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**Michel Rivera v. State of Florida**

**SC05-1873**

THE NEXT CASE ON OUR CALENDAR  
THIS MORNING IS RIVERA V. STATE.

>> I'M HERE --

>> IF YOU COULD TALK UP, AND  
MR. McCLAIN, I'M GOING TO ASK  
YOU FOR ME, AS MANY OF YOUR  
CASES ARE, YOU HAVE GOT A LOT OF  
POINTS.

IF YOU COULD TRY TO FOCUS JUST  
ON IF YOU SAID HERE ARE THE  
THREE POINTS WE HOPE WE CAN  
LEAVE THIS ORAL ARGUMENT WITH  
AND AS CLEAR AS YOU CAN DO IT.

>> I ALMOST ANTICIPATED THAT  
BECAUSE I WAS GOING TO SAY MY  
FOCUS IS GOING TO BE ON THE DNA  
AND CERTAINLY IF THERE'S ANY  
EXTRA TIME TO DISCUSS THE JUDGE  
ISSUE, I WILL DO THAT.

>> AND ALSO, THEN, PLEASE TAKE  
PAINS TO NOT ON I HAVE SKATE THE  
FACTORS.

LES A LOT OF FACTUAL, THE DAYS  
THEY COME OUT, SO PLEASE BE SURE  
THAT WE HAVE A VERY CLEAR AND  
DIRECT FACTUAL PICTURE TO  
DISCUSS.

>> YES, YOUR HONOR.

HAVING SAID THAT, I'M GOING TO  
START WITH THE DNA, BUT I THINK  
I JUST WANT TO QUICKLY DO A  
LITTLE PROCEDURAL HISTORY THERE  
JUST TO REMIND THE COURT.

AN EVIDENTIARY HEARING WAS HELD  
ON THE GUILT PHASE.

THIS COURT AFFIRMS THE DENIAL OF  
THE GUILT PHASE.

WHILE THOSE PROCEEDINGS ARE  
GOING ON, A NEW 3850 IS FILED ON  
THE BASIS OF BRADY MATTERS AND  
ALSO REQUESTS FOR DNA TESTING IS  
INCLUDED IN THAT 3850.

FILED IN 1999.

BEFORE THE ORDER DENYING PENALTY  
PHASE RELIEF COMES OUT, THAT

3850 IS AMENDED IN 2001.

WHEN THE ORDER COMES OUT DENYING RELIEF, THERE'S NO MENTION OF THIS 3850 REGARDING THE GUILT PHASE, MATTERS OF THE BRADY CLAIM OR THE DNA TESTING. I'VE BECOME MR. RIVERA'S COUNSEL AFTER THAT ON THE APPEALS OF THIS COURT.

I BRING TO THIS COURT'S ATTENTION, THAT 3850 HAS NOT BEEN RESOLVED.

>> WAS THE UNRESOLVED 3850 FILED WITH LEAVE OF THE TRIAL COURT OR WAS IT JUST FILED AFTER THE EVIDENTIARY HEARING ON THE PENALTY PHASE ISSUE?

>> OFF THE TOP OF MY HEAD, I DON'T SPECIFICALLY RECALL. I BELIEVE THAT THERE WAS LEAVE, BUT I CAN'T SWEAR TO THAT. I KNOW THAT IT WAS ORIGINALLY FILED IN '99.

>> AFTER THE EVIDENTIARY HEARING THOUGH?

>> IT'S FILED, I THINK, BEFORE THE EVIDENTIARY HEARING, AMENDED AFTER THE HEARING.

AND THEN THE JUDGE'S ORDER COMES OUT DENYING THE PENALTY PHASE --

>> I JUST WANT TO HEAR ON THE DNA JUST LIKE QUICK THING, ASSUMING PROCEDURAL BAR DOESN'T EXIST, WHAT IS THE DNA?

THE HAIR --

>> YES.

>> AND WHAT DID THE JUDGE DO BELONG TO.

>> THE ONLY CAVEAT I JUST WANTED TO POINT OUT, WHEN THIS COURT REMANDED THE 3850 AND THE DNA REQUEST, THIS COURT SPECIFICALLY POINTED OUT YOU HAD ADOPTED RULE 308.3.

AND IT SHOULD BE ANALYZED UNDER THAT.

THE JUDGE, OR THE STATE DOES NOT OBJECT TO A 3853 TESTING OF THE HAIR THAT WAS INTRODUCED INTO EVIDENCE.

THE HAIR WAS FOUND IN THE BLUE VAN.

IT'S INTRODUCED INTO E EVIDENCE EVERY DAY.

THE TESTIMONY WAS FROM A BROWARD COUNTY SPECIALIST.

HE SAYS I CANNOT CONCLUSIVELY SAY THIS IS THE VICTIM'S HAIR.

IT'S NOT LIKE TRANSCRIPTING.

ALL I CAN SAY IS IT'S SIMILAR TO, AND IT COULD BE HER HAIR.

>> THAT WAS AT THE TRIAL?

>> THAT'S AT THE TRIAL.

>> OKAY.

SO NOW WHAT DOES THE TESTING SHOW?

>> SO WHAT HAPPENS, THE TESTING SHOWS IT IS DEFINITELY NOT HER HAIR.

SHE'S RULED OUT.

>> WHAT DOES THE TRIAL JUDGE DO WITH THAT?

THIS TRIAL JUDGE IN THIS CASE?

>> THIS JUDGE SAYS THAT DISCUSS NODS WARRANT AN EVIDENTIARY HEARING.

>> WELL, WHAT WOULD THE EVIDENTIARY HEARING BE ON?

>> IT WOULD BE ON PRESENTING THE CONCLUSIONS, PRESENTING WHAT IT MEANS, ETC.

AND ALSO EVALUATING CUELATIVELY WITH THE CLAIMS THAT HAD BEEN PRESENTED IN '95 --

>> IT WOULD BE A NEW EVIDENCE CLAIM.

>> DEFINITELY IT'S A NEW EVIDENCE CLAIM, AND UNDER THE EVALUATED CUMULATIVELY WITH ALL OF THE OTHER INFORMATION THAT HAS COME OUT SINCE THAT THE JURY DIDN'T HAVE.

>> AND YOU SHOWED US IN YOUR BRIEF HOW MUCH THEY RELIED, AT LEAST YOU CLAIM, IN THE ORIGINAL TRIAL ON THIS HAIR.

>> IT'S MENTIONED IN THE OPENING, IT'S MENTIONED IN THE CLOSING.

I THINK ALL OF THAT IS SET FORTH IN THE BRIEF.

>> NOW YOU HAVE, SO THAT'S THE HAIR, NOW YOU GET TO THIS PERSON THAT YOU'RE SAYING SHOULD HAVE BEEN MORE IMPEACHED.

>> BEFORE YOU GET TO THAT, I HAVE QUESTIONS ABOUT THE DNA EVIDENCE.

DID YOU THEN FILE A MOTION FOR  
NEW TRIAL BASED ON  
NEWLY-DISCOVERED EVIDENCE?

>> YES.

WHAT HAPPENED IS THE JUDGE HAD  
RULED I COULD DO SORT OF ONE  
AMENDMENT OF THE 3850 FROM 2001  
ONCE WE FINISHED THE DNA TESTING  
AND ANY OTHER 119 RECORDS.  
THAT WAS FILED IN JANUARY OF  
2004 WITH ALL OF THE INFORMATION  
I'D OBTAINED.

>> AND THE JUDGE DENIED THAT?

>> AND THAT'S THE 3850, THAT  
AMENDED 37850 -- 3850 THAT HAS  
BEEN DENIED WITHOUT THE BENEFIT  
OF AFTER AN EVIDENTIARY HEARING.  
I HAVE REQUESTED THAT HAIR BE  
TESTED AND ALSO HAIR FOUND ON  
THE VICTIM'S BODY TO BE TESTED.  
THE STATE SAID THAT HADN'T BEEN  
INTRODUCED INTO EVIDENCE, THEY  
OBJECTED TO THAT.

AND SO INITIALLY THE TESTING  
JUST WAS THE HAIR THAT WAS  
INTRODUCED.

>> WHO WOULD TESTIFY AT THE  
EVIDENTIARY HEARING?

YOU ALREADY HAD IT TESTED SO  
WHAT MORE INFORMATION DO YOU  
NEED OTHER THAN TO MAKE YOUR  
ARGUMENTS ABOUT THE SIGNIFICANCE  
OF THIS HAIR NOT BEING THE  
VICTIM'S?

>> WELL, I MEAN, I THINK  
UNDER -- I MEAN, THE RESULT IS  
NOT IN EVIDENCE.

