

>> SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
>> OKAY.
NEXT CASE IS STATE OF FLORIDA V.
JACOB JOHN DOUGAN, JR. LIZ
WHENEVER YOU ARE READY.
>> MAY IT PLEASE THE COURT,
PATRICK DELANEY, ASSISTANT
ATTORNEY GENERAL REPRESENTING
THE STATE OF FLORIDA.
IN GRANTING HIM A NEW TRIAL THE
TRIAL COURT MADE A MISTAKE
BECAUSE BEYOND REASONABLE DOUBT
JACOB DOUGAN IS GUILTY OF
FIRST-DEGREE MURDER.
THIS BEGINS WITH --
>> WHAT DID YOU SEE?
>> BASED ON PERMISSIBLE
EVIDENCE.
>> THAT IS NOT ADMISSIBLE.
THERE ARE SEVERAL CLAIMS THAT
THE JUDGE GRANTED RELIEF ON.
WE HAVE LIMITED TIME.
THE BRADY GIULIO CLAIM AND
CONFLICT OF INTEREST AND THE
EFFECTIVENESS OF COUNCIL.
YOU, DECREED THAT ON THE GEO
CLAIMS THE STANDARD WOULD BE
WHETHER THE TESTIMONY OF THE
ONLY EYEWITNESS, THE FAILURE
CORRECT TESTIMONY ABOUT WHAT HIS
DEAL WAS IS SUBJECT TO THE STATE
HAVING TO PROVE BEYOND
REASONABLE DOUBT THAT IT IS
HARMLESS.
IS THAT WHAT YOU WERE STARTING
WITH?
>> YES.
>> YOU ARE JUMPING TO ASSUMING
THIS, ASSUMING THAT IS
HARMLESSLY
>> WHETHER OR NOT THERE IS
GIGLIO OR BRADY THE EVIDENCE
THAT WAS ADMISSIBLE AND OUTSIDE
THE TESTIMONY --
>> HARMLESS ERROR DOESN'T SAY
THERE WAS OTHER ADMISSIBLE
EVIDENCE.
HARMLESS ERROR SAYS BEYOND A
REASONABLE DOUBT, MR. HEARN,

WHOSE GUN AND CAR WAS USED IN THIS MURDER, IT DEPENDED UPON MR. DOUGAN AS THE MAIN PERPETRATOR OF THE CRIME WHETHER THE JURY IF THEY HAD UNDERSTOOD THAT THIS MAN WAS GOING TO GET A 15 YEAR SENTENCE WITH IF THEY WOULD HAVE FOUND HIM TO BE NOT CREDIBLE AND MADE A DIFFERENT DECISION.

ISN'T THAT AS I UNDERSTAND IT THE BURDEN YOU HAVE.

>> THAT IS CORRECT AND WE HAVE TO LOOK AT THE OTHER EVIDENCE AGAINST JAKOB DOUGAN WHICH THE STATE COULDN'T RELY ON AND THAT CONSISTED OF THREE SELF TAPE-RECORDED CONFESSION CONFESSING TO THE MURDER GIVING DETAILS ABOUT THE MURDER AND BRAGGING ABOUT THE MURDER, JACOB DOUGAN'S AND WRITING ON THE NOTE LEFT ON THE VICTIM'S BODY, FINGERPRINT EVIDENCE FROM THE ENVELOPS USED TO MAIL THOSE TAPE-RECORDED CONFESSIONS WHICH ARE JACOB DOUGAN'S FINGERPRINTS, AND THREE OTHER WITNESSES THE SAGE JACOB DOUGAN CONFESSED TO WAS THAT HE HIMSELF SHOT STEPHEN ORLANDO.

SOME OF THAT IS CIRCUMSTANTIAL BUT THOSE TAPE-RECORDED CONFESSION ARE DIRECT EVIDENCE OF GUILT SO --

>> I YOU TALKING ABOUT THE TAPES THAT WERE SENT OUT AFTER THE MURDER THAT SEVERAL OF THE DEFENDANTS SENT OUT, THEY ALL SENT IT OUT BASED ON DETAILS OF THE CRIME, BUT THAT ISN'T EVIDENCE THAT THEY COMMITTED THE CRIME.

>> THAT WAS JACOB DOUGAN'S OPINION FOR WHY WAS ON THOSE CONFESSIONS.

>> A COUPLE OTHER CO-DEFENDANTS HAD THAT SAME --

>> THERE WERE THREE OTHER INDIVIDUALS WHO WERE PRESENT

WHEN THE RECORDED CONVERSATIONS
TOOK PLACE BUT THEY WERE NOT
PRESENT DURING THE MURDER AND
WERE NEVER CHARGED WITH THE
MURDER OF STEPHEN ORLANDO.

JACOB DOUGAN'S STORY DOES NOT
LINE UP, WHEN THE DEFENSE IS ONE
OF ALIBI, WE HAVE NO EXPLANATION
WHY HIS HANDWRITING IS ON THE
VICTIM'S BODY AND THE RHETORIC
IN THAT

ÇÇ IS THE RHETORIC IN THOSE
TAPE-RECORDED CONFESSION IS.

THERE IS STRONG EVIDENCE
REGARDING THE GUILT OF JACOB
DOUGAN AND THE JURY MAY NOT HAVE
KNOWN THE EXTENT OF WILLIAM
HEARN AT THE DEAL THEY LEARNED
THE BENEFIT OF HIS TESTIMONY,
THEY KNEW HE HAD DEAL, WITH A
WERE MISLED WHETHER IT WAS A
LIFE SENTENCE OR A 15 YEAR
SENTENCE THAT IS CERTAINLY
SUBJECT TO A GIGLIO VIOLATION.

>> THE NEW ABOUT MR. HEARN'S
PARTICIPATION IN THE MURDER
ITSELF.

