Gregory Mills vs State Of Florida

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED. MR. CHIEF JUSTICE: GOOD MORNING. THE COURT IS HAVING A SPECIAL ORAL ARGUMENT CALENDAR THIS MORNING, THE CASE OF MILLS VERSUS STATE. MR. SHERE? -- MR. SCHERR?

GOOD MORNING. MAY IT PLEASE THE COURT. TODD SHERE, ON BEHALF OF APPELLANT GREGORY MILLS. WITH ME AT COUNSEL TABLE ARE COUNSEL WHO HAVE BEEN ASSISTING ME IN MR. MILLS' CASE. YOUR HONOR, THIS CASE COMES BEFORE YOU ON THE DENIAL OF A RULE 3.850 MOTION, FOLLOWING AN EVIDENTIARY HEARING ON ONE CLAIM WITH RESPECT TO MR. MILLS' CO-DEFENDANT, VINCENT ASHLEY. MR. ASHLEY WAS BROUGHT TO THE SANFORD COURTHOUSE TO TESTIFY ABOUT STATEMENTS THAT HE HAD MADE TO MYSELF AND MY INVESTIGATOR CONCERNING HIS INVOLVEMENT IN THIS CASE. HE HAD INDICATED TO MYSELF AND TO THE INVESTIGATOR THAT HE HAD, IN FACT, LIED AT MR. MILLS' TRIAL. WHEN BROUGHT TO COURT, HOWEVER, MR. ASHLEY REFUSED TO TESTIFY, AND THE RECORD IS CLEAR, IN TERMS OF SOME OF THE STATEMENTS THAT HE MADE. AFTER HE REFUSED TO TESTIFY, AT THE STATE'S SUGGESTION, MR. ASHLEY WAS BROUGHT INTO THE JURY ROOM, WHERE THE STATE QUESTIONED HIM AS TO HIS CONCERNS ABOUT WHY HE DID NOT WANT TO TESTIFY, AND HE MADE VERY CLEAR THAT THINGS WOULD GET VERY COMPLICATED FOR HIM, WERE HE TO TESTIFY, BECAUSE HE MIGHT, IN FACT, TESTIFY THAT HE WAS THE SHOOTER IN THIS CASE. OF COURSE THIS WAS ONE OF THE ISSUES ALWAYS IN THIS CASE AT TRIAL. HOWEVER, IT IS THE FIRST TIME IN THIS RECORD THAT THERE IS A INDICATION THAT MR. ASHLEY, NOT MR. MILLS, WAS THE SHOOTER. THIS INFORMATION IS CORROBORATED BY A NEWLY-DISCOVERED AFFIDAVIT, WHICH WAS FILED WITH THEOURT, AN AFFIDAVIT FROM MR. JOHN ANDERSON, AN INMATE AT POLK CORRECTIONAL INSTITUTION, WHO HAS, IN FACT, ATTESTTED THAT MR. ASHLEY CONFESSED TO HIM, WHILE THEY WERE IN THE SEMINOLE COUNTY JAIL BACK IN 1979.

MR. ASHLEY, THOUGH, DID NOT TESTIFY. IS THAT CORRECT?

MR. ASHLEY DID NOT TESTIFY. HOWEVER, HE MADE THESE EX-TEMP RAINIOUS STATEMENTS TO COUNSEL, WHICH ARE ON THE RECORD AND WHICH ARE REPORTED BY THE COURT REPORTER, AND I SUBMIT THAT ALL OF THIS INFORMATION IS NEW EVIDENCE, WHICH CONSTITUTES A REASONABLE BASIS FOR MR. MILLS' LIFE RECOMMENDATION, AND THEREFORE THE OVERRIDE COULD NOT BE SUSTAINED AT THIS TIME.

JUSTICE SHAW.

DO YOU AGREE THAT YOU, THE BURDEN IS ON YOU TO MAKE A SHOWING THAT THIS NEWLY-DISCOVERED EVIDENCE WOULD HAVE CHANGED THE JUDGE'S DECISION?

I ADMIT THAT -- I ACKNOWLEDGE, CERTAINLY, IT IS MY BURDEN. I DON'T AGREE WITH THE STANDARD THAT WAS EMPLOYED BY THE LOWER COURT. IT IS CLEAR FROM THE LOWER COURT'S ORDER THAT HE PUT THE BURDEN ON ME TO SHOW THAT THIS INFORMATION WOULD HAVE CHANGED JUDGE WOODSON'S MIND, JUDGE WOODSON BEING THE SENTENCING JUDGE, AND THAT IS AN I AM POSBLY HIGH BURDEN THAT I DON'T THINK ANYBODY COULD EVER MEET. IT SHOULDN'T BE MY BURDEN, TO SHOW WHAT ANOTHER JUDGE, I DON'T KNOW WHAT IS IN JUDGE WOODSON'S MIND. I DON'T KNOW WHAT HIS PRACTICES ARE. I THINK THAT IS THE WRONG STANDARD. I SUBMIT THAT THIS IS A REASONABLENESS STANDARD, AS ARTICULATED IN STRICKLAND.

I GUESS MY POINT IS, EVEN IF MILLS WAS NOT THE, QUOTE, SHOOTER, HE WAS CERTAINLY INVOLVED, TO THE EXTENT THAT IT WAS HIS GUN AND HE WAS INTIMATELY INVOLVED IN IT.

WELL, THAT MAY BE SO. MR. MILLS' DEFENSE AT TRIAL WAS THAT HE WAS NOT THERE. HE HAD AN ALIBI, WHICH HE TESTIFIED TO. CERTAINLY THIS NEW INFORMATION CONCERNING ASHLEY'S INVOLVEMENT IS CONSISTENT WITH THE DEFENSE AT TRIAL, WHICH IS THAT ASHLEY AND ASHLEY, ALONE, WAS INVOLVED IN THE BURGLARY AND THE SHOOTING OF MR. WRIGHT, BUT EVEN ASSUMING THAT WHAT YOUR HONOR IS SAYING IS CORRECT, CERTAINLY IF MR. ASHLEY IS THE TRIGGERMAN, THEN YOU KNOW, THE DISPARATE TREATMENT AMONG THESE TWO IS EVEN MORE GRAVE AND MORE SEVERE. HOWEVER, THE ISSUE THAT IS BEFORE THE COURT NOW, WHICH IS NOT AN ISSUE THAT HAS REALLY EVER BEEN IN THIS CASE, IS THE RELATIVE CULPABILITY BETWEEN MR. MILLS AND MR. ASHLEY. MR. ASHLEY HAS NEVER, UP UNTIL NOW, EVEN ACKNOWLEDGED THE POSSIBILITY THAT HE MIGHT HAVE ACTUALLY PULLED THE TRIGGER.

YOU KEEP TALKING ABOUT NEW INFORMATION, BUT THE BOTTOM LINE IS, IN TERMS OF THE HEARING BEFORE THE TRIAL COURT HERE, THERE WAS NO NEW INFORMATION. THAT IS THAT MR. ASHLEY DID NOT TESTIFY, SO THE TRIAL COURT, REALLY, HAD NOTHING BEFORE IT. ISN'T THAT CORRECT?

NO. I MEAN, I SUBMIT THAT MR. ASHLEY'S STATEMENTS TO THE PROSECUTOR COULD BE CONSIDERED EVIDENCE. I MEAN, IF I WERE TO CALL, IF A DEFENDANT MAKES A STATEMENT TO A SNITCH, THE STATE CALLS THE SNITCH. I MEAN, IF I AM TO CALL MR. NUNNELLEY, AND ASK HIM DID MR. ASHLEY INDICATE ANYTHING TO YOU, AND THAT WOULD BE EVIDENCE, AND I MEAN, I DIDN'T SEE THE NEED TO DO THAT, ONLY BECAUSE MR. ASHLEY'S STATEMENTS WERE ON THE RECORD.

