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Ian Deco Lightbourne v. State of Florida

LIGHTBOURNE VERSUS STATE. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. SUZANNE MYERS FROM CCRC SOUTH, ON BEHALF OF THE APPELLANT, IAN DECO LIGHTBOURNE. THIS IS THE POST-CONVICTION RELIEF DENIAL, PURSUANT TO THIS COURT'S REMAND. THIS COURT REMANDED THE CASE FOR TWO REASONS. ONE WAS TO TAKE THE TESTIMONY OF LARRY BERNARD EMMANUEL, AND SECOND, FOR THE TRIAL COURT TO CONSIDER THE CUMULATIVE EFFECT OF ALL OF THE POST TRIAL EVIDENCE. IN DOING SO, THE TRIAL COURT WAS TO EVALUATE THE RELIABILITY AND VERACITY OF THE JAILHOUSE SNITCHES SHAVERS AND CARSON THAT TESTIFIED AT TRIAL AND DETERMINE WHETHER A NEW PENALTY PHASE IS REQUIRED.

LET ME ASK A QUESTION THAT IS NOT COVERED IN THE BRIEFS BUT IS BOTHERSOME TO ME. IN READING THE FACTUAL BACKGROUND OF THIS 1981 MURDER, THERE SEEMS TO BE A LOT OF EVIDENCE WHICH WOULD BE SUBJECT TO DNA TESTING. THERE WAS PUBIC HAIR. THERE WAS BLOOD, SEMEN. HAS THAT BEEN TESTED?

NO, YOUR HONOR, NOT TO MY KNOWLEDGE, IT HAS NOT. I KNOW THAT, AT TRIAL THERE WAS TESTIMONY THAT THE SEMEN WAS TESTED IN COMPARISON TO MR. LIGHTBOURNE'S BLOOD AND THE HAIRS WERE MICROSCOPICALLY COMPARED. THAT IS THE ONLY TYPE OF TESTING THAT HAS BEEN DONE.

AND THERE HAS BEEN NO ATTEMPT, IN THESE POSTCONVICTION PROCEEDINGS, TO HAVE ANY OF THAT TESTING DONE. IS THAT CORRECT?

NO, YOUR HONOR, NOT TO MY KNOWLEDGE.

THANK YOU.

AND BOTH CARSON AND CHAVEZ -- SHAVERS HAVE, BOTH, RECANTED THEIR TESTIMONY TO WHAT EXTENT?

THEY BOTH HAVE STATED THAT ALL OF THE INFLAMMATORY DETAILS THAT THEY PROVIDED AT TRIAL, WHICH WERE THE DETAILS THAT SUPPORTED THE FIVE AGGRAVATORS THAT THE TRIAL COURT FOUND AND THAT THIS COURT FOUND ON DIRECT APPEAL, THEY HAVE, NOW, STATED, MR. SHAVERS THROUGH AN AFFIDAVIT AND MR. CARSON THROUGH POSTCONVICTION TESTIMONY, THAT ALL OF THOSE DETAILS WERE FABRICATED, THAT IN FACT, MR. LIGHTBOURNE NEVER DID DISCUSS THE DETAILS WITH THEM AND THAT HE NEVER, IN FACT, CONFESSED TO MURDERING MS. O'FARRELL.

YOU HAVE GOT TWO CLAIMS, THE BRADY CLAIM AND THE NEWLY-DISCOVERED EVIDENCE CLAIM. THE BRADY CLAIM IS CONTINGENT ON THERE BEING EVIDENCE THAT THE STATE SOLICITED THE JAILHOUSE INFORMANTS, BASICALLY, IS THAT CORRECT? IT BASICALLY HAS TO DO WITH THE STATE INVOLVEMENT IN PROCURING OR NOT PROCURING THE TESTIMONY OF THE JAILHOUSE INFORM ANSWER. IS THAT RIGHT?

-- INFORM APARTMENTS. IS THAT RIGHT?

-- INFORMANTS. IS THAT RIGHT?

SURE. THERE IS TWO THINGS, ONE THE UNEXPECTED BENEFITS THAT SHAVERS AND CARSON BOTH RECEIVED. THE SECOND IS THE ACTUAL FACT THAT THEY DID LIE AND THAT THE STATE WAS AWARE THAT THEY WERE LYING, REGARDING THESE DETAILS.

WELL, HOW, THERE YOU HAVE GOT, NOW, I AM NOT IS THAT SOMETHING THAT HAS COME OUT IN THIS MOST RECENT TESTIMONY, THE UNEXPECTED BENEFITS TO SHAVERS AND TO CARSON, OR HAS THAT ALREADY BEEN SOMETHING LITIGATED AND PAST POSTCONVICTION PROCEEDINGS?

I THINK THE EXPECTED BENEFITS HAVE COME OUT THROUGH THE COURSE OF THE POSTCONVICTION PROCEEDINGS. AS THIS COURT IS AWARE, THE POSTCONVICTION PROCEEDINGS HAVE BEEN DONE IN A VERY PIECEMEAL FASHION.

ON THE SECOND PART, BECAUSE YOU SAID THAT THE QUESTION IS THAT THEY LIED. THEY SAID THEY HAVE LIED, SO THAT IS, WE ASSUME THAT IS A FACT, AND THAT THE STATE WAS AWARE OF IT, THAT THAT IS BRADY. WHAT EVIDENCE IS THERE, IN THIS RECORD, TO SUPPORT THE CONCLUSION THAT THE STATE WAS AWARE THAT SHAVERS AND CARSON WAS LIE SOMETHING.

I THINK THERE ARE SEVERAL THINGS. THERE IS INDEPENDENT CORROBORATION FOR THE FACT THAT SHAVERS TESTIFIED AT TRIAL THAT HE HAD POSTED BOND ON ONE OF HIS CHARGES, WHEN IN FACT THAT IS NOT TRUE. HE WAS RELEASED ON HIS OWN RECOGNIZANCE ON ALL OF THE CHARGES, IN EXCHANGE FOR THE INFORMATION HE DID GIVE. WE HAVE THE INDEPENDENT TESTIMONY OF THE BAIL BONDSMAN, DAVID BAILLY, WHICH SUBSTANTIAL YATES THIS INFORMATION. WE, ALSO, HAVE THE TESTIMONY OF RICHARD CARNAGIA, WHO SAID THAT, WHEN HE WAS PULLED OUT OF THE CELL BY LAW ENFORCEMENT OFFICERS AND ASKED WHAT HE KNEW WITH REGARDS TO THE INFORMATION THAT SHAVERS WAS PROVIDING, HE STATED THAT HE TOLD LAW ENFORCEMENT THAT HE NEVER HEARD LIGHTBOURNE CONFESS TO THE MURDER AND NEVER HEARD LIGHTBOURNE PROVIDE ANY OF THESE DETAILS, SO CERTAINLY THAT PUT LAW ENFORCEMENT OFFICERS ON NOTICE THAT THERE WAS A PROBLEM WITH SHAVERS'S INFORMATION. ALSO FROM CARSON, THERE IS TESTIMONY THAT HE, ALSO, TOLD LAW ENFORCEMENT THAT HE WAS NOT ABLE TO GET INFORMATION FROM MR. LIGHTBOURNE.

