

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE FLORIDA SUPREME COURT IS
NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEAD
DRAW NEAR, GIVE ATTENTION AND
YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,
THE 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 DOCKET
TODAY IS KNIGHT VERSUS THE
STATE OF FLORIDA.

>> GOOD MORNING, MAY IT PLEASE
THE COURT.

MY NAME IS MELODEE SMITH.

THIS MORNING I'D LIKE TO
PRESENT ARGUMENTS ON THREE
ISSUES.

ISSUES 1 AND 4 IN TANDEM AND
THEN ISSUE 3.

IN THE GUILT INNOCENCE PHASE OF
BRAIN-DAMAGED RICHARD KNIGHT'S
TRIAL.

HANS MULLINGS, HANESSIA
MULLINGS AND ODESSIA STEPHENS
FATHER WAS ON THE PHONE WHEN HE
HEARD NEWS SOMETHING HAPPENED
AT HIS HOUSE.

IN RESPONSE THE, TO THE STATE'S
QUESTION, WHEN HE WAS
TESTIFYING BEFORE THE JURY WAS
ASKED, WHY DID YOU RUSH BACK?
HE RESPONDED, I ASSUMED KNIGHT
AND ODESSIA GOT INTO AN
ARGUMENT OR SOMETHING BECAUSE I
KNOW RICHARD'S VIOLENT
BACKGROUND.

>> WHAT HAPPENS WHEN THAT WAS

SAID?

>> KNIGHT OBJECTED AND HIS LAWYERS OBJECTED AND THEY MOVED FOR A MISTRIAL.

THE COURT HELD A HEARING.

>> THE COURT SUSTAINED THE OBJECTION, IS THAT CORRECT?

>> YES, JUDGE.

THE COURT SUSTAINED THE OBJECTION.

AND THEN THERE WAS A HEARING.

I BELIEVE IT WAS IN TWO PARTS THAT DAY AND THEN THE NEXT MORNING.

>> DIDN'T THE JUDGE ALSO INSTRUCT THE JURY?

>> YES.

>> OKAY.

>> JUSTICE, THE TRIAL JUDGE DID HOLD A HEARING AND FOLLOWING AN ARGUMENT BY THE DEFENSE AND THE STATE HE, THE JUDGE MADE A DECISION TO DENY THE MOTION FOR A MISTRIAL AND INSTRUCTED THE JURY, IT IS CALLED A CURATIVE INSTRUCTION BUT THAT REMAINS TO BE ARGUED AT THIS VENUE.

INSTRUCTED THE JURY TO

DISREGARD THE STATEMENT.

SO EVERYBODY CONCEDED IT IS CLEAR IT WAS AN INADMISSIBLE STATEMENT AND WHAT HAPPENS IS INSTEAD OF A BELL GOING OFF AS DUNNE DISCUSSES, A BELL GOES OFF. MY MOTHER COLLECTS BELLS, THEY'RE LOUD, CLANGY, THEY'RE SOOTHING, THEY'RE SOFT, THEY'RE ANNOYING.

THIS WAS AN ALARM.

THIS WAS NOT A BELL.

THIS WAS AN ALARM THAT WAS ALARMING, WAS STARTLING, WAS FRIGHTENING AND IT WAS CONFUSING THEN FOR THE JUDGE TO

SAY, I'M SURE TO THE JURY THAT THIS WAS TO BE DISREGARDED.

>> DID THE DEFENSE ATTORNEY OFFER ANY OTHER INSTRUCTIONS THAT HE WANTED THE JUDGE TO GIVE?

>> DIDN'T BELIEVE ANY INSTRUCTION WOULD BE CURATIVE, JUDGE.

>> I GUESS MY INTEREST IS, WHAT WAS SAID ABOUT THE VIOLENT BACKGROUND FROM THERE? WAS IT ARGUED BY THE PROSECUTOR THAT THIS MAN HAD A VIOLENT BACKGROUND?

WHAT USE WAS MADE OF THAT STATEMENT?

>> OKAY. THE STATEMENT, LET'S TAKE THE STATEMENT FIRST BY REMINDING OURSELVES WHO SAID IT.

THIS IS THE MURDER VICTIM'S FAMILY MEMBER WHO'S ON THE STAND IN THE GUILT PHASE DESCRIBING WHAT HE KNOWS.

>> RIGHT.

SO THAT THAT'S WHAT I'M REALLY INTERESTED IN. FROM THAT POINT. THIS IS A STATEMENT, COUPLE OF WORDS BASICALLY.

WHAT USE WAS MADE OF IT?

>> OKAY. WELL, AGAIN, WE KNOW WHO SAID IT.

AND NOW IT WAS IN RESPONSE TO, I'M GOING TO GET TO YOUR QUESTION I PROMISE YOU, BUT LET ME JUST DESCRIBE.

THIS IS A QUESTION ASKED BY A PROSECUTOR.

NOBODY GETS OUT OF LAW SCHOOL, ESPECIALLY SEASONED PROSECUTORS AND ASKS A QUESTION THEY DON'T KNOW THE ANSWER TO AND --

>> PROSECUTOR DIDN'T ASK HIM

ABOUT A VIOLENT BACKGROUND, DID HE?

>> WELL, THAT'S THE POINT.

HE ASKED HIM, BASICALLY WHY THE RUSH? WHY DID YOU GO BACK?

REMEMBER MR. ^MULLINGS DIDN'T SAY I WAS SAD, I WAS SCARED, I WAS FRIGHTENED.

I WAS WORRIED ABOUT EVERYBODY.

WHAT HE SAYS WAS I ASSUMED THEY HAD AN ARGUMENT BECAUSE I KNOW RICHARD KNIGHT HAS A VIOLENT BACKGROUND.

>> BUT YOUR SUGGESTION THAT THAT QUESTION WAS CALCULATED TO GET THAT PARTICULAR RESPONSE SEEMS TO ME TO BE VERY SPECULATIVE.

>> WELL, JUSTICE CANADY, AGAIN, EVERY LAWYER PRACTICING LAW KNOWS YOU DON'T ASK A QUESTION IN THAT VENUE IN THIS SERIOUS OF A CASE.

>> WELL I KNOW THAT IS GOOD ADVICE FOR LAWYERS TO FOLLOW BUT I ALSO KNOW THAT A LOT OF THINGS HAPPEN IN TRIALS AND THAT NOBODY ANTICIPATES AND WITNESSES SAY THINGS ALL THE TIME THAT CAN NOT BE REASONABLY ANTICIPATED.

THAT IS JUST THE DYNAMIC NATURE OF A TRIAL PROCESS.

>> RIGHT. AND I JUST ARGUE IT IS DIFFICULT TO BELIEVE THAT MR. ^MULLINGS HAD NOT PREVIOUSLY MADE THE STATEMENT TO THE PROSECUTOR BEFORE.

>> DID HE MAKE ANY REFERENCE TO ANYTHING SPECIFICALLY AS RELATIVE TO VIOLENT BACKGROUND?

>> NO. HE DIDN'T HAVE TO.

IT IS NOT A GENERAL COMMENT ABOUT HIS CRIMINAL HISTORY OR

HE IS A CONVICTED FELON.

THIS IS A WORD THAT INVOKES
FEAR AND ANGST AND, AGAIN, IT
IS AN ALARMING STATEMENT AND
THE DISTINCTION --

>> AT WHAT POINT IN THE TRIAL
WAS THIS?

WAS THIS IN THE EARLY STAGES
OR?

>> THIS WAS WITHIN, AFTER JURY
SELECTION, PROBABLY WITHIN THE,
I THINK IT IS FIRST WEEK OF
TRIAL.

>> FIRST WEEK?

>> IT WASN'T A LONG TRIAL.

>> THE JURY HEARD VIOLENCE AND WHAT
HAPPENED DURING THE TRIAL?

>> THE CASE WAS A VERY VIOLENT
CASE. TWO PEOPLE WERE STABBED.

>> LET'S GO BACK.

>> SURE.

>> I'D LIKE TO TEST OUT FURTHER
YOUR ASSERTION THAT THE
PROSECUTOR KNEW AND INVOKED
THIS ANSWER BECAUSE I CERTAINLY
WOULD AGREE THAT IF THERE IS
SOMETHING WHERE PROSECUTOR
KNOWINGLY ELICITS SOMETHING
THAT IS CLEARLY INADMISSIBLE,
WHEN YOU LOOK AT IS SOMETHING
DIFFERENT.

