ALL RIGHT. THE NEXT CASE ON THE COURT'S CALENDAR IS ROBINSON VERSUS THE STATE OF FLORIDA. MR. BRIGGS.

MAY IT PLEASE THE COURT. MY NAME IS KEVIN BRIGGS. I AM REPRESENTING THE PETITIONER IN THIS CASE, MR. CEASAR ROBINSON. THIS CASE HAS A LONG HISTORY. MR. ROBB I KNOW SON WAS ORIGINALLY CONVICTED OF MURDER AND ATTEMPTED MURDER, BACK IN 1981. SUBSEQUENT TO THAT, MR. ROBB I KNOW SON SERVED 15 YEARS IN PRISON FOR THESE OFFENSES. IN 1996, AN INMATE, A FELLOW INMATE WITH MR. ROBB I KNOW SON, A MR. WILBURT HILLINS, GAVE TESTIMONY IN THE TRIAL COURT THAT INDICATED THAT THE TWO PROSECUTORIAL WITNESS THIS CASE HAD ACTUALLY PERJURED THEMSELVES ON THE STAND. BASED ON THAT TESTIMONY, JUDGE BENTLY, POLK COUNTY JUDGE, GRANTED MR. ROBB I KNOW SON A NEW TRIAL -- MR. ROBB I KNOW SON A NEW -- MR. ROBINSON A NEW TRIAL, BASED ON THE EVIDENCE.

DO YOU AGREE THAT THIS IS INCONSISTENT WITH WHAT WE HAVE SAID IN JONES, YOU KNOW, THE ACTUAL LANGUAGE THAT THE TRIAL JUDGE USED IN.

I THINK JUDGE BENTLY MADE THE DETERMINATION THAT, IF MR. HOLLINS'S TESTIMONY HAD BEEN INTRODUCED AT A TRIAL THAT, THAT PROBABLY WOULD HAVE RESULTED IN AN ACQUITTAL. I DON'T THINK JUDGE BENTLY APPLIED THE INAPPROPRIATE STANDARD.

YOU UNDERSTAND, THOUGH, THAT A MAJORITY, IT STARTS OUT WITH ARTICULATING THE APPROPRIATE STANDARD, THAT, WHEN IT GETS TO THE END --

THAT'S TRUE, YOUR HONOR.

-- THE LANGUAGE THAT IS THERE, AND, OF COURSE, THIS IS WHAT WE ARE -- IT IS ALWAYS DIFFICULT TO SEPARATE OUT THE -- OBVIOUSLY WE ARE VERY CONCERNED AT THE JUSTICE IN THE INDIVIDUAL CASE, BUT WE ARE VERY CONCERNED ABOUT THE RULES OF LAW TO COME OUT OF THIS, AND SO WHEN HE USED DIFFERENT LANGUAGE TOWARDS THE END OF HIS OPINION, WHEN HE WAS COMING TO A CHRAINGS, WOULD YOU AGREE THAT THAT LANGUAGE WAS NOT CORRECT? WHEN HE USED THE WORD "COULD" FOR INSTANCE?

I WOULD AGREE THAT THAT LANGUAGE IS NOT CORRECT. THAT LANGUAGE --

ARE YOU SUGGESTING THAT, IF YOU READ THE OVERALL ORDER, OR SEE WHAT HE DID, AND, FOR INSTANCE, STARTING OUT WITH THE, APPARENTLY THE RIGHT LEGAL ANALYSIS AND FRAMEWORK, THAT HE DID -- HE WAS AWARE OF THE APPROPRIATE LAW AND FOLLOWED THE APPROPRIATE LAW? I GUESS THAT WOULD BE YOUR BOTTOM LINE.

HE CITED THE MOST SIGNIFICANT CASE, WHICH WAS JONES V STATE THAT SET OUT THE STANDARD.

DO WE KNOW, ON THIS RECORD, WHETHER OR NOT THE TRIAL JUDGE DID CONSIDER THE RECORD IN PREVIOUS TRIAL? THAT IS THAT WE ARE CERTAIN THE DISTRICT COURT, FOR INSTANCE, HAS COMMENTED ABOUT THE EXISTENCE OF CONSIDERABLE CIRCUMSTANTIAL EVIDENCE IN THE CASE, AND DO WE KNOW WHETHER OR NOT THAUL OF THAT EVIDENCE WAS -- ALL OF THAT EVIDENCE WAS CONSIDERED BY JUDGE BENTLY HERE, INCOMING TO A CONCLUSION ABOUT THE IMPACT OF HOLLINS' TESTIMONY?

WE KNOW THAT JUDGE BENTLY ATTACHED OVER 100 PAGES OF THE ORIGINAL TRIAL TRANSCRIPT

TO HIS ORDER. IT IS TRUE THAT, IN HIS ORDER, HE DID NOT NECESSARILY ADDRESS ALL THE CIRCUMSTANTIAL EVIDENCE. BUT IT IS, ALSO, TRUE THAT HE WROTE THE ORDER, WITH THE IDEA OF SUPPORTING HIS POSITION, IN WHICH HE DID SO.

WAS ALL OF THAT EVIDENCE CALLED TO HIS ATTENTION?

I BELIEVE SO, FROM THE TRANSCRIPT OF THE HEARING ON THE POST-CONVICTION MOTION.

THAT THE STATE POINTED OUT THAT THERE WAS OTHER EVIDENCE, IN ADDITION TO THESE TWO WITNESSES.

YES. ARGYUMTHS WERE MADE TO THAT EFFECT, THAT THERE WAS CIRCUMSTANTIAL EVIDENCE THAT THE STATE CLASSIFIED AS STRONG.

WOULD YOU AGREE THAT THE EVIDENCE OF THIS INMATE WAS SOLELY IMPEACHING EVIDENCE?

I WOULD AGREE WITH THAT, YOUR HONOR. I CAN'T DISPUTE THAT.

DOESN'T THE STATEMENT OF THE SECOND DISTRICT, AS TO THE FACT THAT IMPEACHMENT EVIDENCE CAN BE USED, AND ISN'T THAT IN CONFLICT WITH WHAT THIS COURT SAID, AS RECENTLY AS JUNE OF THIS YEAR, IN WOODS, THAT SAYS THAT, UNDER THIS RULE, A NEW TRIAL WILL NOT BE AWARDED ON THE BASIS OF NEWLY-DISCOVERED EVIDENCE, UNLESS DUE DILIGENCE WAS EXERCISED TO HAVE SUCH EVIDENCE AT THE TRIAL, UNLESS THE EVIDENCE GOES TO THE MERITS OF THE CAUSE AND NOT MERELY TO IMPEACH A WITNESS?

YES, YOUR HONOR.

SO WE WOULD HAVE TO RECEDE FROM THAT.

I DON'T BELIEVE THAT THAT WAS -- THAT LANGUAGE WAS NECESSARY TO DECIDE. I WOULD HAVE TO RE A QUAINT MYSELF WITH THE FACTS OF WOODS, BUT I BELIEVE THERE IS AN ELEMENT OF DICTA THERE, AS THERE ARE --

IT CITES TO CLARK, WHICH HAS BEEN A CASE THAT THIS COURT I SHOULD IN -- THIS COURT ISSUED IN 1997, WHICH SAYS, VERBATIM, THAT SAME THING.

