

>> THE NEXT CASE.
OLIVER, VERSUS STATE OF FLORIDA.
>> MAY IT PLEASE THE COURT.
GOOD MORNING, I'M CHRIS QUARLES.
THIS IS A DIRECT APPEAL FROM
BREVARD COUNTY WHERE IN
MR. OLIVER WAS CONVICTED OF TWO
COUNTS OF FIRST-DEGREE MURDER
AND SENTENCED TO DEATH ON EACH.
THIS MORNING I WOULD LIKE TO
FOCUS ON ONE ISSUE, THE, WHAT I
CALL THE SHOT GUN ISSUE.
MR. OLIVER WAS CONVICTED OF
KILLING KRYSTAL PINSON, WHO HE
HAD AN ON AND OFF RELATIONSHIP
WITH OVER THE YEARS.
HE DESCRIBED HER AS A SIDE
GIRLFRIEND.
THEY HAD SOME PROBLEMS IN THE
PAST AND SHE WAS STAYING AT THE
TIME WITH A GUY NAMED ANDREA
RICHARDSON, WHO WAS THE OTHER
VICTIM AND THIS WAS KIND OF A
SITUATION WHERE EVERYBODY, ALL
THE WITNESSES GREW UP IN THE
SAME NEIGHBORHOOD IN TITUSVILLE.
MR. RICHARDSON WAS A DRUG
DEALER.
EVERYBODY WAS INVOLVED IN SOME
WAY SEXUALLY WITH EACH OTHER AND
A LOT OF INSTANCES AND, EXCUSE
ME IF I MIX UP THE NAMES BUT --
>> ASK YOU JUST ON THIS SHOTGUN
ISSUE.
>> YES.
>> I'M A LITTLE CONFUSED ABOUT
THE FACTS, HOW IT HAPPENED.
CAN YOU TELL US, FROM MY
UNDERSTANDING HE WENT TO A
HOUSE, CAME OUT WITH A SHOTGUN
AND HANDGUN WAS DELIVERED.
HOW DID THAT HAPPEN?
>> WHAT HAPPENED WAS THE MURDER
WEAPON WAS A .40 CALIBER HANDGUN.
>> FOUND IN THE LAKE.
>> PARDON?
>> THE GUN THAT WAS FOUND IN THE
LAKE.
>> THE GUN THAT WAS FOUND IN THE
LAKE WHICH SHEENA CAMISCIOLI LED

POLICE TO.

AFTER THE MURDERS TWO BYSTANDERS SAW TWO MEN GO INTO THE HOUSE AND LEAVING AFTER THE SHOTS.

ONLY MR. OLIVER WAS PROSECUTED. NO OTHER ASSAILANT WAS ARRESTED OR CHARGED.

THEN AFTER THE, SOME DAYS AFTER THE MURDERS, MR. OLIVER WAS HANGING AROUND WITH VARIOUS FEMALES INCLUDING SHEENA AND HER FRIEND CHELSEA AND SHEENA HAD A RELATIONSHIP WITH MR. OLIVER'S BROTHER WHICH HE DIDN'T APPROVE OF.

WELL, WHAT HAPPENED WAS SHE TESTIFIED INITIALLY WHEN SHE WAS QUESTIONED BY THE POLICE DENIED ANY KNOWLEDGE.

THEN SHE ULTIMATELY TOLD THE POLICE THAT MR. OLIVER HAD CONFESSED TO HER ONE WEEKEND AFTER THE MURDERS WHEN THEY WERE ALL HANGING OUT AT A HOTEL ROOM WITH MR. OLIVER HANGING OUT WITH CHELSEA AND SHEENA HANGING OUT WITH ANOTHER GENTLEMAN.

WHEN SHE LED THE POLICE TO THE 40 CALIBER HANDGUN, WHICH MATCHED SOME OF THE BULLETS FOUND AT THE SCENE SHE WAS CROSS-EXAMINED BY DEFENSE COUNSEL ON VARIOUS ASPECTS INCLUDING HER MOTIVE AND BIAS RELATING TO HIS BROTHER, SOME OTHER FACTORS, JUST GENERAL IMPEACHMENT.

WELL IN RESPONSE THE JUDGE RULED THAT THE STATE COULD INTRODUCE EVIDENCE THAT, IN THE DAYS AFTER WHEN THEY WERE HANGING OUT AT THE MOTEL BUT THEY MADE A TRIP, CHELSEA AND SHEENA AND MR. OLIVER IN SHEENA'S CAR.

THEY WENT TO A HOUSE IN MELBOURNE OR COCOA BEACH, RATHER, WHERE MR. OLIVER GOT A, ACCORDING TO SHEENA AND CHELSEA, GOT A LONG RIFLE-LOOKING WEAPON OUT OF THE TRUNK, TOOK IT INTO

THE HOUSE --

>> I THINK HIS QUESTION WAS
WHERE DID THIS, WHERE DID IT
COME FROM?

WE KNOW THE STORY BUT --

>> WHERE THE SHOTGUN COME FROM
ORIGINALLY?

>> HOW DID IT GET IN THE TRUNK
OF THE CAR?

>> THAT'S NOT CLEAR.

>> OH, OKAY.

>> THEY STOPPED SOMEPLACE, GOT A
LAUNDRY BASKET.

>> RIGHT.

>> WAS IT IN THE LAUNDRY BASKET?

>> THERE WAS NO TESTIMONY IT WAS
IN THE LAUNDRY BASKET.

THEY STOPPED I BELIEVE AT
MR. OLIVER'S HOUSE.

SHE SAID HE GOT A BUNCH OF
CLOTHES AND PUT THEM IN THE
TRUNK.

SHE DID NOT SAY, I DON'T BELIEVE
THE RECORD REFLECTS THAT SHE SAW
HIM PUT A WEAPON IN HIS TRUNK.
THEN THEY GO TO THE HOUSE IN
COCOA.

HE GETS A LONG RIFLE-TYPE OUT OF
THE TRUNK OF THE CAR.

TAKES IT IN THE HOUSE, ANOTHER
MAN COMES OUT WITH A HANDGUN,
WHICH APPARENTLY IS THE MURDER
WEAPON, HAND IT TO MR. OLIVER.

THEY ALL GET IN THE CAR
TOGETHER.

THEY DRIVE A LITTLE WAYS AND GO
TO A LAKE.

MR. OLIVER ACCORDING TO SHEENA
AND CHELSEA THROWS THE HANDGUN
INTO THE LAKE.

>> THE PERSON THAT GAVE HIM THE
HANDGUN WAS THE MURDER WEAPON,
WAS NOT IDENTIFIED?

>> NEVER IDENTIFIED.

>> THERE WAS NEVER, THERE'S NO
KNOWLEDGE, AND AGAIN I THINK, AS
TO THAT THIS, SHOTGUN CERTAINLY
PLAYED NO ROLE --

>> NO ROLE WHATSOEVER.

>> IN THE MURDER.

SO, IT WAS, THE RELEVANCE, THE STATE SAID WAS TO CORROBORATE THAT THE HANDGUN, WHAT?

>> THAT SHEENA AND, AND CHELSEA WERE TELLING THE TRUTH ABOUT BEING WITH HIM WHEN HE GOT THE HANDGUN OR --

>> SHE WAS ABLE TO FIND, LEAD THEM TO THE HANDGUN?

>> YES, SHE WAS.

>> SO THERE WAS INDEPENDENT CORROBORATION OF IT?

>> CORRECT.

>> I MEAN IT JUST HAS NOTHING TO DO WITH ANYTHING, DOES IT?

>> NOTHING TO DO WITH ANYTHING.

>> NOTHING TO DO WITH THE CRIME, THE CRIME SCENE, ANY TRADE ABOUT A GUN FOR GUN?

>> NO, SIR.

>> OKAY.

SO ASSUME WE ACCEPT THAT. IT HAS NOTHING TO DO -- COMES IN.

DO WE HAVE HARMLESS ERROR ANALYSIS WE SHOULD APPLY OR PER SE?

>> IN LIGHT OF THE FACT --

>> IT IS NOT PER SE, CORRECT?

>> WHAT?

>> PER SE ERROR, REVERSIBLE ERROR.

>> DEPENDING ON HARMLESS ERROR, I THINK IT IS ERROR.

>> I UNDERSTAND BUT IT IS NOT PER SE REVERSIBLE ERROR?

>> ONCE THE ERROR OCCURS THE STATE HAS BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT --

>> WOULD YOU ADDRESS THAT.

>> I WILL.

THERE WERE NO EYEWITNESSES TO THE MURDER.

ONLY TWO SHADOWY FIGURES. ONE OF THE WITNESSES WHO TESTIFIED WAS FOUR HOUSES UP ACROSS THE STREET FROM WHERE THIS HOUSE WHERE THE MURDERS OCCURRED.

HE GREW UP WITH MR. OLIVER AND SAID, I THINK I WOULD RECOGNIZE HIM EVEN IF HE WERE WEARING A WIG WHICH IS SOME OF THE OTHER TESTIMONY INDICATED HE WAS WEARING VARIOUS WIGS WHILE HE WAS HANGING AROUND THE AREA. THAT WAS, HE EXPLAINED THAT, HE WAS WANTED FOR STROLL USUAL COUNTY WARRANT ON -- VOLUSIA COUNTY WARRANT ON HOME INVASION AND HE WAS ON THE RUN FROM THE POLICE.

