

>> SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.  
PLEASE BE SEATED.

>> THANK YOU.  
THE NEXT CASE ON THE DOCKET IS  
HALL V. STATE.  
WHENEVER OR YOU'RE READY,  
COUNSEL.

>> THANK YOU, YOUR HONOR.  
GOD MORNING.  
GOOD MORNING, COURT.  
MY NAME IS ALI SHAKOOR, I'M HERE  
ON BEHALF OF MR. DONTE HALL.  
I'D LIKE TO FIRST START WITH  
ISSUE TWO OF OUR BRIEF THAT  
INVOLVES THE FACT THAT TRIAL  
COUNSEL WAS INEFFECTIVE FOR  
FAILING TO VITIATE THE VICTIM  
IMPACT TESTIMONY--

>> COULD YOU TALK A LITTLE  
LOUDER, PLEASE?

>> TRIAL COUNSEL WAS INEFFECTIVE  
FOR FAILING TO VITIATE THE  
VICTIM IMPACT TESTIMONY  
PRESENTED DURING PENALTY PHASE.  
I'D ALSO LIKE TO ADDRESS THE  
GUILT PHASE ISSUE, TRIAL  
COUNSEL'S INEFFECTIVE TO OBJECT  
TO MULTIPLE REFERENCES TO  
UNCHARGED COLLATERAL CRIMES  
DURING THE GUILT PHASE OF THE  
TRIAL.

NOW, REGARDING ISSUE TWO--

>> YOU KNOW, THAT'S AN  
INTERESTING TERM.

HOW DO YOU VITIATE THE VICTIM  
IMPACT INFORMATION?

>> AS THIS COURT IS AWARE,  
VICTIM IMPACT IS VERY NARROW.  
VICTIM IMPACT INVOLVES  
DEMONSTRATING THE UNIQUENESS OF  
THE INDIVIDUAL AND HIS  
IMPORTANCE TO COMMUNITY.  
THAT'S IT, YOU KNOW?

IT CAN'T BE USED AS A WINNING  
PROCESS, AS AN AGGRAVATOR.  
AND IN THIS CASE, THERE'S VICTIM  
IMPACT FROM ONLY ONE WITNESS,  
I'M SORRY, ONE VICTIM.  
THAT WAS ANTHONY BLUNT.

THEY PUT THE IMPACT OF HIS SISTERS, HOW HE HAD WORKED WITH CHILDREN, HOW HE WAS CHARITABLE, HOW HE WAS A GOOD BROTHER, THINGS LIKE THAT.

AND TRIAL COUNSEL HAD AN OBLIGATION TO ADDRESS SOMETHING ELSE THAT MADE MR. BLUNT UNIQUE, AND THAT'S THE FACT THAT MR. BLUNT WAS ARRESTED FOR L AND L, LEWD AND LASCIVIOUS INVOLVING A 13-YEAR-OLD GIRL.

>> DIDN'T THE-- TRIAL COUNSEL TESTIFIED ABOUT THIS.

DID HE KNOW ABOUT THIS OTHER, THESE PRIOR BAD ACTS?

?

HE TESTIFIED THAT HE KNEW ABOUT THEM.

>> AND HE SAID THE WORST THING HE'D WANT TO DO IS TAKE A VICTIM WHO'S BEEN KILLED BY HIS OWN CLIENT AND TRY TO MALIGN HIM.

AND, YOU KNOW, AND SO HE MADE A REASONED JUDGMENT ABOUT IT.

I, I CAN'T FAULT HIM FOR THAT.

I DON'T KNOW HOW YOU CALL THAT SIXTH AMENDMENT, NOT FUNCTIONING UNDER THE SIXTH AMENDMENT.

BEYOND THAT THOUGH, HOW-- SINCE WE SAY VICTIM IMPACT STATEMENTS SHOULD NOT, THEY'RE NOT USED BY TRIAL COURT, CERTAINLY, THEY'RE NOT SUPPOSED TO BE USED AS AGGRAVATORS, SO HOW WOULD YOU EVER ESTABLISH PREJUDICE UNDER STRICKLAND WHICH I GUESS YOU WOULD BE SEEKING A NEW PENALTY PHASE WHERE, WHAT, THEY GET TO CROSS-EXAMINE THE VICTIM IMPACT? YOU SEE?

SO I THINK YOU HAVE A PROBLEM ON BOTH DEFICIENCY AND PREJUDICE.

>> WELL, INVOLVING PREJUDICE, YOUR HONOR, DON TODAY HALL HAS A TWIN BROTHER BY THE NAME OF DANTE HALL.

HIS ATTORNEY WAS NAMED MR. SPIVEY.

HE DID SOMETHING EVERYBODY'S

SUPPOSED TO DO IN A CASE LIKE THIS; YOU RUN THE CRIMINAL RECORDS OF THE VICTIMS JUST TO SEE WHAT YOU'RE DEALING WITH, ESPECIALLY IN A CASE LIKE THIS, HAPPENED IN A HIGH-CRIME AREA. INCIDENT HAPPENED AT A PARTY WHERE THERE WERE STRIPPERS, MULTIPLE DIFFERENT TYPES OF DRUGS.

HE RAN A CRIMINAL BACKGROUND CHECK.

MR. SPIVEY RAN THAT BACKGROUND CHECK, AND HE DISCOVERED THAT ANTHONY BLUNT, THE SOLE PERSON UPON WHOM A VICTIM IMPACT TESTIMONY WAS PRESENTED FOR, HAD A PRIOR ARREST FOR LEWD AND LASCIVIOUS.

AND ANTHONY BLUNT--

>> WHEN DID HE RUN THAT BACKGROUND CHECK, THE LAWYER FOR THE OTHER DEFENDANT?

>> HE RAN IT AFTER OUR TRIAL--

>> BECAUSE, YEAH.

SO HE HAD THE ADVANTAGE OF WATCHING WHAT WAS GOING ON, AND THEN HE MADE THAT DECISION.

BUT WE ALREADY, I THINK THAT IF YOU'RE GETTING TO WHAT HAPPENED TO THE BROTHER, DID HE GET LIFE?

>> THE BROTHER GOT LIFE.

>> BUT WE'RE NOT, YOU'RE NOT PLAUSIBLY ARGUING THAT THAT WAS BECAUSE THE VICTIM IMPACT STATEMENT WAS NOT OFFERED IN THAT CASE, WAS--

>> ABSOLUTELY, YOUR HONOR.

>> BUT THAT'S SO SPECULATIVE.

>> WELL, YOUR HONOR, ALL OF THIS IS SPECULATIVE, BUT WE'RE--

>> BUT IN VICTIM IMPACT STATEMENTS, UNLESS WE ELEVATE IT TO SOMETHING THAT IT'S NOT SUPPOSED TO BE, AND I REALIZE THERE'S A TENSION ABOUT IT, THE GUY, YOU KNOW, THE PERSON WASN'T AS GOOD AS THEY'RE SAYING HE WAS.

OKAY.

SO WHAT?

>> [INAUDIBLE]

I CANNOT EVEN CONCEIVE OF WHY ANY ATTORNEY WOULD WANT TO VILIFY A VICTIM THAT THE CLIENT HAS COME IN ON A PARTY, NO MATTER WHAT WAS GOING ON IN THAT PARTY.

HE'S COME IN UNINVITED WITH GUNS, SHOOTING PEOPLE. NOT JUST THIS VICTIM--

>> WELL--

>> AND HOW IN THE WORLD WOULD SAYING THIS VICTIM HAD A CRIMINAL HISTORY WOULD HAVE HELPED YOUR CLIENT?

>> FIRST OF ALL, THAT'S WHAT HE WAS CONVICTED OF.

WE ALSO CHALLENGED THE GUILT PHASE CONVICTION.

BUT REGARDING YOUR QUESTION, WE'RE NOT TRYING TO VILIFY THE VICTIM.

AND WHAT MR. SPIVEY DID IN THE BROTHER DANTE HALL'S CASE, HE INTERVIEWED-- HE SECURED THE INFORMATION FROM A DETECTIVE BY THE NAME OF DETECTIVE HART. AND DETECTIVE HART DID THE FULL INVESTIGATION OF THE LEWD AND LASCIVIOUS ALLEGATION.

HE INTERVIEWED THE VICTIM.

HE INTERVIEWED ANTHONY BLUNT.

AND BASED ON HIS INTERVIEWS, HE DECIDED THERE WAS ENOUGH TO MAKE AN ARREST.

NOW, THE STATE DECIDED NOT TO GO FORWARD WITH THE CHARGE, BUT THERE WAS STILL AN ARREST.

WE'RE NOT TRYING TO VILIFY THE VICTIM.