DIDN'T YOU, ALSO, HAVE IN HERE, THAT THESE SAME PEOPLE SAID THAT, WELL, THEY COULDN'T, THEY WERE NOT THERE AT ALL TIMES, WHEN MR. LIGHTBOURNE WAS IN THE CELL, AND THAT THERE COULD BE PRIVATE CONVERSATIONS IN THE CELL, SO I AM STILL HAVING A PROBLEM WITH HOW THAT ACTUALLY DEMONSTRATES THAT LAW ENFORCEMENT KNEW THAT CARSON AND SHAVERS WERE LYING ABOUT MR. LIGHTBOURNE HAVING CONFESSED TO THEM.

CERTAINLY THERE IS TESTIMONY THAT PEOPLE DID COME IN AND OUT OF THE CELL FOR VARIOUS REASONS, WHETHER IT BE TO TALK TO LAW ENFORCEMENT OFFICERS OR MEDICAL REASONS, WHAT NOT. HOWEVER, WE ARE DEALING WITH THE TESTIMONY OF SEVERAL DIFFERENT INDIVIDUALS. THAT WOULD BE ASSUMING THAT ALL OF THOSE INDIVIDUALS WERE OUTSIDE OF THE CELL, WHEN SHAVERS WAS HAVING A CONVERSATION WITH LIGHTBOURNE OR WHEN CARSON WAS HAVING A CONVERSATION WITH LIGHTBOURNE. RICHARD CARNAGIA TESTIFIED THAT HE NEVER HEARD ANY INFORMATION. WE HAVE THE AFFIDAVIT OF JACK HALL, WHICH I WOULD SUBMIT THERE IS SUFFICIENT INDICIA OF REALITYIBILITY FOR THAT TO -- OF RELIABILITY TO HAVE THAT CONSIDERED NOW. THAT ALSO STATES THAT LIGHTBOURNE NEVER MADE THESE CONFESSIONS OR TALKED ABOUT THE DETAILS TO THESE PEOPLE. THERE IS, ALSO, EMMANUEL, THAT HE STATES THE SAME THING NOW, SO WE ARE TALKING ABOUT THREE OR FOUR DIFFERENT INDIVIDUALS THAT ARE SAYING THEY NEVER HEARD IT, SO EVEN IF THERE WAS SOME MOVEMENT IN AND OUT, CERTAINLY THE NUMBER OF PEOPLE THAT WERE THERE, THEY WEREN'T ALL GONE AT THE SAME TIME.

NOW, I KNOW THAT YOU ARE ASKING HERE FOR A NEW PENALTY PHASE. DOES THAT MEAN THAT DESPITE THE FACT THAT YOU NOW BELIEVE OR HAVE EVIDENCE THAT CARSON AND SHAVERS LIED ABOUT MR. LIGHTBOURNE HAVING CONFESSED TO THE, TO THIS MURDER, THAT THAT DOES NOT AFFECT, DO YOU AGREE THAT THAT DOES NOT AFFECT THE PENALTY PHASE, THAT THERE WAS OTHER OR SUFFICIENT INDEPENDENT EVIDENCE, OUTSIDE OF THESE TWO PEOPLE, TO AFFIRM THE CONVICTION PORTION OF THIS CASE?

I THINK WHAT YOU ARE ASKING ME IS WITH REGARDS TO THE HENRY CLAIM, IF I AM NOT MISTAKEN. WE STILL DO CONTEND THAT THERE IS A VIABLE HENRY CLAIM HERE, AND CERTAINLY WITH THE CORROBORATION --

I WAS MORE ASKING ABOUT THE SUFFICIENCY OF THE EVIDENCE.

OKAY. IN TERMS OF THE PENALTY PHASE.

IN TERMS OF THE GUILT PHASE.

OKAY.

THAT WITHOUT SHAVERS AND CARSON, THAT THE GUILT PHASE OF THE TRIAL, THERE IS STILL SUFFICIENT EVIDENCE.

WELL, THIS COURT --

LIGHTBOURNE'S GUILT.

THIS COURT DID PREVIOUSLY HOLD, IN 1999, THAT THERE WAS SUFFICIENT EVIDENCE. HOWEVER, IT IS OUR CONTENTION AND THE TRIAL COURT DID ADDRESS THIS IN ITS ORDER, THAT WITHOUT THE TESTIMONY OF SHAVERS AND CARSON, THERE IS NOT SUFFICIENT EVIDENCE TO UPHOLD THE CONVICTION. THEIR TESTIMONY RELATED VERY MUCH SO, TO THE SEXUAL BATTERY OF MISS ON FARRELL, AND ALTHOUGH -- OF MISS O'FARRELL, AND ALTHOUGH THERE WAS SEMEN AND PUBIC HAIR FOUND AT THE SCENE, THERE WAS TESTIMONY FROM THE MEDICAL EXAMINER THAT THERE WAS NO EVIDENCE OF A SEXUAL BATTERY. SHE COULD ONLY TESTIFY TO A SEXUAL ENCOUNTER. ALSO --

BUT ISN'T, THERE IS CIRCUMSTANTIAL EVIDENCE OF A SEXUAL BATTERY, WHERE YOU HAVE EVIDENCE OF A BREAKING AND ENTERING, AND YOU CAN MAKE A LOGICAL CONCLUSION THAT SOMEBODY WOULD NOT HAVE CONSENSUAL SEXUAL RELATIONS WITH SOMEBODY WHO JUST BROKE INTO THEIR HOME?

THERE WAS THAT RECEIVED THAT THERE WAS A BREAK IN, YES.

AND CAN'T A JURY MAKE THE LOGICAL CONCLUSION THAT SOMEBODY WOULD NOT HAVE CONSENTUAL SEXUAL RELATIONS WITH SOMEBODY THAT JUST BROKE INTO THEIR HOME?

I THINK THAT IS A POSSIBLE CONCLUSION FOR THE JURY TO MAKE. HOWEVER, WHEN YOU TAKE AWAY THE TESTIMONY OF CARSON AND SHAVERS, CARSON, ALSO, PROVIDED MANY OF THE DETAILS THAT THIS WAS A BURGLARY, SO WHEN YOU TAKE THAT AWAY AS WELL, IT CERTAINLY CREATES SOME DOUBT.

