

>> THE NEXT CASE ON THE COURT'S
AGENDA IS SCOTT VERSUS STATE.

>> ARE YOU READY TO PROCEED?

>> MATE PLEASE THIS COURT, TODD
DOSS ON BEHALF OF PAUL WILLIAM
SCOTT, HERE TODAY ON A SUMMARY
DENIAL OF 3.853 MOTION,
REGARDING DNA TESTING.

THAT MR. SCOTT HAD ORIGINALLY
FILED FOR THE -- SUBSEQUENTLY,
THE COURT HAD APPOINTED COUNSEL
FOR HIM.

THERE -- THE BASIS FOR OUR
APPEAL, SUMMARY DENIAL IS THE
TRIAL COURT FAILED TO MAKE THE
REQUIRED FINDINGS UNDER 3863,
AND THE TRIAL COURT DID NOT
COMPLY WITH THE RULE OF CRIMINAL
PROCEDURE AND DID NOT DETAIL THE
SPECIFIC FINDINGS THAT ARE
REQUIRED, AS TO WHETHER THE
PHYSICAL EVIDENCE THAT MAY
CONTAIN DNA STILL EXISTS,
WHETHER THE RESULTS OF THE
TESTING LIKELY WOULD BE
ADMISSIBLE AT TRIAL, AND WHETHER
THERE IS --

>> DOESN'T THE -- DOESN'T THE
ORDER ASSUME THAT EVEN IF THERE
IS, THIS KIND OF EVIDENCE,
AVAILABLE, THAT IT WOULDN'T -- I
MEAN, I AM JUST WONDERING, WHY
WE WOULD REVERSE THIS IF IN FACT
HE IS -- THE TRIAL JUDGE IS
CORRECT THAT NO MATTER WHAT THE
TESTING, ASSUMING THAT ALL OF

THESE PIECES OF EVIDENCE ARE STILL THERE, THEY STILL CONTAIN DNA EVIDENCE, THE TESTING OF THOSE, WHETHER IT SHOWS THE VICTIM'S BLOOD OR HIS BLOOD, WOULDN'T -- WOULD NOT DEMONSTRATE THAT THERE SHOULD BE A DIFFERENT RESULT IN THIS CASE, SO WHY IS IT OWE IMPORTANT THAT THE -- TRIAL JUDGE DID NOT SAY THIS EXISTS AND THAT EXISTS, AND --

>> BECAUSE AS YET ANOTHER -- YET ANOTHER EXAMPLE OF NOT COMPLYING WITH THE RULE, IN THAT THE TRIAL JUDGE DID SAY THAT IT WOULD NOT EXONERATE MR. SCOTT.

BUT, IT DID SO IN A CONCLUSORY STATEMENT AND JUST SAID THAT THERE WERE FINGERPRINTS NOT SPECIFYING WHICH OF THE MANY, MANY FINGERPRINTS THAT WERE PRESENT --

>> WERE SOME OF THESE FINGERPRINTS MR. SCOTT'S?

>> ABSOLUTELY AND HE WAS ADMITTEDLY THERE AT THE SCENE AND HIS DEFENSE WAS THAT HE WAS THERE AND LEFT BEFORE MR. ALESSI WAS KILLED AND THERE IS MUCH LITIGATION OVER THAT FACT EVER SINCE THEN.

>> HOW DOES THE DNA EVIDENCE HAVE ANY POSSIBLE VALUE IN ESTABLISHING HIS INNOCENCE FOR -- OR THAT HE WAS THE -- LIKELY

TO GET A LESSER SENTENCE.

>> I MEAN, I DON'T UNDERSTAND
THE THEORY.

>> THE THEORY HAS BEEN ADVANCED,
THE STATE AT TRIAL --

>> THEORY... MOTION.

>> RIGHT, AND --

>> HE HAS TO SHOW THAT IT IS
GOING TO -- THE EVIDENCE WOULD
MAKE A DIFFERENCE.

>> THAT IS CORRECT AND THERE WAS
A -- PARTICULARLY AS TO THE TWO
CIRCLES OF BLOOD, THAT -- THAT
WERE PRESENT, THERE HAS BEEN
LITIGATION REGARDING WHETHER OR
NOT THAT WAS A CHAMPAGNE BOTTLE
THAT HAD BEEN SET DOWN, THERE
WAS THE ACTUAL MURDER WEAPON AS
OPPOSED TO THE STATUE OF THE
BEAR THE STATE ALLEGED AT TRIAL
ORIGINALLY AND MR. CONDI
SUBSEQUENTLY HAD, TRUTH THROUGH
AFTER DAVIS, RECANDED SOME OF
WHAT HAD BEEN STATED IN
STATEMENTS BEFORE, THE
CODEFENDANT, THAT PLED OUT, TO
45 YEARS AND SAID THAT HE HAD
ACTUALLY USED THE CHAMPAGNE
BOTTOM AND ALSO, WITHIN THE
RECORD, THERE IS ALSO A LETTER,
THERE WAS A PART OF AN
APPLICATION FOR STAY AND A
MOTION FOR -- TO VACATE BACK IN
1994 WHEN MR. SCOTT WAS UNDER
WARRANT, FOR -- FROM MEDICAL
EXAMINER SAYING THAT IF HE HAD

ADD ALL OF THE INFORMATION, THAT WAS NOW AVAILABLE, HE WOULD HAVE SAID THAT THE STATUE WAS NOT THE MURDER WEAPON.

AND THE CHAMPAGNE BOTTLE WAS, AND THE ISSUE --

>> IS THIS THE CASE, LOOKING AT THE POST QUICK, THAT -- --

QUICK, THE APPELLANT TOLD THIS GUY, OF THEIR PLAN TO ROB AND KILL ALESSI, IS THAT STILL IN THE -- HAS SOMEONE RECANTED?

>> ABSOLUTELY.

MR. SOUTULLO PROVIDED AN AFFIDAVIT SAYING THAT AT THE TIME HE DID EXACTLY WHAT DETECTIVE COLLINS ASKED HIM, THAT HE HAD PENDING CHARGE, BOTH IN FLORIDA AND CALIFORNIA AND THAT BASED UPON THAT, HE RECANTED.

AS WELL --

>> AND WHAT IS THE STATUS OF THE DECISION WHETHER THAT WAS NEWLY DISCOVERED EVIDENCE AND WHETHER THE RECANTING WAS...

[INAUDIBLE].

>> THAT WAS, THAT WAS SUMMARILY DENIED.

