read this incorrectly. "Before I could talk to him about the
18 homicide, Lilton Deon Moore wanted to talk to his attorney,
19 John Morris. After Lilton Deon Moore talked to his attorney, I
20 then took a tape recorded statement from him." Did I read that
21 correctly?

22 A. You did, but you -- you stopped --

23 MR. LASSITER: I'm going to object to
24 nonresponsive.

25 THE COURT: Okay. Two things I'm going to say.

1 I don't want to hear any kind of audible response from the
2 audience when you don't like something that's being said. That
3 doesn't contribute to this. That's not proper decorum for a
4 courtroom, and don't do it. If you do, you will be asked to
5 leave the courtroom.

6 You need to just answer the question asked.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Don't offer further explanations,
9 rationalizations, anything else. Just answer the question
10 asked.

11 Q. (By Mr. Lassiter) So based on the statement that I
12 read to you, and that's in the record as Exhibit 6, that is a
13 narrative from Detective Williams in this case; you would
14 agree?

15 A. Narrative, yes.

16 Q. And when I read to you that statement, it does not
17 say William Hennesy said John Morris was his attorney. It
18 says, "Before I could talk to him about this homicide, Lilton
19 Deon Moore wanted to talk to his attorney, John Morris" --

20 A. That portion --

21 Q. -- it specifically states that, yes?

22 A. That portion you read does say that.

23 Q. And it states that and indicates that Deon Moore was,
24 in fact, able to talk to John Morris before getting -- and
25 giving a statement?

1 A. That portion you've read does say that.

2 Q. And you believe Detective Williams to be credible?

3 A. Yes, sir.

4 Q. You would agree with me that during your examinations
5 in trial of Douglas Wilson, Louie Sheppeard, and Sidney Perry,
6 multiple times you used their witness statements to correct
7 their testimony?

8 A. I don't recall that, no.

9 Q. And if the record does not reflect that you ever
10 turned anything over regarding those statements -- actually let
11 me ask it to you this way. After Captain Schlaudroff -- or
12 excuse me if I'm mispronouncing that. After Captain
13 Schlaudroff testified, the defense attorney, Mr. Morris, asked
14 for his report, and you provided that on the record?

15 A. I don't recall that.

16 Q. Your testimony specifically -- or the record states,
17 "Ms. Haverkamp: Your Honor, for the record, I'm handing Mr.
18 Morris a copy of Mr. Schlaudroff's report." Does that ring a
19 bell?

20 A. No.

21 Q. After Detective Williams testified, Mr. Morris also
22 asked for a copy of Investigator Williams' report, and you
23 provided it to him, correct?

24 A. I don't recall.

25 Q. The record states for "Ms. Haverkamp: Let the record

1 reflect I'm handing Mr. Morris a copy of Investigator Williams'
2 report."

3 Mr. Morris: "May I have a moment to look at it,
4 Your Honor?"

5 Does that indicate that you, to the best of your
6 knowledge, provided that police report?

7 A. That's what the record says.

8 Q. And to the best of your knowledge, it looks like
9 Mr. Morris took a moment to review it, correct?

10 A. I don't know.

11 Q. And that is the same police report in which it states
12 that Mr. Morris was Deon Moore's attorney 10 days prior to
13 Mr. Newberry being arrested, right?

14 A. That portion you read.

15 MR. LASSITER: Your Honor, I pass the witness.

16 MR. WARREN: Judge, the State has no questions.

17 THE COURT: All right. You may step down.

18 MR. LASSITER: And, Your Honor, I would reserve
19 for recall. If I could look at the notes that she --

20 MR. PIEL: Judge, may I approach?

21 THE WITNESS: Does Mr. Piel get to ask anything?

22 MR. PIEL: Judge, this isn't an adversary
23 hearing. She should be allowed to answer questions instead of
24 them just sitting on their hands.

25 THE WITNESS: Do I get --

1 THE COURT: Hold on. You've got to talk one at
2 a time, and you know that, so just stop. I can barely hear
3 him. I'm sure the court reporter's having difficulty hearing
4 him. What is your position?

5 MR. LASSITER: My position, Your Honor, is they
6 are not a party to the case. They do not have standing to ask
7 any questions. That is for the District Attorney's Office.
8 And they have attempted to insert without the right an amicus
9 brief, which now we were able to question on. However, this
10 person does not have the standing to come in and just because
11 he doesn't like the way the hearing goes --

12 THE COURT: Okay. Just answer my question.
13 You're being just as evasive as everybody else. I asked you a
14 question. Do you have a problem with him asking questions?

15 MR. LASSITER: I do, Your Honor.

16 THE COURT: Okay. I don't think you do have
17 standing to ask questions. Can you show me any case law that
18 says that an amicus attorney has the right to ask questions of
19 a witness that you don't technically, to the best of my
20 knowledge, represent? I mean, she's a witness. She's not a
21 party. She's a witness.

22 MR. PIEL: No, ma'am, I do not have a case.

23 THE WITNESS: Can I say something?

24 THE COURT: Okay.

25 THE WITNESS: Okay. Your Honor, in 40 years, in

1 all my years of doing this, the attorney against whom
2 allegations have been made -- and some false allegations have
3 been made against me -- always gets the opportunity to respond
4 by an affidavit. This District Attorney's Office never asked
5 me. They've known about this for four years, and they have
6 filed an 800-page writ; made horrible, heinous, false
7 allegations against me, and never asked for my side, never
8 given me an opportunity to respond. And now these allegations
9 are out there for the sole purpose of disparaging my
10 reputation. And I don't get an opportunity to even give my
11 side of it. He won't let me speak. Can I file an affidavit?
12 If I can't -- if I can't respond to them and they're just out
13 there and it's because of a personal, political vendetta
14 against me by the DA, when can I tell the truth?

15 THE COURT: She makes a good point, sir. I
16 think she has the right to give her side of the story, and
17 normally you don't have this situation. But I'm not familiar
18 with any case law that says an amicus attorney can ask her
19 questions. I don't know that she can't just tell her side of
20 the story though, just like you did earlier before we started
21 any testimony.

22 MR. LASSITER: May I respond, Your Honor?

23 THE COURT: Yes.

24 MR. LASSITER: There is, in fact, an avenue for
25 which she can do so and tell her side of the story, and we

1 actually have filed that Application for Show Cause in which
2 this court can order it --

3 THE COURT: No. That's --

4 MR. LASSITER: -- she can explain the whys.

5 THE COURT: No. No. That is after the writ is
6 decided. I'm not going to hear the show cause until after the
7 writ is decided. I can tell you that right now. This ship
8 will have sailed at that point in time. She should have the
9 right to give her side of the story before the Court makes a
10 ruling on the writ.

11 And I have a problem with the fact that the DA's
12 office won't let her see the file. This just needs to be fair
13 across the board. We need to have -- you want fairness for
14 your client. I want fairness for your client. But it
15 shouldn't be a gotcha. It shouldn't be, I'm going to, you
16 know, keep this from you and not let you see. If you remember
17 what you did 28 years ago, more power to you. I don't. And I
18 don't think anybody else does.

