>> ALL RISE.
THE SUPREME COURT OF
FLORIDA IS NOW IN SESSION.
>> NEXT CASE ON THE CALENDAR IS
LENNART S. KOO V. STATE OF
FLORIDA.
>> THANK YOU, MAY IT PLEASE THE
COURT, I AM D. GRAY THOMAS
REPRESENTING THE PETITIONER
LENNART KOO AND I RESERVE FIVE
MINUTES OF MY TIME.
MR. KOO WAS CONVICTED OF
COMMITTING BURGLARY OF THE
STORAGE UNITS AND BECOMING
ALARMED IN THE PROCESS BASED ON
THE TESTIMONY OF HIS EMPLOYER
AND ALLEGED VICTIM, AFTER TRIAL
BUT BEFORE SENTENCING, DOCTORS
ALLOWED THE TRIAL COURT
CHANGING HIS STORY ON SOME
POINTS THAT ARE VERY MATERIAL TO
THE THEORIES OF THE DEFENSE
REGARDED LACK OF INTENT, CONSENT
TO ENTER AND NECESSITY.
>> WHERE IS THAT IN THE LETTER?
I READ THE LETTER AND READ WHAT
YOU ARGUE AND IT SEEMS TO MEET
THAT THE LETTER, IT IS CLEAR
FROM A LETTER HE IS SORRY THAT
THE END DEFENDANT GOT SENTENCED
TO TEN YEARS AND WHICH THIS
WOULD ALL GO AWAY, BUT ON THE
CRITICAL FACTS WITH RESPECT, THE
FACTS ON WHICH THE CONVICTION
HAD TO BE BASED, I DON'T SEE
THAT HE SAYS ANYTHING THAT TAKES
THOSE FACTS AWAY.
TELL ME WHERE I AM WRONG.
>> THERE ARE THREE KEY FACTS AND
THAT IS ONE OF THE THINGS THAT
GOT THE TRIAL COURT AND FIRST
DISTRICT MAJORITY HUNG UP, THEY
GOT HUNG UP ON WHAT I WOULD
CONCEDE IS A LOT OF OPINION IN
THE LETTER, A LOT OF REGRET.
THE KEY FACTS ARE HE HAD KEYS TO
EVERY DWELLING.
THAT IS STATED IN THE LETTER.
>> ON THAT, I WILL LET YOU GO ON
AFTER YOU ANSWER THIS.

BURGLARIES YEAR IS NOT THE
BURGLARY OF A DWELLING.
IT IS THE BURGLARY OF A STORAGE
UNIT.
HE OBVIOUSLY DIDN'T HAVE A KEY
TO THAT BECAUSE HE BROKE THE
LOCK OFF.
I DON'T UNDERSTAND THE POINT YOU
ARE MAKING HAS ANYTHING TO DO
WITH THE CONVICTION IN THIS
CASE.
>> A COUPLE POINTS SPECIFICALLY
TO THAT QUESTION, MR. KOO
CLEARLY HAD KNOWLEDGE OF THE
ACCESS CODE TO GET INTO THE
BUILDING IN THE FIRST CASE, IN
THE FIRST PLACE AND HIS
TESTIMONY AT TRIAL WAS HE FORGOT
TO BRING THE KEY WITH HIM TO THE
STORAGE UNIT.
DOCTOR SOLEIL TESTIFIED AT
TRIAL, PAGE 183 TO 184 OF VOLUME
3 THAT MR. KOO DIDN'T HAVE KEYS
OR ACCESS TO ANYTHING, ANY OF
HIS PROPERTIES PERIOD EXCEPT HE
CLAIMED THAT MR. KOO STOLE KEYS
ON MORE THAN ONE OCCASION AND
IMMEDIATELY THEREAFTER WHEN
ASKED HOW YOU SAYING HE STILL
KEYS?
PROBABLY.
I WOULDN'T PUT HIM PAST HIM.
WHO KNOWS WHAT THAT TRIAL
TESTIMONY ULTIMATELY MEANS.
HE ALSO CONTRADICTS HIS TRIAL
TESTIMONY IN TWO OTHER RESPECTS
THAT ARE SIGNIFICANT TO WHAT WAS
IN MR. KOO'S MIND AS TO THE
ISSUE OF CONSENT, 42 ENTERED DR.
SOLEIL'S VARIOUS PREMISES.
THE LETTER DOES SAY HIS
IRRITATION WAS INTENSIVE AND
FRIGHTENING AT TIMES DURING
TRIAL, PAGE 185 OF VOLUME 3 OF
THE RECORD, HE DENIES HE EVER
GOT MAD AT MR. KOO OR AROUND
HIM.
THE TRIAL PORTRAYED MR. KOO AS
ONLY WORKING FOR HIM ON AND OFF
FOR A PERIOD OF TIME AND IN THE

LETTER HE MAKES IT CLEAR THAT HE
HAS KNOWN MR. KOO FOR PERIOD OF
YEARS AND MR. KOO HAS WORKED
WITH HIM ON A CONTINUOUS BASIS
SO HE IS CHANGING THE WHOLE
PERSPECTIVE ABOUT MR. KOO'S
RELATIONSHIP WITH HIM.
HE DOES ACKNOWLEDGE MR. KOO
LIVED UNDER THE SAME ROOF, AND
IN THE SAME HOUSE, HE DOES
ACKNOWLEDGE -- WHAT HE HAS DONE
IN HIS LETTER IN THOSE THREE
MATERIAL RESPECTS IS TO
ABSOLUTELY, ABSOLUTELY
CONTRADICT HIS OWN TRIAL
TESTIMONY AND CORROBORATE MR.
KOO'S.
>> I AM LOOKING AT THE JUDGE'S
DESCENT IN THE FIRST DISTRICT.
THE DEFENSE, ONE OF THE DEFENSES
WAS THE DOCTOR EFFECTIVELY HAD
GIVEN HIM CONSENT SO CONSENT WAS
AN ISSUE.
SECOND, HE DENIED HE HAD GIVEN
CONSENT AT THE TRIAL.
SECOND HE HAD ASSERTED A
NECESSITY DEFENSE, NECESSARY TO
KEEP FIREARMS OUT OF THE
DOCTOR'S HAND.
WHEN THE DOCTOR WAS ASKED ABOUT
THAT, ABOUT WHAT HE SAID ABOUT
THREATENING TO HARM HIS OWN
LIFE, DID HE DENY WHAT HE HAD
TOLD THE DEFENDANT?
WAS THERE A CONTRADICTION ON
THAT ISSUE AT TRIAL TOO?
>> THE SPECIFIC TESTIMONY FROM
MR. KOO WAS NOT FLATLY
CONTRADICTED BY DR. SOLEIL OTHER
THAN DR. SOLEIL DENYING THE
BEING THIS PERSON WHO WAS
EXPLOSIVE IN HIS TEMPER AND
FRIGHTENING.
THE LETTER DOES SAVE THAT HE
TOLD MR. KOO MAKE SURE I DON'T
DO SOMETHING I REGRET.
>> WAS HE ASKED ABOUT THAT AT
TRIAL?
>> HE WAS NOT.
>> WE WERE REALLY HAD A POINT.

