Paul H. Evans v. State of Florida

PRESENTED THAT THE DEFENDANT WAS NOT --

THAT IS SORT OF GENERALIZED, BUT SPECIFICALLY WHAT IS THE SPECIFIC --

SPECIFICALLY THE DEFENSE CONTENDED FIRST THAT THERE WAS A WITNESS, MAHIA, WHO HAD STATED TO THE POLICE THAT HE HAD SEEN THE WIFE COMMIT THE MURDER. THE STATE DID NOT DISPUTE THAT AT THE HEARING ON THE MOTION TO DISMISS THE ENINDICTMENT, THAT THERE WAS SUCH A PERSON, THAT THAT PERSON HAD SINCE DISAPPEARED. THAT WOULD BE A HIGHLY FAVORABLE PIECE OF EVIDENCE FOR THE DEFENSE. THE SECOND PRESENTATION WITH REGARD TO THAT WAS A WITNESS NAMED MR. LIMPCK, WHO -- MR. LYNCH, WHO WOULD HAVE SAID THAT THE GUNSHOTS OCCURRED BETWEEN TWO OR THREE IN THE MORNING. THE STATE'S ENTIRE CONTENTION IN THIS CASE WAS THAT THE SHOOTING OCCURRED AROUND EIGHT O'CLOCK AT NIGHT, AND IN FACT THE PROSECUTOR ARGUED SPECIFICALLY TO THE JURY, THAT THERE IS NO -- THERE IS NO ONE WHO HEARS SHOTS AFTER 9:30. THE STATE, BOTH, BECAUSE OF THE DELAY IN BRINGING THE PROSECUTION AND BECAUSE OF EVIDENTIARY ISSUES WHICH AROSE DURING THE TRIAL, IN WHICH I DISCUSS ELSEWHERE IN THE BRIEF, WAS ABLE TO SHAPE THE EVIDENCE IN SUCH AWAY THAT THERE WAS NO EVIDENCE PRESENTED WHICH SHOWED THAT THERE WERE SHOTS AFTER NINE-THIRTY, ALTHOUGH THE PROSECUTION WAS AWARE THAT, IN FACT, THERE HAD BEEN REPORTS OF SHOOTING AFTER NINE-THIRTY. ADDITIONALLY, ON THE MOTION, THE DEFENSE ALLEGED THAT THERE WERE ALIBI WITNESSES WHO COULD ESTABLISH THE DEFENDANT'S CONTINUES PRESENCE AT THE FAIR, SOME MILES AWAY FROM THE PLACE OF THE SHOOTING, AT THE TIME OF THE CRIME. THE IS STATE COUNTERED, WELL, THERE WERE SOME OTHER ALIBI WITNESSES, AND THE DEFENSE POINTED OUT, AND, AGAIN, THE JUDGE ASKED THE STATE IF THEY DISPUTED THE DEFENSE PRESENTATION, AND THE STATE SAID THEY HAD NOTHING FURTHER TO SAY ON THE POINT. THE DEFENSE POINTED ON OUT THAT THERE WAS A SEQUENCE OF WITNESSES WHO WOULD HAVE ESTABLISHED THE ENTIRE ALIBI THAT THE DEFENDANT WAS AT THE FAIR, FAR AWAY FROM THE PLACE OF THE SHOOTING, AT THE ALLEGED TIME OF AROUND EIGHT O'CLOCK. SO THAT THIS IS THE ACTUAL PREJUDICE WHICH THE DEFENSE CLAIMED, WHICH WAS THE ENTIRE DEFENSE CASE, IN ESSENCE, THAT THE DEFENDANT WAS AT THE FAIR, WAS NOT INVOLVED IN THE SHOOTING HAD DISAPPEARED IN THE FIVE YEARS PRIOR TO THE INDICTMENT.

MY QUESTION IS, ON THAT POINT WHAT IS OUR STANDARD OF REVIEW OF THE CLAIM OF BOTH OF ACTUAL PREJUDICE? HOW DO WE EVALUATE IT? THERE SEEMS TO BE SOME CASES THAT TALK ABOUT COMPETENT, SUBSTANTIAL EVIDENCE. YOU HAVE MADE A POINT OF SAYING THE STATE DIDN'T CONTEST THINGS, BUT THIS WASN'T A -- THESE WERE ALLEGATION THAT A DEFENSE, THAT THE DEFENSE LAWYER MADE. HOW DO WE REVIEW THIS ISSUE OF PREJUDICE?

WELL, I SUBMIT TO THE COURT THAT, WHERE THE DEFENSE HAS MADE A WRITTEN MOTION LIKE THIS, AND REFERS THE COURT TO POLICE REPORTS, AND THE STATE DOES NOT CONTEST THE FACTUAL ALLEGATIONS, THAT THAT IS A SUFFICIENT EVIDENTIARY RECORD.

WELL, ON THE ONE THAT YOU SAY IS SORT OF CRITICAL, THAT SOMEBODY ELSE MURDERED THE VICTIM, IS THERE, IN THIS RECORD A POLICE REPORT THAT SHOWS THIS GUY, MAHIA, AS BEING SOMEBODY THAT WAS A WITNESS TO SOMEONE ELSE MURDERING THE DEFENDANT?

JUSTICE PARIENTE, NO. THE POLICE REPORT, ITSELF, IS NOT IN THE RECORD, AND, AGAIN, THIS IS A SITUATION WHERE THE DEFENSE HAS FILED THE WRITTEN MOTION, HAS REFERRED THE COURT TO

THE POLICE REPORT, AND THE STATE HABIT DISPUTED IT. HAD THE STATE SIMP-- HASN'T DISPUTED IT. HAD THE STATE SIMPLY SAID, WAIT A SECOND, JUDGE, THERE IS NO SUCH POLICE REPORT OR, JUDGE, HERE IS WHAT THE POLICE REPORT ACTUALLY SAYS, THEN IT WOULD HAVE BEEN DEVELOPED MORE, BUT I SUBIT TO THE COURT THAT, WHERE THE DEFENSE MAKES THE CONTENTION SUCH AS THIS, AND THE STATE DOES NOT DISPUTE IT, THAT IT IS NOT NECESSARY FOR THE DEFENSE TO GO FURTHER, IN TERMS OF ESTABLISHING THE FACTUAL --

WHAT ABOUT THE ALIBI WITNESSES? DID THE -- CAN THE DEFENSE JUST COME UP AND SAY THESE PEOPLE WOULD HAVE ESTABLISHED THAT I WAS ELSEWHERE AND MAKE THAT ASSERTION, AND THAT IS ENOUGH TO GET THROUGH A SHOWING OF ACTUAL PREJUDICE?

JUSTICE PARIENTE, IT APPEARS, FROM THE RECORD, THAT THE STATE UNDERSTOOD THE NATURE OF WHAT THE DIFFERENT WITNESSES WOULD HAVE BEEN, BECAUSE THE STATE WAS ALSO, TALKING ABOUT THE OTHER ALIBI WITNESSES WHO WOULD HAVE BEEN AVAILABLE. IT APPEARS THAT THE PARTIES WERE AWARE OF WHAT THIS WAS, AND THEIR PRESENTATION TO THE COURT WAS SUCH THAT, IN EFFECT, IT WAS AN AGREEMENT OF THE PARTIES AS TO WHAT THE EVIDENCE WOULD HAVE BEEN. I AGREE THAT, IF HE STATE HAD SAID, WELL, WAIT A MINUTE, YOU KNOW, WE DON'T KNOW ANYTHING ABOUT THESE ALIBI WITNESSES, OR IF THE STATE HAD SAID, WELL, WAIT A MINUTE, WE HAVE POLICE REPORTS SHOWING THIS, THAT OR THE OTHER THING, THEN, OR THE STATE HAS SIMPLY SAID THESE ARE MERELY ALLEGATIONS. WHAT IS YOUR EVIDENCE. THEN THE EVIDENTIARY RECORD WOULD HAVE BEEN DEVELOPED MORE.

AND ALL OF, OF COURSE, THE ACTUAL PREJUDICE GOES TO WHETHER YOU MEET YOUR INITIAL BURDEN. THAT DOESN'T END THE COURT'S INQUIRY, SO WOULD YOU ADDRESS, ASSUMING WE AGREE THAT YOU HAVE MET YOUR INITIAL BURDEN OF ACTUAL PREJUDICE, WHAT, THEN, DOES THE COURT DO, AND WHAT IS OUR STANDARD OF REVIEWING THE COURT'S DETERMINATION THAT THE INDICTMENT SHOULD NOT BE DISMISSED?

JUSTICE PARIENTE, THE MAIN CASE ON THIS DOES NOT SPELL OUT, IN CONCRETE DETAIL, HOW COURT IS TO MAKE THE EVALUATION. IT SAYS THAT THE COURT IS TO CONSIDER BOTH THE ISSUE OF ACTUAL PREJUDICE AND THEN, UPON A SHOWING OF ACTUAL PREJUDICE, THEN THE COURT IS TO CONSIDER THE REASONS FOR THE DELAY. I SUBMIT THAT THE SUBSTANCE OF THAT MEANS THAT IT HAS TO BE DECIDED ON A CASE-BY-CASE BASIS.

THE BURDEN IS YOURS TO SHOW OR THE DEFENDANT'S TO SHOW THE ACTUAL PREJUDICE. CAN YOU RELY UPON THE STATE NOT CONTESTING YOUR ALLEGATION, AS AIDING YOU IN MEETING YOUR PROOF?

I SUBMIT SO, JUSTICE SHAW, WHERE YOU KNOW, THE STATE HAS AN ADVOCATE THERE. THEY HAVE A LAWYER THERE TO REPRESENT THEM. THE STATE ATTORNEY CAN SAY THAT IS NOT TRUE. THEY CAN SAY WAIT A SECOND. WHERE IS THEIR PROOF? THEY CAN SAY WAIT A SECOND --

DOES THE STATE HAVE AN OBLIGATION TO DO ANYTHING?

I SUBMIT THAT IT DOES. IT HAS, AT A MINIMUM, AN OBLIGATION TO OBJECT, WHEN THE EVIDENTIARY PREDICATE IS INSUFFIENT THAT MORE EVIDENCE NEEDS TO BE PRESENTED.

WELL, NO EVIDENCE WAS PRESENTED, THOUGH, WAS IT?

RIGHT.