THE STATE MADE THE ARGUMENT IN THEIR ANSWER BRIEF AND DURING THE EVIDENTIARY HEARING TRIAL COUNSEL SAID WE'RE NOT TRYING TO SAY THE VICTIM DESERVED IT.

IT'S NOT ABOUT THE VICTIM DESERVING IT.

IF--

>> WHAT OTHER INFORMATION, I

MEAN, WHAT IS THE OTHER PURPOSE,  
WHAT WOULD THE REAL PURPOSE BE  
OTHER THAN TO--

>> TO DEMONSTRATE--

>>-- MAKE THE VICTIM LOOK LIKE  
SOMEONE WHO ASKED FOR IT?

>> IT'S NOT ABOUT HIM ASKING FOR  
IT, YOUR HONOR.

IT'S TO DEMONSTRATE HIS  
UNIQUENESS AS AN INDIVIDUAL AS  
OUTLINED BY THE STATUTE.

AND I CAN'T SAY IT ANY BETTER T  
THAN MR. SPIVEY SAID IT AT THE  
EVIDENTIARY HEARING.

HE SAID-- I'M PARAPHRASING, BUT  
THE EXACT QUOTATION IS IN OUR  
BRIEF.

IF I HAVE DAMNING INFORMATION  
REGARDING THIS VICTIM, COME HELL  
OR HIGH WATER, I'M GOING TO TRY  
TO MAKE SURE I GET IT INTO  
EVIDENCE IF THEY'RE GOING TO ACT  
LIKE THIS VICTIM'S THE GREATEST  
THING SINCE SLICED BREAD.

THE PROBLEM WITH VICTIM IMPACT  
TESTIMONY, AS YOU'RE SAYING,  
THERE IS A TENSION.

AND SO WE'RE SAYING THAT THE  
VICTIM--

>> AND SO, I MEAN, I GUESS  
ANOTHER POINT OF THAT IF YOU  
WANT TO CONTINUE ON THIS LINE IS  
HE WASN'T EVER CONVICTED OF  
THAT, CORRECT?

>> NO.

>> OKAY.

>> HE WAS NEVER CONVICTED.  
BUT AN OBJECTIVE THIRD PARTY  
WITH NO SKIN IN THE GAME, HE'S  
GOT NO TIES TO THE DEFENSE, HE'S  
GOT NO TIE TOSS THE STATE DID AN  
INDEPENDENT INVESTIGATION.

AND IN THE DANTE HALL CASE, THE  
ATTORNEY, MR. SPIVEY, PRESENTED  
THE SAME INFORMATION TO THE  
STATE ATTORNEY, MR. GROSS, THAT  
WE PRESENTED DURING OUR  
EVIDENTIARY HEARING.

AND WHAT DID THE SATE DO?

THEY DECIDED NOT TO GO FORWARD

WITH VICTIM IMPACT TESTIMONY.  
SO WE'RE TALKING ABOUT DAMAGING  
INFORMATION VILIFYING THE  
VICTIM, BUT DANTE HALL'S SERVING  
LIFE RIGHT NOW, AND THE STATE  
DECIDED NOT TO GO FORWARD WITH  
VICTIM IMPACT TESTIMONY.

AND IN OUR CLIENT'S CASE, IF  
THEY DECIDED ONCE AGAIN NOT TO  
GO FORWARD WITH VICTIM IMPACT  
TESTIMONY LIKE THEY DID IN DANTE  
HALL'S CASE, IT STANDS TO REASON  
IN OUR CLIENT'S CASE THEY WOULD  
NOT HAVE GONE BECAUSE THEY WOULD  
NOT WANT THAT DAMAGING  
INFORMATION--

>> AND WHAT OF AGGRAVATORS AND  
MITIGATING CIRCUMSTANCES THAT  
WERE PRESENTED WOULD HAVE  
CHANGED IF THERE HAD BEEN NO  
VICTIM IMPACT INFORMATION?

>> WELL, IF THERE'S NO VICTIM  
IMPACT--

>> AGGRAVATORS AND MITIGATORS  
ARE WHAT A SENTENCE IS BASED ON,  
CORRECT?

>> YES, YOUR HONOR.

>> SO TELL ME WHAT ABOUT THE  
AGGRAVATORS AND THE MITIGATORS  
WOULD HAVE CHANGED IF THERE HAD  
BEEN NO VICTIM IMPACT-- IN  
NOTHING WOULD HAVE CHANGED AS  
FAR AS THE AGGRAVATORS AND  
MITIGATORS.

>> WERE THE-- NOW, WAS THERE A,  
ARE YOU ARGUING A BELATED  
PROPORTIONALLY, THAT WAS HIS  
BROTHER CONVICTED OF  
FIRST-DEGREE MURDER?

>> YES, YOUR HONOR.

>> DID THEY SEEK THE DEATH  
PENALTY?

>> YES, THEY DID, YOUR HONOR.

>> THE JURY CAME BACK WITH WHAT?

>> LIFE, BECAUSE THERE WAS NO  
VICTIM IMPACT TESTIMONY.

>> THAT'S THE LEAP.

OKAY.

SO, THEREFORE, HE'S EQUALLY--  
IS HE EQUALLY CULPABLE?

>> ACCORDING TO THE STATE OUR  
CLIENT IS MORE CULPABLE.

>> OKAY.

SO WHY AREN'T YOU-- IF HE  
BELATEDLY GOT LIFE AND IF YOU'RE  
GOING TO SAY HE'S EQUALLY  
CULPABLE, WHY WOULDN'T YOU BE  
BRINGING A NEWLY-DISCOVERABLE  
CASE, BECAUSE WHAT YOU'LL HAVE  
TO CONFRONT IS THE STATE SAYING,  
NO, YOUR CLIENT WAS THE MOST  
CULPABLE, WHICH IS PROBABLY MORE  
LIKELY WHY THE JURY IN THAT CASE  
RECOMMENDED THE DEATH PENALTY.

>> YOUR HONOR, I WOULD SAY  
THAT'S SPECULATIVE.

>> NO, IT'S MORE SPECULATIVE IF  
IT WAS ANYTHING OTHER THAN  
VICTIM IMPACT STATEMENT.  
BUT ARE YOU SAYING THE  
MITIGATION WAS IDENTICAL BETWEEN  
THE TWO BROTHERS?

>> THE MITIGATION WAS NOT  
IDENTICAL--

>> WELL, WHAT WAS THE  
DIFFERENCE?

>> YOUR HONOR, WHAT WAS THE  
DIFFERENCE BETWEEN THE  
MITIGATION?

WELL IN OUR CASE, YOUR HONOR,  
THE MOTHER TESTIFIED.

IN DANTE HALL'S CASE THE MOTHER  
DIDN'T TESTIFY.

THEY HAD DR. MING TESTIFY IN  
DONTE HALL'S CASE, BUT OUR  
CLIENT HAD AN 8-4.

AND WE HAVE TO REMEMBER THAT A  
JURY WAS THERE.

SO A JURY, WE'RE TALKING ABOUT  
WEIGHING AGGRAVATORS AND  
MITIGATORS, THAT'S SOMETHING  
THAT THE COURT DOES.

>> I THINK YOU HAVE, AGAIN, I  
KNOW YOU HAVE ANOTHER POINT.  
I JUST RESPECTFULLY WOULD SAY  
THAT I THINK THIS IS-- I CAN'T  
IMAGINE EVEN HOW WE COULD WRITE  
SOMETHING BASED ON THE FACT THAT  
WE REALLY, WE ALLOW VICTIM  
WITNESS, VICTIM IMPACT

STATEMENT, BUT IT'S REALLY IN A GRAY ZONE OF WHAT'S THERE. SO WHY DON'T YOU GO TO THE OTHER MITIGATION THAT SHOULD HAVE BEEN PRESENTED THAT YOU'RE SAYING WOULD HAVE RESULTED IN A LIFE SENTENCE.

>> WE DON'T HAVE A-- ACTUALLY, MY OTHER ISSUE, YOUR HONOR, IS ISSUE ONE.

>> YOU DIDN'T BRING UP IN THE CASE, DIDN'T YOU HAVE MORE, DIDN'T YOU HAVE ANOTHER PSYCHOLOGIST, AND YOU PUT A BROTHER ON--

>> YES, YOUR HONOR.

>> OH, OKAY.

BUT I SEE YOU'RE SAYING THERE WAS OTHER MITIGATION THAT WOULD HAVE BEEN PRESENTED THAT WOULD HAVE RESULTED IN A LIFE SENTENCE?

YOU DON'T WANT TO ARGUE THAT TODAY?

