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Robert Consalvo v. State of Florida

THE COURT WILL CALL THE LAST CASE ON THIS MORNING'S CALENDAR WHICH IS CONSALVO VERSUS STATE OF FLORIDA.

GOOD MORNING, MAY IT PLEASE THE COURT MY NAME IS IRA STILL, CORAL SPRINGS, FLORIDA, REPRESENTING ROBERT CONSALVO.

CHIEF JUSTICE: I HAVE THAT YOU HAVE -- YOU ARE NOT SAVING ANY TIME FOR REBUTTAL?

NO, I'M JUST GOING TO USE MY 20 MINUTES.

CHIEF JUSTICE: OKAY.

THIS CASE, THE MAJOR ISSUES IN THIS CASE THAT I WOULD LIKE TO ADDRESS TODAY HAVE TO DO WITH JAIL NICHE RECONTATION EVIDENCE AS WELL AS THE LAST CASE.

CHIEF JUSTICE: YOU SEE, THIS IS NOT A GREAT CASE TO COME AFTER THE LAST CASE BECAUSE THIS CASE HAS EVERY EARMARK OF BEING INCREDIBLE TESTIMONY SO I THINK YOU'VE GOT NOT ONLY A JAILHOUSE SNITCH BUT YOU'VE GOT SOMEBODY THAT IN ORDER TO BELIEVE WHAT HE SAYS YOU'VE GOT TO BELIEVE THAT THE ASSISTANT STATE ATTORNEY AND SEVERAL OTHERS ASSOCIATED WITH THE STATE ATTORNEY'S OFFICE ARE LYING, CORRECT?

THAT'S CORRECT.

CHIEF JUSTICE: SO THAT'S A REALLY HIGH BURDEN.

IT APPEARS AT FIRST BLUSH TO BE A DIFFICULT CASE. THE TRIAL JUDGE FOUND THAT THE WITNESSES WERE UNRELIABLE, LISTED ALL OF THIS REASONS. THEY HAD LIFELONG MENTAL HEALTH PROBLEMS, THEY WERE LIARS, THEY'VE GOT ALL SORTS OF FELONY CONVICTIONS IN AND OUT OF PRISON FOR THEIR LIFE BUT THAT RAISES THE QUESTION IF THEY ARE UNRELIABLE NOW AT THE POST-CONVICTION HEARING, WHY WAS PALMER RELIABLE BACK AT THE TRIAL? AND IN PONDERING THAT --

ISN'T THAT THE CASE FOR EVERY RECONTATION CASE THAT WE HAVE? THEY TESTIFIED ONE WAY DURING THE TRIAL AND NOW THEY ARE RECONTING IT AND THE JUDGE SAYS, WELL, I FIND THAT UNRELIABLE AND YOU CAN ASK THE SAME QUESTION THEN WHY WERE THEY RELIABLE AT TRIAL? THAT'S THE WHOLE ISSUE REGARDING ANY RECONTATION CASE.

YES, THAT'S TRUE, AND I THINK THAT THE WAY THAT I HAVE BEEN READING THE COURT'S OPINIONS ON THIS AND STRUGGLING WITH THIS THAT THE COURT HAS BEEN NARROWING AND NARROWING DOWN THE TEST, AND I THINK THAT SOME MORE NEEDS TO BE DONE WITH THAT, AND I WOULD ASK THE COURT TO LOOK AT THIS BECAUSE TRIAL JUDGES AND LITIGATION ATTORNEYS DOWN IN THE TRENCHES NEED SOMETHING A LITTLE BIT MORE DEFINITIVE ABOUT HOW TO HANDLE THESE CASES.

ISN'T IT PRETTY DEFINITIVE TO HAVE A STANDARD OF REVIEW WHERE WE DEFER TO THE TRIAL JUDGE'S DETERMINATIONS OF CREDIBILITY AND IF WE RULED IN YOUR FAVOR ACTUALLY WE WOULD BE DOING IS HAVING LESS STABILITY IN THE LAW AND NOT MORE STABILITY BECAUSE

NOW WE ARE GOING TO REWRITE A JUDGE'S DETERMINATION OF CREDIBILITY?

IT APPEARS THAT WAY BUT I DON'T THINK IT IS ENTIRELY THAT WAY, JUSTICE CANTERO. THE TRIAL JUDGE IN THIS CASE AND IN THE SEVERAL OTHER CASES THAT THE COURT HAS HANDLED HAVE DONE THE SAME THING. THEY'VE LOOKED AT THE RECANTATION WITNESS AND SAID WE FIND HIM TOTALLY UNRELIABLE, AND THEN THEY EXCISE THAT TESTIMONY OUT OF THE POST-CONVICTION HEARING AND THEN THEY LOOK AT THE RECORD AND THEY SAY, WELL, THE DEFENDANT HAS GOT NO EVIDENCE TO SHOW THAT HE SHOULD HAVE A NEW TRIAL. SO THERE IS SOMETHING I THINK THAT MAY BE LACKING THERE. I THINK THAT THE TRIAL JUDGE SHOULD NOT ONLY LOOK AT THE CREDIBILITY OF THE WITNESS, BUT SHOULD ALSO LOOK AT THE CREDIBILITY OF THE SUBSTANCE, THE RELIABILITY OF THE SUBSTANCE OF THE TESTIMONY AND MEASURE IT AGAINST THE RECORD.

CHIEF JUSTICE: THAT WOULD BE FINE IN SOME OTHER, AGAIN, IF WE WERE MAYBE TALKING ABOUT ARCHER AND WHETHER AND I THINK THE JUDGE DID THAT IN ARCHER, BUT IN THIS CASE I JUST -- THE JUDGE IS MAKING A DECISION THAT IN ORDER TO BELIEVE THE RECANTED TESTIMONY HE HAS TO BELIEVE THAT THE ASSISTANT STATE ATTORNEY IS LYING UNDER OATH IN HIS TESTIMONY IN THIS CASE, CORRECT?