IN OTHER WORDS THERE WAS NO HEARING, AS WE WOULD UNDERSTAND THE TYPICAL USE OF THE WORD, AS FAR AS FOR INSTANCE, IN A CRIME WHERE, IN A CROWDED SHOPPING CENTER, AND THERE WAS A SHOOTING AND THERE WERE 20 WITNESSES THAT SAW WHAT HAPPENED, AND THEN TEN YEARS LATER, THEY CHARGE A DEFENDANT WITH THAT CRIME, AND THE DEFENDANT COMES

IN AND SAYS, WELL, WAIT A MINUTE. I WAS NOWHERE NEAR THIS PLACE AT THE TIME, AND FURTHERMORE, 15 OF THOSE PEOPLE HAVE DISAPPEARED. TEN OF THEM HAVE DIED AND WHATEVER, AND SO THIS IS, YOU KNOW, TERRIBLY PREJUDICES ME, BECAUSE I, YOU KNOW, AND YOU SHOW ALL THAT, THOUGH. IN OTHER WORDS YOU SHOW THAT THESE PEOPLE HAVE, THAT AN INVESTIGATOR TRIED TO FIND THEM OR THAT THEY ARE DECEASED, OR THAT KIND OF THING. WE ARE DEALING, HERE, REALLY, VIRTUALLY IN A VACUUM, ARE WE NOT? YOU KNOW, THE CLAIMS HERE. WE DON'T REALLY HAVE ANY CLEAR POSITION BY THE STATE, WITHOUT THEIR BEING ACTUALLY A HEARING ABOUT IT. WE DON'T HAVE ANY REAL, THE PRESENTATION OF FACTS TO A FACT FINDER, TO DETERMINE WHETHER PREJUDICE OCCURRED, SO AREN'T WE LACKING IN ESSENTIAL INGREDIENT IN THIS CLAIM, AND THAT IS WHEN WE TALKING ABOUT ACTUAL PREJUDICE, A TRIAL COURT'S ABILITY TO EVALUATE THE CIRCUMSTANCES AND THEN TO BE ABLE TO POINT TO SPECIFIC THINGS TO SAY THAT THERE IS THIS ACTUAL PREJUDICE? I MEAN, AREN'T WE LACKING THAT IN THIS RECORD?

I UNDERSTAND WHAT YOU ARE AYING. THERE WAS A HEARING, BUT THERE WAS NO EVIDENTIARY HEARING. AND, AGAIN, I WOULD SUBMIT THAT WHERE THERE HAS BEEN THIS SORT OF DETAILED PRESENTATION BY THE DEFENSE, AND IT IS NOT DISPUTED BY THE STATE, THEN THE COURT IS JUSTIFIED IN UNDERSTANDING THAT THAT, THIS IS, IN FACT, WHAT THE WITNESSES WOULD HAVE SAID, AND THAT, IN FACT, THE WITNESSES ARE UNAVAILABLE, AND IN FACT, THE JUDGE APPARENTLY RULED ON THE MERITS. THE JUDGE DIDN'T SAY, WELL, WAIT A SECOND. YOU HAVEN'T PRESENT NID EVIDENCE OR ANYTHING LIKE THAT. -- PRESENTED ANY EVIDENCE ON OR ANYTHING LIKE. THAT THE JUDGE SEND THE PRESENTATIONS OF THE PARTIES AS TO WHAT THE EVIDENCE WOULD HAVE BEEN. I ALSO WANTED TO TALK ABOUT POINT NUMBER THREE ON THE APPEAL WHICH PERTAINS TO THE CROSS-EXAMINATION OF THE LEAD DETECTIVE ON THE CASE, AND, AGAIN, THIS PERTAINS TO THE QUESTION OF WHETHER THERE WERE SHOTS FIRED, AFTER THE TIME ALLEGED BY THE CLAIM, CLAIMED BY THE STATE BEFORE THE JURY. THE OFFICERS ARRIVED, I BELIEVE, AROUND THREE OR FOUR IN THE MORNING OF THE, AND APPARENTLY THE HOMICIDE OCCURRED THE PREVIOUS NIGHT. AND THE LEAD DETECTIVE, DETECTIVE BRUMLY, TESTIFIED THAT WE FOLLOWED UP WHATEVER LEADS WE HAD FROM THE NEIGHBORHOOD CANVASS, ON DIRECT EXAMINATION. IT OUR CONTENTION THAT, WHEN THE STATE IS ENTITLED TO PRESENT THAT EVIDENCE, THAT THE DEFENSE SHOULD BE ALLOWED TO CROSS-EXAMINE THE OFFICER ON THE LEADS.

ARE YOU SAYING THAT THAT INFORMATION SOUGHT AND ELICITED INFORMATION FROM THE DETECTIVE?

I SUBMIT IN THE CONTEXT OF THIS CASE THAT IT DID, AND THE REASON THAT I SAY THAT IS THE REASON BEFORE. THE STATE ARGUED TO THE JURY THAT THERE WAS NO ONE WHO HEARD SHOTS AFTER NINE-THIRTY. THE STATE'S CONTENTION TO THE WIFE IS -- TO THE JURY IS THAT THE WIFE HAD AN IRONCLAD ALIBI FOR THAT PERIOD BEFORE NINE-THIRTY, THAT WE REPEATEDLY KEPT SAYING WE KNOW WHAT THE EVIDENCE IN THE CASE IS, THAT IT IS KNOWN THAT THAT WAS WHY THE DEFENDANT HAD TO BE INVOLVED, WAS BECAUSE SHE HAD AN IRONCLAD ALIBI FOR THIS PERIOD BEFORE NINE-THIRTY, AND THAT THAT THERE IS NO EVIDENCE OF SHOTS AFTER NINE-THIRTY, SO YOU COUPLE THIS WITH THE POLICE SAYING THAT THEY FOLLOWED UP ALL THE LEADS, WHATEVER LEADS WE HAD. THAT COMMUNICATES TO THE JURY THAT THEY DID FOLLOW-UP THE LEADS AND FOUND NO LEAD OF ANY SHOT AFTER NINE-THIRTY, COUPLING THAT WITH THE STATE'S ARGUMENT. THAT WAS WHAT WAS COMMUNICATED TO THE JURY REPEATEDLY, DURING THE STATE'S FINAL ARGUMENT, IS, WAS THIS IDEA THAT THERE IS THIS VERY DISCREET TIME PERIOD DURING WHICH THE DEFENDANT DID NOT HAVE AN ALIBI, BECAUSE, AGAIN, THE ALIBI WITNESSES WERE GOTTEN. -- WERE GONE.

MR. CALDWELL, YOUR QUESTION, AND I UNDERSTAND YOUR POINT, BUT THE QUESTION THAT YOU SAY OPENED THE DOOR, BECAUSE ORDINARILY CERTAINLY THE DEFENDANT COULDN'T GET IN NOR COULD THE STATE GET INTO THE KINDS OF QUESTIONING, WAS WE FOLLOWED UP

WHATEVER LEADS WE HAD FROM THE NEIGHBORHOOD CANVASS AND FOLLOWED UP, HAD A DETECTIVE FOLLOW-UP ON THE BACKGROUND OF THE DECEASED AND THE FINANCIAL ASPECT OF HIM, SO IN THE CONTEXT OF THAT, AND THERE IS NO OBJECTION. CORRECT?

YOU ARE CORRECT.

YES, MA'AM.

THERE IS NO OBJECTION TO THAT AT ALL.

YES, MA'AM.

SO YOU SAYERING THAT IS ENOUGH TO OPEN UP THE DOOR TO HAVE ASKED ABOUT DIDN'T YOU HEAR SOMEONE FIRE, DIDN'T YOU FIND SOMEONE THAT HEARD SHOTS AT TWO OR THREE IN THE MORNING?

YES, MA'AM. BECAUSE, AGAIN, HE SAID WE FOLLOWED UP WHATEVER LEADS WE HAD FROM THE NEIGHBORHOOD CANVASS. AND WE SUBMIT THAT WHERE THE STATE PRESENTS THAT TESTIMONY ON DIRECTION, THE DEFENSE IS ENTITLED TO PUT BEFORE THE JURY, WHAT THOSE LEADS WERE. IT IS WITHIN THE SCOPE OF CROSS-EXAMINATION. IT CAME UP DURING DIRECTION. THIS WAS A VITAL ISSUE IN THE CASE, AND --

I AM A LITTLE CONFUSE ODD THAT ISSUE. YOU SEEM TO ARGUE, IN THE SAME POINT, THAT SOME OF THE STATEMENTS WERE HEARSAY. IS YOUR ARGUMENT ON LIMITED CROSS-EXAMINATION CONTINGENT UPON BRUMLEY'S STATEMENTS BEING HEARSAY?

I SUBMIT THAT IT MAKES IT A LOT STRONGER.

OR CAN THEY STAND ALONE? DO YOU UNDERSTAND?

I APOLOGIZE FOR THE CONFUSION IN THE BRIEF. I SUBMIT THAT IT MAKES MY CASE MUCH STRONGER, BECAUSE THERE ARE CASES WHICH ARE CITED ON THE BRIEF, TO THE EFFECT THAT, ONCE THE STATE, ONCE A PARTY HAS PUT HEARSAY, PUT BEFORE THE JURY THAT THERE ARE THESE SORTS OF HEARSAY STATEMENTS, THAT THERE ARE HEARSAY STATEMENTS, THEN THE DEFENSE IS ENTITLED TO BRING OUT THE FULL NATURE OF WHAT WAS SAID AND HERE, AGAIN, THE ITCH INDICATION TO THE JURY IS THAT THEY GOT THESE LEADS. THEY FOLLOWED THEM ALL UP. THE STATE THOROUGHLY INVESTIGATED THE CASE, AND THAT THERE IS NOBODY WHO HEARD SHOTS AFTER NINE-THIRTY AT NIGHT. AND WE SUBMIT THAT, IN THE CONTEXT OF THIS CASE, THAT IT WAS PREJUDICIAL TO THE DEFENSE NOT TO BE ABLE TO PUT BEFORE THE JURY, WHAT THESE LEADS WERE.

DID THE DEFENSE ATTEMPT, IN ANY OTHER MANNER, TO PUT THESE LEADS BEFORE THE COURT? I MEAN, COULDN'T THE PERSON WHO ACTUALLY MADE THE STATEMENT HAVE BEEN CALLED OR AS OPPOSED TO TRYING TO DO HEARSAY? BECAUSE IT SEEMS TO ME YOUR WHOLE ARGUMENT IS THAT ONCE A PARTY, THE COURT ERRONEOUSLY ALLOWS IN HERE SAY, THEN THE OTHER PARTY IS FREE TO BRING IN HERE SAY, ALSO.