I HAVE NOT INTRODUCED INTO  
EVIDENCE THE MY TO COND REEL  
REPORT FROM THE PEOPLE IN  
PENNSYLVANIA.

IF THE STATE IS STIPULATING AS  
TO THE RESULTS, THEN THE  
EVIDENTIARY HEARING WOULD BE ON  
THE SIGNIFICANCE OF THIS IN  
CONJUNCTION WITH THE CUMULATIVE  
EFFECT --

>> BUT MY QUESTION, REALLY, IS  
DO YOU NEED AN EVIDENTIARY  
HEARING TO DO THAT?

>> I --

>> WE ACCEPT THAT THIS IS NOT  
THE VICTIM'S HAIR.  
DO YOU NEED AN EVIDENTIARY

HEARING TO DO YOUR ARGUMENT ABOUT THE CUMULATIVE EFFECT AND THOSE KINDS OF THINGS?

>> I HAD ALWAYS ASSUMED THAT WOULD BE REQUIRED SIMPLY BECAUSE I WAS ASSUMING THAT NO ONE WAS STIPULATING TO THE QUALIFICATIONS TO THE RESULTS THAT THE STATE WOULD PRESUMABLY WANT TO CROSS EXAMINE THE EXPERT AS TO WHAT IT DOES OR DOES NOT MEAN.

>> SO WE MAKE SURE ON THE HAIR, LET'S ASSUME IT'S CONCLUSIVELY ESTABLISHED NOT TO BE THE VICTIM'S.

ARE YOU ALSO ASSERTING ERROR IN THE TRIAL JUDGE UNDER A 3853 NOT HAVING OTHER HAIR TESTED?

>> WELL, WHAT HAPPENED --

>> JUST YES OR NO.

I KNOW IT'S ALWAYS COMPLICATED IN YOUR CASES.

I KNOW THAT.

>> THE STATE ASKED FOR ADDITIONAL TESTING.

AFTER THOSE RESULTS CAME IN. AND THEY WANTED THE HAIR ON THE BODY TESTED.

THE RESULTS, BECAUSE THEY DON'T DO MY TOE COND' Y'ALL, WERE INCONCLUSIVE.

THEY WERE SENT BACK TO -- AND THOSE RESULTS INDICATED VIRTUALLY ALL OF THE HAIRS FOUND ON HER WERE HERS.

THERE WAS ONE HAIR THAT WAS MIXTURE, AND THEY JUST COULDN'T CONCLUSIVELY --

>> SEE, NOW YOU'RE NOT KEEPING IT SIMPLE.

THAT'S ONLY BECAUSE WE'VE GOT TO GET THE PICTURE.

WHAT I WAS GOING TO SAY -- TO SAY WAS ON THE HAIR THING, THAT STANDING ALONE YOU WOULD AGREE WOULDN'T PROBABLY PRODUCE AN ACQUITTAL WITH EVERYTHING ELSE IN THIS CASE.

>> I'M NOT GOING TO AGREE TO THAT.

>> WELL, IT'S PRETTY WEAK FOR YOU.

>> THE STATE UNDER 3853, AGREE

TO THE EVIDENTIARY HEARING?  
I MEAN, TO THE DNA TESTING.  
IT REQUIRES ME TO ESTABLISH THAT  
IF I GET THE FAVORABLE RESULTS  
THAT IT CALLS INTO QUESTION THE  
RESULT OF THE TRIAL.

THAT'S A REQUIREMENT OF 3853.  
THE STATE DEPARTMENT OBJECT, THE  
JUDGE ORDERED THE DNA TESTING --

>> BUT WE DON'T WANT TO DO  
SOMETHING USELESS.

I'M NOT GOING TO GO ON, THEN, TO  
YOUR INFORMANT UNTIL WE'RE SURE  
WE'RE ALL FINISHED WITH THE  
HAIR.

>> I DON'T THINK YOU'VE ANSWERED  
THE JUSTICE'S QUESTION WHICH IS  
WHY WOULD THIS PROBABLY PRODUCE  
AN ACQUITTAL ON RETRIAL?

THERE'S OTHER EVIDENCE, EVEN  
THOUGH THIS IS THE ONLY EVIDENCE  
DIRECT EVIDENCE OR

CIRCUMSUBSTANTIAL PLACING THE  
VICTIM IN THE VAN, HE CONFESSED  
TO SEVERAL PEOPLE, AND  
ELIMINATING THE ONE WITNESS YOU  
CLAIM WAS A CI, HE CONFESSED TO  
OTHER PEOPLE.

>> THE ONLY OTHER PERSON THAT HE  
ALLEGEDLY CONFESSED TO WAS WHEN  
HE MADE AN OBSCENE PHONE CALL.  
PEOPLE WHO MAKE OBSCENE PHONE  
CALLS ARE TRYING TO SHOCK THE  
LISTENER.

>> THE JURY CAN REJECT WHAT YOU  
JUST SAID.

>> ABSOLUTELY.

BUT I WOULD SUBMIT WHEN YOU HAVE  
MENTAL HEALTH EXPERTS SAYING  
OBSCENE PHONE CALLERS DON'T TELL  
THE TRUTH WHEN THEY'RE MAKING AN  
OBSCENE PHONE CALL, THAT THERE  
IS A REASONABLE LIKELIHOOD OF  
REASONABLE PROBABILITY OF A  
DIFFERENT OUTCOME --

>> IT WILL PROBABLY PRODUCE AN  
ACQUITTAL ON RETRIAL.

>> WHEN A STATE SPECIFICALLY  
RELIES ON THIS, THIS IS NOT JUST  
IN A VACUUM.

WE'VE ALREADY PRESENTED THE  
TESTIMONY OF MARK PETERS IN THE  
PRIOR PROCEEDINGS WHERE HE  
INDICATED HE HAD THE BLUE VAN AT

THE TIME.

THIS COURT DIDN'T ACCEPT THAT.  
BUT MARK PETERS WAS THE OWNER OF  
THE BLUE VAN, NOT MICHAEL  
RIVERA, AND THE TESTIMONY WE  
FOUND, THE TRIAL ATTORNEY WAS  
NOT ABLE TO FIND HIM.

MARK PETERS SAID AT THE TIME OF  
THE HOMICIDE, HE HAD THE VAN.

>> IS THE HAIR THE ONLY PHYSICAL  
EVIDENCE THAT TIES THIS  
DEFENDANT TO THE MURDER?

>> TO THE VAN.

>> TO THE VAN.

OKAY.

>> MADE REFERENCE TO THE VAN.

>> ALL RIGHT.

BUT THE ONLY PHYSICAL EVIDENCE  
THAT SHOWS THAT IF HE HAD THE  
VAN AT THAT TIME AND THE  
VICTIM'S HAIR WAS IN THERE,  
THAT'S PRETTY, MUCH MORE  
POWERFUL.

ALL RIGHT, NOW, SO WHAT YOU'RE  
SAYING IN A PRIOR CASE, AND  
AGAIN, I'M FOLLOWING THIS  
THREAD, PETERS DID NOT TESTIFY  
AT THE TRIAL.

>> CORRECT.

>> PETERS TESTIFIED LATER, AND  
THERE'S A DOUBT, NOW, AS TO  
WHETHER AT THE CRITICAL TIME  
WHETHER RIVERA ACTUALLY WAS IN  
POSSESSION OF THE VAN BY  
HIMSELF.

>> CORRECT.

>> SO NOW YOU GET TO WHY YOU  
REALLY WANT US ALSO TO KNOW THAT  
THIS ONE PERSON WHO IS POWERFUL  
CONFESSION EVIDENCE --

>> YES.

>> IS REALLY RENDERED, GAVE  
FALSE TESTIMONY?

>> RETURNING TO THAT, ONE LAST  
POINT ON THE DNA BEFORE I LEAVE  
IT IS THAT AFTER THE RESULT CAME  
IN THAT THAT HAIR WAS NOT  
STACY'S, THEN THE STATE DECIDED  
THEY WANTED THE HAIR ON THE  
CLOTHING TESTED.

THAT IN AND OF ITSELF SHOWS  
DISCOMFORT AND CONCERN OVER THE  
RESULTS OF THE HAIR FROM THE  
VAN.

>> HOW ABOUT, WAS THERE ANYTHING FROM THE BODY SUIT OR THE STOCKINGS THAT WERE OUT IN THAT FIELD SIGNAL WASN'T THERE SOMETHING, PIECE OF GARMENT, DID ANYTHING COME FROM THAT?

