Andrew Michael Gosciminski v. State of Florida
SC05-1126

THE
FINAL CASE, THIS MORNING,
IS -- STATE OF FLORIDA
>>> GOOD MORNING GARY ON
BEHALF!!$$!!!!!!!!!!
BEHALFCH.
>> MR. KROM WL OF YOU ENORMOUS
POINTS IT MAY HELP IF YOU
WOULD DIRECT OUR ATTENTION TO
WHERE YOU ARE GOING TO
CONCENTRATES YOUR EFFORTS.
>> YES, SIR, MR. CHIEF
JUSTICE.
I HAVE AN ABUNDANCE OF ISSUES
HERE, I WOULD LIKE TO FIRST
DISCUSS, THE FIRST ISSUE,
WHICH PERTAINS TO JURY SELECT!!$$!!!!!!!!!!
SELECTION, AND THEN, BECAUSE
THE SECOND SUPPLEMENTAL RECORD
WAS FILED AFTER MY INITIALLY
BRIEF I NEED TO POINTS 11 AND
12, AND THEN, IF --
>> EXCUSE ME.
>> WHAT IS 11 AND 12 THE 11
AND 12 HAS TO DO WITH HEARSAY
STATEMENTS MADE BY THE VICTIM
JOAN LOT OFMAN TO HER SISTER,
WHICH WERE REPEATED BY A
POLICE OFFICER, AND HIS
WRITTEN INTERROGATION OF A
DEFENDANT SUBSEQUENTLY WERE
REPEATED BY THE TESTIMONY OF
THE $$VICTIM'S HUSBAND TOMAS,
AND HER SISTER JANET.
I APOLOGIZE FOR THE -- UNUSUAL
ORDER OF THE ARGUMENTS HERE.
THE FIRST ISSUE HAS TO DO WITH
THIS JUROR O SCHMIT, IN THE
COURTROOM WHEN THE JUDGE
EXPLAINED TO THE JURY THE
NATURE OF DEATH SENTENCING
PROCEDURE PREWHEN PROSECUTOR
EXPLAINED IT AGAIN TO THE JURY
WAS PRESENT WE THE PROSECUTOR
SAID TO THE JURY, YET AGAIN,

THAT THERE IS NO RULE OF AN
AUTOMATIC DEATH SENTENCE
FIRST-DEGREE MURDER CONVICTION
WAS PRESENT WHEN THE
PROSECUTOR DISCUSSED THAT WITH
VARIOUS JURORS, LEADING UP TO
THE QUESTIONING OF HIM.
THEN WHEN THE PROSECUTOR GOT
TO MR. SCHMIDT WHO PREVIOUSLY
INDICATED IN A QUESTIONNAIRE
THAT HE WAS ABSOLUTELY IN
FAVOR OF THE DEATH PENALTY,
ASKED HIM ABOUT HIS VIEWS, AND
HE SAID, WELL HE WAS 50-50 IN
THAT HE FFRD HE WOULD --
FAVORED WOULD OPPOSE DETH
PENALTY FOR VEHICULAR HOMICIDE
IN WHICH A KID WAS DRIVING AND
TIRE BLEW OUT, AND EP CAUSED
THE DEATH OF SOMEONE, BUT THAT
HE WAS IN FAVOR OF THE DEATH
PENALTY FOR A ROBBERY IN WHICH
A STORE CLERK WAS SHOT.
THE PROSECUTOR, THEN SAID TO
HIM, OKAY, YOU UNDERSTAND THAT!!$$!!!!!!
THATP THE DEATH PENALTY IS
ONLY FOR FIRST-DEGREE MURDER
FELONY MURDER PREMEDITATED
MURDER, YES, OKAY, SO IT IS
NOT FOR EVERY FIRST-DEGREE
MURDER.
>> RIGHT.
>> OKAY, SO YOU THERED HAS TO
BE THIS WEIGHING PROCESS, SO
GIVEN THAT YOU DO STILL
BELIEVEP THAT THERE IS A
CONVICTION FOR FIRST-DEGREE
MURDER FELONY MURDER OR
PREMEDITATED MURDER DO YOU
AUTOMATICALLY WANT THE DEATH
PENALTY AND HE ANSWERED YES.
ED THE EVIDENCE IS THERE, YES
WE SUBMIT TO YOU THAT AFTER
THAT THE PROSECUTOR CONTINUED
TO WORK ON HIM, AND AT THAT
POINT, HE GAVE WHAT ONE MIGHT
SAY US THE RIGHT ANSWER, OR
THE MORE NEUTRAL ANSWER, WHICH
IS THAT HE WOULD WEIGH THE
CIRCUMSTANCES AND WOULD BE
ABLE TO RENDER A DEATH
SENTENCEP.
>> WELL, IN THAT CONTEXT ISN'T
THAT WHAT WE ARE LOOKING FOR,

EVEN IF A JUROR STARTS OUT, WITH SOME OF NOTION THAT WANTS -- EXPLAINED TO HIM HOW THIS PROCESS WORKED IF THAT JUROR INDICATES THAT THEY CAN PUT ASIDE THESE NOTIONS, AND CAN IN FACT FOLLOW THE LAW, AND DO WHAT THE COURT INSTRUCTS THEM TO DO, THEN THAT JUROR HAS IN FACT BEEN REHABILITATED?

.

>> THAT IS CORRECT, AND THAT IS THE IN ISSUE THE OVER TON CASE UPON WHICH I RELY, AND EVERY I POP WHICH ALSO MY OPPONENT RELIES.

BUT WHAT WE HAVE HERE WE DON'T HAVE SIMPLY, AN INITIAL STATEMENT OF PREFERENCE FOR THE DEATH SENTENCE.

P FIRST OF COURSE IS AN ABSOLUTE PREFERENCE FOR THE DEATH SENTENCED TO START BUT HE HEARD ALL OF THESE THINGS, WHICH -- WHAT YOU ARE TALKING ABOUT ALL THESE INDICATIONAL PROCESSES HE HEARD THE JUDGE DISCUSS IT WITH THE JURY HEARD THE PROSECUTOR DISCUSS IT WITH THE JURY HE HEARD THE PROSECUTOR AGAIN SAY, THERE IS NO AUTOMATIC DEATH SENTENCED FOR FIRST-DEGREE MURDER, HE HEARD THE PROSECUTOR DISCUSSING THIS WITH ALL THE OTHER JURORS.

HE HEARD THE PROSECUTOR -- HE HEARD ALL OF THIS, HE WAS EDUCATED, THEN THE PROSECUTOR ASKED WHAT I AM HIS VIEW WAS THAT WAS THE 50-50 THING WITH THE TIRE BEING BLOWN OUT.

THEN THE PROSECUTOR WENT THROUGH IT WITH HIM YET AGAIN THIS IS LIKE, AT LEAST THE FOURTH TIME, THAT THIS IS ADDRESSED TO HIM, NOT COUNTING HIS BEING THERE WHILE THE OTHER JURORS DOWN THE LINE ARE HOWEVER IT WAS, WERE BEING HAVING THIS DISCUSSED WITH THEM.

AT THAT POINT, HE WAS AS EDUCATED AS HE WAS GOING TO

GET, I SUBMIT, BECAUSE THE PROSECUTOR THEN SAID TO HIM, OKAY, YOU UNDERSTAND THAT THIS IS NOT FOR EVERY FIRST-DEGREE MURDER.
>> YES.
YOU UNDERIT HAS TO BE PREMEDITATED FELONY ADMINISTERED RIGHT.
>> CASES SEEM TO SAY IF THE JUROR EVENTUALLY AGREES ON WHAT THE LAW IS, BECAUSE SOMETIMES THEY ARE UNDER A MISCONCEPTION WHEN THEY COME, IN ABOUT THE LAW THEY DON'T KNOW WHAT THE LAW IS, ONCE THEY ARE TOLD WHAT THE LAW IS, IF THEY EVENTUALLY AGREE THAT THEY WILL FOLLOW THE LAW, AND PUT ASIDE THEIR PERSONAL BELIEFS!!$$!!!!!!!!!!!!
BELIEFS, THAT THEY ARE REHABILITATED!!$$!!!!!!!!!!!!!!!!!!!!!!!!
REHABILITATED.
>> I -- RESPECTFULLY DISAGREE WITH THAT JUSTICE, THAT WAS DISCUSSED IN THE OVER TON CASE, WHERE THEY DISCUSSED PRIOR -- THE COURT DISCUSSED PRIOR OPINIONS OF THIS COURT WHICH SAY THAT HOW IS ONE TO BE ABLE TO DECIDE WHETHER THE -- THE LATER RESPONSE IS BETTER AND A GREATER VALUE, THAN THE EARLIER RESPONSE, IS -- STILL --
>> YOU CAN NEVER REHABILITATE A POTENTIAL JUROR?
>> THE SORT OF SITUATION THAT YOU SEE IN OVERTON WITH THE SECOND JUROR, THAT IS TRUE.
WHERE THERE IS THERE IS MERELY AN INITIAL STATEMENT OF BIAS, AFTER WHICH THE JUROR AGREES WITH -- OKAY, YES, I UNDERSTAND NOW I WILL FOLLOW THE LAW.
BUT MANY THIS IS -- BECAUSE THERE IS THE EDUCATIONAL PROCESS.
HOWEVER THE CASES DON'T SAY THAT JUST SO LONG AS EVENTUALLY I GET THE PERSON TO THE RIGHT ANSWER THAT IS --

THAT THAT --
>> THE CASES IN AS A MATTER OF FACT I THINK THE SUPREME COURT CAME OUT WITH A KISS ON THIS VERY ISSUE YESTERDAY -- CASE ON THIS VERY ISSUE YESTERDAY.
>> -- YOU HAVE ADVANTAGE.
>> EXPLAIN FURTHER -- AND, IT THE CASES REALLY DO COME DOWN TO THEP TRIAL JUDGE MAKING A DETERMINATION AS TO THE CREDIBILITY OF WHAT THE JUROR IS SAYING.
ISN'T THAT BASICALLY WHERE IT IS?
>> WELL, IT EXCEPT THAT THE $$ JUDGE'S DISCRETION IS LIMITED BY TWO IMPORTANT THINGS, ONE WHAT IS THIS JUROR SAY AND SECOND IS VOUR WELL ESTABLISHED RULE IN FLORIDA WHICH IS THAT -- THAT THERE IS A STRONG PREFERENCE IN FAVOR OF EXCUSING THE JUROR THAT THERE IS A REASONABLE DOUBT ABOUT THE $$JUROR'S PARTIALITY, AGAIN, I KEEP MENTION THE OVER TON CASE WHAT HAPPENED IN THE OVER TON CASE WAS -- THAT THE JUROR THERE WERE TWO JURORS, JUROR RUSSELL AND JUROR -- JUROR RUSSELL, HAD SAID, WELL, I THINK THAT THE DEFENDANT SHOULD TAKE THE STAND, BECAUSE THAT IS WHAT I WOULD DO, AND I -- SO GAVE RESPONSES WHICH WOULD GIVE RISE TO A BELIEF THAT THE JUROR WAS DISQUAFFED, THE JUROR WAS -- DISQUALIFIED THE JUROR WAS QUESTIONED PROGRESSIVELY EVENTUALLY SAID, NO, I -- I AGREE THAT I UNDERSTAND, NOW, THAT THIS SHOULD NOT WOULD NOT COULD NOT PLAY A ROLE IN MY DELIBERATIONS IN THIS CASE.
NEVER THE LEGALS -- NEVERTHELESS THIS COURT FOUND ERROR IN DENIAL OF THE CAUSE CHALLENGE TO THAT JURY ON OUR IT WAS SIMPLY THE RESULT OF THIS PROCESS, OF LEADING THE JUROR INTO THE RIGHT ANSWER.
>> DISCREET ISSUE, IN OVER TON