OTHER THAN SAYING, PEOPLE
ALWAYS KNOW WHAT THEIR
WITNESSES ARE GOING TO SAY,
WAS, WAS MULLINGS DEPOSED
BEFORE TRIAL?

>> HE WAS DEPOSED, GIVING A
STATEMENT, GIVING A DEPOSITION.

>> DID HE SAY THAT IN THE
DEPOSITION?

>> I'M NOT, NO, I DON'T KNOW
WHETHER HE SAID IT IN HIS
DEPOSITION.

I'M SORRY I DON'T KNOW THE

ANSWER.

I HAVEN'T REVIEWED THE DEPOSITION LATELY BUT I DO KNOW PROSECUTORS KNOW THESE THINGS.

>> YOU'RE GIVING A VERY, WHAT I WOULD SUGGEST YOU DO IS, WE'RE GOING TO HAVE TO ASSUME BECAUSE THIS RECORD DOESN'T SHOW TO THE CONTRARY, THAT THE PROSECUTOR DID NOT KNOW, DID NOT INTEND TO ELICIT THIS.

WHAT WAS THE QUESTION SPECIFICALLY THAT WAS ASKED OF MULLINGS?

>> SPECIFICALLY THE QUESTION WAS, WHY DID YOU RUSH BACK?

>> NOW, DO YOU THINK, WAS THERE ANYTHING ABOUT THAT QUESTION, ABOUT WHY DID YOU RUSH BACK, THAT YOU THINK WAS AN IMPERMISSIBLE QUESTION?

>> I THINK IT'S A QUESTION THAT YOU ASK IN A VERY CLEVER WAY TO ELICIT A RESPONSE.

IT WASN'T, HOW DID YOU FEEL WHEN YOU HEARD WHAT HAPPENED?

>> WHY DID YOU RUSH BACK?

NOW THE FACT IS, THE FIRST PART WAS, TRUTHFULLY I THOUGHT THEY HAD A FIGHT.

NOW THE BACKGROUND IS THAT THIS DEFENDANT WAS IN THE HOUSE AND WAS TOLD HE REALLY WAS GOING TO NEED TO LEAVE THE HOUSE AND THAT WAS SOMETHING THAT HE KNEW THAT HIS GIRLFRIEND HAD, WAS UNHAPPY WITH, SO THE FACT THAT OF SAYING, I ASSUME THEY HAD A FIGHT, IS NOT IN ITSELF SOMETHING, BECAUSE THAT'S WHAT IN FACT HAPPENED.

THEY HAD A FIGHT.

>> I AGREE.

>> OKAY. SO THE ONLY PART,
AND I GUESS I
WANT TO TALK ABOUT HOW THIS
THEN RISES TO THE LEVEL OF A
MISTRIAL BECAUSE I DO AGREE
THAT THERE ARE SOME THINGS THAT
YOU CAN'T UNRING THE BELL OR
THE ALARM.
BUT AS JUSTICE PERRY WAS
SAYING, HE DOESN'T DENY BEING
AT, HE IS THE ONLY ONE THAT
COULD HAVE COMMITTED THIS
CRIME.
YOUR DEFENSE IS HE WASN'T
THERE?
>> WELL THE DEFENSE'S DEFENSE
IS THAT HE WASN'T THERE.
AND THERE WAS ADDITIONAL DNA
THAT DIDN'T BELONG TO HIM.
THERE WERE NO FINGERPRINTS ON
THE KNIFE.
THERE WAS --
>> THEIR BLOOD WAS ALL OVER HIS
CLOTHING.
>> THEIR BLOOD WAS ON HIS
CLOTHING.
>> AND IT WAS A VERY VIOLENT
CRIME.
>> IT WAS A VERY VIOLENT CRIME.
>> DO YOU THINK THE JURY
DECIDING WHETHER THEY'RE GOING
TO CONVICT THIS PERSON IS GOING
TO SAY, WELL, I DON'T KNOW
ABOUT, YOU KNOW WHETHER HE WAS
THERE OR NOT OR WHETHER, BUT,
BOY, SOMEBODY SAID SOMETHING
ABOUT HIM HAVING A VIOLENT
BACKGROUND, SO HE MUST BE
GUILTY?
AND IN THIS CASE, I THINK
THAT'S WHAT THE JUDGE WAS
WEIGHING, LOOKING AT WHETHER IN
LIGHT OF THE FACTS OF THIS
CASE, WHETHER THIS SINGLE

STATEMENT, SO INFECTED THE TRIAL THAT MR.^KNIGHT COULD NOT GET A FAIR TRIAL. IS THAT THE STANDARD?

>> JUSTICE PARIENTE --

>> IS THAT THE STANDARD?

>> THIS IS A DEATH PENALTY CASE.

>> IS THAT THE STANDARD?

THE JUDGE MADE A DECISION LOOKING AT IT WHETHER THIS SINGLE STATEMENT SO INFECTED THE FAIRNESS OF THE TRIAL THAT MR.^KNIGHT COULD NOT GET A FAIR TRIAL. IS THAT THE STANDARD?

>> THE STANDARD, I'M NOT SURE THE JUDGE USED THAT STANDARD. JUDGES, YOU KNOW, EVERYBODY WHO GOES TO TRIAL, JUDGES DON'T LIKE TO GRANT MISTRIALS. THEY DON'T.

AND IF THERE IS BASIS NOT TO --

>> AGAIN, THIS IS ENTIRELY SPECULATIVE.

IT IS NOT, YOU DON'T THINK THE JUDGE USED THE STANDARD?

>> I DON'T KNOW WHAT THE JUDGE --

>> WHAT BASIS YOU HAVE FOR MAKING THESE ASSERTIONS YOU'RE MAKING?

>> LET'S MOVE TO POINT 4 IN TANDEM WITH ONE.

>> YOU DANCED AROUND ANSWERING A QUESTION AS TO WHETHER THIS WAS USED AT SOME OTHER POINT IN THE TRIAL, HOW IT WAS USED. THAT WAS PENDING.

IT WAS A PENDING QUESTION.

>> I WOULD LIKE TO RETURN TO THAT.

>> WOULD YOU PLEASE.

>> JUSTICE QUINCE, THANK YOU, LEWIS.

BECAUSE VIOLENCE WAS A PERVASIVE

TERM IN THIS TRIAL BOTH IN ARGUMENTS AND THE NATURE OF THE CASE, OF COURSE IT WAS USED OVER AND OVER AGAIN.

AND THE WORD IS NOT, THE WORD --

>> USED OVER AND OVER AGAIN HOW?

>> THE IMPACT OF THE WORD VIOLENT.

>> WEREN'T THESE PEOPLE STABBED 26 TOTAL TIMES?

DOESN'T THAT CONOTE -- WHAT DOES THAT CONOTE?

WHAT OTHER WORD WOULD YOU USE THAN VIOLENCE?

>> THAT IS THE POINT, JUSTICE PERRY. IT WAS A VIOLENT CRIME.

>> WAS THERE A CONNECTION OF THE VIOLENT PROPENSITY, I THINK THIS IS WHAT SHE IS GETTING TO.

THIS IS VIOLENT OR APPEARS TO BE A VIOLENT SITUATION.

I THINK THAT'S WHERE THE QUESTION WAS GOING. WAS IT ARGUED THAT THIS DEFENDANT HAD THIS, YOU KNOW, AND WAS LAID UPON, THE STATEMENT, THE VIOLENT PROPENSITIES, VIOLENT PERSONALITY, WAS THAT, OR WAS IT JUST THE WORD VIOLENCE BECAUSE OF THE SCENE?

>> IT WAS A VIOLENT BACKGROUND WAS THE ASSERTION.

AND THE VIOLENT CRIME.

>> I GUESS I THINK WHAT THE JUSTICES ARE TRYING TO ASCERTAIN WHETHER OR NOT THIS WAS ISOLATED OR WAS THIS PLAYED UP OVER AND OVER AGAIN DURING THE TRIAL ABOUT THE VIOLENT BACKGROUND.

NOW, THERE WAS VIOLENCE

OBVIOUSLY.

THE VIOLENT BACKGROUND --

>> OUR POSITION IT WAS ISOLATED,
JUSTICE PERRY.

>> YOU SAID IT WASN'T?

>> IT WAS PART OF THE TRIAL,
RIGHT.

>> TELL US SPECIFICALLY, WHERE
THE PROSECUTOR SAID ANYTHING
MORE ABOUT THE DEFENDANT HAVING
A VIOLENT BACKGROUND.

WE ALL KNOW THIS CASE WAS
VIOLENT.