WELL, IT APPEARS, FROM THE RECORD, AND THIS IS NOT CLEAR, ADMITTEDLY, THAT THESE PERSONS WHO MADE THESE REPORTS ARE AMONGST PEOPLE WHO HAVE DISAPPEARED DURING THE COURSE OF THAT, OF THE PERIOD BETWEEN THE INITIAL CRIME AND THE INDICTMENT AND THE TRIAL. BECAUSE THERE IS OTHER TALK IN THE RECORD ABOUT REPORTS OF, WHICH THE DEFENSE CHARACTERIZED AS EXCITED UTTERANCES ABOUT SHOTS, WHICH HAD OCCURRED LATER THAT NIGHT, AND THAT THE DEFENSE THE STATE HAS SAID, WELL, YOU NEED TO BRING IN THE 911 OPERATOR, TO BE ABLE TO TESTIFY TO WHAT THAT WAS, AND IN THE DISCUSSION, IT APPEARS THAT THE 911 OPERATOR IS NO LONGER AVAILABLE OR SOMETHING, AND THAT AGAIN,

IT IS RATHER VAGUE, BUT IT LOOKS LIKE THE PEOPLE, THEMSELVES, HAD, ALSO, DISAPPEARED, SO IT DOESN'T LOOK LIKE IT WAS POSSIBLE FOR THE DEFENSE TO DO THAT. ADDITIONALLY, OF COURSE, IT WOULD PENALIZE THE DEFENSE BY HAVING TO PUT THE PEOPLE ON IN DIRECTION AND LOSE THE RIGHT TO, YOU KNOW, CROSS-EXAMINATION NATION IS PREFERABLE, BECAUSE YOU -- CROSS-EXAMINATION IS PREFERABLE, BECAUSE YOU GET TO ASK MORE LEADING QUESTIONS AND TAKE AN ADMIRABLE DEFENSE TO THE WITNESSES, AND THE DEFENSE WOULD HAVE BEEN ABLE TO ARGUE THIS TO THE JURY.

ISN'T THIS A DANGEROUS ROAD TO TRAVEL DOWN, IN TERMS OF THE RELIABILITY OF EVIDENCE THAT MAY COME OT UNDER THAT? THAT IS THAT, IF YOU SAY THAT THAT OPENS THAT UP TO THE DEFENSE, AREN'T YOU, ALSO RESPECT SUGGESTING, THEN, THAT THE STATE COULD, THEN, BRING IN ALL KINDS OF STATEMENTS MADE TO THE INVESTIGATORS, ABOUT THE CRIME, THAT ORDINARILY WOULD NOT BE SUFFICIENTLY RELIABLE UNDER THE RULES OF EVIDENCE, TO BE ADMITTED IN THE CASE, AND IT SEEMS TO ME THAT BASED ON THIS RATHER LIMITED STATEMENT, THAT IN OUR CASE LAW, AT LEAST, REALLY WHAT WE HAVE SAID IS THAT WE HAVE LIMITED STATEMENTS ARE ALL RIGHT. YOU DID A FURTHER INVESTIGATION OR WHATEVER. AND, BUT, NOT TO GO ON AND SAY, THEN, AND WE INTERVIEWED THE NEIGHBOR, WHO DESCRIBED THE KILLER AS WEARING A RED SHIRT AND BEING 5 FOOT 2 INCHES TALL AND SAYING I DID IT, YOU KNOW, AND NOW, WITH THIS, I AM VERY APPREHENSIVE THAT, BASED ON, REALLY, A RATHER LIMITED STATEMENT HERE, WE ARE GOING TO OPEN THINGS UP, AND I AM WONDERING WHETHER THAT, REALLY, WOULD BE, IT WOULD BE GOOD LAW, IN TERMS OF HAVING RELIABLE EVIDENCE BEFORE THE JURY.

WELL, I SUBMIT THAT THAT IS THE LAW. THE DEFENSE PUTS BEFORE THE JURY THAT THERE WERE LEADS POINTING TO. THE PERSON. THEN THE -- TO ANOTHER PERSON. THEN ON THE CROSS-EXAMINATION OF AN OFFICER, THEN THE STATE IS ABLE, TO, ON REDIRECT, TO ASK THE OFFICER, WELL, WAIT A SECOND. WHAT WERE THOSE LEADS, AND DIDN'T THEY ALL POINT TO THE DEFENDANT, OR SOMETHING LIKE THAT.

DID THE OFFICER, HERE, TESTIFY THAT THE ONLY LEADS WE HAD WERE THAT THERE WERE SHOTS FIRED AROUND NINE-THIRTY OR WHATEVER, AND NO SHOTS FIRED AFTER THAT? HE DIDN'T TESTIFY TO THAT EFFECT DID HE?

NO. BUT I SUBMIT THAT THE STATE WAS ABLE TO ARGUE TO THE JURY, BECAUSE THE DEFENSE WAS NOT ABLE TO BRING THIS OUT, THAT THE STATE SPECIFICALLY ARGUED TO THE JURY NO ONE HEARD SOTS AFTER NINE-THIRTY. SO I WOULD SUBMIT THAT, UNDER IN CIRCUMSTANCE, IT WAS -- UNDER THIS CIRCUMSTANCE, IT WAS COMMUNICATED TO THE JURY. THERE WAS NO ONE WHO HEARD SHOTS AFTER THAT TIME. NOW, I AM STARTING TO GET INTO MY REBUTTAL TIME. I BRIEFLY WANT TO MENTION POINT NUMBER FOUR, EXCUSE ME, WHICH PERTAINS TO THE EXCLUSION, THE DEFENDANT'S PARENTS NOT BEING ABLE TO PARTICIPATE IN THE JURY SELECTION.

HOW MUCH OF THE JURY SELECTION WERE THE PARENTS NOT IN? FIRST OF ALL, YOU HAVE REACHED INDIVIDUAL VOIR DIRE.

UM-HUM.

AND WHAT PART OF THE VOIR DIRE DID THAT ENCOMPASS?

IT INVOLVED -- -- IT INVOLVED THE INDIVIDUAL VOIR DIRE OVER SEVERAL HOURS, OVER --

WOULD YOU AGREE THAT THAT WAS NOT PRESERVED? THEY SORT OF ASKED IF THE PARENTS COULD BE IN THERE, AND THEN AFTER THE JUDGE SAID, WELL, I DON'T KNOW IF I CAN -- BECAUSE THIS IS GOING TO BE THE INDIVIDUAL PORTION. I DON'T KNOW IF THERE IS ROOM FOR THEM. THERE WAS NO FOLLOW-UP BY THE DEFENSE ATTORNEY?

WELL, THE JUDGE HAD SAID NO. SO I DON'T KNOW THAT THE LAW, I SUBMIT THAT A LAWYER, YOU KNOW, FACED WITH -- BECAUSE THE JUDGE HAD, ALSO, SAID NO, AT THE SECOND TRIAL, WHICH IS THE ONE THAT ENDED IN A MISTRIAL AT THE END OF THE JURY SELECTION. THE JUDGE HAD, ALSO, SAID HE WAS NOT GOING TO ALLOW THE DEFENDANT'S FAMILY IN THE JURY ROOM DURING THE ENTIRE VIE DIRE, AS I RECALL -- VOIR DIRE, AS I RECALL, AND THEN BECAUSE OF SEATING PROBLEMS, APPARENTLY IT WAS A SMALLER COURTROOM, SO I WOULD SUBMIT THAT, UNDER THE CIRCUMSTANCE WHERE THE JUDGE SAID HE WAS NOT GOING TO ALLOW THEM IN, THAT THAT IS SUFFICIENTLY PRESERVED. THE JUDGE WAS ALERT THAT THE PURPOSE OF THE CONTEMPORANEOUS OBJECTION RULE IS TO ALERT THE JUDGE OF WHAT THE PROBLEM IS.

IS THIS A PARTIAL CLOSURE VERSUS A TOTAL CLOSURE?

I SUBMIT IT IS NOT A PARTIAL CLOSURE. THE STATE RELIED ON UNITED STATES VERSUS BRAZIL IN THAT REGARD, BUT IN THAT CASE, THAT CASE THERE WAS SIMPLY STOPPING PEOPLE AT THE COURTROOM DOOR AND ASKING THEM FOR IDENTIFICATION, AND THERE ARE OTHER CASES INVOLVING PARTIAL CLOSURES, SUCH AS DOUGLAS VERSUS WAINWRIGHT, WHERE IF YOU GO BACK AND YOU LOOK AT THIS COURT'S ORIGINAL OPINION, THE DEFENDANT'S FAMILY WAS PRESENT, AND THE DEFENDANT'S -- THE VICTIM'S FAMILY WAS PRESENT, AND THE PRESS WERE PRESENT, BUT OTHER PEOPLE WERE EXCLUDED, SO THIS IS NOT A PARTIAL CLOSURE. THIS WAS A PROCEEDING IN WHICH THE PUBLIC WAS EXCLUDED.

WASN'T THE PRESS, THE PRESS WASN'T THERE?

AT ONE POINT, ONE REPORTER SHOWED UP, BUT THEN HE HAD TO LEAVE, BECAUSE A PHOTOGRAPHER SHOWED UP. I SUBMIT THAT A PARTIAL CLOSURE IS WHEN THE GENERAL PUBLIC IS EXCLUDED BUT NOT THE DEFENDANT'S FAMILY. THE PRESS, IN GENERAL, THE VICTIM'S FAMILY. THIS WAS NOT THAT KIND OF A SITUATION. MR. CHIEF JUSTICE: THANK YOU, MR MR. CALDWELL. KMAMS BELL.

