

>> THE SECOND CASE ON THE DOCKET  
TODAY IS SMITH VERSUS STATE  
OF FLORIDA.  
COUNSEL.

OKAY.

YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT.

I'M JULIUS AULISIO.

AND I REPRESENT DELMER SMITH.

I LIKE TO BEGIN BY GOING TO  
ISSUE TWO FROM THE PREVIOUS  
WHICH IS REGARDING THE  
STATEMENTS MADE BY DETECTIVE  
LINDA DINERO FROM THE  
ST. PETERSBURG POLICE  
DEPARTMENT.

THIS CASE IS A MURDER CASE OUT  
OF MANATEE COUNTY IN A SMALL  
COMMUNITY CALLED TERRA CEIA.  
DETECTIVE DENIRO WAS CALLED TO  
HAVE PRELIMINARY QUESTIONS.  
SHE HAD BEEN A POLICE OFFICER  
WITH THE CITY OF SARASOTA POLICE  
DEPARTMENT FOR 23 YEARS.

SHE WAS THEN ASKED IF SHE BECAME  
INVOLVED IN AN INVESTIGATION  
INVOLVING DELMER SMITH.

AND THIS, THE QUESTION ITSELF  
PROBABLY IS WHAT LED TO THE, HER  
TESTIFYING THE WAY SHE DID.  
BECAUSE IT TALKS ABOUT HER  
INVESTIGATION AND INVOLVING  
DELMER SMITH.

SHE WAS THEN ASKED IF SHE HAD AN  
OPPORTUNITY TO CONTACT MICHELLE  
QUINONES, AND WHICH SHE DID AND  
WAS ASKED ABOUT HOW SHE  
OBTAINED, DID SHE OBTAIN SOME  
PROPERTY FROM MICHELLE QUINONES  
WHO WAS SMITH'S FORMER  
GIRLFRIEND.

AND SHE WAS ASKED HOW THAT  
CAME ABOUT.

AND THEN HER RESPONSE WAS  
REGARDING MIGHT HAVE  
INVESTIGATION FOR THE CITY  
OF SARASOTA.

>> BUT AT THAT POINT THE  
PROSECUTOR SAID, LET ME STOP  
YOU THERE.

WHAT I MEANT WAS, DID YOU CALL HER, IN OTHER WORDS, THE PROSECUTOR REALIZING SHE WAS ABOUT TO GET INTO SOMETHING THAT MIGHT INDICATE THE JURY SHOULDN'T CONSIDER, ACTUALLY STOPPED HER WHICH I WOULD COMMEND THE PROSECUTOR FOR AND REDIRECTED HER.

AND SO I GUESS THE QUESTION I HAVE IS, AT THAT POINT THE DEFENDANT'S OBJECTED.

MOVED FOR A MISTRIAL.

JUDGE SAID, THIS IS POOR CHOICE OF WORDS.

SHE SHOULD HAVE

KNOWN BETTER BUT WE HAVE SITUATION WHERE A MISTRIAL SHOULD HAVE BEEN GRANTED WHERE THE PROSECUTOR STOPPED THE POLICE OFFICER FROM GOING DOWN AN IMPROPER PATH AND, I'M NOT, HOW DOES IT MEET THE STANDARD, JUST THAT ISOLATED COMMENT FOR A MISTRIAL?

I MEAN I'M NOT SO SURE I EVEN WOULD HAVE GOTTEN, IF I WAS THE JURY, WELL, THAT THIS MEANT HE WAS BEING INVESTIGATED SEPARATELY.

SO, THAT IS MULTIPLE QUESTIONS BUT DIDN'T PROSECUTOR THE WITNESS AND THEREFORE AMELIORATE ANY HARM AND WHY WOULD THIS BE WORTHY OF A MISTRIAL OR REQUIRE A MISTRIAL?

>> WELL, THE PROSECUTOR DID STOP THE WITNESS WHEN SHE REALIZED THAT IT WAS AN IMPROPER COMMENT. THE PROBLEM IS THAT IT WAS STOPPED TOO LATE BECAUSE IT BROUGHT OUT TO THE JURY THE FACT THAT THERE WAS ANOTHER INVESTIGATION.

>> BUT IT IS JUST, YOU DON'T EVEN KNOW WHAT KIND OF INVESTIGATION IT WAS. REGARDING MY INVESTIGATION I WAS DOING FOR THE CITY OF SARASOTA. IT'S, HOW DOES THAT NECESSARILY

SAY IT WAS AN INVESTIGATION OF HIM ABOUT ANOTHER CRIME?  
I MEAN I'M JUST NOT CONNECTING THE DOTS.  
AND I'M VERY SENSITIVE TO THESE THINGS BUT I DON'T SEE THIS ONE.  
EXPLAIN WHAT WOULD BE SO, LIKE THE JURY WOULD GO, AH-HA, THIS GUY'S COMMITTED MULTIPLE CRIMES?  
>> WELL THE, BECAUSE THE JURY, BECAUSE THIS CASE IS IN MANATEE COUNTY, I THINK IT'S, ALL THE JURORS WERE FROM MANATEE COUNTY. THEY'RE IN MANATEE COUNTY.  
>> I UNDERSTAND BUT IT DOESN'T SAY, REGARDING MY INVESTIGATION, I WAS DOING FOR THE CITY OF SARASOTA, YOU DON'T EVEN KNOW WHAT KIND OF INVESTIGATION. MAYBE SHE WAS JUST, I MEAN WHY WOULD YOU, WHY WOULD THE JURY ASSUME JUST ON THAT LITTLE PART THAT THERE WAS ANOTHER CRIME THAT HAD OCCURRED?  
I MEAN THAT IS THE IMPLICATION, YOU'RE SAYING THEY MUST HAVE DRAWN, THAT HE WAS BEING INVESTIGATED FOR ANOTHER CRIME IN SARASOTA?  
>> ABSOLUTELY.  
BECAUSE SHE IS A DETECTIVE FOR THE SARASOTA POLICE DEPARTMENT, THAT'S HER PARTICULAR JOB.  
AND HER SPECIFIC WORDING OF HOW SHE ANSWERED THAT.  
AND SEE, INITIALLY SHE WASN'T ASKED THE QUESTION, DID YOU BECOME INVOLVED IN THIS MURDER INVESTIGATION?  
SHE WAS, SHE WAS ASKED A QUESTION, DID YOU BECOME--  
>> NO.  
AND AGAIN, IF PROSECUTOR AND JUDGE RECOGNIZED THAT THIS WITNESS SHOULD NOT HAVE ANSWERED IN THAT WAY.  
AND AGAIN, SO NOW WE'RE JUST TALKING ABOUT NOT WHETHER IT SHOULD HAVE, THE ANSWER SHOULD HAVE BEEN GIVEN BUT WHETHER IT

MEETS THE MISTRIAL STANDARD  
WHICH WOULD BE WHAT?  
THAT IT SO FUNDAMENTALLY AFFECTS  
THE ULTIMATE OUTCOME, I'M  
PARAPHRASING.

>> SURE.

>> BUT THAT IS A VERY HARD  
STANDARD TO MEET IN, WITH THAT  
SMALL REFERENCE.

I MEAN THE JUDGE, THE DEFENDANT  
DIDN'T ASK FOR A CURATIVE  
INSTRUCTION BECAUSE IT PROBABLY  
WOULD HAVE ONLY BEEN CALLED  
ATTENTION BUT, I DON'T REALLY--  
THE WITNESS WAS STOPPED.

SO HOW DOES THAT, HOW DOES THAT  
REQUIRE A NEW TRIAL IN THIS CASE  
ON THE GUILT PHASE?

>> WELL THE WITNESS WENT ON THEN  
WITH THE NEXT QUESTION AND SAID  
THAT MICHELLE QUINONES INDICATED  
THAT SHE HAD SOME PROPERTY THAT  
SHE WANTED TO GIVE TO THE  
SARASOTA POLICE DEPARTMENT.

>> BUT SHE WAS, WHERE WAS  
MICHELLE QUINONES FROM?  
WHERE WAS SHE FROM?

>> SHE WAS FROM, NORTHPORT,  
WHICH IS IN SARASOTA COUNTY.

>> SO WOULD IT BE UNUSUAL THAT  
YOU WOULD HAVE TURNED OVER  
PROPERTY, I MEAN SARASOTA,  
MANATEE ABUT.

THAT YOU TURN IT OVER TO A  
SARASOTA DETECTIVE VERSUS  
SOMEONE FROM MANATEE COUNTY?

>> WELL YOU WOULD BE TURNING IT  
OVER TO SOMEONE FROM SARASOTA  
SHERIFF'S DEPARTMENT, NOT--  
HERE YOU KNOW, I'M NOT SURE--

>> YOU'RE TALKING SORT OF--  
HERE'S THE PROBLEM AND YOU'RE  
SAYING THAT JURORS HAD TO KNOW  
WHAT THIS MEANT.

