

>> THE NEXT CASE IS DAVIS VERSUS STATE.

THIS IS A DIFFERENT CASE.

>> WHENEVER YOU'RE READY.

>> MAY IT PLEASE THE COURT,

KAREN KINNEY FOR LEON DAVIS.

THIS CASE INVOLVES THE EVENTS THAT OCCURRED ON DECEMBER 7TH, 2007, AT A GAS STATION IN LAKE ALFRED WHICH WAS JUST OFF OF I-4.

AND I HAVE THREE ISSUES IN MY BRIEF THAT I'D LIKE TO ADDRESS. THE FIRST INVOLVING THE TRIAL JUDGE'S RULING THAT THE EVENTS OF DECEMBER 13TH AT LAKE WALES WERE INEXPLICABLY INTERTWINED WITH THIS CASE AND ALLOWING THEN ALL THE EVIDENCE ABOUT THE IDENTITY OF DAVIS AT LAKE WALES TO BE COMING IN THROUGH AN INFERENCE ABOUT THE BALLISTICS IN THAT CASE.

>> YOU SAY ALL THE EVIDENCE, BUT MY RECOLLECTION IN READING THE JUDGE'S ORDER IS THAT HE GAVE A DETAILED, VERY SPECIFIC ORDER STATING WHAT'S ALLOWED AND WAS NOT ALLOWED.

AND HE REQUIRED THE STATE TO PRETTY MUCH THREAD THE NEEDLE AROUND A LOT OF THINGS, AND THE STATE PRETTY MUCH STUCK TO THAT. SO IT WASN'T ALL THE EVIDENCE THAT WAS PRESENTED, IT WAS JUST SOME OF IT THAT DEALT WITH THE FIREARM AND DEALT WITH THE AT MA, THE VEHICLE.

THOSE WERE THE TWO CONNECTING ISSUES, AM I CORRECT?

>> CORRECT.

SO AT THE HEARING, THE STATE ACKNOWLEDGED AT THE HEARING THAT WHAT WE ARE ASKING FOR IS MORE EVIDENCE OF ANOTHER CRIME THAN YOU'VE PROBABLY EVER SEEN IN A TRIAL.

AND THE JUDGE ACKNOWLEDGED THAT ALSO.

HE DID EXCLUDE SOME OF THE EVIDENCE FROM LAKE WALES.

HE EXCLUDED THE ISSUE OF WHAT HAPPENED INSIDE THE BUILDING AND THE ISSUE OF ANYTHING ABOUT A FIRE.

BUT THEN AS YOU CAN SEE, THAT ENDED UP BEING PART OF HIS SENTENCING ORDER IN FACTS THAT A HE FOUND, BECAUSE AFTER HE HAD READ THE WHOLE TRIAL--

>> WHY IS THAT IMPROPER IN THE SENTENCING ORDER?

>> WELL, IT'S IMPROPER IN THE SENTENCING ORDER BECAUSE HE WAS SITTING AS THE TRIER OF FACT FOR THE GUILT.

AND IF YOU READ THAT ORDER, THIS CAME IN-- THIS DIDN'T COME IN IN THE TRIAL, AND HIS ORDER IS TALKING ABOUT HIS ANALYSIS OF WHY HE'S FINDING THAT LEON DAVIS IS THE PERPETRATOR.

SO THE FACT THAT HE SETS OUT ALL ABOUT THE HEADILY CASE ARE FACTS WILLING TO DO WITH THE IDENTITY OF LEON DAVIS AS THE PERPETRATOR IN THE BP CASE.

SO HE'S NOT TALKING ABOUT THEM HAVING TO DO WITH ONE OF THE AGGRAVATING CIRCUMSTANCES--

>> BUT THIS IS, WHAT'S IN THE SENTENCING ORDER IS AFTER HE'S ALREADY MADE THE JUDGMENT AND DECIDED TO CONVICT THE DEFENDANT AND MADE THE DETERMINATION OF GUILT.

>> RIGHT.

>> SO I'M STRUGGLING TO SEE WHY THAT SOMEHOW TAINT GOES BACK TO TAINT WHAT WAS IN THE PRIOR DETERMINATION OF GUILT.

>> OKAY.

WELL, HE DIDN'T HAVE TO PROBABLY SAY IN THE SENTENCING ORDER WHY I DECIDED THAT LEON DAVIS WAS THE PERPETRATOR AT THE BP CASE, BUT HE DID.

AND IF YOU LOOK AT YOUR CASE OF--

[INAUDIBLE]

YOU SAID IN THAT CASE WHEN A TRIAL JUDGE SAYS IN A BENCH TRIAL AS A TRIAL OF FACT, WE PRESUME THAT HE DOESN'T CONSIDER INADMISSIBLE EVIDENCE UNLESS HE TELLS US THAT HE DID.

AND THAT'S WHAT YOU HAVE IN THIS CASE.

MAYBE HE TOLD US THAT HE DID AFTER HE MADE THE FINDING, BUT

HE STILL TOLD US THAT HE DID.
AND IT WOULD BE, I MEAN, IF HE
HAD SAID SOMETHING OUTRAGEOUS,
LIKE I FOUND HIM GUILTY BECAUSE
I DIDN'T WANT LIKE HIS RACE, I
MEAN, WE COULDN'T IGNORE THAT.
SO JUST LIKE HE TELLS US THAT HE
FOUND HIM GUILTY BECAUSE HE
CONSIDERED ALL THESE THINGS THAT
HE HEARD IN THE PRETRIAL
HEARING, THE FACT THAT HE WAS
CONVICTED OF THE CRIMES AT
HEDLEY, THOSE THINGS AREN'T IN
THE TRIAL OF THIS CASE.

>> BUT THEY'RE HISTORICAL FACTS
THAT ARE PART OF THE RECORD THAT
HE'S JUST RECITING IN THE
SENTENCING ORDER.

IT JUST SEEMS LIKE TO ME IT'S A
STRETCH.

>> HE SETS OUT AN ANALYSIS OF
GUILT AND CALLS IT THAT.

IS AND HERE'S MY ANALYSIS OF
GUILT.

I'M RELYING ON THE FACT THAT THE
JURY FOUND HIM GUILTY IN THE
HEDLEY CASE.

WELL, THAT'S NOT EVIDENCE IN
THIS CASE.

SO THAT'S--

>> SO LET'S GO TO THE
INEXTRICABLY INTERTWINED THEORY.

>> OKAY.

>> THIS CASE, THE MURDER HERE,
THE CRIME OCCURS WITH SEVEN--
SIX DAYS BEFORE.

>> THIS CASE OCCURRED--

>> THE FIRST ONE.

>> THE EVENTS HERE AT THE GAS
STATION ON DECEMBER 7TH AND THE
HEDLEY IS ON DECEMBER 13TH.

>> OKAY.

SO THE FIRST-- THE IDENTITY OF
HIM STARTS WITH, AGAIN, AND THIS
IS WHAT JUSTICE LABARGA WAS
ASKING ABOUT.

LET'S JUST TALK ABOUT THE GUN.

>> OKAY.

>> OKAY?

BECAUSE I WANT TO UNDERSTAND THE
TESTIMONY THAT TIES IN AND
INEXTRICABLY INTERTWINES, SO TO
SPEAK--

>> OKAY.

>> I'M NOT SURE THAT'S, THEY'RE

NOT REALLY INEXTRICABLY
INTERTWINED AS WE USUALLY SAY
SOMETHING PRECEDE TODAY EXPLAIN
IT.

>> RIGHT.

>> SO THEY'RE REALLY USING THAT
THE GUN, IF THE GUN AND THE CAR
TIES HIM TO ONE, THEN IT MUST
TIE HIM TO ANOTHER.
SO HOW DID THE GUN EVIDENCE COME
INTO THIS TRIAL?

>> OKAY.

SO THERE IS A BALLISTICS EXPERT
FROM FPLE WHO EXAMINES THE
PROJECTILES THAT ARE RECOVERED
FROM MR. HEDLEY AND THE THREE
RECOVERED FROM THE BP, AND HE
MAKES THE OPINION THAT THESE
WERE SHOT FROM THE SAME FIREARM,
OKAY?

AND THEN THE STATE USES, WANTS
TO USE THAT TO DRAW AN A
INFERENCE THAT, THEREFORE, THE
SAME PERSON WHO HAD THE FIREARM
ON THE 13TH MUST HAVE BEEN
THE PERSON WHO HAD IT
ON THE 7TH.

>> HERE'S MY-- THAT'S GOING TO
BE A QUESTION AS I THINK ABOUT
THIS NOW FOR THE STATE.

IT'S REALLY, IT'S NOT
INEXTRICABLY INTERTWINED, IT'S
REALLY COMING IN TO ESTABLISH
IDENTITY NOT AS THE PERSON,
BUT AS THE FIREARM.

IT MUST BE THE SAME PERSON THAT
FIRED THE GUN.

OF COURSE, IT COULD BE TWO
DIFFERENT PEOPLE THAT FIRED THE
GUN.

SO LET'S GO A LITTLE FARTHER
ABOUT HOW YOU'RE SAYING IT
WASN'T INEXTRICABLY INTERTWINED
OR ARE WE MIXING UP THEORIES OF
ADMISSIBILITY FOR A SUBSEQUENT
REALLY BAD CRIME THAT OCCURRED?
>> CORRECT.