THE STATE ALLEGES THAT IS ONE OF THE POSSIBLE MOTIVES WAS WANTING TO SHOOT KRYSTAL PINSON BECAUSE SHE WAS ON A LOT OF HIS PAPERWORK AND HE WAS HIDING FROM THE POLICE.

>> HELP ME UNDERSTAND, EVIDENCE WITH RESPECT TO THE SHOTGUN COULD HAVE POSSIBLY HAD ANY IMPACT ON THE JURY'S EVALUATION OF ALL THAT, GIVEN THE OTHER THINGS THAT THEY HEARD ABOUT THE GUN AND, AND EVERYTHING ELSE? IT IS JUST HARD FOR ME TO CONCEIVE IT WOULD HAVE MADE ANY DIFFERENCE TO ANY JUROR BY ANY STRETCH.

>> WELL, NUMBER ONE --

>> HOW COULD IT?

>> NUMBER ONE IT IS STATE'S BURDEN OF PROVING.

>> I UNDERSTAND THAT.

>> THEY'RE DRIVING AROUND DEALING WITH GUNS.

THE JURY GET THIS IS IMPRESSION THIS GUY HAS LOTS OF GUNS AND THEY'RE TRAFFICKING IN WEAPONS, DISPOSING OF WEAPONS IN LAKES. THEY HAVE GOT A SHOTGUN WHICH, EVEN THEY SAID, OKAY, THIS LOOKS LIKE A SHOTGUN WHEN THEY INTRODUCE IT BUT INITIALLY THEY SAID WHEN HE TOOK IT OUT OF THE TRUNK IT LOOKED LIKE A LONG RIFLE.

DNA TOUCH WAS MIXTURE OF TWO INDIVIDUALS, AND COULD HAVE

BEEN, ODDS I THINK WERE 200 TO 1 THAT MR. OLIVER AND AN AFRICAN-AMERICAN COULD HAVE HANDLED IT.

IT WAS 1 IN 120 THAT A WHITE PERSON COULD HAVE HANDLED IT AND 1 IN 57 THAT A SOUTHEASTERN HISPANIC COULD HAVE HANDLED. EVEN THE CONNECTION TO MR. OLIVER OF THAT SHOTGUN WHICH WAS COMPLETELY IRRELEVANT TO THE MURDERS WAS, WAS SPECULATIVE TO SOME EXTENT.

>> THE REASON I ASKED YOU THE QUESTION INITIALLY IS BECAUSE MY INCLINATION WHEN I FIRST READ THIS, AND I WANT TO YOU CLARIFY IT FOR ME, THERE WAS A TRADE. IT MAY NOT HAVE BEEN, YOU MAY NOT HAVE HAD ANY WITNESSES TO HAVE HEARD, I'LL GIVE YOU A SHOTGUN IF YOU GIVE ME A HANDGUN BUT THE IMPRESSION I GOT FROM THE ENTIRE, LOOKING AT THE BIG PICTURE IS THAT THIS GUY DRIVES UP WITH A SHOTGUN.

HE WALKS INTO THE HOUSE WITH A SHOTGUN. HE COMES OUT AND THE GUY COMES OUT AND HANDS HIM A HANDGUN. THAT IS THE INFERENCE I SAW FROM THE WHOLE THING.

WHY, ASSUMING THERE WAS A TRADE, WOULD IT HAVE BEEN RELEVANT?

>> ASSUMING THERE WOULD HAVE BEEN WHAT, I'M SORRY?

>> THERE WAS A TRADE.

>> OH.

>> WOULD THE SHOTGUN HAVE BEEN RELEVANT THEN?

>> I THINK GUNS IN AND OF THEMSELVES ARE SOMEWHAT PEJORATIVE ESPECIALLY TO A LAY JURY.

AND TALKING ABOUT ALL THE GUNS EXCHANGING HANDS AND DRIVING AROUND.

>> THIS OCCURRED AFTER THE CRIME?

>> AFTER THE CRIME, YES.

>> WASN'T BEFORE, I WONDERED THE SAME THING.

>> IT WAS SEVERAL DAYS AFTER THE CRIME.

>> WAS A TRADE, WHY WOULD HE BE TRADING TO GET THE MURDER WEAPON BACK?

>> THAT WOULD MAKE NO SENSE.

>> I DON'T KNOW IF THAT MAKES --

>> BUT DIDN'T THE DEFENDANT SAY THAT HE HAD NOTHING TO DO WITH THE MURDER.

THAT IT WASN'T THE MURDER WEAPON?

>> HE DID.

>> AND THEY TRIED TO SAY THAT THESE TWO LADIES WERE MAKING THIS UP?

>> YES, SIR.

>> NOW WASN'T THE RIFLE CONTEXTUALLY HAD TO DO WITH WHETHER OR NOT THIS ACCIDENT HAPPENED, THERE WAS A RIFLE, SO THEREFORE I GUESS THEY'RE TRYING TO INFER THAT WHAT THEY SAID WAS TRUE AND WHAT HE SAID WASN'T TRUE.

>> CORRECT.

AS I SAID IN MY BRIEF I THINK THE STATE'S ADMISSIBILITY WAS SOMEWHAT STRAINED AND I THINK YOU SUMMED IT UP VERY WELL THERE.

>> LET'S GO BACK TO THIS ISSUE, LET'S ASSUME IT IS ERROR UNDER AGATHEAS. WE'RE HAVING TROUBLE FIGURING IT OUT, WAS IT A TRADE, WAS IT THIS.

AND START THINKING IN WAYS THAT TAKE US AWAY FROM THE MURDER. PLUS THE CHARGE WOULD HAVE BEEN SEVERED, RIGHT, HE WAS CONVICTED FELON.

>> CORRECT.

>> AS FAR AS POSSESSION OF A FIREARM WHICH WE DON'T ALLOW IN, AGAIN POSSESSING WEAPONS IS SOMETHING THAT IS PREJUDICIAL. HOW DID THE STATE USE IT, IF OTHER THAN TO, THEY JUST USE IT

TO SAY, SAY WHAT THEY WANTED IT FOR WHICH IS TO CORROBORATE THE TWO WITNESSES TESTIMONY? OR DID THEY USE IT IN A WAY THAT INFERRED THIS IS A BAD GUY? HOW WAS IT USED AT TRIAL? SO WE'RE NOW GOING TO BACK TO THE HARMLESS ERROR ANALYSIS.

>> THEY SAID IT WAS JUST TO CORROBORATE.

>> AND THAT'S HOW, THEREFORE DID THE STATE BY LIMITING ITS ARGUMENT AND NOT TRYING TO IMPLY MORE DID THE STATE THEN SELF-LIMIT IT SO THAT IT WAS HARMLESS BEYOND A REASONABLE DOUBT?

>> WELL THE STATE ON APPEAL SEEMED TO CERTAINLY EMPHASIZE THAT BUT BY SAY THERE WAS NO DISPLAY OF THE SHOTGUN. I DON'T THINK --

>> WAS THE SHOTGUN --

>> IT WAS INTRODUCED INTO EVIDENCE. IT WAS STATE EXHIBIT 116.

>> WHAT WAS THE REASON IT WAS --

>> TO CORROBORATE THOSE TWO WITNESSES TESTIMONY IS WHAT THE STATE SAID.

>> ON DIRECT OR REBUTTAL?

>> ON DIRECT.

>> IS IT, DOES IT MATTER THAT IT'S, DID THEY, DID THE STATE GO INTO THIS WASN'T A REGISTERED, DID THEY DO ANYTHING ABOUT THE SHOTGUN ITSELF?

YOU KNOW, AGAIN I GUESS, IF IT WAS A UZI IT MIGHT HAVE BEEN MORE PREJUDICIAL BECAUSE WE'RE --

>> THEY DID NOT DO ANYTHING ABOUT REGISTRATION OR WHO IT BELONGED TO. THEY REALLY COULDN'T, THEY PUT IT IN HIS HAND AND THEY INDICATED IT -- BUT I THINK THE EVIDENCE IS A LITTLE SHAKY.

>> IT IS WEIRD, WHAT IS WEIRD TO ME WE'RE QUESTIONING WHY WAS THE

GUY GOING, GIVING THIS GUY A SHOTGUN TO GET BACK HIS MURDER WEAPON SEEMS TO BE LIKE, YOU WOULD BE GIVING HIM THE MURDER WEAPON AND TAKING SOMETHING ELSE AND TRYING TO GET RID OF IT?

>> SEEMS TO --

>> WE HAVE DEFENDANTS LIKE THAT ALL THE TIME.

>> THAT'S TRUE.

IT SEEMS TO IMPACT THE CREDIBILITY OF THOSE TWO WITNESSES THOUGH.

>> TELL US HOW AND WHAT DID THE STATE IN CLOSING ARGUMENT SAY ABOUT THE WEAPON?

WAS IT, WAS THERE A FEATURE IN THEIR CLOSING ARGUMENT ABOUT THIS WEAPON?

>> I THINK --

>> WHAT I'M STILL TRYING TO UNDERSTAND IS, AS JUSTICE CANADY ASKED A LITTLE WHILE AGO, HOW IN THE WORLD WE WOULD FIND THAT THIS SHOTGUN EVIDENCE WOULD LEAD TO A DIFFERENT, THAT THE JURY, THERE'S A REASONABLE PROBABILITY I GUESS THAT, WITHOUT THIS, THERE WOULD HAVE BEEN A DIFFERENT RESULT?