IT IS TRUE, BUT IN CLARK, READ THAT CASE, THERE WAS ALSO DETERMINATION THAT SO-CALLED NEWLY-DISCOVERED EVIDENCE IN THAT CASE WAS, IN FACT, NOT NEWLY DISCOVERED, SO IN CLARK, ALSO, THERE IS A STATEMENT IN DICTA THAT IMPEACHMENT EVIDENCE CANNOT SERVE AS A BASIS, BUT I WOULD EMPHASIZE THAT IT IS IN DICTA, AND THIS COURT HAS NEVER SQUARELY ADDRESSED THAT ISSUE.

WE HAVE TO LOOK AT THE FACTS OF EACH CASE. FOR EXAMPLE THERE IS A LOT OF LANGUAGE, AND WHEN THERE IS LANGUAGE THAT SAYS SOMETHING IS MERELY IMPEACHING, AND I LOOKED AT ONE OF THE OLDER CASES THAT CITED FOR THAT, AND THAT WAS WHERE THE WITNESS, THERE WAS A CHANGE IN WHETHER THE TIME OF THE CRIME OR SOMETHING, THERE WAS A DETAIL THAT WAS INCONSISTENT, AND THAT WOULD BE MERELY IMPEACHING. AS I TAKE IT, AND THE JUDGE WITNESSED AND LIT END TO THE ACTUAL WITNESS AND THE -- AND LISTENED TO THE ACTUAL WITNESS AND THE ORIGINAL WITNESS. THE TEN OR OF THE JUDGE'S ORDER, AS FAR AS WHETHER THIS IS MERELY IMPEACHING, IS THAT HE DIDN'T BELIEVE THAT SHE WAS ACTUALLY ABLE TO IDENTIFY THE DEFENDANT. CORRECT?

THIS IS TRUE.

SO THAT IF THE TWO EYEWITNESSES, IF THE JURY WERE TO DISBELIEVE THE TWO EYEWITNESSES,

THEN HIS CONCLUSION, IF WE TAKE HIS ORDER, AS IT APPEARS TO BE AS A WHOLE, WAS THAT IT WOULD PROBABLY -- THEY WOULD HAVE A REASONABLE DOUBT.

THAT'S CORRECT.

SO YOU WOULD MAKE A DISTINCTION, AGAIN, THERE IS A DISTINCTION BETWEEN, SAY, IF IT WAS THE MAIN WITNESS, AND SHE CAME FORWARD AND SAID I SAID THIS, IN THE TRIAL THAT I SAW THE DEFENDANT, BUT I REALLY DIDN'T, THAT WOULD BE RECANTATION,, SO THAT WOULDN'T JUST BE MERELY IMPEACHING, BUT ON THE OTHER HAND, IF SHE SAID TO ANOTHER PERSON THAT I DIDN'T SEE IT, THEY WOULD BE IMPEACHING, AND THEN IT WAS QUESTION OF WHAT IS THE CREDIBILITY OF THE OTHER PERSON, AS TO WHETHER THAT STATEMENT WAS REALLY MADE.

CERTAINLY, AND, JUDGE BENTLY, CERTAINLY QUESTIONED THE CREDIBILITY OF THE TWO SO-CALLED I WITNESSES IN THIS CASE. HE POINTED OUT THAT THE CHILD HAD, EVEN THOUGH SHE GAVE SOMEWHAT DETAILED TESTIMONY DURING THE TRIAL, SHE WAS UNABLE TO RELATE, AT ALL, WHAT HAPPENED TO THE POLICE OFFICER ON --

LET ME ASK YOU THIS. WHEN WE ARE LOOKING AT NEWLY-DISCOVERED EVIDENCE AND THE TEST OF WHETHER OR NOT YOU SHOULD HAVE A NEW TRIAL, BASED ON NEWLY-DISCOVERED EVIDENCE, DON'T WE HAVE TO LOOK AT THE EVIDENCE AS PART OF THAT PROCESS? AS LOOKING AT THE EVIDENCE THAT WAS ACTUALLY PRESENTED AT TRIAL, AND SO WE HAVE TO ACCEPT THAT EVIDENCE AS IT WAS.

YES. YES, THAT THIS -- THAT IS CORRECT.

AND WE ARE NOT REEVALUATING WHETHER THE EVIDENCE THAT WAS ACTUALLY PRESENTED AT TRIAL WAS TRUE OR NOT, ARE WE?

THAT'S CORRECT. IT IS IMPORTANT TO REALIZE THAT WHAT IS BEFORE THIS COURT AND WHAT IS -- WHAT WAS BEFORE THE SECOND DISTRICT IS NOT WHETHER THIS EVIDENCE PROBABLY WOULD RESULT IN AN ACQUITTAL. WHAT IS BEFORE THIS COURT IS WHETHER JUDGE BENTLY COMMITTED A GROSS ABUSE OF DISCRETION IN GRANTING THAT ORDER.

WHAT WAS BEFORE JUDGE BENTLY IS WHETHER IT WOULD HAVE --

THAT'S CORRECT. A DIFFERENT ISSUE.

AND SO LET ME -- I GUESS I AM HAVING A PROBLEM HERE, TRYING TO -- JUDGE BENTLY, IN HIS EVALUATION, HAS TO EVALUATE THE CREDIBILITY OF THE NEWLY-DISCOVERED EVIDENCE, CORRECT? THAT IS WHETHER OR NOT HE BELIEVED MR. HOLLINS'S VERSION OF THIS LADY HAVING ADMITTED TO HIM THAT SHE REALLY COULDN'T IDENTIFY HIM.

THAT'S CORRECT.

VERSUS -- AND PUT THAT INTO THE CONTEXT OF THAT PARTICULAR INFORMATION IS ADDED INTO WHAT WAS ACTUALLY PRESENTED AT THE TRIAL, WHETHER IT WOULD RESULT IN A DIFFERENT VERDICT.

THAT'S CORRECT. HE HAS TO EVALUATE THE EVIDENCE, AS IT IS, UP TO THAT POINT, INCLUDING THE IMPEACHING EVIDENCE OF THE NEWLY-DISCOVERED WITNESS.