OKAY. SO YOU TAKE THAT AWAY, BUT YOU HAVE GOT THE, I THINK THERE IS A BROKEN WINDOW AND OTHER PHYSICAL EVIDENCE OF A BREAKING AND ENTERING, CORRECT?

YES.

AND YOU HAVE GOT THE SEMEN AND THE PUBIC HAIR, AND YOU CAN COMBINE THOSE TWO, AND THERE IS CIRCUMSTANTIAL EVIDENCE THAT, A, THERE WAS A BREAKING AND ENTERING, AND, TWO, THERE WAS SOME KIND OF SEXUAL ENCOUNTER, AND THEREFORE THREE, THE BREAKING AND ENTERING COMBINED WITH THE SEXUAL ENCOUNTER CAN LEAD ONE TO CONCLUDE THAT SOMEONE IS NOT GOING TO HAVE CONSENSUAL SEXUAL RELATIONS WITH SOMEONE WHO BROKE INTO THEIR HOME.

YES. THAT IS A LOGICAL CONCLUSION, BASED ON THE CIRCUMSTANTIAL EVIDENCE, AND THE STATE ARGUED IN ITS OPENING ARGUMENT AT TRIAL, THAT THEIR ENTIRE CASE WAS BASED ON THAT CIRCUMSTANTIAL EVIDENCE. I THINK THAT IS ALL THAT IT IS. BUT IT IS A LOGICAL --

WELL THERE, IS, ALSO, THE FACT THAT THE WEAPON THAT WAS ON THE FLOOR OF LIGHTBOURNE'S VEHICLE, WHEN HE WAS APPREHENDED, WAS MATCHED AS THE MURDER WEAPON.

YES. THERE WAS TESTIMONY THAT THE WEAPON, THERE WAS A CASING FROM THE WEAPON, AND IT DID MATCH. YES.

WE HAVE ASKED A LOT OF QUESTIONS OF YOU HERE, AND WE HAVE A VERY LITTLE BIT OF TIME LEFT, AND I AM NOT SURE WHETHER YOU HAVE FOCUSED ON THE ISSUE OR ISSUES THAT YOU WANTED US, YOU KNOW, DURING THE COURSE OF ORAL ARGUMENT, TO ADDRESS. COULD YOU SHARPEN THE FOCUS A LITTLE BIT.

I THINK THAT IT IS IMPORTANT TO LOOK AT THE LOWER COURT'S ORDER HERE. THE LOWER COURT HAS MADE A CONCLUSORY CREDIBILITY FINDING WITH REGARDS TO EMMANUEL, WHICH IS COMPLETELY UNSUPPORTED BY THE POSTCONVICTION RECORD, THE ENTIRE POSTCONVICTION RECORD, AND THE LOWER COURT, ALSO, FAILED TO CONDUCT A MEANINGFUL CUMULATIVE ANALYSIS HERE.

EMMANUEL TESTIFIED IN THE PRESENCE OF THE TRIAL COURT JUDGE, IS THAT CORRECT?

THAT'S CORRECT.

ALL RIGHT. SO ORDINARILY, WE DEFER TO THE EXAMINATION BY THE FACT FINDER, AND IN THIS CASE THAT IS THE TRIAL COURT JUDGE. NOW, WHY SHOULDN'T THERE BE SUBSTANTIAL DEFERENCE HERE, WITH REFERENCE TO EVALUATING THE CREDIBILITY OF EMMANUEL?

WELL, FIRST WE HAVE A SITUATION WHERE THE TRIAL COURT HAS NOT, HAS MADE A BLANKET STATEMENT THAT HE FOUND EMMANUEL NOT CREDIBLE. HE PROVIDES NO SUPPORT FOR THAT FINDING WHATSOEVER, SO WE DON'T KNOW WHAT, ABOUT EMMANUEL'S TESTIMONY, HE FOUND LACKING IN CREDIBILITY. HE DOESN'T CITE TO ANYTHING FROM THE RECORD, BUT DETECTIVE LATORIE'S TESTIMONY AT THE POSTCONVICTION HEARING.

EMMANUEL, IF I RECALL, CONCEDED THAT HE WASN'T AROUND ALL OF THE TIME IN THIS CIRCUMSTANCE, AND I GUESS THAT WOULD JUST BE A LOGICAL CONCESSION ANYWAY, BUT ISN'T THAT ONE OF THE FACTORS HERE, THAT WOULD SEEM TO SUGGEST NOT BEING AROUND ALL THE TIME, HE CAN'T REALLY GIVE A COMPLETE TESTIMONY AS TO WHAT MIGHT HAVE BEEN SAID BY LIGHTBOURNE, TO THESE OTHER INHABITANTS OF THE SAME CELL. IS THAT RIGHT?

SURE. HE DID SAY THAT, YOU KNOW, HE WAS NOT THERE ALL THE TIME, BUT CERTAINLY HE WAS IN THE CELL A SUBSTANTIAL APARTMENT OF TIME, AND HE, ALSO, TESTIFIED THAT HIS BUNK WAS RIGHT NEXT TO MR. LIGHTBOURNE'S. HE WAS ABLE TO OVER HEAR CONVERSATIONS QUITE FREQUENTLY THAT MR. LIGHTBOURNE WAS HAVING, AND HE WAS ABLE TO HEAR SHAVERS HAVE CONVERSATIONS WITH MR. LIGHTBOURNE. I THINK THAT THE TRIAL COURT, IN DETERMINING CREDIBILITY, CITED TO DETECTIVE LATORIE'S TESTIMONY, NOT TO THE FACT THAT EMMANUEL

WASN'T PRESENT IN THE CELL AT ALL TIMES, BUT WHAT HE SAID IS THAT EMMANUEL IS NOT CREDIBLE, AND DETECTIVE LAT ON ORIE FELT THE SAME WAY, BECAUSE HE DECIDED NOT TO USE HIM IN THE LIGHTBOURNE CASE AS WELL, BECAUSE HE WAS NOT --

DIDN'T WE LOOK AT THE TESTIMONY HERE, WASN'T WASN'T THERE TESTIMONY THAT EMMANUEL -- WASN'T THERE TESTIMONY THAT EMMANUEL FIRST SAYS THAT HE WAS WITH SCOTT AND THIS OTHER DETECTIVE SORT OF PROMPTED HIM TO TRY TO GET INFORMATION ON MR. LIGHTBOURNE, AND THEN LATER ON, IN THE CROSS-EXAMINATION OF EMMANUEL, DOESN'T HE SAY, WELL, REALLY HE WAS INVOLVED IN THE SUNNY OATS CASE, AND THAT HE MAY BE MISTAKEN ABOUT HAVING MADE A STATEMENT ABOUT THIS CASE TO DETECTIVE SCOTT? IT SEEMS TO ME THAT THERE IS SOME FLIPPING AND FLOPING BETWEEN THE DIRECT EXAMINATION AND THE CROSS-EXAMINATION HERE, AND WOULDN'T THAT SUPPORT THE TRIAL JUDGE'S DETERMINATION THAT MR. EMMANUEL WAS NOT, REALLY, A CREDIBLE WITNESS?

