StephenTodd Booker v. State of Florida

SC06-121

PLEASE RISE.
>> GOOD MORNING.
>> BACK AGAIN.
GOOD MORNING.
LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.
>> THE NEXT CASE ON OUR
CALENDAR IS BOOKER VERSUS
THE STATE OF FLORIDA.
MR. BRODY.
>> MAY IT PLEASE THE COURT,
I AM HARRY BRODY AND JEFF
HAZEN, WE REPRESENT STEPHEN
TODD BOOKER ON HIS CLAIM FOR
POST-CONVICTION RELIEF ON
APPEAL FROM THE ORDER OF THE
CIRCUIT COURT IN
GAINESVILLE, FLORIDA.
THE CIRCUIT COURT SIMPLY DID
NOT ADDRESS THE DOCUMENTARY
EVIDENCE THAT A MALE COVER
WAS CONDUCTED ON ALL
MR. BOOKER'S MAIL.
>> MR. BRODY, IT APPEARS
THAT THEY DID ADDRESS THAT
WITH THE EVIDENCE FROM YOUR
CLIENT'S TRIAL LAWYER,
DIDN'T THEY DISCUSS THAT ON
HOW THE MAIL WAS
HAND-DELIVERED, THAT WAS NOT
ADDRESSED AND WHETHER OUR
MAIL MAY NOT HAVE BEEN
ADDRESSED BUT THE LEGAL MAIL
CERTAINLY WAS ADDRESSED,
WANT IT?
>> YES, YOUR HONOR, HE DID
ADDRESS THE LEGAL MAIL,
LEGAL MAIL IS TYPICALLY, UM,
HIS ATTORNEY DESCRIBED HOW
LEGAL MAIL IS HANDLED, BUT
OUR CLAIM WAS FAR BROADER
THAN THAT.
OUR CLAIM WAS THAT THERE WAS

SYSTEMIC INTRUSION INTO OUR
CLIENT'S TRIAL PREPARATIONS,
AND THAT IS EQUALLY
FORBIDDEN AS THE ATTORNEY-CLIENT
PRIVILEGE, SO OUR CLAIM WAS
NOT JUST LIMITED TO THE
ATTORNEY-CLIENT PRIVILEGE.
IT HAS TO DO WITH OUR
CLIENT'S LETTERS TO
WITNESSES.
>> LET ME ASK YOU, FIRST OF
ALL, LET'S, LET'S ASSUME
THAT SOMETHING ELSE HAPPENED.
WHAT IS THE -- HOW DO YOU
EVALUATE THE PREJUDICE
PROBLEM?
>> THE PREJUDICE WAS NOT
REACHED.
WE HELD BEFORE THIS HEAR,
THE FIRST THING WE WERE
GOING TO DO IS MAKING A
DETERMINATION AS TO WHETHER
THIS HAPPENED.
THEN, WE WOULD ADDRESS THE
PREJUDICE PART OF THE CASE
BECAUSE THERE WAS NO --
THERE ISN'T ANY CLEAR
GUIDANCE IN THIS CASE LAW AS
TO HOW WE WOULD PROCEED, AND
WE WE THINK THE CASE
ACTUALLY NEEDS TO BE
REMANNEDED FOR THE COURT TO
DEAL WITH THAT ISSUE.
>> SO YOU ARE REALLY TALKING
ABOUT SOMETHING THAT IS
ALMOST LIKE THAT
PROSECUTORIAL MISCONDUCT,
THEY NOW ALLEGED THEY KNOW
SOMETHING THAT THEY WOULDN'T
HAVE KNOWN BUT WE DON'T KNOW
WHAT THAT SOMETHING IS, AND
SO, HOW WOULD THIS UNDERMINE
OUR CONFIDENCE IN THE
OUTCOME AND HOW WOULD A
REMEDY OF A NEW TRIAL EVEN
SOLVE THE PROBLEM?
SOMETIMES THAT HAPPENS WITH,
YOU KNOW, SO I THINK THERE
IS A LOT OF CONNECTING UP,
AND MAYBE IF YOU DON'T THINK
YOU CAN ESTABLISH THAT,
MAYBE I WOULD GO BACK AND
SAY WHAT IS THE, DOES THE
STATE HAVE THE RIGHT THROUGH

THE DEPARTMENT OF COVERRECTION -- CORRECTION TO LOOK AT MAIL THAT IS NOT ATTORNEY-CLIENT MAIL, THEY HAVE THE RIGHT TO MONITOR A PRISONER'S MAIL?
>> OF COURSE, THEY DO HAVE THAT HE RIGHT.
THIS WAS DONE, THOUGH, BY THE STATE ATTORNEY'S OFFICE, NOT BY THE JAIL, IN ORDER TO, FOR DISCIPLINE OR FOR PROTECTION IN THE JAIL.
THIS WAS -- THIS IS VERY AKIN TO AN INTRUSION BY PLANNING AN AGENT IN THE LAWYER'S OFFICE, OR BY TELEPHONE TAPS.
>> COULDN'T YOU HAVE THE PROSECUTOR IN THE CASE SAYING, YEAH, IT LOOKS LIKE SOMETHING MIGHT HAVE HAPPENED, BUT WE, OURSELVES, THE SPECIFIC PEOPLE THAT WOULD THEN BENEFIT FROM IT, HAD NO KNOWLEDGE, WE RECEIVED NO INFORMATION.
>> THE PROSECUTOR TESTIFIED THAT HE WOULD HAVE HAD TO AUTHORIZE IT, THE STATE ATTORNEY SMITH, HIS TESTIMONY WAS THAT IN ORDER FOR THIS TO HP PERSON, I WOULD HAVE HAD TO AUTHORIZE IT.
MR. PRICE TESTIFIED THAT HE WOULD REPORT IT TO MR. SMITH AND MR. GRAY, BUT HE WOULD REPORT EVERYTHING TO THEM, SO HE CONFIRMED THAT WHAT IS IN THE REPORT, HE WOULD HAVE DONE, THE REPORT SAYS, I DID SO AND SO, HE TESTIFIED, THAT MEANS THAT I DID THAT, ANSWERED ALSO TESTIFIED I WOULD HAVE REPORTED EVERYTHING IN THERE TO MY SUPERIORS, TO MR. SMITH.
THESE DOCUMENTS WERE FROM THE STATE ATTORNEY'S WORK FILES, WHERE THEY CAME FROM.
>> WERE ANY DOCUMENTS, DID, FROM THE ATTORNEY'S WORK FILES, DID YOU COME UP WITH

