Dusty Ray Spencer v. State of Florida

THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS DOORBAL VERSUS STATE. YOU MAY PROCEED. THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS SCOTT SAKIN. I AM HERE ON BEHALF OF THE APPELLANT, NOEL DOORBAL, WHO WAS TRIED AND CONVICTED OF SEVERAL OFF ENDS, INCLUDING TWO COUNTS OF FIRST-DEGREE -- OFFENSES, INCLUDING TWO COUNTS EVER FIRST-DEGREE MURDER AND TWO OTHER SERIOUS -- OF FIRST-DEGREE MURDER AND TWO OTHER SERIOUS CHARGES. AFTER A PENALTY-PHASE, IT WAS RECOMMENDED BY THE JURY AND REVISED IN THE VERDICT THAT HE BE SENTENCED TO DEATH AND ULTIMATELY THE JUDGE DID SENTENCE HIM TO DEATH FOR BOTH COUNTS OF FIRST-DEGREE MURDER. THE FACTS OF THE CASE ARE SOMEWHAT UNUSUAL, ONLY BECAUSE THEY ARE SOMEWHAT COMPLICATED, AND THEY GO ON AND ON AND ACCOMPLISH MANY CRIMES WHICH WERE PUT TOGETHER IN ONE PROCEEDING, AND THE FACTS OF THE CASE INVOLVE MANY PEOPLE WHO WERE INVOLVED IN ALL TYPES OF DOGS HERE. DURING THE COURSE OF THE TRIAL -- OF DOINGS HERE. DURING THE COURSE OF THE TRIAL THAT TOOK PLACE, IT TOOK OVER THREE MONTHS TO TRY THE CASE, THERE WAS EVIDENCE WHICH WAS BROUGHT IN BY THE STATE, AND THE EVIDENCE WHICH WAS BROUGHT IN BY THE STATE WAS BAD CHARACTER TESTIMONY. THE BAD CHARACTER TESTIMONY WAS NOT INVITED BY THE DEFENDANT AND WAS GRATTUTSLY BROUGHT IN BY THE STATE. AS THE COURT KNOWS, THIS INVOLVED A CASE WHERE, AFTER THE DEATH OF THE VICTIMS OCCURRED, THE BODIES WERE CUTOFF. THE BODIES WERE PUT INTO A DRUM AND DISPOSED OF IN SEVERAL DIFFERENT PLACES ALONG I-75 IN BROWARD COUNTY, ONE DOWN IN SOUTH DADE. THE FACTS OF THE POST MORTEM DESTRUCTION OF THE BODIES WAS BROUGHT OUT THROUGHOUT THE TRIAL. THE JURY HEARD ABOUT THAT. BUT DURING, ALSO DURING THE COURSE OF THE TRIAL, IT WAS, ALSO ALSO, BROUGHT UP, THROUGH STATE WITNESSES, THAT PROVIDED TESTIMONY, ONE MARIO SANCHEZ, WHO DESCRIBED HIS RELATIONSHIP WITH MY CLIENT, MR. DOORBAL, AS BEING VOLATILE, AND HE ONCE DISCUSSED, AND THIS WAS NOT RELEVANT FOR ANY ISSUE, MR. SANCHEZ SAID THEY ONCE HAD A HEATED ARGUMENT IN WHICH MR. SANCHEZ WAS GOING TO QUIT HIS JOB.

EXPLAIN TO US WHY THERE WERE NO OBJECTIONS MADE TO ANY OF THE COMMENTS DURING THE COURSE OF THIS TRIAL?

AS THIS COURT KNOWS, I WAS NOT TRIAL COUNSEL. CLEARLY THERE SHOULD HAVE BEEN --

PART OF YOUR ARGUMENT SEEMS TO BE THAT THIS WAS SO EGREGIOUS THAT IT REALLY DIDN'T RELATE TO ANYTHING THAT, IT WOULD SEEM PRETTY REASONABLE THAT AN ATTORNEY -- THIS IS PRETTY BAD -- WOULD PUT OUR CLIENT'S CHARACTER INTO QUESTION HERE.

CLEARLY CHARACTER WAS NOT BROUGHT INTO ISSUE EXCEPT BY THE STATE, AND THERE SHOULD HAVE BEEN AN OBJECTION BY TRIAL COUNSEL. TRIAL COUNSEL OBVIOUSLY WAS NOT AWARE OF THE CONTEMPORANEOUS OBJECTION RULE OR WAS JUST SLEEPING AT THE SWITCH. THERE WAS NO STRATEGY REASON THAT ANYONE COULD THINK OF WHY YOU WOULD NOT OBJECT, DURING THE INTRODUCTION OF TESTIMONY WHICH CAME OUT --

ISN'T THAT MORE APPROPRIATE, THOUGH, FOR, DEPENDING ON WHAT OCCURS HERE, FOR POSTCONVICTION PROCEEDINGS?

YES AND NO. THERE WAS SO MUCH OF THIS ERROR THAT OCCURRED --

WHAT YOU HAVE HERE, WHAT, THREE WITNESSES, SANCHEZ, THE GIRLFRIEND, I AM NOT SURE HOW YOU PRONOUNCE HER NAME.

PATRISCIU.

THOSE ARE THE THINGS THAT WE ARE TALKING B AND WHY SHOULD WE NOT LOOK AT THIS AS THOUGH IT WERE A COUPLE OF SENTENCES IN A 14,000-PAGE TRANSCRIPTAROUNDS THIS IS KIND -- TRANSCRIPT, AND THIS IS KIND OF, FROM THAT PERSPECTIVE, TELL US WHY WE SHOULD NOT LOOK AT IT IN THAT WAY.

BECAUSE WHEN YOU LOOK AT IT AS TO HOW WE RELATE TO THE SPECIFIC FACTS OF THE CASE, IT WASN'T LIKE SANCHEZ SAID DOORBAL IS A WIFE-BEATER, WHICH HAS NO RELEVANCE, REALLY, TO THE CASE AT ALL. IT SAID SANCHEZ WAS ALLOWED TO SAY THAT DOORBAL HAD SAID, TO HIM, WHEN I GET MAD, I WILL DO ANYTHING. I WILL CUT. I WILL START UP A CHAIN SAW AND CUT SOMEBODY UP, JUST TO SEE THE BLOOD SPURTING. SANCHEZ, ALSO, SAID THAT HE TESTIFIED THAT HE HEARD HIM SAY ON ANOTHER OCCASION, I WILL GO INTO THE HOUSE AND TIE EVERYBODY UP. GRANDMOTHER, MOTHER, DAUGHTER, AND I WILL SHOOT. I WILL START SHOOTING EVERYBODY, UNTIL THEY GIVE ME WHAT I WANT. OF COURSE TIED TO THE FACTS OF THIS CASE, WHAT ARE THE FACTS OF THIS CASE? IT WAS ALLEGED AND THE JURY OBVIOUSLY BELIEVED THAT DOORBAL WAS ACTUALLY INVOLVED WITH CUTTING BODIES UP AFTER THE DEATH OF THE VICTIMS.

CLEARLY THEY DIDN'T PUT THE WITNESS IN JUST FOR THOSE TWO SENTENCES, SO WHAT IS THE CONTEXT IN WHICH THESE ARE PRESENTED AND HOW SHOULD WE TAKE THAT? I MEAN, IS THERE A CONTEXT TO THESE OR JUST WITNESS BLURTING THEM OUT? HELP US UNDERSTAND THAT A LITTLE BIT.

