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Matthew Marshall v. State of Florida

SC05-2379

FINAL CASE ON CALENDAR THIS MORNING IS MARSHALL VERSUS STATE OFFED FLORIDA. #,,,,,,
MAY IT PLEASE THE COURT GOOD MORNING MY NAME IS MELISSA DONOHO I REPRESENT
MATTHEW MARSHALL THIS APPEAL STEMS FROM A A REMAND OF THIS COURT ORDERING THAT
AN EVERYBODY\$\$!!!!IOE EVIDENTIARY HEARING BE HELD REGARDING ALLEGATIONS OF JURY
MISCONDUCT!!\$!!!!!!!!!!!!!!!! MISCONDUCT, WE ARE HERE BEFORE THIS COURT, BECAUSE THE
SAME TRIAL JUDGE WHO OVERRODE THE JURY RECOMMENDATION OF LIFE AND CONDEMNING
MATTHEW MARSHALL TO DEATH ABANDONED HIS JUDICIAL RESPONSIBILITY TO CONDUCT A
MEANING FULL INQUIRY ON REMAND REGARDING SUBSTANTIAL ALLEGATION OF SERIOUS -- OF
CONDUCT, DESPITE EVIDENCE OF RACIAL -- JOKE OTHER SERIOUS MISCONDUCT BY TWO
INDEPENDENT SOURCES THE TRIAL COURT CHOSE TO AVOID MEANINGFUL INQUIRY.
WHAT WERE THE TERMS OF -- REMAND? IN OTHER WORDS --
THE -- SPECIFIC EXTREMELY SPECIFIC NOT A FACT YOU SAID, THE LIMIT TO DO ATTEMPTING TO
OBTAIN IDENTITY OF THE THE FEMALE JUROR WHO SPOKE TO MR. -- SNEFF!!\$!!!!!!!! SNEFF, AS
THIS COURT RULES, THE -- MR. SMITH A LAWYER IN AREA OF STEWART RECEIVED A TELEPHONE
CALL FROM A WOMAN ALLEGING TO HAVE BEEN ON THE JURY, STATING NUMEROUS ACTS OF
JURY MISCONDUCT OCCURRED!!\$!!!!!!!! OCCURRED, DURING THE TRIAL OF MR. MARSHALL.
SO THE REMAND SPECIFICALLY SAID IDENTIFY THE FEENAIL JUROR WHO SPOKE TO MR. SMITH, TO
INTERVIEW THAT JUROR, AND THEN TO CONDUCT FURTHER INTERVIEWS ONLY IF THE COURT
DETERMINES THAT THERE IS A RONABLE PROBABILITY OF JURY -- REASONABLE PROBABILITY OF
JURY MISCONDUCT.
SO HE AS THIS HAPPENS OF THE TWO JURORS, PASSED AWAY.
CORRECT.
THEY GO THROUGH BASICALLY THE DISCUSSION WITH ALL OF THE OTHER JURORS ONE TIME OR
ANOTHER, AND NONE OF THEM ADMIT TO MAKING A TELEPHONE CALL. IS THAT A FAIR
STATEMENT?
THAT IS A FAIR STATEMENT.
AND THEN THE WIFE OF THE ESTRANGED WIFE OR THE EX-WIFE OF ONE OF THEM MADE
COMMENTS ABOUT!!\$!!!!!!!! # HER EX-HUSBAND HAD SOME CLIPPINGS!!\$!!!!!!!!
CLIPPINGS. THAT IS BASICALLY WHAT HAPPENED WITH REGARD TO THAT FIRST QUESTION.
WELL.
IS THAT A FAIR --
IT IS IT IS FAIR ENOUGH, ALTHOUGH!!\$!!!!!!!! ALTHOUGH, IT WAS A LONG DRAWN OUT
PROCESS.
RIGHT.
WHAT HAPPENS ALONG THE WAY IT BECOMES TANTAMOUNT, I THINK TO WHY I'M HERE BEFORE
THE COURT TODAY, IS AND WHAT HAPPENS IS THAT IN THE COURSE OF ATTEMPTING TO
DISCOVER WHERE THESE JURORS WERE GETTING THEM INTO COURT TO TESTIFY WHEN THE
INVESTIGATOR SPEAKING TO EX-WIFE OF A JUROR, AND THEY HAPPENED TO HAVE BEEN MARRIED
20 YEARS, RECENTLY, DIVORCED!!\$!!!!!!!! DIVORCED, I THINK AT THE TIME MAYBE FOUR, FIVE
YEARS, SHE MAKES STATEMENTS TO INVESTIGATOR NOT SIMPLE STATEMENTS THERE IS A LONG
AFFIDAVIT TAKEN FROM THIS --
THE PASSES AWAY BEFORE THE INTERVIEWS CAN BE HELD IS THAT DID THAT OCCUR?
WELL SHE DOES PASS AWAY I DISAGREE WITH THE STATEMENT SHE PASSES AWAY BEFORE
INTERVIEWS WOULD BE HELD.
BEFORE THEY WERE HELD.

BEFORE THEY WERE HELD, BUT, COULD HAVE BEEN HELD BEFORE THE PASSED AWAY. SO WHAT HAPPENS IS, WE ARE SET FOR EVIDENTIARY HEARING, ON SOME MORE JURORS THERE WERE THREE MORE THAT NEEDED THAT WE HAD BROUGHT BEFORE THE COURT, BEFORE THAT, TIME, THE AFFIDAVIT WAS GOTTEN FROM THE JURORS, EX-WIFE ON APRIL 29TH, I SAW IN EMERGENCY MOTION TO ADD THAT WITNESS TO MAY 19TH HEARING ON MAY 4TH.

BUT DID YOU FILE IT BASED ON WERE YOU CONCERNED THAT SHE WAS GOING TO DIE? YOUR HONOR NO, WE HAD NO -- I CAN'T.

I CABINET HAVING LOOKED AT WHAT THE STATE SAID WHICH IS YOU SHOULD FILE IT AS SEPARATE MOTION, WITHOUT ANY ONE KNOWING THAT SHE WAS UNFORTUNATELY GOING TO PASS AWAY, I HARDLY SEE HOW THAT IS REVERSIBLE ERROR THERE WAS A DISCRETIONARY CALL, IT WAS BEYOND THE SCOPE OF THE REMAND CERTAINLY, TO HAVE SAID FILE YOUR SEPARATE MOTION, AND PRESUMABLY, IF SHE HAD LIVED THE JUDGE WOULD HAVE SEPARATELY CONSIDERED THAT ALLEGATION. SO HOW IS THAT ERROR AS A MATTER OF LAW!!\$!!!!!!THAT WOULD CAUSE US TO REVERSE AND I'M NOT SURE WHAT WE WOULD DO WITH IT. EXPLAIN THAT TO ME IT SEEMED PRETTY REASONABLE WHAT THE JUDGE WAS DOING DESCRIBING SCRUPULOUS!!\$!!!!!!!!!!!!!!!!!!!!!! SCRUPULOUSLY TO ADHERE TO THE REMAND ORDER IT LOOKED LIKE THE JUDGE WAS ACTUALLY -- MY IMPRESSION WAS BENDING OVER BACKWARDS TO BE FAIR, TO BOTH SIDES, AND I DON'T SEE WHERE THAT THE FACT OF THE \$JUROR'S WIFE THAT THERE WAS ANY ERROR OF LAW.

WELL IT WAS!!\$!!!!!! RESPECTLY DISAGREE WITH THE INTERPRETATION THAT THE COURT WAS CORRECT IN ASKING COUNSEL TO FILE A SUPPLEMENTAL OR SUCCESSIVE 3.850 MOTION.

