

>> ALL RISE.

SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

PLEASE BE SEATED.

>> MAY IT PLEASE THE COURT.

GOOD MORNING.

MY NAME IS ROBERT MOELLER.

I'M ASSISTANT PUBLIC DEFENDER

WITH THE 10th JUDICIAL

CIRCUIT.

>> I SHOULD SAY THIS IS THE
CASE OF PARTIN VERSUS STATE OF
FLORIDA.

>> YES.

>> THIS IS THE CASE OF
37-YEAR-OLD DEFENDANT?

>> YES.

>> OKAY.

THAT'S CORRECT.

MR. PARTIN WAS SENTENCED TO

DEATH AFTER A 9-3

JURY VOTE RECOMMENDING DEATH.

I WOULD LIKE TO START OUT WITH

THE FIRST ISSUE ADDRESSED IN

THE BRIEFS HAVING TO DO WITH

CERTAIN EVIDENCE PRESENTED AT
TRIAL WE FEEL SHOULD NOT HAVE
BEEN ALLOWED HAVING TO DO WITH
OTHER CRIMES AND BAD ACTS.

WE'VE IDENTIFIED IN THE BRIEF
SEVEN SEPARATE INSTANCES OF
THIS TYPE OF THEY HAVE HAD THAT
WAS ALLOWED IN OVER DEFENSE
OBJECTIONS.

THE FIRST EXAMPLE IS IN A
RECORDED TELEPHONE CONVERSATION
BETWEEN DETECTIVE SCOTT GATTUSO.

>> COULD YOU SPEAK UP.

SPEAK MORE DIRECTLY INTO THE
MIKE.

>> I'LL TRY TO DO THAT, I'M
SORRY.

THERE WAS A RECORDED TELEPHONE
CONVERSATION BETWEEN DETECTIVE
SCOTT GATTUSO AND THE APPELLANT
IN WHICH THE DEFENDANT REFERRED
TO HAVING FIREARMS AND KNOWING
HE WAS NOT SUPPOSED TO HAVE
ANY.

ANOTHER EXAMPLE WAS THERE WAS A

VIDEOTAPED INTERVIEW WITH LAW
ENFORCEMENT AFTER THE
DEFENDANT'S ARREST WHERE THE
DEFENDANT SPOKE OF HAVING HIS
GUN WITH HIM EVERYWHERE HE WENT
AND POSSIBLY OF SHOOTING IT OUT
WITH LAW ENFORCEMENT.

>> TO ME THERE'S TWO DIFFERENT
THINGS THERE.

ONE IS, KNOWING YOU'RE NOT
SUPPOSED TO HAVE GUNS I COULD
SAY IS NOT RELEVANT OR IS
DEBATABLE BUT GIVE ME THE
CONTEXT OF SAYING HE WAS ALWAYS
KEEPING HIS GUN WITH HIM IN
CASE LAW ENFORCEMENT FOUND HIM.
IN THE CONTEXT OF THIS CASE
WHERE HE SUCCESSFULLY EVADED
ARREST FOR HOW LONG?

>> WELL THE OFFENSE OCCURRED
JULY 31st, AUGUST 1st, 2002, AND
HE WAS ARRESTED OCTOBER 2003.

>> A YEAR PLUS?

>> A YEAR.

>> HE WAS ON THE RUN?

>> RIGHT.

>> AND YOU WOULD AGREE THAT
NOT -- RUNNING AFTER A CRIME IS
KNOWLEDGE OF FLIGHT, IS
RELEVANT TO CONSCIOUSNESS OF
GUILT?

>> THAT'S WHAT THE CASES SEEM
TO INDICATE, YES.

>> SO MY CONCERN IS THAT IN THE
CONTEXT OF AFTER, TELL ME THE
CONTEXT OF THE ONE WHERE HE
SAID, HE ALWAYS KEEPS A GUN
WITH HIM IN CASE LAW
ENFORCEMENT FOUND HIM, WHY
THAT'S NOT RELEVANT IN THE
CONTEXT OF CONSCIOUSNESS OF
GUILT AND KNOWLEDGE THAT HE WAS
BEING SOUGHT FOR THIS CRIME?
WHICH IS WHERE I UNDERSTAND ALL
OF THIS, THESE COMMENTS ALL
CAME IN UNDER THAT, UNDER THAT
EXCEPTION OR THAT THEORY.

>> I THINK THAT'S CORRECT.

THEY DID.

>> WHAT'S WRONG WITH THAT ONE

NOT BEING RIGHT ON POINT?

>> WELL, RATHER THAN, ISOLATING
JUST THAT ONE --

>> I WOULD JUST LIKE TO TAKE
THAT ONE BECAUSE YOU BROUGHT
IT UP.

LET'S TAKE ONE WHICH IS THAT
ONE, IS ONE THAT HE ALWAYS
KEPT A GUN WITH HIM IN CASE LAW
ENFORCEMENT FOUND HIM.

THAT'S A BAD, WOW, SOMEBODY
WILL SHOOT UP LAW ENFORCEMENT
AND THEY HAVE A GUN, YOU SAY
THAT IS PREJUDICIAL BUT SO
LET'S TALK ABOUT THAT ONE.

>> YEAH, WELL I THINK THAT'S
ANOTHER PART OF OUR ARGUMENT IS
THAT ALL THESE THINGS ARE MORE
PREJUDICIAL THAN PROBATIVE.

I'M NOT GOING TO SAY THAT THAT
HAS ABSOLUTELY NO RELEVANCE
WHATEVER BUT A BIG PART OF OUR
ARGUMENT IS ALL THESE THINGS
THAT CAME IN ARE MORE
PREJUDICIAL THAN PROBATIVE.

>> HOW IS THAT?

WHAT WAS PREJUDICIAL ABOUT IT

AND IF IT WAS --

>> I THINK IN PARTICULAR,

RATHER THAN JUST ISOLATING

THAT ONE AGAIN I'D LIKE TO LUMP

THEM ALL TOGETHER WHEN YOU

CONSIDER ALL THIS EVIDENCE

ABOUT THERE WERE SEVERAL

EXAMPLES OF TESTIMONY ABOUT HIM

HAVING GUNS AND THIS WENT ABOUT

SHOOTING IT OUT WITH POLICE.

>> TAKING OUT THE GUNS, WAS

THERE OTHER STATEMENTS THAT YOU

TAKE ISSUE WITH THAT WOULD HAVE

ANYTHING TO DO WITH PRIOR BAD

ACTS?

>> THERE WERE A FEW OTHER

EXAMPLES BESIDE THE GUN THING.

FOR EXAMPLE, WHEN TESTIMONY

FROM PARTIN'S FORMER GIRLFRIEND

THAT HE ASKED FOR HER

EX-HUSBAND'S SOCIAL SECURITY

NUMBER, THAT'S ONE EXAMPLE OF

ANOTHER BAD ACT, SUGGESTING HE

HAD SOME SORT OF FRAUDULENT
INTENT.

AND ANOTHER ONE WAS, WELL, THIS
ONE IS PARTICULARLY I THINK
EGREGIOUS BECAUSE IT REALLY,
DOESN'T HAVE ANY MARGINAL
RELEVANCE.

IT'S WHEN IN A TAPE OF A
TELEPHONE CONVERSATION BETWEEN
PARTIN AND HIS FRIEND, FRED
KAUFMAN, PARTIN WAS DESCRIBING
BEING IN A FIGHT APPARENTLY AT
SOME BEACH AREA AND ENGAGING IN
A FIGHT WITH ANOTHER PERSON AND
THERE WAS A MENTION BY PARTIN
THAT THE MAN'S HEAD WAS SPLIT
WIDE OPEN.

AND IT'S NOT CLEAR TO ME
WHETHER HE MEANT HE SPLIT THE
GUY'S HEAD OPEN OR IF SOMEBODY
ELSE DID THAT BUT THE FACT HE
WAS IN THIS FIGHT BASICALLY
PORTRAYS HIM AS A VIOLENT
INDIVIDUAL.

>> WHAT WAS THE -- AS I

UNDERSTAND IT, THERE WAS SOME
PARTS IN THAT CONVERSATION WITH
FRED KAUFMAN THAT WERE RELEVANT
AND BUT THE ARGUMENT IS, THIS
WAS NOT?

SOMEHOW THOUGHT THE TRIAL COURT
FOUND THEY WERE USED
INEXTRICABLY INTERTWINED.

SO COULD YOU GIVE US THE
CONTEXT OF THAT CONVERSATION?

WHAT ELSE WAS STATED DURING THE
CONVERSATION WITH FRED KAUFMAN
THAT WOULD HAVE BEEN RELEVANT?

>> I THINK PARTIN AT THAT POINT
WAS, THERE WAS, BASICALLY
TELLING KAUFMAN WHERE HE HAD
BEEN AND WHAT HE HAD BEEN
DOING, IF I'M REMEMBERING THAT
CONVERSATION CORRECTLY.

>> THAT WOULD SEEM, BASED ON
YOUR PORTRAYAL YOU WOULD BE
ABSOLUTELY RIGHT, IT WOULDN'T
EVEN BE RELEVANT.

SO I GUESS WE'LL HAVE TO HEAR
FROM MISS BLANCO WHY THAT WOULD

COME IN.

>> IF YOU TAKE ALL OF THESE,
WHAT REALLY, I'M TRYING TO GET
WHAT IS THE PREJUDICE THAT
YOU'RE SAYING THAT THE REASON
THIS THE JURY SHOULD NOT HAVE
HEARD THIS?

WHAT'S THE PREJUDICE FROM THESE
STATEMENTS?

>> BASICALLY I THINK THE
PREJUDICE IS IT PORTRAYED
PARTIN AS THIS VIOLENT,
GUN-TOTING INDIVIDUAL.
THIS WOULD HAVE AFFECTED NOT
ONLY THE GUILT PHASE BUT THE
PENALTY PHASE AS WELL.