>> THE DNA TESTING THAT THE STATE REQUESTED AFTER WE GOT THE FIRST RESULT, THERE WAS A SWEATER AND A SHOE.

HAIR FOUND ON THAT WAS SENT OFF FOR TESTING.

EVERYTHING BUT ONE HAIR WAS DEFINITELY RULED OUT TO BE FROM MICHAEL RIVERA.

AS FOR ONE HAIR THEY SAID THERE'S A PROBLEM WITH IT, BUT BECAUSE OF THAT WE CAN'T REACH A CONCLUSION.

>> SO LET ME MAKE SURE WHAT YOU'RE ARGUING, AN EVIDENTIARY HEARING WOULD BRING IN THESE OTHER MATTERS THAT WOULD ADDRESS TO CREATE THE BASIS THAT IT WOULD PROBABLY HAVE A DIFFERENT RESULT?

YOU NEED THIS OTHER EVIDENCE TO COME IN IN CONNECTION WITH THE DNA?

>> YES.

DEFINITELY, IT BRING BREAKS THE CONNECTION.

>> SORT OF LIKE WE DID --

>> CORRECT.

ON ONE LEVEL I WANT TO ARGUE THE DNA ALONE WARRANTS A NEW TRIAL, BUT I'M ALSO RELYING ON ALL OF THE NEW INFORMATION REGARDING SUBRELL LA.

AND IN REFERENCE TO THAT, TO SOME EXTENT I THINK THE STATE'S SAYING YOU HAD PIECES OF A JIGSAW PUZZLE BEFORE.

IN FACT, IN 1995 A CLAIM WAS PRESENTED THAT ZUCCARELLO WAS WORKING FOR THE STATE.

BUT IN 1995, THE STATE POINTS OUT YOU DIDN'T PRESENT EVIDENCE TO SUPPORT IT.

AND THAT'S BECAUSE WE DIDN'T HAVE THE PIECES NECESSARY TO ESTABLISH THAT.

>> WHEREWHICH IS THE JIGSAW PUZZLE? THE WRITTEN PLEA AGREEMENT?

>> WELL, THERE'S A NUMBER OF THINGS.

THERE'S THE WRITTEN PLEA AGREEMENT.

>> I THOUGHT THEY SAID THAT WAS NEVER EXECUTED?

THE WRITTEN PLEA AGREEMENT. OR IS THAT --

>> I DON'T RECALL THE MEMBER SAYS THAT'S NOT WHAT WAS EXECUTED.

THE WRITTEN PLEA AGREEMENT, MY UNDERSTANDING EVEN THOUGH THERE'S NOT A DATE ON IT WAS WHAT WAS ENTERED INTO IN JUNE OF 1986 BEFORE HE WENT INTO COURT AND PLED.

MY UNDERSTANDING WAS THAT WAS THE PLEA AGREEMENT THAT WAS, IN FACT, EXECUTED.

>> AND WHEN DID HE TESTIFY?

>> HE TESTIFIED THAT HE WAS TESTIFYING AGAINST --

>> NO, NO WHEN.

>> IN MICHAEL RIVERA'S CASE IN EARLY '97.

>> I THOUGHT IT WAS APRIL OF '86.

>> NO, ALSO TO BE CLEAR, RIVERA'S ARRESTED IN FEBRUARY OF '96.

HE'S CHARGED WITH ANOTHER CRIME INVOLVING DEATH.

HE'S NOT INDICTED ON THIS MURDER UNTIL AUGUST OF '86.

THERE IS AFTER -- HAS GOTTEN FROM ZUCCARELLO THAT MICHAEL RIVERA CONFESSED THE MURDER TO HIM.

THERE'S ALSO THE JAILHOUSE RECORDS OR THE JAIL RECORDS SHOWING TRANSPORTATION.

AND WHAT BECOMES IMPORTANT IS KNOWING THAT ON APRIL 18TH IS WHEN AROUND GENERAL TEEN, A BROWARD COUNTY SHERIFF'S PERSON, TAKES HIM OUT OF JAIL.

AND THAT TIES HIM TO THE TESTIMONY THAT HE FIRST TOLD ARJENTINE ABOUT THE CONFESSION FROM RIVERA.

THE TESTIMONY WAS THAT HE CONVEYED HE HAD INFORMATION, BUT THAT IT'S -- WHO HE REALLY TELLS

THE STORY TO, AND THAT'S NOT UNTIL JULY 16TH.

THE SIGNIFICANCE OF THAT IS HE'S WORKING AS AN AGENT.

HE TESTIFIES HE HAD ABOUT 15 OR 16 CONVERSATIONS WITH RIVERA IN WHICH HE'S HEARING THIS CONFESSION.

BUT HE'S WORKING AS AN AGENT.

IN FACT, THE SYNOPSIS WHICH IS ALSO NEW SHOWS THAT ON APRIL 4TH HE WAS DESCRIBED AS A CONFIDENTIAL INFORMANT WORKING FOR BOTH BROWARD AND DADE COUNTIES.

>> SO IS YOUR ARGUMENT, THEN, IF HE WAS THE CONFIDENTIAL INFORMANT AND, AS I UNDERSTAND IT, HE WAS WORKING ON A LOT OF THESE HOME INVASION KINDS OF ROBBERIES AND THINGS.

SO IF HE WAS WORKING AS A CONFIDENTIAL INFORMANT FOR THOSE ROBBERIES, DOES THAT TRANSLATE INTO HIM ALSO BEING A CONFIDENTIAL INFORMANT ON THIS CASE?

>> WHEN YOU READ THAT SYNOPSIS FROM APRIL 4TH AND THE ONE FROM APRIL 18TH, IT'S CLEAR HE'S NOT LIMITING HIMSELF TO THOSE CASES HE WAS INVOLVED IN, THAT HE IS GATHERING INFORMATION ON OTHER CASES AND FEEDING INFORMATION TO THE LAW ENFORCEMENT ABOUT ANOTHER UNSOLVED MURDER.

>> MY QUESTION STILL IS, THOUGH, THESE OTHER CASES, THE HOME INVASION ROBBERIES, DOES THE FACT THAT HE'S HELPING THE POLICE ON THOSE TRANSLATE INTO HIM BEING A CONFIDENTIAL INFORMANT ON THIS CASE?

>> WELL, I THINK IT DOES WHEN YOU READ THE SYNOPSIS WHERE IT'S DESCRIBING HIM AS A CONFIDENTIAL INFORMANT, AND HE'S STILL TRYING TO GET INFORMATION.

THEY SPECIFICALLY HAVE A PARAGRAPH INFORM THERE THAT HE ACKNOWLEDGES HE HASN'T TOLD THEM EVERYTHING HE KNOWS.

HE WANTS TO SEE WHAT THEY'RE GOING TO GIVE HIM OR HOW THEY'RE

GOING TO NEGOTIATE WITH HIM  
BEFORE HE COMES CLEAN.  
>> KNOWS ABOUT WHAT?  
I MEAN, IS IT EVERYTHING HE  
KNOWS ABOUT THOSE HOME INVASION  
ROBBERIES?  
EVERYTHING HE KNOWS ABOUT THE  
COHEN MURDER?  
WHAT?  
>> IT'S MY ALLEGATION --  
>> THAT'S A LITTLE LEAP HERE.  
>> WELL, AT THIS POINT IN  
TIME --  
>> TO SAY HE'S TALKING ABOUT  
MR. RI RIVERA'S CASE.  
>> I'VE NOT HAD AN EVIDENTIARY  
HEARING, I'VE GOTTEN THESE  
DOCUMENTS.  
I THINK THESE DOCK DOCUMENTS  
SHOW HE WAS WORKING AS A  
CONFIDENTIAL EMPLOYEE --  
>> THE WAY YOU'RE SAYING IS EVEN  
IF IT'S NOT, YOU DON'T GET THE  
BEST THING WHICH IS GIGLIO, YOU  
STILL ARE CLAIMING THIS IS  
EITHER NEWLY-DISCOVERED EVIDENCE  
OR BRADY THAT SHOULD BE  
CONSIDERED IN CONJUNCTION WITH  
THE HAIR AND WITH MARK PETERS'  
TESTIMONY S. THAT IT IN A  
NUTSHELL?  
>> YES.  
YES.  
TRYING TO SAVE ME TIME, I  
APPRECIATE THAT.  
>> WELL, YOU'RE ABOUT TO RUN OUT  
OF IT, SO SHE NEEDS TO.  
>> IT'S ALWAYS FASCINATING  
BECAUSE IT DOES FEEL LIKE IT'S  
OFF TO THE RACES WHEN WE HAVE  
YOU UP HERE.  
THAT'S BOTH GOOD AND BAD.  
>> I'M SORRY.  
THANK YOU.  
>> I SAY GOOD AND BAD.  
>> GOOD MORNING.  
CELIA TERENCE ON BEHALF OF THE  
STATE OF FLORIDA.  
I GUESS WE CAN START WITH THE  
DNA EVIDENCE.  
>> YOU NEED TO KEEP YOUR VOICE  
UP.  
>> I KNOW YOU'RE NOT GOING TO,  
QUOTE, CONCEDE, BUT AS WE DID

WHEN WE HAD ALL THESE PIECES, WE ENDED UP SENDING IT BACK AND LETTING THE JUDGE LOOK AT IT, SORT OF TO GET THE WHOLE PICTURE FOR US RATHER THAN, YOU KNOW, WE'VE GOT THE HAIR.

