Charles Michael Kight vs. State of FLorida

SORT OF OFFERING THEM DEALS IN EXCHANGE FOR THEIR TESTIMONY. THE OTHER IS JUST A STRAIGHT OUT STATEMENT THAT THEIR TESTIMONY IS FALSE. I MEAN THAT THEIR TESTIMONY AT TRIAL WAS FALSE.

RIGHT.

THE TRIAL COURT, IN THE FIRST HEARING, DID IT MAKE A FINDING AS TO THAT THEY WERE NOT CREDIBLE AT ALL ABOUT WHETHER THEY WERE, NOW, TELLING THE TRUTH OR THEY HAD BEEN TELLING THE TRUTH AT THE TIME OF TRIAL?

THE COURT MADE A CREDIBILITY FINDING AND DID NOT MAKE SPECIFIC FINDINGS ABOUT WHAT ASPECTS OF THE TESTIMONY WERE NOT CREDIBLE.

ONE OTHER QUESTION. AS TO THE RELATIVE CULPABILITY, OTHER THAN THE FOUR JAIL HOUSE SNITCHES THAT TESTIFIED THAT MR. KIGHT CONFESSED TO THEM, TWO WHO HAVE NOW RECANTED THEIR TESTIMONY, WHAT OTHER PHYSICAL EVIDENCE WAS THERE THAT INDICATES WHICH DEFENDANT WAS THE ACTUAL PERPETRATOR OF THIS CRIME?

OKAY. THE PHYSICAL EVIDENCE IN THIS CASE CONSISTED OF BLOOD THAT WAS FOUND ON MR. KIGHT'S CLOTHES AND MR. HUTTO'S CLOTHES, AND THE STATEROLOGY EXPERT -- THE STATE SEROLOGY EX-PERCKT TESTIFIED THAT THE BLOOD ON MR. HUTTO'S CLOTHES WAS CONSISTENT WITH THAT OF THE VICTIM AND INCONSISTENT WITH HIS OWN BLOOD AND THE BLOOD ON MR. KIGHT'S CLOTHES WAS CONSISTENT WITH THE DEFENDANT'S BLOOD. MR. HUTTO WAS, ALSO, IN POSSESSION OF THE VICTIM'S BELONGINGS WHEN HE WAS ARRESTED AND MR. KIGHT WAS IN POSSESSION OF A KNIFE THAT HAD BEEN LONGED TO THE VICTIM. THAT WAS THE ONLY EVIDENCE IN THIS CASE.

HOW MANY WOUNDS WERE INFLICTED ON THE VICTIM IN THIS CASE. DO YOU KNOW?

51. JUDGE CARRUTHERS FOUND THAT THIS NEWLY-DISCOVERED EVIDENCE WOULD IN THE MAKE A DIFFERENCE AT A TRIAL OR RESENTENCING. BECAUSE OF THE SPECIAL VERDICT, WE KNOW THAT THE JURY DID NOT BELIEVE THE DEFENSE WITNESSES AT TRIAL. WE DO KNOW THAT JUDGE CARRUTHERS HAD FOUND EQUAL CULPABILITY, BASED ON THE NEWLY-DISCOVERED EVIDENCE, SO WHAT WE HAVE IS A JUDGE WHO HEARD THE NEW EVIDENCE, FOUND EQUAL CULPABILITY, A JURY THAT DID NOT HEAR THE EVIDENCE AND FOUND THAT MR. KIGHT WAS THE ACTUAL KILLER.

ARE WE SURE -- YOU KNOW, I AM READING THE SENTENCE, THE ORDER OF THE TRIAL JUDGE IN THIS CASE, AND IT IS HARD -- I DON'T QUITE READ IT THE WAY YOU DO, AND I WANT TO MAKE SURE ABOUT IT. I READ THAT HE SAYS THAT THE NEW EVIDENCE IS CUMULATIVE, THAT HE HAS NOW DONE JUST AN OVERALL REVIEW OF THE RECORD, AND THAT MAYBE HE WOULD HAVE COME TO A DIFFERENT CONCLUSION THAN THE ORIGINAL TRIAL JUDGE, AS TO THE CULPABILITY. IS THAT NOT, ALSO, WHAT THE READING OF WHAT THE JUDGE HAS SAID?

YES. THAT HE FOUND EQUAL CULPABILITY.

BUT A JUDGE -- YEARS AFTER A TRIAL, JUST BECAUSE A DIFFERENT JUDGE WOULD HAVE FOUND EQUAL CULPABILITY, IS NOT A REASON TO REVERSE A DEATH SENTENCE, IS THERE?

WELL, IT IS A REASON TO REVERSE THE DEATH SENTENCE, WHEN THE CODEFENDANT HAS A LESSER SENTENCE AND HAS BEEN FOUND TO BE EQUALLY CULPABILITY -- EQUALLY CULPABLE.

YOU ARE SAYING THAT FINDING SHOULD BE REVISITED BY A TRIAL JUDGE AT ANY STAGE IN POSTCONVICTION PROCEEDINGS?

YES. WHEN THERE IS NEWLY-DISCOVERED EVIDENCE.