YES. JUSTICES, THERE ARE ACTUALLY TWO WITNESSES HERE. ONE IS PALMER WHO TESTIFIED AT THE TRIAL AND THE OTHER IS DaCOSTA WHO DIDN'T TESTIFY AT THE TRIAL, BUT WHAT HAD COME TO LIGHT WAS THAT DaCOSTA HAD SPOKEN TO THE STATE ATTORNEY, HAD GOTTEN INFORMATION AND THEN HE WENT BACK AND TRAINED OR GAVE THE INFORMATION TO PALMER WHO THEN CAME FORWARD AND TESTIFIED. NOW, THERE IS SOMETHING IN THE RECORD THAT I THINK IS KEY TO THIS, BECAUSE WHEN DaCOSTA CAME FORWARD AND SAID THAT THIS IS WHAT HAPPENED, THAT ATTORNEY -- STATE'S ATTORNEY CAVANAUGH CALLED HIM DOWN AND GAVE HIM THIS INFORMATION, BETWEEN THE TIME THAT THE INVESTIGATOR FOR THE DEFENSE SAW HIM INITIALLY, TWO MONTHS LATER WHEN THE AFFIDAVIT WAS SIGNED, WHICH TIME PERIOD WAS BEING TAKEN TO RESEARCH THE VERACITY OF WHAT HE WAS SAYING, IN THAT PERIOD OF TIME DaCOSTA WROTE A LETTER TO THE GOVERNOR AND THAT'S PART OF THE RECORD AS WELL. AND HE SAID THE SAME THING. NOW, THERE IS SOMETHING THAT WAS IN THE TRIAL THAT I THINK IS KEY. IF YOU LOOK AT DaCOSTA'S STATEMENT TO THE POLICE ON OCTOBER 10TH OF 1991, JUST A COUPLE OF DAYS AFTER CONSALVO WAS BROUGHT INTO HIS CELL, HE SAYS IN HIS POLICE STATEMENT THAT HE TALKED TO CONSALVO AND CONSALVO TOLD HIM THESE THINGS AND HE SAYS, HE TOLD HIM THAT HE GOT INTO THE APARTMENT BY THE USE OF A SET OF KEYS THAT HE HAD STOLEN FROM LORRAINE PEZZA ABOUT A WEEK OR TEN DAYS PRIOR, AND THAT KIND OF GLOSS OVER THAT AND IT DOESN'T SEEM SO MATERIAL UNTIL I REALIZED THAT THE INVESTIGATION WASN'T COMPLETE YET. THE STATE ATTORNEY'S OFFICE AND THE DETECTIVES BELIEVED THAT THAT'S HOW HE HAD GOTTEN INTO THE APARTMENT AT THAT TIME, BUT SHORTLY AFTER THAT, THEY FOUND OUT THERE WAS A LOCKSMITH WHO HAD COME OUT TO HER APARTMENT AND CHANGED THE LOCKS AND THE KEYS. SO THAT THE KEYS THAT SUPPOSEDLY CONSALVO HAD TAKEN WHEN THEY WERE OUT ON A DATE COULDN'T HAVE BEEN USED TO GET HIM INTO THAT APARTMENT. BUT THAT WAS NOW ON THE RECORD AND IT INDICATES OR IMPLIES THAT HE HAD GOTTEN THAT FROM SOMEPLACE OTHER THAN CONSALVO, BECAUSE IF, IN FACT, CONSALVO HAD TOLD HIM HE GOT INTO THE APARTMENT IT WOULDN'T HAVE BEEN BY THE KEYS. THE LOCKSMITH HAD CHANGED THE LOCKS. SO THAT'S CURIOUS TO ME. ALSO, JUDGE ZEIDWIG SAID THAT THE DEFENSE WITNESSES WERE TOTALLY UNRELIABLE AND GAVE A WHOLE LIST OF REASONS WHY AND THEN SAID THAT THE STATE ATTORNEY WAS UNIMPEACHABLE, BUT I THINK HE HAS ABUSED HIS DISCRETION IN FINDING THAT THE STATE ATTORNEY WAS UNIMPEACHABLE BY HIS TESTIMONY IN THIS HEARING. BRINE CAVANAUGH WAS DIRECTLY AND ACTIVELY INVOLVED IN PROCURING THE DOWNWARD DEPARTURE SENTENCING FOR BOTH PALMER AND DaCOSTA BUT CAVANAUGH TESTIFIED AT THE HEARING THAT HE WAS JUST A PINCH HITTER FOR ONE HEARING AT THE GRAND JURY. THAT'S ALL HE DID. HOWEVER, HE SIGNED THE SUBPOENAS THE DAY BEFORE. SO WE KNOW THAT HE DID MORE THAN JUST PINCH HIT FOR JEFFREY MARCUS

WHO WAS TIED UP IN ANOTHER TRIAL. THE SUBPOENAS HAVE JEFF MARCUS' NAME TYPED ON THERE, BUT BRIAN CAVANAUGH SIGNED THE SUBPOENAS. THE RECORD SHOWS BOTH THE INFORMATION ON PALMER'S SENTENCING WHERE IT IS THE TWO DETECTIVES, DETECTIVE ILARRAZA FROM THE CONSALVO CASE HAD NOTHING TO DO WITH IT, BUT THEY GO IN TO PROCURE THE ROR AND THEN TEN DAYS LATER A DOWNWARD DEPARTURE FROM AN AGGRAVATED BATTERY ON A LAW ENFORCEMENT OFFICER DOWN TO A BATTERY.

ASSUMING THAT THE TWO JAILHOUSE SNITCHES WERE CREDIBLE, ASSUMING WE ACCEPT THEIR TESTIMONY THAT THEY DIDN'T GET THIS INFORMATION FROM MR.^CONSALVO, WHERE DOES THAT LEAVE YOU IN TERMS OF THIS CASE? IT SEEMS TO ME THAT THIS IS A VERY, THE EVIDENCE AGAINST MR.^CONSALVO HERE INCLUDES, YOU KNOW, STATEMENTS THAT HE MADE TO HIS MOTHER, A STATEMENT HE MADE TO THE POLICE, DNA EVIDENCE, YOU KNOW, SO WHERE DOES THAT LEAVE YOUR CASE IN TERMS OF THE OVERWHELMING OR WHAT APPEARS TO BE SORT OF OVERWHELMING EVIDENCE AGAINST MR.^CONSALVO?

YES. AND I WOULD GO ON TO SAY I THINK THAT THE FIRST PRONG OF THE TEST SHOULD BE ASSUMING ARGUENDO THE RECANTATION IS TRUE WOULD THAT CHANGE THE RESULT OF THE TRIAL? AND I'M GOING TO ANSWER YOUR QUESTION BUT LET ME FIRST SAY HOW IT WOULD CHANGE THE TRIAL AS FAR AS PALMER'S TESTIMONY ON FOUR POINTS. ONE, THERE WAS NO OTHER EVIDENCE THAT PUT CONSALVO INTO THE VICTIM'S APARTMENT AT THE TIME OF THE MURDER. THERE WAS NO OTHER EVIDENCE THAT SHOWED THAT HE WAS COMMITTING A BURGLARY OR AN ARMED BURGLARY. THERE WAS NO OTHER EVIDENCE THAT HE KILLED HER TO AVOID ARREST. THAT ALL CAME FROM PALMER'S TESTIMONY.

