Amos Lee King, Jr. v. State of Florida

MR. CHIEF JUSTICE

GOOD MORNING AND WELCOME TO THE SPECIAL ORAL ARGUMENT CALENDAR FOR THE FLORIDA SUPREME COURT. THE CASE WE HAVE TO BE HEARD THIS MORNING IS KING VERSUS STATE. KING VERSUS MOORE. MR. KILEY.

YOUR HONOR, MAY IT PLEASE THE COURT. MY NAME IS RICHARD KILEY. I AM EMPLOYED BY CCRC MIDDLE, AND I REPRESENT AMOS KING IN THIS ACTION TODAY. I WOULD LIKE TO FOCUS MY ARGUMENT ON ISSUE ONE OF THE APPELLANT BRIEF.

IF YOU WOULD BE KIND ENOUGH TO PUT THAT MIKE BACK IN FRONT OF YOU, WE WOULD APPRECIATE IT.

I WOULD LIKE TO FOCUS MY ARGUMENT ON ISSUE ONE. HOWEVER, I WOULD LIKE TO BRING TO THE COURT'S ATTENTION ON MONDAY, AT APPROXIMATELY FIVE O'CLOCK, WE ARGUED FOR A STAY OF EXECUTION AND THE UNITED STATES SUPREME COURT HAS ACCEPTED CERTIORARI ON THE APRENDI ISSUE ON RING VERSUS STATE OF ARIZONA. THE COURT DENIED THE STAY YESTERDAY AT FIVE, AND WE ARE FILING A SUPPLEMENTAL BRIF TODAY APPEALING THAT RULING.

WHY WOULDN'T THAT BE AN APPROPRIATE ISSUE TO BRING BEFORE THE SUPREME COURT OF THE UNITED STATES?

WHY WOULDN'T IT?

YES.

I SUBMIT IT WOULD BE, UNDER BAREFOOT V ESTELL, AND I ALSO SUBMIT TAKE IT WOULD BE CORRECT ON DIRECT APPEAL, ACCORDING TO BAREFOOT.

BUT WE HAVE OUT OF THIS COURT PRECEDENT IN MILLS.

YES, YOUR HONOR.

AND THAT CASE WAS TAKEN TO THE U.S. SUPREME COURT IN CERTIORARI AND DENIED, IS THAT CORRECT?

THAT'S CORRECT, SIR.

THANK YOU.

JUDGE,ISH EW ONE BEING -- JUDGE, ISSUE ONE BEING DIRECT CONCLUSION THAT THE VAGINAL SCHWAB WAS DESTROYED IN 1989. YOUR HONOR, IT IS CLEAR FROM THE RECORD THAT THE ONLY EVIDENCE LINKING A TYPE ASECRETOR TO THE CRIME SCENE WAS THIS SCHWAB.

WHAT ABOUT THE PANTS?

THE PANTS -- WAS THIS SWAB.

WHAT ABOUT THE PANTS?

THE PANTS WERE WORN BY MR. KING. THEY WERE NEVER RECOVERED, SIR, SO THIS IS THE ONLY EVIDENCE LINKING MR. KING, WHERE A TYPE ASECRETOR, WHICH MR. KING WAS -- A TYPE "A" SECRETOR, WHICH MR. KING WAS. DOCTOR WOODS STOOD BY WHILE IT WAS TESTED FOR BLOOD TYPE ANALYSIS. THEN THE TECHNICIAN GAVE IT BACK TO DR. WOOD.

I DID UNDERSTAND YOU TO SAY THAT YOU ARE NOT ALLEGEING A BAD FAITH DESTROYING OF EVIDENCE, ARE YOU?

YES, I AM.

YOU ARE? YOU ARE SAYING IT WAS DESTROYED?

IN BAD FAITH.

INTENTIONALLY, TO --

JUDGE, I AM ALLEGING THAT THIS CASE FALSE UNDER ELLIOTT VERSUS UNITED STATES -- THIS CASE FALLS UNDER ELLIOTT VERSUS UNITED STATES, CITED IN MY BRIEF AND WE ARE PREPARED TO DEMONSTRATE AN OBJECTIVE BAD FAITH ARGUMENT.

WHAT EVIDENCE, WHAT WOULD BE YOUR PROOF OF BAD FAITH?

WELL --

WHAT ARE YOU ALLEGING THAT --

WELL, YOUR HONOR, IN ELLIOTT, IT IS CLEAR AND UNAMBIGUOUS --

WHAT WAS DONE INTENTIONALLY TO FRUSTRATE JUSTICE, BY DESTROYING THE EVIDENCE AND THROWING IT AWAY?

WELL, JUDGE, ELLIOTT STATES, WHEREAS HERE THERE IS -- WHERE, AS HERE, THERE IS NO EVIDENCE OF ESTABLISHED PRACTICE WHICH WAS RELIED UPON TO EFFECTUATE THE DESTRUCTION, AND RELIABLE DOCUMENTS SHOW THAT THE DESTRUCTION SHOULD NOT HAVE OCCURRED, AND WHERE THE LAW ENFORCEMENT OFFICER ACTED IN A MANNER WHICH WAS EITHER CONTRARY TO APPLICABLE POLICIES AND THE COMPETENT SEIZEMENT OF EVIDENCE RESPECTBLY EXPECTED OF LAW ENFORCEMENT OFFICERS OR WAS SO UNMINDFUL OF BOTH AS TO CONSTITUTE THE RECKLESS DISREGARD OF BOTH, AND THERE IS A SHOWING OF BAD FAITH REQUIREMENT IN YOUNG BLOOD V TRAMBETA.

WAS THERE ANY STANDARDS AT THE TIME IN REFERENCE TO THE PRESERVATION OF EVIDENCE?

YES, THERE WAS, YOUR HONOR.

WHAT WERE THE STANDARDS AND IN THIS CASE HOW WERE THEY OUT OF COMPLIANCE?

THE STANDARD IN 1977 WAS FLORIDA STATUTE 406.133, WHICH STATES BRIEFLY, IN REGARD TO DESTRUCTION OF EVIDENCE, THAT THE MEDICAL EXAMINER COULD EITHER KEEP IT OR TURN IT OVER TO LAW ENFORCEMENT OFFICERS, AND LAW ENFORCEMENT, ACTUALLY THE LEAD DETECTIVE, THE LEAD DETECTIVE COULD, THEN, PURSUANT TO COURT ORDER ON AN INTERNAL MEMO, ORDER DESTRUCTION OF THAT EVIDENCE. THE LAW IS CLEAR AND UNAMBIGUOUS ON THIS POINT.