THAT'S WHAT I THINK IS HAPPENING
BECAUSE WHEN WE LOOK AT
INEXTRICABLY INTERTWINED, YOU'RE
TALKING ABOUT DISSIMILAR FACT
EVIDENCE OF A COLLATERAL CRIME,
AND YOU LOOK AT THE GENERAL
RULES OF RELEVANCY, AND THIS
COURT HAS ALWAYS SAID THAT THIS

IS EVIDENCE THAT CONSTITUTES AN
INSEPARABLE PART OF THE ACT THAT
IS NECESSARY TO ADMIT THE
EVIDENCE TO ADEQUATELY DESCRIBE
THE DEED OR TO PAINT AN ACCURATE
PICTURE OF THE EVENTS
SURROUNDING THE CRIME.

AND THE SITUATIONS LIKE THE
TYPICAL SITUATION LIKE THE
GRIFFIN CASE, YOU HAVE A PERSON
WHERE HIS CAR IS STOLEN FROM HIS
DRIVEWAY, AND THEN HE TESTIFIES
THAT HE WENT TO BED, HE HAD LEFT
THE KEYS ON THE DRESSER, WHEN HE
WOKE UP, THE KEYS WERE MISSING
FROM THE DRESSER.

WELL, THE QUESTION WAS DID THE,
DID THAT TESTIMONY SHOW THAT
THERE WAS A BURGLARY OF HIS
BEDROOM, AND THE ANSWER WAS,
WELL, THAT WAS INEXTRICABLY
INTERTWIEPED BECAUSE YOU CAN'T
REALLY UNDERSTAND WHY THE CAR
WAS TAKEN WITHOUT EXPLAINING
WHAT WAS GOING ON THERE.

BUT IN THIS CASE YOU HAVE WHAT
IS NOT INEXTRICABLY INTERTINED
WHAT PROFESSOR EARHART WOULD SAY
A CLEAR BREAK BETWEEN THE--

>> IT SEEM LIKE TO ME IT IS--
IT SEEMS LIKE TO ME THIS IS A
DEPARTURE FROM THE REALITY OF
WHAT'S GOING ON HERE.

THIS IS ALL ABOUT PUTTING THE
GUN THAT WAS USED IN THE MURDERS
AT THE SERVICE STATION IN THE
HAND OF MR.DAVIS.

>> CORRECT.

>> SUBSEQUENTLY.

>> CORRECT.

>> NOW, THAT-- HOW YOU LABEL
THAT IS INEXTRICABLY
INTERTWINED, THAT'S BESIDE THE
POINT.

THE QUESTION IT IS, SEEMS TO ME
TO BE HIGHLY RELEVANT, AND I DO
NOT SEE AN ARGUMENT THAT IT IS
IMPROPER.

NOW, YOU CAN ARGUE THAT, BUT IT
SEEMS LIKE TO ME WE'RE KIND OF
GOING AROUND IN CIRCLES ARGUING
ABOUT HOW IT GETS LABELED WHICH
TAKES US AWAY FROM THE REALITY
HERE THAT WE'RE PUTTING THE GUN
IN THIS EVIDENCE--

>> UH-HUH.

>>-- ESTABLISHES THAT HE HAD THE GUN EARLIER AND THERE'S AN INFERENCE THAT-- HE HAD IT LATER, I'M SORRY. AND SO THERE'S AN INFERENCE THAT HE HAD IT WHEN THESE MURDERS TOOK PLACE.

>> OKAY.

WELL, TWO THINGS TO SAY ABOUT THAT.

FIRST OF ALL, YOU-- THERE'S REALLY A STACKING OF INFERENCES WHICH GOES TO THE SUFFICIENCY OF THE EVIDENCE.

PAUSE THE FACT THAT-- BECAUSE THE FACT THAT THERE WAS A GUN USED, AND WE CAN SAY THAT THERE'S IDENTIFICATION WITNESSES WHO WILL PUT IT IN HIS HAND ON THE 13TH, DOESN'T-- YOU'D HAVE TO TO DRAW AN INFERENCE THEN THAT SIX DAYS LATER THE SAME PERSON WAS USING THE GUN.

AND THAT IS AN INFERENCE THAT THE TIME FRAME IS--

>> WELL, BUT WE'VE GOT OTHER CIRCUMSTANCES.

WE HAVE GOT OTHER--

>> OKAY.

>>-- CIRCUMSTANCES ABOUT HIM ACQUIRING A GUN EITHER THE DAY BEFORE THE SERVICE STATION MURDERS OR RIGHT AROUND THE TIME OF THAT.

WE'VE GOT THE CAR.

THIS IS NOT, THIS IS NOT JUST ONE CIRCUMSTANCE THAT POINTS TO MR. DAVIS.

>> WELL, I THINK THAT THERE'S A STACKING OF INFERENCES AROUND THE WAY HE, THEY PUT IN IN EVIDENCE ABOUT HIM ACQUIRING A GUN AND SAYING SO THAT MUST HAVE BEEN THE GUN HE USED EVEN THOUGH THERE'S NO EVIDENCE THAT THAT WAS THE GUN. IT WAS NEVER RECOVERED, THERE'S NO-- THE CHARACTERISTICS OF THE GUN THEY'RE SAYING MUST HAVE BEEN THE GUN THAT WAS USED ARE SO BROAD THAT THERE ARE PROBABLY MILLIONS OF GUNS THAT FIT INTO THE CLASS CHARACTERISTICS OF THE GUN THEY SAY THAT HE POSSESSED

ON THE 7TH.
>> BUT I THOUGHT THE KEY WAS
THAT THEY FOUND THE PROJECTILES
FOR BOTH, CORRECT?
>> THE STATE'S EVIDENCE IS THAT
PROJECTILES FROM BOTH CRIMES
WERE--
>> AND TESTIMONY WAS THAT THEY
WERE FIRED FROM THE SAME WEAPON.
>> CORRECT.
>> SO IF YOU HAVE THOSE TWO, YOU
MAY HAVE A FEW OTHER THINGS
MISSING, BUT AT LEAST YOU HAVE
THAT CONNECTION TO ESTABLISH
IDENTITY AND A WEAPON, DON'T
YOU?
>> WELL--
[INAUDIBLE]
>> YOU CAN SAY THAT THE SAME
WEAPON WAS USED AT BOTH
DEFENSES.
>> RIGHT.
>> OKAY.
>> AND IT WAS USED-- IT WAS
PURCHASED BY A AND IT WAS SHOT
BY A--
>> I DISAGREE THAT YOU CAN SAY
THAT THE WEAPON THAT WAS--
>> OKAY.
>>-- PURCHASED BY--
>> OKAY.
>> BUT THAT'S WHERE YOU STACK
YOUR INFERENCES.
>> YEAH.
BUT THE ONE THAT WAS FIRED WAS
THE ONE-- THE WEAPON FIRED IN
BOTH OF THESE INCIDENTS--
>> RIGHT.
>>-- THE SAME WEAPON.
>> YES.
>> AND WE HAVE EVIDENCE, DIRECT
EVIDENCE THAT PLACES ONE OF THE
INCIDENTS, THE WEAPON IN THE
HAND OF THE DEFENDANT.
>> SIX DAYS AFTER THIS CASE.
>> WELL, THAT'S WHAT I'M SAYING.
I MEAN, I UNDERSTAND THAT'S WHEN
IT WAS, BUT IT ESTABLISHES A
CONNECTION.
NOT AS FAVORABLE TO THE STATE AS
IF THEY HAVE IT IN HIS HAND FIVE
MINUTES BEFORE--
>> OKAY.
>> BUT IT IS, IT IS THE STATE'S
SAYING, THAT'S NOT AN INFERENCE,

IT'S IN HIS HAND.

>> SO THE EVIDENCE ON THE 13TH ESTABLISHES AN INFERENCE THAT THERE WAS THE SAME WEAPON WAS USED.

AND I GUESS YOU COULD SAY SO I'M OOH GOING TO MAKE AN INFERENCE THAT THE SAME PERSON HAD IT EVEN THOUGH I DON'T HAVE EVIDENCE THAT IT WAS THE SAME PERSON.
AND--

>> BUT JUST TO BE CLEAR, HE BOUGHT THE WEAPON FROM HIS COUSIN THE MORNING OR THE DAY OF THE BP MURDERS, AM I CORRECT?

>> OKAY.

THE WEAPON THAT HE BOUGHT FROM HIS COUSIN IS NOT EVER RECOVERED, NOT EVER--

>> NO, NO.

MY QUESTION--

>> HE HAD A GUN.

HE HAD A GUN THAT HE OBTAINED FROM HIS COUSIN--

>> BUT DID HE OBTAIN THAT GUN FROM HIS COUSIN THE SAME DAY AS THE BP MURDERS IN.

>> YES.

>> AND IT WAS A .357 MAGNUM?

>> IT'S A .357 REVOLVER.

>> RIGHT.

AND THE PROJECTILES THAT WERE RECOVERED FROM THE HAND OF BOOST MAN TODAY AND THE TWO VICTIMS AT THE BP STATION--

>> RIGHT.

>>-- THE TESTIMONY WAS THEY CAME FROM A .357 MAGNUM.

>> NO.

>> NO?

>> THEY'RE .38 CALIBER BULLETS, AND THEY COULD HAVE COME FROM EITHER A .38 CALIBER OR A .357 WITH SPECIFIC LAND GROOVES AND TWISTS, AND THERE ARE 21 MANUFACTURERS WHO MAKE THE .357 AND .38 CALIBERS WITH THOSE RIFLING CHARACTERISTICS.

>> BUT A .357 MAGNUM RECOVER CAN SHOOT A--

>> CORRECT.

>> WHICH MAY EXPLAIN WHY THE BULLET DID NOT GO COMPLETELY TO HIM, TO BOOST MAN TODAY.

>> THERE'S NO EVIDENCE IN THE

RECORD OF THAT.