THAEN DOCUMENTS THAT WERE LETTERS OF YOUR CLIENTS?
>> WE DID NOT COME UP WITH THE LETTERS WHICH THEY MAILED.
THEY READ THE LETTERS, THEN, THEY -- I SUPPOSE, WE WERE NOT PERMITTED TO GO INTO ANY OF THIS, AS I SAY, THE SCOPE OF THIS HEARING WAS LIMITED TO WHETHER, SO THE JUDGE FOUND THAT AS TO NON-LEGAL MAIL THAT THERE WAS NO INTERCEPTION OF NON-LEGAL MAIL?
>> THE JUDGE FOUND THAT THE ATTORNEY-CLIENT PRIVILEGE WAS NOT REACHED.
>> BECAUSE THAT GOES BACK TO WHAT JUSTICE LEWIS ASKED INITIALLY, IT IS IMPRESS IF THAT THERE WAS EVIDENCE THAT ANYTHING THAT WAS DELIVERED BY THE LAWYER, EXCEPT FOR ONE OR TWO PIECES WAS ACTUALLY DELIVERED TO YOUR CLIENT IN PERSON, SO THAT IT WOULD REFUTE THAT THERE WAS BER EXCEPTION OF THE MOST IMPORTANT ATTORNEY-CLIENT MAIL?
>> THE ATTORNEY CLIENT MAIL IS ALWAYS DELIVERED IN THAT MANNER, AT FISP, I BELIEVE.
>> THEY DON'T HAND DELIVER FROM MIAMI, THEY MAIL IT UP. YOU MUST HAVE MISSPOKEN.
>> OH, AIM SO REQUIRE, I THOUGHT YOU MEANT DO THEY CARRY IT TO THE CELL BY HAND?
>> NO, NO.
INITIALLY, THE LAWYER TESTIFIED THAT HE, IN FACT,, THAT IS RIGHT.
>> YOUR HONOR, I AM SORRY.
>> THEN, ALSO, THE MAIL GOING BACK, I MEAN, IT SIM SEEMS AS THOUGH THE RECORD INDICATES THAT THE INMATE WOULD CROSS OR DO SOMETHING ALONG EVERY SEAL OF EVERY LETTER TO BE SENT TO HIS LAWYER, THE LAWYER TESTIFIED

HE NEVER RECEIVED ONE.
CORRECT ME IF I AM WRONG, HE NEVER RECEIVED THAT APPEARED IT MAY BE TAMPERED WITH.
THIS WAS NOT A SHRINKING KIND OF A LAWYER.
I MEAN, --
>> RIGHT.
THAT IS RIGHT, YOUR HONOR.
BUT WE ARE SAYING IT IS NOT LIMITED.
IT HAS TO DO WITH MONITORING LETTERS TO WITNESSES, WHO WERE ACTUALLY, WHO WERE GOING TO TESTIFY TO MITIGATION, FACTS ABOUT MR. BOOKER IN PRISON, THIS WHOLE, HIS WIFE, THEY MONITORED LETTERS TO HER AND THAT IS WHAT THE WHOLE INCIDENT WITH ALLEGEDLY FEELING HER WAS ABOUT AND --
>> LET'S COME DOWN, REALLY, THEN, YOU ARE PRESENTING A RULE, THAT IT IS, WHEN YOU ARE IN THE MIDDLE OF LITIGATION, YOU THAT IT IS ILLEGAL TO DEAL WITH THESE MAIL REVIEW KINDS OF SITUATIONS BECAUSE IT MAY, IT MAY INCLUDE SOMETHING THAT IS GOING TO BE IN PREPARATION OF THE CASE?
>> THAT IS ABSOLUTELY CORRECT.
THE TRIAL PREPARATION.
>> WOULD YOU THEN PLEASE ANSWER JUSTICE PARRY EN TA'S QUESTION, LET'S ASSUME YOU ESTABLISHED THAT.
S WHAT THE NEXT STEP?
WHAT IS THE NEXT BURDEN?
IS IT LIKE A CHRONIC SITUATION THAT IT IS PER SE.
WHAT HAPPENED?
>> THE COURT DID HOLD, ACTUALLY, IT WAS IN THE MID '70s, THAT WOULD HAVE BEEN THE HOLDING, OF COURSE, THEY MOVED AWAY THAT, CERTAINLY, AND THE COURTS NOW, THE CASES THAT WE HAVE FOUND, AND WE PUT THEM IN THE REPLY BRIEF, THERE ARE NOT A LOT

OF THEM, WOULD SAY THE
BURDEN SHIFTS AT THAT POINT
TO THE PROSECUTION TO SHOW
THAT WHAT THEY PRESENTED WAS
NOT TARNISHED OR TAINTED BY
THE IMPROPERLY OBTAINED
KNOWLEDGE.
>> OKAY.
LET'S STOP RIGHT THERE.
DIDN'T THEY DO THAT DIDN'T
THEY PRESENT ALL OF THE
EVIDENCE FROM THE STATE
SIDE.
WHAT IS MISSING ON THAT?
>> WE DID NOT REACH THAT
QUESTION AND EVIDENCE WAS
NOT PRESENTED ON THAT POINT.
WE DIDN'T, BY AGREEMENT AND
THE COURT AGREED WITH THIS.
WE DIDN'T EVEN REACH THAT
POINT.
WE THINK THE CASE NEEDS TO
BE REMANNED FIRE DEPARTMENT
THERE IS A FINDING THAT, IN.
>> PLEASE CORRECT ME IF I AM
WRONG, I THINK THE THOUGHT
THE RECORD DEMONSTRATED
SENATOR SMITH SAID I DIDN'T
USE ANYTHING THERE, WHOEVER
WAS RESPONSIBLE SAID I NEVER
SAW ANYTHING LIKE THAT.
>> THEY DENY TAD THAT A MAIL
COVER TOOK PLACE.
THE RECORD DOES NOT SUPPORT
THAT FINDINGS.
THE RECORD --
>> THEY SAID THEFER NEVER
SAW ANYTHING, IF IT
HAPPENED, DIDN'T THEY SAY,
NEVER SAW ANY THING, I NEVER
USED ANYTHING.
EALSO TESTIFIED THAT -- HE
ALSO TESTIFYED THAT HE WOULD
HAVE HAD TO YOU A THOOR RISE
IT AN MR. -- AUTHORIZE IT
AND MR. PRICE TESTIFIED THAT
THE INFORMATION WOULD HAVE
GONE TO HIM.
>> BUT AGAIN, YOU DESCRIBED
WHAT THE BURDEN WAS AND MY
QUESTION TO YOU IS S..
DID THE STATE NOT SATISFY
THAT BY PRESEG THE EVIDENCE?
NOTHING CAME ARE THE MAIL

THAT I EVER SAW?
>> NO IT DO NOT, YOUR HONOR
I WAS NOT ALLOWED TO EXAMINE
THEM SUFFICIENTLY ON THOSE
POINTS.
I WAS NOT ALLOWED TO TALK TO
MR. SMITH ABOUT THAT, TO
FIND OUT WHO ELSE WAS
WORKING ON THE CASE.
IT WAS IN THE MIDDLE OF THE
CAMPAIGN FOR ONE THING.
IT WAS VERY HARD TO DO MUCH
DISCOVERY THAT TIME.
>> DID THE JUDGE STOP YOU AT
THE EVIDENTIARY HEARING ON
THIS ISSUE FROM ASKING
QUESTIONS OF THOSE
WITNESSES?
>> YES.
>> YES?
>> IT WAS RESERVED -- NO,
BEFORE THE HEARING, WE
AGREED.
IT WAS AGREED THAT WE WERE
NOT EVEN GOING INTO THE
PREJUDICE ISSUE UNTIL WE --
BECAUSE THE STATE WAS
SAYING, IT NEVER HAPPENED.
THE STATES SAYING, THERE WAS
NO MAIL COVER.
A MAIL COVER DID NOT HAPPEN.
WE SAY THAT UNDER THIS
RECORD, WE HAD THE DOCUMENT,
NICK PRICE WROTE MEMOS THAT
HE IDENTIFIED AND THAT RUN
THE RECORD AND AT WHICH THE
STATE DID NOT JUST IGNORE,
THE COURT IGNORED THEM, BUT
THEY SHOW, THEY SHOWED THAT
A MAIL COVER DID HAPPEN.
>> HOW DO WE DEAL WELL THE
COURT'S FINDING ON PAGE 4 OF
THIS ORDER, THAT THE
DEFENDANT NOT ONLY FAILED TO
PRESENT EVIDENCE LEGAL MAIL
BEING TAMPERED, WITH BUT THE
DEFENDANT LIKEWISE FAILED TO
PRESENT ANY EVIDENCE OF ANY
FORM WERE INTERCEPTED,
INTERFERED WITH OR USED BY
AN AGENT OF THIS STATE?
>> THAT WOULD BE ON THE
SCOPE OF THE HEARING, THAT
WAS BROADER THAN THE SCOPE

