Richard Harold Anderson v. State of Florida

MR. CHIEF JUSTICE

GOOD MORNING ONCE AGAIN, AND WE PARTICULARLY WOULD LIKE TO WELCOME TO THE FLORIDA SUPREME COURT THE FLORIDA A&M UNIVERSITY STUDENT GOVERNMENT. I UNDERSTAND THAT ALL OF THE LEADERSHIP IS HERE, INCLUDING THE PRESIDENT OF THE STUDENT BODY, ANDREW GILHAM, AND SO WE ARE PARTICULARLY PLEASED TO HAVE YOU HERE, AND KNOW THE MEMBERS OF THE COURT LOOK FORWARD TO JOINING YOU AFTER THE ORAL ARGUMENT FOR LUNCH. SO WE WILL NOW CONTINUE WITH OUR ORAL ARGUMENT CALENDAR. JUSTICE QUINCE IS RECUSEED IN THIS CASE. THE CASE IS ANDERSON VERSUS STATE. MR. STRAIN.

THANK, YOUR HONOR. IF THE COURT PLEASE, WHEN THE ISSUE OF PERJURED GRAND JURY TESTIMONY WAS PRESENTED TO THIS COURT ON MR. ANDERSON'S DIRECT APPEAL, IT WAS A CASE OF FIRST IMPRESSION. THE COURT WILL RECALL THAT YOU LOOKED AT FEDERAL CASE LAW IN OTHER STATE CASES, IN TERMS OF ANALYZING THE TRUTH-THINKING FUNCTION OF A TRIAL, THE DUTIES OF THE PROSECUTOR AND WHAT HE DOES, WHEN PERJURED GRAND JURY TESTIMONY HAS ARISEN, AND HOW THE USE OF IT BEFORE TRIAL OR BY THE TIME OF TRIAL, CORE UPTS THE PROCESS AND OUR SYSTEM. TODAY MR. ANDERSON RETURNS TO THE COURT, FOLLOWING THREE DAYS OF HEARING FOR AN EVIDENTIARY ON THIS ISSUE AT THE TRIAL COURT, AND TODAY OR NOW, THE ISSUE IS WHAT IS THE EFFECT OF MR. ANDERSON'S CONSTITUTIONAL DUE PROCESS RIGHTS, WHEN THE STATE KNEW THAT THIS PERJURED TESTIMONY OF CONNIE BEASLEY WAS PRESENTED TO THE GRAND JURY, AND THAT KNOWLEDGE CAME ONE DAY AFTER THE GRAND JURY.

LET'S GO BACK TO WHAT IS AND IS NOT AT ISSUE HERE. THE STATEMENTS OF BEASLEY, WHO WAS THE WITNESS AGAINST ANDERSON CHANGED FROM THE TIME SHE FIRST STARTED TO SPEAK TO THE DETECTIVES UNTIL SOMETIME DURING THE TRIAL, CORRECT?

IT CHANGED MANY, MANY TIMES.

AND THIS IS NOT A CASE, UNLIKE MANY WE SEE, WHERE THE DEFENDANT IS CLAIMING THAT THEY DIDN'T HAVE ALL OF THE DIFFERENT VERSIONS TO USE TO IMPEACH THE CREDIBILITY OF MS. BEASLEY, CORRECT?

YES, JUSTICE, EXCEPT UNTIL SEVERAL WEEKS BEFORE TRIAL OR THE PRECISE TERMS OF HER GRAND JURY TESTIMONY WAS --

BUT THEY HAD THE GRAND JURY TESTIMONY. THE JURY KNEW. THE DEFENSE LAWYER KNEW THAT SHE HAD TESTIFIED TO BE LESS INVOLVED AT THE TIME OF THE GRAND JURY TESTIMONY THAN SHE SUBSEQUENTLY TOLD THE FDLE. CORRECT?

THAT'S CORRECT.

AND THIS COURT, ON DIRECT APPEAL, MADE A SPECIFIC STATEMENT THAT IT WAS NOT MATERIAL. BEGIN THAT, WHETHER OR NOT FDLE KNEW, A DAY AFTER, THAT IT WAS INCORRECT OR FALSE TESTIMONY, THE GRAND JURY TESTIMONY, HOW DO YOU GET AROUND THIS COURT'S FINDING THAT IT WAS NOT A MATERIAL CHANGE, SO AS FOR THE PURPOSE OF, I GUESS, FOR INDICTMENT OR SOME OTHER RELIEF BEING SOUGHT, COULD YOU ADDRESS THAT, AND LET'S FORGET THE

KNOWINGLY AND DOESN'T IT STILL HAVE TO BE THE MATERIALITY, IN ORDER TO CAUSE THIS, THESE STATEMENTS THAT WERE KNOWN TO THE JURY AND THE JUDGE BEFORE TRIAL AND DURING TRIAL AND AT TRIAL, TO COME TO A DUE PROCESS VIOLATION.

SURELY, JUSTICE PARIENTE. THE KEY IS THAT THE FACTS, AS ELICITED AND REFINED, IF YOU WILL, AT THE EVIDENTIARY HEARING SHOW THAT THIS COURT WAS IN ERROR IN ITS DIRECT OPINION OR THE OPINION ON THE DIRECT APPEAL WHEN IT SAID THAT CONNIE BEASLEY'S TESTIMONY PERJURED AT THE GRAND JURY, AS IT WAS, WAS NOT MATERIAL THE REASON, AND FOLLOWING THE EVIDENTIARY, IT WAS CLEAR, THE MATERIAL ASPECTS THAT THIS COURT DID NOT SEE AND, IN FACT, THE EVIDENTIARY COURT ESSENTIALLY IGNORED, ALSO, IS THAT CONNIE BEASLEY LIED AT LEAST TWICE, AS TO THE MOTIVE FOR THE KILLING OF ROBERT GRAN THAT MANY. SHE -- OF ROBERT GRANTHAM. SHE LIED AT LEAST TWICE FOR THE OPPORTUNITY OF KILLING ROBERT GRANTHAM. YOU COMBINE THAT WITH THE FACT THAT IT WAS CLEAR, FROM THE READING OF JUDGE SIMS'S ORDER ON THE EVIDENTIARY, THAT THE STATE YOU WERE USLY REFUSED OR DID NOT BRING FDLE CRIME LAB ANALYST LEROY PARKER, TO TESTIFY ABOUT THE BLOODSTAINS.

MATERIALITY, THIS ISN'T THE BRADY VIOLATION. AGAIN, IT IS SOMETHING THAT WASN'T PRESENTED AT TRIAL. THIS IS A QUESTION AS TO MATERIALITY, IN TERMS OF THE, WHETHER THEY WOULD HAVE GOTTEN THE GRAND JURY INDICTMENT. CORRECT?

WELL, YES, BUT --

THIS IS A DIFFERENT --

IT IS A VERY UNIQUE SITUATION JUSTICE PARIENTE, I AGREE.

