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Russell Hudson v. State of Florida

SC06-748

SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL THOSE HAVING BUSINESS BEFORE
THE COURT GIVE ATTENTION THEN
YOU SHALL BE HEARD.

THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

GOOD MORNING FRIENDS, WELCOME TO
THE FLORIDA SUPREME COURT AND
THE ORAL ARGUMENT FOR CALENDAR
FEBRUARY 4TH.

FOR PLANNING PURPOSES SO YOU
WILL KNOW THE ACCORD WILL TAKE
ITS NORMAL MORNING RECESS AFTER
THE FIRST CASE THIS MORNING, THE
TO OUR CASE.

OUR FIRST CASE IS HUDSON VERSUS
THE STATE OF FLORIDA.

MR. CALDWELL.

>> GOOD MORNING, MAID PLEASE THE
COURT, MR. CHIEF JUSTICE.

MY NAME IS GARY CALDWELL AND ON
BEHALF OF RUSSELL HUDSON I WOULD
LIKE TO ARGUE ISSUES NUMBER ONE,
TWO AND FOUR AS I HAVE TIME.

OBVIOUSLY I WELCOME QUESTIONS
ABOUT ANY OF THE OTHER ISSUES IN
THE CASE.

I WILL BE PREPARED TO ARGUE.

>> NO DOUBT WE WILL HAVE THEM.

>> THIS CASE INVOLVES THE MURDER
OF A MAN NAMED LANCE PELLER AT
HIS APARTMENT FROM A GUNSHOT.

>> WE ARE FAMILIAR WITH THAT.

THE FIRST POINT IS WHETHER THE
STATEMENT FOR THE CONVERSATION
THAT PRITCHARD, WHO IS AVAILABLE
TO TESTIFY, HAD WITH VICTIM
PELLER CONSTITUTES EITHER AN

EXCITED UTTERANCE OR SPONTANEOUS STATEMENT AND YOUR CONTENTION, CORRECT ME IF I'M WRONG, IS THAT BECAUSE HE WAS DESCRIBED BY PRITCHARD AS BEING, AND NOT AGITATED, IT DOES NOT QUALIFY AS AN EXCITED UTTERANCE OR SPONTANEOUS DAY, IS THAT CORRECT?

>> IN LARGE PART, YES MAAM.

>> THIS IS THE PROBLEM I HAVE AND I HAVE BEEN LOOKING AT A LOT OF CASES ON THIS ISSUE AND I AGREE WHEN THOSE TYPES OF SITUATIONS WHERE THE POLICE COME AND THEY QUESTION SOMEONE AFTER THE EVENT, THERE IS A CONVERSATION.

THOSE CASES SOMETIMES HAVE BEEN URGED DOES EXCITED UTTERANCES WHEN THEY ARE NOT BUT HERE THERE IS NO QUESTION BUT THAT A CRIME IS GOING ON AT THAT TIME, IS THAT TRUE?

>> NO.

NOT AT ALL.

THE JUDGE FOUND THAT.

THE JUDGE FOUND THAT A CRIME WAS OCCURRING THAT THE DEFENDANT WAS THERE AT THE TIME AND MUST HAVE TOLD HIM HE WAS THERE TO KILL HIM?

>> THE JUDGE MERELY RULED IT WAS ADMISSIBLE.

HE MADE NO SPECIFIC FINDINGS.

>> WAS THERE KIDNAPPING GOING ON AT THE TIME?

>> I DON'T BELIEVE SO, NO SIR.

THE STATEMENT WAS THAT THERE WAS A FELLOW WHO CAME TO HIS HOUSE TO KILL THEM.

>> IF THAT IS WHAT HE RELATED, SOMEONE IS HERE TO KILL ME, THAT WOULD AT LEAST BE A BURGLARY, WOULD IT NOT?

>> DEPENDING.

HE WAS A CONSENSUAL ENTRY BUT THE POINT IS, HE SAID THAT HE IS NOT GOING TO KILL ME, HE IS A FRIEND OF MINE.

>> SO THAT MAYBE HELPFUL TO THE DEFENSE THAT HUDSON WAS THERE AND AMBIVALENT ABOUT WHAT WAS GOING ON, BUT AS FAR AS WHETHER

IT CONSTITUTES A SPONTANEOUS STATEMENT THAT IS A CONVERSATION THAT IS OCCURRING CONTEMPORANEOUSLY WITH THE EVENT, I'VE GOT A PROBLEM SEEING HOW IT DOESN'T QUALIFY AS THAT, ESPECIALLY WHERE YOU HAVE NOT SHOWN ANY MOTIVE THAT PRITCHARD WOULD HAVE NOT TO BE TRUTHFUL ABOUT WHAT WAS BEING TESTIFIED TO.

>> PRITCHARD OR PELLER?

>> PRITCHARD BEING THE PERSON LISTED HAVING THE CONVERSATION. I GUESS, HOW WOULD GO?

WHEN YOU LOOK AT THAT EXCEPTION, TO SEE OF MADE UNDER CIRCUMSTANCES WHERE SOMEBODY WOULD NOT HAVE A MOTIVE, IS THAT SUPPOSED TO BE THE VICTIM?

>> I BELIEVE THE STATE HAS TO SHOW THE DECLARANT, WHO IN THIS CASE WOULD BE MR. PELLER, DID NOT HAVE TIME FOR REFLECTION. HE WAS EXCITED, OR THAT THE STATEMENT WAS BLURTED OUT, SO LET'S GO AND TALK ABOUT WHAT THIS WAS.

HE DOES NOT KHALED, HELD THERE SOMEONE HERE TO KILL ME, HE CALLS UP AND SAYS, HI, THIS IS LANCE COMMENT YOU HAVE A GUN? SO THEN MR. PRICHARD SAYS, WHY DO NEED A GUN?

AND THEN THIS CONVERSATION INVOLVES IN RESPONSE TO QUESTIONS.

HE IS NONRESPONSIVE TO SOME OF THE QUESTIONS THAT MR. PELLER HAS TO DRAW THESE THINGS OUT SO THAT DOES NOT HAVE THE EXCITEMENT OF AN EXCITED UTTERANCE, NUMBER ONE.

AND IT DOES NOT HAVE THE LACK OF REFLECTION, WHICH IS REQUIRED FOR BOTH CIRCUMSTANCES.

WHAT IS YOUR BEST CASE ON YOUR SIDE THAT WOULD SAY THAT THIS IS, SHOULD NOT QUALIFY, THAT THIS WOULD BE BAD PRECEDENT TO EXTEND EXCITED UTTERANCE SPONTANEOUS STATEMENT, WHAT IS YOUR BEST CASE?

WITH ALL OF THE CASES, IT HAS

TO BE THE LACK OF REFLECTION.
THAT IS THE HUTCHINSON, THERE
ARE LOTS OF CASES -- I MEAN THAT
IS THE CRUCIAL -- THE STATE DOES
NOT DISPUTE THAT IN THIS BRIEF.
>> DO SAY THAT -- IS DIFFERENT
THAN EXCITED UTTERANCE FOR THE
LET'S GO TO SPONTANEOUS
STATEMENT.

IS IS MORE AKIN TO THE FEDERAL
PRISON SENSE EXCEPTION,
SOMETHING LIKE THAT, FORGET THE
EXACT TERM?

THERE IS AN EXCEPTION IN OUR
STEAD YOU FOR THAT.

THAT IS 90.8033 I THINK.

AND THEY ARE NOT TRYING TO
GET IT AND UNDER THAT?

THAT WAS NOT ARGUED AND UNDER
THE STOWE CASE THEY CAN'T COME
UP AND WITH SOME NEW THEORY ON
THE APPEAL.

THEY WERE ARGUING, THIS IS AN
EXCITED UTTERANCE BECAUSE HE WAS
EXCITED AND THEY CITE THIS
VAGUELY ON THE CASE, WHICH IS
WHERE THE --.

>> WAS THIS A SITUATION, MR.
HUDSON IS THERE AND USE GOING TO
KILL THEM.

>> SUPPOSEDLY.

MR. HUDSON IS IN THE ROOM
WHILE THE PHONE CALL WAS TAKING
PLACE.

>> THAT IS NOT AT ALL CLEAR.

>> THAT IS NOT CLEAR?

THERE IS NO INDICATION HE LEFT
THE ROOM?

