

>> NEXT CASE ON THE COURT'S DOCKET
IS RONALD WAYNE CLARK VERSUS
STATE OF FLORIDA.

LET'S LET MR. CHARBULA GET
ORGANIZED HERE.

PARTIES READY?

ALL RIGHT.

MR. BRODY?

>> MAY IT PLEASE THE COURT, GOOD
MORNING, YOUR HONOR.

I'M HARRY BRODY REPRESENTING
RONALD WAYNE CLARK.

ON THE APPEAL OF THE DENIAL OF
THE 3851 MOTION.

>> DID YOU WRITE THE BRIEF
YOURSELF?

THE BRIEF IN THIS CASE.

>> THE INITIAL BRIEF, YES, I
DID.

>> THERE IS A REPLY BRIEF.

>> THERE IS NO REPLY BRIEF
BECAUSE I PREPARED A REPLY BRIEF
BUT I HAD A DISPUTE WITH MY
CLIENT ABOUT THE CONTENT OF IT
AND HE PREPARED A REPLY BRIEF AS
WELL AND WANTED ME TO FILE HIS
REPLY BRIEF.

AND HE DIRECTED ME NOT TO FILE
MY REPLY BRIEF.

AND, I...

>> ALL RIGHT --

>> I DECIDED NOT TO FILE IT.

>> I WANTED TO BE SURE THERE WAS
NOT A -- THERE WAS NOT A REPLY
BRIEF AS WE UNDERSTOOD.

>> I'M SORRY FOR THAT IN THE --

COUPLE OF INSTANCES I THINK IT
WOULD BE -- WOULD HAVE BEEN --
REPLY BRIEF IS USUALLY HELPFUL.
THERE ARE -- WE HAVE TWO CLAIMS
FOR RELIEF, THAT ARE BEFORE THE
COURT PROPERLY.

AND I SEE PENALTY PHASE CLAIM.
THERE WAS NO MITIGATION
PRESENTED AT THE TRIAL.
OF THIS MATTER.

AS YOUR HONOR KNOWS, THERE WAS A
PREVIOUS TRIAL FOR THIS, SEVERAL
WEEKS OR PERHAPS A MONTH BEFORE
IN NASSAU COUNTY, AT THAT TRIAL,
MR. CLARK HAD BEEN R. BY THE
SAME LAWYER, AND, HE HAD
RECEIVED A DEATH SENTENCE AT
THAT TIME.

THIS CASE CAME ON FOR TRIAL
SHORTLY THEREAFTER.

AND, AT THIS TRIAL, THE
ATTORNEY, JUDGE DAVIS, HAD ALL
OF THE SAME MITIGATION READY TO
GO.

IT WAS WHAT IT WAS WHAT THE
COURT CALLED SUBSTANTIAL
NONSTATUTORY MITIGATION AND IT
TOLD THE STORY OF A VERY -- OF
THE MOST PAINFUL LIFE THAT THIS
ATTORNEY HAD EVER HEARD OF.

MR. CLARK'S LIFE OF ALCOHOL
ABUSE FROM A VERY EARLY AGE,
ALCOHOL AND DRUGS, DOMESTIC
ABUSE, SEXUAL ABUSE, THE WHOLE
NINE YARDS.

>> SO THIS IS A VERY UNUSUAL

SITUATION BECAUSE WE KNOW WHAT THE MITIGATION WAS, BECAUSE IT WAS PRESENTED IN NASSAU COUNTY. AND MR. DAVIS INVESTIGATED FULLY THE MITIGATION AND YOUR CLIENT ON THE RECORD GAVE A KNOWING AND VOLUNTARY WAIVER OF THE MITIGATION.

OR DIRECT APPEAL -- OUR DIRECT APPEAL OPINION SAYS HE REFUSED TO PUT ON MITIGATION.

SO, I AM A LITTLE PERPLEXED AS TO WHAT LAW WE WOULD APPLY IN THIS CASE AS TO A PERSON THAT IS -- HAS MADE A KNOWING AND VOLUNTARY WAIVER OF MITIGATION, MITIGATION IN SOME FORM WAS PRESENTED IN A HEARING AND YOU HAVE NOT UNCOVERED NEW... SAYING JUDGE DAVIS SHOULD HAVE INVESTIGATED SOMETHING ELSE.

I'M NOT SURE HOW YOU... WHAT APPROACH YOU WOULD TAKE TO SET ASIDE THE WAIVER THAT MR. CLARK INVOKED, AT THE TIME OF THE PENALTY PHASE.

TO NOT PUT ON ANY MITIGATION IN HIS BEHALF.

>> WHEN ONE READS THE WAIVER, IT IS NOT SUBSTANTIVE IN ANY WAY. IT IS JUST SAYING MR... AND IT DOES SAY THE LAW AT THAT TIME WAS PERHAPS MEANT, SHORTLY THEREAFTER, THIS WAS BEFORE THE KUHN DECISION, WHEN THE COURT MADE THE ATTORNEY'S OBLIGATIONS

EVEN IN A WAIVER CASE A LITTLE MORE COMPLICATED.

BUT, AT THIS TIME, ALL THAT MR. CLARK SAYS AND ALL THAT THE COURT INQUIRES OF HIM, IS THAT HE DOESN'T WANT TO PUT ANY OF THAT STUFF ON.

WELL, THAT -- DOES APPEAR --

>> IT IS REALLY A UNIQUE CASE, BECAUSE, BECAUSE HE KNEW EXACTLY WHAT THAT STUFF WAS, BECAUSE HE HAD BEEN IN A TRIAL, WHERE IT ALL HAD BEEN PUT ON -- THERE IS NO QUESTION, THAT HE KNEW WHAT THE MITIGATION -- WHAT MITIGATION COULD BE PUT ON AND THAT THE -- WOULD BE IN A POSITION TO EVALUATE ITS IMPACT.

>> RIGHT.

AND IT IS -- REALLY NOT UNCOMMON, FOR -- MITIGATION, THE CLIENTS... IT IS HARD TO LISTEN TO THE STUFF, ABOUT THEIR CHILDHOOD AND IT IS OFTEN EMBARRASSING.

IT INVOLVES BED-WETTING AND THINGS LIKE THAT AND CLIENTS OFTEN DON'T REALLY WANT TO PUT IT ON.

BUT, THE ATTORNEY'S OBLIGATION -- THAT IS JUST THE NATURE OF MITIGATION, THESE ARE NOT CASES WHERE THE CLIENT OFTEN WILL HAVE EARNED AN EAGLE SCOUT STATUS OR SOMETHING TO THAT EFFECT.

THAT YOU CAN PUT ON, MITIGATION

IS... THIS KIND OF MITIGATION IS
HARD.

AND IT IS -- THE ATTORNEY HAS AN
OBLIGATION TO MAKE A... TO TELL
THE CLIENT AND ADVISE THE
CLIENTS AND ALSO, THE CLIENTS IS
VERY YOUNG, 21 YEARS OLD.

AND, REALLY, NOT CAPABLE OF
THINKING AHEAD, THAT IN TEN OR
15 OR 20 YEARS YOU WILL WANT TO
HAVE PUT THE MITIGATION ON.