AND WHAT SHE SAID AT THE COURT WAS SHE HAD LESS THAN HER KNOWLEDGE AT THE TIME OF THE GRAND JURY INDICTMENT, AND SHE TESTIFIED AT TRIAL THAT SHE WAS VERY MUCH MORE INVOLVED, THERE IS, UNQUESTIONABLE THAT THE GRAND JURY WOULD HAVE INDICTED MR. ANDERSON ON THAT MUCH STRONGER TESTIMONY.

WELL, HERE IS THE KEY, AND IT IS DIRECTLY IN ANSWER TO YOUR QUESTION. BECAUSE LEROY PARKER, THE CRIME LAB ANALYST'S REPORT WAS TRANSCRIBED, TYPED UP AND MAILED OUT OF ORLANDO ON JULY 15, AND HIS CONCLUSIONS AS TO HOW THE SHOOTING OF ROBERT GRANTHAM OCCURRED IN THE CAR WITH THE BLOODSTAINS ON THE SEAT, CONTRADICTED CONNIE BEASLEY'S TESTIMONY. TWO THINGS ABOUT WHAT HAPPENED, JUST PIECE PARIENTE. -- JUSTICE PARIENTE. IF, AND WHAT THIS COURT RECOGNIZED AND THE TRIAL COURT RECOGNIZED IS THAT, ON JULY 15, CONNIE BEASLEY CHANGED HER EXPLANATION AND HER STORIES TO FDLE THE SECOND, AT LEAST THE SECOND TIME, SO ON JULY 15, WHEN YOU HAVE, WHEN ALL OF US HAVE THE RARE CHANCE TO READ A KEY WITNESS'S GRAND JURY TESTIMONY, YOU WILL SEE THAT THERE IS A COMPLETE ABSENCE OF ANY MENTION OF PREMEDITATION OR ANY DETAILS WHICH SHOW WHAT THE DEGREE OF A KILLING THIS WAS. IN FACT, THE PROSECUTOR, IN AN ABUNDANCE OF LEADING QUESTIONS, AS THE COURT KNOWS FROM GOING OVER THAT GRAND JURY TESTIMONY, TALKED ABOUT SHOOTING THE DEFENDANT AND KILLING THE DEFENDANT. AND THE ONLY ASPECT OF MOTIVE THAT CONNIE BEASLEY TALKED ABOUT AT THE GRAND JURY WAS THAT SHE THOUGHT RICHARD ANDERSON WAS GOING TO TAKE ROBERT GRANTHAM OUTSIDE AND ROUGH HIM UP OR GIVE HER A FINAL WARNING, LIKE HER FATHER HAD ALREADY DONE, ACCORDING TO HER GRAND JURY TESTIMONY, BECAUSE OF THE BIZARRE AND WEIRD AND UNWANTED SEXUAL ADVANCES THAT ROBERT GRANTHAM HAD BEEN GIVING FOR THE PREVIOUS MONTH TO CONNIE BEASLEY. NOW, THE KEY TO YOUR, THE KEY ANSWER. SHE CHANGED THAT STORY, ON JULY 16, IN INTERVIEWS WITH FDLE. PERHAPS LEROY PARKER'S REPORT HAD BEEN RECEIVED BY FDLE ON JULY 16, THE DAY AFTER, AND ON JULY 16, SHE SAID, WELL, NO, THE MOTIVE FOR RICHARD ANDERSON TO TAKE ROBERT GRANTHAM OUT OF THE APARTMENT IS

BECAUSE HE INTERRUPTED GRANTHAM'S RAPE OF ME, SO THERE, FOR THE SECOND TIME, CONNIE BEASLEY IS TALKING ABOUT PROVOCATION OF KILLING ROBERT GRANTHAM, NOT PREMEDITATION, NOT PLANNING, NOT DETAILS OR WHAT HAVE YOU, BUT ONLY PROVOCATION, AND THIS TIME ON JULY 16, FOR INTERRUPTING A RAPE, AND THAT IS THE FIRST TIME SHE TELLS THE POLICE THAT SHE WENT OUT. JUSTICE PARIENTE --

LET ME ASK YOU A QUESTION. WHAT IS THE REMEDY, ASSUME THAT A VIOLATION OF THIS TYPE, WHICH IS JUST, NOT TAKE THE TRIAL, ITSELF -- NOT THAT THE TRIAL, ITSELF, HAS ANYTHING BUT HER TESTIMONY WHICH WAS TRUTHFUL, HAD ANYTHING BUT HER PRIOR TESTIMONY TO IMPEACH HER, WHAT IS THE REMEDY FOR THIS? IF WE WERE TO AGREE WITH --

THERE IS ONLY ONE REMEDY TO DO, THAN IS AS THIS COURT STATED IN THE 1997 CASE OF OWEN, TO USE YOUR EXTRAORDINARY AUTHORITY AND EXTRAORDINARY CIRCUMSTANCES TO CORRECT THE LAW OF A CASE. THE SECOND ERROR, QUICKLY, JUSTICE PARIENTE --

WHAT WOULD THAT DO THOUGH?

YOU SEND THE CASE BACK, WITH THIS INDICTMENT, WITH THIS CONVICTION AND SENTENCE, DISMISSED, WITH INSTRUCTIONS TO THE STATE OF FLORIDA TO GO BACK AND REINDICT MR. ANDERSON. WHAT THE TRIAL COURT SHOULD HAVE DONE AT THE TIME OF TRIAL, AS WHAT THIS COURT COULD HAVE DONE ON DIRECT APPEAL. THERE IS A SECOND ERROR, REAL QUICK, JUSTICE PARIENTE, PUTTING THE WHOLE CASE IN PERSPECTIVE IS SO INTRIGUEING, BECAUSE THIS COURT, ALSO, MADE AN ERROR ON DIRECT APPEAL, WHEN IT SAID THAT --

AGAIN, BACK TO THE QUESTION, WHICH I HAD, WHICH IS WHAT WAS DISCOVERED ON THE EVIDENTIARY HEARING ABOUT THE MATERIALALITY THAT WASN'T KNOWN AT THE TIME OF THE DIRECT APPEAL? AS I AM HEARING YOU, THERE IS NOTHING, OTHER THAN YOUR ASKING US TO REEVALUATE MATERIALITY. IS THAT --

WELL, IN TERMS OF MOTIVE AND OPPORTUNITY, AND REMEMBER, MOTIVE GOES TO THE DEGREE OF THE MURDER.

BUT THAT --.

ABSOLUTELY.

SO YOU ARE CANDIDLY ASKING US TO DO THAT, SO THEREFORE MY INITIAL QUESTION, WHICH IS ASSUMING THAT THAT MATERIALITY FINDING STANDS, THE KNOWINGLY PART IS, UNLESS YOU GET MATERIALITY, KNOWINGLY DOESN'T CARRY THE DAY FOR YOU, CORRECT?

