Allen Ward Cox v. State of Florida

THE CHIEF JUSTICE, DUE TO A CONFLICT IN SCHEDULING WILL NOT BE WITH US ON THIS LAST CASE, BUT HE WILL PARTICIPATE. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. GOOD MORNING. I REPRESENT, I AM CHRIS QUARLES, AND I RENTAL ENCOX IN THIS APPEAL FROM LAKE COUNTY, WHERE MR. COX WAS CONVICTED OF FIRST-DEGREE MURDER IN A JURY TRIAL AND SENTENCED TO DEATH. THIS CASE HAS THOMAS BAKER, ALSO KNOWN AS VENEZUELA OR "LITTLE KID" WAS STABBED TO DEATH. IT WAS HOUSING APPROXIMATELY 1,000 INMATES AT THE TIME OF THE MURDER AT THIS FACILITY. IT IS, ALSO, A PSYCH CAMP. THEY ALSO HAVE AN ADDITIONAL 200 PATIENTS ON MEDICATION OR YET HAVE THE RUN OF THE FACILITY. COX WAS, ALSO, ON MEDICATION, SO ALL OF THE EYEWITNESSES OF THIS MURDER WERE INMATES, AND SEVERAL WERE ON PSYCHOTROPIC MEDICATIONS AT THE TIME. THE DAY BEFORE THE MURDER, ALLEN COX DISCOVERED THAT $500 HAD BEEN STOLEN FROM HIS FOOT LOCK HER IN HIS CELL, HIS HOUSE. HE WAS UNDERSTANDABLY UPSET. HE OFFERED A CASH REWARD FOR THE NAME OF THE CULPRIT AND THREATENED TO KILL OR STAB THE VICTIM. HE DIDN'T CARE ABOUT THE CONSEQUENCES. THE NEXT MORNING, TONY WILSON, ANOTHER INMATE, GOT INTO A FIGHT WITH THOMAS BAKER, THE ULTIMATE VICTIM, BECAUSE BAKER HAD HEARD THAT WILSON WAS POINTING THE FINGER AT HIM AS THE THIEF. BAKER WAS OBVIOUSLY UPSET AT THIS, AND A FIGHT ENSUED THAT MORNING, AT THE DORM. COX TOLD ANOTHER INMATE THAT HE DIDN'T THINK THAT BAKER WAS THE ACTUAL THIEF, AND THERE WAS A LOT OF TESTIMONY WHERE SOME INMATES THOUGHT HE WAS AND SOME THOUGHT HE WAS NOT. LATER THAT DAY, AT MIDDAY, DURING LUNCH HOUR, THE INMATES HAD A TENDENCY TO GATHER AT THE CANTEEN, WHERE THEY PICKED UP THEIR MAIL AND PURCHASED FOOD. IT WAS THIS THAT A SCUFFLE ULTIMATELY ENSUED BETWEEN ALLEN COX AND THOMAS BAKER. SEVERAL INMATES TESTIFIED THAT THEY SAW COX HIT BAKER WITH HIS FISTS, AND ULTIMATELY PULL OUT A SHANK AND STAB HIM TO DEATH. COX, THEN, WALKED AWAY FROM THE SCENE, SAYING HE HAD ONE MORE PERSON TO GET. HE WENT TO HIS CELL, WHERE HE PUNCHED HIS CELLMATE, LAWRENCE WOOD, WOODY, IN THE FACE, AND ACCUSED HIM OF PARTICIPATING IN THE THEFT.

IS THERE SOME EVIDENCE THAT HE DISPOSED OF THE WEAPON BEFORE HET BACK TO HIS CELL, TOO?

YES. YES. WHEN HE LEFT THE, WHEN HE LEFT THE SCENE, SOME INMATES TESTIFIED THAT HE WALKED AROUND THE PUMP HOUSE, WHERE HE SEEMED TO DROP SOMETHING OR DISAPPEARED FROM VIEW, AND THE THEORY WAS THAT HE HAD HIDDEN IT, WHICH ULTIMATELY COMES INTO PLAY ON THE FIRST POINT, BUT HE, ALSO, SAID TO WOODY, THAT I GOT YOUR BUDDY. YOU ARE LUCKY I PUT IT UP, BECAUSE I WOULD GET YOU, TOO. HE TESTIFIED, COX TESTIFIED, IN HIS OWN DEFENSE, AND BEFORE TRIAL, EVE OF TRIAL, HE PLED GUILTY TO THE BATTERY ON LAWRENCE WOOD IN A CORRECTIONS FACILITY. HE TESTIFIED ON HIS OWN DEFENSE AND, ALSO, CALLED SEVERAL WITNESSES OF HIS OWN. HIS CASE-IN-CHIEF REVEALED THAT HE HAD ATTEMPTED TO TALK TO BAKER, TO ASSURE HIM THAT HE DID NOT THINK THAT HE WAS THE THIEF, AND THAT VINCENT MAYNARD, ANOTHER IN MADE -- INMATE, BECAME INVOLVED AND RAN UP AND WAS ATTEMPTING TO STAB COX, HE THOUGHT, AND HE PULLED BAKER BETWEEN HIM AND MAYNARD, AND THAT IS HOW BAKER SUSTAINED A FATAL INJURY. HE DID ADMIT THAT HE STABBED A COUPLE OF TYPES AT BAKER, WITH HIS KNIFE, WHICH HE HAD ARMED HIMSELF WITH EAR THAT DAY, HENE FET THREATENED BY OTHER INMATES, WHO WERE TRYING TO GET HIM TO PAY THE REWARD MONEY TO TONY WILSON.

LET ME, I AM NOT SURE I UNDERSTAND THAT LAST SCENARIO YOU DESCRIBED. DID YOU -- HE TESTIFIED THAT MAYNARD STABBED BAKER.

YES.

AND KILLED BAKER.

YES. YES. RIGHT.

THAT WAS HIS -- RIGHT. SO NOW, DID YOU SAY IN THE SAME TESTIMONY, HE SAID THAT, WHILE THE THREE OF THEM WERE THERE, THAT HE, ALSO, PULLED OUT A KNIFE AND STABBED BAKER?

CORRECT. HE, AND THERE WERE THREE WOUNDS, ONE WAS THE FATAL WOUND, AND THE OTHER TWO WERE VERY SHALLOW, VERY NONLIFE-THREATENING WOUNDS TO THE --

SO HIS TESTIMONY POINTING THE IF I CAN FINGER AT -- POINTING THE FINGER AT MAYNARD, HE DID AGREE THAT HE, ALSO, STABBED BAKER. DID HE CLAIM IT WAS --

IT WAS SELF-DEFENSE. HE SAID THAT BAKER, WHEN HE APPROACHED HIM, SAID I I AM NOT A -- I AM NOT AFRAID OF YOU. I HAVE ARMED MYSELF, AND HE SHOWED HIM HIS SHANK.

SO WHILE MAYNARD IS ATTACKING HIM, IS HE ENCONSIDERING BAKER, AND BAKER IS -- HE IS ENCOUNTERING BAKER, AND BAKER IS ATTACKING HIM, AND HE HAS TO DEFEND HIMSELF AGAINST BAKER AND HE HAS TO DEFEND HIMSELF AGAINST MAYNARD, TOO.

YES. HE SAID THAT HE GRABBED BAKER'S ARM THAT HAD THE SHANK IN IT, AND THAT IS WHEN MAYNARD RAN AT HIM. HE PULLED BAKER IN BETWEEN MAYNARD AND HIMSELF, IN SELF-DEFENSE, AND HAD GRABBED ER'S ARM IN SELF-DEFENSE, AND THEN, DURING THE SCUFFLE THAT ENSUED, TH BAKER GENG ESTABHED THAT FATAL WOUND, HE HE SAID HE WAS TRYING TO ECATE ELF FROHEY ADBAKER WS HOLDING ON TO M, AND THAT IS WHEN HE STABBED AT BAKER AND INFLICTED THE TWO MINOR WOUNDS.