>> NO, I WANT TO ARGUE ISSUE ONE, YOUR HONOR, RESPECTFULLY. BUT AGAIN, REGARDING ISSUE TWO, IT'S PAINTING THE FULL PICTURE FOR THE JURY.

>> YOU DON'T SEE THAT YOUR TWO REALLY GO TOGETHER, WHICH IS THEY SHOULD PUT ON MORE MITIGATION, AND THEY SHOULD HAVE KEPT OUT THE VICTIM IMPACT STATEMENT?

ISN'T THAT YOUR BETTER ARGUMENT?

>> YOUR HONOR, WE'VE MADE SEVERAL ARGUMENTS IN OUR BRIEF, AND WITH ONLY 20 MINUTES, I ONLY HAVE TIME TO TOUCH ON A COUPLE. I'M NOT NEGATING OUR ORE ARGUMENTS BY FOCUSING ON ONE AND TWO ARGUMENTS.

>> I UNDERSTAND.

>> AND BY ALLOWING THE JURY TO SIT THERE AND THINK THAT THIS GUY HAD NO FLAWS, THERE'S A JURY THERE.

THE VICTIM'S FAMILY'S TALKING ABOUT HIS UNIQUENESS AND ALL

THESE GREAT QUALITIES.  
OKAY, IT'S NOT SUPPOSED TO BE  
USED FOR MITIGATION OR  
AGGRAVATION, BUT OF COURSE IT  
IS.

THEY'RE HEARING, OH, MY GOD, A  
SOB STORY FROM THE FAMILY,  
UNDERSTANDABLY.

BUT WHAT MR. SPIVEY DID, HE  
SAID, YOU KNOW WHAT?

I'M NOT JUST GOING TO LET THAT  
STAND.

IT'S NOT GOING TO JUST BE THE  
SOB STORY, I'M GOING TO HAVE AN  
OBJECTIVE THIRD PARTY, A  
DETECTIVE WHO INVESTIGATED THE  
CASE AND INTERVIEWED THE VICTIM  
AND THE ALLEGED PERPETRATOR AND  
DECIDED THERE WAS PROBABLE CAUSE  
TO MAKE AN ARREST, I'M GOING TO  
HAVE HIM READY TO TESTIFY.

WHAT DID THE STATE DO?

THEY PUNTED AND DID NOT HAVE--

>> HAD THAT DETECTIVE WOULD HAVE  
BEEN ABLE TO TESTIFY?

>> HE WOULD HAVE BEEN, YOUR  
HONOR.

MR. SPIVEY TESTIFIED THAT HE  
ARGUED THE CASE WITH MR. GROSS,  
THE STATE ATTORNEY, AND THEY  
COULD COME UP WITH NO REASON WHY  
IT WOULD BE KEPT OUT.

AND MR. HART WAS OUTSIDE THE  
HALL READY TO TESTIFY WHEN THE  
STATE ELECTED TO NOT GO FORWARD.  
AND MR. HALL IS SERVING LIFE  
RIGHT NOW.

>> ABSENT THE STATUTE THAT WE  
HAVE IN CONNECTION WITH CAPITAL  
CASES ON VICTIM IMPACT, IF A  
VICTIM OF A CRIME IS EITHER A  
WONDERFUL, WONDERFUL PERSON OR  
REALLY BAD, DOES THAT EVIDENCE  
COME BEFORE A JURY?

IF IT HAS NOTHING TO DO WITH  
CRIME THAT'S BEING TRIED?

>> THE VICTIM IMPACT EVIDENCE  
COMES BEFORE A JURY.

>> WITHOUT THE STATUTE THAT WE  
HAVE ON CAPITAL LITIGATION.

WITHOUT THAT.

>> NO, YOUR HONOR.

>> IT DOESN'T COME IN IN ANY  
CONTEXT.

SO THE ONLY AUTHORITY THAT THE  
COURT SYSTEM HAS FOR ALLOWING  
THAT TYPE OF EVIDENCE--

>> IS THE CAPITAL--

>>-- IS THE STATUTE.

>> YES, SIR, YOUR HONOR.

>> STATUTE DOESN'T PROVIDE FOR  
IT FOR VICTIMS, DUDS IT?

>> IT DOESN'T PROVIDE FOR--

>> THE BAD ACTS OF VICTIMS.

>> BUT IT DOESN'T SAY YOU CAN'T  
DO IT EITHER.

AND MR. SPIVEY--

>> HAS THERE BEEN EVER A CASE IN  
OUR JURISPRUDENCE WHAT THE BAD  
ACTS OF THE VICTIM HAS BEEN  
PLACED IN EVIDENCE AND HAS BEEN  
APPROVED?

>> NOT THAT I COULD FIND, YOUR  
HONOR, BUT ALL I HAVE IS THE  
RECORD AND MR. SPIVEY READY TO  
GO FORWARD WITH DETECTIVE HART.  
AND THIS ALSO GOES TO  
CREDIBILITY.

MULTIPLE REFERENCES TO UNCHARGED  
CRIMES, COLLATERAL CRIMES WERE  
BROUGHT INTO EVIDENCE WITHOUT  
OBJECTION BY COUNSEL.

THE WITNESS, THE KEY WITNESS IN  
THIS CASE WAS A LADY BY THE NAME  
OF ANGEL GLYNN.

SHE WAS OUR CLIENT'S GIRLFRIEND.  
DURING TESTIMONY ELICITED FROM  
THE STATE-- BECAUSE YOU  
REMEMBER, THE STATE, WHEN THEY  
PUT A WITNESS ON, THE STATE  
PREPARES THAT WITNESS.

THEY TALK TO THE WITNESS ABOUT  
WHAT THEY'RE GOING TO TESTIFY  
ABOUT.

ON MORE THAN ONE OCCASION,  
MS. GLYNN REFERENCED UNCHARGED  
COLLATERAL CRIMES WHICH IS,  
OBVIOUSLY, NOT ALLOWABLE IN A--

>> WHAT DID SHE SAY AND HOW MANY  
TIMES?

WAS IT MORE THAN TWO TIMES?  
>> SHE SAID TOTAL THREE TIMES.  
>> THREE?  
>> THE FIRST TWO TIMES WERE  
REFERENCE TOSS THE COHORTS, A  
GUY BY THE NAME OF SHOE SHOE AND  
A GUY BY THE NAME OF PIG.  
AND THE STATE ATTORNEY ASKED  
HOWDOWN WHO WAS WHO?  
I'M PRAYER RAH PRAISING.  
AND SHE SAID SHOE SHOE, HE'S  
SHORT, HE DOES THIS TYPE OF  
THING, HANGS AROUND WITH DONTE  
HALL AND DOES THIS TYPE OF  
STUFF.  
IN THE TYPE OF SUFFICIENT  
MURDER, ROBBERY, HOME  
INVASION--  
>> DID HE SAY THAT?  
>> PARDON?  
>> DID HE SAY THAT?  
>> WHO IS HE, YOUR HONOR?  
>> HE SAID THE STUFF.  
HOW IS SOMEBODY SUPPOSED TO KNOW  
WHAT THE STUFF IS?  
>> BECAUSE IT'S IN THE CONTEXT  
OF THE QUESTIONING D THE  
QUESTIONING HAPPENED IN  
REFERENCE TO WHAT HAPPENED WHEN  
THEY ENTERED THE HOUSE.  
>> WHAT DID THE DEFENSE LAWYER  
SAY?  
DID HE HEAR THAT COMMENT--  
>> HE HEARD THAT.  
>> WHAT DID HE SAY?  
>> HE DIDN'T WANT TO OBJECT  
BECAUSE HE DIDN'T WANT TO OPEN  
THE TOUR.  
>> HE DIDN'T WANT TO BRING  
ATTENTION TO IT BECAUSE HOW MANY  
TIMES--  
>> A SECOND TIME REGARDING PIG.  
>> HOW DO YOU KNOW HIM?  
>> HE'S BIG, BALD-HEADED, AND HE  
DOES THIS TYPE OF STUFF.  
THAT'S THE SECOND TIME.  
TYPE OF STUFF IS WHAT THE JURY'S  
LISTENING TO; MURDER, ROBBERY,  
HOME INVASION.  
THAT'S, THAT'S THIS TYPE OF

STUFF.

IT'S NOT JUST A VAGUE TERM, IT'S IN CONTEXT OF WHAT THE JURY'S LISTENING ABOUT.

THEN LATER ON THERE WAS A REFERENCE TO MS. GLYNN TALKING ABOUT A CONVERSATION SHE HAD WITH THE DEFENDANT, AND I'M PARAPHRASING BUT IT'S IN OUR BRIEF, WHAT COMES OVER YOU? WHAT GETS INTO YOU?