I WASN'T SURE THAT THE NEWLY-DISCOVERED EVIDENCE IS WHAT LED JUDGE CARRUTHERS TO SAY THAT HE NOW LOOKS AND SAYS THAT THE CULPABILITY LOOKS TO BE EQUAL, AND THAT IS HOW YOU ARE INTENTING IT.

YES. HE CONSIDERED THE NEWLY-DISCOVERED EVIDENCE AND THE EVIDENCE THAT WAS PRESENTED AT TRIAL AND CONCLUDED THAT THE CODEFENDANT IS EQUALLY CULPABLE. THE STATE AGREES THAT THIS EVIDENCE WOULD NOT HAVE MADE A DIFFERENCE AT TRIAL, AND IN DOING SO, THEY HAVE CONCEDED MR. HUTTO'S INVOLVEMENT IN THIS CRIME. IN PAGE 39 OF THEIR ANSWER BRIEF, THEY SAY ALL THAT THE NEWLY-DISCOVERED EVIDENCE SAYS IS THAT HUTTO ADMITTED STABBING THE VICTIM. THE TESTIMONY DOES NO MORE THAN INDICATE THAT HUTTO MAY HAVE PARTICIPATED IN THE STABBING WITH KIGHT, BUT THAT HAS ALWAYS BEEN THE CASE. THE STATE NEVER CLAIMED THAT KIGHT ACTED ALONE OR THAT HUTTO WAS INNOCENT. HUTTO WAS OBVIOUSLY A PARTY TO THE MURDER.

ISN'T THAT, REALLY, THE STATE OF THE RECORD? I MEAN, THE TRIAL JUDGE, IN THIS NEW SENTENCING ORDER, GOES THROUGH GREAT PAINS TO TALK ABOUT THE EVIDENCE THAT WAS ADMITTED, INCLUDING HUTTO'S STATEMENT THAT INDICATES HIS OWN INVOLVEMENT IN THIS CRIME, AND SO YOU KNOW, THE BOTTOM LINE SEEMS TO BE, HERE, THAT THE TRIAL JUDGE IS SAYING, YES, WE HAVE SOME MORE EVIDENCE, BUT IT REALLY IS BASICALLY THE SAME EVIDENCE THAT WE HAVE PRESENTED. IT IS JUST CUMULATIVE OF THAT EVIDENCE, THAT MR. HUTTO WAS, IN FACT, INVOLVED. THERE WAS BLOOD ON MR. HUTTO'S CLOTHING. MR. HUTTO ADMITTED THAT HE WAS THERE. SO WE -- BASICALLY WE HAVE ONE MORE WITNESS WHO IS SAYING THE SAME THINGS WE HAVE HEARD.

BUT THIS WITNESS MADE A DIFFERENCE TO JUDGE CARIETHERS. JUDGE CARIETHERS HEARD THE EVIDENCE AND FOUND AT LEAST EQUAL CULPABILITY. THAT ISSUE IS DISPOSITIVE. BASED UPON ALL OF THIS COURT'S CASE LAW, STATING REPEATEDLY, THAT EQUALLY CULPABLE CODEFENDANTS MUST BE TREATED THE SAME. WE HAVE THAT FINDING NOW. THAT IS BASED ON NEWLY-DISCOVERED EVIDENCE, AND THIS COURT'S PRIOR FIND HAD GONE THAT THE SENTENCE IS NOT DISPRATT, MUST BE CONSIDERED IN LIGHT OF THE NEW EVIDENCE AND IN LIGHT OF THE FACT FINDING THAT THE DEFENDANT IS AT LEAST EQUALLY CULPABLE. I WOULD LIKE TO SAVE THE REMAINING TIME FOR MY REBUTTAL.

YOU MAY DO SO. MR. FRENCH.

MAY IT PLEASE THE COURT. CURTIS FRENCH FOR THE STATE OF FLORIDA. LET ME TALK ABOUT THE FACTS JUST QUICKLY. THE VICTIM IN THIS CASE WAS STABBED 51 TIMES. NO MATTER WHO -- WHOSE TESTIMONY YOU LOOK AT, HUTTO TESTIFIED AND, OF COURSE, YOU HAD KIGHT'S STATEMENT, ALSO, AND VARIOUS OTHER WITNESSES. HE WAS STABBED, I BELIEVE, 26 TIMES IN THE NECK, EITHER IN THE RIGHT OR THE LEFT OR THE BACK PART OF THE NECK, 25 TIMES IN THE BACK. AFTER HE WAS STABBED A NUMBER OF TIMES, HE WAS DRAGGED OFF INTO SOME BUSHES, AND HE WAS STILL BREATHING, SO A FINAL CUT WAS INFLICTED TO THE THROAT. THIS WOUND WAS IMMEDIATELY THE MOST IMMEDIATELY FATAL WOUND THAT WAS INFLICTED, BECAUSE IT CUT THE CARROT I HAD -- THE COROTID ARTERY AND THE JUGULAR VEIN.

DO WE KNOW WHO DID THAT?

KIGHT TOLD POLICE THAT HUTTO DID IT. HOWEVER, KIGHT TOLD EDDIE HUGO THAT HE CUT THE DRIVER'S THROAT, AND HE, ALSO, TOLD RICHARD ELWOOD THAT.

ARE THESE THE NONRECANTING WITNESSES?

