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John Shane Kormondy v. State of Florida

SC05-1200 | SC06-210

A99!!!!!!!!!!!!

> >FLORIDA.
> > -- IS KORMONDY VERSUS STATE OF
> >FLORIDA.,,
> > MR. REITER.
> > GOOD MORNING.
> >MICHAEL REITER ON BEHALF OF
> >MR. KORMONDY.
> >WE'RE HERE ON A DENIAL OF A 3850
> >MOTION.
> >I WOULD LIKE TO DISCUSS CLAIMS
> >FIVE, CONFLICT OF INTEREST, AND
> >CLAIM SEVEN, WHICH IS NEWLY
> >DISCOVERED EVIDENCE.
> >AT THE OUTSET, I WOULD LIKE TO
> >STATE THAT NOT WITHSTANDING THE
> >50 PAGES OF THE ORDER BY THE
> >COURT, MANY OF ITS FACTS
> >CREATING THE CONCLUSION WERE
> >EITHER IRRELEVANT OR SPECIOUS
> >RATIONALIZATION.
> >THERE WERE THREE POINTS RAISED
> >BY THE COURT AND BY MYSELF WITH
> >REGARD TO CON THRIKT OF
> >INTEREST.
> > -- CONFLICT OF INTEREST.
> >PERSONAL CONFLICT OF INTEREST,
> >NEW REPRESENTATION OF A
> >SUBSTANTIAL --
> >[INAUDIBLE]
> >AND ALSO A REQUEST BY
> >MR. KORMONDY ON A NUMBER OF
> >OCCASIONS THAT THE PUBLIC
> >DEFENDER'S OFFICE BE DISMISSED.
> > SHE SAID THAT SHE WENT TO
> >HIGH SCHOOL WITH THE DECEDENT,
> >BUT THAT AS I UNDERSTAND IT,
> >THEY DID NOT RUN IN THE SAME
> >CIRCLES, SHE DIDN'T REALLY KNOW
> >HIM, SO EXPLAIN TO US HOW THAT
> >IS A CONFLICT OF INTEREST.
> > WELL, SHE SAID THE FACT THAT
> >SHE HAD KNOWN HIM IN HIGH
> >SCHOOL, HAD ATTENDED SIMILAR

>>SOCIAL FUNCTIONS, FOOD
>>BALLGAMES, BUT THEY BE --
>>FOOTBALL GAMES, BUT DIDN'T HAVE
>>THE SAME ACQUAINTANCES AS HE
>>DID.
>>THE RELATIONSHIP WE CONTEND
>>MAKES A POINT AND LET ME QUOTE.
>>SHE SAYS, I WOULD HAVE BEEN OFF
>>THAT CASE LIKE A SHOT, BECAUSE I
>>DIDN'T WANT TO BE ON THE CASE IN
>>THE FIRST PLACE.
>>I WANTED OFF MR. KORMONDY'S
>>CASE.
>>I WAS REALLY UNPOPULAR WITH NOT
>>ONLY MR. MCADAMS GROUP THAT I
>>WENT TO HIGH SCHOOL WITH, I WAS
>>GETTING CALLS FROM MY GROUP THAT
>>I WENT TO HIGH SCHOOL WITH.
>>HOW CAN YOU DEFEND HIM.
>>I GOT PHONE CALLS, AND IT WAS
>>ALSO, YOU KNOW, MY NAME HAD BEEN
>>IN THE PAPER, I RAN INTO PEOPLE
>>AT SOCIAL FUNCTIONS, IT MADE ME
>>FEEL CREEPY AND SHE HAD NO
>>SYMPATHY FOR THE DEFENDANT.
>> AND DID SHE TELL MR. KORMONDY
>>ABOUT THIS RELATIONSHIP -- WELL,
>>I HADE TO SAY RELATIONSHIP, BUT
>>THE FACT THAT SHE HAD GONE TO
>>SCHOOL WITH HIM?
>> SHE CLAIMS THAT SHE DID, BUT
>>HERE'S THE POINT THAT DOESN'T
>>RING TRUE WITH REGARD TO COMMON
>>SENSE.
>>IN MARCH OF 1994, MR. KORMONDY
>>WROTE A LETTER TO THE COURT AND
>>TO THE DEFENSE COUNSEL SAYING, I
>>WANT DEFENSE COUNSEL OFF THIS
>>CASE, BECAUSE I BELIEVE THERE'S
>>A CONFLICT OF INTEREST.
>>THERE WAS A -- A LETTER WAS SENT
>>BACK BY THE JUDGE TO
>>MR. KORMONDY SAYING WE'LL HAVE A
>>HEARING ON IT.
>>IT WAS SUPPOSEDLY CONDUCTED ON
>>MARCH 30, 1994.
>>THERE IS NO RECORD OF THIS
>>PARTICULAR HEARING, HOWEVER,
>>THERE'S A DOCKET ENTRY IN THE
>>CLERK'S DOCKET SAYING THE
>>HEARING WAS CONDUCT AND IT WAS
>>DENIED.
>>I TRIED TO GET THAT -- I TRIED
>>TO GET THAT RECORD DESTROYED,

> >UNAVAILABLE.
> >WITHIN 10 YEARS THEY DESTROYED
> >IT, IT WASN'T AVAILABLE.
> >IN 1998, SAME LETTER WAS WRITTEN
> >AGAIN SAYING WHEN IT WENT BACK
> >FOR REMAND, I WANT THEM OFF THE
> >CASE, CONFLICT OF INTEREST.
> >THERE WAS A HEARING CONDUCTED
> >WHERE SHE WAS ASKED WHY HE
> >WANTED THEM OFF.
> >HE DOES NOT MENTION IN THE
> >LETTER NOR AT THE HEARING THAT
> >HE HAD ANY KNOWLEDGE THAT SHE
> >EITHER KNEW THAT -- KNEW THE
> >VICTIM OR THAT THERE WAS DUAL
> >REPRESENTATION.
> >IT DOESN'T MAKE SENSE THAT SHE'S
> >GOING TO FILE A LETTER WITH THE
> >COURT ASKING FOR THEM TO BE
> >REMOVED FROM THE CASE, THAT HE
> >DOESN'T PRESENT THE INFORMATION
> >THAT WOULD HAVE CAUSED IT.
> >SECONDLY, SHE DID ACKNOWLEDGE
> >AND THE COURT FOUND HER CREDIBLE
> >THAT SHE INFORMED THE STATE
> >EARLY ON IN THE CASE AND THE
> >COURT ABOUT THAT REPRESENTATION
> >OF THE DEFENDANT AND ALSO HER
> >RELATIONSHIP.
> >NOT ONE TIME IN ALL THE HEARINGS
> >THAT WERE CONDUCTED DID SHE
> >INFORM THE COURT OF THAT
> >ACKNOWLEDGEMENT ON THE RECORD
> >AND WHEN SHE FINALLY DID, WHEN
> >IT WAS REMANDED IN 1998, THE
> >COURT -- SHE SAYS WELL I DIDN'T
> >PUT IT ON THE RECORD.
> >I KNEW THE VICTIM, IT WAS
> >RELATIONSHIP OF SCHOOL AND IT
> >WAS NOT EVEN A RELATIONSHIP.
> >THE COURT MAKES NO
> >ACKNOWLEDGEMENT OF IT.
> >HEARS FROM HER, DIDN'T SAY WELL
> >DID YOU TELL MR. KORMONDY, IS
> >THAT A CONFLICT FOR YOU?
> >NOTHING IS MENTIONED AT IT AT
> >ALL UNTIL THE SECOND HEARING IN
> >1998, WHERE SHE FILES A MOTION
> >TO WITHDRAW AND TELLS THE COURT
> >THAT THESE CONFLICTS, MEANING
> >THE JUDGE HAS PUT ON THE RECORD
> >HIS RELATIONSHIP WITH THE
> >VICTIM, AND THE FACT THAT HIS
> >WIFE WORKED FOR THE STATE