WHAT ABOUT THE CHECKBOOK? HOW WOULD HE EXPLAIN THE CHECKBOOK IF THE ROBBERY WASN'T A MOTIVATION?

ALL OF THESE ITEMS AND THE ONES THAT JUSTICE QUINCE HAD TALKED ABOUT THERE IS NO QUESTION THAT THERE IS PROBABLE CAUSE. THERE IS NO QUESTION THAT THE STATE WOULD GET TO THE JURY BASED ON THOSE PIECES OF EVIDENCE. BUT THE FOCUS IS THAT IF THIS IS TRUE ABOUT THE RECANTATION THEN THIS SO UNDERMINES THE JUSTICE SYSTEM THAT A NEW TRIAL SHOULD BE HELD AND WE ARE NOT SAYING THAT HE WOULD BE FOUND NOT GUILTY, WE ARE SIMPLY SAYING HE SHOULD HAVE A NEW TRIAL AND LET THE CHIPS FALL WHERE THEY ARE. IF HE IS FOUND GUILTY WITHOUT THE --

WELL, WHAT IS THE PREJUDICE PRONG FOR THE RECANTED TESTIMONY? DOESN'T IT HAVE TO -- SO THAT THERE WOULD POSSIBLY BE A NEW RESULT AT TRIAL SO AT TRIAL WHAT YOU WOULD HAVE IS NO MR.^PALMER, WELL, THE OTHER GUY NEVER TESTIFIED ANYWAY. SO YOU HAVE NO MR.^PALMER AND ALL OF THE OTHER EVIDENCE THAT WE HAVE JUST TALKED ABOUT?

YES.

PALMER'S TESTIMONY WAS SO CRUCIAL AND SO CRITICAL IT WAS USED BY THE STATE ATTORNEY IN HIS OPENING. IT WAS USED BY THE STATE ATTORNEY IN HIS CLOSING, SO WE HAVE THREE TIMES THIS COMES BEFORE THE JURY. BESIDES PALMER'S TESTIMONY THERE IS NOTHING IN THE CASE THAT GIVES US THE SCENARIO OF THE LAST FEW MINUTES OF THIS VICTIM'S DEATH.

WHAT ABOUT THE BLOODY TOWEL THAT WAS FOUND IN MR.^CONSALVO'S ROOM?

THAT WAS FOUND WITH A SEARCH WARRANT THE NEXT DAY, AND THE --

WITH THE VICTIM'S BLOOD ON IT?

THE TESTIMONY IN THE RECORD WAS THAT THE MOTHER FOUND IT AND SHE MOVED IT INTO THE DRESSER SO THERE IS SOME QUESTION ON THAT. IT WAS THE VICTIM'S BLOOD. THERE WAS ALSO

AN IDENTICAL TOWEL THAT WAS FOUND WITH BLOOD ON IT IN THE VICTIM'S APARTMENT THAT WAS SHOVED DOWN INTO A LAUNDRY BASKET, BUT EVEN THOUGH THERE IS A TOWEL WITH BLOOD FOUND IN CONSALVO'S ROOM, YOU CAN'T CONCLUDE THAT THAT PUTS HIM IN THE APARTMENT AT THE TIME.

WHAT ABOUT HIS STATEMENT TO THE POLICE THAT SOMETHING TO THE EFFECT OF I DIDN'T DO THAT STABBING OR YOU CAN'T PIN THAT STABBING ON ME OR SOME STATEMENT TO THAT EFFECT.

YES, THE MEDICAL EXAMINER COULDN'T TIME OUT THE DEATH BUT THERE WAS SOME QUESTION IN THE RECORD WHETHER IT WAS SEPTEMBER 27TH OR SOMETIME BETWEEN SEPTEMBER 27TH AND OCTOBER 3RD. SO THERE IS QUITE A WINDOW THERE. THAT STATEMENT IS NOT A CONFESSION BUT IS CIRCUMSTANTIAL EVIDENCE COULD ALSO BE INTERPRETED TO MEAN THAT SOMEONE HAD BEEN IN THERE AND FOUND THE BODY AND THAT THERE WAS A STABBING. SO THAT, LIKE I SAID, I JUST DON'T KNOW ABOUT THESE THINGS. I'M NOT GOING TO SAY THAT HE COULDN'T BE FOUND GUILTY WITH THAT. MY POINT IS THAT THE INFORMATION ON THE RECANTING JAILHOUSE SNITCH WITNESSES IS SO HUGE THAT WITHOUT THAT IT REALLY UNDERMINES THE CONFIDENCE IN THE JUDICIAL SYSTEM AND THE TRIAL PROCESS.

BUT THE RECANTED TESTIMONY REALLY GOES MORE TO THE AGGRAVATING CIRCUMSTANCES IN THIS CASE AS OPPOSED TO THE ACTUAL FINDING OF GUILT? SO YOU REALLY ARE TALKING ABOUT WOULD UNDERMINE A CONFIDENCE IN THE PENALTY PHASE?

WELL, THAT'S TRUE. IN THIS COURT'S OPINION, THE AVOID ARREST AGGRAVATOR RESTED ON PALMER'S STATEMENT THAT CONSALVO HAD GONE IN THERE AND WAS SURPRISED BY THE WOMAN AND THE VICTIM AND THE VICTIM STARTED SCREAMING AND HE TRIED TO CALM HER DOWN AND SHE GRABBED THE PHONE AND HE STABBED HER TO AVOID -- TO KEEP HER FROM CALLING. SO ALL OF THAT IF THAT WAS EXCISED OUT OF THE TRIAL, THAT WAS TAKEN OUT OF THE TRIAL THERE WOULD BE -- THERE WOULD CERTAINLY BE NOTHING ON THE AVOID ARREST AGGRAVATOR. IF I MAY, I JUST WANTED TO GO BACK TO A FEW THINGS I HADN'T COMPLETED MY POINT ON CAVANAUGH BEING RELIABLE WITNESS IF I MAY. OKAY? IN THE TESTIMONY BY BRIAN CAVANAUGH, HE ANSWERED THE QUESTION THAT IT WOULD BE -- HE COULDN'T MOVE PRISONERS OUT OF CELLS AND INTO OTHER CELLS AND ON A COURT ORDER. IF YOU GO ON TO TESTIMONY IT GOES UP TO THEM AS WELL AFTER THE GRAND JURY TESTIMONY ISN'T THE FACT THAT YOU MOVED. YOU WERE ABLE TO MOVE DaCOSTA AND PALMER OUT OF CONSALVO'S CELL AND HIS ANSWER WAS THAT WE CAN DO. THAT I CAN DO AND I DO HAVE THAT POWER. I WOULD SAY THAT IS AN INCONSISTENT STATEMENT AND WOULD CERTAINLY --

