

>> ALL RISE.
>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.
>> OKAY.
GOOD MORNING.
THE NEXT CASE ON THE DOCKET IS BROOKINS V. STATE.
COUNSEL?
>> MAY IT PLEASE THE COURT, YOUR HONOR, I'M BAYA HARRISON, COUNSEL FOR THE APPELLANT, MR. ELIJAH BROOKINS.
I'VE ASKED TO RESERVE EIGHT MINUTES OF MY TIME FOR REBUTTAL.
>> COULD YOU SPEAK INTO THE MIC?
>> I WILL.
YES, YOUR HONOR.
I KNOW YOU'RE FAMILIAR WITH THE FACTS OF THE CASE AND, THEREFORE, I'LL GET RIGHT INTO MY ARGUMENT.
I'D LIKE TO ADDRESS OUR POINT TWO ON APPEAL, IF I MAY.
THAT IS THAT THE TRIAL COURT ERRED IN ALLOWING THE PROSECUTOR TO QUESTION MR. BROOKINS ABOUT AND COMMENT ON HIS POST-MIRANDA SILENCE.
IN THIS PARTICULAR CASE, THERE ARE FOUR DATES THAT ARE VERY IMPORTANT.
THE HOMICIDE WAS COMMITTED ON SEPTEMBER 20, 2011.
MR. BROOKINS WAS ARRESTED ON JANUARY-- ON JULY 5, 2012.
HE FORMALLY INVOKED HIS RIGHT TO SILENCE, HIS FIFTH AMENDMENT RIGHT TO SILENCE, THE NEXT DAY ON JULY 6TH, AND THE TRIAL WAS NOT HELD UNTIL DECEMBER 11, 2013.
ON DIRECT EXAMINATION AT TRIAL, MR. BROOKINS TESTIFIED THAT HE DID NOT KILL THE VICTIM, THAT ANOTHER INMATE, THEODUS HUNT, DID.
HE NOTED WHEN HE GOT OFF THE BUS IN SHIPLEY AFTER THE HOMICIDE HAD OCCURRED, HE WAS ASKED BY OFFICER BELL WHAT HAD HAPPENED.

HE SIMPLY SAID "SOME DUDE WENT CRAZY IN THERE."

AND WHEN THE OFFICER ASKED HIM WHO THAT "DUDE" WAS, MR. BROOKINS SIMPLY REPEATED HIMSELF SAYING, "SOME DUDE IN THERE."

>> WAS THIS OFFICER ON THE BUS?
>> NO, YOUR HONOR, HE WAS NOT ON THE BUS.

>> THERE WERE TWO OFFICERS ON THE BUS, RIGHT?

>> YES, YOUR HONOR.

THE TWO INFAMOUS OFFICERS UP AT THE FRONT WHO THIS THING WENT ON FOR 30 MINUTES, AND THEY NEVER SAW A THING.

BUT OFFICER BELL WAS OUTSIDE WHEN THEY GOT TO SHIPLEY.

>> AND THEY TESTIFIED THEY DIDN'T KNOW ANYTHING ABOUT THIS. THE OFFICERS ON THE BUS.

>> DIDN'T SEE A THING, JUDGE. DIDN'T SEE A THING.

IT'S AMAZING, BUT THAT'S WHAT HAPPENED.

AT ANY RATE--

>> THAT'S WHAT THEY TESTIFIED.

>> PARDON ME?

>> YOU SAID THAT'S WHAT HAPPENED.

YOU SAID THAT'S WHAT THEY TESTIFIED TO.

>> CORRECT, YES.

THAT'S WHAT THEY SAID.

AT ANY RATE, YOUR HONOR, BROOKINS' COUNSEL ASKED MR. BROOKINS ABOUT HIS CONVERSATION WITH OFFICER BELL, AND COUNSEL ASKED IS THERE A REASON WHY YOU DIDN'T SAY WHO SPECIFICALLY DID IT?

MR.-- COUNSEL WAS ASKING MR. BROOKINS ABOUT HIS CONVERSATION THERE WITH OFFICER BELL, AND BROOKINS SAID HE DIDN'T WANT TO GET LABELED AS THE POLICE.

NOW, OVER DEFENSE OBJECTION AT TRIAL, THE PROSECUTOR WAS

NEVERTHELESS PERMITTED TO HAVE BROOKINS ANYTIME THAT HE HAD NEVER-- ADMIT THAT HE HAD NEVER BEFORE MADE THE CLAIM THAT THEODUS HUNT WAS THE KILLER UNTIL THE TIME OF TRIAL. THE PROSECUTOR ASKED VERY POINTEDLY WHETHER OR NOT THAT WAS THE CASE.

MR.-- AND THEN THE PROSECUTION ARGUED ON-- PROSECUTOR ARGUED ON CLOSING, EXCUSE ME, CLAIMING THAT-- I'M SORRY.

SORRY, I MISSED SOMETHING HERE. OKAY, PLEASE EXCUSE ME.

THE PROSECUTOR NEVERTHELESS ASKED MR. BROOKINS ON CROSS, "YOU HAVEN'T TOLD ANYBODY UNTIL TODAY, HAVE YOU, ABOUT THEODUS HUNT BEING THE KILLER," AND THEN IN CLOSING THE PROSECUTOR ARGUED, "THE FIRST TIME HE EVER TOLD ANYBODY THIS STORY ABOUT THEODUS HUNT CHASING ERIC SEXTON DOWN THE AISLE OF THAT BUS IS HERE IN THIS COURTROOM, AND HE ADMITTED THAT."

NOW, YOUR HONOR, UNDER VARIOUS DECISIONS OF THIS COURT AND CHANNEL BRITAIN V. STATE DECIDED BY THE FIRST DISTRICT COURT OF APPEAL, YOU AND THE FIRST DCA HAVE MADE IT CLEAR THAT A PROSECUTOR SIMPLY CANNOT COMMENT ON A DEFENDANT'S EXERCISE OF HIS POST-MIRANDA, FIFTH AMENDMENT RIGHT TO REMAIN SILENT. BUT THAT IS WHAT HAPPENED CONCERN.

>> WAS THAT A POST-MIRANDA STATEMENT WHEN HE SAID "SOME DUDE WENT CRAZY," WAS THERE A FOLLOW-UP QUESTION ABOUT WHO AND HE SAID NOTHING?

>> YOUR HONOR, YOU'RE RIGHT. THAT WAS A PRE-MIRANDA STATEMENT.

THAT WAS PRE-MIRANDA.

WHAT I'M SAYING IS WHAT THE PROSECUTOR DID IN THIS CASE AND

WHAT THE TRIAL COURT ALLOWED WAS FOR THE PROSECUTOR TO COMMENT ON MR. BROOKINS' POST-MIRANDA EXERCISE OF HIS RIGHT TO SILENCE.

>> AND WHAT, BY SAYING YOU'VE NEVER HEARD HIM EVER SAY THIS?

>> YES.

IN OTHER WORDS, AT TRIAL MR.-- THE PROSECUTOR ASKED MR. BROOKINS, YOU'VE NEVER MENTIONED THEODUS HUNT UNTIL TODAY, UNTIL THIS TRIAL, OVER A YEAR AND A HALF ONCE THEY WERE AT TRIAL, AND THE PROSECUTOR SAYS YOU NEVER BROUGHT THIS UP UNTIL NOW.