>> BUT, WE ALSO HAVE' FURTHER
UNIQUE SITUATION WHICH IS THAT
JUDGE DAVIS TESTIFIED AT THIS
EVIDENTIARY HEARING THAT HE WAS
REALLY NOT AGAINST THE
DEFENDANT'S DECISION TO WAIVE
THE MITIGATION.

BECAUSE HE HAD WATCHED IT.
IN THE NASSAU COUNTY CASE AND
SAW THE JURORS' REACTION AND
THOUGHT HE HAD A BETTER SHOT IN
THIS CASE BY SHOWING OR TRYING
TO ATTEMPT TO SHOW THAT
MR. CLARK WAS NOT THE SHOOTER.
SO YOU NOW HAVE TWO LAYERS.
YOU FIRST 0 OF ALL... MITIGATION
AND A CLIENT WHO KNEW WHAT THE
MITIGATION WAS AND NOW YOU HAVE
AN ATTORNEY WHO SAYS I REALLY
WAS NOT AGAINST THIS DECISION,
THAT MR. CLARK MADE TO ---...
[INAUDIBLE] MITIGATION AND YOU
HAVE REALLY TWO SEPARATE LAYERS
OF UNIQUE CIRCUMSTANCES THAT
WEIGH AGAINST FINDING SUFFICIENT

PERFORMANCE IN THIS CASE.

>> WELL, THAT IS CORRECT, YOUR HONOR.

I DON'T THINK HIS TESTIMONY WAS THAT HE THOUGHT THAT THE MITIGATION WAS NECESSARILY BAD.

IN FACT, HE TESTIFIED THAT HE WOULD PROBABLY USE IT TODAY IF HE WAS HANDLING THE CASE, WOULD PROBABLY PUT IT ON, NOW.

IT WAS THAT FRANKLY MY FEELING, WHEN YOU READ THE WHOLE THING, IN WHAT -- WHEN YOU ANALYZE WHERE -- WHAT HE IS SAYING IS I THINK HE HAD GIVEN THE FIRST CASE EVERYTHING THAT HE HAD. AND WAS SOMEWHAT DEFLATED AT THE TIME OF THE SECOND TRIAL.

WHICH IS A NATURAL REACTION. HE HAD THOUGHT HE HAD MORE OF A SHOT I THINK AT THE FIRST TRIAL, AND --

>> A SHOT AT WHAT.

>> GETTING A LIFE SENTENCE PERHAPS WITH THE MITIGATION. THIS WAS THE WORST HE HAD EVER SEEN.

>> SO YOU THINK HIS... BUT, HE THOUGHT THIS CASE WAS A STRONGER CASE FOR GETTING LIFE BECAUSE HE COULD SHOW OR ARGUE THAT ARE CLIENT WAS NOT THE SHOOTER. I'M A LITTLE CONFUSED ABOUT WHAT... WHAT THE TESTIMONY WAS, AS TO WHY THE MITIGATION WAS ULTIMATELY NOT PUT ON IN

ADDITION TO THE FACT THAT THE...
THE DEFENDANT WAIVED IT.
WHY MR. DAVIS THOUGHT IT SHOULD
NOT BE PUT ON.

>> WELL, THE FIRST REASON HE
SAYS IS, MR. CLARK WANTED TO GET
DEATH INSTEAD OF LIFE AND HAD A
DEATH SENTENCE, AND HE DID NOT
WANT TO SPEND LIFE IN PRISON,
AND THAT IS THE FIRST REASON
THAT HE GIVES, YOUR HONOR.
AND HE WANTED TO HAVE A De
SENTENCE AND DIDN'T WANT TO HAVE
A LIFE -- DO LIFE AND THAT IS
ALSO A COMMON THING, A YOUNG MAN
SAYS, IN THESE CASES.

I WOULD RATHER GET, YOU KNOW,
PUFFING HIMSELF UP.

>> BUT --

ISN'T THE FACT OF THE MATTER
THAT THE DEFENDANT, IF HE IS
PROPERLY INFORMED, ABOUT
MITIGATION, HAS A TRITE WAIVE
MITIGATION.

IF HE IS COMPETENT.

>> YES.

HE DOES HAVE A RIGHT TO WAIVE.

>> SO, IF IT IS -- WHAT POSSIBLE
BASIS IS THERE IN THE RECORD
BEFORE US, TO CONCLUDED THAT
THIS WAIVER WAS NOT KNOWING AND
VOLUNTARY?

>> I HAVE BEEN --

>> THAT IS NOTE QUESTION.

>> RIGHT, WELL, IT -- THE WAIVER
IS NOT VERY -- DOESN'T INQUIRE

MUCH ABOUT THE CLIENT'S
UNDERSTANDING OF THE MITIGATION.

>> WE HAVE THE -- WE KNOW WE
HAVE THE... HAVE INDISPUTABLE
EVIDENCE THAT HE HAD BEEN IN A
TRIAL WHERE THE -- THE WAIVER --
I'M SORRY WHERE THE MITIGATION
EVIDENCE HAS BEEN PUT ON AND
THAT IS NOT REALLY A QUESTION.
HE OBVIOUSLY KNEW WHAT IT WAS,
BECAUSE IT HAD BEEN PRESENTED
BEFORE HIM, AT TRIAL.

>> THAT'S CORRECT, YOUR HONOR.
AND THAT IS PERHAPS WHY, BUT IF
HE DIDN'T WANT TO PUT IT ON
BECAUSE HE PERHAPS DIDN'T WANT
TO EMBARRASS -- I DON'T WANT TO
EMBARRASS MY MOTHER, I DON'T
WANT TO EMBARRASS MY STEPMOTHER,
WHATEVER, WHETHER HE'S... THE
REASON HE'S MAKING FOR THE
DECISION, IS IMPORTANT, AND HOW
WELL HE DOES UNDERSTAND THE
IMPORTANCE OF THE DECISION.
THIS IS -- HE WILL NOT PUT
ANYTHING ON.

IT IS AN IMPORTANT DECISION,
AND, THE COURT NOW HAS PUT IN
PLACE STEPS TO REMEDY THIS.
TO MAKE IT -- SO THAT THE COURT
DOESN'T GET A RECORD WHERE THERE
IS NO, NO MITIGATION.

>> WE HAVE SOME QUESTIONS FROM
JUSTICE PERRY.

>> JUSTICE PERRY WOULD LIKE TO
KNOW, WHETHER MITIGATION WAS

PRESENTED IN THIS CASE, THROUGH
THE SPENCER HEARING, AND,
WHETHER THE TRIAL COURT
CONSIDERED REPORTS FROM -- FROM
MENTAL HEALTH EXPERTS.

>> YES, IT WAS THE... THE TWO
MENTAL HEALTH REPORTS WERE GIVEN
TO THE JUDGE AT THE SPENCER
HEARINGS.

AND I'M SORRY.

WHAT WAS THE SECOND PART OF THE
QUESTION, YOUR HONOR.