BUT WASN'T THE TRIAL COURT ENTITLED, REALLY, TO REJECT THOSE COMMENTS OUTRIGHT? THAT IS THAT THOSE WERE MADE IN THE CONTEXT OF, YOU KNOW, I AM NOT GOING TO TESTIFY, FIRST OF ALL, AND THAT, IF YOU DO SOMEHOW FORCE ME TO TESTIFY, AND I END UP ON THE STAND, I MIGHT SAY ANYTHING, AND WASN'T THE TRIAL COURT ENTITLED, REALLY, TO DISREGARD THOSE STATEMENTS COMPLETELY, IN TERMS OF THEIR CREDIBILITY, BECAUSE OF THE CONTEXT IN WHICH THEY WERE MADE? THAT IS THAT, WERE THEY MADE JUST TO TRY TO, WILL YOU QUIT ASKING ME TO TESTIFY, BECAUSE I MAY GO OVER THERE AND TESTIFY THAT IT WAS THE COACH OF THE NEW YORK GIANTS THAT WAS WITH ME THAT DAY OR, YOU KNOW, WHATEVER, AND SO TRULY, IN TERMS OF WHAT WAS BEFORE THE TRIAL COURT, THE TRIAL COURT WAS ENTITLED, WAS HE NOT, TO DISREGARD THAT, IN TERMS OF PLACING ANY WEIGHT OR CREDIBILITY ON THAT?

I MEAN, I DISAGREE.

WHAT -- HOW -- WHAT WOULD YOU HAVE THE TRIAL COURT DO, IF PRESENTED WITH THAT KIND OF INFORMATION?

WELL, I SUBMITTED TO THE TRIAL COURT, AND I SUBMIT NOW THAT THE STATEMENTS THAT MR. ASHLEY MADE, IN TERMS OF EVEN HIS REFUSAL TO TESTIFY, WOULD BE NEW EVIDENCE, IN TERMS OF ANALYZING THE OVERRIDE ISSUE IN THIS CASE. OF COURSE ASHLEY IS UNDER A CONTRACTUAL OBLIGATION TO TESTIFY TRUTHFULLY IN MR. MILLS' CASE, AND THA CONTRACTUAL OBLIGATION CONTINUES, I SUBMIT. HERE HE REFUSED TO HONOR THAT, ADMITTED THE STATE DID STIPULATE THAT HE WOULD TESTIFY THAT HE HAD LIED AT THE TRIAL ABOUT HIS INVOLVEMENT, AND NOW COUPLED WITH THE STATEMENT THAT HE MADE ON QUESTIONING BY THE STATE, I SUBMIT THAT ALL OF THAT IS INFORMATION -- AGAIN, WHEN WE ARE TALKING ABOUT SENTENCING, WE ARE TALKING ABOUT ISSUES THAT ARE ADMISSIBLE AT PENALTY PHASE AND THINGS OF THAT NATURE, AND I THINK ALL OF THAT INFORMATION FROM ASHLEY WOULD BE ADMISSIBLE AT THE PENALTY PHASE AND COUPLED WITH, OF COURSE, THIS

AFFIDAVIT WHICH CLEARLY RELATES TO WHAT HAPPENED AT THE EVIDENTIARY HEARING, IN TERMS OF ASHLEY'S INVOLVEMENT, GIVES RISE TO A SIGNIFICANT PROBLEM IN THIS CASE.

JUSTICE QUINCE.

AS I UNDERSTAND IT, HOWEVER, YOUR INITIAL MOTION INDICATED THAT ASHLEY WAS GOING TO CHANGE HIS TESTIMONY, BUT HIS INITIAL INITIAL STATEMENT TO YOU -- HIS INITIAL STATEMENT TO YOU WAS NOT THAT HE WAS THE SHOOTER BUT THERE WAS SOME DIFFERENCE AS TO WHO WENT INTO THE WINDOW FIRST AND WHO CAME OUT AND THOSE KINDS OF THINGS, CORRECT?

CORRECT. HE NEVER INDICATED, WHEN HE TALKED TO ME, THAT HE MAY HAVE BEEN THE SHOOTER.

SO THIS TESTIMONY THAT YOU ARE TALKING ABOUT IS NOT REALLY TESTIMONY, BUT THIS STATEMENT THAT HE MADE WAS, REALLY, JUST MADE IN THE CONTEXT OF "LEAVE ME ALONE, OR THIS IS WHAT I MIGHT SAY ON THE STAND."

WELL, IT WAS QUESTIONING BY THE STATE AS TO WHY --

BUT THAT WAS THE PURPOSE OF THE QUESTIONING, TO SEE WHY HE WAS NOT GOING TO TAKE THE STAND WHILE HE WAS EXERCISING HIS RIGHTS.

CERTAINLY, BUT HIS EX-TEMP RAINIOUS STATEMENT THAT HE MIGHT HAVE BEEN THE TRIGGERMAN CERTAINLY -- BUT HIS EX-TEMP RAINIOUS -- EXTEMPORANEOUS STATEMENT CERTAINLY BRING AS NEW LIGHT THAT HE HAS CON PHELPSED, WHEN PUT -- CONFESSED, WHEN PUTTING MR. ASHLEY'S STATEMENT CLEARLY INTO CONTEXT, BECAUSE HE IS TESTIFYING AND PROVIDING INFORMATION THAT WOULD -- EXCUSE ME.

HOW WOULD THAT INFORMATION RELATE TO THE OTHER INFORMATION WE HAVE ABOUT MR. MILLS' ROOMMATE AND THE GIRL FRENT, WHO, I BELIEVE, TESTIFIED THAT MR. MILLS DID, IN FACT, SAY HE HAD SHOT SOMEONE?

WELL, THE INFORMATION FROM MR. DAVIS, WHO IS THE ROOMMATE, ALSO HAS TO BE TAKEN INTO CONTEXT. THE ONLY EVIDENCE IMPLICATING MR. MILLS IN THE CASE CAME FROM ASHLEY AND FROM SYLVESTER DAVIS. VIOLA MAY STAFFORD, THE GIRLFRIEND, NEVER ACTUALLY TESTIFIED, AND AS I SET FORTH IN THE BRIEF, THE MANNER IN WHICH MR. DAVIS'S INFORMATION CAME FORTH TO THE AUTHORITIES WAS SUSPICIOUS AT BEST. HE ONLY CAME FORWARD AFTER HIS GIRLFRIEND, MISS STAFFORD, WAS ARRESTED, SEVERAL DAYS AFTER MR. WRIGHT WAS KILLED, AND SHE ONLY ACKNOWLEDGED, AT THAT POINT THAT, SHE KNEW WHERE THE SHOTGUN SHELLS WERE, BECAUSE SHE AND DAVIS HAD HID THEM. SHE ONLY TOLD THE POLICE THAT, IN EXCHANGE FOR DROPPING THE CHARGES AGAINST HER. THEY WERE SHOPLIFTING CHARGES. AND MR. MILLS'S SISTER-IN-LAW HAD ACTUALLY RUN THE STORE THAT MS. STAFFORD WAS ARRESTED IN, AND MR. MILLS CALLED THE POLICE. AT THAT POINT, ONLY SEVERAL WEEKS LATER, WHEN MR. DAVIS, HIMSELF, WAS ARE AESTED, WHETHER -- ARRESTED, WHERE HE WAS BROUGHT DOWN TO THE POLICE STATION AND MISS STAFFORD WAS PUT INTO A ROOM, AND THE POLICE OFFICERS CAME OUT ALONE AND MR. DAVIS SAID, IF YOU WILL GIVE ME CONSIDERATION, I WILL TELL YOU ABOUT THE SHOOTING. SO THAT IS WHETHER IT ALL CALM, AND ALL OF THAT NEEDS TO BE PUT INTO CONTEXT, IS THAT THE KEY EVIDENCE IMPLICATING MR. MILLS, IN THIS CASE, CAME FROM TWO INDIVIDUALS WHO IN A HIGH MOTIVATION TO LIE, IN TERMS OF GETTING THEMSELVES OFF OF THE PENDING CHARGES, SO IT IS SUBMITTED THAT THIS AFFIDAVIT COMPLETELY PUTS THE CASE INTO A NEW CONTEXT, IN TERMS OF WHO WAS THE ACTUAL TRIGGERMAN. AT MINIMUM, A NEW EVIDENTIARY HEARING WOULD BE WARRANTED, BUT I WOULD SUBMIT THAT ALL OF THE MITIGATION IN THIS CASE THAT WAS PRODUCED AT THE PENALTY PHASE, THAT THIS COURT SHOULD GO AHEAD AND ORDER A RESENTENCING. I HAVE ALSO RAISED A NEWLY-DISCOVERED CLAIM OF AN EXPARTE COMMUNICATION BETWEEN THE STATE AND THE SENTENCING JUDGE,

