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Lamar Z. Brooks v. State of Florida

BROOKS VERSUS STATE OF FLORIDA.

GOOD MORNING. MY NAME IS DAVID DAVIS, ON BEHALF OF LAMB ARRESTS BROOKS, THE APPELANT IN THIS CASE.

DID YOU LOOK AT THE FIRST APPEAL?

NO, I HAVEN'T. I STUCK WITH THE RECORD I HAD ON THIS CASE. THIS CASE, THE SECOND TIME AROUND, THE FIRST TIME AROUND THEY REVERSED FOR SEVERAL TRIAL EVIDENTIARY ISSUES AND THOSE ARE THE ONES I WANT TO CONCENTRATE ON THIS, AT LEAST THIS PORTION OF THE APPEAL AND ALSO TALK ABOUT PROPORTIONALITY AT THE END. THE FACTS ARE THAT, WEDNESDAY, APRIL 24, 1996, TWO POLICE OFFICERS FOUND THE BODIES OF RACHEL CARLSON AND HER THREE-MONTH-OLD DAUGHTER ALEXIS STEWART IN A CAR IN THE GHETTO AREA OF CRESTVIEW, STABBED 60-TO-70 TIMES AND STRANGLER. INVESTIGATORS, WITHIN A DAY OR SO, BEGAN TO FOCUS ON WALKER DAVIS, A CO-WORKER OF HERS AT EGGLAND AIR FORCE BASE AND EVENTUALLY THEY ALSO EXPANDED THAT TO LAMAR BROOKS WHO HAD COME DOWN FROM UP NORTH AND WAS VISITING WITH HIS COUSIN, WHO WAS WALKER DAVIS, AND EVENTUALLY THE INVESTIGATION ALSO EXPANDED TO A MAN NAMED MARK GILLIAN, WHO WAS AN ARMY FRIEND OF BROOKS. GILLIAN WOULD EVENTUALLY TELL THE POLICE THAT, ON MONDAY PRECEDING THE MURDER, THAT BROOKS, DAVIS AND GILLIAM HAD KIND OF JOKINGLY TALKED ABOUT HOW THEY WOULD KILL SOME WOMAN WHO HAD BEEN HARASSING DAVIS ABOUT SOME MONEY OWED HER FOR SOME STEREO. THEY IN FACT TRIED TO KILL HER ON, RACHEL CARLSON ON MONDAY. THAT FAILED. THEY TRIED AGAIN ON TUESDAY. THAT FAILED. GILLIAM AT THAT POINT BAILED OUT OF THIS AND WENT BACK TO FORT BENNING AND THEN A MURDER OCCURRED THE NEXT DAY, ON WEDNESDAY. NOW, THE BRIEF I HAVE RAISED 14 ISSUES. OBVIOUSLY I DON'T HAVE TIME TO GO OVER THOSE, SO I WOULD LIKE TO FOCUS, THEN, ON SOME GUILT PHASE ISSUES THAT THE STATE THE FIRST TIME AROUND HAD A LOT OF EVIDENCE THAT THIS COURT SAID HAD BEEN IMPROPERLY ADMITTED. WHILE THE STATE DID NOT INTRODUCE THE SAME EVIDENCE, IT NEVER ABANDONED THE SAME THEORY, THAT IS THAT THEY COULD PROVE LAMAR BROOKS'S INTENT TO COMMIT THE MURDER BY SHOWING WALKER DAVIS'S. THE TRIAL COURT, WHEN FACED WITH ADMITTING SOME OF THIS EVIDENCE, SPECIFICALLY THE EVIDENCE OF MATHENIE, THE INSURANCE AGENT, WHO SAID TWO MONTHS EARLIER, WALKER DAVIS APPROACHED HIM ABOUT BUYING AN INSURANCE POLICY ON ALEXIS STEWART, THAT IS IT IN FANT, AND THE COURT SAID YOU CAN ONLY ADMIT THAT TO SHOW A SOURCE OF MONEY, BECAUSE GILLIAM HAD SAID THAT DAVIS HAD PROMISED BROOKS \$10,000 IF HE WOULD ASSIST IN THE MURDER, SO IT WOULD HAVE SOME RELEVANCE, I SUPPOSE, TO SHOW. THAT THE PROSECUTOR, ONCE HE GOT THAT EVIDENCE IN, PROMPTLY BEGAN USING IT TO SHOW WALKER DAVIS'S INTENT, AND DURING THE CLOSING ARGUMENT HE REPEATEDLY REPEATEDLY REPEATEDLY USED THAT FACT OF THE INSURANCE POLICY, TO SHOW WALKER DAVIS'S INTENT.

IN THE ORIGINAL TRIAL IN THIS CASE, ON DIRECT APPEAL FROM THE ORIGINAL TRIAL, THIS COURT SAID THAT, AT THE TRIAL, BROOKS OBJECTED NOT ONLY TO THE INSURANCE PERSON'S TESTIMONY, AND WE STRUCK THAT, SAID THAT TESTIMONY WAS NOT APPROPRIATE FOR RETRIAL, BUT WE, ALSO, SAID THAT HE, ALSO, OBJECTED TO THE INTRODUCTION OF THE ACTUAL LIFE INSURANCE POLICY.

RIGHT.

NOW, WE DID NOT, IN THAT DIRECT APPEAL, SAY THAT THE INTRODUCTION OF THAT LIFE INSURANCE POLICY WAS IMPROPER, SO WHAT IS THE EFFECT OF NOT HAVING SAID THAT, WHEN WE IN FACT ACKNOWLEDGED THAT HE MADE THAT OBJECTION, AND IN THE ORIGINAL --

I THOUGHT YOU HAD SAID THAT THE INSURANCE POLICY WAS, MAYBE IT IS MY READING OF THE OPINION, BUT I THOUGHT NOT ONLY WAS STEVE METHANE I'S TESTIMONY ADMISSIBLE BUT ALSO THAT IS MY TAKE ON WHAT YOU SAID IN BROOKS ONE. NOW, EVEN IF YOU HAD SAID NOTHING, THE ONLY WAY THIS EVIDENCE CAN COME IN IS UNDER THE COCONSPIRATOR EXCEPTION TO THE HEARSAY RULE, AND THE STATEMENT HAS TO HAVE BEEN MADE DURING THE COURSE OF AND IN FURTHERANCE --

WHEN I, WE ARE NOT ASKING ABOUT STATEMENT HERE. WE ARE TALK BTH ACTUAL INSURANCE POLICY, ITSELF, WEREN'T WE?

IT STILL HEAR SAY. I MEAN, SIMPLY LOOKING AT WALKER DAVIS'S SIGNATURE ON THERE AND MATHENIE COULD SAY,IA, I SOLD IT TOM.

HOW WOULD IT HAPPEN IF THE JUDGE SAID IT WOULD BE LIMITED TO SAY, HEY, THERE IS A SOURCE OF MONEY HERE, WHICH WOULD THEN MEAN THE ONLY THING THAT WOULD COME IN IS THERE HAPPENED TO BE AN INSURANCE POLICY THAT DAVIS HAD, AND THAT WOULD BE THE END OF IT, WHAT HAPPENED TO EXPAND IT TO WHERE IT ALL OF A SUDDEN CAME INTO, BY THE END OF THE TRIAL, IT WAS BEING USED EXTENSIVELY BY THE PROSECUTOR TO SHOW MOTIVE AND INTENT OF, YOU KNOW, DIRECT VIOLATION OF OUR FIRST OPINION?

RIGHT. RIGHT. SO --

HOW DID THAT HAPPEN? I GUESS THE JUDGE WAS VERY CLEAR.

YES. RIGHT.

--

ABOUT IT WILL BE ADMITED FOR A VERY LIMITED PURPOSE.

AND THEN IN CLOSING ARGUMENT, ACE QUOTED IN MY BRIEF SEVERAL TIMES.

DID THE DEFENSE OBJECT?

YES, HE DID, ON PAGES 2379 AND 2378. HE SAID, JUDGE, THIS IS THE REASON I OBJECTED.

WHAT DID THE JUDGE?

MOVE O OBJECTION OVERRULED. I ANTICIPATED THAT, BECAUSE, YES, THAT WAS OBJECTED TO AND THAT SPECIFIC OBJECTION WAS MADE.

WAS THE JURY TOLD WHEN THE INSURANCE POLICY CAME IN, THAT IT WAS COMING IN NOT AGAINST, DID THEY GIVE, WAS THERE A LIMITING INSTRUCTION?

I DON'T, I DON'T KNOW. I DON'T BELIEVE SO. BUT I DON'T KNOW. WE WOULD HAVE TO, I COULD EASILY DETERMINE BUT I DON'T KNOW. BUT --.

DID THE TRIAL ATTORNEY CONCEDE THAT THIS TESTIMONY THAT WE HAD SAID OF MATHENIE, WE SAID SHOULDN'T COME IN, WAS RELEVANT FOR ANY REASON?

NO. I MEAN, HE WAS OBJECTING, THIS WAS A BIG FIGHT AT THE TRIAL, OF THIS INSURANCE

TESTIMONY, AND THE PROSECUTOR IN THIS CASE SIMPLY DOESN'T LIKE BROOKS ONE. HE THINKS HE OUGHT TO BE ABLE TO INTRODUCE ANYTHING HE WANTS TO RELEVANT TO WALKER DAVIS, BECAUSE HIS THEORY IS WALKER DAVIS IS THE KINGPIN OF THIS WHOLE MURDER AND HIS MOTIVE IS KINGPIN AND PROPER AND THE TRIAL COURT SAID ONLY IN THE LIMITED SENSE OF CONSPIRACY AND THE PROSECUTOR DIDN'T LIKE THAT, BUT THEN HE GOT HIS FOOT IN THE DOOR WHEN HE LET IT COME IN TO SHOW THE SOURCE OF THE \$10,000, AND THEN AT CLOSING ARGUMENT, HE TURNS AROUND AND REPEATEDLY USES IT TO SHOW WALK IRDAVIS'S MOTIVE -- WALKER DAVIS'S MOTIVE AND REPEATEDLY DOES THAT AND COUNSEL OBJECTED TO IT.

WAS THE POLICY ACTUALLY IN EFFECT?

I BELIEVE SO SO, YES.

WAS THERE A CLAIM MADE AFTERWARDS?

THERE IS NO EVIDENCE OF THAT. I DOUBT IT.

DID HE EVER GET \$10,000?

BROOKS NEVER GOT \$10,000. AS FAR AS I KNOW, WALKER DAVIS NEVER COLLECTED ON THE POLICY AND BROOKS NEVER GOT \$10,000.

IS THERE ANY ARGUMENT MADE AND I GUESS THIS WOULD GO BACK THAT IT WOULD BE RELEVANT, IF THERE WAS ANY EVIDENCE WHATSOEVER THAT, BEFORE THE KILLING, THAT BROOKS KNEW ABOUT THE POLICY?

THAT IS THE REASON THEY INTRODUCED THE POLICY, TO SHOW A SOURCE OF THE MONEY. THE PROBLEM IS EVEN THAT REASON WASN'T SUPPORTED BECAUSE MARK GILLIAM, WHO IS THE STATE'S KEY WITNESS, SAID WE NEVER TALKED ABOUT KILLING THE BABY AND WE NEVER TALKED ABOUT THE INSURANCE POLICY, SO IF IT HAS ANY RELEVANCY, WE HAVE TO COME TWO, THREE STEPS INFERENCES HERE TO GET THIS INFERENCE, AND I DON'T SEE IT EVEN BECOMES RELEVANT AS TO WHAT THE COURT WANTED, AND THEN IT CERTAINLY WASN'T RELEVANT --

WHY WASN'T THIS RELEVANT TO EXPLAIN IF BROOKS WAS OFFERED \$10,000 AND THE ANSWER WAS DAVIS DIDN'T HAVE MUCH MONEY, HOW IS HE GOING TO GET \$10,000, THIS EXPLAINS WHY.