BUT IF SHE HAD LIVED WOULD YOU REALLY I MEAN IT IS LIKE -- WHAT IS THE BIG DEAL? IF SHE HAD LIVED YOU GOT TO CALL HER AND SINCE YOU DIDN'T KNOW IF THE IF THE JUDGE HAD BEEN APPRISED SHE IS ABOUT TO DIE, CIVIL PROCEDURE EVERYBODY TESTIMONY I COULD SEE -- PRESERVE TESTIMONY WOULD I SEE SOMETHING ELSE BROUGHT TO COURT ATTENTION YOU HAD A MILTED NO, I DON'T SEE AGAIN WHAT IT WOULD BE THE ABUSIVE -- ABUSE OF DISCRETION TO HAVE DECIDED TO HAVE IT AS A SEPARATE MOTION.

WELL, IF ABUSE OF DISCRETION TO HAVE AS SEPARATE MOTION, BECAUSE EVEN THOUGH THIS \$COURT'S ORDER WAS AS YOU ARE STATING LIMITED TO FIND OUT WHO THE JUROR WAS, TO THE JUROR WAS, THIS COURT ALSO GOES ON TO STATE THAT IF -- IF TO CONDUCT FURTHER INTERVIEWS IN THE COURT DETERMINES A REASONABLE PROBABILITY OF JUROR MISCONDUCT, WELL ONCE THIS AFFIDAVIT IS PRESENTED TO THE COURT, DOES THAT RAISE THE QUESTION THEN, THE SAME EXACT ALLEGATIONS THAT MAYBE THERE IS A REASONABLE PROBABILITY OF JUROR MISCONDUCT!!\$!!!!!!!!!!!!!!!!!!!!!! MISCONDUCT?

DOES THE JUROR MISCONDUCT THAT THE COURT WAS TALKING ABOUT -- THE REMAND, TOTALLY UNRELATED TO THE MATTERS NOW THAT ARE BROUGHT UP BY THE SURVIVING SPOUSE IN THE AFFIDAVIT!!\$!!!!!!!!!!!!!!!!!!!!!! AFFIDAVIT, SUCH IS IT NOT.

-- RESPECTFULLY DISAGREE WITH THAT.

OKAY, YOU OBVIOUSLY HAVE READ!!\$!!!!!! ALL RIGHT THE CONCLUDING PART OF OUR OPINION. THAT AS YOU SAID, IT SAYS THAT ANY HEARING WILL BE NARROWLY RELATED TO THIS CALL THAT WAS MADE. NOW TELL ME HOW THIS OTHER CLAIM THAT YOU ARE TALKING ABOUT NOW IS RELATED TO THE CALL THAT WAS MADE?

WELL, OBVIOUSLY NOT RELATED TO THE CALL, THAT WAS MADE BUT MY ARGUMENT IS IS THAT -- WHAT DID OUR MANDATE SAY THE HEARING HE DO YOU HAVE IT IN FRONT SNAFU YES.

READ THAT TO US.

THE SCOPE OF THE HEARING REMAND IS LIMIT TO DO ATTEMPTING TO OBTAIN THE IDENTITY OF THE FEMALE JUROR WHO SPOKE TO MR. SMITH, TO INTERVIEW THAT JUROR THEN TO CONDUCT GURTH INTFZ ONLY IF THE COURT DERLZ THERE IS REASONABLE PROBABILITY OF JUROR MISCONDUCT USHGS.

SO IT IS A WHOLE ISSUE THAT IS BEING REMANDED, IS THE NOT THIS TELEPHONE CALL, MADE TO THE LAWYER.

BEING ALSO PROFESSORER TO THIS COURT WE HAVE -- PROFFER WE HAVE TWO DEAD JURORS MAYBE THE ARGUMENT SHOULD BE, THAT IT WAS CONDITION PRECEDENT THAT COULDN'T HAVE EVEN BEEN MET.

TELL US HOW -- HOW THIS CLAIM ABOUT ANOTHER MALE JUROR, READING THE NEWSPAPERS AND EXPRESSING HIS OPINION DURING THE COURSE OF THE TRIAL!!\$\$!!!!!!!ABOUT THE GUILT OF THE DEFENDANT -- IS RELATED TO THIS JUROR THAT ALLEGED!!\$\$!!!!!!! ALLEGEDLY MADE A CALL TO A LAWYER.

CONNECT THOSE TWO DOTS TOGETHER FOR ME.

WHAT I WANT TO CONNECT FOR YOU, IS THAT THE AFFIDAVIT THAT WAS WRITTEN BY DEBORAH THOMPSON THE ALLEGATION, ARE ALMOST EXACTLY THE ALLEGATIONS THAT WERE PRESENTED IN THE AFFIDAVIT OF RONALD SMITH, THE LAWYER, SO, I UNDERSTAND WHAT YOU ARE SAYING, THAT YOU ARE REMAND WAS LIMITED, BUT -- FOR ONE THING WE CABINET EVEN BE SURE THAT -- CAN'T BE SHUSH IT WASN'T THE DEAD JUROR FOR ANOTHER THING, ISN'T IT THE \$\$COURT'S OBLIGATION --

DID THE -- DEAD JUROR.

THERE WERE TWO DEAD JURORS!!\$\$!!!!!!! JURORS.

I THOUGHT YOU WERE TALKING ABOUT -- THE -- THIS IS A ALLEGEDLY A FEMALE JUROR THAT MADE THE TELEPHONE CALL; RIGHT? .

IT WAS ALLEGEDLY A FEMALE JUROR

NOW YOU ARE TALKING ABOUT A MALE JUROR -- THAT WAS READING ALLEGEDLY READING NEWSPAPERS --

ALL I'M SAYING I'M STAND BEFORE THIS COURT SAYING THAT WE KNOW THAT THERE WERE TWO DEAD JURORS AT LEAST ONE FEMALE JUROR MAYBE YOUR ORIGINAL CONDITION THAT WE FIND THIS PERSON COULD NEVER HAVE BEEN MET, MAYBE IT WAS THE DEAD ONE --

-- BEFORE THIS COURT HAD NOTHING DO WITH JURORS READ!!\$\$!!!!!!! READING THE NEWSPAPER -- FOR OR HAVING IMPRESSIONS OF THE GUILT OF THE DEFENDANT DID THEY?

-- IN RONALD \$\$SMITH'S AFFIDAVIT ISSUES WERE SPECIFIC TO RAY IS ASHAL JOKING -- VAISHAL JOKING READING OF NEWS FAIP ARTICLES BROUGHT INTO THE JURY ROOM TWO SPECIFIC.

I THOUGHT THE MISCONDUCT WAS ABOUT RACIAL COMMENTS, AND RACIAL BIAS.

THERE WERE TWO SPECIFIC IN THIS \$\$COURT'S OPINION, SPECIFICALLY STATED YOUR CONCERNS WERE THE RACIAL JOKING AND RACIAL COMMENTS, AND THE OUTSIDE THE LOOKING AT -- NEWSPAPER ARTICLES, THE JURORS LOOKING OUTSIDE NEWSPAPER ARTICLES AND THOSE BEING BROUGHT INTO THE JURY -- WHEN I READ YOUR OPINION, MY READING OF THAT, WAS THAT YOUR CONCERNS WERE THOSE TWO FACETS!!\$\$!!!!!!! FACETS, AND KWH --

TELEPHONE CALLER HAD SAID TO THE LAWYER -- THERE'S -- RACIAL -- FOR READING THE NEWSPAPERS!!\$\$!!!!!!! NEWSPAPERS.

RIGHT, AND THE AFFIDAVIT OF DEBORAH THOMASSON ALLEGATION AS THE SAME THING SHE SAYS, SPECIFICALLY, WHEN I HEARD ABOUT READING NEWSPAPER ARTICLES THE RACIAL JOKES, MY HUSBAND -- FACE CAME DIRECTLY TO MIND, I STILL.