THERE HASN'T BEEN IN AND THE
DENTURE REHEARING WHAT THIS
WOULD QUALIFY AS LIKELIHOOD OF
ACQUITTAL, YOU ARE JUST ASKING
FOR AN EVIDENTIARY HEARING.
I WANT TO MAKE SURE ABOUT THAT.
WE ARE NOT SAYING THIS IN TITLES
YOU TO A NEW TRIAL.
>> I DON'T THINK THE SLOP
FORECLOSES THE POSSIBILITY
SOMETHING COULD BE SO STRONG AS
TO WARRANT A NEW TRIAL ON
EVIDENCE SUCH AS THIS.
>> WE WOULD NEVER GRANT ON A
MATTER THAT HASN'T BEEN TESTED.
>> I THINK THERE IS NO DOUBT
THAT ALL OF THIS NEEDED TO BE
FLESHED OUT IN AN EVIDENTIARY
HEARING.
THIS COURT'S PRESIDENTS AND
THOSE OF THE OTHER DISTRICTS ARE
VERY CLEAR THAT IF YOU ARE
HAVING DOUBTS ABOUT THE
CREDIBILITY OF THE POST TRIAL
RECANTATION YOU NEED A HEARING
AND THAT --
>> WHY NOT BRING A WITNESS TO
THIS HEARING?
WHY WASN'T THIS THE HEARING
WHERE MORE EVIDENCE COULD HAVE
BEEN SUBMITTED?
YOU WERE NOT PRECLUDED FROM
THAT, WERE YOU?
>> HERE IS THE UNUSUAL THINGS
THAT HAPPENED.
IN TWO OR TWEAK THE PLACES WHERE
CASE LAW SUPPORT IN THE WRITTEN
AMENDED MOTION FOR NEW TRIAL
DEFENSE COUNSEL IN DEEDS DID ASK
FOR AN EVIDENTIARY HEARING, SAID
IT WAS REQUIRED AND JUSTIFIED.
DR. SOLEIL DID NOT APPEAR AT
THAT HEARING.
>> WHY NOT?
>> THAT IS WHAT I CAN'T ANSWER.
>> THAT SEEMS TO BE A PROBLEM
FROM YOUR PERSPECTIVE.
FURTHERMORE WE HAVE JUST A
MATTER.
THIS IS NOT EVEN A SWORN

STATEMENT.
ISN'T THAT ALSO A PROBLEM?
>> NO.
THE CASES THAT I HAVE CITED, YOUR HONOR, INCLUDE ANY NUMBER OF CASES WHERE THERE WAS ONE CASE FOR INSTANCE IN WHICH AN EVIDENTIARY HEARING WAS REQUIRED, UP BEAR WITH ME ON MY LIST, I APOLOGIZE FOR FUMBLING.
THERE WAS THE MERE REPRESENTATION IN A SWORN POST CONVICTION MOTION THAT THE WITNESS RECANTED TO A THIRD PERSON.
ONE OF THE FIRST DISTRICT CASES INVOLVES A CLAIM OF RECANTATION THAT WAS REPRESENTED IN A SWORN MOTION BUT WAS BASED ONLY ON A VIDEOTAPE OF THE PURPORTED VICTIMS OF AN OFFENSE THAT THE COURT IN ITS DECISION SAID APPEARS TO HAVE BEEN MADE UNDER SUSPICIOUS CIRCUMSTANCES THAT MAY HAVE BEEN VERY SUGGESTIVE TO THOSE WITNESSES WHAT THEY OUGHT TO BE DOING AND WHY.
THE COURT BELOW, GOT ALSO HUNG UP WITH THIS COULD NOT BE NEW EVIDENCE.
THAT IS NOT THE STANDARD IN ARCHER OR THE FIRST DISTRICT, IT IS A MATTER OF WHETHER YOU CAN PROVE MY EVIDENCE OF THE THAN THE DEFENDANT'S OWN MOUTH THAT THE WITNESS IS LYING AT THE TIME OF TRIAL AND THAT IS WHAT THESE THREE POINTS IN THE LETTER DO.
THEY CHOSE THAT DR. SOLEIL'S POSITION DURING AND AFTER TRIAL CHANGED IN MATERIAL RESPECTS.
>> I DON'T SEE HOW
>> Reporter: IN THE CRITICAL RESPECT CONCERNING WHETHER THE DEFENDANT HAD PERMISSION TO GO KNOCK THE LOCK OF THE STORAGE UNIT AND TAKE THE GUNS AND SELL AT LEAST ONE OF THEM.
THERE IS NOTHING THAT CHANGES ANY OF THAT IN THAT LETTER.

