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**Roy Lee McDuffie v. State of Florida**

**SC05-587**

FINAL CASE ON THE CALENDAR  
THIS MORNING McDUFFY VERSUS  
STATE OF FLORIDA.....,  
McDID YOU HAVEFY BEFORE THE  
COURT ON DIRECT APPEAL FROM  
CONVICTIONS FOR MURDER AND TWO  
DIETING SENTENCES.

>> YOU HAVE AS WE ALWAYS SAY  
AT THE BEGINNING, YOU HAVE  
GOT, A LOT OF POINTS.

>> YES.

>> AND WOULD YOU LET US, AND  
VERY INTRICATE FACTUAL  
CIRCUMSTANCE, COULD YOU  
HIGHLIGHT WHICH POINTS YOU  
BELIEVE ARE -- WELL, I KNOW  
YOU THINK THEY ARE ALL  
MERITORIOUS WHICH POINTS ARE  
YOU GOING TO ARGUE TO US?

>> THIS MORNING, TIME  
PERMITTING I'D LIKE TO ARGUE  
ARGUMENTS ONE, WHICH IS THE  
RICHARDSON CLAIM, PORTION OF  
ARGUMENT TWO, SUBSECTION B,  
DEALS WITH THE IMPROPER  
RESTRICTION ON  
CROSS-EXAMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

CROSS-EXAMINATION, OF TUESDAY  
WITNESSESES TIME FOR ARGUMENT  
FIVE AND ARGUMENT SIX  
SUFFICIENCY OF THE EVIDENCE.

>> ARE YOU PART OF ISSUE FIVE,  
IS TO DO WITH THE PETERSON --

>> CORRECT, CORRECT.

>> THAT IS RELATIVELY BRIEF  
ARGUMENT BUT I THINK AN  
IMPORTANT CERTAINLY IN THE  
CONTEXT OF THE CUMULATIVE  
CONSIDERATION OF SOME OTHER  
ERRORS THAT WE SUBMIT OCCURRED  
IN THIS CASE, AS TO ARGUMENT  
ONE THAT ARGUMENT RELATES TO  
WHAT OCCURRED DURING THE  
DEFENSE CASE-IN-CHIEF WHERE  
COUNSEL ATTEMPTED TO CALL A  
WITNESS BY THE NAME OF ANTHONY

WIGGINS!!\$\$!!!!!!!!!!!!!!

WIGGINS, TO TESTIFY THAT  
MR. HE HAD LOANED MR. McDID  
YOU HAVE KWLOOI -- McDUFFY TWO  
OCCASIONS MONEY IN THE WEEK  
PRECEDING MURDERS HERE THIS  
ISSUE WAS CRITICAL, BECAUSE  
THE STATE'S THEORY OR THE  
STATE'S THEORY OF MOTIVE  
WAS FINANCIAL MOTIVATION AND  
MR. McDUFFY AND HIS WIFE WERE  
SO IN SUCH FINANCIAL  
CIRCUMSTANCES, THAT AS A RESULT HE  
COMMITTED ROBBERY OF THE  
DOLLAR STORE WHERE HE WAS  
EMPLOYED AND DURING THE COURSE  
OF THAT ROBBERY, MURDERED TWO  
VICTIMS HERE.

>> THE JUDGE STRUCK THE  
WITNESS WITHOUT REALLY LOOKING  
AT ALTERNATIVES THAT IS YOUR  
RICHARDSON ERROR.

>> THAT IS CORRECT.

>> MY BIGGER CONCERN IS THE  
HARMLESS ERROR QUESTION AND I  
MEAN WHAT -- HE COULD HAVE  
TESTIFIED TO A 40 DOLLAR!!\$\$!!!!!!!!!!!!!!\$40 ON ME ORDER  
IS THAT HE --

>> THERE WERE TWO, WHERE THE  
40 DOLLAR!!\$\$!!!!!!!!!!!!!!\$40 -- THE WAY THE RECORD  
REFLECTS IS THAT WIGGINS COULD  
HAVE TESTIFIED ON TWO OCCASION  
HE IS AROUND THE SAME DATE  
APPROXIMATELY A WEEK BEFORE  
THE MURDERS, HE WIRED  
MR. McDUFFY SOME MONEY.  
HE HAD A RECEIPT FOR ONE OF  
THOSE TRANSACTIONS -- RECEIPT  
FOR THE 40 DOLLARS!!\$\$!!!!!!!!!!!!!!\$40, APPARENTLY HE DID  
THAT TRANSACTION AT WORK SO HE  
HAD THE RECEIPT IN HIS OFFICE,  
HE WAS ATTEMPTING BUT UNABLE  
TO LOCATE THE RECEIPT THE WIRE  
TRANSFER RECEIPT FOR THE  
SECOND --

>> HOW MUCH WAS THE SECOND  
AMOUNT?

>> SECOND LOAN I THINK FOR #  
00 OR -- 340 DOLLARS!!\$\$!!!!!!!!!!!!!!\$340.

>> MY PROBLEM WITH IT AS FAR  
AS HARMLESSNESS IS THAT THIS  
IN THE DAYS BEFORE HE ELSE  
ABOUT HIS LANDLORD THAT HE  
DOESN'T HAVE THE MONEY, SO

WHATEVER MR. WIGGINS WOULD HAVE GIVEN HIM WAS -- ALREADY USED, BUT YET THE DAY AFTER, HE HAS 1430 DOLLARS!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!\$1,430, IN MONEY ORDERS, AND I THINK THAT WIGGINS DOESN'T EVEN TOUCH ON THAT ISSUE, OF IF HE DIDN'T HAVE THE MONEY, AND I REALIZE WE DON'T SOMETIMES YOU CAN'T ISOLATE THIS BUT THAT IS WHAT YOU KNOW, I CAN BUY THE IDEA THAT IT IS THAT THEY WERE ABLE TO ARGUE ONLY FAMILY MEMBERS CAME IN.

BUT AS FAR AS THE AMOUNTS INVOLVED, IN THE TIMING, IT SEEMS THAT IT WOULD BE HARMLESS ERROR.

>> WELL, FIRST OF ALL THERE WAS EVIDENCE THAT MR. McDUFFY DID HAVE BECAUSE HE HAD ALSO THE EVIDENCE SUGGESTED THAT HE HAD RECEIVED SOME OTHER HOONS FROM FAMILY MEMBERS HAD INDEED PAID OFF, I THINK IT WAS, SOMETHING IN THE MID PART OF OCTOBER SO HE DID HAVE MONEY, CERTAINLY THE EVIDENCE SUGGESTED THAT THERE WERE CONTINUED MONEY PROBLEMS. I'M NOT SURE THAT THE AMOUNTS OF THE LOANS THAT WIGGINS WOULD TESTIFY IT TO IS THE CRITICAL FACT ALTHOUGH IT IS CERTAINLY IMPORTANT, I THINK WHAT IS CRITICAL AS YOUR HONOR POIVENLTED OUT WAS THE FACT THAT THERE WAS -- A NONFAMILY MEMBER, WITH OBJECTIVE DOCUMENTATION TO SHOW THAT MONEY WAS COMING IN FROM OTHER SOURCES BESIDES THE FAMILY, TO REFUTE THE \$\$\$STATE'S THEORY OF MOTIVATION.

>> NOW ON TERMS YOU MAKE SOME CONSTITUTIONAL, AT THAT ARE NOT PRESENT WHEN THE FOR THE STATE YOU KNOW, STATE COMMITTING A DISCOVERY VIOLATION THAT IS THAT YOU HAVE GOT A RIGHT TO PRESENT WITNESSES THERE IS A CONSTITUTIONAL IMPLICATION, BUT, DO YOU AGREE OR DISAGREE

THAT THE STATE IF THERE IS A RICHARDSON VIOLATION THAT THE STATE WOULD STILL HAVE THE BENEFIT OF BEING ABLE TO ESTABLISH IF THEY CAN THAT IT IS HARMLESS BEYOND A REASONABLE DOUBT THAT IT IS NOT A PER SE REVERSAL WITH THE SITUATION OF A DEFENDANT HAVING A WITNESS STRUCK? DO YOU AGREE WITH THAT.

>> I AGREE CERTAINLY -- WITH THE CASE LAW FROM VARIOUS DISTRICT COURTS OF APPEAL.

>> -- SAYS RIGHT TO REMAIN SILENT CAN BE HARMLESS SIEGE TO ME RICHARDSON VIOLATION -- SUBSEQUENT TO COULD HOPE, HOWEVER IT IS SAID COULD STILL BE HARMLESS.

>> CORRECT.

>> OKAY, CORRECT I'M SAYING UNDER THE FACTS OF THE CIRCUMSTANCES, WHAT THE COURTS, I DON'T THINK THERE IS A CASE THAT I FOUND FROM THE -- THIS COURT THERE MAY HAVE BEEN ONE FROM 70s THAT TALKS ABOUT A RICHARDSON VIOLATION IN THE CONTEXT OF A -- OF A STRIKING A DEFENSES WITNESSES THERE HAS BEEN A BODY OF CASES!!\$\$!!!!!!! CASES, WHICH ARE NOT DISCUSSED AT ALL ABOUT!!\$\$!!!!!!!BY THE STATE I DON'T BELIEVE THAT I FOUND ONE, WHERE IT WAS FOUND TO BE HARM!!\$\$!!!!!!! HARMLESS.

AND SO I THINK, AND WHAT THE COURTS DISCUSSES THE FACT THAT WHEN IT IS A DEFENSE WITNESS OR EVIDENCE STRUCK IT I AMPLICATES THE 6THALD SO IT IS NOT LIKE THE CONVERSE, WHERE THERE IS A VIOLATION ON THE OTHER SIDE OF THE OTHER BHAERT DEFENSE WITNESS YOU HAVE 6TH AMENDMENT IMPLICATED FURTHERMORE!!\$\$!!!!!!! FURTHERMORE, I THINK ONE OF THE OTHER FAR, TO CONSIDER WHEN ASSESSING HARMLESS ERROR ANALYSIS THE FACT THAT STATES COULD CAPITALIZE ON WHAT I SUBMIT TO BE ERROR IN THE

CHEESING ARGUMENT, SUGGEST --  
CLOSING ARGUMENT SEGING --  
SUGGESTING THIS WAS A --  
>> HAVE WE EVER DEALT WITH A  
RICHARDSON ERROR IN TERMS OF  
HARMLESS!!\$\$!!!!!!!!!!!!!!  
HARMLESSNESS?  
THE CHOP CASE DEALT IN TERMS  
OF PREJUDICE.  
>> YES, BUT HAVE YOU GONE, AND  
SIP!!\$\$!!!!  
SIPIO, I BELIEVE YOU ADDRESSED  
THE FACT THAT ALTHOUGH YOU ARE  
STILLED A HERE TO GO THE  
STRICT PROCEDURAL PREJUDICE  
REQUIREMENT!!\$\$!!!!!!!!!!!!!!  
REQUIREMENT, AND THAT ONLY IN  
A RARE CIRCUMSTANCE WERE A A  
DISCOVERY VIOLATION BE FOUND  
TO BE HARMLESS YOU CLARIFIED  
SOME EARLIER LANGUAGE, I THINK  
IT WAS IN CHOP MAY HAVE  
INDICATED THAT IT WAS YOU KNOW  
PER SE, REVERSIBLE -- THIS  
COURT IN CICIPPIO THE COURT  
FOUND IT WAS IN CHP OUT FOR  
FOUND ERRORHAMLESS CICCPIO  
HARM FULL REVERSED THERE IS  
SOME CASE LAW FROM THE COURT  
THOUGH CERTAINLY NOTHING  
RECENT ADDRESSING THE  
SITUATION ON THE OTHER SIDE  
WHERE YOU HAVE DEFENSE WITNESS  
I SUMMIT PARTICULARLY HERE YOU  
HAVE THE STATE CAPITALIZING ON  
THE EXCLUSION DURING THE  
CLOSING ARGUMENT REALLY THIS  
CASE COMES DOWN TO MR. McDUFFY  
MAINTAINS INNOCENCE DOES SO  
TODAY, SO, THERE IS NO OTHER  
MOTIVE THAT THE STATE WAS ABLE  
TO SUGGEST, OTHER THAN THIS  
FINANCIAL MOTIVE, SO, YOU KNOW  
WHEN IT COMES DOWN TO \$\$STATE'S  
ABILITY TO ESTABLISH HARMLESS  
NE -- YOJD A REASONABLE DOUBT  
THIS IS A SIGNIFICANT, FACTOR  
IN TERMS OF THE OVERALL  
PRESENTATION OF THE CASE IF  
DEFENSE DIDN'T THINK WIGGINS  
WAS NECESSARY, IT WOULDN'T  
HAVE GONE TO THE TROUBLE  
TRYING TO PRESENT IT.  
>> AGAIN, BEGINS WAS NECESSARY IT