WHAT'S THAT?

>> I THOUGHT THAT THE EVIDENCE
IN THIS RECORD WAS THAT THE
PROJECTILES FOUND IN CONNECTION
WITH EACH INCIDENT WERE FIRED
FROM THE SAME WEAPON.

>> THAT'S CORRECT.

THAT'S WHAT THE FDLE EXAMINER
SAYS.

BUT WE DON'T KNOW IF IT WAS A
.38 CALIBER WEAPON.

THEY'RE .38 CALIBER BULLETS, SO
IT COULD HAVE BEEN A .38 CALIBER
WEAPON, IT COULD HAVE BEEN A
.357.

HE HAD OBTAINED A .357 CALIBER
GUN FROM HIS COUSIN ON DECEMBER
7TH.

YOU'VE GOT TO USE THE INFERENCE
THAT THE PERSON WHO USED THE GUN
ON THE 13TH WAS THE SAME PERSON
WHO USED THE GUN ON THE 7TH.

YOU'VE GOT TO STACK THOSE
TOGETHER, MAKE THE PYRAMID TO
FIND OUT THAT WAS THE SAME
PERSON, AND THAT'S WHY THERE'S
CIRCUMSTANTIAL EVIDENCE ON THE
IDENTITY PROBLEM.

I ALSO THINK THE FACT THAT YOUR
TESTIMONY ABOUT THE 13TH IS
COMING IN TO MAKE AN INFERENCE
WHICH IS A REALLY STRONG REASON
WHY IT'S NOT INEXTRICABLY
INTERTWINED EVIDENCE.

AND I THINK IT DOES MATTER WHAT
YOU'RE CALLING IT BECAUSE THE
STATE CAME IN HERE AND SAID WE
DON'T WANT YOU TO LOOK AT THIS
AS THE WILLIAMS RULE.

>> WELL, YOU AGREE WITH THAT,
DON'T YOU?

>> I DON'T KNOW IF I AGREE WITH
IT OR NOT.

>> THERE'S NO WAY IT WOULD BE
WILLIAMS RULE.

>> WELL, THEY'RE CITING A BUNCH
OF WILLIAMS RULE CASES IN THEIR
BRIEFS AND SAYING THIS IS WHY WE
GET TO THERE.

AND SO THAT'S A PROBLEM FOR THEM
THAT HAS TO DO WITH THEY'RE
WAIVING AN ARGUMENT THAT THEY
WANT TO SNEAK IN THE BACK DOOR
ON APPEAL, THE WAY I SEE THAT.

BUT THEY CAN'T RELY ON 90404,
THEY'RE RELYING ON 90402, AND
THEY'RE RELYING ON CASE LAW THAT
WON'T SUPPORT WHAT THEY'RE USING
IT FOR.

SO I ALSO JUST--

>> WHY IS IT NOT RELEVANT?

>> WELL, I MEAN, THE RELEVANCE,
AS I'M SAYING, IS TO MAKE AN
INFERENCE AS TO THAT WILL HAVE
TO BE STACKED WITH OTHER
INFERENCES.

>> WELL, YOU KNOW, ANYTIME THERE
ARE MULTIPLE CIRCUMSTANCES IN A
CIRCUMSTANTIAL EVIDENCE CASE
THAT POINT TO GUILT, YOU COULD
SAY, WELL, YOU'RE STACKING
INFERENCES.

I MEAN, I JUST THINK THAT'S
BEING APPLIED HERE IN A WAY THAT
WOULD, I MEAN, THAT ANYTIME
THERE'S A CIRCUMSTANTIAL
EVIDENCE CASE, THERE'S A
STACKING OF INFERENCES.

I THINK YOUR ARGUMENT--

>> NO, I DON'T, I DON'T THINK SO
BECAUSE THEY'RE DRAWING AN
INFERENCE ABOUT A CAR BEING--
I'M NOT TALKING ABOUT THE CAR,
I'M NOT TALKING ABOUT OTHER
THINGS, I'M TALKING ABOUT THE
GUN.

SO I THINK THAT THERE'S A
STACKING OF INFERENCES RELATED
TO PUTTING THIS GUN IN HIS HANDS
ON THE 7TH.

NOW, THERE IS INFERENCES THAT
ARE BEING USED FOR OTHER THINGS,
LIKE THERE'S AN INFERENCE THAT
THE PERSON WHO DID THE--

[INAUDIBLE]

AT THE GAS STATION DRIVING A
DARK-COLORED CAR AND PARKED IT A
QUARTER OF A MILE NORTH OF THE
GAS STATION.

AND THAT'S REALLY AN INFERENCE
BECAUSE WHAT HAPPENED WAS THERE
WERE NO FOOTPRINTS AROUND WHERE
THE BODIES WERE FOUND, THEY
FOLLOW SOME-- THE DOG FOLLOWS A
SCENT, AND THEY FIND SOME
FOOTPRINTS GOING NORTH OF THE
GAS STATION, AND THEN THEY FIND
SOME PEOPLE WHO SAY THEY SAW A
DARK-COLORED CAR.

THEY SHOW THEM A PICTURE OF LEON DAVIS' CAR, THEY SAY, WELL, THAT COULD BE THE CAR.

SO YOU'RE PICKING OUT A PERSON WHO'S YOUR SUSPECT, AND THEN YOU'RE DEVELOPING THE EVIDENCE WHICH COULD ALL BE EVIDENCE THAT COULD BE COINCIDENTAL TO A LOT OF PEOPLE WHO DRIVE A DARK COLORED CAR.

>> WILL TO ADD ANOTHER INFERENCE, WASN'T EVIDENCE OF GASOLINE FOUND ON THE FLOOR MAT OF THE ALTIM?

>> NO.

>> THE DRIVER'S SIDE?

I THOUGHT THERE WAS?

>> NOT IN THIS CASE.

>> OKAY.

>> NO, THERE WAS NO PHYSICAL EVIDENCE IN THE CAR, AND IT WAS IDENTIFIED IN THIS CASE.

THERE WAS NO-- THE THING THAT--

>> LET ME ASK YOU A QUESTION ABOUT THE BALANCING, BECAUSE THERE SEEMS TO ME THEY CAN TIE UP.

AND, AGAIN, THERE'S A GUN USED IN A CRIME ON THE 13TH THAT IS TIED TO LEON DAVIS, AND LET'S JUST TALK ABOUT THE GUN.

>> UH-HUH.

>> AS JUSTICE LABARGA SAID AT THE BEGINNING, FIRST OF ALL, IT'S A JUDGE TRIAL VERSUS A JURY TRIAL.

THE JUDGE IN HIS ORDER MADE SOME VERY PRECISE STATEMENTS ABOUT WHAT COULD COME IN AND WHAT COULDN'T COME IN.

AND I'D BE VERY CONCERNED IN THIS CASE IF IN A, IN THE BP CASE ALL OF A SUDDEN A JURY WAS HEARING ABOUT ALL THE CIRCUMSTANCES OF THE HEDLEY CASE.

I MEAN, SETTING THE PLACE ON FIRE AND PEOPLE RUNNING OUT BURNING.

AND SO THAT WAS, ALL OF THAT EVIDENCE WAS EXCLUDED.

DO YOU AGREE WITH THAT?

I MEAN, AGAIN, YOU'RE SAYING HE THOUGHT ABOUT IT--

>> I MEAN, THERE WERE SOMETHING LIKE 20 SOMETHING WITNESSES THAT TALKED ABOUT THE HEDLEY CASE IN THIS CASE.

SO I THINK IF A JURY HAD HEARD THE WITNESSES, IT'S DEFINITELY A FEATURE OF THE TRIAL.

THE FIRST WITNESS UP IN THIS CASE IS BRANDON GREASEMAN IN THE CASE ABOUT THE BP GAS STATION. SO, YOU KNOW, IT IS DEFINITELY A FEATURE OF--

>> AND THAT WOULD BE A CONCERN IF THE-- BY THEN HE WAS ALREADY CONVICTED OF--

>> RIGHT.

AND THE CASE WAS ON APPEAL, AND THE JUDGE HAD READ THE APPELLATE RECORD, THE TRANSCRIPTS IN ORDER--

>> THE TRIAL JUDGE.

>> THE TRIAL JUDGE.

BECAUSE IT WAS-- AT THAT TIME IT WAS ALL CONTEMPLATED THAT IT WAS GOING TO GO BEFORE A JURY. THE WAIVER OF THE JURY TRIAL WAS DONE ON THE MORNING OF TRIAL. SO ALL OF THESE RULINGS WERE MADE WITH THE IDEA THAT IT WOULD GO BEFORE A JURY.

>> BUT IF THE JUDGE SAYS I AM GOING TO CONSIDER IT FOR THIS VERY NARROW PURPOSE, WHY DON'T BASED ON OUR CASELOAD WE CAN ACCEPT THAT THE JUDGE DOES THAT, THAT THE JUDGE DOESN'T, YOU KNOW, YOU SAY THERE WERE A LOT OF WITNESSES.

YOU KNOW, AGAIN, THAT'S ALWAYS A HARD THING TO SAY, THAT IT DOESN'T-- THE FEATURE TO HAVE THE TRIAL IS MORE OF A CONCERN WHEN IT'S A JURY TRIAL VERSUS A JUDGE TRIAL.

>> RIGHT.

>> SO I GUESS THAT'S MY QUESTION.

WITH THE JUDGE MAKING THE RULING THAT IT'S SOME NARROW ASPECTS OF THE HEDLEY CASE COMING IN, IF BEING A JUDGE AND THE JUDGE SAYING I'M NOT ALLOWING THIS OTHER INFORMATION, IF WE ACCEPT THERE'S RELEVANCY, HOW CAN WE SAY THAT THE PREJUDICIAL IMPACT

OUTWEIGHS THE RELEVANCY IN THIS SITUATION?