I BELIEVE THAT WHAT OCCURRED HERE IS THAT THE STATE ASKED THESE QUESTIONS AND THE WITNESS WAS ALLOWED TO ANSWER THE QUESTIONS. THIS INFORMATION WAS NOT RELEVANT TO ANY ISSUE AT ALL. NEVER SHOULD HAVE BEEN ALLOWED, AND IT SHOULD HAVE BEEN OBJECTED TO, AND WHEN LOOKED AT CAREFULLY WITH THE FACTS OF THE CASE, IT WAS ESPECIALLY PREJUDICIAL AND GOES TO THE ENTIRE VERDICT IN THIS CASE. THIS IS ONE OF THREE. THESE WERE EAST EUROPEAN HUNGARIANS, AS YOU ARE AWARE. THAT IS WHY THE NAMES ARE THIS WAY. SHE, HER TESTIMONY CAME OUT THAT DOORBAL WAS KILLER IN HIS OWN COUNTRY, REFERRING TO HUNGARY. THAT WASN'T RELEVANT TO ANYTHING AT ALL. THE WOMAN WHO WAS THE GIRLFRIEND TO MR. LUGOW, WHEN IT CAME OUT THAT HE WAS A KILLNER HIS OWN COUNTRY, IT WASN'T RELATIVE TO ANYTHING AND NEVER SHOULD HAVE COME OUT. THERE WAS NO REASON WHY IT WASN'T OBJECTED TO, AND WHAT THE CHARGE IS IN THIS CASE, THE CHARGE IS FIRST-DEGREE MURDER AND SOME OF THE MOST VIOLENT CRIMES THAT YOU CAN SEE, AND YET THERE WAS NO OBJECTION TO THEM, MORE IMPORTANTLY, AND NEVER SHOULD HAVE BEEN BROUGHT OUT BY THE STATE, AND THEN FRANK FAUCET WHO WAS THE STOCK BROKER FOR MERRILL LYNCH, HIS TESTIMONY IS ESPECIALLY INTERESTING, HE IS THE INVESTMENT BANKER WHO WAS CONTACTED BY MR. LUGOW ABOUT THE DEFENDANTS. HE HEARD HIM THREATEN TO KILL HIS GIRLFRIEND WHILE ON THE TELEPHONE. A MONTH LATER, WHEN FAWCETT TRIED TO TALK TO DOORBAL, THE DEFENDANT SAID "LEAVE ME ALONE. I AM MAKING A BOMB." WHAT RELEVANCE THAT HAD TO ANYTHING IN THIS CASE CLEARLY IS NOT HERE, NEVER SHOULD HAVE BEEN BROUGHT OUT, HAVING BEEN BROUGHT OUT SHOULD HAVE BEEN OBJECTED TO. MAKING A BOMB. COULD YOU THINK OF ANYTHING MORE SCARY OR PENETRATING TO THE JURY THAN HE IS MAKING A BOMB, ESPECIALLY IN THIS CASE, WHERE THIS INVOLVED EXTREME CRIMES OF VIOLENCE, INCLUDING MURDER. DOORBAL AT LEAST SHOULD HAVE BEEN ENTITLED FOR THE JURY TO FOLK OUTS RELEVANT EVIDENCE WHICH WAS ADMITTED TO PROVE THE CHARGED OFFENSES AND NOT BASED ON ITEMS WHICH WERE ONLY BROUGHT IN TO SHOW BAD CHARACTER BY DOORBAL. THESE WERE THREE IMPORTANT PIECES OF EVIDENCE. THERE WERE THREE THINGS WHICH CAME OUT WHICH SHOWED DOORBAL WAS BAD BEFORE. BAD NOW. BAD LATER. THAT HE,

AND PUT IT ALL TOGETHER WITH THE SPECIFIC FACTS OF THIS CASE, IT WAS ESPECIALLY PREJUDICIAL TO MR. DOORBAL, AND BASED ON THAT, I BELIEVE --

BUT BECAUSE THEY WEREN'T OBJECTED TO, THE FACT THAT THEY ARE BAD, NO ONE IS GOING DO DISAGREE THAT THEY ARE NOT BAD, PREJUDICIAL COMMENTS, AS HAS OFTEN BEEN SAID, ANYTHING THAT IS NEGATIVE TO THE DEFENDANT IS PREJUDICIAL, BUT OUR STANDARD IS A VERY HIGH ONE OF FUNDAMENTAL ERROR THAT WOULD HE VICEIATE THE ENTIRE -- THAT WOULD EVICIATE THESE ENTIRE PROCEEDINGS, AND IT GOES BACK TO DO THESE COMMENTS RISE TO THE LEVEL OF FUNDAMENTAL ERROR, WHERE THE DEFENDANT'S LAWYER DOESN'T OBJECT AND THE TRIAL JUDGE DOESN'T HAVE, A CHANCE, IN THIS VERY LONG TRIAL, TO DO SOMETHING TO CURE IT?

WHILE THE UNPRESERVED ERRORS WHICH I HAVE HIGHLIGHTED BELOW MAY NOT INDIVIDUALLY RISE TO THE LEVEL OF FUNDAMENTAL IT IS OUR POSITION THAT, WHEN YOU LOOK AT THESE COMMENTS INDIVIDUALLY, THAT THE RIGHT TO A FAIR TRIAL WAS FUNDAMENTALALLY IMPAIRED BY THE NUMEROUS OBJECTION WHICH I DIDN'T GO INTO. AND THE OTHER ISSUE WHICH I WILL GET INTO NOW IS ON THE --

ARE YOU SAYING THAT THIS ALONE, WITHOUT THE OTHERS, WOULD NOT AMOUNT TO FUNDAMENTAL ERROR? THESE COMMENTS ALONE WOULD NOT? IS THAT WHAT YOU ARE SAYING?

IF YOU HAD JUST ONE, PROBABLY IT WOULD NOT BE FUNDAMENTAL ERROR, BUT WHEN YOU HAVE ALL THREE OF THOSE, COUPLED WITH THE OTHER ERROR WHICH OCCURRED --

THAT IS WHAT I AM SAYING. YOU KEEP SAYING "COUPLED WITH".

YES.

SO DOES THAT MEAN COUPLED WITH THESE THREE, NOT COUPLED TOGETHER, WOULD NOT?

NO. WITH THE UNIQUE NATURE OF THE CASE AND THE POST MORTEM DESTRUCTION OF THE BODIES, AND IF YOU GO INTO WHAT ELSE OCCURRED DURING THE CLOSING ARGUMENT WAS THE STATE'S COMMENT ON SILENCE. FOR SOME REASON, THE PROSECUTOR FOCUSED ON THE JURY'S ATTENTION ON THE FACT THAT MR. DOORBAL DID NOT TEST PHI ---MR. DOORBAL DID NOT TESTIFY TO REBUT THE TESTIMONY OF JORGE DELGADO. HE WAS THE GUY VERY MUCH INVOLVED WITH THE SCHILLER, THE EARLIER KIDNAPING OF MR. SMELL SCHILLER -- WITH MR. SCHILLER, AND THE TESTIMONY OF DOORBAL, IT WAS MR. DELGADO WHO PROVIDED ALL OF THE TESTIMONY THAT THERE WAS, REGARDING WHAT HAD OCCURRED, FIRSTHAND INFORMATION ABOUT WHAT OCCURRED AGAINST THESE TWO HUNG AARON VICTIMS.

WHY SHOULD WE NOT VIEW THESE PHRASES AND SENTENCES USED IN THIS CASE AS A STATEMENT THAT THERE IS NO OTHER EVIDENCE, AS OPPOSED TO A COMMENT OF ONE, THE DEFENDANT'S RIGHT TO REMAIN SILENT AND NOT TESTIFY? BECAUSE CERTAINLY WE CAN'T HAVE A RULE THAT SAYS ANY TIME A LAWYER STANDS UP AND SAYS THERE IS NO OTHER EVIDENCE, THAT THAT IS AUTOMATICALLY CONVERTED INTO A, ONE OF THESE VIOLATIONS. IS IT?