>> YOUR HONOR, THAT IS ALSO WHY AN EVIDENTIARY HEARING IS CRITICAL.
DR. SOLEIL, WHAT DID YOU MEAN BY MAKE SURE I DON'T DO SOMETHING I WILL LATER REGRET?
WHAT DID YOU MEAN WHEN YOU SAY HE HAD KEYS TO EVERY DWELLING?
DID YOU MEAN THAT TO BE LIMITED TO ACTUAL RESIDENTIAL PROPERTIES?
>> STORAGE UNIT IS NOT A DWELLING.
>> I KNOW IS NOT AND DR. SOLEIL IS A LAWYER.
>> HE IS THE PSYCHIATRIST, ISN'T HE?
>> WAS.
>> WHAT CAN I SAY?
>> THE POINT IS THAT THESE POINTS ARE NOT INHERENTLY INCREDIBLE, NOT OBVIOUSLY IMMATERIAL, NOT SIMPLY SPOUTING INFORMATION THAT IS NOTHING NEW TO THE CASE.
>> IT SEEMS TO ME THE LETTER IS BUYER'S REMORSE.
I DIDN'T THINK IT WOULD BE TEN YEARS.
THAT IS WHAT THIS LETTER SEEMS TO BE ABOUT AND OH MY GOSH, I KNOW HIS FAMILY AND IF HE HAS TO SERVE TEN YEARS HIS PARENTS MIGHT STILL BE AROUND THAT LONG.
THIS IS A LETTER, SEEMS TO ME IT DOESN'T REALLY GOES TO THE HEART OF THE CASE.
IT GOES TO I AM SORRY HE GOT TEN YEARS.
>> THAT IS WHY YOU HAVE GOT TO FIND THE FACTS AND NOT GET HUNG UP AS THE MAJORITY BELOW DID ON THE MISSTATEMENTS THAT ARE OF REMORSE IN THIS LETTER.
DR. SOLEIL SAYING --
>> TELL ME.
IN THIS LETTER, WHAT WOULD NEGATE ANY ELEMENT OF THE CRIME HE WAS CONVICTED OF?
>> KEYS TO EVERY DWELLING GOES

TO IN TENT.
IT GOES TO CONSENT.
>> THE KEYS TO EVERY DWELLING GOES TO CONSENT OF BREAKING A LOCK AS JUSTICE KENNEDY SAID ON A STORAGE UNIT?
>> IT DEPENDS ON THE SCOPE OF MR. KOO'S AUTHORITY THAT WAS GIVEN BY DR. SOLEIL.
>> THE STORAGE UNIT ALONE?
WAS IT YOUR TESTIMONY HE DID NOT GIVE THEM BUT THE AUTHORITY TO GO INTO STORAGE UNITS WITHOUT HIM?
>> DR. SOLEIL TESTIFIED TO THAT TRIAL COMMENTS AT AN EVIDENTIARY HEARING AFTER A TRIAL.
>> THIS LETTER SAYS THAT WAS DIFFERENT.
>> NO.
WE HAD SOMEBODY WHO WAS WRITING A LETTER, THEY ARE NOT BEING EXAMINED BY A QUESTIONNAIRE OR QUESTIONNAIRES TO KNOW WHAT POINTS THEY WANT TO FIND OUT TO GET TO THE TRUTH OF WHAT DR. SOLEIL IS SAYING.
>> THIS IS THE DOCUMENT YOU ARE RELYING ON.
WHERE IN THIS LETTER DOES ANYTHING THAT NEEDS THE ELEMENTS OF THE CRIME?
WHERE IS IT?
>> THERE IS NO ONE THING THAT HITS THE HOME RUN.
>> WHERE IS ANYTHING YOU CAN RELY ON?
WHERE IS IT?
>> THE ACCESS TO CHEESE.
>> WHERE IS IT?
>> HAD KEYS TO EVERY DWELLING, THE SECOND LINE OF THE LAST PARAGRAPH ON THE FIRST PAGE, PAGE 84.
>> THAT NEGATES WHAT ELEMENTS?
>> THAT SUGGESTS --
>> WHAT ELEMENT OF DEFENSE DOES THAT NEGATE?
>> THAT HE DIDN'T HAVE PERMISSION TO ENTER.

IT IS RELEVANT TO THAT.
>> JUST SO WE MAKE SURE.
WITH RECANTATIONS IN DEATH
PENALTY CASES, IMPEACHMENT, YOU
SAID IN THE TESTIMONY AT TRIAL
HE DENIED, WHAT DID HE SAY ABOUT
WHETHER THE DEFENDANT HAD KEYS
TO HIS DWELLINGS?
>> HE SAID HE DID NOT -- THIS IS
AT PAGE 183, VOLUME 3 OF THE
RECORD, WHEN DR. SOLEIL
TESTIFIED MR. KOO DID NOT HAVE
KEYS TO ANYTHING.
>> IMPEACHES HIM ON THAT AND
CREDIBILITY ISSUE, THAT IS
TRUTHFULNESS.
IS THAT CORRECT?
>> IT IS MORE THAN CORE
SOMETIMES REFERRED TO AS MERE
IMPEACHMENT.
IT IS A SOURCE EXTERNAL TO THE
DEFENDANT SHOWING THIS WITNESS
WAS NOT TELLING THE TRUTH AT THE
TIME OF TRIAL AND THAT IS THE
STANDARD IN ARCHER AND KINDRED
AND THAT LINE OF CASES.
>> HIS DEFENSE AT TRIAL, I HAVE
THE RIGHT TO GO IN AND TAKE IT
AND SOME ANYTHING I WANT.
>> NOT TO SELL.
THE DEFENSE AT DRAWER, DR.
SOLEIL TESTIFIED MR. KOO TOLD
HIM HE SOLD ONE OF A FIREARMS.
MR. KOO'S TESTIMONY WAS HE
STASHED THESE FIREARMS, THE GUNS
AT A LUMBERYARD WITH FRIENDS AND
WHEN THEY WENT TO RETRIEVE THEM
THE NEXT DAY, THE 22 WAS GONE
AND HE DOESN'T KNOW WHAT
HAPPENED TO IT.
THAT GOES TO THE ISSUE OF DR.
SOLEIL AT TRIAL INDICATING THERE
WAS A PROFIT MOTIVE TO MAKE
MONEY FROM SELLING STOLEN
PROPERTY WHICH IS NOT SUPPORTED
IN THE RECORD.
>> THE TESTS, THE TESTIMONY AT
TRIAL TESTIFIED HE HAD BECOME
CONCERNED DR. VICIOUS DIVORCE
AND HE WAS CONCERNED HE MIGHT

