

>> THE LAST CASE ON THE DOCKET
THIS MORNING IS HODGES V. STATE.

>> YOU MAY PROCEED WHENEVER
YOU'RE READY.

>> THANK YOU VERY MUCH.

I APPRECIATE STARTING AT 11:25
INSTEAD OF 12:10 THAT IT SHOWED.
THAT WAS WONDERFUL.

I'D RESERVE FIVE MINUTES FOR
REBUTTAL-- FIVE MINUTES FOR
REBUTTAL.

BOB NORGARD ON BEHALF OF WILLIE
HODGES.

THE FIRST ISSUE THAT I WANT TO
TALK ABOUT IS, CLEARLY, DNA
EVIDENCE WAS CRITICAL IN THIS
CASE.

AND THE TRIAL JUDGE MADE A
FINDING IN HIS ORDER, ALTHOUGH
HE DENIED RELIEF, THAT A CAPITAL
ATTORNEY REPRESENTING SOMEBODY
IN A DEATH PENALTY CASE WHERE
DNA EVIDENCE WAS CRUCIAL HAD BUT
A CRUDE UNDERSTANDING OF DNA
EVIDENCE, DID NOT ASSOCIATE AN
EXPERT TO ASSIST HIM WITH THAT
CRUDE UNDERSTANDING.

>> WHICH SPECIFIC DNA EVIDENCE
ARE YOU TALKING ABOUT?

>> THERE WAS SEVERAL ITEMS OF
DNA EVIDENCE.

>> OKAY.

BLOOD ON THE SOCKS--

>> YES, MA'AM.

>> RIGHT?

AND THERE WAS A HAIR?

>> THERE WAS A HAIR ON THE
JACKET, A HAIR ON A POWER OF
JEANS.

>> AND THE ANUS.

>> A SWAB OF-- AND THERE WAS
DNA EVIDENCE IN THE WILLIAMS
RULE EVIDENCE.

>> WE TALKING ABOUT THE DNA
EVIDENCE IN THIS CASE--

>> YES, MA'AM.

>> WILL-- AS OPPOSED TO THE
WILLIAMS RULE.

>> WELL, THERE'S DNA IN BOTH
CASES.

>> I KNOW.
BUT WHAT ARE YOU--
>> THE DNA IN BOTH CASES.
>> SO YOUR ARGUMENT IS NOT ONLY
SHOULD HE HAVE HAD AN EXPERT
LOOK AT THE DNA EVIDENCE IN THIS
CASE, BUT HE SHOULD HAVE HAD AN
EXPERT LOOK AT THE DNA EVIDENCE
THAT WAS PRESENTED IN THE
WILLIAMS RULE CASE?
>> YES.
AND THAT DNA EVIDENCE WAS EVEN
WEAKER.
>> NOW, ON THAT, MAYBE-- CAN I
DON'T WANT TO JUMP TO PREJUDICE,
BUT--
>> I WAS GOING TO.
>> BECAUSE I DIDN'T WANT GET
THAT YOUR-- I DIDN'T GET THAT
YOUR EXPERT, IS THERE, THIS
OTHER EVIDENCE, HIS CONFESSIONS,
THERE'S--
>> WHICH WASN'T CHALLENGED.
[LAUGHTER]
I MEAN, BY THE PHONE EVIDENCE.
>> OKAY.
DO YOU HAVE EVIDENCE THAT THIS
WAS NOT HIS DNA?
>> WHAT THE COURT DID--
>> NO, I JUST-- THAT IS A
SIMPLE, IS THERE-- YOU KNOW,
WE'RE IN A SITUATION WHERE DNA
AND THE ISSUE OF HAIR, FBI IS
NOW QUESTIONING DUD YOU PUT
FORWARD IN THIS EVIDENTIARY
HEARING EVIDENCE FROM AN EXPERT
THAT CHALLENGES THE SOURCE OF
THE DNA BEING MR. HODGES?
>> WELL, WHAT WE'RE DEALING WITH
IS STATISTICAL PROBABILITY.
>> WELL, WHAT IS THE CHANGE IN
THE STATISTICAL PROBABILITY THAT
YOU WERE ABLE TO DEMONSTRATE?
>> WHAT I THINK OUR EXPERT--
>> WHAT IS THE DIFFERENCE?
>> WHAT THE DIFFERENCE IS, IS,
YOU KNOW, THE COURT ULTIMATELY
SAID THAT THEY FELT DESPITE THE
ATTORNEY NOT DOING ANYTHING
REGARDING THE DNA, THAT THE

TESTS WERE ACCURATE.
AND WHAT DR. TRACY SAID WAS
ACCURATE.
I'LL USE AN EXAMPLE THAT I THINK
EPITOMIZES WHAT OUR ARGUMENT
WAS.

IF I SAT HERE AND TOLD YOU THAT
A LAW ENFORCEMENT OFFICER SAW
SOMEBODY DRIVING DOWN THE ROAD
AT 100 KILOMETERS AN HOUR--

>> CAN WE JUST FINISH IT'S
EASIER TO STICK WITH GIVE THE
BLOOD ON THE SOCK.

OKAY, WHAT WAS THE TESTIMONY AT
TRIAL ON THE STATISTICAL
PROBABILITY THAT IT WAS
MR. HODGES' DNA?

>> IT TENDS ON WHICH EXPERT YOU
LOOK AT.

DR. TRACY PRESENTED IT USING THE
EXCLUSION PRINCIPLE WHERE HE
WOULD SAY 99.92% ARE EXCLUDED.

>> OKAY.

AND NOW IF YOU DO IT BASED ON
WHAT WE SEE A LOT IS ONE IN A
TRILLION OR ONE IN A MILLION--

>> AND IN THIS CASE--

>> WHAT ARE WE DOWN TO ON THAT?

>> OTHER THAN ONE ITEM IN THIS
CASE WHAT YOU'RE LOOKING AT IS
NUMBERS LIKE 1 IN 806, 1 IN 214,
1 IN 55.

THESE WERE NOT--

>> THAT'S NOT-- SO, IN FACT,
WHEN YOU DO IT, INSTEAD OF
EXCLUSION, THAT'S CALLED WHAT?

>> THAT'S CALLED THE INCOLLUSION
PRINCIPLE.

>> INCOLLUSION.

>> YES, MA'AM.

>> YOU DON'T GET TO THESE
INCREDIBLE PROGRAMMINGS.

>> RIGHT.

>> NOW, BUT--

>> WELL, YOU CAN GET INCREDIBLE
PERCENTAGES WITH THE EXCLUSION.
SOMETIMES--

>> BUT NOT IN THIS CASE.

>> NOT IN THIS CASE.

>> IF HE HAD BEEN CROSS-EXAMINED

PROPERLY, IT WOULD HAVE ESTABLISHED THAT INSTEAD OF 99.9%, IT REALLY WAS 1 IN 800?

>> RIGHT--

>> IS THAT CORRECT?

>> YES, MA'AM.

>> I THOUGHT IT WAS-- OKAY.

NOW, THE OTHER QUESTION IS THIS LAWYER SAID THAT THE DEFENSE WAS THAT THESE ITEMS HAD BEEN STOLEN AND, THEREFORE, IT WASN'T HIS STRATEGY TO CHALLENGE THE DNA.

>> AND WHICH LEADS TO ISSUE NUMBER TWO.

>> WELL, IT SURE DOES.

[LAUGHTER]

>> WHICH I'LL TALK ABOUT.