WOULDN'T HAVE GONE TO  
TROUBLE PRESENTING IT.  
>> ISN'T THE AMOUNT INVOLVED  
RELEVANT TO WHETHER IT'S  
HARMLESS OR NOT.  
WIGGINS WAS GOING TO TESTIFY  
I GAVE HIM \$1,000.  
\$2,000 HE HAS MUCH BETTER  
CLAIM THAT HE WASN'T IN  
FINANCIAL STRAITS.  
>> HIS CLAIM ALWAYS BEEN HE  
WAS NEVER CERTAINLY  
FINANCIAL STRAITS PORTRAYED  
HIM TO BE.  
BUT CERTAINLY THE AMOUNTS  
ARE A FACTOR.  
BUT LIKE I SAID THE RECORD  
ALSO BEARS OUT THAT HE HAD  
BEEN RECEIVING MONEY FROM  
OTHER FAMILY MEMBERS.  
>> HE PRESENTED THAT.  
HE WAS ABLE TO PRESENT THAT.  
>> HE PRESENTED THAT.  
THIS IS WHY WIGGINS IS SO  
IMPORTANT.  
THE STATE CROSS-EXAMINED ALL  
THE WITNESSES ALL FAMILY  
MEMBERS.  
BROTHERS.  
MOTHER, MR. McDUFFIE HIMSELF  
ALL WERE CROSS EXAMINED THEY  
NO DOCUMENTATION DON'T  
REMEMBER LOANS OCCURRED OR  
AMOUNTS.  
>> IT WAS EVIDENT HERE THAT  
THERE WAS A \$1400 MONEY  
ORDER THAT WAS BOUGHT THE  
DAY AFTER THE MURDER.  
>> CORRECT.  
EARLY IN THE MORNING.  
>> CORRECT.  
CORRECT.  
>> SO WE'RE DEALING WITH  
SUBSTANTIALLY MORE THAN THE  
\$40, AS FAR AS THE TOTALITY  
OF THE RECORD.  
>> THERE IS THE 40 AND THE  
300.  
PLUS THERE IS THE DECISIONAL  
MONIES, THAT, THERE WAS  
EVIDENCE PRESENTED WAS  
LOANED TO MR. McDUFFIE.  
LIKE I SAID THE RECORD DOES  
REFLECT, I'M NOT SURE WHO

TESTIFIED TO THIS, IT MAY HAVE BEEN MR. McDUFFIE OR MAY HAVE BEEN, I DON'T REMEMBER, THERE WERE SOME CASES FACTUALLY DENSE. THERE WAS EVIDENCE THAT I THINK FIRST OR SECOND WEEK IN OCTOBER MR. McDUFFIE DID MAKE A PAYMENT TO, IT WAS EITHER FOR, I THINK IT WAS FOR THE RENT OF THE NEW RESIDENCE, PARTIAL PAYMENT. HE STILL OWED SOME DECISION ADDITIONAL MONEY FOR THE REMAINDER OF THE SECURITY DEPOSIT.

>> I LIKE YOU TO SAY SAID YOU WERE GOING TO GET INTO 2-B.

>> YES.

>> THE CROSS-EXAMINATION. THIS IS SORT OF UNUSUAL, TO ME UNUSUAL SITUATION BECAUSE YOU HAVE GOT, WHY DON'T YOU TELL US, THE STRONGEST RESTRICTION WAS BECAUSE YOU HAD BOTH MATAIS AS WELL AS HOPKINS.

>> CORRECT.

>> THEN YOU'VE GOT THE CROSS-EXAMINATION AS TO, FITZGERALD BEING MAYBE THE GUY THAT IS OUTSIDE. AND THEN YOU GOT, ABSOLON SUPPOSE TO LOOK LIKE.

>> McDUFFIE.

>> McDUFFIE.

>> CORRECT.

THIS IS VERY TROUBLING CLAIM.

WHAT HAPPENED, TRIAL THERE WAS LITIGATION ON REVERSE WILLIAMS RULE EVIDENCE. JUDGE ULTIMATELY, GRANTED THE STATE'S MOTION IN HIM KNEE, PREVENTING THE DEFENSE FROM ADMITTING THE FACTS OF SEVERAL CRIMES THAT HAD OCCURRED IN THE AREA BY VARIOUS INDIVIDUALS, TWO OF WHOM WERE FITZGERALD AND ABSOLON.

THERE --

>> YOU WERE VERY CANDID THAT

IF WE ADHERE TO OUR PRIOR JURISPRUDENCE THAT THOSE PRIOR ACTS WHICH AREN'T SIMILAR WOULD NOT COME IN AS REVERSEABLE ERROR?

>> THAT'S WHAT THIS COURT'S CASE LAW SUGGESTS.

>> YOU'RE SUGGESTING --

>> REVISIT THAT, CORRECT.

WHAT HAPPENED DURING THE, THE DEFENSE, FRIDAY TO CROSS-EXAMINE CAROL HOPKINS WHO WAS A CRITICAL WITNESS AND ALEX MATAIS ANOTHER CRITICAL WITNESS.

>> THOSE PHOTOGRAPHS THAT THEY WANTED TO, EXAMINE THESE WITNESSES ON, DID THESE WITNESSES EVER PICK THESE PHOTOGRAPHS OUT OF SOMETHING BEFOREHAND OR, WHERE DID THESE PHOTOGRAPHS COME FROM?

I'M HAVING A PROBLEM TRYING TO FIGURE OUT WHY THESE PHOTOGRAPHS WITH THESE WITNESSES?

>> MY UNDERSTANDING IS THAT THE PHOTOGRAPHS, MY RECOLLECTION IS THAT, DURING, THESE WITNESSES WERE SHOWN THESE PHOTOGRAPHS DURING DISCOVERY, DURING THE DEPOSITIONS.

BECAUSE THE DEFENSE WAS TRYING TO DEVELOP THIS THEORY THAT THE OTHER, THERE WERE OTHER INDIVIDUALS, WELL ACCORDING TO CAROL HOPKINS THERE WERE TWO OTHER INDIVIDUALS OUTSIDE THE STORE WHICH --

>> THIS IS TRUE, MATAIS AT DEPOSITION ADMITTED THAT THE PHOTO OF ABSOLON LOOKED LIKE McDUFFIE.

>> CORRECT.

>> THERE WAS THAT AT THE DEPOSITION.

>> AND SO DO CAROL HOPKINS. CAROL HOPKINS --

>> JUSTICE QUINCE'S QUESTION, YES THEY WERE ASKED ABOUT IT IN DEPOSITION?

>> CORRECT.

>> BUT, THE PICTURES WERE SHOWN TO THEM BY THE DEFENSE ATTORNEY.

IT WASN'T LIKE THESE WERE IN PICTURES THAT THEY HAD PICKED OUT AFTER GROUP OF PICTURES.

>> THAT'S CORRECT.

NO LINEUP OR ANYTHING LIKE THAT.

THAT'S CORRECT THESE WERE SHOWN DURING THE DISCOVERY PROCESS.

WHAT'S IMPORTANT OBVIOUSLY IS, THE TIME THAT WE'RE TALKING ABOUT HERE BECAUSE THE DEFENSE, LIKE I SAID WAS DEVELOPING THIS THEORY, IT WAS NOT, THAT MR. McDUFFIE WAS NOT IN THAT STORE AT THE TIME THAT THE MURDERS OCCURRED.

THERE WERE VARIETY OF OTHER INDIVIDUALS WHO COULD HAVE BEEN THE PERPETRATOR.

OF COURSE THEY DON'T HAVE TO PROVE THAT.

ALL THEY HAVE TO DO IS PUNCH SOME HOLES IN THE STATE'S CASE.

>> BUT I CAN SEE IT AS TO FITZGERALD.

FITZGERALD IS NOW TESTIFYING THEY'RE IDENTIFYING HIM AS SOMEONE, ESSENTIALLY CONFESSES

AND NOW CAROL HOPKINS SAYS THAT HE LEAKS LIKE THE PERSON THAT WAS OUTSIDE.

BUT, I'VE GOT A PROBLEM WITH, IF ABSOLON IS ONLY THERE BECAUSE OF, YOU ONLY FIND THAT PICTURE OF HIM BECAUSE HE IS ONE OF THE PEOPLE THAT HAS COMMITTED A PRIOR CRIME IN THAT AREA.

THE JUDGE HASN'T ALLOWED THAT REVERSE WILLIAMS RULE IN, AREN'T YOU ESSENTIALLY, IF YOU IDENTIFY WHO HE IS, TO THE JURY, YOU'RE, ESSENTIALLY GETTING IN THROUGH THE BACK DOOR.

ON OTHER HAND, AS JUSTICE

QUINCE SAYS IF YOU START TO TAKE PICTURES OF BLACK MEN, SAY, LOOK LIKE HIM, WITH THAT REFERENCE TO THE LINEUP, WHERE'S, WHERE DOES THAT STOP AND START?

>> I THINK WITH, WHAT'S CRITICAL ABOUT MATAIS, IS THAT, MATAIS THE DEFENSE WAS ATTEMPTING TO, IMPEACH THE RELIABILITY OF HIS IN COURT IDENTIFICATION OF MR. McDUFFIE.

WHAT HAPPENED WITH MATAIS HE CLAIMED TO HAVE OBSERVED A GENTLEMAN, EXITING THE DOLLAR STORE ON TWO OCCASIONS LOOKING AT HIM AT THE FACE, GOING TO A CAR, GOING BACK IN THE STORE AROUND 9:25 I BELIEVE IT WAS ON OCTOBER 25th.

HE WAS NEVER ABLE GIVING A COMPOSITE TO THE POLICE, GIVE ANY INFORMATION ABOUT THE FACE.

HE, THEN, THIS IS AGAIN IN THE END OF THE OCTOBER.

IN DECEMBER WHEN MR. McDUFFIE IS ARRESTED IT'S ON THE TELEVISION.

MATAIS WHEN HE SAW THE TELEVISION HE SAYS OH THAT'S THE GUY THAT I SAW.

HE DOESN'T GO TO THE POLICE WITH THAT INFORMATION FOR FIVE MORE MONTHS UNTIL APRIL.

>> I UNDERSTAND THAT.

BUT COULDN'T THOUGH, UNDER YOUR PHILOSOPHY THEY COULD HAVE IN THE DEPOSITION GONE AND FOUND ANYBODY THAT WAS 5'10" OR WHATEVER THAT WAS A BLACK MAN, AND, START, I MEAN, COULD THEY JUST START TO SAY, DOESN'T THIS GUY REASSEMBLE MR. McDUFFIE OR, YOU KNOW, SO FORTH, SO ON.

THAT IS THE QUESTION OF HOW FAR, ISN'T THERE SOME LEEWAY FOR THE JUDGE TO RESTRICT THAT AS, STARTING TO CONFUSE THE ISSUES BECAUSE AGAIN YOU

ONLY PICK ABSALON BECAUSE HE IS ONE OF THE PEOPLE NOT THAT WAS THERE ON THE DAY OF THE INCIDENT BUT WHO COMMITTED A PRIOR BANK ROBBERY.