>> WELL THE TENOR OF THIS COURT'S OPINION IN AGATHEAS AND OTHER PERSONS SEEMS TO ME TO SUGGEST THAT A GUN IN AND OF ITSELF, THAT THE DEFENDANT POSSESSED A GUN THAT DIDN'T HAVE ANYTHING TO DO --

>> DID WE EVER REALLY SAY THAT, PER SE RULE?

>> NOT A PER SE RULE, NO.

>> OKAY.

>> SURE COMES ACROSS.

YOU JUST SAY, IT HAS TO SHOW SUBSTANTIAL CONNECTION TO THE CRIME AND IF IT DOESN'T, IT'S, IT'S INADMISSIBLE AND SHOULD NOT HAVE BEEN ADMITTED.

>> WE WOULD AGREE WITH THAT.

SOME OF US AGREE WITH THAT.

WE'RE STILL JUST TRYING TO GIVE

YOU A CHANCE TO TALK ABOUT
HARMLESS ERROR.

>> AND AGATHEAS YOU FOUND IT AS
FUNDAMENTAL ERROR AFTER THE
FOURTH SAID IT WAS IAC CLAIM AND
YOU SAID THAT THE FOURTH DCA
SAID IT WAS NOT ERROR FOR THE
TRIAL, LAWYER, DEFENSE LAWYER
NOT TO OBJECT TO THE POSSESSION
OF THAT FIREARM.

>> TO GO BACK ON THAT CASE, EACH
CASE DOES, IF IT IS NOT A PER SE
REVERSAL AND THERE IS HARMLESS
ERROR APPLIED YOU CAN'T GO BACK
AND SAY YOU DID IT IN AGATHEAS
AND GOT TO DO IT IN THIS CASE.
YOU HAVE TO GIVE US HOW IT WAS
NOT HARMLESS BEYOND A REASONABLE
DOUBT.

EVEN THOUGH I APPRECIATE THAT IT
IS THE STATE THAT HAS TO DO IT.

>> RIGHT.

>> BUT YOU'RE AN EXPERIENCED
APPELLATE LAWYER AND WHAT YOU'RE
BASICALLY SAYING IS THAT,
LISTEN, PEOPLE WOULD THINK THAT
THIS GUY WAS GOING AROUND
DUMPING, YOU KNOW, FIREARMS.
I DON'T, IS THAT YOUR BEST --

>> NO.

ALSO THE LACK OF EVIDENCE, THE
LACK OF PHYSICAL EVIDENCE THAT,
REALLY HER CREDIBILITY IS
CRITICAL, SHEENA'S.

CHELSEA'S LESS SO.

BUT SHEENA IS THE ONE, ONLY
CONFESSION.

>> I STILL THINK I WONDER
WHETHER SOMEBODY WOULD SAY,
LISTEN, NOT ONLY DOESN'T IT
CORROBORATE BUT IT DOESN'T MAKE
SENSE THAT THIS HAPPENED IN THE
WAY THAT THEY'RE DESCRIBING IT.

>> PERHAPS, PERHAPS YOU'RE A
LITTLE MORE ANALYTICAL THAN A
LAY JURY AS FAR AS THAT IS
CONCERNED.

THEY WILL HEAR, OH, SHE IS RIGHT
ABOUT THE SHOTGUN, SHE MUST BE
TELLING THE TRUTH.

>> A REASONABLE EXPLANATION IS,
THERE IS SUCH A THING, GIVEN
WHAT PEOPLE DO NOWADAYS, IS THAT
THE PERSON WHO HAD THE HANDGUN
LEARNED THAT IT WAS THE HANDGUN
USED IN A MURDER AND SAID, I
DON'T WANT THIS THING.

YOU TAKE IT.

HE TOOK IT AND HE DUMPED IT IN
THE LAKE. THAT'S REASONABLE.

AGAIN, STRETCHING THE WORD
REASONABLE AS MUCH AS WE CAN.

>> THAT WAS NEVER ARGUED BY THE
DEFENSE.

>> THAT IS REASONABLE, THE JURY
COULD HAVE THOUGHT ABOUT THAT.

>> MAYBE.

I WISH THE DEFENSE LAWYER HAD
MADE THAT ARGUMENT.

>> WHO WANTS A HOT GUN THAT JUST
MURDERED SOMEBODY?

HERE YOU SHOT HIM.

YOU TAKE IT.

YOU GET RID OF IT.

>> TRUE.

AS YOU SAID MOST CASES WE HAVE
DEFENDANTS IN CAPITAL CASES DO
THINGS THAT DON'T MAKE SENSE BUT
WE HAVE NO SNITCHES IN THIS
CASE.

>> MAYBE YOUR BEST ARGUMENT AS
QUESTIONS UP HERE REVEAL WE'RE
CONFUSED HOW THE SHOTGUN WAS
USED AND IF THERE IS CONFUSION
HARD TO SAY IT IS HARMLESS ERROR
BEYOND A REASONABLE DOUBT.

MAYBE THAT IS YOUR BEST --

>> HE HAS TO PROVE IT IS
HARMLESS ERROR.

>> YOU'RE RIGHT.

BUT MAYBE, STILL IT IS BETTER IF
YOU GIVE IS THE ARGUMENT WHY IT
ISN'T HARMLESS.

>> AND THE JUDGE DID 403
BALANCING AND AS, I THINK THIS
IS A PERFECT EXAMPLE.

THE 90.403 LEADING TO CONFUSION
WITH THE JURY AND MISLEADING THE
JURY.

THEY'RE GOING, WHAT IS THIS

SHOTGUN ALL ABOUT?
YOU WANT THEM TO DRAW THE RIGHT
CONCLUSION.

>> EVEN IF YOU SAY THAT IT
DOESN'T CHANGE THE FACT THAT IN
THIS CASE WE HAVE A PERSON WHO
SAYS CLEARLY AND UNAMBIGUOUSLY
THAT MR. OLIVER CONFESSED TO
HAVING KILLED THE VICTIMS.
WE HAVE, YOU KNOW, WHAT I
INTERPRET AND YOU PROBABLY
INTERPRET IT DIFFERENTLY AS SOME
KIND OF PRIOR THREAT, THAT HE
MAKES AGAINST HER TO
MR. WATKINS.

AND, THEN, AND THAT DOESN'T, AND
HE DISPOSED OF THE WEAPON
ACCORDING TO TWO PERSONS.

>> SO THAT DOESN'T CHANGE ANY OF
THAT WHEN WE, EVEN WHEN WE THINK
ABOUT THIS SHOTGUN.

HER CREDIBILITY WAS CRITICAL TO
BOTH SIDES OF THIS CASE AND,
THEREFORE, THE WHOLE SHOTGUN
THING -- WHICH I THINK THE JURY
WOULD HAVE CONFIRMED --

>> WHICH ADDS TO HER
CREDIBILITY.

>> EXACTLY.

THAT'S THE THEORY THE STATE
ADMITTED IT ON, AND SO I THINK
WE HAVE TO ACCEPT THE FACT THAT
THAT'S WHAT THE JURY ACCEPTED.

>> BUT SHE WAS NOT THE ONLY ONE
WHO SAID THIS DIDN'T HAPPEN.
DIDN'T CHELSEA --

>> YES.

CHELSEA ALSO, SHE -- WELL, SHE
WAS IN THE CAR, AND THERE WERE
SOME DIFFERENCES IN THE
TESTIMONY.

>> PART OF THE DIFFERENCE, IT
SEEMS TO ME, ABOUT THIS IS NOT
ONLY DOES SHE CORROBORATE THAT
THE SHOTGUN WAS GIVEN TO SOMEONE
ELSE, BUT SHE CORROBORATES THE
FACT THAT THERE WAS A GUN IN A
BAG, AND THAT GUN AND BAG WERE
SUBSEQUENTLY THROWN AWAY, AND
THAT WAS THE GUN AND BAG THAT

WAS RECOVERED BY THE POLICE.
>> WELL, ONLY SHEENA LED THE POLICE TO THAT GUN.
CHELSEA DID NOT,
>> SHE HAD LED THEM TO IT, BUT CHELSEA ALSO SAID THAT THAT HAPPENED, DIDN'T SHE?
>> SHE DID.
>> OKAY.
>> SHE DID.
>> HOW MANY PEOPLE DO YOU NEED TO LEAD YOU TO THE GUN?
>> HOW MANY PEOPLE DO YOU NEED -- WHAT?
[LAUGHTER]
>> ONCE YOU GET IT --
>> OH, THAT'S TRUE.
>> HOW DID THE, HOW DID THE DEFENSE IMPEACH THE CREDIBILITY OF THOSE WITNESSES?
>> THE -- THEY DID IT -- THEY TALKED ABOUT -- HOLD ON A SEC.
>> I MEAN, I ASK THAT BECAUSE YOU SAID THIS ALL HINGES ON THEIR CREDIBILITY.
AND SO, WELL, WHAT WAS THEIR -- THE JURY HAD TO CONSIDER THAT UNDERMINED THEIR CREDIBILITY?
>> THEY, DEFENSE COUNSEL, CROSS-EXAMINED SHEENA, AND I DID CITE A CASE WHERE THEY TALK ABOUT GENERAL IMPEACHMENT OF --
[INAUDIBLE CONVERSATIONS]
>> A QUESTION ABOUT WHETHER THE ERROR IS HARMLESS OR NOT.
>> I UNDERSTAND.
HER RECOLLECTION OF OLIVER AFTER THE MURDER, WHAT HIS HAIR WAS LIKE, HER TESTIMONY THAT OLIVER --
>> AND THAT WAS IMPEACHED IN WHAT WAY?
BECAUSE IT SEEMS TO ME THIS RECORD IS SO OVER THE TOP --
>> ALL OVER THE PLACE.
>> WE'VE GOT A BALD HEAD, WE'VE GOT A WIG WITH BRAIDS, WE'VE GOT A WIG WITH --
>> DREADLOCKS, UH-HUH.
>> SO HOW WAS THAT IMPEACHING?

