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Mark A. Twilegar v. State of Florida

SC07-1622

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF FLORIDA IS

NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW

NEAR, GIVE ATTENTION, AND YOU

SHALL BE HEARD.

GOD SAVE THIS UNITED STATES,

THIS GREAT STATE OF FLORIDA, AND

THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO

THE FLORIDA SUPREME COURT.

THE FIRST CASE ON OUR AGENDA

THIS MORNING IS MARK TWILEGAR

VERSUS STATE OF FLORIDA.

>> GOOD MORNING, I'M KIN THEE

YEAH DODGE AND I'M AN ASSISTANT

PUBLIC DEFENDER OUT OF THE TENTH

JUDICIAL CIRCUIT AND I'M

REPRESENTING MARK TWILEGAR.

HE WAS CONVICTED OF THE FIRST

DEGREE MURDER OF MR. DAVID

THOMAS AND HE WAIVED THE PENALTY
PHASE JURY AND WAIVED THE
PRESENTATION OF MITIGATION AND
ALSO THE INVESTIGATION INTO
MITIGATION, HE WAS SENTENCED TO
DEATH AND THAT IS WHY THE CASE
IS BEFORE US, YOUR HONOR, THIS
IS A CIRCUMSTANTIAL EVIDENCE
CASE AND I WOULD LIKE TO DISCUSS
THE ISSUES IN THE ORDER THE
APPEARANCE BRIEF FOCUSING ON
ISSUES 1, 2 AND 3.

I AM ASSUMING THE COURT HAS A
RUDIMENTARY KNOWLEDGE OF THE
FACTS BUT IF THERE ARE ANY YOU
NEED HELP WITH, PLEASE INTERRUPT
ME.

THIS IS A CIRCUMSTANTIAL
EVIDENCE CASE, IN THAT IT
REGARDS THAT THE IDENTITY OF THE
PERPETRATOR IS AT ISSUE AND IT
WAS PROVED BY CIRCUMSTANTIAL
EVIDENCE, AND, ALSO, THE FACT OF
WHETHER OR NOT THERE WAS EVEN A
ROBBERY WAS PROVED BY
CIRCUMSTANTIAL EVIDENCE.

AND, OF COURSE, THE PERPETRATOR
OF THE ROBBERY IF ONE WAS

COMMITTED WAS PROVED BY
CIRCUMSTANTIAL EVIDENCE, THE
FIRST THING I NEED TO ADDRESS
BRIEFLY IS THE JURY VERDICT
ITSELF.

IT WAS VERY, KIND OF UNIQUE IN
THIS CASE, A SPECIAL VERDICT
FORM.

AND THIS VERDICT FORM READ --

>> THE SPECIAL VERDICT FORM.

>> THAT WAS BROUGHT UP BY THE
JUDGE AND APPARENTLY HE HAD GONE
TO A CONFERENCE, IN WHICH THERE
WAS I THINK A JUDGE EATON WHO
HAD HELD THE CONFERENCE AND HE
LIKED THE IDEA OF A SPECIAL JURY
VERDICT AND THOUGHT THE JUDGE
HAD A GOOD IDEA AND PROPOSED IT
AND, EVERYBODY KIND OF BALKED AT
IT, AT FIRST, AND -- YOU STARTED
NICELY SAYING YOU'LL GIVE US AND
OVER VIEW OF THE FACTS AND IN
ORDER AND WHAT ISSUE IS AN
OBJECTION TO THE VERDICT FORM?

>> THERE IS NO OBJECTION TO THE
VERDICT FORM.

WHAT THIS HAS TO DO WITH, WAS
ACTUALLY WHAT IS THE MAN
CONVICTED OF.

AND THAT ACTUALLY HAS TO DO WITH
THE SUFFICIENCY ARGUMENT BECAUSE
MY ARGUMENT IS THAT HE WAS
CONVICTED OF PREMEDITATED FIRST
DEGREE MURDER AND NOT FELONY
MURDER AND THAT IS THE TIE-IN TO
THE VERDICT FORM.

BECAUSE, IF YOU LOOKED AT THE
VERDICT FORM, IT SAYS, IF YOU
FIND THE DEFENDANT WAS -- HAS
COMMITTED FIRST DEGREE PLEASE
ANSWER THE FOLLOWING QUESTION,
BLANK OF NUMBER FIND THE KILLING
WAS PRE-MED DAY, BLANK OF OUR
NUMBER FIND IT WAS COMMITTED
DURING A ROBBERY OR ATTEMPTED
ROBBERY --

>> AND ISN'T THAT IN -- AND THE
STATE HAS ACCEPTED THAT IT WAS A
PREMEDITATED MURDER VERDICT AND
THERE WAS SUFFICIENT EVIDENCE TO
SHOW THAT THIS DEFENDANT
PREMEDITATED THE MURDER.

I MEAN, ISN'T --

>> RIGHT.

>> LET'S GET TO THE FACTS THAT
ARE MOST FAVORABLE TO THE STATE,
THE INFERENCES AND THE ACTUAL

FACTS, OF WHAT OCCURRED IN THIS
CASE.

>> RIGHT.

THE STATE IS CONTESTING,
HOWEVER, THE STATE IS SAYING
THAT THIS VERDICT -- THIS
CONVICTION CAN BE -- HELP ON
BOTH THEORIES AND I'M SAYING NOT
ONLY CAN IT NOT BE UPHELD ON
BOTH THEORIES, WHEN YOU GO AND
TALK ABOUT WHETHER OR NOT MY
CLIENT WAS A PERPETRATOR OR
WHETHER OR NOT THIS WAS THE --
THE EVIDENCE WAS SUFFICIENT TO
PROVE PREMEDITATION YOU CAN'T
USE THE FACTS OF THE ROBBERY,
BECAUSE, IN EFFECT, HE WAS
ACQUITTED OF THOSE.

HE WAS CHARGED BY INDICTMENT,
WITH JUST THE FIRST DEGREE
MURDER, HE WAS NOT SEPARATELY
CHARGED WITH THIS UNDERLYING
ROBBERY, AND EVEN THOUGH THE
INDICTMENT HAS THE LANGUAGE
COUCHED IN THE ALTERNATIVE.
THERE WAS NO SECOND COUNT OF
ROBBERY.

SO, WHEN YOU GET TO THIS POINT,
WHERE YOU GET THE VERDICT FORM,

AND THEY ANSWER THE -- 12 OF OUR
MEMBERS FIND THE KILLING WAS
PREMEDITATED AND BLANK MEANS
ZERO.

>> EVEN IF YOU ACCEPT YOUR
ARGUMENT THAT THIS IS A
PREMEDITATED MURDER CASE NOT A
FELONY MURDER CASE.

>> YES.

>> ISN'T THERE EVIDENCE HERE OF
PREMEDITATION?

>> I'M SAYING THAT ALL OF IT IS
CIRCUMSTANTIAL.

AND I WILL --

>> OKAY.

WE ACCEPT THAT IS
CIRCUMSTANTIAL.

BUT -- YOU CAN STILL --

>> I'M SORRY I'M NOT BEING
CLEAR.

>> YOU CAN STILL PROVE
PREMEDITATION.

>> YES.

YOU CAN --

>> BY CIRCUMSTANTIAL EVIDENCE.

>> BUT THAT EVIDENCE HAS TO BE
INCONSISTENT WITH THE THEORY OF
GUILT AND THERE IS ONLY ONE FACT

DIRECTLY INCONSISTENT WITH THE
HYPOTHESIS OF INNOCENCE AND
THERE IS A CONTRADICTION BETWEEN
WHERE HE SAYS HE WAS ON THE 6TH.

>> AND THAT IS NOT -- DOESN'T
THAT UNRAVEL THE WHOLE THING.

>> NO.

NO.

BECAUSE --

>> THAT THIS IS ONLY THING,
WHICH I WOULDN'T CONCEDE BUT IF
THERE IS ONE THING THAT IS
INCONSISTENT WITH HIS STORY, THE
WHOLE STORY --

>> NO, THE WHOLE STORY DOES NOT
FALL DOWN.

IT DOESN'T FALL DOWN, BECAUSE
THE SIXTH WAS NOT THE DAY
MR. THOMAS DISAPPEARED AND THAT
WAS THE DAY BEFORE AND IT WAS
INCONSISTENT TESTIMONY, AND IT
WAS ALSO -- THERE IS A -- THE
STATE'S CASE IS INCONSISTENT ON
THAT POINT, BECAUSE WHAT HAPPENS
WAS ON THE 6TH, SUPPOSEDLY,
MR. THOMAS SAYS HE IS DRIVING
DOWN, HE TELLS HIS GIRLFRIEND,
MS. SABINA, VALERIE SABINA, HE
TELLS HIS GIRLFRIEND THAT HE IS

GOING TO COME DOWN TO FLORIDA
AND HE'S IN ALABAMA AND MAKING
REPAIRS ON HIS HOUSE AND WHAT HE
DOES IS DRIVES UP TO MONTGOMERY,
ALABAMA WITH MR. TWILEGAR AND
THERE IS NO ARGUMENT ABOUT THAT,
IT WAS PROBABLY THE 2ND OF
AUGUST, HE DRIVES THERE AND THEY
ARE SUPPOSED TO PUT A DICK ON A
HOUSE, IT IS A HISTORIC HOUSE
AND HE NEEDED SPECIAL PERMITS
AND FOR SOME REASON DIDN'T GET
IT AND MR. THOMAS DECIDES TO
DRIVE BACK DOWN.

ON THE 6TH.

AND HE TELLS MR. FABINA HE IS
DRIVING DOWN WITH THE APPELLANT
BUT THE STATE HAS EVIDENCE
PLACING MR. THOMAS AND
MR. TWILEGAR AT THE MONTGOMERY
AT 3:00 IN THE AFTERNOON ON THE
6TH.

AND MR. THOMAS'S WIFE TESTIFIED
IT TAKES FROM 10 TO 14 HOURS TO
GET FROM MONTGOMERY DOWN TO FORT
MYERS AND IF YOU DO THE MATH,
THAT WOULD MAKE THEM COMING IN
BETWEEN -- SOMEWHERE BETWEEN

1:00 AND 3:00 IN THE MORNING AND

IF YOU ADD, 3:00 PLUS TEN HOURS.