-- MS. CAMPBELL. GOOD MORNING. LESLIE CAMPBELL, ASSISTANT ATTORNEY GENERAL. MAY IT PLEASE THE SUPREME COURT. THE STATE WOULD SUBMIT THAT THE PARTIAL CLOSURE WAS A PORTION OF THE TRIAL. THE FOUR QUESTIONS THAT WERE ASKED OF THE POTENTIAL JURORS DURING THEIR INDIVIDUAL VOIR DIRE DEALT WITH THEIR DISABILITIES OR HARDSHIPS THAT THEY WOULD FACE, IF THEY WERE PICKED FOR THE JURY, AND, ALSO, DEALT WITH WHETHER OR NOT THEY WERE FAMILIAR WITH THE PARTIES, FAMILIAR WITH THE CASE, FAMILIAR WITH THE ATTORNEYS. NOW, THOSE QUESTIONS WERE ASKED OF THE JURORS IN GENERAL. THOSE, THE, THOSE PARTICULAR QUESTIONS WERE ASKED DURING THE GENERAL VOIR DIRE, WHEN EVERYONE WAS IN THE COURTROOM. IT WAS ONLY THE ANSWERS TO THOSE QUESTIONS THAT WERE GIVEN IN THE INDIVIDUAL HEARING ROOM. NOW, THE REASON FOR THE JURORS GOING INTO THE INDIVIDUAL HEARING ROOM WAS BECAUSE THE JUDGE HAD LOST THE FIRST PANEL OF THE SECOND TRIAL. AS THE COURT, I AM SURE, IS AWARE, THERE HAD BEEN AN INITIAL TRIAL, AND THEN THERE WERE QUESTIONS AS TO IT ENDED IN A MISTRIAL, AND THERE WERE QUESTIONS AS TO THE AMOUNT OF INFORMATION THAT HAD BEEN DISSEMINATED TO THE GENERAL PUBLIC, AND THE PARTIES WERE VERY CONSCIOUS OF THIS, WHEN THEY DECIDED TO DO THE INDIVIDUAL QUESTIONING IN PRIVATE. AND IT WAS BROUGHT TO THE FOREFRONT DURING THE FIRST PANEL'S QUESTIONING IN THE SECOND TRIAL, WHEN ONE JUROR BLURTED OUT THAT HE KNEW ABOUT A PARTICULAR WITNESS FROM THE FIRST TRIAL. SO THAT WHOLE PANEL WAS TAINTED, AND WE WENT TO A SECOND PANEL. THE STATE WOULD SUBMIT THAT, DURING THE VOIR DIRE, THE PRESS WAS THERE. THE PARENTS WERE THERE. ANYBODY WHO WANTED TO BE IN THE COURTROOM WAS THERE. AND IT WAS ONLY A PORTION OF THE INDIVIDUAL VOIR DIRE THAT WAS IN A SEPARATE HEARING ROOM.

MAYBE I AM NOT, AM I UNDERSTANDING THAT YOU ARE SAYING THAT THERE WAS, THAT THE

REASON THAT THERE WAS THE PARENTS OF THE DEFENDANT COULD NOT BE THERE, WAS BECAUSE OF THIS CONCERN ABOUT PUBLICITY, OR WAS IT A QUESTION OF THE LOGISTICS, THAT IT WAS TAKING PLACE IN THE HEARING ROOM?

THE REASON THAT THE PARENTS WEREN'T THERE IS BECAUSE OF THE SIZE OF THE HEARING ROOM.

WASN'T THE IDEA THAT YOU WERE THAT THERE WAS A CONCERN THAT JURORS WERE GOING TO BE TANED BY THE PARENTS BEING THERE?

NO. NOT BY THE PARENTS BEING THERE, YOUR HONOR. I AM SORRY IF I AM NOT BEING CLEAR. THE QUESTION WAS AND THE CONCERN WAS THAT THE JURORS WHO MIGHT KNOW SOMETHING ABOUT THE CASE WOULD TAINT THE JURORS WHO DIDN'T KNOW ANYTHING ABOUT THE CASE.

THAT WOULD ALWAYS BE THE CASE IN AN INDIVIDUAL VOIR DIRE. THAT IS WHY WE ENCOURAGE JUDGE TO SAY DO INDIVIDUAL VOIR DIRE, BUT THERE IS NO INDICATION THAT INDIVIDUAL VOIR DIRE SHOULD TAKE PLACE IN SECRET OR IN PRIVATE, CORRECT?

NO, BUT ON OCCASION YOU MAY WANT TO HAVE INDIVIDUAL VOIR DIRE OUT OF THE HEARING OF THE OTHER PUBLIC, BECAUSE ON CERTAIN OCCASIONS, IT MIGHT ENCOURAGE AN INDIVIDUAL WHO IS BEING QUESTIONED TO BE A LITTLE MORE FORTHCOMING WITH ANY OF THEIR INFORMATION, WHETHER IT BE PERSONAL INFORMATION OR WHETHER IT BE SOMETHING ABOUT THE CASE.

ON THIS RECORD, THOUGH, NOW, WOULD YOU BE SPECULATING AS TO THAT IS WHY THE PARENTS WERE EXCLUDED? BECAUSE I AM HAVING A HARD TIME, IN TERMS OF THE COLLOQUY THAT OCCURRED BETWEEN THE JUDGE AND THE DEFENSE LAWYER, IN GATHERING THAT THERE WAS A, WHAT YOU ARE SEEMING TO SAY, A COMPELLING REASON TO EXCLUDE EVERYBODY BUT A CERTAIN NUMBER OF PEOPLE.

WELL, WHEN HE, WHEN THE JUDGE FIRST MADE HIS RULING THAT HE DIDN'T THINK THAT THE PARENTS, THAT THERE WOULD BE ROOM FOR THE PARENTS IN THERE.

THAT IS ALL I THOUGHT HE WAS SAYING.

THAT IS ALL HE SAID. IT WAS NEVER BROUGHT UP, AS FAR AS THE PARENTS WERE CONCERNED. IN FACT, WHEN THEY WENT INTO THE INDIVIDUAL, STARTED THE INDIVIDUAL VOIR DIRE, THEY, A PRINT PERSON FROM THE NEWSPAPER, PRINT MEDIA PERSON, CAME IN AND WAS ALLOWED TO BE IN THERE. THEN, BECAUSE OF THE LIMITED SPACE, THEY SWITCHED BETWEEN THE PRINT PERSON AND THE PHOTO PERSON, SO THE RECORD IS CLEAR THAT THERE IS LIMITED SPACE IN THAT ROOM.

BUT YOUR OTHER ARGUMENT, WHICH IS ONE THAT IS APOLICY ARGUMENT, IS ONE YOU ARE ADVANCING BUT ONE THAT IS NOT IN THE RECORD, AS FAR AS A REASON THAT WENT INTO THE JUDGE'S DECISION, CORRECT?

NO. THAT IS NOT NECESSARILY CLEAR ON THE RECORD THAT THAT WAS SOMETHING THAT WENT INTO HIS DECISION. HE WAS CONCERNED. HE WAS CONCERNED THAT THE JURORS THAT HAD BEEN IDENTIFIED SHOULD REMAIN SEQUESTERED FROM EVERYONE AND HE WANTED THEM IN THE COURTROOM, BECAUSE THAT WAS THE MOST CONVENIENT PLACE FOR THEM, AND HE, ALSO, WANTED THE BAILIFFS TO WATCH THEM, TO MAKE SURE THAT THEY DIDN'T DISSEMINATE ANY OTHER INFORMATION. HE WAS CONCERNED THAT HE WOULD LOSE. THE PANEL.

WAS THERE -- WOULD LOSE ANOTHER PANEL.

WAS THERE ANY OBJECTION TO THIS PROCEEDING AT THE TIME?

NO, OTHER THAN THE REQUEST FOR THE PARENTS TO COME IN, NO, THERE WAS NOT A CLEAR OBJECTION.

WAIT A MINUTE. WHAT DO YOU MEAN CLEAR OBJECTION?

WELL, HE HAD ASKED. THE DEFENSE COUNSEL HAD ASKED THAT THE PARENTS BE ALLOWED IN, AND THE ANSWER WAS THAT THE JUDGE DIDN'T BELIEVE THAT THERE WAS ANY ROOM FOR THEM IN THE ROOM. IN THAT SEPARATE HEARING ROOM.

DO WE HAVE, IN THE RECORD, WHAT DID GO ON IN THE FIRST TRIAL THAT ENDED IN A MISTRIAL? IN OTHER WORDS MR. CALDWELL IS ASSERTING THAT THE JUDGE DIDN'T LET THE PARENTS IN DURING THE FIRST VOIR DIRE. DO WE HAVE THAT IN THE RECORD, ONE WAY OR. THE?

WELL, THE WHOLE FIRST TRIAL IS IN THE RECORD, BUT I BELIEVE WHAT MR. CALDWELL WAS REFERRING TO WAS THE FIRST PANEL OF THE SECOND TRIAL.

DO WE HAVE THAT VOIR DIRE IN THE RECORD?

YES. THAT PORTION OF THE VOIR DIRE, YES, THAT HAD TAKEN PLACE. NOW --

IS IT TRUE THAT THE PARENTS WERE EXCLUDED FROM THE GENERAL VOIR DIRE IN THIS, IN THE --

THE PARENTS NRP A SEPARATE JURY ROOM, AND THAT WAS DISCUSSED. BUT THEY HAD, THEY WERE ALLOWED TO HEAR. THERE WAS AN AUDIO. THAT WENT BACK INTO THAT, EITHER INTO THAT, INTO A CERTAIN ROOM WHERE THE PARENTS WERE. THE BASIS FOR HAVING THE PARENTS OR THE DEFENSE COUNSEL HAD ASKED FOR THE PARENTS TO BE PRESENT, IS HE WANTED TO INTRODUCE THE PARENTS TO THE PANEL, AND THAT CERTAINLY IS SOMETHING THAT ISN'T BY RIGHT, TO HAVE DEFENSE COUNSEL INTRODUCE PARENTS TO THE PANEL AT THAT PARTICULAR POINT IN TIME. IF THEY WISH TO BE WITNESSES, THEY COULD BE INTRODUCED AT THAT TIME, BUT NOT JUST AS A MATTER OF COURSE TO INTRODUCE PARENTS OF THE DEFENDANT TO THE JURY PANEL. ALMOST SOUNDS LIKE HE IS TRYING TO TAINT THE JURY PANEL.

DO WE HAVE A CLEAR RECORD OF WHO WAS PRESENT DURING THE INDIVIDUAL VOIR DIRE?