WE ARE TALKING ABOUT WHETHER
THE PROSECUTOR PLAYED ON THE,
WHETHER OR NOT HE HAD A VIOLENT
BACKGROUND.

>> PROSECUTOR DIDN'T HAVE TO,
JUSTICE QUINCE.

>> I'M ASKING YOU IF HE DID,
NOT WHETHER HE HAD TO.

DID HE EVER TAKE THAT STATEMENT
ABOUT THE DEFENDANT HAVING A
VIOLENT BACKGROUND AND PLAY IT
UP FOR THE JURY?

>> MY ARGUMENT IS THAT THE
CONTINUE --

>> THE ANSWER IS NO OR YES?

>> YES.

>> AND WHERE WOULD THAT BE
FOUND?

>> CONTINUALLY THROUGHOUT THE
TRIAL WHEN IT WAS REFERRED TO
AS VIOLENT.

THAT'S MY ARGUMENT. I'M SORRY.

IF WE ADDRESS ISSUE 4 --

>> DID THEY EVER REFER TO THE
BACKGROUND, AFTER THAT?

>> DIDN'T, NOT IN THE GUILT
PHASE.

IN THE INNOCENCE PHASE, WHICH IS
ISSUE 4, THAT IS THE TANDEM I
WANT TO TALK ABOUT, OF COURSE.

>> OBVIOUSLY IN THE PENALTY

PHASE IT'S A DIFFERENT STORY?

>> YES, SIR.

AND IN THE PENALTY PHASE, AGAIN
DIDN'T HAVE TO DO IT.

IN FACT IT IS STILL

PRETTY MUCH INADMISSIBLE AS
NON-STATUTORY AGGRAVATION.

>> I'M JUST CONCERNED THAT A
SPECIFIC QUESTION IS ASKED AND
EITHER, IT WAS ASKED IN A WAY
THAT IS EITHER A YES OR A NO.

DID THE PROSECUTOR TAKE IT
FURTHER AND THEN EXTOL THE FACT
THAT THIS MAN HAD A VIOLENT
BACKGROUND?

>> THE ANSWER TO THAT QUESTION
IS NO.

>> OKAY. THANK YOU.

>> THE DEFENSE AT THE
BEGINNING, BEFORE THE PENALTY
PHASE BEGAN REQUESTED A JURY
PANEL AND THAT MOTION WAS
DENIED.

AND THE ARGUMENT DEFENSE
COUNSEL GAVE THE JUDGE WAS THAT
BECAUSE THE STATEMENT ABOUT
HIS, THE ASSERTION THAT HE HAD
A VIOLENT BACKGROUND WAS MADE
IN THE GUILT PHASE BUT THIS
JURY PANEL ESSENTIALLY WAS
ALREADY TAINTED.

THEY CONVICTED HIM.

>> WAS THERE ANY TESTIMONY IN
THIS TRIAL ABOUT PREVIOUS
ARGUMENTS BETWEEN THE DEFENDANT
AND THE VICTIM OR THE DEFENDANT
AND THE HUSBAND -- FATHER OF THESE
VICTIMS?

>> NO, JUSTICE QUINCE.

>> OKAY.

>> IN FACT, THE MITIGATION
PRESENTED DURING THE PENALTY
PHASE DOESN'T ILLUSTRATE THAT
MR. KNIGHT HAD THAT TYPE OF

VIOLENT BACKGROUND.

IT'S NOT THERE.

AND SO THE COMMENT THAT WAS MADE, THE ASSERTION THAT WAS MADE, IS HIGHLY PREJUDICIAL WHEN IT IS PRESENTED IN THE GUILT PHASE AND HAS, WHAT I THOUGHT OF AS PERMEATED THIS ENTIRE ATMOSPHERE, COLORED THE WHOLE PICTURE.

>> SEE, AGAIN, LET ME GO BACK TO THIS.

>> YES, MA'AM.

>> THIS IS THE VICTIM'S BOYFRIEND AND IT'S THE FATHER OF ONE OF THE VICTIMS NOW TESTIFYING.

OBVIOUSLY HE'S GOT AN INTEREST IN THIS.

I COULD SEE YOUR POINT IF IT WAS A POLICE OFFICER WHO ENDED UP SAYING, IN RESPONSE TO THE QUESTION, WHY DID YOU THINK YOU SHOULD, YOU WOULD ARREST MR.^KNIGHT?

BECAUSE WE KNEW OF HIS VIOLENT BACKGROUND.

NOW YOU GOT A DIFFERENT, YOU HAVE AN OFFICER OF THE LAW SORT OF SAYING SOMETHING AND THEN GO, I WONDER WHAT HIS VIOLENT BACKGROUND IS?

WHAT'S GOING ON.

THIS IS JUST, THIS IS A DISTRAUGHT PERSON AND THEN, IN THE PENALTY PHASE THEY BRING OUT ALL THESE THINGS ABOUT MR.^KNIGHT.

THAT HE HAD A GOOD BACKGROUND. WENT TO HIGH SCHOOL.

EXCELLED IN ART.

ADMIRER BY THE CHILDREN. THE STATE DOESN'T TRY TO BRING OUT THAT, TO IMPEACH HIM WITH

SOMETHING ELSE ABOUT, WELL,
DIDN'T HE HAVE A VIOLENT
BACKGROUND?

SO I DON'T EVEN, IT STARTS TO
BECOME LESS AND LESS
SIGNIFICANT IT SEEMS TO ME IN
THE PENALTY PHASE.

>> HE IS ON DEATH ROW.
HE GOT TWO DEATH SENTENCES.

>> HE KILLED TWO PEOPLE.

>> RIGHT.

AND, 98 OUT OF 100 PEOPLE ARE
OUT OF DEATH ROW.

98% OUT OF 100 PEOPLE DON'T GET
PUT ON DEATH ROW.

>> DO YOU THINK, NOW YOU WANT
TO, IF YOU'RE GOING TO
PROPORTIONALITY, THIS IS
SOMEBODY WHO KILLED TWO PEOPLE
WITH HAC, WITH ONE BEING 4
YEARS OLD.

THIS IS AMONG THE MOST
AGGRAVATED AND LEAST MITIGATED
OF CASES WITHOUT THAT.

CAN YOU MAKE A DIFFERENT
ARGUMENT THAT THIS, IN ANOTHER
SITUATION WOULDN'T BE A DEATH
PENALTY CASE?

>> JUSTICE PARIENTE, I'VE SEEN
CASES THAT FLAT-OUT WHERE THEY
PURSUE THE DEATH PENALTY AND
THE PERSON DIDN'T GET DEATH
ROW, OR DEATH SENTENCE.
THAT'S NOT WHAT YOU'RE LOOKING
FOR.

I'M NOT PREPARED TO ARGUE IN
DOZENS AND DOZENS OF CASES THAT
THIS CASE IS NOT
DISTINCTLY, NOT PROPORTIONAL.
WHAT I DO WANT TO SUGGEST IS
THAT, THE STATE DIDN'T HAVE
ANYTHING TO COME BACK WITH TO
ARGUE VIOLENT BACKGROUND.
THEY DIDN'T HAVE TO.

IT WAS OF COURSE THE CRIME
ITSELF. IT WAS TERRIBLE.
IT WAS VIOLENT.

>> DID HE HAVE, SO THERE WAS NO
EVIDENCE THAT HE HAD A VIOLENT
BACKGROUND?

>> NO, JUSTICE PARIENTE.

>> NO PRIOR VIOLENT FELONIES?

>> WHAT ABOUT THE VIOLENCE TO
HIS GIRLFRIEND?

DIDN'T HE RESIST ARREST WITH
VIOLENCE?

I MEAN DID HE NOT?

AM I, IS DID I READ THE WRONG
CASE?

>> YOU MAY HAVE READ THE CHARGE
BUT, USUALLY THOSE CASES ARE
ASSOCIATED WITH WHEN PEOPLE GET
BEAT UP BY POLICE OFFICERS, THE
CHARGE IS USUALLY RESISTING
WITH VIOLENCE.

YOU KNOW, I'M HEAR TO ARGUE FOR
MY CLIENT.

I'M HEAR TO ARGUE FOR MY CLIENT
WHO IS FACING THE DEATH
PENALTY.

>> THE REASON WE'RE LOOKING AT
YOU, MISS SMITH, YOU SEEM TO BE
ARGUING ABOUT THINGS THAT MIGHT
HAPPEN IN THE GENERAL WORLD AND
THAT IS NOT WHAT YOU'RE HERE TO
DO.

YOU'RE HERE TO ARGUE THE FACTS
OF THIS CASE AND MAKE A LEGAL
ARGUMENT.