WHAT IS THE STATE'S ANSWER TO THAT? WE DON'T KNOW WHAT HAPPENED TO IT. IT WAS JUST LOST. IS THAT THE STATE'S ANSWER?

JUDGE SHAFER FOUND, AS, IN HER FINDING OF FACT, THAT THE EVIDENCE WAS DESTROYED BY DR. WOOD, BETWEEN THE YEARS 1977 AND 1979, BEFORE MR. KING'S DIRECT APPEAL WAS EVEN DECIDED. NOW, IT IS OUR PREMIES THAT THE STATUTE, THE ONLY STATUTE GOVERNING THE -- OUR PREMISE THAT THE STATUTE, THE ONLY STATUTE GOVERNING, ORDERED HIM TO KEEP IT OR TURN IT OVER TO THE LEAD DETECTIVE. IF DR. WOOD DESTROYED IT, SHE SHOWED A RECKLESS DISREGARD FOR THE REASONABLE EXPECTED OF A MEDICAL EXAMINER.

WAS THIS THE ONLY PHYSICAL EVIDENCE THAT WAS DESTROYED OR IS NOT AVAILABLE?

CORRECT, YOUR HONOR.

SO WAS THERE OTHER EVIDENCE THAT LINKED MR. KING TO THE CRIME SCENE?

NO. NOT TO THE CRIME SCENE. THERE WAS --

TO THE -- WELL, THIS DOESN'T -- ACTUALLY THIS DIDN'T LINK HIM TO THE CRIME SCENE BUT TO THE DEFENDANT. IS THERE -- WHAT ABOUT --

NO, YOUR HONOR. THERE WERE KNIVES PRESERVED. A KNIFE WHICH WAS USED TO STAB THE GUARD OF THE CORRECTIONAL FACILITY WAS COVERED IN TYPE "B" BLOOD. MRS. BRADY WAS A TYPE "O". THERE ARE NIGHT GOWNS WITH MRS. BRADY'S BLOOD ON IT. THERE ARE JACKETS WITH GUARD McDONOUGH'S BLOOD ON IT. THERE ARE KNOWN SAMPLES OF MR. KING'S BLOOD AND MRS. BRADY'S BLOOD STILL IN EVIDENCE TODAY.

FOR YOU TO BE ABLE TO MAKE A SHOWING UNDER YOUNG BLOOD, YOU ARE SEEKING THIS EVIDENCE MORE THAN TWENTY YEARS AFTER THE CRIME OCCURRED, UNDERSTANDING THIS WAS DESTROYED WITHIN THE FIRST YEAR OR TWO, BUT THE FIRST TIME THIS IS BEING SOUGHT IS TWENTY-PLUS YEARS AFTER THE CRIME OCCURRED. IS THERE ANYTHING FURTHER THAT YOU NEED TO SHOW, OTHER THAN IT WAS DESTROYED, AND IT WAS NOT PURSUANT TO PROCEDURE? IN OTHER WORDS, THERE HAS TO BE SOME REASONABLE BASIS IN THE EVIDENCE, AS TO WHAT THE MOTIVATION OF THE MEDICAL EXAMINER WOULD HAVE BEEN, TO NOT HAVE RETAINED THIS EVIDENCE?

WELL, NO, JUDGE. UNDER ELLIOTT, I HAVE TO SHOW THAT SHE DISREGARDED APPLICABLE POLICIES OR SHE DEMONSTRATED A LACK OF COMMON SENSE ASSESSMENT OF EVIDENCE REASONABLY EXPECTED OF HER.

I GUESS WHAT I AM LOOKING FOR IS THERE ANY, FOR EXAMPLE, A SHOWING OF, THAT YOU HAVE TO MAKE, OF PREJUDICE IN SOME WAY, TO SHOW THAT IT WAS LIKELY THAT THIS EVIDENCE COULD HAVE LED TO EXCULPATORY --

YES. I CAN DO THAT, IF THE COURT LIKES. JUDGE, THERE WAS A LAB REPORT DATED MARCH 17, 1977, IN REGARDS TO THE BLOOD TYPING. NOW, ON THAT REPORT, THERE IS HANDWRITTEN NOTES BY MARIANNE HILL WHO, DID THE BLOOD TYPING, SAYING GROSSLY WHOM ON THISNIZED VERY POTTED, VERY BLOODY. VERY DIFFICULT TO READ. THAT SAMPLE WAS SUBJECT TO ATTACK AT TRIAL, AND WE ARE MAINTAINING THAT, BECAUSE IT WAS DESTROYED BEFORE MR. KING'S DIRECT APPEAL WAS EVEN DECIDED, THAT THIS IS A DUE PROCESS VIOLATION, AND MR. KING IS ENTITLED TO RELIEVE ON THIS POINT.

DO YOU HAVE TO MAKE A SHOWING THAT THE EXCULPATORY NATURE OF THE EVIDENCE WAS KNOWN AT THE TIME OF ITS DESTRUCTION? IS THAT ONE OF YOUR BURDENS?

I DON'T BELIEVE I HAVE TO MAKE THE SHOWING, BUT I WILL MAKE THE SHOWING THAT IT WAS EXCULPATORY INNATE AT THE TIME. -- EXCULPATORY IN NATURE AT THE TIME. YOUR HONOR, DR. WOOD WAS AN EXPERIENCED MEDICAL EXAMINER. SHE KNEW THIS TEST WAS SUBJECT TO ATTACK BY COMPETENT TRIAL COUNSEL, YET SHE DESTROYED IT. NOW, YOUR HONOR, IF COMPETENT TRIAL COUNSEL AT THE TIME OR EVEN POSTCONVICTION COUNSEL HAD ATTACKED THE LAB REPORT SAYING GROSSLY WHOM ON THISNIZED, VERY DIF-- HOMOGENIZ ED, VERY DIFFICULT TO READ, VERY BLOODY, IT COULD HAVE BEEN ABLE TO SHOW A TYPE "A" SECRETOR AT THE TIME.

BUT IT WASN'T RAISED IN ANY POSTCONVICTION MOTION UNTIL TODAY. NOW YOU ARE COMING BACK AND SAYING, BECAUSE THE LAB REPORT IS INCLUSIVE, THAT TRIAL COUNSEL SHOULD HAVE USED THAT IN SOME WAY, SO THAT SORT OF TIES IN, TO ME, TO SAY THAT YOU ARE TRYING TO RESUSCITATE A POSTCONVICTION INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, AND WE ARE HERE, IN 2 TO YOU 2, ON A CASE THAT -- IN 2002, ON A CASE THAT IS OVER TWENTY YEARS OLD.