IT'S NOW SOMETHING DIFFERENT. YOU MIGHT WANT TO PICK APART EACH ONE, BUT THE JUDGE DIDN'T HAVE AN EVIDENTIARY HEARING TO EVALUATE IT.

ALL THAT IS NOW EITHER DISCOVERED, PRODUCED AFTER THE TRIAL AND, WOULDN'T THAT BE THE BETTER WAY TO PROCEED IN THIS CASE?

>> WELL, FIRST OF ALL, THERE WAS AN EVIDENTIARY HEARING IN THE FIRST 3850 BACK IN 1995 ON THIS PLEA AGREEMENT AND WHETHER OR NOT THE DEFENSE ATTORNEY KNEW ABOUT IT, OKAY?

>> SO RIGHT AWAY THAT CASE WAS ALREADY THERE BACK IN '95?

>> YES, IT WAS.

>> WHAT IS THE NEW STUFF ON THE PERSON THAT'S COME OUT SINCE '95?

>> YOU MEAN ON --

>> ON THE THE ALLEGED CI?

>> OKAY.

WELL, FIRST OF ALL, CALLING HIM A CONFIDENTIAL INFORMANT, THERE WAS NEVER ANY EVIDENCE THAT HE WAS A CONFIDENTIAL INFORMANT.

>> LET'S CALL HIM --

>> OKAY.

>> WHAT HAS COME OUT SINCE '95 ON ZUCCARELLO?

>> CAN I BRING YOU BACK FIRST TO WHAT HAPPENED AT THE TRIAL IN TERMS OF THIS PLEA AGREEMENT?

>> WHY DON'T YOU ANSWER HER QUESTION DIRECTLY, I THINK, AND THEN GO INTO THAT.

>> OKAY.

>> I'M JUST ASKING WHAT'S NEW. NOW YOU'RE SAYING THE PLEA AGREEMENT ISN'T NEW.

>> IT'S NOT, IT WAS ALWAYS --

>> SO IS THERE ANYTHING NEW?

>> NOW, IN 1995 DURING A THREE-DAY EVIDENTIARY HEARING ON PUBLIC RECORD, THE DEFENSE

REQUESTED ANY AND ALL INFORMATION ON FRANK DUCCARELLO WHETHER HE WAS A WITNESS, DEFENDANT, OR VICTIM IN ANY CASE, AND ALL THAT INFORMATION CAME OUT.

AS A MATTER OF FACT, IN THE RECORD FROM THAT FIRST 3850 AND IN THE RECORD FROM THE REHASN'T 3850, THERE, IN THE RECORD, THERE IS EVIDENCE FROM THE PROSECUTOR WHERE SHE OUTLINED IN LETTERS ALL THE INFORMATION, EXCUSE ME, ALL THE CASES WHERE THE STATE PROVIDED THE PUBLIC RECORDS REGARDING FRANK ZUCCARELLO'S PARTICIPATION AS A WITNESS.

>> OKAY, SO SHE GAVE THE CASE NAMES.

>> YES, SIR.

>> AND DID SHE GIVE WHAT THE DOCUMENTATION WAS?

>> NO.

>> JUST THE LISTING.

IS THERE A DISPUTE ABOUT WHAT WAS GIVEN AT THAT TIME?

>> YOU HAVE TO REMEMBER, TOO, BACK THEN, WE DIDN'T HAVE A REPOSITORY.

>> IS THERE A DISPUTE ABOUT WHAT WAS GIVEN AT THAT TIME?

>> WELL, NOT AT THE TIME, THERE WASN'T.

>> IS THERE NOW?

>> WELL, NOW MR. McCLAIN, AND YOU HAVE TO REMEMBER, TOO, TO PUT THIS IN CONTEXT.

MR. McCLAIN IS THE FOURTH CCR LAWYER ON THIS CASE.

NOW --

>> THAT DOESN'T ANSWER THE QUESTION AS TO, AGAIN, IS THERE SOMETHING IN DISPUTE TODAY THAT HAS BEEN PRODUCED SINCE THAT '95 PROCEEDING AND THAT LETTER THAT MENTIONED THOSE FILES?

>> I DON'T THINK SO.

>> SAY NO.

>> I DON'T THINK THERE'S BEEN --

>> I THOUGHT THE TWO THINGS WERE THOSE PRISON RECEIPTS SHOWING HIM COMING BACK AND FORTH AND THEN A SYNOPSIS OF A

CONVERSATION WITH FRANK  
ZUCCARELLO ON APRIL 4TH, 1986  
THAT TALKED ABOUT THE CI  
CANDIDLY ADMITS HE'S NOT TOLD  
INVESTIGATORS EVERYTHING HE KNEW  
AND IS HOLDING BACK SOME  
INFORMATION UNTIL HE SEES -- IS  
THAT NOT WHAT MR. McCLAIN'S  
REFERRING TO?

>> THAT IS WHAT HE'S REFERRING  
TO, HOWEVER, SUSAN BAILEY,  
ASSISTANT STATE ATTORNEY WHO WAS  
ON THIS CASE SINCE 1991 WHEN  
DIRECT APPEAL WAS FINAL AND HAS  
INTIMATELY BEEN INVOLVED IN ALL  
THE PUBLIC RECORDS HEARINGS  
INCLUDING THE THREE-DAY  
EVIDENTIARY HEARING ON THIS  
EXACT ISSUE, AS AN OFFICER OF  
THE COURT TOLD THE COURT AND  
ATTACHED TO HER RESPONSE  
INFORMATION THAT SHE TOOK FROM  
ONE OF THOSE SUCH FILES, AND  
ACTUALLY, IT INCLUDED EVEN MORE  
DETAIL ABOUT WHAT YOU'RE TALKING  
ABOUT.

IT WAS THE ACTUAL DEPOSITION  
FROM DETECTIVE GROSS, AND THAT'S  
WHERE THIS IS COMING FROM, A  
STATEMENT FROM FDLE, STATEMENT  
TAKEN BY FDLE OF FRANK  
ZUCCARELLO WHICH CLEARLY  
DELINEATED ALL OF THIS  
INFORMATION.

ALSO INCLUDED IN THERE WAS A  
BOND HEARING TESTIMONY OF  
ANOTHER FDLE AGENT WHERE HE  
TALKS ABOUT FRANK ZUCCARELLO  
BEING ACTIVELY INVOLVED -- HE  
WAS A CO-DEFENDANT IN MANY OF  
THESE CASES WE'RE TALKING  
ABOUT -- ACTIVELY INVOLVED TO  
THE POINT WHERE THE FDLE AGENT  
ACTED AS A TRAFFIC OFFICER --

>> SO LET ME MAKE SURE, YOU'RE  
SAYING IT WAS ALREADY VISITED IN  
1995 IN AN EVIDENTIARY HEARING,  
BUT THERE ARE NEW DOCUMENTS.  
YOU'RE JUST SAYING THEY'RE NOT  
REALLY DIFFERENT FROM '95.

>> YES, THEY'RE NOT.

>> MY CONCERN IS THERE'S A LOT  
OF ON  
NOW, AND, A LOT MORE

DETAILED ABOUT HIS  
INVOLVEMENT!!\$\$!!!!!!!!!!!!!!!!!!!!  
INVOLVEMENT, SO IN THAT  
REGARD -- YOU ARE -- YOU  
KNOW, SHOULD THE JUDGE BE  
LOOKING IF WE WERE TO ALLOW  
ANSWERING EVIDENTIARY  
HEARING ON ANY PART OF THIS,  
CUMULATIVE!!\$\$!!!!!!!!!!!!!!!!!!!!  
CUMULATIVELY ON ZUCCARELLO,  
ON THE PETERS TESTIMONY  
ABOUT WHAT HE WAS IN  
POSITIVE O SESSION OF THE  
VAN, AND NOW, I GUESS WE GET  
BACK TO THE HAIR, THAT IT IS  
NOW CONCLUSIVELY ESTABLISHED  
NOT TO BE THE \$\$VICTIM'S.