THERE WAS NEVER, HE NEVER CAME INTO, HE NEVER CAME INTO COURT. MY RECOLLECTION FROM LOOKING AT THE RECORD WAS THAT THAT WAS SUMMARILY DENIED BASED UPON, I GUESS, IT WAS HARMLESS IN

LOOKING AT IT OVERALL AS TO WHETHER OR NOT THAT WAS, IN FACT, PREJUDICIAL, SOMETHING THAT WOULD OVERTURN THE JUDGMENT, MR. SOUTULLO --

>> AND DID THAT APPEAR TO THIS COURT?

>> YES.

>> AND BACK TO THIS ONE AND TRYING TO HELP US ON THIS.

HIS FINGERPRINTS, YOU AGREE, ARE IN THE VICTIM'S HOME, AND -- YOU'RE SAYING IT MIGHT NOT BE ON THE MURDER WEAPON AS THE MURDER WEAPON MIGHT NOT BE WHAT EVERYONE SAID IT WAS?

>> THE FINGERPRINTS IN THE HOME, IT WAS NEVER A DISPUTE AS TO WHETHER OR NOT MR. SCOTT WAS IN THE HOME OR NOT.

IT WAS, IT WAS CLEAR THAT MR. KONDIAN AND MR. SCOTT HAD BOTH BEEN THERE.

THE ISSUE FROM THE BEGINNING WAS WHETHER MR. SCOTT HAD LEFT BEFORE THE MURDER OF MR. ALESSI.

>> AND SO HOW DID HE GET THE ITEMS OF JEWELRY?

AS I UNDERSTAND IT, THEY WENT TO THE LADIES', WHAT IS THIS, A MAN'S JEWELRY STORE AFTER ALL THIS TOOK PLACE, AND WASN'T THAT JEWELRY FOUND WITH MR. SCOTT WHEN HE WAS ARRESTED?

>> THERE WAS ABSOLUTELY JEWELRY FOUND THAT WAS PRESENTED AT

TRIAL AS TO IT BEING SIMILAR TO,
I GUESS IT WAS OF A BEAR THAT --
>> SO HE LEFT.

YOUR THEORY, THEN, IS HE LEFT
THE SCENE AND WENT TO THE
JEWELRY STORE AND THAT
MR. KONDIAN, IS THAT HIS NAME?
WAS STILL IN THE HOUSE WITH THE
VICTIM, AND HE WAS THE ONE WHO
KILLED THE VICTIM AND THEN MET
UP WITH MR. SCOTT AGAIN.

>> RIGHT.

BECAUSE THEY HAD WENT, THEY HAD
WENT FROM FT. LAUDERDALE.
FROM THE STRIP IN FT. LAUDERDALE
WHERE THEY WERE STAYING IN A
HOTEL, THEY HAD WENT UP TO PALM
BEACH COUNTY WHERE MR. ALESSI
RESIDED AND HAD HIS, HAD HIS
BUSINESS.

AND IT HAPPENED AT MR. ALESSI'S
HOME.

THEN THEY RETURNED BACK TO FT.
LAUDERDALE AND LEFT FROM FT.
LAUDERDALE.

THE THING IS THAT --

>> THEY, THEY BOTH LEFT AND WENT
TO CALIFORNIA?

>> NO.

MR. KONDIAN WENT ONE WAY AND
EVENTUALLY WAS APPREHENDED IN
RHODE ISLAND WHEREAS MR. SCOTT
WAS EVENTUALLY APPREHENDED IN
CALIFORNIA.

COMPLETELY SEPARATE FROM EACH
OTHER.

THE THING IS THAT WHEN, WHEN YOU LOOK AT IT, IT DIRECTLY BEARS ON THE SENTENCE AS WELL AS ON THE PROPORTIONALLY ISSUE BECAUSE MR. KONDIAN, HE PLED TO A SECOND-DEGREE MURDER AND GOT 45 YEARS AND SUBSEQUENTLY WAS RELEASED.

>> HOW LONG WOULD THAT 45 YEARS BE --

>> I'M NOT 100 PERCENT SURE, JUSTICE LABARGA.

I SEEM TO REMEMBER READING HE WAS PAROLED IN 1987 OR 1988. I COULD BE IN ERROR ON THAT, BUT THAT'S WHAT I REMEMBER READING.

>> WELL, THAT WOULD HAVE BEEN, THIS CASE WENT TO TRIAL IN 1980? OR '79?

>> 1982 IS WHEN THE FIRST DECISION CAME FROM THIS COURT, SO I BELIEVE IT WAS IN 1979 OR '80 THE ACTUAL TRIAL WAS AND MR. KONDIAN'S PLEA WOULD HAVE BEEN TAKEN.

AND INTERESTINGLY ENOUGH, MR. ROTH THAT REPRESENTED MR. KONDIAN BROUGHT UP THE VINCENT SOUTULLO AND NOT ONLY HAD HE RECANTED, HE HAD TAKEN DEPOSITIONS FROM OFFICERS IN MOBILE, ALABAMA, THAT DIRECTLY HINGED ON HIS BELIEVABILITY. THEY SAID HE HAD A REPUTATION AS BEING UNTRUTHFUL AND, BASICALLY, DIDN'T HAVE ANYTHING GOOD TO SAY

ABOUT HIM.

HE ACTUALLY UTILIZED THAT AS
KIND OF A MAJOR THEME TO GET THE
SENTENCE THAT HE GOT FOR
MR. KONDIAN.

MEANWHILE, THIS HAD OCCURRED AT
THE SAME TIME AS THE TRIAL OF
MR. SCOTT.

BUT HE GOES BACK TO WHERE HE
STARTED, ORIGINALLY STARTED
TALKING ABOUT THIS AS TO THE
EXONERATION OR WHETHER IT WOULD
PRODUCE A LESSER PENALTY.

THE TRIAL COURT MADE THE
STATEMENT THAT THERE WERE
FINGERPRINTS AT THE SCENE AND
THAT THIS EVIDENCE WOULDN'T TEND
TO EXONERATE MR. SCOTT.

NOTHING FURTHER FROM THAT AND
NEVER ATTACHED ANY PORTIONS OF
THE TRIAL RECORD.

WE DON'T KNOW WHAT FINGERPRINTS
THAT THE JUDGE WAS RELYING ON
BECAUSE SHE DIDN'T ATTACH
ANYTHING TO THE RECORD OR MAKE
ANY KIND OF EXPLANATION.

NOR DID SHE COMPLY WITH THE
OTHER PORTIONS OF 3853 AND AS
WELL THE APPELLATE RULE THAT
DIRECTS THE COURT TO DO THAT.

IT'S VERY IMPORTANT THAT THAT
HAPPEN AS WELL BECAUSE THERE WAS
NO EVIDENTIARY HEARING.