THAT WOULD BE GOOD EXCEPT THERE IS NO EVIDENCE THAT DAVIS WAS BROKE. HE COULD HAVE EARNED HALF THE STATE OF COMMITTEE, AS FAR AS THIS -- OF CONNECTICUT, AS FAR AS WE KNOW. HE WAS AN AIRMAN IN THE AIR FORCE. BUT YOU JUST DON'T KNOW. THERE IS NO EVIDENCE TO SHOW THAT HE WAS ON POVERTY'S DOORSTEP OR THAT HIS FATHER OWNED KISER ALUMINUM OR SOMETHING LIKE THAT.

BUT YOU HAVE GENERALLY IN CRESTVIEW, POPULATED BY AIR FORCE FOLKS, AND AIRMEN LIKE MANY ARE, IT IS FAIRLY COMMON KNOWLEDGE IN THAT AREA, DO NOT GET HIGHLY PAID.

WELL, ALSO --

THEY HAVE THREE CHILDREN. WAS THE RECORD CORRECT HE HAD THREE CHILDREN?

I THINK HE HAD TWO AND ONE WAS ON THE WAY.

THAT HE WOULD BE SUPPORTING.

YES, BUT THERE IS ALSO PEOPLE WHO JOIN THE MILITARY WHO ARE RICH. I MEAN, THEY JOIN BECAUSE DUTY TO COUNTRY, GOD AND COUNTRY AND THIS SORT OF THING, SO YOU JUST CAN'T

SPECULATE THAT THIS GUY --

THESE GUYS WERE BUMMING RIDES, RIGHT? THEY DIDN'T HAVE CARS? I MEAN THEY WERE GETTING TRANSPORTATION.

WALKER DAVIS'S WIFE WAS OUT APPARENTLY TAKING THE KIDS IN THE CAR AND GONE SOMEWHERE, SO BUMMING RIDES, IS, I DON'T WANT TO IMPLY THAT HE DIDN'T HAVE TRANSPORTATION. IT IS JUST THAT HIS WIFE WAS GONE, AND AGAIN --

THEIR ONLY VEHICLE.

YEAH. I DON'T KNOW. WE JUST DON'T KNOW. I MEAN, WE ARE SITTING HERE SPECULATING ABOUT HIS WEALTH.

THAT IS WHY I AM ASKING. I HAVEN'T READ THE WHOLE RECORD LIKE YOU HAVE.

GOING BACK TO THIS, IF YOU ARE SOMEHOW CONCEDED THAT MAYBE THE JURY COULD HAVE HEARD THAT DAVIS HAD A \$10,000 LIFE INSURANCE --

\$100,000.

ON HIS CHILD. AND MAYBE THEY COULD, BUT AS FAR AS WHEN IT WAS DONE, WHETHER THIS WAS A MOTIVE FOR THE KILLING AX EVIDENCE AGAINST BROOKS -- AS EVIDENCE AGAINST BROOKS, THIS WOULD BE DIRECTLY IN CONTRADICTION TO WHAT WE SAID IN THE FIRST OPINION.

EXACTLY RIGHT.

AND AGAIN I WANT TO MAKE SURE THIS WAS ON THE BABY NOT ON RACHEL CARLSON, AND THE MOST THAT THIS CONSPIRACY ESTABLISHES IS THIS IS A CONSPIRACY TO KILL THE MOTHER.

THE MOTHER, RACHEL CARLSON. THAT'S CORRECT. THE PROSECUTOR, LET ME GO ON TO SOME OF THE OTHER ISSUES THAT THE PROSECUTOR CREATED HERE. AGAIN, GETTING EVIDENCE ADMITTED FOR ONE REASON AND THEN USING IT FOR ANOTHER, THE STATE CALLED MELISSA THOMAS, WHO TESTIFIED THAT SOMETIME AFTER, ABOUT THE TIME OF THE MURDER, BROOKS AND DAVIS COME INTO HER APARTMENT. THEY ARE WEARING BLACK RUNNING PANTS, SOMETHING LIKE THAT, AND SOME SORT OF SHIRTS. BROOKS GOES INTO THE BATHROOM AND COMES OUT A FEW MINUTES LATER AND THE PROSECUTOR ASKS DOES HE HAVE ANY DIFFERENT CLOTHES ON AT THAT TIME AND MS. THOMAS SAID I DON'T REMEMBER. HE THEN LATER CALLS ANOTHER OFFICER WHO HAS INVESTIGATED THE MURDER AND SAYS, WELL, WHEN I TALKED TO MELISSA THOMAS, SHE SAID THAT HE CAME OUTWEARING SHORTS. OBVIOUSLY IMPLYING THAT THERE WAS BLOOD ON HIS CLOTHES AND HE CHANGED TO HIDE THE BLOOD. THERE WAS AN OBJECTION TO THIS. THIS IS NOT IMPEACHING EVIDENCE, AND THAT IS WHAT THE PROSECUTOR IS TRYING TO DO. HE IS TRYING TO IMPEACH MISS THOMAS'S TESTIMONY, AND IT WASN'T IMPEACHING BECAUSE IT WASN'T INCONSISTENT. FOR HER TO SAY I DON'T RECALL, I DON'T REMEMBER, IS NOT MATERIAL, OR IS NOT INCONSISTENT WITH THE POLICE OFFICER'S STATEMENT, SO THE COURT WAS I AM PROPNER LETTING HIM IMPEACH HER FOR THAT -- WAS IMPROPER IN LETTING HIM IMPEACH HER FOR THAT REASON.

WAS THERE ANY PAST EVIDENCE THAT SHE RECOLLECTED?

UNDER THAT HEARSAY EXCEPTION YOU ARE TALK ABOUT, RIGHT? THERE IS NO EVIDENCE THAT SHE SAID THAT, YES, WHAT I TOLD THE OFFICER WAS CORRECT. THAT YOU KNOW, THERE IS NO PREDICATE FOR THAT TO COME UNDER THAT HEARSAY EXCEPTION. OKAY.

HOW WAS THAT HARMFUL?

WELL, YOU HAVE GOT MARK GILLIAM, WHO HAS ADMITTED COMMITTING PERJURY IN THIS CASE, AND THE PROSECUTOR HIMSELF, ADMITS THAT THIS IS, THAT GILLIAM HAS GOT TREMENDOUS CREDIBILITY PROBLEMS. AND SO WE START, WHAT OTHER EVIDENCE DO THEY HAVE? MELISSA THOMAS'S TESTIMONY FRANKLY BECOMES VERY STRONG TESTIMONY, BECAUSE IT BECOMES THE TESTIMONY THAT PUTS DAVIS AND WALKNER THE VICINITY OF THE MURDER ABOUT THE TIME OF THE MURDER. OTHER THAN THAT YOU HAVE GILLIAM'S VERY FLAKY TESTIMONY AND THAT PRETTY MUCH BECOMES THE STRONGEST EVIDENCE, SO WHEN THEY BEGIN TO IMPEACH HER TESTIMONY AND NOT ONLY IMPEACHING IT BUT USING IT AS SUBSTANTIVE EVIDENCE. IN CLOSING ARGUMENT THE PROSECUTOR TALKED ABOUT NOT ONLY WHAT SHE DIDN'T RECALL BUT SAID, YES, HE CAME OUT OF THE BATHROOM WEARING SHORTS AND YOU JUST CAN'T DO THAT WITH IMPEACHMENT EVIDENCE.

WAS THERE AN OBJECTION TO THAT? I DON'T BELIEVE THERE WAS AN OBJECTION TO THAT USEFUL THE TESTIMONY, BUT THERE IS OTHER PROBLEMS HERE. PROSECUTOR IS FIX EIGHT ODD SHOWING EVERYBODY ELSE'S INTENT EXCEPT WALKER, EXCEPT LAMAR BROOKS, AND HE CALLS A BOBBIE, I THINK IT WAS BILLY JOE MATTER A TO THE STAND WHO -- MATEIRO TO THE STAND WHO WORKED FOR THE DEPARTMENT OF REVENUE AND SAID MAYBE A MONTH BEFORE THE MURDER, SOMEBODY THAT CLAIMED TO BE RACHEL CARLSON CALLED AND GAVE A SOCIAL SECURITY NUMBER AND WANTED TO INQUIRE ABOUT GETTING CHILD SUPPORT PAYMENTS FROM THE FATHER OF MY CHILD AND CLAIMED WALKER DAVIS IS THE FATHER. THERE IS NO INDICATION THAT WALKER DAVIS KNEW THAT RACHEL CARLSON HAD MADE THIS INQUIRY. THERE IS NO EVIDENCE THAT, WHICH IS REALLY IRRELEVANT ANYWAY, BECAUSE, AGAIN WE ARE LOOKING AT LAMAR BROOKS'S INTENT AND THAT IS THE KEY THIS CASE LOOKS AT, WHAT IS HIS INTENT, AND THERE IS NO EVIDENCE CERTAINLY THAT LAMAR BROOKS KNEW ABOUT IT, AND THEN WE ALSO HAVE A PROBLEM OF WE DON'T EVEN KNOW RACHALLY CARLSON EVEN MADE THE PHONE CALL BECAUSE THE STATE NEVER LAID THE PREDICATE TO ESTABLISH THAT, SO WHAT IN THE WORLD IS THAT TESTIMONY DOING HERE BUT IT GETS IN ANY WAY.

WHAT IS THE TIME LINE BETWEEN THAT CALL AND THE PURCHASE OF THE \$100,000 LIFE INSURANCE POLICY?

I BELIEVE THE PURCHASE OF THE POLICY IN FEBRUARY AND I BELIEVE THE PHONE CALL WAS IN THE EARLY PART OF APRIL. THAT IS AS I RECALL AS I BELIEVE. SO, BUT AGAIN THERE IS NO EVIDENCE THAT RACHAL CARLSON KNEW ABOUT THE POLICY, EITHER. WE ARE TOTALLY SPECULATING HERE. AND THEN THE STATE HAS GOT A WEAK CASE, AND SO THEY GET IN TWO MORE PIECES OF EVIDENCE HERE, AT LEAST OF NOTE. WALKER DAVIS HAD BROKEN HIS FOOT INDEPENDENT OF THIS WHOLE EPISODE. AFTER HE IS ARRESTED, THE POLICE TOOK HIM TO THE HOSPITAL AND HAD IT CUT OFF AND WHEN THEY HAD IT CUT OFF TWO NOTES CAME OUT, WHICH APPARENTLY HAVE, THE STATE CLAIMS THAT THEY WERE DIFFERENT HANDWRITING. THAT IS THE STATE'S CLAIM THERE. IS NO EVIDENCE TO SUPPORT. THAT ANOTHER STATE DIDN'T AT ALL TRY TO LINK THIS WRITING TO MR. BROOKS?

NO. NO. THEY JUST SAID, THE STATE SAID, WELL, THIS, WE CAN LOOK AT THE NOTES AND THEY HAVE GOT DIFFERENT HANDWRITING ON THERE.

LET ME JUST MAKE -- THERE ARE NOTES THAT ARE INSIDE THIS GUY'S KAST?

STUFFED DOWN IN THE CAST. THEY CUT IT OFF AND THE NOTES FALL OUT AND THE POLICE SEES THEM, AND THEY HAVE SOME EVIDENCE THAT TENDS TO SHOW SORT OF A CONSPIRACY OF WE HAVE GOT, AS IN WALK THE DOG AND THINGS LIKE THAT THE.