>> WHETHER MITIGATION WAS
PRESENTED IN THE CASE AT THE
SPENCER HEARING.

AND WHETHER THE TRIAL COURT
CONSIDERED REPORTS FROM MENTAL
HEALTH EXPERTS.

>> I THINK, YES, AND YES.

ARE THE ANSWERS TO THOSE.

SO...

>> ARE YOU GOING TO DISCUSS YOUR
ISSUE OF A NEWLY DISCOVERED
EVIDENCE AND IN DISCUSSIONS IT,
COULD YOU PLEASE EXPLAIN THE
PROCEDURAL STATUS OF THAT CLAIM
AND HOW IT WOULD JUST -- IT WAS
BROUGHT UP OUT OF NOWHERE,
APPARENT AT THE EVIDENTIARY
HEARING.

>> OKAY, IT CAME UP, THERE WAS A
CARTER HEARING, A COUPLE OF
MONTHS BEFORE THE EVIDENTIARY
HEARING, WHERE WE HAD FILED A
MOTION THE CLIENT WAS
INCOMPETENT TO ASSIST COUNSEL IN

PREPARING THE CASE.

THAT WAS DENIED, AND, THE TRIAL
-- AND THE EVIDENTIARY HEARING
WAS SET, FOR A COUPLE OF MONTHS
LATER.

THE CLIENT AT THAT TIME WE BEGAN
TO GET MORE INFORMATION, WE
FOUND OUT WHERE THIS INMATE WAS,
AND DEVELOPED THIS -- FOUND THIS
FORMER FRIEND... AND, DIDN'T
TALK TO HIM, UNTIL AFTER THE
CARTER HEARING.

AND I HAD ONLY BEEN COUNSEL ON
THE CASE BEFORE THAT, FOR MAYBE
FIVE OR SIX MONTHS.

>> SO YOU TOOK OVER THE CASE --

>> IN THE SPRING.

>> OF WHAT YEAR.

>> MARCH, '06.

>> AND IT HAD BEEN PENDING SINCE
194.

>> PENDING FOR A LONG TIME AND I
REPRESENTED MR. CLARK VERY
BRIEFLY FOR A PERIOD BEFORE THE
NORTH WAS CLOSED.

NORTHERN CCRC WAS CLOSED.

I REPRESENTED MR. CLARK AT THE
TIME IT WAS CLOSED.

THEN, HE WENT THROUGH A LONG
SKIRMISH WITH A COUPLE OF OTHER
LAWYERS.

AND, I WAS REAPPOINTED, THE
JUDGE ASKED ME IF I WOULD TAKE
IT IN MARCH 2, '06, SOMETHING
LIKE THAT.

AT THAT TIME, MR. CLARK WAS ON

HIS FIRST SERIES OF HUNGER
STRIKES AND...

>> DOES THE RECORD REVEAL THAT
HE IS A DIFFICULT CLIENT FOR THE
COURT AS WELL AS FOR HIS
ATTORNEYS?

>> WELL, THE COURT REPLIED IN
ONE OF THE RECENT SKIRMISHES,
THAT -- FILED A MOTION WHERE THE
JUDGE WAS RESPONDING AND I
BELIEVE HE STATED THAT HE HAD
TROUBLE WITH MR. CLARK AND...

>> LETS GET BACK TO THIS ONE, SO
YOU ARE -- WHAT IS THE REASON
FOR THE NONCOMPLIANCE WITH THE
ONE YEAR OF DISCOVERY OF THIS
INFORMATION.

>> WELL, WE FOUND IT -- WE SET
AN ORDER OF TRANSPORT OF THE
WITNESS TO BE AT THE HEARING
WHICH I BELIEVE WAS IN JANUARY,
AND IT WAS REALLY SHORT ORDER
AND WE WENT AND TALKED TO THE
GUY AND WE GOT THE EVIDENCE, WE
WERE GOING -- WE WERE -- DIDN'T
THINK TO GO AHEAD AND FILE A
WRITTEN MOTION, FIRST.

WE WERE... AND I HAD DONE THIS
BEFORE, WHERE I PUT ON EVIDENCE,
AND --

>> THAT IS A WHOLE DIFFERENT
CLAIM.

WOULDN'T IT BE -- I MEAN,
FORTUNATELY THE TRIAL JUDGE
ALLOWED A RECORD TO BE MADE SO
THAT WE NOW KNOW WHAT

MR. THOMPSON WOULD SAY AND
MR. HATCH CALLED IN REBUTTAL
BUT, YOU KNOW, MR. BRODY IS THE
LAWYER THAT HAS APPEARED HERE,
THERE HAS TO BE A WRITTEN MOTION
ON NEWLY DISCOVERED EVIDENCE.

>> YES, YOUR HONOR, IT WAS...
AND SORT OF SOME OF THESE CASES,
I DON'T KNOW, AT THE HEARINGS,
WE HAVE... JUST DID NOT THINK
THAT IT... TO START OVER AGAIN,
WITH A MOTION AND WE THOUGHT WE
WOULD PRESENT IT AT THE HEARING.
I MEAN, IT ISN'T LIKE THERE IS A
LOT OF DISCOVERY DONE
NECESSARILY.

>> WELL, THAT IS YOUR -- YOU ARE
IN YOUR REBUTTAL.

>> WE ARE TRYING TO --

>> YOU ARE IN YOUR REBUTTAL.
DO YOU WANT TO SAY WHY THIS
EVIDENCE WAS -- WOULD PROBABLY
PRODUCE AN ACQUITTAL IF
MR. THOMPSON --

>> MR. THOMPSON -- YEAH, HE
BASICALLY TESTIFIED THAT HATCH
WAS LYING IN COURT WHEN HE
TESTIFIED THAT CLARK WAS THE
SHOOTER.

HATCH CONFESSED THAT HE WAS THE
SHOOTER.

HE APPARENTLY DRESSED IT UP, BUD
MATE IT SOUND LIKE A DRUG
SHOOTOUT AND MADE HIMSELF LOOK A
LITTLE BETTER.

MR. THOMPSON'S TESTIMONY IS

CLEAR WHEN HE SAYS, HE ADMITS
BEING THE SHOOTER.

HE AND HATCH WERE CLOSE PRISON
FRIENDS.

>> DID THE JUDGE MAKE A FINDING
OF THE CREDIBILITY OF
MR. THOMPSON.

>> HE MADE A FINDING THAT
MR. THOMPSON HAD CREDIBILITY,
PROBLEMS.

>> DIDN'T MR. HATCH TESTIFY ON
REBUT AND REAFFIRM WHAT HE HAD
SAID AND WAS HE CONFRONTED WITH
THIS STATEMENT, THAT HE
ALLEGEDLY MADE TO MR. THOMPSON?
?

>> HE DID, HE DID REPLY, I DON'T
BELIEVE HE WAS -- MR. HATCH WAS
NEVER VERY FRIENDLY.

WHEN I TALKED TO HIM AND I DID
NOT WANT TO ASK HIM A LOT OF
QUESTION.

AND I DIDN'T THINK HE WAS GOING
TO SAY ANYTHING HELPFUL.