>> IT WAS MR. HEARN'S GUN, IT IS
NOT HONEST TO CLASSIFY HIM AS
THE GETAWAY DRIVER BUT HE WAS
RESPONSIBLE FOR DRIVING THE CAR
MR. ORLANDO WAS ABDUCTED IN.

>> MULTIPLE STANDINGS HERE?

>> THERE WERE MULTIPLE
STANDINGS.

>> WAS HE PORTRAYED AS ONE OF
THE PERSONS WHO PARTICIPATED IN
THE STABBING?

>> NO.

THAT IS WHY THE PROSECUTION SAID
THEY CUT THE DEAL WITH WILLIAM
HEARN BECAUSE THEY DETERMINE HIS
CULPABILITY TO BE THE MOST
REMOVED FROM THE ACTUAL MURDER.

>> THE OTHER MAJOR CLAIM ON
WHICH IT WAS GRANTED WAS
CONFLICT OF INTEREST.

IN THAT REGARD, THE STANDARD
THAT THE CONFLICT OF INTEREST
WOULD EITHER BE SOLICITING THE

CO-DEFENDANTS FOR HAVING AN AFFAIR WITH DOUGAN'S SISTER DURING THE TIME OF THE TRIAL. WHETHER IT ADVERSELY AFFECTS COUNCIL'S PERFORMANCE, CONFLICT OF INTEREST, WHAT IS THE STANDARD OF IT THERE IS A CONFLICT OF INTEREST, IS THERE SOMETHING MORE THAN ADVERSELY AFFECTING PERFORMANCE?

IF IT WOULD BE HE WOULD HAVE BEEN FOUND GUILTY ANYWAY?

>> IT MUST BE SOMETHING MORE THAN ADVERSELY AFFECT THE PERFORMANCE BECAUSE THERE'S ACTUAL CONFLICTS REPRESENTING THE REPRESENTATION AND FIRST THERE IS NO EVIDENCE THAT EARNEST JACKSON, MR. DOUGAN'S ATTORNEY SOLICITED AND/OR REPRESENTED ANY OF THE OTHER CO-DEFENDANTS DURING TRIAL. HE DID FIND ON APPEAL THAT HE WAS IN CONFLICT BECAUSE HE REPRESENTED EVERYONE ON APPEAL.

>> THE FACT THAT HE DID ACTUALLY SOLICIT REPRESENTATION FOR THE APPEAL ON THIS CASE THAT WAS GOING ON.

I THOUGHT THAT WAS WHAT THE RECORD INDICATED.

>> I AM NOT SURE THAT IS WHAT THE RECORD INDICATES AN OPPOSING COUNSEL WENT TO GREAT LENGTHS TO DISTINGUISH THE REPRESENTATION THE OTHER DEFENDANTS RECEIVED FROM MR. JACKSON'S REPRESENTATION.

THERE WAS A CLEAR DIVISION OF LABOR DURING THE TRIAL MONDAY CO-DEFENDANTS AND THEIR ATTORNEYS.

AS TO WHETHER, AN EXTRAMARITAL AFFAIR REPRESENTS A CONFLICT OF INTEREST IS WILDLY INAPPROPRIATE THAT JACKSON DID HAVE AN EXTRAMARITAL AFFAIR WITH JACOB DOUGAN'S SISTER.

THAT IS UNPROFESSIONAL AND COUNSEL SHOULD BE INVOLVED IF

MR. JACKSON WAS STILL ALIVE
TODAY BUT THAT BY ITSELF DOES
NOT CREATE AN ACTUAL CONFLICT OF
INTEREST BASED ON JACOB DOUGAN'S
RECOMMENDATION.

MOREOVER THE ARGUMENT FROM POST
CONVICTION COUNCIL BASED ON THIS
PRESUMED CONFLICT IS THAT HAD
THIS EXTRAMARITAL AFFAIR NOT
OCCURRED MORE TIME WOULD HAVE
BEEN SPENT ON JACOB DOUGAN'S
CASE AND DEFENSE PREPARATION AND
NO EVIDENCE SUGGESTS THAT.

JACOB DOUGAN GOT THE DEFENSE
THAT HE WANTED WHICH WAS ACTUAL
INNOCENCE DUE TO ALIBIED.

HE WAS GOING TO TAKE THE STAND
AND SAY THAT HE WAS NOT THERE,
THAT HE MADE THESE RECORDINGS
AFTER THE FACT TO TRY TO TAKE
CREDIT FOR A MURDER HE DIDN'T
COMMIT BUT ALL THE OTHER
EVIDENCE AS HE DID COMMIT.

I HAVE NOT FOUND A CASE WHERE
THIS COURTS OR DISTRICT COURT
HAS SAID AN EXTRAMARITAL AFFAIR
CREATES CONFLICT OF INTEREST
BECAUSE YOU DIDN'T SPEND ENOUGH
TIME PREPARING FOR YOUR CASE.
WHAT IS MOST IMPORTANT IS THE
PRESUMED GIGLIO AND
REVITALIZATION IN THE EVIDENCE
CLEARLY ESTABLISHES JACOB DOUGAN
COMMITTING FIRST-DEGREE MURDER
AND AS THE RINGLEADER OF THIS,
THE TESTIMONY FROM ERIC BLACK
AND JAMES MADISON BEARS THAT
OUT.

>> WAS THERE AN ALLEGATION THAT
BECAUSE MR. JACKSON WAS
INTERESTED IN DOING THE APPEAL
BEFORE BARKLEY AND SOMEONE ELSE
THAT HE DID NOT VIGOROUSLY
EXAMINE -- ALL OF THEM TESTIFIED
AT THE TRIAL.

>> ELWOOD BARKLEY DID NOT
TESTIFY.

-- EITHER EVANS OR CRAIG WAS
TRIED SEPARATELY.