RICHARD ELWOOD, MY READING OF THE 1989 PROCEEDINGS, RICHARD ELWOOD WAS THE ONLY ONE THAT RECANTED HIS TESTIMONY, AFTER THE STATE FAILED TO GIVE HIM A DEAL AND HE GOT MAD AT THEM. EVERY OTHER WITNESS CONTRADICTED HIS TESTIMONY.

DID THE THREE OTHER WITNESSES, ARE THE ONES THAT, AFTER THEY GAVE THEIR TESTIMONY, HAD THEIR SENTENCING REDUCED?

MY READING OF THE RECORD IS THAT NONE OF THEM HAD THEIR SENTENCINGS REDUCED, EXCEPT THAT A COUPLE OF THEM HAD LOST GAIN TIME, BECAUSE AT THE TIME THAT THEY TESTIFIED, THEY HAD ALREADY BEEN CONVICTED AND SENTENCED, BUT THEY WERE WAITING IN JAIL RATHER THAN IN PRISON FOR THIS CASE TO COME TO TRIAL, SO BECAUSE OF THAT THEY LOST GAIN TIME THAT THEY WOULD HAVE RECEIVED IN PRISON, SO THEY WERE COMPENSATED TO THE EXTENT THAT THEY HAD LOST THEIR GAIN TIME. PAST THAT, I DON'T THINK THERE WERE ANY --

LET ME ASK YOU THIS. 26 TIMES TO THE NECK AND 25 TIMES TO THE BACK AND THEN A CUT TO THE THROAT. AT THE ORIGINAL TRIAL, WAS IT THE STATE'S POSITION THAT ALL 52 WERE INFLICTED BY MR. KIGHT?

THE STATE DIDN'T TAKE A FIRM POSITION ON THAT. THE STATE ACKNOWLEDGED, IN ARGUMENT, THAT HUTTO MAY HAVE PARTICIPATED IN THE CUTTING. IN FACT, EDDIE HUGO, WHO TOLD HIM THAT KIGHT TOLD HIM THAT HE HAD CUT THE TAXI DRIVER'S THROAT, ALSO TOLD HIM THAT THEY, MEANING HIM AND HUTTO, HAD PARTICIPATED IN THE STABBING, SO THERE WAS SOME EVIDENCE THAT HUTTO HAD PARTICIPATED IN THE STABBING.

WHAT I AM HAVING TROUBLE WITH, KNOWING THAT MR. HUTTO HAD A LOW IQ, 69 OR 79, KNOWING THAT MR. HUTTO WAS A HIGH SCHOOL EDUCATION AND HAVING BEEN IN A BUSINESS, KNOWING THAT, THEN, THEY BOTH PARTICIPATED IN STABBING, HOW COULD THIS BE NOT A SITUATION OF EQUAL CULPABILITY?

BECAUSE KIGHT INFLICTED THE FINAL FATAL WOUND.

AND YOU THINK --

HE CUT HIM IN THE THROAT.

YOU THINK THAT THAT HAS ALWAYS BEEN, EVEN THOUGH 51 -- 26 TIMES IN THE NECK, WHICH WOULD HAVE -- WHETHER IT WASN'T FATAL AT THAT MOMENT WOULD HAVE HAD TO BE --

THE STATE'S POSITION IS THAT IT WAS CLEAR THAT KIGHT STABBED THE VICTIM. HUTTO MAY HAVE. THE EVIDENCE IS NOT CLEAR, ONE WAY OR THE OTHER. HE MAY HAVE. HE MAY NOT HAVE. OKAY. BUT KIGHT INFLICTED THE FINAL FATAL WOUND. MOREOVER --

SO THAT IS WHO THE KILLER WAS, WOULD BE THE PERSON WHO TOOK THAT FINAL STAB. IS THAT HOW WE ARE INTERPRETING THE KILLER?

I WOULD BELIEVE SO, IF THAT WAS THE FATAL WOUND. MOST OF THESE WOUNDS WERE NONFATAL. THERE WERE A COUPLE OF THEM TO THE BACK THAT MAY HAVE EVENTUALLY BEEN FATAL BUT NOT IMMEDIATELY SO. THERE WERE TWO ROBBERIES IN THIS CASE. DONALD BUTLER WAS ROBBED --

LET ME SEE IF I UNDERSTAND YOU. IT IS CLEAR, FROM THE MEDICAL EXAMINER'S TESTIMONY, THAT THE FINAL WOUND WAS THE FATAL WOUND.

WELL, HE COULDN'T SAY, NECESSARILY, THAT IT WAS FINAL. WHAT HE SAID IS THAT THE FATAL WOUND WOULD HAVE CAUSED DEATH IN A COUPLE OF SECONDS. WHEN YOU LOOK AT KIGHT'S STATEMENT, SOME OF THE OTHER TESTIMONY IN THE CASE, IT IS CLEAR THAT THAT WOUND WAS IN FLUCKTED AFTER HE WAS DRAGGED INTO THE BUSHES.

AND NONE OF THE OTHER WOUNDS WERE IMMEDIATELY FATAL, ALTHOUGH THEY WOULD HAVE, MAY HAVE LED TO DEATH, AT SOME OTHER POINT.

