Thomas Overton v. State of Florida

PLEASE BE SEATED. MR. CHIEF JUSTICE: THE TIME CASE ON THE COURT'S ORAL ARGUMENT CALENDAR FOR THIS WEEK IS OVERTON VERSUS STATE. MS. LAUREDO.

MAY IT PLEASE THE COURT. MARY A LAUREDO, ASSISTANT PUBLIC DEFENDER, ON BEHALF OF MR. OVERTON. I WOULD LIKE TO DEAL WITH THE FIRST ISSUE IN MY BRIEF, WHICH DEALS WITH THE TRIAL COURT'S ERROR IN REFUSING TO STRIKE TWO JURORS FOR CAUSE, MR. RUSSELL AND MR. HUSSLEIN. BOTH OF THOSE JURORS HAD INDICATED THAT THEY KNEW ABOUT THE SECURITY ARRANGEMENTS USED IN THE COURTROOM. SPECIFICALLY THERE WAS A STUN BELT THAT WAS HIDDEN UNDERNEATH MR. OVERTON'S CLOTHING, AN ELECTRIC STUN BELT, AND THERE WERE, ALSO, LEG SHACKLES THAT WERE PLACED ON DEFENDANT'S LEGS UNDERNEATH COUNSEL TABLE.

DID THEY KNOW ABOUT THE SECURITY OR WERE THEY AWARE?

THE FIRST JUROR INDICATED SPECIFICALLY THAT HE KNEW ABOUT THE STUN BELT AND THE SHACKLES FORM THE SECOND JUROR INDICATED THAT HE KNEW WHAT THEY WERE.

IT WAS A GENTLEIZED SITUATION OF SECURITY.

YES. AND MR. RUSSELL STATED THAT HE READ EVERY ARTICLE IN THE KEY WEST CITIZEN, AND THOSE ARTICLES STATE SPECIFICALLY WHAT THE SECURITY ARRANGEMENTS WERE AND HE HAD THAT KNOWLEDGE. IN ADDITION, MR. RUSSELL, ALSO, KNEW THAT MR. OVERTON HAD CUT HIS LOT TLOET WHILE HE WAS IN JAIL, WHICH WAS NOT A FACT THAT WAS INTRODUCED AT TRIAL, AND HE, ALSO, RECALLS READING THAT MR. OVERTON WANTED TO ESCAPE. THE FACT THAT THESE JURORS WERE EXPOSED TO THIS HIGHLY PREJUDICIAL INFORMATION IN THE NEWSPAPER, THAT, IN AND OF ITSELF, DID NOT INDICATE THAT THEY BE STRICKEN FOR CAUSE. WHAT MADE IT UNUSUAL WAS THEIR RESPONSE WHEN THEY WERE ASKED CAN YOU SET IT ASIDE AND CAN YOU FOLLOW THE LAW. THE FIRST RESPONSE OF MR. RUSSELL WAS UNACCEPTABLE, BECAUSE HE SAID, BASED ON THE SECURITY RESTRAMENTS, HE HAD TROUBLE WITH A PRESUMPTION OF INNOCENCE, AND THEN WHEN HE ASKED IF HE COULD SET IT ASIDE, HIS RESPONDS WERE EQUIVOCAL. -- RESPONSES WERE EQUIVOCAL. THE SECOND JUROR SAID THAT, BECAUSE OF WHAT HE HAD READ, HE BELIEVED THAT MR. OVERTON MIGHT BE GUILTY, AND HE WAS GLAD THE RESTRAINS WERE BEING USED AND HE, ALSO, INDICATED THAT HE WANTED TO HEAR THE DEFENDANT TESTIFY. IN ADDITION TO THAT, HE GAVE CONTRADICTORY RESPONSES, WHEN ASKED IF HE COULD SET ALL OF THOSE FEELINGS ASIDE, AND HIS RESPONSES WERE EQUIVOCAL.

NOW, THESE WERE CHALLENGED REENT ORL?

YES.

-- PREEMPTORYLY?

YES, YOUR HONOR.

WERE THERE SEVERAL REQUESTS FOR ADDITIONAL CHALLENGES?

ONE ADDITIONAL PREEMPTORY WAS GRANTED, BUT THAT WAS GRANTED, AND I BELIEVE THAT THAT WAS THE REASON BOTH OF THESE JURORS SHOULD HAVE BEEN EXCUSED FOR CAUSE. AFTER THAT SEVERAL PREEMPTORYS WERE REQUESTED AND COUNSEL SPECIFICALLY CITED JURORS

THAT HE NEEDED TO STRIKE, PREEMPT ORL, AND ALL OF THOSE REQUESTS WERE DENIED.

IF YOU RECEIVE ONE PREEMPTORY CHALLENGE, DOES THAT DEMONSTRATE ERROR AS TO FAILURE TO REMOVE BOTH OF THESE JURORS?

YES, YOUR HONOR, AND BOTH OF THESE JURORS WERE EQUALLY UNACCEPTABLE.

WOULD YOU, IF YOU CAN, CAPSLIZE FOR US, THE DISTINCTION, AS YOU SEE, IT BETWEEN THAT LINE OF CASES, REPRESENTED BY PAD ILL A CASE AND THOSE THAT TALK IN TERMS OF HAVING REHABILITATION BEING SUFFICIENT ON WANTING A DEFENDANT TO TESTIFY, AND THE LOW LINE OF CASES, WHICH ATTEMPTS TO DISTINGUISH THE PADILLA CASE AND VALLEY AND ALL OF THOSE, BECAUSE THESE CASES SEEM TO GO DIFFERENT WAYS AT DIFFERENT TIMES. IS THERE SOME WAY THAT THIS COURT CAN GRAPHIC, CAN GET A HANDLE -- CAN GRASS P -- CAN GRASP, CAN GET A HANDLE ON, IF HE HAS A HANDLE ON THESE?

I THINK IT IS POSSIBLE IN LAW THAT THE JURY, REALLY, DOESN'T UNDERSTAND THE INTRICACIES OF THE LAW AND FOR A JUROR TO BE INSTRUCTED AND FOR HIM TO UNDERSTAND WHAT THE LAW IS AND FOR HIM TO INDICATE, UNEQUIVOCALLY, THAT HE CAN FOLLOW IT. I THINK WHAT IS SIGNIFICANT ABOUT THESE JURORS IS THE FIRST JUROR IS, CERTAINLY, EQUIVOCAL, ABOUT WHETHER HE COULD SET ASIDE THAT STRONG FEELING THAT HE STATED, AND THE SECOND JUROR STATED THAT HE HAS A FIXED OPINION THAT HE WANTS THE DEFENDANT TO TESTIFY, AND EVEN AFTER HE IS INSTRUCTED, HE IS CONTRADICTORY ABOUT WHETHER HE CAN SET ASIDE HIS FEELINGS AND FOLLOW THE LAW, SO, REALLY, WHAT I CAN FOCUS ON IN THIS CASE IS THESE JURORS, THEIR RESPONSES AND THEIR REACTIONS, CREATE A REASONABLE DOUBT ABOUT WHETHER THEY CAN BE FAIR.

THAT IS I THINK I CAN. YES, I THINK I CAN. THOSE KINDS OF RESPONSES ARE SO EQUIVOCAL THAT THAT IS INSUFFICIENT REHABILITATION IN YOUR VIEW.

THAT'S CORRECT.

AND THAT IS WHAT YOU ARE REFERRING TO. THIS IS KIND OF THE COLLOQUY THAT THEY WERE INVOLVED WITH.

THAT IS -- COLLOQUY OF WHAT THEY WERE -- INVOLVED N.

THIS ISN'T A CASE OF WHERE THE JURORS SAID I AM AWARE OF THE SECURITY AND I THINK I CAN SET IT ASIDE. THIS IS A CASE WHERE THE FIRST JUROR SAID I AM AWARE OF THE SECURITY. IT IS INCONSISTENT WITH THE PRESUMPTION OF INNOCENCE. CAN YOU SET IT ASIDE? I THINK SO. AND WHEN YOU TAKE EVERYTHING TOGETHER, THESE JURORS WERE COMPLETELY UNACCEPTABLE.

BUT THERE WERE A LOT OF OTHER JURORS THAT GAVE SPOBZ RESPONSES THAT YOU WERE QIFCK -- THAT GAVE RESPONSES THAT YOU WERE EQUIVOCAL THAT THE JUDGE DID STRIKE FOR CAUSE. WHAT IS THE STATUS OF THEIR RECORD? BECAUSE THE REASON THAT I HIM ASKING THAT IS THAT WE HAVE, ALSO, SAID THAT IT IS, REALLY, THE JUDGE'S SUPERIOR VANTAGE POINT TO DETERMINE WHETHER, BASED ON THE TOTALITY OF THE RESPONSES, THERE IS ANY REASONABLE COME OUT THAT THAT JUROR TOO BE FAIR AND IMPARTIAL, BECAUSE THAT IS WHAT WE ARE TESTING.

THAT'S CORRECT.

JUST AS FAR AS GENERALLY, DID THE JUDGE, WAS THE JUDGE VERY LIBERAL IN GIVING CAUSE CHALLENGES?

NO. WHAT HAPPENED IN THIS CASE, THERE WERE 116 JURORS THAT WERE QUESTIONED. THE

JURORS, IN THE INITIAL QUESTIONING, HAVE YOU READ IN THE NEWSPAPER ANYTHING, WITHOUT INDICATING WHAT IT IS, CAN YOU SET IT ASIDE. THAT WAS AT THE VERY BEGINNING, BEFORE THE ATTORNEYS WERE ABLE TO EXPLORE WHAT THE JURORS READ AND HOW THEY REACTED. THE JURORS WHO UNEQUIVOCALLY STATED I CANNOT SET IT ASIDE THERE IS NOTHING I CAN DO TO BE FAIR, THOSE WERE ELIMINATED FOR CAUSE. HOWEVER, ALL OF THE CAUSE CHALLENGES THAT WERE DISPUTED, BECAUSE THE ONES I AM REFERRING TO EARLIER WERE, ALL, STIPULATED, BECAUSE THE JURORS CAME OUT INITIALLY. OF THE CAUSE CHALLENGES THAT WERE DISPUTED, I BELIEVE THERE WAS ONLY ONE THAT WAS GRANTED BY THE TRIAL JUDGE, AND I DIDN'T SEE ANY THAT WERE WHERE THE JUROR EQUIVOCATED IN THE WAY THAT THESE TWO JURORS EQUIVOCATED, WHERE THE JUDGE ERRED ON THE EYED OF -- SIDE OF THE DEFENDANT.

AS FAR AS STATEMENTS FROM BOTH THESE JURORS, WHERE THEY SAY I THINK I CAN FOLLOW THE LAW, SOMETHING LIKE THAT.

ESSENTIALLY.

WERE THOSE IN RESPONSE TO QUESTIONS THAT THE PROSECUTOR ASKED, THE JUDGE ASKED, AND AFTER -- FIRST OF ALL, CAN YOU TELL US, THE ONES THAT COULD BE CONSTRUED TO BE, YES, I CAN BE FAIR AND IMPARTIAL, AFTER THE INITIAL STATEMENT, WHO ASKED THOSE QUESTIONS?

