

>> NEXT CASE UP IS HODGKINS
VERSUS STATE.

>> MAY IT PLEASE THE COURT.
MATTHEW BERNSTEIN FOR
MR. HODGKINS.

IN THIS CASE THE CIRCUMSTANTIAL
EVIDENCE IN THIS CASE IS
INSUFFICIENT TO PROVE THAT
MR. HODGKINS KILLED MISS LODGE.
THE ONLY EVIDENCE OFFERED BY THE
STATE WAS DNA FOUND UNDER THE
FINGERNAILS OF MISS LODGE'S LEFT
HAND.

THERE WERE NO FINGERPRINTS OF
MR. HODGKINS FOUND AT THE, IN
HER APARTMENT.

THERE WAS NO BLOOD.

>> SPEAK UP A LITTLE BIT.

>> CAN I ASK ONE QUESTION, JUST
FROM THE OUTSET.

>> SURE.

>> IF THE EVIDENCE HAD
ESTABLISHED THAT THE DECEASED
HAD HAD HER HANDS STERILE,
STERILIZED, BETWEEN THE TIME
THAT THE DEFENDANT LAST SAW HER
AND FINDING HER, AND, THEY FOUND
HIS DNA ON HER HAND, UNDER HER
NAILS IS THAT SUFFICIENT?

WOULD THAT HAVE BEEN SUFFICIENT?

>> STERILIZATION IN A HOSPITAL
SETTING?

I MEAN I THINK--

>> STERILIZATION, NOT PLAYING
GAMES ON SPLITTING QUESTIONS.

>> RIGHT, RIGHT.

>> YOU KNOW WHERE I'M GOING.

>> I UNDERSTAND.

I THINK IF IT WAS STERILE TO THE
POINT OF, YOU KNOW, A WHITE ROOM
WHERE THERE IS NOTHING, THEN I
THINK THAT WOULD BE A DIFFERENT
CASE.

IN THIS CASE--

>> WE DON'T HAVE ENOUGH EVIDENCE
WITH REGARD TO HER FANS AND
WATER AND FOOD BEING CLEANSED TO
THE POINT THAT IT IS SUFFICIENT
TO OVERCOME THAT ISSUE?

>> WELL I THINK THE, I DON'T

THINK THERE IS SUFFICIENT EVIDENCE TO PROVE WHEN THE DNA WAS LEFT ON HER FINGERS. AN WHETHER THAT WAS AT THE TIME OF THE MURDER.

>> AGAIN, THAT GOES BACK TO THE ISSUE.

HE SAID HE SAW HER.

THEN THE EVIDENCE IS, SHE HAS HER HAPPENED CLEANING, UNLIKE WE AS JUSTICE, WE'RE NOT SCRUBBING OUR HAND ALL THE TIME.

SO THAT IS REALLY WHAT IT COMES DOWN TO, SEEMS TO ME.

WHY DOES IT NOT COME DOWN TO THAT?

>> I THINK WHAT THERE IS, THERE IS RELATIONSHIP BETWEEN TWO PEOPLE, A SEXUAL RELATIONSHIP. AND THEY HAD SEEN EACH OTHER AND, WHEN SHE IS FOUND DEAD, THERE'S, HIS DNA UNDER THE FINGERNAILS OF ONE HAND.

>> BUT THAT WOULD BE TRUE IF THIS WAS A BOYFRIEND AND GIRLFRIEND IN AN ON-- GIRLFRIEND IN AN ONGOING RELATIONSHIP.

HIS FIRST STORY IS, HE HADN'T SEEN HER FOR MONTHS.

THEN THE SECOND STORY WAS SOMETHING DIFFERENT.

THEN WHEN HE WAS CONFRONTED WITH FINGER.

DNA UNDER THE FINGERNAIL, OH, IT WAS THREE DAYS BEFORE.

IN TERMS OF WHEN THIS GETS TO THE JURY, ISN'T THE JURY ENTITLED TO FIND HIS THIRD STATEMENT TO BE INCREDIBLE?

THAT IS, THAT HE SAYS IT ONLY BECAUSE OF BEING CONFRONTED WITH THE DNA?

THEN ON TOP, AGAIN, ON TOP OF IT, YOU'VE GOT EVIDENCE THAT THE DNA WAS NOT DEGRADED.

IT WAS, AND THEREFORE LIKELY THAT IT WAS, PUT, IT WAS ON HER WITHIN A SHORT PERIOD OF TIME.

THEN YOU HAVE THE EVIDENCE SHE

IS IN A BUSINESS WHERE SHE IS
CONSTANTLY WASHING HER HAND
CONSTANTLY.

PLUS YOU HAVE A WITNESS WITH HER
MOST OF THE NIGHT.

HE HAD COME BY.

SHE WAS AGITATED AFTER HE CAME
BY.

DOESN'T LOOK LIKE THEY WERE
TOGETHER THAT NIGHT.

I GUESS PUTTING ALL OF THOSE
TOGETHER THAT I DON'T SEE, OR
I'M QUESTIONING WHY THERE ISN'T
A JURY ISSUE?

I REALIZE IT IS SLIM EVIDENCE.
I UNDERSTAND THAT.

IT IS NOT A GIRLFRIEND, ON GOING
GIRLFRIEND AND BOYFRIEND, WHERE
THERE IS NO QUESTION THEY HAD
SEXUAL RELATIONS WITHIN, YOU
KNOW, A DAY OR SO.

>> I THINK THERE IS A COUPLE
POINTS THERE.

I THINK, WHETHER THE DNA IS
DEGRADED, I THINK THAT JUST
MEANS THEY FOUND ALL 13, ALL 13
LOCA THE DNA ON HER OTHER HAND,
THERE WAS ONLY FOREIGN ALIEL
THAT WAS FOUND.

MOREOVER, WHEN THEY'RE SCRAPING
FINGERNAILS IN THIS CASE, WHAT
THE INVESTIGATOR TESTIFIED TO
ALL THE FINGERNAIL SCRAPINGS IN
A BAG.

SO IT COULD HAVE BEEN JUST ONE
NAIL.

IT IS NOT DEGRADED THERE IS A
CHUNK OF BLOODY SKIN OR
SOMETHING UNDER HER NAIL.

THIS IS FINGERNAIL SCRAPINGS
FROM ONE HAND.

POSSIBLY ONLY ONE FINGERNAIL
WITH HIS DNA IN IT.

>> LET ME ASK YOU A DIFFERENT
WAY.

IF HE HADN'T GIVEN THREE
DIFFERENT VERSIONS, AND THE
STATE PUT ON THE DNA, AND THAT
THEY HAD BEEN BOYFRIEND AND GIRL
FRIEND, YOU KNOW MONTHS BEFORE,

BUT HAD BROKEN UP, WOULD YOUR ARGUMENT STILLING SAME?
IN OTHER WORDS, THERE IS, IT IS NOT A REASONABLE-- THERE IS JUST NOT ENOUGH THERE WITH SOMEBODY THAT KNEW A PERSON TO HAVE A FIRST-DEGREE MURDER CHARGE SUSTAINED WITH, DNA UNDER THE FINGERNAIL?

>> I THINK THE INCONSISTENT EXCULPATORY STATEMENTS ARE NOT PROOF OF GUILT.

THOSE ARE TO USE THIS COURT'S PHRASE, EXTRINSIC TO THE CRIME.

>> DOESN'T THERE HAVE TO BE REASONABLE HYPOTHESIS OF INNOCENCE.

>> THE REASONABLE HYPOTHESIS OF INNOCENCE IS SOMEONE ELSE DID IT.

AGAIN, HE KNEW HER. THEY HAD A SEXUAL RELATIONSHIP. SO I DON'T THINK IT IS UNREASONABLE TO THINK THAT HIS DNA MIGHT BE UNDER HER FINGERNAILS ON ONE HAND.

>> THE REASONABLE HYPOTHESIS OF INNOCENCE IS SOMEONE ELSE DID IT, ARE YOU SAYING IN ANY MURDER CASE THAT THE, THE DEFENSE STEPS FORWARD AND SAYS SOMEBODY ELSE DID IT, THAT STANDING ALONE IS A REASONABLE HYPOTHESIS OF INNOCENCE?

>> I DON'T THINK IT IS THE BURDEN OF THE DEFENSE TO PUT FORWARD EVIDENCE TO CREATE A ELABORATE HYPOTHESIS OF INNOCENCE.

THE REASONABLE HYPOTHESIS OF INNOCENCE IS SOMEONE ELSE COMMITTED THIS MURDER. THE BURDEN REMAINS ON THE STATE--

>> I UNDERSTAND THE BURDEN ALWAYS REMAINS ON THE STATE BUT WE'VE GOT THIS SPECIAL RULE ABOUT CIRCUMSTANTIAL EVIDENCE CASES WHERE THERE IS A REASONABLE HYPOTHESIS OF

INNOCENCE BUT, WHAT CASE SAYS THAT THE ONLY THING THAT'S NECESSARY TO HAVE A REASONABLE HYPOTHESIS OF INNOCENCE IS TO POSIT THAT SOMEONE ELSE DID IT?

>> WELL I THINK, USUALLY, WHAT HAPPENS IS, THERE'S, REASONABLE HYPOTHESIS SOMEONE ELSE COMMITTED THIS MURDER AND THE STATE DOESN'T OVERCOME THE HYPOTHESIS.

THIS COURT'S RECENT DECISION IN DAUSH, WHERE THERE WERE FINGERPRINTS ON THE CAR--

>> LET ME ASK YOU THIS DOESN'T THERE HAVE TO BE A FACTUAL BASIS FOR A REASONABLE HYPOTHESIS OF INNOCENCE.

>> I DON'T THINK THERE IS ANY REQUIREMENT THAT THE DEFENSE PUT FORWARD A REASONABLE HYPOTHESIS OF INNOCENCE.

IN CLOSING ARGUMENT IN THIS CASE THE DEFENSE ATTORNEY ARGUED THEY HAD A SEXUAL RELATIONSHIP.