SUPPOSEDLY, AGAIN THIS IS
SPECULATION, THERE WAS A CELL
PHONE CALL.

WINONAH WHERE THE CALL CAME
FROM.

>> WE KNOW WHAT TIME OCCURRED?
SUPPOSEDLY WAS AROUND 7:00.

IT SEEMS TO ME OF ALL OF THAT
WERE TRUE YOU HAVE A BETTER
ARGUMENT, HERE WE HAVE A MAN WHO
COMES IN AND SAYS I'M GOING TO
KILL YOU GET HE IS MAKING A
PHONE CALL IN THE GUISE
PRESENCE, TELLING SOMEONE ELSE
THAT HE IS HERE TO KILL HIM AND
IT JUST SEEMS A LITTLE SCREW TO

ME.

I AM NOT CLEAR IN MY MIND AS TO WHO IS WHERE AND WHAT TIME.

>> HERE IS THE WAY IT IS.

A MAN SUPPOSEDLY ARRIVES AT 7:00.

OKAY, THE PHONE CALLS AT 7:00. WE DON'T KNOW WHERE THE PHONE CALLS MADE FROM.

ALL WE KNOW IS IT IS A CELL PHONE CALL.

WAS THEIR FEMALE AND DEPARTMENT ALSO AT THE TIME WHEN THE CALL WAS MADE?

>> THAT IS WHAT MR. PRICHARD SAYS BUT MR. -- AND MR. PELLER SAYS BUT THAT IS COMPLETELY CONTRADICTED BY THE TESTIMONY OF THE GIRLFRIEND.

ON PAGE 583, MR. PRICHARD SAYS THAT PELLER SAID HIS GIRLFRIEND WAS THERE AT 7:00.

THE CRAWFORD WAS ADAMANT SHE WAS NOT THERE AT THAT TIME.

SO OBVIOUSLY THERE WAS TIME FOR REFLECTION BECAUSE APPARENTLY HE WAS SAYING THAT SOMETHING WASN'T TOO.

HE WAS COMING UP WITH REASONS FOR WHY HE NEEDED THIS GUN, REGARDLESS OF WHETHER HE WAS ACTUALLY AT WHAT TIME UNDER THREAT OF DEATH FROM MR. HUDSON. BECAUSE YOU JUST CALLED UP AND ASK FOR THE GUN AND THE GUY STARTS ASKING HIM, WHY YOU HAVE THE GUN, ASKED HIM WHY DO YOU GO TO THE POLICE, THESE SORTS OF THINGS SO THERE ARE LOTS OF OPPORTUNITIES FOR REFLECTION AND HE OBVIOUSLY IS REFLECTION.

AS YOUR QUESTION ABOUT WHETHER THEY ARE IN THE SAME ROOM, THE WITNESS TESTIFIED THAT HE THOUGHT THAT THEY WERE IN THE SAME ROOM.

USE THE PHRASE, THE MAN IN THE ROOM WITH HIM.

ON THE OTHER HAND THE WITNESS WAS ALSO SAYING THAT HE THOUGHT THAT MR. PELLER HAD GONE INTO THE BATHROOM, SO THAT THIS PHONE CALL WOULD NOT BE OVERHEARD APPARENTLY.

>> YOU SAID HE HEARD A FAN FOR DOES THE WHAT HE THOUGHT WAS A FAN, RIGHT.

>> WHAT WAS THE PURPOSE OF THE.

>> I WANT TO GIVE BACK TO THE POINT, WHAT WAS THE PURPOSE OF INTRODUCING -- I BELIEVE THE STATE ARGUED TO THE JUDGE IT WAS HIGHLY RELEVANT TO SHOW THE DEFENDANT WAS THE PERSON IT WENT TO THE APARTMENT IN COMMITTED THE MURDER.

>> THIS GUY IS HERE AND HE IS A FRIEND AND IN FACT I BONDED HIM NOW.

>> RIGHT, WHICH IS OBVIOUSLY A PAST EVENT GO THAT AS WELL PAST, A MUCH EARLIER IF SAID.

HE IS NOT DESCRIBING ANY CONTENT RING IS THING AT THAT POINT.

IS THE WHAT WOULD BE, IF WE GET PAST THE SPONTANEOUS STATEMENT ISSUED, WHAT WOULD BE THE VICTIMS MOTIVE TO FALSIFY?

>> AS I SAID, AS I WAS SAYING THE JUSTICE QUINCE, HE CALLS UP AND ASK FOR A GALLON, OKAY, THEN THE GUYS ASKING HIM WHY HE HAS A GUN SO HE HAS A MOTIVE TO MAKE THE SITUATION, THE NEED FOR THE GUN AS DRAMATIC AS POSSIBLE, OF WHICH COULD BE THERE IS THIS GUY HERE TO KILL ME SO THEN OBVIOUSLY THE REACTION OF MR. PRITCHARD IS, CALL 911, CALL THE POLICE.

BUT THEN HE STARTS BACKPEDALING FROM THAT, AGAIN REFLECTING, SAYING NO, HE IS NOT GOING TO KILL ME, SO THEY ARE JUST LOTS OF -- THE STATE HAS TO SHOW THAT THIS LACK OF REFLECTION ABOUT THE FAN, YOU MENTIONED ABOUT THE FAN.

THIS FELLOW, PELLER, HAD THIS OLD CAR THAT WAS ON ITS LAST LEGS OR WHATEVER AND IT HAD BEEN DRIVEN THAT NIGHT AND IT WAS HOT AND AFTER 11:30 THAT NIGHT, SO THAT THAT EVIDENCE WOULD FIT VERY WELL WITH THE FACT THAT THE 7:00 CALL COULD HAVE BEEN MADE WHILE HE WAS DRIVING AROUND IN

THIS NOISY OLD CAR, BUT HE KNOWS WHAT THIS NOISE WAS.

THE DETECTIVE DID NOT TESTIFY, SO HE WENT INTO THE APARTMENT, HE SAW THIS BATHROOM THAN THAT MADE A LOT OF NOISE IS SOMETHING LIKE THAT.

WE JUST DON'T KNOW WHAT THE SOURCE OF THIS PHONE CALL IS, OTHER THAN IT WAS MADE FROM HIS CELL PHONE.

>> WE KNOW AN AWFUL LOT, DO WE NOT FROM THE GIRL FRIENDS TESTIMONY?

MUSKIN TEMPORARY TESTIMONY IS IT NOT, RELATING TO WHAT WAS GOING ON IN THE APARTMENT WITH THE THREE OF THEM.

THAT IS, WITH YOUR CLIENT, WITH THE DICTUM AND WITH HER AS THE RIGHT.

SPEECH AND ISN'T THERE REALLY A QUALITATIVE DIFFERENCE BETWEEN THE REFLECTION THAT MIGHT GO ON AFTER SOME EVENT IS OVER WITH AND SOMEONE NOW, HAVING CALMED DOWN AND REFLECT ON WHAT IS GOING ON?

AS OPPOSED TO EVEN IF WE DON'T PUT YOUR CLIENT IN THE SAME ROOM, WE CERTAINLY PUT YOUR CLIENT IN THE APARTMENT, AND WE KNOW FROM THE GIRL FRIEND'S TESTIMONY THAT THERE WAS CONSTANT FEAR, THAT IS THE CIRCUMSTANCES THERE, THAT WE HAVE GOT A PERSON THAT HAS BEEN TOLD THAT HE HAS -- WAS GOING TO BE KILLED, THAT THE PERSON THERE IS THERE TO KILL HIM.

THE PERSON THAT IS THERE IS GOING BACK AND FORTHWITH THIS THING.

BUT WE HAVE ALL OF THESE PEOPLE THAT CALLED EXTENSIVELY IN THE DRUG TRADE, AND THE ULTIMATE VICTIM CONTINUES UNDER WHAT MUST BE AN ENORMOUS STRESS OF BEING TOLD HE IS GOING TO BE KILLED BEFORE THAT PERSON LEAVES THE APARTMENT.

ISN'T THERE A QUALITATIVE DIFFERENCE BETWEEN THE REFLECTION THAT THE CASE OR

NEARLY TALKS ABOUT, WHEN AN EVENT IS OVER WITH AND SOMEBODY MIGHT BE THEN DESCRIBING IT, VIV HAD A CHANCE TO CALM DOWN AND GET THEIR WITS ABOUT THEM, AND WHAT IS GOING ON HERE.

