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**Herman Lindsey v. State of Florida**

**SC07-1167**

>> PLEASE RISE.

PLEASE RISE.

LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE NEXT CASE ON THE COURT'S

AGENDA IS LINDSEY VERSUS STATE.

>> THANK YOU YOUR HONOR.

MAY IT PLEASE THE COURT.

MY NAME IS JEFFERY ANDERSON AND

I REPRESENT HERMAN LINDSEY.

>> PLEASE, IF YOU COULD MAKE

SURE YOU PICK UP THE MICROPHONE.

>> I KNOW I HAVE A LOT OF ISSUES

SO I'M GOING TO TRY TO START OFF

WITH THE FIRST TWO ISSUES

INVOLVING THE MAIN EVIDENTIARY

ISSUE AND SUFFICIENCY OF THE

EVIDENCE.

THE FIRST ISSUE INVOLVES THE

CONVERSATIONS BETWEEN MARK

SIMMS, WHO IS ALSO KNOWN AS MARK

SWAN, AND I'M GOING TO REFER TO

HIM AS SIMMS BECAUSE THAT IS THE

WAY HE WAS REFERRED TO AT TRIAL.  
DEFENSE COUNSEL MOVES TO STRIKE  
A PORTION OF THEIR CONVERSATION  
WHERE THE DEFENDANT SAID, I HAD  
TO KILL SOMEONE, AND THE BASIS  
FOR STRIKING IT WAS THAT IT WAS  
NOT LINKED TO THE CRIME CHARGED.

>> COULD YOU ADDRESS THE  
PRESERVATION ISSUE FIRST ON THAT  
BECAUSE, HAVE THEY TAKEN A  
DEPOSITION OF MR. SIMMS, AND WAS  
HE EXPLICIT ABOUT WHAT THE  
DEFENDANT HAD SAID TO HIM?  
WHY WOULDN'T HE HAVE EITHER  
MOVED TO ELIMINATE OR OBJECTED  
AT THE OUTSET TO TESTIMONY THAT  
COULD HAVE BEEN, OR WAS  
POTENTIALLY QUITE--

>> I DON'T THINK THERE WAS A  
DEPOSITION OF MR. SIMMS.  
THERE WAS, AT THE PRETRIAL  
HEARING, THEY HAD A HEARING ON A  
MOTION TO DISMISS FOR  
PRE-INDICTMENT TO DELAY AND I  
KNOW THEY HAD SOME OF SIMMS'  
STATEMENTS TO POLICE AND THE  
PROSECUTOR WAS MAKING  
REPRESENTATION THAT THERE WOULD

BE A CONFESSION AND, IN FACT, I  
THINK ONE OF THE PRIOR  
STATEMENTS WAS, IT WAS MUCH MORE  
DETAILED AND I THINK THE DEFENSE  
WAS NOT AWARE THAT IT WOULD BE  
SO, AND YOU KNOW, NO DETAILS TO  
IT.

>> WHAT WAS SAID DURING OPENING  
STATEMENT?

DID THE PROSECUTOR MENTION THAT  
SIMMS--

>> HE MENTIONED PART OF THE  
STATEMENT THAT YOU WOULD BE  
HEARING FROM SIMMS, SAYING THAT  
THE DEFENDANT SAID HE HAD KILLED  
SOMEONE BECAUSE THEY HAD  
RECOGNIZED HIS FACE.

[INAUDIBLE]

IS THAT PRETTY MUCH WHAT WAS  
SAID DURING TESTIMONY?

>> NO, I MEAN THEY ARE TALKING  
ABOUT HYPOTHETICALS WITH THE  
DEFENDANT SAYING, YOU SHOULD  
HAVE KILLED THE WITNESS IN YOUR  
ROBBERY AND, IF I HAD BEEN IN  
YOUR POSITION I WOULD HAVE DONE  
THAT, BUT WHEN HE STATES A  
FACTUAL STATEMENT, HE DOES NOT  
SAY WHY HE DID THE KILLING.

HE JUST SAID, I HAD TO KILL  
SOMEONE.

>> BUT, WHAT I'M ASKING IS,  
GOING BACK TO THE  
CONTEMPORANEOUS OBJECTION  
PROBLEM, THE PROSECUTOR STATES--  
SAYS THAT IN OPENING STATEMENT,  
THAT IS WHAT HE WAS GOING TO  
SAY, THEREFORE DEFENSE COUNSEL  
WAS AWARE THAT IT WAS COMING, SO  
WHY DIDN'T YOU WAIT UNTIL THE  
END TO MAKE THE OBJECTION?

>> I THINK IN ESPECIALLY THE  
TYPE OF OBJECTION, SAYING THAT  
WHAT THE TESTIMONY ABOUT HAVING  
KILLED SOMEONE NOT BEING  
CONNECTED, I THINK DEFENSE  
COUNSEL BELIEVED THAT THERE  
WOULD BE MORE.

I THINK HE WAS NOT AWARE OF THE  
EXACT TESTIMONY OF MARK SIMMS AS  
TO WHAT LINDSEY TOLD HIM.

>> I AM JUST TROUBLED BY THE  
FACT THAT THE FIRST DEGREE  
MURDER CASE, AND SIMMS IS  
OBVIOUSLY AN IMPORTANT WITNESS--  
YOU ARE TELLING US THAT DEFENSE  
COUNSEL WAS NOT AWARE AS TO WHAT

SIMMS WAS GOING TO SAY AT TRIAL?

>> HE WAS UNAWARE, OR MAKING THE ASSUMPTION THAT HE WOULD SAY A LOT MORE.

YEAH, THEY SHOULD HAVE DEPOSITIONS, AND TOTALLY BE AWARE, BUT THE FACT IS I THINK HE THOUGHT SIMMS WAS SUCH A WILD CARD, HE WOULD NOT KNOW.

>> SHOULDN'T HE HAVE KNOWN FROM THE OPENING COMMENTS OF THE PROSECUTOR?

I MEAN, BECAUSE THE OPENING COMMENTS KIND OF INDICATED THAT IT WAS GOING TO BE LIMITED.

[INAUDIBLE]

>> THAT IS ONE OF THE AREAS WHERE YOU COULD GET SOME PREVIEW OF IT, BUT ALSO DURING THE PRETRIAL HEARING, THE PROSECUTOR WAS TALKING ABOUT THIS BEING A FULL-BLOWN CONFESSION FOR THE PAWN SHOP ROBBERY.

>> YOUR POINT WOULD BE, ANYWAY, AND OBVIOUSLY FROM THE DEFENDANT'S POINT OF VIEW, IT WOULD HAVE BEEN AS IF IT WAS GOING TO BE SUCCESSFUL, BUT YOU ARE SAYING THAT WAITING UNTIL

THE END OF THE TESTIMONY AND  
THEN MOVING TO STRIKE FOR ALL  
APPELLATE PURPOSES PRESERVES THE  
ISSUE FOR APPEAL?

>> I THINK IT DOES, AND I THINK  
YOU KNOW, HE DOES NOT REALLY  
KNOW THAT IT IS NOT LINKED UNTIL  
THE FULL DIRECT TESTIMONY IS  
DONE.

>> THE JUDGE THEN HAS THE CHANCE  
TO RULE ON THE MERITS TO WHETHER  
IT SHOULD BE STRICKEN OR NOT.

WHY ISN'T IT, GIVEN THE  
PROXIMITY, SOMEWHAT PROXIMITY IN  
TIME AND THE CONTEXT, AT LEAST  
MARGINALLY RELEVANT AS AN  
ADMISSION THAT HE WOULD HAVE TO  
BE THAT HE KILLED THE DEFENDANT,  
A VICTIM IN THIS ROBBERY FOR IT  
TO BE RELEVANT AT ALL?

IT WOULD HAVE TO BE LINKED UP TO  
THE ROBBERY SO GIVE ME YOUR BEST  
SHOT AS TO HOW THAT DOESN'T EVEN  
REMOTELY SHOW THAT HE KILLED.

>> BECAUSE YOU DON'T HAVE ANY  
INFORMATION WHO HE KILLED.

>> YOU DON'T NEED THE NAME AND  
DATE OF BIRTH OF COURSE, BUT

SOME IDENTIFICATION MARKER OR  
WHEN IT OCCURRED.

>> HOW ABOUT WYATT AND SWOFFORD?

>> SWOFFORD WAS MUCH MORE  
SPECIFIC BECAUSE HE HAD MADE A  
STATEMENT THAT HE WAS ON TRIAL  
FOR ABDUCTING A GIRL AND THEN  
SEXUALLY ABUSING HER IN NUMEROUS  
WAYS, AND THEN PUTTING TWO  
BULLETS IN HER HEAD AND KILLING  
HER AND DISPOSING OF THE BODY.

SWOFFORD IS WITH THIS BUDDY, AND  
SAYING WE CAN ABDUCT A GIRL, DO  
WHATEVER WE WANT WITH HER AND  
THEN THE BUDDY SAYS, WELL WE  
COULD GET IN TROUBLE.

HE SAYS, WE PUT TWO BULLETS IN  
HER HEAD AND DISPOSE OF THE  
BODY.

THAT IS PRETTY SPECIFIC.

>> WAS IT NOT THE LINKAGE WITH  
REGARD TO DOING THE ROBBERY AND,  
THEY MAY SEE HER FACE?

AND, I HAD TO GET RID OF THEM, I  
HAVE DONE IT BEFORE.

>> HE DID NOT SAY THAT.

>> HOW ABOUT WYATT?

>> HE SAID FACTUALLY, THE FIRST  
IS A HYPOTHETICAL QUESTION--

STATEMENT.

YOU SHOULD NOT DO THIS AND

BELIEVE A WITNESS.

IF I WERE IN YOUR POSITION, I

WOULD HAVE.

IT WAS A WOULD HAVE, COULD HAVE

HYPOTHETICAL, BUT THE FACTUAL

PART OF HIS STATEMENT IS, I HAD

TO KILL SOMEONE.

MARK SIMMS WAS THERE AND HE

WAS-- HE TESTIFIED HE HAD NO

IDEA ABOUT THE PORTION OF THE

STATEMENT.

>> WHAT ABOUT WYATT?

>> THE ISSUE WAS NOT PRESERVED

AS FAR AS RELEVANCY.

AND IT WAS ANOTHER-- THE ISSUE

REALLY WAS STRICTLY A HEARSAY

ADMISSION TYPE OF ISSUE.

IT WASN'T THE RELEVANCY PORTION,

AND IT WAS AGAIN A HEARSAY.

WE ARE NOT COMPLAINING ON TERMS

OF AN ADMISSION IN TERMS OF

HEARSAY.

IT IS THE RELEVANCY.

