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Paul Anthony Brown v. State of Florida

CHIEF JUSTICE: BROWN VERSUS STATE AND BROWN VERSUS MOORE COMBINED. IF COUNSEL IS READY TO PROCEED, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I AM JOHN BONACCORSY, AND I AM COUNSEL FOR THE APPELLANT ANTHONY BROWN. I AM HIM GOING TO SPLIT MY TIME 15 MINUTES AND SAVE 5 FOR REBUTTAL. MR. BROWN, RAISES THREE GROUNDS ON WHICH HE BELIEVES HE IS ENTITLED TO RELIEF TO SET ASIDE HIS JUDGMENT FOR CONVICTION FOR DEATH, FIRST-DEGREE MURDER AND HIS SENTENCE FOR DEATH. MR. BROWN, FIRST, ARGUES THAT THIS IS A CASE OF PER SE INEFFECTIVE ASSISTANCE OF COUNSEL, BECAUSE TRIAL COUNSEL ENTIRELY FAILED TO SUBJECT THE PROSECUTION'S CASE TO MEANINGFUL ADVERSARIAL TESTING. AND THE GROUNDS WHICH RAISE THE PRESUMPTION ARE THAT, FIRST, TRIAL COUNSEL DID NOT USE CROSS-EXAMINATION TO IMPEACH THE CREDIBILITY OF THE CODEFENDANT AND STATE'S STAR WITNESS SCOTT JASON MAGUIRE. THE FIRST INSTANCE THAT TRIAL COUNSEL FAILED TO IMPEACH HIM WAS A TRIAL STATEMENT THAT MAGUIRE MADE, HOW WOULD YOU LIKE TO DO IT, AND HE MADE, HE ALLEGES, HE ATTRIBUTES THIS STATEMENT TO MR. BROWN AS THEY ARE GETTING OUT OF THE VICTIM'S TRUCK AND WALKING TO THE VICTIM'S APARTMENT.

LET ME ASK YOU A QUESTION. THERE WAS AN EVIDENTIARY HEARING IN THIS CASE, CORRECT?

YES. AND THE TRIAL JUDGE MADE DETERMINATIONS THAT THE, WHAT COUNSKEL DID AMOUNTED TO TRIAL STRATEGIC. WHEN WE ARE LOOKING, THIS WASN'T A CASE LIKE IN NIXON, WHERE THERE WAS AN ADMISSION OF GUILT. ARE YOU SAYING THERE WAS NO CROSS-EXAMINATION OF THIS WITNESS, OR ARE YOU SAYING THAT THERE WAS ONLY CONCESSIONS GFLT IN OPENING AND CLOSING, THAT THERE WAS NOTHING THAT THIS LAWYER DID TO DEFEND MR. BROWN, OR IS IT A MATTER OF DEGREE?

FIRST, YOUR HONOR, IT IS CORRECT, WE ARE NOT ALLEGING THAT TRIAL COUNSEL MADE CONCESSIONS OF GUILT IN EITHER OPENING OR CLOSING. HE DIDN'T DO. THAT HE MADE SOME OTHER EGREGIOUS STATEMENTS IN OPENING AND CLOSING, WHICH IS WHAT I WILL GET TO, BUT WHAT WE ARE ALLEGING, FOR EXAMPLE, IN THE EXAMINATION OF THE CODEFENDANT SCOTT MAGUIRE, HE MAY HAVE ASKED HIM ONE POINTED QUESTION ABOUT HIM TESTIFYING IN RETURN FOR A 40-YEAR SENTENCE, BUT THERE WERE MANY OTHER PRIOR INCONSISTENCIES THAT TRIAL COUNSEL COULD HAVE USED TO IMPEACH HIM THAT HE NEVER USED.

WELL, I GUESS MY QUESTION IS, SINCE, YES, THERE WAS CROSS-EXAMINATION.

YES. THERE WAS CROSS-EXAMINATION. YES.

THERE WAS AN OPENING STATEMENT. THERE WAS A CLOSING ARGUMENT.

YES. YES.

THE LAWYER TESTIFIED AT AN EVIDENTIARY HEARING, AS TO WHY HE MADE THE DECISIONS THAT HE MADE, AND ALTHOUGH WE HAVE GOT AN INDEPENDENT STANDARD OF REVIEW, ON THE QUESTION AS TO WHEN DOES TRIAL STRATEGY BECOME SO DEFICIENT AS TO AS A MATTER OF LAW, RISE TO THE LEVEL OF INEFFECTIVE ASSISTANCE OF COUNSEL. HE -- I MEAN, CAN YOU POINT

TO ANY CASE WHERE THIS TYPE OF CLAIM HAS BEEN, REALLY, RECOGNIZED AS YOU ARE TRYING, AS YOU ARE CLAIMING HERE.

NO CASE IN THIS STATE, UNDER THESE EXACT CIRCUMSTANCES, BUT WHAT WE ARE CLAIMING IS THAT COUNSEL'S OVERALL PERFORMANCE SHOULD BE THE FOCUS, AND THAT IT WAS, HE ENTIRELY FAILED TO SUBJECT THE STATE'S CASE TO ADVERSARIAL TESTING.

WAS THERE ANY OBJECTIONS IN CLOSING ARGUMENT? NOTHING?

NO. NONE. NONE.

BUT THERE WAS CROSS-EXAMINATION OF WITNESSES.

THERE WAS CROSS-EXAMINATION OF SOME OF THE WITNESSES. CORRECT. FOR EXAMPLE, TRIAL COUNSEL DIDN'T EVEN CROSS-EXAMINATION ONE OF THE DETECTIVES WHO WAS INVOLVED IN THE MURDER INVESTIGATION, OSTRACAMP. HE HAD NO QUESTIONS FOR HIM, WHEN HE COULD HAVE QUESTIONED HIM ABOUT A TYPED STATEMENT IN WHICH HE MADE A LOT OF THESE INCONSISTENT STATEMENTS. IT WAS BARREL MINIMAL CROSS-EXAMINATION. -- IT WAS BARELY MINIMAL CROSS-EXAMINATION, WHICH WE ARE ALLEGEING WAS, WHICH UNFORTUNATELY, ENTIRELY FAILED TO SUBJECT THE PROSECUTION'S CASE TO ANY TESTING AT ALL. DIDN'T HOLD THE STATE'S FEET TO THE FIRE AT ALL.

WELL, A NUMBER OF THESE ALLEGATIONS YOU MAKE HERE, ARE CONCERNING THE IMPEACHMENT OF MR. MAGUIRE.

CORRECT.

BUT DURING THAT CROSS-EXAMINATION, MR. MAGUIRE WAS IMPEACHED SIGNIFICANTLY, WASN'T HE?