>> THERE IS NO ALLEGATION THAT

BECAUSE OF HIS DESIRE TO
REPRESENT THEM ON THE APPEAL BUT
HE DID NOT DO A VIGOROUS
EXAMINATION OF WITNESSES.

>> NOT PRECISELY.

HOWEVER THE ARGUMENT HAS BEEN
MADE THAT BECAUSE THERE WAS
CONFLICT OF INTEREST BASED ON
HIS REPRESENTATION DURING THE
DIRECT APPEAL THAT MEANS THEY'RE
NECESSARILY WAS CONFLICT OF
INTEREST DURING THE TRIAL AND
THAT IS NOT TRUE.

THEY ARE TWO SEPARATE
PROCEEDINGS.

THEY ALL HAD SEPARATE COUNSEL
DURING THE TRIAL.

THERE IS ALSO NOTE --

>> WHAT HAPPENED TO THE
CO-DEFENDANTS?

>> BARKLEY WAS CONVICTED OF
FIRST-DEGREE MURDER.
HE DID RECEIVE A DEATH SENTENCE.

ULTIMATELY IN 1985 ELWOOD
BARKLEY RECEIVED A LIFE
RECOMMENDATION FROM THE JURY,
THE JUDGE OVERRODE THE LIFE
RECOMMENDATION AND THIS COURT ON
APPEAL VACATED THE JUDGE
OVERRIDE.

BLAINE CRETENDON AND BRAD
NIVENS WERE CONVICTED OF
SECOND-DEGREE MURDER SEPARATELY
AT RECEIVE SENTENCES
INDIVIDUALLY OF 199 YEARS FOR
EACH MURDER.

>> THE CO-DEFENDANTS, WORD THEY
TRIED TOGETHER?

>> ONE CO-DEFENDANT WAS TRIED
SEPARATELY.

>> SO OF THE CO-DEFENDANTS, DID
HEARN TESTIFIED AT A
CO-DEFENDANT'S TRIAL?

>> THE SECOND ONE I AM NOT AWARE
OF BUT THE JOINT TRIAL HEARN
TESTIFIED FOR THE BARKLEY AND
JACOB DOUGAN TRIAL WHICH WAS ALL
HELD AT THE SAME TIME WHICH IS
WHY WILLIAM HEARN, JAMES MADISON

--

>> WHAT WAS THE CO-DEFENDANT'S DEFENSE?

YOU SAID DOUGAN'S DEFENSE WAS HE WASN'T THERE.

WHAT WAS BARKLEY'S DEFENSE?

>> I AM NOT AWARE OF BARKLEY'S DEFENSE, I AM SORRY.

THERE IS ANOTHER ALLEGATION, THE TRIAL COURT FOUND A SEPARATE BRADY VIOLATION STEMMING FROM THE 1987 RESEND AND SING OF JACOB DOUGAN.

AT BRADY VIOLATION IS PLAIN ERROR.

THE SUBSTANCE WAS THE PROSECUTING ATTORNEY SEND AN INTERNAL MEMO DESCRIBING HIS PERSONAL FEELINGS ARE ABOUT WILLIAM HEARN TESTIFYING IN THE SENTENCING.

SPECIFICALLY THAT WILLIAM HEARN WAS GOING TO BE A HOSTILE WITNESS THAT IS THE PROSECUTING ATTORNEY'S OF OPINION IN.

DURING POST CONVICTION HE SAID HE WAS NOT HOSTILE, DID NOT WANT TO TESTIFY.

THIS COURT HAS NEVER HELD THAT THE PROSECUTION IS REQUIRED TO TURN OVER ANY AND ALL WORK PRODUCT WITH PERSONAL FEELINGS ABOUT A WITNESS AT PROCLIVITIES FOR TESTIFYING AS BRADY MATERIAL.

>> DID HEARN ADMIT TO BEING AT THE SCENE?

>> YES.

>> ANY OF THE CROSS-EXAMINATION ABOUT HIM THAT HE WAS THE ACTUAL SHOOTER?

>> NO.

THAT EVIDENCE HAS BEEN PUT FORWARD THAT WILLIAM HEARN WAS RESPONSIBLE FOR THE MURDER.

THAT WAS RAISED AS A POST CONVICTION CLAIM.

THERE'S NO EVIDENCE THAT WILLIAM HEARN COMMITTED THIS MURDER.

IT WAS HIS GUN.

>> YOU SAID THE GIGLIO VIOLATION

WOULD POSIT HARMLESS ERROR
BEYOND REASONABLE DOUBT IN THE
GUILT PHASE.

WHAT ABOUT THE SENTENCING, WHAT
ABOUT THEM HAVING HEARD HIS
TESTIMONY AND IT WAS DOUGAN WHO
WAS THE MAIN PERSON, AS TO HOW
THAT WOULD IMPACT THE PENALTY
PHASE?

>> THE PENALTY PHASE, OPERATING
FROM 197 -- 1987 RECENT AND
THING.

THE JURY HEARD THAT WILLIAM
HEARN AND SERVED FIVE YEARS IN
1987 WILLIAM HEARN'S RIGHTS WERE
RESTORED.

THAT JURY WAS AWARE OF THE TOTAL
CIRCUMSTANCES.

THERE IS NO ISSUE AS TO RELATIVE
CULPABILITY AS PRESENTED BY POST
CONVICTION COUNSEL TO THIS COURT
IN THIS PRESENT SETTING.

HOWEVER THE EVIDENCE BEARS OUT
THAT JACOB DOUGAN WAS THE
RINGLEADER OF THIS MURDER.
HE WAS OLDER THAN ALL THESE
CO-DEFENDANTS, HE WAS THERE
KARATE INSTRUCTOR.

