

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.

WE NOW COME TO THE FINAL CASE ON TODAY'S DOCKET, MARTIN VERSUS STATE.

>> MY NAME IS DAWN MACREADY AND I REPRESENT ARTHUR MARTIN.

THE CIRCUIT COURT'S DENIAL OF HIS INITIAL CONVICTION.

I WOULD LIKE TO START TODAY'S ARGUMENT BY FOCUSING ON ISSUE ONE, THE INEFFECTIVE ASSISTANCE OF COUNSEL IN THE FACE OF HIS TRIAL.

THIS IS THE CASE WHERE THE EVIDENCE OF TRIAL AGAINST MISTER MARTIN CONSISTENT SOLELY OF EYEWITNESS IDENTIFICATION AND TESTIMONY BY THE CO-DEFENDANT.

TWO THE MOST PROBLEMATIC AND LEAST RELIABLE FORMS OF EVIDENCE.

COUNSEL'S DEFENSE AT TRIAL WAS ONE OF MISIDENTIFICATION AND REASONABLE COUNSEL PRESENTED EVIDENCE TO SUPPORT THEIR CHOSEN DEFENSE BUT THAT WAS NOT DONE IN THIS CASE, TRIAL COUNSEL FAILED TO IMPEACH THE STATE'S WITNESSES ON CROSS-EXAMINATION.

HE FAILED TO CALL WITNESSES TO SUPPORT MISIDENTIFICATION DEFENSE AND FAILED TO CHALLENGE THE PHOTO LINEUPS WHICH IDENTIFIED MISTER MARTIN AS THE SHOOTER.

I WILL START WITH FAILURE TO IMPEACH.

CROSS-EXAMINATION IS PROBABLY THE MOST IMPORTANT TOOL IN IT DEFENSE ATTORNEY'S TOOLBOX AND TRIAL COUNSEL HAD STATEMENTS MADE PRIOR TO TRIAL THAT WERE INCONSISTENT THAT HE FAILED TO USE TO IMPEACH THESE WITNESSES ON KEY ISSUES SUCH AS IDENTIFICATION OF THE SHOOTER. AS THE TRIAL COURT MADE AN

AGGREGATE FINDING AS TO THE FAILURE TO IMPEACH, SAYING COUNSEL MADE REASONABLE DECISIONS BASED ON HIS STRATEGY TO, QUOTE, KEEP BAD FORMATION OUT BUT THIS WAS NOT BASED ON COMPETENT SUBSTANTIAL EVIDENCE. FOR EXAMPLE SEBASTIAN LUCAS WAS ONE OF THE WITNESSES WHO TESTIFIED AT TRIAL. HE TESTIFIED HE SAW THE SHOOTING AND IDENTIFIED MISTER MARTIN AS THE SHOOTER. HE HAD MADE DIFFERENT STATEMENTS PREVIOUSLY BEFORE TRIAL.

FIRST TIME HE SPOKE WITH POLICE HE SAID HE DIDN'T SEE ANYTHING, HE DIDN'T SEE THE SHOOTING, DIDN'T SEE THE SHOOTER. HE ONLY HEARD IT.

THE NEXT TIME HE SPOKE WITH POLICE --

>> HOW IS THAT PREJUDICIAL, IF MISTER LUCAS GAVE PROBABLY THE MOST DETAILED OF ALL EYEWITNESS TESTIMONY ABOUT WHAT HE SAW, WHAT HAPPENED AND THAT STATEMENT WAS CONSISTENT WITH WHAT HE SAW 6 DAYS AFTER THE INCIDENT SO EVEN IF THERE WAS THE INITIAL STATEMENT OF I DIDN'T SEE ANYTHING, 6 DAYS LATER HE CAME BACK, GAVE A DETAILED STATEMENT AND THE STATEMENT WAS LARGELY CONSISTENT THROUGHOUT INCLUDING TRIAL TESTIMONY.

HOW IS THAT PREJUDICIAL IF THE TESTIMONY THAT CAME IN WAS SO DETAILED AND WENT SO MUCH TO THE PREMEDITATION ELEMENT IF THE SINGLE QUESTION IS DIDN'T YOU MAKE A PRIOR STATEMENT WHEN YOU FIRST GOT THERE THAT YOU DIDN'T SEE ANYTHING AND 6 DAYS LATER SAID YOU DID?

>> THAT IS PROBLEMATIC BECAUSE THERE IS ANOTHER STATEMENT HE MADE IN HIS DEPOSITION THAT IN

BETWEEN THE FIRST AND SECOND STATEMENTS TO POLICE HE ENGAGED IN NEIGHBORHOOD GOSSIP.

HE HAD SPOKEN TO PEOPLE AT THE APARTMENT COMPLEX ABOUT WHAT HAPPENED IN THE SHOOTING AND GAINED SOME OF HIS INFORMATION FROM THOSE PEOPLE.

>> THAT WASN'T TRUE 6 DAYS LATER.

THE DEPOSITION HAPPENED SOME YEARS LATER.

IS THAT FAIR?

6 DAYS LATER HE GIVES A DETAILED STATEMENT THAT APPEARS TO NOT BE TAINTED IN ANY WAY AND CERTAINLY IT IS NOT SURPRISING, HIS SISTER IN LAW OR HIS SISTER-IN-LAW WHO HE WAS WITH AT THE TIME WHO SAW IT AND WAS EYEWITNESS TO WHAT HAPPENED THAT THEY WOULD HAVE HAD INFORMATION IDENTICAL OR SIMILAR TO EACH OTHER, CORRECT?

>> POSSIBLY.

I'M HAVING A HARD TIME SEEING WHAT THE PREJUDICE WOULD BE EVEN IF COUNSEL DIDN'T ASK THE ORIGINAL STATEMENT THE ORIGINAL DAY OF I DIDN'T SEE ANYTHING AND 6 DAYS LATER GIVES A DETAILED STATEMENT CONSISTENT THROUGHOUT.

DOESN'T APPEAR TO BE AFFECTED BY HEARSAY.

>> IN BETWEEN, THE FIRST TIME HE SPOKE TO POLICE AND SAID I DIDN'T SEE ANYTHING AND AGAIN WHEN HE SPOKE TO THE POLICE AND SAID I SAW THE SHOOTING AND IDENTIFIED MISTER MARTIN.

IN BETWEEN THOSE TIMES HE ENGAGED IN NEIGHBORHOOD GOSSIP SO BEFORE HE GAVE THAT DETAILED STATEMENT, THAT IS WHEN HE HAD BEEN SPEAKING WITH OTHER PEOPLE AT THE APARTMENT COMPLEX ABOUT THE SHOOTING.

IF THAT MAKES IT MORE CLEAR.