AND I'M SORT OF SAYING I KNOW  
WHERE SARASOTA AND MANATEE ARE.  
I'M STILL, ENLIGHTEN ME HOW THAT  
WOULD MEAN THAT THERE WAS A  
DIFFERENT CRIME BEING  
INVESTIGATED IN SARASOTA AS

OPPOSED TO SARASOTA HELPING  
MANATEE COLLECT EVIDENCE THAT  
WAS FOR THIS CRIME?

>> WELL MAYBE IF I PUT IT IN  
CONTEXT WITH WHAT JUSTICES WOULD  
BE FAMILIAR WITH LEON COUNTY.  
IF THERE WAS A MURDER COMMITTED  
OUTSIDE OF TALLAHASSEE.

>> RIGHT.

>> SO WE'RE IN LEON COUNTY.  
THE CASE IS BEING TRIED IN  
LEON COUNTY.

ALL THE JURORS ARE FROM  
LEON COUNTY.

AND WE HAVE THIS DETECTIVE WHO'S  
FROM, LET'S SAY QUINCY WHICH IS  
NEIGHBORING COUNTY, GADSDEN  
COUNTY AND SHE IS TALKING TO  
THIS WITNESS OUT IN THE FAR  
REACHES OF GADSDEN COUNTY.  
SAY CHATTAHOOCHEE, SOMEWHERE  
WAY OUT THERE.

THIS PERSON IN CHATTAHOOCHEE SHE  
IS TALKING TO, ISN'T GOING TO  
SAY THAT I HAVE EVIDENCE I WANT  
TO TURN OVER TO THE QUINCY  
POLICE DEPARTMENT, IF IT'S, IF  
IT'S EVIDENCE WAY OUT THERE IN  
THE OUTSKIRTS OF GADSDEN COUNTY  
UNLESS--

>> IF THE PERSON HAD PROPERTY  
WHICH THAT WAS IN, THAT WAS  
RELEVANT TO A CRIME FROM LEON  
COUNTY WHY WOULDN'T SOMEBODY  
FROM THAT, FROM THE NEIGHBORING  
COUNTY, WHY WOULDN'T SOMEONE  
FROM THE POLICE-- WE'RE  
PROBABLY, WHY DON'T YOU, YOU'RE  
NOT REALLY, I'M NOT GETTING IT  
AND MAYBE, I WILL LOOK BACK AT  
THE BRIEFS.

MAYBE MY COLLEAGUES CAN  
ENLIGHTEN ME.

YOU MIGHT WANT TO GO ON TO, YOU  
STILL HAVEN'T SAID WHAT IS IT  
THAT THEREFORE MEETS THE  
STANDARD WHERE AN ERROR IS SO  
PREJUDICIAL TO VITIATE THE  
ENTIRE TRIAL?

THAT IS THE MISTRIAL STANDARD.

TELL US HOW THIS REFERENCE,  
WHICH IS A BIT OBLIQUE, WOULD  
VITIATE THE ENTIRE TRIAL?

>> BECAUSE IT'S EVIDENCE OF  
OTHER CRIMES WHICH IS PRESUMED  
HARMFUL.

THAT IS THE WHOLE, THE POINT OF  
EVIDENCE OF OTHER CRIMES--

>> SURE.

AND YOU'RE SAYING ANYTIME THERE  
IS A PASSING REFERENCE WE SAID  
THERE IS AN AUTOMATIC MISTRIAL,  
NO MATTER HOW OBLIQUE IN PASSING  
AND HOW MUCH THE PROSECUTOR  
DIDN'T BRING IT OUT AND HOW MUCH  
IT'S NOT THEN EVEN DISCUSSED  
FURTHER IN ANY OTHER PART OF THE  
TRIAL OR IN CLOSING ARGUMENT  
THAT WE GO, WHOOP, AUTOMATIC  
MISTRIAL?

>> WELL IT'S NOT AN OBLIQUE  
REFERENCE, NO, YOU WOULDN'T GET  
A MISTRIAL BUT IN THIS CASE THIS  
IS DEFINITELY REFERS TO ANOTHER  
INVESTIGATION.

SIMILAR TO THE JACKSON CASE I  
BELIEVE IT WAS WHERE, WHERE  
THERE WAS MENTION THAT IT WAS A  
ROBBERY CHARGE AND, THEY WERE  
TRADING TO DETERMINE HOW THE  
INVESTIGATOR BECAME, HOW JACKSON  
BECAME A SUSPECT IN THAT  
PARTICULAR CASE.

AND THE INVESTIGATOR SAID, WELL,  
HE WAS PICKED UP ON ANOTHER  
CHARGE AND FIT THE DESCRIPTION  
OF THE CHARGE IN THE CASE  
JACKSON WAS BEING TRIED WITH.  
SO ALL, IN THAT CASE HE WAS JUST  
PICK UP ON ANOTHER CHARGE.

IT'S VERY SIMILAR.

>> HERE IT WAS THE WITNESS HAD  
PROPERTY INVOLVING THIS MURDER  
AND THAT PROPERTY HAPPENED TO BE  
IN SARASOTA COUNTY, IS THAT  
CORRECT?

>> CORRECT.

>> THAT'S WHY SHE BECAME  
INVOLVED AND WHY SHE WAS A  
WITNESS IN THIS CASE.

SO IT'S RELEVANT EVIDENCE THAT,  
AND IT DOESN'T, IT'S PASSING,  
BECAUSE SHE IS SARASOTA COUNTY  
AND THE PROPERTY INVOLVED IN  
THIS MURDER, THAT THE DEFENDANT  
EITHER LEFT FOR HIS GIRLFRIEND  
OR, WAS IN SARASOTA COUNTY?

>> BUT THE, THIS PARTICULAR  
DETECTIVE DID NOT WORK FOR  
SARASOTA COUNTY.

YOU KNOW, THERE IS CERTAINLY  
DISTINCTION BETWEEN A COUNTY  
JURISDICTION WHICH COVERS THE  
WHOLE COUNTY AND--

>> THE WHOLE ISSUE HERE--  
JUSTICE PARIENTE IS GETTING AT,  
WHY IS THIS ONE REFERENCE SO BAD  
THAT WE SHOULD GRANT THIS  
DEFENDANT A NEW TRIAL?

>> WELL, PART OF IT IS,  
IS THIS WAS A VERY HIGHLY  
PUBLICIZED CASE.

THERE WAS DIFFICULTY IN  
SELECTING THE JURORS.

EVEN DURING JURY SELECTION.  
THE PROBLEM IS, THEY COULDN'T  
QUESTION THE JURY, THEY SAY ARE  
YOU FAMILIAR WITH BURGLARIES  
THAT OCCURRED IN SARASOTA COUNTY  
THAT MR. SMITH WAS CHARGED WITH  
BECAUSE YOU CAN'T TELEGRAPH TO  
THE JURIES.

YOU WOULD BRING OUT OTHER  
CRIMES.

SO YOU CAN'T DO THAT.

SO WHAT THEY WERE DO, THEY WERE  
ASKING QUESTIONS, WELL, ARE YOU  
FAMILIAR WITH HIS BACKGROUND OR  
ANYTHING LIKE THAT?

AND MOST OF THE JURORS WOULD BE  
ANSWERING, NO, WE DON'T, YOU  
KNOW, WE READ SOMETHING IN THE  
PAPER ABOUT IT.

>> WELL WHAT DID THIS ADD TO  
THIS TRIAL THAT WAS SO EGREGIOUS  
THAT YOU COULDN'T HAVE GOTTEN A  
VERDICT WITHOUT?

WHAT IS IT ABOUT THIS ONE  
REFERENCE TO A DETECTIVE FROM  
ANOTHER COUNTY THAT WAS SO BAD

IN THE MINDS OF THE JURY, THAT YOU COULDN'T HAVE OTHERWISE GOTTEN A CONVICTION IN THIS CASE?

>> WELL IT PUT BEFORE THE JURORS EVIDENCE OF ANOTHER CRIME. THAT HE IS BEING INVESTIGATED FOR EVIDENCE OF ANOTHER CRIME. AND THAT'S, THAT'S WHAT IS PRESUMPTIVELY HARMFUL. THAT IS WHY WE DON'T--

>> THERE WAS ANOTHER CRIME BECAUSE IT WAS A DETECTIVE FROM ANOTHER COUNTY? THAT IS HOW WE GET TO, THAT IT WAS ANOTHER CRIME?