CORRECT. AND I HAVE POINTED OUT THAT THERE WERE TWO ROBBERIES. BUTLER WAS ROBBED ON DECEMBER 6, 1982. BEFORE HIS BODY WAS FOUND, KIGHT AND HUTTO PARTICIPATED IN ANOTHER ROBBERY, THE NEXT EVENING, OF HER MAN MACGOUGAN. IN THIS ROBBERY, KIGHT WAS THE ONLY ONE THAT WAS ARMED. HE HAD A KNIFE AND PUT IT TO MACGOUGAN'S THROAT. HUTTO ASKED HIM WHAT HE WAS DOING. PUT HIS HAND ON THE KNIFE AND MACGOUGAN GOT FREE AND ESCAPED.

THAT WAS FROM THE VICTIM GETTING FREE AND TESTIFIED TO THAT?

MACGOUGAN TESTIFIED THAT KIGHT HAD A KNIFE. HE WAS THE ONLY ONE THAT HAD A KNIFE. HE WAS THE ONLY ONE WHO PLAYSED IT TO MACGOUGAN'S THROAT. WHEN THEY WERE ARRESTED, KIGHT WAS THE ONE THAT HAD HAD IN HIS POSSESSION. THE KNIFE HAD THE SAME BLOOD TYPE AS THE MURDER VICTIM. KIGHT NOT ONLY HAD POSSESSION OF THE KNIFE, BUT HE, ALSO, WHEN IT WAS ARRESTED, IT WAS IN A SHEATH ATTACHED TO HIS BELT.

WHAT WAS IT, THOUGH, THAT I GUESS WHAT IS COMPELLING ABOUT WHAT MR. O'KELLEY SAYS IS THAT MR. HUTTO SAID THAT HE WAS GOING TO MAKE SURE AND GET IT BLAMED ON MR. KIGHT, BECAUSE HE FIGURED, SINCE MR. KIGHT WAS MENTALLY RETARDED, THAT HE WOULDN'T GET THE DEATH PENALTY, ANYWAY. DID ANYTHING LIKE THAT TYPE OF TESTIMONY COME OUT, AT THE ORIGINAL TRIAL, AND DID THE JURY HEAR THAT TYPE OF TESTIMONY?

THERE WAS TESTIMONY AT THE ORIGINAL TRIAL THAT KIGHT, HIMSELF, HAD TOLD SOME PEOPLE THAT HE THOUGHT HE WAS GOING TO GET OFF BECAUSE HE WAS CRAZY.

BUT I AM SAYING ANYTHING THAT CAME FROM THE -- TO ITCH -- TO IMPEACH MR. HUTTO, ABOUT WHY HE HAD A MOTIVE.

HUTTO WAS NOT A STATE'S WITNESS. HUTTO WAS CALLED AS A COURT'S WITNESS, AT THE BEHEST OF THE DEFENDANT, BECAUSE THE DEFENDANT DIDN'T WANT TO VOUCH FOR HIS TESTIMONY. THE ONLY REASON HUT 'WAS -- HUTTO WAS PUT UP, WAS BECAUSE HUTTO HAD CONFESSED TO CARTWRIGHT THAT HE HAD COMMITTED THE MURDER.

MY QUESTION IS THE IMPACT THAT THIS NEWLY-DISCOVERED EVIDENCE COULD HAVE HAD ON THE JURY IN THE PENALTY PHASE OF THE FIRST CASE. ISN'T THERE A POWERFUL STATEMENT THAT THE REASON THAT MR. HUTTO WAS, WHAT HE SUPPOSEDLY SAID TO MR. O'KELLEY WAS "I AM GOING TO FRAME MR. HUTTO, BECAUSE HE IS MENTALLY RETARDED."

THAT ALMOST INDICATES THAT HUTTO IS SAYING THAT KIGHT IS INNOCENT BUT HE IS GOING TO FRAME HIM, ANYWAY, BUT MR. O'KELLEY GAVE THREE TOTALLY GIVE RENT STATEMENTS. HE GAVE AN AFFIDAVIT IN WHICH HE SAID THAT HUTTO TOLD HIM THAT HUTTO HAD STABBED THE CAB DRIVER, AND THAT KIGHT HAD NOT STABBED HIM AT ALL. AND THEN HE TALKED TO ASSISTANT STATE ATTORNEY LAWRENCE DERRICK SOMETIME AFTER THAT AND TOLD HER THAT THE AFFIDAVIT WAS A LIE AND HE NEVER SAID ANY OF THAT AND NEVER SIGNED AN AFFIDAVIT. NEVER SWORE TO AFFIDAVIT.

WHAT DID HE SAY ABOUT THAT, THE CIRCUMSTANCES OF THAT STATEMENT TO THE ASSISTANT STATE ATTORNEY? WHAT DID HE SAY UNDER OATH AT THE HEARING ABOUT THAT?

IN HIS TESTIMONY? HE TESTIFIED THAT HE TOLD THEM THAT, BUT HE WASN'T --

DID -- DIDN'T HE SAY HE WAS IN A CELL AND HE WAS BASICALLY COERCEED?