>> I HAVE TO DISAGREE WITH YOUR CHARACTERIZATION ABOUT THE GIRL FRIEND'S TESTIMONY.

>> HOW DID SHE DESCRIBE IT? SHE DID NOT SAY CIRCUMSTANCES IN THE APARTMENT AS FAR AS YOUR CLIENTS IN FORMING THE ULTIMATE VICTIM THAT HE WAS GOING TO BE KILLED.

>> I MAY HAVE MISUNDERSTOOD YOU. I BELIEVE YOU SAID THAT SHE TESTIFIED THERE WAS THIS CONSTANT FEAR DURING THIS PERIOD.

SHE SAID THAT SHE CALLED THIS NUMBER AROUND 8:00 IN THE GUY IS FINE, HAPPY GO LUCKY, OKAY. WHAT YOU COME OVER? SO IT IS NOT THIS CONTINUOUS PERIOD.

>> WHAT HAPPENED WHEN SHE CAME OVER?

>> SHE COMES OVER, HE IS FINE, COME ON AND. HE GIVES HER A HUG.

IN OTHER WORDS SHE JUST SAYS, UP UNTIL THE TIME THE VICTIM WAS KILLED EVERYBODY WAS HAPPY? SHE DID NOT SAY THAT.

>> NO, NO, BUT SHE DID NOT IN ESSENCE TESTIFIED THAT SHE WAS BEING KIDNAPPED, THE ISSUE IS BEEN FORCIBLY HELD THERE AND THAT THEY WERE BOTH NOW UNDER ENORMOUS STRESS U.S. AND SHE ARRIVED.

SHE DID NOT TESTIFY TO THAT EFFECT?

>> NOT AS SOON AS SHE ARRIVED. AFTERWARD, YES.

WHAT YOU MEAN AFTER WORDS?

>> AS SOON AS SHE ARRIVED, WHEN SHE ARRIVES EVERYTHING IS FINE, SO FAR SHE KNOWS.

NOTHING HAPPENED WHILE SHE WAS THERE?

I AM NOT SAYING THAT.

WHAT HAPPENED WHILE SHE WAS

THERE?

>> OKAY, OKAY.

TO BEGIN WITH THIS IS SUPPOSEDLY AN HOUR AFTER THIS PHONE CONVERSATION WITH MR. PRITCHARD, OKAY, AND LIKE I SAY, THERE'S NO EVIDENCE MR. PRITCHARD -- I MEAN MR. PELLER WAS EXCITED AND ANYWAY.

>> HOUSE IN THE GC A WEAPONED?

>> RIGHT, SHE SAID ABOUT FIVE MINUTES.

BUT AS I SAY, AT THAT POINT, SHE SAYS THAT THE VICTIM BEGINS TO EXHIBIT EXCITEMENT OR WHATEVER, BUT THAT IS LIKE AN HOUR LATER, SO IT DOES NOT HAVE ANY RELATIONSHIP TO.

>> WHAT WAS GOING ON AT 7:00? SPECIES SEEMED TO BE ACQUITTING THAT EXCITEMENT IS A MANDATORY ELEMENT OF AN EXCITED UTTERANCE IN RESPONSE TO THIS SPONTANEOUS STATEMENT.

IN WHAT CASE DO YOU RELY ON THAT IT MUST BE EXCITED, DESCRIBING THE EVENTS THAT ARE OCCURRING, WHAT TAKES THAT OUT OF THE CATEGORY?

OF BEING A SPONTANEOUS STATEMENT , DESCRIBING EVENTS THAT YOUR PERFORMING BEFORE ME? HUDSON SAYS THE SPONTANEOUS STATEMENT IN EXCITED UTTERANCE HAVE TO BE UNDER THE INFLUENCE OF AN EXCITING AND EVENT. OF THE EXCITING EVENT --.

>> I MEAN, A STARTLING EVENT IS THE PHRASE THAT IS USED HEAVILY. BUT YOU SEE THAT IS THE WHOLE THING, JUST GOING TO WHAT THE EVIDENCE SAYS, EXCITED UTTERANCE SAYS IT IS THAT TO BE WHAT THEY ARE UNDER THE STRESS OF EXCITEMENT CAUSED BY THE EVENT, WHICH SEEMS TO IMPLY THAT AN EXCITED UTTERANCE COULD OCCUR, CONTINUE AFTER THE EVENT WHERE A SPONTANEOUS STATEMENT SAYS DESCRIBE WORKS PLANNING AN EVENT MADE WHILE THE DECLARANT WAS PERCEIVING THE EVENT OR IMMEDIATELY THEREAFTER. HE SAYS, IT SAID NOTHING ABOUT,

FOR THAT EXCEPTION, THE WORD EXCITEMENT OR EVEN STRESS OF EXCITEMENT AND THAT IS WHY I GO BACK TO THIS ISSUE THAT, UNLESS THIS WHOLE THING IS FABRICATED, WHICH IS NOT IN ITS HOME WINNING MAKES THIS CALL, WHICH THERE IS AN ISSUE THAT WOULD BE MADE UNDER CIRCUMSTANCES THAT INDICATE A LACK OF TRUSTWORTHINESS AND YOU HAVE POINTED ANYTHING OUT IN THE RECORD THAT WOULD INDICATE THIS LACK OF TRUSTWORTHINESS TO THE EXTENT THAT IT SHOULD EXCLUDE IT FROM COMING INTO EVIDENCE.

>> THE STATE HAS THE INITIAL BURDEN OF SHOWING THE CONTEMPORARY NAY FATIGUE. THAT WAS WHAT I WAS TALKING ABOUT.

WE DON'T KNOW WHAT WAS GOING ON AT THE TIME OF THE PHONE CALL. NOW, AS TO THE DIFFERENCE BETWEEN SPONTANEOUS STATEMENT AND EXCITED UTTERANCE AND WHETHER EXCITEMENT IS NEEDED FOR BOTH, HUTCHINSON SAYS THAT IT DOES, AND I SUBMIT TO YOU THAT THAT MAKES SENSE BECAUSE THAT SATISFIES THE ELEMENT OF LIKE A REFLECTION, WHICH IS VERY WELL DEVELOPED IN THE CASE LAW AND WHICH I DON'T THINK THAT THE STATE DISPUTES IN ITS BRIEF THAT IT HAS TO BE REFLECTION.

>> YOU ARE RAPIDLY RUNNING OUT OF YOUR TIME AND I KNOW YOU WANT TO ARGUE THE OTHER ISSUES AND I'M INTERESTED ON YOUR DISCUSSION OF ERNESTO GONZALEZ.

>> ALRIGHT, LET ME JUST -- I APPRECIATE THAT VERY MUCH. ANOTHER WAY OF DEALING WITH THIS LACK OF REFLECTION WOULD BE, IF IT IS SORTED OUT, SOMEBODY SAYS LOOK, THERE'S SO AND SO OUTSIDE THE WINDOW, THE PERSON DOES NOT NECESSARILY HAVE TO BE EXCITED BUT IT IS SPONTANEOUS BECAUSE IT IS SORTED OUT, BUT THAT WAS NOT WHAT HAPPENED HERE.

HE CALLS UP AND ASKS FOR A GUN, HE RESPONDS TO A QUESTION.

SO IT IS JUST NOT.

>> I APPRECIATE WHAT YOU ARE SAYING.

LET'S GO TO THAT SECOND POINT. ALL RIGHT, OKAY, THE SECOND ONE PERTAINS TO THE CROSS-EXAMINATION OF THE DEFENDANTS.

NOW, IF A STATE WITNESS COMES IN AND TESTIFIES THE DEFENDANT DID NOT COMMIT THE CRIME, THE DEFENDANT CAN'T CROSS-EXAMINE THIS WITNESS WITH HERE'S A STATEMENT.

THE DEFENDANT OR SOMEONE ELSE, SAYING THE DEFENDANT DID NOT COMMIT THE CRIME.

SAID HE CAN'T CROSS-EXAMINE HIM WITH THE STATEMENTS THAT THE STATE DID NOT UTTER THE HEARSAY STATEMENT AND IT WAS THE DEFENDANT THAT UNDER THE HEARSAY STATEMENTS ABOUT YOU HAVE TO APPROVE THE STATE KNEW THAT THAT HERESAY STATEMENT WAS COINED TO COME OUT IN THE ANSWER BECAUSE THE QUESTION, DID NOT NECESSARILY REQUIRE AN ANSWER THAT WAS PROVIDED BY A HEARSAY STATEMENT.