BUT, YOUR HONOR, HISTORICALLY THIS WHOLE ISSUE CAME ABOUT BY US REQUESTING DNA TESTING UNDER THE STATUTE.

AND THAT WAS IN WHAT YEAR?

THAT WAS IN WHAT YEAR?

WHAT YEAR WAS THIS FIRST, THE NATURE OF THIS EVIDENCE FIRST THOUGHT TO BE SOMETHING THAT COULD BE AN ISSUE THAT WOULD ASSIST MR. KING?

WELL, WHEN THE DEATH WARRANT WAS SIGNED.

IN THE LAST FEW MONTHS?

YES, MA'AM. HOWEVER, WE HAD MOVED, MR. KING HAD UNTIL 2003 TO GET THE TESTING. THE STATE HAD DONE AN INVESTIGATION BACK IN JULY OF 2001 AND DETERMINED THAT THIS EVIDENCE WAS DESTROYED. JUDGE SHAFER, IN HER FINDING OF FACT, DETERMINED THAT THE EVIDENCE WAS DESTROYED BETWEEN 1977 AND 1979.

SO YOU HAVE R -- SO YOU WERE NOT SEEKING THE VAGINAL WASHING SEPARATE AND APART FROM ANY OF THE -- YOU WERE JUST ASKING FOR ALL OF THE PHYSICAL EVIDENCE THAT STILL WAS IN EXISTENCE IN THIS CASE?

NO, JUDGE. WE WERE SPECIFICALLY ASKING FOR THE VAGINAL WASH AND RECTAL SWAB FOR DNA TESTING, BECAUSE THAT WAS THE ONLY EVIDENCE THAT LINKED MR. KING TO THE CRIME SCENE.

BUT IT WASN'T, AT THE TIME WHEN IT WAS LINKED, HE WAS LINKED, IT WASN'T BECAUSE OF DNA TESTING. IT WAS LINKED BASED ON BLOOD TYPE.

CORRECT, YOUR HONOR.

WHICH WAS REALLY, I MEAN, SINCE A CERTAIN PERCENTAGE OF INDIVIDUALS HAVE TYPE "A" BLOOD, IT IS NOT, THIS IS NOT REALLY, IT IS NOT REALLY DEVASTATING EVIDENCE AGAINST MR. KING IN THIS CASE, WAS IT?

JUDGE, I WOULD SUBMIT IT WAS DAMNING EVIDENCE AGAINST MR. KING IN THIS CASE, BECAUSE THIS WAS THE ONLY EVIDENCE THAT PLACED A TYPE "A" SECRETOR AT THE SCENE, AND AS I SAID, WE ORIGINALLY, WE ASSUMED THAT THE STATE HAD PRESERVED THIS EVIDENCE, AS THEY DID EVERY OTHER PIECE OF EVIDENCE IN THIS CASE. THE ONLY EVIDENCE WHICH WS NOT

PRESERVED IS THE ONLY EVIDENCE THAT COULD EXONERATE MR. KING, SO ONCE WE FOUND OUT THAT THE STATE HAD DESTROYED THIS EVIDENCE, IT HAS NOW BECOME A YOUNGBLOOD ISSUE, AND, JUDGE, WE ARE FURTHER BASING OUR ARGUMENT ON THE FACT THAT DR. WOOD KNEW THE EXCULPATORY VALUE OF THIS EVIDENCE, YET SHE DESTROYED IT.

WHAT IS OUR STANDARD OF REVIEW, AS TO JUDGE SHAFER'S FINDINGS IN THIS REGARD?

DE NOVO REVIEW, YOUR HONOR, AND PURSUANT TO STEPHENS V STATE THE COURT HAS TO PLACE GREAT DEFERENCE TO THE TRIAL COURT'S FINDING OF FACT. WE ARE CONTENDING, WE HAVE TWO ALTERNATE THEORIES OF DESTRUCTION. DR. WOOD DESTROYED IT IN 1977 THROUGH 1979, OR THE SHERIFFS OFFICE DESTROYED IT, CONTRARY TO THEIR POLICIES, IN 1987 AND 1988 RESPECTIVELY. WE ARE SEEKING THE PRODUCTION OF THE VAGINAL WASH, WHICH INDICATED THE PRESENCE OF ACID PHOSPHOTASE OR THE TYPE OF BLOOD RATHER, AND THE VAGINAL WASH, WHICH INDICATED THE TYPE OF ACID PHOSPHOTASE. JUDGE, THIS WAS NOT SOMEONE WHO WAS NOT INVOLVED IN THIS CASE AND WAS NOT AWARE OF THE EXCULPATORY VALUE IN THIS CASE AT THE TIME OF THE DESTRUCTION. THIS CASE IS UNIQUE. DR. WOOD TESTIFIED AT TRIAL THAT A TYPE "A" SECRETOR WAS THE INDIVIDUAL THAT RAPED AND MURDERED MRS. BRADY. ALL THE CASES CITED BY COUNSEL. VERA, KELLY, ANY, ALL THE CASES IN COUNSEL'S BRIEF WAS, WERE INVOLVED INDIVIDUALS THAT KNEW NOTHING ABOUT THE CASE AND DESTROYED THE EVIDENCE. IN ELLIOTT, IT SETS OUT A STANDARD, BUT MORE IMPORTANTLY, DR. WOOD WAS NOT AN ORDINARY PERSON. SHE WAS ACTIVELY INVOLVED IN THE INVESTIGATION. SHE PRODUCED THIS EVIDENCE AND TESTIFIED THAT THIS EVIDENCE WAS A TYPE "A" SECRETOR AND PLACED MR. KING AT THE SCENE SCENE OF THE CRIME. NOW, FOR HER -- AT THE SCENE OF THE CRIME. NOW, FOR HER TO DESTROY THIS EVIDENCE AND SHE KNEW ABOUT THIS EVIDENCE WAS SUBJECT TO ATTACK.

WHEN DID YOU FIRST FIND OUT THAT THIS EVIDENCE WAS DESTROYED?

DECEMBER 3, 2001. THE STATE HAD DONE ANES -- HAD DONE AN INVESTIGATION IN JULY AND TURNED OVER THEIR FINDINGS TO US. WHEN WE MOVED --

BUT AT NO TIME PRIOR TO THAT HAD THAT BECOME A CRITICAL ISSUE.

JUDGE, WE DIDN'T HAVE THE CASE UNTIL THE WARRANT WAS SIGNED. AND THEN, ON LOOKING AT THE EVIDENCE, WE HAD MOVED FOR DNA TESTING. ONLY TO FIND THAT THE STATE HAD DONE AN INVESTIGATION IN JULY AND DETERMINED THAT THE EVIDENCE THAT WE SEEK, THE VAGINAL WASH AND THE RECTAL SWAB, WERE DESTROYED.