HE HAD BEEN ARRESTED ON A FWRARNT COLORADO, AND AT THE TIME HE TALKED TO THEM, BUT HE WAS -- HE TESTIFIED THAT THEY WERE VERY NICE TO HIM. THAT HE WASN'T AFRAID OF THEM. THAT THEY TOLD HIM SPECIFICALLY THAT HIS CASE IN FLORIDA, AND MR. O'KELLEY HAD BEEN ARRESTED FOR SECOND-DEGREE MURDER, ALSO.

I THOUGHT THERE WAS TESTIMONY ABOUT BEING UP AGAINST A WALL.

HE WAS HANDCUFFED AND UP AGAINST A WALL, BECAUSE HE WAS BEING HELD AT THAT TIME. HE WAS IN CUSTODY.

DID THE JUDGE MAKE A FINDING OF CREDIBILITY THAT MR. O'KELLEY WAS NOT CREDIBLE?

HE DID STATE, SOMETIME DURING THE YEAR, THAT HE THOUGHT HIS IN-COURT TESTIMONY WAS CREDIBLE. HIS IN-COURT TESTIMONY WAS THAT HUTTO ADMITTED STABBING THE VICTIM, BUT HE DIDN'T SAY, ONE WAY OR ANOTHER, ABOUT WHETHER OR NOT KIGHT HAD STABBED THE VICTIM, ALSO.

SO DID THE TRIAL JUDGE FOUND MR. O'KELLEY TO BE CREDIBLE, AND DID MR. O'KELLEY TESTIFY IN HIS TRIAL?

I AM NOT SURE HE MADE AN EXPLICIT FINDING OF THAT.

DID MR. O'KELLEY TESTIFY UNDER OATH ABOUT THE STATEMENT THAT MR. HUTTO SAID THAT THE REASON THAT HE WAS GOING TO FRAME HIM WAS ABOUT THAT MR. KIGHT WAS MENTALLY RETARDED?

YES.

OKAY. AND IS THERE -- I READ, SOMEWHERE IN THE RECORD, THAT MR. KIGHT IS ILLITERATE. IS THERE -- WHAT IS THE EVIDENCE?

THERE IS SOME EVIDENCE OF THAT. THERE IS, ALSO, EVIDENCE THAT HE HAD CLIPPED OUT A NEWSPAPER ARTICLE ABOUT THIS AND HAD SAVED IT.

WHAT GRADE DID HE FINISH IN SCHOOL?

I AM NOT SURE. I DO KNOW THAT HUTTO GRADUATED IN THE BOTTOM HALF OF HIS CLASS IN HIGH SCHOOL. THAT IS IN THE HUTTO'S PRESENTENCE REPORT. HUTTO, BY THE WAY, ALSO HAD A FELONY, HAD SOME FELONY CONVICTIONS. EXCUSE ME. HUTTO HAD NO FELONY CONVICTIONS. KIGHT DID HAVE SOME FELONY CONVICTIONS. KIGHT WAS, ALSO, A YEAR-OLDER THAN HUTTO. THE COURT ASKED O'KELLEY STRAIGHT OUT, DO YOU REMEMBER HIM, MEANING HUTTO, SPECIFICALLY TELLING YOU WHAT MR. KIGHT'S INVOLVEMENT WAS? THE WITNESS. NO. THE COURT. ONE WAY OR THE OTHER. THE WITNESS: I DON'T REMEMBER SPECIFICS OF WHAT CHARLIE TOLD ME, ONE WAY OR THE OTHER. HE CAN'T SAY, YES OR NO. HE WAS, ALSO, ASKED STRAIGHT OUT, LATER ON BY THE STATE, IF HUTTO HAD NOT TOLD HIM THAT HE STABBED THE CAB DRIVER, AND HE SAID, NO, HE DID NOT TELL ME THAT.

MR. HUTTO PLED TO SECOND-DEGREE MURDER?

THAT'S CORRECT.

HAS HE COMPLETED HIS SENTENCE?

HE IS STILL IN PRISON. AS A MATTER OF FACT, WELL, HE IS SNIL IN PRISON.

YOU -- HE IS STILL IN PRISON.

YOU MENTIONED THAT HE WAS IN THE BOTTOM HALF OF HIS CLASS AND HAD NO FELONY CONVICTIONS. WAS HE A FORMER CORRECTIONS OFFICER?

FOR A FEW MONTHS, AND THEN HE DIDN'T SHOW UP TO WORK ONE DAY, AND HE WAS FIRED. ADDRESSING JUDGE CARIETHERS' ORDER, HE ADD DRISED THE GUILT PHASE FIRST AND SAYS BECAUSE THE EVIDENCE -- WELL, LET ME SAY THIS. JUDGE CARIETHERS FOUND, AS A FACT, THIS, AND I WANT TO QUOTE DIRECT FROM HIS ORDER. MR. O'KELLEY SPECIFICALLY TESTIFIED THAT MR. HUTTO NEVER AND SOLVED MR. KIGHT OF THE CRIME AND HE NEVER DAVID GAVE THE STATEMENT THAT HE HAD, ALSO, STABBED THE VICTIM. HE SAID THAT COULD NOT RESULT IN ACQUITTAL. AS FOR THE SENTENCING PHASE, JUDGE CARIETHERS, AND I WILL QUOTE IF I MAY, THE NEW EVIDENCE WOULD PROBABLY NOT PRODUCE A LIFE SENTENCE, IF A NEW SENTENCING AND PENALTY PHASE WERE GRANTED. THE TRIAL JUDGE ALREADY HAD, IN THE FORM OF THREE OTHER STATEMENTS MADE BY MR. HUTTO, AS WELL AS FORENSIC EVIDENCE TO THE EFFECT OF THE NEW EVIDENCE. IT IS HARD TO IMAGINE HOW THE NEW EVIDENCE COULD, THEN, HAVE AFFECTED ANY SIGNIFICANT CONCLUSION DRAWN BY THE TRIAL JUDGE.