NO. I AM NOT SUGGESTING IT SHOULD BE.

BUT WHAT -- IT SHOULD BE. BUT WHAT OCCURRED HERE WAS FAR MORE THAN THAT. WHEN YOU LOOK AT WHAT THE PROSECUTOR SAID, IT IS QUOTED IN THE BRIEF. I WON'T READ THE WHOLE THING, BUT THE PERTINENT PART IS THAT THE PROSECUTOR SAID, IN HER CLOSING, "ANOTHER THING IS THAT LISTEN TO THE CROSS-EXAMINATION OF JORGE DELGADO. TRY AND RECALL IT. NEVER ONCE WAS ANYBODY ELSE BUT THE DEFENDANT DOORBAL THAT WAS THE HANDS-ON KILLER. LUGOW, ALONG WITH THE HANDS-ON KILLER DOORBAL." NEVER ONCE DID ANYBODY ELSE GET UP, ONCE, TO SAY ANYTHING DIFFERENT. NOW, LOOKING AT THAT QUOTE IN THE

CLOSING ARGUMENT BY THE PROSECUTOR, WHO ELSE COULD THAT, ANYBODY ELSE BE REFERRING TO, EXCEPT FOR THE DEFENDANT DOORBAL DOORBAL.

WERE ANY OTHER WITNESSES TESTIFYING THAT PARTICIPATED IN THIS GROUP THAT WERE INVOLVED AT ALL THAT HE COULD BE REFERRING TO, OR WAS THAT, OR WAS JUST ONE WITNESS, DELGADO, BECAUSE THERE ARE SEVERAL PEOPLE THAT CERTAINLY YOU HAD THE CORRECTIONAL OFFICER. YOU HAD ALL KINDS OF FOLKS INVOLVED.

RIGHT. THE CORRECTIONS OFFICER AT THE TIME HAD NOT YET BEEN TRIED. HE HAD NOT YET BEEN TRIED IN THE CASE. THIS CASE WAS PENDING. IT WAS DELGADO. LUG GOU. OF COURSE, WHO WAS ON TRIAL ALONG WITH THE DEFENDANT, AND THEN OF COURSE IT WAS DOORBAL, MY CLIENT, WHO WAS ALSO THERE. I ONLY READ ONE PORTION. LOOK AT THE WHOLE CONTEXT OF THIS AND THE FACT THAT THE PROSECUTOR WAS TALKING ABOUT DOORBAL IN THAT PORTION. IT IS CLEAR THAT SHE WAS REFERRING TO THE FACT THAT IT WAS DOORBAL WHO DID NOT GET UP AND SAY ANYTHING TO REFUTE OR COMMENT ON WHAT HIS POSITION WAS. THERE WAS NO WAY FOR THE JURY TO BELIEVE THIS WAS ANYTHING BUT SILENCE. IT WASN'T A COMMENT ON THE CASE. IT WAS A COMMENT ON THE SILENCE. THE PROSECUTOR MADE A POINT IN HER ARGUMENT THAT MR. LUGOW HAD THE DETAILS NEEDED TO CONVICT THE DEFENDANT OF FIRST-DEGREE MURDER. IN HER CONCLUDING ARGUMENT SHE MADE TWO POINTS. SHE SAID MR. DELGADO'S TESTIMONY HAD NOT BEEN SHAKEN BY CROSS-EXAMINATION, AND THAT IS WHEN SHE SAID, WHEN SHE INFORMED THE JURY THAT NOT ONCE DID ANYBODY GET UP AND SAY ANYTHING DIFFERENT. BASED ON DELGADO'S TESTIMONY, THE ONLY OTHER PERSON IN A POSITION TO CONTEST THAT WOULD HAVE BEEN DOORBAL.

WAS IT IN THE CONTEXT THAT THEY ARE TALKING, REALLY, ABOUT WHO WAS THE HANDS-ON KILLER? GOING BACK TO WHAT JUSTICE LEWIS ASKED. WEREN'T THERE OTHER WITNESSES THAT WERE, DID ALL THE WITNESSES PUT DOORBAL AS THE HANDS-ON KILLER OF HIS FIRST VICTIM?

THE ONLY WITNESS WHO WOULD HAVE KNOWN WAS LUGOW, AND OBVIOUSLY HE WASN'T SAYING, BECAUSE HE WAS A DEFERCKTS AND DELGADO, WHO BASED -- WAS A DEFENDANT, AND DELGADO, WHO BASED HIS TESTIMONY PRIMARILY ON WHAT DELGADO AND LUGOW HAD SEEN. THERE WAS NOBODY ELSE THAT WOULD HAVE KNOWN INFORMATION AT THE TIME. THERE WERE JUST TWO OF THEM THERE AT THE TIME OF THE DEATH, AND AS I SAID, DELGADO GOT HIS INFORMATION FROM LUGOW, AND THE JURY HAD TO KNOW THAT THE PROSECUTOR WAS COMMENTING CONCERNING MR. DOORBAL.

IF THE STATE, IN ITS CLOSING ARGUMENT, HAD MADE THE STATEMENT AND YOU HEARD, AND HAD SUMMARIZED THE STATE'S CASE, AT THE CLOSE OF IT SAID THAT YOU HEARD NO EVIDENCE TO THE CONTRARY, WOULD THAT BE IN THE SAME CONTEXT AS WHAT YOU ARE OBJECTING TO?

NO. THE STATE SAYS HERE IS WHAT MY CASE IS ALL ABOUT. THERE HAS BEEN NO EVIDENCE TO THE CONTRARY. DEPENDING ON THE WHOLE ARGUMENT, IF THE ONLY PERSON WHO COULD HAVE OFFERED TESTIMONY TO THE CONTRARY WAS THE DEFENDANT, THEN YES, I THINK THAT WOULD BE A COMMENT ON THE SILENCE. IF, IN THIS CASE, IT WAS MUCH MORE THAN THAT, BECAUSE HERE THEY WERE SPECIFICALLY DISCUSSING DOORBAL. RIGHT IN THE SENTENCE BEFORE THE PROSECUTOR'S COMMENT, THE PROSECUTOR WAS TALKING ABOUT DOORBAL, HOW DOORBAL WAS THE HANDS-ON KILLER, SO YOU HAVE TO LOOK AT THE SPECIFIC CONTEXT, AND THIS WAS NOT INVITED ERROR, IN ANY WAY, SHAPE OR FORM, AS THE STATE HAS SUGGESTED. THE NEXT ISSUE I WOULD LIKE TO GET TO IS THE COMMENT CONCERNING THE VIOLATION OF THE GOLDEN RULE WHICH CAME UPON, AND I AM READ AGO QUOTE -- READ AGO QUOTE DURING CLOSING -- I AM READING A QUOTE WHERE THE PROSECUTOR SAID THE FOLLOWING. "HE CAME IN AND SHOWED YOU HOW THAT OMEGA TASER WORKED. MANY OF YOU JUMPED." AND THE PROSECUTOR SAID "CAN YOU IMAGINE HOW THAT WOULD FEEL ON YOUR SKIN UP CLOSE AND HOW THAT WOULD HAVE FELT ON MR. THE VICTIM'S SWEATY SKIN AND ANKLES? UP CLOSE." THIS IS A