>> WELL THE DECK TESTIFY SPECIFICALLY THOUGH-- IT'S A LITTLE BIT CONFUSING BECAUSE SARASOTA, YOU HAVE THE CITY AND YOU HAVE SARASOTA COUNTY. SO IT IS THE SAME NAME BUT SARASOTA THE CITY IS GOING TO BE A VERY MUCH SMALLER SPECIFIC MUNICIPAL JURISDICTION. SO THAT DETECTIVE WORKS CRIMES IN THE CITY.

THAT DETECTIVE IS NOT WORKING CRIMES FROM WAY OUT IN NORTHPORT WHERE, WHERE THE WITNESS LIVED.

>> AFTER HE, AFTER THE PROSECUTOR STOPPED HER, SHE THEN ANSWERS, SHE SAID, SOME PROPERTY SHE WOULD LIKE TO TURN OAF TO THE SARASOTA POLICE DEPARTMENT, CITY OF SARASOTA.

SO THAT CLARIFIES ALTHOUGH THERE WAS A REFERENCE TO MY INVESTIGATION.

IT WAS STOPPED.

SHE THEN EXPLAINS WHY SHE WAS TURNING, WHY SHE WAS RECEIVING PROPERTY.

THE WITNESS WANTED TO GIVE IT TO HER BECAUSE SHE IS IN SARASOTA AND THEN THERE IS NO FURTHER REFERENCE TO IT IN THE WHOLE CASE, RIGHT?

>> RIGHT.

>> OKAY.



>> BUT THE PROBLEM IS, IF THAT WITNESS, SHE WOULD SAY, I HAVE, IF IT WAS FOR THE MURDER, SHE SAYS, WELL I HAVE PROPERTY THAT I WANT TO TURN OVER TO MANATEE COUNTY.

I HAVE PROPERTY INVOLVING A MURDER IN MANATEE COUNTY. BUT SHE SAID SHE WANTED TO TURN IT OVER TO THE SARASOTA POLICE DEPARTMENT, A VERY SMALL MUNICIPALITY, NOT, AND THIS, WHERE SHE LIVED, NORTHPORT, WAS ABOUT 30MILES AWAY FROM SARASOTA.

>> WHERE THE WITNESS LIVED?

>> RIGHT, RIGHT.

>> SO THE WITNESS WAS, YOU KNOW, AGAIN, I THINK YOU'VE MADE YOUR POINT.

>> OKAY.

>> IF IT WOULD BE SOMETHING THAT MAYBE THOSE JURORS WOULD START TO THINK WHAT ELSE WAS GOING ON IN THE CITY OF SARASOTA,, I ACCEPT THAT.

BUT THEN IT IS JUST GONE. SO WE GO BACK TO THIS MISTRIAL STANDARD BEING SUCH A HIGH STANDARD THAT THEY WOULD HAVE TO CONNECT THE DOTS THAT WERE NEVER EVER DISCUSSED.

PLUS THE EVIDENCE IN THIS CASE OF THE ACTUAL IS, IS, INVOLVEMENT AS THE ACTUAL MURDERER AND HIS POSSESSION OF PROPERTY, ETCETERA, ETCETERA, WERE PRETTY STRONG AND I KNOW THAT IS SOME OTHER ISSUES ABOUT CIRCUMSTANTIAL EVIDENCE BUT ARE YOU GOING TO GO OVER ANY OTHER GUILT PHASE ISSUES OTHER THAN THIS ONE?

>> YES.

I MOVE ON TO THE OTHER EVIDENCE THAT CAME IN WHERE THE THREATS, OR ALLEGED THREATS THAT WERE RELAYED TO JOSHUA HALL, THEY WERE ON A BUS COMING BACK FROM COURT.

JOSHUA HALL IS AN EIGHT-TIME CONVICTED FELON AND HE SAID THAT DELMER SMITH MADE STATEMENTS TO HIM THAT WERE TAKEN AS THREATS. SPECIFICALLY HE SAID TO TELL CELLECZ, HE IS JAMES CELLECZ IS THE PERSON WHO PALMED THE NECKLACE THE DAY AFTER THE MURDER.

AND HE TOLD CELLECZ THAT THAT I HAVE SOMETHING FOR HIS ASS AND HE KNEW WHERE STEPHANIE AND GAVIN LIVED, THAT HE HAD SOMETHING FOR THEM.

>> DO YOU NOT SEE THAT AS A THREAT?

>> WELL THE PROBLEM--

>> I DON'T UNDERSTAND WHY IT'S NOT, IT IS A STATEMENT BY THE DEFENDANT AND, YOU KNOW, OUR ENGLAND CASE CITING HEATH, THAT SAYS DEFENDANT'S ATTEMPT TO INTIMIDATE A STATE WITNESS IS RELEVANT AND ADMISSIBLE.

WHAT ABOUT THAT WAS CELLECZ, THE GUY THAT PAWNED THE PROPERTY THAT COULD HAVE BEEN THE MURDERER WAS THREATENED BY SMITH, HOW WOULD THAT NOT COME INTO EVIDENCE UNDER THE ENGLAND LINE OF CASES?

>> WELL, FIRST OF ALL, THE, THE STATEMENTS WERE NOT VERY CLEAR THREATS AND THEY WEREN'T DIRECTLY CONNECTED TO--

>> LET'S SAY, SO WE GOT IT HERE, WHAT WERE THE STATEMENTS THAT CAME INTO EVIDENCE?

SOUNDED LIKE A THREAT TO ME.

>> SAID, I HAVE SOMETHING FOR HIS ASS AND, TELL HIM THAT I KNOW WHERE STEPHANIE AND GAVIN LIVE.

I HAVE SOMETHING FOR THEM.

>> AND STEPHANIE AND GAVIN BEING THE CHILDREN?

>> THE CHILDREN, THE WIFE AND CHILD.

>> SO DOES THAT MEAN HE HAS A GIFT TO GIVE THEM?

>> WE DON'T, THAT'S THE THING.  
THAT IS EXACTLY WHAT I'M SAYING.  
IT'S VAGUE.

WE DON'T KNOW WHAT IT MEANS.

>> WE DON'T?

>> IT COULD BE A GIFT.

IT COULD BE A THREAT TO DO  
PHYSICAL VIOLENCE.

>> KNOWING WHERE YOUR CHILDREN  
AND YOUR WIFE LIVE?

THAT SOUNDS LIKE MAFIA STUFF  
TO ME.

THEY SAY THAT ALL THE TIME.

>> I DON'T THINK YOU CAN GIVE IT  
THAT CONNOTATION BUT--

>> ISN'T THAT, IT'S RELEVANT.

I, YOU KNOW, I THINK THE MORE  
LOGICAL INFERENCE, AND I THINK  
THERE WAS SOME OTHER STATEMENT  
HE MADE TOO AROUND IT BUT I WILL  
TAKE A LOOK AT THE RECORD AGAIN.  
IT'S A LOGICAL AND REASONABLE  
INFERENCE AND IT IS RELEVANT AND  
IT CERTAINLY THEREFORE IS  
SOMETHING THAT THE DEFENDANT CAN  
ARGUE, I JUST MEANT I HAD A  
CHRISTMAS PRESENT FOR THE, YOU  
KNOW FOR THE CELLECZ.

I DIDN'T MEAN THAT I WAS  
THREATENING HIM.

AND, THERE'S MORE TO THAT  
STATEMENT.

SO, HOW IS THAT NOT ADMISSIBLE  
AS RELEVANT EVIDENCE, AS A  
STATEMENT OF A THREAT WHICH IT'S  
A REASONABLE INFERENCE BY A  
DEFENDANT?

>> WELL, FOR ONE THING IT'S NOT  
TIED TO THIS PARTICULAR CRIME  
BECAUSE THERE WAS, IT WAS KNOWN  
THAT CELLECZ AND SMITH OFTEN  
TIMES EXCHANGED PROPERTY.

SO WE DON'T KNOW THAT IT WAS  
DEALING WITH THIS OR IF IT WAS  
DEALING WITH ONE OF THE SARASOTA  
ROBBERIES OR--

>> BUT YOU DON'T, THAT WASN'T  
GOING TO BE SOMETHING THAT YOU,  
WAS HE THEN, WAS HE IN PRISON, I  
MEAN IN JAIL AT THE TIME FOR THE

SARASOTA ROBBERIES?

>> YES.

THIS, THE CONVERSATION BETWEEN SMITH AND HULL OCCURRED IN APRIL OF 2010 AND THE TRIAL ON THE SARASOTA BURGLARY ROBBERY WAS DECEMBER OF 2011.

THIS WAS ALL BEFORE AND THE SARASOTA TRIAL OCCURRED BEFORE THE MANATEE TRIAL.

SO, WE DON'T, WE DON'T HAVE A SPECIFIC CONNECTION.