ALL THE EVIDENCE BEAR OUT DURING
THE 1987 RESEND AND SEEING THAT
THIS COURT ACKNOWLEDGED, THAT
JACOB DOUGAN WAS A COMMUNITY
LEADER AND HE WAS THE ONE
RESPONSIBLE.

IT WAS JACOB DOUGAN THAT SPURNED
THE USE OF WEAPONS IN MURDERING
STEPHEN ORLANDO AND THAT HIS
TESTIMONY FROM EDRICK BLACK
CADET JACOB DOUGAN INSISTED AND
USING WEAPONS.

>> THE WEAPON HAD BEEN THROWN
AWAY OR SOMETHING -- I WAS JUST
WONDERING, WHO PUT THAT IN THE
HAND, OTHERS THEN MR. HEARN, WHO
PUTS THE HAND DID -- THE GUN IN
MR. DOUGAN ADDS CAN'T?

>> JACOB DOUGAN TOLD THEM THAT
HE SHOT --

>> THERE WERE NO FINGERPRINTS?

>> NO FINGERPRINTS.

THE ONLY FINGERPRINT EVIDENCE
ARE ON THE ENVELOPS USED TO MAIL
THE CONFESSION TAKES.

THE HANDWRITING ON THE NOTE HAS
GONE UNCHALLENGED FOR 40 YEARS,
THAT IS JACOB DOUGAN'S AND
WRITING THAT IS ATTACHED TO THE
BODY.

THERE MAY BE AT GIGLIO BRADY
VIOLATION, IF WE REMOVE THE
TESTIMONY, WE ARE LEFT WITH
DIRECT EVIDENCE OF JACOB
DOUGAN'S BUILT IN MURDERING
STEPHEN ORLANDO AND THAT
EVIDENCE CAN OVERCOME GIGLIO
BRADY VIOLATION COUPLED WITH THE
FACT THAT THE JURY DID KNOW
WILLIAM HEARN WAS BENEFITING,
THEY DIDN'T KNOW THE EXTENT OF
THAT.

>> PLEASE THE COURT, MARK OLIVE,
NEVER SAID THAT BEFORE IN THIS
COURT ROOM.

FOR THE UP HOW THE.

PAGE 29, THE PROSECUTOR ARGUES
WE BELIEVE YOU SHOULD KNOW WHAT
HAPPENED IS WHAT HAPPENED.
WILLIAM HEARN WAS THE ONE PERSON
WHO WAS ABLE TO GIVE YOU THAT.
WHAT HAPPENS, ONE PERSON, NO ONE
ELSE PUTS ANY GUN IN MY CLIENT'S
HAND.

THE PROSECUTION HAS ARGUED
REPEATEDLY THAT THIS WITNESS WAS
THE MOST IMPORTANT WITNESS IN
THE CASE AND WITHOUT HIM THERE
WOULD NOT HAVE BEEN A CASE.

>> ASKED HIM ABOUT THAT, HE SAYS
THERE ARE WITNESSES THAT SAID
MR. DOUGAN CONFESSED THAT HE WAS
THE ONE WHO DID THE SHOOTING.
IS THAT TRUE?

>> THE TWO WITNESSES MADISON AND
BLACK RECEIVED HELPFUL TREATMENT
AND WERE CONSIDERED SUSPECT
THEMSELVES.

>> THEY WERE NOT PROSECUTED FOR
THIS MURDER.

>> IMMUNITY TO TESTIFY BUT THEY
DID TO THE TAPES.

THEY MADE THE SAME CONFESSIONS
IF THEY WERE CONFESSIONS ON THE
TAPES THAT THESE TWO WITNESSES
WERE COMPLETED CONFLICTING
STORIES, THE BRIEF ON PAGE 27
THROUGH 42 YOU CAN GO THROUGH
CONFLICTING STORIES.

THEY WERE NOT THE IMPORTANT
WITNESSES, THEY DIDN'T SEE HIM
SHOOT ANYONE.

VARIOUS PEOPLE MADE VARIOUS
BRANDS.

BARKLEY, WHEN THEY WERE MAKING
TAPES, DECIDED THE TAPES WERE
NOT GLORY ENOUGH SO HE ADDED
THAT THE VICTIM OPENED THE BAG
AND HEARN SAID THAT NEVER
HAPPENED.

THERE IS A LOT OF NOT VERY SMART
THINGS GOING ON.

>> TO BE CONVICTED OF
FIRST-DEGREE MURDER WHICH IS
WHAT WE ARE TALKING ABOUT HERE,
THE QUESTION IS IS HE THERE?
HE SAYS HE WASN'T THERE.
WHAT ABOUT THE HANDWRITING
EXPERT SAYING THAT THE NOTE THAT
WAS PINNED TO THE VICTIM IS --
WAS IN YOUR CLIENT'S HAND
WRITING.

>> DEPENDS ON WHEN IT WAS
WRITTEN.

NO ONE SAYS OTHERS THEN HEARN.

>> WAS PINNED TO THE VICTIM I
THOUGHT.

>> THAT IS CORRECT BUT IT
ACTUALLY WASN'T.

IT WAS ON THE GROUND.

THEY TRIED TO STAB THE VICTIM.

ACCORDING TO HEARN --

>> WHAT DID THE NOTE SAY?

>> IT WAS THE VITUPERATIVE SORT
OF BLACK POWER --

>> IT WAS AN INDIVIDUAL TO THE
VICTIM?

>> NO.

>> THE IDEA WOULD BE WHAT?

SOMEONE TOOK IT AND SOMEONE ELSE
PINNED IT ON?

THAT IT WAS WRITTEN BEFORE?