BUT I REALLY DO THINK THE EXAMPLE I'M ABOUT TO GIVE HIGHLIGHTS WHY EACH WHAT DR. TRACY SAID WAS ACCURATE IS IMPORTANT HERE IS THAT YOU TELL A FLORIDA JURY SOMEBODY'S DRIVING 10 KILOMETERS AN HOUR, THAT'S GOING TO SOUND FAST TO THEM.

AND I HAD TO TRANSLATE IT FROM GOOGLE, IT'S 62 MILES AN HOUR. BUT YOU HEAR 100 KILOMETERS AN HOUR, THAT SOUNDS FAST.

YOU HEAR 99.962%, THAT SOUNDS ASTRONOMICAL WHEN THE EXPERT SAYS THAT'S THE EKH COLLUSION PRINCIPLE OF HOW MANY PEOPLE ARE EXCLUDED, BUT WHEN YOU CRUNCH THE NUMBERS AND DO IT THROUGH THE OTHER PROCESS, 1 IN 214'S NOT THAT HARD--

>> BUT THAT CORRELATES TO THE SAME PERCENTAGE THAT YOU--

>> IT DOES.

BUT I THINK IT HELPS THE JURY UNDERSTAND IT.

>> OKAY.

JUST WANTED TO KNOW WHERE WE ARE.

>> YEAH.

>> OKAY.

>> I MEAN, I'M NOT DISPUTING THAT, YOU KNOW, IT'S THE SAME

TYPE THING.

BUT IT'S BEING PRESENTED IN A WAY THAT THE JURY UNDERSTANDS IT.

>> I MEAN, THERE'S NO REASON, AGAIN, THAT SOMEBODY-- I MEAN, THAT'S AN IMPORTANT THING TO KNOW BECAUSE USUALLY WE SEE THESE, WENT, ONE IN A BILLION, ONE IN A TRILLION, ONE IN A MILLION--

>> QUADRILLION.

>> A WHAT?

>> QUADRILLION.

>> YEAH.

[LAUGHTER]

>> DID HE NOT KNOW THAT IT TRANSLATED TO SOMETHING THAT WAS LESS IMPRESSIVE?

>> HE SHOULD HAVE KNOWN--

>> DID HE SAY HE DIDN'T KNOW IT?

>> IN SOME OF THE FDLE REPORTS, THAT WAS REFERENCED.

>> HE'S THE-- DID THE DEFENSE LAWYER SAY I DIDN'T KNOW ABOUT PRINCIPLES OF INCLUSION IN ORDER TO BE ABLE TO CROSS-EXAMINE ON THIS?

>> MY RECOLLECTION IS THAT HE JUST GENERALLY TESTIFIED THAT HIS UNDERSTANDING WAS CRUDE, THAT HE REALLY DIDN'T UNDERSTAND DNA EVIDENCE, AND I DON'T THINK IT GOT--

>> I MEAN, THAT'S A PRETTY INCREDIBLE STATEMENT, RIGHT? WITH A CASE THAT HAD A LOT OF DNA.

>> I DID NOT THEM RAISE THIS RECORD.

>> WELL, THAT'S AN IMPORTANT THING BECAUSE YOUR TWO OTHER ISSUES WHICH DO CONCERN ME WHICH IS THAT WHAT THE LAWYER DID DO, HE SAYS IN OPENING STATEMENT HE'S GOING TO SHOW THAT THIS WAS STOLEN WHICH ONLY CAN COME UP-- OUT FROM HIS CLIENT AND, APPARENTLY, HADN'T DISCUSSED ENOUGH WITH HIS CLIENT

BEFOREHAND AND THEN PUTS ON A WITNESS WHO ENDS UP BEING THE STRONGEST WITNESS FOR THE STATE.

>> YEAH.

YOU KNOW, BASICALLY FOR, YOU KNOW, THIS LAWYER WHO WAS THE LEAD GUILT PHASE COUNSEL WAS ON CASE FOR TWO YEARS.

IT WAS HIS UNDERSTANDING FOR TWO YEARS THAT MR. HODGES WAS GOING TO TESTIFY.

THE JUDGE EVEN FOUND THAT HE COMMITTED TO THAT DEFENSE IN HIS OPENING STATEMENT.

>> BUT MR. HODGES CHANGED HIS MIND, CORRECT?

I MEAN, AND THAT'S-- THE QUESTION WHETHER A DEFENDANT TESTIFIES IN THE END, UP LIKE ANY OTHER DECISION-- UNLIKE ANY OTHER DECISION, IS THE DEFENDANT'S DECISION.

>> YEAH.

ULTIMATELY, IT'S HIS DECISION, BUT--

>> AND HE SAID THAT HE HAD, AFTER FURTHER CONSULTATION, DECIDED NOT TO TAKE THE STAND, AND HE WAS QUESTIONED ABOUT THAT DURING THE TRIAL.

>> BUT AT THE EVIDENTIARY HEARING WHAT HE TESTIFIED TO IS THAT THE REASON HE DIDN'T TESTIFY IS HIS MISUNDERSTANDING BASED ON WHAT THE LAWYER SAID AS TO THE IMPEACHMENT POTENTIAL.

>> BUT SOME CREDIBILITY ISSUES HERE.

IF THE LAWYER SAID FOR TWO YEARS HE HAD, HIS INTENT TO HAVE THE CLIENT TESTIFY--

>> WELL, MY CREDIBILITY ISSUE IS WITH THESE LAWYERS.

I MEAN, THINK ABOUT THIS.

FOR TWO YEARS SOMEBODY SAYS THEY'RE GOING TO TESTIFY.

IN OPENING STATEMENT YOU COMMIT TO THE CLIENT TO TESTIFYING, AND WHEN THEY ARE ASKED IN THIS EVIDENTIARY HEARING, TWO

LAWYERS, YOU KNOW, WHAT DID YOU TALK TO THE CLIENT ABOUT, THEY DIDN'T REMEMBER.

THAT'S MIND BLOWING.

IF A HEAD COACH OF A FOOTBALL TEAM, THEIR QUARTERBACK CAME TO HIM AND SAID YOU BUILT YOUR GAME PLAN AROUND ME, I'M NOT GOING TO PLAY, THE COACH WOULD SAY, WHY. THESE GUYS CAN'T EVEN SAY WHY, WHAT CHANGED THE DEFENDANT'S MIND.

THEY COULDN'T EVEN REMEMBER WHETHER THEY'D DISCUSSED WITH HIM THE PROS AND CONS OF IT, THE FACT HE MAY WELL HAVE WALKED BACK IN THAT COURTROOM AND ENTERED A GUILTY PLEA BY SAYING HE WASN'T GOING TO TESTIFY.

>> HOW MUCH TIME TOOK PLACE BETWEEN WHEN THAT EVIDENTIARY TOOK PLACE WHEN THE LAWYERS WERE TESTIFYING?

>> YEARS.

>> WELL, I KNOW IT'S ALWAYS YEARS.

AN IDEA, WAS IT TEN YEARS?

>> YEAH, AT LEAST.

>> AT LEAST TEN YEARS.

>> AND I UNDERSTAND THAT, YOU KNOW, I'VE BEEN IN THOSE SHOES OF BEING QUESTIONED ABOUT CONVERSATIONS THAT MANY YEARS AGO.

BUT YOU BETTER BELIEVE IF I'VE PLANNED A DEFENSE AND MY CLIENT ALL OF A SUDDEN SAYS I'M NOT TESTIFYING, IT'S ONE THING IF HE PLANNED HE WASN'T GOING TO TESTIFY.

