Noel Doorbal v. State of Florida

MR. CHIEF JUSTICE: NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS LUGO VERSUS STATE. MR. RODRIGUEZ.

THANK, YOUR HONOR. MAY IT PLEASE THE COURT. COUNSEL. MY NAME IS RAFAEL RODRIGUEZ, AND I REPRESENT DANIEL LUGO, THE OTHER INDIVIDUAL WHOM YOU HEARD ABOUT THIS MORNING ON THIS CAPITAL APPEAL. LIKE MR. DOORBAL, HE WAS ALSO CONVICTED OF THE TWO MURDERS OF GREEK AND BURTON AND WERE -- OF GREGA AND BURTON AND WERE SENTENCED TO DEATH, AND AS YOUR HONORS ALREADY HEARD, THIS BASICALLY INVOLVED TWO SEPARATE HE SODZ OF -- EPISODES OF A KIDNAPING COUPLE, ONE INVOLVING MARIO SCHILLER AND THE OTHER INVOLVING THE HUNK AARON COUPLE. FROM THE ORAL ARGUMENT PRESENTED TO YOU BY MR. DOORBAL, IT WAS ALMOST A CARBON COPY OF WHAT OCCURRED DURING TRIAL, AND THAT IS WHAT HAPPENED TO MR. DOORBAL, LUGO DID IT, LUGO DID IT, LUGO DID IT! LUGO WAS, IN FACT, THE BRAINS OF THE OPERATION, AND THIS PERVADED THE ENTIRE TRIAL. WE RAISED AS ISSUE, THE FACT THAT THE TRIAL COURT ERRED, WHEN IT DENIED THE MOTION FOR SEVERANCE, RAISING SPECIFICALLY BEFORE THE TRIAL EVEN BEGAN, THE SPECTOR OF WHAT OCCURRED AT THE TRIAL, AND WHAT HAS --

THIS GOES DOWN INTO THAT RICO ACT, THE ASPECT OF THIS CASE, DOES IT NOT? YOU ARE TALKING ABOUT SUFFICIENCY OF THE EVIDENCE AND ONE OF THE POINTS AND THE APPROPRIATE RIGHT OF THE -- AND THE PROPOSEITE OF THE -- AND THE PROPRIETY OF THE EVIDENCE, AND CERTAINLY UNDER FLORIDA LAW, IT SEEMS OF THE EVIDENCE THAT WE TOUCHED UPON AN AWFUL LOT OF THIS IN GROSS, AND THIS CASE THAT WAS NEEDED AND WHAT YOU NEEDED ADDITIONALLY, SO THAT YOU COULD TRY THESE TWO CASES TOGETHER, AND THE THEORY WAS THAT THEY ARE ABDUCTING FOLKS AND EXTORTING MONEY AND THAT WAS THEIR PLAN. YOU HAVE GOT THREE OF THEM IN A ROW. SO WHERE DOES THAT GO WRONG AND WHERE IS IT LEGALLY INSUFFICIENT INSUFFICIENT? BECAUSE THESE ARE INTERTWINED, IT SEEMS TO ME.

JUSTICE LEWIS, LET ME EXPLAIN THAT BASICALLY OUR POSITION, INSOFAR AS THE RICO CHARGE IS CONCERNED, THAT IN OUR VIEW, THE RICO CHARGES WITH REFERENCE TO SEVERANCE, ARE NOT OBLITERATED, SIMPLY BECAUSE THE STATE CHOOSES TO INDICT SOMEONE UNDER RICO. IF THEY CHOOSE IMPROPERLY TO DO SO, THEN SEVERANCE IS STILL AN OPTION FOR THE TRIAL COURT, AND THE TRIAL COURT STILL HAS NOT INHERENT AUTHORITY TO SAY WAIT A SECOND, YOU CAN'T TRY THESE TWO INDIVIDUALS TOGETHER, BECAUSE WHAT IS GOING TO HAPPEN IS THERE IS GOING TO BE AND FAIR TRIAL TO ONE OR THE OTHER, SO SIMPLY BECAUSE THE STATE USED THE DEVICE OF INDICTING SOMEONE FOR RICO IS NOT ENOUGH TO OBLITERATE THE SEVERANCE ISSUE. NOW, HAVING SAID THAT, WHAT I AM REFERRING TO IS, IN ADDITION TO THAT, MR. LUGO FILED A MOTION FOR SEVERANCE OF DEFENDANTS, SPECIFICALLY BEFORE THE TRIAL BEGAN, POINTING OUT THAT THIS IS EXACTLY WHAT WAS GOING TO OCCUR. NOT SO MUCH THAT THESE INDIVIDUALS MAY HAVE BEEN INVOLVED TOGETHER BUT THE FACT THAT, WHEN THE TRIAL WAS ACTUALLY PRESENTED, WHEN THE WITNESSES WERE ACTUALLY CALLED BY THE STATE, WHAT OCCURRED WAS COUNSEL FOR DOORBAL ENDED UP CROSS-EXAMINING THESE WITNESSES, POINTING THE FINGER AT MR. LUGO, SAYING MR. LUGO WAS THE ONE WHO WAS ORGANIZING ALL OF THIS. MR. LUGO WAS THE ONE WHO WAS DOLLING OUT THE MONEY. MR. LUGO WAS BETRAYING HIS WIFE, BY HAVING HIM SIGN THE DOCUMENTS. THE LIST GOES ON. MR. LUGO WAS IDENTIFIED, TIME AND AGAIN, BUT MR. DOORBAL WASN'T IDENTIFIED, POINTING OUT THAT INCRIMINATING EVIDENCE WAS FOUND IN MR. LUGO'S APARTMENT, POINTING OUT THAT THE DEMAND LETTERS WERE, THAT WERE MADE TO MR. SCHILLER, AND THERE WAS THE

NEGOTIATION GOING ON, AS FAR AS AM NOT PRESENTING THE PROSECUTION AGAINST THEM, WAS ALL LUGO'S ACTIVITY, THAT DOORBAL WAS OUT OF IT.

WHAT IS THE EFFECT THAT THERE WERE TWO DIFFERENT JURIES AND THAT THE CLOSING ARGUMENTS WERE BEFORE TWO SEPARATE JURIES, IS THAT CORRECT?

THAT'S CORRECT. WHAT HAPPENED WAS --

MOST OF THE TIME, WHEN YOU HAVE GOT A CODEFENDANTS AT TRIAL TOGETHER, THE JURY HEARS BOTH THE, ONE JURY HEARS BOTH DEFENDANTS, AND THE CASE AGAINST BOTH DEFENDANTS. HOW, IS THAT, WAS THE JUDGE TRYING TO MINIMIZE ANY EFFECT OF POINTING THE FINGER BY DOING THAT?

I THINK WHAT THE CIRCUIT COURT WAS DOING WAS REALLY CONCERNING ABOUT THE BRUTON POLICY, BECAUSE REALLY WHAT HAPPENED WITH EVERY SINGLE WITNESS PRACTICALLY TESTIFIED IN FRONT OF BOTH JURIES, SO YOU DON'T HAVE A SITUATION WHERE WHOLE SEGMENTS OF WITNESSES WERE SEGREGATED BETWEEN THE JURIES, AND WHAT OCCURRED WAS --

THERE WASN'T ANY BRUTON PROBLEM.

THERE WASN'T ANY BRUTON PROBLEM, BECAUSE THOSE STATEMENTS WERE NOT INTRODUCED, BUT WHAT HAPPENED WAS IT WAS ALMOST A FACADE, BECAUSE WHAT YOU HAD WERE THE ONE JURY SITTING ON THIS SIDE AND ONE JURY SITTING ON THE OTHER SIDE, BUT THEY WERE LISTENING TO THE SAME EVIDENCE AND THE SAME CROSS-EXAMINATION, SO THAT THE ENTIRE EVIDENCE WAS PRESENTED IN FRONT OF THE LUGO. WHENEVER LUGO TRIED TO CROSS-EXAMINE SOMEONE, HE WAS TOTALLY UNDERMINED BY THE DOORBAL CROSS-EXAMINATION. AND WHAT LUGO'S COUNSEL TRIED TO DO BEFORE THE TRIAL IS SAY WAIT A SECOND. THIS IS WHAT IS GOING TO HAPPEN, AND THE TRIAL JUDGE, AND I RAISED IT IN MY BRIEF, MADE WHAT I CONSIDER A FINDING OF FACT ON THE RECORD, WHEN HE SAID FROM DAY ONE, HE HAS BEEN STANDING UP THERE, BASICALLY MY GUY HAS BEEN MISLED BY LUGO. MY GUY WOULDN'T DO ANYTHING. IT IS LUGO THAT IS THE ONE THAT MANIPULATED HIM. THE JUDGE SAID THAT, ON PAGE 11714 OF THE RECORD, AND LATER, IN 11857, THE JUDGE RECOGNIZED THAT THE DEFENDANTS WERE PRESENTING CONFLICTING DEFENSES.

IS THAT, WHAT IS THE STANDARD FOR SEVERANCE? IS IT THAT THERE HAS GOT TO BE -- IF EITHER OF THEM POINTS A FINGER AT THE OTHER THAT, SEVERANCE IS REQUIRED? WHAT IS THE LAW?