OF THE HEARING THAT WE HAD.
THE RECORD DOES REFLECT, WE WERE RECEIVING THAT QUESTION.
>> WELL, WHO ELSE WOULD YOU HAVE PUT ON TO ESTABLISH THAT, EVEN IF THE PROSECUTOR, OR THE STATE ATTORNEY DID NOT HAVE THIS INFORMATION, THAT SOMEBODY ELSE DID?
WHAT WOULD YOU HAVE PUT ON TO SHOW THAT MAIL WAS INTERCEPTED?
>> WELL, I WOULD CERTAINLY LOOK AT THE TESTIMONY OF BETTY, FOR INSTANCE, HOW IT CAME OUT, I WOULD LOOK AT THE STRATEGIES THAT THE COURT ACTUALLY EMPLOYED IN, IN DEALING WITH SOME OF THE ARGUMENTS ABOUT FUTURE DANGEROUSNESS OR THAT SORT.
WHETHER MR. BOOKER WAS STILL DANGEROUS.
>>, NO THAT IS YOU WHAT SAID.
THE PROSECUTOR SAID, WE NEVER SAW ANYTHING.
YOU SAID, YOU WERE STOPPED FROM PUTTING ON OTHER PEOPLE FROM THE STATE ATTORNEY'S SPACE THAT COULD HAVE SHOWN THAT SOMEONE HAD READ SOMETHING.
>> RIGHT.
I WAS CONCERNED ABOUT W ESTABLISHING THAT A MAIL COVER HAD OCCURRED.
THAT WAS THE SCOPE OF THE HEARING THAT WE AGREED TO.
>> MAIL COVER ITSELF IS NOT UNCONSTITUTIONAL, RIGHT?
>> IT NOW IT IS UNCONSTITUTIONAL.
>> I AM SORRY, YOUR HONOR, I DIDN'T MEAN TO INTERRUPT.
I WAS JUST GOING TO SAY, IN ORDER TO SHOW CONSTITUTIONAL VIOLATION, THEN GO TO THE PREJUDICE PRONG, YOU HAVE TO SHOW THAT THE STATE INTERCEPTED ATTORNEY-CLIENT PRIVILEGE, HM MUNCATION, AN HA THE STATE USED THOSE

COMMUNICATION AT TRIAL.
BOTH OF THOSE, YOU HAVE TO SHOW BEFORE YOU EVEN DEMONSTRATE A CONSTITUTIONAL VIOLATION.
>> NOT NECESSARILY.
OR THE STATE MAY HAVE TO PROVE THAT IT DID NOT SHOW, THAT, THEY DIDN'T USE IT.
IT IS VERY HARD.
THE CASES SAY IT IS VERY HARD FOR US TO PROVE.
>> FROM WHAT I READ OF THE OTHER CASE, IT IS NOT A VIOLATION IN ITSELF THAT THE STATE TO INTERCEPT ATTORNEY-CLIENT PRIVILEGE COMMUNICATION.
THE VIOLATION OCCURS WHEN IT USES THOSE ATTORNEY-CLIENT COMMUNICATIONS TO PREPARE FOR TRIAL OR USE THEM AT TRIAL.
RIGHT.
THAT IS CORRECT, YOUR HONOR.
BUT THE QUESTION OF WHO HAS -- I AM JUST SAYING, IT IS NOT BEEN RESOLVED.
THERE IS NOT A TEST RIGHT NOW IN THE JURISDICTION THAT STATES WHO HAS THE BURDEN OF PROVING --
>> WELL, YOU HAVE THE BURDEN OPINION OF PROVING.
>> I AM NOT TALKING ABOUT PREJUDICE.
MY POINT IS, YOU DON'T EVEN REACH PREJUDICE UNTIL YOU SHOW BOTH THE INTERCEPTION AND THE USE.
>> THE USE.
>> THAT IS WHERE THE CONSTITUTIONAL VIOLATION ARISES ARE.
>> WELL, THERE ARE CASES THAT SAY THAT ONCE YOU SHOW THE VIOLATION, WELL, THERE ARE CASES FROM WAY BACK THAT WOULD SAY THAT IS ENOUGH.
DOING THAT IS ENOUGH.
>> RIGHT, MY POINT IS --
>> THEN, AT THAT POINT, ONCE YOU SHOW THAT THEY DID THIS, THAT THERE IS A PRESUMPTION

THAT THE STATE CAN REBUT.
I THINK WE ARE GOING AROUND IN CIRCLES.
MY POINT IS THAT THE WAY I READ THE CASES, THERE IS NO VIOLATION INTERCEPTING COMMUNICATION.
THE VIOLATION OCCURS IN USING THOSE COMMUNICATIONS FOR THE BENEFIT OF THE STATE, AND IT SEEMS TO ME, YOU HAVE TO SHOW THAT A VIOLATION OCCURRED.
>> OH, I DON'T BELIEVE THE CASES ARE THAT CLEAR.
THERE ARE ALSO CASES THAT SAY THE STATE HAS -- ONCE WE SHOW IT HAPPENS, THAT THE STATE HAS TO SHOW, THAT THEY DIDN'T USE THE INFORMATION.
THERE ARE CASES --
>> WHAT CASE SAYS THAT?
>> IN MY REPLY BRIEF, IT IS MASBRONI, SOMETHING TO THAT EFFECT.
THERE IS ONE CITED.
I DON'T -- IT IS SOMETHING.
IT IS IN THE REPLY BRIEF.
>> WHAT IS THE LANGUAGE?
WHAT IS THE LANGUAGE AT THE HUFF HEARING IN WHICH YOU SAY YOU HAVE A LIMITED HEARING ABOUT THIS AND RESERVICE THE RIGHT TO HAVE A FURTHER HEARING?
THE JUDGE SAID OR DO YOU AND THE STATE AGREE AND STIPULATE THAT WE ARE ONLY GOING TO COVER THIS IN A CERTAIN WAY?
TELL ME WHAT THAT LANGUAGE --
>> IT WAS MORE INFORMAL.
IT WAS MORE IN ESSENCE OF WHAT THE STATE WAS SAYING, LOO just didn't happen at all.
and I I believe actually, that they -- forgotten that they that they had given us these documents!!$$!!!!!!!!!!!!!!!!
documents, is what happened, but --
>> Not asking about that, what!!$$!!!!!!

