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Anthony Spann v. State of Florida

SC05-1334

>ALL RISE.

ALL RISE.

THE SUPREME COURT OF FLORIDA IT IS NOW IN SESSION.

ALL THOSE HAVING BUSINESS BEFORE THIS COURT, GIVE ATTENTION AND YOU SHALL BE HEARD.

GOD SAVE THE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN THE FLORIDA SUPREME COURT WILL PLEASE BE SEATED.

WELCOME TO THE FLORIDA SUPREME COURT ON FEBRUARY 5TH.

> > READ YOUR HONOR.

MAY PLEASE THE COURT ON BEHALF OF THE APPELLATE, IF I MAY YOUR HONOR I WOULD LIKE TO RESERVE SEVEN MINUTES FOR REBUTTAL.

THIS IS A DIRECT APPEAL OF A FINAL -- EARL 3.851 PROPOSED CONVICTION RELIEF AND THIS MORNING WITH YOUR PERMISSION I WOULD LIKE TO CONCENTRATE ON THE TRIAL COURT'S REJECTION OF OUR CLAIMS RELATED TO THE ALLEGED FAILURE OF TRIALED COUNCIL TO PRESENT WHAT WE BELIEVE WAS A VERY VIABLE ALIBI DEFENSE AND THE FAILURE TO RESIST THE STATE'S EFFORT TO REFUTE THAT ALIBI SO I HAVE TO KIND OF BEGIN BY PUTTING THAT ALIBI IN PERSPECTIVE, GOING OVER THE CRITICAL TIMES IN QUESTION.

> > COULD WE JUST, ONE BASIC QUESTION THAT I HAVE IS WE ARE TALKING ABOUT SPANN AS A WITNESS?

> > THAT IS ONE ELEMENT.

> > WE KNOW AND THIS CASE THAT THE DEFENSE COUNSEL WAS AWARE OF LEO SPANN AND MADE A DECISION NOT TO CALL HIM AS A WITNESS, IS THAT TRUE?

> > THAT IS CORRECT RUNNER.

> > THAT ALREADY PUTS IT IN A DIFFERENT PERSPECTIVE BECAUSE WE ARE DEALING WITH AN ISSUE OF STRATEGY AS OPPOSED TO FAILING TO DISCOVER.

> > ABSOLUTELY.

WE CONCEDE THAT MR. UDDO KNEW ABOUT ALLELES BEEN.

IN FACT HE WAS PRESENT WHEN LEO SPANN'S DEPOSITION WAS TAKEN BUT WHAT WE SAY IS THAT IT WAS UNREASONABLE FOR TRIAL COUNSEL TO IGNORE WHAT BALILES PM COULD HAVE SAID AS AN ALIBI WITNESS.

> > WHAT IS SO COMPELLING ABOUT LEO SPANN'S TESTIMONY RESTORING AS COMPARED WITH THE BALANCE OF THE EVIDENCE IN THE CASE? THAT WOULD MAKE IT UNREASONABLE FOR A LAWYER TO KNOW ABOUT IT, BUT THEN DECIDE NOT TO GO THAT WAY?

WHAT IS SO COMPELLING ABOUT THAT EVIDENCE?

WHAT IS SO.

> > WHAT IS SO COMPELLING IS THAT LEO SPANN CORROBORATES HIS BROTHER, ANTHONY SPANN'S ALIBI TO THE EFFECT THAT ON THE 14TH, FIRST OF ALL BEGINNING AROUND NINE OR 10:00 A.M., HE, THAT IS ANTHONY WAS THAT ANTHONY'S AND TAOS, MRS. BROWN'S RESIDENCE, LEO SAW LIGHTS ON IN THE BACK HOUSE.

> > HOW DOES THAT COMPARE TO THE FACT THAT THERE ARE OTHER WITNESSES BETTER NOT LEO SPANN'S RELATIVES BUT NOT ANTHONY SPANN POSTURAL IT IS YOU SAY THEY WERE AT A HOTEL TOGETHER UNTIL NOON?

> > YOUR HONOR, I AGREE AS TO THE MORNING AS TO WHAT HAPPENED IN THE MORNING.

THERE ARE SOME INCONSISTENCIES. I CAN SEE THAT BUT AS TO THE CRITICAL TIME.

> > YOU STARTED WITH 9:00.

> > LIGHTS RON IN THE BACK AND I AGREE WITH WHAT LEO SAID BUT THE KEY TIME IN THIS AFTERNOON, AND BOTH LEO AND ANTHONY SAY THAT ABOUT 1:00, BETWEEN 1:00 IN

TO:00 ANTHONY WAS THERE AT HIS AUNT'S HOUSE.

