>> COURT IS NOW IN SESSION,

PLEASE BE SEATED.

>> CASE OF STATE OF FLORIDA

VERSUS MICHAEL PEREZ.

>> MAY I PLEASE THE COURT, LINDA

KATZ ON BEHALF OF THE STATE OF

FLORIDA, A PETITIONER IN THIS

MANNER, I WOULD LIKE TO PLEASE

RESERVE FIVE MINUTES FOR

REBUTTAL.

THIS CASE IS BEFORE THE COURT ON

THE CERTIFIED QUESTIONING--

>> COULD YOU SPEAK OF A LITTLE

LOUDER?

>> ABSOLUTELY.

THIS CASES BEFORE THE COURT OF

US ARE THE TO WHAT DEFINITION OF

MANIFEST INJUSTICE SHOULD APPLY

IN A CASE WHERE A DEFENDANT HAS

CLAIMED NEWLY DISCOVERED

EVIDENCE--

>> CAN I ASK YOU ONE QUESTION?

WHAT DID THE THIRD DISTRICT SAY

OF THIS?

>> THE THIRD DISTRICT WAS A

LITTLE CONFUSED ABOUT THE

STANDARD, WHICH IS WHY WE SAY

THERE NEEDS TO BE A DEFINITION,

AND THEY CERTIFIED THIS

QUESTION.

>> WHAT DID THEY SAY?

>> THEY SAID EVIDENTIARY HEARING

SHOULD BE CONDUCTED ASIDE FROM

THE STATES POSITION THAT AFTER I

EXPLAINED WHY WE BELIEVE THERE

IS NO NEED, BUT EVEN IF THERE

WAS NEED IN THIS CASE FOR

ANOTHER CASE, THE QUESTION IS

WHAT STANDARD IS TO BE APPLIED

IN SUCH A HEARING.

>> I UNDERSTAND, A THRESHOLD

ISSUE HAS TO BE SATISFIED.

>> THE THRESHOLD AS TO NEWLY

DISCOVERED EVIDENCE.

>> NO, THRESHOLD AS TO THE

DISTRICT COURT OF APPEAL MUST

ANSWER THE QUESTION BEFORE IT
CAN BE CERTIFIED, THAT IS WHY I
ASKED WHAT DID THEY SAY.
I DON'T SEE THE THIRD DISTRICT
ANSWERED THE QUESTION.
>> PART OF THE PROBLEM WITH THE
THIRD DISTRICT'S OPINION IS THAT
IT WAS BASED ON AN ERRONEOUS
PRESUMPTION BASED ON TOMPKINS.
THE APPLIED TOMPKINS WHERE THIS
COURT SAID THERE WAS A LESS --
THE STANDARD IN FLORIDA IS MORE
LIBERAL THAN THE FEDERAL COURT.
BUT THEY WERE REFERRING TO THE
JONAS STANDARD THAT APPLIES TO A
TRIAL BID.
>> I DON'T AND THAT
ADDRESSES JUSTICE LOUIS QUESTION
ABOUT OUR JURISDICTION.
THEY COULD BE ALL KINDS OF
PROBLEMS WITH THE THIRD DISTRICT
AND WE WILL STIMULATE THE
PROBLEMS WITH WHAT THEY DID, BUT

THAT HAS NOTHING TO DO WITH
WHETHER WE HAVE JURISDICTION,
DOES IT?
>> WELL, WE ARE HERE AND
JURISDICTION WAS ACCEPTED--
>> I UNDERSTAND THAT, I VOTED
FOR IT.
BUT SOMETIMES IF WE DON'T HAVE
JURISDICTION, WE DON'T HAVE
JURISDICTION.
THAT IS KIND OF A FUNDAMENTAL
POINT HERE, WHETHER BOTH SIDES
THINK WE HAVE JURISDICTION AND
SAY WE HAVE JURISDICTION,
WHETHER THE DISTRICT COURT WANTS
US TO HAVE JURISDICTION, ALL
THAT IS BESIDES THE POINT.
THE QUESTION IS WHETHER THE
QUESTION THAT WAS CERTIFIED IS A
QUESTION THAT WAS PASSED ON AND
IT IS UNDERSTANDABLE, THAT MEANS
IT IS DECIDED BY THE DISTRICT
COURT.

NOW, I'M STRUGGLING TO SEE WHAT
THE DISTRICT COURT SAID THAT
ANSWERED THE QUESTION THAT THE
DISTRICT COURT HAS CERTIFIED.
AND FROM WHAT YOU HAVE SAID SO
FAR, I AM STILL STRUGGLING.
SO IF YOU CAN HELP ME UNDERSTAND
WHAT THEY SAID THAT ANSWERED THE
QUESTION CERTIFIED, THAT WOULD
BE HELPFUL.
>> WELL, THE FACTS OF THIS CASE
INVOLVE NEWLY DISCOVERED
EVIDENCE, AND THE CASE WAS,
THERE WAS A GUILTY PLEA AND THEY
FELT THAT IN ORDER TO DETERMINE
WHETHER HE WAS ENTITLED TO
WITHDRAW HIS GUILTY PLEA NINE
YEARS LATER, THEY'D HAVE TO HAVE
A HEARING.
AND THEN THEY WENT ON AND TALKED
ABOUT WHAT WOULD HAPPEN AT A
HEARING, BUT WHAT THEY GAVE AS
AN INDICATION OF WHAT THEY

THOUGHT SHOULD HAPPEN WAS

INCORRECT.

AND OBVIOUSLY OF IT GOES BACK

FOR THIS HEARING IT WILL

PERPETUATE THE PROBLEM THAT

EXISTS THROUGHOUT THE DISTRICTS.

>> I'M SURE OF IT WERE TO GO

BACK -- AND FIRST OF ALL THE

QUESTION OF THESE AFFIDAVITS.

IF THIS DEFENDANT FALSELY

CONFESSED, AND IF THERE WAS

ANOTHER PERSON WHO SHOT THE

VICTIM -- AND SO THAT THESE

DEFENDANTS ARE ACTUALLY INNOCENT

AS LIKE THE CASE IN

NORTH CAROLINA, UNDER WHAT

STANDARD WITH THE STATE SAY IT

DOESN'T MATTER, HE PLED GUILTY,

IT'S OVER FOR HIM?

AND AGAIN, I UNDERSTAND, I THINK

IT NEEDS -- IF THEY ON THE OTHER

HAND, IT'S SORT OF LEFT OVER.