JUDGE WOODSON, AT THE TIME OF MR. MILLS' FIRST 3.850 PROCEEDING. THOSE DOCUMENTS WERE TURNED OVER TO ME FOR THE FIRST TIME LAST WEEK. I IMMEDIATELY FILED A MOTION TO RELINQUISH JURISDICTION, WHICH THE STATE OPPOSED AND WHICH THIS COURT HAS DENIED, SO I DIDN'T INCLUDE IT AS A CLAIM IN MY BRIEF. THIS ISSUE GOES TO A DUE PROCESS VIOLATION DURING MR. MILLS' FIRST 3.850 PROCEEDING. I ALSO SUBMITTED AN AFTERWARDIVITY FROM THE -- AN AFFIDAVIT FROM PRIOR COLLATERAL COUNCIL, IN WHICH HE FILED YESTERDAY THAT HE DID NOT KNOW ABOUT THIS SITUATION. HAD HE KNOWN ABOUT THE FACT THAT THE STATE HAD DRAFTED THE ORDER MERELY DENYING MR. MILLS' FIRST 3.850 MOTION, HE WOULD HAVE, IN FACT, MOVED TO DISQUALIFY JUDGE WOODSON FROM PRESIDING OVER MR. MILLS'S CASE, AND, OF COURSE, JUDGE WILSON DID SIT ON THIS AFTER AFTER THE COURT REMANDED FOR AN EVIDENTIARY HEARING IN 1990, AND THE FACTUAL CONCLUSIONS WHICH HAVE FOLLOWED THIS CASE OF SINCE, IN BOTH THIS CASE AND IN THE FEDERAL COURTS, SO, AGAIN, ON THAT ISSUE, THE STATE HAS OPPOSED RELINQUISH RELINQUISHMENT. I AM IN A BIND,i] BECAUSE THE LAW CLEARLY SAYS THAT I CAN'T GO BACK AND FILE A NEW 3.850 WHILE THERE IS AN APPEAL PENDING, IF THE STATE HAS TAKEN THE POSITION THAT I HAVE RAISED THIS CLAIM IN AN UNAUTHORIZED MANNER BEFORE THIS COURT, AND I SHOULD HAVE FILED A 3.850, SO I DON'T REALLY KNOW WHAT TO DO, AND THAT IS WHY I, IN FACT, RAISED IT IN MY BRIEF, AND THE STATE HAS OPPOSED AN EVIDENTIARY HEARING CLAIM ON THAT AS WELL, AND I SUGGEST THAT, IN THE COMPLETE CONTEXT OF THIS CASE, THAT THIS CASE SHOULD BE, AT MINIMUM REMANDED ON AN EVIDENTIARY HEARING. IF THERE ARE NO FURTHER QUESTIONS. I AM SORRY?

I HAVE A QUESTION WITH REGARD TO THE PUBLIC RECORDS REQUEST. TELL US ABOUT THAT.

JUDGE -- JUDGE EATON HAD DENIED SEVERAL OF OUR REQUESTS FOR PUBLIC RECORDS, WHICH WERE DENIED UNDER THE NEW RULE 3.852. THE AGENCIES THAT WE DID NOT GET OR HE DID NOT ALLOW US TO GET RECORD FROM INCLUDED SOME RECORDS FROM THE STATE ATTORNEYS OFFICE IN THE EIGHTHEENTH JUDICIAL CIRCUIT, SOME RECORDS FROM THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT, AND, I BELIEVE, RECORDS FROM THE DIVISION OF ELECTIONS. THERE MAY BE OTHER RECORDS, WHICH ESCAPES ME RIGHT NOW. I SUBMIT THAT WE WERE ENTITLED TO THOSE RECORDS, IN TERMS OF BEING ABLE TO FULLY INVESTIGATE THE CLAIMS IN THIS CASE. OF COURSE WE NOW KNOW, IN THE STATE ATTORNEYS -- FROM THE STATE ATTORNEYS OFFICE, THOSE RECORDS, PURSUANT TO RULE 3.852.2-H-3, WERE REQUESTED BACK AND IN THAT RECORD IS WHERE WE SIGNED THE UNDRAFT SENTENCING ORDER WHICH FORMED THE BASIS OF PART OF ARGUMENT TWO, AND SO I WOULD SUBMIT THAT ANY OF THAT OTHER INFORMATION THAT IS OUT THERE THAT COULD BEAR UPON THIS CASE, WHICH WE WOULD BE ENTITLED TO, UNDER THESE REQUESTS THAT WERE VALIDLY MADE UNDER --

BUT THE STATE CAT GORIZES THIS AS A FISHING EXPEDITION. WHAT IS IT YOU ARE SAYING, NOW, THAT THE STATE HAS THAT YOU ARE ENTITLED TO HAVE THAT YOU DON'T HAVE, AND IS NOT PRIVILEGED?

WELL, THE REQUESTS THAT WE MADE, I MEAN, THE GENERAL TEN OR OF THE REQUESTS THAT THE OBJECTIONS WHICH WERE SUSTAINED BELOW, RELATES TO INFORMATION THAT WE HAVE REQUESTED FROM THE STATE AND THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT, PARTICULARLY AS TO THE JURORS IN MR. MILLS'S CASE. FOLLOWING THIS COURT'S DECISION IN BUENOANO, IT IS CLEAR THAT IT IS INCUMBENT UPON US TO BEGIN INVESTIGATING POTENTIAL JUROR MISCONDUCT AT THESE CAPITAL TRIALS, AND SO WE REQUESTED INFORMATION FROM BOTH THE STATE AND FROM FDLE REGARDING ANY CRIMINAL HISTORY THAT THE JURORS MAY HAVE AND THINGS OF THAT NATURE, SO WE CAN DETERMINE WHETHER OR NOT JURORS ACTUALLY DID NOT TELL THE TRUTH OR DID NOT DISCLOSE IT OR THE STATE DID NOT DISCLOSE IT, PRIOR TO MR. MILLS'S --

DOES THAT GIVE YOU THE RIGHT TO PHRASE YOUR REQUEST IN THAT MANNER? DOES THAT GIVE ME ANY INFORMATION THAT, IN EFFECT, MAY AFFECT MY CLIENT. THAT IS KIND OF BROAD.