HARM HIMSELF OR HIS WIFE.
DID HE TESTIFY TO THAT?
>> WHAT DID THE DOCTOR TESTIFIED TO WHETHER HE HAD THAT CONVERSATION WITH THE DEFENDANT?
HE ADMITTED HE HAD THAT CONVERSATION?
>> HE WAS NOT ASKED THAT ABOUT THIS STATEMENT WHICH APPEARS IN THE LETTER, THE DEFENSE KNEW HE WOULD MAKE LATER TO MAKE SURE I DON'T DO SOMETHING I MIGHT REGRET.
THE LETTER DOES DEMONSTRATE THE EXPLOSIVE TEMPER AND IN PURE THREATENING MORE FRIGHTENING, GO THROUGH HIS EMOTIONAL TURMOIL DURING DIVORCE AND CUSTODY CASES.
>> CORROBORATING HIS DEFENSE --
>> YES.
>> JUST BECAUSE YOU HAVE KEYS TO A PLACE DOESN'T MEAN YOU HAVE THE RIGHT TO TAKE STUFF OUT OF THERE, RIGHT?
>> RIGHT, OF COURSE.
IT DEPENDS ON THE CIRCUMSTANCES.
IF I HAVE SOMEONE WITH KEYS TO MY HOUSE EDGE AND EXPECTED TO TAKE MY JEWELRY, I WOULD CERTAINLY ACKNOWLEDGE THAT.
THE ISSUE COMES ON THE ISSUE OF WHETHER MR. KOO REASONABLY BELIEVED THAT HE HAD TO GET THESE GUNS AWAY FROM DR. SOLEIL TEMPORARILY FOR THE PROTECTION OF DR. SOLEIL AND OTHERS.
>> WOULD THAT HAVE BEEN BROUGHT OUT IN THE DEFENSE?
HOW COULD ANY OF THIS BE BROUGHT OUT NOW AS COMPARED TO WHEN THE TRIAL TOOK PLACE ORIGINALLY?
>> DR. SOLEIL WAS TESTIFYING VERY DIFFERENTLY AT THE TIME OF TRIAL THAN WHAT HE WROTE IN A LETTER.
>> WHAT DID HE TESTIFY AT TRIAL?
>> THAT HE NEVER HAD AN EXPLOSIVE TEMPER AROUND MR. KOO, NEVER DISPLAYED THOSE EMOTIONS,

TESTIFIED MR. KOO DIDN'T HAVE KEYS TO EVERYTHING, TESTIFIED MR. KOO WAS ONLY AND ON AND OFF EMPLOYEE AS OPPOSED TO SOMEONE WHO WAS THERE ON THE GROUND, EVEN LIVING ON THE PROPERTY WHERE DR. SOLEIL LIVED AND HAD HIS PRIMARY OFFICE.
THE WHOLE ISSUE OF WHAT MR. KOO'S ACCESS WAS TO WHENEVER PROPERTIES, THE RELATIONSHIP THAT HE AND DR. SOLEIL HAD, THE TRUST OR CONFIDENCE FACTOR, THE AUTHORITY THAT MR. KOO COULD REASONABLY HAVE FELT THAT HE HAD TO TAKE APPROPRIATE ACTIONS SUCH AS THIS, MR. KOO AT TRIAL TESTIFIED THERE WERE DRESSES DR. SOLEIL SAID FEEL FREE TO TAKE THOSE OUT OF THE STORAGE UNIT, THEY BELONG TO MY WIFE, SHE WILL NEVER WEAR THEM ANYWAY.
>> THIS DEFENSE OF NECESSITY STRIKES ME AS RATHER FAR-FETCHED.
PARTICULARLY WITH THE CIRCUMSTANCES INVOLVING THE SALE TO A THIRD PARTY OF ONE OF THE GUNS.
I AM HAVING TROUBLE UNDERSTANDING THE FACTS HERE, INCLUDING ANY FACTS THAT MIGHT BE SUPPORTED BY THIS LETTER WOULD SUPPORT A DEFENSE, THE LEGAL DEFENSE OF NECESSITY.
>> IN THE ISSUE OF SELLING A GUN, MR. KOO DID NOT SAY THAT WHEN HE WAS BEING INTERROGATED, HE DID NOT TESTIFY TO THAT DURING TRIAL.
DR. SOLEIL TESTIFIED THAT HE TOLD HIM THAT AT THE TIME THE GUNS WERE BEING RETURNED, BUT ISSUE REALLY.
>> $300 TO BUY IT BACK, DIDN'T HE?
>> ACCORDING TO DR. SOLEIL.
ONE OF THE REASONS WHY THE TRIAL COURT FOUND THE LETTER NOT TO BE TERRIBLY CREDIBLE WAS BECAUSE

JUDGE DANIEL SAID THIS
EXPLICITLY, I DON'T FIND DR.
SOLEIL CREDIBLE IN DURING HIS
TRIAL TESTIMONY.
HE ACTUALLY FLIPPED THE
ANALYSIS.
GOT TO ANALYZE THE CREDIBILITY
OF THE RECANTATION EVIDENCE
WHICH WILL REQUIRE AN
EVIDENTIARY HEARING.
THANK YOU.
>> GOOD MORNING.
MATTHEW V. PAVESE ON BEHALF OF
THE STATE.
THE LETTER HERE WAS NOT A
RECANTATION AND THAT FALLS THIS
ISSUE RIGHT OFF THE BAT.
YOU NAIL THE ON THE HEAD, THIS
IS BUYER'S REMORSE.
YOU WERE PICKING UP ON THIS TOO.
IT SEEMS LIKE HE IS UPSET AFTER
THE TRIAL THAT WAIT A SECOND, HE
IS GETTING TEN YEARS WHEN HE WAS
JUST TRYING TO PROTECT ME FROM
MY OWN SELF BUT HE NEVER SAID HE
HAD CONSENT TO TAKE THE GUNS.
BECAUSE THIS IS NOT A
RECANTATION, IT IS NOT NEW
EVIDENCE, THERE IS NO CONFLICT
FOR THIS COURT TO REVIEW TO
BEGIN WITH.
>> THEY SAY IN THEIR OPINION
THAT BECAUSE HE COULD HAVE KNOWN
THIS AT THE TIME OF TRIAL IT IS
NOT NEW LEAD DISCOVERED.
THAT IS NOT CORRECT.
ALL THE TIME IN DEATH PENALTY
CASES, FOR WHATEVER REASON
SOMEBODY CHANGES SOMETHING THEY
HAVE SAID, IT MAY BE DIRECT OR
IMPEACHMENT AND WE AT LEAST GIVE
THEM AN EVIDENTIARY HEARING, WE
DON'T SAY WE SHOULD HAVE KNOWN
HE WAS GOING TO CHANGE HIS
TESTIMONY AND IT IS UP TO THE
JUDGE TO EVALUATE THE
CREDIBILITY AND RECANTATIONS ARE
VIEWED SKEPTICALLY BUT THE
STATEMENT CALLING IN THE FIRST
DISTRICT OPINION, DOESN'T