19 MR. LASSITER: If I may --

20 (Interruption)

21 THE COURT: Sir, be quiet or you will be
22 leaving. Last chance. Last warning.

23 MR. LASSITER: If I may, Your Honor. We intend
24 to call a witness that contests whether the DA restricted her
25 access to the file, and we will be able to establish to the

1 Court that that was a mischaracterization and untrue.

2 THE COURT: Let me just ask. Let's try to make
3 this as simple as possible. When can she see the file?

4 MR. WARREN: Immediately. Right now. She never
5 asked. She never asked me to see the file. She never asked
6 Austin to see the file. She never asked anybody in my office
7 to see the file. She said to Eric -- after yelling at Eric in
8 open court, she told Eric. Well, I guess I'm not going to be
9 able to see the file, huh? And Eric said, Judge, I don't think
10 that -- basically he said, I'm not sure that we wouldn't let
11 you look at the file.

12 THE COURT: Okay.

13 MR. WARREN: So, Judge, this is -- when Eric
14 came back to our office, I said, of course we're going to let
15 her see the file. We would have let -- I would have made a
16 copy of the file for her. I would have let her stay in my
17 office and look at the file. I would have let her court
18 coordinator come up and make a copy of the file if she had not
19 agreed --

20 THE COURT: Don't say anything.

21 MR. WARREN: -- to me making a copy. She never
22 sent an email to me. She never got her court coordinator --
23 no communication --

24 THE COURT: I got it. I got it.

25 MR. WARREN: Okay. So it is a lie.

1 THE COURT: I got your position on this. So I
2 think she should be able to see the file and to then have an
3 opportunity to revisit your questions. I just -- I want this
4 to be transparent. I want this to be fair to everybody. And
5 I -- I don't know how anybody can answer some of these
6 questions without being able to see the file. So they're
7 saying they don't mind her seeing the file. She needs to see
8 the file.

9 MR. LASSITER: I don't mind it either, Your
10 Honor, but may I respond just ever so briefly?

11 THE COURT: Yes.

12 MR. LASSITER: Contained within the writ and the
13 record is the entirety of the file. She has had access to it
14 for weeks. My understanding is that she requested the trial
15 transcript already. She requested a copy of the court's file.
16 She even employed a visiting judge for an entire week so that
17 she didn't have to work on anything but this hearing. So it's
18 a mischaracterization that she doesn't have access. She's had
19 access to everything because we put everything in the record to
20 make sure it was there.

21 THE COURT: Do you -- would you take -- if you
22 were sitting in her spot, would you take your word that
23 everything was there? I wouldn't. Nothing against you. I
24 just want to see it myself.

25 MR. LASSITER: I don't mind. It's there. The

1 same way that we got it, she could get it.

2 THE COURT: Okay. And that's all I'm trying to
3 facilitate here is for her to be able to see it. So we need to
4 make that happen and -- which means we're probably not going to
5 finish this -- we weren't going to finish it today anyway, or
6 we weren't going to get an answer today anyway, but I think
7 that that's only fair that she gets to see it, and if
8 everything is something she's already seen, then it is.

9 MR. LASSITER: I don't have any issue and have
10 not had an issue. It's just I have an issue when you know
11 you're going to testify and you don't prepare and you have had
12 access to the same things --

13 THE COURT: I don't need that argument. I
14 really don't. I've already told you what I'm going to do. I'm
15 going to give her a chance to look at it.

16 MR. LASSITER: May I look at all the notes that
17 she's brought today? Because we haven't had a chance to fully
18 review them, and in them, we saw some statements that we need
19 to be able to use. So similarly, if she's going to have a copy
20 of everything, I'd like a copy of everything that she's looked
21 at, and she's holding it right there.

22 THE COURT: I don't know that you're entitled to
23 a copy of them, but you're certainly entitled to review them.

24 MR. LASSITER: Then may I have and continue to
25 review them now that she is done with her testimony?

1 THE WITNESS: Judge, can I -- can I give my
2 statement under oath, my side? Because it's --

3 THE COURT: I'm going to let you look at the
4 documents first.

5 THE WITNESS: I'm ready to give my side because
6 they have really laid a false narrative here.

7 THE COURT: And I'm not going to make a decision
8 until I hear all sides. You say you want to see what they
9 have. I want you to see what they have. I'm probably going to
10 let you have a chance to, but I don't think I'm going to let
11 Mr. Piel question you because I don't think that's appropriate
12 unless somebody can show me some case law that says it is. I
13 just don't think that's the way it goes.

14 MR. PIEL: May I?

15 THE COURT: None of this is exactly the way it
16 normally goes, but I don't think that that's appropriate.

17 MR. PIEL: May I just say something? He said
18 since she was finished. Could we ask for a recess so she could
19 have time to look at the file and then she could come back on
20 the stand and make this statement?

21 THE COURT: Well, looking at -- I know you want
22 to do it right now, but I'm telling you that's not going to
23 happen.

24 So I want her to have a chance to look at the
25 file. I'd just as soon do it this afternoon and us pick back

1 up on this tomorrow. I honestly do not have a lot of other
2 slots of time in the very near future.

3 MR. LASSITER: I've got a flight leaving out
4 tomorrow. I'm leaving at 10:00 a.m.

5 THE COURT: Well, I will go look at my calendar
6 and tell you the next time I can hear it, but it's not going to
7 be for a while.

8 MR. LASSITER: Understood, Your Honor.

9 THE COURT: But I could do it tomorrow.

10 MR. LASSITER: I can't do it tomorrow. But may
11 I see these notes?

12 THE COURT: I'm going to let you see them, sir.
13 Just you can go ahead and go back to counsel table. I'm going
14 to let her go see what she needs to see. I'm going to let you
15 see what you need to see, and then we're going to have to talk
16 about how we go forward from this point. But if you wanted to
17 go ahead and call another witness and utilize the time, we can
18 do that.

19 MR. LASSITER: Yes, Your Honor, I would.

20 THE COURT: Okay.

21 MR. LASSITER: It's already 3:30, so I'm just
22 trying to get through it.

23 THE COURT: I realize that. I'm trying to find
24 the most efficient way to do this given everybody's schedule,
25 and so it seems to me like you've got other witnesses here.

1 Let's do it.

2 MR. LASSITER: With that, Your Honor, I would
3 call John Morris.

4 THE COURT: Okay. You're going to get your
5 chance, but I want you to have a chance to look at the file.

6 MR. PIEL: Since we're having a change in
7 witnesses, can we have Deon Moore's State's file as well since
8 everything was taken from that that were used in this hearing?

9 MR. ERLANDSON: We don't have any objection to
10 that, Your Honor. They can see all of our files.

11 MR. PIEL: Thank you.

12 THE COURT: Okay.

13 MR. LASSITER: Judge, subject to recall?

14 THE COURT: Okay.

15 MR. LASSITER: And could I get those before she
16 goes out of the courtroom so we can start looking at them?

17 THE COURT: I mean, they're used to -- to
18 question her, but -- so I don't know that this is the best -- I
19 guess so. Let them have those back. Let them -- excuse me.
20 Let them have those back. If they want to use the time of
21 co-counsel while another witness is testifying to look at that,
22 then I guess that's the most efficient thing to do. Anything
23 she reviewed.

24 MR. LASSITER: May we approach, Judge?

25 THE COURT: Do you want this on the record?

1 MR. LASSITER: Yes. It would appear that she
2 took stuff out of the file that she had originally given to us.
3 I don't know what that is. I'm just asking for you to review
4 it at some point in camera.