>> SO WOULD YOUR ARGUMENT BE DIFFERENT THEN IF HE HAD SAID YOU WERE ASKED WHEN YOU GOT OFF THE BUS WHO THIS DUDE WAS, AND YOU NEVER SAID ANYTHING.

>> THAT WOULD BE PERMISSIBLE. YES, YOUR HONOR--

>> SO BY STRETCHING IT OUT TO YOU NEVER SAID IT--

>> YEAH.

>>-- THAT'S WHEN YOU COMMENTED ON HIS RIGHT TO REMAIN SILENT? >> STRETCHING IT OVER ALMOST TWO YEARS UNTIL THE TIME AT TRIAL, WHAT THE PROSECUTOR IS DOING IS COMMENTING ON THE DEFENDANT'S EXERCISE OF HIS POSTCONVICTION RIGHT TO SILENCE.

>> MIRANDA, YOU MEAN?

>> SIR?

>> YOU MEAN POST-MIRANDA.

>> I'M SORRY, POST-MIRANDA RIGHT TO SILENCE.

>> DID HE-- WHAT HAPPENED? WAS AN OBJECTION MADE?

>> OH, YES.

WE OBJECTED, AND THE COURT OVERRULED US, AND THE COURT ALLOWED IT.

NOW, COUNSEL FOR THE ATTORNEY GENERAL SAYS THAT THIS CAN BE EXPLAINED, THAT THIS CAN BE EXPLAINED.

COUNSEL SAYS-- EXPLAINED.
COUNSEL SAYS ON PAGE 34 OF HIS
BRIEF THAT BROOKINS EFFECTIVELY
OPENED THE DOOR TO THIS LINE OF
QUESTIONING THROUGH HIS OWN
TESTIMONY REGARDING THE
STATEMENT MADE TO OFFICER BELL,
AND THE REASONS HE KEPT THE
INFORMATION TO HIMSELF UNTIL
TRIAL.

THAT IS A FACTUAL MISTAKE, I
BELIEVE, MADE BY COUNSEL IN THIS
PARTICULAR CASE.

WHAT MR. BROOKINS SAID
PRE-MIRANDA WHEN THEY GOT OFF
THE BUS WAS NOT ANYTHING ABOUT
WAITING UNTIL TRIAL TO REFERENCE
THEODUS HUNT.

THAT IS THE CONSTITUTIONAL
VIOLATION.

THE PROSECUTION SIMPLY CANNOT
COMMENT, ESPECIALLY IN AN
UNFAVORABLE WAY, WHEN A
DEFENDANT EXERCISES A RIGHT TO
COUNSEL.

WE SUBMITTED A WRITTEN NOTICE
THAT THE DEFENDANT WAS
EXERCISING THIS RIGHT BACK IN
JULY OF 2012, YET THE PROSECUTOR
WAS ABLE TO GET UP THERE AND
ARGUE TO THE JURY THIS, YOU
KNOW, THIS GUY MUST BE NOT
TELLING THE TRUTH.

WHY WOULD HE WAIT ALL OF THIS
TIME AND NOW UNTIL TRIAL AND
SPRING IT ON US?

WELL, THE REASON BROOKINS DIDN'T
SAY ANYTHING POST-MIRANDA WAS
BECAUSE HIS COUNSEL HAD PUT HIM
ON NOTICE IT'S-- YOU NEED TO
KEEP YOUR MOUTH SHUT AND NOT
INCRIMINATE YOURSELF.

AND SO I JUST-- IF YOU LOOK AT
THE CHAMBLIN V. STATE CASE
DECIDED BY THE FIRST DCA AND YOU
DECIDE THAT WAS CORRECT LAW AND
THAT IS WHAT SHOULD BE APPLIED,
I JUST DON'T SEE HOW YOU CAN GET
AROUND A SERIOUS FIFTH
AMENDMENT--

>> WELL, LET'S NOT, AGAIN, I SAY "SERIOUS," AND I GUESS I WANT TO GET YOU INTO THE HARMLESS ERROR ISSUE.

>> OKAY.

>> I'M NOT A BIG FAN OF HARMLESS ERROR, BUT THIS SEEMS LIKE A GOOD ONE TO THINK ABOUT APPLYING IT TO IN THAT HE'S TAKEN THE STAND, AND HE'S GIVEN AN EXPLANATION.

AND IN THE CONTEXT, THE JURY COULD REALLY THINK, WELL, YOU'VE SAID THAT, AND YOU GAVE A REASON WHICH WAS YOU DIDN'T WANT TO BE A SNITCH, ESSENTIALLY.

>> RIGHT.

>> NOW HE'S DEFENDING HIMSELF, SO NOW HE'S GIVING THE, WHO THE PERSON IS.

IS THERE REALLY A RISK THAT THE JURY IS SEEING THAT AS HIS RIGHT TO REMAIN SILENT, ESPECIALLY BECAUSE HE'S TAKING THE STAND AS OPPOSED TO IF THIS CAME OUT IN SOME OTHER WAY?

I REALIZE THAT YOU STILL HAVE TO BE CAREFUL WHEN SOMEONE TAKES THE STAND, BUT IT SEEMS LIKE THERE'S-- HE'S NO LONGER EXERCISING HIS RIGHT TO REMAIN SILENT.

>> WELL, YOUR HONOR, THE COLLOQUY BETWEEN THE DEFENDANT AND OFFICER BELL AT SHIPLEY ON THE DAY OF THIS INCIDENT, THAT'S FAIR GAME.

HE WAS NOT TRUTHFUL TO THAT OFFICER.

THAT'S FAIR GAME, HE CAN BE IMPEACHED.

BUT FOR THE PROSECUTOR TO LET TWO YEARS GO BY AND THEN EMPHASIZE, HEY, THIS GUY ALL THIS TIME HAS NOT SAID A WORD ABOUT THEODUS HUNT, THE IMPLICATION CLEARLY IS HE'S LYING.

>> OKAY, I UNDERSTAND. BECAUSE YOU'RE SAYING TO

REHABILITATE HIM HE'D HAVE TO
SAY MY LAWYER TOLD ME TO REMAIN
SILENT--

>> RIGHT, RIGHT.

>>-- AND THAT'S WHY I DIDN'T
TALK.

IN TERMS OF WHY IS IT HARMLESS
BEYOND A REASONABLE DOUBT?

>> OKAY.

>> FIRST OF ALL, THERE WERE
PEOPLE WHO SAW HIM DO IT.
HE COMES OUT WITH-- ALL BLOODY,
AND HE'S CLAIMING SOMEBODY ELSE
DID IT.

I MEAN, THERE'S-- SEEMS TO BE,
I KNOW IT'S NOT-- WE DON'T HAVE
AN OVERWHELMING EVIDENCE
STANDARD, BUT IT SEEMS-- AND HE
TAKES THE STAND, AND IT'S JUST
NOT MAYBE CREDIBLE.

SO WHY ISN'T IT HARMLESS BEYOND
A REASONABLE DOUBT?

>> ALL RIGHT.

YOUR HONOR, I THOUGHT YOU MIGHT
ASK THAT.