I THINK THAT IT WAS VERY CLEAR ON DIRECT AND ON CROSS-EXAMINATION, MR. EMMANUEL DID NOT WAIVER ON THE FACT THAT HE TALKED TO LAW ENFORCEMENT OFFICERS ABOUT MR. LIGHTBOURNE'S CASE. THIS IS CONFIRMED BY DETECTIVE LATORIE AT TRIAL, AS WELL AS AT THE 1999 EVIDENTIARY HEARING. HE CONCEDED THAT HE DID, IN FACT, SPEAK TO MR. EMMANUEL ABOUT MR. LIGHTBOURNE'S CASE. I THINK WHERE THE CONFUSION COMES IN, DURING CROSS-EXAMINATION, IS THAT THE STATE WAS SHOWING MR. EMMANUEL THE WRITTEN STATEMENT THAT HE MADE IN SUNNY BOY OATS CASE, AND WAS ASKING IF HE HAD EVER PROVIDED A STATEMENT IN MR. LIGHTBOURNE'S CASE, WHERE MR. EMMANUEL SAID HE DIDN'T THINK SO. HE COULDN'T REMEMBER. HE DID COME BACK AND SAY THAT HE DID TALK TO LAW ENFORCEMENT OFFICERS, SO HIS MEMORY AS TO WHETHER HE GAVE A WRITTEN STATEMENT OR A RECORDED STATEMENT OR ANYTHING OF THAT NATURE, IS WHERE HE WAVERED HE WAS NOT SURE. AND, BUT HE DEFINITELY WAS CLEAR THAT HE DID SPEAK TO LAW ENFORCEMENT OFFICERS. HE DID SPEAK TO SCOTT AND KEN REIGN, AND LaTORY WAS THE INVESTIGATOR ON BOTH THE SUNNY BOY OATS CASE AND THE LIGHTBOURNE CASE.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME.

I WILL RESERVE. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH.

STEVE WHITE, APPEARING ON BEHALF OF ROBERT BUTTERWORTH FOR APPELLEE.

WOULD YOU TAKE ON THE BRADY AND THE NEWLY-DISCOVERED EVIDENCE ISSUE SEQUENTIALLY.

YES, YOUR HONOR. BASICALLY WE HAVE THE POSTCONVICTION TESTIMONY OF THREE PEOPLE, CARSONS, CARNEGIE AND EMMANUEL. AND THE STATE CONTESTS LIGHTBOURNE'S USE OF THE HALL AFFIDAVIT AND THE SHAVERS AFFIDAVIT, WHICH I WILL BE GLAD TO TALK ABOUT NEVERTHELESS, BUT THOSE ARE NOT COMPETENT SUBSTANTIAL EVIDENCE IN THIS PROCEEDING. THEY ARE STILL INADMISSIBLE, BUT GETTING TO CARS ONES. -- TO CARSONS.

AND WHY ARE THEY INADMISSIBLE?

AS HEARSAY, YOUR HONOR, AND WITH AN INSUFFICIENT INDICIA OF RELIABILITY.

WELL, AS FAR AS THE CARSON AFFIDAVIT IS CONCERNED, DIDN'T CARSON, LATER, TESTIFY AT SOME KIND OF HEARING, AND THEN THAT AFFIDAVIT WAS INTRODUCED AT THAT HEARING?

WELL, YOUR HONOR, CARSONS DID TESTIFY IN THE POSTCONVICTION PROCEEDINGS, AND HIS POSTCONVICTION PROCEEDING EVIDENCE TESTIMONY WAS SUBSTANTIALLY THE SAME AS HIS

AFFIDAVIT, UNLIKE THE OTHER INMATES. I MEAN, BASICALLY HIS STORY WAS THAT THE POLICE SOLICITED ME. THEY MICROMANAGED THE DETAILS, THE SPECIFIC FACTS THAT HE WAS I WAS SUPPOSED TO TEST -- THAT I WAS SUPPOSED TO TESTIFY TO. THEY BASICALLY FET FED ME ALL THESE FACTS AND THEN I WAS A PUPPET AT TRIAL AND IMPLEMENTED WHAT THEY ORDERED ME TO DO UNDER THREAT. HE WAS THE ONLY ONE, HOWEVER, WHO TESTIFIED THAT THE POLICE MICROMANAGED THOSE DETAILS. AND IN FACT, CARNEGIE'S POSTCONVICTION TESTIMONY, THERE IS NO INDICATION OF POLICE INVOLVEMENT. HE TESTIFIED THAT SHAVERS TESTIFIED. NOT THE POLICE. THE POLICE DIDN'T MICROMANAGE IT. THEY WEREN'T INVOLVED. THEY DIDN'T IMPLEMENT IT APPARENTLY. CARNEGIE TESTIFIED THAT THERE WERE 10-TO-12 INMATES IN THE CELL WITH THEM AND WE HAVE HEARD FROM SOME OF THEM, AND NOW THERE IS SOME EVIDENCE IN THE PROCEEDING THAT WE HAVE HEARD FROM ALL OF THEM, WHICH IS CONTRARY. EMMANUEL, WHOM WE HAVE POSTCONVICTION TESTIMONY FROM, DOES NOT TESTIFY TO THE MICROMANAGEMENT OF THIS BIG LIE. INSTEAD EMMANUEL TESTIFIES IN 1999 THAT, McBRIDE, HIS COUSIN McBRIDE, I THINK IT WAS OTIS McBRIDE, TOLD HIM THAT SHAVERS SAID THAT LIGHTBOURNE DONE IT OR DONE KILLED THE LADY, SOMETHING TO THAT EFFECT.