5 THE COURT: What --

6 MR. LASSITER: Doesn't have to be today.

7 THE COURT: Okay. Sure. Absolutely. If she
8 did, then I will.

9 MR. LASSITER: Judge, we have called Judge
10 Morris to the stand.

11 HON. JOHN MORRIS,
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LASSITER:

15 Q. Judge Morris, could you state your name, spelling
16 your last name for the record?

17 A. John Morris, M-O-R-R-I-S.

18 Q. And, Judge Morris, are you the same John Morris that
19 represented Michael Newberry in this case?

20 A. Yes.

21 Q. Now in your -- you filed an affidavit as part of an
22 amicus or amicus brief in this case; is that true?

23 A. I signed an affidavit.

24 Q. You signed an affidavit. Did you create that
25 affidavit?

1 A. I did not.

2 Q. Who created that affidavit?

3 A. I don't know that. Rick Hagen brought it to me.

4 Q. Ah. So you didn't ask Mr. Hagen to create it for
5 you, but he did?

6 A. I assume so.

7 Q. Okay. Did you read it?

8 A. Yes.

9 Q. Is everything in it true and correct?

10 A. Yes.

11 MR. LASSITER: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes.

14 Q. (By Mr. Lassiter) Judge Morris, is that a copy of
15 your affidavit?

16 A. (Reading) Yes, it appears to be.

17 Q. Has it been altered in any way other than
18 highlighting and underlining?

19 A. Doesn't seem to be.

20 Q. Are the words in it true and correct to the best of
21 your knowledge?

22 A. (Reading) Yes.

23 Q. Thank you.

24 MR. LASSITER: Judge, with respect, I'm going to
25 mark this as defense -- or applicant's No. 61. I know it's

1 included in the amicus brief, which we objected to. May I
2 offer this into evidence?

3 THE COURT: Yes. 61 is admitted.

4 Q. (By Mr. Lassiter) Mr. Morris, you would agree with
5 me that it contains a statement that if you were Mr. Moore's
6 attorney, that you would have a direct conflict of interest
7 which you would not then be allowed to represent Michael
8 Newberry?

9 A. I agree.

10 Q. And it would have been an actual conflict of interest
11 because it would have been a co-defendant in the case, right?

12 A. Yes.

13 Q. And would you also -- as part of your investigation
14 before making the affidavit, did you have a chance to review
15 the police report in this case?

16 A. Before the investigation at the trial or now?

17 Q. No, no, no. Before making this affidavit.

18 A. No.

19 Q. So you didn't look at the police report in the case
20 before?

21 A. No.

22 Q. Okay. No problem.

23 MR. LASSITER: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes.

1 Q. (By Mr. Lassiter) Now are you familiar with
2 Detective Williams?

3 A. Yes.

4 Q. Okay. He was the lead investigator in the Michael
5 Newberry case?

6 A. I don't remember that. It may be.

7 Q. That's fine. And also the lead investigator in
8 Lilton Deon Moore's case?

9 A. I don't know that.

10 Q. So this is already an exhibit. It's Exhibit 6 in the
11 record, but I'm going to read this. You tell me if I've read
12 this incorrectly. "Before I could talk to him about the
13 homicide, Lilton Deon Moore wanted to talk to his attorney,
14 John Morris. After Lilton Deon Moore talked to his attorney, I
15 then took a tape recorded statement from him. This taped
16 statement was done 5/31/1996 at 12:14." Did I read that
17 correctly?

18 A. You did.

19 MR. LASSITER: Judge, may I approach the bench
20 real quick?

21 THE COURT: Yes.

22 Q. (By Mr. Lassiter) This has been admitted as
23 applicant's Exhibit No. 60. Do you see at the top where it
24 says, "John Morris let him talk"?

25 A. I see that.

1 Q. Okay. And I'm going to represent to you this came
2 from Deon Moore's file. So do you recognize Judge Haverkamp's
3 handwriting?

4 A. I really don't -- her signature maybe.

5 Q. Okay. Well, is there some reason why it would state
6 in Deon Moore's file and in the police report that you spoke
7 with Deon Moore and gave him counsel and then he talked? Can
8 you think of a reason why those statements are contained in the
9 investigation of Mr. Newberry's case and Deon Moore's case?

10 A. I can't other than someone wrote them down other than
11 me, and I don't know if they're true or not. I never talked to
12 the man.

13 Q. Okay. Is it your testimony that you never spoke with
14 Deon Moore?

15 A. That's correct.

16 Q. Is it your testimony that on May 31st, 1996, Deon
17 Moore did not call you and speak with you? Is that your
18 testimony?

19 A. I don't remember that. I don't remember any phone
20 call.

21 Q. Okay. So I want to be very clear, Judge Morris. All
22 right?

23 A. (Nodding head up and down)

24 Q. If you're going to say it didn't happen, it has to be
25 an affirmative statement it did not happen. If you don't

1 recall, that's okay. But we need to know if you recall or not,
2 and you have given now two different answers. So do you recall
3 if Lilton Deon Moore called you on May 31st to talk to you
4 about giving a statement?

5 A. I don't recall the telephone call.

6 Q. That's fair. So it's fair to say because you don't
7 recall, you don't know if it happened or did not happen; you
8 don't recall? It's been 28-plus years.

9 A. I just don't remember it.

10 Q. That's fair. Okay. You can't say that it didn't
11 happen though because you don't remember. It could have
12 potentially happened?

13 A. Yes.

14 Q. And so if it could have potentially happened, that
15 would then make a conflict, an actual conflict of interest, for
16 you in representing Mr. Newberry, right?

17 A. Only if I gave him legal advice.

18 Q. Okay. So is it your testimony that you believe an
19 attorney-client relationship is not established unless you give
20 him legal advice? That is what your belief is?

21 A. Yes.

22 Q. If the law is different from that and the law stated
23 if somebody gave you confidential information, that establishes
24 the attorney-client privilege, would that surprise you?

25 A. No. That would not surprise me.

1 Q. Now you would also agree with me that these
2 statements that "John Morris let him talk" and John Morris was
3 his attorney, those are definitive statements; they don't say
4 they weren't able to reach you, right?

5 A. Right.

6 Q. It states that you were reached and you took an
7 affirmative action in this case letting him talk?

8 A. That's what somebody else said.

9 Q. That's what somebody else said. Now you would agree
10 with me that under the ethical rules, you are obligated to
11 bring it to the trial court's attention if there is an actual
12 conflict of interest?

13 A. Sure.

14 Q. Would you also agree with me that during the course
15 of the trial, you were provided on the record a copy of
16 Detective Williams' report?

17 A. I don't --

18 Q. Do you remember?

19 A. I don't know that I was provided a copy of the
20 report.

21 Q. Okay. So this is the trial transcripts.

22 "Cross-examination by Mr. Morris."

23 "Investigator Williams, did you make a copy of
24 your investigation in this case -- did you make a report of
25 your investigation in this case?"