WELL, IT IS BROAD, BUT THE PROBLEM THAT WE HAVE IS WE ARE ASKING FOR INFORMATION THAT WE DON'T -- I MEAN, I DON'T KNOW IF THEY HAVE IT OR NOT, AND IF I DON'T ASK FOR EVERYTHING YOU HAVE ON THIS PARTICULAR PERSON, IF I ONLY ASKED FOR ITEM, YOU KNOW, X, Y AND Z, THE STATE WILL COME BACK AND SAY IF, NO SOME REASON, I FIND THAT INFORMATION LATER ON, THE STATE WILL COME BACK LATER ON AND SAY, GEE, YOU DIDN'T ASK FOR THIS. YOU JUST ASKED FOR THIS. YOU DIDN'T ASK FOR EVERYTHING. YOU JUST ASKED FOR SPECIFIC X, Y AND Z, AND THAT IS WHAT HAPPENED IN THE THOMPSON CASE.

ARE YOU SAYING THAT YOUR REQUEST CAN BE AS BROAD AS THAT?

WELL, THE WAY THAT THE RULE IS WRITTEN, IT IS A DISCOVERY RULE. I MEAN, THE DISCOVERY RULE, IT IS NOT -- WE DID REQUEST SPECIFIC INFORMATIONATION ON SPECIFIC PEOPLE. OF COURSE WE REQUESTED ANY INFORMATION THEY HAD ON THE NAMED PEOPLE. THAT IS THE ONLY WAY, AND WE DID SPECIFY CRIMINAL HISTORIES, ET CETERA.

BUT YOU UNDERSTAND THE PROBLEM THAT POSES TO AGENTS IN TRYING TO HONESTLY COMPLY?

NO. I UNDERSTAND THAT, AND YOU KNOW, THAT IS THE AGENCY'S BURDEN, TO COME FORTH AND SAY THIS IS OVERBROAD, AND HERE THEY DID. THAT I SUBMIT THAT CERTAINLY REQUESTING CRIMINAL INFORMATION ON PARTICULAR NAMED PEOPLE IS NOT AN OVERBROAD REQUEST.

YOU ARE INTO YOUR REBUTTAL.

THANK. I WILL RESERVE THE REMAINDER OF MY TIME.

MR. NUNNELLEY.

MAY IT PLEASE THE COURT. I AM KEN NUNNELLEY. I REPRESENT THE STATE OF FLORIDA IN THIS APPEAL. WITH RESPECT TO THE VINCENT ASHLEY ISSUE, THE DIFFERENCE BETWEEN MR. ASHLEY'S TRIAL TESTIMONY AND THE VERSION OF EVENTS SET OUT IN THE 3.850 MOTION WAS THAT, IN THE NEW VERSION, MR. ASHLEY DID NOT GO INTO THE RESIDENCE OF THE VICTIM. THAT IS THE ONLY DIFFERENCE. MR. ASHLEY'S TESTIMONY AT TRIAL, WITH RESPECT TO THE SHOOTING, DOES NOT DIFFER BECAUSE, AT THAT POINT, HE HAS ALWAYS MAINTAINED HE WAS OUTSIDE OF THE HOUSE. WITH RESPECT TO WHAT JUDGE EATON FOUND AS TO MR. ASHLEY, I AM QUOTING FROM THE 3.850 ORDER. JUDGE EATON SAID, IN FACT, ASHLEY TOLD THE LAWYERS HE MIGHT SAY ANYTHING, INCLUDING THAT HE WAS THE ONE THAT PULLED THE TRIGGER. THIS STATEMENT WAS SUBSEQUENTLY TAKEN OUT OF CONTEXT BY DEFENSE COUNSEL, BUT IT WAS MADE FOR THE PURPOSE OF DISSUADEING THE LAWYERS FROM CALLING HIM AS A WITNESS AND NOT AN ANNOUNCEMENT THAT HIS TESTIMONY HAD CHANGED. THAT IS A FINDING JUDGE EATON IS ENTITLED TO MAKE, UNDER STATE VERSUS SPAZIANO. IT SHOULD NOT BE DISTURBED BY THIS COURT. WITH RESPECT TO SYLVESTER DAVIS AND MR. ASHLEY -- EXCUSE ME.

ON THAT LAST POINT, WAS THAT STATEMENT MADE IN FRONT OF JUDGE EATON?

MA'AM? THE STATEMENT THAT I QUOTED?

YES.

NO, MA'AM. THAT IS JUDGE EATON'S FINDING.

BUT THE STATEMENT THAT, WHEN ASHLEY MADE THIS STATEMENT, I CAN EVEN TESTIFY I WOULD BE THE SHOOTER, WAS THAT MADE IN OPEN COURT? IT WAS HARD TO UNDERSTAND THE SEQUENCE. OR WAS THAT SOMETHING MADE WHEN THE STATE TRIED TO ASSIST IN GETTING HIM --

I AM SORRY. THAT WAS UNCLEAR. THAT STATEMENT WAS MADE OUTSIDE OF THE PRESENCE OF JUDGE EATON. HOWEVER, MR. ASHLEY'S REFUSAL TO TESTIFY, OF COURSE, OBVIOUSLY TOOK PLACE IN FRONT OF JUDGE EATON, AS TO THE COLLOQUY BETWEEN JUDGE EATON AND MR. ASHLEY, ABOUT THE REFUSAL TO TESTIFY. BUT I WOULD SUGGEST, JUSTICE PARIENTE, THAT JUDGE EATON IS ENTITLED TO TAKE ALL OF THESE FACTS INTO CONSIDERATION, AND USE THEM IN ASSESSING THE CREDIBILITY OR THAT IS NOT EXACTLY THE WORD TO USE, BUT IN RESOLVING THE FACTUAL ISSUE AND MAKING THE DETERMINATION THAT HE MAY. IT IS NOT -- THAT HE MADE. IT IS NOT AN ABUSE OF DISCRETION FOR HIM TO FIND THAT HE DID.

THE STATE, IN LIGHT OF THE FACT THAT ASHLEY DIDN'T TESTIFY, FOR OUR RECORD PURPOSES, WHAT IS IT THAT WE HAVE BEFORE US TO CONSIDER? IS THERE A STIPULATION THAT HE WOULD HAVE TESTIFIED, AND THE STATE HAS AGREED THAT THAT IS SOMETHING THAT CAN BE CONSIDERED?

WHERE THIS COURT REALLY IS, IS WHERE THE STATE ARGUED WE SHOULD BE AT THE TIME OF THE HUFF HEARING. AND THAT IS THAT, EVEN ASSUMING THE FACTS CONTAINED IN THE 3.850 MOTION IS TRUE, THERE IS NO NEED FOR AN EVIDENTIARY HEARING. THAT IS EFFECTIVELY WHERE WE ARE. MY ARGUMENT AT THE HUFF HEARING, ITSELF, WAS THAT THERE WAS NO NEED FOR AN EVIDENTIARY HEARING. I LOST ON THAT. AND THE EVIDENTIARY, THE, QUOTE, EVIDENTIARY HEARING KIND OF ABORTED, I SUPPOSE, BUT WE KNOW WHERE WE EFFECTIVELY ARE, I SUPPOSE, IS KIND OF A HYBRID BETWEEN WHAT THE STATE ARGUED FOR AT THE HUFF HEARING, BASED UPON MAKING THE ASSUMPTION THAT THE ALLEGATIONS CONTAINED IN THE 3.850 MOTION ARE TRUE BUT STILL NO BASIS FOR RELIEF, BUT ON TOP OF THAT, YOU HAVE THE WITNESS REFUSING TO TESTIFY IN FRONT OF JUDGE EATON. YOU HAVE THE WITNESS'S COMMENT THAT PLAYS INTO THIS, SO HAVE JUDGE EATON ENTITLED TO MAKE THE ASSESSMENT OF THE CASE, BASED ON THE EVENT, IN ADDITION TO THOSE CONTAINED IN THE 3.850 MOTION. IT IS A LITTLE BIT HARD TO CONCEPTUALIZE.