HE WAS IN THE BACK HOUSE.

HE WAITED AROUND FOR A LITTLE WHILE IN CAME UP TO THE FRONT HOUSE.

LATER JULIO SAW A CAR RESEMBLING A GOLD LEXUS DRIVE UP AND ANTHONY GOT INTO THAT VEHICLE AND LEFT.

> > WHAT DID HE SAY IN HIS DEPOSITION ABOUT THAT TIME FRAME

> > A VERY VALID QUESTION AND WE HAVE TO DEAL WITH THAT BECAUSE IN HIS DEPOSITION LEO SAID THE ACTUAL TIME WAS LATER THAT DAY BETWEEN AROUND 2:00 AND 3:00 BUT LEO ALSO SAID, YOU KNOW IT COULD HAVE BEEN AN HOUR EARLIER SO THE POINT IS THAT LEO CORROBORATES ANTHONY POTTS ALIBIED THAT WHEN MRS. PERRON WAS ABDUCTED, WHICH WAS ABOUT 1:20 IN PALM BEACH.

> > WHO LIVED IN THE HOUSE IN FRONT OF A SMALLER PLACE?

> > MRS. BROWN.

> > WHAT WAS YOUR EVIDENCE?

> > YOUR HONOR, THAT TO US IS A CRUCIAL ASPECT OF THIS CASE HE AND I WILL TELL YOU THAT IN SOME DETAIL.

MRS. BROWN CANDIDLY REALLY HURT FOSSELLA BY.

SHE REALLY, REALLY CUT INTO THIS ALIBI BECAUSE THIS WAS A STRONG LADY AND SHE WAS VIDEOTAPED, SHE WAS ILL OF THE TIME OF THE TRIAL AND SHE GOT UP ON THAT VIDEO TAPE AND SHE SAID LISTEN, ANTHONY SPANN NEVER STAYED AT MY HOUSE, ABSOLUTELY POSITIVELY NEVER STAYED AT MY HOUSE, SO CLEARLY --.

> > ARE WE GO GOING IN THE DIRECTION, WE REALLY HAVE A MIX. THAT IS WHY SDUSD OUT SAID ABOUT WHAT WAS SO COMPELLING.

WHAT WE REALLY HAVE IS AMMEX, THAT IS WE HAVE REALLY EVIDENCE THAT IS SUBSTANTIALLY CONTRARY TO THIS ALIBI DEFENSE.

WE ARGUABLY THE TESTIMONY OF LEO IS NOT COMPELLING.

THAT IS, I WOULD ORDINARILY USE

THE TERM -- WHY IF WE HAVE A MIX
, WHERE THE LAWYER IS SAYING,
WE HAVE THE PERSON THAT ACTUALLY
LIVE THERE, OKAY, WHO WAS GIVING
DIRECTLY, AND AS YOU SAID
CANDIDLY, THAT THAT REALLY
UNDERMINES ANY ALIBI DEFENSE,
WHY WOULD YOU HAVE SUCH A --
HERE?

WHY WOULD IT BE UNREASONABLE FOR
THE LAWYER TO DECIDE, I AM NOT
GOING TO SUBJECT THAT DEFENSE TO
RIDICULED OR SET SUBSTANTIAL
IMPEACHMENT?

> > HERE IS THE REASON WHY.
THERE WAS TESTIMONY THAT THEY
POSED CONVICTION PROCEEDINGS
THAT MRS. BROWN SUFFERED FROM
SERIOUS DEMENTIA.

NOT ONLY AT THE TIME OF THIS
HOMICIDE, BUT CERTAINLY AT THE
TIME OF THE TRIAL.

DR. STAN MAO WAS AVAILABLE TO
TESTIFY THAT SHE SUFFERED FROM
DEMENTIA AND THERE IS A NEXUS TO
THAT BECAUSE HE HAD AS AN
EMPLOYEE YOLANDA SPANN WHO WAS
ANTHONY'S SISTER, AND THAT,
EVERYBODY KNEW EVERYBODY US
BEESON NIGH YOU ARE TALKING
ABOUT A VERY COMPLICATED WAY OF
UNDERMINING THAT.

AND JUST AS CLINTON IS POINTING
OUT IN HER QUESTIONS TO YOU,
AREN'T THERE SERIOUS QUESTIONS
ABOUT THE TIMING, THAT IS THERE
ARE CONTRADICTIONS AND CONFLICTS
WITH REFERENCE TO THE TIMES.
ESPECIALLY WITH REFERENCE TO
YOUR CLIENT.