>> OKAY, A LOT OF QUESTIONS  
IN THERE

>> NUMBER ONE.

>> DO YOU SEE THE ISSUE  
THERE IS HAS BEEN NO NIGH  
EVIDENTIARY HEARING WE ARE  
TRYING TO DECIDE NOT  
ULTIMATE ISSUE BUT WHETHER  
THERE SHOULD BY THESE SHOULD  
BE LOOKED AT CUMULATIVELY  
AND EVALUATED BY A TRIAL  
JUDGE, TO SEE IF ALL PIECES  
TOGETHER EITHER UNDERMINE  
CONFIDENCE IN THE OUTCOME,  
OR THE PROBABLY PRODUCES  
ACQUITTAL ON RETRIAL.

>> LET'S START WITH  
ZUCCARELLO THE INFORMATION,  
THAT THEY POSSESSED SINCE  
94 REGARDING HAVE HIS  
PARTICIPATION AS A WORNS  
CO-DEFENDANT IN THESE OTHER  
CASES, THEY HAD ALL OF THAT  
INFORMATION!!\$\$!!!!!!!!!!!!!!!!!!!!  
INFORMATION, PRIOR TO THE  
FILING OF THE FIRST 3850.

OKAY?

NOW, THE DEFENSE ATTORNEY  
WOULDN'T HAVE THAT  
INFORMATION AT THE TRIAL.  
WHAT HE HAD AT THE TRIAL WAS  
THE P\$\$LEA AGREEMENT WHICH  
DETAILED THAT MR. ZUCCARELLO  
WAS THEN TO PROVIDE AGAIN  
THIS P\$\$LEA AGREEMENT DID NOT  
INCLUDE THIS CASE, AND I  
THINK I THINK THE RECORD IS

CLEAR ON THAT.

>> BUT ARE YOU SAYING THAT THE DEFENSE ATTORNEY HAD THIS P\$\$LEA AGREEMENT WE ARE TALKING ABOUT NOW AT THE TIME OF TRIAL.

>> YES.

>> ABSOLUTELY, AS A MATTER OF FACT, ON THE RECORD, YOU CAN START AT PAGE 1410 OF HIS CROSS-EXAMINATION, MR. -- RIVERA'S TRIAL COUNSEL SAYS TO HIM TELL ME ABOUT YOUR 23 FELONYING CONVICTIONS AND HE SAID WELL I HAD HE IS TALKING ABOUT HIS PLEA AGREEMENT SAYS MY P\$\$LEA AGREEMENT TOOK 23 APPELLATE CASES, WHICH IS -- THE A COMBINATION OF ALL THE CASES FROM DADE, AND BROWARD, COUNTIES, OKAY, AND -- ALL THE PUBLIC RECORDS, ARE GENERATED FROM ALL OF THOSE CASES.

SO HE ASKS HE SAYS YES MY P\$\$!!! PLEA AGREEMENT INVOLVED ME COMING OUT ALL -- COMING OUT 23 CASES IN DADE CASES SAYS I GOT FIVE PLEAS IN P\$\$LEA AGREEMENT FOR THOSE CASES.

>> NOT THE SAME AS DEFENSE ATTORNEY ACTUALLY HAVING THE PLEA AGREEMENT YOU ARE REPRESENTING THAT THE DEFENSE ATTORNEY HAD A COPY.

>> YES I AM, YET -- THE DEFENSE ATTORNEY IS QUESTIONING!!\$\$!!!!!!!!!!!!!!!!!!!!!! QUESTIONING, HIM, ON -- ON ALL THE CASES, THAT ARE IN THE P\$\$LEA AGREEMENT AS MATTER OF FACT HE LISTS THE DEFENSE ATTORNEY ASKS HIM TO DISCUSS WITH HIM THE -- WHETHER THE AG ASSAULT THE KINGS!!\$\$!!!!!!!!!! KINGS,!!\$\$!!!!!!!!!! KID NAPPINGS CREDIT FARED FORGERY ASKS FOR ALL THOSE CASES WHAT DID YOU GET HE GOT SEVEN YEARS ON THAT P\$\$LEA AGREEMENT SAYS IT IN HERE I GOT SEVEN YEARS BUT I HAVE A

MOTION TO MITIGATE CURRENTLY  
PENDING CAUTION I WANTED TO  
RUN CONCURRENT WITH THE DID  
A CASES SO I MAINTAIN I --  
DADE CASES DID HE SHOW HIM  
THE P\$LEA AGREEMENT?  
NO THE RECORD DOESN'T  
DEMONSTRATE THAT, BUT I  
THINK THAT RECORD IS REplete  
WITH REFERENCES, TO THAT P\$!!!!  
PLEA AGREEMENT AS A MATTER  
OF FACT, AT ONE POINT,  
MR. MELIVINDA ASKS WHIM WHEN  
DID YOU FINALLY COME FORWARD  
TO BE -- REGARDING WHAT  
MICHAEL RIVERA SAID TO YOU,  
HE CAME FORWARD, AFTER THE  
PLEA AGREEMENT HOW COULD  
THAT BETRAY AGREEMENT HAVE  
EVER!!\$!!!!!!

-- THAT PLEA AGREEMENT.

>> THAT IS WE HAVE DATE I  
DIDN'T SEE DATE WHAT IS THE  
DATE ON THAT PLEA AGREEMENT?

>> WELL, ACCORDING TO THE  
COPY WE HAVE, DOESN'T HAVE A  
DATE HOWEVER, I KNOW IT IS  
IN A COURT FILE, AND  
MR. McCLAIN HAS REPRESENT  
AND I THINK HE IS CORRECT,  
JUNE 12, 1986.

>> IS THERE SOMETIME LATER  
THOUGH, PURSUANT TO A PUBLIC  
-- RECORDS REQUEST THAT  
STATE ACTUALLY LATER, IN THE  
POSTCONVICTION LITIGATION,  
DOES PROVIDE AN ACTUAL COPY  
OF THE PLEA AGREEMENT.

>> YES.

>> WHEN IS THAT.

>> THAT HAPPENED IN  
LITIGATION IN 1994 AT THE  
HEARD!!\$!!!!!!  
EVIDENTIARY HEARING OF THE  
FIRST PUBLIC RECORDS REQUEST  
IN THE POSTCONVICTION AS A  
MATTER OF FACT, THEY GOT A  
HEARING ON THAT, THEY DIDN'T  
PRESENT ANY IT WERE IT WERE  
ANYWAYS THE STATED CALLED  
MR. HANCOCK PROSECUTOR  
MR. SHABAS, WHO WAS  
REPRESENT!!\$!!!!!!  
REPRESENTING MR. RIVERA AT

THAT TIME ASKS HIM ABOUT  
WELL LET'S TALK ABOUT THE  
JUNE 1986 CONVICTION, AND  
MR. SHABAS, RISKED THE  
CORRECT RIGHT FROM THE PLEA  
AGREEMENT HE SAYS OKAY,  
THREE COUNTS OF KIDNAPPING,  
ONE COUNT OF AG ASSAULT,  
EVERYTHING, THAT WAS IN THE  
PLEA AGREEMENT WAS  
DISCUSSED, AT THE 3850  
HEARING THAT IS ON.

>> THAT HEARING WAS IN 1995?

>> YES, SIR.

>> OKAY NOW WAS THIS WRITTEN  
PLEA AGREEMENT THAT WE ARE  
NOW FOCUSING ON, PUT IN  
EVIDENCE?

>> NO.

>> AT THE TIME -- HEARING.

>> NO, SIR WAS NOT.

>> IS THERE ANY REASON WHY  
NOT?

>> BY EITHER THE STATE OR  
THE -- BECAUSE GRANTED, THAT  
THE PROSECUTOR, CONTINUED TO  
SAY, YOU KNOW IN THIS CASE,  
I DIDN'T OFFER HIM ANYTHING.  
IN HE DID EXPLAIN, HOWEVER,  
HAVING WRITTEN A LETTER; IS  
THAT CORRECT?

>> YES, YES.

>> WHY WASN'T THAT -- IF  
THAT WAS THERE, AND, YOU  
KNOW THAT THAT WAS GREATER  
CLARITY IT SEEMS LIKE,  
EXPLAIN WHAT THE DEAL WAS,  
IF IT IS INFORMANT

>> I DON'T KNOW -- BUT IT  
WASN'T YOU KNOW.