YOU HAVE A BRIEF COLLOQUY, HE SAYS, YEAH, THAT'S STILL WHAT I WANT TO DO.

I'M NOT GOING TO REMEMBER THE DETAILS OF THAT.

BUT WHEN SOMEBODY TOTALLY BLOWS UP DEFENSE THAT I'VE BEEN BUILDING FOR YEARS AND WEEKS OF TRIAL, ALL OF A SUDDEN SAYS I'M NOT GOING TO TESTIFY, I'M GOING

TO ASK 'EM WHY, AND I'M GOING TO REMEMBER WHY.

>> WHAT DID--

>> AND I'M GOING TO POINT OUT TO HIM THE CONSEQUENCE.

>> WHOSE TESTIMONY DID THE COURT CREDIT?

>> ESSENTIALLY, WHAT THE COURT LED TO WERE SOME-- THE COURT HAD TO ACKNOWLEDGE THEY SAID THEY DIDN'T REALLY REMEMBER THE CONVERSATION.

THERE WAS SOME REFERENCE TO ONE OF THE ATTORNEYS WHO HAD BEEN THE PENALTY PHASE ATTORNEYS, MR. LESTER, SAYING THAT HE HAD QUALMS ABOUT THE DEFENDANT TESTIFYING BECAUSE HE DID TOO GOOD IN HIS MENTAL RETARDATION HEARING AND CAME ACROSS TOO INTELLIGENT.

OBVIOUSLY, THE CLIENT DIDN'T FAKE THAT HE WAS MENTALLY RETARDED.

HE TESTIFIED AT A HEARING, THE JUDGE FOUND IN PART BASED ON HIS TESTIMONY THAT HE WASN'T MENTALLY RETARDED, SO HE WASN'T FAKING THEN.

BUT THESE ATTORNEYS REALLY DIDN'T GIVE ANY GOOD REASONS AS TO, YOU KNOW, WHY MR. HODGES ALL OF A SUDDEN DIDN'T WANT TO TESTIFY.

>> NOW, WHY DID-- WHAT IS, THE ONE THAT ACTUALLY CONCERNS ME MORE IS, OKAY, SO HE DOESN'T PUT CLIENT ON THE STAND EVEN THOUGH HE SAID HE WAS GOING TO.

HOW MANY WITNESSES DID THE DEFENSE ATTORNEY PUT ON?

>> MY RECOLLECTION IS THEY DIDN'T PUT ON A CASE.

>> I THOUGHT HE PUT ON THE GUY THAT--

>> I MIGHT-- I APOLOGIZE. HOW COULD YOU FORGET THAT?

>> YEAH, HOW COULD YOU FORGET--

>> HE CALLS A WITNESS--

>> IS THAT THE ONLY WITNESS HE

CALLS?

>> RIGHT NOW, YOU KNOW, I
APOLOGIZE.

I MEAN, YOU KNOW, HE MAY HAVE
CALLED SOME MINOR WITNESSES.

>> OKAY.

>> MS. McCASKILL WOULD BE THE
KEY--

>> AND WHAT'S HIS PURPOSE HE
SAID HE WAS CALLING HIM FOR?

>> BASICALLY, WHAT HAPPENED IS
MR. McCASKILL HAD SEEN
SOMEBODY IN HIS YARD.

THE DEFENSE ATTORNEY CLAIMS WHEN
HE WENT AND MET WITH
MR. McCASKILL, THAT
MR. McCASKILL GAVE HIM A
DESCRIPTION THAT DIDN'T INDICATE
IT WAS MR. HODGES.

THEN AFTER CALLING MR. HODGES,
HE MAKES A POSITIVE
IDENTIFICATION--

>> I UNDERSTAND THAT.

BUT DIDN'T THE DEFENSE ATTORNEY
WHEN HE-- SO HE WAS CALLING
HIM.

HE THOUGHT HE WAS GOING TO SAY
PERSON WAS NOT MR. HODGES?

>> CORRECT, YES.

>> BUT WHEN HE-- AND THEN HE,
HE ACTUALLY-- HE, THE DEFENSE
ATTORNEY, DOESN'T HE SHOW HIM
BEFOREHAND FINISH.

>> IN COURT.

>> BEFORE GOING ON THE STAND.

>> YES.

>> HE SAYS THERE'S
MR. HODGES.

DOES HE SAY THAT?

AND WHAT--

>> OH, THEY GAVE HIM AN
OPPORTUNITY TO LOOK AT
MR. HODGES.

>> AND WHAT DID HE SAY AT THAT
TIME?

>> THAT'S WHEN HE SAID THAT'S
THE GUY I SAW IN MY YARD.

>> SO WHY'D HE PUT HIM ON THE
STAND THEN?

>> I THINK HE WAS IN A BOX.

I MEAN, WHAT WAS HE GOING TO DO?
HE FIGURED THE STATE WAS GOING
TO REOPEN THEIR CASE AND CALL
HIM.

I MEAN, I DON'T KNOW.
THAT'S A GOOD OR A GREAT
QUESTION.

>> DUD HE SHOW HIM A PICTURE OF
MR. HODGES WHEN HE WENT TO SEE
HIM?

>> MY UNDERSTANDING IS HE JUST
WENT BY VERBAL DESCRIPTION.

>> THAT IS--

>> EXCUSE ME, BUT I THOUGHT
MR. HODGES-- NOT MR. ONLIES,
BUT--

>> McCASKILL.

>>-- I THOUGHT HE HAD HAD SOME
POINT SAID, WAS UNABLE TO SAY
THAT THAT WAS MR. HODGES.

>> RIGHT.

>> YEAH.

AND SO I THOUGHT THAT WAS THE
POINT OF PUTTING HIM ON, BECAUSE
DIDN'T HE THEN AFTER HE SAYS IT
IS MR. HODGES PUT ON HIS WIFE?

>> IN AN EFFORT TO TRY TO
IMPEACH MR. McCASKILL AFTER HE
HAD TURNED ON HIM AND MADE THE
IDENTIFICATION.

>> WELL, THE QUESTION IS I
THINK-- THE ISSUE IS WAS HE
COMPLETELY SURPRISED, OR WAS HE
BEING SOMEWHAT HAPHAZARD IN THE
DECISION TO PUT MR. McCASKILL
ON?

BECAUSE UNLESS HE WAS PREPARED
TO SAY IT WASN'T MR. HODGES,
THAT'S A DANGER CAN, IT SEEMS TO
ME, THAT'S A DANGEROUS THING TO
DO BECAUSE THE GUY'S SITTING
THERE AND--

>> LET ME PUT IT-- IT'S NOT
LIKE HE WENT TO MR. McCASKILL,
SHOWED HIM A PHOTO PACK, HAD A
SITUATION WHERE THE GUY SAID I
CAN'T PICK HIM OUT.

IT WAS MORE BASED ON
MR. McCASKILL'S CONVERSATIONS
WITH THE POLICE AND THE POLICE

REPORT, HIS CONSIDERATIONS WITH MR. McCASKILL ABOUT WHO HE SAW.

MR. McCASKILL'S REPRESENTATIONS THAT HE DIDN'T FEEL LIKE--

>> NOW, IF YOU TAKE, SO YOU'VE GOT A DEFENSE ATTORNEY WHO SAID HE ONLY HAD A CRUDE KNOWLEDGE OF DNA, DIDN'T, THEREFORE, CROSS-EXAMINE HIM, PRINCIPLES OF THE CONCLUSION.