I ADMIT CANDIDLY THAT THE
EVIDENCE AGAINST MR. BROOKINS
WAS VERY STRONG.

BECAUSE, FOR EXAMPLE, THERE WAS
FORENSIC EVIDENCE THAT
CORROBORATED WHAT THE LAY
WITNESSES TESTIFIED TO.

BUT JUST REMEMBER THIS: WHO WERE
THE PEOPLE--

>> YOU SAID THE EVIDENCE WAS
VERY, WHAT WAS THE WORD YOU--

>> I THINK IT WAS CORROBORATED.

>> OH, STRONG, OKAY.

>> YES.

CORROBORATED AND STRONG BY, FOR
EXAMPLE--

>> AND WAS THERE ANY EVIDENCE
THAT THE, THAT THERE WAS A
CREDIBLE ARGUMENT OTHER THAN IT
COMING FROM HIS MOUTH THAT THIS
OTHER INMATE DID IT?

>> HERE'S WHY I SAY IT WASN'T
HARMLESS: WHO WERE THE ONLY
STATE WITNESSES WHO SAID THAT
MR. BROOKINS COMMITTED THIS

CRIME?
CONVICTS.
JUST LIKE HIM.
>> JUST LIKE HIM.
I MEAN--
>> JUST LIKE HIM.
SO WHAT I'M SAYING IS THE
EVIDENCE THAT THE STATE WAS ABLE
TO PRODUCE, THESE GUARDS
DIDN'T--
>> WELL, THAT'S WHY THEN IT
SEEMS THAT THE FORENSIC EVIDENCE
BECOMES THE MOST IMPORTANT
THING, NOT A SWEARING CONTEST
BETWEEN CONVICTS.
>> I BELIEVE, CERTAINLY, THAT
THAT STRENGTHENS THE STATE'S
CASE.
BUT ALL I'M SAYING IS IT WAS NOT
A SLAM DUNK.
WHEN YOU HAVE THREE FELONS JUST
LIKE MR. BROOKINS WHO ARE THE
ONLY PEOPLE TO TESTIFY AGAINST
MR. BROOKINS THAT HE WAS THE
PERSON THAT COMMITTED THE CRIME,
I'M SAYING THAT IT'S UP FOR
GRABS.
IT'S NOT A SLAM DUNK.
>> WELL, IN TERMS OF THE
FORENSICS--
>> OKAY.
>>-- HE'S-- THERE'S A LOT OF
BLOOD.
>> A LOT OF BLOOD.
>> OKAY.
IT'S HIS SHANK.
>> WHO KNOWS?
>> OKAY.
>> HE DIDN'T--
>> HE COMES, EVERYONE ELSE COMES
OFF THE BUS, AND WHAT CONDITION
ARE THEY IN, OTHER THAN THE GUY
WHO DOESN'T COME OFF THE BUS?
>> THEY DON'T HAVE BLOOD ON
THEM.
>> HE COMES OFF IN WHAT
CONDITION?
>> HE'S GOT BLOOD ON HIS SHIRT.
HE'S GOT HIS BLUE SHIRT OFF,
HE'S IN A T-SHIRT--

>> AND WHAT ABOUT THE STATE OF THE GUY THAT HE'S NOW ACCUSING WAS THE ONE WHO DID IT? HOW DID HE COME OFF THE BUS?

>> CLEAN.

I MUST ANYTIME THAT.

WHAT I'M SAYING THOUGH--

>> I KNOW YOU'RE TRYING TO-- IT SEEMS PREPOSTEROUS, AND I DON'T THINK IF THAT MAKES IT-- I DON'T KNOW IF THAT MAKES IT HARMLESS, BUT--

[LAUGHTER]

THAT THIS OTHER GUY DID IT OR THAT THE JURY'S GOING TO GIVE THAT EVEN A MOMENT OF CREDIBILITY--

>> WELL.

>>-- DESPITE IF THE PROSECUTOR JUST SAT ON HIS HANDS.

>> YOUR HONOR, I AGREE IT WAS A STRONG CASE, BUT IT WAS NOT ABSOLUTELY A SLAM DUNK, COMPELLING CASE.

AGAIN, BECAUSE THE ONLY WITNESSES-- YOU KNOW, IF THESE GUARDS--

>> YOU THINK THAT THE JURY MIGHT BE SITTING THERE GOING, HMM, MR. HUNT DID IT, BUT, GEE, IF THIS GUY HAD THOUGHT HE DID IT, HE SHOULD HAVE TOLD US TWO YEARS AGO?

I MEAN-- AND, AGAIN, I-- IT JUST SEEMS UNDER THE CIRCUMSTANCES THERE'S NO WAY IT COULD MAKE A DIFFERENCE.

AND, AGAIN, AS I SAID, I AM A BIG ONE THAT HARMLESS ERROR AND COMMENTS ON THE RIGHT TO SILENCE, THAT'S, YOU KNOW, IT'S A BIG DEAL, BUT THIS JUST DOESN'T SEEM LIKE A BIG DEAL HERE.

>> WELL, YOUR HONOR, WHEN THE PROSECUTION VIOLATES A DEFENDANT'S CONSTITUTIONAL RIGHT TO SILENCE AND REALLY IN THIS PARTICULAR CASE VIOLATES HIS RIGHT TO COUNSEL BECAUSE HE WAS

TOLD BY COUNSEL TO SHUT HIS MOUTH--

>> DID HE--

>> THAT'S PRETTY SERIOUS.

>> WAS THE, DID THE PROSECUTOR REPEAT THIS IN CLOSING ARGUMENT?

>> OH, ABSOLUTELY, YES, MA'AM. ABSOLUTELY.

HE SAID, HE WAITED UNTIL NOW. HE WAS COMMENTING ON THE PERIOD OF TIME BETWEEN THE INVOCATION OF THE FIFTH AMENDMENT RIGHT TO COUNSEL AND THE TRIAL.

AT ANY RATE, YOUR HONOR, SO THAT I STAY WITHIN MY TIME, IF I COULD MOVE ON TO OUR POINT ONE ON APPEAL.

THIS IS THE CLAIM THAT THE TRIAL COURT ERRED IN ADMITTING COLLATERAL CRIME EVIDENCE IN THE FORM OF MR. BROOKINS' ADMISSION THAT HE HAD A SHANK HIDDEN IN HIS PRISON CLOTHES ON JULY 18, 2013, WHICH WAS ALMOST TWO YEARS AFTER THIS INCIDENT OCCURRED. AND THIS HAPPENED AT THE GADSDEN COUNTY JAIL.

IN OTHER WORDS, TO MAKE THIS CLEAR, MR. BROOKINS IS WAITING FOR TRIAL IN THE GADSDEN COUNTY JAIL, AND HE HAS A SHANK.

I MEAN, THAT WAS NOT SMART, OBVIOUSLY.

HOWEVER, THE QUESTION--

>>-- MR. BROOKINS DURING HIS EXAMINATION, I GUESS DIRECT EXAMINATION, WENT THROUGH SOME ELABORATE DETAIL ABOUT BEING SEARCHED AND WITH THE IDEA, THE CLEAR IDEA TO ME ANYWAY, THAT THERE'S NO WAY IN THE WORLD HE COULD HAVE HAD A SHANK ON HIM, CORRECT?