BUT HE WOULD HAVE DENIED -- I
MEAN, HE DENIED THAT HE SAID IT
AND DENIED MAKING ANY SUCH
STATEMENT.

>> SAVE THE REST OF YOUR TIME
FOR REBUTTAL.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT,
MEREDITH CHARBULA.

>> SORRY FOR --

>> ASSISTANT ATTORNEY GENERAL
FOR THE APPELLEE IN THIS CASE.

I'D LIKE TO ADDRESS THE
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM DURING THE PENALTY
PHASE.

>> IT DISTURB POLICE THIS HAS
BEEN IN POSTCONVICTION FOR
ALMOST 14 YEARS, AT THIS POINT.
ON THE INITIAL EVIDENTIARY
HEARING, BRINGING THE OTHER CASE
TO LIFE -- I DON'T WANT YOU TO
SPEND ALL OF YOUR TIME ON THIS.
BUT IS IT... DID IT OCCUR
BECAUSE OF THE -- IN PART
BECAUSE OF THE CLOSING OF CCR
NORTH OR IS IT JUST A WHOLE
SERIES OF PROBLEMS WITH THE
CLIENT AND HIS ATTORNEYS AND
JUST SO THE COURT CAN
UNDERSTAND, SINCE WE ARE
RESPONSIBLE FOR TRYING TO BRING
THESE CASES TO PROMPT
RESOLUTION.

>> WHAT HAPPENED IS THE MOTION
WAS FILED IN 1994, THAT WAS A
HUFF HEARING AND EVIDENTIARY
HEARING SET AND THEREAFTER, A
PUBLIC RECORDS LITIGATION,
ENSUED, FOR QUITE A LONG PERIOD
OF TIME.

THEN, CCRC CLOSED, AND,
MR. CLARK WENT THROUGH SEVERAL
COUNSEL.

HE WAS UNHAPPY WITH SEVERAL OF
HIS COUNSEL, MR. WESTLING WAS
REPRESENTING HIM FOR A WHILE AND
FILED A SUPPLEMENTAL MOTION IN

'03, A RING CLAIM WHICH WE ANSWERED. AND, THEN, MR. CLARK WAS VERY, VERY UNHAPPY WITH MR. WESTLING, A SUBSEQUENT ATTORNEY WAS APPOINTED, AND MR. ANDERSON, MR. AND SOUND WITHDREW, AND MR. CLARK WAS VERY IN CITIZEN THAT MR. BRODY BE REAPPOINTED TO HIS CASE AND THEY DID SO AND MR. CLARK FILED MOTIONS TO DISMISS THE POSTCONVICTION AND CHANGED HIS MIND AND THEN, MR. BRODY PRETTY CLOSE TO THE EVE OF THE EVIDENTIARY HEARING FILED A CARTER MOTION, AND WE HAD A CARTER HEARING AND IT WAS ABUNDANTLY CLEAR MR. CLARK WAS COMPETENT AND HAD BEEN EXAMINED AND POST-CONVICTION FOR COMPETENCY AND THAT WAS ANOTHER ISSUE, HIS COMPETENCY WAS QUESTIONED AND HE WAS FOUND COMPETENT AND SO... I CANNOT EXPLAIN WHY, AFTER AN EVIDENTIARY HEARING WAS SET, THAT IT DIDN'T PROCEED FASTER, BEFORE CCR WAS CLOSING BUT I DID SEE IN MY FILES SEEMS LIKE THERE WAS A GREAT DEAL OF PUBLIC RECORDS LITIGATION, AND THAT THAT WAS OF COURSE BEFORE THE COURT PRECLUDED SHELL MOTIONS AND THERE WAS A LOT OF SUBSEQUENT EVALUATION BY -- NEED FOR PUBLIC RECORDS BY COLLATERAL

COUNSEL, IT APPEARED.

AND I, OF COURSE, I, YOU KNOW,
DON'T LIKE AT ALL THAT THIS CASE
HAS TAKEN SO LONG TO GET TO
EVIDENTIARY HEARING BUT IT
DIDN'T LOOK LIKE THERE WAS -- IT
JUST WAS LEFT ON THE SHELF, FOR
ANY SIGNIFICANT PERIOD OF TIME,
THERE WAS THINGS ONGOING
INCLUDING THE PUBLIC RECORDS AND
ONCE CCRC CLOSED AND MR. BRODY
EXPRESSED -- OR MR. CLARK,
EXCUSE ME, EXPRESSED NUMEROUS
TIMES, TO SATISFACTION WITH
COUNSEL, HE WAS APPOINTED
SEVERAL SUCCESSOR COUNSEL.
AND -- IN THIS CASE, SO THAT IS
THE BEST I CAN PIECE TOGETHER
FROM THE RECORD, THAT I HAVE,
YOUR HONOR.

THANK YOU.

>> YOU WANT TO PROCEED TO
DISCUSS THE PENALTY PHASE?

>> CERTAINLY, AS THIS COURT I
THINK RECOGNIZED, A COMPETENT
DEFENDANT MAY WAIVE HIS RIGHT TO
MITIGATION AND SET FORTH IN MY
BRIEF WAS THE COLLOQUY THE JUDGE
DID WITH MR. CLARK, TO MAKE SURE
THAT HE UNDERSTOOD HIS RIGHT TO
PUT ON MITIGATION, AND THIS
COURT FOUND HIS WAIVER, KNOWING
INVOLUNTARY -- THIS COURT HAS
SAID THAT A COMPETENT DEFENDANT
MAY NONETHELESS PIERCE HIS
WAIVER IF SHE SHOWS TWO THINGS,

HE SHOWS COUNSEL FAILED TO FULLY INVESTIGATE AND DISCOVER SUBSTANTIAL UNDISCOVERED MITIGATION, AND,/OR FAIL TO FULLY DISCUSS MITIGATION OR THE -- MITIGATION SO HE UNDERSTOOD WHAT HE WAS WAIVING.

AND THIS COURT, JUSTICE CANADY HIT THE NAIL ON THE HEAD SO TO SPEAK IN THAT MR. CLARK KNEW OF THE MITIGATION AND SAT THROUGH THE MITIGATION IN THE TRIAL, JUST A MONTH BEFORE.

TWO MONTHS BEFORE, BEFORE THIS CASE, IN THE NASSAU COUNTY CASE AND SAT THROUGH THE MITT GAGS AND WATCHED THE JURY AND HE WAS FULLY AWARE OF THE MITT GAGS.

PLUS --

MITIGATION AND PLUS, JUDGE DAVIS TESTIFIED AT THE EVIDENTIARY HEARING I DISCUSSED WITH MR. CLARK MITIGATION AVAILABLE ON SEVERAL OCCASIONS AND HE FULLY UNDERSTOOD AND UNDERSTOOD WHAT I WAS TALKING ABOUT AND HE WAS A BRIGHT AND ENGAGED CLIENT AND I'M CONFIDENT HE UNDERSTOOD WHAT HE WAS WAIVING.

>> CAN YOU EXPLAIN THIS?