>> IT WAS NOT IMPEACHED IN ANY

WAY.

AND WHAT THEY LARGELY SAW
HAPPEN.

>> IMPEACHMENT MATERIAL OUT
THERE AS TO WHAT HAPPENED,
TRIAL COUNSEL FAILED TO IMPEACH
ANYTHING.

NONE OF THEM WERE IMPEACHED SO
FOR SEBASTIAN LUCAS, IT IS
PROBLEMATIC BECAUSE COUNSEL
COULD HAVE GIVEN JURORS A
REASON NOT TO BELIEVE HIS
TESTIMONY AT NOT TO BELIEVE HIS
IDENTIFICATION OF MARTIN AS A
SHOOTER.

HE SAID YOU DIDN'T SEE ANYTHING
AND PART OF WHAT YOU LEARN WAS
FROM THE NEIGHBORHOOD THAT
COULD HAVE CALLED INTO QUESTION
CREDIBILITY OF HIS TESTIMONY
AND HE COULD HAVE GIVEN
SUMMARIES TO DISBELIEVE MISTER
MARTIN WAS THE SHOOTER SINCE
HIS DEFENSE AT TRIAL WAS ONE OF
MISIDENTIFICATION.

THAT COULD HAVE AIDED HIS
ARGUMENT IN THAT.

YOU MENTIONED LAUREN BURNS.
SHE TESTIFIED AT TRIAL THAT SHE
WAS ON THE STEPS WITH SEBASTIAN
LUCAS AND HER CHILDREN, SHE SAW
THE SHOOTING AND ALSO
IDENTIFIED MISTER MARTIN AS THE
SHOOTER.

ANOTHER THINGS SHE SAID WAS THE
FIRST TIME SHE HAD EVER SEEN
THE SHOOTER WAS THE DAY OF THE
SHOOTING.

SHE MADE AN INCONSISTENT
STATEMENT ABOUT THIS AND THIS
IS IMPORTANT BECAUSE IT GOES TO
THE IDENTITY OF THE SHOOTER.

>> DIDN'T TRIAL COUNSEL
EXPLAINED THAT AS A MATTER OF
STRATEGY HE DIDN'T WANT TO
DELVE IN THAT BECAUSE HOW THEY
KNEW EACH OTHER WAS UNSAVORY
MEANS.

>> SHE STATED SHE KNEW THE
SHOOTER PREVIOUSLY BECAUSE HE

TRIED TO FLIRT WITH HER AND SHE WASN'T INTERESTED BECAUSE HE WAS A DRUG USER SO THAT WAS ONE OF HIS JUSTIFICATIONS.

THE PROBLEM WITH THAT IS THERE WAS INFORMATION THAT CAME OUT ABOUT THE USE OF DRUGS IN THIS CASE AND I KNOW AT THE EVIDENTIARY A HEARING SAID HE DIDN'T WANT MENTION OF DRUGS COMING IN ESPECIALLY AS RELATED TO MISTER MARTIN.

THE PROBLEM WITH THAT IS HE KNEW AHEAD OF TIME THAT IS WHERE THE INFORMATION WAS COMING IN.

ANOTHER WITNESS TESTIFIED THE APARTMENT COMPLEX, THAT IS WHY PEOPLE GO THERE AND SELL DRUGS AND IT IS NOT MUCH OF A LEAP TO ASSUME THAT IS WHY EVERYONE WAS THERE THAT DAY.

>> WHAT HOW UNDER STRICKLAND WHICH GIVES A LOT OF DIFFERENCE TO STRATEGIC DECISIONS CAN WE SAY NO COUNSEL, NO REASONABLE COUNSEL IN A SIMILAR POSITION WOULD NOT HAVE MADE THE DECISION TRIAL COUNSEL DID, TO SAY LET'S AVOID THE TOPIC OF MY CLIENT'S DRUG USE BECAUSE IT MAKES MY CLIENT LOOK A LOT WORSE THAN HE OTHERWISE WILL.

>> REASONABLE COUNSEL WOULD HAVE KNOWN THAT INFORMATION WAS OUT THERE AND GOING TO COME IN AT TRIAL IT WOULD HAVE DONE A MOTION TO PREVENT THAT INFORMATION FROM COMING IN.

>> COUNSEL COULDN'T HAVE PREVENTED THAT COMING IN IF HE DEALT WITH THE INCONSISTENCY CAN BECAUSE THE STATE WOULD BE LIKELY TO SAY WE KNOW HIM AND HERE'S HOW I KNEW HIM AND I'M NOT SURE WHY I SAID THAT ORIGINALLY.

>> THERE ARE SO MANY THINGS REASONABLE COUNSEL COULD HAVE DONE.

>> THE COUNCIL ANSWER THAT?
I DIDN'T WANT TO BRING UP THE
ISSUE OF DRUG USE FOR MY CLIENT
BECAUSE IT WOULD MAKE MY CLIENT
LOOK WORSE, I AM TRYING TO SAVE
HIS LIFE.

>> I'M SAYING THAT IS NOT
REASONABLE BECAUSE HIS DEFENSE
WAS MISIDENTIFICATION.
HE IS PRIORITIZING SOMEONE
FINDING OUT HE MAY BE A DRUG
USER VERSUS THIS IS IN HIM.
HE IS NOT THE SHOOTER AND THIS
IMPEACHMENT WOULD HAVE CALLED
INTO QUESTION WHETHER SHE
IDENTIFIED THE RIGHT PERSON AND
WHETHER HER IDENTIFICATION WAS
CREDIBLE.

THAT WAS THE MOST IMPORTANT
THING AND THAT IS WHY I AM
ARGUING THAT REASONABLE COUNSEL
WOULD NOT HAVE PRIORITIZED THE
CLIENT BEING A DRUG USER.

>> REASONABLE COUNSEL HAS TO
BALANCE ALL SORTS OF THINGS,
NOT JUST THAT YOU ESTABLISHED
SOME SORT OF ABSOLUTE PRIORITY.
HOW IS THIS GOING TO PLAY?
WHAT THE JURY HEARS IN THE
GUILT PHASE, HOW IS IT GOING TO
PLAY IN A POTENTIAL PENALTY
PHASE IF THAT COMES AND YOU
REALLY DO WANT TO SECOND-GUESS
THAT.

JUST ONE OF 38, 51s.

