

>> NEXT CASE ON THE DOCKET IS  
SEXTON V. STATE.

>> MAY IT PLEASE THE COURT, I'M  
JULIUS AULISIO, I REPRESENT JOHN  
SEXTON.

MR. SEXTON WAS DENIED HIS  
CONSTITUTIONAL RIGHT TO A FAIR  
TRIAL BECAUSE OF FOUR ERRORS  
MADE BY THE TRIAL COURT DURING  
THE GUILT PHASE OF THE TRIAL.  
MR. SEXTON IS ENTITLED TO A NEW  
JURY TRIAL.

FIRST, THE TRIAL COURT  
IMPROPERLY PREVENTED DEFENSE  
COUNSEL FROM CROSS-EXAMINING THE  
STATE'S DNA EXPERTS REGARDING  
PRIOR CONTAMINATION.

SECOND, TRIAL COURT PREVENTED  
DEFENSE FROM PRESENTING EVIDENCE  
TO SUPPORT THEIR THEORY OF THE  
CASE THAT SOMEONE OTHER THAN  
MR. SEXTON COMMITTED THIS  
MURDER.

THIRD, THE TRIAL COURT ALLOWED  
HEARSAY STATEMENTS FROM  
MR. SEXTON'S WIFE THAT  
UNDERMINED THE CREDIBILITY OF  
MR. SEXTON AND HIS THEORY OF THE  
CASE THAT HE WAS NOT PRESENT AT  
THE MURDER SCENE AT THE TIME.  
AND FOURTH, TRIAL COURT ERRED BY  
ADMITTING HIGHLY INFLAMMATORY  
PHOTOS OF POSTMORTEM INJURIES  
THAT WERE NOT RELEVANT TO ANY  
ISSUE IN DISPUTE.

FIRST GUILT PHASE ISSUE, WELL--

>> CAN I JUST GO TO THE ONE ON,  
IT WOULD BE ISSUE THREE, ON THE  
STATEMENT OF THE WIFE?

DID SHE TESTIFY AT TRIAL?

>> SHE DID.

>> AND SHE TESTIFIED THAT HE  
DIDN'T COME IN TIL TWO A.M.?

>> YES.

SHE--

>> OKAY.

SO SHE SAID, SO I'M-- ON THAT  
ONE WHATEVER YOU CALL IT, WHAT  
DIFFERENCE-- I MEAN, SHE'S BEEN  
CONSISTENT IN TALKING ABOUT HIM

COMING IN TWO A.M.  
IS IT BECAUSE IT'S SPONTANEOUS  
THAT HE'S A LIAR?

WAS THAT THE PART THAT'S SO  
HARMFUL?

I MEAN, SHE WAS GOING TO BE  
CONTRADICTING WHAT HE SAID NO  
MATTER WHAT.

>> WELL, NOT TOTALLY BECAUSE SHE  
CLARIFIED THAT STATEMENT THAT  
OFTENTIMES HE WOULD COME HOME,  
AND HE WOULD SIT OUTSIDE AND  
LISTEN TO MUSIC AND DRINK BEER  
BEFORE HE WOULD KNOCK ON THE  
DOOR TO COME INTO THE HOUSE.  
SO--

>> BUT DID SHE SAY THAT THAT WAS  
THE CASE THAT NIGHT?

IT SEEMS TO ME SHE SAID THAT  
NIGHT HE CAME IN AT 2:00.

>> NO.

SHE SAID SHE DIDN'T KNOW IF HE  
WAS, HAD BEEN-- SHE DIDN'T KNOW  
WHAT TIME HE CAME HOME.

ALL SHE KNEW WAS THAT SHE HEARD  
HIM KNOCK ON THE DOOR AT 1:55.  
AND THE DAMAGING PART OF IT IS  
NOT ONLY THAT SHE SAID HE CAME  
HOME AT TWO A.M. WHICH  
CONTRADICTS HIS STATEMENT, BUT  
SHE SAYS HE'S NOT TELLING THE  
TRUTH.

AND IT'S NOT REALLY CLEAR FROM  
THE, FROM GRADY, DETECTIVE  
GRADY'S TESTIMONY.

HIS TESTIMONY WAS THAT SHE SAID  
SOMETHING TO THE EFFECT THAT  
HE'S NOT TELLING THE TRUTH.

>> SO LET ME-- WHY ISN'T THAT A  
SPONTANEOUS STATEMENT?

IT SEEMS TO ME THAT THE  
DEFENDANT IS THERE TALKING WITH  
THE POLICE SAYING I CAME HOME AT  
10:30, SHE'S THERE HEARING THAT,  
AND SHE SAYS THAT'S NOT TRUE, HE  
CAME HOME AT TWO?

WHY ISN'T THAT SPONTANEOUS?

I MEAN, WAS IT IN RESPONSE TO  
ANYTHING?

IT WAS IN DIRECT RESPONSE TO A

STATEMENT THAT HE HAD MADE, SO EXPLAIN TO ME WHY THAT ISN'T.

>> WELL, SPONTANEOUS STATEMENT IS SPONTANEOUS TO AN EVENT.

>> WELL, THE EVENT BEING HE SAID "I CAME HOME AT 10:30."

>> WELL, THAT'S NOT AN EVENT.

>> AND THAT'S NOT, THAT'S NOT EVENT ENOUGH?

I MEAN, HE'S BEING QUESTIONED BY THE POLICE, HE MAKES THIS STATEMENT, AND SHE MAKES A COUNTERSTATEMENT.

>> THE SPONTANEOUS STATEMENT IS REGARDING EVENTS THAT HAPPENED, NOT CONVERSATIONS.

BECAUSE, BASICALLY, IF YOU'RE GOING TO COMMENT ON A CONVERSATION, IT CAN'T BE SPONTANEOUS.

FIRST OF ALL, YOU'RE MAKING AN ANALYSIS AS TO WHETHER OR NOT THAT STATEMENT IS TRUE OR NOT. AND SHE'S RELYING ON PAST EVENTS TO MAKE THAT DETERMINATION--

>> SO HYPOTHETICALLY, IF A WITNESS WALKS INTO A HOUSE AND HEARS SOMEONE SAY, SPLIT SECOND, I KILLED HER AND I'M GLAD I DID IT, THAT BECAUSE IT'S A STATEMENT, IT WOULD NOT QUALIFY AS A SPONTANEOUS STATEMENT?

YOU SAID HE HAS-- THE STARTLING EVENT HAS TO BE AN EVENT, SOMETHING HAPPENING.

NOT SOMEBODY SAYING SOMETHING, IS THAT WHAT YOU'RE SAYING?

>> WELL, I, I THINK YOU'RE MIXING UP EXCITED UTTERANCE AND SPONTANEOUS STATEMENT.

>> LET'S LOOK AT THE THREE ELEMENTS OF SPONTANEOUS STATEMENT.

ONE, A STARTLING EVENT ENOUGH TO CAUSE NERVOUS EXCITEMENT. AND THAT'S THE ISSUE HERE, ISN'T IT?

THAT'S THE FIRST ELEMENT.

>> NO, THAT'S NOT AN ELEMENT OF A SPONTANEOUS STATEMENT.

THAT'S AN ELEMENT OF EXCITED  
UTTERANCE.

>> OKAY.

>> SPONTANEOUS STATEMENT IS IT'S  
OBSERVING ANY EVENT AS IT'S  
HAPPENING, AND YOU'RE DESCRIBING  
THAT EVENT.

SO WHAT WE HAVE HERE IS  
MRS. SEXTON, SHE'S DESCRIBING AN  
EVENT THAT OCCURRED 12 HOURS AGO  
IF SHE'S SAYING HE CAME HOME AT  
TWO A.M.

AND--

>> BUT THE EVENT IS WHEN HE CAME  
HOME, NOT THE MURDER.

>> RIGHT.

THE EVENT-- SO IF SHE WAS  
OBSERVING IT AT TWO A.M. AND,  
YOU KNOW, IF SHE CALLED THE  
DETECTIVE, IF SHE WAS ON THE  
PHONE WITH THE DETECTIVE AND SHE  
SAYS IT'S TWO A.M. AND HE'S JUST  
COMING HOME NOW, OKAY?