THE QUESTION WAS, THE STATE WAS ASKING TO COMMITTED --.

>> MR. GONZALEZ, HOW DO YOU KNOW THAT BECAUSE I SAW HIM TAKE THE GUN.

>> THAT ASSUMES HE TOOK THE GUN. OTHERWISE, HE ONLY KNOWS THE STATEMENT.

>> HE SAID, ERNESTO GONZALEZ TOOK THE GUN.

EXCUSE ME?

THE DEFENDANT SAID I KNOW ERNESTO GONZALEZ TOOK THE GUN. HE SAID HE HAD AN IDEA, BECAUSE HE DID NOT KNOW. HE DID NOT RESPOND TO THE QUESTION.

OKAY, HE SAID, THE STATE SAID THE QUESTION WAS, HE HAD NO IDEA WHO STOLE THE GUN.

OKAY COMING HE DID HAVE AN IDEA, YES HE DID HAVE AN IDEA.

>> WHO STOLE THE GUN, AND SIR, ERNESTO GONZALEZ?

HOW DO YOU KNOW THAT?

VINNY SAYS IN REDISCOVERING HIS STATEMENT, HE SAYS WHO STOLE THE GUN?

ERNESTO GONZALEZ.

HOW DO YOU KNOW THAT?

HOW DOES THAT QUESTION NECESSARILY REQUIRE A HERESAY RESPONSE?

HOW DOES THE STATE KNOW THAT?

>> THIS DATE IS BRINGING ALL OF THIS UP, HOW DOES HE KNOW THAT?

>> THE PROBLEM IS THAT THE OBJECTION, IF THE DEFENDANT DID NOT WANT TO WIN TO THAT QUESTION OR ONLY, OR THE DEFENDANT KNEW THE ONLY WAY YOU WOULD KNOW WAS THERE HERESAY THAT WAS WHEN THE OBJECTION SHOULD BE HAD, BUT GOING TO THIS COLLOQUY IT SEEMS PERFECTLY APPROPRIATE FOR THIS DAY TO ASK, WHO STOLE THE GUN IF YOU HAVE IDEAS?

LENI ANSWERS ERNESTO GONZALEZ, HOW DO YOU KNOW THAT, AT THAT POINT IF THEY THOUGHT IT ONLY CAME OUT THROUGH HERESAY, THEY SHOULD HAVE SAID IT IS GOING TO CALL FOR HEARSAY, BUT ONCE HE SAYS THAT YOU ARE READING A DISCOVERY DEPOSITION AND MY CONCERN IS THAT HE HAS ONLY TOLD HALF THE STORY.

HE IS TOLD THAT HE KNOWS FROM RATING ERNESTO GONZALEZ DEPOSITION, A ERNESTO IMPLICATES HIM SO ALTHOUGH I DON'T THINK THEY COULD'VE BROUGHT IT OUT OTHERWISE I THINK BY BRINGING OUT HALF OF IT, THE DEFENDANT MIGHT HAVE THEN, BY RESPONDING IN THAT WAY AND NOT OBJECTING EARLIER MIGHT HAVE WAIVED ANY SUBSEQUENT QUESTIONING ON THAT SUBJECT.

>> THE RULE ESTABLISHED IN THE JACKSON CASE AND SEVERAL OTHER CASES OF THIS COURT, AN OBJECTION IS DIVISIBLY TIMELY IF IT IS MADE DURING THE COURSE OF THE QUESTIONING SO THAT THE COURT HAS AN OPPORTUNITY TO TAKE CORRECTIVE ACTION.

>> WHICH THE COURT COULD HAVE

DONE.

EVEN WHEN THE OBJECTION WAS MADE
, THE COURT COULD HAVE TOLD
THE JURY TO DISREGARD ALL OF
THIS ABOUT THE DEFENDANT.

>> BUT TO SEE THE DEFENDANT
WANTED IT TO COME OUT THAT
ERNESTO GONZALEZ STOLE THE GUN,
THAT WAS HELPING HIS DEFENSE.
HE WAS WANTING TO GET OUT HALF
OF IT, BUT NOT THE WHOLE TRUTH
ABOUT WHETHER ERNESTO GONZALEZ
SAID.

HOW CAN YOU CONCLUDE, I DON'T
SEE HOW YOU CAN CONCLUDE THAT.
WASN'T THAT HIS DEFENSE, THAT
HIS FRIEND SET HIM UP?

>> HIS DEFENSE WAS HE DID NOT
COMMIT THE CRIME AND THAT HE
THOUGHT IT WAS THIS FELLOW,
FELIPE MEJIA IT WAS GOING AROUND
MAKING DEATH THREATS ABOUT MR.
PELLER, THAT THAT WAS THE
DEFENSE.

THE COURT HAD AN OPPORTUNITY --
ACCORD HAD TAKEN CORRECTIVE
ACTION AT THE TIME THE OBJECTION
WAS MADE.

HE COULD HAVE TOLD THE JURY,
THIS IS ALL HERE SAY, YOU CANNOT
CONSIDER THIS, DON'T LET IT BE
ANY PART OF YOUR CASE.

THE JUDGE, THE OBJECTION WAS
TRUMAN BECAUSE THE COURT HAD AN
OPPORTUNITY TO TAKE CORRECTIVE
ACTION.

ENDOCYST INADMISSIBLE HEARSAY,
THIS ALLEGATION OF THIS ERNESTO
GONZALEZ WHO DID NOT TESTIFY, IS
ACCUSING THE DEFENDANT OF LISPER
DORI, SO THAT IS HOW THIS PLAYED
OUT IN THE TRIAL IN COURT.

>> LET ME SEE IF I UNDERSTAND
YOUR POSITION ABOUT THIS BECAUSE
I THINK I AM SOMEWHAT CONFUSED,
AND I WILL STATED IN A WAY, OR
LEAST ONE OF THE WAYS I AM
TAKING IT SO THAT I UNDERSTAND
YOU.

IS IT YOUR POSITION THAT JUST
BECAUSE THE DEFENDANT IN ANSWER
TO A SERIES OF QUESTIONS
IDENTIFIED ERNESTO GONZALEZ AS
BEING THE PERSON THAT SOLD THE

GUN OR BURGLARIZED DEPARTMENT,
AND THEN IDENTIFIED HIS
STATEMENT, AS THE SOURCE OF
THAT, THAT THAT DID NOT
THEREFORE OPEN THE DOOR TO
MAKING ALL OF ERNESTO GONZALEZ'S
STATEMENT ADMISSIBLE IN THE
EVIDENCE?

IS THAT YOUR --.

>> THE OBJECTION IS THAT THE
QUESTION BEFORE THE COURT, WHICH
WAS WHOM DID HE DO IT WITH OR
SOMETHING ALONG THOSE LINES WAS
HERE SAY.

THAT WAS THE OBJECTION AND THAT
IS MY ARGUMENT, THAT THIS
ACCUSATION.

>> YOU WOULD AGREE, DO YOU NOT
THAT THE STATE HAS THE FULL
RIGHT TO QUESTION HIM ABOUT THAT
GUN.

>> HE DEFINITELY HAD THE RIGHT
TO QUESTION HIM ABOUT THE GUN,
YES AND ABOUT HIS DOLD AGAIN.

>> AT THAT POINT.

>> ARE YOU SAYING THEY WOULD NOT
HAVE THE RIGHT TO CROSS-EXAMINE
HIM ABOUT WHETHER HE KNOWS WHO
STOLE THE GUN OR HOW BEGAN GOT
STALIN?

>> THEY COULD NOT CROSS-EXAMINE
HIM ABOUT A HERE'S A REPORT
BECAUSE AS YOU KNOW, HEARSAY --
HOW DOES THE STATE NO, FOR
INSTANCE IF THE STATE BELIEVES
THAT HE ACTUALLY WAS THE BURGLAR
, AND THAT HE, DURING THE
BURGLARY HE STILL BEGUN.