SOMEBODY WHO SAYS HE'S GOING TO PUT HIS CLIENT ON AND THEN DOESN'T--

>> BITE MARK EVIDENCE.

>>-- A WITNESS THAT IS HELPFUL, THAT SEALS THE CASE FOR THE STATE.

BUT WITH THAT ALL, HOW DOES THIS UNDERMINE CONFIDENCE IN THE OUTCOME?

YOU STILL HAVE WHAT HE HAS, YOU KNOW, HIS-- IT'S HIS JACKET, HIS SOCKS, HIS BLOOD ON THE SOCK, HIS STATEMENTS TO BOTH A JAILHOUSE SNITCH AS WELL AS TO HIS GIRLFRIEND.

AND I REALIZE IT'S NOT AN ISSUE OF WHETHER THERE'S OVERWHELMING ED OR NOT-- EVIDENCE OR NOT, BUT IN TERM OF IT NOT BEING HIM OR IT UNDERMINING CONFIDENCE IN THE GUILT PHASE, WHAT'S YOUR ARGUMENT ON THAT?

>> BASICALLY, MR. HODGES, ONE OF THE THINGS HE WANTED HIS DEFENSE LAWYER TO DO WAS--

>> I'M SORRY, GET WHAT?

>> PHONE RECORDS.

THE WOMAN WHO HE ALLEGEDLY CONFESSED TO WAS DONE BY PHONE IN A VERY SPECIFIC PERIOD OF TIME WHERE SHE SAID IT WAS BETWEEN THIS PERIOD OF TIME.

MR. HODGES WAS AWARE OF THE FACT THAT WOMAN'S MOTHER DID NOT HAVE A PHONE DURING THAT TIME PERIOD. IN POSTCONVICTION WE GOT PHONE RECORDS THAT ESTABLISH SHE, IN

FACT, DID NOT HAVE A PHONE.
SO DURING THE TIME PERIOD SHE
CLAIMED HE CALLED AND CONFESSED,
THERE WERE NO PHONE RECORDS.
AND MR. HODGES WOULD HAVE
TESTIFIED THAT HE DID NOT
CONFESS TO HER OR THE JAILHOUSE
SNITCH.

>> WAS IT THAT CLEAR THAT SHE
DID NOT HAVE A PHONE OR THAT
THEY COULD NOT LOCATE RECORDS?

>> YOU GUYS CAN READ--

>> WELL--

>>-- JUST LIKE I CAN.

MY INTERPRETATION--

>> I DIDN'T ASK INTERPRETATION,
I UNDERSTAND THAT YOU'RE A
LAWYER, AND YOU'RE A VERY GOOD
LAWYER.

IT SOUNDED LIKE, AND I WANT
TO-- I'LL CORRECT MYSELF IF I'M
WRONG, BUT IT SOUNDED TO ME LIKE
THEY JUST COULDN'T FIND RECORDS.
AND IS THAT WRONG?

>> MY RECOLLECTION IS THEY SAID
THERE IS NO RECORD OF HER HAVING
A PHONE.

>> OH, OKAY.

ALL RIGHT.

>> YOU KNOW, I'M PARA--

>> OKAY.

>> I KNOW I'M PARAPHRASING.

>> ALL RIGHT.

>> THAT'S WHY I SAID I COULD SIT
HERE AND LOOK IT UP, BUT I DON'T
HAVE ENOUGH TIME.

IT'S IN THE RECORD AS TO HOW
THEY WORDED IT.

MY RECOLLECTION, AND I READ IT
VERY PLAINLY KIND OF LIKE THAT
LAW ENFORCEMENT STATUTE WAS
THERE WERE RECORDS IN EXISTENCE.

>> OKAY.

>> THEY DIDN'T SAY THESE WERE
RECORDS THAT WOULD HAVE BEEN
DESTROYED OR WE DON'T KEEP
RECORDS FOR THAT PERIOD OF TIME.
IT WAS AN AFFIRMATIVE STATEMENT
THAT THEY DID NOT HAVE RECORDS
OF THAT PERSON HAVING A PHONE.

>> YOU'RE DEEP INTO YOUR REBUTTAL.
>> THAT'S WHY I SAID FIVE MINUTES.
>> YOU'RE WELL KOHL TO CONTINUE-- WELCOME TO CONTINUE--
>> YOU HAVE 3:14.
>> PERFECT.
THANK YOU.
>> MAY IT PLEASE THE COURT, ASSISTANT ATTORNEY GENERAL CHARMAINE MILLSAPS APPEARING ON BEHALF OF THE STATE.
I WOULD LIKE TO GET THE FACT REGARDING THE PHONE RECORDS CLEAR RIGHT UP FRONT.
THE FINDING AND WHAT HAPPENED IN THE EVIDENTIARY HEARING WERE 24R-R7 NO RECORDS LEFT.
NOT A STATEMENT THAT THIS WITNESS DIDN'T HAVE A PHONE AT THE TIME.
AND THAT'S THE JUDGE'S, THAT'S LITERALLY WHAT HAPPENED.
THERE'S NO DISPUTE IN THE RECORD.
YOU WILL SEE THAT CLEARLY, AND THAT'S WHAT THE TRIAL COURT FOUND.
WE DON'T HAVE THE RECORDS THAT LONG.
IT WAS FIVE YEARS, YOUR HONOR, APPROXIMATELY FROM THIS TRIAL TO THE EVIDENTIARY HEARING.
THE TRIAL WAS IN--
>> LET ME ASK YOU THIS, WHAT DID THE WITNESS ACTUALLY SAY?
I'M NOT CLEAR.
DID SHE SAY HE CALLED ME AT MY MOTHER'S HOUSE--
>> YES.
>> THAT'S WHAT SHE SAID?
>> YES.
SO THEY WERE TRYING-- THE CLAIM WAS SO YOU SHOULD HAVE GOT THE MOTHER'S PHONE RECORDS.
OKAY?
BUT IN THE EVIDENTIARY HEARING, THOSE PHONE RECORDS WERE NO

LONGER AVAILABLE.

SO WE DON'T KNOW WHETHER SHE HAD A PHONE OR NOT.

>> BUT IF THE LAWYER, AGAIN, HERE'S ANOTHER DEFICIT OF THE LAWYER.

IF THE DEFENSE, DEFENDANT IS SAYING THERE WAS NO-- I HAD NO CALL WITH THIS GIRLFRIEND, AND HER MOTHER DIDN'T HAVE A PHONE. WHY WOULDN'T HE GET THE PHONE RECORDS TO SEE IF THAT'S TRUE OR NOT AT THE TIME?

>> WELL, BUT YOU'RE ASSUMING THAT-- FIRST OF ALL--

>> I'M NOT ASSUMING ANYTHING. I'M ASKING YOU A QUESTION.

>> OKAY.

BUT WHAT I'M SAYING IS WE DON'T KNOW WHETHER SHE HAD A PHONE OR NOT, AND THAT WAS NOT PROVEN--

>> THAT WASN'T THE QUESTION I ASKED YOU.

I ASKED YOU IF HE TOLD HIS DEFENSE ATTORNEY THAT SHE DIDN'T HAVE A PHONE AND UNIT, I DIDN'T TALK TO HER, WHY WOULDN'T THE DEFENSE LAWYER AT THAT TIME HAVE CHECKED THAT OUT?