I AGREE WITH YOU COMPLETELY, AND REMEMBER, AS MY INITIAL BRIEF TRIED TO POINT OUT, THAT IS AFTER JULY 16 AND BEFORE JULY 24, 1987, IF THE PROSECUTOR HAD FOLLOWED HIS DUTY, UNDER THE FLORIDA BAR RULES, REGULATING THE FLORIDA BAR, UNDER THE CASE LAW THAT THIS COURT CITED ON DIRECT OPINION, AND HAD GONE BACK TO THE GRAND JURY, AND TELLING THE COURT AND DEFENDANT ABOUT HER PERJURY, AT THAT TIME IT WOULD HAVE BEEN THE INTERRUPTING THE RAPE MOTIVE. THE EFFECT OF THE PROSECUTOR WAITING, AGAIN, ALMOST SEVEN MONTHS BEFORE REACTING, DURING TRIAL, TO A MOTION TO DISMISS, THE EFFECT OF THE PROSECUTOR NOT TAKING CONNIE BEASLEY BACK TO THE GRAND JURY AFTER JULY 24, WAS THE VERY INTERESTING COMPONENT OF NOT USING AND LIST LEROY PARKER -- AND LIST LEROY PARKER -- ANALYST LEROY PARKER AT THE TRIAL. HE WAS CALLED AS A DEFENSE WITNESS, AND HE CONTRADICTED CONNIE BEASLEY ABOUT HOW THE DEFENDANT WAS SHOT. SO WHAT DID THIS MEAN? IF, IN FACT, LEROY PARKER HAD BEEN TAKEN BACK TO THE GRAND JURY, ALONG WITH CONNIE BEASLEY, COULD WE NOT AT YOU MEAN VERY, VERY SAFELY, THAT CONNIE BEASLEY WOULD NOT HAVE BEEN BELIEVED, WHEN THE STATE'S OWN LAW ENFORCEMENT AGENT IS SAYING CONNIE BEASLEY LIED, WHEN SHE SAID ANDERSON WAS SITTING IN THE BACKSEAT OF

THE CAR AND PUMPED FOUR SHOTS FROM THE PISTOL INTO --

THE SITUATION WHERE THE DID NOT KNOW ABOUT THE PERJURED TESTIMONY, IS THAT CORRECT? THEY FOUND OUT ABOUT IT A DAY AFTER.

LEROY PARKER'S TESTIMONY WAS THAT THE REPORT WAS NOT TRANSCRIBED AND MAILED OUT UNTIL JULY 15, THAT THEY DIDN'T HAVE IT UNTIL THE AFTERNOON WHEN CONNIE BEASLEY TESTIFIED. NOW, IN HIS MIND, HE CERTAINLY KNEW WHAT HIS REPORT, AS DICTATED, WAS GOING TO SAY ABOUT HIS CONCLUSIONS.

I GUESS MY QUESTION, THEN, IS SINCE THERE WAS NO INTENTIONAL FAULT ON THE PART OF THE STATE AND THERE WAS ERROR, ARGUABLY ERROR IN THE GRAND JURY INDICTMENT, ONCE IT GOES TO TRIAL AND EVIDENCE IS PUT IN, SUFFICIENT TO SUSTAIN A CONVICTION, WHY ISN'T THAT CURED

JUSTICE SHAW, I THINK THE TOTALITY OF THE CASE, AS TO WHAT YOU ARE SAYING, BRINGS TO MIND WHAT DEFENSE COUNSEL SAID AT THE SENTENCING HEARING, THAT HE WOULD BE TORMENTED THE REST OF HIS LIFE BY FEAR THAT CONNIE BEASLEY WAS NOT TELLING THE TRUTH AT THE TRIAL. WHEN YOU RECOGNIZE THE HARM TO OUR SYSTEM OF THE STATE, JUST LIKE THIS COURT CITED IN NEW YORK VERSUS PELTIN CASE, WHERE EVEN A GUILTY PLEA ON A DRUG BISTHE WAS OVER -- ON A DRUG BUST WAS OVERTHROWN BECAUSE THE PROSECUTOR WENT ON VACATION, JUST LIKE MR. SKYE AND MR. ANDERSON'S CASE, CAME BACK AND SAID MY LEAD GRAND JURY TESTIMONY WAS IN ERROR. I DON'T SEEING MR. PELTIN AT THE DRUG BUST, THAT COURT WHAT IS DISMISSED EVEN OVER A GUILTY PLEA, WHERE IT WAS A DRUG BUST ROUND UP AND WHAT HAVE YOU.

SO THE PROOF IS HEAVIER AT TRIAL THAN IT IS FOR THE GRAND JURY.

WELL, I RECOGNIZE THAT, TOO, JUSTICE SHAW, BUT YOU KNOW, YOU PUT EVERYTHING ELSE IN PERSPECTIVE, MR. GRANTHAM, THIS IS NOT ONLY A CASE OF FIRST IMPRESSION ABOUT THE HORRORS OF USING GRAND JURY PERJURY, OR AS THE CASE LAW AND YOU FOLKS HAVE PROPERLY POINTED OUT, ONCE THE PERJURY IS KNOWN, WHAT IS THE DUTY OF THE PROSECUTOR TO DO? WHEN WE, WHEN THIS CASE FIRST CAME ON DIRECT APPEAL AND BEFORE THE TRIAL JUDGE, IT WAS ONLY ABOUT TWO OR THREE WEEKS USAGE, AND IN FACT, MR. SKYE SAID, TESTIFIED AT THE EVIDENTIARY, HE DIDN'T UNDERSTAND WHY TRIAL COUNSEL DIDN'T MOVE TO DISMISS THE INDICTMENT BEFORE TRIAL. BUT NOW WE KNOW THAT THE STATE KNEW, ON JULY 16, SEVEN MONTHS BEFORE TRIAL, AND PURPOSELY DID NOT BRING IN LEROY PARKER. AS MY REPLY BRIEF ATTEMPTED TO EXPLAIN, LEROY PARKER TESTIFIED AT THE TRIAL AND AT THE EVIDENTIARY HEARING, THAT HE WAS KEPT COMPLETELY OUT OF THE LOOP, EVEN THOUGH HE WAS ONE OF THE FIRST LAW ENFORCEMENT OFFICERS ON, CALLED IN TO LOOK AT THE BLOODSTAINS ON THE CAR. HE WAS WAITING AND WAITING FOR THE MEDICAL EXAMINER'S REPORT, NOT EVEN REALIZING AND NEVER BEING TOLD BY THE PROSECUTORS OR HIS FDLE COLLEAGUES, THAT THERE WAS NEVER ANY BODY FOUND. YOU PUT THAT IN CONJUNCTION WITH THE VICTIM USING A DECEASED MOBSTER'S NAME FROM NEW ORLEANS, ON HIS PHONE RECORDS, AND THAT IS HOW MR. ANDERSON'S NAME WAS LINKED TO GRANTHAM'S DISAPPEARANCE. YOU PUT -- MR. CHIEF JUSTICE

YOU ARE INTO YOUR REBUTTAL TIME. MR. LANDRY.

