

>> NEXT CASE ON THE DOCKET IS  
EVANS VERSUS STATE.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

CYNTHIA DODGE ON BEHALF OF  
PATRICK EVANS.

MR. EVANS WAS CONVICTED OF THE  
FIRST DEGREE MURDER OF HIS WIFE,  
ELIZABETH EVANS AND A MAN NAMED  
GERALD TAYLOR WHO WAS WITH HER  
IN HER BEDROOM IN HER  
CONDOMINIUM ON THE NIGHT OF THE  
MURDER.

IN THIS CASE THE STATE FAILED TO  
PROVE THAT THE CIRCUMSTANTIAL  
EVIDENCE PROVED PREMEDITATION  
BECAUSE THE EVIDENCE IS  
CONSISTENT WITH AND DOES NOT  
EXCLUDE THE REASONABLE  
HYPOTHESIS THAT THE MURDERS WERE  
COMMITTED IN THE HEAT OF  
PASSION.

THE EVIDENCE--

>> WE HAD, UNLIKE MOST CASES,  
VERY INFREQUENTLY DO WE HAVE A  
RUNNING COMMENTARY OF THE MURDER  
AS OCCURRED HERE WITH THE 911  
CALL BACK.

>> THAT'S TRUE.

>> AND THE, THE NATURE OF THE  
ENTRY OF THE WOUNDS WITH REGARD  
TO THE GENTLEMAN PARTICULARLY  
AND THE BURNS FROM THE, FROM THE  
WEAPON, AS TO PREMEDITATION.  
YOU PUT A GUN TO SOMEBODY'S  
HEAD, I THINK FROM THAT YOU CAN,  
AND PULL THE TRIGGER, I THINK  
PROBABLY OUR CASE LAW WOULD  
SUPPORT THAT'S PREMEDITATION  
BECAUSE THERE IS NO INDICATION  
OF SOMEBODY JUST GOING WILD AND  
IN A TERRIBLE RAGE.

I UNDERSTAND WHERE YOU'RE TRYING  
TO TAKE THIS.

BUT WHERE IS THE EVIDENCE OF  
SOME KIND OF RAGE?

HE WAS VERY CALM WHEN HE, AND  
THEY HAVE SENT THE TRANSCRIPT UP  
TO US, THE ACTUAL RECORDING.  
WHERE'S THE RAGE?

>> THE ACTUAL RECORDING SHOWS THAT THE ENTIRE INCIDENT HAPPENED IN 29 SECONDS, FROM THE TIME THE CALL-BACK, THE CALL-BACK HAPPENED AROUND 7:11 IN THE EVENING BUT IT IS 29 SECONDS AND IT IS BASICALLY, FIRST OF ALL, THIS IS CIRCUMSTANTIAL EVIDENCE OF INTENT.

IN OTHER WORDS, THERE IS NO ONE ON THAT TAPE, PERPETRATOR ON THE TAPE IS NOT SAYING, I'M GOING TO KILL YOU.

>> BUT IS THAT REQUIRED BY FLORIDA LAW.

>> NO, IT ISN'T, BUT FLORIDA LAW DOES REQUIRE THAT THE EVIDENCE IS INCONSISTENT WITH A HYPOTHESIS THAT THE MURDERS WERE COMMITTED IN THE HEAT OF PASSION.

>> WAIT A SECOND.

YOU SAID THAT THE 29 SECONDS FOR THE 911 CALL, PRESUMABLY I GUESS, THE VICTIM HAD CALLED 911 AND HAD HUNG UP.

BUT HE WAS ALREADY IN THE BEDROOM SO, WITH A GUN.

>> RIGHT.

>> SO WE'VE GOT TO ASSUME, I MEAN, THAT THE PLAN DIDN'T START AT THE POINT OF THE 911 CALL. THEY SIMPLY, THAT CAPTURES THE END PART OF WHAT HAPPENED, WOULDN'T YOU-- NOT LIKE IT WAS A 29 SECOND EVENT.

HE WAS ALREADY HAVING THESE TWO VICTIMS COWERING, YOU KNOW, WITHOUT, YOU KNOW, WITH THE GUN?

>> ACTUALLY WE DON'T KNOW BECAUSE THE, THE PHONE WAS OBVIOUSLY IN THE BEDROOM. SO, WE DON'T KNOW WHAT HAPPENED FROM THE TIME THE ORIGINAL 911 CALL, I THINK IT WAS PLACED AT 7:10 P.M. AND CALL-BACK WAS, WITHIN A MINUTE.

SO IN OTHER WORDS, IT COULD HAVE BEEN A 911 CALL PLACED BECAUSE

THE PEOPLE UPSTAIRS WERE HEARING NOISES.

SO WE DON'T KNOW EXACTLY WHAT HAPPENED AND, WE CAN'T REALLY, WE CAN'T ASSUME THAT, YOU KNOW THE PERPETRATOR WAS ALREADY IN THE BEDROOM AND THINGS WERE ALREADY HEATED.

NOT ONLY THAT, JUST BECAUSE SOMEONE IS IN THE BEDROOM AND CONFRONTING HIS WIFE WITH A MAN DOESN'T MEAN HE HAS INTENT TO KILL THEM AT THAT POINT.

>> WAIT, WAIT.

WE HAVE EVIDENCE, DIRECT EVIDENCE OF THE PURCHASE OF THE WEAPON.

WE HAVE DIRECT LINKAGE OF THE TEST FIRING OF THE WEAPON, AND WHAT WAS FOUND AT THE SCENE.

WE FOUND, IN THE SAFE, AT THE MAN'S HOUSE, THE BOX WHICH THE GUN CAME.

SO IS THERE NOT, I MEAN PROPER INFERENCE IS, IS THAT WE HAVE A MAN WHO BUY AS GUN AND BUYS THE AMMUNITION, AND TAKES A LOADED GUN THE HOUSE OF AN EX-WIFE THAT HE WAS TRYING TO GET BACK TOGETHER WITH, AND, THAT KNEW THAT SHE HAD A DATE THAT NIGHT. WAS GOING TO BE ANOTHER MAN THERE.

AND THEN PUTS A GUN TO THE MAN'S HEAD AND WE'RE SUPPOSED TO SAY, OH, THAT IS PROBABLY NOT PREMEDITATION.

THAT IS JUST SORT OF DEFIES ANY KIND OF LOGIC, DOESN'T IT?

>> YOUR HONOR THE MURDER TOOK PLACE IN DECEMBER OF 2008.

THE GUN WAS PURCHASED, AND THERE WAS ABSOLUTE PROOF OF THIS BECAUSE THIS IS PART OF THE STATE'S CASE.

THE GUN WAS PURCHASED IN, THREE YEARS BEFORE, I THINK NOVEMBER IN 2005.

SO IT IS NOT AS IF SOMEONE WAS PROCURING A GUN FOR THIS

PURPOSE.

THERE IS ALSO--

>> HE HAD THE GUN WITH HIM.  
HE TOOK IT TO THE SCENE, RIGHT?

>> THERE IS ALSO EVIDENCE THAT  
HE KEPT IT IN HIS CONSOLE  
SOMETIMES.

>> HE TOOK THE BUN IN THE HOUSE,  
DIDN'T HE.

>> YES HE DID, THE THING IS, THE  
THEORY WAS, THERE WAS NO  
PREMEDITATED INTENT.

IN OTHER WORDS HE WENT IN,  
EITHER TO CONFRONT, I MEAN HIS  
WIFE IS NAKED, UPSTAIRS IN HER  
BEDROOM WITH A MAN.

AND SUPPOSEDLY SHE IS ON A DATE.  
WHICH IS VERY DIFFERENT, BECAUSE  
THERE IS NO, THERE IS NO  
EVIDENCE THAT THESE PEOPLE WHO  
WERE SHOT HAD A RELATIONSHIP.  
THAT THERE WAS ANYTHING OTHER  
THAN, THAT THIS WAS A FIRST  
DATE.

THERE IS NO EVIDENCE TO SUPPORT  
THAT.

SO IN OTHER WORDS--

>> DID HE LIVE IN THIS HOUSE.

>> PARDON ME?

NO.

IT WASN'T.

IT WAS HER CONDOMINIUM.

BUT HE WAS THERE OFTEN AS A  
VISITOR.

HE USED TO ENTER WITHOUT  
KNOCKING.

HE USED TO BRING HIS SON, WHO  
WAS NOT THEIR SON.

IT WAS HIS SON--

>> WAS, THE WIFE AND DAUGHTER  
DIDN'T APPRECIATE HIM JUST  
COMING IN WITHOUT KNOCKING OR  
ANNOUNCING HIMSELF?

>> THERE WAS EVIDENCE SHE DIDN'T  
APPRECIATE IT.

THERE WAS NO EVIDENCE THAT THAT  
WAS CONVEYED TO MY CLIENT IN  
ANYWAY.

SO, IN OTHER WORDS, WHETHER OR  
NOT SHE DIDN'T LIKE IT DOESN'T

MEAN THAT HE DIDN'T HAVE CONSENT  
FROM THE MOTHER TO COME IN  
AND--

>> SO YOU AREN'T SUGGESTING THAT  
HE HAD CONSENT TO COME INTO THE  
HOUSE ON THE NIGHT OF THE  
MURDERER, ARE YOU?

>> WELL, THAT IS A VERY  
INTERESTING QUESTION BECAUSE OF  
THE WAY THE BURGLARY STATUTE,  
FIRST OF ALL, AT THE END OF THE  
STATE'S CASE THE, THE DEFENSE  
MOVED TO, OR ASKED THE COURT NOT  
TO INSTRUCT THE JURY ON FELONY  
MURDER SAYING THAT HE HAD  
CONSENT TO ENTER THE RESIDENCE.  
SO WHAT HAPPENED WAS THE  
PROSECUTOR COMPILED THE JURY  
INSTRUCTIONS AND THERE ARE TWO  
DIFFERENT TYPES OF JURY  
INSTRUCTIONS AND ONE IS UNDER  
1-B-1 AND ONE IS UNDER 1-B-2-C.  
HE CHOSE THE ONE THAT PRESUMES  
THAT THERE IS NO CONSENT.  
SO IN OTHER WORDS THE STATE HAS  
TO PROVE THERE WAS NO CONSENT TO  
ENTER.