AND I APPRECIATE THAT THIS IS EXACTLY WHAT YOU ARE SAYING, WHICH IS THE DEFENDANT DID KNOWINGLY AND VOLUNTARILY WAIVE THE MITIGATION, AND JUDGE DAVIS HAD IN EFFECT INVESTIGATED.

WHAT I'M NOT SURE I COMPLETELY UNDERSTAND IS WHAT JUDGE DAVIS'S... POSITION WAS, VIS-A-VIS WHETHER THE MITIGATION SHOULD HAVE BEEN PUT ON AND SOUNDED TO ME LIKE WHAT HE WAS REALLY SAYING IS YEAH, I SORT OF INSTEAD OF URGING HIM TO PUT IT ON I WAS SORT OF AGREEING THAT IT MIGHT NOT REALLY HELP HIM, IN FACT, WOULD YOU HELP ME ON THAT ISSUE?

BECAUSE THAT... IT SEEMS THAT THERE IS ALL MOST A FINDING THAT IT WAS A STRATEGIC REASON FOR NOT PUTTING ON MITIGATION. AS OPPOSED TO JUST THERE WAS A WAIVER.

>> I THINK THE -- MR. DAVIS TESTIFIED AT THE EVIDENTIARY HEARING THAT HE BELIEVED THE MITIGATION CUT BOTH WAYS AND ALSO TESTIFIED THAT THERE WAS EVIDENCE OUT THERE THAT HE CERTAINLY DID NOT WANT TO COME TO LIGHT.

THAT IS, THAT MR. CLARK WHEN HE WAS A CHILD SUPER GLUED CATS' EYELIDS TOGETHER JUST FOR FUN...

>> THAT CAME OUT IN THE NASSAU COUNTY --

>> NO, BUT HE WAS AWARE THAT IT WAS OUT THERE FROM HIS PARENTS AND THREW CATS AGAINST THE WALL TO TORTURE AND KILL THEM AND KNEW THAT WAS OUT THERE AND THE

STATE AS FAR AS WE KNOW DIDN'T
KNOW THAT AT THE TIME.
BUT, OF COURSE WHEN YOU --
WHENEVER YOU PUT ON MITIGATION
EVIDENCE THE STATE STARTS TO
DIG.

ALSO, WE HAVE -- IF YOU LOOK AT
THE MITIGATION PRESENTED IN THE
NASSAU COUNTY CASE, AND, WITH
RESPECT TO THIS COURT'S FINDING
THAT IT WAS SIGNIFICANT
MITIGATION, IF YOU LOOK AT THE
RECORD, DR. CHAKNIS TESTIFIED AT
THE NASSAU COUNTY CASE AND ONE
THING THAT IS UNIQUE IS THAT IN
CASE... WHAT WAS PRESENTED WAS
PRESENTED IN THE -- THE ONLY
TESTIMONY IN THE NASSAU COUNTY
CASE WAS DR. BERNARD AND
DR. CHAKNIS TESTIFIED FOR THE
DEFENSE AT THE THAT SAW COUNTY
CASE HE ENGAGED IN RAPE LIKE
BEHAVIOR WITH FEMALES WHEN THEY
WERE UNCONSCIOUS AND ENJOYED...
DERIVED GREAT PLEASURE FROM
HURTING OTHERS AND THAT HE
ENJOYED WATCHING BLOOD SPLATTER,
HE TESTIFIED THAT HE HAD BEEN
SUSPENDED FROM SCHOOL, ON
NUMEROUS OCCASIONS, ON ONE
OCCASION, HE TOOK A TWO-BY-4 TO
HIS VICE PRINCIPAL AND ANOTHER
CHILD AND ANOTHER OCCASION IN
OKLAHOMA GATHERED WEAPONS IN
ORDER TO HURT A SMALL CHILD, SO
I THINK EVEN IF YOU... WHEN YOU

LOOK AT WHAT TRIAL COUNSEL WAS THINKING, TRIAL COUNSEL NUMBER ONE WANTED TO KEEP ANY POSSIBILITY AWAY THAT THEY WOULD FIND OUT ABOUT CLARK'S PROPENSITY FOR TORTURING ANIMALS AND THE MITIGATION CUT BOTH WAYS AND FRANCIS CLARK, CLARK'S STEPMOTHER TESTIFIED IN MITIGATION AT THE NASSAU COUNTY CASE, THAT WHEN CLARK DRANK HE GOT MEAN, AND, THAT HE HAD A -- POSSESSED A SHOULD THE GUN AND WHEN YOU LOOK AT THE MITIGATION, CERTAINLY, THERE WAS MITIGATION FROM DR. MACULICI WHO WAS AN ADDICTION... AND THERE WAS ALSO DR. CHAKNIS WHO I THINK ANY REASONABLE PERSON CAN SAY WAS NOT MITIGATING WHATSOEVER. SO, TRIAL COUNSEL'S DECISION TO NOT LET'S SAY TRY AND PERSUADE MR. CLARK THAT HE REALLY SHOULD PRESENTS THIS KIND OF EVIDENCE, I THINK IS REASONED AND IF IT IS A REASONED TACTICAL DECISION LOOKING AT IT OBJECTIVELY IT CANNOT BE BY ITS NATURE DEFICIENT PERFORMANCE AND WHEN ONE LOOKS AT THE NATURE OF THE MITIGATION, ONCE ALSO CAN BE SAY THERE IS NO PREJUDICE, BECAUSE THIS COURT HAS SAID, MANY, MANY TIMES, WHEN LOOKING BOTH AT THE PERFORMANCE, THAT IT'S NOT DEFICIENT PERFORMANCE, TO NOT

PUT ON MITIGATION EVIDENCE THAT
MAY HURT YOU.

AS MUCH AS IT HELPS YOU.

>> I GUESS THE ONLY -- I THINK
THAT YOU HAVE GOT VERY --
SEVERAL STRONG POINTS.

WHAT IS A LITTLE DIFFICULT FOR
ME IS THAT -- AS I READ THE
COURT'S OPINION, FROM 1992, IN
THE NASSAU COUNTY CASE, AS YOU
SAY, THEY... THEY SET OUT WHAT
APPEARS TO BE VERY COMPELLING
MITIGATION, AND FINDS THAT WHEN
THEY FIND IT IS
DISPROPORTIONATE, DOES IT BASED
ON NOT ONLY THE -- ONLY ONE
AGGRAVATOR FOUND, BUT, ALSO, ON
STRONG NONSTATUTORY MITIGATION
INCLUDING HIM BEING SEXUALLY
ABUSED AS A CHILD, HIS PARENTS
WERE ALCOHOLICS AND SEPARATED
WHEN CLARK WAS FIVE OR SIX, AND
HE WITNESSED PHYSICAL ABUSE, AND
YOU KNOW, HE -- THE LONG HISTORY
OF THIS, SO, I'M -- ON ONE HAND,
IT CUTS BOTH WAYS BUT WE REALLY
HAVE IN FACT AT LEAST THIS COURT
FELT IT WAS CONTRIBUTED TO THE
DECISION TO REDUCE THE NASSAU
COUNTY CASE.