LET ME JUST STILL GET BACK TO THIS ISSUE, BECAUSE WHAT WE ARE REALLY DEALING WITH IF THE ISSUE WAS THAT THE JUDGE HAD NOT ALLOWED TESTIMONY AT SOME POINT FROM THE FEMALE JUROR,OR IF YOU HADN'T BEEN ABLE TO LOCATE HER HUSBAND, I THINK WE WOULD BE DEALING WITH A SEPARATE ISSUE, OR IF THE STATE HAD SAID SHE CAN'T RAISE THAT AT AMPLE!!\$\$!!!!!!!LL BECAUSE HER CLAIMS WERE LIMITED TO JUST THIS FEMALE JUROR BUT THAT IS NOT!!\$\$!!!!!!!WHAT HAPPENED THE STATE SAID I THINK SHOULD YOU RAISE THIS AS A SEPARATE MOTION, AND I THINK A REASONABLE JUDGE READING OUR MANDATE, COULD ASSUME THAT THE INQUIRY, WAS LIMIT TO DO FINDING THE JUROR, NOW, SEPARATE ALLEGATIONS, OF MISCONDUCT!!\$\$!!!!!!! MISCONDUCT, WHICH ARE YOU ARE RAISING, I MEAN REASONABLE TO SAY -- A SEPARATE MOTION WHICH IS WHAT YOU DID, THE HAPPEN STANCE THE TRAGEDY FOR CERTAINLY THE HER FAMILY, AND HER, AND MAYBE FOR YOUR CASE, IS THAT SHE DIDN'T GET TO TESTIFY BUT THEN YOU GOT TO INQUIRE OF THE MALE JUROR, WHO -- INQUIRY WENT BEYOND THE SCOPE OF THE REMAND, ADDITIONAL QUESTIONS WERE ASKED AND HE DENIED IT I'M NOT SURE WHAT ELSE SHOULD HAVE BEEN DONE, THAT, AGAIN, WOULD CAUSE THERE TO BE REVERSAL IN THIS COURT BASED ON AN ERROR OF LAW.

SO HE IS -- IF YOU CAN HELP ME WITH THAT BECAUSE IT HAS TO BE CLEAR, THAT -- THERE IS A RULE OF LAW THAT WAS VIOLATED, BY THIS JUDGE IN HOW THE JUDGE CONDUCTED THE PROCEEDINGS ON REMAND.

OBVIOUSLY, JUSTICE PARIENTE WOOIM PROPOSING TO THIS COURT HE ABUSED HIS DISCRETION THAT YOU SEE IT -- YOU KNOW, AS -- A TRIAL LAWYERS AND GO YOU THROUGH THIS ME BEING THE ONE THAT WENT THROUGH THIS. SEES IT IN A DIFFERENT LIGHT IN SOME I WAS, WHEN YOU READ A COLD RECORD ITS ONE WAY OR ANOTHER. I -- WE FEEL THWARTED HONESTLY THROUGH THIS PROCEDURE I CAN TAKE YOU BACK TO THE ORIGINAL 3.850 MOTION IN WHICH WE ALLEGING RACIAL JOKING, READING OF NEWSPAPER ARTICLES, AND THIS JUDGE SAID IT IN-- IN THE VERSUS!!\$\$!!!!!!!!!!!!!! VERSUS.

AND THERE WAS A REVERSAL, AND IF THE REMABD INSTRUCTIONS WERE TO BE ABLE TO INTV EVERY JUROR -- INTERVIEW EVERY JUROR FULLY ANY OTHER WITNESS THAT MIGHT BE FOUND TO ASK ABOUT ALLEGATION, OF RACIAL JOKE, AND READING THE NEWSPAPER, THEN, THE JUDGE WOULD HAVE ERRED BUT THAT IS NOT WHAT THE REMAND WAS ABOUT AND YOU DIDN'T ARGUE THAT WE ERRED IN REMAND INSTRUCTIONS SO I GO BACK TO THIS, I UNDERSTAND YOURINGS FROM,O FRUSTRATION I WAS TRIAL LAWYER UNDER STAND YOUR FRUSTRATION BUT LOOKING AT IT HERE ON A PRINCIPLE OF LAW THAT WE WOULD ANNOUNCE -- THE JUDGE WAS NOT WORKING ON A BLANK SLATE THE JUDGE WAS WORKING ON A SET OF ABOUT FIVE LINES THE JUDGE WAS TRYING TO FOLLOW.

I STILL WANT TO REITERATE THOUGH THAT YOU ARE REMAND WAS SPECIFIC BUT YOU GO ON TO SAY, YOU DO SAY LOCATE THIS JUROR BUILT I KEEP SAYING -- THE JUROR MAYBE COULDN'T BE LOCATED WHY WOULDN'T A REASONABLE JUDGE WANT TO FIND OUT THE TRUTH? WHY DOESN'T HE THE RESPONSIBILITY TO WANT TO KNOW IF RACIAL JOKING AND NEWSPAPER ARTICLE READING REALLY HAPPENED?

OKAY.

LET'S ASSUME -- YOU WANT TO GET WELL WE DO WANT TO GET THAT KIND OF INFORMATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! INFORMATION, SO -- WE ACCEPT -- THAT MR. -- THOMPSON -- THAT HER NAME.

MRS. THOMASON.

DEBORAH.

THEN THE TESTIMONY OF MR. THOMPSON EVEN IF WE ACCEPT HER AFFIDAVIT, WHAT IS THAT IT WE COULD DO AT THIS POINT? WE HAVE HER TESTIMONY, THE AFFIDAVIT WE HAVE HIS TESTIMONY, DENYING THAT HE DID THIS, AND THE TRIAL JUDGE CAN REASONABLY SAY THIS DID NOT OCCUR, SO WHERE DOES THAT LEAVE US.

WELL WHERE IT LEAVES USES FAR AS I'M REQUESTING THIS COURT OBVIOUSLY, I THINK MR. MARSHALL HAS BEEN PREJUDICED BY THIS SEVLY I THINK THE 3850 SUCCESSOR MOTION SHOULD NOT HAVE BEEN REQUIRED OF MR. --

THE SUCCESSOR MOTION HAVING TO FILE THE SUCCESSOR 3850 PETITION, THEREBY MISS SO MANISON!!\$\$!!!!!!!!!!!!!!!!!!!!!! SO MANISON'S TESTIMONY WOULD HAVE TAKEN AT MAY 19TH HEARING. WE ASSUME SHE SAY WILL WHAT SHE SAID IN HER AFFIDAVIT!!\$\$!!!!!!!!!!!!!!!!!!!!!! AFFIDAVIT.

RIGHT, LET ME SUBMIT TO THE COURT THAT AND I THERE IS NO -- WAY OR TO ME TO THROW THIS OUT TO YOU ALL OTHER THAN TO SAY PEOPLE ARE NOT GOING TO COME FORWARD AND NECESSARILY TELL THE TRUTH. ABOUT -- THEIR OWN RACIAL JOKE\$\$!!!!ING OR NEWSPAPER READING AND I'M GOING TO REFER YOU TO U.S. VERY BROWN AN 11th CIRCUIT 1984 CASE 733 FSECOND IN THE BRIEF, BLINDING PRECEDENT IN THIS CIRCUIT HOLDS A JUROR DENIALS OF MISCONDUCT ARE \$\$INO AN INSUFFICIENT BASIS UPON WHICH TO REJECT A CLAIM OF MISCONDUCT SO WHAT I'M SUGGESTING FIRST OF ALL WOULD I LIKE TO SUGGEST THAT MR. MARSHALL HAS BEEN PREJUDICED BY THIS WHOLE PROCEDURE THAT IT SHOULD GO THAT HE SHOULD BE GIVEN A LIFE SENTENCE BUT SECONDLY, IF NOT, THEN I WANT TO GO WALK FOR A FULL EVIDENTIARY HEARING WANT TO BE ABLE TO REINTV THOSE JURORS AND ASK QUESTIONS THAT ARE RELEVANT TO THIS MISCONDUCT NOT DID YOU CALL -- MR. SMITH AND SAY THIS -- DIDN'T YOU AGREE TO THE QUESTIONING THAT THE COURT DID OF THESE -- IN THE BEGINNING, NOT WHEN I FOUND OUT ABOUT THE SECOND AFFIDAVITP.