>> YES.
>> I DON'T THINK THE STATE IS NECESSARILY CONCEDED GIGLIO BUT THEY ARE TALKING ABOUT HARMLESS ERROR.
HOW DID WE REVIEWED THAT?
WHAT DID THE TRIAL COURT FIND?
YOU HAVE THE BENEFIT OF THIS IS -- WHAT YEAR OF CONVICTION?
>> 75.
>> HOW LONG IS THE TRIAL IN 1975?
>> TWO FOUR NIGHTS.
>> AN EVIDENTIARY HEARING.
WHAT DID THE JUDGE SAY ABOUT HARMLESS ERROR?
THE GIGLIO MATERIALITY?
>> MR. HEARN'S TESTIMONY, PAGE 2222, MR. HEARN'S TESTIMONY WAS OF VITAL IMPORTANCE TO THE STATE'S CASE AGAINST THE DEFENDANT.
DESPITE THE STATE'S ARGUMENT TO THE CONTRARY.
WITHOUT HIS TESTIMONY THE STATE WOULD NOT HAVE BEEN ABLE TO PROVE ITS CASE.
THE STATE SAID THIS ITSELF IN 1975 REPEATEDLY, THAT, QUOTE, WILL LIKELY DAMAGE OF SUPPRESSED EVIDENCE IS BEST UNDERSTOOD BY TAKING THE WORD OF THE PROSECUTOR.
THE PROSECUTOR SAID AT TRIAL WHAT HAPPENED, ONE PERSON KNOWS. THE PROSECUTORS SAID --
>> THEY WENT RIGHT TO HARMLESS BUT UNDER BRADY THE IDEA THAT YOU WOULD HAVE THE MAIN WITNESS FOR THE STATE FALSELY TESTIFYING ON A MATERIAL ISSUE, THE QUESTION IS ON UNDERMINING CONFIDENCE ALTHOUGH WE USUALLY THINK OF THAT AS THE CARTER STANDARD THERE IS GREAT CONCERN THAT I HAVE AND THE TRIAL JUDGE DID THAT THE MAIN WITNESS WAS THERE UNDER FALSE PRETENSES.
>> CORRECT.
WHAT THE STATE ARGUED WIN THIS

INDIVIDUAL WAS SENTENCED AND THIS IS PROSECUTOR BOUND, I STATE WITH ABSOLUTE CERTAINTY THAT WITHOUT THE TESTIMONY OF MR. HEARN THE STATE COULD NOT HAVE ACHIEVED THE RESULTS THAT WERE ACHIEVED.

WITHOUT MAKING A DEAL WITH HEARN THE CONVICTION, QUOTE, WAS AN ABSOLUTE IMPOSSIBILITY.

THE STATE'S POSITION CERTAINLY EVOLVE OVER TIME.

IF YOU LOOK AT THEIR BRIEF IN THIS COURT, THE OPENING BRIEF IN THIS COURT, A FEW PAGES OF FACTS INDEPENDENT OF HURST BUT THE PAGES WHERE HURST IS TESTIFYING.

>> YOU DON'T MEAN HURST.

WE ARE ALL HURST --

>> GOT TO BE TIRED OF HURST.

HEARN WAS TESTIFYING AND IN THEIR BRIEF TO THIS COURT THEY RELY ON HEARN EXTENSIVELY.

THE QUESTION ABOUT RECENT AND SING WAS WHAT THE JURY DIDN'T KNOW AT RECENT AND THING WAS THAT HEARN LIED IN ORDER TO GET THIS CONVICTION.

THEY WERE NOT TOLD THAT.

IT WASN'T KNOWN AT THAT TIME.

WAS KNOWN HE GOT A 15 YEAR SENTENCE ULTIMATELY BUT THEY DIDN'T KNOW THAT HE LIED WHEN HE SAID AT TRIAL LIFE IS WHAT I AM EXPECTING BUT THIS GENTLEMAN WHO IS IN CHARGE OF THINGS IN THIS COURTROOM TOLD ME, SO IT IS IMPORTANT ON RECENT TENSING THAT JURORS KNOW THAT AS WELL BECAUSE HEARN TESTIFIED.

IF YOU LOOK AT YOUR OPINION IN 1992 AFFIRMING THE RECENT AND SING, YOU QUOTE FROM THE SENTENCING MEMORANDUM AND THE SENTENCING MEMORANDUM CONTAINS COMPLETE THE TESTIMONY OF HEARN.

IF YOU READ THE 1977 OPINION IN THIS COURT, IT RELIES ON HEARN. IF YOU DECIDE, I AM NOT

CONCEDING IT, THAT MR. DOUGAN
WAS AT THE SCENE OF THE CRIME,
THAT DOESN'T END THE QUESTION
WHO DID WHAT IS THE QUESTION.

>> IF HE IS AT THE SCENE WHEN
SOMEONE IS MURDERED THAT IS
STILL FIRST DEGREE MURDER.

>> TWO PEOPLE WHO WERE AT THE
SCENE WERE CONVICTED OF
SECOND-DEGREE MURDER.

AT ALL TURNS, WHAT HEARN HAS TO
SAY, WHO HE POINTS THE FINGER AT
AND WHO GETS TO DECIDE WHO THEY
POINT THE FINGER AT BECAUSE ANY
OTHER DEFENDANT WHO WAS BEING
TRIED TESTIFIED.

>> EXPLAIN THE QUESTION, WHO WAS
TRIED WITH MR. DOUGAN?

WAS IT JUST BARKLEY?

>> EVANS, A PRINCETON AND
BARKLEY.

>> THEY ALL SAID --

>> HEARN TESTIFIED.

>> THEY ALL SAID THAT THEY
PARTICIPATED IN THESE TAPE
RECORDINGS.

>> CORRECT.

>> WHO DID THAT?

SAID THEY PARTICIPATED IN TAPE
RECORDINGS THE KEY

>> ALL OF THEM WHO WERE BEING
TRIED.

HEARN, WHO WAS THERE, IN MADISON
AND BLACK --

>> I ASK THE QUESTION, THE OTHER
CO-DEFENDANTS SAID THE SAME
THING, THEY DID.