SO BASICALLY SHE'S RELYING UPON
UNSWORN ALLEGATIONS FROM THE
STATE.

AND MR. SCOTT, HE HAD FILED HIS MOTION.

IT WAS A VALID MOTION, AND IT WAS SWORN TO BY HIM.

THERE'S CASE LAW THAT I HAD CITED IN MY BRIEF THAT HAD DIRECTED THE COURTS GRANTED -- IT WAS THE DISTRICT COURTS OF APPEAL -- BUT IT HAD DIRECTED LOWER COURTS, TRIAL COURTS TO NOT ACCEPT THESE UNSWORN ALLEGATIONS, TO GO AHEAD AND ATTACH THE PORTIONS OF THE RECORD TO HAVE AN EVIDENTIARY HEARING SO THAT THESE THINGS CAN BE FLESHED OUT SO THAT WHEN IT COMES BEFORE A HIGHER COURT, YOU HAVE A RECORD TO BE ABLE TO LOOK AND DETERMINE EXACTLY WHAT IS, WHAT IS THE BASIS OF THIS COURT'S SUMMARY OF DENIAL --

>> BUT DON'T YOU BEFORE YOU GET TO THAT POINT HAVE TO HAVE SOMETHING BEFORE THE TRIAL COURT THAT SAYS THAT?

YOU COULD HAVE A CASE WHERE THE DNA -- AND YOU SAID THERE'S DNA NEXT DOOR -- HAS NOTHING TO DO WITH ANYTHING.

YOU HAVE TO HAVE AN EVIDENTIARY HEARING IN THAT CASE?

>> NO, BECAUSE --

>> OKAY.

SO YOU HAVE TO HAVE SOME KIND OF ALLEGATION AS TO HOW THIS IS GOING TO IMPACT A CASE, CORRECT?

>> THAT WOULD, THAT IS
ABSOLUTELY CORRECT.

>> OKAY.

AND ISN'T THAT AT THE STAGE
WE'RE AT HERE?

THIS TRIAL JUDGE FOUND OR
DETERMINED -- I DON'T THINK
THERE'S A FINDING, IT'S A
DETERMINATION THAT'S WHAT'S
HERE, IT'S A SO WHAT?

THIS IS TESTED, THIS IS OR IS
NOT, SO WHAT?

SO YOU DON'T HAVE TO GO TO AN
EVIDENTIARY HEARING IF YOU DON'T
GET PAST THE THRESHOLD, DO YOU?
ISN'T THAT THE WHOLE QUESTION
HERE?

>> BUT WHEN WE HAVE TWO
COMPETING THEORIES ADVANCED --

>> WELL, OKAY, I AGREE WITH
THAT, BUT THE TRIAL COURT IS
SAYING THAT WHAT YOU'RE
ADVANCING IS NONMERITORIOUS,
THAT IT'S NOT A REASONABLE
THEORY.

ISN'T THAT WHAT THE TRIAL
COURT'S DETERMINATION
ESSENTIALLY WAS?

>> WE DON'T REALLY KNOW BECAUSE
IT WAS JUST A CONCLUSORY
STATEMENT THAT IT WOULDN'T
EXONERATE HIM.

>> WELL, ISN'T THAT WHAT IT'S
SAYING?

>> THAT'S WHAT IT'S SAYING, BUT
MY POSITION IS THAT'S THE REASON

WE HAVE 3853 WRITTEN THE WAY IT IS SO THAT WE KNOW WHAT IT IS THAT COURT'S RELYING ON.

OTHERWISE, COURTS CAN SUMMARILY DENY EVERY SINGLE ONE --

>> NO, AGAIN --

>> -- PARTS OF THE RECORD.

>> WOULD WE NOT HAVE TO CROSS THE THRESHOLD AND SAY MR. DOSS IS CORRECT, THAT WHAT IS SET FORTH HERE, IF IT'S DETERMINED THAT WAY, WOULD EXONERATE HIM?

>> IF YOU ACCEPT WHAT'S IN MR. SCOTT'S MOTION, YES.

>> AND IF WE SAY, WELL, WE SEE WHAT'S IN HIS MOTION, AND HE MAY MAKE THAT CONCLUSORY REMARK, BUT THAT'S NOT HOW WE SEE THIS CASE, THAT HE DOESN'T GET OVER THAT THRESHOLD.

WHERE DOES THAT LEAVE US?

>> THAT LEAVES THAT TRIAL COURT JUDGE TO ATTACH THE PORTION OF THE RECORD TO REFUTE WHAT WAS IN MR. SCOTT'S MOTION OR ANY SIMILAR WAY TO DEFEND IT.

>> SO THAT SHOULD BE THE PROCEDURE WE SHOULD FOLLOW? BECAUSE THIS HAPPENS VERY OFTEN.

>> THAT'S CORRECT.

>> YOU'RE SAYING IT NOT OUGHT TO, BUT IT HAS TO.

OKAY.

>> MUCH LIKE WE DO IN THE 3851 PROCEEDINGS AND THE DENIAL OF EVIDENTIARY HEARINGS THERE,

UNLESS THE RECORD CONCLUSIVELY
REFUTES THAT THE PERSON'S
ENTITLED TO NO RELIEF THAT YOU
HAVE TO GET THE HEARING.
AND IN THIS INSTANCE MR. SCOTT
FILED THE VALID 3853 MOTION.
HE PROVIDED AN EXPLANATION OF
HOW THE TESTING WOULD, IN FACT,
GO WITH THE THEORY THAT HE HAD
ADVANCED PREVIOUSLY AND AS WELL
THAT THE IDENTITY WAS DISPUTED.
NOT THE IDENTITY IN THE SENSE OF
WHETHER HE WAS AT THE SCENE OR
NOT, BUT THE IDENTITY OF WHO
WAS, WHO WAS THE ACTUAL KILLER
OF MR. ALESSI WHICH WOULD THEN
DIRECTLY IMPACT NOT ONLY THE
FACT OF HIS GUILT OR INNOCENCE,
BUT THE FACT OF THE
PROPORTIONALITY ISSUE.
AND BACK IN 1982 JUSTICE OVERTON
DISSENTED IN MR. SCOTT'S CASE ON
THE PROPORTIONALLY ISSUE.
>> BUT AS TO THE GUILT PHASE
HERE, HOW WOULD THIS REALLY
IMPACT HIS GUILT PHASE?
HE WAS A PRINCIPLE.
EVEN YOU SEEM TO AGREE THAT HE
WAS THERE, HE WAS PART OF THE
SCHEME TO ROB.
DID HE, WASN'T THERE A
DISCUSSION ABOUT ROBBING AND
KILLING?
HE KNEW THAT, SO HOW --
>> THE DISCUSSION IS WHAT'S THE
SUBJECT OF THE RECANTED

TESTIMONY OF VINCENT SOUTULLO
WHO LATER SAID MR. SCOTT DIDN'T
SAY ANYTHING ABOUT THAT, IT WAS
MR. KONDIAN.