>>ATTORNEY'S OFFICE, SHE PUT THAT
>>ON THE RECORD EARLY ON AND SHE
>>SAYS TO THE COURT, MY CONFLICT
>>AND YOUR CONFLICT ARE
>>UNWAIVEBLE.
>>WELL IF IT'S NOT WAIVEBLE IN
>>1998, IT'S CERTAINLY NOT
>>WAIVEBLE IN 1994, WHY NOT
>>MENTION IT THEN.
>>IT WAS NEVER PRESENTED.
>>HERE'S WHERE THE DILEMMA COMES
>>IN.
>>THIS IS NOT AN -- THIS IS NOT A
>>NORMAL TYPE OF CONFLICT
>>SITUATION, THAT COMES BEFORE
>>YOU.
>>WHAT I MEAN BY THAT IS THIS.
>>THIS COURT HAS ADOPTED TYLER
>>VERSUS SULLIVAN DETERMINATION
>>THAT WHEN A CONFLICT OR
>>POTENTIAL CONFLICT COULD ARISE,
>>IGNORED BY THE COURT, IT IS
>>PRESUMED PREJUDICED AND ALMOST
>>ERROR ANALYSIS DOESN'T ARISE, TO
>>BE USED WHEN IT'S BROUGHT BEFORE
>>THIS COURT.
>>BUT IT'S DIFFERENT IN POST
>>CONVICTION WHEN IT'S RAISED FOR
>>THE FIRST TIME WHERE YOU HAVE TO
>>SHOW THAT THERE WAS AN ACTUAL
>>CONFLICT AND THAT IT AFFECTED
>>THEIR PERFORMANCE.
>> CAN I GO BACK TO THE COMMON
>>FLIKT?
>>ARE YOU SAYING THAT BECAUSE SHE
>>WENT TO HIGH SCHOOL WITH THE
>>VICTIM THAT THAT'S -- THAT
>>ITSELF IS -- RISES TO THE LEVEL
>>OF A CONFLICT OF INTEREST?
>> NO, I'M SAYING THAT THAT
>>RELATIONSHIP SHE HAD -- WE DON'T
>>KNOW WHAT FEELINGS SHE HAD FOR
>>THE MAN.
>>ALL WE KNOW, SHE MAY HAVE HAD
>>HIDDEN FEELINGS FOR HIM.
>>SHE HAD KNOWN HIM FOR FOUR YEARS
>>OF HIGH SCHOOL, HANK!!!!!!!!!!!! HANG AROUND AT
>>THE SAME SOCIAL FUNCTIONS WENT
>>TO FOOTBALL GAMES, BUT THE
>>QUESTION IS, HOW DID THAT AFFECT
>>HER MENTALLY?
>>DID THAT AFFECT HER PER!!!!!!!!!!!! PERFORMANCE.
>> ISSUE THAT GOES ON INSIDE IS
>>SOMEWHAT AKIN TO A JUDGE'S

> > RECUSAL.
> > THERE ARE CERTAIN CATEGORIES
> > WHERE RECUSAL IS REQUIRED, EVEN
> > THOUGH YOU COULD BE FAIR, BUT
> > IT'S PRESUMED.
> > THE FACT THAT YOU HAVE GONE TO
> > SCHOOL WITH THE VICTIM, BUT WERE
> > NOT SOCIAL FRIENDS, HOW IS THAT
> > A CONFLICT OF INTEREST IN
> > REPRESENTING THE DEFENDANT?
> > THIS IS THE FIRST ISSUE ABOUT
> > NOT WHETHER IT'S PREJUDICES THE
> > OUTCOME, BUT HOW IS THAT AN
> > ACTUAL CONFLICT OF INTEREST?
> > WELL THE FACT THAT SHE HAD
> > NO -- I'M SAYING IS, WELL, THE
> > COURT PUT ON THE RECORD THE FACT
> > THAT HE HAD A BUSINESS
> > RELATIONSHIP WITH THE
> > INDIVIDUAL, NOT A SOCIAL ONE.
> > LET'S FORGET ABOUT THE COURT.
> > ARE WE TALKING ABOUT -- I
> > THOUGHT YOU'RE TALKING ABOUT THE
> > DEFENSE COUNSEL.
> > I AM.
> > AND THIS WAS AN EVIDENTIARY
> > HEARING, NO?
> > THERE WAS AN EVIDENTIARY
> > HEARING.
> > SO ANYTHING ABOUT
> > SPECULATION, WHAT MIGHT HAVE
> > GONE ON IN HER MIND IF SHE
> > DIDN'T SAY IT, YOU'RE STUCK WITH
> > THE RECORD.
> > WHAT ON THIS RECORD, OTHER THAN
> > YOU'VE GIVEN US THAT, WELL, IT
> > SORT OF SEEMS INCREDIBLE THAT
> > SHE WOULDN'T BE -- WOULDN'T HAVE
> > A CONFLICT OF INTEREST, SHE MAY
> > HAVE FELT UNCOMFORTABLE
> > REPRESENTING A DEFENDANT, AN
> > UNPOPULAR DEFENDANT, BUT THAT
> > DOESN'T GIVE RISE TO A CONFLICT
> > OF INTEREST.
> > WHAT IS IT ABOUT THE FACT THAT
> > SHE WENT TO SCHOOL WITH HIM,
> > WHERE IS OUR CASE LAW THAT WOULD
> > SAY THAT IS AN ACTUAL CONFLICT
> > OF INTEREST?
> > WELL, IN AND OF ITSELF, I
> > WOULD AGREE THAT IT MAY NOT, BUT
> > WHEN SHE SAYS THAT SHE IS
> > BEING -- GETTING CALLS FROM HIS
> > FRIENDS, AND HER FRIENDS, AND

> >HOW CAN YOU REPRESENT THIS
> >INDIVIDUAL, AND SHE FELT CREEPY,
> >IT OBVIOUSLY AFFECTED HER
> >ABILITY TO REPRESENT THE CLIENT,
> >AS WELL AS THE FACT THAT THE
> >PUBLIC DEFENDER'S OFFICE ALSO
> >REPRESENTED MR. LONG.
> > NOW WE HAVE A -- THAT'S A
> >SECOND ISSUE ON LONG.
> > THAT'S CORRECT.
> > OK.
> >SO IT'S HER SAYING THAT SHE FELT
> >CREEPY THAT CREATES THE CONFLICT
> >OF INTEREST?
> > AND SHE WAS GETTING CALLS AND
> >ASKED BY THE VUK TIM'S
> >FRIENDS -- VICTIM'S FRIENDS.
> > AND THE SECOND PRONG HAS TO
> >BE THAT IT ACTUALLY AFFECTED THE
> >REPRESENTATION.
> > CORRECT.
> >AND THERE WAS A LIST OF THOSE,
> >WITH REGARD TO --
> > LET ME ASK YOU ABOUT THE
> >GETTING CALLS.
> >IT SEEMS TO ME WOULD BE A PRETTY
> >UNCOMFORTABLE POLICY IF WE SAID
> >WHENEVER A LAWYER REPRESENTS AN
> >UNPOPULAR DEFENDANT, MAYBE IN A
> >HIGH PUBLICITY CASE, STARTS
> >RECEIVING CALLS FROM PEOPLE,
> >WHETHER THE LAWYERS FRIENDS OR
> >THE VICTIM'S FRIENDS OR THE
> >GENERAL PUBLIC, OR ANYBODY, THAT
> >NOW THE LAWYER HAS A CONFLICT OF
> >INTEREST AND HAS TO BE REMOVED
> >FROM THE CASE, IT WOULD SEEM TO
> >ME THEN THAT WE'D BE REGULARLY
> >REMOVING LAWYERS FROM HIGH
> >PUBLICITY CASES.
> > THAT'S NOT WHAT THE CASE LAW
> >SAYS.
> >THE CASE LAW SAYS IF SHE
> >PRESENTS TO THE COURT THE
> >POTENTIAL I CAN'T TELL OF THAT
> >CONFLICT, IF SHE SAID JUDGE
> >EARLY ON, I'VE BEEN GETTING
> >CALLS FROM MY FRIENDS, FROM THE
> >VICTIM'S FRIENDS, I FEEL
> >UNCOMFORTABLE ON THIS CASE, I
> >DON'T KNOW IF I CAN DO A GOOD
> >JOB, THE COURT IS REQUIRED BY
> >PUTTING IT ON THE RECORD, THE
> >COURT MAKES A DETERMINATION AS

>>TO WHETHER THAT IS THE CONFLICT
>>AND SHE CAN ASK THOSE QUESTIONS.
>>SHE TESTIFIED TESTIFY TRIAL THAT
>>SHE TOLD THE COURT AND THE STATE
>>ABOUT THIS, AND IT WAS NEVER
>>INQUIRED ON THE RECORD WHETHER
>>THAT WOULD AFFECT HER OR NOT AND
>>THAT WAS A REQUIREMENT BY KY
>>LETTER.
>>WHAT IS UNUSUAL ABOUT KYLER,
>>THEY SAY IT'S NOT REQUIRED OF
>>THE COURT TO INQUIRE OF THE
>>CONFLICT UNLESS IT KNEW OR
>>SHOULDN'T HAVE KNOWN.
>>WELL IT DID KNOW.
>>ACCORDING TO HER OWN TESTIMONY,
>>THE COURT KNEW AND DID NOT PUT
>>IT ON THE RECORD.
>>NOW IT SAYS UNDER THOSE SECIAL
>>SPIRKS, IT DOESN'T SAY WHAT THE
>>RESULT IS.
>>IT DOES SAY WHEN IT'S REVIEWABLE
>>BY THE COURT, PREJUDICE IS
>>PRESUMED AND IT'S REVERSIBLE,
>>BUT REGARDING RAISED FOR THE
>>FIRST TIME POST CONVICTION, AS
>>TO SPECIAL CIRCUMSTANCES, THIS
>>WAS A SPECIAL CIRCUMSTANCE CASE
>>WHERE THE COURT KNEW ABOUT IT OR
>>SHOULD HAVE KNOWN ABOUT IT AND
>>FAILED TO BRING IT ON THE RECORD
>>AND I WOULD SUGGEST THAT THAT
>>ALONE WOULD GIVE RISE TO A
>>PRESUMPTION OF EVIDENCE AS IF IT
>>WAS RAISED FOR THIS COURT ON
>>APPEAL AND IT SHOULD HAVE BEEN.
>>COUNSEL WAS AWARE --
>> WHAT WAS THE TESTIMONY AT THE
>>EVIDENTIARY HEARING?
>> SHE TESTIFIED THAT EARLY ON
>>IN CHAMBERS, SHE TOLD THE COURT
>>AND THE STATE OF HER CONFLICT.
>> AS FAR AS IT AFFECTING HER,
>>WHAT WAS HER TESTIMONY AS TO HOW
>>THIS AFFECTED HER ABILITY TO
>>REPRESENT THE DEFENDANT?
>> SHE STATED THAT SHE DIDN'T
>>FEEL IT AFFECTED HER ABILITY,
>>BUT WHEN YOU GO BACK AND LOOK AT
>>HOW SHE TESTIFIED HOW SHE FELT
>>ABOUT IT AND WHAT SHE DID, FOR
>>EXAMPLE, THE STATE HAD
>>ACQUIESCED TO A SUPPRESSION OF
>>THE DEFENDANT'S STATEMENT, NOT