COULD YOU JUST -- THERE ARE A
LOT OF DISTURBING THINGS IN THIS
CASE.

1975 TO WHAT WAS GOING ON IN
JACKSONVILLE IN 1975 COULD YOU
ADDRESS THE ISSUE OF THE
CONFLICT OF INTEREST, AS TO
WHETHER THAT STANDARD, WHAT WAS
THE FINDING OF WHERE THERE WAS
CONFLICT OF INTEREST REGARDING
SOLICITATION OF THE CODE DEFENSE
BECAUSE WE FOUND CONFLICT OF
INTEREST IN THE APPEAL.

>> I CAN ADDRESS THAT.
COUNSEL FOR THE STATE IS
INCORRECT, WE ARE NOT RELYING ON
WHAT THIS COURT DID NOT APPEAR
LIGHTER THAN TO SAY IF THERE WAS
A CONFLICT IS A REAL PROBLEM IN
THE CASE AND OUR PROOF AT THE
HEARING WAS THERE WAS A
CONFLICT, BOTH BARKLEY AND
PRINTINTON TESTIFIED JACKSON
APPROACHED THEM WHILE THE TRIAL
WAS GOING ON AND SOLICITED
REPRESENTING THEM ON APPEAL AND
LOWER COURT FOUND AS A MATTER OF
FACT PAGE 2275 OF THE COURT
ORDERED JACKSON APPROACHED AND
SOLICITED THE CO-DEFENDANTS
CONCERNING THEIR UP,
REPRESENTATION WHILE
REPRESENTING DEFENDANT JURY
TRIAL PROCEEDINGS.

IT IS A FINDING OF FACT, NOT A
SUPPOSITION BEFORE THIS COURT.

>> SO HE DOES THAT.

HOW IS THAT A SOLICITING
CO-DEFENDANT, CONFLICT OF
INTEREST DURING THE TRIAL?

>> COULDN'T CREATE A RECORD THAT
BLAMED HIS OTHER TWO CLIENTS
FROM DOING SOMETHING WRONG AND
HE DIDN'T.

FOR EXAMPLE CO-DEFENDANT BARKLEY
TESTIFIED WHEN HE MADE TAPES HE
WAS ONLY READING FROM A SCRIPT
AND MR. MATHESON AND MR. DOUGAN
PREPARED THE SCRIPT.

JACKSON COULD HAVE CITIZEN TO
TRUE THAT YOU YOURSELF HAD THE
PART ABOUT THE VICTIM?

IT IS HIS CRIME.

BARKLEY'S TESTIMONY THAT HE
SOUNDED THE WAY HE DID ON THE
TAPE BECAUSE THEY WERE MAKING IT
AS GLORY AS POSSIBLE COULD HAVE
BEEN COUNTERED WITH AREN'T YOU
THE ONE WHO BELIEVED IT WAS NOT
GLORY ENOUGH?

ALSO WASN'T BRAGGING AT THE TIME
HE MADE THE TAPE AND THE JUDGE
FOUND BARKLEY'S REPULSIVE BUT

DRAMATIC TAPE RECORDING IN WHICH HE WAS BOASTING OF THE MURDER, AND COULD HAVE A PLEA-BARGAIN BUT YOU CAN'T PLEA-BARGAIN FOR MR. DOUGAN TO TESTIFY AGAINST SOMEONE ELSE.

>> HE WASN'T REPRESENTING BARKLEY AT THE TIME.

WAS REPRESENTING MR. BARKLEY? HE HAD A LAWYER.

IT IS A LITTLE STRANGE, A STRANGE, SOMETHING IS RON IN DENMARK IS NOT REALLY APPROPRIATE FOR 1975 MURDER IN JACKSONVILLE BUT YOU GOT A SITUATION OF THIS LAWYER DOING THE SOLICITATION BUT IT IS NOT A CONFLICT OF INTEREST IF YOU ARE TRYING TO GET IT THROUGH APPEAL, IS IT?

>> WE ARE LIKELY GOING TO LOSE THIS AND I WILL BE HANDLING YOUR APPEAL, HE CAN'T CREATE A RECORD AGAINST THAT PERSON.

>> THAT IS WHAT THE JUDGE FOUND.

>> HER LANGUAGE WAS THAT IT WAS INCONSISTENT WITH OBLIGATION TO THE DEFENDANT.

>> WHAT ABOUT THE AFFAIR WITH THE SISTER WHICH END ED UP TO COMPLICATE MATTERS HIS WIFE WAS A SECRETARY WHO KNEW ABOUT THE AFFAIR.

EVERYONE DID BUT MR. DOUGAN OR EVERYBODY AT LEAST WITH IN THAT OFFICE.

HAS THERE EVER BEEN A CONFLICT OF INTEREST CLAIM ABOUT HAVING AN AFFAIR WITH A RELATIVE?

>> A CASE?

>> OBVIOUSLY THERE IS A CLAIM, WE HAVE MADE IT.

>> I THINK -- IT DOESN'T COME TO MIND, THERE ARE OTHER CASES WHERE THIS HAPPENS, WHERE YOU ARE HAVING AN AFFAIR WITH A CLIENT'S WIFE OR SOMETHING LIKE THAT --

>> A LITTLE DIFFERENT, HAVING AN AFFAIR WITH THE SISTER.

>> THAT IS RIGHT BUT HE IS ALSO MARRIED AND HIS WIFE IS SECRETARY AND THE SISTER CATCHES THEM HAVING SEX AND THAT RESULTS IN, QUOTE, SCUFFLES, FACTIOUSNESS, ATTACKS PHYSICAL FIGHTS, TENSION AND ARGUMENTS WITHIN THE SMALL OFFICE.