IF WE TAKE WHAT THE TRIAL COURT AT THE EVIDENTIARY HEARING LISTENED TO THIS PARTICULAR SET OF FACTS, AND THE TRIAL COURT SAYS THAT THE TOTAL PICTURE IS ABUNDANTLY CLEAR THAT ALL OF THE JAILHOUSE INFORMANTS WERE ACTING OUT OF SELF INTEREST, IN HOPE OF PERSONAL GAIN, NONE OF THEM WERE ACTING AS AGENTS SOLICITED BY THE STATE, THAT THEIR TESTIMONY IS INCONSISTENT, CONTRADICTORY AND JUST NOT WORTHY OF MUCH BELIEF. IT APPEARED THAT THEY SOLICITED EACH OTHER IN AN EFFORT TO BOLSTER THEIR OWN CREDIBILITY AND GAIN FAVOR, RATHER THAN HAVING BEEN SOLICITED BY LAW ENFORCEMENT. IS THAT THE FINDING OR FINDINGS THAT WE SHOULD ACCEPT, AS BEING AN ACCURATE ASSESSMENTS OF THE CREDIBILITY OF THE JAILHOUSE INFORMANTS.

YOUR HONOR, AS THE STATE ARGUED IN ITS BRIEF, JUDGE CARSON ANGEL WAS THE ONE WHO HEARD THE POSTCONVICTION PROCEEDINGS. JUDGE CARSON WAS THE ONE WHO HEARD SHAVERS AND CARSON TESTIFY AT TRIAL.

SO YOU WANT US TO DECIDE THAT THEY WERE CREDIBLE ENOUGH TO FORM THE BASIS FOR TWO IF NOT THREE OF THE AGGRAVATING CIRCUMSTANCES THAT THIS COURT UPHELD ON THE APPEAL OF THE ORIGINAL CASE BUT NOT CREDIBLE ENOUGH TO DECIDE THAT THEIR RECANTATION IS NOT WORTHY OF BELIEF, THAT IT WAS REALLY THAT WHAT THEY SAID AT TRIAL WAS THE TRUTH AND THE FACT THAT EVERYONE IS NOW RECANTED, WE SHOULD JUST SAY THAT THIS THOSE ARE ALL -- THAT THOSE ARE ALL LIES.

TWO THINGS ABOUT THAT, YOUR HONOR. ONE IS THAT STEP ONE, THIS COURT INDICATED IN SWEET, FIRST JUDGE HAS TO DETERMINE WHETHER THE RECANTING EVIDENCE IS TRUTHFUL, BEFORE GOING TO STEP TWO. WE DON'T GET TO STEP TWO HERE BECAUSE THE RECANTING EVIDENCE IS NOT WORTHY OF BELIEF. GETTING TO JUDGE ANGEL'S COMMENT ABOUT THE TRIAL TESTIMONY, NOT ONLY DID HE NOT SEE IT AT TRIAL BUT HE ALSO INDICATED, EXCEPT AS CORROBORATED BY OTHER EVIDENCE, AND AS THE STATE ARGUED RATHER EXTENSIVELY IN ITS BRIEF, THERE IS SUBSTANTIAL ADDITIONAL EVIDENCE CORROBORATING THE EXISTENCE OF THE TWO PARTICULAR AGGRAVATORS AT ISSUE. YOU KNOW.

WHAT IS, LET'S TAKE HAC. I GUESS I AM MOSTLY CONCERNED ABOUT THE TESTIMONY THAT CARSONS AND SHAVERS GAVE AT TRIAL, ABOUT THE DETAILS OF HOW THE SEXUAL RELATIONS OCCURRED, THAT THE DEFENDANT WAS PLEADING FOR HER LIFE, THAT SHE WAS FORCED TO SUBMIT, AND THERE ARE VERY EXACTING DETAILS ABOUT IT THAT WOULD JUST HAVE TO BE HIGHLY INFLAMMATORY FOR ANY JURY TO HEAR, AND I WOULD LIKE TO FOCUS ON WHERE ELSE OTHER THAN THROUGH THE MOUTHS OF THESE TWO, SHAVERS AND CARSONS, WOULD THAT KIND OF TESTIMONY ABOUT HAC IN PARTICULAR AND THAT SHE WAS FORCED TO ENGAGE IN ACTS OF ORAL SEX, WHERE WAS THAT IN THE RECORD?

YOUR HONOR, THE HORROR OF THIS MURDER IS, AND THIS IS INDEPENDENT OF CARSONS AND CHAFERS, IS, AS JUSTICE CANTERO HAS ALREADY INTIMATED, THAT THE DEFENDANT BROKE IN. THE VICTIM WAS INSIDE AT THE TIME. THAT EITHER SHE WAS SURPRISED BY HIM BREAKING IN, AS ONE OF THE INMATES TESTIFIED TO, OR SHE HEARD HIM BREAKING IN AND WAS TERRORIZED BY. THAT IT IS GOING TO BE ONE OF THE TWO. HE CUT THE PHONE LINE. HE NOT ONLY CUT THE BEDROOM PHONE LINE. HE CUT THE KITCHEN PHONE LINE. HE CUT TWO PHONE LINES BEFORE HAVING SEX WITH HER. SEX WAS ESTABLISHED INDEPENDENTLY BY THE SEMEN, WHICH, GETTING TO JUSTICE WELLS'S QUESTION, WAS NARROWED TO LESS THAN 2.7 PERCENT OF THE POPULATION, AND PUBIC HAIR WAS MICROSCOPICALLY ANALYZED, AND IT WAS IDENTICAL TO, THAT IS THE PUBIC HAIR FOUND WAS IDENTICAL TO, WAS NOT DISSIMILAR, SO THERE IS NO QUESTION THAT THERE WAS SEX IN THE CONTEXT OF THE DEFENDANT BREAKING IN, AND EITHER SURPRISING OR TERRORIZING THE VICTIM BY, AS SHE HEARD HIM COMING IN, AND HE CUTTING THE PHONE LINES, HAVING SEX WITH HER AND THEN PUTTING THE PILLOW TO HER HEAD AS HE EXECUTED HER AT POINT-BLANK RANGE WITH HIS .25 CALIBER, AND BY THE WAY --

IS THERE INDEPENDENT EVIDENCE OF THAT, OF HOW THE FINAL SHOT WAS FIRED? IT WAS THE PILLOW?

YES, YOUR HONOR. AN EXPERT TESTIFIED THAT THE, BEGIN THE POWDER MARKS ON THE PILLOW, IT WAS CONSISTENT WITH THIS PARTICULAR TYPE OF GUN, THAT THERE WAS A HOLE GOING THROUGH THE PILLOW TRACING THE HOLE THROUGH THE PILLOW, AND THE PILLOW WAS FOUND NEXT TO THE VICTIM'S HEAD, WHEN SHE WAS DISCOVERED. SO THERE WAS STRONG EVIDENCE, AND AS THIS COURT HAS INDICATED OVERWHELMING EVIDENCE OF THE DEFENDANT'S GUILT, AND STRONG EVIDENCE THAT THE DEFENDANT EXECUTED HER OR ASSASSINATED HER AS SHE LAY ON THE BED.

