

>> THE NEXT ITEM ON OUR DOCKET IS  
THE CASE OF SERRANO VERSUS THE  
STATE.

>> GOOD MORNING.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

I AM MARCIA SILVERS AND I  
REPRESENT THE APPELLATE, NELSON  
SERRANO.

YOUR HONOR, WE HAVE RAISED A  
NUMBER OF ISSUES IN OUR BRIEF AS  
ACCORDING TO WHERE.

BECAUSE THE TRIAL WAS SO TAINTED  
BY DELIBERATE AND PERVASIVE  
PROSECUTORIAL MISCONDUCT, I  
WOULD LIKE TO FOCUS ON WHY THE  
TEN ACTS OF THIS MISCONDUCT  
DEPRIVED MR. SERRANO OF A FAIR  
TRIAL IN THIS CASE.

THE FIRST ACT OF MISCONDUCT, ONE  
OF THE MOST EGREGIOUS THAT I  
WOULD LIKE TO DISCUSS, IS THAT  
DURING THE TRIAL, THE PROSECUTOR  
QUESTIONED THE LEAD AGENT IN  
THAT CASE, AGENT RAY, AND HE  
ELICITED FROM HIM THAT TWO OTHER  
SUSPECTS IN THE CASE HAD  
TESTIFIED BEFORE THE GRAND JURY.  
ONE OF THEM BEING MR. SERRANO'S  
SON, THE OTHER ONE BEING HIS  
NEPHEW AND IT WAS THE SAME GRAND  
JURY THAT WAS INVESTIGATING THIS  
CASE HE BROUGHT OUT AND HE ALSO  
BROUGHT OUT THAT THEY HAD  
TESTIFIED ON MULTIPLE OCCASIONS  
BEFORE THAT GRAND JURY.

THEN HE IMMEDIATELY ASKED IF MR. NELSON SERRANO, THE APPELLANT IN THIS CASE, HAD TESTIFIED BEFORE THE GRAND JURY, KNOWING THAT MR. SERRANO HAD TAKEN THE FIFTH AMENDMENT AND HAD BEEN IN FRONT OF THE GRAND JURY THAT WAS INVESTIGATING HIM AND HAD TAKEN THE FIFTH AMENDMENT.

AND THE LAW IS CRYSTAL CLEAR.

>> WAS THERE AN OBJECTION?

>> YES THERE WAS.

>> WAS IT SUSTAINED?

>> THE OBJECTION WAS SUSTAINED.

>> I UNDERSTAND THAT YOU HAVE A LOT OF ISSUES SO YOU ARE GOING TO FOCUS ON THIS, AND I'M SURE WE COULD SPEND THE WHOLE ARGUMENT JUST ON THIS POINT BUT WHAT I WAS-- WHEN I WAS LOOKING AT YOUR CLAIMS, IT SEEMED THAT THE MAJORITY OF THEM, THE JUDGE IN FACT HAD ACTED PROPERLY AND HAD SUSTAINED THE OBJECTION, SO AT THAT POINT THEN YOUR BURDEN IS NOT JUST SIMPLY ONE OF ERROR BUT YOU HAVE GOT TO SHOW THAT THE WHOLE CONVICTION WAS FUNDAMENTALLY FLAWED BY QUESTIONS IN THIS CASE THAT WEREN'T EVEN ANSWERED, SO I HAVE GOT SOME PROBLEMS.

I MEAN, IF YOU WANT TO SAY HERE ARE TWO OF THE THREE OF THE MOST EGREGIOUS THAT WOULD MANDATE A

NEW TRIAL, BUT MY CONCERN REALLY WAS THAT-- NOT A CONCERN, A GOOD THING FOR THE SYSTEM, THE JUDGE SEEMED TO RECOGNIZE THAT SOME OF THESE STATEMENTS WERE IMPROPER, SO IF YOU COULD SORT OF IN A WHOLE TELL US WHAT STANDARD WE WOULD USE IN EVALUATING THAT ISSUE.

>> YOUR HONOR, THE STANDARD IS THIS TRIAL SHOULD HAVE BEEN GRANTED WHENEVER IT IS NECESSARY TO ENSURE A FAIR TRIAL.

AND THAT THIS COURT IN THE GARRON CASE STATED THAT A MISTRIAL WAS REQUIRED, EVEN THOUGH THE OBJECTIONS WERE SUBSTANTIVE BECAUSE OF THE CUMULATIVE NATURE OF THE IMPROPER PROSECUTORIAL MISCONDUCT IN THAT CASE, AND THAT IS WHY I FEEL THAT IT IS SO IMPORTANT TO UNDERSTAND WHY THE JURY CONVICTED IN THIS CASE, TO LOOK AT THE VARIOUS ACTS OF MISCONDUCT.

THE SECOND ONE THAT I THINK IS REALLY EGREGIOUS, YOUR HONOR, IS THAT HE INTRODUCED THE TESTIMONY OF NUMEROUS PERMITS AND PHOTOS OF OF FIREARMS, GUNS-- 20 DIFFERENT GUNS DATING BACK TO 1972 FROM THE SERRANO GUN COLLECTION.

HE HAD WITNESSES TESTIFY THAT THEY SOLD HIM GUNS THAT WEREN'T

EVEN OF THE CALIBER OF THIS GUN.  
HUNTING RIFLES, ALL SORTS OF  
GUNS.

>> HAVE YOU CHALLENGED THAT AS A  
SEPARATE ISSUE ON APPEAL THAT IS  
THE ADMISSIBILITY OF EVIDENCE OF  
HIS OWNERSHIP OF GUNS?

>> YES YOUR HONOR I HAVE, AND IN  
THE JACKSON CASE.

>> IS THAT PART--

>> THAT IS PART OF THE  
PROSECUTORIAL MISCONDUCT ISSUE.

>> YOU ARE SAYING THAT WE SHOULD  
ACTUALLY LOOK FIRST AS TO  
WHETHER THE EVIDENCE WAS  
ADMISSIBLE OR INADMISSIBLE?

>> CORRECT YOUR HONOR, AND I  
RELIED IN MY BRIEF, AND I HOPE I  
MADE IT CLEAR YOUR HONOR, AND  
MAYBE I DIDN'T.

I HOPE I DID.

I CITED THIS COURT'S RECENT  
JACKSON DECISION THAT THE COURT  
WAS VERY CLEAR IN WHICH THE  
COURT FOUND IT WAS IMPROPER TO  
INTRODUCE EVIDENCE THAT A  
DEFENDANT HAD BEEN CARRYING A  
PISTOL WHEN THERE WAS NO LINK  
WHATSOEVER BETWEEN THE  
DEFENDANT'S PISTOL AND THE  
CRIME, AND THE COURTS MADE IT  
CLEAR.

THEY HAVE ALWAYS MADE IT CLEAR  
THAT GUNS AREN'T RELEVANT--  
UNLESS THEY ARE SUFFICIENTLY--

>> YOU ARE ARGUING THIS ISSUE

ABOUT THE GUN AND THIS ISSUE  
ABOUT A QUESTION THAT WAS ASKED,  
BUT NEVER ANSWERED, AND SO MY  
QUESTION REALLY TO YOU IS, HOW  
DO YOU SEE THESE AS ACTUALLY  
AFFECTING THE JURY'S VERDICT?  
IT SEEMS TO ME THAT IN A  
QUESTION LIKE THE GUY, THE  
DEFENDANT, APPEARED BEFORE THE  
GRAND JURY, IF THE JURY DOESN'T  
KNOW WHETHER HE DID OR DID NOT,  
HOW IN THE WORLD DOES THAT  
IMPLICATE THAT THE JURY  
CONVICTED HIM BASED ON THIS  
INFORMATION AND THE FACT THAT HE  
HAS DONE?

>> YOUR HONOR, FIRST OF ALL I  
JUST WANT YOU TO KNOW THAT THE  
TESTS FOR DETERMINING WHETHER  
SOMETHING IS A COMMENT ON THE  
DEFENDANT'S SILENCE IS WHETHER  
IT IS FAIRLY SUSCEPTIBLE AS  
BEING INTERPRETED AS BEING A  
COMMENT ON THE DEFENDANT'S  
SILENCE.

>> YOU BELIEVE IT IS FAIRLY  
SUSCEPTIBLE WHEN THERE WAS NEVER  
ANY ANSWER ABOUT WHETHER HE DID  
OR HE DID NOT APPEAR BEFORE THE  
GRAND JURY?

>> I DO, YOUR HONOR.  
I BELIEVE IT IS ABSURD TO SAY  
THAT THE JURY DIDN'T KNOW THAT  
WHEN HE STOOD UP AND OBJECTED  
AFTER ALL THE TESTIMONY CAME OUT  
ABOUT EVERYBODY ELSE WHO

TESTIFIED, THAT IT WAS PLAIN TO THE JURY THAT HE DIDN'T TESTIFY.  
>> COULD YOU TELL ME WHERE IN YOUR BRIEF HE RAISES A SEPARATE ISSUE THAT THE GUN EVIDENCE WAS INADMISSIBLE?

THE PROSECUTORIAL MISCONDUCT, THAT SECTION OF THE BRIEF.

>> IF EVIDENCE COMES IN PROPERLY, EVEN IF IT IS SUBJECTED, THAT RAISES AN ISSUE THAT THE EVIDENCE SHOULD HAVE BEEN ADMITTED, NOT THAT IT IS PROSECUTORIAL MISCONDUCT TO DISCUSS IT.

>> THE REASON WHY I ADDRESSED IT WITHIN THAT SECTION YOUR HONOR IS BECAUSE IN ADDITION TO ADMITTING THE EVIDENCE AND INTRODUCING THE EVIDENCE, WHAT HAPPENED WAS THE JUDGE SAID LOOK, I AM NOT GOING TO LET YOU INTRODUCE ALL THESE 20 GUNS INTO THIS CASE IF YOU CAN'T SHOW SOME KIND OF A LINK.

AND HE SAID JUDGE, I PROMISED DURING THE CLOSING ARGUMENT I AM NOT GOING TO ARGUE THAT NO ONE-- SO ONE OF THEM MUST HAVE BEEN USED IN THE CRIME.