WHY DO YOU DO THIS TYPE OF STUFF?

SOMETHING COMES OVER ME.

THIS IS OUR CLIENT'S RESPONSE, SOMETHING COMES OVER ME.

AND THEN DURING CLOSING ARGUMENTS-- SO THAT'S THREE.

AND THEN DURING CLOSING ARGUMENTS THE STATE ATTORNEY IS ABLE TO CAPITALIZE ON THAT AND REFERENCE THAT SAME DISCUSSION I JUST REFERENCED AND SAID THAT YOU HEARD WHAT MS. GLYNN SAID, SOMETHING COMES OVER ME.

HE DOESN'T KNOW WHAT COMES OVER HIM, BUT HE SEEMS SERIOUS.

SO IF YOU TAKE ALL THAT TOGETHER, THE FIRST TWO REFERENCES AND THE LAST TWO REFERENCES, IT IMPLIES AN ONGOING CONDUCT.

AND OUR CLIENT IS ON TRIAL FOR ONE PARTICULAR CRIMINAL EPISODE. NOT WHATEVER MIGHT HAVE HAPPENED IN THE PAST.

AND, YOUR HONOR, YOU MENTIONED ABOUT HE DIDN'T WANT TO CALL ATTENTION TO IT.

WHAT THE TRIAL ATTORNEY SAID WAS I DIDN'T WANT TO OPEN THE DOOR.

YOU CANNOT-- A TACTICAL DECISION OR A STRATEGIC DECISION IS NEVER REASONABLE IF IT'S BASED ON A MISUNDERSTANDING OF THE LAW.

ON FOUR SEPARATE OCCASIONS DURING THE EARTH SHARE HEARING-- EVIDENTIARY HEARING, HE REFERENCED, WELL, IF I WERE

TO OBJECT, THAT WOULD CAUSE ME  
TO QUESTION HER WHAT ABOUT THIS  
CRIME, WHAT ABOUT THAT CRIME?  
I DON'T WANT TO OPEN THE DOOR.  
THAT MAKES NO SENSE, YOUR HONOR.  
>> YOU'RE INTO YOUR REBUTTAL  
TIME.

>> YES.

I'D LIKE TO RESERVE THE REST FOR  
REBUTTAL AND THANK YOU.

>> MAY IT PLEASE THE COURT, I'M  
STACEY KIRCHER FROM THE OFFICE  
OF THE ATTORNEY GENERAL ON  
BEHALF OF THE STATE IN THIS  
CASE.

I'D LIKE TO BEGIN JUST BY  
CLARIFYING A COUPLE POINTS.  
I'LL ONLY ADDRESS ISSUES ONE AND  
TWO BECAUSE THAT IS WHAT MY  
OPPOSING COUNSEL ADDRESSED IN  
HIS ARGUMENT.

AS TO ISSUE TWO, THE VICTIM  
IMPACT STATEMENT, THIS COURT HAS  
NEVER HELD AND NO CASE THAT I'M  
AWARE OF HAS HELD THAT A DEFENSE  
ATTORNEY IN ORDER TO BE  
EFFECTIVE UNDER STRICKLAND IS  
REQUIRED TO ATTACK A VICTIM  
IMPACT STATEMENT.

AND--

>> WELL, HIS POINT, IF I GATHER  
CORRECTLY, IS THAT IN THE OTHER  
CO-DEFENDANT'S CASE THERE WAS NO  
VICTIM IMPACT STATEMENT.

HE GOT LIFE.

HERE PERHAPS IF THAT WAS PURSUED  
AND ADMITTED, ALLOWED, PERHAPS  
THE STATE WOULD HAVE BACKED OFF  
AND NOT USED THE VICTIM IMPACT  
STATEMENT, AND, YOU KNOW,  
PERHAPS A LIFE SENTENCE MAY HAVE  
OCCURRED.

>> AND, JUSTICE LABARGA, THAT IS  
APPELLANT'S ARGUMENT, AND THAT'S  
A COMPELLING ARGUMENT WHEN WE  
MAKE THAT SPECULATION.

HOWEVER, WHAT WE HAVE IN THIS  
CASE IS A VASTLY MORE CULPABLE  
DEFENDANT IN DONTE HALL.

WE HAVE TESTIMONY AND WE HAVE A

FACTUAL FINDING BY THE TRIAL COURT THAT DONTE HALL IS VASTLY MORE CULPABLE.

HE'S NOT ONLY THE INDIVIDUAL THAT MASTERMINDED THIS WHOLE ROBBERY AND HOME INVASION, HIS GIRLFRIEND WAS ANGEL GLYNN.

ANGEL GLYNN WAS ONE OF THE STRIPPERS THAT WAS HIRED TO DANCE AT THIS PARTY.

HE WAS COMMUNICATING WITH HER THROUGHOUT THE PARTY ASKING HOW MANY INDIVIDUALS ARE THERE, WHERE ARE THEY, DO YOU SEE ANY GUNS, HOW MANY PEOPLE ARE THERE, HOW MUCH MONEY IS THERE.

THAT'S ALL VERIFIED BY TEXT RECORDS, TEXT AND CELL RECORDS.

ANGEL GLYNN IS THE, WAS AN EYEWITNESS AS WELL AS SEVERAL OF THE INDIVIDUALS WHO WERE INJURED PARTYGOERS.

THEY TESTIFIED AS WELL THAT THE INDIVIDUAL, THAT HE WAS THE ONE WITH THE AK-47.

HE'S THE ONE WITH THE LARGEST HANDGUN-- OR ASSAULT RIFLE-- HE'S THE ONE THAT COMES IN THE HOUSE FIRST, HE'S DIRECTING THE OTHER THREE

INDIVIDUALS, INCLUDING HIS BROTHER DANTE HALL WHAT TO DO.

HE INFORMS DANTE HALL GO BACK TO THE BACK BEDROOM, YOU KNOW, GET THE MONEY THAT'S BACK THERE.

SO THERE'S MULTIPLE PIECES OF EVIDENCE ESTABLISHING THAT--

>> DID THE BROTHER DO ANY OF THE SHOOTING?

>> THERE WERE GUNS, YOU KNOW, BULLETS FLYING EVERYWHERE.

SO, YES, THERE WERE MULTIPLE GUNSHOT WOUNDS.

DONTE HALL--

>> THREE INDIVIDUALS THAT CAME IN?

>> FOUR INDIVIDUALS.

>> FOUR.

>> THERE WAS DONTE HALL--

>> AND ALL OF THEM HAD GUNS.

>> YES, YOUR HONOR.  
THE OTHER THREE INDIVIDUALS,  
DONTE HALL HAD AN ASSAULT RIFLE  
SIMILAR TO AN AK-47, DANTE HALL  
HAD A .9 MM, PIG AND SHOE SHOE  
BOTH HAD .9 MMs.  
>> AND DO WE KNOW WHAT KIND OF  
BULLET KILLED MR. BLUNT?  
>> NOW, WE KNOW FOR A FACT THAT  
IT WAS DONTE HALL'S GUN AND  
DONTE HALL THAT SHOT KEYSHAWN  
EVANS.  
AS TO ANTHONY BLUNT, THEY WERE  
NOT ABLE TO IDENTIFY  
SPECIFICALLY THE WEAPON, WHICH  
WEAPON KILLED HIM BECAUSE THIS  
IS A VERY SMALL ROOM, CONCRETE  
BLOCK AND APPROXIMATELY 15  
PEOPLE IN A TINY ROOM, AND  
LIGHTS WERE OUT, BULLETS WERE  
FLYING EVERYWHERE.  
IT WAS JUST MAYHEM.  
>> SO WE DON'T, I MEAN, I WOULD  
ASSUME THAT AN AK-47, IS THAT  
WHAT YOU SAID?  
>> IT WAS A--  
>> OR SOME KIND OF ASSAULT  
RIFLE.  
>> VERY SIMILAR TO THAT, YES,  
YOUR HONOR.  
>>-- WOULD HAVE A DIFFERENT  
BULLET--  
>> IT HAD--  
>>-- FROM A .9 MM.  
>> CORRECT, YOUR HONOR.  
>> SO WHAT, WE DON'T KNOW WHICH  
KIND OF BULLET KILLED MR. BLUNT?  
>> UNFORTUNATELY, THE MEDICAL  
EXAMINER WAS NOT ABLE TO  
CONCLUSIVELY SAY THAT IT WAS  
DONTE HALL'S WEAPON WHICH IT  
FIRED A ROUND, A 39 ROUND.  
RATHER THAN THE .9 MMs THAT  
THE OTHER INDIVIDUALS HAD.  
BUT EVEN ASIDE FROM THAT, ALL  
EYEWITNESS TESTIMONY POINTED TO  
THE FACT THAT IT WAS DONTE HALL  
WHO WAS THE MOST CULPABLE.  
HE WAS THE LEADER, HE WAS  
DIRECTING THE OTHER PEOPLE.