DID -- WERE YOU EVEN WITH THE AFFIDAVIT POSED QUESTIONS THAT WERE ASKED OF MR. THOMPSON?

I CERTAINLY DIDN'T HE REFUSED TO ASK THE ONES I THOUGHT WERE RELEVANT HE TOLD HE SAID IN HIS ORDER SPECIFICALLY HE SAID, I'M GOING TO CONTROL I'M GOING TO ASK QUESTIONS

GOING TO ALLOW COUNSEL COME BACK AND ASK QUESTIONS, AS I SEE FIT. OKAY, SO I PREPARED QUESTIONS I'M GOING TO GO BACK GOING TO BANTER WITH -- YOU KNOW -- GO BACK UNDERSTAND BANTER WITH THE GUY -- NO YOU DON'T BANTER YOU ASK QUESTIONS. FORGIVE ME YOUR HONOR, I\$\$!!!! I -- YOU ARE GETTING A LITTLE WORKED UP BE CALM. OKAY.

-- THE QUESTIONS THAT YOU WOULD LIKE TO HAVE ASKED.

OF COURSE, AND I -- AND I.

ASKED.

DID YOU SEEK A REHEARING WHEN WE FIRST REMANDED AND ASKED TO EXPAND THE EXTENT OF THE REMAND.

NOW YOU ARE ASKING US -- FOUR YEARS AFTER OUR OPINION IN MARSHALL AND SAYING THE REMAND WAS TOO LIMITED, WHY DIDN'T YOU FILE MOTION FOR REHEARING AT THAT TIME TO SAY THE REMAND WAS TOO LIMITED!!\$\$!!!!!!!! LIMITED? .

YOU ARE RIGHT. IT SHOULD HAVE BEEN DONE, AND BUT I WILL I STILL WANTED TO. YOU ARE SAYING WE'VE BEEN PREJUDICED THIS WHOLE WAY, I MEAN, IF YOU FELT PREJUDICED!!\$\$!!!!!!!!!!!!!!!! PREJUDICED, YOU SHOULD HAVE FILED A MOTION AT THAT TIME,!!\$\$!!!!!!!! TIME,IN AND SAY WE NEEDED A MUCH MORE EXPANSIVE REMABD TO INTERVIEW ALL JURORS.

BUT WOULD I LIKE TO STAND HERE BEFORE THE COURT TODAY, AND THAT SAY!!\$\$!!!!!!!!!!!!!!!!SAY THAT THE DEBORAH THOMSON!!\$\$!!!!!!!!!!!!!!!! THOMSON'S AFFIDAVIT COMING FORWARD SHOULD HAVE HE A-- FOOSHD THE OPPORTUNITY TO EXPAND TO EXPAND THE QUESTIONING OF THESE JURORS, THESE JURORS SHOULD BE ASKED QUESTIONS, MR. THIS IS A SPECIFIC JUROR THIS WHAT I WOULD LIKE TO THE HAVE ASKED THEM, IT HAS BEEN -- COME BEFORE THE COURT AND THE LAWYERS ATTENTION, THAT THIS JUROR MR. -- CLAY THOMPSON IF YOU RECALL HIM, MAY HAVE -- SPOKE ABOUT RACIAL -- MAY HAVE MADE RACIAL JOKES RACIAL COMMENTS, MAY HAVE BROUGHT NEWSPAPER ARTICLES IN TO THE JURY ROOM AND DISCUSSED THEM WITH YOU ALL. HAND A DIALOGUE IN WHICH THEY FEEL FREE AND OPEN TO DISCUSS THE ISSUES, I SUBMIT TO THIS COURT THAT THAT IS NOT WHAT HAPPENED HERE. THERE WAS NO REAL DIALOGUE AND REAL FREEDOM OF OPENNESS TO DISCUSS WITH COUNSEL OR THE COURT.

DID YOU ASK THE JUDGE TO BE ABLE TO DO THAT.

YES, SIR DIED IN THE JUDGE THEN OVERRULED THAT REQUEST.

HE DID AND HE MADE ME -- WRITTEN SPECIFIC QUESTIONS REFUSED TO ASK TWO QUESTIONS THAT I SPECIFICALLY WROTE.

IT IS THE CASE THAT IT SEEMS TO ME FROM READING THE RECORD THAT THE JUDGE FELT THAT HE HAD TO REALLY BALANCE THE REMAND ORDER AND THE FACT AT A THERE ARE CERTAINS ISSUES THAT IN HERE IN THE JURY'S VERSUS HE DIDN'T WANT TO CROSS THE LINE, INTO THAT AREA. AND SO HE WAS TRYING TO CAREFUL NAVIGATE A REMAND ORDER.

-- PROBABLY, BUT I STILL SAY THAT ONCE WE GOT THE AFFIDAVIT FROM THOMPSON IT CHANGED THE WHOLE LIGHT OF THE -- THE WHOLE -- WAY THAT IT WAS THE HEARING WHAT IS OCCURRING!!\$\$!!!!!!!!!!!!!!!! OCCURRING.

YOU ARE WELL INTO YOUR REBUTTAL IF YOU WANT TO SAVE TIME.

THANK YOU. 99\$\$.

GOOD MORNING, MAY IT PLEASE THE COURT LISA MARY, ASSISTANT ATTORNEY GENERAL FOR THE STATE. AND, YOUR HONORS GOING TO THE THIRD ISSUE, FIRST SINCE THAT IS WHAT MOST OF THE TIME WAS MISS DONOHO WAS SPEAKING ABOUT, DEBORAH \$ THOMPSON'S AFFIDAVIT AND WHETHER OR NOT THAT OPENED THE DOOR FIRST OF ALL, I WANT TO ALERT THE COURT THAT IT WASN'T JUST ONE JUROR, DENYING MISCONDUCT, ALL TEN JURORS!!\$\$!!!!!!!!!!!!!!!! JURORS, WHO WERE INTERVIEWED!!\$\$!!!!!!!!!!!!!!!! INTERVIEWED, EACH AND --

OPPOSING COUNSEL SAYS I THINK SUMMED IT UP SAID THIS IS THE KIND OF QUESTION THAT I SHOULD HAVE BEEN PERMITTED TO ASK AND THAT IS NOT JUST WHEN THOSE JURORS HEARD ANY RACIAL COMMENTS OR NOT JUST WHETHER THEY HAD REMEMBERED ANY ONE DISCUSSING IT

BUT THAT SHE SHOULD FOUR BEEN ABLE TO ASK EACH ONE OF THEM AFTER THIS AFFIDAVIT WAS DELIVERED THAT IT HAS BEEN, ALLEGED!!\$\$!!!!!!!!!!!!!! ALLEGED, THAT MR. THOMPSON, DID THIS, AND DID ANY OF YOU SEE THAT DID DEW DO YOU CONFIRM IT OR DENY IT THAT IS LITTLE BIT DIFFERENT QUESTION, AND THAT IS WHEN SHE IS SAYING SHOULD HAVE BEEN SHOULD HAVE HAPPENED BECAUSE THAT IS WITHIN THE CONTENT MAY NOT BE WITHIN THE PARTICULAR JUROR, BUT SHE IS SAYING IT IS WITHIN THE SUBJECT MATTER WITHIN THE CONTENT OF THE WHOLE THING THAT WE ARE TALKING ABOUT, AND THAT IS THE WAY THE JURY BEHAVED SO YOUR RESPONSE.