SMITH DIDN'T SAY IF CELLECZ TESTIFIES IN MY TRIAL, I'M GOING TO DO THIS.

HE DIDN'T SAY, YO, THAT BECAUSE I WAS INVOLVED IN THIS CASE, I'M GOING TO DO THIS.

>> LET'S JUST SAY THERE WERE SOME OTHER THINGS.

HULL EXPLAINED THAT STEPHANIE, HULL SAID WHO THEY WERE.

WHEN ASKED WHY SMITH WAS ASKING HULL TO PASS ALONG THE MESSAGE, HULL TESTIFIES, SMITH WAS UPSET AT CELLECZ, BECAUSE SMITH HAD GIVEN CELLECZ SOME JEWELRY AND STUFF TO PAWN AND CELLECZ WAS SNITCHING ON SMITH.

HULL TOLD CELLECZ THE MESSAGE, BECAUSE HE WANTED TO MAKE SURE CELLECZ COULD TAKE APPROPRIATE ACTION.

IT'S REALLY, IF IT IS, NOT ONLY THAT HE WAS SNITCHING ON HIM FOR THIS CRIME BUT OTHER CRIMES, IT STILL WOULD ENCOMPASS THAT HE WAS AT THAT POINT, GOING TO TESTIFY FOR THE STATE, THAT, I MEAN, AGAIN THE STATE OTHERWISE WAS LOOKING AT HIM, CELLECZ, AS A POTENTIAL DEFT, RIGHT?

BECAUSE HE PAWNED THE JEWELRY. SO THE ARGUMENT WAS, CELLECZ DID IT.

SO--

>> RIGHT.

>> RIGHT?

>> RIGHT, RIGHT.

SO CELLECZ IS, HE IS TRYING TO

FIND AN ALIBI TOO.  
SO HE IS POINTING THE FINGER  
AT SMITH.  
BUT--  
>> BUT IT WAS SMITH THAT MADE  
THE STATEMENTS HE IS SNITCHING  
ON HIM AND TELL HIM THAT I DON'T  
WANT TO, I KNOW WHERE THEY ARE  
AND I HAVE SOMETHING FOR HIS  
ASS, WHICH WOULD HARDLY BE  
SOMETHING KIND TO SAY ABOUT,  
THAT WANT TO GET HIM SOMETHING,  
PRESENTS FOR HIS KIDS.  
>> AND IT'S, THE PROBLEM IS IT'S  
A VAGUE STATEMENT AND IT'S  
HIGHLY PREJUDICIAL, WHEN YOU  
TALK--  
>> OH, IT DEFINITELY IS  
PREJUDICIAL.  
SO A LOT OF RELEVANT EVIDENCE IS  
PREJUDICIAL.  
>> BUT IT IS PREJUDICIAL TO A  
COMPLETELY EXTRINSIC INCIDENT.  
IT IS NOT PREJUDICIAL IN SAYING  
BECAUSE OF THIS STATEMENT HE  
COMMITTED THE MURDER.  
IT IS PREJUDICIAL BECAUSE OF  
THIS STATEMENT.  
WE MIGHT BE LOOKING AT A GUY WHO  
IS GOING TO BE INVOLVED IN A  
PRISON RAPE OR HAVE, YOU KNOW,  
SOMETHING GOING ON WITH  
RETALIATION FOR WHATEVER REASON.  
THERE IS THE LIKE, THE CASE  
DOCTOR.  
>> WHAT WAS, WHAT WAS THE ACTUAL  
OBJECTION MADE TO THE TRIAL  
COURT?  
>> THAT IT WAS EXTRINSIC AND IT  
WASN'T INTERTWINED AND IT WAS--  
>> THEY WERE TRYING TO TALK  
ABOUT I AS WILLIAMS RULE  
EVIDENCE AND, OR, OR THAT KIND  
OF THING.  
DID THE ENGLAND CASE OR THE IDEA  
THIS SHOULDN'T COME IN BECAUSE  
IT WASN'T REALLY A DIRECT  
THREAT, WAS THAT-- I MEAN THE  
ARGUMENT AND THEN, AGAIN, YOU  
TAKE THE RECORD AS YOU FIND IT,

BUT DID THE DEFENDANT THEN SAY,  
EVEN IF IT'S RELEVANT THE  
PREJUDICIAL EFFECT OUTWEIGHS ANY  
PROBATIVE VALUE?

>> THAT ARGUMENT WAS MADE,  
90.403 OBJECTION.

>> BASED ON A DIFFERENT  
OBJECTION THAT IT WAS NOT  
INEXTRICABLY INTERTWINED.  
BUT FOR A SEPARATE THREAD, ISN'T  
INEXTRICABLY INTERTWINED  
EVIDENCE BUT IT IS A STATEMENT  
OF A THREAT, THAT TENDS TO  
SHOW GUILT.

THAT YOU THREATEN A WITNESS THAT  
IS GOING TO TESTIFY AGAINST YOU.

>> THEY WERE TRYING TO INTRODUCE  
THIS EVIDENCE SAYING IT WAS A  
THREAT TO PREVENT CELLECZ  
FROM TESTIFYING.

>> AND WHY ISN'T THAT  
RELEVANT EVIDENCE?

>> WELL, IT WOULD BE RELEVANT IF  
IT WAS TIED IN, IF IT WAS SMITH  
MADE THE STATEMENT, IF YOU  
TESTIFY I WILL DO THIS TO YOU  
BUT IT WASN'T TIED INTO CELLECZ  
TESTIFYING AT THIS TRIAL.

MOST IMPORTANTLY, IT IS THE  
PREJUDICIAL IMPACT THAT, THE  
RELEVANCE WAS MINIMAL BECAUSE OF  
THE VAGUENESS, AND YET THE  
PREJUDICIAL IMPACT WAS VERY HIGH  
BECAUSE OF THE SPECIFIC WORDING  
OF THE STATEMENTS THAT CAME IN.  
BRIEFLY I ALSO MENTIONED THE  
MOTION FOR CONTINUANCE THAT  
WAS DENIED.

JUST PRIOR TO TRIAL  
DEFENSE COUNSEL WANTED  
A CONTINUANCE TO HAVE A  
FINGERPRINT EXPERT COMPARE THE  
PRINTS THAT WERE FOUND IN THIS  
MEDICAL ENCYCLOPEDIA.

THE IMPORTANCE THAT THE MEDICAL  
ENCYCLOPEDIA IS THE ONLY PIECE OF  
EVIDENCE THAT HAD ANY OF SMITH'S  
FINGERPRINTS, DNA, ANY KIND OF  
PHYSICAL EVIDENCE LINKING HIM TO  
THE CRIME SCENE.

AND THERE WAS, A PALM PRINT  
FOUND WHICH THEY WERE WANTING TO  
COMPARE TO ALEX RAMOS, WHO WAS A  
FEDERAL INMATE UP IN INDIANA.

>> RIGHT.

AT THE EVE OF TRIAL AND THIS GUY  
RAMOS, SUPPOSEDLY HE'S THE ONE,  
WAS HE A LAW LIBRARIAN OR  
SOMETHING?

>> NO, HE WAS ANOTHER INMATE  
THAT USED THIS BOOK.

>> IS THERE ANY PROFFER IN THE  
RECORD ABOUT RAMOS AND WHETHER  
RAMOS WAS AVAILABLE TO TESTIFY  
AND THAT RAMOS WOULD HAVE SAID  
THIS WAS A BOOK THAT WAS ACTUAL  
IN PRISON?

I MEAN THE RECORD, IT IS LIKE  
RAMOS COMES OUT OF KNOW WHERE  
AND THERE IS NOTHING IN THE  
RECORD THAT ACTUALLY SAYS THAT  
RAMOS WOULD HAVE TESTIFIED TO  
ANY OF THIS.

SO IT'S, IT SEEMS TO ME THAT WAS  
WELL WITHIN THE DISCRETION OF  
THE JUDGE, AT THAT LATE DATE, TO  
DENY THE CONTINUANCE AND I DON'T  
WANT TO BELABOR IT BECAUSE  
YOU'RE IN YOUR REBUTTAL.

>> SAVE REMAINDER OF MY TIME FOR  
REBUTTAL.

THANK YOU.

>> GOOD MORNING YOUR HONORS.

MAY IT PLEASE THE COURT.

I'M CAROL DITTMAR FROM THE  
ATTORNEY GENERAL'S OFFICE  
REPRESENTING THE APPELLEE IN  
THIS CASE THE STATE OF FLORIDA.  
WITH REGARD TO THE STATEMENTS BY  
THE COMMENTS BY DETECTIVE  
DINERO, THE TRIAL JUDGE  
CONCLUDED BELOW THERE WAS NO  
CHANCE THE JURY WOULD TAKE THESE  
COMMENTS AS ANY KIND OF EVIDENCE  
OF A SEPARATE CRIME OR SEPARATE  
SUSPICION OF CRIME, A SEPARATE  
INVESTIGATION MUCH.