VIOLATION OF THE GOLDEN RULE. THE PROSECUTOR SOUGHT TO INFLAME THE EMOTIONS OF THE JURY BY ASKING THEM TO PUT THEMSELVES IN THE POSITION OF MR. SCHILLER AND HOW HE FELT WHEN HE WAS SHOT BY THE TASER GUN. IT SHOULDN'T HAVE BEEN ALLOWED. WHY THE PROSECUTOR DID THAT, THERE WAS NO NEED FOR IT. CERTAINLY IT WASN'T INVITED IN ANY WAY, AND WHEN YOU ADD THIS TO THE OTHER OCCURRENCES IN THE TRIAL, BRING THIS WHOLE TRIAL INTO A FUNDAMENTAL ERROR SITUATION, WHICH WE BELIEVE IS WHAT OCCURRED BY THE CONTINUOUS ERROR AND BRINGING IN IMPROPER EVIDENCE AND IMPROPER ARGUMENT BY THE STATE. WITH RESPECT TO THE SEARCH WARRANT ISSUE, THE COURT WILL HAVE TO REVIEW THE SEARCH WARRANTS, OBVIOUSLY, BUT WHEN YOU LOOK AT THE AFFIDAVITS, WHICH WERE DONE UP IN THIS CASE, TO GET THE SEARCH WARRANTS, THERE WAS NOTHING IN THE SEARCH WARRANTS WHICH SET FORTH THAT THERE WAS PROBABLE CAUSE TO SEARCH THE HOME OR THE VEHICLE OF MR. DOORBAL. YES. THERE WAS CERTAINLY ALLEGATIONS THAT DOORBAL WAS INVOLVED IN THE KIDNAPING OF MR. SMELLER. THERE WERE ALLEGATIONS THAT MR. DOORBAL WAS INVOLVED IN THE KIDNAPING OF THE TWO HUNGARIANS, MR. GRIVA AND MISS BURTON, BUT THERE WAS NOTHING IN THE AFFIDAVITS WHICH SET FORTH THAT THERE WAS A REASON TO BELIEVE THAT ANY CONTRABAND OR FRUITS OF THE CLIMB WERE GOING TO BE ---OR FRUITS OF THE CRIME WERE GOING TO BE LOCATED IN MR. DOORBAL'S HOME. THERE WAS SPECULATION AND A HUNCH THAT THERE MIGHT HAVE BEEN SOMETHING THERE. NEVERTHELESS THE TRIAL COURT APPROVED THE WARRANT, AND ONCE THAT SEARCH TOOK PLACE AND SOMETHING WAS FOUND, THEY WENT AHEAD AND GOT ANOTHER WARRANT FOR AN ADDITION WILL SEARCH OF THE APARTMENT -- AN ADDITIONAL SEARCH OF THE APARTMENT, AND IT WAS SEARCHED THREE TIMES ALL TOGETHER, BUT THE INITIAL SEARCH WHICH TURNED UP EVIDENCE IN THE CASE SHOULD NOT HAVE BEEN ALLOWED, BASED ON THE AFTERWARD ASTD -- ON THE AFFIDAVIT AND THE WARRANT WHICH WAS ISSUED IN THIS CASE. THE, DETECTIVE GAROFALO, WHO WAS THE LEAD DETECTIVE, CONCLUDED THAT DOORBAL'S HOME, APARTMENT OR AUTOMOBILE WOULD HAVE EVIDENCE CORROBORATING THE CRIMES COMMITTED UPON SMELLER AND THE LOCATION -- UPON SMELLER AND THE LOCATION AND -- UPON SMILER AND THE WHEREABOUTS -- UPON MR. SCHILLER, BUT THERE WAS NOTHING CONFIRMING THAT AT THE TIME. WITH RESPECT TO THE PENALTY PHASE, THE ISSUE IS RAISED WITH WHAT WE CALL THE LUGOW LETTERS, WHICH IS LETTERS WHICH MR. DOORBAL ATTEMPTED TO PUT INTO EVIDENCE AT THE BEGINNING OR DURING THE PENALTY PHASE, AND THESE LETTERS ARE PART OF THE SUPPLEMENTAL RECORD. THE COURT HAS THEM IN FULL. AND WHAT OCCURRED WITH THAT IS THAT, AFTER THE CRIMES HAVE BEEN COMMITTED, MR. LUGOW SENT MR. DOORBAL LETTERS, AND IN THOSE LETTERS IT WAS ESTABLISHED THAT THERE WAS A RELATIONSHIP BETWEEN MR. DOORBAL AND MR. LUGOW. MR. DOORBAL SOUGHT TO INTRODUCE, IN THE PENALTY PHASE, THESE LETTERS WRITTEN TO HIM BY CODEFENDANT LUGOW, AFTER BOTH OF THEM HAD BEEN ARRESTED. IN THE LETTERS, LUGOW PROPOSED AN ELABORATE PLAN IN WHICH THE DEFENDANT WAS TO CONFESS TO HIS OWN COMPLICIT IN THE CRIME WHILE EXONERATING LUGOW. ONCE LUGOW HAD BEEN CLEARED, LUGOW WAS GOING TO COME BACK AND ASSIST THE DEFENDANT WITH DOORBAL'S OWN CASE, AND YOU HAVE GOT THE LETTERS. THE LETTERS GO AHEAD, AND THEY SHOW THE RELATIONSHIP AND SHOW HOW LUGOW HAD CONTROL OVER DOORBAL. BECAUSE THE STATE'S THERE ANY THE CASE WAS THAT DOORBAL WAS THE PERSON WHO DID THE KILLINGS, BUT LUGOW SET THE WHOLE WHOLE THING UP AND WAS THE BRAINS OF THE OPERATION. IT WAS THE DEFENDANT'S POSITION THAT LUGOW HELD A DOMINANT POSITION WITH THEIR RELATIONSHIP. THE DEFENDANT MAINTAINED THAT THE LETTERS WERE NONSTATUTORY MITIGATION AND THAT IT WAS PROBATIVE OF THE DOMINANCE ENJOYED BY LUGOW WITHIN THE RELATIONSHIP, AND WITHIN THE CONSPIRACY FORMED BY THE DEFENDANT AND LUGOW. IT IS VERY SIMILAR TO THE CASE OF GORE VERSUS DUGGAR, WHICH IS CITED IN THE BRIEF, AND IN THAT CASE, AND IT ALSO, IN THIS CASE, WE WERE SEEKING TO ADMIT THE EVIDENCE TO SHOW THE NONSTATUTORY MITIGATING CIRCUMSTANCES RELATING TO THE SUBSTANTIAL DOMINATION OF MR. LUGOW OVER MR. DOORBAL.

WHAT WERE THE RESPECTIVE AGES OF THESE TWO CODEFENDANTS? LOU DPOU AND DOORBAL.

DOORBAL WAS 23, AND I DON'T RECALL MR. LUGOW'S AGE. I BELIEVE HE WAS OLDER, BUT DOORBAL WAS 23, AT THE TIME OF THE INCIDENT. HE WAS YOUNG.

DID THE EVIDENCE SHOW THE RELATIONSHIP TO BE BETWEEN THESE TWO? HOW LONG HAD THEY HAD A RELATIONSHIP? WHAT WAS --

THEY HAD KNOWN EACH OTHER. WHAT HAPPENED, AS THE COURT KNOWS, THEY WERE INTO BODYBUILDING AND MET EACH OTHER AT THE GYM, OWNED THE GYM TOGETHER AT ONE POINT. THEY WERE INVOLVED WITH ACTUALLY LUGOW WAS INVOLVED WORKING FOR SCHILLER, AND THAT IS HOW THE WHOLE THING GOT STARTED, BUT THE RELATIONSHIP WITH LUGOW WAS MORE LIKE THE LEADER. LUGOW WAS THE APPARENTLY THE ONE WHO CAME UP WITH THE IDEA AND HE BROUGHT DOORBAL IN TO ASSIST LUGOW.