WHO KNOWS IF THEY HAD SEX TWO DAYS BEFORE OR THREE DAYS BEFOREHAND BUT THE POINT IS SOMEONE ELSE COMMITTED THIS MURDER.

I DON'T THINK THERE IS ANY REQUIREMENT IN ANY CASE LAW THAT STATES THAT THE DEFENSE HAS TO PUT ON A CASE IN ORDER TO PUT ON, IN ORDER TO PUT FORWARD A REASONABLE HYPOTHESIS OF INNOCENCE.

>> THEY DON'T HAVE TO POINT TO ANY FACTS THAT WOULD SUPPORT REASONABLE-- SO, REASONABLE HYPOTHESIS OF INNOCENCE, IF I UNDERSTAND WHAT YOU'RE SAYING IS, TOTALLY DIVORCED FROM THE FACTUAL CONTEXT?

>> I THINK, IN THIS CASE, IF THE REASONABLE HYPOTHESIS, WELL, THE REASONABLE HYPOTHESIS IS, SOMEONE ELSE COMMITTED THIS MURDER.

THEN THE STATE PUTS FORWARD

EVIDENCE THAT SAYS, WELL, HIS BLOOD WAS FOUND IN A POOL OF BLOOD RIGHT BY HER BODY, THEN THAT WOULD, YOU KNOW, THAT'S A FACT THAT WOULD, OBVIOUSLY THAT CONFLICTS WITH A REASONABLE HYPOTHESIS.

>> IN THIS CASE DID THEY POINT TO A FORMER BOYFRIEND OF THE DRUG DEALER THAT ABUSED HER, USED TO ABUSE HER.

>> SHE WAS DEALING DRUGS WITHOUT OUT OF HER HOUSE, THAT WAS ANOTHER THING.

WE HAVE COMBINATION OF THE FACT THERE WAS NONE OF HIS BLOOD, NO FINGERPRINTS, NO ANYTHING, JUST DNA.

THAT IS NOT ENOUGH TO OVERCOME THE REASONABLE HYPOTHESIS OF INNOCENCE.

IT IS ONE THEORY BUT IT IS SO SLIGHT THAT IT DOESN'T OVERCOME THE REASONABLE HYPOTHESIS THAT SOMEONE ELSE COMMITTED THIS MURDER.

SHE HAD OTHER PEOPLE COMING IN AND OUT OF THE APARTMENT.

SHE DEALT DRUGS IN THE APARTMENT.

THERE WERE OTHER PEOPLE THERE. FROM WHAT THE DEFENSE ATTORNEY IS ARGUING THEY HAD A RELATIONSHIP.

SO IT IS NOT UNREASONABLE TO THINK THAT HIS DNA WAS FOUND UNDER MAYBE ONE OR TWO OF HER FINGERNAILS.

>> WHERE WERE THE, WHICH TINKERS ON THE RIGHT HAND WAS THE DNA FOUND ON?

>> THE LEFT HAND.

>> AND UNDER HER FINGERNAIL?

>> WE DON'T--

>> NOT CASUAL, NOT A CASUAL CONTACT, CORRECT?

>> WELL--

>> IT IS NOT LIKE, DOES THERE HAVE TO BE SOMEHOW THAT HE WAS WHETHER DID IT IN SEX OR

OTHERWISE, ACTUALLY SCRATCHING
OR, I'M SORRY, SHE WAS
SCRATCHING HIM AT THE TIME IN
ORDER FOR THAT DNA TO BE THERE?
>> I MEAN THE EVIDENCE IN THIS
CASE, THE ANALYST STATES THAT
THIS IS DEBRIS, DNA IS OBVIOUSLY
MICROSCOPIC, BUT THIS IS NORMAL
FINGERNAIL DEBRIS.
EVERYBODY HAS DEBRIS UNDER THEIR
FINGERNAILS.
>> WAIT.
HOW DO I GET, HOW DO I GET YOUR
DEBRIS UNDER MY FINGERNAILS?
WHAT WOULD I HAVE TO DO?
>> THERE IS NO EVIDENCE IN THIS
CASE THAT GOES BACK TO THAT
POINT SO I DON'T KNOW.
>> WAS THAT, AGAIN, THAT MAY BE
A FAILURE OF THE STATE'S CASE
BECAUSE IT SEEMS TO ME THERE IS
A DIFFERENCE, SOMEONE PUTS A,
FINGERPRINT ON A CAR, AND WE
KNOW, OKAY, THAT THERE COULD BE
LOTS OF REASONS FOR THAT.
BLOOD IS FOUND, MIXED WITH THE
VICTIM'S BLOOD.
WE KNOW, THEY WILL SAY SOMETHING
LIKE, I CUT MY FINGER WHILE I
WAS AROUND.
BUT, SO IS THERE A LACK OF
EVIDENCE ABOUT THE WAYS THAT DNA
COULD GET UNDER SOMEONE'S, YOU
KNOW, DEBRIS?
>> SURE.
I THINK THAT IS ANOTHER HOLE IN
THE STATE'S CASE.
IF THIS, IF IT WERE A CHUNK OF
BLOODY SKIN, IT WOULD BE A
DIFFERENT ANALYSIS.
BUT IT'S NOT.
ANALYST TESTIFIED THAT THIS IS
NORMAL FINGERNAIL DEBRIS.
THE PERSON WHO TESTED, WHO
TESTED DNA SAID SHE COULD SEE
IT.
BUT I MEAN YOU--
>> WHEN YOU SAY NORMAL DEBRIS,
YOU GET DIRT UNDER YOUR
FINGERNAILS BUT I DON'T KNOW YOU

GET SOMEBODY ELSE'S-- LET ME
FINISH SO WE-- YOU DON'T GET
SOMEONE'S DNA UNDER YOUR
FINGERNAILS.

JUST BY TOUCHING THE PERSON, DO
YOU?

>> I DON'T KNOW BECAUSE NONE OF
THAT WAS PRESENTED.

THE STATE DIDN'T PRESENT ANY OF
THAT EVIDENCE.

IT COULD BE THAT JUST BY
TOUCHING SOMEONE BY, BY SHAKING
THEIR HAND YOU MAY HAVE DNA
UNDER YOUR FINGERNAILS.

>> I THOUGHT THERE WAS EVIDENCE
THAT SHE DID SCRATCH HIM WHEN
THEY HAD INTIMATE RELATIONS?
I THOUGHT THERE WAS EVIDENCE?

>> IN ONE OF HIS STATEMENTS HE
SAID THAT.

>> SO THERE IS EVIDENCE OF HOW
IT GOT THERE, HOW IT COULD HAVE
GOTTEN THERE.

>> I DON'T THINK THAT IS
EVIDENCE HOW IT GOT THERE.

>> SHE ASKED THE QUESTION, WAS
THERE EVIDENCE OF TO EXPLAIN HOW
IT'S THERE?

SO THE ANSWER IS TO ME, YES
THERE IS EVIDENCE IN THIS RECORD
OF HOW IT COULD HAVE TO THEN
THERE.

>> HOW IT COULD HAVE GOTTEN
THERE.

>> UNLESS YOU HAVE A CAMERA
YOU'RE NOT GOING TO CAPTURE IT.

>> TO CLARIFY, I DON'T KNOW ALL
THE WAYS DNA CAN GET UNDER
FINGERNAILS.

THAT WASN'T PRESENTED.

SCRATCHING SOMEONE, YES, THAT IS
POSSIBLE EXPLANATION.

>> HIS FLORIDA NATION IS SEX--
EXPLANATION SEX THREE DAYS
BEFORE IS HOW IT GOT THERE.

I SAID, IS THAT THE INNOCENT
EXPLANATION?

YOU SAID NO, THE INNOCENT
EXPLANATION IS SOMEONE ELSE DID
IT.

>> I THINK THAT IS ONE POSSIBLE EXPLANATION.

THE REASONABLE HYPOTHESIS REMAINS THAT SOMEONE ELSE COMMITTED THIS MURDER.

THE THEORY, HIS THEORY IS THAT THE DNA WAS GOT UNDER HER FINGERNAILS, BY SEX, SOME OTHER CONTACT BECAUSE THEY KNEW EACH OTHER.

AGAIN, I DON'T KNOW IF DNA CAN GET UNDER SOMEONE'S FINGERNAILS BY I SHAKE YOUR HAND, TOUCH A DOORKNOB, I HAVE NO IDEA BECAUSE THAT IS NOT IN THE RECORD.

THAT WASN'T PRESENTED.

SO THE SEX IS ONE POSSIBLE EXPLANATION.

THE STATE PRESENTED NO EVIDENCE TO REBUT THE THEORY THAT THE DNA GOT UNDER THERE BY SOME, SOME OTHER TIME BEFORE THE MURDER.

>> WELL THEY DID BY SAYING THAT THE FIRST, WHAT HE SAID, IT IS NOT CREDIBLE BECAUSE THE FIRST TWO TIMES HE SAID HE HADN'T SEEN HER FOR WEEKS OR MONTHS.

THAT THE PERSON THAT TESTIFIED, TESTIFIED THAT THE WHEN THEY, WHEN SHE WAS WITH HER MOST OF THE NIGHT BEFORE SHE GOT READY TO GO TO WORK AND THAT THE ONLY CONTACT WAS THAT HE CAME BY AND SHE TALKED TO HIM FOR FIVE MINUTES AND SLAMMED THE DOOR AND WAS AGITATED.

SO THERE ISN'T EVIDENCE, AND THAT THEY HAD BROKEN UP.

SO, THERE IS THAT OTHER EVIDENCE.

THE QUESTION IS WHAT DO WE DO WITH IT IS MY CONCERN.

>> AGAIN, I DON'T, IS NOT MR. HODGKINS' BURDEN TO PROVE THE DNA WAS PLACED UNDER THERE X TIME.

IT IS THE STATE'S BURDEN TO REBUT THE REASONABLE HYPOTHESIS OF INNOCENCE THAT SOMEONE ELSE COMMITTED THIS CRIME.