>> WELL, ONE OF THE BIG PROBLEMS IS THAT THE JUDGE EXPLAINS HIS ANALYSIS OF GUILT, AND IT'S NOT A NARROW PURPOSE THAT HE'S USING THE HEDLEY CASE FOR.

HE'S NOT JUST--

>> SO YOU'RE NOW GOING TO WHAT YOU SAY IS IN THE SENTENCING ORDER.

>> YES.

>> IS THAT WHAT YOU'RE-- SO WE NEED TO LOOK BACK AT THE SENTENCING ORDER AND SAY IT ACTUALLY DID TAINT HIS FINDINGS OF GUILT?

IS THAT WHAT YOU'RE ARGUING?

>> YES.

BECAUSE IN HIS SENTENCING ORDER HE MAKES STATEMENTS ABOUT A LOT OF THINGS THAT EVEN AREN'T IN THE RECORD UNLESS, YOU KNOW, HE'S RELYING ON THINGS HE LEARNED BEFORE THE TRIAL STARTED ABOUT-- WELL, HE SPECIFICALLY DISCUSSES THE JURY HAVING FOUND HIM GUILTY OF THE CRIMES AT HEDLEY.

WELL, THAT IS NOT PART OF THE EVIDENCE IN THIS CASE.

HE DISCUSSES WOMEN BEING DOUSED WITH GASOLINE AND SET ON FIRE, AND THAT WAS SOMETHING SPECIFICALLY EXCLUDED FROM HIS ORDER.

SO HE WASN'T ABLE TO UNRING THAT BELL, AND HE DEFINITELY USED THAT AS THE PROPENSITY AND BAD CHARACTER EVIDENCE AND NOT JUST, AS ANYBODY WOULD, YOU KNOW?

BUT I THINK THAT'S A PROBLEM.

I THINK THAT ONE THING THAT YOU'VE GOT TO LOOK AT WITH THE CIRCUMSTANTIAL EVIDENCE IS THAT THERE'S EVIDENCE AT THE SCENE THAT DOESN'T FALL WITHIN THE, INTO THE STATE'S WHOLE THEORY BECAUSE THE STATE HAS THE THEORY THAT THERE'S THIS CAR THAT'S RELATED TO THE CRIME AND THAT THERE'S FOOT PRINTS GOING TO IT, AND THEY-- BUT THEN THE LEAD DETECTIVE SAYS I DIDN'T SUBMIT THE FOOTPRINTS, WHICH THERE ARE

PICTURES OF THE FOOTPRINTS IN THE RECORD, AND THEY'RE PRETTY GOOD PRINTS.

AND HE SAYS BECAUSE I COULD TELL FROM LOOKING AT THEM THAT THEY WEREN'T AND LOOKING AT THE PHOTOS THAT THEY WEREN'T GOING TO MATCH LEON DAVIS' FOOTWEAR EVEN THOUGH THERE IS AN EXPERT WHO SAYS SHE COULD IDENTIFY SIZES OF SHOES.

AND THEN THEY HAVE THE NEWPORT CIGARETTE THAT THERE'S A PHOTOGRAPH OF THAT, IT'S AT MARKER FIVE, AND IT'S A FRESH NEWPORT CIGARETTE ON THE GROUND WHERE THE FOOTPRINTS STOP WHERE THE CAR WAS PARKED, AND THEY THINK THAT'S GOING TO BE TYING DAVIS TO THE CASE, BUT THE DNA ON THAT COMES FROM A DIFFERENT PERSON, AN UNIDENTIFIED MALE.

SO TO THE EXTENT THAT YOU CAN SAY THAT THE STATE'S EVIDENCE HERE IS, YOU KNOW, THE JUDGE DOESN'T TALK ABOUT ANY OF THESE THINGS IN HIS SENTENCING ORDER. SO HE'S, HE'S LOOKING AT THE CIRCUMSUBSTANTIAL EVIDENCE ONLY IN A WAY THAT RELIES ON SPECULATION AND THE STACKING OF INFERENCES, AND IT'S JUST INSUFFICIENT UNDER THIS COURT'S CASE LAW ABOUT WHAT YOU NEED TO SHOW FOR CIRCUMSTANTIAL EVIDENCE OF IDENTITY.

NOW, LET'S SEE.

UM, THIS COURT HASN'T REALLY ADDRESSED GUN EVIDENCE IN THIS KIND OF CONTEXT WHERE IT'S SOMETHING THAT'S A SIX-DAY PERIOD BETWEEN THEM, BUT I THINK THAT YOU HAVE TO KEEP IN THE MIND IF YOU LOOK AT CASES THAT DISCUSS A CAR, YOU KNOW, EVERYBODY KIND OF REALIZES THAT DIFFERENT PEOPLE CAN DRIVE IT AT DIFFERENT TIMES.

AND I THINK THE SAME THING YOU HAVE TO REALIZE WITH A GUN THAT A GUN CAN BE PASSED FROM PERSON TO PERSON, AND IT WOULD MAKE SENSE FOR A PERSON WHO DID THE CRIME AT THE BP TO GET RID OF THAT GUN BECAUSE WHEN YOU LOOK

AT THE VIDEO IN THAT CASE, IT DOESN'T-- YOU CAN'T EVEN TELL WHAT'S GOING ON THERE, BUT IT'S A CRIME OF VIOLENCE BY SOMEBODY WHO DEFINITELY WANTED TO, WAS INTENT ON DOING A CRIME OF VIOLENCE.

AND IT WOULD-- IT ALMOST LOOKS LIKE SOMEBODY IT MAKES SENSE THEY WOULD GET RID OF THE GUN AFTER THEY DID THAT.

AND I ALSO WANT TO TOUCH ON THE FACT THAT WHEN YOU LOOK AT THE VIDEO, IT IS NOT CLEAR AT ALL WHAT THE MOTIVE IS IN THIS CASE. BECAUSE IT IS NOT CLEAR AT ALL THAT THIS IS AN ATTEMPTED ROBBERY.

THE PERSON GOES UP TO THE DOOR, HE LOOKS LIKE HE'S JUST GOING TO LOOK IN, VIEW THE PERSON AT THE COUNTER AND SHOOT THROUGH THE WINDOW, AND THEN HE RUNS OFF TO THE OTHER PEOPLE, COMES BACK, LOOKS IN AND DOESN'T SEE THE CLERK AND RUNS OFF AGAIN.

SO THERE'S NOTHING HERE THAT SHOWS THAT THERE'S A DEMAND FOR MONEY THAT YOU WOULD NEED FOR AN ATTEMPTED ROBBERY.

AND IN THE SENTENCING ORDER, THE JUDGE ACKNOWLEDGES THAT HE CAN'T TELL WHAT THE MOTIVE WAS IN TERMS OF THE ELIMINATING OF WITNESSES AGGRAVATING CIRCUMSTANCE, SO HE REJECTS THAT.

>> YOU'RE DEEP INTO YOUR REBUTTAL.

>> OKAY.

>> YOU CAN KEEP GOING, BUT WANTED TO LET YOU KNOW.

>> SO I JUST WANTED TO TOUCH ON THAT, BECAUSE I THINK THAT THE EVIDENCE OF IDENTITY ISN'T SUFFICIENT, AND THE EVIDENCE OF MOTIVE IS INSUFFICIENT WHICH WOULD GO TO THE PENALTY.

SO THANK YOU.

>> MAY IT PLEASE THE COURT, TIMOTHY FREELAND ON BEHALF OF THE STATE OF FLORIDA.

LET ME REVIEW THE FACTS OF THIS CASE, THE FACTS OF WHAT WERE ESTABLISHED-- JUST THE FACTS OF

WHAT WERE ESTABLISHED AS TO WHAT HAPPENED AT THE BP STATION.

MR. PETE PATEL TESTIFIED THAT AT APPROXIMATELY 8:52 A MAN CAME TO HIS DOOR, CAME TO THE GAS STATION DOOR AND TRIED TO GET IN.

HE INDICATED, HE TOLD THE MAN, NO, WE'RE CLOSED, GO AWAY. AND AT THAT POINT THE MAN-- NOW, HE DESCRIBED THIS MAN. HE WAS A LARGE MAN, HE WAS DARK SKINNED, HE WAS WEARING A MASK, AND WE HAVE THE SURVEILLANCE VIDEO WHICH SUPPORTS ALL OF THIS AND A HOOD.

SO THE ONLY THING-- HIS EYES WERE VISIBLE, BUT THE REST OF HIM WAS DISGUISED.

HE TELLS THIS MAN, MR. PATEL TELLS THE MAN, WE'RE CLOSED, YOU CAN'T COME IN, WHEREUPON THE MAN PRODUCES A GUN AND SHOOTS INTO THE BP STATION, AND MR. PATEL DUCKS DOWN, DUCKS DOWN.

AT THAT POINT VIDEO, SURVEILLANCE VIDEO SHOWS THAT THE MAN WHO DID THIS LOOKED OVER TO THE AREA OF WHERE THE SIGNAGE WAS, THE SIGN-- YOU KNOW, THE PRICES FOR THE GASOLINE ARE. THERE WERE TWO YOUNG MEN OVER THERE WHO WERE CHANGING THE PRICES.

THE SHOOTER THEN GOES FROM THE DOORWAY, MAKES A BEELINE STRAIGHT OVER TO WHERE THOSE TWO MEN ARE, AND HE KILLS THEM.