THE PROSECUTOR AND THE COURT.

AND THEN WERE THERE, AFTER THOSE QUESTIONS, FURTHER EXAMPLES OF EQUIVOCATION?

YES. AND REALLY, THE QUESTIONING IS VERY LONG, AND I WOULD LIKE TO GET INTO SOME OF THE SPECIFIC RESPONSES AND THE ORDER OF THEM.

IN REFERENCE TO WHAT JUSTICE LEWIS ASKED, AS WE GET INTO THEM, IS IT IMPORTANT THAT, ALTHOUGH YOU CAN FIND AN ISOLATED STATEMENT OR ISOLATED STATEMENTS WHERE THEY CAN SAY, YES, I COULD, IF THEY, THERE AFTER, SAY FURTHER THINGS THAT ARE CONTRADICTORY, THAT IS WHEN IT WCKS A CONCERN.

-- IT BECOMES A CONCERN.

ABSOLUTELY, AND IT IS VERY IMPORTANT TO LOOK AT ALL OF THE RESPONSES TOGETHER. NOT ONLY WHAT THEY READ. HOW THEY REACTED, THEIR FEELINGS ABOUT WHAT THEY READ AND ALL OF THE SUBSEQUENT RESPONSES TAKEN TOGETHER. IT, ALL, HAS TO BE LOOKED AT TOGETHER, TAKEN AS PACKAGE, AND I WOULD LIKE TO ADDRESS THE TWO DIFFERENT JURORS INDIVIDUALLY. THE FIRST JUROR WAS MR. HUSSLEIN. HE WAS, FIRST, QUESTIONED IN THE GROUP VOIR DIRE. AND IT WAS ASKED HIM OF HIM WHAT ARE YOUR IMPRESSIONS OF THE DEFENDANT AS HE SITS THERE, AND HE SPONTANEOUSLY STATES WHY A PERSON HAS SO MANY RESTRAINTS ON THEM IN COURT AND WHATNOT MAKES YOU WONDER. EVERYBODY IS SAYING YOU ARE INNOCENT, WHEN YOU COME INTO COURT. WELL, IF HE IS INNOCENT, WHY IN ALL OF THESE HEAVY RESTRAINTS? WHY CAN'T WE JUST SIT THERE, THE WAY WE SIT THERE. LATER ON, HE IS QUESTIONED INDIVIDUALLY BY THE DEFENSE COUNSEL, AND HE IS ASKED IF THOSE RESTRAINTS MADE MANY ARE BELIEVE MR. OVERTON WAS GUILTY, AND HIS RESPONSE WAS, NO, I JUST, YOU KNOW, I THINK IT IS RATHER WEIRD. YOU ARE EXPECTING US TO INSTANTLY BELIEVE A PERSON IS INNOCENT. WHY ARE YOU RESTRAINING HIM. SO I THINK IT IS CLEAR THAT THIS IS A JUROR, GIVEN WHAT HE KNOWS, WHO HAS A PROBLEM PRESUMING MR. OVERTON IS INNOCENT. THEN HE IS ASKED QUESTIONS BY THE PROSECUTION. DO YOU THINK YOU CAN SET IT ASIDE, AND HE SAYS YES. AND THEN HE, ALSO, STATES, WHEN HE IS QUESTIONED BY DEFENSE COUNSEL, WHAT MAKES YOU THINK YOU CAN PUT THAT OUT OF YOUR MIND, AND HE SAYS I DON'T KNOW, TO TELL YOU THE TRUTH, AND THEN HE GOES ON TO EXPLAIN THAT HE HAS NEVER, BEFORE, BEEN IN THIS SITUATION OF KNOWING SOMETHING AND THEN HAVING TO PUT IT OUT OF HIS MIND.

WELL, AFTER THAT, THEN, DOES THE COURT SAY, WELL, YOU ARE GOING TO BE HEREING INSTRUCTIONS FROM ME ABOUT THAT THE PRESUMPTION OF INNOCENCE AND HEAR INSTRUCTIONS ON THE LAWS. WERE THERE THOSE KINDS OF QUESTIONS FROM THE JUDGE?

NO. AFTER THAT, THERE WERE -- THERE WAS A SERIES OF QUESTIONS FROM THE PROSECUTOR, AND WHAT THE PROSECUTOR DID WAS EXPLAIN THE DIFENS BETWEEN THE -- DIFFERENCE BETWEEN THE BURDEN OF PROOF FOR ARREST AND THE BURDEN THAT THE JURORS ARE FACED WITH BEYOND A REASONABLE DOUBT, THEN HE IS ASKED DOUBTFUL YOU CAN SET IT ASIDE, AND THE JUROR, AT THAT POINT, SAYS YES, AND THEN THE FINAL QUESTION, OUT OF ALL QUESTIONS HAVE COME OUT OF DEFENSE COUNSEL, AND HE IS ASKED IF IT IS, LIKE, A CLOSE CALL AND YOU ARE THINKING, YOU KNOW, THEY HAVE GOT HIM CHAINED UP, YOU DON'T THINK THAT WOULD KIND OF SEEP INTO YOUR THINKING? AND THE JUROR, AGAIN, SAYS IN EQUIVOCAL LANG, I DON'T THINK SO. AGAIN, LIKE I SAID, YOU WOULD HAVE TO HEAR IT, REFERRING TO THE EVIDENCE. THE PAPERS AND EVERYTHING, I DON'T THINK SO. I THINK, WHEN YOU TAKE THE TOTALITY OF THESE RESPONSES, THE WAY THE JUROR REACTED TO THE RESTRAINTS, THAT THEY WERE INCONSISTENT WITH A PRESUMPTION OF INNOCENCE, HIS EQUIVOCAL RESPONSES, HIS RESPONSES TO THE PROSECUTOR AND THEN HIS REAFFIRMING, AGAIN, IN AN EQUIVOCAL RESPONSE, YOU TAKE THAT TOGETHER AND THERE WAS, CERTAINLY, A REASONABLE DOUBT AS TO WHETHER THIS JUROR COULD SERVE. THE SECOND JUROR IS MR. RUSSELL. AGAIN, MR. RUSSELL READ IN THE PAPER ABOUT THE SECURITY ARRANGEMENTS. HE, ALSO, STATED THAT HE READ THAT MR. OVERTON CUT HIS THROAT AND THAT MR. OVERTON, HE RECALLED READING THAT MR. OVERTON WANTED TO ESCAPE, AND, AGAIN, WHAT IS IMPORTANT IS HOW DOES THIS JUROR REACT TO WHAT HE HAS READ, AND HE SAYS THREE THINGS. HE SAYS, BASED ON THE ARTICLES I BELIEVE MR. OVER WAS GUILTY. HE, ALSO, STATED THAT HE BELIEVED MR. OVERTON MIGHT BE DANGEROUS, AND HE SAID, AT ONE TIME THAT HE WAS GLAD THAT THE RESTRAINTS WERE BEING USED, BECAUSE THEY MADE HIM MORE RELAXED. IT IS, REALLY, NOT SURPRISING THAT MR. RUSSELL FELT THAT WAY, BECAUSE HE INDICATED, AS I INDICATED EARLIER, THAT HE READ EVERY ARTICLE IN THE KEY WEST CITIZEN, AND THE ARTICLES THAT DESCRIBE THE SECURITY ARRANGEMENTS IN THE RECORD, ON PAGE 799 AND 803, AND THERE IS ONE PARTICULAR ARTICLE THAT TALKS ABOUT RESTRAINTS, DESCRIBES INMATES, IN GENERAL, WHO HAVE TO WEAR THESE RESTRANLTS, AND IT STARTS OUT THEY ARE VIOLENT AND THEY HAVE KILLED. IT, THEN, STATES THAT THE HIGH PROFILE TYPES ARE CHOSEN, BASED ON PAST PERFORMANCE, THAT ACCUSED KILLER THOMAS OVERTON USUALLY WEARS A STUN BELT, HANDCUFFS AND LEG SHACKLES, WHEN HE IS BROUGHT TO COURT.

HOW DOES THIS SQUARE, THOUGH, WITH MR. RUSSELL'S RESPONSE THAT IT WAS -- THAT THERE MAY BE SOMETHING DANGEROUS ABOUT THE DEFENDANT OR SOMEONE IS GOING TO HURT THE DEFENDANT. THAT SEEMS TO BE IN CONFLICT WITH WHAT YOU ARE SUGGESTING NOW.

I DON'T THINK SO, YOUR HONOR.

SOMEONE IS GOING TO HURT THE DEFENDANT?

I ACTUALLY HAVE NO IDEA WHERE HE GOT THAT CONCLUSION THAT SOMEONE MIGHT WANT TO HURT THE DEFENDANT, BUT THE PROBLEM HERE IS THAT HE IS THINKING THAT MR. OVERTON IS A VERY DANGEROUS PERSON AND FINALLY, THAT ARTICLE IN THE KEY WEST CITIZEN, ON PAGE 103, SAYS OVERTON, WHO HAS ESCAPED BEFORE, IS CONSIDERED A SECURITY RISK, SO IT IS REALLY NOT SURPRISING THAT MR. RUSSELL COMES TO THESE CONCLUSIONS ABOUT MR. OVERTON. IN ADDITION TO THAT, TO HIS FEELINGS ABOUT THE ARTICLES, HE, ALSO, STATES THAT HE WANTED TO HEAR THE DEFENDANT TESTIFY. HE STATES, DURING THE GROUP VOIR DIRE, I UNDERSTAND WHAT JUDGE JONES SAID, BUT I KIND OF BELIEVE I WOULD WANT TO GET UP THERE, IF I WERE INNOCENT, YOU KNOW, AND SAY WHAT I HAD TO SAY TO EXPLAIN MYSELF. I ALWAYS THINK IF A PERSON IS INNOCENT, THEY SHOULD GET UP ON THE STAND AND SPEAK FOR THEMSELVES. THAT IS THE WAY I BELIEVE. BUT, ALSO, I UNDERSTAND WHAT THE JUDGE SAID. IT IS CONFUSING TO

ME. BUT IN ALL HONESTY, THAT IS WHAT I REALLY BELIEVE. I BELIEVE A PERSON SHOULD GET UP THERE AND SAY I DIDN'T DO THIS. AND HE IS, THEN, ASKED THAT IS WHAT YOU WOULD WANT SOMEONE TO DO? AND HIS RESPONSE IS YES. LATER IN THE INDIVIDUAL VOIR DIRE, HE SAYS AND THIS IS AFTER HE HAS BEEN EXPLAINED THE LAW, THAT IS THE WAY I ALWAYS FEEL ABOUT IT, WHEN SOMEONE DOESN'T TAKE THE STAND. I FIGURE THEY HAVE GOT SOMETHING TO HIDE. THAT IS THE WAY I HAVE ALWAYS BELIEVED. WHEN THE JUROR IS QUESTIONED, DURING THE INDIVIDUAL VOIR DIRE, ABOUT ALL OF THESE STATES THAT HE HAS MADE --

DO YOU RECALL WHETHER OR NOT HE -- THIS WAS-ON-I SEEM TO REMEMBER, IN RESPECT TO ONE OF THESE PEOPLE, THAT HE INDICATED THAT HE THAT THIS WAS SOMETHING NEW TO HIM, AND THAT HE WAS TRYING TO GET SOME UNDERSTANDING OF HOW THIS -- HE WAS STATING AN OPINION, BUT HE WAS TRYING TO GET SOME UNDERSTANDING OF HOW THE COURT WORKED.