>> IF HE HAD SAID, I KILLED

SOMEBODY ONCE IN 2000, OR

WHATEVER-- IN 1990, IT COULD NOT

COME INTO EVIDENCE BECAUSE IT  
WOULD THEN BE AN ADMISSION OF  
SOME OTHER CRIME THAT HAD  
NOTHING TO DO WITH THIS CRIME.

>> RIGHT.

>> THE ONLY WAY IT COMES IN--  
AND I WILL ASK THIS OF  
MR. CAMPBELL, IF IT CAN BE  
REASONABLY CONSTRUED AS AN  
ADMISSION THAT HE KILLED THE  
VICTIM IN THIS CASE.

>> RIGHT, BECAUSE HE DID NOT  
WANT TO ADMIT OTHER ADMISSIONS  
TO OTHER CRIMES.

THERE IS NO WAY FOR A DEFENDANT,  
OR TO BE PUT INTO A POSITION OF  
SAYING TO THE JURY, YOU KNOW,  
YOU HAVE NOT LINKED UP MY  
ADMISSION TO THIS CRIME.

>> WHAT IF HE SAID SOMETHING  
LIKE, I ONCE HAD TO KILL SOMEONE  
AT A PAWN SHOP?

WOULD THAT LINK IT UP TO HIM?

>> THAT WOULD BE MUCH STRONGER.  
I'M NOT SURE IF IT WOULD,  
BECAUSE THERE ARE ROBBERIES IN  
PAWN SHOPS AND THEY ARE TRYING  
TO SAY THAT THAT IS WHAT THE  
DEFENDANT SAID.

NOW, IF HE MADE THE BIG DOLLAR  
PAWN SHOP, I WOULD SAY THAT IS A  
LINKAGE AND MAYBE EVEN JUST A  
PAWN SHOP MIGHT BE ENOUGH.

>> IS THIS THE ONLY EVIDENCE?

I KNOW THE JURY FOUND THE  
DEFENDANT WAS THE SHOOTER, AND  
YOU ARE GOING TO BE TALKING  
ABOUT CIRCUMSTANTIAL EVIDENCE,  
BUT THIS IS THE ONLY CONCEIVABLE  
EVIDENCE UPON, TO ME, UPON WHICH  
A JURY COULD MAKE A FINDING THAT  
IT WAS THE DEFENDANT AS OPPOSED  
TO THE CO-DEFENDANT, LOROY WHO  
IS SERVING A SENTENCE FOR  
SECOND-DEGREE MURDER, AND HIS  
FINGERPRINTS WERE FOUND ON THE  
GUN, AND HE WAS THE SHOOTER.

IS THERE ANY OTHER EVIDENCE THAT  
WOULD SAY WHO WAS THE SHOOTER?

>> NO.

>> IF IT CAME IN AN ERROR, THERE  
IS NO WAY TO SAY IT IS HARMLESS  
ERROR?

>> RIGHT.

>> IF THIS EVIDENCE CAME IN, IS  
THERE SUFFICIENT EVIDENCE?

>> I DON'T THINK SO, BECAUSE

SOME ADMISSIONS CAN BE JUST  
CIRCUMSTANTIAL, AND YOU STILL  
HAVE, EVEN IF THE COURT RULED  
AGAINST ME ON THAT, THERE WOULD  
STILL BE ENOUGH AMBIGUITY THAT  
IT IS JUST CIRCUMSTANTIAL  
EVIDENCE, AND WE ARE STILL  
STACKING ALL THESE PIECES OF  
CIRCUMSTANTIAL EVIDENCE.

>> WELL, KNOW THE DEFENDANT  
COULD HAVE KILLED ANOTHER  
PERSON BUT THAT'S NOT AN ISSUE IN  
THIS CASE.

YOU'RE PUT IN A POSITION OF  
TRYING, I THINK FROM A DEFENSE  
POINT VIEW, ALMOST AN  
IMPOSSIBLE POSITION TO SAY  
MAYBE HE KILLED SOMEBODY ELSE  
BUT THAT IS --

>> THAT DOESN'T WORK AND JURY  
WILL TAKE IT OUT ON YOU WITH  
THE COLLATERAL CRIMES.

>> LET ME ASK ABOUT THE TIMING  
ON THIS.

WHEN THIS STATEMENT WAS MADE,  
HOW LONG AFTER THE MURDER WAS  
THAT?

WAS THIS ABOUT A MONTH LATER?

>> IT WAS, SIMS AND LINDSEY'S

MEETING WAS, THEIR FIRST

MEETING WAS 32 DAYS AFTER.

AND THEN SOMETIME AFTER THAT, I

THINK IT'S --

>> MAY 20th, 1994.

>> THAT'S THEIR FIRST MEETING.

>> OKAY.

AND MURDER WAS APRIL 19th.

>> THE MURDERER'S APRIL 19th.

I THINK ON MAY 20th THEY'RE IN

THE BROWARD JAIL TOGETHER AND

THEN, AT THE, POMPANO BEACH

FACILITY CONVERSATION TAKES

PLACE A LITTLE BIT LATER.

>> BUT JUST DAYS LATER?

>> I'M NOT SURE OF THE EXACT

AMOUNT OF TIME.

>> BUT THIS --

>> IT IS NOT LIKE A YEAR LATER

THIS IS A CONVERSATION THAT IS

TAKING PLACE WITHIN A

RELATIVELY SHORT PERIOD OF TIME

AFTER THE CRIME?

SO THERE HAD BEEN SOME SPECIFIC

REFERENCE TO THE PAWN SHOP,

THAT MIGHT BE CLEARLY LINKED TO

THE PAWN SHOP MURDER THAT JUST

OCCURRED THERE.

>> THAT WOULD BE A MUCH  
STRONGER LINKAGE.

>> THAT'S NOT WHAT HAPPENED  
HERE.

>> RIGHT.

>> THERE'S NO, THERE'S NO,  
THERE'S NOTHING THAT REALLY  
TIES THIS COMMENT TO ANY  
PARTICULAR MURDER, OTHER THAN  
THE FACT THIS FELLOW SAID IT?

>> HE DOESN'T EVEN SAY IN HIS  
STATEMENT HOW THIS OTHER  
KILLING OCCURRED.

HE DOESN'T SAY SHOOTING.

THE PROSECUTOR REPEATS IT AS A  
SHOOTING THROUGHOUT THE CASE  
BUT THAT IS NOT WHAT SIMMS  
TESTIFIED TO.

>> NOT THAT IT IS RELEVANT TO  
THIS PARTICULAR POINT BUT THIS  
WITNESS DOESN'T COME FORWARD  
UNTIL TWO YEARS LATER TO SELL  
ABOUT THIS ALLEGED  
CONVERSATION?

>> APPROXIMATELY TWO YEARS  
LATER.

>> AND IS THE WHOLE ISSUE THAT  
IN FACT IT LOOKED LIKE IT WAS  
ACTUALLY LINDSEY THAT WAS

BEING, SORT OF THE SNITCH AND  
IT IS POSSIBLE, CERTAINLY THAT  
IT MIGHT HAVE BEEN LORAY AND  
EVEN SWAN THAT MIGHT HAVE BEEN  
THE TWO PEOPLE THAT COMMITTED  
THIS MURDER?

DID THAT COME OUT IN THIS CASE?

>> IN THE EVIDENCE? NO.

I THINK THAT RELATES TO POINT 4  
WHEN THE POLICE TOOK A  
STATEMENT FROM LINDSEY AND THEY  
INTRODUCED A PORTION OF IT BUT  
THEY REDACTED A PORTION WHERE  
LINDSEY WAS ASKED ABOUT SIMS  
AND LORAY DOING ROBBERIES  
TOGETHER IN WHICH THERE WAS A  
SHOOTING.

AND HE IS KIND OF LEADING HIM  
YOU ABOUT THE DEFENDANT SAYS, I  
THINK SO.

AND THAT THE STATE SUCCESSFULLY  
GOT THAT REDACTED OUT AND, IN  
POINT FOUR THAT'S WHERE I  
ARGUED THAT SHOULD HAVE BEEN  
ALLOWED IN OVERALL.

>> GOING INTO THE, MAKE SURE WE  
TOUCH ON THIS JOA MOTION ON THE  
EVIDENCE.

IN BALLARD WE OVERTURNED A  
FIRST-DEGREE MURDER CONVICTION  
DESPITE THE FACT THAT THERE  
WERE FINGERPRINTS FOUND AT THE  
SCENE AND DEFENDANT ARM HAIRS  
FOUND AT THE SCENE.

REASON WE DETERMINED THAT  
PRESENCE OF HAIR AND  
FINGERPRINTS COULD HAVE AN  
INNOCENT EXPLANATION FOR IT,  
MEANING THAT THE DEFENDANT HAD  
BEEN THERE BEFORE AND COULD  
HAVE DROPPED THEM OR COULD HAVE  
TOUCHED SOMETHING.

IN THIS INSTANCE, WHEN THE  
POLICE ARRIVED AT THE PAWN  
SHOP, THE PLACE SEEMED TO BE IN  
DISARRAY.

THERE WERE PAWN SLIPS ALL OVER  
PLACE.

IN ONE OF THOSE PAWN SLIPS THEY  
FOUND THE DEFENDANT'S  
FINGERPRINT.

>> NOW --

>> I'M NOT, I NEVER BEEN IN A  
PAWN SHOP BEFORE SO I DON'T  
KNOW WHERE THEY KEEP THE PAWN  
SLIPS AND WHETHER PEOPLE WHO  
JUST WALK INTO THE STORE HAVE

ACCESS TO THEM.

THE, I GUESS THE QUESTION IS  
WHERE WERE THE PAWN SLIPS?  
ARE THEY KEPT BACK IN THE  
OFFICE WHERE HE COULDN'T HAVE  
BEEN?

>> WELL, I DON'T KNOW, BUT  
THERE IS AN EXPLANATION FOR  
THAT PARTICULAR PAWN SLIP IN  
THAT, IN HIS STATEMENT TO  
POLICE, HE ACKNOWLEDGES BEFORE,  
WEEKS BEFORE HE WAS IN THE PAWN  
SHOP, AND HE IN FACT, PAWNED A  
WATCH THERE, UNDER A DIFFERENT  
NAME.

THAT IS THE KIND OF STUFF THAT  
HERMAN LINDSEY DOES.

HE DOES PROPERTY STUFF.

>> WAS A FINGERPRINT FOUND ON  
THE PAWN SLIP ASSIGNED TO HIM?

>> HE ADMIT THAT IS HIS --

>> THE ONLY FINGERPRINT FOUND  
OF HIS IS ACTUALLY ON.

>> PAWN SLIP.

>> WHERE HE ADMITS THAT WAS A  
TRANSACTION HE HAD.

>> EXACTLY.