THEN SHE'S DESCRIBING THE EVENT  
AS IT'S HAPPENING.

BUT WHEN SHE DOES IT 12 HOURS  
LATER, SHE'S DESCRIBING THE  
EVENT AS IT OCCURRED 12 HOURS  
AGO.

AND THERE'S ALSO THE FACT THAT  
SHE SAYS HE'S NOT TELLING THE  
TRUTH.

FIRST OF ALL, WHEN THEY, WHEN  
THEY WERE DISCUSSING WHETHER OR  
NOT THIS WOULD BE ADMISSIBLE,  
THE PROSECUTOR SAID THAT THE ONE  
DETECTIVE WAS DOING A TAPED  
INTERVIEW WITH MRS. SEXTON, AND  
THEN-- AND HER STATEMENT ISN'T  
ON THE RECORDER.

FOR SOME REASON IT'S NOT HER.  
HE SAYS SHE TOOK HIM OVER TO THE  
SIDE, SHE WHISPERED TO THE OTHER  
DETECTIVE, "TWO A.M., HE CAME  
HOME AT TWO A.M."

THERE WAS NOTHING IN THIS  
DISCUSSION PRIOR TO IT BEING  
ADMITTED INTO EVIDENCE THAT SHE  
WAS GOING TO SAY HE'S NOT  
TELLING THE TRUTH.

SO HER STATEMENT BASICALLY  
COMING FROM THE WIFE OF  
MR. SEXTON, YOU KNOW, SHE'S,  
SHE'S ELIMINATING THE  
CREDIBILITY OF THE WHOLE  
STATEMENT THAT HE GAVE TO THE  
DETECTIVE.

>> I'D GO BACK TO THE QUESTION  
THAT JUSTICE PARIENTE STARTED  
OFF WITH.

IF, EVEN IF THERE'S SOME ERROR  
HERE IN LIGHT OF THE SUBSEQUENT  
TESTIMONY, WHAT, HOW IS THIS  
CONCEIVABLY HARMFUL?

>> BECAUSE IT UNDERMINES THE  
WHOLE CREDIBILITY OF--

>> I UNDERSTAND THAT.  
BUT THE TESTIMONY THAT SHE GAVE  
DOES THE SAME THING.

>> NO.  
BECAUSE THE JURY COULD HAVE VERY  
WELL TAKEN HER TESTIMONY AND  
SAID, WELL, HE CAME HOME AT  
10:30.

HE SAID HE CAME HOME AT 10:30.  
AND HER TESTIMONY AT TRIAL, SHE  
DIDN'T CONTRADICT THAT.

SHE SAID, BECAUSE SHE SAID HE  
OFTEN COMES HOME EARLY, HE'LL  
SIT ON THE PORCH, LISTEN TO  
MUSIC, THEN WHEN HE'S READY TO  
COME IN, HE'LL KNOCK ON THE  
DOOR, AND I LET HIM IN.

SO IT'S COMPLETELY DIFFERENT  
WHEN YOU HAVE YOUR WIFE CALLING  
YOU A LIAR AND THE JURY'S  
HEARING THAT VERSUS WHAT HER  
TESTIMONY WAS.

AND THE JURY COULD HAVE FROM HER  
TRIAL TESTIMONY CAME TO THE  
CONCLUSION THAT HE CAME HOME AT  
10:30, AND HE SAT ON THE PORCH  
AND DRANK BEER, LISTENED TO  
MUSIC AND THEN CAME IN AT TWO  
A.M.

>> WELL, THE BOTTOM LINE IS, AND  
IT'S NOT-- I REALIZE HARMLESS  
ERROR IS NOT A AMOUNT OF  
EVIDENCE, BUT, I MEAN, ONE OF  
THE MOST DAMNING PARTS OF THE

TESTIMONY IS THAT NEIGHBORS SAW HIM IN THE HOUSE, IN THE VICTIM'S HOUSE AND JUST THOUGHT, WELL, MAYBE THERE'S SOMETHING ELSE GOING ON, MAYBE HE'S HELPING OUT.

BUT SPECIFICALLY IDENTIFIED HIM AND, ACTUALLY, WAS CONCERNED ENOUGH THAT WENT AROUND AND GOT HIS, HIS LICENSE PLUS HIS DNA. SO IT SEEMS-- AND, AGAIN, I ASKED YOU TO START WITH THIS ISSUE, BUT I KNOW YOU WANTED TO TALK ABOUT OTHER ISSUES.

I'M JUST NOT SURE, AND THE QUESTION, I GUESS, IS THE SPONTANEOUS STATEMENT HE'S NOT TELLING THE TRUTH, OR HE CAME HOME AT TWO A.M.

IS IT BOTH PARTS?

>> BOTH PARTS.

>> YOU'RE SAYING--

>> WE'RE SAYING--

>> I MEAN, NEITHER PART SHOULD COME IN?

>> CORRECT.

AND THE COMBINATION OF THEM IS VERY DAMAGING TO THE CREDIBILITY TO THE WHOLE DEFENSE.

>> DO YOU WANT TO GO TO THE FIRST ISSUE THAT YOU WERE GOING TO TALK ABOUT, WAS THIS DNA AND BEING ABLE TO QUESTION THE LAB PERSON ON ERRORS SHE HAD MADE IN THE PAST?

AND THE ARGUMENT REALLY IS THAT THAT, YOU DON'T CROSS-EXAMINE ON PRIOR, I MEAN, THERE'S NOT AN ISSUE THAT SHE'S, WHETHER SHE'S COMPETENT IN THIS PARTICULAR EXAMINATION, SO HOW IS IT RELEVANT THAT SHE HAD MADE ERRORS IN THE PAST?

>> THE ISSUE ISN'T WHETHER SHE'S COMPETENT, BUT IT'S WHETHER SHE COULD HAVE MADE A MISTAKE.

SO, OBVIOUSLY, WHAT WE'RE LEFT WITH IF YOU'RE NOT ALLOWED TO CROSS-EXAMINE ABOUT PRIOR INCIDENTS OF CONTAMINATION, THE

JURY NEVER LEARNS OF THIS.

THIS IS ONE POSSIBLE--

>> BUT THIS WOULD, THIS WOULD CHANGE THINGS, ALL OF THESE PROCEEDINGS, THE FUNDAMENTAL CHARACTER, BECAUSE IT WOULD ALWAYS BE ABOUT SOME MISTAKE, SOMEBODY ELSE-- I'M SORRY, SOME MISTAKE THAT THE WITNESS MADE AT SOME OTHER TIME AS OPPOSED TO IN THIS CASE?

I JUST CANNOT SEE HOW THAT CAN BE RELEVANT TO WHETHER THERE WAS A MISTAKE IN THIS CASE.

HOW-- WE ALL KNOW THAT IT'S POSSIBLE THAT AN EXPERT WILL MAKE A MISTAKE.

WE KNOW THAT.

THE QUESTION IS WHETHER THERE IS A BASIS FOR CHALLENGING THE TESTIMONY OF THE EXPERT IN THIS PARTICULAR CASE.

AND TO GO RANGING AROUND IN THE PAST AND TO SAY, OH, YOU MADE A MISTAKE FIVE YEARS AGO OR TWO YEARS AGO OR THREE YEARS AGO, THEREFORE, YOU MUST BE MISTAKEN NOW OR YOU COULD BE MISTAKEN NOW, IS THAT THE WAY THESE PROCEEDINGS WORK OR COULD WORK?

>> WELL, WHEN YOU'RE DEALING WITH AN EXPERT WITNESS WHO IS DOING A PROCEDURE OVER AND OVER AND OVER AGAIN, THEN YOU SAID WE ALL KNOW THAT EXPERTS CAN MAKE MISTAKES.

WELL, AND THAT'S NOT CLEAR, YOU KNOW?

FROM THE TESTIMONY WE HAVE NO BASIS OF KNOWING SINCE THEY WERE PRECLUDED FROM CROSS-EXAMINING THE DNA EXPERTS, WE HAVE NO WAY OF KNOWING THAT THEY'VE EVER MADE MISTAKES IN THE PAST.