WHAT WAS THE EXTENT OF THE EVIDENCE ACTUALLY PRESENTED AT THE EVIDENTIARY HEARING, BEFORE JUDGE SHAFER?

THE EVIDENCE?

WHAT --

WELL, JUDGE, THIS ISSUE CAME OUT AS A RESULT OF THE HEARING FOR DNA TESTING AND THE STATE'S RESPONSE. NOW, AT THESE HEARINGS, ONE LARRY BEDOUR, A FORMER MEDICAL EXAMINER INVESTIGATOR, TESTIFIED THAT HE WAS NOT PRESENT IN 1977, BUT HE KNEW DR. WOOD, AND HE KNEW THAT THEY DIDN'T HAVE AN EVIDENCE LOCKER, SO WE CAN PRESUME THAT IT WAS TURNED OVER TO THE SHERIFFS OFFICE OR DESTROYED BY DR. WOOD. I AM INTO MY REBUTTAL TIME, SIR, AND I WILL KEEP GOING IF YOU WANT, BUT I WOULD LIKE TO RESERVE FIVE MINUTES FOR REBUTTAL. MR. CHIEF JUSTICE

THANK YOU, MR. KILEY. MS. DITTMAR.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. CAROL DITTMAR REPRESENTING THE STATE ATTORNEYS OFFICE AND MICHAEL MOORE. MR. KILEY STARTED OUT REMARKING THAT HE WAS CHALLENGING JUDGE SHAFER'S LEGAL CONCLUSION THAT THIS EVIDENCE WAS DESTROYED NOT IN BAD FAITH. THAT IS NOT A LEGAL CONCLUSION. THAT IS A FACTUAL CONCLUSION, AND THIS COURT IS ENTITLED TO DEFERENCE IN THIS COURT. IT WAS BASED ON THE TESTIMONY TAKEN AT THE PUBLIC RECORDS HEARING ON DECEMBER 10. SO UNDER THEAPPROPRIATE STANDARD OF REVIEW, THAT IS ENTITLEED TO GREAT DEFERENCE, AND I AGREE THAT THE APPLICATION OF Y OMENT UNGBL -- OF YOUNGBLOOD AND PERHAPS WHAT THE APPLICATION OF YOUNGBLOOD SAID, IT IS DE NOVO, BUT THERE ARE VERY CRITICAL FINDINGS THAT MUST BE TAKEN INTO ACCOUNT, IN THIS LACK OF GOOD FAITH, AND THAT IS THE CRITICAL FINDING.

THE TESTIMONY IS THE PERSON WHO KNEW DR. WOOD BUT WAS NOT WITH THE MEDICAL EXAMINER'S OFFICE AT THE TIME?

THAT'S CORRECT. HE STARTED IN THE EARLY '80s. THIS TESTING WAS DONE IN 1977. HE STARTED SHORTLY AFTER. THAT HE WORKED WITH DR. WOOD, I BELIEVE HE SAID FOR 16 YEARS. HE COMMENTED THAT THEY HAD EXTENSIVE DISCUSSION THROUGHOUT THE YEARS, ABOUT THE PRESERVATION OF EVIDENCE. HE WAS VERY FAMILIAR WITH THE ROUTINE PROCEDURES IN THAT OFFICE, PRIOR TO THE TIME HE STARTED THERE, AND SO THE BASIS OF HIS CREDIBILITY AND THE BASIS OF HIS KNOWLEDGE WERE QUESTIONS FOR JUDGE SHAFER TO DETERMINE, AND CERTAINLY SHE TOOK THAT INTO ACCOUNT WHEN SHE MADE HER FACTUAL FINDINGS.

SO IT IS BASICALLY DURING THAT PERIOD OF TIME, THE TESTIMONY IS, THAT NOT JUST THIS PARTICULAR SPECIMEN, BUT THAT MEDICAL EXAMINER'S OFFICE REGULARLY DID DESTROY EVIDENCE WITHIN A YEAR AFTER IT WAS TESTED. IS THAT --

THAT'S CORRECT. IN FACT --.

THAT WOULD PERTAIN TO ANY, ALL EVIDENCE IN THAT MEDICAL EXAMINER'S OFFICE AS OF THAT TIME.

THAT'S CORRECT. IN FACT, BOTH LARRY BEDOUR AND THERE WAS ANOTHER, DEBORAH LEWIS FROM THE MEDICAL EXAMINER'S OFFICE, WHO, ALSO, DID NOT WORK THERE IN '77 AND PROBABLY WAS NOT AS FAMILIAR WITH THE PRACTICE AS MR. BEDOUR WAS. THEY, BOTH, SPOKE, ALSO, TO THE PROMULGATION OF THE FLORIDA ADMINISTRATIVE CODE IN 1981, AND ACCORDING TO BEDOUR'S TESTIMONY, THAT CODE WAS PROMISE YOU WILL GATED, BASED ON THE ROUTINE PRACTICES OF MEDICAL EXAMINER'S OFFICES AROUND THE STATE, SO NOT ONLY WAS THAT THE TYPICAL PRACNIECE IN THE SIXTH DISTRICT MEDICAL EXAMINER'S OFFICE, BUT IT WAS APPARENTLY CONSISTENT WITH WHAT WAS BEING DONE STATEWIDE AT THAT TIME.

IS THAT WHAT LED TO THAT ADMINISTRATIVE CODE, THE THOUGHT THAT MAYBE THIS TYPE OF EVIDENCE THERE SHOULD BE A SYSTEM FOR MAINTAINING SUCH CRITICAL --

I WOULD ASSUME SO, JUST BECAUSE IT WAS AN AREA THAT THERE REALLY WAS NO REGULATION ABOUT, SO I CAN'T SPEAK TO EXACTLY WHY THE CODE ADOPTED THE PROCEDURES IT DID, BUT THAT WAS THE TESTIMONY THAT WAS PRESENTED TO JUDGE SHAFER, WAS THAT THEY BASED THAT, BASED ON ROUTINE PRACTICES THROUGHOUT THE STATE. UNDER THE YOUNG BLOOD DECISION, IN ORDER TO FIND BAD FAITH ON THE PART OF THE PROSECUTION, THE DEFENDANT MUST BE ABLE TO SHOW NOT ONLY THAT THE EXCULPATORY VALUE OF THE EVIDENCE WAS APPARENT BUT, ALSO, THAT THE REASON FOR DESTROYING THE EVIDENCE WAS TO KEEP IT FROM THE DEFENDANT. THE KNOWLEDGE OF THE EXCULPATORY NATURE WAS THE MOTIVATION IN DESTROYING THE EVIDENCE, AND CLEARLY THAT STANDARD IS NOT MET ON THE FACTS OF THIS CASE. AND JUDGE SHAFER FOUND THAT, BASED ON THE EVIDENCE BEFORE HER BASED ON COMPETENT EVIDENCE.