>> BUT YOU'VE GOT THE -- LET'S

SEE, THE GIRLFRIEND, WHO IS --

DIDN'T SHE SEE THEM AT THE MOTEL

--

>> NO.

>> AT 11:00 THAT EVENING.

>> IT WAS A HOUSE.

I GUESS, WHAT HAPPENED --

>> WELL, BUT SAW THEM THAT

EVENING AT 11:00, AND IN OTHER

WORDS SHE SAW THEM AT CERTAIN

PERIODS OF TIME, IN FLORIDA.

SO, WE -- THE FACT THAT THERE

MIGHT BE INCONSISTENCY WHAT TIME

THEY LEFT ALABAMA.

>> RIGHT.

BUT --

>> YOU ARE NOT CONTESTING THAT

TWILEGAR AND THOMAS WENT UP

TOGETHER TO ALABAMA, FOR A

LAWFUL PURPOSE, THAT AT SOME

POINT, THOMAS OBTAINED A LARGE

AMOUNT OF MONEY, THAT HE STILL

HAD THAT LARGE AMOUNT OF MONEY

WHEN HE -- THEY RETURNED

TOGETHER TO FLORIDA.

>> I'M CONTESTING THAT.

>> BUT THE FACTS -- YOU MAY --

BUT THERE ARE FACTS THAT SUPPORT
THAT.

>> THE FACTS SUPPORT THE FACT
THAT HE DID TAKE UP THE MONEY --
FIRST OF ALL, I WANT TO BACK UP
THIS.

THE STATE'S CASE IS INCONSISTENT
ON THE POINT OF FABINA -- HE
CALLED HER AND SAID, COULD YOU
PLEASE GET ME A MOTEL AT MOTEL
6, A ROOM AND SHE HAD THE LITTLE
KEY THING AND HE HAD TO GO TO
THE HOUSE AND GET IT FROM HER
AND SUPPOSEDLY, SHE GOES TO GIVE
HIM THE KEY AND FROM THE
DOORWAY, SHE SEES THE RENTAL
CAR.

AND SHE SEES WHAT SHE BELIEVES
IS MR. TWILEGAR SITTING IN THE
PASSENGER SEAT AND THAT IS THE
DAY BEFORE AND FABINA IS THE
ONLY PERSON, LAST PERSON TO SEE
MR. THOMAS ALIVE.

SHE DIDN'T SEE THE APPELLANT ON
THE 7TH.

>> WASN'T YOUR CLIENT, WASN'T
YOUR CLIENT OBSERVED AS DIRECT

EVIDENCE HE WAS OBSERVED DIGGING
A HOLE WHERE LATER ON
MR. TWILEGAR -- THE VICTIM IN
THE CASE WAS FOUND AND NOT ONLY
THAT, BUT THE MEDICAL EXAMINER
FOUND HE HAD INHALED SOIL WHICH
IS CONSISTENT WITH THE FACT THAT
HE MAY HAVE BEEN ALIVE AND
PROBABLY MOANING WHEN HE WAS
BURIED.

HOW IS THAT INCONSISTENT WITH --

>> OKAY.

JUST BECAUSE EVIDENCE IS
CONSISTENT WITH ONE THEORY --

>> OKAY.

>> IT CAN BE CONSISTENT WITH
LOTS OF OTHER THEORIES.

FIRST OF ALL, HE WASN'T SEEN
DIGGING A HOLE, HE WAS SEEN MAKE
A DIGGING MOTION.

AND, THE WITNESS SAID, I ONLY
OBSERVED HIM FOR A FEW SECONDS.

SECOND OF ALL, IN ORDER TO DIG
THAT HOLE, THE TENTS WOULD HAVE
HAD TO HAVE BEEN DOWN ALREADY.
THE HOLE WAS WHERE THE TENT WAS
AND THAT -- I URGE THE COURT TO
LOOK AT THE PHOTOGRAPH.

LOOK AT THE PHOTOGRAPHS OF THE

PROPERTY.

AND SEE HOW LITTLE CLEARED LAND

THERE IS RIGHT THERE.

THE TENT WOULD HAVE HAD TO HAVE

COME DOWN AND FIRST -- AND NOT

ONLY THAT IT WOULD HAVE BEEN AN

EXCAVATION, WHEN THE TEAM CAME

INTO RETRIEVE THE BODY, FIRST OF

ALL, THEY TREATED IT AS AN

ARCHEOLOGICAL DIG AND DUG AROUND

IT AND DIDN'T JUST DIG UP THE

BODY AND WHEN THEY DID THAT THEY

HAD A MONSTROUS TIME TRYING GET

THROUGH THIS THE -- THE PALMETTO

AND THE OAK TREE ROOTS AND

SPENCER... WAS THE WITNESS AND

IT WAS THE HEART MAN'S PROPERTY

AND BASICALLY HE WAS LIVING IN A

TENT WITHOUT TOILET FACILITIES

AND -- HE USED TO TAKE A POWER

LINE AND HOOK IT UP AND USED THE

WATER HOSE THERE AND DIDN'T

ALWAYS STAY THERE AND HE'D

DISAPPEAR AND STAY AT OTHER

PLACES AT TIMES, THERE ARE

WITNESSES THAT SAID HE'D

DISAPPEAR AT TIMES.

>> WASN'T THE TESTIMONY, I

BELIEVE OUR UNDERSTANDING IS
THAT THE TESTIMONY OF THE
GENTLEMEN WHO WAS DOING REPAIR
WORK ON THE HOME CAME TO THE
PROPERTY AND OBSERVED WITHOUT
MR. TWILEGAR SEEING HIM, THAT
THERE WAS DIGGING GOING ON, NOT
IN THE TENT, BUT ON THE OUTSIDE
OF THE TENT.

WAS OUR UNDERSTANDING.

>> RIGHT.

RIGHT.

>> IS THAT CORRECT.

>> THAT'S CORRECT.

>> AND THAT THIS PERSON WAS THEN
OFFERED MONEY TO LEAVE AND GO
AWAY FROM THAT PLACE, WHICH HE
DID AND NOW YOU ARE TELLING US
THAT THE RECORD CONCLUSIVELY
ESTABLISHES THAT THE THE BURIAL
SITE WAS ACTUALLY WITHOUT
CONTRADICTION, PRECISELY UNDER
WHERE THE TENT WOULD HAVE BEEN
AND COULD NOT HAVE BEEN SEEN BY
THE WITNESS, ARE YOU TELLING US
THAT THE RECORD CONCLUSIVELY
WITHOUT DISPUTE ESTABLISHES THAT
AS A MATTER OF ABSOLUTE FACT.

>> THAT THE BURIAL SITE --

>> WOULD BE UNDER THE TENT, NOT
OUTSIDE.

>> IT WOULD HAVE HAD TO HAVE
BEEN UNDER.

>> AND THAT IS --

>> THAT IS WHAT I BELIEVE IT
SHOWS, AND NOT ONLY THAT --

>> WOULD HAD TO HAVE BEEN YOUR
CONCLUSION, OR SOMEONE TESTIFIED
TO THAT?

>> IT WAS IN THE CLEARING AND
THERE WAS TESTIMONY TO SHOW IT
WAS IN THE CLEARING.

OF COURSE THE TENT WAS NO LONGER
THERE WHEN THEY FOUND THE BODY.

>> IT SEEMS TO ME THAT MAY --

YOU'VE GOT ISSUES THAT WERE THE
SUBJECT I'M SURE OF VIGOROUS
CROSS-EXAMINATION AND PERHAPS
EVEN SHOWING INCONSISTENCIES BUT
I THINK WE ARE LOOKING AT
WHETHER -- AND THE ISSUE THAT WE
ARE RAISING IS WHETHER THE
EVIDENCE IS INSUFFICIENT TO
SUPPORT A FINDING OF GUILTY OF
PREMEDITATED MURDER.

>> RIGHT.

>> IT SEEMS THAT THERE ARE SO

MANY CIRCUMSTANCES --

>> THERE ARE, BUT --

>> LET ME FINISH.

>> I'M SORRY, I'M SO SORRY.

>> THERE ARE SO MANY

CIRCUMSTANCES THAT POINT TO THIS

DEFENDANT AS THE MURDERER AND

HAVING MURDERED THIS PERSON --

VICTIM BECAUSE HE HAD A LARGE AT

OF MONEY, BECAUSE THEY HAD BEEN

TOGETHER, THIS NATURE OF THE WAY

HE WAS MURDERED, WAS THAT HE WAS

KNEELING -- EITHER KNEELING DOWN

OR ALREADY IN THE GRAVE, WHEN HE

WAS SHOT, AT A DOWNWARD ANGLE,

IN THAT THAT ALL SUPPORTS

PREMEDITATION OF MURDER.

AND SO, WE ARE TALKING ABOUT

WHETHER ONE PART IS NOT CREDIBLE

TET HE LEFT ALABAMA, WAS EARLIER

OR LATER, YOU KNOW, YOU ARE

BRINGING UP SOMETHING ABOUT THE

DIGGING, THAT IT MAY BE... BUT

ALL THAT YOU ARE DOING IS SAYING

THERE MAY BE HOLES IN THE

STATE'S CASE.

>> NO, NO, I'M NOT, WHAT I'M

SAYING IS, GO BACK TO THE

CIRCUMSTANTIAL EVIDENCE CASE,

AND SUSPICIOUS CIRCUMSTANCES ARE
NOT ENOUGH.

THAT EVIDENCE HAS TO BE
INCONSISTENT WITH THE THEORY OF
INNOCENCE AND HAS TO BE
INCONSISTENT.

>> WHAT IS THE THEORY OF
INNOCENCE.

>> SOMEBODY ELSE DID IT AND THAT
IS A --

>> SOMEBODY ELSE CAME TO THE
SAME PLACE WHERE MR. TWILEGAR
WAS, AND DUG UP -- DUG A HOLE
AND PUT MR. THOMAS IN IT.

>> THAT PROPERTY, THE PROPERTY
WAS NOT FENCED.