>> TO ERR IS HUMAN.

I MEAN, IT'S A PART OF THE HUMAN CONDITION THAT PEOPLE MAKE MISTAKES, ISN'T IT?

ISN'T THAT SOMETHING THAT ANY JURY'S GOING TO KNOW?

>> WELL, THEY MAY OR MAY NOT KNOW AS FAR AS IN THIS PARTICULAR PROCEDURE.

>> WELL, IF YOU'VE GOT TO DO THAT, THEN WOULD THE STATE BE ABLE TO SAY, WELL, IN FIVE CASES-- BECAUSE YOU'RE TALKING ABOUT FIVE CASES OUT OF 5,000-- THAT THEY WOULD THEN BE ABLE TO GET INTO, WELL, IN THAT CASE THE REASON FOR IT WAS THIS, AND THAT WASN'T PRESENT IN THIS CASE? I MEAN, DON'T YOU HAVE TO SHOW SOMETHING MORE TO HAVE IT BECOME RELEVANT TO WHAT HAPPENED IN THIS CASE?

WASN'T IT THAT WHEN YOU TOOK THIS KIND OF SAMPLE, IT HAPPENED, AND HOW DID YOU PREVENT IT?

I MEAN, THAT'S-- MY CONCERN IS IT BECOMES INSTEAD OF FOCUSING ON THIS CASE A TRIAL OF THESE FIVE OTHER CASES.

>> WELL--

>> BECAUSE SHE'S NOT, YOU'RE NOT CHALLENGING THAT SHE'S NOT AN EXPERT, ARE YOU?

>> NO.

>> OKAY.

SO THE QUESTION THEN IS HOW MUCH CAN YOU GET INTO PRIOR CASES THAT ARE NOT RELEVANT TO THE CASE AT HAND?

>> THE DEFENDANT SHOULD BE ABLE TO CROSS-EXAMINE ON ANYTHING THAT MAY MODIFY, SUPPLEMENT, CLARIFY OR MAKE CLEARER THE FACTS.

WHAT HAPPENED IN THIS CASE IS BOTH DNA EXPERTS TESTIFIED THAT THEY DID X NUMBER-- SHE DID NEARLY 5,000 DNA ANALYSIS.

SO THEY'RE LEFT-- AND THE OTHER EXPERT, MICHAELS, THAT HE DID NEARLY 1,500 DNA ANALYSIS.

SO WE'RE LEFT WITH THE ASSUMPTION THAT THOSE ANALYSIS ALL WENT CLEARLY WITHOUT A HITCH, THERE WAS NO ERROR IN



THEM--

>> SO YOU THINK THAT REALLY IS THE PART THAT OPENS THE DOOR. ONCE THEY SAY SOMEBODY'S DONE-- I MEAN, WHICH MAY BE A POINT-- THAT YOU'VE DONE 5,000, YOU DON'T GET TO SAY, WELL, DO YOU EVER-- ARE YOU ALLOWED TO ASK DO YOU EVER MAKE A MISTAKE? COULD YOU ASK THAT QUESTION? DID YOU TRY TO ASK-- DID SOMEONE TRY TO ASK THAT QUESTION?

>> THAT, THAT WAS NOT ASKED BECAUSE IT APPEARED TO BE PRECLUDED FROM--

>> WELL, I THINK THAT'S DIFFERENT.

TO SAY THE IMPLICATION IS YOU'VE DONE 5,000 SO THAT MUST MEAN YOU'RE, YOU KNOW, ARE YOU ALWAYS CORRECT?

>> AND WHEN SHE TESTIFIED THAT SHE HAD DONE 5,000 CASES, DEFENSE COUNSEL RENEWED HIS ARGUMENT THAT HE SHOULD BE ABLE TO CROSS-EXAMINE HER NOW ABOUT PAST INSTANCES OF CONTAMINATION. AND THE TRIAL COURT STILL DENIED HIM.

>> I GUESS THIS GOES BACK TO BUT THERE WAS NO EVIDENCE TO GET INTO THAT THERE COULD POSSIBLY HAVE BEEN CONTAMINATION IN THIS CASE.

I DON'T KNOW ENOUGH OR ANYTHING ABOUT THE OTHER CASES, BUT THAT'S DIFFERENT THAN, WELL, YOU KNOW, WE USED TO HAVE A LOT OF CASES WITH BREATHALYZERS, AND THERE WOULD BE PROBLEMS WITH THE MACHINE.

SO IF THERE WAS AN ISSUE OF THE MACHINE USED IN THIS CASE THAT WAS, THAT WOULD COME IN.

SO THAT'S, YOU KNOW, AGAIN--

>> I MEAN, HOW IS THE DEFENSE GOING TO GET THIS INFORMATION TO BE ABLE TO ESTABLISH CONTAMINATION?

IT'S GOING TO BE, YOU KNOW, IT'S GOING TO BE THE DNA, THE STATE'S EXPERTS.

THEY HAVE ALL THE DNA.

AND IF THEY'RE DOING THE TESTING AND THEY CONTAMINATE IT SOMEHOW--

>> YOU MUST HAVE GOTTEN THE RECORDS, RIGHT?

YOU GOT THE RECORDS TO SHOW THERE HAD BEEN CONTAMINATION.

>> RIGHT.

BUT THEY MAY OR MAY NOT KNOW WHETHER OR NOT THERE WAS CONTAMINATION.

>> THEN IT'S REALLY SPECULATIVE.

[LAUGHTER]

I MEAN, YOU KNOW, I FEEL-- I MEAN, I UNDERSTAND WHAT YOU'RE SAYING.

YOU RAISED A POINT ABOUT THIS OTHER, THE PRIOR, THESE TWO CARJACKING SUSPECTS THAT WERE ON, SEVERAL BLOCKS AWAY, THAT YOU SHOULD HAVE BEEN ABLE TO INTRODUCE THIS AS THAT THEY WERE POSSIBLE SUSPECTS OR POSSIBLE, POSSIBLE MURDERERS.

IS THAT, THAT'S YOUR OTHER POINT?

>> CORRECT.

THAT WAS THE SECOND ISSUE, THAT THE DEFENSE HAD PROFFERED TESTIMONY FROM THE NEIGHBOR THAT LIVED SEVERAL BLOCKS AWAY FROM THIS INCIDENT.

HE GOES OUT AT NIGHT, I THINK TO SMOKE A CIGARETTE, WHATEVER. IT'S BETWEEN 1 AND 3:00 IN THE MORNING.

AND HE SEES THESE TWO PEOPLE OUT THERE, THEY HAVE NO SHIRTS ON, AND THEY'RE TRYING TO GET INTO A CAR.

HE YELLS AT THEM.

WHEN HE YELLS AT THEM, THEY TAKE OFF RUNNING.

SO BASICALLY, I MEAN, THAT'S-- THE THEORY OF THE DEFENSE IS SOMEONE OTHER THAN MR. SEXTON

COMMITTED THIS CRIME.  
AND IF THAT'S THE CASE, HE  
SHOULD BE ABLE TO PRESENT ANY  
EVIDENCE TO ESTABLISH THAT.  
HE DOESN'T HAVE TO, YOU KNOW,  
THE EVIDENCE HE'S PRESENTING  
DOESN'T HAVE TO CONCLUSIVELY  
PROVE, YOU KNOW, WHAT HE'S  
PRESENTING.

IT'S ANY EVIDENCE THAT TENDS TO  
CREATE A REASONABLE DOUBT SHOULD  
BE ADMISSIBLE IN THE CASE.

AND SO THAT'S WHAT WE'RE SAYING.

>> A CRIME, A POTENTIAL CRIME  
THAT HAPPENS SEVERAL BLOCKS AWAY  
IS ENOUGH, YOU THINK, TO FIT  
INTO YOUR CATEGORY OF ANY  
EVIDENCE THAT WOULD CREATE A  
REASONABLE DOUBT?

>> WELL, ALSO YOU HAVE TO HAVE  
TIME AND LOCATION.

SO IF IT HAPPENED, YOU KNOW,  
HALF A DAY OR A DAY LATER--

>> NO--

>>-- NO.