> >TELLING THE DEFENDANT, SHE
> >DISMISSES HIM AND SAYS YOU DON'T
> >HAVE TO BE HERE, WITHDRAWS THE
> >MOTION.
> >WRITING A LETTER OR A MEMO IN
> >HER OWN FILE SAYING WHY SHE DID
> >IT, DOESN'T TELL THE DEFENDANT
> >WHY SHE DID IT.
> >SHE TESTIFIED, I THOUGHT THERE
> >WAS A SUPPRESSION HEARING.
> >I THOUGHT IT WAS DENIED.
> >I DIDN'T EVEN KNOW ABOUT IT.
> > WAS SHE ASKED ABOUT THIS AT
> >THE HE EVIDENTIARY HEARING?
> > SHE WAS.
> >SHE FELT THAT SHE BELIEVED HIS
> >TESTIMONY BEFORE THE JURY, THE
> >FACT FROM HIS OWN WORDS, THAT HE
> >WAS NOT THE SHOOTER OF THIS
> >CASE, AND THAT SHE DID NOT WANT
> >HIM TO TESTIFY.
> >BUT YOU HAVE TO UNDERSTAND WE'RE
> >WEIGHING AGAINST A CONFESSION
> >VERSUS A CONVICTED FELON WHO IS
> >ON DRUGS SAYING HE SAID THAT.
> >TWO DIFFERENT WAYS COMPLETELY
> >AND DIDN'T CONFER WITH THE
> >CLIENT.
> >SHE ACKNOWLEDGES IN THE OPENING
> >STATEMENT THAT HE WAS GUILTY OF
> >ROBBING -- ROBBERY AND HOME
> >INVASION, NOT WAITING TO SEE IF
> >THE EVIDENCE COMES IN FOR THE
> >STATE TO PROVE IT OR IF A
> >WITNESS IS GOING TO BE KILLED ON
> >THE WAY TO THE COURTHOUSE, HE
> >TELLS HER HE WAS GUILTY RIGHT
> >OFF THE BAT.
> >SHE DOESN'T OBTAIN ANY RECORDS
> >FROM --
> > YOU ARE FAST USING EVERY BIT
> >OF YOUR TIME.
> >ON THIS ISSUE, THAT'S FINE, BUT
> >YOU'RE ALREADY DOWN TO EIGHT
> >MINUTES OUT OF 20.
> > I'LL MAKE TWO POINTS -- THANK
> >YOU, JUSTICE ANSTEAD.
> >TWO POINTS WITH REGARD TO THINGS
> >SHE DIDN'T DO.
> >TWO MAJOR WITNESSES AND SHE DOES
> >BRING IN IMPEACHMENT EVIDENCE.
> >PRIOR INCONSISTENT STATEMENT OF
> >MR. MCADAMS AND DOESN'T BRIEF IN
> >DEPUTY SHERIFF -- BRING IN

> >DEPUTY SHERIFF WHO TOOK HER
> >STATEMENT.
> >THE COURT FINDS RELEVANT
> >INFORMATION YOU DIDN'T BRING HIM
> >INTO SAY WHETHER HE WAS ABLE TO
> >TAKE DOWN NOTES CORRECTLY.
> >THAT'S IRRELEVANT.
> >THE POINT BEING THE STATE WAS
> >ASKED, SHE COULD HAVE USED IT TO
> >IMPEACH MR. MCADAMS, THEY SAID
> >SHE DIDN'T WANT TO OFFEND THE
> >JURY BY ATTACKING THE VATICAN
> >TUM.
> >THEY DIDN'T HAVE TO.
> >THEY COULD HAVE CALLED THE
> >DEPUTY SHERIFF.
> > THEY DIDN'T DO IT.
> > MR. LONG HAD A DEPOSITION
> >WITH THE -- THE STATE ARGUED
> >THAT HIS STATEMENT TO MR. LONG,
> >THAT HE WAS THE SHOOTER, WAS THE
> >BASIS FOR WHICH ESTABLISHED HIM
> >TO BE THE SHOOTER.
> >YET IN HIS DEPOSITION, SHE
> >DOESN'T SAY THAT.
> >WAS HE IMPEACHED WITH IT?
> >NO.
> >NOT ONLY THAT THERE WAS A BIG
> >CONTROVERSY WHERE SHE WANTED HIS
> >CONVICTION, TO SEE WHETHER HE
> >WAS CONVICTED OF A FELONY.
> >THEY SPENT 20 MINUTES TO
> >HALF-HOUR OBTAINING THAT RECORD
> >AND THEN SHE DOESN'T ASK HIM
> >WHETHER HE'S EVER BEEN CONVICTED
> >OF A FELONY, WHICH IS ONE OF THE
> >CREDIBILITY ISSUES THAT GOES TO
> >THE JURY.
> >SECOND ISSUE, WITH REGARD TO
> >NEWLY DISCOVERED EVIDENCE.
> >AGAIN I SUGGEST THIS IS NOT --
> > YOU'RE GOING TO GET INTO
> >BUFFEY?
> > YES.
> > DID EITHER ONE OF THEM
> >TESTIFY AT MR. KORMONDY'S TRIAL?
> > NO, AND THAT'S WHY I SAY IT'S
> >NOT A TRADITIONAL TYPE OF RECAN
> >RECAN -- RECANTATION.
> > NOT ONLY IS IT NOT A
> >TRADITIONAL TYPE, IT IS NOT A
> >RECANTATION AT ALL BECAUSE IT
> >DIDN'T OWE!!!!!!!! OCCUR IN THE TRIAL.
> > WHEN I LOOKED UP THE WORD

> > RECANTATION, IT SAYS THE
> > CHANGING OF TESTIMONY, BUT IT
> > DOESN'T SAY HOW.
> > HOW ARE WE TO SAY THIS IS A
> > CHANGE IN TESTIMONY IF -- THERE
> > WAS NO TESTIMONY AT THIS TRIAL
> > THAT'S GOING TO BE CHANGED, SO
> > IT'S NOT THAT THE JURY HEARD
> > SOMETHING THAT IS NOW DETERMINED
> > NOT TO BE TRUE, THE JURY DIDN'T
> > HEAR IT AT ALL, SO HOW IS IT
> > RELEVANT WHATSOEVER?
> > WELL, I DIDN'T UNDERSTAND
> > QUITE THE QUESTION WITH REGARD
> > TO RELEVANCY.
> > HOW IS THE RECANTATION
> > RELEVANT, BECAUSE IT'S NOT
> > RECANTING ANYTHING THAT THE JURY
> > OR THE JUDGE OR ANYBODY HEARD AT
> > THIS TRIAL?
> > FIRST OF ALL IT WAS
> > INTRODUCED THAT NEWLY DISCOVERED
> > EVIDENCE, IT WAS BROUGHT UP BY
> > THE STATE AND ARGUED BY THE
> > COURT AS BEING RECANTED.
> > MR. BUFFEN -- NEITHER TESTIFIED
> > AT MR. KORMONDY'S TRIAL, BUT
> > MR. BUFFEN AFTER HIS OWN TRIAL
> > PROVIDED A DEPOSITION AND
> > TESTIFIED AT MR. HAYESEN'S
> > TRIAL.
> > THOSE WERE RECANTED AT THE BY
> > MR. BUFFEN SAYING HE LIED --
> > BUT HE DIDN'T RIPE AT
> > MR. KORMONDY'S TRIAL IS IT.
> > NO, WHICH IS NEWLY DISCOVERED
> > EVIDENCE ON THAT BASIS.
> > MR. HAZ!!!!!!!!!! HAYESEN TESTIFIED AT HIS OWN
> > TRIAL TO THE SIMILAR FACTS AT
> > HIS OWN TRIAL.
> > DID HE TESTIFY THAT
> > MR. KORMONDY WAS NOT THE
> > SHOOTER.
> > HE HAD SEEN MR. BUFFEN WITH
> > THE GUN, HE HEARD A SHOT,
> > WHETHER HE CAME BACK OUTSIDE,
> > MR. BUFFEN ONLY LEFT THE HOUSE
> > HOUS AND MR. BUFFEN INDICATED TO
> > HIM MA HE HAD SHOT MR. MCADAMS
> > HE DID NOT SEE THE ACTUAL
> > SHOOTING.
> > MR. BUFFEN TESTIFIED AND I WOULD
> > POINT OUT UNDER THE THREAT OF
> > NOW BEING RETRIED FOR A DEATH