DID THIS COME IN IN THE LAST TRIAL?

NO. I DON'T BELIEVE SO. BUT ANY WAY, THEY GET THIS STUFF, IN AND THE TRIAL JUDGE,

HIMSELF, SAYS I DON'T KNOW WHO WROTE THESE THINGS, AND WE CAN ALSO SAY WE DON'T KNOW WHEN THEY WERE WRITTEN, EITHER DURING THE COURSE OF CONSPIRACY OR NOT, SO WE HAVE GOT A TREMENDOUS PROBLEM OF YOU KNOW, WHAT IN THE WORLD DOES HE THINK HE IS DOING HERE? WE CAN'T TIE THESE THINGS TO BROOKS, TO GILLIAM, TO LAMAR DAVIS EXCEPT IT HAS DAVIS'S FINGERPRINT ON IT SO WHY IS THIS STUFF COMING IN? IT HAS NO RELEVANCE HERE AND THIS BECOMES VERY POTENT HE HAVE.

WHY WAS THE JUDGE -- POTENT EVIDENCE.

WHY WAS THE JUDGE LETTING THE EVIDENCE IN?

HE SAYS IT SHOWS EVIDENCE OF CONSPIRACY. I THINK HE IS BUYING WHAT THE PROSECUTOR SAYS. IT SHOWS THE LINK OF A CONSPIRATTORIAL IDEA.

DIDN'T ONE OF THE NOTES, ASSUME THAT THEY WERE BOTH WRITTEN BY DAVIS, ACTUALLY GIVE THE SAME EXACT STORY THAT THE DEFENDANT GAVE ABOUT THAT HE WAS WALKING THE DOG OR SOMETHING LIKE. THAT.

YEAH. AND THAT IS THE PROSECUTOR'S THEORY.

DID YOU GO TO THE ONE ABOUT THE PRIOR ATTEMPTS TO KILL CARLSON AND WHAT, I THINK THAT DIDN'T COME IN IN THE --

THE WILLIAMS RULE EVIDENCE. I MEAN THE OFFERS TO KILL THE POLICE OFFICER?

RIGHT.

RIGHT. I WAS, WHAT HAD HAPPENED IS MONDAY EVENING, LAMAR DAVIS CALLS RACHEL CARLSON TO THE, TO PICK HIM UP AND SHE COMES OVER AND SHE LITERALLY SPEEDS AWAY, AND GILLIAM, THE PLAN WAS GILLIAM AND BROOKS WOULD THEN FOLLOW AND THEN SOMEHOW THEY WOULD KILL HER. UNFORTUNATELY, I DON'T KNOW WHETHER IT WAS UNFORTUNATE OR NOT BUT ANYWAY A POLICE OFFICER STOPS RACHEL CARLSON FOR SPEEDING. GILLIAM PULLS BEHIND THOSE TWO CARS AND AS IT TURNS OUT, ANOTHER POLICE OFFICER COMES BEHIND GILLIAM AND GETS OUT OF HIS CAR TO APPROACH GILLIAM. WHILE HE IS DOING THAT, ACCORDING TO GILLIAM, BROOKS SAYS I HAVE GOT TO KILL THIS MAN. I DON'T WANT TO GO BACK, AS IN I DON'T WANT TO GO BACK TO PRISON OF THE THE COURT LET'S THIS IN. THERE IS A LOT OF OBJECTION TO IT, AND THE ONLY RELEVANCE THAT I SEE, IS IT SHOWS LAMAR BROOKS'S BAD CHARACTER. HE IS OUT THERE, WILLING TO KILL ANYBODY THAT GETS IN HIS WAY.

WHY WOULD IT NOT TEND TO ESTABLISH PART OF THE CONSPIRACY AND THE GLOVES IN THE CAR, THE WEAPON IN THE CAR AND THEN THEY FINALLY PUT THOSE UNDER THE SEAT COVER IN THE BACK AND THIS WAS KIND OF THE EVENING BEFORE RUN-THROUGH THAT WAS FOILED, THE ATTEMPT WAS FOILED. WHY WOULD IT NOT GO TO ESTABLISH --

YOUR HONOR, I WILL BE HONEST THAT I DON'T RECALL A WEAPON BEING FOUND IN THE CAR.

I THOUGHT HE HAD A SHOTGUN.

HE CLAIMED HAD HE A, GILLIAM CLAIMED HAD HE A SHOTGUN, BUT I WILL BE HONEST THAT I DON'T RECALL A SHOTGUN BEING FOUND IN THE CAR.

I AM NOT SUGGESTING THAT THE LAW ENFORCEMENT FOUND IT, BUT THAT THERE WAS ONE IN THE VEHICLE WITH, I THOUGHT, LATEX GLOVES. I, MAYBE I AM MISTAKEN.

I DON'T RECALL THE SHOTGUN BEING USED. BUT YOU KNOW, IN A SENSE THE SHOTGUN IS

ALMOST IRRELEVANT BECAUSE SHE WASN'T KILLED BY THE SHOTGUN. SHE WAS STABBED TO DEATH. BUT THE PROBLEM IS, THE RELEVANCE LARGELY IS SIMPLY TO SHOW HIS BAD CHARACTER, AND IF WE ASSUME IT DOES HAVE, IF WE ACCEPT YOUR, THAT IT HAS SOME RELEVANCE, CERTAINLY THE PREJUDICIAL VALUE OUTWEIGHS ANY PROBATIVE VALUE UNIFORMITY SUBSTANTIALLY OUTWEIGHS IT.

DON'T WE GET TO, THEN, AN ABUSE OF DISCRETION STANDARD AT THAT POINT, IF YOU ADMIT THAT IT IS RELEVANT, IT IS, THE ONLY ISSUE IS WHETHER IT IS PREJUDICE OUTWEIGHS ANY RELEVANCE. ISN'T THAT FOR THE TRIAL COURT TO DETERMINE IN THE FIRST INSTANCE AND THE TOTALITY OF THE CIRCUMSTANCES AT TRIAL?

LET'S LOOK AT THE TOTALITY OF THE CIRCUMSTANCES.

WOULD YOU AGREE FIRST?

YEAH. I AM SORRY. I DIDN'T MEAN TO SAY IT QUITE THAT CASUALLY, BUT, YES I THINK THE ABUSE OF DISCRETION IS THE APPROPRIATE STANDARD. I AM RELUCTANT TO SAY THAT BUT I AM FORCED TO SAY IT, BUT IF WE LOOK AT THAT STANDARD AND THEN WE SAY, REALLY, WHY DID THE STATE NEED THIS? WAS THIS REALLY NECESSARY, AND THAT IS WHERE WE LOOK AT WHETHER PREJUDICE OUTWEIGHS PROBATIVE VALUE UNIFORMITY WE LOOK AT THE NECESSITY OF IT. THE STATE COULD HAVE TAKEN THIS EVIDENCE OF THE THREAT PROMISE, I DON'T WANT TO GO BACK TO PRISON. TAKEN IT OUT AND THROWN IT AWAY AND IT WOULD NOT HAVE MADE ANY IMPACT ON THE LEGITIMATE CASE THE STATE HAD AGAINST LAMAR BROOKS. IT WOULD NOT HAVE STRENGTHENED THEIR CASE AT ALL. AND SO THE STATE HAD NO NEED FOR THIS EVIDENCE, AND THE PREJUDICIAL VALUE, I MEAN, THIS COURT --

DID IT NOT STRENGTHEN THE ONGOING NATURE OF THE CONSPIRACY? I WOULD ASSUME THAT THE DEFENDANT, THE POLICE OFFICERS HAVE CALL RECORDS AND WHATEVER TO DISPATCH, THAT IF THEY WERE NOT IN FACT, FOLLOWING THE LADY SPEEDING, THAT THERE WOULD HAVE BEEN ABSENCE OF POLICE RECORDS. IT WOULD CLEARLY IMPEACH.

IT IS REALLY KIND OF AN AMAZING PART OF THE INVESTIGATION THAT THE STATE DID HERE, BECAUSE THEY WENT BACK AND SIX YEARS AFTER THE FACT THEY GO BACK AND ACTUALLY FIND THE ACTUAL OFFICER AND THE RECORDS, NOT ONLY FOR THE ONE STOPPING RACHEL CARLSON BUT THE OFFICER HERE.

SO THERE WAS EVIDENCE OF THAT? INDEPENDENT OF GILLIAM'S TESTIMONY THAT THIS OCCURRED.

YES. THAT IS WHAT IS REALLY KIND OF AMAZING BUT SO WHAT? I MEAN THERE, IS NO, REALLY, QUESTION OF A CONSPIRACY.

LET ME JUST MAKE SURE, BECAUSE THERE IS TWO ASPECTS TO IT. AS I UNDERSTAND, THE FIRST TRIAL, THESE IDEAS THAT THERE WERE TWO PRIOR ATTEMPTS DID NOT COME OUT AT ALL.

YORBL. NO. THAT -- I DON'T BELIEVE SO, NO. THAT BECOMES, I THINK, PART OF THE PERJURY. PERJURY.

FOR GILLIAM.

MISTRIAL. SO THE FIRST TRIAL, GILLIAM TESTIFIES, NEVER TALKS ABOUT THE STOP AND THE STATEMENT BY, THE ALLEGED STATEMENT BY BROOKS.

NO. NO. AS I READ THE COURT'S OPINION, YES.

SO ARE YOU OBJECTING TO BOTH THE, YOU WOULD AGREE THAT THE PRIOR ATTEMPTS ON CARLSON'S LIFE --

THOSE ARE RELEVANT. THOSE ARE ADMISSIBLE. THE POLICE OFFICER --

THE ONLY THING YOU ARE TALKING ABOUT IS THE STATEMENT THAT REALLY, THAT WAS NEVER MADE BEFORE BY GILLIAM, THAT IS OUT OF THE BLUE, SAYS, AND HE SAID LET'S KILL THEM.

RIGHT. RIGHT. THAT IS WHAT I AM FOLK USING ON IS THAT -- FOCUSING ON IS THAT PAIR OF STATEMENTS. I HAVE GOT TO SHOOT THE POLICE OFFICER. I DON'T WANT TO GO BACK TO PRISON.

BUT DOESN'T THAT ADDRESS THAT HE IS INVOLVED IN CRIMINAL ACTIVITY AT THE TIME OF THE STOP? HE WASN'T EVEN DRIVING THE VEHICLE, SO DOES IT NOT TIE IN IN SOME WAY THAT HE IS INVOLVED IN A CRIMINAL ENTIRE PRIZE, SO THEREFORE SOME KIND OF INVOLVEMENT WITH A CONSPIRACY? THAT IS THE WAY I LOOKED AT IT THAT I WAS LOOKING, IS THAT THAT WOULD BE THE ONLY BASIS. IT IS INTERESTING THAT YOU ARE SAYING SOME KIND OF, SOME WAY, AND I HATE TO TAKE YOUR WORDS AND TURN THEM AGAINST YOU, BUT THAT IS THE THING THAT WE ARE SITTING HERE SORT OF SPECULATING HOW THIS STUFF IS GOING TO BE USED. THE CONSPIRACY WAS TO KILL RACHEL CARLSON AND NOW WE HAVE HIM OUTGOING TO KILL A POLICE OFFICER WHO JUST BY FORTUITY HAPPENS TO BE THERE. THE RELEVANCE THERE IS CERTAINLY TANGENTIAL AND PREJUDICIAL VALUE -- CERTAINLY IS TANGENTIAL, PREJUDICIAL VALUE ANY TIME SOMEBODY SAYS I AM GOING TO KILL SOMEBODY. THAT CERTAINLY GOES AS TO PREJUDICE.