>> WELL, SHE -- YOU'RE RIGHT.
EVERYBODY'S, ALL THE WITNESSES
ARE ALL OVER THE PLACE.
SO TO SOME EXTENT, THEY'RE ALL
IMPEACHABLE IN WAYS, AND I
CAN'T --

>> WELL, HE ADMITTED --

>> YES, UH-HUH.

AND HE WAS WEARING IT BECAUSE HE
WAS ON THE RUN FROM THE VOLUSIA
COUNTY HOME INVASION.

>> WERE THEY IMPEACHED ON THE
BASIS OF A BIAS OR A MOTIVE?

>> HER RELATIONSHIP WITH HIS
BROTHER WHICH HE, OLIVER,
DISAPPROVED OF BECAUSE HE
THOUGHT SHE WAS TOO OLD FOR HIS
BROTHER.

AND HIS BROTHER ENDED UP
TESTIFYING TOO.

THERE WERE A LOT OF TANGENTIAL
PATHS THAT THIS TRIAL TOOK WITH
OTHER WITNESSES GOING DOWN --

>> I NOTICED THAT.

[LAUGHTER]

>> DID THEY TRY TO IMPEACH HER
WHEN SHE LIED TO THE POLICE AT
FIRST?

>> THAT TOO.

THAT TOO.

YES, SIR.

YES, SIR.

YOU'RE RIGHT, YOUR HONOR.

YES, SHE INITIALLY LIED TO
POLICE.

HER TESTIMONY THAT OLIVER'S
CONFESSION WAS INCOMPLETE, THAT
OLIVER ALSO SAID HE DIDN'T KNOW
WHY THE POLICE WERE AFTER HIM,
IT COULD HAVE BEEN ANYBODY
BECAUSE DARRELL SELLS DRUGS OUT
OF THE HOUSE.

>> HOW IS THAT IMPEACHING?

>> WELL, SHE LEFT THAT OUT.

SHE LEFT THAT OUT WHEN SHE FIRST
TESTIFIED ON THE RECORD.

SHE SAID THIS IS WHAT HE SAID.

HE SAID, "I KILLED HER" --

>> OH, SHE LEFT IT OUT.

OKAY.

>> YES, UH-HUH.
ON A CROSS SHE FILLED IN THE
GAPS.
>> THESE THINGS ARE CONFUSING IN
THE JURY'S MIND AS TO WHETHER OR
NOT --
>> THE HANDGUN?
>> NO.
>> OR THE SHOTGUN?
>> SHOTGUN.
>> I MEAN, I WASN'T IN THE MIND
OF THE JURY.
I CAN'T POINT TO --
>> WASN'T IT POINTED OUT CLEARLY
THAT THE SHOTGUN HAD NOTHING TO
DO WITH THE MURDER?
>> YES.
>> OKAY.
>> WELL, MOST OF THAT ARGUMENT
WAS POINTED OUT TO THE JUDGE BY
THE DEFENSE LAWYER.
BUT, YOU KNOW, THEY KIND OF
STAYED AWAY FROM IT.
>> I'VE GOT TO TELL YOU, I'M
CONFUSED.
YOU LOST ME WITH THE WIGS.
[LAUGHTER]
>> YEAH.
AND THE MOTIVE ON THE BROTHER --
>> CAN I ASK YOU ABOUT ANOTHER
ISSUE?
>> YES, MA'AM.
>> YOU'RE GETTING CLOSE TO YOUR
TIME HERE.
>> YES, YOUR HONOR.
>> AND I'M CONCERNED ABOUT THE
CCP AS IT RELATED TO
MR. RICHARDSON.
>> COMPLETELY UNSUPPORTED BY THE
EVIDENCE.
THE ONLY EVIDENCE OF THAT IS
REFUTED BY THE FACT THAT HER,
SHEENA -- IF YOU BELIEVE HER --
SHE SAID HE WENT TO KILL KRYSTAL
BECAUSE SHE WAS ON ALL OF HIS
PAPERWORK, AND SHE WAS WORRIED
ABOUT THE POLICE, AND HE WAS
THERE.
THEY GREW UP TOGETHER, HE KNEW
HIM, SO HE DIDN'T KNOW FOR SURE

THAT HE WAS GOING TO BE HOME
EVEN.

HE SAW HER CAR OUT OF ANDREA'S
HOUSE.

FOR ALL HE KNEW, ANDREA WAS ON
THE STREET DEALING DRUGS, BUT HE
WAS THERE, SO HE HAD TO KILL
HIM.

>> SO HOW DID THE TRIAL JUDGE
SUPPORT IT?

>> HE SAID BECAUSE THEY GREW UP
TOGETHER AND HE KNEW HIM, AND HE
COULD IDENTIFY HIM.

I DIDN'T, I DIDN'T EVEN ATTACK
THE ELIMINATION WITNESS BECAUSE
OF, I THINK, THERE WAS
SUFFICIENT SUPPORT OF THAT.

>> ISN'T --

>> BUT NOT CCP.

>> ISN'T THAT MURDER JUST A
COLLATERAL ASPECT OF PLAN TO --
WHICH WAS COLD, CALCULATED AND
PREMEDITATED -- TO GET RID OF
THE GIRLFRIEND?

>> BUT ONLY THE GIRLFRIEND.

>> WELL, BUT IT'S ALL, IT'S ALL
PART AND PARCEL OF THE SAME
THING.

>> NO, IT'S NOT.

AND LET ME GET ON MY SOAP BOX
HERE --

>> HE CAN'T DO THAT BECAUSE HE
HAD THIS COLD, CALCULATED,
PREMEDITATED PLAN TO DO ONE
MURDER.

THIS IS COLLATERAL DAMAGE THAT
FLOWS DIRECTLY FROM THE SAME
COLD, CALCULATED AND
PREMEDITATED PLAN.

>> BUT THAT'S NOT THE
JURISPRUDENCE OF THIS COURT
ABOUT CCP AND, UNFORTUNATELY,
AND I THINK LATELY THIS COURT
HAS BEEN RUBBER STAMPING CCP AND
EHAC ON ANY EVIDENCE AND THAT
THERE ARE A LOT OF MURDERS THAT
HAVE BEEN -- THIS COURT HAS BEEN
HELD, HAS HELD TO BE CCP THAT
FLIES IN THE FACE OF ITS PRIOR
JURISPRUDENCE.

AND I THINK THAT MIGHT
ULTIMATELY RESULT IN THE FINDING
OF UNCONSTITUTIONALITY OF THAT
AGGRAVATING STATUTE IN OUR WHOLE
SENTENCING SCHEME.

>> YOU ARE IN YOUR REBUTTAL.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, MY
NAME IS MITCH BISHOP ON BEHALF
OF THE STATE OF FLORIDA.

AND I'LL TURN TO THE SHOTGUN
ISSUE FIRST, IF I MAY.

TO REBUT SOME OF THE THINGS THE
APPELLANT HAS SAID ABOUT THIS
SHOTGUN, IT DIDN'T BECOME A
FEATURE OF THE TRIAL.

IT DIDN'T BECOME THIS ARGUMENT
WHERE THE PROSECUTOR'S STANDING
IN THE WELL OF THE COURTROOM
HOLDING THE SHOTGUN --

>> WELL, HE DID STAND IN THE
WELL OF THE COURTROOM AND PLACE
IT INTO EVIDENCE.

I CAN SEE IF YOU'RE GOING TO
TALK ABOUT IT, BUT THEY ACTUALLY
BROUGHT THAT IN AND WENT TO THE
EXTENT OF DNA ON IT, DIDN'T
THEY?

>> THEY DID, JUSTICE LEWIS.
BUT IT WAS ABOUT THE FACT THAT
IT CORROBORATED SHEENA'S
TESTIMONY AND ABOUT THE FACT
THAT THE DNA EVIDENCE TO SOME
DEGREE, AGAIN, CORROBORATED THAT
HE HAD POSSESSED THIS WEAPON
CONTEMPORANEOUS WITH THE MURDER
WEAPON.

AND WHAT THIS COURT IS,
OBVIOUSLY, APPEARS TO SEE AS
SOME TYPE OF A TRADE, SOME TYPE
OF AN EXCHANGE FOR THE MURDER
WEAPON --

>> BUT WHY WOULD YOU WANT THE
MURDER WEAPON BACK IF YOU HAD
ALREADY DISPOSED OF IT?

>> WELL, TO DISPOSE OF IT,
JUSTICE QUINCE.

AS JUSTICE LABARGA POINTED OUT,
THE INDIVIDUAL WHO HAD THE
MURDER WEAPON IN THE HOUSE IN

COCOA MOST LIKELY DIDN'T WANT IT ANYMORE.

>> AND WE HAVE NOTHING IN THIS RECORD --

>> WE DON'T.