what --
>> Language, used at the Huff hearing or court order that said we are only going to have a a limited hearing, on this, and that hearing, shall treat, this issue.
what --
>> It was -- I believe, it was done, more informally, in the discussions where I would stand up, I would say I want, you know just to be insure we are clear on this, I want to be insure we are clear that we are just dealing with this initial issue, at this point and what is --
>> What is the initial issue, as to whether there was a male cover done at all the court said all right that is all we are going to deal with?
>> Yes, I can show the court in the record, I was on this, I was -- been on this case, since, postconviction.,,,,,,,,,,,,,,,,,,,,,,,,,,,,
EVIDENTIARY HEARING HE COULD ENVISION SOME CASES WHERE PERHAPS THERE WAS A PRISONER THERE WAS A SUSPICION A PRISONER WAS LET THAT HE THINKS A POTENTIAL WITNESS OR THREATENING ANOTHER PERSON WHERE A MAIL COVER MIGHT BE DONE, BUT IN THIS CASE, HE SAID -- THAT HE DID NOT AUTHORIZE MAIL COVER THAT HE IS THE LEAD PROSECUTOR DID NOT SEE ANY OF MR. BOOKER'S MAIL PRIVILEGED OR OTHERWISE, WAS NOT PRIVY TO ANY ATTORNEY-CLIENT PRIVILEGE INTERCEPTIONS IN ANY WAY.
NOW WHAT I WOULD LIKE --
>> WHAT WAS THE PERSON, WHO WENT BY THE PRISON THAT PICKED UP THE WHAT WAS HE DOING.
>> WELL, IT APPEARS BASED ON HIS TESTIMONY, THAT IT WAS, ANTICIPATED, THAT THE DEFENSE AT THE RESENTENCING HELD IN 1998, MIGHT PRESENT, SKIPPER EVIDENCE, IN MITIGATION, AND,

THOUGH THE TEST WAS NOT
CRYSTAL -- TESTIMONY WAS NOT
CRITICIZESTAL CLEAR MR. PRICE
ORIGINALLY HAD BEEN OFFERED,
MAIL COVER BY DEPARTMENT OF
CORRECTIONS!!$$!!!!!!!!!!!!!!!!!!!
CORRECTIONS, FIRMS --
OFFICIALS AND HAD SAID, NO AT
SOME POINT LATER, FOUR ISSUE
FIVE!!$$!!!!!!
FIVE MONTHS THERE, IS A
NOTATION IN HIS FILE, THAT HE
PICKED UP, MAIL COVER, NOW HE
DID TESTIFY AT THE EVIDENTIARY
HEARING THAT THE STATE
ATTORNEY DID NOT DIRECT HIM TO
DO THAT NOR DID HE DISCUSS
THAT WITH THE STATE ATTORNEY.
AND MR. GRAIBL WHO WAS
PROSECUTOR MR. SMITH WHO WAS
THE PROSECUTOR, TESTIFIED,
THAT THEY DIDN'T AUTHORIZE
MAIL COVER, THAT THEY DIDN'T
SEE ANY OF MR. BOOKER'S MAIL.
>> WHAT WAS IN THE STATE
ATTORNEY'S FILE, THAT THE
DEFENDANT FOUND, WHICH YOU
KNOW, SEE, SEEMS TO ME, THAT
IT IS EITHER, THERE WAS, OR
THERE WASN'T.
AND THE DEFENSE, SEEMS TO SAY,
THAT THEY FOUND THIS, IN THE
STATE ATTORNEY'S FILE.
SO, DID THE STATE ATTORNEY,
HAVE INFORMATION IN THEIR
FILE, INDICATING THERE WAS A
MAIL COVER?
>> MR. PRICE SAID THAT HE
WOULD HAVE FILED, HIS MEMOS,
IN THE STATE ATTORNEYS THEY
WILL BES MR. GRAIBL, WOULD
HAVE SEEN THEM, OR NOT, HE
DOES NOT KNOW, BUT, MR. GRAIBL!!$$!!!!!!!!!!!!!!!!!!
MR. GRAIBL, TESTIFIED AT THE
EVIDENTIARY EVIDENTIARY
HEARING NO KNOWLEDGE OF MAIL
COVER, EITHER ATTORNEY-CLIENT
PRIVILEGE OR OTHERWISE HE DID
NOT AUTHORIZE IT, AND
MR. PRICE, TESTIFIED
SPECIFICALLY AT THE
EVIDENTIARY HEARING THAT HE
NEVER DISCUSSED MAIL COVER
WITH EITHER PROSECUTOR, AND

NEITHER ONE OF THEM AUTHORIZE
THE IT.
I THINK ONE OF THE THINGS,
THAT WE NEED IS THAT -- AND
THE COLLATERAL COURT JUDGE
SPECIFICALLY FOUND, THAT
MR. GRAIBL'S TESTIMONY THAT HE
WAS -- REVIEWED NONE OF MR.
BOOKER'S MAIL -- WAS CREDIBLE,
MR. SMITH, TESTIMONY THAT HE
DID NOT AUTHORIZE MAIL COVER
HE DID NOT SEE ANY OF MR.
BOOKER'S MAIL HE WAS NOT PRIVY
TO ANY PRIVILEGED, INFORMATION
WAS CREDIBLE AND
MR. KEARNTESTIFIED AND I HAVE
TO DISPUTE, ONE OF THE
LIMITATIONS THAT MR. BRODY
EXPLAINED ON THE EVIDENTIARY
HEARING, THE ONLY ISSUE REALLY
IN DISPUTE, FIRST OF FALL LOOK
AT THE MOTION FILED IN THE
TRIAL COURT, MR. BRODY OR
MR. BOOKER NEVER POINTED TO A
SINGLE STRATEGY THAT WAS
STOLEN!!$$!!!!!!!!!!
STOLEN, NEVER POINTED TO A
SINGLE PLACE IN THE RECORD
WHERE THAT EVEN GAVE RISE TO
AN INFERENCE THAT
ATTORNEY-CLIENT PRIVILEGE WAS
ENTERED WITH, AND, BUT HE DID
ACKNOWLEDGE THAT IT WAS THE
BURDEN OF THE STATE TO SHOW
PREJUDICE THE COURT THAT THE
COLLATERAL COURT, SAID, WELL
WE WILL DEAL WITH THAT, IF WE
DETERMINE, THAT
ATTORNEY-CLIENT PRIVILEGE MAIL
WAS INTERCEPT AND USED.
>> GO BACK SORT OF THE SUTEM!!$$!!!!!!!!
SUTEMNDING!!$$!!!!!!!!!!!!!!!!!!
SUTEMNDING, THING I'M LOOKING
AT THE ORDER, GRANTING THE
HEARING, AND THAT IS THE THE
ORDER ON THE HUFF HEARING AS
THE CLAIM TWO, THE JUDGE
STATED THAT HE WAS GOING TO
HOLD A HEARING, ON THE CLAIM
THAT THE STATE KNOWINGLY
INTERFERED, AND THIS OTHER
PHRASE, AND USING THE
INFORMATION, GLEANED FROM
COMMUNICATIONS!!$$!!!!!!!!!!!!!!!!!!!!!!!!