WITH REFERENCE TO THIS STIPULATION, WHAT IS IT?

THE STIPULATION WAS THAT -- I BELIEVE I STATED THEM IN MY BRIEF. EFFECTIVELY IT WAS THAT HE WOULD PRESENT TESTIMONY, OR RATHER EVIDENCE, CONSISTENT WITH THAT CONTAINED IN THE 3.850 MOTION, WHICH IS EFFECTIVELY SAID, ASSUME IT IS TRUE AND THEN DENY RELIEF WITHOUT A HEARING.

WHICH IS THAT HE NEVER WENT IN THE HOUSE.

YES, MA'AM, AND THAT IS THE ONLY DIFFERENCE BETWEEN THE SO-CALLED NEW VERSION AND THE TRIAL TESTIMONY.

BUT WE ARE, REALLY, IN A SITUATION WHERE WE ARE HAVING TO EVALUATE WHETHER THE JURY OR THE JUDGE, WHETHER THIS WOULD HAVE AFFECTED THE OUT COME, AND JUDGE EATON WAS CONCERNED, IN HIS ORDER, SAID THAT THE JURY HAD CREDIBILITY PROBLEMS TO OTHER INCONSISTENT STATEMENTS AND THAT, IN FACT, THIS IS THE MOST TROUBLING ASPECT OF THE CASE. THE JURY RECOMMENDED A LIFE SENTENCE. SO I GUESS THEN HE DECIDED TO CONCENTRATE ON WHAT THE JUDGE WOULD HAVE DONE DIFFERENTLY, AND THAT BECOMES -- HOW DO WE EVALUATE THAT. AS MR. SHERE SAID, WE WE CAN'T GET INTO THE JUDGE'S MIND. THE MANNER IN WHICH THE VICTIM DIED, THAT FORMS THE BASIS, I GUESS, FOR THE JUDGE FINDING THIS COURT STRUCK THAT -- FOR THE JUDGE'S FINDING, AND THIS COURT STRUCK. THAT HOW DO WE, BEGIN AGAIN, IN LIGHT OF THE STATE'S STIPULATION -- HOW DO WE, AGAIN, IN LIGHT OF THE STATE'S STIPULATION, HOW DO WE TAKE THAT AS TRUE?

WITH RESPECT TO THE -- LET ME KIND OF SPLIT THIS UP, JUSTICE PARIENTE, IF I CAN. WITH RESPECT TO ASHLEY'S TESTIMONY, WITH RESPECT TO THE VICTIM'S DEATH OR THE HAC PART OF

IT, IF YOU WILL, THAT TESTIMONY IS NOT EFFECT -- AFFECTED BY THE NEW VERSION, BECAUSE THOSE OBSERVAONS HAVE ALWAYS BEEN OBSERVATIONS IT THAT MR. ASHLEY MADE FROM OUTSIDE OF THE HOUSE. HE HAS NEVER SAID THAT HE WAS INSIDE THE HOUSE WHEN THE FATAL SHOT WAS FIRED. I BELIEVE HIS TESTIMONY AT TRIAL WAS THAT HE RAN, THAT THE VICTIM WOKE UP AND HE BAILED OUT THE WINDOW THAT HE HAD COME IN, AND THEN THOUGHT, GEE, MY COHORT IS STILL IN THERE AND WENT BACK, AND SOMEWHERE IN HERE HEARD A GUNSHOT. AND WENT BACK TO THE HOUSE BUT DIDN'T GO IN THE HOUSE. HE HAS NEVER SAID HE WENT BACK IN THE HOUSE. THEN HE OBSERVED THE VICTIM, I THINK HE SAID, CURSING OR MOANING OR SOMETHING LIKE THAT.

THAT STILL WOULD BE --

THAT IS STILL IN PLAY. THAT IS NOT AFFECTED BY ANY OF THIS. WHAT -- AND, ALSO, WITH RESPECT TO JUDGE EATON'S COMMENT OR STATEMENT IN HIS ORDER ABOUT THIS IS THE MOST TROUBLING ASPECT OF THE CASE, I DON'T KNOW WHAT HE MEANT BY THAT. I REALLY DON'T. I DON'T KNOW IF HE MEANT THAT GAVE HIM TROUBLE OR IF THIS IS THE MOST COMPLICATED ASPECT OF THE CASE. I WOULD CTAINLY SUGGESTION THAT IT IS -- I WOULD CERTAINLY SUGGEST THAT IT IS THE COMPLICATING ASPECT OF THE CASE, BUT IT IS WHERE WE FIND OURSELVES ENGAGED IN A SERIES OF MENTAL GYNMASTICS ABOUT WHAT TO DO OR HOW TO EVALUATE THE CASE. NOW, I UNDERSTAND YOUR CONCERNS, YOUR HONOR, BUT THE BOTTOM LINE IS, JUDGE EATON APPLIED THE JONES'S STANDARD. HE IS WELL AWARE OF WHAT JONES IS. HE CITED JONES, AND HE FOUND THAT THERE IS NO REASONABLE PROBABILITY OF A DIFFERENT SENTENCING RESULT, EVEN CONSIDERING THE SO-CALLED NEW VERSION OF EVENTS. THE NEW VERSION DOESN'T AFFECT THE SUBSTANTIVE MEAT OF THE TESTIMONY. IT ONLY AFFECTS WHETHER OR NOT ASHLEY WAS INSIDE THE HOUSE, AND WHETHER HE DOES, I WOULD SUGGEST, MAKES NO DIFFERENCE IN THIS CONTEXT. IT, DOES PERHAPS, REDUCE ASHLEY'S CREDIBILITY, AND I WOULD SUGGEST IT DOES DO THAT. IT DOESN'T HELP MR. MILLS'S CAUSE, TO PROVE THAT THE CO-DEFENDANT DID NOT GO IN THE HOUSE. THAT DOESN'T HELP HIM. I HOPE I AM ANSWERING YOUR QUESTION. IT IS A SOMEWHAT CONVOLUTED QUESTION, I AGREE, BUT IN THE FINAL ANALYSIS, JUDGE EATON APPLIED THE JONES'S STANDARD, WHICH IS WHAT HE HAS TO DO, AND FOUND THAT THERE IS NO REASONABLE PROBABILITY OF A DIFFERENT RESULT AT SENTENCING, AND THAT IS --

I GUESS IN TERMS OF OUR REVIEW OF THIS, SINCE THERE IS A STIPULATION, AND SO WE ARE NOT REALLY TALKING ABOUT A CREDIBILITY DETERMINATION, HOW IS JUDGE EATON IN A BETTER POSITION TO EVALUATE THE SECOND PRONG OF THE JONES TEST THAN THIS COURT IS?