>> WE DON'T KNOW IF HE WAS THERE ON THE DAY OF THE INCIDENT BECAUSE THERE WERE TWO PEOPLE THAT SHE SAW. WHICH WAS THE OTHER PART OF THE DEFENSE POINT I THINK FACT THE MATTER I THINK THE IS ENTITLED TO TEST THE RECOIBLT OF THIS IDENTIFICATION WITH A PHOTOGRAPH OF SOMEBODY WHO RE -- RESEMBLES THE DEFENDANT WHETHER IT'S --

>> LET ME HELP NARROW IT DOWN.

I THINK THERE IS ONE ARGUMENT FROM PICKING SOMEBODY OUT OF THE AIR AS OPPOSED TO PICKING PEOPLE WHO ARE KNOWN TO FREQUENT THIS PARTICULAR AREA WHERE THE CRIME OCCURRED AND, AND, LOOK LIKE THE TWO PEOPLE MISS HOPKINS SAW OUGHT SIDE. SO ARE YOU, WHICH WAY ARE YOU GOING HERE?

WHAT IS YOUR ARGUMENT? AS I SEE A DIFFERENCE AGAIN BETWEEN IDENTIFYING PEOPLE WHO FREQUENT THE AREA AND LOOK SIMILAR, ARE KNOWN, IF YOU HAD THE ABILITY TO SAY YES I'VE SEEN THIS FROM OTHER PEOPLE, SEEN THAT PERSON AROUND THERE, AROUND THAT TIME FRAME AS OPPOSED TO JUST, PULLING SOMEBODY OUT OF A HAT.

>> I THINK I UNDERSTAND YOUR QUESTION.

I THINK PROBABLY MY ANSWER IS A COMBINATION OF BOTH BECAUSE, AGAIN, THE DEFENSE DOESN'T HAVE TO PROVE THAT THIS OTHER INDIVIDUAL WAS ABSA LON.

ALL THEY WERE TRYING TO DO IS PUNCH HOLES IN THE

IDENTIFICATION OF MATAIS AND AGAIN --

>> I THINK YOU GOT A FRIENDLY QUESTION FROM JUSTICE BELL.

>> CORRECT.

>> WHAT HE IS SAYING THAT YOU HAD A HE CAN CONNECTION FOR ABSALON TO BE ABLE TO SAY HE IS SOMEBODY WHO COULD HAVE COMMITTED THIS MURDER.

>> THAT'S WHAT I'M SAYING.

>> LOOKED LIKE McDUFFIE.

HE IN FACT IS CLOSER IN HEIGHT TO THE PERSON THAT MATAIS FIRST DESCRIBES.

>> THAT'S WHAT I'M, ABSALON.

--

>> I DON'T KNOW IF IT WAS A FRIENDLY QUESTION.

>> I MEAN I WAS IN THE MIDDLE OF RESPONDING BECAUSE I PERCEIVED IT ALSO AS FRIENDLY QUESTION.

WE HAVE WITNESS IDENTIFYING IN A DEPOSITION A PHOTOGRAPH OF SOMEONE WHO SHE, AND EVEN THE TRIAL COURT ON SEVERAL OCCASIONS SAID LOOK REMARKABLY LIKE MR. McDUFFIE.

SO WHAT THE DEFENSE WAS TRYING TO DO HERE, FURTHER SHAKE MATAIS'S IDENTIFICATION BECAUSE, FORGETTING THE, PART A OF CLAIM TWO WHICH IS THE SUPPRESSION ISSUE.

ASIDE FROM MATAIS, WE HAVE, OLIVIA SUSO.

ALL SHE SEES IS BLACK MAN FROM THE BACK IN THE STORE AT 9:30.

THAT DOESN'T REALLY TELL US ANYTHING.

MATAIS WAS CLEARLY CRITICAL WITNESS HERE.

CERTAINLY HE WAS IMPEACHED.

WHEN YOU HAVE COMBINATION OF MATAIS BEING CROSS-EXAMINED WITH A PHOTOGRAPH OF ABSALON AND CAROL HOPKINS ADMITTING THERE WERE TWO INDIVIDUALS WHO LEFT THE STORE, IN FACT

SHE STUCK HER HEAD BACK IN,  
PEOPLE ARE OUT HERE, CALL  
THE POLICE IF SOMETHING GOES  
WRONG HERE.

>> THAT IS CRITICAL ELEMENT.  
YOU HAD TWO PEOPLE THAT WERE  
THERE AND RAISED SUSPICION  
BY MISS HOPKINS.

>> CORRECT.

>> NOW DOES MISS HOPKINS  
RELATE IN THE DEPOSITION.  
ABSALON LOOKED LIKE THE  
OTHER PERSON?

>> YES.

IN HER DEPOSITION, -- THIS  
IS FROM SHE WAS IMPEACHED  
DURING THE PROFFER.

IN HER DEPOSITION SHE SAID  
THAT THEY LOOKED SIMILAR TO  
THE TWO MEN, LOOKED SIMILAR  
TO ONE OF THE TWO MEN SHE  
SAW OUTSIDE THE STORE OF THE  
NIGHT IN QUESTION AS SHE WAS  
LEAVING?

>> ABSALON?

>> YES.

>> IF THE JUDGE ALLOWED THE  
CROSS-EXAMINATION, WOULD THE  
JUDGE SAY, HERE IS A  
GENTLEMAN, DOES HE LOOK LIKE  
McDUFFIE OR WHATEVER IT  
MIGHT BE.

WOULD THE, THEN WOULD YOU,  
ARE YOU ARGUING THAT YOU  
COULD HAVE GONE FARTHER AND  
EXPLAINED -- OF COURSE  
FITZGERALD WAS ALREADY  
IDENTIFIED.

SO THE JURY WOULD KNOW WHO  
FITZGERALD WAS.

>> AT THE TIME THIS CAME  
UP --

>> THEY WILL EVENTUALLY  
KNOW.

AS FAR AS ABSALON AS FAR AS  
WOULD THEY ESTABLISH THAT  
ABSALON WAS SOMEBODY THAT  
COMMITTED ANOTHER CRIME IN  
THE AREA?

>> I DON'T KNOW.

THAT WASN'T THE ARGUMENT.

>> THEN YOU'RE GETTING IN  
THE BACK DOOR.

>> BUT THAT WASN'T THE

ARGUMENT SO, THERE WAS NEVER --, IN A DEFENSE CASE, THE COUNSEL NEVER MADE THE ARGUMENT THAT, YOU KNOW WE WANT TO BRING THIS IN NOW BECAUSE OF COURSE, THE COURT DIDN'T LET THEM CROSS-EXAMINE THE WITNESSES AS TO THE PHOTOGRAPHS OF ABSLON AND FITZGERALD. PERHAPS HAD THEY DONE THAT THAT MIGHT HAVE BEEN SOMETHING THAT WOULD HAVE BEEN ADDRESSED.

BUT AT THIS POINT THERE WAS NO BACK DOORING BECAUSE THE DEFENSE WASN'T ATTEMPTING TO GET THAT INFORMATION BEFORE THE JURY.

ALL THEY WERE TRYING TO DO IS PUNCH HOLES IN THE STATE'S CASE AND CERTAINLY CAST DOUBT ON THE TESTIMONY OF MATAIS AND HOPKINS WERE OF THE MYRIAD OF WITNESSES WERE TWO OF THE MORE CRITICAL ONE THAT IS THE STATE PRESENTED.

I WANT TO BRIEFLY TOUCH ON CLAIM FIVE.

ARGUMENT FIVE.

WHICH AGAIN, IS A RELATIVELY BRIEF CLAIM BUT IT'S SOMETHING THAT WANTED TO BRING TO THE COURT'S ATTENTION BECAUSE I THINK IT NEEDS TO BE CONSIDERED, CERTAINLY IN ACCUMULATION OF OTHER ERRORS WE SUBMIT OCCUR, THAT IS ERRONEOUS ADMISSION, I'M SORRY, NOT CLAIM FIVE.,, WILLIAMS RULE CLAIM.

PETERSON.

ERRONEOUS AND UNDULY PREJUDICIAL TESTIMONY OF DAVID PETERSON WHO WAS SON OF LANDLORD OF MR. McDUFFIE BEFORE THE MURDER.

THIS WAS SOMETHING THAT WAS STRENUOUSLY LITIGATED BEFORE THE COURT ALLOWED MR. PETERSON TO TESTIFY TO SOME IRRELEVANT, VERY PREJUDICIAL AND VERY, VIAL

COMMENTS THAT MR. McDUFFIE  
SUPPOSEDLY MADE --

>> IS THIS, THE RECORDING  
THAT HE LEFT, THE MESSAGE?

>> CORRECT.

CORRECT.

>> WAS THE MESSAGE, HOW LONG  
BEFORE THE MURDER WAS THE  
MESSAGE LEFT?

>> IT WAS SUBSEQUENT -- I  
DON'T KNOW THAT IT WAS EVER  
ESTABLISHED.

IT WAS ABOUT, I BELIEVE IT  
WAS SUBSEQUENT TO THE TIME  
THAT PETERSON FILED THE, THE  
SUIT TO RECOVER THE MONEY.  
WHICH YOU THINK WAS ABOUT  
TWO WEEKS BEFORE THE MURDER.

AND SO THE PHONE CALL, I  
DON'T RECALL, I DON'T HAVE  
IT IN MY NOTES IF THE DAY  
WAS SPECIFIC, BUT

MR. McDUFFIE ACKNOWLEDGED  
CALLING PETERSON.

TO DISPUTE UNITED STATES NOT  
ONLY CALLING BUT HE CALLED  
HIM WITHIN A COUPLE WEEKS OF  
THE MURDER?

>> CORRECT.

CORRECT.

THAT'S ONE THING.

>> THIS IS NOT SOMETHING  
THAT HAPPENED COUPLE YEARS  
AGO, ALL WE'RE INTRODUCING  
FOR TO SAY HE IS A BAD GUY,  
HE, CUSSES ON THE PHONE.

>> CORRECT.

BUT I SUBMIT THAT UNDER THE  
FACTS OF THIS CASE, WHAT  
MR. McDUFFIE SAID TO HIM AND  
CERTAINLY WHAT CAME OUT FROM  
PETERSON WAS REALLY  
IRRELEVANT.

EVEN IF IT WAS MARGINALLY  
RELEVANT IT WAS SO  
INFLAMMATORY IT OVERCAME ANY  
POTENTIAL PROBATIVE VALUE.

I DON'T KNOW IF YOU WANT ME  
TO REPEAT THE COMMENTS IT.

WAS ABOUT PETERSON FATHER  
AND BAULT BALTIMORE AND  
COULD GET SHOT BY SNIPER.

THERE ARE OTHER COMMENTS I  
WON'T REPEAT BUT THEY'RE SET

OUT IN PREVIOUS.

JUDGE FOXWOOD THEY WERE  
RELATIVE TO McDUFFIE'S STATE  
OF MIND TO THE FINANCIAL  
SITUATION.

>> YOU'RE ARGUING THEY'RE  
UNDULY PREJUDICIAL TO 403  
BUT YOU'RE ARGUING THEY'RE  
IRRELEVANT?

>> CORRECT.

>> THAT'S WHERE I HAVE A  
PROBLEM.

IT CERTAINLY SHOWS STATE OF  
MIND AROUND THE TIME OF THE  
MURDER.

AND BEING SO UPSET AT  
GETTING EVICT, WHETHER  
UNDULY PREJUDICIAL I THINK  
YOU HAVE THERE IS A BETTER  
ARGUMENT THERE BUT --

>> WELL, HE DOESN'T, THE  
PHONE CALL, FROM WHAT  
PETERSON RELATED DOESN'T SAY  
THAT McDUFFIE SAID I'M UPSET  
ABOUT BEING EVICTED, JUST  
INVECTIVE HE GOES IN ON.