AND DID HE SAY HE DID THAT -- I AM SORRY.

I GUESS THIS WHOLE SCENARIO, I THOUGHT THAT THERE WAS TESTIMONY, AND MAYBE YOU CAN TELL ME WHO TESTIFIED TO THIS, THAT THE DEFENDANT APPROACHED BAKER AND PUNCHED HIM OUT, BEFORE ANY OF THIS OTHER STABBING TOOK PLACE, AND AT THAT POINT, I DIDN'T HEAR ANYTHING ABOUT MAYNARD BEING EVEN PRESENT AT THE SCENE, SO WHO MADE THOSE STATEMENTS?

MAYNARD ADMITTED THAT HE WAS AT THE SCENE. OTHER INMATES --.

WHAT ABOUT THE PUHING OUT OF BAKER?

OTHER INMATES, I MEAN, THIS WAS LITERALLY 100 INMATES WERE MILLING AROUND, AND PEOPLE WERE NOT WATCHING ALLENX AD BAKER. BAKER WAS PLAYING HANDBALL. HE LLED, HE APPARENTLY CALLED HIM OFF THE COURT, AND A DISCUSSION ENSUED, AND THEN PEOPLE LOOKED AROUND, AND ALL OF A SUDDEN THE FIGHT HAD STARTED.

AND THERE IS OTHER VERSIONS OF WHAT OCCURRED, PUT ON BY THE STATE.

YES. CORRECT.

THIS IS A FACTUAL DISPUTE KIND OF THING IS W YOU ARE SUGGESTING.

ABSOLUTELY. ABSOLUTELY.

I JUST WANT TO MAKE SURE, DOES THIS GO TO THE POINT OF THE AGGRAVATORS, OR UNDERSTANDING THAT THERE IS A DISPUTE IN THE EVIDENCE, WHAT IS, AS FAR AS THE SEQUENCE OF HOW THIS HAPPENED, WHAT POINTS ON APPEAL DOES THAT GO TO?

WELL, I THINK IT GOES TO SOME OF THE AGOS. YES. SOME OF THE -- SOME OF THE AG'S, YES, SOME OF THE AGGRAVATING FACTORS. ANOTHER JUDGE FOUND, ON HEINOUS ATROCIOUS AND CRUEL, THAT MR. COX KNOCKED HIM TO THE GROUND. HE WAS STRUCK NUMEROUS TIMES. EACH TIME HE WOULD COME UP, HE WAS SLAMMED BACK, THAT SEVERAL WITNESSES TESTIFIED THAT, AFTER BEING IN TOTAL CONTROL OF MR. BAKER, MR. COX DREW THE WEAPON FROM HIS PANTS, TOLD MR. BAKER THAT THE BEATING WAS NOT GOOD ENOUGH, BEGAN TO STAB HIM. THE VICTIM WAS OBVIOUSLY SCARED, WAS KICKING, TRYING TO GET AWAY, AND THIS HOMICIDAL ATTACK CONTINUED FOR SEVERAL MINUTES. IS THAT NOT A VERSION OF THE FACTS THAT COULD BE DRAWN FROM THE EVIDENCE?

IT IS. HOWEVER, I THINK THAT IT IS IMPORTANT TO, ESPECIALLY TO THE FIRST TWO POINTS AT THE GUILT-INNOCENCE PHASE, AND THIS IS A VERY COMPLICATED FACT SITUATION, AS EVIDENCED BY MY ATTEMPT TO SUMMARIZE THEM, AND THIS MORNING I WOULD LIKE TO FOCUS WHAT I THINK IS THE DISPOSITIVE ISSUE ON ISSUE ONE, WHICH IS A DISCOVERY VIOLATION THAT OCCURRED AT THE GUILT/INNOCENCE PHASE.

IN THIS ARGUMENT, COULD YOU HELP ME UNDERSTAND A LITTLE BIT HOW IT WOULD HAVE PROCEDURALLY CHANGED THE POSTURE OF THE DEFENSE? I AM NOT SURE THAT I QUITE UNDERSTAND FULLY WHAT THE CHANGE IN THE DEFENSE WOULD BE, AS PART OF YOUR PRESENTATION. YOU DON'T NEED TO STOP AND ANSWER THAT NOW BUT PLEASE GET TO THAT, AS YOU APPROACH THIS ISSUE.

WELL, IMMEDIATELY AFTER THE STABBING, THRI WAOCKED DOWN. AND THE VICTIM HAD RUN TO SEEK MEDICAL ATTENTION AND HAD SAID, WHEN THEY ASKED HIM WHO DID THIS TO YOU, BIG AL, QUAD THREE, ECODORM, AND SUBSTANTIVE EVIDENCE REVEALED THAT HE WAS IN THAT DORMAN THERE WERE MATERIAL WITNESSES AND AN INVESTIGATION ENSUED. CORNEALIOUS TALK WAS THE -- CORNELIUS FAULK WAS THE INVESTIGATOR IN CHARGE OF THIS INVESTIGATION. AFTER EIGHT DAYS, INMATES HAD BEEN LOCKED DOWN IN ADMINISTRATIVE CONFINEMENT, FAULK SENT A NOTE TO COX AND SAID HE WANTED TO TALK TO HIM. FAULK COX TOLD FAULK THAT YOU HAVE GOT A LOT OF GUYS LOCKED UP HERE THAT SHOULDN'T BE, AND COX ASKED HIM DID YOU FIND THE WEAPON, AND FAULK DID NOT RESPOND, AND THEN COX SAID I HEARD YOU FOUND THE WEAPON, AND HE PROCEEDED TO DESCRIBE THE SHANK THAT THE AUTHORITIES HAD, IN FACT, FOUND, HIDDEN IN A DRAIN PIPE OF SOME SORT IN THE PUMP HOUSE, WHICH WAS WHERE IS COX HAD WALKED AFTER THE STABBING.

THIS IS HOW COX DESCRIBED IT.

YES. AND, ACCORDING TO FAULK, IT MATCHED EXACTLY. NOW, THAT, AND --

THE DEFENSE KNEW OF THIS CONVERSATION AND KNEW THAT COX HAD DESCRIBED THE KNIFE.

THEY KNEW THAT HAD HE DESCRIBED THE KNIFE.

HE JUST DID NOT KNOW THE INTRODUCTORY REMARK, IF I AM CLEAR, THAT, SO YOU HAVE FOUND THE WEAPON. SOMETHING TO THAT EFFECT.

RIGHT.

BUT HE DID GO AHEAD AND EXPLAIN WHAT THE WEAPON LOOKED LIKE AND WHAT IT WAS.

CORRECT.

AND THAT WAS, ALL, DISCLOSED, BOTH DURING THE DEPOSITION AND AT ALL TIMES THE DEFENSE WAS AWARE OF THAPT. IT IS JUST THAT ONE SDROUKT OTHER STATEMENT.