SO HOW... YOU KNOW, IF WE DECIDE
THAT THAT SAME EVIDENCE COULD
HAVE BEEN PRESENTED BUT THERE
WAS A KNOWING WAIVER WE DON'T
GET THERE AND THAT IS WHY I WAS
TRYING TO UNDERSTAND WHETHER

MR. -- I THINK YOU ARE... YOUR ANSWER, TO MY QUESTION REALLY WAS, DID MR. DAVIS HAVE A STRATEGIC REASON FOR IN THE PUTTING IT ON OR WAS IT A SITUATION WHERE HE HE WANTED TO PUT IT ON BUT THAT MR. CLARK SAID NO, I EITHER DON'T WANT TO GO THROUGH THIS AGAIN, I WANT TO... JUST AS SOON DIE OR... AND THAT WHAT IS I WAS ASKING AND YOU ARE SAYING THAT AS I'M UNDERSTANDING, MR. DAVIS REALLY WAS NOT SURE ABOUT WHETHER THEY SHOULD PUT IT ON AND DIDN'T HAVE THE BENEFIT OF WHAT THE COURT -- TO THINK ABOUT IT, EITHER? EXACTLY AND REALISTICALLY, IF THE COURT LOOKS AT ITS OPINION IN NASSAU COUNTY CASE, THE PRIMARY REASON THE COURT REDUCED IT WAS BECAUSE IT STRUCK THREE OF THE FOUR AGGRAVATORS THE TRIAL COURT FOUND AND ALSO I THINK THE COURT NEEDS TO REALIZE THAT IN THIS CASE THIS IS COMPLETELY DIFFERENT POSTURE FOR ONE REALLY BIG REASON, AND THAT REALLY BIG REASON IS THAT IN THIS CASE THE STATE PRESENTED EVIDENCE THAT JUST 74 DAYS BEFORE MR. CLARK SHOT MR. WILLIS BECAUSE HE WAS KIND ENOUGH TO PICK HIM UP AND -- HE AND HATCH UP HITCHHIKING HE KILLED CHARLES CLARK AND WE HAVE A PRIOR

VIOLENT FELONY INTRODUCED IN
THIS CASE
AND TRIAL COUNSEL KNEW THAT.
BUT IF YOU LOOK AT TRIAL
COUNSEL'S TESTIMONY AT THE
EVIDENTIARY HEARING, HE SAID,
LOOK, I THOUGHT THE MITIGATION
CUT BOTH WAYS.
OBVIOUSLY, I PRESENTED IN THE
FIRST CASE.
MR. CLARK TOLD ME UNEQUIVOCALLY
HE DIDN'T WANT TO PRESENT THIS
MITIGATION.
>> AND WHAT IS THE REASON HE HAD
SAID HE DIDN'T WANT TO PRESENT
IT?
>> MY RECOLLECTION IS THAT HE
DIDN'T WANT TO SPEND LIFE IN
PRISON.
THE -- AS I THINK IS PROPER --
THE ISSUE IS NOT WHETHER THE
DECISION IS ILL-ADVISED, THE
QUESTION IS, IS IT KNOWING AND
VOLUNTARY?
AND, OF COURSE, THIS COURT, LIKE
IN THE NASSAU COUNTY CASE, HAS
MADE A FINDING IN THIS CASE THAT
THAT WAIVER WAS KNOWING AND
VOLUNTARY, SO --
>> AND WE ALSO HAVE IN THIS
CASE, THERE WAS EVIDENCE
PRESENTED IN THE SPENCER
HEARING --
>> THAT'S CORRECT.
>> -- WHICH PUTS IT IN A VERY
DIFFERENT POSTURE, IN MY VIEW,

THAN OTHER CASES WHERE THERE'S
JUST A COMPLETE WAIVER.

>> ABSOLUTELY.

HE PRESENTED THE EXPERT,
DR. BERNARD, DR. MACULUCI AND
DR. MILLER.

YOU KNOW, I THINK, OF COURSE,
ALSO WHEN YOU'RE LOOKING AT SOME
OF THE MITIGATION THAT CLARK PUT
ON, MUCH OF IT WAS
UNCORROBORATED.

THIS NOTION OF SEXUAL ABUSE BY
HIS MOTHER'S LESBIAN LOVERS, ALL
UNCORROBORATED.

THERE WASN'T ANY DISPUTE THAT
MR. CLARK HAD A SUBSTANCE ABUSE
PROBLEM, THAT IS CLEAR, BUT I
THINK WHEN YOU LOOK AT SOME OF
THE MITIGATION EVIDENCE, IT'S
UNCORROBORATED, AND I THINK YOU
CAN SEE, YOU KNOW, DR. GLENN
TALKED ABOUT IN REBUTTAL AND, OF
COURSE, HAD MR. DAVIS PUT ON THE
MITIGATION HE PUT ON IN THE
NASSAU COUNTY CASE, HE WOULD
HAVE, THE STATE WOULD HAVE BEEN
FREE TO PUT ON A WITNESS LIKE
DR. GLENN WHO SAID, NOT ONLY IS
CLARK ANTISOCIAL, BUT HE'S
SOCIOPATHIC.

AND WHY HE'S DIFFERENT IS THAT A
SOCIOPATH DERIVES ENJOYMENT FROM
HURTING OTHERS, AND ALSO
SIGNIFICANT IS THAT THEY WILL
LIE TO REDUCE THEIR OWN
RESPONSIBILITY.

I THINK EVEN IF YOU LOOK AT THE REPORTS FROM SOME OF THE MORE FAVORABLE, YOU KNOW, THAT ARE SUPPOSEDLY FAVORABLE, YOU'LL SEE OUTRAGEOUS CLAIMS BY MR. CLARK LIKE HE MADE A LIVING RIPPING OFF DRUG DEALERS, AND HE ROBBED DRUG DEALERS WITH FOUR AUTOMATIC WEAPONS HE BROUGHT BACK FROM OKLAHOMA.

YET HE'S LIVING IN HIS CAR AT THE SAME TIME, AND HE DOESN'T HAVE A CAR.

THAT'S ONE OF THE REASONS WHY IT'S LOGICAL TO CONCLUDE THAT THEY TOOK THE TRUCK.

HE'S SAYING TO EXPERTS, I MADE \$15,000 A WEEK.

HE SAID THAT TO DR. BERNARD.

IT'S IN THE RECORD.

I MADE \$15,000 A WEEK AROUND 1989 RIPPING OFF DRUG DEALERS.

AT THE SAME TIME, HE'S LIVING IN HIS CAR, AND HE'S NOT, YOU KNOW, HE DOESN'T EVEN HAVE A CAR OF HIS OWN, AND HE'S HAVING TO HITCHHIKE.

SO WHEN YOU LOOK AT SOME OF THE THINGS, YOU KNOW, HE TELLS DR. MILLER, FOR INSTANCE, I DROPPED OUT OF SCHOOL IN THE EIGHTH GRADE AND FLUNKED SEVENTH GRADE TWICE.