>> AND MR. SCOTT WAS OR WAS NOT
PRESENT?

>> HE WAS PRESENT FOR THE
CONVERSATION BETWEEN THE THREE
OF THEM.

HE NEVER, HE NEVER SAID ANYTHING
ABOUT THAT.

AND AS WELL THE STATE HAD CITED
TO SOME TESTIMONY FROM FELICIA
BROOKS THAT WAS THE GIRLFRIEND
OF MR. SOUTULLO.

SHE JUST KNEW THE THREE HAD
SPOKEN.

SHE DIDN'T HEAR ACTUALLY WHAT
WAS PHYSICALLY, WHAT WORDS CAME
FORTH.

AND THAT WAS AT THE TRIAL AS
WELL.

>> [INAUDIBLE]

>> NO, HE HAD NOT PLED YET.

HE PLED LATER, AND THEN THERE
WERE NUMEROUS AFFIDAVITS NOT
ONLY FROM MR. KONDIAN, BUT
AFFIDAVITS WERE PRODUCED FROM
OTHERS THAT MR. KONDIAN HAD TOLD
THAT HE WAS ACTUALLY THE ONE
THAT HAD KILLED MR. ALESSI AND
THAT MR. SCOTT HAD RAN OUT
BEFORE IT EVER HAD HAPPENED.

>> JUST, AND MAYBE YOU'VE
ANSWERED THIS, I'M JUST LOOKING
AT THIS AGAIN.

YOU WANT BLOODSTAINS TESTED TO SHOW THAT THE BLOODSTAINS WOULD HAVE BELONGED TO EITHER SCOTT OR KONDIAN, NOT THE VICTIM?

OR IS THAT A PRIOR, WAS THAT THE PRIOR MOTION?

ARE YOU ALLEGING -- WHAT ARE YOU ALLEGING THE BLOOD WOULD SHOW?

>> THE BLOOD, THE BLOOD WOULD SHOW PARTICULARLY AS TO THE CIRCLES OF BLOOD, THAT'S EITHER MR. KONDIAN'S BLOOD OR

MR. ALESSI'S BLOOD BECAUSE WHEN MR. KONDIAN WAS FOUND IN RHODE ISLAND -- AND THERE'S MANY WITNESSES THAT HAVE TESTIFIED TO IT AS WELL -- THAT HE HAD HAD A SIGNIFICANT CUT ON HIS LEFT --

>> AND WHAT DOES THE STATE ALLEGE AT TRIAL ABOUT THE BLOOD?

>> THAT WAS BEFORE THE DNA TESTING.

THEY JUST BASICALLY SAID THAT, YOU KNOW, IT WAS A BLOODY, CHAOTIC SCENE, THAT THERE WAS A TREMENDOUS AMOUNT OF BLOOD FROM MR. ALESSI.

MR. SCOTT HADN'T BLED.

>> SO NONE OF MR.-- ARE YOU SAYING THAT NONE OF THE TESTING HAS EVER SHOWN THAT ANY OF THE BLOOD AT THE SCENE WAS MR. SCOTT'S?

>> NOT ANY BLOOD THAT I KNOW OF. THERE'S BEEN TESTING THAT SHOWS THAT MR. KONDIAN'S BLOOD WAS AT

THE SCENE AND, OBVIOUSLY,
MR. ALESSI'S.

>> MR. SCOTT'S BLOOD DOESN'T
HAVE TO BE AT THE SCENE.

>> IN WHAT CONTEXT, JUSTICE?
I DON'T UNDERSTAND.

>> WELL, WHAT -- I'M STILL
HAVING TROUBLE UNDERSTANDING HOW
THIS MAKES ANY DIFFERENCE AND
HOW THIS WILL SHOW YOUR CLIENT'S
INNOCENCE.

I MEAN, I JUST DON'T, I DON'T
SEE THE DOTS BEING CONNECTED.

>> THE STATE'S THEORY WAS THAT
MR. ALESSI WAS KILLED BY THIS
BEAR STATUE AFTER BEING ATTACKED
BY MR. KONDIAN AND MR. ALESSI
DURING A ROBBERY AS OPPOSED TO
THE DEFENSE THEORY OF THEY WENT
THERE FOR DRUGS THAT MR. ALESSI
SEXUALLY ATTACKED MR. KONDIAN.
AN ALTERCATION ENSUES.

ALL THREE ARE INVOLVED IN THE
ALTERCATION, AND MR. SCOTT
LEAVES.

THERE'S ACTUALLY A PORTION WHERE
IT SHOWS THE BACK SCREEN ON THE
PORCH WAS BUSTED OUT.

AND THEN MR. SCOTT'S POSITION IS
THAT MR. KONDIAN KILLS
MR. ALESSI, AND THEN THEY MEET
UP LATER ON AS OPPOSED TO THE
STATE'S THEORY THAT BOTH OF THEM
ARE THERE, THAT MR. SCOTT IS THE
MORE CULPABLE ONE AND MR. SCOTT
CAN -- IS THE ONE THAT KILLED

MR. ALESSI.

SO IF IT'S MR. SCOTT KILLING HIM
WITH THE CHAMPAGNE BOTTLE,
THERE'S PROBLEM WITH THE STATE'S
CASE AS TO THE WAY THE METHOD
OCCURRED, AND IT CORROBORATES
MR. SCOTT'S CONTENTION THAT HE
WAS ALREADY GONE, THERE'S
MR. KONDIAN.

IT ALSO IMPACTS DIRECTLY UPON
THE SENTENCE ON THE
PROPORTIONALLY ISSUE OF
MR. KONDIAN RECEIVING A 45-YEAR
SENTENCE WHILE MR. SCOTT, WHO
WOULD BE LESS CULPABLE, RECEIVES
A DEATH SENTENCE.

I THINK I'VE WENT WELL INTO MY
REBUTTAL TIME, SO I'M GOING TO
SAVE THAT, IF IT PLEASES THE
COURSE.

>> ALL RIGHT.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, CELIA
TERENZIO ON BEHALF OF THE STATE
OF FLORIDA.

>> WITH REGARD TO HIS POSITION,
I'M NOT SURE I'M SOLD THAT IF,
THAT HIS ALLEGATIONS TAKE HIM
WHERE HE NEEDS TO BE.