AS I INDICATED IN MY BRIEF IN McCRAE, THIS COURT INDICATED THAT BASICALLY THAT THIS COURT RECOGNIZED THAT A FAIR DETERMINATION MAY BE ACHIEVED, WHEN ALL THE RELEVANT EVIDENCE REGARDING THE CRIMINAL OFFENSE IS PRESENTED IN SUCH A MANNER THAT THE JURY CAN DISTINGUISH THE EVIDENCE RELATING TO EACH DEFENDANT'S ACTS, CONDUCTS AND STATEMENTS, AND CAN THEN APPLY THE LAW INTELLIGENTLY, WITHOUT CONFUSION, TO DETERMINE THE INDIVIDUAL'S GUILT OR INNOCENCE. THAT IS REALLY THE STANDARD IN McCRAE AND THE CASES THAT FOLLOW IT. WHAT THIS COURT HAS RECOGNIZED, APPARENTLY, WAS IF YOU CAN DO THIS IN A FAIR MANNER, THEN IT PROPER, BUT IF YOU CAN'T, THEN THERE IS A PROBLEM. AND I SUGGEST TO YOU, AND WE ARE SUGGESTING TO YOU ON THIS APPEAL JUSTICE PARIENTE, THAT THAT DID NOT OCCUR THAT WAY, BECAUSE IT WAS A PERVADED, IT PERVADED THE ENTIRE TRIAL. WE ARE NOT TALKING ABOUT A SINGLE WITNESS HERE, A SINGLE WITNESS THERE. PRACTICALLY EVERY WITNESS THAT WAS CROSS-EXAMINED BY DOORBAL'S COUNSEL, AND IN FACT NICE'S COUNSEL JOINED IN ON SOME OF THEM, WAS TO POINT THE FINGER AT LUGO.

WHAT WOULD BE IF YOU TOOK ONE WITNESS, THE MOST GRAPHIC EXAMPLE, THAT THAT WAS DOORBAL'S DEFENSE AND HIS SOLE BASE OF STRATEGY IS THAT IT WAS ALL LUGO?

OKAY. WELL, AS I --

A PRETTY LONG RECORD HERE.

I REALIZE THAT, AND I TRIED TO, AS MUCH AS I COULD, DETAIL IT IN THE BRIEF, BUT YOU HAVE, FOR EXAMPLE, MR. DOORBAL'S COUNSEL POINTING OUT THE IDENTIFICATIONS MADE, NUMBER ONE BY THE WITNESSES CONCERNING THE OCCUPATION OF MR. SCHILLER'S HOME BY LUGO, WHICH DID NOT OCCUR FOR MR. DOORBAL. YOU HAVE THE CROSS-EXAMINATION EMPHASIZING, AGAIN, THE FACT THAT MR. LUGO HAD POSSESSION OF THE BLOODY CLOTHES FOUND IN HIS APARTMENT, NOT MR. DOORBAL. YOU HAD CROSS-EXAMINATION OF MR. SCHILLER, WHERE IT WAS CLEARLY POINTED OUT THAT SCHILLER IDENTIFIED LUGO THROUGH A LIST. HE WAS MINDFUL THAT HE DIDN'T IDENTIFY ANYONE, AND AGAIN POINTING OUT THAT DOORBAL WAS NEVER IDENTIFIED IN ANY OF THIS. YOU HAD INFORMATION BROUGHT OUT, THROUGH THE PRIVATE INVESTIGATOR MR. DuBOIS, WHO TESTIFIED CONCERNING THE NEGOTIATIONS AND, AGAIN, THROUGH MR. LUGO'S OWN EX-WIFE, WHEN HE SAID ISN'T IT A FACT THAT HE USED YOU, THAT HE DECEIVED YOU, THAT HE BETRAYED YOU, THAT HE MADE YOU SIGN THESE DOCUMENTS? I MEAN, IT GOES ON AND ON AND ON. IT PERVADES THE ENTIRE TRANSCRIPT. AND I WOULD ASK THE COURT TO CLEARLY LOOK AT THIS, BECAUSE IN MY ESTIMATION, AND IN MY LOWELLLY ESTIMATION, I BELIEVE THAT THIS IS A CENTRAL ASPECT OF DEPRIVING MR. LUGO OF A FAIR TRIAL, WHEN YOU HAVE HIM STANDING, AS THIS COURT HAS INDICATED IN CRUM, YOU CAN'T HAVE A DEFENDANT STANDING IN BETWEEN TWO ACCUSERS, THE STATE AND HIS CODEFENDANT, WHICH IS EXACTLY WHAT OCCURRED HERE, AND MR. LUGO'S ATTORNEY, IN THIS CASE, FILED HIS MOTION FOR SEVERANCE, SPECIFICALLY POINTING THIS OUT BEFOREHAND, AND I WOULD ALSO, POINT OUT THAT, IN CRUM, THE MOTION FOR SEVERANCE WAS ACTUALLY FILED AFTER THE JURY WAS SWORN AND THIS COURT SAID IT SHOULD HAVE BEEN GRANTED.

BUT IN KRUM, WERE THEY NOT DEAL BE WITH -- DEALING WITH A MIDSTREAM CHANGE IN POSITIONS AND CHANGE IN, WHERE BEFORE THEY WERE GOING TO PRESENT A CONSISTENT DEFENSE AND ALL OF A SUDDEN, MIDWAY THROUGH, THAT CHANGED. IS THAT WHAT HAPPENED HERE?

RIGHT BEFORE, RIGHT AFTER THE JURY WAS SWORN, EVIDENCE CAME FORWARD THAT THIS WAS GOING TO BE WHAT OCCURRED, AND THAT IS WHEN THE ATTORNEY JUMPED UP AND SAID, HEY, I NEED A SEVERANCE, BUT IN THIS CASE IT IS EVEN MORE EGREGIOUS, BECAUSE MR. LUGO'S ATTORNEY ACTUALLY FILED IT BEFORE THE TRIAL HE EVEN BEGAN AND SAID I KNOW THIS IS WHAT IS GOING TO HAPPEN. I KNOW THIS IS WHAT IS GOING TO HAPPEN, AND HE DETAILED IT IN THE MOTION WHICH IS IN THE RECORD AND CITED IN THE BRIEF, AND STILL THE MOTION WAS DENIED. SO FOR PURPOSES OF CONVENIENCE'S SAKE, BECAUSE THEY WERE JOINED IN THE RICO, I BELIEVE THE TRIAL COURT KEPT IT TOGETHER, EVEN THOUGH THERE WAS THIS FUNDAMENTAL PROBLEM IN THE STRUCTURE OF THIS TRIAL, AND, AGAIN, I WOULD POINT, AGAIN, TO THE ACTUALLY, WHAT I CONSIDER A FINDING OF FACT BY THE TRIAL JUDGE. WE DON'T HAVE TO SPECULATE THAT THE TRIAL JUDGE MAY HAVE THOUGHT OF IT. HE FOUND IT ON THE RECORD.

ARE YOU REFERRING TO THE SENTENCING ORDER?

NO. I AM REFERRING TO THE ONE POINT WHEN MR. DOORBAL'S CLIENT WANTED TO REINTRODUCE THE LETTERS CONCERNING THE NEGOTIATIONS THAT WERE GOING ON BETWEEN SCHILLER AND REPUBLISH THEM TO THE JURY, AND MR. LUGO, AND THAT IS WHEN THE JUDGE, DURING THE COURSE OF THE TRIAL, MADE THESE COMMENTS, AND THEN LETTER -- LATER, DURING THE COURSE OF THE TRIAL, BEFORE THE TRIAL EVEN ENDED, HE RECOGNIZED THESE ARE CONFLICTING DEFENSES. SO WE HAVE A RECORD THAT IS PERFECT ODD THAT POINT. THE SECOND ISSUE THAT I WOULD LIKE TO THE FOOCKT THAT -- THE FACT THAT THE STATE INTRODUCED ADDITIONAL EVIDENCE. THE STATE --

ARE YOU ALSO RELYING ON YOUR POINT ON RICO? ARE YOU ALSO RELYING ON THAT? THAT IS IN ADDITION TO THE POINT ON THE SEVERANCE --

I WOULD GENERALLY RELY ON MY BRIEF, BUT I WOULD POINT OUT ON THAT POINT THAT I THINK THAT THERE IS, THERE PROBABLY NEEDS TO BE CLARIFICATION ON THIS POINT, BECAUSE GROSS INDICATED A SORT OF BROAD STANDARD FOR RICO, INSTEAD OF THERE IS SOME KIND OF ONGOING ORGANIZATION, AND THERE IS A COMMON PURPOSE INVOLVED AND RICO IS SATISFIED, BUT IT DOESN'T ADDRESS DIRECTLY, I DON'T THINK, WHETHER OR NOT SEVERANCE IS STILL AN OPTION, WHICH IN OUR VIEW, IT STILL IS, BECAUSE YOU ARE STILL LOOKING AT WHETHER OR NOT THESE CRIMES WERE INTERRELATED, EVEN UNDER THE GROSS STANDARD, AND INSOFAR AS THE COUNSELOR CONCERNED, MR. LUGO, IN MY -- THE COUNSEL ARE CONCERNED, MR. LUGO, IN MY VIEW, WAS DOOMED FROM THE BEGINNING, ONCE THESE TWO HE VODZ -- EPISODES INTRODUCED, BECAUSE MR. DOORBAL SAW A LAMBORGHINI AND SAID, HEY, WHAT ABOUT THIS CASE? IT WASN'T ORGANIZED BY TWO INDIVIDUALS THAT SAID WE ARE GOING TO DO THIS AND THAT AND THAT. IT WAS A HAPHAZARD ORGANIZATION AT BEST. I THINK THE COMPLICATION IN GROSS, AND I DON'T HAVE THE INDICATION BY A FOOTNOTE, AND IN THE FOOTNOTE IT IS INDICATED VERY CLEARLY, THAT YOU CANNOT INDICATE RICO CONSPIRACY. IN OTHER WORDS YOU CANNOT MAKE IT SO THAT A CONSPIRACY BECOMES A RICO. THERE HAS TO BE A LITTLE DISTANCE BETWEEN THE TWO, BECAUSE OTHERWISE THERE IS A COMPLETE SMUDGING OF THE BOARDERS BETWEEN THE TWO, AND I THINK THIS COURT STILL, UNDER DWROS, INDICATED THAT -- GROSS, INDICATED THAT THERE HAS TO BE SOME TYPE OF ORGANIZATION, NOT JUST AN INDEPENDENT ENTITY BUT SOME TYPE OF ORGANIZATION WHERE THERE IS A CONSPIRACY, WHERE THESE PEOPLE OFTEN, SOMETIMES --

THERE ARE TWO DIFFERENT POINTS. IS EVIDENCE SUFFICIENT TO SUPPORT A RICO VIOLATION? TWO, IF THERE IS, IS THERE SOME LAW THAT WOULD SAY THAT, WHEN YOU GOT A MURDERER AND ONE IS GOING TO INFLAME THE OTHER, THAT SEVERANCE COULD BE PROPER, THE OTHER CHARGE.