>> RESPECTFULLY, I DON'T AGREE--

>> IS THAT, IS THAT WHAT HE WAS TRYING TO TELL THE COURT AND THE JURY?

>> YOUR HONOR, WHAT WE MIGHT ASSUME HE WAS TRYING TO TELL IS

NOT THE ISSUE.
IT'S WHAT HE SAID.
DID HE SAY SOMETHING WHEN HE
TALKED ABOUT BEING STRIP
SEARCHED AND THE GUARDS GOING
THROUGH HIS PERSONAL EFFECTS, IS
THIS CONTRADICTED BY WHAT
HAPPENED TWO YEARS LATER WHEN HE
HAS A SHANK IN THE GADSDEN
COUNTY JAIL?
THAT'S THE--

>> YOU DON'T THINK THAT HAS ANY
RELEVANCY TO HOW ONE COULD, IN
FACT, BE SEARCHED AND STILL END
UP WITH A SHANK?

>> NO, YOUR HONOR.
AND I THINK THIS CASE MAKES IT
CLEAR THAT THE D.O.C. CAN'T BE
GIVEN A LOT OF CREDIT OR
CREDIBILITY WHEN IT COMES TO
MAINTAINING ORDER.

THEY COULDN'T MAINTAIN ORDER ON
THAT BUS, THEY COULDN'T-- YOU
COULDN'T EXPECT THEM TO DO--

>> BUT THEY'RE NOT ON TRIAL
HERE.

>> I UNDERSTAND.
BUT YOU CAN'T EXPECT JURORS TO
NECESSARILY BELIEVE THAT THE
WORK OF THE D.O.C. IN DOING
THESE STRIP SEARCHES IS THAT
EFFECTIVE.

THESE INMATES HAVE THESE KNIVES
ALL THE TIME.

>> WELL, THAT'S WHY--
[LAUGHTER]

BUT HE SAID THEY DO--

>> THAT'S THE POINT.

>> HE'S SAYING THEY DO SUCH A
GREAT JOB, I COULD NEVER HAVE
GOTTEN AWAY WITH IT.

IT'S IMPEACHED BY YOU'RE NOW A,
YOU'RE ON, YOU'RE ARRESTED FOR
THIS MURDER, AND YOU GOT AWAY
WITH IT.

>> YOUR HONOR, MR. BROOKINS
DIDN'T SAY ANYTHING LIKE THAT.
HE SAID THEY STRIP SEARCHED ME,
THEY WENT THROUGH MY CLOTHES.
THIS WAS CORROBORATED BY TWO

D.O.C. OFFICIALS WHO SAID THAT THAT IS WHAT IS DONE IN THESE PARTICULAR CASES.

IF MR. BROOKINS HAD SAID, YOU KNOW, I'M AFRAID OF SHANKS, I'VE NEVER HAD A SHANK BEFORE, I WOULD NEVER THINK OF HAVING A SHANK, I DON'T KNOW HOW TO SECRETE A SHANK AND HIDE IT IN MY CLOTHES, I DON'T KNOW ANYTHING ABOUT ANYTHING WHEN IT COMES TO SHANKS, THAT WOULD HAVE AUTHORIZED THE ADMISSIBILITY OF WHAT HAPPENED AT THE GADSDEN COUNTY JAIL TWO YEARS BEFORE THAT TO IMPEACH IT.

BUT HE DIDN'T SAY ANYTHING LIKE THAT.

AND WHAT HAPPENED WAS THE TRIAL COURT THEN LET THE PROSECUTOR GO WAY BEYOND THE SCOPE OF EXAMINATION--

>> BUT THE QUESTION, THE SPECIFIC QUESTION WAS, "ISN'T IT TRUE THAT YOU KNOW HOW TO SECRETE A SHANK IN YOUR CLOTHING?"

>> EXACTLY, YOUR HONOR.

>> HE SAYS, "NO, SIR."

>> CORRECT.

HE'S LYING, I AGREE.

>> OKAY.

ISN'T IT TRUE YOU'VE HAD A SHANK IN YOUR CLOTHING BEFORE?

"NO, SIR."

>> CORRECT.

>> IT SEEMS LIKE, TO ME, THAT'S DIRECTLY IMPEACHED BY WHAT THEY DID.

>> YOUR HONOR, HE IS GOING OUTSIDE THE SCOPE--

>> MR. BROOKINS NEVER SAID WHEN HE TESTIFIED ANYTHING ABOUT WHETHER OR NOT HE EVER HAD A SHANK.

THAT'S THE POINT.

THE PROSECUTOR-- IT'S LIKE THE ROBERTSON V. STATE CASE, JUSTICE PARIENTE AND JUSTICE CANADY, THAT'S WHAT I'M REALLY HOPING

THAT YOU AGREE WITH ME THAT YOUR DECISION IN ROBERTSON V. STATE, WHICH DEALT WITH THESE VERY ISSUES.

THE PROSECUTION, IN A CASE LIKE THIS, CANNOT BE ALLOWED TO GO OUTSIDE SCOPE OF DIRECT EXAMINATION AND COME UP WITH A TOTALLY NEW SET OF QUESTIONS TO ASK A DEFENDANT, GET THE DEFENDANT TO CUT HIS LEGS OUT FROM UNDER HIM BY LYING ABOUT IT AND THEN USING THAT TO IMPEACH HIM.

>> HE KNEW THAT A SHANK WAS FOUND.

I MEAN, I GUESS IT SEEMS THAT, YOU KNOW, IT SEEMS-- THIS IS, FIRST OF ALL, WOULD YOU AGREE IS IT A DISCRETIONARY DECISION ON THE PART OF THE TRIAL COURT AS TO WHEN THE PREJUDICE-- AS TO WHETHER THE PREJUDICE OUTWEIGHS THE PROBATIVE VALUE?

>> YES, YOUR HONOR, I AGREE.

>> DID THE PROSECUTOR BEFORE EXAMINING ON THIS INCIDENT, DID HE ALERT THE TRIAL JUDGE THAT HE WAS GOING TO GO INTO THIS AREA?

>> HE DID, YOUR HONOR.

>> AND HE ALSO-- WHICH WAS ONE OF THE ISSUES THAT PROSECUTORS JUST NOT COMING OUT WITH THIS. DID THAT, AND THERE WAS A TIME TO ARGUE AS TO THE RELEVANCY, CORRECT?

>> ALL RIGHT NOW, YOUR HONOR, YOU'RE NOT TALKING ABOUT THE SIMILAR FACT--

>> NO, I'M JUST, DID THEY-- BEFORE HE STARTED TO QUESTION HIM ABOUT THE SHANK, THE OTHER INCIDENT, WAS, DID HE ASK THE JUDGE FOR PERMISSION TO DO THAT?

>> YES.

THERE WAS NO QUESTION THAT--

>> HE DIDN'T HAVE TO, BUT IT'S--

>> NO.

>> HE DIDN'T HAVE TO BECAUSE

IT'S NOT WILLIAMS RULE, BUT IT WAS AN ISSUE THAT THE JUDGE-- THAT AT THAT TIME THE DEFENSE LAWYER COULD SAY, YOUR HONOR, IT'S NOT RELEVANT, THE PROBATIVE EFFECT IS NOT OUTWEIGHED BY THE PREJUDICIAL VALUE, RIGHT? ALL THOSE ARGUMENTS COULD HAVE BEEN MADE?

