

>> 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 AND GIVE ATTENTION, AND YOU
SHALL BE HEARD.

GOD SAVE THESE 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
THIS SESSION OF THE FLORIDA
SUPREME COURT.

BEFORE WE GET STARTED, I JUST
WANT THE PARTIES TO KNOW THAT
YOU WILL ONLY BE QUESTIONED BY
SIX OF US THIS MORNING.

JUSTICE PERRY HAS BEEN TOLD TO
REST HIS VOCAL CHORDS.

WITH THAT, WE WILL PROCEED WITH
THE FIRST CASE, WHICH IS
TUMBERLIN VERSUS FLORIDA.

>> GOOD MORNING, PAUL PETILLO ON
BEHALF OF APPELLATE ALWIN
TUMBERLIN.

I'LL TRY AND GO THROUGH THIS
FIRST THREE ISSUES IN THE CASE
IF I CAN AND IF I TIME WILL TRY
AND COVER MORE.

JUST TO GIVE YOU THIS BRIEFEST
OUTLINE OF FACTS OF THE CASE,
THIS WAS A ROBBER/MURDER, AT AN
AUTO SHOP, AND THERE WAS NO

PHYSICAL EVIDENCE, THAT LINKED
MR. TUMBERLIN TO EITHER THE
CRIME SCENE, THE MURDER WEAPON,
OR THE GET AWAY CAR.

ALL OF THE EVIDENCE -- AND HE
MADE NO ADMISSIONS TO THE POLICE

--

>> I THOUGHT THERE WAS SOMETHING
THAT CONNECTED HIM TO THE MURDER
WEAPON.

I THOUGHT THAT WAS FOUND IN HIS
ROOM AND THEY TESTED IT, I
THOUGHT, AM I INCORRECT IN THAT
ASSUMPTION.

>> NO, YOU ARE CORRECT ABOUT
THAT BUT I'M SAYING ALL THE
EVIDENCE THAT LINKS
MR. TUMBERLIN TO THE CRIME CAME
FROM THREE WITNESSES, AND THAT
WOULD BE RHONDA TUM BERLIN, AND
JEAN NICOLE RUTH AND ANTHONY
MAYES, AND ALL THE EVIDENCE CAME
THROUGH THOSE THREE PEOPLE AND
THERE WAS NO INDEPENDENT
EVIDENCE OTHER THAN THOSE THREE
TO ESTABLISH THAT HE HAD
ANYTHING TO DO WITH THE CRIME.

>> THE GUN USED IN THE CRIME,
THE WEAPON, THAT WAS CONNECTED
TO EXPERT TESTIMONY.

>> YES.

THAT FOUND THE MURDER WEAPON.

>> LET ME ASK YOU THIS, BECAUSE
ONE PIECE OF FACTS I'M CONFUSED
ABOUT, THEY WERE ABLE TO TEST A
SPENT PROJECT UNTIL OR CASING.

>> YES.

>> WASN'T IT A REVOLVER.

>> YES.

>> HOW DO WE GET A CASING OUT OF
A REVOLVER.

>> OKAY.

WELL... I PLEAD IGNORANCE ON HOW
THESE GUNS WORK AND I DON'T KNOW
IF THAT CAME UP IN THE -- IF
ANYONE MADE AN ISSUE.

I DON'T RECALL, THE FACTS OF
THIS.

>> I WONDERED, TYPICAL WITH A
REVOLVER... THERE WAS TESTIMONY
THE CYLINDER IN THE REVOLVER
WOULDN'T LOCK AND MAY HAVE BEEN
THERE AND FALLEN OUT, THAT IS
ALL I CAN THINK OF.

>> YEAH, THAT IS... THAT MYSTERY
IS NOT SETTLED IN THIS RECORD.

>> OKAY.

BUT THERE WAS EXPERT TESTIMONY,
CONNECTING THE SPENT CASING AND
THE ROUNDS FOUND IN THE VICTIM,
TO THE WEAPON, THAT WAS
ALLEGEDLY THE DEFENDANT'S.

>> YES, THAT'S RIGHT.

>> BUT...

>> BUT I'M SAYING, THE PERSON
THAT CONNECTS MR. TUMBERLIN WITH
THE GUN WAS RHONDA TUMBERLIN AND
JEAN NICOLE RUTH AND ANTHONY
MAYES AND TO FIND HIM GUILTY THE
STATE HAS TO BELIEVE THOSE THREE
WITNESSES OR... REALLY BOILS
DOWN TO THAT.

THERE IS NO OTHER POLICE
TESTIMONY, OF AN ADMISSION HE
MADE, WHAT I'M TRYING TO GET
ACROSS IS THERE IS NO PHYSICAL
EVIDENCE, LIKE HIS DNA OR
FINGERPRINTS AT THE SCENE, NO DN
AMOUNT OR FINGERPRINTS FOUND IN

--

>> YOU ARE TRYING TO GET TO
THE... [INAUDIBLE] THE WITNESS.

>> YES.

>> I THINK -- CERTAINLY WITH ALL
OF THIS THE GUN BEING FOUND IN
POSSESSION OF -- NOT POSSESSION
BUT THE ROOM WHERE MR. TUMBERLIN
WAS AND THE GUN AT THE SAME TIME
HAVING BEEN SEEN EARLIER IS
STILL ADDITIONAL EVIDENCE
SUPPORTING MR. TUMBERLIN'S
INVOLVEMENT.

>> RIGHT.

>> AS FAR AS YOUR FIRST TWO
POINTS, MY CONCERN ON THE FIRST
ONE, AS FAR AS THE ENTIRE
WITNESS'S STATEMENT, IT REALLY
SEEMS THAT IT DOES COME INTO THE
CASE, AND NOT ONLY FOR A CHARGE
OF RECENT FABRICATION BUT... BUT
ALSO IMPROPER INFLUENCE BUT, THE
WHOLE ISSUE WAS THAT... ON THAT,
THAT YOUR DEFENSE ATTORNEY WAS
SAYING THAT THAT WITNESS MADE...
[INAUDIBLE] BY LIEUTENANT SMITH
AND THAT I GUESS HE WAS TELLING
HIM... [INAUDIBLE] THAT WOULD BE
IMPROPER INFLUENCE AT THE VERY

LEAST AND THERE IS ALSO I
THINK... [INAUDIBLE] IS REALLY
SHOWING, RECENT FABRICATION AND
I'M HAVING TROUBLE WITH YOUR
FIRST POINT.

>> SURE.

SURE.

WELL, I THINK IF YOU LOOKED AT
THE CROSS-EXAMINATION OF MAYES
ON THAT PART OF IT, OUT OF
CONTEXT, YOU MIGHT COME TO THAT
CONCLUSION.

BUT, I THINK IF YOU LOOK UP TO
WHAT HAS HAPPENED IN THE TRIAL,
UNTIL THEN, INCLUDING OPENING
STATEMENTS, THAT THE DEFENSE
THEORY HAD BEEN THAT ALWIN
TUMBERLIN HAD NOTHING TO DO WITH
THE CRIME AND ANTHONY MAYES DID
AND HE DID IT WITH SOMEONE ELSE,
POSSIBLY RHONDA TUMBERLIN AND
THOSE THREE WITNESSES, RHONDA,
JEAN NICOLE RUTH AND MAYES WERE
NOT APPREHENDED RIGHT AFTER THE
CRIME, AND, THIS IS WHAT HE
STATED IN OPENING, AND THAT THEY
HAD CONSTANT CONTACT WITH EACH
OTHER, AFTER THE CRIME.

DEFENSE COUNSEL TOOK SOME EFFORT
AND WAS VERY DELIBERATE IN
ESTABLISHING THEY HAD THE
OPPORTUNITY TO AND DID SPEAK
WITH EACH OTHER, AFTER THE
CRIME.

THE THEORY BEING, THAT THESE
THREE WITNESSES CONCOCTED THE

STORY TO BLAME MR. TUMBERLIN.
IT HAD NOT BEEN THE DEFENSE
POSITION... LIEUTENANT SMITH WAS
SOMEHOW INVOLVED IN THE
CONSPIRACY TO FABRICATE AN
WOULDN'T MAKE ANY SENSE --
>> YOU LOOK AT THIS ONE THING,
WHICH JUMPED OUT AT ME, AND
INVESTIGATOR... [INAUDIBLE] TOOK
A STATEMENT WHERE YOU
REGURGITATED THE SAME THINGS
THAT LIEUTENANT SMITH HAD JUST
GONE OVER.
THAT THAT DOESN'T SOUND LIKE
THERE IS FABRICATION AND
IMPROPER INFLUENCE BY LIEUTENANT
SMITH?
>> WELL, I THINK ALL I CAN GO BY
ON WHAT THE DEFENSE HAD IN MIND,
BY THAT, WAS WHAT HE SAID IN
RESPONSE TO THE JUDGE WHEN THE
STATE INTRODUCED THE PRIOR
CONSISTENT STATEMENT.
AND HE SAID WHEN HE -- AFTER HE
OBJECTED ON HEARSAY GROUNDS,
ACTUALLY WHERE THE STATE ARGUED,
THE -- YOU MENTIONED THE REASON
TO FABRICATE AND WHAT I PUT
BEFORE THE JURY IS WHAT IS IN
THE RECORD, DENNIS SMITH WAS
TELLING HIM WHAT HE SAID AND
WHAT HE SAID AND HOW... HE
ACKNOWLEDGED.
THERE IS NOTHING, NO SUGGESTION
OF RECENT FABRICATION.
AND HE HAS BEEN CONSISTENTLY

FABRICATING THROUGHOUT THE ENTIRE TRIAL, AND THROUGHOUT THE ENTIRE COURSE OF THE INVESTIGATION.

>> DID ANYONE ARGUE IMPROPER INFLUENCE, THAT IS ANOTHER...

[INAUDIBLE].

>> I DON'T THINK SO.

>> IF IT IS APPROPRIATE, BECAUSE SEEMS LIKE HE SAID LIEUTENANT SMITH HELPED HIM TO COME UP WITH THE VERSION OF THE...

[INAUDIBLE].

>> AND I THINK WHEN YOU TALK ABOUT THE REGURGITATION, I THINK, ESPECIALLY WHAT IS IN -- WHAT HAPPENED HERE WAS, THAT LIEUTENANT, WHAT WOULD THE -- ONCE THE JURY FINDS OUT IT IS LIEUTENANT SMITH WAS SUMMARIZING WHAT MAYES PREVIOUSLY TOLD HIM AND THE DEFENSE SAID WHEN HE WAS REGURGITATING WHAT MAYES ALREADY TOLD SMITH, AND, EVEN IF... YOU LOOKED AT THE CROSS-EXAMINATION, AND CAME UP WITH -- AND CAME AWAY WITH THE FEELING THAT THE DEFENSE THEORY WAS -- ANTHONY MAYES WAS THE CONDUIT FOR LIEUTENANT SMITH'S INFORMATION, THE PRIOR CONSISTENT STATEMENT AS RELATED BY LIEUTENANT SMITH DOESN'T REBUT THAT.

ASKING LIEUTENANT SMITH, LIEUTENANT SMITH, DID YOU SUPPLY HIM WITH THE INFORMATION FOR THE

SUMMARY?