THAT IS ABSOLUTELY CORRECT. OUR POSITION --

I HIM ASKING YOU, IS THERE LAW TO SUPPORT YOUR ARGUMENT?

NO, OTHER THAN THE SEVERANCE LAW IS OUT THERE. THIS COURT -- THERE IS A CASE FROM A DISTRICT COURT, I BELIEVE IT IS FUDGE, AND I CITED IN THE BRIEF, WHICH TALKED ABOUT RICO AND THE FACT THAT SEVERANCE WAS STILL AVAILABLE. IN THAT CASE, IT IS A LITTLE DIFFERENT BECAUSE SOME OF THE COUNTS HE WAS ACQUITTED ON, AND IT IS NOT QUITE CLEAR EXACTLY HOW THE DISTRICT COURT WAS LOOKING AT IT, BUT THE DISTRICT COURT DIDN'T HAVE A PROBLEM APPLYING SEVERANCE PRINCIPLES TO RICO. THIS COURT HAS NEVER, TO MY KNOWLEDGE, EVER ADDRESSED THAT ISSUE. AND WE FOUR SQUARE PRESENT THIS ISSUE TO THE COURT, BECAUSE WE BELIEVE THAT IT IS ESSENTIAL DUE PROCESS FOR A DEFENDANT FOR BE ABLE TO ARGUE THAT SEVERANCE IS STILL AN OPTION, EVEN THOUGH QUOTE/UNQUOTE A GRAND JURY HAS RETURNED A VERDICT ON RICO. AND HE SHOULD NOT HAVE TO FOREGO HIS DUE PROCESS RIGHTS, JUST BECAUSE OF THE FORE TUT US OR UNFORTUNATE OUT US -- BECAUSE OF THE FORTUTIOUS OR UNFORTUTIOUS ACCOUNT.

WHEN WE LOOKED AT IT IN GROSS WHAT IS YOUR POSITION, IT WAS INDIVIDUALS IN HOME INVASIONS AND THOSE KINDS OF THINGS, AND THAT PRETTY MUCH, IT SEEMS TO ME SEEMS TO BE VERY SIMILAR TO SELECT, ON A CASE-BY-CASE BASIS, WHAT IT IS THAT YOU ARE GOING TO DO TO 4 SOMEONE, SO HOW WOULD YOU PHRASE AND WHAT IS THE LEGAL REQUIREMENT THAT WE HAVE NOT BEFORE STATEED?

I BELIEVE, JUSTICE LEWIS, THAT THE FOCUS SHOULD BE ON WHETHER OR NOT THERE IS AN ORGANIZATION, HOW A.M. OR FUSS IT MAY BE -- HOW AMORPHOUS IT MAY BE TO DO "X",

BECAUSE THE FACTS IN THE CASE ARE THAT IT WAS A HAPHAZARD SITUATION. THE EVIDENCE WAS BROUGHT IN NOT NECESSARILY BY LUGO BUT IT COULD HAVE BEEN BROUGHT IN BY DELGADO, WHO WAS ONE OF THE STATE'S WITNESSES, AND PEOPLE ACTED ON THAT INFORMATION, AND IT IS NOT AS IF TO SAY, OKAY, PEOPLE HAVE DONE THIS. LET'S DO THE NEXT ONE, AND THAT IS WHERE WE GET INTO THE VERY DANGEROUS AREA OF EQUATING THIS WITH A CONSPIRACY, BECAUSE I THINK A CONSPIRACY IS MUCH MORE BROAD THAN RICO OR IT SHOULD BE, BECAUSE RICO IS A VERY SPECIFIC CRIME, AS ALLEGED, AND IT CALLS FOR INTERRELATEDNESS OF THE PREDICATE DEFENSES. IT CALLS FOR THAT. AND NO ONE DISPUTES THAT. SO THERE IS AN ADDITIONAL STRINGENT ELEMENT IN RICO THAT IS ABSENT IN A CONSPIRACY.

BUT HERE WE HAVE THE SAME GROUP OF PEOPLE, DOING THE KIDNAPING FOR EXTORTION, AND THEN THE ELIMINATION OF WITNESSES ON A REPRESENTATIVE BASIS. AND ARE YOU SAYING THAT THEY MUST HAVE A CLUBHOUSE AND HAVE A MEETING WHEN THAT OCCURS?

I DON'T THINK IN GROSS THAT THAT IS WHAT THIS COURT SAID.

IT DIDN'T SEEM TO ME TO BE THAT WAY, EITHER.

BUT I THINK THE FACTS MUST BE ADDRESSED THAT, IN THIS CASE, AND I THINK IT WAS BROUGHT TO THE COURT'S ATTENTION EARLIER, THAT IN THE CASE OF MR. SCHILLER FOR EXAMPLE, IT WASN'T EVEN MR. LUGO WHO WANTED TO, QUOTE, ELIMINATE THE WITNESS. IT WAS BROUGHT OUT BY OTHER MEMBERS. THERE IS GOING TO BE A STRUCTURE TO THIS AMORPHOUS ORGANIZATION, THEN LET THERE BE A STRUCTURE. IF THERE IS SOMEONE WHO IS GOING TO BE THE MUSCLE OR WHO IS GOING TO BE THE BRAINS, THEN SO BE IT, BUT WE DON'T HAVE THAT IN THIS CASE. YOU HAVE THE INFORMATION THAT, ONCE IT WAS SHARED WITH MR. GREGG A, IT WAS -- ONCE THE INFORMATION WAS SHARED ON MR. GREGA, YOU HAVE A TYPE OF CONSPIRACY AT BEST, AND THAT IS WHERE OUR ARGUMENT IS AS TO INSUFFICIENCY I. NOW, INSOFAR AS THE OTHER POINT I WANT TO MAKE IS THE INDIVIDUAL INDIVIDUAL'S BROUGHT INTO THE CASE. THIS IS IMPROPER BECAUSE OF MONEY-LAUNDERING, WITH MONEY-LAUNDERING WE CAN PROVE THAT HE PAID OFF HIS RESTITUTION THROUGH ILL-GOTTEN MONIES. WHAT OCCURRED BELOW WAS ANYTHING BUT A SIMPLE MONEY-LAUNDERING EXPLANATION, BECAUSE WHAT HAPPENED WAS THE STATE PRESENTED THIS EVIDENCE TIME AND TIME AGAIN, THROUGH A MYRIAD OF WITNESSES, ACTUALLY CALLING TO THE STAND, THE FEDERAL PROBATION OFFICER. NOW, WHAT NEED IS THERE TO CALL THE FEDERAL PROBATION OFFICER TO TESTIFY ABOUT THIS, WHEN YOU HAVE ALREADY INTRODUCED THE EVIDENCE AND CONTINUED TO HARP ON IT, TO THE POINT WHERE MR. DuBOIS, THE PRIVATE INVESTIGATOR DOING THE INVESTIGATION, DELVED INTO THE FACTS OF THE PRIOR CASE, AND ON PAGE 7421 OF THE TRANSCRIPT SAID MR. LUGO HAD DEFRAUDED INVESTORS IN AN ADVANCE-FEE SCHEME, AND THEN WENT ON TO MENTION HE DID THE SAME IN OKLAHOMA, BUT HE DIDN'T PLEAD, BECAUSE HE PLED GUILTY IN THIS CASE, THEY DECIDED NOT CHARGE HIM IN OKLAHOMA, IN THE OKLAHOMA SCAM, TO THE TUNE OF HUNDREDS OF THOUSANDS OF DOLLARS. YOU DON'T HAVE JUST A SIMPLE EXPLANATION FOR THE MONEY-LAUNDERING. YOU HAVE A WHOLESALE INTRODUCTION OF A PRIOR CONVICTION AND THE FACTS OF THOSE PRIOR CONVICTION THAT IS HOPELESSLY TAINTED THIS JURY. IT ALREADY PABTED MR. LUGO AS -- POINTED -- PAINTED MR. LUGO AS A CONVICTED FELON ON PROBATION. FIVE PERCENT OF THE $1.26 MILLION WAS LESS THAN $70,000, AND YET TO PAY OFF A LITTLE BIT MORE THAN 5 PERCENT, TO SHOW THAT 5 PERCENT OF THOSE PROCEEDS WERE USED TO PAY OFF THE FEDERAL PROBATION, THE STATE CALLED, I COUNTED NINE WITNESSES THAT WERE QUESTIONED AS TO THAT, AND MR. DOORBAL JUMPED IN, AS WELL, TO BRING OUT THE FACT THAT THE FEDERAL PROBATION WAS PENDING AGAINST MR. DOORBAL AND THAT HE WAS INVOLVED IN MEDICARE FRAUD AND HE WAS INVOLVED IN MEDICAID FRAUD AND HE WAS INVOLVED IN ALL OF THESE TYPES OF CRIMINAL ACTIVITIES, THROUGH HIS CROSS-EXAMINATION. I WOULD, ALSO, LIKE TO ADDRESS, IF I MAY, THE VERY BRIEFLY I WOULD LIKE TO ADDRESS THE FACT THAT THIS COURT ACTUALLY REMANDED THIS CASE, AT ONE POINT DURING THESE PROCEEDINGS, FOR A, FOR THE