>> THEY COULD HAVE BEEN--

>> IT'S A BALANCING.

YOU'RE NOT SAYING IT'S NOT-- IT IS RELEVANT.

IT IS, DOES IMPEACH A STATEMENT HE MADE.

THERE'S NO WAY THAT THEY COULD-- THAT I CAN GET A SHANK THROUGH ON THAT DAY.

RIGHT?

>> YOUR HONOR, I RESPECTFULLY DISAGREE.

IF MR. BROOKINS HAD TESTIFIED ON DIRECT, LISTEN, I NEVER HAD A SHANK, THERE IS NO WAY I COULD HAVE GOTTEN A SHANK THROUGH SECURITY, I DON'T-- THEY MAKE ME NERVOUS, SOMETHING LIKE THAT, BUT HE DIDN'T DO THAT.

HE SIMPLY SAID THEY STRIP SEARCHED ME.

BUT THE PROSECUTOR WAS ALLOWED BY THE TRIAL COURT TO GO WAY OUTSIDE THAT--

>> SO WHAT WAS THE POINT THEN OF ALL THE TESTIMONY ABOUT THE STRIP SEARCH?

WHAT WAS THE POINT ABOUT THAT TESTIMONY?

>> THE POINT WAS SIMPLY MR. BROOKINS DESCRIBING WHAT HE AND THE OTHER INMATES WENT THROUGH BEFORE THEY GOT ON THE BUS.

THAT'S IT.

AND--

>> WHY IS THAT RELEVANT?

WHY IS THAT NOT RELEVANT TO THE SHANK?

I MEAN, THE WHOLE THING IS ABOUT THE SHANK.

THE STRIP SEARCH FOR THE SHANK,
RIGHT?

>> YES, YOUR HONOR.

THAT'S CORRECT.

HOWEVER, AGAIN, MR. BROOKINS
DIDN'T SAY ANYTHING THAT WAS
MISLEADING OR FALSE WHEN HE
TESTIFIED ABOUT THE STRIP
SEARCH.

YOU KNOW, THESE SHANKS ARE ALL
OVER THE PLACE.

THE FACT THAT HE HAD A SHANK TWO
YEARS LATER, TWO YEARS LATER AT
THE GADSDEN COUNTY JAIL, HOW IS
THAT RELEVANT TO WHAT HAPPENED
TO MR. SEXTON?

>> DON'T YOU THINK, AND REALLY,
THE ARGUMENT WOULD HAVE BEEN YOU
HEARD MR. BROOKINS SAY THERE IS
NO-- THAT HE WAS STRIP
SEARCHED--

>> RIGHT.

>> HOW IN THE WORLD COULD HE
HAVE HAD A SHANK ON HIM AFTER HE
HAD GONE THROUGH SUCH A SEARCH?
THAT WOULD HAVE BEEN THE
ARGUMENT.

>> WELL, YOU KNOW, STRANGER
THINGS HAVE HAPPENED.

AGAIN, THESE D.O.C. PROCEDURES
APPARENTLY AREN'T VERY
EFFECTIVE.

AND, AGAIN, IF MR. BROOKINS HAD
INDICATED IN ANY WAY THAT HE
NEVER HAD A SHANK, HE DIDN'T
WANT ANYTHING TO DO WITH SHANKS,
THINGS OF THIS NATURE, IT MIGHT
HAVE BEEN DIFFERENT.

>> BUT HE WAS REALLY ARGUING
THEY ARE REALLY EFFECTIVE,
THEREFORE, BECAUSE THEY'RE SO
EFFECTIVE, I COULDN'T HAVE
BROUGHT THIS SHANK ON, BECAUSE
THEY WOULD HAVE FOUND IT.

>> JUSTICE PERRY, HE WASN'T
ARGUING ANYTHING.

HE WAS SIMPLY SAYING--

>> THE IMPLICATION.

>>-- THEY STRIP SEARCHED ME.

AT ANY RATE, I'M UP TO MY EIGHT

MINUTES, SO I'LL TURN IT OVER TO THE STATE.

>> MAY IT PLEASE THE COURT, PATRICK DELANEY, ASSISTANT ATTORNEY GENERAL REPRESENTING THE STATE OF FLORIDA.

MR. BROOKINS' DIRECT TESTIMONY OPENED THE DOOR TO THE STATE'S USE OF THE COLLATERAL CRIME EVIDENCE AND THE CROSS-EXAMINATION CONCERNING WHEN MR. BROOKINS ACCUSED ANOTHER INMATE OF THE MURDER.

>> WELL, IT SEEMS THAT THE SHANK, I THINK, IS PROBABLY, I THINK THERE'S RELEVANCY THERE. I MEAN, THE IT'S JUST BECAUSE OF WHAT HE SAID.

BUT IN OPENING THE DOOR THAT HE DIDN'T WANT TO TELL ANYBODY BECAUSE HE DIDN'T TELL THE SECURITY OR THE CORRECTIONS OFFICER AT THE TIME, HE SAID HE DIDN'T WANT TO BE A SNITCH, BUT TO SAY, WELL, YOU'VE NEVER TOLD ANYONE THIS UNTIL TRIAL, THE ONLY WAY TO REHABILITATE THAT IS TO SAY, WELL, MY LAWYER TOLD ME TO-- I INVOKE MY RIGHT TO SILENCE.

I MEAN, AND SO HE CAN'T REALLY-- HE'S BEING IMPEACHED ON SOMETHING THAT HAS TO DO WITH HIM HAVING A RIGHT TO REMAIN SILENT AND NOT BE QUESTIONED. AND SO, TO ME, I DON'T SEE THAT IT IS-- I THINK IT OPENS THE DOOR.

I THINK IT'S HARMLESS, MOST LIKELY, BUT I THINK IT WOULD BE, I DON'T SEE HOW IT OPENED THE DOOR BECAUSE OF HIM-- IS IT BECAUSE HE TOOK THE STAND, THAT HE OPENED THE DOOR?

>> YES.

>> I MEAN, ARE YOU ALLOWED TO ONCE-- WHEN A DEFENDANT TAKES THE STAND, IS THEN THE STATE ALLOWED TO TALK ABOUT EVERYTHING THAT HAPPENED IN, POSTARREST

ABOUT SILENCE AND NOT?

>> NO.

>> THEY DO THAT?

>> AND THE STATE IN MAKING THAT STATEMENT, "UNTIL TODAY YOU HAVEN'T COME FORWARD," WAS NAILING THE DEFENDANT DOWN TO HIS STATEMENT.

HE OPENED THE DOOR FOR THAT QUESTION BY GIVING HIS REASON FOR HIS SILENCE.

BUT WHAT'S IMPORTANT IS THAT ON REBUTTAL THE STATE PUTS ON BOTH OFFICER BELL AND OFFICER MAYO TO SHOW THAT THE DEFENDANT HAS NOW GIVEN THREE DIFFERENT VERSIONS OF EVENTS.

HE TELLS OFFICER BELL, "THE DUDE WENT CRAZY IN THERE."