WE DON'T KNOW EXACTLY THE CIRCUMSTANCES OF WHAT HAPPENED WHEN HE KILLED THEM BECAUSE WE DON'T HAVE A VIDEO OF THAT PART. BUT WE DO KNOW THERE'S A SHORT IMAGE OF ONE OF THE TWO MEN STANDING WITH HIS ARMS UPRAISED. AND THEN THE MEDICAL TESTIMONY IS THAT BOTH MEN WERE SHOT EXECUTION STYLE, POINT-BLANK GUN TO THE HEAD.

THE VIDEO THEN SHOWS THE KILLER COMING BACK TO THE DOOR OF THE BP STATION, TRYING TO GET IN. MR. PATEL TESTIFIED HE TRIED TO GET IN TWICE.

FAILS TO GET IN, AND THEN HE

LEAVES.

LAW ENFORCEMENT RESPONDS TO THE SCENE.

THEY BRING A TRACKING DOG.

THE TRACKING DOG GOES FROM THE DOOR OF THE ROBBERY SITE, I MEAN, THE BP STATION, FOLLOWS THE TRAIL OF THE SHOOTER OUT TO AN AREA APPROXIMATELY A QUARTER MILE AWAY, A SANDY AREA WHICH IS REFER TODAY AS A CATTLE GAP.

I DON'T KNOW WHAT A CATTLE GAP IS, BUT THAT'S WHERE HE WAS. THAT'S-- FOLLOWED IT TO THAT AREA.

AT THE AREA THERE'S PHOTOGRAPHS IN THE RECORD SHOWING TIRE MARKS IN THE SAND.

THE TIRE MARKS WERE UNUSUAL. NOT UNIQUE, I'LL GIVE THEM THAT, BUT IT'S UNUSUAL TIRE MARKS. EXPERT TESTIMONY REVEALED THAT THOSE TIRE MARKS WERE MADE BY A BRAND OF MANUFACTURER CALLED NANKING TIRES.

AND IF YOU LOOK AT THE IMAGES OF PHOTOGRAPHS OF THE TIRE MARKS, THEY ARE UNUSUAL.

OUR COMMON EXPERIENCE WITH TIRES, WE ALL SEE TIRES EVERY DAY, USUAL TREAD MARKS ARE STRAIGHT ON THE TIRE WITH SQUIGGLY MARKS, YOU KNOW? THESE TIRES ARE UNUSUAL IN THAT THEY ARE A SPLAYED PATTERN WHICH IS NOT COMMON.

IT'S OUT THERE, BUT IT'S NOT COMMON.

WITNESSES WHO DROVE BY THE AREA REGULARLY WERE LOCATED BY LAW ENFORCEMENT, AND THEY TESTIFIED THAT AT AROUND 9:00 ON THE NIGHT OF THE ROBBERY, DECEMBER 7TH, THERE WAS A DARK CAR THAT HAD AN UNUSUAL GRILL ONE OF THE WITNESSES SAID WHICH IS A CUSTOM EDITION TO THE VEHICLE.

A DARK NISSAN WITH A SPORTY ROUNDED END.

ALL OF THOSE DESCRIBE A VEHICLE OWNED BY THE DEFENDANT.

THAT'S THE CIRCUMSTANTIAL EVIDENCE THAT WE HAVE OF IDENTIFYING THIS DEFENDANT IN THIS CASE JUST FROM WHAT WE HAVE

AT THE BP STATION.
IN ADDITION, OF COURSE, WE HAVE
THE BULLETS.
NOW, WE'RE TALKING INEXTRICABLY
INTERTWINED.
AT THIS POINT IF WE STOP, WE
DON'T KNOW WHO THE SHOOTER IS
BECAUSE WE DON'T HAVE ENOUGH
EVIDENCE TO LINK THIS DEFENDANT
DEFINITELY WITH THAT.
AND THAT'S WHY THE EVIDENCE FROM
THE SECOND CRIME SCENE COMES
INTO PLAY.
SO WE GET PAST 9402, THE
RELEVANCE ISSUE, BECAUSE WE KNOW
THAT THE SAME GUN WAS USED IN
BOTH CRIMES.
WE KNOW THAT.
THERE'S EXPERT TESTIMONY.
SAME BULLETS, IT WAS FIRED BY
THE SAME GUN.
EVIDENCE SUGGESTING THAT THIS
DEFENDANT WITH RESPONSIBLE.
WE KNOW THAT HE PURCHASED A .357
DAN WESSON REVOLVER FROM HIS
COUSIN, RANDY BLACK, A FEW HOURS
BEFORE THIS ROBBERY OCCURRED.
HE BOUGHT A GUN THAT COULD HAVE
FIRED THE BULLETS.
HE HAS, HE HAS ATTEMPTED TO
ESTABLISH AN ALIBI.
HE SAID THAT HE WAS OUT HOPPING
FOR CHRISTMAS PRESENTS THAT DAY,
AND HIS WIFE TESTIFIED--
IMPEACHED BUT TESTIFIED-- THAT
HE DID NOT RETURN HOME UNTIL
9:30.
SO, AND WE HAVE EVIDENCE,
TESTIMONIAL EVIDENCE THAT IT
WOULD HAVE TAKEN ABOUT 25
MINUTES FROM HIM TO DRIVE TO THE
BP STATION TO HIS HOUSE.
SO THERE'S NOTHING THAT WE HAVE
AT THIS POINT THAT SAYS THAT HE
COULD NOT HAVE COMMITTED THIS
OFFENSE.
WE MOVE TO SIX DAYS LATER.
WE KNOW THAT HE BOUGHT A GUN, A
.357.
WE KNOW THAT A .357-TYPE GUN WAS
USED IN THE BP STATION.
SIX DAYS LATER THE MURDER AT THE
HEDLEY INSURANCE COMPANY OCCURS,
AND WE HAVE EVIDENCE THAT A
SIMILAR GUN COULD HAVE BEEN USED

AT THE HEDLEY INSURANCE MURDER.
AND WE HAVE EXPERT TESTIMONY
THAT THE SAME BULLETS WERE, IN
FACT, USED.

AND WITNESSES SAID THE SHOOTER
AT HEDLEY INSURANCE COMPANY HAD
A GUN.

SO WE HAVE CLEAR EVIDENCE TYING
HIM TO, AS BEING THE SHOOTER IN
HEDLEY.

>> CAN I SAY JUST ON THAT, THE
WAY WE HAVE USED IN THE PAST
INEXTRICABLY INTERTWINED USING
THE, YOU KNOW, WRIGHT CASE IS
THAT IT'S TO GIVE IT A COMPLETE
AND INTELLIGENT ACCOUNT OF THE
CRIMINAL EPISODE WITHOUT CAN YOU
DO IT, OKAY?

NOW I THINK MY QUESTION HERE
MAYBE REALLY JUST GOES TO THE
PREJUDICE ISSUE.

IF THE SECOND CRIME WAS A
ROBBERY, THERE'S NO MURDER,
OKAY?

JUST A ROBBERY A FEW DAYS LATER,
IT WOULD NECESSARILY BE, YOU
KNOW, IT'S NOT A SIMILAR CRIME.

>> SAME GUN.

>> WITH THE SAME GUN.

WHAT CASES DO WE HAVE?

BECAUSE IT SEEMS TO ME THIS IS
SORT OF A MELDING OF-- WE'RE
USING IT TO PROVE THAT THE SAME
GUN WAS USED AND, THEREFORE,
WHOEVER USED-- YOU COULD ALMOST
SAY EITHER WAY WHOEVER USED THAT
GUN PROBABLY COMMITTED BOTH
MURDERS, ALTHOUGH AGAIN,
SOMEBODY COULD HAVE-- TWO
PEOPLE COULD USE, COULD HAVE A
GUN.

IT COULD BE HIS BROTHER, FOR
EXAMPLE.

SO MY CONCERN REALLY IS THAT
THIS IS, THIS OTHER CRIME SO
HORRENDOUSLY HEINOUS--

[INAUDIBLE]

>> RIGHT.

THAT IT DOESN'T, THAT THE--
WHATEVER MARGINAL RELEVANCE TO
ESTABLISH IT'S A GUN AND THE
INFERENCES JUST GETS OUTWEIGHED
BY THE PREJUDICIAL ASPECTS OF
IT.

AND HOW DO YOU-- YOU KNOW,

AGAIN, I'M MORE, THE FACT THAT IT'S A JUDGE DOING IT VERSUS A JURY GIVES SOME--

>> THAT REALLY DOES ANSWER THE QUESTION.

>> DOES IT, DO YOU THINK THAT IT DOES IN THIS-- BECAUSE, AGAIN, WE'RE SORT OF LOOKING AT A RULE OF LAW ABOUT WHETHER DOES IT FACTOR INTO IT THAT IT'S A JUDGE WHO'S CAPABLE OF NOT LOOKING AT THE HORRENDOUS--

>> ABSOLUTELY.

>>-- PART OF THE CRIME?

>> THIS WAS AN EXPERIENCED TRIAL JUDGE, AND WE DO HAVE HIS PRETRIAL RULING THAT WE'RE ONLY GOING TO BE CONSIDERING THE HEDLEY INSURANCE FOR THE PURPOSE OF ESTABLISHING IDENTITY. THE HORRIBLE ASPECTS OF THAT CASE WERE EXCISED, WERE NOT INTRODUCED; THE FLAMES, WHAT HAPPENED AFTER HE ENTERED THE HEDLEY, NONE OF THAT CAME IN IN TERMS OF GUILT PHASE. AFTER HE'S FOUND GUILTY, ALL THAT COMES IN, YOU KNOW? IT'S ALL RELEVANT BECAUSE WE'RE TALKING ABOUT PENALTY THEN. NO, THIS IS-- I AGREE THAT THERE ARE SOME DIFFICULTIES WITH REALLY CALLING THIS INEXTRICABLY INTERTWINED.