>> THAT MAY HAVE BEEN THE ALLEGATION, BUT HE DIDN'T SAY THAT AT THE EVIDENCE SHARE HEARING-- EVIDENTIARY HEARING. LET ME GET MORE TO THE MERIT OF THAT.

YOUR HONOR, HE COMES IN AFTER THE PUBLIC DEFENDER LEAVES. SO REALLY WE DON'T KNOW WHAT THESE PHONE RECORDS WOULD SHOW. SO THERE'S ABSOLUTELY NO PRINCIPLE.

AND I DON'T THINK THAT FIRST PART OF YOUR QUESTION ABOUT THAT CONVERSATION EVEN HAPPENED WAS PROVEN.

OKAY?

AT THE EVIDENTIARY HEARING. SO IN OTHER WORDS, LAWYER DOESN'T KNOW THIS.

SO THAT'S WHY HE'S NOT

INVESTIGATING IT.

>> I THINK LET'S GET TO IT FROM A DIFFERENT WAY.

AT THE TIME OF THE TRIAL, HAD THE-- DID THE-- HAD THE DEFENDANT TOLD HIS LAWYER THAT HE DID NOT HAVE A CONVERSATION WITH TENNESSEE RAH SILVER, I BELIEVE THAT'S HER NAME?

>> THAT'S RIGHT.

SHE'S THE DAUGHTER.

>> AND THAT COULD NOT HAVE TAKEN PLACE BECAUSE THERE WAS NO TELEPHONE?

>> MAYBE NOT--

>> WAS THE DEFENSE ATTORNEY--

>> THAT'S WHAT I'M SAYING EXACTLY WAS NOT PROVEN.

THEY DID NOT ASK THAT QUESTION. THEY DON'T HAVE THAT.

>> DID MR. HODGES TESTIFY THAT HE TOLD HIS LAWYER?

>> NO.

I DON'T REMEMBER HIM SAYING--

>> SO WHAT MR. NORGARD JUST SAID, HE'S JUST-- THIS IS JUST COMING OUT OF THIN AIR?

>> NO.

I THINK HE'S MISREMEMBERING HOW THE PHONE RECORDS CAME OUT. I'D LIKE TO GET TO THE DNA, BECAUSE I'D LIKE TO TELL YOU WHAT HAPPENED AT THE EVIDENTIARY HEARING.

THEIR DEFENSE EXPERT AT THE EVIDENTIARY HEARING, DR. FLOPPINGER, AGREED THAT THE TWO NUMBERS GIVEN, THE ONE IN 990 QUADRILLION ON THE SOCK OF THIS CRIME AND THE 1 IN 214 OF THE WILLIAMS RULE CRIME WERE ACCURATE.

>> OKAY.

SO LET'S JUST GO, BECAUSE I WANT TO-- I THOUGHT THERE WAS SOME-- SO EVEN WHEN YOU GET TO EXCLUSION, IT'S FOR THE SOCK, THE BLOOD ON THE SOCK.

IT'S WHAT IS THE PERCENTAGE?

WHAT'S THE NUMBER, 1 IN WHAT?

>> 1 IN 990 QUADRILLION.
>> OKAY.
>> SO THAT NUMBER WAS, AND LET ME EXPLAIN SOMETHING, EXCLUSION-- DR. TRACY AT THE ORIGINAL TRIAL DID REGARDING THE OTHER DNA USE EXCLUSIONARY TO DESCRIBE IT. BUT THIS SOCK AT TRIAL, HE USED EXCLUSIONARY. HE SAYS 1 IN 9990 QUADRILLION. SO THE JURY HEARS IT THE WAY THEY RECOMMEND IT REGARDING THE MOST CRITICAL DNA EVIDENCE WHICH IS THE SOCK. A LOT OF THE EXCLUSIONARY PRINCIPLES REGARDED WERE ABOUT THE ORE DNA-- THE OTHER DNA.
>> IS THE SOCK, THAT IT WAS HIS DNA.
>> IT WAS HIS DNA. BUT HIS DEFENSE FOR THAT, AGAIN, WAS THAT IT WAS, IT WAS HIS SOCK, BUT HE HAD-- THE BLOOD WAS FROM SOME OTHER TIME. IS THAT WHAT HE HAD--
>> YES. HE SAID HE WAS FIXING A CAR. HE CUT HIS HAND AND USED THE SOCK.
>> WAS THERE DNA RECOVERED FROM AS A RESULT OF SEXUAL BATTERY?
>> FROM THE ANAL SWAB OF THIS VICTIM AND THEN FROM A VAGINAL SWAB OF THE WILLIAMS RULE.
>> WHAT WAS THIS VICTIM, WHAT WAS-- WAS THE DNA IDENTIFIED AS BEING MR. HODGES'?
>> THAT WAS THE OTHER-- THE EXCLUSIONARY ONE.
>> OKAY. SO EXPLAIN THAT ONE.
>> THE SPERM FRACTION WOULD EXCLUDE 96%. HE DID USE, YOUR HONOR-- DR. TRACY USED EXCLUSIONARY TO DESCRIBE THE OTHER DNA.
>> OKAY. AND SO WHAT WOULD THE INCLUSION BE?

WHAT ABOUT THE INCOLLUSION?

>> THE SOCK WAS THE--

>> NO, THE DNA ON, IN SPERM?

>> NO.

HE DESCRIBED THAT IN
EXCLUSIONARY--

>> OKAY.

SO WHAT I'M ASKING YOU, IF HE
DID IT IN INCLUSION, WHAT WAS
THE INCLUSION?

>> THEY DID NOT HAVE

DR. KNOPLER, THEY DID NOT HAVE
DR. KNOPLER DO IT THE OTHER WAY
AND SAY THESE NUMBERS ARE WRONG.
AND WHAT'S MORE--

>> SO WE DON'T KNOW TO THIS DAY
WHETHER IT'S 1 IN 200, 1 IN
800--

>> THEY NEVER HAD THEIR
EXPERTS--

>> BUT THAT WOULD JUST BE A
MATHEMATICAL CALCULATION.
THAT'S NOT A DNA THING, THAT'S
JUST FIGURING OUT WHAT THAT
PERCENTAGE MEANS.

>> THAT'S RIGHT.

BUT THEY DIDN'T DO IT.

SO I'M NOT GOING TO SIT HERE AND
DO IT FOR THEM, YOU KNOW?

THEY DIDN'T DO IT AT THE
EVIDENTIARY HEARING.

>> THEY--

[INAUDIBLE]

SOCK, BUT NOT THE SWAP, AND WHAT
ABOUT--

>> NOTHING ELSE, YOUR HONOR.

>>-- PIECE OF DNA?

>> OKAY.

THE TWO INCLUSIONARY PRINCIPLES
THAT DR. TRACY HAT TRIAL DID--
AT TRIAL DID WAS THE 1 IN 900
QUADRILLION REGARDING THE BLOOD,
HODGES' BLOOD ON THE WHITE SOCK
AND THE VAGINAL SWAB OF THE
WILLIAMS RULE VICTIM WHICH CAME
OUT AT 1 IN 214.

>> NOW, WHERE WAS THE SOCK
FOUND?

>> THE VICTIM'S-- ON THE PATH
THAT THE PERPETRATOR TOOK.

UNDERSTAND THE FAMILY CAME OVER AND LITERALLY INTERRUPTED THIS CRIME.