NO.

WHERE DID YOU GET THE
INFORMATION?

HE GAVE THAT TO ME PREVIOUSLY.

YOU COULD ASK MAYES THE SAME
THING, MR. MAYES, WERE YOU
SUPPLIED THAT INFORMATION FROM
LIEUTENANT SMITH?

YOUR STORY FROM LIEUTENANT
SMITH?

AND HE'LL SAY NO.

THIS IS MY VERSION.

>> ISN'T THIS A... IT PROVE THAT
A THEME OF THE DEFENSE HERE WAS
THAT MAYES WAS INFLUENCED BY THE
[INAUDIBLE] THAT HE HAD.

>> YES.

>> WELL, DOESN'T THIS TESTIMONY
CONSTITUTE A PRIOR CONSISTENT
STATEMENT THAT WOULD TEND TO
REBUT THAT DEFENSE THEORY OF
IMPROPER INFLUENCE BASED ON THE
PLEADINGS.

>> WELL, I SAY NO, FOR THIS
REASON.

>> STATED --

>> WHY?

WHY.

>> I JUST EXPLAIN, THE STATE
BROUGHT OUT THE PLEA DEAL AT THE
BEGINNING.

THE STATE ATTORNEY DID.

AND THEY WENT THROUGH SOME OF
THE DETAILS OF IT.

NOW THE DEFENSE CROSS EXAMINED

AND FILLED OUT MORE DETAILS AND THE STATE BROUGHT UP THE PLEA DEAL AND I SUPPOSE THE STATE HAD FULLY LEFT OUT ANY TESTIMONY ABOUT THE PLEA DEAL, WITH MR. MAYES, AND THEN DEFENSE COUNSEL BROUGHT IT UP, THAT WOULD MAKE ADMISSIBLE YOUR THEORY.

BUT, HERE'S THE STATE BRINGS IT IN AND THEY CANNOT FIRST OPEN THE DOOR, AND WALK THROUGH IT.

AND THIS IS, THE PRIOR CONSISTENT STATEMENT IS ONE OF -- PROBABLY THE ONLY HEARSAY RULE THAT ACTUALLY DEPENDS ON WHAT SOMEONE ELSE DOES.

>> IS IT YOUR POSITION THAT HAD THE STATE NOT CONDUCTED THE ANTICIPATORY... THAT THEY NEVER WOULD HAVE CROSS EXAMINED MR. MAYES ABOUT THE PLEA DEAL HE GOT --

>> I DOUBT IT WOULD HAVE COME OUT.

>> HOWEVER, THAT IS HIS CHOICE, THAT WOULD BE HIS CHOICE AND THAT WOULD --

>> AND THAT IS A DECISION HE'D HAVE TO MAKE.

>> WE HAVE HELD BEFORE IN JACKSON VERSUS STATE THAT EVIDENCE OF PLEA NEGOTIATIONS, AS COMPARED TO THE ALLEGATIONS... IN THE PARTICULAR INSTANCE, THE -- DESPITE THE

FACT THE PROSECUTOR MAY HAVE
OPENED... [INAUDIBLE]
SOVEREIGNED THE PUNCH BY GETTING
INTO THAT, DEFENSE COUNSEL DID
SUBSTANTIALLY CROSS EXAMINE
MR. MAYES ABOUT THE DEAL THAT HE
GOT, AND I THINK IT WAS SECOND
DEGREE MURDER, AND 20 YEARS
WHICH, IN COMPARISON TO WHAT THE
STATE WAS SEEKING AS TO YOUR
CLIENT WAS A SUBSTANTIAL DEAL.
SO I THINK THAT, LEAVES IN THE
MINDS OF THE JURY THE
IMPLICATION THE GUY MAY BE
MAKING THIS UP TO GET THE SWEET
DEAL.

>> YEAH.

WELL, I THINK MOST OF THOSE
DETAILS CAME OUT IN THE STATE'S
DIRECT EXAMINATION.
AND, I WANT TO HAVEN H -- TO
POINT OUT THE STATE DIDN'T ARGUE
THE THEORY OF ADMISSIBILITY
BELOW AND HAS NOT ARGUED IT ON
APPEAL.

SO...

>> WHAT IS... I KNOW IN TERMS OF
EVIDENCE, THERE ARE RULES OF
EVIDENCE, BUT THERE IS ALSO
DISCRETION.
FOR THE TRIAL COURT.
AND, IF THERE -- WHAT IS THIS
STANDARDS HERE FOR US, LOOKING
AT THIS, YOU KNOW, MAYBE THE
JUSTICE WHEN HE WAS A TRIAL
JUDGE MAYBE WOULD HAVE SAID, NO,

I THINK THIS IS CLOSE BUT I WILL NOT LET IT IN.

IF THERE IS EVIDENCE BECAUSE OF WHAT JUSTICE CANADY RAISED AND JUSTICE LABARGA'S RAISED AND THE STATE RAISED THAT WOULD ALLOW THE ADMISSIBILITY AND THERE ARE OTHER EVIDENCE, THAT WOULD SAY, NO, IT IS PROBABLY NOT A HIGH RISK SITUATION, BETTER NOT LET IT IN, BECAUSE IT IS AGAIN A KEY WITNESS, HOW DO WE LOOK AT THAT? AND...

>> ALL I CAN TELL YOU IS WHAT THE COURT STATED ABOUT THE STANDARD OF REVIEW FOR EVIDENTIARY ISSUES, AND TO BE HONEST, PERFECTLY BLUNT, I DON'T KNOW HOW... MAKING DECISIONS, AND IT IS ABUSE OF DISCRETION BUT IS LIMITED BY THE EVIDENCE, CODE AND CASE LAW.

>> OKAY.

WE GET TO THE CODE, THAT SAYS, TO REBUT CHARGES OF RECENT FABRICATION, AND IMPROPER INFLUENCE AND THAT IS WHY I'M SAYING IF THERE IS EVIDENCE THAT COULD GO BOTH WAYS YOU ARE SAYING THAT IS NOT WHAT THE CROSS-EXAMINATION IS ABOUT AND WHAT THE DEFENSE CASE WAS ABOUT AND THE JUDGE LISTENING TO EVERYTHING GOES, NO, I THINK THAT IS WHAT YOU WERE SAYING AND I'LL LET IT IN BECAUSE YOU

OPENED THE DOOR, IN YOUR
CROSS-EXAMINATION, AND YOUR
CASE, HOW DO WE FIND THAT TO BE
REVERSIBLE ERROR?

>> OKAY, THEN LET ME GO RIGHT TO
THIS, THEN, ON THE EVIDENCE CODE
PART.

BECAUSE IT GOES BACK TO WHAT I
WAS TRYING TO SAY BEFORE, IS
THAT, HAVING LIEUTENANT SMITH
COME IN, AND SAY, NO, NO, I --
MAYES IS NOT MY CONDUIT, I
LEARNED MY INFORMATION FROM
MAYES.

THAT IS, THE PRIOR CONSISTENT
STATEMENT RULES IS A
DOOR-OPENING CONCEPT AND THIS
CLOSES THE DOOR.

A PRIOR CONSISTENT STATEMENT IS
ONLY ADMISSIBLE IF IT REBUT THE
CHARGE.

NOW, IF YOU MAKE A -- CONTRAST,
IF MAYES HAD MADE A PRIOR
CONSISTENT STATEMENT TO SOMEONE
ELSE BEFORE HE MET SMITH, THAT
WOULD CERTAINLY REBUT THE THEORY
THAT MAYES IS SIMPLY THE CONDUIT
FOR SMITH, BECAUSE HE HAS NEVER
EVEN MET SMITH AND ALREADY MADE
THE SAME STORY.

AND THAT REBUT IT.

AND THAT STATEMENT REBUTS IT AND
TO HAVE LIEUTENANT SMITH COME IN
AND SAY, I DID NOT SUPPLY HIM
WITH THE INFORMATION, HE
SUPPLIED IT TO ME AND THAT

CLOSES THE DOOR.

THAT IS THEIR REPLY.

IF YOUR ASSUMPTION ABOUT THE
CROSS-EXAMINATION IS CORRECT.

BUT, HAVING LIEUTENANT SMITH
TESTIFY AT THE -- ABOUT THE
STATEMENT DOESN'T REBUT IT.

AND IT IS HARMFUL, BECAUSE THE
STATEMENT, THE STORY, ACQUIRES
ADDED CREDIBILITY.

YOU KNOW, GETS THE IMPRIMATUR OF
TRUTH FROM THE WITNESS WHO GIVES
IT, WHICH IS LIEUTENANT SMITH.

>> OF COURSE, THEN THAT PLAYS
RIGHT INTO YOUR SECOND POINT.

>> RIGHT.

>> OF WHAT LIEUTENANT SMITHS AT
THE END --

>> EXACTLY, THE POINT TO... THAT
DANGER OF THE WITNESS GIVING THE
STATEMENT, THE IMPRIMATUR OF
TRUTH CAME TO FRUITION HERE.

WHEN --

>> DOES IT MAKE ANY DIFFERENCE
IN THIS CASE, IF... HE WASN'T
SAYING AT THE TRIAL ITSELF.

THAT, YOU KNOW, I BELIEVE THIS
WITNESS WAS TELLING ME THE
TRUTH.

HE WAS SAYING, TO ANOTHER
OFFICER, THAT I THINK MR. MAYES
WILL TELL YOU THE TRUTH.

>> YEAH.

>> DOES THAT MAKE ANY
DIFFERENCE, THAT CONTEXT.

>> IT MIGHT MAKE IT WORSE OR, I

DON'T KNOW.

AND THAT IS PRETTY SUBTLE
DISTINCTION, I DON'T KNOW IF A
JURY WOULD APPRECIATE IF THERE
IS A DIFFERENCE, THEY MIGHT
FIND IT MORE PERSUASIVE THAT HE
IS VOUCHING FOR THE TRUTH OF THE
WITNESS TO ANOTHER OFFICER.

>> THE 5th DISTRICT IN A CASE
CALLED... [INAUDIBLE] WHAT THEY
HELD WAS THAT IF THE OFFICER IS
TALKING ABOUT THAT... THESE
STATEMENTS GIVEN BY THE WITNESS,
SO FAR, CORROBORATE -- ARE
CORROBORATED BY THE
INVESTIGATION I'VE CONDUCTED AND
IN OTHER WORDS, UP TO THIS POINT
EVERYTHING HE SAID IS TRUE AND
MATCHES WHAT I FOUND FROM THE
EVIDENCE AND IF THAT THIS IS
CASE, THE OFFICER IS NOT TALKING
ABOUT THE WITNESS IS GOING TO
TELL THE TRUTH AT TRIAL BUT THE
FACT IT IS CORROBORATED BY THE
EVIDENCE IN THE CASE AND DUNHAM
SAID THAT IS OKAY.

HOW IS THAT NOT OKAY HERE?

>> I'M SURE I DON'T QUITE KNOW
WHAT THE DISTINCTION WAS.
THERE WERE... THE OFFICER IS
JUST SAYING THAT --

>> WHILE CONDUCTING AN
INVESTIGATION I FOUND ALL OF
THESE FACTS AND EVERYTHING HE
TOLD ME IS CORROBORATED BY THE
FACTS I FOUND AND THAT IS WHAT

HE TOLD THE OTHER OFFICERS.