IF THE JUDGE FINDS THAT IT WAS,

SHOULD BE WITHDRAWN, THE STATE,
WHAT WOULD THE STATE DO?
THEY'D APPEAL IT TO THE THIRD
DISTRICT WHO WOULD THEN,
HOPEFULLY, ANSWER THE QUESTION
AND GO BACK UP WITH THE RECORD
SO WE COULD HAVE, NOT JUST SORT
OF ANSWER THIS QUESTION IN THE
STRATOSPHERE, BUT WITH REFERENCE
TO THIS CASE.
>> WELL, IN TERMS OF WHAT
STANDARD WOULD APPLY, THE STATE
ARGUED QUITE STRENUOUSLY THAT IT
MUST BE A HIGH STANDARD.
AND ALTHOUGH MANIFEST IP JUSTICE
IS-- INJUSTICE IS ABOUT EQUITY
AND WE'RE NOT TOTALLY PRECLUDING
THE WITHDRAWAL OF A GUILTY PLEA,
BUT THE STATE EMPHASIZES TO THE
COURT-- AND I BELIEVE THE COURT
IS AWARE OF THIS VERY WELL--
THAT A GUILTY PLEA CARRIES WITH
IT A CONFESSION, IT'S TANTAMOUNT

TO A CONVICTION.

>> BUT YOU SAY THAT THE STATE,

THAT THE THIRD DISTRICT ERRED IN

SENDING IT BACK FOR AN

EVIDENTIARY HEARING OR JUST THAT

WHAT THE STANDARDS WERE THAT

THEY WERE GOING TO SAY GOVERNED

IT IS, ARE WRONG?

>> IN BOTH CASES.

HOWEVER--

>> YOU'RE SAYING THERE WASN'T

ENOUGH THERE FOR AN EVIDENTIARY

HEARING.

WHY IS THAT?

>> BECAUSE THE EVIDENCE HAS TO

BE NEWLY RELIABLE IN ACCORDANCE

WITH THE STANDARDS FROM THE

FEDERAL SUPREME COURT WHICH

DEALS WITH MANIFEST INJUSTICE AS

ACTUAL INNOCENCE.

I ARE RELY ON THE FEDERAL

STANDARD BECAUSE RULE 3.850 IS

PATTERNED AFTER--

>> DIDN'T THE AFFIDAVIT SAY THAT
THIS GUY DIDN'T SHOOT THE
VICTIM, SOMEONE ELSE DID?
>> THE TESTIMONY ACCORDING TO--
THE STANDARD, RATHER, ACCORDING
TO THE FEDERAL STANDARD HAS TO
BE EITHER EXCULPATORY,
SCIENTIFIC EVIDENCE.
>> A CASE OF DNA WOULD CLEARLY
BE SOMETHING THAT COULD PROVE
SOMEONE'S FACTUAL INNOCENCE.
WE'RE NOT BOUND BY, IN THIS
ISSUE AND, AGAIN, NOW WE'RE
DOING MERITS, WE'RE NOT BOUND BY
WHAT THE FEDERAL APPELLATE COURT
OR EVEN THE SUPREME COURT ON
WHETHER IN THIS STATE IF
SOMEBODY HAS FALSELY CONFESSED
AND SOMEBODY ELSE ACTUALLY DID
IT BASED ON CREDIBLE, RELIABLE
EVIDENCE, THAT WE WOULD JUST
TURN A BLIND EYE TO THAT?
>> OH, WELL, THE STATE DOES NOT

SUGGEST THAT A BLIND EYE SHOULD
BE TURNED IN ANY WAY OR ANY
MANNER.
HOWEVER, THE FEDERAL COURT AND
THE FEDERAL AUTHORITY IS MOST
INSTRUCTIVE AND PERSUASIVE IN
THIS CASE BECAUSE, AS I WAS
SAYING, RULE 3.850 WHICH THE
DEFENDANT USED TO MOVE TO
WITHDRAW HIS PLEA IS PATTERNED
AFTER THE FEDERAL POSTCONVICTION
STATUTE 2255.
AND WHAT WE HAVE AS THE MAIN
EVENT IS EITHER A PLEA OR A
TRIAL WHERE A DEFENDANT IS
CONVICTED.
AND THE STATE, OBVIOUSLY TO, HAS
THE BURDEN TO REACH THAT
CONVICTION IN A TRIAL.
AFTERWARDS THERE ARE NUMEROUS
CONCENTRIC CIRCLES THAT KEEP
GETTING FURTHER AND FURTHER AWAY
FROM THE MAIN EVENT.

AND AS WE GET FURTHER AWAY, THE
BURDEN ON THE DEFENDANT MUST BE
HIGHER IN ORDER TO PRESERVE THE
FINALITY OF JUDGMENT.
AND I WOULD LIKE TO JUST READ
FROM THIS COURT'S OPINION IN
CAMP PELL THAT'S LESS THAN A--
CAMPBELL THAT'S LESS THAN A YEAR
OLD.
AND EACH THOUGH IT'S-- EVEN
THOUGH IT'S A DIFFERENT CASE AND
IT'S A TECHNICALITY AS TO WHY IT
WAS ASSERTED THE PLEA SHOULD BE
WITHDRAWN BECAUSE THEY ALLEGE
THAT IT WASN'T FORMALLY ACCEPTED
AND THAT WAS REJECTED.
HOWEVER, THE COURT SAID THAT
THIS COURT'S LONGSTANDING
INTEREST IN THE FINALITY OF
CRIMINAL PROCEEDINGS MUST NOT BE
OVERLOOKED.
THE IMPORTANCE OF FINALITY IN
ANY JUSTICE SYSTEM, INCLUDING

THE CRIMINAL JUSTICE SYSTEM,

CANNOT BE UPSIDE STATEMENTED--

UNDERSTATED AS IT HAS LONG BEEN

RECOGNIZED THAT FOR SEVERAL

REASONS LITIGATION MUST AT SOME

POINT COME TO AN END.

SO WE'RE SAYING WE DRAW A LINE

IN THE SAND.

BUT MANIFEST INJUSTICE WILL BE

CONSIDERED IF YOU CAN PROVE

ACTUAL INNOCENCE.

WE'RE NOT GOING TO PUT OUR

FINGERS IN OUR EARS AND SAY

WE'RE NOT GOING TO LISTEN.

BUT AT THIS POINT YOUR BURDEN SO

HIGH, DEFENDANT, THAT UNLESS YOU

CAN ASSERT THIS KIND OF CLAIM

AND PROVE IT, WE CAN'T THROW OUT

A GUILTY PLEA THAT HAS SUCH A

STRONG LEVEL OF--

>> WELL, BUT WHAT WE HAVE HERE

IS A CLAIM OF ACTUAL INNOCENCE.

>> YES, WE DO.

>> OKAY.

>> WE DO.

>> THERE'S A CLAIM OF ACTUAL

INNOCENCE.

>> ABSOLUTELY.

>> NOW, IF I UNDERSTAND YOUR

ARGUMENT, YOU TAKE-- THE STATE

TAKES THE POSITION THAT THESE

AFFIDAVITS DO NOT CONSTITUTE

NEWLY-DISCOVERED EVIDENCE

BECAUSE, ESSENTIALLY, BECAUSE

THE DEFENDANT KNEW HE WAS

INNOCENT TO BEGIN WITH.

>> WE, AT THIS POINT--

>> DON'T YOU ARGUE THAT IN YOUR

BRIEF?

>> BUT FORSAKE OF ARGUMENT--

>> DO YOU ABANDON THAT ARGUMENT?

>> FOR SAKE OF ARGUMENT, I WILL.