HE'S THE ONE WITH THE BIG WEAPON.

AND HE'S THE ONE WHO INFORMED THE PARTYGOERS I'M GOING TO MAKE THIS CHOPPER DANCE, MEANING THE GUN, AND STARTED SHOOTING.

AND ALL ACCOUNTS ARE THAT THE INDIVIDUALS AT THE PARTY WERE COMPLIANT.

KEYSHAWN EVANS, IN FACT, HAD SAID CALM DOWN, YOU KNOW, NO PROBLEM.

THERE'S MONEY IN THE BACK BEDROOM.

WHEN DANTE HALL WASN'T ABLE TO ACCESS THE BACK BEDROOM FOR WHATEVER REASON, THAT'S WHEN DON, E HALL STARTED SHOOTING AND SHOT KEYSHAWN EVANS.

SO ALL OF THE ACCOUNTS WERE THAT DONTE HALL WAS MUCH MORE CULPABLE THAN DANTE HALL.

SO IT WASN'T JUST A SCENARIO OF THE VICTIM IMPACT STATEMENT NOT BEING PRESENT, IN DANTE HALL'S CASE IT WAS THE ONLY DIFFERENCE BETWEEN LIFE IS AND DEATH IN THIS CASE.

AND EVEN DANTE HALL'S COUNSEL TESTIFIED THAT DONTE HALL WAS MUCH MORE CULPABLE.

HE HAD HAD THE BENEFIT OF WATCHING THE DONTE HALL TRIAL, SEEING THE STATE STRONG POINTS, DEFENSE WEAK POINTS, ETC.

, AND TAILORING HIS PRESENTATION, AND DANTE HALL BASED ON WHAT HAPPENED IN DONTE HALL.

BUT ONE OF HIS MAIN COMPONENTS WAS THAT DANTE HALL WAS THE MUCH LESS CULPABLE OF TWINS.

>> DO WE KNOW WHAT KIND OF AGGRAVATION AND MITIGATION WAS IN THE OTHER CASE?

>> WAS IN--

>> THAT WAS PRESENTED IN DANTE HALL'S CASE?

>> AND THAT'S A GOOD POINT AS WELL, JUSTICE QUINCE.

THE STATE WAS SEEKING DEATH ON BOTH OF THE TWINS, DONTE AND DANTE.

HOWEVER, IN DANTE HALL THERE WAS NO HAC FOUND.

AND SO THAT IS A MAJOR DIFFERENCE IN THE AGGRAVATION BETWEEN DONTE AND DANTE HALL. THE STATE DID NOT-- STATE DID NOT SEEK HAC IN EITHER OF THE CASES AS TO KEYSHAWN EVERY WAS BECAUSE THE TESTIMONY WAS AFTER SAYING IN THE MONEY'S IN THE BACK BEDROOM, EVERYBODY CALM DOWN, WE'RE GOING TO BE FINE, DANTE HALL CAME BACK NOT BEING ABLE TO ACCESS THAT BACK BEDROOM, AND THEN DONTE IMMEDIATELY SHOT HIM IN THE HEAD.

HE WAS IMMEDIATELY RENDERED UNCONSCIOUS.

SO THEY DIDN'T SEEK HAC AS TO KEYSHAWN EVANS.

>> SO ARE YOU SAYING THE ONLY DIFFERENCE IN THOSE THREE DEFENDANTS WAS WHEN THE VICTIM, THEY WERE ALL SHOT WITH GUNS, BUT IN ONE CASE BECAUSE WHATEVER REASON SOMEBODY DIDN'T DIE IMMEDIATELY, THAT WAS THE ONLY DIFFERENCE BETWEEN THE--

>> NO.

>>-- CASES?

>> NO, THAT'S NOT THE ONLY DIFFERENCE IN THE CAN CASES.

>> YOU, I THOUGHT IT WAS THAT THIS DEFENDANT WAS THE RINGLEADER, WAS THE MORE CULPABLE--

>> ABSOLUTELY.

>>-- AND WHAT ABOUT, AND WAS THERE OTHER MITIGATION THAT WASN'T PRESENT?

>> WAS THERE OTHER MITIGATION AS TO DON, E HALL THAT WASN'T PRESENT AS TO DANTE?

>> OTHER-- WHICH IS THE ONE-- WE'VE GOT--

>> WE HAVE DONTE HALL RECEIVED A

DEATH RECOMMENDATION.

>> MANY OKAY.

THEN DANTE.

WAS THERE OTHER MITIGATION FOR DANTE THAT WASN'T-- FORGET THE VICTIM IMPACT STATEMENT.

>> THEY HAD SIMILAR MITIGATION, OBVIOUSLY, BEING IDENTICAL TWINS.

THEY PUT ON SOME OF THE SAME MITIGATION, FAMILY BACKGROUND, GENERATIONAL DRUG USE, DRUG USE IN THEIR--

>> BUT THEY'VE NEVER MADE, AND I GUESS FOR ME AFTER THE LIFE SENTENCE OF THE TWIN, THEY NEVER MADE A RELATIVE CULPABILITY THAT THE DEATH SENTENCE WAS NO LONGER PROPORTIONATE.

>> THAT WAS AN ARGUMENT FOR DONTE HALL IN DIRECT APPEAL. THAT WAS-- AND THE MAIN THRUST OF THE ARGUMENT IN DIRECT APPEAL WAS WHETHER HE WAS ERRONEOUSLY FOUND AS TO ANTHONY BERNARD BLUNT, BECAUSE HE DID, HE DID DIE OF THREE GUNSHOT WOUNDS, BUT HE LINGERED AND WAS PLEADING FOR HIS LIFE FOR APPROXIMATELY 30 MINUTES.

AFTER THE 911 CALL CAME IN AT APPROXIMATELY 2:30, HE DIDN'T SLIP INTO A COMA UNTIL APPROXIMATELY 3:04 A.M.

SO THAT ENTIRE TIME ALL ACCOUNTS ARE THAT HE WAS BEGGING FOR HIS LIFE, THAT HE WAS SAYING, PLEASE, GOD, DON'T TAKE ME, AND IT WAS EVIDENT FROM FIRST RESPONDERS THAT HE WAS IN AN EXTREME AMOUNT OF PAIN WHICH IS WHERE THE HAC CAME FROM.

BUT, NO, THE STATE'S POSITION IS NOT THAT THE ONLY DIFFERENCE IS HAC IN THOSE.

IT'S-- AND I BELIEVE THAT MY OPPOSING COUNSEL ARGUES THAT, WELL, THERE WAS NO VICTIM IMPACT EVIDENCE AS TO KEYSAWN EVANS, AND EVANS, THERE WAS A LIFE

RECOMMENDATION.

WELL, THAT'S ALSO DIFFERENT BECAUSE EVANS WAS IMMEDIATELY RENDERED UNCONSCIOUS, AND THE STATE DIDN'T SEEK HAC.

WELL, OKAY, SECONDARILY THERE WAS NO VICTIM IMPACT EVIDENCE AS TO ANTHONY BERNARD BLUNT IN DANTE HALL'S CASE.

SO, AGAIN, THIS DEATH RECOMMENDATION MUST ONLY PIVOT ON THE VICTIM IMPACT INFORMATION.

AND THAT'S NOT TRUE EITHER BECAUSE IT'S CLEAR BOTH FROM THE TESTIMONY THAT CAME OUT AND A FACTUAL FINDING BY COURT AND THE OUTIN 3851, FRANKLY, THAT DONTE HALL IS THE VASTLY MORE CULPABLE OF INDIVIDUALS.

SO I KNOW THIS COURT DOESN'T HAVE TO HAVE A FINDING ON DEFICIENCY AND PREJUDICE, BUT STATE'S POSITION IS THAT THIS IS NO DEFICIENCY FOR FAILING TO ATTACK THE VICTIM IMPACT INFORMATION BECAUSE TRIAL COUNSELS WERE BANK WITS AND MILLS.

TRIAL COUNSEL BANK WITS DID TESTIFY IN THE EVIDENTIARY HEARING THAT HE WAS AWARE OF THIS 1994-- IT'S USED INTERCHANGEABLY.

IT WAS A NONARREST CASE THAT WAS FILED AS A COMPLAINT TO THE STATE ATTORNEY'S OFFICE.