>> YOU SAID THAT NIGHT, BUT  
SEVERAL BLOCKS AWAY TWO PEOPLE  
WERE TRYING TO BREAK INTO A CAR?

>> WELL--

>> POSSIBLY?

AND SO THAT SHOULD BE ADMISSIBLE  
TO SHOW A REASONABLE DOUBT?

>> WELL, AND THEY DON'T HAVE  
SHIRTS ON, OKAY?

AND WE KNOW THIS IS A BLOODY  
CRIME SCENE.

THEY COULD HAVE TAKEN THEIR  
SHIRTS OFF TO GET RID OF BLOOD.

>> SO YOU'RE, THE IDEA IS THAT  
THIS, THESE TWO, THIS WOULD HAVE  
HAPPENED AFTER, THAT THEY KILLED  
THE VICTIM?

>> RIGHT.

>> THERE'S NO INDICATION THAT  
THERE WERE TWO PEOPLE, IS THERE  
ANY INDICATION THAT TWO PEOPLE  
COMMITTED THIS CRIME?

>> THERE WAS-- ONE OF THE  
KNIVES FOUND ON THE LIVING ROOM  
FLOOR, THERE WAS DNA TESTING

WHERE BLADE OF THE KNIFE MATCHED THE VICTIM'S DNA, AND THE HANDLE OF THE KNIFE MATCHED DNA FROM SOMEONE, FROM A MALE, SOMEONE OTHER THAN MR. SEXTON.

SO, YEAH, THERE'S A POSSIBILITY THAT THERE WAS SOMEONE ELSE.

>> OKAY.

ON YOUR-- AGAIN, I THINK THE JUDGE WEIGHED THAT.

WHAT WAS THE JUDGE'S BASIS FOR DECIDING THAT IT SHOULD NOT COME IN TO EVIDENCE?

I MEAN, IS THIS A DISCRETIONARY ISSUE, ANOTHER JUDGE MIGHT HAVE LET IT IN FOR WHATEVER IT WAS WORTH EVEN THOUGH IT SEEMS PARTICULARLY FARFETCHED?

>> WELL, HIS BASIS-- WHICH WE THINK WAS TOTALLY WRONG-- WAS THAT HE WAS LOOKING AT IT AS REVERSE WILLIAMS RULE.

AND THAT'S NOT THE PURPOSE THIS WAS, WE WERE TRYING TO PRESENT IT.

>> YOU WANT TO SHOW THERE WERE OTHER POSSIBLE SUSPECTS IN THE AREA.

>> CORRECT.

>> AND SO I WOULD AGREE WITH, ON THAT-- I WOULD AGREE WITH YOU THAT IF THERE WAS SOME POSSIBLE BASIS THAT THESE TWO COULD HAVE BEEN INVOLVED IN THE CRIME, THAT, YOU KNOW, THEY WOULD BECOME RELEVANT.

BUT DID THEY ALSO-- WAS THERE ANY ISSUE OF THE PERSON WHO SAW THEM SAYING, YOU KNOW, WHAT RACE THEY WERE, HEIGHT, ANYTHING ABOUT THE PHYSICAL APPEARANCE OF THESE TWO?

>> NO.

THERE WASN'T ANY-- BUT ONCE HE HEARD OF--

>> WHAT IS HIS, WHAT DOES THE DEFENDANT LOOK LIKE?

HE'S TALL, SHORT?

WHAT'S THE, WHAT'S HIS AGE?

WHAT ARE THE--

>> HE WAS 47 AT THE TIME OF THE CRIME, PROBABLY SIX FEET.

>> SIX FEET, 47, AND WHITE? BLACK?

>> WHITE.

>> OKAY.

AND ANYTHING ABOUT-- BEFORE YOU'RE GOING TO GET IN ABOUT THESE TWO OTHER SUSPECTS, DID THE PERSON WHO IDENTIFIED THEM SAY HOW OLD THEY WERE, HOW, WHAT THEIR RACE WAS, WHAT THEIR HEIGHT WAS?

>> NO.

>> I MEAN, AGAIN, THAT'S WHAT-- IT WOULD SEEM TO ME BECAUSE I KNOW WE'VE HAD THIS IN A CASE WHERE SOMEONE'S TRYING TO SAY IT WAS SOMEONE ELSE, THEY JUST MISTOOK IT, THAT YOU HAVE TO AT LEAST SHOW SOMETHING THAT WOULD BE A LITTLE SIMILAR TO WHAT PEOPLE IN THE, THAT SAW HIM IN THE HOUSE AND HIS TRUCK'S THERE WOULD SAY, WELL, THEY WERE CONFUSED BECAUSE THESE ARE THE MORE LIKELY SUSPECTS.

>> THE PEOPLE THAT SAW HIM IN THE HOUSE DID NOT GIVE ANY DESCRIPTION AT ALL.

>> I THOUGHT THEY WERE ABLE TO IDENTIFY HIM.

>> THEY, THERE WERE THE THREE NEIGHBORS THAT CAME OUT.

TWO OF THEM IDENTIFIED HIM--

>> OKAY.

SO WHEN YOU SAID THEY DIDN'T GIVE A DESCRIPTION, BETTER-- I MEAN, INSTEAD OF SAYING A SIX-FOOT, 47-YEAR-OLD WHITE MALE, THEY SAID IT'S SEXTON.

>> NO.

>> WHO-- WHAT, THAT MOWS HER LAWN?

>> THEY IDENTIFIED HIM AT TRIAL, BUT THEY WERE ALSO SHOWN PHOTO PACKS, AND THEY WERE NOT ABLE TO PICK HIM OUT OF THE PHOTO PACKS. AND THIS ISN'T A PERSON THAT THEY DIDN'T KNOW, BECAUSE

MR. SEXTON HAD PREVIOUSLY APPROACHED THEM AND ASKED THEM IF HE COULD CUT THEIR LAWNS ON MORE THAN ONE OCCASION.

SO THEY KNEW WHAT HE LOOKED LIKE.

WHEN THEY WERE SHOWN HIS PICTURE IN A PHOTO PACK, THEY COULDN'T IDENTIFY HIM.

THE WOMAN, THEY CAME BACK A SECOND TIME WITH A MORE CURRENT PHOTO.

THE WOMAN STILL COULD NOT IDENTIFY HIM.

KARLYN, HE SELECTED TWO PHOTOGRAPHS THAT COULD POSSIBLY BE HIM.

>> WELL, WE'RE GETTING A LITTLE FAR-- YOU HAVE, HAVEN'T QUESTIONED THEIR, AS AN ISSUE OF APPEAL, THEIR IDENTIFICATION, CORRECT?

THEY IDENTIFIED HIM AT TRIAL, AND YOU HAVEN'T ESTABLISHED ANYTHING IN THE RECORD THAT WOULD SHOW THESE SUSPECTS WERE EVEN POSSIBLY SIMILAR TO THIS DEFENDANT.

AND I THINK AT LEAST-- THAT'S NOT A WILLIAMS RULE ISSUE, IT'S JUST A RELEVANCY ISSUE.

>> WELL, IT'S NOT-- THERE'S NO REASON TO THINK THEY WOULD BE SIMILAR.

WE DON'T KNOW, THERE WAS NO EYEWITNESS AS TO WHO COMMITTED THE MURDER, THERE WAS NO DNA ON ANY OF THE MURDER WEAPONS CONNECTED--

>> WELL, BECAUSE WHOEVER COMMITTED THE MURDER DID, SPENT A LOT OF TIME AFTERWARDS TRYING TO CLEAN UP.

COULD YOU, THE LAST POINT YOU'VE RAISED IS ABOUT THE PHOTOGRAPHS, AND THERE IS, OF COURSE, A VERY, TO ME, HIGHLY INFLAMMATORY ISSUE ABOUT POSTMORTEM ANAL PENETRATION BY AN OBJECT. THAT CAME-- YOU'RE NOT

QUESTIONING-- DID YOU QUESTION WHETHER EVIDENCE OF THAT SHOULD COME IN OR THAT THE PHOTOGRAPH OF IT SHOULDN'T COME IN?

THE POSTMORTEM ANAL PENETRATION?  
>> RIGHT.