BUT IT WOULD BE A HARD THING, AND UNDERSTANDING AND JUST TRYING TO SEE, AGAIN, HOW THE JUDGE IS TO DO THIS, IS THAT, AT THE ORIGINAL TRIAL, YOU HAVE SOMEONE TESTIFY WITHOUT IMPEACHMENT, AND NOW, SUBSEQUENTLY, WHAT WE FIND OUT, SAY THAT THE STATEMENT IS TO A RETIRED POLICE OFFICER, SOMEONE WHO HAS NO MOTIVE. IT WAS THE

ORIGINAL INVESTIGATING OFFICER, AND THE PERSON SAYS, YOU KNOW, I TOLD YOU THIS IS WHAT THE OFFICER TESTIFIES, THAT THE PERSON SAYS, THAT SHE REALLY DIDN'T SEE IT. AT THAT POINT, YOU ARE GOING TO BE LOOKING AT AND SAYING IS HE -- AND SAYING SHE REALLY SAID IT AT THE TRIAL, SO IT IS STRONG TESTIMONY, BUT YOU ARE EVALUATING AT THE TRIAL HOW STRONG THIS IMPEACHMENT WOULD NOW BE, AND, AGAIN, HOW WOULD YOU CHARACTERIZE WHAT THIS TYPE OF IMPEACHMENT IS, VERSUS SOME OF THE OTHER CASES WHERE WE HAVE SAID, WELL, SOMETHING IS MERELY IMPEACHING, AND THAT THAT, ALONE, ISN'T GOING TO BE ENOUGH TO GRANT A NEW TRIAL? CAN YOU GIVE US SOME ASSISTANCE IN HOW, FOR THE PURPOSE OF ADVISING TRIAL COURTS, HOW THEY ARE TO LOOK AT THE IMPEACHING EVIDENCE?

I THINK THAT THE TRIAL JUDGE IS IN THE POSITION WHERE THEY, AS THEY ARE, AS ANY FACT FINDER IS, OF WEIGHING THE CREDIBILITY OF THE PARTICULAR WITNESSES, IT IS A QUESTION OF CREDIBILITY, THE WEIGHT THAT IS TO BE GIVEN THE IMPEACHMENT EVIDENCE, AND THAT IS TRADITIONALLY, THE CONTENT, OF COURSE, AS WELL AS THE TONE OF VOICE, DEMEANOR, ALL OF THESE THINGS JUDGE BENTLY CONSIDERED.

WE DID HAVE THE WITNESS WHOSE TESTIMONY WAS ATTEMPTED TO BE IMPEACHED, TESTIFY AT THIS HEARING, TOO, IS THAT CORRECT?

THAT'S CORRECT. MISS FRANCIS DID TESTIFY.

THE JUDGE HAD AN OPPORTUNITY. DID HE HEAR HER TESTIFY ABOUT ALL OF THESE ISSUES THAT ARE IN DON'T VERSEY?

RIGHT. AND HE, ALSO, FOUND THAT INCONSISTENCY IN HER STATEMENT, I BELIEVE SHE TESTIFIED, THAT SHE HAD NEVER BEEN DOWN TO MIAMI, WHERE MR. HOLINS SAID THAT HE ORIGINALLY MEAT METH HER, WHILE SHE WAS -- ORIGINALLY MET HER, WHILE SHE WAS IN ROUTE TO MIAMI, AND THEN THERE WAS ANOTHER WITNESS THAT TESTIFIED DURING THE TRIAL, MISS ETHERIDGE, THAT SAID THAT MISS FRANCIS HAD, IN FACT, INDICATED THAT SHE HAD GONE TO MIAMI ON ONE OCCASION. THAT WAS ONE OF THE POINTS.

BUT THE ESSENCE OF THIS PROBLEM, AS WAS GOING BACK TO HALLMAN AND THEN TO JONES, AND JONES, ITSELF, WHICH SET OUT THE WORD "PROBABLY" TEST, CITED TO THE UNITED STATES VERSUS REED AND WILLIAMSON VERSUS DUGGER, AND THOSE CASES SET OUT HAD, IN UNITED STATES VERSUS READ -- REED, SET OUT FIVE POINTS, BECAUSE THE ESSENCE OF IT IS THAT THE FOCUS SHOULD BE IN THE PROCESS, UPON THE TRIAL, AND THAT THERE IS A PRESUMPTION IN THE TRIAL THAT WHAT COMES OUT OF THERE IS CORRECT. ISN'T THAT RIGHT? AND THAT IT WAS BASED UPON THE TRUTH, AND WHEN WE START ATTACKING THAT, THERE HAS GOT TO BE SOME DEGREE OF HIGHER STANDARDS STANDARD, AND THAT IS THE REASON YOU GET TO THIS FIVE-POINT TEST. WOULDN'T YOU AGREE TO THAT?

I WOULD AGREE TO THAT, THAT THERE IS THAT PRESUMPTION. HOWEVER THAT, PRESUMPTION CANNOT BE IRREBUTTABLE. I MEAN, WHEN YOU HAVE COMPELLING EVIDENCE IN THE INTEREST OF JUSTICE, IT IS REQUIRED THAT THE JURY HEAR ALL OF THE EVIDENCE, AND THAT IS WHAT I AM ASKING FOR, AND THAT IS WHAT JUDGE BENTLY GRANTED IN THIS CASE. I WOULD JUST REITERATE THE POINT THAT THE DISTRICT COURT IN THIS CASE AND THE STATE, BY EMPTIZE SIZING THAT THE -- BY EMPHASIZING THAT THE TRIAL JUDGE DID NOT REVIEW ALL OF THE EVIDENCE, IS ACTUALLY JUST -- IS PLACING THE DISTRICT COURT, THE APPELLATE COURT IN THAT ROLE OF A FACT FINDER, AND THAT IS NOT THE APPROPRIATE ROLE OF THAT COURT, NOR IS IT OF THIS COURT. THE APPROPRIATE RULE TO BE APPLIED IS WHETHER JUDGE BENTLY ABUSED HIS DISCRETION AND WHETHER HE GROSSLY ABUSED THAT DISCRETION AND THE RECORD, IN THIS CASE, SIMPLY DOES NOT SHOW THAT.

THANK YOU. MS. McCARTHY.

GOOD MORNING. MY NAME IS PATRICIA McCARTHY, APPEARING ON BEHALF OF THE STATE OF FLORIDA. THE STATE WOULD LIKE TO CALL THE COURT'S ATTENTION BACK TO THE 1982 TRIAL IN THIS CASE. THE STATE, IN 1982, TOOK PAINS TAKING DETAIL TO PRESENT EYEWITNESS TESTIMONY, AS WELL AS CORROBORATING EVIDENCE IN THIS CASE, TO SHOW THAT MR. ROBINSON WENT INTO A FORMER HOME HE USED TO LIVE IN AND WENT AND SOUGHT OUT HIS EX-WIFE AND HER NEW HUSBAND, AND SHOT THEM AND LEFT A YOUNG CHILD IN THE BED A LIVE.

WOULD YOU AGREE, IF YOU WERE GOING TO PUT SOME WEIGHT ON THE EVIDENCE, THAT WAS PRESENTED, THAT THE TESTIMONY OF THE FORMER WIFE AND THEN THE CHILD WOULD BE THE TWO MOST IMPORTANT PIECES OF EVIDENCE THAT THE STATE HAD TO OFFER DURING THE COURSE OF THAT TRIAL?

JUSTICE ANSTEAD, I WOULD SUBMIT THAT THEIR TESTIMONY WAS IMPORTANT. OF COURSE IT WAS IMPORTANT. BUT THE PHYSICAL AND THE CORROBORATIVE EVIDENCE OF THE NEIGHBORS, OF THE INDIVIDUAL WHO SAW THIS PERSON DISPLAY A GUN AND TALK ABOUT KILLING THE TWO PEOPLE WHO WERE SHOT, WERE PROBABLY RIGHT UP THERE ON THE SAME LEVEL WITH THE TESTIMONY OF BERNADETTE, WHO WAS SLEEPING AND WOKE UP AND SAW THIS HAPPENING. THAT IS HOW COMPELLING THAT CIRCUMSTANTIAL EVIDENCE WAS IN THIS CASE.