I DON'T RECALL ANY TIME THAT MR. RUSSELL INDICATED THAT HE HAD NEVER BEEN EXPOSED TO THE CRIMINAL JUSTICE SYSTEM. THAT MAY HAVE BEEN THE FIRST JUROR.

HOW MANY JURORS WERE CALLED?

HOW MANY JURORS WERE QUESTIONED? 116.

116.

UM-HUM.

SO THIS TOOK SEVERAL DAYS.

I THINK IT TOOK AN ENTIRE DAY -- AN ENTIRE WEEK, EVERY WORKING DAY OF THE WEEK.

SET THE STAGE AS TO HOW THIS VOIR DIRE WAS HANDLED. WAS IT -- DID JUDGE JONES, FIRST, QUESTIONED ALL 116 PEOPLE, OR TOOK THEM IN SEGMENTS AND TURNED -- THEY WERE ALL SITTING OUT IN THE COURTROOM AND HE ASKED QUESTIONS, TO BEGIN WITH?

THE WAY HE DID IT WAS THERE WERE THREE SEPARATE PANELS. EACH TIME A PANEL WAS CALLED IN, HE SAID, WITHOUT TELLING ME ANYTHING ABOUT WHAT YOU HAVE READ, RAISE YOUR HANDS. HAVE YOU READ ANY ARTICLES ABOUT THIS CASE? CAN YOU SET IT ASIDE? THAT WAS THE VERY FIRST THING THAT HAPPENED. THEN EACH SIDE WAS ABLE TO DO THEIR GROUP VOIR DIRE, AND AFTER THAT IS, THE JURORS WERE INDIVIDUALLY QUESTIONED, AS TO PUBLICITY AND THEIR VIEWS ON THE DEATH PENALTY.

AND THIS WAS ALL HAPPENING IN KEY WEST.

THAT'S CORRECT, YOUR HONOR.

AND THESE WERE PEOPLE THAT WERE FROM ALL OVER MONROE COUNTY, THAT CAME --

I BELIEVE SO, YOUR HONOR.

DOES THE RECORD REFLECT THAT MOST OF THE PEOPLE HAD HEARD OF THIS CASE? HAD READ ABOUT THIS CASE?

I THINK 78 OF THE 116 INDICATED THAT THEY HAD READ ABOUT THE CASE.

OKAY. NOW, YOU ARE NOT CONTENDING THAT THERE WAS AN ABUSE FOR FAILURE TO CHANGE VENUE HERE.

NEW YORK CITY I AM NOT. WHAT I AM STATING, HERE, IS THAT THESE PARTICULAR JURORS, THEY

HAD REACTIONS TO WHAT THEY READ, AND THEIR RESPONSES INDICATE -- DO NOT ELIMINATE THE REASONABLE DOUBT ABOUT WHETHER THEY COULD BE FAIR.

AND HOW MANY JURORS WERE DISMISSED FOR CAUSE?

I COULDN'T -- LET ME SEE IF I CAN FIND THAT. I THINK IT WAS THERE WERE 22 OF THEM THAT WERE THE ONES THAT STATED, IN THAT VERY FIRST LINE OF QUESTIONING, I ABSOLUTELY CAN'T BE FAIR, AND THOSE WERE STIPULATED CAUSE CHALLENGES.

ONLY -- THERE WERE ONLY STIPULATED CAUSES?

THEY WERE STIPULATED CAUSE CHALLENGES. OF THE DISPUTED CAUSE CHALLENGES, WHEN I REREAD THIS VOIR DIRE, I SAW ONLY ONE WHERE THE DEFENDANT WAS GIVEN THE BENEFIT OF THE DOUBT AND THE JUROR WAS EXCUSED FOR CAUSE, AND THEN, OF COURSE, THERE WERE THESE TWO THAT I HIM RAISING HERE TODAY.

HOW MANY CHALLENGES WERE MADE THAT WERE NOT GRANTED?

I BELIEVE IT WAS SIX OR SEVEN THAT WERE NOT GRANTED, TWO OF WHICH I AM RAISING HERE TODAY. THAT IS MY RECOLLECTION.

WHEN YOU, AGAIN, TALK A LOT ABOUT THE VANTAGE POINT OF THE TRIAL JUDGE, AND AS YOU SAID, IT TOOK SOME PERIOD OF TIME, IN LOOKING AT THE COLORADO QUESTION AS TO WHEN -- THE COLLOQUY AS TO WHEN THE CHALLENGE WAS MADE TO MR. RUSSELL, THE JUDGE WAS SAYING, HE WAS SAYING THAT IS NOT JUST WAY I RECOLLECT IT. AND, OF COURSE, WE, NOW, HAVE THE TRANSCRIPTS, AND WE ARE READING EVERY PART OF THE TRANSCRIPT. BETWEEN THE TIMES THAT THE STATEMENTS WERE MADE, THAT YOU ARE, NOW, SAYING SHOW EQUIVOCATION, SHOW THAT THERE WAS REASONABLE DOUBT AND THE CAUSE CHALLENGE, WAS IT IMMEDIATELY AFTER, OR WAS THERE SOME PERIOD OF TIME AFTER ALL OF THE QUESTIONING CREASED, THAT, THEN, THE -- SEIZED, THAT, THEN, THE THE-ON-CEASED -- -- KRE. ASED -- CEASED, WAS THERE A PERIOD OF TIME BEFORE THE JUDGE WAS CALLED UPON TO HAVE TO MAKE THIS DECISION? I KNOW THERE ARE SOME CASES WHERE A DEFENSE ATTORNEY WILL CHALLENGE RIGHT AWAY, SO THAT THE JUDGE HEARD THAT RESPONSE AND THEN KNOWS, REALLY, WHAT IS BEING TALKED B.

I KNOW BECAUSE ARE SAYING. IT WAS NOT RIGHT AWAY AFTER THE GROUP VOIR DIRE, BUT IT WAS IMMEDIATELY FOLLOWING THE INDIVIDUAL VOIR DIRE THAT THESE JURORS WERE CHALLENGED FOR CAUSE, AND IN THE INDIVIDUAL VOIR DIRE, COUNSEL EXPLORED ALL OF THEIR ANSWERS FULLY, AND I WOULD LIKE TO GET INTO SOME OF THE RESPONSES THAT MR. RUSSELL GAVE, DURING THIS INDIVIDUAL VOIR DIRE, WHEN THEY ATTEMPT TO REHABILITATE HIM. HE IS QUESTIONED ABOUT PRESUMING MR. OVERTON, IN LIGHT OF THE ARTICLES, AND HE, FIRST, SAYS THAT MR. OVERTON, QUOTE, MUST BE THERE FOR A REASON, BUT THAT HE COULD SIT WITH AN OPEN MIND AND LISTEN TO THE EVIDENCE IN THIS CASE. HE FOLLOWED THAT WITH A CORRECT STATEMENT OF THE LAW THAT MR. OVERTON SHOULD BE PRESUMED INNOCENT, AND UNLESS HE IS PROVEN TO BE GUILTY BY THE STATE, BUT IMMEDIATELY, ASKING SAID THAT, HE IS QUESTIONED, IF YOU HAD TO VOTE NOW, WHAT WOULD YOUR VERDICT BE, AND THE JUROR SAID I DON'T KNOW. BASED ON WHAT I READ IN THE NEWSPAPER, THE FINGER IS POINTING AT HIM, BUT I HAVEN'T HEARD THE EVIDENCE, SO I CAN'T, YOU KNOW -- MAYBE AFTER I HEAR THE EVIDENCE, I WILL SAY, WELL, YOU KNOW. THIS IS A JUROR WHO HAS BEEN INFLUENCED BY THE ARTICLES, WHO IS COMING IN, BELIEVING MR. OVERTON IS GUILTY, AS HE STATED EARLIER, AND WOULD, POSSIBLY, REQUIRE PROOF TO CHANGE THAT. IT IS UNCLEAR. WITH REGARD TO THE RESTRAINTS, HE IS ASKED WOULD YOU CONSIDER THE SECURITY ARRANGEMENTS, AND HE SAID PROBABLY. I WOULD BE WONDERING WHY THERE IS -- YOU KNOW, SO MUCH SECURITY. WHAT IS THE REAL REASON FOR IT. THEN, AFTER THAT, HE SAYS THAT HE WOULD RELY ON THE EVIDENCE, ONLY IN DECIDING WHETHER MR. OVERTON IS DWILT. THEN HE IS ASKED -- IS GUILTY. THEN HE IS ASKED --

IN CONTEXT, ISN'T HE, ACTUALLY, SAYING THAT I WOULD GIVE THE DEFENDANT THE PRESUMPTION OF INNOCENCE? IS THAT -- WHEN YOU CONSIDER ALL OF IT, ISN'T HE AGREEING THAT IS THAT WHAT HE WOULD DO?

YOCKS, YOUR HONOR. I THINK WHEN HE -- I DON'T THINK SO, YOUR HONOR. I THINK WHEN HE IS QUESTIONED, HE KNOWS WHAT THE CORRECT ANSWER WOULD BE, AND HE STATES I WOULD PRESUME HIM INNOCENT. THE NEWSPAPER STATES THAT HE IS GUILTY, AND THEN HE STATES THE NEWSPAPER IS POINTING THE FINGER, YOU KNOW, AND THEN HE GOES BACK AND FORTH BETWEEN THE RESPONSES, AND HE DOES THE SAME THING WITH REGARD TO THE SECURITY ARRANGEMENTS. HE SAID I WOULD RELY ONLY ON THE EVIDENCE. WOULD YOU BE WONDERING ABOUT THEM? PROBABLY. THIS IS A JUROR WHO IS CONSTANTLY VAST LATHING, AND THAT IS -- VACILLATING, AND THAT IS THE PROBLEM, AND GIVEN THE ARTICLES, THERE IS A PROBLEM AS TO WHETHER HE CAN PUT THAT COMPLETELY OUT OF HIS MIND. WITH REGARD TO THE RIGHT TO SILENCE, HE SAID I CAN FOLLOW THE JUDGE'S RULES, AND HE IS GIVING HIS OPINION, I CAN FOLLOW THE JUDGE'S RULES, BUT I STILL THAT THEY SHOULD GET UP THERE, IF THEY ARE INNOCENT. THAT IS WHAT I BELIEVE. HAVING SAID THAT, THE FINAL QUESTION IN THIS AREA WAS A QUESTION DEFENSE COUNSEL ASKED. HE EXPRESSED THAT, IF IT WERE HIM, IF HE WERE ACCUSED, HE WOULD WANT TO TESTIFY, AND DEFENSE COUNSEL SAYS, WELL, WHAT ABOUT OTHER PEOPLE WOULD YOU TEND TO HOLD THAT AGAINST SOMEONE WHO WOULDN'T TAKE THE STAND? YOU WOULDN'T THINK, WELL, WHY DIDN'T HE? AND THE JUROR RESPONDS I WOULD THINK THAT, BUT I WOULD CLOSE IT OUT OF MY MIND, BECAUSE THE JUDGE SAYS TO CLOSE IT OUT OF MY MIND, AND THAT IS AN INHERENTLY CONTRADICTORY RESPONSE. IN DELIBERATING THIS CASE, I WOULD BE WONDERING WHY HE DIDN'T TESTIFY, BUT THEN I WOULD SHUT IT OUT. THAT RESPONSE ENCAPS LATES WHAT HAPPENED IN THIS CASE.