WHEN HE WAS WHERE HE WAS AND
WHEN HE LEFT.

ARE THERE NOT THOSE
CONTRADICTIONS?

> > YOUR HONOR, THERE ARE SOME
BUT THIS IS THE KEY TO MY
ARGUMENT AND I KNOW I'VE GOT TO
DEAL WITH THAT ISSUE.

THE POINT HAS BEEN MADE BY OTHER
JUSTICES, HOLD IT, THERE WERE
CIVILIANS WHO SAW BITS AND
PIECES OF ALL OF THIS.

THERE WERE CIVILIANS FOR EXAMPLE
THAT WERE THERE ON THE 13TH AND

SOUGHT A LITTLE BIT ABOUT THIS PAWNSHOP.

THERE WERE SOME CIVILIANS THAT GOT A GLIMPSE OF WHO WAS THERE WHEN MRS. PERRON WAS ABDUCTED.

> > WHAT YOU MEAN BY CIVILIANS?

> > I MEAN FRANKLY, CANDIDLY YOUR HONOR, CREDIBLE WITNESSES, BELIEVABLE WITNESSES.

> > MINOGUE FAMILY?

> > EXACTLY, I DON'T THINK THESE TWO LADY FRIENDS THAT WORK WITH SPANN AND PHILMORE, I DON'T THINK THERE TESTIMONY WAS WORTH A HOOT.

THESE WOMEN WERE PRETTY SHADY. CERTAINLY MR. PHILMORE, BUT HIS CREDIBILITY IS QUESTIONABLE, BUT JUDGE WHAT I DID WAS I LOOKED HARD AT HIS RECORD AND I HOPE YOU ALL WILL AGREE WITH ME, WHEN ALL IS SAID AND DONE, THE ONLY PERSON THAT CAN PUT ANTHONY SPANN ON THE 13TH AT THAT FIRST ROBBERY OF THE PAWNSHOP, THE ONLY PERSON WHO CAN PUT ANTHONY SPANN THERE WHEN THIS POOR LADY WAS AFFECTED IN LATER KILLED IS LENARD PHILMORE.

IN VET EVERYTHING IN THIS PARTICULAR CASE WAS GOING SO FAST.

I MEAN THESE GUYS WERE DRIVING AROUND LIKE CRAZY, ALL KINDS OF VIOLENT ACTIVITY HAPPENING VERY QUICKLY AND WHEN YOU REALLY LOOK AT IT, AND MAYBE I COULD PUT IT IN THE FORM OF A QUESTION, WHO ELSE BUT LENARD PHIL MARK CAN REALLY PUT ANTHONY SPANN AT THE SCENE OF ALL THIS STUFF?

ONLY LENARD PHILMORE AND THIS RAISES ANOTHER ISSUE ABOUT TRIAL COUNSEL EFFECTIVENESS.

THAT TRIAL, FOR SOME REASON, MR. YUDO MADE THE DECISION NOT TO IMPEACH MR. PHILMORE.

ON A WHOLE HOST OF CONTRADICTIONARY AND FALSE STATEMENTS.

> > NOW YOUR SAYING FOR SOME UNKNOWN REASON, THIS WAS A DENIAL AS AN EVIDENTIARY HEARING MR. UDELL, WHO IS AN EXTREMELY EXPERIENCED DEFENSE LAWYER IN

CAPITAL CASES.

YOU MAY DECISION AGAIN, WHICH AGAIN TO ME, YOU KEEP ON TALKING ABOUT THINGS AS IF HE HAD NOT THOUGHT ABOUT IT.

HE THOUGHT ABOUT IT AND DECIDED IT WAS BETTER TO USE HIS FIRST DAY AND AND HIS LAST STATEMENT TO IMPEACH AND NOT USE THE ACCREDITATION.

YOU SAY, I WOULD'VE DONE IT DIFFERENTLY AND MAYBE YOU WOULD HAVE MR. HARRISON OF THAT AS A CLASSIC ISSUE OF A 2020 HINDSIGHT AND MONDAY MORNING QUARTERBACKING TO ME.

> > YOUR HONOR, IF YOU FIND THAT IS WHAT I AM SAYING, THAT THIS IS MONDAY MORNING QUARTERBACKING, I AGREE. BUT THAT IS NOT THE SITUATION HERE BECAUSE AS I SAY, LET'S GET THIS THING.