AND THAT PROPERTY --

>> DON'T WE ALSO HAVE ON TOP OF
THE FACT THAT HE'S THE MOST
LOGICAL PERSON, THAT DID DO THE
SHOOTING, HE IS WITHIN HOURS OF
WHEN THIS MURDER OCCURRED, HE
HAS LARGE AMOUNTS OF MONEY THAT
HE USES TO BUY CELL PHONES AND
-- AT 7-ELEVEN, \$600 WORTH, HE'S
SPENDING THOUSANDS OF DOLLARS.

>> I UNDERSTAND THAT.

I UNDERSTAND THAT.

BUT --

>> YOU MENTIONED THE FACT THAT
THE VICTIM WAS SHOT, WITH A
12-GAUGE SHOTGUN AND YOUR CLIENT
SUPPOSEDLY HAD BEGUN.

>> THAT WAS UNSECURED IN THE
TENTED AND ANYBODY COULD HAVE
WALKED.

THERE ARE A LOT OF -- A LOT OF
THINGS.

TO ADD UP BUT LOOK AT THE SMOLKA
CASE.

SMOLKA.

BUT, LOOK AT THAT, SUSPICION IS
NOT ENOUGH.

IT HAS TO BE CONTINUES DICK
TERRY AND THE TENT WAS --

HAD A ZIPPER, IT WAS UNCURED AND
HE LEFT THE SHOTGUN THERE AND AS

FAR AS THE MONEY IS CONCERNED,
IT WAS IN THE WRONG

DENOMINATIONS AND MY CLIENT WAS
SPENDING \$100 BILLS.

>> HIS THEORY IS SOMEONE CAME
AND STOLE HIS SHOTGUN AND --

>> NOBODY KNOWS WHAT SHOTGUN WAS
USED.

NOBODY KNOWS WHAT SHOTGUN WAS
USED, AND THERE AGAIN YOU HAVE

ALL OF THE CIRCUMSTANTIAL
EVIDENCE AND YOU WOULD HAVE TO
PYRAMID INFERENCES AND BELIEVE
THAT HIS SHOTGUN WAS USED.
YOU WOULD HAVE TO BELIEVE THAT
TWO OR THREE SECONDS DIGGING
MOTION WAS NOT HIM GOING TO THE
BATHROOM.

>> THAT IS NOT PYRAMIDING
INFERENCES, THOSE ARE SEPARATE
FACTS THAT START TO SHOW
CIRCUMSTANCES OF GUILT.
YOU DON'T USE THE PYRAMIDING OF
INFERENCES WHEN YOU LOOK AT,
YES, HE HAD MONEY, AFTER THE
MURDER, BUT, NOT BEFORE THE
MURDER.

THAT --

>> RIGHT BUT IT WASN'T PROVEN
THAT IT WAS HIS MONEY, MY CLIENT
TESTIFIED THAT HE WAS A DRUG
DEALER, HE WAS WANTED FUGITIVE
OF THE STATE OF MISSOURI.
HE WAS LIVING UNDER AN ASSUMED
NAME, VINNIE AND DEALING DRUGS.
HE LEFT -- KEPT A LOW PROFILE
AND DIDN'T SPEND HIS MONEY, WHEN
HE LEFT --

LEFT HE STARTED SPENDING MONEY
AND I MEAN, HE HAD -- HE
TESTIFIED HE HAD MONEY FROM DRUG
DEALING AND HIS MOTHER HAD
MONEY.

AND THERE WASN'T, SUPPOSEDLY
MR. THOMAS HAD \$25,000, AND
THERE WAS NOTHING LIKE THAT
FOUND.

THE MOST THAT YOU CAN SAY, AND I
MEAN, THERE ARE EVIDENCE
PROBLEMS --

>> WELL, YOU SAY THERE WAS
NOTHING LIKE THAT FOUND.

BUT THIS WAS MUCH LATER AFTER
THE MURDER, THAT MR. TWILEGAR
WAS ACTUALLY ARRESTED AND SO,
WHAT WE HAVE IS A TRAIL OF
RECEIPTS, THAT INDICATE HE WAS
SPENDING A LOT OF MONEY AND WE
MAY NOT HAVE FOUND \$25,000 BUT
THERE ARE LOTS OF RECEIPTS
SHOWING SHE SPENT THOUSANDS OF
DOLLARS AND I'M JUST... YOU
STILL HAVE NOT TOLD US BEYOND
SAYING SOMEBODY ELSE COULD HAVE
DONE THIS, WHAT THE REAL
HYPOTHESIS OF INNOCENCE IS IN
THIS EVIDENCE THAT IS NOT

SUPPORTED INTO.

>> A DEFENDANT DOES NOT HAVE TO
TELL YOU, I DIDN'T DO IT, JOE
SMITH DID IT.

THAT IS NOT HOW THAT WORKS.

THE DEFENDANT IS IN THE WORST
POSITION IN THE WORLD, IF HE IS
IN A POSITION, AND SAYS I DIDN'T
DO IT AND I DON'T KNOW WHO DID
IT.

I HAVE NO CLUE WHO DID IT.

>> BUT IF A DEFENDANT CAN SIMPLY
SAY SOMEONE ELSE MUST HAVE DON'T
AND THAT WOULD BE ENOUGH TO
PROVIDE A REASONABLE HYPOTHESIS
OF INNOCENCE --

>> IT IS.

>> WELL --

>> ONCE HE PROVIDES FACTS.

AND MY CLIENT DID TESTIFY.

MY CLIENT DID TESTIFY.

SO, YES, HE DID PROVIDE FACTS

AND NOT ONLY THAT, ONCE HIS

REASONABLE HYPOTHESIS OF

INNOCENCE IS "I DIDN'T DO IT"

THE STATE HAS THE BURDEN OF

PROOF ALWAYS, IT DOESN'T SHIFT

TO HIM, BECAUSE HE SAYS I DIDN'T

DO IT.

IT NEVER DOES.

>> I'M NOT SAYING THAT HE HAS TO
GO AND DEMONSTRATE THAT JOE BLOW
DID THIS.

WHAT WE ARE SAYING --

>> RIGHT.

>> -- IS THAT YOU TAKE EACH OF
THESE PIECES OF EVIDENCE, YOU
PUT THEM TOGETHER, THEY POINT TO
MR. TWILEGAR AS THE PERSON WHO
COMMITTED THE MURDER.

NOW, WHAT EVIDENCE IS THERE TO

--

>> THERE WAS A SUSPICION AND
I'LL SAY AGAIN THE STATE HAS A
BURDEN.

THERE WAS A SUSPICION, YES.

BUT THE STATE STILL HAS THE
BURDEN AND WITH REGARD TO THE
MONEY, THERE WAS ABSOLUTELY NO
EVIDENCE THAT MR. TWILEGAR KNEW
THAT MR. THOMAS HAD MONEY, WHY
WOULD MR. THOMAS TELL SOMEBODY
WHO WAS A HANDY MAN WORKING FOR
HIM THAT HE HAD TAKEN OUT
\$25,000 AND WHY IS HE TAKING IT
OUT IN \$20 BILLS, ANYWAYS AND MY
CLIENT IS -- THERE IS NO

EVIDENCE THAT MY CLIENT WENT TO
ANY BANK OR ANY KIND OF
COMMERCIAL OUTLET AND CHANGED
\$20 BILLS INTO \$100 BILLS
BECAUSE HE WAS SPENDING \$100
BILLS AND THERE ARE A LOT OF
THINGS THAT YOU HAVE TO ASSUME,
TO COME UP WITH THE STATE'S
THEORY.

YOU HAVE TO ASSUME THAT THAT
PERSON WAS KILLED ON THAT
PROPERTY, AND -- THE MEDICAL
EXAMINER --

>> HOLD ON A MINUTE.

LET ME ASK YOU.

WAIT, YOU ARE NOW CONTESTING
THAT WHETHER MR. THOMAS WAS SHOT
IN THE GRAVE AND BURIED ALIVE.

>> SURE.

YES.

EVIDENCE IS NOT INCONSISTENT
WITH HIS BEING KILLED ELSEWHERE
AND THE CAR WAS DRAGGED OUT TO
THE MIDDLE OF LEE HIGH ACRES AND
WAS BURNED.

THERE WAS -- THE CAR, THE SEAT
WAS PUSHED BACK, AND THE FIRE
MARSHAL, WHOEVER DID THE

INVESTIGATION SAID THE SEAT WAS
PUSHED BACK IN A WAY TO
ACCUMULATE A LARGER MAN AND MY
CLIENT IS SOMEWHERE LIKE 5 FEET
4".

OKAY?

AND NOT ONLY THAT, THERE WERE A
RING IN THE CAR THAT WAS NOT
IDENTIFIED AND A GUN IN THE CAR
THAT WAS NOT IDENTIFIED AND WE
DON'T KNOW WHO THESE BELONGED TO
AND MY CLIENT WOULD HAVE HAD TO
HAVE SHOT MR. THOMAS, AND BURIED
HIM, AND GOT ALL THE WAY OUT TO
LEHI ACRES AND HOW WILL HE GET
BACK FROM THE MIDDLE OF NOWHERE?
HOW WILL HE GET BACK?

THE STATE'S THEORY DOESN'T SAY
THERE IS ANY ACCOMPLICE TO ANY
OF THIS, HOW WILL HE GET BACK TO
HIS NIECE'S HOUSE SOMETIME
BEFORE EVENING, SHE SAYS
SOMETIME BEFORE EVENING AND THE
STATE HAS THE BURDEN OF PROOF
AND WHY DIDN'T THIS STATE, WHEN
THE WITNESS SAYS, WHAT TIME
BEFORE EVENING, SAY, WHAT DO YOU
MEAN, 7:00, 8:00, 9:00,
MIDNIGHT, WHAT DO YOU MEAN BY

THAT, SOMETIME BEFORE EVENING,
TO A REASONABLE PERSON, MEANS
HE'S ASSUMING MORNING,
AFTERNOON, OR EVENING.

AND SOMETIME MORE TOWARDS
EVENING.