MAY IT PLEASE THE COURT. BOB LAND RIO BEHALF OF THE STATE OF FLORIDA TODAY IN THIS APPEAL. NOTHING HAS CHANGED SINCE THE TIME OF THIS DIRECT APPEAL. THIS COURT WAS WELL AWARE 6 THE CONNIE BEASLEY TESTIMONY AT THE TIME OF THE DIRECT APPEAL. IT WAS MADE AVAILABLE TO THE DEFENSE AND TO THE JURY, BECAUSE OF THE CROSS-EXAMINATION BY DEFENSE COUNSEL T WAS WELL-KNOWN TO THE COURT. THE COURT CONSIDERED THE GRAND JURY TESTIMONY, AS WELL AS ALL OF THE OTHER TOTAL EVIDENCE THAT WAS PRESENTED AT

TRIAL, AND THIS COURT CONCLUDED AT THAT POINT THAT, HER TESTIMONY AT THE GRAND JURY, MINIMIZING HER INVOLVEMENT WAS NOT MATERIAL, THAT THE TESTIMONY THAT SHE FINALLY ENDED UP GIVING TO THE JURY WOULD HAVE MORE QUICKLY, I GUESS, LED TO A GRAND JURY INDICTMENT. NOW, WHEN A 3.850 MOTION WAS FILED, CCR CANNOT PROVE THE CLAIM THAT IT WAS UNKNOWN AT THE TIME OF THE TRIAL APPEAL AND WHICH THE FLORIDA SUPREME COURT WAS NOT AWARE OF, AND THAT IS THAT THE STATE ATTORNEY KNOWINGLY PUT ON THIS PERJURED TESTIMONY AT THE GRAND JURY AND THE TRIAL COURT DECIDED TO HOLD AN EVIDENTIARY HEARING ON THAT FACT, SINCE IT PRESUMABLY HAD NOT BEEN DEVELOPED, SO AN EVIDENTIARY HEARING WAS HELD, AND THE COURT HEARD THE TESTIMONY OF VIRTUALLY EVERYONE THE DEFENDANT WANTED TO CALL IN THIS CASE. MR. SKYE TESTIFIED THAT THERE WAS NO --

LET ME JUST STOP YOU THERE.

YES.

DID THE STATE PROPOSE AT THE EVIDENTIARY HEARING, SAYING IT DOESN'T MATTER IF IT WAS KNOWING IT WASN'T MATERIAL?

I THINK THE STATE TOOK THE POSITION, IN ITS RESPONSE TO THE MOTION TO VACATE, THAT THIS ISSUE HAD BEEN RESOLVED ON THE COURT'S DIRECT APPEAL. WHEN THE CCR AND THE TRIAL COURT WHEN CCR GOT PRESENTED TO THE TRIAL COURT THAT THEY COULD NOW SHOW THAT THE STATE ATTORNEY ACTUALLY KNEW, BEFOREHAND, THAT THIS WAS GOING TO BE PERJURED TESTIMONY AND KNOWINGLY PRESENTED IT, THE COURT GRANTED THE HEARING. I DON'T KNOW THAT WE OBJECTED TO. THAT AT THAT POINT.

WHAT WOULD, IF THE STATE KNEW THAT SHE WAS PERJURING HERSELF WHEN THEY PUT HER ON FOR THE GRAND JURY TESTIMONY, EVEN THOUGH HER PERJURY WAS MINIMIZE HER INVOLVEMENT, AND IT WAS SUBSEQUENTLY FOUND THAT SHE WAS MORE INVOLVED, WHAT IS THE PROPER REMEDY FOR THAT, AS JUSTICE SHAW SAID, ONCE IT GOES TO TRIAL?

THE REMEDY AT THIS POINT IS THERE IS NO REMEDY. JUSTICE, I INTERPRET JUSTICE SHAW'S QUESTION, I THINK, CORRECTLY SO, THAT ONCE A JURY FINDS OUT THE ENTIRE TRUTH OF ALL HER ENTIRE TESTIMONY, THEN THAT ENDS THE MATTER, AND I BELIEVE THAT IS THE WAY THE FEDERAL COURTS HAVE DECIDED THAT.

THAT IS REALLY NOT THE LAW OF THIS CASE. WE SEEM TO BELIEVE THAT, IF THE DEFENDANT CAN SHOW THAT THE INDICTMENT WAS PREDICATED ON PERJURED MATERIAL TESTIMONY, THAT THERE WOULD BE A DUE PROCESS VIOLATION, AND THERE WOULD BE RELIEF.

WELL, I DON'T KNOW. I THINK THAT THIS COURT RELIED ON THE CERTO OPINION OUT OF THE CIRCUIT COURTS, AND EVEN THAT DECISION, I THINK, HAS BEEN NOT FOLLOWED A GREAT DEAL BY THAT CIRCUIT. MY READING OF THIS COURT'S OPINION WAS THIS COURT, UPON REVIEW OF ALL THE TESTIMONY THAT WAS BEFORE IT, IN THE HEARING, DEMONSTRATED THAT THERE WAS NO MATERIALITY THAT WOULD HAVE AFFECTED ULTIMATELY, THE GRAND JURY RETURN AGO INDICTMENT, BASED ON THE -- RETURNING AN INDICTMENT, BASED ON THE TOTALITY OF THE EVIDENCE. IT MIGHT BE A PROBLEM, IF CERTAINLY THE STATE KNOWINGLY PUT ON PERJURED TESTIMONY AND IT NEVER CAME TO LIGHT AND NO ONE KNEW ABOUT IT AND THE PETIT JURY NEVER KNEW THE FULL STORY AS TO WHAT WAS GOING ON, BUT THAT IS NOT WHAT HAPPENED HERE.

BUT THE STATE, EVEN AT TRIAL TO KNOWINGLY PUT ON, TO TESTIFY TO SOMETHING FALSE, THERE IS NO QUESTION THAT THAT IS A JILL YO VIOLATION, AND -- A GILLIO VIOLATION AND THAT WOULD REQUIRE A NEW TRIAL H THIS IS A DIFFERENT TWIST, BECAUSE THEY ARE NOT ALLEGING THAT ANYTHING HEARD AT TRIAL SUBVERTED THE TRUTH-SEEKING PROCESS. WHAT

THEY ARE SAYING IS THAT SOMETHING WAS HEARD AT THE GRAND JURY PROCESS THAT SUBVERTED THE TRUTH-SEEKING PROCESS. CORRECT?

I MEAN, THE PURPOSE OF THE GRAND JURY, ANYWAY, IS JUST TO DEVELOP PROBABLE CAUSE AS TO WHETHER OR NOT TO GO FORWARD WITH THE CHARGE, AND THAT IS, OBVIOUSLY THAT WAS SATISFIED BY THE, IF YOU WANT TO CALL IT INCOMPLETE OR ERRONEOUS TESTIMONY OF MISS HUNT AND OTHER WITNESSES AT THAT POINT.

THAT IS WHY I ASKED YOU WHY WOULDN'T THE STATE AVOID THAT ARGUMENT AND A THREE-DAY EVIDENTIARY HEARING, FOR THE TRIAL JUDGE TO SAY IT DOESN'T REALLY MATTER, IF THE GRAND JURY TESTIMONY WAS KNOWINGLY PUT ON. YOU NOW HAVE THE JURY VERDICT, AND A FINDING OF GUILT, BASED ON COMPETENT SUBSTANTIAL EVIDENCE, AND THAT IS THE END OF THE STORY.