WAS HE NOT THE ACTUAL SOOTER IN THIS CASE? -- SHOOTER IN THIS CASE?

THERE WAS NO SHOOTER. I THINK SHE WAS STABBED TO DEATH.

THE KILLER.

THAT IS A NICE SEGUE INTO MY PENALTY PHASE, BECAUSE THERE IS REALLY NO EVIDENCE WHO THE KILLER WAS.

BUT I GUESS IN TERMS OF UNDERSTANDING WHETHER THERE IS PREJUDICE THAT MAY OUTWEIGH THE PROBATIVE VALUE AND WHETHER THIS IS MORE LIKE BAD CHARACTER EVIDENCE, THE FACT THAT SOMEONE SAYS, HEY I AM GOING TO KILL SOMEBODY, AT SOME POINT IN TIME, SHOWS THAT YOU KNOW, WOULD TEND TO TRY TO SHOW THAT HE IS THE KILLER OF CARLSON.

RIGHT. SO JUST, SO I DON'T WANT TO BE RHETORICAL, SO ANY TIME SOMEBODY GETS UP THERE AND SAYS I AM GOING TO KILL SOMEBODY AND THEN HE HAPPENS TO KILL SOMEBODY --

THAT IS A FRIENDLY QUESTION.

THANK IS EXTRAORDINARILY PREJUDICIAL BECAUSE YOU HAVE GOT A MAD DOG KILLER OUT THERE AND THE POLICE OFFICER SAYS GOOD GRIEF. WE HAVE GOT TO GET HIM OFF THE STREET. MAYBE I CAN GIVE A FRIENDLY ANSWER AS OPPOSED. BUT LET ME MOVE ON TO THE PENALTY PHASE. WE HAVE WALKER DAVIS AT GUILT PHASE THE BRAINS OF THE WHOLE THING, DRIVING THIS THING FORWARD, AND NOW ALL OF A SUDDEN AT THE PENALTY PHASE, HE FADES AWAY. WHY DOES HE FADE AWAY? BECAUSE HE GOT A LIFE SENTENCE AND NOW THE TRIAL JUDGE IS FINDING THAT LAMAR BROOKS IS THE MAN WHO ACTUALLY COMMITTED THE MURDER.

ISN'T THERE EVIDENCE THAT HE WAS THE ONE SITTING IN THE BACKSEAT AND THAT THESE STABS TOOK PLACE IN THAT DIRECTION, SO --

THAT'S CORRECT. YES.

SO I KNOW --

YES.

THERE SEEMS TO ME THAT THERE IS SOME EVIDENCE THAT MR. BROOKS WAS, IN FACT, THE PERPETRATOR.

YES. WELL THERE, IS BUT THERE IS ALSO THE SAME MEDICAL EXAMINER SAID THAT SHE WAS STABBED FROM BEHIND ALSO SAID THAT SHE COULD HAVE BEEN, THAT THERE COULD HAVE BEEN TWO STABBERS OR PEOPLE, TWO PEOPLE COULD HAVE STABBED HER. SHE WAS ALSO STRANGLING, SO THE EVIDENCE THAT LAMAR BROOKS WAS THE ONLY PERSON THAT STABBED HER IS CERTAINLY INCONCLUSIVE, BECAUSE OF WHAT THE MEDICAL EXAMINER SAID. NOW, THE TRIAL COURT DRAWS STRENGTH FROM THE FACT THAT THE FACT THAT THE STATE CALLED TERENCE GOODMAN, A JAILHOUSE ACQUAINTANCE OF LAMAR BROOKS, AND HE DOESN'T CALL HIM IN THE GUILTY PHASE, DOESN'T CALL IN THE PENALTY PHASE BUT SPENCER HEARING AND TERENCE GOODMAN, AND YOU CAN UNDERSTAND WHY THEY DO IT BECAUSE IS HE SUCH A FUZZY WITNESS WHO SAYS I TALKED TO LAMAR BROOKS WHILE WE WERE IN PRISON OR JAIL TOGETHER AND HE SAYS I DON'T KNOW IF I WAS HIGH ON MARIJUANA BUT I CAUGHT THE CASE AND SAID I CAUGHT THE BROAD, THAT IS YOU WILL AGREE, KIND OF FUZZY STUFF AND IS NOT REALLY CLEAR, BUT THAT IS WHAT THE TRIAL COURT USED TO BASE HIS TESTIMONY THAT LAMAR BROOKS IS THE ONLY ONE WHO KILLED RACHEL CARLSON. WE DON'T KNOW ABOUT ALEXIS STEWART AND THAT IS WHY HE DISTINGUISHES TWO AND SAYS LAMAR BROOKS SHOULD GET A DEATH SENTENCE WHILE WALKER DAVIS GETS A LIFE. BUT THEN IF WE START LOOKING AND SAY WE ASSUME THAT LAMAR BROOKS WAS A KILLER, WHAT ABOUT WALKER DAVIS? HE IS THE MAN WHO HAD THE MOTIVE. HE IS THE ONE WHO WAS SUPPOSED TO GET A \$100,000 POLICY. HE IS THE MAN WHO TWICE GOT RACHEL CARLSON TO COME TO TRY AND KILL HER, BUT FOR WALKER DAVIS, RACHEL CARLSON WOULD BE ALIVE TODAY, AND ALEXIS STEWART, AND LAMAR BROOKS WOULD BE A FREE MAN AND WE WOULD BE OUT EATING LUNCH RIGHT NOW.

ARE YOU ARGUING, THEN, THAT THE PERSON WHO MOTIVATES SOMEONE ELSE TO ACTUALLY DO THE KILLING, THEY CAN'T BE A DIFFERENCE IN SENTENCING, IF ONE IS ACTUALLY THE ACTUAL PERPETRATOR OF IT, VERSUS THE OTHER ONE BEING THE PROCURER OF IT?

WELL, ANTOINE CASE, THAT IS BASICALLY WHAT SHE SAID. IN FACT, ANTOINE WAS EXECUTED BECAUSE HE, AND WHAT I AM SAYING HERE IS WHEN YOU HAVE GOT A MAN WHO IS SO INTIMATELY INVOLVED WITH THIS THING WHO MAY HAVE DONE SOME OF THE STABBING HIMSELF AND STRANGLING, WHEN HE IS SO INTIMATELY INVOLVED WITH THIS THING AND BUT FOR HIS PARTICIPATION AND HE WAS THE KEYSTONE OF THIS WHOLE THING, YES, THEN THE FACT THAT LAMAR DAVIS MAY HAVE BEEN THE KILLER DOES NOT JUSTIFY THE DISPARITY IN THIS CASE.

DID THEY FIND, WAS DAVIS CONVICTED IN A JURY TRIAL?

I DON'T KNOW.

WE ONLY NEED TO KNOW SOME OF. THAT DO WE KNOW WHETHER HE GOT FIRST-DEGREE?

IT WAS FIRST-DEGREE MURDER. HE GOT LIFE. YOUR OPINION IN BROOKS ONE SAID THAT HE GOT A LIFE SENTENCE.

SO WE DON'T KNOW WHETHER IT WAS A JURY RECOMMENDATION OF LIFE OR WAS IT THE SAME JUDGE HA MERD DAVIS WHO HEARD -- SAME JUDGE WHO HEARD DAVIS THAT HEARD BROOKS?

I DON'T KNOW.

CHIEF JUSTICE: THE MARSHAL IS REMINDING YOU.

YES.

MAY IT PLEASE THE COURT. CHARMAINE MILLSAPS REPRESENTING THE STATE. FIRST OF ALL, I WOULD LIKE TO POINT OUT THAT, IN BROOKS ONE, YOU ALSO SAID THAT RACHEL JONES'S STATEMENT TO, DAVIS STATEMENT TO RACHEL JONES THAT HE WAS GOING TO SMOKE THE DIP, WAS ADMISSIBLE. YOU HELD THAT ADMISSIBLE. IN THIS RETRIAL, THE JUDGE SAID, NO, THAT THE SUPREME COURT DIDN'T HEAR THE NEW TESTIMONY THAT I HEARD ABOUT TIMING. AND WHILE THE SUPREME COURT SAID RACHEL JONES, WHICH WAS EVIDENCE IN OUR FAVOR, WAS ADMISSIBLE, I AM RULING THAT IT IS NOT ADMISSIBLE, BECAUSE IT HAND OUT SIDE THE CONSPIRACY. SO YOUR HONOR, WHAT THE JUDGE DID WAS, IN THAT CASE, EVEN THOUGH YOU HAD RULED THAT OUR EVIDENCE, STATEMENTS THAT DAVIS MADE TO HER WAS ADMISSIBLE, WAS ADMISSIBLE, HE SAID, NO, IT IS NOT. THE STATE MAY NOT USE THE STATEMENT I AM GOING TO SMOKE THE DIP.

WOULD YOU GO TO THE TWO POINTS, CERTAINLY THE ADMISSION OF BOTH THE TESTIMONY OF THE AGENT AND THE POLICY WAS CHALLENGED IN OUR FIRST CASE, THE FIRST TIME IT WAS HERE.

YES. YES.

AND THE OPINION DOES NOT SPECIFICALLY SPEAK TO THE POLICY. IT DOES SPEAK TO, HOWEVER, THE TESTIMONY OF THE AGENT. AND CAN YOU EXPLAIN TO ME, I MEAN, IT WOULD SEEM THAT THE AGENT WOULD DO THE SAME THING IN BOTH CASES. YOU WOULD IDENTIFY THE OWNER APPLICANT BENEFICIARY OF THE INSURANCE POLICY WOULD DO THE SAME THING THE SECOND TIME AS THE FIRST. THAT IS QUESTION NUMBER ONE. AND THEN I WANT TO FOLLOW UP WITH THE TELEPHONE CALL.

ALL RIGHT. FIRST TIME, THERE WAS MUCH MORE EXTENSIVE TESTIMONY OUT OF THE INSURANCE AGENT. BROOKS, DAVIS HAD A CONVERSATION WITH HIM ABOUT CAN I INSURE THIS CHILES? HE AT FIRST -- INSURE THIS CHILD? FIRST HE DENIED HE WAS THE FATHER THIS. IS TRIAL ONE. LET ME EXPLAIN WHAT HAPPENS IN THIS TRIAL. WE LITERALLY SAY APPLICATION. AGENT. HE LITERALLY IDENTIFIES WHO IT IS. THAT IS IT. VERY FEW PAGES.

BUT STILL THE INFORMATION AS FAR AS OWNER, APPLICANT, BENEFICIARY, AMOUNT OF INSURANCE. IT JUST NOT ALL OF THE COLLOQUY THAT GOES INTO IT.

IT WASN'T THE CONVERSATION THAT HAPPENED ON FEBRUARY 20. THAT WAS EXTENSIVE IN THE FIRST TRIAL.

WHY WOULD THAT NOT ALSO VIOLATE THIS COURT'S DECISION IN BROOKS ONE THAT SAID YOU CANNOT USE THESE THINGS FOR MOTIVE, AND IT SEEMS TO ME IN READING THIS ARGUMENT IN THIS CASE, THAT IT WAS, IN FACT, USED FOR, AS A MOTIVE, ALTHOUGH IT MAY HAVE BEEN PRESENTED INITIALLY TO SHOW THE SOURCE, IT WAS CONVERTED, THAT FLIP SIDE OF SOURCE OF FUNDS INTO MOTIVE.

NOW, YOUR HONOR, BROOKS DID OBJECT TO THE ACTUALLY, IN OPINION ONE, BUT YOU DIDN'T SAY YOU AGREED WITH THAT.