WELL, HOW DOES, WE ARE GOING, IF WE ASSUME THAT THE BRADY CLAIM FALLS BECAUSE THEY CAN'T ESTABLISH THAT THE STATE ACTUALLY SOLICITED THESE INDIVIDUALS OR THAT THE STATE KNEW THAT THEIR TESTIMONY WAS FALSE, DO WE, THEN, GO INTO THE NEWLY-DISCOVERED EVIDENCE CLAIM OF THE RECANTED TESTIMONY? SO WHAT YOU ARE SAYING IS THAT WE HAVE TO, THEN, RELY ON THE FACT THAT THE TRIAL, VARIOUS TRIAL COURTS HAVE FOUND THAT THE RECENT ASIANS ARE NOT -- RECANTATIONS ARE NOT CREDIBLE.

WE START OUT WITH THE ASSUMES THAT THAT IS RELIABLE. THERE IS A SUBCULTURE YOU DON'T SNITCH. YOU DON'T COOPERATE WITH THE POLICE. IF YOU ARE IN PRISON, YOU ARE ESPECIALLY IN DANGER, IF YOU ARE KNOWN AS A SNITCH.

WHICH IS WHY JAILHOUSE TESTIMONY IS INHERENTLY UNRELIABLE TO BEGIN WITH, CORRECT?

YES, THAT WOULD GO TO SUPPORT IT.

BUT WE ARE CONCERNED ABOUT THE USE OF THESE INDIVIDUALS AT TRIAL. WHAT IS IN THE SECOND PRONG OF JONES, UNDER THE NEWLY-DISCOVERED EVIDENCE PRONG, IT WOULD BE THAT THERE WOULD BE, WITHOUT THEIR TESTIMONY, THERE IS STILL OVERWHELMING EVIDENCE TO SUPPORT ALL THE AGGRAVATORS. IS THAT HOW WE APPROACH IT? BECAUSE IT IS NOT THE SAME AS A BRADY PRONG OF UNDERMINING CONFIDENCE THAT THE DEFENDANT WOULD ACTUALLY HAVE TO SHOW A PROBABILITY OF A DIFFERENT RESULT.

YES, YOUR HONOR. WHICH JUDGE ANGEL EXPLICITLY FOUND THAT THERE WOULD BE NO DIFFERENT RESULT, GIVEN ALL OF THE EVIDENCE THAT HE KNOWS AND HAS HEARD. BUT I WANTED TO TIE IN, ALSO, AND THIS WAS MY SECOND POINT, AS TO JUDGE ANGEL'S REACHING BACK INTO THE TRIAL. HE, ALSO, INDICATED AS CORROBORATED BY OTHER OFD -- OTHER EVIDENCE, AND AS THE STATE HAS ALREADY ARGUED AND ARGUED AT LENGTH IN ITS BRIEF, THERE IS CORROBORATION OF THESE AGGRAVATORS, INDEPENDENT OF THE INMATES, BUT

GETTING TO YOUR QUESTION, JUSTICE PARIENTE, JUDGE ANGEL FOUND THAT THESE INMATES, POSTCONVICTION TESTIMONY WAS NOT BELIEVABLE, SO IT DOESN'T EXIST. I MEAN, HE SAID, I MEAN, WE HAVE TO TAKE HIM AT FACE VALUE. HE SAID HE REVIEWED EVERYTHING. AND THAT HE DIDN'T FIND IT WORTHY OF BELIEF.

I GUESS MAYBE MY PROBLEM IS WITH THAT SECOND PARAGRAPH, WHICH SAYS NO REASONABLE JUROR WOULD PLACE MUCH CREDENCE IN TESTIMONY OF THESE INFORMANTS EXCEPT AS CORROBORATED BY INDEPENDENT EVIDENCE. FIRST OF ALL, THIS CASE WAS A 1981 CASE. WE DON'T EVEN KNOW WHAT THE JURY VOTE WAS IN THIS CASE, CORRECT?

IT WAS A MAJORITY. THAT IS ALL WE KNOW.

RIGHT. AND AS FAR AS NO REASONABLE JUROR PLACING MUCH CREDENCE, THE PROBLEM IS THAT THIS COURT, IN ITS 1983 OPINION, DID PLACE A LOT OF CREDENCE ON, IN REVIEWING THE AGGRAVATORS ON THE TESTIMONY OF THE INFORM APARTMENTS, IN PARTICULAR AGAIN WHAT I SAID ABOUT THE PLEADING FOR HER LIFE AND FORCING, BEGGING AM NOT TO KILL HER AND THOSE TYPE OF THINGS, SO IT LOOKS LIKE THIS TRIAL, THIS COURT COULD PLACE GREAT CREDENCE ON THESE JAILHOUSE INFORMANTS. WHAT DO WE DO WITH THAT?

GETTING BACK TO THE STANDARD OF REVIEW ON THE ORDER WE ARE HERE ON, IT GOES BACK TO WHETHER THERE IS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDINGS, ESPECIALLY AS TO THE WITNESSES THAT HE SAW IN THE POSTCONVICTION. AND HONING IN ON THAT, FOCUSING IN ON THAT, JUDGE ANGEL OBSERVED CARSONS, CORN HE GI, EMMANUEL TESTIFY, AND SAID HE DOES NOT BELIEVE THEM. -- CARNEGIE, EMMANUEL TESTIFY, AND SAID HE DOES NOT BELIEVE THEM.

CAN, AS I RECALL THE 1999 OPINION SAYS THAT WE HAVE TO LOOK AT THE RECANTED TESTIMONY, IN LIGHT OF EMMANUEL'S TESTIMONY AND THE OTHER INMATE, I FORGET HIS TESTIMONY.

CARSONS, POSTCONVICTION TESTIMONY. YES, MA'AM.

ALL RIGHT. WE HAVE TO LOOK AT ALL OF THAT TESTIMONY CUMULATIVELY, TO DETERMINE THIS ISSUE OF THE NEWLY-DISCOVERED EVIDENCE, AND IS THAT NOT THE CASE? DO WE NOT HAVE ANYTHING TO ANALYZE HERE?