WELL, I THINK THE STATE DID OBJECT THAT NO EVIDENTIARY HEARING WAS NEEDED, BASED ON THIS COURT'S PRIOR OPINION ON DIRECT APPEAL. NOW, IT WAS, YOU KNOW, CCR'S ATTORNEY VOCIFEROUSLY ARGUED THAT HE HAD NOTES FROM THE STATE ATTORNEYS OFFICE THAT WOULD DEMONSTRATE THAT THIS WAS ALL ON TO AND THEY KNEW ABOUT IT AT THE TIME, SO THEY HELD AN EVIDENTIARY HEARING AND VIRTUALLY EVERY WITNESS WHO TESTIFIED, TESTIFIED THAT THEY DID NOT KNOW THAT CONNIE BEASLEY HUNT WAS GOING TO COMMIT PERJURY BEFORE THE GRAND JURY.

BUT IN A PERFECT WORLD, WOULDN'T THE FAIR THING TO DO, WOULDN'T IT HAVE BEEN TO THROW OUT THE GRAND JURY INDICTMENT, THE TRUE BILL THAT WAS FOUND ON THE PERJURED TESTIMONY, AND ONCE THE STATE FOUND OUT THE NEXT DAY THAT WE HAVE GOT A TRUE BILL ON PERJURED TESTIMONY, REPORT THIS TO THE JUDGE, AND GO BACK AND HAVE ANOTHER HEARING BEFORE THE GRAND JURY. WOULDN'T THAT HAVE BEEN THE FAIRER THING AND THE EASIEST THING AND WOULD HAVE AVOIDED PROBLEMS LATER?

WELL, I DON'T KNOW THAT IT WOULD HAVE AVOIDED PROBLEMS LATER, BECAUSE WE GET THESE EVIDENTIARY HEARINGS ON CLAIMS THAT THE DEFENSE SAYS THAT THEY CAN PROVE, AND THEN THEY PUT ON EVERY WITNESS TO ABSOLUTELY REFUTES HER TESTIMONY. NO ONE TESTIFIED THAT THEY KNEW ABOUT PERJURED TESTIMONY BEFORE, AND EVERYONE FOUND OUT ABOUT IT AFTERWARDS. THIS COURT FOUND OUT ABOUT IT. THE JURY FOUND OUT ABOUT IT. AND NOW --

JUSTICE SHAW'S QUESTION IS THAT, EVEN THOUGH IT WAS FOUND OUT SOON AFTER, WOULDN'T THE BEST THING BE TO DO TO GO BACK AND GET ANOTHER INDICTMENT? IT WASN'T THE QUESTION OF --

WELL, MAYBE THEY COULD HAVE DONE THAT, AND --

WHAT WERE THE CIRCUMSTANCES HERE? WAS IT FDLE THAT KNEW ABOUT HER CHANGED STATEMENT, OR WHO WAS IT THAT, ON BEHALF OF THE STATE? IN OTHER WORDS WHAT --

SHE APPARENTLY --.

WHAT WAS THE EVIDENCE, AS FAR AS WHEN THE STATE GOT THIS SECOND STORY?

SHE PROBABLY WENT BACK TO THE FDLE AGENTS AFTER HER GRAND JURY TESTIMONY AND YOU KNOW, AND TOLD THEM, YOU KNOW, A DIFFERENT VERSION OF WHAT SHE HAD TOLD THE GRAND JURY, AND THIS TIME --

DID SHE DO THAT? WHEN DID SHE DO THAT?

IT WAS SHORTLY AFTER HER GRAND JURY TESTIMONY. I DON'T KNOW IF IT WAS A DAY OR A

WEEK OR WHATEVER. IT WAS SHORTLY --

AND DID FDLE TELL THE PROSECUTORS?

THE FDLE AGENTS OBVIOUSLY GAVE THE PROSECUTORS WHATEVER INFORMATION THEY HAD. CERTAINLY AS THE CASE WAS PROGRESSING TOWARD TRIAL.

NOT AS THE CASE IS PROGRESSING TOWARDS TRIAL. I AM TALKING ABOUT WHAT WAS THE EVIDENCE AT THIS EVIDENTIARY HEARING? WERE THE PROSECUTORS TOLD, RIGHT AWAY? IN OTHER WORDS ARE WE TALKING ABOUT WITHIN DAYS OF THE RETURN OF THE INDICTMENT?

THERE WAS NO --

WHAT ARE WE TALKING ABOUT?

AT THIS HE HAVE YEAR HEARING, THERE IS -- AT THIS EVIDENTIARY HEARING, THERE IS NO TESTIMONY, REALLY NO QUESTIONS WERE ASKED OF THE PROSECUTOR SKYE OR ANDERSON, AS TO WHEN THEY WERE TOLD --

HOW ABOUT THE FDLE?

THE FDLE AGENTS, ALL THEY WERE QUESTIONED ABOUT WAS DID YOU KNOW BEFOREHAND THAT SHE WAS GOING TO COMMIT PERJURY? AND THEY SAID WE DIDN'T KNOW BEFOREHAND. WE CERTAINLY DIDN'T KNOW AFTER HER APPEARANCE BEFORE THE GRAND JURY, BECAUSE GRAND JURY TESTIMONY IS SECRET AND WE ARE NOT EXPOSED TO THAT, AND THEY, ALSO, TESTIFIED WE DID NOT, WERE NOT IN THE COURTROOM. WE WERE SEQUESTERED DURING THE TRIAL TESTIMONY, BUT, I MEAN, FDLE AGENTS INDICATED THAT, YOU KNOW, THROUGHOUT THEIR DEALINGS WITH COIN BEASLEY HUNT, I MEAN, SHE WOULD -- WITH CONNIE BEASLEY HUNT, I MEAN, SHE WOULD MINIMIZE HER INVOLVEMENT IN THIS. THIS WAS FROM DAY ONE.

I THOUGHT IT WHAT IS UNDISPUTED HERE THAT FDLE WOULD FIND OUT VIRTUALLY IMMEDIATELY AFTER THE RETURN OF THE INDICTMENT, THAT SHE NOW WAS GIVING A DIFFERENT VERSION OF EVENTS. IS THAT NOT A CORRECT IMPRESSION?

THE FDLE AGENTS DID NOT KNOW WHAT SHE HAD TESTIFIED TO THE GRAND JURY. OBVIOUSLY WHEN THEY CAME --

I THOUGHT THEY KNEW WHAT HER STATEMENT HAD BEEN, AND THEN THERE FOR CAN ASSUME THAT SHE WAS GOING TO GO BEFORE THE GRAND JURY AND GIVE THE SAME STATEMENT AND THEN TO SAY, HAD HER GIVING THIS DIFFERENT VERSION. I AM GETTING TOTALLY CONFUSED HERE, NOW, ABOUT WHAT I THOUGHT WAS ALL UNDISPUTED, SO YOU OUTLINE IT FOR ME.

WELL, AS I UNDERSTAND THIS CASE, CONNIE HUNT HAD MADE A NUMBER OF STATEMENTS, HAD GIVEN A NUMBER OF INTERVIEWS TO FDLE. THE, SHE WENT TO THE GRAND JURY SUBSEQUENTLY, AND GAVE A, ONE OF THOSE VERSIONS, APPARENTLY, TO THE EFFECT THAT SHE WAS NOT PRESENT AT THE TIME OF THE HOMICIDE, BUT THAT WHEN THE DEFENDANT HAD COME BACK, HE HAD BLOOD ON HIM AND ALL OF THIS KIND OF STUFF AND THIS IMPLICATED HIM.