>> WELL, I THINK THAT IS DIFFERENT, QUITE HARMFUL. YOU KNOW, I THINK THE HEART OF THIS CASE IS, AS I SAID, AT THE BEGINNING, THE STATE'S CASE RESTED ON THESE THREE RATHER DISREPUTABLE, SHADY WITNESSES, AND HERE'S A JURY, YOU KNOW, 12 PEOPLE, THEY ARE PROBABLY GOOD AT JUDGING THE CREDIBILITY OF PEOPLE LIKE THEMSELVES, AND THEY PROBABLY HAVE NO EXPERIENCE OR LITTLE EXPERIENCE WITH PEOPLE LIKE RHONDA TUMBERLIN AND JEAN NICOLE RUTH AND MAYES AND THEY THINK POLICE OFFICER, LIKE LIEUTENANT SMITH, 19 YEARS EXPERIENCE, AND HE'S OUT THERE EVERY DAY TALKING TO THESE KIND OF PEOPLE AND THAT IS WHAT HE DOES FOR A LIVING AND INVESTIGATES.

HE DETERMINES WHO IS TELLING THE TRUTH AND WHO ISN'T.

AND, I THINK THEY WOULD BE PRETTY SWAYED BY AN OFFICER WHO VOUCHES.

>> THAT IS WHAT THE FOURTH DISTRICT SAID IN ACOSTA AND ARE THERE NOT CIRCUMSTANCES IN WHICH AN OFFICER CAN COME IN AND SAY WHAT THE WITNESS IS SAYING IS TRUE BASED ON WHAT I KNOW OF THE CASE SO FAR AND NOT SAYING TO THE JURY I BELIEVE EVERYTHING HE

SAYS IS TRUE BUT THERE ARE CIRCUMSTANCES IN WHICH AN OFFICER CAN DO THAT, AREN'T THERE?

>> I... I'LL SAY NO.

TO BE HONEST, I DON'T KNOW WHAT THE RELEVANCE OF THAT WOULD BE. UNLESS THE DEFENSE MADE SOME ISSUE AND IT OPENED THE DOOR TO THAT KIND OF TESTIMONY.

MIGHT MAKE IT RELEVANT.

I DON'T KNOW, I DON'T SEE HOW THE DETECTIVE COULD COME IN AND SAY ALL OF THIS WITNESS ADDED UP WITH WHAT I FOUND.

THEY CAN SAY HERE'S WHAT I FOUND AND THE WITNESSES CAN COME IN AND SAY, HERE'S WHAT HAPPENED AND LET THE JURY ADD THE TWO TOGETHER AND WE DON'T NEED THE DETECTIVE TO TELL THEM, TO MAKE THE -- ADD IT UP.

>> HERE, THE OFFICER JUST TO MAKE SURE WE ARE SURE, THE OFFICER HADN'T DONE AN INVESTIGATION.

ISN'T THAT THE DIFFERENCE, EVEN IF YOU ASSUME THAT THE 5th DISTRICT CASE SEEMS TO SAY -- WHAT JUSTICE LABARGA SAYS, HERE, LIEUTENANT SMITH HAD ONLY -- ALL HE HEARD WAS WHAT MR. MAYES SAID AND IS TELLING HIS FELLOW OFFICER, THE GUY IS GOING TO TELL YOU THE TRUTH.

>> LIEUTENANT SMITH WAS... WAS

IN AND OUT OF THIS
INVESTIGATION.

BUT HE WAS THE MAIN -- THE MAIN
PERSON IN IT.

LIKE I SAY --

>> YOUR ARGUMENT REALLY IS,
MR. MAYES WAS THE ONLY PERSON
WHO WAS THERE WHEN THE ACTUAL
SHOOTING TOOK PLACE, OTHER THAN
THE DEFENDANT.

>> WELL, OTHER THAN SOMEONE
ELSE.

YES.

>> OTHER THAN WHAT SOMEONE ELSE.

>> THE DEFENSE THEORY WAS, I
THINK, THAT IT WAS RHONDA
TUMBERLIN.

>> WE HAVE IN OUR RECORDS, WHAT
WE HAVE HERE, BASICALLY, IS THAT
MR. MAYES AND MR. TUMBERLIN WERE
THE TWO PEOPLE AT THE SCENE OF
THE MURDER --

>> THAT'S CORRECT.

>> ALL RIGHT.

AND SO, I THOUGHT YOUR ARGUMENT
REALLY WAS, BECAUSE MR. MAYES
WAS THE ONLY PERSON WHO REALLY
PUT MR. TUMBERLIN AT THE SCENE
OF THE CRIME, THAT THAT IS WHY
THE -- WHAT YOU TERM AS THE
BOLSTERING OF HIS TESTIMONY, BY
SAYING HE IS GOING TO TELL THE
TRUTH, IS CRITICAL.

>> YES, I AGREE.

THANK YOU, YEAH.

I'M SORRY.

>> IT WAS ALSO CRITICAL IN THE PENALTY PHASE.

BECAUSE, CCP WAS ONE OF THE AGGRAVATORS.

IN THE BULK OF THE EVIDENCE THE COURT RELIED UPON TO INSTRUCT THE JURY ON THE CCP WAS MR. MAYES' TESTIMONY.

>> CORRECT.

>> BUT FOR MR. MAYES' TESTIMONY, PERHAPS, CCP, WOULD NOT HAVE BEEN JUSTIFIABLE IN THIS CASE AND...

>> RIGHT HE MOVED MORE THAN THAT, JUSTICE LABARGA AND WOULDN'T HAVE BEEN ABLE TO GETS THE DEATH PENALTY AND WOULDN'T KNOW WHO THE SHOOTER IS WITHOUT MAYES' TESTIMONY.

>> NOW THAT YOU HAVE HAD ALL OF THE FRIENDLY QUESTIONS, LET ME GIVE YOU THE OTHER SIDE. AND IN THIS CASE, THE TRIAL JUDGE RECOGNIZED THAT THIS IS AN ERRONEOUS STATEMENT AND I DON'T THINK THE STATE WILL GET UP AND SAY IT IS A PERFECTLY FINE STATEMENT FOR LIEUTENANT SMITH TO SAY.

IT WAS OFFERED AND... YOU KNOW, THIS IS THE TYPE OF HIGH RISK ERROR WE HOPE DOESN'T OCCUR DURING THE TRIAL BUT THE JUDGE RECOGNIZED, IT WAS AN OBJECTION, AND A SIDEBAR, AND THE JUDGE... ALTHOUGH DIDN'T QUITE SUSTAIN

THE OBJECTION BUT MUST HAVE
SUSTAIN IT AND TOLD -- IN FRONT
OF THE JURY, THAT -- TO
DISREGARD THE LAST ANSWER AND
THEN, THERE, HE REALLY
DELIBERATED HIMSELF, ACOSTA,
READ THE CASES, A THOROUGH TRIAL
JUDGE, IN THE REGARD, AND, HE
THEN CAME BACK AND THEN WAS
LOOKING AT THE STANDARD FOR A
MISTRIAL.

SO, IF WE HAD A CASE, WHERE IT
WAS -- DEALING WITH HARMLESS
ERROR BEYOND A REASONABLE DOUBT,
I THINK YOU ARE... YOUR ARGUMENT
WOULD BE VERY VERY, STRONG, BUT,
NOW, WE GET TO, WHAT THE
STANDARD IS, DID THE JUDGE...
SHOULD THE JUDGE HAVE GRANTED A
MISTRIAL AND GAVE A CURATIVE
INSTRUCTION, AGREED TO BY THIS
DEFENSE ATTORNEY AND BY THE
STATE, AND, NOW WE GET TO
WHETHER THIS ONE STATEMENT, ONCE
SAID AND EVEN WITH IT BEING
RECOGNIZED BY THIS JUDGE AND
STRICKEN AND THOUGH IT IS AN
INSTRUCTION, ARE YOU SAYING, AS
A MATTER OF LAW, THERE IS NO WAY
TO UNRING THIS BELL IN THIS CASE
BECAUSE OF THE IMPORTANCE OF
MAYES AND A MISTRIAL HAD TO BE
GRANTED.

>> YES.

>> YOU KNOW, I'M STRUGGLING WITH
THAT.

AND I THINK THAT IT IS... IN
OTHER WORDS IT IS EASIER IF IT
WAS A HARMLESS ERROR ANALYSIS
BUT THE MISTRIAL STANDARD IS
INDEED A VERY HIGH STANDARD.

>> SURE, A HIGHER BURDEN, I
ADMIT.

>> MUCH HIGHER.

>> YEAH.

AND, WELL, ON THE CURATIVE, THE
JUDGE, THEY HAD THE BENCH
CONFERENCE, AFTER WHICH THEY
TOOK A PAGE-AND-A-HALF, I DON'T
KNOW HOW LONG IT WOULD TAKE,
PAGE-AND-A-HALF AND COMES BACK
AND THE JUDGE SAYS, I'M GRANTING
THE MOTION TO STRIKE THE
WITNESS'S LAST COMMENT.

NOT EXACTLY THE MOST COMPELLING
CURATIVE AND THEN AS YOU SAY,
THEY TALKED ABOUT A -- ACOSTA
AND --

>> AND HE SUSTAINED --
ESSENTIALLY SUSTAINED THE
OBJECTION.

>> YEAH --

>> ISN'T THAT CORRECT.

>> YES.

AND THE CURATIVE INSTRUCTION
LATER WAS FOUR DAYS LATER.
SO IT LOST A LOT OF ITS
EFFECTIVENESS IF IT HAD ANY,
WANTED TO MAKE THAT
CLARIFICATION.

>> FOUR DAYS LATER AFTER OTHER
PEOPLE TESTIFY.

>> YES.

THE MISTRIAL MOTION WAS MADE ON
-- BAD EVIDENCE CAME IN ON
THURSDAY.

AND THEY CALLED A COUPLE MORE
WITNESSES AND THIS IS TOWARDS
THE END OF THE STATE'S CASE,
TOO, BY THE WAY, LIEUTENANT
SMITH, AND SO, HAD A LITTLE MORE
POWER THAN NORMAL.

AND STATE CALLED TWO MORE
WITNESSES I THINK ON FRIDAY, A
FEW MORE, INCONSEQUENTIAL
WITNESSES.

THEN THEY TALKED ABOUT THE
MISTRIAL, AND THE JUDGE MADE HIS
RULING ON SATURDAY, AND THE --
ANNOUNCED HIS DECISION ON MONDAY
AND THAT IS WHEN THE CURATIVE
WAS GIVEN.

>> AND WHAT WAS THE SUBSTANCE OF
THE CURATIVE?

>> THE SECOND ONE?

>> YES.

>> WELL, LET'S SEE.

>> BECAUSE, AT FIRST, HE SIMPLY
SAID I'M GOING TO STRIKE THIS
TESTIMONY, THIS LAST ANSWER,
CORRECT.

>> RIGHT.

>> AND SO...

>> HERE'S WHAT HE TOLD THE JURY
ON MONDAY.