QUALIFY AS NEW DISCOVERED
EVIDENCE BECAUSE IT COULD HAVE
BEEN KNOWN IS THAT A CORRECT
STATEMENT OF THE LAW?
I AM ASKING IS THAT STATEMENT
CORRECT?
>> IN THIS CASE YES BECAUSE IT
DID COME OUT AT TRIAL.
THIS IS THE WEIRDEST PART ABOUT
THIS CASE ACTUALLY.
>> ASKING ABOUT WHAT IS IN THE
LETTER, NOT WORKING ON THE
PROBLEMS THAT WORKING ON A
LETTER.
>> WHAT IS IN THE LETTER --
>> ONE DISCOVERED?
THAT IS WHAT WE ARE TALKING
ABOUT.
>> IS NOT NEW DISCOVERED
EVIDENCE.
IS NOT NEW DISCOVERED EVIDENCE
AND THE BASES WOULD BE BECAUSE
OF WHAT WAS AT TRIAL BUT
DEFENDANT ON PAGE 167 OF THE
THIRD VOLUME OF THE RECORDS SAID
HE DID NOT HAVE CONSENT TO TAKE
THESE GUNS.
>> THAT IS NOT BECAUSE HE KNEW
ABOUT IT.
YOU ARE CONFUSING THE SUBSTANCE
WITH WHEN THIS COMES FORWARD AND
THE STATEMENT OF THE FIRST D.C.
A.
IT IS VERY DISINGENUOUS TO STAND
THERE AND ARGUE THAT A LETTER
THAT DID NOT EXIST AT THE TIME
OF THE TRIAL IS NOT NEW
DISCOVERED EVIDENCE BECAUSE A
PARTY KNEW ABOUT IT.
IT IS IMPOSSIBLE TO KNOW ABOUT
SOMETHING THAT IS NOT CREATED
UNTIL AFTER THE FACTS.
>> THAT IS CORRECT.
>> WE ARE WHERE WE NEED TO BE.
WE DON'T ARGUE THE SUBSTANCE
THAT THAT IS NOT HER QUESTION.
>> WHAT IT IS, NOT ONE SENTENCE
THAT THE JUDGE HAD A PROBLEM
WITH, CITING THAT SENTENCING,
THIS CAN'T BE RIGHT, HE NEEDS TO

HAVE AN EVIDENTIARY HEARING,
BECAUSE AS THE COURT'S DECISION
HIGHLIGHTS WHETHER OR NOT THIS
WOULD BE NEWLY DISCOVERED, CAN
SAY THAT BECAUSE HE COULD HAVE
KNOWN ABOUT IT.
>> HERE'S THE OTHER PART ABOUT
THIS.
I MIGHT HAVE A DIFFERENT VIEW
THAN MY COLLEAGUES, THE
CREDIBILITY OF THE KEY
COMPLAINING WITNESS IS AT STAKE.
UNLESS I AM UNDERSTANDING WHEN
THE VICTIM WAS ASKED DID HE HAVE
KEYS TO DWELLINGS?
HE DIDN'T HAVE THAT, NEVER LIVED
WITH ME, BUT HERE IN THE LETTER,
HE HAD KEYS TO EVERY DWELLING.
I REALIZE HE DIDN'T HAVE KEYS TO
THE STORAGE UNIT BUT IF I AM A
JUROR LISTENING TO THAT AND I
UNDERSTAND THIS IS SOMEONE THAT
LIVES WITH OR HAS LIVED WITH THE
PERSON IT CHANGES WHAT THE
RELATIONSHIP IS.
WHY ISN'T THAT IMPEACHMENT TO
ALLOW THE TRIAL JUDGE TO
EVALUATE WHAT THE EVIDENTIARY
HEARING SETTING, WHAT WAS THE
RELATIONSHIP BETWEEN THE TWO OF
THEM AND ON THE NECESSITY SAID
HE WAS THIS DEFENDANT
LEGITIMATELY CONCERNED ABOUT
VIOLENCE BECAUSE -- THESE ARE
IMPORTANT THINGS FOR THE JUDGE
TO EVALUATE IN THE TESTIMONY.
>> THE FIRST PART ABOUT WHETHER
IT IS IN CONFLICT WITH THE
TESTIMONY, WAS KIND OF UNCLEAR
BASED ON THE DOCTOR'S TESTIMONY
HOW HE GOT THESE KEYS, MIGHT
HAVE GOTTEN THEM BY STEALING THE
KEYS AND A LETTER MENTIONS HE
HAD KEYS TO EVERY DWELLING.
IT DOESN'T CREATE NEW EVIDENCE
HE DID NOT RECEIVE THOSE LETTERS
FOR THEM TO BE STOLEN.
THE QUESTION BECOMES --
>> LET ME MAKE SURE.
HE HAD KEYS TO EVERY DWELLING.