AND THE JUDGE THEN ALLOWED HIM OVER THE OBJECTION OF DEFENSE COUNSEL ON PAGE 5129 OF THE TRANSCRIPT, AND I CITE THAT IN MY BRIEF, TO INTRODUCE ALL THIS EVIDENCE ABOUT THE GUN AND THEN

DURING THE CLOSING ARGUMENT AT 6151 AT THE TRANSCRIPT HE DOES EXACTLY WHAT HE TOLD THE JUDGE HE WASN'T GOING TO DO.

>> ARE YOU GOING TO ADDRESS ANY OTHER POINTS ON APPEAL?

>> YES YOUR HONOR, I AM AND I ONLY HAVE A LIMITED AMOUNT OF TIME.

>> I WOULD ASK YOU TO ADDRESS WHAT I THOUGHT WAS GOING TO BE YOUR MAJOR POINT, WHETHER THERE WAS SUFFICIENT CIRCUMSTANTIAL EVIDENCE TO CONVICT THIS DEFENDANT.

>> AND I AM HAPPY TO DO SO YOUR HONOR BECAUSE THAT IS ALSO TIED INTO THIS ARGUMENT BECAUSE IT IS THESE ACTS OF PROSECUTORIAL MISCONDUCT THAT WERE ESPECIALLY HARMFUL BECAUSE THIS WAS A CIRCUMSTANTIAL CASE.

IT WAS ENTIRELY CIRCUMSTANTIAL AS THE COURT COURT IS AWARE OF.

>> ONE QUESTION.

IF THE DRAWING, THE SKETCH, OF A PERSON SEEN ACCORDING TO THE EVIDENCE AT THIS BUSINESS, WOULD MATCH WITH THE PERSON SEEN ON THE VIDEO TAPES FROM THE HOTEL IN ATLANTA, WOULD THAT SIGNIFICANTLY IMPACT THIS CASE?

>> NO, YOUR HONOR.

>> WHY NOT?

>> I WILL BE GLAD TO ANSWER THAT QUESTION, YOUR HONOR.

MR. PURVIS, WHO WAS RESPONSIBLE FOR THAT DRAWING, WHO SAW THIS PERSON TESTIFY THAT THAT PERSON WAS BETWEEN 25 AND 30 YEARS OF AGE.

THIS DEFENDANT IS 59 YEARS OLD.

HE ALSO TESTIFIED.

>> JUST ONE AT A TIME.

THERE ARE YOUNG-LOOKING 59-YEAR-OLD PEOPLE AND IN LOOKING AT THE VIDEO -- AND HE DID NOT APPEAR TO LOOK AS OLD AS I AM AND HE LOOKED TO BE A YOUNG PERSON ON THAT VIDEO, DARK HAIR, SO IF THEY APPEAR TO BE THE SAME AGE, WHY WOULD AGE MAKE A DIFFERENCE?

>> ADMITTEDLY YOUR HONOR THE VIDEO IS A LITTLE FOGGY.

>> I DON'T DISAGREE WITH THAT.

>> HE DID SAY IN COURT THAT HE COULD NOT SAY THAT THAT WAS MR. SERRANO THAT HE SAW AND HE WOULD NOT EVEN BE ABLE TO SAY THAT IT MATCHED.

>> SO THE VERBAL TESTIMONY OF THE A PERSON WHO OBSERVED MUST BE CONTROLLING OVER WHAT A REASONABLE JURY COULD DETERMINE ITSELF IN LOOKING AT THE SKETCH AND THE VIDEO.

>> YES YOUR HONOR, PLUS THE FACT THAT MR. PURVIS TESTIFIED THAT HE SAW THIS PERSON SMOKING A CIGARETTE BETWEEN 5:50 AND 6:15 AND WE KNOW THERE WERE NO

PHONECALLS BEING ANSWERED AFTER 5:45 AND MR. SERRANO DOESN'T EVEN SMOKE CIGARETTES.

HE SAID THIS PERSON WAS WEARING A TIE, SHIRT AND A JACKET AND MR. SERRANO WAS WEARING A WHITE TURTLENECK ON THE VIDEO IN THE MORNING WHEN HE IS LEAVING THE HOTEL LATER ON IN THE DAY.

I THINK IT IS ALSO IMPORTANT.

>> LET'S FINISH WITH THIS.

HOW FAR WAS MR. PURVIS FROM THE PERSON THAT HE SAW?

I THOUGHT HIS TESTIMONY WAS THAT HE REALLY COULDN'T SEE THE FEATURES THAT WELL BECAUSE THE MAN'S HAND WAS UP AND IT LOOKED LIKE HE WAS SMOKING A CIGARETTE, SO I AM NOT SURE ABOUT YOU KNOW WHAT A JURY, WHETHER A JURY HAS TO TAKE WHAT HE SAYS.

>> THAT IS CORRECT.

HE DID SAY HIS HAND WAS KIND OF OVER-- YES AND HIS CLOTHES WEREN'T SIMILAR.

THE TIMING WASN'T THE SAME AS IT WOULD HAVE BEEN.

THE CIGARETTE MAKES NO SENSE AND WHY WOULD SOMEBODY WHO JUST COMMITTED A MURDER STAND OUTSIDE AND SMOKE A CIGARETTE?

>> HOW FAR AWAY WAS THE WITNESS FROM THE PERSON THAT HE SAW?

>> I DON'T RECALL, YOUR HONOR.

I KNOW THAT HE WAS ON HIS WAY HOME, I BELIEVE FROM WORK, BUT

I'M NOT SURE OF THE ANSWER TO THAT QUESTION.

>> HOW LONG A PERIOD OF TIME DID HE OBSERVE?

>> HE DIDN'T SAY, YOUR HONOR.

>> LEAVING ASIDE THE QUESTION OF WHAT MR. PURVIS SAW, DOESN'T THE RECORD HERE SHOW THAT MR. SERRANO WENT TO ENORMOUS LENGTHS TO ESTABLISH AN ALIBI RELATED TO HIS PRESENCE IN ATLANTA?

AND DOESN'T THE RECORD SHOW THAT MR. SERRANO AND FACT CAME FROM ATLANTA TO CENTRAL FLORIDA AND THEN WENT BACK THE DAY OF THE MURDERS?

I UNDERSTAND YOU MAY NOT LIKE SOME OF THE EVIDENCE.

YOU MAY DISAGREE WITH THE STRENGTH OF IT OR YOU MAY ARGUE THAT SOME OF IT WAS FABRICATED BUT DIDN'T THE EVIDENCE SHOW THAT HE CONCOCTED SUCH AN ALIBI, WHICH WAS DISPROVEN, AND DOESN'T THE FACT THAT HE WENT TO SUCH LENGTHS TO ESTABLISH AN ALIBI, WHICH WAS SUBSEQUENTLY DISCREDITED AND THAT HE DID THAT FOR THE MURDERS WERE COMMITTED, ESTABLISHED A PRETTY POWERFUL INFERENCE THAT THE JURY COULD ENTERTAIN, THAT HE HAD SOMETHING THAT HE WAS UP TO THAT NEEDED AN ALIBI?

>> YOUR HONOR, THERE IS NO

EVIDENCE THAT HE TRAVELED.  
EVEN THOUGH HE SUPPOSEDLY WAS IN  
THREE DIFFERENT AIRPORTS WHERE  
THERE WAS AIRPORT SURVEILLANCE.  
THEY HAD THE PASSENGERS, ALL THE  
NAMES OF THE PASSENGERS.

>> WHAT ABOUT THE FINGERPRINT ON  
THE PARKING TICKET?

>> YES YOUR HONOR, AND WHAT I  
WOULD LIKE TO SAY REGARDING THAT  
EVIDENCE, YOUR HONOR, IS THAT  
LOTS OF PEOPLE IN THIS CASE KNEW  
THAT THERE WAS TENSION BETWEEN  
MR. SERRANO AND GEORGE GAVALDES  
AND THERE WAS SOME STRANGE  
EVIDENCE THAT SOMEONE TRIED TO  
POINT THE GUILT TOWARDS  
MR. SERRANO.

MOST CURIOUS IS THE FACT THAT  
THESE PARKING TICKETS WERE  
LOOKED FOR BY POLICE OFFICERS IN  
1998.

>> THIS IS AN ARGUMENT TO MAKE  
TO A JURY, BUT THE EVIDENCE WAS  
ADMITTED AND HIS EVIDENCE THAT  
THE JURY COULD CREDIT AND IT IS  
NOT, YOU DON'T REALLY HAVE AN  
ARGUMENT THAT IT IS LEGALLY  
ADMISSIBLE.

>> YOUR HONOR, WITH REGARD TO  
THE FINGERPRINT BECAUSE I KNOW  
THAT IS WHAT YOUR QUESTION  
REALLY WAS, AS THE COURT KNOWS  
STATE RECORDS HAS-- ABOUT THAT  
FINGERPRINT AND IT IS VERY  
STRANGE THAT THAT FINGERPRINT,

THE SAME RIGHT INDEX FINGER IS ON BOTH FINGERS AND ON BOTH PARKING TICKETS.

HALF IS ON ONE PARKING TICKET.

THE OPPOSITE HALF IS ON THE OTHER PARKING TICKET AND THERE IS NO OTHER FINGERPRINTS ON IT. IT IS THE RIGHT HAND AND NO ONE REALLY WOULD GRAB A PARKING TICKET WITH THE RIGHT HAND.

>> EVEN IF WHAT JUSTICE CANADY IS SAYING ABOUT THAT PARTICULAR PIECE OF EVIDENCE THAT THEY JURY COULD CONSIDER SINCE IT WAS ADMITTED, YOU ARE NOT CHALLENGING SEPARATELY THE ADMISSIBILITY.

THE JURY SHOULD CONSIDER IT AND GIVE IT WHAT WAY DID THINK EVIDENCE SHOULD BE GIVEN.