WAS ALL OF THAT EVIDENCE CALLED TO THE ATTENTION OF THE TRIAL COURT?

YES, YOUR HONOR. IT WAS. THE STATE DID THAT IN A WRITTEN MEMORANDUM.

THAT WAS BEFORE THE TRIAL COURT.

THE STATE HAD SUBMITED THAT IN A WRITTEN MEMORANDUM TO THE COURT, BUT THE COURT'S ORDER DOES NOT REFLECT THAT IT CONSIDERED IT, YOUR HONOR.

AREN'T WE TO ASSUME THAT, IF THAT WAS CALLED TO THE JUDGE'S ATTENTION, THAT HE DID PLUG IT IN? IN TERMS OF HIS ANALYSIS? ARE WE TO ASSUME TO THE CONTRARY?

IN THIS CASE, I WOULD SUGGEST YES. FOR TWO REASONS, YOUR HONOR. THE FIRST IS JUDGE BENTLY WENT TO PAINS TAKING DETAIL TO LAY OUT THE FACTS IN THIS CASE, BUT THERE IS NO MENTION OF ALL OF THIS WEALTH OF CIRCUMSTANTIAL EVIDENCE. THE CRIME SCENE EVIDENCE, THE FINGERPRINT EVIDENCE. THE FACT THAT THERE WAS NO FORCED ENTRY IN THIS HOME. ALL OF THESE FACTORS, THERE IS NOT ANY MENTION. THAT IS THE FIRST --

IT WAS IN THE MEMORANDUM. WAS THERE A PETITION FOR REHEAR HAD GONE?

NO. THE STATE TOOK AN APPEAL. I DON'T BELIEVE THERE WAS A REHEARING, BUT THE MEMORANDUM WAS BEFORE THE COURT.

I MEAN, IF THERE WAS A CONTENTION THAT, JUDGE, YOU FORGOT TO CONSIDER, THIS, WOULDN'T IT HAVE BOON MORE APPROPRIATE TO GO -- HAVE BEEN MORE APPROPRIATE TO GO BACK TO THE TRIAL COURT AND SAY, JUDGE, REALIZING WHERE YOU ARE ON THIS, WE JUST WANT TO BE SURE THAT YOU DID CONSIDER THE OTHER EVIDENCE THAT WAS THERE AND THAT WE ARTICULATED FOR YOU IN DETAIL IN OUR MEMORANDUM?

WELL, IN THAT THE STATE DID SUBMIT IT IN THE FIRST INSTANCE, AND IT WAS THERE FOR THE COURT TO CONSIDER, AND THEN THE COURT SAYS AND CONCLUDES THAT ALL THERE WAS WAS CIRCUMSTANTIAL EVIDENCE, AND IT DOESN'T ELABORATE ON IT. IT DOESN'T TAKE IT INTO ANY -- THERE IS NO EXPRESS FIND BINGS IT. THE STATE, I SUBMIT, WOULD BE REASONABLE IN SUMING THAT THE COURT HAS JUST SIMPLY DECIDED THAT IT IS GOING TO OVERLOOK THAT EVIDENCE AND WRITES ITS DECISION IN A LIMITED VIEWPOINT ON CREDIBILITY TO DETERMINE NATIONS AT

THE EVIDENTIARY HEARING WITH SPECULATION.

IF WE WERE TO AGREE WITH YOU AND CONCLUDE, ON THIS RECORD, THAT WE FIND THE TRIAL JUDGE DIDN'T DID CONSIDER, WHAT WOULD BE THE APPROPRIATE RELIEF?

WELL, WE WOULD SUBMIT PRIMARILY THAT AN AFFIRMANCE OR APPROVAL, RATHER, OF THE DISTRICT COURT DECISION WOULD BE IN ORDER. BECAUSE THE DISTRICT COURT --

IF THE JUDGE DIDN'T CONSIDER THE REST OF THAT, WOULDN'T THE APPROPRIATE RELIEF BE TO MANDATE THAT THE JUDGE BE CERTAIN THAT HE DID CONSIDER ALL OF THAT?

THAT IS AN ALTERNATIVE REQUEST BUT IT IS NOT REQUIRED IN THIS CASE, BECAUSE IT IS SO CLEAR --

OTHERWISE WE WOULD BE DOING WHAT THE TRIAL JUDGE IS SUPPOSED TO BE DOING. THAT IS WE ARE NOT SUPPOSED TO STEP IN, EITHER AT THE DCA LEVEL AT THIS LEVEL, CERTAINLY, AND TAKE ON THE RESPONSIBILITY OF THE TRIAL COURT, ARE WE?

WELL, AS JUSTICE WELLS POINTED OUT, THAT CIRCUMSTANTIAL EVIDENCE IS ESTABLISHED. IT IS PRESUMED TO BE CORRECT. THE TRIAL COURT IS IN NO BETTER POSTURE, AS A SUCCESSOR TRIAL JUDGE WHO DIDN'T HEAR THE TRIAL EVIDENCE IN '92, THAN THE DISTRICT OUT COURT, TO LOOK AT THAT CIRCUMSTANTIAL EVIDENCE, AND, YOUR HONOR, IT IS A LEGAL CONCLUSION. WOULD THIS NEW EVIDENCE PROBABLY HAVE PRODUCED ACQUITTAL? NOT COULD HAVE. WOULD IT PROBABLY -- ZOO EACH TIME A TRIAL --.

SO EACH TIME A TRIAL JUDGE DOES THAT, WE ARE TO LOOK AT IT DE NOVO AND LOOK AT IT FRESH, AND SO, FOR INSTANCE, IF HE DENIED RELIEF, THE OBLIGATION OF THE APPELLATE COURT IS TO LOOK AT THE RECORD AND MAKE UP THEIR OWN MINDS ABOUT THAT TEST?

I AM NOT PROPOUND AGO DE NOVO STANDARD, BECAUSE IN EFFECT --

I THOUGHT THAT IS WHAT YOU WERE SAYING.

NO, YOUR HONOR.

YOU SAID THAT WE ARE IN THE SAME POSITION THAT THE TRIAL JUDGE WAS TO MAKE THAT DECISION.

THAT'S CORRECT, BUT WHEN THE COURT IS LOOKING AT THAT, THE COURT IS ACCORDING AN ABUSE OF DISCRETION STANDARD, AND THIS DISTRICT COURT DID THAT. EXPRESSLY STATES WE UNDERSTAND THE STANDARD HERE ON A NEW TRIAL IS AN ABUSE OF DISCRETION. NO REASONABLE JURIST WOULD REACH THE CONCLUSION THAT THE TRIAL JUDGE DID IN THIS CASE, GIVEN THE CORRECTNESS OF ALL OF THIS WEALTH OF EVIDENCE, IMPLICATING A MAN WHO HAD THE SOLE MOTIVE IN THIS CASE, TO DO AWAY WITH THESE TWO INDIVIDUALS.