I WOULD DISAGREE. I WOULD ARGUE THAT HE WAS NOT IMPEACHED SIGNIFICANTLY. AGAIN, TRIAL COUNSEL ASKED THEM, DIDN'T YOU, WEREN'T YOU ABLE TO PLEAD TO SECOND-DEGREE MURDER FOR A 40-YEAR SENTENCE. YES. BUT HE COULD HAVE FOLLOWED UP WITH THE FACT THAT HE WAS ALLOWED TO PLEAD TO SECOND-DEGREE MURDER AND GOT A 40-YEAR SENTENCE INSTEAD OF LIFE IN PRISON. THE JURY DIDN'T KNOW. THAT ALSO THE JURY, THE TRIAL COUNSEL DIDN'T QUESTION HIM.

THE JURY DIDN'T KNOW HE GOT THE 40-YEAR SENTENCE? I THOUGHT HE HAD ASKED HIM ABOUT THE 40-YEAR SENTENCE. ANOTHER JURY KNEW HE HAD A 40-YEAR SENTENCE, BUT TRIAL COUNSEL DIDN'T LET THE JURY KNOW THAT HE COULD HAVE GOTTEN LIFE IN PRISON RATHER THAN JUST 40 YEARS. ALSO --

I THINK WHAT THEY ARE STRUGGLING WITH IS WHERE DOES THE CHRONIC TEST APPLY AND WHERE DOES STRICKLAND APPLY? BECAUSE IT SEEMS AS THOUGH YOU ARE EXPANDING IT TO SUCH A DEGREE THAT IT IS GOING TO COME IN, I GUESS IS LIKE BEING THE DIFFERENCE BETWEEN A FOOL AND A DAM FOOL, IS THAT IF IT IS THAT BAD, DOES IT CHANGE OVER AND THEN SHIFT INTO A DIFFERENT ANALYSIS? YOU SEE, WHAT WE ARE STRUGGLING WITH IS THAT FIRST THRESHOLD ISSUE. WE NEED SOME HELP. EYE UNDERSTAND. AGAIN, THIS IS NOT A CASE WHERE COUNSEL CONCEDED GUILT, BUT HE MADE STATEMENTS, FOR EXAMPLE, IN OPENING AND CLOSING THAT THE DEFENDANT WASN'T A WONDERFUL PERSON. HE IS DISTANCING HIMSELF FROM HIS CLIENT, SOMETHING THAT COUNSEL SHOULD NEVER DO, EVEN IF HE IS TRYING TO BE HONEST AND UP FRONT WITH THE JURY THAT HIS CLIENT IS NOT AN ANGEL. TRIAL COUNSEL MADE A STATEMENT IN CLOSING THAT HIS CLIENT HAD TURNED BAD. COUNSEL SHOULD NEVER MAKE, TRIAL COUNSEL SHOULD NEVER MAKE A STATEMENT ABOUT A CLIENT, A DEATH PENALTY CLIENT TURNED BAD. THAT IS, A JURY HEARS THAT AND THEY SAY, WELL, THE TRIAL COUNSEL

BELIEVES HIS CLIENT IS BAD. IE HE DESERVES, HE SHOULD BE CONVICTED. HE DESERVES THE DEATH PENALTY. I UNDERSTAND THE PROBLEM THAT THE COURT HAS WITH THIS, AND IT IS A PROBLEM THAT I HAD WITH IT, BUT LOOKING AT COUNSEL'S OVERALL FUNCTION AT TRIAL, MR. BROWN ARGUES THAT THERE SHOULD BE A PRESUMPTION OF INEFFECTIVE ASSISTANCE.

NOW, COUNSEL DID TESTIFY AT THE EVIDENTIARY HEARING.

YES, SIR.

WHAT DID COUNSEL SAY IN HIS OWN DEFENSE, IN TERMS OF WHAT HIS STRATEGY WAS AND WHAT WAS HIS EXPLANATION OF WHEN HE DIDN'T CROSS-EXAMINATION OR WHEN HE DID, SO GIVE US A THUMBNAIL SKETCH OF HOW HE DEFENDED HIS STRATEGY IN THE CASE.

A THUMBNAIL SKETCH SAID THAT HE WOULD BE A GENTLEMAN'S ATTORNEY. HE IS NOT GOING TO GET UP AND OBJECT TO LEADING QUESTIONS AND I TAKE THAT TO MEAN THAT HE IS NOT GOING TO BE CONFRONTATIONAL WITH THE WITNESSES. HIS STYLE WAS TO BE A GENTLEMAN ATTORNEY.

WHEN HE ASKED, THOUGH, WHAT WAS YOUR STRATEGY OF DEFENSE DURING THE GUILT PHASE.

YES.

IN OTHER WORDS WHAT WAS YOUR INTENTION? WAS IT A REASONABLE DOUBT DEFENSE? WAS IT TO IMPEACH THE WITNESSES OF THE, YOU KNOW, CAN YOU HELP ME WITH THAT?

YES.

WHETHER HE WAS ASKED ABOUT THAT AND IF HE GAVE --

EXCUSE ME. TRIAL COUNSEL, YOUR HONOR, STATE HAD THAT HE RECOGNIZED THIS WAS A PENALTY-PHASE TRIAL, AND HE WAS DOING WHAT HE NEEDED TO DO TO SAVE THE DEFENDANT'S LIFE, BUT IF YOU LOOK AT HIS CLOSING ARGUMENT, HE MENTIONS REASONABLE DOUBT, BUT HE REALLY DOESN'T FOLLOW-UP ON IT. DOESN'T ARGUE IT. IT WAS JUST A BARE BONES, YOU KNOW, HE WAS THERE. HE PARTICIPATED. BUT HE WASN'T GOING TO BE CONFRONTATIONAL.

AND WHAT ABOUT THE PENALTY PHASE SIDE OF IT? HOW EXTENSIVE WAS HIS CASE IN THE PENALTY PHASE?

HE INTRODUCED TESTIMONY OF A GRANDMOTHER AND AN UNCLE AND, I BELIEVE IT WAS THE UNCLE MAY HAVE SAID SOMETHING ABOUT OTHER PEOPLE HAD BAD INFLUENCES ON HIM, AND HE TURNED BAD, AND I THINK THAT IS WHERE TRIAL COUNSEL GOT THAT STATEMENT FROM.

ON THE PENALTY PHASE, OFTENTIMES IN THESE CASES WE SEE EVIDENCE THAT THERE WAS A WEALTH OF MITIGATION THAT COULD HAVE BEEN PUT ON THAT WASN'T. I TAKE IT THAT YOU WEREN'T ABLE TO FIND THAT.