YOU ARE HERE BY INSTRUCTED THAT
THE BELIEVEABILITY OR
CREDIBILITY OF ALL WITNESSES

TESTIFYING IN THE CASE IS WITHIN
THE EXCLUSIVE PROVINCE OF THE
JURY.

PLEASE DISREGARD ANY SUGGESTION
TO THE CONTRARY.

>> SO THERE WAS NO PINPOINTING
OF THAT INSTRUCTION TO THE
QUESTION OR ANSWER THAT WAS MADE
BY THE DETECTIVE SMITH ABOUT.

>> RIGHT.

RIGHT.

>> HE WAS GOING TO TELL THE
TRUTH.

>> I'M NOT A BIG PROPONENT OF
THE DEFENSE SHOULD DO THIS OR
THAT, BECAUSE THIS DEFENSE DID
AN AWFUL LOT IN THIS CASE BUT IT
SEEMS TO ME -- AND I KNOW IT IS
HARD IN THE HEAT OF TRIAL AND
THEY ARE DEALING WITH DIFFICULT
ISSUES AND I'M NOT FAULTING THE
DEFENSE, BUT, WOULDN'T THE BEST
TIME FOR THE DEFENSE HAVE ASKED
FOR A FURTHER -- IF THEY'LL ASK
FOR A CURATIVE INSTRUCTION,
RIGHT AFTER THE -- HE TESTIFIED,
THEY MOVE TO A MISTRIAL AND THE
JUDGE TAKES IT UNDER
CONSIDERATION AND SAYS AT LEAST
IF YOU MOVE TO STRIKE IT, PLEASE
DISREGARD THAT LAST STATEMENT,
AND, THEN, REITERATE THAT THE
CREDIBILITY OF WITNESSES ARE FOR
YOUR CONSIDERATION.

>> I CAN SAY I SHARE THAT.

YOU KNOW, I DON'T KNOW WHAT WAS

GOING ON IN THE HEAT OF THIS BATTLE, BUT, I AGREE WITH YOUR OVERALL POINT.

ABOUT CURATIVE INSTRUCTIONS.

BUT I THINK JUST TO GO BACK, JUSTICE PARIENTE, WHAT YOU MENTIONED ABOUT THE MISTRIAL ISSUE, THAT IS A DECISION THIS COURT HAS TO MAKE, IS DID WHAT HAPPENED HERE DEPRIVE

MR. TUMBERLIN OF A FAIR TRIAL SUCH AS THE JURY COULDN'T DISREGARD THE TESTIMONY.

BECAUSE, AS I SAY, WE HAVE THREE RATHER DISREPUTABLE WITNESSES, ONE OF WHOM IS THE MOST IMPORTANT, ANTHONY MAYES AND THE JURY CALLED ON TO MAKE THIS KIND OF DECISION OF THIS MAGNITUDE WHERE SOMEONE'S LIFE IS AT STAKE, THEY'LL ASK THEMSELVES CAN I BELIEVE THIS PERSON.

>> THE STATE DIDN'T USE THAT IN CLOSING ARGUMENT, THOUGH.

>> NO.

>> YOU ARE INTO YOUR REBUTTAL IF YOU WANT TO SAVE TIME AND YOU DID SAY YOU WANTED TO DISCUSS THREE ISSUES.

>> YEAH, I WOULD LIKE TO TAKE A MINUTE-AND-A-HALF ON POINT THREE.

I THINK THE ISSUE THERE IS THIS STATE IS CONCEDED THERE WAS A DISCOVERY VIOLATION AND WE ARE DISAGREEING WHETHER A PROPER

INQUIRY WAS HELD AND I WANT TO POINT OUT THE MOST GLARING DEFECT WAS, THE JUDGE DID NOT DELVE INTO WHETHER THE STATE'S FAILURE TO TELL THE DEFENSE ABOUT THE WITNESS'S HYDROCODONE USE AND DIDN'T TELL THE STATE --

>> I BELIEVE WHAT HAPPENED IS, THE STATE KNEW THAT THE WITNESS HAD BEEN SHOT.

AND FROM WHAT I GATHERED FROM THE EVIDENCE, THEY DID NOT KNOW SHE WAS MEDICATED UNTIL THAT MORNING.

>> THAT'S RIGHT.

BUT THAT WAS FOUR OR FIVE HOURS EARLIER.

>> RIGHT, WELL, THAT IS... I THINK THE COURT COVERED THAT, I THOUGHT HE ASKED THE STATE, WHEN THEY FOUND OUT ABOUT IT AND WHEN IT WAS TOLD.

>> BUT HE JEAN NICOLE RUTH TESTIFIED THAT SHE TOLD THE STATE THAT MORNING THAT SHE WAS TAKING MEDICINE.

AND THE DEFENSE, NEVER TURNED TO THE STATE AND SAID WHAT ABOUT THAT, WHY DIDN'T SHE TELL THE DEFENSE AND FOR ALL WE KNOW, I DON'T WANT TO CAST ASPERSIONS, THEY KNOW, THEY PURPOSELY CHOSE NOT TO...

>> THE STATE SAID WE DIDN'T CALL THEM BECAUSE WE DIDN'T THINK IT WAS RELEVANT.

THE SHOOTING HAPPENED IN TAMPA

--

>> TALKING ABOUT THE HYDROCODONE USE, THOUGH, THEY MAY HAVE SAID, I... DECIDED IN THEIR MINDS THEY DIDN'T WANT THE WITNESS IMPEACHED WITH THAT. AND THAT WAS IMPORTANT AND I'LL RESERVE THE REST OF MY TIME FOR REBUTTAL.

THANK YOU.

>> MAY IT PLEASE THIS COURT, LISA-MARIE LERNER WITH THE ATTORNEY GENERAL'S OFFICE FOR THE STATE.

I WANT TO CLEAR UP SOME OF THE FACTUAL THINGS BEHIND THE CRIME ITSELF.

THIS GUN WAS SCENE SEEN WITH ALWIN TUMBERLIN TWO WEEKS BEFORE WHEN HE WAS AT A FAMILY --

>> BY WHOM.

>> RHONDA, HIS SISTER AND SHE WAS THE ONE WHO GAVE HIM A PLACE TO LIVE, SO IT'S NOT LIKE THEY WERE HOSTILE WITH EACH OTHER. SHE GAVE HIM A PLACE TO STAY, AND LET HIM STAY WITH HER CHILDREN IN HER HOUSE.

>> THIS IS STILL THE SAME PERSON THAT THE DEFENSE CONTENTS WAS ACTUALLY A PART OF THIS MURDER.

>> YES, THE EVIDENCE DOESN'T SUPPORT THE DEFENSE CONTENTIOUS. EARLIER IN THE WEEK OF THE CRIME, NICKY, ANOTHER OF THE

WITNESSES, HEARD TUMBERLIN TELL THERESA YORK, HIS GIRLFRIEND, THE WOMAN WHO OWNED THE YELLOW TAXI CAB-LOOKING CAR WHICH WAS INVOLVED IN THE CRIME, THAT WAS THERESA YORK'S CAR, TO BRING HIS GUN OVER TO HIS SISTER'S HOUSE.

ON THE MORNING OF THE CRIME, THERESA YORK CALLED WAL-MART TO SEE IF THEY HAD BULLETS.

ON THE MORNING OF THE CRIME, TUMBERLIN AND THERESA YORK WENT IN HER TAXI CAB LOOKING CAR TO WAL-MART AND BOUGHT BULLETS AND THE STATE PRODUCED THE RECEIPT AND ALSO PRODUCED THE BIRTHDATE AND DRIVERS LICENSE INFORMATION FROM THE PERSON WHO PURCHASED THE BULLETS AND THAT PERSON WAS THERESA YORK, TUMBERLIN'S GIRLFRIEND, NOT NICKY, THE NOT RHONDA, IT WAS NOT ANTHONY MAYES.

IT WAS TUMBERLIN'S GIRLFRIEND AND HE THEN CAME BACK TO THE HOUSE, RECRUITED MAYES AND THEY WENT OUT TO DO THE CRIME AND AT THE CRIME SCENE, TWO INDEPENDENT CIVILIAN WITNESSES UNCONNECTED WITH ANY OF THESE SUPPOSEDLY DISREPUTABLE WITNESSES, A WOMAN WHO WORKED ACROSS THE STREET IN THE AUTO ZONE, AND A NEIGHBOR, IN HER HOUSE, BOTH HEARD THE GUN SHOTS AND CAME OUT ONTO THE CRETE STREET, AND FOUND TWO MEN,

NOT A MAN AND WOMAN, TWO MEN AND
THE SHORTER, YOUNGER MAN WAS
RUNNING DOWN THE STREET AND THAT
IS CONSISTENT WITH ANTHONY
MAYES, HIS DESCRIPTION AND HE
DID TESTIFY THAT HE RAN ALL OF
THESE WITNESSES TESTIFIED HE
NEVER WENT BACK TO THE HOUSE.

>> WHAT -- THERE IS SOMETHING,
BECAUSE I THINK YOU ARE GIVING A
GOOD OVERVIEW OF THE OTHER
FACTS, AND WASN'T THERE ALSO
SOMETHING, THOUGH, ABOUT THAT
PERSON, WHO RAN, HAVING A WHITE
RAG IN HIS HAND?

>> THE NEIGHBOR SAID THAT.

>> OKAY, AND THE -- IF THAT
WHITE RAG WAS IN ANTHONY MAYES'
HANDS, ISN'T IT... WASN'T THERE
TESTIMONY THAT THE GUN, SOMEONE
PUT A WHITE RAG OR SOME COLOR
RAG OVER THE GUN.

>> YES.

>> WOULD YOU ELABORATE ON THAT.

>> YES, WHAT HAPPENED WAS, AS
THE JUSTICE INDICATED, THE GUN
WAS BROKEN AND THE ONLY WAY TO
SHOOT THE GUN WAS TO HOLD THE
CYLINDER CLOSED, AND TURN THE
GUN SIDWAYS.

YOU COULDN'T HOLD IT NORMALLY
AND YOU COULDN'T FIRE IT
ACCIDENTALLY.

SO, WHOEVER HELD THE GUN HAD TO
PUT A CLOTH OVER IT.

THIS WOMAN SAID SHE SAW THE

PERSON RUNNING DOWN THE STREET,
WITH A WHITE RAG IN HIS HAND.

>> AND THAT IS... THAT, YOU ARE
SAYING, WHOEVER -- YOU ARE
SAYING IT IS ANTHONY MAYES.

>> RIGHT, BUT THE DEFENSE HAS
THE INFORMATION AND THEY CROSS
EXAMINED ALL OF THE WITNESSES ON
THAT INFORMATION.

THE JURY CHOSE TO BELIEVE THAT
IT WAS TUMBERLIN WHO HAD THE GUN
BECAUSE HE WAS THE ONLY ONE WHO
WENT BACK...

>> WE DON'T KNOW WHY -- I THINK
WHAT WE ARE GETTING TO HERE...
FIRST TWO POINTS, WE DON'T KNOW
WHY THE JURY CLOSE TO BELIEVE
MAYES AND THE JUDGE GAVE A
SPECIAL VERDICT AND THE JURY
FOUND FELONY MURDER AND
PREMEDITATED, OR JUST
PREMEDITATED.