CLEARLY THE JUDGE AND THE  
PROSECUTOR AND THE DEFENSE  
ATTORNEY OBVIOUSLY WERE WELL

AWARE OF THE SAY SOCIETY CRIMES AND OFFENSES THAT HAD HAPPENED THERE AND THEY TOOK GREAT EFFORTS THROUGHOUT THIS RECORD TO KEEP THE JURY FROM HEARING ANYTHING ABOUT THOSE OFFENSES OBVIOUSLY UNTIL PENALTY PHASE WHEN THEY WOULD COME IN.

>> BUT IT IS REALLY, AND AGAIN, I APPRECIATE THE PROSECUTOR STOPPED THE WITNESS BUT WHEN YOU'VE GOT A CASE LIKE THIS WHERE YOU'RE SO ACUTELY AWARE OF KEEPING IT OUT, HOW YOU COULD HAVE AN EXPERIENCED DETECTIVE, ALMOST SCREW UP A CASE.

>> BUT FORTUNATELY THE PROSECUTOR DID JUMP IN AND CUT HER OFF AND KEPT HER FROM SAYING ANYTHING MORE THAN, BECAUSE OF MY INVESTIGATION.

AND REALLY THE DEFENSE ARGUMENT NOW SEEMS TO BE, NOT REALLY EVEN SO MUCH WHAT SHE SAID BUT JUST THE MERE FACT SHE WAS A DETECTIVE FROM THE CITY OF SARASOTA.

AND YET THE JURY'S GOING TO HEAR.

THAT THERE WAS CERTAINLY NO PRETRIAL MOTION TRY TO HAVE HER APPEAR AS SOMEBODY SHE WASN'T SO THE JURY WOULDN'T TRY AND PIECE THAT TOGETHER BUT I THINK THE MAIN, THE MAIN INFERENCE THAT THEY'RE DRAWING HERE FROM THE JURY IS JUST, SHE'S A DETECTIVE FROM THE CITY AND SO SHE WOULDN'T HAVE BEEN INVOLVED IN THIS.

THAT IS JUST THE FACTS OF THE CASE.

>> RIGHT.

SO HE IS SAYING THAT WHERE THE PROPERTY ACTUALLY WAS WAS WELL OUTSIDE OF THE CITY OF SARASOTA?

>> SURE BUT THE JURY WAS ALSO AWARE THERE WERE OTHER JURISDICTIONS THAT WERE WORKING ON THIS CRIME AND CERTAINLY THE



PROPERTY SHE WENT TO PICK UP AT THIS LOCATION, ALTHOUGH IT WAS OUTSIDE THE CITY, DID NOT RELATE TO THE CITY PROSECUTION.

IT RELATED TO THIS CASE AND THIS TRIAL.

SHE WAS JUST FAMILIAR WITH THE AREA AND WAS, YOU KNOW, THERE WERE A LOT OF THINGS THAT WERE TIED UP TOGETHER.

>> IT WOULD HAVE TO TAKE A LOT OF STEPS TO DRAW THE INFERENCE THAT THIS, THERE MUST HAVE BEEN OTHER CRIMINAL INVESTIGATIONS GOING ON.

IT COULD HAVE STARTED OF.

BUT AS YOU SAID IT STOPPED, IT WAS STOPPED BY THE PROSECUTOR SPECIFICALLY.

>> RIGHT.

AND THAT'S WHAT, AND THAT'S WHAT THE JUDGE CONCLUDED AND OBVIOUSLY HE WAS THERE AND OBSERVED THE WHOLE EXCHANGE AND KNEW EVERYTHING THAT THE JURY HEARD AND KNEW THE BACKGROUND THE JURY DIDN'T KNOW AND THAT'S THE CONCLUSION HE DREW FROM THE COMMENTS AND THAT'S WHY HE DENIED THE MOTION FOR MISTRIAL AND CERTAINLY IT MAY HAVE, I THINK THE PROSECUTOR DEAD KEEP ANY REAL ERROR COMING IN HERE BUT EVEN IF THERE WAS SOME MISSLIP, IT DID NOT RISE TO THE LEVEL OF WARRANTING A MISTRIAL IN THIS CASE.

AS TO THE THREATS BY JOSHUA HULL THAT WERE RELATED BY JOSHUA HULL, I THINK IT IS INTERESTING TO COMPARE THE ARGUMENT THAT WAS MADE AT TRIAL, NOT JUST FOR PRESERVATION PURPOSES, BUT BECAUSE THAT ARGUMENT WAS, IT WASN'T THAT THE COMMENTS WERE SO VAGUE THEY WOULDN'T BE TAKEN AS A THREAT.

THE ARGUMENT WAS, THAT WAS EVIDENCE OF A COLLATERAL CRIME. THAT WAS EVIDENCE OF A THREAT

AGAINST A WITNESS COMING IN IT WAS PRETTY CLEAR THAT WAS THE MOTIVATION AND THOSE WERE THE COMMENTS.

TO THE ENDINGS TENT THERE WAS ARGUMENT THAT HE MIGHT HAVE MEANT SOMETHING ELSE OR THE PENALVER CASE YOU COURT SAID THAT GOES TO THE WEIGHT RATHER THAN ADMISSIBILITY OF THIS EVIDENCE AND THIS COURT HAS IN MANY CASES SINCE ENGLAND UPHELD RELEVANCE AND ADMISSIBILITY OF THREATS THAT LIKE THIS THAT GO AGAINST A WITNESS.

THIS WAS TIED TO THE SPECIFIC CASE BECAUSE HE TALKED ABOUT THE FACT THAT HE HAD GIVEN HIM THE JEWELRY TO PAWN.

HE WAS NOW SNITCHING ON HIM. SO I THINK THAT TIES IT IN WITH EXACTLY WHAT WAS GOING ON HERE AND WHAT THE JURY KNEW ABOUT THIS PARTICULAR CASE.

WITH REGARD TO MOTION FOR CONTINUANCE--

>> CAN I ASK YOU SOMETHING ABOUT THAT?

DOES THE RECORD DEMONSTRATE THAT THIS WAS ALLEGEDLY A MEDICAL ENCYCLOPEDIA TAKEN FROM THE VICTIMS'S HOME.

>> YES.

>> RECORD SUCH THAT NO FINGERPRINTS FROM THE VICTIM OR ANYONE FROM THE VICTIM'S FAMILY WAS FOUND ON THIS BOOK?

>> THEY WERE NOT ABLE TO IDENTIFY ANY OF THE FAMILY'S FINGERPRINTS ON THIS BOOK.

HOWEVER KATHLEEN BRILES SON, WHO HAD USED THE BOOK AND BORROWED THE BOOK A COUPLE YEARS BEFORE HE RETURNED IT TO THE HOME WHICH IS WHY IT WAS IN THE HOME, HE SAW THE BOOK AS IT WAS IN EVIDENCE.

AND HE WAS ABLE TO IDENTIFY IT SPECIFICALLY AS THE BOOK THAT HE KNEW.

HE WAS ABLE TO IDENTIFY--

>> HOW?

>> WAS BOUGHT AS A USED BOOK AT  
LIKE A GARAGE SALE.

AND APPARENTLY IT, I DON'T KNOW  
IF THE COVER DIDN'T CLOSE RIGHT  
OR SOMEWHAT CREASED AND PAGES  
THAT WERE, JUST UNIQUE THINGS  
ABOUT THE BOOK ITSELF, THAT HE  
WAS ABLE TO RELATE TO THE JURY  
HOW HE KNEW IT WAS THAT BOOK.  
AND THEN WE ALSO HAD PICTURES OF  
THE BOOK AS IT WAS AT THE HOUSE,  
THERE WERE PICTURES OF  
KATHLEEN'S CATS THAT HAD THE  
BOOK IN THE BACKGROUND.