>> YOU AGREE, THE FACT THAT  
HE'S, UPSET ABOUT THE  
EVICTION, THAT HE HAD BEEN  
EVICTED, AGAIN YOU SAY A LOT  
OF THAT SHOULDN'T COME IN.  
BUT LET'S JUST ASSUME, IT'S  
THE PART THOUGH, I THINK  
WHAT JUSTICE CANTERO IS  
SAYING THAT, YOU RILEY NEED  
TO SEPARATE THAT IT MIGHT  
HAVE SOME RELEVANCE BECAUSE,  
IT'S PART AND PARCEL OF HOW,  
HOW HE FELT ABOUT HIS  
FINANCIAL SITUATION AND THEN  
REALLY, ISN'T IT THE ISSUE  
MAYBE MARGINALLY RELEVANT  
BUT THAT THE PREJUDICIAL  
EFFECT, IS SO OUTWEIGHS  
ANYTHING.

I WAS THINKING ABOUT THIS.  
I'M GOING TO ASK MISS DAVIS  
ABOUT IT THE FACT THAT HE  
TALKS ABOUT THE SNIPER, THAT  
THE BALTIMORE SNIPER AND  
THAT THE, EVEN THOUGH THE,  
STATE DOESN'T SPECIFICALLY  
USE THAT, THE BULLETS IN  
THIS CASE WERE ACTUALLY

SNIPER BULLETS.

FIRST OF ALL ANYONE EVER SAY  
THAT MADE IT RELEVANT  
BECAUSE HE REFERS TO A  
SNIPER AND, THERE WAS --

>> I DON'T THINK IT WAS  
ARTICULATED LIKE THAT.

I WOULD DEFER TO THE RECORD  
FRANKLY.

I DON'T REMEMBER THE  
SPECIFIC NATURE.

>> DO YOU THINK THAT ADDS TO  
THE PREJUDICIAL NATURE.

>> CERTAINLY WAS ONE OF THE  
ARGUMENTS SNIPER INCIDENT  
GONE ON CAPTIVATED COUNTRY  
AND TERRORIZED THE COUNTRY.

>> THIS IS BLACK MAN AND  
WHITE VICTIMS?

>> CORRECT.

CORRECT.

AGAIN THE STATE ALSO BROUGHT  
THIS UP AGAIN IN CLOSING  
ARGUMENTS.

IT WASN'T SOMETHING THAT WAS  
ISOLATED AND PRANCE THE JURY  
COULD HAVE FORGOTTEN ABOUT  
IT ALTHOUGH I SUBMIT THIS,  
THESE TYPE OF COMMENTS EVEN  
IF MARGINALLY RELEVANT OR  
PROBATIVE TO STATE OF MIND  
WERE SO UNDULY PREJUDICIAL  
THEY VISION EIGHTED ANY  
PROBATIVE VALUE THAT THEY  
MIGHT HAVE HAD.

>> YOU'RE MOVING INTO  
REBUTTAL.

I KNOW YOU WANTED TO TALK  
ABOUT SUFFICIENCY.

>> BRIEFLY SUCH TOUCHING ON  
SUFFICIENCY.

THE BRIEF SET ITS OUT.

WE'RE RELYING ON THE COURT'S  
DECISION IN BALLARD.

FOR MOST PART THERE ARE  
CERTAINLY OTHER CASES.

HARMIO --

>> WHETHER THERE WAS  
SUFFICIENT EVIDENCE OR NOT  
THERE HAVE TO AGREE THERE  
WAS MORE EVIDENCE THAN IN  
BALLARD?

>> THERE WAS MORE EVIDENCE  
IN THE, LENGTH OF THE TRIAL.

I SUBMIT THAT THE QUALITY OF THE EVIDENCE --

>> AND ALSO, THIS IS, THIS ISN'T JUST A CIRCUMSTANTIAL EVIDENCE CASE, IS IT?

>> I SUBMIT THAT IT'S A CIRCUMSTANTIAL CASE.

THE PHYSICAL EVIDENCE WE'RE TALKING ABOUT, TALKING ABOUT THE MOTIVE AND ALL THAT OTHER TESTIMONY.

I MEAN, THERE'S --

>> I'M NOT TALKING ABOUT THAT.

I'M TALKING ABOUT HIS HAND PRINT FOUND --

>> THAT'S WHAT I'M TALKING ABOUT.

THAT'S WHAT THIS CASE BOMBS DOWN TO.

IT'S NOT HIS HAND PRINT BUT A THIRD OF A PALM PRINT BUT NO OTHER PALM PRINTS, NO OTHER FINGERPRINTS, NO OTHER FORENSIC EVIDENCE.

NOTHING.

>> DIDN'T FITZGERALD, THEY OPENED THE DOOR ON THIS. DIDN'T FITZGERALD ACTUALLY SAY McDUFFIE KILLS, SAID HE KILLED THEM?

>> HE DID SAY THAT. HE WAS IMPEACHED.

-- WOUND UP HAPPENING --

>> THAT MAY BE THE FLIMSIEST AND JURY MAY HAVE FOUND THAT TO HAVE NO CREDIBILITY BUT ONCE THAT, ADMISSION IS IN, HOWEVER INCREDIBLE IT MIGHT BE WE DON'T WEIGH THAT CREDIBILITY, DO WE?

>> I SUBMIT, I DON'T KNOW THAT A, SNITCH TESTIMONY RESULT QUALIFIES AS DIRECT EVIDENCE BUT AS OPPOSED TO CONFESSION FROM THE DEFENDANT.

>> IT'S SUFFICIENT EVIDENCE. LET'S FORGET WHETHER IT'S DIRECT OR CIRCUMSTANTIAL.

>> YOU HAVE TO LOOK CONTEXT ENTIRE INMATE TESTIMONY. THERE WAS ONGOING BATTLE OF THE INMATES HERE AND

SNITCHES.

>> WHAT STRUCK ME IS, HOW ELSE DO YOU EXPLAIN THE SUSPECT BEING ABLE TO LOCK AND UNLOCK SEVERAL TIMES THE STORE UNLESS IT'S AN EMPLOYEE?

>> WELL, FITZGERALD FOR EXAMPLE, KNEW DAWN, HE HAD BEEN IN THE STORE BEFORE. HAD DATED AND CHILDREN WITH DAWNIELL BEAUREGARD'S SISTER.

THERE WAS, FITZGERALD ISN'T A NAME SOMEBODY PICKED OUT OF A HAT.

HE HAD, AS DID ALEX MATAIS --

>> YOU CAN KNOW AN EMPLOYEE OF THE STORE WITHOUT HAVING ACCESS TO THE KEYS TO THE STORE.

SEEMS TO ME IF SOMEBODY WAS THERE TO KILL SOMEBODY, ROB SOMETHING, I HAVEN'T RUN ACROSS A CASE HERE YET WHERE THE MURDERER THEN LOCKS THE DOOR TO THE PLACE, TO A STORE.

>> THE IMPORTANT PART OF WHAT YOU'RE SAYING THOUGH IS THAT THE TESTIMONY ABOUT THE LOCKING OF THE DOOR COMES FROM ALEX MAAIS.

>> THAT'S A CREDIBILITY ISSUE.

THAT'S FOR THE JURY TO DECIDE WHETHER THAT'S ENOUGH. I'M --

>> LET ME ASK YOU WHEN THE POLICE ARRIVED WAS THE DOOR LOCKED?

>> YES.

I BELIEVE SO.

I BELIEVE SO.

THE DOOR --

>> WERE YOU GOING TO COMMENT ON CUMULATIVE NATURE OF THESE OTHER ERRORS YOU DISCUSSED BEFORE US?

>> I CERTAINLY CAN.

IN TERMS WE'VE GOT RICHARDSON PROBLEM WITH THE EXCLUSION OF THE DEFENSE

WITNESSES.

WE HAVE THE DEFENSE BEING  
PRECLUDED FROM  
CROSS-EXAMINING TWO CRITICAL  
PROSECUTION WITNESSES ABOUT  
THE PHOTOGRAPHS OF OTHER  
PEOPLE WHO THOSE WITNESSES  
AND THE COURT ADMITTED  
LOOKED LIKE MR. McDUFFIE.  
YOU'VE GOT INTRODUCTION OF  
THIS VERY INFAMTORY  
PREJUDICIAL TESTIMONY FROM  
DAVID PETERSON AS WELL AS  
SOME OF AT OTHER ISSUES WE  
CONTINUE WERE ERROR.

I THINK EVEN IF NOT ALONE,  
WARRANT RELIEF, CERTAINLY  
CUMULATIVE BASIS I DO THINK  
I'M GIVEN PROBLEMATIC NATURE  
OF THIS CASE WHERE EVEN THE  
LEAD INVESTIGATOR, CANDIDLY  
ACKNOWLEDGED THAT IT'S ONE  
OF THESE CASES WHERE HE  
FINDS IT HARD TO BELIEVE  
ONLY ONE PERPETRATOR DID IT  
WITH ALL THE MURDER WEAPONS  
ALL THIS BLOOD AND, NO  
FORENSIC EVIDENCE  
WHATSOEVER.

WE HAVE A PARTIAL PALM PRINT  
ON A PIECE OF WADDED UP TAPE  
BUT NO OTHER FINGERPRINTS ON  
THE TAPE AND NOTHING ELSE  
TYING MR. McDUFFIE TO THE  
ACTUAL MURDERS I DO  
SUBMIT --

>> WAS THE STATE'S THEORY  
ELIMINATE ANY POSSIBILITY  
THERE WAS ANOTHER  
PERPETRATOR THAT JUST HASN'T  
BEEN FOUND?

>> THEY HAVE NEVER TAKEN THE  
POSITION THAT IT WAS ANYONE  
OTHER THAN MR. McDUFFIE.  
THANK YOU.

>> MISS DAVIS.

>> MAY IT PLEASE THE COURT.  
MY NAME IS BARBARA DAVIS.  
I REPRESENT THE STATE OF  
FLORIDA AND I GUESS I'LL  
START WITH THE RICHARDSON  
ISSUE GO STRAIGHT TO THE  
HARMLESS ERROR.  
I LIKE TO POINT OUT THIS WAS

A MASSIVE CASE.

>> BEFORE WE GET TO THE HARMLESS ERROR, TELL US WHAT THE, WHAT THIS COURT HAS SAID ABOUT, IF ANYTHING, ABOUT STRIKING OF DEFENSE WITNESSES AS, AS FAR AS RICHARDSON AND HOW IT'S ANALYZED.

>> I HAVE NOT FOUND A CASE WHERE THIS COURT HAS RULED ON THAT ISSUE.

NORMALLY IT'S THE STATE THAT'S, GOT THE RICHARDSON VIOLATION.

>> THOSE SITUATIONS STATE, USED TO BEFORE, SHOPE, WE WERE CONCERNED THAT THE STATE, WAS, PUTTING SOMETHING IN AND BUT THEN IF IT WAS A RICHARDSON VIOLATION, EVEN IF IT WAS HARMLESS OR, YOU KNOW, IT WAS, IT WAS STILL, REQUIRING AN AUTOMATIC REVERSAL. SO, WHAT, IS YOUR, WHAT IS YOUR BEST CASE FOR THAT IT'S STILL, THAT IT'S A HARMLESS ERROR ANALYSIS WHEN IT'S THE DEFENDANT THAT HAS A WITNESS STRUCK?

>> WELL, IN CIPIO, I QUOTE THIS HAD IN MY BRIEF THIS COURT SAID THE RULES APPLY EQUALLY TO THE DEFENSE AND THE STATE.

AND THAT THE DEFENSE HAS CONTINUING DUTY OF DISCOVERY AND, THEY, NOW THIS IS A PRETTY EGREGIOUS RICHARDSON THING.

IF YOU WANT TO GO TO STRAIGHT TO HARMLESS ERROR SAVE TIME IF YOU'VE MADE UP YOUR MIND BUT THIS WITNESS WAS KNOWN TO THE DEFENSE AND, THEY HAD HIM OUT BEFORE THIS TRIAL EVEN STARTED LOOKING FOR THE OTHER RECEIPT.

AND YET THEY NEVER LISTED HIM, --

>> THEY LISTED HIM FOR PENALTY PHASE.

>> FOR THE PENALTY PHASE.

>> STATE KNEW ABOUT HIM JUST DIDN'T KNOW HE IT WOULD BE PRESENTED FOR THE GUILT PHASE.

>> YES.

SHOWS UP ON THE DAY OF THE DEFENSE, WE'RE NOW A MONTH INTO THE TRIAL.