I WILL SAY WHAT DO WE DO AT THE

POINT WHERE WE NEED TO DEFINE

IT?

SO FOR THE SAKE OF ARGUMENT,

EVEN IF WE SAY IT'S NEWLY

DISCOVERED, DO WE STILL GRANT

RELIEF?

AND WE WOULD SAY YOU HAVE A VERY

HIGH BURDEN HERE TO THROW OUT

THIS PLEA NINE YEARS LATER.

IN TERMS OF A 3.710--

>> WELL, BUT HELP ME UNDERSTAND

HOW, WHAT STANDARD WOULD

PRECLUDE THE CONSIDERATION OF

THESE MATTERS IN AN EVIDENTIARY

HEARING?

NOW, IT MAY WELL BE THAT IN AN

EVIDENTIARY HEARING THESE

AFFIDAVITS ARE GOING TO BE

DISCREDITED, OR THE TESTIMONY OF

THE FOLKS WHO GAVE THESE

AFFIDAVITS MAY BE DISCREDITED

RATHER QUICKLY BY THE TRYER OF

FACT.

WE MAY ALL THINK THAT THAT'S

CERTAINLY A POSSIBILITY.

BUT HOW DOES THAT, WHAT DOES

THAT HAVE TO DO WITH WHETHER

THERE OUGHT TO BE AN EVIDENTIARY

HEARING?

>> WELL, TYPICALLY IN THE CASE

OF A RECANTATION IT'S

CREDIBILITY MATCH, AND THAT'S

SOMETHING THAT YOU NEED A

HEARING ON.

THIS DOES NOT INVOLVE THAT TYPE

OF CREDIBILITY MATCH.

>> WHY NOT?

WHY NOT?

>> WELL, WE HAVE AN INDEPENDENT

WITNESS WHO NEVER RECANTED.

WE HAVE THE FACTS OF THIS CASE,

IF I MAY BRIEFLY STATE THEM,

WHERE THE DEFENDANT WENT TO THE

POLICE THE NEXT DAY OR THE

POLICE PICKED HIM UP THE NEXT

DAY AFTER SHOOTING THE VICTIM,

JIMMY RAMIREZ.

WITHIN TWO HOURS HE CONFESSED

THAT HE SHOT THE VICTIM, BUT HE

SHOT HIM IN SELF-DEFENSE.

TRULY, IF, IN FACT, HE WAS SO

AFRAID OF FAT STEVE, WHICH IS

THE REASON WHY THIS

NEWLY-DISCOVERED EVIDENCE

SUPPOSEDLY SURFACED, WHY DIDN'T

HE BLURT THAT OUT RIGHT AWAY,

ALL RIGHT?

THEN WE HAVE HIM CONFESSING

AGAIN IN THE FORM OF HIS PLEA.

NEVER DID HE RESERVE THE RIGHT

TO APPEAL THE VOLUNTARINESS OF

HIS PLEA.

>> WELL--

>> OR OF HIS CONFESSION.

>> THAT'S ALL TRUE--

>> BUT--

>> BUT AREN'T THERE A COUPLE OF

THINGS WE KNOW ABOUT THE WORLD

OF PLEAS AND CONFESSIONS IN

GENERAL?

SOMETIMES CRIMINALS WILL CONFESS

WHEN THEY'RE NOT, IN FACT,

GUILTY, AND SOMETIMES
INDIVIDUALS WILL ENTER A GUILTY
PLEA WHEN THEY'RE NOT, IN FACT,
GUILTY.
THOSE THINGS HAPPEN FOR A
VARIETY OF REASONS.
THEY DON'T HAPPEN MOST OF THE
TIME PROBABLY, BUT THEY DO
SOMETIMES HAPPEN.
AND THAT, ISN'T THAT RIGHT?
>> CERTAINLY, IT DOES.
AND IN THAT CASE IF YOU CAN
PROVE THAT YOU ENTERED THE PLEA
ALTHOUGH YOU WERE ACTUALLY
INNOCENT, IT WILL BE ENTERTAINED
BY THE COURT.
BUT JUST TO SAY I WAS UNDER
PRESSURE, THAT'S NOT THE SAME AS
AN INVOLUNTARY PLEA.
THE COURT IS CONCERNED AND HAS
RULES IN PLACE FOR THE FORMAL
ACCEPTANCE OF A PLEA.
YOU MUST UNDERSTAND THE NATURE

OF THE CHARGES, THE RIGHTS HE IS
GIVING UP.
HE MUST UNDERSTAND THE PANOPLY
OF WHAT GOES ON WITH THE PLEA
PROCESS.
AND THAT PLEA MUST NOT BE
COERCED.
EVEN THOUGH HE IN HIS MIND FELT
COERCED BY FAT STEVE, THAT'S NOT
WHAT THE COURT CONSIDERS COERCED
FOR THE PURPOSE OF AN
INVOLUNTARY PLEA.
AN INVOLUNTARY PLEA IS WHEN YOUR
ATTORNEY OR THE COURT OR THE
POLICE OR SOMEBODY IN JAIL
FORCES YOU TO DO IT AND
THREATENS YOU.
THIS IS AN EXTERNAL MATTER.
THE COURTS NEED TO PRESERVE
THEIR RESOURCES FOR OTHER CASES.
THIS DEFENDANT HAS HAD THE
ABILITY OVER TIME TO FILE A
3.170 MOTION.

HE FAILED TO DO IT.

HE HAD THE ABILITY TO RESERVE

HIS RIGHT TO CHALLENGE THE

VOLUNTARINESS WHEN HE ENTERED

HIS PLEA.

HE FAILED TO DO IT.

HE COULD HAVE FILED A 3.850

WITHIN TWO YEARS AFTER--

>> WELL, ISN'T IT THE FACTS HERE

THOUGH THAT THE AVAILABILITY OF

THIS TESTIMONY FROM THE TWO

INDIVIDUALS DIDN'T OCCUR UNTIL

MORE RECENTLY?

>> WELL, THE ALLEGED

AVAILABILITY DIDN'T OCCUR UNTIL

MORE RECENTLY, AND IF, IN FACT,

THE COURT IS STATING THAT YOU

BELIEVE AN EVIDENTIARY HEARING

IS REQUIRED, THE FACT REMAINS

THAT THE STANDARDS TO BE APPLIED

AT THAT HEARING HAVE TO HAVE A

VERY STRONG BURDEN PLACED ON THE

DEFENDANT TO PROVE HIS

INNOCENCE.

AND THE COURT RIGHT NOW, THE

THIRD DCA, THAT IS, APPEARS TO

EXHIBIT A FEELING OF, WELL, WE

JUST THINK IT'S NOT FAIR, THEN

IT'S POSSIBLE HE'LL GET RELIEF.

AND THAT'S NOT GOOD ENOUGH.

EVERY DCA THROUGHOUT THE STATE

HAS ACKNOWLEDGED MANIFEST

INJUSTICE MUST BE APPLIED.

IT WOULD BEHOOVE THE COURT TO BE

ABLE TO GUIDE THEM AS TO HOW

THEY APPLY THAT STANDARD.