THERE WAS ARGUMENT ACTUALLY IN  
MOTION FOR NEW TRIAL, WHICH  
TELLS ME THEY CONTINUED TO  
INVESTIGATE THE MEDICAL BOOK AND  
ALTHOUGH THE DEFENSE NEVER EVER  
FILED A MOTION TO GET ITS OWN  
INDEPENDENT FINGERPRINT EXPERT  
WHICH IS WHAT THIS CONTINUANCE  
WAS SUPPOSED TO BE ABOUT, THEY  
DID CONTINUE TO LOOK AT IT  
BECAUSE WHEN THE MOTION FOR NEW  
TRIAL COMES UP THEY'RE TALKING  
ABOUT HOW THE BOOK WHICH IS  
ACTUALLY IN EVIDENCE, THE LOGO  
ON THE BOOK APPEARS A LITTLE  
DIFFERENT THAN THE LOGO IN THE  
PHOTO OF THE BOOK AT THE HOUSE.  
THE STATE ACTUALLY BROUGHT IN AN  
EXPERT IN DIGITAL PHOTOGRAPHY TO  
EXPLAIN DUE TO EXPOSURES AND  
DIFFERENT WAYS THAT DIGITAL  
PHOTOGRAPHY WORKS YOU DON'T  
ALWAYS GET A COMPLETELY  
ACCURATE, SOMETIMES THE COLORING  
OR SHADING MIGHT BE A LITTLE OFF  
AND HE LOOKED AT THE PICTURE OF  
THE BOOK AND LOOKED AT THE BOOK  
AS IT WAS IN EVIDENCE, THAT IS  
WHAT HE WOULD EXPECT TO SEE WITH  
A DIGITAL PICTURE OF THE BOOK.

>> NOW THE FIRST TIME, THE BOOK  
IS ACTUALLY TIED TO THE  
DEFENDANT BY THE GIRLFRIEND, NO,  
JAMES CELLECZ IN HIS VEHICLE.

>> IN HIS CAR, YES.  
>> SO YOU'RE CARRYING AROUND A MEDICAL BOOK.  
I MEAN, TO UNDERSTAND WHY HE WOULD HAVE HAD AN INTEREST IN IT, TO EVEN TAKE IT FRANKLY.  
>> YEAH.  
>> BUT I DON'T, IF THIS THING ABOUT FINGERPRINT THE AND BOOKS, THEY FIND HIS FINGERPRINT ON ONE PAGE.  
CLEARLY, WHETHER HIS EXPLANATION, WHICH YOU KNOW, WHICH WOULD HAVE BEEN THROUGH RAMOS I GUESS WHO WE DON'T KNOW ANYTHING ABOUT, IS THAT, OH, NO, I HAD THAT BOOK.  
I, THAT WAS ONE OF MY FAVORITE BOOKS IN FEDERAL PRISON WHERE WHEREVER HE WAS AND YOU KNOW, I LIKED IT SO MUCH I TOOK IT. I STOLE IT FROM THE FEDERAL PRISON THAT I WAS IN, RIGHT? SOMETHING LIKE THAT.  
THEN WHY WOULDN'T, WAS THERE ANY EXPLANATION WHY THERE WAS ONLY ONE IDENTIFIABLE FINGERPRINT? EVEN UNDER THE DEFENDANT'S EXPLANATION, YOU WOULD THINK THERE WOULD HAVE BEEN FINGERPRINTS ON THE COVER OR OTHER PAGES.  
WAS THERE A EXPLANATION WHETHER THOSE ARE HARDER TO, YOU KNOW, TAKE OFF OF BOOKS VERSUS OTHER ITEMS?  
>> THERE WASN'T ANY SPECIFIC TESTIMONY ABOUT THAT PARTICULARLY.  
THERE WAS, OBVIOUSLY THE EXAMINER HAD GONE PAGE BY PAGE THROUGH THE BOOK AND THERE WERE, I BELIEVE IT WAS 10, THERE WERE A NUMBER OF PRINTS THEY BELIEVED MIGHT BE USABLE FOR COMPARISON VALUES.  
THEY COMPARED THEM TO, I WANT TO SAY THE NUMBER WAS 89 PEOPLE INVOLVED IN THE CASE BUT THE FAMILY MEMBERS, JAMES CELLECZ,

THESE OTHER PEOPLE, THEY WERE NOT ABLE TO IDENTIFY ANY OTHER PEOPLE OTHER THAN THE ONE FINGERPRINT.

THEY DID HAVE A COPY OF SOME FINGERPRINTS FROM THIS RAMOS GUY IN PRISON AND THEN THEY WERE MAKING THE ARGUMENT, WELL, MAYBE THERE WAS A PALM PRINT OF HIS AND APPARENTLY WASN'T A HIGH QUALITY PICTURE OF HIS FINGERPRINTS BECAUSE THE EXAMINER THAT WAS, THAT WAS THERE THAT MORNING WAS SAYING, WELL, YOU KNOW, IF THEY GET ME A BETTER, BETTER PICTURE OF THE FINGERPRINTS OR THEY CAN GET ME A PALM PRINT I CAN DO FURTHER COMPARISON.

>> I WANT TO MAKE SURE THAT'S CLEAR.

THERE WAS A PERIOD OF TIME WHERE THE DEFENSE WAS ACTUALLY ASKING THE STATE'S WITNESS TO SORT OF HELP THEM IDENTIFY ISN'T.

>> THAT IS WHY THEY WERE GETTING THIS AT THE LAST MINUTE.

THAT'S WHY THEY WERE GETTING THIS A WEEK OR SO BEFORE TRIAL. THEY DIDN'T ASK THE STATE EXAMINER TO DO THIS COMPARISON UNTIL RIGHT BEFORE TRIAL.

>> BUT THE DEFENSE, THE EXPERT WAS ABLE TO DO SOME OF IT?

>> YES.

>> SO IT WASN'T REALLY THIS IDEA WELL EARLY ON THEY ASKED FOR THEIR OWN FINGERPRINT EXPERT.

>> THEY NEVER DID ASK FOR THEIR OWN FINGERPRINT EXPERT.

>> HOW DOES RAMOS, MAYBE YOU, WHAT DO WE KNOW FROM THE RECORD ABOUT WHO RAMOS IS?

HE SORT OF SOMEHOW COMES UP AND OBLIQUE MENTION.

MAYBE THERE ARE THINGS OFF THE RECORD ABOUT IT, BUT I COULDN'T FIGURE OUT AND GO THROUGH THIS ENTIRE RECORD.

>> ONLY THING I CAN FIND HE IS

MENTIONED VERY MORNING OF TRIAL  
JUST PRIOR TO JURY SELECTION AND  
THIS WAS, THERE HAD BEEN AN  
EARLIER MOTION FOR CONTINUANCE  
HEARD SEVERAL DAYS BEFORE TRIAL  
AND THE DEFENSE RENEWED THAT  
JUST FRYER TO JURY SELECTION AND  
FIRST TIME MENTIONED ALEX RAMOS.  
MAYBE WE GET HIM HERE.

>> WHEN THEY MENTION I AM FOR  
THE FIRST TIME HOW DID EVERYONE  
KNOW WHO HE WAS?

HAD HE BEEN MENTIONED  
EARLIER ON?

>> APPARENTLY THE PARTIES KNEW  
BECAUSE THE DEFENSE ATTORNEY HAD  
ASKED THE PROSECUTOR TO HAVE THE  
STATE'S FINGERPRINT EXPERT  
COMPARE HIS PRINTS.

>> THAT'S IN THE RECORD?

>> I THINK THEY TALKED ENOUGH  
ABOUT IT AND I THINK ACTUALLY, I  
DON'T THINK HE, HIS NAME IS  
LISTED BUT THE DEFENSE MOTION  
ASKING FOR THE STATE TO GET ITS  
EXAMINER TO REVIEW THE  
FINGERPRINTS WHICH WAS A COUPLE  
WEEKS BEFORE THE TRIAL, I THINK  
THEY BRING OUT, THERE'S A  
FEDERAL PRISONER WHO SAYS THERE  
IS SOMETHING ABOUT THIS.  
I DON'T THINK HIS NAME IS  
SPECIFICALLY MENTIONED.

>> NOW DID THE JURY KNOW, WHAT  
WAS HE IN FEDERAL PRISON FOR?

>> MR. SMITH WAS THERE FOR A  
BANK ROBBERY.

>> IN THE GUILT PHASE THEY  
DIDN'T KNOW ABOUT THAT?

>> NO.

>> SO WHAT I'M ALSO WONDERING,  
LET'S JUST ASSUME--

>> BRING IN SOMEBODY TO SAY I  
WAS IN PRISON WITH THIS GUY FOR  
BANK ROBBERY.

>> I DON'T SEE HOW THAT HELPS--

>> THAT IS STRATEGIC DECISION  
THE DEFENSE ATTORNEY WOULD HAVE  
TO MAKE.

>> I'M SURE THE BOOK FROM THE

FEDERAL PRISON BECAUSE THAT WAS LIKE, IT IS JUST, THAT SEEMS ABSURD.

DOESN'T SEEM REALLY, SEEMS A LITTLE BIZARRE HE WOULD TAKE IT ACTUALLY FROM THE VICTIM'S HOUSE BUT--

>> I KNOW JAMES CELLECZ TESTIFIED THAT IS WHY IT GOT HIS ATTENTION THAT MORNING BECAUSE HE NEVER KNEW SMITH TO HAVE ANY INTEREST IN MEDICINE OR HAVE ANY NEED FOR A MEDICAL ENCYCLOPEDIA AND THAT IS WHY HE WHEN HE SAW THE BOOK IN THE CAR.