I HAVE TWO -- PARTS TO MY RESPONSE, MY FIRST PART IS DEBORAH \$STHOMPSON'S AFFIDAVIT WAS MADE ON APRIL 29, 2004, AND DONOHO FILED HER EMERGENCY MOTION TO ADD A WITNESS ON MAY 4TH THIS THREE ADDITIONAL JURORS CAME IN TO THE TRIAL COURT WHENTH MISS DONOHO WAS PRESENT ALONG WITH THE STATE NOT ME BUT OTHER PEOPLE ON MAY 19TH, THOSE THREE JURORS TWO OF WHOM WERE WOMEN, WERE INTERVIEWED!!\$\$!!!!!!!!!!!!!! INTERVIEWED, AND AT THE MAY 19TH HEARING NEITHER THE STATE NOR MISS DONOHO ASKED TO EXPAND THE QUESTIONS THE COURT WAS ASKING. EVEN THOUGH MISS \$STHOMPSON'S AFFIDAVIT WAS OUT THERE WAS FILED IN COURT, AND EVERYONE HAD IT IN FRONT OF THEM. OKAY.

SHE SAID SHE DID WRITE THEM DOWN BUT THAT IS AT LATER TIME.

THAT IS THE JUNE 10, 2005 I BELIEVE.

THE FIRST TIME SHE DID NOT YOU ARE RECOLLECTION OF THE RECORD SHE DID NOT ASK PERMISSION!!\$\$!!!!!!!!!!!!!! PERMISSION, TO EXPAND THIS QUESTIONING WHAT IS YOU ARE SAYING.

THAT IS CORRECT IN FACT THE TRIAL COURT HAD HER EMERGENCY MOTION IN FRONT OF HIM, AND THEY DID NOT DISCUSS IT MISS DONOHO DID NOT BRING IT UP UNTIL AFTER THE JURORS HAD BEEN EXCUSED, BUT, AT THAT HEARING, THE COURT AFTER THE VERY FIRST JUROR, STOPPED AND SAID MISS DONOHO DO YOU HAVE ANY ADDITIONAL QUESTIONS? AND SHE SAID NO. HE DID THAT AFTER EACH OF THE JURORS EVEN MISS THOMSON!!\$\$!!!!!!!!!!!!!!\$ THOMSON'S AFFIDAVIT WAS THERE!!\$\$!!!!!!!!!! THERE. THE SECOND PART OF MY RESPONSE TO YOU IS THERE IS A BIT OF DISCREPANCY IN OUR BRIEFS ABOUT THE QUESTIONS THE JUDGE ACTUALLY ASKED HE ASKED VERY DETAILED QUESTIONS OF ALL TEN JURORS, THE MOST DETAILED QUESTION WHICH HE STARTED WITH THE FIRST JUROR HE WROTE IT DOWN, AND THEN HE USED THE TRANSCRIPT TO ASK THE SAME QUESTION TO ALL THE JURORS, IT IS ON RECORD, PAGE 273. IS QUOTE ARE YOU THE JUROR, WHO PHONED ATTORNEY RONALD B. SMITH WHO IS A LAWYER IN STEWART AND SAID BASICALLY TWO THINGS, FIRST, THAT YOU WERE RELATED TO ONE OF MR. SMITH'S CLIENTS, AND ALSO THAT YOU WERE A JUROR IN THE CASE, AND THAT YOU OBSERVED OTHER JURORS, DOING THINGS THAT WERE IMPROPER, INCLUDING, MAKING RACIAL JOKES!!\$\$!!!!!!!!!! JOKES, AND ALSO FAILING TO FOLLOW THE \$\$JUDGE'S INSTRUCTIONS!!\$\$!!!!!!!!!!!!!! INSTRUCTIONS, THAT THE JURORS SHOULD NOT COME INTO ANY CONTACT WITH NEWS MEDIA COVERAGE DURING THE TRIAL IT WAS VERY SPECIFIC, ALL TEN JURORS!!\$\$!!!!!!!!!! JURORS, GOT THAT QUESTION. INCLUDING THE RACIAL COMPONENT AND --

AND, AGAIN, MAY HAVE BEEN THIS REMAND, I'M JUST TRYING TO UNDERSTAND THIS, THAT IS SO IF THEY ARE NOT FEMALE JUROR THAT CALLED, EVEN THOUGH THEY MIGHT HAVE KNOWN THAT THIS WAS GOING ON, THAT WAS NEVER ASKED OF THE JURORS!!\$\$!!!!!!!!!! JURORS; IS THAT CORRECT?

IT WAS NOT SPECIFICALLY ASKED.

IN A QUESTION YOU JUST SAID IF I'M -- COMPOUND QUESTION BUT IF I'M NOT THE FEMALE JUROR, RIGHT, I DON'T KNOW WHO THE FEMALE JUROR IS EVEN IF I KNOW IN A I BOUGHT NEWS -- BROUGHT NEWSPAPERS IN DIDN'T ASK ME DID YOU BRING NEWSPAPERS IN, DID YOU HEAR RACIAL JOKING; CORRECT?

THAT IS CORRECT, BUT --

OKAY, SO I GUESS WHAT I'M TRYING TO FIND OUT HERE IS THAT -- YOU ARGUING A WAIVER THAT IT SEEMS TO ME, ONCE DEB DRA THOMPSON'S AFFIDAVIT APPEARED THERE IS NOW SEPARATE ALLEGATIONS WHAT THEY SAY HE INARIOUS INCIDENTS -- NEFOUS INCIDENTS OF JUROR MISCONDUCT DID THE DEFENSE COUNSEL ASK TO REINTERVIEW, THE JURORS BASED ON THAT

AFFIDAVIT!!\$\$!!!!!!!!!!!!!! AFFIDAVIT, IN OTHER WORDS, EXPLAIN TO ME, HOW THESE SEPARATE -- ASSUMING, THERE HAS BEEN NO REMAND BUT THIS CAME UP, AS NEWLY DISCOVERED EVIDENCE, WHAT DID THE DEFENSE ASK CAN BE DONE UPON DISCOVERY OF THE AFFIDAVIT OTHER THAN WANTING TO QUESTION HER LET'S ASSUME EVERYTHING SHE SAID IF THERE IS WHAT SHE WOULD HAVE SAID, WHAT THEN HAPPENED.

WELL, TER EVIDENTIARY HEARING, ON JUNE 10, 2005 DO I BELIEVE THAT SHE WANTED TO OPEN THE QUESTIONING OF COY THOMPSON.

I BELIEVE, I DON'T RECALL HER EVER ASKING TO OPEN THE QUESTIONING OF THE OTHER NINE, AND SPECIFICALLY, ON MAY 19TH, WHERE SHE HAD THREE LIVE JURORS IN FRONT OF HER, WITH THE AFFIDAVIT IN HER HAND, SHE DID NOT ASK ANY OF THAT.

BUT MAY HAVE SAID IF SHE TRIED THAT -- NOT YOU BUT THE STATE, DIDN'T YOU SAY THAT CAN'T BE PART OF THESE PROCEEDINGS BECAUSES THIS BEYOND THE SCOPE OF THE REMAND, SHE HAS GOT TO FILE A SEPARATE MOTION, WHICH WHAT IS SHE DID, SO IT WOULD HAVE BEEN PRETTY OEB THAT IF SHE -- OBVIOUS IF SHE IS CONTINUING STARTING TO SAY NOW I WANT TO ASK QUESTIONS, BASED ON WHAT DEBORAH THOMPSON HAD SAID THAT THE JUDGE WOULD HAVE SAID AS HE SAID, YOU GOT TO FILE A SEPARATE MOTION.