HE TELLS OFFICER MAYO, IMMEDIATELY GETS OFF THE BUS, "I DON'T KNOW WHAT HAPPENED, SARGE."

>> BUT THAT'S PROPER EXAMINATION.

YOU COULDN'T ASK HIM, WELL, WHAT DID YOU TELL YOUR LAWYER, OR WHAT DID YOU TELL THE POLICE WHEN YOU WERE ARRESTED?

WELL, I INVOKED MY RIGHT TO SILENCE, YOU COULD HAVE EFFECTIVELY IMPEACHED HIM WITHOUT THIS OPEN-ENDED QUESTION THAT DEFINITELY IMPLY-- IMPLICATES HIS RIGHT TO NOT TELL, HAVE TO TALK TO THE STATE AFTER HE'S ARRESTED.

>> AND IT'S BECAUSE HE SAID I WANTED TO REMAIN SILENT BECAUSE I DIDN'T WANT TO GET LABELED A SNITCH.

HE DIDN'T SAY I INVOKED BECAUSE MY LAWYER TOLD ME TO REMAIN SILENT.

HE SAID, THIS IS WHY.

>> WELL, WE'RE NOT-- DO YOU WANT TO GO TO THE HARMLESS ERROR?

AGAIN, OTHERS MAY AGREE THAT IT IS NOT A COMMENT, BUT LET'S JUST

ASSUME FOR THE PURPOSE OF THE ARGUMENT, TELL ME WHY IT'S HARMLESS.

>> THREE DIRECT WITNESSES, THREE DIRECT EVIDENCE WITNESSES TO THE MURDER ITSELF, PHYSICAL EVIDENCE ON BOTH MR. BROOKINS' SHIRT AND PANTS, BLOOD EVIDENCE.

OUT OF THE OTHER 20 INMATES THAT WERE ON THE BUS, NOT ONE OF THEM HAD BLOOD ON THEM, AND THEN DNA EVIDENCE.

>> WAS THAT JUST A VISUAL EXAMINATION?

>> IT APPEARS SO.

>> OR DID THEY, DID THEY ACTUALLY DO ANY, ANY CLOSE LOOKING TO DETERMINE WHETHER ANY OF THE REST OF THEM HAD BLOOD ON THEM?

>> I BELIEVE IT'S JUST A PHYSICAL EXAMINATION.

THERE'S NOTHING IN THE RECORD ABOUT EXAMINING OTHER INMATES FOR BLOOD SPATTER OR ANY OF THAT EVIDENCE.

BUT MR. BROOKINS ALSO ADMITTED THAT NONE OF THE OTHER PEOPLE-- ESPECIALLY MR. HUNT WHO HE ACCUSED OF THE MURDER-- HAD ANY BLOOD ON THEM.

FINALLY, THERE'S DNA EVIDENCE.

>> WAS THE SHIRT EVER FOUND?

>> THE BLUE SHIRT WAS NOT FOUND. THE KNIFE AND THE ELASTIC HOLDER THAT WAS USED TO HELP CONCEAL THE KNIFE WERE BOTH FOUND.

MR. BROOKINS' DNA WAS FOUND ON THE HANDLE OF THAT KNIFE AND ON THE ELASTIC HOLDER OF THAT KNIFE.

AND THAT WAS THE ONLY OTHER DNA IN ADDITION TO MR. SEXTON, THE VICTIM, THAT WAS ON, THAT WAS ON THOSE OBJECTS.

SO THE ERROR, IF THE COURT DOES FIND THAT THERE IS ERROR, IT IS CLEARLY HARMLESS IN THIS CASE GIVEN THE NATURE OF THE EVIDENCE THAT POINTED TO ONLY

MR. BROOKINS AS THE PERPETRATOR OF THIS CRIME.

>> WHO FOUND THE SHANK, DO WE KNOW?

>> A TROOPER FROM THE FLORIDA HIGHWAY PATROL.

>> NOT THE SAME TWO CORRECTIONAL OFFICERS ON THE BUS.

>> NOT THE SAME, NO.

IT WAS FLORIDA HIGHWAY PATROL. A DIFFERENT DEPARTMENT OF CORRECTIONS OFFICER FOUND THE ELASTIC HOLDER--

>> JUST PROBABLY ONLY BECAUSE THIS IS, THERE ARE SOME BIZARRE PARTS OF THIS CASE NOT REALLY FOR THE APPEAL, BUT THE BLUE SHIRT THAT HE WAS WEARING, WHERE COULD IT HAVE GONE?

>> SOMEWHERE ARE ON THE SIDE OF I-10.

>> THROWN OUT THE WINDOW?

>> HE THREW IT OUT THE WINDOW, RIGHT?

>> IT WAS THROWN OUT THE WINDOW ALSO.

>> BUT THEY DIDN'T FIND THAT IN THEIR SEARCH OF THESE ITEMS.

>> CORRECT.

>> IN REFERENCE TO THE BUS AND THE TWO GUARDS, I TAKE IT THE TWO GUARDS ARE UP FRONT IN THE BUS?

>> YES.

THE BUS IS DIVIDED IN THREE SECTIONS.

>> RIGHT.

AND THESE PRISON BUSES, AS ARE THE PRISONS THEMSELVES, THEY'RE VERY, VERY LOUD.

EVERYBODY'S SCREAMING, EVERYBODY'S TALKING, EVERYBODY'S YELLING AT EACH OTHER.

A VERY LOUD THING.

>> YES.

THAT'S THE TESTIMONY FROM THE DEPARTMENT OF CORRECTIONS' OFFICERS.

>> IF YOU'VE EVER BEEN TO A PRISON OR ANYTHING LIKE THAT--

>> I HAVE.
>>-- YOU HEAR IT.
THAT'S THE FIRST THING YOU HEAR.
IT'S LOUD 24/7.
>> UH-HUH.
>> IS THAT THE REASON WHY THE
GUARDS WERE NOT ABLE TO HEAR
THIS PERSON SCREAMING, HELP ME,
HELP ME?
>> YES.
THE BUS WAS NOT AIR-CONDITIONED,
SO THE WINDOWS WERE DOWN, SO
THEY HAD WIND NOISE IN ADDITION
TO THE ENGINE NOISE AND EXHAUST
NOISE COMING FROM IT.
THEY SAID THAT BUS WAS
EXCEPTIONALLY LOUD FOR THEM TO
HEAR ANYTHING IN THE BACK.
>> YOU SAID THE BUS WAS IN THREE
PARTS.
I ASSUME THE FIRST PART, THAT'S
THE DRIVER AND WHOEVER IS WITH
THE DRIVER.
>> YES.
>> WHERE WERE-- AND DID THIS
MURDER TAKE PLACE IN THE SECOND
PART OF THE BUS?
DIRECTLY BEHIND THE DRIVERS?
>> NO.
THE SECOND PART OF THE BUS IS
CLOSED OFF FOR THE CLOSE
MANAGEMENT INMATES, THOSE MAY
NOTES THAT-- INMATES THAT NEED
TO BE KEPT A SPECIFIC EYE ON.
THAT MIDDLE SECTION IS DIVIDED
FROM THE REST OF THE BUS BY
EXPANDED METAL GATES WITH PLEX
GLASS ON THE SIDE, AND THERE'S A
KEY-IN, KEY-OUT LOCK ON THOSE
DOORS.
THE THIRD PORTION OF THE BUS IS
FOR THE GENERAL POPULATION
INMATES.
THE INMATES ENTER AND EXIT FROM
THE REAR OF THE BUS, AND THE
TESTIMONY WAS THAT MR. BROOKINS
AND MR. SEXTON WERE IN THE FRONT
PORTION OF THE THIRD SECTION.
SO WE HAVE THAT ENTIRE MIDDLE
SECTION SEPARATING--