BUT IN 1994, SO WE'LL CALL IT AN ARREST, THIS LEWD AND LASCIVIOUS ON OR IN THE PRESENCE OF A MINOR CHILD, A 15-YEAR-OLD GIRL.

HE WAS AWARE OF IT.

HE SPECIFICALLY TESTIFIES THAT HE DID NOT WANT TO ATTACK THE CREDIBILITY OF THE VICTIM, HE DID NOT WANT TO MAKE IT APPEAR TO THE JURY AS THOUGH HE WERE ARGUING HE'S A BAD GUY--

>> RIGHT.

BUT THEY'RE SAYING IF HE HAD

JUST BEEN PREPARED TO CHALLENGE IT, THAT THEY, YOU KNOW, THE STATE WOULDN'T HAVE OFFERED IT. >> AND THAT FAILS FOR LACK OF PROOF BECAUSE OPPOSING COUNSEL DID NOT CALL THE-- THE PROSECUTOR WAS BILL GROSS IN BOTH DONTE HALL AND DAN TODAY HALL.

WE DON'T KNOW WHY BILL GROSS DIDN'T PUT IT ON IN DANTE HALL. THERE COULD BE A VAST NUMBER OF REASONS.

THERE-- WE CAN SPECULATE UNTIL THE COWS COME HOME, BECAUSE HE ALSO COULD HAVE EXCISED ANY MENTION OF BEING GOOD WITH CHILDREN WHICH IS WHAT OPPOSING COUNSEL ARGUES WOULD HAVE TRIGGERED THIS, WELL, HE'S NOT GOOD WITH CHILDREN, HE HAS A PROBLEM WITH CHILDREN, EVIDENCE TO COME IN.

SO EVEN TRIAL COUNSEL FOR DANTE HALL, SPIVEY, DOESN'T KNOW.

AND HE TESTIFIES IN THE EARTH SHARE HEARING HE DOESN'T KNOW WHAT THEORY SPECIFICALLY COULD COME IN, THEY CAN'T BE CERTAIN IT WOULD BE RELEVANT OR ADMISSIBLE, BUT HE TALKED TO BILL GROSS ABOUT IT BEFOREHAND. TRIAL COUNSEL TESTIFIED THAT HE WAS AWARE OF THAT INFORMATION, HE KNEW IT, BUT HE WASN'T ABOUT TO ATTACK THE CREDIBILITY OF THE VICTIM IN FRONT OF THE JURY.

AND THE FACT IS THAT THE VICTIM IMPACT INFORMATION THAT WAS GIVEN, IT WAS BY ANTHONY BERNARD BLUNT'S TWO SISTERS, EWE LEAN AND ELEANOR.

BOTH OF THEIR VICTIM IMPACT STATEMENTS COMPLIED WITH PAIN. THERE WAS NOTHING OBJECTIONABLE PER SE IN THEIR VICTIM IMPACT STATEMENTS.

THEY DIDN'T TALK ABOUT THE CRIME, THEY DIDN'T TALK ABOUT

PUNISHMENT, THEY DIDN'T TALK ABOUT RETRIBUTION OR SENTENCE, ANYTHING OF THAT NATURE. THEY TALKED ABOUT THE FACT THAT BERNARD ANTHONY-- OR ANTHONY BERNARD BLUNT WORKED FOR DRF, HE MENTORED THE CHILDREN IN HIS FAMILY, HE WAS THEIR BABY BROTHER, HE LIKED TO EAT, HE WAS, YOU KNOW, A JOVIAL MEMBER OF THEIR FAMILY THAT THEY'RE GOING TO MISS.

SO EVEN IF TRIAL COUNSEL BANK WITS HAD WANTED TO ATTACK THEIR VICTIM IMPACT STATEMENTS, THERE'S NO INDICATION THAT THEY KNEW ABOUT THIS INVESTIGATION ARREST FROM BUD HART IN '94, AND THAT WOULD HAVE BEEN THE END OF THE INQUIRY.

AND IF WE'RE SAYING THAT-- WE'RE ARGUING DEFICIENCY FOR FAILING TO TELL PROSECUTOR GROSS ABOUT IT BEFOREHAND, WELL, PROSECUTOR GROSS DIDN'T TESTIFY AT THE EVIDENTIARY HEARING, SO WE CAN'T SPECULATE AS TO WHY HE DIDN'T PUT THAT EVIDENCE ON IN DANTE HALL A YEAR AND A HALF LATER.

SO, BUT AGAIN, THERE WOULD BE NO PREJUDICE BECAUSE, AGAIN, DONTE IS THE VASTLY MORE CULPABLE, THE MASTERMIND, AK-47, FIRING THE FIRST SHOTS, KILLING KEYSAWN EVANS, DIRECTING THE OTHERS. ADDITIONALLY, THE FACTORS OF HAC AND THE CULPABILITY, NOT JUST THE VICTIM IMPACT STATEMENT, WERE AT PLAY HERE.

AS TO ISSUE ONE, THE COURT WAS CORRECT IN SAYING THAT THERE WAS NO INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO OBJECT TO ANGEL GLYNN'S TESTIMONY FOR A COUPLE REASONS.

TRIAL COUNSEL BANK WITS TESTIFIED AT THE EVIDENTIARY HEARING THAT HE HEARD THE STATEMENT, HE ASSUMED SHE WAS

TALKING ABOUT OTHER ROBBERIES,  
AND I'M TAKING DIFFERENT PIECES  
OF HIS TESTIMONY HERE.

BUT PRIMARILY, HE DIDN'T OBJECT  
BECAUSE, FIRST, HE DIDN'T THINK  
IT WAS OBJECTIONABLE.

IT WAS AN AMBIGUOUS STATEMENT.  
IT DIDN'T CLEARLY REFERENCE ANY  
OTHER PRIOR CRIMES OR BAD ACTS.  
SHE DOESN'T SAY, OH, YEAH, THEY  
HANG OUT IN THEIR GANG THAT ROB  
AND MURDER.

SHE SAYS, "DO THIS KIND OF  
STUFF."

THESE ARE THE TWO THAT DO THIS  
KIND OF STUFF WITH HIM.

AND MY OPPOSING COUNSEL ARGUED  
THAT THIS WAS ELICITED BY STATE.  
JUST TO CLARIFY THAT, THE  
QUESTION THAT THE PROSECUTOR AT  
THIS POINT WAS ASKING WAS AS TO  
IDENTITY.

HE WAS TRYING TO ESTABLISH WHO  
THESE OTHER INDIVIDUALS WERE WHO  
WERE WITH DONTE HALL.

AND SO IT WASN'T A QUESTION  
ABOUT PRIOR BAD ACTS, IT WASN'T  
A QUESTION ABOUT WILLIAMS RULE.  
THERE WAS NO WILLIAMS RULE  
MOTION FILED, NO WILLIAMS RULE  
EVIDENCE ARGUED.

HE WAS MERELY TRYING TO ASK HOW  
DO YOU KNOW THESE PEOPLE,  
BECAUSE THEY HAD MASKS ON.

AND SHE SAYS, WELL, PIG WAS 2,  
300 POUNDS, HE HAD A BIG BALD  
HEAD, THERE WAS NO MISTAKING  
HIM, AND HE'S THE ONE THAT HANGS  
AROUND WITH HIM AND DOES THIS  
KIND OF THING.

AND SAME THING AS TO SHOE SHOE.  
WELL, SHOE SHOE WAS THE SHORT  
GUY I KNOW THAT HE HANGS OUT AND  
DOES THIS KIND OF THING  
FINISH--

>> WERE THOSE TWO PROSECUTED?

>> THEY WERE NOT PROSECUTED, NO.  
WHEN I SPOKE TO THE PROSECUTOR,  
THEY HAD A KIND OF PRELIMINARY  
IDENTIFICATION WITH THEM AND

KNEW WHO THEY WERE BUT NOT ENOUGH TO BRING CHARGES AGAINST THEM, SO THEY WALK FREE TODAY. BUT ADDITIONALLY, BECAUSE THE TRIAL COUNSEL BANK WITS WAS UNDER THE ASSUMPTION THAT SHE WAS TALKING ABOUT OTHER ROBBERIES, HE SPECIFICALLY SAYS-- AND I THINK THE CONFUSION, WELL, HE SPECIFICALLY SAYS I WASN'T ABOUT TO JUMP UP AND BRING THE JURY'S WHOLE ATTENTION TO IT, IS WHAT HE SAYS.

AND THAT'S AT RECORD SITE 154 WHERE HE TALKS ABOUT THAT.