CORRECT. NOW, THE DEFENSE, THE DEFENSE LAWYERS PUT ON THE RECORD AND SAID IT WAS IMPORTANT THAT THAT PARTICULAR STATEMENT, I HEARD YOU FOUND THE WEAPON, CALLED INTO QUESTION COX'S CREDIBILITY ABOUT BEING ABLE TO DESCRIBE THE WEAPON THAT WAS FOUND. THEY EMBRACED, THE DEFENSE EMBRACED THAT SHANK, BECAUSE THEY PRESENTED EXPERT WITNESS TO TESTIFY THIS WEAPON COULD NOT HAVE BEEN THE MURDER WEAPON. IT WAS TOO SHORT, AND ADDITIONALLY IT HAD NO BLOOD ON IT, AND IT WAS A VERY COARSE, CRUDE KNIFE, WHICH THE EXPERTS SAID YOU WOULD THINK THAT THERE WOULD BE AT LEAST SOME TRACE BLOOD ON IT. WELL, THAT STATEMENT BY COX, WHICH WAS REVEALED IN THE MIDDLE OF TRIAL, AND SHOULD HAVE BEEN REVEALED PRETRIAL, MADE IT, IT CALLED COX'S CREDIBILITY INTO QUESTION AS TO WHETHER OR NOT HE THAT WAS HIS KNIFE, WHICH THEY EMBRACED, AS I SAID, VERSUS HEARING, THROUGH THE PRISON GRAPEVINE, WHILE HE WAS LOCKED DOWN IN ADMINISTRATIVE CONFINEMENT, LOOK, THEY FOUND THIS SHANK AND THIS IS WHAT IT LOOKED LIKE, AND THAT WAS WHERE HE GOT HIS INFORMATION.

YOU LOST ME THERE ON THAT TRANSITION SOMEPLACE.

BECAUSE THEY WANTED THE JURY TO BELIEVE THAT THAT WAS THE SHANK THAT COX HAD.

OKAY. AND SO HOW DOES THE STATEMENT, SO I HEAR YOU HAVE FOUND THE KNIFE, IMPACT THAT?

BECAUSE HIS DESCRIPTION AND KNOWLEDGE OF THE SHANK COULD HAVE, THEN, COME FROM THE PRISON GRAPEVINE, HEARING FROM OTHER INMATES WHO WERE IN LOCK DOWN, THAT THEY FOUND A SHANK AND THIS IS THE DESCRIPTION. THAT, THE SOURCE OF HIS KNOWLEDGE OF THAT SHANK WAS, THEN, CALLED INTO QUESTION, BECAUSE HE COULD HAVE HEARD IT THAT WAY, RATHER THAN WHAT THE DEFENSE LAWYERS WANTED THE JURY TO BELIEVE.

DID THE STATE EVER SUGGESTION THAT, TO THE CONTRARY, THAT -- EVER SUGGEST, THAT, TO THE CONTRARY, THAT THIS WAS NOT HIS KNIFE? HE JUST ALL OF A SUDDEN FABRICATED THAT THIS WAS HIS KNIFE BECAUSE THEY FOUND ONE?

TO EENT N CLOSING ARGUMENT, THE STATE -- TO SOME EXTT. IN CLOSING ARGUMENT, THE STATE ATTEMPTED TO MENTION, AND THIS IS THE OTHER THING THE LAWYERS SAID, ADDITIONALLY, BESIDES CALLING INTO CREDIBILITY THE SOURCE OF THE INFORMATION FROM WHICH COX LEARNED ABOUT THIS SHANK, THEY, ALSO, SAID IT ALLOWS THE STATE TO, NOW, SHIFT THEIR FOCUS AND ALLOW FOR THE POSSIBILITY THAT THIS WAS A DECOY KNIFE, AND THE REAL MURDER WEAPON HAS NEVER BEEN FOUND.

BUT DID THE STATE ARGUE THAT?

WELL, TO SOME EXTENT. IN CLOSING ARGUMENT, THE STATE MENTIONS A DECOY KNIFE. THE DEFENSE COUNSEL STARTS TO OBJECT. AND THE TRIAL COURT SUA SPONTE, INSTRUCTED THE STATE ATTORNEY OT MION THE DECOY AGAIN, AND THE STATE ATTORNEY ARGUED THE EVIDENCE SUPPORTS IT. THE ARGUMENT THAT THERE WAS A DECOY KNIFE.

WAS THE KNIFE THAT WAS FOUND THAT WAS DESCRIBED BY COX, WAS IT THE STATE'S THEORY THAT THAT WAS THE MURDER WEAPON?

I THINK INITIALLY IT WAS, AND THEN, WHEN THIS BECAME APPARENT IN THE MIDDLE OF TRIAL, I

THINK THEY SORT OF THREW IT IN THE MIX THAT POSSIBLY THERE WAS, THIS WAS A DECOY KNIFE AND THE ACTUAL MURDER WEAPON HAD NEVER BEEN FOUND.

NORMALLY THIS WOULD BECOME EITHER PRESSURE ADDITIONAL OR NOT. USUALLY IF SOMEONE DESCRIBES SOMETHING THAT ONLY, THAT THE MURDERER WOULD KNOW, THAT WOULD BE USED BY THE STATE, AND IT WOULD BE THE DEFENDANT THAT WOULD WANT TO SHOW THAT THE DEFENDANT HEARD IT SOMEWHERE ELSE.

RIGHT.

SO I THINK I AM STILL HAVING JUSTICE LEWIS'S CONCEPTUAL PROBLEM OF IT SOUNDS LIKE THAT WOULD HAVE BEEN, IF IT WERE THE MURDER WEAPON, IT WOULD BE BENEFICIAL TO THE DEFENSE THAT HE DIDN'T, WASN'T ABLE TO DESCRIBE THE MURDER WEAPON FROM HIS OWN KNOWLEDGE, BUT RATHER BECAUSE HAD HE HEARD IT WAS FOUND AND ITASESCRIBED, SO I GUESS I AM STILL HAVING CONCEPTUAL PROBLEMS, ALSO.

AS I SAID BEFORE, THE DEFENSE EMBRACED THIS KNIFE. THEY EMBRACED THE FACT, THE THEORY THAT THIS WAS THE KNIFE COX HAD, BECAUSE THEY PRESENTED AN EXPERT, A MEDICAL EXAMINER WHO SAIDHICOULD NOT HAVE BEEN THE MURDER WEAPON. THE WOUND WAS TOO DEEP FOR THIS KNIFE TO CAUSE THAT WOUND.

BUT DIDN'T THE STATE EMBRACE T THEORY, ALSO, BECAUSE THEY PUT ON EXPERTS TO THE EFFECT THAT, DUE TO THE ELASTICITY OF FLESH, THIS COULD HAVE BEEN THE KNIFE.

RIGHT. IT COULD HAVE BEEN. AND THEN THEY, ALSO, AS I SAID, MENTIONED THE DECOY KNIFE. IT SORT OF ALLOWED THEM TO COVER ALL THE BASIS, AND THAT IS WHAT THE DEFENSE LAWYERS CLEARLY AND EXPRESSLY POINTED OUT WAS THEIR PROBLEM WITH THIS BEING REVEALED IN THE MIDDLE OF TRIAL, WHEN THEY DID NOT KNOW IT.

AT SOME POINT, BOTH STATE AND THE DEFENDANT WERE AGREEING THAT THIS WAS THE KNIFE. IS THAT CORRECT?

THAT INFLICTED THE FATAL WOUND?

YES.

NO. THE DEFENSE NEVER DID. THE DEFENSE --

BUT IT WAS THE KNIFE THOUGH. IT IS HIS POSITION THAT THAT WAS HIS KNIFE.

COX'S KNIFE BUT NOT THE MURDER WEAPON.

BUT DIDN'T INFLICT --

RIGHT. RIGHT.

SO THE SAME KNIFE, IF COULD --

IT IS THE SAME KNIFE THAT COX HAD IN HIS POSSESSION.

WAS IT COX'S THEORY THAT HE BETWEEN NOT KNOW OF THIS KNIFE BUT HE HEARD IT THROUGH THE GRAPEVINE? I DON'T -- I GUESS WE ARE ALL HAVING A PROBLEM WITH WHAT IS THE POINT YOU ARE TRYING TO MAKE WITH THIS KNIFE THAT WAS FOUND, BECAUSE IF COX ADMITS IT IS HIS --

HE ADMITS IT ISIS T HE INSISTS THAT IT IS NOT THE MURDER WEAPON.