AS TO WHETHER THE JUROR WOULD FOLLOW THE LAW, AS TO THE TESTIMONY, CORRECT?
>> UM-HMM.
>> YES --
>> THIS COURT JURISPRUDENCE IS PRETTY MUCH INSISTENTLY FOLLOWED WHITHERSTON, CORRECT.
>> IT -- WITH REPUBLICAN TO THE -- WITH RESPECT TO THE DEATH SENTENCE, FLORIDA, I'M NOT SURE I NORTHBOUND WHAT WAY FOLLOWED -- OBVIOUSLY THE COURT IS BOUND BY AND FOLZ WHITHERSPOON!!$$!!!!!!!!!!!!!!!!!!!! WHITHERSPOON.
>> WE HAVE SAID IN ANY OF OUR CASES THAT THERE IS ANY GREATER -- RIGHT UNDER THE STATE CONSTITUTION -- THAN IS DELINEATED BY THE UNITED STATES SUPREME COURT.
>> -- I MEAN, BUT -- BOTH THE STATE CONSTITUTION AND FEDERAL CONSTITUTION REQUIRE THAT A JUROR BE IMPARTIAL.
>> WHAT I HAVE PROBLEMS WITH I THINK!!$$!!!!!!!!
THINK, YOU GOT SEVERAL POINTS I THINK YOU SAID YOU WERE GOING TO ARGUE TWO I THINK YOU HAVE A FEW THAT ARE INTERESTING EVIDENTIARY ISSUES MY ISSUE HERE IS THAT IF THIS JUROR HAD A FAMILY MEMBER WHO HAD BEEN YOU KNOW -- A VICTIM OF A CRIME, AND THEN, EXPRESSED THESE VIEWS, I WOULD BE LOOKING AT THESE THE RESPONSES IN A DIFFERENT WAY. BUT I THINK YOU REALLY WHEN WE GET TO THE IDEA THAT SOMEONE IS GIVING THEIR OPINION, I THINK THAT THE DISCRETION OF THE JUDGE IS TO THEN IS FOLLOWS DIFFERENT, AND THAT IS WHY I SAY THE REHABILITATION ISSUE IF SOMEBODY, HAD BEEN A WITNESSES TO A CRIME, AND THEN THEY GO YEAH "COULD PUT IT ASIDE WE ARE GOING TO BE LOOKING THAT THE WITH A LOT MORE SKEPTICISM THAN IF IT IS JUST THIS ISSUE OF THAT PEOPLE

ARE NOT INFORMED, UNTIL THEY
ARE YOU KNOW ABOUT THIS HOW
THE DEATH PENALTY IS APPLIED
THIS THIS STATE, SO THAT IS --
DO YOU SEE THAT THERE IS A
DIFFERENCE IN CASES, DEPENDING
ON WHAT THE NATURE IS OF THE
INDIVIDUAL OPINION, AND IF
THERE IS ANY BASIS IN THAT
PERSON'S EXPERIENCE, WHO HAS
TO MAKE THEM -- YOU KNOW, BIAS!!$$!!!!!!
BIASED, BECAUSE OF THEIR
PERSONAL EXPERIENCE, AS A
POSED SOME GENERALRISED VIEWS
ABOUT THE DEATH PENALTY.
>> NO DOUBT THERE IS, I CAN
UNDERSTAND THAT, DISTINCTION
BUT IN THE OVERTONE CASE THAT
WASN'T THE DISTINCTION, THERE
LIKE SAID THERE WERE TWO
JURORS!!$$!!!!!!!!!!
JURORS, AND OVER TON, AND THE
COURT -- APPLIED THE SAME IS A
STANDARD TO BOTH OF THEM, AND
THE SECOND ONE WAS -- WAS THIS
AS JUSTICE WELLS AS I
MENTIONED ONE HAD TO DO WITH $$
JUROR'S VIEWS ON THE DEATH
PENALTY BUT THE FIRST JUROR,
JUROR RUSSELL,AND THE OVER TON
CASE -- HAD A VIEW ABOUT THE
LAW, WHICH WAS SOMEBODY SHOULD
HAVE TO TESTIFY IN HIS OWN
DEFENSE.
AND THE EVEN THOUGH THE JUROR
WAS KAE EDUCATED -- WAS
EDUCATED, THE COURT FOUND THAT
THE MERE FACT THAT THE PERSON
COMES AROUND AND STARTS GIVING
THE RIGHT ANSWERS, ISN'T
DISPOSITIVE, NOW, I AGREE WITH
YOU ABOUT THE -- ABOUT THE
EDUCATIONAL PROCESS, BUT HERE
THE JUROR WAS EDUCATED BEFORE
HE SAID HE AUTOMATICALLY WANT
THE DEATH PENALTY THAT IS A
SIGNIFICANT --
>> WHAT WOULD WE SAY IN
REVERSING THE TRIAL JUDGE?
BECAUSE THE TRIAL JUDGE WAS
THE ONE WHO SAT THROUGH THIS,
AND HEARD THE DEFENDANT, SAW
EVERYTHING THAT WAS GOING ON,
WHAT WOULD WE SAY IN SAYING

THE TRIAL JUDGE ERRED HERE.
>> FIRST THE JUDGE WAS NOT RELYING ON ANY SORT OF SUBJECTIVE THINGS HE DIDN'T SAY ANYTHING ALONG THOSE LINES.
SECOND, THE JUDGE'S DISCRETION IS CLEARLY BOUND BY THE RULE WHICH IS IN FAVOR OF EXCUSING JURORS!!$$!!!!!!!!!!
JURORS, WHEN THERE IS A REASONABLE DOUBT, ABOUT THE $$ JUROR'S PARTIALITY, THIRD, THE JUDGE'S --
>> UNDER THAT STANDARD YOU ARE SAYING ALTHOUGH WE SAY THE JUDGE HAS A LOT OF DISCRETION HE REALLY DOESN'T IT IS A LIMITED DISCRETION, BECAUSE IT IS ALWAYS GOING TO BE THE ISSUE OF WHETHER THERE IS A REASONABLE DOUBT OR NOT SOUSH SAYING, DISCARD THAT ISSUE OF THE $$JUDGE'S DISCRETION AND COME DOWN TO IS THERE A REASONABLE DOUBT.
>> NO, I DON'T BELIEVE THAT THAT IS THE CASE.
THE -- FOR INSTANCE IN THE SENIOR DISCUSS BIDS JUSTICE PARENT AYE THE PERSON SIMPLY HAS INITIAL IMPRESSION QUICKLY SWEPT AWAY.
>> THAT CASE THERE IS NO REASONABLE DOUBT.
>> RIGHT THERE IS NO DONEABLE DOUBT BUT OBVIOUSLY OBVIOUSLY THE JUDGE I'M SORRY, I'M INTERRUPTING.
>> SO YOU ARE SAYING FORGET THE THERE REALIZE SAVENLT STANDARD OF REVIEW OF ABUSE OF DISCRETION WE REVIEWED DE NOVO ISSUE ISSUE WHETHER REASONABLE DOUBT ABOUT $$JUROR'S IM!!$$!! IMPARTIALALITY THAT IS WHAT YOU ARE SAYING, ABUSE OF DISCRETION!!$$!!!!!!!!!!!!!!!!!
DISCRETION, A $$JUDGE'S DISCRETION IS ALWAYS BOUND BY THE LAW GOVERNING THE ISSUE.
IT HAS BEEN THE LAW OF THIS STATE FOR DECADES --
>> STASHED OF REVIEW OF ABUSE

OF DISCRETION WOULD SAY IF
REASONABLE MINDS CAN DIFFER,
THEN YOU AFFIRM.
>> UM-HMM.
>> I THINK A WHAT YOU ARE
PROPOSING WE DON'T USE THAT WE
JUST SAY DO WE THINK THIS ISSO
THERE IS A REASONABLE DOUBT,
AND IF WE THINK THERE IS A
REASONABLE DOUBT, THEN WE
REVERSE.
>> NO -- -- THE RULE OF ABUSE
OF DISCRETION ALSO INCLUDES
THE CONCEPT THAT LIKE FACTUAL
SITUATIONS REQUIRE LIKE
RESULTS.
THAT ISESES IN CANON CARRIS
DISCUSSED IN CAN AND CARRIS,
YES THE JUDGE HAS BROAD
DISCRETION!!$$!!!!!!!!!!!!!!!!!
DISCRETION, AND WE SEE, THAT
IN ALL KINDS OF ISSUES, ABOUT
CAUSE CHALLENGES WHERE THERE
IS -- THERE IS DISCRETION
ABOUT THE -- ABOUT THAT, BUT
HERE WHAT YOU HAVE IS
SOMETHING QUITE DIFFERENT,
HERE YOU HAVE AN ISSUE WHERE I
BELIEVE UNDER THE FACTS, AS A
MATTER OF LAW, THERE IS A
REASONABLE DOUBT ABOUT THE $$
JUROR'S --
>> I THINK THEN THAT IS A
DIFFERENT ANSWER TO JUSTICES
QUESTION.
>> IF THAT IS THE CASE I
APOLOGIZE JUSTICE.
>> IF YOU SAYING THIS
IDENTICAL TO OVER TON, AND
THEREFORE UNDER THAT LAW, THE
JUDGE MUST HAVE GRANTED A
CAUSE CHALLENGE, THEN THAT IS
ANOTHER ISSUE.
>> WELL, ANY ISSUE OF ABUSE OF
DISCRETION IS -- THERE ARE
VERY FEW THINGS WHERE
UNBRIDLED UNREVIEWABLE
DISCRETION BECAUSE THIS COURT
IS REVIEWING IT, AND SINCE
THIS COURT IS REVIEWING IT
THIS COURT HAS TO LOOK AT WHAT
THE RECORD SHOWS ABOUT WHAT --
>> -- YOU YOU HAVE USED HALF
OF YOUR TIME, AND YOU HAVE

GOT, SOME SUBSTANTIAL, AT,
AND I WOULD LIKE YOU TO WHAT
DO YOU THINK IF WE DON'T AGREE
WITH YOU ON THIS, WHAT IS YOUR
STRONGEST POINT FOR --
>> LET ME DISCUSS THIS ISSUE
11.
THIS IS THIS IS -- HE WHAT
HAPPENED HERE, WAS THAT THE
COURT IS PLAYING A TAPE OF THE
DEFENDANT'S INTERROGATION BY
THE POLICE OFFICER, THE SECOND
SUPPLEMENTAL RECORD AT PAGE
50, SHOWS THE PROSECUTOR IS
BEGINNING TO DISCUSS WITH THE
DEFENDANT A CONVERSATION WHICH
THE OFFICER HAD, WITH THE $$
VICTIM'S SISTER JANET ABOUT A
DISCUSSION, THAT SHE HAD HAD
WITH THE VICTIM, WHICH THE
VICTIM ABOUT A CONVERSATION
WAS THE VICTIM HAD HAD WITH
THE DEFENDANT.
THE DEFENDANT AT THAT POINT
OBJECTS THERE IS A DISCUSSION,
THE ARGUMENT IS -- TRIPLE
HEARSAY!!$$!!!!!!!!!!!!
HEARSAY, AND THE AND THERE IS
A MOTION FOR MISTRIAL.
>> -- IS THIS FOR IMPEACHMENT?
I MEAN, IN CONTEXT THIS WAS --
ABOUT THE STATE THAT DEFENDANT
HAD --
>> NO, THIS IS -- THIS IS
BEFORE THIS.
>> THIS IS IN THAT HE STATE
DIRECT CASE, YES, SIR.
>> WHO WAS ON HE ON THE
>> AND POLICE OFFICER THE
DETECTIVE THEY ARE PLAYING A
TAPE.
>> OF THE -- OF THE VOLUNTARY!!$$!!!!!!!!!!!!!!!!
VOLUNTARY --
>> YES.
>> ISSUE OF WHETHER A WAIVER,
BECAUSE --
>> RIGHT.
>> THEY HAD ALREADY -- AGREED
TO THE TAPE.
ADDRESS THE WAIVE ISSUE.
>> OKAY, THE WAIVE ISSUE IS --
WAIVER ISSUE IS DISCUSSED IN
THE JACKSON CASE, WHICH IS --
THE BRETT KILLER CASE HAS TO