AND HE SAYS-- AND THAT'S NOT THE, THAT'S THE ACTUAL RECORD STATEMENT SHE DIDN'T REFERENCE OTHER ROBBERIES, SO HE DIDN'T THINK IT WAS ANYTHING THAT THE JURY WOULD NECESSARILY THINK OF AS REFERENCING OTHER CRIMES OR OTHER BAD ACTS.

HE DIDN'T--

>> HE KNEW THAT'S WHAT IT MEANT, BUT HE DIDN'T THINK THE JURY WOULD--

>> CORRECT.

>>-- WOULD POSSIBLY INFER THAT.

>> YES, JUSTICE CANADY.

AND ONE OF THE REASONS THAT HE DIDN'T IS BECAUSE IT'S EVIDENT THROUGHOUT ANGEL GLYNN'S TESTIMONY.

SHE DOESN'T ALWAYS SPEAK PRECISELY.

SO SHE WILL OFTEN SAY THINGS THAT ARE-- IT WASN'T SUCH THAT HER SPEECH WAS SO PROPER AT EVERY OTHER TIME THAT THE JURY WOULD HAVE WENT, OH, THAT'S A PLURAL, SHE MUST BE TALKING ABOUT OTHER TIMES.

>> BUT ONCE HE HEARD IT AND KNEW WHAT IT PROBABLY MEANT, MIGHT NOT WANT TO OBJECT IN FRONT OF THE JURY, BUT MIGHT WANT TO SAY MAY WE APPROACH THE BENCH SO IT'S NOT, SO THAT THE WITNESS IS

TOLD NOT TO REPEAT THIS.  
BECAUSE IF THIS IS AN IMPRECISE  
WITNESS, THERE'S A DANGER SHE  
MIGHT BLURT SOMETHING OUT.  
WOULDN'T THAT BE PRUDENT-- I  
MEAN, AGAIN, IT MAY NOT BE  
INEFFECTIVE ASSISTANCE OF  
COUNSEL, BUT IT SURE SEEMS LIKE  
A PRUDENT THING TO DO.

>> WELL, AND THAT IS A  
DOUBLE-EDGED SWORD, JUSTICE  
PARIENTE, BECAUSE AS A TRIAL  
ATTORNEY THAT'S SOMETHING THAT  
YOU'RE LOOKING AT EVEN IF YOU,  
OF COURSE, ARGUE FROM THE BENCH.  
YOU'RE NOT GOING TO ARGUE THAT,  
OH, SHE'S TALKING ABOUT ALL  
THOSE OTHER ROBBERIES THAT HE  
COMMITTED WITH HER.

BUT EVEN IF HE WERE TO APPROACH  
THE BENCH, HE'S NECESSARILY  
RINGING THE BELL FOR THE JURY  
WHERE THEY MAY HAVE BEEN JUST  
IDLY LISTENING, THEY'RE GOING TO  
SAY, OH, WHAT DID SHE JUST SAY  
AND WHY IS THAT A PROBLEM?

>> BUT THAT WOULD REALLY, YOU  
KNOW, TAKEN TO ITS LOGICAL  
CONCLUSION, WHAT YOU'D REALLY  
SAY IS-- AND I UNDERSTAND THIS,  
HAVING BEEN AS A TRIAL LAWYER  
AND NOT REALLY APPRECIATED THE  
SENSITIVE OBJECTION TO, BECAUSE  
YOU DO FEEL THAT WAY.

BUT IF YOU DON'T DO IT, YOU'RE  
LIKELY NOT TO HAVE A PRESERVABLE  
ISSUE FOR APPEAL.

AND SO IT MAY BE A DOUBLE-EDGED  
SWORD, BUT I DON'T THINK WE  
WOULD ENDORSE A RULE THAT SAYS A  
LAWYER THAT SAYS MY STRATEGY IN  
A TRIAL IS NEVER TO OBJECT TO  
ANYTHING IMPROPER, BECAUSE I  
DON'T WANT TO LET THE JURY KNOW  
THAT THERE ARE IMPROPER THINGS  
GOING ON.

>> ABSOLUTELY NOT.

AND, OF COURSE, THAT WOULD BE AN  
EXTREME EXAMPLE.

BUT HERE I THINK WHAT WE'RE

HOOING AT IS BECAUSE IT WAS SUCH-- LOOKING AT IS BECAUSE IT WAS SUCH AN AMBIGUOUS STATEMENT, BECAUSE IT DIDN'T CLEARLY REFERENCE ANY ROBBERIES AND BECAUSE MY QUESTIONS DURING THE EVIDENTIARY HEARING MIGHT NOT HAVE BEEN AS ARTFUL-- WHICH I THINK IS WHY WE HAVE SOME OF THIS CONFUSION-- WHAT I ASKED WAS IS IT A FAIR CHARACTERIZATION THAT YOU DIDN'T WANT TO CALL ATTENTION TO THIS STATEMENT OR HAVE HER EXPOUND ON THAT TESTIMONY?

SO HE TALKS ABOUT TWO DIFFERENT THINGS.

HE DOESN'T WANT TO CROSS-EXAMINE HER ON IT BECAUSE, CLEARLY, SHE CAN EXPOUND ON IT.

AND AS HIS GIRLFRIEND AND LITERAL PARTNER IN CRIME, SHE IS INTIMATELY INVOLVED WITH HIM IN SEVERAL BAD ACTS.

HE DIDN'T WANT TO GIVE HER AN OPPORTUNITY TO TALK ABOUT WHAT SHE, WHAT SHE WAS TALKING ABOUT BECAUSE HIS FEAR WAS THAT SHE WOULD EXPOUND ON OTHER ROBBERIES.

WE KNOW THAT AFTER THE FACT THEY MET UP IN A CAR, HE TOOK SOME OF THE JEWELRY, HAD HER PAWN THE JEWELRY, WAS TELLING OTHER PEOPLE NOT TO TALK AND WAS TAKING EFFORT TO CONCEAL HIS CULPABILITY IN THE CRIME.

SO JUST FROM THIS CRIME WE KNOW THAT THERE ARE KIND OF OTHER BAD ACTS SO THAT, SO THAT BANK WITS WAS REASONABLE IN NOT WANTING HER TO EXPOUND ON THAT TESTIMONY.

WHILE HE COULD HAVE OBJECTED, THE STATE'S POSITION IS THAT HIS EXPLANATION THAT HE DID NOT WANT TO JUMP UP AND CALL ATTENTION TO THIS PORTION OF THE TESTIMONY FOR THE JURY, IS REASONABLE. AND IT IS A CONSIDERATION THAT

THE COURT CAN CONSIDER.  
OF COURSE, IT IS ON A  
CASE-SPECIFIC AND FACT-SPECIFIC  
BASIS, BUT THIS IS AN ATTORNEY  
WHO'S BEEN A CRIMINAL DEFENSE  
ATTORNEY FOR APPROXIMATELY 40  
YEARS.

HE'S BEEN DOING CAPITAL CASES  
FOR APPROXIMATELY TEN YEARS.  
SO HIS JUDGMENT, THAT'S A FACTOR  
THAT WE CAN CONSIDER IN WHETHER  
OR NOT HIS DECISION WAS  
REASONABLE FOR NOT OBJECTING IN  
THIS CASE, WHICH THE STATE'S  
POSITION IS, THAT IT WAS  
REASONABLE.

AND, AGAIN, IF WE'RE GOING TO  
PREJUDICE, THERE'S NO PREJUDICE  
BECAUSE THERE'S NO REASONABLE  
OUTCOME OF AN ACQUITTAL OR A  
LIFE SENTENCE HAD SHE NOT BEEN  
ABLE TO DISCUSS THE FACT THAT IT  
WAS PIG AND SHOE SHOE AND HOW  
SHE KNEW PIG AND SHOE SHOE.

>> WAS THAT BROUGHT UP ON DIRECT  
APPEAL AS A FUNDAMENTAL ERROR?

>> NO.

AND, ACTUALLY, THAT IS CLAIM ONE  
IN THE HABEAS PETITION WHICH  
WASN'T DISCUSSED, SO I WASN'T  
GOING TO GO INTO IT.

BUT THAT--

>> WE WOULD FIND THAT IT'S  
NOT--

>> OUR ARGUMENT WOULD BE--

>> NOT--

>> THAT IT WOULD HAVE TO BE  
FUNDAMENTAL ERROR AND THAT, YOU  
KNOW, THAT SMALL PIECE OF  
TESTIMONY WAS NOT SO EGREGIOUS  
TO VITIATE THE ENTIRE TRIAL.

SO IF THERE ARE NO FURTHER--

>> HOW DID THE STATE USE IT IN  
THEIR CLOSING ARGUMENT?

>> AND THAT'S ANOTHER ARGUMENT  
THAT I WANTED TO ADDRESS  
QUICKLY.