>> CERTAINLY IN THE PENALTY
PHASE THEY WOULD HAVE HEARD
ABOUT HIS PRIOR MURDER
CONVICTION, WOULDN'T THEY?

>> THEY DID HEAR ABOUT THAT,
YES.

>> SO IN CONNECTION WITH THE
PRIOR MURDER CONVICTION I'M NOT
SURE THAT I SEE THAT THAT, THE

REST OF THIS WOULD HAVE BEEN

THAT PREJUDICIAL.

>> WELL BECAUSE I THINK THESE

ARE ADDITIONAL, SEVERAL

SEPARATE INCIDENTS WHERE HE'S

CARRYING A GUN AND THIS MURDER,

THIS HOMICIDE DID NOT INVOLVE A

GUN AT ALL, NOR DID THE

PREVIOUS MURDER INVOLVE A GUN.

>> WOULDN'T MAKE IT, ACTUALLY,

THEY SAY THAT MAKES IT LESS

PREJUDICIAL BECAUSE THE, SINCE

A GUN WAS NOT USED, A KNIFE WAS

USED AND HIS HANDS, THERE'S

NOTHING TO INFER THAT HE

COMMITTED THIS MURDER BECAUSE

HE WAS TRYING TO AVOID ARREST.

SO THIS IS, IT DOES SEEM, I

I MEAN, AGAIN, I TEND TO AGREE

THAT I'M NOT SURE WHY ALL THOSE

STATEMENTS NEEDED TO COME IN

BUT I'M NOT, AGAIN THAT THERE'S

RELEVANCE, AND ISSUES

THAT THE PREJUDICE

OUTWEIGHS IT AND I THINK THAT

IS WHERE JUSTICE QUINCE WAS
GOING. HOW PREJUDICIAL
REALLY IS IT IN THE CONTEXT OF
THIS CRIME AND CIRCUMSTANCE OF
THIS CRIME.

AND THEN YOU HAD HIM WITH
PHYSICAL EVIDENCE LINKING HIM
TO THE VICTIM AND THE CRIME.
THE HAIR ON THE VICTIM.

THE DNA ON CARPET IN PARTIN'S
ROOM. HARD TO SAY IT WASN'T HIM.

>> WELL, THAT SORT OF RAISES
THE QUESTION WHY DID THEY NEED
TO HAVE ALL THIS STUFF?

>> MANY TIMES WE ASK PROSECUTORS
WHY DO YOU PUT THINGS ON.

>> SURE, I UNDERSTAND THAT.
BUT AGAIN, JUST TO ME WHEN THE
JURY IS HEARING ALL THIS STUFF
HE IS TOTING GUNS AND THINKING
ABOUT SHOOTING IT OUT WITH THE
POLICE AND SO FORTH, SEEMS TO
ME PORTRAYS HIM AS A VIOLENT
PERSON ABOVE AND BEYOND
WHATEVER HE MIGHT HAVE --

>> I'M TALKING ABOUT THE

CONTEXT.

IF SOMEBODY SAID, YOU KNOW, I

SAW HIM TWO DAYS BEFORE THE

CRIME AND HE WAS CARRYING GUNS,

WE'D SAY NO, THAT'S NOT COMING

IN RIGHT?

>> RIGHT.

>> NO RELATIONSHIP TO THE

CRIME.

>> CORRECT.

>> THE FACT THAT HE MIGHT HAVE

BEEN ARRESTED THE YEAR BEFORE

BECAUSE HE SPLIT SOMEBODY'S

HEAD OPEN BUT WASN'T PROSECUTED

IS NOT COMING INTO THE GUILT PHASE.

>> RIGHT.

>> TRYING TO GET THE CONTEXT

THAT THE JURY WAS HEARING IT IN

WHICH HE IS ON THE LAMB KNOWING

HE IS BEING SOUGHT FOR THIS

MURDER AND HE'S TELLING PEOPLE

THAT THEY'RE NOT GOING TO GET

HIM BECAUSE HE'S GOT GUNS.

IT SEEMS THAT IT'S RELEVANT.

ISN'T THAT BECAUSE OF WHEN IT'S
BEING SAID WE WOULD AGREE
GENERALLY THAT BEFORE THE
MURDER, IT WOULD BE BAD
CHARACTER EVIDENCE.

IT WOULDN'T BE RELEVANT.

>> WELL --

>> IS THIS CASE WHERE HE ALSO
WANTED THE POLICE TO MEET HIM
WITHOUT, AND HE DIDN'T WANT THE
POLICE TO BRING A WEAPON --

>> YES.

>> -- TO THIS MEETING SITE?

SO IT SEEMS TO ME, AT LEAST IN
THAT CONTEXT THE FACT THAT HE
HAD A GUN AND HE NEGOTIATING OR
TRYING TO NEGOTIATE WITH THE
POLICE AND SAY, YEAH, I'LL MEET
YOU AND LET'S MEET AT THIS
LOCATION BUT YOU HAVE TO AGREE
NOT TO BRING A WEAPON.

I MEAN, ISN'T THAT, THIS WHOLE
THING THAT HE HAD A WEAPON SORT
OF TIE INTO HIM NOT WANTING THE
POLICE TO COME TO THE SITE WITH

A WEAPON?

>> WELL, I DON'T KNOW THAT
THOSE TWO ARE REALLY CONNECTED
THAT MUCH BECAUSE I DON'T THINK
HE WAS SAYING HE WAS GOING TO
BRING, HE WAS GOING TO BRING
HIS GUN TO THE MEETING BUT THE
POLICE COULDN'T BE ARMED.

THAT IS NOT THE WAY I --

>> I'M NOT SAYING THAT HE WAS
GOING TO BRING HIS WEAPON AND
HE DIDN'T WANT THEM -- BUT THE
WHOLE IDEA DISCUSSION IN THIS
CASE ABOUT A WEAPON AND NOT
WANTING THE POLICE TO BRING A
WEAPON TO THEIR MEETING SEEMS
TO ME THAT THERE'S AT LEAST
SOME MARGINAL RELEVANCE TO HIS
POSSESSION OF A GUN.

>> WELL, DOESN'T REALLY, TO ME
THAT'S LIKE A TANGENTIAL
MATTER, IF HE WAS GOING TO MEET
WITH THE POLICE AND HE WAS
GOING TO BE ARMED AND WANTED
THEM TO BE UNARMED I DON'T

REALLY SEE THE IMPORTANCE OF
THAT. OKAY.

IF I COULD, I'D LIKE TO MOVE ON
NOW TO THE SECOND ISSUE.

WHICH HAS TO DO WITH THE --

>> I'M SORRY, GO BACK TO ONE
THING.

>> OKAY.

>> I DON'T FEEL LIKE YOU
ANSWERED.

THE CONVERSATION WITH FRED
KAUFMAN, WHAT WAS THAT, WHAT
PART OF IT DO YOU AGREE WAS
ADMISSIBLE?

WHAT WAS IT BEING OFFERED FOR?
JUST HE MUST HAVE TALKED TO HIM
ABOUT SOMETHING OTHER THAN
HAVING HAD A FIGHT.

DO YOU RECALL OR WOULD WE NEED
TO GO BACK TO YOUR BRIEFS TO
FIGURE THAT OUT?

>> I REALLY CAN'T HELP YOU OUT
VERY MUCH THERE, I'M SORRY, BUT
I REALLY DON'T REMEMBER ABOUT
THE CONTEXT OF THAT.

>> WAS YOUR IMPRESSION WAS
READING IN THE RECORD THE SUM TOTAL
THERE IS LOT OF THINGS THAT YOU
THOUGHT WAS EXTRANEIOUS, BAD ACT
PORTRAYAL EVIDENCE --

>> RIGHT.

>> -- THAT DIDN'T NEED TO COME IN?

>> RIGHT. AND SOME OF THESE
TAPES AND CONVERSATIONS,
SOME OF THEM
WERE RATHER RAMBLING AND A
LITTLE BIT HARD TO SEE WHAT THE
POINT OF IT WAS.

MOVING ON TO ISSUE TWO IN THE
BRIEFS, HAVING TO DO WITH THE
ADMISSION OF FORMER TESTIMONY
OF SUSAN ULERY, WHO WAS A DNA
EXPERT FOR THE STATE.

SHE TESTIFIED AT PARTIN'S FIRST
TRIAL, WHICH ENDED IN A
MISTRIAL,

AT THE TIME OF THE NEW TRIAL
THIS WITNESS, SUSAN ULERY OR
ULERY WAS LIVING IN SAN DIEGO,
CALIFORNIA, AND WAS FOUR

AND A HALF MONTHS PREGNANT.

>> TAKE OUT THE PREGNANCY.

SOMEBODY NOW IS LIVING IN
ANOTHER STATE.

DOESN'T THAT ALLOW, DOES THAT
NOT ALLOW THEIR DEPOSITION TO
COME IN OR THEIR FORMER
TESTIMONY IF IT'S TAKEN UNDER
OATH AND THERE IS
CROSS-EXAMINATION?

OR DOES UNAVAILABILITY HAVE TO
MEAN THAT THEY CAN'T TRAVEL?

>> I HAVEN'T SEEN ANY, ASKED TO
BE UNAVAILABLE AND I HAVEN'T
SEEN ANYTHING THAT ALLOW
SOMEBODY WHO SIMPLY LIVES IN
ANOTHER TO BE CONSIDERED
UNAVAILABLE.

>> IF THEY'RE A LAY WITNESS AND
THEIR DEPOSITION IS TAKEN, IS
SHE AN EXPERT?

>> I DON'T REALLY THINK THAT
HAS ANYTHING TO DO WITH IT.