SO REALLY WHAT YOU ARE SAYING IS, BECAUSE WHAT WE WOULD HAVE TO SAY IS LET'S ASSUME THAT THE EYEWITNESSES RECANTED. THAT THERE WERE NO EYEWITNESSES. THAT THE CIRCUMSTANTIAL EVIDENCE IS SO OVERWHELMING THAT THERE WOULD BE NO PROBABILITY, EVEN IF AT ANOTHER TRIAL THE EYEWITNESSES DIDN'T TESTIFY, OF AN ACQUITTAL?

I WOULD SUBMIT YES, AND THAT IS A LEGAL CONCLUSION, BUT THE LEGAL IMPORT OF HOLLINS'S TESTIMONY IS IT IS MERELY IMPEACHING.

LET ME ASK YOU, THOUGH, ABOUT THAT. IS THE STATE, ON THE ISSUE OF WHAT TYPE OF EVIDENCE SHOULD QUALIFY AS NEWLY-DISCOVERED EVIDENCE, IS THE STATE ADVOCATE AGO

BRIGHT-LINE RULE THAT, IF THE EVIDENCE THAT IS NEWLY-DISCOVERED IS IMPEACHMENT EVIDENCE, AND IN A CASE WHERE THE IMPEACHMENT IS THE PERSON TESTIFIES WHO IS FOUND BY THE JUDGE TO HAVE COMPLETE CREDIBILITY, THAT THE EYEWITNESS SAYS THEY DIDN'T SEE IT, THAT THEY ACTUALLY HAVE GLASSES. THEY DIDN'T HAVE THEIR GLASSES ON THAT NIGHT, AND THEY COULDN'T SEE ANYTHING, BUT THEY SAID IT. THAT THAT CAN NEVER BE NEWLY-DISCOVERED EVIDENCE, OR IS IT BECAUSE, IN THIS CASE, BECAUSE YOU HAVE GOT ALL OF THIS OTHER CIRCUMSTANTIAL EVIDENCE, THAT IT REALLY, THE WEIGHT, YOU KNOW, OF THE EYEWITNESSES, THAT IS JUST LESS CRITICAL, AND THAT IS WHY, IN THIS CASE, THERE SHOULDN'T BE A NEW TRIAL?

YOUR HONOR, I WOULD SUBMIT THE BEST WAY TO APPROACH THIS IS THAT, AS IN PERRY, WE DON'T SAY THERE IS AN AUTOMATIC, IN EVERY CASE, DISQUALIFICATION, BUT ALMOST ALWAYS, AND IN ALMOST EXCLUSIVELY, IN ALMOST EVERY SITUATION, IMPEACHMENT EVIDENCE, WHICH SERVES ONLY TO CONTRADICT A WITNESS, WITHOUT MORE, ISN'T GOING TO SUFFICE, EVEN IF IT IS CREDITED AT A HEARING. IT HAS GOT TO DO MORE. IT HAS GOT TO GO TO THE MERITS.

HOW CAN THAT BE THOUGH? LET'S SAY THAT WE TAKE AND WORK THROUGH A HYPOTHETICAL. WE HAVE ONLY GOT ONE WITNESS. SO THIS IS IT. IF YOU ACCEPT THE TESTIMONY OF THIS WITNESS, THE DEFENDANT DID THE DEED, AND IF YOU DON'T ACCEPT THE TESTIMONY OF THAT WIT NEXT AND THEN WE HAVE A SITUATION LIKE THIS, EXCEPT I CHANGE IT A LITTLE BIT, ON THE WITNESS NOW, WHO HAS THE EYEWITNESS, YOU KNOW, SAY NO, I HAVE LIED, OR WHATEVER, RECORDS THAT CONVERSATION? AND NOW GOES INTO A HEARING LIKE THIS, NOT ONLY WITH THEM SAYING SHE TOLD ME THAT SHE LIED, BUT HAS A RECORDING OF HER VOICE SAYING, YES, I HATED THAT SOB THAT S. O. B., AND I NAILED HIM, AND I AM PRETTY CONFIDENT THAT HE DID IT, ANYWAY, AND I LAID OUT THE FACTS OF WHAT HE DID THAT NIGHT AND I LIED, AND I AM HAPPY FOR IT, BECAUSE HE IS A MISERABLE PERSON OR WHATEVER KIND OF THING, AND IT IS RECORDED, AND NOW WOULD YOU SAY, IN A SITUATION LIKE THAT, THAT EVEN THOUGH THAT IS JUST IMPEACHMENT, THAT A TRIAL COURT COULDN'T GRANT A NEW TRIAL?

NO. BECAUSE IN THAT INSTANCE, YOUR HONOR, YOU HAVE GOT SOME CORROBORATION OF A RECORDING, OF WHAT THAT PERSON --

CORROBORATION OF WHAT, THOUGH?

CORROBORATION OF THAT NEWLY-DISCOVERED EVIDENCE.

IT IS CORROBORATION OF IMPEACHMENT, THOUGH. IT IS STILL IMPEACHMENT, THOUGH, RIGHT?

IT IS NOT MERELY IMPEACHING INNATE.

WHAT DOES IT DO?

IT GOES MORE, BECAUSE UNDER YOUR SCENARIO, YOUR HONOR, AS YOU HAVE PROPOSED THE HYPOTHETICAL, THE CONVICTION TURNED UPON THAT WITNESS, IN THAT CASE ALONE, AND THAT THAT WITNESS CAME IN, CAME IN WITH NEW EVIDENCE THAT SHOWED THAT THAT WITNESS WAS NOT TRUTHFUL, AND HAD SOME CONFIRMATION, INDEPENDENT EVIDENCE. HERE IS A RECORDING.

WHAT IS THE DIFFERENCE BETWEEN A WITNESS, WHO THE TRIAL COURT FINDS TO BE TOTALLY UNCONNECTED TO THE CASE, AND COMPLETELY CREDIBLE, BEING THE RECORDER, I.E. SWEARING TO THE TRUTH OF WHAT THE PERSON TOLD HIM, AND THERE BEING A RECORDER? I MEAN THAT IS JUST A DIFFERENCE IN. IS IT NOT? AND THAT THEY ARE BOTH IMPEACHING. THAT IS THE RECORDING WOULD IMPEACH THAT WITNESS. I AM JUST HAVING TROUBLE WITH THE ADVOCACY OF A BRIGHT-LINE RULE, BECAUSE OBVIOUSLY IMPEACHMENT CAN HAVE A DEVASTATING IMPACT IN A CASE, CAN IT NOT? AND AS YOU WOULD AGREE WOULD HAVE A DEVASTATING IMPACT IN THAT HYPOTHETICAL THAT I -- A DEFS ACETATING IMPACT IN THAT HYPOTHETICAL

THAT I GAVE YOU.