THE PHOTOGRAPH OR EVIDENCE OF IT SHOULDN'T HAVE COME IN BECAUSE IT WASN'T RELEVANT TO ANY ISSUE IN DISPUTE.

>> AND WHAT WAS THE JUDGE'S RULING AS TO THAT PARTICULAR PHOTOGRAPH?

AS TO WHY THE POSTMORTEM PENETRATION WAS RELEVANT?

>> I DON'T, I DON'T CLEARLY REMEMBER WHAT HE SAID, I JUST KNOW IT WAS ADMISSIBLE.

>> YOU'RE INTO YOUR REBUTTAL TIME.

>> OKAY.

I JUST BRIEFLY WANTED TO MENTION THAT MR. SEXTON'S ALSO ENTITLED TO A NEW PENALTY PHASE BASED ON THE ERRORS THAT I'VE OUTLINED IN THE INITIAL BRIEF IN SECTIONS 5-11.

>> WELL, YOU ALSO-- IF THE HURST CASE GOES THE WAY MR. HURST WOULD LIKE IT, IT SEEMS LIKE THERE'S A HURST ISSUE HERE, BECAUSE SEXUAL BATTERY WAS NOT FOUND BY THE JURY.

>> YEAH.

IT'S A PURE RING ISSUE--

>> IT'S NOT A PURE, IT'S A PURE-- IT'S A HURST ISSUE.

>> WELL, OKAY.

>> OKAY, ANYWAY--

>> THANK YOU.

>> MAY IT PLEASE THE COURT, CHRISTINA ZUCCARO FROM THE OFFICE OF THE ATTORNEY GENERAL REPRESENTING THE STATE OF FLORIDA ON THIS CASE.

>> COULD YOU GO TO THAT LAST QUESTION?

I MEAN, AS I'M READING THE FACTS, IT'S-- THEY'RE SO DISTURBING, THIS 94-YEAR-OLD

VICTIM.

AND YOU'RE READING IT, JUST CANNOT BELIEVE-- YOU KNOW, THAT'S AN EMOTIONAL REACTION AS YOU READ THESE FACTS AS MUCH AS YOU READ OVER THE YEARS.

YOU JUST, THERE'S SOMETHING, AN AN ACTIVE 94-YEAR-OLD.

THE POSTMORTEM ANAL PENETRATION, WHAT WAS THE-- AND THE PHOTOGRAPH, I GUESS, ASSOCIATED WITH IT.

COULD YOU EXPLAIN WHAT THE JUDGE FOUND AS BEING THE RELEVANCE AND WHETHER THAT, YOU KNOW, WHETHER THE PREJUDICIAL EFFECT WOULD OUTWEIGH ANY PROBATIVE VALUE?

>> THE COURT-- INITIALLY THERE WAS A MOTION HEARING ON THE POSTMORTEM INJURIES, AND THE COURT DENIED THE DEFENSE'S MOTION AND STATED THAT IT WOULD LOOK AT THE PHOTOS AS THEY CAME IN THROUGH TRIAL TO DETERMINE--

>> BUT THAT'S THE PHOTOS.

BUT, ACTUALLY, THERE MUST HAVE BEEN TESTIMONY FROM THE MEDICAL EXAMINER, BECAUSE THE VAGINAL PENETRATION, THERE WAS EVIDENCE THIS OCCURRED PREMORTEM--

>> YES.

>>-- AND WAS THE BASIS FOR THE JUDGE FINDING SEXUAL BATTERY. THE STATE DIDN'T CHARGE SEXUAL BATTERY WHICH THEY DON'T HAVE TO CHARGE, BUT-- THEREFORE, THE JURY NEVER FOUND SEXUAL BATTERY BEYOND A REASONABLE DOUBT.

SO THE QUESTION OF THE SCOPE OF THE MEDICAL EXAMINER'S TESTIMONY, I MEAN, THERE WAS SOME POSTMORTEM, I THINK, A BREAST WAS-- I MEAN, THERE WERE VICIOUS--

>> YES.

>>-- BOTH PRE- AND POSTMORTEM WOUNDS AND ACTS.

SO WAS THAT RELEVANT TO, OBVIOUSLY, ANYTHING THAT HAPPENED PREDEATH IS RELEVANT TO



HAC, TO THE MURDER.  
THE POST WAS AND, CERTAINLY, THE  
CLEANING UP.

SO WAS THAT JUST PART OF THIS IS  
WHAT HAPPENED AFTERWARDS, AND  
IT'S GOING TO COME IN FOR THAT,  
OR DID THEY NOT QUESTION THE  
TESTIMONY, JUST THE PHOTOGRAPHS?

>> THERE WASN'T A SPECIFIC  
RULING AS TO THE TESTIMONY AND  
THE PHOTOGRAPHS.

IT WAS KIND OF THE COURT JUST  
LOOKED AT EACH ONE, AND THE  
COURT CAREFULLY CONSIDERED.  
AND SOME PICTURES THE COURT  
EXCLUDED AND THEN SOME THE COURT  
ADMITTED.

AND THE VASE IN THE RECTUM, IT  
WAS RELEVANT TO THE STATE'S CASE  
BECAUSE THE MEDICAL EXAMINER  
TESTIFIED THAT THERE WAS SEXUAL  
BATTERY THAT OCCURRED, THE  
VAGINAL PENETRATION, AND THAT  
OCCURRED EITHER BY AN OBJECT OR  
A PENIS.

THE MEDICAL EXAMINER TESTIFIED  
THAT IT VERY WELL COULD HAVE  
BEEN CAUSED BY THE VASE THAT WAS  
FOUND IN HER RECTUM.

SO THE PHOTOGRAPH WAS RELEVANT  
FOR THAT PURPOSE.

THE MEDICAL EXAMINER USED THAT  
PHOTOGRAPH TO TESTIFY AS TO ALL  
OF THE DIFFERENT--

>> SO THAT'S HOW TO, SO THAT  
WOULD BE-- AND THAT'S THE ONE,  
DID THE JUDGE, WERE THERE  
CERTAIN PHOTOGRAPHS THAT WERE  
EXCLUDED?

>> YES.

>> THE JUDGE MADE DECISIONS AS  
TO LIMITING THE PHOTOGRAPHS.

>> YES, MOST CERTAINLY.

THE JUDGE EXCLUDED VARIOUS  
PHOTOGRAPHS.

THERE'S ONLY FOUR PHOTOGRAPHS  
HERE THAT ARE AT ISSUE.

IN TWO OF THOSE PHOTOGRAPHS, THE  
VICTIM'S BODY IS COVERED BY A  
SHEET, AND IN THE OTHER TWO

THERE ARE-- THE SHEET HAS BEEN REMOVED, AND THOSE PHOTOGRAPHS WERE USED BY THE MEDICAL EXAMINER.

AND THE OTHER ONE WAS USED BY THE BLOOD SPATTER EXPERT TO EXPLAIN THE BLOOD RADIATING FROM HER HEAD AND HER BODY AND HOW HER POSITIONING WAS.

SO THEY WERE MOST CERTAINLY RELEVANT.

THEY WERE LIMITED.

THERE WAS NOT A LOT OF THEM THAT WERE USED.

THE COURT CAREFULLY CONSIDERED THEM AND RULED APPROPRIATELY IN THIS INSTANCE.

THERE WAS NO ABUSE OF DISCRETION HERE.

>> NOW, WHAT ABOUT THE-- ON THE DNA, THERE'S SORT OF AN INTERESTING ISSUE.

YOU GO AND SAY OUR DNA EXPERT DID 5,000 OR 1,500.

WHAT CROSS-EXAMINATION IS PERMISSIBLE ABOUT WHEN THE STATE PUTS ON HOW MANY THEY DID?

DO THEY GET TO ASK, WELL, DO YOU EVER MAKE MISTAKES?

CAN THEY ASK THAT GENERAL QUESTION?

>> I BELIEVE THEY COULD HAVE.