WELL, WE HAVE CUMULATIVELY, WE HAVE JUDGE ANGEL'S, I THINK IT WAS THE 1996 ORDER, WHERE HE SPENT SIX OR SEVEN PAGES ANALYZING CARSON'S POSTCONVICTION TESTIMONY, AND LAYERED ON TOP OF THAT, WE HAVE THE LATEST ORDER DATED 1999-2000, WHERE HE BASICALLY SAYS I HAVE LOOKED AT ALL THIS STUFF, ALL OF THE POSTCONVICTION IN THE TRIAL, AND I JUST FIND THE INMATES NOT WORTHY OF BELIEF.

WHAT WAS IT THAT HE WAS LOOKING AT? I GUESS THAT IS THE PROBLEM HERE, BECAUSE HE JUST SAYS THAT I LOOKED AT THIS INFORMATION. WHAT IS IT THAT YOU SUGGEST TO US HE WAS LOOKING AT, BECAUSE YOU HAVE SAID THAT HE DIDN'T, BASICALLY THAT YOU DIDN'T HAVE TO LOOK AT IT, BECAUSE HE FOUND THESE WITNESSES NOT CREDIBLE. SO WHAT WAS IT THAT HE WAS LOOKING AT, WHEN HE SAYS THAT HE LOOKED, HE HAS LOOKED AT ALL OF THIS STUFF AND NOTHING WOULD CHANGE THE OUTCOME.

I BELIEVE HE INTIMATED IN HIS ORDER THAT HE REVIEWED THE TRIAL, NOT IN SO MANY WORDS, I MEAN, IT CERTAINLY INDICATED THAT HE LOOKED BACK AT THE TRIAL BY EVALUATING THE INMATES' TESTIMONY AT TRIAL, AND OF COURSE HE HAS, ALSO, REVIEWED THE CUMULATIVE EVIDENCE SINCE THEN.

DID THE TRIAL, AT THE POSTCONVICTION PROCEEDINGS AT SOME POINT, DID ALL OF THE

INVESTIGATING POLICE OFFICERS, ALSO, TESTIFY?

YES, YOUR HONOR, AND THEY DENIED ANY WRONGDOING.

THEY DENIED.

AND IN FACT, IN HIS 1996 ORDER, THE JUDGE REFERS TO THE OFFICERS' TESTIMONY. I MEAN HE DOESN'T SAY IN SO MANY WORDS, YOU KNOW, I HERE BY A CREDIT THEIR TESTIMONY -- I HEAR BY A CREDIT THEIR TESTIMONY, BUT HE CITES IT AND GOES ON THAT THEY HAVEN'T PROVEN THEIR CLAIM.

WHAT IS IT, GIVEN THE EVALUATION OF EMMANUEL'S TESTIMONY, HOW WOULD YOU DESCRIBE THE GIST OF THE TESTIMONY AFTER IT WAS COMPLETE ED, EMMANUEL'S TESTIMONY?

I THINK MAYBE TEN PAGES IN MY BRIEF POINTING OUT THAT, ALL THE PROBLEMS WITH IT, BUT THE UPSHOT IS HE CONFLICTS WITH OTHER INMATES. HE CONFLICTS WITH HIMSELF. HE CONFUSES THE OATS CASE WITH THE LIGHTBOURNE CASE. HE TESTIFIES --

ON THAT POINT, THE PETITIONER SAYING HERE, THE APPELANT IS SAYING HERE, THAT BASICALLY IT IS NOT A CONFLICT, BECAUSE WHAT HE IS SAYING IS THAT HE DIDN'T GIVE A WRITTEN STATEMENT IN THE SUNNY BOY OATS CASE. HE DIDN'T, NO, HE GAVE A WRITTEN STATEMENT IN THE SUNNY BOY OATS CASE BUT NOT IN THIS PARTICULAR CASE.

RIGHT.

AND THAT IS WHERE THE CONFLICT IS AND WHERE WE ARE TALKING ABOUT HE MAYBE MISTAKEN, AS OPPOSED TO HE MAY HAVE BEEN MISTAKEN IN TALKING ABOUT THE LIGHTBOURNE CASE AT ALL OR GIVING ANY KIND OF STATEMENT IN THE LIGHTBOURNE CASE.

HE REPEATEDLY CONFUSED AND COMINGLED THE CASES. I MEAN, HE SAID THAT DETECTIVE RAMS AND SCOTT INTERVIEWED -- DETECTIVE RAMES AND SCOTT INTERVIEWED HIM IN THIS CASE AND THEY SAID, NO, WE DIDN'T TALK TO HIM ABOUT THIS CASE. HIS, IN FACT, DEAL, WAS AS TO THE SUNNY BOY OATS CASE, LAW ENFORCEMENT DECIDED NOT USE EMMANUEL. EMMANUEL WAS APPARENTLY EAGER TO COOPERATE WITH LAW ENFORCEMENT AND SUPPOSEDLY CARSON WAS, NO, I WAS RESISTENT AND THEY FORCED ME TO DO IT AND YET SOMEHOW LAW ENFORCEMENT USES CARSONS AND NOT EMMANUEL. THEY USED THE PERSON WHO WAS RESISTANTANT TRIED TO BULLY HIM, ACCORDING TO CORES ONES, AND EMMANUEL SAID, NO, I WAS EAGER TO TESTIFY FOR THEM AND I AM KIND OF UPSET THAT THEY DIDN'T USE ME, HE TESTIFIES AT SOME POINT, AND IN FACT LOOKING AT THE RECORD CUMULATIVELY CONFLICTS BETWEEN THE TWO INMATES, A AND IF I MAY QUICKLY BACKTRACK TO JUSTICE PARIENTE'S QUESTION, ON PAGE 319 OF THE TESTIMONY, HE TESTIFIED THAT VIEWING LARRY EMMANUEL AND VIEWING ALL OF THE CUMULATIVE EFFECT OF THE RECORD, SO IT EXPRESSLY INDICATES THAT HE HAS LOOKED AT EVERYTHING. NOW, HE DIDN'T BREAK IT OUT AND GIVE US THE DETAILS, BUT LOOKING AT THIS IN CONJUNCTION WITH HIS 1996 ORDER, HE CERTAINLY SPENT A LOT OF TIME ON THAT ORDER, ANALYZING CARSON'S/GALLMAN'S TESTIMONY AND COMPARING IT TO OTHER EVIDENCE, BUT THE TEST IS WHETHER, IF THERE IS COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THIS CHROORX AND THE STATE HAS ARGUED AT LENGTH IN ITS BRIEF THAT THERE CERTAINLY IS. BUT, SO, CARS ONES, BASICALLY, HE -- SO CARSONS, BASICALLY HE IS THE ONE THAT SAID THAT THE POLICE MICROMANAGED MY TESTIMONY. LET'S BRIEFLY LOOK AT HALL AND SHAVERS, WHICH THE STATE ARGUED TO BE INCOMPETENT AND NOT CONSIDERED, BUT BRIEFLY TO LOOK AT IT NEVERTHELESS, BECAUSE IT HAS BEEN REFERENCED EARLIER. HALL'S AFFIDAVIT OR HALL TESTIFIES THAT HE WAS THE ONLY ONE THAT LIGHTBOURNE TALKED TO. I MEAN, HERE AGAIN WE HAVE GOT SOME PROBLEMS WITH THE INMATE'S POSTCONVICTION TESTIMONY. EMMANUEL'S, TESTIFIES AT THE HEARING AND SAID, NO, SHAVERS WAS THE ONLY ONE WHO TALKED TO LIGHTBOURNE. HALL SAYS, NO, LIGHTBOURNE ONLY TALKED TO ME. I