LET ME ASK YOU THIS QUESTION:
WHO ELSE TESTIFIED THAT
TUMBERLIN TOOK A GUN FROM THE
WAISTBAND AND PLACED IT UNDER
THE SEAT AND COMMENTED DURING
THE NIGHT HE WAS GOING TO KILL
EVERYBODY, WHOEVER WAS IN THERE.

>> ONLY MAYES BUT HE TESTIFIED
TO THAT BEFORE ANY PRIOR --

>> WE ARE TALKING ABOUT -- TO
ME, EVERYTHING ELSE YOU SAID IS
CONSISTENT WITH TUMBERLIN MAY BE
BEING INVOLVED IN DECIDING TO
ROB A PLACE.

WE'RE HERE BECAUSE MR. TUMBERLIN HAS GOTTEN THE DEATH PENALTY, AND HAS BEEN CONVICTED OF PREMEDITATED MURDER AND CCP. AND, THE ONLY PERSON THAT REALLY SHOWS -- I MEAN, ROBBERIES, GENERALLY, EITHER THEY ARE REAL GUNS OR FAKE GUNS BUT THAT IS A PRETTY COMMON WAY TO COMMIT A ROBBERY, BUT THE ISSUE OF WHETHER HE INTENDED TO MURDER SOMEBODY, THAT IS SUPPLIED SOLELY BY ANTHONY MAYES.

>> YES, BUT THERE IS ALSO THE CIRCUMSTANTIAL EVIDENCE, FOR EXAMPLE, THE TIMELINE.

I JUST, VERY QUICKLY, THE POLICE WERE CALLED TO THE BODY SHOP, AROUND 12:30.

AND THEY STOPPED RHONDA TUMBERLIN AND THERESA YORK IN THE CAR, AT 1:45.

THE HELICOPTER SAW THE TAXI CAB -- 12:45, THE TAXI CAB WAS SEEN BEHIND THE -- RHONDA'S HOUSE AT 12:46 AND THE HOUSE WAS SECURED. THE HOUSE WAS SECURED WITHIN 15 TO 26 MINUTES.

AND THE POLICE SAT ON THAT HOUSE AND WITHIN 20 MINUTES OF THEM SECURING THE HOUSE, THEY FOUND THE GUN, AND -- IN TUMBERLIN'S ROOM AND MAYES WAS NEVER IN THE HOUSE DURING THAT TIME.

AND THE ONLY PERSON IN THE HOUSE DURING THE TIME WAS TUMBERLIN.

AND HE WAS SEEN WALKING DOWN THE HALLWAY, AND DROPPED SOMETHING WITH METAL AND WENT INTO THE BEDROOM, AND CAME BACK OUT, AND LEFT TO GO LOOK FOR MAYES, WHO HAD RUN OFF.

>> DO YOU BELIEVE THAT THE CAR PORT WOULD HAVE... [INAUDIBLE] WITHOUT MAYES' TESTIMONY BASED ON WHAT YOU JUST TOLD US?

>> WELL, MAYES' TESTIMONY WOULD STILL BE THERE.

>> MAYES DIDN'T TESTIFY, WOULD CCP BE APPLICABLE.

>> IT WOULD BE, BUT HE DID TESTIFY.

>> THAT IS THE ISSUE, HE TESTIFIED AND HIS TESTIMONY WAS BOLSTERED BY THE POLICE OFFICER. AND, NOT ONLY IN THE GUILT PHASE BUT ALSO AFFECTED THE...

[INAUDIBLE].

>> I UNDERSTAND WHAT YOU ARE SAYING BUT MAYES WOULD TESTIFY EVEN IF HIS PRIOR CONSISTENT STATEMENT HAD NOT COME IN. THE THING IS, THAT HIS TESTIMONY ON DIRECT AND DURING THE CROSS-EXAMINATION, BEFORE THIS PRIOR CONSISTENT STATEMENT CAME IN, WAS THE THING AND IT WAS DURING THAT TIME THAT HE SAID THAT TUMBERLIN MADE THE STATEMENTS.

>> WOULD YOU ADDRESS -- GO AHEAD.

FINISH YOUR ANSWER.

>> EVEN IF THE PRIOR CONSISTENT STATEMENT HADN'T COME IN, MAYES' TESTIMONY WOULD STILL BE VALID.

>> RIGHT, BUT I'M... I GUESS I'VE GOTTEN BEYOND THE PRIOR CONSISTENT STATEMENT AND THE SECOND ISSUE, INVOLVING THE OFFICER, BASICALLY, SAYING HE IS GOING TO TELL THE TRUTH, AND, YOU KNOW, AND COUNSEL MADE REFERENCE TO WHAT THE 4TH DCA REFERRED TO, IN ACOSTA, THAT WHEN A POLICE OFFICER COMES INTO A COURTROOM, AND IDENTIFIES HIMSELF AS A POLICE OFFICER, THAT JURORS HAVE A TENDENCY TO LOOK AFTER THAT PERSON AND BELIEVE THEM.

AND, HERE THE OFFICER CAME IN AND TOLD THEM, THIS GUY IS GOING TO TELL THE TRUTH.

AND, THIS IS THE WITNESS WHO BASICALLY TESTIFIED -- ONLY WITNESS WHO TESTIFIED THAT THE DEFENDANT HAS STATED I'M GOING TO GO THERE AND KILL ANYONE, EVERYONE, I THINK HE SAID EVERYONE WHO IS THERE...

>> I THINK THE TRIAL COURT DID AN EXCELLENT JOB IN ITS ORAL DECISIONS.

AND IN DIFFERENTIATING ACOSTA FROM THIS PARTICULAR SITUATION. IN THIS PARTICULAR SITUATION, THE STATEMENT WAS, A

PROSPECTIVE.

I DON'T THINK IT IS VOUCHER BUT I WILL SAY PROSPECTIVE VOUCHING OUTSIDE OF THE PRESENCE OF THE JURY WHEN IT WAS MADE AND IT WAS IN AN INTERVIEW ROOM BETWEEN TWO DETECTIVES, AND SMITH WAS INTRODUCING MAYES, WHO WAS SITTING THERE.

TO COLEMAN, AND, SMITH WAS SAYING, ESSENTIALLY, TO MAYES, HERE, TALK TO COLEMAN, I THINK HE IS GOING TO TELL YOU THE TRUTH AND IS INSTRUCTING MACE WITH THAT TO TELL THE TRUTH. AND HE DID NOT MAKE ANY COMMENT ON THE...

>> WHAT WAS THE PURPOSE OF THAT STATEMENT, COMING INTO EVIDENCE HERE?

>> IT SHOULD NOT COME IN. IT WAS... IT WAS... WHAT HAPPENED WAS THEY WERE DISCUSSING A PRIOR CONSISTENT STATEMENT, AND THE DEFENSE WENT THROUGH ALL... EXACTLY WHAT WAS SAID IN THE PRIOR CONSISTENT STATEMENT, AND, THE STATE DID, TOO.

AND, THE STATE THEN SAID, WELL, DID YOU SAY ANYTHING ELSE TO ANTHONY MAYES, ON WHAT TO SAY? AND, WHAT HAPPENED IS, THIS IS ABOUT A PARAGRAPH...

>> WHAT WAS THE STATE LOOKING FOR WITH THAT PARTICULAR

QUESTION.

>> WAS, DID YOU TELL ANTHONY
MAYES ANYTHING ELSE TO SAY?

>> SO, THIS IS...

>> AS TO WHETHER OR NOT THERE
WAS AN IMPROPER --

>> RIGHT, WHETHER OR NOT --

>> WHAT THE ANSWER WAS SUPPOSED
TO DO.

>> WHETHER OR NOT DETECTIVE
SMITH WAS FEEDING MAYES THE
STORY.

>> CAN I ASK A QUESTION ABOUT
THE STORY?

THE... MAYES ENDS UP TESTIFYING
AT TRIAL THAT HE COMMENTED, IS
THIS A CORRECT -- FROM PAGE 46

--

4662, HE'S GOING TO KILL
EVERYBODY, WHOEVER IS IN THERE,
IS THAT WHAT HE TESTIFIED TO.

>> YES.

RIGHT.

BUT WHAT SMITH TESTIFIES TO IS
THAT... EVERYBODY HAS THESE, I
GUESS, NICKNAMES, YOU HAVE MR...
THIS ONE MAN GANG AND THEN,
TUMBERLIN IS REFERRED TO AS MAN,
MAN.

>> RIGHT.

>> HE SAYS, HE SAID THAT
WHATEVER ROOM... MAKE SURE I'VE
GOT IT.

THAT HE WAS GOING TO CAP THE OLD
MAN, IF THE OLD MAN BUSTED.

>> RIGHT.

>> NOW WHERE... TO ME, I'M NOT SURE I UNDERSTAND. BUT I CAN SURE FIGURE WHAT THAT SAYS, I DON'T KNOW IF THAT IS RAISED BUT THAT SEEMS TO BE EVEN MORE HARMFUL, THAN THE ACTUAL TESTIMONY THAT MAYES GAVE THE JURY, HE WAS GOING TO CAP THE OLD MAN IF THE OLD MAN BUSTED. ISN'T THAT MEANING HE'LL KILL HIM, IF...

>> NO.

WELL, WHAT LATER ON THE TESTIMONY IS, THIS IS THE PRIOR CONSISTENT STATEMENT THAT CAME IN.

AND SMITH --

>> IS THAT CONSISTENT -- MORE LAB BRAT AND DAMNING.

>> NO, BECAUSE, WHAT THEY EXPLAINED IS, IF HE BUSTED OR BUCKED.

AND THEY EXPLAINED TO THE JURY THAT THAT MEANS IF HE RESISTED. AND IN FACT THE DEFENSE USED THE LATER ON IN CLOSING AND EVERYTHING ELSE, TO ARGUE THAT MAYES REALLY SAID HE'D ONLY PLAN TO SHOOT IF HE RESISTED AND USED THE PRIOR CONSISTENT STATEMENT. BUSTED OR BUCKED.

WHICH MEANS RESISTED OR FOUGHT BACK.

TO SHOOT.

AND, THE DEFENSE USED THAT IN THEIR ARGUMENT TO SHOW THAT THE

ARGUMENT THAT TUMBERLIN DIDN'T
HAVE THE... PREMEDITATION AND
SO, NO, I THINK YOU ARE
INCORRECT.

IT ACTUALLY HELPED THE DEFENSE.
THAT PORTION.

FURTHER IN TERMS OF THE SECOND
ISSUE AS JUSTICE PARIENTE
POINTED OUT, THE TRIAL COURT DID
DECIDE THIS WAS VOUCHING AND IT
WAS IMPROPER AND THEY STRUCK IT
IMMEDIATELY AND ASKED THE
DEFENSE IF THEY WANTED TO GIVE A
CURATIVE IMMEDIATELY, AND THE
DEFENSE ASKED FOR TIME TO THINK
ABOUT IT AND TO DO SOME
RESEARCH.

AND...

>> THE DEFENSE AT THAT POINT HAD
ASKED FOR THE CURATIVE... NO,
FOR A MISTRIAL.

>> YES.

THEY HAD.

>> AND SO, IS OUR CASE LAW SUCH
THAT YOU HAVE TO ASK FOR A
CURATIVE INSTRUCTION, BEFORE
MISTRIAL.