1 Your answer -- or his answer, "Yes, sir, I did."

2 Your question, "Do you have a copy with you?"

3 His answer, "No, sir, I don't."

4 Ms. Haverkamp states, "Your Honor, I have a copy

5 here." She states, "Let the record reflect I'm handing

6 Mr. Morris a copy of Investigator Williams' report."

7 And your reply, "May I have a moment to look at
8 it, Your Honor?"

9 A. That could have happened.

10 Q. Could have happened?

11 A. Yes.

12 Q. Did it --

13 A. I don't recall it specifically, but --

14 Q. I understand that --

15 A. -- I don't -- I don't question the transcript.

16 THE COURT: Y'all need to talk one at a time,
17 okay?

18 Q. (By Mr. Lassiter) Judge Morris, this is the trial
19 court transcript. Do you understand?

20 A. I understand.

21 Q. Do you disagree that this is true and correct?

22 A. No.

23 Q. So based on the trial transcript, we know that you
24 asked for and received a copy of this very report from
25 Detective Williams, right?

1 A. Yes.

2 Q. Okay. And you asked for time to read it, correct?

3 A. Apparently.

4 Q. And when you read it, if you had read the entirety of
5 it, on page four --

6 MR. LASSITER: May I approach again, Your Honor?

7 THE COURT: Yes.

8 Q. (By Mr. Lassiter) -- you would have read a reference
9 to you where it says, "Before I could talk to him about the
10 homicide, Lilton Deon Moore wanted to talk to his attorney,
11 John Morris."

12 A. Okay.

13 Q. So you would have read that at the time of trial
14 because you said you read a copy of the report, right?

15 A. Yes.

16 Q. And if that had been a mistake, you being an ethical
17 person would have raised your hand and said, Judge Woodlock,
18 we've got a problem, right?

19 A. Yes. I guess so.

20 Q. But you didn't do that, did you?

21 A. No.

22 Q. You didn't tell Judge Woodlock, hey, they're claiming
23 that I am Deon Moore's attorney, and I am not; you never
24 corrected that statement?

25 A. No.

1 Q. And you would agree with me you were under an ethical
2 obligation and would have corrected this statement if it was
3 wrong?

4 A. I told you my -- my feeling was if I gave him no
5 legal advice, we did not have an attorney-client relationship.

6 Q. And that's what you believed established the
7 attorney-client relationship, giving him advice?

8 A. If he would have called me, I would have told him you
9 need to talk to another attorney.

10 Q. Judge, are you aware that at the time of this call,
11 you were not conflicted from representing Mr. Moore? You had
12 not yet been appointed to Mr. Newberry.

13 A. No. I don't know that. I don't remember that.

14 Q. So you would not have told Lilton Deon Moore, hey,
15 I've got a conflict, you have to call somebody else, because
16 you didn't yet represent anybody else in the case.

17 A. I don't -- I didn't -- I don't know that.

18 Q. But you just made a statement that you would have
19 told him to hire somebody else because you had a conflict, but
20 you didn't yet have a conflict. You had a conflict in
21 representing Mr. Newberry. You had no conflict representing
22 Mr. Moore.

23 A. I didn't know -- I didn't know -- when I said I would
24 have told him to call an attorney, I would have assumed that I
25 was already Mr. Newberry's attorney.

1 Q. But you weren't.

2 A. Okay. I don't remember that.

3 Q. So your answer really doesn't make any sense. Now
4 you say you didn't give legal advice --

5 THE COURT: Is that a question --

6 MR. LASSITER: Yes, Your Honor.

7 THE COURT: -- or just a statement? You didn't
8 give him a chance to answer it.

9 MR. LASSITER: I'm following it up with it.

10 THE COURT: Well, that was a question in and of
11 itself, "that didn't really make any sense." Let him answer
12 that question.

13 Q. (By Mr. Lassiter) When you have a statement that
14 says you let someone talk, that is an affirmative action on
15 your part, correct?

16 A. Affirmative action on my part?

17 Q. Right. You did something. You didn't sit there and
18 listen to the phone call. You did something. You allowed him
19 to talk. You allowed him to make a statement. That's how this
20 reads, correct?

21 A. I would assume, yes.

22 Q. Okay. And you don't believe that's giving legal
23 advice, You need to give a statement to the police?

24 A. I don't think I would have ever told any client or
25 anybody else, Go talk to the police because you're a suspect in

1 a murder case.

2 Q. I understand that you don't believe you would have
3 done so, but the evidence --

4 A. I have never done anything like that.

5 Q. -- proves that you did. So the question is, why are
6 you saying that's not legal advice? Wouldn't you agree with me
7 letting them talk to the police, that is giving legal advice?

8 A. I'm saying I would never -- it says that. That's
9 incorrect. I would never have told a client or anybody else
10 that called me, I'm a suspect in a murder case, should I talk
11 to the police? Oh, yeah, you should go talk to the police.
12 That's absurd.

13 Q. Here's the problem, Judge Morris. Do you know what
14 Deon Moore told you?

15 A. No.

16 Q. Then how can you make a statement that you never
17 would have told him to talk to the police?

18 A. I would have never told anybody that if I knew that
19 was the situation.

20 Q. How would you have even known it was a murder
21 investigation unless he told you?

22 A. Unless he told me.

23 Q. Yeah.

24 A. I wouldn't have.

25 Q. That's right. So if you would have gotten that

1 information, you received confidential information, and then if
2 the record reflects that you let him talk, you would have given
3 him the advice to talk. Whether you remember it or not, the
4 record indicates that you let him talk, correct?

5 A. Then the record is incorrect.

6 Q. Now you believe that the record is incorrect. That's
7 what you're saying?

8 A. Yes, sir. And when I say the "record," not the
9 transcript. The report there.

10 Q. Do you recall giving testimony in a former writ
11 hearing in 2005?

12 A. No.

13 Q. 20 years ago, right?

14 A. '25, '05, yes.

15 Q. Do you recall even any of the facts of this
16 particular case specifically?

17 A. Yeah. I recall a few of the facts.

18 Q. In those facts that you recall, do you recall ever
19 making Judge Woodlock aware that there is a problem with your
20 representation because it is alleged, according to you
21 incorrectly, that you represented a co-defendant prior to
22 representing Michael Newberry? Did you ever make Judge
23 Woodlock aware of that?

24 A. I did not.

25 Q. Would you agree with me that having your file in this

1 case would be very helpful?

2 A. Certainly.

3 Q. And do you know where your file is?

4 A. No.

5 MR. LASSITER: May I approach the witness, Your
6 Honor?

7 THE COURT: Yes.

8 Q. (By Mr. Lassiter) So you were given an affidavit
9 today in which you stated affirmatively that your file was
10 destroyed?

11 A. I destroyed all of my files, except some recent ones.

12 Q. Have you ever given statements to the contrary of
13 that, that your file in this case was destroyed? Have you ever
14 made a statement to the alternative?

15 A. Not that I know of.

16 Q. All right. This is your testimony when questioned by
17 Mr. Goldsmith during the writ hearing.

18 "Did you pull your file prior to your testimony
19 today to review your file?"

20 Your answer, "Actually I looked for that file
21 and I was not able to find it. I moved my law office several
22 years ago. Some of those things were stored, and I was not
23 able to find that file."

24 "What things were you able to review to refresh
25 your memory?"

1 "I looked at the Court's file and just used my
2 own memory. That's all I had to go on."