WE REALLY HAVE TO LOOK AT IS IT RELEVANT AND BALANCE IT WITH IS IT TOO PREJUDICIAL.

AND WHEN I LOOK AT THE EVIDENCE THAT ESTABLISHES IDENTITY, JUST THAT, THAT'S NOT TOO PREJUDICIAL.

WE HAVE ADMITTEDLY A LOT OF EVIDENCE FROM THE HEDLEY CASE, BUT REMEMBER, THE DEFENDANT VIGOROUSLY CONTESTED ALL THESE FACTORS--

>> WELL, THAT'S REALLY THE KEY, HOW MUCH CAME IN FROM THE HEDLEY CIRCUMSTANCE?

BECAUSE LET'S ASSUME THAT RATHER THAN HEDLEY, THAT MR. DAVIS' PRIEST WENT OUT ON A FARM WITH HIM, AND THEY DID TARGET SHOOTING AT A FENCE POST. AND THE PRIEST SAW MR. DAVIS

FIRE THE SHOTS INTO THE POST.
NO OTHER SHOTS WERE IN THE POST.
AND LAW ENFORCEMENT TALKED TO
THE PRIEST, AND HE SAID THERE'S
WHERE THEY ARE.

THAT'S NOT INEXTRICABLY
INTERTWINED, BUT IT IS RELEVANT
TO IDENTITY OF-- AND THOSE
BULLETS MATCH JUST LIKE THEY DO
HERE-- THAT WHOEVER USED THE
GUN.

NOW, DOES CAN IT GET YOU AWE
CROSS THE THRESHOLD THAT
MR.DAVIS HAD THE GUN AT THE BP?
I'M NOT SO SURE.

BUT THE QUESTION OF RELEVANCE,
IT DOES PUT IT IN HIS HAND.

>> YES, SIR, IT DOES.

>> SO, I MEAN, REALLY THE
QUESTION COMES DOWN TO HOW MUCH
PREJUDICIAL INFORMATION CAME IN
FROM THE HEDLEY CIRCUMSTANCES,
AND I THINK IT'S ALMOST WORSE
THAN THE TRIAL JUDGE WAS THERE
BECAUSE THE TRIAL JUDGE KNEW
WHAT HAD HAPPENED WHEREAS A
CLEAN JURY, UNLESS THEY'D
ALREADY BEEN TAINTED BY THE NEWS
AND THAT KIND OF THING, THEY
WOULDN'T KNOW WHAT THE CRIME
WAS, JUST THAT A GUN HAD BEEN
FIRED IN HEDLEY.

>> WELL, LET ME ANSWER IT THIS
WAY, IF WE JUST LOOK AT THE
QUANTITY OF EVIDENCE THAT CAME
IN FROM THE INSURANCE COMPANY,
I'M GOING TO GRANT YOU THAT IT
WAS A LOT.

BUT WHEN I LOOK AT IT AND WHEN I
LOOK AT WHAT EXACTLY DID COME
IN, WE'RE TALKING ABOUT VIDEOS
OF THE DEFENDANT WALKING AROUND
WALMART.

HOW PREJUDICIAL IS THAT?

ALL OF THIS DEALS WITH--

>> WHAT DID WALKING AROUND
WALMART HAVE TO DO WITH THE GUN
AND--

>> BECAUSE IT DID, IN FACT, SHOW
THAT HE WAS RESPONSIBLE FOR THE
HEDLEY CRIME.

HE WENT TO WALMART, HE PURCHASED
THINGS THAT WERE THEN USED AT
THE HEDLEY SCENE.

>> WENT TO IDENTIFYING HIM--

>> YES, SIR.
YES, SIR.
SOME REAL SPECIFIC THINGS.
HE BOUGHT, FOR EXAMPLE, AN
UNUSUAL, A COLORED ORANGE
LUNCHBOX, A SOFT SIDE LUNCHBOX
THAT HE USED TO HIDE THE GUN IN
AT THE HEDLEY INSURANCE.
SO THEY BROUGHT IN EVIDENCE
SHOWING HE WAS AT WAL-MART THE
MORNING OF THE HEDLEY INSURANCE
CRIME, HE BOUGHT-- THAT WAS
WHAT HE BOUGHT.
AND A FEW YEARS LATER--
>> AND HE CARRIED THAT INTO
THE--
>> HE CAN CARRIED THAT INTO THE
HEDLEY INSURANCE COMPANY.
IS THAT PREJUDICIAL?
A LITTLE.
>> I MEAN, ALL EVIDENCE COULD
BE-- DID THE VIDEO ACTUALLY
SHOW HIM SHOOTING OR
RAMPAGING--
>> NO, SIR.
WE DON'T HAVE EVIDENCE OF THAT.
THERE'S NO ACTUAL VIDEO AT THE
HEDLEY INSURANCE, IT'S ALL
EYEWITNESS--
>> WHAT CASES DO WE HAVE--
>> GRIFFIN.
>> YOU AGREE IT'S NOT YOUR
TRADITIONAL INEXTRICABLY
INTERTWINED TO EXPLAIN THE
CRIME.
>> NO.
WE'RE TALKING ABOUT RELEVANCE
AND PREJUDICE HERE.
THAT IS WHAT WE'RE MEASURING
HERE.
AND IN THE GRIFFIN CASE, THE
DEFENDANT STOLE A GUN AT A
PREVIOUS LOCATION AND USED IT
LATER.
SO THAT WAS, IT WAS-- THE
PREVIOUS OFFENSE WAS PROPERLY
ADMITTED TO PUT THE GUN IN THE
HANDS OF THE DEFENDANT.
WE KIND OF HAVE THE FLIP SIDE
HERE.
WE HAVE A SUBSEQUENT CRIME USED
TO PUT THE SAME GUN IN THE HANDS
OF A DEFENDANT.
>> SO THE FLIP SIDE WOULD BE
THAT YOU COULD HAVE USED, COULD

YOU HAVE USED THE BP CRIME IN
THE HEDLEY CRIME?
>> IF WE KNEW DEFINITELY
THE--
>> BUT YOU DON'T HAVE THAT.
>> WE DON'T.
SO WE HAVE THE OPPOSITE.
IN THE TERMS OF TIME--
>> ONLY BECAUSE THE IDENTITY WAS
KNOWN AT THE SECOND EVENT.
>> YES, SIR, CORRECT.
>> AND IT DOESN'T MAKE ANY
DIFFERENCE WHETHER A JURY FINDS
IT OR NOT.
THAT, TO ME, THE IRRELEVANCE.
THE TESTIMONY OF WITNESSES WHO
SAW HIM WITH THE GUN IN THE
HAND, SEEMS TO ME, IS ALL THAT'S
RELEVANT.
>> THAT IS WHAT IS CELL HAVEN'T,
CORRECT.
>> BUT THE JUDGE DOES MAKE A
NUMBER OF STATEMENTS WHERE HE
SAID THE JURY FOUND HIM--
>> IN THE SENTENCING ORDER.
>> WELL, HE GOES THROUGH THE
FINDINGS OF GUILT.
NOT JUST THE SENTENCING ORDER.
HE GIVES HIS RATIONALE FOR WHY
HE FINDS HIM GUILTY.
IT'S NOT-- SHOULDN'T BE THE
FACT THAT THE JURY FINDS HIM
GUILTY IN THE HEDLEY CRIME--
>> THE TIME THAT HE ANNOUNCES
THE VERDICT ON OCTOBER 4TH.
HE DOES NOT GO THROUGH ALL THAT.
HE MERELY ANNOUNCES THE VERDICT.
IF WE'RE LOOKING AT THE
SENTENCING ORDER ITSELF WHICH
CAME OUT MORE THAN A MONTH
LATER--
>> I GUESS MAYBE I'M THINKING
ABOUT FOR MY-- IT SEEMS LIKE
THERE IS AMPLE EVIDENCE OF THE
HEDLEY CRIME, AND IT'S
MR. DAVIS.
THIS OTHER ONE SEEMS SORT OF OUT
OF-- WELL, IT'S CERTAINLY NOT
EVEN REMOTELY SIMILAR.
AND I CAN'T HELP BUT FEEL THAT
I'M LOOKING AT THIS CASE AND
GOING, HEDLEY AND EVERYTHING
THAT HAPPENED THERE, IT MUST BE
HIM.
AND WE DON'T WANT THAT TO BE THE