>> YES, TECHNICALLY.

BUT WHAT THE DEFENSE SAID, IS...

>> IF YOU BELIEVE THAT A
CURATIVE INSTRUCTION WOULD NOT
HELP, AND ONLY OFTEN YOU SEE
ARGUMENTS, ABOUT CURATIVE
INSTRUCTIONS, REALLY, ONLY
BRINGING MORE ATTENTION TO THE
ERROR, UNDER THOSE

CIRCUMSTANCES, YOU WOULD NOT HAVE TO ASK FOR A CURATIVE INSTRUCTION.

>> I'M NOT SAYING THE DEFENSE WAIVES THE ISSUE.

I'M NOT SAYING THAT AT ALL, I'M SAYING THE REASON THE CURATIVE INSTRUCTION WAS NOT GIVEN IMMEDIATELY IS THE DEFENSE WANTED TO THINK ABOUT THE WORDING OF THE INSTRUCTION, THEY DIDN'T THINK A CURATIVE INSTRUCTION WOULD WORK.

I CAN SEE -- CONCEDE THEY WANTED A MISTRIAL AND THAT IS PART OF REASON FOR THE DELAY IN GETTING THE CURATIVE IS THE DEFENSE WORKED OUT THIS LANGUAGE AND THAT IS HOW IT GOT TO BE A GENERALIZED LANGUAGE.

>> BY THEN, BY MONDAY, BECAUSE THE JUDGE PONDERES, YOU KNOW, WHICH IS CERTAINLY HIS, AVOID IT TO THE END OF THE TRIAL AND PONDERED ON WHETHER TO GIVE A MISTRIAL AND, YOU KNOW, SEEMS LIKE THE DEFENSE, THOUGHT WITH THE -- FOLLOWING RIGHT ON THE HEELS OF THESE -- THE WHOLE NARRATIVE OF WHAT MAYES TOLD HIM AND THEN SAID, I TOLD FELLOW OFFICER THIS GUY IS TELLING THIS TRUTH, TO MY, THAT IS --

>> NO, THAT IS NOT --

>> I FELT LIKE HE WOULD TELL THE TRUTH.

>> THAT HE WILL TELL YOU THE TRUTH.

>> WOULD TELL HIM THE TRUTH.

>> RIGHT.

WHICH IS DIFFERENT.

BECAUSE, HE NEVER WENT LATER AND SAID, WHAT HE TOLD COLEMAN IN THAT TAPED STATEMENT WAS THE TRUTH.

THIS IS PROSPECTIVE AND IT IS -- PERSPECTIVE AND IT IS DIFFERENT FROM ACOSTA WHERE HE SAID I TOTALLY BELIEVE THE UNCHARGED CODEFENDANT... THE ONLY PERSON INVOLVED AND IT IS DIFFERENT AND THE TRIAL COURT WAS VERY CAREFUL IN ITS ANALYSIS.

>> THE TESTIMONY I THINK WAS WELL, I DID ASSURE DETECTIVE COLEMAN IN FROM OF MAYES, I FELT LIKE MAYES WOULD TELL HIM...

>> RIGHT.

>>... COLEMAN.

>> YES, BECAUSE HE WANTED MAYES TO BE STRAIGHT WITH COLEMAN.

>> AND LET'S HAVE NO MISTAKE THE JUDGE SAID IT WAS VOUCHING, VOUCHING TO ANOTHER OFFICER AND CALLED INTO QUESTION WHETHER THERE WOULD BE PREMEDITATION WITHOUT MAYES'S TESTIMONY AND THE JUDGE WAS VERY CONCERNED ABOUT THE TESTIMONY.

>> YES.

HE WAS BUT HE ALSO INDEED DECIDING NOT TO GRANTED A

MISTRIAL BECAUSE IT IS A HIGH STANDARD TO GRANT A MISTRIAL, AND HE POINTED OUT ALL OF THE FACTS THAT I DID ABOUT THE GUN, THAT HIS OWN SISTER WAS TESTIFYING AGAINST HIM AND THE DEFENSE DID NOTHING TO IMPEACH THE SISTER FOR HOSTILITY TOWARD TUMBERLIN OR ANYTHING LIKE THAT AND ONLY TRIED TO POINT OUT THIS HER STATEMENTS VARIED BECAUSE SHE WAS TRYING NOT TO GET TUMBERLIN INVOLVED AND TRYING NOT TO EVEN ACKNOWLEDGE THAT SHE KNEW HIM INITIALLY.

AND, SO, THE JUDGE SAID THAT THAT WAS SIGNIFICANT, THE FACT THAT THE GUN IS ONLY TIED TO TUMBERLIN AND THE FACT THESE OTHER TWO WITNESSES SAW HIM THERE, AND, NICKY'S TESTIMONY, ABOUT GETTING THE BULLETS, AND, BRINGING THE LETTERS BACK AND THE BACKYARD AND THE FACT THAT THE CAR THAT WAS USED WAS TUMBERLIN'S GIRLFRIENDS' CAR, NOT NICKY'S CAR, WHICH THEY THEN HID BEHIND THE HOUSE, SO YOU COULDN'T SEE IT FROM THE STREET. AND THE ONLY WAY THEY FOUND IT IS BECAUSE THE HELICOPTER WAS OVER THE HOUSE.

SO THIS JUDGE SAID, GIVEN ALL OF THAT, THERE IS ENOUGH HERE FOR A TRIAL, EVEN BE A SENT THIS ONE ISOLATED COMMENT.

THIS JUDGE ALSO POINTED OUT THAT A NUMBER OF OTHER TIMES MAYES' TRUTHFULNESS OR WILLINGNESS TO TELL THE TRUTH IS BROUGHT UP, AND MAYES BROUGHT IT UP WHEN HE SAID, I WAS GOING TO TALK TO SMITH BECAUSE MY GRANDMOTHER TOLD ME TO BE TRUTHFUL WITH HIM. AND THAT WAS UNOBJECTED TO AND DURING THE PLEA BARGAIN, DURING... WHEN THE DEFENSE WAS QUESTIONING MAYES, ABOUT THE PLEA BARGAIN, HE SAID, MY... I HAVE TO TELL THE TRUTH...

>> HOW OLD AS MAYES AND TUMBERLIN.

>> ROUGHLY 24 AND 46.

>> IT ISN'T A SITUATION WHERE MAYES THIS IS 18-YEAR-OLD AND... I MEAN, THEY ARE CLOSE IN AGE.

>> THEY ARE CLOSE, I COULD BE WRONG, 23, 26, BUT, YOU KNOW, WITHIN A FEW YEARS OF EACH OTHER.

AND MAYES SAID, I HAVE TO TELL THE TRUTH ACCORDING TO THE PLEA BARGAIN AND THE DEFENSE GOES INTO THE TRUTH ACCORDING TO THE STATE ATTORNEY AND DETECTIVE COLEMAN, ISN'T THAT TRUE, AND ALL OF THAT WAS UNOBJECTED TO AND IN LIGHT OF THOSE INSTANCES OVER PEOPLE SAYING MAYES HAS TO TELL THE TRUTH, THIS IS AN ISOLATED COMMENT, AND IT WAS PROSPECTIVE AND NOT COMMENTING

ON THE TESTIMONY ITSELF OR EVEN
ON THE RECORDED STATEMENT
ITSELF.

>> ISN'T THE... DOESN'T OUR
JURISPRUDENCE CLEARLY RECOGNIZE
THE HEIGHTENED IMPORT, THE
CONDUCT AS ATTRIBUTABLE TO AN
INVESTIGATING OFFICER OR POLICE
OFFICER AND IS NOT JUST IN THIS
CATEGORY, IT SEEMS TO ME, BUT IT
IS RUNS THROUGHOUT THE AREA OF
ANYTHING THAT DEMONSTRATES THAT
A POLICE OFFICER HAVING THE...
BEEN CLOAKED WITH THAT POSITION
OF AUTHORITY, COMES IN, AND
POINTS THAT GUILT IN A
PARTICULAR CIRCUMSTANCE, GOES TO
A PARTICULAR PERSON, THAT IS
VIEWED DIFFERENTLY THAN LAY
PEOPLE COMING IN AND TESTIFYING,
ISN'T IT?

>> YES.

IT IS AND THAT IS WHAT ACOSTA
WAS BASED ON, HOWEVER, I THINK
THE TRIAL JUDGE ALSO TOOK PAINS
TO ADDRESS THAT ISSUE.

ONE, SMITH WAS AN ADJUNCT FROM
THE SHERIFFS DEPARTMENT, AND HE
WASN'T AN ACTIVE MEMBER OF THE
FT. PIERCE POLICE DEPARTMENT.

>> I CAN THINK OF CASES WE HAVE
LOOKED AT, RESPECTFULLY, FOR
EXAMPLE, SOUTH FLORIDA WHERE A
GENTLEMAN TOOK HIS WIFE OUT AND
THE JURY DETERMINED HE PUSHED
HER OVERBOARD AND THE POLICE

OFFICER INVESTIGATING MADE AN INNOCUOUS STATEMENT HOW THEY GOT TO THE PARTICULAR DEFENDANT WAS THEY HAD BASICALLY ELIMINATED EVERYONE ELSE AND THE GUY HAD TO HAVE BEEN THE ONE AND I THINK THE COURT REVERSED BECAUSE OF THAT CONCEPT OF THE IMPORTANCE OF THE POLICE POSITION OR LAW ENFORCEMENT IN OUR TOTAL JUSTICE SYSTEM AND WHEN THEY BECOME THE DETERMINER OF WHAT HAS OCCURRED IT IS PROBLEMATIC IT SEEMS TO ME AND DON'T WE HAVE CASE LAW THAT SAYS THAT?

>> YES.

YOUR HONOR YOU ARE ABSOLUTELY RIGHT AND THAT IS WHY POLICE OFFICERS ARE PUT TO SUCH A HIGH STANDARD, HOWEVER AS I FALL BACK ON WHAT I SAID BEFORE, IN THE SWISS, IT WAS A COMMENT MADE IN AN INTERVIEW BETWEEN ANOTHER DETECTIVE, ABOUT A STATEMENT THAT WAS GOING TO BE MADE, HE WAS TALKING --

>> CAME BEFORE THE JURY IS THIS POINT, IF THAT... IF IT GOES ON THERE, THAT IS ONE THING.

>> BUT HE WASN'T COMMENTING ON ANY, ANY EVIDENCE THAT WAS BEFORE THE JURY OR EVEN A RECORDED STATEMENT.

HE'S SAYING HE WILL TELL YOU THE TRUTH.

AND THEY DIDN'T EVEN GET INTO

THE --

>> YOU DON'T BELIEVE THAT THAT IS AN EVALUATION... A MENTAL EVALUATION, MADE BY LAW ENFORCEMENT, WITH REGARD TO WHAT A PERSON IS GOING TO TESTIFY TO?

>> I THINK IT WAS A NUDGING WITH MAYES TO BE FORTH RIGHT AND STRAIGHT.

>> OR TELL THE SAME THING HE REPEATED.