IT WASN'T RAISED. I MEAN, HAVE YOU LOOKED AT THE BRIEF IN BROOKS ONE?

YES, YOUR HONOR. I LOOKED AT THE --

WAS THAT RAISED, THE ADMISSIBILITY OF INSURANCE AS A SEPARATE ISSUE ON APPEAL? IT WAS

ALL RAISED TOGETHER ON THE ISSUE.

THERE WAS NO SEPARATE ISSUE RAISED BY DEFENSE ATTORNEY. IT WAS RAISED IN CONJUNCTION WITH THE HEARSAY. WOULD YOU, IN BROOKS ONE.

RIGHT.

WE DID NOT RULE IN BROOKS ONE, ON THE INSURANCE POLICY. SO IT CERTAINLY IS NOT, I MEAN, I AM NOT SURE WHAT YOU ARE ARGUING ABOUT WHAT WE SAID IN BROOKS ONE. WE DIDN'T RULE IT WILL ADMISSIBLE, DID WE?

NO. BUT YOU DIDN'T RULE IT INADMISSIBLE. THAT IS MY ARGUMENT. I AM SAY IN BROOKS ONE, YOU SAID DON'T HAVE THE CONVERSATION BETWEEN STEVE MATHENIE AND DAVIS. YOU DID NOT SPECIFICALLY RULE AS TO THE CONTRACT.

THE JUDGE ADMITTED IT IN THIS CASE FOR A VERY LIMITED PURPOSE, SO SAY WE CAN COME IN AS A SOURCE THAT THERE WAS MONEY TO PAY \$10,000 TO, IS THAT WHAT THE PURPOSE WAS?

I THINK HE SAID THAT WAS ITS RELEVANCE. THEY OBJECTED TO VERY WELLRANS -- THEY OBJECTED TO RELEVANCE AND THEN THE JUDGE SAID HERE IS Y I DON'T THINK THEY EVER LIMITED IT JUST TO THAT. HE SAID IT WAS RELEVANCE. THERE WAS NO LIMITING INSTRUCTION REQUESTED OR ANYTHING LIKE THAT, SO THERE WAS NO LIMITING IN INSTRUCTION. THE JUDGE NEVER RULED IT IS LIMIT TO DO THAT PURPOSE ONLY.

THE JUDGE ACTUALLY THEN ALLOWED IT FOR ALL PURPOSES, AND THAT ALLOWED THE --
THAT IS HOW --

-- THE PROSECUTOR, SO THEN IT REALLY VIOLATE WHAT HAD WE SAID IN BROOKS, BECAUSE, BROOKS ONE, SINCE THERE IS NO EVIDENCE THAT MR. BROOKS KNEW ABOUT THIS INSURANCE POLICY THAT IT WAS NOT RELEVANT TO PROVE BROOKS'S MOTOR I. AND YET THAT IS WHAT -- MOTIVE. AND YET THAT IS WHAT THE PROSECUTOR ARGUED.

I AM ARGUING, YES, IT IS RELEVANT FOR WHAT THE JUDGE SAID IT WAS, WHICH WAS THE SOURCE OF THE MONEY. DAVIS IS GOING TO GET \$100,000 AND TAKE \$10,000 OF THAT \$100,000 AND GIVE IT TO BROOKS.

WAS THERE ANY EVIDENCE THAT THERE WAS, PART OF THE CONSPIRACY WAS TO KILL THE BABY?

WELL, YOU HAVE TO, PART, YES, THERE IS EVIDENCE. ON TUESDAY, DAVIS ADMITS, ONE OF THE TWO ATTEMPTS, INCIDENTALLY THE CHILD IS IN THE CAR ALL THREE TIMES, AND ONE OF THE TIMES, DAVIS SAYS TO THE OTHER, TO THE OTHER PARTICIPANTS, GILLIAM AND BROOKS, THE CHILD IS IN THE CAR, SO IT IS NOT LIKE THEY DON'T KNOW THAT THE CHILES IS IN THE CAR.

I THOUGHT GILLIAM SAID THAT HE DIDN'T KNOW THE CHILD WAS IN THE CAR.

HE ADMITS THAT, ON TUESDAY, ON TUESDAY THE TUESDAY ATTEMPT, THAT DAVIS HAD SAID TO THEM THAT THE CHILD WAS IN THE CAR. NOW, MONDAY HE DIDN'T SAY ANYTHING.

SO ARE YOU ARGUING THIS WAS PROPERLY ADMITTED NOT ONLY TO SHOW THE SOURCE OF PAYMENT BUT TO SHOW THE MOTIVE OF BROOKS?

IN THIS WAY. WHEN YOU HIRE SOMEBODY --

JUST YES?

YES. YES. YES. YES, I AM. WHEN YOU HIRE SOMEBODY TO KILL SOMEONE, THE JURY NEEDS TO KNOW WHY THAT PERSON WHO IS HIRING YOU, IT IS, WHY WOULD HE HIRE HIM TO DID -- TO KILL THIS CHILD? WHY WOULD HE HIRE HIM TO KILL ANY OF THESE PEOPLE? WHY IS HE WILLING, WHY IS DAVIS WILLING TO PAY BROOKS \$10,000?

SO ALL THE TALK ABOUT THAT THERE HAS TO BE, OUT-OF-STATE CASES AND FROM THE THIRD DISTRICT, THAT THERE HAS TO BE SOME KNOWLEDGE REQUIREMENT ON PART OF THE DEFENDANT, IS, YOU WOULD SAY THAT IS NOT A GOOD RULE OF LAW.

NO. THERE DOESN'T HAVE TO BE ANY KNOWLEDGE ON HIS PART THAT THE INSURANCE POLICY EXISTS. IT WOULD INCREASE THE STRENGTH OF OUR CASE BUT IT IS NOT REQUIRED. IT STILL IS GOING TO BE WHERE HE IS GOING TO GET THE MONEY.

SO WHAT DO YOU MAKE OF OUR DECISION IN BROOKS ONE? WHY DID WE THINK THAT WAS SUCH A BAD THING TO ALL OF THE CONVERSATIONS TO COME IN?

I THINK IT HAD TO DO ALSO WITH THE SHEER AMOUNT OF T REMEMBER IT WASN'T JUST ONE LITTLE HEARSAY STATEMENT ABOUT MATHENIE. THERE WERE NUMEROUS PEOPLE, COWORKERS, YOU LIST, I MEAN, YOU LIST FIVE AND SIX PEOPLE. WE DIDN'T REINTRODUCE THAT TESTIMONY.

GOING TO THE NEXT ONE, THOUGH, WE DID EXCLUDE IN BROOKS ONE, THE EMAIL THAT WENT DIRECTLY, AND I UNDERSTAND, BUT THAT WAS ONE THAT LINKED, WAS SOME MENTION ABOUT THE PURCHASE OF DIAPERS OR SOMETHING. IT CERTAINLY HAD SOME IMPLICATION THAT IT WOULD HOOK, CONNECT DAVIS AND BROOKS TO MISS CARLSON. AND -- LOGICALLY PRESERVE THAT THE SOMEHOW LESS CREDIBLE AND IN ADMISSIBLE, BUT AT THE SAME TIME WE CAN TAKE HEARSAY STATEMENTS MADE BY AN UNKNOWN PERSON THAT ARE PLACED ON A FORM AND GET THAT HEARSAY BEFORE A JURY, AND THAT IS THE SECOND POINT AS TO WHETHER THE CHILD SUPPORT CASEWORKER CAN COME IN AND TESTIFY TO THOSE THINGS.

THE CHILD CASEWORKER, WHILE RAISED, WASN'T ADDRESSED IN BROOKS ONE.

I UNDERSTAND BUT HOW IS THAT ANY DIFFERENT OR HOW IS THAT LESS OF A PROBLEM THAN THE EMAIL DIRECTLY TO DAVIS, TALKING ABOUT SUBSTANTIALLY THE SAME MATERIAL?

OKAY. BUT NUMBER ONE, I THINK A LOT OF YOUR OPINION HAD TO DO WITH THE CUMULATIVE NATURE. YOU HAD, THERE WERE JUST TOO MANY, TOO MUCH INADMISSIBLE HEARSAY, AND WE DID NOT INTRODUCE THAT AGAIN, AND THE E. MAIL STATEMENT, THE PROBLEM WITH THIS -- AND THE EMAIL STATEMENT, THE PROBLEM WITH THAT WAS HE DID PROVE WHERE DAVIS WENT. THERE WAS NO CONNECTION TO BROOKS.

WHERE IS THE CONNECTION TO BROOKS ON THIS? THE CALL WAS ALLEGEDLY MADE TO THE CASEWORKER. WHERE IS THE CONNECTION TO BROOKS ON THAT?

WELL, THE CONNECTION TO BROOKS ON THE CASEWORKER PROVES THE RELATIONSHIP BETWEEN ALL THESE PEOPLE.

WHAT IS THE CONNECTION TO BROOKS, KNOWLEDGE OF THE CASEWORKER? THAT IS WHAT I AM ASKING. -- WHAT I AM ASKING. YOU SAID THAT THERE IS SOME NEXUS THAT BROOKS KNOWS ABOUT SOME OF THIS STUFF. HOW IS BROOKS CONNECTED TO THIS TESTIMONY OF THE --

TRIAL JUDGE RULED THIS ADMISSIBLE, BECAUSE WHAT HE SAID IS IT WAS RELEVANT WHY DAVIS WOULD BE WILLING TO PAY BROOKS \$10,000.

WELL, IT CAME IN AS A BUSINESS RECORD EXCEPTION BECAUSE IT IS CLEARLY HEARSAY, BUT WE

STILL HAVE A HEARSAY PROBLEM IF THERE IS HEARSAY WITHIN THE BUSINESS RECORD, DO WE NOT?

IF THE RECORD, IF THE RECORD IS, NO, THAT IS THE WHOLE POINT OF HAVING A HEARSAY. IT IS NOT LIKE DOUBLE HEARSAY.

SO YOU CAN GET IN HEARSAY IS WHAT YOU ARE SAYING, YOU CAN GET IN HEARSAY CONTENT THROUGH A BUSINESS RECORD IS YOUR POSITION.

RIGHT.

OKAY.

OKAY. SO THESE STATEMENTS THAT AND WHAT IS ON THIS RECORD --

IF THAT IS INCORRECT, THEN THAT WAS ERRONEOUSLY ADMITED?

THOSE ARE REALLY, I AM NOT SURE WHETHER YOU ARE ASKING ME RELEVANCE OR THE HEARSAY EXCEPTION PART OF IT. I DON'T THINK I AM UNDERSTANDING THE QUESTION. ALL RIGHT. I WOULD ALSO ALSO LIKE TO TALK -- I WOULD ALSO LIKE TO TALK, TO CLEAR SOME THINGS UP, THE NOTES THAT WERE ADMIT -- TO CLEAR SOME THINGS UP. THE NOTES THAT WERE ADMITTED, IN THE CAST, THEY WERE NOT RAISED AS ISSUE, SO THE SHOTGUN THAT BROOKS AS HAS IN THE ATTEMPTED MURDERS ON MONDAY AND TUESDAY, IT IS FOUND ON FRIDAY WHEN THEY SEARCH HIS HOUSE. IT IS FOUND IN THE DINING ROOM, THE CLOSET OF THE DINING ROOM, SO WE DO, THE OTHER, NOT ONLY IS MONDAY AND TUESDAY'S ATTEMPT RELEVANT TO WHAT FINALLY IS SUCCESSFUL ON WEDNESDAY, WHEN THESE, WHEN BOTH THE MOTHER AND THE DAUGHTER ARE KILLED, BUT THE GUN --

CAN WE GO BACK TO, I AM STILL NOT SURE OF WHAT YOU SAID ABOUT WHAT THE RELEVANCY OR WHY THE INFORMATION FROM THE CASEWORKER IS RELEVANT IN MR. BROOKS'S CASE. THIS IS THE INFORMATION THAT MISS CARLSON CALLED THIS CASEWORKER, GAVE HER SOCIAL SECURITY NUMBER AND ALL OF THIS STUFF AND SAYS I WANT TO GET SOME --

IT IS AN APPOINTMENT FROM A SOCIAL, FROM A CHILD SUPPORT AGENCY.