>> I CAN'T--
>> BUT ISN'T IT, THE STATE AT LEAST, IN MY ESTIMATION, ATTEMPTED TO SHOW THAT WHAT HE SAYS AT THE TIME IT GOT THERE, POSSIBLY GOT THERE MAY NOT BE TRUE SIMPLY BECAUSE OF ALL THE HAPPENED WASHING.
SHE WORKED IN A RESTAURANT OR SOMETHING.
>> RIGHT.
>> SHE AND THE GIRL, THE FRIEND WHO TESTIFIED, SAID THEY WERE CLEANING HER APARTMENT AND ALL OF THAT, RIGHT?
>> UH-HUH.
>> BUT THAT WAS, HOW MANY HOURS, THAT WAS A DAY OR 1/2 BEFORE THE ACTUAL MURDER.
>> IT WAS MONDAY NIGHT.
IT WAS MONDAY NIGHT HER BODY WAS FOUND ON THURSDAY.
SHE WAS KILLED--
>> SO IT WAS MONDAY NIGHT THAT THE FRIEND WAS AT HER APARTMENT?
>> RIGHT.
>> OKAY.
SO MANY, SEVERAL DAYS HAD PASSED SINCE THAT TIME.
>> RIGHT.
SHE WAS, SHE WAS KILLED EITHER ON WEDNESDAY OR THURSDAY.
AND THAT HAPPENED ON MONDAY NIGHT.
>> I THINK THAT WAS, ISN'T THAT THE STATE'S CASE, IS THAT HIS, LET'S THERE WAS NO OPPORTUNITY OR THE EVIDENCE SEEMS TO REPORT THAT THEY DIDN'T HAVE SEX THAT NIGHT.
EVEN IF THEY HAD SEX THAT NIGHT, SHE WAS WASHING HER HANDS, THE REST OF ALL DAY TUESDAY AND WEDNESDAY AND THAT THIS DNA THAT WAS FOUND WAS NOT DEGRADED TO THE EXTENT THAT IT WOULD HAVE BEEN PUT THERE THREE DAYS BEFORE?
THAT'S, I MEAN AGAIN THAT'S THE EVIDENCE.

>> RIGHT.

I THINK THE HOLES IN THAT,
THAT'S WHY THE STATE'S EVIDENCE
DOESN'T REBUT THE REASONABLE
HYPOTHESIS THAT SOMEONE ELSE
COMMITTED THIS CRIME BECAUSE WE
DON'T KNOW WHEN THE DNA OR HOW
THE DNA GOT UNDER HER
FINGERNAILS.

THESE ARE TWO PEOPLE THAT NEW
EACH OTHER AND HAD SEX.
DNA GOTTEN THERE BY SOME OTHER
MEANS BECAUSE IT WAS ALREADY IN
THE APARTMENT?

I DON'T KNOW.

THAT IS JUST ONE OTHER
ALTERNATIVE.

AGAIN, THIS IS, IT IS NOT AS
THOUGH THERE WAS DNA UNDER ALL
10 FINGERNAILS IN THE REST OF
THE APARTMENT.

THERE WAS POSSIBLY COULD BE ONE
OR TWO FINGERNAILS ON HER LEFT
HAND.

AGAIN THERE WAS, FOREIGN DNA ON
HER RIGHT HAND BUT IT WAS
DEGRADED.

SO THE LEFT HAND, IT MAYBE IT
WASN'T DEGRADED.

WE DON'T KNOW.

I THINK--

>> WERE THERE, HIS FINGERPRINTS
FOUND?

>> NO.

THERE WERE NO FINGERPRINTS OF
HIS FOUND ANYWHERE.

>> WHERE DID HE SAY HE HAD SEX
WITH HER.

>> I'M SORRY?

>> WHERE DID HE SAY HE HAD SEX
WITH HER?

>> I THINK IN HER APARTMENT.

>> THE FACT THAT NONE OF HIS
FINGERPRINTS ARE FOUND IN THE
APARTMENT INDICATIVE HE ACTUALLY
WASN'T IN THE APARTMENT?

>> I DON'T THINK THAT GOES TO
WHO COMMITTED THE MURDER.
SOMEONE ELSE COULD HAVE
COMMITTED THE MURDER WHICH IS

THE REASONABLE HYPOTHESIS OF INNOCENCE.

>> MURDER BY STRANGULATION AND STABBING, RIGHT?

>> SHARP FORCE INJURIES.

>> DOES THAT AT ALL PLAY INTO WHETHER OR NOT UNDER THOSE CIRCUMSTANCES THE KILLER'S DNA WOULD HAVE GOTTEN UNDER HER FINGERNAIL OR NOT?

>> THERE WAS NO EVIDENCE OF THAT PRESENTED.

THERE WERE NO DEFENSIVE WOUND ON HER, ON HER BODY.

AND ALSO, THERE WAS NO EVIDENCE THAT MR. HODGKINS HAD ANY SCRATCHES OR BLOOD ON HIM OR ANYTHING LIKE THAT AT AROUND, AT THE TIME OF THE MURDER.

THERE IS NOTHING THAT PLACES HIM AT THE SCENE.

THERE IS NONE OF HIS BLOOD AT THE, AT THE APARTMENT.

THERE IS NONE OF HIS FINGERPRINTS AT THE APARTMENT.

>> HOW MANY FINGERPRINTS DID THEY FIND AT THE APARTMENT?

>> I FORGET THE NUMBER BUT THEY WERE HERS.

MAYBE 20 OR 30?

MAYBE 12.

I FORGET THE NUMBER.

>> MULTIPLE FINGERPRINT.

>> MULTIPLE FINGERPRINTS BUT THEY WERE ALL HERS.

HER BLOOD WAS ALSO FOUND AT SCENE OF THE THERE WAS SOME OF HER BLOOD AROUND THE BODY AND I THINK AROUND A BEER CAN IN THE SINK.

BUT THERE WAS, AGAIN, NONE OF HIS BLOOD, NONE OF HIS FINGERPRINTS.

>> HOW LONG AFTER THE MURDER WAS MR. HODGKINS.

>> HODGKINS.

>> WAS HE ARRESTED.

>> OVER A YEAR.

THERE IS TESTIMONY FROM THE DETECTIVE THAT SAID HE DIDN'T

EVEN KNOW THEY HAD A
RELATIONSHIP UNTIL THE DNA
RESULTS CAME BACK.
THERE WAS NO, IT WAS, I THINK,
INTERVIEWED HIM A YEAR AND A
COUPLE OF MONTHS AFTER THIS
CRIME TOOK PLACE.
SO AGAIN, BECAUSE THERE IS
NOTHING THAT LINKS HIM TO THE
MURDER, I THINK THE
CIRCUMSTANTIAL EVIDENCE OF
IDENTITY IS INSUFFICIENT.
>> AS A MATTER OF FACT, THIS
PERSON THAT WAS IN THE HOUSE
WITH HER THE VICTIM AT THE TIME
HE ALLEGEDLY CAME TO THE DOOR,
DID NOT MENTION THIS TO THE
DETECTIVES AT ALL WHEN THEY
INITIALLY INTERVIEWED HER?
>> THAT SHE WAS DEALING DRUGS.
>> RIGHT.
>> OR THAT HE WAS THERE OR EVEN
MENTIONED, MR. HODGKINS?
>> RIGHT.
YEAH, SHE DIDN'T EVEN MENTION IT
BECAUSE IT WAS SO
INCONSEQUENTIAL.
>> SAID NOTHING ABOUT HIM UNTIL
A YEAR LATER.
>> MORE THAN A YEAR LATER.
I THINK--
>> WHAT DID SHE TESTIFY ABOUT,
WHEN DID SHE MAKE A STATEMENT
ABOUT MR. HODGKINS?
>> ABOUT HIM COMING?
>> THE LADY WHO WAS THERE ON A
MONDAY?
>> I DON'T KNOW IF IT WAS A
DEPOSITION OR SOMETHING BUT IN
TRIAL SHE TESTIFIED THAT.
>> HOW DOES SHE KNOW
MR. HODGKINS?
>> SHE DOESN'T.
>> PICKED HIM OUT
FROM A LINEUP OR
PICTURE DISPLAY OR SOMETHING.
>> YEAH.
I THINK SHE RECOGNIZED HIM.
IT WAS FIVE MINUTES.
THAT WAS IT.

>> WERE THERE ANY PHONE RECORDS OR ANYTHING, CELL PHONE RECORD, THAT PUT HIM IN THE, AT THE LOCATION?

>> I THINK HIS, HIS CAC INFORMATION WAS IN HER PHONE. BUT AS FAR AS RECENT CALLS, NO. HE HAD, I THINK SHE HAD HIM LISTED AS-- [INAUDIBLE]

>> I MEAN, WAS THERE ANY TESTIMONY, EVIDENCE TO SHOW THERE WAS A PING FROM A CELL TOWER THAT--

>> NONE OF THAT.

NOTHING AT ALL PLACED HIM ANYWHERE NEAR HER APARTMENT AT THE TIME OF THE MURDER.

THE ONLY EVIDENCE THAT PLACED HIM NEAR HER APARTMENT IS WHEN THE WOMAN TESTIFIED THAT SHE, SHE SAW HIM STOP BY FOR FIVE MINUTES MONDAY NIGHT.

WHICH WAS A COUPLE OF DAYS BEFORE THE CRIME TOOK PLACE.

THE ONLY EVIDENCE THERE IS, PLACING HIM AT THE SCENE OF THIS CRIME IS TWO DAYS BEFORE THE ACTUAL CRIME.

AND AGAIN, COMPARE TO SOME OF OTHER CASES CRATED IN THE BRIEFS, HE HAS NOT NO BLOOD ON HIS SHIRT OR ANYTHING.

SOME OF THESE OTHER CASE THERE IS IS A TIMELINE WHERE-- I THINK--

>> THIS IS A YEAR LATER. ANY SCRATCHES WOULD HAVE BEEN--

>> WHICH GOES TO THE LACK OF EVIDENCE.

>> GOTTEN RID OF ANY KIND OF BLOODY CLOTHING OR ANYTHING.