>> YOU'RE TELLING ME AN
OUT-OF-STATE EYEWITNESS WHOSE

DEPOSITION IS TAKEN THAT ONE
SIDE OR THE OTHER HAS TO BRING
THEM TO TRIAL OR --

>> STILL HAS TO BE UNAVAILABLE,
YES.

>> I THINK IN CIVIL RULES.

THERE'S A PROVISION FOR EXPERTS
WHO ARE MORE THAN 100 MILES
AWAY THAT YOU ARE PERMITTED TO
REED THEIR TESTIMONY.

>> BUT IN CRIMINAL THEY HAVE TO
BRING THEM?

>> IT IS PREFERABLE ALWAYS THAT
THE WITNESS TESTIFIES.

>> REALLY PREFERABLE.

SO THERE HAS TO BE ACTUAL
UNAVAILABILITY?

>> THAT'S MY UNDERSTANDING,
YES, THAT'S CORRECT.

>> AND THE FACT THAT HER DOCTOR
SAID SHE SHOULDN'T TRAVEL ISN'T
ENOUGH TO SHOW UNAVAILABILITY?

>> HE DIDN'T SAY SHE SHOULDN'T
TRAVEL.

HE SAID SHE SHOULDN'T FLY.

THE DEFENSE HAD TWO

SUGGESTIONS.

SHE COULD COME HERE BY OTHER

MEANS.

SHE WOULDN'T HAVE TO FLY

NECESSARILY.

CAR, TRAIN, BUS, WHATEVER.

OR THAT THE TRIAL COULD

BE CONTINUED UNTIL SHE WAS

AVAILABLE TO TESTIFY.

>> WHICH WAS MONTHS LATER?

>> SEVERAL MONTHS LATER.

I THINK THE TRIAL WAS IN, MARCH

I BELIEVE AND SHE WOULD HAVE

BEEN AVAILABLE IN AUGUST I

BELIEVE TO FLY AT THAT TIME.

AND THE DEFENSE HAD NO

OBJECTION TO THAT PROCEDURE.

>> DID YOU FEEL LIKE THE, THERE

WAS SOMETHING MISSING IN THE

FIRST CROSS EXAMINATION?

I GUESS THE OTHER PROTECTION IF

WE'RE LOOKING WHETHER THERE IS

DISCRETION, SHE'S UNAVAILABLE,

I DON'T REALLY THINK REQUIRING

SOMEBODY WHO IS NOT SUPPOSED TO
TRAVEL TO GO, HAVE TO PUT THEM
ON A TRAIN OR A BUS FROM SAN
DIEGO TO FLORIDA IS, WHAT I
WOULD CONSIDER TO BE SOMETHING
THE COURT WOULD WANT TO
ENDORSE.

SO THE QUESTION THOUGH IS, CAN
YOU, IS THERE, WAS THERE
SOMETHING THAT YOU SAID, WELL,
SHE WAS CROSS-EXAMINED BUT WHAT
WE REALLY WANTED TO DO IS, THE
JURY NEEDED TO SEE HER BECAUSE
SHE WAS FIDGETING?

ANYTHING, MAYBE I'M GOING TO
THE DUE PROCESS PART OF THIS
BUT JUST TRYING TO GET AT WHAT,
WHERE THE PREJUDICE REALLY WAS
TO THE DEFENDANT FROM HER NOT
BEING ABLE TO BE PRESENT AT
TRIAL?

>> YES. WELL, I THINK DURING THE
HEARING ON THE QUESTION OF
WHETHER THIS FORMER TESTIMONY
SHOULD BE ALLOWED OR NOT THE

DEFENSE COUNSEL DID MAKE THE
POINT THAT HE, IT IS A LITTLE
UNCLEAR TO ME EXACTLY WHAT HE
WAS SAYING BUT HIS
CROSS-EXAMINATION DURING THE
FIRST TRIAL WAS ABBREVIATED FOR
SOME REASON.

I'M NOT SURE EXACTLY WHY BUT HE
INDICATED THAT BASICALLY THIS
TRIAL COULD BE DIFFERENT.
HE DOESN'T KNOW HOW THE
TESTIMONY IS GOING TO COME OUT
IN THIS ONE.

HIS CROSS-EXAMINATION COULD
POSSIBLY BE DIFFERENT THAN IT
WAS IN THE FORMER TRIAL AND
THAT HE --

>> WELL, WE DID, DIDN'T WE HAVE
ANOTHER EXPERT IN THIS CASE WHO
TESTIFIED TO ESSENTIALLY THE
SAME INFORMATION?

>> WELL, THIS WITNESS TESTIFIED
TO AT LEAST ONE IMPORTANT PIECE
OF EVIDENCE THAT THE OTHER DNA
EXPERTS DIDN'T AND THAT IS,

THERE WAS A CARPET WITH A STAIN
ON IT IN THE ROOM IN FRED
KAUFMAN'S HOUSE WHERE PARTIN
HAD BEEN STAYING WITH HIS
DAUGHTER AND THIS, I BELIEVE
THIS WAS THE ONLY DNA WITNESS
THAT IDENTIFIED THE DNA OF THE
VICTIM ON THE CARPET FROM THAT
ROOM. SO --

>> BUT WE ALL, WASN'T DISPUTED
THAT SHE WAS IN FACT IN THE
ROOM WITH THE DEFENDANT'S
DAUGHTER AT SOME POINT DURING
THAT DAY?

I MEAN THAT'S A FACT THAT WAS
NOT DISPUTED, IS IT?

>> NO, IT WASN'T REALLY
DISPUTED.

LET ME MENTION ALSO ONE THING.
THE STATE'S COMMENTS IN THE
HEARING WHETHER TO ALLOW THIS
FORMER TESTIMONY OR NOT, THIS
IS THE PROSECUTOR SPEAKING, I
WOULD SUGGEST IN THIS
PARTICULAR CASE WE HAVE SUZANNA

ULERY RYAN, THAT WAS HER
MARRIED NAME, WHO IS A VERY
MATERIAL WITNESS IN THE CASE.
I DON'T THINK DEFENSE COUNSEL
WOULD ARGUE SHE IS NONMATERIAL.
SHE IS MATERIAL.
SHE IS NECESSARY.
SO THE STATE THOUGHT THIS WAS A
VERY IMPORTANT WITNESS.
AND IF YOU HAVE A VERY
IMPORTANT WITNESS HERE, IN A
CAPITAL CASE, THE DEFENSE
SHOULD HAVE THE RIGHT TO SEE
THE WITNESS AND CONFRONT AND
CROSS-EXAMINE THE WITNESS AND
NOT HAVE TO RELY ON JUST HER
FORMER RECORD TESTIMONY.
>> THIS DEFENSE ATTORNEY?
>> I'M SORRY.
>> WAS IT THE SAME DEFENSE
ATTORNEY AS THE ONE IN THE
FORMER TRIAL?
>> YES, I BELIEVE IT WAS.
>> IS IT, IF WE FIND THAT,
OKAY, SO WHAT WE WOULD HAVE TO

FIND TO FIND SHE WASN'T

AVAILABLE IS THAT THE TRIAL

COURT IS, HOW IS UNAVAILABILITY

DEFINED?

ABUSE OF DISCRETION STANDARD AS

TO WHETHER THE TRIAL COURT'S

FINDING OF UNAVAILABILITY?

>> YES, I BELIEVE THAT'S

CORRECT.

>> SO WE WOULD HAVE TO FIND,

AND THIS IS WHERE I THINK I

WOULD HAVE THE TROUBLE, THE

TROUBLE FINDING IT, TO THAT HE

ABUSED OR SHE ABUSES HER, HIS

OR HER DISCRETION IN FINDING A

WITNESS WHO WAS 4 1/2 MONTHS

PREGNANT, WHOSE DOCTOR TOLD HER

WAS NOT SAFE TO TRAVEL, TO HAVE

NOT ORDERED HER TO COME BY

MEANS OTHER THAN AN AIRPLANE.

AND, JUST SEEMS LIKE THAT RULE

OF LAW IS, DOESN'T, THIS IS

SOMETHING THAT I'M HAVING

PROBLEMS WITH.

>> IT IS A BIT INHUMANE OR?

>> SEEMS UNAVAILABILITY IS,
THAT IS, YOU KNOW, THAT YOU
HAVE A PHYSICAL ILLNESS MIGHT
MAKE YOU UNAVAILABLE.
THAT THAT'S AN APPROPRIATE USE
OF THE STATUTE.

THE OTHER QUESTION I HAVE IS
THAT, IF WE FOUND IT ABUSE, IS
THE STANDARD IT'S PER SE
REVERSIBLE OR DO YOU HAVE TO
DEMONSTRATE THAT IT WAS SOME
ERROR, SOME EFFECT ON THE
TRIAL?

>> WELL I THINK THE, BECAUSE OF
THE IMPORTANCE OF THE
CONFRONTATION AND
CROSS-EXAMINATION PROVISIONS IN
THE CONSTITUTION THAT BASICALLY
TRUMPS ANY INCONVENIENCE TO THE
WITNESS.

>> NO, NO.
IN THERE I HAVE YOU
CROSS-EXAMINED, SO I DON'T
THINK YOU HAVE A SIXTH
AMENDMENT ARGUMENT.

LET'S SAY WE SAY THE JUDGE

ERRED IN THE WAY THEY DEFINED

UNAVAILABILITY.

>> RIGHT.

>> THEN IS IT AN AUTOMATIC

REVERSAL?

OR DO YOU HAVE TO SHOW HOW YOU

WERE PREJUDICED?

AND YOU SAY, WELL ,I COULD SHOW

IT JUST BECAUSE I SHOULD HAVE

HAD A RIGHT TO CROSS-EXAMINE

HER IN PERSON AND THAT'S THE

PREJUDICE.