SO YOU ARE TELLING US WE SHOULD REVERSE THE COURT'S DETERMINATION OF DaCOSTA'S CREDIBILITY AND OF CAVANAUGH'S CREDIBILITY BECAUSE THEY ARE LIKE OPPOSITE SIDES OF THE SAME COIN. COULD YOU POINT TO ANY CASE IN FLORIDA EITHER FROM OUR COURT OR FROM ANY OTHER COURT THAT HAS REVERSED A TRIAL COURT'S DETERMINATION OF CREDIBILITY?

NO, I CAN'T. BUT ALMOST ALL OF THOSE CASES WILL, IT APPEARS IN TERMS OF ANALYSIS AS A MATTER OF CHECK, A CHECK AT THE END, THE COURT WILL SAY, WELL, EVEN IF WE ASSUME ARGUENDO THAT THE RECANTS ARE TRUE, THERE IS OTHER EVIDENCE IN THE RECORD OR THERE IS --

THERE IS ALSO PLENTY OF CASES THAT SAY, WE HAVE TO DEFER TO THE JUDGE'S CREDIBILITY DETERMINATIONS, CORRECT?

THAT'S TRUE. UNLESS THERE IS AN ABUSE OF DISCRETION. OTHERWISE I THINK --

BUT CAN YOU CITE ANY CASE WHERE WE HAVE FOUND AN ABUSE OF DISCRETION IN THE JUDGE'S CREDIBILITY FINDINGS?

NO. ALTHOUGH SPAZIANO GOT A NEW TRIAL BUT THAT WAS THE JUDGE FOUND IT CREDIBLE AND GRANTED A NEW TRIAL.

HAVE YOU CITED ANY CASE IN ANY OTHER PART OF THE COUNTRY WHERE APPELLATE COURT HAS SAID THAT THE TRIAL COURT ABUSED HIS DISCRETION IN ITS CREDIBILITY FINDINGS?

NO, BUT I'M NOT SAYING THAT'S ENTIRELY WHAT THIS COURT NEEDS TO DO. I THINK THAT THE TRIAL COURT'S DISCRETION PLAYS INTO IT BUT THE TRIAL COURT ALSO NEEDS TO LOOK AT INDEPENDENT CORROBORATING EVIDENCE IN THE RECORD TO SUPPORT THE STANCE OF THE TESTIMONY, AND THAT'S WHAT I HAD SUGGESTED IN MY REPLY BRIEF THAT MAY BE HELPFUL TO NARROW THAT TEST DOWN, BECAUSE WHEN YOU TAKE JAIL SNITCH WITNESSES THAT ARE RECANTING, THEY ARE UNRELIABLE FROM THE START. THE PERSON IS COMING FORWARD AND SAYING I'M A LIAR. I LIED, AND I WANT TO TELL YOU ABOUT THIS. SO THAT IS A DIFFICULT AREA OF WITNESSES, AND I THINK IF WE JUST NARROW OUR FOCUS ON TRADITIONAL EVIDENTIARY RELIABILITY FACTORS THEN --

WELL, IN A JAILHOUSE SNITCH RECANTATION DO YOU KNOW WHAT IS THE -- IN THE ORIGINAL TRIAL IS THE JURY INSTRUCTED IN TAKING INTO ACCOUNT THE CREDIBILITY OF THAT JAILHOUSE SNITCH AS A WITNESS, THAT THEY ARE TO TAKE INTO ACCOUNT ALL OF THE CIRCUMSTANCES OF THAT TESTIMONY, THE BACKGROUND, WHETHER THE PERSON HAS BEEN CONVICTED, WHAT THE CIRCUMSTANCES WERE?

YES, CREDIBILITY INSTRUCTION WAS GIVEN. I THINK WHAT I AM SAYING, JUSTICE, IS THAT THE TRIAL PROCEEDS, YOU'VE GOT EVIDENCE, YOU'VE GOT ARGUMENTS, YOU'VE GOT THINGS GOING ON AND ALL OF THE SUDDEN A WITNESS COMES IN AND PAINTS A PICTURE OF THE LAST DYING, GASPING MOMENTS OF THE VICTIM. ONCE THAT GETS IN THE JURY'S MIND, IT IS IN THERE. NOW THEY CAN WALK AWAY AND SAY I KNOW HOW LORRAINE PEZZA DIED. I KNOW WHAT SHE WAS GOING THROUGH THE LAST FEW MINUTES AND IF IT TURNS OUT THAT THAT WAS A LIE AND IT WASN'T TRUE, THEN THAT'S DEVASTATING. I ALSO WANTED TO TALK ABOUT THE PROSECUTOR CAVANAUGH, THERE WAS A MEMORANDUM THAT WAS FILED IN PALMER'S CASE BY HIS PROSECUTOR, AND THE MEMORANDUM SAID THAT BRIAN CAVANAUGH MET WITH DaCOSTA AND PALMER AND ANOTHER INMATE AT THE BROWARD COUNTY JAIL AND THERE WAS SOME QUESTION GOING BACK AND FORTH AS TO THE PERTINENCE OF THE ACT AT THE BROWARD COUNTY JAIL AND WHETHER HE MEANT THERE WAS AN INMATE AT THE JAIL OR HE MET AT THE JAIL AND DaCOSTA TESTIFIED THAT HE MET WITH HIM OVER IN HIS OFFICE BUT THE IMPORTANT POINT THERE WAS HERE AGAIN CAVANAUGH WAS MEETING WITH THESE WITNESSES; WHEREAS ON HIS TESTIMONY HE SAID ALL HE DID WAS PINCH HIT AT THE GRAND JURY.

CHIEF JUSTICE: YOUR TIME HAS EXPIRED.

THANK YOU.

CHIEF JUSTICE: MISS CAMPBELL?