AND I ASK THIS COURT--

>> I WANT TO ASK YOU ABOUT HAC. I'M TORN TO THIS EXTENT.

IT DOESN'T APPEAR WITH THIS BLUDGEONING BY THE, WITH THIS SEWING MACHINE THAT THERE IS EVIDENCE THAT THE MEDICAL EXAMINER TALKS ABOUT AS TO WHETHER THE FIRST BLOW WOULD HAVE RENDERED THE VICTIM UNCONSCIOUS.

>> RIGHT.

>> ON THE OTHER HAND, AND THIS IS, HE MAY WANT TO RESPOND, YOU'VE GOT, SHE'S ON HER, WHEN SHE IS, ALL OF THIS OCCURS, SHE IS BOUND AND SHE IS ON HER, ON HER STOMACH.

BUT THERE IS A KICKING WOUND TO THE STOMACH THAT WAS APPARENTLY SEVERE ENOUGH THAT WOULD HAVE CAUSED HER TO ACTUALLY BLEED OUT.

SO, LET ME ASK YOU, DISREGARD THAT FIRST BLOW, IS THERE ENOUGH EVIDENCE HERE THAT THE JURY COULD INFER, OR THE MEDICAL EXAMINER TALK ABOUT, THAT THE BLOW TO THE ABDOMEN AND THEN BEING BOUND, YOU HAVE A HELP LESS VICTIM, WOULD IN ITSELF SUPPORT HAC WITHOUT WONDERING WHICH BLOW OCCURRED?

>> ABSOLUTELY.

THE EVIDENCE WAS THAT SHE WAS

AWARE WHAT WAS HAPPENING.  
THE EVIDENCE THAT SHE WAS AWARE  
OF HER SITUATION.

>> WHAT EVIDENCE WAS THERE THAT  
SHE WOULD BE AWARE OF WHAT WAS  
HAPPENING.

>> FIRST OF ALL, COMES HOME, BE  
A PIERCE SHE IS ABDUCTED THERE  
WHEN SHE GETS OUT OF HER CAR.  
HER PURSE AND GROCERIES ARE  
STILL IN HER CAR WHEN IT'S  
FOUND.

NOT LIKE SHE GETS OUT OF HER CAR  
AND HITS OVER THE HEAD AND  
DOESN'T KNOW ANYTHING AT THAT  
POINT.

>> AT THAT POINT SHE COULD THINK  
SHE WAS BEING ROBBED.

>> SHE COULD, BUT AT THAT POINT  
SHE GETS TAKEN INTO THE HOUSE  
AND OBVIOUS THESE OTHER  
INJURIES, THE INJURIES TO HER  
ELBOW AND LIVER ARE HAPPENING  
WHILE SHE IS SUBDUED BECAUSE IT  
DOESN'T--

>> YOU SAY OBVIOUSLY.  
I WANT TO MAKE SURE.

>> WELL, BECAUSE--

>> IS THAT SUPPORTED BY THE  
MEDICAL EXAMINER TESTIMONY THAT  
IT WAS OBVIOUS THAT THESE WOUND,  
ESPECIALLY THE ONES TO THE  
ABDOMEN, WHERE SHE IS KICKED,  
WERE DONE WHILE SHE WAS FULLY  
CONSCIOUS BEFORE SHE WAS  
POTENTIALLY KNOCKED UNCONSCIOUS  
BY THE, BY THE BLOW TO THE HEAD?

>> WELL WE KNOW SHE IS ALIVE.  
AND WE KNOW THE MEDICAL EXAMINER  
CAN'T SAY--

>> BEING ALIVE IS DIFFERENT THAN  
CONSCIOUS, RIGHT?

>> MEDICAL EXAMINER TALKS ABOUT  
THE ONLY THING THAT WOULD CAUSE  
HER TO LOSS CONSCIOUSNESS ARE  
THE BLOWS TO HEAD.

AT THAT POINT SHE IS PRETTY MUCH  
ON THE GROUND, WE KNOW FROM  
THE EVIDENCE.

ALTHOUGH THEY TALKED ABOUT SHE



IS FACE DOWN WHEN THIS IS HAPPENING, SHE ALSO HAS FRICTIONS AND ABRASIONS ON HER BACK AND ON HER SHOULDERS. SO SHE WASN'T FACE DOWN THE WHOLE TIME.

SHE WAS FACE UP AND MOVING BECAUSE SHE IS CAUSING THIS FRICTION.

CLEARLY SHE IS SEEING. EVEN THOUGH SHE IS BOUND UP, SHE DOESN'T HAVE ANY KIND OF BLINDFOLD ON.

THERE IS NO REASON TO BELIEVE SHE IS UNCONSCIOUS AT THAT POINT BECAUSE SHE HASN'T HAD THE FIRST BLOW TO THE HEAD.

I THINK THOSE ALL GO TO THE IF YOU LOOK AT TOTALITY OF CIRCUMSTANCES SHE HAS TO BE AWARE SOMETHING IS GOING ON HERE AND SUFFERS THOSE INJURIES.

>> WHAT EARTH EVIDENCE OF THE STRUGGLE IS THERE?

>> WELL THERE'S, YOU KNOW, OF THE STRUGGLE HERSELF WE MOSTLY HAVE HER PHYSICAL INJURIES.

>> HOW ABOUT OF THE PREMISES?

>> THERE, CLEARLY THE HOUSE IS DISHEVELED.

ALL THE FURNITURE IS MOVED AROUND.

>> OTHER THAN THAN RANSACKED AND THAT IS PART OF IT AS WELL AS I READ THE RECORD.

>> WE KNOW BECAUSE SHE IS BOUND, SHE WILL NOT HAVE DEFENSE WOUNDS AND DEFENSE INJURIES BUT YOU STILL--

>> THE CONDITION OF THE HOUSE, DID THEY ATTRIBUTE THAT TO HER BEING CHASED AROUND THE HOUSE OR WAS THAT HIM--

>> THERE WAS NO SPECIFIC TESTIMONY ABOUT HER BEING CHASED AROUND THE HOUSE AND THE BLOOD WAS MOSTLY CONFINED TO THAT ROOM BECAUSE THE BLOOD IS WHAT IS HAPPENING WITH THE HEAD INJURIES.

THE LIVER INJURY AND, THE LIVER INJURY DID NOT HAVE ANY EXTERNAL CORRESPONDING INJURIES.

THERE WAS NO BLOOD THAT WOULD HAVE COME AT THAT POINT WHEN THAT INJURY WAS INFLICTED.

>> NORMALLY IN THESE CASES, UNFORTUNATELY WE HAVE NORMAL WITH THIS WHEN SOMEONE'S BOUND, YOU SEE THE AGGRAVATOR BEING SOUGHT OF AVOID ARREST BECAUSE SHE IS, BECAUSE HE IS NOT BLINDFOLDED AND SHE IS NOT BLINDFOLDED OR EVEN CCP AFTER YOU TAKE A HELPLESS VICTIM AND IT JUST, WERE THOSE AGGRAVATORS SOUGHT OR ARE THEY JUST--

>> I DON'T BELIEVE THE STATE SOUGHT THOSE AGGRAVATORS HERE. I BELIEVE THEY FELT THEY HAD LIKE FIVE AGGRAVATORS THEY FELT COMFORTABLE PURSUING.

>> WHAT WERE THE OTHER AGGRAVATORS.

>> PRIOR VIOLENT FELONY CONVICTION FOR--

>> FOR?

>> WHEN THE JUDGE WEIGHED PRIOR FELONY CONVICTIONS HERE HE DID NOT CONSIDER THE SARASOTA OFFENSE BECAUSE IT WAS STILL ON APPEAL.

>> PRIOR VIOLENT FELONY WAS THE BANK ROBBERY.

>> WAS THE ARMED BANK ROBBERY. HE WAS JUST RELEASED FROM PRISON LESS THAN A YEAR.

>> HE WAS ON WHAT.

>> FELONY PROBATION.

>> THAT IS THE SECOND.

TWO THAT WERE MERGED DURING THE COURSE OF A BURGLARY, ROBBERY FOR PECUNIARY AGAIN THOSE WERE--

>> I THOUGHT IT WAS INTERESTING, WHEN WE CONSIDER THIS FOR PROPORTIONALITY, THIS IS A ROBBERY AND YET THE AGGRAVATOR THAT, IT IS MERGED, GOES TO BURGLARY, BUT REALLY THIS IS,

WE CAN CONSIDER THIS WHEN WE  
LOOK AT PROPORTIONALITY THAT  
IT'S ROBBERY, IT IS  
PECUNIARY GAIN.