WHAT WAS, AS FAR AS FIRST OF ALL, WE HAVE IN THE EVIDENCE THAT THESE TYPES OF THINGS WERE REGULARLY DESTROYED, BUT AS FAR AS TESTIMONY AS TO WHETHER THERE WOULD HAVE BEEN ANY EXCULPATORY NATURE OF THIS EVIDENCE, MR. KILEY SPEAKS OF THAT, THE REPORT THAT IS SORT OF SAYS IT IS EITHER DIFFICULT TO READ OR THERE IS SOMETHING ABOUT IT THAT HE FEELS WOULD HAVE SHOWN THAT THIS WAS, COULD HAVE BEEN EXCULPATORY. COULD YOU ADDRESS THAT?

WELL, ACTUALLY, WHEN THEY PRESENTED THEIR POSTCONVICTION MOTION, THE ALLEGATION AT THAT TIME WAS THAT THIS EVIDENCE HAD BEEN DESTROYED BY THE SHERIFFS OFFICE IN 1987 OR 1988. JUDGE SHAFER REJECTED THAT ALLEGATION, BECAUSE THE SHERIFFS OFFICE MAINTAINED STRICT EVIDENCE LOGS, DETAILING EVERYTHING, HANDWRITTEN NOTES DETAILING EVERYTHING THAT EVER CAME INTO THEIR POSSESSION, AND IT WAS CLEAR THAT THEY NEVER POSSESSED THE VAGINAL WASHINGS. IN ADDITION TO THE ROUTINE PRACTICE THAT THE MEDICAL EXAMINER'S OFFICE DID NOT TURN THESE THINGS OVER TO THE SHERIFFS OFFICE, THERE WAS NOTHING FROM THE RECORD OF THE SHERIFFS OFFICE THAT SHOWED THAT THEY EVER POSSESSED THESE PARTICULAR WASHIGS SO THEIR ALLEGATION AT THE TIME WAS THAT THE SHERIFF DESTROYED THE EVIDENCE IN 1987 OR 1988, AND THE REASON THE EXCULPATORY WAS APPARENT BY THAT TIME WAS, BECAUSE BY THAT TIME, DNA TESTING HAD DEVELOPED AND THE SHERIFFS OFFICE WAS AWARE THAT IT COULD BE TESTED UNDER DNA. IT WAS TESTIFIED AT THE HEARING THAT DNA WAS NOT EVEN CONSIDERED A POSSIBILITY IN 1977. THERE WAS NO SUGGESTION THAT ANYTHING ABOUT THESE WASHINGS COULD EVER BE SUBJECTED TO FURTHER TESTING, BECAUSE THEY JUST DID NOT KNOW ABOUT IT BACK THEN, AND JUDGE SHAFER, AGAIN, IN HER ORDER FOUND THAT, BECAUSE THERE WAS NO CLUE THAT DNA WOULD BE HAPPENING YEARS LATER, IN 1977, THAT WAS NOT A BASIS FOR FINDING THAT FROM COULD BE -- THAT THERE COULD BE ANY EXCULPATORY VALUE. OBVIOUSLY THIS EVIDENCE HAD BEEN TESTED AND IT INCRIMINATED KING WHEN IT WAS TESTED. THE ELLIOTT CASE, WHICH WAS HEAVILY RELIED ON, INVOLVED A CASE WHERE LAW ENFORCEMENT DISCARDED EVIDENCE WITHOUT SUBJECTING IT TO ANY TESTING AT ALL, SO THAT IS A VERY IMPORTANT DISTINCTION. THE IDEA THAT EXCULPATORY VALUE --

WAS THE ELLIOTT, DID THE ELLIOTT CASE GO ON TO AN APPELLATE COURT OR IS THAT A DISTRICT COURT CASE?

IT IS A DISTRICT COURT CASE, AND I WAS NEVER ABLE TO FIND WHERE ANY HIGHER COURT HAD REVIEWED THE FINDINGS IN THE ELLIOTT CASE. IT HAS BEEN COMMENTED UPON IN A COUPLE OF OTHER DECISIONS, WHERE IT HAS BEEN QUESTIONED, BUT THERE IS NO ACTUAL DIRECT HISTORY OF IT GOING ANY FURTHER THAN THE DISTRICT COURT.

DO I UNDERSTAND THAT THE UNWRITTEN RULE OF WHEN THE STATE WOULD DESTROY EVIDENCE WAS JUST SORT OF AFTER A YEAR OR SO, THE STATE WOULD JUST DESTROY IT, AND THIS WAS DONE THROUGHOUT THE STATE. IS THAT WHAT YOU ARE TELLING ME? WAS THERE ANY WRITTEN RULES AT THAT TIME, AS TO WHAT WOULD BE DONE WITH EVIDENCE AND HOW LONG IT WAS TO BE HELD?

NO, THERE WERE NOT. THE ONLY THING IN PLACE WAS THE STATUTE WHICH KING HAS CITED, WHICH JUDGE SHAFER BELOW CONSIDERED THE STATUTE AND RULED THAT DR. WOOD DID NOT VIOLATE THE STATUTE, IN DISCARDING THIS EVIDENCE, BECAUSE THE STATUTE SAID THE MEDICAL EXAMINER MAY KEEP THE EVIDENCE OR MAY TURN IT OVER TO THE SHERIFFS OFFICE. THE STATUTE DID NOT REQUIRE ANY PRESERVATION OF THIS EVIDENCE, DID NOT GIVE A PARTICULAR PERIOD OF TIME, AND, AGAIN, I THINK THE THING THAT MAKES A DIFFERENCE HERE IS THIS IS BIOLOGICAL EVIDENCE. IN ORDER TO MAINTAIN THE EVIDENCE, IT WOULD HAVE TO NOT ONLY BE PUT ON A SHELF BUT WOULD PROBABLY HAVE TO BE REFRIGERATED AND KEPT INSERT CONDITIONS TO PRESERVE IT, AND THAT IS WHY THE TESTIMONY FROM DEBORAH LEWIS,

AT THE DECEMBER 10 HEARING, WAS WE CERTAINLY KEEP THEM A YEAR, AS WE ARE REQUIRED TO UNDER THE ADMINISTRATIVE CODE. WE PREFER TO KEEP THEM TWO YEARS BUT WE JUST DON'T HAVE THE STORAGE FACILITY, AND SOMETIMES WE DON'T KEEP THEM A FULL TWO YEARS. THEY ARE NOT REQUIRED TO. BUT THAT HAVE WHY THEY DON'T, YOU KNOW, THESE ARE A LITTLE DIFFERENT THAN SOMETHING THAT YOU CAN JUST PUT UP ON A SHELF AND DOESN'T REQUIRE SPECIAL CONDITIONS OR SPECIAL ENVIRONMENT.