ACTUAL INNOCENCE--

>> WELL, AND YOU AGREE THAT

MANIFEST INJUSTICE IS THE

STANDARD THAT SHOULD BE APPLIED.

>> YES, BUT HOW DO WE DEFINE

THAT?

>> I UNDERSTAND THAT.

AND THE THIRD DISTRICT SAID

MANIFEST INJUSTICE, BUT THEY

DIDN'T SAY ANY MORE.

YOU WANT US TO EXPLAIN WHAT THAT MEANS.

>> WELL, IN THE COURT'S OPINION IN THOMPKINS DEALING WITH A DIFFERENT CASE-- IT WAS A DEATH PENALTY CASE-- BUT THE ISSUE OF THE FEDERAL STANDARD WAS, IN FACT, BROUGHT UP, AND THE FEDERAL STANDARD DOES NOT APPLY TO A JURY TRIAL BECAUSE YOU HAVE EVIDENCE THAT YOU CAN COMPARE THE NEW EVIDENCE TO THE TRIAL TRANSCRIPT.

HERE WE DON'T HAVE THAT.

WE NEED A STANDARD THAT'S VERY CLEAR SO WE WON'T HAVE INCONSISTENT AND SUBJECTIVE RESULTS THROUGHOUT THE STATE.

AND THAT STANDARD HAS BEEN WORKED OUT FOR US BY THE FEDERAL COURT IN SIMILAR POSTCONVICTION POSTURES AND SHOULD BE APPLIED HERE.

AND I'D LIKE TO EXPLAIN--

>> YOU'RE INTO YOUR REBUTTAL

TIME.

>> THANK YOU.

I WOULD JUST LIKE TO BRIEFLY

EXPLAIN WHY IT IS IMPORTANT TO

HAVE THIS STANDARD.

NUMBER ONE, AS I SAID, A GUILTY

PLEA CARRIES WITH IT THAT CON

CONFESSION AND CONVICTION AND AS

OPPOSED TO ANY OTHER PLEA, IT

SHOULD NOT BE SET AA SIDE

WITHOUT-- ASIDE WITHOUT PROVING

ACTUAL INNOCENCE.

WE DON'T HAVE A TRIAL

TRANSCRIPT, AS I MENTIONED.

AND ALSO THE 3.850 LIMITATION,

THE TWO-YEAR TIME LIMITATION HAS

BEEN CIRCUMVENTED BY VIRTUE OF

NEWLY-DISCOVERED EVIDENCE

CLAIMS.

WE HAVE TO MAKE SURE THAT

DOESN'T GET ERODED TO THE POINT

WHERE THE TWO-YEAR LIMITATION NO
LONGER MATTERS.
LASTLY, FINALITY SO IMPORTANT.
AS I QUOTED FROM THIS COURT, AND
I WANT TO MAKE JUST ONE OTHER
BRIEF QUOTE FROM THE COURT'S
OPINION IN CAMPBELL.
THE COURT RECOGNIZED THAT WHEN
YOU WITHDRAW A PLEA, THERE'S A
GREAT AMOUNT OF PREJUDICE TO THE
STATE BECAUSE WE NO LONGER
HAVE-- NOT EVEN JUST TO GO TO
TRIAL, BUT EVEN TO GO TO A
POSTCONVICTION HEARING, WE NO
LONGER HAVE THE ACCESS TO ALL
THE NOTES, WE DON'T HAVE ALL THE
WITNESSES READILY AVAILABLE.
AND THIS COURT STATED IT ALSO
APPEARS THAT REVERSING THE
SECOND DISTRICT'S HOLDINGS AS IN
CAMPBELL WOULD POSSIBLY CAUSE
STAMM PREJUDICE TO THE STATE--
SUBSTANTIAL PREJUDICE TO THE

STATE IN THE CONSEQUENT TRIAL OF
THE DEFENDANT DUE TO THE
EXPECTED DECAYING OF EVIDENCE
OVER TIME ALONG WITH THE
POSSIBLE MEMORY LAPSE OF
POTENTIAL WITNESSES.
SO OTHERWISE WE'RE ALMOST
VACATING THE BAR AND SAYING A
DEFENDANT CAN COMFORT AT ANY
TIME REGARDLESS OF THE IMPACT ON
THE STATE AND THE JUDICIARY.
AND THE STATE MAINTAINS THAT IT
SHOULD NOT BE DONE WITHOUT THESE
IMPORTANT STANDARDS AND A VERY
HIGH BURDEN.
>> MAY IT PLEASE THE COURT, MY
NAME IS STEVEN BRICKENS DURINGER
IF, WE REPRESENT THE RESPONDENT,
MICHAEL PEREZ.
TO ANSWER JUSTICE LEWIS'
QUESTION, YOU'RE PRECISELY
RIGHT.
IF THE THIRD DISTRICT COURT OF

APPEAL DID NOT ANSWER THE
CERTIFIED QUESTION, THEN THIS
COURT DOESN'T HAVE JURISDICTION.
SO LONG AS MR. PEREZ IS ALLOW
TODAY PROCEED TO AN EVIDENTIARY
HEARING, THE RESPONDENT TAKES
THE POSITION IS NOT CONCERNED
THAT THIS COURT REJECTS
JURISDICTION IS IMPROPERLY
GRANTED.
THE THIRD DISTRICT DIDN'T, THERE
WAS NO CONFLICT, SO CONFLICT
JURISDICTION IS NOT A
POSSIBILITY HERE, AND THIS COURT
DOESN'T ISSUE ADVISORY OPINIONS
WHICH IS WHAT THE STATE SEEMS TO
BE ASKING.
WHAT MR. PEREZ ULTIMATELY IS
ASKING FOR HERE ISN'T UNUSUAL.
HE FILED A POSTCONVICTION
MOTION, SUPPORTED IT WITH
NEWLY-DISCOVERED EVIDENCE THAT'S
NOT CONCLUSIVELY REFUTED BY THE

RECORD.

AND THE THIRD DISTRICT COURT

CAME TO THE CONCLUSION THAT HE

ALLEGES ENOUGH TO HAVE A

HEARING.

THAT'S WHAT THIS CASE HAS ALWAYS

BEEN ABOUT.

TO THE EXTENT THAT THE STATE

WANTS THE CERTIFIED QUESTION

ANSWER AND FEELS IT WOULD BE

HELPFUL TO GUIDE

TRIAL COURTS, WE PROPOSE THE

FOLLOWING STANDARD THAT THIS

COURT SHOULD APPLY IN DEFINING

WHAT MANIFEST INJUSTICE MEANS.

FIRST, THE DEFENDANT MUST PROVE

WITH NEWLY-DISCOVERED EVIDENCE

ACTUAL INNOCENCE AS OPPOSED TO

MANAGER LESS.

THAT, TWO, THAT EVIDENCE CREATES

A REASONABLE POSSIBILITY OF AN

ACQUITTAL IF A TRIAL IS GRANTED.

OR THAT SUGGESTS THE PLEA WAS

INVOLUNTARY.