>> -- THAT TELLS US ANYTHING ABOUT THIS HOUSE OR THIS PERSON OR HOW THIS PERSON CAME INTO POSSESSION OF THE MURDER WEAPON?

>> WE DON'T HAVE ANYTHING ABOUT THE INDIVIDUAL IN COCOA OTHER THAN THE ADDRESS OF THE HOUSE AND THE FACT THAT THE SHOTGUN WAS RECOVERED EXACTLY WHERE SHEENA AND CHELSEA WILSON SAID THEY'D SEEN IT GO --

>> ISN'T THAT JUST THE PROBLEM NOW?

BECAUSE WE'RE NOW THINKING, GEE, THIS IS A BACKWARD TRADE FOR THE SHOTGUN OR MURDER WEAPON, AS JUSTICE LABARGA -- WHO WAS A CRIMINAL DEFENSE LAWYER -- MIGHT HAVE ARGUED.

LISTEN, HE HAD THAT BECAUSE HE WAS DUPED INTO GETTING THE MURDER WEAPON THAT WASN'T HIS MURDER WEAPON.

BUT I JUST THINK THAT THE VERY FACT THAT WE'RE HAVING THIS DISCUSSION, AND NOW YOU'RE IMPLYING MAYBE IT WAS A TRADE EVEN THOUGH THAT'S NOT WHAT WAS ARGUED BELOW SHOWS TO ME THAT YOU CANNOT SAY IT'S GOING TO COME IN TO CORROBORATE THEIR TESTIMONY.

WHEN IT COMES TO A GUN, NOW YOU'RE -- THAT HAS NOTHING TO DO WITH THE MURDER BECAUSE THAT'S WHAT THE STATE SAID.

NOW, WE AGREE IT HAS NOTHING TO DO WITH THE MURDER.

IT INTRODUCES AN ELEMENT OF CONFUSION TO THE JURY, AND I WANT TO KNOW, THEREFORE, LET'S ASSUME IT'S ERROR --

>> OKAY.

>> HOW IN A CASE THAT'S CIRCUMSTANTIAL CAN YOU SAY THAT

IT IS HARMLESS BEYOND A
REASONABLE DOUBT?

IF WE'RE TALKING ABOUT, WELL,
MAYBE IT WAS A TRADE, MAYBE
THIS, MAYBE THAT, THAT THAT
WOULDN'T HAVE ENTERED INTO THE
JURY'S DELIBERATIONS?

>> THE DISTINGUISHING FACTOR
HERE, THE REASON WHY THIS IS
HARMLESS BEYOND A REASONABLE
DOUBT AND THIS MAIN THING THAT
DISTINGUISHES THIS CASE FROM
THE AGATHEUS CASE ON A FACTUAL
BASIS AS WELL IS THE FACT THAT
THERE WASN'T CONFUSION OVER WHAT
THE MURDER WEAPON.

THERE WASN'T ANY CONFUSION THAT
THIS PARTICULAR WEAPON WAS
SOMEHOW USED IN THE MURDER, AND
IT WAS SIMPLY ARGUED THAT IT WAS
USED TO CORROBORATE --

>> WAS HIS FINGERPRINT SHOWN ON
THE -- WERE HIS FINGERPRINTS ON
THE WEAPON?

>> FINGERPRINTS WERE NOT
RECOVERED ON THE MURDER WEAPON.

>> OKAY.

SO HERE YOU HAVE THE JURY, HIS
FINGERPRINTS AREN'T ON THERE,
BUT THEY WERE ON THE SHOTGUN,
AND THEY WERE CONTEMPORANEOUS
WITH THE MURDER WEAPON, SO THAT
MUST SHOW THAT HE HAD THE MURDER
WEAPON.

SEE, THAT'S THE PROBLEM.

IF THE FINGERPRINTS HAD BEEN --
WE WOULDN'T BE HERE.

SO THE CONCERN IS THAT HE GETS
CONVICTED OF THIS MURDER BECAUSE
THEY SAY, WELL, HE POSSESSED A
SHOTGUN THAT HAD HIS
FINGERPRINTS ON IT.

>> [INAUDIBLE]

>> SO I'M NOT STILL SURE HOW IS
IT HARMLESS BEYOND A REASONABLE
DOUBT?

HOW DOES THE STATE ESTABLISH IN
A CASE THAT THIS WAS HARMLESS
BEYOND A REASONABLE DOUBT?

>> AND IF THE PROSECUTOR HAD

MADE SOME TYPE OF ARGUMENT TO THAT EFFECT, THAT JUST BECAUSE HE'S POSSESSING THIS SHOTGUN AND HAS IT AROUND THE TIME OF THE MURDER WEAPON THAT MUST MEAN HE COMMITTED THESE MURDERS WITHOUT SIMPLY USING IT TO CORROBORATE THE WITNESS' TESTIMONY, THEN THAT WOULD BE A DIFFERENT LANDSCAPE.

>> BUT, YOU SEE, THE PROBLEM IS THE PROSECUTOR CAN SAY ONE THING, BUT THE JURY'S BACK THERE THINKING ALL SORTS OF OTHER THINGS THAT ARISE BECAUSE THE SHOTGUN -- WHICH HAS NOTHING TO DO WITH THE MURDER -- IS PUT INTO EVIDENCE.

>> AND THE LAST THING THAT THE JURY HEARD ABOUT GUNS PERIOD WAS BEFORE THE STATE RESTED ITS CASE IN CHIEF WAS THE FIREARMS EXAMINER FROM FDLE GETTING ON THE STAND AND TALKING ABOUT THE .40 CALIBER MURDER WEAPON AND TALKING ABOUT THAT OLIVER DISPOSED OF IN THE LAKE AND ALL OF THE PROJECTILES THAT WERE ANALYZABLE AND ALL OF THE SHELL CASINGS WERE FROM THAT .40 CALIBER PISTOL THAT OLIVER DISPOSED IN THE LAKE. THE LAST THING THEY HEAR IS ABOUT THAT --

>> WHEN THE JUDGE ALLOWED IT TO BE INTRODUCED INTO EVIDENCE, DID THE JUDGE GIVE A LIMITING INSTRUCTION AS TO WHAT IT SHOULD BE USED FOR AND ONLY THAT?

>> I DON'T RECALL SPECIFICALLY THE JUDGE --

>> WELL, USUALLY WHEN SOMEONE DOESN'T RECALL SPECIFICALLY, THAT MUST MEAN IT'S NOT IN THERE.

ISN'T THAT ANOTHER PROBLEM IF YOU'RE GOING TO ALLOW SOMETHING IN THAT ONLY IS THERE TO -- THEY'VE BEEN IMPEACHED ON CROSS-EXAMINATION, SO THE IDEA

THE STATE IS USING THE SHOTGUN
TO REHABILITATE THEIR WITNESSES,
IS THAT WHAT --

>> THAT'S CORRECT.

BECAUSE OF THE CREDIBILITY OF
THIS WITNESS.

>> AND NO INSTRUCTION GIVEN TO
THE JURY THAT THIS IS TO BE USED
SOLELY TO CORROBORATE THEIR
STORY AND TO MAKE SURE THEY
UNDERSTAND IT HAS NOTHING TO DO
WITH THE MURDER?

>> THAT'S THE WAY IT WAS ARGUED
THOUGH.

>> WHAT OTHER EVIDENCE IS THERE
IN THE RECORD THAT ESTABLISHES
IT?

>> THE FACT THAT THE DAY OF THE
MURDERS, THE AFTERNOON OF THE
21ST OF JULY, HE'S SEEN DRIVING
AROUND IN A CAR THAT'S NOT HIS
IN THE NEIGHBORHOOD AROUND
ANDREA RICHARDSON'S HOUSE, AND
HE'S WEARING A DREADLOCK WIG.
AND THE WITNESS WHO IDENTIFIED
HIM THAT AFTERNOON NORMALLY
RECOGNIZED HIM TO BE BALD-HEADED
BUT SAW HIM, COULD RECOGNIZE HIM
DRIVING THAT DAY AND SAW HIM
WEARING THIS WIG.

DAVID AND ERIC EDWARDS, THE TWO
INDIVIDUALS WHO WERE SEVERAL
STREETS DOWN THE ROAD FROM
ANDREA RICHARDSON'S HOUSE WHERE
THE MURDERS OCCURRED SAID
WHENEVER THEY -- AFTER THEY
HEARD THE BANGING NOISES AND
THEY SAW TWO INDIVIDUALS IN THE
DARK FAR AWAY LEAVING THE HOUSE,
ONE OF THEM HAD DREADLOCK HAIR.

>> THEY DIDN'T IDENTIFY THE
PERSON, JUST THE FACT THAT THEY
HAPPENED TO BE A WIG?

>> THEY IDENTIFIED THAT
PARTICULAR HAIR STYLE, MR. CHIEF
JUSTICE.

>> WELL, THAT'S PRETTY WEAK.
WHAT ELSE IS IN THE RECORD?

>> AND THEN, AGAIN, MR. OLIVER
IS SEEN WEARING A DREADLOCK WIG

AFTER THE MURDERS AS WELL
WHENEVER THEY'RE ALL HANGING OUT
AT THE HOTEL, AND THEN HE
CONFESSES TO THE MURDERS, AND
THEN HE IS THE ONE DISPOSING OF
THE MURDER WEAPON --

>> HE CONFESSES THE MURDER TO --
>> TO SHEENA.

>> THAT'S THE ONLY PERSON?