IT COULD HAVE A DEVASTATING IMPACT WHERE THE CONVICTION TURNED, BUT THAT IS SAYING MERE IMPEACHING EVIDENCE ALONE, BUT NOW YOU HAVE ADDED ANOTHER FACTOR IN HERE. YOU SAID THIS CASE, UNDER YOUR SCENARIO, WAS TOTALLY INDEPENDENT ON THAT PARTICULAR WITNESS. IT IS DISTINGUISHABLE FROM THE FACTS HERE, SO THAT IS WHY I HAVE NOT ASKED THE COURT TO ADOPT A NEVER SAY NEVER, UNDER ANY CIRCUMSTANCES, AUTOMATIC RULE. THE COURT REJECTED IT IN THE 3.600 CONTEXT IN PERRY, AND I HAVE POINTED IT OUT IN SUPPLEMENTAL BRIEF, BUT FOR THE MOST PART, I WOULD SUBMIT THAT, A DEFENDANT WHO COMES IN WITH IMPEACHING EVIDENCE OUGHT TO MAKE A SIMILAR SHOWING, AS IF ONE WOULD MAKE IN MAKING AN ACTUAL INNOCENT SHOWING. AND THAT JUST COMING IN AND SAYING A WITNESS SAID SOMETHING DIFFERENT, AND THAT WITNESS MAINTAINS THAT TRIAL TESTIMONY THAT IS PRESUMED CORRECT, IS NOT SUFFICIENT. IN THIS CASE BERNADETTE SAID I TOLD THE TRUTH IN 1982 AND -- IN 1982 AND I AM TELLING IT NOW.

AND THE JUDGE DOESN'T BELIEVE HER.

THE COURT DIDN'T CREDIT HER, BUT WE, ALSO, KNOW THAT THE COURT, IN THE CONCLUSION OF THIS ORDER, SAYS IN LIGHT OF THE HOLLINS'S TESTIMONY AND INCONSISTENCY IN HERE, DOESN'T MENTION THAT ADDITIONAL EVIDENCE, WHICH WAS ABUNDANT.

DOES THE JUDGE HAVE ANY ROLE, IN A HEARING LIKE THIS, IN MAKING CREDIBILITY DETERMINATIONS?

THE COURT, OF COURSE, AND WE HAVE GOT A COURT DEFERENCE. THE DISTRICT COURT IN THIS CASE TOOK GREAT PAINS, IN THE ORDER, NOT TO IS UP LENT ANY FINDINGS ON THE CREDIBILITY OF -- NOT TO SUPPLANT ANY FINDINGS ON THE CREDIBILITY OF HOLLINS AND A CHANCE ENCOUNTER SOME YEARS LATER IN PRISON. SUSPECT AS IT MAY SEEM, THE DISTRICT COURT DID NOT SUPPLANT ITS VIEW ON THE CREDIBILITY OF HOLLINS. WHAT THIS COURT SAID, IN ESSENCE ACCEPTING HOLINS'S TESTIMONY AS CREDIBILITY CREDIBLE -- AS CREDIBLE, TAKING THE TRIAL COURT FINDINGS, THERE IS NO PROBABILITY OF A DIFFERENT VERDICT. NO REASONABLE FACT FINDER WOULD ACQUIT ROBINSON, BASED ON THE COMPELLING EVIDENCE.

DID THE COURT SET OUT ALL OF THIS OTHER EVIDENCE?

THE DISTRICT COURT WENT IN PAINS TAKING DETAIL TO SET FORTH CIRCUMSTANTIAL EVIDENCE AND SPECIFICALLY SETS IN THEORDER THAT WE UNDERSTAND THAT THE STANDARD OF REVIEW HERE IS AN ABUSE OF DISCRETION.

WAS THERE A CONFESSION IN THIS CASE?

THERE WAS NO CONFESSION IN THIS CASE.

WERE THERE FINGERPRINTS?

LET ME QUALIFY. THERE WAS --

WAS THE MURDER WEAPON FOUND?

NO. BUT WE KNOW THAT --

TELL ME WHAT -- IN OTHER WORDS HIGHLIGHT FOR US --

IF I COULD TAKE A MINUTE TO HIGHLIGHT THAT EVIDENCE. WE KNOW THAT, FROM TESTIMONY FROM A PAWNSHOP OWNER THAT ROBINSON HAD PURCHASED A .38, RIGHT AT THE TIME THAT

BERNADETTE AND HE HAD SEPARATED IN APRIL OF THE YEAR. HE PURCHASED IT, AND HE PERFORMED THE SAME CALIBER OF BULLETS THAT WERE FOUND IN AVIL'S BODY AND IN THE MAT REST. ALL RIGHT. SO WE HAVE THAT LINK THERE.

A .38 WAS USED IN THE KILLING.

A .38 OR A .357 FEDERAL MANUFACTURER. IT WAS THE SAME MFERL REMEMBER AS THE BULLETS HE PURCHASED. THAT WAS IN APRIL. THEY SEPARATED --

HELP ME.

IF I CAN PELL PUL YOU FORWARD ON THE EVIDENCE. -- IF I CAN PULL YOU FORWARD ON THE EVIDENCE.

YOU DID SOMETHING ABOUT A .357.

THEY COULDN'T CONCLUSIVELY TYPE IT AS .38. THEY SAID IT WAS A FEDERAL MANUFACTURER, A .38 OR A .357 FEDERAL MANUFACTURER ON THE SHELLING THAT WAS FOUND AT THE SCENE.

AND HE OWNED A .38?

HE PURCHASED A .38, AND THEY PUT ON THAT PAWNSHOP OWN OWNNER APRIL TO SHOW THAT HE PURCHASED IT, USING SOME INFORMATION THAT HE HAD NEVER -- FALSE INFORMATION ON HIS APPLICATION.

THE ESSENCE OF THAT IS HE OWNED A .38.

HE HAD A GUN, AND WE, ALSO, KNOW THAT THE STATE PUT ON A WITNESS BY THE NAME OF JOE TUGGERSON, AND HE SAW HIM A WEEK BEFORE THE SHEET SOOTHING. HE WASN'T SURE OF THE EXACT DAY, AND IT COULD HAVE BEEN ANYWHERE FROM A WEEK TO FIVE OR SIX WEEKS BEFORE, AND HE SEES HIM IN TOWN, AND HE PULLS OUT FROM UNDER THE SEAT OF HIS TRUCK A .38 SNUB NOSE, AND HE SHOWS IT TO HIM AND SAYS I CAUGHT BERNADETTE AND AVIL IN BED AND I COULD HAVE KILLED THEM. THAT IS JUST STARTLINGLY SIMILAR TO WHAT ACTUALLY TRANSPIRED IN THIS CASE, AND TUGGERSON WAS ESTABLISHED TO HAVE NO MOTIVE TO LIE. HE WAS AN INDEPENDENT WITNESS.

THIS STATEMENT WAS MADE BEFORE OR AFTER THE KILLINGS?

BEFORE THE KILLING.

BEFORE THE KILLING.

BEFORE THE KILLING.

HE CAUGHT THEM IN BED, AND HE COULD HAVE KILLED THEM?