NO. ONE OF THE PROBLEMS IS AND I CONCEDE THIS IS THAT MR. BROWN PUT TRIAL COUNSEL IN A LITTLE BIT OF A BAD POSITION, IN THAT FROM THE TIME MR. BROWN CAME TO COURT IN VOLUSIA COUNTY TOY THE TIME OF TRIAL WAS -- TO THE TIME OF TRIAL, WAS, LIKE, TWO AND-A-HALF MONTHS, SO TRIAL COUNSEL DIDN'T MAKE THE DEPOSITIONS AND WE DIDN'T HAVE THOSE ARGUMENTS, BECAUSE HE DIDN'T HAVE A LOT OF TIME TO DO THAT SORT OF INVESTIGATION.

WHY WAS IT THAT THERE WAS A SHORT TIME TO THE TIME OF TRIAL?

MR. BROWN WAS RETURNED TO FLORIDA ON A FEDERAL ROBBERY CONVICTION. HE INSISTED ON

NOT WAIVING THE SPEEDY TRIAL, SO TRIAL COUNSEL TOOK THE CASE, FIRST-DEGREE MURDER CASE TO TRIAL WITHIN TWO, TWO AND-A-HALF MONTHS, AND I KNOW HE TESTIFIED AT THE EVIDENTIARY HEARING HE NEVER DID ANYTHING LIKE THAT, AND I UNDERSTAND THAT THAT IS A DIFFICULT POSITION TO PUT AN ATTORNEY IN, BUT I BELIEVE THAT THE LAW AND ETHICS REQUIRE THE ATTORNEY TO TEST STATE'S CASE, MEANINGFULLY, AND MR. BROUP ARGUES THAT, IN THIS CASE -- AND MR. BROWN ARGUES THAT, IN THIS CASE TRIAL COUNSEL DIDN'T DO IT FOR WHATEVER REASON, AND I NEVER GOT THE ANSWER FROM HIM WHETHER SOMETHING WAS HAPPENING WITHIN HIS LIFE, NEVER TESTIFIED TO ANYTHING LIKE. THAT IT JUST TESTIFIED THAT HE WAS A GENTLEMAN AND TAKES THE GENTLEMAN ATTORNEY APPROACH TO TRIAL.

WHAT WAS THE EXPERIENCE BACKGROUND, IN TERMS OF CRIMINAL DEFENSE LAW?

HE IS A VERY EXPERIENCED ATTORNEY. 26 YEARS, HANDLED CAPITAL CASES WITH THE PUBLIC DEFENDERS OFFICE, HANDLED CAPITAL CASES AS PRIVATE ATTORNEY. I KNOW THIS ATTORNEY. HE IS A GOOD ATTORNEY. AND LOOKING AT THE RECORD, HIS OVERALL PERFORMANCE, I SUGGEST THAT IT DIDN'T TEST MEANINGFULLY, THE STATE'S CASE.

LET'S GO BACK TO THE FACT THAT, LET'S JUST ASSUME THAT THERE WAS INSTANCES OF DEFICIENT PERFORMANCE. I THINK ONE WAS WHETHER HE ALLOWED THE, HE ASKED A QUESTION THAT OPENED THE DOOR.

CORRECT.

WITH THE FBI AGENT.

CORRECT.

IN TERMS OF NOW, THIS WAS A 12-0 JURY RECOMMENDATION FOR DEATH, WHAT IS IT THAT, IF YOU WERE TO GET HIM A NEW TRIAL, BECAUSE OF THIS, WHAT IS IT THAT NOW WOULD PUT INTO DOUBT THIS DEFENDANT'S GUILT? WHAT, IS THERE OTHER EVIDENCE THAT IS ONLY PELLING? I GUESS I AM -- THAT IS COMPELLING? I AM LOOKING AT THE SECOND PRONG OF STRICKLAND AS TO WHY WOULD THIS PICTURE UNDERMINE OUR CONFIDENCE IN THE OUTCOME IN THIS CASE?

I SUGGEST THAT, IF HE OR SOMEONE COULD, ON CROSS-EXAMINATION, TEST MAGUIRE ABOUT PRIOR INCONSISTENT STATEMENTS, FOR EXAMPLE THE ONE ABOUT GETTING OUT OF THE TRUCK AND BROWN, SAYING TO HIM THIS WAS THE TRIAL TESTIMONY, HOW WOULD YOU LIKE TO DO IT, WHICH THE JURY INTERPRETED HOW WOULD YOU LIKE TO ROB, RIP OFF THAT GUY, VERSUS A DEPOSITION STATEMENT OR A TAPED STATEMENT THAT MAGUIRE SAID THAT, WHEN THEY GOT OUT OF THE TRUCK, BROWN SAYS TO HIM WHAT DO YOU WANT TO DO ABOUT IT? WHAT DO YOU WANT TO DO ABOUT A JOB? THAT IS ONE INSTANCE TO BE THAT AT TRIAL, BROWN WAS TRYING TO MINIMIZE HIS PARTICIPATION IN THIS CASE, AND HE SAID THAT, BY TESTIFYING THAT WHEN BROWN HANDED HIM A KNIFE, HE IMMEDIATELY TOOK IT AND THREW IT TO THE GROUND. HE GAVE A PRIOR INCONSISTENT STATEMENT WHICH SAYS HE TOOK THE KNIFE AND PLACED IT ON A TABLE. THAT IS IMPORTANT FOR THE JURY TO NOTE THAT AT TRIAL, HE WAS DOING EVERYTHING TO MINIMIZE HIS PARTICIPATION, WHEN HE MADE PRIOR INCONSISTENT STATEMENTS, WHICH WOULD SEVERELY CAST DOUBT ON HIS CREDIBILITY. HE WAS THE CODEFENDANT. HE WAS THE STATE'S STAR WITNESS, SO MAINLY IT WOULD BE THE CROSS-EXAMINATION AND COUNSEL NOT MAKING THE PREJUDICIAL STATEMENTS THAT TRIAL COUNSEL MADE IN THIS CASE, THAT, IN THE OPENING, HIS CLIENT IS NOT A WONDERFUL PERSON. HE DOESN'T GO PLAY GOLF. THAT IS NOT ANYTHING LIKE ANY OF US WOULD DO. HE IS DISTANCING HIMSELF FROM HIS CLIENT, IN THE BEGINNING OF THE TRIAL, AND THAT IS WHAT WE ARE ARGUING, IS THAT THE, HIS PERFORMANCE CONTINUED HIS DEFICIENT PERFORMANCE CONTINUED, THROUGHOUT THE TRIAL FROM THE BEGINNING IN THE TRIAL NOT USING CROSS-EXAMINATION, NOT OBJECTING TO LEADING QUESTIONS. HE OBJECTED TO LEADING QUESTIONS ONE TIME IN THIS CASE, AND AT THE EVIDENTIARY HEARING, THE DEFENDANT, MR. BROWN, MR. BROWN TESTIFIED IT WAS AT HIS

INSISTENCE, BECAUSE HE WAS TIRED OF HEARING THE STATE PUT WORDS INTO THE, PUT TESTIMONY INTO THE MOUTHS OF THE WITNESSES.