BUT WE HAVE, ALWAYS, GIVEN THE TRIAL JUDGE BROAD DISCRETION IN THIS AREA. THE TRIAL JUDGE IS SITTING THERE, LOOKING AT THE POTENTIAL JURORS AND SO FORTH, AND IF WE ARE GOING TO OVERRULE HIM, WHAT WOULD BE OUR STANDARD OF REVIEW THAT WE WOULD UTILIZE?

IT IS A ABUSE OF DISCRETION STANDARD. AND I THINK THAT HIS DISCRETION WAS CLEARLY ABUSED, WHEN THIS RECORD INDICATES THAT THE JUROR BELIEVED MR. OVERTON WAS GUILTY AND THAT HE MIGHT BE DANGEROUS, AND HIS SUBSEQUENT ANSWERS ABOUT WHETHER HE COULD SET ALL OF THAT ASIDE, IN ADDITION TO HIS WANTING TO HEAR THE DEFENDANT TESTIFY. HIS SUBSEQUENT ANSWERS, ON THE FACE OF THE RECORD, ARE CONTRADICTORY, AND WHEN THAT IS THE CASE, THERE IS AN ABUSE OF DISCRETION.

YOU ARE IN YOUR REBUTTAL.

VERY BRIEFLY, I KNOW THAT THE STATE WILL DO, AS THEY DID IN THE BRIEF, SEIZE UPON THE RESPONSES, WHERE MR. RUSSELL STATES I CAN FOLLOW THE LAW, BUT I CAN'T STRESS, ENOUGH, HOW THAT HAS TO BE READ IN CONTEXT WITH THE RESPONSES THAT I HAVE READ OUT, AND HIS INITIAL FEELINGS ABOUT MR. OVERTON BEING GUILTY AND MR. OVERTON BEING DANGEROUS.

WHAT YOU TOUCH UPONEST, RATHER BRIEFLY, BECAUSE I DON'T WANT TO USE UP ALL YOUR TIME, BUT THE FAILURE TO APPOINT A CHEMIST AND WHETHER THE INFORMATION THAT THERE WERE OTHER TESTS OR WAS THE INFORMATION, NO, THAT WE HAVE NO OTHER TESTS. THOSE ARE THE PEOPLE WHO MAKE IT. WHAT IS THE ESTABLISHMENT OF THE RECORD BEFORE THE TRIAL JUDGE, WHEN THAT REQUEST WAS MADE?

I DON'T THINK THE TRIAL JUDGE HAD ANY KNOWLEDGE ABOUT THE SCIENCE INVOLVED IN THIS. I DON'T THINK HE HAD ANY AWARENESS OF WHAT KINDS OF TESTS COULD BE DONE. HE DIDN'T REQUIRE COUNSEL, HE JUST SAYS I HAVE GRANTED ENOUGH CONTINUE ACCESS. I HAVE GRANTED

ENOUGH EXPERTS. YOU ARE NOT GETTING ANYMORE. SO THAT WAS THE STATUS.

THAT WAS AN INFORMED DECISION, ON THE PART OF THE EXPERT, TO TEST THE MINOXIDAL THEORY?

NO. HE JUST SAID I AM NOT GOING TO GRANT ANYMORE EXPERTS, AND WE ARE GOING TO PROCEED WITH THIS TRIAL TODAY. THANK YOU.

THANK YOU, MS. LAUREDO. MS. RUSH.

MAY IT PLEASE THE COURT. MY NAME IS JUDY TAYLOR RUSH, AND I AM THE ASSISTANT ATTORNEY GENERAL, REPRESENTING THE STATE OF FLORIDA IN THIS CASE. REGARDING THE FIRST ISSUE WHICH THEY HAVE RAISED IN THEIR BRIEF AND WHICH THEY HAVE ARGUED, TODAY, REGARDING THE JURORS, I WOULD POINT OUT TO THE COURT THAT THE STANDARDS FOR JUROR COMPETENCY IS LONG ESTABLISHED, AND IT IS WHETHER ANY JUROR CAN LAY ASIDE ANY BIAS OR PREJUDICE AND RENDER A VERDICT SOLELY ON THE EVIDENCE AND THE INSTRUCTIONS THAT THE JUDGE GIVES ON TO THE JURORS.

WHAT ABOUT THE FIRST PART, WHICH IS IF THERE IS ANY REASONABLE DOUBT THAT THE JUDGE SHOULD EXCUSE A JUROR FOR CAUSE AND THAT ANY DOUBT SHOULD BE RESOLVED IN FAVOR OF EXCUSEING THE JUROR?

WELL, IN THIS CASE, THE JUDGE VERY CLEARLY AND SPECIFICALLY STATED, IN REGARD TO EACH ONE OF THESE CHALLENGES THAT HE HAD, SOLUTELY NO DOUBT THAT THESE PEOPLE WOULD BE ABLE TO FOLLOW -- THAT THEY MET THE LESS STANDARD THAT, THEY WOULD BE ABLE TO LISTEN TO THE EVIDENCE AND FOLLOW HIS INSTRUCTIONS, AND THERE IS PLENTY OF REASON IN THE RECORD, FOR HIM TO HAVE REACHED THAT CONCLUSION, AND THIS COURT, AS YOU RECENTLY SAID IN THE SINGLETON CASE, WHEN YOU FILED THE SUPPLEMENTAL AUTHORITY, RECOGNIZED THAT THE JUDGE IS, AND THE TRIAL JUDGE IS IN THE SUPERIOR VANTAGE POINT, SO IF THERE HAD BEEN ANY EQUIVOCAL RESPONSES, IT WAS UP TO THE TRIAL JUDGE TO WATCH THOSE BEING DELIVERED, TO TAKE INTO CONSIDERATION THE CONTEXT, THE BODY LANG, THE FACIAL EXPRESSIONS, WHATEVER, OF THE PEOPLE BEFORE HIM, AND THEN REACH A DECISION AS TO WHETHER THERE WAS ANY REASONABLE DOUBT THAT THIS PERSON MEET THE STANDARDS.

DOESN'T THIS, REALLY, COME DOWN TO, I MEAN, IN YOUR ARGUMENT, IT SEEMS TO BE, TO ME, THAT IF THE PROSPECTIVE JUROR MOUTHED THE WORDS THAT I CAN FOLLOW THE JUDGE'S INSTRUCTIONS AND THAT I WILL GIVE HIM THE BENEFIT OF THE PHRASE INNOCENT UNTIL PROVEN GUILTY, THAT MISSOURI MATTER WHAT ELSE IS SAID IN THAT ENTIRE COLLOQUY, WITH THAT PROSPECTIVE JUROR, NO -- THAT NO MATTER WHAT ELSE IS SAID IN THAT ENTIRE COLLOQUY, WITH THAT PROSPECTIVE JUROR, NO MATTER WHAT BELIEFS THEY HOLD, THAT WE HAVE TO ACCEPT THIS ONE STATEMENT FROM THIS JUROR.

I THINK WHAT YOU HAVE INDICATED IN YOUR DECISIONS THAT YOU NEED TO ACCEPT IS THE TRIAL JUDGE'S ASSESSMENT OF THAT SITUATION, HOW THIS JUROR APPEARED TO THE TRIAL JUDGE, WHEN HE MADE THE STATEMENT, WHAT HIS BODY LANGAND OTHER INDICATIONS WERE, WHAT THE CONTEXT WAS. THIS COURT IS WELL AWARE, WHEN SOMEONE IS SPEAKING TO YOU VERBALLY, YOU CAN PUT EMPHASIS ON CERTAIN WORDS OR PHRASES, WHEN YOU GIVE A SPONSOR YOU ASK A QUESTION. WHEN YOU ARE READING IT ON THE COLD RECORD, YOU DON'T KNOW WHAT WAS EMPHASIZED AND WHAT WASN'T, BUT THE TRIAL JUDGE DOES.

AND SO -- THAT IS, REALLY, NOT REVIEWABLE, BECAUSE WE HAVE -- THAT IS --

THAT IS WHY YOU HAVE THE STANDARD THAT THE TRIAL JUDGE HAVE THE SUPERIOR VANTAGE POINT.

NO, BUT WHAT I AM SAYING, IF IT LOOKS LIKE, FROM THE RECORD, LET'S JUST SAY AS TO MR. RUSSELL, ONE OR THE OTHER, SOME OF THE THINGS THAT CAUSE CONCERN, FIRST OF ALL, THIS IS A CASE WHERE THERE IS PRETRIAL PUBLICITY, SO THIS ISN'T LIKE ONE OF THESE CASES WHERE SOME ABSTRACT THINGS, YOU KNOW, I REALLY THINK THAT, IF SOMEONE IS THERE, HE MUST HAVE DONE, IT BUT THE JUDGE SAYS YOU UNDERSTAND THERE IS A PRESUMPTION OF INNOCENCE, AND YOU GO THROUGH THAT, FIRST OF ALL WE HAVE THE BACK DROP OF THE PRETRIAL PUBLICITY. WE HAVE -- AREN'T THERE THINGS LIKE SPONTANEOUS STATEMENTS INDICATING STRONG FEELINGS, WHICH IS DIFFERENT THAN YOU ARE ASKED A QUESTION AND YOU SAY, YEAH, I GUESS SO. I THINK SO. DO WE JUST IGNORE THAT AND JUST SAY, WELL, THERE MUST HAVE BEEN SOMETHING ELSE THAT WE CAN'T SEE ABOUT THAT HE WAS, REALLY, LAUGHING AT THE TIME OR HE WAS HOLDING HIS -- THAT THE JUDGE RELIED ON, IN MAKING THIS DECISION, IF THE JUDGE DOESN'T ARTICULATE IN THE RECORD, WHAT THAT WAS, WHICH IS I UNDERSTAND YOU ARE SAYING THERE WAS A LOT OF EQUIVOCATION, BUT WHEN HE FINALLY GAVE HIS ANSWER TO ME, IT WAS A VERY STRAIGHTFORWARD ANSWER. HOW DOES THAT GET REVIEWED, IF THAT IS THE TEST? THAT IS THAT THE JUDGE HAS -- WHEN WOULD THERE EVER BE AN ABUSE OF DISCRETION I GUESS IS WHAT I AM ASKING.