>> WELL I THINK THE STATE FAILED TO PRODUCE ANY EVIDENCE POINTING TO MR. HODGKINS OTHER THAN THE DNA UNDER THE FINGERNAILS WHICH IS CIRCUMSTANTIAL EVIDENCE AND NOT ENOUGH TO CONVICT HIM OF FIRST-DEGREE MURDER.

IF I COULD I WILL BRIEFLY JUMP TO THE SECOND ISSUE AS FAR AS

AS PREMEDITATION.

I THINK, ASSUMING ARGUENDO HE DID COMMIT THIS CRIME WHICH HE DIDN'T, WHICH WE'RE ARGUING THAT HE DIDN'T, THERE WAS NO PREMEDITATION IN THIS CASE.

I THINK STRANGULATION IS NOT ENOUGH FOR PREMEDITATION AND--

>> MULTIPLE STAB WOUND?

AREN'T THERE CASES THAT TALK ABOUT STRANGULATION AND MULTIPLE STAB WOUND AS INDICATIVE WOUNDS AS INDICATIVE THE PREMEDITATION.

>> IN COULEN THERE WERE STAB WOUND AND NO IN GREEN.

>> I THINK THERE ARE NO, THERE IS NO EVIDENCE MR. HODGKINS OR WHOEVER, PROCURED A WEAPON BEFOREHAND.

THERE IS NO EVIDENCE THAT THIS WAS PLANNED.

>> SHE SUFFERED 32 WOUNDS, BLUNT TRAUMA TO THE FOREHEAD.

>> WHICH IS--

>> HANG ON.

>> SORRY.

>> YOU GOT TO CALM DOWN.

RELAX.

MANUEL STRANGULATION AND THAT SHE GOT STABBED BY SOME TYPE OF SHARP OBJECT.

I MEAN, THAT REQUIRES SOME THINKING, DOESN'T IT?

>> I THINK THIS COURT HAS HELD IN PAST CASES THAT THERE COULD ALSO BE INDICATIVE OF JUST BLIND RAGE, WHICH IS LACK OF PREMEDITATION.

I THINK IN, IN COOLAN, THIS COURT FOUND IT COULD HAVE BEEN A FIGHT OVER A BEER OR SOMETHING.

THE FACT THERE WAS NO EVIDENCE OF ANY WEAPON PROCURED BEFOREHAND, THERE WAS NO PLANNING, NO ONE SAW HIM LURKING ABOUT, BEFORE THE CRIME, ANYTHING LIKE THAT, THERE IS NO EVIDENCE OF THAT WHATSOEVER.

>> WHAT WAS THE STATE'S POSITION AS TO MOTIVE FOR THIS CRIME?

>> THERE IS NO MOTIVE.
THAT IS ANOTHER POINT.
>> WERE DRUGS, WERE DRUGS TAKEN?
>> NO.
THERE WAS NO MONEY, NO DRUGS, NO
ANYTHING TAKEN.
>> IS THERE TESTIMONY FROM
SOMEONE WHO MAY HAVE OVERHEARD A
CONVERSATION BETWEEN THE VICTIM
AND SOMEBODY TALKING VERY LOUDLY
AT THE DOOR?
, EARLIER THAT EVENING?
>> NO, THAT WAS THE MONDAY
BEFORE AND THE TESTIMONY WAS NO
ONE WAS ANGRY OR UPSET.
MIGHT HAVE BEEN A LITTLE
DISPLEASED TO SEE HIM.
THAT WAS IT.
SO THERE IS NO YELLING.
THERE IS NO EVIDENCE OF
ANIMOSITY OR ANYTHING.
SO LACK OF, AGAIN GOES TO
PREMEDITATION.
>> SO YOU WOULD SAY THAT IF WE
FOUND, SUFFICIENT EVIDENCE, THIS
SHOULD BE A SECOND-DEGREE MURDER
CASE?
>> RIGHT.
I THINK THE LACK OF
PREMEDITATION WOULD KNOCK IT
DOWN TO SECOND-DEGREE MURDER.
I'M RUNNING SHORT ON TIME.
SO I THINK I WILL JUMP TO ISSUE
FOUR WHICH IS THE SHACKLE
ASKING.
IN THIS CASE, MR. HODGKINS WAS
SHACKLED WITH A LOCKBOX, WAIST
CHAIN--
>> WHAT PART OF THE TRIAL?
>> THE PENALTY PHASE.
>> MY QUESTION HERE--
>> I DIDN'T HEAR THAT I'M SORRY?
>> THE PENALTY PHASE.
>> MY QUESTION HERE IS THE
REASON WE SAY SHACKLING IS
SHOULD NOT BE DONE UNLESS ALL
THE CRITERIA ARE MET, AS I
UNDERSTAND IT, USUALLY IN THE
GUILT PHASE BECAUSE YOU'RE
THINKING THAT THE, LIKE IF THE

GUY'S A PRISON-FOR SHACKLED--
GARB OF THERE IS SOME INDICATION
HE IS GUILTY.

IN THIS CASE THE JURY ALREADY
FOUND NAME UNANIMOUSLY GUILTY.
ASSUME HE, THE JUDGE SHOULD NOT
HAVE SHACKLED, DIDN'T MEET
THE CRITERIA AND, ASSUMED MAYBE
A JUROR SAW SOMETHING.
THEY ALREADY FOUND HIM GUILTY.
WHERE IS THE REVERSIBLE ERROR
UNDER THE PRINCIPLES THAT WE
GENERALLY APPLY TO THE GUILT
PHASE?

>> I THINK DEC v. MISSOURI IS
RIGHT ON POINT.

THAT WAS A PENALTY PHASE
HEARING.

SHACKLING WITHOUT MAKING CASE
SPECIFIC DETERMINATION IN THE
PENALTY PHASE OF A CAPITAL TRIAL
IS UNCONSTITUTIONAL.

>> I WILL LOOK AT DECK.
BECAUSE OF WHAT BASIS?

WHAT IS THE JURY LIKELY INTER?

>> I THINK THE COURT'S PHRASE
WAS IT IS A WEIGHT OR THUMB ON
THE SCALE ON THE SIDE OF DEATH
BECAUSE THE JURY IS STILL MAKING
A DETERMINATION.

IN THIS CASE THE DEATH REC IS
7-5.

SO I THINK IT IS EVEN MORE
PREJUDICIAL.

>> WHAT DID THEY FIND OUT IN THE
PENALTY PHASE ABOUT HIS PRIOR
RECORD?

>> HE HAS, HE HAD A PRIOR CRIME
FROM--

>> WHAT WAS THE PRIOR CRIME?

>> IT WAS ATTEMPTED MURDER AND,
I THINK SEXUAL BATTERY.

HE WAS ON PROBATION FOR THAT.

>> 12-YEAR-OLD.

>> I FORGET HER EXACT AGE BUT
SHE WAS YOUNG.

>> SO WHAT IS THE STANDARD?

IF THE JUDGE IMPROPERLY
SHACKLED, WHAT IS THE STANDARD
FOR HOW YOU WOULD REVERSE.

WHAT DO YOU HAVE TO ESTABLISH?

>> ABUSE OF DISCRETION.

>> WHAT IF IT WAS ERROR?

>> RIGHT.

>> IS IT HARMLESS ERROR?

>> NO.

JUST REVERSIBLE--

>> UNDER DECK.

>> ACE READ DECK OF I THINK DECK IS RIGHT ON POINT.

ASSUMING THIS COURT DOES NOT REVERSE AND VACATE HIS CONVICTION UNDER ISSUE ONE, THEN UNDER DECK THIS COURT SHOULD VACATE THE DEATH SENTENCE AND REVERSE FOR A NEW PENALTY PHASE.

I SEE I'M INTO MY REBUTTAL.

SO IF THERE ARE NO FURTHER QUESTIONS, I WILL RESERVE THE REMAINDER OF MY TIME.

THANK YOU.

>> GOOD MORNING.

MY NAME IS SARA MACKS.

I REPRESENT THE STATE OF FLORIDA.

I DO WANT TO GET INTO THE PREMEDITATION ALL THAT, BUT QUICKLY, TALKING ABOUT DECK AND ALL THAT STUFF, THERE IS A HARMLESS ERROR STANDARD, YOUR HONOR.

>> IN DECK THEY WERE, WASN'T THE DEFENDANT RESTRAINED THROUGHOUT THE TRIAL.

>> HE WAS, BOTH AT TRIAL AND THEN AT THE PENALTY PHASE. AND SPECIFICALLY, THE DECK COURT, IT HAS TO BE VISUAL RESTRAINTS TOO.

AND I THINK IT IS REALLY IMPORTANT TO REMEMBER, THE JUDGE IN THIS CASE WENT ABOVE AND BEYOND BECAUSE HE ACTUALLY WENT, HE SAT IN ALL 12 JUROR SEATS. THE ONLY ONE HE COULD EVEN THINK HAD A POSSIBILITY I THINK JUROR NUMBER 7.

I THINK THAT IS RIGHT, OFF THE TOP OF MY HEAD.

NONE OF THE OTHERS WOULD EVEN BE

ABLE TO SEE ANY OF THE RESTRAINTS THAT WERE ON THE DEFENDANT.

THE DEFENDANT AND SO, AND, JUROR NUMBER 7 NEVER SAID, HEY I CAN SEE THESE, THESE RESTRAINTS. SO WE DON'T ACTUALLY HAVE ANY KNOWLEDGE THAT ANY OF THE JURORS ACTUALLY SAW.

>> WASN'T ONE OF THE REASONS THAT THE JUDGE DECIDED TO KEEP THE SHACKLES ON WAS BECAUSE SHERIFF'S OFFICE INDICATED THAT WAS THE SHERIFF'S OFFICE POLICY, ONES THAT ARE CONVICTED HAVE TO BE SHACKLED?

>> IT WAS, YOUR HONOR.

>> IS THAT A REASON FOR IT?

>> THAT IS NOT SUPPOSED TO BE ONE OF THE REASONS FOR IT.