IN DOING THAT, HE DIDN'T, THEN, CONSIDER THE RECANTATION OF THE TWO OUT OF THE FOUR OR AT LEAST ONE OUT OF THE FOUR AND MAYBE TWO OUT OF THE FOUR OF THE INDIVIDUALS WHO HAD SAID THAT FROM KIGHT CONFESSED TO THEM, AND THAT WOULD, ALSO, BE, IF THEY WERE ASKED TO ACTUALLY FIND WHO WAS THE KILLER, WOULDN'T THAT HAVE -- SHOULDN'T THAT, UNDER OUR CASE LAW, ALSO BE CONSIDERED? THAT IS THOSE TWO, THE RESULTS OF THE TRIER?

I DON'T RECALL HIM ASKING TO CONSIDER THAT, BUT, AGAIN, THERE WAS A HEARING IN 1989. THAT JUDGE MADE CREDIBILITY FINDINGS AND CONCLUDED, BEYOND ANY DOUBT, THAT THERE WERE NO IMPROPER INDUCEMENTS OF ANY TESTIMONY.

BUT THAT DOESN'T REALLY AFFECT WHETHER THEY REALLY RECANTED, AND THE RECANTATION, THEN, WE NOW HAVE A SITUATION, WHERE WE, REALLY, HAD THE ONLY REAL EVIDENCE AS TO THE -- WHO WAS THE KILLER CAME FROM THESE FOUR -- THE FOUR JAIL HOUSE SNITCHES.

WELL, I DON'T THINK THAT IS THE ONLY EVIDENCE WE HAVE. I THINK IT IS VERY INCRIMINATING THAT THE NEXT NIGHT, WHEN THEY COMMITTED A ROBBERY, THAT KITE WAS THE ONLY ONE WHO WAS ARMED, AND HE WAS ARMED WITH A KNIFE, AND THAT KNIFE HAD WHAT WAS PROBABLY THE FIRST VICTIM'S BLOOD ON IT. FURTHERMORE, KIGHT GAVE VERY DETAILED STATEMENTS IN DESCRIBING WHAT HAPPENED. HE WAS THE ONE THAT TOOK THE POLICE, SHOWED THEM WHERE TO FIND THE CAR. HE TOOK THEM TO -- SHOWED THEM WHERE TO FIND THE VICTIM'S TWO RINGS. I THINK THE EVIDENCE POINTS TO HIM AS ASIDE FROM --

WE ARE NOT TALKING ABOUT, HERE, WHETHER THERE IS ACTUAL INNOCENCE. THERE IS NO QUESTION, AS YOU SAY FROM ALL THIS EVIDENCE, THAT BOTH OF THEM WERE INVOLVED. I GUESS -- I THOUGHT WE WERE JUST CONCENTRATING ON THE RELIABILITY OF THE PENALTY PHASE AND WHETHER IT IS, SHOULD BE OF CONCERN TO THIS COURT THAT A PERSON WHO MAYBE, THAT THE JUDGE IS NOW FINDING IS EQUALLY CULPABLE, HAS A SECOND-DEGREE SENTENCE, A PLEA TO SECOND-DEGREE MURDER, AND THAT THE PERSON WHO ALSO PARTICIPATED IN GETTING THE DEATH SENTENCE. ISN'T THAT OUR FOCUS?