>> I APOLOGIZE.

LISTING HIM AS A PENALTY PHASE WITNESS.

WAS HE DEPOSED BY THE STATE?

>> KNOWS.

>> SO WHAT WAS HE GOING TO TESTIFY ABOUT TO THE RECEIPTS TO FROM YOUR KNOWLEDGE?

>> HE DID TESTIFY IN THE PENALTY PHASE HE HAD BEEN A FRIEND OF ROY'S FOR YEARS. HAD BEEN HIS BARBER IN JACKSONVILLE.

THAT HE WAS A WONDERFUL PERSON.

THAT HE COACHED LITTLE LEAGUE.

>> HAD THE DEFENDANT PROVIDED YOU WITH A SUMMARY OF HIS STATEMENT?

>> IT --

>> MY QUESTION WAS THE STATE AWARE WHAT HE WAS GOING TO TESTIFY TO INTO THE PENALTY PHASE?

>> YES.

>> EITHER BY STATEMENT OR DEPOSITION?

>> YES.

THE PENALTY PHASE WITNESSES THERE WAS A LOT OF DISCOVERY ON THAT THAT MR. McDUFFIE HAD COACHED LITTLE LEAGUE AND --

>> SPECIFICALLY AS TO THIS GENTLEMAN WIGGINS?

>> NOT THAT I KNOW OF.

NOT THAT I KNOW OF.

>> WAS THERE AN ATTEMPT BY THE STATE MADE TO HAVE THE TRIAL JUDGE ALLOW THEM TO TAKE HIS DEPOSITION WHEN HE WAS, WHEN IT BECAME APPARENT HE, WANTED, THE DEFENSE WANTED HIM TO TESTIFY IN

GUILT PHASE?

>> THE PROSECUTOR WAS JUST  
TAKEN ABACK.

>> I UNDERSTAND, UNDERSTAND  
THAT.

BUT WHAT HAPPENED THEN?

>> THEN THE JUDGE SAID, I  
WANT TO DO A RICHARDSON  
HEARING.

HE ASKED, YOU KNOW WAS IT  
INADVERTENT, WAS IT WILLFUL?  
HOW LONG VERY BEEN TALKING  
TO THIS PERSON?

HE SHOWS UP TODAY WITH  
RECEIPT THAT THE DAY THE  
WITNESSES ARE TESTIFYING.

>> MY RECOLLECTION WHERE WE  
CAME IN RICHARDSON WAS, WAY  
BACK, WHEN I FIRST GOT HERE,  
WE WERE, STILL DEALING WITH,  
IT WAS AN AUTOMATIC  
REVERSEAL.

THEN THEY CAME DOWN WITH,  
SHOPE.

AND THERE, THAT REAL ISSUE  
WAS, WHETHER IT WAS  
PREJUDICIAL TO THE  
PREPARATION OF THE OTHER  
SIDE'S CASE.

AND, THE TRIAL JUDGE NEEDED  
TO MAKE A DETERMINATION, NOT  
ONLY AS TO SURPRISE BUT AS  
TO WHETHER IT WOULD ACTUALLY  
AFFECT THE TRIAL PREPARATION  
FOR THE, THE OTHER, THE  
OTHER SIDE.

NOW --

>> YES, SIR.

>> DID THE JUDGE MAKE A  
FINDING ON THAT?

>> YES, HE DID.

AND THE PROSECUTOR HAD  
ARRESTED, -- THEY ALREADY  
RESTED THEIR CASE, TWO WEEKS  
OF TESTIMONY.

THE DEFENSE KNEW EVERYTHING  
THAT THE PROSECUTION HAD.  
THIS WITNESS CAME IN, HE WAS  
CALLED AS A WITNESS.

>> BUT YOU CHARACTERIZED  
THIS HE WAS TAKEN ABACK.

BLESS REFRESH MY  
RECOLLECTION BUT I WAS UNDER  
THE IMPRESSION THAT THE

STATE, THE ATTORNEY FOR THE STATE SAID YEAH I'M SURPRISED BY IT, IT'S NO BIG DEAL, I CAN HANDLE IT? AM I MISTAKEN ON THAT?

>> WELL IT'S MORE THAN WHAT THEY QUOTED IN THEIR BRIEF?

>> AM I MISTAKEN?

>> I'M ON PAGE 3799.

>> OKAY.

>> TRANSCRIPT WHAT THE PROSECUTOR SAID I'M TOTALLY UNAWARE WHAT THIS PERSON IS GOING TO SAY.

I'M SURE I CAN PROBABLY DEAL WITH IT, BUT, THE PROBLEM IS, IT'S A SURPRISE.

IT IS SPRUNG ON THE STATE.

TODAY WE'VE HAD A NUMBER OF RULINGS THAT HAVE CAUSED US TO CHANGE THE WAY WE WERE PREPARED FOR TODAY AND THIS THROWN INTO THE MIX IT'S JUST, HOW MANY MORE ARE WE GOING TO GET HE HAVE THE END OF THE TRIAL?

>> DO YOU BELIEVE THAT THAT ANSWER JUSTICE WELLS'S QUESTION THE INQUIRY AS TO THE TRIAL PREPARATION THAT'S WHAT YOU SAY WOULD SATISFY THAT?

>> YES, SIR.

AND THERE WERE SOME OTHER THINGS THAT THE PROSECUTOR SAID.

AND REMEMBER, THIS WAS THE MORNING THAT THE WHOLE THEORY OF THE DEFENSE CHANGED AND THEY WERE GOING TO START BRINGING IN THE INMATES WHEREAS THE DAY BEFORE, THEY WERE GOING TO START PROFFERING THE INMATE TESTIMONY AND WHETHER THEY WOULD TESTIFY.

AND THEN WE HAVE THIS LITANY OF SIX INMATES COMING IN AND, THIS, AND THIS MORNING, THIS HAPPENED THREE WITNESSES AFTER, AFTER THEY CHANGED THIS WHOLE THING AND THEY SAY, NO, WE'RE GOING TO CALL FITZGERALD HIMSELF AND IF

THAT MAKES THIS TAKES US OUT OF A CIRCUMSTANTIAL EVIDENCE CASE WE DON'T CARE AND BECAUSE WE WANT TO BRING ALL THE OTHER INMATES IN TO IMPEACH FITZGERALD.

>> YOU SAID THAT THE TRIAL COURT INQUIRED AS TO WHETHER OR NOT IT WAS WILLFUL OR INADVERTENT AND WHAT WAS THE DETERMINATION ON THAT?

>> HE SAID, FIRST HE ASKED, HE ASKED THE STATE HAVE YOU SEEN THIS?

NO, I HAVEN'T.

IT WAS JUST PUT ON MY DESK NOW.

THE WITNESS WAS LISTED ASPEN NALT PHASE, NOT AS GUILT PHASE.

--

>> CASE LAW SAYS THERE SHOULD BE INQUIRY AND DETERMINATION AS TO WHETHER IT WAS WILLFUL AND INADVERTENT AND WHAT DID THE TRIAL COURT DETERMINE ON THAT?

>> HE THEN TURNED TO THE DEFENSE COUNSEL AND SAID, DEFENSE COUNSEL, TELL ME WHY THIS PERSON HAS SHOWN UP WITH THIS RECEIPT AFTER THE STATE'S RESTED AND WE'RE ONE DAY FOR THE FINISH OF THIS TRIAL, TELL ME HOW THIS HAPPENED?

AND THEY SAID, WELL WE'VE BEEN TALKING TO I AM HAD FOR A WHILE AND PLAYING PHONE TAG.

AND, THE OFFICE JUST TOLD HIM TO SHOW UP THIS MORNING AND HE BROUGHT THE ONE RECEIPT BUT HE'S BEEN LOOKING FOR THE OTHER RECEIPT.

>> SO DID THE TRIAL JUDGE DETERMINE IT WAS WILLFUL OR INADVERTENT?

>> HE SAID, I FIND A RICHARDSON VIOLATION AND I FIND PREJUDICE.

>> SO, WE DON'T KNOW WHETHER

HE FOUND IT WILLFUL OR  
INADVERTENT?

>> HE DID NOT BREAK IT DOWN  
I SAY I FIND YOU DID THIS  
WILL FULLY.

I FIND THE STATE DIDN'T HAVE  
THIS BEFORE BUT THE  
TESTIMONY SHOWS AFTER HE  
TOOK THE TESTIMONY, HE SAYS  
I FIND A WILLFUL, I FIND A  
RICHARDSON --

>> HE FOUND IT WILLFUL?

>> NO, SIR.

I'M ON PAGE 3799 AGAIN.

I BELIEVE THERE IS A  
RICHARDSON VIOLATION.

I BELIEVE THE STATE  
ESTABLISHED PREJUDICE.

HE SAYS AS TO WHETHER OR NOT  
THE STATE CAN REPAIR THE  
PREJUDICE, I'D HAVE TO  
SPECULATE AND I'M NOT  
WILLING TO DO IT AT THIS  
POINT IN THE TRIAL.

>> DOESN'T THE RICHARDSON  
CASE LAW THEY SAY THE JUDGE  
HAS TO DO ALL THAT?

HE HAS GOT TO CONSIDER THE  
POSSIBLE SANCTIONS OR,  
REMEDIES FOR IT AND, DECIDE  
WHICH ONE WOULD BE MOST  
APPROPRIATE?

DID THE TRIAL JUDGE DO ANY  
OF THAT?

>> NO, SIR.

HE DID NOT GO THROUGH THE  
LAUNDRY LIST, SAY WELL WE  
CAN DO THIS OR WE CAN DO  
THIS OR WE CAN DO THIS?

>> THAT IS WHAT THE CASE LAW  
SAYS HE SHOULD DO UNDER  
RICHARDSON INQUIRY, RIGHT?

>> REMEMBER WHAT IS  
HAPPENING THIS DAY.

WE HAVE NOW ALL THE INMATES  
COMING IN FROM PRISON, SIX  
OF THEM, AND, THAT MORNING,  
THE DEFENSE CHANGED  
EVERYTHING AND SAID --

>> IS THAT REALLY KIND OF --

>> AFFECT THIS IS WITNESS.

>> THAT'S THE JUST BECAUSE  
YOU'RE GOING TO CALL THESE  
OTHER PEOPLE, DOESN'T THAT

REALLY INQUIRY MEAN IT  
CHANGES THE WAY YOU APPROACH  
THE CASE OR SOMETHING OF  
THAT NATURE?

DOESN'T REALLY MEAN, THAT  
NOT WHO IS GOING TO COME IN  
THE NEXT 15 MINUTES TO  
TRIAL.

>> NO, SIR.

BUT IT GOES TO THE  
PROCEDURAL PREJUDICE.  
AS CIPIO YOU SAID IT'S  
PROPER RAL PREJUDICE?

>> DID WE REFER TO IT IN  
THAT SENSE?

I'M TRYING TO SEE.

HAVE WE REALLY GONE THAT FAR  
IF YOU CALL ONE WITNESS OUT  
OF TURN THAT'S SUFFICIENT?

>> IT'S --

>> WHEN DID HE CALL THE  
OTHER -- TO TESTIFY ABOUT  
LOANS?

>> REMEMBER --

>> WHEN DID HE CALL THE  
OTHER FAMILY MEMBERS ABOUT  
TESTIFYING ABOUT LOANS?

>> BEFORE AND AFTER  
MR. WIGGINS.

>> I THOUGHT WHAT WE HAD  
HERE WAS THAT THERE WERE  
NUMBER OF FAMILY MEMBERS  
THAT TESTIFIED THAT THEY  
GAVE HIM MONEY TO RELIEVE  
HIM.

>> THERE WERE THREE FAMILY  
MEMBERS.

>> THERE WERE THREE?

>> YES.

>> OKAY.

WHEN DID THEY TESTIFY?

>> THE MOM TESTIFIED AND  
THEN THE BROTHER.

>> WHEN DID THEY TESTIFY IN  
RELATIONSHIP TO THIS  
WITNESS?