>> I DON'T KNOW WHY, MR. --  
MR. SHABAS, DID NOT PUT THE

--  
>> -- IN THIS RECORD, IN  
OTHER WORDS, THE RECORD  
AFFIRMATIVELY SHOWS THAT  
SOMETIME IN 1994 THAT PUBLIC  
RECORD WAS DISCLOSED TO THEN  
DEFENSE COUNSEL COLLATERAL  
COUNSEL, THAT THIS WRITTEN  
PLEA AGREEMENT --

>> WAS -- NOW YOU ARE  
TALKING ABOUT SPECIFIES!!\$\$!!C A  
SPECIFIC REFERENCE TO THE

PLEA AGREEMENT.

NO.

NO.

WHAT IMSAYING THAT -- NO.

>> THERE IS A DIFFERENCE, OR  
-- WHAT PART OF WHAT WE ARE  
STRUGGLING WITH IS THAT  
THERE IS A DIFFERENCE  
BETWEEN DEFENSE LAWYERS  
SEEMING TO KNOW ABOUT  
SOMETHING, AND ASKING  
QUESTIONS ABOUT IT, OR WHAT!!\$\$!!!!  
WHATEVER, AND THEN, THE  
IMPACT OF THIS ACTUAL  
WRITTEN PLEA AGREEMENT WHICH  
SEEMS TO BE A VERY  
COMPREHENSIVE DOCUMENT IN  
TERMS OF SAYING YOU KNOW YOU  
ARE COOPERATING WITH US ON  
ALL THE KINDS OF CASES, AND  
EVEN HAS SOME REFERENCE TO  
HOMICIDES NOW, WE ARE GOING  
TO LEAD THE RESPONSIBILITY  
TO THE INDIVIDUAL  
PROSECUTORS.

AS TO HOW THEY HANDLE IT  
WITH YOU.

ISN'T THERE SOMETHING IN  
THERE ABOUT YOU KNOW -- SO

--

>> YES.

>> IT IS VERY COMPREHENSIVE  
DOCUMENT IN TERMS OF  
APPARENTLY UTILIZING YOU  
KNOW THIS PERSON, AS A -- AS  
IF YOU DON'T CALL HIM A  
CONFIDENTIAL INFORMANTP  
CERTAINLY IT IS SOMEBODY.  
HE IS INFORMANT, OH, YES,  
HE IS ACTIVE.

>> -- AS OF THAT POINT.

>> YES.

>> AND IT SEEMS LIKE -- THAT  
IF THAT WRITTEN DOCUMENT WAS  
IN THE RECORD AT THE TIME  
THAT THIS CASE WAS TRIED IT  
WOULD GIVE A WHOLE NEW COLOR  
TO WHAT ROLE THIS WITNESS  
WAS PLAYING YOU KNOW, IN  
TERMED OF BECAUSE HE -- HE  
IS SITTING THERE AT THE  
TRIAL, SAYING, YOU KNOW, THE  
ONLY REASON I'M COMING  
FORWARD IS BECAUSE I HEARD

THIS FELLOW, TELL ME ABOUT THIS, HORRIBLE OFFENSE, AND I'M JUST A GOOD CITIZEN, AND NOBODY PROMISED ME ANYTHING, AND WHATEVER.

AND THEN YOU LOOK AT THIS WRITTEN PLEA AGREEMENT, AND SEEMS TO SUGGEST THAT THIS FELLOW IS YOU KNOW WORKING FOR THE STATE, IN DADE COUNTY AND BROWARD COUNTY, IN ALL KINDS OF WAYS, YOU KNOW, WHICH THE DETAILS WOULD HAVE TO BE -- FLUSHED OUT.

WHAT IS A BETTER THING TO HAVE A TRIAL JUDGE -- HAVE A HEARING, AND SORT IT ALL OUT FOR US, AND SAY, THERE IS NO MERIT TO THIS -- BECAUSE, THEY HAD ALL THIS STUFF BEFORE AND, THEREFORE THIS THING PRICECLUDED YOU KNOW PROCEDURALLY!!\$\$!!!!!!!!!!!!!!!!!!!!!! PROCEDURALLY, BUT -- IT SEEMS LIKE TRYING TO GET A HANDLE ON IT AT THIS STAGE WITH ALL THE AMBIGUITIES, AS FAR AS WHAT DEFENSE COUNSEL HAD WHAT DEFENSE COUNSEL DIDN'T HAVE AND THEN YOU THROW INTO THE MIX THE MORE SOPHISTICATED ANALYSIS OF THE HAIR AND THE NOW THE CHALLENGE TO WHETHER THE OFFENSE TOOK PLACE IN THE VAN, YOU ARE -- YOU ARE WE ARE ALSO LOOKING FOR HELP IS REALLY WHAT WE ARE LOOKING FOR, HAVE HERE SO, YOU DON'T THINK WOULD IT BE A BETTER THING TO LET A JUDGE GET A HANDLE ON THIS, AFTER SAYING ALL RIGHT, PUT EVERYTHING OUT THERE THAT YOU HAVE GOT, AND I WILL I WILL CONSIDER THEM?

>> FIRST OF ALL, BESIDES THAT WE BELIEVE THE RECORD THE DIRECT APPEAL RECORD SHOWS IN TERMS OF THE TRIAL ATTORNEY HAVING THIS, I THINK JUSTICE WHEN YOU SAID TO FLUSH THIS OUT AND I

THINK THIS COURT NEEDS TO  
LOOK AT HOW THIS ISSUE IS  
PLED.

AND -- MR. McCLAIN ISN'T  
SAYING THAT AND I KNOW THAT  
HE IS NOT REQUIRED TO -- TO  
PRESENT AFFIDAVIT AFFIDAVITS  
BUT THE HE IS NOT EVEN  
BLEEDING THAT HE HAS SPOKEN  
TO MR. MELIVINDA AND HE HAS  
SAID HE HASN'T SEEN THIS HE  
IS NOT SAYING THAT HE  
ADVOCATE TO FRANK ZUCCARELLO  
-- OR THAT HE SPOKE TO FRANK  
ZUCCARELLO!!\$\$!!!!!!!!!!!!!!!!!!!!  
ZUCCARELLO, AND THEY ARE  
SAYING THAT THEY THOUGHT  
THAT THEIR THAT HIS THE PLEA  
AGREEMENT INCLUDED THIS, HE  
IS NOT SAYING THAT, HE IS  
NOT EVEN ALLEGING THAT PRIOR  
-- CCR COUNSEL DIDN'T HAVE  
THAT.

AND I THINK THAT THIS COURT  
NEEDS TO -- I THINK I THINK  
THAT IS EXTREMELY IMPORTANT.  
AND I --

>> THAT IS WHAT I'M THINKING  
WE'RE ALMOST, ALMOST OUT OF  
TIME AND MAYBE COULD YOU  
FOCUS ON THE HAIR.

>> OKAY.

>> WHICH IS NEW.

AND I THOUGHT WHAT  
MR. McCLAIN WAS TRYING TO  
GET AT IS HOW HE APPROACHES  
CASES THAT YOU'VE THE HAIR  
YOU HAD PETERS YOU HAVE MORE  
QUESTION ABOUT THIS --  
ZUCCARELLO!!\$\$!!!!!!!!!!!!!!!!!!!!  
ZUCCARELLO, SO TELL US ABOUT  
-- YOU KNOW THAT YOU CABINET  
JUST LOOK AT ONE PIECE, AND  
SAY --

>> NO YOU CAN'T I UNDERSTAND  
THAT.

>> -- THE HAIR NOW TESTING  
DO YOU AGREE CONCLUSIVELY  
ESTABLISHES THAT ONE HAIR  
THAT WAS SOMEWHAT OF A FOCUS  
AT THE FIRST TRIAL, IS NOT  
THE \$\$VICTIM'S?

>> OKAY LET'S START WITH  
PETERS, YOU ASKED ME SO MANY



ALIBI THAT MARK PETERS, AND HE AND BY THE WAY THAT IS NOT EVEN AN ISSUE IN THIS APPEAL BUT THERE WAS A WEAK ALIBI RIVERA NEVER HAD AN ALIBI FOR THE CRITICAL 30 MINUTES AROUND THE TIME OF THE MURDER.

>> THAT IS WHAT WE SAID POSTCONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!  
POSTCONVICTION?

>> YES.