I UNDERSTAND THAT THE EVIDENCE IS THAT DOORBAL WAS THE ONE WHO HAD FINGERED OR TARGETED GREGA HERE. IS THAT A MISUNDERSTAND SOMETHING.

THE EVIDENCE IS THAT HE HAD SEEN A PHOTOGRAPH OF GREGA THROUGH A WOMAN NAMED WHELAND. SHE HAD A PHOTO BOOK AND THERE WAS A YELLOW LAMBORGHINI THERE. HE LIKED THE WAY THE VEHICLE LOOKED AND WAS INTERESTED IN MEETING GREGA, AND IN FACT THE INITIAL MEETING WHERE THE KIDNAPING WAS SUPPOSED TO TAKE PLACE, DOORBAL DIDN'T UTTER A SOUND EVENT DIDN'T TALK AT ALL. ALL OF THE TALKING WAS BETWEEN GREGA AND MR. LUGOW. IT WAS NOT DOORBAL. DOORBAL WAS JUST, I HATE TO USE THIS WORD, DOORBAL WAS THE ONE WHO THEY BROUGHT IN TO BE THE MUSCLE. LUGOW WAS THE ONE WHO HAD THE BRAINS HERE. I KNOW IT IS A CLICHE, BUT THAT IS APPARENTLY THE WAY THAT IT APPEARS IN THE RECORD, AS TO WHAT OCCURRED. WITHOUT LUGOW, AND IF YOU LOOK AT THE MITIGATION EVIDENCE, SHORTLY, IT IS APPARENT THAT LUGOW CALLED THE SHOTS. LUGOW WAS THE ONE WHO PUT THINGS TOGETHER. LUGOW WAS THE ONE WHO HAD ALL TYPES OF FINANCIAL DOCUMENTS. LUGOW WAS THE ONE WHO CONTROLLED DOORBAL'S MERRILL LYNCH AC OUGET. AS THE COURT KNOWS, AN ACCOUNT WAS SET UP WITH LOTS OF MONEY IN IT. A PERSON WHO WAS ALLOWED TO CONTROL THE ACCOUNT WAS LUGOW. IT WAS DOORBAL'S ACCOUNT. THE MERRILL LYNCH ACCOUNT WAS CONTROLLED BY LUGOW. HE CONTROLLED ALL OF THE ACCOUNTS.

WAS THERE EVER ANY EVIDENCE THAT DOORBAL WAS SOMEHOW INTIMIDATED OR SOMEHOW COERCED INTO PARTICIPATING IN THESE EVENTS?

I DID NOT RAISE THE LEVEL OF BEING COERCED OR INTIMIDATED, NO. THERE WAS NOT EVIDENCE OF THAT, BUT THERE WAS CERTAINLY EVIDENCE THAT DOORBAL CHANGED, ONCE HE MET LUGOW, AND THAT AT THAT POINT, DOORBAL TRIED TO MIMIC LUGOW AND TRIED TO DO WHAT LUGOW WAS DOING AND TRIED TO FOLLOW THE THING THAT IS LUGOW DID, AND BECAUSE OF THAT THE LETTERS SHOULD AT LEAST HAVE THE BEEN INTRODUCED AND THE JURY SHOULD HAVE HAD THE OPPORTUNITY TO SEE THE LETTERS AND MADE A DETERMINATION OF WHETHER OR NOT THERE WAS MITIGATION IN THE CASE. I WANT TO REMIND THE COURT THE ADVISORY RECOMMENDATION WAS 8-TO-4. THAT IS A FAIRLY CLOSE RECOMMENDATION, AND IT IS IMPOSSIBLE TO DETERMINE WHETHER OR NOT THE LUGOW LETTERS OR SOME OF THE OTHER MITIGATION EVIDENCE COULD HAVE HAD A PREFOUND IMPACT ON HOW THE JURY MADE THEIR DECISION OR WHETHER IT WOULD HAVE CHANGED THE RECOMMENDATION IN THE CASE.

YOU ARE IN YOUR REBUTTAL, MR. SAKIN.

YES. THANK YOU.

MS. JAGGARD. MAY IT PLEASE THE COURT. SANDRA JAGGARD, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE. WITH REGARD TO THE CHARACTER EVIDENCE, THERE WAS A CONTEXT TO IT, WITH REGARD TO MR. SANCHEZ. HE HAD ASSISTED IN THE SCHILLER KIDNAPING. THE

EVIDENCE WAS PRESENTED TO EXPLAIN WHY IT WAS HE DIDN'T GO TO THE POLICE. AFTER THE SCHILLER KIDNAPING, IT WAS EVEN ELICITED, WITH A QUESTION, DID HE EVER DO ANYTHING THAT CAUSED YOU TO BE FRIGHTENED OF HIM? AND HE SAID, YEAH, HE DID THESE THINGS AND MADE ME AFRAID, AND THAT IS WHY I GOT INVOLVED WITH THE POLICE, BECAUSE I DIDN'T DO ANYTHING. ALL I DID WAS STAND THERE AND GET DRUG MONEY OUT OF IT. WE ENDED UP KIDNAPING SOMEBODY. I WASN'T EXPECTING THAT. HE THEN TRIES TO DISTANCE HIMSELF FROM THE DEFENDANT BY CEASING TO GO TO THE SUN GYM AND MOVING TO A DIFFERENT GYM, AND MR. LOU GO WENT THERE AND HE EXPLAINED IT. THERE WAS A WITNESS. IT HAD TO DO WITH CREDIBILITY. AT THAT POINT IT IS NOT CHARACTER EVIDENCE. IT IS EVIDENCE REGARDING HIS CREDIBILITY, AND THEREFORE IT WAS NOT IMPROPERLY ADMITTED. IT WAS PROPERLY ADMITTED. THE SAME IS TRUE WITH REGARD TO THE STUFF ABOUT MISS PATRESCEU. THE EVIDENCE IS WHY DID SHE DRIVE AROUND IN A CAR WITH PEOPLE AFTER TELLING HER WE WERE GOING OUT TO KIDNAP PEOPLE, AND SHE EXPLAINED THAT WE ARE GOING OUT TO DO THIS BECAUSE LUG-TOLD MOW HE -- TOLD -- BECAUSE LUGO TOLD ME HE WORKS FOR THE CIA. THAT WAS EXPLAINED TO HER AND THAT THEY WERE TAX CHEATS AND WE ARE KIDNAPING THEM FOR THE FBI. THE STATE NOT ONLY DIDN'T USE THIS FOR CHARACTER EVIDENCE. THE STATE PRESENTED THIS AS FALSE AND AN EXCUSE TO SIMPLY GET THIS POOR WOMAN TO HELP THEM OUT. AGAIN SHE IS PROVIDING US WITH EVIDENCE. HER CREDIBILITY IS IMPORTANT. IT IS NOT GOING TO THE DEFENDANT'S CHARACTER. IT IS GOING TO HER CREDIBILITY. IT WAS ADMISSIBLE. EVEN IF IT WASN'T, THIS CASE IS HUGE. THESE COMMENTS ARE INCREDIBLY BRIEF. THEY ARE UNOBJECTED TO.

WERE THEY REEMPHASIZED IN CLOSING ARGUMENTS?

NO. NOT AT ALL.

HOW LONG WAS THIS TRIAL?

THIS TRIAL TOOK SIX MONTHS TO TRY. -WE HAVE THE SCHILLER EVIDENCE, WHERE MR. SMELLER TESTIFIED ABOUT WHAT HAPPENED TO HIM AND WEEKS AND WHAT HAPPENED IN THAT, THEN WE HAVE THE PATRESCEU COMING IN WITH THE WINSTON LEE, GREG COMING IN WITH THE WINSTON LEE STALKING, AND THEN YOU HAVE DELGADO AND ALL OF THE PHYSICAL EVIDENCE, THE BLOOD ON THE CARPETING REMOVED FROM THE DEFENDANT'S HOUSE.