>> SEEMS TO ME THAT IS ANOTHER

POINT FOR, THAT IS ABSOLUTELY  
CONSISTENT WITH INNOCENCE,  
IF HE IS IN  
THERE WITH THE MURDER, WHY IS  
HIS FINGERPRINTS ONLY FOUND ON  
ONE PAWN SLIP THAT HAS TO DO  
WITH A TRANSACTION HE WAS  
INVOLVED WITH?

>> THE TRANSACTION WAS NOT WITH  
HIS NAME.

>> HE USED DAVID ASHTON, HIS  
LAST NAME.

>> WHO ELSE BESIDES HIM KNEW  
THAT HE USED THAT NAME?

>> I DON'T BELIEVE ANYBODY.

>> SO THE ONLY EXPLANATION THAT  
HE HAD WAS IT WAS HIS SLIP,  
USING A NAME THAT ONLY HE TOLD  
THE PEOPLE HE USED?

>> HE SAID HE, HE DID THE  
TRANSACTION UNDER THIS OTHER  
NAME ON THE SLIP.

HE PAWNED A WATCH.

>> OKAY.

>> YEAH.

>> WAS THE PAWN SLIP FOR A  
WATCH?

>> I BELIEVE, SEIKO, YEAH.

THE MAIN PIECE, THE INTERESTING

THING, YOU'VE SAID THERE WERE  
NO EYEWITNESSES TO THIS.

THERE IS NOTHING LEFT BY  
MR.^LINDSEY AT THE SCENE, BUT  
THE STATE MAKES ITS CASE FROM  
PRIMARILY A CROWN ROYAL BAG.

>> DID THE OWNER OF THE PAWN  
SHOP TELL THE POLICE INITIALLY  
THAT, AMONG THE MISSING ITEMS  
WAS JEWELRY THAT WAS CONTAINED  
IN A CROWN ROYAL BAG?

>> NO, HE DIDN'T.

EVEN IN THIS CASE WHEN HE  
TESTIFIED AT TRIAL, HERE IS  
WHAT HAPPENS.

HE DESCRIBES THIS CROWN ROYAL  
BAG AND SAYS, JEWELRY IS KEPT  
IN IT.

>> HE DESCRIBED IT, SORRY.

HE DESCRIBED IT HOW?

DID HE SAY --

>> HE SAID, YEAH, CROWN ROYAL,  
THE WHISKEY TYPE OF BAG AND IT  
HAS GOT THE PURPLE AND GOLD  
DRAW STRINGS.

SO HE GIVES THIS DESCRIPTION OF  
IT, BUT THE PROSECUTOR NEVER  
ASKS HIM, IS THIS MISSING?

WE DON'T HAVE ANY TESTIMONY  
THAT'S EVER MISSING FROM THE  
SHOP.

>> IS THERE TESTIMONY THAT HE  
KEPT IT IN THE SAFE AND --  
PHOTOGRAPH SHOWS AN EMPTY SAFE?

>> EXACTLY. THAT'S WHAT HAPPENS.

HE GIVES A DESCRIPTION AND  
THE PROSECUTOR THEN, HAS THE  
PHOTO OF THE SAFE.

THAT IS HOW HE IS TRYING TO  
MAKE HIS CASE.

HE SAYS THE SAFE IS EMPTY.

ACTUALLY THERE IS STUFF ON THE  
TOP SHELF AND IT IS EMPTY  
OTHERWISE.

AND HE SAYS, THEREFORE WE CAN  
INFER THAT THE BAG WAS TAKEN  
DURING THE ROBBERY.

>> THERE IS NO BAG VISIBLE IN  
THE SAFE ON THE PHOTOGRAPH?

>> IT COULD BEHIND -- IT IS NOT  
VISIBLE OTHERWISE, YOU'RE  
RIGHT.

>> HOW DO WE THEN CONNECT  
MR. LINDSEY TO THE BAG THAT  
NIKKI WAS TALKING ABOUT?

>> OKAY.

>> AS I UNDERSTOOD HER

TESTIMONY IT WAS IN A CLOSET  
AND MULTIPLE PEOPLE WERE IN AND  
OUT.

>> EXACTLY.

SHE TESTIFIED IT WAS IN A  
CLOSET AND SHE NEVER SAW IT  
WITH THE DEFENDANT.

AND OTHER PEOPLE WERE IN AND  
OUT INCLUDING RONNIE LORAY WAS  
IN AND OUT OF THE PLACE.

>> DID SHE TESTIFY AT ANY POINT  
THAT MR.^LINDSEY ACTUALLY TOOK  
JEWELRY OUT OF THIS BAG AND  
PAWNED IT, OR DID WHATEVER HE  
DOES WITH STOLEN ITEMS?

>> NO.

HER TESTIMONY, THE CLOSEST HE GETS  
IS, ACTUALLY IT IS  
IMPEACHMENTMENT BECAUSE SHE'S,  
THE PROSECUTOR THINKS SHE IS  
GOING TO SAY THAT LINDSEY CAME  
HOME WITH A BAG OF JEWELRY ON  
THE DAY OF THE ROBBERY.  
AND SHE SAYS NO, THAT DIDN'T  
HAPPEN.

AND THEN --

>> THAT WAS AT OPENING  
STATEMENTS BUT SHE DIDN'T

TESTIFY TO THAT AT TRIAL,

RIGHT?

>> WELL THE PROSECUTOR ASKED  
HER THAT QUESTION DURING TRIAL  
AND SHE SAID NO, THAT DIDN'T  
HAPPEN.

AND THEN THE PROSECUTOR PULLED  
OUT A STATEMENT, WELL YOU TOLD  
DETECTIVE, ONE OF THE  
DETECTIVES THAT YOU DID SEE  
THIS AND THAT YOU GUYS WENT TO  
A FLEA MARKET.

THERE IS EXAMINATIONS ABOUT THE  
FLEA MARKET BUT THAT IS THE  
IMPEACHMENT PORTION.

AND THEY NEVER MENTION WHAT  
BAGS, THEY NEVER IDENTIFIED THE  
BAG EVEN WHEN THEY TALKED ABOUT  
GOING TO THE FLEA MARKET.

>> HE IS NEVER IN POSSESSION OF  
JEWELRY THAT WAS TAKEN FROM  
THIS PAWN SHOP?

>> WE HAVE NO EVIDENCE OF THAT.

>> THERE IS NO EVIDENCE  
INTRODUCED THAT HE EVER WAS IN  
POSSESSION OF JEWELRY TAKEN  
FROM THE PAWN SHOP?

>> RIGHT.

>> DID SHE EVER TESTIFY THAT IT

WAS A CROWN ROYAL BAG?

>> SHE TESTIFIED IT WAS A CROWN ROYAL BAG BUT, SHE DIDN'T TESTIFY, THE THING ABOUT CROWN ROYAL BAGS, THERE IS DIFFERENT TYPES OF CROWN ROYAL BAGS. THERE IS NOT JUST THE WHISKEY BAG.

THERE IS OTHER BAGS WITH THE WORDS, CROWN ROYAL ON THEM. PARTICULARLY THE CROWN ROYAL WHISKEY BAGS THEY MAKE ALL SORTS OF THOSE BAGS.

THERE IS LITERALLY MILLIONS OF THEM OUT THERE.

>> THEY'RE USUALLY PURPLE? NOT THAT WOULDN'T KNOW ANYTHING ABOUT THAT.

>> USUALLY PURPLE BUT THEY EVEN HAVE CAMOUFLAGE ONES, TAN ONES, BLACK ONES BUT THE MOST POPULAR IS THE PURPLE ONE AND THAT IS THE MOST NUMEROUS.

>> LET'S GO BACK. SUFFICIENCY OF THE EVIDENCE SITUATION, YOU'VE GOT THAT HE, KNOWS THIS PAWN SHOP.

HE HAS DEALT WITH THE PAWN

SHOP.

HE APPARENTLY, THERE'S

TESTIMONY THAT HE WAS IN

THERE THE DAY BEFORE WITH THE

CODEFENDANT.

HE IS IN THERE AND HE'S THEN,

AND THEN THIS IS WHY THIS

STATEMENT BECOMES SO CRITICAL I

THINK TO WHETHER THERE IS

SUFFICIENT EVIDENCE OR NOT.

IF THE STATEMENT IS BEING LET

IN BECAUSE IT IS RELEVANT TO

SHOW THAT IT IS INDICATIVE HE

COMMITTED THIS CRIME, THEN HOW

DO WE DISREGARD IT FOR THE

PURPOSES OF EVALUATING

SUFFICIENCY OF THE EVIDENCE?

IF A JURY IS GOING TO HEAR IT,

AND INFER THEN IT IS, HE WAS

ADMITTING TO A CRIME, THEN HOW

DO WE THEN SAY, WELL, YEAH, BUT

IT REALLY ISN'T VERY STRONG

ADMISSION BECAUSE IT'S NOT

SPECIFIC?

>> WELL, BECAUSE YOU'RE

INFERRING, YOU'RE STILL STACKING

THESE INFERENCES UPON

INFERENCES BECAUSE HE IS NOT,

IT IS NOT LIKE, I KILLED THE

PAWN SHOP LADY.

>> THAT'S YOUR ARGUMENT WHY IT  
SHOULDN'T COME IN AT ALL.

>> RIGHT.

>> BUT ONCE IT COMES IN, THEN  
IT IS COMING IN BECAUSE IT IS  
RELEVANT TO, AS POTENTIAL  
ADMISSION.

>> IT IS STILL, UNLESS IT IS A  
REALLY DIRECT ADMISSION, IT IS  
STILL AMBIGUOUS, AND YOU HAVE  
TO INFER, MAKE I HAVE FRIENDSES  
FROM THAT ALONG WITH THE OTHER  
INFERENCES FOR IT TO ADD UP TO  
SUBSTANTIAL COMPETENT EVIDENCE.

ONE THING I WANTED TO MENTION  
ABOUT THE EMPTY SAFE IS, I  
DIDN'T SEE IT AT FIRST BUT AT  
1182 OF THE RECORD, WHEN GERALD  
SINGER, THE PAWN SHOP MANAGER  
OWNER TESTIFIED, HE TESTIFIED  
HE CLEARED OUT THE SAFE THAT  
MORNING OF THE MERCHANDISE.  
PLUS IT WAS BASICALLY CLEARED  
OUT BEFORE THE ROBBERY EVEN  
OCCURRED.

>> LET ME ASK THIS.

IS THERE ANY EVIDENCE THAT LINK

AS PARTICULAR ITEM OF JEWELRY  
THAT WAS STOLEN TO AN ITEM OF  
JEWELRY THAT WAS IN POSSESSION  
OF THE DEFENDANT SUBSEQUENTLY  
AT ANY POINT?

>> NO, THERE WASN'T.