COMMUNICATIONS, AGAINST THE DEFENDANT AT TRIAL, IS THERE ANYTHING OTHER THAN THIS ORDER THAT WE NEED TO LOOK TO AND BECAUSE THIS SAYS, THAT THEY ARE GOING TO TURN BOTH WHETHER IT OCCURRED WHETHER IT WAS USED AGAINST THE DEFENDANT, SO
>> YES, SIR.
>> IS THERE ANOTHER ORDER.
>> NO, SIR, WHAT -- I THINK WHAT MR. BROADIE IS REFERRING TO THE FACT THAT THE JUDGE LEFT FOR ANOTHER DAY PREJUDICE I THINK PRIMARILY WAS ON THE BARE BONES PLEADING PRESENTED TO THE COURT BECAUSE AS I SAY MR. BOOKER NEVER IDENTIFIED A SINGLE, PIECE OF MAIL THAT HE ALLEGED WAS TAMPERED WITH NEVER ALLEGED, IN FACT HE DIDN'T ALING, THE BETTY BOE, AND MRS. JILL YOON ANDERSON I DON'T KNOW WHETHER ACTUALLY MARRIED EVERY WHERE, BUT HE REFERRED TO HER AS WIFEY, I'M NOT INSURE OF THEIR ACTUAL STATUS HE DIDN'T EVEN ALLEGE THAT.
>> WHAT DID PRICE, TESTIFY TO, IN OTHER WORDS, WHAT DID PRICE SAY THAT WOULD GIVE RISE TO THE $$DEFENDANT'S CLAIM, THAT, YES, THERE WAS SOMETHING LIKE AN INTERCEPTION OF MAIL, I ACTUALLY COLLECTED THE INTERCEPTED MAIL, AND READ IT. AND, FILED REPORTS, IN THE STATE ATTORNEY'S FILE, IN THE CASE, DID PRICE TESTIFY TO THAT?
>> HE TESTIFIED, THAT HE BELIEVES THAT THE MEMOS, ACCURATELY REFLECTED WHAT HE DID HE HAD NO INDEPENDENT RECOLLECTION OF EVER READING, ANY OF THE MAIL, HE SAID HE WOULD JUST TAKE THE LETTERS TO THE STATE TEN OR'S OFFICE HE BELIEVED.
>> WERE THE MEMOS PLAY PLA -- PLACED IN EVIDENCE.
>> THE MEMOS WERE PLACED IN EVIDENCE YOU HAVE THAT.

>> WHAT DO THE MEMOS SHOW.
>> THE MEMOS SHOW THAT HE WAS AT THE PRON ENTERING HE -- INTERVIEWING MADE NOTE INTERVIEWED 99 DEPARTMENT OF CORRECTIONS OFFICIALS, THE MEMO SAID ON TWO DIFFERENT OCCASIONS THAT HE PICKED UP, ANOTHER BATCH OF MAIL COVER, AND IN THAT MEMO, HE POINTED TO TWO COMMUNICATIONS APPARENT!!$$!!!!!!!!!!!!!! APPARENTLY, FROM BOOKER, ONE, TO MISS JILLIAN ANDERSON THERE WAS A SUSPICION HE WAS THREATENING HERE BECAUSE HE HAD, HE HAD, FONDLED HER TOUCHED HER DURING A CONTACT VISIT, AND HAD BEEN FORBIDDEN TO DO THAT BUT CONTINUED TO DO THAT AND THERE WAS SOME, APPARENTLY WHAT THE ONLY THING WE CAN GLEAN THE MOST LOGICAL CONCLUSION FROM THE MEMO WAS THAT, THAT HE HAD -- HAD THREATENED HER THEY WERE CONCERNED ABOUT THAT, THE OTHER ONE WAS TO BETTY BO, WHO WAS A WITNESSED AT THE MITIGATION!!$$!!!!!!!!!!!!!!!!! MITIGATION, AT THE HEARING, SECOND PENALTY PHASE, HAD TO DO WITH AN UNRELATED INCIDENT, ABOUT MRS. ANDERSON, AND GUARDS BEING DISPLINED FOR ANOTHER THING.
>> LET'S JUST TAKE IT FROM THERE, ASSUME, THEN, THE -- WORST-CASE SCENARIO, THAT THAT WHAT IS HAPPENED.
ALL RIGHT, NOW DOES THAT PROVE A CLAIM IN THIS CASE?
>> NO.
>> NO, SIR IT DOESN'T PROVE A CLAIM, PRESUMING THAT MR. AND IT APPEARS BASED ON THE FACT THAT BOTH MR. GRAIBL AND MR. SMITH TESTIFIED THEY DIDN'T AUTHORIZE IT NOR DID THEY WERE THEY PRIVY TO IF I HAVE THIS INFORMATION, EVEN THE LETTERS TO BETTY BO AND TO MRS. ANDERSON, THAT HE WAS ACTING IN SOME WAY ULTRA VIRRIES!!$$!!!!!!!!!!!!

VIRRIES, ASSUMING THAT HE
INTERCEPTED ROUTINE MAIL NOT
ATTORNEY-CLIENT PRIVILEGED
MAIL, THERE STILL HAS TO BE
THE NEXT STEP, AND THEN THAT
IS COMMUNICATION TO THE
PROSECUTION AND WE KNOW THAT
IS WHERE IT STOPS, BECAUSE THE
BOTH PROSECUTORS TESTIFIED,
THAT THEY DID NOT NOT PRIVY TO
ANY COMMUNICATION, AND
MR. KEARNS, ONCE YOU LOOK AT
THE EVIDENTIARY HEARING YOU
WILL SEE THAT I I WAS ALLOWED
AND MR. PRODDY WAS NOT STOPPED
FROM DOING SO, I PERCEIVED
TOGETHER BOTH DID YOU
AUTHORIZE IT DID YOU SEE IT
DID YOU USE IT TO THE BENEFIT
OF IT STATE OF THE DETRIMENT
TO MR. BOOKR THE ANSWER ALL
THREE OF THOSE WAS NO.
WE DIDN'T, AND THE COLLATERAL
COURT FOUND THOSE PROSECUTORS,
CREDIBLE AND I ASKED
MR. KEARNS, WE ASKED
MR. KEARNS, WAS THERE
ANYTHING, IN THE COURSE OF YOU
PRESENTS THIS MITIGATION CASE
I THINK THAT IS ALSO
IMPORTANT, THIS WAS A
MITIGATION CASE, IT WAS
UNREFUTED!!$$!!!!!!!!!!!!!!!!
UNREFUTED, IF YOU LOOK AT THE
TESTIMONY, OF MRS. VO THERE
WASN'T A SINGLE QUESTION BY
THE PROSECUTOR ABOUT, PURCHASE
CORRESPONDENCE WITH BOOKER
ABOUT CONTENT OF THE
CORRESPONDENCE IT WAS SIMPLY
MRS. BO, ARE YOU AWARE OF THE
FACTS OF THIS MURDERER.
>> NO THAT WAS THE ONLY THING
THAT WAS EVER ASKED OF MRS.
BO, SO, MR. KEARNWAS ASKED WAS
THERE ANYTHING IN EVERY THE
COURT OF REPRESENTATION THAT
GAVE RISE TO A CONCERN, ON
YOUR PART, THAT THE STATE HAD
READ ANY OF MR. BOOKER'S
ATTORNEY-CLIENT MAIM OR WERE
PRIVY TO ANY PRIVILEGED
ATTORNEY-CLIENT COMMUNICATIONS!!$$!!!!!!!!!!!!!!!!!!!!!!!!
COMMUNICATIONS.