>> THAT'S THE ONLY PERSON TO
WHOM HE CONFESSES THE MURDERS,
YES.

>> WHAT ELSE IS THERE OTHER THAN
THAT ONE CONFESSION?

>> THE FACT THAT HE IS, AGAIN,
DISPOSING OF THE MURDER WEAPON,
THAT THAT WAS THE MURDER WEAPON,
THAT WAS, IN FACT, THE MURDER
WEAPON --

>> BUT NOTHING TIES HIM TO THAT
MURDER WEAPON.

>> IT DOES, MR. CHIEF JUSTICE,
YES.

AND THEN AGAIN --

>> WHAT TIES HIM, THE FACT THAT
HE HAD IT AND HE PUT IT --

>> IN THE LAKE.

>> -- IN THE LAKE?

>> HE DISPOSED OF IT.

AND THE TWO EYEWITNESSES SAW HIM
GO GET IT AND DISPOSE OF IT AND
THROW IT AWAY IN THE LAKE.

>> TWO EYEWITNESSES?

>> SHEENA AND CHELSEA WILSON
BOTH SAW HIM, AND IT WAS SHEENA
WHO LED THEM BACK TO THE LAKE.

AND PRIOR TO THE MURDERS
WHENEVER MR. OLIVER IS CONCERNED
THAT MS. PINSON'S GOING TO TURN
HIM INTO THE POLICE, HE
EXPRESSES THAT CONCERN TO
LEANDER WATKINS AND SAYS TO
MR. WATKINS, YOU NEED TO TELL
HER THAT SHE'S GOING TO MAKE HE
DO SOMETHING TO HER IF SHE KEEPS
TRYING TO -- I'M PARAPHRASING --
SET ME UP WITH THE POLICE LIKE
THAT.

I'M PARAPHRASING.

BUT HE MADE THAT.

OF COURSE, THAT IS PART OF CCP AS WELL.

SO EVERY -- AND MR. OLIVER ALSO ADMITTED THAT HE KNEW WHERE ANDREA RICHARDSON LIVED, HE NEW MS. PINSON AND MR. RICHARDSON WERE TOGETHER, HAD BEEN SEEING EACH OTHER, AND HE ALSO ADMITTED --

>> BUT I THOUGHT HE, I THOUGHT THE RECORD WAS HE DID NOT KNOW SHE WAS THERE WITH MR. RICHARDSON.

>> HE -- I RECALL HIM ADMITTING THAT HE KNEW THAT THEY HAD, THAT HE KNEW BOTH OF THEM AND KNEW -- OF COURSE, HE HAD DATED PINSON, AND HE KNEW THAT THEY WERE, THEY HAD BEEN SEEING EACH OTHER. BUT HE WAS A LITTLE VAGUE WHEN HE TESTIFIED ABOUT WHETHER HE KNEW THAT THEY WERE GOING TO BE THERE THAT NIGHT.

OF COURSE, HE AGAIN DENIES THAT HE COMMITTED THIS, BUT HE, HE ALSO ADMITTED THAT HE KNOWS HOW TO GET TO MR. RICHARDSON'S HOUSE BY PARKING ON SOME OTHER SIDE STREET AND GETTING THERE BY SOME, BY A BACK PATHWAY.

AND THE REASON THAT THE EYEWITNESSES ON THE NIGHT OF THE MURDER WHO HEARD THE GUNSHOTS AND THEN LOOKED DOWN AND SAW THE TWO PEOPLE LEAVING, IT WAS 2:00 IN THE MORNING, THE MIDDLE OF THE NIGHT.

IT WAS DARK, AND IT WAS SIX OR SEVEN HOUSES DOWN, AND IT WAS FAR AWAY, AND ALL THEY COULD SEE WAS, YOU KNOW, BODIES AND THE DREADLOCK HAIR STYLE.

>> WHEN THE SHOTGUN WAS FOUND IN THE HOUSE, I TAKE IT THE HOUSE WAS SEARCHED, THAT'S HOW THE SHOTGUN WAS FOUND?

>> THE ONLY THING FROM THE HOUSE THAT WAS ADMITTED WAS THE SHOTGUN.

>> THE HOUSE IS SEARCHED --

>> YES.
>> WHEN IT WAS FOUND, WAS IT FOUND WRAPPED IN THE SAME GARMENT THAT THE WITNESSES CLAIM IT WAS WRAPPED IN?
>> WE DON'T HAVE ANY EVIDENCE FROM THE OFFICER WHO SEES THIS AS TO HOW IT WAS WRAPPED UP.
>> I THOUGHT IT WAS STATED IT WAS STILL IN THE SAME BAG?
>> THAT IT WAS IN THE --
>> THE RECORD DOESN'T SAY THAT THE GUN WHEN IT WAS RECOVERED WAS STILL IN THE BAG THAT THE WITNESSES --
>> THE PISTOL WAS, JUSTICE QUINCE.
I THOUGHT JUSTICE LABARGA --
>> WASN'T THE SHOTGUN WRAPPED INTO SOMETHING?
>> THE WAY THAT PLAYED OUT, THEY HAD GONE TO MR. OLIVER'S HOUSE, GOT SOME OF HIS BELONGINGS, SOME LAUNDRY BAGS.
THEN THEY DRIVE TO THE HOUSE IN COCOA, AND HE GOES TO THE BACK. HE PULLS OUT FROM AMONGST THOSE BELONGINGS THIS, THE SHOTGUN AND TAKES IT IN THE HOUSE.
BUT THERE WAS NEVER ANY INDICATION THAT IT WAS NECESSARILY WRAPPED WHEN HE TOOK IT INTO THE HOUSE.
THEY WERE ABLE TO SEE IT AND RECOGNIZE IT, AND WHEN THEY SAW IT ON THE WITNESS STAND SITTING INSIDE THE EVIDENCE BOX, THEY WERE ABLE TO RECOGNIZE IT.
>> I MEAN, THE SHOTGUN WAS INTRODUCED TO CORROBORATE THE FACT THAT THE WITNESSES WERE PRESENT WHEN HE RECEIVED THE HANDGUN.
>> CORRECT.
AND THAT OLIVER RECEIVED THE GUN THAT WAS DISPOSED OF IN THE LAKE THAT TURNS OUT TO BE THE MURDER WEAPON.
>> I MEAN, HAD IT BEEN A TOASTER THAT HE DELIVERED, YOU WOULD

HAVE INTRODUCED A TOASTER OR
TO --

>> AND THAT'S REALLY WHAT THIS
BOILS DOWN TO.

IT'S, OBVIOUSLY, SOMETHING THAT
THE COURT'S GOING TO TAKE A
DOUBLE TAKE AT BECAUSE OF THE
FACT IT'S A FIREARM, BUT IT'S AN
OBJECT.

IT COULD HAVE BEEN A SHOE BOX,
IT COULD HAVE BEEN THE LAUNDRY
BASKET ITSELF.

>> THE WITNESS TELLS THE POLICE,
YOU KNOW, WE WENT INTO THE
HOUSE.

I WAS THERE.

SHOTGUN WAS DELIVERED, AND THEN
THE HANDGUN WAS HANDED TO HIM,
AND THEN WE WENT AND THREW IT IN
THE LAKE.

HAD IT BEEN A TOASTER, YOU WOULD
HAVE INTRODUCED THE TOASTER THAT
WAS FOUND IN THE HOUSE TO
CORROBORATE THE FACT THAT THE
WITNESS WAS PRESENT.

>> BASED ON THE STATE'S THEORY
BELOW, THE STATE WOULD HAVE
INTRODUCED THIS, AS YOU SAY,
JUSTICE LABARGA, WHATEVER IT WAS
THAT HE BROUGHT INTO THE HOUSE
TO GET THE MURDER WEAPON BACK
AND DISPOSE OF IT.

WHATEVER THAT OBJECT WOULD HAVE
BEEN WOULD BE WHAT WE WOULD BE
HERE TALKING ABOUT.

>> WAS THE SHOTGUN ADMITTED INTO
EVIDENCE BEFORE OR AFTER
CROSS-EXAMINATION?

>> AFTER CROSS-EXAMINATION.

AND THE WAY THE PROSECUTOR
BROACHED THAT SUBJECT WAS HE
TOOK DELIBERATE STEPS TO
MINIMIZE THE EFFECT THAT IT WAS
GOING TO HAVE.

HE DIDN'T JUST PICK UP THE
SHOTGUN OFF THE EXHIBIT TABLE
AND START WAVING IT AROUND IN
FRONT OF THE JURY AND TALKING
ABOUT IT WITH THE WITNESS.

HE ASKED THE -- FIRST, HE ASKED

FOR A SIDEBAR AFTER THE
CROSS-EXAMINATION REASONABLY
BELIEVING THAT HE COULD GO INTO
THIS NOW BECAUSE THEIR
CREDIBILITY HAS BEEN
SUFFICIENTLY ATTACKED.

>> AND HOW WAS IT CHALLENGED?
THE CREDIBILITY?

>> THE CREDIBILITY WAS
CHALLENGED, THE BIGGEST THINGS
ABOUT HER CREDIBILITY WERE THE
THINGS THAT SHE LEFT OUT THAT HE
HAD SAID WHEN SHE TESTIFIED
ABOUT HIS CONFESSION, AND THEN
ON CROSS-EXAMINATION THEY POINT
OUT THE FACT THAT HE HAD ALSO
SAID IT COULD HAVE BEEN ANYBODY
AND THAT HE LOVED KRYSTAL, AND
HE WOULDN'T HAVE, YOU KNOW --
AND DARRELL SELLS DRUGS OUT OF
HIS HOUSE, AND IT COULD HAVE
BEEN A BAD DRUG DEAL.