WELL, NO, I DON'T THINK THAT THAT IS ACCURATE, BECAUSE ON THE MAY 19TH HEARING -- -- I UNDERSTAND WHAT YOU ARE SAYING BUT ON THE MAY 19TH HEARING THE JUDGE ACTUALLY EXPANDED ON THESE QUESTIONS, HE FURTHER ASKED HE SAID BY WERE A I MEAN BY NEWS MEDIA ALSO INCLUDES NEWSPAPER ARTICLES, RADIO, AND HE STARTED GETTING INTO A LITTLE BIT, AND --

IF THEY HAD READ.

YES.

OKAY.

AND THE FACT, I BELIEVE HER NAME IS -- ON THE MAY 19TH HEARING, SPECIFICALLY SAID WELL, NO, I NEVER READ ANY NEWS MEDIA COVERAGE I NEVER HEARD ANY ONE DISCUSSING IT IN THE JURY ROOM AND I DIDN'T SEE ANY OF THE OTHER JURY DORS!!\$\$!!!!!! DORSING IT. SO THESE JURORS, DID NOT TAKE THESE QUESTIONS AS TIGHTLY AS WE LAWYERS MIGHT.

ALL OF THE JURORS MADE THOSE KIEVENLTS STATEMENTS OR JUST THAT -- KINDS OF STIERMTHS JUST ONE.

THERE WERE THREE OR FOUR MADE STATEMENTS LIKE THAT, AND THE MARCH 24, 2004 HEARING BEFORE MISS SO MANY -- THOMSON\$\$'S AFFIDAVIT A JUROR SAID I DIDN'T DO ANY DIDN'T READ ANY MEDIA BUT THE MEDIA ACTUALLY CONTACTED ME, AFTERWARDS, SO, THE JURORS WERE -- LOOKING AT THE SUBSTANCE OF THE QUESTION, AND GOING BEYOND IT, AND SEVERAL OF THEM ACTUALLY VOLUNTEERED INFORMATION TO THE COURT. SO THE JURORS, AT LEAST, THOSE THREE OR FOUR, DID NOT FEEL OVERLYCONSTRAINED ABOUT TALKING TO THE COURT, AND THE ATTORNEYS, AND AFTER MISS LETTERMAN MADE THAT YOU COMMENT MAY 19TH THE COURT SPECIFICALLY GAVE BOTH SIDES AN OPPORTUNITY TO FOLLOW UP, NOBODY DID THEY ACCEPTED HER STATEMENT THAT SHE HAD NOT READ ANY MEDIA, SHE HAD NOT SEEN ANYONE ELSE READING ANY MEDIA, AND NO ONE DISCUSSED IT IN HER PRESENCE, IN THE JURY ROOM THAT IS WHAT WE SHE SAID. SO THE TRIAL COURT HIS QUESTIONS WERE ACCURATELY FRAMED ACCORDING TO THE \$\$ COURT'S REMAND ORDER.

WHAT I DON'T EVEN SEE I WANT TO MAKE SURE ON ISSUE THREE, IS ONLY WE WHEN SHE SHOULD HAVE ASKED -- BEEN ABLE TO ASK MORE QUESTIONS OF COY LEE THOMPSON, IN OTHER WORDS, DID SHE -- I DON'T SEE BEFORE US, UNLESS THE NEXT ISSUE HERE, WANT TO MAKE SURE -- NO -- IS THAT SHES SHOW HAVE BEEN ABLE TO GO BACK AND REQUESTION ALL THE JURORS.

I DON'T BELIEVE THAT EVERY CAME UP.

NOW GETTING TO WHETHER THE QUESTIONING OF COY THOMPSON WAS UNREASONABLY RESTRICTED!!\$\$!!!!!!!!!!!!!! RESTRICTED. WHAT DO YOU SAY ABOUT THAT.

AND I DON'T BELIEVE IT WAS, BECAUSE WHAT HAPPENED ON THE JUNE 5, 2005 HEARING WAS THE COURT DID TWO HEARINGS AT ONCE, HE DID THE COURT'S REMAND ORDER, WHERE HE ASKED THESE THREE SPECIFIC QUESTIONS, AND THEN HE ACTUALLY\$\$!!!!!!IES VERY VERY CAREFUL TOLD THE COURT DRAW A LINE SENT MR. THOMPSON BACK INTO THE JURY ROOM BY HIMSELF, THE FORMULATED QUESTIONS, MISS DONOHO, I BELIEVE, NOT RIGHT THEN, BUT LATER ON DURING

THE QUESTION, HE LEFT AGAIN -- FORMULATED FIVE QUESTIONS SHE WANTED, THEY ALL DISCUSSED, THEM, AND THE COURT DECIDED YOU THAT SHE WITHDRAW ONE WAS LEFT WITH FOUR THE COURT DECIDED THE QUESTIONS ABOUT DID YOU THINK HE WAS GUILTY FROM THE BEGINNING, THAT -- IN THE VERSUS -- THAT TIME!!\$\$!!!!!!!!!!!!!!E JUDGE ACTED ON THE SUPPLEMENTAL MOTION, AND SPECIFICALLY!!\$\$!!!!!!!!!!!!!! SPECIFICALLY, CONFRONTED COY THOMPSON CONCERNING WHETHER HE ACTUALLY HAD A BRIEF CASE, AND. NEWSPAPER ARTICLES.

WHEN THE JUDGE DID IT IS IN THE RECORD, PAGES 418 AND 419, HE ASKED MR. THOMPSON THREE FOLLOW-UP QUESTIONS, AFTER THEY HAD DONE THE INITIALLY QUESTIONING. AND THESE THREE FOLLOW-UP QUESTIONS WERE AFTER THE STATE HAD ITS PROPOSED QUESTIONS ASKED THESE WERE BASED ON MISS DONOHO'S REQUEST, ONE, DID YOU AT ANY TIME CARRY A BRIEF CASE WITH YOU CONTAINING ARTICLES OF MATTHEW MARSHALL CASE? PAGE 418. AND HE SAID NO. TWO, DID ANYONE TELL YOU OR HAVE YOU READ ANY NEWSPAPER ARTICLES!!\$\$!!!!!!!!!!!!!! ARTICLES, OR HEARD ANYTHING ON RADIO OR TELEVISION THAT -- ABOUT WHY YOU ARE BEING CALLED HERE TODAY.

NO.

AND, THREE, AND WHEN YOU SAY YOU THOUGHT IT WAS GOING TO QUESTIONS ABOUT THE TRIAL DID YOU THINK IT WAS GOING TO BE QUESTIONS THAT I HAVE ASKED YOU TO THIS POINT HE ANSWER NOD OH, TO.

EVEN THOUGH -- THOSE QUESTIONS SEEM TO BE OUTSIDE THE SCOPE OF THE REMAND ORDER. RIGHT THIS IS THE SECOND PORTION OF THE HEARING, THIS IS -- RIGHT.

-- THE EVIDENTIARY HEARING PORTION FOR THE SUCCESSIVE 3.851 MOTION, AND FOR THAT THAT IS THE SUM AND SUBSTANCE, OF THE DEBORAH DRA DEBORAH POM \$THOMPSON'S AFFIDAVIT!!\$\$!!!!!!!!!!!!!! AFFIDAVIT.

NOT ONLY DEALING WHETHER HE PROPERLY STAYED WITHIN THE SCOPE OF THE REMAND ORDER BUT ARE WE ALSO THEN DEALING WITH THE APPEAL OF THE ORDER DENYING SUCCESSIVE -- THE SUCCESSOR MOTION BASED ON DEBORAH THOMPSON.

YES.

THE IS I THINK BEING A LITTLE CONFUSING TO ME --

DEBORAH THOMPSON, WE HAVE AN EVIDENTIARY HEARING AND WE USED --

BUT EVIDENTIARY HEARING WAS MR. THOMPSON SPECIFICALLY ASKED OR, AND DID DEFENSE COUNSEL ASK ABOUT THE I NOTICED THE QUESTIONS THE YOU READ SAID SOMETHING TO THE EFFECT THAT DID YOU READ ANYTHING IN THE NEWSPAPER ABOUT WHY WERE YOU HERE. HE WAS ASKED ABOUT WHETHER OR NOT HE WAS ACTUALLY READING THE NEWS PAIPZ AT THE TIME OF THE TRIAL.