YOU ARE SAYING THAT BECAUSE THE
STATE MIGHT FEAR THAT THEY HAVE
TO WALK ON EGGS ABOUT WHETHER OR
NOT HE MIGHT COME UP WITH AN
ANSWER THAT INCLUDES YEARS THEY?
HOW WILL THE WORLD DOES THE
STATE KNOW THAT HE IS GOING TO
COME UP WITH AN ANSWER THEN, OUT
OF THE BLUE THAT SAYS OH WELL, I
READ ERNESTO'S STATEMENT THAT HE
GAVE IN DISCOVERY AS OPPOSED TO
REFLECTING HE WILL BREAK DOWN ON
THE STAND AND SAY, WELL YOU ARE
RIGHT, I DID STEAL THE GUN WITH
HER NEST OR SOMETHING LIKE THAT.
WHY WOULD THE STATE BE LIMITED

IN ITS EXAMINATION BECAUSE POTENTIALLY OUT OF THE BLUE, HE COULD COME UP WITH AN ANSWER LIKE THAT THAT SAYS, ALL WELL I KNOW IT BECAUSE I READ HIS DISCOVERY STATEMENT.

WIDE THAT WOULD DEPRIVE THE STATE OF THE RIGHT TO CROSS-EXAMINE HIM.

>> THERE ARE TWO THINGS.

IN ANSWER TO YOUR QUESTION, THE STATE CAN ASK, DID YOU STEAL THE GUN?

THERE IS NO PROBLEM WITH THAT. MISSTATE SIR LINCOLN'S THAT.

GEAR HOWEVER, THEY WERE LEANING TOWARDS THIS HERE'S A STATEMENT AND YOU ASK HIM HOW THE STATE KNOW THEY WERE GETTING INTO HEARSAY?

WE CAN TELL THAT BECAUSE OF THEIR NEXT QUESTION.

>> YOU ARE SAYING HE INTENTIONALLY LEAD TO THIS?

>> I DON'T THINK WE HAVE TO GO INTO PSYCHOANALYZING THE PROSECUTOR.

THE QUESTION BEFORE THE JUDGE OF THAT TIME WAS WHETHER THIS WAS HEARSAY AND THE ANSWER IS, YES IT IS.

SO WHAT WE DO WITH THE FACT IS HEARSAY, WE CAN TELL THE JURY TO DISREGARD THIS STATEMENT OF THE DEFENDANT AS A PREVIOUS YEAR SAY STATEMENT.

WHICH THIS THEY DID NOT OBJECT TO.

THIS THEY DID NOT SAY, WAIT A MINUTE THISES HEARSAY.

THE JUDGE COULD TAKE CORRECTIVE ACTION SO THAT DOES NOT ALTER THE QUESTION OF WHETHER THIS IS AN ADMISSIBLE HEARSAY, WHO DID HE SAY HE DID IT WITH.

>> YOU ARE RAPIDLY USING ALL OF YOUR TIME, JUST TO ALERT YOU TO THAT.

>> ALRIGHT, WITH THAT I RECALLED THE COURT TO REVERSE.

THANK YOU.

>> MAY IT PLEASE THE COURT, ASSISTANT ATTORNEY ON BEHALF OF THE STATE STARTING WITH THE LAST

POINT, THE DEFENDANT IS THE ONE WHO CHOSE TO BRING UP THIS YEAR SAID.

THE STATE ASKED HIM, THE STATE IS DOING PERFECTLY PERMISSIBLE CROSS-EXAMINATION ABOUT WHETHER HE HAS EVER HAD THE GUN AND HAD AGAIN CAME TO --.

>> WHY IS IT THOUGH THAT ONCE THAT HE SAYS, USE LIKE SAYING, WELL I'VE READ ERNESTO'S STATEMENT THAT HE GAVE IN DISCOVERY, I READ HIS DEPOSITION ALAWITE IN THE WORLD WITH THAT LEAD TO THEN THE INESCAPABLE CONCLUSION BY ACKNOWLEDGING THAT KOREAN QUOTING SOME PART OF IT, THAT THE WHOLE STATEMENT THEN, WITH WHATEVER IS IN IT WOULD THEN BE SUBJECT TO ADMISSIBILITY AND EVIDENCE?

IT CLEARLY IS AN AL ACCORD STATESMAN AT ETC., ETC. I AM HAVING DIFFICULTY WITH WHY.

>> THE ENTIRE STATEMENT WOULD NOT BE YOUR HONOR.

THAT WHICH EXPLAINS HIS ANSWER TO KEEP THEM FROM MISLEADING THE JURY AND EXPLAIN HIS ANSWER THAT YES ERNESTO GONZALEZ SAID HE DID IT WITH ME, BUT HE IS LYING.

THE BUT THE STATE IS GOING ON THEN AND SAYING, WHAT ELSE DOES ERNESTO SAYIN THERE AND NOW DOESN'T ERNESTO IN FACT THEY USED ALL THE GUN WITH HIM?

I AM HAVING TROUBLE WITH WHITE HIS ANSWER TO THE ONE THING LEADS -- NOW WE WANT TO GET OUT OF THE INCRIMINATING STUFF THAT ERNESTO SAYS ABOUT YOU?

>> IT IS JUST WITH KOJM, THAT IS THE ONLY QUESTION THAT COMES OUT AND HE SAYS ERNESTO WAS WITH ME BUT HE IS LYING.

>> WHY IS THAT ADMISSIBLE? HE BELIEVES ERNESTO STOLE THE GUN?

IT EXPLAINS HIS MISLEADING THE JURY.

YET PLENTY OF OPPORTUNITY TO AVOID THIS.

THE STATE SAYS COMMENT YOU HAVE ANY IDEA WHO STOLE THIS GUN?

HE SAID I HAVE AN IDEA.

IF THE DEFENSE THIS THING I HAVE NOTHING TO DO WITH IT, ALL HE HAS TO DO THAT POINT SAY NOBODY DOZEN.

DO YOU AGREE THIS DATE COULD NOT HAVE ELICITED, OR DON'T YOU KNOW FROM READING THE DEPOSITION THAT THEY COULD NOT ASK THAT QUESTION WITHOUT THERE BEING -- BUT WHEN THEY SAY, WHEN WE ARE TALKING ABOUT AN INVITED ERROR, AND TO ME IT IS A QUOTE, WHO STOLE THE GUN, AND IF AT THAT POINT, THE DEFENDANT HAD OBJECTED TO SAY, YOUR HONOR THAT ANSWER CAN ONLY ONLY.

>> THE DEFENDANT COULD IT JUST SAID NO, I DON'T KNOW IF HE IS CLAIMING HIS ONLY KNOWLEDGE WAS FROM.

>> HOW WOULD HE KNOW HE WAS NOT SUPPOSED TO USE THE DISCOVERY DEPOSITION.

HE IS TRYING TO ANSWER TRUTHFULLY.

HE IS NOT LIKE, THINK IS TRYING TO BE SMART ABOUT THIS BUT THE ONLY WAY, I DID NOT STEAL THE GUN, I HAVE IDEAS, DO YOU KNOW? KNOW WHY DO.

NOW YOU DO?

OBVIOUSLY, WHO STOLE THE GUN, WHY WOULD HE KNOW THAT HE WAS NOT SUPPOSED TO ANSWER WITH REFERENCE TO THE DISCOVERY DEPOSITION?

>> BECAUSE ONE WOULD HOPE THAT HE HAD BEEN PREPARED BEFORE HE WOULD'VE BEEN PUT ON THE STAND TO KNOW BETTER THAN TO ANSWER WITH HERE'S A.

HE SAT THE THE WHOLE TRIAL. HE HAS HEARD THE EARLIER DISCUSSIONS WHEN THE DEFENSE IT WAS WANT TO ELICIT ALL THESE STATEMENTS AND THERE IS A DISCUSSION ABOUT THAT NOTHING ADMISSIBLE.

HE WAS THERE THAT WHOLE TIME AND THEN HE CHOOSES TO BRING UP THIS YEAR SAY STATEMENT AND LIE ABOUT IT TO THE JURY AND THAT ALLOWED THE STATE TO CORRECT THAT.

>> THAT IS THE KEY ISSUE, IF HE VOLUNTEER SOMETHING, HE DID NOT HAVE TO VOLUNTEER THAT WAS HEARSAY AND THE STATE IS SAYING, AND THIS IS WHERE I WAS STRUGGLING, BUT I THINK THIS DATE MAY HAVE THE BETTER ARGUMENT THAN THAT, BY BRINGING OUT THAT ERNESTO DID NOT JUST SAY HE STOLE THE GUN BUT IT WAS STEALING IT WITH THE DEFENDANT. IT WAS PART AND PARCEL OF THAT, NOT TO BRING THAT OUT WOULD HAVE LEFT IT LEADING OR INCOMPLETE?