>> WHAT WOULD BE THE SISTER'S MOTIVATION TO WANT DOUGAN TO BE CONVICTED OF THE DEATH PENALTY? CONVICTED OF MURDER?

>> I THINK SHE WANTED HIM NOT TO BE.

I THINK SHE WANTED HIM TO BE INNOCENT.

>> HAVING THE AFFAIR WITH THE SISTER HE WOULD BE MORE MOTIVATED -- I AM JUST --

>> IF THIS IS A FINE UPSTANDING FAMILY, MR. DOUGAN IS PART OF IT AND HE WOULD NOT WANT TO SULLY HIM, TO SELL THE FAMILY BECAUSE IN FACT WHAT IS GOING ON IN THAT FAMILY --

>> OBVIOUSLY THIS IS A LONG EVIDENTIARY HEARING, LONG COMPREHENSIVE QUARTER.

I KNOW YOU HAVE CROSS APPEAL ISSUES AND YOU WILL STAND ON YOUR BRIEF.

ARE THERE ANY OTHER ISSUES? QUESTION ON THE CONFLICT OF INTEREST GOES ALONG WITH INEFFECTIVE ASSISTANCE AT COUNCILS SO WHETHER YOU CALL IT ONE OR THE OTHER YOU HAVE PROBLEMS, THAT WOULD BE YOUR ARGUMENT, THE WAY THE CASE WAS APPROACHED, COULD NOT HAVE BEEN TACTICAL.

THESE WERE JUST EITHER A LAWYER THAT WAS PERFORMING SUBSTANDARD OR MOTIVATED BY SOMETHING ELSE.

>> WAS SHE WITNESS IN THE PENALTY PHASE?

>> SHE WAS NOT.

>> CAN ADDRESS ONE ISSUE FROM THE CROSS APPEAL?

FROM 1974 UNTIL 1987 MR. DOUGAN

WAS ON DEATH ROW IN PRISON AND WAS AN EXEMPLARY INMATE, THE GUARDS THOUGHT HE MADE A POSITIVE CONTRIBUTION, WAS A POSITIVE FORCE.

PEOPLE FROM OUTSIDE CAME TO VISIT HIM, CONVINCED PEOPLE TO GO TO LAW SCHOOL, GRADUATES SCHOOL, RECENT AND SING IN 1987, DECIDED HE DID NOT WANT THE JURORS TO KNOW ABOUT DEATH ROW OR THAT MR. RUBIN HAD BEEN SENTENCED TO DEATH ROW SO HE DIDN'T PRESENT THIS EVIDENCE. HE PRESENTED TO THE JUDGE BUT NOT TO THE JURY.

THE TROUBLE IS THAT HE LEFT A JUROR ON THE SENTENCING JURY. THE DOOR HAD A THREE COLUMN FRONT-PAGE NEWSPAPER ARTICLE WITH THE HEADLINE MAN SENTENCED TO DIE IN 75 BACK FOR A SECOND TRIAL ON FAKE.

THE ARTICLE GOES INTO THE CASE, THE GENTLEMAN REMEMBERS THE CASE.

ANYONE WHO WAS THERE IN 75, HE SAID REMEMBER THE CASE OF ITS ENTIRE STRATEGY BUILT ON PEOPLE NOT KNOWING AND THEREBY EXCLUDING TWO DECADES, ALMOST 13 YEARS OF A PERSON'S MITIGATION WAS PERFORMED INEPTLY.

AND COUNCIL COULD HAVE HAD HE WANTED TO URGED THE COURT TO TELL WITNESSES NOT TO MENTION DEATH ROW WHICH PERSONS TO COINCIDENTALLY PREPARED THAT T S ARE IN THIS CASE TESTIFIED HE HAD DONE THAT IN THIS CASE.

MY POSITION IS IT WAS UNCONSTITUTIONAL AND VIOLATION OF THE EIGHTH AMENDMENT FOR COUNSEL IN THIS CASE TO HAVE INTENTIONALLY EXCLUDED COMPETENT PROBATIVE LITIGATING EVIDENCE BASED ON A TACTIC THAT HE AND RECENTLY PERFORMED.

IT WOULD HAVE MADE A DIFFERENCE IN THIS CASE.

WE HAD THREE JUSTICES OF THE COURT, FOUR PROSECUTORS SAY THIS IS BAD BUT LIFE IS AN APPROPRIATE SENTENCE.

KEEPING 13 YEARS OF CONDUCT EXHIBITED IN PRISON VIOLATES -- I WILL RESERVE.

>> TO DIRECT THE COURT TO TESTIMONY WHERE AT DRAKE BLACK SAID JACOB DOUGAN CONFESSED TO SHOOTING STEPHEN ORLANDO WOULD BE VOLUME VII DIRECT APPEAL FOR TRIAL TRANSCRIPT PAGE 1287 VOLUME VI, TRIAL TRANSCRIPT, PAGES 11431141 VOLUME VI PAGE 11

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>> WAS HE RIGHT THAT THEY GOT IMMUNITY?

DID THEY GET IMMUNITY?

>> YES.

>> IN TERMS OF BEYOND REASONABLE DOUBT I AM CONCERNED THAT AS OPPOSED TO THE MAIN WITNESS, HAVING A SWEETHEART DEAL NOT FOR LIFE BUT MUCH LESS, I GUESS I AM HAVING TROUBLE THAT THOSE ARE WITNESSES THAT WOULDN'T HAVE BEEN IN PEACH OR WERE NOT IN PEACH.

>> THAT IS ALL -- IT IS MORE TROUBLING IF DICK DOUGAN IS ON TRIAL BY HIMSELF BUT HE IS NOT. HE IS ON TRIAL WITH FOUR OTHER CO-DEFENDANTS AND A PICKUP JACOB DOUGAN AS THE ONE COMMITTING THIS MURDER.