WASN'T THIS A CASE OF, DIDN'T MR. BROWN MAKE A NUMBER OF STATEMENTS WHERE HE CONFESSED TO HIS PARTICIPATION IN THESE EVENTS?

FBI AGENT.

AND WAS THERE PHYSICAL EVIDENCE THAT TIED HIM TO THIS EVENT, ALSO?

YES. THE FBI AGENTS IN TENNESSEE SAID HE CONFESSED, BUT HE TOOK THE STAND AT TRIAL AND DENIED IT OR SAID THAT HE DIDN'T REMEMBER IT. YES, THERE WAS A FOOTPRINT, A BLOODY FOOTPRINT WHICH WAS CONSISTENT WITH THE VICTIM'S BLOOD, ON HIS SHOE, BUT HE TESTIFIED, ALSO, AT TRIAL, THAT HE WENT DOWN TO COMFORT THE MAN, SO THAT WOULD EXPLAIN THAT PHYSICAL EVIDENCE TYING HIM TO THE SCENE OF THE CRIME. ALSO MR. BROWN IS ARGUING, HOW MUCH TIME DO I HAVE LEFT? OKAY. ALSO MR. BROWN IS ARGUING THAT NEWLY-DISCOVERED EVIDENCE SHOULD ENTITLE HIM TO RELIEVE, AND THAT NEWLY-DISCOVERED EVIDENCE WAS, IS THAT, AT THE TIME OF TRIAL, THE CODEFENDANT AND STATE'S STAR WITNESS SCOTT MAGUIRE, BECAUSE A CONVICTED FELON FROM THE STATE OF OHIO AND HE WAS AN ESCAPED CONVICT FROM OHIO. THAT WAS NOT KNOWN AT TRIAL. HE DIDN'T ADMIT TO IT, WHEN HE ADMITTED, AT THE IN INSISTENCE OF THE STATE, THAT HE HAD TWO PRIOR CONVICTIONS AND ONLY FOR FELONY DRUG OFFENSES, BUT IT WAS DISCOVERED WITH A CHECK OF THE DEPARTMENT OF CORRECTIONS WEB SITE, THAT TESTIMONY OR THAT FACT THAT HE WAS A CONVICTED FELON AND THAT HE WAS AN ESCAPED CONVICT FROM OHIO, WOULD EXPLAIN WHY HE WENT THROUGH THE APARTMENT WIPING HIS FINGERPRINTS OFF OF THE KNIFE THAT HE WAS HANDED, HE SAYS THAT HE WAS HANDED AND WIPING HIS FINGERPRINTS OFF OF THE BEER BOTTLE, AND ALSO IT WOULD SUPPORT THE DEFENSE THEORY OF THE CASE THAT MAGUIRE WAS THE ONE WHO KILLED THE VICTIM AND NOT MR. BROWN.

I THOUGHT THE ISSUE THERE WAS IT WAS A QUESTION AS TO WHETHER THIS ACTUALLY WAS THE SAME PERSON. WAS THERE NOT AN ISSUE ABOUT IDENTITY, WHETHER THIS WAS MR. MAGUIRE?

YES, THAT IS TRUE. THE TRIAL COURT FOUND THAT HADN'T SUFFICIENTLY PROVED IT.

HOW DO WE GET AROUND THAT?

I DON'T KNOW, BECAUSE THE CERTIFIED COPY OF THE JUDGMENT AND SENTENCE, WHICH IS PART OF THE RECORD, PART OF THE EXHIBIT HERE, HAS A NAME ON IT SCOTT KEATUM, AND IT DOESN'T HAVE ANY FINGERPRINTS MUCH WE CHECKED WITH THE CAHAIHAGO COUNTY SHERIFFS OFFICE AND THEY TOLD US THEY DID NOT HAVE ANY RECORD ON SCOTT MAGUIRE, AND THE CERTIFIED JUDGMENT OF SENTENCE WAS PROVIDED TO US BY THE STATE AT THE HEARING, SO IT WOULD BE HARD TO PROVE, BECAUSE THERE WERE NO FINGERPRINTS. HE TOOK THE FIFTH AND REFUSED TO TALK ABOUT IT. THE JUDGE MR. CHIEF JUSTICE

YOU ARE TO YOUR REBUTTAL TIME, IF YOU WANT TO PAUSE NOW AND SAVE THAT EXTRA TIME.

THANK YOU. I WILL.

MAY IT PLEASE THE COURT. MY NAME IS DOUGLAS SQUIRE, AND I REPRESENT THE STATE, BOTH APPELLEE AND THE RESPONDENT. I WOULD LIKE TO START BY ADDRESSING SOME OF THE QUESTIONS THAT HAVE ALREADY BEEN ASKED. AS FAR AS THE STRATEGY, THAT TRIAL COUNSEL IS TRYING TO FOLLOW, I BELIEVE ON PAGE 134 OF THE HEARING TRANSCRIPT, HE SUMMARIZED IN A NUTSHELL, AND HE TESTIFIED, I QUOTE, MR. BROWN, HE HAS HAD, THIS WAS HIS THEORY, MR. BROWN, HE HAS HAD HIS PROBLEMS AND HE IS NOT A STELLAR CITIZEN, BUT MR. QUARLES IS HERE BEING UP FRONT HERE, ABOUT WHAT KIND OF PERSON HE IS, AND SO CERTAINLY HE IS NOT