AND THE PERPETRATOR, HODGES, KNOCKED OUT A WINDOW AND WENT THROUGH THE BACKYARD, HOPPED A FENCE THROUGH ANOTHER BACKYARD INTO WOODS AND ALL THERE. THE SOCK WAS FOUND-- HE STARTED TAKING--

>> THE SOCK, THE MEMBERS ONLY JACKET--

>> TWO SOCKS, TWO SHOES, AND A MEMBERS ONLY JACKET WHICH PHOTOGRAPHS HAD FALLEN OUT. RIGHT OUTSIDE THIS WINDOW. OH, AND EVERYBODY HEARS THE WINDOW BEING BROKEN OUT. DEBORAH TAYLOR, THE VICTIM'S DAUGHTER, THEY ALL SHOWED UP THERE.

THEY WERE GOING TO TAKE THEIR MOTHER WITH THEM ON A TRIP TO IDAHO.

OKAY?

THEY'RE ALL GOING TO THE AIRPORT.

WHEN THEY CAN'T OPEN THE FLOOR DOOR, THEY HEAR THIS--

TENNESSEE RAH TAYLOR TESTIFIES SHE HEARS THIS WINDOW BEING BROKEN OUT.

SHE LOOKS, AND SHE SEES SOMEBODY RUNNING AWAY.

THIS IS BEFORE 10:00 IN THE MORNING.

>> AND SO ALONG THIS PATH--

>> ON PATH--

>>-- IS WHERE WE FIND THE SOCKS, THE PHOTOS, THE MEMBERS ONLY JACKET--

>> PHOTOGRAPHS WITH HIS FINGERPRINTS ON THEM.

OKAY?

MEMBERS ONLY BOOTS AND THIS CRITICAL SOCK THAT EVERYBODY AGREES, UNDERSTAND THERE'S NOT ONLY A TRIAL WAS IT CORRECTLY DESCRIBED THE MORE RECOMMENDED AND ACCEPTED WAY, THE BLOOD ON

THIS SOCK, BUT AT THE
EVIDENTIARY HEARING THEIR EXPERT
AGREED THAT NUMBER IS ACCURATE.
THAT NUMBER IS 1 IN 990
QUADRILLION.
UNDERSTAND THE STATE'S CASE.
WE HAVE FINGERPRINTS AND DNA
HERE.
WE'RE DONE.
IT DOESN'T MATTER ANYTHING ABOUT
PHONE RECORDS.
IT WOULDN'T HELP YOU A BIT.
>> TELL US ABOUT FINGERPRINTS.
WHERE WERE THE FINGERPRINTS
FOUND?
>> ON THE PHOTOGRAPHS.
AND THE PHOTOGRAPHS FALL OUT,
THEY'RE RIGHT NEXT TO THIS
WINDOW.
THEY FALL OUT OF JACKET.
HE HAS, HE HAS PHOTOGRAPHS.
AND ONE OF THOSE PHOTOGRAPHS IS
ON THE BACK HAS "I LOVE YOU,
WILLIE," AND WE CALL THE WITNESS
WHO WROTE THAT TO IDENTIFY THAT
IS HER PHOTOGRAPH, AND HIS
FINGERPRINTS ARE ALSO FOUND--
TWO OF HIS FINGERPRINTS ARE ON
THAT PHOTOGRAPH RIGHT ON THIS
PATH.
UNDERSTAND THIS IS LIKE HANSEL
AND GRETEL, ONLY THE EVIDENTIARY
VERSION OF IT.
WE LITERALLY FIND EVIDENCE AND
MORE EVIDENCE.
SO WE GO FROM FINGERPRINTS,
HAVING HIS FINGERPRINTS RIGHT
WHERE THE WINDOW GETS BROKEN
OUT.
AND SOMEBODY SEES ALL THIS.
OH, THE DOG SHOWS UP HALF AN
HOUR LATER.
UNDERSTAND THIS DOG IS TRACKING
THIS FRESH SCENT.
WITHIN THE HOUR OF THIS CRIME
OCCURRING, OKAY?
WE'RE LITERALLY PICKING UP OUR
EVIDENCE AS WE GO, AND THAT
EVIDENCE IS FINGERPRINTS AND
JUST 1 IN 990 QUADRILLION ON THE

DNA OF THE SOCK.

THIS BLOOD, AND IT IS NO
DISPUTE.

THAT HODGES-- THAT IS HODGES'
BLOOD ON THAT SOCK.

NOW, THERE'S JUST NO POSSIBLE
PREJUDICE UNDER ANY OF THESE.

>> EXCEPT DO WE KNOW WAS THIS
FRESH BLOOD OR WAS THIS-- COULD
THIS HAVE BEEN LEFT ON THE SOCK
AND SOMEONE ELSE ACTUALLY HAD
THE SOCKS?

>> YOUR HONOR, THERE BUDGET ANY
TESTIMONY THAT I REMEMBER--
THERE WASN'T ANY TESTIMONY IN
THE RECORD THAT I REMEMBER ABOUT
IT BEING FRESH VERSUS DRIED.

>> YEAH, BUT, I MEAN, HERE'S THE
WHOLE THING.

THIS THING OF SAYING IT WAS LIKE
HANSEL AND GRETEL, THE IDEA THAT
SOMEBODY WHO IS THE DEFENDANT
JUST HAPPENS TO HAVE HIS OWN
PHOTOGRAPHS BEING CARRIED AROUND
IN HIS JACKET, AND THOSE ARE
DROPPED ALONG THE WAY.

PHOTOGRAPHS THAT IDENTIFIES HIM,
WASN'T HIS-- DIDN'T HE SAY THAT
SOMEBODY ELSE WAS TRYING TO
FRAME HIM FOR THIS?

>> NO, YOUR HONOR.

HE WAS SAYING HE WAS TRYING TO
FRAME SOMEBODY ELSE.

I'M NOT QUITE SURE HOW-- THAT
PART DOESN'T EVEN MAKE ANY
SENSE.

>> WELL, DOES IT MAKE-- AGAIN,
MAYBE WE'RE TALKING ABOUT A
CRIMINAL THAT IS A WELL
FUNCTIONING CRIMINAL.

>> THE DIRECT APPEAL WAS MENTAL
RETARDATION.

>> YEAH.

WHICH IS NOT AN ISSUE NOW.

>> BUT YOU SAID LOW FUNCTIONING.

>> WE'RE NOT-- I JUST WANT TO
MAKE SURE BECAUSE I LOOK BACK AT
THAT.

THERE'S NO CLAIM ABOUT
INEFFECTIVE ASSISTANCE AT THE

PENALTY PHASE OR THAT HE IS MENTALLY RETARDED OR ANYTHING.

>> NO, YOUR HONOR, NOT BEFORE YOU.

BUT I'M JUST-- IN OTHER WORDS, YOUR PREMISE OF YOUR QUESTION WAS THAT HE'S LOAFING, AND THAT IS, THAT IS ACCURATE. AND THAT WAS THE MITIGATION. AND THEY DID A REMARKABLE JOB IN THE PENALTY PHASE PRESENTING THAT AS A, AS, AS MITIGATION.

WELL, THEY WERE DOING IT TO PROHIBIT THE DEATH PENALTY, BECAUSE IF YOU MEET-- SO THAT WAS THEIR BIG FOCUS.

BUT, YOUR HONOR, YOU WERE ASKING ME ABOUT LOW FUNCTIONING--

>> NO, I THOUGHT THERE WAS SOME EVIDENCE THAT HE HAD SAID THAT SOMEBODY ELSE WAS TRYING TO FRAME HIM FOR THESE MURDERS. BUT IT SEEMS TO ME THE STRONGEST ED IS HIS DNA FINGERPRINT.