THAT IMPLIES SOMETIME BETWEEN
AFTERNOON AND EVENING AND THERE
WAS NOTHING TO SHOW MY CLIENT
WAS SWEATY OR DIRTY WHEN HE
ARRIVED THERE AND IF HE KILLED
SOMEBODY HE WASN'T COVERED WITH
BLOOD AND NO EVIDENCE THAT HE
HAD SHOWERED AND HOW DID HE GET
FROM LEHI ACRES ALL THE WAY OVER
THERE?

I MEAN, IF YOU LOOK AT THE
STATE'S THEORY OF THE CASE,
OKAY.

YOU SAY, WELL, DEFINITELY THE --
MR. THOMAS WAS KILLED ON THE
PROPERTY AND THE SCENE WAS
CONSISTENT WITH, IN THE GRAVE
AND WHY WASN'T IT TESTED.

>> YOU ARE DOING A VERY GOOD JOB
OF MAKING JURY ARGUMENTS, AND
MAYBE, THE DEFENSE LAWYER EITHER
MADE THESE ARGUMENTS OR DIDN'T

MAKE IT BUT I THINK YOU HAVE
SPENT -- I THINK THAT WE
UNDERSTAND THE ARGUMENT, ARE YOU
GOING TO RAISE -- ADDRESS ANY
OTHER POINTS IN THE TIME YOU
HAVE REMAINING.

>> WELL, I WILL TELL YOU, I
THINK EVERYTHING -- THE BRIEFS
GIVEN 100 PAGES I WAS ABLE TO
FIT JUST ABOUT EVERYTHING I
WANTED TO FIT INTO IT.

AND THE REPLY BRIEF, I THINK
HITS EVERYTHING.

BUT, I WOULD REALLY LIKE YOU TO
LOOK AT SOME OF THIS THE
EVIDENTIARY ISSUES, LIKE THE
RECEIPTS AND THINGS, BECAUSE I
JUST -- IN FACT LAST NIGHT I
TOTALLED UP THE RECEIPTS FROM
WHICH THERE WAS NO FOUNDATION
WHATSOEVER, IN OTHER WORDS, NO
STORE CLERK OR NOBODY THAT WAS
BROUGHT IN, AND IT WAS SOMEWHERE
AROUND \$1345 OR SO, AND --

>> 7-ELEVEN.

>> THE 7-ELEVEN.

>> AND DIDN'T THE GIRLFRIEND
REALLY VERIFY THAT HE WENT --
AND A -- I AGREE THERE IS NIGHT

FOUNDATION ON THAT.

WASN'T SHE WITH HIM.

>> THE NIECE?

SHE HAD NO IDEA --

>> WHEN HE BOUGHT SEVERAL CELL
PHONES SHE KNEW WHAT HE BOUGHT.

>> RIGHT BUT HAD NO CLUE HOW
MUCH THEY WERE OR --

>> WHAT DID SHE TESTIFY TO, THAT
HE ACTUALLY --

>> BOUGHT CELL PHONES FOR HER,
HIS MOTHER, AND HIMSELF I THINK.

AT THIS 7-ELEVEN AND PICKED UP
DOG FOOD AND SOMETHING LIKE
THAT.

>> AND WHAT IS THIS OTHER
RECEIPT THERE IS NO FOUNDATION
FOR, SAM'S CLUBS.

>> SAM'S CLUB, 400-SOMETHING
DOLLARS AND A BUNCH FROM -- THEY
USED ALL OF THESE RECEIPTS TO
MAKE A TIMELINE AND WHAT
HAPPENED WITH THE RECEIPTS WAS,
THERE WAS AN OBJECTION TO THE
FOUNDATION, AT THE TIME THE
DEPUTY, THE MAN WHO FOUND THE
DEPUTY -- THE DEPUTY WHO TOOK
THE STUFF OFF OF THE CAMPING

THING AND THERE WAS AN OBJECTION AS TO LACK OF FOUNDATION AT THAT TIME AND THE JUDGE LET THE DEPUTY READ ALL OF THESE INTO EVIDENCE, AND THE CAT WAS ALREADY OUT OF THE BAG AND THE DAMAGE DONE AND SO AS FAR AS, YOU KNOW, AT THAT POINT, THERE WAS A PROPER OBJECTION TO THE LACK OF FOUNDATION.

AND, YOU KNOW, \$1345, THAT IS A LOT OF MONEY.

AND THEY DID USE THESE RECEIPTS TO MAKE A TIMELINE.

AND TO SHOW WHERE MY CLIENT WAS, WHERE AND WHEN, AND, YOU KNOW, IT -- FINDINGS -- FINDING

CAMPING EQUIPMENT DOESN'T SHOW WHO BOUGHT IT OR WHATEVER AND DOESN'T SHOW -- I MEAN, THERE ARE A LOT OF THINGS AND I WANT TO STRESS THAT I KNOW THAT THIS IS TROUBLESOME.

I KNOW THAT IT IS.

BUT, WITH A STANDARD OF REVIEW, SUSPICION IS NOT ENOUGH.

IT REALLY ISN'T.

AND IF YOU ARE GOING TO SAY THAT YOU CAN TAKE ONE TANGENTIALLY

FACT OR ONE OTHER FACT AND JUST
TAKE THE WHOLE CLIENT'S CASE AND
JUST -- DEFENDANT'S CASE AND
SAY, YOU CAN DISBELIEVE HIM ON
EVERY, SINGLE POINT, BECAUSE,
THERE IS A -- THE TERRA NOVA
CASE, 2ND DISTRICT THAT SAYS
THAT THAT IS NOT TRUE AND
DOESN'T ALL FALL.

AND ANYWAY...

>> YOU ARE INTO YOUR REBUTTAL IF
YOU WANT TO SAVE SOME TIME.

>> YES, I WOULD LIKE TO.

>> MAY IT PLEASE THE COURT,
CANDACE SEBELLA REPRESENTING THE
STATE OF FLORIDA AND FIRST I
WOULD LIKE TO POINT THE COURT TO
THE PHOTOGRAPHS IN THE CASE AND
IF YOU TAKE ONE LOOK AT THE HOLE
THE VICTIM WAS FOUND IN YOU WILL
SEE THERE WAS SUBSTANTIAL
EVIDENCE OF PREMEDITATION,
BECAUSE AS THE TESTIMONY WAS,
THEY HAD TO DIG DOWN AT LEAST
THREE FEET BEFORE THEY GOT TO
THE BODY.

>> WOULD YOU CLARIFY WHETHER IT
WAS ADJACENT OR UNDERNEATH THE

TENT.

>> MR. HARTMAN TESTIFIED HE SAW HIM DIGGING RIGHT BEHIND THE TENT AND THE EVIDENCE WAS THAT THERE WAS -- THE TENTS TOOK UP MOST OF THE CLEARING BUT THAT THERE WAS SOME SPACE THERE.

FURTHERMORE, THE EVIDENCE --

>> WHAT WOULD BE THE THEORY, HE STARTED DIGGING BEHIND THE TENT, AND THEN AT SOME POINT AFTER HE SAW HIM HE TOOK THE TENT DOWN AND CONTINUED THE DIGGING, IS THAT THE STATE'S THEORY.

>> THAT IS ENTIRELY POSSIBLE BUT, YOUR HONOR --

>> ALL --

>> THE TESTIMONY WAS THERE WAS A CLEARING IN FRONT OF THE TEN AND WHERE IT WAS, IN REGARDS TO WHERE THE TENT WAS, I DO NOT KNOW.

WHAT I DO KNOW IS SPENCER HARTMAN SAID, I SAW HIM DIGGING IN THE CLEAR SPACES BEHIND THE TENT.

CLEARLY THERE WAS A SPACE THERE.

AND WHETHER HE HAD TO

DISASSEMBLE THE TENT BECAUSE

THIS NEXT DAY, REMEMBER, SPENCER HARTMAN COMES BACK THE TENT HAS BEEN DISASSEMBLED AND PUT THEN -- DISASSEMBLED AND PUT IN THE INCINERATOR AND BURNED.

FURTHERMORE, I WANT TO MENTION THE RECEIPTS, SHE MAKES A POINT OF THAT, AND THE RESIDENTS COME TON PLAY AND THE -- IN ISSUE 3 AND ISSUE 7.

>> I MUST SAY WHEN WE LOOK THE AT THESE CASES AND THE STATE AND DEATH PENALTY CASES, THESE ARE GOING TO GO ON FOREVER, I'M SORT OF SURPRISED THAT THE STATE TO TAKE RISK OF INTRODUCING THESE RECEIPTS THAT ARE VERY INDICATIVE NOT ONLY OF THE AMOUNT BUT THE TIMELINE, WHEN THROUGH A DEPUTY THAT COULD NOT ESTABLISH THE FOUNDATION.

SO, PLEASE EXPLAIN THAT AND PLAIN WHAT YOU DID TO CURE THAT ERROR.

>> I WOULD HAVE LIKED TO HAVE HAD A WITNESS ALSO BUT THE FACT IS, YOU KNOW, IT IS JUST --

>> I APPRECIATE YOUR CANDOR ON

IT, BUT, WE HAVE THESE CASES,
THEY ARE SERIOUS CASES SUCH AS,
IT IS TERRIBLE FOR EVERYBODY AND
VICTIMS AND WE WANT TO MAKE SURE
THAT THIS IS -- WORDS GET
THROUGH, THAT EVERY I HAS TO BE
DOTTED IN THESE CASES.

>> IN THE PROSECUTOR'S DEFENSE,
YOU WERE -- YOUR HONOR, WHEN ALL
OF THE EVIDENCE IN TENNESSEE WAS
FOUND AND WAS INTRODUCED, HIS
TENTS AND EVERYTHING, WERE
INTRODUCED INTO EVIDENCE, THE
COURT FOUND SINCE THESE RECEIPTS
WERE IN HIS POSSESSION, THEY DID
NOT NEED TO BE AUTHENTICATED.
NEVERTHELESS -- AUTHENTICATED
AND THE STATE BROUGHT IN
WITNESSES TO AUTHENTICATE, A
NUMBER OF WITNESSES AND I WANT
TO MAKE A POINTED AND ESPECIALLY
SHE SAID WE USE IT AS A TIMELINE
AND THE ONLY RECEIPT THAT WAS
RELEVANT OR ESSENTIAL TO A
TIMELINE IS THE 7-ELEVEN
WAL-MART RECEIPT AND THAT WAS
TESTIFIED TO BY JENNIFER
MORRISON, WHO WAS HIS NIECE THAT
HE CAME TO HER HOUSE THAT NIGHT

AND THEY WENT SHOPPING AND BOUGHT THE CELL PHONES AND SUPPLIES, AND THEY CAME BACK AND SHE WENT TO BED AND WHEN SHE WOKE UP THE NEXT MORNING HE WAS GONE AND HE ALSO TESTIFIED THAT HE WENT TO JENNIFER MORRISON'S AND THEY WENT SHOPPING AROUND MIDNIGHT.