THE WELLS BUT PHILMORE CAN CONVECT ANTHONY SPANN.

> > I AGREE IF YOU HAD COME UP WITH A WITNESS THAT SAID ANTHONY SPANN WAS WITH ME FROM 1:00 TO 3:00 THAT AFTERNOON AND I KNOW IT BECAUSE I TOOK A PICTURE OF HIM AND I GOT IT AND STATED AND TIMED, WE WOULD BE IN A WHOLE DIFFERENT SITUATION BECAUSE YOU ARE CORRECT THAT PHILMORE IS NOT NECESSARILY A BELIEVABLE WITNESS, BUT GOING BACK TO THE SPECIFIC ISSUES THAT YOU HAVE RAISED, I DON'T SEE HOW YOU GET AROUND SOMETHING WHERE AN EXPERIENCED DEFENSE LAWYER HAS CONSIDERED SOMETHING AND REJECTED IT AND ON ITS FACE IT APPEARS LIKE A REASONABLE DECISION.

> > RIGHT, YOUR HONOR, NO ONE QUESTIONS THE COMPETENCE AND EXPERIENCE OF THIS ATTORNEY, THAT IS NEVER OUR POINT. AND HIS PERFORMANCE IN A PARTICULAR CASE AND WHAT YOU'VE GOT TO DO IN YOUR CASES YOUR HONOR, YOU CAN'T JUST MAKE A DECISION. YOU OF THAT TO MAKE THE RIGHT

DECISION AND IF YOU WILL ACCEPT MY ARGUMENT THAT ONLY PHILMORE COULD REALLY CONVICT ANTHONY, THEN YOU'VE GOT A SITUATION WHERE TRIAL COUNSEL -- HE IS HANDED THIS LITANY OF FALSE.

> > YOU'VE GOT TO GO BACK TO THE WHOLE FACT THAT WHAT COUNSEL KNEW AT THE TIME HE MADE THE STRATEGIC DECISION IS THAT LEO SPANN WAS GOING TO SAY THAT HE SAW HIS BROTHER AT 3:00 OR 2:00 TWO MAX 3:00 FOR SOME TIME PERIOD LIKE THAT WHICH IS NOT THE TIME PERIOD HE IS NOW SAYING HE SAW HIS BROTHER.

AND THIS IS, AS JUSTICE PARIENTE SAID, WE ARE LOOKING AT THIS NOW BUT WHEN YOU ARE NOT LOOKING AT IT FROM WHAT THE DEFENSE ATTORNEY KNEW AT THE TIME HE MADE HIS DECISION.

> > JUSTICE, THIS IS MY RESPONSE. A TRIAL LAWYER IN A SITUATION LIKE THIS CANNOT PLAY JUDGE AND JURY.

ASK YOURSELF THIS QUESTION. WHAT ELSE DID ANTHONY SPANN HAVE GOING FOR HIM IN THIS TRIAL OTHER THAN THAT ALIBI IN WHAT TRIAL COUNSEL DID WAS SAY, LISTEN, I AM GOING TO MAKE THE DECISIONS HERE, WE ARE JUST NOT EVEN GOING TO TRY TO REFUSE IT.

> > IS THE TRIAL COUNSEL CHARGED WITH MAKING CERTAIN DECISIONS ON HOW YOU TRY THESE CASES?

> > ABSOLUTELY AND IT IS NOT RIGHT FOR ME TO SECOND-GUESS THEM.

IT IS RIGHT FOR ME TO SAY LISTEN , THE ONLY DEFENSE POSSIBLE AND WHAT IS GOT TO BE A YOUR KNISLEY SORBO CASE WHERE YOU KNOW IF HE IS CONVICTED HE IS GOING TO MORE THAN LIKELY -- KU OF GOT TO PUT -- WE ARE NOT HANDLED THESE CASES IN A VACUUM. WE HAVE BAD FACTS, WE ALWAYS HAVE THAT FACTS.

> > WHAT DID THE LAWYER TESTIFIED TO, WITH HIS DEFENSE? WHAT WAS THE STRATEGY AS THE DEFENSE LAWYER HERE?

WHAT OFFENCE DID HE ADVOCATE ON BEHALF OF HIS CLIENT?

> > WHAT MR. UDELL DID WAS TAKE AWAY AT VARIOUS ASPECTS OF THE TESTIMONY OF THE WITNESS.

> > SO JUST PUTTING THE STATE TO ITS PRESENT?

> > YES, I THINK THAT IS WHAT HAPPENED.