HOWEVER, TO GO INTO THOSE 5,000 CASES THEN THERE WOULD, IT WOULD CREATE A HUGE PROBLEM BECAUSE THEN IT WOULD BECOME A CASE ABOUT THESE OTHER CASES, AND THE STATE WOULD HAVE ANOTHER EXPERT COME IN TO TESTIFY AS TO THOSE OTHER CASES, AND IT WOULD JUST BE COMPLETELY CONFUSING FOR THE JURY AND GET SO OFF TOPIC THAT IT WAS JUST NOT PROPER TO HAVE CROSS-EXAMINATION ABOUT THOSE INSTANCES OF CONTAMINATION.

>> WELL, WHAT IF THE EXPERT TESTIFYING ABOUT THE EXPERT HAD MADE A MISTAKE?

COULD YOU THEN BRING IN ANOTHER EXPERT?

I MEAN, IT'S LIKE AN INFINITE  
REGRESS.

>> IT IS.

>> WE'RE GOING TO BE PICKING AT  
PEOPLE'S MISTAKES.

>> IT IS.

SO THE COURT CERTAINLY PROPERLY  
EXERCISED ITS DISCUSSION IN  
LIMITING THE CROSS-EXAMINATION  
FOR THAT REASON.

AND ALSO, IMPORTANTLY, THE  
DEFENSE HIRED THEIR OWN DNA  
EXPERT, AND THAT EXPERT DID NOT  
FIND ANY CONTAMINATION IN THIS  
CASE.

>> AND THAT'S PROBABLY THE MOST,  
TO ME, THAT'S THE MOST CRITICAL  
ISSUE.

>> EXACTLY.

>> IT BECOMES COMPLETELY  
IRRELEVANT, BECAUSE EVEN THE  
DEFENSE CONCEDES THERE'S NO  
CONTAMINATION.

SO IT'S A FALSE ISSUE.

>> YES.

>> BUT WE HAVE TO BE CAREFUL,  
BECAUSE, YOU KNOW, WE'VE HAD  
THIS, YOU KNOW, THE FBI  
ADMITTING CERTAIN KINDS OF  
ANALYSIS THAT WERE DONE AT ONE  
POINT, ERRORS IN ANALYSIS.  
SO IT'S NOT LIKE THESE EXPERTS  
ARE INFALLIBLE, AND WE'VE GOT TO  
MAKE SURE WE'RE CAREFUL WHERE WE  
DRAW THE LINE.

WOULD YOU AGREE WITH THAT?

>> I DO AGREE, YOUR HONOR.

>> AND THIS WAS NOT RAISED IN  
SOME KIND OF OBJECTION TO THE  
QUALIFICATION OF THE EXPERT.

>> NO.

NO, IT WASN'T, YOUR HONOR.  
AND MOVING ON TO THE HEARSAY  
ISSUE WITH KATHERINE SEXTON, I  
BELIEVE, JUSTICE PARIENTE, YOU  
POINTED OUT THAT SHE DID, IN  
FACT, TESTIFY DURING TRIAL.  
SHE TESTIFIED BEFORE THE  
DETECTIVE TESTIFIED, AND  
THERE--

>> WELL, SO THEN-- OKAY.  
SO IF SHE TESTIFIED-- THIS IS  
NOT-- SHE TESTIFIED  
CONSISTENTLY WITH WHAT SHE HAD  
SAID AT THE SCENE.

>> YES.

>> BUT WAS THE DEFENSE  
SUCCESSFUL IN MAYBE RAISING A  
DOUBT AS TO WHETHER HE REALLY  
CAME HOME AT TWO A.M., THAT HE  
COULD HAVE MAYBE GOTTEN HOME AT  
10:30?

>> I BELIEVE THE DEFENSE WAS,  
AND FOR THAT VERY REASON THE  
STATE CONTENDS THAT THERE  
ABSOLUTELY COULD BE NO HARMFUL  
ERROR.

>> WELL, THERE WOULD BE HARMFUL  
ERROR, IN OTHER WORDS, IF THEY,  
IF THEY SUCCEEDED, IF THE  
DEFENSE SUCCEEDED IN HAVING  
HER-- THE QUESTION AS TO  
WHETHER HE GOT HOME AT TWO A.M.  
OR TEN P.M.

BUT THEN AFTERWARDS THE  
DETECTIVE WHERE NOTHING'S  
RECORDED, SHE SAYS TO HIM  
QUIETLY-- SHE DOESN'T EXCLAIM  
IT, LIKE, YOU KNOW, YOU ARE A  
LIAR, YOU KNOW?

PRETTY UPSETTING.

SHE WHISPERS, "HE'S NOT TELLING  
THE TRUTH."

HE CAME HOME AT TWO P.M -- TWO  
A.M.

IT SEEMS THAT THAT KIND OF PUTS  
TO REST ANYTHING THAT THE  
DEFENSE DID IN  
CROSS-EXAMINATION.

I MEAN, THAT-- SO BACK TO THE  
HARMLESS ERROR ISSUE, IT DOES  
BECOME, I MEAN, IT MAY NOT--  
THE WHOLE SCHEME OF THIS CASE,  
YOU KNOW, BUT DOESN'T THAT KIND  
OF PUT TO REST ANY HELP THAT  
ANYTHING THEY DID IN  
CROSS-EXAMINATION?

>> I UNDERSTAND, YOUR HONOR, BUT  
I DON'T AGREE, RESPECTFULLY,  
BECAUSE--

>> YOU DON'T AGREE THAT THAT WOULD BE PRETTY POWERFUL, THE HUSBAND IS STANDING THERE JUST TELLING THIS STORY, AND THE WIFE SAYS HE'S A LIAR?

I MEAN--

[LAUGHTER]

IT'S PRETTY, YOU KNOW, AT THE TIME THAT IT HAPPENED WHERE SHE DOESN'T, YOU KNOW?

IT SEEMS TO ME THAT'S PRETTY POWERFUL EVIDENCE TO TAKE ANYTHING SHE MIGHT HAVE HEDGED AT AT TRIAL.

>> WELL, SHE TESTIFIED THAT HE DID, IN FACT, COME HOME AT 1:55 OR 2 A.M. IN THE MORNING, AND THE DEFENSE THEN ASKED HER, WELL, DOESN'T SOMETIMES HE WILL COME HOME AND JUST SIT OUTSIDE FOR A WHILE?

ISN'T IT POSSIBLE THAT HE SAT OUTSIDE AND DIDN'T ACTUALLY KNOCK ON THE DOOR UNTIL 2 A.M.? AND SHE SAID THAT WAS, IN FACT, POSSIBLE.

SO WHEN HER STATEMENT CAME IN, THE JURY THEN-- AND WHILE THEY'RE HEARING IT, THEY COULD KEEP IN MIND THE FACT THAT IT WAS, IN FACT, POSSIBLE THAT SHE JUST, THAT WAS THE TIME THAT SHE HEARD HIM COME HOME, BUT HE ACTUALLY COULD HAVE BEEN SITTING OUTSIDE BEFORE THAT.

>> WELL, ALSO, AND A FRIENDLY QUESTION TO HIM, SHE SAW HIM DURING-- WASN'T THERE OTHER TIMES SHE SAW HIM?

>> YES.

>> AND HE WAS GETTING PROGRESSIVELY MORE DRINKING. AND SHE WAS SAYING YOU ARE, YOU KNOW, YOU'RE SLEEPING ON THE COUCH?

WHAT WAS THAT TIMELINE THAT SHE TESTIFIED TO?

>> SHE SAW HIM AT CIRCLE K, AND I BELIEVE THAT WAS AROUND 9:45. SO HE PURCHASED A BEER THERE AND

DROVE AROUND IN HIS CAR DRINKING A BEER.

SO HIS TESTIMONY, OR HIS CLAIM THAT HE CAME HOME AT 10:30 IS NOT REASONABLE GIVEN, GIVEN THE FACT THAT HE WAS AT CIRCLE K. AND MOST IMPORTANTLY, THE NEIGHBORS SAW HIM AT THE VICTIM'S HOME AT, AFTER MIDNIGHT THAT NIGHT.

>> HIS CAR WAS AT-- IT WAS HIS TRUCK THAT THEY TOOK DOWN THE LICENSE PLATE NUMBER OF THAT NIGHT, CORRECT?

>> YES.