AND NOT TALK ABOUT WHETHER THIS
IS, IN YOUR EXPERIENCE AND I'M
NOT SURE WHAT IT IS, THAT YOU
FIND THIS HAPPENS OR THAT
HAPPENS.

THAT DOESN'T HELP THIS COURT IN
MAKING A DECISION.

>> THE ASSERTION ABOUT KNIGHT'S
PURPORTED BACKGROUND WAS NOT

DISREGARDED IS OUR ARGUMENT.
THE PENALTY PHASE WAS
IRREVOKABLY TAINTED AND I
DON'T BELIEVE, IT IS OUR
ARGUMENT THAT THE JURORS COULD
NOT DISREGARD'S MULLINGS
ASSERTIONS. THEY PERMEATED
THE ENTIRE
ENVIRONMENT AND MR.^KNIGHT WAS
DENIED A FAIR PENALTY PHASE AT
TRIAL.

>> I WANT TO LET YOU KNOW
YOU'RE NOW, YOU WANTED TO
RESERVE 15 MINUTES FOR
REBUTTAL.

YOU'RE DOWN TO A TOTAL OF ABOUT
11 MINUTES.

>> YES, SIR.

>> YOU'RE CERTAINLY WELCOME TO
PROCEED NOW.

>> JUSTICE, I'M GOING TO STAY
ON POINT 3 AND I WILL CONTINUE
AT REBUTTAL
FOLLOWING STATE'S ARGUMENT.
ISSUE 3 I WANTED TO ARGUE FROM
A LEGAL PERSPECTIVE THAT THIS,
THIS DNA EVIDENCE, TESTIMONY,
THAT, CHANGED FROM BEFORE TRIAL
TO TRIAL HINDERED THE DEFENSE
TRIAL --

>> WOULD YOU EXPLAIN THAT.
I KNOW YOU'RE IN YOUR REBUTTAL
BUT WOULD YOU EXPLAIN THAT A
LITTLE BIT.

ACTUALLY I FIND THAT A MORE
COMPELLING, MORE INTERESTING
ARGUMENT THAN THE OTHER ONE,
WHICH IS YOU'RE SAYING BEFORE
TRIAL THE STATE GAVE THE
DEFENSE THIS EXPERT'S
TESTIMONY?

AND THAT THE EXPERT GAVE SOME
ADDITIONAL TESTING WHICH
CHANGED HIS OPINION?

>> YES, JUSTICE QUINCE.

WHILE THEY WERE IN TRIAL, JURY SELECTION HAD ALREADY STARTED, EVIDENTLY THE EXPERT CHANGED HIS OPINION AND WHEN --

>> AND YOU MAINTAIN THAT THAT WAS BASED ON ADDITIONAL TESTING.

DO WE, DO WE KNOW THAT AS A FACT OR IS THAT SPECULATION?

>> THAT WAS THE TESTIMONY, JUSTICE QUINCE.

IT WAS THE TESTIMONY.

>> WHAT WAS THE TESTIMONY?

>> THERE WAS ADDITIONAL TESTING.

AND IT WAS REQUESTED BY THE STATE AND IT WAS DONE DURING, AFTER THE TRIAL STARTED AND THEN WHEN THE, THE FIRST TIME, IF YOU CAN IMAGINE, THE FIRST TIME, AND AGAIN I DO HAVE EXPERIENCE, THAT'S WHY I LOOK AT IT FROM THAT PERSPECTIVE.

YOU HEAR THIS IS WHEN THE WITNESS IS TESTIFYING AND YOU'RE, YOU KNOW, AS A DEFENSE ATTORNEY YOU'RE FLAT-FOOTED.

YOU'RE BEING BLINDSIDED.

YOUR DEFENSE STRATEGY NOW HAS CHANGED AND IN THE COMMOTION THAT ENSUES IS AGAIN --

>> PRIOR, LET ME MAKE SURE I UNDERSTAND WHAT YOU'RE ARGUING HERE.

YOU ARE SAYING THAT THE PRIOR INFORMATION THAT WAS GIVEN TO THE DEFENSE SAID YOUR CLIENT'S DNA WAS NOT ON A CERTAIN PIECE OF EVIDENCE?

>> IT WAS EXCLUDED FROM THE -- YES.

>> THEN AT THE TRIAL THE EXPERT

TESTIFIED THAT YOUR CLIENT'S
DNA WAS ON THAT SAME PIECE OF
EVIDENCE?

>> ACTUALLY, JUSTICE QUINCE,
WHAT HE SAID WAS, THE EXPERT
SAID THAT AFTER DOING A
DIFFERENT CALCULATION WITH
SOMEBODY ELSE IN THE MIX, IT
COULD NOT BE EXCLUDED.
HE DIDN'T SAY IT WAS INCLUDED.
COULD NOT BE EXCLUDED.

>> HE COULD NOT BE EXCLUDED
WHEREAS BEFORE HE DEFINITELY
SAID IT WAS NOT HIS DNA?

>> RIGHT.

>> DID IT GO IN ANY WAY TO THE
BLOOD THAT WAS FOUND ON THIS
DEFENDANT?

>> I'M SORRY, JUSTICE LEWIS?

>> DID IT IN ANY WAY ADDRESS
DNA FINDINGS WITH REGARD TO THE
OTHER BLOOD THAT WAS FOUND ON
THE DEFENDANT THAT BELONGED TO
THE VICTIM?

>> THE DEFENSE COUNSEL?

>> NO. DID THIS NEW, WHATEVER
HAPPENED LATER, DID IT IN ANY
WAY ADDRESS THOSE FINDINGS?

>> JUSTICE LEWIS, THE CHANGED
OPINION DID NOT ADDRESS THE
OTHER, CORRECT.

>> OKAY.

>> MAY IT PLEASE THE COURT,
LISA MARIE LEARNER WITH THE
ATTORNEY GENERAL'S OFFICE FROM
THE STATE.

ADDRESSING ISSUE 3 ABOUT THE
DNA EVIDENCE.

I HAVE TO RESPECTFULLY DISAGREE
WITH MY COLLEAGUE.

WHAT HAPPENED IS THE STATE DID NOT
ASK ANY EXPERT TO DO ANY
ADDITIONAL TESTING. NO
ADDITIONAL TESTING WAS DONE.

THE PERSON WHO WAS TESTIFYING WAS MR. McELFRESH, I BELIEVE HIS NAME WAS. HE HAD NEVER DONE ANY BENCH WORK OR TESTING IN THIS CASE AT ALL. NOR HAD HE EVER WRITTEN A REPORT THAT WAS GIVEN OVER TO THE DEFENSE.

THE PERSON WHO HAD DONE THE ACTUAL TESTING FOR BODE LABORATORIES AND HAD WRITTEN THE REPORT WAS FAITH PATTERSON.

>> WAS MR. McELFRESH GIVEN AS A WITNESS, HE WAS ON THE WITNESS LIST?

>> HE WAS INDEED ON THE WITNESS LIST.

>> WAS THERE ANY INDICATION GIVEN TO THE DEFENSE ABOUT WHAT HE WAS GOING TO SAY?

>> NO. NOR DID THE DEFENSE EVER DEPOSE HIM.

THE DEFENSE WAS ALSO GIVEN ALL OF THE INFORMATION IN THIS CASE.

THE HANDWRITTEN BENCH NOTES FROM THE BROWARD SHERIFF'S CRIME LAB WHO DID DNA ANALYSIS. ALL OF THE RESULTS FROM BROWARD --

>> HE WAS MAKING THIS ASSERTION BASED ON OTHER PEOPLE'S WORK?

>> YES. WHAT HAD HAPPENED WAS THAT THE BROWARD COUNTY CRIME LAB, MR. McNOPPINGER I BELIEVE HIS NAME IS, AND THE EXPERT FROM FLORIDA INTERNATIONAL UNIVERSITY, HAD CREATED A CHART WITH THE STANDARDS OF KNIGHT'S STEPHENS, MULLINGS AND THEN MARTINO I BELIEVE.

>> AND WHO WAS SHE?

>> SHE WAS KNIGHT'S GIRLFRIEND.

>> VICTORIA MARTINO?

>> YES.

>> BROWARD HAD THE EXHIBIT WITH FOUR STANDARDS THEY USED IN THEIR TESTIMONY ABOUT THE RESULTS THAT THEY GOT.

THE STATE ATTORNEY LOOKED AT THAT, NOTICED BODE HAD A DIFFERENT EXHIBIT AND HAD ONLY THREE SCANS ON IT INSTEAD OF FOUR.