SHE WANTS TO GET SOME CHILD SUPPORT FROM MR. DAVIS. SO HOW IS THAT RELEVANT IN MR. BROOKS'S CASE?

OKAY. WHAT THE TRIAL JUDGE RULED AND WHAT I AGREED WITH, IS THAT THAT IS WHY IT IS RELEVANT TO ESTABLISH WHY DAVIS WOULD BE WILLING TO PAY BROOKS \$10,000. TO KILL HER, TO KILL THE MOTHER AND THE --

SO EVEN THOUGH MR. BROOKS HAS NO IDEA THAT THIS IS GOING ON, IT IS RELEVANT IN HIS CASE.

WELL, HE DOES KNOW IT IS GOING ON IN THE SENSE THAT IT IS WHY DAVIS WOULD PAY BROOKS TO KILL THIS WOMAN! WHY IS HE WILLING TO PAY TO KILL THIS WOMAN? BECAUSE SHE IS THE MOTHER OF HIS ILLEGITIMATE CHILD WHO IS BRINGING, WHO IS GOING TO BRING CHILD SUPPORT.

BUT SHALL -- BUT IS THERE ANY EVIDENCE FROM GILLIAM OR ANYBODY ELSE THAT THERE WAS DISCUSSION BY DAVIS IN THE PRESENCE OF BROOKS, THAT THAT WOULD BE A MOTIVATION?

NO. REMEMBER WHAT GILLIAM TESTIFIES TO ON MONDAY WHEN THEY START FORMING THIS CONSPIRACY, GILLIAM TESTIFIES THAT THEY GO AWAY, BOTH BROOKS AND DAVIS GO INTO DAVIS'S BEDROOM, SO GILLIAM IS ONLY HEARING PART OF THE CONSPIRACY. OKAY. EXACTLY WHAT THEY ARE, THE FULL DISCUSSION WAS NOT HELD IN FRONT OF GILLIAM. GILLIAM IS JUST

GOING TO BE PAID TO BE THE DRIVER. ALL RIGHT.

BUT YOU SAID, OKAY, BUT LET'S GO BACK AGAIN. YOU SAID THAT BROOKS, THERE IS NOTHING THAT SAYS THAT BROOKS KNEW ABOUT THE PHONE CALL, BUT IT WAS RELEVANT TO SHOW WHY DAVIS WOULD HAVE PAID BROOKS \$10,000. IS THERE ANY EVIDENCE THAT DAVIS KNEW ABOUT THIS CALL FROM A PERSON WHO IDENTIFIES HERSELF AS RACHEL CARLSON? WAS THERE --

NO. THERE IS NO EVIDENCE OF THAT.

HOW, EVEN IF THIS WAS INTRODUCED IN DAVIS'S CASE, IT SEEMS LIKE IT WOULD BE, SUFFER FROM THE SAME PROBLEM. FIRST OF ALL, WE DON'T KNOW IT IS ACTUALLY RACHEL CARLSON. SECOND OF ALL, THERE IS NO KNOWLEDGE THAT MR. DAVIS KNEW THAT SHE WAS SEEKING, IN THAT WAY, IN A FORMAL DOR PROCEEDING, CHILD SUPPORT.

WELL, WE DO KNOW THAT CARSON, MADEIRA TESTIFIES THAT THE WOMAN WHO SHE WAS TALKING TO ON THE PHONE GAVE HER SOCIAL SECURITY NUMBER, GAVE HER ADDRESS, IDENTIFIES HER NAME, SO THOSE ARE, WE DO HAVE CIRCUMSTANTIAL EVIDENCE THAT THIS IS, IN FACT, RACHEL CARLSON.

GETTING BACK,BUT DAVIS DOESN'T KNOW THAT THIS --

NO. HE ONLY KNOWS IN GENERAL.

SO WHAT IS THE RELEVANCE OF IT EVEN TO DAVIS?

THAT SHE IS SEEKING CHILD SUPPORT AGAINST HIM. HE MAY NOT KNOW THE EXACT FORM IT IS GOING TO TAKE AND EXACTLY WHETHER SHE STARTED THE PROCEEDINGS OR NOT, BUT HE DOES KNOW THAT SHE WANTS CHILD SUPPORT FOR IT.

BECAUSE OF THIS RECORDED CONVERSATION THAT HE IS NOT --

NO. THIS IS NOT THE SOURCE OF THAT KNOWLEDGE, BUT HE DOES KNOW, FOR INSTANCE, THEY ARE TALKING.

SO, AGAIN, WHAT IS IT BEING INTRODUCED FOR IN THIS TRIAL AGAINST BROOKS?

BECAUSE IT EXPLAINS THE RELATIONSHIP BETWEEN THE CO-PERPETRATOR, RACHEL CARLSON, AND THIS BABY. THAT HE IS IN FACT A PUNITIVE FATHER OF THIS CHILD.

IS THERE ANY EVIDENCE THAT DAVIS KNEW THAT CARLSON WAS SEEKING CHILD SUPPORT?

DAVIS. NOT OFFICIALLY. WE HAVE NO EVIDENCE THAT HE KNEW OF THIS PARTICULAR TELEPHONE CONVERSATION. THERE IS EVIDENCE THAT SHE WAS, THAT SHE DID REPEATEDLY REQUEST MONEY FOR HIM. AS A MATTER OF FACT THAT IS HOW GILLIAM STARTS OUT HIS, THE FIRST TIME HE MEETS RACHEL CARLSON IS SHE HAS COME OVER TO DAVIS'S HOUSE WHERE ALL THREE OF THEM ARE, ASKING TO SEE HIM, AND THEN WHEN HE GETS BACK FROM WORK, WHEN DAVIS GETS BACK FROM WORK THIS IS WHERE THE CONVERSATION ABOUT LET'S KILL HER BECAUSE SHE IS HARASSING ME FOR MONEY.

CAN YOU ADDRESS BOTH AS TO ISSUE BEFORE YOU SIT DOWN AND AS TO THE LIFE INSURANCE POLICY ISSUE, IF THIS COURT FINDS THAT THOSE THINGS WERE A INADMISSIBLE AND SHOULD NOT HAVE BEEN ADMITTED, WHETHER HARMLESS ERROR APPLIES.

OKAY. NOW, ON THE TRADITIONALLY THIS BLACK LETTER OF THE LAW, CONTRACTS ARE NOT HEARSAY, SO CONTRACTS, THEMSELVES, ARE NEVER, YOU KNOW, THEY ARE HEARSAY. WE DIDN'T

EVEN HAVE TO GO TO BUSINESS RECORD, WHICH IT IS ONE. I STILL BELIEVE THAT THE, REMEMBER WE STILL HAVE GILLIAM'S TESTIMONY THAT THERE IS AN AGREEMENT TO KILL RACHEL CARSON, AND WE HAVE AN ATTEMPT ON MONDAY, AND AN ATTEMPT ON TUESDAY, WHICH IS VERIFIED BY PHYSICAL EVIDENCE SUCH AS WE FIND THE SHOTGUN.

GILLIAM, DID HE HAVE A MOTIVE TO TESTIFY IN THIS CASE? DID HE GETS A DEAL FOR HIS TESTIMONY?

HE, THEY AGREED NOT TO PROSECUTE HIM FOR THE UNDERLYING THING, BUT DO YOU MEAN THE PERJURY CHARGES?

NO. I WOULD SAY, I THINK THAT WOULD BE A, IN OTHER WORDS WE ARE LOOKING AT WHETHER THIS, THESE TWO PIECES OF EVIDENCE CAN BE CONSIDERED TO BE, IF THEY ARE ERROR, HARMLESS BEYOND A REASONABLE DOUBT, AND YOU SAID, WELL, GILLIAM TESTIFIED. I AM TRYING TO GET AN UNDERSTANDING OF HOW, WHETHER GILLIAM'S TESTIMONY IS UNDERMINED BY THE FACT THAT HE IS A COCONSPIRATOR AND HE GETS OFF SCOT-FREE FOR IT.

WELL, HE IS A COCONSPIRATOR. REMEMBER, BY WEDNESDAY, HE BACKS OUT. HE DOES NOT DRIVE THESE PEOPLE TO THE --

DOES HE FACE ANY CHARGES FOR WHAT WOULD HAVE HAPPENED?

WE AGREED THAT IF HE WOULD TESTIFY TRUTHFULLY, WHICH HE DID NOT, THAT WE WOULD NOT BRING CHARGES AGAINST HIM -- THAT WE WOULD NOT BRING CHARGES AGAINST HIM, BUT THERE WASN'T REALLY ANY CHARGES TO BRING AGAINST HIM. HE WAS BACK AT FORT BENNING WHEN THE 24 MURDER OCCURRED -- WHEN THIS MURDER OCCURRED. HE WAS -- WHEN THIS MURDER OCCURRED. HE WAS BACK ON FORT BENNING BASE, SO HE WITHDRAWS FROM THE CONSPIRACY BY THE TIME THESE MURDERS OCCUR, AND WE KNOW THAT FOR A FACT, SO WE WEREN'T REALLY IN A POSITION TO PROSECUTE HIM FOR THE ACTUAL MURDERS, ANYWAY.

SO GETTING BACK TO THE HARMLESS-ERROR ANALYSIS, YOU HAVE GILLIAM'S TESTIMONY.

WE HAVE GILLIAM'S TESTIMONY THAT THERE IS CONSPIRACY. THE DRY RUNS, ON MONDAY AND TUESDAY, AND WE HAVE THE OFFICER. WE FOUND THE OFFICER WHO ISSUED THE TICKET TO RACHEL CARLSON ON MONDAY, AND SO WE CAN VERIFY THAT, IN FACT, RACHEL CARLSON HAD DRIVEN TO CRESTVIEW ON MONDAY NIGHT, WHICH WE HAVE INDEPENDENT OFFICER TESTIMONY CORROBORATING THAT THERE WAS AN ATTEMPT ON MONDAY NIGHT. WE HAVE, WE HAVE THE PHYSICAL EVIDENCE, THE FACT THAT WE FIND THE SHOTGUN THAT WAS USED IN THAT ATTEMPT, ALTHOUGH IT IS NOT THE MURDER WEAPON, THAT THE VICTIMS WERE IN, IN FACT, STABBED. WE HAVE --

SOMEONE PLACED THESE DEFENDANTS IN THE SCREW THAT NIGHT? -- IN CRESTVIEW THAT NIGHT?

A SERIES OF WITNESSES PLACED DAVIS AND WALKER, DAVIS AND BROOKS IN CRESTVIEW. WE HAVE A WOMAN WHO LIVED, MELISSA THOMAS, WHO LIVED A BLOCK FROM THE MURDER. WE HAVE THE PHONE RECORDS SHOWING THAT THEY CALLED AT 9:22, EXACT TIME, THAT THEY MADE THESE PHONE CALLS. ROCHELLE JONES PICKS THEM UP FROM THE CREDIT UNION, WHICH IS RIGHT AROUND, ALL OF THIS IS WITHIN A BLOCK OF THE CAR THAT THE VICTIMS ARE FOUND IN. SHE PICKS HIM UP. WE HAVE ANOTHER SPEEDING TICKET AT 10:20, SO WE CAN CORROBORATE THAT SHE IS, IN FACT, PICKING THEM UP. THE OFFICER WHO ISSUES THE TICKET REMEMBERS THAT THERE WERE BLACK MALES IN THE CAR, ONE OF WHOM HAD A CAST ON HIM. DAVIS HAS A CAST AT THIS TIME.