IT GETS, I THINK IT IS VERY  
WELL-LAID OUT IN THE BRIEFS, IN  
BOTH MY BRIEFS AND IN THE  
STATE'S BRIEFS, IT'S A VERY  
COMPLICATED ARGUMENT BECAUSE THE  
DISTRICT COURTS HAVE FOUND THAT  
IF YOU, THAT THESE ARE TWO,  
TWO-WAYS TO CHARGE IT THAT ARE  
MUTUALLY EXCLUSIVE.

SO IN OTHER WORDS, WHEN YOU  
CHARGE THAT THERE IS, AS HE WAS  
CHARGED, YOU HAVE TO PROVE THAT  
HE HAD NO CONSENT TO ENTER.  
THE ONLY TIME YOU CAN USE  
REMAINING END LANGUAGE IN THE  
2-C PART OF IT IS WHEN THE STATE  
IS ACTUALLY PROVED THERE WAS  
CONSENT TO ENTER.

AND SO, THE STATE DIDN'T GET THE  
BENEFIT OF THE REMAINING IN  
BECAUSE THE JURY INSTRUCTION WAS  
AND THEY READ THE THIRD PART OF  
IT THAT SAID THAT THE STATE HAD

TO PROVE THAT HE HAD NO LICENSE OR CONSENT TO ENTER.  
SO IN OTHER WORDS, WE'RE SAYING THERE WASN'T IMPLIED CONSENT. IT GOES BACK TO DELGADO, WHICH THE REASONING OF DELGADO, EVEN THOUGH THE FLORIDA LEGISLATURE HAS OVERRULED DELGADO, THE REASONING OF DELGADO IS VERY INSTRUCTIVE IN THIS CASE BECAUSE IN DELGADO, THIS COURT SAID YOU CAN'T, YOU CAN'T SAY THERE IS IMPLIED REVOCATION OF CONSENT. IT IS VERY MESSY.  
SO IN OTHER WORDS, WHEN WOULD SOMEBODY KNOW?  
IF THEY GO TO, IF A MAN GOES TO HIS WIFE'S CONDOMINIUM AND ENTERS--  
>> ISN'T THE CASE THAT DELGADO IS HISTORY?  
DOESN'T THE STATUTE MEAN THAT DELGADO IS HISTORY?  
>> YES IT IS HISTORY BECAUSE IT HAS BEEN OVERRULED BUT THE PROBLEM IS THE WAY THAT THE, IT HAS BEEN OVERRULED BY STATUTE BUT THE WAY THE LEGISLATURE WROTE IT BROKE IT UP INTO TWO DIFFERENT TYPES OF BURGLARY. ONE WHERE THE PERSON HAS NO CONSENT TO ENTER BUT HAS THE INTENT TO COMMIT A CRIME THEREIN AND THE SECOND ONE IS WHEN THERE IS CONSENT BUT THEN A FORCIBLE FELONY HAPPENS.  
AND IF YOU LOOK AT, MY FOOTNOTE NUMBER NINE, I PUT IT ALL IN A FOOTNOTE ON PAGE 51 OF MY BRIEF, THE DISTRICTS COURTS HAVE SAID IN ORDER TO AVAIL THE STATE, TO AVAIL ITSELF OF THE REMAINING IN LANGUAGE, THE STATE ACTUALLY HAS TO PROVE THERE IS CONSENT BECAUSE THE LEGISLATURE--  
>> HAVE WE SAID THAT?  
>> NO, YOU HAVEN'T.  
THIS PROBABLY WILL BE AN OPPORTUNITY TO DECIDE WHETHER OR NOT THE DISTRICT COURTS ARE

CORRECT.

BECAUSE THE DISTRICT COURTS HAVE SAID, THEY USED TERM NO WITH STANDING.

THE LEGISLATURE COULD HAVE SAID, REGARDLESS OF WHETHER OR NOT THERE WAS CONSENT TO ENTER, COMMITTING A FORCIBLE FELONY TURNS IT INTO A BURGLARY.

NOW WHAT IS REALLY IMPORTANT IS, IN A CASE WHERE YOU'RE TALKING ABOUT A MURDER, A, OR SOMEBODY IS KILLED, BURGLARY ELEVATES THIS TO A FIRST DEGREE, PREMEDITATED-- EXCUSE ME, FIRST-DEGREE MURDER.

IT ALSO MAKES SOMEBODY DEATH ELIGIBLE.

THEREFORE IT IS VERY IMPORTANT THAT THIS BE STRICTLY CONSTRUED. AND, AS I SAID THE LEGISLATURE SAID NOT WITHSTANDING, WHICH MEANS IN SPITE OF OR ALTHOUGH THE SUSPECT, THE DEFENDANT WAS INVITED TO ENTER.

THE COMMISSION OF A FORCIBLE FELONY TURNS IT INTO, IT TURNS IT INTO FELONY MURDER WHICH OF COURSE MAKES YOU ELIGIBLE FOR LIFE IMPRISONMENT.

IT ALSO MEANS THAT IT IS AN AGGRAVATOR WHICH WILL MAKE YOU DEATH ELIGIBLE.

SO IT IS VERY IMPORTANT.

WHAT WE'RE ARGUING--

>> I'M A LITTLE BIT CONFUSED HERE.

HE HAD CONSENT TO ENTER OR HE DIDN'T HAVE CONSENT TO ENTER? IT WAS NOT HIS PLACE, CORRECT?

>> THE STATE--

>> BUT YOU, ARE YOU ARGUING THAT IT DOESN'T MATTER?

>> I'M ARGUING THAT HE HAD STANDING CONSENT TO ENTER.

IN OTHER WORDS HE WOULD ENTER, WHENEVER HE CAME OVER.

>> YOU'RE SAYING THAT HE HAD THE CONSENT TO ENTER.

THEN HE COMMITTED A FELONY.

SO-- COMMITS A FORCIBLE FELONY.  
WHY ISN'T THAT UNDER YOUR  
EXPLANATION BURGLARY BECAUSE HE  
NOW COMMITTED THE FORCIBLE  
FELONY?

>> BECAUSE IF YOU LOOK AT THE  
WAY THE FELONY MURDER  
INSTRUCTION THAT WAS ACTUALLY  
READ TO THE JURY AND CHOSEN BY  
THE PROSECUTION, THERE WAS NO  
ARGUMENT.

ONCE, ONCE THE COURT SAID, YES,  
I AM GOING TO INSTRUCT ON FELONY  
MURDER, THERE WAS NO ARGUING  
ABOUT WHAT THE INSTRUCTION  
SHOULD BE.

THE PROSECUTOR VOLUNTEERED, I  
WILL PUT IN, THE JUDGE SAID  
SOMETHING LIKE, WELL WE NEED AN  
INSTRUCTION ON BURGLARY AND THE  
PROSECUTOR SAID, I'LL PROVIDE  
IT.

SO THE STATE CHOSE THAT.  
IF YOU LOOK AT CLOSING ARGUMENT  
AND LOOK WHAT WAS SAID,  
OBVIOUSLY THE STATE WAS  
PROCEEDING ON A THEORY HE DID  
NOT HAVE CONSENT AND THE  
DEFENSE, IF YOU LOOK AT THE  
ARGUMENT JUST, WHEN HE WAS  
ASKING FOR THE COURT TO NOT  
CHARGE ON FELONY MURDER, AND, HE  
ALSO TACKED IT ON TO HIS JOA, HE  
IS SAYING, WELL, THERE WAS  
CONSENT.

THIS CONSENT WAS NEVER REVOKED.  
AND--

>> SO YOUR ARGUMENT THEN IS THAT  
BECAUSE HE HAD COME IN AT OTHER  
POINTS, WITHOUT ACTUALLY BEING  
INVITED IN--

>> YES.

>> THAT ON THIS NIGHT WHEN SHE  
WAS IN THE BEDROOM WITH SOMEONE  
ELSE, SHE WAS INVITING HIM INTO  
THE PLACE?

>> WELL, IT WOULD BE NOT AN  
EXPRESS INVITATION OF COURSE.  
BUT THE THING IS, THAT'S WHERE,  
EVEN THOUGH DELGADO HAS BEEN



OVERRULED, IF YOU LOOK AT THE LANGUAGE IN THERE, IF YOU LOOK AT REASONING IN DELGADO IT IS VERY, VERY INSTRUCTIVE AND STILL APPLICABLE BECAUSE IT GETS INTO WHETHER OR NOT THERE CAN BE IMPLIED NON-CONSENT.

SO IN OTHER WORDS, IF SOMEONE HAD CONSENT TO COME INTO MY HOUSE BUT I OBVIOUSLY, THEY WOULD COME AND GO BUT I DIDN'T WANT THEM IN THERE WHEN THE KITCHEN WAS MESSY OR, I MEAN, YOU KNOW, OBVIOUSLY I WOULDN'T WANT THEM IN THERE IF I WERE HAVING A FIGHT WITH MY CHILD OR SOMETHING, THAT MIGHT BE, SOMETHING THAT I WOULD NOT WANT BUT, YOU WOULD HAVE TO CHARGE, WOULD YOU HAVE TO SAY TO THE DEFENDANT, YOU SHOULD HAVE KNOWN THAT YOU, AND IT'S IMPLIED NON-CONSENT.

AND IT WOULD BE SITUATIONS WHERE MAYBE THE PERSON, OR THE DEFENDANT WOULD NOT--

>> I THINK I UNDERSTAND WHAT YOUR ARGUMENT IS ABOUT THE BURGLARY.

AND YOU, ARE RUNNING OUT OF TIME HERE.

>> YES.

>> BUT I WOULD REALLY LIKE YOU TO ADDRESS SOME OF THE OTHER ISSUES THAT ARE IN THIS CASE.

>> YES.

>> INCLUDING WHETHER OR NOT THE DETECTIVE'S OPINION ABOUT THE 911 TAPE WAS ERROR.