THE ABUSE OF DISCRETION WOULD, I SUPPOSE, OCCUR IN A CASE WHERE THE JUROR NEVER SAID THE THINGS THAT WOULD QUALIFY HIM TO THE MEET THE LESSER STANDARDS. IN THIS CASE, I MEAN, BOTH OF THESE TWO PEOPLE WHO WERE CHALLENGED WELL MET THE LESS STANDARD. IT IS, REALLY, NOT NEARLY AS CLOSE, I DON'T BELIEVE, AS THE POSITION THAT THE DEFENSE HAS PRESENTED HERE. YOU HAVE HELD, IN THE ROLLING CASE, THAT IT IS NOT NECESSARY FOR PROSPECTIVE JURORS TO BE IGNORANT OF THE FACTS OF A CASE OR TO BE FREE FROM ANY PRECONCEIVED NOTIONS. WHAT IS NECESSARY, THEY COME INTO COURT. THEY ARE ASKED QUESTIONS. THEY FREE AND HONESTLY SAY, WELL, I HAVE ALWAYS THOUGHT THIS OR I HAVE KIND OF THOUGHT THAT, AND THE JUDGE SAYS, WELL, YOU KNOW, UNDER THE LAW, THIS IS WHAT YOU WOULD NEED TO BE ABLE TO DO, IF YOU ARE GOING TO SIT AS JUROR IN THIS CASE. CAN YOU DO THAT?

HOW DOES THIS COMPARE WITH THE HAMILTON CASE? HAMILTON VERSUS STATE, WHERE THERE WAS A JUROR HAD A PRECONCEIVED OPINION. AND THAT WE SAY THE RECORD BEARS OUT THE ALLEGATION. YOU SAY WE RECOGNIZE THE JUROR EVENTUALLY STATED SHE CAN BAIT HER VERDICT ON THE EVIDENCE AT THE TRIAL AND THE LAW AS INSTRUCTED BY THE COURT. NONETHELESS, HER RESPONSES, WHEN VIEWED TOGETHER, ESTABLISH THAT THIS PROSPECTIVE JUROR DID NOT PURSUE HAMILTON, IN A SENSE. HOW DID THAT -- HOW IS THIS CASE DIFFERENT FROM --

HOW IS THE OVERTON CASE DIFFERENT?

YES.

BECAUSE, WELL, LET'S JUST TAKE MR. RUSSELL, FOR EXAMPLE. MR. RUSSELL SAID THAT HE WOULD BE ABLE TO SHUT OUT AND WOULD SHUT OUT HIS PERSONAL BELIEF THAT NOT TESTIFYING INDICATED ANYTHING TO HIM, JUST BECAUSE HE, HIMSELF, WOULD GET ON THE STAND AND TESTIFY. IF HE HAD BEEN ACCUSED OF A CRIME UNJUSTLY, HE WOULDN'T TAKE THAT INTO CONSIDERATION AGAINST MR. OVERTON. HE, ALSO, SAID -- HE REFUSED TO AGREE THAT HE HAD PREJUDGED THE CASE, BASED ON UP IN REPORTS, AND I MEAN THE DEFENSE ATTORNEY TRIED TO GET HIM TO AGREE WITH HIM THAT HE HAD DONE THAT, AND HE JUST REFUSED TO DO IT. SAYING THAT HE WOULD HAVE TO HEAR THE WHOLE CASE, AND THAT WAS ON PAGE 1676. HE SAID THAT HE HAD REACHED NO CONCLUSION, REGARDING MR. OVERTON'S GUILT. HE INSISTED THAT HE COULD SIT AS A JUROR, WITH AN OPEN MIND, THAT HE WOULD LISTEN TO ALL OF THE EVIDENCE, THAT HE WOULD PUT THE NEWSPAPER INFORMATION OUT OF HIS MIND AND MAKE HIS DECISION, BASED ON THE EVIDENCE, THAT HE WOULD NOT LET ANY OF THAT CREEP INTO HIS DECISION-MAKING PROCESS, AND UNPROMPTED, HE SAID THAT MR. OVERTON IS INNOCENT, UNTIL

PROVEN GUILTY, AND THE STATE HAS TO PROVE TO ME THAT --

SOMETHING LIKE THAT, WHICH IS AN UNPROMPTED SPONTANEOUS STATEMENT OF SHOWING THAT HE DOES HAVE THIS IS AN IMPORTANT THING. IN OTHER WORDS VERSUS JUST RESPONSE TO A LEADING QUESTION, WELL, YOU COULD BE FAIR OR IMPARTIAL. YEAH, I THINK SO, WOULD BE MORE EQUIVOCAL.

VERY IMPORTANT. IT IS OF MORE IMPORTANCE, BUT I WOULD NOT SAY THAT THE RESPONSES TO THE OTHER QUESTIONS IS MORE IMPORTANT, BUT I WOULD SAY THIS IS MORE IMPORTANT. REGARDING THE SUICIDE ATTEMPT THAT MR. RUSSELL IS ALLEGED TO HAVE KNOWN ABOUT, THAT WAS NOT RAISED, IN THE TRIAL COURT, AS A BASIS FOR THE FOR-CAUSE CHALLENGE FOR MR. RUSSELL, SO THOSE, I DON'T BELIEVE, ARE PROPER FOR THIS COURT TO CONSIDER ON APPEAL. THE ONLY THINGS THAT THE DEFENSE ATTORNEY RAISED IN THE TRIAL COURT, WHEN MAKING THE FOR-CAUSE CHALLENGE TO MR. RUSSELL, WAS THAT HE THOUGHT THAT MR. RUSSELL BELIEVED HE WAS GUILTY FROM READING THE NEWSPAPERS, AND THAT MR. RUSSELL SAID, WELL, IF IT WAS HIM, HE WOULD WANT TO TESTIFY, AND WE HAVE, ALREADY, DEALT WITH WHAT MR. RUSSELL HAD TO SAY SPECIFICALLY, ABOUT THOSE ISSUES.

WHAT ABOUT THE OTHER JUROR? WAS THAT SPECIFICALLY RAISED, IN REGARD TO HIM?

WHAT?

THE SECURITY MEASURES.

YES. THE SECURITY MEASURES WAS SPECIFICALLY RAISED, IN REGARD TO HUSSLEIN. IN THAT CASE, HE SAID THAT HE COULD PUT ASIDE THE INFORMATION FROM THE NEWSPAPERS, REGARDING THE SECURITY MEASURES. I -- WHEN I READ THE COLLOQUY AND WHEN I HEARD DEFENSE COUNSEL READ IT, JUST NOW, TO THE COURT, IT SEEMS TO ME THAT MR. HUSSLEIN'S CONCERN WAS NOT THAT HE BELIEVED MR. OVERTON TO BE GUILTY, BECAUSE THE SECURITY MEASURES WAS BEING TAKEN. IT WAS ALMOST THAT HE WAS SPEAKING UP, ON MR. OVERTON'S BEHALF, AND SAYING, YOU KNOW, WE PRESUME THIS MAN TO BE INNOCENT. SO HE SHOULDN'T, REALLY, BE BOUND LIKE THIS. IT WASN'T THAT HE WAS SAYING BECAUSE HE IS, I BELIEVE HE COMMITTED THIS CRIME. HE WAS SPEAKING OUT FOR HIM AND SAYING WE DO PRESUME HIM INNOCENT. YOU KNOW, HE IS INNOCENT, AS HE SITS THERE RIGHT NOW, AND SO HE SHOULDN'T BE SHACKLED LIKE THIS. BUT HE DID SAY THAT HE COULD PUT ALL THAT INFORMATION ASIDE AND NOT CONSIDER IT IN MAKING HIS DECISION. AS REGARDING HIS VIEW ON THE DEATH PENALTY, HE HAD INDICATED, EARLY ON, THAT HE WOULD LEAN TOWARD IMPOSING THE DEATH PENALTY, IF IT WAS APPROVED -- IF IT WAS PROVED THAT IT WAS A PLANNED MURDER, AND SO HE WAS QUESTIONED ABOUT THAT AND INFORMED THAT, YOU KNOW, THAT IS NOT A PRESUMPTION THAT HE SHOULD MAKE, UNDER THE LAW, AND HE SAID THAT HE HAD NO DOUBT THAT HE WOULD ENTERTAIN THE POSSIBILITY OF A LIFE SENTENCE AND THAT HE WOULD FOLLOW THE LAW AND APPLY IT AS INSTRUCTED. THE TRIAL JUDGE, AGAIN, WAS THERE. HE SAW ALL THESE RESPONSES. HE SAW ALL THE CONTEXTS, THE BODY LANGAND EVERYTHING, AND AS WAS APPOINTED OUT JUST A FEW MINUTES AGO, IN THE DEFENSE ARGUMENT, THE FOR-CAUSE CHALLENGES AND THE DISCUSSION AND THE RULINGS ON THEM FOLLOWED IMMEDIATELY AFTER THE INDIVIDUAL VOIR DIRE OF THESE PROSPECTIVE JURORS, SO IT WASN'T A LONG TIME THAT HAD PASSED. THE JUDGE HAD IT ALL FRESH ON HIS MIND. HE HADN'T CONSIDERED OTHER ISSUES IN THE MEANTIME. THEY WERE THERE. THEY WERE FOCUSED ON THIS.

THE COURT WAS ACTIVELY INVOLVED IN THE --

-- QUESTIONING.

-- QUESTIONING OF BOTH OF THESE?