IS THAT THE STANDARD OF

REVERSAL?

>> WELL, IN --

>> LIKE IS IT A PER SE

REVERSAL?

>> THAT'S, I WOULD ALMOST HAVE

TO SAY YES BECAUSE --

>> I DON'T WANT -- WHAT DOES

THE CASE LAW SAY ABOUT IT?

>> I'M SORRY?

>> IS THERE CASE LAW THAT SAYS

IF THERE IS ABUSE PER SE

REVERSIBLE?

>> I CAN'T POINT TO A CASE THAT
SAYS THAT EXACTLY BUT SEEMS TO
ME THE CASES SAY THAT YOU HAVE
TO HAVE, YOU HAVE TO HAVE TWO
THINGS.

YOU HAVE TO HAVE UNAVAILABILITY
AND YOU HAVE TO HAVE HAD AN
OPPORTUNITY TO CROSS-EXAMINE IN
THE PAST.

AND IF YOU DON'T HAVE ONE OR
THE OTHER THEN YOU JUST CAN'T
USE THE FORMER TESTIMONY
PERIOD.

THAT IS CONSISTENT WITH THE
CRAWFORD AND OTHER CASES THAT
DEAL WITH HEARSAY AND
EXCEPTIONS TO IT.

THE NEXT ISSUE WE BRIEFED DEALS
WITH THE REFUSAL OF THE COURT
TO ALLOW APPELLANT'S JURY TO
HAVE COPY OF INDICTMENT IN THE
JURY ROOM OR HAVE THE
INDICTMENT READ TO THEM.

TWICE THE JURY REQUESTED TO

HAVE THE INDICTMENT -- FIRST

THEY REQUESTED A COPY OF IT.

THE COURT SAID NO.

>> WAS IT READ TO THEM BY THE

JUDGE AT THE BEGINNING?

>> I THINK IT WAS BUT I'M NOT

QUITE SURE.

AND THE REASON, WELL, THEY

ASKED FOR A COPY FIRST.

THE JUDGE SAID NO AND THEY

ASKED TO HAVE THE INDICTMENT

READ TO THEM. THE --

>> THE JUDGE SAID NO TO THAT

TOO?

>> YES, REFUSED AS TO BOTH.

>> AS THIS ABUSE OF DISCRETION

STANDARD, ISN'T IT, BECAUSE AT

THE TIME OF THIS TRIAL YOU DID

NOT HAVE TO GIVE THE JURY A

COPY OF THE INDICTMENT,

CORRECT?

>> THAT'S CORRECT.

>> AND SO WHAT WAS THE, WHAT

WAS THE PREJUDICE?

WHAT WAS DEMONSTRATED BY NOT

GIVING IT, THE INDICTMENT?

>> WELL, THE ONLY THING I CAN
SAY IS OBVIOUSLY THE JURY WAS
VERY CONCERNED ABOUT SOMETHING
IN THE INDICTMENT SINCE THEY
ASKED FOR IT TWICE.

MY SPECULATION IS THAT MAYBE
THEY WERE CONCERNED WHETHER THE
ALLEGATIONS MET THE PROOF.

BUT I REALLY CAN'T SAY THAT.

SINCE WE DON'T HAVE ANYMORE
FROM THE JURY AS TO WHY THEY
WANTED IT --

>> LET ME LOOK AT IT THIS WAY.
WHAT, DID THE DEFENSE ATTORNEY
OBJECTED TO THE TRIAL JUDGE'S
DECISION NOT TO GIVE THEM THE
INDICTMENT?

>> I BELIEVE HE OBJECTED BUT I
DON'T KNOW IF HE OBJECTED OR
NOT BUT HE REQUESTED THAT THE
INDICTMENT GO BACK.

>> OKAY.

AND WAS THERE ANY REQUEST ON
HIS PART WHEN THEY SAID, NO,

I'M NOT GOING TO SEND THE
INDICTMENT BACK TO REDEFINE
FIRST-DEGREE MURDER?

>> NO, I DON'T BELIEVE THERE
WAS. MIGHT BE, MIGHT BE USEFUL TO
KNOW THE JUDGE'S RATIONALE,
APPARENT RATIONALE FOR NOT
COMPLYING WITH THE JURY'S
REQUEST.

RULE 3.400 OF THE RULES OF
CRIMINAL PROCEDURE PROVIDE THAT
IS THE COURT MAY PERMIT THE
JURY UPON RETIRING FOR
DELIBERATION TO TAKE TO THE
JURY ROOM A COPY OF THE CHARGES
AGAINST THE DEFENDANT AND IT
APPEARS THAT THE JUDGE WAS
SOMEHOW CONCERNED THAT BECAUSE
THE JURY HAD ALREADY GONE OUT
TO DELIBERATE, IT WAS TOO LATE
THEN FOR THEM TO RECEIVE THE
INDICTMENT BECAUSE THE LANGUAGE
OF THE RULE WHICH SAYS UPON
RETIRING FOR DELIBERATION THAT
THE JURY MAY HAVE THE CHARGES.

I BELIEVE THAT'S WHY HE DENIED
THE REQUEST.

>> SO YOU'RE NOW DOWN TO ABOUT
SIX 1/2 TOTAL MINUTES.

YOU HAVE MOVED INTO THE TIME
YOU INDICATED YOU WISHED TO
RESERVE FOR REBUTTAL.

>> THANK YOU.

>> WANT TO CONTINUE OR --?

>> YES, I WANT TO CONTINUE FOR
AT LEAST ONE OTHER ISSUE HERE.

AND THAT HAS TO DO WITH THE
ISSUE OF THE DEATH SENTENCE
ITSELF.

THE, OF COURSE THERE WAS A 9-3
DEATH RECOMMENDATION.

THE COURT FOUND TWO
AGGRAVATORS, HAC AND PRIOR
VIOLENT FELONY.

THE PRIOR VIOLENT FELONY
HAPPENED OVER 20 YEARS AGO IN
1987 TO BE SPECIFIC WHEN PARTIN
WAS ONLY 22 YEARS OLD.

IN THIS CASE THERE WAS
COMPELLING MITIGATING

EVIDENCE --

>> WELL LET'S JUST, HE WAS ONLY

22.

>> RIGHT.

>> HE SERVED FIVE YEARS IN

PRISON OR SIX YEARS?

>> I'M NOT SURE HOW LONG HE

SERVED.

I DON'T REMEMBER SEEING THAT IN

THE RECORD.

>> FIVE 1/2.

SO, HE WAS, I WAS IN PRISON FOR

MOST OF HIS 20s.

THIS IS A SIGNIFICANT CRIME.

HE MURDERED SOMEONE ELSE,

CORRECT?

>> YES.

>> DO YOU SEE THAT AS BEING A

SIGNIFICANT PRIOR VIOLENT

FELONY UNDER OUR CASE LAW?

>> OF COURSE.

YES, BUT MY, THE MAIN POINT I

WANTED TO GET TO HAS TO DO WITH

THE MITIGATING EVIDENCE THAT

WAS PRESENTED AND NOT PRESENTED

TO THE JURY.

THE DEFENSE INITIALLY PRESENTED

A VERY MINIMAL CASE IN

MITIGATION TO THE JURY AND THEN

PRESENTED WHAT I CONSIDER TO BE

MUCH MORE COMPELLING MITIGATING

EVIDENCE AT THE SPENCER

HEARING.

>> ARE WE GOING TO BE HEARING

ABOUT THIS IN POST-CONVICTION?

>> I'M SORRY?

>> SOUND LIKE A POST-CONVICTION

ARGUMENT.

>> WELL IT MAY BE BUT THAT'S

SORT OF MY PET PEEVE WHEN THE

JURY RETURNS ITS RECOMMENDATION

AND THEN ADDITIONAL, MUCH MORE

COMPELLING MITIGATION IS

PRESENTED TO THE JUDGE ONLY.

I HAVE A REAL, REAL PROBLEM

WITH THAT BECAUSE EVEN THE

JUDGE RECOGNIZED IN HIS

ORDER THAT A SITUATION LIKE

THIS MAY ENTITLE THE JURY'S

RECOMMENDATION TO LESS WEIGHT

WHEN YOU HAVE SITUATION LIKE
THIS.

TO ME IT GOES EVEN BEYOND THAT.

I THINK IT --

>> WHAT WAS THE RATIONALE FOR
PRESENTING THIS EVIDENCE AT THE
SPENCER HEARING AS OPPOSED TO
AT THE PENALTY HEARING?

>> I THINK THERE WERE TWO
THINGS THAT THE DEFENDANT MAY
NOT HAVE WANTED IT PRESENTED AT
THE PENALTY PHASE.

AND BEYOND THAT THE DEFENSE
APPEARS TO HAVE HAD SOME
TROUBLE GETTING ITS EVIDENCE
TOGETHER, SPECIFICALLY THEY
WANTED EVIDENCE FROM PARTIN'S
BIOLOGICAL FATHER, LESTER
VIECO.

AT FIRST HE WAS VERY
NONCOOPERATIVE AND THEN HE
DECIDED TO COOPERATE FOR A
WHILE.

THEN HE DECIDED TO STOP
COOPERATING AGAIN.

SO THE EVIDENCE ONLY CAME OUT
AFTER THE PENALTY PHASE.

BUT ANYWAY --

>> BUT YOU HAVE A PET PEEVE BUT
A PET PEEVE HAS TO TRANSLATE
AGAIN INTO A RULE OF LAW.

>> RIGHT.

>> THAT SAYS, IN OTHER WORDS,
IT MAY BE DEFICIENT
PERFORMANCE, NOT ON ITS FACE.
WE CAN'T TELL THAT BUT WE ALLOW
ADDITIONAL EVIDENCE TO BE
PRESENTED AT THE SPENCER
HEARING.