BECAUSE THEY NEVER IDENTIFIED A  
PARTICULAR TYPE OF JEWELRY THAT  
WAS A PIECE OF JEWELRY THAT WAS  
MISSING, OR STOLEN.

IT WAS INTERESTING BECAUSE  
THERE WAS TESTIMONY ABOUT  
RONNIE LORAY VERY DISTINCTIVE  
WITH A MARIJUANA LEAF ON IT.

IT IS VERY INTERESTING  
TESTIMONY BUT THE PART THAT IS  
MISSING ANYONE FROM A PAWN SHOP  
SAYING THAT WAS AN ITEM THAT  
WAS STOLEN.

>> WHAT'S THE TESTIMONY ABOUT  
THE JEWELRY THAT WAS SOLD AT  
THE FLEA MARKET?

>> OKAY.

THAT'S, IT FIRST STARTS OUT, AS  
I SAID, IT'S REFERRING BACK TO  
DETECTIVE, ONE OF THE  
DETECTIVES STATEMENTS THAT NIKK  
GAVE TO THE DETECTIVE AND IT IS  
IMPEACHMENT.

>> IT IS ALL IMPEACHMENT?

THERE IS NO DIRECT --

>> WELL, THEY DO CROSS OVER,  
ARGUABLY THEY CROSS OVER TO A  
POINT WHERE THEY START TALKING  
ABOUT THE FACTS.

IT IS HARD TO DISCERN WHEN  
THEY'RE TALKING ABOUT THE  
STATEMENT, DIDN'T YOU TELL  
DETECTIVE PERCIO THIS AND THAT?  
I WOULD SAY THEY, DEFINITELY  
CROSSED OVER AT 1245 OF THE  
RECORD WHERE IN THE MIDDLE OF  
THE PAGE THE PROSECUTOR GOES,  
SO, FORGET ABOUT TELLING US  
WHETHER OR NOT THEY CAME BACK  
WITH THE JEWELRY, BECAUSE  
THAT'S WHERE THE IMPEACHMENT  
STARTED.

HE SAID, PUTTING THAT ASIDE, OR  
IF YOU FOUND IN THE CLOSET,  
WHEN WAS IT THAT THEY GOT RID  
OF THE JEWELRY, OR, HER MAN GOT  
RID OF HIS JEWELRY?

SO A COMPOUND QUESTION IS  
ASKED, WHICH IF THE DEFENDANT  
IS GETTING RID OF HIS JEWELRY  
AT A FLEA MARKET, THAT'S NOT

PROVING ANYTHING TOWARD THE  
STATE'S CASE.

>> IS ANY DISCUSSION OF THE  
CROWN ROYAL BAG POINT?

>> NO THERE ISN'T.

THEY'RE NOT IDENTIFYING THE  
CROWN ROYAL BAG IN THIS WHOLE  
DISCUSSION INVOLVING THE FLEA  
MARKET EITHER.

BY THE WAY HER ANSWER WAS, I  
DON'T KNOW, BUT IT WAS PROBABLY  
A WEEKDAY.

>> ONE OTHER QUESTION ABOUT  
THIS BAG.

THE CROWN ROYAL BAG, FIRST OF  
ALL, THE OWNER DOESN'T TELL THE  
POLICE AT THE, RIGHT AFTER THE  
MURDER THAT A CROWN ROYAL BAG  
WAS MISSING.

THEN NIKKI, HIS FORMER WIFE,  
SOME 10 YEARS AFTER THE MURDER,  
COMES, DECIDES TO COME FORWARD  
AND TELLS THE POLICE THAT I, WE  
SAW, I SAW A CROWN ROYAL BAG IN  
A CLOSET.

THERE IS NO EVIDENCE THAT  
CLOSET WAS EXCLUSIVELY  
POSSESSED BY THE DEFENDANT.

>> CORRECT.

>> AND IS SHE EVER SHOWN A  
SOMETHING, THAT, THAT THEY'RE  
DESCRIBING THE SAME CROWN ROYAL  
BAG?

>> NO.

>> NO, THE PROSECUTOR DOESN'T DO  
THAT.

>> YOU HAVE A LITTLE BIT OF  
TIME LEFT I WANT TO TOUCH ON  
ONE ISSUE THAT IS OF CONCERN TO  
ME, THAT IS DURING THE PENALTY  
PHASE APPARENTLY MR. LINDSEY  
TOOK THE STAND AT THE PENALTY  
PHASE AND TESTIFIED AS EXPECTED  
ABOUT HIS FAMILY GROWING UP AND  
THIS AND THAT.

APPARENTLY THE PROSECUTOR ON  
CROSS-EXAMINATION QUESTIONED  
HIM INTENSELY, EXTENSIVELY, I  
SHOULD SAY, ABOUT HOW HE KNEW  
THE VICTIM.

HOW HE KNEW HER AT THE PAWN  
SHOP, AND HOW SHE WAS SEATED  
WHEN HE SHOT HER.

DIDN'T RESIST HIM AND WHY DID  
HE PUT THE GUN TO HER HEAD AND  
PULL THE TRIGGER.

HAD NOTHING TO DO WITH

LINDSEY'S RELATIONSHIP WITH HIS  
FAMILY.

SO APPARENTLY HE, THE  
PROSECUTOR, CROSS-EXAMINED  
MR. LINDSEY EXTENSIVELY DURING  
THE PENALTY PHASE ABOUT ISSUES  
INVOLVING THE GUILT PHASE OF  
THE CASE.

WHAT IS YOUR POSITION ON THAT?

>> WELL, THAT, DEFENSE COUNSEL  
OBJECTED BELOW THAT THAT WAS  
BEYOND THE SCOPE.

HE HAD JUST ASKED HIM ABOUT HIS  
FAMILY AND BACKGROUND, STUFF  
LIKE THAT.

NOTHING ABOUT THE CRIME.

AND THE WORST PART IT WAS, THE  
PROSECUTOR'S LAST QUESTION,  
BECAUSE THE, LINDSEY WAS  
DENYING INVOLVEMENT IN THIS  
KILLING.

HE KEPT DENYING IT EVEN AT THE  
PENALTY PHASE.

AND THEN THE LAST QUESTIONS THE  
PROSECUTOR IS GOING, SO YOU'RE  
DISAGREEING WITH THE JURY HERE?

YOU'RE SAYING THEY'RE WRONG?

AND HE GAVE HIS HONEST ANSWER,  
THEY ARE WRONG.

SO THAT DOESN'T HELP WITH THE  
JURY IN A PENALTY PHASE BY  
FORCING THE DEFENDANT TO START  
CRITICIZING THE JURY.

I SEE I'M RUNNING OUT OF TIME.  
I'D LIKE TO RESERVE THE REST OF  
MY TIME FOR REBUTTAL, THANK  
YOU.

>> ALL RIGHT.

MISS CAMPBELL.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, LESLIE  
CAMPBELL WITH THE ATTORNEY  
GENERAL'S OFFICE ON BEHALF OF  
THE STATE OF FLORIDA.

WITH REGARD TO THE FIRST ISSUE,  
THE ADMISSION BY MR. LINDSEY  
THAT HE HAS KILLED SOMEONE IN  
THE PAST, IT WAS MORE THAN JUST  
ONE LITTLE PASSING STATEMENT.

WHAT HE TOLD MARK SIMMS WAS THAT  
MARK SIMMS SHOULD HAVE HANDLED  
HIS ROBBERY BETTER.

THEY WERE DISCUSSING REASONS  
WHY THEY WERE IN JAIL AND MARK  
SIMMS SAID HE HAD DONE  
A ROBBERY.

HE SAID HE HAD TO DO THAT IN

THE PAST AND THEN HE ASKED

MARK SIMMS, WHY SIMMS DIDN'T

KILL THE PERSON.

BECAUSE THAT PERSON SAW YOUR

FACE.

AND THEN THE DEFENDANT SAYS,

YOU'RE SUPPOSED TO, AND HE USED

WORD, OFF, ALL PEOPLE OR ALL

WITNESSES LIKE FACING YOUR

FACE.

SO CLEARLY HE IS TALKING ABOUT,

WITH WHEN YOU SHOULD KILL A

WITNESS TO --

>> AND SO HOW DOES THAT CONNECT

TO THIS MURDER?

>> IT STARTS THE CONNECTION TO

THIS MURDER.

AND THEN YOU HAVE TO LOOK AT

THE OTHER EVIDENCE WHICH WAS,

RIGHT AFTER THE MURDER HE TALKS

TO ALFONZER.

HIS FIRST QUESTION TO HIM, DID

YOU SEE THE NEWS REPORT ABOUT

THIS PAWN SHOP ROBBERY, AND WAS

THERE ANY REPORT ABOUT ANY

WITNESS? YOU TAKE THOSE TWO

STATEMENTS TOGETHER AND CLEARLY

THERE IS DEBT EVIDENCE THAT

MR. LINDSEY WAS TALKING ABOUT

THE ROBBERY IN THIS CASE AND  
KILLING IN THIS CASE.

>> THAT STATEMENT, THE SECOND  
STATEMENT, THERE IS EVIDENCE  
HERE THAT MR. ^LINDSEY KNEW OR  
THIS VICTIM, CORRECT.

>> YES.

>> HE HAD BEEN IN THIS PAWN  
SHOP BEFORE.

AND HAD DEALINGS WITH THIS PAWN  
SHOP BEFORE.

WOULDN'T IT BE THE SORT OF A  
NATURAL THING, YOU SEE THERE  
HAS BEEN A MURDER AT A PLACE  
WHERE YOU HAVE FREQUENTED AND  
YOU KNOW THE PEOPLE THERE, THAT  
YOU MIGHT WANT TO ASK A  
QUESTION ABOUT IT?

>> I DON'T THINK IT IS, YOUR  
HONOR, WHEN HE SUPPOSEDLY HAD  
SEEN A NEWS REPORT EARLIER THAT  
DAY AND THERE WAS NO REPORT OF,  
THERE WAS NO DISCUSSION ABOUT  
WITNESSES IN THAT REPORT.

ALSO, WHEN YOU LOOK AT ALL OF  
THE OTHER EVIDENCE OF HIS  
STATEMENTS, HE WOULD KNOW THAT  
THERE WEREN'T ANY WITNESSES.

HE CLAIMS --

>> YOU SAID ALL THE OTHER  
EVIDENCE.

LET'S TALK ABOUT ALL OF THE  
EVIDENCE THAT REALLY LINKED,  
YOU BELIEVE LINKED MR.^LINDSEY  
TO THIS MURDER.

>> FIRST OF ALL, MR.^LINDSEY,  
AS WE HAVE SAID, KNEW THE PAWN,  
HAD BEEN TO THAT PAWN SHOP.

KNEW THAT PAWN SHOP.

HE HAD BEEN THERE THREE AT  
LEAST TIMES.