BUT, SO, WHY DOES THIS STATEMENT MAKE ANY DIFFERENCE? HE KNEW, IF HE ADMITS THAT THE KNIFE WAS HIS AND HE KNEW WHERE IT WAS, I DON'T UNDERSTAND HOW THIS STATEMENT CHANGES ANYTHING.

BECAUSE THE JURY COULD HAVE BELIEVED THAT HE DID NOT HAVE THAT KNOWLEDGE OF THE DESCRIPTION OF THE KNIFE FROM HIS OWN PERSONAL KNOWLEDGE, FROM HIS POSSESSION OF IT.

SO IS HE SAYING IT IS NOT THE MURDER WEAPON? THE DEFENSE IS IT IS NOT TE MURDER WEAPO,O WHETHER IT IS HIS KNIFE OR SOMEONE ELSE'S KNIFE, IT SEEMS LIKE IT IS A WASH. I MEAN, I AM CONCERNED THAT IT LOSKEHERE WAS AN AFFIRMATIVE MISLEADING IN THE DEPOSITION, WHEN THE INVESTIGATOR ANSWERED THERE WAS NO EVIDENCE THAT HE KNEW THAT THEY HAD FOUND THE WEAPON, AND I DON'T UNDERSTAND WHY, THAT TROUBLES ME.

YES.

BUT I AM HAVING TROUBLE UNDERSTANDING AS A DISCOVERY VIOLATION, I AM STILL HAVING TROUBLE SEEING THAT ASPECT.

MAYBE THE DEFENSE LAWYER'S WORDS DO A BETTER JOB THAN I CAN. WHEN ASKED ABOUT IT, THE DEFENSE LAWYER SAYS THE SUBSTANCE OF THE STATEMENT IS NOT ONLY THE DESCRIPTION AND THE LOCATION OF THE KNIFE BUT WHETHER THE CREDIBILITY OF THAT STATEMENT IS BASED, WHETHER OR NOT ALLEN COX KNEW THE KNIFE HAD BEEN FOUND. INSPECTOR FAULK HAS ALREADY ADMITTED THAT IN HIS TESTIMONY, IF ALLEN COX DOESN'T KNOW WHERE THAT KNIFE IS AND COMES OUT AFTER A WEEK IN THE HOLE AND SAYS HERE IS WHEREIS AND HERE IS WHAT IT LOOKS LIKE, THAT STATEMENT HAS A LOT MORE CREDIBILITY THAN IF HE COMES OUT OF THE HOLE, HAVING HAD SOMEONE TELL HIM IT APPEARS THAT THEY FOUND THE KNIFE. DO YOU UNDERSTAND LOGIC? THE TRIAL COURT, I UNDERSTAND. MAYBE IT WOULD HAVE HELPED TO BE THERE, TO UNDERSTAND. IT IS DIFFICULT FROM THE RECORD, COLD RECORD, I ADMIT, TO GRASP THE NUANCES OF THAT.

BUT THE JUDGE, KNOWING THE IMPORT, FOUND IT WAS A DISCOVERY VIOLATION BUT FOUND,, WHAT THAT IT WASN'T PREJUDICIAL? WASN'T HARMLESS?

THE JUDGE FOUND IT WAS NOT A DISCOVERY VIOLATION.

IT WAS NOT A DISCOVERY VIOLATION.

AND IF SO, IT WAS INADVERTENT INADVERTENT. NOW, I DON'T UNDERSTAND THAT RULING AT ALL. I THINK THAT IS WRONG.

IS THAT ALL, DID HE FIND ANYTHING --

THEN HE SAID, OKAY, SUPPOSE, SUPPOSE IT IS A DISCOVERY VIOLATION. WHAT REMEDY WOULD YOUPROPOSE, DEFENSE LAWYER? DO YOU NEED MORE TIME TO DEPOSE INSPECTOR FAULK? AND HE SAID, WELL, NO. OUR WHOLE THEORY OF DEFENSE IS NOW COMPROMISED. WE ARE IN THE MIDDLE OF TRIAL.

THAT IS WHAT WE ARE GETTING TO. WHAT WAS THE THEORY OF NSE THAT WAS COMPROMISED. BAUSTIS CONSISTENT THIS WAS THE KNIFE. IT IS JUST THAT IT COULDN'T HAVE BEEN THE MURDER WEAPON. IT INFLICTED THE WOUND BUT NOT THE FATAL WOUND.

I DOKNOW HOW TO EXPLAIN IT ANY BERNIE ALREADY HAVE, REALLY, OTHER THAN IT -- ANY BETTER THAN I ALREADY HAVE, REALLY. THE JURY COULD HAVE PERCEIVED THAT HE MANUFACD THIS DEFENSE THERE THAT I THIS IS MY KNIFE AND IT IS NOT THE MURDER WEAPON,

Y GAINING INFORMATION, GLEANING INFORMATION FROM THE PRISON GRAPEVINE.

SO ITD NOT REALLY HAVE CHANGED HIS DEFENSE. IT IS JUST THAT IT PERMITTED THE JURY TO LOOK AT HIS DEFENSE IN A DIFFERENT, THROUGH DIFFERENT EYES. THAT IS WHAT YOU ARE SAYING.

DEFENSE LAWYERS DON'T SAY, WELL, IF WE WOULD HAVE KNOWN THIS STATEMENT, COX HAD MADE THIS ORAL STATEMENT, ACCORDING TO INSPECTOR FAULK, OUR DEFENSE OULD HAVE BN STHING ENTIRELY DIFFERENT, AND THIS IS WHAT IT WOULD HAVE BEEN. THEY DIDN'T REACH THAT POINT, AND I DON'T THINK THEY HAVE TO. I THINK THAT THEY ARE THE BEST JUDGES AS TO WHETHER OR NOT IT COMPROMISED THEIR DEFENSE, AND GETTING BACK TO WHAT THE TRIAL JUDGE DID, HE THEN SAID, WELL, WHAT DO YOU WANT, AND HE SAID, WELL, I WANT A MISTRIAL, AND HE SAID, WELL, YOU ARE NOT GETTING A MISTRIAL. I THINK THE RECORD CLEARLY REVEALS THEY HAVE INVESTED TOO MUCH TIME, BUT, AND EFFORT AT THIS TIME POINT, TO MISS TRY THE CASE. -- TO MISTRY THE CASE. ELSEWHERE THE LAWYER SAYS IN OUR ENTIRE CASE PREPARATION, THE ENTIRE THRUST OF OUR PREPATION AND WELL AS THE DEFENSE -- PREPARATION, AS WELL AS THE DEFENSE, IS BASED UPON LACK OF KNOWLEDGE.

LACK OF KNOWLEDGE OF THIS KNIFE IN PARTICULAR. HOW DOES THAT JIVE WITH YOUR SAYING HE ADMITTED IT WAS HIS KNIFE?

BECAUSE IT IS NOT THE MURDER WEAPON IN THE DEFENSE THEORY. THE STATE WANTS TO HAVE IT BOTH WAYS. THE STATE SAYS, WELL, IT IS THE MURDER WEAPON. THEY PRESENTED EXPERTS THAT SAID YES, IT IS, AND THIS IS HOW IT COULD INFLICT THIS WOUND THIS DEEP, EVEN THOUGH IT IS SHORTER THAN THE WOUND, BUT THEN THEY, ALSO, WELL, MATES THER KNIFE. MAYBE WE HAVEN'T FOUND THE REAL MURDER WEAPON.

BUT IS IT YOUR POSITION THAT, WHEN THE DEFENSE ASKS FOR A MISTRIAL, THERE WAS NO OBLIGATION TO EXPLAIN HOW THEIR DEFENSE WAS COMPROMISED BY THE DISCOVERY VIOLATION?