>> WELL, IF HE'S ACTUALLY

INNOCENT, DOES IT, ISN'T-- WHAT

WOULD BE THE-- I THINK THE

QUESTION IS WHAT'S THE STANDARD,

YOU KNOW, WHAT THE STATE'S

SAYING, WHETHER THIS IS 30 YEARS

LATER THEY WAIT FOR SOMEBODY TO

DIE, AND THEY SAY THAT'S THE GUY

THAT DID IT.

HOW IS THE TRIAL COURT, WHAT IS

THE STANDARD FOR WHETHER THE

PERSON IS ESTABLISHED THAT HE IS

ACTUALLY INNOCENT?

IF IT'S NOT-- IS IT THE

UNREASONABLE DOUBT, IS IT CLEAR

AND CONVINCING--

>> WE BELIEVE.

>> IS IT--

>> IN THE INTEREST OF GETTING

THE CERTIFIED QUESTION RIGHT, WE

FEEL THAT THAT BURDEN OF PROOF

IS A REASONABLE POSSIBILITY THAT

THE DEFENDANT IS ACTUALLY

INNOCENT.

AS OPPOSED TO A REASONABLE

PROBABILITY OR A CLEAR,

CONVINCING OR AN ABSOLUTE--

>> LET ME, I UNDERSTAND THAT'S

YOUR POSITION, BUT I DON'T

UNDERSTAND HOW THE STRUCTURE

OF-- THAT FITS THE STRUCTURE OF

THE APPELLATE VERSUS THE-- THE

DIRECT APPEAL PROCESS VERSUS THE

POSTCONVICTION RELIEF PROCESS.

BECAUSE BASICALLY WHAT YOU'RE

SAYING, IF I UNDERSTAND IT, IS

THAT YOU'RE GOING TO APPLY THE

SAME KIND OF STANDARD THAT WE

APPLY IN WILLIAMS V. STATE WHICH

WAS DIRECT APPEAL CONTEXT.

IN THIS POSTCONVICTION CONTEXT.

IS THAT RIGHT?

>> WELL, I'M-- RESPONDENT'S

POSITION BUILDS OFF OF THE SCOTT

CASE.

THE FOURTH DISTRICT RECOGNIZED
THAT THE FIRST PART OF THE JONES
STANDARD WORKED TO JUDGE WHETHER
OR NOT THIS NEWLY-DISCOVERED
EVIDENCE WAS CREDIBLE.
THAT'S A BARE MINIMUM.
NEED THE NEWLY DISCOVERED
EVIDENCE OF ACTUAL INNOCENCE.
IT WAS THE SECOND PRONG OF THE
JONES STANDARD THAT SEEMED
PROBLEMATIC; COMPARING THE
EVIDENCE AND DETERMINING WHETHER
OR NOT THERE'S A REASONABLE
PROBABILITY OF SUCCESS AT A
TRIAL.
WE PROPOSE THAT A POSSIBILITY
STANDARD ALLEVIATES THAT BURDEN
FROM THE TRIAL COURT TO WHEN
COMPARING WHAT EVIDENCE COULD
HAVE BEEN ADMISSIBLE--
>> IT MAY ALLEVIATE THE BURDEN
ON THE TRIAL COURT, BUT WHAT
ABOUT THE BURDEN ON THE STATE?

>> ABSOLUTELY.

>> I MEAN, BECAUSE THEN THE

STATE IS DEALING WITH THE

CIRCUMSTANCE WHERE IT'S ONLY

ESTABLISHED, WELL, MAYBE A JURY

WOULD HAVE, WOULD HAVE COME UP

WITH AN ACQUITTAL MANY YEARS

LATER WHEN THE STATE MAY

EFFECTIVELY NOT EVEN BE ABLE TO

PROSECUTE THE CASE.

>> CERTAINLY.

>> BECAUSE OF THE PASSAGE OF

TIME, THE DEATH OF WITNESSES AND

CIRCUMSTANCES SUCH AS THAT.

>> TWO TO POINTS TO YOUR HONOR'S

QUESTION.

FIRST, THE RULE STILL REQUIRES

NEWLY-DISCOVERED EVIDENCE OF

ACTUAL EVIDENCE AS OPPOSED TO

SOMETHING LESS, LESS

CULPABILITY, FOR EXAMPLE.

THE SECOND POINT IS LOOKING AT

THE ABA STANDARD AND WHAT

MANIFEST INJUSTICE MEANS

ACCORDING TO THIS COURT IN

WILLIAMS, IT'S ROOTED IN CLEAR

PREJUDICE WHICH--

>> WELL, YEAH.

GIVEN WILLIAMS AND THE ABA

STANDARDS, LET ME ASK YOU ABOUT

THAT BECAUSE THERE'S A LIST IN

THE ABA STANDARDS WHERE AFTER IT

TALKS ABOUT PROVING THAT

WITHDRAWAL IS NECESSARY TO

CORRECT A MANIFEST INJUSTICE, IT

SAYS A MOTION FOR WITHDRAWAL WAS

TIMELY IF MADE WITH DUE

DILIGENCE AND THEN SO ON.

BUT THEN IT GOES ON TO LIST THE

PARTICULAR CIRCUMSTANCES THAT

MAY BE, THAT MAY BE SHOWN BY

SAYING WITHDRAWAL IS NECESSARY

TO CORRECT A MANIFEST INJUSTICE

WHENEVER THE DEFENDANT PROVES

THAT.

AND THEN THERE'S A LIST.

WHERE DOES THIS DEFENDANT'S

CLAIM FALL ON THAT LIST OF THOSE

FIVE DIFFERENT THINGS THAT ARE

LISTED THERE?

>> THE LIST THAT'S INCORPORATED

INTO WILLIAMS IS THE 1968 DRAFT

OF THE ABA STANDARDS.

NEWLY-DISCOVERED EVIDENCE OF

ACTUAL INNOCENCE IS NOT ON THAT

LIST, AS YOUR HONOR POINTS OUT.

HOWEVER, THE 1978 DRAFT--

>> WELL, WE DIDN'T-- THAT'S NOT

IN OUR CASE.

I MEAN--

[LAUGHTER]

>> I UNDERSTAND.

THERE'S NOTHING IN WILLIAMS OR

THE ABA STANDARDS AT THE TIME

THAT SAYS THIS IS AN EXCLUSIVE

LIST.

AND THERE HAVE BEEN OTHER STATES

THAT HAVE RECOGNIZED THAT THESE

ARE EXAMPLES.