3 You would agree with me that nowhere in there
4 does it state you destroyed the file?

5 A. Yes. It doesn't say that.

6 Q. Mr. Goldsmith's question to you, "If you could locate
7 your file that you searched for but could not locate it prior
8 to testifying, do you think that there might be some type of
9 documentation about that in your file?"

10 Your answer was "Possibly."

11 His question, "Are there other places that you
12 could search that you might locate this file?"

13 Your answer was, "I only have files in two
14 different locations. I have some stored in some old boxes in a
15 storeroom. I searched those the last two days. And I looked
16 and I have a locked filing cabinet in the back of my home, and
17 I searched that. I didn't find any case, and that could have
18 been just because of the age of the file."

19 Would you agree with me you don't say in there
20 it was destroyed?

21 A. Yes.

22 Q. He asked you if you take anything, to the bench, on
23 file retention. Your answer, "I think I shredded everything
24 that was more than five years old. I -- that was about it, I
25 think."

1 His question, "So would this case be in the age
2 range where it's likely shredded?"

3 Much like destroyed, right?

4 Your answer, "Could have been. But I -- I have
5 had several cases that were more important than others. And --
6 and I thought I would have kept this one just because of the
7 nature of the case, but I was not able to find it. So I don't
8 know if it's shredded or not."

9 You would agree with me that in here, you don't
10 remember, you don't know if it was shredded or not, correct?

11 A. No. All I remember was that I shredded just about
12 every file more than five years old.

13 Q. I understand. But you gave under-oath testimony
14 here, right?

15 A. Yes.

16 Q. That was true and correct then, right?

17 A. Yes.

18 Q. And that was 20 years ago?

19 A. But I did not particularly remember that file.

20 Q. And so has your memory improved such in the last 20
21 years that when you affirmatively stated in your affidavit to
22 this court that that file was destroyed, that's not entirely
23 true, you simply don't know? Isn't that more accurate?

24 A. I don't know that it's more accurate or not. To the
25 best of my memory, I destroyed files of more than five years

1 old. That would have been one. And I never found that file,
2 so I just assumed it was shredded.

3 Q. And that's fair. But that's not what you put in your
4 affidavit.

5 A. Okay.

6 Q. Now in your affidavit, you also state that you cannot
7 confirm or recall what evidence was received in this case. Is
8 that correct?

9 A. That's true.

10 Q. Do you recall ever getting the grand jury transcript
11 of Lilton Deon Moore?

12 A. I do not recall that, but I do not think that I did.

13 Q. Okay. And would it be fair to say that the reason
14 that you don't think that you did -- well, let me ask it this
15 way. Have you had a chance to review the writ that we have
16 filed in this case?

17 A. No.

18 Q. Okay. So have you even looked at the grand jury
19 transcript of Deon Moore in this case?

20 A. No.

21 Q. If I were to represent to you that in that
22 transcript, Deon Moore over 46 times states this was never a
23 robbery, would that surprise you?

24 A. No.

25 Q. Would you agree with me that in this case, the charge

1 was capital murder?

2 A. Yes.

3 Q. And in a capital murder, there has to be an
4 aggravating element, correct?

5 A. Yes.

6 Q. And the aggravating element the District Attorney or
7 then-District Attorney Haverkamp was using was this was a
8 robbery, right?

9 A. I don't remember if it was robbery or a narcotics
10 transaction.

11 Q. Okay. If it was a narcotics transaction, it would
12 not be a capital murder, right?

13 A. If the murder occurred during the selling of
14 narcotics, I would think it would.

15 Q. So when -- and I'll read these statements to you, and
16 you tell me if this jogs your recollection.

17 Judge Haverkamp, in opening statement, "They got
18 out of the vehicle to rob Granville Hanks. The robbery is the
19 whole reason we're in the courtroom today. The sole and
20 exclusive reason why these two gentlemen, the defendant and his
21 co-defendant, got out of the car was to rob Granville Hanks.
22 They all knew they were going to rob Granville Hanks."

23 Would you agree with me that she is trying to
24 make the case that this is a robbery as the aggravating
25 element?

1 A. If that's the statement, sure.

2 Q. And would you also agree with me that if you had been
3 provided evidence that one of the co-defendants is saying this
4 is not a robbery, it never was a robbery, you would have used
5 that to disprove, disparage, conflict with the State's theory
6 of the case?

7 A. Yes.

8 Q. And that would be exculpatory evidence, right?

9 A. Yes.

10 Q. Because it disproves a fact --

11 A. An element --

12 Q. Everybody knows that, right?

13 A. Yes.

14 Q. And if District Attorney Haverkamp had evidence in
15 the form of the grand jury transcript that over 46 times Deon
16 Moore was questioned intensely and stated over and over again
17 this was not a robbery, we -- and he says, I was there to sell
18 drugs. Not Michael Newberry. I was there to sell drugs.
19 Would you agree with me that you, if you had known that, would
20 have used that in the course of the trial?

21 A. Sure.

22 Q. And, in fact, we know that you were not provided this
23 information --

24 MR. LASSITER: May I approach the witness, Your
25 Honor?

1 THE COURT: Yes.

2 Q. (By Mr. Lassiter) By the way, you questioned
3 Detective Williams. So this is your questioning of Detective
4 Williams. Talking about Deon Moore.

5 "But after he, Deon Moore, testified before the
6 grand jury, he gets arrested and charged with capital murder
7 too, doesn't he?"

8 Detective Williams' answer, "Yes, sir, he does."

9 Your question, "So either one of two things
10 happened, didn't it? After he made you -- when Deon Moore made
11 this statement to you on May 31st, 1996, he either told you the
12 truth and you didn't believe it, or when he testified before
13 the grand jury on July 10th, 1996, he changed his story.
14 Didn't one of those two things have to happen?"

15 His answer was, "Probably. Yes, sir."

16 Did I read that correctly?

17 A. Yes.

18 Q. So that shows you didn't have the grand jury
19 statement or Deon Moore's statement because if you had, you
20 would have known what was different in the two statements and
21 illustrated it for Detective Williams, right?

22 A. I know I didn't have the two statements.

23 Q. Perfect. So you know Janelle Haverkamp never turned
24 over for you the grand jury transcript of Deon Moore or the
25 statement of Deon Moore?

1 A. Yes.

2 Q. And would it also be fair to say that you never
3 received the statement of Douglas Wilson?

4 A. Yes.

5 Q. You never received the statement of Louie Ray
6 Sheppeard?

7 A. I did not.

8 Q. You never received the statement of Sidney Perry?

9 A. No.

10 Q. You never received the statement of Erica Bradley?

11 A. I'm assuming these are witnesses in the case? Yes.
12 I didn't receive any of those statements.

13 Q. You did not receive the statement of Eugene or Tonya
14 Pezzatta?

15 A. No.

16 Q. And you did not receive the statement of Kassondra
17 Carr?

18 A. No.

19 Q. Or Ruby Renee Williams?

20 A. No.

21 MR. LASSITER: May I approach the bench, Your
22 Honor?

23 THE COURT: Yes.

24 Q. (By Mr. Lassiter) You practiced with Judge Haverkamp
25 being the opposing party in many cases, right?

1 A. Yes.

2 Q. You're familiar with how she goes about disclosing
3 evidence to you, right?

4 A. Somewhat. I mean, I knew I -- we -- she did not
5 usually disclose the grand jury testimony or witness
6 statements.