MAY IT PLEASE THE COURT, LESLIE CAMPBELL WITH THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE. THE TRIAL COURT LOOKED AT THE LAW, QUOTED THE CORRECT LAW, AND LOOKED AT THE FACTS AND THE TESTIMONY OF THIS CASE NOT ONLY THE TRIAL BUT ALSO THE EVIDENTIARY HEARING AND MADE FINDINGS OF FACT THAT ARE SUPPORTED BY THE RECORD.

CHIEF JUSTICE: WAS HE THE TRIAL JUDGE?

YES, HE WAS, YOUR HONOR.

CHIEF JUSTICE: IS THAT SOMETHING THAT THE FACT THAT SOMEONE IS A TRIAL JUDGE AS WELL AS THE POST-CONVICTION JUDGE, IS THAT SOMETHING WE NEED TO CONSIDER?

IN THIS PARTICULAR CASE IT CERTAINLY IS HELPFUL.

CHIEF JUSTICE: GIVE ME THIS -- WHAT WAS, IN FACT, FOR BOTH DaCOSTA AND PALMER, WHAT WAS THE DEAL THAT THEY GOT? DID THEY GET A DEAL AFTER THEIR TESTIMONY? WAS THERE ANY AGREEMENT FOR A DOWNWARD DEPARTURE SENTENCE?

LET ME JUST CLEAR THE RECORD ON ONE POINT THAT MR.^STILL HAD MADE, AND THEN I WILL DEFINITELY ANSWER THAT QUESTION. MR.^FARNSWORTH IS MR.^-- WAS MR.^PALMER'S PROSECUTOR, AND THE MEMORANDUM THAT HE WROTE WAS THAT ASSISTANCE BRIAN CAVANAUGH SPOKE TO THE DEFENDANT PALMER AND ALSO ANOTHER INMATE AT THE BROWARD COUNTY JAIL. IT WASN'T A MEETING. IT WAS THAT MR.^CAVANAUGH SPOKE TO THOSE -- TO AT LEAST MR.^PALMER AND ANOTHER INMATE.

CHIEF JUSTICE: DID THAT CONTRADICT, THOUGH, WHAT CAVANAUGH TESTIFIED TO?

THAT DID NOT CONTRADICT WHAT MR.^CAVANAUGH TESTIFIED TO.

CHIEF JUSTICE: I THOUGHT HE SAID HE HADN'T MET THEM UNTIL THEY WERE THERE FOR THE GRAND JURY TESTIMONY.

THAT DOESN'T CONTRADICT. HE SPOKE TO THEM AT THE GRAND JURY BEFORE THE GRAND JURY. IT IS STILL SPEAKING TO THEM SO THERE IS NO CONTRADICTION OF MR.^CAVANAUGH. THERE IS A CONTRADICTION OF MR.^DaCOSTA. AND I'M SORRY, LET ME GO BACK TO YOUR QUESTION. WHICH WAS?

CHIEF JUSTICE: THEY WERE PROMISED --

NO, THEY WERE NOT PROMISED ANYTHING, NEITHER OF THEM WERE.

CHIEF JUSTICE: NO EXPECTATION THAT THEY WOULD GET A BETTER SENTENCE IF THEY HELPED OUT?

NO, RIGHT.

THE EVIDENCE OF THE ORDER IN THIS CASE SAYS THAT THE STATE REQUESTED 20 TO 30 YEARS FOR DaCOSTA AND THE DEFENSE COUNSEL REQUESTED 12 TO 17 AND THE TRIAL JUDGE GAVE HIM 17.

THAT IS CORRECT. HOWEVER, THE STATE ALSO ASKED FOR A HABITUAL SENTENCE AND RECEIVED THAT ON MR.^DaCOSTA. MR.^DaCOSTA WENT TO TRIAL SO IF THERE WERE A DEAL IN PLACE I'M SURE MR.^DaCOSTA WOULD NOT HAVE GONE TO TRIAL.

CHIEF JUSTICE: SO MR.^STILL'S STATEMENT THAT CAVANAUGH ACTIVELY ADVOCATED FOR A DOWNWARD DEPARTURE FOR DaCOSTA IS NOT IN THE RECORD?

HE WAS NOT AT THE SENTENCING HEARING. MR.^MARCUS CAME IN, AND MENTIONED THAT MR.^DaCOSTA HAD TESTIFIED AT THE GRAND JURY, THAT THERE HAD BEEN A DECISION BASED ON HIS CREDIBILITY BEFORE MR.^DaCOSTA'S CREDIBILITY BEFORE THE GRAND JURY THAT MR.^DaCOSTA WAS NOT GOING TO BE USED AS TRIAL. HOWEVER, BECAUSE MR.^DaCOSTA HAD TESTIFIED FOR THE STATE THAT WAS TAKEN INTO ACCOUNT BY THE TRIAL JUDGE IN GIVING THE 17-YEAR HABITUAL SENTENCE BUT ALSO THE TRIAL COURT RELIED ON THE FACT THAT MR.^DaCOSTA'S FATHER AND ANOTHER FRIEND CAME IN AND SPOKE IN MR.^DaCOSTA'S --

DID YOU SAY DaCOSTA DIDN'T TESTIFY AT CONSALVO'S TRIAL?

MR.^DaCOSTA DID NOT TESTIFY AT THE TRIAL. HE MERELY TESTIFIED AT THE GRAND JURY.
PALMER TESTIFIED?

MR.^PALMER TESTIFIED AT THE TRIAL AND AT THE GRAND JURY.

CHIEF JUSTICE: HOW ABOUT MR.^PALMER'S DEAL? DID HE GET ANY DEALS?

NO, MR.^PALMER DIDN'T GET A DEAL NECESSARILY BECAUSE OF THIS CASE. MR.^FARNSWORTH TESTIFIED THAT THE EVIDENCE AGAINST MR.^PALMER WAS WITH REGARD TO THE POSSESSION OF COCAINE WOULD NOT HAVE BEEN THERE BECAUSE OF A MOTION TO SUPPRESS. HE FELT HE WAS GOING TO LOSE THAT SUPPRESSION MOTION SO THEY DROPPED THAT CHARGE. IT HAD NOTHING TO DO WITH MR.^PALMER TESTIFYING. ALSO, THE CASE WAS RATHER WEAK WITH REGARD TO THE BATTERY ON A LAW ENFORCEMENT OFFICER AS HIS ASSESSMENT WAS. BUT HE ALSO TOOK INTO ACCOUNT THE FACT THAT MR.^PALMER DID TESTIFY AT THE -- THAT THE AT THE GRAND JURY.

CHIEF JUSTICE: DID THAT COME OUT AT THE TRIAL?