THE FACT HE IS IN THE HOUSE,  
THAT SORT OF SEEMS LIKE THE  
SECONDARY ISSUE.

AND THEN WHAT OTHER--

>> HAC.

>> YOU SAID FIVE.

>> WELL THERE WERE FOUR WITH THE  
MERGED, WITH THE PECUNIARY GAIN  
MERGER.

>> OKAY.

>> SO IT WAS HEAVILY AGGRAVATED  
CRIME AND I THINK HAC IS FULLY  
SUPPORTABLE.

IF YOU LOOK AT CASES WHERE THIS  
COURT HAS STRUCK HAC BASED ON  
THERE BEING ONE BLOW TO THE  
HEAD, USUALLY THE PERSON DID NOT  
EVEN SEE THE BLOW COMING.

THE PERSON DIDN'T EVEN KNOW THEY  
WERE IN TROUBLE.

SO YOU HAVE VERY REASONABLY  
SAID, THIS PERSON DIDN'T FEEL  
ANY KIND OF FEAR, APPREHENSION.  
IN THIS CASE CLEARLY IS NOT IN  
THAT CATEGORY.

SHE CLEARLY KNEW SHE WAS IN  
TROUBLE AND SHE SUFFERED  
INJURIES THAT SHE SUFFERED.

>> PLUS, FRIENDLY QUESTION.

THE DEFENSIVE WOUND CASES--

>> SHE IS BOUND.

>> WOMAN IS BOUND WHICH IS TO  
ME, TO ME THAT'S SORT OF WHY  
THERE WEREN'T THOSE KIND OF  
DEFENSIVE WOUND.

>> AND THE JUDGE DISTINGUISHED,  
HE WAS AWARE OF THE BREMER CASE  
WHICH WHERE THIS COURT HAS SAID  
EVEN THOUGH VICTIMS IN THAT CASE  
WERE DUCK TAPEED DUCT TAPEED, THE  
CIRCUMSTANCES WERE VERY  
DIFFERENT.

THAT WAS COMMERCIAL BUSINESS  
ROBBERY AND IT WAS VERY QUICK  
AND DIDN'T HAVE CORRESPONDING  
INJURIES.

THE JUDGE WAS AWARE OF DECISION  
BUT STILL FELT HAC--

>> SOMETHING ABOUT THE ELBOW,  
EXPLAIN HOW THE ELBOW INJURY  
SHOWS ANYTHING ABOUT PREDEATH  
AWARENESS OF HER IMPENDING  
DEATH?

>> I THINK ONE MORE INJURY THAT  
SHOWS SHE WAS BEING BRUTALIZED  
BEFORE SHE WAS KNOCKED  
UNCONSCIOUS.

>> HOW?

I DON'T UNDERSTAND.

>> SHE IS ON THE GROUND  
UNCONSCIOUS.

I DON'T KNOW WHAT IS GOING TO  
HAPPEN TO HER ELBOW AT THAT  
POINT.

>> IS ELBOW, IS IT AN ABRASION  
INJURY?

WHAT KIND OF--

>> IT WAS CONTUSION.

I DON'T THINK THE MEDICAL  
EXAMINER COULD EXPLAIN EXACTLY,  
HE SAID IT DID NOT APPEAR  
RELATED TO THE SEWING MACHINE.

>> WHAT ABOUT THE ACTUAL CHOICE  
OF THIS, WAS THERE ANY EVIDENCE  
AS TO WHERE, AS OPPOSED TO  
USING, STRANGLING OR--

>> THIS WAS IN DIFFERENT ROOM.  
THE SEWING MACHINE WAS HE HAD TO  
GO GET IT.

>> SO WAS THE IMPLICATION SHE  
WOULD HAVE ACTUALLY SEEN AT THAT  
POINT BUT THEN HE TURNED HER  
OVER?

WHAT IS-- AGAIN TRYING--

>> AT SOME POINT SHE WAS TURNED  
OVER BEFORE SHE WAS KILLED BUT  
WE KNOW FOR SOME EXTENDED TIME  
SHE WAS NOT TURNED OVER.

SHE WAS ON THEIR BACK AND SHE  
WAS ABLE TO SEE BECAUSE SHE HAS  
GOT THE FRICTION WOUND ON HER  
BACK WHICH IS THE ABRASION THE  
MEDICAL EXAMINER ABRASION.

CLEARLY TRYING TO GET AWAY BUT  
CLEARLY ACTIVE AT THAT POINT.  
FOR ALL THESE REASONS I WOULD

ASK THIS COURT TO AFFIRM THE  
JUDGMENT AND SENTENCE IMPOSED  
ON DELMER SMITH.

THANK YOU.

>> REBUTTAL?

>> FIRST OF ALL, ON THE  
TESTIMONY FROM DINERO, WHERE THE  
STATE ARGUES THAT THE JUDGE SAYS  
THERE IS NO CHANCE THE JURY  
WOULD TAKE THAT AS A SEPARATE  
CRIME, ACTUALLY WITH THE WHAT  
THE JUDGE SAID, THERE IS  
CERTAINLY A POSSIBLE INFERENCE  
THAT THERE WAS A SEPARATE AND  
DISTINCT CRIME.

THE JUDGE WAS AWARE THAT THE  
JURY COULD HAVE TAKEN THOSE  
STATEMENTS BY DINERO AS SEPARATE  
BUT DISTINCT CRIME.

AS FAR AS THE MEDICAL  
ENCYCLOPEDIA, THERE WAS BLOODY  
CRIME SCENE AND AND THERE WAS NO  
BLOOD ON THIS MEDICAL  
ENCYCLOPEDIA WHICH CAME FROM  
THE RESIDENCE.

IT WAS VERY IMPORTANT THEY COULD  
HAVE PROVEN, IF RAMOS'S PRINTS  
WERE ON THIS ENCYCLOPEDIA, IT  
OBVIOUSLY DID NOT COME FROM  
RAMOS RESIDENCE.

THAT WAS THE ONE PIECE OF  
EVIDENCE, PHYSICAL EVIDENCE  
LINKING SMITH TO ANYTHING THAT  
CAME OUT OF THE BRILES HOUSE.  
THERE WAS NO FINGERPRINTS FOUND  
ON ANY OTHER OF THE EVIDENCE.  
AND REASON THE ADMISSION OF ALL  
THIS, SO PREJUDICIAL BECAUSE IT  
WAS A CIRCUMSTANTIAL CASE.  
THERE WAS, YOU KNOW, THERE WERE  
NO FINGERPRINTS THAT WERE FOUND  
INSIDE OF THE HOUSE.

THERE WAS NO DNA.

THERE WAS NO FOOTPRINTS.

THERE WAS NO HAIR.

THERE WAS NO OTHER EVIDENCE  
PLACING HIM INSIDE OF THE HOUSE.

THERE WAS NO WITNESSES AT  
THIS TIME.

THEY HAD THE CELL PHONE EVIDENCE

WHICH PLACES HIM NEAR THE SCENE OF THE CRIME BUT, WE KNOW THAT BEING NEAR THE SCENE OF THE CRIME IS NOT, NOT ENOUGH TO ESTABLISH THAT THEY WERE INSIDE OF THE HOUSE.

THERE WAS, IT WAS OWEN CASE OUT OF THE FOURTH DCA WHERE THERE WAS BURGLARY.

THE PERSON WAS SEEN IN THE YARD OF THAT PARTICULAR HOUSE.

BUT THAT WASN'T ENOUGH TO ESTABLISH THAT HE WAS ACTUALLY INSIDE OF THE HOUSE.

SO THAT'S, THAT'S THE SITUATION WHERE WE HAVE THE, YOU KNOW, THE EVIDENCE ON THE JUDGE, FOR JUDGMENT OF ACQUITTAL, IT WAS CLOSE WHETHER OR NOT THE JUDGMENT OF ACQUITTAL SHOULD HAVE BEEN GRANTED BUT EVEN IF IT SHOULD NOT HAVE BEEN, IT WAS CLEAR IT WAS NOT OVERWHELMING EVIDENCE.

THERE WAS NO CONFESSION IN THIS CASE.

THERE WAS NO OVERWHELMING EVIDENCE.

THAT'S WHY THE EVIDENCE OF DETECTIVE DINERO COMING IN ABOUT THE CITY OF SARASOTA INCIDENT ABOUT THE TESTIMONY, JAMES HULL AND COMING AND DENIAL OF CONTINUANCE PREJUDICIAL TO-- AS A RESULT, GRANTED A NEW TRIAL.

>> COURT WILL BE IN RECESS FOR TEN MINUTES.

>> ALL RISE.