IN FACT, THE ABA'S NEXT
ITERATION SAYS THESE WERE JUST
EXAMPLES OF MANIFEST INJUSTICE.
>> HERE'S MY CONCERN ABOUT WHAT
YOU SAID ABOUT REASONABLE
POSSIBILITY VERSUS THE
PROBABILITY AND CHANGING THE
JONES STANDARD IS THAT WHAT
YOU'RE ASKING US-- AND, AGAIN,
I DON'T KNOW THAT WE GET TO HEAR
BECAUSE I THINK YOUR FIRST POINT
IS THIS IS NOT SOMETHING WE
SHOULD BE ANSWERING IN THIS
POSTURE, BUT ASSUMING WE GOT TO
THAT SINCE YOU'VE OBVIOUSLY
PREPARED FOR THIS PARTICULAR
PART-- HOW CAN THE STANDARD
UNDER JONES BE MORE DO
DEFENSE-FRIENDLY WHEN SOMEONE'S
ENTERED A PLEA THAN WHEN THEY'VE
GONE TO TRIAL?
BECAUSE, YOU KNOW, THIS COULD BE
TYPICALLY, AND WE SEE THIS IN

DEATH CASES.

YOU KNOW, SOMEBODY DIES, AGAIN,

IN ALL HONESTY, SOMEBODY DIES

AND NOW SOMEONE SAYS, OH, THAT

GUY CONFESSED, JUST DIDN'T

CONFESS WHEN HE WAS ALIVE.

I MEAN, WE DIDN'T REPORT BECAUSE

WE WERE SCARED OF HIM.

THAT'S THE M.O. WE'VE SEEN IN

DEATH CASES.

SO HERE IS A SITUATION WHERE

THEY'VE RELIED ON A GUILTY PLEA.

NOTHING UNRELIABLE ABOUT THE--

I MEAN, THE CONFESSION.

NOTHING TO SHOW AT THIS POINT

THAT HE WAS COERCED, AND YET

YOU'RE SAYING THAT THE STATE,

THAT THERE'S GOING TO BE A LOWER

BURDEN FOR HIM TO WITHDRAW THE

PLEA, ALLOWING HIM TO GO TO

TRIAL WHERE FROM THE STATE'S

POINT OF VIEW THIS IS NINE

YEARS, IT COULD BE TWENTY YEARS

LATER, IT COULD BE THIRTY YEARS
LATER THAT SOMEBODY POPS UP
BECAUSE SOMEONE DIED, NOW
THEY'RE NO LONGER SCARED OF
THEM.
HOW, I DON'T-- I'M NOT SEEING
HOW THAT FITS INTO OUR
JURISPRUDENCE, HOW JONES CAN BE
BETTER FOR A DEFENDANT THAT
PLEADS GUILTY, I GUESS, IS THE
ULTIMATE QUESTION.
>> CORRECT.
RECOGNIZE THE COURT'S CONCERN,
AND WE RECOGNIZE MANIFEST IP
JUSTICE IS A HIGH STANDARD.
TO THE EXTENT THAT MANIFEST
INJUSTICE REQUIRES
NEWLY-DISCOVERED EVIDENCE OF
ACTUAL ESPECIALLY IN, THAT'S
MORE THAN JUST NEWLY-DISCOVERED
EVIDENCE THAT'S MATERIAL TO A
FACT THAT MAY AFFECT THE OUTCOME
OF-- THE OUTCOME.

>> THAT'S A PRETTY BIG-- JONES
IS A PRETTY HIGH STANDARD, THE
PROBABILITY OF AN ACQUITTAL.
MAYBE THE POSSIBILITY OF
ACQUITTAL, NOT EVEN THE
PROBABILITY OF ACQUITTAL.
>> WILL AS A FINAL ANSWER MAYBE
TO THAT QUESTION, WE'RE NOT
INVESTED IN POSSIBILITY OR
PROBABILITY AS MUCH AS WE'RE
CONCERNED THAT THIS COURT
REJECTS THE STATE'S PROPOSED
FEDERAL STANDARD WHICH IS AN
IMPOSSIBILITY STANDARD.
THAT, IN FACT, TURNS, TURNED IT
TO WHERE THE DEFENDANT HAS TO
PROVE HE'S INNOCENT BEYOND A
REASONABLE DOUBT.
NOW, THERE'S TWO REASONS WHY
THIS COURT SHOULD REJECT THE
FEDERAL STANDARD.
FIRST, FLORIDA'S POSTCONVICTION
PARTICULARLY WITH RESPECT TO

NEWLY-DISCOVERED EVIDENCE CLAIMS
ARE DIFFERENT FUNDAMENTALLY FROM
THE FEDERAL SYSTEM WHICH
REQUIRES CONSTITUTIONAL--
[INAUDIBLE]
COUPLED WITH NEWLY DISCOVERED
EVIDENCE.
FLORIDA HAS NO SUCH REQUIREMENT,
AND THAT'S WHY THIS COURT IN
THOMPKINS EXPLAINED THE RULE IS
MORE LIBERAL THAN THE FEDERAL
RULE.
THE SECOND REASON WHY THIS COURT
SHOULD REJECT ANY FEDERAL
STANDARD THE STATE IS TRYING TO
EMPLOY, WHICH IS SOME SORT OF
SUPERSTANDARD BASED ON TWO
SEPARATE FEDERAL ACTUAL
INNOCENCE STANDARDS, IS BECAUSE
THE STATE'S STANDARD KIND OF
MISSES THE MARK.
THE FOCUS SHOULD BE ON WHAT
WOULD MATERIALLY AFFECT THE

DEFENDANT'S DECISION TO ENTER
THE PLEA IN THE FIRST CASE.
ACCORDING TO THE STATE, THE
DEFENDANT WOULD HAVE TO PROVE IF
GUILT IS AN IMPOSSIBILITY, AND
THEN THAT'S ONLY TO WITHDRAW THE
PLEA.
THE DEFENDANT WOULD THEN-- THE
STATE WOULD THEN HAVE TO PROVE
ITS CASE BEYOND A REASONABLE
DOUBT THAT THE DEFENDANT HAS
ALREADY DONE THAT, PLUS MORE.
IT JUST, IT DOESN'T MAKE SENSE.
MANIFEST INJUSTICE IS A
NECESSARILY FLEXIBLE STANDARD
THAT IS FACTUALLY DRIVEN
ACCORDING TO FACTS OF THE CASE.
AND YOUR HONOR RAISED ANOTHER
POINT ABOUT COERCION ELEMENT IN
THIS CASE.
THERE ACTUALLY IS NO PLEA
COLLOQUY IN THE RECORD.
THERE'S NO RULING FROM THE TRIAL

COURT EXPLICITLY SAYING THAT THE

CONFESSION WAS VOLUNTARILY--

>> WELL, WAIT.

THERE'S NO PLEA COLLOQUY.

YOU'RE SAYING THERE WASN'T A

PLEA COLLOQUY?

>> CERTAINLY NOT.

>> SO THIS IS, AGAIN, THE

PROBLEM.

THE JUDGE, I DON'T KNOW WHO THE

JUDGE IS, WAITING 9, 10, 20, 30

YEARS AND THEN SAYING, WELL, WE

DON'T HAVE THE PLEA COLLOQUY IN

THE RECORD, YOU KNOW, AGAIN, IT

SEEMS LIKE WE'RE PENALIZING THE

STATE BECAUSE YOUR CLIENT WHO

WAS INNOCENT WAITS NINE YEARS TO

GET THESE WITNESSES.

I MEAN--

>> RIGHT.