GOING TO MISLEAD US ABOUT HIM BEING A MURDERER OR NOT. AND THAT IS A COMMON STRATEGY. HE KNEW THAT THE DEFENDANT WAS INSISTING IT UPON TESTIFYING AND THEREFORE HIS NINE PRIOR FELONY CONVICTIONS WERE GOING TO COME OUT, SO DURING OPENING HE WANTED TO SOFTEN THE BLOW AND UP FRONT, ESTABLISH SOME SORT OF CREDIBILITY WITH THE JURY, AND THAT IS WHEN HE MADE THE COMMENTS THAT THESE AREN'T THE KIND OF GUYS THAT GO OUT AND PLAY GOLF THAT, TYPE OF THING, AND THERE WAS GOING TO BE TESTIMONY FROM THE CODEFENDANT THAT THEY HAD SPENT TWO WEEKS, AND THIS MAY HAVE BEEN CORROBORATED BY THE DEFENDANT AS WELL, DRINKING AND SMOKING CRACK, BEFORE THE MURDER. AND IN CLOSING, HE ADMITS THAT HE COULD HAVE USED A DIFFERENT PHRASE, AS FAR AS BAD, BUT WHAT HE WAS TRYING TO ESTABLISH WAS THE MITIGATION, AS FAR AS THE FAMILY. I MEAN, HE WAS THE SON OF AN UNWED MOTHER. BY THE TIME OF THE MURDER, AND, OR SHORTLY THEREAFTER, HIS MOTHER WAS SERVING HER OWN MURDER SENTENCE, AND THE VERY NEXT SENTENCE WAS THAT THEY WERE NOT HERE. WE ARE NOT HERE ARGUING THAT HE IS A BOY SCOUT OR ANYTHING LIKE THAT. THAT EXPLAINS THE SENTENCE RIGHT BEFORE THAT, AND THAT WAS OMITTED FROM THE BRIEF, AS IN THE ISSUE TWO, ISSUE ONE SUBPART TWO, SEVERAL OF THE INSTANCES PROPERTY OUT, AS I BELIEVE THE FIRST ONE, THE STATE ARGUED BROWN'S TESTIMONY WAS WORTHLESS OR WORTH AS MUCH AS BROWN FELT THE VICTIM'S LIFE WAS WORTH. THESE SENTENCING -- THESE SENTENCES WERE REVERSED AND THE PROSECUTOR SAID, QUOTE, YOU ALL CAN USE YOUR COMMON SENSE AND JUDGE THE CREDIBILITY OF MR. BROWN WHEN HE WAS HERE IN COURT. HE IS CLEARLY TELLING THE JURY THAT HE BELIEVED THE EVIDENCE SHOWED, WHAT THEY WOULD DETERMINE FROM THE EVIDENCE.

TO GET BACK TO WHAT THE TRIAL STRATEGY WAS HERE, I WOULD ASSUME THAT MR. BROWN WAS SAY HAD GONE THAT MR. MAGUIRE ACTUALLY IS THE ONE WHO KILLED THE VICTIM, RIGHT?

THAT WAS HIS TESTIMONY, CORRECT.

THAT WAS HIS TESTIMONY. AND SO IN ORDER TO FURTHER THAT KIND OF DEFENSE, WOULDN'T IT SEEM REASONABLE THAT A TRIAL ATTORNEY WOULD USE EVERYTHING THAT, AT HIS OR HER DISPOSAL, TO TRY TO FURTHER THAT DEFENSE? AND IN THIS CASE, THERE WERE PRIOR STATEMENTS MADE BY MR. MAGUIRE, THAT SEEM TO BE IN CONFLICT WITH STATEMENTS THAT HE IS MAKING AT TRIAL, SO WHY WOULDN'T A REASONABLE DEFENSE ATTORNEY USE THOSE PRIOR STATEMENTS, TO FURTHER DESTROY HIS CREDIBILITY AND MAYBE INDICATE IN THE JUROR'S MIND THAT, YEAH, HOW CAN WE BELIEVE THIS GUY? THERE IS CERTAINLY SOME THOUGHT HERE THAT MR. MAGUIRE MIGHT BE THE ONE WHO ACTUALLY INFLICTED THE FATAL BLOWS.

I THINK PART OF YOUR QUESTION HIGHLIGHTS THE POINT, AND THAT IS THAT IT SEEMS TO BE IN CONFLICT, AND THIS IS ADDRESSED LABORIOUSLY IN THE BRIEFS, AND AS THE TRIAL JUDGE NOTED, THERE WERE 15 ALLEGED INCIDENTS OF INCONSISTENCIES, AND HE DIDN'T GET INTO THEM. HE FOUND THAT THEY WERE ALL INSIGNIFICANT OR VERY MINOR. AS TO WHETHER HE THREW THE KNIFE DOWN OR PLACED IT DOWN. WHAT IS THE DIFFERENCE? AS FAR AS WHAT THEY WERE TALKING ABOUT ON THE WAY, NEITHER ONE'S STATEMENT DETERMINES THAT THE OTHER STATEMENT DIDN'T OCCUR. I AM NOT SURE WHAT SOME OF THE OTHER ONES WERE, AND AGAIN, THEY ARE NOT ADDRESSED IN THE ORDER, AND WHEN MAGUIRE WAS ON THE STAND, HE DID IMPEACH HIM. HE WANTED TO SHOW THAT HIS CHARGE HAD ALREADY BEEN REDUCED TO SECOND AGREEMENT HIS SENTENCE HAD ALREADY BEEN REDUCED FROM 50 TO 40 YEARS. HE HAD BEEN GIVEN THE ONE-THIRD OFF, AND THAT HE WAS STILL SEEKING TO REDUCE HIS SENTENCE, SO HE WAS TESTIFYING, AND HE STILL HAD AN INTEREST IN THE MATTER. AS TO WHAT HE MIGHT GET FROM THE STATE, OR AT LEAST THAT WAS THE IMPRESSION HE WAS CREATING WITH THE JURY, AND HE, ALSO, POINTED OUT THAT BROWN, I MEAN MAGUIRE HAD NEVER BEEN PAID THE $1,000 AND HE HAD BEEN ABANDONED IN KENTUCKY WITHOUT THE MONEY. I AM TRYING TO REMEMBER THE OTHER PART OF THE QUESTION. I LOST THAT.

NOT SPECIFIC IN IMPEACHMENT, IN ANSWER TO JUSTICE QUINCE'S QUESTION, YOU ARE SAYING THESE WOULD HAVE BEEN INSIGNIFICANT IMPEACHMENT, AND I GUESS IT STILL GOES BACK, BUT IF THEY THEY INCONSISTENCIES, WOULDN'T A GOOD -- IF THEY ARE INCONSISTENCIES, WOULDN'T A GOOD DEFENSE ATTORNEY WANT TO USE ALL OF THE INCONSISTENCIES TO IMPEACH THE OTHER WITNESS'S CREDIBILITY?

THAT WAS THE POINT I WAS TRYING TO GET TO IS THAT NONE OF THESE INCONSISTENCIES UNDERMINED THE QUESTION ABOUT THE BANK ROBBERIES AND ADMITTING TO THING THAT IS THE LAW ENFORCEMENT AGENTS HAD NO KNOWLEDGE WHATSOEVER. SPECIFIC NUMBER OF TIMES HE STABBED THE VICTIM. WHERE HE STABBED THE VICTIM. EVERYTHING WAS CORROBORATED BY THE PHYSICAL EVIDENCE. NOTHING ABOUT MAGUIRE'S INCONSISTENCIES, AS FAR AS THE EVIDENCE, IF THEY BELIEVE THE CONFESSION BY BROWN THAT, ACTUALLY SUPPORTS WHAT HAPPENED TO MAGUIRE, BECAUSE IF THE JURY BELIEVED MAGUIRE'S VERSION OF EVENTS, WHY WAS HE DOING 40 YEARS, IF THEY DIDN'T BELIEVE ANYTHING. IF THEY BELIEVED THAT MAGUIRE HELPED CUT THE VICTIM'S THROAT AND HELPED PLAN IT AND PARTICIPATE IN IT AND THAT KIND OF THING, THAT WENT MORE TOWARDS WHAT HE CONFESSED TO, AS FAR AS WHAT MAGUIRE WAS CONFESSING TO. AND AS FAR AS THE MEDICAL TESTIMONY, WHOEVER SLICED THE NECK DID NOT CAUSE THE DEATH OF THE VICTIM, WAS NOT THE FATAL INJURY.