IS THAT CONSISTENT WITH WHAT SHE HAD TOLD FDLE BEFORE?

SOME OF IT WAS. SOME OF IT, SHE SUBSEQUENTLY, AFTER THE GRAND JURY TESTIMONY, SHE THEN GOES TO THE FDLE AGENTS AFTER THAT AND GIVES THEM MORE DETAILS, SOME OF WHICH CONFLICTED WITH, YOU KNOW, WHAT SHE HAD PREVIOUSLY SAID. BUT ULTIMATELY, THE DEFENSE KNEW EVERYTHING. THE DEFENSE HAD, THE DEFENSE HAD HER DEPOSITION. THE DEFENSE HAD HER GRAND JURY TESTIMONY. THE DEFENSE HAD ALL OF THE FDLE POLICE

REPORTS. THEY KNEW EVERYTHING AT THE TIME OF TRIAL, AND THERE WAS VIGOROUS CROSS-EXAMINATION OF HER, AND WE HAVE THIS EVIDENTIARY HEARING IN WHICH EVERYONE SAYS NOTHING HAS CHANGED. I AM GLAD WE FIND OUT NOW, IN A REPLY BRIEF, THAT WHAT THE REAL COMPLAINT ABOUT THIS ALLEGED PROBLEM OF PERJURY IS, IS MR. PARKER.

WHAT, WOULD HE TESTIFY AT THE EVIDENTIARY HEARING AND WHAT ROLE COULD HE PLAY?

MR. PARKER FIRST TESTIFIED AT TRIAL. HE WAS CALLED AS A DEFENSE WITNESS. BASICALLY HE GAVE AN OPINION. HE WAS THE ANALYST WITH FDLE, AND HE HAD MADE A REPORT AND MADE A GRAPH OR A CHART OR SOMETHING, INDICATING WHAT HE SAID AT TRIAL WAS HIS SPECULATION. WHAT HIS SPECULATION WAS, BASED ON THE BLOOD SPLATTER THAT HE FOUND INSIDE THE CAR, THAT ONE OF THE HYPOTHESIS OR ONE POSSIBILITY WAS THAT THE SHOOTER WAS OUTSIDE THE CAR, POINTING THE GUN IN AT THE DRIVER. MR. PARKER TESTIFIED, BOTH AT TRIAL AND AT THE EVIDENTIARY HEARING, SAYING YOU KNOW, I NEVER DID TALK TO THE MEDICAL KPARMER. I NEVER DID GET -- TO THE MEDICAL EXAMINER. I NEVER DID GET ANYTHINGES, SO THE ONLY THING I MADE MY PECK -- I NEVER DID GET ANYTHING, SO THE ONLY THING I MADE MY SPECULATION ON AND MY HYPOTHESIS IS WHAT I OBSERVED BY LOOKING AT THE AUTOMOBILE. HE TESTIFIED AT TRIAL AND AT THIS HEARING ON CROSS-EXAMINATION, SAID, WELL, SINCE YOU DIDN'T TALK TO ANYBODY AND, REALLY, FIND OUT, BY THE WAY, IS IT INCONSISTENT WITH THE FACT THAT THE SHOOTER WAS ACTUALLY IN THE BACKSEAT OF THE CAR? I MEAN, WOULD THAT MAKE A DIFFERENCE FOR THE BLOODSTAIN? AND HE SAYS NO! IT DOESN'T MAKE ANY DIFFERENCE.

HIS TESTIMONY AT THE EVIDENTIARY HEARING WAS THAT THAT WOULD NOT MAKE ANY DIFFERENCE.

IT WOULD NOT CHANGE ANYTHING. IT HAS TO DO --

WITH WHAT HIS ORIGINAL TESTIMONY WOULD HAVE BEEN.

RIGHT. HE STATED THAT, WHEN I TESTIFIED AT TRIAL, I WAS GIVING MY SPECULATION, BASED ON THE LIMITED INFORMATION I HAD AND THE BLOOD SPATTERS AND HOW COME THERE WAS BLOOD IN THE BACKSEAT OR NOT IN THE BACKSEAT AND ALL OF THAT KIND OF THING. NOW, APPARENTLY THE DEFENSE IS MAKING A BIG DEAL OUT OF THE FACT THAT HE WAS CALLED AS A DEFENSE WITNESS RATHER THAN A STATE WITNESS, AND USUALLY THE LAB PEOPLE ARE CALLED AS STATE WITNESSES. WELL, THAT IS FINE, BUT, I MEAN, HE HASN'T CHANGED HIS TESTIMONY. HIS TESTIMONY, EITHER AT TRIAL OR THE EVIDENTIARY HEARING, DOES NOT PROVE ANYTHING MORE IMPROPER ABOUT CONNIE BEASLEY HUNT. BECAUSE WHEN SHE GAVE HER STORY THAT SHE WAS IN THE FRONT SEAT AND THAT THE VICTIM WAS SHOT AND BLOOD IS SPURTING ON TO HER AND SHE GETS OUT OF THE CAR AND GETS INTO THE BACKSEAT, WHICH CAUSES SOME BLOOD TO BE IN THE BACKSEAT PARKER SAYS THAT IS CONSISTENT, TOO, AS ANOTHER ALTERNATIVE HYPOTHESIS. PARKER DOESN'T CONTRADICT ANYTHING.

WOULD YOU ADDRESS ONE LAST TIME, THAT THE FOCUS WHICH, AS I UNDERSTAND IT CORRECTLY FROM THE TRANSCRIPT, THAT THE FOCUS OF THE EVIDENTIARY HEARING IN THE POSTCONVICTION, WAS WHETHER OR NOT THE STATE KNOWINGLY SUBMITTED HER TESTIMONY TO THE GRAND JURY, KNOWING IN ADVANCE IT WAS FALSE, AND THAT THAT THAT WAS THE ISSUE AS STATED BY THE COURT, AS OPPOSED TO THE ISSUE THAT WE ARE ADDRESSING NOW. WOULD YOU COMMENT ON THAT?

WELL, I AM KIND OF NONPLUSSED NONPLUSSED. I AM NOT REALLY SURE WHAT WE ARE ADDRESSING NOW, BECAUSE I HEAR IN THE REPLY BRIEF THAT WE ARE REALLY TALKING ABOUT PARKER NOT BEING CALLED AS A STATE WITNESS, AND THAT HIS HYPOTHESIS AND HIS CHART MAY SOMEHOW WE PUDIATE CONNIE BEASLEY HUNT. -- MAY SOMEHOW REPUDIATE CONNIE BEASLEY HUNT.

WERE THEY CLAIMING NOT WHAT THEY KNEW IN ADVANCE BUT WHAT THEY FOUND OUT AFTERWARDS? IN OTHER WORDS WHAT WAS THE ARGUMENT MADE TO THE TRIAL COURT JUDGE, AT THE POSTCONVICTION HEARING.