THIS IS NOT A CONSPIRACY WHICH WE FOR INDIVIDUALS SAY HE DID IT AND WE DIDN'T HAVE ANYTHING TO DO WITH IT.

THIS IS WHERE THREE OF INDIVIDUALS SAY JACOB DOUGAN CONFESSED TO SHOOTING STEPHEN ORLANDO.

>> WAS THERE ANY EVIDENCE THE PEOPLE WHO TALKED ABOUT HIS CONFESSION, THAT THEY WERE EVER PRESENT AT THE SCENE AND INVOLVED IN THE MURDER OF MR. ORLANDO?

>> NO.

THE EVIDENCE IS THEY WERE
PRESENT.

>> TALKING ABOUT THE ONES GIVEN
THE IMMUNITY.

WAS THERE EVIDENCE THEY WERE AT
THE SCENE PARTICIPATING?

>> NO.

>> THEIR PARTICIPATION WAS IN
THE MAKING OF THE VIDEO TAPE.

>> AFTER THE FACT AND BRIEFLY TO
ADDRESS CROSS APPEAL, THE RECENT
TENSING COUNCIL PRESENTED 26
WITNESSES DURING THE PENALTY
PHASE AND DEVELOPED 45 NON
STATUTORY MITIGATING FACTORS AND
SHOWED BIG DOUGAN TO BE A
COMMUNITY LEADER.

HE DEVELOPED PROGRAMS FOR
HOMELESS INDIVIDUALS, HE TRIED
TO DEVELOP SHELTERS FOR BATTERED
WOMEN, THE LIST THIS COURT
ACKNOWLEDGES IN AFFIRMING THAT
SENTENCE IS LENGTHY.

>> HERE IS THE PROBLEM.

WHAT WAS THE JURY VOTE?

>> 9-3.

>> IS THAT -- WHAT I HEAR IS BY
THAT TIME HE HAD BEEN IN PRISON
FOR 13 YEARS SO IT IS A PRETTY
COMPELLING, THIS IS A COMPELLING
CASE, AUGUSTUS MCDONALD AND TWO
OTHERS WOULD HAVE ADJUSTED THIS,
THE QUESTION OF THE FACT THAT
NOT ONLY WAS HE AN OUTSTANDING
PERSON FOR MUCH OF HIS LIFE
BEFORE HE COMMITTED THE MURDER
OR CONVICTED THE MURDER BUT THEN
FOR ALL THE YEARS HE WAS IN
PRISON THAT HE WAS AN
OUTSTANDING PERSON, PRETTY
IMPRESSIVE TESTIMONY.

OTHERWISE THE JURY JUST DOESN'T
HEAR THIS HAPPEN, COMMITTED THIS
MURDER.

>> SENTENCING IN HIS LATE 30s,
THE JURY WONDERING WHAT WENT ON
FOR THOSE 12 YEARS?

>> THE JURY IS GOING TO BE AWARE
HE HAS BEEN IN PRISON.

>> WHY PUT ON THIS TESTIMONY
ABOUT HOW WONDERFULLY HE DID IN
THIS PRISON SETTING?

>> RECENT AND THING COUNSEL DID
NOT ADDRESS THAT AND I WOULD
MOVE TOWARDS PREJUDICE THAT
BASED ON THE PRESENTATION THAT
HE DID PRESENT THAT THERE
WOULDN'T HAVE BEEN ANY PREJUDICE
TO THAT BECAUSE HE DID
EVERYTHING HE COULD TO SHOW THAT
JACOB DOUGAN WAS ALL THOSE
THINGS OUTSIDE OF PRISON, THAT
HE DID EVERYTHING HE COULD TO BE
THAT COMMUNITY LEADER.

FOR THE AFOREMENTIONED READINGS,
WE REQUEST THE COURT REVERSED
THE ORDER OF THE TRIAL COURT
GRANTING JACOB DOUGAN A NEW GILT
FACE TRIAL AND GUILTY PHASE,
THANK YOU.

>> ONE OF THE WAS CHARGED WITH
MURDER TO BEGIN WITH, ANOTHER
ONE HAD VIOLATION OF PROBATION
THAT DIDN'T HAPPEN AND THEY
FEARED WAS TOLD EVEN IF YOU WERE
INVOLVED YOU WILL GO FREE.
THESE WERE WITNESSES WHO WERE
NOT DISINTERESTED.

I FINALLY FOUND A QUOTE -- PAGE
276, TRIAL COUNSEL,
CO-DEFENDANTS AT TRIAL WOULD
NECESSITATE PLACING ONE OR THE
OTHER IN A MORE CULPABLE LIGHT
DESPITE THE NATURE OF THE TRIAL
THE CHARGES AND CRIME, THEY DID
NOT CROSS-EXAMINE EITHER
CO-DEFENDANTS AT DEFENSE AND
TRIAL, TRIAL COUNSEL MADE NO
ATTEMPT TO DISTINGUISH
CULPABILITY OR A DEFENDANT OF
HIS CO-DEFENDANTS AT TRIAL
RESULTING IN A CONFLICT OF
INTEREST AND THIS COURT ON
DIRECT -- IN 1984.

I HAVE TO CONCLUDE THE SAME
SENTENCE I STARTED WITH.
WE BELIEVE YOU SHOULD KNOW WHAT
HAPPENED.

THE ONE PERSON WAS ABLE TO GIVE

YOU THAT WAS HEARN.
WHAT HAPPENED IN THIS CASE
DEPENDS ON ONE PERSON.
THERE IS PREJUDICE THAT THE
STATE WAS UNABLE TO PROVE BEYOND
REASONABLE DOUBT BUT DIDN'T
AFFECT THE JURORS.
THANK YOU.
>> COURT IS IN RECESS UNTIL
TOMORROW AT 9:00.