>> SO--

>> WELL, THIS CASE, ACTUALLY

SPEAKING, IS VERY MUCH LIKE THE

KNIGHT CASE WHICH IS THE
ILLINOIS 2010 INTERMEDIATE
APPELLATE DECISION INVOLVING
GANG PRESSURE OVER THE DEFENDANT
AND OTHER WITNESSES.
AND ONCE THE GANG LEADER HAD
DIED, ALL THIS NEW EVIDENCE CAME
OUT.
THESE WITNESSES CAME FORWARD.
DEFENDANT WAS ABLE TO DEFEND
HIMSELF AND SAY I DIDN'T WANT DO
THIS PRISON MURDER-- I DIDN'T
DO THIS PRISON MURDER.
THE FACT THAT, THE FACT THAT WE
HAVE A NEWLY-DISCOVERED EVIDENCE
STANDARD, 3850B1, ALLOWS FOR
NEWLY-DISCOVERED EVIDENCE CLAIMS
TO OVERCOME A BAR, TWO-YEAR BAR
THAT THIS COURT BY POLICY
CIRCUMSTANCES BASED ON FINALITY
VERSUS FAIRNESS SAID THAT WE'RE
ALLOWED TO RECOGNIZE THESE
CLAIMS OR WE RECOGNIZE THESE

CLAIMS.

THIS IS ONE SUCH CLAIM EVEN IN

THE ABSENCE OF-- ALTHOUGH WE

KNOW, WE ASSUME THAT A COLLOQUY

OCCURRED, THERE'S NOTHING THAT

NEGATES OR CONCLUSIVELY REFUTES

MR. PEREZ'S ALLEGATION IN HIS

MOTION THAT HE FALSELY

CONFESSED.

>> AND JUST REFRESH MY

RECOLLECTION, WHY DOES HE SAY HE

FALSELY CONFESSED?

DID HE KNOW THE PERSON THAT HE

CLAIMS NOW IS THE ACTUAL

SHOOTER?

>> BECAUSE HE-- YES.

HE WITNESSED THE MURDER, BUT HE

WAS THREATENED NOT TO SAY

ANYTHING.

>> WELL, IT'S ONE THING TO

THREATEN NOT TO SAY ANYTHING,

BUT HE WAS THREATENED THAT HE

HAD TO CONFESS HE WAS THE

KILLER?

>> WELL, AGAIN, THIS IS

CONSIDERING THE CIRCUMSTANCES,

IT'S NOT INHERENTLY CREDIBLE.

A 16-YEAR-OLD WITH SUBSTANCE

ABUSE AND MENTAL HEALTH ISSUES

WOULD HAVE SAID THIS.

>> HE WAS 16 AT THE TIME?

>> YES.

>> BUT ISN'T IT THE CASE THAT

THERE IS NO NEWLY-DISCOVERED

EVIDENCE THAT IS RELEVANT TO THE

ISSUE OF THE SUPPRESSION OF THE

CONFESSION?

BECAUSE, I MEAN, THE

VOLUNTARINESS OF THE CONFESSION

WAS LITIGATED, RIGHT?

>> WE HAVE--

>> WELL, I MEAN, IT SAYS HERE,

IN THE DISTRICT COURT IT SAYS,

IT SAYS THAT AFTER HIS MOTIONING

TO SUPPRESS THE CONFESSION WAS

DENIED.

HE PLED GUILTY.

>> THIS IS WHAT THE RECORD

INCLUDES.

IT INCLUDES THE STATE'S RESPONSE

TO THE MOTION, REFLECTING THAT

THE MOTION WAS DENIED.

WE KNOW THAT THE STATE RESPONDED

ON TWO GROUNDS.

FIRST, THE LACK OF PARENTAL

NOTIFICATION BECAUSE MR. PEREZ

ASKED TO HAVE HIS FAMILY PRESENT

DURING THE FOUR-HOUR

INTERROGATION, AND HE WASN'T

ALLOWED THAT.

SECOND WAS, BASICALLY, HIS

MENTAL LIMITATIONS.

THE STATE SOUGHT TO SUPPRESS--

OR THE DEFENDANT SOUGHT TO

SUPPRESS HIS CONFESSION, AND

THOSE WERE THE TWO BASES THE

STATE RESPONDED--

>> WELL, BUT THERE'S NOTHING--

MY QUESTION IS OR MY POINT IS

THERE'S NO NEWLY-DISCOVERED
EVIDENCE THAT HAS ANY BEARING ON
THAT.
>> JUST THE SAME, THERE'S NO
NEWLY, THERE'S NO-- THERE'S
NOTHING IN THE RECORD TO REFUTE
THE DEFENSE ALLEGATION THAT HE
FALSELY CONFESSED.
>> WELL, THE DETERMINATION BY
THE TRIAL COURT.
>> WELL, WE----
>> I MEAN, THAT IS UNCHALLENGED
BE BY ANY OF THIS NEW EVIDENCE.
>> I'M SORRY.
MAYBE I MISSED-- WHAT WE KNOW
NOW IS THAT FAT STEVE, WHY HE
CONFESSED.
WE DIDN'T KNOW THAT BEFORE, AND
HE DIDN'T FEEL COMFORTABLE
COMING FORWARD WITH THAT OR
COULDN'T BECAUSE OF THE PRESSURE
AND THE THREATS FROM FAT STEVE.
THAT'S THE NEWLY-DISCOVERED

EVIDENCE ELEMENT THAT HE

CORROBORATES--

>> WELL, SEE, BUT I DON'T KNOW

HOW THAT-- THE FACT THAT HE

KNEW WHAT HE KNEW ABOUT FAT

STEVE AND THAT HE WAS, HE WAS,

HE CONFESSED BECAUSE OF ALL

THAT, I DON'T UNDERSTAND HOW

THAT IS NEWLY DISCOVERED.

WHAT THESE OTHER PEOPLE SAY MAY

BE NEWLY DISCOVERED, BUT WHAT HE

KNEW, I THINK THE STATE IS

CORRECT THAT HOW SOMETHING THAT

WAS PECULIAR WITHIN HIS

KNOWLEDGE COULD BE

NEWLY-DISCOVERED EVIDENCE, I

DON'T WANT FOLLOW THAT.

>> AGAIN, THIS IS SOMETHING MORE

THAT COULD GO TO THE WEIGHT OF

THE EVIDENCE OF MR.PEREZ'S

UNREFUTED ALLEGATIONS AT AN

EVIDENTIARY HEARING WHICH WE AT

BOTTOM REQUEST THAT THIS COURT

ALLOW THIS CASE TO PROCEED TO AN
EVIDENTIARY HEARING TO DETERMINE
THESE CREDIBILITY ISSUES, AT
WHAT POINT DID MR. PEREZ COME TO
FIND THESE WITNESSES AND WHETHER
IT WOULD EXERCISE DILIGENCE AND
WHETHER OR NOT JUST LIKE THE
THIRD DISTRICT'S OPINION SAID
THIS ENTIRE CASE HINGES ON
CREDIBILITY.
THESE TWO WITNESSES THAT HAVE
COME FORWARD.
>> HOW SOON AFTER THE MURDER--
[INAUDIBLE]
ARRESTED?
>> HE WAS ARRESTED SHORTLY AFTER
HIS CONFESSION--
>> THE NEXT DAY?
>>-- WHICH OCCURRED THE NEXT
DAY.
>> ALL RIGHT.
NOW, WHY DID HE CUT HIS HAIR OFF
AND TRY TO CHANGE HIS

APPEARANCE?