I WANTED TO GO SPECIFICALLY TO THE DNA IN QUESTION.

THE CLOTHES IN THE BATHROOM WERE A PAIR OF BOXER SHORTS, A PAIR OF JEAN SHORTS, AND A PLAID SHIRT THAT WERE ROLLED TOGETHER IN A BALL.

SO THEY WERE NOT SEPARATED IN DIFFERENT PILES.

THEY WERE ROLLED TOGETHER IN A BALL AND PUT UNDER THE SINK.

ON THE BOXER SHORTS, WHICH THERE WAS TESTIMONY THEY WERE MR. KNIGHT'S, THEY WERE THE SAME TYPE AND SIZE THAT HE WAS WEARING WHEN HE WAS ARRESTED AS WELL.

ON THOSE BOXER SHORTS THERE WERE STAINS ALL OVER THE FRONT AND BACK FROM STEPHENS AND MULLINGS, THE MOTHER AND DAUGHTER.

THERE WAS A SPOT ON THE BACK OF THE BOXER SHORTS WITH A MIXTURE OF STEPHENS AND RICHARD KNIGHT.

THERE WERE TWO STAINS ON THE BOXER SHORTS, A SINGLE-SOURCE STAIN, AND THE EXPERTS TESTIFIED THAT IT IS 100% CERTAIN IN A SINGLE SOURCE STAIN, THAT IT WAS RICHARD KNIGHT'S, ON THOSE BOXER SHORTS. SO WHAT HAPPENED WAS THE CRIME SCENE ANALYST DURING THE DNA

WORK TOOK SWABBINGS FROM THE
WAISTBAND AREA.

THIS WAS NOT BLOOD EVIDENCE.
THIS IS JUST SWABBINGS LIKE YOU
TAKE A COTTON SWAB AND SWAB FOR
SKIN CELLS AND THEY SENT THOSE
OUT TO BODE LABORATORIES FROM
THE BOXER SHORTS.

ONE OF THOSE OWNERSHIP SITES IS
WHAT THEY CALL IT, CAME BACK AS
INCLUDING RICHARD KNIGHT IN IT.
THE OTHER OF THOSE OWNERSHIP
SITES, INITIALLY WERE FAITH
PATERSON, EXCLUDED RICHARD
KNIGHT'S.

IT WAS THE SECOND SPOT THAT WAS
THE SOURCE OF THIS CONTENTION
THERE WAS A DISCOVERY
VIOLATION.

BUT RICHARD KNIGHT WAS
INEXORABLY LINKED TO THOSE
BOXER SHORTS BY HIS BLOOD,
STEPHEN'S BLOOD AND MULLINGS'
BLOOD.

PUTTING HIM IN THE POSITION OF
GETTING THEIR BLOOD ON HIS
SHORTS AND HE BLED TOO.
HE HAD CUTS ON HIS HAND FROM
THE KNIFE WHICH WAS THE SOURCE
OF HIS BLOOD.

ON THE JEAN SHORTS, THE JEAN
SHORTS HAD BLOODSTAINS ALL
OVER THEM FROM STEPHENS AND
MULLINGS.

>> SOMETHING VERY INTERESTING.
YOU SAY HIS HAND WAS CUT AND
HIS BLOOD WAS ON THESE ITEMS
BUT THERE WERE NO FINGERPRINTS
OR ANYTHING ON THE KNIFE
ITSELF?

>> THAT'S CORRECT.
HOWEVER, THERE WAS A TESTIMONY
BY MR. ^WHITSETT,
UNFORTUNATELY A JAILHOUSE

SNITCH, WHO TESTIFIED THAT KNIGHT TOLD HIM THAT HE WIPED DOWN THE KNIFE.

>> COULD YOU ADDRESS, I MEAN, YOU'VE GONE ALL AROUND TO SHOW THE OTHER LINKS.

SO HOW WOULD YOU DESCRIBE WHATEVER OCCURRED WITH REGARD TO THE CHANGE?

IT WAS ONLY THE WAISTBAND, IS THAT WHAT YOU'RE SAYING?

>> YES IT WAS THE WAIST --

>> AND HOW DID THAT COME ABOUT?

>> IT CAME ABOUT BECAUSE THE STATE ATTORNEY NOTICED WHEN, DURING THE TRIAL, NOTICED THAT BODE LABORATORIES DIDN'T HAVE THE FOURTH STANDARD ON ITS EXHIBIT.

AND HE SAT THERE AND PERSONALLY COMPARED IT AND SAID, WELL THIS MATCHES VICTORIA.

AND HE TALKED TO THE EXPERT AND SAID, WILL YOU LOOK AT THIS AND SAY WHAT YOU THINK OF IT.

THE EXPERT DID AND THE EXPERT TESTIFIED.

I ALSO WANT TO POINT OUT THAT THE STATE WAS NOT TRYING TO HIDE ANYTHING.

THE STATE PRESENTED FAITH PATTERSON.

AND SHE TESTIFIED THAT SHE EXCLUDED RICHARD KNIGHT FROM THESE TWO SPOTS, ONE ON THE JEANS AND ONE ON THE BOXERS.

MR. McELFRESH ALSO TESTIFIED INITIALLY THAT IT LOOKED, BASED ON THE INFORMATION BODE HAD, HE WOULD HAVE EXCLUDED HER TOO.

BUT BASED ON THIS ADDITIONAL INFORMATION HE WAS GIVEN AT TRIAL HE NOW INCLUDED HIM.

>> NOW THAT ADDITIONAL INFORMATION THAT WAS GIVEN TO HIM AT TRIAL, DID THE DEFENSE HAVE ACCESS TO THAT INFORMATION?

>> THE DEFENSE HAD THAT FOR AT LEAST A YEAR BEFORE TRIAL. IT WAS THE STANDARD FROM VICTORIA MARTINO. AND IT WAS ALSO THE STANDARD USED DURING THE TESTIMONY FROM THE BROWARD.

THE DEFENSE HAD THAT. BOTH PARTIES THE DEFENSE INCLUDED AGREED THAT THE DEFENSE HAD THAT INFORMATION. THE DEFENSE GAVE THAT INFORMATION TO ITS EXPERT WHO HAD IT AND COULD HAVE LOOKED AT IT JUST AS THE STATE ATTORNEY DID BEFORE TRIAL.

ADDITIONALLY THE COURT FOUND THERE WAS NO DISCOVERY VIOLATION BECAUSE THEY HAD GIVEN EVERYTHING OVER HOWEVER THE COURT DID FIND SOMETHING VERY INTERESTING.

EVEN THOUGH THERE WAS NO DISCOVERY VIOLATION AND IT WAS NOT MATERIAL, THE INFORMATION, BECAUSE THE DEFENSE HAD ALL THE INFORMATION, THE COURT WENT A STEP FURTHER AND ACTUALLY DECIDED TO FASHION A REMEDY ANYWAY SO AS TO NOT PREJUDICE THE DEFENSE.

THE COURT GAVE A RECESS IN THE MIDDLE OF THE GUILT PHASE TRIAL FOR 12 DAYS.

TO ALLOW THE DEFENSE TO GET THIS INFORMATION AND THE TRANSCRIPT TO ITS EXPERT AND HAVE ITS EXPERT COME INTO COURT TO TESTIFY, IS THE IF THE

DEFENSE WANTED TO DO THAT.
THE DEFENSE TOOK THE 12 DAYS.
CAME BACK AND SAID THAT HE HAD
GIVEN ALL THE INFORMATION TO
HIS EXPERT AND HAD MADE A
STRATEGIC DECISION NOT TO PUT
HIS EXPERT ON AND NOT TO
CHALLENGE THE STATE'S DNA
EVIDENCE.

SO HE --

>> SO EVEN IF IT IS THAT
PARTICULAR ITEM WAS CHALLENGED,
IT JUST SEEMS TO ME THAT WE
HAVE HIS DNA ON OTHER THINGS,
DON'T WE?

>> OVERWHELMING.

MISS STEPHENS DNA WAS FOUND ON
THE SHIRT HE WAS WEARING WHEN
HE WAS ARRESTED AND ON THE
BOXERS HE WAS WEARING WHEN HE
WAS ARRESTED.

KNIGHT HAD BLOOD ON HIS HANDS
WHEN HE WAS ARRESTED AND THE
POLICE VERY PROPERLY AND
QUICKLY TOOK SWABBINGS OF THAT
BLOOD.

THE BLOOD ON HIS HAND WAS A
MIXTURE OF HIS BLOOD AND MISS
STEPHENS' BLOOD.