AFTER THE TESTIMONY FINALLY CAME OUT AND THEY PROCEEDED TO LEGAL ARGUMENT ON IT, THE JUDGE KIND OF MADE INQUIRY OF THE DEFENSE AND SAID, YOU KNOW, I DON'T REALLY SEE THAT YOU HAVE SHOWN THAT THE STATE ATTORNEY KNOWINGLY USED ANYTHING. DO YOU HAVE AN ALTERNATIVE ARGUMENT THAT, BECAUSE FDLE MIGHT HAVE KNOWN, THAT IT IS IMPUTE ABLE TO THE STATE ATTORNEY? AND THEY SAID, YES, THAT IS BASICALLY OUR ARGUMENT. THEY DON'T MENTION ANYTHING AT ALL OF PARKER'S TESTIMONY, EITHER AT THE EVIDENTIARY HEARING OR AT TRIAL, IN THEIR CLOSING ARGUMENT AT THE EVIDENCE YEAR HEARING. WE ARE -- AT THE EVIDENCIARY HEARING. AT THE TIME --

IT WAS NOT REASON FOR THE TRIAL COURT TO GRANT Le LEAVE.

I DON'T RECALL THAT. -- TO GRANT RELIEF.

I DON'T RECALL THAT. PARKER WAS CERTAINLY CALLED AS A DEFENSE WITNESS AT THE EVIDENCIARY HEARING, AND THEY ASKED HIM WHEN DID YOU DO THE REPORT AND WHEN DID YOU SEND THE REPORT TO THE STATE ATTORNEY AND WHEN DID THEY TALK TO YOU, AND PART OF HIS TESTIMONY WAS THAT IT IS NOT THAT UNUSUAL THAT THEY DON'T GET BACK WITH ME. I DO MY REPORT. I SEND IT UP. IF SOMEBODY WANTS TO USE ME AS A WITNESS LATER ON, I GET CONTACTED AND ALL OF THAT KIND OF STUFF. OBVIOUSLY IN THIS CASE I WAS CALLED AS A DEFENSE WITNESS TO GIVE --

DID THE TRIAL COURT ADDRESS THIS ALTERNATIVE ARGUMENT IN THE ORDER?

WELL, THE TRIAL JUDGE, IN HIS ORDER, I THINK IT IS AT PAGE 536 OF THE RECORD, HE SAYS THE FDLE CRIME LAB ANALYST LEROY PARKER PREPARED A REPORT AND SIGNED IT ON JULY 15, 1987, ON THE SAME DAY AS THE GRAND JURY TESTIMONY. UPON LATER REVIEW AND ANALYSIS ANALYSIS, MR. PARKER'S OPINION, WHEN HAD TO DO WITH THE BLOOD SPATTER IN THE VEHICLE, CONTRADICTED CONNIE BEASLEY'S TESTIMONY. I DON'T KNOW WHAT HE IS TRYING TO SAY THERE, BECAUSE PARKER TESTIFIED, BOTH AT THE EVIDENTIARY HEARING AND IN TRIAL TESTIMONY, THAT THE SHOOTER COULD, BASED ON HIS EXAMINATION, HAVE WELCOME FROM OUTSIDE THE CAR.

THAT IS WHY BEASLEY WAS PUT ON. THE WHOLE THRUST AT THE TRIAL FOR THE DEFENSE WAS THAT BEASLEY WAS NOT A CREDIBLE WITNESS, CORRECT?

HE ALSO TESTIFIED ON CROSS-EXAMINATION AND AT TRIAL AND AT THE EVIDENTIARY HEARING THAT THE OTHER HYPOTHESIS THAT THE SHOOTER WAS IN THE BACKSEAT WAS, ALSO, TRUE.

BUT NOTHING THAT WAS DEVELOPED AT THE EVIDENTIARY HEARING, IN THE STATE'S VIEW, CHANGES OUR CHROOX ON -- OUR CONCLUSION ON DIRECT APPEAL THAT THE CHANGES IN CONNIE BEASLEY'S TESTIMONY WERE NOT MATERIAL CHANGES THAT WOULD HAVE RESULTED LIKE THE CASE IN NEW YORK, IN NO INDICTMENT BEING RETURNED, IF THE JURY KNEW ABOUT THE LATER TESTIMONY, CORRECT?

THAT'S CORRECT.

ALL RIGHT. NOW, JUST ONE MORE ABOUT WHAT ACTUALLY WENT ON AT THE TRIAL COURT LEVEL. ON ISSUE TWO RAISED ON APPLE.

, THERE IS -- ON APPEAL THERE, IS A ISSUE ACCORDING WHETHER THE TRIAL COURT ERRED IN

FAILING TO GRANT AN EVIDENTIARY HEARING ON SEVERAL BRADY CLAIMS, AND THIS HAD TO DO WITH OTHER, I GUESS JAILHOUSE INFORMANTS. MY UNDERSTANDING IS THAT THE STATE'S POSITION IS THAT THEY NEVER, ALTHOUGH THEY HAVE RAISED TAKE IN THEIR MOTION AT THE HUFF HEARING, THEY NEVER MENTIONED ANYTHING ABOUT THESE BRADY CLAIMS, AND THAT IN FACT, AT THE EVIDENTIARY HEARING, THERE WAS NO ATTEMPT BY THE DEFENSE TO PUT ON ANY OTHER WITNESSES THAT WOULD HAVE TESTIFIED AS TO THE BRADY CLAIM. IS THAT CORRECT?

THAT'S CORRECT. AND LET ME JUST ADD THAT, AS I, THE RECORD, WHEN THEY HAD THE HUFF HEARING AND THE TRIAL COURT WAS ELICITING INFORMATION OR PERSPECTIVE FROM RESPECTIVE COUNSEL AS TO WHAT NEED HEARING AND WHAT DIDN'T NEED A HEARING, THE COURT WAS VERY REPETITIOUS AS TO WHAT IS, REALLY, YOUR BASIC CLAIM AND WHAT ADDITIONAL CLAIMS ARE YOU EMPHASIZING? AND, OF COURSE, THEY ARGUED THE CONNIE HUNT PERJURED TESTIMONY ISSUE AS A PRIMARY THING. THEY MADE MENTION OF SOMETHING ABOUT TRIAL COUNSEL BEING INEFFECTIVE FOR HAVING FAILED AT PENALTY PHASE, TO SPECIFY WHAT THE MITIGATING WITNESSES WOULD HAVE TESTIFIED TO, WHEN MR. ANDERSON REFUSED AND DID NOT PERMIT HIS ATTORNEY TO PUT ON ADDITIONAL PEOPLE. MORE THAN THAT, THE JUDGE, AFTER HAVING THE PARTIES REPEAT EXACTLY WHAT IT WAS THAT THEY WANTED ARGUED, THE JUDGE SAYS I WILL GIVE YOU TEN DAYS. I WILL GIVE YOU TEN DAYS TO SUPPLEMENT YOUR CLAIM FOR ANY OTHER ISSUES THAT WE NEED A HUFF HEARING, THAT WE NEED AN EVIDENTIARY HEARING ON, AND THEY DIDN'T SUBMIT ANYTHING, SO I THINK IT IS ABUNDANTLY CLEAR THAT, AFTER HAVING FILED THE 3.850 MOTION TO VACATE, THEY REALIZED, UPON REVIEW OF THE RECORD, THAT THE CLAIM WAS MERITLESS OR YOU KNOW, WAS SOMETHING THAT COULD HAVE BEEN PURSUED ON DIRECT APPEAL OR IN THE 3.850 AND SO THEY DIDN'T URGE IT, SO NOW THEY COME HERE TO CRITICIZE THE JUDGE. MR. CHIEF JUSTICE

YOUR TIME IS UP.