WHERE DID THE WINSTON LEE SITUATION WORK IN CHRONOLOGICALLY? WAS THAT AFTER THE MURDERS?

BEFORE.

OKAY. BOTH THE OTHER -- DO YOU IT FOR ME CHRONOLOGICALLY.

MIDDLE OF NOVEMBER WE KIDNAPPED MR. SMELL SCHILLER. WE -- MR. SCHILLER. WE HOLD HIM FOR A MONTH AND RELEASE HIM BY TRYING TO KILL HIM UNSUCCESSFULLY IN THE MIDDLE OF DECEMBER. WE LIVE OFF THAT MONEY AND BEGIN TO LOOK FOR OTHER VICTIMS AND IN APRIL WE STALK MR. LEE, IN ANTICIPATION OF KIDNAPING AND KILLING HIM. MR. LEE, THEY THOUGHT, WAS A JAMAICAN DRUG DEALER. TURNS OUT HE WAS A TRAVELING SALESMAN. HIS SCHEDULE WAS TOO ERRATIC FOR THESE PEOPLE TO BE CAPABLE OF KIDNAPING HIM, SO AT THAT POINT MR. DOORBAL SEES THE PICTURE OF MR. GREGA'S LAMBORGHINI AND DECIDES THIS IS A BETTER PERSON TO KIDNAP, AND THEN THEY TRANSFER THE PLAN TO MR. GREGA, WHO IS, THEN, KIDNAPPED IN MAY, SO THAT IS WHERE YOU HAVE THE SERIES OF EVENTS GOING ON. WITH REGARD TO THE COMMENT REGARDING SILENCE, IT WAS NOT A COMMENT REGARDING SILENCE. IT WAS A COMMENT REGARDING WHETHER OR NOT JORGE DELGADO HAD BEEN IMPEACHED. THIS ENTIRE COMMENT WAS FRAMED IN THE CONTEXT OF YOU HEARD THIS FROM MR. DELGADO. DID YOU HEAR HIM BEING IMPEACHED IMPEACHED?

THIS IS ALWAYS THE TROUBLING LINE, AND I REFER TO IT IN RODRIGUEZ, WHERE YOU, THE QUESTION IS LACK OF EVIDENCE. YOU HAVE GOT ONE WITNESS TO A CRIME, AND THE ONLY OTHER WITNESS WOULD BE THE DEFENDANT. YOU SAY THAT THE JURY -- YOU SAY TO THE JURY, HAVE YOU HEARD ANYTHING TO CONTRADICT THIS PERSON? BASED ON OUR CASE LAW, ISN'T THAT A COMMENT ON THE FACT THAT MR. DOORBAL DID NOT TAKE THE STAND? THIS, HE IS WARNED OVER AND OVER FOR 30 YEARS, I GUESS WHAT I AM TRY -- I WONDER, IF SAY THAT THE NEXT TIME YOU WOULD ADVISE --

I WOULD NOT ADVISE HER TO PHRASE IT THAT WAY, NO.

I AM STARTING TO CROSS THE LINE. AND I AM SO CONCERNED HERE. YOU HAVE A SIX-MONTH TRIAL. WHY RISK IT OVER AND OVER ON COMMENTS THAT MAY BE CLOSE TO THE LINE OR MAY BE OVER THE LINE?

I AM NOT A PROSECUTOR. I DON'T GO BEFORE JURIES, BUT YOU DO HAVE TO PERSUADE THESE PEOPLE.

SO IN SAYING IT IS IMPEACHMENT, THAT WOULD BE ANY TIME A WITNESS TESTIFIES AND THE JURY DOESN'T HEAR ANYTHING DIFFERENT BUT THEY ARE THE ONLY WITNESS, YOU WOULDN'T WANT US TO WRITE AN OPINION, MAYBE YOU WOULD, BUT IT WOULD BE CONTRARY TO A PRIOR LAW THAT WOULD SAY YOU COULD SAY HAVE YOU HEARD ANYTHING ELSE TO CONTRADICT WHAT THIS WITNESS SAID? THE ONLY OTHER WITNESS THAT COULD CONTRADICT IT WAS THE DEFENDANT.

HE IS NOT THE ONLY OTHER WITNESS.

TELL ME ABOUT THAT.

MR. LUGOW AND MR. -- MR. LOING MR. LUGO AND MR. ROMUNDO WAS THERE. MR. LUGO HAD A DIFFERENT JURY WHO WASN'T THERE DURING THIS CLOSING ARGUMENT AND MR. ROMUNDO HAD NOT BEEN TRIED YET. THEY COULD HAVE CALLED OTHER PEOPLE. THERE WERE OTHER WITNESSES THERE. WHETHER OR NOT HE COULD HAVE CALLED THEM, IT DOESN'T NECESSARILY RELATE TO HIS RIGHT TO REMAIN SILENT, WHICH IS WHAT HE HAD A STANDING TO RAISE.

YOU CAN'T, I MEAN, HE COULDN'T HAVE CALLED MR. LUGO.

I DON'T KNOW WHETHER HE COULD HAVE CALLED MR. LUGO OR NOT. I DON'T KNOW WHETHER MR. LUGO WOULD HAVE AGREED TO TESTIFY FOR HIM. MR. LUGO, IN -- ASSUMING THOSE LETTERS WERE ACTUALLY WRITTEN BY MR. LUGO, WHICH WAS NEVER SHOWN, HE ACTUALLY AGREES TO TESTIFY. FOR HIM. NOW, IN AN ELABORATE PLAN TO CONDUCT A SET UP, BUT HE DOES. SO WE DON'T KNOW WHETHER HE WOULD HAVE TESTIFIED FOR HIM OR NOT. AND BESIDES WHICH, EVEN IF THIS WAS ERROR, AGAIN, IN THE CONTEXT OF THIS CASE, WHERE YOU HAVE EYEWITNESS TESTIMONY, YOU HAVE PHYSICAL EVIDENCE, YOU HAVE A SIX-MONTH TRIAL. THAT ONE LINE, NEVER DID ANYBODY ELSE SAY ANYTHING DIFFERENT, THAT IS UNOBJECTED TO, IS NOT WHAT CAUSED THIS VERDICT. WHAT CAUSED THIS VERDICT WAS THE TESTIMONY OF THESE EYEWITNESSES TO WHAT THESE PEOPLE DID. THE JURY WASN'T CONVINCED TO CONVICT THESE PEOPLE BECAUSE OF THAT ONE SENTENCE. AND THEREFORE ANY ERROR WOULD HAVE BEEN HARMLESS NOT FUNDAMENTAL. WITH REGARD TO THE SEARCH WARRANTS, WE LOOKED AT THE TOTALITY OF THE CIRCUMSTANCES IN THE SEARCH WARRANTS. WE HAVE SEARCH WARRANTS IN PLACE FOR THIS DEFENDANT INVOLVED IN THE SCHILLER KIDNAPING. WE HAVE EVIDENCE THAT PLACES THIS DEFENDANT WITH THESE PEOPLE WHO ARE MISSING. WE DON'T KNOW THEY ARE DEAD YET, AT THIS POINT. WE JUST KNOW THEY ARE MISSING. WE ARE LOOKING FOR THEM AT THAT POINT, NOT BODIES. WE ARE LOOKING FOR THE ACTUAL PHYSICAL PEOPLE, AND WHERE THEY ARE. AND WE HAVE HIM THE LAST PERSON ALIVE. WELL, GOING INTO HIS HOUSE LOOKING FOR PEOPLE WHO WERE LAST SEEN WITH HIM, WHEN YOU KNOW THAT HE HAS ALREADY

KIDNAPPED AND TORTURED ONE PERSON, LOOKING FOR DOCUMENTATION ON A WAREHOUSE THAT HE MIGHT HAVE BECAUSE THAT IS WHERE HE HELD SCHILLER, WOULD BE A LOGICAL PLACE TO LOOK IN HIS HOUSE AND CAR, AND THEREFORE THE SEARCH WARRANTS WERE PROPER.