>> SO WHAT WAS THE TRUTH ABOUT HIS EDUCATION?

>> IT'S NOT IN THE RECORD.

>> IT'S NOT IN THE RECORD.

>> IT'S NOT IN THE RECORD.

THERE'S A SECOND CLAIM THAT HAS TO DO WITH THE TESTIMONY OF MR. THOMPSON, BUT BEFORE YOU GET TO WHETHER IT'S PROCEDURALLY BARRED, WHAT IS THE EVIDENCE IN THIS RECORD THAT MR. CLARK RATHER THAN MR. HATCH WAS THE SHOOTER?

AM I TO UNDERSTAND THAT THIS WAS ACTUALLY MR. HATCH'S PISTOL?

>> MR. HATCH HAD STOLEN THE PISTOL EARLIER IN THE WEEK --

>> AND HAD HE ALSO STOLEN THE AMMUNITION AND HAD IT FULLY LOADED?

>> THAT'S CORRECT.

THAT'S CORRECT, AND MR. HATCH TESTIFIED THAT ON THE WAY THEY WERE SHOOTING SIGNS AND BOTTLE ON THE WAY AS THEY WERE HITCHHIKING --

>> WHO HAD THE --

>> THEY WERE BOTH SHOOTING.

ACCORDING TO MR. HATCH'S TESTIMONY, THEY WERE BOTH SHOOTING.

TWO WITNESSES, BILLIE JO BEAMAN AND MARY HATCH, SAW CLARK IN POSSESSION OF THE FIREARM.

MARY HATCH SAW -- WHO'S JOHN DAVID HATCH'S MOTHER -- SAW THE WEAPON IN CLARK'S POCKET AS THEY WERE LEAVING TO GO HITCHHIKING.

>> THAT IS, THAT'S THE

CO-DEFENDANT'S MOTHER?

>> THAT'S THE CO-DEFENDANT'S MOTHER.

THAT HAS NOT YET -- THERE'S BEEN NO EVIDENCE, EVEN THOUGH THERE WAS A CLAIM ON POSTCONVICTION, SHE WAS NOT TELLING THE TRUTH. THAT'S NEVER BEEN RECANTED.

ALSO WE HAVE MR. CLARK, MR. HATCH TESTIFIED HE WAS THE SHOOTER.

WE HAVE MR. CLARK SHOWING UP SOMETIME SHORTLY AFTER THE SHOOTING WEARING MR. WILLIS' BOOTS.

MR. CLARK IS THE ONE WHO GOES AND ATTACKS DEBORAH WILLIS WHO HAS, ALONG WITH HER SISTER SANDRA HARDY, HAS FOUND MR. WILLIS' PICKUP TRUCK IN THE OASIS MOTEL AND HAS --

>> SO WHAT YOU'RE REALLY SAYING HERE IS THAT EVEN IF FOR SOME REASON HE WASN'T THE SHOOTER, HE WAS CERTAINLY EQUAL -- I MEAN, THAT WOULD BE THE ARGUMENT YOU'RE GOING TOWARD.

>> THAT'S NOT MY ARGUMENT. MY ARGUMENT IS THAT HE'S THE SHOOTER, AND TWO OF THE THINGS I CAN TELL YOU WAS REALLY IMPORTANT, JUSTICE PARIENTE, AND THAT'S BECAUSE CLARK TOLD DOLAN THOMPSON AND WILLIAM BROWN, "I SHOT MR. WILLIS."

THE TESTIMONY AT TRIAL APART

FROM JOHN DAVID HATCH AND APART FROM ALL THIS EVIDENCE WAS THAT CHIEF WILLIAM BROWN, WHO WAS CHIEF OF THE JAIL AT THE TIME, WAS TRANSPORTING MR. CLARK EITHER FROM NASSAU COUNTY TO DUVAL COUNTY OR VICE VERSA, AND CLARK TOLD WILLIAM BROWN, "AFTER I SHOT MR. WILLIS, I REALIZED THAT HE WAS MY FATHER'S BEST FRIEND AND MY GIRLFRIEND'S MOTHER'S BEST FRIEND.

BUT, HELL, I DONE KILLED HIM ALREADY."

SO HE CONFESSED TO BOTH WILLIAM BROWN, DOLAN THOMPSON, "I SHOT" -- NOT DAVID SHOT -- "I SHOT HIM."

THAT WAS THE TESTIMONY.

AND IF YOU LOOK AT MICHAEL THOMPSON'S TESTIMONY, HIS TESTIMONY IS PRETTY INCONSISTENT IN TWO MATERIAL WAYS.

FIRST OF ALL, OF COURSE, MICHAEL THOMPSON'S TESTIMONY WOULD NOT BE ADMISSIBLE AS SUBSTANTIVE EVIDENCE THAT HATCH WAS THE SHOOTER.

IT WOULD AT MOST BE A PRIOR INCONSISTENT STATEMENT.

ALSO IT DIFFERED IN TWO MATERIAL WAYS FROM THE ACTUAL KILLING.

NUMBER ONE, MR. THOMPSON ALLEGED THAT MR. HATCH TOLD HIM, WELL, YOU KNOW, THIS HAPPENED IN A CAR, AND THE DUDE PULLED A GUN

ON ME, SO I HAD TO PULL A GUN ON HIM AND KILL HIM IN SELF-DEFENSE.

NEVER HAS MR. HATCH OR MR. CLARK TESTIFIED OR SAID IN ANY MANNER THAT MR. WILLIS HAD PULLED A GUN, AND SO THEY HAD TO KILL HIM IN SELF-DEFENSE.

THAT WAS A BIG, BIG DISCREPANCY.

ALSO A LITTLE ONE IS THAT

MR. THOMPSON ALLEGED THAT MR. HATCH TOLD HIM THAT ALL THIS HAPPENED IN A CAR.

WELL, THIS HAPPENED ACTUALLY IN A PICKUP TRUCK, AND IT MIGHT SOUND SMALL, BUT ASK SOMEONE ON YOUR COURT WHO'S FROM RURAL FLORIDA WHETHER ANYBODY WOULD CALL A CAR A PICKUP, A PICKUP A CAR, AND I THINK YOU'LL FIND THE ANSWER IS NO.

SO TWO MAJOR WAYS IT'S INCONSISTENT.

NOT IN A CAR, AND THERE'S ABSOLUTELY NO SUPPORT FOR THE NOTION THAT MR. WILLIS PULLED A GUN.

>> BUT THE BOTTOM LINE IS THIS IS -- YOU'VE GOT MR. HATCH REAFFIRMING HIS --

>> EXACTLY.

>> -- HIS TESTIMONY THAT HE WAS NOT THE SHOOTER, SO AT THE MOST THIS WOULD BE IMPEACHMENT OF MR. HATCH.

>> ABSOLUTELY.

PLUS, AND IT WOULDN'T DO AWAY WITH WILLIAM BROWN, IT WOULDN'T DO AWAY WITH THOMPSON, IT WOULDN'T DO AWAY WITH THE FACT THAT MR. CLARK IS WEARING WILLIS' BOOTS WHEN DEBORAH WILLIS AND SANDRA HARDY CONFRONT HIM AT THE OASIS MOTEL.