THE DEPARTMENT, ITSELF, HAD NO RULES.

NO. THERE WERE NO RULES. NO RULES. AND GETTING BACK TO THE EXCULPATORY NATURE, AS FAR AS THESE COMMENTS ABOUT THE WASH BEING BLOODY WAS NOT REALLY AN ISSUE WHICH JUDGE SHAFER WAS ASKED TO CONSIDER, BECAUSE THAT WASN'T ARGUED TO HER AS BEING WHERE THE EXCULPATORY NATURE WAS APPARENT. HOWEVER, THE NOTE IS ON THE LAB, ONE OF THE LAB REPORTS, THAT MARIANNE HILL, WHO ACTUALLY IS THE ONE THAT DID THE BLOOD TYPING, IT IS ON HER NOTES, AND SHE WAS QUESTIONED ABOUT IT BY DEFENSE COUNSEL IN HER DEPOSITION. HE ASKED HER ABOUT THE NOTES. HE ASKED HER IF IT WOULD AFFECT THE READING, AND SHE SUSPENDED, AND SHE SAID, YOU KNOW, WITH THE BLOOD TYPE, AND SHE EXPLAINED THAT, BECAUSE THE VICTIM WAS A "0", THAT THEY, ALSO, TESTED FOR "H", AND THAT THE ACTUAL TYPING WOULD NOT BE AFFECTED BY THE BLOOD IN THE WASHINGS, SO I THINK THAT IS KIND OF A RED HERRING, THE IDEA THAT THAT NOW BECOMES EXCULPATORY, WHEN IT WAS EXPLAINED, AND IT WASN'T A CONCERN BACK AT THE TIME OF TRIAL OR BEFORE TRIAL, WHEN IT WAS BEING TESTED.

IF I UNDERSTAND IT CORRECTLY, THIS EVIDENCE, AS WELL AS THE OTHER DNA EVIDENCE, WAS, THE WAY IT CAME TO LIGHT THAT THIS WAS, QUOTE, DESTROYED, WAS BECAUSE THE STATE ATTORNEY FOR THE SIXTH CIRCUIT ORDERED THAT ALL PHYSICAL EVIDENCE AND ALL CAPITAL CASES BE TESTED FOR DNA, AS TO WHATEVER WAS AVAILABLE.

THAT'S CORRECT. THAT IS MY UNDERSTANDING.

IT WAS REALLY DONE BY THE STATE, IN AN EFFORT TO SEE IF THERE WAS ANYTHING THAT MIGHT BE EITHER, I GUESS, POTENTIALLY EXCULPATORY OR INCULPATORY IN ANY OF THE CAPITAL CASES?

THAT WAS A REPRESENTATION MADE BY A MEMBER OF THE STATE ATTORNEYS OFFICE TO JUDGE SHAFER WAS THAT MR. McKAB, WHO IS THE STATE -- MR. McCABE, WHO IS THE STATE ATTORNEY, WHO HAD REQUESTED, ONCE THE STATUTE WAS PROMULGATED, HE WANTED TO GO BACK AND REVIEW, IN EVERY DEATH PENALTY CASE OUT OF HIS OFFICE, WHAT EVIDENCE WAS AVAILABLE AND TO GO BACK AND HAVE IT TESTED, WHATEVER COULD BE TESTED. NOW, I DON'T KNOW WHERE THEY ARE IN THAT PROCESS. THE REPRESENTATION WAS THAT, SINCE THIS IS AN OLDER CASE, IT WAS ONE OF THE FIRST ONES THEY DID AND THIS WAS DONE IN JULY. THAT IT WAS BEING UNDERTAKEN.

THAT IS WHETHER IT CAME TO LIGHT THAT THIS EVIDENCE WAS NOT AVAILABLE.

YES, YOUR HONOR.

AND THE OTHER EVIDENCE THAT WAS AVAILABLE, IS THAT BECAUSE IT WASN'T -- WHAT WAS THE DIFFERENCE IN,000 THE OTHER EVIDENCE WAS -- IN HOW THE OTHER EVIDENCE WAS KEPT?

THE OTHER EVIDENCE WAS KEPT BY THE SHERIFFS OFFICE.

IS THAT BECAUSE IT WAS CRIME SCENE EVIDENCE?

RIGHT. RIGHT. IT WAS DISCOVERED BY THE MEDICAL EXAMINER'S OFFICE DURING THE AUTOPSY,

AND IT WAS TURNED OVER TO THE SHERIFFS OFFICE AT THAT TIME, RIGHT AFTER THE AUTOPSY WAS DONE, WHEN THE VICTIM'S CLOTHES AND ALL THE PHYSICAL EVIDENCE THAT CAN BE TURNED OVER TO LAW ENFORCEMENT WAS TURNED OVER. HOWEVER, THINGS THAT THE MEDICAL EXAMINER'S OFFICE, ITSELF DID THE FURTHER TESTING ON, SUCH AS THE VAGAL WASHINGS, THEY WERE MAINTAINED BY THE MEDICAL EXAMINER'S OFFICE.

WAS THERE ANY OTHER EVIDENCE IN THIS CATEGORY?

NO. NO. THAT WAS IT.

SO THE HAIR SAMPLES WERE TURNED OVER AT THE TIME THAT THE OTHER PHYSICAL SAMPLES WERE TURNED OVER?