>> I UNDERSTAND WHAT YOU ARE
SAYING ABOUT WHAT I AM SAYING
IS HER TESTIMONY WENT AND
REFUTED AND UNCHALLENGED AND
THIS IS A WAY HE COULD HAVE
CHALLENGED IT, THIS IS A WAY
YOU COULD HAVE ARGUED IN
CLOSING THIS WITNESS SHOULD NOT
BE BELIEVED, SHE MADE A PRIOR
INCONSISTENT STATEMENT BECAUSE
HE DIDN'T DO THAT, HE
PRIORITIZED DRUG USAGE OVER IT.
HER TESTIMONY WENT ON IMPEACHED
AND UNREFUTED.
THAT IS WHY I SAY THAT WAS

PREJUDICIAL AND REASONABLE
COUNSEL WOULD HAVE IMPEACHED
HER WITH THAT STATEMENT.
THERE WERE ALSO WITNESSES TRIAL
COUNSEL FAILED TO CALL THAT HE
COULD HAVE CALLED TO TESTIFY AT
TRIAL.

>>, GO BACK TO THAT?
YOU HAVE SEEN HE DIDN'T IMPEACH
ANYTHING HERE.

WITH REGARD TO MISTER BURNS HE
DID IMPEACH TO SOME DEPOSITION
TESTIMONY.

>> AS TO MISS BURNS.

>> DIDN'T COUNSEL ASKED
SPECIFICALLY IF SHE MADE A
PRIOR STATEMENT ABOUT WHETHER
SHE COULD POSITIVELY IDENTIFY
THE SHOOTER?

>> YES.

>> HE DID USE THAT, DIDN'T HE?
HE MADE A REASONABLE CHOICE
THAT CHIEF JUSTICE KENNEDY WAS
TALKING ABOUT, THERE ARE
CERTAIN THINGS HE COULD DO AND
THINGS HE DIDN'T AND HE TRIED
TO AVOID CERTAIN AREAS AND
FOCUS ON OTHER AREAS.

>> YOU ARE TALKING ABOUT, I
WANT TO MAKE SURE I AM TALKING
ABOUT THE RIGHT THING.
HE LOOKED FAMILIAR.

>> REFERRING TO PAGE 324 OF THE
TRANSCRIPT WHERE MISTER SHEA
REFERENCED TRIAL COUNSEL FOR
THE POSITION TESTIMONY, IF SHE
WERE TO SEE HIM AGAIN IT HAD
BEEN A WILD.

SHE MADE THE STATEMENT IN A
PRIOR STATEMENT.

WHAT I'M SAYING IS IT WASN'T
LIKE THERE WAS NO
CROSS-EXAMINATION.

TRIAL COUNSEL DIDN'T SIT ON THE
STAND, HE DID STUFF.

>> I DON'T THINK HE USED
INFORMATION, THAT IS SOMETHING,
THE INSTRUCTIONS THE JURY GETS
ABOUT PRIOR INCONSISTENT
STATEMENTS.

>> THERE WAS PRIOR
INCONSISTENCY THEY HADN'T ASKED
ABOUT.

>> THERE WAS DISCUSSION IN THE
CHARGING CONFERENCE WHETHER THE
JUDGE IS GOING TO GIVE THAT
INSTRUCTION AND THEY WERE GOING
THROUGH THE LIST AND THE JUDGE
THAT I'M NOT SURE WE GOT THERE.
A SICKLY YOU DIDN'T BRING ANY
PRIOR INCONSISTENCY AND TRIAL
COUNSEL AGREED AND SAID I
AGREE.

INITIALLY IT APPEARED THAT
WASN'T COMING IN.

THE JUDGE DID INCLUDE THAT.
THERE WAS DISCUSSION ABOUT
WHETHER HE HAD IMPEACHED
WITNESSES.

GOING BACK TO HIS FAILURE TO
CALL THE WITNESSES AT TRIAL
THERE WERE TWO WITNESSES THAT
COULD HAVE BEEN CALLED TO
SUPPORT HIS MISIDENTIFICATION
DEFENSE WAS WILLIE MCGOWAN AND
LARRY JONES.

>> TALK ABOUT

HOW DO WE GET AROUND THE TRIAL
COURT'S FINDING THAT THE
TESTIMONY YOU ARE SAYING, HE
WOULD HAVE SAID BASED ON HIS
AFFIDAVIT HE COULD NOT HAVE
IDENTIFIED BUT THAT WASN'T WHAT
HIS TESTIMONY WAS.

HIS TESTIMONY WAS THERE WAS A
DESCRIPTION OF THE SHOOTER THAT
WAS CONSISTENT WITH MISTER
MARTIN THOUGH HE SAID I DIDN'T
SEE THE PERSON AND CANNOT
IDENTIFY THEM.

>> THAT IS A LITTLE MIXED UP.

>> SUPPLEMENTS THE POLICE
REPORT NUMBER 6.

WITH THAT MISTER JONES'S
TESTIMONY?

>> HE TOLD ONE POLICE OFFICER
HE SAW THE SIDE OF THE FACE.

>> BUT DID NOT IDENTIFY HIM.

>> HE DIDN'T THINK HE COULD
IDENTIFY HIM.

>> TRIAL COURT CREDITED THAT TESTIMONY OVER THE TESTIMONY OF THE AFFIDAVIT.

HOW DO WE GET AROUND THAT?

>> SHE DIDN'T JUST LOOK AT THAT ONE PART OF THE POLICE REPORT. SHE ALSO LOOKED AT THE FACT THAT THERE WERE DIFFERENT -- HE INITIALLY SPOKE TO ONE OFFICER. IN HIS AFFIDAVIT HE ONLY SPOKE TO ONE DETECTIVE AND THAT DESCRIPTION WAS CONSISTENT WITH WHAT HE SAID IN THE AFFIDAVIT, THE SHOOTER WAS BLACK MAIL, EARLY 20s, 160 POUNDS, 5 FOOT 8.

THERE IS ANOTHER, DIFFERENT SUPPLEMENT WHERE ANOTHER OFFICER SAYS HE SPOKE TO JONES AND MCGOWAN TOGETHER AND JONES GAVE THE DESCRIPTION OF BLACKMAIL.

I DON'T THINK --

>> WHICH WAS THE CONSISTENT DISCUSSION OF MISTER MARTIN THROUGHOUT.

>> THAT WAS RIGHT WITH THE SAME DESCRIPTION BY WILLIE MCGOWAN AND WILLIE MCGOWAN SAID WAS A SHORT BLACKMAIL AND LARRY JONES'S AFFIDAVIT HE WAS SHOWN VETERANS THAT I NEVER MADE THAT STATEMENT.

>> I UNDERSTAND THAT.

WE TAKE THE TRIAL COURT'S ORDER AS IT STANDS AS LONG AS IT IS SUPPORTED BY CIRCUMSTANTIAL EVIDENCE.

AS I UNDERSTAND IT THE DETECTIVE DID TESTIFY AND SAID THIS IS A STATEMENT THAT WAS MADE TO ME IN THE TRIAL COURT CREDITED THAT OVER THE VERSION THAT IS IN THE AFFIDAVIT. IS THERE EVIDENCE SUPPORTING THAT?