>> I THINK THE LAW IS PRETTY CLEAR ON THAT.

FIRST OF ALL, THE DETECTIVE NEVER TESTIFIED THAT HE WAS FAMILIAR WITH THE DEFENDANT'S VOICE BEFORE, YOU KNOW, BEFORE HE REVIEWED THE JAIL, THE JAIL PHONE CALLS.

SO IN OTHER WORDS, HE WAS DOING WHAT EXACTLY WHAT THE JURY COULD HAVE DONE.

IN OTHER WORDS, IF THE STATE HAD PLAYED SNIPPETS OR PARTS OF THESE JAIL PHONE CALLS, THE JURY COULD HAVE COMPARED THE VOICE. IN FACT, THE ONE OF THE REASONS THAT THE TRIAL JUDGE ALLOWED THE STATE TO INTRODUCE THE OPINION OF THE DETECTIVE, WAS BECAUSE THE JURY COULD DO THIS ON THEIR OWN.

SO IN OTHER WORDS, IT WAS AN INVASION OF THE PROVIDENCE OF THE JURY.

NOT ONLY THAT, THIS WAS A DETECTIVE, THE LEAD DECK TESTIFY IN THE CASE, SO-- DETECTIVE IN THE CASE.

TWO PEOPLE ARE TESTIFYING. ONE IS THE VICTIM'S DAUGHTER WHO IS TESTIFYING THIS IS, THIS IS THE DEFENDANT'S VOICE AND ALSO PAMELA ASHBY.

PAMELA ASHBY HAD NOT HEARD THE DEFENDANT'S VOICE FOR THREE YEARS BEFORE SHE WAS, BEFORE TRIAL, PLAYED THE 911 TAPE AND ASKED TO DECIDE WHETHER OR NOT IT WAS HIS.

AND ALSO, IF YOU READ THE RECORD CAREFULLY, WHEN PAMELA ASHBY GETS OFF THE STAND COUNSEL INFORMED THE COURT THAT SHE HAD MADE A FACE OR HAD SNEERED AT THE DEFENDANT.

UNFORTUNATELY IT WAS HER MOTHER THAT WAS KILLED.

>> YOU SAY THE DETECTIVE HEARD CALLS IN THE JAIL AND-- [INAUDIBLE], IS NOT QUALIFIED TO DO IT.

AND SOMEBODY THAT KNEW HIM, THE STEPDAUGHTER, SHE WAS TOO CLOSE TO KNOW IT.

YOU'RE SAYING ON ONE HAND HE DIDN'T REALLY KNOW HIM, HIS VOICE AND YOU'RE SAYING THE OTHER PERSON WAS TOO CLOSE TO KNOW IT.

I MEAN I DON'T GET IT.

>> I'M NOT SAYING THAT.

THAT THE FACT THAT THE PERSON IS TRY-- TOO CLOSE, WHETHER OR NOT THE DETECTIVE'S TESTIMONY WAS HARMFUL OR HARMLESS.

SO IN OTHER WORDS, IF IT IS CUMULATIVE, THEN THAT'S ONE THING.

SO, NO, I'M NOT SAYING THAT SHE CAN'T IDENTIFY IT.

I'M SAYING THAT WHEN YOU'VE GOT A PILE ON SITUATION WHERE YOU'VE GOT A DETECTIVE COMING IN AND INVADING THE PROVINCE OF THE JURY.

BUT WHAT THE ISSUE I WOULD REALLY LIKE TO GET TO--

>> WILL THAT ALWAYS BE THE CASE? ANYTIME A TAPE RECORDING IS INTRODUCED WHERE THE JURY'S BEING ASKED TO IDENTIFY A PERSON, YOU ALWAYS ARE GOING TO MAKE THAT ARGUMENT, THEY ARE INVADING PROVINCE OF THE JURY.

>> NO.

SOMEONE, EXCUSE ME.

THE LAW SAYS THAT WITNESSES CAN SAY THAT THIS IS, I KNOW THIS VOICE.

THIS IS SO-AND-SO'S VOICE.

>> IF A DETECTIVE SPENDS SUFFICIENT PERIOD OF TIME WITH SOMEONE AND BECOMES FAMILIAR WITH THAT PERSON'S VOICE, WHY CAN'T THE DETECTIVE BE THE ONE TO TESTIFY TO THAT?

>> WELL, FIRST OF ALL, HE WAS NOT FAMILIAR WITH THE VOICE BEFORE.

SO WHEN HE LISTENED TO JAIL PHONE CALLS.

AND WHAT HE IS DOING IS ACTING IN LIEU OF AN EXPERT.

IN OTHER WORDS, THEY DON'T, THE LAW DOESN'T AL ALLOW LAY TESTIMONY, UNLESS YOU'RE QUALIFIED AS AN TESTIMONY THAT I'VE EXAMINED THIS KNOWN EXEMPLAR AND THIS UNKNOWN EXEMPLAR.

>> THAT HE WAS TESTIFYING WITH

AS A COMMUNICATIONS EXPERT WITH REGARD TO ALL THE FANCY EQUIPMENT AND ALL THOSE KINDS OF THINGS.

>> RIGHT.

>> HE IS TESTIFYING AS A LAY WITNESS HAVING HEARD THE VOICE ON THE TELL PHONE FOR A NUMBER OF TIMES.

THEY WERE THE QUESTION BECOMES, I MEAN IT SEEMS TO ME, IT IS A QUESTION OF WEIGHT, NOT ADMISSIBILITY THAT WE'RE LOOKING AT HERE.

>> I THINK THE CASES THAT I HAVE CITED ARE CLEAR THAT THAT KIND OF TESTIMONY IS NOT ALLOWED AND IT IS EVEN WORSE WHEN IT COMES FROM A DETECTIVE.

>> WHAT TESTIMONY, I'M SORRY, WHAT TESTIMONY IS NOT ALLOWED?

>> IT IS NOT ALLOWED THAT THIS KIND OF TESTIMONY WHERE SOMEBODY IS JUST COMPARING-- I MEAN THERE ARE--

>> LET ME ASK THIS QUESTION. SAY IN A DOMESTIC VIOLENCE CASE THE WIFE OR THE HUSBAND CALLS THE OTHER PARTY AND THREATENS TESTIFIES I AM FAMILIAR WITH IT, I KNOW I DATED THEM. THAT IS ALLOWED.

I USING TESTIMONY IS NOT ALLOWED?

>> THAT IS A DIFFERENT TYPE OF TESTIMONY.

WHAT THEY ARE SAYING IS SAY THERE IS THE VIDEO OF A ROBBERY OF A STORE.

OR SAY THAT THERE IS ONE IN CASE IN WHICH A MAN HAD BAD CHECKS OR SOMETHING AND THERE WAS A VIDEO OF HIM CASHING THE CHECKS.

THE OFFICER GOES AND GETS HANDWRITING ON THE DRIVER'S LICENSE, AND GETS PICTURES OF THIS GUY AND SAYS THAT IS THE GUY BECAUSE I WENT AND GOT PICTURES OF THE GUY SO HE IS COMPARING NOT HIS PERSONAL

KNOWLEDGE OF THE GUY BUT  
PICTURE OF THE GUY WHICH WOULD  
BE COMPARABLE TO JAIL PHONE  
CALLS WITH THE UNKNOWN  
IDENTIFICATION WHICH WOULD BE  
WHO WAS IT WHO CASHED THESE  
CHECKS AND THAT IS NOT ALLOWED.  
THE CLAW IS VERY CLEAR.  
THE BIG ISSUE IN THIS CASE  
REQUIRES REVERSAL, ISSUE NO. 4  
IN WHICH WHAT DEGREE IT IS.  
THE PROSECUTOR ASKS MR. EVANS  
ISN'T IT TRUE THAT YOU HIRED A  
PRIVATE INVESTIGATOR AND HE SAYS  
NO, THAT IMPLIES IT WAS AN  
OBJECTION BECAUSE AFTER THE  
REBUTTAL CASE WHEN IT WAS CLEAR  
THE PROSECUTOR HAD NO EVIDENCE  
THAT MR. EVANS HIRED A PRIVATE  
INVESTIGATOR TO INVESTIGATE THE  
THEY GERALD TAYLOR, THERE IS A  
MOTION FOR PUNITIVE INSTRUCTION.  
THE CURATIVE INSTRUCTION WAS  
DENIED.

>> ON THE TIMING, SO TELL ME  
WHEN THE OBJECTION IS MADE IN  
REFERENCE TO WHEN THE QUESTION  
IS ASKED.

>> THE OBJECTION WAS MADE AFTER  
THE REBUTTAL CASE BECAUSE WHEN  
THIS WAS FLOATED OUT AND HE SAYS  
DIDN'T YOU HIRE A PRIVATE  
INVESTIGATOR AND THE WITNESS  
SAYS NO, THE ASSUMPTIONS THAT  
HAS TO BE THE DEFENSE LINE IS IT  
WAS ASKED IN GOOD FAITH, THERE  
WOULD BE A REBUTTAL.

>> IN ORDER FOR IT TO BE -- I  
DON'T KNOW ABOUT THE ISSUE OF  
PRESENTATION, OR WHAT STANDARD  
IS USED, IF IT HAD BEEN  
SUSTAINED, IT WOULD BE SUBJECT  
TO A MISTRIAL STANDARD.  
OBJECTION IS OVERRULED IF IT WAS  
TIMELY, SUBJECT TO HARMLESS  
ERROR.

THE CONCERN IS THE JURY HEARD IT  
BACK DURING THE CASE AND  
SHOULDN'T THE OBJECTION OF BEEN  
AT THAT TIME TO REQUIRE THE

STATE TO HAVE OFFERED THEIR GOOD FAITH BASIS FOR THE QUESTION?

>> THE CASE LAW, THE ONLY CASE LAW ON THE ISSUE SAYS THE TIME FOR THE OBJECTION IS AFTER THE STATE FAILED TO PUT ON EVIDENCE TO SUBSTANTIATE THAT INNUENDO. IN OTHER WORDS AT THE TIME OF THE TRIAL THE TRIAL ATTORNEY, THAT IS THE ONLY CASE LAW AVAILABLE TO HIM.