I MEAN, HIS FROM TIME TO TIMES ON THE DOOR-- FROM TIME TO TIMES ON THE DOOR AND ALSO THAT'S WHY I WANTED TO ASK YOU ABOUT THE DNA ON THE WINDOW. NOT THE DOOR-- NO, HIS-- HIS FINGERPRINTS WERE ON THE WINDOW.

>> ON THE PHOTOGRAPHS.

>> NO, NO.

I THOUGHT YOU SAID ALSO--

>> NO THE ONLY FINGERPRINTS IN THIS CASE ARE ON THE PHOTOGRAPHS.

>> WELL, IF THEY'RE HIS PHOTOGRAPHS, AGAIN, IF SOMEBODY STOLE HIS WHATEVER ALL THESE ARE IN, THAT WOULD EXPLAIN ALL OF--

>> NO, THAT DOESN'T EXPLAIN IT.

>> DIDN'T YOU SAY HIS FINGERPRINTS WERE LEFT AT THE SCENE?

>> THE PHOTOGRAPHS FALL OUT OF HIS JACKET AS HE'S GOING OUT OF THE WINDOW.

SO RIGHT OUTSIDE THIS WINDOW IS BROKEN THAT WE KNOW THE

PERPETRATOR GOES NEW BECAUSE WE
HAVE--

>> OKAY.

>>-- THE DAUGHTER'S TESTIMONY
THAT SHE'S SEEING THIS.
SHE SEEN THIS GUY GREEN.
SHE'S HEARING THE BROKEN GLASS
AND SEEING THIS GUY FLEE, OKAY?
RIGHT THERE WHEN THE DOG SHOWS
UP, WE SEE THE PHOTOGRAPHS.
THE PHOTOGRAPHS HAVE HIS
FINGERPRINT ON IT.

NOTHING INSIDE, AS A MATTER OF
FACT, THAT WAS ALL READ--

>> BUT IF AS A HYPOTHESIS AND,
AGAIN, I REALIZE THAT HE DIDN'T
TESTIFY, SO THAT DIDN'T HAPPEN,
HE GOES THIS WAS ALL STOLEN,
SOMEONE STOLE MY JACKET, MY--
THAT HAD MY PHOTOGRAPHS IN IT,
AND THEY'RE FRAMING ME.

>> THEY'RE THE ACTUALLY
PERPETRATOR.

>> MY FINGERPRINTS ARE NOT IN
THIS HOUSE.

NOW, THAT'S WHERE I GO AND SAY
WHAT IS THE SPERM IN THE ANUS
AND THE DNA ON THAT WOULD BECOME
TO ME THE MOST CRITICAL
EVIDENCE.

AND YOU'RE SAYING THAT WAS A 96%
LIKELIHOOD THAT IT'S HIM.

IS THAT CORRECT?

>> THE SPERM FRAGMENT WOULD
EXCLUDE 96% OF THE MALE
POPULATION AND ALL OF THE FEMALE
POPULATION, OKAY?

>> WELL, THERE'S SPERM?

>> EXACTLY.

>> WELL--

>> YOUR HONOR, YOU ASKED ME WHAT
THE TESTIMONY WAS.

I'M QUOTING YOU THE TESTIMONY.

>> I DON'T THINK-- GOT IT.

>> OKAY?

SO-- OH, AND I'D LIKE TO MAKE
IT CLEAR, HE DIDN'T PROMISE THAT
HIS CLIENT WOULD TESTIFY.

WHAT HE SAYS IN THE OPENING IS
HE DOES IT BOTH WAYS.

ALLRED SAYS IN THE OPENING-- HE DOES SAY THAT HE ANTICIPATES THAT HODGES WOULD TESTIFY. YOUR HONOR, I'M READING FROM VOLUME SIX, PAGE 670 AND 671. BUT ALLRED ALSO REFERS TO THE POSSIBILITY THAT HODGES WOULD NOT TESTIFY, AND HE TELLS THE JURY YOU MUST NOT HOLD IT AGAINST ANYONE IF HE CHOOSES NOT TO TESTIFY.

>> DID HE SAY HIS DEFENSE WAS THAT THESE ITEMS WERE STOLEN IN THE OPENING?

>> YES, HE DID.

>> AND HOW OTHER THAN FROM MR. HODGES WOULD HE EVER BE ABLE TO ESTABLISH THAT?

>> WELL, YOUR HONOR, IT'S VERY CLEAR AT THE BEGINNING THEY'RE VERY AMBIGUOUS ABOUT WHETHER HE'S GOING TO TESTIFY.

BUT THEY'RE FAKING IT SOUND-- MAKING IT SOUND LIKE THEY DEFINITELY TOLD THE JURY THAT HE WOULD--

>> WELL, THEY DEFINITELY TOLD THEM THE DEFENSE WAS IT WAS STOLEN.

>> HE DID TELL THEM THAT, AND THAT WAS THEIR DEFENSE, THAT THE PERPETRATOR WAS WEARING HIS CLOTHES AND HIS-- A DUFFEL BAG FULL OF HIS STUFF, INCLUDING MEMBERS JACKETS AND PORTFOLIOS WERE--

>> THE QUESTION IS HOW TO YOU, YOU MIGHT ARGUE THAT, BUT ARGUE IT BASED ON WHAT?

IF HE'S NOT TESTIFYING, WHAT EVIDENCE WOULD THERE BE IN THE RECORD TO SUPPORT SUCH AN ARGUMENT?

THAT'S REAL QUESTION, I THINK, THAT IS BEING ASKED.

>> WELL, THERE WOULDN'T BE EVIDENCE, BUT THERE WOULD BE ARGUMENT.

I MEAN, THE JURY-- AND, YES, IT WAS VERY AMBIGUOUS WHETHER HE

WAS GOING TO TESTIFY, BUT IT'S NOT TRUE THAT HE SAID HE DEFINITELY WAS.

I'M JUST TELLING YOU WHAT THE RECORD ACTUALLY SAYS REGARDING DEFENSE COUNSEL'S OPENING STATEMENT IN THIS CASE.

MOREOVER, THE COLLOQUY WHEN THE JUDGE HAS THE COLLOQUY ABOUT WHETHER YOU WANT TO TESTIFY OR NOT, HERE'S HODGES' RESPONSE, HE FLATLY REFUSES TO ANSWER THAT AND SAYS I WANT TO TESTIFY OR I DON'T.

OKAY?

SO THIS IS, YOU KNOW, NOT ONLY DID DEFENSE COUNSEL SAY, LOOK-- AND HE DID SAY HE ANTICIPATED THAT HODGES WOULD TESTIFY. BUT HE DID NOT PROMISE THAT. HE THEN GOES ON TO THIS JURY AND SAY AS, BUT HE MIGHT NOT. SO IT'S VERY CLEAR THAT THAT WASN'T A DEFINITIVE PART OF WHAT THEY WERE DOING.

AND REGARDLESS OF ANY OF THIS, YOUR HONOR, YOU STILL HAVE 1 IN 990 QUADRILLION.

AND IT'S YOUR BLOOD ON--

>> HOW MUCH BLOOD, HOW MUCH BLOOD WAS THAT ON THE SOCK?

>> YOUR HONOR, I CAN ANSWER THAT, BUT IT'S NOT IN THE RECORD.

I JUST KNOW THAT FROM WHAT I SAW AT THE EVIDENTIARY HEARING.

DO YOU WANT ME TO ANSWER THAT?