THE OTHER PART THOUGH IS THAT THERE IS NO QUESTION THAT THE VEHICLE THAT HIS NEPHEW RANTED FOR HIM ON THIS DAY THAT HE WAS SUPPOSED TO BE AN ATLANTA, WITH THE STORY THAT HE TELLS HIS NEPHEW, THAT HE IS GOING TO VISIT A BRAZILIAN GIRLFRIEND, THAT THAT VEHICLE LEFT THE PARKING LOT OF THE ORLANDO AIRPORT AT I THINK IT WAS 3:40 OR SOMETIME IN THE AFTERNOON, THAT THAT VEHICLE WAS DRIVEN 139 MILES, THAT IT WAS 80 MILES-- THE PROSECUTION PUT TOGETHER THAT ESSENTIALLY THAT

THAT VEHICLE AND THE TIMING OF WHEN THE VEHICLE LEFT THE AIRPORT, PUT THAT VEHICLE, WHICH WAS RENTED BY HIS NEPHEW FOR HIM, EXACTLY IN THE AREA OF THE MURDER WHEN HE WAS SUPPOSED TO BE IN ATLANTA.

SO, MY QUESTION ON THIS IS THAT THIS IS NOT A CASE WHERE THERE IS INFERENCE UPON INFERENCE. THERE ARE SEPARATE PIECES OF EVIDENCE THAT PUT TOGETHER. VERY SIGNIFICANTLY TO THIS DEFENDANT'S GUILT, SO WHEN YOU SAY IT IS CIRCUMSTANTIAL, I THINK WE ALL AGREE IT IS A SET CIRCUMSTANTIAL EVIDENCE CASE EXCEPT FOR THERE IS A STATEMENT THAT HIS ANIMOSITY, BUT ISN'T THAT ALL THE EVIDENCE THE JURY COULD PROPERLY CONSIDER TO FIND THIS DEFENDANT GUILTY?

>> BUT YOUR HONOR, THE JURY HAS TO CONSIDER CREDIBLE EVIDENCE AND THERE WAS NO CREDIBLE EVIDENCE THAT NELSON SERRANO ACTUALLY DROVE THAT RENTAL CAR THAT DAY.

THEY TESTED BOTH OF THOSE RENTAL RENTAL CARS FORENSICALLY.

>> WAS THAT THE RENTAL CAR, THOUGH, THAT THE NEPHEW RENTED FOR MR. SERRANO?

AND DIDN'T THE NEPHEW GET A CALL TO SAY EITHER THE SAME DAY TO SAY NOW YOU ARE GOING TO HAVE TO

GO PICK IT UP IN TAMPA?

>> YOUR HONOR THAT IS SOMETHING HE SAID BUT HE ALSO ADMITTED HE LIED EIGHT TO 10 TIMES.

>> YES, BUT YOU UNDERSTAND THAT HIS CREDIBILITY--

A JURY I GUESS COULD HAVE FOUND THIS DEFENDANT NOT GUILTY BASED ON THIS EVIDENCE BUT THAT IS NOT WHAT WE ARE HERE TO DECIDE.

WE ARE HERE TO DECIDE WHETHER THERE IS ENOUGH EVIDENCE SO THAT THE CONVICTION IS NOT BASED ON SPECULATION.

>> AND YOUR HONOR, THAT IS CORRECT AND THE EVIDENCE AT THE COURTHOUSE IN THE CIRCUMSTANTIAL CASE, IT HAS TO LEAD TO A MORAL CERTAINTY THAT HE COMMITTED THE CRIME.

WE CAN'T BE GUESSING HERE ABOUT THIS AND THE FACT OF THE MATTER IS, YOUR HONOR, THAT THE OFFICERS ON THE SCENE SAID THAT IT WOULD HAVE BEEN VIRTUALLY IMPOSSIBLE-- THEY HAVE A VERY HARD TIME TRYING TO WALK AROUND THE BLOOD.

>> THERE WAS SO MUCH BLOOD ON THAT SCENE AND THERE WAS NOT ONE SPECK OF BLOOD IN THE RENTAL CAR?

THERE WAS NOT ONE PIECE OF FORENSIC EVIDENCE AND I JUST WANT TO SAY THIS, YOUR HONOR. THERE ARE TWO STRANGE THINGS

ABOUT THIS CASE.

IF THE STATE WAS SO SURE THAT  
MR. SERRANO COMMITTED THESE  
CRIMES WHY IS IT THAT THEY NEVER  
RETESTED FOR DNA ON THE GLOVE  
THAT WAS LEFT ON THE SCENE  
THERE?

WHY?

>> HOW LONG AFTER THE MURDER WAS  
THE RENTAL CAR TESTED?

>> YOUR HONOR, I AM NOT SURE  
ABOUT THAT.

>> THAT IS ONE OF THE THINGS  
THAT GETS ME.

YOU SAY THERE IS NO BLOOD IN THE  
RENTAL CAR BUT WHEN DID ALL OF  
THIS HAPPENED IN RELATIONSHIP TO  
WIN THE CAR WAS ACTUALLY TESTED?  
I MEAN IT JUST SEEMS TO ME THERE  
IS A LITTLE BIT OF LOOSE ENDS  
HERE.

>> YEAH, BUT YOUR HONOR I KNOW  
THAT WITH THE WAY, AND THE  
DEFENSE I BELIEVE MADE THIS  
ARGUMENT THAT DNA EVIDENCE RIGHT  
NOW IS SO PRECISE THAT IF THERE  
IS SOMETHING IN THERE, IF THERE  
IS ANY BLOOD, THEY ARE GOING TO  
FIND THAT CELL OF BLOOD TO WEIGH  
THE DNA TECHNOLOGY.

THEY HAD UP TO 2000-- THEY HAD  
THE LATEST SGR DNA TESTING TO  
POSSIBLY EXTRACT DNA PROFILE.

>> IS THERE A POSSIBILITY THERE  
WAS AN ADDITIONAL PERSON WITH  
MRS. SERRANO, THE SO-CALLED

HITMAN?

IS THIS SOMETHING WHERE THE JURY  
COULD SAY MAYBE HE DIDN'T COMMIT  
THESE CRIMES ALONE.

MAYBE HE DID HAVE SOMEBODY MEET  
HIM THERE.

I'M NOT SUGGESTING THAT IS WHAT  
HAPPENED THAT THAT WOULD EXPLAIN  
CERTAIN THINGS AND THAT WOULD  
NOT EXONERATE OR MAKE YOUR  
DEFENDANT AND A LESS GUILTY.

>> EXCEPT THAT I REALLY WOULDN'T  
MAKE ANY SENSE FOR HIM TO COME  
DOWN THAN IF HE HAD A HITMAN WHO  
IS DOING THIS FOR HIM.

YOUR HONOR, I KNOW THAT THE  
COURT DOESN'T WANT ME TO SPEND A  
LOT OF TIME ON THE PROSECUTORIAL  
MISCONDUCT BUT BECAUSE IT WAS SO  
PERVASIVE IN THIS CASE AND SO  
DELIBERATE I THINK WHEN WE ARE  
TALKING ABOUT THE EVIDENCE WE  
HAVE TO THINK OF ALL THE REASONS  
WHY THE CIRCUMSTANTIAL CASE THE  
JURY WOULD CONVICT, AND WE HAVE  
TO THINK ABOUT THE FACT THAT HIS  
CHARACTER WAS REPEATEDLY  
MALIGNED DURING THIS TRIAL.

>> DO YOU WANT TO ADDRESS  
WHETHER THE STATEMENT THAT HE  
MADE TO THE AGENT WERE  
ADMISSIBLE OR NOT AND WHETHER  
ANY OF THE STATEMENTS, IF THEY  
WEREN'T ADMISSIBLE, COULD BE  
SAID TO BE NOT HARMLESS OR  
HARMLESS?

>> YES, YOUR HONOR.

>> THAT IS A LEGAL ISSUE FOR THE ARGUMENT.

>> AS THE COURT IS AWARE WHEN HE WAS ON THE PLANE WITH AGENT RAY, HE INVOKED HIS FIFTH AMENDMENT RIGHT TO SILENCE, AND HE WAS GIVEN MIRANDA WARNINGS AND EVOKES THAT.

HE THEN ASKED AFTER A PERIOD OF TIME, BECAUSE HE HAD NOT BEEN EXTRADITED--

HE HAD BEEN ILLEGALLY REMOVED IN THIS RUSHED MANNER, HELD IN A CAGE FOR ANIMALS.

HE SAID HE KNEW SOMETHING STRANGE HAD HAPPENED, SO HE MAKES THIS OFFHAND QUESTION, NOTHING TO DO WITH THE CRIME, TO THE AGENT.

HOW MUCH DID YOU PAY THE ECUADORIAN POLICE TO DO THIS TO ME?

UNDER OREGON VERSUS BRADSHAW THIS IS NOT A QUESTION THAT ADVANCES A WILLINGNESS AND A DESIRE TO TALK ABOUT THE CRIME, AND FOR THIS REASON ALONE, THAT IS ONE PRONG OF OREGON VERSUS BRADSHAW THAT WAS NOT MET SO THAT ALONE DEPARTS-- HE DIDN'T VOLUNTARILY WAIVE HIS RIGHT. THE AGENT, AFTER HE INVOKED HIS RIGHTS, WHEN HE THEN MADE THIS OFFHAND REMARK ABOUT HOW MUCH DID YOU PAY THE POLICE TO DO

THIS TO ME BECAUSE I AM BEING ILLEGALLY KIDNAPPED HERE, WHICH HAS NOTHING TO DO WITH THE CRIME, THE AGENT THEN MAKES NO EFFORT TO ENSURE THAT HE WANTS TO TALK ABOUT THE CRIMES IN THIS CASE.

HE DOES NOT MIRANDIZE HIM.

HE DOES NOT WARN HIM OF HIS RIGHTS.

HE JUST PROCEEDS TO INTERROGATE HIM IMMEDIATELY ABOUT THE CRIMES.

HE ASKED HIM, WELL WHAT ABOUT THE CIVIL LITIGATION RELATED TO THIS PROBLEM WITH YOUR PARTNER? ARE YOU GOING TO COME BACK OR ARE YOU GOING TO HIDE FROM THAT? ON AND ON AND ON FOR 30 MINUTES OF INTERROGATION.

SO, YOUR HONOR, I WOULD SUBMIT THAT THAT IS A PLAIN VIOLATION OF OREGON VERSUS BRADSHAW.

>> DID HE ACTUALLY-- I MEAN WAS IT DISCUSSING ACTUAL CRIME OR JUST THE MATTERS ABOUT THE RELATIONSHIP, AND I DON'T KNOW IF THAT MATTERS, BETWEEN SERRANO AND HIS FORMER PARTNERS?