>> YES, THAT IS THE STATE'S POSITION.

HE WAS MISLEADING THE JURY, HE WAS INTENTIONALLY MISLEADING THE JURY, IT WAS ALL PART OF THE DEFENSE STRATEGY.

>> IT SEEMS TO ME THE WHOLE LINE OF QUESTIONING WAS ABOUT WHETHER THE DEFENDANT HAD BEGUN, CORRECT?

>> YES MAAM.

>> TALKED ABOUT THEIR ROOMMATE AND ALL OF THOSE THINGS, SO IS THIS STATEMENT REALLY RELEVANT TO WHETHER THE DEFENDANT REALLY HAD THE GUN, WHETHER HE WAS A PART OF THE BURGLARY OR NOT, IS THAT REALLY RELEVANT TO WHETHER HE ACTUALLY HAD BEGUN?

THAT IS THE PART THAT I AM STRUGGLING WITH HERE, BECAUSE IT REALLY DOES NOT GO TO THE SUBJECT THAT THEY WERE CROSS-EXAMINING.

>> THERE CROSS-EXAMINING HIM ABOUT THE POSITION OF THE GUN. HE SAID I'VE SEEN IT, BUT I KNOW IT WAS STOLEN.

DEKNOW WHO STILL LIVE?

DEVAL FOLLOWS IN THIS WHOLE LINE OF QUESTIONING.

IT IS NOTHING IMPROPER ABOUT ASKING HIM, DO YOU KNOW THE STILL THE THEN?

THE NOTE WAS DAHLEN, THE NO PLEWES DOLE IT?

ALL YES TO SAY IS, I HAVE NO PERSONAL KNOWLEDGE OF THAT.

WHAT WAS THE RELEVANCE OF BEING IN POSSESSION OF A STOLEN

GUN?

HE WAS NOT CHARGED WITH
POSSESSION OF RECENTLY STOLEN
PROPERTY?

THIS IS THE MURDER WEAPON.

THE RELEVANCE OF HIS HAVING THE
GUN AND IT BEING STOLEN EARLIER
FROM THE VICTIM'S HOUSE IS THE
VICTIM HAS BEEN DEPRIVED OF HIS
MEANS OF DEFENDING HIMSELF WHAT
WE ARE SENDING SOMEONE IN TO
KILL HIM AND YOU BROUGHT THE
WEAPON IN ADVANCE WHICH GOES TO
PREMEDITATION BECAUSE THAT IS
WHY IT CAME UP THAT THE GUN HAD
BEEN TAKEN OUT OF THE HOUSE SIX
WEEKS BEFORE THE CRIME, IT IS
BEEN STOLEN, IT IS THE MURDER
WEAPON.

>> WE ARE CLEAR, IN THIS CASE
THE DEFENDANT NEVER ARGUED IN
DOES NOT ARGUE ON APPEAL THAT
WAS IMPROPER TO BRING OUT THAT
PELLER'S GUN WAS STOLEN WEEKS
BEFORE THE CRIME, CORRECT?

THAT CAME IN AND THAT IS NOT A
POINT ON APPEAL?

>> NO IT IS NOT.

OF THE STATE OF HAVE DIRECT
EVIDENCE THAT HUDSON WAS
INVOLVED IN THE BURGLARY, THEY
WOULD HAVE ARGUED THAT PART OF
THE ROLE LEADING UP TO THE
CRIME, THAT HE HAD STOLEN HIS
GUN AND USED AGAIN.

>> YES.

SO NOW WE ARE GETTING
REALLY -- AND I THINK THE
DEFENDANT SAID ON HIS ANSWERS
THAT HE AGREED IT WAS -- WHO
STOLE THE GUN, SO WE DON'T GET
PAST THAT, YOU ARE IN TROUBLE
RIGHT?

>> YES, IT IS HARMLESS.

WE HAVE THE DEFENDANT'S
STATEMENT, WE HAVE AN
EYEWITNESS, WE HAVE THE BULLET
MATCHING THE CALIBER OF THE GUN
AND A CAR.

WE OF THE CAR WITH THE DEFENDANT
STANDING ON THE STEERING WHEEL,
WHICH THE DNA TECHNICIAN SAID HE
WOULD NOT EXPECT TO BE THERE
UNLESS HE RECENTLY DROVE THE CAR

OR WAS HIS DEGETTE HAVE A CAR LEFT RUNNING RIGHT FOR THE DEFENDANTS PICKED UP, BEFORE YOU PICKED UP WE HAVE THE MURDER WEAPON LEFT IT THAT SAME PLACE. WE HAVE HIM MAKING AND INCULPATORY STATEMENT TO THE POLICE ON THE NIGHT OF HIS ARREST ACCEPTING RESPONSIBILITY FOR THE CRIME A WEEK LATER IN MAKING AN INCRIMINATING STATEMENT SO IT WOULD ALL BE HARMLESS, EVEN IF IT WAS IMPROPERLY ADMITTED.

THE STATE ADMITS IT.

TO GO BACK, THE DEFENDANT NEVER ARGUES THE ISSUE OF THE BURGLARY AND WHO STOLE THE GUN IS IRRELEVANT TO THE FACT OF THIS MURDER?

I DON'T BELIEVE SO.

>> LET ME ASK ABOUT THE FIRST QUESTION, WHAT WAS THE PURPOSE OF THE STATE IN PUTTING ON THIS EVIDENCE IN REGARD TO THE 7:00 PHONE CALL?

AGAIN, ELAINE VINCE THE TIME PERIOD AND SHOWS PREMEDITATION. HE IS CALLING FOR HELP, PROBABLY SHOULD HAVE CALLED THE POLICE INSTEAD OF HIS FRIEND.

WE HAVE THE -- IN THE BACKGROUND SO WE DON'T HAVE THEM IN THE SAME ROOM.

WE HAVE MR. PELLER GOING INTO THE BATHROOM TO MAKE A PHONE CALL FOR CARRIES INTENTIONALLY NOT SING THE NAME OF THE PERSON.

>> IS THE ONLY WAY THAT WE KNOW THAT HE WENT INTO THE BATHROOM TO MAKE A PHONE CALL IS BECAUSE PRITCHARD TESTIFIES THAT HE HEARD A FAN?

>> HE HEARD A BATHROOM THAN IN THE BACKGROUND.

>> NOW, IS THE TESTIMONY, IS THERE ANY OTHER EXTRINSIC FACT THAT SUPPORTS ANY OF THE HEARSAY THAT IS IN THIS STATEMENT?

>> WELL, CERTAINLY THE DEFENDANT IS A PERSON WHO WAS THERE. HE NEVER IDENTIFIED THE DEFENDANT DIRECTLY.

>> SIO UNDERSTAND WHAT WENT ON,

IS THAT THE GIRLFRIEND OUR RIGHTS BETWEEN 8:00 AND 8:30, AND INsofar AS THE LENGTH OF TIME, THAT THE ONLY EVIDENCE THERE IS THIS PHONE CALL TO PRITCHARD AROUND 7:00.

>> SOMEONE IS IN MY APARTMENT, THEY ARE HERE TO KILL ME AND I NEED A GUN AND THERE HILL TO KILL ME BECAUSE OF A DRUG DISPUTE AND THE PERSON THAT IS HERE TO KILL ME IS SOME LIGHT ON IT OUT.

THE ON THE CONNECTION BETWEEN THAT AND THE DEFENDANT IS STEVE VICTIM WANTED HIM OUT BEFORE WE KNEW PRITCHARD EXISTED.

>> BUT YOU ALSO HAVE IN THAT STATEMENT, YOU HAVE THE FACT THAT, REGARDLESS OF WHAT WAS SAID, THAT PRITCHARD WAS NOT MOTIVATED TO CALL THE POLICE RIGHT?

>> YES SIR, HE TOLD MR. PELLER TO CALL THE POLICE OR LEAVE THE APARTMENT, GET OUT OF THERE AND I SUPPOSE IT THOUGHT IF MR. PELLER COULD CALL HIM, HE COULD CALL THE POLICE TO.