BOUGHT THESE SUPPLIES AND BOUGHT THESE PHONES, AND THAT HE THEN WENT BACK TO THE PROPERTY, AND HE LEFT SOMETIME EARLY THAT MORNING.

FOR TENNESSEE.

AND EVERYTHING THAT IS IN 7-ELEVEN RECEIVED WAS SUBSTANTIALLY TESTIFIED TO BY JENNIFER MORRISON AND THE DEFENDANTS.

>> YOU ARE SAYING IT IS HARMLESS ERROR.

>> IF IT WAS ERROR IT IS HARMLESS, ABSOLUTELY.

>> AND... TESTIFYING ABOUT ANY OF THE OTHER RECEIPTS.

>> ABSOLUTELY, YOUR HONOR.

>> SOMEONE FROM WAL-MART.

>> THERE WERE TWO PEOPLE FROM
WAL-MART, WHO TESTIFIED FOR
RECEIPTS AND ONE OF THE CLERKS
FROM TENNESSEE, SHE REMEMBERED
HIM.

SHE TESTIFIED ABOUT THEIR
CONVERSATION, SHE IDENTIFIED
HIM, SHE TESTIFIED AS TO WHAT HE
BOUGHT AND SHE SAID HE GAVE HER
THREE CRISP BRAND NEW \$100
BILLS.

>> WERE THESE RECEIPTS THAT WERE
IN THE POSSESSION DEFENDANT?
ISN'T THE RECORD [INAUDIBLE].

>> THEY WERE IN HIS BRIEFCASE,
FOUND AT THE CAMP SITE IN
TENNESSEE.

>> I UNDERSTAND THAT.

BUT WERE THEY BUSINESS RECORDS
KEPT BY WAL-MART AND THE OTHER
BUSINESSES THAT...

>> THEY WERE NOT THEIR BUSINESS
RECORDS.

THEY WERE RECEIPTS THEY GAVE TO
THE CUSTOMER, SO, BASICALLY,
THEY ARE -- THE DEFENDANT'S
BUSINESS RECORDS.

>> IF THEY ARE NOT THEIR
BUSINESS RECORDS I'M HAVING

TROUBLE SEEING HOW IT CAME IN
UNDER THE BUSINESS RECORDS
EXCEPTION.

BECAUSE, YOU KNOW, SOMEONE
DOESN'T AUTHENTICATE SOMEBODY
ELSE'S RECORDS.

THERE MIGHT BE A WAY TO DO IT
WHERE YOU MATCH UP, A RECORD
THAT WAL-MART HAD, WITH
SOMETHING THAT HE HAD BUT THAT
IS NOT WHAT WAS DONE.

>> THE WAL-MART MANAGER WAS ABLE
TO COME IN AND IDENTIFY IT AS,
THIS IS THE WAL-MART RECEIPT,
THIS IS WHAT THIS CODE MEANS AND
THAT CODE MEANS AND THESE
THEY'RE RECEIPTS WE ISSUE AND
WHEN THERE WAS A QUESTION OF
WHETHER THEY WERE FALSIFIED
THERE WAS NO CHALLENGE AS TO
THAT.

>> MY QUESTION IS, IS IF THEY
ARE NOT AT LEAST ARGUABLY UNDER
THE STATUTE, DOES THE -- THE
BUSINESS RECORDS HAVE TO BE
AUTHENTICATED BY THE PERSON WHO
KEEPS THE BUSINESS RECORDS AND
I'M JUST WONDERING WHETHER IT

FALLS INTO THAT CATEGORY.

>> CERTAINLY, WAL-MART.

>> LET ME SAY CANDIDLY IT IS

EVIDENCE THAT SHOULD COME IN, IF

IT IS PRESENTED PROPERLY BUT I'M

HAVING TROUBLE SEEING HOW IT WAS

IN THE BUSINESS RECORDS

EXCEPTION.

>> THE RULE SIMPLY REQUIRES TO

BE A BUSINESS RECORD YOU HAVE TO

HAVE SOMEBODY COME IN AND

TESTIFY THESE ARE THE TYPE OF

RECORDS THAT WE NORMALLY KEEP

AND THIS IS HOW WE KEEP THEM AND

CLEARLY WAL-MART WILL HAVE A

COPY OF THIS RECEIPT THEY WOULD

NORMALLY KEEP THEM AND HE WAS

ABLE TO IDENTIFY IT AS SAME.

AND SIMILARLY, WITH THE NAPA

PERSON, WHICH THEY ARE NOT

CHALLENGING THE INTRODUCTION OF

THAT, AND ALSO --

I'M SORRY, I FORGET, SEVERAL

OTHER RECEIPTS THEY ARE NOT

CHALLENGING.

>> BUT, YOU KNOW, IT STRIKES ME

-- AND I HAVE... THE

SIGNIFICANCE IS THAT THEY WERE

FOUND IN HIS POSSESSION.

AND THEN THE QUESTION OF THE RELEVANCE IS, AS OPPOSED TO IF THEY ARE, YOU KNOW, JUST SOME PAPERS, IS THAT MAYBE THEY DON'T COME IN HIS BUSINESS RECORDS BUT THE WAL-MART EMPLOYEES ARE ABLE TO SHOW THESE ARE IN FACT WITH THE RECEIPTS FROM THEIR STORES, AT THE TIME AND I HAVE TO LOOK BACK AT THE RECORD BUT IT WAS SORT OF TO TIE UP THESE DOCUMENTS FOUND IN HIS POSSESSION AND IF WE WRITE SOMETHING WE NEED TO BE SURE WE GIVE GUIDANCE FOR THE FUTURE.

>> EXACTLY.

THEY WERE INTRODUCED CLEARLY TO SHOW THAT HE HAD MONEY HE DID NOT HAVE BEFORE AND BROUGHT IN THE PEOPLE FROM WAL-MART, TO VERIFY WHAT WERE THE RECEIPTS AND -- WHAT THE RECEIVE SAID AND THE CODES ON IT IN ORDER TO AUTHENTICATE THEM BUT REALLY THE BOTTOM LINE IS WHAT THEY WERE DOING -- WHY THEY WERE DONE IS TO PROVE THAT HE HAD MONEY HE DIDN'T HAVE BEFORE AND THE FACT

THAT HE HAD PLENTY OF TESTIMONY
OUTSIDE OF THESE RECEIPTS, THAT
HE HAD ITEMS THAT HE DID NOT
POSSESS WHEN HE WAS IN FORT
MYERS AND WHEN HE WAS IN FORT
MYERS, THE TESTIMONY IS, HE
LIVED A MEAGER EXISTENCE, THAT
HE HAD THIS TENT, THAT HIS
MOTHER WOULD BRING HIM
CIGARETTES IN HIS DAILY BUSINESS
AND HE MADE HIS LIVING LIVING AS
A HANDY MAN WHICH HE BASICALLY
DID IN EXCHANGE FOR PLACES TO
LIVE, AND SUSTENANCE BUT
SUDDENLY, WHEN HE GETS TO
TENNESSEE, AND WHEN -- WE HAVE
TESTIMONY FROM THE CAMP HOSE AND
ALSO FROM DEPUTY HOT HE HAD
GENERATORS, REFRIGERATORS,
SCANNERS, THREE TENTS, AND HAS A
CAR NOW ALL OF A SUDDEN AND
SUDDENLY THERE ARE ITEMS IN HIS
POSSESSION HE CLEARLY DID NOT
HAVE WEEKS EARLIER AT THE TIME
OF THE MURDER.

>> COULD YOU EXPLAIN THE
\$25,000, WHAT -- WHAT DID THE
EVIDENCE SHOW AS TO WHY
MR. THOMAS WITHDREW \$25,000, IN

\$20 BILLS?

AND AGAIN, I DON'T KNOW -- I
MEAN, THE -- I DON'T KNOW IF IT
WAS RAISED OFFICIALLY THE AT
TRIAL, WHETHER THESE WERE
ACTUALLY GOING TO GET INVOLVED
IN A DRUG DEAL, VERSUS SOMETHING
LEGITIMATE BUT THAT SEEMS LIKE
THAT IS AN ODD THING, TO BE
DOING, AND TO BE DOING WITH
SOMEBODY THAT YOU REALLY DON'T
KNOW VERY WELL.

THAT IS, HAVING WITHDRAWN THAT
KIND OF MONEY AND IN \$20 BILLS.

>> YOUR HONOR, WHAT THE VICTIM
TOLD THIS TELLER WAS THAT HE WAS
PLANNING ON GOING TO AN AUCTION.
AND PURCHASING PROPERTY AT AN
AUCTION.

WHEN HE GOT TO FORT MYERS --

>> AND THE TELLER TESTIFIED HE
ASKED FOR IT IN \$20.

>> AND THE TELLER TESTIFIED HE
ASKED FOR IT IN \$20 BILLS AND
WHEN HE GOT TO FORT MYERS HE
TOLD VALERIE... HE SAID THIS IS
THE LAST DAY HE'S SEEN ALIVE --
7:00, 7:30 AND HE'S GOING TO BUY

A TRUCK FOR THE DEFENDANT TO
TAKE TO ALABAMA TO USE IN
ALABAMA WHILE HE'S WORKING ON
THE PROPERTY.

>> AND THE -- THE MONEY IN
ALABAMA, IS THERE ANY EVIDENCE
HE WENT TO AN AUCTION UP THERE.

>> THERE IS NO EVIDENCE AS TO
THAT.