IN FACT IT SAYS IF YOU OBJECT AT THE TIME THE INNUENDO WAS FLOATED THAN THAT IS A PREMATURE OBJECTION BECAUSE IT IS NOT UNTIL BECAUSE THE PROSECUTOR MIGHT --

>> THE DEFENDANT KNOWS WHETHER HE HIRED AN INVESTIGATOR OR NOT.

>> CASE LAW SAYS THE PROPER TIME, THE CASE LAW AS IT STANDS AS THE PROPER TIME FOR THE OBJECTION AND CURATIVE INSTRUCTION, YOU WOULD HAVE TO SAY --

>> I WILL LOOK AT THE CASE LAW. I AM SYMPATHETIC THAT THE QUESTION DIDN'T SEEM TO HAVE -- HE DIDN'T HAVE A WAY TO REFUSE IT BY PUTTING IN EVIDENCE OF SOMETHING HE HAD SOME HERE SAY. THE QUESTION I HAVE, I DON'T WANT THE CASE LAW THAT DISRUPTS SORT OF SAYS AT THAT POINT YOU INSTRUCT THE JURY WHEN YOU HEARD THAT COMMENT TWO DAYS AGO, PLEASE IGNORE IT, IT SEEMS THERE OUGHT TO BE A PROCEDURE. IF THERE IS NOT, THE PROSECUTOR BEFORE THE PROSECUTOR ASKED A QUESTION LIKE THAT TO OFFER A GOOD FAITH BASIS.

I THOUGHT WE HAD SOME CASE LAW BUT I WILL TAKE A LOOK. IF THERE'S A MISTRIAL STANDARD, DID THEY USE THAT, NOW WE GO BACK TO LET'S ASSUME IT WAS A MISTRIAL STANDARD.

>> THE OBJECTION WAS OVERRULED. WE ARE NOT TALKING ABOUT AT THAT

POINT THERE IS NOT EVEN AN OBLIGATION TO ASK FOR A MISTRIAL.

>> IT IS A HARMLESS ERROR STANDARD IS WHAT YOU ARE SAYING.

>> I WOULD THINK SO.

THIS ERROR WAS DEVASTATING BECAUSE WHEN YOU TALK ABOUT WHETHER THIS PERSON ACTED IN THE HEAT OF PASSION, WHETHER OR NOT THIS WAS SECOND DEGREE OR -- HIRING A PRIVATE INVESTIGATOR, FLOATING THAT INNUENDO WITHOUT HAVING ANYTHING TO BACK UP IS DEVASTATING.

>> LOOKING AT THIS IN CONTEXT, I HAVE TROUBLE UNDERSTANDING WHY THAT IS DEVASTATING GIVEN WHAT THE JURY ALREADY KNOWS.

THEY KNOW THAT THE D SENTENCE IS AWARE OF THE VICTIM HAS SAID 8, HE HAS COME THERE, THE MALE VICTIM'S CAR IS IN THE DRIVEWAY AND GOES INTO THE HOUSE WITH A GUN.

I DON'T SEE HOW THIS REFERENCE WAS TO BE POSSIBLE --

>> WHAT THEY ALSO KNOW, WHAT THEY HAVEN'T TOUCHED ON IS THE DAY BEFORE THE MURDERS, ASKED MR. EVANS TO COME WITH A LADDER AND HELP HER WITH THE SMOKE ALARMS AND NOT ONLY THAT BUT ACTORS THAT THEY TAKE THEIR CARS TO BE DETAILED AND WALK OVER TO A BISTRO AND HAVE A PERFECTLY LOVELY BY ORANGE WITH A REALTOR BY THE NAME OF LEAR AND HIS TESTIMONY WAS PRESENTED IN THE DEFENSE CASE AND THEY SAT ON THE SAME SIDE OF THE.

TALKED NOT ONLY CIVILLY BUT WENT BACK AND FORTH IN A CALM CONVERSATIONAL MANNER.

AND THEY LAUGHED TOGETHER AND THE EVIDENCE HAS BEEN REFUTED, NEVER CONTESTED THE EVIDENCE THAT MY CLIENT GETS IN HIS CAR, GOES BACK OVER TO MRS. EVANS'S CONDO, HE WAS HOPING WITH THE

CHRISTMAS TREE WITH THAT LADDER,  
PICKS UP THE LADDER AND HELPS  
REMOVE THINGS IN THE GARAGE.

>> THAT IS VERY CHARMING.

>> THAT IS VERY INTERESTING BUT  
THE IMMEDIATE REALITY IS THAT HE  
GOES IN THERE WITH A GUN.

IT IS HARD FOR ME TO UNDERSTAND  
HOW THIS REFERENCE TO HIRING A  
PRIVATE DETECTIVE.

A LOT OF PEOPLE HIRE PRIVATE  
DETECTIVES.

HOW THAT HAS ANY SIGNIFICANT  
IMPACT ON HOW THE JURY IS GOING  
TO VIEW THE PERSON THEY DECIDED  
HAD GONE WITH A GUN.

>> AFTER THAT THE 911 TAPE WHERE  
THE CLIENT'S NAME IS MENTIONED

--

>> THAT IS CIRCUMSTANTIAL  
EVIDENCE OF IDENTITY, NOT  
INTEND.

>> IS PART OF THE PUZZLE.  
HE WAS IN THERE WITH A GUN AND  
SHOOT HER.

>> IF YOU LISTEN TO THE  
BEGINNING OF IT, SHE SOUNDS A  
GRAND UPSET AND NOT FRIGHTENED.  
THAT IS CIRCUMSTANTIAL EVIDENCE  
THAT AT THIS POINT --

>> MISJUDGED HIM.

HE HAD MISJUDGED HIM.

>> THAT DOESN'T MEAN HE HAD  
BEGUN AT THE BEGINNING OF IT.

>> PEOPLE IN THE BED ROOM, YOU  
ARE SAYING SHE INVITED HIM IN.

>> THERE IS NO --

>> ACCORDING TO THE 911 CAME  
AFTER THE TESTIMONY, THE STATE  
ASKED DID YOU KNOW THE NAME OF  
THE PERSON?

HE SAID I DON'T KNOW THE NAME OF  
THE PERSON I WAS SEEING AT NIGHT  
BUT ON THE TAPES, HE CALLED HIM  
BY HIS NAME.

DID HE HAVE TO DO SOMETHING WITH  
HIM?

>> WE DON'T KNOW WHAT HAPPENED  
BEFORE THE 911 TAPE, AND SAY WHO  
IS THAT OR PICK UP THE PHONE OR



-- HAS TO DO IS SAY JERRY  
ONCE AND COULD HAVE SAID WHO ARE  
YOU?

WITH MY WIFE.

HE SAYS I AM JERRY.

>> DOES IT MATTER WHETHER IT WAS  
JERRY OR SOMEONE ELSE?

>> IF YOU LISTEN TO THE TAKE,  
SHE IS VERY ANGRY, SHE SAYS I  
WILL PUT ON A ROBE, THERE IS A  
LOT OF SCUFFLING, JERRY TAYLOR  
IS STAYING PUT DOWN THE GUN.  
OBVIOUSLY VERY AGITATED OR  
FRIGHTENED AND THERE IS  
SCUFFLING, AND JERRY TAYLOR  
MOVED TOWARDS THE DEFENDANT  
BECAUSE HE WAS SHOT BETWEEN TWO  
AND STUNT 4 INCHES AWAY.

MR. K DECIDED TO BE A HERO, IS  
NOT A VIDEO TAPE.

IS AN AUDIO TAPE.

>> BACK TO THE ORIGINAL ISSUE WE  
WERE DISCUSSING, HE SAID THIS  
WHOLE BUSINESS ABOUT THE  
INVESTIGATOR WAS DEVASTATING.  
IN LIGHT OF ALL THAT I AGREE  
WITH JUSTICE KENNEDY.

I JUST DON'T GET WHY IT IS SO  
DEVASTATING IN LIGHT OF  
EVERYTHING ELSE THE JURY HEARD  
INCLUDING THE 911 KATE?

>> IF YOU WERE SNOOPING AND HE  
HAD NO INTENTION, NO INTENTION  
OF DOING ANYTHING AND HE SEES  
SOME GO TO THE BEDROOM AND GETS  
INTO A RAGE AND THE DOOR IS  
UNLOCKED, DAIRIES NO EVIDENCE  
THAT THE DOOR WAS LOCKED, SHE IS  
IN A GATED COMMUNITY.

THERE ARE OTHER TIMES --

>> I DON'T SEE HOW THIS IS  
RESPONSIVE TO THE QUESTION THE  
CHIEF JUSTICE ASKED.