IN FACT IN ONE OF THE TIMES  
WHEN SOMEBODY CAME FROM THE  
BACK ROOM, THEY LEFT SHORTLY  
THEREAFTER.

SO CLEARLY HE APPEARS HE WAS  
CASING THE, THAT PAWN SHOP.

>> AND BECAUSE YOU LEAVE WHEN  
SOMEBODY ELSE COMES, YOU ARE  
CASING THE PLACE?

>> HE WAS THERE THREE OTHER  
TIMES.

>> BUT YOU'RE SAYING AT THIS  
ONE TIME HE WAS IN THE PAWN  
SHOP.

SOMEONE COMES OUT OF THE BACK  
ROOM AND HE LEAVES, AND WE

INFER FROM THAT THAT HE WAS  
CASING THE PAWN SHOP?

>> I THINK THAT IS A REASONABLE  
INFERENCE, YOUR HONOR, GIVEN  
AGAIN THE OTHER EVIDENCE IN  
THIS CASE.

SHE ALSO --

>> AND WHAT DAY WAS THIS?  
THIS IS THE DAY BEFORE THE  
MURDER?

>> THE DAY BEFORE THE MURDER.

IT WAS IN THE MORNING.

THIS ROBBERY WAS IN THE  
MORNING.

HAVING BEEN THERE AT THAT TIME

IT WOULD SEEM THAT THE  
INFERENCE COULD BE THAT HE KNEW  
THAT IT WAS GOING TO BE EMPTY  
OR, THERE WOULDN'T BE MANY  
PEOPLE THERE.

>> MR. LINDSEY WAS INDICTED

SOME 11 YEARS AFTER THE MURDER.

WHAT WAS IT THAT STIMULATED THAT?

WAS IT SIMMS STATEMENT AT THE  
JAIL?

WHAT WAS IT THAT CAUSED THE  
INDICTMENT TO COME ABOUT?

>> I BELIEVE, YOUR HONOR, THE

RECORD INDICATES THAT MR.^LORAY  
HAD BEEN INCARCERATED.

THEY HAD A FINGERPRINT FROM THE  
STUN GUN, FROM THE STUN GUN BOX  
BUT HIS FINGERPRINTS WEREN'T IN  
THE AFIS SYSTEM AT THAT TIME.

BUT EVENTUALLY --

>> WAIT A MINUTE.

THE STUN FINGERPRINT WAS  
MR.^LORAY'S.

>> I'M SORRY.

MR.^RONNIE LEE LORAY.

HE HAD HIS FINGERPRINTS BUT HE  
WASN'T IN THE SYSTEM AT THAT  
TIME.

HE IS ARRESTED AGAIN.

HE IS IN JAIL, HIS  
FINGERPRINTS.

>> FINGERPRINTS, MR.^LORAY'S

FINGERPRINT, IT POPS UP.

NOW A LINK.

MR.^LINDSEY HAD GIVEN A  
STATEMENT THAT HAD LINKED HIM  
WITH MR.^LORAY IN THE PAST.

SO.

IT WAS A COLD CASE.

THEY FINALLY GET TO TALK TO  
NIKKI THE WIFE.

THEY TALK TO LORAY AND

EVENTUALLY.

>> WAS MR. LORAY CONVICTED

SOMETHING INVOLVING IN CRIME?

>> NOT AT THE TIME BUT SUBSEQUENTLY HE

HAS BEEN CONVICTED.

>> WHAT WAS THAT?

>> HE PLED GUILTY TO

SECOND-DEGREE MURDER.

>> BUT HE DID NOT TESTIFY IN

THIS CASE?

>> HE DID NOT TESTIFY IN THIS

CASE.

>> I THINK THE PROSECUTOR WAS

COMPLAINING ABOUT THE COURT

TAKING THE -- PRIOR TO GIVING

SOME TESTIMONY OUT OF HIM.

I READ SOMETHING ABOUT THAT.

>> I DON'T REMEMBER THAT, YOUR

HONOR BUT, --

>> OKAY.

>> WOULD YOU, THE JURY FOUND

THE DEFENDANT TO BE THE SHOOTER?

>> YES.

>> IS THAT, WHAT OTHER

EVIDENCE, OTHER THAN THE

SOMEWHAT VAGUE AND SUBJECT --

AMBIGUOUS, AT LEAST, ON ONE

SIDE BUT THE STATEMENT OF

MR.^SWAN THAT WOULD SHOW THAT

MR.^LINDSEY WAS THE SHOOTER?

>> YOUR HONOR, IF YOU LISTEN TO

THE TAPES, THAT HE, THAT

MR.^LINDSEY, NOT THAT HE

CREATED BUT, HIS TELEPHONE

CONVERSATIONS WITH WHEN HE WAS

IN PRISON, IT CERTAINLY

INDICATES THAT HE WAS INVOLVED

IN THIS CRIME.

HE WAS CONCERNED --

EVEN THOUGH --

>> I'M ASKING YOU ABOUT BEING

THE SHOOTER.

>> THERE IS NO FORENSIC

EVIDENCE THAT MAKES HIM THE

SHOOTER.

HOWEVER, HIS STATEMENTS AND

OTHER ACTIONS INDICATE THAT HE

IS THE SHOOTER.

>> HE ACTED SUSPICIOUS, THE

FACT THAT HE ACTED

SUSPICIOUSLY.

BUT REALLY SWAN'S TESTIMONY,

SIMMS OR SWAN, IS THE,

ADDITIONAL LYNCHPIN.

>> THE LINK.

>> WITH THAT IN MIND, THIS IS

AN ISSUE I ASKED MR.^ANDERSON,

BUT I AM VERY CONCERNED ABOUT  
THE STATEMENT THAT CAME TO  
LIGHT AFTER THE GUILT PHASE  
WHERE A SHERIFF'S DEPUTY,  
TESTIFIED THAT HE HEARD THE  
DEFENDANT SAY TO SWAN, WHY DID  
HE TESTIFY LIKE THAT, MAKES  
FALSE ALLEGATIONS ABOUT HIM.  
HE STATED IT WASN'T PERSONAL,  
IT'S PAYBACK.

NOW TO ME, THE JUDGE FOUND,  
THAT WAS REDUNDANT BECAUSE A  
LOT OF INMATES TESTIFY THAT  
SWAN WAS, HAD OTHER MOTIVES.  
WE KNOW HE HAD OTHER MOTIVES  
BECAUSE LINDSAY ACTUALLY WAS  
SNITCHING ON HIM, FOR OTHER.  
AND OTHER ROBBERIES.

WITH MR. ^LORAY.

WHY, WITH SUCH A SLIM, I MEAN  
JUST ASSUME THERE IS ENOUGH  
CIRCUMSTANTIAL EVIDENCE TO GO  
TO THE JURY, BUT WITH SUCH A SLIM  
CASE, WHY WOULDN'T TESTIMONY OF  
A SHERIFF'S DEPUTY OR JAILER  
ABOUT THIS, BE VERY SIGNIFICANT  
IMPEACHMENT TO REALLY, THE KEY,  
IF PROSECUTION WITNESS, AS TO

THAT HE COMMITTED THIS CRIME?

>> I THINK THERE ARE TWO

REASONS FOR THAT, YOUR HONOR.

NUMBER ONE, IF YOU TAKE A LOOK

AT LORAY'S, EXCUSE ME, SIMMS'S

TESTIMONY, HE TELLS THE COURT

THAT HE KNOWS ABOUT THE CRIME

BECAUSE HE TALKED TO LORAY.

SO HE KNOWS THE FACTORS, ALL

THE FACTS OF THE CRIME, YET HE

LIMITS HIS TESTIMONY TO WHAT

CAME OUT AT TRIAL, WHICH WAS

THAT LINDSEY TOLD HIM THAT HE

SHOULD HAVE HAND.

HANDLED HIS ROBBERY BETTER

AND HE HAS KILLED A WITNESS IN

THE PAST.

SIMMS IS TELLING TRUTH HE IS

NOT KEEPING ON ALL THE

INFORMATION HE HAS ABOUT THIS

CRIME.

HE IS NOT SAYING EVERYTHING

THAT LORAY TOLD HIM.

AND NUMBER TWO --

>> THAT IS MORE SUPPORT?

THE WHOLE NOTION THAT HE IS OUT

TO GET MR. ^LINDSEY?

>> NO, I DON'T THINK SO, YOUR

HONOR.

IF HE WERE OUT TO GET

MR.^LINDSEY I THINK HE

CERTAINLY WOULD HAVE DONE A

MUCH BETTER JOB.

>> BUT NOT IMPLICATING LORAY,

IT SEEMS TO ME IT IS A BETTER

ARGUMENT THAT HE IS FOCUSING ON

MR.^LINDSEY, EVEN THOUGH HE HAS

SUPPOSEDLY, HAS INFORMATION

THAT REALLY LINKS SOMEONE ELSE

TO THE CRIME?

>> WELL, AS YOU UNDERSTAND,

YOUR HONOR, IT WAS THE

DEFENDANT, LINDSEY, AND LORAY

THAT, THAT WERE COMMITTING

THESE CRIMES TOGETHER.

>> WASN'T SIMMS ALSO IMPLICATED

AS HAVING COMMITTED SOME CRIMES

WITH MR.^LORAY?

>> YES, HE WAS.

HOWEVER --

>> DID THE JURY KNOW THAT?

>> WELL THE JURY KNEW THAT

THROUGH THE PENALTY PHASE BUT

THE DEFENDANT SPECIFICALLY AND

ADAMANTLY SAID HE DID NOT WANT

MR. CARTER TO TESTIFY AND HE ALSO

SAID, AND THE PROSECUTOR

OFFERED TO JUST BRING IN THE  
STATEMENT OF MR.^CARTER, WHICH,  
LINKED SIMMS TO THIS MURDER.

AND THEY SAID NO.

>> HOW ABOUT THE --

MR.^LINDSEY'S OWN STATEMENT  
THAT WAS REDACTED?

>> EXCUSE ME.

>> HOW ABOUT MR.^LINDSEY'S OWN  
STATEMENT THAT THE STATEMENT  
WAS REDACTED?

DOESN'T HE INDICATE MR.^LINDSEY AND  
LORAY HAVING --

>> ABSOLUTELY, YOUR HONOR.

>> THERE IS NO INDICATION IN  
THAT STATEMENT BELIEVING THAT  
THEY DID SOME ROBBERIES  
TOGETHER?

>> ARE YOU TALKING ABOUT WITH  
THE PORTION THAT WAS REDARKED  
TO DETECTIVE KING'S COMMENT TO  
HIM, DIDN'T YOU DO, WASN'T  
SIMMS INVOLVED WITH THIS  
AND --

>> REDACTED PORTION.

>> THE REDACTED PORTION.

>> THAT IS NOW BEING ARGUED IN  
THIS CASE.