WELL, I THINK THAT TO SOME EXTENT THEY DID. WHAT THEY DIDN'T DO WAS, AND I DON'T THINK THEY ARE REQUIRED TO DO, IS GO TO THE NEXT STEP OF, WELL, THEN, WHAT WOULD YOUR DEFENSE HAVE BEEN, IF YOU WOULD HAVE KNOWN THIS ORAL STATEMENT FROM YOUR CLIENT, TO THIS POLICE OFFICER? I DON'T THINK THEY HAVE TO GO THAT FAR. BECAUSE IF ULTIMATELY THERE IS A MISTRIAL OR A REVERSAL, THEN THEY DON'T WANT TO TIP THEIR HANDS.

IS THIS IN OPENING STATEMENT, IF WE READ THE OPENING STATEMENT WOULD WE FIND THE, WAS THERE AN OPENING STATEMENT BY THE DEFENSE IN THIS CASE?

YES.

WILL WE FIND SOME REFERENCE TO HOW THIS THEORY WAS ILLUMINATED TO THE JURY IN OPENING STATEMENT?

I DON'T RECALL.

WE TAKE A LOOK.

I DON'T RECALL. I THINK THAT DEFENSE LAWYERS SORT OF FELT THAT THEY HAD, TO SOME EXTENT, WERE SURPRISING THE STATE WITH THIS THEORY THAT WE EMBRACED THE SHANK, BECAUSE THAT IS NOT THE MURDER WEAPON. I THINK THAT IS HOW THEY FELT, BUT I DON'T RECALL OPENING STATEMENT.

BUT IF THERE IS NO OBLIGATION ON THE DEFENSE TO EXPLAIN HOW IT WAS HURT, THEN THE

JUDGE IS PLACED IN THE POSITION OF SAYING THAT, OKAY, THERE WAS A DISCOVERY VIOLATION, BUT I DON'T SEE ANY PREJUDICE TO THE DEFENSE AND THE DEFENSE HAS NOT SHOWN HOW IT HAS BEEN PREJUDICED BY IT SO THAT IS A CALL FOR THE TRIAL JUDGE TO MAKE, ISN'T IT?

YES. BUT AS THIS COURT HAS HELD, THAT IN THE VAST MAJORITY OF CASES, IT SHOULD BECOME, SHOULD BE APPARENT ON THE RECORD THAT IT IS HARMLESS.

ONE OF THE THINGS, I GUESS, AND MAYBE YOU ARE NOT MAKING THIS POINT ON, BUT I WOULD BE WANTING TO HEAR FROM THE STATE. IF THEY KNEW BEFOREHAND, THAT THE WAY HE COULD HAVE LEARNED ABOUT THE MURDER WEAPON WAS BECAUSE SOMEONE TOLD HIM IT HAD BEEN FOUND, THEN YOU MIGHT DEFEND ON THE BASIS THAT, WELL, THIS COULD HAVE BEEN THE MURDER WEAPON, BUT HE DIDN'T, WASN'T HIS. HE LEARNED OF ITS IDENTITY THROUGH THE GRAPEVINE, NOT FROM FIRSTHAND KNOWLEDGE.

COULD BE. THEY DIDN'T ARTICULATE THAT, BUT YOU ARE RIGHT.

YOU ARE INTO YOUR REBUTTAL TIME.

OKAY. THANK YOU. JUST IN STATE VERSUS SCHOPP, THIS COURT SAID, IF THE REVIEWING COURT FINDS, IF, IN DETERMINE HAD GONE THIS DETERMINATION, EVERY CONCEIVABLE COURSE OF ACTION SHOULD BE CONSIDERED. IF THE REVIEWING COURT FINDS THAT THERE IS A REASONABLE POSSIBILITY THAT THE DISCOVERY VIOLATION PREJUDICED THE DEFENSE OR IF THE RECORD IS INSUFFICIENT TO DETERMINE THAT THE DEFENSE WAS NOT MATERIALLY AFFECTED, THE ERROR MUST BE CONSIDERED HARMFUL IN OTHER WORDS ONLY IF THE APPELLATE COURT CAN SAY, BEYOND A REASONABLE DOUBT, THAT THE DEFENSE WAS NOT PROCEDURALLY PREJUDICED BY THE DISCOVERY VIOLATION, CAN THE ERROR BE CONSIDERED HARMLESS. THAT IS PRETTY STRONG LANGUAGE. THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS STEPHEN AKE, AND I REPRESENT THE STATE OF FLORIDA IN THIS CASE. ON THE FIRST ISSUE, I WOULD LIKE TO POINT OUT A COUPLE OF ADDITIONAL FACTS THAT HAVEN'T BEEN BROUGHT OUT YET, IS THAT ON DIRECTION OF INSPECTOR FAULK, THE STATE ELICITED THIS STATEMENT THAT WAS NOT TURNED OVER IN DISCOVERY, THE, QUOTE, I HEARD YOU GUYS FOUND THE KNIFE STATEMENT. THAT CAME OUT DURING THE DIRECTION. THERE WAS NO OBJECTION. THERE WAS NOTHING RAISED ABOUT THAT. THE DEFENSE COUNSEL GETS UP ON CROSS AND QUESTIONS THE INSPECTOR ABOUT THAT IN HIS CROSS. THEN THE STATE DOES REDIRECT AND THEY TALK ABOUT IT SOME MORE, AND THEN ON RECROSS, THE DEFENSE ATTORNEY IS TRYING TO QUESTION THE INSPECTOR AS TO WHY HE DID NOT PUT IN HIS DIARY THIS ONE STATEMENT, AND THE STATE OBJECTS TO THAT AND THEN DEFENSE COUNSEL FINALLY, RAISES A DISCOVERY VIOLATION OBJECTION. I THINK THAT IS IMPORTANT TO NOTE, BEE NHIS REPRESENTATION TO THE TRIAL COURT AS TO, WELL, TELL ME HOW YOU HAVE BEEN PREJUDICED HERE. HE SAYS, WELL, THE THRUST OF OUR ENTIRE CASE IS, YOU KNOW, TAKING A DIFFERENT CONTEXT HERE. HE NEVER BROUGHT IT UP. IT HAS BEEN BROUGHT OUT, NOW, THREE TIMES BEFORE HE OBJECTS, SO I THINK THAT KIND OF SHOWS THAT THE ENTIRE THRUST OF HIS PREPARATION IS, REALLY, NOT BEEN AFFECTED OR HE WOULD HAVE BROUGHT IT UP AT THE VERY FIRST TIME IT WAS MENTIONED, BUT WHAT YOU HAVE TO LOOK AT IS, WAS IT A DISCOVERY VIOLATION, AND THE ANSWER TO THAT IS NO. THE DISCOVERY RULE PROVIDES THAT YOU HAVE TO PROVIDE THE SUBSTANCE OF A DEFENDANT'S ORAL STATEMENT, AND HERE, INSPECTOR FAULK WAS CALLED INTO A ROOM AND COX TOLD HIM THE STATEMENT. I HEARD YOU GUYS FOUND THE KNIFE AND THEN WENT ON TO EXPLAIN, IN GREAT DETAIL, EXACTLY WHERE HE PLACED THE KNIFE AND WHAT IT LOOKED LIKE. THE INSPECTOR DID NOT TAPE RECORD THE STATEMENT OR ANYTHING. AFTER MR. COX LEFT THE ROOM, HE THEN TOOK DOWN HIS NOTES AND LEFT THEM IN A CASE DIARY, WHICH WAS THEN DISCOVERED, AND HE DETAILS THE DESCRIPTION AS TO WHERE HE WHERE HE FOUND THE KNIFE AND WHAT IT LOOKED LIKE. THE ONLY THING OMITTED WAS THE STATEMENT, "I HEARD YOU GUYS FOUND THE KNIFE."