> > DID HE TESTIFIED HE DID NOT HAVE ANY PARTICULAR DEFENSE STRATEGY?

> > NO, HE CONCEDED THAT HIS STRATEGY.

WAS VERY EXPERIENCED AND HE SAID I DID NOT THINK LEO WOULD COME ACROSS AS A GOOD WITNESS AND ALL I AM SAYING IS, HE SHOULD NOT MAKE THAT CALL WHEN THAT IS OBVIOUS GOT BECAUSE NO, LEO WAS NOT PERFECT.

THERE WERE PROBLEMS, WE HAVE A SITUATION WHERE HE IS OFF ON TIME BY ABOUT ONE HOUR AND THAT HURTS BODY ALSO SAID, IT COULD HAVE BEEN AN HOUR BEFORE AND ONE OF THE THINGS THAT LEO SAID WAS, YOU KNOW I BROKE DOWN WITH HIM TO THE DEPOSITION AND HE DID NOT EVEN DISCUSS THE CASE WITH ME. HE DID NOT LET ME KNOW WHAT I WAS GOING TO BE ASKED.

POWERPOINT IS, AND I WILL SIT DOWN, THERE WAS A GOOD DIEBOLD ALIBI DEFENSE AND IT SIMPLY WAS NOT PRESENTED AND ANTHONY SPANN SUFFERED THE CONSEQUENCES.

IF I MAY, I WILL SAVE THE REST MY TIME FOR REBUTTAL.

THANK YOU.

> > GOOD MORNING, MAY IT PLEASE THE COURT WITH THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THIS DAY.

CONTRARY TO WHAT MR. SPANN IS PROPOSING MR. UDELL DID DO A THOROUGH INVESTIGATION OF THIS ALIBI DEFENSE.

> > TO ME A FAVOR IF YOU WHAT, BECAUSE I THINK IT SEEMS THAT IT IS PRETTY WEAK ON DEFICIENT PERFORMANCE, BUT IN TERMS OF THE UNDERMINING CONFIDENCE ISSUE, WHAT IS THE OTHER EVIDENCE OTHER

THAN PHILMORE THAT IMPLICATES IN THE DEATH OF THE VICTIM IN THIS CASE?

> > WE HAVE TWO WITNESSES AT THE SCENE OF THE AFFECTION THAT PUT BOTH A SUBARU AND A FLEXES AT THE SAME AND THEY IDENTIFIED TO BLACK MALES, ONE WHICH FITS THE DESCRIPTION OF MR. SPANN DRIVING THE SUBARU AND THE COURT WILL RECALL THAT MR. PHILMORE CANNOT DRIVE A STICK SHIFT AND THE SUBARU IS A STICK SHIFTS OF THEY HAVE SOMEONE WHO FITS THE DESCRIPTION OF MR. SPANN AT THE SAME TIME THAT MR. PHILMORE, SOMEONE WHO FITS THE DESCRIPTION OF MR. PHILMORE IS IN THE AREA AND FOLLOWING IN THE LEXIS. ALSO WE HAVE A WITNESS TO HAVE SOMEBODY DRIVING THE SUB11 AND MS. BROWN IN THE PASSENGER SEAT. WE ALL SO HAVE IN THE INDIAN TOWN AREA, PEOPLE WHO PLACE TO BLACK MALES --.

> > IS PHILMORE IDENTIFIED POSITIVELY AT 158, WHICH IS THE TIME OF YEAR ROBBERY?

BUT SPANN WAS NOT?

SO I GUESS MY POINT WOULD BE THAT, IF THERE WERE A GREAT ALIBI DEFENSE, THAT IS THAT SPANN COULD NOT HAVE BEEN AT THAT ROBBERY AT 1:58 BECAUSE HE WAS WITH HIS PASTOR FROM HIS CHURCH AND THEY WERE HAVING SOMETHING GOING ON THERE, YOU WOULD AGREE THAT THAT COULD UNDERMINE CONFIDENCE IN THE OUTCOME?

> > THE FACTS ARE COMPLETELY DIFFERENT.

> > IF THE ALIBI, WE WERE TALKING ABOUT THE INSTANCE, WHETHER THIS WOULD BE A GREAT ALIBI.

IF THERE WAS A GREAT ALIBI, YOU COULD NOT SAY OH MY GOODNESS, WE HAVE GOT A PHOTOGRAPH FROM HIM AT THE BANK OR, THAT IS WHAT I'M TRYING TO SAY.

> > WE DON'T HAVE THE KIND OF EVIDENCE.