> >SENTENCE, BECAUSE HE'S OBJECT
> >VEE YATING HIS AGREEMENT, THAT
> >HE IN FACT WAS THE SHOOTER OF
> >MR. MCADAMS AND NOT MR. KORMONDY
> >AND THE REASON WHY HE HAD
> >TESTIFIED THAT MR. KORMONDY WAS
> >THE SHOOTER WAS BECAUSE HE
> >WANTED TO SAVE HIS OWN LIFE
> >WHETHER THE STATE APPROACHED HIM
> >WHEN THE JURY HAD KNOCKED ON THE
> >DOOR AND ASKED QUESTIONS ABOUT A
> >SECOND DEGREE MURDER
> >INSTRUCTION, THE STATE
> >APPROACHED THE DEFENSE AND SAID,
> >HOW ABOUT A DEAL, HE TOOK IT,
> >AND BECAUSE MR. KORMONDY WAS THE
> >ONE WHO POINTED THE FINGER AT
> >HIM, HE WAS GOING TO POINT IT
> >BACK AT MR. KORMONDY.
> > REFRESH MY RECOLLECTION.
> >MR. KORMONDY'S TRIAL, WAS
> >THERE -- DID THE STATE ARGUE
> >THAT MR. KORMONDY WAS THE
> >SHOOTER?
> > THEY DID.
> > AND DID THE COURT IN
> >SENTENCING MR. KORMONDY FIND
> >THAT HE WAS THE SHOOTER?
> > HE DID.
> >AND THIS COURT ACCEPTED THOSE
> >FACTS.
> >NOW, THE COURT MAKES THE
> >STATEMENT IN --
> > YOU'RE WELL INTO YOUR
> >REBUTTAL.
> > ONE FINAL COMMENT.
> >THE COURT MAKES THE COMMENT IN
> >ITS ORDER THAT EVEN IF BUFFEN OR
> >HAYESEN HAD TESTIFIED, THERE
> >WOULD BE NO CHANGE IN
> >CIRCUMSTANCES.
> >AT TRIAL, I WOULD PROBABLY AGREE
> >WITH THAT.
> >HOWEVER, THIS COURT CANNOT
> >CREATE A PROPORTIONALITY REVIEW,
> >AND UNTIL THESE TWO INDIVIDUALS
> >TESTIFY AT TRIAL AND SHOULD THEY
> >BE GRANTED A SPECIAL VERDICT BY
> >THE JURY TO DETERMINE WHO IN
> >FACT WAS THE SHOOTER THEY
> >BELIEVED TO BE, THIS COURT CAN
> >DO A PROPORTIONALITY REVIEW AS
> >IT DID IN HAZEN AND YOU'LL FIND
> >MR. HAZEN WAS SUBSTANTIALLY MORE

>>CULPABLE, SHOOTER NOT
>>WITHSTANDING, THAN MR. KORMONDY
>>WAS.
>> SO YOUR ARGUMENT IS THIS IS
>>NEWLY DISCOVERED EVIDENCE THAT
>>WOULD GO TO THE SENTENCE, NOT
>>THE CONVICTION?
>> THAT'S CORRECT AND THE FACT
>>THAT THE TRIAL COURT DID FIND
>>NEWLY DISCOVERED EVIDENCE.
>> MAY IT PLEASE THE COURT, MY
>>NAME IS MEREDITH CHARBULA, I'M
>>AN ASSISTANT ATTORNEY GENERAL
>>FOR THE STATE OF FLORIDA AND I
>>HAVE HELP THE APPEALEE IN THIS
>>CASE.
>> COULD WE START WITH THE LAST
>>THING FIRST, BECAUSE I WANT TO
>>MAKE SURE I UNDERSTAND WHAT THE
>>STATE'S POSITION WAS.
>>DID HAZEN GO TO TRIAL?
>> EMWHY,!!!!!!!YES, MA'AM, HAZEN WENT TO
>>TRIAL, HE WAS CONVICTED,
>>SENTENCED TO COURT.
>>THIS COURT ON A ROW VIEW REDUCED
>>HIS SENTENCE TO LIFE AND FOUND
>>THAT HE WAS A MINOR PARTICIPANT
>>AS COMPARED TO MR. KORMONDY OR
>>BUFFEN.
>> HAYESEN SAID HE DIDN'T COME
>>INTO THE -- WAS NOT IN THE ROOM
>>AT THE TIME?
>> ACTUALLY, MR. HAYESEN
>>TESTIFIED AT HIS OWN TRIAL,
>>HE -- THAT HE WASN'T THERE, HE
>>HAD NOTHING TO DO WITH IT, HE
>>LEARNED ABOUT IT LATER FROM
>>MR. BUFFEN, HE DENIED HIS
>>INVOLVEMENT AT ALL.
>> DID WE MAKE A STATEMENT IN
>>HAYESEN'S CASE AS TO WHO THE
>>SHOOTER WAS?
>> MR. KORMONDY.
>> WE SAID THAT?
>> YES, MA'AM.
>> IN TERMS OF THE
>>PROPORTIONALITY, CAN YOU TELL ME
>>WHETHER IN THE -- THE NEW
>>EVIDENCE COULD AFFECT OUR
>>PROPORTIONALITY ANALYSIS IN THIS
>>CASE?
>> NOM, BECAUSE MR. LONG
>>TESTIFIED AT THE EVIDENTIARY
>>HEARING CONSISTENT WITH HIS

>>TESTIMONY AT TRIAL THAT
>>MR. KORMONDY ON TWO OCCASIONS
>>ADMITTED THAT HE SHOT
>>MR. MCADAMS AND MR. BUFFEN'S
>>TESTIMONY AND MR. HAZEN'S
>>TESTIMONY WAS FOUND SPECIFICALLY
>>NOT TO BE CREDIBLE BY THE
>>COLLATERAL COURT JUDGE.
>> IS THERE -- WAS -- DID
>>KORMONDY, IS THE STATE'S
>>CONTENTION THAT AT SOME POINT
>>LEADING UP TO THE SHOOTING THAT
>>KORMONDY RAPED MRS. MCADAMS.
>> YES, SHE TESTIFIED THAT ALL
>>THREE INTRUDERS RAPED HER.
>>MR. -- EVEN IN HIS SWORN --
>>EVEN IN HIS STATEMENT,
>>MR. KORMONDY ADMITTED THAT HE
>>WENT BACK WHEN MR. HAYESEN WAS
>>ORAL LIVE SOD OMIZING HER AT
>> GUN
>>POINT AND IT'S AT THIS POINT --
>> MR. HAYESEN --
>> MR. HAYESEN WAS THE FIRST
>>PERSON TO TAKE MS. MCADAMS BACK
>>AT GUN POINT.
>> AND WE FOUND HIM TO BE A
>>MINOR PARTICIPANTS?
>> YES, MA'AM.
>>HE TOLD HER WHEN HE WAS ORAL
>>LIVE SOD OMIZING HER, WHEN SHE
>>WAS HAVING DIFFICULTY GAGGING ON
>>HIS PENIS THAT I'LL BLOW YOUR
>>HEAD OFF AND YET THIS COURT DID
>>FIND THAT HE WAS A MIGHT HAVE
>>NOR PARTICIPANT.
>>MR. KORMONDY, IN ADDITION TO
>>MS. MCADAMS UNEQUIVOCAL AND
>>UNWAVERING TESTIMONY ABOUT THE
>>SECOND RAPIST, WHICH WAS
>>MR. KORMONDY, SHE DESCRIBED HIM,
>>HIS APPEARANCE 5'9" AND 135 WITH
>>LONG HAIR DOWN TO HIS COLLAR AND
>>THAT WAS CONSISTENT WITH
>>MS. MCADAMS DESCRIPTION OF THE
>>SECOND RAPIST.
>>AND THEY -- A FIBER ANALYSIS
>>ALSO WAS INTRODUCED AT TRIAL,
>>THERE WERE FIBERS FROM
>>MRS. MCADAMS' GREEN DRESS, WHICH
>>SHE HAD BOUGHT SPECIALLY FOR HER
>>20 YEAR REUNION MA THAT MR. AND
>>MRS. MCADAMS HAD JUST RETURNED
>>FROM WHEN THE THREE ENTERED