WHAT WAS THE SCOPE OF THE SEARCH WARRANT? WHAT COULD THEY ACTUALLY SEARCH? AND FOR WHAT COULD THEY SEARCH?

WELL, THERE ARE LOTS AND LOTS AND LOTS OF SEARCH WARRANTS HERE. THEY SEARCHED --

THE INITIAL SEARCH WARRANT SEEMS TO BE THE ONE THAT THE DEFENSE IS TALKING ABOUT, WHICH LED TO THE OTHERS.

YES, BUT THERE ARE EVEN LOTS OF INITIAL SEARCH WARRANTS. THEY SEARCHED THE HOME. DOORBAL HAD A HOME THAT THE DEFENDANT, THAT LUGO'S WIFE, WHO WAS DOORBAL'S COUSIN, WAS LIVING IN. DOORBAL HAD AN APARTMENT. DOORBAL HAD A CAR. ALL OF THE OTHER DEFENDANTS HAD APARTMENTS AND CARS, AND THEY WERE GOING IN --

IT ALLOWED A COMPLETE SEARCH OF THE ENTIRE HOUSE.

LOOKING IF FOR EVIDENCE.

ANY PARTICULAR PLACE.

LOOKING FOR EVIDENCE RELATED TO THE SCHILLER KIDNAPING, LOOKING FOR EVIDENCE RELATED TO WHERE GREGA AND BURTON MIGHT BE. KEEP IN MIND THEY HAVE EVERYTHING MR. SCHILLER OWNS. THEY HAVE HIS WHOLE FURNITURE AND EVERYTHING, SO, YES, THEY ARE LOOKING THROUGH THE HOUSE, AND THEN WHEN THE STATE GETS THERE AND THEY REALIZE, THEY GO AND TALK TO THE APARTMENT MANAGER AFTER THE FIRST SEARCH, WHERE THEY WALK AROUND AND LOOK AT STUFF AND FIND OUT THAT THE CARPETING HAS BEEN REPLACED AND THE WALLS HAVE BEEN REPAINTED IN MR. DOORBAL'S APARTMENT, THEY GO BACK AND GET ANOTHER SEARCH WARRANT TO LOOK PARTICULARLY FOR EVIDENCE OF BLOOD AND THINGS RELATED TO THE CARPET. THEY GO IN THERE AND SEE MORE FINANCIAL DOCUMENTS. THEY DON'T JUST PICK THEM UP. THEY LEAVE AND GO AND GET ANOTHER SEARCH WARRANT TO GO BACK AND PICK UP THOSE FINANCIAL DOCUMENTS. THESE ARE POLICE OFFICERS ACTING IN GOOD FAITH, GOING IN, LOOKING FOR EVIDENCE OF THESE CRIMES. THE SEARCH WARRANTS WERE PROPERLY ISSUED. WITH REGARD TO THE LUGO LETTERS, FIRST OF ALL WE ARE ASSUMING MR. LUGO WROTE THEM. WE DON'T KNOW. THAT THAT WAS NEVER SHOWN AT TRIAL. SECONDLY, THESE LETTERS WERE WRITTEN SOMETIME AFTER THE TRIAL. THIRDLY, THEY ARE CERTAINLY PROBATIVE --

LET ME JUST ASK YOU THIS. WAS THAT BROUGHT UP AS A REASON TO DENY THE USE OF THE LETTERS? TWHAE DON'T KNOW THAT MR. LUG -- ---THAT WE DON'T KNOW THAT MR. LUGO WROTE THEM?

YES.

OKAY. AND WAS THERE ANY OFFER TO DEMONSTRATE THAT?

NO. THEY HAD ALREADY DISCHARGED HER HANDWRITING ANALYST AT THAT POINT. SO WE DON'T KNOW HE WROTE THEM. AND THEY ARE WRITTEN AFTERWARDS. WE DON'T KNOW WHAT THE RELATIONSHIP WAS LIKE BEFORE. WHAT WE KNOW IS, WHAT, IF THESE LETTERS WERE WRITTEN BY MR. LUGO HIS PERCEPTION OF HIS RELATIONSHIP WITH THE DEFENDANT WITHDRAWS WAS WE DON'T KNOW ANYTHING ABOUT WHAT THE DEFENDANT THOUGHT THE RELATIONSHIP WAS, WHETHER HE WAS ACTUALLY BEING DOMINATED BY MR. DOORBAL, AND IN FACT THE LETTERS TELL HIM TO DO SOMETHING AND HE TURNS AROUND AND DOES THE EXACT OPPOSITE. DON'T

TELL YOUR ATTORNEY THIS. THAT IS WHAT HE DOES. HE PICKS UP THE LETTER AND HANDS THEM TO THE ATTORNEY. THAT IS CERTAINLY NOT EVIDENCE THAT I AM ACTUALLY BEING DOMINATED, IF I DO WHAT THE LETTER TELLS ME NOT TO DO. AND, YES, WHILE MR. LUGO WAS MORE OF THE BRAINS OF THE OPERATION, THE DEFENDANT IS THE ONE WHO CONVINCES MR. LUGO TO TRY AND KILL MR. SCHILLER. MR. LUGO DIDN'T WANT TO DO. THAT THE DWEST DEFENDANT ALWAYS -- TO DO. THAT THE DEFENDANT ALWAYS WANTED TO KILL MR. SCHILLER, AND HE, MR. DELGADO, PREVAILED UPON MR. LUGO TO TRY AND KILL MR. SCHILLER. THE DEFENDANT IS THE ONE WHO PICKS OUT GREGA AND BURTON AS THE VICTIMS IN THIS CRIME. THIS IS NOT SOMEBODY WHO IS BEING DOMINATED. THIS IS SOMEBODY WHO IS AN EQUAL PARTNER IN THIS, AND THOSE LETTERS WEREN'T PROBATIVE OF THAT RELATIONSHIP, AND THEY WERE PROPERLY EXCLUDEED. THEREFORE THE STATE WILL RESPECTFULLY REQUEST THAT YOU AFFIRM.

THANK YOU, MS. JAGGARD. REBUTTAL, MR. SAKE I KNOW? -- MR. SAKIN.