HIS CONCLUSIONS OR HIS REFERENCE TO EQUAL CULPABILITY DOES NOT DEPEND ON ANY NEW EVIDENCE THAT WAS INTRODUCED AT THIS HEARING, AND THAT IS CLEAR FROM HIS ORDER, BECAUSE AFTER SAYING THAT THEY APPEAR, FROM THE RECORD, TO HIM TO BE EQUALLY CULPABLE, HE SAYS THE RELATIVE INVOLVEMENT OF THE TWO WAS WELL-KNOWN AT THE TIME OF THE TRIAL. HIS CONCLUSION WAS WHAT IS PRESENTED TODAY, DOES NOT AFFECT ANY CONCLUSIONS ABOUT RELATIVE CULPABILITY THAT WAS KNOWN AT THE TIME OF THE TRIAL. AND AT THE TIME OF THE TRIAL, WE HAVE A FINDING BY THE JURY, BY THE TRIAL JUDGE, AND BY THIS COURT, ON APPEAL, AND THE JURY SPECIFICALLY FOUND, AND CHECKED -- IS ON THE VERDICT FORM, AND THIS WAS A VERDICT FORM THAT WAS PRESENTED TO THEM AS A RESULT OF THE CASE OF INMANSV FLORIDA, FELONY MURDER AND SO FORTH, THEIR FINDING THAT CHARLES M KIGHT DID, INDEED, KILL LAWRENCE D BUTLER. THE TRIAL JUDGE SPECIFICALLY FOUND THAT THE EVIDENCE SUPPORTS A CLEAR FINDING THAT THE DEFENDANT ACTUALLY COMMITTED THE HOMICIDE. ON APPEAL, THIS COURT LOOKED AT THE EVIDENCE AND SAID WE REJECT KIGHT'S ARGUMENT THAT DEATH IS INAPPROPRIATE IN THIS CASE. KIGHT RELIES ON THIS COURT'S DECISION IN SLATER, WHERE WE FOUND THAT THE IMPOSITION OF THE DEATH PENALTY AGAINST A MERE ACCOMPLICE WAS UNCONSTITUTIONAL, WHERE THE TRIGGERMAN GOT LIFE. THE FACTS IN THIS CASE ARE NOT THE SAME OR SIMILAR TO THOSE IN SLATER. IN THAT CASE THERE WAS SUPPORT FOR THE JURY'S CONCLUSION THAT KIGHT ACTUALLY KILLED BUTLER. THE EVIDENCE SUPPORTS A CONCLUSION THAT KIGHT WAS THE PERSON WHO ACTUALLY KILLED BUTLER, THAT KIGHT IS MORE CULPABLE, AND HIS NEWLY DISCOVERED EVIDENCE SIMPLY DOESN'T IMPACT THAT. WE WOULD ASK THAT THE JUDGMENT BE AFFIRMED.

REBUTTAL?

IN REGARD TO THE STATE'S CLAIM THAT MR. KIGHT HAS A PRIOR FELONY CONVICTION, THERE IS NOTHING ON THE RECORD IN THE CASE REGARDING ANY CRIMINAL HISTORY ON THE PART OF MR. KIGHT. THE STATE DID NOT SEEK TO APPLY THE PRIOR VIOLENT FELONY AGGRAVATOR, BECAUSE IT DOES NOT APPLY TO THIS CASE. IN ADDITION, THERE IS EVIDENCE ON THE RECORD IN MR. KIGHT'S CASE THAT MR. HUTTO DOES HAVE PRIOR CONVICTIONS. THOSE ARE AT PAGE 670 OF THE RECORD ON DIRECT APPEAL. THE ONLY THING I KNOW ABOUT MR. KIGHT AND HIS PRIOR HISTORY IS THAT HE WAS PREVIOUSLY ARRESTED AND FOUND INCOMPETENT TO BE TRIED, DUE TO HIS MENTAL RETARDATION, AND HE WAS SENT TO A STATE MENTAL FACILITY.

THAT HAPPENED -- YOU MEAN PRIOR TO THIS CASE?

YES. HE HAD NO PRIOR VIOLENT FELONY CONVICTIONS. HE HAS NO FELONY CONVICTIONS. THE RECORD WILL SUPPORT THAT THE. IN REGARD TO THE MACGOUGAN ROBBERY, THE SENTENCING ORDER IN THIS CASE EXPLICITLY STATES THAT MR. HUTTO AND MR. KIGHT WERE EQUALLY CULPABLE. THAT EVIDENCE ESSENTIALLY IS A WASH. IT DOESN'T SUPPORT EITHER SIDE. WITH REGARD TO THE WOUNDS AND THE STATE'S ALLEGATION THAT MR. KIGHT IS SOMEHOW THE ACTUAL KILLER, BECAUSE HE DELIVERED THE FATAL BLOW, THE MEDICAL EXAMINER'S TESTIMONY EXPLICITLY STATES THAT THE ORDER OF WOUNDS CANNOT BE DETERMINED. THERE IS NO EVIDENCE TO SUPPORT THAT ARGUMENT, AND IN FACT, IT IS COMPLETELY IRRELEVANT, NOW THAT WE HAVE A FINDING OF AT LEAST EQUAL CULPABILITY. IN REGARD TO THE WITNESSES WHO TESTIFIED IN 1989 AND THE STATE'S CLAIM THAT THEY DIDN'T RECEIVE ANYTHING, THAT THEY ONLY GOT SENTENCE REDUCTIONS DUE TO LOST GAIN TIME, THE RECORD WILL SHOW THAT MOTION TO SAY VACATE OR REDUCE WERE FILED BY THE STATE ATTORNEYS, WHO PROSECUTED MR. KIGHT, AND THAT WHAT THOSE WITNESSES RECEIVED WAS BEYOND GAIN TIME, AND THE RECORD WILL SUPPORT THAT.

AS TO ALL FOUR OF THESE?

YES. ALL FOUR OF THE INFORMANTS. WITH REGARD TO MR. O'KELLEY AND THE CIRCUMSTANCES OF HIS --

IS THAT KNOWN? WAS THAT BEFORE THE FIRST JURY?

NO. THEY DID NOT KNOW THAT. IN FACT, WITH THE EXCEPTION OF ONE MOTION TO VACATE, WHICH WAS FILED AND GRANTED TWO DAYS AFTER MR. KIGHT'S TRIAL, WHICH IS, OF COURSE, THE FOURTH PENALTY PHASE BUT WAS NOT DISCLOSED TO THE DEFENSE, ALL OF THOSE MOTIONS WERE FILED AFTER MR. KIGHT'S CASE THAT. EVIDENCE IS NOT KNOWN TO THE JURY.