TRIAL COURT TO ADDRESS EVIDENCE THAT MR. SCHILLER HAD BEEN INDICTED BY THE FEDERAL GOVERNMENT FOR MEDICARE FRAUD AND, BASED ON THE DEFENDANT'S MOTION FOR A NEW TRIAL, AND WHAT HAPPENED WAS THE TRIAL JUDGE SIMPLY DENIED THE MOTION FOR NEW TRIAL, WITHOUT EVEN PERMITTING, IN OUR VIEW, THE DEFENDANT TO BE ABLE TO PERFECT THE RECORD, WHICH I BELIEVE THAT WAS THE INTENTION OF THIS COURT, TO SEE EXACTLY WHAT OCCURRED HERE, BECAUSE HE SAYS I AM NOT GOING TO ALLOW YOU TO DO ANY DISCOVERY. I DON'T BELIEVE THAT THE LAW EVEN PROVIDES FOR YOU TO DO DISCOVERY. MR. SCHILLER WAS ARRESTED OUTSIDE OF THE COURTROOM, THE MOMENT HE FINISHED TESTIFYING IN THE SENTENCING PROCEEDING. AND HE WAS ARRESTED BY THE FEDERAL GOVERNMENT, AND THERE WAS APPARENTLY AN INDICTMENT, WITH THE VIEW OF THE DEFENSE ATTORNEY AT THE TIME THAT THE PROSECUTOR KNEW THIS, AS EARLY AS 1995, AND SAT ON THIS INFORMATION, AND OUR VIEW IS THAT THE VERY MINIMUM, THE CIRCUIT COURT SHOULD HAVE PERMITTED THE DEFENDANTS TO ENGAGE IN SOME TYPE OF DISCOVERY TO FIND OUT WHETHER HAD, IN FACT THE PROSECUTOR KNEW AND WHEN HE KNEW OR WHEN SHE KNEW IT. THAT WAS NOT PERMITTED IN THIS CASE. ALSO WE RAISED ISSUES CONCERNING CLOSING ARGUMENTS, AND I KNOW THAT THIS COURT HAS HEARD SOME OF THE ARGUMENTS, AS FAR AS MR. DOORBAL, BUT THIS IS A SEPARATE JURY, SO THESE ARE SEPARATE COMMENTS THAT WERE BEING DISCUSSED, WE, ALSO, CANDIDLY ADMIT THAT MOST IF NOT ALL OF THE CLOSING STATEMENTS IN THE GUILT PHASE WERE NOT OBJECTED TO, BUT WE, ALSO, LIKEWISE RELY ON THE FUNDAMENTAL ERROR, PARTICULARLY ON THE PROSECUTOR'S DISEARTHATION ON EVIL -- DISSERTATION ON EVIL, INDICATING THAT THIS SHOWS EVIL, LIKEENING THIS CASE TO AN IRANIAN HOSTAGE SITUATION, REIGNING THE SPECTOR OF A NATIONAL NIGHTMARE TO THE JURIES. THIS IS OUTRAGEOUS, WHAT THE PROSECUTOR WAS DOING, AND I HAVE NO IDEA WHY THE DEFENDANT'S ATTORNEY SAT ON HIS HANDS BUT HE DID, AND THERE COMES A POINT WHERE I BELIEVE THAT THE TRIAL JUDGE HAS TO STEP IN AND SAY THIS IS ENOUGH ALREADY. I MEAN, THE PROSECUTOR WENT ON TO SAY WE KNOW HE DID IT. IMAGINE YOUR FACE AND YOUR MOUTH BEING TAPED OVER. BY THE WAY, LUGO IS A LIAR. SHE SAID THIS. I ACTUALLY LOST COUNT OF HOW MANY TIMES SHE CALLED HIM A LIAR EVEN THOUGH HE NEVER TESTIFIED, AND EQUATED THAT TO HIS GUILT. HE IS A GREAT LIAR, AND HE IS ONE VERY GUILTY KILLER. THAT IS WHAT SHE SAID, AND THIS COURT HAS CONDEMNED THAT PARTICULAR UNION OF STATEMENTS IN THE GORE CASE. IF HE IS A LIAR, HE IS GUILTY. IT WAS THE UNANIMOUS DECISION OF THIS COURT, CONDEMNING THAT TYPE OF REMARK, AND IT IS EXACTLY WHAT MS. LEVINE AND THE PROSECUTOR DID BELOW. AND AS TO PENALTY-PHASE CLOSING ARGUMENTS, THERE WERE SOME OBJECTIONS AND THERE WERE NOT SOME OBJECTIONS. BY THE WAY, INSOFAR AS THE IRANIAN HOSTAGE SITUATION, SHE MENTIONS IT, AS WELL, IN THE OPENING STATEMENT, WHICH WE HAVE RAISED THIS IN THIS APPEAL, BUT IN THE CLOSING STATEMENT IN THE PENALTY PHASE, THE PROSECUTOR WENT ON TO SAY, TO INTIMATE THAT BECAUSE THEY TOOK AN OATH, THERE WAS NO OTHER APPROPRIATE SENTENCE IN THIS CASE OTHER THAN DEATH. THERE WAS AN OBJECTION TO THAT. AND OUR ARGUMENT IS THE JURORS SHOULD NOT BE MISLED INTO THINKING THAT THEY HAD A DUTY UNDER OATH TO RECOMMEND THE DEATH PENALTY THERE. IS NO DUTY FOR THEM TO DO THAT. SHE, ALSO, LIKENED THE DEFENDANT'S ACTIONS TO TREATING THE VICTIMS LIKE ANIMALS, AND SHE, JUST GARBAGE, SHE GOT INTO THE DISMEMBERMENT OF THE BODIES AND THERE WAS AN OBJECTION. THIS IS IMPROPER. YOU CANNOT TALK ABOUT THIS AS AN AGGRAVATOR, AND IT ENDED UP BEING A NONSTATUTORY AGGRAVATOR, AND THE JUDGE SAID, WELL, I AM GOING TO LET IT IN BECAUSE IT DEALS WITH CCP, AND THE PROSECUTOR, OF COURSE, IF YOU WILL READ IT IN THE TRANSCRIPTS, READILY AGREED, YES, YES, IT WILL BE ADDRESSED AS CCP, BUT REALLY WHAT WAS GOING ON IS SHE WAS INFLAMING THE PASSIONS OF THIS JURY, TALKING ABOUT THE DISMEMBERMENT OF THESE BODIES. IT HAD NOTHING DO WITH AN AGGRAVATOR. THE FACT THAT THEY HAD HEIGHTENED PREMEDITATION, YES, AND THAT THEY HAD PLANNED THESE THINGS, YES, THAT HAD SOMETHING TO DO WITH CCP, BUT THE FACT THAT THEY WENT AHEAD AND ACTUALLY DID KUPT COUTH UP THE BODY,-ON DID CUT UP THE BODIES -- DID CUT UP THE BODIES, THAT HAD NOTHING DO WITH THE ARGUMENT BEFOREHAND. GO TO THE YARD. GO TO THE GYM AND GET A WORKOUT. ALL OF THIS TIME AND TIME AGAIN, MOST PARTICULARLY IN THE HODGE INSIDE CASE. SHE -- WENT ON AND CITED AND SAID THIS IS THE WORST TYPE OF CASE. INTRODUCING INTO HER

ARGUMENT TOTALLY EXTRANEOUS, IMPROPER COMMENTS, CONCERNING SOCIETAL AND RELIGIOUS DOCTRINE, TOTALLY IMPROPER. SHE MENTIONED THAT THEY DESERVED NO MERCY AND THEN WENT ON TO EXPLAIN HOW THE DEFENDANTS SHOWED NO MERCY TO THE VICTIMS. AGAIN, TIME AND AGAIN, OBJECTION WAS NOT LODGED ON THAT, BUT WE WOULD ARGUE VERY STRENUOUSLY, THAT THIS AMOUNTED TO FUNDAMENTAL ERROR AND, IN FACT, I BELIEVE IN THE BROOKS CASE, IT INDICATED RECENTLY, BY THIS COURT, THAT YOU, IF YOU HAVE A MIXTURE OF OBJECTED-TO COMMENTS AND UNOBJECTED TO COMMENTS, THAT THIS COURT SHOULD LOOK AT THE ENTIRE RECORD TO SEE WHETHER OR NOT THE DEFENDANT WAS DENIED A FAIR TRIAL, AND THAT WAS, ALSO, CITED IN OUR BRIEF, AND LASTLY WHAT I WOULD LIKE TO ADDRESS IS THE IMPROPER DOUBLING, CONCERNING MORE PARTICULARLY PECK UNYEAR GAIN AND THE -- PECUNIARY GAIN AND THE UNDERLYING FELONY WHICH THE JUDGE FOUND AND IN THIS PARTICULAR CASE THE UNDERLYING FELONY HE WAS RELYING ON WAS KIDNAPING, BUT THIS CASE HAS RECENTLY RULED THAT, IN A BURGLARY SITUATION, IF THE PURPOSE IS TO, TO DO ROBBERY IS TO GAIN FUNDS, THEN IT DOESN'T MATTER THAT THEY STILL MERGE, AND YET THE COURT IN THIS CASE FOUND BOTH, PECUNIARY GAIN AND KIDNAPING, WHICH WE FEEL WAS AN IMPROPER DOUBLING. BASED ON ALL OF OUR PRESENTATIONS, WE FIND, WE ASKED THAT THIS COURT FIND BOTH THAT THE GUILT PHASE WAS IN ERROR AND THAT HE SHOULD BE, RECEIVE A NEW TRIAL, AND AT THE VERY MINIMUM THAT HE SHOULD RECEIVE A NEW SENTENCING, BASED ON THE OUTRAGEOUS COMMENTS MADE BY THE PROSECUTOR IN CLOSING ARGUMENTS. THANK YOU.

THANK YOU, MR. RODRIGUEZ. MS. RODRIGUEZ.