I MEAN, I DON'T QUITE UNDERSTAND

THAT IF HE WAS ACTUALLY

INNOCENT.

>> AGAIN--

>> BECAUSE HE DIDN'T WANT STEVE

TO RECOGNIZE HIM?

>> PERHAPS.

WE DON'T REALLY KNOW.

THAT'S, AGAIN, SOMETHING THAT

GOES TO WEIGHT OF THESE

ALLEGATIONS.

HE WAS SCARED.

HE SAYS THAT IN-- WE DO KNOW

THAT.

THERE'S CONFLICT AS TO EXACTLY

WHEN DID HE SHAVE HIS HAIR, WAS

IT AFTER FAT STEVE PICKED HIM UP

AT THE CORNER OF--

>> BEFORE HE WAS ARRESTED.

>> BEFORE HE WAS ARRESTED,

CERTAINLY.

BUT WE DON'T KNOW IF IT WAS

BEFORE HE WAS PICKED UP BY FAT
STEVE OR AFTER.
WHICH MAY, BY SHOWING PEREZ
WHERE THE GUN WAS DISPOSED OF,
FAT STEVE WAS, IN FACT, STARTING
A TREND OF FRAMING MR. PEREZ OR
AT LEAST SO THE RECORD SUPPORTS.
AND, AGAIN, THIS IS SOMETHING
THAT GOES TO MORE WEIGHT AND
CREDIBILITY THAN CONCLUSIVELY,
YOU KNOW, SAYING THIS IS NOT
NEWLY-DISCOVERED EVIDENCE.
IF THE COURT HAS NO FURTHER
QUESTIONS, JUST, AGAIN, REQUEST
AT BOTTOM THAT THIS COURT ALLOW
THE EVIDENTIARY HEARING TO
PROCEED.
TO THE EXTENT IT ANSWERS THE
CERTIFIED QUESTION, ANSWER THAT
DEFENDANT CAN PROVE THAT IT IS
REPUBLICAN MY POSSIBLE OR--
REASONABLY POSSIBLE OR IF THE
COURT PREFERS PROBABLE THAT HE

IS ACTUALLY INNOCENT AND HE IS
PERMITTED TO WITHDRAW HIS PLEA
TO CORRECTLY MANIFEST INJUSTICE.
>> COUNSEL, YOU HAVE A MINUTE,
46 SECONDS.
>> IN TERMS OF THE STANDARD,
3.710L STANDARD APPLIES TO A
PLEA WITHIN 30 DAYS AFTER HE'S
BEEN SENTENCED.
A STANDARD OF ACTUAL INNOCENCE
AS SUGGESTED OF CLEAR PREJUDICE
AS SUGGESTED BY THE DEFENDANT
SHOULD NOT APPLY BEYOND THAT
PERIOD IN THE CASE THAT'S BEFORE
THE COURT NOW NINE YEARS AFTER
WE'VE HAD A GUILTY PLEA.
HOWEVER, I'D LIKE TO ALSO
IMPRESS UPON THE COURT THE BASIS
FOR WHY THERE IS NO NEED FOR AN
EVIDENTIARY HEARING HERE.
AS JUSTICE PERRY MENTIONED, WE
DID HAVE THE DEFENDANT CAN CUT
HIS HAIR, AND THE RECORD

ILLUSTRATES THAT IN HIS
CONFESSION CUT HIS HAIR THE
NIGHT BEFORE STEVE PICKED HIM
UP, AND JUSTICE PARIENTE AND
JUSTICE CANDY HAVE RECOGNIZED--
CANADY HAVE RECOGNIZED THE TIME
THAT HE COLLAPSED HAS CAUSED
SEVERE PREJUDICE TO THE STATE
YET A WINDFALL TO THE DEFENDANT
WHO'S ALLOWED TO PROCEED UNDER
THE STANDARD I SUGGESTED BY THE
DEFENDANT.
THE STATE WAS--
>> BUT THE STANDARD YOU SUGGEST,
ISN'T IT A STANDARD THAT NO
DEFENDANT WHO HAS CONFESSED TO A
CRIME COULD MEET?
BECAUSE, I MEAN, YOU'VE ALWAYS
GOT THE POSSIBILITY-- WHICH IS
ALL THAT WOULD BE REQUIRED--
THAT A RATIONAL JUROR COULD
CREDIT THE CONFESSION AS OPPOSED
TO THE ALL THE OTHER STUFF THAT

CAME UP LATER.

>> WELL, THERE ARE TIMES,

RECANTATIONS WHERE YOU MAY NEED

THE ARGUMENT, AND AT THAT POINT

IF THERE'S A VIABLE EXPLANATION

FOR WHY HE PLED--

>> BACK TO YOUR STANDARD, EVEN

VIABLE EXPLANATION MOMENTUM MEAN

THAT NO RATIONAL JUROR COULD

CREDIT THE, COULD CREDIT THE

ORIGINAL-- COULD NOT CREDIT THE

ORIGINAL CONFESSION.

>> THE STATE DOES NOT PROPOSE AN

EMPTY, FUTILE FORM OF RELIEF.

HOWEVER, BASED ON THE FEDERAL

STANDARD IT IS IN A VERY RARE

CASE THAT THIS WOULD, IN FACT,

PROVIDE RELIEF.

IF THAT STANDARD CAN BE MET, SO

IS BE IT.

THE STATE WOULD ACKNOWLEDGE THAT

THAT DEFENDANT WOULD BE

ENTITLED.

BUT IT MUST BE A HIGH BURDEN.

THE STATE WOULD REQUEST THAT

THIS COURT REVERSE THE LOWER

COURT'S OPINION WITH DIRECTIONS

THAT THE TRIAL COURT'S ORDER BE

AFFIRMED AND THE DEFINITION

SHOULD, IN FACT, BE PROPROVIDED

BY THIS COURT TO INCLUDE THE

ACTUAL INNOCENCE DEFINITION AS

IS RELIED UPON BY THE FEDERAL

COURT, PERSUASIVE AND

INSTRUCTIVE IN THIS VERY MATTER.

THANK YOU VERY MUCH.

>> THANK YOU FOR YOUR ARGUMENTS.

AND, MR. BLINKENSER IF

YOU'RE ACCEPTED TO THE

APPOINTMENT OF THIS CASE ON A

PRO BONO BASIS, AND THE

COURT THANKS YOU AND YOUR LAW

FIRM.

FEELS YOUR DEDICATION TO THIS

CASE AND YOUR DEDICATION TO OUR

CONSTITUTIONAL VALUES.

THANK YOU, SIR.

>> THANK YOU.