MISS STEPHENS, KNIGHT HAD
SCRATCHES ON HIS CHEST AND
BRUISES ON HIS SHOULDER.

THERE WAS EVIDENCE THAT MISS
KNIGHT, I MEAN, MISS STEPHENS
HAD MR. KNIGHT'S SKIN UNDER HER
NAILS.

HIS DNA SHOWED UP UNDER HER
NAILS.

HE IS, THE TWO VICTIMS ARE
LINKED TO THE CLOTHES IN THE
BATHROOM THE CLOTHES HE WAS
WEARING.

THE BLOOD ON HIS HAND AND HIS
DNA WAS FOUND UNDER HER

FINGERNAILS AND PLUS HE HAD
SCRATCHES ON HIS CHEST.

>> IN TERMS OF THAT ASPECT THE
EVIDENCE, THERE WAS NO BREAK-IN
IN THE HOUSE?

>> RIGHT.

>> THE DOORS WERE LOCKED?

>> CORRECT.

>> IN TERMS OF, I MEAN WAS
THERE EVER A SUGGESTION OF
THERE BEING OTHER SUSPECTS?

>> NO, YOUR HONOR.

AND ALSO INTERESTINGLY ENOUGH,
THE WOMAN UPSTAIRS CALLED 911
AT, I BELIEVE 12:21.

THE POLICE GOT THERE BY 12:28.
THE POLICE KNOCKED ON THE DOOR,
AND THEN STARTED WALKING AROUND
THE APARTMENT.

THE POLICE NOTICED THAT THE
LIGHTS WERE ON IN THE MASTER
BEDROOM AND IN THE APARTMENT
AND THAT THE WINDOWS WERE
CLOSED.

HE WENT BACK TO THE DOOR TO TRY
AND SEE WHO ELSE WAS RESPONDING
FROM THE POLICE DEPARTMENT.

HE WALKED BACK AROUND THE
APARTMENT.

NOTICED THAT THE LIGHTS WERE
NOW OFF, THE WINDOW WAS OPEN.
AND THE BLIND WERE OUT OF THE
WINDOW.

WHEN KNIGHT WAS STOPPED BY THE
WOMAN POLICE OFFICER OVER BY
THE BUSHES, HE WAS WET.

HIS HAIR WAS WET.

HIS CLOTHES WERE WET.

HE HAD A DIRT MARK ON HIS BACK
WHICH WAS CONSISTENT WITH
LEANING AGAINST A WINDOW SILL
TO GET OUT.

THERE WERE TWO WET TOWELS IN
HIS BEDROOM AND THE SHOWER IN

HIS BATHROOM HAD BEEN USED.

>> AS FAR AS THE TIME FRAME, I KNOW THEY EXCLUDED THE BOYFRIEND AS A POSSIBLE SOURCE, THE DEFENDANT.

HE WAS, HE HAD GONE TO KINKO'S THAT WAS LIKE AT 9:00?

>> NO. HE WAS, THERE IS VIDEOTAPE AND ALSO THE CASH REGISTER RECEIPT

FROM KINKO'S SHOWING HE WAS THERE BETWEEN 11:45 AND 12:15.

>> OKAY. FOR SOME REASON I THOUGHT I HAD SEEN 9:00.

>> HE LEFT HIS OFFICE AT 9:00?

>> RIGHT.

>> AND HE WENT TO KINKO'S AND DROPPED SOME RELATIVES OFF, HIS BROTHER OFF, SOMEBODY ELSE OFF AND WENT BY HIS MOTHER'S HOUSE.

>> HE GOT A CALL FROM THE POLICE.

I GUESS WE MIGHT AS WELL GO INTO THIS FIRST, WANT TO GO INTO THE FIRST ISSUE WE SPENT A LOT OF TIME ON?

HE WAS CALLED BY WHO?

>> HE WASN'T CALLED BY ANYONE.

HE HAD FINISHED HIS BUSINESS AT KINKO'S. HE WAS MAKING FLYERS.

HE WAS AN EVENT PROMOTER.

THAT IS HOW HE WORKED.

HE FINISHED MAKING THE FLYERS AND HE WENT BACK TO THE APARTMENT.

AND HE SAW SOME POLICE OFFICERS THERE AND HE STOPPED AND WENT OVER TO THE PUBLIX SHOPPING CENTER ACROSS THE STREET TO CALL HIS HOUSE.

BECAUSE HE RECOGNIZED THE POLICE OFFICERS WERE THE SAME POLICE OFFICERS HAD BEEN OUT A WEEK OR TWO BEFORE BECAUSE

KNIGHT HAD BEEN INVOLVED IN A TRAFFIC INCIDENT.

HE ACTUALLY RECOGNIZED THE INDIVIDUALS.

WHEN NO ONE ANSWERED FROM HIS HOME HE THEN CALLED A FRIEND TO TRY AND DO A THREE-WAY TO HIS HOUSE TO SEE WHAT WAS GOING ON.

IT WAS WHILE HE WAS ON THE PHONE WITH HIS FRIEND, HE HAD NO IDEA WHAT HAD HAPPENED OVER THERE, THAT HE NOTICED WHAT HE INITIALLY THOUGHT WERE HOSES FROM SOMETHING.

WHAT HE SAW WAS CRIME SCENE TAPE.

THEN HE NOTICED THERE WERE A LOT OF OFFICERS OVER THERE.

SO HE QUICKLY GOT OFF THE PHONE AND WENT OVER TO THE APARTMENT COMPLEX.

AND THAT'S THE SUBSTANCE OF WHERE THIS STATEMENT CAME UP.

>> THE SUBSTANCE BEING, WHAT WAS, HE TO HIMSELF?

DID HE SAY TO SOMEBODY, THIS IS WHAT HE THOUGHT, THAT, OH, MUST BE, HE MUST HAVE GOTTEN IN A FIGHT BECAUSE I KNOW HE HAS A VIOLENT CHARACTER?

IN OTHER WORDS HOW WOULD THAT, YOU AGREE, I THINK THE STATE AGREES THAT IS NOT RELEVANT.

WHY WAS THE QUESTION EVEN ASKED?

>> WELL BECAUSE, IT LOOKED ODD, AND IN MY -- [INAUDIBLE]

HE WAS TRYING TO EXPLAIN WHY HE DIDN'T JUST GO STRAIGHT HOME AND WHY HE WAS OVER AT PUBLIX MAKING THESE PHONE CALLS INSTEAD OF GOING STRAIGHT HOME. AND THE PROSECUTOR WAS ASKING HIM, SO WHY DID YOU HANG UP AND GO AT THIS POINT?

AND IN FACT --

>> WHAT WOULD BE, WHAT WOULD THE PROSECUTOR HAVE THOUGHT WAS GOING TO BE THE ANSWER TO THAT? LIKE WHY DID YOU GO?

THERE WAS NO INDICATION THAT HE HAD EVER SAID ANYTHING ABOUT, I WENT BECAUSE I THOUGHT THERE WAS A FIGHT AND --

>> NO.

>> WHAT WAS, WAS THAT AFTER THE DEPOSITION?

>> NOTHING WAS BROUGHT UP BY THIS, I MEAN NO ONE ASKED MR. ^MULLINGS, DID KNIGHT HAVE A REPUTATION FOR VIOLENCE AND IT NEVER CAME UP PRETRIAL.

>> SO WHY, MISS SMITH'S ARGUMENT IS, SINCE WE ALL DO AGREE THAT PEOPLE, PROSECUTORS, DEFENSE LAWYERS LEARN AS FUNDAMENTAL PRINCIPLE YOU DON'T ASK A QUESTION YOU DON'T KNOW THE ANSWER TO, WHEN HE SAID, WHY DID YOU DO THAT, WHAT WAS THE ANSWER HE THOUGHT HE WAS GOING TO ELICIT?

>> WELL, WAS THAT HE WAS GOING TO GO OVER THERE BECAUSE HE SAW ALL THE POLICE OFFICERS AND WANTED TO CONTACT HIS FAMILY. THAT'S WHAT HE HAD SAID BEFORE AND --

>> HIS RESPONSE WAS ON REDIRECT?

>> YES.

>> SO HE HAD BEEN CROSSED?

>> EXACTLY, ABOUT WHY HE WAS DELAYING BECAUSE THE DEFENSE WAS TRYING TO PAINT HIM AS A SUSPECT.

>> OKAY.

>> HE WAS TRYING TO EXPLAIN HOW HE WASN'T A SUSPECT.