>> FIRST THE MOM, THEN THE  
BROTHER AND THEN MR. WIGGINS.  
THEN ANOTHER BROTHER.

>> THEY TESTIFIED ALL OF  
THOSE WITNESSES HAD SIMILAR  
THINGS TO SAY?

>> OH, WELL, THERE WAS \$3800  
OF I'M TRYING TO UNDERSTAND

YOUR ARGUMENT ABOUT -- THAT  
SOMETHING DRAMATIC CHANGED.  
AND THAT THIS WITNESS WAS PART  
OF A DRAMATIC CHANGE --

>> NO, NO SIR, I'M --

>> IF I UNDERSTAND IT FROM YOUR

--

>> WHEN YOU ARE LOOKING --

>> HE CALLED THIS WITNESS AS  
PART OF THIS GROUP OF FAMILY  
MEMBERS.

THAT WERE ALL GOING TO TESTIFY  
ABOUT GIVING HIM MONEY.

OR LOANS.

IN ORDER TO PAY HIS DEBT.

>> YES, SIR, AND --

>> IS THAT CORRECT?

I MEAN --.

>> YES, SIR --

>> IS THAT CORRECT.

>> THAT IS HOW IT HAPPENED,  
HOWEVER, IF YOU LOOK AT THE  
MONEY ORDERS THAT THE STATE HAS  
IN THE RECORD, THEY WENT BACK  
AND GOT EACH MONEY ORDER  
INVESTIGATED THE VALIDITY OF  
THAT, REMEMBER, MR. McDUFFY WAS  
GOING OUT AND GETTING MONEY  
ORDERS, ONE THING THEY SAID,  
THE PROSECUTOR SAID, I CAN'T  
INVESTIGATE THE VALIDITY OF THE  
MONEY ORDER, WHICH IS IN  
JACKSONVILLE AND WE HAVE TRIAL  
IN DAYTONA BEACH WHICH IS  
EXACTLY WHAT THEY HAD DONE AS  
THEY HAD -- IS THEY HAD GONE  
BACK AND AUTHENTICATED --

>> WELL, COULDN'T -- COULDN'T  
THE REMEDY HAVE BEEN BECAUSE  
THAT IS A DIFFERENT ISSUE, LIKE  
-- I WOULD LIKE YOU TO ADDRESS  
THAT, WHICH IS IF THEY HAD  
ALLOWED HIM TO TESTIFY THAT HE  
HAD LOANED MONEY, DIDN'T ALLOW  
HIM TO USE THE \$40 RECEIPT, WE  
MIGHT HAVE A DIFFERENT  
SITUATION AND THAT IS MY  
CONCERN.

I CAN SEE THE ISSUE OF, WE  
DIDN'T KNOW ABOUT THE  
DOCUMENTARY EVIDENCE, NOBODY  
CLAIMED THAT THAT -- THERE WAS  
A DOCUMENTARY EVIDENCE THAT WAS  
THE VAY RELATION -- VIOLATION

BECAUSE IT WASN'T LISTED.  
THE WITNESS IS THE -- IS THE --  
THIS CONCLUSION OF THE WITNESS  
AND THE PROBLEM IS THAT EVEN  
THOUGH THE STATE SAYS, I'M SURE  
I CAN PROBABLY DEAL WITH IT AT  
THIS POINT, IT IS -- THAT  
WITNESS, WHO IS A DEFENSE  
WITNESS, WILL ASK THE STATE TO  
ARGUE IN CLOSING ARGUMENT THAT  
ALL HE COULD BRING IN WERE  
FAMILY MEMBERS.

AND SO, THAT IS, TO ME, WHERE  
YOU HAVE THE ISSUE OF THE --  
HOW DID IT REALLY PREJUDICE THE  
PREPARATION OF THE OTHER SIDE,  
SINCE THEY KNEW ABOUT -- THAT  
EVERYBODY -- THEY WERE SAYING  
HE DIDN'T HAVE MONEY, SO THE  
DEFENSE WAS, YES, WE HAVE A LOT  
OF PEOPLE THAT LOANED US MONEY,  
AND THEN, YOU HAVE THE DEFENSE  
-- THE PROSECUTOR SAYING, I CAN  
PROBABLY DEAL WITH IT.

AND NO ONE LOOKING AND SAYING,  
WELL, THAT MAY BE -- MAYBE WHAT  
IS WE SHOULD DO WHICH IS LET  
HIM TESTIFY BUT NOT LET HIM  
TESTIFY AS TO THE MONEY ORDER.  
WOULD THAT HAVE BEEN A  
COMPROMISE?

>> WELL --  
BUT SEE THEN THERE WAS ANOTHER  
\$300 THAT CAME UP DURING HIS  
PROFFER.

THAT --  
>> BUT THERE -- THEY ONE HAVE  
BEEN ABLE TO VERIFY IT AND THEN  
YOU WOULD HAVE BEEN ABLE TO  
CROSS EXAMINE HIM, SAYING, YOU  
KNOW, YOU DOPE HAVE ANY  
EVIDENCE OF THAT, DO YOU?

>> EXACTLY.  
BUT NOW LET ME COMMENT ON THE  
CLOSING ARGUMENT.  
THAT IS ONE SMALL PARAGRAPH IN  
REBUT CLOSING ARGUMENT IN 71  
PAGES OF ARGUMENT.  
THIS WAS NOT HAMMERED ON IN  
CLOSING ARGUMENT.

AND HE DIDN'T EXACTLY SEE -- IF  
YOU READ THAT COMMENT, HE  
WASN'T SAYING, ALL THESE FAMILY  
MEMBERS ARE LIARS AND

EVERYTHING ELSE, IT IS THAT,  
YOU KNOW, THESE PEOPLE WERE  
THERE, THEY COULD SEE HIM AND  
COULD JUDGE THEIR CREDIBILITY  
BUT TO ALLOW THEM TO HAVE KNOWN  
ABOUT --

>> ISN'T IT REALLY -- THE  
IMPLICATION IS THESE ARE HIS  
FAMILY MEMBERS AND THEY ARE  
GOING TO TRY TO -- TRYING TO  
HELP HIM, AND SO THERE IS NO  
REAL OUTSIDER, WHO IS THERE WHO  
IS SAYING HE LOANED HIM ANY  
MONEY, I MEAN, IT IS THE REAL  
IMPLICATION, FROM A STATEMENT  
LIKE THAT.

ISN'T IT IN.

>> WELL, YOU HAVE TO REALIZE  
THE AMOUNT OF EVIDENCE IS THAT  
-- THAT IS IN HERE, I MEAN,  
THERE WERE --

>> IT IS NOT REALLY -- A  
QUESTION OF THE AMOUNT OF  
EVIDENCE, THAT IS HERE.  
BUT, IT IS A QUESTION OF THE  
DEFENDANT NOT BEING ABLE TO PUT  
ON A WITNESS, AND IN THE --  
THEN THE STATE USING THAT  
FAILURE TO PUT ON THE WITNESS,  
TO THEN BOLSTER THEIR OWN CASE.

>> WELL --

AND YOU JUST HAVE TO LOOK AT  
THE CONTEXT.

AND THAT -- THIS IS ONE  
SENTENCE AND WHAT HE SAYS IS,  
OH, WE HAVEN'T SEEN ANYBODY  
OUTSIDE -- HE SAID, IT IS  
FAMILY MEMBERS, ALL FAMILY  
MEMBERS AND HERE THEY ARE.  
THE REST OF WHAT HE IS CITING  
WAS IN CROSS-EXAMINATION.  
FROM THE FAMILY MEMBERS.  
SAYING, WELL, DO YOU HAVE ANY  
RECEIPTS FOR THIS?

DID YOU KEEP ANY PAPER TRAIL ON  
THIS?

BUT THE COMMENT IN CLOSING  
ARGUMENT IS NOT THE STATED  
SEIZING ON AN EXCLUDED WITNESS.  
THESE QUESTIONS CAME IN BEFORE  
MR. WIGGINS WAS EVEN THERE.  
AND REMEMBER THAT THEY  
ESTABLISHED \$3800 WORTH OF  
LOANS, BOTH TROY AND MR. -- THE

WIFE, MRS. McDISC, MR. McDUFFIE  
AND THE FAMILY CAME IN AND  
THERE WAS \$3800 WORTH OF LOANS  
AND WE ARE TALKING ABOUT \$40  
HERE.

SO, AND JUST -- AS FAR AS THE  
HARMLESSNESS ISSUE, THE -- THIS  
IS A 4500-PAGE TRIAL.

THIS FINANCIAL STUFF WAS NOT A  
FEATURE OF THE TRIAL.

--

>> WHERE WAS THE HOME --  
[INAUDIBLE] ABOUT FINANCES AND  
HOW CAN YOU SAY -- FINANCIAL  
WAS NOT THE -- I MEAN, THIS WAS  
-- THE -- STATED IT THROUGHOUT.

>> FINANCIAL WAS ONE PIECE OF  
THE PUZZLE.

WHY WOULD ROY DO THIS?  
HOW ROY DID THIS WAS THE  
FEATURE OF THE TRIAL.

THE INVESTIGATION, THE  
TIMELINE.

THE VIDEOTAPES FROM HIM PAYING  
CASH, THE MORNING AFTER.

THE VIDEOTAPES FROM HIM AT  
MCDONALD'S.

WHICH WAS AN HOUR OFF HIS  
TIMELINE.

THE RECONSTRUCTION OF THE  
PARTIAL PALM PRINT BY FTLE --

>> I THINK YOU HAVE ESTABLISHED  
TO MY SATISFACTION THAT THERE  
IS PROBABLY SUFFICIENT EVIDENCE  
TO ALLOW THIS TO GO TO THE  
JURY.

I WOULD NOT CATEGORIZE THIS  
CASE AS THE STRONGEST -- AND I  
THINK -- YOU WERE ON THE CASE  
EARLIER THIS WEEK, AND THESE  
ARE TWO CASES THAT HAVE, YOU  
KNOW, A LOT OF BLOOD, VICIOUS  
MURDERS, NO BLOOD, EVIDENCE, ON  
THE DEFENDANT.

AND SO WE HAVE A SITUATION HERE  
WHERE WE REALLY HAVE TO LOOK  
CAREFULLY AT ANY ERROR.

I'D LIKE YOU TO MOVE TO THE ONE  
THAT CONCERNS ME PROBABLY THE  
MOST.

IS THE STATEMENT THAT WAS ILL  
LIS IT FROM MR. PETERSON ON THE  
--EE LIS IT FROM MR. PETERSON  
ON THE VOICE MAIL, WISHING HE

-- McDUFFIE, TELLING HIM HE WOULD GO UP TO BALTIMORE AND BE SHOT BY THE SNIPER UP THERE. AND THEN THE STATE USING THAT IN CLOSING ARGUMENT TO SAY HE PICKS UP THIS PHONE AND CALLS PETERSON AND LEAVES A MESSAGE, NO REASON WHY THEY -- MAKING THE PHONE CALL OTHER THANKS I GUESS, TO BE NASTY AND THEN GOES ON AND ON ABOUT THIS. I'M CONCERNED ABOUT THE UNDUE PREJUDICE AND HOW THAT REALLY, IF IT IS REL OR MARGINALLY REL. >> I'LL GRANT AND SAY -- SAVE A REPRIEVE ON THE OTHER CASE, I THINK WAS MS. CAMPBELL.

>> OH, WAS IT?

SORRY.

TUESDAY, WITH THE RICHARDSON CASE, YOU ARE HERE --

>> GETTING LATE IN THE WEEK.

>> AND THE FIRST TIME FOR YOU THIS WEEK.

>> SO, MR. PETERSON'S COMMENT AND REMEMBER, THAT THE JUDGE HAD FIRST -- HE PRESERVED -- REVERBD RULING AND SAID I'LL SEE HOW THE EVIDENCE PLAYS OUT AT TRIAL AND WILL SEE IF THAT COMES IN, AND THE WIFE, MS. McDUFFIE TESTIFIED, NO, WE HAVE PLENTY OF MONEY, THIS, THAT AND THE OTHER AND HAD NO PROBLEMS AND AT THAT POINT, AND THE -- THREAT TO MR. PETERSON WAS THREE DAYS PRIOR TO THE MURDER.