>> IT IS REASONABLE GIVEN THE NUMBER IF YOU LOOK AT THE POLICE REPORTS AND YOU CLEARLY HAVE, THE NUMBER OF POLICE

OFFICERS ON THE SCENE THAT DAY
COUPLED WITH THE NUMBER OF
PEOPLE THEY WERE INTERVIEWING
THAT DAY.

MULTIPLE PEOPLE THEY WERE
INTERVIEWING AT THE APARTMENT
COMPLEX.

IT IS REASONABLE THAT THE
SECOND STATEMENT THEY CREDITED
TO LARRY JONES WAS JUST A
POLICE ERROR AND THE OFFICER
TESTIFYING THAT HE REALLY TOLD
ME THAT, THIS IS AN OFFICER
LOOKING AT IT YEARS LATER BUT
AT THE TIME OF TRIAL, HAD TRIAL
COUNSEL SPOKEN WITH LARRY
JONES, LARRY JONES COULD HAVE
CLARIFIED THAT AND THAT I NEVER
GAVE IT SECOND STATEMENT.

AND SO TO SPEAK A LITTLE BIT
MORE ABOUT LARRY JONES, FOR THE
FIRST TIME, LET ME GO BACK,
LARRY JONES WAS RIDING HIS BIKE
PAST THE APARTMENT WHEN THE
SHOOTING OCCURRED AND THAT IS
HOW HE WITNESSED THE SHOOTER
AND GAVE A DESCRIPTION.

FOR THE FIRST TIME AT THE
EVIDENTIARY HEARING, TRIAL
COUNSEL STATED HE HAD CALLED
LARRY JONES ON THE PHONE AND
DECIDED HE COULDN'T BE OF ANY
HELP TO THE DEFENSE.

AND IN PART DENYING THIS CLAIM,
THE TRIAL COURT GAVE DIFFERENCE
TO THAT JUSTIFICATION.

THE STATEMENT WAS NOT CREDIBLE
AND IS REFUTED BY THE RECORD
AND SHOULD NOT BE GIVEN ANY
DIFFERENCE AND I WILL TELL YOU
WHY.

TRIAL COUNSEL WAS DEPOSED PRIOR
TO THE EVIDENTIARY HEARING AND
HE WAS CLEARLY ASKED IF HE EVER
SPOKE TO ANY WITNESSES WHILE HE
WAS PHYSICALLY AT THE CRIME
SCENE OR ANY OTHER TIME OUTSIDE
THE DEPOSITION AND HE SAID NO.
THE EVIDENTIARY HEARING WHEN I
IMPEACHED HIM WITH THAT, HE

TRIED TO CLAIM HE DIDN'T UNDERSTAND THE QUESTION.

>> DIDN'T HE SAY WAS IN THE CONTEXT OF SPEAKING TO PEOPLE AT THE SCENE?

>> THAT'S WHAT HE TRIED TO SAY BUT THAT'S NOT WHAT THE QUESTION WAS.

IT WAS VERY CLEAR.

>> WHEN SOMEONE IS FACED WITH IMPEACHMENT AND IT IS EXPLAINS WHICH IS HOW THE PROCEDURE IS SUPPOSED TO GO TO TRIAL COURT IS ALLOWED TO MAKE CREDIBLE ANY FINDINGS REGARDING THAT.

>> THEY ARE BUT I WOULD POINT TO OTHER THINGS THAT DISCREDIT HIS TESTIMONY.

LATER ON IN HIS TESTIMONY HE CLAIMED IT WAS NOT HIS PRACTICE TO INTERVIEW WITNESSES WITHOUT PRESENCE OF THE STATE ATTORNEY SO THAT UNDERCUTS HIS ASSERTION THAT HE CALLED THIS WITNESS ON THE PHONE.

FURTHERMORE, WE SUBMITTED HIS TIMESHEETS THAT WERE SUBMITTED TO PAYMENT ON THE CASE UNDER PENALTY OF PERJURY AS TO THEIR ACCURACY AND NOWHERE IN THOSE DETAILED TIMESHEETS DOESN'T SAY ANYTHING.

>> DO YOU HAVE A CASE WHERE THIS COURT OVERRULED THE TRIAL JUDGE'S CREDIBILITY DETERMINATION THAT IS IN THE COURTROOM AND LISTENING TO THE TESTIMONY, THE CROSS-EXAMINATION, LOOKING AT THE WITNESS AS THE WITNESS TESTIFIED AND YOU'RE MAKING SAME TARGET THEN WE COME UP HERE AND SAY WE THINK THE TRIAL JUDGE WHO WAS IN THE COURTROOM IS WRONG BECAUSE OF ALL THESE FACTORS AS TO WHY HE SHOULD NOT BE CREDITED.

DO YOU HAVE ANY CASE WHERE THIS COURT HAS DONE THAT?

>> I DO NOT.

>> IT IS NOT OUR JOB TO
DETERMINE CREDIBILITY.
CORRECT?

>> IT IS YOUR JOB TO LOOK AT
WHETHER THE FINDINGS OF THE
TRIAL COURT WERE BASED ON
COMPETENT SUBSTANTIAL EVIDENCE.

>> TESTIMONY FROM A WITNESS
WHETHER YOU THINK IT SHOULD BE
BELIEVED AND WAS IMPROPERLY
CROSS-EXAMINED OR NOT WILL THAT
BE SUBSTANTIAL EVIDENCE?

>> I DON'T BELIEVE THE TRIAL
COURT CONSIDERED ALL THE THINGS
I TELL YOUR HONOR AS TO WHY IT
SHOULD NOT BE CONSIDERED.
SHE DID MAKE A FINDING IS TO
THESE THINGS AND WHETHER SHE
DISBELIEVED OUR ARGUMENTS OR
JUST SIMPLY -

>> YOU HAVE CONSUMED MORE THAN
HALF OF THE TIME YOU SET ASIDE.

>> I HAVE.
THANK YOU.

>> YOU CAN KEEP GOING BUT THE
TIME IS GOING.

>> WOULD YOU LIKE ME TO FINISH
ANSWERING?

I WILL RESERVE THE REST OF MY
TIME FOR REBUTTAL, THANK YOU,
YOUR HONOR.