MAY IT PLEASE THE COURT. LISA RODRIGUEZ ON BEHALF OF THE STATE. TAKING APPELLANT'S ISSUES IN TURN, THE FIRST ISSUE BEING THE RICO, I THINK IT IS IMPORTANT TO LOOK AT GROSS, BECAUSE GROSS SETS OUT A VERY CLEAR TEST ON WHAT ELEMENT HAS TO BE PROVED TO ESTABLISH RICO. THERE ARE BASICALLY TWO ELEMENTS THE RACKETEERING, CRIMINAL ACTIVITY AND THE ENTERPRISE ASPECT OF IT, AND THE ENTERPRISE IS DEMONSTRATED THROUGH A FORMAL OR INFORMAL ORGANIZATION, AND SECONDLY THAT IT CONTINUES TO FUNCTION AS AN UNIT. WELL, THE RECORD PATENTLY REFUTES THE CONCEPT THAT THEY WERE NOT OPERATING AS AN UNIT. STEPHENSON PIERRE TESTIFIES EXPLICITLY ABOUT THE, FOR LACK OF A BETTER WORD, PARAMILITARY ORGANIZATION THAT WAS GOING ON WITH THESE PEOPLE, WHO WERE IN THE BUSINESS OF KIDNAPING, EXTORTING ASSETS, AND MURDERING THE VICTIMS AND DESTROYING THE EVIDENCE. HE SPECIFICALLY TESTIFIED THAT LUGO WAS THE GENERAL, THAT DOORBAL WAS THE MUSCLE, THAT DELGADO, WHO WORKED WITH SCHILLER, PROVIDED INTELLIGENCE. HE GOT THE INFORMATION REGARDING SCHILLER'S ASSETS, THAT HE AND WEEKS WERE MERELY THE FOOT SOLDIERS.

LET ME ASK YOU THIS, IF I MAY MAY. THE CONSIDERATIONS FOR A SEVERANCE ARE DIFFERENT, WHEN YOU HAVE A RICO CASE. ARE THE DEFENDANTS' RIGHTS, RELATIVE TO A SEVERANCE, DIMINISHED BY THE FACT THAT THIS IS A RICO OR THE SAME THING CONSIDERED?

I WOULD SUBMIT TO THIS COURT THAT DEFENDANTS' RIGHTS WERE NOT INFRINGED AT ALL, BY HAVING THE RICO COUNT JOINED WITH THE OTHER UNDERLYING MURDERS THAT FORMED THE PREDICATE ACTS. IN FACT, THIS COURT HAS HELD, PREVIOUSLY THAT, THERE IS NO ERROR IN DENYING SEVERANCE OF THE UNDERLYING PREDICATE ACTS. WHEN RICO IS PROPERLY PLED, AND EVEN IF WE CHOOSE APPELLANT'S TEST OF INTERRELATEEDNESS, WHICH IS --

ARE YOU SAYING THAT, IF A RICO IS PLED, ARE YOU NOT ENTITLED TO A SEVERANCE?

OF THE PREDICATE ACTS FROM THE RICO STATUTE, I WOULD SUBMIT TO THIS COURT YES. IN THIS PARTICULAR CASE, WITH THESE PARTICULAR FACTS, WE HAVE AN EXTREMELY INTERTWINED SERIES OF THE SAME PRINCIPLE PLAYERS INVOLVED IN THE KIDNAPING AND THE MURDERS AND THE MONEY-LAUNDERING, THAT THE PREDICATE ACTS, THE MURDERS, THEMSELVES, ARE THE

PREDICATE ACTS FOR THE RICO STATUTE. WE WOULD -- THE OTHER ALTERNATIVE WOULD BE TO HAVE AN ENTIRE 5-MONTH TRIAL FOR THE RICO STATUTE, LIE LEIING OUT ALL OF THE EVIDENCE -- LAYING OUT ALL OF THE EVIDENCE FOR UNDERLYING MURDERS, AND ADDITIONALLY THE SAME TRIAL WITH THE RICO COUNT REMOVED, AND I UNDERSTAND THAT THE RICO COUNT IS NOT --

IS IT A PER SE RULE THAT YOU ARE SAYING? RICO, THEN, THERE IS NO ENTITLEMENT TO A SEVERANCE.

THERE IS NO PER SE SAYING THAT YOU ARE NOT ENTITLED TO A SEVERANCE, WHEN YOU PLEAD RICO. HOWEVER, AS THIS COURT HELD IN SCHEMAKIN, WHEN RICO IS PROPERLY PLED, WHEN THE STATE CAN ESTABLISH RICO, THE SEVERANCE, THAT THE TRIAL COURT DOES NOT ERR, WHEN DENYING THE SEVERANCE OF THE PREDICATE ACTS FROM RICO, BUT EVEN IF WE APPLY THE APPELLANT TEST, WHICH I SUGGEST THIS COURT IS NOT SUGGESTING, IN ANY CASE LAW, THAT THE PREDADEQUATE ACT, IN THE NORMAL TEST FOR A SERIES OF TRANSACTIONS AND CONTINUING THE EPISODE, THE EPISODIC STANDARD TEST FOR JOINDER OF OFFENSES, ASIDE FROM RICO, EVEN UNDER THAT STANDARD, WE HAVE THE SAME PLAYERS INVOLVED. WE HAVE THE VICTIMS ARE SIMILARLY SITUATED. THEY ARE WEALTHY CITIZENS OF MIAMI. WE HAVE A WAREHOUSE THAT IS RENTED, AND STOCKED WITH TOOLS OF KIDNAPING AND EXTORTION THAT SCHILLER IS HOUSED IN FOR APPROXIMATELY A MONTH. WE HAVE THEM BOOKED AND CONTINUE TO RENT THAT SAME WAREHOUSE AND PLAN TO KEEP GREGA AND BURTON IN THE WAREHOUSE, HOWEVER THEY BUNGLED THAT AND MURDERED THEM PREMATURELY, BECAUSE DELGADO TESTIFIES THAT GREGA WAS KILLED TOO SOON.

IN THIS PARTICULAR CASE, WAS THE SEVERANCE DENIED ON THE BASIS THAT THIS WAS A RICO CASE, OR WAS IT DENIED ON THE BASIS THAT THERE WAS A FULL CONSIDERATION OF THE USUALLY ELEMENTS -- OF THE USUAL ELEMENTS FOR A SEVERANCE?

THE TRIAL COURT --.

DID THE JUDGE JUST TAKE A POSITION, WELL, THIS IS RICO, AND I REALIZE THAT YOU MIGHT HAVE INCONSISTENT DEFENSES, AND I REALIZE THAT THE HE SAID SHE SAID, ONE PARTY MIGHT BE POINTING TO ANOTHER, BUT THIS IS A RICO CASE, SO YOU ARE NOT ENTITLED TO A SEPARATION OF DEFENSE.

I DON'T BELIEVE IT WAS SEPARATED FOR THE OTHER TWO MURDERS.

I DON'T THINK YOU UNDERSTAND JUSTICE SHAW'S QUESTION. HE SUGGESTED THAT YOU SHOULD HAVE A SEPARATE TRIAL FOR THE DEFENDANTS, NOT SEVERANCE. I DON'T THINK YOU HAVE BEEN RESPONDING.

I AM SORRY. WITH REGARD TO SEVERANCE OF THE DEFENDANTS, THE TRIAL COURT GAVE THEM SEPARATE JURIES, SO THERE WOULD NOT BE ANY BRUTON PROBLEMS AND ALLEVIATED THE PROBLEMS ARISING FROM ONE JURY HAVING DELIBERATED OVER BOTH DEFENDANTS. HOWEVER, I WOULD POINT TO McCRAE VERSUS STATE AND DISCUSSES CRUM, AND SPECIFICALLY SAYS YOU HAVE GOT DEFENDANTS WHO ARE GOING TO BE HOSTILE TO ONE ANOTHER AT THE TRIAL AND POINTING THE FINGER AT ONE ANOTHER AND BLAMING EACH OTHER, AND THAT IS WHAT WE HAVE HERE, AND THERE IS NO SEPARATION NEEDED HERE. AND I WOULD ALSO POINT OUT THAT THIS ISSUE IS NOT PRESERVED. YES, THE COUNSEL DID MOVE FOR SEVERANCE OF THE DEFENDANTS PRIOR TO TRIAL AND HE DID PRESENT THE MOTION PRIOR TO TRIAL AND SEVERANCE OF THE DEFENDANTS. HE DID NOT RAISE THE ISSUE OF ANTAGONISTIC SECOND PROSECUTOR, WHICH HE POINTED OUT IN HIS BRIEF THAT, THE STATE GETS UP AND IN DID YOU SEE TESTIMONY AND IN DID YOU SEE WITNESSES REGARDING ELIAN TORES, AND THE FACT THAT LUGO'S PASSPORT WASN'T FILLED OUT WITH THE NAMES AND ALL OF THAT WAS INCRIMINATING EVIDENCE. ALL OF THAT WAS INTRODUCED THROUGH THE STATE. AT THE WORST, DOORBAL'S ATTORNEY MERELY CUMULATIVELY REINTRODUCED THAT EVIDENCE, BUT THERE IS NO

PREJUDICE. MOREOVER --

WAIT. WAIT. WAIT. I WANT TO MAKE SURE I UNDERSTAND. FIRST OF ALL, BACK TO JUSTICE SHAW'S QUESTION, THE FACT OF THE RICO CASE HERE HAS NOTHING TO DO WITH THE ISSUE AS TO WHETHER LUGO AND DOORBAL SHOULD HAVE BEEN SEVERED UNDER SEVERANCE RULE, CORRECT?

CORRECT. THE SEVERANCE OF THE DEFENDANTS --

YOU WERE TALKING ABOUT SEVERANCE OF THE OFFENSES.

I MISUNDERSTOOD.

SO THE RIGHT TO SEVERANCE OR WHATEVER THE LAW IS, IS THE SAME WHETHER THIS WAS A RICO CASE OR WHETHER IT WAS JUST A MURDER CASE.

SEVERANCE OF THE DEFENDANTS WOULD NOT BE AFFECTED BY THE RICO CHARGE.