YES, IT DID.

CHIEF JUSTICE: IT MAKES A LOT OF SENSE. OBVIOUSLY THE STATE IS GOING TO BE PLEASED IF A WITNESS TESTIFIES HOPEFULLY, I MEAN AND THIS IDEA I GUESS THIS IS WHERE I AM THINKING IS THEN WHEN THE DEAL IS FINISHED AND NOW THERE IS NOTHING ELSE BUT THEY ARE IN PRISON AND THEY'VE GOT NOTHING TO LOSE THEY SAY, WELL, WHAT I SAID WASN'T TRUE AND THAT'S WHY I THINK THE JAILHOUSE SNITCH PROBABLY, YOU KNOW, IS EITHER WAY THEY ARE PROBABLY UNRELIABLE.

IT DEPENDS ON THE FACTS OF EACH CASE, YOUR HONOR.

COULD YOU COMMENT ON TWO THINGS THAT YOUR OPPONENT MADE A POINT OF? ONE WAS ABOUT THE INFORMATION, THE KEYS, AND USING THE KEYS AS ACCESS. DOES THAT SEEM TO SUGGEST THAT THAT'S THE WAY THE STATE WAS HEADED IN THEIR INVESTIGATION ORIGINALLY, BUT THAT IT TURNED OUT THAT THAT WASN'T THE CASE AND THAT THAT'S ONE FACTOR THAT WE SHOULD EVALUATE HERE. THE OTHER THING IS HE ARGUED EXTENSIVELY THAT THERE WERE A NUMBER OF FACTS THAT UNDERMINED THE CREDIBILITY OF CAVANAUGH, SO THOSE ARE TWO THINGS THAT HE RAISED THAT I FELT NEEDED SOME RESPONSE, SO WOULD YOU RESPOND TO THOSE TWO?

YES, YOUR HONOR. WITH REGARD TO THE KEYS, WE'RE ASSUMING OR MR.^CONSALVO IS ASSUMING THAT THAT WAS, AND I HATE TO SAY THIS, THE KEY TO THE CASE, BUT THE POLICE SAW PLY MARKS ON THE FRONT DOOR AND THAT THE BACK SCREEN WAS CUT. SO HOW MR.^CONSALVO GOT INTO THE APARTMENT WAS PROBABLY NOT LEANING TOWARDS THE USE OF KEYS. IT WAS LEANING TOWARDS AN ACTUAL BREAK-IN. AND WE ARE GIVING I THINK A LITTLE TOO MUCH CREDENCE TO MR.^DaCOSTA'S TESTIMONY THAT IT WAS KEYS. MR.^DaCOSTA SAID THAT HE LEARNED THE INFORMATION FROM NOT ONLY MR.^CONSALVO BUT ALSO IN HEARING TELEVISION REPORTS. SO WE DON'T KNOW HOW MR.^DaCOSTA CAME UP WITH THE FACT THAT KEYS WERE USED. FURTHER, MR.^DaCOSTA HAS -- CONTINUES TO SAY THAT HE HAS LEARNED THINGS AND FROM THE TELEVISION, AND ALSO THAT HE WOULD BE WILLING TO LIE. SO MR.^DaCOSTA AT THE TIME OF HIS TESTIMONY, WAS LOOKING TO GET OUT OF JAIL QUICKLY OR TO HAVE HIS CASE TAKEN CARE OF QUICKLY BECAUSE HIS WIFE HAD JUST GIVEN BIRTH, AND HE IS THE TYPE OF PERSON THAT WOULD BE WILLING TO USE ANY INFORMATION THAT HE COULD IN ORDER TO FURTHER HIS OWN AIM. SO, THEREFORE, JUST THE FACT THAT HE SAID THERE WERE KEYS INVOLVED DOES NOT NECESSARILY MEAN THAT THE STATE WAS GOING FORWARD WITH

THE THEORY THAT THE KEYS WERE --

OR THAT THE STATE HAD SUPPLIED HIM THAT INFORMATION IS REALLY WHAT WE ARE TALKING ABOUT.

RIGHT. AND, IN FACT, WITH REGARD TO THE STATE SUPPLYING ANY INFORMATION, MR.^DaCOSTA IS ALL OVER THE BOARD ON THIS. IF YOU LOOK AT ALL OF HIS STATEMENTS, HE INITIALLY BLAMES THE POLICE FOR GIVING HIM INFORMATION FOR FEEDING HIM INFORMATION. THE NEXT TIME HE HAS CONTACTS WITH THE GOVERNOR IT IS THE PROSECUTORS AND THEN A SUBSEQUENT LETTER WE NOW HAVE FOUR PROSECUTORS INVOLVED AND JUDGES AND POLICE, BUT BY THE TIME WE GET TO THE EVIDENTIARY HEARING IT IS ONLY MR.^CAVANAUGH THAT IS THE ONE WHO HAS FED HIM INFORMATION AND IT IS MR.^CAVANAUGH WHO BROUGHT MR.^DaCOSTA SUPPOSEDLY FROM THE JAIL TO THE STATE ATTORNEY'S OFFICE. WE KNOW THAT DIDN'T HAPPEN, BECAUSE THERE IS NO COURT ORDER ASKING TO HAVE MR.^DaCOSTA REMOVED FROM THE JAIL AND BROUGHT TO THE STATE ATTORNEY'S OFFICE. THERE WAS NOTHING PRODUCED ON THAT FACT. SO WE KNOW THAT MEETING COULD NOT HAVE TAKEN PLACE. THE ONLY TIME THAT MR.^DaCOSTA AND MR.^CAVANAUGH MET WAS BEFORE THE GRAND JURY TESTIMONY. IT WAS JUST OUTSIDE. MR.^ --

SO THE MOVEMENT OF THE DEFENDANT FROM CELL TO CELL CAN TAKE PLACE BUT THE MOVEMENT OF A DEFENDANT OUT OF THE CELL TO A PARTICULAR PLACE IS WHAT YOU NEED THE COURT ORDER FOR?

TO MOVE THEM OUTSIDE OF THE JAIL, THAT'S CORRECT, YOUR HONOR. AND AS FAR AS MOVING THEM WITHIN THE JAIL, THE STATE ATTORNEY HAS NO AUTHORITY TO ASK FOR A DEFENDANT TO BE MOVED INTO A PARTICULAR JAIL CELL WITH ANOTHER DEFENDANT AND MR.^CAVANAUGH TESTIFIED THAT HE COULD NOT DO THAT AND DID NOT DO THAT.