>> THAT'S CERTAINLY IN MY MIND GOES TO THIS IDEA OF WHETHER THIS WAS EXCITED OR SPONTANEOUS, WHICHEVER ONE OF THOSE YOU WANT TO USE, SAID THE MAN COMES TO HIS APARTMENT, THREATENS THEM AND LETS THEM GO TO THE BATHROOM TO MAKE A PHONE CALL.

HE SAYS HIS LIFE IS IN DANGER, HE HAS GOT THE CELL PHONE BUT HE DOES NOT CALL THE POLICE.

HE CALL SOMEONE ELSE AND ASK THEM TO BRING A GUN AND THEN SAYS, OH WELL, HE IS PROBABLY NOT GOING TO KILL ME.

I MEAN, HOW WHEN THE WORLD IS ALL OF THAT AND EXCITED UTTERANCE?

I MEAN, IT SEEMS TO ME IT IS AS, AS ANYTHING COULD BE.

>> JUST BECAUSE SOMEONE DOES NOT HAVE EXCITEMENT IN THEIR FOIS DOES NOT MEAN THEY ARE NOT.

>> I'M NOT TALKING ABOUT WHETHER HIS VOICE WAS EXCITED AND NOT

COME I'M TALKING ABOUT WHAT IS ACTUALLY SAYING AND HE IS CALLING SOMEONE TO GET HELP, GIVE ME A GUN, I'VE THAT SOMEBODY HERE TO KILL ME, WHAT COULD BE MORE EXCITING THAN TELLING SOMEONE THEY ARE THERE TO KILL YOU.

>> IN THIS SITUATION, WE HAVE -- IS THE HERE'S A TESTIMONY TO BEGIN WITH?

THERE IS NOTHING THAT EXTRINSICALLY SUPPORTS THE EXCITEMENT.

IT IS SELF-SERVING THING THAT WE ARE GRAPPLING WITH, RIGHT?

IF WE GO WITH THE UTTERANCE BUSINESS.

>> THEY THEN HAVE AN HOUR LATER, SHE SHOWS UP WITHIN A FEW MINUTES, HE PULLS OUT THE GUN AND SPENDS THE NEXT HOUR THREATENING HIM.

LET ME GO BACK TO THAT BECAUSE I DID NOT REALIZE THAT UNTIL I LOOKED AGAIN AT THE STATEMENT.

INDICATED THERE WAS MORE THE ONE PERSON THERE.

YOU MENTIONED HIS GIRLFRIEND WAS THERE.

WE NOTE THE GIRLFRIEND, UNLESS SHE IS NOT TRUSTWORTHY, GETS THERE BETWEEN 8:00 AND 8:30.

THIS CAUSES HER BETWEEN 7:00 AND 7:30.

WE ALSO KNOW WHEN THE GIRL FRIEND ARRIVES, SHE HAD CALLED, HE SOUNDED FINE WHEN SHE CALLED HIM.

HE DID NOT SAY, DON'T COME ON OVER.

HE SAID COME ON OVER AND WHEN HE CAME IN, HER TESTIMONY WAS THAT, WHEN SHE ARRIVED PELLER SMILED AND HUGGED HER, SO GOING BACK TO ACTUALLY THIS ISSUE OF WHETHER THERE WAS STRESS, WHETHER THERE'S A CRIME GOING ON OR WHETHER HE THOUGHT SOMETHING MIGHT BE GOING ON, I WOULD LIKE YOU TO ADDRESS THAT INCONSISTENCY, THAT IS IT THE CALL WAS MADE AN HOUR BEFORE,

AND WHEN SHE ARRIVES, HE IS CALM
, AND THE CONVERSATION IS
THAT THE GIRLFRIEND IS THERE,
HOW DOES THE STATE EXPLAIN ALL
OF THAT?

>> THIS DATE EXPLAINS ALL OF
THAT BY SAYING EVEN DURING THE
PHONE CALL HE IS RATIONALIZING,
I CAN TALK HIM OUT OF IT.
HOW WOULD A GIRL FROM BE
THERE?

THE GIRL FROM CALL THEN COME
OVER.

[INAUDIBLE]

>> I DON'T RECALL HIM SAYING THE
GROVER AND WAS THERE.

>> IT IS ON PAGE 583, HE
INDICATED THERE WAS MORE THAN
ONE PERSON THERE AND HE
MENTIONED HIS GIRLFRIEND WAS
THERE.

>> THE STATE'S POSITION IS AGAIN
THAT THIS WOULD BE HARMLESS
BECAUSE YOU HAVE THE EYE
WITNESS, YOU HAVE.

>> I WOULD LIKE TO ADDRESS AGAIN
SOMETHING THAT MR. CALDWELL WAS
GOING TO GET INTO AND THAT IS
WHETHER OR NOT IT IS HARMLESS
DURING THE GUILT PHASE, THIS
ISSUE ABOUT THE PENALTY PHASE
AND HAC.

IT IS CLEAR IN THIS RECORD THAT
THIS DEFENDANT KNEW HE WAS THERE
BECAUSE HE WAS SUPPOSED TO BE
THERE TO KILL HIM BUT OVER
EITHER AN HOUR OR SOME PERIOD OF
TIME, HE WAS COMPLETELY TRYING
TO DO WHATEVER HE COULD TO AVOID
KILLING THIS DEFENDANT.

LANCE PELLER THOUGHT AT LEAST AN
HOUR BEFORE THE CRIME HE WAS
THERE TO KILL HIM, HE WAS THERE
AS A FRIEND AND WAS TRYING TO
GET HIM OUT OF IT.

I HAVE SOME TROUBLE, AND I WAS
TRYING TO READ ALL OF THESE HAC
CASES, SEVEN TO FIVE JURIES
RECOMMENDATION, HOW THIS MEETS
THE STANDARDS SET FORTH FOR
SOMETHING THAT IS TORTUROUS AND
SHOWING EXTREME INDIFFERENCE TO
THE SUFFERING OF OTHERS.

IF HE HAD BEEN BETTER OFF IF IT

COME IN AS A COLD-BLOODED KILLER, IT WOULD NOT BE ANY HAC BUT BECAUSE, AND EVEN THE GIRLFRIEND TESTIFIED THAT SHE COULD TELL HE DID NOT WANT TO KILL PELLER, EVEN THOUGH HE WAS SENT THERE, THAT HE WAS -- THE DEFENDANT HIMSELF WAS WAVERING IN EXTREME ANXIETY AND IT WAS NOT THAT HE WAS THERE FOR THESE TWO HOURS TO TORTURE HIM BUT TO FIGURE OUT A WAY TO AVOID IT IF HE COULD, SO HOW IS THAT EQUAL HAC BASED ON ALL OF OUR CASE LAW?

>> WHEN WE GET TO THE PENALTY PHASE, THIS EXCITED UTTERANCE COMES IN FOR MR. PELLER'S STATE OF MIND WHICH IS RELATIVE TO HAC AND HE IS TOLD HE IS GOING TO BE KILLED TWO HOURS EARLIER.

>> BUT THAT IS WHERE IT COMES -- AGAIN, HE HAS SAID DON'T WORRY, HE IS A FRIEND AND HE IS NOT GOING TO KILL ME.

OBVIOUSLY THE PHONE CALL TO THE PARENTS SURELY BEFORE IS QUITE, IS PROBABLY THE BEST EXAMPLE OF WHERE HE KNOWS HE IS GOING TO BE KILLED, AND SO IF WE CAN GET HAC GOING TO THE HALF-HOUR BEFORE, IF THAT IS SIMILAR TO OTHER CASES, THEN WE COULD HAVE AN APPOINTMENT.

I AM CONCERNED THAT THE JUDGE RELIED ON IT FOR TWO AND A HALF HOURS.

AND YOU SAID SOMETHING ABOUT HIM COWERING IN THE BATHROOM.

THERE IS NO EVIDENCE SUWANNEE CALLED PRITCHARD THAT HE WAS COWERING IN THE BATHROOM.

>> USE IN THE BATHROOM, HE IS NOT IDENTIFYING THE PERSON AND THE FAN IS GOING.

HE IS CLEARLY FRIGHTENED ENOUGH QUEUES NOT TELLING THE NAME OF THE DEFENDANT.

HE IS -- PRITCHARD, SHOWS UP BETWEEN 8:00 AND 8:30.