>> UH-HUH.

>> BUT HIS ARGUMENT IS THAT WE
HAVE TO LOOK AT THIS AS A TRIAL
JUDGE WOULD THAT KNOWS NOTHING
ELSE ABOUT THE CASE AND DOES
THIS ALLEGATION ENTITLE HIM TO A
HEARING?

THAT SEEMS TO BE WHAT HE'S SAYING.

HE OR SHE MUST ATTACH PORTIONS OF WHATEVER'S GONE ON BEFORE THAT SUPPORTS THE CONCLUSION THAT, YOU KNOW, SO WHAT? WHAT YOU'VE ALLEGED DOESN'T MAKE ANY DIFFERENCE.

TO GET TO WHERE WE ARE, I THINK HE'S ASSERTING UNDER THIS RULE THAT HAS TO BE ATTACHED.

WHAT -- TELL ME ABOUT THAT, BECAUSE I AGREE WITH THE STATE THAT I DON'T SEE HOW HE GETS THERE.

BUT IT WAS NOT ATTACHED, CORRECT?

>> NO, YOUR HONOR, IT WAS NOT ATTACHED.

>> OKAY.

SO WOULD YOU JUST ADDRESS THAT ON HOW THIS RULE WORKS?

>> I DON'T KNOW THAT THE RULE NECESSARILY SAYS THAT IT MUST BE ATTACHED, BUT THE CASE LAW SAYS YOU NEED TO LOOK AT THE ENTIRE CONTEXT OF THIS CASE FROM THE TRIAL AND ALL THE PROCEEDINGS THAT HAVE HAPPENED AFTERWARDS --

>> OKAY.

SO THAT'S NOT A REQUIREMENT.

>> CORRECT.

>> YOU ANSWERED MY QUESTION.

>> OKAY.

AND I THINK THAT'S WHAT'S MISSING HERE, AND I KNOW,

JUSTICE PARIENTE, THEY SEEM CONCERNED ABOUT SOUTULLO.
>> WELL, WHAT I MEAN, I GUESS, IS A WORD PICTURE --
>> RIGHT.
>> -- OF THIS TO MAKE SURE WE'RE NOT GIVING THIS SHORT SHRIFT. I THINK THE ORIGINAL MOTION WAS FILED PRO SE, AND, I MEAN, AGAIN, IF HE'S SAYING ABOUT THE GUILT, I MEAN, IT WAS 7-5. SO I GUESS JUSTICE OVERTON THOUGHT IT WAS NOT PROPORTIONAL IF KONDIAN WAS THE ACTUAL KILLER VERSUS SCOTT, YOU KNOW, THAT MAYBE WOULD MAKE THE DIFFERENCE IN TERMS OF THE SENTENCE.
>> SURE.
>> SO --
>> OKAY.
AT TRIAL THE DEFENSE WAS, OKAY, I WAS THERE.
HE HAD TO ADMIT HE WAS THERE, HIS FINGERPRINTS ARE ALL OVER THE HOUSE.
MATTER OF FACT, IN THE DIRECT APPEAL OPINION THIS COURT NOTED THAT HIS FINGERPRINTS WERE ON ITEMS THAT CLEARLY DEMONSTRATED THAT HE PARTICIPATED IN THE FIGHT.
HIS -- ESPECIALLY HIS FINGERPRINTS ON A BLOODY KNIFE THAT WAS USED TO CUT THE CORD TO TIE THIS UNCONSCIOUS VICTIM.
AT TRIAL THE STATE NEVER RELIED

ON THE FACT THAT SCOTT'S BLOOD
WAS THERE.

AS A MATTER OF FACT, THE STATE
RELIED ON THE FACT THAT THIS WAS
A TWO-MAN JOB.

KONDIAN'S BLOOD WAS AT THE
SCENE, SCOTT'S BLOOD WAS NOT AT
THE SCENE.

THERE'S NO TESTIMONY THAT, IN
FACT, IT WAS.

IT WAS, IT WAS KONDIAN'S BLOOD
AND SCOTT'S FINGERPRINTS.

>> ALL THE BLOOD WAS TESTED NOW
AND IT DIDN'T SHOW SCOTT'S
BLOOD, IT WOULD MAKE -- IT'S A
NON-ISSUE.

>> EXACTLY.

BECAUSE THE STATE DIDN'T MAKE
THAT AN ISSUE.

WE CONCEDED HIS BLOOD WASN'T
THERE.

THEN YOU GO TO THE 3850, THE
FIRST 3850, AND I THINK THIS IS
CRITICAL.

AT THAT PROCEEDING SCOTT
COMPLETELY CHANGES HIS DEFENSE
AND SAYS COUNSELOR WAS
INEFFECTIVE FOR NOT ARGUING THAT
I DID PARTICIPATE IN THE
BEATING, BUT I WAS DOING IT AS A
DEFENSE-OF-OTHERS THEORY.

AND THIS COURT SAID IN THAT
OPINION, YOU CAN'T HAVE IT BOTH
WAYS.

EITHER YOU LEFT BEFORE THE
STRUGGLE HAPPENED, WHICH IS WHAT

YOU SAID AT TRIAL BECAUSE YOUR BLOOD WASN'T THERE, OR NOW YOU'RE SAYING THAT, NO, I DID PARTICIPATE.

I DID HIT THE VICTIM, BUT I WAS HELPING MY FRIEND, RICHARD KONDIAN, BECAUSE THE VICTIM PERPETRATED A SEXUAL ASSAULT ON HIM.

YOU CANNOT HAVE IT BOTH WAYS.

THIS COURT ALSO SAID IN THAT SAME OPINION THAT THE PHYSICAL EVIDENCE CLEARLY WOULD NOT SUPPORT A DEFENSE OF OTHERS THEORY BECAUSE THE VICTIM WAS BRUTALLY AND SAVAGELY BEATEN. THE MEDICAL EXAMINER TESTIFIED THAT THERE WERE SIX BLOWS TO THE HEAD, THREE THAT WERE FATAL, THREE THAT CRUSHED HIS SKULL. HE WAS TIED WHEN HE WAS ALIVE, AND THE EVIDENCE DEMONSTRATES THAT HE WAS HIT AFTER HE WAS TIED.

SO EVEN THE PHYSICAL EVIDENCE WOULDN'T SHOW THAT THIS IS IN DEFENSE OF OTHERS.

SO YOU'VE GOT TO LOOK AT THIS DNA MOTION IN THE CONTEXT THAT SCOTT, HE'S CLAIMING EVERYTHING. HE WAS THERE, HE WASN'T THERE -- >> WHAT'S THE STRONGEST, FIRST OF ALL, IT'S PRETTY STRONG EVIDENCE THAT HIS FINGERPRINTS ARE ON THE BLOODY KNIFE.