BUT HE CAN HAVE THEM MOVED OUT OF A CELL?

HE CAN REQUEST TO HAVE THEM MOVED OUT AND IN THIS CASE MR.^DaCOSTA HAD JUST TESTIFIED TO -- BEFORE MR.^CONSALVO'S GRAND JURY AND THAT CERTAINLY IS A REASONABLE REQUEST. WITH REGARD TO OTHER FACTORS THAT SHOW THAT MR.^--.

CHIEF JUSTICE: AGAIN I WANT TO JUST MAKE SURE I'M CLEAR ON ONE THING ABOUT THAT NOTE THAT WAS IN THE PROSECUTOR'S FILE THAT SAID THAT MR.^CAVANAUGH MET WITH --

THAT'S INACCURATE, YOUR HONOR.

CHIEF JUSTICE: SPOKE WITH HIM AT THE JAIL. WHEN WOULD THAT HAVE HAPPENED? I THOUGHT AGAIN CAVANAUGH, DIDN'T CAVANAUGH SAY THAT HE ONLY MET DaCOSTA AND SPOKE WITH HIM RIGHT BEFORE THE GRAND JURY PROCEEDING?

THAT IS CORRECT. THAT'S MR.^CAVANAUGH'S TESTIMONY. MR.^FARNSWORTH BACKS UP MR.^CAVANAUGH IN THAT RESPECT. MR.^FARNSWORTH SAYS IT WAS, IN HIS MEMORANDUM, WHEN HE SAYS AT THE JAIL HE WAS REFERRING TO WHERE THE DEFENDANTS WERE HOUSED. HIS GRAMMAR WAS WRONG, BUT MR.^FARNSWORTH UNDER OATH EXPLAINED THAT PARTICULAR SENTENCE, AND HE SAID THAT IT WAS BECAUSE THAT'S WHERE THEY WERE HOUSED. SO WE HAVE MR.^CAVANAUGH AND MR.^FARNSWORTH AGREEING THAT THERE WAS NO MEETING BETWEEN MR.^CAVANAUGH OR ANY OF THE WITNESSES.

DOES THE BROWARD JAIL HAVE RECORDS OF MOST JAILS HOW WE CHECK IN AND CHECK OUT, WHATEVER, DOES THE BROWARD JAIL DO THAT? SO THERE WOULD BE EVIDENCE OF WHETHER OR NOT CAVANAUGH ACTUALLY WENT TO THE JAIL?

IF THERE IS THERE WAS NOTHING INTRODUCED IN THIS CASE.

OKAY.

ALSO WITH MR.^CAVANAUGH, THE STATE ATTORNEY'S SECRETARY, MISS GARDENER, TESTIFIED THAT THIS CASE WHEN IT CAME IN, WHEN MR.^CONSALVO'S CASE WAS BROUGHT TO THE STATE ATTORNEY'S OFFICE SHE LOGGED IT IN, AND THEY MADE A NOTE THAT THE GRAND JURY HAD TO BE CONVENED BY OCTOBER 23RD. SHE ALSO NOTED THAT MR.^MARCUS ON THE 8TH OF OCTOBER WAS ASSIGNED THE CASE AND IT WAS MR.^MARCUS' CASE. MR.^CAVANAUGH MERELY TOOK OVER THE CASE AS A FAVOR TO MR.^MARCUS ON THE 21ST OR THE 22ND, AND THEN ON THE 22ND SENT OUT THE SUBPOENAS AND TOOK THE CASE TO THE GRAND JURY ON THE 23RD. MR.^CAVANAUGH SAYS HE DOES NOT PREPARE WITNESSES FOR THE GRAND JURY BECAUSE HE REALLY DOESN'T HAVE THE INFORMATION YET. HE HAS THAT, HE GETS THAT FROM THE POLICE OFFICERS AND THEN HE TALKS TO THE WITNESSES JUST OUTSIDE THE GRAND JURY ROOM AND THEN PRESENTS THEM TO THE GRAND JURY. SO THROUGHOUT THIS WE KNOW THAT MR.^CAVANAUGH HAD NO MEETINGS WITH THESE -- WITH MR.^DaCOSTA, WE KNOW THAT MR.^DaCOSTA IS COMPLETELY UNRELIABLE IN HOW HE PRESENTS HIS TESTIMONY, AND THE FACTS BACK UP MR.^CAVANAUGH'S ACCOUNT OF WHAT HAPPENED. WITH REGARD TO MR.^PALMER, IF I'VE ANSWERED ALL OF YOUR QUESTIONS ON MR.^CAVANAUGH, WITH REGARD TO MR.^PALMER, MR.^PALMER'S MOTIVATED -- MOTIVATION WAS THAT HE DID NOT WANT TO BE RESPONSIBLE FOR PUTTING SOMEBODY ON DEATH ROW AND HE SAID THAT IN NUMEROUS -- ON NUMEROUS OCCASIONS. MR.^PALMER ALSO CONTRADICTS MR.^DaCOSTA. MR.^DaCOSTA SAYS THAT EVERYTHING CAME THROUGH MR.^CAVANAUGH. MR.^PALMER SAYS NO. THERE WERE MANY CONVERSATIONS BETWEEN MR.^DaCOSTA AND MR.^CAVANAUGH. EXCUSE ME, MR.^DaCOSTA AND MR.^CONSALVO REGARDING MR.^CONSALVO'S CASE. THEY HAD MANY DISCUSSIONS, SOME OF WHICH WERE OVERHEARD BY MR.^PALMER AND SOME OF WHICH MR.^PALMER -- SOME CONVERSATIONS THAT MR.^PALMER HAD WITH MR.^CONSALVO DIRECTLY. THE ONLY THING THAT MR.^PALMER ATTEMPTS TO RECALL AND DOES NOT DO THAT COMPLETELY IS THE FACT THAT MR.^CONSALVO STABBED THE VICTIM IN THIS CASE, AND TWO STATEMENTS BY MR.^PALMER ARE QUITE TELLING. THE FIRST ONE IS I WASN'T LYING INTENTIONALLY. I WAS LYING AND SAYING THAT I HEARD IT DIRECTLY FROM HIM, MEANING MR.^CONSALVO, BUT I MIGHT HAVE HEARD IT DIRECTLY FROM HIM, MEANING MR.^CONNECTICUT, BUT -- MR.^CONSALVO, BUT I DIDN'T HEAR IT FROM HIM BECAUSE I WASN'T LISTENING. I'M NOT SURE WHAT HE TALKED ABOUT. HE ALSO, MR.^PALMER ALSO GOES ON TO SAY I DON'T THINK MR.^CONSALVO, MEANING HE, SHOULD BE ON DEATH ROW. THOUGH IF ANY STATEMENT THAT HE TOLD ME HE STABBED HER PUT HIM THERE, THEN I'M WRONG. I DON'T THINK HE EVER TOLD ME HE STABBED HER. SO IT IS CLEAR THAT THERE WAS A MOTIVATION BY MR.^PALMER TO TRY AND MINIMIZE HIS RESPONSIBILITY OR HIS ROLE IN THIS CASE. MR.^PALMER ALSO WAS MOTIVATED BECAUSE AT THE TIME THAT HE WAS CONTACTED BY THE DEFENSE FOR THE POST-CONVICTION, HE WAS IN JAIL AND HE DID NOT WANT TO BE LABELED A SNITCH. HE WAS IN FEAR OF BEING LABELED A SNITCH THAT PUT SOMEONE ON DEATH ROW. THE AFFIDAVIT HE GAVE WAS INACCURATE IN THREE RESPECTS, AND THAT, MR.^PALMER CORRECTED IN HIS EVIDENTIARY HEARING. MR.^PALMER SAID THAT HE WAS ON DRUGS AT THE TIME HE GAVE HIS TESTIMONY AT TRIAL AND THAT WAS NOT CORRECT. MR.^PALMER SAID THAT HE RECEIVED HIS INFORMATION SOLELY FROM MR.^DaCOSTA. AGAIN, THAT WAS INACCURATE. HE RECEIVED IT ALSO FROM MR.^CONSALVO. AND THEREFORE THE AFFIDAVIT ITSELF IT INACCURATE. IN ANY CASE, ALL OF THE EVIDENCE PUT TOGETHER SHOWS THAT THERE IS NO RELIABILITY THAT CAN BE PLACED ON THE -- ON MR.^DaCOSTA OR MR.^PALMER AND THAT'S WHAT THE JUDGE FOUND AND YET WE HAVE MR.^CAVANAUGH AND FARNSWORTH AND MISS GARDENER ALL SUPPORTING THE FACT THAT THERE WAS NO IMPROPRIETY ON THE STATE'S PART, NO MEETING BETWEEN MR.^CAVANAUGH AND MR.^DaCOSTA PRIOR TO THE GRAND JURY. HOWEVER, EVEN SO, AS WAS ASKED OF MR.^STILL, EVEN IF YOU WANT TO SAY THAT THERE IS SOME CREDIBILITY TO THOSE WITNESSES, IT WOULD NOT CHANGE THE OUTCOME OF THE TRIAL AND THAT'S THE STANDARD. THE STANDARD IS THAT THIS NEWLY DISCOVERED EVIDENCE WOULD PROBABLY PRODUCE AN ACQUITTAL AT RETRIAL AND THAT WOULD NOT HAPPEN HERE. WHAT WE HAVE IS