CASE, RIGHT?
YOU DO NOT WANT SOMEBODY TO BE
CONVICTED BECAUSE THEY--
>> NO.
>>-- THEY SAY THIS IS--
>> ON THE MERITS OF THIS CASE.
>>-- TO DO HEDLEY.
I'D BELIEVE ANYTHING ELSE THAT
HE DID WHETHER IT WAS BEATING
HIS KID OR WHATEVER IT IS.
>> BUT THAT'S NOT HOW THE STATE
USED IT IN THIS CASE.
>> WE USED IT SOLELY FOR THE
PURPOSE OF ESTABLISHING THE
IDENTITY OF THE PERSON IN THE
HEDLEY CASE BECAUSE IT WAS
RELEVANT TO SHOW THE SAME GUNMAN
WAS INVOLVED.
>> AND IT'S IMPOSSIBLE TO ERASE
THE GUNMAN'S MEMORY--
>> SAID THAT HE DID.
>> WELL, YOU KNOW, THAT'S--
[INAUDIBLE]
DON'T THINK ABOUT THAT FOR THE
NEXT TWO MINUTES.
THIS DEFENDANT WAS AWARE THAT
THIS TRIAL JUDGE HAD HURT HIS
TRIAL EARLIER IN HEDLEY.
>> IN FACT, THE DEFENSE
STIPULATED THAT THE EVIDENCE
FROM THE HEDLEY CASE SHOULD COME
IN.
>> WAS HE--
>> THE SAME JUDGE?
>> NO, DIFFERENT JUDGE.
>> TELL ME AGAIN?
>> IT WAS NOT THE SAME JUDGE--
>> WAS NOT THE SAME JUDGE?
>> CORRECT, IT WAS NOT.
IT WAS A DIFFERENT JUDGE.
THE JUDGE WHO TRIED THIS CASE
RELIED ON TRIPLETS AND
EYEWITNESS TESTIMONY--
>> WHAT YOU'RE SAYING IS HE
THOUGHT IT WAS GOING TO BE A
JURY TRIAL, SO HE HAD READ THE
WHOLE TRANSCRIPT--
>> HE SAID THAT HE DID.
>> AND DID THE DEFENDANT OBJECT
TO THAT?
>> NO.
HE DID NOT.
THERE WAS NO OBJECTION-- FOR
THE PURPOSES OF THE PENALTY
PHASE, EVERYBODY AGREED THAT THE

JUDGE NEEDED TO CONSIDER THE INFORMATION FROM THE HEDLEY CASE IT WAS ALL BROUGHT IN. SO IT WAS PROPERLY ADMITTED, NO OBJECTION.

>> THAT DOESN'T MAKE ANY DIFFERENCE AT WHAT POINT THE TRIER OF FACT READS THAT.

>> WELL, AT THAT POINT, GUILT HAD ALREADY BEEN ESTABLISHED.

>> BEFORE HE READ THE TRANSCRIPT, YOU'RE SAYING THE JUDGE HAD ALREADY FOUND HIM-- HOW COULD THAT BE?

BECAUSE THE IDENTITY'S IN THE TRANSCRIPTSOME.

>> THE JUDGE DECADE SAY IN THE RUNUP TO THE TRIAL, I HAVE TO AGREE, THE JUDGE DID SAY THAT I'VE READ THE TRANSCRIPT FROM THE HEDLEY CRIME.

AND HE HAD TO KNOW--

>> WELL--

[INAUDIBLE]

>> BECAUSE PART OF THE ARGUMENT PRIOR TO TRIAL WAS WE WANT TO EXCLUDE THE PREJUDICIAL, UNFAIRLY PREJUDICIAL--

>> AND ALL THAT BUSINESS.

>> RIGHT.

THE JUDGE WAS AWARE OF THE ENTIRETY OF IT, BUT WE HAVE AN ORDER FROM THE TRIAL JUDGE SAYING WE'RE ONLY GOING TO CONSIDER THE PARTS THAT ARE FOR THE PURPOSES OF IDENTITY.

WE'RE NOT GOING TO CONSIDER THE REST OF IT, AND I THINK THINKING THAT THE JUDGE VIOLATED HIS OWN ORDER REQUIRES US TO SPECULATE AS TO WHAT THE JUDGE DID.

>> WELL, IT'S KIND OF A STRANGE CIRCUMSTANCE--

>> IT IS.

>>-- WHERE YOU'VE GOT THE, CLEARLY TO MY MIND, IF THEY HAD PUT ON THE HEDLEY IN A JURY TRIAL, THE HEDLEY FACTOR'S REVERSIBLE ERROR RIGHT HERE. AND YET WE ARE LETTING THE TRIER OF FACT-- I MAY BE WRONG, BUT IT JUST SEEMS TO ME THAT WE REALLY WITHOUT THE HEDLEY TRIAL, YOU DON'T HAVE ENOUGH EVIDENCE TO--

>> WE NEED TO HAVE THE TRIAL.
[INAUDIBLE]
>> WE DID.
AND THEN YET IF YOU PUT ALL
THAT'S IN THE HEDLEY TRIAL,
YOU'VE GOT ERROR.
BUT YET WE'VE-- I JUST, THIS
IS--
>> I'M NOT DISPUTING--
>> THEY WAIVED JURY TRIAL,
RIGHT?
>> YES, SIR.
>> AND THEY KNEW THAT THE JUDGE
READ THE TRANSCRIPT PRIOR TO
THEM WAIVING JURY TRIAL, RIGHT?
>> ABSOLUTELY.
IT'S PART OF THE RECORD.
>> OKAY.
SO NOW THEY CAN CLAIM, WELL,
REMEMBER WHAT HE KNEW BEFORE WE
WAIVED THE JURY TRIAL SO,
THEREFORE, THE-- THAT DOESN'T
MAKE SENSE.
>> WELL, YOU WOULD THINK THAT IF
THEY WERE CONCERNED ABOUT IT AT
THE TIME, THAT THEY COULD HAVE
ASKED FOR A DIFFERENT JUDGE.
BUT THAT WASN'T DONE.
THEY PROCEEDED WITH--
>> THEY DIDN'T DO THAT.
>> BUT THE WAIVER OCCURRED AFTER
HE ANNOUNCED HE'D ALREADY READ
EVERYTHING OR BEFORE THAT?
>> THE JUDGE ANNOUNCED AND WAS
ASKED BY THE PARTIES TO CONSIDER
THE TESTIMONY BEFORE THE TRIAL
STARTED, BEFORE THE
STIPULATION--
>> NO, NO, NO.
BEFORE THE STIPULATION?
>> CORRECT.
>> THAT IT WOULD BE A BENCH
TRIAL.
>> CORRECT.
THE JUDGE WAS FAMILIAR WITH THE
ENTIRETY OF THE RECORD BEFORE
THE STIPULATION--
>> AND THE DEFENDANT KNEW THAT
BEFORE HE STIPULATED TO A BENCH
TRIAL.
>> YES, SIR.
AND WE KNOW THAT IN ORDER TO
MAKE A DETERMINATION OF WHAT'S
ADMISSIBLE AND WHAT'S NOT--
>> SO HE HAD ALREADY SAID I'M

GOING TO LET SOME OF IT IN.
>> YES.
>> SO, TO ME, AGAIN I-- AT THAT POINT THE DEFENDANT SAID WE CANNOT AFFORD TO LET A JURY HEAR THIS OTHER EVIDENCE.
>> REASONABLE INFERENCE--
>> BETTER TO HAVE A JUDGE WHO, HOPEFULLY, CAN SEPARATE THE PREJUDICIAL PART FROM WHAT IS RELEVANT WHICH IS THE GUN AND THE CAR.
>> I'M GOING TO AGREE THAT IF THIS CASE WERE TRIED BEFORE A JURY, MY ARGUMENT WOULD BE MUCH DIFFERENT.
BUT THE FACT THAT WE HAVE A VERY EXPERIENCED TRIAL JUDGE WHO MADE SPECIFIC FINDINGS AND THE DEFENDANT KNEW WHAT IT WAS THE JUDGE WAS AWARE OF, YOU KNOW, I DON'T SEE THAT WE HAVE A DIFFICULTY HERE THAT WOULD REQUIRE REVERSAL ON THIS ISSUE.
>> WAS THERE, JUST CURIOSITY, WAS THERE GASOLINE FOUND ON THE FLOOR MAT OF THE CAR?
>> YES.
YOU'RE REFERRING TO THE HEDLEY CRIME.
>> RIGHT.
>> THEY BROUGHT IN THE FIRE FIRE MARSHAL, AND THERE WAS GASOLINE FOUND IN THE FLOOR MATS, THE REAR OF THE ALTIMA.
>> DID THAT COME IN IN THIS CASE?
>> IT DID.
IT WAS PART OF THE RECORD.
YES, IT DID COME IN IN THIS CASE.
PART OF IDENTIFYING HIM.
>> THAT WOULD CONNECT THE CAR--
>> THAT WOULD CONNECT THE CAR IN BOTH PLACES, RIGHT.
>> WELL, HOW DOES IT-- I'M SORRY, HOW DOES IT CONNECT THE CAR-- WHAT ELSE CONNECTS THE CAR AT THE HEDLEY CRIME WITH THIS CRIME?
>> ALL THE WITNESSES WHO SAW THE DEFENDANT WALKING TOWARDS THE CAR IN THE HEDLEY CRIME DESCRIBED A BLACK NISSAN ALTIMA. ADMITTEDLY, NO ONE SAW HIM

GETTING IN THE CAR, BUT THEY SAW HIM WALKING TOWARDS IT, AND A FEW MINUTES LATER, IT WAS GONE. IT'S KIND OF A DISTINCTIVE CAR. IT'S BLACK, IT HAD UNUSUAL TIRES--

>> BLACK DOESN'T MAKE IT--

>> NO, BUT THE RIMS WERE CUSTOM RIMS.

AND ONE OF THE WITNESSES TESTIFIED-- I THINK IT WAS MR. ORTIZ-- TESTIFIED ABOUT THE RIMS LOOKING DIFFERENT.

SO WE HAVE THAT.

WE HAVE BLACK ALTIMA, SPORTY LOOKING COMING FROM WITNESSES WHO SAW THAT CAR AT THE--

>> WELL, HOW DID THEY--

>>-- THE INSURANCE COMPANY AND ALSO BP.

>> IS THERE OTHER WAYS TO IDENTIFY THAT WAS HIS CAR? IN OTHER WORDS, ARE THERE OTHER THAN SAYING HE WAS--

>> HIS WIFE'S TESTIMONY.