WHAT ABOUT THESE CONVICTIONS FOR PRIOR AGGRAVATED BATTERY. IS THE DEFENSE THAT WE DON'T KNOW THAT THIS WAS MAGUIRE OR NOT?

AGGRAVATED BATTERY OR AGGRAVATED BURGLARY?

THE PRIOR CONVICTION.

AS WAS APPOINTED OUT, THE IDENTITY WAS NEVER ESTABLISHED. I DON'T KNOW HOW MAGUIRE DOES THINGS, BUT THERE HAD TO BE MUG SHOTS. I AM SURE HE HAD TO BE FINGERPRINTED. THEY HAD A YEAR.

DOESN'T THE STATE HAVE TO ASCERTAIN, IF THEY ARE PUTTING ON A WITNESS, AS TO WHAT THE PRIOR CRIMINAL HISTORY OF THAT WITNESS IS? I MEAN, ISN'T THAT BRADY MATERIAL, IF THIS WERE MR. MAG YOUR?

I, THE -- MR. MAGUIRE?

THE SAME ANALYSIS WOULD BE WAS IT DISCOVERABLE TO THE DEFENSE OR THE STATE? I DON'T KNOW THAT ANYONE HAD ANY INDICATION OR ANY WAY OF FINDING OUT THAT MAGUIRE WAS WANTED SOMEWHERE ELSE. I DON'T KNOW THAT ANY DETAINERS WERE ACTUALLY ISSUED, UNTIL YEARS AFTER THE TRIAL.

NO CLAIM HERE THAT THE STATE KNEW THAT?

NO. THAT IS NOT ALLEGED AT ALL.

ABOUT THE CLOSING ARGUMENT, IS YOUR ARGUMENT ABOUT THE CLOSING ARGUMENT, THAT THE COMPLETE FAILURE TO OBJECT TO ANY PART OF THE CLOSING ARGUMENT WAS BECAUSE THERE WAS ABSOLUTELY NOTHING OBJECTIONABLE IN CLOSING ARGUMENT?

HE DIDN'T, HE WASN'T SURE IF THERE WAS OR WAS NOT, AND ONE OF HIS PRIMARY REASONS FOR NOT OBJECTING WAS THAT HE, HIM ALREADY IS -- HIMSELF, HAD USED "I THINK" IN HIS CLOSING ARGUMENT AND IN HIS OPENING ARGUMENT, I BELIEVE THERE IS A VERY SPECIFIC ONE ON 1228, WHICH ALMOST MIRRORS WHAT THE STATE HAD ARGUED, AS FAR AS WHAT HE THOUGHT THE EVIDENCE SHOWED, AND THERE IS NO CLAIM OR I BELIEVE A SLIGHT ARGUMENT MENTIONED IN THE HABEAS, AS FAR AS WHETHER THIS INDICATED ANY KNOWLEDGE BY THE STATE THAT WAS

NOT, THE JURY WAS NOT MADE PRIVY TO, BUT NONE OF THE ARGUMENTS WENT TO THAT POINT. AND AGAIN, HE WANTED TO, AS I HAVE ALREADY READ, TO HAVE A, TO SHOW THE JURY THAT THEY WERE BEING UP FRONT ABOUT THESE THINGS, AND LIKE WITH THE HEARSAY AND THE LEADING QUESTIONS, HE DID MAKE A LEADING QUESTION OBJECTION TO THE MOST IMPORTANT WITNESS, AND THAT WAS MAGUIRE. HOWEVER, ON THE VERY NEXT PAGE, WHEN THE STATE WAS ASKING THE, YOU KNOW, THE TEXTBOOK-TYPE OPEN QUESTIONS, THOSE ARE WHAT BROUGHT OUT THE HEARSAY. NONE OF THOSE QUESTIONS EXCEPT ONE, AS TO THE WAGE, COULD YOU YOU ARGUE THIS CALLS FOR HEARSAY. THIS WAS JUST MAGUIRE GOING ON IN HIS ANSWER, AND ONCE IT WAS OUT THERE, HE DIDN'T WANT TO LOOK LIKE HE WAS TRYING TO HIDE ANYTHING, AND HE BELIEVED THAT, IF ANYTHING HAD BEEN VERY DETRIMENTAL, I THINK ON PAGE 208, TO HIS CASE, HE WOULD HAVE OBJECTED, BUT HE DIDN'T WANT TO HIGHLIGHT, IT JUST AS WHEN THE EMPLOYER, WHO I GUESS WAS THE PERSON WHO WAS BROUGHT IN TO IDENTIFY THE VICTIM, SAID THAT HE HAD NEVER SEEN HIM, HAD SEEN HIM LOOKING BETTER BEFORE. HE DIDN'T WANT TO DO ANYTHING TO HIGHLIGHT THAT PREJUDICIAL TESTIMONY, AND MORE INTO THE CLOSING ARGUMENT, ONE OF THE POINTS HE BRINGS OUT THAT HE SHOULD HAVE OBJECTED TO THE STATE TALKING ABOUT EYE CONTACT. WHY WOULDN'T THERE BE A JURY. THE STATE WAS ACTUALLY RESPOND TO GET DEFENSE'S ARGUMENT, WHICH WAS NOT UNREASONABLE, BECAUSE APPARENTLY WHEN MAGUIRE WAS TESTIFYING, HE WOULDN'T LOOK AT ANYBODY ON, SO THE STATE HAD POINTED OUT, YOU KNOW, LOOK AT THE DEMEANOR OF THE WITNESSES. THAT IS WHAT YOU ARE HERE TO JUDGE. MAGUIRE WOULDN'T MAKE EYE CONTACT WITH ANYBODY, SO THEN WHEN THE STATE WAS BROUGHT UP, THEY SIMPLY ARGUED THE FAILURE TO MAKE EYE CONTACT IS NOT HOW WE DETERMINE CREDIBILITY, GUILT, OR WE WOULDN'T BE HAVING TRIALS.