YOU ARE SAYING THAT MIGHT MEAN
HE STOLE THE KEYS TO EVERY
DWELLING?
>> THAT IS WHAT THE DOCTOR
TESTIFIED TO AT TRIAL.
>> IT IS NOT CLEAR BUT IS HE
ENTITLED TO AND EVIDENTIARY
HEARING SO THAT THE JUDGE COULD
EVALUATE THE CREDIBILITY?
END IF THIS IS SIMPLY BUYER'S
REMORSE, WHAT HE SAID AT TRIAL
WAS THE TRUTH, WHAT HE IS NOW
SAYING IS BECAUSE HE FEELS BADLY
THAT THE GUY GETS A TEN YEAR
SENTENCE THE JUDGE CAN EVALUATE
THAT.
>> AT THE EVIDENTIARY HEARING ON
PAGE 110 OF THE FIRST VOLUME OF
THE RECORD THE JUDGE OPENS UP
THE HEARING BY SAYING WE ARE
HERE IN A MOTION FOR A NEW TRIAL
AND IF I DON'T GRANT THE MOTION
WE WILL MOVE FORWARD TO
SENTENCING.
AT THAT POINT HAS THE LETTER AND
WILL MAKE IT PART OF THE RECORD.
THE COUNCIL DOESN'T OFFER
WITNESSES IN SUPPORT OF THEIR
POSITION HERE OR EVEN CALL THE
DOCTOR TO TESTIFY.
ALL HE DID WAS DEFENSE COUNSEL
BELOW WAS RELYING ON THE LOVE
LETTERS TO FEED NEW EVIDENCE AND
THAT WAS THEIR ARGUMENT AND THE
TRIAL COURT SAYS LOOKING AT THIS
LETTER I FIND IT TO BE
IMMATERIAL.
>> THE TRIAL COURT'S SORTED
DENYING MOTION FOR A NEW TRIAL
RECOGNIZE THE COURT WAS DENYING
AN EVIDENTIARY HEARING HAVING
REVIEWED THE LETTER AND FINDING
THAT HIS TESTIMONY SHOULD BE
CONSISTENT WITH THE CONTENT OF
HIS LETTER WHICH FALLS SHORT OF
SATISFYING THE STANDARD OF NEWLY
DISCOVERED EVIDENCE BUT HE
DOESN'T EVALUATE, HE IS SAYING
IT WOULDN'T HAVE MATTERED AND IN
AN EVIDENTIARY HEARING, THE

JUDGE IS PREJUDGING IT.
MAY BE SIGNIFICANT IMPEACHMENT
OF THIS WITNESS.
THE JURY IS ENTITLED TO LOOK AT.
>> EVEN IF IT WAS IMPEACHMENT
THERE WERE OTHER FACTORS THAT
COULD DETERMINE IF IT WAS
MATERIAL TO THE TRIAL.
THE LETTER DIDN'T SPEAK TO ANY
ELEMENT OF THE ACTUAL OFFENSE AT
BEST IT COULD BE CONSIDERED A
CREDIBILITY ATTACK ON THE VICTIM
BUT NOW IS THE VICTIM SAYING HE
HAD CONSENT EVEN THOUGH AT TRIAL
THE DEFENSE SAID I DIDN'T HAVE
CONSENT, HAD TO DO THAT.
EVALUATING THE MATERIALITY OF
THE NEW POTENTIAL CONSENT TO GO
IN, DOES NOT CHANGE WHETHER HE
HAD CONSENT TO STEAL THE
FIREARMS AND ON HIMSELF AND
ULTIMATELY SELL ONE OF THE
FIREARMS FOR $300.
>> THE JUDGE SAYS IT WAS TWOFOLD
DEFENSE, FIRST THE DOCTOR HAD
EFFECTIVELY GIVEN HIM CONSENT SO
WAS CONSENT ONE OF HIS DEFENSES?
>> YES.
>> IT SEEMS TO ME IF I HAVE AN
EMPLOYEE THAT BECOMES CLOSE TO
ME AND I GIVE THEM KEYS AND HAVE
THIS DIFFERENT RELATIONSHIP
VERSUS SOMEONE ELSE, HE COULD --
CHANGES WHAT I MIGHT THINK AS A
JUROR.
AT LEAST SOMEONE NEEDS TO BE
GIVEN THE OPPORTUNITY TO
EVALUATE THE DOCTOR TO SEE IF HE
IS REAFFIRMING HIS TRIAL
TESTIMONY OR SAYING I'D TO
REMEMBER IS THAT I TALKED TO HIM
ABOUT THE RAGE I WAS IN.
I WAS A CRAZY PERSON AS I WAS
GOING THROUGH THIS DIVORCE AND
THE DEFENDANT KNEW IT.
PRETTY SIGNIFICANT.
>> HAVING KEYS EVEN IF IT WAS TO
THE DWELLING, TO THE STRUCTURE
EVEN THOUGH HE BROKE INTO THE
STRUCTURE HE MAY HAVE HAD

IMPLIED CONSENT TO BREAK THIS
LAW, STORAGE UNITS, WHEN HE
ENTERED WITH THE INTENT TO STEAL
THESE FIREARMS.
>> I THOUGHT, WHETHER SOMEONE
SOLD THEM, WHETHER HE HAD TAKEN
THEM, WITHOUT LOOKING AT THIS
TRIAL I JOAN KNOW IF THAT IS
WHAT THE VICTIM IS SAYING, IF HE
WANTED TO GET MONEY HE NEEDED
MONEY, THERE WAS A LOT OF
JEWELRY IN THESE RESIDENCES, HE
COULD HAVE TAKEN A LOT OF OTHER
THINGS FROM THE THAT WOULD HAVE
BEEN A FAR MORE VALUE.
>> EVEN IF IT SPOKE TO THE
NECESSITY DEFENSE THE EMINENCE
FACTOR, AND WHETHER OR NOT THERE
WAS NOT ANOTHER REASONABLE MEANS
AND THE STATE IN ITS CLOSING
ARGUMENT AND THE ARGUMENT BELOW
HUNG ITS HAT THAT EVEN IF HE HAS
CONSENT TO COME IN HERE AND TAKE
THESE THERE IS NO REASON FOR HIM
TO DO IT THIS.
IT WAS NOT IN LOOKING AT THE
NECESSITY, WAS NOT EMINENT AND
THERE WERE OTHER REASONABLE WAYS
AND THAT IS WHAT THE STATE WAS
ARGUING TO THE JURY.
THERE WERE OTHER OPTIONS FOR MR.
KOO TO EFFECT WAIT HIS OWN
SAFETY.
DIDN'T NEED TO TAKE THE GUNS OR
SELL ONE OF THE GUNS.
>> COULD GO DOWN THE STREET AND
NOT COME BACK.
>> CALL THE POLICE, HE DIDN'T
FEEL THE POLICE WOULD HELP THE
TESTIMONY AT TRIAL BUT BREAKING,
COMMITTING FOR ALL INTENTS AND
PURPOSES AND ARMS BURGLARY TO
PROTECT YOURSELF AND HIDING SOME
OF THESE GUNS IN A LUMBER YARD
WHICH IS WHAT THE RECORD BEARS
OUT, CERTAINLY NOT THE SAFEST
WAY TO PROTECT ANYBODY LET ALONE
YOUR OWN SAFETY.
>> GIVE IT BACK AND NEXT DAY?
>> HE DID WHICH THE STATE ARGUED