>> AND COMES BACK WITH THE MONEY

--

>> HE COMES BACK AND VALERIE
TESTIFIED THAT SHE SAW HIS
WALLET AND HE HAD A LARGER THAN
NORMAL SUM OF MONEY IN THE
WALLET AND DID NOT DO THE
DENOMINATIONS.

>> AND HE TOLD HER HE WAS GOING
TO USE TO IT BUY YOU A TRUCK FOR
THE DEFENDANT.

>> HE SAID HE WAS GOING TO GET
THE DEFENDANT AND THEY WERE
GOING TO GO TOGETHER TO BUY A
TRUCK FOR THE DEFENDANT TO USE
IN ALABAMA.

TO WORK ON THE PROPERTY.

>> I GUESS THAT WAS -- SOUNDS
LIKE THERE IS SOMETHING OFF.

>> THE TESTIMONY IS THE VICTIM

BOUGHT AND SOLD A LOT OF
VEHICLES, AND THERE WAS
SOMETHING THAT HE DID, HE
COLLECTED VEHICLES.

AND HE BOUGHT AND SOLD THEM.

SO, THAT WAS CONSISTENT WITH THE
TESTIMONY AS TO WHAT HE DID.

AND ALSO, THE TESTIMONY IS THAT
HE ALSO OWNED A LOT OF PROPERTY,

SO, THAT HIS STATEMENT TO THE
TELLER THAT HE WAS GOING TO

PURCHASE PROPERTY, IS ALSO

CONSISTENT WITH HIS NORMAL

ACTIONS AND BEYOND THAT ANYTHING

IS IS SPECULATION AND THERE IS

NO EVIDENCE THEY HAD ANY OTHER

PLANS.

>> THIS RECORD DEMONSTRATES

MR. TWILEGAR WAS WORKING FOR

HIM, IN FORT MYERS AND WHEN HE

DECIDES HE NEEDS TO DO SOME WORK

ON SOME PROPERTY IN ALABAMA, HE

TAKES MR. TWILEGAR WITH HIM, TO

WORK ON THE PROPERTY.

>> YES, HE DOES.

>> IN ALABAMA.

>> AND YES.

AND THE TESTIMONY IS THEY CAME

BACK TOGETHER ON THE 6TH IN THE
DODGE NEON HE RENTED IN ALABAMA.

>> AND WHEN IS THE LAST TIME
THEY ARE SEEN TOGETHER IN
FLORIDA.

>> ON THE 6TH.

>> WHO TESTIFIED TO THAT.

>> VALERIE BISNETT.

>> THOMAS'S GIRLFRIEND.

>> YES.

>> AND, WHAT TIME OF DAY WAS
THAT.

>> ABOUT 11:00 P.M. AT NIGHT.
ON THE 6TH.

>> I THOUGHT, HE'S AT THAT
POINT, THAT IS WHEN HE -- AND
THOMAS AT THAT POINT, IS
OBTAINING A MOTEL ROOM KEY.

>> HE HAS HIM RENT A MOTEL ROOM
AND CAME BY TO PICK UP THE KEY
AND IS WITH THE DEFENDANT AT
THAT TIME.

>> LET ME ASK YOU ABOUT A QUICK
-- ONE OF THE ISSUES HERE WAS
THE SEARCH OF THE ITEMS THAT
WERE TAKEN FROM THE CAMP SITE IN
TENNESSEE.

>> RIGHT.

>> NOW, THE POLICE OFFICER CAME

TO THE CAMP SITE, AND TALKED TO
THE PEOPLE RUNNING THE CAMP
SITE?

I'M TRYING TO GET TO HOW THE
POLICE AND THIS COUPLE GOT TO
THE PLACE WHERE MR. TWILEGAR'S

--

>> WHAT HAPPENED, THE SEQUENCE
OF EVENTS IS THAT MR. TWILEGAR
WAS AT THE CAMP SITE AND OWNED A
WHITED PIT BULL AND HAD THE
PITTED BULL TIED UP AT THE CAMP
SITE AND HAD SIGNS, BEWARE OF
THE SOMETHING, AND THERE WERE
SEVERAL OTHER CAMPERS AROUND WHO
WERE NERVOUS ABOUT THIS DOG, AND
SO THE DETECTIVES -- THE DEPUTY
CAME AND TALKED TO HIM ABOUT THE
DOG.

AND HE ASKED HIM FOR HIS NAME,
AND HE RAN THAT THROUGH NCIC AND
DIDN'T COME BACK WITH ANYTHING
AND ALSO BECAUSE HE WAS
CONCERNED, HE ALSO ASKED IF HE
HAD A PICTURE I.D. AND HE SAID I
DON'T HAVE ONE ON ME BUT I CAN
GET YOU WITHIN AND AT THAT
POINT, THE DEFENDANT WAS USING

THIS NAME BRYAN WAGNER.

SO, HE TELLS -- MAKES A PHONE

CALL AND TELLS HIM I CAN HAVE IT

HERE IN 30 MINUTES, AND THE

DEPUTY SAID OKAY.

I'LL COME BACK IN 30 MINUTES AND

GET IT AND WHEN HE CAME BACK,

THE DEFENDANT WAS SEEN, AND HIS

MOTHER CAME AND PICKED HIM UP

AND THE DOG AND THEY LEFT AND

WHEN HE CAME BACK HE WAS GONE

AND THAT IS WHEN HE WALKED

AROUND AND SAW THE REFRIGERATOR

AND THE GENERATOR AND THE

SCANNERS, AND ONE OF THIS TENTS

WAS JUST A NETTING TENT AND YOU

COULD SEE INTO, AND THEN HE

LEFT.

AND SUBSEQUENTLY, WHEN WE READS

SEE -- REEDS SEE ANOTHER CAR

THEY DIDN'T RECOGNIZE COME INTO

THE CAMP SITE AND GO TO THE

DEFENDANT'S CAMP SITE AND DRIVE

BACK TO CHECK ON IT AND WHEN

THEY FLASH THEIR LIGHTS ON IT,

IT IS LOADED UP WITH STUFF, AND

MR. TWILEGAR'S CATCH SITE IS

RAVAGED AND STUFF IS THROWN IN

THE STREET AND BEDDING STREWN

AROUND THE CAMP SITE.

>> AND THERE WAS NO INDICATION
IS MR. TWILEGAR.

>> NO INDICATION IT IS HIM AND

--

>> WHAT I'M TRYING TO GET TO IS
WHY THIS POLICE WERE THERE AT
THAT POINT.

SO, THE REEDS THEN CALLED THE
POLICE AND SAID, THERE IS A --
SOME BURGLARY POSSIBLY --

>> EXACTLY, WHAT HAPPENED IS THE
CAR TAKES OFF AND THEY -- THEY
GET THE TAG NUMBER AND CALL THE
POLICE, AND THE DEPUTY COMES
OUT, AND HE TESTIFIES WHEN I GOT
THERE, THERE WAS STUFF STREWN IN
THE MAIN ROAD AND THE CATCH SITE
WAS RAVAGED AND OBVIOUSLY HAD
BEEN BURGLARIZED AND IT WAS OPEN
AND POURING DOWN RAIN, AND SO WE
HAD THE DISCUSSION ABOUT WHAT TO
DO AND DIDN'T KNOW IF IT WAS A
HOSTAGE SITUATION, AND IF IT WAS
A THEFT, EXACTLY WHAT HAD
HAPPENED.

AND SO IN ORDER TO MAINTAIN THE
STATUS QUO, THE REEDS SAID WE

HAVE NO PLACE TO STORE THIS
STUFF AND HE SAID, I'LL JUST
TAKE IT INTO CUSTODY AND WHEN HE
COMES BACK, TELL HIM I HAVE HIS
STUFF AND HE'S MORE THAN WELCOME
TO IT.

AND TOOK IT AND HELD IT FOR A
FEW DAYS AND WHEN THE DEFENDANT
NEVER CAME BACK TO CLAIM IT HE
CHECKED THROUGH THIS BRIEFCASE
TO SEE IF HE COULD FIND
IDENTIFICATIONS BECAUSE HE
DIDN'T HAVE ANY ADDRESS FROM THE
BRYAN WAGNER NAME, AND TO SEE IF
WE COULD LOCATE THE DEFENDANT.
AND HE WAS NOT ABLE TO LOCATE
THE DEFENDANT.

>> COULD YOU ADDRESS COUNSEL'S
COMMENTS WHEN SHE WAS TALK ABOUT
THAT IT COULDN'T HAVE BEEN HIM
BECAUSE THERE WAS A VEHICLE THAT
WENT OUT TO THE MIDDLE OF TO
WHERE AND HAD NO WAY TO GET
BACK.

>> I HEARD HER MAKE THAT COMMENT
AND I DIDN'T UNDERSTAND THE
COMMENT.

IF SHE'S SAYING, HE HAD A WAY TO
GET TO THE MIRAMAR HOUSE, THE

DEFENDANT DROPPED HIM OFF AND
THAT IS WHERE HE LIVED AND AFTER
HE KILLED THE VICTIM HE HAD THE
VICTIM'S AUTOMOBILE.

SO, I WASN'T REALLY CLEAR WHAT
POINT SHE WAS --

>> I THINK SHE WAS SAYING THE
VEHICLE WAS TAKEN AND DESTROYED.
AND IT WAS AT A LOCATION THAT
WAS DISTANT FROM WHERE THE
DEFENDANT WAS AND COULDN'T GET
BACK TO IT.

THAT IS THE ARGUMENT.

>> THERE WAS NO EVIDENCE
PRESENTED AS TO WHO TOOK THE
VEHICLE OUT THERE OR WHO
ASSISTED IN DOING IT OR HOW THAT
WAS DONE.

>> I THINK HER ARGUMENT IS,
THERE IS NO EVIDENCE THAT ANYONE
ELSE IS INVOLVED AND SOMEHOW IS
SUPPOSEDLY TRACED BACK TO
WHOEVER DID THE KILLING, THAT
WAS THE ARGUMENT.

SO...

>> I THINK, CONTRARY, THERE IS A
LOT OF SUSPICION A LOT OF PEOPLE
WERE INVOLVED BUT THERE WAS NO

EVIDENCE, ABSOLUTELY.