THAT, OF COURSE, WAS PART OF THE
STATE'S THEORY AS WELL, THIS
REBUTTAL TO THAT, THAT HE TRIED
TO MAKE IT LOOK LIKE IT WAS SOME
TYPE OF A ROBBERY.

AND THEN ALSO --

>> SO THEY WENT TO THE SIDEBAR?
>> THEY WENT TO SIDEBAR, AND THE
OTHER ISSUE THAT THEY IMPEACHED
THEIR CREDIBILITY ON AND ONE OF
THE MAIN THINGS, SHE WAS NOT
ORIGINALLY HONEST WITH THE
POLICE WHEN THEY, WHEN THIS
MURDER HAPPENED, AND SHE WAS
QUESTIONED.

SHE ORIGINALLY SAID SHE DIDN'T
KNOW ANYTHING ABOUT IT, AND THEN
MS. WILSON TOOK HER TO THE
POLICE, AND THEY, AND SHE CAME
FORWARD WITH THE CONFESSION.
SO THEY HAD IMPEACHED HER ON ALL
OF THOSE THINGS IN THE
CROSS-EXAMINATION.

AND THEN THE ASA ASKED FOR A
SIDEBAR AND ARGUES TO THE COURT
THAT HE REASONABLY BELIEVES HE
SHOULD BE ABLE TO GO INTO THIS
TO SUPPORT HER CREDIBILITY, TO

REHABILITATE HER CREDIBILITY AND FOR THAT REASON.

DEFENSE COUNSEL OBJECTS UNDER A 90.043.

THE COURT HEARS ARGUMENT FROM BOTH SIDES AND THEN RULES I'M GOING TO ALLOW IT.

>> THEY DID NOT OBJECT ON THE BASIS OF RELEVANCE?

>> THEY -- RELEVANCE IN THE 400s OF THE RULES OF EVIDENCE. THEY WERE OBJECTING IN THAT REALM.

>> BECAUSE THE JUDGE, ORIGINALLY IT HAD BEEN BROUGHT UP, AND THE JUDGE HAD SAID HE -- OR SHE -- WAS GOING TO DEFER RULING.

>> CORRECT.

>> BUT THE QUESTION WAS, WELL, IT COULD HAVE BEEN A TOASTER, THEY WOULD HAVE INTRODUCED IT. I DON'T, I CAN'T IMAGINE THE PROSECUTOR SAYING HERE'S THE TOASTER, I'M INTRODUCING IT INTO EVIDENCE.

>> WHY NOT?

>> WHAT IF, IF RIGHT BEFORE THEY GOT TO THE HOUSE TO GET THE GUN HE HAD BEEN DOING A DRUG DEAL -- AND THIS IS SEVERAL DAYS AFTER THE MURDER, SO IT'S NOT PART OF THE MURDER -- AND THEY WERE ABLE TO SHOW THAT HIS HANDS WERE ON, YOU KNOW, THE DRUGS.

UNDER YOUR, UNDER THE STATE'S THEORY, ANY COLLATERAL CRIME COULD COME INTO EVIDENCE IF IT'S GOING TO CORROBORATE WHAT SOMEONE SAYS.

AND I THINK THAT THAT'S THE POINT OF AGATHEUS.

ON THE SURFACE IT SEEMS, YEAH, YEAH, LET'S CORROBORATE THE TESTIMONY, BUT DEFENSE IS ALLOWED TO IMPEACH ON THINGS THAT ARE PRIOR INCONSISTENT STATEMENTS, MOTIVE BIAS.

YOU'RE NOT -- THE ISSUE IS YOU CAN'T REHABILITATE ON EVIDENCE OF A SEPARATE CRIME.

SO WHAT WOULD -- MY SCENARIO,
WOULD THAT BE ADMISSIBLE?
THAT ON THE WAY TO GET THE
MURDER WEAPON ANOTHER CRIME WAS
COMMITTED?

WOULD THE STATE BE ARGUING,
YEAH, THAT CORROBORATES, AND
WE'RE ABLE TO SHOW THAT HE
COMMITTED THAT CRIME, THAT THAT
WOULD COME INTO EVIDENCE?
OR WOULD THAT BE TOO
PREJUDICIAL?

>> AND I DON'T THINK THAT OUR
ARGUMENT, JUSTICE PARIENTE, IS
WE SHOULD BE ABLE TO ADMIT ANY
COLLATERAL CRIME OR BAD ACT
UNDER A 404.2 SUBSET SIMPLY
BECAUSE SOMEBODY'S BEEN
VEHEMENTLY CROSS-EXAMINED ON
THEIR CREDIBILITY.

BUT, AND PERHAPS IF COUNT FOUR,
THE FELONY POSSESSION, HAD NOT
BEEN SEVERED, WHICH IT WAS, AND
IT WAS DEALT WITH COMPLETELY
SEPARATELY --

>> AND WHY WAS IT SEVERED?

>> BECAUSE HE WAS A CONVICTED
FELON.

THE JURY IS NOT LOOKING AT HIM
POSSESSING THIS FIREARM AS A
CRIME AT THE TIME THEY'RE
HEARING THE TESTIMONY AND
BRIEFLY SEEING THIS EXHIBIT.
THEY'RE NOT SEEING THIS AS,
AGAIN, SOME TYPE OF COLLATERAL
CRIME, THEY'RE JUST SEEING IT AS
AN ACT AND AN OBJECT THAT HE'S
TAKING INTO THE HOUSE TO GET THE
MURDER WEAPON.

>> [INAUDIBLE]
HAVING GUNS.

FOR SOME PEOPLE IT'S LIKE, IT
MAY NOT BE -- YOU DON'T KNOW IF
IT'S REGISTERED OR NOT, BUT IT'S
NOT LIKE HAVING A TOASTER, OKAY?

>> CERTAINLY --

>> IT IS NOT, YOU KNOW, WHETHER
THIS IS TITUSVILLE OR MELBOURNE,
WHATEVER, IT'S NOT THE WILD
WEST.

AND PEOPLE ON THE JURY CAN INFER ALL SORTS OF THINGS FROM SOMEBODY POSSESSING A WEAPON.

>> THEY --

>> I MEAN, THAT'S THE PROBLEM WITH IT.

>> BUT THERE AGAIN WE ALSO HAVE, WE HAVE THIS SHOTGUN THAT'S NOT SOME TYPE OF AN ASSAULT RIFLE, NOT SOMETHING THAT --

>> BUT, YOU SEE, YOU REALLY HAVE TO GO TO THAT LENGTH TO SAY AND YET THE BURDEN IF WE FIND IT'S ERROR, THE BURDEN IS ON THE STATE TO PROVE ITS HARMLESS BEYOND A REASONABLE DOUBT. NOT THAT THERE WAS OTHER EVIDENCE, BUT THAT THE JURY WOULD NOT HAVE CONSIDERED THAT IN DECIDING THAT HE WAS GUILTY. AND I THINK THAT'S RIGHTFULLY A HEAVY BURDEN.

>> CERTAINLY, JUSTICE PARIENTE. AND, AGAIN, IT'S NOT -- THE WAY THE JURY IS LOOKING AT THIS TO PLAY OFF OF THE HYPOTHETICAL IS IT'S NOT A COLLATERAL CRIME. THEY'RE JUST SEEING HIM WITH THIS SHOTGUN, AND THEN THE FOCUS ABOUT THE MURDERS WAS ON THE MURDER WEAPON.

AND, AGAIN, THE LAST THING THAT THEY HEARD BEFORE THE STATE RESTED ABOUT GUNS PERIOD WAS ABOUT THE MURDER WEAPON AND MATCHING IT TO THE SHELL CASINGS AND THE PROJECTILES FROM THE MURDER SCENE THAT WERE RECOVERED FROM THE BODIES AND FROM THE MATTRESS AT THE MURDER SCENE. SO THAT, AGAIN, WAS THE WAY THE STATE DEALT WITH THIS PARTICULAR ISSUE.

AND THE ASA TOOK SIGNIFICANT STEPS TO TRY TO MINIMIZE ANY TYPE OF PREJUDICIAL EFFECT THIS SHOTGUN COULD HAVE HAD BUT DIDN'T HAVE IN THIS TRIAL.

>> COULD YOU ADDRESS THE CCP?

>> CERTAINLY.

THERE IS, I WOULD AGREE THAT THERE IS NOT AS MUCH EVIDENCE FOR CCP STRICTLY FOCUSING ON ANDREA RICHARDSON AS THERE IS FOR KRYSTAL PINSON.

AS JUSTICE CANADY POINTED OUT --

>> YOU SAID THERE'S NOT AS MUCH WHAT?

WHAT DO WE HAVE OTHER THAN THE FACT THAT HE GOES THERE, I PRESUME, TO KILL MS. PINSON AND THAT RICHARDSON IS THERE?

>> THE MURDER SCENE IS ANDREA RICHARDSON'S HOUSE.

IT WASN'T KRYSTAL PINSON'S HOUSE, SOMEBODY ELSE'S HOUSE, IT WAS ANDREA RICHARDSON'S HOUSE.