UNDERMINED THE NECESSITY DEFENSE
BECAUSE CLEARLY HE DID NOT FEEL
SAFE IF HE RODE TO THE STORAGE
UNIT AND GAVE THE GUNS BACK AND
NEXT DAY.
THE ISSUE AT TRIAL WAS NOT
NECESSARILY WHETHER HE TOOK THE
GUNS, IT WAS WHETHER THIS WAS
THE NECESSITY AND THIS DOES NOT
CHANGE AND THE LETTER EVEN
CONTRADICTS ITSELF IN PLACES
WHERE THE DOCTOR GOES ON TO SAY
YOU MIGHT HAVE BEEN PROTECTING
ME FROM MY OWN SELF, HOWEVER OF
COURSE I WOULD NEVER HARM MY
WIFE OR ANYBODY ELSE.
>> HE IS NOT GOING TO ADMIT, WE
DON'T KNOW, MAYBE THE PROBLEM IS
IF THE ISSUE WAS IS NOT AN
AFFIDAVIT UNDER ROSE AND QUALIFY
THAT WOULD BE A DIFFERENT ISSUE
SO MAYBE THERE WOULD BE A REASON
FOR THEM TO HAVE THIS PC A
DECIDING ISN'T WASN'T UNDER OATH
IT DOESN'T MEET THE STANDARD.
WE ARE DEALING WITH IT AS IF
SOMEONE EVALUATED NOT LETTER,
THIS IS SORT OF AN UNUSUAL CRIME
AS I AM HEARING THIS, YOU DO
QUESTION THE MOTIVE, AND THE
CONTEXT MAY HAVE HELPED THE JURY
DECIDED TO EXPRESS' ITS PARDON
POWER TO REALLY GIVE CONTEXT
THAT THIS REALLY, THIS GUY
WASN'T GUILTY OF THE CRIME THE
STATE CHARGED HIM WITH BECAUSE
OF WHAT THE VICTIM HAD TO SAY.
>> COULD I ASK YOU A QUESTION
ABOUT WHETHER THE TRIAL COURT
EVER SAID THAT THE TRIAL COURT
WAS DENYING AN EVIDENTIARY
HEARING?
>> THAT DOES NOT APPEAR ON THE
RECORD AT LEAST I CAN'T FIND A
PLACE IN THE RECORDS AS WE WON'T
ALLOW AN EVIDENTIARY HEARING ON
THIS ISSUE.
IT APPEARS THE DEFENSE JUST
CHOSE NOT TO CALL MR. KOO AS A
WITNESS, MAYBE BECAUSE OF THE

USUAL FACTS IN THIS CASE, WHEN
WE LOOK OF THE TRIAL TRANSCRIPT
FROM MR. KOO THE STATE CALLED
HIM, THE VICTIM, THREE
QUESTIONS, DID HE HAVE CONSENT
TO ENTER, NO, IS THE UP, THE ONE
WHO TOOK THE GUNS, YES, IS THIS
YOUR FIREARM, WE WILL ENTER INTO
THAT, AND THAT IS ALL THE STATE
WANTED FROM THIS VICTIM IN THE
CASE ISN'T WASN'T UNTIL
CROSS-EXAMINATION WHERE THE
DEFENSE TRIES TO ELICIT MORE OF
THE FACTS OF THE TESTIMONY AND
THAT COULD POTENTIALLY BE PART
OF THE REASON THE DEFENSE DIDN'T
CHOOSE TO CALL THIS WITNESS
BECAUSE WE DON'T KNOW WHAT IS
COMING OUT OF HIS MOUTH HALF THE
TIME.
THE TRIAL COURT TOOK INTO
CONSIDERATION THE LETTER AND
EVEN IF IT DETERMINED BASED ON
THE ORIGINAL TESTIMONY IN THIS
APPARENTLY CONFLICTING WHERE IT
MAY CONFLICT THE TRIAL COURT
SAID IT IS IMMATERIAL EVEN IF --
>> THE ASPECT OF THIS LETTER THE
DEFENDANT IS BRINGING TO THE
COURT, DID THE DOCTOR ACTUALLY
SAY IN HIS TRIAL TESTIMONY THAT
HE NEVER DISCUSSED WITH MR. KOO
IS VOLATILITY AND PROBLEMS WITH
HIS WIFE?
>> I DON'T RECALL, THAT CAME OUT
IN TRIAL, I DON'T RECALL IF IT
WAS MR. KOO WHO TESTIFIED ABOUT
HIS DIVORCE.
>> MR. KOO DID.
DID THE DOCTOR DENIED THAT?
>> I DON'T RECALL THAT.
I DON'T RECALL HE WAS ASKED.
>> DID THE DOCTOR IN THIS TRIAL
TESTIMONY BECAUSE OF A PART OF A
LETTER ABOUT THE KEYS WAS VERY
IMPORTANT, THAT THE DOCTOR SAY
THAT HE NEVER HAD ANY KEYS?
>> I THINK THE ULTIMATE WAY IT
CAME OUT IS IF HE HAD THE KEY
IS, HE WOULD HAVE STOLEN THE