>> AND THE RECORDS...

[INAUDIBLE].

>> YOUR HONOR, I KNOW IT DOES
AND SEEMS TO KNEE LIKE THERE WAS
13 MILES MINE IN -- IN MY MEMORY
BUT I'M TOTALLY GUESSING AT THAT
POINT.

>> TO MAKE SURE I --

MR. THOMAS'S VEHICLE WAS FOUND
OUT THERE.

>> IT WAS THIS DODGE NEON THAT
HE HAD RENTED THAT WAS FOUND AND
HAD BEEN BURNT.

>> OKAY.

NOTHING WAS NEVER SORT OF -- BUT
YOU SAID THAT THE -- THE
DEFENDANT DIDN'T HAVE A VEHICLE.

>> THE DEFENDANT DIDN'T HAVE A
VEHICLE UNTIL AFTER HE KILLED
THE --

>> AND THEN WHAT VEHICLE DID HE
HAVE.

>> HE HAD THE DODGE NEON.

>> SO, I THINK AGAIN, AND MAYBE
THIS IS NOT A -- ISN'T A POINT
WE CAN GET TO.

THE IDEA WOULD BE, THE THEORY
WOULD BE THAT HE MAYBE WENT WITH

THE DEFENDANT, OUT TO HIS -- OUT
TO THE DEFENDANT'S PROPERTY IN
THE NEON.

>> NO, YOUR HONOR.

NO.

FROM THE POINT WHERE, WHAT
HAPPENS, TO HAVE THE CAR END UP
AT THE LEHI EXIT POINT.

>> AFTER THE -- THE THEORY IS,
AFTER THE DEFENDANT IS KILLED
AND BURIED IN THIS VERY LARGE,
DEEP HOLE, THAT THE DEFENDANT
THEN TOOK THE DODGE NEON AND
WHETHER HE THEN WENT TO DINNER
FOR -- MORE SONS AND GOT
JENNIFER MORRISON OR HIS MOTHER
OR SOMEBODY ELSE TO FOLLOW HIM
OUT TO DUMP THE CAR, WE DON'T
KNOW.

THERE IS NO EVIDENCE.

>> AND THE 7-ELEVEN, HE'S WITH
HIS NIECE, HE'S IN THE DODGE
NEON.

>> NO.

THERE IS NO EVIDENCE OF THAT.

>> BUT HE'S --

>> THERE IS NO EVIDENCE OF HIM
BEING IN THE DODGE NEON AFTER

THE MURDER.

>> WHAT VEHICLE IS IN WHEN HE
WENT TO THE 7-ELEVEN.

>> JENNIFER MORRISON'S.

>> SO, AT SOME POINT, THEN,
AFTER THE 7-ELEVEN PURCHASE, HE
THEN SUPPOSEDLY TAKES THE
VEHICLE OUT TO BE BURNED.

>> OR IT COULD HAVE BEEN BEFORE
THE 7-ELEVEN PURCHASE.

I DON'T KNOW, THERE IS SIMPLY NO
EVIDENCE OF IT.

THE EVIDENCE IS THAT HE IS AT
THE SITE, HE DIGS THE HOLE, AND
THE NEXT DAY, HIS STUFF IS GONE
AND THE EVIDENCE IS THAT THE
VICTIM IS SEEN 7:00 TO 7:30 AND
NEVER SEEN AGAIN AND HIS LAST
CONVERSATION ON HIS CELL PHONE
FOUND ON HIS BODY, WAS THAT --
AT 8:00 P.M., AND AFTER THIS --

>> THERE IS NOTHING WHERE THE
DEFENDANT IS EVERY FOUND IN
POSSESSION OF ANY OF
MR. THOMAS'S POSSESSIONS.

>> I DO NOT BELIEVE SO, YOUR
HONOR, OTHER THAN MONEY.

>> AND THERE IS NO PHYSICAL
EVIDENCE AS FAR AS, AGAIN, DNA

OR ANYTHING THAT LINKS THE
DEFENDANT WITH THE MURDER?

>> IS THAT CORRECT.

>> WELL, OBVIOUSLY THE DEFENDANT
IS LINKED TO THE MURDER, NO
QUESTION THAT THEY WERE
TOGETHER.

>> NO BLOOD FOUND.

>> NO, THERE IS NOT AND I WANT
TO MAKE A POINT, SHE MAKES THE
CON ESSENTIAL HE DIDN'T TEST THE

--

>> THERE WAS AN ARGUMENT HE
COULD HAVE BEEN LYING FACED DOWN
ANYWHERE AND SUCKED IN THE SAND
AND THE ME TESTIFIED THE WAY THE
SAND WAS INHALED IT COULD NOT
HAVE BEEN DONE FACE DOWN, IT WAS
MORE OF AND INHALING AND HAD TO
BE A CONTINUOUS BREATHING KIND
OF THING AND MORE LIKELY,
BECAUSE HIS BODY WAS FOUND AND
HE WAS IN A SEMI-FETAL POSITION
AND IT WAS WHEN HE WAS IN THAT
POSITION THAN OTHER POINT I WANT
TO GET TO WAS THE WAIVER AND I
WANT TO POINT OUT TWO THINGS,
FIRST OF ALL, THERE WERE A

NUMBER -- I SHOULD MAKE IT THREE THINGS, THERE WERE A NUMBER OF COLLOQUIES THE JUDGE WENT THROUGH WITH THE DEFENDANT AND THE STATE PRESENTED THE MISSOURI PSI WHICH HAS PSYCHOLOGICAL REPORTS AND IQ SCORES IN IT, A BACKGROUND OF HIS FAMILY AND THIS JUDGE USED ALL OF THAT IN HIS SENTENCING ORDER AND HE FOUND NUMEROUS ITEMS IN MITIGATION BASED ON THAT.

>> I WANTED TO ASK YOU, I'M GLAD YOU BROUGHT THAT UP, THERE IS NO QUESTION IN MY MIND THAT THE WAIVER WAS -- CERTAINLY WAS DONE IN AN APPROPRIATE WAY.

WHAT THE DEFENDANT BRINGS UP, THAT WHAT IS DIFFERENT IN THIS CASE IS THAT THE -- THERE WAS ALSO A WAIVER OF INVESTIGATION INTO MITIGATION.

WHAT CASES DO WE HAVE TALK ABOUT WHAT THE DEFENDANT IS ABLE TO DO AND HOW THAT COLLOQUY IS KNOWING AN INTELLIGENT FOR THERE TO BE A WAIVER OF EVEN THE ABILITY TO GO INTO INVESTIGATION, BECAUSE, NORMALLY, WE SAY, WELL, IF THERE

IS A REASONABLE INVESTIGATION
THEN YOU HAVE COON TO SAY WHAT
THE INVESTIGATION SHOWED, ARE
THE -- DO WE HAVE CASES --
>> YES, DO YOU, YOUR HONOR, THE
COURSE IN BOYD AND MAURA GO
THROUGH WHEN THE DEFENDANT SAYS
HE WANT TO PRECLUDE AN
INVESTIGATION AND IN THIS
PARTICULAR CASE COUNSEL
TESTIFIED THAT HE -- TOLD THE
COURT THAT HE HAD GIVEN -- SAW
THE DEFENDANT AT LEAST TWICE A
WEEK, AND THEY ALWAYS TALKED
ABOUT THE MITIGATION AND HE GAVE
HIM THE AVA -- ABA GUIDELINES
AND ARTICLES ON MITIGATION AND
FURTHERMORE THE STATE WHEN THEY
PUT IN THE PSI PUT IN EVIDENCE
HIS PRIOR COUNSEL WHICH HE FIRED
BECAUSE HE CONTINUED TO DO THIS,
HAD GOTTEN THIS INFORMATION
PREVIOUSLY AND HE HAD STOPPED
HIM FROM DOING THIS.
SO, THERE ARE PLENTY OF EVIDENCE
IN THE RECORD, THAT COUNSEL
TALKED TO HIM ABOUT MITIGATION,
AND THAT HE KNEW EXACTLY WHAT

WAS GOING ON.

AND, ALSO, DURING THE SPENCER HEARING, THE DEFENDANT NOT ONLY PRECLUDED HIS COUNSEL FROM PRESENTING MITIGATION, HE ALSO PRECLUDED COUNSEL FROM ARGUING AGAINST THE AGGRAVATION AND THE OTHER POINT I WANTED TO MAKE, WHILE HE SAID HE WAS NOT GOING TO PRESENT MITIGATION HE DID INDEED PRESENTED TWO ITEMS IN MITIGATION, HE PUT IN THE WILL, OF THE VICTIM, AND ALSO, HIS ARREST, PRIOR ARREST REPORT OF THE VICTIM.

SO, WHILE HE DIDN'T PUT IN THE EVIDENCE TO MITIGATE WHAT HE CALLED HIS PRIVATE LIFE, THAT IT WAS HIS RIGHT TO PRIVACY, AND IT WAS HIS PRIVATE LIFE AND HE HAD THE RIGHT TO KEEP PEOPLE FROM GOING INTO IT, HE DID PUT HIM ON EVIDENCE ABOUT THE CHARACTERISTICS.

>> AND ALSO --

IS THERE AN AFFIDAVIT...

[INAUDIBLE].

>> I DON'T KNOW.

>> ANY IF YOUR QUESTIONS?

THANK YOU.

>> MS. DODGE.

>> YES.

FIRST OF ALL, WHEN MR. TWILEGAR
AS AT THE CAMP SITE IN TEN NAS
THERE WAS EVIDENCE THAT HE WAS
-- TENNESSEE, HE WAS DEALING
METHEMPHETAMINE AND HE WAS
CAUGHT WITH A METH LAB WHEN HE
WAS ARREST AND HE TESTIFIED THAT
HE WAS DEALING METHEMPHETAMINE
AND HE WAS COOKING IT UP AND HE
WAS SELLING SUBSTANTIAL AMOUNTS
OF IT.