>> I GUESS WHAT MR. McClAIN THOUGH WANTS US TO DO IS SAY LISTEN IT MAY BE WEAK THERE BUT IF WE THEN AT THAT POINT NEW THE HAIR WAS CONCLUSIVE!!\$\$!!!!!!!!!!!!!!!!!!!!!!  
CONCLUSIVELY ESTABLISHED -- NOT TO BE \$\$VICTIM'S --

>> BUT --

>> HAVE SOMEBODY LOOK AT THE WHOLE PICTURE NOW, TO SEE WHETHER THAT WHOLE PICTURE STARTS TO CAST SOME DOUBT AS TO THIS -- DEFENDANT GUILTY OR INNOCENCE.

>> -- GUILT OR INNOCENCE.

>> WHEN YOU DON'T HAVE MUCH SEPARATELY IT IS EASY AND I YOU NEED TO BALL IT WILL ALL UP I'M ASKING THIS COURT TO SEPARATE IT OUT, BECAUSE, IN TERMED OF -- RIVERA\$\$'S USE OF THE VAN, IN THIS CRIME, WE HAVE HIS STATEMENTS, HIS ADMITTED STATEMENTS TO PEOPLE STARR PACK AND LANG GREEN THAT HE USED THE VAN, WE HAVE ALSO.

>> PART OF THOSE, OBSCENE CALLS!!\$\$!!!!!!!!!!  
CALLS.

>> YES.

>> OKAY.

>> WE ALSO HAVE TESTIMONY AT TRIAL FROM TWO OTHER PEOPLE THAT SAW HIM WITH THE VAN THE DAY AFTER THE CRIME.

OKAY?

NOW IN TERMS OF THE SIGNIFICANCE OF THE HAIR, OKAY, THE HAIR WASN'T STATIONARY O'S BUT THIS ISN'T A DA DNA CASE THIS COURT

ALSO HAS TO WRESTLE WITH THE  
FACT THAT -- THAT IT MAY  
IMPLICATE THE DNA MAY EXCUSE  
ME IMPLICATE SOMEONE ELSE.  
THIS ISN'T SEMEN FOUND THAT  
BELONGS TO SOMEBODY ELSE  
ISN'T HAIR IN HANDS MAYBE  
DURING A STRUGGLE SHE -- IT  
IS NONE OF THAT.

THE LACK OF THE HAIR ONLY  
SAYS THAT THAT PIECE OF HAIR  
IS NOT HERSELF, THAT DOESN'T  
MAINTAIN THAT SHE WAS NOT --  
IT DOESN'T MEAN --

>> THAT IS TRUE MY OWN  
CONCERN MAYBE IT CAME FROM  
AFTER THE THAT -- CONFESSION  
FROM JONBENET RAMSEY JUST  
BECAUSE SOMEONE MAKES  
OBSCENE PHONE CALLS  
FANTASIZES ABOUT SOMETHING  
DOESN'T MEAN THAT PERSON IS  
GUILTY\$\$\$!!!!ITY WHEN YOU TAKE THE  
ONLY PIECE OF PHYSICAL  
EVIDENCE YOU HAVE NOW JUST  
PROVED THAT IT IS NOT THE  
VICTIM'S AS -- I STARTED  
PORTABLE JUROR -- REASONABLE  
DOUBT AS TO THIS DEFENDANT'S  
GUILT THAT IS MY CONCERN.

>> AND YOU ARE WITH THAT  
CONCERN -- OUT --

>> I WILL GIVE YOU TIME TO  
ANSWER IT IS AN IMPORTANT  
POINT, RESPOND TO THAT,  
PLEASE.

>> -- ADMITTED TO FIVE  
PEOPLE OKAY, AND THREE OF  
THEM WERE JAIL HOUSENANTS,  
TWO INFORMANTS, TWO STARR  
PACK ANGELA GREEN HE TELLS  
THEM DETAILS ABOUT THIS  
CRIME, HE ALSO SAYS TO LANG  
GREEN THAT HE WAS WEARING  
PANTS YIE HOSE AT THE TIME  
OF THE CRIME, PANTY HOSE AT  
THE TIME OF CRIME WAS NOT IN  
THE PAPER AS A MATTER OF  
FACT COULDN'T HAVE KNOWN  
THAT, UNTIL THEY FOUND THE  
BODY, AT THE TIME THAT HE  
SAID THESE STATEMENTS, THE  
BODY WASN'T FOUND HE ALSO  
SAID THAT HE USED ETHER THAT

ALSO COULD NOT HAVE BEEN IN THE PAPER, BECAUSE AGAIN, THEY HADN'T FOUND HER. NOW -- THERE HAS NEVER BEEN A TEST TO SEE IF THERE WAS ETHER IN THE BODY BUT THE MEDICAL EXAMINER SAID THAT HE DID -- THAT HE DID SMELL ETHER AND AGAIN WE GO BACK TO THE VAN, HE TOLD, HE TOLD STARR PACK HE USED THE VAN HE SAID HE DRAGGED THE VICTIM INTO THE VAN, STACY HAD THERE WAS STRUGGLE TLEL WAS A -- A GOOSE EGG SAYSED BUFRN ON HER HEAD AGAIN THAT IS NOT SOMETHING IN THE PAPER BECAUSE THEY HADN'T FOUND HER YET, OKAY SO, IN TERMS OF YOUR CONCERN ABOUT BEING A FALSE CONFESSION, I THINK THERE IS ENOUGH CREDIBLE EVIDENCE CONCERNING THOSE TWO PEOPLE.

IN ADDITION TO THAT, AND THIS COURT LAID NO IT THE DIRECT APPEAL OPINION HIS VERY INCRIMINATING STATEMENTS TO THE POLICE OFFICERS!!\$\$!!!!!!!!!!!!!!

OFFICERS, WHEN THEY TRIED TO PUSH HIM THAT HIS ALIBI -- HIS ALIBI DIDN'T WASH, HE DELAYED THAT WHETHER THEY PUSHED HIM HE SAID I CAN'T TELL YOU YOU WILL KILL ME I CAN'T STOP MYSELF BUT ALSO THIS COURT I ALSO FORGETTING THE WILLIAMS RULE EVIDENCE THAT THIS COURT FOUND ADMISSIBLE IN THE DIRECT APPEAL OPINION, TO THE POINTED WHERE THAT IT WAS SO SIMILAR THAT IT WAS PROPER IDENTITY INFORMATION, THAT HE ALMOST KILLED BUT FOR THE FACT FIVE SECONDS LATER, A PERSON CAME UPON JENNIFER GETS SHE!!\$\$!!!!!!!!!!!!!!

GOETZ WOULD HAVE BEEN SECOND I'M VERY IN THIS CRIME THIS COURT ALSO IN ITS OPINION DETAILED SIMILARITIES BETWEEN THE TWO CASES SOCKS

WE HAVE MORE -- THERE IS  
MORE HERE THAN A HAIR, WHICH  
ALL THAT NEGATES THAT IS IT  
WAS STACY -- IT DOESN'T  
MAINTAIN THIS CRIME DIDN'T  
HAPPEN IN THAT VANS, MATTER  
OF FACT THE RECORD IS NOT  
CLEAR WHEN THE VAN WAS  
FINALLY IMPOUNDED BECAUSE,  
AGAIN, MR. RIVERA WAS NOT  
EVEN A SUSPECT UNTIL TWO  
WEEKS AFTER THE CRIME  
OCCURRED!!\$\$!!!!!!!!!!!!!!!  
OCCURRED.  
SO IF YOU TAKE ALL THAT  
INFORMATION!!\$\$!!!!!!!!!!!!!!!  
INFORMATION, INTO  
CONSIDERATION!!\$\$!!!!!!!!!!!!!!!  
CONSIDERATION, I THINK THE  
EVIDENCE IS OVERWHELMING.  
I THINK THE FACT THAT IT  
WASN'T HER HAIR -- ALL THAT  
SAYS IT WASN'T HER HAIR IT  
DOESN'T IT DOESN'T  
DEMONSTRATE ANYTHING ELSE.  
AND I THINK THIS COURT NEEDS  
TO SEPARATE ALL THAT  
INFORMATION OUT WHEN YOU ARE  
LOOKING AT IT I THINK THE  
TRIAL COURT WAS CORRECT, IN  
FINDING THAT THE THAT THE  
DNA ANALYSIS EXCUSE ME THAT  
IT WASN'T HER HAIR WOULD NOT  
HAVE MADE A DIFFERENCE AT  
TRIAL, AND THIS PLEA  
AGREEMENT WAS -- WAS KNOWN,  
AND THE INFORMATION IN TERMS  
OF THE INFORMANT STATUS WAS  
KNOWN AT THE TIME OF THE  
FIRST 3850.  
IF THERE ARE NO FURTHER  
QUESTIONS, I THANK YOU FOR  
THE EXTRA TIME.  
>> YES, MA'AM.  
>> MR. McCLAIN.  
>> I WILL TRY NOT TO TALK  
TOO FAST.  
SO IF FIRST, THE DETAILS  
HAVE ALREADY, DETAILS IN THE  
STARR PACK PHONE CALLS SAID  
WERE NOT TRUE -- AND THE  
DEFENSE FOCUSED ON, THE  
BODY, DUMPED IN LAKE  
OKEECHOBEE!!\$\$!!!!!!!!!!!!!!!