RIGHT. HAIR SAMPLES AND FINGERNAIL SCRAPINGS WERE MAINTAINED BY THE SHERIFFS OFFICE, AS WELL AS OTHER EVIDENCE FROM THE SCENE, SO WE STILL HAVE THOSE PRESERVED BY THE STATE ATTORNEYS, BY THE SHERIFFS OFFICE. THERE WAS, OF COURSE, A GREAT DEAL OF OTHER EVIDENCE TYING MR. KING TO THIS MURDER. ALTHOUGH IT WAS IN SOME WAYS A CIRCUMSTANTIAL EVIDENCE CASE, IT WAS A VERY STRONG CIRCUMSTANTIAL EVIDENCE CASE, BECAUSE HE WAS NOTED TO BE MISSING FROM THE CORRECTIONAL FACILITY, AT THE SAME TIME THAT THE MURDER OCCURRED. THEY WERE ABLE TO PINPOINT THE TIME FRAME PRETTY SPECIFICALLY, AND WHEN HE RETURNED TO THE CORRECTIONAL FACILITY, THERE HIS EYE WITNESS TESTIMONY THAT HE HAD BLOOD ON HIS CROTCH AND HIS PANTS. THAT BLOOD WAS SEEN BEFORE LISTEN COUNTERWITH JAMES McDONOUGH, BEFORE -- THAT BLOOD WAS SEEN BEFORE HIS ENCOUNTER WITH MR. JAMES McDONOUGH, SO THERE WOULD HAVE BEEN MORE BLOOD ON HIS PANTS AT THAT TIME. ON THE GROUNDS OF THE FACILITY WAS NOT FOUND THE KNIFE BUT WHERE HE PUT IT SOMEWHERE ELSE. THE KNIFE WAS SAID TO BE THE SAME MANUFACTURER AS TWO OTHER KNIVES LOCATED WITHIN THE VICTIM'S HOUSE. IT WAS A CASE MANUFACTURED KNIFE THAT MATCHED THE WOOD GRAIN HANDLE AND THE BLADE TO TWO OTHER KNIVES THAT WERE LOCATED WITHIN HER HOUSE, AND THERE WAS A CASE MANUFACTURER REPRESENTATIVE WHO TESTIFIED AT TRIAL THAT, ALTHOUGH HE COULD NOT SAY THEY WERE PURCHASED AS A SET BECAUSE YOU COULD PURCHASE THEM INDIVIDUALLY, THAT THEY MATCHED AS A SET WOULD MATCH. HE ALSO STATED THAT THE PEARING KNIFE, WHICH IS WHAT WAS -- THE PARING KNIFE, WHICH WAS WHAT WAS DISCOVERED WITH WOUNDS BOTH TO MRS. BRADY AND TO McDONOUGH, AND THAT SHE WOULD HAVE PURCHASED THE CASE TO GO ALONG WITH THE PARING KNIFE, SO THERE WAS STATEMENTS THAT KING MADE TO LAW ENFORCEMENT, STATEMENTS THAT HE MADE WHEN HE CALLED BACK TO THE FACILITY THE NEXT MORNING. HE CALLED BACK AND WAS CONSIDERING TURNING HIMSELF IN. HE WANTED TO KNOW WHAT HE WAS BEING CHARGED WITH. THEY TOLD HIM HE WAS BEING CHARGED WITH ESCAPE, WITH ATTEMPTED MURDER, AND HE SAID, WELL, I ESTABLISHED THAT GUY IN SELF-DEFENSE, SO HE ADMITTED THAT FROM THE BEGINNING, BUT HE SAID WHAT ABOUT THAT LADY DOWN THE STREET, BECAUSE HE SAID, I DIDN'T HAVE ANYTHING ANYTHING TO DO WITH THAT. WHEN ASKED BY LAW ENFORCEMENT ABOUT THE KNIFE, HE SAID HE HAD THE KNIFE A WEEK OR TWO AND THEN HE CHANGED HIS STORY AND SAID HE TOOK THE KNIFE AWAY FROM McDONOUGH THAT, McDONOUGH CAME AT HIM WITH A KNIFE, SO THERE WAS OTHER EVIDENCE BESIDES THE VAGAL WASHINGS AND THE "A" SECRETOR BLOOD THAT WAS ON THE WASHINGS. THE EVIDENCE WAS AS TO THE ATTEMPTED MURDER WHICH OCCURRED AT ALMOST THE SAME TIME. WHAT WAS REJECTED BY JUDGE SHAFER BELOW WAS ALSO SUPPORTED BY THE RECORD AT THE DECEMBER 10 HEARING. THAT SUGGESTION COMES OUT OF COMPUTER SCREEN PRINTOUTS THAT SUGGESTION THAT SOMETHING WAS DESTROYED, WITH THE NOTATION "DESTROYED" IN '87 AND '88. THERE WAS A WITNESS THAT TESTIFIED BEFORE JUDGE SHAFER THAT, BECAUSE OF COMPUTER CONVERSION PROBLEMS, THEY HAD BEEN THROUGH TWO COMPUTERS SINCE 1977, THAT REALLY DOESN'T MEAN EVIDENCE WAS DESTROYED. THERE WAS, ALSO, COMMENTS THAT THERE WERE SOME ITEMS WHICH THE WRITTEN NOTES FROM THE SHERIFFS OFFICE REFLECTING WHAT EVIDENCE THEY HAD POSSESSED, THERE WERE SOME ITEMS THAT WERE NO LONGER POSSESSED,

SUCH AS A $1 BILLION, WHICH WE DON'T KNOW WHERE IT IS BUT PRESUMABLY, IF THERE WAS AN ITEM DESTROYED, THAT COULD HAVE BEEN WHAT IT WAS, SO SHAFER HAD COMPETENT EVIDENCE, AGAIN, TO REJECT THE SUGGESTION THAT THIS EVIDENCE EVER WENT TO THE SHERIFFS OFFICE OR WAS DESTROYED BY THE SHERIFFS OFFICE. THE ONLY REAL QUESTION IS, AT THE TIME THAT IT WAS DESTROYED BY THE MEDICAL EXAMINER'S OFFICE WAS THERE ANY APPARENT EXCULPATORY VALUE, AND CLEARLY THERE WAS NOT, AND SHAFER'S FINDING THAT THERE WAS NO EXCULPATORY VALUE KNOWN, NOT EVEN A POTENTIAL EXCULPATORY VALUE, NOT EVEN THE KNOWLEDGE THAT THIS COULD BE SUBJECT TO FURTHER TESTING AT THE TIME, IS WELL-SUPPORTED BY THE RECORD AND BY THE TESTIMONY FROM THE DECEMBER 10 HEARING. SINCE MR. KILEY DIDN'T ADDRESS ANY OF THE OTHER ISSUES, I WOULD JUST RELY ON MY BRIEF FOR THE OTHER ISSUES THAT HAVE BEEN RAISED, UNLESS THE COURT HAS ANY FURTHER QUESTIONS, BUT BASED ON THESE ARGUMENTS, I WOULD ASK YOU TO AFFIRM JUDGE SHAFER'S DENIAL OF THE MOTION FOR POSTCONVICTION RELIEF AND DENY THE STAY OF EXECUTION. THANK YOU. MR. CHIEF JUSTICE

MR. KILEY.