WELL, BECAUSE YOU DO HAVE SOME -- IF YOU ARE TAKING -- IF YOU TAKE OUT THE ASSERTION THAT MR. ASHLEY MIGHT SAY ANYTHING, IF YOU TAKE THAT OUT OF THE MIX, BECAUSE I WOULD SUGGEST JUDGE EATON CLEARLY WAS IN THE BEST POSITION TO EVALUATE THAT, WHEN YOU COME TO THE NEW VERSION, AS OPPOSED TO THE OLD VERSION, THE "WENT IN THE HOUSE" AS OPPOSED TO "DIDN'T GO IN THE HOUSE", THAT BECOMES AN APPLICATION OF JONES, SQUARELY TO THE ISSUE. I WOULD SUGGEST THAT JUDGE EATON CORRECTLY APPLIED THE LAW AND FOUND THAT THERE IS NO PROBABILITY OF A DIFFERENT RESULT. IF YOU TRY TO BLEND IN ALL OF THE EX-EXTRANEOUS MATTERS THAT WE ARE HEARING WITH -- THE EXTRANEOUS MATTERS THAT WE ARE HEARING WITH RESPECT TO VINCENT ASHLEY, THAT DECISION WHICH JUDGE EATON IS ENTITLED TO MAKE AND WHICH IS NOT ABUSE OF DISCRETION SHOULD BE ENTITLED TO MAKE. I HOPE THAT ANSWERS YOUR QUESTION. WITH RESPECT TO THE EXPARTE ORDER ISSUE, THE STATE FILED A MOTION TO STRIKE THAT COMPONENT OF MR. MILLS'S BRIEF. THAT ORDER, AS FAR AS I KNOW, HAS NOT BEEN RULED ON. ALSO I HAVE NOT SEEN ANY AFFIDAVIT FILED BY BILLY NOLLIS, BUT IT REALLY DOESN'T MATTER. THAT ISSUE CAN BE RESOLVED, ONE OF TWO-WAYS, BY THIS COURT. IT CAN BE DISMISSED WITHOUT PREJUDICE, TO FILE A SUBSEQUENT 3.850 MOTION, OR THIS COURT CAN RULE, AS A MATTER ON THE LAW AS IT STANDS. I DO NOT KNOW WHICH COURSE THE COURT WOULD PREFER. I DID NOT BRIEF THIS ISSUE, BECAUSE I CANNOT BRIEF AN ISSUE IN THE BLIND, WITHOUT KNOWING ANY OF THE FACTS SURROUNDING IT. I WOULD SUGGEST, AT THIS

POINT, THE INCLUSION OF THIS ISSUE, IN ITS ARGUMENT BEFORE THIS COURT, IS PREMATURE. HOWEVER, WHAT I WOULD SUGGEST IS THAT THE SUGGESTION THAT THE RELIEF THAT SHOULD BE GRANTED BY THIS COURT IS A REMAND FOR RESENTENCING, IS ABSOLUTELY ABSURD. THIS DOES NOT, IN ANY WAY, IMPLICATE THE SENTENCE OF DEATH IN THIS CASE. AT MOST, IT AFFECTS THE 3.850 ORDER, AND I WOULD POINT OUT THAT THE 3.850 ORDER AT ISSUE WAS SET ASIDE BY THIS COURT. AND IT WAS REMANDED FOR AN EVIDENTIARY HEARING.

WHY DID IT NOT IMPACT THE EXPARTE COMMUNICATION? THAT IS A LITTLE DIFFERENT TWIST TO IT THAN AFFECTING THE LAST ORDER THAT WAS REVERSED, AS YOU ARE CORRECT ABOUT. WHAT IS YOURAKE ON THAT ASPECT AND HOW DOES IT INTERRELATE WITH ALL OF THE SENTENCING AND THAT KIND OF THING, AS YOU SEE IT?

THIS CASE, IN ITS, IN THIS CASE'S PARTICULAR CONTEXT, WE HAVE TO KEEP IN MIND -- LET ME -- I AM NOT DODGING YOUR QUESTION, JUSTICE LEWIS, BUT LET ME KIND OF SET THE STAGE FOR THIS A LITTLE BIT, IF I COULD. THIS CASE OR THE 3.850 THAT WE ARE TALKING ABOUT, THE FIRST 3.850 WAS AN UNDER-WARRANT 3.850 PROCEEDING. OBVIOUSLY TIME WAS OF THE ESSENCE. WE ALL TALKED ABOUT THAT IN SUAVEORD, I BELIEVE IT WAS. -- IN SWAFFORD, I BELIEVE IT WAS. THIS COURT, LET ME BACK UP, THE CIRCUIT COURT SUMMARILY DENIED 3.850 RELIEF. MR. MILLS FILED AN APPEAL OF THE 3.850 MOTION AND A HABEAS PETITION WITH THIS COURT. THIS COURT SET ASIDE THE SUMMARY DENIAL OF 3.850 RELIEF AND REMANDED IT FOR A VERY NARROW HEARING ON THE ISSUE OF WHETHER THE UNPRESENTED MENTAL STATE MITIGATION WOULD HAVE PRECLUDED AN OVERRIDE, UNDER TETHER. ARE YOU -- UNDER TETTER. ARE YOU WITH ME SO FAR? NOW, THE TETTER ISSUE IS WHAT THROWS THE CURVE BALL INTO THIS, BECAUSE TETTER IS THIS COURT'S BALLGAME. THAT IS WHAT THIS COURT DOES. AND THIS COURT MADE THE FACT-FINDINGS, WITH RESPECT TO THE OVERRIDE ISSUE, BASED UPON THE TESTIMONY THAT WAS PRESENTED. SO YOU HAVE -- THIS IS NOT -- THIS IS NOT THE SAME AS A SENTENCING ORDER CASE. THIS IS COMPLETELY DIFFERENT FROM THAT LINE OF CASES ABOUT AN IMPROPERLY DRAFTED SENTENCING ORDER. THIS IS SOMETHING DIFFERENT ALL TOGETHER. I WOULD ALSO POINT OUT THIS IS A PRE-ROSEANNE HUFF DECISION, BUT THE -- A PRE-ROSE AND TOUGH DECISION. BUT THE BOTTOM LINE, THIS COURT GAVE MR. MILLS, YEARS AGO, THE ONLY RELIEF HE COULD GET, BASED UPON AN ERROR IN THE 3.850 ORDER, AND THAT IS AN EVIDENTIARY HEARING. HE HAS ALREADY GOTTEN AN EVIDENTIARY HEARING, AND THIS COURT HAS ALREADY AFFIRMED THE OVERRIDE, BASED UPON THE FINDING OF NO INEFFECTIVENESS OF COUNSEL, AS IT RELATES TO THE TETTER ISSUE, SO WE HAVE A VERY COMPLICATED OR NOT COMPLICATED BUT CONVOLUTED ISSUE, AND I CAN SEE BY YOUR FACE YOU AGREE WITHE.

I AM STILL JUST PUZZLED, BECAUSE YOU HAVE CHANGED THE THRUST FROM WE HAVE A PROBLEM WITH THE SUMMARY DENIAL AND THE ORDER BEING IN THE FILE, TO AN EXPARTE COMMUNICATION. WE SHOULD HAVE HAD A RECUSAL, AND IT TAKES US ALL OF THE WAY INTO THE PROCEEDING, SOMEWHERE BACK DOWN THE LINE. A NUMBER OF YEARS. THAT IS WHERE I AM JUST SEEING WHAT YOUR TAKE IS ON THAT POSITION, BECAUSE BEFORE ARTICULATING THE STATE PREPARED THE ORDER AND THAT KIND OF THING, AND I UNDERSTAND THAT IT IS DIFFERENT THAN THE SENTENCING ORDER, AND WE HAVE TALKED ABOUT THAT, BUT THE RECUSAL ASPECT, SEEING WHERE THAT LEADS, DOES THAT LEAD US ANYWHERE, I GUESS IS THE QUESTION.