>> ALL RIGHT.

>> HE SAID AN ADDITIONAL REASON WHICH GOES TO THE SPECIFIC FINDINGS BY THE COURT, THAT WAS HIS PRIOR OFFENSE OF THE PRIOR OFFENSE IN THIS CASE IS QUITE HORRENDOUS.

I THINK THAT IS A VERY GOOD REASON TO--

>> BUT HE MENTIONED--

>> TELL ME WHY THE PRIOR OFFENSE MEANS HE NEEDS TO BE SHACKLED.

>> BECAUSE IT WAS AN EXTREMELY VIOLENT OFFENSE.

THAT IS, THAT IS ONE OF THE SPECIFIC FINDINGS IN DECK, IS THAT PRIOR VIOLENT OFFENSES CAN BE A REASON TO SHACKLE A DEFENDANT.

>> BUT THE JUDGE MADE A FINDING ON THE RECORD.

HE MADE A STATEMENT I SHOULD SAY, THAT THE DEFENDANT IN THIS CASE BEHAVED HIMSELF AS A GENTLEMAN THROUGHOUT THE ENTIRE PHASE ONE PROCEEDINGS.

THERE WAS NOTHING IN THE RECORD AS FAR AS BEHAVIOR IS CONCERNED EITHER DURING TRIAL OR IN PRETRIAL HEARINGS THAT WOULD

INDICATE THAT, THAT HE WOULD MISBEHAVE.

OTHER THAN THE FACT THAT THE SHERIFF SAYS, I HAVE THIS.

>> THAT IS CORRECT, YOUR HONOR. WE DO HAVE AN ADDITIONAL FACT IN THIS CASE AS WELL ABOUT THE SUICIDE WATCH WHICH THEY TOLD-- THAT WAS ANOTHER POLICY-- THAT WAS-- WE FIND OUT LATER DURING PENALTY PHASE THAT THAT WAS BASED ON THE PREVIOUS SUICIDE ATTEMPT BY THE DEFENDANT.

THE DEFENDANT ATTEMPTED TO COMMIT SUICIDE WHEN HE WAS IN THE DEPARTMENT OF CORRECTIONS. THAT IS A--

>> THE JUDGE KNEW THIS AT THE TIME?

>> HE DID NOT KNOW THIS AT THE TIME.

HE KNEW THAT HE WAS ON SUICIDE WATCH, HE DID NOT KNOW THE SPECIFIC REASON WHY.

BUT HE DOES KNOW THAT HE'S ON SUICIDE WATCH.

NOT EVERY DEFENDANT IS NECESSARILY ON SUICIDE WATCH, BUT THIS PARTICULAR DEFENDANT WAS ON SUICIDE WATCH.

>> LOOKING AT THIS, I SEE-- AND I APOLOGIZE FOR MAYBE MISSTATING IT-- THE SUPREME COURT SEEMS TO BE PRETTY CLEAR THAT THE SAME, THAT THE CONSIDERATIONS THAT MILITATE AGAINST THE ROUTINE USE OF SHACKLES DURING THE GUILT PHASE EXTEND TO THE PENALTY PHASE WHERE THE JURY IS DECIDING LIFE OR DEATH.

>> THAT'S CORRECT.

>> SO ASSUMING THAT THE JUDGE DID NOT DO WHAT HE NEEDED TO DO TO COME UP WITH THE REASON TO EXPLAIN HOW THE HARMLESS ERROR STANDARD WOULD APPLY HERE.

>> THE-- TRYING TO REMEMBER. THE HARMLESS ERROR, TO ME THE HARMLESS ERROR STANDARD APPLIES BECAUSE WHEN YOU LOOK AT ALL

PARTICULARIZED ISSUES IN THIS CASE, AND THAT'S WHY I SAID THE JUDGE DIDN'T NECESSARILY KNOW WHY HE WAS ON SUICIDE WATCH AT THE TIME.

BUT WE FIND OUT IN PENALTY PHASE THAT HE HAD A PRIEST SUICIDE A-- PREVIOUS SUICIDE ATTEMPT, AND THAT CREATES A BIG SAFETY RISK INSIDE THE COURTROOM.

>> BUT LET'S GO INTO THIS.

IF WE FIND THAT THE JUDGE DID NOT HAVE ADEQUATE JUSTIFICATION, THE DEFENDANT DOESN'T HAVE TO PROVE ACTUAL PREJUDICE UNDER DEC.

THE STATE MUST PROVE BEYOND A REASONABLE DOUBT WHAT WAS COMPLAINED OF DID NOT CONTRIBUTE TO THE VERDICT.

>> RIGHT.

>> AND THEN YOU'VE GOT A 7-5 JURY RECOMMENDATION--

>> RIGHT.

>>-- WHICH IS AS CLOSE AS YOU CAN GET IT.

SO WHAT DO YOU HAVE TO ESTABLISH TO SHOW THAT IT DIDN'T CONTRIBUTE TO THE VERDICT, THAT THERE WAS NO INDICATION THAT ANY OF THE JURORS SAW THAT HE WAS SHACKLED OR HAD THE LOCKBOX ATTACHED TO HIM?

>> WELL, I DO BELIEVE THAT THERE IS NO EVIDENCE THAT ANY OF THE JURORS DID SEE THAT HE WAS SHACKLED.

BUT THAT GOES-- ENTER HOW DO YOU ESTABLISH--

>> HOW DO YOU ESTABLISH THAT?

WHAT ARE YOU GOING TO SAY TO THE JURORS?

ANY OF YOU HAPPEN TO SEE THE SHACKLING?

I MEAN, YOU KNOW, IN OTHER WORDS, THERE'S A PROBLEM, AND THAT'S WHY SOMETIMES WE SEE THESE ON POSTCONVICTION WHICH IS YOU REALLY DON'T KNOW IF THEY SAW IT, SO IF THE STATE CAN'T

PROVE IT ONE WAY OR THE OTHER,
DOESN'T THE ERROR GET ON THE
STATE?

AND, AGAIN, I DON'T KNOW THE
ANSWER TO THAT, BUT IT CONCERNS
ME.

>> BUT WE DO HAVE CASES, YOUR
HONOR.

I'M TRYING TO REMEMBER, I KNOW
WE CITED THE A CASE, I BELIEVE
IT WAS FERNANDEZ, IN OUR BRIEF
WHERE THE JUROR COMES TO THE
COURT AND SAYS I SAW THE
DEFENDANT IN HANDCUFFS.

SO WE DO HAVE CASES WHERE JURORS
DO COME.

AND IN THAT PARTICULAR CASE THIS
COURT FOUND ONE JUROR SEEING THE
DEFENDANT IN HANDCUFFS WAS NOT
ENOUGH TO REVERSE.

BUT BESIDES THAT, YOU ASKED
ABOUT THE HARMLESS ERROR
STANDARD.

WHAT THE HARMLESS ERROR STANDARD
IN PENALTY PHASE IS, IS
ANALYZING WHAT THE EVIDENCE
ACTUALLY WAS PRODUCED DURING
PENALTY PHASE.

SO IN THIS CASE WE HAVE THREE
EXTREMELY WEIGHTY AGGRAVATORS
AND NOT VERY HEAVY MITIGATION.
SO EVEN IF ONE POSSIBLE JUROR,
JUROR SEVEN, SAW A DEFENDANT IN
HANDCUFFS, THAT'S NOT GOING TO
CHANGE THE RESULTS OF THE
PENALTY PHASE BECAUSE WE-- AND
ONE OF THE REALLY STRONG
MITIGATORS--

>> WHY WAS IT 7-5?

>> WHY WAS IT A 7-5--

>> [INAUDIBLE]

THAT'S ABOUT AS CLOSE AS YOU CAN
GET.

>> I GUESS-- THAT'S ABOUT AS
CLOSE AS YOU CAN GET, BUT WE
HAVE-- ONE OF THE REASONS I
THINK THAT IT WAS A 7-5 VOTE WAS
BECAUSE THE STATE WAS VERY
CAREFUL ABOUT HOW IT PRESENTED
ITS AGGRAVATION.

THEY PRESENTED IT THROUGH A POLICE OFFICER THAT WAS THERE AT THE TIME.

SO THEY DIDN'T PRESENT IT THROUGH-- THEY CONTEMPLATED PRESENTING IT THROUGH THE MOTHER OF THE VICTIM.

BUT THAT DIDN'T OCCUR FOR CONSIDERATION TO THE VICTIM. BUT THEY COULD HAVE PRESENTED IT IN A MUCH STRONGER WAY, BUT THEY DECIDED TO PRESENT IT THROUGH THIS, THROUGH THE POLICE OFFICER.

SO IT WAS THE MANY A MUCH KINDER WAY.

THEY COULD HAVE REALLY EMPHASIZED THAT.

BECAUSE IT WAS A VERY HORRIFIC PRIOR CRIME.

>> OKAY.

>> SO YOU HAVE THAT CRIME ALONG WITH HIM BEING ON LIFETIME PROBATION AND THEN THIS PARTICULAR HAC CRIME.

SO YOU HAVE THREE VERY STRONG MITIGATE-- OR STRONG AGGRAVATORS.

>> WELL, LET'S, LET'S JUMP TO IN YOUR BRIEF YOU INDICATED THERE WAS OVERWHELMING EVIDENCE OF HIS GUILT.

>> UH-HUH.

>> COULD YOU POINT THAT OVERWHELMING EVIDENCE OUT TO ME?

>> OKAY.

SO THAT GOES TO THE--

>> YEAH.

I WANT TO GET TO THE FIRST--

>> SEGUE TO THAT.

SO AS TO THE FIRST TWO ISSUES, THE DNA CLAIM ON THE JOA AND THEN THE PREMEDITATION CLAIM.

SO THE HYPOTHESIS OF INNOCENCE IN THIS CASE FROM THE DEFENSE STANDPOINT, WHAT THEY ACTUALLY BROUGHT UP IN THE JUDGMENT--

>> WHAT'S THE OVERWHELMING EVIDENCE OF HIS GUILT?