SO YOU KNOW, SOME OF THE
STRATEGIC REASONS ARE IT COMES
OUT LIKE THEY'RE ANTISOCIAL BUT
THE JUDGE IS GOING TO BE MAYBE
MORE UNDERSTANDING BECAUSE THEY
HEAR IT ALL THE TIME.

HOW IS THAT, HOW DOES THAT
TRANSLATE INTO ANYTHING THAT
WOULD BE REVERSIBLE ERROR ON
DIRECT APPEAL?

>> WELL, WHAT I WAS TRYING TO

GET TO IT CALLS INTO QUESTION
THE RELIABILITY TO ME OF THE
JURY'S RECOMMENDATION, WHICH I
THINK IS SOMETHING THIS COURT
CAN CONSIDER ON APPEAL.

I DO THINK MAYBE THERE SHOULD
BE SOME TYPE AFTER RULE THAT
WOULD PROHIBIT THIS SITUATION
SUCH AS MAYBE REQUIRING THAT
DEFENSE COUNSEL TO PRESENT ALL
AVAILABLE MITIGATION AT THE
PENALTY PHASE, I DON'T KNOW.
THERE MUST BE A REMEDY OUT
THERE SOMEWHERE AND I WOULD
CERTAINLY LIKE TO SEE THAT
HAPPEN.

I'LL SAVE THE REST OF MY TIME
FOR REBUTTAL, THANK YOU.

>> MAY IT PLEASE THIS HONORABLE
COURT.

YOUR HONORS, MY NAME IS
KATHERINE BLANCO WITH THE STATE
ATTORNEY GENERAL'S OFFICE IN
TAMPA REPRESENTING THE STATE OF
FLORIDA IN THIS DIRECT APPEAL.

I WOULD LIKE TO ADDRESS THE
ISSUES IN THE SEQUENCE OPPOSING
COUNSEL HAS ADDRESSED THEN.

WITH THIS COURT'S PERMISSION

I'D LIKE TO SEPARATE THE
INDIVIDUAL MOTIONS IN LIMINE
AND THEN ADDRESS THEM
ACCUMULATIVELY.

IT MAY FLOW A LITTLE EASIER AND
HELP MY UNDERSTANDING.

>> BECAUSE THE IMPRESSION WE
END UP GETTING THIS TRIAL
CONSISTED OF ALL THIS, THESE
COMMENTS THAT HE MAKES AFTER
HE'S, WHEN HE'S ON THE LAMB
ABOUT OWNING GUNS AND SPLITTING
PEOPLE'S HEAD OPEN AND IT LIKE,
WHAT, ISN'T THAT AN AWFUL LOT
OF --, OBVIOUSLY THE DEFENSE
LAWYER WAS AWARE OF IT BECAUSE
FILED A LOT OF MOTIONS IN
LIMINE ABOUT IT.

>> YOUR HONOR, IN THIS CASE THE
STATE PRESENTED 46 WITNESSES.

THE TRIAL WAS OVER FIVE DAYS.

THE PRESENTATION OF THE STATE'S
CASE, THE SEQUENCE, THE FIRST
DAY WAS DEVOTED PRIMARILY TO
THE DISCOVERY OF THE VICTIM'S
BODY AND SO YOU HAVE THE
OFFICERS, THE WITNESSES ON THE
SCENE THAT DISCOVERED THE
VICTIM'S BODY.

THE CRIME SCENE INVESTIGATORS.
THE FOLLOW-UP, TRYING TO GET
LEADS.

SO YOU HAVE THE FIRST DAY,
ACTUALLY THE TRIAL STARTS AT
VOLUME 40 OF THIS 56-VOLUME
RECORD.

AND VOLUME 41 THEN GOES ON
AGAIN TO LAW ENFORCEMENT
OFFICERS EFFORTS TO OBTAIN
PHYSICAL EVIDENCE.

THERE WERE REALLY THREE
DIFFERENT TYPES OF EVIDENCE IN
THIS CASE.

YOU HAD THE PHYSICAL EVIDENCE
WHICH OF COURSE INCLUDED THE
CRIME SCENE PHOTOS, THE HAIR,

THE FIBERS, THE BLOOD, THE DNA.

YOU ALSO HAD THE TESTIMONIAL
EVIDENCE FROM THE WITNESSES ON
THE STAND.

AND YOU ALSO HAD THE STATEMENTS
FROM THE DEFENDANT THAT CAME IN
PRIMARILY IN VOLUME 44.

AND SO YOU HAVE, AGAIN, 46
WITNESSES IN TOTAL.

THE TAPES THAT THE DEFENSE IS
COMPLAINING ABOUT ARE THE
STATEMENTS THAT THE DEFENDANT
IS COMPLAINING ABOUT ARE ALL
THOSE OF THE DEFENDANT IN FACT.

SO AND THE DEFENDANT AND BASED
ON THE DEFENDANT'S OWN ACTIONS.

YOU HAVE WITH RESPECT TO MOTION
IN LIMINE 4, WHICH IS THE FIRST
MOTION THAT'S DEALT WITH IN THE
DEFENDANT'S BRIEF, THERE ARE
ACTUALLY THREE CALLS TO
DETECTIVE GATTUSO BY DEFENDANT
PARTIN.

THEY'RE ON AUGUST 27th,
SEPTEMBER THE 4th.

>> THE DEFENDANT IS MAKING ALL
THESE CALLS?

>> THE DEFENDANT IS PLACING ALL
THESE CALLS TO DETECTIVE
GATTUSO.

EARLY ON WITHIN THE
INVESTIGATION WITHIN TWO DAYS
OF FINDING THE VICTIM'S BODY,
ANOTHER DETECTIVE GETS THE
PHONE NUMBER THAT IS LINKED TO
A PHONE IN THE DEFENDANT'S
POSSESSION.

SHE GETS THIS PHONE NUMBER
BECAUSE THE VICTIM, THE
VICTIM'S BOYFRIEND OR FORMER
BOYFRIEND IN ANY EVENT, THE
MOTHER HAS A CALL THAT SHE
RECEIVED ON THE MORNING BEFORE
THE VICTIM IS KILLED OR BEFORE
HER BODY IS DISCOVERED AND SO
SHE RECORDS THE CALLER I.D. THE
VICTIM, JOSHAN ASHBROOK, COMES
TO HER BRIEFLY, DROPS OFF THE
NOTE.

IRIS MANCERO IS THE MOTHER OF

VICTIM'S FORMER BOYFRIEND.

SHE SEES A RED TRUCK,

DISTINCTIVE RED TRUCK.

DOESN'T SEE WHO IS DRIVING THE

TRUCK BUT A FAIRLY NEW BURGUNDY

PICKUP TRUCK.

LAW ENFORCEMENT THROUGH THIS

LEAD IS ABLE TO CONTACT THE

PERSON THROUGH THE PHONE.

DETECTIVE MAZZA CONTACTS THE

NUMBER BUT GETS PHILLIP THOMPSON,

FALSE NAME LATER GIVEN BY THE

DEFENDANT BECAUSE WE LEARN

PARTIN HAS CALLED.

ASKS WHAT TYPE OF CAR HE IS

DRIVING OR VEHICLE HE IS

DRIVING.

HE SAYS A BLUE '72 CHEVY TRUCK.

NOTHING LIKE THE NEWER MODEL

VEHICLE THAT HE IS ACTUALLY IS

DRIVING AND ALSO, CAN I MEET

WITH YOU, CAN I TALK TO YOU?

SAYS I'M A TRANSIENT.

I'LL GET BACK TO YOU.

DETECTIVE MAZZA EFFORTS TO SET

UP A MEETING TO TALK WITH

PARTIN ARE UNSUCCESSFUL.

THEN DETECTIVE GATTUSO ENTERS

THE PICTURE AT WHICH TIME THE

CALLS ARE PLACED TO PARTIN.

THREE CALLS OF GATTUSO.

OF THE THREE CALLS ONLY ONE IS

IDENTIFIED AS HAVING ONE

PARAGRAPH THAT IS EXCERPTED IN

THE DEFENDANT'S BRIEF.

WHICH HAS TO DO WITH STATEMENTS

ABOUT, I KNOW I'M NOT SUPPOSED

TO HAVE FIREARMS.

THERE'S THAT LINE IN THAT

EXCERPT.

>> LET'S JUST TAKE THAT ONE.

>> CERTAINLY.

>> WHAT IS RELEVANT ABOUT

SAYING, ISN'T THAT PREJUDICIAL,

I KNOW I'M NOT SUPPOSED TO HAVE

GUNS -- TAKE THAT ONE.

WHY DOESN'T THAT COME IN?

IF IT IS LINKED IN TERMS HOW

THE STATEMENT IS BEING MADE?

>> JUSTICE PARIENTE, WITH THE

COURT'S INDULGENCE I WOULD LIKE
TO EXPLAIN HOW THE EXACTLY IT
CAME IN.

>> SURE.

>> THIS IS THE AUGUST 27th
CONVERSATION.

THE DEFENDANT'S MOTION IN
LIMINE IN VOLUME TEN OF THE
RECORD AT PAGE 1734 TO 42 SETS
OUT THE COMPLAINT WITH REGARD
TO THE PHONE CALLS.

THERE IS NEVER A DATE
ATTRIBUTED TO AUGUST 27th,
2002, IDENTIFIED IN THAT PAPER
MOTION.

AT THE COMMENCEMENT OF THE
HEARING AND THIS IS THE HEARING
STARTS AT VOLUME 24 AT PAGE
3920, THE TRIAL COURT IS GOING
THROUGH PAGE BY PAGE OF THESE
TRANSCRIPTS AND THE PROSECUTOR
IS X-ING OUT THINGS, TAKING
STUFF OUT, SO THE TRIAL COURT
SAYS, WELL, DOES YOUR MOTION
RELATE TO AUGUST 27th?