YES, WE DO. WE HAVE THE TRANSCRIPT, AND WE ALSO HAVE AN AUDIOTAPE OF THAT INDIVIDUAL VOIR DIRE, AND IN THE TRANSCRIPT, IT SHOWS THAT THE JUDGE WAS THERE, THE CLERK, THE COURT REPORTER, THE TWO, THE COUNSEL FROM THE STATE, COUNSEL FROM THE DEFENSE, THE DEFENDANT, AND ON OCCASION, SOMEBODY FROM THE PRESS, AND ACTUALLY ON THE SECOND DAY, THERE WAS A A SHADOW STUDENT THAT WAS ALLOWED INTO THE HEARING ROOM AND WAS SITTING WITH DEFENSE COUNSEL. SO WE KNOW WHO WAS IN THERE. WE KNOW, OF COURSE, THE INDIVIDUAL JURORS THAT WERE IN THERE, AND WE KNOW THEIR RESPONSES, AND AS I SAY, THERE WAS AN AUDIOTAPE, SO IF AT ANY TIME THE PARENTS WISHED OR THE DEFENSE COUNSEL WISHED TO HAVE THAT AUDIOTAPE PLAYED FOR THE PARENTS, IF THEY WERE THAT CONCERNED AND WERE WORRIED THAT THERE WAS SOMETHING GOING ON IN THAT HEARING ROOM THAT THEY NEEDED TO KNOW ABOUT, THEY COULD HAVE REQUESTED THAT AUDIOTAPE AND THEY COULD HAVE REQUESTED A TRANSCRIPT. NEITHER OF THOSE THINGS WERE DONE IN IN CASE.

AND IS THE RECORD SIMILARLY CLEAR THAT, WITH THOSE PERSONS PRESENT THAT YOU HAVE JUST DESCRIBED THAT, THAT TOOK UP ALL THE SEATING CAPACITY IN THAT ROOM?

NOBODY MADE AN OBJECTION. NOBODY MADE THAT CLEAR THEY SAID THERE WOULD ONLY BE ROOM FOR ONE PRESS PERSON AT A TIME. THE REASONABLE LIKELIHOOD IS THERE WERE NO

MORE CHAIRS, THERE WAS NO MORE ROOM, AND IN FACT THE PRESS PERSON AND THE PHOTOGRAPHER HAD TO STAY IN THE CORNER SOMEPLACE, SO IT SEEMS VERY LIMITED, AND FROM THE RECORD IT WOULD BE CLEAR THAT THERE WASN'T ANYMORE SPACE.

THERE IS NO QUESTION THAT THE PARENTS WERE PRESENT FOR THE OTHER, ALL OTHER PARTS OF VOIR DIRE.

AS FAR AS THE RECORD SHOWS, I MEAN, OF COURSE THEY WERE NOT INTRODUCED, BUT THERE CERTAINLY ISN'T AN ARGUMENT THAT THEY WERE NOT. THE STATE WOULD SUBMIT THAT IF THERE IS AN ARGUMENT, IT SHOULD BE LOOKED AT ON A SLIDING SCALE, AND THERE WAS DEFINITELY REASON FOR THIS LIMITED CLOSURE AFTER LIMITED PORTION OF THE VOIR DIRE.

WHAT DOES THE STATE HAVE TO SAY, RELATIVE TO THE DELAY BETWEEN THE INDICTMENT AND THE ARREST?

THE STATE WOULD SUBMIT THAT THERE WAS NO ERROR IN DENYING THE MOTION TO QUASH OR DENYING THE MOTION TO DISMISS THIS CASE. WHILE THE CRIME OCCURRED IN MARCH OF '91 AND THE INDICTMENT DIDN'T OCCUR UNTIL 1997, IT CERTAINLY WASN'T AT ANY FAULT OF THE STATE. IF YOU LOOK AT THE ENTIRE RECORD THERE WERE FOUR MAJOR PLAYERS IN THIS MURDER. IT WAS THE WIFE OF THE VICTIM, MR. EVANS, WHO WE ARE DISCUSSING NOW, AND TWO OTHER WOMEN. ONE, MR. EVANS'S GIRLFRIEND AT THE TIME, SARAH THOMAS, AND DONNA WADDELL, WHO HAPPENED TO BE FRIENDS WITH THE, WITH CONNIE PFEIFFER, WHO IS, WAS A CO-DEFENDANT. THE FOUR CAME UP WITH A THEY AGREED TO GIVE THEMSELVES ALIBIS WITH THE FAIR THAT NIGHT. THEY WOULD ARRIVE AT THE FAIR AND BE SEEN BY AS MANY PEOPLE AS POSSIBLE. CONNIE WOULD STAY AT THE FAIR WITH HER BOYFRIEND, AND DONNA WADDELL, SARAH THOMAS AND THE DEFENDANT HERE, WOULD LEAVE AND GO KILL MR. PFEIFFER. IN THE COURSE OF THAT, MR. EVANS STOLE A GUN. INITIALLY WAS GIVEN MONEY BY CONNIE PFEIFFER TO BUY A KNIFE, AND THEY REJECTED THAT PLAN. THEN HE STOLE DONNA WADDELL'S FATHER'S GUN, WITH BULLETS.

HOW OLD WAS HE AT THE TIME OF THE MURDER?

HE WAS 19 AT THE TIME OF THE MURDERS, YOUR HONOR.

HOW OLD WAS CONNIE, THE --

CONNIE WAS 31, I BELIEVE. 30 OR 31. HE THEN, HE STOLE THIS GUN. HE, THEN,, MR. EVANS THEN DECIDED THAT THEY HAD TO MAKE THE TRAILER LOOK LIKE THERE WAS A BURGLARY, SO THE THREE OR FOUR PEOPLE WENT OVER THERE. THEY MOVED ELECTRONIC EQUIPMENT TO THE BACK DOOR. THEY DISABLED THE LIGHT. MR. EVANS DISABLED THE LIGHT AT THE PADDLE FAN, SO THAT THERE WASN'T ANY LIGHT WHEN YOU FIRST CAME INTO THE APARTMENT.

I THINK WE ARE RELATIVELY FAMILIAR WITH THE FACTS. I THINK WHAT I AM ASKING THE STATE TO SHOW IS WHY THERE WAS NO PREJUDICE.

WELL THERE, IS NO PREJUDICE, BECAUSE THERE WAS THE TWO PEOPLE WHO WERE MOST CLOSELY ASSOCIATED WITH THIS, OTHER THAN CONNIE AND EVANS, KEPT THEIR CONSPIRACY UNTIL 1997, WHEN THE STATE REOPENED THE CASE, AND IT WAS AT THAT POINT THAT THE STATE WAS ABLE TO FIND PROBABLE CAUSE TO CHARGE OR TO INDICT CONNIE PFEIFFER AND MR. EVANS.

YOU SEEM TO BE GOING TO THE SECOND PRONG, WHICH IS, I THINK, JUSTICE SHAW WAS ASKING YOU ABOUT THE PREJUDICE FIRST. YOU ARE GOING TO THE FACT THAT THERE WAS NO BAD MOTIVE. BUT COULD YOU ADDRESS THE PREJUDICE.

SURE. THERE IS NO PREJUDICE FOR TWO REASONS. NUMBER ONE, DISCUSSING THE GUN SHOTS THAT WERE OUT OF, THAT SUPPOSEDLY OCCURRED AFTER NINE-THIRTY. THE DEFENSE DID TALK TO DETECTIVE BRUMLEY, AND THIS WILL DOVETAIL INTO THE NEIGHBORHOOD CANVASS. IN DETECTIVE BRUMLEY'S CROSS-EXAMINATION, HE WAS ASKED WHETHER OR NOT THERE WERE ANY, ANYTHING OCCURRED AFTER NINE-THIRTY, AND HE SAID THAT, BASED ON CERTAIN LEADS, THAT HE, THAT THE POLICE HAD FOLLOWED UP, AND DID SOME EXTRA INVESTIGATION AND HE WAS SPECIFICALLY ASKED ABOUT MR. MAKE HI, A AND WHEN -- MR. MAGIA, AND WHETHER OR NOT MR MR. MAGIA HAD GIVEN A DIFFERENT ACCOUNTING OF THE TIME, AND DETECTIVE BRUMLEY SAID, YES, HE HAD, AND THAT THAT ACCOUNTING WOULD NOT HAVE CORROBORATED THE STATE'S CASE, WHICH WAS AN EIGHT ORATE THIRTY TIME FRAME, SO WITH -- OR EIGHT THIRTY TIME FRAME, SO WITH REGARD TO MR. MAGIA, WE DO NOT HAVE ACTUAL PREJUDICE.

I THOUGHT MR. MAGIA WAS THE ONE WHO SAID HE WITNESSED CONNIE DOING THE SHOOTING.

WE DON'T HAVE ANYTHING IN THE RECORD SUPPORTING THAT. WE DON'T HAVE A POLICE REPORT. WE DON'T HAVE ANYTHING THAT WOULD SUBSTANTIATE THAT. WHAT THE STATE SAID, IN RESPONSE TO DEFENSE COUNSEL'S CLAIM THAT THERE HAD BEEN PREJUDICE IS THAT THE STATE AGREED THAT THERE WERE OTHER WITNESSES OUT THERE THAT THEY MAY HAVE WANTED TO TALK TO. THEY DIDN'T NECESSARILY AGREE THAT MR. MAGIA WAS NOT AVAILABLE OR THAT ANY OF THE OTHER WITNESSES WERE NOT AVAILABLE.

SO WHERE DID THE DEFENSE GET THAT INFORMATION FROM, IF THERE ARE NO POLICE REPORTS AND YOUR OFFICER DIDN'T TESTIFY OR GIVE THEM THAT INFORMATION, WHERE DID THEY GET THAT INFORMATION?

I DON'T KNOW, YOUR HONOR. MAYBE THEY DID TALK TO MR. MAJIA AT SOME TIME. THAT IS SPECULATION. I DON'T KNOW.

SO YOU ARE SAYING, THEY BE, THAT THERE IS NO ADEQUATE EVIDENTIARY PREDICATE IN THE RECORD, AND THAT THE STATE, EVEN THOUGH THEY DIDN'T SAY THAT THEY DISPUTES PUTED THESE -- DISPUTED THESE ALLEGATIONS, THAT THE DEFENDANT HAS MORE OF AN AFFIRMATIVE DUTY TO PLACE, IN THE RECORD, EVIDENCE THAT WOULD SUPPORT A CLAIM OF ACTUAL PREJUDICE?

AT THE MINIMUM, HE SHOULD HAVE BROUGHT ON SOME INVESTIGATORS, SAYING THAT THE INVESTIGATOR WENT OUT TO A PARTICULAR LOCATION. THAT HE DID SOME SORT OF ACTIVE INVESTIGATION OR TOOK SOME ACTIVE PART IN TRYING TO BRING THESE WITNESSES IN, OTHER THAN JUST SAYING CAN'T FIND THEM. THERE SHOULD BE SOMETHING IN THE RECORD TO ACTUALLY HE SHOULD HAVE ACTUALLY DONE SOMETHING TO SUPPORT THE RECORD FAVORABLY FOR HIM.