WELL, THE BEST COMMENT I CAN MAKE ABOUT THE RECUSAL ISSUE IS THAT THERE WAS A MOTION TO DISQUALIFY THAT WAS FILED. AND THAT MOTION CAME, LET ME CHECK MY DATE ON THAT, THAT MOTION WAS FILED ON OCTOBER 18 OF 1990. IT WAS DENIED BY JUDGE WOODSON, AND IT WAS NOT THE SUBJECT OF APPEAL.

WHAT WAS THE BASIS OF THAT MOTION?

THAT IT WAS -- THAT, BASED UPON HIS RULINGS, ET CETERA, THAT JUDGE WOODSON WAS

PREJUDICED AGAINST MR. MILLS. IF YOU GIVE ME JUST A MOMENT, I MAY HAVE WRITTEN DOWN THE ACTUAL RECORD CITE TO IT. NO, MA'AM. I DID NOT. I DIDN'T JOT DOWN THE RECORD CITE. IT WOULD BE FROM THE -- IT IS IN THE RECORD OF THE 3.850 APPEAL AND THE ORDER DENYING IT IS A MINUTE ENTRY FROM THE CIRCUIT COURT.

WHAT YOU ARE SAYING IS, IN IF EFFECT, EVEN IF THERE WAS AN EXPARTE COMMUNICATION, WE WOULD APPLY A HARMLESS ERROR ANALYSIS TO THAT, BECAUSE THIS COURT REVIEWED THE EVIDENCE AND, IN EFFECT, DID NOT NECESSARILY RELY ON THE TRIAL COURT'S ORDER. EYE SUSPECT THAT IS FAIRLY AC --

I SUSPECT THAT IS FAIRLY ACCURATE, JUSTICE HARDING, IN A NUTSHELL. AND ASSUMING THIS COURT WISHES TO GO AHEAD AND DISPOSE OF IT AT THIS JUNCTURE, INSTEAD OF JUST DISMISSING THE CLAIM WITHOUT PREJUDICE.

SOMETHING THAT YOU SAID JUST BRINGS ME BACK TO THE FIRST ISSUE. YOU SAID THAT TETTER IS THIS COURT'S RESPONSIBILITY, WHICH MEANS THAT THIS JUDGE OVERRODE THE JURY RECOMMENDATION OF LIFE AND THEN THIS COURT HAD THE RESPONSIBILITY, UNDER TETTER, TO DETERMINE WHETHER ANY REASONABLE JUROR COULD HAVE RECOMMENDED LIFE. THAT BEING THE CASE, DOESN'T THAT REALLY CHANGE, IN TERMS OF ANY NEWLY-DISCOVERED EVIDENCE, THE THRUST OF THIS COURT'S INQUIRY THAT IT IS NOT REALLY WHAT THE SENTENCING JUDGE WOULD HAVE DONE, BECAUSE THE SENTENCING JUDGE OVERRODE THE JURY, BUT ISN'T THE QUESTION, THEN, WHAT THIS COURT WOULD HAVE DONE, GIVEN THE -- THIS NEWLY-DISCOVERED EVIDENCE, WHETHER THIS COURT HAS FOUND THERE TO BE A REASONABLE BASIS FOR THE JURY OVERRIDE OR NOT? DOESN'T THAT, SINCE TETTER IS THIS COURT'S RESPONSIBILITY?

I AM NOT SURE IT IS HITTING YOU ALL, I AM NOT SURE IT IS BRIEFED IN THAT FORM. I WOULD SUGGEST -- I AM SORRY, I AM LOSING MY VOICE. I WOULD SUGGEST THAT THE JONES STANDARD OF NO REASONABLE PROBABILITY AFTER DIFFERENT RESULT IS -- OF A DIFFERENT RESULT, IS WHAT SHOULD APPLY IN THIS CONTEXT.

BUT THE DIFFERENT RESULT BEING WHETHER THE JURY OVERRIDE WOULD HAVE BEEN SUSTAINED OR NOT.

AND IF THIS COURT WISH TOES MAKE THAT DETERMINATION, IT IS CONFRONTED WITH A STATEMENT THAT REDUCES RATHER THAN INCREASES THE CO-DEFENDANT'S CULPABILITY. AND WHICH WOULD STRENGTHEN THE OVERRIDE, RATHER THAN HE VIRBIATING THE OVERWRITE -- THAN EVICIATING THE OVERRIDE. I AM OUT OF TIME. I WOULD ASK THE COURT --

JUSTICE HARDING HAS A QUESTION.

ON THE PUBLIC RECORDS REQUEST, OPPOSING COUNSEL SEEMS TO INDICATE THAT, IF HE IS GOING TO GET ANY MEANINGFUL INFORMATION, THEN HIS REQUEST, OF NECESSITY, HAS TO BE RATHER BROAD. AND WHAT IS THE STATE'S POSITION ON THAT? WHAT IS WRONG WITH THAT POSITION? HOW CAN THE STATE, THEN, SAY, WELL, YOU DIDN'T SAY EXACTLY WHAT YOU WANTED, SO IT IS A FISHING EXPEDITION. ISN'T THAT A LITTLE UNFAIR?

I THINK WE HAVE TO LOOK AT IT IN THE CONTEXT OF THIS CASE, WHICH IS A UNDER-WARRANT PROCEEDING, GOVERNED BY 3.852-H-3, WHICH LILTS IT TO -- WHICH LIMITS THE SCOPE AND SAYS THAT THE SCOPE IS NOT GOING TO BE A FISHING EXPEDITION.

WHAT PARAMETERS OF THE LIMITATION? I GUESS THAT IS WHAT I AM ASKING.

H-3, OR UNDER-WARRANT LITIGATION, UNDER SIMS AND GLOCK AND THAT IS THE ONLY TWO CASES WE HAVE REALLY HAD DEALING WITH IT, AN UNDER-WARRANT REQUEST IS NOT SUPPOSED TO BE A SHOTGUN, SCATTER SHOT REQUEST DIRECTED TO 20 DIFFERENT AGENCIES FOR ANY AND

ALL RECORDS RELATING TO A, B, C, D, E AND F. IT HAS GOT TO BE A FOCUSED INQUIRY, BASED UPON PREVIOUSLY-PRODUCED RECORDS. YOU CAN'T SCATTER SHOT AT THIS POINT IN TIME, UNDER THE PLAIN LANGUAGE OF THE RULE AND THIS COURT'S CASES INTERPRETING THE RULE, AND I WOULD SUGGEST THAT THE REQUESTS AT ISSUE WHICH, APPARENTLY, ARE NOW THE JUROR INFORMATION, ARE REQUESTS THAT COULD AND SHOULD HAVE BEEN MADE LONG AGO, IF AT ALL, NOT WAITING UNTIL UNDER A DEATH WARRANT, TO DECIDE, OH, WE BETTER INVESTIGATE THE JURORS. THEY HAVE KNOWN WHO THE JURORS WERE SINCE 1979, AND THEY COULD HAVE CONDUCTED ANY INVESTIGATION THEY WANTED TO, INTO THE JURORS, IN A TIMELY FASHION AND NOT DONE IT UNDER A DEATH WARRANT, AND I WOULD SUGGEST THAT, AT THIS POINT IT IS INAPPROPRIATE AND IMPROPER, UNDER THE RULE AND THE CASE LAW.