> >THEIR HOME, FIBERS FROM HER
> >DRESS WERE FOUND IN THE DRIVER'S
> >SEAT OF MR. KORMONDY'S CAR AND
> >MRS. KORMONDY IDENTIFIED THAT
> >CAR AS MR. KORMONDY'S, SO THERE
> >WERE FIBERS FROM --
> > MRS. MCADAMS TESTIFIED AT
> >TRIAL THAT THE SECOND RAPIST AND
> >THE FIRST RAPIST CAME IN CONTACT
> >WITH HER DRESS, SHE WAS NOT
> >SURE --
> > THIS DOESN'T GO TO WHETHER HE
> >RAPED MRS. MCADAMS, ON THE ISSUE
> >OF THE SHOOTER THERE, YOU SAID
> >THAT WE DID FIND OR WE STATED IN
> >THE HAYESEN CASE THAT KORMONDY
> >WAS THE SHOOTER.
> >YOU SAID IT'S STILL LONG THAT
> >SHAYS THAT KORMONDY WAS THE
> >SHOOTER.
> >IS THERE ANYTHING IN TERMS OF
> >BULLET EVIDENCE OR THAT --
> > YES, MA'AM.
> >ONE THING IS VERY SIGNIFICANT
> >ABOUT THE ID!!!!!!!!! IDENTITY OF THE THIRD
> >RAPIST AND THAT'S WHAT
> >MR. KORMONDY THROUGHOUT HIS
> >EVIDENCE RIFE HEARING IS
> >CLAIMING, IT WAS HAYESEN WHO
> >WENT BACK WITH MCADAMS AGAIN OF
> >A HE FIRST RAPED HER.
> >HAYESEN WHO WENT BACK WITH
> >MRS. MCADAMS AGAIN AND IT WAS
> >BUFFEN WHO FIRED THE SHOT.
> >WE KNOW FROM THE TESTIMONY AT
> >TRIAL THAT MR. MCADAMS WAS
> >KILLED WITH A .30 HATE ROUND.
> > -- .38 ROUND.
> >WHICH WAS MR. MCADAMS' OWN GUN,
> >WHICH THE ASSAILANTS FOUND IN
> >THE BEDROOM NIGHT TABLE.
> >THE THIRD RAPIST HAD THE .44
> >WITH HIM WHEN HE FORCED
> >MRS. MCADAMS BACK IN THE TOM
> >RUNED RAPED HER AND IT WAS THE
> >THIRD RAPIST WHO SHE POSITIVELY
> >AS FOUND BY THE COLLATERAL COURT
> >JUDGE HAS CLEARLY AND IDENTIFIED
> >AS BUFFEN, BECAUSE BUFFEN WAS
> >THE ONLY ONE OF THE THREE WHO
> >ORIGINALLY DIDN'T HAVE ANYTHING
> >COVERING HIS FACE, AND
> >MR. BUFFEN WAS THE FIRST ONE WHO
> >ENTERED THE HOME WITH THE GUN,

> >AND PUT THE MCADAMS ON THE FLOOR
> >AND MRS. MCADAMS DESCRIBED IT AT
> >TRIAL AS WARP ALL SORT OF FROZEN
> >IN TIME, GARY AND I COULDN'T
> >BELIEVE WE THOUGHT IT WAS --
> >THEY THOUGHT IT WAS THEIR
> >NEIGHBOR KNOCKING ON THEIR DOOR,
> >BECAUSE WHEN BUFFEN KNOCKED ON
> >THE DOOR, AND THEY SAID WHO'S
> >THERE, HE SAID IT'S ME, SO THEY
> >PRESUMED IT WAS THEIR NEIGHBOR
> >NEXT DOOR.
> >SO THEY WERE FROZEN IN TIME,
> >STARING AT THE FACE OF THE MAN
> >WHO WOULD EVENTUALLY RAPE HER,
> >SO SHE SAW HIS FACE VERY WELL
> >AND SHE ALSO RECOGNIZED HIS
> >VOICE.
> >SHE WAS CLEAR ABOUT THE THIRD
> >RAPIST AND THAT WAS BUFFEN AND
> >HE WAS IN THE ROOM WITH HER AT
> >THE TIME SHE HEARD THE GUNSHOT.
> >THRRT A .44 SLUG PULLED OUT OF
> >THE FLOOR.
> >THE .44 HAD TO BE WITH
> >MR. BUFFEN BECAUSE IT WAS A SHOT
> >FIRED IN THE FLOOR.
> >NOW WE DON'T KNOW POSITIVELY
> >THAT MR. BUFFEN WAS THE ONE THAT
> >FIRED THE SHOT IN THE FLOOR, BUT
> >IT'S A LOGICAL INFERENCE FROM
> >THE EVIDENCE THAT HE DID THAT.
> >SO NOT ONLY DO WE HAVE
> >MRS. MCADAMS TESTIMONY THAT SHE
> >RECOGNIZED BUFFEN, WE HAVE OF
> >THE GUNSHOT IN THE FLOOR
> >CORROBORATING THAT THE .44 WAS
> >BACK WITH HER.
> > DOESN'T THAT RAISE THE
> >QUESTION THEN ABOUT THERE'S AN
> >ARGUMENT HERE ABOUT THE FACT
> >THAT AT VARIOUS POINTS
> >MRS. MCADAMS MADE A DIFFERENT --
> >MADE DIFFERENT STATEMENTS ABOUT
> >WHO WAS IN THE ROOM WITH HER AT
> >WHAT POINT AND SO I'M A LITTLE
> >CONCERN ABOUT THE ARGUMENT THAT
> >TRIAL COUNSEL DID NOT USE THESE
> >VARIOUS STATEMENTS, THAT
> >MRS. MCADAMS MADE, WHICH SHOW
> >DIFFERENT PLACES AND DIFFERENT
> >POSITIONS OF PEOPLE?
> > I THINK THE RECORD WILL
> >REFUTE THAT.

> >NOW, MR. KORMONDY HAS ALLEGED
> >THAT IT WAS INEFFECTIVE
> >ASSISTANCE OF APPELLATE COUNSEL
> >TO NOT PUT MRS. MCADAMS'
> >DEPOSITION INTO THE RECORD AND
> >THAT SHE WAS ALSO INHEY IF HE
> >CAN IF I HAVE FOR FAILING TO
> >IMPEACH HER ON THIS PARTICULAR
> >POINT, IN THE PARTICULAR DEPUTY
> >SHERIFF'S DEPOSITION TESTIMONY.
> >MRS. MCADAMS WASN'T PUT IN THE
> >RECORD EVEN THOUGH HE CITED FROM
> >IT AND THE STATE WOULD BE HAPPY
> >TO SUPPLEMENT THE RECORD IF IT
> >WISHES BUT IT WILL SHOW THAT SHE
> >CONSISTENTLY, EVEN IF HER
> >DEPOSITION TESTIMONY, IDENTIFIED
> >BUFFEN AS HER THIRD, SO I THINK
> >THE RECORD WILL REFUTE THAT
> >MRS. MCADAMS WAS EVER CONFUSED.
> >THERE WAS AN ISSUE ABOUT THE
> >DEPUTY SHERIFF, BUT THE
> >COLLATERAL COURT FOUND THAT THE
> >DEPUTY WHO WAS A ROAD OFFICER,
> >NOT AN INVESTIGATOR, HE WAS
> >SIMPLY THE FIRST ONE ON THE
> >SCENE VERY SHORTLY AFTER
> >MRS. MCADAMS HAD BEEN RAPED BY
> >THREE MEN, HAD FOUND HER HUSBAND
> >BLEEDING AND DYING ON THE FLOOR,
> >HAD RUN NAKED ACROSS THE -- HER
> >NEIGHBOR'S HOUSE TO SUMMON HELP
> >AND AS HE DESCRIBED, WAS CRYING
> >NATURALLY, WHERE HE FOCUSED ON
> >ONE PARTICULAR POINT IN TIME.
> >DURING WHEN THE GUN SHOTS WERE
> >HEARD.
> >SO I THINK THE RECORD WILL
> >REFUTE THAT MRS. MCADAMS EVER
> >GAVE INCONSISTENT TESTIMONY
> >ABOUT WHO WAS WHERE AT WHAT
> >TIME.
> > I JUST WANT TO GO BACK TO
> >THIS ISSUE OF THE HAYESEN AND
> >BUFFEN.
> >THE TRIAL JUDGE -- WHETHER YOU
> >CALL IT A RECANTATION OR NOT,
> >THE TRIAL JUDGE FOUND NEITHER OF
> >THE TWO CO-DEFENDANTS TO BE
> >CREDIBLE.
> > THAT'S CORRECT.
> > SO IN TERMS OF OUR DEFERENCE
> >TO THAT, THERE IS NO REASON THAT
> >WE WOULD HAVE IN HOUR CASE LAW,