> > PHILMORE BECOMES A VERY IMPORTANT WITNESS AND WHERE

SPANN WOULD A BEEN BETWEEN 1:00
AND 3:00 IS PRETTY CRITICAL
RIGHT?

AND NOW WE WILL GO BACK TO WHAT
REALLY IS THE TRUTH, EVEN IN
WHAT COMES OUT IN'S CONVICTION.

> > MR. UDELL TESTIFIED THAT HE
LOOKED INTO THIS.

HE LOOKED INTO SPANN'S
CONFESSION AND WHAT SPANN WAS
SAYING ACTUALLY HAPPENED, AND HE
CERTAINLY CONFLICTED WITH WHAT
OTHER WITNESSES ALSO, THERE WERE
WITNESSES OTHER THAN MR.

PHILMORE THAT CIRCUMSCRIBED
WHERE SPANN WAS A THE TIME AND
THOSE WERE THE TWO GIRLFRIEND'S.
WHETHER YOU LIKE THEY ARE NOT,
THAT IS WHAT THEIR TESTIMONY WAS

, THAT THEY DROPPED, THERE
WERE DROPPED OFF AT A CERTAIN
TIME AND THAT MR. SPANN AND MR.
PHILMORE WENT OFF AND WHEN THEY
WERE PICKED UP LATER IN THE DAY,
AROUND 2:30 OR 3:00, THAT MR.
PHILMORE AND MR. SPANN WERE IN A
LEXUS AND NO LONGER HAD THE
SUPER.

WE ALSO HAVE A TIGHT TIMELINE AS
FAR AS WHEN THE ABDUCTION TOOK
PLACE, THE TIME IT TAKES TO GO
UP IN BACK FROM INDIAN TOWN TO
COMMIT THE ROBBERY AND MURDER
AND THAT OFFICE WITH MR. SPANN
AND MR. PHILMORE.

> > WHAT ABOUT THE OTHER SIDE OF
IT?

OBVIOUSLY E-PLEDGE NOT GUILTY.
OBVIOUSLY THE LAWYER WAS
DEFENDING HIM AND TRYING TO GET
AN ACQUITTAL IN THIS CASE, AND
SO WHAT WOULD BE THE DOWNSIDE OF
OFFERING THE UNCLE AS A WITNESS
HERE, IN OTHER WORDS WHY, IN
ESSENCE REALLY THE DEFENSE IS,
IT WAS NOT MEAN.

I WAS NOT WITH PHILMORE.
IF HE WAS NOT WITH PHILMORE, AND
DID NOT TELL PHILMORE TO SHOOT
THE VICTIM, THEN HE HAD TO BE
SOMEPLACE ELSE, AND SO WHAT
WOULD BE THE DOWNSIDE THAN
PRESENTING WHAT APPEARS TO BE
CERTAINLY A CREDIBLE WITNESS AS

FAR AS THIS APPEARS TO BE SORT OF AN INNOCENT, EVEN IF HE IS NOT INNOCENT, HE IS A RELATIVE BY REALIZE THAT WHAT IS THE DOWNSIDE, SINCE YOU HAVE GOT, WHAT IS MISSING IN THIS DEFENSE IS THAT I DID NOT DO IT, I WAS NOT THERE, WHICH IS CLEARLY WHAT WOULD BE THE IMPLICATION OF THIS DEFENSE AND WHY NOT?

NOW, THIS IS SORT OF LIKE FILLING IN A BLANK, SAYING IF YOU DID NOT DO IT AND YOU WERE NOT THERE, YOU KNOW, YOU HAD TO BE AT THE CORNER BAR OR SOME PLACE, SO WHERE IS SOMEBODY WHO IS GOING TO SAY WHERE YOU WERE THEN?

> > UNFORTUNATELY IT WOULD NOT BE LEO SPANN.

LEO SPANN WAS NOT PUTTING HIS BROTHER AT A DIFFERENT LOCATION THAT THE CRITICAL TIME IN HIS DEPOSITION.

MR. UDELL LOOKED AT THAT, HE SAW THAT IT DID NOT GIVE ANTHONY SPANN A COMPLETE ALIBI.

HE CONSIDERED IT, HE MET WITH LEO SPANN AT THE ANSWER.

THEY LOOK AT HOW HE COULD GET INTO THE PROPERTY.

THEY LOOKED AT WHERE YOU COULD SEE DOWN THE STREET.

THERE IS DISCUSSION ABOUT WHETHER MR. SPANN WAS AT HIS AUNT'S HOME AT THAT TIME.