NOW I WANT TO UNDERSTAND WHAT YOU ARE SAYING ABOUT THE PRESERVATION ARGUMENT. GREED THAT THEY MADE A MOTION -- YOU AGREED THAT THEY MADE A MOTION, LUGO MADE A MOTION FOR SEVERANCE AT THE BEGINNING OF THE TRIAL, AND WHAT WAS THE BASIS FOR THE MOTION OF SEVERANCE OF HIM FROM DOORBAL?

CONFLICTING DEFENSES, THAT HE DIDN'T, YOU KNOW, IT WAS PRETTY MUCH PRO FORMA MOTION, THAT THE DEFENSE WOULD BE PRESENTING CONFLICTING DEFENSES.

AND WHAT ELSE WOULD HE HAVE TO DO BEFORE TRIAL?

THE STATE'S POSITION IS THAT THE COMMENTS THAT HE RAISES ON HIS BRIEF, HE ESSENTIALLY THAT DOORBAL'S -- ESSENTIALLY THAT DOORBAL'S ATTORNEY GETS UP AND REITERATES THE QUESTIONS THAT THE STATE ASKED WERE NOT OBJECTED TO AT THE TRIAL. THE MAJORITY OF THE COMMENTS WERE --

YOU HAVE TO MOVE FOR SEVERANCE, BUT AS THE ANTAGONISTIC DEFENSE IS GOING TO GOS ON, WHAT WOULD HAPPEN?

YOU ARE OBJECTING TO THE QUESTION AND, YES, THE DEFENSE ATTORNEY WOULD HAVE TO GET UP AND YES, THAT QUESTION HAS BEEN ASKED AND ANSWERED, AND HE WOULD HAVE TO POINT OUT TO THE TRIAL JUDGE, IF HE IS SPECIFICALLY PLEADING THAT IT WAS IMPROPER JOINDER BECAUSE THE DOORBAL'S ATTORNEY WAS ACTING AS SECOND PROSECUTOR, THAT WASN'T RAISED AT ALL. THE ISSUE OF THE STATE'S ATTORNEY ASKING AND RAISING --

HOW DO YOU KNOW THAT ONE IS NOT GOING TO FINGER THE OTHER? THAT THAT IS NOT GOING TO BE THAT DOORBAL IS GOING TO SAY THAT LUGO WAS THE LEADER OR THE INSTIGATOR. HOW DO YOU, WITHOUT, HOW DOES THAT, HOW, IN REAL WORLD, WOULD DOORBAL, WOULD LUGO HAVE FOUND THAT OUT? WOULD HE VOIR DIRE -- I AM SORRY. LUGO VERSUS DOORBAL. HOW WOULD YOU --

CERTAINLY WHEN HE FOUND OUT AT TRIAL, HE WOULD OBJECT AND PRESERVE THE ISSUE.

HOW WOULD HE, AT THE TIME THAT IT CLEARLY BECAME ANTAGONISTIC, AFTER THE JURY IS SELECTED AND AFTER THIS IS GOING ON, AT THAT POINT THAT NOW I MOVE FOR A MISTRIAL, BECAUSE WHAT I TOLD YOU BEFORE IS NOW HAPPENING?

WELL, YOU WOULD THINK THAT HE WOULD AT LEAST OBJECT TO THE QUESTION AS BEING

CUMULATIVE. IF THE STATE HAS ASKED THE QUESTION AND THE ANSWER WAS GIVEN, DOORBAL'S ATTORNEY WOULD OBJECT AND SAY IT IS CUMULATIVE.

WOULD YOU THINK THERE WOULD BE ANYABILITY FOR A TRIAL JUDGE TO RESTRICT A CODEFENDANT'S CROSS-EXAMINATION AFTER WITNESS? BY SAYING IT IS CUMULATIVE TO WHAT THE PROSECUTOR SAID?

I WOULD SUBMIT TO THIS COURT THAT MERELY THE BASIS OF THAT QUESTION OCCURRING, MR. DOORBAL'S ATTORNEY GETTING UP AND REITERATING THE SAME QUESTIONS THE STATE HAD ALREADY ASKED AND HAD ALREADY INTRODUCED PREJUDICES APPELLANT NOT AT ALL. THAT EVIDENCE WAS ALREADY INTRODUCED VIA THE STATE. AT THE VERY MOST IT IS CUMULATIVE. HE IS NOT BROUING ANY -- INTRODUCING NEW EVIDENCE. IT IS NOT A REASON, FURTHER, FOR SEVERANCE AND DOES NOT ENTITLE SOMEONE SHRIMP TO SEVERANCE BECAUSE THEIR DEFENDANTS ARE HOSTILE AT TRIAL AND TAKE HOSTILE POSITIONS AND PAINT BLAME AT THE OTHER.

HOW WOULD YOU CHARACTERIZE THE DEFENSES ASSERTED BY DOORBAL AND LUGO IN THIS CASE?

REASONABLE DOUBT.

BOTH?

MR. DOORBAL'S DEFENSE, IN MITIGATION, I THINK HE PRESENTED THE IDEA THAT HE WAS, THAT APPELLANT WAS MASTERMIND, THAT HE WAS THE MUSCLE, BUT --

THAT WAS IN THE PENALTY PHASE MITIGATION IS WHAT YOU ARE SAYING.

CORRECT.

THAT WAS SEPARATED TOTALLY, WAS IT NOT? ANOTHER EVIDENCE THAT THEY ARE GOING TO RELY ON IN THE PENALTY PHASE IS INTRODUCED IN THE GUILT PHASE, AS WELL, IN TERMS OF HOW PEOPLE ARE GOING TO VIEW THEM AND WHETHER HE WAS OR WAS NOT DOMINANT, BUT THE FACT IS THAT IT IS IRRELEVANT, BECAUSE BOTH OF THEM ARE CULPABLE MEMBERS. BECAUSE THE FACT IS WHAT IF SOMEONE COMES UP WITH A PLAN AND THE OTHER AGREES TO EXECUTE THAT PLAN. BOTH ARE EQUALLY CULPABLE, AND SECTION 724 POINTS THAT OUT VERY CLEARLY, SO IN RESPONSE TO THE SEVERANCE ISSUES, THE STATE WOULD SUBMIT THAT HE WAS NOT PREJUDICED BY THE TRIAL COURT'S DENIAL OF SEVERANCE OF THE DEFENDANTS, AND SIMILARLY WITH THE RICO COUNT, THE STATE WOULD SUBMIT THAT THERE IS NO ERROR THERE. THE PREDICATE, AT SIMILAR. THE EVIDENCE ESTABLISHES THAT THE SAME PLAYERS WERE INVOLVED. THEY INTENDED THE SAME PLAN. THEY INTENDED TO KIDNAP THE VICTIMS, TORTURE THEM. THEY HAD THE SAME WAREHOUSE SET ASIDE TO CARRY THIS OUT. AND THEY ATTEMPTED TO KILL AND EVENTUALLY KILLED THEIR VICTIMS TO DO SO, BUT IT WAS VERY SIMILAR, THAT THEY ARE RELATED, THAT WHILE APPELLANT CONTENDS THAT THERE WAS A TEMPORAL DISCONNECT, THERE WASN'T, AS DISCUSSED IN THE PREVIOUS ARGUMENT. THEY KIDNAPPED SCHILLER IN NOVEMBER AND DECEMBER, FOR A MONTH, AND TORTURED HIM, AND WHEN THAT WAS CONCLUDED, THEY WENT ON TO THE NEXT VICTIM. THEY WERE OUT RECONNAISSANCING FOR OTHER TARGETS. THEY HAD WINSTON LEE ON THE TABLE FOR A WHILE AND STALKED HIM AND TRIED TO GET HIS SCHEDULE AND HAD PLANS IN THE MAKING TO KIDNAP HIM AND HE HAD NO SCHEDULE, SO THEY MOVED ON TO ANOTHER TARGET. THEY DID CONTINUE TO FUNCTION AS UNIT AND IT WAS CON TEMPORAL FUNCTIONALITY. THEY WERE IN THE BUSINESS OF KIDNAPING PEOPLE, DRAINING THEIR ASSETS AND KILLING THEM. THAT WAS THEIR BUSINESS. WITH REGARD TO THE ISSUE OF FEDERAL PROBATION BEING ENTERED INTO TRIAL, THE STATE WOULD SUBMIT THAT THIS ISSUE IS, ALSO, PRESERVED, TO THE EXTENT THAT AT TRIAL HE OBJECTED TO THE ENTIRE CONVICTION COMING IN. ON APPEAL NOW, HE SAYS THAT WE SHOULD HAVE REDACTED

THE PORTION OF THE CRIME ITSELF AND ONLY ALLOWED THE FACT THAT HE WAS ON PROBATION TO COME IN. WELL, THAT WASN'T THE POSTURE AT TRIAL. THE POSTURE AT TRIAL WAS THE ENTIRE CONVICTION SHOULD BE KEPT OUT, BUT MOREOVER, IT WAS AN IMPORTANT PIECE OF EVIDENCE. IT WASN'T A KEY PIECE OF EVIDENCE, BUT IT WAS IMPORTANT BECAUSE IT COULD ESTABLISH THE MONEY-LAUNDERING THAT LUGO HAD TO TERMINATE HIS PROBATION. HE TERMINATED HIS PROBATION, BUT THE PROCEEDS FOR THE SCHILLER KIDNAPING, THAT HIS MOTIVATION FOR TERMINATING PROBATION WAS TO GET A BANK ACCOUNT, BECAUSE ONE OF HIS PROBATION PROHIBITIONS BECAUSE WAS THAT HE COULD NOT HAVE A BANK ACCOUNT IN HIS NAME. IN ORDER TO EFFECT HIS MONEY-LAUNDERING SCHEME, HE HAD TO HAVE FREE ACCESS TO BANK ACCOUNTS, SO HE HAD TO TERMINATE THAT AND THE REASON HE HAD A PROHIBITION AGAINST HOLDING A BANK ACCOUNT WAS BECAUSE OF THE NATURE OF THE BANK ACCOUNT, WHICH WAS MONEY-LAUNDERING AND SECURITIES FRAUD, SO IT WAS MATERIAL AND KEY TO THE BACKDROP OF FACTS.