IN FACT HE DID NOT SAY HE
THOUGHT MISS STEPHENS AND
KNIGHT THOUGHT THEY HAD A
FIGHT.
HE SAID HE THOUGHT THEY HAD AN
ARGUMENT.
HE ACTUALLY USED THE WORD
ARGUMENT.
THEN SAID BECAUSE OF RICHARD'S
VIOLENT BACKGROUND.
AND THE COURT DID A HEARING ON
THIS -- [INAUDIBLE]
TALKED TO MR. ^MULLINGS AND SAID
WHAT ARE YOU TALKING ABOUT?
BECAUSE THE STATE DIDN'T KNOW
WHAT HE WAS TALKING ABOUT,
NEITHER DID THE DEFENSE.
HE TALKED ABOUT SOME INCIDENTS
WHEN KNIGHT WAS A TEENAGER.
THE COURT SPECIFICALLY DIRECTED
THEM ABSOLUTELY DO NOT SAY
ANYTHING ABOUT THIS.
REALLY READ THEM THE RIOT ACT.
THEN GAVE A CURATIVE BEFORE
THEY HAD THIS HEARING.
WENT BACK AND THE COURT MADE
FINDINGS THIS WAS ISOLATED
COMMENT. IT WAS NEBULOUS.
IT DIDN'T HAVE ANYTHING TO DO
WITH THE SPECIFIC ACT OR
PROBLEMS WITH MISS STEPHENS OR
ANYTHING.
>> HE SAID A VIOLENT CHARACTER.
WHAT DID HE SAY --
>> VIOLENT BACKGROUND.
>> BACKGROUND.
I MEAN, I THINK WE ALL AGREE
THAT IT'S NOT ONLY
IMPERMISSIBLE BUT UNDER OTHER
CIRCUMSTANCES IT COULD HAVE
INFECTED THE TRIAL, DEPENDING
ON THEN WHAT HAPPENED.
YOUR ANSWER IS, DID THE
PROSECUTOR EVER TALK ABOUT THE

VIOLENT, A VIOLENT BACKGROUND
OR ANYTHING ABOUT IT AGAIN IN
THE REST OF THE TRIAL?

>> NO. IT WAS NEVER RAISED AGAIN.
IT WAS NOT USED IN CLOSING
ARGUMENT.

THE PROSECUTOR HAD SPECIFIC
ACTS OF VIOLENCE THAT HE COULD
HAVE USED FROM JAMAICA.
DID NOT USE IT.

IN FACT THE STATE DID NOT PUT
ON ANY CASE IN THE PENALTY
PHASE.

DID NOT CHALLENGE KNIGHT'S
CHARACTER AT ALL.

ALL THE WITNESSES AT THE
PENALTY PHASE WERE PEOPLE
SAYING WHAT A NICE GUY
MR. KNIGHT WAS.

>> THIS ARGUMENT IS, ONCE THE
JURY HEARS THERE IS A VIOLENT
BACKGROUND YOU DON'T NEED TO
SAY ANYTHING MORE, THEY JUST
KNOW IT?

I JUST WANT TO KNOW ABOUT HER
ARGUMENT.

WHAT'S HER RESPONSE TO THAT?

>> A VIOLENT BACKGROUND AS THE
TRIAL COURT INDICATED COULD BE
VIOLENCE AGAINST HIM,
ARGUMENTIVE FAMILY LIFE,
ANYTHING.

IT WAS VERY NEBULOUS.

IT WAS NOT SAYING THAT HE
PERSONALLY WAS VIOLENT OR HE
HAD BEHAVED VIOLENTLY IN ANY WAY.
BECAUSE THE COMMENT WAS VIOLENT
BACKGROUND.

>> AS YOU SAID THEY HAD
AN ARGUMENT.

HE DIDN'T SAY, I THOUGHT HE MUST
HAVE KILLED MY GIRLFRIEND?

>> NO.

>> IT WASN'T ANYTHING LIKE

THAT?

>> NO. HE USED THE WORD ARGUMENT.

GIVEN THE CONTEXT OF BOTH THE COMMENT AND THE OVERALL TRIAL, THE TRIAL COURT DENIED THE MOTION FOR MISTRIAL.

AND I DON'T BELIEVE IT WAS AN ABUSE OF DISCRETION.

I ALSO WANT TO POINT OUT THAT THIS COMMENT WAS MADE, I BELIEVE ON APRIL 5th.

THE JURY DID NOT EVEN GET TO CLOSING ARGUMENTS UNTIL 18 DAYS LATER.

>> I GUESS AGAIN, THE POINT ABOUT THESE TYPES OF THINGS, AND DEPENDING WHAT THEY ARE IS THAT SOMETIMES, ONCE SOMETHING IS SAID, YOU REMEMBER THAT.

I THINK THAT, AND THERE CAN BE, WHEN WE TALK ABOUT NOT BEING ABLE TO UNRING THE BELL, THE DETERMINATION WHETHER IN THIS CASE THAT IS ONE OF THOSE TYPES OF THINGS ONCE THE JURY HEARS THAT THEY CANNOT GIVE THIS DEFENDANT A FAIR TRIAL.

I THINK THAT THERE'S ALL THE REASONS WHY THIS ISOLATED COMMENT WOULD NOT BE SUCH A STANDARD BUT THERE ARE THOSE, THE FACT A FEW WEEKS GO BY ISN'T NECESSARILY THE TEST BUT YOU'RE STILL SAYING IT IS ISOLATED.

NEVER BROUGHT UP AGAIN AND NOT BROUGHT UP IN THE PENALTY PHASE IN ANY WAY EITHER?

>> CORRECT.

AND THERE'S NO WAY, GIVEN THE OTHER EVIDENCE BROUGHT OUT AT THE TRIAL ABOUT THE STABBING OF A 4-YEAR-OLD CHILD AND WHAT NOT, THAT THIS WOULD VITIATE

THE FAIRNESS OF THE TRIAL.

>> YOU TALKED ABOUT THE TIME OF THE TRIAL.

THIS IS A MURDER THAT OCCURRED IN 2000 AND, 2000?

>> 2000.

>> AND THE CASE STYLE FROM THE LOWER COURT IS 01?

>> YES.

>> THE CASE, SENTENCING ORDER DOESN'T OCCUR UNTIL 2007.

>> YES. AND THE TRIAL WAS IN 2006.

>> IS THERE AN EXPLANATION IN THE RECORD FOR THE REASON FOR THIS TYPE OF DELAY, TO BRING THIS DEFENDANT TO TRIAL?

JUST IN THE RECORD, NOT --

>> YES. THERE IS EVIDENCE FROM THE CHIEF INVESTIGATING OFFICE, OFFICER, THAT THE REASON HE WAITED A YEAR TO GET THE INDICTMENT WAS THAT HE HAD TO INTERVIEW ALL THE WITNESSES AND HE WANTED TO MAKE SURE ALL THE DNA RESULTS WERE BACK.

>> NO, I'M ASKING BETWEEN WHEN IT WAS FILED AND SIX YEARS TRIAL, OR FIVE YEARS.

>> JUST LOOKING AT MOTIONS, DEFENSE PREPARATION.

>> THEN THIS CASE WAS FILED HERE IN 2007.

NOW IT IS FOUR YEARS LATER.

DO YOU KNOW WHAT, HAVE THE REASON IN THE RECORD FOR THE INORDINANT DELAY IN GETTING THIS CASE HERE TO ORAL ARGUMENT?

>> YES.

A NUMBER OF DEFENSE ATTORNEYS, FIRMS, PUBLIC DEFENDERS AND WHAT NOT, WERE ASSIGNED TO THIS CASE AND EACH OFFICE FOR ABOUT A YEAR SUPPLEMENTING THE

RECORD.

AND THEN HAD TO GET OFF OF IT
EITHER FOR CONFLICT FROM THE
PUBLIC DEFENDERS.

AND THEN THE I BELIEVE THE
ULTIMATE PUBLIC DEFENDER OFFICE
SAID THAT THEY DIDN'T HAVE THE
MANPOWER TO FINISH THE CASE
AFTER THEY HAD HAD IT A YEAR.
THEN MISS SMITH GOT IT.

BUT FINISHING ON POINT 3, AS
I SAID, THERE WAS NO DISCOVERY
VIOLATION FOUND.

I DON'T BELIEVE THAT THIS COURT
IS GOING TO BE ABLE TO FIND AN
ABUSE OF DISCRETION ON THAT.
BUT EVEN THOUGH THERE WAS NO
VIOLATION, THE INFORMATION WAS
NOT MATERIAL AND --

>> BUT YOU'RE SAYING EVEN IF
THERE WAS A VIOLATION, IT WAS
REMEDIED BY WHAT YOU JUST SAID?