>> WERE THERE CAMERAS ON THE BUS?
>> NO.
NO, THERE WERE NO CAMERAS ON THE BUS.
>> CAMERAS ON SCHOOL BUSES, RIGHT?
>> I BELIEVE SO.
I BELIEVE SO.
>> COULD I ASK YOU, THIS IS AN ISSUE THAT WAS RAISED BUT NOT ARGUED TODAY, THE QUESTION OF CCP.
>> YES.
>> AND I BELIEVE THE ARGUMENT IS BEING MADE THAT IT WAS MORE IN LINE OF A FRENZY AS OPPOSED TO A HEIGHTENED, PREMEDITATED EVENT.
CAN YOU ADDRESS THAT?
THAT'S THE ONE AREA THAT I'M HAVING A LITTLE BIT OF PROBLEM WITH.
>> AND THE TRIAL COURT DID WEIGH CCP LESS DUE TO THE CIRCUMSTANTIAL NATURE OF THE EVIDENCE, BUT THE EVIDENCE IS THERE TO SUPPORT IT.
SPECIFICALLY, WE HAVE THE DEFENDANT PROCURING A WEAPON IN ADVANCE, CONCEALING THAT WEAPON TO AVOID DETECTION ON THE BUS.
>> WELL, I MEAN, MOST PRISONERS ARE NOT-- MAYBE "MOST" IS NOT THE RIGHT WORD, BUT A LOT OF PRISONERS CARRY SHANKS JUST IN CASE.
[LAUGHTER]
JUST IN CASE.
>> THE, I THINK THE MORE CRITICAL PIECE OF EVIDENCE IS THE DEFENSE USE OF LATEX GLOVES. HE BROUGHT LATEX GLOVES WITH HIM--
>> NOW, HE WAS MOVING TO ANOTHER FACILITY, RIGHT?
>> YES.
>> SO THAT MEANT HE MOVED EVERYTHING HE OPENED.
>> HE TOOK ALL OF HIS PROPERTY.

>> GLOVES AND SHANKS AND--
>> ONE WOULD ASSUME.
BUT IT'S NOT, IT WAS NOT
DETERMINED WHETHER OR NOT LATEX
GLOVES WERE CONTRA BAND WITHIN
THE PRISON FACILITY.
>> I'M SAYING ASSUMING IT WAS
CONTRA BAND.
HE TOOK EVERYTHING HE POSSESSED.
>> CORRECT.
>> AND DID HE KNOW WHO WAS GOING
TO BE ON THE BUS?
>> WE HAVE NO EVIDENCE OF THAT.
>> DID HE GET ADVANCE NOTICE OF
WHEN HE WAS GOING TO BE MOVED?
>> THEY'RE TOLD THEY WILL BE
MOVED; HOWEVER, PRECISELY WHEN,
THEY DO NOT KNOW.
AND THAT'S EVEN FROM THE INTAKE
OFFICERS, BECAUSE THE LIST THAT
THEY GET OF EVERY INDIVIDUAL
BEING TRANSFERRED IS NOT AN
EXHAUSTIVE LIST, AND I THINK
THEY TRY TO KEEP THAT CLOSE
TO--
>> I MEAN, IT SEEMS SO MUCH LIKE
A FRENZIED, LIKE, THING THAT
OCCURRED.
AND, I MEAN, AGAIN, I HATE TO
KEEP ON USING HARMLESS ERROR,
BUT THERE'S SO MANY OTHER
AGGRAVATORS HERE, THIS JUST
DOESN'T SEEM LIKE A CCP CASE FOR
ALL THE REASONS THAT MY
COLLEAGUES ARE TALKING ABOUT.
IT LOOKS LIKE THERE WAS
SOMETHING-- BECAUSE WHAT DID HE
DO AFTER, A GUY WAS KILLED, HE
SEARCHED HIS ANUS?
HE WAS LOOKING FOR SOMETHING?
>> CORRECT.
HE USED-- HE PUT THE GLOVES ON
HIS HAND AND USED HIS HAND TO
SEARCH MR. SEXTON'S RECTUM, AND
HE STABBED HIM IN THE RECTUM
WITH THE SHANK.
>> WHAT WAS HE LOOKING FOR?
>> IT'S UNCLEAR.
HE WAS SAYING "GIVE IT UP"--
>> IT SEEMS TO ME THERE WAS SOME

PROBLEM BETWEEN THEM IF HE WAS SEARCHING FOR SOMETHING WHICH MAY OR MAY NOT PLAY INTO THE WHOLE CCP THING.

BUT THERE'S NO EVIDENCE OF WHY-- EVIDENCE OF WHY-- I THOUGHT SOMEONE TESTIFIED OR THERE'S SOMETHING THAT SAYS WHERE IS IT, SOMETHING TO THAT EFFECT.

>> YES.

HE WAS SAYING GIVE IT UP, WHERE IS IT, WHERE'S THE PACKAGE WHEN HE WAS SEARCHING THROUGH MR. SEXTON'S CAVITY.

>> AND I BELIEVE ONE OF THE THREE PRISONERS WHO TESTIFIED MENTIONED THAT THEY WERE SHOoving EACH OTHER WHEN THEY WERE GETTING ON THE BUS.

SO THEY HAD SOME-- IT WAS AN ONGOING ALTERCATION, WASN'T SNIT.

>> NO.

ONE OF THE PRISONERS TESTIFIED THAT MR. BROOKINS JUMPED OVER TO MR. SEXTON AND SHOVED HIM AND THAT SEXTON SHOVED HIM BACK, AND THEN MR. BROOKINS CAME OVER WITH THE KNIFE.

>> I MEAN, IT SOUNDS LIKE THERE WAS A FIGHT THAT ESCALATED INTO THIS MURDER.

BUT, AGAIN, YOU KNOW, IT'S JUST-- WE HAVE TO BE CAREFUL THAT CCP JUST DOESN'T BECOME-- IT'S NOT A LITTLE MORE THAN JUST A PREMEDITATED PLUS.

IT'S GOT TO BE PLUS PLUS.

AND THIS-- YOU KNOW, AND, AGAIN, I REALIZE THAT WASN'T THE MAIN POINT ARGUED BY MR. HARRISON.

BUT WHAT ARE THE OTHER AGGRAVATORS IN THIS CASE?

>> HAC, WHICH WAS GIVEN VERY GREAT WEIGHT.

CCP WAS WEIGHTED LESS THAN HAC AND THE PRIOR VIOLENT FELONY FOR FIRST-DEGREE MURDER.