HOW WAS IT ACTUALLY WRITTEN OUT IT DID HE SAY COX SAID TO ME THAT COX SAID HE HID, AND THEN THE DESCRIPTION?

FOOTNOTE 21, HE SAYS IN AN INTERVIEW WITH COX, HE PLACED THE SHANK NEXT TO THE WEIGHT PILE AND DESCRIBED IT AS TAPE ON GRAY HANDLE AND HANDLE CURVED. THAT WAS HIS DIARY NOTATION FOR HIS INTERVIEW ON THAT DATE.

BUT THE ONLY THING WE HAVE ON THAT, ARE YOU NOT CONCERNED, AS A REPRESENTATIVE OF THE STATE, THAT WHEN THIS PARTICULAR WITNESS WAS DEPOSED, THAT THERE REALLY IS AN ARMATIVE MISLEADING, WHEN HE ANSWERED THAT THERE WAS NO EVIDENCE THAT HE KNEW THEY FOUND THE WEAPON, WHICH LEADS ME TO BELIEVE THAT, BECAUSE THE DEFENSE, THEN, IS PREPG, ING, WELL, I HAVE REALLY GOT TO DISPROVE THIS IS THE MURDER WEAPON, BECAUSE HE DESCRIBES SOMETHING THAT HE HAS NO WAY OF KNOWING THAT THEY FOUND IT, SO I AM GOING TO HAVE TO COME UP WITH A THEORY THAT THIS WAS NOT THE MURDER WEAPON, WHEREAS IF THEY HAD, WHEREAS IF THEY KNEW THAT HE SAID I HEARD YOU FOUND IT, THEN THE DEFENSE WOULD BE, WELL, HE DIDN'T, THAT WASN'T HIS WEAPON. HE JUST HEARD THEY FOUND IT AND THAT WAS WHAT HE WAS DESCRIBING.

I THINK IT IS HARSH TO LABEL THAT AS MISLEADING COMMENT BY THE INSPECTOR. I THINK WHAT YOU HAVE, IF YOU READ IN CONTEXT, AND I HAVE PUT IT OUT IN MY BRIEF, IN HIS DEPOSITION, THERE, IS THEY WERE TALKING ABOUT COULD ALLEN COX HAVE FOUND OUT ABOUT THE KNIFE IN ADMINISTRATIVE CONFINEMENT, AND HE WAS, LIKE, SURE, AND MAKES PAST NOTES AND THINGS HAPPEN LIKE THAT, AND THEY SAID, WELL, DO YOU HAVE ANY EVIDENCE THAT HE KNEW ABOUT THE KNIFE, AND HE SAID NO, AND THE STATE DOWN BELOW AT THE TRIAL COURT, SAID I THINK IT IS JUST A MISUNDERSTANDING THAT THIS WITNESS IS THINKING IS FROM ANY PHYSICAL EVIDENCE THAT HE -- IS THINKING IS THERE ANY PHYSICAL EVIDENCE THAT HE KNEW ABOUT IT?

I CAN'T THINK OF ANYTHING MORE DIRECT THAN HIM SAYING, AS THE INTRODUCTION, I HEARD YOU FOUND THE WEAPON.

I CAN UNDERSTAND HOW DEFENSE COUNSEL WAS CONFUSED, BASED ON THAT ANSWER AND ADMITTEDLY INSPECTOR FAULK, HIS DEPOSITION IS IN THE RECORD, HE DID SAY, IN ANSWER TO THAT QUESTION, IS THERE ANY EVIDENCE, HE DID SAY, NO, I DON'T KNOW OF ANY EVIDENCE EVIDENCE. AND IN TRIAL HE CAME IN AND THAT IS WHAT HE SAID, AND WHETHER HE JUST FORGOT ABOUT IT AT THE TIME OF THE DEPOSITION OR WHAT HAVE YOU, BUT YOU STILL GET INTO THE QUESTION OF WHAT IS HAPPENING IN THIS CASE? ALLEN COX IS ADMITTING THAT HE PLACED THE KNIFE ABOUT IT -- THAT HE PLACED THE KNIFE THERE. WHETHER HE HEARD ABOUT IT OR WHAT HAVE YOU, IN PREPARATION OF THIS CASE, IN PART OF THE RICHARDSON HEARING, FIRST OFF YOU HAVE TO LOOK AT WAS IT WILLFUL OR INADVERTENT ADMISSION AND I WOULD SUBMIT THAT, FIRST OFF,HEY ARE NOT REQUIRED TO GIVE THIS, BASED ON THE RULE THAT SAYS YOU HAVE TO GIVE THE SUBSTANCE. I WOULD SAY THAT THEY DID GIVE THE SUBSTANCE, BUT IF YOU DID FIND THAT THAT WAS AN OMISSION, THEN IT WAS AN INADVERTENT OMISSION, AND THAT WAS WHAT THE TRIAL COURT FOUND HERE.

WHAT WAS THE STATE'S PROOF THAT THIS CAUSE, IN FACT -- THIS IT -- THAT THIS WAS, IN FACT, THE MURDER WEAPON?

A NUMBER OF WITNESSES, WHEN SHOWN THE ACTUAL KNIFE AT THE TRIAL, THEY SAID THIS LOOSE LIKE THE KNIFE. NOBODY SAID THIS IS 100 PERCENT, THIS IS THE MURDER KNIFE, BUT THE KNIFE WAS CONSISTENT WITH THE WOUNDS THAT THE VICTIM HAD ON HIS BODY. I BELIEVE THE KNIFE WAS, IN TOTAL, ABOUT 8 AND-A-HALF INCHES LONG, WITH A BLADE OF ABOUT FOUR AND-A-HALF INCHES LONG, AND THAT THE WOUND WAS ABOUT 6 AND-A-HALF INCHES, SO YOU HAVE --

WAS THERE A BLOOD ANALYSIS OR ANYTHING?

EXCUSE ME?

WAS THERE ANY BLOOD ANALYSIS?

NO, YOUR HONOR, THERE WAS NONE FOUND ON THE KNIFE, SO WHAT DEFENSE COUNSEL IS ARGUING BELOW IS THEY BROUGHT IN AN EXPERT TO SAY IT WAS IMPOSSIBLE FOR THIS KNIFE TO CAUSE THESE INJURIES, BECAUSE THE WOUND WAS TOO LONG FOR THIS KNIFE BLADE. WELL, ON CROSS-EXAMINATION OF THAT DEFENSE EXPERT, IT WAS BROUGHT OUT THAT THE EXPERT REALLY DIDN'T KNOW ALL OF THE FACTS OF THIS CASE, THAT ALLEN COX, A LARGE INDIVIDUAL, 6-2, 220, WAS LITERALLY STRADDLING THIS SMALL VICTIM ON A CONCRETE SURFACE AND PLUNGING THIS KNIFE INTO HIM, AND THAT HIS BODY COULD, DUE TO ELASTICITY, MAKE A DENT AND THAT WOULD MAKE UP THE DIFFERENCE FOR THE LENGTH OF THAT WOUND.

THERE WAS NO FINGERPRINTS, FOR PHYSICAL EVIDENCE?

NO, YOUR HONOR -- NO PHYSICAL EVIDENCE?

NO, YOUR HONOR.

SO HOW DID THE STATE PROVE AT TRIAL THAT THIS WAS COX'S, IT WAS HIS?

THE STATE NEVER PROVED THAT THIS WAS, INDEED, THE ACTUAL KNIFE, AND THAT IS PART OF --

HOW DID THEY PROVE THAT THIS SHANK WAS ALLEN COX'S?