THAT PHONE CALL WAS AT NINE CONGO 15, THE MURDER DOES NOT OCCUR UNTIL AFTER THAT PHONE CALL SO YOU HAVE HEARD THERE

WITH HIM AND SHE SAYS WITHIN A FEW MINUTES OF FOR COMING IN HE HANGS UP THE PHONE, THE DEFENDANT STANDS UP AS THOUGH HE'S GOING TO VOTED THAT SINCOM PULLS OUT A GUN AND HOLDS AN AGAIN POINT FOR THE NEXT HOURS DO YOU HAVE A WHOLE HOUR FROM HIRSCHER SHOWING UP BETWEEN ISIKOFF AND NATE:30 AND A MURDER OCCURRING YET 9:59:30.

THE WHAT TIME WERE THE PARENTS CALLED?

>> 9:15.

>> SO THERE WAS APPROXIMATELY AN HOUR AFTER THE GIRL FRIEND ARRIVED?

THE GIRLFRIEND ARRIVED AND ALMOST IMMEDIATELY A GUN COMES OUT AND MR. -- STARTS HYPERVENTILATING.

THAT IS AMPLE TIME TO FEAR YOUR DEATH.

IT IS NOT A MATTER OF HIS INTENT.

INTENT IS NOT AN ELEMENT OF THAT.

IT IS THE VICTIM FEELING FEAR AND EMOTIONAL STRAIN.

>> AND THE SUFFERING OF OTHERS, THAT WAS WHAT I WAS STRUGGLING WITH BECAUSE IT SEEMS TO THE CONTRARY, HE WAS STRUGGLING BECAUSE HE WAS, HE WAS NOT INDIFFERENT TO THIS OFFERING, HE DID NOT WANT TO HAVE TO KILL THIS MAN.

>> WELL, IF HE REALLY DID NOT WANT TO KILL HIM DID NOT TAKE THE CONTRACTORS EARLY, HE DID NOT NEED TO SHOW BUT THAT HOUSE THAT DAY.

HE IS DOING THIS AND AS THE TRIAL COURT FOUND HE IS MAKING THESE PHONE CALLS NOT TO GET OUT OF IT BECAUSE IN THE SECANT, BUT TO TORTURE THE VICTIMS, TO MAKE THEM THINK THEY ARE GOING TO GET OUT OF IT AND THEN HIDE THEIR FEAR WHEN THEY DON'T.

AND THE EVIDENCE SUPPORTS THAT ANY STATE THAT MEDS HAC IS PERFECTLY.

>> ALSO, THE CCP WAS FOUND IN

THIS CASE, CORRECT?

>> YES MAAM.

>> I'M A LITTLE BIT CONCERNED ABOUT THE COLD CALCULATED IN PREMEDITATED, AND SO THE FACT THAT THIS DEFENDANT SEEMS SO AGITATED HIMSELF ABOUT HAVING TO DO THIS AND NOT WANTING TO DO THIS AND MAKING A PHONE CALL TO THE GUY HEWETT ASKED HIM TO DO THIS, IS THAT REALLY DEMONSTRATE THE COLDNESS THAT WE NORMALLY TALK ABOUT IN COLD, CALCULATED OR PREMEDITATED?

>> THIS IS AN EXECUTION AND CONTRACT KILLING IN THOSE REPAIRMEN EXAMPLES OF CCP. THE FACT THAT HE WAS WAVING AT THE LAST MINUTE HAVING ACCEPTED A CONTRACT THREE WEEKS EARLIER WHEN HE IS GOING IN THERE IS A CONTRACT KILLER AND EVENTUALLY SHOTS HIM IN KILLS HIM WITH ONE SHOT TO THE TOP OF HIS HEAD AFTER HOLDING HIM FOR A LEAST AN HOUR, SITTING THERE WITH THE GUN ON HIM.

>> SO THE FACT THAT HE WAVERED AND ALL OF THIS AND ACTUALLY CALLED -- IS IT CORRECT THAT HE CALLED THE PERSON TO TRY TO GET OUT OF DOING THIS?

>> HE DID CALL THE PERSON, MR. PELLER ASKED HIM TO CALL THE PERSON IN THE CALL THE PERSON. IT IS THE STATE'S POSITION -- HE KNEW HE HAD ACCEPTED A CONTRACT THREE WEEKS EARLIER TO DO THIS. IF HE DID NOT INTEND TO PREMEDITATED WE MURDER THIS PERSON HE DID NOT NEED TO ACCEPT THAT CONTRACT THREE WEEKS EARLIER.

>> THE COURT HAS NO FURTHER QUESTIONS, THE STATE RESPECTFULLY REQUEST YOU CONFIRM

>> ALRIGHT, GIVE ME A COUPLE OF SECONDS TO TALK ABOUT THE SECOND ISSUE, WHICH WAS THE ERNESTO GONZALEZ.

THE STATE SAID TO THE DEFENDANT, DO YOU KNOW?

THE DEFENDANTS SAID NOW I DO. THIS DAY, NOW YOU DO, WAS STILL

THE GUN?

AT THAT POINT THE STATE HAD TO KNOW HE WAS GETTING INTO HEARSAY BECAUSE HE IS SAYING NOW I KNOW, WHICH MEANS IT WAS SOMETHING HE FOUND OUT SUBSEQUENTLY, SO WOULD HAVE TO GET INTO HEARSAY.

NOW LET'S TALK ABOUT HIS PHONE CALLS MADE TO ROUTE THIS PERIOD.

AT 9:00, THERE WAS THIS PHONE CALL FROM THIS TEENAGER APPARENTLY WANTING TO BUY DRUGS FROM THE DEFENDANT.

HE SAID THE DEFENDANT WAS PERFECTLY CALM AT THAT TIME, SO WHAT WE HAVE THIS -- I'M SORRY, MR. PELLER WAS PERFECTLY CALM AT THAT TIME SO WE HAVE MR. PELLER CALM AT 7:00, WE OF AND PERFECTLY, AT 8:00, WHEN THE CRAWFORD ARRIVES HE MAKES ANOTHER PHONE CALL TO SOMEONE, WE DON'T KNOW WHO COME OR RATHER HE RECEIVES A PHONE CALL, YES A CHAD AND SEEMS FINE AT THAT TIME.

THE DEFENDANT PULLS OUT THE GUN AND IS TAPPING IT ON HIS LEG FOR A DUET THAT POINT MR. PELLER GETS UPSET BETHANY CALMS DOWN AND THEY HAVE A CONVERSATION ACCORDING TO THE GIRLFRIEND.

THEY ARE TALKING BACK AND FORTH, AND THE DEFENDANT SAYS TELL ME WHAT I WANT TO HEAR.

SHE NEVER TESTIFIES THAT HE IS POINTING THE GUN AT HER.

SHE SAID THE TAPPED THE GUN ON HIS LEG AND THEN THEY GOT INTO THIS CONVERSATION.

THE STATE SAID SEVERAL TIMES IN ITS ARGUMENT THAT THE DEFENDANT ACCEPTED THIS MURDER CONTRACT.

I FORGET HOW LONG PREVIOUSLY, SEVERAL WEEKS PREVIOUSLY.

THAT IS NO EVIDENCE.

THE ONLY EVIDENCE WITH REGARD TO ANYTHING ALONG THOSE LINES, THE DEFENDANT'S STATEMENT THAT REFUSED HIS OFFER TO KILL MR. PELLER THAT TIME SO THERE IS NO EVIDENCE AT ALL THAT HE ACCEPTED THE CONTRACT, THIS LONG PERIOD OF FOREHAND.

I JUST ALSO WANT TO POINT OUT,
THE DEFENDANT DID NOT VOLUNTEER
THAT THE GUN WAS STOLEN.
AGAIN, THAT WAS THE STATE'S
LEADING QUESTION, ASKING HIM
ABOUT THE GUN BEING STOLEN SO
THIS ENTIRE SEQUENCE IN
QUESTIONING WITH REGARD TO .2
WAS LEADING QUESTIONS BY THE
STATE, LEADING UP TO THE
HEARSAY.

I SEE MY TIME IS OUT.

>> WE THANK BOTH OF YOU AND WE
WILL TAKE VENTER ADVISEMENT.
DECORE WILL TAKE ITS MORNING
RECESS AS ANNOUNCED AND WE WILL
HEAR THE FOLLOWING TWO CASES,
ONE AFTER THE OTHER.

ALL RISE.,``%%

>> THE COURT STANDS IN RECESS.,``%%