THAT IS WHAT HE SAID. HE CAUGHT THEM IN BED TOGETHER AND HE COULD HAVE KILLED THEM, AND HE SHOWED HIM THE GUN, AND TUGGERSON SAID, MAN, IT IS NOT WORTH IT. IT IS NOT WORTH IT, AND HE DISTRACTS HIM AND MOVES ON THE CONVERSATION. THEN WE HAVE A NEIGHBOR WHO SEES HIM SITTING OUTSIDE THE HOME ONE NIGHT. HE SAW HIM ON MORE THAN ONE OCCASION DRIVING UP AND DOWN. REMEMBER THIS IS THE FORMER MARITAL ABODE WHERE HE HAD LIVED WITH THE EX-WIFE. THEY WERE LONG DIVORCED. IT WAS JULY, AND SHE HAD LEFT TO GO TO NEW YORK TO GET AWAY FROM HIM, AFTER INCIDENT IN WHICH HE HAD THREATENED HER WITH A GUN IN AN ORANGE GROVE. THAT CAME OUT, TOO. THERE WAS WILLIAMS RULE TESTIMONY THAT HE HAD THREATENED HER WITH THE GUN AND HE HAD, ALSO, IN A SEPARATE

INCIDENT, THREATENED AVIL AND HER WITH THE GUN, AND SHE LEFT IMMEDIATELY TO GET AWAY AND HAD STAYED AWAY EXCEPT FOR COMING BACK TO SIGN THE DIVORCE PAPERS, UNTIL WEEKS, SOME FIVE WEEKS BEFORE THE CRIME.

YOU WERE TELLING ABOUT THE NEIGHBOR.

ALL RIGHT. SO THE NEIGHBOR SEES HIM JUST SITING THERE, LATE AT NIGHT, WATCHING THE RESIDENCE, IN LATE NOVEMBER.

THE NIGHT OF THE MURDER?

NO. LATE NOVEMBER. AS BEST AS SHE CAN PIN IT, AND IT WAS DECEMBER, THE EARLY MORNING HOURS OF DECEMBER 5 THAT THIS CRIME TOOK PLACE. THIS SAME NEIGHBOR AND HER HUSBAND, ALSO, SAW, THAT NIGHT, THAT THE VICTIM'S PORCH LIGHT WAS ON. WHEN THEY WENT TO BED, IN THE MIDDLE OF THE NIGHT, THERE IS DOGS BARKING. THE LIGHT IS OFF. THE TESTIMONY IS THAT, FROM THE CRIME SCENE PEOPLE, THAT THERE IS A FINGERPRINT ON THE LIGHT BULB. IT IS UNSCREWED AND IT IS LOOSE, AND THE LIGHT IS OFF, BUT THE LIGHT SWITCH IS ON. INSIDE.

IS THIS THE NIGHT OF THE MURDER?

THE NIGHT OF THE MURDER. COMING TO THE SCENE. SO WE KNOW WHOEVER COMMITTED THIS CRIME LOOSENED THAT BULB, BECAUSE WE HAVE GOT INDEPENDENT VERIFICATION FROM THE NEIGHBOR THAT THAT LIGHT WAS ON, AND IT WAS OFF LATER IN THE NIGHT, SHORTLY AFTER 1:45, AND HER SON HEARS A WOMAN SCREAM AND THE DOG BARKING, AND THE LIGHT IS OFF AT THIS TIME. THERE IS A COVER ON THE FRONT LIGHT BULB, THE COVER OF THE PORCH LIGHT IS ON THE FLOOR UNDAMAGED, ON THE GROUND RIGHT BESIDE, AND WHAT IS VERY EERIE ABOUT IT IS THERE IS NO FORCED ENTRY TO THE DOOR. THE DOOR WAS LOCKED. BOTH BERNADETTE AND HER NEPHEW WHO WAS LIVING THERE SAID IT WAS LOCKED, SO SOMEONE HAD ACCESS. SOMEONE? THAT WAS ROBINSON. HE LIVED THERE, AND SHE TESTIFIED HE HAD ACCESS TO A KEY TO THE HOUSE, EVEN THOUGH SHE HAD CHANGED THE LOCKS, SHE FURNISHED HIM, TWOBT, ACCESS TO THAT KEY -- AT ONE TIME, ACCESS TO THAT KEY, SO HE HAS THE OPPORTUNITY. HE HAS THE MOTIVE. HE HAS TALKED ABOUT THE POSSIBILITY OF KILLING THEM BEFORE, AND THEN, THE NEXT MORNING, AN OFFICER GOES TO HIS HOME IN MONTH I CELL ---IN MONTICELO AND CESA GUN BOX UNDER HIS TRUCK SEAT, THE SAME LOCATION AS TUGGERSON. THE GUN IS MISSING.

WAS HIS THE ONLY FINGERPRINTS ON THE LIGHT BULB?

THEY COULD NOT DETERMINE ANY OTHER USABLE PRINTS, TO MY RECOLLECTION OF THE RECORD. IT WAS HIS PRINT. AND THE STATE CONTENDED THAT IT WASN'T INNOCENTLY PUT THERE. ROBINSON DEFENDED THAT HE CAME TO MAKE REPAIRS, WAS BEFORE OF THE -- WAS BECAUSE OF THE LOCKED ENTRY TO THE HOME AND BECAUSE OF ALL OF THESE OTHER FACTORS HERE, AND WE KNOW THAT THAT LIGHT BULB GOT UNSCREWED, SO THAT WAS PRETTY TELLING EVIDENCE THAT HE HAD LEFT HIS FINGERPRINT ON THERE TO GO IN AND COMMIT THIS CRIME. IT WAS GREAT CORROBORATION OF THE EYEWITNESS ACCOUNT THAT HE WAS THE ONE THAT DID THIS, AND IN ALL OF HOLLINS'S TESTIMONY, HE DOESN'T HAVE ANYTHING TO OFFER IN THE WAY OF A CRIME, THE MERITS. HE WASN'T THERE. HE DIDN'T KNOW ANYTHING ABOUT THE FACTS AT THE TIME. HE LEARNED THEM LATER. AND THAT IS WHY WE CHARACTERIZE HIS TESTIMONY AS MERELY IMPEACHING. YOUR HONOR, YOU HAD POINTED OUT THAT, WELL, THIS IS GOING TO THE FACT THAT IT IS IDENTITY, AND THAT MAYBE POSSIBLY, AND THAT THAT IS SOMETHING MORE THAN MERE IMPEACHING.

WHAT I WAS SAYING IS THAT, IF A JURY HEARS IMPEACHMENT, THAT SOMEONE HAS TESTIFIED THAT THE PERSON SAYS THAT THE PERSON DIDN'T DO IT, THEN THAT, THE JURY, THEN, CAN DISREGARD THE EYEWITNESS TESTIMONY, SO THAT ALTHOUGH WE CALL IT IMPEACHING, IN FACT WHAT HAPPENS IS THE JURY ENDS UP, IT ALMOST COULD BE A SITUATION THE SAME POSTURE AS

IF THE PERSON HAD RECANTED.

BUT IN THIS CASE --

LET ME ASK YOU THIS WAY.

IT IS IMPORTANT THAT SHE DIDN'T RECANT.