>> HMM?

>> YOU SAID THERE WAS
OVERWHELMING EVIDENCE OF
MR. HODGKINS' GUILT?
>> YES.
>> WHAT WAS THAT?
>> THAT WOULD BE BASED ON THE
DNA EVIDENCE THAT WAS PRESENTED.
>> YOU SHOULD THE FINGERNAILS ON
THE LEFT HAND?
>> CORRECT.
>> WHAT ELSE?
>> AND THEN THE LIES THAT HE
TOLD.
ONCE HE WAS, ONCE THAT WAS--
AND THEN THE LIES THAT HE TOLD
TO LAW ENFORCEMENT.
>> THAT'S EVIDENCE OF HIS GUILT?
>> CORRECT.
>> COULD IT ALSO NOT BE EVIDENCE
THAT HE DIDN'T WANT HIS WIFE TO
KNOW THAT HE HAD A SEXUAL
RELATIONSHIP WITH THIS WOMAN?
>> BUT EVEN ONCE HE ADMITTED
THAT HE WAS HAVING A SEXUAL
RELATIONSHIP WITH THIS WOMAN, HE
CONTINUED TO TELL LIES.
IT WASN'T, OH, OKAY, NOW I
KNOW-- NOW I'M GOING TO ADMIT
TO HAVING A SEXUAL RELATIONSHIP.
HE CONTINUED TO TELL LIES.
NEVER ONCE DID HE OFFER AN
INNOCENT EXPLANATION.
IT WAS ALWAYS LIES TO TRY TO
COVER UP WHERE HE-- EVEN WHEN
PRESENTED WITH THE DNA
AND LAW ENFORCEMENT TOLD HIM
THAT'S NOT POSSIBLE, HE
CONTINUED TO TELL LIES.
THERE WAS NEVER AN INNOCENT
EXPLANATION NOR WHAT THE-- FOR
WHAT THE DNA EVIDENCE ACTUALLY
SHOWED.
>> WHAT DOES IT SHOW?
>> THE DNA IN EVIDENCE SHOWS
THAT HE WAS THERE WITHIN 4
HOURS, AND HE NEVER-- 24 HOURS,
AND HE NEVER PROVIDES--
>> DOES IT SHOW THAT HE CAN
KILLED HER?
>> THE STATE BELIEVES IT DOES.

YES, YOUR HONOR: SO--
>> HOW MANY NAILS?
>> THERE'S DNA EVIDENCE FOUND UNDER FOUR DIFFERENT NAILS.
>> ALL RIGHT.
HIS DNA UNDER FOUR DIFFERENT NAILS?
>> IT MATCHES THE ALLELES OF HIS DNA, YES.
>> NOW, WAS THERE EVIDENCE OF DNA EVIDENCE ON HIS RIGHT HAND OF SOME OTHER PERSON?
>> NO.
IT'S ALL MATCHES HIS.
ALL FOUR OF THEM, ALL FOUR OF THE DNA MATCHES HIS ALLELES.
THE ONE THAT MATCHES ALL 13 WAS THE ONE FOUND ON THE LEFT-HAND FINGERNAIL.
NONE OF THEM ARE FROM ANYBODY ELSE.
THEY'RE ALL HIS.
YES.
SO THE STRONGEST ONE, THE ONE THAT IS THE ONE IN TWO QUADRILLION IN ALL 13 ALLELES, THAT'S THE ONE THAT'S FOUND ON THE LEFT HAND FINGERNAIL OF THE VICTIM.
AND THAT ONE-- AND ALL OF THEM DO HAVE BLOOD UNDER THEM AS WELL.
SHE TESTED THEM FOR BLOOD, AND THEY--
>> WHOSE BLOOD, HIS BLOOD?
>> UH, I-- SHE TESTED THEM FOR BLOOD, THAT'S WHAT THE EVIDENCE SAYS.
>> I KNOW, BUT WHOSE BLOOD WAS FOUND UNDER THE NAILS?
>> IT'S A MIXTURE BETWEEN HER SKIN CELLS IS AND HIS SKIN CELLS, SO ONCE IT'S A MIXTURE--
>> THEY FOUND HIS BLOOD UNDER HER NAILS, IS THAT WHAT YOU'RE TELLING ME?
>> BOTH SKIN CELLS ARE A MIXTURE.
THEY CAN'T TELL WHOSE BLOOD IT IS.

WE JUST KNOW THAT IT'S BLOODY SKIN CELLS.

ALL THEY CAN DO IS TEST FOR THE BLOOD WHEN IT'S UNDER THERE. THEY CAN'T ACTUALLY EXTRACT IT AND SEE WHO EXACTLY, WHOSE BLOOD IT IS.

BUT THEY CAN SEPARATE OUT THE DNA, AND THAT'S WHEN THEY WERE ABLE TO TELL THAT-- SO THEY KNOW IT'S BLOODY SKIN CELLS, AND THEY KNOW THAT IT IS, IT BELONGS TO THE DEFENDANT.

AND THEN THERE'S A VERY SMALL AMOUNT FOR THE VICTIM.

UNDERNEATH THOSE, THE SKIN CELLS--

>> SO YOU'RE SAYING THE DEFENDANT'S BLOOD WAS YOU SHOULD HER NAIL-- WAS UNDER HER NAILS? THAT WAS PROVEN?

>> NO, YOUR HONOR.

WE KNOW THERE'S BLOOD UNDERNEATH THERE.

IT'S BLOODY SKIN CELLS.

THE MAJORITY OF THE SKIN CELLS BELONG TO THE DEFENDANT.

THERE'S A SMALL AMOUNT FOR THE VICTIM.

THAT'S WHAT WE KNOW FOR SURE.

>> HOW DOES THIS, HOW DID SHE DIE?

HOW MANY-- WHAT WERE THE-- I WANT TO GO BECAUSE I THINK THERE ARE QUESTIONS ON CIRCUMSTANTIAL EVIDENCE, BUT THE ISSUE OF PREMEDITATION.

STATE CAN'T, DOESN'T COME UP WITH A MOTIVE, RIGHT?

NOTHING WAS TAKEN.

THERE'S NOT ANY HISTORY RIGHT NOW THAT THEY WERE, YOU KNOW, IT WAS A BAD BREAK-UP OR ANYTHING ASSUMING IT WAS HIM.

ARE THE, THERE'S BOTH LOTS OF STAB WOUNDS WITH WAS IT A KNIFE THAT WAS HER KNIFE?

A KNIFE THAT WAS IN THE HOUSE?

>> THE WEAPON WAS NEVER FOUND.

>> NEVER FOUND, OKAY.

SO WE DON'T KNOW THAT.
AND THERE WAS STRANGULATION?
MANUAL STRANGULATION OR WAS
THERE A ROPE USED?
>> IT WAS MANUAL STRANGULATION.
>> ALL RIGHT.
DOES THE MEDICAL EXAMINER SAY
WHAT OCCURRED FIRST?
I MEAN--
>> RIGHT.
WE BELIEVE THAT SHE WAS HIT WITH
ONE OF THE BEER BOTTLES BECAUSE
THERE IS A ONE PARTICULAR INJURY
TO HER HEAD THAT IS CONSISTENT
WITH A BEER BOTTLE IN THE.
THERE'S BLOOD FOUND IN THE BEER
BOTTLE IN THE SINK THAT MATCHES
HER BLOOD.
>> WAS THERE FINGERPRINTS ON THE
BEER BOTTLE?
>> NO, NO FINGERPRINTS ON THE
BEER BOTTLE AT ALL.
>> NOT EVEN HERS?
>> THAT I DON'T REMEMBER, YOUR
HONOR.
I KNOW THERE ARE-- WE KNOW
THERE ARE NONE FROM--
>> SHE'S HIT WITH THE BEER
BOTTLE AND NO DNA OR NO
FINGERPRINTS ON THE BEER BOTTLE.
THEN WHAT HAPPENS?
>> AND THEN THERE ARE VARIOUS
CONTUSIONS AND ABRASIONS
THROUGHOUT HER BODY THAT THE
MEDICAL EXAMINER TESTIFIES COULD
HAVE HAPPENED EITHER BEFORE OR
AFTER THE STRANGULATION.
THOSE AREN'T-- SHE IS NOT SURE
OF.
BUT WE KNOW THAT SHE IS MANUALLY
STRANGULATED AND WE KNOW THAT
THAT STRANGULATION HAPPENS FOR
LONGER THAN 10-15 SECONDS.
AND THE REASON WE KNOW THAT IS
BECAUSE SHE TESTIFIES THAT AT A
MINIMUM A STRANGULATION WITHOUT
ANY STRUGGLING AT ALL HAPPENS
FOR 10-15 SECONDS.
AND SHE SAYS THAT IN THIS
PARTICULAR CASE IT HAD TO HAPPEN

FOR LONGER THAN THAT BECAUSE THERE ARE A FEW THINGS THAT SHE TESTIFIES TO THAT HAPPENED. ONE IS-- LET ME MAKE SURE I GET THIS RIGHT, I WROTE THIS DOWN-- IS THAT THE BONE RIGHT HERE, THE HIGH RIDE BONE WAS BROKEN. MOST IMPORTANTLY, SHE HAD THE SUBCON HEMORRHAGING. AND THAT'S THE MOST IMPORTANT PART BECAUSE THAT CAN'T HAPPEN WITHOUT A DIFFERENCE IN PRESSURE THAT OCCURS DURING THE STRANGULATION.

>> NOW, WHEN WERE THE-- HOW MANY KNIFE WOUNDS?

>> THERE WERE, THERE WERE SEVEN IN THE TORSO AREA, THREE ALONG THE NECK--

>> AND THAT HAPPENED AFTER THE STRANGULATION?

>> THAT HAPPENED AFTER THE STRANGULATION.