YES. THE COURT WAS INVOLVED. HE WAS A VERY INVOLVED TRIAL COURT, AND HE WAS QUITE CONVINCED THAT THESE PEOPLE HAD MET THE LESS STANDARDS, WHEN HE DENIED THE FOR-CAUSE CHALLENGES, AND THE STATE WOULD SUBMIT THERE IS NO ERROR BEEN SHOWN, CERTAINLY NOT AN ERROR THAT WOULD RISE TO AN ABUSE OF DISCRETION WHICH IS THE STANDARD OF REVIEW FOR A JURY FOR-CAUSE CHALLENGES. I WOULD LIKE TO, UNLESS YOU HAVE ANY OR QUESTIONS ABOUT THE JUROR ISSUESISH, I WOULD LIKE TO MOVE ON AND HIT JUST A COUPLE OF OTHER POINTS. I WOULD LIKE TO POINT OUT, IN REGARD TO CLAIM EIGHT, WHERE IT WAS ALLEGED THAT THE TRIAL JUDGE SHOULD NOT HAVE FOUND HEINOUS, ATROCIOUS AND CRUEL, IN REGARD TO THE DEATH OF MR. McIVOR. THE STANDARD, THERE, FOR THIS COURT ON REVIEW IS WHETHER THE TRIAL COURT'S FINDING IS SUPPORTED ON COMPETENT EVIDENCE THAT COMES OUT OF THE MANSFIELD CASE AND SOME OTHER CASES THAT YOU HAVE HAD. I WOULD SUBMIT THAT THERE WAS OVERWHELMING EVIDENCE OF HAC, AS TO MR. McIVOR, BUT, CERTAINLY, ENOUGH TO SUPPORT THE COMPETENT SUBSTANTIAL EVIDENCE, AND THAT INCLUDES THAT MR. OVERTON HAD TOLD MR. GREEN THAT, WHILE HE WAS IN THE HOUSE IN THE KEYS, THAT HE STARTED FIGHTING WITH THE FAT WOMAN, WHO JUMPED ON HIS BACK. MR. ZENTEC SAID THAT MR. OVER TOLL TON TOLD HIM THAT, AFTER -- MR. OVERTON TOLD HIM THAT, AFTER HE HAD BROKEN INTO THESE PEOPLE'S HOME, THAT THE MALE BEGAN LOOKING AROUND IN THE KITCHEN EN, SUSPECTING THAT SOMETHING -- IN THE KITCHEN, SUSPECTING THAT SOMETHING WAS WRONG. HE PICKED UP A PIPE AND HIT HIM OVER THE HEAD. IT DIDN'T KNOCK HIM OUT BUT IT COULD HAVE ONLY STUNNED HIM, WHICH IS CONSISTENT WITH MR. OVERTON'S REPORT TO MR. ZENTEC, IT COULD HAVE ONLY STUNNED HIM. HE SAID THAT, THEN, WHEN HE WAS IN THE PROCESS OF TRYING TO RESTRAIN MR. McIVOR, THE WOMAN CAME RUNNING OUT OF THE BEDROOM, SCREAMING AND HOLLERING, AND HE TOLD MR. GREEN SHE JUMPED ON HIS BACK, AND THEN HE KNOCKS OUT MR. McIVOR WITH HIS FIST, RENDERING HIM UNCONSCIOUS FOR A TEMPORARY PERIOD OF TIME. OVERTON, THEN, CHASES THE WIFE INTO THE BEDROOM, WHERE HE BINDS HER, AND HE IS CONCERNED THAT MR. McIVOR IS ONLY VERY TEMPORARILY KNOCKED OUT, SO HE GOES BACK INTO THE LIVING ROOM, WHERE HE BINDS MR. McIVOR, WHERE HE TAPES HIS FACE AND HIS HEAD COMPLETELY, EXCEPT FOR LEAVING OUT HIS NOSE, SO THAT HE WOULD NOT SUFFOCATE BUT WOULD REMAIN ALIVE, UNTIL SUCH TIME AS MR. OVERTON WAS READY TO ELIMINATE ALL THE WITNESSES. I WOULD SUBMIT THAT A REASONABLE INFERENCE, FROM THIS EVIDENCE, IS THAT HE DID NOT WANT MR. McIVOR TO SUFFOCATE, UNTIL AFTER THE MAN HEARD WHAT WOULD HAPPEN TO HIS WIFE, WHILE HE WAS UNABLE TO HELP HER. ONLY AFTER OVERTON BRUTALLY BEAT, VAGLY AND ANDLY RAPED AND STRANGLED THE WIFE -- AND ALLY RAPED AND STRANGLED THE WIFE, DID -- ANALLY RAPED AND STRANGLED THE WIFE DID HE RETURN TO MR. McIVOR AND STRANGLE HIM. HAC, THERE IS NO DOUBT, SHOULD HAVE BEEN FOUND, WITH REGARD TO MR. McIVOR. MR. OVERTON TOLD MR. ZENTEC THAT, AFTER HE STRANGLED THE WIFE, THAT HE RETURNED TO THE LIVING ROOM, WHERE MR. McIVOR WAS, AND THAT HE RAN UP TO HIM AND DROP-KICKED HIM, WITH A SEVERE BLOW TO THE SOLAR PLEXUS REGION OF THE BODY, TO DISABLE HIM, SO, CLEARLY, THIS MAN WAS NOT ONLY CONSCIOUS BUT WAS ATTEMPTING TO STAND, AND HE CAME INTO THE ROOM AND DROP-KICKED HIM IN THE ABDOMINAL AREA, WHICH THE MEDICAL EXAMINER TESTIMONY CORROBORATES, KNOCKING HIM TO THE FLOOR AND DISABLING HIM, WHICH THE MEDICAL EXAMINER'S TESTIMONY CORROBORATES.

EVEN WITHOUT THE TESTIMONY THAT -- OF THE STATEMENTS TO THE JAILHOUSE PEOPLE, YOU SAY THE PHYSICAL EVIDENCE --

CORROBORATES OVERTON.

SOMETIMES WHEN WE HAVE THESE KINDS OF ELABORATE STATEMENTS BY OTHER JAILHOUSE PEOPLE, THOSE ARE THE KINDS OF THINGS THAT, LATER ON, MAYBE THEY RECANT OR CHANGE, IT BUT YOU SAID JUST PHYSICAL EVIDENCE.

YES. THE MEDICAL EXAMINER'S TESTIMONY CORROBORATES THESE THINGS THAT WERE SAID AND HOW THIS OCCURRED. ON SO AFTER HE HAD FOUND THIS MAN CON SHOES -- CONSCIOUS,

TRYING TO STABBED, HE DROP -- TRYING TO STAND, HE DROP-KICKS HIM. THEN HE TAKES A CORD --

IS THERE ANY EVIDENCE OF THAT, INDENINDEPENDENT OF THE STATEMENT?

YES. THE MEDICAL EXAMINER SAID THAT IT EITHER OCCURRED LIKE THAT OR, AS THE MAN LAID ON THE FLOOR, HE COULD HAVE POSSIBLY STOMPED ON HIM, BUT THE EVIDENCE WAS -- CERTAINLY SUPPORTS AND DOES CORROBORATE THAT IT HAPPENED THE WAY HE RELATED TO MR. ZENTEC THAT IT DID. THE MEDICAL EXAMINER SAID THAT THAT WOULD ACCOUNT FOR THE INJURIES AND THE DISABLING --

WAS THERE INJURIES, ACTUALLY, TO THAT AREA?

YES. SEVERE INJURIES TO THAT AREA. YES. AND THEN THE MEDICAL EXAMINER, ALSO, TESTIFIED THAT, AT THE POINT WHEN THE CORD, THE LIGATURE WAS WRAPPED AROUND MR. McIVOR'S NECK, THAT IF IT WAS HELD PERFECTLY TIGHT, THAT IT WOULD HAVE TAKEN A MINIMUM, A VERY MINIMUM, OF TEN TO 15 SECONDS TO RENDER HIM UNCONSCIOUS, AND THAT IT COULD HAVE TAKEN LONGER THAN THAT. IT WOULD HAVE TAKEN AT LEAST FIVE MINUTES TO CAUSE HIS DEATH, IF IT REMAINED PERFECTLY TIGHT THE ENTIRE TIME, AND HE, ALSO, TESTIFIED THAT THE MARKINGS ON MR. McIVOR'S NECK INDICATED THAT THE ROPE WAS APPLIED MORE THAN ONE TIME. NOW, HE SAID, IT MAY NOT HAVE BEEN, BUT THAT THERE WAS EVIDENCE THAT MADE HIM BELIEVE THAT IT MAY HAVE BEEN. AND WHEN YOU ARE REVIEWING WHETHER THERE IS COMPETENT SUBSTACKS EVIDENCE IN THE RECORD -- SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE TRIAL JUDGE'S FINDING OF HAC, YOU ARE ALLOWED TO CONSIDER THAT THE ME SAID IT MAY HAVE BEEN APPLIED, HAD TO BE REAPPLIED, SO IT WASN'T PERFECTLY FIGHT -- PERFECTLY TIGHT THE FIRST TIME, SO IT DID TAKE MORE THAN TEN OR 15 SECONDS, BUT IN ANY EVENT, TEN OR 15 MINUTES OF LIGATURE IS MORE THAN ENOUGH COMPETENT AND SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDING.

LET ME ASK YOU A QUESTION ABOUT THE DISCOVERY ISSUE.

YES.

I BELIEVE THE DEFENSE SAID THAT THEY ASKED FOR THESE DIFFERENT MANUALS AND THINGS, THAT THE STATE'S EXPERT HAD USED IN DOGGING THEIR DNA ANALYSIS -- IN DOING THEIR DNA ANALYSIS, AND THE STATE RESPONDED BY SAYING THAT IT WAS TOO VOLUMINOUS TO COPY AND SEND TO THE DEFENSE ATTORNEY. WHAT ARE WE, REALLY, TALKING ABOUT? HOW MUCH INFORMATION ARE WE TALKING ABOUT HERE?

THE RESPONSE THAT YOU ARE REFERRING TO ACTUALLY CAME FROM THE INDEPENDENT LABORATORY, WHICH IS BODY OR -- WHICH IS BODE LABORATORY. THE STATE HAD HIRED THEM TO DO A SPR, DNA ANALYSIS FORM THE RESPONSE INDICATES THAT THE PROTOCOL MANUAL WAS TOO VOLUMINOUS, AND THAT THEY INVITED THE DEFENSE TO COME TO THE PRIVATE LABORATORY AND REVIEW IT, MAKE ANY COPIES IT WANTED TO, COMPLETE, UNFETTERED ACCESS. IT WAS -- THEY, ALSO, WANTED, IN ADDITION TO THAT MANUAL, THEY WANTED VALIDATION STUDIES, AND THEY WANTED PROFICIENCY TESTS, AND THE LAB RESPONDED THE SAME, WITH REGARD TO EACH OF THOSE, INVITING THEM TO COME AND LOOK AT IT, TO HAVE COMPLETE ACCESS TO ANYTHING AT THE FACILITY AND MAKE COPIES OF ANYTHING THAT THEY WANTED. THIS RESPONSE WAS COMMUNICATED TO THE DEFENSE, BY THEIR ADMISSION ON DECEMBER 29. THE FRYE HEARING, WHICH HAD BEEN SET ON THE DEFENDANT'S MOTION, WAS SCHEDULED FOR JANUARY 7, SO THAT WAS A PERIOD OF NINE DAYS THAT THEY HAD NOTICE THAT THEY NEEDED TO GET UP HERE AND LOOK AT THIS STUFF, IF THEY WANTED TO LOOK AT IT. THEY ELECTED, INSTEAD, TO WAIT UNTIL THE FIFTH OF JANUARY, AND FILE A MOTION FOR A CONTINUANCE WITH THE TRIAL COURT. NOW, THIS WAS NOT A MOTION TO COMPEL DISCOVERY. THIS WAS A MOTION FOR A CONTINUANCE. BECAUSE THEY DIDN'T GET THIS DISCOVERY. BUT YET

THEY MADE NO ATTEMPT TO GET IT ANY TIME BETWEEN THE 29th AND THE FIFTH OF JANUARY. THE JUDGE SAID -- THE JUDGE ASKED THEM ABOUT THAT, AND THEY SAID, WELL, OUR DEFENSE EXPERT WAS OUT OF TOWN ON THE HOLIDAYS, AND HE DIDN'T GET BACK UNTIL YESTERDAY, THE FOURTH, AND SO THAT IS WHY WE WAITED UNTIL TODAY TO ASK YOU FOR MORE TIME, BUT WHAT THEY, ALSO, SAY IN THEIR BRIEFING, IS THAT THIS -- THAT THE REASON THAT THEY ASKED FOR THIS INFORMATION,, TO BEGIN WITH, A COUPLE OF MONTHS BEFORE, WAS BECAUSE THE DEFENSE EXPERT, AT THAT TIME, HAD SAID THAT HE COULD NOT UNDERSTAND HOW THE STR TEST WAS PERFORMED, WITHOUT, FIRST, EXAMINING THE PROPERTY-COLORADO MANUAL -- THE PROTOCOL MANUAL, SO THEY DIDN'T NEED TO WAIT UNTIL THEIR EXPERT GOT BACK IN TOWN AND ASK HIM, WELL, DO YOU REALLY NEED THIS STUFF, BECAUSE WE HAVE GOT TO GO UP THERE, IF YOU REALLY NEED IT. HE ALREADY TOLD THEM HE NEEDED IT. SO WHEN THEY GOT THE RESPONSE ON THE 29th AND SAID COME UP HERE AND LOOK AT THIS STUFF, THEY SHOULD HAVE BEEN GOING UP THERE AND LOOKING AT THE STUFF AND NOT WAITING UNTIL THEIR EXPERT GETS IN AND SAY, WELL, DO YOU REALLY NEED, IT AND THEN GOING TO THE JUDGE AND SAYING CAN WE HAVE A CONTINUANCE, JUDGE, BECAUSE WE DON'T HAVE IT, AND WE REALLY NEED IT.