>> YES.

>> THE OTHER AS FAR AS -- AND HE, AGAIN, AT TRIAL WAS, "I WAS THERE."

I MEAN, SO AS YOU SAID, HE'S NEVER DENIED NOT BEING THERE.

>> CORRECT.

>> SO NOW WE'RE GOING BACK TO THIS ISSUE OF SOMEHOW AFTER HE'S TIED UP THAT HE LEAVES, BUT WHERE -- AND MAYBE, I MEAN, AGAIN, I JUST WANT TO MAKE SURE SO WE'RE NOT MISSING SOMETHING.

>> SURE.

>> GIVE ME THE DEFENSE ARGUMENT ABOUT WHAT DNA MIGHT POSSIBLY MAKE A DIFFERENCE FOR HIM TO HAVE ARGUED SOMETHING AT TRIAL, EVEN IF WE DON'T THINK IT WOULD BE AN ACQUITTAL.

WHAT COULD IT POSSIBLY SHOW?

>> WELL, I'M NOT SURE BECAUSE --

>> WELL, HELP ME THOUGH.

GIVE ME THE OTHER, YOU KNOW, YOU DID THOSE ARGUMENTS THE NIGHT BEFORE, YOU HAVE TO ARGUE BOTH SIDES.

WHAT'S THE OTHER, GIVE US, WHAT'S THE OTHER SIDE THAT MAYBE THE DEFENSE LAWYER WOULD LIKE TO HAVE WITH SOMETHING --

>> OKAY.

AND THE REASON WHY I'M HAVING A HARD TIME WITH ANSWERING THE QUESTION IS BECAUSE IN THE MOTION -- NOT THE PRO SE MOTION, THE MOTION FILED BY COUNSEL --

HE TAKES AN INCONSISTENT POSITION IN THE MOTION, PARAGRAPH 5B, ON WHETHER IT'S EITHER -- IT WAS TWO ITEMS, AND THERE WERE BLOODSTAINS ON A WALL, AND THAT WOULD BE AT PAGE 4191 OF THE RECORD.

HE SAYS, WELL, ON TWO OF THOSE STAINS IT IS EITHER THE DEFENDANT, SCOTT, OR THE CO-DEFENDANT.

HE SAYS THAT IN THE MOTION.

SO HE'S NOT EVEN SURE WHAT THE EVIDENCE IS GOING TO SHOW.

AND HE SAYS, WELL, IF IT SHOWS THAT IT'S KONDIAN, THEN MY ORIGINAL DEFENSE AT TRIAL IS SUPPORTED BY THAT WHICH JUST CORROBORATES THAT MY BLOOD WASN'T THERE -- WHICH THE JURY ALREADY KNEW -- OR ON THE NEXT PAGE HE SAYS IF MY BLOOD IS THERE, THEN IT SUPPORTS MY OTHER ARGUMENT THAT I MADE AT THE 3850 THAT I DID PARTICIPATE, BUT I WAS HELPING MY FRIEND.

SO THAT'S WHY IT'S REALLY, THE MOTION ITSELF IS INCONSISTENT.

WHICH IS JUST, THE DEFENSE THROUGHOUT THIS --

>> THAT'S THE SECOND AMENDED MOTION --

>> CORRECT.

THAT WAS FILED BY COUNSEL.

>> THAT'S WHAT WE HAVE.

I JUST WANT TO UNDERSTAND --

>> YES, MA'AM.

>> SO WE'RE ONLY TALKING ABOUT THIS ASKING FOR BLOODSTAINS TO BE TESTED.

>> CORRECT.

>> COULD YOU JUST ENLIGHTEN ME THEN ON THE FACT THAT IT SEEMS ALSO PRETTY STRONG THAT THEY HAD MADE STATEMENTS THE DAY BEFORE THAT THEY WERE GOING TO DO THIS. IS THAT -- WHAT'S THE -- WAS THAT -- WHO WAS PRESENTED AT TRIAL TO SAY THAT?

>> CHARLES SOUTULLO WAS PRESENTED AT TRIAL, ACTUALLY THE AFTERNOON OF THAT RICHARD KONDIAN, PAUL SCOTT AND SOUTULLO, AND SOUTULLO WAS INVITED BY SCOTT TO GO WITH THEM BECAUSE THEY WERE PLANNING A ROBBERY AND A MURDER. HE TESTIFIED TO THAT, ABOUT THAT AT TRIAL.

IN A SUBSEQUENT 3850, HE RECANTS THAT PORTION WHERE HE SAYS IT WASN'T SCOTT WHO SAID WE INTENDED TO ROB.

HE WASN'T GIVEN AN EVIDENTIARY HEARING ON THAT CLAIM.

IT CAME UP BEFORE THIS COURT, AND THIS COURT SAID THAT IT'S REALLY A SO WHAT BECAUSE THE EVIDENCE, EXCUSE ME, EVEN IF SOUTULLO CHANGED HIS TESTIMONY ABOUT THE ROBBERY, IT DOESN'T CHANGE THE FACT THAT SCOTT HAD

THE ITEMS, HE WAS FOUND WITH THE VICTIM'S ITEMS, AND MORE IMPORTANTLY AND THIS COURT POINTED OUT THAT SCOTT AT HIS CLEMENCY PROCEEDINGS ADMITTED YET ANOTHER THEORY, THAT THE INTENT WAS FOR THEM TO GO TO THE HOUSE.

MR. KONDIAN WOULD ENGAGE IN SEXUAL ACTIVITY WITH THE VICTIM WHILE SCOTT RUMMAGED THROUGH THE HOUSE FOR VALUABLES.

SO THAT IS YET A THIRD KIND OF VARIATION ON THE WHOLE THEME, AND THAT'S WHAT THIS COURT RELIED ON, THE CLEMENCY, TO NEGATE ANY IMPACT OF SOUTULLO'S RECONTATION.

I WOULD ALSO, AS AN ASIDE, MY OPPONENT SAYS MR. KONDIAN HAS SINCE ADMITTED TO THE KILLING. THAT IS ABSOLUTELY AND POSITIVELY A FALSE STATEMENT. AT BEST HE HAS SAID MR. SCOTT CAME TO MY DEFENSE, AND THERE WAS A VIOLENT STRUGGLE AMONG ALL OF US.

HE HAS NEVER SAID THAT HE WAS THE ONE WHO --

>> DID HE SAY THAT MR. SCOTT RAN OUT OF THE DOOR?