>> NO YOUR HONOR, HE ACTUALLY QUESTIONS HIM ABOUT THE CRIMES.

AGENT RAY ASKED, WERE YOU PLANNING TO COME BACK UP HERE FOR THE CIVIL HEARING IN THIS CASE OR WERE YOU GOING TO HIDE DOWN THERE?

AND THEN HE SAID, WHY DID YOU DEPOSIT THOSE TWO CORPORATE CHECKS THAT BELONG TO THE CORPORATION INTO A SEPARATE ACCOUNT, WHICH WAS A PIVOTAL PART OF THIS CASE.

>> LET'S ASSUME WE AGREE WITH YOU OR I AGREE WITH YOU THAT THERE IS A PROBLEM WITH THIS INTERROGATION.

WHAT STATEMENT DID NOT COME IN THROUGH OTHER WITNESSES?

IN OTHER WORDS, WASN'T THERE A LOT OF OTHER EVIDENCE ABOUT HIM HAVING TAKEN MONEY FROM THE PARTNERS IN THE WHOLE SURROUNDING CIVIL LITIGATION?

WHAT WOULD BE THE STATEMENT THAT WAS THE REAL INCULPATORY STATEMENT THAT THE PROSECUTION COULD HEAR?

>> THE MOST INCULPATORY STATEMENT THAT THE PROSECUTION RELIED ON REPEATEDLY IS THAT HE TOLD AGENT RAY, AGENT RAY TESTIFIED THAT HE TOLD THEM THAT HE KEPT A 357 REVOLVER IN THE CEILING OF HIS OFFICE AND THE CLOSING PROSECUTOR QUOTED THE DEFENDANT SAYING THAT AND THAT OF COURSE WAS THE THEORY ALTHOUGH I WOULD LIKE TO POINT OUT THAT THE GUNS IN THIS CASE WERE NOT REVOLVERS.

THEY WERE 22 AND 32 SEMI-AUTOMATICS, WHICH INJECTED

CASINGS, UNLIKE A REVOLVER.

>> DID HE ALSO MAKE THAT KIND OF STATEMENT TO THE PERSON HE WAS SHARING WITH?

WAS THERE SOME INFORMATION THAT WAS GIVEN TO THAT PERSON ABOUT KEEPING GUNS?

>> NO, HE DID NOT MAKE ANY STATEMENTS TO MR. JONES ABOUT KEEPING THE GUNS IN THE CEILING.

>> THERE WAS SOMEBODY WHO OBSERVED A GUN IN HIS OFFICE AND SAW HIM GOING INTO THE CEILING.

>> YOUR HONOR.

THAT IS TRUE.

MR. CATALAN SAID HE OBSERVED, HE OBSERVED THAT HE HAD A REVOLVER IN HIS OFFICE, AND SAID HE SAW HIM ONE TIME GETTING PAPERS DOWN FROM THE CEILING BUT HE NEVER SAID THAT HE SAW THAT HE KEPT A GUN IN THE CEILING WHICH IS WHAT MR. RAY SAID THAT MR. SERRANO SAID SO THAT IS WHY IT IS VERY HARMFUL IN THIS CASE, THAT THIS EVIDENCE WAS ADMITTED AGAINST HIM.

IN ADDITION DURING THE CLOSING ARGUMENTS--

>> YOU HAVE ABOUT FIVE MINUTES.

>> THANK YOU, YOUR HONOR.

I WOULD ALSO LIKE TO SAY DURING THE CLOSING ARGUMENT HE ALSO ARGUED THAT THE DEFENDANT LIED TO AGENT RAY ABOUT AND A GILLIAN AND THAT HE ALSO MOCKED THE

DEFENDANT'S STATEMENTS TO AGENT RAY, THAT PERHAPS FRANK DOSSO HAD HIRED A HITMAN TO KILL GONSALVES AND SAID THAT WAS PREPOSTEROUS, SO HE DID RELY HEAVILY ON THE STATEMENTS AND THE OTHER ARGUMENT I WOULD LIKE TO BRIEFLY TOUCH ON IS THE CRAWFORD ISSUE, THE CONFRONTATION ISSUE BECAUSE PLAINLY, HEARSAY TESTIMONY OF THE BLOODSTAINS PATTERN EXPERT THAT WAS INTRODUCED IN THIS CASE VIOLATED THE CONFRONTATION CLAUSE.

THE TRIAL JUDGE SAID IT VIOLATED THE LAWS.

THE PROSECUTOR ADMITTED IT VIOLATED THE CONFRONTATION CLAUSE, AND IT ONLY CAME IN BECAUSE THE PROSECUTION SAID THEY WERE GOING TO TIE IT UP AND BRING IN THE ACTUAL PERSON WHO DID THE MEASUREMENTS AND THAT WERE RESPONSIBLE FOR THE CONCLUSIONS IN THE REPORT THAT WAS NOT WRITTEN BY THE BLOODSTAIN EXPERTS, AND THAT WAS NOT HARMLESS BEYOND A REASONABLE DOUBT.

WE CAN'T SAY THERE IS NO POSSIBILITY THAT THAT AFFECTED THE VERDICT BECAUSE WITHOUT THAT TESTIMONY THE JURY WOULD NOT HAVE KNOWN WHERE THE VICTIMS WERE SHOT IN THE JURY WOULD NOT

HAVE KNOWN THE POSITION OF THEIR BODIES, SO THAT WHOLE TESTIMONY ALLOW THE STATE TO ARGUE THE MOTIVE TO SHOOT GUNS ALL THIS IN THE BLOODSTAIN EXPERTS WAS ALSO ABLE TO ARGUE THAT IT WAS POSSIBLE THAT THERE WERE NO CONTACT SO THERE WAS NO BLOOD SPATTER BACK ON THE DEFENDANT.

>> THE PERSON WHO DID THE MEASUREMENTS, I WAS UNDER THE IMPRESSION THAT THAT PERSON DID COME IN LATER BUT WAS NOT ASKED CERTAIN QUESTIONS.

IS THAT MY CORRECT UNDERSTANDING?

>> YOU ARE CORRECT, YOUR HONOR.

>> HOW DOES THIS THEN BECOME A CRAWFORD ISSUE WHICH IS THE CONFRONTATION, BECAUSE THAT WITNESS WAS CONFRONTED? OR NOT CONFRONTED?

>> SHE WAS BROUGHT IN BY THE PROSECUTION BECAUSE IT WAS ACTUALLY NOT A BLOODSTAIN EXPERT.

SHE WAS A FINGERPRINT ANALYST SO SHE WAS BROUGHT IN LATER TO TESTIFY ABOUT FINGERPRINTS BUT TESTIFIED NOTHING ABOUT BLOOD.

>> NOTHING AT ALL?

>> WHAT JUSTICE LEWIS IS SAYING IS SHE WAS AVAILABLE FOR CROSS-EXAMINATION ON THE MEASUREMENTS, CORRECT?

>> YOU CAN'T ASK THE WITNESS

QUESTIONS THAT EXCEED THE SCOPE OF DIRECT, PLUS YOUR HONOR THIS COURT AND THE SUPREME COURT IN LANDES VERSUS DIAZ-- HE MADE IT CLEAR THAT THE STATE HAS THE BURDEN OF PRESENTING CONSTITUTIONALLY EVIDENT-- THEY SAID THEY WERE GOING TO PRODUCE IT AND THEY DIDN'T PRODUCE IT AND I THANK YOU, YOUR HONOR, FOR YOUR TIME.

>> MAY IT PLEASE THE COURT?

STEPHEN AKE WITH THE STATE OF FLORIDA.

I WOULD LIKE TO BEGIN I BELIEVE BY ADDRESSING AND CORRECTING SOME FACTUAL MISSTATEMENTS BY COUNCIL REGARDING THE IDENTIFICATION BY MR. PURVIS AND HIS TESTIMONY AT TRIAL, WHICH ULTIMATELY LED TO THIS POLICE ARTIST'S RENDITION OF AN INDIVIDUAL THAT HE DESCRIBES, AND HE RATED IT A NINE OUT OF 10.

UNFORTUNATELY, I DIDN'T BRING IN A PICTURE FROM THE SURVEILLANCE VIDEOS, BUT THE JURY CERTAINLY COULD HAVE COMPARED THIS POLICE SKETCH THAT WAS BASED ON MR. PURVIS' DESCRIPTION OF WHAT I WANTED TO CORRECT WAS MR. PURVIS WAS DESCRIBED AS WEARING A WHITE V-NECK SWEATER WHICH OBVIOUSLY THE SURVEILLANCE HOTEL SHOWED HIM AS WEARING A

WHITE SWEATER AND IT SHOWED HIM AS WEARING A JACKET OVER A SUIT AND TIE AND MATCH PRETTY MUCH EXACTLY WHAT HE WAS WEARING WITH THE EXCEPTION OF THE TURTLENECK AS OPPOSED TO A V-NECK SWEATER.

>> AGAIN WHAT YOU WOULD SAY ABOUT IT IS THE JURY CERTAINLY COULD CONSIDER IT.

DID HE HAVE A MUSTACHE?

>> YES, HE DESCRIBED HIM AS HAVING A MUSTACHE.

>> AND GLASSES?

>> I DON'T BELIEVE HE WAS WEARING GLASSES IN THE HOTEL SURVEILLANCE.

>> THE FACT IS HE WAS WEARING THE TURTLENECK AND HE IS WEARING AT THAT MORNING AND THAT EVENING.

WAS MR. PURVIS PRETTY SURE THIS GUY WAS WEARING A TIE?

>> HE SAID, I BELIEVE HE SAID HE WAS WEARING A JACKET AND TIE ALONG WITH A WHITE V-NECK SWEATER.

HE DID NOT SAY HE WAS SMOKING A CIGARETTE.

HE WAS HOLDING HIS HANDS ABOVE HIS FACE AS IF HE WAS SMOKING A CIGARETTE.

>> WHAT TIME WAS THIS IN RELATIONSHIP TO THE MURDERS?