>> IT IS DEVASTATING BECAUSE IF  
HE WERE ENRAGED HE SEES THE  
SILHOUETTES AND THE DETECTIVE  
WENT TO SEE THE CURTAINS, HE  
SAYS YES, VERY WELL YOU CONCEDE  
TO THE CURTAINS AND HE SEES  
THESE PEOPLE IN THE BEDROOM, HE

FLIES INTO A RAGE AND IF YOU  
LOOK AT -- IT IS AN OLDER CASE  
BUT THAT ENCOUNTER DIDN'T TAKE  
PLACE IN SECONDS.  
THERE WAS A STRUGGLE, ALL SORTS  
OF STUFF WERE GOING ON.  
FLIES INTO A RAGE.  
OBVIOUSLY IT NEGATES  
PREMEDITATION AND MAKES IT SUCH  
THAT THE JURY COULD HAVE FOUND  
BUT FOR THE FACT, BUT FOR THE  
FACT, NOWADAYS THINK HE HAS GONE  
TO THE ADDED OR LENGTH OF THE  
DAY  
>> THESE ADJECTIVES ARE DIVORCED  
FROM REALITY.  
>> IT SUGGEST PREMEDITATION.  
IT SUGGESTS STALKING.  
IT SUGGESTS A CALCULATED STATE  
OF MIND THAT IS NOT SUPPORTED BY  
ACTUAL FACTS.  
>> HE KNEW SHE HAD MADE THAT  
MAY.  
WHY DID HE COME OVER?  
>> I DON'T KNOW.  
>> YOUR TIME --  
>> MY TIME IS WILLING TO MY  
REBUTTAL.  
MY TIME IS WELL INTO REBUTTAL.  
>> YOU HAVE A REBUTTAL.  
>> I WILL GIVE TWO MINUTES TO  
REBUT.  
>> GOOD MORNING, YOUR HONOR'S  
WHICH MAY I PLEASE THE COURT?  
CHRISTINA ZUCCARO FOR THE STATE  
OF FLORIDA.  
I WOULD LIKE TO ADDRESS OPPOSING  
STATEMENTS REGARDING CONSENT.  
THIS IS NOT AN ISSUE WHERE THERE  
WAS A STANDING CONSENT ISSUE  
ASSERTED.  
WE KNOW THAT THE PARTIES ARE  
SEPARATED.  
THEY ARE GOING THROUGH A  
DIVORCE, LIVING IN SEPARATE  
HOMES.  
MRS. EVANS ACQUIRED HER OWN  
CONDOMINIUM WITH HER DAUGHTER.  
THE DEFENDANT DID NOT HAVE A KEY  
TO THE CONDOMINIUM.

HE KNOWS THAT SHE HAS THE DATE.  
AND YES, HE DID GO THERE IN THE  
PAST TO PICK UP HIS SON OR TO  
DROP HIS SON OFF OR WHEN SHE  
INVITED HIM BUT REMEMBER, THIS  
IS AN UPDATED COMMUNITY.

HE DID NOT HAVE THE KEYS SO HE  
WENT BY INVITATION AND THE  
VICTIM KNEW THAT HE WAS COMING  
AND THAT WAS IT.

BECAUSE SOMEONE IS INVITED TO  
SOMEONE ELSE'S HOUSE AND GOES  
THERE A FEW TIMES DOESN'T MEAN  
THEY HAVE THE CONSENT TO GO IN  
WHENEVER THEY WANT.

IT IS STANDING CONSENT ALL THE  
TIME.

>> WAS THE DOOR LOCKED?

>> THE FRONT DOOR WAS LEFT  
UNLOCKED.

WHEN DEPUTIES ARRIVED ON SCENE  
IT WASN'T LOCKED.

WHETHER IT WAS LEFT UNLOCKED  
WHEN THE DEFENDANT LEFT OR IT  
WAS UNLOCKED.

>> SINCE THERE IS NO SIGN OF A  
BREAK IN HE EITHER HAD THE KEY  
OR IT WAS UNLOCKED.

>> IS THAT THE LOCATION WHERE HE  
AND THE VICTIM LIVED WHEN THEY  
WERE TOGETHER?

>> IT IS NOT.

SHE ACQUIRED THAT PROPERTY AT  
THE TIME SHE FILED FOR THE --

>> HE WOULD NOT HAVE A KEY  
UNLESS SHE GAVE IT TO HIM.

>> NOT EXACTLY.

SHE DID NOT GIVE HIM A KEY.

HE SAID HE DID NOT HAVE A KEY  
BET THE KEYS WENT MISSING

COMMAND STRANGELY ENOUGH, THE  
DEFENDANT'S MOTHER RETURNED

THOSE KEYS TO THE VICTIM SAYS  
SHE WAS NEVER -- HE WAS NEVER

GIVEN A KEY BUT IT IS POSSIBLE  
THAT HE COULD HAVE TAKEN KEYS  
AND MADE A COPY.

>> ON THE BURGLARY THING.

IF WE TALK ABOUT SUFFICIENCY OF  
EVIDENCE WAS THIS A GENERAL

VERDICT THAT THE JURY --

>> YES.

>> OKAY.

IN MY VIEW THERE IS NO QUESTION  
THERE IS ENOUGH FOR PREMEDITATED  
MURDER.

THERE FOR AS TO SUFFICIENCY OF  
EVIDENCE, IT DOESN'T HANG ON A  
BURGLARY.

SO NOW THE OTHER ISSUE, THE  
BURGLARY GOES TO WHETHER IT IS  
UP PROPER STATUTORY AGGRAVATING.  
IN TERMS OF ITS BEING  
PROPORTIONATE, YOU HAVE GOT TWO  
VICTIMS THAT ARE KILLED, NOT ONE  
VICTIM.

IT SEEMS TO ME, I ALWAYS THINK  
THIS ABOUT THESE CRIMES, THE  
BURGLARY TO ME DOESN'T REALLY  
ADD TO THE -- IF IT WAS JUST THE  
BURGLARY, JUST THE BURGLARY AND  
YOU DON'T KNOW HOW AND ALL OF A  
SUDDEN THE PERSON IS GOING TO  
GET THE DEATH PENALTY BECAUSE IT  
IS BURGLARY AND THERE'S NOTHING  
ABOUT AGGRAVATED MURDER YOU HAVE  
A CONCERN IN MY VIEW ABOUT  
PROPORTIONALITY BUT WE DON'T  
HAVE THAT HERE BECAUSE WE HAVE  
TWO MURDERS AND WE HAVE THE  
ADDITIONAL FELONY THAT IS THE  
MURDER OF TWO PEOPLE VERSUS ONE  
WHICH HAS GOT TO BE A MORE  
AGGRAVATED MURDER FOR EACH IN MY  
VIEW.

IS IT THE STATE'S POSITIONS THAT  
FOR PROPORTIONALITY YOU NEED THE  
BURGLARY TO FIND THESE DEATHS  
SENTENCES PROPORTIONATE?

>> ABSOLUTELY NOT.

OUR POSITION IS THE BURGLARY  
AGGRAVATOR WAS ESTABLISHED BY  
SUBSTANTIAL EVIDENCE.

>> YOU DON'T HAVE PREMEDITATED.  
THE PERSON WAS THERE BY CONSENT  
AND THEY KILLS SOMEONE, THE FACT  
THAT THIS OTHERWISE MURDER  
BECOMES A DEATH PENALTY, THAT IS  
WHERE THE CONCERN IS THAT THAT  
DOESN'T SEEM TO BE THE CASE

HERE.

BECAUSE IT DOESN'T APPEAR EVEN AT THE OUTSET THAT HE HAD CONSENT TO ENTER INITIALLY WHICH IS WHAT THE STATE'S THEORY WAS. THERE IS A FRIENDLY QUESTION. THE OTHER QUESTIONS, WE DID NOT GET TO THE MANY ARGUMENTS THAT THIS PROSECUTOR MADE THAT SOME WERE OBJECTED TO AND SOME WERE NOT, THAT SEEMED LIKE THEY WENT COMPLETELY OVERBOARD THROUGHOUT. I DON'T KNOW IF WE WILL HAVE TIME TO ADDRESS EACH AND EVERY ONE OF THEM BUT STARTING WITH THE ISSUE OF ASKING ABOUT THE INVESTIGATOR.

I AM SOMEWHERE IN BETWEEN. I DON'T KNOW THAT I WOULD SAY IT IS DEVASTATING BUT IS THE STANDARD FOR HOW YOU LOOK AT THAT COMMENT, THEY DID ASK FOR A CURATIVE INSTRUCTION, THE JUDGE DENIED IT.

IS THE STATE'S POSITION THAT IT WAS A PROPERLY PRESERVED OBJECTION OR WE GO TO THE MISTRIAL STANDARD? THAT MATTERS AS TO WHETHER WE DO A HARMLESS ERROR BEYOND REASONABLE DOUBT WHICH DOESN'T NECESSARILY MEAN IT HAS TO BE DEVASTATING VERSUS THE MISTRIAL STANDARD WHERE WE HAVE THE FUNDAMENTAL FAIRNESS OF THIS TRIAL BEING AFFECTED.

>> I BELIEVE THE OBJECTION WAS MADE WHEN THE QUESTION WAS ASKED AND IT WAS OVERRULED.

>> BECAUSE MR. DODGE SAYS IT WASN'T MADE UNTIL AFTER REBUTTAL THAT THEY PUT IN GOOD FAITH BUT YOU ARE SAYING THERE WAS A CONTEMPORANEOUSLY OBJECTION.

>> I THOUGHT THAT IT WAS BUT IT WAS I GET IN MORE DETAIL DURING THE MOTION FOR A MISTRIAL.

>> IF IT WAS AN IMPROPER QUESTION BECAUSE HE DIDN'T HAVE GOOD FAITH BASIS FOR IT, THEN

DON'T WE APPLY WHAT THE HARMLESS  
ERROR RULE, WHICH MEANS THAT YOU  
AS THE STATE HAVE TO BEAR THE  
BURDEN OF SHOWING THERE WAS NO  
REASONABLE POSSIBILITY  
CONTRIBUTING TO THE VERDICT.

>> THAT IS CORRECT.

>> DO WE ALSO LOOK AT SOME OF  
THE OBJECTIONS AND CLOSING  
ARGUMENT THAT WERE MADE AND IT  
LOOKS TO ME LIKE THE DEFENSE  
LAWYER OBJECTED TO MANY  
ARGUMENTS FACT APPEAR TO BE  
IMPROPER, DENIGRATING THE  
DEFENSE LAWYER AND THE JUDGE  
DIDN'T SUSTAIN ANY OF THEM.  
ARE YOU IN A POSITION TO SAYING  
THAT THE ARGUMENTS THAT ARE  
POINTED OUT BY THE DEFENSE  
LAWYER WERE ALL PROPER AND  
PERMISSIBLE OR DO YOU AGREE THAT  
SOME OF THEM WENT OVER THE LINE  
INTO IMPERMISSIBLE ARGUMENTS.

>> THE COMMENTS WERE NOT  
IMPROPER.

CERTAINLY WHEN YOU LOOK AT THEM  
IN ISOLATION THEY DO APPEAR TO  
BE BAD.

WHEN YOU LOOK AT THE ENTIRE  
CONTEXT OUT OF WHERE THOSE  
STATEMENTS COME FROM, THEY WERE  
NOT IMPROPER.