>> TO BE STRAIGHT WITH HIM AND THE OTHER THING THE JUDGE POINTED OUT AND MAY NOT BE A LARGE DEAL, BUT I JUST WANTED TO BRING IT BEFORE THE COURT, WAS THE DETECTIVE WAS A VERY CASUAL SORT OF MAN OF THIS STREET, CALLED ONE MAN GANG AND CAME TO COURT, IN JEANS AND A POLO SHIRT AND WAS NOT IN A POLICE UNIFORM AND NOT ATTACHED TO THE FT. PIERCE POLICE DEPARTMENT, WHICH WAS INVESTIGATING IT.

>> WAS HE WHITE OR BLACK.

>> I DON'T KNOW.

>> I DON'T KNOW, JUST FOLLOWING UP, BECAUSE, IT OCCURS TO ME THAT, REALLY, YOU ARE SAYING, IT IS BETTER BECAUSE HE THOUGHT PROSPECTIVELY -- THAT IS HERE SAY AND AFTER RECOUNTING THE OTHER HEARSAY THAT WAS POTENTIALLY ADMISSIBLE HE SAYS AND I TOLD THIS OTHER GUY THAT HE -- I THINK HE'S GOING TO TELL

YOU THE TRUTH.

BUT, AT THAT POINT, THE
DEFENDANT, WHAT IS THIS
DEFENDANT GOING TO DO?

DO YOU THINK HE'S STILL TELLING
THE TRUTH AND PUTS THE DEFENSE
AND EVERYBODY IN A POSITION THAT
YOU CANNOT ASK THEM TO... THE
QUESTION... THINK HE'S TELLING
THE TRUTH?

IT IS IMPLIED AND NOTHING IN
FRONT OF THE JURY WAS WHERE THEY
SAW, THIS IS REALLY HEARSAY, OF
SOMETHING THAT WAS SAID, AT THE
TIME.

THAT IS MY PROBLEM, WITH YOUR
ARGUMENT.

THAT IT IS... IT IS REALLY,
REALLY LOOK AT THIS, IT IS
IMPROPER NOT ONLY, BECAUSE IT IS
BOLSTERING THE WITNESS BUT IS
IMPROPER HEARSAY.

>> IMPROPER ON MANY DIFFERENT
LEVELS.

>> YOU MAKE IT LIKE A NOTHING
... BUT LOOKS LIKE ON THIS
RECORD AND AS THE JUDGE FOUND IT
WAS A -- IT WAS IMPORTANT, HE
WAS VOUCHING FOR WITNESS.

>> AND THAT'S WHY THE JUDGE
IMMEDIATELY SUSTAINED THE
OBJECTION WITHOUT MUCH ARGUMENT
AND THE STATE DIDN'T THROW UP A
HUGE HULLABALOO ABOUT KEEPING IT
IN AND EVERYONE AGREED IT
SHOULDN'T COME IN, AND STRUCK IT

IN FRONT OF THE JURY AND GAVE
CURATIVE INSTRUCTIONS.
THE QUESTION IS, WHETHER OR NOT
HE SHOULD HAVE GRANTED A
MISTRIAL.

AND, BASED ON ALL OF THE
EVIDENCE, BEFORE THIS TRIAL
JUDGE, OF ALWIN TUMBERLIN ON
THESE COUNTS HE DECIDED IT DID
NOT VITIATE THE ENTIRE FAIRNESS
OF THE TRIAL AND THE STATE
BELIEVED THAT THAT WAS AN
APPROPRIATE AND ACCURATE
JUDGMENT.

>> BEFORE YOU LEAVE HERE, I WANT
YOU TO... TO TALK TO YOU ABOUT
THE RICHARDSON... [INAUDIBLE] WE
HAVE HELD IN RICHARDSON, THAT
WHENEVER A DISCOVERY VIOLATION
IS ALLEGED, THE COURT STOPS THE
PROCEEDING AND... [INAUDIBLE]
FIND OUT WHETHER THE VIOLATION
WAS WILLFUL, AND THE EFFECT --
PREJUDICIAL EFFECT IT WILL HAVE
ON THE DEFENDANT.

AND IN THE PARTICULAR CASE, THE
COURT DIDN'T JUST START THE
PROCEEDINGS BY SAYING, OKAY I'M
NOW CONDUCTING AN INQUIRY WHICH
WOULD HAVE BEEN NICE.

HE DID NOT DO THAT.

AND WE HAVE THIS ONE WITNESS,
WHO APPARENTLY HAD BEEN SHOT,
AND... [INAUDIBLE] THE STATE
ACCORDING TO COUNSEL LEARNED
ABOUT THE FACT THAT SHE WAS

TAKING THIS MEDICATION, AND MAY
HAVE AFFECTED HER ABILITY TO
REMEMBER THINGS.

WHAT HAVE.

WE DON'T KNOW.

THIS MORNING OF THE TESTIMONY.

AND THE STATE KNEW THAT, WELL IN
ADVANCE OF HER TESTIMONY,
ACCORDING TO COUNSEL ABOUT FOUR
HOURS BEFORE SHE TESTIFY.

DIDN'T TELL THE DEFENSE COUNSEL
THAT AND OBVIOUSLY HAD COUNSEL
ACCORDING TO THEIR ARGUMENT, NON
ABOUT IT.

THEY COUGH LOOKED INTO TO SEE
WHAT EFFECT THE DRUG THAT SHE
WAS TAKING WOULD HAVE ON THE...
AND THINGS LIKE THAT.

HOW FROM THIS EVIDENCE, HOW
ARGUE THAT THE TRIAL COURT IN
THIS CASE CONDUCTED PROPER...

>> YOUR HONOR, EVEN THOUGH, THE
TRIAL COURT DID NOT SAY THIS IS
A INQUIRY, IT WAS A RICHARDSON
INQUIRY.

AND THE TRIAL COURT TOLD
EVERYONE, STARTED QUESTIONING
THE STATE ATTORNEY, IF THE COURT
GOES THROUGH THE TRANSCRIPT,
AND, SAID, I AGREE WITH THE
DEFENSE, YOU SHOULD HAVE TOLD
HIM, ESPECIALLY GIVEN THE
HISTORY OF THIS TRIAL, WHEN DID
YOU FIND OUT, AND THE TRIAL
COURT GOT FROM THE STATE
ATTORNEY THE FACT THAT SHE KNEW

THIS WOMAN, NICKY WAS SHOT TWO WEEKS AGO AND THE COURT SID, WHY DIDN'T YOU TELL THE DEFENSE, AND, THE TRIAL COURT GOT ALL OF THIS OUT ON THE RECORD, AND THE STATE SAID THAT IT DIDN'T TELL THE DEFENSE, BECAUSE IT HAD NO BEARING ON THE TRIAL, WAS IRRELEVANT TO THE CHARGES ITSELF, AND, SO, THE TRIAL COURT MADE A FINDING, AND IT WAS AN INADVERTENT DISCOVERY VIOLATION, BECAUSE THE STATE DID NOT BELIEVE IT WAS DISCOVERY. FOR DISCOVERY IT IS EXCULPATORY MATERIAL OR PREPARATION FOR TRIAL AND IN TERMS OF THE DRUG USAGE THE TRIAL COURT SAID THE STATE SHOULD HAVE TOLD THE DEFENSE --

>> HE SAID IT WOULD HAVE BEEN NICE IF THE STATE HAD...

>> YES.

AND IMPLYING, OR SAID LATER ON IT WOULD BE APPROPRIATE FOR YOU TO HAVE TOLD THE DEFENSE THIS. AND HE FOUND THERE WAS A DISCOVERY VIOLATION AND FOUND IT WAS NONWILLFUL AND SHE DIDN'T THINK IT WAS APPROPRIATE FOR THE TRIAL AND WENT ON AFTER QUESTIONING THE WITNESS AWAY FROM THE JURY'S PRESENCE AND ALLOWED THE DEFENSE ATTORNEY TO QUESTION HER, IT WAS TRIVIAL AND NOT AFFECTING THE WITNESS'S

COMPETENCY OR ABILITY TO TESTIFY
AND THE TRIAL COURT WENT THROUGH
ALL OF THE VARIOUS ASPECTS OF
THE RICHARDSON INQUIRY AND ARE
-- MADE A FINDING IT WAS
INADVERTENT AND TRIVIAL AND IN
NO WAY DID IT AFFECT THE
DEFENSE'S ABILITY TO PREPARE.
THE TRIAL COURT ALSO --
>> SENTENCE IT... I KNOW THE
TRIAL JUDGE SAID THAT AND THE
PROBLEM WAS, BECAUSE THE
DEFENDANT DIDN'T KNOW THAT SHE
HAD BEEN SHOT UNRELATED TO THE
DEFENDANT AND THAT SHE WAS
TAKING DRUGS AND I DON'T SEE HOW
EITHER REALLY COULD NOT, I MEAN,
I THINK TO ME, BOTH SHOULD HAVE
BEEN DISCLOSED, THE DEFENDANT
SEES HER WHISPERING SOMETHING TO
SOMEONE ELSE AND ASKS AND THEN
IN THE FRONTS OF THE JURY GOES,
WELL, I HAVE BEEN SHOT AND I
HAVE BEEN TAKING DRUGS AND THIS
IS DIFFERENT, IF HE HAD KNOWN
ABOUT IT HE WOULD HAVE MADE SURE
THAT NONE OF IT CAME OUT OF THE
JURY AND QUESTIONED HER OUTSIDE
OF THE E PRESENCE OF THE JURY AS
TO WHETHER THE HYDROCODONE WAS
AFFECTING HER ABILITY TO RECALL
AND TO PUT THINGS TOGETHER PUT
HIM AT A COMPLETE DISADVANTAGE
AND IT IS BLURTED OUT IN FRONT
OF THE JURY.

>> AND HE WAS GIVEN AN

OPPORTUNITY TO DO AN INQUIRY
OUTSIDE THE PRESENCE OF THE
JURY.

>> ALL I'M SAYING, IS HE SAID IT
DIDN'T AFFECT HIS PREPARATION
FOR TRIAL AND WE USE THESE
THINGS AND WHAT IT AFFECTED IS
HOW HE'D CROSS EXAMINE THIS
WITNESS.

AND HE WOULD HAVE KNOWN WHAT
AREA NOT TO GET INTO, IF HE HAD
KNOWN ABOUT THIS INFORMATION.

>> HE DIDN'T GET INTO THAT AREA,
NO QUESTION HE ASKED AND THE
STATE ASKED GOT INTO IT, ONLY
BECAUSE SHE WAS ASKING THE
BAILIFF IF SHE COULD HAVE A
BREAK.

>> AND AT THAT POINT --

>> THEY WERE SIDE -- AND SOMEONE
SAID, WHAT ARE YOU ASKING, AND
SHE SAID I NEED TO TAKE
MEDICATION AND THEY WENT
SIDEBAR.

>> I THOUGHT SHE SAID IN FRONT
OF THE JURY SHE HAD BEEN SHOT.

>> SHE MAY HAVE.

I DON'T REMEMBER.

>> MY CONCERN, GOING BEYOND THE
-- SAYING THE COURT CONDUCTED AN
INQUIRY, THE COURT'S FINDING,
AND THAT IS THE STATE'S
EXPLANATION, I MEAN, WHY SHOULD
THE STATE GET TO DECIDE WHAT IS
IMPORTANT AND NOT IMPORTANT?
WHAT IS RELEVANT AND NOT

RELEVANT?