SO AT THIS POINT THERE IS A WITNESS SAYING THAT HE SAW CONNIE DO THE SHOOTING.

WE DO KNOW THAT HE GAVE THAT INFORMATION TO THE POLICE. WHY AND HOW DETAILED THAT WAS, THAT IS NOT IN THIS RECORD.

THAT IS GOING TO BE POST -- IF THERE IS SOMEBODY, THE WITNESS, SOMEONE ELSE DOING THE SHOOTING, THAT IS PRETTY SIGNIFICANT EVIDENCE, WOULD YOU AGREE?

I WOULD AGREE THAT THAT WOULD BE SIGNIFICANT.

IN TERMS OF THIS CASE, CONNIE WHO GOT A LIFE SENTENCE WHO, IS 31, WHO GOT ALL OF THE INSURANCE PROCEEDS, IS, WE HAVE GOT HER. WE HAVE GOT TWO PEOPLE, ONE WHO WAS NEVER PROSECUTED, AND THE OTHER WHO GOT SECOND-DEGREE MURDER IN EXCHANGE FOR THEIR TESTIMONY. THAT IS THE EVIDENCE IN THIS CASE.

THAT IS THE EVIDENCE. IF YOU ARE ASKING WHETHER THAT IS DISPARATE TREATMENT, I AM SAYING IT IS NOT, BECAUSE WE HAVE --

I HIM SAYING OTHER THAN THINGS WOULD BE ACTUAL PREJUDICE, IF IT EXISTED, BUT YOU ARE SAYING TO ME THAT IT IS NOT IN THE RECORD. THE STATE HAS NO ACTUAL KNOWLEDGE THAT SUCH WITNESSES EXIST, AND THEREFORE THERE IS NO ACTUAL PREJUDICE IN THIS CASE AT THIS TIME.

THERE IS NO PREJUDICE IN THIS CASE, AS FAR AS MR. MAJIA. WE DO KNOW THAT HE EXISTS. WE DO HAVE A POLICE REPORT THAT SAYS HE HAD HEARD SHOTS AT A LATER TIME. THAT WE KNOW.

I THOUGHT THAT WAS LYNCH.

EXCUSE ME. LYNCH. BUT MR. MAJIA, THERE WAS TESTIMONY FROM DETETIE BRUMLEY THAT HE HAD, THAT THE POLICE HAD SPOKEN TO MR. MAJIA, AND THAT HE HAD HEARD SHOTS AT A TIME OTHER THAN WHAT THE STATE WAS PROPOSING.

THAT IS IN THE CROSS-EXAMINATION OF --

THAT IS IN THE CROSS-EXAMINATION.

JUST ON THE QUESTION, ASSUMING WE FOUND ACTUAL PREJUDICE, YOU SAY THAT THE STATE, THE CASE WAS COLD, AND THEN THESE, THEY CONSPIRED TO KEEP IT QUIET, AND THEN SOMETHING HAPPENED IN 1997. BUT IN TRUTH, OTHER THAN SOME QUESTIONING IN 1991, NOTHING HAPPENED IN THIS CASE BETWEEN 1991 THROUGH 1997, UNTIL A NEW DETECTIVE DECIDED TO GO A TALK TO THE GIRLFRIEND, WHO HAD BROEN UP WITH MR. EVANS THREE MONTHS AFTER THIS INCIDENT.

RIGHT. AFTER CONNIE HAD RECEIVED THE INSURANCE PROCEES, I BELIEVE IT WAS IN EARLY '92, THERE WAS NO FURTHER INVESTIGATION OF THE CASE. IT WAS THE QUESTIONING OF SARAH THOMAS, WHO FINALLY UNBURDENED HERSELF, THAT ALLOWED THE STATE TO, THEN, CONTACT A SECOND WITNESS, WHICH WAS DONNA WADDELL CONFRONT HER WITH INCRIMINATING STATEMENTS THAT SHE MADE TO SARAH THOMAS, WHEN SARAH THOMAS WAS WEARING A BODY BUG, THAT, THEN, BROUGHT THE CASE TO TRIAL, TO INDICTMENT AND TO TRIAL. SO UNTIL THE CONSPIRATORS BROKE THEIR SILENCE, THERE WAS NOTHING THE STATE COULD DO. THE STATE WOULD SUBMIT THAT THERE IS NO STATUTE OF LIMITATIONS FOR MURDER, AND, OF COURSE, WHEN YOU HAVE A CONSPIRACY LIKE THIS, IT MAY TAKE A SIGNIFICANT PERIOD OF TIME IN WHICH TO UNCOVER THE ACTIONS OF THE CONSPIRATORS. IF THEY ARE WORKING IN CONSORT THAT, IS THE WHOLE IDEA OF A CONSPIRACY.

CAN THE STATE PUT ON A CASE AND ADVANCE TWO THEORIES, ONE THAT THE DEFENDANT IS, IN FACT, THE SHOOTER, AND AT THE SAME TIME ADVANCE THE THEORY THAT THE DEFENDANT IS A PRINCIPLE IN THE CASE? IS THERE ANYTHING WRONG WITH THAT?

THERE IS NOTHING WRONG WITH THAT. YOU CAN GO ON ALTERNATE THEORIES FORM THE THRUST OF THE STATE'S CASE WAS THAT MR. EVANS WAS THE SHOOTER, AND THE PRINCIPLE THEORY CAME IN, BASED ON SOME OF THE DEFENSES THAT MR. EVANS WAS PUTTING FORWARD, NAMELY THAT HE HAD TOLD SARAH THOMAS THAT HE HAD GOTTEN THREE OTHER INDIVIDUALS TO DO THE ACTUAL KILLING AND, ALSO, THAT HE WAS AT THE FAIR AT THE TIME.

BUT WHAT IS THE JURY TO BELIEVE, IF THE STATE IS, IN FACT, ADVANCING THESE TWO THEORIES AT THE SAME TIME?

THE STATE WAS ADVANCING THE SHOOTER THEORY PREDOMINANTLY, AND IT WAS ONLY IN

PART, IN RESPONSE TO AN ARGUMENT THAT THE DEFENSE COUNSEL HAD MADE, THAT THEY SAID, WELL, YOU COULD HAVE THE PRINCIPLE. HE COULD EITHER BE A PRINCIPLE OR HE COULD BE THE SHOOTER. NOW, AS FAR AS BEING A PRINCIPLE HE WAS MORE THAN INVOLVED IN THIS. HE WAS THE MASTERMIND. HE WAS THE ONE WHO CAME UP WITH THE PLAN TO GO TO THE FAIR. HE WAS THE ONE WHO SET UP THE TRAILER TO LOOK LIKE A BURGLARY. HE WAS THE ONE WHO STOLE THE GUN AND HE WAS THE ONE WHO TESTIFIED -- WHO TEST FIRED THAT UN, IN ORDER TO MAKE SURE THAT IT WAS IN WORKING ORDER BEFORE THE MURDER.

WAS HE A SUSPECT IN 1991?

HE WASN'T A SUSPECT.

WHO DID TE POLICE INVESTIGATE, AT THE TIME OF THE MURDER?

THEY LOOKED AT EVERYONE WHO WAS IN AND AROUND, WHO WAS WITH CONNIE AT THE TIME, CONNIE PFEIFFER. CONNIE --

INCLUDING MR. EVANS.

THAT INCLUDED MR. EVANS. THEY TOOK A STATEMENT FROM MR. EVANS AT THE TIME, AND A LOT OF WHAT MR. EVANS SAID PUT HIM AT THE SCENE, DURING THE STAGING OF THE CRIME. IN FAC, IN HIS STATEMENT, HE IS THE ONE WHO SAID THAT HE CHANGED THE LIGHT BULB IN THE PADDLE FAN WHICH THE POLICE LATER FOUND HAD BEEN DISABLED. IT HADN'T BEEN SCREWED IN TIGHTLY, SO THAT WHEN SOMEONE CAME INTO A DARKENED TRAILER, THEY WOULDN'T HAVE HAD ANY LIGHT. HE, ALSO, TESTIFIED, MR. EVANS, ALSO, TESTIFIED THAT HE WAS IN THAT TRAILER SEVERAL TIMES, TOUCHING A LOT OF THINGS. SO HE HAD PLACED HIMSELF AT THE SCENE. HE HAD PLACED HIMSELF AT THE FAIR WITH CONNIE. HE HAD PLACED HIMSELF AT DENNY'S AFTERWARDS, AND HE WAS WITH THE THREE OTHER CONSPIRATORS DURING THE TIME THAT THE STATE PUT FORWARD AS THE TIME OF THE MURDER. SO THE STATE WOULD SUBMIT THAT THERE IS MORE THAN ENOUGH EVIDENCE THAT MR. HE ANSWER PARTICIPATED -- THAT MR. EVANS PARTICIPATED IN THIS CRIME, AND THERE IS SUBSTANTIAL EVIDENCE THAT HE WAS THE ACTUAL SHOOTER.

WELL, IF THE JUDGE FOUND THAT HE WAS THE SHOOTER.

THAT'S CORRECT, YOUR HONOR.

BECAUSE IF HE WEREN'T THE SHOOTER, FOR THE PURPOSES OF THE DEATH PENALTY, NOW GOING BACK TO THE PROPRTIONALITY, WE HAVE GOT, HERE, A 19-YEAR-OLD, WHO, THE TWO AGGRAVATORS, ALTHOUGH WE HAVE HELD THAT CCP AND PECUNIARY GAIN AND A CONTRACT KILLING CAN BE SEPARATE, THEY REALLY COME FROM THE SAME EXACT THING, THAT HE PLANNED THIS, HE DID THIS NOT FOR MONEY, I GUESS, GETTING THE VIDEO, WHATEVER, HE WAS --

IT DOESN'T MATTER THAT HE DIDN'T RECEIVE ANY REWARD.

THE CCP AND THE PECUAY GAIN ARE THE SAME, ARE ASPECTS OF THIS HAVING BEEN A CONTRACT KILLING, SO TO SPEAK.