NUMBER ONE, HE ADMITTED IT. HE TESTIFIED.

THAT IS WHERE IT BECOMES SORT OF MATERIAL ABOUT HOW YOU DEFEND THIS CASE. IF HE IS THE ONLY ONE THAT COULD HAVE KNOWN WHERE HE HID IT AND WHERE IT WAS, THEN THAT IS, THEN THEY HAVE GOT TO DEFEND ON AYINGIT IS NOT THE MURDER WEAPON. IF HE COULD HAVE, IF ALL HE WAS DOING IN THE INTERVIEW WAS SAYING I HEARD YOU FOUND THE MURDER WEAPON, AND THIS GUY SAYS WHAT DID YOU HEAR, AND HE TELLS HIM, THEN ALL HE IS DOING IS DESCRIBING WHAT HE HAS HEARD THROUGH THE GRAPEVINE, WHICH, THEN, ALLOWS HIM TO DEFEND ON SAYING THAT THAT WAS NOT HIS KNIFE AT ALL.

WELL, YOU ALSO HAVE THE CIRCUMSTANTIAL EVIDENCE OF WHAT HAPPENED AFTER THE STABBING. WITNESSES SEE COX WALK BACK BEHIND THE PUMP HOUSE.

NO, BUT I AGREE THERE IS STILL EVIDENCE, BUT AS YOU POINT OUT AND YOU KNOW, IN A RICHARD SON VIOLATION, THE STANDARD IS NOT JUST WHETHER THERE IS STILL OVERWHELMING EVIDENCE. THE QUESTION IS IF THERE IS ANY PREJUDICE TO THE DEFENSE, IT IS A REVERSAL.

RIGHT. BUT DEFENSE COUNSEL HAS BEEN UNABLE TO SHOW ANY PREJUDICE IN THIS CASE IS WHAT I AM GETTING AT. AT THE TIME THIS CAME OUT --

SO WE GET BACK TO THE STATEMENT ITSELF.

I HEARD YOU GUYS FOUND THE KNIFE.

THAT IS ALL IT WAS, BUT THEN HE DESCRIBED THAT THIS WAS HIS KNIFE, DID HE NOT, DURING THIS INITIAL CONFERENCE.

AND HE DESCRIBED THE KNIFE AND WHERE IT WAS FOUND. IT WAS A PERFECT MATCH, AND THAT IS WHAT THE INVESTIGATOR THOUGHT WAS SIGNIFICANT.

IT WAS HIS KNIFE. HE DESCRIBED THAT.

HE DESCRIBED THAT. AND THE INVESTIGATOR SAID, HEY, WAIT A MINUTE, LET'S WRITE THIS DOWN, AND HE ACCURATELY DESCRIBED IT AND THAT IS WHERE THEY FOUND IT.

DO I UNDERSTAND YOU CORRECTLY THAT COX, WHEN HE WENT TO HIS CELL AND CONFRONTED HIS ROOMMATE ALSO MADE SOME STATEMENT TO THE EFFECT OF HAVING HID THIS WEAPON WEAPON? CORRECT. HE TOLD HIM, AFTER HE STABBED THE VICTIM, THOMAS BAKER, HE SAID I HAVE GOT ONE MORE PERSON TO GO AND GO AHEAD AND THEN -- TO GO AND GET, AND THEN HE GOES INTO HIS CELL AND CONFRONTS HIS ROOMMATE AND SAYS YOU ARE LUCKY I PUT IT UP OR I WOULD STAB YOU, TOO, OR THAT IS WHAT HE TOLD HIM AND THEN YOU HAVE WITNESSES THAT SAW HIM WALK AROUND BEHIND THE PUMP HOUSE AND PUT THE KNIFE WHERE HE PUT IT IN THE GATE POST AND THEN CAME BACK TO HIS CELL AND CON FRAUGHTED HIS RTE. SO THE STATE WOULD SUBMIT THAT APPELLANT HAS FAILED TO SHOW ANY ERROR HERE ON THE TRIAL COURT'S PART IN DENYING HIS MOTION FOR MISTRIAL, BASED ON THIS. COUNSEL ARGUES THAT, WELL, THE STATE ARGUED IN CLOSING ARGUMENT THAT IT MAY NOT HAVE BEEN THE KNIFE. JUST A COUPLE OF WEEKS AGO OR LAST WEEK, I THINK IT WAS, THIS COURT PUT OUT AN OPINION WHERE A KNIFE IS NOT LIKE A BULLET. YOU CAN'T SAY 100 PERCENT THIS IS THE KNIFE, UNLESS YOU HAVE SOMETHING WITH THE BLOODSTAINS OR WHATEVER. THAT MIGHT BE HELPFUL, BUT HERE YOU HAVE THE STATE ALWAYS SAYING IF IT IS NOT THIS KNIFE, IT IS A KNIFE VERY SIMILAR TO IT, VERY CONSISTENT WITH IT. THE INJURYS WERE EXTREMELY CONSISTENT WITH THIS ICE PICK SHANK IS WHAT IT WAS, A VERY SMALL, CYLINDER-SHAPED PIECE OF METAL.

THERE IS NO DISPUTE THAT THE VICTIM WAS KILLED BY STABBING. IS THAT RIGHT?

RIGHT.

AND THE STATE'S CASE WAS, REALLY, BASED ON EYEWITNESS OBSERVATIONS OF A STABBING, WHETHER OR NOT WITH SOME KIND --

YOU HAVE 50 OR 60 WITNESSES OR INMATES THAT OBSERVED THIS HAPPENING. HE MADE THE ANNOUNCEMENT THE DAY BEFORE THAT HE WAS GOING TO GO KILL HIM. HE ORDERS THE SHANK THE NEXT DAY AND PLACES AN ORDER THROUGH THE PRISON SYSTEM TO GET THIS SHANK AND THEN --

AND HE MADE STATEMENTS TO WITNESSES BOTH BEFORE AND AFTER, CORRECT?

AND THEN HE HAD A NUMBER OF WITNESSES AND THEY CAME IN AND TESTIFIED TO IT, SO I DON'T KNOW HOW COUNSEL CAN SHOW ANY PREJUDICE IN THIS CASE.

CAN YOU DESCRIBE, AND PERHAPS IT IS JUST NOT THERE, BUT THE GIST OF WHAT THE DEFENSE DID ARGUE AT TRIAL, WHEN THEY MADE THE MOTION FOR MISTRIAL, AS FAR AS HOW THIS PREJUDICED THEM?

THEY MAKE THAT CONCLUSORY STATEMENT, AND I QUOTE, THEIR ENTIRE CASE PREPARATION, THE THRUST OF OUR ENTIRE CONSIDERATION OF THE CASE, IT WAS BASED ON A LACK O KNOWLEDGE BUT THAT IS ALL THEY SAY, AND THEY DON'T GO ON TO SAY HOW THAT AFFECTED THEIR PREPARATION IN ANY WAY, AND CONSISTENT WITH THEIR DEFENSE, I DON'T SEE HOW, I STILL HAVEN'T SEEN IT, EVEN BAD OARGUMENTAY, HOW HE WAS PREJUDICED --

AND THIS CAME OUT DURING THE COURSE OF THE STATE'S CASE. THE DEFENDANT HAD NOT YET TESTIFIED. IS THAT CORRECT?

CORRECT. CORRECT. BUT, AGAIN, I POINT OUT THAT THIS CAME OUT, LIKE, FOUR TIMES BEFORE THEY EVER DECIDED TO JUMP UP AND SAY THIS IS AFFECTING OUR ENTIRE PRESENTATION HERE. SO I THINK THAT SHOULD BE WEIGHTED INTO THE FOLD, HERE, AS TO EXACTLY HOW HE WAS PREJUDICED PREJUDICED. UNLESS THIS COURT HAS ANY QUESTIONS ON ANY OF THE OTHER ISSUES, THE STATE WILL RELY ON ITS BRIEF FOR THOSE ARGUMENTS. THANK YOU.