COULD YOU GO BACK TO THE STATEMENT ABOUT THE KILLING OF THE POLICE OFFICER? THAT

COMES SOLELY FROM GILLIAM IN THE SECOND TRIAL, GIVING THIS STATEMENT.

THERE IS NO TESTIMONY ABOUT ATTEMPTED, THE ATTEMPT ON MONDAY OR TUESDAY IN TRIAL ONE.

HOW IS THAT, YOU SAID THAT WAS SOME OF THE MOST POWERFUL EVIDENCE IN THIS CASE, YET IT WASN'T EVEN, GILLIAM DIDN'T EVEN MENTION IT UNTIL THE SECOND TRIAL?

GILLIAM DID NOT MENTION THAT UNTIL THE SECOND ATTEMPT.

AND JUST FOR SEVERAL YEARS DID NEVER MENTION THE STATEMENT ABOUT THAT HE ALSO SAID I AM GOING TO KILL THE POLICE OFFICER?

BUT LET ME, THAT WAS NOT, THAT IS NOT TRULY PRESERVED, THIS CLAIM. WHY THEY OBJECTED TO THE WHOLE ATTEMPT ON MONDAY AND TUESDAY, CAME IN, THEY NEVER ASKED THE TRIAL JUDGE TO, THEY NEVER MADE THIS SELECTIVE ADMISSIBILITY ARGUMENT THAT THEY ARE MAKING ON APPEAL. ON APPEAL, THEY ARE ADMITTING THAT THE ATTEMPT SHOULD COME IN BUT JUST THAT STATEMENT. I AM ASSUMING THEY WOULD EVEN LET US HAVE THE SHOTGUN BUT I AM NOT QUITE SURE ABOUT THAT.

COULD YOU ADDRESS THE, WHAT THE RELEVANCE IS OF AND HOW THE PREJUDICE DOESN'T OUTWEIGH THE PROBATIVE VALUE OF THIS, REALLY, UNCORROBORATED STATEMENT THAT, IN AN ATTEMPT, THAT HE, GILLIAM MAKES, I AM SORRY, THAT BROOKS MAKES A STATEMENT, AND COULD YOU THEN ALSO ADDRESS HOW THE PROSECUTOR USED THAT, IF HE DID, IN CLOSING ARGUMENT?

OKAY. NOW, THE ATTEMPT ITSELF VERSUS THE STATEMENT THAT IS PART OF THE ATTEMPT.

THE STATEMENT ABOUT KILLING THE POLICE OFFICER.

OKAY. WE WOULD HAVE AFTERNOON HARDER CASE, IF THEY HAD ASKED THE TRIAL JUDGE TO DO IT THAT WAY. ADMIT THE ATTEMPT ON MONDAY AND TUESDAY BUT JUST NOT THE STATEMENT. THEY NEVER ASKED THE TRIAL JUDGE TO DO. THAT THEY ASKED THE TRIAL JUDGE TO EXCLUDE THE WHOLE THING.

WHOLE THING OUT. SO JUST COULD YOU ADDRESS, THOUGH, THE STATEMENT AND THE RELEVANCYANT PREJUDICIAL VALUE?

-- RELEVANCY AND THE PREJUDICIAL VALUE?

I THINK IF HE WAS ARMED WITH A SHOTGUN, GIVEN THAT WE FOUND A SHOTGUN ON FRIDAY WHEN WE CONDUCTED THE SEARCH, THAT SHOULD COME IN AS WELL, THE SHOTGUN PART OF T.

JUST STATEMENT.

JUST STATEMENT.

BY THE PROSECUTOR IN CLOSING ARGUMENT.

OKAY. NOW, THE PROSECUTOR DID USE IT AS A CONSCIOUSNESS OF GUILT. YOUR HONOR, THAT WOULD BE A CLOSER CALL. IF I WERE THE TRIAL JUDGE, I MIGHT WE WILL SAY THAT THAT STATEMENT, I MIGHT WE WILL HAVE EXCLUDED, BECAUSE YOU GET SO MUCH OF THE POWERFUL VALUE OF THAT FROM THE FACT THAT THEY ARE FOLLOWING THE VICTIM IN HER CAR. THEY HAVE THIS WHOLE SET UP TO FOLLOW HER. BUT BECAUSE THAT ARGUMENT WAS NOT MADE, THAT, IN FACT, IT DOES SHOW THAT HE IS WILLING TO KILL IN FURTHERANCE OF THIS --

SO THAT WOULD BE, IF JUST ARGUMENT HAD BEEN TAILORED TO SAY JUST PLEASE EXCLUDE THAT STATEMENT, THAT WOULD BE A DIFFERENT ISSUE.

YEAH. I THINK THAT WOULD BE A MUCH CLOSER CALL. BUT THAT IS NOT WHAT THEY ASKED HIM TO EXCLUDE. THEY ASKED HIM TO EXCLUDE EVERYTHING THAT HAPPENED ON THE ATTEMPT ON MONDAY AND TUESDAY, AND THAT ABSOLUTELY SHOULD NOT BE EXCLUDED NOR SHOULD THE SHOTGUN, BECAUSE THAT CORROBORATES THAT THESE ATTEMPTS DID IN FACT OCCUR, AND THEY CORROBORATED --

JUST THAT, IT WASN'T AN ATTEMPT TO EVERYTHING THAT OCCURRED ON THAT EVENING. THEY DID VOICE AN OBJECTION TO ENCOUNTER WITH LAW ENFORCEMENT, DID THEY NOT?

THE FACT THAT THE BLOIFER STOPS HER AT 9:10 ABSOLUTELY SHOULD COME IN AS -- THAT THE POLICE OFFICER STOPS HER AT 9:10 SHOULD COME IN AS CORROBORATING.

BUT THAT ACCOUNT WAS AS TO THE POLICE OFFICER. IT WAS NOT TO THE ENTIRE EVENING OF FOLLOWING AND WHAT HAPPENED. IT WAS THE ENCOUNTER WITH THE POLICE OFFICER THAT THE DEFENDANT OBJECTED. THEY DID OBJECT TO THAT, DID THEY NOT?

YES. YES. THEY OBJECTED TO THAT, BUT THAT IS OUR CORROBORATION, THAT THEY, THAT THE ATTEMPT ON MONDAY OCCURRED, IS THAT THIS OFFICER THEN, WE CALL HIM TO THE STAND AND HE SAYS OH, YES, I ISSUED A SPEEDING TO HER AT 9:10, SIX MILES OUTSIDE CRESTVIEW, SO THAT ABSOLUTELY IS RELEVANT.

IS THERE ANY INDICATION THAT THE DEFENSE LAWYER KNEW BEFORE, SINCE GILLIAM HAD NEVER TESTIFIED ABOUT THIS ALLEGED STATEMENT THAT, THE DEFENSE LAWYER NEVER EVEN KNEW THAT THIS PARTICULAR STATEMENT WAS COMING WHEN IT CAME?

I, I THINK THERE IS. BUT IT IS AN INFERENCE FROM READING THE RECORD. HE DID NOT SAY I HAVE NEVER HEARD THIS BEFORE. THEY SEEM TO SEE THIS COMING. I AM ASSUMING FROM SOME DEPOSITION, BUT YOUR HONOR, THAT WAS NOT LAID OUT IN THE TRIAL RECORD. I CANNOT TELL YOU THAT. FOR SURE.

COULD YOU TALK ABOUT THE RELATIVE CULPABILITY ISSUE, AND IF YOU COULD ENLIGHTEN US AS TO THE CIRCUMSTANCES UNDER WHICH DAVIS RECEIVED, WAS THERE A JURY RECOMMENDATION OF LIFE IN THIS CASE?

ALL RIGHT. NOW, DAVIS DID, IT WAS A TRIAL. I HAVE THE TRIAL. I JUST WENT AND GOT IT FROM OUR RECORDS. I HAVE THE PENALTY PHASE. NO. I AM SORRY. I HAVE THE GUILT PHASE. I DO NOT HAVE THE PENALTY PHASE, BECAUSE IT BECAME A LIFE, BECAUSE IT BECAME A LIFE CASE, I GUESS THE PENALTY WASN'T TRANSSCRIBED. I DO NOT HAVE THE PENALTY PHASE, SO ALL I CAN TELL HAVE YOU THE GUILT PHASE. IT WAS, AS I UNDERSTAND IT, A JURY RECOMMENDATION OF LIFE, WHO WAS FOLLOWED BY THE JUDGE, AND YES, IN RESPONSE TO YOUR HONOR'S QUESTION, JUDGE TOLTON DOES TRY BROOKS ONE, BROOCKTS TWO AND DAVIS. IT -- BROOKS TWO AND DAVIS. IT IS THE SAME JUDGE TRYING ALL OF THESE. HE IS THE SAME JUDGE MAKING RELATIVE CULPABILITY. ALSO IN DAVIS, A POSTCONVICTION MOTION WAS FILED. ON GILLIAM'S RECANTATION, AND SO HE HAS HEARD THE POSTCONVICTION IN THE DAVIS CASE AS WELL.

HAVE YOU HAD CASES WHERE THE PERSON WHO IS THE, MAYBE NOT THE ACTUAL PERPETRATOR BUT IS REALLY THE REASON THAT THE MURDER TAKES PLACE, GETS DEATH, AND THE KILLER GETS LIFE. DO WE HAVE THOSE CASES?

WELL, YOUR HONOR, I WAS LOOKING FOR CASES THE OTHER WAY AND I FOUND SEVERAL OF THOSE, SO IN FACT, YOU HAVE, WHEN THERE IS A LIFE INSURANCE POLICY INVOLVED, AND THE ACTUAL SHOOTER GETS DEATH, THE ACTUAL STABER SHOOTER TRIGGERMAN, GETS DEATH, BUT

THE PERSON WHO DID THE HIRING GETS LIFE, YOU HAVE AFFIRMED THOSE CASES.

WHICH CASES ARE THOSE?

AND THOSE CASES WOULD BE VENTURA, BRADLEY, AND I HAVE ANOTHER ONE HERE.

I GUESS, IT STRIKES ME THAT THE DIFFERENCE IN THIS CASE, IN WHAT CONCERNS ME, IS THAT, IN A LOT OF THESE OTHER CASES, SOMEONE MIGHT HIRE SOMEBODY BUT THEN REALLY ISN'T A PARTICIPANT IN WHAT IS GOING ON. HERE, IN DISPUTEABLY NOT ONLY IS DAVIS THE ONE WITH THE REAL MOTIVATION, INCLUDING, AS YOU SAY, THE \$100,000 LIFE INSURANCE POLICY AND THE ONLY ONE THAT REALLY KNOWS THAT HE HAS GOT THE, AT LEAST FROM THIS RECORD THAT HE HAS GOT THE \$100,000 POLICY ON A CHILD THAT IS NOT EVEN HIS, BUT HE, ALSO, IS ACTUALLY THERE FOR THE TWO AMENDMENTS AND HE IS PHYSICALLY THERE ON THE THIRD ONE, AND CLEARLY IS EITHER PARTICIPANT IN WHAT GOES ON AND DOESN'T THAT DISTINGUISH, IN TERMS OF THE RELATIVE CULPABILITY, WHEN HE IS THE PROCURING SOURCE, WHEN HE IS THE, CLEARLY YOU KNOW, THE SORT OF THE, IN MORAL CULPABILITY, IT IS, HE THINKS IT IS HIS KID, THAT, AND HE IS PHYSICALLY THERE ON THE SCENE, AS OPPOSED TO JUST SAYING HEY, I AM GOING TO HIRE SOMEBODY TO KILL SOMEBODY, DOESN'T THAT REALLY CAUSE CONCERN AS TO THE RELATIVE CULPABILITY AND PROPORTIONALITY ISSUE IN THIS CASE?