> >AND I THINK THAT MRS. REITER
> >ACKNOWLEDGED IT, TO SECOND GUESS
> >THE TRIAL JUDGE ON THE
> >CREDIBILITY OF THESE TWO
> >DEFENDANTS -- CO-DEFENDANTS.
> > THAT'S CORRECT, YOUR HONOR,
> >AND THIS COURT'S DECISION IN
> >JOHNSON, THIS COURT SAID THAT IT
> >WOULD NOT SUBSTITUTE ITS
> >JUDGMENT FOR THAT OF THE TRIAL
> >COURT ON ISSUES OF CREDIBILITY,
> >AND MR. -- THOUGH MR. KORMONDY
> >IN HIS BRIEF HAS ALLEGED THAT
> >THE TRIAL JUDGE FAILED TO
> >CONSIDER ALL THE CIRCUMSTANCES
> >OF THE CASE, WHEN DETERMINING
> >THE CREDIBILITY OF MR. HAYESEN
> >AND MR. BUFFEN, THE ORDER, THE
> >VERY COMPREHENSIVE ORDER THAT
> >THE COLLATERAL COURT JUDGE
> >ISSUED IN THIS CASE REFUTES
> >THAT.
> >HE CONSIDERED NOT ONLY THE FACT
> >THAT MR. HAZEN HAD LIED AT HIS
> >OWN TRIAL, MR. HAYESEN ADMITTED
> >THAT WHEN HE FILED HIS 3850
> >MOTION, ATTACKING HIS CONVICTION
> >AND SENTENCE, THAT HE AGAIN
> >DENIED ANY INVOLVEMENT,
> >MR. HAZEN'S TESTIMONY THAT HE
> >WOULD, YOU KNOW, HE HAD NO
> >REALLY ISSUE AT TIMES COMMITTING
> >PERJURY, HIS CLOSE RELATIONSHIP
> >WITH THE DEFENDANT --
> > WOULD YOU CLARIFY FOR ME, DID
> >MR. HAZEN, MR. BUFFEN ACTUALLY
> >TESTIFY AT THE EVIDENTIARY
> >HEARING?
> > YES, SIR.
> >BOTH DID.
> >THE COLLATERAL COURT FOUND BOTH
> >WITNESSES NOT TO BE CRBL.
> > IT WASN'T JUST BASED ON AN
> >AFFIDAVIT?
> > NO, SIR.
> >BOTH TESTIFIED AT THE EVIDENCE
> >RIFE HEARING.
> >MR. HAZEN SAID HE WAS BACK IN
> >THE BACK WITH MRS. MCADAMS WHEN
> >THE SHOT WAS FIRED, SO HE DIDN'T
> >ACTUALLY SEE THE SHOOTING, BUT
> >HE CLAIMS THAT HE WASN'T BACK
> >WITH HER, BUT IF YOU REMEMBER,
> >MRS. MCADAMS TESTIFIED AT TRIAL

> > THAT THE THIRD RAPIST WHO TOOK
> > HER BACK AND SHE IDENTIFIED HIM
> > AS MR. BUFFEN, HELD A GUN TO HER
> > AND SAID, I DON'T KNOW WHAT THE
> > OTHER TWO DID TO YOU, BUT I
> > THINK YOU'RE GOING TO LIKE WHAT
> > I'M GOING TO DO TO YOU, SO THE
> > FACT IS THERE'S EVIDENCE THAT
> > ALL THREE -- YOU KNOW, IN
> > ADDITION TO HER UNEQUIVOCAL
> > TESTIMONY, THE STATEMENT OF ONE
> > OF THE INTRUDERS AT THE TIME
> > INDICATES INVOLVEMENT OF ALL
> > THREE IN THE SEXUAL ASSAULT AND
> > MR. BUFFEN'S PRESENCE IN THE
> > BEDROOM WHEN THE FATAL SHOT WAS
> > FIRED INTO MR. MCADAMS' HEAD,
> > WITH THE GUN PRESSED INTO THE
> > BACK OF HIS HEAD.
> > IS DEFENSE COUNSEL CORRECT
> > THAT MR. BUFFEN REALLY COULD BE
> > REPROSECUTED FOR THIS MURDER?
> > YOU KNOW, I THINK THAT'S
> > ENTIRELY SPECULATIVE.
> > AS FAR AS I KNOW, NO EFFORT HAS
> > BEEN MADE TO RETRACT HIS GUILTY
> > PLEA AND I SERM THINK THERE'S
> > DIFFICULTIES DECADE LATER WITH
> > ATTEMPTING TO DO SO OR DECADE OR
> > SO LATER.
> > I GUESS I WAS INTERESTED,
> > BECAUSE YOU KNOW, YOU LOOK AT
> > THESE RECANTED STATEMENTS AND --
> > OR WHAT -- NEWLY DISCOVERED
> > EVIDENCE AND YOU SAY WELL,
> > NEITHER ONE OF THEM HAVE
> > ANYTHING TO LOSE BECAUSE NOW
> > THEY BOTH HAVE LIFE SENTENCES.
> > BUT IT BECOMES A LITTLE BIT
> > DIFFERENT IN ONE OF THEM COULD
> > BE REPROSECUTED, ALTHOUGH I'M
> > HAVING TROUBLE TRYING TO FIGURE
> > OUT HOW.
> > THAT'S THE THING, I THINK
> > THAT'S FIRST OF ALL ENTIRELY
> > SPECULATIVE, GIVEN THE POTENTIAL
> > LEGAL HURDLES THAT THE
> > PROSECUTION WOULD HAVE TO JUMP
> > OVER.
> > MR. BUFFEN IS IN PRISON FOR THE
> > REST OF HIS LIFE, WHERE HE
> > CERTAINLY SHOULD BE.
> > BUT I -- SO I THINK -- BUT I
> > THINK ONE OF THE THINGS IS THE

>>CLASS REL COURT CONSIDERED IS
>>MR. BUFFEN REALLY WASN'T
>>THINKING ABOUT THE POSSIBILITY
>>OF BEING PROSECUTED AS FOUND BY
>>THE TRIAL COURT AND PRESENTED AT
>>THE EVIDENCE RIFE HEARING.
>>WHEN MR. BUFFEN WAS TAKEN BACK
>>TO THE DEPARTMENT OF CORRECTIONS
>>AFTER THE FIRST DAY OR SO OF THE
>>EVIDENCE RIFE HEARING AND I'M
>>NOT SURE WHERE HE WAS AT THE
>>TIME, BUT WHEN THEY TRIED TO
>>TAKE HIS LEG IRONS OFF, THEY
>>FOUND A MAKESHIFT CUFF KEY AND
>>OFFICER TESTIFIED TESTIFY
>>EVIDENTIARY HEARING THAT -- AT
>>THE EVIDENTIARY HEARING, IN HIS
>>OPINION, IT WAS NOT A
>>MANUFACTURER THAT IS NOT
>>PRODUCED BY A COMMERCIAL
>>ESTABLISHMENT CUFF KEY AND
>>NOBODY WAS MISSING A CUFF KEY.
>> SO YOU'RE SAYING THERE'S
>>SOMETHING ABOUT WHETHER BUFFEN'S
>>MOTIVATION WAS TO TRY TO ESCAPE.
>> YES.
>>AND THAT WAS FOUND BY THE CLEFT
>>REL COURT JUDGE.
>> -- COLLATERAL COURT JUDGE.
>> IT WOULD SEEM IF THAT'S
>>SOMEONE'S MOTIVATION WHEN THEY
>>CAME INTO COURT, THEY WOULD
>>START TO FUDGE IT, THEY WOULDN'T
>>GO AND TESTIFY THAT THEY WERE
>>THE SHOOTER IF THEIR PRIMARY
>>MOTIVATION WAS ESCAPE.
>>DON'T YOU FIND THAT A LITTLE
>>BIT --
>> NOT IF HE WAS PLANNING ON IT,
>>AND HE WANTED TO CONVINCED
>>MR. REITER THAT HE WAS GOING TO
>>BE A POSITIVE WITNESS FOR THE
>>DEFENSE.
>>AND THAT, IN ORDER TO BE A
>>POSITIVE WITNESS FOR THE
>>DEFENSE, HE NEEDS TO BE
>>TRANSPORTED OUT OF THE
>>DEPARTMENT OF CORRECTIONS WHERE
>>HE WILL HAVE THE BEST CHANCE --
>> I AGREE HE COULD HAVE SAID
>>THAT EARLIER BUT THEN HE GETS
>>INTO THE COURTROOM AND THERE ARE
>>MANY CASES WHERE THE
>>RECATATIONS OR WHAT ARE FALL