>> MAY IT PLEASE THE COURT MY
NAME IS LISA HOPKINS AND I'M
APPEARING ON BEHALF OF THE
STATE IN THIS MATTER.
FRANCIS SAY, TRIAL COUNSEL,
TESTIFIED DURING HIS
EVIDENTIARY HEARING THAT HIS
CLIENT ADMITTED TO HIM THAT HE
WAS IN FACT THE SHOOTER ON
OCTOBER 28, 2009, AND HE WAS
THE ONE WHO SHOT DANIELS.
BASED ON THOSE CONVERSATIONS
WHICH WERE CONFIRMED BY MISTER
ANDERSON WHO WAS COCOUNSEL
MISTER SHEA MADE THE DECISION
TO APPROACH THE TRIAL AND
ATTACK IDENTIFICATION AND
PREMEDITATION.
THIS IS A COMPLETELY REASONABLE

STRATEGY IN LIGHT OF THE EVIDENCE THAT WAS PRESENTED, WHAT THE WITNESSES WERE SAYING INCLUDING MISTER FRANKLIN BEATTY WHO TESTIFIED MISTER MARTIN TOOK HIS 45 CALIBER MASTERPIECE ACP GUN FROM HIM, WENT TO THE VICTIM'S SUV, PROCEEDED TO SHOOT HIM 9 TIMES FROM THE DRIVER'S SIDE, WALKED AROUND, SHOT ONE TIME TOWARDS THE TOP PART OF THE WINDSHIELD AND THEN SHOT 3 TIMES.

>> YOU WOULD CONCEDE THE RECORD REFLECTS SOME PRETTY OBVIOUS CROSS-EXAMINATION FOR THE EYEWITNESSES THAT COULD HAVE BEEN DONE, CORRECT?

AND ONCE YOU SAY MY ONLY DEFENSE IS MISIDENTIFICATION, WHAT IS THE JUSTIFICATION GENERALLY FOR NOT DOING OBVIOUS CROSS-EXAMINATION AVAILABLE FROM PRIOR STATEMENTS WHEN DECLARING THAT THAT IS MY DEFENSE?

>> TO START WITH, MISTER LUCAS, MISTER LUCAS WAS A LITTLE INCONSISTENT ABOUT THE FACIAL HAIR ON THE SHOOTER.

>> THAT IS NOT WHAT YOUR COCOUNSEL SAID.

THERE WAS THE ISSUE AT THE TRIAL COURT LEVEL BUT THAT IS NOT WHAT WE ARE TALKING ABOUT. THE REAL STATEMENT IS MISTER LUCAS ORIGINALLY SAID WHEN INTERVIEWED BY POLICE THAT HE DID NOT SEE THE SHOOTER AND 6 DAYS LATER HE SAID HE DID. HOW IS THAT NOT AN OBVIOUS INCONSISTENT STATEMENT THAT IS DEFICIENT FOR COUNSEL IN A ID CASE TO ASK ABOUT?

>> THAT COULD POTENTIALLY BE DEFICIENT.

>> HOUSE IT NOT?

WHAT CONSTITUTIONALLY ALLOWED COUNSEL NOT TO ASK THAT?

>> THERE'S NOTHING THAT DIDN'T

ALLOW HIM TO NOT ASK THAT.
HE LOOKED AT MISTER LUCAS'S
OVERALL STATEMENTS, THE FACT
THAT MISTER LUCAS INITIALLY
INDICATED HE DID NOT SEE
ANYTHING, WE DON'T KNOW THE
REASONS WHY HE SAID THAT.
MISTER LUCAS NEVER TESTIFIED AT
THE EVIDENTIARY HEARING.

>> WHAT STRATEGIC REASON WOULD
ALLOW COUNSEL NOT TO DO
SOMETHING THAT IS OBVIOUS THAT
ANY COUNSEL WOULD DO IN A ID
CASE?

>> MISTER SHEA TESTIFIED HIS
FOCUS WAS TO MINIMIZE ANY
STATEMENTS THAT BROUGHT OUT THE
EXECUTION STYLE -- MISTER LUCAS
DID NOT TESTIFY AT THE
EVIDENTIARY A HEARING SO WE
DON'T KNOW WHAT POSSIBLE REASON
HE COULD HAVE HAD FOR TELLING
POLICE I DON'T KNOW.

IT IS POSSIBLE THAT HE DIDN'T
SEE ANYTHING AND IT IS POSSIBLE
HE HAD MISTRUST OF POLICE AND
DIDN'T WANT TO BE INVOLVED.

>> THAT IS ALL POSSIBLY TRUE
BUT NONE IS SUPPORTED BY THE
RECORD.

WHAT IS SUPPORTED BY THE RECORD
IS THAT THERE WAS AN
INCONSISTENT STATEMENT.

MY QUESTION, WOULDN'T SOMEONE
BE ENTITLED TO HAVE A ID CASE
TO BE CROSS-EXAMINED ON AN
INCONSISTENT STATEMENT
REGARDING ID THAT DID NOT
INCREASE PREMEDITATION ISSUE,
DEAL WITH THE BEARD ISSUE HE
WAS WORRIED ABOUT, DEAL WITH
COCAINE USE, NONE OF THAT IS
LOCATED BY THE INITIAL
STATEMENT BY MISTER LUCAS SO
WHAT CONSTITUTIONAL REASON DID
HE HAVE?

I AM TALKING ABOUT ON CERTAIN
DEFICIENCIES ONLY.

>> I AM UNAWARE OF ANY REASON
HE WOULD NOT HAVE ASKED ABOUT

THAT BECAUSE HE WASN'T
CONFRONTED WITH THAT DURING THE
EVIDENTIARY HEARING SO I DON'T
KNOW WHAT HIS REASONS WERE
SPECIFICALLY FOR NOT ASKING
ABOUT WHY HE DIDN'T GO INTO WHY
MISTER LUCAS INITIALLY STATED I
DIDN'T SEE ANYTHING AND COMING
FORWARD WITH DETAILED
DESCRIPTION AND BEING
CONSISTENT THROUGHOUT HIS
DEPOSITION AND ALSO HIS TRIAL
TESTIMONY.

IT WOULD BE PURE SPECULATION
AND THAT IS WHY DOES THE
STATE'S POSITION THAT THERE IS
NO PREJUDICE WHICH YOU NEED ON
STRICKLAND, YOU NEED DEFICIENT
PERFORMANCE AND PREJUDICE.

>> LET'S TALK ABOUT OTHER
AREAS, THE FAILURE TO HIRE A
FORENSIC EXPERT WITH REGARD TO
TRAJECTORY ANALYSIS OR ANALYSIS
OF THE BULLETS.

AS I UNDERSTAND IT ROBINSON
TESTIFIED BASED ON HIS REVIEW
OF THE PHYSICAL EVIDENCE THAT
THERE WAS A SECOND SHOOTER.
DID HE TESTIFY TO THAT?

>> I DON'T REMEMBER IF HE DID
TESTIFY THAT THERE WAS A SECOND
SHOOTER BUT THIS WOULD BE
INCONSISTENT WITH THE
EYEWITNESS TESTIMONY.