IT IS THE STATE'S POSITION THAT IT IS UNTIMELY, RATHER THAN THE SCOPE OF IT. IS THAT --

IT IS BOTH. IT IS UNTIMELY AND IT IS OVERBROAD AT THIS POINT. THERE BEING NO FURTHER QUESTIONS, THE STATE ASKS THAT THE 3.850 ORDER DENYING RELIEF BE AFFIRM IN ALL RESPECTS.

-- BE AFFIRMED IN ALL RESPECTS.

THANK. MR. SHERE?

I WOULD LIKE TO ADDRESS JUSTICE PARIENTE'S QUESTION TO OPPOSING COUNSEL, THE LAST QUESTION, WHICH WAS, ISN'T PART OF THE ANALYSIS WHETHER OR NOT THIS OVERRIDE WOULD HAVE WITHSTOOD REVIEW ON DIRECT APPEAL, AND THAT IS, IN FACT, AN ISSUE THAT WAS BRIEFED, CONTRARY TO WHAT MR. NUNNELLEY INDICATES ON PAGE 27 OF MY BRIEF, IN SCOTT VERSUS DUGGAR, WHERE THIS COURT HELD THAT, IN LIGHT OF NEWLY-DISCOVERED EVIDENCE REGARDING THE CULPABILITY BETWEEN SCOTT AND HIS CO-DEFENDANT, THAT THIS COURT HELD THAT IT WOULD NOT HAVE SUSTAINED THE DEATH SENTENCE ON THE APPEAL, AND THAT --

WHAT ABOUT THE IDEA, THOUGH, THAT THIS, REALLY, ASHLEY NOT BEING THE IN THE HOUSE, REALLY -- IN THE HOUSE, REALLY REDUCES ASHLEY'S CULPABILITY.

YES. I WANT TO TALK ABOUT WHAT THE STIPULATION WAS, WAS THAT THIS IS WHAT ASHLEY WOULD TESTIFY TO AT THE EVIDENTIARY HEARING. I DID NOT STIPULATE THAT THE VERSION THAT ASHLEY GAVE ME WAS TRUE. I STIPULATED THAT THIS IS WHAT ASHLEY WOULD TESTIFY TO AT THE HEARING. MY POINT IS THAT NOTHING THAT ASHLEY HAS TO SAY ABOUT THIS CASE, AT THE POINT WHEN THIS INFORMATION WAS PLED BELOW, CAN BE BELIEVED. NOW, OF COURSE, WE HAVE ASHLEY INDICATING THAT HE DOESN'T EVEN WANT TO TESTIFY TO THIS, BECAUSE THINGS CAN GET COMPLICATED. HE MIGHT EVEN SAY HE WAS THE SHOOTER. ALL OF THAT NEEDS TO BE PUT INTO CONTEXT, WITH THE AFFIDAVIT FROM MR. ANDERSON, WHICH THE STATE DIDN'T EVEN MENTION, SO THERE IS A CLEAR INDICATION, HERE, THAT WE HAVE A POTENTIAL SHOOTER WHO IS GETTING OFF SCOT-FREE. MR. MILLS IS GOING TO BE EXECUTED NEXT WEDNESDAY. THIS IS SOMETHING THAT CLEARLY, EVEN IF IT IS A POSSIBILITY UNDER THIS COURT'S TETTER CASE LAW AND UNDER KEEN, THAT IS SOMETHING THAT A REASONABLE JURY COULD RELY ON. IN PENTECOST, THIS COURT CLEARLY INDICATED THAT, IF THE JURY COULD HAVE THOUGHT THAT THE ACCOMPLICE OR THE CO-DEFENDANT MIGHT HAVE STABBED THE VICTIM, THAT, IN AND OF ITSELF, IS A REASONABLE BASIS, AND HERE WE HAVE GOT MUCH MORE THAN THAT. WE HAVE ASHLEY'S REFUSAL TO TESTIFY, AND ASHLEY'S STATES, INDICATIONS THAT PART OF THE REASON IS THAT THINGS COULD GET REAL COMPLICATED FOR HIM, AND THAT THE STATE WOULDN'T LIKE WHAT HE HAS TO SAY. SO, AGAIN, I COMPLETELY DISAGREE, IN TERMS OF CONSIDERING THIS NEW VERSION FROM ASHLEY AS BEING THE TRUTH, AND THAT IT REDUCES, VERSUS INCREASES, ASHLEY'S CULPABILITY, VIS-A-VIS MR. MILLS, BECAUSE IT WAS CERTAINLY EVIDENCE CONSISTENT WITH ASHLEY BEING THE SOLE TRIGGERMAN IN THIS CASE. NO FINGERPRINTS WERE FOUND ON THE WINDOW INTO THE HOUSE. NO FINGERPRINTS WERE FOUND IN THE HOUSE. NO

FINGERPRINTS WERE FOUND ON THE GUN THAT WAS LATER FOUND. MRS. WRIGHT IDENTIFIED ONLY ONE PERSON RUNNING AWAY FROM THE HOUSE. THAT PERSON MATCHED ASHLEY'S DESCRIPTION. MRS. WRIGHT ONLY SAW ONE BICYCLE PARKED AGAINST THE TREE, CERTAINLY CONSISTENT WITH MR. ASHLEY BEING THERE BY HIMSELF, AND MR. ASHLEY HAD A .0 ANTIMONEY ON HIS HANDS, WHICH EVEN THE INVESTIGATOR TESTIFIED WAS UNUSUAL, BECAUSE THE BARIUM THAT COMES FROM THE TEST THAT THEY GIVE YOU FOR GUNSHOT RESIDUE TESTS IS SOMETHING THAT IS NATURALLY OCCURRING, AND SO CERTAINLY THE ARGUMENT COULD BE MADE THAT NO FINGERPRINTS WERE FOUND. ZERO ANIMONEY WAS FOUND AND ZERO FINGERPRINTS WERE FOUND, BECAUSE ASHLEY WAS ALONE WHEN HE DID IT, AND THAT IS THE ONLY PLAUSIBLE INDICATION IS THAT MR. ASHLEY WAS ALONE IN THAT HOUSE, ALONG WITH VINCENT AND DAVIS. TWO PEOPLE WITH VERY LARGE REASONS TO CURRIE FAVOR WITH THE POLICE, OUT OF THEIR OWN SELF-INTEREST. THAT WAS THE ONLY EVIDENCE. AND, AGAIN, EVEN THIS NEW VERSION THAT ASHLEY SAYS, 9 ON THIS DIFFERENCE IS -- THE ONLY DIFFERENCE ISN'T THAT ASHLEY DIDN'T GO INTO THE HOUSE, WHICH IS A BIG DIFFERENCE, BUT, AGAIN, HE CLEARLY INDICATED, AS THE 3.850 SAID, THAT WHAT HE TESTIFIED TO AT TRIAL AS TO WHAT HE SAW WAS A LIE, AND THAT IS WHAT I SUBMIT GOES TO THE TESTIMONY OF ASHLEY, AFTER HAVING ACTUALLY SEEN MR. WRIGHT MOANING AND GROANING AND CRYING IN PAIN. OBVIOUSLY THAT WAS SOMETHING THAT THE JURY TOOK INTO CONSIDERATION, AS TO THE JUDGE -- AS DID THE JUDGE, IN FOUNDING HAC, SO I WOULD SUBMIT THAT THIS CASE SHOULD BE EITHER REVERSED FOR RESENTENCING OR REMANDED FOR EVIDENTIARY HEARING OR THAT RELIEF BE GRANTED.

THANK YOU, COUNSEL. THE COURT APPRECIATES YOUR ASSISTANCE, IN RESOLUTION OF THIS CASE.