SO, AND HE COMMITS THIS MURDER AT ABOUT 2:00 IN THE MORNING AT A TIME WHEN THEY'RE LIKELY TO BE THERE TOGETHER.

AND IT'S ALSO -- THERE'S NO -- THIS COURT HAS FOUND, TOO, SOME FACTORS THAT CAN BE CONSIDERED IN SUPPORTING CCP IS THERE WAS NO PROVOCATION HERE FROM EITHER ONE OF THE VICTIMS.

THERE WAS NO -- THE DOOR WAS UNLOCKED.

HE GOES IN THE HOUSE, AND HE STARTS SHOOTING.

THEY WERE TRYING TO FLEE AWAY.

ANDREA RICHARDSON WAS TRYING TO GO OUT THE SIDE DOOR OF THE LIVING ROOM.

BASED OFF THE DIAGRAM, IT APPEARED HE WAS PROBABLY SHOT FIRST, SO THE DEFENDANT WOULD HAVE HAD TO GO INTO THAT ROOM FIRST AND THEN GO INTO THE MASTER BEDROOM WHERE KRYSTAL PINSON WAS SHOT AS SHE WAS TRYING TO CLIMB UP UNDER THE BED.

SO THERE WAS NO PROVOCATION, AND THIS COURT'S FOUND THE LACK OF PROVOCATION IS SOMETHING TO CONSIDER IN SUPPORTING CCP --

>> DO WE NEED TO HAVE SOME KNOWLEDGE THAT HE HAD, THAT

MR. RICHARDSON WAS ACTUALLY IN THE DWELLING TO SUPPORT CCP?

>> I DON'T KNOW THAT THERE'S A PER SE RULE THAT WE WOULD HAVE TO HAVE THAT.

THAT WOULD CERTAINLY HELP IN SUPPORT IT.

WE DON'T HAVE AFFIRMATIVE KNOWLEDGE OTHER THAN THE CIRCUMSTANCES OF HOW THE CRIME WAS COMMITTED AND WHERE THE CRIME WAS COMMITTED, THAT HE WOULD HAVE -- WE DON'T HAVE AN ADMISSION THAT SAYS HE KNEW RICHARDSON WAS GOING TO BE THERE.

BUT IF THIS COURT IS NOT INCLINED TO FIND THE EVIDENCE SUPPORTS CCP, THOUGH IT IS PART OF ONE CENTRAL PLAN AND ANDREA RICHARDSON WAS PART OF THAT, IF THIS COURT'S NOT INCLINED TO SUPPORT THIS AGGRAVATOR -- AND THEY'RE ONLY CHALLENGING IT TO ANDREA RICHARDSON -- THEN WE CERTAINLY HAVE HARMLESS ERROR BEYOND A REASONABLE DOUBT BECAUSE WE STILL HAVE ALL FOUR OF THE AGGRAVATORS THAT ARE GOING TO APPLY TO KRYSTAL PINSON.

>> THERE'S ONE OTHER POINT THAT WAS RAISED IN THE BRIEFS CONCERNING LACK OF REMORSE AND ARGUING THAT THE STATE ARGUED THAT AS AN AGGRAVATING FACTOR. AND SO IF YOU WOULD ADDRESS THAT.

>> CERTAINLY, JUSTICE PARIENTE. AND THIS IS NOT A SITUATION LIKE BACK INTO THE LANDMARK CASE ABOUT THIS POPE FROM 1983 WHERE LACK OF REMORSE WAS USED AS AN AGGRAVATOR.

THAT IS NOT AT ALL HOW THIS WAS ADDRESSED.

THE PROSECUTOR IN ONE SENTENCE IN THE PENALTY PHASE WHEN HE'S TALKING ABOUT THE EVIDENCE ABOUT THE DEFENDANT HAVING CRIED AFTER

THESE MURDERS ON TWO SEPARATE OCCASIONS, AND HE'S ADDRESSING THAT, AND HE'S TRYING TO ADDRESS IT IN THE CONTEXT OF THE EXTREME EMOTIONAL DISTURBANCE THAT'S ALSO SUPPORTED BY THE TURBULENT DOMESTIC RELATIONSHIP THAT THEY HAD HAD, HE IS SIMPLY ARGUING TO THE JURY THAT THEY SHOULDN'T GIVE THAT ANY CONSIDERATION OR ANY WEIGHT IN MITIGATION. HE'S ARGUING IT IN THE CONTEXT OF MITIGATION.

THEY SHOULDN'T GIVE HIM, CONSIDER THAT AS VERY CREDIBLE BECAUSE HE'S NOT CRYING BECAUSE HE'S REMORSEFUL, HE'S CRYING BECAUSE HE'S UPSET BECAUSE HE'S GOING TO GET CAUGHT FOR THIS. AND THAT WAS THE PROSECUTOR'S ARGUMENT.

THEY OBJECTED.

THEY MOVED FOR A MISTRIAL, AND THE TRIAL COURT DENIED THE MOTION FOR MISTRIAL, BUT THEN AFTER THE SIDEBAR, THE PROSECUTOR MOVES ON TO HIS ARGUMENT, DIDN'T SAY ANOTHER WORD AND DIDN'T USE THAT WORD, "REMORSE," EVER AGAIN.

AND THE TRIAL COURT DIDN'T ADDRESS IT, DIDN'T SAY A WORD ABOUT REMORSE OR LACK THEREOF OR ANYTHING TO THAT EFFECT IN THE SENTENCING ORDER.

AND THERE WAS NO INSTRUCTION THAT THE JURY SHOULD CONSIDER LACK OF REMORSE OR ANYTHING ALONG THOSE LINES.

AND SO IT WAS, IT WAS SORT OF A BLIP THAT OCCURRED IN THE PENALTY PHASE ARGUMENT, BUT IT WASN'T, IT WASN'T AN ERROR.

>> IS THIS -- DID THE PROSECUTOR ARGUE TWICE IN THE PENALTY PHASE, OR DID HE JUST DO IT ONCE?

>> THE WAY THIS PENALTY PHASE WENT WAS THE PROSECUTOR ARGUED, THE DEFENSE ARGUED, AND THAT WAS

IT.

THE DEFENSE GOT THE FINAL WORD.
AND THE PROSECUTOR WASN'T
SANDWICHED IN BETWEEN EITHER,
SO HE WAS TRYING TO ANTICIPATE
WHAT THE DEFENSE WAS GOING TO
ARGUE ABOUT ALL OF THE EVIDENCE
ABOUT EXTREME EMOTIONAL
DISTURBANCE, ABOUT THESE TWO
CRYING INCIDENTS WHICH OCCURRED
AFTERWARD, ONE OF WHICH WAS
WHILE HE WAS CONFESSING TO
SHEENA BECAUSE SHE TESTIFIED
THAT HE WAS UPSET AND CRYING
WHENEVER HE WAS CONFESSING TO
HER.

IF THERE ARE NO FURTHER
QUESTIONS, WE WOULD ASK THAT THE
COURT AFFIRM THE CONVICTIONS AND
SENTENCES.

>> THANK YOU.

REBUTTAL?

>> MR. OLIVER TOOK THE STAND IN
HIS OWN DEFENSE, AND SO THE JURY
LEARNED AT THAT POINT THAT HE
HAD FOUR FELONY CONVICTIONS, SO
THAT ADDS TO THE SHOTGUN POINT.
THEY DO KNOW HE WAS GUILTY OF A
CRIME BY POSSESSING A SHOTGUN,
AND HE WAS A CONVICTED FELON.
I DON'T THINK THIS RECORD, YOU
CAN TELL FROM THIS RECORD
NECESSARILY HOW BIG A DEAL THE
STATE MADE OUT OF THE SHOTGUN.
WE DON'T KNOW WHETHER HE WAVED
IT AROUND.

BEFORE IT WAS INTRODUCED INTO
EVIDENCE, YES, VERY CAREFUL.
BUT ONCE HE GOT IT IN, THERE WAS
MUCH TESTIMONY.

THEY RECALLED CHELSEA WILSON TO
TESTIFY ABOUT HER OBSERVATIONS
ON THE SHOTGUN, A CRIME SCENE
TECHNICIAN TESTIFIED ABOUT HOW
HE RECEIVED THE SHOTGUN AND
WORKED IT UP, DID THE FORENSICS,
GOT THE DNA.

THEN THEY HAD THE FDLE EXPERT, A
DIFFERENT ONE, COME IN AND TALK
ABOUT THE DNA HE OBTAINED, THE

TOUCH DNA.

ALWAYS EVIDENCE -- AND THERE WAS ALSO A SPECIFIC OBJECTION AT ONE POINT WHERE THE DEFENSE LAWYER SAID IT'S NOW BECOME A FEATURE, AND THAT WAS OVERRULED.

>> WAS THERE EVER A SUGGESTION BY EITHER SIDE -- AND I WOULD THINK, YOU KNOW, THE STATE MAYBE SHOULD HAVE THOUGHT ABOUT IT -- ABOUT COMING IN WITH A LIMITING INSTRUCTION?

WAS A LIMITING INSTRUCTION GIVEN, FIRST OF ALL?

>> NOT THAT I RECALL, NO.

>> YOU DON'T RECALL --

[LAUGHTER]

>> WHICH I THINK, YOU'RE RIGHT, I THINK THAT MEANS THERE WAS NOT ONE.

THAT'S ALL I HAVE IF THERE ARE NO FURTHER QUESTIONS.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS. COURT IS ADJOURNED.

>> ALL RISE.