I UNDERSTAND THE SEQUENCE TO BE THE EXPERT DISCLOSURE BEING IN OCTOBER AND THEN THE REQUEST, SOMETIME, IN LATE OCTOBER, AND THEN IT WAS IN NOVEMBER THAT, WAS IT NOT, THAT THE RESPONSE CAME BACK, YOU HAVE ACCESS TO THIS EXPERT AND TO THE RECORDS, OR WAS IT ONLY AT THE END OF DECEMBER? I SEEM TO RECALL IT WAS IN THE NOVEMBER PERIOD, WHEN THAT WAS, FIRST, ASSERTED, THIS STUFF IS REALLY VOLUMINOUS. AM I MISSING 30 DAYS?

NO. THERE WAS AN INDICATION OF THAT EARLY ON. BUT THE DEFENSE FILED A SUPPLEMENTAL DISCOVERY REQUEST, I GUESS, WHERE THEY ATTEMPTED TO, MARTION NARROW WHAT THEY WANTED -- MAYBE, NARROW WHAT THEY WANTED, AND THEN IT WAS ON THE 29th OF DECEMBER THAT THE STATEMENT OF THE LAB, IN RESPONSE TO THAT ONE, CAME AND SAID, WELL, HERE IS THIS STUFF AND HERE IS THIS STUFF, AND REGARDING THE ARTICLES, THEY WANTED 3 ON 0 ARTICLES DEALING WITH S -- 300 ARTICLES DEALING WITH STR, DNA, AND THEY SAID, WELL, WITH THESE ARTICLES, YOU CAN COME UP HERE AND LOOK AT THEM OR YOU CAN GO TO THIS WEB SITE ON THE INTERNET, OR YOU CAN GO TO THE LIBRARY AND GET THEM AND KIND OF DO WHAT THEY NEEDED TO DO, TO GET THEM THERE, AND WHEN THEY GET TO THESE REMAINING ITEMS, THEY SAID THEY ARE JUST TOO VOLUMINOUS. COME UP HERE AND LOOK. AND DR. WEBER, WHO WAS THE OPERATOR OF THE LABORATORY, TESTIFIED THAT THAT WAS INDUSTRY STANDARD, THAT NOT ONLY FOR THE LAB HE WAS THEN DIRECTOR OF, BODE, BUT FOR THE ONES HE HAD WORKED AT PREVIOUSLY, THAT IT WAS THE WAY THEY DID IT, BECAUSE THE RECORDS WERE SO VOLUMINOUS, WAS TO SAY "COME LOOK", AND THAT THE ATTORNEYS CAME AND LOOKED, AND THAT THE JUDGE ASKED DR. WEBER, ON THE STAND, ARE YOU JUST A STATE EXPERT HERE? ARE YOU A STATE LAB? AND HE SAID, ROUGHLY, SOME PERCENTAGE, IT WAS A HIGH PERCENTAGE, OF THEIR WORK WAS DONE IN CIVIL CASES. WHETHER IT WAS FAMILY LAW OR PERSONAL INJURY, THOSE KINDS OF THINGS, THAT THEY DID A LITTLE BIT OF, IN CRIMINAL CASES, COMPARATIVELY, A LITTLE BIT, AND THAT THEY DID WORK FOR, BOTH, THE STATE AND THE DEFENSE, AND THAT THAT WAS STANDARD PRACTICE, TO HAVE THEM COME AND LOOK, AND FURTHERMORE, HE TESTIFIED, THAT, AT THE END OF THE FRYE HEARING, THE DEFENSE REPRESENTED TO HIM THAT THEY WOULD COME AND LOOK, AND THEY, STILL, HAD 13 DAYS, IF I DID THE MATH RIGHT, FROM THE FRYE HEARING WAS ON THE 7th OF JANUARY, AND THE TRIAL BEGAN ON THE 20th OF JANUARY. THEY HAD THAT TIME FRAME, IN WHICH THEY COULD HAVE GONE AND HAD TOLD DR. BEBER THEY WERE COMING TO LOOK AT THAT EVIDENCE OR THAT INFORMATION THAT THEY WANTED, AND THEY DIDN'T GO, AND THEY, EVEN, IT IS CLEAR ON THE RECORD THAT THEY HAD A COUPLE OF DEFENSE INVESTIGATORS, SO THEIR COMPLAINT TO THE JUDGE, IN THE TRIAL COURT, WAS NOT, HEY, WE DIDN'T HAVE ENOUGH TIME TO GO. IT WAS THAT IT WASN'T EFFICIENT. IT WOULDN'T BE EFFICIENT FOR US TO SEND AN EXPERT AND TWO ATTORNEYS UP THERE TO LOOK AT THE RECORDS ON SITE. THEY DIDN'T HAVE TO SEND AN EXPERT AND TWO ATTORNEYS UP THERE. THEY COULD HAVE SENT THEIR INVESTIGATOR UP THERE, IF THEY REALLY WANTED THE COPIES OF ALL OF THIS STUFF THAT THEY SAID THEY WANTED, THEIR INVESTIGATOR COULD

HAVE BO UP THERE AND GOTTEN THEM, AND THEY WOULD HAVE HAD THEM, SO WE SUBMIT THERE IS ABSOLUTELY NO ERROR IN THE TRIAL COURT'S DENIAL OF THE DISCOVERY ISSUE, AND THE DENIAL OF THE CONTINUANCE, AND, OF COURSE, ABUSE OF DISCRETION IS THE STANDARD IN REVIEWING BOTH OF THOSE THINGS, AND THEY JUST DIDN'T MEET IT. ONE OF YOUR HONORS ASKED A QUESTION ABOUT THE ISSUE OF THE SECOND CHEMIST, AND I WILL JUST TOUCH ON THAT ONE VERY BRIEFLY. DR. TREAGER HAD BEEN APPOINTED AS THE DEFENSE EXPERT CHEM NIECE THIS CASE, AND HE HAD BEEN GIVEN, BY THE DEFENSE, ONE SAMPLE OF -- FROM OFF OF THE BED SHEET, AND HE WAS ASKED TO MAKE A TEST OF THAT, TO DETERMINE WHETHER NINOXINAL-9 WAS ON THAT SAMPLE, IN CLOSE PROXIMITY TO THE SEMEN THAT WAS ON THAT SAMPLE, WHICH WAS, OF COURSE, MR. OVERTON, AS THE RSLP DNA, WHICH WAS ESTABLISHED CONCLUSIVELY BEFORE THE TRIAL COURT. HE WAS ASKED IF THERE WAS NINOXIDOL-9 PRESENT, AND HE STATED THERE WAS NINOXIDOL-9, AND HE ASKED ABOUT THE MATTRESS ON THE BOTTOM OF THE FITTED SHEET, AND HE TESTED AND FOUND IT ON THE OTHER SAMPLES. WELL, THE STATE INDICATED THAT THERE WERE MORE THAT BE OR SOURCE FOR NINOXIDOL-9. THE DEFENDANT WANTED -- HE HAD A DEFENSE AT TRIAL THAT THE EVIDENCE OF -- HIS SEMEN, THE DNA EVIDENCE, THE SEMEN, HAD BEEN PLANTED BY A DETECTIVE AT TRIAL -- I MEAN AT THE CRIME SCENE OR ON THE EVIDENCE AT SOME POINT THEREAFTER, AND TAKE THE DETECTIVE HAD GOTTEN HIS SEMEN BY GOING TO HIS FORMER GIRLFRIEND, WHO WAS INFECTED WITH AIDS --

LET ME ASK YOU THIS, BECAUSE I AM NOT SURE OF THE SEQUENCE OF EVENTS, BUT WHEN WERE THE SAMPLES, THE BED SHEET AND THINGS, TAKEN? WAS IT THE DAY OF THE MURDER? OR AT THE FIRST EXAMINATION OF THE CRIME SCENE?

DR. POPE TOOK SOME SAMPLES. HE WAS AT THE CRIME SCENE. AND HE TOOK SOME SAMPLES FROM THE BED SHEET. I CAN'T REMEMBER. YES, HE DID CUT OUT SOME SMALL SAMPLES, AT THE SCENE, AND MADE AN INITIAL TEST WITH THOSE, AND, OF COURSE, HE ILLUMINATED THE -- HE LUMI-LIGHTED THE SCENE, AS WELL, BEFORE THEY TOOK SAMPLES AT THE SKRECHBLT HE TOOK SMALL SAMPLES, AT THE SCENE, FOR INITIAL TESTING. THEN HE TOOK INTO CUSTODY, I THINK, DETECTIVE PETRIC, ACTUALLY, FIRST TOOK IT INTO HIS CUSTODY AND THEN DELIVERED IT TO DR. POPE, BUT DR. POPE WAS THERE WHEN IT WAS TAKEN INTO CUSTODY BY DETECTIVE PETRIC.

THE ENTIRE SHEET?

THE ENTIRE SHEET. THE COMFORT OR. AND THERE WAS ONE OTHER BED CLOTHES ITEM THAT THEY, ALSO, TOOK. THEY TOOK A BLOODY TOWEL AS WELL.

AND THEN, WHEN WAS MR. OVERTON DEVELOPED AS A SUSPECT FOR THIS MURDER?

THERE WAS SOME INDICATION IN THE RECORD THAT HE WAS MENTIONED EARLY ON, AS A POSSIBLE SUSPECT, BUT THEY DIDN'T HAVE ANYTHING, REALLY, TO LINK HIM TO IT. HE WAS MENTIONED BECAUSE HE WAS KNOWN TO BE A CAT BURGLAR, AND THAT THE ENTRY INTO THE PREMISE WOULD FIT THAT. BUT THEY DIDN'T LINK HIM TO IT, UNTIL YEARS LATER, MANY YEARS LATER, WHEN THEY OBTAINED DNA EVIDENCE AND IT H IT COMPARED TO THE SAMPLE RUN FROM THE CRIME SCENE.