THANK YOU. WE WOULD ASK THE COURT TO AFFIRM THE LOWER COURT DENYING RELIEF. CHOF. MR. CHIEF JUSTICE

--. MR. CHIEF JUSTICE

THANK YOU. COUNSEL.

LET ME ASK YOU WHAT IS THE STRONGEST SUPPORT THAT YOU HAVE FOR THE PROPOSITION THAT A JURY VERDICT SHOULD BE REVERSED BECAUSE OF SOMETHING THAT HAPPENED AT THE GRAND JURY THAT WILL, THAT WAS NOT INTENTIONAL ON THE PART OF THE STATE? DO YOU HAVE ANY CASE LAW TO SUPPORT YOUR POSITION THAT THE JURY VERDICT SHOULD BE OVER, SHOULD BE REVERSED IN THAT SITUATION?

JUSTICE SHAW, I THINK MY REFERENCE TO WHAT YOU CITED OR WHAT ONE OF AUTHORITIES USED IN THE DIRECT APPEAL OPINION, THE NEW YORK VERSUS PELTIN CASE, THE DETECTIVE WHO TESTIFIED ABOUT THE DRUG BUST ROUND UP WAS NOT PURPOSELY TELLING THE JURY THAT THE DEFENDANT WAS AMONG THE PEOPLE ARRESTED. IT WAS AFTER THE GRAND JURY THAT HE REALIZED, AS I RECALL, THAT HIS TESTIMONY WAS WRONG AND I AM NOT TRUTHFUL.

BUT WAS HIS THE ONLY TESTIMONY THAT WOULD HAVE BEEN IN THAT CASE?

YES.

THAT IS A LITTLE DIFFERENT SCENARIO. THAT IS THE CLASSIC WHERE THEY PUT ON TESTIMONY --

HERE, AGAIN, I AM NOT DISPUTING THE FACT. I AM NOT TRYING TO RUN FROM THE FACT THAT, AS FAR AS PROSECUTOR SKYE AND ATKINSON DID NOT TESTIFY AT THE EVIDENTIARY THAT, YES, WE NORMALLY PUT IT ON, BUT WHAT JUDGE SIPS FOUND, WHEN NUMBER ONE -- JUDGE SIMS FOUND,

WHEN NUMBER ONE THAT THE STATE KNEW THE PERJURY AT LEAST SATURDAY AFTER, WHICH WAS JULY 16, AND IN ANSWER TO YOUR QUESTION THAT THE STATE, JULY 16 THE DAY AFTER THE GRAND JURY TESTIMONY, CONNIE BEASLEY WAS AGAIN INTERVIEWED BY FDLE AGENTS. THAT IS WHERE SHE CHANGED HER MOTIVE FROM RICHARD ANDERSON TRYING TO PROTECT CONNIE FROM THE WEIRD, BIZARRE CREEP THAT SHE THOUGHT ROBERT GRANTHAM WAS, FROM HIS UNWANTED BIZARRE SEXUAL OVERTURES TO CONNIE BEASLEY. ON JULY 16, SHE CHANGED IT TO INTERRUPTING THE RAPE.

THEY DIDN'T KNOW, IN FAIRNESS AND WHAT THE STATE ARGUES, THE FDLE WASN'T PRESENT AND DIDN'T KNOW WHAT BEASLEY HAD TESTIFIED TO AT THE GRAND JURY.

WELL, NO, NOT THEN. WELL, NOT AS FAR AS HERS, NATURALLY, BUT FROM THE STATE ATTORNEYS FILE, WE HAVE FOUND, AND IT DOESN'T APPEAR TO BE PART OF THE ROA, BUT A WITNESS SUBPOENA ADDRESSED TO AGENTS DAVENPORT AND PELHAM, SO THEY WERE THE ONLY -- DAVENPORT AND VALBLOOM, SO THEY WERE THE ONLY THREE THAT TESTIFIED AT THE GRAND JURY. DAVENPORT AND VALBLOOM AND CONNIE BEASLEY, A AND THEY EXPECTED CONNIE BEASLEY TO TELL THE GRAND JURY WHAT SHE LAST TOLD THEM ON JULY 1 AND JULY 2 AND THE NIGHT BEFORE HER GRAND JURY TESTIMONY AND WHAT HAVE YOU SO AT THAT TIME AGENT PARKER SAID THAT NOT ONLY WAS HIS STRONGEST CONCLUSION THAT THE SHOOTING OCCURRED FROM OUTSIDE THE DRIVERS SIDE, AND HE TESTIFIED AND I THINK THIS HAD A BIG IMPACT ON THE COURT, THE DRIVER FELL OVER INTO THE SEAT AND THE BLOODSTAINS WERE REMOVED TO THE BACKSEAT AND THEN SUBSEQUENTLY TAKEN OUT OF THE DRIVERS SEAT, SO THERE WERE TWO COMPONENTS, EXCUSE ME, OF HOW HIS TESTIMONY CONTRADICTED CONNIE BEASLEY'S. SHE SAID SHE WAS IN THE PASSENGER SEAT. GRANTHAM FELL INTO HER LAP. GOT HER DRESS BLOODY AND THEN SHE WENT INTO THE REAR SEAT, SO THIS HAD A BIG IMPACT ON THE EVIDENTIARY COURT. IT MEANS THAT IS CORRECT AS I INDICATED EARLIER, BETWEEN JULY 16 AND JULY 23, IF THE STATE HAD GONE BACK TO THE GRAND JURY, THERE WOULDN'T HAVE BEEN ANY PREMEDITATED MURDER FOR THE PROVOCATION OF INTERRUPTING A RAPE OR FOR TRYING TO GET GRANTHAM TO BACK OFF ON THE WAY HE WAS TREATING BEASLEY. YES, AFTER JULY 24, THE STATE HAD TAKEN CONNIE BEASLEY BACK TO THE GRAND JURY, I WOULD SUGGEST THEY WOULD BE MORE THAN COMPELLED TO TAKE LEROY PARKER, THEIR OWN STATE AGENT, WHOSE TESTIMONY WOULD HAVE SHOWN THAT SHE WAS LYING, EVEN AGAIN AT THE GRAND JURY, TO BRING BACK "THE HAUNTING" MEMORY THAT THIS -- TO BRING BACK THE HAUNTING MEMBERSHIPRY THAT THIS -- THE HAUNTING MEMORY -- THAT THIS COURT HAD. THANK YOU. MR. CHIEF JUSTICE

THANK YOU. THIS COURT WILL NOW BE IN RECESS