>> WAS THERE A BULLET FRAGMENT
THAT WAS A SIGNIFICANT DISTANCE
AWAY AND A BULLET HOLE AT THE
TOP OF THE CAR THAT WAS
INCONSISTENT WITH THE OTHER
BULLET HOLES THAT LED MISTER
ROBINSON TO CONCLUDE THAT THERE
WAS INDEED A SECOND SHOOTER?

>> THAT WOULD BE PURE
SPECULATION.

IT WOULD BE INCONSISTENT WITH
THE REST OF THE EVIDENCE THAT
WAS PRESENTED AT THE TRIAL
THROUGH MULTIPLE EYEWITNESSES
THAT NOT ONE PERSON TESTIFIED
THERE WAS A SECOND SHOOTER BUT

IT DOESN'T NEGATE THE FACT THE DEFENDANT WAS THE SHOOTER BY HIS OWN ADMISSION.

>> IT CERTAINLY INDICATES PREMEDITATION AND CULPABILITY.

>> DEFENSE EXPERT AT THE EVIDENTIARY A HEARING DID TESTIFY THAT BASED ON HIS REVIEW OF THE EVIDENCE BASED ON HIS REVIEW OF THE REPORTS AND PHOTOGRAPHS AND EVERYTHING ELSE THAT THERE WOULD HAVE HAD TO HAVE BEEN A BREAK FROM THE TIME THE DEFENDANT WAS SHOOTING FROM THE DRIVERS SIDE AND MOVING AROUND.

THE COURT FOUND BASED ON THIS COURT'S PRECEDENT THAT WAS ENOUGH TO ESTABLISH PREMEDITATION AND DEFENSE EXPERT ULTIMATELY TESTIFIED CONSISTENTLY WITH IF THE ONLY EXPERT THAT WAS PRESENTED AT TRIAL.

>> LET ME ASK YOU THIS. OF THE EXPERT TESTIFIED THERE WAS A SECOND SHOOTER WOULD IT HAVE BEEN CONSTITUTIONALLY EFFECTIVE COUNSEL TO NOT HAVE PRESENTED THAT EVIDENCE TO THE TRIAL?

>> I THINK IT WOULD HAVE BEEN BECAUSE OF DEFENDANT'S OWN ADMISSION THAT HE WAS IN FACT THE SHOOTER.

>> THAT IS NOT NEGATED BY THERE BEING A SECOND SHOOTER.

>> A SECOND SHOOTER DOESN'T NEGATE THE IDENTIFICATION, DOESN'T NEGATE THE PREMEDITATION.

IT IS POTENTIAL OF SOMEONE ELSE BEING INVOLVED.

IT DOESN'T NEGATE THE OTHER EVIDENCE INDICATING THE DEFENDANT AS THE ONE WHO IS THE ONE WHO SHOT AT THE VICTIM. AGAIN, I BELIEVE A JURY WOULD HAVE REJECTED A THEORY OF A SECOND SHOOTER GIVEN THE

EXTENSIVE TESTIMONY FROM MS. BURNS FROM MS. HART, MISTER BEATTY, MISTER MC IMAGER WHO ALL TESTIFIED SO ONLY SEEING ONE SHOOTER.

REGARDING MISTER BURNS, OPPOSING COUNSEL BROUGHT UP THE FACT SHE KNEW MISTER MARTIN IN THE COMMUNITY BECAUSE HE TRIED TO IN HER WORDS HOLLER AT HER AND SHE WAS NOT INTERESTED BECAUSE HE WAS A KNOWN COKE USER.

MISTER SHEA TESTIFIED HE DID NOT THINK THAT WAS AN APPROPRIATE ISSUE TO GO INTO BECAUSE HAVING A WITNESS WHO WHO THE SHOOTER WAS AND NO HIS IDENTITY BOLSTERS THE IDENTIFICATION VERSUS INJURY HEARING THAT I HAVE NEVER SEEN THEM BEFORE, THIS IS THE FIRST TIME I SAW HIM.

THAT IS MORE UNRELIABLE THAN SOMEONE WHO KNEW HIM FOR SEVERAL MONTHS OR SEVERAL YEARS SUCH AS THE CASE WITH MS. HART. MISS HEART TESTIFIED SHE DID NOT KNOW HIM BEFORE BUT HER MOTHER TESTIFIED AT THE EVIDENTIARY HEARING, THAT IS NOT TRUE.

I INTRODUCED THEM.

IT WAS SHORTLY AFTER HE GOT OUT OF PRISON FOR A PREVIOUS MURDER.

AND HE WAS RELEASED ON THAT MURDER CHARGE, MS. HART WOULD HAVE KNOWN HIM FOR A SUBSTANTIAL AMOUNT OF TIME.

AS FAR AS CALLING TWO ADDITIONAL WITNESSES, MISTER JONES AND MISTER MCGOWAN. MISTER JONES DESCRIBED THE SHOOTER AS A SHORT, FAT, BLACK MAIL, THEN PROCEEDED TO CHANGE HIS STORY AND SAID IT WAS SOMEONE WHO WAS ABOUT 5 FOOT 10, 160 POUNDS AND THEN CHANGED HIS STORY AGAIN AND TESTIFIED

IT WAS A SHORT FAT BLACK MAIL
IS MISTER SHEA TESTIFIED WHEN
HE SPOKE TO HIM.

ULTIMATELY HIS OWN AFFIDAVIT HE
ADMITTED HE WOULD BE UNABLE TO
IDENTIFY, MCGOWAN, HIS
STATEMENTS WHERE HE DID NOT THE
SHOOTER, HE WOULD NOT BE ABLE
TO IDENTIFY, THIS WOULD NOT BE
HELPFUL TO THE.

THEY DIDN'T SEE ANYTHING, THEY
DID NOT SEE -- I MCGOWAN CANNOT
SEE THE SHOOTING AND MISTER
JONES WOULD BE CUMULATIVE TO
WHAT OTHER WITNESSES HAD
ALREADY TESTIFIED THAT THEY SAW
SOMEONE SHOOTING FROM THE
DRIVERS SIDE MOVING AROUND THE
CAR AND CONTINUING TO SHOOT THE
VICTIM.

>> MISTER JONES WAS GIVEN A
PHOTO IDENTIFICATION AND WAS
NOT ABLE TO IDENTIFY MISTER
MARTIN.

WHY NOT ASK DETECTIVE CHISIK
ABOUT THAT?

>> MISTER SHEA TESTIFIED HIS
STRATEGY AND HIS CONCERNS
TALKING TO HIM ABOUT THAT,
BECAUSE MISTER MCGOWAN
TESTIFIED IT LOOKED LIKE HIM
BUT COULDN'T IDENTIFY THEM.