THANK YOU, SIR, YOUR HONOR, IN REBUTTAL, FIRST OF ALL THE 1981 FLORIDA ADMINISTRATIVE CODE IS IRRELEVANT. IT WAS NOT IN EVENT IN 1977. SECOND OF ALL, YOUR HONOR, THE COMMENT THAT NOT ALL OF THAT, OR THAT ANY EVIDENCE HELD BY THE MEDICAL EXAMINER IN ANY CASE WAS DESTROYED WITHIN TWO YEARS IS, ALSO, IRRELEVANT. THIS SHOULD BE EVALUATED ON A CASE-BY-CASE BASIS. WE ARE NOT TALKING ABOUT A DUI CASE HERE. WE ARE NOT TALKING ABOUT SOMEONE UNDER SENTENCE OF IMPRISONMENT. WE ARE TALKING ABOUT A SENTENCE OF DEATH, A CAPITAL CASE, AND THE MEDICAL EXAMINER, BY DESTROYING THIS EVIDENCE, HAS SATISFIED THE STANDARD IN ELLIOTT, WHICH STATES SHE SHOWED A RECKLESS DISREGARD FOR THE COMMON SENSE ASSESSMENT OF EVIDENCE REASONABLY EXPECTED OF A TRAINED MEDICAL EXAMINER. NOW --

HOW DO YOU OVERCOME THE TWO FACTORS THAT, ONE, THE BLOOD HAD BEEN TESTED, AND IT WAS INCULPATORY TO YOUR CLIENT. YOU KNOW, THAT IS JUST ONE OTHER YOU KNOW, FIRST THAT, AND THAT IS THAT THE APPEARANCE, AT LEAST THAT THIS EVIDENCE WAS INCULPATORY, AND THAT IS THAT, IF ANY EVIDENCE WAS BEING DESTROYED, IT WAS EVIDENCE THAT TIED YOUR CLIENT, OKAY, TO THE SCENE, AS YOU HAVE ACKNOWLEDGED, AND THE SECOND THING BEING THAT, IF THERE WAS A REGULAR PRACTICE THAT APPLIED ACROSS THE BOARD, THAT THAT WOULD BE EVIDENCE THAT TENDED TO SHOW GOOD FAITH, AS OPPOSED TO BAD FAITH. THAT IS THAT IF YOU HAD A REGULAR PRACTICE THAT YOU ADOPTED, AND WERE SHOWN TO APPLY IT ACROSS THE BOARD, THAT THAT WOULD BE EVIDENCE OF GOOD FAITH, AS OPPOSED TO BAD FAITH. HELP ME WITH THOSE TWO ASPECTS.

YES, YOUR HONOR. FIRST OF ALL, THAT TEST WAS SUBJECT TO ATTACK. IT WAS GROSSLY WHOM ON THISNIZED BY MARROW-HOMOGENIZED BY MARIANNE HILL AND -- IT WAS GROSSLY HOMOGENIZED BY MARIANNE HILL AND DIFFICULT TO READ.

BUT YOU ARGUED THAT IT WAS INCULPATORY, CORRECT?

IT WAS INCULPATORY, YOUR HONOR. HOWEVER, WE ARE MAINTAINING THAT TEST WAS UNRELIABLE, DUE TO THE HANDWRITTEN NOTES FROM THE MEDICAL TECHNICIAN, BUT DR. WOOD SAW THAT.

BUT NOBODY HAD RAISE HAD THAT ISSUE, UNTIL LAST, UNTIL THIS WARRANT WAS SIGNED. ISN'T THAT CORRECT?

THAT IS CORRECT, JUDGE. WE DIDN'T KNOW THIS EVIDENCE WAS DESTROYED, UNTIL THE THIRD OF DECEMBER.

BUT THE ISSUE HAD NOT BEEN CHALLENGED ON DIRECT APPEAL OR ON 3.850 OR ANY OF THE SUBSEQUENT MOTIONS THAT HAD BEEN FILED IN THIS CASE. AND SO THE FACT OF THE DESTRUCTION TO THE CONTRARY NOTWITHSTANDING, NOBODY HAD EVER SUGGESTED THAT IT WAS A PROBLEM.

THAT IS CORRECT, YOUR HONOR, AND I AM MAINTAINING THAT, IF THEY HAD READ THIS LAB REPORT, IT HAS OBVIOUS EXCULPATORY VALUE VALUE.

ISN'T THAT AN INFERENCE --

DOESN'T THAT GO BACK TO JUSTICE PARIENT, THAT THIS IS LEAPING BACK ON A CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL?

NO, YOUR HONOR. WE ARE MAINTAINING THIS IS A YOUNG BLOOD ISSUE, SUPPORTED BY ELLIOTT. GOING BACK -- MR. CHIEF JUSTICE

JUSTICE ANSTEAD.

JUST, TO FINISH UP WITH THAT FOR YOU TO RESPOND, WOULDN'T IT BE JUST AS LOGICAL FOR IT TO BE THE BRTION -- THE PROSECUTION, ASSUMING THAT A NEW TRIAL HAD BEEN GRANTED ON APPEAL, THAT IT WOULD BE THE PROSECUTION THAT WOULD BE GREATLY DISTRESSED WITH THE MEDICAL EXAMINER'S DESTRUCTION OF THIS EVIDENCE, BY SAYING YOU HAVE DESTROYED THE EVIDENCE THAT IS GOING TO ALLOW US TO DIRECTLY TIE THE DEFENDANT TO THIS CRIME, AND THAT, YOU KNOW, WE ARE THE ONES THAT HAVE BEEN HARMED BY THAT. WOULDN'T THAT BE A LOGICAL CONCLUSION, IF THERE HAD BEEN A NEW TRIAL GRANTED AND THIS EVIDENCE HAD BEEN DESTROYED?

NO, YOUR HONOR. THE PROSECUTION HAD ALREADY GOT WHAT THEY WANTED FROM THAT EVIDENCE. THEY DIDN'T WANT IT RETESTED. THEY DIDN'T WANT IT CHALLENGED. GOING BACK TO YOUR STATEMENT ABOUT COMMON PRACTICE OF DESTRUCTION OF THIS EVIDENCE, JUDGE, THAT IS COMMON PRACTICE, TO DESTROY EVIDENCE AFTER TWO YEARS, IT IS NOT THE LAW. IT IS NOT WHAT THE LAW SAID. SHE WAS BOUND BY STATUTE. IF, THE ONLY WAY TO AUTHORIZE THE DESTRUCTION OF THIS EVIDENCE WAS