THE ASPECTS OF THE MURDER, BUT THEY COME FROM TWO SEPARATE PORTIONS OF THE MURDER. ONE IS HIS BENEFIT AND ONE IS THE WAY HE WENT ABOUT DOING IT, SO YOU HAVE TWO SEPARATE ACTIONS OF THE DEFENDANT THAT ARE TAKEN INTO ACCOUNT.

IF HE WEREN'T, IF THE JUDGE HADN'T FOUND HIM TO BE THE ACTUAL SHOOTER, WOULD THE STATE BE ABLE TO ARGUE THAT, STILL, THAT HE SHOULD THE DEATH PENALTY WAS

PROPORTIONATE WITH CONNIE BEING, RECEIVING A LIFE SENTENCE?

-- IN OTHER WORDS, IS THAT A CRITICAL ASPECT FOR US TO FOCUS ON, FOR THE PROPORTIONALITY REVIEW IN THIS CASE?

I THINK THAT IS THE MAIN THRUST OF THE STATE'S POSITION BELOW, WAS THAT HE WAS THE SHOOTER AND THEREFORE HE WAS THE MORE CULPABLE, AND HE DESERVED THE DEATH PENALTY.

AT THE TIME THE JURY DECIDED THE ISSUE OF WHETHER EVANS SHOULD RECEIVE THE DEATH PENALTY CONNIE HAD NOT YET, HAD SHE NOT BEEN TRIED?

SHE HAD NOT BEEN TRIED.

SO ALTHOUGH THE JUDGE CONSIDERED THE RELATIVE CULPABILITY, THE JURY DIDN'T HAVE THAT OPPORTUNITY TO KNOW WHAT WAS GOING TO HAPPEN TO CONNIE.

THEY DIDN'T KNOW WHAT WAS GOING TO HAPPEN TO CONNIE, BUT THEY CERTAINLY KNEW THAT SHE EXISTED, AND THEY CERTAINLY KNEW THE STATE'S THEORY AND WHAT THE EVIDENCE SHOWED, AS FAR AS HER CULPABILITY. THEY KNEW THAT SHE HAD ASKED SEVERAL PEOPLE, PRIOR TO THE MURDER, SAY WITHIN EIGHT WEEKS OF THE MURDER, SHE HAD ASKED TWO OR THREE PEOPLE WHETHER OR NOT THEY KNEW SOMEBODY WHO COULD KILL HER HUSBAND OR KNEW OF SOMEBODY WHO HAD SOMEONE KILLED. THEY KNEW THAT SHE HAD GIVEN MONEY TO MR. EVANS. THEY KNEW THAT SHE HAD GIVEN ELECTRONIC EQUIPMENT TO MR. EVANS, AND THEY KNEW THAT SHE HAD PROMISED ADDITIONAL FUNDS FROM THE INSURANCE PROCEEDS. NOW, AS FAR AS THE DIFFERENCE IN AGE, I AM SORRY, YOUR HONOR.

GO AHEAD. FINISH THAT.

AS FAR AS THE DIFFERENCE IN AGE, IT IS CLEAR THAT MR. EVANS WAS THE ONE WHO PUSHED THIS CRIME FORWARD. CONNIE MAY HAVE PUT IT INTO PLAY BUT MR. EVANS IS THE ONE WHO MASTERMINDED IT AND TOOK ALL OF THE ACTIONS THAT ENDED IN THE MURDER OF MR. PFEIFFER. YES, YOUR HONOR.

ON THE SECOND ISSUE, EXCLUDING THE TESTIMONY OF CAN I BISIN THE VICTIM -- OF CAN BISIN THE VICTIM'S -- OF CANNABIS IN THE VICTIM'S BLOOD, THE DOCTOR'S TESTIMONY, ISN'T THAT THE NORMAL METHOD FOR PUTTING THAT IN? WHAT WAS WRONG WITH THE WAY THE DOCTOR TESTIFIED?

NO FOUNDATION WAS SET FOR THE ADMISSION OF THAT TESTIMONY. THE DOCTOR WASN'T ASKED WHETHER OR NOT HE RAN A TEST OR ASKED FOR THAT TEST TO BE RUN. THE DOCTOR DIDN'T TESTIFY THAT HE WAS THE, THAT HE RELIED ON THAT TEST OR RELIED ON THAT INFORMATION, IN FORMING HIS OPINION OF THIS CASE.

IS IT REQUIRED THAT THE DOCTOR, HIMSELF, RUN THE TEST?

NO.

IS THAT A REQUIREMENT?

NO. IT IS NOT. I AM JUST SAYING THAT THERE WAS NO EVIDENCE PUT INTO THE RECORD, AS FAR AS, OR PROFFER, AS FAR AS A FOUNDATION. NO, THE DOCTOR CERTAINLY DOES NOT HAVE TO RUN THE TEST, BUT IT HAS TO BE SOMETHING THAT IS RELIED UPON IN THE NORMAL COURSE OF HIS BUSINESS, AND IS SOMETHING THAT HE RELIED UPON TO FORMULATE HIS OPINION. NOW, THERE IS NOTHING IN THIS RECORD THAT SAYS THE BLOOD CONTENT OF MR. PFEIFFER HAD

ANYTHING TO DO WITH THE MANNER OR THE TIME OR THE CAUSE OF HIS DEATH.

BUT YOU HAVE CIRCUMSTANCES WHERE THIS IS A MEDICAL EXAMINER AND MEDICAL EXAMINERS, THEY DRAW FLUIDS, AS PART OF THE NORMAL PROCESS TO CONDUCT THAT EXAMINATION, AND WHETHER THAT MEDICAL EXAMINER BELIEVES IT TO BE IMPORTANT OR NOT, WHEN YOU USE THIS FORMULATNG OF HIS OWN OPINION, IS THAT REALLY THE TEST BECAUSE THE OPPOSTION IS THEN NOT ENTITLED TO USE THE TOXOLOGY SCREEN, BECAUSE THE MEDICAL EXAMINER, HIMSELF, DID NOT RELY ON IT?

NO. THEY COULD USE THE TOX SCREEN, BUT THEY CAN'T BRING IT IN DURING THE STATE'S CASE.

THERE WAS NOTHING WITH THE MEDICAL EXAMINER ABOUT THAT ON CROSS-EXAMINATION.

ONLY IF THERE IS SOME SORT OF FOUNDATION FOR THAT INFORMATION. IF THEY WISHED TO ASK DID YOU RELY, DID YOU DO A TOX SCREEN OR WAS A TOX SCREEN DONE, DID YOU RELY ON THAT INFORMATION IN FORMING YOUR OPINION. THERE WAS NOTHING BROUGHT FORWARD TO THE TRIAL COURT, TO ALLOW HIM TO FIND THAT THERE WAS SOME BASIS FOR BRINGING IN THAT INFORMATION.

SO I GUESS YOU ARE SAYING THEY JUST DIDN'T ASK ENOUGH QUESTIONS. IT COULD COME IN, BUT THEY JUST DIDN'T GO FAR ENOUGH WITH THEIR QUESTIONING, IS WAT YOUR POINT IS.

THERE WAS NO FOUNDATION. BUT LET US ASSUME THAT THIS INFORMATION SHOULD HAVE COME IN. WHAT IS THE -- WHERE IS THE TERMENT HERE? I MEAN -- THE MATERIALITY HERE? WHETHER OR NOT HE HAD CAN BISIN HIS -- CANNABIS IN HIS BLOODSTREAM OR NOT HAS NO BEARING ON THIS CASE. HE MAY HAVE SMOKED ON THE WAY HOME.

THAT IS IMMATERIAL, THAT IS NOT RELEVANT, BUT THAT IS NOT THE REASON IT WAS KEPT OUT IN THIS INSTANCE.

NO, IT WAS KEPT OUT BECAUSE THE STATE HAD NO FOUNDATION.

SO IT HAS NOT BEEN ATTACKED ON RELEVANCY, SO I DON'T SEE HOW THE STATE CAN TAKE THE POSITION THAT IT WASN'T RELEVANT.

UNDER THE CASSO CASE, IF WE ASSUME THAT THE TRIAL COURT WAS INCORRECT, WE CAN OFFER A SEPARATE, OR YOU CAN FIND THAT IT WAS RIGHT FOR THE WRONG REASONS.

WHAT WOULD HAVE BEEN THE PROPER PREDICATE HERE? WHERE IN THE STATE'S OPINION, TO GET THIS IN?

IN THIS CASE, YOU WOULD HAVE TO FORM, YOU WOULD HAVE TO SET A FOUNDATION. YOU WOULD HAVE TO FIND OUT WHETHER OR NOT THAT THIS IS SOMETHING THAT IS DONE IN THE NORMAL COURSE OF THE MEDICAL KPAERM'S -- EXAMINER'S DUTIES, WHETHER OR NOT HE ASKED FOR THIS TOXICOLOGY SCREEN TO BE DONE, AND WHETHER OR NOT HE RELIED UPON IT, IN ORDER TO GET THIS IN. THOSE ARE THE THREE BASIC QUESTIONS THAT COULD VERY EASILY BEEN ADDRESSED AT TRIAL AND MAYBE THERE WOULD HAVE BEEN A DIFFERENT RESULT, BUT THAT WASN'T THE CASE HERE.

IT COULD HAVE COME IN AS BUSINESS RECORD HERE?

IT COULD HAVE COME IN AS A BUSINESS RECORD. THE DUI BLOOD RESULTS COME IN AS A BUSINESS RECORD. WE ARE NOT NECESSARILY BRINGING IN THE PERSON WHO IS RUNNING THE TEST. AND THIS SORT OF INFORMATION, DUI INFORMATION, HAS COME IN, OR EXCUSE ME, THE ETHEL ALCOHOL INFORMATION HAS COME IN THROUGH A MEDICAL EXAMINER, BUT IT IS AFTER

HE HAS MADE THE OR SHE HAS MADE THE, MET THE FOUNDATION REQUIREMENTS OF HAVING RELIED ON SUCH A TEST, AND THAT WAS NOT DONE HERE.

BUT APPARENTLY HE ASKED ABOUT THE POINT AND HE SAID IT CAME IN IN THE LAST TRIAL, HE ORDERED THE DEPOSITION, HE ORDERED THE TEST, TO QUALIFY AND INTERPRET THE RESULTS IN HIS REPORT. THE COURT ASKED TO SEE THE REPORT. THE PROSECUTOR SAID THAT IS NOT HIS REPORT. THAT IS A SEPARATE DRUG TEST. THAT IS NOT HIS REPORT. AND THE COURT JUST SAYS I WILL SUSTAIN THE OBJECTION, SO IT LOOKS LIKE THE ONLY REASON THE JUDGE KEPT IT OUT WAS BECAUSE IT WASN'T HIS REPORT, AND YOU AGREE THAT THAT IS NOT A BASIS FOR EXCLUDING THIS EVIDENCE.