JUST BRIEFLY. THE TRIAL TOOK THREE MONTHS, FROM FEBRUARY TO MAY 5 OF 1998. THERE WAS A DELAY OR A RECESS BETWEEN THE GUILT PORTION AND THE PENALTY PORTION OF THE TRIAL THEN THERE WAS THE PENALTY PORTION, AND LATER ON, OF COURSE THERE WAS THE SPENCER HEARING, AT WHICH TIME THE SENTENCE WAS IMPOSED, SO THE ACTUAL TRIAL, ITSELF, OR THE GUILT PORTION TOOK APPROXIMATELY THREE MONTHS. WITH RESPECT TO THE COMMENT ON SILENCE, OBVIOUSLY MR. DOORBAL IS NOT IN THE POSITION TO CALL MR. LUGO AS A WITNESS IN THE CASE. THE JURY WAS, OF COURSE, INSTRUCTED THAT THE DEFENDANT HAS A RIGHT TO REMAIN SILENT IN THE CASE. THERE WERE TWO DEFENDANTS. THE JURY WAS AWARE THAT THERE WERE TWO DEFENDANTS ON TRIAL. MOST OF THE TESTIMONY WAS TAKEN TOGETHER DURING THE TRIAL, ONE WITH ANOTHER DEFENDANT. AS FAR AS THE SEARCH WARRANT GOES, IF YOU LOOK AT THE AFFIDAVIT FOR THE SEARCH WARRANT THERE WAS NOTHING WHICH INDICATED THAT ANY EVIDENCE WAS INSIDE THE HOME OR RATHER THE APARTMENT OF MR. DOORBAL. THAT WAS STRICTLY SPECULATION ON PART OF THE POLICE IN THE CASE, BECAUSE THEY WERE LOOKING FOR EVIDENCE IN THE CASE. THEY HAD HOPED TO FIND SOMETHING. THEY WERE LOOKING BUT NOTHING IN THE AFFIDAVIT SETS FORTH THE FACT THAT THERE WAS ANYTHING INSIDE THERE OR ANYONE HAD GIVEN INFORMATION THAT THERE WAS ANYTHING INSIDE OF THE HOME OF MR. DOORBAL. AND AS FAR AS THE LUGO LETTERS GO, THE LUGO LETTERS HELP ESTABLISH THE FACT THAT THE, THEY SHOW THE POSITION, RELATIONSHIP, BETWEEN LUGO AND DOORBAL. THIS WOULD BE FOR NONSTATUTORY MITIGATING. IT WASN'T THERE TO ESTABLISH WHAT MR. LUGO'S PERSONALITY WAS. IT WAS TO ESTABLISH AND SHOW THE RELATIONSHIP. IF YOU LOOK AT THE LETTERS AND THE PORTIONS THAT ARE HIGHLIGHTED IN THE BRIEF, YOU CAN SEE THAT THE CONTROL, THE WAY DOORBAL WAS TOLD NOT TO MAKE DECISIONS, UNLESS --

BUT THOSE SUPPOSED LETTERS WERE ACTUALLY WRITTEN BY HIM?

DO THE LETTERS ESTABLISH THAT?

WAS IT ESTABLISHED THAT THOSE LETTERS WERE ACTUALLY WRITTEN BY HIM? WAS THAT A CHALLENGE?

I DON'T BELIEVE --

TO THEIR ADMISSIBILITY, AND THEN --

THE TRIAL COURT DID NOT KEEP THE LETTERS OUT BECAUSE OF THAT. AS A MATTER OF FACT, THE TRIAL COURT, IN ITS SENTENCING ORDER, DISCUSSES THE OTHER LETTERS THAT WERE NOT ADMIT INTERESTED EVIDENCE. THE TRIAL COURT DISCUSSES THE LETTERS IN ITS SENTENCING MEMORANDUM AND TALKS ABOUT THE LETTERS, WHICH WAS ODD, IN LIGHT OF THE FACT THEY WERE NOT INTRODUCED DURING THE COURSE OF THE TRIAL, SO, NO, THEY WERE NOT KEPT OUT BECAUSE OF THE REASON THAT THERE WAS AN ISSUE WHETHER THEY WERE WRITTEN BY MR.

LUGO OR NOT. THEY WERE KEPT OUT BECAUSE THE TRIAL COURT THOUGHT THAT IT WASN'T, SHOULD NOT HAVE BEEN BROUGHT INTO THE, BEFORE THE JURY, BECAUSE OF A HEARSAY SITUATION, AND CLEARLY AS WE STATE, I BELIEVE THAT THE TRIAL COURT WAS IN ERROR ON. THAT AS THIS COURT KNOWS, THE DEFENDANT SHOULD BE ABLE TO PUT ON ANYTHING TO SHOW MITIGATION, AND ALTHOUGH IT WOULD NOT HAVE BEEN STATUTORY MITIGATION, IT WOULD HAVE SHOWN THE REASONS WHY MR. DOORBAL WAS UNDER THE INFLUENCE OF MR. LUGO. THE STATE, ALSO, AS FAR AS THE MITIGATION GOES, THERE IS AMPLE EVIDENCE THAT THE TRIAL COURT MISCONSTRUED CERTAIN OF THE AGGRAVATORS HERE. IMPROPER DOUBLING, IN WHAT THE TRIAL COURT CONSIDERED IN ITS SENTENCING ORDER. THAT IS ALL LAID OUT IN THE BRIEF HERE, WHY THERE WAS IMPROPER DOUBLING. AND THE FACTS ARE SET FORTH THERE. WHEN THE COURT LOOKS AT ALL OF THE EVIDENCE HERE, FUNDAMENTAL ERROR OCCURRED. IT IS THE STATE'S BURDEN TO SHOW THAT THE ERROR WAS NOT HARMLESS, AND ON THIS RECORD THE PRIMARY EVIDENCE AGAINST THE DEFENDANT WAS THAT OF MR. DELGADO. NOBODY ELSE --

LET ME JUST, ON THE STANDARD, IF YOU ARE ARGUING FUNDAMENTAL ERROR, IT IS NOT THE STATE'S BURDEN TO PROVE IT WAS HARMLESS. IT IS YOUR BURDEN TO PROVE THAT THE ERROR IS CUMULATIVELY SO VICEIATEED THE TRIAL. IT IS ENTIRELY DIFFERENT STANDARDS THAN IF IT HAD BEEN OBJECTED TO?

YES. I AGREE.

I THOUGHT YOU SAID IT WAS THEIR BURDEN TO SAY THERE WAS HARMLESS ERROR.

NO. WHEN THE ERROR IS GOING TO BE A BURDEN, IT IS THE STATE'S BURDEN TO SHOW THE ERROR IS HARMLESS.

BUT ALL OF THIS IS UNOBJECTED TO, CORRECT?

THE ISSUE ON THE COMMENT OF SILENCE IS UNOBJECTED TO.

CORRECT. SO WE ARE, REALLY, THE ONLY ERROR THAT THE COURT COULD HAVE COMMITTED WOULD HAVE BEEN FUNDAMENTAL ERROR, BECAUSE THE COURT WAS NOT GIVEN AN OPPORTUNITY TO RULE, AND THEREFORE THE COURT COULD NOT HAVE COMMITTED ERROR, UNLESS THERE WAS SOME REASON THAT WAS INCUMBENT UPON THE COURT, TO STEP IN AND RULE AT THAT TIME.

THE ERROR AS TO THE GUILT PHASE, WHICH I HAVE ALREADY DISCUSSED BY THE GOLDEN RULE, AND ALSO ABOUT THE COMMENT ON SILENCE AND ABOUT BRINGING IN THE CHARACTER EVIDENCE WAS NOT OBJECTED TO. OUR POSITION IS THAT WAS FUNDAMENTAL. HOWEVER, THE ERROR, AS DID THE SENTENCING PHASE, THOSE ERRORS WERE PRESERVED, AND THOSE ERRORS WE FIRMLY BELIEVE, ARE NOT HARMLESS ERRORS, ESPECIALLY IN THE COURT'S SENTENCING MEMORANDUM, AN IMPROPER DOUBLING OF MANY OF THE FACTORS IN THE SENTENCING. ACCORDINGLY, WE WOULD ASK THAT THE COURT REVERSE THE JUDGMENT OF SENTENCE IN THIS CASE AND AS A MINIMUM, REMAND THE CASE BACK FOR A NEW SENTENCING HEARING.

THANK YOU, COUNSEL. THANK YOU, COUNSEL FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL TAKE ITS MORNING RECESS. IN RECESS FOR 15 MINUTES.