DO WITH HOW LONG, OR WHERE IN
THE INTERROGATION, A DEFENDANT
-- AN OBJECTION BECOMES
ULTIMATELY UNTIMELY SO AS TO
AMOUNT TO A WAIVER, HERE THE
DEFENSE WAS MADE THE OBJECTION
WHEN THE OFFICER WAS FIRST
BROACHING THE ISSUE, THEP
OFFICER HAD NOT FULLY SET OUT
WHAT THIS DISCUSSION, THAT YOU
KNOW, TRIPLE HEARSAY
DISCUSSION, SO THAT THE JUDGE
DID I TELL!!$$!!!!!!!!!!!!!!!!!
DID HAVE AN OPPORTUNITY AND
THAT IS THE CRITICAL ISSUE FOR
WAIVER!!$$!!!!!!!!!!
WAIVER, THE JUDGE DID HAVE AN
OPPORTUNITY TO TAKE CORRECTIVE
ACTION!!$$!!!!!!!!!!
ACTION.
>> -- ALREADY HAVE THE
TRANSCRIPT.
>> THE JURY HAD THE
TRANSCRIPTS PRESUMABLY THEY
ARE READING ALONG WITH THIS,
AND IN ANY EVENT THE JUDGE CAN
TELL THE JURY TO DISREGARD
THAT, HE LATER REDACTED OTHER
PARTS OF THE TRANSCRIPT, SO IT
IS CUT OFF RIGHT AT THAT POINT
SO THAT THE JUDGE COULD HAVE
TAKENP ACTS IN FACT THE JUDGE
WAS CONSIDERING99TAKING ACTION,
INCLUDING TELLING THE JURY,
STIPULATION THAT THIS WAS NOT
BEING ADMITTED FOR THE TRUTH
OF THE MATTER ASSERTED.
BUT THE STATE WAS SAYING WELL
NO, ACTUALLY, WE WANT TO SHOW
THAT THIS CONVERSATION
OCCURRED!!$$!!!!!!!!!!!!!!
OCCURRED.
THIS -- THIS HEARSAY.
>> WAS THIS BEFORE OR -- WE
ARE AT THE POINT WHERE WE ARE
TALKING ABOUT WHAT WENT ON
BETWEEN THE OFFICER AND THE
DEFENDANT; CORRECT?
>> UM-HMM.
>> WAS THIS BEFORE OR AFTER
THE PART WHERE THE DEFENDANT
HAD BEEN ASKED ABOUT THE
JEWELRY AND HE SAYS HE NEVER
NOTICES THAT TIEND!!$$!!!!!!!!KIND OF THING

THIS WAS AFTER THAT POINT;
CORRECT?
>> THIS WAS RIGHT AT THAT
POINT.
>> OKAY.
>> THIS IS AT PAGE 50 OF THE
SECOND SUPPLEMENTAL RECORD, IT
SHOWS IT SHOWS EXACTLY WHERE
-- WHERE IN THE DISCUSSION,
THAT OCCURRED.
AND IT WAS ONLY AFTER THE
DISCUSSION AT THE BEENCH THAT
THE JUDGE ALLOWED THE TAPE TO
PROCEED.
FOR THE OFFICER TO DEVELOP IT.
OF COURSE THE WORST THING IS
THEN SUBSEQUENTLY, THE JAIJ
ALLOWED THE HUSBAND AND THE
SISTER TO COME IN TO TESTIFY
ABOUT THIS HEARSAY ALSO.
THE JUDGE HAD INITIALLY
UNDERSTOOD THIS JUST SOMETHING
THE STATE WAS PUTTING IN FRONT
OF THE JURY, TO SHOW THE
CONTEXT OF THE INTERROGATION
BUT THE STATE WAS SAYING, NO,
THAT THIS -- THIS ALTHOUGH
THEY WERE CALLING IT
IMPEACHMENT --
>> WHAT DID THE DEFENSE DO
WHEN ALL OF THIS INFORMATION
WAS COMING IN WHEN THE --
HUSBAND,AND THE SISTER WP GOT
ON THE STAND WAS DISCUSSING
THESE HEARSAY STATEMENTS ABOUT
HIM NOTICING HER JEWELRY, DID
THE DEFENSE MAKE AN OBJECTION
TO THAT.
>> YES, YES YOUR HONOR, THERE
WAS AN EXTENSIVE DISCUSSION
THE DEFENSE RAISED HEARSAY
OBJECT!!$$!!!!!!!!!!
OBJECTION.
>> THE TRIAL JUDGE SAID WELL
IT IS ADMISSIBLE FOR
IMPEACHMENT PURPOSES AND SO I
WILL GIVE A LIMITING INSTRUCT!!$$!!!!!!!!!!!!!!
INSTRUCTION AND THE DEFENSE
THEN AT THAT POINT SAID NO,
JUDGE, WE DON'T REALLY NEED
YOU TO GIVE A LIMITING
INSTRUCT!!$$!!!!!!!!!!!!!!
INSTRUCTION, THAT THE DEFENSE
-- IS THAT AN ABANDONMENT.

>> NOT ABANDONMENT, BECAUSE WHAT THE JUDGE WAS GOING TO TELL THE JURY, THE JUDGE -- LIMITING INSTRUCTION WOULD HAVE BEEN I THINK SIX DAYS AFTER THE JURY FIRST HEARD THIS.
SO THAT IT WOULD REMIND THE JURY THAT THERE WAS THIS PREVIOUS TESTIMONY, NUMBER TWO, MOST IMPORTANTLY, IT WOULD AND I CITED A CASE ON THAT ISSUE, SHABAZZ, MORE IMPORTANT!!$$!!!!!!!!!!!!!!!!
IMPORTANTLY, THE -- THE $$ JUDGE'S INSTRUCTION WOULD AUTHORIZE THE JURY TO CONSIDER THIS OUT OF COURT STATEMENT, FOR THE TRUTH OF THE MATTER ASSERT!!$$!!!!!!!!!!
ASSERTED.
WHICH WAS THAT THIS CONVERSATION DID OCCUR, THE ONLY EVIDENCE THAT THIS CONVERSATION OCCURRED WAS HEARSAY!!$$!!!!!!!!!!!!
HEARSAY, THE STATE RELIED UPON THE SUBCONSTANTIVE FACT THIS CONVERSATION OCCURRED IN FINAL ARGUMENT TO THE JURY IN THE LIMITING INSTRUCTION --
>> HOW DID THE STATE USE THAT IN FINAL ARGUMENT?
IN FINAL ARGUMENT?
>> UM-HMM.
>> THE STATE SHOWED THE CHFRGS OCCURRED!!$$!!!!!!!!!!!!!!!
OCCURRED, IT IS AT PAGE, I BELIEVE -- MANY 3393, 3394, AND AGAIN 334 -- 33.
>> AT THAT POINT AT ANY OF THOSE POINTS.
>> IN THE FINAL ARGUMENT.
>> OBJECTION.
>> NO, BECAUSE THE JUDGE HAD ADMITTED THE EVIDENCE.
WHAT WOULD THE OBJECTION BE?
THE OBJECTION WOULD BE THAT IT WAS FOR IMPEACHMENT ONLY.
>> WELL NO, BECAUSE THE -- THE STATE WAS ARGUING THAT IT IMPEACHED THE DEFENDANT BECAUSE IT WAS TRUE, SEE I HAVE THE THEY WERE CONFUSION

IT FOR IMPEACHMENT IN THAT
THEY WERE USING TOILT
CHALLENGE WHAT THE DEFENDANT
HAD SAID ON THE TAPE.
BUT, THEY WERE IMPEEFK HIM
WITH INCOMPETENT EVIDENCE THAT
IS THE ISSUE, TELLING THE JURY
THAT THIS IS ADMISSIBLE, AS
HYMN PIECH MEANT DOESN'T ALTER
THE FACT THAT THE STATE WAS
TELLING THE JURY THAT IT WAS
TRUE, AND THIS WHAT THE STATE
TOLD THE JUDGE.
>> I GUESS --
>> BECAUSE IT WAS TRUE, THAT.
>> --
>> SOMETHING IF A DEFENDANT
SAYS, X, CAN YOU INTRODUCE
IMPEACHMENT EVIDENCE THAT SAYS
NOT X?
.
>> IF IT IS COMPETENT EVIDENCE
THAT IS THE PROBLEM ISN'T IT?
>> THERE IS SEVERAL EVIDENCE
ADMISSIBLE FOR IMPEACHMENT NOT
ADMISSIBLE FOR SUBCONSTANTIVE
PURPOSES.
>> BUT -- BUT, BUT -- THIS CAN
IMPEACH HIM ONLY IF IT IS
TRUE.
THAT IS THE PROBLEM.
>> LET ME --
>> GO ON.
>> BUT UNDER YOUR GO AHEAD.
>> I'M --
>> SEEMS LIKE UNDER YOUR
THEORY COULD YOU NEVER USE
TESTIMONY FOR IMPEACHMENT THAT
IS HEARSAY, AND THAT'S NOT
WHAT THE RULE PROVIDES, AND
HEARSAY IS IF IT IS INTRODUCED
FOR THE TRUTH OF THE MATTER,
BUT IF IT IS USED FOR
IMPEACHMENT!!$$!!!!!!!!!!!!!!!!!!!
IMPEACHMENT, THEN IT DOESN'T
MATTER IF IT IS HEARSAY.
>> BUT IT WAS USED FOR THE
TRUTH OF THE MATTER.
I MEAN, IT BECAUSE COULD IT
IMPEACH ONLY IF IT WAS TRUE
THAT THIS CONVERSATION HAD
OCCURRED!!$$!!!!!!!!!!!!!!
OCCURRED.
THAT IS -- THAT IS -- THAT IS

-- THAT IS THE ONLY THING THAT IT IMPEACHED THE $$DEFENDANT'S STATEMENT THAT THIS CONVERSATION HADN'T OCCURRED BACK BEFORE THE MURDER.
AND THIS -- THIS HEARSAY COULD ONLY IMPEACH THAT STATEMENT IF IT WAS AD MYTHED TO ADMITTED TO PROOF THAT THAT CONVERSATION OCCURRED.
>> LET ME SWITCH TO ANOTHER SUBJECT SINCE YOUR TIME IS FEETING IS IT'S THE DEFENSE' POSITION THAT THE $$STATE'S CASE WAS TOTALLY CIRCUMSTANTIAL.
>> YES, SIR.
>> WHAT IS THE REASONABLE HYPOTHESIS OF INNOCENCE THAT YOU ARE -- PUTTING FORTH.
>> AS IN THE BALLARD CASE THE DEFENSE HYPOTHESIS IS THAT THE DEFENDANT WAS NOT THE PERSON WHO COMMITTED THE CRIME, THAT IT MAY HAVE BEEN THE -- SULLIVAN SMITH, BEN THOMAS DEBORAH THOMAS OR SOME OTHER PERSON ALSO THIS EVIDENTIARY ISSUE CONCERNING THIS HAND UNIFY MAN IN THE AREA THAT THE HOWEVER THE DEFENDANT DID NOT COMMIT THE CRIME -- THE $$ STATE'S CASE, DEPENALIZEDED ENTIRELY UPON --
>> WHAT IS YOUR -- WHAT IS -- LET ME ASK YOU, A DIFFICULT QUESTION WHAT DO YOU SEE AS THE $$STATE'S STRONGEST EVIDENCE AGAINST YOUR CLIENT?
>> IT IS VERY HARD TO SAY, JUSTICE WELLS AND I'M NOT I APOLOGIZE THAT I SEEM EVASIVE BECAUSE WHAT THEY HAVE IS THEY HAVE A LOT OF LITTLE PIECES OF EVIDENCE.
>> THEY GOT THE TIMING OF THE CELL PHONE CALL.
>> RIGHT.
>> THEY HAVE TIMING OF THE BANK DEPOSIT.
>> DONTS HAVE TIME OF THE DEATH THAT IS PART OF THEIR PROBLEM THEY DON'T HAVE THE -- THEY TRIED TO FIT THEIR CASE INTO --