THE STATE, THE ONLY EXPLANATION
THE STATE GAVE WAS, I DIDN'T
THINK THE SHOOTING IN TAMPA WAS
RELEVANT AND I DIDN'T THINK THE
DRUG USAGE WAS A PROBLEM,
BECAUSE, I DIDN'T THINK IT WAS A
PROBLEM.

WHY IS THAT NOT A VIOLATION.

>> IN TERMS OF THE SHOOTING THE
DRUG USE IS SEPARATE BECAUSE THE
WITNESS ON THE STAND TESTIFYING,
THE DEFENSE MAY WANT TO KNOW
WHETHER OR NOT, YOU KNOW, THEIR
ABILITY TO ANSWER QUESTIONS IS
AFFECTED.

BUT THE SHOOTING ITSELF, I MEAN,
I THINK, THE STATE MAKES CALLS
ALL THE TIME ABOUT WHETHER OR
NOT SOMETHING IS DISCOVERY, IF A
WITNESS IS HAVING A HIP
REPLACEMENT TWO MONTHS BEFORE
THE TRIAL DO YOU HAVE TO TELL
THE DEFENSE THAT?

ISN'T THAT A VIOLATION --

>> I WANTED TO BE SURE, BECAUSE
WE WERE HERE AND... THE
STATEMENT HE MADE IN FRONT OF
THE JURY, THE DEFENSE SAID YOU
TOLD ME SOMEONE ELSE IN THE
COURTROOM, I TALKED TO THE
DETECTIVE RIGHT HERE AND WHAT
WERE YOU TELLING THEM ABOUT AND
I GOT SHOT AND NEED MY MEDICINE,
I'M HURTING.

THAT IS THE PART THE JURY HEARD

AND THE STATE KNEW THAT MORNING
IF SHE WAS TAKING MEDICATION AND
HAD BEEN SHOT, WOULDN'T YOU WANT
TO TELL THE DEFENSE SO -- TO
STAY AWAY FROM IT?

THIS IS DIFFERENT THAN YOUR
NORMAL BRADY MATERIAL.
THIS IS SOMETHING YOU GO, YOU
NEED TO KNOW THIS, BECAUSE YOU
KNOW, JUST SO YOU STAY AWAY FROM
IT.

>> THE TRIAL COURT AGREED WITH
YOU.

AND, SAID THERE WAS A DISCOVERY
VIOLATION, AND THEY DID GO
THROUGH THE IN CONVEYOR.

AND THE TRIAL COURT ALSO GAVE
THE DEFENSE AN OPPORTUNITY TO
QUESTION HER AND ALSO SAID, DO
YOU WANT ME TO GIVE THE CURATIVE
OR DO YOU WANT TO CLEAR IT UP ON
QUESTIONS, ON YOUR OWN?

AND, THE DEFENSE ATTORNEY AGREED
TO DO IT THROUGH QUESTIONS ON
HIS OWN, BECAUSE IT WOULD BE
LESS -- PUT LESS OF A SPOTLIGHT
ON THE ISSUE.

SO, WHEN HE TOOK A 15 MINUTE
BREAK AND THE COURT ASKED IF HE
NEEDED A CONTINUOUS AND HE
DIDN'T ASK FOR A DOCTOR TO
CONSULTED WITH AND HE CAME BACK
OUT FOR 15 MINUTES AND
QUESTIONED THE WITNESS IN FRONT
OF THE JURY AND CLEARED UP ALL
THE IMPLICATIONS HE WAS WORRIED

ABOUT AND WAS GIVEN THE OPPORTUNITY TO GO OUTSIDE OF THE PRESENCE OF THE JURY AND IN FRONT OF THE JURY TO CLEAR UP ANY PROBLEMS AND HE WAS GIVEN THE OPPORTUNITY TO GET A CONTINUANCE IF HE WANTED TO GET A DOCTOR, BUT, PRESUMABLY BASED ON HER ANSWERS, HIS OBSERVATION OF THE PILL BOTTLE AND SHE WAS TAKING HALF A PILL EVERY SIX HOURS HE DECIDED IT WASN'T WORTH IT, I'M PRESUME, BECAUSE HE DIDN'T ASK FOR A CONTINUOUS AND HIS TRIAL STRATEGY EXCEPT FOR THE ONE INTERRUPTION WOULD NOT HAVE DIFFERED IN ANY WAY.

AND THE COURT THEN TOLD -- BENT OVER BACKWARDS ALLOWING HIM ACCESS TO THE WITNESS OUTSIDE THE PRESENCE OF THE JURY AND IN THE PRESENCE OF THE JURY TO CLEAR UP ANY MISCONCEPTIONS THAT THEY MAY HAVE HAD BECAUSE OF THIS OUTBURST.

>> AND WITH THAT, YOU HAVE USED ALL OF YOUR TIME.

WE THANK YOU VERY MUCH FOR YOUR ARGUMENT.

>> THANK YOU.

I ASK THE COURT TO AFFIRM BOTH THE GUILT AND THE SENTENCE.

>> REBUTTAL?

>> YES, THANK YOU.

JUST TWO THINGS.

THE INQUIRY WAS AT 4201 AND WENT ON FOR 15 PAGES, AND I DON'T THINK THEY COVERED MUCH OF ANYTHING HAVING TO DO WITH THE THREE CRITERIA OF RICHARDSON, ESPECIALLY --

>> LET ME ASK YOU THIS QUESTION. I'M TROUBLED BY EVEN THE ARGUMENT HERE.

IF THIS WITNESS HAD HAD AN AUTOMOBILE ACCIDENT TWO MONTHS BEFORE THIS TRIAL, ARE YOU SUGGESTING THAT'S SOME KIND OF RICHARDSON DISCOVERY INFORMATION?

>> UM, WHEN YOU PHRASE IT IN TERMS OF AUTOMOBILE ACCIDENT, WE HAVE NO IDEA WHAT KIND, NO. I'M GOING TO SAY, NO.

>> WELL, NOTHING HAS DEVELOPED HERE.

THE SHOOTING HAD NOTHING TO DO WITH THIS CASE, DID IT?

>> WELL, THAT'S WHAT WE'RE TOLD. HE HAD, LIKE, 15 MINUTES TO PREPARE TO MEET THAT EVIDENCE. AND MORE IMPORTANTLY, I THINK --

>> IF THAT IS THE STANDARD, THEN I THINK WE ARE REALLY OPENING THIS AREA OF DISCOVERY UP TO UNTOLD LENGTHS.

THEY GO THROUGH THIS, AND NO ONE HAS EVER SUGGESTED THIS HAS ANYTHING TO DO WITH THIS CASE.

HOW ABOUT IF A PERSON HAS MIGRAINE HEADACHES AND THEY TAKE

MEDICATION FOR IT AND THEY TAKE
MEDICINE WHILE THEY'RE
TESTIFYING, IS THAT DISCOVERY
VIOLATION?

>> THIS COURT HAS SAID A WITNESS
CAN BE IMPEACHED IF THEY'RE
USING DRUGS AT THE TIME OF THE
EVENT OR WHILE THEY'RE
TESTIFYING.

>> IF SOMEONE TAKES AN ASPIRIN,
IS THAT WHAT THOSE CASES MEAN?

>> I DON'T THINK SO.

I DON'T THINK THAT'S WHAT THIS
COURT HAS IN MIND WHEN IT SAYS
"DRUG."

>> YOU'RE THROWING THIS WORD
AROUND SO LOOSELY.

MAY I FINISH?

>> SURE.

I'M SORRY.

>> AS I UNDERSTAND THE RECORD,
THIS PERSON IS ON PRESCRIPTION
MEDICATION FOR HALF OF A TABLET
EVERY SIX HOURS.

>> SHE WAS SUPPOSED TO TAKE A
WHOLE ONE BUT, YES.

>> WELL, IS THAT THE EVIDENCE?

>> YES.

>> ALL RIGHT.

THAT, TO ME, IS A
MISCHARACTERIZATION TO START
TALKING ABOUT PEOPLE DRUGS, AND
ON DRUGS WHEN THAT IS THE
EVIDENCE.

>> WELL, THE EVIDENCE CODE
ALLOWS YOU TO IMPEACH A

WITNESS --

>> I WON'T DISAGREE WITH THAT.

>> -- TO REMEMBER AND RECOUNT THINGS ABOUT WHICH THEY'RE TESTIFYING --

>> BUT A RICHARDSON VIOLATION HAS TO BE SOMETHING THAT GOES TO THAT.

>> I THINK IT DOES.

I RESPECTFULLY DISAGREE.

>> OKAY, WELL, AGAIN OUR STANDARD IS ANYTIME SOMEBODY'S TAKING ANY KIND OF MEDICATION THAT COULD IN ANY WAY IMPACT, THEN THAT HAS TO BE DISCLOSED IN DISCOVERY.

I MEAN, JUST SO WE KNOW WHAT THE RULES ARE.

>> YEAH.

A WITNESS' ABILITY TO REMEMBER OR RECOUNT IN A CASE LIKE THIS OR ANY CASE, THAT SHOULD BE DISCLOSED.

>> WELL, YOU'RE TAKING THE BACK END FIRST.

MY POINT IS WHAT DOES A PARTY HAVE TO DO TO GET TO THE POINT THAT THAT'S A DISCOVERY ITEM? ANYTIME SOMEBODY TAKES A PILL OF SOME KIND, THEN THAT SHOULD BE DISCLOSED?

THAT'S A RICHARDSON VIOLATION, THAT'S WHAT YOU'RE SAYING?

>> NO, I DON'T AGREE WITH THAT, JUDGE.

>> OKAY.

WELL, WHAT'S THE RULE?

THAT'S WHAT WE'RE LOOKING FOR.

>> I JUST GO BACK TO IT'S DRUG
USE, AND I THINK WHEN THIS COURT
SAYS "DRUGS," IT MEANS ANY DRUG
THAT WILL AFFECT THEIR ABILITY
TO REMEMBER AND RECOUNT --

>> AND IS THERE ANY EVIDENCE
HERE THAT WHAT OCCURRED IS
THAT'S WHAT HAPPENED HERE?
THERE'S SOMETHING THAT AFFECTED
OR CHANGED OR ALTERED THIS
PERSON'S ABILITY TO TESTIFY?

>> WELL, SHE WAS TAKING
HYDROCODONE.

IT'S A CONTROLLED SUBSTANCE.

I'M GOING TO ASSUME -- QUITE
CORRECTLY, I'M SURE -- THAT IT
INFLUENCES YOUR ABILITY TO
REMEMBER AND RECOUNT.

IT MAY HAVE NOT DONE SO WITH
THIS WITNESS, BUT THAT'S WHAT HE
NEEDED TO KNOW FOUR OR FIVE
HOURS BEFORE NOT TO KEEP THAT
SECRET AND LET HIM DISCOVER THIS
IN THE MIDDLE OF HIS
CROSS-EXAMINATION.

>> OKAY.

>> THANK YOU.

>> THANK YOU VERY MUCH, BOTH OF
YOU, FOR YOUR ARGUMENTS HERE
TODAY.