>> THAT IS A QUESTION BY

DETECTIVE KING.

IF IT IS A QUESTION BY

DETECTIVE KING IT IS HEARSAY

AND NOT NECESSARILY THE TRUTH.

AND ON TOP OF THAT, THE

DEFENDANT DENIED DID NOT ACCEPT

THAT AS TRUE, WHAT HE SAID WAS,

I DON'T REMEMBER, OR I DON'T

KNOW.

SO HE IS NOT, HE IS NOT

ADOPTING THE DETECTIVE'S

STATEMENT.

SO THAT IS NOT EVIDENCE HERE.

>> BUT I GUESS, GOING BACK TO

MY ISSUE, QUESTION ABOUT WHY

WOULDN'T THAT NEW EVIDENCE,

WHICH TO ME IS PRETTY

IMPRESSIVE EVIDENCE THAT SIMMS

IS SETTING UP LINDSAY, BE A

BASIS FOR A NEW TRIAL BECAUSE

SIMMS IS CRITICAL WITNESS IN

WHETHER, IF YOU ALLOW THIS

EVIDENCE IN TO BEGIN WITH, THAT

THE DEFENDANT WAS A, WAS THE

SHOOTER, AND THAT YOU'VE GOT A

MOTIVE THAT SIMMS HAD, TO PIN

SOMETHING ON LINDSEY, BEING

THAT, LINDSEY HAD BEEN TRYING

TO ACTUALLY RAT ON SIMMS ABOUT  
ROBBERIES IN WHICH LORAY --

>> AND DID.

>> LORAY AND SIMMS HAD  
COMMITTED? SO WHY ISN'T THAT  
ENOUGH IN THIS CASE TO SAY THAT  
THIS IS THE KIND OF NEWLY  
DISCOVERED EVIDENCE THAT COULD  
SO UNDERMINE WHAT MR.^SO  
IMPEACH WHAT MR.^SIMMS SAYS  
THAT IT SHOULD WARRANT A NEW  
TRIAL?

>> YOUR HONOR, THE JURY KNEW  
ABOUT THAT.

THE JURY KNEW THERE WAS BAD  
BLOOD BETWEEN --

>> THEY KNEW IT FROM OTHER  
INMATES.

THERE IS REALLY SOMETHING,  
BECAUSE WHEN IT COMES FROM A  
OFFICER OF THE LAW, TESTIFYING  
TO WHAT HE OVERHEARD.

>> BUT, YOUR HONOR, THERE WAS  
NO ADOPTION NECESSARILY BY  
SIMMS.

HE DIDN'T SAY, YES, YOU'RE  
RIGHT, I TESTIFIED FALSIFY  
AGAINST YOU.

WHAT HE SAID WAS, YOU KNOW, IT

IS NOTHING PERSONAL.

>> IT WAS PAYBACK.

>> PAYBACK.

AND PAYBACK DOES NOT

NECESSARILY MEAN THAT I'M

PAYING YOU BACK WITH FALSE

TESTIMONY.

IT JUST MEANS I'M PAYING YOU

BACK FOR RATTING ME OUT BEFORE.

I MEAN, YOU CAN LOOK AT IT BOTH

WAYS AND IF, AND THE INFERENCE

THAT THE JURY DREW FROM THE

ORIGINAL COMMENTS WAS THAT

MR. SIMMS WAS TELLING THE

TRUTH.

>> LET ME TAKE YOU BACK TO THE

STATEMENT OF SIMMS, THAT I HAD

TO KILL SOMEBODY ONCE.

IS THAT STATEMENT, BY ITSELF,

SUFFICIENT TO CONVICT?

>> THAT STATEMENT ALONE THAT I

HAD TO KILL SOMEBODY?

>> YES.

>> PROBABLY NOT, YOUR HONOR.

BUT, WE HAVE MORE THAN THAT.

>> I UNDERSTAND.

BUT IF YOU LOOK AT JUST THAT

ONE PIECE OF EVIDENCE, BY

ITSELF, THAT NOT ENOUGH?.

>> I WOULD SAY, NO, YOUR HONOR.

>> SO THE STANDARD THAT HE IS  
HITTING TO, THE STANDARD FOR  
ADMISSIBILITY WOULD NOT BE THE  
SAME STANDARD FOR JOA THEN?

>> IT IS ADMISSIBLE --

>> I UNDERSTAND.

SO, WE DON'T EQUATE THIS.

>> OKAY. WITH REGARD TO

THE STATEMENT

THAT MR.^LINDSEY WAS KNOWN BY

THE VICTIM, THAT, THAT WAS

PROPER EVIDENCE IN THIS CASE.

IT CERTAINLY GOES TO SIMMS

ADDS TO THE STATEMENT WHY HE

HAD TO KILL THE VICTIM, WHY HE

WOULD KILL A WITNESS.

THE FACT THAT THE OTHER

STATEMENTS THAT CAME IN, THAT

WERE TAKEN IN JAIL AND INCLUDED

THE NOTION THAT, THE,

INFORMATION THAT HE WAS IN

JAIL, ALL OF THAT WAS RELEVANT

TO THIS CASE AND SHOWED THE

DEFENDANT'S INVOLVEMENT AND HIS

MINDSET.

CERTAINLY HE WAS VERY CONCERNED

ABOUT WHAT MR.^LORAY COULD

TESTIFY.

>> I MEAN, SEEMS TO ME THAT  
MANY OF THOSE COULD BE VERY  
EASILY INTERPRETED, THE  
STATEMENTS MADE DURING THOSE,  
AS CONCERN THAT HE IS BEING SET  
UP AND PEOPLE ARE GOING TO  
FALSELY TESTIFY.

THAT'S NOT A FAIR ASSUMPTION  
FROM STATEMENTS?

>> I DON'T THINK SO IT IS, YOUR  
HONOR, NOT WHEN THEY'RE TAKEN  
IN CONTEXT AND IN TOTALITY.  
HE IS WORRIED ABOUT A DETAINER  
AGAINST HIM.

HE SAYS, I HAVEN'T DONE IT THE  
BUT THERE IS NOTHING MY WIFE  
CAN TESTIFY TO, BUT YOU GOT TO  
GO TALK TO MY WIFE.

MAKE SURE SHE, YOU KNOW, SHE IS  
ON BOARD WITH US.

YOU GOT TO GO TALK TO  
MR. LORAY, TELL HIM I'M NOT  
GOING TO BETRAY HIM, ALL OF  
THOSE THINGS TAKEN TOGETHER  
CERTAINLY THOUGH SHOW THIS  
DEFENDANT WAS INVOLVED IN THIS  
MURDER AND WAS, WAS THE SHOOTER

BASED ON HIS ADMISSION

DIRECT --

>> SEEMS TO ME A LOT OF THAT

EVIDENCE IS ALSO SUSCEPTIBLE TO

REASONABLE INFERENCE, I MEAN

THIS WASN'T LIKE, THIS IS NOT

AN INNOCENT MAN THAT WAS JUST,

YOU THEY, SOME, STORE MANAGER

JUST HAPPENED TO BE QUOTE,

FRAMED BY OTHER PEOPLE.

HE MUST HAVE BEEN INVOLVED, AT

LEAST KNOWING SIMMS AND LORAY.

HE HAD APPARENTLY HELPED LORAY

GET RID OF OTHER STOLEN GOODS.

MAYBE HE WAS INVOLVED IN, YOU

KNOW, RECEIVING STOLEN PROPERTY

OR DOING THAT.

BUT, IT DOESN'T SEEM TO ME,

THOSE OTHER STATEMENTS ARE

INDICATIVE OF SOMEBODY THAT

MURDERED SOMEBODY IN, YOU KNOW,

MURDERED ONE AND ONLY TIME,

SOMEBODY IN, YOU KNOW, IN THIS

PAWN SHOP.

AND SO THAT'S MY CONCERN, IS

THAT WE'VE GOTTEN RECENTLY,

SOME, DOOZIES OF STATEMENTS

THAT ARE MADE BY DEFENDANTS

WHEN THEY'RE IN PRISON THAT ARE

VERY INCULPATORY.

TO ME THIS DOESN'T SEEM LIKE,  
YOU KNOW, SEEMS SUCH A THIN  
THREAD OF EVIDENCE IN THIS  
CASE, AND I THINK THAT'S, THAT  
IS MY CONCERN.

YOU MAY BE ABLE TO COBBLE THIS  
TOGETHER BUT IT IS AWFULLY  
THIN.

>> I UNDERSTAND, YOUR HONOR.  
IT IS JUST THAT THE, GIVE  
EVERYTHING THAT WE HAVE, AND,  
DON'T FORGET THE JURY HAS HEARD  
THE DEFENDANT ACTUALLY  
SPEAKING.

THE TAPES WERE PLAYED.

THE JURY SAW THE DEFENDANT IN  
THE COURTROOM.

THE JURY HEARD AND SAW THE  
WITNESSES AND, --

>> THAT'S WHY WE'RE HERE  
THOUGH.

YOU KNOW, THEY'RE SUSPICIOUS.

IT IS A VERY SUSPICIOUS.

AND I DON'T THINK AT ANY TIME  
THAT THE COURT FIND THAT,  
LISTEN, WITH ALL THE SUSPICION,  
WE HAVE A GREATER DUTY, WHICH

IS TO ENSURE THAT SOMEBODY WHO  
IS INNOCENT, ISN'T WRONGLY  
CONVICTED.

IN THIS CASE SEEMS LIKE THERE  
IS A LOT OF SUSPICION, A LOT OF  
SMOKE BUT IT IS SORT OF LIKE,  
YOU KNOW, WHERE IS THE BEEF, SO  
TO SPEAK IN JUST SAYING, YEAH,  
MAYBE HE WAS INVOLVED BUT, I  
MEAN IF I HAD A TO PUT MY MONEY  
ON I THINK LOROY HAD A FAR  
GREATER ROLE IN THIS MURDER.  
THAT IS MY CONCERN.

I UNDERSTAND, WE DEFER TO THE  
JURY 99% OF THE TIME THESE  
CASES.

BUT THIS JUST SEEMS LIKE ONE  
THAT HAS, ONE OF THE THINNER  
THREADS OF CIRCUMSTANTIAL  
EVIDENCE THAT I HAVE SEEN.

>> GOING TO --

>> CAN YOU JUST --

>> SORRY.

>> YOU'RE SAYING NO, IT HAS A  
LOT, WHAT I WAS RESPONDING TO,  
YOU'RE SAYING WELL THE JURY  
HEARD THE TONE OF HIS VOICE.

>> THE JURY HEARD THE TONE OF  
HIS VOICE.

THE JURY SAW HOW MARK SIMMS  
TESTIFIED.

THE JURY SAW HOW NIKKI  
TESTIFIED.