>> HERE IS THE PROBLEM.

I AGREE IF HE WERE NOT  
PRESERVED, YOU HAVE TO LOOK AT  
THEM AND SAY WAS THE FAIRNESS OF  
THE TRIAL UNDERMINED, BUT IF A  
PROSECUTOR MAKES IMPROPER  
REMARKS AFTER IMPROPER REMARKS,  
NONE OF THEM ARE SUSTAIN SO THE  
JURY IS JUST HEARING THEM,  
PLEASE PROSECUTOR, MOVE ON AND  
COMBINED WITH THE QUESTION ABOUT  
THE INVESTIGATOR, DO WE LOOK AT  
EACH OF THE ERRORS THAT WERE  
PRESERVED, AND DECIDE WHETHER  
THOSE ERRORS, CAN YOU PROVE  
BEYOND A REASONABLE DOUBT IT HAD  
NO IMPACT ON THE JURY'S VERDICT,  
THAT IS WHERE I AM CONCERNED

BECAUSE SEVERAL OF THESE WERE PROPERLY PRESERVED AND I DON'T THINK WE JUST GO AND SAY WE GOT TO LOOK AT THE FAIRNESS OF THE TRIAL SO EXPLAIN THAT TO ME HOW WE WOULD DO THAT WITH AN IMPROPER REMARKS AND CLOSING ARGUMENT THAT THE OBJECTION WAS MADE.

THE RIGHT TO A JURY TRIAL. AND IT COULD BE ON VIDEO TAPE, YOU HAVE A RIGHT TO A JURY TRIAL.

>> THERE WAS NO OBJECTIONS THAT WAS MADE TO FAT CONTENT.

>> THEY DID OBJECT CONTENDING FAT THE PROSECUTOR WAS DENIGRATING THE DEFENSE.

>> THE FIRST TIME THAT IT WAS, AS THEY DID AND THAT WAS PART OF THE MOTION FOR A NEW TRIAL AND WHEN YOU LOOK AT THAT COMMENT, THE ENTIRE CONTEXT OF WHAT THE PROSECUTOR WAS SAYING, IT DOESN'T MATTER IF YOU HAVE A CRIME CAPTURED ON RECORDING, WE HAVE A RECORDING CAPTURING THE ENTIRE COMMISSION OF A CRIME, IT DOESN'T MATTER.

WE KNOWS WHAT WE HAVE THE RIGHT TO A JURY TRIAL IN AMERICA AND DICK IS THE STATE'S VERDICT. DOESN'T MATTER HOW MUCH EVIDENCE THERE IS, WE HAVE TO PROVE THE CASE.

>> YOU GOT THAT OUT OF THAT ARGUMENT?

THAT IS THE MOST CREATIVE APPELLATE ARGUMENT I HAVE EVER HEARD.

>> THANK YOU.

>> AS I LOOK AT THIS, THIS IS A VILE, I DON'T KNOW HOW MY COLLEAGUES FEEL BUT THE FILED THIS YOUNG PROSECUTOR NEEDS TO RECEIVE A MESSAGE, THIS IS NOT HOW YOU ARGUE A CASE AND HE GOES DOWN THROUGH IT.

THIS IS A WORLDLY IN A WORLD OF DEFENSE LAWYERS.

THERE MAY HAVE BEEN SOME ABSURD  
OF ARGUMENTS THAT YOU CAN'T MAKE  
THAT ARGUMENT.

THIS IS BAD TV.

THEY COULDN'T EVEN GET ON TV  
WITH THAT THEIR DEFENSE IS SO  
BAD.

THE JURY TRIAL, SEEMS TO BE SO  
GUILTY BUT HE GETS A JURY TRIAL  
AND THIS IS NOT ONE OF THOSE  
WHERE HE WAS SAYING, THIS IS  
AMERICA AND WE THE JURY TRIALS.  
MOST MURDERS CREATED BY FAMILY  
MEMBERS.

WAS THERE EVIDENCE OF THAT AT  
ALL?

AND GO DOWN, HE URINATED HIMSELF  
WHEN HE WAS ARREST.

MIGHT NOT BE AS BAD BECAUSE  
THERE IS EVIDENCE OF THAT.

WHETHER IT IS ENOUGH TO TURN THE  
CASE I DON'T KNOW.

YOU NEED TO SET THE PROSECUTOR  
TOWN AND THEY LOOK AT THAT AND  
DON'T DO IT AGAIN.

>> I CERTAINLY UNDERSTAND.

>> TOLD TRIAL JUDGE I AM TOUGH.

I HAVE NEVER BEEN REVERSED.

ISN'T THAT WHAT HE TOLD THE  
JUDGE?

SOME PEOPLE DILLYDALLY AROUND,  
BUT I AM A TOUGH PROSECUTOR.

>> HE DIDN'T SAY THAT.

THAT WAS ANOTHER CASE.

>> I DON'T RECALL THAT BEING  
PART OF THE CASE BUT I  
UNDERSTAND WHERE YOUR CONCERNS  
ARE COMING FROM.

I AM NOT ARGUING THAT THE  
CLOSING ARGUMENT WAS BEST  
PRACTICE.

THE PROSECUTOR DIDN'T FOLLOW  
BEST PRACTICE IN THIS CASE BUT  
WHEN YOU LOOK AT THE ENTIRE  
CONTEXT IT IS IMPORTANT TO  
REMEMBER THESE COMMENTS CAME IN  
REBUTTAL.

WHEN YOU LOOK AT WHAT THE  
DEFENSE WAS ARGUING --

>> REBUTTAL IS WORSE.



THEY WEREN'T SUSTAINED.  
THIS IS WHERE WE LOOK AND SAY  
WHAT DO WE ASK?  
WE TRY SO HARD OVER THE YEARS.  
WHAT DO WE ASK PROSECUTORS TO  
TRY TO DO?  
SEEK JUSTICE, NOT TO GET A  
CONVICTION.  
TRIAL JUDGES TO TAKE CONTROL  
WHERE THEY CAN END HERE IF YOU  
SAY IT IS JUST CLOSING ARGUMENT,  
LET THEM ARGUE WHAT THEY WANT,  
WE END UP IN A DEATH CASE WITH  
THESE KIND OF THINGS AND SO IT  
IS -- YOU DON'T WANT TO BE IN A  
POSITION TO HAVE TO REVERSE THE  
CASE BECAUSE OF CLOSING  
ARGUMENT.  
IT LOOKS -- THIS 911 TAPE IS  
DEVASTATING AGAINST THE  
DEFENDANT.  
TO ME, NO QUESTION ABOUT IT.  
YOU DIDN'T NEED TO GO THERE  
WHICH WE SAY OVER AND OVER.  
IT WAS ON A PLATE FOR THIS  
PROSECUTOR.  
THIS CASE.  
YOU ARE UP HERE, YOU ARE BEING  
REASONABLE AND I AM NOT TAKING  
IT OUT ON YOU.  
GOING BACK TO THE POINT ABOUT  
THE VOICE IDENTIFICATION.  
HERE IT IS MY CONCERN.  
I AGREED THE WE HAVE ALLOWED  
CASES WHERE YOU HAVE A  
CONSPIRACY AND YOU HAVE THE LONG  
TAPE AND EXPERTS LISTEN TO THE  
TABLE AND SAY TO THE VOICES ARE,  
BUT ASSUMING THAT YOU HAVE GOT  
LAY PEOPLE WHO ARE FAMILIAR WITH  
THE VOICE, AND YOU CAN SAY THEY  
HAD AN INTEREST IN IT, YOU HAVE  
SOMEBODY WHO IS NOT AN EXPERT  
AND THE JUDGE SAYS THIS IS  
SOMETHING THE JURY CAN FIGURE  
OUT, AND THE DETECTIVE WHO IS  
THE LEAD DETECTIVE SAYING IT IS  
HIM, DOESN'T THAT END UP AS A  
SLAM DUNK WHERE THIS IS NOT JUST  
ANOTHER LAY PERSON.

IT IS THE STATE AS IF THE PROSECUTOR IS SAYING YOU CAN'T DO THAT BUT I HAVE LISTENED TO THIS KATE AND I KNOW THIS IS WHO IT IS.

WHAT IS OUR LAW ON THAT AND HOW IS IT DIFFERENT THAT SOMEBODY WATCHES A VIDEO TAPE OF HIS SOMEBODY IS CENTS THE POLICE OFFICER WATCHES IT MORE THEY GO I KNOW -- I HAVE LOOKED AT THAT PERSON, I HAVE LOOKED AT THAT PHOTOGRAPH AND IT IS THE DEFENSE AND.

IT IS PRETTY DEVASTATING WHEN IT COMES FROM A POLICE OFFICER WHO IF THEY DON'T HAVE SPECIAL TRAINING, WHAT IS THE LAW ON IT AND IS THERE JUST DISCRETION TO SAY 11 TESTIFY, IN VOICE IDENTIFICATION BECAUSE HE LISTENED TO IT MORE?

>> HE WAS TESTIFYING AS A LAY OPINION, NOT AN EXPERT.

>> THAT IS A PROBLEM.

WHEN AN OFFICER, THEY HAVE GOT TO BE CAREFUL, IT CARRIES EXTRA WAGE.

WHEN YOU LISTEN TO THE LEAD INVESTIGATOR, HE IS NOT JUST A LAY PERSON, HE IS THE DETECTIVE. TO ME IT PUTS THE SOME OF THE STAGE ON HIM SO I THIRD CASES THAT GO BOTH WAYS?

WHAT IS THE LAW IN THIS?

>> THE CASE IS, HAVE DEALT WITH THIS, IT HAS BEEN AN OFFICER, THE OFFICER DIDN'T BECOME FAMILIAR WITH EITHER THE VOICE OR THE PERSON, I HAVEN'T FOUND A CASE SPECIFIC TO THIS SITUATION.