HIS WIFE'S TESTIMONY SAID THAT THEY OWNED THAT CAR, THEY OWNED A BLACK NISSAN ALTIMA THAT THE DEFENDANT USED.

THEY HAD TWO CARS.

THEY WERE--

>> WELL, AND THE CAR THAT THEY OWNED WAS A CAR IN WHICH THERE WAS SOME GASOLINE--

>> YES, SIR.

>>-- RESIDUE IN THE CAR.

>> YES, SIR, EXACTLY.

AFTER ALL THESE CRIMES WERE COMPLETED, THEY IMPOUNDED THE BLACK NISSAN ALTIMA THAT WAS OWNED BY THE DEFENDANT.

THEY TESTED THAT CAR, AND IT DID HAVE GASOLINE IN THE BACK OF THE CAR.

THAT'S HOW WE LINKED THE CAR TO HIM, THROUGH HIS WIFE'S TESTIMONY, THAT, YES, WE OWNED THAT CAR AND HE WAS DRIVING IT DURING THAT TIME PERIOD.

IF I CAN TURN TO SOME OF THE OTHER ISSUES THAT WE HAVE HERE, I WOULD LIKE TO TALK JUST FOR A MINUTE ABOUT THE ROBBERY.

THE QUESTION OF WHETHER WE HAVE ENOUGH EVIDENCE TO GET PAST THE

JOA ON THE ROBBERY.
THE TRIAL JUDGE MADE A SPECIFIC
FINDING AS TO THIS.
WE KNOW THAT THE DEFENDANT
APPROACHED THE GAS STATION.
WE KNOW THAT HE TRIED TO GET IN.
THAT'S CLEAR FROM MR. PATEL'S
TESTIMONY.
HE TRIED TO GET IN.
HE WAS WEARING A MASK, HE WAS
DISGUISED SO THAT HIS IDENTITY
COULDN'T BE LATER-- AND IT'S A
REMOTE LOCATION TOO.
THE EVIDENCE ALSO SUGGESTS THAT
THE DEFENDANT WAS AVAILABLE
BETWEEN 6:00 UNTIL 9:30.
AND PART OF THE ARGUMENT THAT
THE STATE MADE WAS THAT THE
DEFENDANT WAITED UNTIL THE RIGHT
MOMENT TO APPROACH IN ORDER TO
COMMIT THIS CRIME.
HE WAITED UNTIL THE GAS STATION
WAS ALMOST CLOSED.
>> WELL, WHY ELSE WOULD SOMEONE
GO TO THE DOOR OF A GAS STATION
WEARING A MASK CARRYING A
FIREARM, BUT TO ROB THE STATION?
THAT'S WHAT THE TRIAL JUDGE
FOUND.
YOU PUT THOSE FACTORS TOGETHER,
AND IT SEEMS LIKE THAT'S WHAT HE
WAS GOING FOR.
THE ARGUMENT THAT THEY MADE THAT
HE DID NOT ROB THE TWO MEN
OUTSIDE OF THE GAS STATION, HE
WASN'T CHARGED WITH ROBBING
THOSE MEN.
HE WAS CHARGED WITH TRYING TO
ROB THE GAS STATION ITSELF, AND
SO THAT'S REALLY--
>> I MEAN, WHOEVER DID IT--
ASSUMING IT'S-- THEY SAW THAT
THOSE TWO MEN SAW HIM.
>> THE SHOOTER SAW THOSE TWO MEN
AND, I MEAN, THE DEFENSE WANTED
TO ARGUE THIS WAS A HATE CRIME,
AND THERE'S ABSOLUTELY NO
EVIDENCE IN HERE THAT IT'S A
HATE CRIME UNLESS MAYBE YOU WANT
TO SAY THAT THE PERSON WHO DID
THIS HATES WITNESSES.
HE SAW THOSE TWO MEN, HE SAW
THAT THEY HAD SEEN HIM.
THIS IS AFTER HE HAD FIRED A
SHOT INTO THE GAS STATION.

HE GOES AND ELIMINATES THEM, AND THEN HE COMES BACK AND TRIES TO GET INTO THE GAS STATION AGAIN. SO I THINK WE HAVE ENOUGH TO GET PAST THE JOA ON THE ROBBERY. THAT'S THE EXTENT OF MY ARGUMENT.

IF YOU HAVE ANY OTHER QUESTIONS, THANK YOU.

>> I THINK THAT THERE ARE SOME DISPUTES ABOUT WHAT THE FACTS ARE IN THIS CASE.

MY OPPONENT HAS SAID THAT THERE WERE TIRE MARKS THAT WERE DISTINCTIVE AND THAT-- I JUST THINK THAT THE EVIDENCE AS TO THE CAR IS NOT WHAT IT'S BEEN PORTRAYED.

THE TIRE MARKS WERE NOT DISTINCTIVE.

THEY TOOK THE TIRES OFF OF THE BLACK ALTIMA WHEN THEY FOUND IT AT THE DAY AFTER THAT DAVIS WAS ARRESTED IN HEDLEY, AND THEY SENT IT TO THE FDLE, AND THOSE WERE TIRES MANUFACTURED BY NANKING.

THE TIRE MARKS ARE NOT MATCHED TO THOSE TIRES.

THERE WAS JUST A CLASS CORRESPONDENCE.

THERE WEREN'T GOOD CASTS MADE OF THEM.

THE EXPERT LOOKED AT THE PHOTOS AND COULDN'T GIVE A MATCH.

SO IF IT'S BEING REPRESENTED THAT THERE WAS A MATCH MADE THERE, I DISAGREE WITH THAT.

I DISAGREE THAT THERE WAS, THAT THIS WAS A SPECIFICALLY IDENTIFIABLE CAR, THAT IT HAD AN UNUSUAL GRILL OR CUSTOM ADDITIONS.

THIS RECORD DOES NOT SHOW THAT.

THERE WAS A MAN WHO HAD SAID THAT HE NOTICED THE CAR WHEN HE WAS STOPPED A WEEK AFTER THE 7TH, AND HE SAID I THOUGHT THE CAR LOOKED LIKE IT HAD A BILLET GRILL, AND I KNOW WHAT THAT IS BECAUSE MY CAR HAS ONE TOO.

THERE'S NO TESTIMONY THAT THAT'S SOME KIND OF UNUSUAL THING ON A CAR LIKE THIS.

AND IT WAS A BLACK NISSAN

ALTIMA.

THERE'S PICTURES OF IT IN THE RECORD.

AND THERE'S NO TESTIMONY THAT THERE'S ANYTHING MORE THAN SOME KIND OF UBIQUITOUS KIND OF NISSAN ALTIMA AND THAT WE'RE DRIVING DOWN, YOU KNOW, GOING PAST I-4 HOW MANY OF THOSE KIND OF CARS COULD HAVE GONE BY.

MY OPPONENT ALSO SAYS THAT--

>> COULD YOU JUST MENTION THE GUN?

ARE YOU REFUTING THAT THE BULLETS THAT WERE FOUND AT BOTH PLACES ARE A MATCH?

>> NO.

THAT WASN'T DISPUTED.

BUT WHAT WAS DISPUTED WAS WHAT KIND OF GUN IT WAS.

THAT WAS NEVER SHOWN.

AND I DO DISPUTE THE FACT THAT THERE'S AMPLE EVIDENCE OF THE HEDLEY CRIME AGAINST DAVIS BECAUSE IN THIS CASE AND IN THE HEDLEY CASE ALL OF THESE LITTLE THINGS WERE IMPEACHED, WERE-- LIKE, FOR EXAMPLE, WE DON'T KNOW WHAT KIND OF GUN IT WAS, AND CARLOS ORTIZ AND BRANDON GREASEMAN GIVE DIFFERENT DESCRIPTIONS.

ONE SAID IT WAS A CHROME GUN, AND ONE SAID IT WAS A BLACK GUN. SO IT'S, THE EVIDENCE-- HE'S TALKING ABOUT THE EVIDENCE AT WAL-MART WHERE THERE'S EVIDENCE THAT DAVIS WAS WALKING AROUND WALMART.

WELL, THAT WAS HEAVILY DISPUTED, AND WE BROUGHT IN AN EXPERT THAT SAID THAT-- AND THE JUDGE IN THE HEDLEY TRIAL SAID THAT THE FACE OF THE PERSON THAT THEY'RE SHOWING IN THE WALMART VIDEO COULD NOT BE IDENTIFIED AS DAVIS.

BUT--

>> BUT DIDN'T THE STORE MANAGER IDENTIFY DAVIS?

>> YEAH, HE DID--

>> OKAY.

>> BUT THERE WAS, BUT THIS WAS BEING IMPEACHED BECAUSE THERE WAS A VIDEO THAT WE BROUGHT,

THAT THE EXPERTS SAID THE PERSON
ON THE VIDEO DOESN'T HAVE THE
DISTINCT I TATTOOS--
DISTINCTIVE TATTOOS.
SO THERE'S ALSO, THERE'S A
DISPUTE ABOUT THE HAIR STYLE OF
THE PERSON THAT PEOPLE WERE
IDENTIFYING.
THERE WERE A LOT OF
DISCREPANCIES IN THE
IDENTIFICATION AT HEDLEY, AND
THAT WAS-- ACTUALLY HAD TO BE
THE MAIN POINT IN OUR, IN OUR
CASE TOO BECAUSE WE HAD TO
DEFEND AGAINST THE HEDLEY CASE
AND THE IDENTIFICATION THERE.
AND SO I THINK THAT IT WAS
DEFINITELY REVERSIBLE ERROR TO
HAVE BROUGHT IT IN THAT WAY.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.
COURT IS IN RECESS.