NEWSPAPERS AT THE TIME OF TRIAL.

YES, I BELIEVE HE WAS.

AT WHAT POINT WAS HE ASKED THAT.

I BELIEVE THE \$\$STATE'S INITIAL QUESTION, WHEN THEY DID THE EVIDENTIARY HEARING PORTION, OF THE QUESTIONING AND MR. THOMPSON --

I THOUGHT THOSE THREE CONFESS THAT YOU QUESTIONS THAT YOU READ WERE THREE QUESTIONS YOU SAID WERE PART OF THE EVIDENTIARY HEARING PORTION.

YES, THEY WERE.

THAT IS QUESTION WAS NOT ASKED IN THOSE THREE QUESTIONS.

NO WHAT HAPPENED MR. THOMPSON WAS QUESTIONED WITH THE REMAND QUESTION HE WAS THEN SENT BACK INTO THE JURY ROOM.

I UNDERSTAND THAT.

-- AT ANY POINT, WHAT IS HE ASKED, DID YOU IN FACT, READ NEWSPAPER ARTICLES, ABOUT THE TRIAL, DURING THE TRIAL TIME THE TRIAL TOOK PLACE?

YES, I BELIEVE, HE DID, THE WHAT HAPPENED IS THE STATE THE STATE ATTORNEY HAD QUESTIONS PREPARED, THAT HE WENT OVER WITH MR. WITH MISS DONOHO AND THEN THE TRIAL COURT ASKED THE QUESTION, THE QUESTIONS, ENCOMPASS I DON'T HAVE THEM IN FRONT OF ME

BUT THE QUESTION WAS, DID YOU DISCUSS THE CASE WITH YOUR WIFE OR ANY ONE ELSE, DURING THE TRIAL? THE THAT WAS THE FIRST QUESTION. THE SECOND QUESTION WAS DO YOU -- DID YOU READ ANY NEWSPAPER ARTICLES!! OR MEDIA -- LISTEN TO MEDIA REPORTS DURING THE TRIAL? THOSE WERE THE TWO QUESTIONS THE STATE PROPOSED, AFTER MR. THOMPSON ANSWERED THOSE TWO QUESTIONS, HE WAS SENT BACK INTO THE JURY ROOM, MISS DONOHO PROPOSED HER FIVE QUESTIONS, OF THOSE FIVE QUESTIONS, THE COURT ASKED THE THREE THAT I READ BEFORE. SO FOR THE EVIDENTIARY PORTION OF MR. THOMPSON'S TESTIMONY, HE WAS ASKED A TOTAL OF APPROXIMATELY FIVE QUESTIONS, DID YOU DISCUSS THE CASE DURING THE TRIAL WITH ANY ONE. DID YOU READ OR LISTEN TO MEDIA REPORTS?!! DURING THE TRIAL? DID YOU CARRY A BRIEF CASE WITH NEWSPAPER CLIPPINGS? DID YOU -- READ ANY ARTICLES OR HEAR ANY NEWS REPORTS ABOUT WHY YOU ARE COMING IN TODAY? YOU KNOW IF HE WAS TIPPED OFF BEFOREHAND, AND DID YOU THINK THE QUESTIONS WERE GOING TO BE ON THESE SUBJECTS!!\$!!!!!!!!!!!!!! SUBJECTS? HE ANSWERED NO TO ALL OF THOSE THAT IS THE EVIDENTIARY HEARING, HE IS THE ONLY WITNESS AT THE EVIDENTIARY HEARING, NO OTHER EVIDENCE WAS PROFFERED BY OTHER SIDE SO WE DON'T HAVE TESTIMONY BY ANY FORMER EMPLOYEES WE DON'T HAVE ANYTHING, THE JUDGE HAD TO BASE HIS DECISION SOLELY ON THE EVIDENCE PUT FORTH AT THIS HEARING, AND THE EVIDENCE WAS ONLY MR. 24078!!\$!!!!!!!!!!!!!! MR. THOMPSON'S TESTIMONY, AND --

NOW COUNSEL GIVES US AND STANDS IN QUOTES SHE BELIEVES THE LAW TO BE, THAT A COURT CANNOT RELY UPON, THE NEGATIVE RESPONSES OF A JUROR, WITH REGARD TO MISCONDUCT!!\$!!!!!!!!!!!!!! MISCONDUCT, AND THAT DOES NOT CONSTITUTE COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT A RULING OF THE COURT DO YOU BELIEVE IN A TO BE THE LAW UNDER THESE CIRCUMSTANCES?

I KNOW OF THE PRECEDENT, HOWEVER THAT IS NOT THE SITUATION IN THIS CASE.

ALL RIGHT. WHAT DO YOU I THOUGHT BE WHAT DO YOU I THINK THE LAW APPLICABLE A IS. THE LAW APPLICABLE IN THIS CASE THE COURT HEARD A TOTALLY OF TEN JURORS MR. THOMPSON IF HE WAS GUILTY OF JUROR MISCONDUCT, MIGHT LIKELY DENY IT, AS DOES THE PRECEDENTS, THAT MISS DONOHO STATED, INDICATE PB JURORS, PEOPLE WILL LIE SOMETIMES IF THEY ARE CAUGHT DOING SOMETHING WRONG --. HOWEVER YOU ALSO HAD THE OTHER NINE JURORS, WHO WERE QUESTIONED ABOUT JURY MISCONDUCT INCLUDING MISS LUTMAN I MENTIONED BEFORE THESE JURORS SAID THEY DID NOT HEAR OF ANY JURY MISCONDUCT DISCUSSING NEWSPAPER ARTICLES, IN THE JURY ROOM.

THE BOTTOM LINE IS THAT IN THE EVIDENTIARY HEARING THERE WAS NO TESTIMONY OR OTHER EVIDENCE PRESENTED, AT THE HEARING THAT MISCONDUCT OCCURRED!!\$!!!!!!!!!!!!!! OCCURRED. THAT IS CORRECT.

SO YOU HAVE TO -- IF YOU CAN'T RELY ON -- JURORS' DENIALS!!\$!!!!!!!!!!!!!! DENIALS, YOU STILL NEED YOU BEEN SUBSTANTIAL COMPETENT EVIDENCE THAT MISCONDUCT OCCURRED!!\$!!!!!!!!!!!!!! OCCURRED.

AND THERE IS NONE HERE, AND I UNDERSTAND MISS DONOHO!!\$!!!!!!!!!!!!!!\$ DONOHO'S POSITION BUT PART OF THE WEAKNESS IN MY OPINION OF HER ARGUMENT IS SHE AASSUMES THE VALIDITY OF BOTH OF THESE AFFIDAVIT AFFIDAVITS, ON THE RONAL SMITH AFFIDAVIT SHE AASSUMES FOR THE BASES OF HER ARGUMENT IN HER BRIEF THAT IT WAS IN FACT A JUROR WHO CALLED, WE CAN'T ASSUME THAT I DON'T BELIEVE YOU ALL ASSUMED THAT IN YOUR REMAND ORDER. LET ME ASK A QUESTION ON THAT, ONCE THE NAME OF THE FEENAIL -- FEMALE JURORS WERE IDENTIFIED WE KNOW ONE WAS DECEASED WAS THERE EFFORT TO GO BACK TO MR. SMITH WHOSE KRET -- CREDIBILITY WAS NOT QUESTIONED I BET THE STUART THE DEFENSE WAS THERE ANY EFFORT TO MAKE MR. SMITH AWARE OF THAT DECEASED \$\$ JUROR'S NAME TRY TO IDENTIFY WHETHER OR NOT SHE HAVE WAS RELATED TO ONE OF HIS CLIENTS!!\$!!!!!!!!!!!!!! CLIENTS, AND TRY TO CONNECT IT BECAUSE HE SAID HE COULDN'T REMEMBER THE \$\$ CALLER'S NAME.