BUT IT IS CLEAR THAT THE FIRST DNA WAS TESTED EARLY ON.

YES.

I MEAN, FIVE OR SIX YEARS BEFORE THIS PARTICULAR DEFENDANT --

BEFORE THE SDR DNA.

WE HAD A PARTICULAR STANDARD THAT WE KNEW WHAT THE DNA WAS, EARLY ON, BUT JUST DIDN'T CONNECT WITH ANY INDIVIDUAL UNTIL MUCH LATER.

WE TESTED SEVERAL OTHER INDIVIDUALS, BEFORE WE GOT TO OVERTON AND SENT IT UP THERE TO BE COMPARED TO THE FIRST DNA ANALYSIS, AND, OF COURSE, IT DIDN'T MATCH, AND THEN EVENTUALLY THEY GOT A SAMPLE OF MR. OVERTON'S, AND HIS DID MATCH. THEN SOME TIME PASSED, AND THE NEW TECHNOLOGY, THE NEWER TECHNOLOGY OF SPR DNA, HAD BEEN DEVELOPED AND WAS BEING USED, SINCE 1991, I BELIEVE THE TESTIMONY ESTABLISHED, AND THE STATE SAID, TO THE DEFENSE, ACTUALLY, WOULD YOU LIKE TO GIVE SOME -- TO GET SOME FURTHER TESTING ON THE DNA? DO YOU WANT TO SATISFY YOURSELF HERE THAT EVERYTHING IS WHAT WE HAVE REPRESENTED IT IS, AND THE STATE OFFERED THEM THAT FOR A YEAR AND-A-HALF, AND THEY DECLINED TO GET IT DONE, SO FINALLY THE STATE SAYS, WELL, OKAY, WE HAVE GOT THIS TECHNOLOGY OUT HERE. WE WILL GO AHEAD AND DO IT, AND THEY DID.

IT SEEMS AS THOUGH THE COMPLAINT ON APPEAL WAS THAT THEY ASKED FOR ANOTHER CHEMIST, BECAUSE THEY WANTED TO TEST THE NINOXIDOL-9, TO SEE IF THEY COULD LOCATE A DIFFERENT SOURCE, SUCH AS A LUB CANTOR SOMETHING ELSE. THAT SEEMS TO -- SUCH AS A LUBRICANT OR SOMETHING ELSE. THAT SEEMS TO BE THE CLAIM.

FROM THE RECORD AND THE TRIAL COURT, WAS THAT THEY WANTED ANOTHER CHEMIST, BECAUSE THE STATE HAD GIVEN THE DEFENSE INFORMATION THAT ITS EXPER/ WOULD SAY THE MINOXIDOL-9 WOULD BE CONTAINED IN A SPERM SIDE, BUT IT WAS, ALSO, CONTAINED IN LAUNDRY DETERGENTS, AND IT COULD HAVE GOTTEN ON THE BED SHEETS WHEN THEY WERE WASHED AND THERE COULD HAVE BEEN EVIDENCE THAT IT SURVIVED THE WASHING, SO THEY WANTED THE SECOND CHEMIST, THEY SAID, BECAUSE THEY WANTED TO FIND OUT IF THERE WAS A TEST THAT COULD BE DONE, WHICH WOULD TELL THEM WHETHER THE SOURCE OF THE NINOXINOL-9 WAS THE DERBLING EMPTOR -- DETERGENT OR HAD WHETHER IT WAS THE SPERM SIDE, AND THE REASON THEY GAVE TO THE COURT FOR NOT USING DR. TAYLOR, WHOM THEY ALREADY HAD TO ASK THAT QUESTION, WAS, WELL, WE DON'T FEEL CONFIDENT IN CONFIEDING HIM TO -- IN CONFIDING TO HIM, BECAUSE THE STATE SENT HIM TWO OTHER SAMPLES THAT HE TESTED.

THAT IS ASSERTED IN THE YOUR CLAIM.

YES, YOUR HONOR, I WOULD SUBMIT THAT THAT IS THE CASE.

JUSTICE PARIENTE HAS A QUESTION.

JUST REAL QUICK, UNRELATED TO THIS POINT. THERE WAS A PSI THE JUDGE ORDERED, AND IT IS REFERENCED EXTENSIVELY IN THE SENTENCING ORDER. I DON'T THINK THE PSI IS IN THE RECORD. COULD THAT BE FILED? WAS THAT FILED AS PART OF --

WAS IT FILED?

I MEAN, IT IS PART OF THE RECORD SOMEWHERE, ISN'T IT?

WELL, IT IS MY UNDERSTANDING THAT IT IS. I HAVEN'T PERSONALLY LOOKED AT IT, SO I WILL FOLLOW-UP ON THAT AND SEE WHAT I CAN DO, TO GET IT UP HERE TO THE COURT, IF YOU DON'T HAVE IT. THERE WAS A PSI. MR. OVERTON REFUSED TO COOPERATE.

I JUST WONDERED --

IT MAY BE KIND OF ABBREVIATED, BUT YES, MA'AM. THANK YOU.

REBUTTAL?

VERY BRIEFLY, I AM DIDN'T HAVE TIME TO ADDRESS THE DNA ISSUE. I WOULD JUST REFER THE

COURT TO MY REPLY BRIEF FOR THE TIME LINE. THERE WAS NO OPPORTUNITY, BY THE TIME THE RESULTS CAME IN IN OCTOBER, I BELIEVE, IT TOOK SIX MONTHS FOR THE STATE TO DO THIS TESTING, THAT THE STATE SAID WAS ABSOLUTELY VERY IMPORTANT TO ITS CASE. AFTER THAT, I THINK IT WAS DECEMBER 29, WHETHER THEY FINALLY GAVE US THE RESULTS OF -- OR RATHER OCTOBER THEY GAVE US THE RESULTS OF THE TEST. DECEMBER THEY GIVE US OUR DISCOVERY THAT WE REQUESTED, AND, OF COURSE OF COURSE, COUNSEL -- AND, OF COURSE, COUNSEL IS A LAY PERSON. HE CAN'T KNOW WHAT IS IN ALL OF THESE SCIENTIFIC DOCUMENTS. THE EXPERT WAS OUT OF TOWN, BUT ON JANUARY 4, THE EXPERT EVALUATES IT. HE SEES WHAT IS MISSING AND THE NEXT DAY WE BRING IT TO THE ATTENTION OF THE COURT. I NEED TO GET BACK TO THE JURY ISSUE, THE JURORS THAT WERE ACCEPTED IN THE CASE. COUNSEL CITES THE SINGLETON CASE. IN SINGLE TON THE JURORS INDICATED THAT THEY HAD NO OPINION OF WHETHER THE DEFENDANT WAS INNOCENT OR GUILTY AND, ALSO, THEY WERE UNEQUIVOCAL THAT THEY COULD SET IT ASIDE. THESE JURORS INDICATED THEY HAD, MR. RUSSELL HAD AN OPINION THAT MR. OVERTON WAS GUILTY, THAT HE WAS DANGEROUS. HE WAS GLAD THE RESTRAINTS WERE THERE AND THEN HIS RESPONSES ON THE RECORD ARE CONTRADICTORY, AND COUNSEL STATES, YOU KNOW, MAYBE THE JURORS' EXPRESSIONS, HOW THEY APPEAR, WHERE THE RESPONSES ON THE RECORD ARE CONTRADICTORY AND EQUIVOCAL, THE COWER CAN LOOK AT THE COLD RECORD AND SEE, AND THAT HAS TO OBCONSIDERED, AS I SAID EARLIER, WITH WHAT THE JURORS' SPONTANEOUS RESPONSES WERE, HOW THEY FELT ABOUT THE ARTICLES. ALL OF IT HAS TO BE TAKEN TOGETHER. COUNSEL, ALSO, MADE THE POINT ABOUT PRESERVATION. THE OBJECTION THAT WAS MADE ABOUT MR. RUSSELL WAS HE WANTED TO HEAR THE DEFENDANT TESTIFY, AND IN ADDITION TO THAT, HOW HE FELT ABOUT ALL THE MUST BE ILLICIT IN THE CASE ---ALL THE PUBLICITY IN THE CASE, WHAT HE READ, AND, OF COURSE, THE CUTTING OF THE THROAT AND HOW IT WAS READ, ALL THREE OF THOSE THINGS, THE PUBLICITY AND WHAT HE THOUGHT ABOUT IT WAS, ALSO, PRESERVED. COUNSEL ALSO STATED THAT PERHAPS MR. HUSSLEIN SAID THAT PERHAPS THE DEFENDANT SHOULDN'T BE REST OBTAINED. THAT IS NOT MY -- RESTRAINED. THAT IS NOT MY READING OF IT AT ALL. THE GROUP VIE DIR WAS ARE THERE ANY IMPRESSIONS OF MR. OVERTON AS HE SITS THERE, AND THAT IS WHEN HE BROUGHT UP THAT THEY ARE INCONSISTENT WITH THE PRESUMPTION OF INNOCENCE, AND THE LANGTHAT HE USES IS YOU ARE EXPECTING US TO INSTANTLY BELIEVE THAT HE IS INNOCENT. WHY ARE YOU RESTRAINING HIM? AND THEN, AS I SAID BEFORE, HIS RESPONSES, I THINK I CAN PUT IT ASIDE. I WOULD SAY SO. THOSE ARE EQUIVOCAL RESPONSES. AND AT ONE POINT HE SAYS I DON'T KNOW WHAT MAKES ME THINK I CAN. I HAVE NEVER BEEN IN THIS SITUATION BEFORE. ALL OF THAT HAS TO BE CONSIDERED TOGETHER. I THINK THE STATE'S POSITION, HERE, IS THAT, IF, AT SOME POINT THE JURORS SAY THAT I CAN SET IT ASIDE, THAT THOSE MAGIC WORDS MAKE THE JAR ACCEPTABLE, AND THAT IS NOT THE CASE, UNDER THESE COURTS' DECISIONS IN SYNCER AND HAMILTON. EVERYTHING -- IN SYNC -- IN SINK SINGER AND HAMILL -- IN SINGER AND HAMILTON, AND BASED ON THE RESPONSES TAKEN TOGETHER, BOTH OF THESE JURORS WERE UNACCEPTABLE AND THEY SHOULDN'T HAVE BEEN SERVING. THEY SHOULD HAVE BEEN EXCLUDED FOR CAUSE. THANK YOU.

THANK YOU. WE WOULD LIKE TO STATE THAT WE ARE GLAD TO HAVE THE STUDENS FROM THE CAN'TERBURG I SCHOOL OF FLORIDA -- CAN'T YOU ARE BURY -- CANTERBURY SCHOOL OF FLORIDA, THEIR TEACHERS AND LEADERS WITH US THIS MORNING, AND YOU ARE VERY WELCOME TO THE FLORIDA SUPREME COURT. AT THIS POINT, THE COURT WILL STAND IN RECESS. THANK YOU, COUNSEL. THE MARSHAL: PLEASE RISE.