>> THE NORMAL SITUATION THE OFFICER HAS ALREADY HAD SOME CONTACT WITH THE PERSON AND IS FAMILIAR WITH THE PERSON VERSUS IN THIS CASE, AND OFFICERS THAT SEEMS TO ME MADE HIMSELF FAMILIAR WITH THE PERSON'S VOICE BY LISTENING TO THE TAPE OR LISTENING TO OTHER CONVERSATION,

ISN'T THAT A DIFFERENCE?  
HAS HAD CONTACT WITH THE PERSON  
IN WHATEVER CONTEXT AND KNOWS  
THAT VOICE VERSUS SOMETHING THAT  
MAKES THEMSELVES FAMILIAR WITH  
THE VOICE?

>> THERE IS A DIFFERENCE BUT THE  
IMPORTANCE IS THAT CAN OCCUR  
AFTER THE CRIME OR THE  
RECORDING.

>> COULD THE DEFENSE HAVE GONE  
AND SOMEONE AS UPSTANDING, WHO  
DOES THE SAME FAME AS THE  
DETECTIVE DID AND LISTENED TO IT  
OVER AND OVER AND LISTENED TO  
THE SAME -- THE SAME TAPE, OR  
THE DEFENDANT'S PRIEST OR  
MINISTER AND SAY I LISTENED TO  
THIS.

IS NOT THE DEFENDANT.  
YOU SAY HE DIDN'T OFFER IT,  
WASN'T BEING OFFERED AS AN  
EXPERT, IT WAS A LAY PERSON BUT  
A LAYPERSON DID SOMETHING THAT  
MADE IT SOUND LIKE THEY BECAME  
AN EXPERT IN THIS GUY'S VOICE.  
THAT IS THE PROBLEM AND I DON'T  
KNOW HOW YOU WOULD ALLOW IT IN  
WITH AN -- THE DEFENSE  
OBJECTIVES THE DEFENSE DID  
SOMETHING LIKE THIS WITH  
SOMEBODY ELSE, A RETIRED POLICE  
OFFICER AND SAY WE ARE NOT  
OFFERING HIM AS AN EXPERT BUT  
JUST AS SOMEBODY WHO LISTENED TO  
THIS VOICE OVER AND OVER.

>> WHAT DID DETECTIVE LISTENED  
TO IS THE JAIL RECORDINGS,  
WASN'T LISTENED TO THE 911 CALL  
OVER AND OVER AGAIN.

>> SAME THING, DEFENSE LAWYERS  
SAME THING, LISTENS TO IT.

>> IF THE WITNESS SAID WE HAD  
BECOME SUFFICIENTLY FAMILIAR  
WITH THE VOICE TO THE POINT WE  
MAKE AN IDENTIFICATION THEN THE  
STATE WOULD NOT --

>> WAS THERE ANYONE LOCALLY WHO  
KNEW THE DEFENDANT OR A COUSIN  
OR BROTHER OR SISTER, ANYONE OR

ANYBODY ELSE WHO HAD DEALINGS WITH HIM, THIS PROSECUTOR COULD HAVE BROUGHT IN TO IDENTIFY THE VOICE, LET'S MAKE A DETECTIVE FAMILIAR WITH THIS.

LOOKS BAD.

>> WERE THERE OTHER PEOPLE?

>> THAT IS CORRECT.

THERE WERE TWO OTHER WITNESSES WHO MADE THE IDENTIFICATION BUT

--

>> THE FACT THAT THEY DID. IT BECOMES IN MY MIND IMPORTANT THAT THE DETECTIVE WHO IS WORKING THIS CASE GETS UNDERSTAND, THIS IS THIS MAN'S VOICE BUT ONLY KNOWS THAT BECAUSE HE HAS MADE HIMSELF FAMILIAR AND SO IF THAT IS THE CASE AND IT SEEMS TO ME HE SHOULD HAVE BEEN QUALIFIED AS AN EXPERT AS OPPOSED TO SOMEONE WHO IS FAMILIAR AS OF LATE PERSON WITH HIS VOICE.

>> THIS IS A WITNESS THAT THE PROSECUTOR HAD ACCESS TO. HE HAD THE ABILITY TO LISTEN TO THESE RECORDINGS OVER AND OVER AGAIN.

>> THIS IS WHY WE WERE SO CAUTIOUS ABOUT POLICE OFFICERS GOING BEYOND THEIR SUBJECT BECAUSE WE SAY OVER AND OVER AGAIN THAT THEY ENJOY A SPECIAL PLACE IN THIS SOCIETY, IN A MAJORITY OF SOCIETIES AS SOMEONE WHO'S THE OPINION YOU ARE GOING TO VALUE.

WE DON'T SAY, THE POLICE OFFICERS SAY AFTER I DID MY INVESTIGATION I NARROWED IT DOWN AND THOUGHT THIS IS THE GUY THAT DID IT.

CAN'T GIVE IT BECAUSE YOU ARE GOING TO GET SPECIAL DEFERENCE IN THAT.

THERE WAS A CASE WE HAD, A VIDEO TAPE OF TWO PEOPLE COMING -- CRIME WAS ON TAPE AND ONE PERSON WHO'S MASK, THERE WERE SOME

ISSUES ABOUT WHO COULD IDENTIFY WHO THAT WAS.

I DON'T THINK IN THAT SITUATION IF YOU LET THE POLICE OFFICERS SAY I LOOKED AT THAT PHOTOGRAPH, IT IS THE SAME PERSON BECAUSE THEY ARE JUST DOING WHAT A JURY WOULD DO.

CHANGE YOU ARE TAKING AWAY FROM THEM AND THAT IS WHAT THE JUDGE SAYS.

HE IS JUST DOING WHAT THE JURY WOULD DO BUT HE IS NOT.

>> THE JURY COULDN'T IDENTIFY THE ONE WHO PLAYED THE TAPE, COULDN'T IDENTIFY WHO THE PERSON WAS, COULD THEY?

>> DO YOU MIND REPEATING THAT?

>> HAD DETAINED BEEN PLAYED TO THE JURY WITH NO OTHER EXPLANATION WOULD THEY HAVE BEEN ABLE TO IDENTIFY WHO THE VOICE BELONGED TO?

>> THAT DEPENDS.

WHEN THE TESTIMONY WAS PRESENTED THE STATE DIDN'T KNOW WHETHER THE DEFENDANT WAS GOING TO TESTIFY.

HE DID TESTIFY AND THE JURY WAS ABLE TO COMPARE HIS VOICE NOT ONLY WITH HIS TESTIMONY BUT HE REPEATED THE STATEMENTS IN THE CALL SO THE JURY WAS ABLE TO DO AND AT AND THESE OTHER WITNESSES ALSO MADE THE IDENTIFICATION AND IT IS IMPORTANT TO NOTE THAT THE JURY WASN'T MISLED INTO BEING TOLD THAT THE DETECTIVE WAS FAMILIAR WITH THE DEFENDANT BEFORE.

THE JURY WAS TOLD HOW THE DETECTIVE BECAME FAMILIAR AND THAT WAS AN ARGUMENT THE DEFENDANT HAD AN OPPORTUNITY TO MAKE DURING CLOSING ARGUMENT THAT THE DETECTIVE DIDN'T KNOW HIM BEFORE, HE HAD DEVELOPED AND AS A SUSPECT SO YOU SHOULDN'T RELY ON HIS --

>> IF THE SUPREME COURT OF

FLORIDA APPROVED THIS PROCEDURE WHERE YOU CHOOSE A DETECTIVE IN THE CASE TO BECOME FAMILIAR WITH THE VOICE AND TESTIFY AS TO THE COMPARISON, IF WE HAVE APPROVED THAT, THAT WOULD BE THE PROCESS USED THROUGHOUT THE STATE OF FLORIDA FROM NOW ON.

WHY SHOULD WE DO THAT?

>> BECAUSE THE WITNESS IF THERE IS A FAMILIARITY ESTABLISHED, THEN THE WITNESS SHOULD BE TREATED AS ANY OTHER WITNESS. HOWEVER, IF YOUR HONOR WAS TO ESTABLISH THAT RULE, THIS CASE WOULD NOT BE EFFECTIVE BASED ON THE OTHER IDENTIFICATION'S MADE AND FACT THAT THE DEFENDANT TESTIFIED AND THE JURY HEARD HIS VOICE AND WAS ABLE TO MAKE THAT DETERMINATION THE DETECTIVE DIDN'T SWAY THE JURY.

>> IT IS HARMLESS EVEN IF IT WAS ERROR, OFF TO ALLOW THE DETECTIVE TO MAKE THAT COMPARISON, IT WAS HARMLESS. IS THAT YOUR ARGUMENT?

>> YES BECAUSE THE DEFENDANT, THE JURY HEARD THE DEFENDANT'S TESTIMONY AND THEY WERE ABLE TO MAKE THAT DETERMINATION WITH THE OTHER WITNESSES AS WELL. THE DETECTIVE DIDN'T CHANGE THEIR OPINION WHEN THEY HAD THE ABILITY TO MAKE THE DETERMINATION FOR THEMSELVES.

>> AS I LOOK AT THE CASE LAW, I THINK THIS IS NOT THAT THIS IS INVADING THE PROVINCE OF THE JURY AND THERE IS CASE LAW THAT SAYS AGAIN UNLESS YOU HAVE SOME PRIOR FAMILIARITY WITH THE DEFENDANT, YOU HAVE THAT, THE INVESTIGATOR COMMENT, YOU DON'T LOOK AT IN ISOLATION. WITH THIS DEFENDANT GOT A FAIR TRIAL IS MY CONCERN. YOU CAN'T DO SOMETHING WITH THE LAW AND IT IS OKAY BECAUSE IT DIDN'T AFFECT THE JURY, EACH ERA

MAY HAVE AFFECTED THE JURY.  
BE MADE YOU HAVE ENOUGH THAT IT  
IS SO OVERWHELMING THAT -- WE  
DON'T SAY OVERWHELMING IS THE  
TEST FOR WHETHER IT IS  
REVERSIBLE.