I DON'T KNOW, IT IS NOT IN THE RECORD I WAS NOT INVOLVED WITH IN THE CASE AT THAT TIME. I KNOW THAT -- THE DEFENSE I BELIEVE THE STATE BOTH TALKED TO MR. SMITH, AND SAID BASICALLY THAT IS WHAT I CAN REMEMBER I CAN'T REMEMBER THE NAME AND I DIDN'T WRITE IT DOWN THE DECEASED FEMALE JUROR MISS CUNNINGHAM AS THE COURT KNOWS, SHE DID GIVE AN AFFIDAVIT!!\$!!!!!!!!!!!!!! AFFIDAVIT, WHICH WAS FILED IN 1996 ALLEGINGING A COMPROMISE

VERDICT, BUT, NOTHING IN HER AFFIDAVIT INDICATED ANY OTHER JURY ACTIONS WHICH COULD BE CONSTRUED MISCONDUCT NOTHING OF THAT NEWS REPORTS OR RACIAL JOKING. OH -- THE AFFIDAVIT WAS PREPARED BY WHOM? THE DEFENSE.
!!\$\$!!

THE DEFENSE HAD AN OPPORTUNITY TO TALK TO THIS DECEASED JUROR. INDEED. PRIOR?

INDEED. THEY INTERVIEWED HER IN 1996 WITHOUT COURT PERMISSION, PRESUMABLY THROUGH AN INVESTIGATOR!!\$\$!!!!!!!!!!!!!!!!!!!! INVESTIGATOR, TALKED TO HER, AND THEIR DISCUSSIONS ENDED UP WITH THIS AFFIDAVIT BUT IN THEIR DISCUSSIONS, AND THIS AFFIDAVIT, THERE IS NO INDICATION OF ANY MEDIA REPORTS BEING IN THE JURY ROOM, OR RACIAL BIAS, SO, IT IS A LOGICAL STEP TO SAY THAT IT IS UNLIKELY MISS CUNNINGHAM WAS THE JUROR WHO CALLED, ALLEGING DISMISSED!!\$\$!!!!!!!!!!!!THIS MISCONDUCT!!\$\$!!!!!!!!!!!!!!!!!!!! MISCONDUCT. -- AND THE STATE ASKED THE COURT TO AFFIRM IF THERE IS NO FURTHER QUESTIONS HE IF -- MISS DONOHO WISHES MY TIME -- ALL RIGHT, MISS DONOHO. 99,, .

JUST WANT TO BRIEFLY COMMENT ABOUT A COUPLE OF JURORS NOT FOR A COUPLE OF OF THE JURORS BRIEFLY SPOKE TO THE COURT AFTER THEY WERE QUESTIONED, VERY MINIMAL, VERY SORT OF -- REMOTIVED WAY -- REMOVED WAY THERE WASN'T A LEVEL OF COMFORT IN THE ROOM, IT WAS -- BIG JURY ROOM -- SITTING IN JURY BOX WITHOUT A LEVEL OF COMFORT, BUT BE THAT AS IT MAY,\$\$!!!! THE IMPORTANT THING HERE -- AND LET ME JUST TALK ABOUT ONE OTHER THING WHEN I ASKED THE WHEN I ASKED THE COURT TO READ THE QUESTIONS ONE OF THE QUESTIONS HE REFUSED TO ASK OF MR. THOMPSON WAS DID YOU DISCUSS NEWSPAPER ARTICLES WITH OTHER JURORS, DURING THE COURSE OF THE TRIAL. AND REFUSED TO ASK THAT QUESTION OF MR. THOMPSON. AND THAT IS -- BUT THAT QUESTION WAS ASKED OF OTHER JURORS, AND THEY RESPONDED THAT THEY HAD NOT -- TALKED ABOUT THE CASE.

ACTUALLY I DISAGREE WITH THAT BECAUSE OF THE WAY THE QUESTION WAS ASKED -- BY THE COURT, THE WAY HE PHRASED THE QUESTION, WAS WERE YOU THE JUROR WHO CALLED THE ATTORNEY RONALD SMITH, AND SAY THAT YOU WERE A TELERELATIVE OF SOMEBODY AND THEN READ ON FROM THERE, SO THEY WOULD HAVE HAD TO HAVE TAKEN IT UPON THEMSELVES YOU KNOW TO COME FORWARD AND SAY THEY WERE NEVER ASKED SPECIFICALLY ASKED THE QUESTION.

BUT YOU AGREE THAT ALL EVERY FEMALE JUROR HAD AN OPPORTUNITY FOR THE DEFENSE TO EITHER ASK A QUESTION AT THIS HEARING OR AS THE STATE MENTIONED, JUST A MOMENT AGO PRIOR.

WELL I RESPECTFULLY DISAGREE WITH THARGS BECAUSE THAT JUROR THAT WAS THE AFFIDAVIT CAME FROM, THAT WAS THE DECEASED JUROR, I CERTAINLY WASN'T THE ATTORNEY AT THE TIME, WHEN THAT AFFIDAVIT TOOK PLACE, AND THAT WAS LITTED GAIT HAD A LONG TIME AGO LITIGATE HAD A LONG TIME AGO A WHOLE LOT OF HISTORY AS FORS THAT SPECIFIC -- I MEAN THAT THE TIME THAT JUROR MADE AN ALLEGATION. THAT THERE WAS --

THAT DID NOT INCLUDE WHAT WAS BEING --

HER ALLEGATION WAS SHE DIDN'T BELIEVE HE WAS GUILTY OF FIRST-DEGREE MURDER SHE COMPROMISED HER VERDICT SO THEY WOULDN'T HAVE A HUNG JURY!!\$\$!!!!!! JURY.

SHE MADE NO ALLEGATION AS TO RACIAL COMMENTS, NEWSPAPER ARTICLES.

SHE DIDN'T MAYBE WASN'T ASKED I DON'T THINK WE CAN FAIRLY INFER THAT DIDN'T HAPPEN JUST BECAUSE SHE MADE AN AFFIDAVIT SAYING SHE HAD A COMPROMISED VERDICT.

WAS THE -- ALLEGATION ABOUT THE RACIAL COMMENT AND THE READING OF THE NEWSPAPERS MADE BEFORE OR ADVOCATE!!\$\$!!!!!!!!!!!!!!!!!!!! OR AFTER MRS. CUNNINGHAM\$\$'S AFFIDAVIT!!\$\$!!!!!!!!!!!!!!!!!!!! AFFIDAVIT.

THE -- THAT -- IS THE AFFIDAVIT YOU KNOW YOUR HONOR I CAN'T REMEMBER I WANT TO SAY

AFTER OR SOMETIME SHORTLY AROUND THE SAME TIME BUT I DON'T -- I DON'T THINK THAT THE
THAT OFFICE HAD MR. SMITH'S AFFIDAVIT AT THE TIME, THAT THEY SPOKE TO THESE JURORS.
THEY DID NOT HAVE HIS AFFIDAVIT!!\$\$!!!!!!!!!!!!!!!!!!!! AFFIDAVIT.
NO,NO, IT WAS -- YEARS BEFORE THAT.
WITH OUR ASSISTANCE, YOU HAVE NOW USED ALL YOUR TIME PLUS MORE TIME.
THANK YOU.
THANK YOU FOR THE ARGUMENTS WE'LL TAKE THE CASE UNDER ADVICEMENT COURT WILL
STAND IN RECESS, UNTIL 9:00 TOMORROW MORNING.
PLEASE RISE