ABSOLUTELY NOT, FOUND CREDIBLE
BY COLLATERAL COURT JUM.
>> I WOULD LIKE TO JUST ASK
YOU A QUESTION ABOUT A LOT OF
CLAIMS, SUMMARILY DENIED, AND,
THIS CASE OH, KURD AFTER WE
AMENDED THE RULE, NOT SEEING
VERY MANY CASES ANYMORE, WHERE
CLAIMS AT LEAST ALING THINGS
LIKE YOU KNOW FAILURE TO
INVESTIGATE PRESENT MITIGATION!!$$!!!!!!!!!!!!!!!!!
MITIGATION -- THE FAILURE TO
ATTACK THE PRIOR VIOLENCE ON
-- JUST SUMMARILY DENIED I'M
MORE -- CONCERNED ABOUT THAT
IN THIS CASE, WHY -- DON'T YOU
THINK OUR RULES PRETTY CLEAR
THAT IF THERE IS A COLORABLE
CLAIM PRESENTED UNDER A 3.851
THAT THE JUDGE SHOULD BE
GRANTING AN EVIDENTIARY
HEARING ON -- THE ISSUE?
>> WELL, YES, MA'AM, BUT,
FIRST OF ALL I WOULD LIKE TO
POINT OUT THAT I ARGUED WHAT
WE GOT TO THE HUFF HEARING
THAT THIS WAS A NEW RULE CASE,
MR. BROADIE$$'S PROTESTED AND
SAID, BECAUSE THEY HAD FILED
THE INITIALLY MOTION PRIOR TO
ONE OCTOBER 2ND O 001 ITS THAT
WAN OLD RULE DAIS THE JUDGE
AGREED HE SAID IT IS IN THE
RECORD WHERE HE SAID THE STATE
COMMITTED TO THE FACT THAT
THIS WAS AN OLD RULE CASE.
>> AND,IVE GOT THAT CITATION!!$$!!!!!!!!!!!!!!
CITATION -- ON THE RECORD,
PAGE -- 210 OF THE POST
EVIDENTIARY HEARING WHERE
MR. BRODY IP INSISTED THIS WAS
AN OLD RULE CASE, HOWEVER EVEN
IF THIS COURTDITION GREECE
SAYS THIS AN -- A NEW RULE
CASE, THE -- DISAGREES THE
CLAIM MR. BRODY IS MAKING HERE
WAS THAT TRIAL COUNSEL WAS
INEFFECTIVE FOR SAILING TO
UNDERMINE THE FACTUAL
APPLICABILITY OF THE PRIOR
FELONY!!$$!!!!!!!!!!
FELONY, TRIAL COUNSEL COULDN'T
DO THAT IT WAS CONVICTION FOR
AGGREGATED BATTERY, ON ITS

FACE A PRIOR VIOLENT FELONY.
>> --
>> CORRECT ME IF I'M WRONG, BECAUSE -- YOU CAN'T, DENY THE FACT THAT THE CONVICTION, BUT, WHAT WEIGHT THE JURY IS GOING TO GIVE TO IT CERTAINLY CAN BE, MITIGATED, BY THE CIRCUMSTANCES, YOU KNOW, SOMETHING THAT IS A PRIOR VIOLENT -- SCORER CONVICTION OR SECOND DEGREE MURDER WE LOOK AT WHETHER IT WAS SOMETHING THAT WAS -- YOU KNOW, AN ACCIDENT, OR YOU KNOW SOMETHING, SO I DON'T REALLY UNDERSTAND, HOW THIS BECAUSE IT IS A PRIOR VIOLENT FELONY I DON'T THINK WE HAVE EVER HELD THAT A THE DEFENSE, ISN'T ABLE TO EXPLAIN THE CIRCUMSTANCES, JUST LIKE THE STATE CAN EXPLAIN THE CIRCUMSTANCES TO EITHER, SHOW IT IS REALLY A BAD PRIOR VIOLENT FELONY OR IT IS NOT.
>> YES YOUR HONOR AND I THINK YOU ARE CORRECT, EACH IF YOU ASSUME, AS AGAIN, DESPITE THE PROTESTS OF THE DEFENSE AT THE HUFF HEARING THAT YOU ARE GOING TO ANALYZE THIS UNDER THE NEW LIBERAL RULE FOR EVIDENTIARY HEARINGS THE DEFENSE IS STILL GOT THE BURDEN OF PRESENTING A PRIMA FACIE CASE OR COLORABLE CLAIM YOU SEE PUT IT IN THIS CASE INITIALLY PLEADING IDENTIFIED NO ONCE THAT WOULD TESTIFY WAS GIVEN 30 DAYS TO AMENDMENT HIS CLAIM.
>> AT WHATEVER, THE HUFF HEARING, WHICH WOULD BE A CASE MANAGEMENT HEARING, THE JUDGE ASKS WHAT WITNESSES WOULD YOU PUT ON TO ESTABLISH THIS.
>> EXACTLY.
>> AND THERE WAS NO --
>> WELL.
>> PRESENT NOD WITNESSES, FAILED TO MEET ANY OF THE STANDARDS OF THE NELSON VSTATE, SHOWING THAT THE

WITNESSES WAS IDENTIFY THE WRNGS WHETHER THEY WERE AVAIL BUILDING ET CETERA SO MR. SO THE TRIAL COURT GAVE HIM 30 DAYS TO AMEND, HE THEN, NAMED THREE WITNESSES TWO ON DEATH ROW WHO HE SAID MIGHT TESTIFY, THAT A THREAT WAS MADE, IT WAS NEVER EXPLAINED, WHEN THE LET THAT WAS MADE, WHAT POINT, WAS THERE AN IMMINENT THREAT, NO WHAT THE THREAT WAS.
>> IS NOT THAT, I GUESS AGAIN TRYING TO CITE NEW RULE/OLD RULE WHEN HERE DON'T SPEND A LOT OF ENERGY TRYING TO SAY COME ON YOU GOT TO TELL US IN DETAIL!!$$!!!!!!!!!!
DETAIL, THAT IS WHY WE HAVE THE EVIDENTIARY HEARING, AND --
>> THIS COURT SAID IT IS OPPOSITE IN NELSON.
>> BUT NELSON WAS UNDER 3.850. AND I THINK, THAT AND AGAIN IF YOU ARE SAYING, THAT THIS WAS NOT UNDER THE NEW RULE, THAT MAY BE ANOTHER ISSUE, BUT, MY UNDERSTANDING, WHAT WE ARE TRYING TO DO IS SAY, YOU SET A CLAIM DOWN HE COULD HAVE PRESENTED SOMETHING TO MITT COMAIT THIS, THEN WHAT YOU DO IS THROUGH THE CASE MANAGEMENT CONFERENCES!!$$!!!!!!!!!!!!!!!!!!!
CONFERENCES, THEY LUIS HERE ARE WITNESSES THAT WILL STATE IT SINCE DON'T YOU HAVE AUTOMATIC DIFFERSRY IT CABINET BE, IT CABINET KNOW IN EVERY DETAIL!!$$!!!!!!!!!!
DETAIL, WHAT WOULD BE PUT ON.
>> WELL, THE RULES STILL REQUIRES THAT YOU MAKE A SWORN ALLEGATION, THAT PRESENTS A COLORABLE CLAIM, AND IN THIS CASE, EVEN IF YOU LOOK AT THE HUFF HEARING, WHEN HE GOT TO THE HUFF HEARING AND WES -- WAS TALKING ABOUT TREWICK, THE OTHER DEATH ROW IN MATE HE SAID THEY WERE IN CELLS NEXT TO HIM MIGHT HAVE HEARD A THREAT.$$!!!! I THINK THE COLLATERAL