IS THERE ANY ISSUE IN THE CASE ABOUT WHETHER BROWN SHOULD TESTIFY IN HIS OWN DEFENSE OR NOT? WAS THAT, WAS THERE ANY DISPUTE BETWEEN COUNSEL AND HIS CLIENT, ABOUT THAT ISSUE?

I BELIEVE THERE IS TESTIMONY THAT HE WAS AGAINST THE CLIENT TESTIFYING, BUT THAT HE COULDN'T OPPOSE. THAT THAT IS HIS FUNDAMENTAL RIGHT.

BROWN TESTIFIED. WHAT WAS HIS EXPLANATION, IF ANY, IF HE WAS ASKED ABOUT IT, ABOUT HISAL EMINGD CONFESSION TO THE -- ABOUT HIS ALLEGED CONFESSION TO THE FEDERAL AUTHORITIES?

HE STARTED BY SAYING HE COULDN'T REMEMBER, AND THEN WHEN THE STATE POINTED OUT THAT HE HAD AN AWFULFULLY GOOD MEMORY FOR EVERY OTHER DETAIL THAT HAPPENED THAT WEEKEND, HE THEN DENIED MAKING THE STATEMENT, AND AS CHARACTERIZED BY THE TRIAL COURT AND, I BELIEVE THE STATE, IT WAS THE FAIRY TALE HE PRESENTED ON THE STAND THAT RESULTED IN THE DEATH PENALTY, AND OF COURSE, THE GUILT CONVICTION. THE EVIDENCE WAS OVERWHELMING. AS THE TRIAL COURT STATES IN HIS ORDER, HE HATED TO SOUND LIKE A BROKEN RECORD, BUT ON EVERY ONE OF THESE ISSUES AND THE VOLUMINOUS SUBISSUES, HE FOUND THAT YOU COULD NOT POSSIBLY SATISFY THE SECOND PRONG OF STRICKLAND, AND THAT IS ONE OF THE THINGS IN THE, I BELIEVE THE HABEAS, IS THAT HIS ARGUMENT IS SO, IS ENTIRELY ON THE PROSECUTOR'S CONDUCT. THERE IS NO RECITATION ON THE FACTUAL ISSUES OF THIS CASE ON WHICH THE STATE RELIED OR ANY EVIDENCE TO THE CONCLUSION AS TO WHETHER THIS EVIDENCE WAS OR WAS NOT DISPOSITIVE, AND NOT TO GET AWAY FROM CHRONIC, AFTER THIS CASE WAS BRIEFED, THE U.S. SUPREME COURT, I BELIEVE IN JUNE, ADDRESSED A VERY SIMILAR CASE, AND IN THAT CASE THERE HAD BEEN NO MITIGATION DURING THE GUILT PHASE. HE HAD WAIVED CLOSING ARGUMENT, BECAUSE HE DIDN'T WANT THE MORE EXPERIENCED STATE ATTORNEY TO GET UP, AND WHAT THEY POINTED OUT WAS THAT HIS ARGUMENT WASN'T THAT HIS COUNSEL HAD FAILED TO OPPOSE THE PROSECUTION THROUGHOUT TRIAL, AND IN THIS CASE HE DID, YOU KNOW, CROSS-EXAMINATION, PUT ON OPENING AND CLOSING, PUT THE, THE DEFENDANT TOOK THE STAND. HE DID A PENALTY PHASE. IT WAS THAT THE, HE FAILED TO DO SO AT SPECIFIC POINTS, AND THEY SAID FOR THE PURPOSES OF DISTINGUISHING BETWEEN THE

RULES OF STRICKLAND AND CHRONIC, THIS IS A DIFFERENCE NOT OF DEGREE BUT OF KIND, POINTED OUT HE HAS NO CASE THAT HAS GONE HIS WAY, IN THAT HAS HE ADDED THESE UP AND COME UP WITH A STANDARD. THE SUPREME COURT PRETTY MUCH SAID AT THAT TIME, THIS IS NOT THE WAY THIS IS GOING TO BE DEVELOPED. I GUESS WITH THAT I WOULD JUST ASK THAT, BASED ON THIS ARGUMENT TODAY AND THE ARGUMENTS MADE IN THE BRIEF, THAT YOU AFFIRM. THANK YOU.

CHIEF JUSTICE: COUNSEL, YOU HAVE FIVE MINUTES.

FIRST, I WOULD LIKE TO ADDRESS THE ARGUMENT THAT FIRST, I WOULD LIKE TO ADDRESS THE ARGUMENT ABOUT THE PROSECUTOR STATEMENTS IN CLOSING ARGUMENT. THE PROSECUTOR MADE AT LEAST TWO STATEMENTS IN WHICH HE MOCKED THE DEFENDANT, AND IT IS NOT THE STATE'S JOB TO MOCK THE DEFENDANT OR MOCK THE DEFENSE IN CLOSING ARGUMENT. FOR EXAMPLE, THE DEFENDANT SAID, THE DEFENDANT CAME TO DAYTONA BEACH ON HIS SO-CALLED VACATION, WHEN HE WAS TIRED OF HIS SO-CALLED VACATION, HE WANTED TO GO BACK TO TENNESSEE. THAT WAS NOT OBJECTED TO. THERE IS ABSOLUTELY NO REASON FOR THE PROSECUTOR TO BE MOCKING MR. BROWN ABOUT WHETHER OR NOT HE WAS IN DAYTONA BEACH ON HIS VACATION. ALSO HE SAID IN MOCKING MR. BROWN --

DID MR. BROWN, DID HE TESTIFY THAT, WHAT DID HE SAY --

MR. BROWN TESTIFIED HE WAS IN DAYTONA BEACH ON VACATION FROM TENNESSEE. AND THEN, THOUGH, THE PROSECUTOR, ALSO, MOCKED MR. BROWN, WHETHER OR NOT MR. BROWN'S TESTIMONY AT TRIAL WAS THAT HE WAS IN FEAR OF THE CODEFENDANT MAGUIRE, AND THE PROSECUTOR, IN CLOSING, SAID, NOW, TELL ME SOMETHING. IF MR. MAGUIRE IS THE MAN IN CONTROL AND MAGUIRE IS SOMEONE TO BE FEARED, AND YOU FEEL THAT WAY ABOUT SOMEONE, WHAT DO YOU THINK ABOUT LEAVING THAT PERSON'S OH, HERE WE ARE, JUST COMMITTED A MURDER, AND OH, MR. MAGUIRE, I AM LEAVING YOUR LICENSE HERE, YOUR IDENTIFICATION, AND WHAT HE WAS TALKING ABOUT WAS THAT, WHEN MAGUIRE AND BROWN LEFT DAYTONA BEACH, THEY WENT THROUGH GOO TENNESSEE, AND AT A GAS -- THROUGH GEORGIA TO TEN SEE, AND AT -- TO TENNESSEE, AND AT A GAS STATION IN GEORGIA, MR. BROWN GAVE MR. MAGUIRE'S ID TO A CLERK. THERE IS NO ABSOLUTELY NO REASON FOR THE PROSECUTOR TO BE MOCKING HIM OR MOCKING THE DEFENSE IN THAT WAY.