>> TALKING ABOUT MISTER JONES.

>> HE DESCRIBED THE SHORT FAT
GUY WHICH MATCHES THE
DEFENDANT'S DESCRIPTION.

>> HE WAS SPECIFICALLY SHOWN
THE DEFENDANT'S PICTURE AND WAS
UNABLE TO IDENTIFY HIM.

HOW DOES NOT HELP WITH A
IDENTIFICATION DEFENSE?

>> HE CHANGED HIS APPEARANCE
BETWEEN THE TIME OF THE MURDER
AND WHEN HE WAS ARRESTED A FEW
DAYS LATER.

>> HOUSE THAT ADVOCATE?

HOW DOES FAILURE TO SHOW THE ID
INDICATE THAT?

I UNDERSTAND THE STRATEGIC
DECISION TO AVOID THAT BUT HOW

DOES THAT DETERMINE IF MISTER JONES WAS ABLE TO ID OR NOT ID HIM?

>> I DON'T THINK IT WOULD.

>> HOW IS IT A STRATEGIC DECISION TO AVOID ASKING THAT QUESTION?

>> IT WOULD NOT HELP THE DEFENDANT'S CASE.

>> IT WOULDN'T HELP THAT SOMEONE UNSEEN WAS NOT ABLE TO IDENTIFY WHAT WAS SHOWN IN THE PICTURE?

>> IT WOULD ULTIMATELY COME OUT THE DEFENDANT CHANGED HIS APPEARANCE, HE HAD SHAVED.

>> HOW WOULD IT HAVE IMPLICATED THAT?

ASKING IF MISTER JONES WAS SHOWN A LINEUP AND WAS UNABLE TO IDENTIFY MISTER MARTIN?

>> I BELIEVE THEY WOULD HAVE GONE INTO QUESTIONS ABOUT DIDN'T THE DEFENDANT, WAS CLEAN-SHAVEN WHEN HE WAS ARRESTED ON NOVEMBER 2, 2009, JUST A FEW DAYS AFTER AND MISS HEART'S TESTIMONY HE HAD IN FACT SHAVED A FEW DAYS LATER WHEN SHE CAME IN CONTACT WITH HIM.

I BELIEVE WITH ALL THE OTHER EVIDENCE THAT CAME OUT FROM MS. HART AND OTHER WITNESSES INCLUDING MISTER LUCAS DESCRIBING HIM AS HAVING A BEARD AND OTHER WITNESSES DESCRIBING FACIAL HAIR, THAT WOULD HAVE BEEN IMPLICATED FOR THE JURY THAT IT LOOKS LIKE HIM BUT I DON'T THINK IT IS HIM BECAUSE THERE WAS A SUBSTANTIAL CHANGE TO HIS FACE AND HE WOULD NOT BE ABLE TO IDENTIFY HIM WITH THAT CHANGE AND THAT WAS MISTER SHEA'S CONCERN.

THERE WAS A QUESTION ABOUT INVESTIGATING MISTER FRASER WHO WAS INVOLVED IN A SHOOTING A FEW DAYS PRIOR, WHO WAS

INVOLVED IN A SHOOTING INVOLVED WITH FRANKLIN BEATTY WHO MISTER FRASER HAD ALSO BEEN SOUGHT. MISTER MANTAI, THE PROSECUTOR, CONFIRMED THE ALIBI THAT MISTER FRASER AFTER BEING RELEASED FROM THE HOSPITAL A FEW DAYS PRIOR TO THE MURDER WAS IMMEDIATELY SENT TO SOUTH FLORIDA SO HE COULD RECOVER FROM HIS INJURIES AND WAS NOT IN TOWN AT THE TIME OF THE MURDER.

SO THERE WAS NO EVIDENCE TO CONTRADICT THAT OUR BISON MISTER MANTAI'S RECOMMENDATION TO CONFIRM THAT ALIBI, THAT IS WHY MISTER SHEA DID NOT GO DOWN THE ROAD OF ASKING ABOUT MISTER FRASER.

IN TERMS OF CALLING ADDITIONAL WITNESSES, OPPOSING COUNSEL PRESENTED THE TESTIMONY OF MISTER DAVIS AT THE EVIDENTIARY AIR HEARING AND HE TOLD PEOPLE THAT I DID NOT SEE ANYTHING THE DAY OF THE MURDER AND HE TESTIFIED HE DID NOT SEE THE SHOOTING AND HE DID NOT SEE WHO THE SHOOTER WAS.

HIS TESTIMONY WOULD NOT HAVE BEEN HELPFUL WHATSOEVER TO DEFENSE BECAUSE HE DIDN'T SEE THE MURDER.

IF THERE ARE NO FURTHER QUESTIONS.

>> BEFORE YOU SIT DOWN ADDRESS FOR ME THE JURISDICTIONAL ARGUMENT YOU MAKE IN YOUR BRIEF?

>> THE STATE IS ARGUING THAT BECAUSE THERE IS A FINAL ORDER VACATING THE DEATH SENTENCE THAT THIS CASE IS NO LONGER A DEATH SENTENCE.

IT IS THE STATE'S POSITION THAT THIS COURT SHOULD NOT HAVE EXERCISED JURISDICTION OVER THE CASE AND IT SHOULD BE DETERMINED WHETHER OR NOT THIS

CASE WILL BE A DEATH PENALTY
CASE BEFORE THE APPEAL IS
HEARD.

>> I WE PERMITTED OR IS ANY
COURT PERMITTED, THE COURT
PERMITTED TO HEAR AN APPEAL OF
THE GUILT PHASE CLAIMS,
SEPARATE AND APART FROM THE
SENTENCING THAT IS PENDING?

>> THE FEDERAL COURT, I DID
CITE IT IN THE JURISDICTIONAL
SECTION OF MY BRIEF, THE UNITED
STATES SUPREME COURT HELD THAT
THE JUDGMENT IS THE SENTENCE,
THAT YOU NEED TO KEEP

EVERYTHING TOGETHER, BOTH THE
CONVICTION AND THE SENTENCE, TO
GO THROUGH THE COURTS AND WHEN
YOU SEPARATE THEM YOU ARE
CREATING ALL SORTS OF PROBLEMS?

>> THAT MAY BE TRUE BUT THAT IS
AN ADMINISTRATIVE DECISION MADE
BY THE FEDERAL COURTS.

HAVE WE SAID ANYTHING LIKE THAT
OR IS THERE ANY LAW LIKE THAT
WHERE SEPARATING THE TWO CAUSES
THE JURISDICTIONAL DEFECT.