>> MR. PURVIS ORIGINALLY TOLD DEFENDANTS HE WON'T LEFT WORK AROUND 5:30 AND LATER IT WAS

AROUND 5:30 TO 6:15 IS WHAT HE TOLD LAW ENFORCEMENT OFFICERS. WE DON'T KNOW THE EXACT TIME OF THE MURDER.

IT WAS STIPULATED THAT DIANE PATISSO LEFT AT AROUND 5:20.

WE HAVE RELATIVES CALLING THE VICTIM AT AROUND 5:45 AND NOT GETTING AN ANSWER ON THEIR CELL PHONES SO IT MOST LIKELY HAPPEN SOMEWHERE IN THAT TIMEFRAME.

>> SO IT IS THE STATES THEORY THAT THIS WAS THE DEFENDANT AND HE WAS STATING THAT BEFORE THE MURDERS-- STANDING BEFORE THE MURDERS?

>> IT CERTAINLY WOULD FIT THE EVIDENCE IN THE JURY COULD COME TO THAT CONCLUSION.

>> HE WOULDN'T LOGICALLY BE STANDING ON THE ROAD AFTER THE MURDERS.

>> NO, AND THE TESTIMONY THAT GEORGE GONCALVES HAD STAYED BEYOND THE OTHER EMPLOYEES AND IT WAS WELL-KNOWN THAT HE WOULD WORK LATE BY HIMSELF.

THERE WAS ONLY ONE CAR OUT FRONT AND ARE JUST SO HAPPENED TO THE OTHER VICTIMS WERE GOING TO BE GETTING A RIDE FROM MR. PETISSO WHO SUBSEQUENTLY WALKED IN AND AS THE STATE ARGUED, THAT IS ONE OF NUMEROUS PIECES OF EVIDENCE.

>> WOULD YOU AGREE IF THERE WASN'T THIS WHOLE ISSUE OF

ATLANTA AND THE RENTAL CAR,  
PUTTING THAT TOGETHER, THAT THEY  
HAD ANIMUS AND A PERSON SEEN ON  
THE SIDE OF THE ROAD LOOK LIKE  
THAT, THAT THAT SPECIFIC PIECE  
OF EVIDENCE ALONE EVEN WITH THE  
ANIMUS WOULD MAKE THE STATE'S  
CASE VERY DIFFICULT?

>> A LOT OF THAT WOULD MAKE IT  
MORE DIFFICULT BUT CERTAINLY WE  
DON'T HAVE THAT HERE.

I WOULD ALSO POINT OUT THAT WE  
HAVE THE CEILING TILE THAT HAD  
BEEN MOVED IN THE OFFICE AND THE  
CHAIR THAT HAD BEEN REMOVED WITH  
A FOOTPRINT ON IT THAT WAS  
CONSISTENT WITH THE ISSUE THAT  
THE APPELLANT OWNED.

>> WE WOULD HAVE SOME PROBLEMS  
WITH THOSE, SO YOU WOULD HAVE TO  
ADMIT THAT THAT SHOE--

IS THAT CORRECT IS AND YOUR  
ESTEEMED DISTINGUISHED COLLEAGUE  
CORRECT THAT THE GUN WITH THE  
REVOLVER AND THE SEMIAUTOMATIC--  
SO THAT DESTROYED THE NEXUS.

>> I DON'T THINK IT DESTROYED  
THE NEXUS THAT HE TOLD AGENTS  
RAID THAT HE OFTEN LEFT A  
FIREARM IN THE CEILING TILE OR  
BEHIND HIS COMPUTER.

HE OWNS NUMEROUS GUNS.

MR. CATALAN TESTIFIED HE SAW HIM  
ON OCCASION SIX MONTHS BEFORE  
THE MURDER WITH ONE OF HIS  
WEAPONS BUT HE WAS WELL-KNOWN TO

SHOOT NUMEROUS WEAPONS.

>> LET'S GO TO THAT THEN.

I HAVE SOME LEGAL CONCERNS WITH THAT KIND OF EVIDENCE.

IN FACT I THINK THERE ARE A COUPLE OF CASES IN FLORIDA AND I THINK ONE IS MORE OUT OF DEFENSE THAT SAYS IT IS AN EFFECTIVE ASSISTANCE OF COUNSEL TO OBJECT TO FIREARMS BEING DISCUSSED OR ADMITTED TO EVIDENCE THAT HAVE NO NEXUS TO THE CRIME AND THERE IS A CASE OUT OF THE THIRD DISTRICT.

I BELIEVE IT IS CALLED SOSA THAT SAYS IT IS REVERSIBLE ERROR TO ADMIT CARTRIDGES FOUND IN A MOTOR VEHICLE TO BE PLACED INTO EVIDENCE WHEN A DIFFERENT TYPE OF WEAPON--

THEY COULD NOT BE CONNECTED TO THE CRIME.

IS THAT PROBLEMATIC IN FLORIDA JUST GENERALLY TO PERMIT THE STATE TO PUT IN EVIDENCE FIREARMS UNCONNECTED TO THE CRIME?

WE KNOW THAT A 12-GAUGE SHOTGUN FOR EXAMPLE IS NOT CONNECTED TO A 22 SEMIAUTOMATIC.

>> DEFENSE COUNSEL DID OBJECT AND THE TRIAL COURT OVERRULED THAT, AND I WOULD LIKE TO MAKE ANOTHER CORRECTION.

THAT WAS NOT RAISED IN THE BRIEF AS A SEPARATE ISSUE AT THE

ADMISSIBILITY TRIAL.

>> ISN'T THAT A PROBLEM HERE  
THOUGH?

>> I DON'T THINK IT IS A PROBLEM  
WHEN YOU HAVE THE LIMITED  
TESTIMONY TO HIS HABIT OF BEING  
A MARKSMAN OR WHAT HAVE YOU OR  
SHOOTING WEAPONS OUTSIDE OF  
THEIR PLANT AND THAT A WITNESS  
OBSERVED HIM WITH A FIREARM WHEN  
IT WAS RELEVANT TO SHOW THAT  
THERE WERE TWO GUNS USED IN THIS  
CASE.

WE NEVER RECOVER THE ACTUAL  
MURDER WEAPONS THAT WERE USED IN  
THIS CASE BUT WE KNOW A 22 AND A  
32 WERE USED.

THERE WAS VERY LIMITED EVIDENCE  
OF THESE OTHER FIREARMS.

ALL THE CAME IN REALLY WAS THAT  
MR. CATALAN'S TESTIMONY AND THE  
RESULT FROM THE SEARCH OF HIS  
RESIDENCE.

>> AGAIN WHAT KIND OF FIREARM  
DID THEY FIND?

A 45?

>> THEY FOUND NUMEROUS PERMITS  
FOR 22'S WHICH WERE THE MURDER  
WEAPONS IN THIS CASE.

>> WHY WAS NOT THE EVIDENCE  
LIMITED TO THAT?

WAS THERE EVIDENCE OF OTHER  
FIREARMS PLACED?

>> I BELIEVE THERE WAS EVIDENCE  
THAT HE OWNED OTHER FIREARMS.

>> THAT WAS ALL?

>> MR. CATALAN TESTIFIED AT BELIEVE THAT HE HAD SEEN A DIFFERENT TYPE OF FIREARM AND AUTOMATIC 22.

>> IT WASN'T ACTUALLY PUT INTO EVIDENCE, JUST A MENTION.

>> I BELIEVE THE DEPARTMENTS MAY HAVE BEEN ADMITTED INTO EVIDENCE ALL THE PERMITS FOR THE GUNS HE HAD PURCHASED BUT THEY COULDN'T FIND.

AGAIN YOUR HONOR THAT WAS NOT RAISED AS AN ISSUE IN THIS CASE.

>> LET ME ASK YOU, WHAT I FIND INTERESTING IS THE INFORMATION HE GOT CONCERNING THE RENTAL CAR, WAS THAT A FEW MONTHS BEFORE THIS INCIDENT WE HAD A SIMILAR KIND OF INCIDENT WHERE THE NEPHEW RENTED A CAR FOR MR. SERRANO, SO WOULD YOU TELL US HOW HE GOT THAT INFORMATION AND HOW IT RELATES TO THIS CASE?

>> THAT INFORMATION DIDN'T COME ABOUT UNTIL A FEW MONTHS BEFORE TRIAL AND AN INMATE LESLIE JONES CONTACTED THE STATE AND SAID HE HAD INFORMATION FROM MR. SERRANO.

THE GIST OF HIS REVELATION WAS THAT SERRANO HAD MENTIONED THAT THEY HAD TRIED, THE HITMAN HAD TRIED TO DO THIS OFFENSE ON HALLOWEEN AND THESE OFFENSES WERE ON DECEMBER.

BECAUSE IT WAS RAINING SO HARD

FOR WHATEVER REASON IT DIDN'T  
GET ACCOMPLISHED THAT THE STATE  
THEN WENT BACK AND RESEARCHED IT  
AND FOUND THERE WAS AN IDENTICAL  
PATTERN OF MR. SERRANO GOING ON  
A BUSINESS TRIP TO CHARLOTTE ON  
HALLOWEEN OR AT HALLOWEEN TIME  
AND ON OCTOBER 31, WARREN AGACIO  
FLIES FROM CHARLOTTE TO-- AND  
FROM TAMPA BACK TO CHARLOTTE.  
THAT ALL HAPPENED ON HALLOWEEN  
IN ADDITION TO EVIDENCE THAT  
THERE WAS 2 INCHES OF RAIN AT  
THE ERIE PLANT THAT EVENING SO  
THAT WAS THE RELEVANCE OF THAT  
TO SHOW THAT BASICALLY THERE WAS  
AN ATTEMPT AT SOME POINT IN TIME  
A FEW MONTHS BEFORE THIS THING  
THAT JUST TIED IN AND WAS  
STRONGER EVIDENCE TO SHOW THAT  
THE SUBSEQUENT DECEMBER 3, ALL  
THE SAME EXACT TYPE OF TRAVEL  
PLANS WHERE YOU HAVE JUAN AGACIO  
WHO WAS THE DEFENDANT'S SON WITH  
ANOTHER WOMAN WHEN HE WAS  
MARRIED TO A LADY NAMED GLADYS  
AGACIO, THAT WAS THE LINK WITH  
THAT NAME AND THEN YOU ALSO HAVE  
THE SAME MANNER OF PURCHASING  
THE TICKETS WITH CASH, BUYING  
ROUND-TRIP TICKETS AND NOT EVER  
USING THE RETURN-TRIP TICKET.  
THAT IS HOW THAT ALL TIED IN BUT  
THERE IS STRONG EVIDENCE THAT  
DESTROYED HIS ALIBI IN ADDITION  
TO OBVIOUSLY THE FINGERPRINT

THAT SHOWED HIM AT THE ORLANDO  
PARKING GARAGE.