>> RIGHT.

>> IT WAS A 12-DAY RECESS TO
LOOK INTO THIS?

>> RIGHT.

THIS JUDGE WAS VERY CAREFUL.
AND WE ASK THE COURT TO AFFIRM
BOTH THE GUILT VERDICT AND THE
DEATH SENTENCE.

>> THANK YOU AGAIN.

I WOULD LIKE TO ASK YOU TO
REFER TO THE RECORD. I'M
GOING TO ADDRESS ISSUE 3,
WHAT WE'RE PURPORTING AND THE
STATE AGREED WAS A
DISCOVERY VIOLATION.

>> I DON'T THINK THEY AGREED IT
WAS, I DIDN'T HEAR MISS LEARNER
SAY SHE AGREED IT WAS A
DISCOVERY VIOLATION.

I -- I THOUGHT ALTERNATIVELY
EVEN IF IT WERE BUT I DIDN'T
SAY, HEAR A CONTENTION ON THIS.

>> VOLUME 32 OF THE TRIAL PAGES
3459, 3460.

THE TRIAL COURT SAYS, I DON'T
BELIEVE THE VIOLATION WAS
INADVERTENT.

SO AT LEAST THE COURT BELIEVES
IT WAS A DISCOVERY VIOLATION.
IT OFFERED A REMEDY THAT WAS
SUFFICIENT FOR DEFENSE TRIAL TO
DO WHAT THEY NEEDED TO DO.

>> WHAT WOULD THE
DEFENSE NEED TO FURTHER DO?
THE 12-DAY RECESS WASN'T
ENOUGH?

>> THE PRESENTATION OF FACTS IS
ALWAYS TRICKY HERE.

BUT THE REMEDY, I'M NOT SURE,
WHAT THE TRIAL TRANSCRIPT SAID
ABOUT THE REMEDY WAS, THAT,
THEIR TRIAL STRATEGY HAD BEEN
SO DAMAGED BECAUSE THEY HAD
BEEN GOING ALONG THE LINE OF
INNOCENCE, TRYING TO SAY THAT
BECAUSE THERE WAS, THERE WERE
NO FINGERPRINTS ON THE KNIFE,
THERE WAS ANOTHER PERSON'S DNA,
A FEMALE PERSON'S DNA ON A
SHOWER CURTAIN, THAT THE, THE
NOW ADMITTED TESTIMONY THAT
MR. KNIGHT'S DNA WAS NOT
EXCLUDED ON ANOTHER ITEM, THE
JEANS.

>> EXPLAIN WHETHER, WHAT I
UNDERSTOOD MISS LEARNER TO
CLARIFY, THIS AFFECTED ONLY THE
AREA IN THE BOXER SHORTS. THAT
THE WAISTBAND, AND THAT THERE
WAS ALL THIS OTHER, THAT THE
BLOOD OF THE VICTIM, FIRST OF
ALL, THEY WERE HIS BOXER
SHORTS. HE LIVED THERE.
AND THAT HIS BLOOD AND THEIR
BLOOD WAS, WE'RE STILL ON THE
BOXER SHORTS,

IS THAT INCORRECT?

>> I DON'T BELIEVE THAT'S INCORRECT.

>> IS THAT CORRECT?

>> I BELIEVE THAT'S CORRECT.

>> THAT IS PRETTY, THE DEFENSE KNOWS THAT GOING IN.

HOW DOES THAT --

>> RIGHT. AND THE DEFENSE ARGUES IT HAS NOT CALLED AN EXPERT TO DISPUTE THAT. THEN IT HEARS THAT THE OTHER ITEMS, THE DNA WAS NOT EXCLUDED AND IT BASICALLY WIPES OUT THEIR STRATEGY, THAT THIS IS, THIS IS A PERSON WHO HAS BEEN EXCLUDED, OR -- HAS BEEN INCLUDED.

SO, THE REPORT THAT THEY GOT, AND AGAIN IF I COULD JUST REFER YOU TO THE RECORD A COUPLE OF CITES THAT MIGHT HELP IN MY REBUTTAL ARGUMENT.

IN VOLUME 31 --

>> EXCUSE ME.

>> YES?

>> YOU JUST EXTRAPOLATED ONE LINE FROM A JUDGE'S MONOLOGUE.

>> I DID.

>> SAID, ALL RIGHT, I DON'T BELIEVE THE COURT FINDS A VIOLATION WAS INADVERTENT. BUT ABOVE THAT HE SAID, BUT IT DOESN'T CREATE A DISCOVERY VIOLATION, AND AFTER THAT HE SAID, IN VIEW OF THE FACT THAT MR. KNIGHT'S DNA WAS FOUND PRIOR TO TRIAL, I DON'T FIND THERE WAS SUBSTANTIAL, THAT IS, A SUBSTANTIAL. AND EVEN IF IT WERE, WAS A VIOLATION, IT WOULDN'T MEET THE BECAUSE THE STATE ALREADY GAVE THE EVIDENCE. HE CLEARLY WAS SAYING SEEMS THE

STATEMENT WAS TAKEN OUT OF
CONTEXT.

>> I DON'T THINK SO, JUSTICE
PERRY.

HE SAYS I DON'T BELIEVE THE
VIOLATION WAS INADVERTENT.

HE DID SAY, THE JUDGE WAS ALL
OVER THE PLACE, I AGREE.

AT ONE POINT HE DID SAY IT WAS
A VIOLATION.

HE SAID I DON'T BELIEVE THE
VIOLATION WAS INADVERTENT.
THAT WORD INADVERTENT REFERS TO
A VIOLATION NOT --

>> ALL AROUND THAT HE SAID IT
WAS NOT A VIOLATION.

UP DOWN, BEFORE IT AND IN
BETWEEN.

>> THAT'S RIGHT.

>> OKAY.

>> HE SAYS BOTH BUT THE, OUR
POSITION IS AND THE FACTS
REMAIN THAT HE SAID IT WAS A
VIOLATION THAT WAS INADVERTENT.
AND MADE ALL THOSE OTHER
COMMENTS AND HIS POTENTIAL
REMEDY, JUSTICE PARIENTE, WHEN
THE DEFENSE HAD ITS TIME TO
EFFECTIVELY TRY TO NOW EITHER
REBUT OR DEFEND AGAINST THIS
STATEMENT, THEY, FROM WHAT THE
TRANSCRIPT SAYS, AND DEFENSE
ATTORNEY TELLS THE TRIAL COURT,
IS THAT THEIR TRIAL STRATEGY
WAS DAMAGED BEYOND REPAIR.
THAT THEY COULD NOT BRING
SOMEBODY IN AT THIS POINT TO
TESTIFY TO SOMETHING THAT WOULD
BE CONSISTENT WITH THEIR TRIAL
STRATEGY.

>> SEE I UNDERSTAND THAT AND I
CONCEDE THERE ARE CASES WHERE
SOMETHING IS NOT REVEALED THAT
THEY HAVE NOW MADE A STATEMENT.

I WAS STILL JUST TRYING TO UNDERSTAND, I'M NOT SURE YOU'VE BEEN ABLE TO CONVINC ME OF IT, THAT WITH ALL THE OTHER DNA TO HAVE A DEFENSE THAT HE WASN'T THERE SEEMS, I DON'T SEE HOW THIS PARTICULARLY CHANGES THAT. AND SO, CAN YOU MAKE ONE MORE TRY AT EXPLAINING HOW --

>> I WILL.

THANK YOU, JUSTICE PARIENTE.

I'M NOT SURE I COULD ARGUE THAT HE WASN'T THERE.

I COULD ARGUE THAT HE MIGHT NOT HAVE BEEN THE KILLER BECAUSE --

>> CAN YOU TELL ME WITH THE BLOOD, WHAT WAS THE, EXPLANATION GOING TO BE ABOUT THE BLOOD THAT THEY COULD NO LONGER MAKE BECAUSE OF THIS OTHER TESTING, OF THE WAISTBAND?

>> THAT HE COULD NOT BE EXCLUDED, JUST TO ADD TO THE, THE OTHER COMMENTS AND THE OTHER TESTIMONY AND EVIDENCE. OKAY.

ANY OTHER QUESTIONS?

THANK YOU VERY MUCH.

>> WE THANK YOU BOTH.

THE COURT WILL NOW TAKE A 10-MINUTE RECESS.

>> PLEASE RISE.

THE COURT IS IN RECESS FOR 10 MINUTES.