>> NO.

SCOTT HAS SAID THAT.

RICHARD KONDIAN HAS NOT SAID THAT IN HIS PLEA, IN HIS STATEMENT TO THE POLICE OR IN

HIS 3850.

WHAT YOU MAY BE THINKING OF --

>> GO ON.

>> OKAY.

THAT THERE WAS IN THE 3850 WHERE
THERE WAS A SUMMARY DENIAL THERE
WERE TWO AFFIDAVITS FILED BY
OTHER INMATES WHO SAID THAT
KONDIAN TOLD THEM THAT SCOTT RAN
OUT.

THIS COURT REMANDED FOR AN
EVIDENTIARY HEARING ON THAT
CLAIM, AND THE DEFENSE NEVER
BROUGHT THOSE WITNESSES.

SO THAT'S A NONISSUE.

>> ON THE ISSUE OF WHO IS THE
MORE CULPABLE, THAT'S NEVER BEEN
RAISED, I GUESS, BECAUSE KONDIAN
PLED GUILTY --

>> CORRECT.

THAT'S CORRECT.

>> BUT IS THE STATE'S THEORY
THAT IT WAS SCOTT THAT WAS THE
ACTUAL PERPETRATOR OF THE
MURDER?

>> WELL, THE STATE'S THEORY AT
TRIAL WAS THAT -- AND I INVITE
YOU TO, PLEASE, LOOK AT THE
CLOSING ARGUMENTS -- HE SAID
THIS WAS A TWO-MAN JOB.
AND THEY BROUGHT KONDIAN IN.
HE DIDN'T TESTIFY, BUT THEY
SHOWED THE HEIGHT AND THE WEIGHT
OF MR. KONDIAN.

HE WAS A SLIGHT MAN.

THE VICTIM WAS TALL, BIG, AND HE

SAID THERE'S NO WAY THAT THIS
COULD HAVE BEEN PERPETRATED BY
ONE PERSON.

IT WAS ALSO THE STATE'S THEORY
THAT SCOTT, BEING THE BIGGER OF
THE TWO, THAT HE WAS
LEFT-HANDED, THAT THE EVIDENCE
DEMONSTRATED THAT SCOTT CLEARLY
PARTICIPATED IN THOSE BLOWS
AFTER THE VICTIM WAS TIED UP ON
THE COUCH.

AND THERE WAS A STATUE THAT WAS
FOUND BY THE VICTIM ON THE FLOOR
THAT THE MEDICAL EXAMINER SAID
WAS CONSISTENT.

THE BASE OF THAT STATUE WAS
CONSISTENT WITH ONE OF THE THREE
COMPRESSED SKULL FRACTURES.

>> AND WHOSE FINGERPRINTS WERE
FOUND ON THAT?

>> NOBODY'S.

>> AND WHAT ABOUT THE ARGUMENT
THAT ACTUALLY THE MURDER WEAPON
WAS A CHAMPAGNE BOTTLE?

>> OKAY.

AGAIN, THE MEDICAL EXAMINER HAS
NEVER SAID THAT THE CHAMPAGNE
BOTTLE -- WHICH HAS NEVER BEEN
RECOVERED -- WAS THE ACTUAL
MURDER WEAPON.

AT BEST HE SAID IN A AFFIDAVIT
THAT IT POSSIBLY COULD HAVE BEEN
BECAUSE IT, TOO, WAS CONSISTENT,
THE ANGLE OF IT --

>> WAIT, WHEN YOU SAY THE
CHAMPAGNE BOTTLE WAS NEVER

RECOVERED --

>> RIGHT.

>> IF THE CHAMPAGNE BOTTLE WAS USED TO KILL SOMEBODY --

>> THEY MUST HAVE TAKEN IT WITH THEM.

>> I THOUGHT IT WAS A BROKEN LAMP.

WASN'T THERE A BROKEN LAMP THAT HAD MR. SCOTT'S FINGERPRINTS ON IT?

THAT WASN'T CONNECTED AT ALL WITH BEING A PART OF THE MURDER WEAPON?

>> THERE WAS A BROKEN VASE, AND ON THE NECK OF IT -- AND APPARENTLY THAT VASE WAS BROKEN INTO HUNDREDS OF PIECES.

SCOTT'S PRINTS WERE ON THE NECK OF THE VASE.

AND --

>> BUT THAT WASN'T A PART OF THE MURDER WEAPON, I MEAN, THAT WAS NEVER CONNECTED AS BEING POSSIBLY ONE OF THE THINGS THAT THE BLOW WAS INFLICTED WITH?

>> WELL, IT, I MEAN, WE THINK HE WAS HIT WITH IT.

THERE WAS A BROKEN CHAIR, THERE WAS A VASE, THERE WAS THE STATUE, THE BEAR STATUE THAT WAS SHATTERED.

BUT THIS CHAMPAGNE BOTTLE -- WHO THE CO-DEFENDANT HAS ADMITTED TO USING, I MIGHT ADD -- THE DEFENDANT HAS ALSO ADMITTED TO

USING THE CHAMPAGNE BOTTLE AS WELL.

>> BUT THE CHAMPAGNE BOTTLE WAS NOT AT THE SCENE.

>> RIGHT.

IT WAS NEVER RECOVERED.

>> ADMITTED TO USING IT TO WHAT?

>> HIT THE VICTIM.

>> WHEN DID THE DEFENDANT ADMIT THAT?

>> HE ADMITTED IT TO DETECTIVE BERNARD COLLINS WHEN DETECTIVE COLLINS WENT TO CALIFORNIA TO BRING THE DEFENDANT BACK, AND THAT'S IN DETECTIVE COLLINS' DEPOSITION --

>> WAS THAT BROUGHT AS EVIDENCE IN THE ORIGINAL TRIAL?

>> NO.

THE STATE DIDN'T BRING DETECTIVE COLLINS IN.

THAT WAS --

>> BUT YOU HAVE THAT.

>> IT'S IN THE RECORD ON 3850 WHERE THE DEFENDANT SAID, WE SHOULD HAVE USED THE DEFENSE-OF-OTHERS THEORY.

BUT DR. CUEVAS HAS NEVER SAID THAT WAS, IN FACT, DEFINITELY A CHAMPAGNE BOTTLE.

HE SAID IT WAS CONSISTENT, HE DIDN'T BACK OFF FROM SAYING THAT THAT STATUE WAS CONSISTENT.

THE ONLY THING HE SAID WAS THAT HE WOULD HAVE THOUGHT IF IT WERE THE STATUE, THAT IT WOULD HAVE

HAD MORE BLOOD ON IT.