>> WHAT WAS ACTUALLY SAID ABOUT  
THOSE FINGERPRINTS BECAUSE AS I  
UNDERSTAND IT THERE WERE SOME  
QUESTIONS ABOUT HOW HALF OF A  
PRINT WAS ON BOTH OF THESE  
TICKETS?

>> THE THE TWO FDLE AGENTS  
TESTIFIED ABOUT TAKING THE  
FINGERPRINTS ON THESE TWO  
TICKETS WITH HIS RIGHT INDEX  
FINGER AND THEN THIS OTHER  
INDEPENDENT EXPERT TESTIFIED  
THAT HE HAD RESERVATIONS ABOUT  
IT BECAUSE HE COULDN'T  
UNDERSTAND WHY A RIGHT INDEX  
PRINT WOULD BE ON A TICKET THAT  
YOU TAKE OUT OF THE DRIVER'S  
SIDE OF THE PASSENGER VEHICLE.  
THAT WAS THE GIST OF IT BUT  
ALTHOUGH WITNESSES SAID THERE  
WAS NO WAY IN THE WORLD THAT  
THIS WAS PLANTED, AS IF IT WAS  
PLANTED THE METHOD THEY WERE  
TALKING ABOUT IT WOULD HAVE BEEN  
A REVERSE PRINT IF THEY REMOVED  
IT WITH TAPE SOMEHOW.  
SO THEY ALL DENIED THESE  
PARTICULAR PRINTS, THAT THERE  
WAS ANY WAY THEY HAD BEEN  
PLANTED.

>> IT IS MY UNDERSTANDING THAT  
THERE WAS ONE FINGERPRINT.

>> CORRECT.

>> AND HALF WAS ON ONE TICKET

AND THE OTHER HALF ON THE OTHER.

IS THAT CORRECT?

>> I AM NOT 100% SURE.

BASED ON MY READING OF THE RECORD, I WAS UNDER THE IMPRESSION THAT HALF OF A PRINT WAS ON AND THE OTHER HALF-- I AM NOT SURE EXACTLY HOW WHAT WAS THAT THEY WERE ABLE TO IDENTIFY AT THAT POINT TO POSITIVELY IDENTIFY IT AS HIS FINGERPRINTS.

IT MUST HAVE BEEN AT LEAST A SUBSTANTIAL AMOUNT OF PRINT.

>> I HAVE SOME QUESTIONS ABOUT THE FIREARMS VIEWED IN THIS CASE.

ALL FOUR VICTIMS WERE SHOT WITH A 22.

THREE OF THEM WERE SHOT EXECUTION STYLE.

DIANE KIND OF WALKED IN ON THIS AND SHE WAS KILLED BUT SHE WAS SHOT WITH A 32.

SHE WAS THE ONLY ONE SHOT WITH A 32 AS WELL.

WHAT WAS THE STATES THEORY AS TO HOW THIS HAPPENED?

>> ARE THEY SAYING THAT THE DEFENDANT HAD TWO WEAPONS?

>> THE THE THEORY WAS THAT HE CAME WITH A 22 AUTOMATIC THAT WAS LOADED WITH 10 BULLETS WITH ONE IN THE CHAMBER, WHICH WOULD HAVE BEEN 11 BULLETS AND HE RETRIEVED THE 32 OUT OF THE CEILING TILE, WHICH MATCHED UP

WITH THE CEILING TILE IN THE FOOTPRINT, THAT HE UTILIZED THE 22, FIRED 10 SHOTS IN THE OFFICE WHICH USED TO BE HIS OFFICE WHERE THE THREE MALE VICTIMS WERE FOUND AND THEN AS HE WAS LEAVING DIANE PATISSO IS COMING IN, IN THE VESTIBULE, AND SHE HAS BEEN SHOT WITH WITH THE 22 BUT AT THAT POINT IN TIME, HE IS OUT OF AMMUNITION WITH THE 22 SO HE THEN UTILIZES THE 32 AND THAT THE STATE'S THEORY WAS THAT IT CAME FROM THE CEILING TILE.

>> HOW DOES THE STATE SURMISE THAT ONE PERSON COULD SHOOT THREE PEOPLE?

DO YOU SHOOT AND WAIT TO SHOOT THEM?

>> THERE WAS TESTIMONY THAT HE WAS AN EXCELLENT SHOT, FROM VARIOUS COWORKERS.

HE WAS USING A 22 TARGET PISTOL BUT HE WAS FAIRLY CLOSE TO THEM.

HE SHOT THE BIGGEST VICTIM FIRST, SHOT HIM FIVE TIMES.

THEY HAVE THEM GET DOWN ON THEIR KNEES, SO OBVIOUSLY THEY ARE DOWN AND SCARED FOR THEIR LIVES WITH THIS INDIVIDUAL THERE WITH A GUN.

>> IS THERE AN EXPLANATION FOR HER, ASSUMING IS MR. SERRANO, HE IS WEARING THE EXACT SAME CLOTHES AT NOON AS HE IS AT 10:00 ON THE SAME DAY-- ABOUT

THE BLOOD SPLATTER?

LET ME FINISH MY QUESTION.

AND HOW HE COULD BE AT SUCH  
CLOSE RANGE AND NOT GET BLOOD ON  
HIS CLOTHES?

>> THERE WAS EVIDENCE OF THAT  
YOUR HONOR.

IT WAS A CONTACT WOUND AND THEY  
WOULDN'T NECESSARILY BE BLOOD  
SPLATTER COMING BACK AND NONE OF  
THESE WERE CONTACT WOUNDS.  
THE CLOSEST ONE WAS PROBABLY  
WITHIN 24 INCHES SO THERE WASN'T  
NECESSARILY GOING TO BE ANY  
BACKSPLATTER TO GET ON HIS  
CLOTHING.

>> THE STATE HAD EVIDENCE THAT  
HE TOLD HIS WIFE THAT NIGHT  
AFTER SHE SAID, THESE MURDERS  
HAD OCCURRED OR AN ACCIDENT,  
THAT HE SAID THEY WILL NEVER  
FIND WHO DID THIS AND THAT ALSO  
THE NEXT DAY WHEN HE WAS  
QUESTIONED, NOT ONLY DID HE GIVE  
THEM THIS ALIBI THAT THE JUSTICE  
PUT TOGETHER BEFOREHAND, BUT HE  
SAID THE FOURTH VICTIM MUST HAVE  
COME IN ON SOMETHING.

AT THAT TIME DID ANYONE HAVE  
EVIDENCE AS TO WHERE DIANE WAS?

>> THAT WAS UNKNOWN TO ANYBODY  
AT AT THE APPOINTED TIME, BUT HE  
MUST HAVE KNOWN THAT BECAUSE  
THERE IS NO OTHER WAY AND AT  
THAT TIME NONE OF THAT  
INFORMATION HAD BEEN RELEASED.

>> I AM CONCERNED ABOUT THE BRADSHAW ISSUE IF YOU COULD ADDRESS THAT.

THE DEFENDANT SAID TO AGENT RAY THAT HE DIDN'T WANT TO TALK AND THEN THERE WAS A COMMENT, WHAT WAS IT?

HOW MUCH MONEY DID THEY PAY THE ECUADORIAN POLICE TO CAPTURE HIM?

THE JUDGE DIDN'T USE THE BRADSHAW TEST.

IS IT YOUR POSITION THAT BRADSHAW IS NOT CONTROLLING ON THIS ISSUE?

>> ACTUALLY I THINK THE JUDGE DID USE THE BRADSHAW TEST BECAUSE THE COURTS ORDER DENYING THIS IS SHE DIDN'T CITE TO IT.

I GRANT YOU THAT.

SHE CITED THE GLOBE WHICH I THINK IS VERY FACTUALLY ON POINT FROM THIS COURT, BUT THE BRADSHAW TEST BASICALLY SAID THAT WHEN THE DEFENDANT MADE A STATEMENT LIKE THAT, IF HE REINITIATE CONVERSATION REGARDING THE CASE, THAN THAT IS THE FIRST IN THE BRADSHAW TEST AND THE SECOND IS YOU LOOK AT THE TOTALITY OF THE CIRCUMSTANCES TO SEE IF HIS STATEMENTS WERE FREE AND VOLUNTARY.

>> ISN'T THE TEST THOUGH A WILLINGNESS AND A DESIRE FOR A

GENERALIZED DISCUSSION ABOUT THE INVESTIGATION AND YOU ARE SAYING HOW MUCH MONEY HAVE THEY PAID THE ECUADORIAN POLICE IS ENOUGH TO OPEN UP THE WHOLE INQUIRY?

>> THE THAT IS THE DEFENDANT THREE INITIATING.

>> BUT IN BRADSHAW DID THEY THEN NOT REMIND HIM AGAIN OF THEIR FIFTH AMENDMENT RIGHT NOT TO TESTIFY?

>> I BELIEVE THEY DID IN BRADSHAW AND THE STATEMENT WAS EVEN MORE GENERIC.

I BELIEVE IT WAS WHAT IS GOING TO HAPPEN TO ME NOW?

>> HOW IS THE SECOND PRONG OF BRADSHAW SATISFIED HERE?

>> ALL YOU HAVE TO DO IS LOOK AT HIS STATEMENTS FOR ONE. AS THE TRIAL JUDGE PROPERLY FOUND HIS RIGHTS WERE SCRUPULOUSLY HONOR BECAUSE AGENT RAY WAS SITTING NEXT TO HIM AND DIDN'T SAY A THING TO HIM FOR OVER AN HOUR AND THE DEFENDANT STARTS ASKING HIM, WHAT DID YOU DO?