>> GOT A PERSON CALLING AT
9:15.
>> UM-HMM.
NINE -- 8:47 OR SOMETHING.
>> RIGHT THAT WAS WHEN SHE
HUNG UP.
>> RIGHT.
>> AS THE COAST'S POSSESSION
OF THE RING.
>> -- $$DEFENDANT'S POSSESSION
OF THE RING.
>> IT WAS A RING THAT WAS LIKE
HER RING, BUT THE TWO PEOPLE
AT THE OFFICE WHO SEE HIM WITH
THIS RING SAY THAT THIS RING
IN THE LINEUP --
>> ARE YOU SAYING THAT A
REASONABLE JURY COULDN'T HAVE
DRAWN A REASONABLE CONCLUSION
THAT THIS WAS THE RING THAT
BELONGED TO THE VICTIM?
>> WELL, THAT THEY WOULD THEY
WOULD HAVE TO THEY WOULD HAVE
TO HAVE TO HYPOTHESIZE THAT,
BECAUSE THE -- THE TELL YOU
RING DISAPPEARED, THE RING
DEGAVE THE GIRLFRIEND,
DISAPPEARED.
SHE SAID.
>> PRETTY IN ITSELF, I HATE TO
TO ME IS ONE MORE FACT THAT IS
IMPLICATES!!$$!!!!!!!!!!!!!!!!!
IMPLICATES, YOUR CLIENT THAT
AFTER HE KNOWS THAT THE RING
IS BEING QUESTIONED, HE GETS
RID OF THE RING.
SO --
>> WELL THAT IS CERTAINLY A
SUSPICIOUS CIRCUMSTANCE, AS
THE CASE LAW SAYS.
>> ISN'T THERE SOME
IDENTIFICATION ALSO WITH SORT
OF A YOU LINEUP WITH THE RING
THING SITUATION.
>> THEY SAY THAT THEY SAY THAT
IT LOOKS LIKE IT, RIGHT, BUT
THE LINE -- THE LINEUP, WAS
APPARENTLY MADE CONTAINED A
RING WHICH WAS AN EXACT
REPLICA OF THE $$VICTIM'S RING,
AND IT WAS A DISPUTE AS TO HOW
COMMON THIS RING WAS, AND THE
DEFENSE WAS NOT ALLOWED TO
PRESENT EVIDENCE OF

CROSS-EXAMINATION OF THE
SISTER ABOUT THAT, THAT IS
ISSUE NUMBER SIX.
>> YOU ARE -- BECAUSE OF THE
TIME, HERE --
>> RIGHT.
>> IMPOSSIBLE
>> VIRTUALLY ALL OF YOUR
REBUTTAL TIME.
>> OKAY.
>> TOO, AFTER THE THING I
REALIZE YOU HAVE WRITTEN A
VERY DETAILED BRIEF.
>> OKAY, WELL ALL RIGHT, WITH
THAT I WILL RECERTIFY MIEFSH
REMAINING TIME FOR REBUTTAL,
THANK YOU -- RESERVE REMAINING
TIME FOR REBUTTAL, THANK YOU.,,
.
>> WHY DON'T WE JUST START
WITH THE SUFFICIENCY OF THE
EVIDENCE WHICH, YOUR OPPONENT
REALLY DIDN'T GET AN
OPPORTUNITY TO FINISH, WITH,
BECAUSE IT DOES SEEM TO ME,
THAT IN THIS CASE, THAT THERE
IS -- SOME REALLY PRETTY THEN
YOU THESES -- OF THIN PIECES
OF EVIDENCE STACKING
INFERENCES ON INFERENCES HERE
SO I WANT YOU TO GIVE ME THE
YOUR THE $$STATE'S BEST CASE,
FOR WHY THERE IS SUFFICIENT
EVIDENCE TO CONVICT THIS
DEFENDANT.
>> WOULD YOU ANNOUNCE YOUR
APPEARANCE.
>> GOOD MORE THAN YOUR HONOR
MAY IT PLEASE THE COURTLESSLY
CAMPBELL THE ATTORNEY
GENERAL'S OFFICE ON BEHALF OF
THE STATE OF FLORIDA, WITH DO
YOU RESPECT YOUR HONOR I DON'T
BELIEVE THE STATE STACKING
INFERENCES UPON INTAKEN VERIES!!$$!!!!!!!!!!
VERIESES WE HAVE ONE VERY LONG
CHAIN, OF CIRCUMSTANCES, THAT
WHEN YOU LOOK AT THEM
TOGETHER, THEY ARE A VERY,
VERY SOLID CASE AGAINST THIS
DEFENDANT.
TO BEGIN WITH WE HAVE THE
DEFENDANT IN THE AREA, AT THE
TIME THAT THE STATE PRESENTS,

IS THE TIME OF THE $$VICTIM'S.
>> HOW BIG AREA ARE WE TALKING ABOUT?
>> COULD IT BE, I THINK IT IS ABOUT 10, 10 TO 16 SQUARE MILES!!$$!!!!!!!!
MILES, AS FAR AS COVERAGE OF THE AREA, HOWEVER, WE HAVE TESTIMONY FROM THE OFFICERS THAT IT IS POSSIBLE TO GET FROM ONE LOCATION, TO THE HOUSE, WITHIN THE TIME FRAME THAT WE HAVE, THE $$DEFENDANT'S PHONE CALL AT 8:25 PUTS HIM NEAR I49 --O -- I-95 NECKS FOEP CALL 91212 PUTS HIM WITHIN THE AREA OF VERY IM'S HOME.
>> DO YOU THINK THAT IS STRONGEST CIRCUMSTANCE.
>> IT IS OUR YEAST CIRCUMSTANCE.
>> THE ONLY REASON I ASK WHAT IS EERIE ABOUT THIS CASE, IS THAT -- THE ALTHOUGHIVE, PERSON, WHO MAY BELESS LIKELY, IS ALSO IN THE AREA, IS ON -- DRIVE OR WHATEVER RIGHT -- AT THE SAME TIME.
HE IS YOUR HONOR ALSO HAS RECEIPTS OTHER FAR, THAT SHOW HE IS -- FACTORS SHOW WITH OTHER PEOPLE IN OTHER LOCATIONS WHEREAS DEFENDANT DID NOT HAVE THAT WHAT IS ABORTSOME I WISH YOU WOULD SPEAK TO IT IS -- BOTHERSOME I WISH YOU WOULD SPEAK TO IT THAT THERE IS AN ENORMOUS AMOUNT OF EVIDENCE ABOUT THE AMOUNT OF BLOOD THAT WOULD HAVE BEEN AT THE SCENE.
AND, YET, WE DON'T HAVE ANY PHYSICAL EVIDENCE THAT TIES THIS DEFENDANT OR THE $$ DEFENDANT'S CLOTHES, OR THE $$ DEFENDANT'S TRUCK, TO ANY OF THAT BLOOD OR ANY FINGERPRINT OR ANYTHING THAT WE CAN SAY OBJECTIVELY THAT THAT IS THIS IS THE FELLOW WHO DID IT.
>> EVEN THOUGH THERE ISN'T ANY FORENSIC EVIDENCE YOUR HONOR FORENSIC EVIDENCE IN THE FORM

OF SOME SORT OF DIRECT
EVIDENCE IS -- NOT MORE
POWERFUL!!$$!!!!!!!!!!!!!
POWERFUL, AND THE ALMOST A --
LACK NOT LESS POWERFUL THAN
CIRCUMSTANTIAL EVIDENCE WE
HAVE THE $$DEFENDANT'S
GIRLFRIEND TESTIFYING THAT HE
WAS WASHING BLOOD OFF HIS
BODY, EXCUSE ME, SOMETIME
AROUND WHAT SOMETIME BEFORE HE
GOT TO WORK, WE ALSO HAVE HIMP
DISCARDING CLOTHING, WE HAVE
HIS STATEMENT TO DEBORA
THOMAS, THAT IS HIS GIRLFRIEND
AT THE TIME.
>> TAUKSDZ ABOUT THAT, IS --
TALKING ABOUT THAT, IS HIS
REASON FOR THE BLOOD WAS HE
HAD GONE TO WEST PB TO COLLECT
A -- HAD TO ROUGH SOMEBODY UP.
>> YES YOUR HONOR.
>> WAS THAT THE SAME DID HE
SAY THAT TO ANYBODY ELSE THAT
HE HAD GONE TO WEST PALM BEACH
TO COLLECT A DEBT?
>> NOT TO MY RECOLLECTION, IN
FACT WHEN HE TESTIFIED, HE
DISAVOWED!!$$!!!!!!!!!!!!!!!
DISAVOWED, THAT HE SAID HE WAS
IN AND AROUND TOWN,PP PICKING
UP BOXES, FOR THE SUPPOSED
MOVE MAKING A DEPOSIT.
>> CHECKING WHETHER PLACES
NEED BROD CHURS.
>> THAT IS CORRECT HIS
TESTIMONY AT TRIAL HIS
COMMENTS TO THE POLICE WERE, I
WAS HOME THE WHOLE TIME.
>> DID THIS PERSON THAT HE HAD
BLOOD, AND THAT HE THAT THAT
WAS THE EXPLANATION, THAT THAT
WAS HIS GIRLFRIEND DID THEY
END UP WITH A STRAINED
RELATIONSHIP!!$$!!!!!!!!!!!!!!!!!!!!
RELATIONSHIP?
HOW DID THAT WORK?
>> YES, AFTER HE I SUPPOSE
AFTER HE TOOK THE RING BACK
BUT BEFORE THAT.
>> WHERE DID SHE END UP?
>> THERE ARE SEVERAL DEN --
DEBORAHS IN THIS CASE DEBORAH
THOMAS WAS DATING THE

DEFENDANT, IN THIS CASE, AND
AT SOME POINT, SHE THEN
STARTED CHEATING ON HIM WITH
BEN THOMAS.
>> THAT IS SUMMER WERE
CHEATING?
SUMMER.
>> RIGHT DEBORAH.
>> THEN THOMAS -- WHERE THE
JEWELRY WAS FOUND --
>> THAT IS CORRECT, HOWEVER,
THE DEFENDANT WAS ALSO THAT
THE LOCATION, BECAUSE HE MET
WITH BEN THOMAS' THEN WIFE,
DEBORA PELTIER HAD BEEN TO THE
SHED HELPED HER --
>> PRIOR THE MURDER WASN'T IT
THIS OCCURRED IN AUGUST, AND
THE MURDER HERE TOOK PLACE IN
SEPTEMBER, AND SO IS THERE ANY
EVIDENCE THAT LINKS HIM TO THE
SHED AFTER THE AUGUST VISIT TO
THAT HOUSE?
>> THAT THE STATE PRESENTED
THAT HE ACTUALLY WENT THERE,
NO.
BUT THE IMPLICATION IS THAT HE
DID GO THERE HE KNEW ABOUT THE
LOCATION, HE KNEW ABOUT THE
SHED, AND HE ALSO WAS SAID TO
HAVE HAD IN HIS POSSESSION, A
GREY FLANNEL COLOGNE BAG IN
THIS GRAY --
>> -- DEBORAH THOMAS WHO IS
NOW MARRIED TO BEN THOMAS.
>> YES YOUR HONOR.
>> JUST -- I MEAN, DEBORAH P$$!!
PELTIER ACTUALLY US THE ONE
THAT VERIFIED THAT IT WAS BEN
THOMAS THAT ALSO HAD THIS GREY!!$$!!!!!!
GREY --
>> NO YOUR HONOR.
>> SHE DIDN'T SAY WHEN SHE SAW
DISCOVERED IT WAS EERIE,
BECAUSE SHE HAD GOTTEN,
PURCHASED COLOGNE FOR BEN
THOMAS.
>> NO, THE STATEMENT, THAT
AWAY, HAVE SHE IS TALKING
ABOUT ISN'T IT EERIE THAT HE
HAS A PURCHASE FROM --
GEOFFREY BEENE, HOWEVER, WE DO
NOT HAVE A RECEIPT FROM
GEOFFREY BEENE, WE HAVE BEN