IT IS ALL TOGETHER.

IT IS ALL INTERTWINED.

>> NICKY'S TESTIMONY, ISN'T

THAT WHAT REALLY WENT WRONG  
WITH THE CASE FOR THE STATE?

IN OPENING STATEMENT THEY SAID  
NIKKI WOULD TESTIFY JUST

MINUTES AFTER THIS ROBBERY, IN  
CAME LINDSEY AND LORAY WITH THE  
CROWN ROYAL BAG OF JEWELRY, AND  
LINKED THEM TIMEWISE AS TO THE  
ROBBERY.

BUT IN FACT ON TRIAL TESTIMONY,  
THAT HE IS NOT WHAT SHE  
TESTIFIED TO.

ISN'T THAT REALLY THE PROBLEM  
WITH THE STATE'S CASE?

>> IT'S, IT IS A DIFFICULTY THE  
STATE HAD TO OVERCOME BEFORE  
THE JURY.

YES, SHE BACKED UP ON THE  
PROSECUTOR, FOR WHATEVER  
REASON.

SHE DID RECEIVE A NOTE FROM HER

HUSBAND, OR HER EX-HUSBAND

TIME.

I MEAN THERE WAS CONTACT

BETWEEN THE FAMILIES.

SHE GAVE ONE STATEMENT TO THE

OFFICER.

SHE SAID SOMETHING ELSE TO THE

STATE ATTORNEY.

ASSISTANT STATE ATTORNEY.

AND SHE SAID WHAT SHE SAID AT

TRIAL.

AND --

>> GOING THROUGH THE PENALTY

PHASE, STILL HAVE SOME TIME

HERE, THE ISSUE THAT I HAD

RAISED EARLIER ABOUT THE

PROSECUTOR'S COMMENTS THE

DEFENDANT WAS ON THE STAND AND

JUST BRING IING THE WHOLE ISSUE

BACK TO PHASE ONE, WHEN THE

DEAD BASICALLY ONLY TESTIFIED

ABOUT HIS FAMILY BACK GROUND

AND THINGS LIKE THAT, AND LIKE

COUNSEL MENTION, PROSECUTOR AT

THE END BASICALLY ASKED HIM IF

CERTAIN PEOPLE WERE LYING ON

THE STAND.

DON'T THINK THAT'S IMPROPER.

>> NO, I DON'T, YOUR HONOR.

AND IT IS NOT IMPROPER IN THIS  
RESPECT.

GENERALLY WE HAVE THE, THE RULE  
THAT YOU, WHATEVER IS TESTIFIED  
TO ON DIRECT THAT'S YOU CAN GO  
INTO CROSS ON BUT THAT REALLY  
COMES INTO PLAY WHEN YOU HAVE,  
NOT A DEFENDANT ON THE STAND  
BUT ANOTHER WITNESS.

AND THAT IS IN ORDER TO MAKE  
SURE THAT THE STATE, YOU KNOW,  
THE DOESN'T HAVE TO CALL ALL  
THE WITNESSES, IF THE DEFENSE  
WANTS A PARTICULAR FACT TO BE  
BROUGHT IN, THEN THE DEFENSE  
CAN BRING THAT FACT IN.

HOWEVER, WHEN THE DEFENDANT IS  
ON THE STAND, A DEFENDANT WHO  
THE STATE CAN NOT CALL, IT IS,  
IT'S ALMOST NO-HOLDS-BARRED.

THE DEFENDANT IS PUTTING HIS  
CREDIBILITY ON THE LINE.

HE'S THE ONE, HE HAD THE  
PROTECTION.

HE DIDN'T HAVE TO TESTIFY, BUT  
NOW THAT HE IS ON THE STAND, HE  
CAN NOT CURTAIL HIS TESTIMONY  
TO SOME VERY NARROW SET OF

FACTS THAT WOULD JUST BENEFIT  
HIM.

HE HAS PUT HIMSELF, BEFORE THE  
JURY.

AND THE STATE IS ALLOWED TO  
CROSS-EXAMINE HIM THOROUGHLY.

>> YOU MEAN AT THIS STAGE, THE  
RULE, THAT GENERALLY SAYS THAT  
A, THE CROSS-EXAMINATION, HAS  
TO BE LIMITED TO THE ISSUES  
THAT ARE COVERED ON --

>> DIRECT.

>> ON DIRECT EXAMINATION FLIES  
OUT THE WINDOW BECAUSE IT IS  
THE DEFENDANT ON THE STAND?

>> BECAUSE THE DEFENDANT CAN  
NOT JUST CURTAIL HIS TESTIMONY  
TO SOMETHING THAT HE WANTS TO  
TALK ABOUT.

HE CAN'T JUST SAY --

>> BUT HE CAN IN FACT, CURTAIL  
HIS TESTIMONY, IN THE PENALTY  
PHASE TO PENALTY PHASE ISSUES,  
CAN'T HE?

>> HE CAN TALK ABOUT PENALTY  
PHASE ISSUES AND WE'RE STILL  
TALKING ABOUT PENALTY PHASE  
ISSUES WHEN WE'RE TALKING ABOUT  
HOW THIS VICTIM WAS KILLED.

HOW SHE WAS SHOT ONCE IN THE  
HEAD.

HER ACTIONS AT THAT TIME.

BECAUSE THAT GOES TO AN  
AGGRAVATOR.

AND THAT CLEARLY IS A  
LEGITIMATE PENALTY PHASE ISSUE.

>> AREN'T THERE ARE A LOT OF  
CASES THAT STAND FOR THE  
PROPOSITION THAT COUNSEL IS NOT  
PERMITTED TO ASK THE WITNESS ON  
THE STAND WHETHER SOMEONE ELSE  
IS LYING?

I MEAN, I, SEEMS TO ME A LOT OF  
CASES THAT PROHIBIT THAT KIND  
OF QUESTIONING.

AND THAT WHAT WAS ASKED OF YOU.

>> HE IS TALKING ABOUT, WHEN HE  
IS ASKING THOSE QUESTIONS HE IS  
TALKING ABOUT HOW THE JURY  
PERCEIVES IT.

WHA, --

>> I MEAN QUESTIONS LIKE, ISN'T  
SO-AND-SO LYING?

ARE YOU SAYING SO-AND-SO IS  
LYING WHEN HE TESTIFIED, THINGS  
LIKE THAT INVOLVING THE GUILT  
PHASE?

>> WELL, YOUR HONOR, I THINK  
AGAIN WITH THE, WHEN IT'S THE  
DEFENDANT, THE DEFENDANT IS IN  
THE UNIQUE POSITION, AND I, I  
BELIEVE, WHY IT MIGHT ANSWER.  
IN THE UNIQUE POSITION TO KNOW  
WHAT HAPPENED, AND THEREFORE,  
IT IS LEGITIMATE TO SAY, WELL,  
YOU KNOW, YOUR FACTS THIS BUT  
WE HAVE OTHER FACTS FROM  
SOMEONE ELSE, AND, YOU KNOW,  
HOW DO YOU RECONCILE THOSE?  
THAT'S LEGITIMATE.

>> FACTS THAT ARE PERTINENT TO  
THE PENALTY PHASE?

>> I WOULD SAY IT WOULD GO TO  
ANYTHING THAT WOULD TALK ABOUT  
THE CRIME, OR, BECAUSE THE  
CRIME --

>> HOW DOES THAT THEN, SQUARE,  
WITH THE FACT THAT THE  
DEFENDANT HAS THE RIGHT, EITHER  
TAKE THE OR NOT TAKE THE STAND  
IN THE GUILT PHASE, CORRECT?

>> YES.

>> AND IN THIS CASE HE DID NOT  
TAKE THE STAND IN THE GUILT  
PHASE.

>> THAT'S CORRECT.

>> BUT NOW WE'RE SAYING, IF YOU TAKE THE STAND IN THE PENALTY PHASE, THEN EVERYTHING IS OPEN FOR EXAMINATION?

>> WELL, I THINK THAT ANYTHING THAT GOES, AT A MINIMUM, ANYTHING THAT GOES TO DISCUSSING ANY OF THE AGGRAVATORS THAT RELATE TO THIS CRIME, OR ANYTHING THAT GOES TO ANYTHING THAT THE DEFENDANT TALKS ABOUT, AS FAR AS ANY MITIGATION.

AND, YOUR HONOR, WE ALWAYS TAKE THE INFORMATION THAT WE HAVE FROM THE GUILT PHASE, AND WE BRING IT OVER TO THE PENALTY PHASE, BECAUSE WE DON'T NECESSARILY HAVE TO REHASH EVERYTHING.

IT JUST AUTOMATICALLY COMES OVER.

HERE --

>> SO THEN YOU'RE SAYING YES, THE GUILT PHASE IS OPEN TO BE EXAMINED AGAIN, IN THE PENALTY PHASE BECAUSE THE DEFENDANT TOOK THE STAND?

I MEAN THAT'S, YOU IN ESSENCE

SAID THAT IS THE CASE.

>> WE DO CERTAINLY FOR ANY OF

THE AGGRAVATION.

SO, YES, IT DOES COME IN.

THE STATE DOESN'T NECESSARILY

HAVE TO BRING THE MEDICAL

EXAMINER BACK IN, BUT IT MAY.

OR IT MAY JUST RELY UPON THE

EVIDENCE THAT CAME IN THE GUILT

PHASE.

NOW WE HAVE THE DEFENDANT ON

THE STAND HERE, AND WE'RE

TALKING ABOUT, FELONY MURDER

ROBBERY, AND TALKING ABOUT

AVOID ARREST.

SO THAT IS RELEVANT TO THE PEN

PENALTY PHASE AND THE DEFENDANT

PUT HIS CREDIBILITY ON THE

STAND BY CHOOSING TO TAKE THE

STAND AND HE, HE HAS TO ENDURE

THE CROSS-EXAMINATION OF THE

STATE, THE FULL

CROSS-EXAMINATION OF THE STATE.

>> IS THERE, WHAT IS YOUR BEST

CASE ON THAT?

>> YOUR HONOR, THERE ARE SOME

OUT OF THE U.S. SUPREME COURT.

>> HAS THIS COURT DECIDED THIS

ISSUE?

IT JUST SEEMS LIKE IT'S, MAYBE

IT IS JUST DEFENDANT MAINLY ARE

NOT GOING TO TESTIFY IN THE

GUILT, THEY DON'T TESTIFY IN

THE PENALTY PHASE.

THIS IS A PRETTY SIGNIFICANT

ISSUE AS TO WHAT COUNSEL WOULD

BE ADVISING THEIR, THEIR

CLIENTS.

NORMALLY YOU SAY LISTEN, IF

YOU'RE GOING TO DO THIS, WE'RE

GOING TO KEEP NARROW.