>> I DO KNOW THAT UNDER FRESNO
VERSUS STATE WHICH I CAN
SUPPLEMENT TO THIS COURT, THIS
COURT DID LOOK AT WHETHER THEY
WOULD HAVE JURISDICTION OVER A
CASE SUCH AS IN THIS SITUATION
WHERE THERE WAS AN ORDER
VACATING THE DEATH SENTENCE.
HOWEVER, THIS CASE IS SEPARATE
INDISTINGUISHABLE BECAUSE THE
STATE DID NOT APPEAL GRANTING
OF HEARST VERSUS STATE RELIEF
FROM THE LOWER COURT.

>> IS AND 9.4 IN A CRIMINAL
CASE, A DEFENDANT IS ALLOWED TO
TAKE AN APPEAL FROM A
CONVICTION FIRST AND CAN
SEPARATELY SEEK APPEAL FROM THE
SENTENCE.

DO I READ THE RULE RIGHT OR DO
I NOT READ THE RULE RIGHT?

>> I AM NOT SURE.
IN A LOT OF THOSE CASES BECAUSE

THIS COURT HAS EXCLUSIVE JURISDICTION OVER DEATH CASES IN DISTRICT COURTS HAVE JURISDICTION OVER THE REST OF THE NONCAPITAL CASES.

THAT IS WHERE WE GET INTO A LITTLE BIT OF MUDDINESS.

>> I AGREE WITH THAT.

>> SO IF THERE ARE NO FURTHER QUESTIONS, I WOULD BE RELYING ON MY BRIEFS.

THANK YOU.

>> I KNOW I HAVE JUST ABOUT A MINUTE LEFT, BUT I NEEDED TO CLARIFY--

>> ALMOST TWO.

>> OKAY.

SOME VERY IMPORTANT MISSTATEMENTS OF FACTS THAT I HEARD JUST A MOMENT AGO.

SO WILLIE MCGOWAN DID SEE THE SHOOTER.

HE TESTIFIED, OR HE TOLD POLICE INITIALLY THAT HE SAW HIM, HE SAW HIS FACE, HE COULD IDENTIFY HIM AGAIN.

POLICE SHOWED HIM NOT ONE, BUT TWO LINEUPS, BOTH CONTAINING MR. MARTIN.

ONE WITH MR. MARTIN CLEAN SHAVEN AND ONE WITH SOME FACIAL HAIR.

IN BOTH OF THEM, HE POINTED TO MR. MARTIN, THAT LOOKS LIKE HIM, BUT THAT'S NOT HIM.

>> DID THE SHOOTER ALSO SHOOT AT MR. MCGOWAN?

>> THAT'S CORRECT.

>> MR. MCGOWAN WAS THE ONE WHO DROVE THE VICTIM--

>> NO.

HE WAS THE PASSENGER.

>> AND HE WAS RUNNING TOWARDS THE VICTIM, APPARENTLY, AND THAT'S WHEN THE SHOOTER SHOT AT HIM?

>> YES.

THAT'S WHAT HE TOLD POLICE.

>> FOUR TIMES?

>> NO, I THOUGHT IT WAS JUST ONCE.

>> SO HE RAN AWAY.
WHY WOULD HE WANT TO BRING THAT
OUT BY CALLING MR. McGOWAN?
>> BECAUSE MR. McGOWAN SAID,
YES, THE SHOOTER SHOT HIM, BUT
IT WASN'T MR. MARTIN.
I THINK THAT'S WHY IT WAS
IMPORTANT TO BRING THAT
TESTIMONY OUT.
>> DIDN'T HE DESCRIBE
MR. MARTIN, BASICALLY, SHORT
GUY, HEAVY SET?
>> YES.
>> DID THAT FIT MR. MARTIN'S
DESCRIPTION?
>> WELL, I THINK THE IMPORTANT
THING IS THAT HE SAID HE LOOKED
AT HIS FACE.
AND WHEN HE LOOKED AT THE TWO
SEPARATE PHOTO LINEUPS WITH
MR. MARTIN WITH DIFFERENT TYPES
OF FACIAL HAIR, HE SAID THAT
LOOKS LIKE HIM, BUT THAT'S NOT
HIM.
THAT WOULD HAVE BEEN AN
IMPORTANT THING FOR THE JURY TO
HEAR.
>> THERE WAS A SPECIFIC REASON
FOR HIM BEING CALLED.
THERE WERE TWO ASPECTS OF IT
TOO.
DIDN'T MR. McGOWAN TESTIFY
THAT MR. MARTIN WAS THE ONE--
OR IS THE SHOOTER OR TOLD HIM
WHERE THE DRUG HOLE WAS, WHERE
TO BUY MARIJUANA, AND COUNSEL
WANTED TO AVOID THE DRUG ISSUE?
>> COUNSEL DID WANT TO AVOID THE
DRUG ISSUE, BUT I DON'T THINK
THERE WAS ANY MENTION FROM HIM
ABOUT THAT SPECIFIC--
>> AND DIDN'T MR. McGOWAN HAVE
A VERY DETAILED DESCRIPTION OF
THE SHOOTER GOING AROUND TO THE
PASSENGER SIDE--
>> HE DID.
>> DIDN'T THEY WANT TO AVOID THE
PREMEDITATION ISSUE?
>> THAT IS WHAT COUNSEL SAID AT
THE EVIDENTIARY HEARING.

IF YOU GO BACK AND LOOK AT THE TRIAL, THE ONLY DEFENSE THAT HE TOLD THE JURY THAT HE WAS PURSUING WAS MISIDENTIFICATION. THAT'S WHAT HE TOLD THEM AT OPENING, AND THAT SHOULD HAVE BEEN HIS FOCUS.

WHETHER-- HOW THE SHOOTING OCCURRED SHOULD NOT HAVE BEEN AS IMPORTANT AS THE FACT THAT IT WASN'T MR. MARTIN THAT WAS THE SHOOTER.

AND SO THAT'S WHY HE WAS NOT REASONABLE IN DOING THAT.

AND JUST TO CLARIFY--

>> YOU NEED TO TIE IT UP IN ABOUT 30 SECONDS.

YOU'RE OVER TIME NOW.

>> I'LL BE VERY QUICK.

MR. JONES WAS NEVER SHOWN A PHOTO LINEUP.

HE WAS ONLY SPOKEN TO BY ONE DETECTIVE THE DAY OF THE CRIME, AND HE WAS NEVER SHOWN A PHOTO LINEUP.

SO I AM JUST ABOUT OF TIME, SO I WOULD ASK THIS COURT GRANT RELIEF AND REMAND A NEW TRIAL FOR MR. MARTIN.

>> THANK YOU.

WE THANK YOU BOTH FOR YOUR ARGUMENTS.

THE COURT IS NOW IN RECESS.