> > WAS HIS CLIENT THE TELLING, WHERE I WAS.

> > THAT WAS IN THE POLICE STATEMENT, HOWEVER IT DID NOT MATCH WITH WHAT LEO SPANN WAS SAYING.

LEO PUT HIM THERE LATER IN THE DAY WHICH WAS AFTER 2:00 OR 3:00.

> > ARE THERE OTHER SORTS OF THE INCONSISTENCIES ABOUT THE TIME? IS IN THAT A ROUGH THING?

THEY WERE STUCK WITH IT ANYWAY?

> > THAT IS WHAT AN ATTORNEY HAS TO DO.

YES TO MAKE A DECISION AS TO WHETHER OR NOT IT WILL HELP THE DEFENSE AND WHAT MR. SUBAIDE

SAID WAS I HAD MY CLIENT'S STATEMENT IN EVIDENCE. I AM KEACH MR. PHILMORE AS BEST I COULD, TRYING TO SHOW HE WAS TRYING TO MAKE MR. SPANN AS CULPABLE TO TAKE SOMEBODY ELSE WITH HIM IN THIS CRIME. AND I LOOKED AT WHAT LEO SPANN WAS SAYING IN LEO SPANN WAS NOT GIVING ME THE RIGHT TIMELINE. IT IS A CLOSE RELATIVE, IT MIGHT DO MORE HARM. IT JUST WAS NOT HELPING MY CASE. I THOUGHT IT WAS BEST JUST TO GO WITH THE STATEMENT, AND CROSS-EXAMINING THE WITNESS IS. THAT WAS HIS DECISION. INVESTIGATED.

> > CAN I ASK YOU ABOUT THE CROSS-EXAMINATION OF PHILMORE? HE DID CROSS-EXAMINE HIM? WHAT EXACTLY WAS HIS CROSS-EXAMINATION?

> > WHAT HE WAS TRYING TO SHOW WHAT PHILMORE WAS MR. PHILMORE WANTED TO TAKE SOME DEALS WITH HIM, THAT MR. SPANN MADE CERTAIN COMMENTS ABOUT HIM MR. PHILMORE WAS JUST A BIG DIAMOND, WITH JURY THING THAT MR. SPANN WANTED IN MR. PHILMORE, HE AMENDED TO DOING ALL OF THE -- IN THE MURDER AND ABDUCTION AND OTHER CRIMES HE WAS TRYING TO SHOW THAT MR. SPANN WAS ALSO INVOLVED JUST TO HAVE SOMEBODY ELSE RESPONSIBLE FOR THIS CRIME, AND THAT IN ESSENCE WAS THE EXAMINATION.

> > WHAT WAS HIS REASONING BEHIND HIS DECISION AFTER CROSS-EXAMINING HIM MORE EXTENSIVELY ABOUT HIS PART INCONSISTENT STATEMENTS?

> > BECAUSE HE FELT THAT WITH EVERY STATEMENT MR. PHILMORE WAS BECOMING MORE AND MORE CULPABLE WITH THE CRIME, AND IF MR. PHILMORE WAS LYING ABOUT WHAT WAS HAPPENING IS A VERY STRANGE WAY TO LIE, TO MAKE YOURSELF MORE CULPABLE AND TO EXONERATED MR. SPANN AS FAR AS BEING THE ACTUAL SHOOTER, THE ACTUAL

DOCTOR, THE ACTUAL BANK ROBBER.
HE FELT IT WAS BETTER TO LEAVE
IT OUT THERE, THAT INITIALLY MR.
PHILMORE SAID, I AM NOT INVOLVED
IN BY THE END IT IS MR. PHILMORE
DOING EVERYTHING.

HE THOUGHT THE JURY WOULD SEE
THAT BETTER THAN SHOWING THE
PROGRESSION OF HOW MR. PHILMORE
ACTUALLY CAME TO GIVE THAT LAST
STATEMENTS.

HE THOUGHT HAVING EVERYTHING IN
THEIR MADE MR. PHILMORE MORE
BELIEVABLE AND MORE CREDIBLE
THAN THE TWO DIFFERENT
STATEMENTS.

LEAVING THE CENTER BLANK AS FAR
AS HOW HE ARRIVED AT THEIR NECK.
BE THE THE TROUT COURT MAKE A
FINDING OF WHETHER THAT WAS
CREDIBLE, WHETHER THAT WAS FOUND
TO BE REASONABLE STRATEGY?

> > YES.