>> SO I GUESS MY QUESTION HERE, AND I KNOW WE'VE HELD, YOU KNOW, CERTAINLY HAC CAN OCCUR, I MEAN, IS PART OF A STRANGULATION. BUT IF YOU TAKE THE, AGAIN, IF WE'RE LOOKING AT A HYPOTHESIS THAT THERE WAS SUDDEN RAGE THAT OCCURS AND IT ALL OCCURS WITHIN A MATTER OF SECONDS, HOW IS THIS NOT CONSISTENT WITH SECOND-DEGREE MURDER AS IT IS WITH PREMEDITATED FIRST-DEGREE MURDER?

>> WELL--

>> DO WE HAVE ENOUGH CASE LAW THAT SAYS, NO, IF YOU STRANGLE SOMEBODY AND THEN, THAT IT'S, IT HAS TO BE, IT'S CONSISTENT WITH FIRST-DEGREE MURDER?

>> ABSOLUTELY, YOUR HONOR. WITH THE PREMEDITATION. BECAUSE, YOU KNOW, LIKE JUSTICE LABARGA SAID, WE HAVE 32 DIFFERENT ACTUAL INJURIES TO THE BODY. BUT BESIDES THAT, THIS WASN'T-- THIS WAS A PROLONGED

STRANGULATION.

AND AFTER HER BODY LAY THERE UNCONSCIOUS ON THE GROUND, THAT'S WHEN WE HAVE THESE TEN DIFFERENT STAB WOUNDS THAT OCCURRED.

SO HERE SHE IS HELPLESS.

IT WASN'T, YOU KNOW, SO THAT'S THE POINT YOU HAVE AN UNCONSCIOUS BODY--

>> AND WHAT WAS THE EVIDENCE THAT SHE WAS CONSCIOUS WHEN THE STRANGULATION TOOK PLACE?

BECAUSE YOU SAID SHE WAS HIT FIRST WITH THE BEER BOTTLE--

>> RIGHT.

>> SO WHAT'S THE EVIDENCE THAT SHE WAS CONSCIOUS WHEN THE STRANGULATION--

>> BECAUSE THERE WASN'T A HARD ENOUGH IMPACT FROM BEING HIT WITH THE BEER BOTTLE TO KNOCK HER UNCONSCIOUS.

>> WHO SAID IT WASN'T A HARD ENOUGH IMPACT?

>> THE MEDICAL EXAMINER TESTIFIED TO THAT.

>> GO BACK TO THIS, BECAUSE I'M STILL A LITTLE CONFUSED ABOUT WHEN THIS CONVERSATION TOOK PLACE.

APPARENTLY, THERE'S A WITNESS NAMED EZEKIEL? --

>> OKAY.

>> APPARENTLY HE OVERHEARD LODGE ENGAGE IN THE CONVERSATION WITH THE DEFENDANT IN THIS CASE, AND THEY WERE STANDING AT THE DOOR OF HER APARTMENT.

HE NEVER ACTUALLY WENT IN.

AND THIS WITNESS BASICALLY SAID THAT HODGKINS HAD STAYED FOR ABOUT FIVE MINUTES, AND HE NEVER ENTERED HER APARTMENT, BUT HE OVERHEARD AN UNEASY CONVERSATION BETWEEN THE VICTIM IN THIS CASE AND MR. HODGKINS.

AND THEN THIS WITNESS LATER TESTIFIED THAT LODGE APPEARED TO HAVE AGGRAVATED HODGKINS AS

HODGKINS LEFT.
HODGKINS HAD A LOOK OF BEING
AGGRAVATED.
DO YOU KNOW WHEN THAT
CONVERSATION TOOK PLACE IN
RELATION TO THE TIME OF THE
HOMICIDE?
WAS THAT-- HOMICIDE?
WAS THAT THE SAME NIGHT?
THE NIGHT BEFORE?
APPARENTLY, THERE HAD BEEN SOME
TYPE OF CONVERSATIONS BETWEEN
BOTH OF THEM THAT INDICATED THAT
THEY WERE NOT HAPPY WITH EACH
OTHER.
>> RIGHT.
AND I BELIEVE THAT WAS THE
NEIGHBOR OF HERS WHO TESTIFIED
TO THAT.
AND THAT HAPPENED, I BELIEVE
THAT HAPPENED A FEW, A FEW DAYS
PRIOR TO--
>> WAIT, WAIT.
I THOUGHT EZEKIEL, I THOUGHT
THAT WAS THE SAME PERSON WHO WAS
WITH HER CLEANING ALL NIGHT,
THAT THAT ALL CAME FROM ONE
WITNESS?
WERE THERE TWO DIFFERENT
WITNESSES?
IN OTHER WORDS, SOMEBODY THAT
CAME AND--
>> RIGHT.
>>-- AND THEY'D SPENT ALL NIGHT
SEEMS, YOU KNOW, CLEANING THE
APARTMENT.
>> RIGHT.
>> SO ISN'T SHE ONE THAT
OBSERVED--
>> RIGHT, HER NEIGHBOR THAT CAME
OVER.
>>
[INAUDIBLE]
.
>> RIGHT, HER NEIGHBOR--
>> BUT SHE'S A NEIGHBOR--
>> SHE'S THE SAME PERSON,
CORRECT?
>> YES.
>> [INAUDIBLE]

>> THAT HAPPENED, BUT SHE WAS WITH HER MONDAY.
>> RIGHT.
IT WAS, LIKE, MONDAY NIGHT INTO TUESDAY MORNING.
>> SO WHEN JUSTICE LABARGA ASKED YOU WHEN DID THAT OCCUR--
>> IT WAS JUST A FEW DAYS BEFORE THE MURDER.
>> SO THERE WAS EVIDENCE INTRODUCE INTO THE RECORD THAT THERE HAD BEEN SOME ANIMOSITY--
>> CORRECT.
>>-- BETWEEN THE VICTIM IN THIS CASE AND MR. HODGKINS.
>> CORRECT, I BELIEVE SO.
>> JUST A FEW DAYS BEFORE.
>> JUST A FEW DAYS BEFORE, CORRECT.
>> [INAUDIBLE]
IS THIS THE ANIMOSITY YOU'RE TALKING ABOUT, DOES SHE SEEM AGITATED AFTER THEY TALKED?
>> RIGHT, AND-- RIGHT.
HE WOULDN'T LET HER-- THE TESTIMONY FROM HER WAS THAT HE STOOD OUTSIDE OF APARTMENT, THERE WAS NO CONTACT BETWEEN THE TWO.
THEY DIDN'T-- SHE DID NOT SEEM VERY HAPPY TO SEE HIM, THAT THEIR CONVERSATION WAS BRIEF AND THAT, YEAH, THEY WEREN'T-- SHE DIDN'T-- YEAH.
THERE WAS, THEIR CONVERSATION WAS SHORT, AND HE-- AND THAT MR. HODGKINS HIMSELF WAS NOT AT ALL HAPPY THAT THERE WAS A GUEST OVER.
>> NOW, THIS HAPPENED-- SHE RELATED THIS TO THE AUTHORITIES A YEAR LATER?
>> YES.
WHEN THEY--
>> NEVER MENTIONED THEM WHEN SHE WAS FIRST--
[INAUDIBLE]
>> NO.
>> SO SHE REMEMBERED THIS WITH SPECIFICITY.

I THOUGHT SHE SAID HE WAS
AGITATED THAT SHE WAS THERE,
THAT IS, THE WITNESS.

I THINK HE WANTED HER, HE
EXPECTED HER TO BE ALONE?

>> YEAH.

I BELIEVE THAT WAS-- SHE DID
TOUGH TO THAT.

>> AND THE SOURCE OF THE
AGGRAVATION WAS THE FACT THAT
SHE WAS THERE?

>> THAT WAS PART OF HER
TESTIMONY, YES.

>> ALL RIGHT.

>> UH-HUH.

>> NOW, I'M STILL STUCK ON IN
THIS, YOU KNOW?

HORRIFIC MURDER, I JUST, I'M
JUST TRYING TO CONNECT HIM OTHER
THAN THIS DNA ED.

WHAT ELSE DO YOU HAVE?

>> IT'S-- THE FOX OF HIS
CONNECTION, THE STRONGEST FOCUS
OF HIS CONNECTION IS THE DNA.
THE SUBSEQUENT FOCUS IS HIS
LIES.

I MEAN, THOSE ARE REALLY WHAT
THE POLICE HAD THAT LED HIM TO
BE THE SUSPECT.

WELL, THE DNA IS WHAT LED HIM TO
BE THE SUSPECT, AND THEN WHEN
THEY CONFRONTED HIM ABOUT IT,
HIS CONSISTENT LYING TO THEM
ABOUT IT.

IT WASN'T, YOU KNOW, ONCE HE
STARTS OFFERING EXPLANATIONS,
IT'S THAT HE CONSISTENTLY LIES
TO LAW ENFORCEMENT.

AND IT'S NOT JUST ONE LIE--

>> I KNOW, HE LIED THREE TIMES.

>> RIGHT.

>> OKAY, WHAT ELSE?

WHAT ELSE?

>> THAT'S THE EVIDENCE THAT THEY
HAD--

>> AND THAT'S IT?

>> YES, YOUR HONOR.

>>

[INAUDIBLE]

ACTUALLY APPLIES A REASONABLE

INFERENCE THAT HE WAS EXPECTING
TO COME IN, THAT HE WANTED TO
COME IN?

>> I BELIEVE SO, YOUR HONOR,
YES.

>> SO THEN THAT'S--

>> YES.

AND I THINK--

>> COME IN FOR WHAT?

TO KILL HER?

>> NO, NOT TO KILL HER.

BUT IF YOU BELIEVE HIS STORY
THAT THEY HAVE THIS SEXUAL
RELATIONSHIP, THIS WITNESS IS
INTERRUPTING HIS TIME WITH THE
VICTIM.

I BELIEVE.

OR--

>> WHAT HAPPENED AT THE DOOR
WOULD ACTUALLY BE CONSISTENT
WITH THE CLAIM THAT HE HAD A
SEXUAL, HE HAD A SEXUAL
RELATIONSHIP WITH HER DURING
THIS, THE RELEVANT, DURING SOME
TIME PERIOD IN THE DAYS LEADING
UP TO THE MURDER.