COURT CORRECTLY, BASED ON THAT, REPRESENTATION, PROPERLY DENIED INSIGHT SO THEY DIDN'T SAY, WELL WE HAVE NOW INVESTIGATED IT HERE IS ALL THIS EVIDENCE WE COULD HAVE PUT ON.
>> ABSOLUTELY NOT IN FACT.
>> WASN'T THAT ON THE FAILURE TO INVESTIGATE AND PRESENT MITIGATION!!$$!!!!!!!!!!!!!!!!! MITIGATION?
>> YOUR HONOR, AGAIN.
>> IS THAT THE THING ABOUT HIM BEING A POET.
>> YES, MA'AM WHAT HAPPENED AT THE INITIALLY HE MADE NO CLAIM WHAT WITNESSES THAT TRIAL OCCURRENCE WAS INEFFECTIVE FOR FAILING TO CALL AGAIN, FAILED TO SET FORGOT THEIR -- FOURTH NAMES WHAT TESTIMONY WOULD HAVE BEEN AT THE PENALTY PHASE THERE WERE SIX, POETS, AND MEMBERS OF THE LITERARY COMMUNITY INCLUDING, THE EDITOR-IN-CHIEF OF WESLEY AND PRESS, WHICH ALL WITNESSES ADMITTED WAS VERY PRESTIGIOUS WHO TESTIFIED THAT NOT ONLY DID MR. BOOKER GET A BOOK PUBLISHED CALLED TUG, BUT HE ALSO ASSIGNED ROYALTIES TO MRS. ZIRAMSKY A RELATIVE OF MRS. HARMON THAT TESTIMONY CAME OUT THE TRIAL JUDGE, GAVE MR. BOOKER THREE -- 30 DAYS TO AMEND HIS CLAIM TO DEMONSTRATE NOT ONLY WHO THESE WITNESSES WERE, AND UP THE WOULD HAVE BEEN AVAILABLE TO TESTIFY AT TRIAL, BECAUSE, YOU KNOW THE BASES OF NELSON ONE CAN'T BE INEFFECTIVE IF THESE WITNESSES, WOULD NOT BE AVAILABLE TO TRIAL, OR WOULD BE CUMULATIVE, IT WOULDN'T UNDERMINE THE CONFIDENCE IN THE CASE, THAT STILL I THINK GOOD LAW IN THIS COURT, IS STILL DISCUSSING THAT, AND, SO HE IDENTIFIED, SIX WITNESSES, BY NAME, ONE OF WHICH WAS MR. HENRY GATES, WHOSE

AFFIDAVIT WAS PRESENTED AT THE SPENCER HEARING TRIAL COUNSEL DIDN'T STOP AT THE PENALTY FACE HE ALSO ENTERED ADDITIONAL EVIDENCE AT SPENCER HEARING IN THAT AFFIDAVIT MR. GATES SAID HE WASN'T AVAILABLE BUT THE ISSUE FOR THE COLLATERAL COURT YUM THAT IS MR. BOOKER NEVER SET FORGOT WITH ANY OF THESE WITNESSES, HOW, WHAT SUBSTANTIVELY DIFFERENT WOULD HAVE BEEN ABOUT THEIR IT TESTIMONY, THAT WASN'T ALREADY PRESENTED TO THE JURY BY THESE SIX, WITNESSES ALREADY PRESENTED. AND, MR. BOOKER NEVER OUTLINED WHAT THEIR -- THE SUBSTANCE OF THEIR TESTIMONY WOULD IT WOULD HAVE BEEN HOW IT WOULD HAVE MADE A DIFFERENCE.
AND, SO THAT IS THE BASES -- BASIS OF THE COLLATERAL COURT'S JUDGES' IN EVERY DAY HE HAD WOULD HAVE BEEN MERELY CUMULATIVE SPEFG GIVEN THE FACT MR. BOOKER NEVER SET FORTH, WHAT TESTIMONY WOULD HAVE BEEN.
>> CONCLUSIVELY -- REFUTED -- BECAUSE OF THE NATURE, REALLY OF WHAT THIS MITIGATION WAS, IT WAS AT THE MOST MORE OF THE SAME NOT ABOUT APPROXIMATE OTHER THINGS THAT IS CHILDHOOD!!$$!!!!!!!!!!!!!!!
CHILDHOOD, OR.
>> EXACTLY.
>> IN OTHER WORDS WHAT I'M CONCERNED ABOUT SOMEBODY SAID LISTEN I COULD YOU DIDN'T PUT MITIGATION ON, ABOUT, CHILDHOOD ABUSE, AND, I'M, I THINK AT SOME POINT ESPECIALLY ON NEW RULE, WE WANT FOR, 3.580, WE, DON'T NECESSARILY WANT THE 3.851 WE WANT TO MAKE INSURE THAT IT IS COMES OUT AT THE EVIDENTIARY HEARING AND NOT, TRY TO -- BAR SOMEONE BECAUSE PROCEDURALLY THIEFRNTHS DOTTED EVERY I.
>> ABSOLUTE HE COULD HAVE SORT OF THREW THAT IN THERE COULD