ISN'T THAT A STRETCH FOR INTRODUCING A CONVICTION, THE FACT THAT HE IS ON EXISTING PROBATION FOR SOMETHING ELSE? INSOFAR AS IT BEING RELEVANT TO WHAT IS GOING ON HERE? WE ARE TALKING ABOUT A BANK ACCOUNT OR WHATEVER, AND CLEARLY UNDER THE CIRCUMSTANCES OF THIS CASE, WHERE THEY ARE DOING EVERY KIND OF ILLEGAL THING THAT YOU CAN THINK OF, HAVING A BANK ACCOUNT IN ANY NUMBER OF NAMES OR WAYS OR WHATEVER, SEEMS ALMOST LIKE A TRIVIAL MATTER, AND SO WHY WOULD YOU NEED TO, THIS RATHER TENUOUS WAY OF SHOWING THE ONLY WAY HE COULD OPEN UP A BANK ACCOUNT WOULD BE TO GET OFF PROBATION, AND THEN THE USE OF THE FUNDS THAT HE GOT FROM ONE OF THESE EARLIER KIDNAPINGS AND THE EXTORTION OF THINGS WAS THE WAY THAT HE GOT OFF PROBATION. I AM HAVING A LOT OF DIFFICULTY SEEING THAT, REALLY, THE RELEVANCY OF THAT, AND HOW HARMFUL IT MAY HAVE BEEN IS A DIFFERENT STORY, BUT WHERE, YOU KNOW, I AM, EXPLAIN TO ME, AGAIN THE LOGIC OF THAT.

THE LOGIC IS, THE LOGIC IS THAT IT DEMONSTRATES HE HAS GOT HIS HANDS IN THE PROCEEDS FROM THE SCHILLER KIDNAPING. HE LAUNDERS THAT MONEY THROUGH THE ACCOUNTANT, WHICH IS GOING TO THE RICO ACT. THE GROUP OF INTERLOCKING INDIVIDUALS, ALL PLAYING A ROLE IN THE RICO STATUTE. HE LAUNDERS THE MONEY THROUGH REESE AND THE RICO STORY AND REESE COMES UP WITH THE $100,000 AND THE KIDNAPING STORY, IT IS ESTABLISHED THAT HE IS LAUNDERING MONEY FROM THE KIDNAPING. IT ALSO ESTABLISHES THAT HE HAD TO TERMINATE PROBATION, IN ORDER TO BE ABLE TO HAVE HIS HANDS FREE, IN ORDER TO BE ABLE TO DO ALL OF THIS. IT IS IMPORTANT THAT HE HAVE A BANK ACCOUNT. TO HAVE A JOB --

HE COULDN'T HAVE A BANK ACCOUNT IN HIS NAME, IN OTHER WORDS TO DO ALL OF THESE ILLEGAL THINGS, THAT HE WOULDN'T DO ONE MORE ILLEGAL THING NOMINALLY, IN VIOLATION OF HIS PROBATION ORDER?

IT IS KEY IN TERMS OF HOW THE MONEY LAUNDER WAS ESTABLISHED. THE PROCEEDS FROM THE MURDERS AND KIDNAPING WERE MONEY LAUNDERED THROUGH THE CENTRAL ACCOUNT ANT, ME SAY, BUT THE STATE -- REESE, BUT THE STATE NOTED THAT, IN VIEW OF THE ARE MOUNTAIN OF EVIDENCE, THAT THE DNA FROM THE BLOOD FOUND IN THE APARTMENT THE TESTIMONY OF HIS GIRLFRIEND, TESTIFYING THAT HE PLANNED TO TARGET AND KIDNAP THESE PEOPLE AND PLANNED TO GET THEIR ASSETS. THE TESTIMONY FROM DELGADO THAT HE WAS THE BRAINS AND CAME UP WITH THE SCHEME, THAT EVEN IF IT WERE ERROR, IT IS CERTAINLY HARMLESS ERROR.

IS COUNSEL RIGHT, THOUGH, THAT THEY WERE HAMMERING AWAY AT THIS PARTICULAR THING AND THAT THEY BROUGHT, I DON'T KNOW HOW MANY WITNESSES. HE SAID THEY BROUGHT WITNESS AFTER WITNESS ON, TO --

NO.

HELP ME. ANOTHER ONLY WITNESS THAT WAS BROUGHT IN SPECIFICALLY FOR THE PURPOSE OF PROBATION WAS MR. WEST LAKE, WHO WAS THE PROBATION OFFICER. THE OTHER WITNESSES WHO WERE CALLED WEREN'T CALLED TO TESTIFY ABOUT THE PROBATION. THEY TESTIFIED PERIPHERALLY THAT YES, FOR INSTANCE, I BELIEVE IT WAS DELGADO WHO TESTIFIED THAT THE NAMES ON THE ACCOUNTS AND OFFSHORE AC OCCUPANTS HAD TO BE INDOOR BALL'S NAME, BECAUSE LUGO COULD ACTUALLY NOT HAVE A BANK ACCOUNT, BECAUSE OF HIS PROBATION, SO PERIPHERALLY, HE -- WERE THOSE THINGS ALL OBJECTED TO AS THEY CAME IN OR NOT?

THE MAJORITY OF THE TESTIMONY REGARDING THE PROBATION, NO, AND IN FACT, I THINK DEFENSE COUNSEL HAD PRESERVED THE ISSUE BY OBJECTING. HE TOLD THE JUDGE I OBJECT TO THE CONVICTION COMING IN, BUT IN TERMS OF THE OTHER WITNESSES MENTIONING IT PERIPHERALLY, NO, I DON'T BELIEVE IT WAS OBJECTED TO. WITH REGARD TO THE MOTION FOR NEW TRIAL, THE STATE WOULD SUBMIT THAT THIS IS PROCEDURALLY BARRED, AND THE STATE DID PRESERVE ITS PROCEDURE BAR IN ITS RESPONSE TO THE MOTION FOR RELINQUISHING JURISDICTION FOR THE MOTION FOR NEW TRIAL. IN THE MOTION, APPELLANT HAD SAID THAT HE, THE INFORMATION KNOWN TO HIM ABOUT THE NEW TRIAL HAD COME TO FORT JULY 10 OF 1998 AND THE MOTION FOR NEW TRIAL WASN'T FILED UNTIL JULY 30, BUT MOREOVER THE GRAPH A MEANT FOR THE NEW TRIAL -- THE GRAVAMENT FOR NEW TRIAL WASN'T MENTIONED. MOREOVER, THE TRIAL COURT HAD EXHAUST I FEEL DEALT WITH THE DISCOVERY OF SCHILLER'S ALLEGED MEDICARE FRAUD. IN FACT HE WAS DEPOSED ON THE POTENTIAL MEDICARE FRAUD. EVERYBODY KNEW OF THE POSSIBILITY THAT SCHILLER WAS ALLEGEDLY INVOLVED IN MEDICARE FRAUD. DELGADO WAS, IN FACT, CROSS-EXAMINED AT TRIAL REGARDING THE ALLEGED MEDICARE FRAUD. THE STATE TESTIFIED AT THE MOTION FOR NEW TRIAL THAT SHE WASN'T AWARE OF WHEN MR. SCHILLER WOULD BE ARRESTED, BUT IN ANY CASE THE INDICTMENT OR ARREST IS NOT ANY PROOF OF GUILT. REGARDING THE MEDICARE FRAUD, THE WITNESSES WERE CROSS-EXAMINED ON SUCH AND IT WAS NOTED AT TRIAL. THE RECORD DEMONSTRATES THAT EVERYBODY WAS ABUNDANTLY CLEAR OF THIS INFORMATION FORM THE OTHER ISSUE HE RAISED WAS THE MEDICAL EXAMINER. THE MEDICAL EXAMINER DIDN'T EVEN SPECIFICALLY PINPOINT A CAUSE OF DEATH. THE APPELLANT COMPLAINS THAT THE MEDICAL EXAMINER TESTIFIED AS TO HAC, RELATED TO BURTON. HOWEVER, MOST OF THE TESTIMONY RELATING TO HAC CAME FROM THE EYEWITNESS TESTIMONY FROM DELGADO AND THE OTHER WITNESSES WHO OBSERVED WHAT HAD OCCURRED. WITH REGARD TO COMMENTS MADE IN THE GUILT PHASE, NONE OF THE COMMENTS THAT APPELLANT RAISES NOW WERE OBJECTED TO. THE ONE HE SEEMS TO EMPHASIZE IS THE FACT THAT THE PROSECUTOR REFERRED TO THE APPELLANT AS A LIAR, BUT THIS WAS IN THE CONTEXT OF HER LAYING OUT ALL THE INSTANCES IN WHICH THE EVIDENCE DEMONSTRATED THAT THE APPELLANT LIED. HE LIED TO HIS PROBATION OFFICER. HE LIED TO HIS GIRLFRIEND. HE TOLD HER THAT HE WAS IN THE CIA, THAT HE WAS A STOCK BROKER. HE LIED TO HER THAT THE HANDCUFFS THAT SHE SAW IN THE CAR WERE MERELY SEX TOYS. HE LIED WITH REGARD TO MR. SCHILLER MOVING AND HE IS TAKING OVER THE HOUSE FOR THE CONSULATE, AND HE LIED AS TO SETTING UP FALSE MEETINGS AND IN FACT HE WAS PLOTTING THE KIDNAPING OF MR. SCHILLER, AND IN FACT HE LIED TO NUMEROUS BANK OFFICIALS, INCLUDING MR. BLANCO AND MR. MURPHY AND THE FICTITIOUS PEOPLE THAT HE WAS OPENING ACCOUNTS FOR. HE LIED TO THE POLICE AS TO WHERE THE BODIES WERE. HE TOLD THEM THAT HE WOULD SHOW THEM THE BODIES AND THEN SHOWED THEM WHERE THE FORCE OWES WERE, WHICH WITHOUT THE OTHER EVIDENCE THEY WOULDN'T HAVE BEEN ABLE TO IDENTIFY THE BODIES. HE HAD A WHOLE STOCKFUL OF FALSE PASSPORTS AND FALSE DOCUMENTATION. SO IT WAS DEMONSTRATED THAT MR. LUGO LIED. THE FACT THAT SHE CALLED HIM A LIAR IS VERY IN CONS SEQUENTIAL AND IS ACCURATE. THE EVIDENCE SHOWS THAT HE LIED AND IF, IN FACT, IT IS A ERROR, IT IS NOT FUNDAMENTAL. THE CLOSING ARGUMENT OBJECTION WAS AS TO THERE IS NO OVER SENTENCE, BUT THIS -- NO OTHER SENTENCE, BUT THIS IS IN THE CONTEXT OF THE PROSECUTOR TELLING THE JURY THERE ARE MANY AGGRAVATORS. IT IS A VERY AGGRAVATED CASE. THERE IS VERY LITTLE MITIGATION IN THIS CASE. THE ONLY PROPER APPROPRIATE SENTENCE IN THIS CASE IS THE DEATH SENTENCE.