AND FOR SUBSTANTIAL MONEY AND HE
WASN'T AT THE CAMP SITE OR THE
ITEMS WEREN'T SEEN AT THE CAMP
SITE UNTIL LATE AUGUST, 22ND,
23RD, SOMEWHERE IN THERE AND
JENNIFER MORRISON, AND SHE HAD
NO IDEA WHAT KIND OF MONEY WAS
SPENT FOR THOSE CELL PHONES AND
SHE WOULD NOT HAVE BEEN ABLE TO
TESTIFY TO THAT, WITHOUT THOSE
RECEIPTS.

AND THE RECEIPTS, THEY WERE KIND
OF A HOLE IN THE THIS LAW WITH
REGARD TO STORE RECEIPTS AND

YOUR POINT WAS EXCELLENT.

THEY DID NOT TAKE AND PULL UP

THE WAL-MART -- WHATEVER COPIES,

CARBON COPIES OR WHATEVER, AND

MATCH THOSE UP.

AND I'M GOING TO TELL YOU, I

MISSED THAT.

THEY --

>> LET ME ASK YOU THAT.

WAS THAT PRECISE ISSUE EVER

ACTUALLY PRESENTED TO THE TRIAL

COURT?

I MEAN, WAS IT EVER -- WAS THE

ARGUMENT THAT THESE REALLY

AREN'T BUSINESS RECORDS, SUBJECT

TO THE BUSINESS RECORDS

EXCEPTION FROM THE HEARSAY RULE.

>> WHAT HAPPENED IS THEY WERE

BLIND SIDED BY THE FACT THAT

DEPUTY HOLT WAS GOING --

>> NO, I UNDERSTAND --

>> READ IT INTO THE RECORD.

>> MY QUESTION IS.

>> NO.

NO.

THE ANSWER IS NO.

SORRY.

>> NOT REALLY --

>> THE ANSWER IS NO.

>> THAT WAS NOT REALLY

PRESERVED.

>> NO AND I DIDN'T TRY THE CASE

AND CAN'T MAKE ANY -- THE

FOUNDATION WAS -- LACK OF

FOUNDATION WAS.

>> IT'S NOT AS IF THERE WERE,

YOU KNOW, SOMEHOW THERE IS A --

SOMETHING IN A CELL PHONE OR

SOMETHING IN THE PERSON'S

POSSESSION, AND THEN THEY TRY TO

SHOW, HERE'S A RECEIPT FROM WHEN

HE MUST HAVE PURCHASED THE CELL

PHONE.

THE RECEIPTS ARE FOUND IN HIS

POSSESSION.

TO ME, THE FACT THAT THEY A

FOUND IN HIS POSSESSION THEN

ONCE THEY A LINKED UP, THESE ARE

IN FACT OUR RECEIPTS, I'M HAVING

TROUBLE KNOWING -- GETS IN UNDER

BUSINESS RECORDS, BUT, ISN'T IT

SIGNIFICANT THAT THEY A FOUND IN

HIS POSSESSION?

AS FAR AS THEN, BEING LINKED UP.

THESE AREN'T COUNTERFEIT

RECEIPTS OR ANYTHING, THESE ARE

RECEIPTS AND THESE ARE THE TYPES

OF RECEIPTS THAT ARE JOHN RATED,
WHEN THERE ARE PURCHASES.

>> THE LAW, I WOULD SAY, OKAY,
FIRST OF ALL THE LAW SAYS THESE
THINGS ARE HEARSAY AND
CERTAINLY, READING THE CONTENTS
OF THESE, IS HERE SAY, BUT THE
ACTUAL EXISTENCE OF THEM, WOULD
NOT BE HERE SAY AND ONCE YOU GET
INTO CONTENTS OF THEM YOU ARE
GETTING INTO HEARSAY AND I THINK
THE LAW IS CLEAR, EVEN THOUGH IT
IS VERY, VERY SPARSE, THAT THE
CONTENTS OF THESE RECEIPTS ARE
HEARSAY.

AND ALSO, NONE OF THE WITNESSES
ACTUALLY WENT FOR THAT TECHNICAL
HURDLE THAT SAID, THESE ARE KEPT
IN THE NORMAL COURSE OF BUSINESS
AND I KNOW IT SOUNDS PICKY, BUT
THAT IS WHAT THE LAW SAYS, AND
THEY NEVER DID THAT.

AND, NOT ONLY THAT, EXCEPT FOR
THE ONE WAL-MART RECEIPT, WHERE
THE LADY SAID, I REMEMBER THE
MAN WHO BOUGHT IT, NO ONE COULD
LINK THIS AM OF MONEY TO -- THE
CLIENTS, THEY KNOW HE HAD
RECEIPTS AND THE STUFF AND WE

DON'T KNOW, WHO ACTUALLY BOUGHT THEM AND IT IS NOT -- NOT AS IF YOU MADE A PAPER TRAIL BY HANDING THE CREDIT CARD WHICH WOULD HAVE BEEN EASIER, AND YOU KNOW WHO ACTUALLY PURCHASED IT OR WHO PURPORTED TO PURCHASE IT. THESE WERE CASH TRANSACTIONS.

>> THAT IS WHY I SAY, WHERE THE FACT THAT THEY ARE IN HIS POSSESSION, IS SIGNIFICANT, AS TO HIM HAVING PURCHASED IT AS OPPOSED TO IF RANDOM RECEIPTS WERE FOUND, AND THEY JUST PICKED THEM UP OFF THE GROUND.

>> IT IS BUT THE CONTENT IS STILL HEARSAY.

THE CONTENTS ARE STILL HEARSAY.

>> ISN'T IT A COPY OF WHAT THE STORE KEEPS ITSELF.

>> BUT THEY NEVER MATCHED THEM UP, NEVER MATCHED THEM UP AND THEY SAID THIS IS -- LOOKS LIKE WHAT WE DO.

I RECOGNIZE THE STORE, I RECOGNIZE THE STORE NUMBER, AND YOU KNOW, IT LOOKS LIKE WHAT WE KEEP IN THE COURSE OF BUSINESS

AND THEY DIDN'T SAY COURSE OF
BUSINESS AND WEREN'T ASKED THAT
BUT DIDN'T SAY THESE MATCH UP
WITH OUR RECORDS, WE WENT BACK
AND PULLED THOSE FOR THAT --

>> ARE YOU SAYING NOW IT COULD
HAVE BEEN A BUSINESS RECORD,
ADMISSION, BUT PROPER FOUNDATION
WAS NOT LAID.

>> MAYBE, IF THEY WENT BACK AND
PULLED THE -- YOU KNOW --

>> THERE HAS TO BE A WAY TO
ALLOW FOR THEM TO COME INTO
EVIDENCE.

YOU KNOW, YOU SAY -- IF IT'S NOT
BUSINESS RECORDS WHAT IS IT.

>> I IMAGINE THIS CASE WILL
STAND FOR THAT PROPOSITION.

>> UNDER THE FEDERAL RULES, IT
IS -- RESIDUAL HEARSAY.

>> THANK YOU.

THAT THIS IS FEDERAL RULE, YOU
DON'T HAVE TO WORRY ABOUT THAT.
BUT AT LEAST IT.

>> AT LEAST IT GIVES ME A
HANDLE, RIGHT?

THERE IS NO EVIDENCE AT THE CAMP
SITE -- THE MOTHER PICKED UP
MR. TWILEGAR AND THE MAROON CAR

DROVE INTO THE CATCHING AREA AND
CAME OUT AND THE CAMP HOST
THOUGHT SHE SAW TWO DOGS ON THE
WAY OUT AND THEN AGAIN,
MRS. TWILEGAR WENT TO FAMILIAR
WITH TWO DOGS, SO, TWO DOGS, ONE
DOG, AND THERE WAS NO
MR. TWILEGAR IN THAT CAR THAT
LEFT.

THE STATE'S THEORY WAS
SPECIFICALLY MR. TWILEGAR WAS
THE ONE WHO DISPOSED OF THE CAR
AND YOU CAN LOOK AT THE
ARGUMENTS AND EVERYTHING AND IT
WAS THEIR THEORY THAT HE DID,
AND INHALING THE SAND, I COVERED
THAT IN THE -- LOOK AT THE
CORONER'S THING, SAYING HE COULD
HAVE INHALED IT, SHE SAID
CONSISTENT WITH FALLING FORWARD,
AND INHALING IT ON AN UNEVEN
SURFACE.

SO, AND AS FAR AS BEING BURIED
HE WOULD HAVE DIED IN MINUTES
AND IT WOULD HAVE BEEN A FAST
BURIAL TO GET DIRT IN HIM AND
HAVE HIM STILL INHALING IT AND
IT IS JUST -- WHETHER OR NOT

THINGS ARE INCONSISTENT OR
WHETHER OR NOT THEY PRECLUDE --

>> I THINK JUSTICE --

>> THE EVIDENCE, DID IT NOT SHOW
TWILEGAR AND HIS MOTHER LEFT
FLORIDA IN THE DEAD OF THE
NIGHT, WITHOUT COMING -- PEOPLE
THEY WERE LIVING WITH AND NEVER
CALLED AND TOLD THEM THEY WERE
LEAVING AND BEFORE THEY WOKE UP
IN THE MORNING, AND THE -- IN
THE MOTHER'S CAR.

>> YES.

THEY DID.

>> DON'T YOU THINK THAT IS --

>> THESE PEOPLE DID NOT LIVE
THIS KIND OF LIFESTYLE THAT I --
I CAN IDENTIFY WITH AND DID NOT
DO THINGS THE WAY THAT -- YOU
KNOW, BUT YES, THEY DID DO THAT.
THEY LEFT.

>> AND WHAT KIND OF CAR DID THE
MOTHER HAVE.

>> A MAROON SOMETHING OR OTHER.

>> CALLED IT THE MAROON CAR.

>> SAME CAR SHE HAD IN
TENNESSEE.

>> YES, SAME CAR SHE HAD IN
TENNESSEE.

>> YOU HAVE USED UP MORE THAN
YOUR TIME AND WE THANK YOU.
BOTH, FOR YOUR ARGUMENT
PRESENTED HERE TODAY.

>> THANK YOU.

>> NEXT CASE ON THE COURT'S
AGENDA IS BRADLEY VERSUS STATE,
AND BRADLEY VERSUS McNEIL.