THOMAS' STATEMENT THAT HE PURCHASED TWO PAIRS OF KHAKI SHORTS AND WE HAVE THE CAPITAL ONE STATEMENT, SAYING THAT THERE WAS A GEOFFREY BEENE PURCHASE BUT WE DON'T HAVE.
>> WHAT DIDN'T SHE WHEN SHE SAW DISCOVERED -- DIDN'T.
>> MADE A CONNECTION.
>> WHAT DID SHE SAY.
>> SHE THOUGHT IT WAS STRAINING THAT THERE WAS THIS THAT -- STRANGE WHAT SHE FOUND DISCOVERED!!$$!!!!!!!!!!!!!!!!!
DISCOVERED, WAS THE STATEMENT, THE CAPITAL ONE STATEMENT, AND WHAT SHE WAS -- WHAT SHE THOUGHT WAS EERIE WAS THAT THERE WAS THIS COLOGNE BAG AND A CAPITAL ONE STATEMENT.
>> THAT.
>> SHOWING GEOFFREY BEENE PURCHASE NOT A GEOFFREY BEENE PURCHASE OF COLOGN.
>> ALL EVIDENCE SEEMS WEAKEST THAT SOMEBODY WHO WANTED THAT IS LOTS OF JEWELRY IN THERE -- THAT WOULD PUT THE JEWELRY, IN A SHED, THAT IS NOT IN HIS HOUSE, I DON'T SEE HOW THAT LINKS IN I DON'T KNOW IF YOU ARE USING THAT EVIDENCE TO LOOIFRNG THIS -- LINK THIS DEFENDANT WITH A CRIME OF ANYTHING -- IF ANYTHING WOULD LINK BEN THOMAS WITH THE CRIME SO ARE YOU RELYING ON EVIDENCE TO LINK THE DEFENDANT WITH THE CRIMING!!$$!!!!!!!!!!!!
CRIMING.
>> IT IS MERELY ANOTHER STEP IN -- THE CHAIN THAT WE HAVE, OF EVIDENCE.
AS THIS COURT HAS ALREADY POINTED OUT, PROBABLY ME MOST CRITICAL PIECE OF EVIDENCE IS THE RING ITSELF.
AND THE RING WAS IDENTIFIED NOT ONLY BY.
>> HE REPLICA OF THE RING.
>> REPLICA OF THE RING YES YOUR HONOR, THE RING WAS IDENTIFIED BY DEBORAH THOMAS ALSO BY HER GIRLFRIEND, AND

THE TWO OFFICERS.
>> ON THE OTHER HAND, I'M TRYING TO SEE THIS CASE FROM YOU KNOW, WHEN YOU HAVE SUCH A CIRCUMSTANTIAL EVIDENCE CASE, DON'T YOU HAVE TO LOOK APT THIS CASE NOT ONLY WITH IN THE LIGHT MOST FAVORABLE TO THE STATE, BUT YOU ALSO HAVE TO LOOK AT IT AS TO WHETHER OR NOT THAT CIRCUMSTANTIAL EVIDENCE ALSO NEGATES ANY REASONABLE HYPOTHESIS OF -- SO WHEN YOU LOOK AT THIS, YOU HAVE DEBORAH THOMAS AND HER FRIEND SAYING YES, THIS REPLICA IS THE RING SHE HAD. ON THE OTHER HAND YOU HAVE THE DEFENDANT THE PEOPLE THAT THE DEFENDANT SHOWED THIS RING TO, NOT BEING ABLE TO IDENTIFY THIS REPLICA AS THE RING THAT -- THAT THE DEFENDANT SHOWED THEM.
>> THE CHALLENGE ON THAT, WAS THAT ONE WAS DIRTIER THAN THE OTHER SO THEY ARE LOOKING AT THE CLONELINESS OF THE RING, AND THAT WAS ONE OF THE REASONS THEY PICKED A DIFFERENT RING, HOWEVER, WE DO HAVE TWO POLICE OFFICERS, IN -- INDEPENDENT PARTIES, WHO ARE PICKING OUT, RING NUMBER THREE.
WHICH IS.
>> AS WHAT.
>> AS THE RING THAT THEY SAW ON DEBORAH THOMAS' HANDS WHEN THEY MET HER A FEW DAYS AFTER THE MURDER.
SO --
>> SOMETHING ABOUT THIS, 16-SQUARE MILE AREA, THAT THE THING THE NEXTEL EMPLOYEE TESTIFIED ABOUT DIDN'T HE ALSO TESTIFY THAT 12 SQUARE MYSELF OF THOSE WAS OCEAN.
>> RIGHT THAT IS CORRECT YOUR HONOR.
>> REASONABLY REALLY THERE WAS ONLY A FOUR-SQUARE MILE AREA WHERE HE COULD HAVE BEEN?
>> WHERE HE COULD HAVE BEEN

DRIVING, YES.
IN ADDITION TO THAT WE HAVE THE DEFENDANT GETTING SO WE HAVE THE DEFENDANT WITH THE JEWELRY!!$$!!!!!!!!!!!!
JEWELRY, WE HAVE THE DEFENDANT SHORTLY AFTER THE POLICE --.
>> THE DEFENDANT WITH THE THE RING, AND -- SUPPOSEDLY ALL RIGHT -- A RING, AND BRACELET, AND SHORTLY AFTER GIVING IT TO THE GIRLFRIEND AND THE GIRLFRIEND SHOWING IT TO A FRIEND.
>> A BRACELET ALSO?
>> NO, BUT HE SAID HE HAD -- HE HAD THIS BRACELET HE AND HE WAS GIVING IT TO HER IT WAS A DIAMOND AND EMERALD TENNIS BRACE!!$$!!!!!!!!
BRACELET.
>> I'M GOING TO BECAUSE YOU ARE JUST MENTIONING THIS RHINE WHICH I DO THINK IS VERY SIGNIFICANT I WOULD LIKE YOU TO JUST BRIEFLY ADDRESS WITH RELATIONSHIP TO THE RING, THE CROSS-EXAMINATION OF THE DEFENDANT OF MY WHERE THE STATEMENT IS MADE BY THE PROSECUTOR!!$$!!!!!!!!!!!!!!!!!
PROSECUTOR, THAT THIS WAS BLOOD ON THIS RING, AS A QUESTION, AND THEN USE THAT IN FINAL ARGUMENT.
THERE IS NO EVIDENCE IN THE RECORD THAT THE DIRTY RING THAT WAS SHOWN NOT ONE WITNESS TESTIFIED THAT IT WAS -- WAS ASKED THE QUESTION, WAS THAT BLOOD.
I'M CONCERNED THAT THAT QUESTION AND THE USE OF IT IN CLOSING WAS ERROR, AND IN A CASE WHERE THE CIRCUMSTANTIAL EVIDENCE IS NOT THE STRONGEST CASE THAT I'VE SEEN, I -- I WOULD LIKE YOU TO ADDRESS IT IF IT WAS ERROR, AND HOW IT COULD BE HARMLESS.
>> I DON'T BELIEVE IT IS ERROR YOUR HONOR BECAUSE IF YOU TAKE A LOOK AT THE TESTIMONY OF THE MEDICAL EXAMINER, THE MEDICAL

EXAMINER SAID WE HAVE THE VICTIM BEING ATTACKED, AND WE KNOW THAT SHE HAS JEWELRY ON HER HANDS, RINGS ON HER HANDS AS BEING ATTACKED, SHE ALSO HAS CUTS ON HER HAND THE DEFENSIVE WOUNDS ON HER HAND THERE IS BLOOD, ON HER HANDS, WHILE SHE IS WEARING THESE RINGS!!$$!!!!!!!!
RINGS, WE ALSO HAVE PICTURES FROM THE CRIME SCENE, THAT SHOW POOLS OF DARK FLUID, ON THE -- ON THE GROUND.
AND, THEREFORE, IT IS A REASONABLE QUESTION TO ASK THE DEFENDANT WHO HAS ATTACK THIS VICTIM CUT HER SEVLY WHEN OR NOT THERE WAS BLOOD ON THE RING.
WE HOE.
>> DIDN'T YOU ALSO, SEE PROBLEM IS, IS THAT THE WITNESSES TO ALLEGEDLY SAW THIS RING SAYS THAT THIS WAS A -- A RING THAT LOOKED LIKE IT WAS OLD, AND YOU KNOW, AND THEY DESCRIBED IT MORE IN TERMS OF THE DARKNESS ON THE RING, WAS REALLY AGE, AND SO, FOR THE STATE TO TAKE THE LEAP BEYOND THAT, THAT THE DARKNESS ON THE RING WAS BLOOD JUST REALLY -- I -- I DON'T FIND I WANT AS A LEAP.
>> I DON'T FIND IT A LEAP YOUR HONOR AS I SAY YOU HAVE TESTIMONY FROM A MEDICAL EXAMINER THE $$VICTIM'S HANDS WERE CUT WHILE SHE IS WEARING RINGS!!$$!!!!!!!!
RINGS.
>> THE QUESTION WAS ASKED THE BLACK THE BLOOD THAT YOU DIDN'T EVEN HE BOTHER WIPING OFF THAT RING BEFORE YOU WANTED TO SHOW IT TO THESE PEOPLE, WITHOUT ASKING THESE PEOPLE, IF THE DARK -- WAS BLOOD OR COULD HAVE BEEN BLOOD, THERE IS NO BASIS IN THE RECORD TO THAT IS AN INFLAMMATORY ARGUMENTATIVE QUESTION.

.
>> AS I SAY, AGAIN POINT TO THE MEDICAL EXAMINERS TESTIMONY AS FAR AS A VALID BASIS FOR ASKING THE QUESTION.
>> BUT --
>> COULD HAVE.
>> -- FULL CIRCLE AROUND TO WHERE I STARTED.
MY CONCERN ABOUT THE FACT THAT AS I YOU UNDERSTAND, THE $$ STATE'S -- AND WHAT THE STATE THEORY, IS, IS THAT THIS MAN CAME TO THIS HOUSE IN HIS TRUCK, AND THAT HE MURDERED THIS WOMAN, THAT SHE WAS VERY BLOODY, THAT SHEP THAT HE TOOK HER BLOODY RING, THAT HE ENDED UP WITH BLOOD ON HIS ARM, AS TESTIFIED TO, BY DEBORAH THOMAS, AND YET THERE IS NOT ONE TRACE OF BLOOD IN THAT TRUCK, WAS THERE ANY EXPLANATION BY ANYBODY FOR THAT?
>> WELL, YOUR HONOR, THE CRIME TOOK PLACE, ON THE 24th OF.
>> HE WAS WAS THE TRUCK XALD.
>> BELIEVE THE TRUCK WAS EXAMINED HOWEVER IT HAS IT WAS IT WAS DAYS AFTERWARDS IT WASN'T THAT THEY EXAMINED IT IMMEDIATELY!!$$!!!!!!!!!!!!!!!!!!! IMMEDIATELY.
WE DON'T KNOW YOU KNOW WHETHER THIS WAS WASHING OR ANYTHING ELSE THAT COULD HAVE HAPPENED, THE MERELY THE LACK OF EVIDENCE DOESN'T HE.
>> WERE HIS CLOTH THIS IS EXAMINED FOR BLOOD IN THE GOT RID OF HIS CLOTHES WE HAVE DEB DRA THOMAS' --
>> WAS THERE ANY -- ANYTHING LAB ANALYSIS OF WHERE HE WAS LIVING?
.
>> THEY FOUND NO BLOOD.
THEY FOUND NO FORENSIC EVIDENCE LINKING HIM TO THIS CRIME.
>> AND DURING THE SAME TIME, THAT THE DEFENDANT GOES TOO COUPLE OF BANKS, AND HE IF --