AND THE -- YOU ACTUALLY THINK IT COMES IN NOT TO SHOW AS A THREAT, I MEAN, ISN'T THAT THE CLASSIC PRIOR ACT OF MISCONDUCT THAT NEEDS TO BE EXCLUDED, NOT INCLUDED.

>> NO, NOT AT ALL.

>> WHAT IF HE HAD BEAT -- THAT DAY, THREE DAYS BEFORE, SUCH DIRE CIRCUMSTANCES, HE BEAT HIS WIFE UP?

YOU KNOW,?

GOT TRUNK AND BEAT HIS WIFE UP, WOULD THAN ADMISSIBLE TO SHOW HE WAS REALLY -- EVEN THOUGH HE LOOKED LIKE HE WAS FUNCTIONING,

GREAT, WENT TO TRAINING,  
WORKING ALL DAY, THAT HE WAS  
REALLY FALLING APART.

>> THAT IS NOT RELEVANT.

THIS IS, MR. PETERSON FILED THE  
LAWSUIT, THREE DAYS BEFORE THIS  
MURDER.

AN EVICTION LAWSUIT ASKING FOR  
ATTORNEYS FEES FOR -- AND THE  
FEES WERE EXCESSIVE.

MR. McDUFFIE SAID, FOR \$1800  
AND WHEN HE GOT WIND OF THAT,  
HE CALLED HIM UP.

AND YELLED AT HIM, NOW, THE  
WIFE IS SAYING WE HAVE NO MONEY  
PROBLEMS --

>> WHY DIDN'T IT STAY -- THE  
STAY LIMIT HIM TO THAT  
STATEMENT INSTEAD OF THE  
VULGARITY, WHO DIDN'T THE STATE  
LIMIT THE PETERSON'S TESTIMONY  
TO EXACTLY THAT, DID YOU NOT  
RECEIVE A NASTY PHONE CALL WITH  
A LOT OF -- INVEKTIVES IN IT?

>> WHAT WAS THE PURPOSE BEHIND  
THE --

>> TO SHOW THE EXTENT OF THE  
DESPERATION OF THE MENTAL STATE  
AND THIS WAS OFFERED TO SHOW  
MENTAL STATE, AND NO --

>> DO THINK YOU HAVE DONE THAT  
AGAIN WITHOUT THE SUBSTANCE.

>> COULD HAVE BUT DIDN'T AND  
THE ISSUE NOW IS, DOES IT THROW  
OUT 200 PIECES OF THAT EVIDENCE,  
RELEVANT TO MENTAL STATE AND  
THE EXTENT OF HIS DISTRESS IS  
ALSO RELEVANT TO MENTAL STATE  
BECAUSE THREE DAYS LATER HE  
KILLED --

>> SURELY --

IT IS NOT -- I MEAN,.

>> BEG YOUR PARDON.

>> THE COMMENTS SHOWED THAT HE  
WAS A PRETTY BAD ACTOR.

AS FAR AS THE LANGUAGE THAT HE  
USED AND THE THREATS THAT HE  
MADE.

ARE YOU SAYING, FOR INSTANCE,  
THAT IF HE HAD SAID TO MOORE  
PETERSON THAT YOU BETTER KEEP  
YOUR CHILD WITH YOU, YOU KNOW,  
ALL THE TIME NOW, AND BE SURE  
THAT THE CHILD DOESN'T GET

SEXUALLY ATTACKED OR SOMETHING,  
THAT ANYTHING HE SAID TO  
MR. PETERSON THEN OF THIS  
CHARACTER TO SHOW THAT HE WAS  
NOT A NICE PERSON, BASED ON  
BOTH THE THREAT ABOUT HIM BEING  
SHOT BY THE SNIPER IN BALTIMORE  
AND THEN THE VILE LANGUAGE THAT  
WAS USED, WHAT WOULD A JURY  
TEND TO DO WITH LANGUAGE LIKE  
THAT?

WENT THEY CONCLUDE THIS  
DEFENDANT WAS A PRETTY BAD GUY,  
HAD A FILL THIS MOUTH AND WAS A  
PRETTY BAD GUY AND ISN'T THAT  
THE THING YOU ARE TRYING TOO,  
VOY IN THESE TRIALS IS NOT HAVE  
A JURY JUST FIND HIM GUILTY IN  
WHATEVER CIRCUMSTANTIAL  
EVIDENCE OR WHATEVER, BECAUSE  
THEY DON'T LIKE HIM?

AND ANYBODY THAT HEARD THIS,  
DON'T YOU THINK, THE NATURAL  
INCLINATION WOULD BE THAT I  
DON'T LIKE THIS GUY AND I DON'T  
KNOW WHETHER HE COMMITTED THE  
CRIME BUT I DON'T LIKE HIM,  
AFTER HEARING WHAT HE HAD TO  
SAY AND THE THREATS THAT HE  
MADE TO THIS LANDLORD WOULDN'T  
THAT BE A NATURAL CONCLUSION.

>> I AGREE THERE IS A LINE FOR  
-- WHERE IT BECOMES MORE  
PREJUDICIAL THAN PROBATIVE AND  
THIS IS NOT IT, YOU HAVE TO  
REMEMBER, HE TESTIFIED AND THE  
JURY WAS ABLE TO SEA HIM  
PERSONALLY, SEE HIM TESTIFY,  
AND LISTEN TO HIM.

AND IF THEY DIDN'T LIKE  
MR. McDUFFIE IT WAS BECAUSE OF  
HIS TESTIMONY BECAUSE HE WAS  
TALKING ABOUT WEARING \$600  
SHOES AND I MEAN, HE TESTIFIED  
SO YOU CAN'T SAY, OH, WELL, HE  
IS A BAD PERSON.

HE WAS UP THERE.  
THEY CAN ASSESS HIS CREDIBILITY  
LIKE THAT.

AND THE TRIAL JUDGE MADE A  
RULING AFTER CONSIDERING IT,  
AFTER RESERVING RULING AND  
SEEING WHAT THE DEFENSE -- WHAT  
THE CROSS-EXAMINATION BROUGHT

OUT ON THE WIFE AND RULED, I'M GOING TO LET IT IN.

>> THE CRITERIA IS NOT WHETHER THE PARTICULAR DEFENDANT TESTIFIES OR NOT.

, IS IT NOT THE PREJUDICE OF THOSE STATEMENTS.

>> WELL, AND I --

>> HE COULD COMING UP AND TESTIFY THEY LIKE HIM OR NOT. THAT IS NOT THE TEST, IS IT.

>> I THINK YOU HAVE TO --

>> IS THAT THE TEST?

ISN'T IT THE SUBSTANCE --

>> NOT LIKE THE DEFENDANT, I JUST SAID IF THE DEFENDANT TESTIFIED AND THEY HAD AN OPPORTUNITY TO SEE HIM AND JUDGE HIM NOT FROM ONE STATEMENT IN 45 -- AND.

>> YOU ARE GIVING REASONS WHY THEY MAY NOT HAVE LIKED HIM OR EVALUATED HIS CREDIBILITY AND ALL OF THAT.

BUT THERE IS PROPER WAYS TO DO THAT, AND YOU HAVE DESCRIBED A PROPER -- THE PROPER WAYS WITH HIM TESTIFYING OR WHATEVER.

BUT ISN'T THIS AN IMPROPER WAY TO SUGGEST TO THE JURY THAT IN ADDITION TO THE FACTS THAT HE -- WE HAVE EVIDENCE AS TO WHETHER OR NOT HE COMMITTED THIS CRIME OR NOT, HE ALSO HAS A FILL THIS MOUTH AND HE HAS MADE TERRIBLE THREATS AGAINST SOMEBODY ELSE.

NOW -- AND THEREFORE, WE WANT YOU TO CONSIDER THAT, TOO.

ISN'T THERE CASE AFTER CASE THAT HAS SUGGESTED THAT IS IMPROPER IF.

>> HOWEVER IF IT IS RELEVANT TO MENTAL STATE AND THE DESPERATION AND HIS VOLATILITY, OF HOW ANGRY HE IS, ABOUT THIS JUDGMENT AND BEING EVICTED FROM THAT HOUSE, SHORTLY BEFORE THESE MURDERS.

>> APPARENTLY -- IT WAS AS SUCH THAT HE GOT ANOTHER JOB, IS THAT CORRECT.

>> HE WAS SUPPOSED TO START A JOB WITH COCA-COLA COMPANY THAT

PAYS MORE MONEY THE VERY FOLLOWING MONDAY?

>> ON MONDAY, BUT, SIR, HE HAD BEEN EVICT AND HIS CAR REPOSSESS AND THIS MAN WAS NOW FILING EVICTION PROCEDURES AND THE -- CHARGING THE SON -- THE SON WAS AN ATTORNEY AND --

>> IF HE KILLED THE GUY, YOU KNOW, -- IF HE THEN KILLED SOMEBODY IN THE GUY'S FAMILY THEN YOU HAVE DIRECT RELEVANCE THAT HE MADE A THREAT, ANIMUS TOWARDS THAT PERSON.

BUT ANIMUS TOWARDS ANOTHER PERSON AND WANTING HARM TO COME TO THAT OTHER PERSON GOES BEYOND JUST THE FACT THAT HE IS IN, YOU KNOW, FINANCIALLY IN BAD SHAPE AND THE STATE HAD MANY WAYS TO DISPROVE THAT. I MEAN -- AND AGAIN, I DO TAKE EXCEPTION WITH YOU SAYING IT WASN'T A MAJOR FEATURE OF THE STATE'S CASE.

THEY HAD MANY EXPERTS -- MANY WITNESSES TO HE HAVE TO THIS SITUATION.

SO, I JUST DON'T -- ARE YOU SAYING THAT YOU DON'T RECOGNIZE THE PREJUDICIAL IMPACT AND MARGINAL RELEVANCE?

THAT IS WHAT IS --

>> TRYING TO UNDERSTAND.

>> I AM SAYING THAT ALL EVIDENCE IS PREJUDICIAL.

AND DID CROSS THE LINE --

>> IS THIS MARGINALLY RELEVANT OR VERY REL.

>> IT IS VERY REL, BECAUSE IT IS THREE DAYS BEFORE THE MURDER, AND THIS MAN HAS FILED EVICT PROCEEDINGS AND HE HAS BEEN EVICT FROMD HIS HOUSE AND CAR REPOSSESS AND CALLS THE MAN UP AND THREATENS HIM, THE CASE OF BROOKS SAYS THREATS ARE RELEVANT.

>> HELP ME UNDERSTAND THIS. THE PREJUDICE ASPECT.

WHAT WAS TO MAKEUP OF THE JURY RACIALLY?

MY POINT IS YOU HAVE TWO WHITE VICTIMS --

>> I DON'T KNOW.

>> I BLACK -- DID YOU HAVE A  
SNIPE -- WAS THIS DURING THE  
SNIPER INCIDENT?

EXCUSE ME.

>> AND, THERE WAS NO CONNECTION  
MADE BETWEEN THE BULLETS  
MR. McDUFFIE USED AND THE  
SNIPER INCIDENT.

>> NO, I'M SAYING WHAT'S THE  
SNIPER INCIDENT ONGOING -- AN  
ONGOING EVENT IN BALTIMORE AND  
WASHINGTON, D.C. WHEN HE MADE  
THE STATEMENT?

>> I THINK IT WAS.

AND I THINK THAT IS WHY HE MADE  
THE STATEMENT.

SO I -- IT HAD TO HAVE BEEN --

>> ISN'T THAT PREJUDICIAL WHEN  
YOU HAVE A WHOLE COUNTRY  
CONCERNED ABOUT THE BRAND --  
RANDOM KILLINGS OF PEOPLE BY  
TWO BLACK GENTLEMEN AND A BLACK  
DEFENDANT, AND TWO WHITE  
VICTIMS AND I DON'T KNOW WHAT  
THE MAKEUP OF THE JURY IS.

>> APPARENTLY YOU DON'T KNOW.  
BUT, ISN'T IT PREJUDICIAL?