MEAN, WHICH IS IT? OF COURSE THE REALITY OF THE JAILHOUSE SITUATION, AS EMMANUEL DID ADMIT AT ONE POINT IS THAT ALL OF THEM CAN'T SEE WHAT ALL OF THEM ARE SAYING TO WHOM, WHEN, WHERE.

BUT THEY ARE ALL SAYING THAT LIGHTBOURNE NEVER CONFESSED TO THIS CRIME. I MEAN, ISN'T THAT THE SIGNIFICANT PART THAT IS UNIFORMLY SHARED, WHETHER SOMEONE HEARD HIM AT ONE TIME OR THE OTHER, ALL OF THEM THAT WERE IN THE CELL, AT ONE TIME OR ANOTHER WITH LIGHTBOURNE, HAVE, NOW, ALL SAID THAT THIS, THESE STATEMENTS WERE NOT MADE, AND WHETHER THEY MADE THEM UP TO THE POLICE FOR THEIR OWN SELF INTEREST OR BECAUSE THE POLICE TOLD THEM THEY WOULD GIVE THEM A DEAL, AS JUSTICE OVERTON ORIGINALLY FELT THAT THERE WAS A HENRY CLAIM, THE FACT IS THAT THAT IS THE CONSISTENCY THAT WE SHOULD BE FOCUSING ON.

WELL, YOUR HONOR, IF WE LOOK AT SHAVERS'S AFFIDAVIT, AND THAT IS TRUE AS TO SOME OF THE INMATES AND THAT IS CERTAINLY CORRECT, BUT AS TO SHAVERSEST, DIDN'T TESTIFY, BUT IT IS UNAMBIGUOUS. I MEAN, HE SWEARS IN HIS AFFIDAVIT THAT DETECTIVE LATORIE TOOK ME OUT AND QUESTIONED ME AT LENGTH AND MADE CLEAR TO ME THAT IT WAS IN MY BEST INTEREST. WHAT DID HE SAY? IS THIS A MISIMPRESSION THAT SHAVERS HAD? WHAT DID LATORIE SAY THAT GAVE HIM THAT IMPRESSION? ALL WE HAVE IS HIS SUBJECTIVE CONCLUSION THAT IT WAS CLEAR TO HIM.

THIS IS SHAVERS?

SHAVERS'S AFFIDAVIT. YES, MA'AM.

AND HE WAS THE ONE THAT WAS FOUND INCOMPETENT TO TESTIFY, AFTER A MEDICAL AND PSYCHOLOGICAL --

RIGHT. HE HAD SOME ACCIDENT OR WHAT HAVE YOU AND THEN HE WAS INCOMPETENT. HE WAS TREATED AND THEN HE CAME BACK AND SAID I HAVE NO RECOLLECTION. SO WE HAVE NO POSTCONVICTION TESTIMONY FROM SHAVERS. ALL WE HAVE IS HIS AFFIDAVIT, WHICH, AGAIN, THE STATE CONTENDS IS STILL INCOMPETENT TO BE CONSIDERED IN THE POSTCONVICTION PROCEEDINGS, AS TO THE CLAIMS. BUT HE, ALSO, INDICATES IN HIS AFFIDAVIT, THEY TOLD ME THINGS THEY WANTED ME TO SAY AND REHEARSED IT WITH ME, BUT THEN HE GOES ON AND SAYS, WELL, HE INTIMATES THAT THE WAY THEY WANTED ME TO SAY IT WAS DIFFERENT FROM WHAT I WANTED TO SAY. I MEAN, EXACTLY WHAT DOES HE MEAN BY -- THESE ARE IN KREBBLY AMMO HE -- THESE ARE IN CREDIBLY AMBIGUOUS, AS TO WHAT DID HE HEAR LIGHTBOURNE SAY IN THE JAIL?

CHIEF JUSTICE: YOU ARE GOING TO HAVE TO CLOSE.

I KNOW MY TIME IS UP. SO THE STATE GOES BACK TO ITS FIRST PREMISE. THERE IS COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING, VIEWING THE CUMULATIVE EVIDENCE AS WELL AS THE CUMULATIVE ORDERS IN THIS CASE.

CHIEF JUSTICE: THANK YOU. THANK YOU, COUNSEL.

I THINK WHAT IS SIGNIFICANT HERE, JUSTICE PARIENTE POINTED OUT, IS THAT THE COMMON THREAD IN POSTCONVICTION IS THAT ALL OF THESE CELLMATES AND INFORMANTS NEVER HEARD MR. LIGHTBOURNE CONFESS TO THE MURDER, NEVER HEARD MR. LIGHTBOURNE TALK ABOUT ANY OF THE DETAILS OF THE CRIME. CERTAINLY THE FACT THAT THE TRIAL COURT FOUND THAT THE TOTAL PICTURE IS ABUNDANTLY CLEAR THAT ALL OF THE JAILHOUSE INFORMANTS WERE ACTING OUT OF SELF-INTEREST, IN HOPE OF PERSONAL GAIN, AND THAT NO REASONABLE JUROR WOULD PLACE MUCH CREDENCE IN THEIR TESTIMONY, IS EVIDENCE THAT THEY WERE LYING, AND THE TRIAL COURT IS FINDING THAT THEY WERE LYING IN THEIR

TESTIMONY, REGARDING THESE GRAPHIC DETAILS, WHICH SUPPORTED THE AGGRAVATORS. THIS COURT, ON DIRECT AFTER -- ON DIRECT APPEAL, USED THEIR TESTIMONY TO SUPPORT THE AGGRAVATORS, THE TRIAL COURT USED THEIR TESTIMONY TO SUPPORT THE AGGRAVATORS. AS SUCH, THE APPELLATE IS ENTITLED TO A NEW HEARING ON THE AGGRAVATORS.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT IS GOING TO TAKE A 15-MINUTE RECESS BEFORE WE HEAR THE NEXT CASE.