AND DEFENSE COUNSEL SAYS I

BELIEVE I OVERLOOKED THAT.

I'M SORRY.

WE'LL GET TO THAT LATER.

AT THE, TOWARDS THE END OF THE

HEARING THEY COME TO THE LAST

PAGE OF THAT MOTION IN LIMINE

WHICH HAS A STATEMENT

ATTRIBUTED TO SEPTEMBER 22nd,

2002, AND IT IS IN FACT THIS

STATEMENT.

AT THAT POINT IN TIME, EVEN

THOUGH THERE IS NOT A SEPTEMBER

22nd CONVERSATION, THE

PROSECUTOR SAYS WE'LL TAKE OUT

THAT SEPTEMBER 22nd, WE'LL TAKE

THAT OUT.

SO IT APPEARS THAT THERE WAS A

BALL DROPPED HERE SOMEWHERE.

>> SO WHAT YOU'RE DESCRIBING

THOUGH, LET ME MAKE SURE, SO WE

HAVE, YOU'RE DESCRIBING A

PROCESS IN WHICH THE PROSECUTOR

AND THE TRIAL JUDGE WAS VERY

AWARE OF TRYING TO EXCISE

THINGS THAT WOULD BE --

>> EXACTLY.

>> -- WOULD BE EITHER IRRELEVANT

OR PREJUDICIAL.

YOU'RE SAYING ON THIS ONE,

WHETHER IT IS MISTAKE OR NOT

MAYBE SHOULD HAVE COME OUT AND

IT JUST DIDN'T.

THAT'S AN ACCEPTABLE, AND I

APPRECIATE THAT.

BUT AGAIN WHAT YOU'RE TELLING

US IS THE CAREFUL PROCESS BY

THE TRIAL JUDGE TO, TO TRY TO

INSURE THAT NOTHING IRRELEVANT

CAME IN?

>> ABSOLUTELY, YOUR HONOR.

AND WE HAVE ARGUED A

PROCEDURAL BAR IN PART.

I HAVE FILED A NOTICE TO THE

COURT BECAUSE UNFORTUNATELY OUR

STATE'S ANSWER BRIEF INCLUDED

AN ASSERTION THAT THAT

STATEMENT WAS NOT INCLUDED IN

THE DEFENSE MOTION.

THAT HAS BEEN CORRECTED.

IT WAS INCLUDED IN THE
DEFENDANT'S MOTION.

I APOLOGIZE FOR THIS.

IT WAS ATTRIBUTED TO A
SEPTEMBER DATE.

>> IS THIS THE STATEMENT, I'M
TRYING TO FIGURE OUT, THERE ARE
SOME OF THESE STATEMENTS.

IS THIS THE ONE WHERE HE'S
NEGOTIATING WITH A POLICE
OFFICER ABOUT MEETING AND HE
ASKS THEM TO BE UNARMED.

HE SAYS HE IS PRESENTLY UNARMED
ALTHOUGH HE HAS HAD WEAPONS BUT
HE SECURED THEM ALL.

SO NOW I'M UNARMED AND YOU NEED
TO BE UNARMED?

>> EXACTLY, YOUR HONOR.

WE DO BELIEVE THAT THE BULK OF
THE STATEMENT IS RELEVANT AND
SHOULD HAVE COME IN AND WOULD
HAVE PROPERLY COME IN.

I BELIEVE THE PROSECUTOR WAS
BEING GENEROUS IN AGREEING TO
TAKE IT OUT.

SO I BELIEVE WE HAVE A SOLID

RELEVANCY ARGUMENT.

SO WE HAVE FIRST AN ARGUMENT

THAT WE DO HAVE A PROCEDURE BAR

IN PART BECAUSE WHEN THE

STATEMENT WAS PLAYED, AND THIS

IS A SHORT TRANSCRIPT.

THIS IS IN VOLUME 44, 1108 TO

116.

IT IS EIGHT PAGES IN THE

TRANSCRIPT.

TWO SENTENCES WITHIN ONE

PARAGRAPH WHERE YOU HAVE THAT,

I KNOW I'M NOT SUPPOSED TO HAVE

THEM.

OF COURSE NOT SUPPOSED TO HAVE

THEM, THE DEFENSE IS SAYING

WELL, THAT NECESSARILY MEANS HE

WAS A CONVICTED FELON.

CERTAINLY COULD HAVE MEANT HE

DIDN'T HAVE A PERMIT FOR IT.

BUT TO MAKE THAT LEAP THAT

SOMEHOW THIS ENTIRE TRIAL IS

CONTAMINATED BY THAT, THOSE TWO

SENTENCES THAT WERE NOT EXCISED

FROM THE PROSECUTOR HAD AGREED
TO THEM, I BELIEVE THAT THE
STATEMENT IS RELEVANT TO SHOW
THE PARAMETERS THAT THE
DEFENDANT IS SETTING UP
DEMANDING THAT LAW ENFORCEMENT
COME UNARMED, CONDITION OF
COURSE THAT IS NEVER GOING TO
BE MET BY A GOOD DETECTIVE.
BUT EVEN IF THE COURT WERE TO
SAY YOU KNOW, WE'RE GOING TO
ASSUME ERROR, EVEN IF YOU WERE
TO GO THAT FAR AND WE DO NOT
BELIEVE IT IS SUPPORTED ON THIS
RECORD BUT YOU HAVE HARMLESS.
OF COURSE THE ERROR WAS
UNIMPORTANT ERROR IF ANY,
AND WE'RE ARGUING
THERE WAS NO ERROR AT ALL.
>> SOUNDS LIKE IT WASN'T
PRESERVED IN THIS REGARD IS
THAT IF IT WAS AGREED TO BE
EXCISED, THEN AT THAT POINT IT
WAS COMING IN THE DEFENSE
LAWYER SAID THAT SHOULD HAVE

BEEN EXCISED, CORRECT?

>> ALTHOUGH THERE WAS
PRELIMINARY OBJECTION WHEN THE
STATEMENT WAS ACTUALLY
TRANSCRIBED AT TRIAL AND
PLAYED, NO ONE JUMPS UP AND,
DEFENSE DOESN'T JUMP UP AND
SAY, HEY, THAT WAS SUPPOSED TO
BE TAKEN OUT.

THERE IS NO REQUEST FOR
CURATIVE INSTRUCTION.

I THINK INDICATIVE OF THE FACT
THAT THE DEFENSE DOESN'T NOTICE
IT.

THE JURY IS HEARING A TAPE
COMING IN THAT IS RELATIVELY
SHORT AND IN THE SCHEME OF
THINGS.

AND CERTAINLY MUCH SMALLER WHEN
YOU LOOK AT THE TWO SENTENCES
THAT ARE IN THAT ONE CHALLENGED
PARAGRAPH.

>> BECAUSE YOU HAVE LIMITED
TIME, THE ONLY OTHER ONE THAT
CAUSED ME CONCERN WAS THIS,

THIS FRED KAUFMAN CONVERSATION,

THAT SPLITTING OPEN THE HEAD.

WHAT, COULD YOU GIVE ME THE

CONTEXT OF THAT?

>> CERTAINLY, YOUR HONOR.

THAT ADDRESSES MOTION IN LIMINE

12.

AND THAT'S A PHONE CONVERSATION

WITH FRED KAUFMAN ON OCTOBER

27th OF 2003.

REMEMBER THE DEFENDANT HAS BEEN

ON THE LAMB FOR A YEAR AND A

HALF.

NOW, HE KNOWS LAW ENFORCEMENT

IS LOOKING FOR HIM.

THERE IS SOME TYPE OF FIGHT.

HE IS NOT ATTRIBUTED TO

STARTING THE FIGHT OR HAVING

ANYTHING TO DO WITH THE FIGHT

OTHER THAN JUMPING IN AT SOME

POINT.

THE RELEVANCE FOR THIS FROM THE

STATE'S ARGUMENT AND THE

STATE'S STANDPOINT IS NOT THE

FIGHT.

THE RELEVANCE HE IS THERE WITH
LAW ENFORCEMENT KNOWING THAT
THEY WANT TO TALK TO HIM.

HE'S GETTING PATTED ON THE
BACK.

HE IS BRAGGING NOT HAVING TO
GIVE UP HIS NAME.

THAT HE WAS SUCCESSFUL IN
AVOIDING DETECTION.

SO IT'S, IT SHOWS THAT THIS
DEFENDANT, THROUGHOUT THIS
COURSE OF CONDUCT AND IN
WANTING TO EVADE APPREHENSION,
THAT HE HAS CONTACTED WITH LAW
ENFORCEMENT.

HE DOESN'T IDENTIFY HIMSELF
KNOWING HE IS WANTED FOR
QUESTIONING.

IT IS --

>> WHAT ABOUT THE INCIDENT AND
MAYBE IT'S, WHERE THE HEAD IS
SPLIT OPEN?

WHERE IS THAT -- I MEAN IF DURING
THE YEAR-AND-A-HALF HE'S ON THE
LAMB HE DOES THINGS LIKE HE HAS

A GIRLFRIEND OR HE, OTHER THINGS,
I MEAN WOULD YOU SAY EVERY
SINGLE THING THAT HAPPENED IN
THE YEAR-AND-A-HALF WOULD BE,
ABLE TO COME IN BECAUSE HE WAS
ESCAPING?

YOU WOULDN'T SAY THAT, WOULD
YOU?

>> WELL, ESCAPE, CERTAINLY I
WOULD.

>> I'M SAYING EVERYTHING THAT
HAPPENED IN A YEAR AND A HALF,
EVERY ACTION HE TOOK COULD COME
IN?

>> I'M SAYING THAT EVERY
RELEVANT ADMISSION BY HIM IN
EFFORT TO AVOID DETECTION,
ABSOLUTELY.