>>APART.
>>THE PERSON DOESN'T SAY WHAT
>>THEY'RE GOING TO SAY, BUT YOU
>>AGREE THAT MR. BUFFEN ACTUALLY
>>PRODUCED FOR MR. REITER, THAT IS
>>THAT HE SAID NO, I WAS THE
>>SHOOTER.
>> HE DID.
>>AND AGAIN, THE COLLATERAL COURT
>>FOUND THAT HE WAS NOT A CREDIBLE
>>WITNESS BASED ON YOU!!!!!!!!!! ALL THE
>>CIRCUMSTANCES OF THE CASE,
>>INCLUDING THE PARENT ESCAPE
>>INTENT AND IT WAS RELEVANT TO
>>THE COLLATERAL COURT JUDGE THAT
>>MR. BUFFEN WAS ON ESCAPE STATUS
>>WHEN HE -- MR. KORMONDY AND
>>MR. HAZEN MURDERED MR. MCADAMS
>>AND RAPED MRS. MCADAMS.
>> I'D LIKE TO GO BACK JUST A
>>MOMENT, IF THE COURT HAS NO
>>OTHER QUESTIONS, ON THE NEWLY
>>DISCOVERED EVIDENCE, TO DISCUSS
>>ISSUES -- THE ISSUE REGARDING
>>MISS STITS ALLEGED CON FLICK OF
>>INTEREST, AND I THINK THAT THE
>>COURT PICKED UP EFFECTIVELY ON
>>THAT MISS STITH -- I MEAN, THIS
>>IS NOT A CONFLICT OF INTEREST,
>>MISS STIT TESTIFIED AT THE
>>EVIDENTIARY HEARING THAT SHE HAD
>>A NODDING A!!!! ACQUAINTANCE WITH
>>MR. MCADAMS WHEN SOME 20 YEARS
>>BEFORE THE MURDER, SHE -- HE RAN
>>WITH ONE GROUP, SHE RAN WITH
>>ANOTHER, THEY MIGHT SEE EACH
>>OTHER AT FOOTBALL GAMES, BUT
>>THAT WAS IT, SO SHE ALSO
>>TESTIFIED, WHICH THE COLLATERAL
>>COURT JUDGE FOUND TO BE
>>CREDIBLE, THAT SHE DISCLOSED
>>THIS TO MR. KORMONDY AND
>>MR. KORMONDY SAID, WELL IF YOU
>>DON'T HAVE A PRESIDENT BUSH LEM
>>WITH IT, I DON'T HAVE A -- HAVE
>>A PROBLEM WITH IT, I DON'T HAVE
>>A PROBLEM WITH IT AND THIS WAS
>>THE ONLY BASIS WITH THE ADDITION
>>OF THE PUBLIC DEFENDERS DID HE
>>EVER'S -- PUBLIC DEFENDER'S
>>REPRESENTATION OF MR. LONG HER
>>BEING PRESSURED BY OTHERS WASN'T
>>RAISED IN THE POST CONVICTION
>>MOTION BUT IT WAS PRESENTED BY

> >ACTUALLY MISS STIT ON FINDING
> >THE STATEMENT AT THE EVIDENCE
> >RIFE HEARING.
> >SHE ALSO TESTIFIED AT THE
> >EVIDENTIARY HEARING THAT DESPITE
> >THE FACT THAT SHE WAS DISTURBED
> >BY THE FACT THAT SHE -- THAT SHE
> >WAS PERCEIVED AS REPRESENTING A
> >BAD GUY BY FORMER CLASSMATES OF
> >LONG AGO, THAT SHE WAS APPOINTED
> >TO THIS CASE AND BY GOSH, SHE
> >WAS GOING TO DO THE BEST JOB SHE
> >CAN.
> >THE ESSENCE OF A CONFLICT OF
> >INTEREST IS THAT A LAWYER HAS TO
> >MAKE A CHOICE, BETWEEN
> >PROTECTING THE INTEREST OF ONE
> >CLIENT, PERHAPS TO THE DETRIMENT
> >OF ANOTHER.
> >AND WE DON'T HAVE THAT HERE, SO
> >THE STATE'S POSITION IS THIS IS
> >NOT A CONFLICT OF INTEREST.
> >AND THE ADDITIONAL THING IS THAT
> >MR. REITER -- MR. KORMONDY HAS
> >SAID LOOK, HER KNOWLEDGE OF
> >MR. MCADAMS, MADE HER
> >INEFFECTIVE, BUT BASICALLY HE'S
> >SAYING THAT EVERYTHING SHE DID
> >WRONG HAS A NEXUS BETWEEN HER
> >KNOWLEDGE OF MR. MCADAMS, WHICH
> >IS NOT SUPPORTED GENTLEMAN.
> > ONE OF THE THINGS THAT HE
> >SAYS THAT SHOWS THAT SHE REALLY
> >WASN'T REPRESENTING HER CLIENT
> >TO THE FULLEST IS THAT SHE IN
> >HIS ABSENCE, WITHDREW THE MOTION
> >TO SUPPRESS, AND SUPPOSEDLY, AND
> >YOU CAN TELL UGS IF THE RECORD
> >BEARS IT OUT, THAT THE STATE HAD
> >AGREED THAT THE STATEMENT SHOULD
> >BE SUPPRESSED.
> > WELL I THINK THAT'S TRUE.
> >WHAT THE RECORD REFLECTS IS IS
> >THAT MISS STIT TESTIFIED THAT
> >SHE BELIEVED THAT MR. EDGAR HAD
> >SAID HE WOULDN'T OPPOSE IT.
> >MR. EDGAR TESTIFIED AT THE
> >EVIDENTIARY HEARING THAT HE
> >REMEMBERS HAVING A CONVERSATION
> >THAT YOU'RE GO TO LOSE ON THIS
> >MOTION TO SUPPRESS, BUT THAT IF
> >MISS STIT HAD A MEMORY OR MADE A
> >NOTE THAT HE DID NOT INTEND TO
> >OPPOSE AT THE TIME SHE WITHDREW,

> > THAT MUST BE RIGHT.
> > I THINK THAT PROBABLY -- IF I
> > WAS A PROSECUTOR, AND I KNEW
> > THAT THE DEFENSE WAS I DIDN'T
> > RAPE HER AND I DIDN'T SHOOT HIM,
> > I'M NOT GOING TO PUT A PECIALY
> > UKES CULL PATORY STATEMENT IN TO
> > EVIDENCE.
> > I'M GOING TO MAKE THE DEFENDANT
> > TAKE THE STAND AND THE DEFENDANT
> > HAD MULTIPLE BURGLARY
> > CONVICTIONS AND MULTIPLE GRAND
> > THEFT CONVICTIONS, WHICH HE
> > COULD HAVE BEEN I AM!!!!!!!!!!!! IMPEACHED WITH,
> > SO MISS STIT TESTIFIED, NUMBER
> > ONE, SHE TOLD MR. KORMONDY OF
> > HER INTENTION, THE CLASS
> > COLLATERAL COURT FOUND HER
> > TESTIMONY TO BE TRUTHFUL.
> > NUMBER TWO, SHE TESTIFIED THAT
> > GIVEN THE EVIDENCE IN THE CASE
> > SHE WAS LOOKING FORWARD TO THE
> > PENALTY PHASE AND TRYING TO SAVE
> > HIS LIFE AND SPECIFICALLY THAT
> > UNLESS SHE PUT HER CLIENT ON THE
> > STAND, HIS OWN WORDS THAT HE
> > DIDN'T RAPE MRS. MCADAMS AND
> > DIDN'T SHOOT MR. MCADAMS WASN'T
> > GOING TO COME BEFORE THE JURY
> > BECAUSE WE HAVE LONG'S TESTIMONY
> > THAT KORMONDY ADMITTED THAT HE
> > WAS THE SHOOTER.
> > ALL HE SAID IN THE STATEMENT
> > WAS I DIDN'T RAPE HER HAND I WAS
> > NOT THE SHOOTER.
> > WHAT ELSE WAS CONTAINED IN HIS
> > STATEMENT?
> > HE ADMITTED TO THE BURGLARY
> > AND TO THE ROBBERY.
> > HE UP PLIED HE WAS SORT OF ALONG
> > FOR THE RIDE, BUT DURING THE
> > EVIDENCE RIFE HEARING, WHEN
> > ASKED WHETHER HE CONSIDERED WHAT
> > HE WAS DOING BEFORE HE WENT INTO
> > THE MCADAMS HOUSE, HE SAID YEAH,
> > I CONSIDERED WHAT I WAS DOING
> > BEFORE I WENT INTO THE HOUSE AND
> > NOT ANELE THAT, I CONSIDERED
> > WHAT I HAD TO DO BEFORE I GOT
> > THERE OR WORDS TO THAT EFFECT.
> > SO HIS TESTIMONY WAS HE ADMITTED
> > TO THE BURGLARY, HE ADMITTED TO
> > THE ROBBERY, HE ADMITTED TO THE
> > SPLITTING UP THE PROCEEDS AFTER