HAVE BEEN WITNESSES TO TESTIFY ABOUT CHILD ABUSE NEVER NAMED ANY OF THOSE ONCE, DR. BERNARD TESTIFIED AT THE PENALTY CASE, ABOUT HIS CHILDHOOD ABUSE FISCAL ABUSE VERBAL ABUSE, HIS SEXUAL ABUSE BY THE BABYSITTERS!!$$!!!!!!!!!!!!!!!!!! BABYSITTERS,DR. BERNARD AT THE PENALTY FACE -- PHASE, PROVIDED OWL THAT EVIDENCE.
>> CORRECT ME IF WRONG ISN'T THERE A PROCEDURE IN NEW RULE YOU LUIS YOUR WITNESSES US THAT IS WOULDN'T PUT IT IN IT IS NOT THAT YOU PUT IN THE CLAIM BUT I HAVEN'T LOOKED AT THE RULE FOR A WHILE, BUT, IF THE ONCE ARE LIST -- WITNESSES ARE LISTED SOME POINT BEFORE THE EVIDENTIARY HEARING.
>> SUPPOSED TO BE DONE ACCORDING TO NEW RULES CASE MANAGEMENT THAT WAS NEVER DONE.
>> ALL THIS DON'T OCCUR BECAUSE I IT THIS WAS BEING DONE UNDER OLD RUE.
>> I'LL SAYING IF YOU ANALYZE UNDER NEW RULE IT IS INSUFFICIENT BECAUSE YOU 124I78 TO DEMONSTRATE HOW CALLING THESE WITNESSES WOULD HAVE MADE A DIFFERENCE, AND -- MAY I FINISH MY ANSWER.
>> FINISH YOUR ANSWER.
>> HOW -- YOU STILL HAVE TO PRESENT A LEGALLY SUFFICIENT CLAIM AND THAT I THINK THE FACT THAT THE COLLATERAL COURT STILL HAS SOME LEEWAY, TO ACT AS A INVESTIGATE KEEPER TO MAKE INSURE THAT THERE IS A PRIMA FACIE CASED EVEN UNDER THE NEW RULE.
>> IN CONCLUSION, WE WOULD ASK THAT THIS COURT -- COURSE AFFIRM THE COLLATERAL $$COURT'S DENY$$!!!!IAL OF MR. BOOKER'S 3.851 MOTION.
>> ALL RIGHT, REBUTTAL?
>> -- ACTUALLY WE HAD A HEARING EARLIER IN THIS CASE, BEFORE, MISS -- WAS INVOLVED

THE COURT MADE A RULING WE
WERE GOING TO GO UNDER THE
OTHER RULES THE STATE
INDICATED IT WAS A WANTED TO
BE A NEW RULE CASE THERE WAS
ACTUALLY A HEARING IN A COURT
RULING WE WERE GOING UNDER,
THE OLD RULE EARLY ON, SEVERAL
YEARS AGO, BUT WHAT HAPPENS
THIS NELSON CASE WAS PRESENTED
TO THE COURT, AND THAT IS WHY
THE COURT, GAVE ME TIME TO
AMEND, MOST THAT THE POINT
MOST PEOPLE, YOU KNOW IF THE
EARLY PLEADING WAS
INSUFFICIENT, IS THAT MOST
PEOPLE WERE CONCEDE TO GO A
HEARING, AT THAT POINT, AND --
PUT THE AMENDED MOTION,
CLEARLY NAMES WITNESSES IT
SAYS IT WOULD HAVE SHOWN THAT
THERE WAS THREAT TO BOOKER'S
LIFE THERE WAS A PRISON RIOT.
>> DOESN'T IT SAY THEY MIGHT
THEY MIGHT --
>> IT SAYS "MIGHT" BECAUSE I
DON'T KNOW WHAT THEY WILL
ACTUALLY TESTIFY TO.
>> I'M --
>> -- THAT IS WHY IT WAS USED
-- BUT IT WOULD I DON'T THINK
WE SHOULD GET DOWN TO WHETHER
I USED A SUBJUNKIVE OR I MEAN
IT IS A SHAME IF WE DON'T GET
A HEARING ON SOMETHING BECAUSE!!$$!!!!!!!!!!!!
BECAUSE --
>> TO WERE A EXTENT TO YOU
ASSERT THAT YOU COULD HAVE
RELITIGATED!!$$!!!!!!!!!!!!!!!!!!!!
RELITIGATED, THIS WAS I
ASSUME, WOULD HAVE BEEN A
RELITIGATION OF THAT UNLIKE!!$$!!!!!!!!!!BATTERY
THAT IS INVOLVED BECAUSE WHAT
YOU ARE DOING SAYING THIS
SELF-DEFENSE!!$$!!!!!!!!!!!!!!!!!!!!!
SELF-DEFENSE, THROWS THE FIRE
BOMB BECAUSE HE HAD BEEN LET
THATTENED.
>> EXPLAINS TO THE JURY THIS
WAS IMPORTANT IT EXPLAINS TO
THE JURY, WHAT HATCHED IT WAS
IN THE CONTEXT OF GUARD
KILLING.
>> MR. KNIGHT, ALSO MENTIONED

KILLED A GUARD THERE, WAS --
THERE WERE WITNESSES MRS.
CAREY WAS IDENTIFIED AS A
POSSIBLE WITNESSES A NUMBER OF
PEOPLE, WOULD HAVE PUT THIS
INTO CONTEXT IT WOULDN'T HAVE
MADE BOOKER OUT THAT HE DIDN'T
DO IT.
IT WOULD HAVE PUT IT IN
CONTEXT.
THAT IS ALL --
>> -- TALK TO WITNESSES WHY
NOT TUT THEM IN YOUR MOTION
AND SAY THAT THEY WILL
TESTIFY, BECAUSE I TALKED TO
THEM?
>> I -- I -- WITH SOME OF
THESE GUYS, THROUGH VERIFY
WHAT THEY ARE GOING TO SAY I
DON'T KNOW.
-- WHAT THEY ARE GOING TO SAY,
I DID -- MR. BOOKER COULD HAVE
TESTIFIED.
AND I TOLD THE COURT THAT AS
WELL.
P TO THIS I SAID SUSAN CAREY,
A LAWYER, WHO KNEW ABOUT THE
FACT THAT THIS COULD HAVE
TESTIFIED, AT THE HEARING.
>> HAD YOU TALKED TO THE
WITNESSES BEFOREHAND.
>> YES,IES, BOOKER BOOKER HAD
TALKED TO THEM, FOR ME I CAN'T
HAVE ACCESS TO -- THESE PEOPLE
ARE ON DEATH ROW.
BOOKER HAD TALKED TO THEM.
>> THAT IS WHY I -- WHERE I
GOT THAT INFORMATION YOUR
HONOR.
>> STRIKE YOUR OTHER BLOWS YOU
ARE WELL BEYOND YOUR TIME.
>> OKAY MY BLOWS SUCH AS THEY
ARE, ARE I WOULD JUST SAY I
WILL PRESENT THE COURT, WITH
THE -- CITES IN THE RECORD,
SHOWING THAT WE WERE
PROCEEDING WITH A BIFURCATED
HEARING ON THIS PREJUDICE
ISSUE.
>> ON THE ORDER OF THE COURT
DOES SAY THAT THE HEARING IS
GOING TO BE ON BOTH WHETHER IT
WAS INTERCEPTED WHETHER IT WAS
USED DOES IT NOT?

>> THAT ORDER DOES SAY THAT.
>> IS THAT NOT THE ORDER --
>> POINTED OUT BUT THE HEARING DID NOT -- DID NOT COVER THAT
>> OBJECT.
>> I BELIEVE HE IS ACTUALLY TALKING ABOUT ATTORNEY-CLIENT, PRIVILEGE.
>> I BELIEVE THAT THE RECORD SHOWS THAT THERE WAS A MAIL COVER, THAT THIS WAS DONE, AND THE $$COURT'S ORDER IS NOT BASED UPON THE RECORD.
P.
>> OKAY, THANK YOU.
>> THANK YOU, WE THANK BOTH PARTIES WE'LL TAKE THE CASE UNDER ADVISEMENT