LET'S ASSUME THAT SHE DID. WOULD YOUR ARGUMENT BE THE SAME, THAT THERE STILL WOULD BE A "NO REASONABLE JUDGE USE COULD GRANT A NEW TRIAL" CLAUSE UNDER THIS CIRCUMSTANCE?

YES, TO TWO REASONS. IF HOLLINS'S TESTIMONY OR A HYPOTHETICAL RECANTTATION CAN'T BE SOMEBODY ELSE DID IT, BECAUSE EVEN UNDER HOLLINS'S SCENARIO, SHE TOLD HIM SHE BELIEVED HE DID IT. THERE HAS NEVER BEEN AN INDICATION THAT ANYONE ELSE WANTED TO DO AWAY WITH THESE TWO PEOPLE, AND, BOY, ALL OF THAT CIRCUMSTANTIAL EVIDENCE JUST LAID IT RIGHT AT THE FEET OF ROBINSON, AND THAT IS THE ABUSE IN THIS CASE, IS THAT JUDGE BENTLY WASN'T THERE IN THE TRIAL, AND HE WAS AT LEAST OBLIGED TO LOOK AT ALL OF THAT, THE CORRECTNESS OF THAT ORIGINAL TRIAL TESTIMONY. THAT IS ALL THIS DISTRICT COURT SAW WAS THAT THERE WAS A WEALTH OF EVIDENCE. IT DIDN'T WEIGH ANYTHING UNDER TIBBS. IT JUST SAID, LOOK, NO FACT FINDER WOULD HAVE ACQUIT REQUESTED THIS GUY, AND THERE IS NOTHING -- ACQUITTED THIS GUY, AND THERE IS NOTHING WRONG IN THAT DECISION, BECAUSE --

THANK YOU VERY MUCH. YOUR TIME IS UP.

I WOULD JUST CONCLUDE THAT, FOR THE MOST PART THERE OUGHT TO BE, AND I WOULD STRESS TO THIS COURT THAT THERE OUGHT TO AND VERY HEAVY BURDEN ON A DEFENDANT WHO COMES IN AND SAYS I HAVE GOT CONTRADICTING EVIDENCE. THERE HAS GOT TO BE MUCH MORE.

THANK YOU. YOUR TIME IS TERMINATED.

THANK YOU, YOUR HONOR.

MR. BRIGGS, WHAT IS YOUR SUGGESTION AS TO THE REMEDY THAT WE SHOULD COME UP WITH IN THIS CASE?

WHAT SHOULD WE DO?

I BELIEVE PETITIONER POSES THAT THIS COURT AFFIRM THE TRIAL COURT ORDER GRANTING MR. ROBINSON A NEW TRIAL AND REVERSE THE ORDER, THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL. I FEEL THAT THAT WOULD BE THE APPROPRIATE ACTION. THE -- WITH ALL RESPECT TO THE COUNSEL FOR THE STATE, THIS CASE IS BEING ARGUED AS IF IT WERE AT THE TRIAL LEVEL, WITH THE CIRCUMSTANTIAL EVIDENCE BEING STRESSED, WEAKNESSES, AND THE CREDIBILITY OF THE IMPEACHMENT EVIDENCE BEING POINTED OUT. THAT IS NOT WHAT THIS COURT IS HERE TO DO TODAY. THIS COURT IS HERE TO DETERMINE IF THERE IS SUBSTANTIAL COMPETENT EVIDENCE TO SUPPORT JUDGE BENTLY'S ORDER, AND I WOULD SUBMIT THAT THAT EVIDENCE DOES EXIST, THAT CIRCUMSTANTIAL EVIDENCE IS NOT COMPELLING. I DON'T THINK THE STATE WOULD TAKE THE POSITION THAT THEY COULD GAIN A CONVICTION SOLELY ON THAT EVIDENCE.

I THINK IT SOUNDS LIKE THEY SORT OF ARE, BECAUSE I ASKED IF THEY HAD JUST HAD RECANTATION, IT WOULD STILL BE THE SAME, AND HER ANSWER WAS YES, SO I THINK WE HAVE GOT TO ASSUME, FOR THIS, THAT THIS CIRCUMSTANTIAL EVIDENCE WAS SUFFICIENT TO CONVICT THIS DEFENDANT BEYOND A REASONABLE DOUBT.

I COULD ADDRESS THE CIRCUMSTANTIAL EVIDENCE AND WEIGH ITS MERITS. AGAIN, I STRESS THAT THAT IS NOT THE PROPER. I WILL POINT OUT, ALTHOUGH, THAT A ..38 CALIBER GUN IS NOT UNUSUAL. I WOULD POINT OUT THAT MR. MR. ROBINSON LIVED IN THIS HOUSEHOLD. HE HAS THE OPPORTUNITY TO CHANGE THE LIGHT BULB. HE STATED THAT HE WENT INTO THE RESIDENCE SUBSEQUENT TO MOVING OUT, TO GET SOME CLOTHES. HE HAD MADE STATEMENTS THAT COULD BE INTERPRETED AS THREATS, BUT, HOWEVER, HE HAD YEARS TO ACT ON THESE THREATS AND HE NEVER DID SO.

DID HE MAKE A STATEMENT RELATIVE TO THE LIGHT BULB, THAT HE DID CHANGE IT?

I BELIEVE HE DID SAY, DURING HIS TESTIMONY, HE SAID THAT HE CHANGED A LIGHT BULB DURING, AT SOME POINT. I AM NOT EXACTLY SURE WHEN.

IN RELATION TO THE KILLING, YOU DON'T KNOW HOW CLOSE IT WAS.

I AM NOT AWARE OF THAT, NO, YOUR HONOR.

HE TESTIFIED, AT THE ORIGINAL TRIAL, THAT HE DIDN'T DO IT?

YES. THAT'S CORRECT. HE PRESENTED AN ALIBI DEFENSE AS WELL.

HOW DO WE KNOW THAT JUDGE BENTLY CONSIDERED THIS OTHER EVIDENCE THAT THE STATE HAS POINTED OUT? THE STATE MADE THESE ARGYULTS AT THE TRIAL LEVEL -- ARGUMENTS AT THE TRIAL LEVEL. JUDGE BENTLY WAS CERTAINLY AWARE OF THE TRIAL TRANSCRIPTS. HE ATTACHED PORTIONS OF THEM. HE HEARD THE EVIDENCE IN THIS CASE, AND HE CHOSE TO RULE WITH THE DEFENSE, AND I WOULD ASK THIS COURT TO SUPPORT HIS RULING, HIS DETERMINATION.

THERE IS NO QUESTION THAT THE STATE, BEFORE JUDGE BENTLY, ARGUED, AS THEY HAVE ARGUED FORCEFULLY HERE, THAT THE CIRCUMSTANTIAL EVIDENCE WAS ABUNDANT IN THIS CASE, AND THAT THE MERE IMPEACHMENT OF THE EYEWITNESSES WAS NOT ENOUGH TO UNDERMINE OR TO PROBABLY PRODUCE ACQUITTAL?

THE ARGUMENT WAS MADE. YES. I THANK YOU FOR REVIEWING THIS CASE. THANK.

THANK YOU, COUNSEL. THANKS TO BOTH OF YOU.