7 MR. LASSITER: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes.

10 Q. (By Mr. Lassiter) This is introduced as applicant's
11 Exhibit No. 58. So this is a list of Compliance With Discovery
12 motions that Janelle Haverkamp made in this case to you. Do
13 you recognize those?

14 A. I recognize my signature.

15 Q. Okay. And you would agree that this is how Janelle
16 Haverkamp would typically provide the evidence to you. If she
17 provided it, she would do it with something saying, this is
18 what I provided?

19 A. Yes.

20 Q. Okay. So if she didn't do one of these, you can
21 testify you didn't get it because she would do this --

22 A. I didn't get it.

23 Q. -- if you got it?

24 A. That's right.

25 Q. That's right.

1 A. I got the statements of my client. I did not get any
2 other statements.

3 Q. Exactly. You did. In fact, you got a letter that
4 she made you sign saying you received those statements, didn't
5 you?

6 A. Probably.

7 Q. Now when she gave you a statement about potentially
8 some mitigating evidence in the case, she actually would
9 disclose it in this same Compliance With Discovery and then
10 list out what that mitigating evidence was, correct?

11 A. Yes.

12 Q. And in this case, she gave you possible mitigating
13 evidence, and she said this witness that she didn't call during
14 the trial, a Tara Engler, stated, "Deon Moore said, my cousin
15 is in jail serving my time." Right?

16 A. That's what it says.

17 Q. That's right. And so if Deon Moore was in jail
18 serving Michael Newberry's time, then anything illustrating
19 that Deon Moore did this crime would then be exculpatory, and
20 you would have used it had you had it?

21 A. Oh, absolutely.

22 Q. And so you had no idea that Deon Moore had robbed
23 five or six times?

24 A. No.

25 Q. You had no idea that Deon Moore would laugh after he

1 robbed people?

2 A. No, I didn't know that.

3 Q. You didn't know that Deon Moore had done a drive-by
4 shooting when he was 13 years old?

5 A. No.

6 Q. You didn't know that Deon Moore possessed that gun
7 that night?

8 A. No.

9 Q. You didn't know that Deon Moore knew the inner
10 workings of the murder weapon, that Judge Haverkamp told the
11 jury it had to be Michael Newberry because only he knew how
12 that weapon worked; you didn't know that she knew because Deon
13 Moore admitted he knew exactly how that weapon worked?

14 A. No.

15 Q. You didn't know that he had had a violent history
16 over and over again and, in fact, had lost a gun a week prior
17 that he needed to replace?

18 A. No, I didn't know that.

19 Q. And you didn't know that Deon Moore admitted that
20 Michael Newberry would never do anything harmful to anyone
21 unless he was forced to? That was in the grand jury
22 transcript.

23 A. Yeah.

24 Q. And you would have used that too, right?

25 A. Absolutely.

1 Q. All of these things that I'm talking about you would
2 agree are exculpatory information that had District Attorney
3 Haverkamp told you about, you would have utilized?

4 A. Absolutely.

5 Q. And you would have utilized it in your
6 cross-examination of Douglas Wilson, Louie Ray Sheppard, and
7 Sidney Perry?

8 A. Sure.

9 Q. And you didn't know that Douglas Wilson had admitted
10 Michael Newberry did not get out of the car with the gun, Deon
11 Moore did?

12 A. I didn't know that.

13 Q. Now she's filed a compliant --

14 MR. LASSITER: May I approach the witness again?

15 THE COURT: Yes.

16 Q. (By Mr. Lassiter) Judge Haverkamp was very
17 particular in how she wrote these compliance with discoveries
18 in your estimation, right?

19 A. Yeah. I would guess so.

20 Q. If she disclosed a witness statement, she would put
21 she disclosed a witness statement. If she just said what
22 somebody said, like Tara Engler, she would just put it in the
23 document, right?

24 A. I would guess so, yes.

25 Q. In this particular case -- this is clerk's record

1 2020 [sic], right? It states that on the 3rd day of July,
2 1997 -- that's about four days prior to trial, right?

3 "Witnesses who identified any other individual other than the
4 defendant as having possessed a firearm in this case: Louie Ray
5 Sheppeard and Douglas Wilson said Deon Moore had a gun." It
6 doesn't state that there are witness statements and here they
7 are, does it?

8 A. No.

9 Q. So this document only tells you that two people
10 identified Deon Moore as having the gun, but it doesn't tell
11 you that they gave witness statements that were recorded and
12 transcribed, does it?

13 A. No.

14 Q. And you never got those statements?

15 A. No, I did not get witness statements.

16 Q. And you, being the good attorney that you were, asked
17 for all favorable evidence, right?

18 A. Absolutely.

19 MR. LASSITER: May I approach the bench, Your
20 Honor?

21 THE COURT: Yes. How much more in time do you
22 have with this witness? I'm not trying to shut you off, but
23 I've got to give the court reporter a break. We've been going
24 for a very long time.

25 MR. LASSITER: Very little, Your Honor. Very

1 little.

2 THE COURT: All right.

3 Q. (By Mr. Lassiter) This is the applicant's Exhibit
4 No. 27. You filed this motion asking for the disclosure of
5 favorable evidence, right?

6 A. Yes.

7 Q. And the first thing that you asked for was the
8 statements of any witnesses interviewed by the prosecution who
9 identified an individual other than the defendant as having
10 fired a gun or possessed a gun in this case?

11 A. Yes.

12 Q. And the judge granted that request?

13 A. Yes.

14 Q. Because it was exculpatory, right?

15 A. Yes.

16 Q. Because you were asking for it and it's exculpatory?

17 A. Well, if there's any other suspects, I want to know
18 about it.

19 Q. And Deon Moore admitted to possessing a gun, and you
20 didn't know that, did you?

21 A. No.

22 Q. And you were not given the statements of Douglas
23 Wilson or Louie Ray Sheppard?

24 A. No.

25 Q. Even though the judge specifically ordered for that

1 to be turned over to you?

2 A. I just didn't get the statements. Yeah.

3 Q. And the judge signed your motion and granted that
4 aspect of it, correct?

5 A. Yes.

6 Q. Were you aware that Deon Moore in the grand jury
7 transcript said that the only reason somebody would cover their
8 face with a bandana or hat would be to do a robbery or some
9 other type of jacking? Were you aware of that?

10 A. No.

11 Q. And in this case is the evidence that the only person
12 who covered his face with a bandana and pulled his hat so he
13 wouldn't be identified was Deon Moore; Michael Newberry, based
14 on your questioning, never covered his appearance at all. You
15 would have used that if you had known, right?

16 A. Well, sure.

17 Q. And that's exculpatory too, right?

18 A. Yes.

19 Q. What you're saying is had you known all these
20 different things, you would have changed your trial strategy?

21 A. Absolutely.

22 Q. And you, in fact, requested -- specifically requested
23 the grand jury and witness statements in this case?

24 A. Yes, I did.

25 Q. And you believed that Judge Haverkamp would follow

1 the judicial orders that if they had any statement that
2 identified Deon Moore as having a gun, that witness's statement
3 would have been disclosed to you. You believed that?