THEN AGENT RAY STARTS TALKING ABOUT HIM AND ONCE THEY START TALKING ABOUT THE CASE, THE APPELLATE SAYS NOW YOU ARE STARTING TO TALK BUSINESS AND I DON'T WANT TO TALK ANYMORE AND THEN THEY CUT OFF QUESTIONING. HE CERTAINLY WAS AWARE OF HIS

RIGHTS.

WHEN I STARTED TALKING ABOUT WHAT IN THE APPELLATE MINDLESS DETAILS OF THE CASE HE DECIDED TO EXERCISE HIS RIGHTS AND AT THAT POINT THE QUESTIONING WAS CUT OFF.

>> LET'S ASSUME THAT THERE IS SOME PROBLEM WITH IT.

COULD YOU ADDRESS THE ISSUE OF HARMLESS ERROR?

>> I THINK THE ONLY THING THAT THEY REALLY POINT TO THAT CAME OUT OF THIS CONVERSATION THAT WASN'T SPECIFICALLY TESTIFIED TO OR HAD OTHER TESTIMONY REGARDING THE STATEMENT TO AGENT RAY THAT HE OFTEN HID HIS FIREARM IN THE CEILING TILE AND WHAT I POINTED TO IN MY BRIEF WAS THAT WE DID HAVE EVIDENCE FROM A COWORKER CATTLE AND THAT HE HAD WALKED IN AND HAD SEEN A FIREARM ON HIS DESK WHILE THE APPELLANT WAS IN THE CEILING TILE GETTING SOMETHING, SOME PAPERS OUT OF THE CEILING TILE, SO I THINK THAT IS BY FAR THE ONLY THING THEY CAN REALLY POINT TO ANY BEEN THAT I WOULD ARGUE IS CUMULATIVE TO CATALAN'S TESTIMONY AND CERTAINLY NOT SO PREJUDICIAL AS TO CAUSE ANY CONCERN AS TO THE STATEMENT COMING OUT.

DID YOU HAVE A QUESTION, YOUR

HONOR, ON THAT?

>> I DIDN'T KNOW IF YOU WERE GOING TO ASK ONE OR NOT.

>> THE OTHER THING, I KNOW WE DIDN'T DISCUSS THIS ISSUE BUT I KIND OF FEEL OBLIGATED TO BRING IT UP.

THEY KEEP RAISING THESE ALLEGATIONS THAT HE WAS HELD IN A DOG KENNEL AND KIDNAPPED. I KNOW WE DIDN'T TALK ABOUT THAT ISSUE BUT I WOULD URGE THIS COURT TO REVIEW THE TESTIMONY FROM THAT AND TO SPECIFICALLY REVIEW THE TRIAL TESTIMONY OF WILLIAM HUDSON, THE DEA AGENT, AND CERTAINLY THERE IS NO EVIDENCE TO SUPPORT ANY OF THOSE ALLEGATIONS THAT HE WAS HELD IN A DOG KENNEL OR ANYTHING LIKE THAT.

HE WAS SUPPORTED BY THE ECUADORIAN GOVERNMENT.

>> NOW, THIS IS-- THESE CASES-- AND THIS WAS CERTAINLY A DIFFICULT CASE TO PROSECUTE IN THAT THEY HAD TO PUT TOGETHER A LOT OF EVIDENCE AND PRETTY EXTENSIVE INTRICATE INVESTIGATION, AND I GUESS MY QUESTION IS, STARTING WITH THE PROSECUTOR ASKING SOMETHING THAT HE KNOWS IS CLEARLY INADMISSIBLE, DID MR. SERRANO TESTIFY AT THE GRAND JURY WHEN HE KNOWS THAT HE HAD INVOKED HIS

RIGHTS?

I MIGHT WANT TO START WITH WHAT WAS THE PROSECUTOR THINKING THAT IF WE GO BACK AND LOOK AT ALL THESE 10 INCIDENTS, WE HAVE A SITUATION WHERE THE PROSECUTOR KEPT ON GETTING SO CLOSE OR CROSSING THE LINE IN HIS INTEREST IN GETTING A CONVICTION, THAT IT AFFECTED THIS TRIAL.

AGAIN, THIS IS A CASE THAT YOU DON'T AGAIN HAVE A DIRECT ADMISSION.

YOU DON'T HAVE FORENSIC EVIDENCE OF HIM AT THE SCENE AND THERE IS A LOT THAT HAD TO BE PUT TOGETHER, SO COULD YOU COMMENT ON WHETHER THE PROSECUTOR AGAIN, STARTING WITH THAT FIRST STATEMENT, THAT THERE WASN'T SOME PROBLEM WITH HOW THE PROSECUTOR WAS PROSECUTING THIS CASE?

>> AS THEY POINT OUT IN THE BRIEF I THINK A NUMBER OF THOSE COMMENTS WERE NOT IMPROPER AND CERTAINLY A NUMBER OF THEM WERE VERY INNOCUOUS TYPE OF COMMENTS. THE ONE THAT THIS COURT HAS SPENT MOST TIME TALKING ABOUT, THE GRAND JURY COMMENT, CERTAINLY THAT IS NOT SOMETHING THAT SHOULD COME OUT. OUT.

>> LET'S JUST GO BACK.

I DON'T KNOW WHETHER-- I THINK IT WAS WHAT REALLY THE APPELLANT TALKED ABOUT BUT STARTING WITH THAT, YOU AGREE THAT THAT IS NOT A QUESTION A PROSECUTOR SHOULD ASK?

>> I THINK THIS COURT'S CASE LAW IS ACCEPTABLE AND I CAN-- GRANTED THE QUESTION WAS NOT ANSWERED AND I CERTAINLY THINK THAT IS BENEFICIAL IN THIS CASE AND I'M NOT SURE THAT A JURY WOULD KNOW WHAT IT IS BUT I CAN UNDERSTAND THIS COURT'S CASE LAW OF THE COMMENTS THAT ARE FAIRLY SUSCEPTIBLE.

I DON'T THINK A JURY NECESSARILY ONE IMPORT THAT SAME KNOWLEDGE. A LAY JURY WILL KNOW WHAT THE IMPLICATIONS OF THAT WORSENS IT IS AN UNANSWERED QUESTION BUT I WOULD JUST POINT OUT TO THIS COURT WHAT I THINK IS A VERY EXTENSIVE CURATIVE INSTRUCTION THAT THE TRIAL JUDGE GAVE AFTER THAT THAT COVERS TWO PAGES IN THE RECORD, AND I THINK THE COMMENT WAS THAT THE COURT COURT FINDS IT WAS IMPROPER, THAT CERTAINLY WOULD HAVE CURED ANY PROBLEM FROM THAT SOMEWHAT ISOLATED INCIDENT BECAUSE THAT IS A VERY DETAILED CURATIVE INSTRUCTION THAT THE JUDGE GAVE, AND I DON'T SEE ANY WAY THAT THAT COMMENT IS GOING TO VITIATE

HIS ENTIRE TRIAL AND I POINT OUT THAT THAT BEGINS ON PAGE 4340 IN THE RECORD.

THE OTHER COMMENTS, A NUMBER OF THEM SIMPLY WEREN'T IMPROPER AND THE ONES THAT WERE WERE SUSTAINED WHEN THE OBJECTIONS WERE MADE.

>> WHAT ABOUT THE COMMENTS THAT COULD BE INTERPRETED AS A COMMENT ON HIS RIGHT TO REMAIN SILENT, WHICH WAS SOMETHING ABOUT HE HAD HAD AN OPPORTUNITY TO.

>> AND THE OPENING STATEMENT THE PROSECUTOR WAS DISCUSSING MR. SERRANO'S COMMERCE EDITION WITH DETECTIVE PARKER THE DAY AFTER, AS SOON AS HE FLEW BACK IN FROM ATLANTA OF THE DAY AFTER THE MURDERS AND HE SAID SOMETHING TO THE EFFECT THAT THAT WAS HIS FIRST TIME TO TELL A STORY TO LAW ENFORCEMENT.

>> TO ME THAT SOUNDS EVEN CLOSER TO A JURY MIGHT INTERPRET THAT, EXCUSE ME AS A COMMENT ON THE DEFENDANT'S RIGHT TO REMAIN SILENT.

>> THAT IS WHAT HAPPENED. HE MADE A DETAILED STATEMENT TO THE DETECTIVE, AND THAT'S WHAT THE PROSECUTOR WAS SAYING. HE UTILIZED IT AND MADE A STATEMENT TO DETECTIVE PARKER THAT DAY.

THERE'S CASE LAW THAT SAYS THAT IS NOT IMPROPER WHEN YOU HAVE THAT SCENARIO, AS WE DID IN THIS CASE.

SO I DON'T THINK THERE'S ANY PROBLEM WITH THAT ONE.

BEFORE I FORGET, YOUR HONOR, JUSTICE QUINCE, YOU HAD A QUESTION OF COUNSEL, AND I LOOKED IT UP.

THE RENTAL CAR, I WANTED TO POINT OUT THAT THE RENTAL CAR WAS NOT LOCATED UNTIL ALMOST TWO YEARS LATER IN OCTOBER OF '99, SO YOU HAD ASKED WHEN THEY HAD FOUND THE RENTAL CAR TO TEST IT AND SO FORTH.

>> WELL, WHAT EVEN LED TO THAT? YOU KNOW, I GUESS ONE OF THE PROBLEMS IS THIS MURDER WAS COMMITTED IN 1997?

>> YES.

DECEMBER, '97.

>> AND WHEN WAS MR. SERRANO REALLY THE --

>> HE WAS A PRIME SUSPECT IMMEDIATELY, BUT HE HAD THIS TRAVEL IN ATLANTA.

LAW ENFORCEMENT COULD NOT SEEM TO BREAK THAT ALIBI INITIALLY.

IT WASN'T UNTIL LATER THAT THEY WERE ABLE TO START, BASICALLY, BREAKING HIS ALIBI AND FINDING OUT ABOUT THE RENTAL CARS AND --

>> AND HOW MUCH LATER WAS THAT? I MEAN, WHAT BROUGHT THE NEPHEW

TO POLICE ATTENTION?