IF IN FACT, HE YOU COMMITTED
THIS MURDER ALL THIS BLOOD
THAT WE'VE BEEN DISCUSSING,
WAS ON HIM, HE GOES TO THE
BANK, HE SAYS HE WENT INSIDE!!$$!!!!!!IN ONE
OF THEM HE WENT THROUGH THE
DRIVE-THROUGH IN THE OTHER, DO
WE HAVE ANY HEAD OF THE ANYONE
SAW HIM AT THE BANK, AND HE
LOOKED BLOODY?
>> NO, WE DO NOT.
>> HOWEVER, OF COURSE IF HE IS
GOING THROUGH THE
DRIVE-THROUGH THERE MAY OR MAY
NOT HAVE BEEN A CONTACT,
DRIVE-THROUGHS ARE NOT
NECESSARILY RIGHT UP AT THE
WINDOW, THERE ARE -- THE TUBE!!$$!!!!!!
TUBING THAT COMES OVER YOU
COULD BE -- MANY FEET WAY FROM
A TELLER, AND -- WE DON'T KNOW
THE -- YOU KNOW, HER ANGLE OF
VIEW.
WHETHER OR NOT HE WENT INTO
THE BANK, THERE COULD BE A
DISPUTE ON THAT.
BUT --
>> ASSUME -- DON'T YOU THINK
IT IS TROUBLING, AS JUSTICE
TWILS JUST ASKED YOU JUSTICE
WELLS JUST ASKED YOU HERE IS A
PERSON SUPPOSEDLY HAS ALL THIS
BLOOD ON HIM YET NOT A TRACE
OF IT IS FOUND IN THE TRUCK?
>> NO, DO I NOT FIND THAT
TROUBLING!!$$!!!!!!!!!!!!!!!!
TROUBLING, YOU KNOW, I FIND
THE DEFENDANT COULD HAVE
CLEANED THE TRUCK, THERE COULD
HE A MYRIAD OF --
>> I KNOW QUITE OBJECTIVE WHEN
PEOPLE CLEAN WE HAVE HAD CASES
WHERE THEY CLEAN USE ALL OF
THESE CLEANING FLUIDS, AND
YET, STILL, YOU KNOW, THE
POLICE HAVE THIS -- I CAN'T
REMEMBER THE KIND OF
SUBSTANCE, THAT IT IS CALLED,
BUT ILLUMINATES EVEN WHEN THE
BLOOD IS NO LONGER THERE, BUT
HAS BEEN THERE.
>> MAYBE HE WAS JUST LUCKY
DIDN'T GETTING ANYTHING ON THE
TRUCK.

>> IF HE HAD ALL THIS BLOOD IN HIS BATHROOM, SHE SAID THE CLOTHES WERE ON THE MAT IN THE BATHROOM AS I UNDERSTAND IT.
THE BATHROOM MAT WAS -- CHECKED, THE BATHROOM ITSELF WAS CHECKED, AND, YET, YOU KNOW, ALL OF THIS BLOOD AND YET WE HAVE NO BLOOD ON ANYTHING THAT THE DEFENDANT TOUCHED!!$$!!!!!!!!!!!!
TOUCHED.
>> I THINK YOUR HONOR IS GETTING -- UM -- CAUGHT UP IN -- IN THE DEFENSE ARGUMENT THAT EVERY PIECE OF EVIDENCE HAS TO PROVE THE $$DEFENDANT'S GUILTY, I THINK.
>> BUT I'M WHAT I'M INTERESTED IN NOT THAT EVERY PIECE OF EVIDENCE HAS TO PROVE GUILTY BUT THAT EVIDENCE ALSO HAS TO BE INCONSISTENT WITH HIS REASONABLE -- WITH A REASONABLE HIGH BOTH THIS OF INNOCENCE WHEN YOU LOOK AT CIRCUMSTANTIAL EVIDENCE, YOU CAN ALSO LOOK AT THE ABSENCE OF EVIDENCE, ALSO.
AND SO THAT IS WHAT IS TROUBLING TO ME, IS THAT THERE IS THIS ABSENCE ALSO OF EVIDENCE.
>> WELL THERE IS AN ABSENCE OF EVIDENCE, BECAUSE THE DEFENDANT GOT RID OF THE RING THIS AN ABSENCE OF EVIDENCE BECAUSE THE DEFENDANT WASHED HIMSELF, THERE IS AN ABSENCE OF EVIDENCE, BECAUSE THE DEFENDANT GOT RID OF THIS CLOTHING!!$$!!!!!!!!!!!!!!
CLOTHING, THE FACT.
>> --
>> SPEAK TO HIS EXPLANATION IN CONTEXT OF HOW HE EXPLAINED THE MIDDAY WASHING --
>> HE DENIED THAT HE WENT HOME TO WASH.
BUT WE HAVE THE PEOPLE AT THE -- DEBORAH THOMAS SAYING THAT HE WAS THERE HOME99WASHED, AND WE HAVE THE -- WASHESING THE PEOPLE AT THE -- LIFORD !!$$!!!!!!!!!!!!

LIFORD NURSING HOME SAYING HE CAME IN LOOKING SCRUBBED HIS HAIR WAS WET.
>> WHAT TIME OF DAY WAS THAT.
>> AROUND NOON.
>> WHAT IS WHAT TIME OF DAY WAS THAT IT HE LEFT THE HOME?
>> HE LEFT HOME EARLIER IN THE MORNING, AND THE $$STATE'S CASE IS THAT HE COMMITTED THE MURDER SOMETIME BETWEEN, 8:47, AND 9:12.
>> HE DENIED TAKE SHOWER A BIGGING BETWEEN.
>> THAT IS CORRECT, AND REMEMBER, AT HIS POLICE STATEMENT, HE WAS HOME THE WHOLE MORNING, BUT BY THE TIME WE GET TO TRIAL, NO, HE IS OUT GALLIVANTING AND PUTTING BROCHURES UP, AND -- DOING ALL SORTS OF OTHER THINGS LOOKING FOR --
>> AT LEAST PARTIALLY TRUE BECAUSE OF THE CELL PHONE RECORDS THE ONES YOU RELY ON TO PUT HIM INTO THE AREA, CERTAINLY DEMONSTRATE THAT HE WAS OUT AND ABOUT; CORRECT?
>> YES AND IT IS CONVENIENT THAT THE DEFENDANT IS TRYING TO TAILOR HIS TESTIMONY TO THE ACTUAL FACTS, IN ADDITION TO THE FACT THAT HE WAS IN THE AREAS WHERE THE WHERE YOU COULD COMMIT THE CRIMES, AND DURING -- DURING THAT TIME FRAME!!$$!!!!!!!!
FRAME, HE WAS ALSO IN AN AREA WHERE THE FANNIE FACT WAS FOUND AND THAT CONTAINED ALSO THE $$VICTIM'S ID AND OTHER EVIDENCE.
>> ON THAT, IS THERE ANY EVIDENCE THERE WAS CASH APPARENTLY IN THE FANNIE BACK, BUT WAS THERE ANY TESTIMONY HOW MUCH CASH THERE WAS TO TIE IT INTO THE CASH DEPOSIT, THE AMOUNT OF 430 DOLLARS!!$$!!!!!!!!!!!!!!!!!!!$430?
>> I DON'T BELIEVE THAT THERE WAS ANYTHING TO SAID EXACTLY HOW MUCH CASH THAT THE VICTIM HAD IN HER FANNIE PACK.

>> HOW -- VERY, BLOODY
FOOTPRINT!!$$!!!!!!!!!!!!!!!
FOOTPRINT, AND IF SO, WAS
THERE WHAT WAS THE EXTENT OF
THE ANALYSIS FOR -- SHOE SIZE
ANY CONNECTION ON THAT?
>> THE INITIAL OFFICER THAT
WENT IN THOUGHT HE SAW
FOOTPRINT!!$$!!!!!!!!!!!!!!!
FOOTPRINT, BUT, BY THE TIME
THE FORENSIC PERSON ACTUALLY
PULLED IT, AND LOOKED AT IT.
HE SAID -- HE COULDN'T --
>> NOT EVEN A SIZE OR
ANYTHING?
>> NO, IT THERE WAS NOT
ENOUGH.
>> THERE WAS AN ATTEMPT TO.
>> THEY PULL IT BUT THEY
COULDN'T DO ANYTHING WITH IT.
>> YES YOUR HONOR?
>> WHAT WAS THE EVIDENCE THAT
THERE WAS EVEN MONEY IN THE
FANNIE PACK?
BECAUSE AS I UNDERSTOOD THE
FANNIE PACK WAS FOUND, I WANT
HAD CREDIT CARDS, IT HAD A
CHECKBOOK!!$$!!!!!!!!!!!!!!!
CHECKBOOK, SOMETHING ELSE,
THAT I CAN'T REMEMBER EXACTLY
WHAT IN IT.
BUT HOW DO WE -- WHAT EVIDENCE
IS THERE THAT SHE ACTUALLY HAD
MONEY IN THAT FANNIE PACK.
>> THAT IS THAT WAS LIKE A P$$!!!!
PURSE.
>> I HAVE A P$$URSE I DON'T HAVE
ANY MONEY IN IT.
>> OH, I -- [LAUGHTER]
>> SORRY YOUR HONOR SO I
MEAN --
>> ARE WE ASSUMING THAT THERE
WAS MONEY IN THE FANNIE SNAKE
DON'T RECALL THAT THERE IS ANY
EVIDENCE THAT THERE WAS MONEY
IN THE FANNIE PACK.
>> WILL HAVE TO BEG TO
APOLOGIZE, BY MY RECOLLECTION
IS THERE WAS SOME EVIDENCE OF
THAT I MAY BE WRONG, BUT, THE
FACT THAT -- IT IS THE FACT
THAT THERE IS A FANNIE PACK
THAT IS FOUND IN A PARTICULAR
AREA WHERE THE DEFENDANT IS,

AND.
>> IT WAS FOUND WHEN.
>> FOUND SEVERAL MONTHS LATER,
BY HAPPENSTANCE.
>> JUST THAT THE LOCATION, OF
I-95 IS I MEAN, YOU KNOW I
THINK THERE IS TO ME, AND I
THINK JUSTICE STAYED EARLIER
THE CRITICAL TESTIMONY IS
ABOUT THE RING, IN MY VIEW,
AND THE VERY CONTRADICTORY
EXPLANATION THAT HE GAVE FIRST
TO IS HERE GIRLFRIEND, THAT HE
NEEDED TO DISPOSE OF IT TO GET
RID OF IT BECAUSE IT IS NOW
ALL OF THE SUDDEN IT IS HOT,
THAT HE -- SAID -- AND SOMEONE
ELSE GOT IT IN STATE!!$$!!!!!!!!ESTATE SALE I
THINK THOSE ARE VERY STRONG
INDICATIONS AND ALSO, NOW BUT
I WOULD LIKE TO ADDRESS THE
HEARSAY ISSUE, BECAUSE, I'M
HAVING A -- ONE HAND, YOU HAVE
ANOTHER PERSON, THAT IS
TESTIFIED ABOUT HIS INTEREST,
IN HER JEWELRY, WHICH IS
>> TWO OTHER PEOPLE.
>> ONE WAS -- THE -- THERE IS
THE COWORKER, AND THEN, BUT,
AS FAR AS THE SISTER, AND THE
AND HER HUSBAND, TESTIFYING,
IT REALLY SEEMS LIKE IT IS
HEARSAY!!$$!!!!!!!!!!!!
HEARSAY, AND TO SAY THAT YOU
CAN TAKE SOMETHING THAT IS
HEARSAY THAT OTHERWISE WOULD
BE INADMISSIBLE, I MEAN I CAN
UNDERSTAND A PRIOR
INCONSISTENT STATEMENT OF A
DEFENDANT, BUT, AN ACTUAL
OTHER STATEMENT I DON'T KNOW
HOW YOU GET THAT IN EVIDENCE,
BASED ON JUST SAYING WELL IT
COMES TO IMPEACH, BECAUSE AS
MR. CALDWELL SAID, THE
IMPLICATION IS YOURLYING
BECAUSE YOU SAID YOU AREN'T
INTERESTED IN THE JEWELRY BUT
YOU TOLD JOAN THAT YOU WERE
INTERESTED BUT THE ONLY WAY
THAT COMES IN IS THROUGH THE
POLICE OFFICER, THROUGH THE
SISTER OR HUSBAND AND SO
FORTH, SO -- EXPLAIN, YOU