OKAY. THE THIRD CASE, BRADLEY VENTURA, AND EVANS, THEY WERE ALL LIFE INSURANCE TYPE OF CASES. AND IN BRADLEY THE WIFE WAS THERE WHEN THAT MURDER OCCURRED. SHE DID NOT ACTUALLY KILL THE PEOPLE. SHE GOT LIFE, AND SHE WAS AT THE SCENE, SO, NO, PHYSICALLY BEING THERE DOES NOT HAVE SEEMED TO BE THE DISTINGUISHING CHARACTERISTIC. THE DISTINGUISHING CHARACTERISTIC IS WHO WAS THE ACTUAL TRIGGERMAN, AND THE ACTUAL STABBER IN THIS CASE, AS THE JUDGE FOUND, THE PERSON WHO STABBED BOTH RACHEL CARLSON AND THREE-MONTH-OLD ALEXIS, WAS BROOKS. AND THAT IS WHY HE SAID THAT BROOKS, THAT IS WHY HE IMPOSED THE DEATH PENALTY. HE FOUND, HE FOUND IN HIS, IN HIS SENTENCING ORDER, HE SPECIFICALLY FOUND THAT DAVIS WAS THE, HE BASED IT ON THE MEDICAL TESTIMONY, AS WELL AS TERRENCE GOODMAN'S TESTIMONY.

WAS THERE A REQUEST FOR THE JURY TO MAKE A DETERMINATION AS TO WHO THE SHOOTER WAS?

THEY WAIVED. LET ME EXPLAIN THERE WAS A JURY RECOMMENDATION 9-TO-3 ON RACHEL CARLSON, 11-TO-1 ON ALEXIS, BUT THEY WAIVED PRESENTATION OF MITIGATION, AS PART OF THE COULD NOT INQUIRY. -- AS PART OF THE COON INQUIRY. DEFENSE COUNSEL ALSO WAIVED ANY ARGUMENT ABOUT CULPABILITY, SO THE ANSWER TO THE QUESTION IS YES, YOUR HONOR.

IS THERE ANY WAIVING OF MITIGATION?

ON TRIAL ONE?

I WAS JUST WONDERING WHY DEFENDANTS SOMETIMES SAY, LISTEN, I AM INNOCENT, AND THAT IS MY POSITION AND NOW I DON'T WANT TO GO ON WITH MITIGATION. WAS THERE ANYTHING LIKE THAT IN THIS RECORD?

HE, IT WASN'T FORMAL BUT THAT DOES SEEM TO HAVE BEEN HIS POSITION.

THAT WAS HIS POSITION THAT IT WAS NOT, HE WAS NOT THE SHOOTER AND --

NOT INVOLVED. OKAY.

DID HE HEAR YOU SAY THAT HE WAIVED AN ARGUMENT ABOUT RELATIVE CUP SNBLT.

YES. HE WAIVED -- RELATIVE CULPABILITY?

YES. HE WAIVED.

THE DEFENDANT IN THIS CASE.

THE DEFENDANT IN THIS CASE ON SENTENCING ON THE RECORD, WAIVED PART OF WHAT THEY SAID IN COON, HE WAIVED ANY ARGUMENT HAVING TO DO WITH RELATIVE CULPABILITY, SO NO, HE DID NOT ASK THE JURY. HE SPECIFICALLY WAIVED ANY RELATIVE CULPABILITY ARGUMENT. IN FRONT OF THE JURY. THE JUDGE, HOWEVER, DOES FIND THAT HE IS THE ACTUAL SHOOTER AND THAT IS WHY THESE ARE NOT EQUALLY CULPABLE PERPETRATORS.

DID YOU SAY YOU WEREN'T ABLE TO FIND ANY CASES OR YOU ARE NOT AWARE OF ANY CASES WHERE WE HAVE HELD THAT IT IS APPROPRIATE TO SENTENCE THE CONSPIRATOR OR THE HIREER TO DEATH AND NOT SENTENCE THE ACTUAL KILLER TO DEATH?

NO, YOUR HONOR, I WAS LOOKING FOR CASES THE OTHER WAY.

BUT YOU ARE NOT AWARE OF ANY CASES UNDER THE CIRCUMSTANCES THAT I DESCRIBED? TO BE THE REVERSE OF WHAT HAPPENED HERE.

TO BE THE REVERSE, NO, I LOOKED FOR CASES THAT WERE SIMILAR TO THIS.

YOU ARE NOT SAYING THAT THEY DON'T, BECAUSE I AM SURE, I KNOW THEY EXIST.

NO. I AM NOT SAYING THEY DON'T EXIST. I WAS JUST LOOKING FOR CASES WHERE THE PERSON THAT WAS HIRING GOT LIFE AND THE ACTUAL TRIGGERMAN GOT DEATH, BECAUSE THAT IS WHAT WE HAVE HERE. ALL RIGHT. I WOULD ALSO TALK, LIKE TO TALK ABOUT THE NOTES IN THE CAST. THE NOTES IN THE CAST, THE TRIAL JUDGE RULED THAT THEY SHOWED A CONNECTION BETWEEN THE SITUATION, AND THEY ALSO MR. CHIEF JUSTICE

I AM AFRAID THAT THE TIME THAUR STARTING AT AND REALIZING THAT YOU -- THAT YOU ARE STARTING AT AND REALIZING THAT YOU FILED EXTENSIVE BRIEFING.

YES. THANK YOU VERY MUCH.

CHIEF JUSTICE: HOW MUCH TIME DOES MR. DAVIS HAVE?

HOPEFULLY I WON'T TAKE THAT LONG.

AM I CORRECT THERE WAS A WAIVER BY THE ACTUAL DEFENDANT ON THE RECORD HERE? IS THERE ANY -- AS TO ANY RELATIVE CULPABILITY ISSUE?

HE WAIVED ANY PRESENTATION OF MITIGATION. EYE UNDERSTAND THAT, BUT I AM TALKING ABOUT --

SHE MAY BE CORRECT. I DON'T RECALL WHETHER HE SPECIFICALLY WAIVED RELATIVE CULPABILITY. THE PROSECUTOR SAID, TOLD, HE ASKED MR. BROOKS, YOU UNDERSTAND THAT THE JURY WILL NOT HEAR THAT MR. DAVIS GOT A LIFE RECOMMENDATION, AND BROOKS SAID, YES, I UNDERSTAND THAT. THAT IS AS CLOSE AS I CAN COME TO THE EXPLICIT WAIVER. HOWEVER, THIS COURT HAS GOT THIS INDEPENDENT OBLIGATION IN PROPORTIONALITY REVIEW. NOW, THE TRIAL JUDGE MAY HAVE FOUND ALEXIS STEWART WAS KILLED BY LAMAR BROOKS. THERE IS NO EVIDENCE 6 THAT. -- NO EVIDENCE OF THAT THE. THERE IS NO EVIDENCE, REALLY, OTHER THAN THE CIRCUMSTANTIAL EVIDENCE THAT HE KILLED RACHEL CARLSON, SOLELY KILLED HER. IT SIMPLY COULD HAVE BEEN THAT THE BOTH OF THEM JOINED IN. I MEAN, BECAUSE

THE MEDICAL EXAMINER SAID THERE COULD HAVE BEEN TWO STABERS HERE.

WAS THIS A FELONY MURDER AND PREMEDITATED THEORY?

YES. BECAUSE THEY USED THE CHILD AGGRAVATE ON, YES, IT WAS --

SOUGHT JURY RETURNED A GENERAL VERDICT, AND SO IT WAS --

YES. YES.

-- SO WE DON'T KNOW WHETHER THEY FOUND PRENEED MEDTATION?

YES. -- PREMEDITATION?

YES. THAT'S CORRECT. LET ME GO BACK TO JUSTICE CANTERO AND HIS WHOLE HARMLESS ERROR QUESTION. IT KIND OF BOTHERS ME BECAUSE YOU GET THE DRIFT FROM THE QUESTIONS THAT LET'S LOOK AT THE EVIDENCE THE STATE HAD AND WE ARE NOT LOOKING AT A SUFFICIENCY OF EVIDENCE STANDARD. DID THEY, COULD THEY HAVE, IN FACT, CREATED A --

COULD YOU AGREE THAT, IF IN FACT YOU ARE CORRECT, THAT EVIDENCE WAS ERRONEOUSLY ADMITTED. THAT DOES NOT END THE ANALYSIS. WE STILL HAVE TO CONDUCT THE HARMLESS-ERROR ANALYSIS?

I WISH IT WOULD, BUT, YES, I THINK YOU ARE CORRECT THAT YOU HAVE TO CONDUCT A HARMLESS-ERROR ANALYSIS, BUT WHAT I AM SAYING IS THIS IS GOING TO AND VERY EASY ANALYSIS, BECAUSE IF THOSE ITEMS THAT I HAVE TALKED ABOUT WERE ERRONEOUSLY ADMITTED, YOU HAVE GOT THE WILLIAMS RULE, LET'S CALL IT ALMOST PER SE PREJUDICIAL.

I ADDRESSED MY QUESTION REGARDING THE INSURANCE POLICY AND THE CALL TO THE SOCIAL SECURITY OFFICE OR WHATEVER THAT OFFICE WAS.

I THINK OF ALL OF THE ITEMS I RAISED AT ORAL ARGUMENT, THE CALL TO THE SOCIAL SECURITY OR DEPARTMENT OF REVENUE IS PROBABLY THE CLOSEST TO BEING HARMLESS. THE OTHER STUFF? NO. IT IS HARMLESS. ANOTHER LIFE INSURANCE POLICY?

THE LIFE INSURANCE POLICY, WILLIAMS RULE EVIDENCE, IMPEACHMENT AND ALL OF THAT OTHER STUFF.

LET'S ASSUME THAT YOU JUST FOUND THE LIFE INSURANCE POLICY AND THE CALL TO THE DEPARTMENT OF REVENUE WAS ERROR.

IF THAT WAS ERROR, I WOULD ADDRESS THAT.

IF THAT WAS THE ONLY ERROR AND WE DID NOT FIND A WILLIAMS RULE VIOLATION, IS IT HARMLESS ERROR?

WELL, I THINK IT WOULD AND CLOSER CALL, BUT, YES, BECAUSE AGAIN WE ARE DIVERTING THE INJURY'S ATTENTION AWAY FROM THE BROOKS INTENT, WHAN YOU LOOK AT YOUR ANALYSIS IN BROOKS ONE -- AND WHEN YOU LOOK AT YOUR ANALYSIS IN BROOKS ONE, THEY HAD A LOT LESS BUT THE IMPACT STILL BECOMES THE SAME. IT BECOMES PREJUDICIAL BECAUSE IT HAS A LIKELY IMPACT ON THE JURY'S GUILTY VERDICT. OTHER THAN THAT, I THINK YOU UNDERSTAND THE ISSUES. AT LEAST I DON'T THINK THERE IS ANYTHING MORE I CAN DO OR SAY TO CLARIFY THEM. THANK YOU.

CHIEF JUSTICE: THANK YOU BOTH VERY MUCH. THE COURT WILL STAND IN RECESS NOW, UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.