>> HE WAS QUESTIONED -- I DON'T RECALL THE DATE OFF THE TOP OF MY HEAD, BUT IT WAS QUITE SOME TIME BEFORE HE WAS QUESTIONED, AND I'M NOT EXACTLY SURE FROM THE RECORD WHAT BROUGHT HIM TO THEIR ATTENTION EXCEPT MAYBE, PERHAPS, JUST INVESTIGATION OF PULLING CREDIT CARDS OR PULLING INFORMATION.

I DON'T RECALL EXACTLY WHAT BROUGHT HIM TO THEIR ATTENTION. BUT EVENTUALLY THEY DID FIND HIM, AND THEY NOTED ALL THESE RENTAL CAR TRANSACTIONS. AND INITIALLY, BECAUSE IT HAD BEEN SO LONG -- I THINK IT WAS IN 2000 WHEN HE WAS FIRST QUESTIONED, THE NEPHEW, WHEN HE WAS FIRST QUESTIONED BY LAW ENFORCEMENT -- HE DIDN'T RECALL THAT HE HAD RENTED CARS ON TWO DIFFERENT OCCASIONS AT THE HALLOWEEN AND DECEMBER INCIDENTS.

HE WAS ORIGINALLY CONFUSED AS TO THAT.

SO SUBSEQUENTLY, YOU KNOW, HE DID RECALL THAT THERE WAS THIS HALLOWEEN INCIDENT, TOO, WHERE HE HAD RENTED A CAR.

>> COULD YOU GO BACK, I'D LIKE TO JUST GO BACK TO THIS GUN ISSUE.

I NOW FOUND ON PAGE 75 OF THE

APPELLANT'S BRIEF WHERE THERE'S  
A MENTION OF THIS POINT.

"OVER THE DEFENDANT'S OBJECTION,  
THE PROSECUTOR IMPROPERLY ARGUED  
AND ELICITED TESTIMONY AND  
EVIDENCE THAT MR. SERRANO OWNED  
A LOT OF GUNS IN HIS GUN  
COLLECTION.

HE MUST HAVE BEEN THE KILLER IN  
THIS CASE."

WAS THAT, THAT WOULD BE, TO ME,  
AN IMPROPER ARGUMENT THAT IF HE  
OWNED LEGAL GUNS, ARGUING THAT  
THAT WOULD BE THE BASIS FOR HIM  
BEING THE MURDERER.

IS THAT WHAT WAS SAID?

>> I DON'T -- THAT WAS NOT WHAT  
WAS SAID BY THE PROSECUTOR AS  
FAR AS, YOU KNOW, HE OWNED THESE  
GUNS, THEREFORE, HE'S THE  
KILLER.

THE PROSECUTOR'S CLOSING  
ARGUMENT WAS EXTREMELY DETAILED,  
AND HE WENT THROUGH, I THINK HE  
HAD COUNTED THEM OUT ABOUT 70  
SOMETHING PIECES OF EVIDENCE  
THAT HE ARGUED ESTABLISHED  
MR. SERRANO WAS THE KILLER.

>> BUT WASN'T THE FACT, I GUESS  
THIS ISSUE OF HOW MANY GUNS --  
GOING BACK TO JUST WHAT JUSTICE  
LEWIS WAS ASKING ABOUT -- HOW  
MANY GUNS HE OWNED AND WHETHER  
THEY WERE DIFFERENT CALIBERS OR  
WHATEVER, I'M QUESTIONING --  
THOSE WERE OBJECTED TO BY THE

DEFENDANT.

>> RIGHT.

AND IT WAS ADMITTED IN THE  
PROSECUTOR'S --

>> BUT WHY WAS IT -- BECAUSE I  
GUESS THIS ONE LINE SAYS IT WAS  
IMPROPERLY, IMPROPERLY ARGUED IN  
THE WITNESS' TESTIMONY.

I'M NOT SURE THAT'S EXACTLY THE  
ARGUMENT, BUT IT SOUNDS LIKE IT  
WAS PRESERVED.

WHAT WAS THE RATIONALE FOR BEING  
ABLE TO GET IN EVIDENCE THAT HE  
OWNED A LOT OF GUNS?

>> YOUR HONOR, BECAUSE THIS  
WASN'T RAISED AS AN ISSUE, I  
CAN'T HONESTLY TELL YOU I RECALL  
SPECIFICALLY AS TO WHAT WAS  
ARGUED AS TO THE ADMISSIBILITY  
ASPECT OF THE GUNS.

I DON'T HAVE --

>> BUT THERE WAS OTHER EVIDENCE  
ABOUT HIM BEING, SHOOTING AROUND  
AT THE ERIE COMPANY, THAT TARGET  
SHOOTING OR SOMETHING?

>> RIGHT.

THERE WAS TESTIMONY THAT THEY  
OFTEN WOULD WOULD GO OUT BACK  
AND SHOOT THEIR FIREARMS AND  
TARGET SHOOTING OUT THERE.

I BELIEVE THE ONLY EVIDENCE AS  
TO OTHER FIREARMS BESIDES THOSE  
INSTANCES WERE THE SEARCH OF HIS  
HOUSE THAT YIELDED PERMITS FOR  
GUNS THAT WERE NOT EVER LOCATED.  
AND I KNOW A NUMBER OF THOSE

WERE .22S, AND THE STATE KNEW THAT A .22 HAD BEEN USED IN THIS CRIME.

IF THERE ARE NO FURTHER QUESTIONS, I WILL ASK THIS COURT TO AFFIRM.

>> YOUR HONORS, I DID WANT TO CLARIFY AS COURT JUST POINTED OUT THAT ON PAGE 75 OF OUR INITIAL BRIEF WE ARGUE THAT THE GUN EVIDENCE WAS IRRELEVANT UNDER 90.401 AND THAT UNDER 403 THE UNFAIR PREJUDICE VERSUS ANY PROBATIVE VALUE THAT IT WAS NOT ADMISSIBLE UNDER 90.403.

AND THEN IN THE REPLY BRIEF, YOUR HONOR, PAGES 24 TO 25, WE ARGUE THAT THE GUNS WERE NOT ADMISSIBLE BECAUSE THEY WEREN'T LINKED IN ANY WAY.

WE CITED THE JACKSON CASE WHERE THIS COURT SAID YOU HAVE TO SHOW A SUFFICIENT LINK BETWEEN THE WEAPON AND THE CRIME AND, THEREFORE, AND I QUOTE, "THE ADMISSION OF MR. SERRANO'S OWNERSHIP OF A LOT OF GUNS IN HIS GUN COLLECTION WITHOUT LINKING ANY OF THOSE GUNS TO THE CRIMES IN THIS CASE WAS, PLAINLY, ERROR."

>> NO, NO.

THE STATE IS ARGUING THAT WHAT CAME IN WERE RECEIPTS FOR PURCHASES OF .22 CALIBER. AND YOU WOULD HAVE TO AGREE

THAT, CERTAINLY, THE SAME  
CALIBER WEAPON -- RECEIPTS FOR  
THAT IF THE WEAPON ITSELF WAS  
NEVER FOUND -- WOULD BE  
ADMISSIBLE.

>> WELL, YOUR HONOR --

>> SAME CALIBER, SAME KIND OF  
WEAPON.

>> I WOULD NOT.

I WOULD NOT --

>> WHY NOT?

>> -- SAY THAT THAT WOULD BE  
ADMISSIBLE, YOUR HONOR, BECAUSE  
THERE'S NO LINK WHATSOEVER.

HE WAS A GUN COLLECTOR --

>> THE LINK IS THE CALIBER OF  
THE WEAPONS.

>> BUT, YOUR HONOR, .22  
CALIBER --

>> JUST ONE MINUTE.

>> I'M SORRY, YOUR HONOR.

>> YOU CERTAINLY DON'T HAVE TO  
MATCH AND SAY IT'S THE GUN, IS  
THAT WHAT YOUR ARGUMENT IS?  
THEY WOULD HAVE TO SHOW THE  
BARRELS AND RIFLING AND MARKS ON  
THE PROJECTILE CAME FROM A  
PARTICULAR GUN.

YOU'RE NOT SAYING THAT, ARE YOU?

>> WHAT I'M SAYING IS THAT YOU  
CAN'T JUST THROW OUT IN THIS  
TRIAL LIKE THE PROSECUTOR DID,  
YOUR HONOR, A BUNCH OF GUN  
EVIDENCE --

>> NO, I'M ASKING YOU ABOUT THE  
.22 CALIBER.

>> OKAY.

THE .22 CALIBER EVIDENCE, YOUR HONOR, I STILL BELIEVE THAT SHOULD NOT HAVE COME IN UNLESS THERE WAS SOME EVIDENCE THAT THAT .22 CALIBER GUN THAT THEY'RE CONTENDING THAT HE OWNED IN 1972, THAT THERE WAS SOME EVIDENCE TO LINK THAT GUN TO THIS CRIME.

>> WELL, THERE WAS.

THERE WAS A .22 --

>> THAT'S IT.

A .22, THE MOST POPULAR --

>> THAT'S YOUR DECISION?

>> YES, YOUR HONOR.

>> OKAY.

I WANTED TO MAKE SURE I UNDERSTAND YOUR ARGUMENT.

>> IT'S THE MOST POPULAR CALIBER GUN THERE IS, YOUR HONOR, AND THE PROSECUTOR PROMISED HE WASN'T GOING TO MAKE THAT KIND OF ARGUMENT, AND HE WENT AHEAD AND DID IT.

>> YOUR TIME HAS EXPIRED IF YOU WANT TO SUM UP.

>> YES, YOUR HONOR.

I'D ALSO LIKE TO SAY WITH RESPECT TO THE PROSECUTORIAL MISCONDUCT ISSUE, THERE'S TEN DIFFERENT ACTS.

MANY OF THESE ALONE WOULD REQUIRE REVERSAL.

THE CONDUCT OF THIS PROSECUTOR IN A DEATH CASE IS SUPPOSED TO

BE ESPECIALLY CONCERNED WITH THE  
DEFENDANT GETTING A FAIR TRIAL.  
HERE THE TRIAL WAS TAINTED BY  
THE PERVASIVE DELIVERY OF  
CONDUCT OF THIS PROSECUTOR, AND  
I WOULD ASK THE COURT TO REVERSE  
MR. SERRANO'S CONVICTIONS FOR  
THAT REASON.  
THANK YOU, YOUR HONOR.  
>> THANK YOU.