4 A. Yes, I believe that.

5 Q. And you had no idea that Judge Haverkamp was
6 withholding it from you?

7 A. I didn't even know it existed.

8 MR. LASSITER: Pass the witness.

9 MR. WARREN: We have no questions.

10 THE COURT: May this witness be excused?

11 MR. LASSITER: Yes, Your Honor. Well, we'd ask
12 him to be subject to recall depending because we don't know
13 what Judge Haverkamp is going to allege.

14 THE COURT: Okay. You may step down, sir, and
15 we'll let you know -- we're probably not going to finish this
16 today, so we'll let you know when it's rescheduled.

17 THE WITNESS: Oh, okay.

18 THE COURT: Thank you.

19 MR. LASSITER: Judge, my final witness will take
20 maybe five minutes. I don't know what he knows. Mr. Hagen.

21 THE COURT: Well, he's going to probably want to
22 testify too, I mean, if you call him.

23 MR. LASSITER: I don't know what he knows, so he
24 may not know anything about any of these details, but --

25 THE COURT: We're going to take a 10-minute

1 break.

2 (Off the record)

3 THE COURT: Resuming in the Newberry case. It's
4 my understanding -- well, during the break, we discussed
5 potential resets of this, and we agreed that we are going to at
6 least agree to reset it for the afternoon of February 13th,
7 which is next Thursday, at 1 o'clock subject to my trial.

8 MR. LASSITER: Yes, Your Honor.

9 THE COURT: And I will let y'all know as soon as
10 I know, will do my best to be here. So given that, I believe,
11 Mr. Lassiter, you said that you were going to wait and call
12 Mr. Hagen.

13 MR. LASSITER: At that later date. We are going
14 to call Eric Erlandson very briefly for some of the testimony
15 that you heard today.

16 THE COURT: Okay.

17 MR. LASSITER: So if we could do so.

18 THE COURT: Yes. Come up here, sir. I know
19 you're an officer of the Court, but I've sworn everybody else
20 in.

21 THE WITNESS: Yes, ma'am.

22 (Witness sworn)

23 THE COURT: Please be seated.

24 ERIC ERLANDSON,
25 having been first duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. LASSITER:

3 Q. Mr. Erlandson, if you would, state your name,
4 spelling your last name for the court reporter.

5 A. It's Eric Erlandson, E-R-L-A-N-D-S-O-N.

6 Q. And you were in the courtroom and you heard Judge
7 Haverkamp claim that she asked you for a copy of the record and
8 you denied her?

9 A. Yes. I heard that.

10 Q. What is your response to that?

11 A. It didn't happen the way that she said it happened.

12 Q. How did it happen?

13 A. I was in the courtroom, and she began to accost me
14 about this case, yelling at me, being very loud. She said
15 several things, but then she went into her office and
16 immediately came out and looked at me and made a comment that,
17 You're just going to give the other side the whole file and
18 you're not even going to let me look at it? At that point, I
19 explained to her that the other -- the attorneys on the other
20 side had filed a public information request in 2020 and 2024
21 and we let them see the whole file. She made a comment that,
22 You just gave them the whole file including all my sticky
23 notes. And I said --

24 Q. Did she seem upset with that?

25 A. She was very upset, angry, yelling the entire time.

1 Very intimidating, to be honest with you.

2 Q. And was any of this caught on the record?

3 A. The court reporter was in here. Not this court
4 reporter. It was Denise Neu. I don't think she took any of it
5 down. I don't know for sure.

6 Q. Is that why you made specific notes about what
7 happened so that you could refresh your recollection and
8 specifically testify to this judge exactly what happened?

9 A. Yes.

10 Q. You did not know at that time or is it -- did you
11 know at that time that she was going to make this claim that
12 she couldn't access the file?

13 A. I had no clue. I just knew it would be important for
14 me to write down what happened in case it was important at some
15 point.

16 Q. And that is due to her reaction to this writ even
17 being filed?

18 A. Yes, sir.

19 Q. And can you affirmatively state to Judge Gabriel that
20 what Judge Haverkamp said earlier that you were requested the
21 file, the DA file, and you denied her, is affirmatively a lie?

22 A. Yes. I never denied her the file.

23 Q. And did you actually make her aware, there's probably
24 a process by which you can request it and we would provide it?

25 A. I didn't go that far. I did tell her -- what I wrote

1 down exactly what I told her is, I'm not sure that we wouldn't
2 let you look at the file. And I said that multiple times
3 because she kept saying, You weren't even going to give me a
4 copy. I hadn't spoken to my boss yet about what we were going
5 to do. And multiple times, I said, I'm not sure that we
6 wouldn't let you look at the file.

7 Q. Okay.

8 MR. LASSITER: Nothing further, Judge.

9 THE COURT: Okay.

10 MR. WARREN: No questions.

11 THE COURT: You may step down, sir.

12 Okay. Anything else you want to do on the
13 record today?

14 MR. LASSITER: Yes, Your Honor. May I approach?

15 THE COURT: Yes.

16 MR. LASSITER: I believe you may have a copy of
17 that. This is the Applicant's Agreed Motion to Set Bond. Do
18 you have a copy it?

19 THE COURT: I think I do.

20 MR. LASSITER: So in this particular case, Your
21 Honor, there is precedent for this. It's actually listed in
22 the code. We've listed the code for you. In the previous case
23 that I was involved with, that was the Walter Roy case. They
24 granted a bond in that instance. He was imprisoned for 26
25 years for a crime that we at that time with the District

1 Attorney's Office agreed that he didn't commit.

2 The Court has made reference several times this
3 is an odd hearing because the District Attorney is in
4 agreement. I would submit to the Court in support of issuing
5 this bond, it is rare for the District Attorney's Office to
6 agree. It is very rare. And in those few and select
7 instances, the reason that they agree is because it is
8 definitive in the record. I started this hearing with letting
9 you know I would not make any claim that I could not back up
10 definitively by the record, and definitively everything that I
11 have said throughout the hearing has been backed up by the
12 record.

13 The other thing is one of the things to consider
14 in whether or not to grant him a bond is whether or not there
15 is a likelihood that the writ is meritorious. In this
16 particular case, you've heard testimony from Judge Morris,
17 definitive testimony, that he did not get 10 items, all of
18 which are in -- inarguably exculpatory. Taking aside the false
19 testimony claim, taking aside whether or not he represented
20 him, which he didn't have an answer for -- and I think the
21 record is clear that Morris represented him and that's an
22 actual conflict. But taking that aside, he said that he would
23 change his trial strategy if he had known the things that were
24 contained within the grand jury transcript and contained within
25 the statements. Not only that, the statements definitively

1 were not disclosed per the Court order. This would entitle
2 Mr. Newberry to relief. It would not entitle him under actual
3 innocence. It would entitle him to a new trial.

4 The reason we're asking for this bond, Your
5 Honor, is Mr. Newberry has been in prison for over 28 years.
6 The record as it stands reflects that not only is the writ
7 meritorious, but the witnesses have confirmed it. So there is
8 a very high likelihood that this writ will be granted in my
9 opinion. Not substituting my opinion for the Court's in any
10 way. But the record backs up what we have made in our claims,
11 and if the record backs that up, why would we keep this man in
12 jail a day longer? There's no need.

13 His family is behind me. His family deserves to
14 have him back, and if this court were to deem it appropriate to
15 recommend that relief be granted, the District Attorney's
16 Office has represented and will represent to this court that
17 their intention is to dismiss the charge against Mr. Newberry,
18 so he will face no charges. There is simply no basis or reason
19 why he can't be released today.