IT DID HAVE SOME OF THE VICTIM'S BLOOD, BUT HE THOUGHT SINCE THE SCENE WAS SUCH A BLOODY MESS THAT IT WOULD HAVE HAD MORE BLOOD.

AND SINCE WE DON'T HAVE THE CHAMPAGNE BOTTLE, NEVER HAD THE CHAMPAGNE BOTTLE, WE DON'T KNOW WHAT SHAPE THE CHAMPAGNE BOTTLE IS IN.

SO I THINK THAT YOU'VE GOTTA --

>> EVIDENTLY, IT DIDN'T SHATTER AT THE SCENE.

>> NO.

>> MUST HAVE BEEN A FULL CHAMPAGNE BOTTLE.

>> SO WHEN YOU LOOK AT THIS DNA MOTION, YOU NEED TO LOOK IN THE MOTION AND SEE THE INCONSISTENCIES IN IT, BUT MORE IMPORTANTLY YOU NEED TO LOOK AT THE INCONSISTENCIES OF THIS WHOLE -- THE THEORIES HAVE RUN THE GAMUT WHICH THIS COURT HAS MENTIONED SEVERAL TIMES IN ALL THE PRIOR OPINIONS.

IF THIS COURT HAS NO FURTHER QUESTIONS, WE ASK THAT YOU AFFIRM THE TRIAL COURT'S LEGAL DETERMINATION THAT NO MATTER WHAT THE DNA EVIDENCE SHOWED THAT THIS WOULD NOT IN ANY WAY EXONERATE OR MITIGATE THE SENTENCE.

THANK YOU.

>> THANK YOU.

I BELIEVE YOU HAVE A COUPLE OF MINUTES LEFT HERE.

>> WELL, FIRST I'D LIKE TO ADDRESS COUNSEL'S CONTENTIONS THERE WAS A FALSE STATEMENT ABOUT MR. KONDIAN SAYING THAT, NOT SAYING THAT HE HAD EVER USED THE CHAMPAGNE BOTTLE TO KILL MR. ALESSI.

YOU CAN LOOK, THERE'S AFFIDAVITS FROM DEXTER KAUFMAN, MICHAEL MALLEY --

>> WELL, I THOUGHT WHAT SHE SAID WAS WHAT WE HAVE WAS SOME AFFIDAVITS FROM OTHER INMATES WHO SAID HE SAID THIS.

>> WELL, HE -- AND SO --

>> IS THAT WHAT --

>> THERE'S EVIDENCE IN THERE THAT HE SAID IT.

IT'S NOT THAT IT NECESSARILY --

>> I THINK YOU'RE JUST TRYING TO SHOW YOU'RE NOT REPRESENTING, MISREPRESENTING --

>> BUT THERE'S SIX DIFFERENT INMATES THAT SAY THIS IS WHAT HE TOLD US, THAT HE WAS THE KILLER, AND THAT HE USED THE CHAMPAGNE BOTTLE.

>> BUT YOU STILL, LET'S GET BACK TO -- YOU'RE ASKING FOR SOME BLOOD TO BE TESTED.

AND THERE IS NO, HOW IF THE BLOOD WAS NEVER ALLEGED TO BE YOUR CLIENT'S, HOW DOES THAT,

HOW DOES THAT EXONERATE OR PUT YOU IN A POSITION OF GETTING A LESSER SENTENCE?

>> BECAUSE OF THE DIRECT CONTRAVENTION OF HOW THIS HAPPENED.

I WOULD ENCOURAGE THE COURT TO LOOK AT VOLUME 9, 1596.

HE SAYS IT COULDN'T HAVE BEEN THE TEDDY BEAR STATUE, THAT IT WAS CONSISTENT WITH THIS CIRCLE OF BLOOD BEING FROM A CHAMPAGNE BOTTLE AS MR. KONDIAN'S REPEATEDLY SAID THROUGH THESE AFFIDAVITS THAT COULD BE PRODUCED.

AND WITHIN THE MOTION IT ACTUALLY SAYS WITH REGARDS TO ITEMS 37 AND 90 DNA TESTING WOULD ESTABLISH THAT THE BLOODSTAINS ARE CONSISTENT WITH THE CHAMPAGNE BOTTLE THAT THE OTHER PARTY, RICHARD KONDIAN, HAS STATED POST-TRIAL THAT HE USED TO KILL THE VICTIM.

KONDIAN CLEARLY HAD A CUT ON HIS HAND.

SO THIS DIRECTLY FLIES IN THE FACE OF WHAT THE STATE PRESENTED AS TO HOW THIS MURDER HAPPENED. AND IT'S ALWAYS BEEN RELEVANT WAS MR. SCOTT THERE OR HAD HE FLED AND LEFT AS STATED IN THESE AFFIDAVITS?

THERE WAS MR. KONDIAN'S VERSION, THERE WAS --

>> IS THERE ANY QUESTION THAT HE WAS THERE, BUT HE WAS COMING TO THE AID OF HIS FRIEND?

>> HE WAS ABSOLUTELY THERE, AND THERE WAS ABSOLUTELY -- I BELIEVE THAT THE TESTIMONY BEARS OUT THAT THERE WAS AN ATTACK BY MR. ALESSI UPON MR. KONDIAN, AND THAT DURING THAT ATTACK MR. SCOTT CAME TO HIS AID, GETS SCARED AND TAKES OFF RUNNING. APPARENTLY, MR. ALESSI WAS A VERY LARGE MAN.

>> HOW ABOUT CONSISTENT WITH THE KNIFE AND THE CUT --

>> IT ACTUALLY WAS NOT ON THE HANDLE, IT WAS ON THE, LIKE, ON THE END OF THE BLADE WHICH JUST LOOKS MORE AS IF IT WAS MOVED AS OPPOSED TO THERE BEING BLOOD ON THE HANDLE, AND THERE'S SOME KIND OF PRINT ON THE HANDLE.

I DON'T BELIEVE THERE WAS EVER A PRINT ON THE HANDLE, IT WAS ACTUALLY ON THE TIPS AS IF THAT WAS SOMETHING THAT WAS MOVED.

I THINK IF THE SCENE, THE SCENE WAS CHAOTIC.

THERE'S STUFF BROKEN ALL OVER THE HOUSE.

IT LOOKS AS IF A FIGHT HAD OCCURRED ALL OVER THE HOUSE.

I THINK I'M OVER TIME.

I APPRECIATE IT.

THANKS.

>> THANK YOU BOTH FOR YOUR

ARGUMENTS HERE TODAY.

THE COURT WILL TAKE ITS MORNING
RECESS FOR 10 MINUTES.

>> PLEASE RISE.