SO THAT, ALSO, TRIAL JUDGE FOUND MR. THOMPSON HAD CREDIBILITY ISSUES, MADE NO FINDING OF ADVERSE CREDIBILITY AGAINST MR. HATCH.

>> HOW OLD WAS MR. HATCH AT THE TIME?

>> 23.

>> AND MR. CLARK WAS 21?

>> 21 YEARS AND TEN MONTHS AT THE TIME OF THE MURDER.

AND MR. HATCH HAD PRIOR TO THAT TIME HAD NOT HAD ANY SORT OF VIOLENT CONVICTIONS.

I THINK HE WAS CONVICTED OF GRAND THEFT AUTO --

>> I THOUGHT HE WAS INVOLVED IN THE NASSAU COUNTY --

>> HE WAS A WITNESS.

HE WAS CONVICTED OF ACCESSORY AFTER THE FACT FOR NOT REPORTING THE INCIDENT.

I'M NOT SURE, BUT HE WAS CONVICTED OF ACCESSORY AFTER THE FACT IN THAT CASE.

AND, OF COURSE, I WOULD URGE THIS COURT TO SAY THIS WAS NEVER A PROPER CLAIM, IT WAS NOT

BROUGHT IN A SWORN MOTION.
IT WAS A COMPLETE AMBUSH, AND IF
THIS COURT SAYS THAT'S OKAY, I
FEAR THAT THIS WILL BECOME A
HABIT.

SO I'D ASK THIS COURT TO FIND
THIS HAS NEVER BEEN A PROPER
CLAIM.

>> THANK YOU, YOUR HONOR.
WE'D ASK THAT YOU AFFIRM THE
COURT'S DENIAL OF
POSTCONVICTION.

>> REBUTTAL?

>> I'D BRIEFLY SAY THAT AMBUSH
IS A BIT OF AN OVERSTATEMENT.
BUT THE STATE IS QUICK TO POINT
OUT WHEN IT WANTS THAT THOMPSON
IS LYING BUT DOESN'T NOTE THAT
THEIR OWN WITNESS, HATCH, MIGHT
BE LYING IN THOMPSON'S VERSION
OF EVENTS, THAT HATCH MIGHT BE
LYING ABOUT HOW IT HAPPENED.
THAT HATCH MIGHT BE SAYING THAT
IT WAS A DRUG SHOOTOUT, THAT
HATCH MIGHT BE SAYING HE DID IT
IN SELF-DEFENSE BECAUSE HE
DOESN'T WANT TO SOUND LIKE HE
JUST SHOT A GUY DOWN.

WHEN THAT MIGHT WELL BE WHAT
HAPPENED FROM THE PHYSICAL
EVIDENCE.

THERE ISN'T MUCH EVIDENCE OTHER
THAN WHAT HATCH SAID.

>> WELL, IF HATCH IS LYING TO
HIS, TO THOMPSON IN THE CONTEXT
OF A JAILHOUSE SITUATION, THAT

SORT OF DOESN'T HELP YOUR SITUATION ABOUT WHETHER HE WAS LYING AT TRIAL.

YOU AGREE THAT THOMPSON WOULD BE, AT THE MOST, USED TO IMPEACH HATCH?

>> I DO AGREE.

>> AND SO, THEREFORE, THE FACT THAT THIS SOUNDS LIKE IT COULD BE A DIFFERENT CRIME, IT COULD BE, YOU KNOW, AGAIN, WE'VE SEEN THIS, THESE JAILHOUSE BLOWHARD KIND OF THINGS, PEOPLE IN PRISON AND WANTING TO MAKE THEMSELVES SOUND LIKE MORE IMPORTANT IN TERMS OF THEIR CRIMES THAN THEY ACTUALLY ARE WHICH IS THE PRISON CULTURE.

>> RIGHT.

>> NOT, YOU KNOW, REGULAR CULTURE.

SO DOESN'T THAT ALL PLAY INTO, I MEAN, THAT DOESN'T ASSIST YOU IN TERMS OF SEEING WHETHER THIS WOULD RESULT IN A PROBABILITY OF AN ACQUITTAL WHICH IS WHAT YOU HAVE TO SHOW UNDER JONES.

>> WELL, I JUST THINK IT SHOWS THAT IN TERMS OF CREDIBILITY ON THESE THINGS, THE STATE IS SORT OF PICKING AND CHOOSING WITH CONVENIENCE'S SAKE.

SIMILARLY --

>> WELL, IF SOMEBODY'S TESTIFYING UNDER OATH, THAT'S WHAT MR. HATCH DID AT THE TIME

OF TRIAL, AND HE DID IT AGAIN IN
THE EVIDENTIARY HEARING.
IT'S A REASONABLE ASSUMPTION
THAT WE HOPE SOMEONE UNDER OATH
IS TELLING THE TRUTH.
SO I DON'T KNOW HOW YOU CAN JUMP
AND SAY, WELL, WHY DO WE THINK
HE'S TELLING THE TRUTH UNDER
OATH WHEN HE MIGHT HAVE LIED TO
A FELLOW PRISONER?
IT DOESN'T MAKE ANY SENSE TO ME.
>> HE WAS SAYING, AND THE SAME
IS TRUE OF THOMPSON, OF COURSE.
THE SAME THING IS TRUE.
HE'S TESTIFYING UNDER OATH TOO.
I'M JUST SAYING THAT THE STATE
WAS ASSUMING THAT THOMPSON WAS
THE ONE NOT TELLING THE TRUTH
BECAUSE ALL THE FACTS DIDN'T FIT
WHEN HATCH MIGHT EASILY BE, HAVE
SHOT THE GUY AS HE SAYS BUT BE
ADORNING THE FACTS TO MAKE
HIMSELF LOOK A LITTLE BETTER.
SIMILARLY, WHEN HE TALKS ABOUT
CLARK, THE STATE SAYS THE MOST
IMPORTANT THING IS TO SHOW THAT
HE WAS THE SHOOTER IS THAT HE
TOLD THOMPSON AND BROWN THIS.
BUT WHEN IT'S CONSIDERING THE
MITIGATION, THE STATE IS SAYING,
WELL, CLARK, IT'S UNCORROBORATED
ABOUT WHETHER HE WAS ABUSED AS A
CHILD, IT'S UNCORROBORATED ABOUT
THIS.
SO CLARK IS LYING ABOUT THAT.
SO THE STATE WANTS YOU TO SAY

HE'S LYING WHEN IT'S THE
MITIGATION ISSUE, AND HE'S
TELLING THE TRUTH WHEN IT'S THE
OTHER ISSUE.

>> ANY FURTHER QUESTIONS?

WITH THAT --

>> WITH THAT --

>> -- YOU'RE OUT OF TIME.

>> -- I WILL THANK YOUR HONORS.

>> THANK YOU.

I WILL TAKE THE CASE UNDER
ADVISEMENT, AND WE'LL TAKE OUR
MORNING RECESS OF TEN MINUTES.

>> PLEASE, RISE.