>> NOT IF--

>> IS THE SOCK IN EVIDENCE?

IS THE SOCK IN EVIDENCE?

>> THE SOCK WAS INTRODUCED INTO EVIDENCE--

>> OKAY.

>>-- AT THE TRIAL.

>> THAT'S THEN PART OF THE RECORD.

WHAT IS IT?

WHAT WILL IT SHOW US?

BECAUSE WE CAN GET THE RECORD.

>> OKAY.

FROM THE PROSECUTOR IT'S NOT A
HUGE SPOT, YOUR HONOR.

IT'S NOT LIKE THE WHOLE HALF OF
THE SOCK IS COVERED IN BLOOD.

>> WAS THE JACKET COVERED IN
BLOOD?

THE MEMBERS ONLY JACKET?

>> YEAH.

OBVIOUSLY, THE MEMBERS ONLY
JACKET.

WE GOT A HAIR FROM THE MEMBERS
ONLY JACKET.

I DO NOT WILL BE US SAYING
ANYTHING ABOUT GETTING DNA FROM
THE JACKET.

WHAT WE GOT FROM THE JACKET WAS
HAIR.

>> BUT NONE OF HER BLOOD OR DNA
WAS ON ANY OF THE PIECES OF
CLOTHING THAT WERE RECOVERED?
THAT WOULD BE PRETTY POWERFUL
EVIDENCE.

THAT WOULD SORT OF CHANGE THE
WHOLE-- I MEAN, THAT WOULD BE
PRETTY POWERFUL.

WOULDN'T BE ABLE TO SAY, WELL,
THAT SOCK WAS A SOCK THAT MIGHT
HAVE GOTTEN BLOOD ON SOME OTHER
TIME.

>> NOW, THE HAIR RECOVERED--
I'M JUST GOING TO TELL YOU
WHAT-- THE HAIR RECOVERED FROM
THE MEMBERS ONLY JACKET WOULD
EXCLUDE 99.9% OF INDIVIDUALS
SELECTED AT RANDOM.

BUT, YOUR HONOR, THAT SOUNDS TO
ME MORE LIKE IT'S HIS HAIR.
OKAY?

>> NOT HER HAIR.

>> RIGHT.

THAT'S SOUNDING TO ME MORE THAT
WAY, OKAY?

NOT THAT WAY.

BUT, YOUR HONOR, NOT ONLY WAS
THERE NO DEFICIENT PERFORMANCE
REGARDING THIS, ANY OF THE
CLAIMS, THERE WAS NO PREJUDICE
BECAUSE OF THE FROM TIME TO
TIMES AND THE DNA.

THANK YOU FOR THE TIME.

I ASK YOU TO AFFIRM THE TRIAL COURT'S DENIAL OF POSTCONVICTION RELIEF.

>> THANK YOU.

THREE MINUTES AND 14 SECONDS.

>> THANK YOU.

TO ANSWER YOUR QUESTION ABOUT FINGERPRINTS, THERE WAS A FINGERPRINT INSIDE THE HOUSE. IT WAS ON A CHAIR THAT WAS BLOCKING A DOOR SO PEOPLE COULDN'T GET IN, AND IT WAS NOT MR. HODGES' FINGERPRINT, IT WAS NOT EXCLUDED BY PEOPLE IN THE HOUSE.

THAT'S THE FINGERPRINT THAT WAS FOUND IN THE HOUSE.

>> WHAT ABOUT THE, WHY DIDN'T-- IF THE DNA, THE SPERM WAS THAT 96% THAT IT WOULD BE EXCLUDED, WHY DIDN'T-- IF IT'S SO IMPRESSIVE, WHAT WAS THE IMPRESSIVE AMOUNT, NUMBER FROM YOUR--

>> MY RECOLLECTION IS THAT IS IN THE RECORD.

I WAS JUST LOOKING OVER-- I DIDN'T BRING THE ENTIRE RECORD WITH ME, BUT--

>> WHAT IS THE INCLUSION THEN? THEY SAY THE SOCK WAS 1 IN A BILLION, TRILLION--

>> I THINK I MAY HAVE OVERLOOKED ASKING WHAT THE 96% WAS.

>> I MEAN, THAT WOULD BE A PRETTY-- BECAUSE EVERYTHING, OKAY?

>> YEAH, I HAVE THE NUMBER.

>> OF EVERYTHING YOU COULD SAY THE JACKET WAS STOLEN, THE PHOTOGRAPHS WERE PLANTED.

>> SURE.

>> BUT THE DNA IN THE VICTIM'S ANUS WOULD BE LIKE-- THAT WOULD BE SORT OF THE END OF THE GAME.

>> WELL, LET ME GIVE YOU AN EXAMPLE.

A 99.6% WAS TESTIFY AS BEING 1 IN 214.

96% IS SUBSTANTIALLY LESS THAN

99.66%.

I MEAN, THESE ARE THE NUMBERS THAT CAME OUT AT THE HEARING. AND FOR SOME REASON I COULD NOT FIND SOMETHING ON THE 96% ONE THE WAY MR. KNOPPINGER EXPLAINED IT WAS IF A 99% INCLUSION RATE, THAT MEANS 1 OUT OF 100 WOULD BE EXCLUDED.

WHICH IS WHY IT WAS CRITICAL THAT MR. HODGES' EXPLANATION AS TO WHY IT COULD POSSIBLY BE THERE.

HE NOT ONLY SAID HE HAD WIPED HIS OBJECT IN THAT GENERAL AREA AT A CRACKHOUSE WHERE HE WAS WORKING BUT THAT HIS SOCKS WERE ALSO STOLEN.

HE'S IN A POSITION OF SOCKS--
[INAUDIBLE]

BUT THEY WERE STOLEN.

THAT WAS HIS DEFENSE.

AND WHAT I WANTED TO CONCLUDE WITH THIS IN-- WITH IN THE LAST MINUTE IS WE SEE WHAT HAPPENS. MILLIONS OF PEOPLE WATCHED THE O.J. SIMPSON TRIAL, MILLIONS OF PEOPLE THINK HE'S GUILTY AS CAN BE, BUT THE 12 PEOPLE WHO HEARD A VIGOROUS DEFENSE CONCLUDED OTHERWISE.

PEOPLE HAVE CONCLUSIONS ABOUT THE CASEY ANTHONY CASE WHEN THEY WATCHED IT AND THE EVIDENCE AGAINST HER.

BUT THE DEFENSE VIGOROUSLY DEFENDED THE CASE.

THAT DID SIMPLY NOT HAPPEN HERE. THE CONFIDENCE OF THE COURT SHOULD BE UNDERMINED THAT THIS ATTORNEY DEFENDED THIS CASE PROPERLY.

WHEN YOU LOOK AT THIS, HE TESTIFIED AT EVIDENTIARY HEARING THE REASON HE DIDN'T DO SOME OF THE DNA STUFF WAS HE WAS COMMITTED TO MR. HODGES TESTIFYING.

SO HE MAY NOT HAVE PROMISED THE JURY HE WAS GOING TO CALL 'EM,

BUT HE DIDN'T SET UP AN
ALTERNATIVE DEFENSE.
THIS ISN'T THE CASE WHERE HE
TRIED IT AS IF MR. HODGES DIDN'T
TESTIFY.

HE LET A LOT OF THE STUFF SLIDE
IN THAT UM MY CANDIDATE
MR. HODGES BECAUSE HE WAS GOING
TO TESTIFY.

THANK YOU.

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