OVERWHELMING EVIDENCE OF MR.^CONSALVO'S GUILT. WE HAVE, EXCUSE ME, MR.^CONSALVO TAKING MONEY FROM MISS PEZZA PRIOR TO AND IT IS ONLY MONEY AND IT IS HER KEYS AND THAT WAS REPORTED TO THE POLICE OFFICERS. AFTER THAT, SHE CHANGED HER LOCKS. WE HAVE THE LOCKSMITH THAT CAME INTO THE HOUSE ON THE 27TH OF SEPTEMBER AND HE REMAINED THERE UNTIL BETWEEN 10:00 OR 11:00. BY 4:00 THAT AFTERNOON, MR.^CONSALVO IS TAKING CASH OUT OF MISS PEZZA'S -- THROUGH THE ATM MACHINE. SO JUST FIVE HOURS LATER HE IS TAKING CASH. HE IS SEEN DRIVING A CAR SIMILAR TO HERS. IN THE PENALTY PHASE, HIS GIRLFRIEND TESTIFIED THAT SHE SEES A CAR, THAT SHE IS IN HER CAR.

CHIEF JUSTICE: ON THE PENALTY PHASE ISSUE, ASSUMING THAT PALMER WAS FOUND TO BE CREDIBLE, ISN'T HE THE ONLY ONE THAT TESTIFIES THAT CERTAIN AGGRAVATORS THAT WHAT CONSALVO SAID OCCURRED FOR THE VICTIM'S DEATH?

AVOIDING ARREST?

MR.^PALMER DOES GIVE SUPPORT FOR THE AVOID ARREST AGGRAVATOR. HOWEVER, THIS COURT FOUND THAT THERE IS OTHER EVIDENCE TO SUPPORT AN AVOID AN ARREST AGGRAVATOR AND THAT WAS THE FACT THAT MR.^CONSALVO HAD TAKEN THAT MONEY AND THE KEYS PRIOR TO AND KNEW THAT THERE WAS GOING TO BE CHARGES FILED, AND THIS COURT QUOTED SWAFFORD AND SAYS ADDITIONALLY A MOTIVE TO ELIMINATE A POTENTIAL WITNESS TO AN ANTECEDENT CRIME CAN PROVIDE THE BASIS FOR THIS AGGRAVATING CIRCUMSTANCE AND THE FINDING OF THIS COURT WAS THAT NOT ONLY MR.^PALMER'S TESTIMONY BUT COUPLED WITH THAT WE HAVE THIS PRIOR CRIME THAT MR.^CONSALVO KNEW ABOUT, AND THAT GAVE CREDENCE OR THAT SUPPORTED THE AVOID ARREST AGGRAVATOR SO THE STATE'S POSITION WOULD BE THAT THE GUILT PHASE CONVICTION WOULD NOT BE AT ALL TAINTED BY OR UNDERMINED BY ANY OF THE TESTIMONY FROM PALMER OR CONSALVO, EXCUSE ME, PALMER OR DaCOSTA AND ALSO THAT THE AVOID ARREST AGGRAVATOR WOULD REMAIN A VALID AGGRAVATOR IN THIS CASE AND THEREFORE THERE WOULD BE NO PENALTY PHASE DIFFICULTIES. UNLESS THE COURT HAS OTHER QUESTIONS I WOULD RELY ON MY BRIEF AND ASK THAT THIS COURT AFFIRM THE DENIAL OF POST-CONVICTION RELIEF.

CHIEF JUSTICE: AND THE COURT WILL BE IN RECESS UNTIL 9:00 TOMORROW MORNING.

THE MARSHAL: PLEASE RISE.