IT WAS NOT PART OF HIS AUTOPSY REPORT. I THINK THAT IS WHAT THE JUDGE WAS GETTING AT, AND I SEE MY TIME IS ENDING, SO IF I COULD JUST FINISH UP THIS QUESTION. IT WASN'T MADE CLEAR THAT IT WAS PART OF THE AUTOPSY REPORT, AND IT WASN'T MADE CLEAR THAT IT WAS SOMETHING THAT THE TRIAL, THAT THE MEDICAL EXAMINER RELIED UPON IN FORMULATING HIS REPORT. THE STATE WOULD ASK THAT YOU AFFIRM THIS CONVICTION AND SENTENCE AND WOULD RELY ON ITS BRIEF FOR THE BALANCE.

THANK YOU, MS. CAMPBELL. MR. CALDWELL. FIRST, WITH RESPECT TO THE MEDICAL EXAMINER, THE MEDICAL EXAMINER DID TESTIFY, ON PAGE 2350 THAT HE ORDERED THE TOXICOLOGY REPORT, AND THE STATE'S ARGUMENT WAS THE TESTIMONY ABOUT THAT COULD NOT BE PRESENTED, BECAUSE HE HAD NOT ACTUALLY PERFORMED IT. THAT WAS, JUST AS JUSTICE PARIENTE POINTED OUT, THAT WAS THE SPECIFIC RULING OF THE COURT. I SUBMIT THAT, IF THE STATE HAD SAID, WELL, YOU KNOW, HE HAS TO SAY THAT HE ORDERED IT, IN FACT HE DID SAY HE ORDERED IT, AND IF THE STATE HAD SAID HE HAS TO SHOW THAT HE RELIED ON IT IN THE COURSE OF THE AUTOPSY, I SUBMIT THAT THAT TESTIMONY, ALSO, WOULD HAVE BEEN FORTHCOMING. I MEAN, OBVIOUSLY THE MEDICAL EXAMINER HAS TO DECIDE WHETHER HE WAS STABBED BEFORE THE GUN SHOTS OR WHAT, AND PART OF THAT WAS A BLOOD SCREENING, TO SEE IF THERE IS POISON IN THE SYSTEM AND THAT SORT OF THING.

WHAT WAS THE RELY VAEBS -- RELEVANCY OF THAT PARTICULAR REPORT?

THE TESTIMONY WAS THAT HE WASN'T HOME BUT HE WAS HOME LATER ON IN THE EVENING AND THAT HE HAD BEEN SMOKING MARIJUANA WITH THE WIFE AND THAT SHE SHOT HIM THEN. TLAFS MARIJUANA RACH FOUND NEAR THE BODY.

HOW WOULD THAT REPORT HAVE SUPPORTED THAT ARGUMENT?

THE MEDICAL EXAMINER HAD TESTIFIED AT THE FIRST TRIAL, THAT THE --

I AM REALLY INTERESTED IN WHAT IT WOULD HAVE SHOWN IN THIS PARTICULAR TRIAL.

THAT IS WHAT I -- THAT IS WHAT I WANT TO EXPLAIN HERE, IF I CAN. HE TESTIFIED AT THE FIRST TRIAL HE COULD HAVE BEEN SMOKING THE MARIJUANA MINUTE OR TWO BEFORE HE WAS SHOT. NOW, THE STATE'S THEORY, THIS WOULD HAVE REFUTED THE STATE'S THEORY THAT HE DROVE DIRECTLY HOME. HE DIDN'T STOP. AS SOON AS HE GOT HOME, HE WALKS INTO THE OR HE FUMBLES WITH THE LIGHTS, AND HE IS SHOT AS HE BENDS OVER THE STEREO, SO THAT IS THE SIGNIFICANCE OF THAT TESTIMONY, I SUBMIT, THAT THAT WOULD HAVE BEEN VERY --

WHAT OTHER EVIDENCE DID THE DEFENSE OFFER, TO SUPPORT THAT THEORY OF THE CASE?

WELL, AGAIN, TO REPEAT, THERE WAS THE EVIDENCE OF THE MARIJUANA ROACH, WHICH WAS FOUND NEAR THE BODY. THERE WAS MARIJUANA FOUND IN THE WIFE'S CAR OUTSIDE. THERE WAS, ALSO, A CIGARETTE FOUND, AND A PUDDLE OF BLOOD NEXT TO THE BODY, WHICH WAS THE DEFENSECONTENDED WAS, ALSO, CONSISTENT WITH HIS SITTING AROUND, SMOKING WITH HER.

THERE WAS, ALSO, EVIDENCE THAT THE, SOME CIRCUMSTANTIAL EVIDENCE THAT THE CRIME OCCURRED AFTER THE TIME PERIODICAL EDGED BY THE STATE, BECAUSE THERE WAS A FRONT PORCH LIGHT WHICH WAS NOT ON, WHEN A WITNESS LIVING ACROSS THE WAY, THIS LITTLE ROAD IN THE TRAILER PARK, CAME HOME LATER THAT NIGHT, THERE WAS NOT A LIGHT ON, BUT WHEN THE POLICE ARRIVED, THE NEXT MORNING, THE LIGHT WAS ON, AND THE DEFENSE CONTENTION WAS THERE FOR THE VICTIM ARRIVED AFTER THIS PERSON CAME HOME AND MET THE WIFE THERE. THE WIFE DID NOT HAVE AN ALIBI FOR THAT TIME PERIOD. THE DEFENDANT DID. SO THIS IS ALL CONSISTENT WITH THE DEFENSE CONTENTION THAT THE SHOOTING OCCURRED LATER ON IN THE EVENING, WITH THE WIFE.

WOULD YOU DISCUSS THE PROPORTIONALITY ISSUE.

RIGHT. THE JUDGE SAID THAT THE DEFENDANT WAS THE MASTERMIND IN THE CASE, AND THAT WAS HIS PRINCIPLE REASON FOR GIVING MR. EVANS A DEATH SENTENCE, RATHER THAN THE LIFE SENTENCE, WHICH WAS RECEIVED BY CONNIE PFEIFFER. E SUBMIT THAT THE RECORD DOES NOT SUPPORT THAT FINDING, AS UNDER THIS RECORD. THE RECORD SHOWS THAT, WHEREAS CONNIE PFEIFFER GOT A VERY SUBSTANTIAL AMOUNT OF INSURANCE MONEY, SHE HAD HAD BEEN PLANING TO HAVE THE HUSBAND KILLED FOR QUITE A WHILE, WAS GOING AROUND AND SOLICITING PEOPLE TO COMMIT MURDER, AND THAT SHE THEN ENCOUNTERED THIS FRIEND OF HERS, DONNA, WHO, ALSO, APPARENTLY, RECEIVED SOME FUNDS OUT OF THIS, THE MURDER PROCEEDS, BECAUSE SHE ACQUIRED A TAXI SERVICE, WHERE SHE WAS SUBSEQUENTLY ARRESTED, WHEREAS THE DEFENDANT WOUND UP LIVING IN AN APARTMENT BEHIND THE CONVENIENCE STORE. HE, WHATEVER HE RECEIVED WAS MINIMAL, SO THE PECUNIARY GAIN CIRCUMSTANCE IS NOT VERY STRONG IN THIS CASE. THAT THE AGGRAVATING CIRCUMSTANCES APPLY MUCH MORE STRONGLY TO THE WIFE, WHO GOT THE LIFE SENTENCE, THAT THIS WAS ALL HER SCHEME, AND THAT THE DEFENDANT WAS LESS CULPABLE IN THE SENSE THAT HE WAS NOT THE MASTERMIND. THAT IS WAS THE JUDGE FOCUSED ON WAS THIS IDEA THAT THE DEFENDANT WAS THE MASTERMIND. WE SUBMIT THAT THAT DOESN'T APPLY TO MR. EVANS, UNDER THE FACTS OF THIS CASE. I WANT TO MENTION BRIEFLY ABOUT THE PARTIAL CLOSURE IN THE UNITED STATES VERSUS BRAZIL, WHICH WAS CITED ON WHICH THE STATE CITED QUITE A BIT, AND IT IS RELIED QUITE A BIT IN ITS BRIEF. THE COURT, AT PAGE 1155, SPECIFICALLY NOTES THAT, UNDER UNITED STATES SUPREME COURT PRECEDENT, A PARTIAL CLOSURE OCCURRED, WHERE PRESS AND FAMILY MEMBERS OF THE DEFENDANT, WITNESS AND DECDENT WERE IN THE COURTROOM DURING ONE WITNESS TESTIMONY, BUT THE REST OF THE PUBLIC WAS EXCLUDED. THAT WOULD BE A PARTIAL CLOSURE. THAT IS NOT WHAT WE HAVE HERE. WE HAVE ONLY ONE PERSON ALLOWED IN AT A TIME. THE REPORTER HAS TO LEAVE WHEN THE PHOTOGRAPHER COMES IN.

DO YOU AGREE THAT THERE WAS A SEATING PROBLEM HERE, OR THERE WAS NOT A SEATING PROBLEM HERE?

OH, YES, JUSTICE SHAW. THERE WAS A SEATING PROBLEM. THAT WAS THE CAUSE. I SUBMIT THAT IS NOT A COMPELLING REASON, AS REQUIRED BY THE UNITED STATES CONSTITUTION.

WHAT DO YOU PROPOSE THAT THE COURT DO? MOVE TO. THE COURTROOM? IS THAT WHAT YOU ARE --

YES, JUSTICE SHAW, AND IN FACT THAT DID OCCUR FOR PART OF THIS INDIVIDUAL VOIR DIRE. PART OF THE INDIVIDUAL VOIR DIRE HAPPENED IN THE MAIN COURTROOM, WHILE THE OTHER JURORS WERE IN THE JUROR ASSEMBLY ROOM, BUT THOSE MOST OF THE INDIVIDUAL VOIR DIRE OR A VERY SUBSTANTIAL PORTION OF IT, OCCURRED IN THIS SMALL HEARING ROOM. MR. CHIEF JUSTICE: THANK YOU, MR MR. CALDWELL.

THANK YOU, SIR.