>> AND THEY TOOK THAT DOWN AT SOMETIME AROUND MIDNIGHT?

>> THAT'S CORRECT.

>> WAS THERE--

>> BUT HE LIVED, WHAT, ONLY A MILE OR SO--

>> YES.

>>-- AWAY FROM THE VICTIM, CORRECT?

>> HE DID.

>> WHERE WAS THE CIRCLE K IN RELATIONSHIP TO THIS?

>> I'M NOT SURE HOW FAR AWAY IT WAS.

I KNOW THAT HE ALSO MADE A STOP TO DROP OFF HIS TRAILER AT SOME POINT AT A LOCATION FOR THE NEXT DAY.

WHEN HE WENT TO THE VICTIM'S HOME, THERE WAS NO TRAILER ATTACHED TO HIS TRUCK, AND THERE WAS ALSO TESTIMONY FROM A NEWSPAPER DELIVERYMAN THAT BETWEEN 1:45 AND 2 A.M. HE SAW THE SAME CAR THAT MR. SEXTON HAD BLOW THROUGH A STOP SIGN THAT WAS ON THE VICTIM'S STREET AND WAS GOING SO FAST THAT IT ALMOST HIT HIM.

>> WELL, TELL ME, WHAT TIME WAS IT THAT THE TWO PEOPLE WITH NO SHIRTS WERE VIEWED AT SOMEONE'S HOUSE SOME BLOCKS AWAY?

>> THE TESTIMONY WAS THAT THAT WAS BETWEEN ONE A.M. AND THREE

A.M.

IT WAS SEVERAL STREETS OVER.  
THERE WERE TWO, THESE TWO  
SHIRTLESS MEN.

THERE WAS NOTHING VIOLENT ABOUT  
THEM.

THEY WERE JUST TRYING TO OPEN  
THE DOOR OF A CAR.

HERE WE HAVE A HORRENDOUSLY  
VIOLENT MURDER.

THE COURT WAS ABSOLUTELY WITHIN  
ITS DISCRETION TO EXCLUDE THAT  
TESTIMONY BECAUSE THE CRIMES OR  
EVEN ATTEMPTED CRIMES WERE SO  
DISSIMILAR TO THE MURDER.

>> BUT ISN'T IT MORE-- IT'S NOT  
REALLY-- THAT'S WHERE I THINK  
THE COURT OR MAYBE IT WAS LED TO  
THAT.

THE ISSUE ISN'T WHETHER-- IF  
IT'S CARJACKING, I MEAN, THE  
IDEA WOULD BE SOMEHOW THAT IF  
THIS WAS, THESE PEOPLE DIDN'T  
HAVE A CAR, BUT, OF COURSE,  
THERE'S A VEHICLE IN THE-- THAT  
THEY'RE GETTING AWAY, AND THEY  
NEED A CAR.

I MEAN, THAT'S-- AND THEY'RE  
WITHOUT A SHIRT.

IF THAT'S, IF THERE WAS NO CAR  
IN THE DRIVEWAY, NO VEHICLE AND  
THEY WERE SEEN RUNNING, MAYBE  
GETTING A VEHICLE AND, I DON'T  
KNOW, DID THEY SAY WHAT TIME OF  
NIGHT THIS WAS THAT THESE TWO  
MEN WERE TRYING TO GET IN THE  
CAR?

>> BETWEEN ONE AND THREE.

>> SO THE TIME FRAME WOULD BE  
RELEVANT.

SO IF THERE WAS SOMETHING WHERE  
NEEDING A CAR TO GET AWAY, IT  
WOULDN'T HAVE TO BE A WILLIAMS  
RULE ISSUE, RIGHT?

WOULDN'T IT JUST BE RELEVANCY  
THAT THESE COULD HAVE BEEN THE  
PEOPLE?

>> YES.

>> OKAY, THAT'S WHAT WE HAVE--  
IT'S REALLY THE RELEVANCY.

NOT THAT IT'S A SIMILAR CRIME,  
BECAUSE IT'S NOT THAT.

IT'S THAT-- AND HE'S, THEY'RE  
TRYING TO SAY, WELL, THE SHIRT  
MEANS IT WAS BLOODY, SO--

THERE'S NOTHING ABOUT IT THAT  
WOULD CONNECT IT WITH THIS--

>> EXACTLY.

>>-- CRIME.

>> WHEN WE HAVE--

>> BUT, YOU KNOW, IF THE JUDGE  
HAD LET IT IN, IT PROBABLY WOULD  
HAVE BEEN, I MEAN, I WOULD THINK  
THE JURY WOULD JUST DISREGARD  
IT.

SO IT'S HARD TO SAY THE STATE  
WOULD HAVE BEEN PREJUDICED TO  
HAVE THIS COME IN.

>> IT WOULD HAVE BEEN OF SOME  
INTEREST IF THERE WERE A COUPLE  
OF SHIRTS-- WERE THERE A COUPLE  
OF SHIRTS FOUND ON THE PREMISES  
OR ANYWHERE--

>> NO, YOUR HONOR.

>> I MEAN, TO ME, THAT WOULD  
MAKE THE POSSIBILITY --

>> YES.

>>-- THAT THESE TWO PEOPLE MAY  
HAVE BEEN INVOLVED IN THIS CRIME  
THAT TOOK PLACE SOME BLOCKS AWAY  
IF THERE HAD BEEN TWO SHIRTS  
FOUND, LEFT AT THE SCENE OR  
SOMEWHERE ALONG THE TRAIL  
BETWEEN WHERE THEY WERE TRYING  
TO CARJACK AND THE VICTIM'S  
HOUSE.

WAS THERE ANY KIND OF  
INFORMATION LIKE THAT?

>> NO, YOUR HONOR.

TO THE CONTRARY, THERE WAS  
EVIDENCE THAT THE WASHING  
MACHINE HAD BEEN USED.

THERE WAS A BLOODY HANDPRINT ON  
THE DRYER, THERE WERE CLOTHES IN  
THE WASHING MACHINE.

THERE WAS TESTIMONY THAT THE  
VICTIM DID NOT USE HER WASHING  
MACHINE.

SHE HAND-WASHED HER ITEMS.

AND THERE WERE VARIOUS ITEMS



LEFT IN THE WASHING MACHINE;  
CIGARETTE BUTTS, SOME OF HER  
CLOTHING.

AND, OF COURSE, THE DEFENDANT  
WAS SEEN THE VERY NEXT DAY WITH  
HIS SAME CLOTHES ON THAT HE WAS  
WEARING THE EVENING BEFORE THAT  
WERE BLOOD-STAINED.

SO THERE'S NO--

>> WELL, I THOUGHT, HAD THEY  
BEEN WASHED?

>> THEY HAD BEEN WASHED, AND THE  
VICTIM'S-- MOST LIKELY IN THE  
VICTIM'S WASHING MACHINE.

HE-- THERE WERE THE NEIGHBORS  
OUTSIDE THAT SAW HIM IN HER  
KITCHEN USING HER SINK, AND HE  
MOST LIKELY STAYED THERE FOR A  
WHILE.

THERE'S EVIDENCE THAT THERE HAD  
BEEN ATTEMPTED CLEANING UP OF  
THE CRIME SCENE, AND HE WASHED  
HIS CLOTHES WHILE HE WAS THERE,  
WENT HOME, SLEPT IN THEM AND WAS  
WEARING THEM WITH THE  
BLOODSTAINS THE VERY NEXT DAY  
WHEN THE DETECTIVES ARRIVED AT  
HIS HOUSE.

>> HER BLOODSTAINS WERE FOUND ON  
HIS CLOTHES?

>> YES.

>> SO GOING BACK TO, THOUGH, I  
JUST-- THERE WAS NOTHING TAKEN?

>> NOTHING TAKEN.

>> IS THERE-- I KNOW YOU DON'T,  
THE STATE DOESN'T HAVE TO FIND A  
MOTIVE, BUT THIS ALMOST SEEMS,  
YOU KNOW, WE HAD A CASE, A  
MR. CROOK, YEARS AGO OF LIKE A  
RAGE CRIME TO DO WHAT HE DID TO  
FOR THEM TO TRY TO EXPLAIN WHAT  
COULD HAVE MOTIVATED SUCH A  
HORRENDOUS CRIME?