KNOW, IN AN EFFORT TO TRY TO
WANT TO MAKE SURE WE HAVE
ENOUGH EVIDENCE IN THIS CASE,
WE DON'T WANT TO -- WE DON'T
WANT TO CHANGE THE LAW, OF
EVIDENCE, IN A WAY THAT IS --
IMPERMISSIBLE!!$$!!!!!!!!!!!!!!!!!!!!!
IMPERMISSIBLE, TO START
BACKWARDS WE HAVE OTHER TWO IT
WERES IN ES HAVE TESTIFIED TO
THIS, THAT THE DEFENDANT,
NOTICED THE JEWELRY, AND TOLD
THEM TO ACT ON IT.
>> WHO ARE THE --
>> -- QUESTION GO AHEAD.
>> MICHAEL OH, AND DEBORAH
THOMAS BOTH TESTIFIED TO THE
FACT THE DEFENDANT NOTICED HER
JEWELRY!!$$!!!!!!!!!!!!
JEWELRY.
>> OKAY THOSE WERE DIRECT
ADMISSION!!$$!!!!!!!!!!!!!!!!
ADMISSION.
>> THAT IS CORRECT.
>> OKAY, ALL RIGHT, NOW, YOU
HAVE TO SEPARATE.
>> YOU HAVE TO SEPARATE OUT
THE TESTIMONY OR THE STATEMENT
THAT HE GAVE TO THE POLICE,
FROM THE IT WERES INNES --
WINSS TEST WINS -- IT WERES IN!!$$!!
INNES THEFT OF $$VICTIM'S
HUSBAND AND SISTER TAKING THE
FIRST AMOUNT OF THE FIRST
EVIDENCE FIRST WHICH IS THAT
THE STATEMENT, WHAT THE POLICE
OFFICERS SAY TO DEFENDANT IS
NOT HEARSAY IT IS MERELY
STATEMENTS THAT ARE MADE AND
IT IS PUTTING IN CONTEXT WHAT
THE DEFENDANT REPORTS.
>> HOW IS IT NOT HEARSAY,$$!!!! FOR
INSTANCE IF A POLICE OFFICER
WAS TO SAY I'VE TALKED TO
MR. SMITH,AND MR. SMITH TOLD
ME YOU CAME OVER CONFESSED TO
HIM.
AND HE ALSO TOLD ME THIS, THAT
AND THE OTHER THING, WHICH IS
ALL YOU KNOW, HEARSAY, AND IN
TERMS OF AND THEN, JUST BY
ASKING THE DEFENDANT, A
QUESTION ABOUT THAT, THAT THE
STATE GETS THAT INTO EVIDENCE,

IN A SITUATION, WHERE THEY
WOULD NOT BE ABLE TO GET THAT
INTO EVIDENCE, OTHERWISE.
>> THIS COURT HAS SAID IN WARD!!$$!!!!!!
WARDEN THAT THE STATEMENTS
THAT THE POLICE PROPOUND TO
THE DEFENDANT DURING
QUESTIONING!!$$!!!!!!!!!!!!!!!!!!!
QUESTIONING, ARE NOT HEARSAY.
THAT.
>> THAT!!$$!!EY ARE NOT BEING OFFERED
FOR THE TRUTH OF MATTER ASSERT!!$$!!!!!!!!!!
ASSERTED IT IS THE STATEMENT.
>> SO THE STATE CAN SAY YOU
KNOW, WE HEARD THAT YOU KILLED
SIX OTHER PEOPLE, ANDP THAT
YOU KNOW THIS IS JUST THE
SEVENTH MURDER THAT YOU HAVE
COMMITTED!!$$!!!!!!!!!!!!!!!!
COMMITTED, AND NOW ARE YOU
GOING TO DENY THAT YOU
COMMITTED THIS SEVENTH MURDER.
>> WELL, I SUPPOSE THERE COULD
BE OTHER OBJECTIONS TO THAT
KIND OF STATEMENT.
>> LET'S JUST TAKE IT AS WE
HEARD FROM MR. SUBMITTING --
SMITH THAT YOU COMMITTED OTHER
SIX MURDERS NOW AREN'T YOU ARE
GOING TO ADMIT THAT YOU
COMMITTED THIS 7TH MURDER.
>> ASSUMING THAT THERE IS NOT
ANOTHER OBJECTION, BASED ON
THE FACT THAT THE POLICE
OFFICER SAID IT, THAT CAN COME
IN HOWEVER I WOULD ASSUME
THERE IS GOING TO BE ON THE
ANOTHER OBJECTION.
>> KACASE SAYS THAT.
>> WARDEN SAYS ANYTHING THAT
POLICE SAY IN QUESTIONS TO A
DEFENDANT, ON INTERROGATION,
CANNOT BE HEARSAY.
>> I WOULD I WOULD -- THE WAY
I READ WHARTON IT IS ADMISSION!!$$!!!!!!!!!!!!!!!
ADMISSIONS OR FINDING --
QUESTIONS PRO UP AND DOWNED BY
THE POLICE THAT ARE NOT
OFFERED FOR THE TRUTH OF THE
MATTER ASSERTED BUT MERELY TO
PUT THE $$DEFENDANT'S STATEMENTS
IN CONTEXT, COME IN.
NOW.
>> SURELY, SURELY WITH MY

HYPOTHETICAL!!$$!!!!!!!!!!!!!!!!!!!!
HYPOTHETICAL, YOU SEE, THAT --
THAT -- THAT -- THAT THAT
COULD NOT BE THE RULE OF
EVIDENCE THAT THE STATE CAN
PROPOUND ANY HEARSAY -- HE
THING IN THERE, AND BUT THAT
IS THE.
>> THAT IS WHY I SAID THAT
THERE IS THERE COULD BE OTHER
OBJECTIONS TO THAT PARTICULAR
QUESTION.
>> THREE OBJECTIONS -- TO --
JUSTICE --
>> RIGHT, HOWEVER THE POLICE
CAN LIE TO THE DEFENDANT, AND
THAT COMES IN, AND IT IS NOT
COMING IN FOR THE TRUTH OF THE
MATTER ASSERTED THEIR QUESTION
IS COMPLETE TOTAL LIE, SO.
>> WASN'T THE ARGUMENT ALSO
THAT THEY USED THIS AGAIN, IN
CLOSING ARGUMENT, I THINK
ARGUED!!$$!!!!!!!!!!
ARGUED, THAT IT DID COME IN
THIS ESTABLISHED THAT.
>> THERE COULD BE AND THERE
COULD BE, THERE SHOULD HAVE
BEEN AN OBJECTION AT THAT TIME
AND THERE WASN'T
>> SO WAS THAT IMPROPERLY
ARGUED BUT THERE SHOULD HAVE
BEEN OBJECTION THAT IS YOUR
POINT?
>> THAT IS CORRECT, THAT TAKES
CARE OF THE STATEMENTS TO THE
POLICE.
AND --
>> TO ME IT DOESN'T.
TAKE CARE OF IT.
BECAUSE I DON'T THINK, I
UNDERSTAND IN CONTEXT IF
POLICE IS RELATING WHAT THE
POLICE IS SAYING -- THE POLICE
THEN BECAUSE THEY ARE THERE TO
BE CROSS-EXAMINED,THAT IS NOT
-- THAT IS NOT HEARSAY ANYWAY,
BUT WHAT THE POLICE SAYS A
THIRD PARTY SAYS UNLESS THERE
IS SOMETHING ELSE, ABOUT IT,
WHICH IS THAT IT IS -- AS YOU
SAY CONTEXT THE ONLY CONTEXT
HERE WAS TO SAY YOU TOLD JOAN
THIS DIDN'T YOU ANDP HE GOES

NO.
SO -- YOU CAN'T I DON'T SEE
HOW YOU CAN GET SOMETHING IN
THE BACKDOOR THAT YOU CAN'T
GET IN THE FRONT DOOR WHEN IT
IS THE $$WHEN IT IS THE POLICE.
>> I THINK THE POLICE
STATEMENT IS LESS OF A
PROBLEM, THAN THE STATEMENTS
TO THE THAT CHAMBER OUT
THROUGH THE TESTIMONY, HOWEVER!!$$!!!!!!!!!!!!
HOWEVER, IF YOU TAKE A LOOK AT
THE STATEMENTS THAT CAME OUT
THROUGH THE TESTIMONY AND I
UNDERSTAND YOUR $$HONOR'S
ARGUMENT THAT YOU KNOW, YOU
CAN'T GET IN THE FRONT --
BACKDOOR WHAT WHAT --
>> CAN'T GET IN THE FRONT
DOOR.
>> SIDE DOOR.
>> RIGHT MAYBE A WINDOW, YOU
KNOW --
>> IN ANY CASE, THE TRIAL
COURT LOOKED AT THOSE THAT
LATER TESTIMONY, AND SAIPD
WELL IT WILL IS GOING TO COME
IN, I CAN SEE IT IS HEARSAY
WITHIN HEARSAY, HOWEVER, WE
HAVE THE $$DEFENDANT'S
STATEMENT, AND THAT IS A
STATEMENT BY A PARTY OPPONENT,
SO HIS COMMENTS BACK HIS
STATEMENT BACK, IS OKAY.
THAT.
>> OF HIS STATEMENT BACK TO
THE POLICE -- WHO BRINGS THAT
STATEMENT IN?
ARE YOU TALKING ABOUT HIS
STATEMENT.
>> HIS STATEMENT THAT HE WAS
HE WAS LOOKING FOR THIS
JEWELRY!!$$!!!!!!!!!!!!
JEWELRY, SO IT IS A IT IS THAT
IS HIS STATEMENT.
>> WHO BRINGS THAT IN?
>> THE -- THE $$VICTIM'S SISTER,
AND HUSBAND.
>> THEY ONLY KNOW THAT,
THROUGH.
>> THROUGH THE VICTIM.
>> THROUGH HEARSAY STATEMENTS
FROM THE VICTIM.
>> LET ME ALSO -- OFFER THIS

TO YOUR HONOR THE ONLY REASON
WHY WE DON'T HAVE TESTIMONY OF
WHAT ACTUALLY TRANSPIRED
BETWEEN JOAN, AND THE
DEFENDANT IS BECAUSE THE JOAN
IS DEAD AT DEFENDANT'S HANDS
THAT SHOULD BE --
>> AND I --
>> WAITING TO SEE.
>> RIGHT.
>> -- WHETHER EITHER CRAWFORD
OR RAOUL OF FORFEITURE WAS
BEING ARGUED BECAUSE NOW I
THINK!!$$!!!!!!!!
THINK, YOU HAVE -- THAT -- I
DIDN'T SEE THAT.
>> CRAWFORD WASN'T ARGUED.
>> OR A RULE OF FORFEITURE DID
YOU ARGUE THAT?
>> NO, NO --
>> AS AN ADDITIONAL STATEMENT
YOU CAN TAKE A LOOK AT AS
ADDITIONAL GROUND TAKE A LOOK
AT IT AS FORFEITURE BY
WRONGDOING!!$$!!!!!!!!!!!!!!!!!
WRONGDOING.
>> --
>> WHETHER OR NOT WOULD IT BE
HARMLESS!!$$!!!!!!!!!!!!!!
HARMLESS, BECAUSE YOU HAVE
ALREADY ALLUDED TO THE FACT
TWO OTHER IT WERES INNES
TESTIFIED TELL ME HOW
ELABORATE THEIR TESTIMONY WAS.
>> THE TESTIMONY WAS JUST THAT
CLEAR, THAT THE DEFENDANT HAD
NOTICED THIS JEWELRY SAID THAT
HE WANTED TO GET HIS -- WELL,
TO HE HAD TOLD NUMEROUS PEOPLE
THAT HE WANTED TO GET HIS
GIRLFRIEND A TWO CARAT DIAMOND
RING AMAZING HE FOUND TWO CAR!!$$!!!!
CARAT DIAMOND RING ON THE $$
VICTIM'S HAND.
>> TWO WITNESSES SAID HE MADE
A FUSS OVER THE JEWELRY THE
VICTIM HAD.
>> YES.
>> WHAT WLA DID COWORKER
ACTUALLY SAY CO.
>> COWORKER SAID WHAT THE
FAMILY WAS BRINGING IN
MONOPOLY VALA, THAT THE -- THE
THAT THE COWORKER, SHOULD TAKE