>> I THINK IT IS IMPORTANT TO  
LOOK AT ALL OF Z'S ALLEGED  
ERRORS AND IF YOU LOOK AT HOW  
THAT WOULD HAVE AFFECTED THE  
JURY, WHEN THEY HAVE -- THEY  
HAVE THE DEFENDANT'S VOICE  
TESTIFYING, THEY HAVE CONTRACTED  
ON THE RECORDING, THEY HAVE HIS  
NAME BEING USED.

>> THERE IS NO EVIDENCE THEY  
SELECTED A POLICE OFFICER TO  
LISTEN TO THE TAPES FOR THE  
PURPOSES OF TESTIFYING IN THIS  
CASE.

AS I UNDERSTOOD IT THIS IS THE  
INVESTIGATING OFFICER WHO I  
ASSUME AS PART OF DOING THIS  
CASE YOU LISTEN TO THE  
TRANSMISSIONS OF THE DEFENDANT  
TO SEE WHAT EVIDENCE MAY COME  
INTO THE CASE AND BY DOING THAT  
YOU BECOME FAMILIAR WITH IT.  
IS A LITTLE DIFFERENT.

THIS IS HOW HE BECAME FAMILIAR  
WITH THAT VOICE IF YOU ARE  
PERFORMING HIS LEGITIMATE  
INVESTIGATIVE FUNCTIONS.

I AM SEARCHING FOR WHY THIS IS  
DIFFERENT.

SOMEONE MAY HAVE KNOWN THEM IN A  
DIFFERENT CAPACITY BUT THIS WAS  
NOT A SET UP WHERE YOU MAKE A  
GOOD WITNESS SO YOU LISTEN TO  
THESE TO TESTIFY.

WASN'T THIS JUST PART OF THE  
INVESTIGATION OF THIS MURDER OR  
THESE MURDERS?

>> YES.

>> MY UNDERSTANDING WAS HE WAS  
THE OFFICER IN CHARGE.

>> HE WAS THE LEAD DETECTIVE.

>> DOES THAT MAKE A DIFFERENCE?

>> HE LISTENED TO THE RECORDINGS  
AND BECAME FAMILIAR TO THE VOICE

AND TESTIFIED TO THAT EFFECT.  
IT WAS CUMULATIVE OF THE OTHER  
IDENTIFICATIONS THAT WERE MADE.

>> THESE INTERROGATION THIS THAT  
HAVE TAKEN TWO DAYS.

I WOULD AGREE THAT IN THOSE TWO  
DAYS, THE DETECTIVE BECOMES MORE  
FAMILIAR WITH THE ACCUSED THAN  
ANYONE ELSE EXCEPT THE WHITE FOR  
THE HUSBAND.

I UNDERSTAND IN THAT INSTANCE  
BUT HERE I DON'T KNOW THAT THE  
DETECTIVE HAD THAT MUCH ACCESS  
TO COME UP WITH A CONCLUSION.

>> HE WAS ASKED WHETHER HE  
BECAME FAMILIAR AND HE SAID HE  
COULD AND HAD THE ABILITY TO  
IDENTIFY HIS VOICE.

>> WHAT THE JUDGE SAID WAS THAT  
HE WOULD ALLOW IT EVEN THOUGH HE  
REALIZED THE JURY WAS CAPABLE OF  
MAKING THE COMPARISON.

THEY MAKE THEIR OWN DECISION ON  
LISTENING TO THEMSELVES.

TO MEET THE CASE LAW HAS BEEN  
FAIRLY CONSISTENT THAT IF YOU  
KNOW THE PERSON FROM PREVIOUSLY  
AND HAVE THAT FAMILIARITY, NOT  
JUST COMPARING TAPE TO TAKE.  
WE WILL SEE WHERE WE GO ON THIS.

>> HOW WAS THE JURY ABLE TO  
COMPARE FOR THEMSELVES?

>> THE DEFENDANT TESTIFIED IN  
THIS CASE SO FROM LISTENING TO  
HIS TESTIMONY AND NOT ONLY THAT  
BUT HE ACTUALLY WAS ASKED TO  
REPEAT EACH OF THESE STATEMENTS  
THAT WERE MADE DURING THE  
RECORDING AND HE DID THAT.

>> DIDN'T HE ATTEMPTS TO CHANGE  
HIS VOICE?

>> HE DID BUT BECAUSE HE ALSO  
TESTIFIED BEFORE WITH IN HIS  
REGULAR TESTIMONY, THE JURY  
COULD HAVE DETERMINED WHETHER OR  
NOT IT MATCHED THE VOICE AND THE  
RECORDINGS AND ALSO THE FACT  
THAT HE POSSIBLY CHANGED HIS  
VOICE.

THAT WAS SOMETHING THE JURY TOOK



INTO CONSIDERATION.

>> THEY ALSO HAD THE STATE PUT ON TWO WITNESSES WHO KNEW THE DEFENDANT AND WAS ABLE TO IDENTIFY HIS VOICE.

I GUESS THIS GOES BACK TO THE QUESTION, WAS THERE REALLY ANY DOUBT THAT IT WAS NOT HIM?

WAS THERE ANY EVIDENCE THAT HE WAS IN THAT HOUSE?

WAS THERE A FINGERPRINT OR ANYTHING UPSTAIRS?

ANYTHING OTHER THAN THE 911 TAKE THAT IDENTIFIED HIM AS BEING THE PERPETRATOR?

>> THE SHELL CASINGS LEFT ON THE SCENE MATCHED, THEY WERE FIRED FROM HIS GUN.

THEY WERE A DIRECT MATCH.

THERE WAS NO QUESTION.

>> THE PERSON, THE VICTIM IDENTIFIED HIM BY NAME.

>> EXACTLY.

EXACTLY.

>> BUT THE DEFENSE WAS AN ALIBI. HE WASN'T THERE.

>> YES.

ALL OF THE EVIDENCE REFUTED THAT.

>> THAT IS HIS CASE OF THESE HE HAD AN EYE WITNESS TO SAY WASN'T THERE.

>> AND WE HAVE HIM AT THE SCENE, HIS NAME BEING USED, SHOWCASING THIS, WE IN NEW THE VICTIM WAS GOING ON A DATE.

ALL OF THE EVIDENCE LINKS HIM, THERE IS NO OTHER REASONABLE POSSIBILITY THAT IT COULD HAVE BEEN ANYONE ELSE.

>> HE WAS FRAMED, THIS WAS A SET UP?

PEOPLE PLANTED -- ISN'T THAT WHAT THE DEFENDANT TRIED TO ASSERT?

>> IT IS.

IT DOESN'T ACCOUNT FOR THE FACT THAT IT WAS CAPTURED AND HIS NAME WAS USED.

>> IN ADDITION TO THAT.

>> TIME IS UP.  
>> I WOULD ASK THAT THE COURT OF  
TERM CONVICTIONS.  
>> TWO MINUTES.  
>> I WOULD LIKE TO ADDRESS THE  
JURY CLOSING A ARGUMENT BECAUSE  
I DIDN'T GET AN OPPORTUNITY TO  
ADDRESS IT.  
FIRST OF ALL THE PROSECUTOR WAS  
NAMED IN SECOND DISTRICT COURT  
OF APPEAL OPINION IN 2001 AND  
THIS IS WHAT YOU WERE THINKING  
OF WHEN YOU SAID SOMETHING ABOUT  
BEING TOUGH.  
BUT THERE IS THE COMMENT ON THE  
RIGHT TO A JURY TRIAL.  
THAT IS A CONSTITUTIONAL RIGHT.  
TO SUGGEST HE WAS DOING  
SOMETHING WRONG BY EXERCISING A  
CONSTITUTIONAL RIGHT WAS  
IMPROPER.  
MOST HOMICIDES AS WE ALL KNOW,  
ARE COMMITTED BY FAMILY MEMBERS.  
TO SAY THAT ONLY IN A WORLD  
POPULATED BY A DEFENSE  
ATTORNEYS, IT IMPLIES THAT  
DEFENSE ATTORNEYS LIVE IN THEIR  
OWN LITTLE WORLD AND IS A  
FANTASY WORLDS.  
>> LOOK AT THE CONTEXT OF THAT  
COMMENT.  
WASN'T THAT MADE IN RESPONSE TO  
THE DEFENSE'S SUGGESTIONS THAT  
IT COULDN'T BE HIM BECAUSE HE  
WOULDN'T HAVE LEFT THOSE  
CARTRIDGES THERE THAT COULD BE  
LINKED TO HIM AND THEREFORE IT  
COULDN'T BE HIM HE WOULD  
NECESSARILY HAVE COVERED THAT.  
HE WOULD HAVE BEEN SMART ENOUGH.  
>> IF I MAY RESPOND TO.  
I KNOW THE CLOSING ARGUMENT  
DIDN'T TALK A LOT ABOUT  
PREMEDITATION.  
THE ARGUMENT WAS THIS COULDN'T  
HAVE BEEN A DIABOLICAL  
CALCULATED PREMEDITATION BECAUSE  
IF SOMEBODY PREMEDITATED THIS  
THEY WOULDN'T HAVE THE  
INCRIMINATING EVIDENCE.

>> OKAY.

THE POINT IS THE SAME.

ISN'T THAT COMMENT THAT THE  
PROSECUTOR MADE, I WON'T THE  
SEND THOSE COMMENTS.

ISN'T IT A COMMENT DIRECTLY  
RESPONSIVE TO THAT.

WILL LEAD DEFENSE ATTORNEYS  
WOULD THINK OF COVERING THEIR  
TRACKS IN THAT WAY.

>> IT IS NEVER APPROPRIATE TO  
SAY ONLY IN A WORLD POPULATED BY  
DEFENSE ATTORNEYS.

IT IS NEVER APPROPRIATE TO TAKE  
POT SHOTS AT DEFENSE COUNSEL.

ALSO TO CALL THAT CONTROL FREAK  
OF PUTTING WORDS IN HIS MOUTH, I  
GOT THIS BIG JOB, THAT IS AN  
INAPPROPRIATE COMMENT.

WE ARE ASKING MR. EVANS GET A  
NEW TRIAL ON A REDUCED CHARGE,  
THANK YOU.

>> THE COURT WILL BE IN RECESS  
FOR TEN MINUTES.