20 And there is no reason to believe that he is a
21 danger to the community after 28 years having proof of
22 exculpatory evidence that Deon Moore actually committed this
23 act and he did it alone, and the grand jury establishes that
24 and the statements establish that and the witness statements
25 establish that, not to mention Deon Moore's witness affidavit

1 that states that Michael had nothing to do with any of this.

2 All I'm asking, Judge, is for what I believe to
3 be the right thing, to grant him the bond. There's no reason
4 to believe that he won't appear for every hearing here on out.
5 You can see the family support that he has. In all of the bond
6 conditions, we look at family support. We look at -- we detail
7 out where he's going to live, what he's going to do. I believe
8 that because the record has established that relief is
9 appropriate, a bond is also appropriate, and we have also filed
10 joint proposed findings of fact and conclusions of law that are
11 very detailed all based on the record and all based on -- the
12 testimony today doesn't change any one of those things. It
13 actually validates them. So we're asking the Court to grant a
14 PR bond in this case.

15 THE COURT: Basically you're asking me to give
16 you a preview or whatever of what the Court is going to --
17 don't argue with me. That's not going to help -- of what the
18 Court's going to do in this case, and I haven't made up my mind
19 yet. I haven't. I haven't heard everything yet. That's not
20 what a judge is supposed to do. I'm not supposed to make up my
21 mind halfway through. I'm supposed to make up my mind when
22 it's all over with. And maybe there is a procedure for this,
23 but I need to look at that, and I quite frankly have not looked
24 at that. I was focused on the merits of your application, and
25 I'm still focused on the merits of your application. And I am

1 not -- I'm not comfortable, but I will tell you, next Thursday
2 when we finish, if -- I don't know that I'm going to make a
3 ruling at that point in time on the merits of the application
4 because I'm not sure I'm going to have sufficient time to look
5 at -- between now and then to look at all this evidence, this
6 right here, that has been submitted. But I will reconsider
7 that this next Thursday, but I'm not going to grant it today.

8 MR. LASSITER: Yes, Your Honor. Can we have a
9 court order for him to be able to remain here in Cooke County
10 rather than being transferred back to TDC and then come back
11 here?

12 THE COURT: That would be a huge waste of time
13 to transfer him back and bring him back next Thursday, so
14 whatever you need from me, you can get from me to make sure
15 that that happens.

16 MR. LASSITER: I have nothing further at this
17 time, Your Honor.

18 THE COURT: Okay. Then we will hopefully get
19 back to this next Thursday. I will do my very best to make
20 sure that happens and spend time on this when I can.

21 MR. LASSITER: Thank you, Your Honor.

22 THE COURT: If you want me to look at -- I guess
23 we need to get Judge Haverkamp back out here and see what it
24 is, because you had made a request the Court look at something
25 that you're saying she has now not given you that she gave you

1 before. So let's get that handled on the record before y'all
2 leave.

3 MR. ERLANDSON: Your Honor, also is there --
4 does the Court have any advice on how we should supply the file
5 to Ms. Haverkamp? Because I'm assuming she doesn't want us to
6 sit in the room with her when she goes over it, but --

7 THE COURT: Are y'all willing to give her a copy
8 of it?

9 MR. WARREN: We can make a copy.

10 MR. ERLANDSON: We can make copies of
11 everything, Your Honor. Yes, ma'am.

12 MR. WARREN: Or if she would prefer, we will
13 allow her court coordinator or someone from the court to make a
14 copy.

15 THE COURT: What's your preference?

16 HON. JANELLE HAVERKAMP: I would ask that my
17 coordinator be given the file to make a copy.

18 MR. WARREN: We would ask that can she make the
19 copy in our office? We have a copy machine. We'll provide her
20 paper and everything.

21 HON. JANELLE HAVERKAMP: That's fine.

22 THE COURT: Okay. All right. So that needs to
23 be done ASAP.

24 MR. ERLANDSON: We can start as soon as she
25 wants.

1 MR. WARREN: Today, tomorrow, whenever.

2 THE COURT: Okay. So counsel is telling the
3 Court that the documents you gave them for review while you
4 were testifying the first and second time included something --
5 they say it's a thicker stack of papers that you did not
6 furnish them when they asked after you left the room. They
7 want to see -- or they want at least the Court to look at
8 whatever it is that they say you took out of the file. They
9 say it was there both times when you gave it to them before,
10 and it wasn't there when you gave it to them the last time.
11 And I believe the State's attorney say they saw you take
12 something out of the file.

13 HON. JANELLE HAVERKAMP: Are you talking about
14 my personal notes?

15 THE COURT: Don't know.

16 MR. LASSITER: There were Facebook posts about
17 Mr. Warren. There was about a packet about this --

18 MS. EMANUEL: It was smaller than that.

19 HON. JANELLE HAVERKAMP: Okay.

20 MS. EMANUEL: It was a typed-out statement with
21 some handwritten notes on it.

22 THE COURT: Whatever you took out of there that
23 you furnished to them the first --

24 HON. JANELLE HAVERKAMP: I didn't furnish, but
25 they're my personal notes.

1 MR. LASSITER: She did. That's how we know
2 what's in it. That's how we know there's handwritten notes on
3 it.

4 THE COURT: If it's something you reviewed prior
5 to testifying.

6 HON. JANELLE HAVERKAMP: Well, it's something I
7 was preparing for an affidavit that goes to their bias, but
8 I'll give it to them.

9 THE COURT: Okay.

10 HON. JANELLE HAVERKAMP: Also is Mr. Hagen still
11 under the Rule? Am I able to talk to him in this week?

12 MR. LASSITER: I have him still under the Rule,
13 Your Honor. They're now represented -- or she is now
14 represented by Cary, so --

15 THE COURT: Y'all haven't testified, so
16 technically you're still under the Rule. I mean, you've
17 testified, but he hasn't. Doesn't mean -- I'm still going to
18 give you an opportunity to testify. I just want you to see the
19 file before you do that. So you're still under the Rule.

20 HON. JANELLE HAVERKAMP: Okay. Thank you.

21 THE COURT: Y'all are going to have to sit here
22 and look at that and give it back to her before you leave,
23 okay?

24 MR. PIEL: Judge, are we in recess on the
25 hearing?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Yes.

(Off the record)

1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS)
3 COUNTY OF COOKE)

4 I, Holly S. Oakley, CSR, RMR, Official Court Reporter in
5 and for the 235th District Court of Cooke County, State of
6 Texas, do hereby certify that the above and foregoing contains
7 a true and correct transcription of all portions of evidence
8 and other proceedings requested in writing by counsel for the
9 parties to be included in this volume of the Reporter's Record,
10 in the above-styled and numbered cause, all of which occurred
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if any,
14 admitted by the respective parties.

15 WITNESS MY OFFICIAL HAND this 6th day of February, 2025.

16
17 /s/ Holly S. Oakley
18 Holly S. Oakley, Texas CSR 7710
19 Expiration Date: 1/31/2027
20 Official Court Reporter
21 235th District Court
22 Cooke County, Texas
23 101 S. Dixon Street
24 Gainesville, Texas 76240
25 holly.oakley@co.cooke.tx.us