> > IF THERE ARE NO OTHER
QUESTIONS ON THE ALIBI AND NONE
OF THE OTHER ISSUES, I WOULD
RELY ON MY BRIEF AND ASK THIS
COURT TO AFFIRM THAT DENIAL OF
POST CONVICTION RELIEF.

SPEAK VERY BRIEFLY YOUR HONOR,
IN REGARD TO THE EDGE IN THE
VACATION OF ANTHONY SPANN AND
THE SUPER ROOT I BELIEVE THE
COUNCIL WAS REFERRING TO THE
PAWNSHOP ROBBERY.

THAT IDENTIFICATION WAS REALLY
LIGHT.

AEGIS SAID THAT THE OTHER
INDIVIDUAL, THE GETAWAY PERSON
WAS THEN I BELIEVE, SKINNING MAY
HAVE BEEN THE WORD.

THERE WAS NO REAL IDENTIFICATION

> > THERE IS NO IDENTIFICATION IN
THE NEIGHBORHOOD WHERE THE
VICTIM WAS ABDUCTED.

I THOUGHT THERE WAS A WITNESS
WHO SAW SOMEONE BOTH IN THE IN
THE SUBARU AND IN THE LEXUS IN
THAT NEIGHBORHOOD.

> > THAT IS CORRECT FOR
JAUNDICING THOSE INDIVIDUALS OR
NOT ASKED BECAUSE THEY COULD NOT
ANSWER FESTIVA THEY GAVE A
GENERAL DESCRIPTION IN THE

SUBARU AND THE PERSON IN THE LEXUS.

> > RIGHT, AND OUR -- THAT IS JUST NOT A GOOD ENOUGH IDENTIFICATION.

> > A QUESTION, THERE IS A BLOODY SHIRT FOUND IN THE SUBARU, RIGHT?

> > THERE WAS US THE WAS THE BLOOD THE VICTIMS? WAS A PROVEN TO BE THE VICTIMS IN THIS CASE?

> > YES YOUR HONOR IT WAS.

> > HOW DID YOUR CLIENT'S EXPLANATION BEING PICKED UP IN THE LEXUS MATCH WITH THE BLOODY SHIRT OF THE VICTIM IN THE FAN FAN -- IN THE SUBARU.

> > A VERY GOOD QUESTION YOUR HONOR.

A PURE MEMBER MR. SPANN EXPLANATION, SHE WAS ONE OF THE PEOPLE THEREOF THE PAWNSHOP, THAT SHE HAD TAKEN HIS VEHICLE.

> > THAT SHE HAD WHAT?

> > THAT SHE HAD TAKEN THE SUBARU, SHE HAD DRIVEN OFF IN THE SUBARU.

THAT WAS ANTHONY SPANN'S EXPLANATION OF THAT.

> > WE ALSO YOUR HONOR WILL RELY ON OUR.

> > I JUST WANT TO MAKE SURE I UNDERSTAND.

AFTER YOU AND'S CONVICTION COUNCIL AND EXAMINE THE ENTIRE RECORD, MAKE SURE YOU DID YOUR OWN INDEPENDENT INVESTIGATION ON THE GUILT PHASE, THE TWO AREAS IN THE GUILT PHASE YOU ARE LOOKING AT IS WHETHER A WITNESS THAT DEFENSE COUNSEL KNEW ABOUT SHOULD HAVE BEEN CALLED, AND WHETHER THERE SHOULD HAVE BEEN MORE COMPLETE CROSS-EXAMINATION OF PHILMORE.

YOU FOUND NO OTHER, APPARENTLY NOT OFFERED ANY ALIBI WITNESSES, ANYTHING ELSE THAT WOULD CONTRIBUTE TO UNDERMINE CONFIDENCE IN THE OUTCOME OF HIS GUILT PHASE THAT MR. SPANN WAS A PARTICIPANT IN A TERRIBLE MURDER

> > YOUR HONOR, THE ON THE OTHER

THING I WOULD ADD, AND I
HESITATE TO DO SO BECAUSE IT WAS
NOT RAISED BY COUNSEL FOR THIS
DATE WAS THAT BOLSTERING ISSUES
SO-MAX.

> > BUT SOMETHING ELSE WITH IN
THE RECORD, NOTHING THAT YOU PUT
ON ABOUT ADDITIONAL
INVESTIGATION THAT SHOULD'VE
BEEN DONE?

> > I AGREE WITH THAT.
THANK YOU VERY MUCH YOUR HONOR.
[INAUDIBLE]``%%