OKEECHOBEE, WASN'T TRUE, A  
BUNCH INFORMATION, IN THAT  
PHONE CALL JUST WASN'T TRUE  
THEY FACT THAT THERE WAS SO  
SOME STUFF THE --

>> WHAT ABOUT THE FACT THAT  
WERE TRUE, THAT HE COULDN'T  
HAVE KNOWN, BECAUSE THEY  
HADN'T BEEN PUBLISHED?

>>?

THE FACT THE -- TRUE OR HE  
USED A BLUE VAN.

>> HOW ABOUT ET--

ETHREPRESENTATIVE!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!  
ETHREPRESENTATIVE.

>> OWNER OF THE BUY VAN  
PAIRNTS HAD CAN HAVE PAINT  
STUFF IN THERE.

-- PAINT STUFF IN THERE.

THAT IS THE ARGUMENT THAT  
THERE IS ETHER THERE, MARK  
SAYS HE COULDN'T HAVE HAD  
THE VAN, SO IF HE MARK  
PETERSED THE VAN HE COULDN'T  
HAVE HAD THE PAINT THEN  
YOUER IN THERE SUPPOSEDLY  
ETHER.

>> EXPLAIN THE BRUSH ON THE  
FAN THAT WAS SIMILAR TO THE  
BRUSH WAS THAT NOT SOME  
DEBRIS FOUND IN THE VAN  
SIMILAR TO WHERE THE BODY  
WAS?

.

>> THERE WAS -- SOME  
REFERENCE TO THAT, BUT THEY  
DIDN'T REALLY RELY ON THAT  
JUST SAID THAT IT WAS, HAD  
BEEN DRIVEN SOMEWHERE WOULD  
HAVE GOTTEN -- THERE WAS NO  
INDICATION THAT THIS WAS --  
BRUSH TO THE SITE WHERE THE  
BODY WAS FOUND, THE  
PANTYHOSE!!\$\$!!!!!!!!!!!!!!!!!!!!!!  
PANTYHOSE, THIS IS A DUMP,  
THERE WAS LOTS OF TRASH  
THERE.

THE FACT THAT THERE WERE  
PANTY HOSE IN THE DUMP,  
ISN'T REALLY THAT  
SIGNIFICANT.

ALL THEY POINT IS THE  
DEFENSE ATALKED ALL THIS  
STUFF THE FACT THAT THERE

ARE SOME INCULPATORY EVIDENCE -- INCULPATORY EVIDENCE SO IF ONE QUICK QUESTION AS FAR AS THE ZUCCARELLO AND HIS COUNSEL, HE WAS NOT -- BOTH OF THEM WERE THEY NOT AVAILABLE TO YOU OR YOUR PRIOR COUNSEL TO TALK TO AND GET HE COPIES OF PLEA AGREEMENTS, AND -- FIND OUT EXACTLY WHAT WAS GOING ON.

>> ZUCCARELLO IN 1959, 96 REFUSED TO TALK TO ANYBODY FROM CCR IN THIS CASE OR ANY OTHER CASE.

>> WHAT ABOUT HIS ATTORNEY THAT WAS HIS ATTORNEY AT THE TIME, HE WAS -- ON THIS PLEA AGREEMENT.

>> -- ATTORNEY -- I'M SORRY -- AND, SO, HE DID TALK TO -- 595 -- REFUSED TO TALK TO ANYBODY FROM CCR EVER SINCE.

>> OPPOSING COUNSEL SAYS THAT THE THEME OF THE ARGUMENT WITH REGARD TO THE PLEA AGREEMENT LOOK AT THE RECORD, THAT IT DEMONSTRATES! DEMONSTRATES, THAT DEFENSE COUNSEL DID HAVE THIS PLEA AGREEMENT, SAYS THAT IS THE THEME, SO WHAT IS ARE YOUR RESPONSE TO THAT.

>> THE WORD -- AGREEMENT IS BEING THIS ENTITLED -- IT IS A PIECE OF PAPER, THERE WAS A TRANSCRIPT OF A SENTENCING!!\$\$!!!!!!!!!!!!!!!!!!!! SENTENCING, WHERE CERTAIN INFORMATION THAT IS IN THIS PIECE OF PAPER FROM -- POINTS NUMBER ONE, POINT NUMBER TWO.

>> THAT IS FINE SO WHAT THEY DID HAVE SOME OF THE GUTS OF THAT BUT NOT THE ENTIRE DOCUMENT AS WRITTEN, THAT INCLUDES THE MATERIAL THAT YOU BELIEVE TO BE VERY IMPORTANT.

>> RIGHT THEY DIDN'T HAVE THREE WHICH INDICATES THAT YOU ARE GOING TO TESTIFY WHEN SUBPOENAED COOPERATE

WITH ARGENTINE WITH -- THEY  
DIDN'T HAVE THIS YOU HAVE  
GOT PASS POLYGRAPH WHICH HE  
FAILED AND YET THEY STILL  
WENT FORWARD WITH THE PLEA  
AGREEMENT, AND ALSO --  
>> NOW SHE SAILS THAT DURING  
THE HEARING, THAT THE  
ASSISTANT STATE ATTORNEY  
THAT HAD THIS FILE TESTIFIED  
SPECIFICALLY ABOUT VYING  
DOCUMENTS LISTED THE NUMBERS  
OF THE CASES

>> WHAT SHE IS ARGUING THAT  
IS STEVE EDGED BAILEY -- AT  
CASE MANAGEMENT HEARING ON  
WHEN OR NOT WOULD I GRANT  
THE BE GRANTED AN  
EVIDENTIARY HEARING SHE MADE  
THE REPRESENTATION, THAT  
THIS STUFF HAD BEEN TURNED  
OVER.

>> RIGHT.

>> THAT IS NOT I MEAN I'M  
ENTITLED TO EVIDENTIARY  
HEARING ON THAT THERE IS NO  
EVIDENCE OF THAT.

>> OKAY, JUST ASKING THE  
QUESTION.

>> -- WASN'T PRESENTED IN  
1959.

THESE -- JAIL RECORDS, THE \$\$  
STATE'S POSITION IS THEY  
WERE DESTROYED, THERE IS  
BACK IN THE RECORD THEY  
WOULDN'T TURN OVER ANY JAIL  
RECORDS THIS STUFF THAT WAS  
NOT HAD BEFORE THIS SHOWS  
WHEN ZUCCARELLO WAS TAKEN  
OUT!!\$\$!!!!

OUT, AND WHEN HE WAS  
INTERVIEWED WHEN HE BECAME A  
CONFIDENTIAL INFORMANT, ALSO  
-- IN THE CASE -- DATED  
APRIL 4TH CALLED APRIL 4,  
1986 A CONFIDENTIAL  
INFORMANT THE STATE WANTS TO  
TAKE THAT BACK THE FACT THEY  
WERE CALLING HIM AT THE  
TIME, THE STATE ALSO MAKES  
THE ARGUMENT THAT LAZ RUTH  
IN ARGENTINE WERE INVOLVED  
IN THE -- WEREN'T INVOLVED  
IN THE REFERENCE TO THEM

ISN'T IMPORTANT, JUST NOT  
TRUE, LAZ RUTH WAS THE  
ORIGINAL PROSECUTOR -- CASE  
HANDLING THIS CASE UNTIL  
AFTER INDICTMENT, ARGENTINE  
CORDING TO TESTIMONY OF  
ZUCCARELLO WHO HE FIRST TOLD  
IN APRIL SO THAT THIS  
INTENTION HE DOESN'T COME  
FORWARD UNTIL AFTER PLEA  
AGREEMENT, THE PLEA IS  
ENTERED IN JUNE, HE TALKS TO  
-- IN JULY IS NOT TRUE.

--

>> WITH THAT I THINK THERE  
IS NO FURTHER QUESTIONS WE  
THANK BOTH OF YOU FOR  
CLARIFYING MANY OF THE  
ISSUES IN THE CASE, THE  
COURT WILL TAKE ITS MORNING  
RECESS!!\$\$!!!!!!!!!!  
RECESS.

>> ALL RISE.....#.