COUNSEL REALIZING THAT EVERYBODY UP HERE HAS ASKED YOU, AT ONE TIME OR ANOTHER, TO ARTICULATE, REALLY, THE WAY THAT THE DEFENSE PREPARATION, WHICH IS WHAT THE FOCUS IS. IT IS SORT OF A PROCEDURAL PREJUDICE THING. I HAVE TO JOIN MY COLLEAGUES IN SAYING I AM HAVING DIFFICULTY, AND REALIZING YOU ANSWERED ONE TIME BEFORE, YOU SAID I DON'T SEE HOW I CAN DESCRIBE IT ANY BERNIE JUST DID, WOULD YOU GIVE US, AND -- ANY BETTER THAN I JUST DID, WOULD YOU GIVE US ONE LAST ATTEMPT. I WON'T SAY ONE LAST STAB. I DON'T THINK THERE IS ANY HUMOR TO BE GAINED.

YOU ARE RIGHT. I AM SORRY.

ONE LAST ATTEMPT AT ARTICULATING. HERE WE HAVE A CASE BY THE STATE THAT IS COMPOSED OF STATEMENTS THAT YOUR CLIENT MAKES, OF EYEWITNESSES TO THE OFFENSE, OF NOBODY DISPUTING THAT THIS WAS A DEATH INFLICTED BY A KNIFE-LIKE ITEM, AND SO I AM HAVING THE DIFFICULTY THAT MY COLLEAGUES SEEM TO BE HAVING OF UNDERSTANDING WHAT THE PROCEDURAL PREJUDICE IS THAT COMES OUT OF THIS ADDITIONAL STATEMENT BY YOUR CLIENT THAT I HEARD YOU FOUND THE KNIFE. WHAT WAS IT, A KNIFE OR THE KNIFE?

OH, GEEZ. IT WAS THE KNIFE. YES. I HEARD YOU FOUND THE KNIFE. YEAH.

OKAY. SO I AM GIVING YOU THE OPPORTUNITY, BEFORE YOU SIT DOWN, IT TO TRY TO ARTICULATE, ONE LAST TIME.

I WILL TRY.

THE PROCEDURAL PREJUDICE.

HIS DESCRIPTION OF THE KNIFE, AND THE LOCATION WHERE IT WAS ULTIMATELY DISCOVERED, IS NOW CALLED INTO DOUBT, BECAUSE IT COULD BE BASED NOT ON HIS PERSONAL KNOWLEDGE AND HIS POSSESSION OF THAT WEAPON, WHICH THE DEFENSE THEORY WAS WAS NOT THE MURDER WEAPON, BUT COULD BE BASED, INSTEAD, ON KNOWLEDGE GAINED FROM OTHER INMATES, WHILE HE WAS IN LOCK DOWN. THE JURY COULD HAVE THOUGHT THAT HE GOT RID OF THE ACTUAL MURDER WEAPON SOMEWHERE ELSE. ALSO IT ALLOWED THE STATE ATTORNEY TO SHIFT GEARS IN THE MIDDLE OF TRIAL, AND NOT CATAGORICALLY REJECT THE IDEA THAT ANOTHER KNIFE MAY HAVE BEEN THE ACTUAL MURDER WEAPON. THAT IS THE BEST I CAN DO. THE BLOOD ANALYSIS WAS DONE ON THE KNIFE THAT WAS FOUND. THE KNIFE WE HAVE BEEN TALKING ABOUT. AND NONE WAS FOUND. THERE WAS ANALYSIS DONE. THE FACT THAT, I WILL CONCEDE THAT HE DID NOT OBJECT RIGHT AWAY. HOWEVER, THIS IS NOT LIKE THE CASE THE STATE RELIES ON IN THE ANSWER BRIEF, WHERE THE STATE MENTIONS SOME EVIDENCE IN OPENING STATEMENT. THIS IS IN THE MIDDLE OF TRIAL. VERY COMPLEX TRIAL. AND I REALLY THINK THAT THE, THERE HAD BEEN PROBLEMS WITH INSPECTOR FAULK'S CASE DIARY, BOTH PRETRIAL AND AT TRIAL. THERE WAS A DISCOVERY, ONGOING DISCOVERY PROCESS, AND THE DEFENSE COMPLAINED, SEVERAL TIMES, WHICH, AT POINTS IN THE RECORD WHERE I CITED IN MY BRIEF THAT THEY WERE NOT GETTING ALL OF INSPECTOR FAULK'S CASE DIAR.

U DO THINK IT IS IMPORTANT THAT THE FIRST TIME INSPECTOR FAULK MAKES THIS STATEMENT, THAT YOU NOW CONTEND WAS SO PREJUDICIAL, THE FIRST TIME HE MADE THAT STATEMENT, NOTHING WAS SAID. AND EVEN THE SECOND TIME HE MADE THE STATEMENT, NOTHING IS SAID.

I THINK THAT, IF YOU LOOK AT THE CROSS-EXAMINATION BY DEFENSE LAWYER, THE FIRST TIME UP, I THINK HE IS ASKING HIM, AND IT SEEMS NOT TO HAVE REGISTERED, AND I DON'T KNOW WHY IT DIDN'T REGISTER. I THINK THAT, LIKE I SAID BEFORE IT IS A COMPLEX TRIAL WITH LOTS OF WITNESSES, AND I THINK THEY WERE CHECKING THE CASE DIARY THAT INSPECTOR FAULK PROVIDED TO THEM EVENTUALLY AND WERE LOOKING IN THERE, AND THEY WERE CROSS-EXAMINING HIM ABOUT WHAT WAS IN THAT CASE DIARY AND WHAT WASN'T IN THAT CASE DIARY, AND THAT IS WHEN IT SORT OF DAWNED ON HIM, WAIT A MINUTE. THIS STATEMENT HAS NEVER BEEN MENTIONED AT DEPOSITION OR IN THE CASE DIARY. AND THAT IS -- IT IS WHEN THEY WERE CROSS-EXAMINING HIM ABOUT THAT OMISSION FROM THE CASE DIARY THAT THAT RICHARDSON OBJECTION WAS FIRST RAISED, SO IT WAS A FOCUS, BUT THERE WAS NOT A SPECIFIC OBJECTION ARTICULATED RIGHT AWAY. I WILL CONCEDE THE STATE NEVER ARGUED BELOW, IT IS NOT TIMELY, AND I THINK THAT THAT IS A WAIVER. AND I THINK THAT IT JUST TOOK A LITTLE WHILE FOR EVERYBODY AT THE TRIAL LEVEL TO REALIZE THAT THIS STATEMENT HAD NEVER BEEN DISCLOSED. I THINK THE BEST JUDGE OF WHAT AFFECTED THEIR DEFENSE PREPARATION AND STRATEGY IS THE DEFENSE TRIAL LAWYER, HIMSELF, AND I THINK THAT IT IS CLEAR FROM THE RECORD, THAT THEY ARTICULATED, AS BEST THEYULD, THAT THIS CLEARLY DID AFFECT THEIR WHOLE STRATEGY AND ALLOW THE STATE TO SEEK AND GAIN AN UNFAIR ADVANTAGE IN THE MIDDLE OF TRIAL, AND UNFAIRLY SO. I THINK IT IS CLEAR THAT, FROM THIS RECORD, YOU CANNOT CONCLUDE BEYOND A REASONABLE DOUBT, THAT IT DID NOT AFFECT THE STRATEGY. THANK YOU.

THANK YOU. THE COURT STANDS IN RECESS.