>> MAYBE I'M MISSING IT.
WHAT WAS THE RELEVANT ADMISSION
ABOUT THE HEAD BEING SPLIT
OPEN?

>> THE FIGHT ITSELF IS NOT
RELEVANT THE PROSECUTOR DID NOT
DWELL ON THE FIGHT.

DOESN'T EVEN TALK ABOUT IT IN
HIS CLOSING ARGUMENT.

>> WAS THAT PART OBJECTED TO?

>> IT WAS PART OF THE MOTION IN
LIMINE TO KEEP THE ENTIRE
CONVERSATION, THE ENTIRE
DISCUSSION OUT.

>> BUT ONCE THE JUDGE SAID I'M
GOING TO PUT IT IN, DO YOU HAVE
OBJECTIONS TO PART OF IT?
DID THAT CONVERSATION TAKE
PLACE?

>> IT WAS REDACTED IN PART, I
BELIEVE, YOUR HONOR.
I CAN NOT GIVE YOU THE EXACT
LINES THAT WERE REDACTED IN
PART.

AGAIN THE JUDGE WENT TO GREAT
EFFORTS AND THE PROSECUTOR WENT
TO GREAT EFFORTS.

WE'LL KEEP OUT THAT HE WAS IN
JAIL BEFORE.

WE WON'T HAVE ANY REFERENCE TO
THE FIREARMS THAT ARE IN THE
FLORIDA HOUSE.

WE WON'T HAVE ANY REFERENCE TO
THE, YOU KNOW, THE .45. THE
9MM COMES IN BECAUSE
THAT'S WHAT HE HAS GOT WITH
HIM.

THAT IS WHAT HE HAS GOT WITH
HIM AT THE TIME HE IS
CONTEMPLATING SHOOTING IT OUT.

AS FAR AS THE FOCUS OF THE
FIGHT, THE SENTENCE REPRESENTS
THAT HE IS COMING TO THIS WOMAN'S
RESCUE.

SHE IS BEING BEAT UP BY THIS
GUY.

HEY, PICK ON ME, SOMETHING LIKE
THAT.

TAKE IT UP WITH ME.

HE ALMOST PORTRAYS HIMSELF AS
SOME TYPE OF A KNIGHT COMING TO
HER AID.

BUT THE RELEVANCE IS NOT THE
FIGHT.

THE RELEVANCE WAS THE CONTACT
WITH LAW ENFORCEMENT.

AND THAT WAS HOW IT WAS ARGUED

BELOW.

AND THE TRIAL COURT FOUND THAT

IT WAS INEXTRICABLY

INTERTWINED.

THAT IT WOULD SHOW THE

DEFENDANT'S, THIS IS THE TRIAL

COURT'S FINDING.

TO SHOW THE DEFENDANT'S EFFORTS

TO AVOID DETECTION AND ARREST

AND HENCE CONSCIOUSNESS OF

GUILT.

SO HE CONCEALED HIMSELF.

HE AVOIDED MAKING A STATEMENT

GIVING HIS NAME AND ALL TO

AVOID DETECTION AND ARREST.

AND WE'VE CITED A SERIES OF

CASES FROM THIS COURT.

THOMAS WITH REGARD TO ESCAPE.

WYATT, THE DECISIONS IN THERE.

TAYLOR AS WELL.

IF THE COURT HAS NO FURTHER

QUESTIONS ON THE MOTION IN

LIMINE I'LL BE HAPPY TO MOVE ON

BUT.

OKAY, THANK YOU.

AND THERE WERE OTHERS AND
CERTAINLY WOULD RELY ON THE
ARGUMENTS IN OUR BRIEF FOR
THOSE.

AND I GUESS, IF YOU ALLOW ME
JUST TO FINISH WITH RESPECT TO
MY HARMLESS ERROR ARGUMENT FROM
MY FIRST, THE MOTION IN LIMINE
4 WHERE THERE WAS SOME
CONFUSION WHAT WAS PRESERVED
AND WHAT WAS NOT.

PHILLIP PARTIN WAS THE LAST
PERSON SEEN WITH JOSHAN ASHBROOK.
HE CALLED HER JO.

HE FLED IMMEDIATELY WHEN WANTED
FOR QUESTIONING.

THE DEFENDANT'S TRUCK TIRE
IMPRESSIONS LED TO HER DEAD
BODY.

THEY MADE CASTS OF THE
IMPRESSIONS.

DEFENDANT'S HAIR WAS FOUND
EMBEDDED IN HER BLOODY HAND.

THE DEFENSE WILL ALWAYS ARGUE
THERE WAS SOME KIND OF

TRANSFER.

THE VICTIM HAD INJURIES TO HER
HAND IF SHE HAD GRASPED A
KNIFE.

THERE IS QUITE A DEEP CUT IN
HER HAND.

THE PHOTOS SHOW HER BLOODY HAND
AND ACTUALLY SHOW THIS
PARTICULAR HAIR THAT IS
EMBEDDED WITHIN THAT WOUND ON
HER HAND.

FRED KAUFMAN, THE HAIR WAS
ANALYZED.

NOTHING LEADS TO FRED KAUFMAN
WITH RESPECT TO ANY HAIRS OR
ANY OF PEOPLE WITH OR ANY
PEOPLE THAT HAD CONTACT WITH
JOSHAN'S BODY THAT MORNING.

OR FRED KAUFMAN DID THIS.

FRED KAUFMAN HAD NOT HAD
CONTACT WITH THE VICTIM.

FRED KAUFMAN HAD NO, WAS NOT
INTRODUCED TO HER.

WAS NOT PRESENT AT THE TIME
THAT SHE DISAPPEARED.

DID NOT, WAS NOT WITH HER THAT
DAY BUT THE DEFENSE THEORY
BECAUSE SHE WAS IN THE HOME
THAT SOMEHOW FRED KAUFMAN WAS
THE MURDERER.

THE DEFENDANT'S CAR WAS SEEN AT
4:15 THAT MORNING.

DEFENDANT HAD A VERY
DISTINCTIVE VEHICLE.

PREVIOUSLY ADDRESSED IT.

IT WAS A BURGUNDY-COLORED FORD
F-110 PICKUP TRUCK.

SO THE WITNESS THAT SEES THIS --
IS COMING AROUND THE BEND.

THIS IS A CURVY ROAD
IN PASCO COUNTY.

COMING, AROUND 4:15 THAT
MORNING.

HAD TO TAKE HIS WIFE TO THE
AIRPORT FOR AN EARLY FLIGHT.

SEES A TRUCK BACKED INTO AN
AREA THAT, ACTUALLY WITHIN TEN
FEET OF WHERE THE VICTIM'S BODY
WAS FOUND.

HE DESCRIBES IT AS A PICKUP

TRUCK.

HE IS FAMILIAR WITH TRUCKS.

HE IS A LONG HAUL TRUCK DRIVER.

SO HE KNOWS WHAT A TRUCK LOOKS
LIKE.

HE SAYS IT IS NOT A EXTENDED
CAB CHEVY SILVERADO WHICH IS
WHAT DIANE KAUFMAN DRIVES.

IT IS NOT AN SUV WHICH IS WHAT
FRED KAUFMAN DRIVES.

AND HE SAID THERE ARE SHINY
TIRES, SHINY GRILL AND, BECAUSE
IT LOOKED DARK.

THERE IS IN FACT ON THE FRONT
OF THE GRILL, ABOVE THE GRILL
ON THIS BURGUNDY TRUCK THAT
BELONGED TO THE DEFENDANT THAT
HE WAS USING THERE IS A LARGE
BUG GUARD.

SO THAT WOULD BE CONSISTENT.

OF COURSE IT IS 4:15 IN THE
MORNING.

NOBODY DISPUTES IT IS DARK
OUTSIDE.

SO YOU HAVE ALL OF THOSE LINKS

COMING INTO PLAY WITH HIS
PRESENCE.

WHERE THE BODY, WHERE THE BODY
WAS EVENTUALLY DISCOVERED AND
THE BODY IS DISCOVERED,
REMEMBER, YOU HAVE GOT JOSHAN
LEAVING HER MOTHER'S HOME AT 2:30
IN THE MORNING.

SHE HAS RUN AWAY BEFORE.

SHE IS 16 YEARS OLD.

SHE LEAVES AT 2:30 IN THE
MORNING ON JULY 31st.

THE MORNING --

>> LET ME ASK YOU ABOUT THAT
TIMELINE THOUGH.

>> SURE.

>> I THOUGHT I REMEMBERED THE
TESTIMONY FROM MRS.^KAUFMAN
THAT --

>> THAT'S RIGHT.

DIANE KAUFMAN.

>> THAT DEFENDANT LEFT WITH THE
GIRLS, I GUESS.

HE CAME BACK ALONE AT 1:00 A.M.

SO HOW DOES THAT PLAY INTO THIS

4:00 A.M. SCENARIO WITH THE,
WITH THIS OTHER TRUCK DRIVER?

>> CERTAINLY.

AND THE MEDICAL EXAMINER
ESTIMATED THE TIME OF DEATH AT
3:30.

SHE DOESN'T KNOW IF, BLESS YOU.

>> PARDON ME.

>> SHE DOESN'T KNOW IF THE
DEFENDANT, EXCUSE ME, IF PARTIN
THEN LEFT AGAIN.

THERE ARE SLIDING GLASS DOORS
FROM HIS BEDROOM.

SO SHE COULDN'T TESTIFY WHETHER
HE LEFT AGAIN.

THE M.E. TESTIFIES THAT THE
MURDER WOULD HAVE OCCURRED
BEFORE 3:30 A.M. OR

APPROXIMATELY AROUND 3:30 A.M.

AND CERTAINLY THE VICTIM'S BODY
COULD HAVE BEEN IN THE PICKUP
TRUCK.