>>THE ROBBERY, BUT HE SPECIFICALLY
>>DENIED TOUCHING MRS. MCADAMS OR
>>SHOOTING MR. MCADAMS AND MISS
>>STIT TESTIFIED THAT GIVEN THE
>>OTHER EVIDENCE IN THE CASE, THAT
>>GETTING HER CLIENT'S DENIAL OF
>>THE RAPE AND THE MURDER, WHICH
>>SHE SAW AS THE MOST AGGRAVATING
>>WAS IN HER CLIENT'S BEST
>>INTEREST AND THAT'S WHAT SHE
>>DID.
>>IF THE COURT HAS NO OTHER
>>QUESTIONS, WE ASK THAT YOU
>>AFFIRM THE DENIAL OF THE TRIAL
>>COURT'S ORDER DENYING
>>MR. KORMONDY'S RULE 3.851 MOTION
>>AND AS WL DENY HIS PETITION FOR
>>HABEAS CORPUS.
>> THANK YOU VERY MUCH.
>>MR. REITER, REBUTTAL.
>> THANK YOU.
>>WITH REGARD TO MR. LONG'S
>>CREDIBILITY, LET ME POINT OUT
>>THAT AT THE EVIDENTIARY HEARING,
>>HE ACT NONGED HE -- ACKNOWLEDGED
>>HE PERJURIED HIMSELF.
>>HE WAS SPECIFICALLY ASKED, DID
>>ANYONE APPEAR AT YOUR REV
>>VAITION HEARING.
>>HE TESTIFIED NO.
>>I LEARNED FOR THE FIRST TIME AT
>>THE EVIDENCE RIFE HEARING WHEN
>>ASKED BY HIS NEW COUNSEL, HE
>>CALLED DETECTIVE COTTON, CAN YOU
>>SHOW UP WITH ME, DETECTIVE
>>COTTON SHOWED UP AND APPEARED ON
>>HIS BEHALF AND HE GOT PROBATION.
>>IRONICALLY THE COURT SAID I
>>DON'T THINK THAT STATEMENT WAS
>>FALSE.
>>I DISAGREE.
>>IT'S A BLATANT LIE.
>>SO HIS CREDIBILITY IS REALLY NOT
>>THAT GREAT TO BEGIN WITH.
>> YOU'VE BEEN ON LONG FOR WHAT
>>REASON IN THE EVIDENTIARY
>>HEARING IT.
>> BECAUSE WE HAD CONTACT WITH
>>MR. LONG TO SEE WHORNT HIS
>>MEMORY WAS VERY -- WHETHER OR
>>NOT HIS MEMORY WAS VERY GOOD, AS
>>TO --
>> IN OTHER WORDS, WHAT CLAIM
>>DID HIS TESTIMONY GO TO?

> > WELL, PUTTING IT IN AS NEWLY
> >DISCOVERED EVIDENCE AND WE ALSO
> >APPLIED TO TO THE FACT THAT
> >COUNSEL WAS INEFFECTIVE WITH
> >REGARD TO IMPEACHING HIM WITH
> >HIS PRIOR IN CON STEPT
> >DEPOSITION TESTIMONY AND SHE
> >FAILED TO ASK HIM IF HE HAD EVER
> >BEEN CONVICTED OF A FELONY AND
> >HE HAD BEEN, SO IT WENT TO TWO
> >SITUATIONS.
> >I ACKNOWLEDGE THE FACT THAT
> >BECAUSE THE RECORD WAS AVAILABLE99!!!!!!!!!!!!!!!!!!!!
> >AVAILABLE, AND COUNSEL FAILED TO
> >GET IT, I INADVERTENTLY PUT IT
> >IN AS NEWLY DISCOVERED EVIDENCE,
> >WHEN IT ALSO APPLIED TO --
> >PROBABLY DIDN'T APPLY TO NEWLY
> >DISCOVERED, BECAUSE IT WAS
> >AVAILABLE, SHE OF COULD HAVE
> >GOTTEN IT, SHOULD HAVE APPLIED
> >IT TO INEFFECTIVE ASSISTANCE OF
> >COUNSEL FOR FAILING TO GET HIS
> >CRIMINAL RECORD.
> >SECONDLY, WITH REGARD TO
> >MR. BUFFEN, EVEN JUSTICE QUINCE,
> >EVEN IF HE IN FACT COULDN'T BE
> >RETRIED FOR MURDER, BECAUSE HE
> >VIOLATED HIS AGREEMENT, HE
> >BELIEVED HE COULD.
> >THE STATE TOLD HIM HE COULD AT
> >THE EVIDENTIARY HEARING.
> >YOU MEAN TO TELL --
> > DON'T YOU THINK IT MAKES A
> >DIFFERENCE IN JUDGING ONE'S
> >CREDIBILITY IN THESE KIND OF
> >RECATED SITUATIONS WHETHER OR
> >NOT YOU HAVE ANYTHING TO LOSE?
> >GENTLEMAN.
> > ABSOLUTELY.
> >AND HE WAS OF THE BELIEF THAT HE
> >COULD BE RETRIED.
> >HE ACKNOWLEDGED THE FACT THAT HE
> >WAS VISH YATING HIS AGREEMENT
> >AND I COULD PROBABLY BE RETRIED
> >AND SENTENCED TO DEATH BUT I
> >WANT TO TELL THE TRUTH AND THE
> >STATE TOLD HIM HE COULD BE.
> >NOT ONLY THAT, IT'S IN THE
> >COURT'S ORDER THERE WAS A
> >CONVERSATION BETWEEN MR. BECK,
> >WHO WAS HIS ATTORNEY AT TRIAL,
> >AND ALSO MR. EDGAR, THAT I WAS
> >UNAWARE OF, WHERE EDGAR

>>THREATENED TO MR. BECK THAT HE
>>WAS GOING TO RETRY HIM FOR
>>MURDER IF HE TESTIFIED AT THE
>>EVIDENTIARY HEARING.
>>AS FAR AS THE UNWAVERING
>>TESTIMONY OF MRS. MCADAMS, THE
>>BRIEF IS CLEAR ABOUT THE
>>INCONSISTENT STATEMENT WHAT SHE
>>TOLD THE DEPUTY SHERIFF VERSUS
>>WHAT WAS TESTIFIED TO AT TRIAL.
>>THERE ARE SUBSTANTIAL
>>DIFFERENCES IN THAT TESTIMONY.
>>IT WAS UNNECESSARY TO CALL HIM
>>AT THE EVIDENTIARY HEARING, OR
>>MRS. MCADAMS AT THE EVIDENTIARY
>>HEARING.
>>THE STATEMENT WAS THERE.
>>IT WAS THE OBLIGATION OF THE
>>COUNSEL TO PRESENT IT TO THE
>>JURY, THAT SHE WAS CONFUSED
>>ABOUT WHAT HAPPENED, AND HERE'S
>>WHY.
>>AT THE CLOSING ARGUMENT, SHE
>>STANDS BEFORE THE JURY AND SAYS,
>>WELL, GIVEN THE TRAUMA SHE HAD
>>GONE THROUGH, IT IS UNSTAWNBLE
>>THAT SHE MIGHT BE --
>>UNDERSTANDABLE THAT SHE MIGHT BE
>>CONFUSED ABOUT WHAT WAS GOING
>>ON.
>>HER OWN ADMISSION, SHE WAS TOLD
>>TO KEEP HER HEAD DOWN, SHE
>>DIDN'T GET A GOOD LOOK AT THEIR
>>FACES OTHER THAN MR. BUFFEN AND
>>YET SHE IS ABLE TO TELL THROUGH
>>EXTREME DETAIL THE CLOTHES SHE
>>WAS WEARING, THE HEADGEAR THEY
>>HAD ON, WHERE THEY WERE AT THE
>>TIME, AND YET, WHEN HER FIRST
>>STATEMENT COMES OUT, IT'S
>>TOTALLY DIFFERENT THAN HER TRIAL
>>TESTIMONY AND SHEEP'S HAD
>>SUBSTANTIAL PRACTICE AT HER.
>>SHE'S GIVEN A NUMBER OF
>>DEPOSITIONS, TESTIFIED AT THREE
>>TRIALS, GOTTEN BETTER AND BET AT
>>THE TIME AT SHE -- BETTER AND
>>BETTER A IT, SHE MAY ACTUALLY
>>BELIEVE IT, BUT THE ACTUAL WHAT
>>SHE SAW IS MORE CLEAR ON THE
>>NIGHT THAT HAPPENED WHICH IS
>>DIFFERENT BY OFFICER SHEER THAN
>>IT WAS AT THE TRIAL.
>> WITH OUR ASSISTANCE, YOU'VE

> >UTILIZE DZ ALL!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!UTILIZED ALL OF YOUR TIME.
> >THANK YOU FOR VERY MUCH.
> >WE THANK COUNSEL.
> >WE TAKE THE MATTER UNDER
> >ADVISEMENT.
> >THE COURT WILL TAKE ITS MORNING
> >RECESS.
> > PLEASE RISE