SO WHEN WAS THAT -- WHEN DID THAT FIRST COME OUT? WAS THAT IN CONNECTION WITH THE 1989 HEARING?

YES. IT WAS. IN REGARD TO THE CIRCUMSTANCES OF MR. O'KELLEY'S AFFIDAVIT, HIS RECANTATION IN CHICAGO, ALL OF THAT EVIDENCE WAS PRESENTED AT THE HEARING. HE WAS FOUND TO BE CREDIBLE. THAT -- THOSE CIRCUMSTANCES ARE IRRELEVANT, THE FACT THAT HE RECANTED, WHEN HE FELT HE WAS UNDER ARREST. HE TESTIFIED "I TOLD THEM WHAT THEY WANTED TO HEAR, BECAUSE I JUST WANTED THEM TO LET ME GO." IN FACT, HE LOOKED AT THE ASSISTANT STATE ATTORNEY AT THE HEARING AND HE SAID "I LIED TO YOU. I APOLOGIZE, BUT I LIED TO YOU YOU." IN REGARD TO THIS COURT'S CONSIDERATION OF THE ARGUMENT ON DIRECT APPEAL, THE ONLY THING WAS RELIED UPON WAS THE SPECIAL VERDICT FORM THAT FOUND IN KIGHT TO BE THE ONLY KILLER. THAT FINDING IS NO LONGER VALID. WE HAVE A FINDING BY A COMPETENT CIRCUIT COURT JUDGE WHO HEARD NEWLY-DISCOVERED EVIDENCE, THAT THE DEFENDANT IS, AT THE LEAST, EQUALLY CULPABLE. HE CONCLUDED IT WAS UNCONSTITUTIONAL. HE STATED HE WAS VERY TROUBLED WITH THE EVIDENCE OF EQUAL CULPABILITY AND THE LIGHTER SENTENCE. IN REGARD TO ANY EVIDENCE OF MR. KIGHT'S GUILT AND HIS INVOLVEMENT IN THIS CRIME, ALL OF THAT IS ON THE RECORD. IT WAS BEFORE THE CIRCUIT COURT, AND IT WAS CONSIDERED. THE ISSUE IS THAT HE HEARD NEWLY-DISCOVERED EVIDENCE THAT WAS NEVER HEARD BEFORE, AND HE MADE A CONCLUSION THAT WAS NEVER REACH BEFORE, THAT THE -- THAT WAS NEVER REACHED BEFORE, AND HE MADE A CONCLUSION THAT THE CODEFENDANT WAS EQUALLY CULPABLE. THIS CASE IS ABOUT TWO MEN. ONE OF THEM WAS A FORMER CORRECTIONAL OFFICER. HE TESTIFIED HE HAD A B AVERAGE IN HIGH SCHOOL. IF THAT IS THE LOWEST HALF, IT MEANS HALF THE PEOPLE GOT A'S. HALF THE PEOPLE GOT B'S. HE SAID HE HAD A B AVERAGE. HE WAS CLEARLY NO INTELLIGENT. HE ENTERED A DEAL WITH THE STATE THAT REQUESTED HIM TO PROVIDE TESTIMONY TO MR. KIGHT, IN THE FORM OF JAIL HOUSE INFORMANTS. MR. KIGHT IS THE CODEFENDANT. HE IS A MENTALLY RETARDED MAN WHO SPENT HIS CHILDHOOD IN SPECIAL EDUCATION CLASSES, IN SCHOOLS FOR THE MENTALLY RETARDED. HE WAS SENTENCED TO DEATH, BASED ON THE EVIDENCE PROVIDED BY HIS CODEFENDANT, AND HE WAS SENTENCED TO DEATH, DESPITE HIS CODEFENDANT AT LEAST EQUAL CULPABILITY IN THIS CRIME. THE STATE ACKNOWLEDGED, AT THE TRIAL, THAT MR. HUTTO'S INVOLVEMENT IN THE CRIME CRIME WAS AN ISSUE. THE STATE, TO THE JURY IN CLOSING" MR. HUTTO IS NOT ON TRIAL HERE. WITH REGARD TO HIS INVOLVEMENT, IT IS A DIFFICULT QUESTION. IT IS HONESTLY A DIFFICULT QUESTION." WELL, THAT DIFFICULT QUESTION HAS BEEN ANSWERED BY JUDGE CARIETHERS, AND THE ANSWER IS MR. HUTTO IS AT LEAST EQUALLY CULPABLE. HE RECEIVED A LESSER SENTENCE. IT IS ARBITRARY, UNCONSTITUTIONAL, AND MR. KIGHT IS ENTITLED TO A LIFE SENTENCE, UNDER THIS COURT'S PRECEDENT, UNDER THE EFFECTS OF SLATER, THAT WHEN THE FACTS ARE THE SAME, THE LAW SHOULD, ALSO, BE THE SAME. MR. KIGHT SHOULD BE ENTITLED TO A LIFE SENTENCE. THANK YOU.

THANKS, COUNSEL. THANKS FOR BOTH OF FOR YOU ASSISTING US.