>> OR THAT MAYBE THINGS WEREN'T
GOING SO WELL.

THEY WERE HAVING A CONVERSATION
THAT THE TWO OF THEM DIDN'T SEEM
SO HAPPY WITH EACH OTHER.

FOR WHATEVER REASON.

>> DID SHE HEAR THIS
CONVERSATION?

WHAT WAS SAID?

>> SHE DID NOT TALK ABOUT WHAT
WAS HAPPENING DURING THE
CONVERSATION.

SHE WAS NOT ALLOWED TO TESTIFY
TO THAT.

>> I TAKE IT THE JURY WAS
CHARGED WITH SECOND-DEGREE
MURDER?

>> THEY WERE, YOUR HONOR.

>> DO YOU RECALL FROM THE
RECORD--

[INAUDIBLE]

WHETHER OR NOT THIS WAS-- THERE
WAS SOME ARGUMENT TO THE JURY
THAT--

[INAUDIBLE]
>> IT WAS NOT, YOUR HONOR.
>> [INAUDIBLE]
>> IT WAS--
>> [INAUDIBLE]
>> I, I DON'T REMEMBER SPECIFICALLY THAT IT WAS AN ALL OR NOTHING, BUT I KNOW THAT IT WAS-- THERE WAS NOT A SECOND DEGREE HYPOTHESIS. THAT WAS NOT PROVIDED. I DON'T REMEMBER THAT OFF THE TOP OF MY HEAD.
>> [INAUDIBLE]
>> I CAN TELL YOU--
>> IT WAS RAGE.
>> I CAN TELL YOU THAT WAS NEVER RAISED AS THEIR JOA ARGUMENT AS A HYPOTHESIS--
[INAUDIBLE]
WHEN WE LOOKED OVER THE JOA ARGUMENT, THAT WAS NEVER RAISED. TRYING TO REMEMBER ABOUT THE-- OFF THE TOP OF MY HEAD, I DON'T REMEMBER.
THAT WAS--
[INAUDIBLE]
HONESTLY, YOUR HONOR. BUT IN TERMS OF, UM, YOU KNOW, I DID WANT TO BRIEFLY TALK ABOUT THE DAUSCH CASE AND HOW THAT CASE IS ACTUALLY QUITE DIFFERENT THAN THIS CASE. BECAUSE IF YOUR HONORS REMEMBER IN DAUSCH, THAT CASE WAS THE VEHICLE THAT WAS LEFT ON THE SIDE OF THE ROAD QUITE A FAR WAYS AWAY FROM THE ACTUAL CRIME SCENE. THERE WAS DNA INSIDE VEHICLE. NOTHING, UM-- THE DEFENDANT'S DNA WAS INSIDE THE VEHICLE. THERE WAS NO DNA ACTUALLY FOUND ON THE-- THE DEFENDANT'S DNA WAS NOT FOUND ON THE VICTIM. AND SO, UM, IN ANY ANALOGY--
>> WHAT THE, IN THAT CASE THERE WAS DNA FOUND ON THE VICTIM THAT DID NOT EXCLUDE--
>> EXCLUDE.

>>, YOU KNOW, A ONE IN SEVEN
CHANCE--
>> IN THE DEFENDANT, YES.
THAT IS-- I JUST, YES, I JUST
REMEMBERED THAT--
[INAUDIBLE]
BUT, SO IN THIS CASE THE ACTUAL,
THE ACTUAL DNA FOUND ON THE
VICTIM IS ONE IN TWO QUADRILLION
WAS THE TESTIMONY.
SO WE DON'T HAVE THAT WEAK DNA
ED, AND WE HAVE THE DNA-- DNA
EVIDENCE, SO WE HAVE REALLY
STRONG DNA EVIDENCE.
WE DON'T HAVE THAT SAME TYPE OF
A CONCERN THAT THIS COURT HAD IN
DAUSCH.
SO ISN'T THAT TYPE OF A DAUSCH
DNA CASE.
WHAT WE HAVE IS A CIRCUMSTANTIAL
EVIDENCE CASE AND IS THIS
EVIDENCE STRONG ENOUGH TO
SURVIVE A JOA AND BE PRESENTED
TO THE JURY?
AND SO THE STATE MAINTAINS THAT,
YES, THIS IS A STRONG ENOUGH
CASE TO SURVIVE.
THE-- AND WHEN YOU LOOK AT WHAT
WAS THE ACTUAL HYPOTHESIS OF
INCIDENCE THAT WAS PRESENTED,
THAT'S WHEN YOU GET TO THIS
36-HOUR BEFORE THAT THE
DEFENDANT-- THAT'S WHAT THE
FACTS OF THE CASE THAT WERE
PRESENTED.
JUSTICE LEWIS, YOU HAD ASKED
WHAT WAS THE FACTS THAT THE
DEFENDANT USED FOR HIS
HYPOTHESIS OF INNOCENCE.
IT'S THIS 36-HOUR STATEMENT HE
MADE TO LAW ENFORCEMENT, AND
THAT'S THE HYPOTHESIS OF
INNOCENCE THAT THE STATE HAS TO
REBUT.
AND THE STATE PRESENTED THE
EVIDENCE THROUGH THE EXCESSIVE
HAND WASHING, THROUGH THE DNA
ED.
THEY REBUTTED-- CAN EVIDENCE.
THEY REBUTTED THIS HYPOTHESIS SO

THAT THIS EVIDENCE COULD BE
PRESENTED TO THE JURY TO MAKE
THE DECISION ON GUILTY.
AND SO IN THIS CASE THE
CIRCUMSTANTIAL EVIDENCE WAS
STRONG ENOUGH TO GO TO THE JURY,
SO THE STATE WOULD ASK THAT THIS
COURT AFFIRM.
THANK YOU.

>> THANK YOU.
COUNSEL?

>> TO YOUR QUESTION, JUSTICE LA
BAR BAA-- LA BAA GASEOUS
PREMEDITATION ARGUMENT FOR
SECOND-DEGREE MURDER WAS NOT
CITED BELOW, BUT THIS COURT HAS
THE DUTY TO MAKE SURE ALL THE
ELEMENTS ARE THERE, SO THAT'S
WHY IT'S BEING RAISED HERE.
TO CLEAR UP A COUPLE FACTUAL
MATTERS, UM, THE INVESTIGATOR IN
THIS CASE TESTIFIED THAT SHE
SCRAPED THE FINGERNAILS SOLELY
FOR EVIDENCE OF MICROSCOPIC
DEBRIS.

THERE WAS NO EVIDENCE THAT THERE
WAS ANY BLOOD UNDERNEATH THE
FINGERNAILS.

AND AS FAR AS HOW MANY
FINGERNAILS THE DNA WAS FOUND
IN, I DON'T THINK THERE WAS ANY
EVIDENCE THAT HIS DNA WAS FOUND
UNDER FOUR DIFFERENT
FINGERNAILS.

SHE MIGHT HAVE SCRAPED FOUR
FINGERNAILS ON THE LEFT HAND,
BUT THAT ALL DOSE INTO THE
EVIDENCE SHE-- GOES INTO THE
EVIDENCE SHE TESTIFIED WAS IN
ONE PLACE, AND THAT WAS TESTED,
SO IT COULD HAVE BEEN LESS THAN
FOUR FINGER NAILS.

ALSO AS TO THE LENGTH OF
STRANGULATION, THE MEDICAL
EXAMINER TESTIFIED IT COULD BE
10-15 SECONDS, BUT SHE TESTIFIED
SHE HAD NO IDEA IT WOULD
ACTUALLY TAKE.

SO-15 SECONDS TO
UNCONSCIOUSNESS, HOW LONG DID IT

TAKE HERE?

I DON'T KNOW.

>> BUT AT THAT POINT IF SHE'S UNCONSCIOUS 10-15 SECONDS--

>> RIGHT.

>>-- YOU THEN HAVE-- AND SHE'S NOT DEAD, AT THAT POINT ISN'T THERE THEN TIME FOR REFLECTION FOR THERE TO BE PREMEDITATION BY THE FACT THAT THESE ADDITIONAL STAB WOUNDS THAT CAUSE THE ULTIMATE DEATH?

>> WELL, AGAIN, I THINK AS THIS COURT FOUND IN THE CASES I MENTIONED IN THE BRIEF AND BEFORE THAT STILL COULD BE INDICATIVE OF BLIND RAGE. SO I THINK THAT'S THE-- BASED ON GREEN AND THOSE CASES. AND GOING TO SHACKLES REAL QUICK, THERE DOESN'T HAVE TO BE QUESTIONING OF THE JURY, DID YOU SEE THE SHACKLES.

I THINK IN DEC THERE WAS, THE ATTORNEY MENTIONED THAT THE DEFENDANT WAS SHACKLED BEFORE THE JURY AND THAT WAS ENOUGH. ALSO THE SUICIDE WATCH WAS BY VIRTUE OF THE FACT THAT HE WAS CONVICTED IN A CAPITAL CASE. THAT'S WHAT THE BAILIFF OR THE SHERIFF'S OFFICE TESTIFIED TO, THAT EVERY DEFENDANT WHO IS CONVICTED OF A CAPITAL CRIME JUST BY VIRTUE OF THEIR CONVICTION IS PLACED ON ESCAPE WATCH AND SUICIDE WATCH. SO THE SUICIDE ATTEMPT WHICH WAS IN THE LATE '80s OR '90s OR SOMETHING LIKE THAT CAME OUT LATER THROUGH A DOCTOR'S TESTIMONY.

HAD NOTHING TO DO WITH A CASE-SPECIFIC DETERMINATION IN THIS CASE AS TO WHETHER TO PUT HIM IN SHACKLES.

UNLESS THERE ARE ANY FURTHER QUESTIONS, WE WOULD ASK THAT YOU VACATE HIS CONVICTION OR IN THE ALTERNATIVE, REVERSE FOR

SECOND-DEGREE MURDER OR A NEW
PENALTY PHASE.
THANK YOU.
>> THANK YOU--