KEYS AND STEALS THINGS FROM ME.
THAT WAS IN REFERENCE TO THE
KEYS OF THE DWELLING.
IT DOESN'T SEEM THERE WAS
CONFLICT IN THE TESTIMONY ABOUT
BREAKING THE LOCK.
>> THAT IS NOT WHAT HE SAYS IN
THE LETTER.
HE HAD KEYS TO MY DWELLING,
COULD HAVE TAKEN SOMETHING ELSE.
IF THE ISSUE IS HE IS SAYING
THEY ARE STOLEN WE DON'T KNOW.
THAT IS WHY AN EVIDENTIARY
HEARING WOULD FLESH THIS OUT.
>> THE LETTER DIDN'T SAY I GAVE
HIM CONSENT.
>> JUST SAID HE HAD KEYS.
>> THERE WAS ONE OTHER ASPECT OF
THIS THAT THE DEFENSE SAYS WAS
VERY IMPORTANT.
WAS THE DOCTOR ASKED ABOUT THE
SELLING OF THE GUNS, THE GUN?
WHAT DID THE DOCTOR'S TESTIMONY
--
>> HE SAID HE NEEDED TO GIVE THE
A, $300 TO RETRIEVE ONE OF THE
FIREARMS WHICH THROUGHOUT THE
DEPENDENCY OF THIS NEVER
RECEIVED THAT.
THERE WAS EVEN SOME DISCREPANCY
ABOUT HOW MANY GUNS BECAUSE IT
MIGHT HAVE BEEN A BB GUN, THERE
WERE SEVERAL GUNS TAKEN, AND
GIVING $300, DIDN'T REPORT THIS
TO THE POLICE FOR A MONTH UNTIL
FOR WHATEVER REASON, I ASSUME
ANOTHER FALLING OUT BETWEEN THE
TWO, FELT IT NECESSARY TO
FINALLY REPORT THIS TO THE
POLICE BUT IT DID COME OUT AT
TRIAL THAT HE SOLD ONE OF THE
GUNS.
>> IT SEEMS THE DOCTOR WAS
CONVICTED IN THE ORIGINAL TRIAL.
WHEN ASKED ON NOVEMBER 14TH DID
YOU AND THE DEFENDANT GOING TO
THE STORAGE UNIT, HE SAID I LOVE
YOU, MAN, BUT I'M GOING TO HAVE
TO GO WITH THE TRUTH.
IT SEEMS AS IF BY THAT

TESTIMONY, HE TO CAN'T REALLY
WANT TO IMPLICATE HIM.
>> EXACTLY.
HE EVEN SAID IT AGAIN ON PAGE
185, I LOVED LENNART, WANTED HIM
TO DO WELL.
THE DOCTOR WAS CONFLICTED THAT
THIS CASE HAD TO GO TO TRIAL AND
IT SEEMS MAYBE HE DIDN'T KNOW
THERE WAS A TEN YEAR MANDATORY
MINIMUM COME IN MR. KOO'S WAY IF
HE IS FOUND GUILTY AND THAT WAS
THIS OFFER OF MITIGATION
AFTERWARDS.
>> WHAT ABOUT THE ACTUAL TRIAL?
>> IT WAS PRIOR TO SENTENCING A
MONTH PRIOR TO SENTENCING.
JULY 24TH, THE LETTER WOULD HAVE
BEEN RECEIVED SEPTEMBER 2ND I
BELIEVE AND ENTERED INTO
EVIDENCE OCTOBER 2ND AT THE
HEARING.
SO FOR THESE REASONS THE STATE
REQUESTS THIS COURT AFFIRMED THE
DECISION.
THANK YOU.
>> I WILL GIVE YOU A COPY NEXT.
>> I WOULD LIKE THE COURT TO
CONSIDER AN EVIDENTIARY HEARING
REGARDING WHAT IS ADMITTED BY
THIS LETTER WOULD DO TO A JURY
IF THE JURY HAD THE OPPORTUNITY
TO HEAR THAT AND WHAT REASONABLE
DOUBT, WHAT REASONABLE DOUBT
THAT WOULD CREATE IN THE JURY'S
MINDS THAT MR. KOO WAS CULPABLE
OF A CRIMINAL OFFENSE FOR THIS
MATTER AS THE COURT RECENTLY
DESCRIBED IN THE COURT'S
DECISION.
THAT IS THE TOUCHSTONE WITH
REASONABLE DOUBT WOULD BE
CREATED, THAT IS THE TOUCHSTONE
OF PROBABILITY UPON RETRIAL.
WE CAN'T QUITE GET THERE UNTIL
WE HAVE AN EVIDENTIARY HEARING.
>> WHAT IS YOUR RESPONSE, OVER
AND OVER DURING THIS ARGUMENT
THAT THE DEFENDANT REQUESTED IT?
IT APPEARED THERE WAS A TIME SET

FOR CONSIDERATION OF THIS MOTION
AND TO PASS ASK THE TRIAL JUDGE
FOR AND EVIDENTIARY HEARING.
HOW DOES ONE WHOLE TRIAL JUDGE
IN ERROR IF THE TRIAL JUDGE IS
NEVER ASKED FOR THE EVIDENTIARY
HEARING?
>> THE TRIAL JUDGE WAS ASKED FOR
AN EVIDENTIARY HEARING AND
AMENDED MOTION FOR A NEW TRIAL
IN AT LEAST THREE PLACES.
>> DID DEFENSE COUNSEL HAVE A
WITNESS TO PUT ON DURING
WHATEVER THE HEARING WAS AT THE
TRIAL JUDGE BRANDED?
>> THE DEFENSE COUNSEL DID NOT
PRESENT DR. SOLEIL BECAUSE THE
TRIAL JUDGE -- IF YOU LOOK AT
THE CASES, WHETHER IT IS KNEW
THE DISCOVERED EVIDENCE,
CERTAINLY JUST CRUMBLING PIECES
OF PAPER FLOATING AROUND ARE NOT
DIRECTLY ADMISSIBLE IN AN
EVIDENTIARY HEARING.
>> THAT IS WHY AN EVIDENTIARY
HEARING WAS NECESSARY.
THE TRIAL JUDGE ASSESSED THE
CREDIBILITY OF DR. SOLEIL'S
LETTER WITHOUT AN EVIDENTIARY
HEARING.
THIS COURT, THAT ENTIRE LINE OF
CASES, YOU NEED AN EVIDENTIARY
HEARING FOR THE CREDIBILITY,
UNLESS IT ADDS NOTHING NEW AT
WORK IT IS CLEARLY IMMATERIAL TO
ANYTHING AT ISSUE IN THE TRIAL
OR IN THE WORDS OF THE FIRST
DC-8 THE ASSERTIONS ARE
INHERENTLY INCREDIBLE AND THESE
CONTENTIONS AND DR. SOLEIL'S
LETTERS ARE NONE OF THOSE.
I ASKED THE COURT'S RULE.