THEY DON'T CAPITALIZE ON IT,  
THEY DON'T MONOPOLIZE ON IT.  
THEY'RE NOT TRYING TO TALK ABOUT

ANY PRIOR BAD ACTS OR WILLIAMS  
RULE EVIDENCE.

WHAT HE'S SAYING IS HE'S  
RECOUNTING THE CONFESSION.

IF YOU LOOK AT THE CONTEXT OF  
THE PROSECUTOR'S CLOSING  
ARGUMENT AND DEFENSE COUNSEL'S  
THEORY IN THIS CASE IN THE GUILT  
PHASE WAS I WASN'T THERE, I HAVE  
AN ALIBI, I DIDN'T DO IT.

SO THE PROSECUTOR IS TALKING  
ABOUT HIS CONSCIOUSNESS OF GUILT  
AND SAYING TO HIS GIRLFRIEND  
WHEN SHE SAYS WHY DO YOU DO THIS  
KIND OF THING?

YOU ONLY THOUGHT THAT PEOPLE  
WERE GOING TO GET ROBBED, YOU  
DIDN'T THINK SOMEBODY WAS GOING  
TO GET KILLED, WHY DO YOU DO  
THIS?

AND HE SAYS, I DON'T KNOW,  
SOMETHING COMES OVER ME.

THE PROSECUTOR WAS MERELY  
RECOUNTING TO THE BEST OF HIS  
ABILITY ANGEL GLYNN'S TESTIMONY  
AS HIS CONSCIOUSNESS OF GUILT.

NOT TO SAY, YOU KNOW, I'M  
ROBBING, MURDERING ALL THE TIME.  
HE DOESN'T TRY TO BRING UP OR  
MONOPOLIZE ON THAT TESTIMONY.

SO IF THERE ARE NO FURTHER  
QUESTIONS, I WOULD ASK THAT THIS  
COURT AFFIRM THE TRIAL COURT'S  
DENIAL OF POSTCONVICTION RELIEF.  
THANK YOU.

>> THANK YOU.  
COUNSEL?

>> JUST TO CLARIFY, I WANT THE  
COURT TO BE AWARE THAT WE CAN'T  
FIX IN THIS FOR MR. BANK WITS.  
HE STATED ON FOUR SEPARATE  
OCCASIONS I DID NOT WANT TO OPEN  
THE DOOR, AND IT WASN'T ANYTHING  
ABOUT THE STATE ATTORNEY'S  
INARTFUL QUESTIONS.

HER QUESTIONS WERE FIND.  
SHE ASKED A QUESTION ABOUT WHY  
HE DID NOT OBJECT, AND HE STATED  
HE DID NOT WANT TO EXPOUND ON  
TESTIMONY AND OPEN THE DOOR DO.

I ASKED HIM TWICE.  
I ASKED HIM TWICE TO CLARIFY,  
AND TWICE TO MY ANSWER, TWICE TO  
MY QUESTIONS HE STATED HE DID  
NOT WANT TO OPEN THE DOOR OR  
START OBJECTING THAT WOULD CAUSE  
HIM TO START QUESTIONING HER  
ABOUT THE OTHER COLLATERAL  
CRIMES.

AND THEN IN RECROSS THE STATE  
ASKED HIM ONE MORE TIME, AND HE  
ONCE AGAIN STATED HE DID NOT  
WANT TO OPEN THE DOOR.

HARWOOD V. CROSBY FROM THE 11TH  
CIRCUIT STATES THAT A STRATEGIC  
OR TACTICAL DECISION IS NEVER  
UNREASONABLE THE IF IT'S BASED  
ON THE UNDERSTANDING OF THE LAW.  
IF HE BELIEVES SOMEHOW OBJECTING  
OPENS THE DOOR, HE DOESN'T  
UNDERSTAND THE LAW.

IF WE WANT TO TALK ABOUT HIS 40  
YEARS OF PRACTICE AND SAY, WELL,  
HE MUST UNDERSTAND THE LAW  
BECAUSE HE'S BEEN PRACTICING FOR  
40 YEARS THEN, YOUR HONOR, YOU  
NEED TO LOOK AT CREDIBILITY.  
THAT HE'S JUST SAYING SOMETHING  
THAT HE NEEDS TO JUST SAY  
BECAUSE HE HAS NO EXCUSE FOR NOT  
OBJECTING.

WE'VE GOT FOUR DIFFERENT  
REFERENCES DURING THE TRIAL TO  
COLLATERAL CRIMES INCLUDING A  
REFERENCE DURING CLOSING  
ARGUMENT.

IT WAS A FEATURE OF THE TRIAL.  
AND REGARDING PREJUDICE, THIS  
WAS A PARTY WHERE EVERYBODY WAS  
WEARING--- THE PERPETRATORS WERE  
WEARING MASKS ON THEIR FACE.  
THE ONLY TWO PEOPLE WHO ID'D  
DONTE HALL BY ALLEGEDLY KNOWING  
HIM WERE ANGEL GLYNN WHO  
TESTIFIED SHE SMOKED MARIJUANA,  
TOOK ECSTASY AND DRANK THAT  
NIGHT AND HER EX-GIRLFRIEND,  
NIKITA, WHO HAD AN AXE TO GRIND  
BECAUSE SHE NEVER LIKED DONTE  
HALL.

THE OTHER WITNESSES AT THE PARTY, THE OTHER VICTIMS, THEY DON'T KNOW DONTE HALL. THEY JUST TESTIFIED ABOUT A MAN WEARING A MASK. THERE'S DRUGS AND ALCOHOL ALL IN THAT PARTY. SO ONE ISSUE WITH PREJUDICE IS THEY COULD HAVE CAME BACK WITH A LESSER-INCLUDED OFFENSE IN THE GUILT PHASE BASED ON WE DON'T KNOW WHO SHOT WHO, THE WITNESSES WERE ALL UNDER THE INFLUENCE, DRUG AND ALCOHOL/SLIPPER PARTY, AND WE DON'T KNOW WHAT COULD HAVE HAPPENED. AND REGARDING PENALTY PHASE REGARDING THIS SAME ISSUE, THE SAME JURY WHO SAT FOR GUILT PHASE SAT FOR PENALTY PHASE. IT SERVES AS A NONSTATUTORY AGGRAVATOR WHEN THE JURY TAKES INTO ACCOUNT, WELL, YEAH, WE'RE HERE ON A HOME INVASION/ROBBERY CASE WITH MULTIPLE DIFFERENT COUNTS, BUT DID YOU HEAR THAT DURING THE TRIAL? THE WITNESS SAID THAT HE DOES THIS STUFF ALL THE TIME. AND WE'RE TALKING ABOUT ID, WELL, BE YOU'RE GOING TO ID THE VICTIM-- ID THE COHORTS, THE CO-CONSPIRATORS, SHE COULD ID THEM WITHOUT REFERENCING PRIOR CRIMES. SHE COULD HAVE SAID, WELL, SHOE SHOE IS SHORT, AND PIG HAS A BALD HEAD, AND I'VE SEEN HIM WITH DONTE BEFORE. THAT'S HOW I KNOW THEM. INSTEAD, AND SHE'S PREPARED BY STATE FOR HER TESTIMONY, INSTEAD SHE SAYS HANGS OUT WITH HIM AND DOES THIS TYPE OF STUFF. SO SHE DIDN'T HAVE TO ID THEM BY REFERENCING UNCHARGED CRIMES, AND THAT ALSO GOES TO THE .404, THE NOTICE REQUIREMENT. THERE'S NO NOTICE OF AN INTENT TO USE COLLATERAL CRIMES.

AND, YOUR HONOR, MY CLIENT SITS ON DEATH ROW, AND I'M ASKING YOU TO TAKE INTO ACCOUNT HIS SIXTH AMENDMENT RIGHT TO COUNSEL, EFFECTIVE COUNSEL.

I'M ASKING YOU TO TAKE INTO ACCOUNT HIS RIGHT TO PROTECTIONS UNDER THE UNITED STATES CONSTITUTION AND THE FLORIDA CONSTITUTION.

SO I'M ASKING YOU TO GO BY THE RECORD AS FAR AS WHAT WAS SAID, NOT WHAT MIGHT HAVE BEEN MEANT BY INARTFUL QUESTIONS, IT'S ABOUT WHAT WAS SAID.

THERE'S DEFICIENT PERFORMANCE, AND THERE'S PREJUDICE, AND MY CLIENT'S ENTITLED TO A NEW GUILT PHASE OR AT LEAST A NEW PENALTY PHASE.

THANK YOU FOR YOUR TIME.

>> THANK YOU FOR YOUR ARGUMENTS.