WE DON'T WANT TO OPEN THE DOOR

AND YOU'RE SAYING IT DOESN'T

MATTER EVEN IF THEY DON'T OPEN

THE DOOR, YOU'RE STILL A ABLE

TO CROSS-EXAMINE THEM ON

ANYTHING THAT YOU WANT TO

REGARDING THE PENALTY PHASE.

MAYBE EVEN THE GUILT PHASE.

>> CERTAINLY ANYTHING THAT GOES

TO AGGRAVATOR OR MITIGATOR.

AN AGGRAVATOR --

>> SO WHICH CASE, WHICH CASE

FROM OUR COURT HAS TALKED ABOUT

THAT ISSUE?

>> I THINK YOUR HONOR, THIS

COURT HAS HORROR LESS LIMITED  
TO WHERE IT COMES UP TALKING  
ABOUT THE CREDIBILITY ISSUES OF  
THE DEFENDANT THAT IS ALWAYS  
OPEN.

HOWEVER, AS A GENERAL  
PROPOSITION THE FACT IS THAT  
THE DEFENDANT, ONCE HE PUTS  
HIMSELF ON THE STAND --

>> JUST SO, NO CASE LAW, EITHER  
WAY FROM THIS COURT?

>> NO. AWAY FROM THIS

COURT THERE IS

U.S. SUPREME COURT.

>> WHAT I SAID, NO, CASE LAW  
ONE WAY OR ANOTHER FROM THIS  
COURT?

>> I APOLOGIZE, YOUR HONOR, I  
DON'T HAVE A CASE AVAILABLE.

>> ALL RIGHT.

BUT TO ME, BECAUSE THE  
PROPOSITION WOULD THEN BE THAT  
IT WOULD BE A MERGING, IF WE  
AFFIRM ON THAT BASIS, IS THAT  
WHEN A DEFENDANT IN A CAPITAL  
CASE TAKES THE STAND IN THE  
PENALTY PHASE, THAT THEY MAY BE  
CROSS, THAT THE RULE, THAT THE  
SCOPE OF THE CAN EXCEED DIRECT

IS NOT APPLICABLE -- CAN'T  
EXCEED AND THE STATE CAN ASK  
ABOUT ANYTHING THAT MIGHT TOUCH  
UPON AGGRAVATION, THAT IS THE  
RULE THAT YOU'RE ASKING US TO  
ADOPT HERE?

>> YES, YOUR HONOR.

AND I THINK, FROM THE GENERAL  
CASE LAW, THAT WOULD NOT BE A  
STRETCH.

THAT REALLY WOULD JUST BE, A  
CON CONTINUATION OF THE FACT  
THAT ONCE THE DEFENDANT TAKES  
THE STAND, HIS CREDIBILITY IS  
OPEN FOR DISCUSSION.

AND THEREFORE, ANYTHING THAT HE  
SAYS, WHETHER IT BE, IN THIS  
PARTICULAR CASE, WHETHER IT IS  
TALKING ABOUT THE AGGRAVATION,  
THAT IS PUTTING HIS CREDIBILITY  
ON THE LINE AND IT IS TESTING  
THE DEFENDANT.

I MEAN, IT IS NOT SOMETHING  
THAT IS UNHEARD OF WHERE, IF A  
DEFENDANT EVEN, IN IF IT IS IN  
THE GUILT PHASE PORTION, HE IS  
TALKING ABOUT ONE ASPECT OF THE  
CRIME, HE CAN NOT BE, HE CAN

NOT STOP THE STATE FROM TALKING  
ABOUT ANOTHER ASPECT OF THE  
CRIME.

AND THEREFORE, WHETHER IT BE IN  
THE PENALTY PHASE OR GUILT  
PHASE, THE DEFENDANT IS OPEN  
FOR CROSS-EXAMINATION BY THE  
STATE.

>> I WAS ASKING WHETHER OR NOT  
THE JURY IS WRONG --

[INAUDIBLE]

>> BECAUSE HE'S BASICALLY  
SAYING I DIDN'T DO IT, I DIDN'T  
DO IT.

YET WE HAVE A FINDING BASED ON  
ALL OF THE OTHER EVIDENCE THAT  
FORWARD, AND, THE, IT'S AN  
OPEN-ENDED STATEMENT.

TELL US WHERE, TELL US WHERE  
WE'RE WRONG.

>> THAT IS ON  
CROSS-EXAMINATION.

IF HE TOOK THE STAND AND SAID,  
LISTEN, I WANT TO NOW TELL YOU,  
I DIDN'T DO IT.

AND ALL OF THIS IS MOOT, OF  
COURSE, ANYTHING ELSE COULD  
COME UP BUT HE TOOK THE STAND  
TO TALK ABOUT HIS DIFFICULT

FAMILY LIFE.

>> YES HE DID.

BUT HE, HE CAN NOT JUST THEN  
LIMIT THE STATE TO DIFFICULTY  
FAMILY LIFE.

THERE ARE OTHER ASPECTS IN THE  
PENALTY PHASE.

CLEARLY THE AVOID ARREST.

WE HAVE A JURY FINDING THAT HE  
IS THE SHOOTER AND THEREFORE,  
IT'S OPEN.

IT'S A PROPER TOPIC.

UNLESS THERE ARE ANY OTHER  
QUESTIONS, I WOULD RELY ON THE  
BRIEF AND THIS COURT TO AFFIRM.

>> I BELIEVE YOU HAVE A SHORT  
PERIOD OF REBUTTAL LEFT.

>> OKAY.

I WILL BE VERY SHORT.

THERE ARE JUST THREE THINGS I  
WANT TO CLEAR UP.

ONE IS THE STATE DID PRESENT  
THE DEFENDANT'S STATEMENT TO  
DETECTIVE KING WHERE HE  
ACKNOWLEDGED HE KNEW ABOUT  
LORAY'S ROBBERIES BUT HE, IN  
THAT STATEMENT, THAT THE STATE  
WAS PRESENTING SAID, I DIDN'T

DO ROBBERIES WITH LORAY.

BUT HE ACKNOWLEDGED AFTER THE  
FACT, I DID HELP SELL ITEMS.

THEN REGARDING ALFONZER  
HARROLD'S TESTIMONY ABOUT THE  
PAWN SHOP, THAT WAS APPARENTLY  
ABOUT THE DAY BEFORE THE  
ROBBERY.

ONE THING MENTIONED THAT THE  
DEFENDANT LINDSEY WAS CASING  
THE PLACE BUT HE KIND OF HIM  
JUST SHOPPING THERE, LOOKING  
FOR THINGS TO BUY.

THERE IS NO INDICATION THAT HE  
IS LOOKING FOR SURVEILLANCE  
CAMERAS OR TAKING PICTURES OF  
LAYOUT. THINGS LIKE THAT.

THAT EVIDENCE IS NOT THERE.

ONE VERY UNUSUAL THING ABOUT  
HARROLD'S TESTIMONY IS THAT,  
BESIDES NOT NOTICING THAT THE  
WOMAN BEHIND THE COUNTER,  
WHETHER SHE DID OR DID NOT KNOW  
THE DEFENDANT, WHICH I THINK  
THE PROSECUTOR WOULD HAVE  
BROUGHT OUT IF SHE DID, HE  
MENTIONS THAT SECOND EMPLOYEE  
COMING FROM THE BACK AND THE  
PAWN SHOP OWNER TESTIFIES THERE

IS ONLY ONE EMPLOYEE AT THIS  
STORE.

SO SOMETHING IS WRONG, I DON'T  
KNOW WHY I'M TELLING YOU BUT  
THERE IS SOMETHING WRONG WITH  
HIS TESTIMONY.

HE IS EITHER AT A DIFFERENT  
STORE OR THERE IS SOME  
SUSPICIOUS ACTIVITY INVOLVING THIS --

>> WOULD YOU ANSWER THE ONE  
QUESTION THAT THE STATE  
ADDRESSED IN RESPONSE TO  
JUSTICE POLSTON'S QUESTION.

THE STATEMENT, THAT WAS  
ATTRIBUTED TO THIS DEFENDANT  
THAT WAS MADE TO MR.^SIMMS OR  
MR.^SWAN, THAT THE STANDARD FOR  
ADMISSIBILITY OF THAT  
STATEMENT, IF IT IS ADMISSIBLE TO  
OVERCOME MOTION FOR JOA OR  
WHETHER IT AS DIFFERENT  
STANDARD BETWEEN THE TWO?

>> IT'S A DIFFERENT STANDARD.

>> SO THE STATEMENT MAY BE  
ADMISSIBLE YET STILL THERE'S  
INSUFFICIENT EVIDENCE FOR  
CONVICTION?

>> YES.

>> OKAY.

>> AND, THE ONLY THING ELSE I WANT TO MENTION IS THAT, BECAUSE IT HASN'T BEEN MENTIONED HERE AND I PROBABLY MISSED IT, WHEN BRIEFING THE CASE, BECAUSE WE HAVE TALKED, THE STATE DOWN BELOW TALKED ABOUT THERE WAS ABSOLUTELY NO RESIST BY THE VICTIM.

I DID POINT OUT THAT, FORENSICLY THEY DIDN'T BRING IN EVIDENCE TO SHOW THAT.

BUT IT IS INTERESTING BECAUSE I MISSED IT.

THE PAWN SHOP OWNER TESTIFIED THAT THE MAZOLLO ACTUALLY HAD A GUN AT THE PAWN SHOP.

WHICH LEAVES OPEN THE REAL POSSIBILITY THAT SHE WAS SHOT, EITHER WHEN SHE HAD THE GUN OR MAYBE WAS GOING FOR IT.

AND SO IT IS NOT NECESSARILY THAT A CASE WHERE YOU DON'T HAVE A POSSIBILITY OF NO RESISTANCE.

IT IS NOT LIKE SHE WAS TIED UP AND SHOT.

>> SHE WAS SITTING IN A CHAIR.

>> SHE WAS FOUND IN A CHAIR.

IT DOESN'T MEAN SHE WAS NOT  
STANDING AND FELL BACK.

THAT IS WHAT THE STATE --

>> IS THERE ANY INDICATION

THERE IS GUN ANYWHERE AROUND  
THERE.

>> HER GUN WAS FOUND IN THE  
SHOP, YEAH.

>> IS THERE ANY INDICATION THAT  
RELATIONSHIP OF THE GUN WHERE  
SHE WAS FOUND WHERE HER BODY  
WAS FOUND?

>> THE GUN HAD BEEN MOVED.

THE GUN WAS ON THE FRONT  
COUNTER WITH OTHER GUNS.

SO, EITHER THE PERPETRATORS OR  
THE PAWN SHOP OWNER HAD BEEN  
MOVING STUFF.

ANYWAY, THANK YOU.

>> THANK YOU.

BOTH FOR YOUR ARGUMENTS.