CARE THAT SHE IS VERY A
WEALTHY HAS JEWELRY SHE SHOULD
TAKE CARE OF, THIS PARTICULAR
FAMILY.
>> HE SAY THAT TO OTHER -- TO
HIM ABOUT ANOTHER FAMILY AT
LEAST.
>> YES BUT THE POINT IS HE
SAID ABOUT IT THIS PARTICULAR
VICTIM, HE SAID TO IT OTHERS
THAT HE WAS LOOKING FOR A TWO
CARAT DIAMOND RING FOR HIS
GIRLFRIEND!!$$!!!!!!!!!!!!!!!!!
GIRLFRIEND, HE FOUND THE TWO
CARAT DIAMOND RING ON THE VERY
IM'S HAND HE TOOK FROM IT HER
YOU WITH VIOLENCE, AND THEN HE
SHOWS IT TO OTHERS WHETHER IT
BE HIS GIRLFRIEND WHO HE GAVE
IT TO AND SHORTLY AFTER THE
POLICE TAKE INTEREST, HE GETS
RID OF IT, OR ARE WHETHER HE
-- HE SHOWS TO IT OTHER
COWORKERS, WHO SAY IT IS IT
LOOKS SIM THE FACT IS HE HAS
SHOIN WITH TWO DAR -- CARAT
DIAMOND RING ON THE VERY
MORNING THAT MISS -- HAS LOST
HER TWO CARROT DIAMOND RING.
>> JUSTICE CANTERO HAS ONE
LAST QUESTION.
>> I HAD A QUESTION FROM A
COUPLE MINUTESBACK WHEN
TALKING ABOUT THE FORFEITURE
IT SEEMS TO ME THAT THE FOR
FUTURE IS AN ARGUMENT, AGAINST!!$$!!!!!!!!!!!!
AGAINSTP APPLYING CRAWFORD, IS
NOT AN ARGUMENT AGAINST
APPLYING THE HEARSAY RHYME.
--S HERE RULE.
>> TECHNICALLY, YES, HOWEVER
THERE IS AN ARGUMENT IN A
CRAWFORD YOU ARE NOT SUPPOSED
TO BRING IN IN THE HEARSAY IN
THESE FORMER STATEMENTS.
>> IF THERE IS NO CRAWFORD
ARGUMENT THERE IS NO DEFENSE
TO THE CRAWFORD ARGUMENT.
>> TRUE BUT I THINK I THINK
THERE COULD BE A STRETCH.
>> I'M --
>> -- I ASK YOU TO AFFIRM.
>> THANK YOU.
.

>> I WOULD ASK YOU WHY NOT
SUBSTANTIAL EVIDENCE, THAT THE
TESTIMONY OF THE LADY, THAT
TESTIFIED AS TO BLOOD ON THE
DEFENDANT, BLOOD ON THE $$
DEFENDANT'S CLOTHING, THE
RING, THAT WAS GIVEN TO HER,
AND THAT DISAPPEARANCE WHEN
POLICE -- WHY WOULD THAT NOT
BE COMPETENT EVIDENCE TO
SUPPORT HERE THE CONVICTION?
>> RIGHT I HAVE TO ACCEPT THAT
THAT IS TRUE FOR THE PURPOSES
OF THE SUFFICIENCY OF THE.
>> RIGHT.
>> -- OF THE EVIDENCE I WOULD
SUBMIT TO YOU THAT IT IS NOT
ENOUGH, BECAUSE IT DOESN'T
ESTABLISH IT ONLY ESTABLISHES
THAT HE HAD BLOOD ON HIM HAD A
SIMILAR RING, NOT THAT IT WAS
THE SAME RING.
AND THAT HE HAD SAID THAT HE
HAD GOTTEN THE RING IN WEST
PALM BEACH, SO AND THE $$STATE'S
THAT DOESN'T PROOF THAT HE
COMMITTED!!$$!!!!!!!!!!!!!!!!
COMMITTED.
>> WHERE DID GET IT FROM -- I
REALIZE IT IS NOT HIS BURDEN,
OTHER THAN SAYING I GOT IT IN
PALM BEACH DID HE SAY FROM
THIS PERSON -- FROM --
>> NO.
>> ANYTHING MORE THAN --
>> ANYTHING MORE THAN -- THE
RING HE SAID HE TESTIFIED THAT
HE GOT THE RING FROM A JEWELER!!$$!!!!!!!!!!!!
JEWELER, IN PORT ST. LUCIE, I
BELIEVE.
>> --
>> -- IDENTIFY, OR THE
PURCHASE EVER VERIFIED.
>> NO.
>> I REALIZE IT IS NOTE.
>> BUT --
>> RIGHT I UNDERSTAND WHAT YOU
ARE SAYING, AND NO, THERE WAS
NO --
>> THE RING THEN, EXCUSE ME.
>> GOES BACK TO THE GIRLFRIEND!!$$!!!!!!!!!!!!!!!!!
GIRLFRIEND, AND SAYS NOW I
NEED THAT RING BACK.
THERE IS A PROBLEM.

>> THAT IS A SUSPICIOUS CIRCUMSTANCE.
>> -- OF THE RING, SO -- OKAY, THOSE CIRCUMSTANCES HAVE TO BE ADDED TO THIS TOO.
>> YES, SIR THAT IS CORRECT.
>> IN ADDITION TO BLOODY CLOTHES RIGHT AT THE TIME.
>> RIGHT.
>> THAT THIS -- BRUTAL MURDER OCCURRED!!$$!!!!!!!!!!!!!!
OCCURRED; IS THAT CORRECT?
>> I'M SORRY WHAT WAS I DIDN'T HEAR THE LAST PART.
>> HE CAME HOME, WITH IN THE BLOODY CLOTHES.
>> RIGHT.
>> HOME THE PLACE HE WAS SHARING WITH THE GIRLFRIEND.
>> RIGHT.
>> AT THE SAME TIME OR IMMEDIATELY AFTER THE TIME THAT THE VICTIM WAS KILLED.
; IS THAT CORRECT?
>> THAT WAS THE TESTIMONY.
IT WAS IT WAS -- SHE GAVE DIFFERENT TIMES FOR IT BUT RIGHT THAT DAY AROUND NOON!!$$!!!!!!
NOONTIME.
>> THE POLICE GO AHEAD!!$$!!!!!!!!!!!!!!PLEASE RESPONDS TO ARGUMENT.
>> MY GOOD FRIEND I HAVE TO DISAGREE WITH A COUPLE THINGS SHE SAID ABOUT THE RECORD ONE WAS THIS TESTIMONY, OF THE COWORKER AND DEBORAH THOMAS ABOUT -- WE HAVE SASHING -- SHE OCCASIONING RISES SAYING HE WAS INTERESTED IN HER RING THE GIRLFRIEND SIMPLY TESTIFIED, THAT HE SAID HE WAS GOING TO GET HER HE WAS GOING TO GET HER A RING, FROM WEST PALM BEACH, THE COWORKERS SIMILAR PLOOEP SAID JEWELRY WAS DISCUSSED.
WHERE!!$$!!!!!!!!
WHEREAS, THE HUSBAND CAME IN, AND HEARSAY, THE HUSBAND CAME IN, AND SPECIFICALLY SAID THE DEFENDANT WAS LOOKING AT HER RING, WANTED TO KNOW THE SIZE OF IT, WAS ASKING DETAILS ABOUT IT.

AND THE SISTER SAID THAT HE
ASKED ABOUT THIS MORE THAN
ONCE THAT WAS THE TESTIMONY
THAT THE STATE RELIED ON IN
FINAL ARGUMENT.
SECONDLY, I WOULD LIKE TO
POINT OUT.
>> IF HE SHE HAD!!$$!!!!!!!!!!!!IF SHE HAD SAID TO
HER HUSBAND I'M REALLY WORRIED
THIS GUY IS STALKING ME, WOULD
THAT COME INTO EVIDENCE?
>> WELL, THAT MIGHT BE SOME
SORT OF STATE OF MIND, EX--
EXCEPT!!$$!!!!!!!!!!
EXCEPTION, BUT IT WOULD
CERTAIN DEPEND ON THE
CIRCUMSTANCES, AND IN THE
RIGHT -- I THINK UNDER THE
RIGHT CASE WHICH I CITED IN MY
BRIEF, I WOULD SAY THAT WOULD
BE ANNED A MISS --
INADMISSIBLE NORMALLY
DISCUSSIONS BETWEEN THE VICTIM
AND THE DEFENDANT CAN NOT BE
BROUGHT, IN UNDER EXCEPTIONS
TO HEARSAY.
>> PLEASE BRING YOUR ARGUMENTS
TO A CONCLUSION GET OUT WHAT
YOU NEED TO SAY IN A MINUTE
BECAUSE YOU ARE OVER YOUR
TIME.
>> LET ME MAKE TWO BRIEF
POINTS!!$$!!!!!!!!!!
POINTS, ONE GOES TO WHAT
JUSTICE CANTERO ASKED ABOUT
THE SMAR MILES THAT SQUARE --
SQUARE MILE FIGURE WAS FOR THE
85% AREA OF COVERAGE NOT THE
100%, WHICH WAS WHAT THE
TESTIMONY WAS ABOUT.
AND THE WITNESSES SAID HE DID
NOT KNOW WHAT THE SQUARE MILES
WERE FOR THE 100% AREA.
WHICH WAS APPARENTLY QUITE A
ABOUT BITE BIGGER SECOND POINT
I WANT TO MAKE IS THE TIMING,
WHEN THE JEWELS WERE FOUND,
THE DETECTIVE TALKED TO THE
FELLOW BEN THOMAS, A WEEK
BEFORE THE GRAND JURY THE
GRAND INJURY WRY WAS OCTOBER!!$$!!!!!!!!!!!!
OCTOBER 22ND, SO THAT WOULD
HAVE BEEN ABOUT OCTOBER 15TH.
THAT THE DETECTIVE TALK TO BEN

THOMAS, THE JEWELRY WAS FOUND
TWO WEEKS, AFTER OCTOBER 3RD,
ACCORDING TO THE WIFE WHICH
WOULD HAVE BEEN AROUND OCTOBER!!$$!!!!!!!!!!!
OCTOBER 17TH, I'M SORRY NOT --
WHEN THE BOYFRIEND, BEN THOMAS
CAME TO THE HOUSE, WHERE THE
JEWELRY WAS FOUND, SO ON
OCTOBER 125!!$$!!!!!!!!!!!!!!!!!!!!
OCTOBER 125 OCTOBER!!$$!!!!!!!!!!!!!!!!!, '25 OCTOBER 15TH
THE DETECTIVE TELLS HIM WE
NEED JEWELRY, OCTOBER 17TH
MR. THOMAS IS WHERE THE JEWELS
WERE FOUND SO BASED UPON, ALL
THE PRESENTATIONS, AND MY
BRIEF, I -- RESPECTFULLY
REQUEST REVERSAL IN THIS CASE
THAT YOU.
>> THANK YOU VERY MUCH WE WILL
TAKE THE CASE UNDER ADVISEMENT
WE STAND IN RECESS THIS
MORNING.
>> PLEASE RISE.,,