>> THEY NEVER EXPLAINED THAT AT  
ALL.

BUT THIS WAS A SEXUAL BATTERY.  
SO THAT COULD HAVE BEEN A MOTIVE  
HERE.

ARE THERE ANY OTHER QUESTIONS?

>> ONLY ON THE PENALTY PHASE

ISSUE.

AS YOU KNOW, OBVIOUSLY YOU KNOW,  
HURST IS UP BEFORE THE COURT.  
WOULD YOU AGREE THAT IN THIS  
CASE THERE IS NOT, THE SEXUAL  
BATTERY WAS NOT CHARGED, SO NO  
JURY FOUND IT BEYOND A  
REASONABLE DOUBT AND FOR SOME  
REASON THE JURY VOTED 10-2,  
THERE AREN'T SPECIAL  
INTERROGATORIES, DEPENDING ON  
WHAT HAPPENED IN HURST, THIS  
PENALTY PHASE COULD BE  
IMPLICATED?

>> THAT IS POSSIBLE, YOUR HONOR.  
>> YOU NEED UNANIMOUS VERDICT ON  
AT LEAST THE AGGRAVATORS WE  
DON'T HAVE IT HERE?

>> STATE'S POSITION IS THAT THE  
JURY VOTED BY A VOTE OF 10-2 AND  
THEY FOUND THAT THE AGGRAVATING  
CIRCUMSTANCES OUTWEIGHED THE  
MITIGATING CIRCUMSTANCES BEYOND  
A REASONABLE DOUBT.

>> 10-2.

>> 10 PEOPLE.

>> WE DON'T KNOW IF 12 PEOPLE  
FOUND THE AGGRAVATORS BUT TWO,  
TIMES THE ISSUE IS, SOMEBODY  
THINKS, THEY DON'T NEED TO BE  
UNANIMOUS.

THEY SAY I'M NOT VOTING FOR  
DEATH.

KNEW IT HAD TO BE UNANIMOUS THEY  
MIGHT VOTE FOR DEATH BUT WE  
DON'T KNOW.

WE DON'T KNOW WHAT THE REASON  
FOR THE VOTE WAS.

>> JURY FOUND AT LEAST ONE  
AGGRAVATOR EXISTED IN THIS CASE.  
IF THERE ARE NO FURTHER  
QUESTIONS, THE STATE  
RESPECTFULLY REQUESTS THAT THIS  
COURT AFFIRM THE DEFENDANT'S  
MURDER CONVICTION AND SENTENCE  
OF DEATH.

THANK YOU.

>> THANK YOU.

JUST THE MENTION OF THE PHOTOS  
OBVIOUSLY THE PHOTOS WERE VERY

INFLAMMATORY AND, VERY MINIMALLY RELEVANT.

SO WE THINK THE PREJUDICIAL IMPACT OUTWEIGHED ANY PROBATIVE VALUE.

THE DNA EXPERT THAT THE DEFENSE HIRED, TO MY UNDERSTANDING, ALL HE WAS-- HE REVIEWED THE NOTES FROM THE STATE'S DNA EXPERTS. HE WASN'T, HE DIDN'T DO HIS OWN TESTING ON IT.

AND IF THERE HAD BEEN CONTAMINATION, DURING THE ORIGINAL TESTING THERE WAS DNA GOT FROM THE GLOVE ON TO THE SWAB AND THEN RESULTED IN A POSITIVE RESULT THE SECOND EXPERT REVIEWING THAT WOULDN'T, THERE WOULD BE NO WAY FOR HIM TO DETERMINE THAT.

>> THAT IS STILL SPECULATION. HE HAD NO WAY OF DETERMINING-- WE CERTAINLY DON'T HAVE THAT IN THIS RECORD SO I'M NOT SURE WHAT THE POINT IS YOU'RE TRYING TO MAKE?

>> ONE OF THE PRIOR INSTANCES WHERE THERE WAS CONTAMINATION THAT THEY WEREN'T ALLOWED TO BRING IN WAS THAT APPARENTLY THERE WAS SOMETHING ABOUT THE, HE USED THE SAME GLOVES. SHE DIDN'T USE A NEW GLOVE WHEN SHE WENT TO THE SWAB AND SOMEHOW IT GOT CONTAMINATED WHERE THAT CAME IN.

THEY GOT A POSITIVE RESULT WHERE THEY SHOULDN'T HAVE.

>> SO A CONTAMINATION THAT HAPPENED IN ANOTHER CASE, YOU BELIEVE SHOULD BE USED TO SHOW THAT THAT COULD HAVE POSSIBLY HAPPENED IN THIS CASE?

>> YES.

WE TALKED ABOUT THE HARMFUL EFFECTS OF THE STATEMENTS MADE BY MISS SEXTON.

THERE WAS, I MENTION OF A TESTIMONY ABOUT A DELIVERYMAN ABOUT A TRUCK BLOWING THROUGH A

STOP SIGN AROUND, NOT REALLY CLEAR.

THE TIMING OF IT, IS WHEN HE USUALLY GETS UP TO GO DELIVER THE PAPERS FOR THE "TAMPA TRIBUNE" BUT THERE WAS NO TESTIMONY THAT THAT WAS THE SAME TRUCK.

I MEAN HE GAVE A GENERAL DESCRIPTION OF A DARK PICKUP TRUCK.

IT DIDN'T SPECIFICALLY-- HE WASN'T ABLE TO IDENTIFY THE DRIVER.

HE DIDN'T GIVE ANY DESCRIPTION AS TO THE DRIVER.

AND HE SAID, IT MADE A LOUD, IT WAS VERY LOUD PICKUP TRUCK AND KATHY SEXTON TESTIFIED THAT WASN'T A LOUD TRUCK.

SO WE DON'T KNOW IT HAD ANYTHING TO DO WITH THE CRIME.

>> DIDN'T THE TESTIMONY SHOWED THAT THE TRUCK WAS PARKED BACK NEAR THE DRIVEWAY BY THE NEIGHBORS?

IN FACT TOOK THE LICENSE TAG DOWN?

ARE YOU DISPUTING--

>> THE NEIGHBORS TESTIFIED TO THAT, YES.

>> ARE YOU SAYING THE TRUCK WASN'T THERE BECAUSE NEWSPAPER GUY COULDN'T HAVE--

>> WE DON'T KNOW THAT IT WAS THE SAME TRUCK BUT THAT WAS ADMITTED.

WHAT I'M SAYING THAT TESTIMONY CAME IN AND WE DON'T KNOW IF THAT TRUCK WAS RELATED TO THIS CRIME AT ALL.

>> BUT WE KNOW THAT HIS TRUCK WAS AT THE CRIME SCENE, RIGHT?

>> IF YOU BELIEVE THE NEIGHBORS.

>> OH, OKAY.

>> THEIR-- THE JURY STILL GETS TO DETERMINE THE CREDIBILITY AND THEIR CREDIBILITY IS SUSPECT WHEN THEY SEE THIS GOING ON AND THEY DON'T CALL THE COPS AT

MIDNIGHT.

>> SOME PRETTY-- HE IS IN THERE  
BUT HE IS IN THERE BY I GUESS,  
VOLUNTARY INJURY BUT THEY'RE  
CONCERNED ENOUGH TO TAKE HIS  
LICENSE, HIS TAG NUMBER DOWN.

>> SO IT SEEMS LIKE THEY WOULD  
BE CONCERNED ENOUGH TO CALL THE  
POLICE BUT-- IN ANY REGARDS WE  
ASK THAT YOU REVERSE FOR A NEW  
TRIAL AND IN THE ALTERNATIVE, A  
NEW PENALTY PHASE AND CERTAINLY  
WAIT TO SEE WHAT THE UNITED  
STATES SUPREME COURT SAYS IN  
BECAUSE IT WOULD RENDER HIS  
SENTENCE UNCONSTITUTIONAL.

>> THANK YOU FOR YOUR ARGUMENTS.  
THE COURT IS IN RECESS UNTIL  
TOMORROW AT 9:00.