AND THE TRIAL COURT SENTENCING

ORDER SAID EITHER THE HAC OR THE PRIOR VIOLENT FELONY FOR FIRST-DEGREE MURDER ALONE WOULD HAVE OUTWEIGHED THE MITIGATION PUT FORWARD BY MR. BROOKINS IN THIS CASE.

>> DID THEY FIND, DID THEY FIND ANY STATUTORY MITIGATION?

>> NONE WAS PRESENTED, AND NONE WAS FOUND BY THE TRIAL COURT.

>> WHAT WAS-- I MEAN, AGAIN, IF WE'RE GOING TO SEE THIS IN POSTCONVICTION, BUT WHAT WAS THE MITIGATION PRESENTED?

>> MOST OF IT FOCUSED ON MR. BROOKINS' DIFFICULT UPBRINGING AND CHILDHOOD, THAT HIS FATHER WAS ABSENT, HIS FATHER DID NOT CARE ABOUT HIM, HIS MOTHER WAS DISABLED.

I MEAN SHE MAY HAVE BEEN PHYSICALLY AND INTELLECTUALLY DISABLED AND HE HAD TO BE RAISED BY ADDITIONAL FAMILY MEMBERS AND HAD A VERY--

>> WHAT WAS THE CRIME HE WAS IN PRISON FOR?

>> FIRST-DEGREE MURDER. THE FACTS OF IT WERE NOT--

>> HE WAS A JUVENILE WHEN IT OCCURRED?

>> HE WAS 16 WHEN IT OCCURRED.

>> HE WAS SERVING A LIFE SENTENCE?

>> YES.

YES.

I BELIEVE IT INVOLVED A SHOOTING, BUT IT WAS NOT-- THE FACTS SPECIFICALLY WERE NOT PRESENTED FORWARD.

I BELIEVE IT WAS STIPULATED.

>> HOW OLD WAS HE WHEN THIS CRIME WAS COMMITTED?

>> 32.

IT WAS 16 YEARS LATER.

>> SO HE'D BEEN IN JAIL FOR 15 YEARS.

>> YES.

IF THERE ARE NO OTHER QUESTIONS,

FOR THE AFOREMENTIONED REASONS,
THE STATE RESPECTFULLY REQUESTS
THE COURT AFFIRM MR. BROOKINS'
CONVICTION AND SENTENCE.

THANK YOU.

>> MAY IT PLEASE THE COURT, I'LL
BE VERY BRIEF.

AS TO THE CCP AGGRAVATOR, THERE
WAS NO INDICATION THAT THESE TWO
INDIVIDUALS, SEXTON AND
BROOKINS, HAD HAD ANY PROBLEMS
BEFORE THEY GOT ON THE BUS.

I BELIEVE THEODUS--

>> WHAT WAS HE LOOKING FOR?

>> CELL PHONE, AS I--

>> EXCUSE ME?

>> A CELL PHONE, AS I UNDERSTAND
FROM--

>> IN HIS ANUS, HE WAS LOOKING
FOR A CELL PHONE?

>> STRANGE THINGS HAPPEN, YOUR
HONOR, IN STATE PRISON.

>> IS THAT IN THE RECORD
SOMEWHERE?

>> I BELIEVE, IF I'M NOT
MISTAKEN, THAT THAT IS SOMEWHERE
IN THE RECORD OR AT LEAST THERE
WAS SOME INDICATION THAT THAT'S
WHAT HE WAS LOOKING FOR.

I BELIEVE THAT IS THE CASE.

BUT THERE WAS NO PROBLEM BETWEEN
THESE TWO INDIVIDUALS.

THEODUS HUNT TESTIFIED THAT A
SHOVING MATCH STARTED.

FIRST, IT WAS CONCERN.

>> WAIT A MINUTE.

BEFORE YOU MOVE ON TO THE
SHOVING MATCH, IF THERE WAS NO
PROBLEM BETWEEN THE TWO, WHY
WOULD HE HAVE ANY REASON TO
BELIEVE THAT THIS, THE VICTIM
HAD HIS CELL PHONE?

>> THERE WAS NO PROBLEM BETWEEN
THE TWO BEFORE THEY GOT ON THE
BUS, BUT MR. BROOKINS APPARENTLY
FELT THIS INDIVIDUAL HAD A CELL
PHONE FOR SOME REASON.

AND--

>> HIS CELL PHONE?

>> HAD A CELL PHONE.

I'M SIMPLY SAYING THAT, THAT THERE IS SOME SUGGESTION IN THE RECORD THAT THAT WAS MR. BROOKINS' INTENT, TO SECURE THAT.

BUT THE POINT IS, IT STARTED OFF AS A VERBAL ALTERCATION ABOUT MR. SEXTON'S SELLING CIGARETTES TO A THIRD PARTY, SOMETHING LIKE THAT.

AND SO THE VERBAL ALTERCATION GETS OUT OF HAND.

NEXT THING WE KNOW THEY'RE PUSHING AND SHOVING EACH OTHER, AND IT'S THEN THAT MR. BROOKINS TAKES OUT THIS KNIFE, APPARENTLY IN A FIT OF RAGE, AND STABS MR. SEXTON MULTIPLE TIMES.

ALL I'M SAYING IS, YES, WE DO ARGUE THAT CCP SHOULD NOT HAVE BEEN APPLIED IN THIS CASE.

BUT I KNOW THAT EVEN IF YOU WERE TO FIND THAT THAT WAS CORRECT, I STILL WOULD NOT BE ABLE TO PREVAIL IN THIS CASE.

I JUST WANT TO EMPHASIZE THE DANGER A PRECEDENT WHERE A DEFENDANT'S POST-MIRANDA RIGHT TO SILENCE HAS REALLY BEEN ABRIDGED IN THIS CASE.

I MEAN, THERE'S NO WAY TO GET AROUND IT.

AND, AND I JUST ASK THAT YOU CONSIDER WHETHER OR NOT THAT IS, IT WAS SO EGREGIOUS IN THIS CASE THAT YOU DON'T EVEN HAVE TO SHOW ANY MORE PREJUDICE AND THAT HARMLESS ERROR REALLY DOESN'T MATTER.

AGAIN, THIS WAS, THIS WAS A STRONG CASE OF GUILT, BUT IT WAS NOT A SLAM DUNK.

AND FOR THAT REASON, I REALLY THINK MR. BROOKINS IS ENTITLED TO RELIEF BECAUSE OF THAT FIFTH AMENDMENT VIOLATION.

AND I KNOW I SEEM TO BE ARGUING AGAINST THE TIDE HERE ON THE FINAL ISSUE, BUT WE-- IF YOU READ ROBERTSON V. STATE, I

HOPE-- AND I'M SURE YOU HAVE,
YOU WROTE IT, SO I KNOW THAT'S
THE CASE.

BUT I SINCERELY BELIEVE THAT
THAT DECISION MAKES CLEAR WHY
THIS SHANK THAT MR. BROOKINS HAD
TWO YEARS AFTER THE FACT SHOULD
NEVER HAVE BEEN ALLOWED TO BE
USED TO IMPEACH HIM.

AND FOR THIS REASONS WE ASK THE
COURT TO REVERSE THE JUDGMENT
AND SENTENCE.

THANK YOU VERY MUCH.

>> THANK YOU FOR YOUR ARGUMENTS.