>> YOU KNOW, I HADN'T PUT THAT  
TOGETHER, I'M SORRY.

AND HE DIDN'T ARGUE THAT  
EITHER.

SO APPARENTLY -- I DON'T KNOW,  
IF WE WERE THERE AT THE TIME,  
MAY HAVE BEEN --

>> LET ME LEAD YOU TO THIS --

>> -- LET ME ASK THIS QUESTION.

I KNOW THAT THERE WAS THE PALM  
PRINT ON THE TAPE.

NOW THIS DOLLAR GENERAL, DID IT  
HAVE DUCT TAPE IN IT.

>> YES.

>> AND SO AND HE HAD BEEN AN  
EMPLOYEE AT THE STORE FOR AT  
LEAST A COUPLE OF DAYS.

IT IS A REASONABLE -- THIS IS  
REASON NAL INFERENCE THAT HE --  
GOT HIS PRINTS ON THAT TAPE.

DURING THE COURSE OF HIS  
EMPLOYMENT AS OPPOSED TO THE  
COURSE OF THE MURDER, IS IT NOT.

>> NO, SIR, BECAUSE THE PALM  
PRINT WAS 30 INCHES FROM ONE  
END AND 40 INCHES FROM THE

OTHER.

AND WHEN HE WRAPPED DARNELL'S HANDS UP THE MEDICAL EXAMINER SAID SHE WAS COMPLIANT AND HE WRAPPED THE TAPE AROUND AND AROUND AND AROUND AND THE MEDICAL EXAMINER MARKED IT AND CUT IT OFF.

KNOWING THAT THERE COULD BE FINGERPRINTS, FTLE AND -- FDLE AND THE RECONSTRUCTION IS IN THE EXHIBITS AT 773 AND 765, AND FTLE TOOK ALL THE FRACTURE MARKS AND PUT THE PIECE OF TAPE TOGETHER AND THEN DUSTED IT FOR PRINT AND THE PALM PRINT WAS RIGHT IN THE MIDDLE OF THE TAPE AND THE BIGGEST CIRCUMFERENCE OF THE DUCT TAPE --

>> WAS THERE ANY OTHER PRINTS ON THAT TYPE.

>> NO, SIR.

>> NONE.

>> NO.

>> AND -- AND WAS THERE ANY OTHER PHYSICAL EVIDENCE TYING THIS DEFENDANT TO THOSE VICTIMS?

>> ANYTHING, BLOOD, WAS BLOOD EVER FOUND IN THIS CAR OR AUTOMOBILE OR ANYTHING.

>> NO, BUT REMEMBER THEY DIDN'T SEARCH HIS HOUSE FOR TEN DAYS, AND THE SHIRT THAT HE WAS WEARING AT MCDONALD'S WHICH WOULD HAVE BEEN THE SHIRT THAT HE WAS WEARING, THE STATE NEVER POINTED.

>> WAS THERE ANY EVIDENCE IN EITHER THE CAR OR THE STATE THAT SOME TYPE OF -- I THINK LYNN MINT OIL OR WHATEVER REMOVES BLOOD WAS USED -- LINAMENT OIL --

>> NO, THEY TRIED TO SHOW THE MCDONALD'S VIDEOTAPE AS THAT BEING THE SHIRT THAT WAS SEIZED AND IT WAS NOT.

SO, HE WAS WITH CAROL -- I MEAN, WHEN CAROL HOPKINS LEFT HE WAS WITH DARNELL AND JANICE, THE LAST PERSON WITH THEM.

HE WAS THE ONLY PERSON -- JANICE HAD THOUGH KEYS.

WE HAVE OLIVIA SEEING HIM LEAVE

AT 9:20, THE LADY HEARING THE GUN SHOTS AT 9:15.

AND HE WAS THE -- HE WAS THE ONLY ONE THERE, WITH THEM, OLIVIA --

>> WE HAVE PHOTOGRAPHS IN THE RECORD.

>> OF THE DOLLAR STORE.

>> OF THE VICTIMS AND THE BLOOD?

>> YES.

>> OKAY.

LET ME ASK ONE OTHER QUESTION. THIS FITZGERALD TESTIMONY, CAME OUT DURING THE CROSS-EXAMINATION OF THAT WITNESS?

IS THAT CORRECT.

>> AS TO THE -- WHEN HE SAID THAT THE DEFENDANT HAD SAID THAT HE HAD MURDERED THE VICTIM.

>> YES.

>> AND THAT -- IN THAT CIRCUMSTANCE.

>> HE WAS CALLED AS A DEFENSE WITNESS.

>> RIGHT.

>> BECAUSE THEY WANTED -- THEY WANTED TO PRESENT A LOT OF INMATE TESTIMONY THAT FITZGERALD, WHO IS WHITE, HAD REALLY COMMITTED THIS MURDER AND IN ORDER TO CALL THE OTHER INMATES TO SAY FITZGERALD CONFESSED TO THESE OTHER INMATES THEY HAD TO CALL FITZGERALD TO IMPEACH HIM, SO THEY CALLED FITZGERALD AND, YOU KNOW, TRIED TO MAKE IT LOOKS LIKE HE COULD HAVE BEEN IN THE AREA, HE COULD HAVE DONE IT. THE TWO WITNESSES SAW A BLACK MAN IN THE STORE.

AND THEN THE FITZGERALD SAID, NO, BUT McDUFFIE CONFESSED TO ME AND THE DETAILS HE SAID IS HE GOT THE ONE GIRL BACK THERE AND LURED JANICE BACK THERE. TO -- BECAUSE THERE WAS A \$50 DISCREPANCY IN THE TALLY. HE DUCT TAPED DARNELL, AND PUT HER ON THE FLOOR AND GOT -- >> FITZGERALD, BEEN DEPOSED.

>> FIT GERALD, OH, YES.  
OH, YES.  
>> HAD NOT COME OUT DURING HIS DEPOSITION.  
>> OH, NO.  
EVERYBODY KNEW THAT  
MR. McDUFFIE HAD CONFESSED TO  
MR. FITZGERALD.  
>> IT DID COME OUT.  
>> YES.  
BUT THE STATE WASN'T GOING TO CALL HIM.  
THE DEFENSE CALLED HIM.  
>> WHAT HAPPENED --  
>> TRIED TO IMPEACH HIM WITH EVERYTHING.  
BEG YOUR PARDON.  
>> WHAT HAPPENED TO THE GUN.  
>> NEVER FOUND.  
NEVER FOUND AGAIN.  
>> TAPER TYING HIM TO A GUN?  
>> WELL, THEY NEVER FOUND THE GUN.  
>> NO, BUT DID THEY SHOW HE OWNED A GUN OR HAD A GUN THAT WAS OF SIMILAR CALIBER.  
>> NO, SIR. BUT LET ME, IF I -- I HAVE TEN SECONDS --  
>> YOU ARE BEYOND -- JUST RESPOND TO THE QUESTION AND -- FINALIZE YOUR --  
>> DID NOT FIND THE GUN.  
>> DID NOT FIND THE GUN AND DID NOT ASSOCIATE HIM WITH THE GUN?  
>> WELL --  
>> HAVE ANY WITNESSES THAT SHOWED THAT HE OWNED A HANDGUN? AND IT WAS THAT HE SAME CALIBER THAT'S GUN USED IN THIS CRIME OR HE HAD POSSESSION OF ONE OR ACCESS TO ONE?  
OR ANY --  
>> HE AND HIS WIFE TESTIFIED THAT HE DID NOT CARRY A GUN.  
>> WELL, I MEAN, POLICE, IN THEIR INVESTIGATION SHOWED --  
>> NO, BUT THEY FOUND A LOT OF OTHER THINGS, SO I WOULD ASK THE COURT TO READ MY BRIEF ON THIS ISSUE, AND AFFIRM THE TRIAL COURT.  
>> THANK YOU VERY MUCH.  
>> REBUTTAL?  
>> JUST BRIEFLY.

>> DOWN TO THE END, SO...

>> LAST POINT.

THE RECORD IS BE A SEPTEMBER OF ANY EVIDENCE MR. McDUFFIE HAD A GUN WHICH BEGAN IS WHY I THINK THE PETERSON --

>> .22-CALIBER HANDGUN.

>> NO GUN, WHICH IS -- AGAIN WHY THE PERSON TESTIMONY ABOUT THE SNIPER IS MORE SIGNIFICANT.

>> I UNDERSTAND THAT THE -- MR. FITZGERALD'S TESTIMONY WAS NO SURPRISE.

>> DO THE COUNSEL OR --

>> I WAS TRYING TO LOOK IN MY BRIEF, THERE WAS SOMETHING THAT CAME UP, IF MEMORY SERVES, I BELIEVE IT WAS FROM FITZGERALD. THAT DIDN'T COME OUT IN HIS DEPOSITION.

>> THAT WAS PRETTY SIGNIFICANT STUFF IF IT CAME OUT FOR THE FIRST TIME ON CROSS-EXAMINATION.

>> BUT ITS IN MY BRIEF, WHERE THAT HAPPENED.

AND WE HAVE OTHER CASES FROM THIS COURT WITH REGARD TO HAND PRINTS, FINGER PRINTS PRINTS ON OBJECT AT A CRIME SCENE AN EXPLANATIONS FOR HOW THEY GOT THERE AND WHERE DOES THE CASE FIT IN TO THAT, ONE FOR EXAMPLE AN AIR PRODUCT AND ONE WAS THE DISCUSSION, SOMEONE'S HANDS KOOCHB ON THAT IN THE STORE AND WHERE DOES THE CASE FIT.

>> IT FITS -- IN TO THOSE CASES, BECAUSE IT WAS -- FIRST OF ALL, THE WAY THAT THE TAPE -- THE THIRD OF THE PARTIAL PALM PRINT WAS LOCATED WAS NOT ON HIS PRISTINE PIECE OF TAPE, IT WAS A ROLLED-UP WAD THAT HAD TO BE UNDONE AND THEN WAS CUT UP AND THAT IS WHEN THEY FOUND THE PARTICULAR 1/3 OF THE PALM PRINT.

SO THAT WAS AN ISSUE IN TERMS OF THE WAY THAT WAS PRESENTED. THE OTHER ISSUE IS WE HAVE MR. -- MR. McDUFFIE TESTIFIED THAT PRIOR TO CLOSING, A WOMAN HAD COME INTO THE STORE THAT

HAD A PREVIOUS CONTACT WITH MS. BEAUREGARD AND SHE APPARENTLY SAID SHE COULD HAVE BOXES IN THE BACK TO HELP E HER MOVE AND HE WENT INTO THE BACK ROOM WITH HER AND HELPED HER PUT THE BOX TOGETHER, WITH TAPE.

WITH DUCT TAPE FROM THE STORE. AND THE DUCT TAPE WAS CUT AND HE PUT PIECES ON WITH A DETERGENT BOTTLE, FOUND IN THE STOREROOM AND THAT IS WHERE HE SAID HE PUT THE PIECES OF TAPE.

>> LET ME JUST, JUST -- BUT, THAT IS WHY IT IS SIGNIFICANT. WHERE IS THE -- IT FOUND ON THE TAPE THAT IT IS NOT FOUND AT THE VERY BEGINNING.

>> B CORRECTED BUT THE TESTIMONY FROM HIM WAS THAT HE HAD UNROLLED THE TAPE AND MADE IT PIECES, AND LIKE WHEN YOU MOVE INSTEAD OF CUTTING THE TAPE AS YOU CUT THE TAPE UP BEFOREHAND YOU HAVE TO --

>> LEFT IT THERE?

>> I MEAN --.

>> WELL, THAT IS -- I MEAN, THAT IS -- YOU KNOW,.

>> THAT IS WHAT THE TESTIMONY WAS, WHAT THE TESTIMONY WAS.

>> AND TESTIMONY OF THE MEDICAL EXAMINER OR WHOEVER TESTIFIED FOR THE POLICE, THEY DIDN'T SAY!!TE IN DIFFERENT PIECES{\_. BEFORE THEwFUU&??|"1'U