WHAT DO YOU SAY TO THE DEFENDANT'S ARGUMENT THAT CLOSING ARGUMENTS, EVEN UNOBJECTED TO BY THE DEFENDANT, CAN REACH A STAGE THAT THE DEFENDANT IS DENIED A FAIR TRIAL THAT THE ARGUMENT CAN BE SO FAR ON THE OUTRAGEOUS SIDE THAT THE JUDGE HAS OBLIGATION, AT SOME POINT, TO STEP IN AND SAY YOU CAN'T ARGUE GOLDEN RULE AND ALL THESE OTHER THINGS AND STOPS THE PROSECUTION.

I WOULD SUBMIT --

-- FROM PROCEEDING IN THAT VAIN, AND IF HE DOESN'T -- THAT VEIN, AND IF HE DOESN'T, IF, THEN, THE DEFENDANT IS DENIED A FAIR TRIAL, IT WOULD BE FUNDAMENTAL ERROR. WHAT DO YOU SAY THAT TO INSTANCE?

IN SOME CASES IT WOULD BE APPROPRIATE. CLEARLY THE DEFENDANT CAN BE DENIED FROM FUNDAMENTALLY IMPROPER STATEMENTS AT CLOSING. THIS DID NOT OCCUR IN THIS CASE. THE COMMENTS SHE MADE WERE FAIR AND ACCURATE COMMENTS ON WHAT THE EVIDENCE ESTABLISHED. SHE MADE A COMMENT ABOUT, YOU KNOW, THE CRIMES BEING EVIL. WELL, THE CRIMES WERE EVIL. SHE DIDN'T MAKE A COMMENT ON THE DEFENDANT BEING EVIL. THE COMMENTS THAT WERE MADE REFLECTED WHAT THE EVIDENCE SHOWED. THEY WEREN'T FUNDAMENTAL IN THIS CASE.

HOW ABOUT THE TAPE OVER YOUR MOUTH AND THE HOOD OVER YOUR HEAD. CAN YOU IMAGINE?

IT IS A GOLDEN RULE VIOLATION BUT IN THE CONTEXT OF THE CLOSING ARGUMENT THAT LASTED 140 PAGES, THAT WAS TWO LINES IN THE VAST -- THE TRANSCRIPT, ITSELF, WAS 14,000 PAGES. THE CLOSING ARGUMENT WAS LENGTHY LENGTHY. WE ARE TALKING ABOUT TWO LINES AND A CLOSING ARGUMENT THAT DEALT WITH EXTENSIVE EVIDENCE. IT IS IMPOSSIBLE THAT THE JURY WOULD HAVE BEEN AFFECTED OR THAT THEIR DETERMINATION WOULD HAVE BEEN AFFECTED BY THE PROSECUTOR SAYING IMAGINE HOW SUCH-AND-SUCH FELT ON YOUR SKIN AND THE CONNECTION WITH ALL OF THE EVIDENCE THAT WAS PUT FORWARD TO THE JURY, AND THE LENGTH OF THE CLOSING ARGUMENT. THE NUMBER OF AGGRAVATORS THAT WERE ADDUCED, THERE WERE SIX AGGRAVATORS, PRIOR VIOLENT FELONY, AVOIDING ARREST, HEINOUS AND AT ATROCIOUS AND DEALING WITH CHRISTINA BURTON AND THE ONLY OTHER COMMENT THAT WAS OBJECTED TO WAS HER COMMENTS THAT DEFENDANT HAD TREATED THE VICTIMS LIKE GARBAGE BY DISMEMBER ERRING THEM, AND AT TRIAL SHE DID NOT OBJECT TO THAT BEING INFLAMMATORY. DEFENSE COUNSEL DID NOT OBJECT TO IT ON BEING IN FLAM TOMPLT DEFENSE COUNSEL OBJECTED TO IT ON THE BASIS THAT DISMEMBERMENT WAS NOT AN AGGRAVATOR AND THE DEFENSE SAID, NO, IT GOES TO GOLD KOELED, CALCULATED AND -- COLD, CALCULATED AND PREMEDITATED, AND ON APPEAL, THERE WAS NO OTHER SENTENCE WAS THE PROSECUTOR'S STATEMENT, AND THAT IS AN APPROPRIATE SENTENCE, IN VIEW OF THE OVERWHELMING AGGRAVATORS AND THE NATURE OF WHAT OCCURRED IN THIS CASE. WHEN YOU WEIGH THE AGGRAVATORS AND MITIGATORS, THERE IS NO OTHER SENTENCE THAN THE DEATH SENTENCE. THAT IS THE APPROPRIATE SENTENCE. SO UNLESS THE COURT HAS ANY OTHER QUESTIONS, THE STATE WOULD ASK THAT THIS COURT AFFIRM ITS CONVICTION AND SENTENCE AND THE STATE WILL RELY ON ITS BRIEF.

THANK. REBUTTAL?

VERY BRIEFLY. I WANT TO ANSWER SOME OF THE QUESTIONS THAT WERE ASKED. THE DEFENSE DID MOVE TO SEVER, BASED ON THE RICO. THE RECORD, ON PAGE 2529 THROUGH 2535, WHERE HE SPECIFICALLY POINTS OUT THAT THIS IS NOT, THAT THIS SHOULD NOT OCCUR. THAT THE COURT SHOULD SEVER OUT THE TWO EPISODES, BECAUSE THEY ARE NOT INTERRELATED.

WHAT ABOUT THE ARGUMENT THAT SUPPOSE YOU HAVE SEVERANCE FROM THE CODEFENDANT, WAS NOT SUFFICIENTLY SPECIFIC, IN THAT WE HAVE HELD THAT MERELY HOSTILE DEFENSES ARE,

THEMSELVES, MIGHT NOT BE GROUNDS TO SEVER.

WELL, THE, IN 2514 OF THE RECORD, THAT IS THE MOTION FOR SEVERANCE THAT WE TALKED ABOUT THAT. AND HE LAYS OUT A COUPLE OF PARAGRAPHS, AFTER ADDRESSING BRUTON, HE POINTS OUT THAT DUVAL IS ASSERTING THAT HE WILL RAISE THE DEFENSE OF DURESS AND COME IRINGSZ -- AND COERCION, AND IN HIS ATTEMPT TO RAISE DEFENSE OF DURESS AND COERCE, HE ATTEMPTED TO ADMIT EVIDENCE SUBMITTED IN THIS TRIAL AND SUBMITED THAT LUGO WAS AND TACKNISTIC -- ANTAGONISTIC TO THE DEFENSE, AND I AM NOT SURE, OTHER THAN HOW MUCH, ACTUALLY HEARING THE ACTUAL TESTIMONY OF MR. DOORBAL TESTIFY, HOW MUCH CLEARER DEFENSE COUNSEL COULD BE, SAYING RAISING ALL KINDS OF RED FLAGS AND SAYING, JUDGE, WE HAVE A PROBLEM HERE AND THIS IS THE PROBLEM, AND HE RAISED IT IN A MOTION.

WHAT KIND OF HEARING DID THE JUDGE HAVE ON THE SEVERANCE? IN REAL LIFE PRACTICALITY, THERE WERE TWO DIFFERENT DEFENSE LAWYERS, WHO, SOMETIMES THEY ARE TOTALLY COOPERATING AND OTHER TIMES THEY REALLY ARE WORKING AT CROSS PURPOSES.

THROUGH MOST OF THE --

WHAT KIND OF HEARING WAS IT ON THIS CASE?

ON THE LEGAL ISSUES, THROUGH MOST OF THE LEGAL ISSUES, AFTER HAVING READ THE TRANSCRIPT, IT APPEARS THAT THEY WERE NOT ANTAGONISTIC TO THE POINT OF WE DON'T AGREE WITH YOUR POINT ON LAW.

ON THE MOTION FOR SEVERANCE, THOUGH, WAS DOORBAL'S ATTORNEY QUESTIONED ABOUT WHETHER HE WAS INTENDING TO FINGER LUGO AS BEING THE MASTERMIND?

I DON'T RECALL THAT OFFHAND, YOUR HONOR, BUT I DO CITE TO THE SECTION OF THE TRANSCRIPT THAT DEALS WITH THE TRIAL JUDGE'S HEARING ON THAT, AND THERE WAS AN ARGUMENT CONCERNING THAT, AND THE JUDGE MADE A RULING ON IT.

BUT DID DOORBAL'S ATTORNEY WANT A SEVERANCE, OR WAS IT JUST --

I BELIEVE HE FILED A MOTION FOR SEVERANCE, BASED ON BRUTON, BUT I HAVEN'T SEEN ONE RAISED ON ANY OTHER.

THANK, MR. RODRIGUEZ. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.