I GUESS I AM HAVING TROUBLE WITH UNDERSTANDING WHY AREN'T BOTH OF THOSE THINGS ARGUMENT? ONE IS HE HAS TESTIFIED THAT HE WENT ON VACATION. WELL, THERE WAS A MURDER. I MEAN, A SO-CALLED VACATION SEEMS TO BE SORT OF AN APPROPRIATE COMMENT ON SOMEONE SAYING I WENT ON VACATION. WHAT WOULD YOU, WHAT WOULD YOU DO? GET UP AND SAY, YOUR HONOR, HE IS MOCKING MY CLIENT? WHAT WOULD BE THE OBJECTION YOU WOULD RAISE, IF YOU WERE IN THE COURTROOM, AS THE DEFENSE ATTORNEY?

IT WOULD BE OBJECTING TO THE TESTIMONY AS ATTACKING THE DEFENDANT PERSONALLY, AND I BELIEVE THAT, IN THE STATE OF FLORIDA, AN ATTORNEY CANNOT DO THAT. THE PROSECUTOR CANNOT ATTACK THE DEFENDANT PERSONALLY, BY MOCKING HIM OR DISPARAGING HIM, MAKING PER JOURTIVE COMMENTS ABOUT HIM.

HE WAS ATTACKING THE CREDIBILITY OF HIS TESTIMONY, BY SAYING THIS WAS A VACATION, A SO-CALLED VACATION. I GUESS I AM JUST HAVING DIFFICULTY IN UNDERSTANDING WHY THAT WOULD BE AN IMPROPER COMMENT.

I UNDERSTAND. I SUGGEST THAT THE PROSECUTOR COULD HAVE SAID HIS TESTIMONY IS HE CAME HERE ON VACATION. YOU DETERMINE WHETHER OR NOT HE CAME HERE ON VACATION OR WHETHER, WHAT HIS PURPOSE WAS, WITHOUT SAYING HE CAME HERE ON HIS SO-CALLED VACATION, AND AFTER HE WAS, AFTER HIS SO-CALLED VACATION, HE LEAVES. IN ADDITION, A MORE EGREGIOUS STATEMENT THAT THE PROSECUTOR MADE WAS WHEN HE SAID THAT, AND I

QUOTE ESSENTIALLY, I THINK MR. BROWN'S TESTIMONY HERE BEFORE YOU IS WORTH JUST ABOUT AS MUCH AS MR. BROWN FELT THAT MR. HENSLEY'S LIFE WAS WORTH, BACK IN NOVEMBER 1992. I SUGGEST THAT THAT IS A THINLY-VEILED ARGUMENT TO THE JURY, YOU GIVE MR. BROWN THE SAME CONSIDERATION THAT HE GAVE THE VICTIM IN THIS CASE. AND I SUGGEST THAT THAT IS IMPROPER FOR THE STATE TO BE MAKING THOSE ARGUMENT. THE PROSECUTOR ALSO SAID IN CLOSING ARGUMENT, SEND A MESSAGE TO MR. BROWN. TELL HIM, YES, YOU ARE A MURDERER, MR. BROWN. AGAIN, MR. BROWN ARGUES THAT THAT IS IMPERMISSIBLE IN THE STATE, IN THIS STATE, FOR A PROSECUTOR TO BE SAYING THAT WE WANT TO SEND A MESSAGE TO THE DEFENDANT. ALSO, AS THE STATE COMMENTED UPON THE PROSECUTOR'S STATEMENT THAT WHETHER OR NOT I THINK THAT THERE IS A NEED FOR TRIAL, MR. BROWN WOULD CONCEDE OR ADMIT THAT THAT IS NOT LIKE SAYING, WELL, YOU KNOW, WE ARE ONLY HERE BECAUSE MR. BROWN WANTS A TRIAL, BUT, AGAIN, THAT IS VERY CLOSE. IT IS A STATEMENT THAT THE PROSECUTOR DOES NOT NEED TO MAKE, ESPECIALLY IN A CASE LIKE THIS! I SUGGEST THAT, IN THIS CASE, BASICALLY, THE PROSECUTOR COULD HAVE PUT ON THE EVIDENCE, AND HE COULD HAVE SAT DOWN. SOMETHING THAT, AS AN EX-PROSECUTOR, I ALWAYS WANTED TO DO, NOT MAKE ANY ARGUMENT. JUST PUT ON THE CASE AND SIT DOWN. THERE WAS ABSOLUTELY NO REASON WHATSOEVER FOR THE PROSECUTOR TO USE THE LEADING QUESTIONS THAT HE DID FROM THE BEGINNING TO THE END OF TRIAL, TO MAKE THE STATEMENTS THAT HE MADE IN OPENING AND THEN AGAIN IN CLOSING. THIS WAS LIKE, I AM SURE THAT THIS WAS A CASE IN WHICH EVERYONE ELSE IN THE STATE ATTORNEYS OFFICE SAID WHY IS THIS CASE GOING TO TRIAL? AND I SUGGEST THAT IN THOSE CASES, WHERE YOU KNOW, THE OPINION IS THIS CASE DOESN'T NEED TO GO TO TRIAL, THESE ARE THE CASES IN WHICH THERE IS OVERREACHING IN THE WORST FORM. IN ADDITION, MR. BROWN WOULD ARGUE THAT THE INCONSISTENCIES IN MAGUIRE'S PRIOR STATEMENTS ARE IMPORTANT. AT LEAST TWO STATEMENTS, THE ONE ABOUT GETTING OUT OF THE TRUCK AND GOING TO THE VICTIM'S APARTMENT. AT TRIAL, BROWN SAYS, MAGUIRE SAID BROWN SAID TO HIM, HOW WOULD YOU LIKE TO DO IT? THERE IS ONLY ONE WAY TO INTERPRET THAT, AND THE INTERPRETATION WITH ALL OF THE OTHER EVIDENCE WAS HOW DO YOU WANT TO COMMIT A CRIME AGAINST THE VICTIM, WHEN IN DEPOSITION, IN A PRIOR TAPED STATEMENT, MAGUIRE SAID BROWN SAID TO HIM WHAT DO YOU LIKE TO DO ABOUT THE JOB?

CHIEF JUSTICE: WE WILL HAVE TO CLOSE ON THAT NOTE. THANK YOU, BOTH, VERY MUCH.