SHE WAS, THERE WAS EVIDENCE OF
LIGATURES AROUND HER WRIST AND
AROUND HER ANKLES.

AND SO IT IS CERTAINLY
CONCEIVABLE THAT WHEN PARTIN
LEFT AND THEN CAME BACK ALONE
THE VICTIM'S BODY WAS STILL IN
HIS PICKUP TRUCK BEFORE HE GOES
LATER TO DUMP IT.

YOU KNOW, ALONGSIDE OF THE
ROAD.

HE DUMPS HER BODY ON THE SIDE
OF THE ROAD.

HAS SEVERE LACERATIONS ACROSS THE
FACE AND ACROSS HER THROAT.

THAT IS NOT WHAT KILLS HER.

THE SLASHING OF HER NECK SEVER
HER SPINAL COLUMN.

SHE CERTAINLY FOUGHT AND THE
MEDICAL EXAMINER TESTIFIED TO
THE DEFENSIVE WOUNDS ON HER
HAND.

SHE IS TALLER THAN PARTIN.

SHE IS TALL AND THIN.

IF YOU SEE BOTH VIDEO OF THE
WALMART VIDEO AND THE STILL
PHOTOS, PARTIN IS NOT VERY
TALL.

I THINK THERE MAY BE SOMETHING
ABOUT 5'3".

I'M NOT SURE IF HE IS THAT
SIZE.

THERE IS A DISCREPANCY.

SHE IS TALL AND SLENDER.

IN THE WALMART VIDEO AND STILL
PHOTOS YOU SEE JOSHAN AND SEE
PARTIN'S 7-YEAR-OLD DAUGHTER
PATRICIA AND SEE PARTIN AND YOU
SEE THE HEIGHT.

SO SHE WOULD HAVE BEEN ABLE TO
PUT UP SOME FORCE AND SHE DID.
SHE, SHE TRIED TO SAVE HERSELF
CERTAINLY.

THE SECOND ISSUE --

>> WELL, --

>> I'M SORRY.

>> THE FINAL ISSUE ON ALL THESE
MOTIONS IN LIMINE IS THE
INFORMATION ABOUT JOSHAN
INFORMATION ABOUT SOCIAL
SECURITY NUMBERS.

>> SURE.

>> HOW IN THE WORLD, WHAT WAS

THOSE, THERE WAS SOMETHING
ABOUT THE GIRL AND THERE WAS
SOMETHING ABOUT KAUFMAN'S
SOCIAL SECURITY NUMBER,
CORRECT?
>> THAT'S TRUE.
>> HOW WERE THOSE AT ALL
RELEVANT IN THIS?
>> THOSE ARE RELEVANT UNDER
THIS COURT'S CASE LAW
ESPECIALLY MURRAY, YOUR HONOR,
THERE WAS NO EVIDENCE OF FALSE
IDENTIFICATION CARDS ON THIS
DEFENDANT'S ARREST.
HE IS OPERATING UNDER AN ALIAS.
HE GOES TO WASHINGTON STATE.
BUYS A VEHICLE UNDER THE NAME
OF FRED KAUFMAN.
SIGNS THE NAME FRED KAUFMAN.
SO EVEN, SO WE'VE ALREADY,
THEY'RE HIGHLY RELEVANT TO HIS
INTENT TO EVADE CAPTURE BY USE
OF AN ALIAS.
NOT ONLY TO EVADE PROSECUTION
BUT LAW ENFORCEMENT DETECTION

BY THE USE OF AN ALIAS BUT
ALSO, YOUR HONOR, THOSE CARDS
WOULD CERTAINLY BE HARMLESS
BECAUSE YOU HAVE IN COURT
TESTIMONY, WITNESSES WHO
IDENTIFIED MR. ^SALMON, AS THE
MAN WHO REPRESENTED HIMSELF AS
FRED KAUFMAN IN WASHINGTON AND
BOUGHT THE VEHICLE IN
WASHINGTON AS FRED KAUFMAN.
AND SO YOU HAVE, AND THIS, THE
STATE'S CASE WAS VERY INTRICATE
THE WAY THEY HAD TO WEAVE ALL
THE CIRCUMSTANCES TOGETHER.
NOT ONLY WITH THE DISCOVERY OF
THE BODY BUT EFFORTS TO
LOCATE THE DEFENDANT.
THE PHONE CALLS LINKING THIS
DEFENDANT TO THIS CRIME.
AND REMEMBER, AFTER THIS
MURDER, THE DEFENDANT LEAVES
WHAT IS MOST IMPORTANT TO HIM,
TWO THINGS THAT ARE MOST
IMPORTANT BEHIND.
HE DROPS OFF HIS 7-YEAR-OLD

DAUGHTER WITH HER FORMER FOSTER
MOTHER.

HE LEAVES HIS TRUCK BEHIND.

AND WHEN THE TRUCK IS LEFT IN A
WALMART PARKING LOT IN PLANT
CITY, WHICH IS ABOUT 50 MILES
FROM WHERE THE SITE OF THE
MURDER WAS, THE TIRES HAD BEEN
CHANGED OUT.

BUT HE FORGETS THAT HE HAS LEFT
IN THE KAUFMAN HOUSE A
DISPOSABLE CAMERA.

THOSE PICTURES ARE DEVELOPED IN
THAT DISPOSABLE CAMERA.

WHAT DO WE HAVE?

LO AND BEHOLD THERE ARE
PICTURES OF THE TRUCK WITH
SHINY TIRES, SHINY NEW TIRES
THAT ARE UNLIKE THE TIRES THAT
HAVE BEEN PUT ON THAT VEHICLE
THAT HAS BEEN ABANDONED.

THOSE TIRE TRACKS ARE
CONSISTENT WITH THE TIRE TREAD
THAT IS LEADING TO THE VICTIM'S
BODY SO THE STATE CALLS IN TIRE

TRACK EXPERTS TO, PEOPLE THAT
ARE FAMILIAR WITH AUTOMOBILES.

IT WAS A VERY, AGAIN, A VERY
INTRICATE WEAVING OF THE CASE
AND ALL THE CIRCUMSTANCES.

AND YOU HAVE IN OCTOBER, THE
DEFENDANT MOVES OUT, VICTIM'S
BODY OF COURSE IS DISCOVERED
OCTOBER, EXCUSE ME, AUGUST THE
1st.

AUGUST THE 2nd AND 3rd YOU
HAVE ATTEMPTS BY DETECTIVE
MAZZA TO MEET WITH HIM.

AUGUST 5th, DEFENDANT SHOWS
UP FOR A JOB. HE'S AGITATED.

THIS TURNS OUT HIS FORMER
GIRLFRIEND SUSAN IN NORTH
CAROLINA CONTACTED HIM BECAUSE
LAW ENFORCEMENT CONTACTED HER.

WHY?

BECAUSE THE CELL PHONE HE IS
USING IS IN HER NAME.

IT LINKS BACK TO THEM.

FIRST DAY ON THE JOB HE ENDS UP
WALKING OFF. AUGUST 10th.

LEAVES HIS DAUGHTER BEHIND.

HE FLEES THE STATE OF FLORIDA.

HE CHANGES HIS NAME,

CHANGES HIS APPEARANCE,

GETS MULTIPLE TATOOS.

HE HAS FACIAL HAIR THAT

DIDN'T HAVE BEFORE.

SO HE GOES THROUGH GREAT EFFORT

TO DISGUISE HIMSELF AND TO NOT

BE FOUND.

AND SO WITH RESPECT TO THE

SOCIAL SECURITY CARDS, JUSTICE

QUINCE'S QUESTION, IT IS

ADMISSIBLE UNDER MURRAY, THAT

FALSE IDENTIFICATION WHICH HE

USED AND THE IMPORT TESTIMONY

WHICH SUPPORTED THAT HE

REPRESENTED HIMSELF BY ANOTHER

NAME.

ISSUE TWO HAS TO DO WITH THE

TESTIMONY OF SUZANNE ULERY,

FDLE AGENT.

THIS IS IN RESPONSE TO AN

EARLIER QUESTION, I BELIEVE BY

JUSTICE PARIENTE.

JUSTICE PARIENTE, THE
DEFINITION OF UNAVAILABILITY,
IF YOU WILL ALLOW ME IN SECTION
90.804(1)(B), SAYS
UNAVAILABILITY AS A WITNESS
MEANS THE DECLARANT, IS UNABLE
TO BE PRESENT OR TESTIFY AT THE
HEARING BECAUSE OF DEATH OR
BECAUSE OF THEN EXISTING
PHYSICAL OR MENTAL ILLNESS OR
INFIRMITY.

AND IT COMES IN AS A HEARSAY
EXCEPTION UNDER SECTION 2,
SECTION A, AS FORMER TESTIMONY.

>> BUT THE RULES OF CRIMINAL
PROCEDURE ALSO PROVIDE A
PROCEDURE FOR PERPETUATING
TESTIMONY OF A WITNESS WHO YOU
KNOW IS GOING TO BE ABSENT.

>> CERTAINLY, YOUR HONOR.

>> 4.19,

IN THIS PARTICULAR CASE THE
STATE WAS AWARE THAT THE
WITNESS WOULD NOT BE ABLE TO
COME AND TESTIFY AND THE

PROCEDURE IS FOR THE LAWYERS TO
TRAVEL TO SAN DIEGO AND TAKE
HER DEPOSITION, PERPETUATE THE
TESTIMONY THERE AND THEN PLAY
THAT TESTIMONY TO THE JURY.

THAT IS, THAT IS THE PROCEDURE
THAT IS UNIQUE TO THE CRIMINAL
RULES OF PROCEDURE.

IN CIVIL PROCEDURE, OF COURSE
YOU CAN JUST PLAY THE TAPE OR
READ A TRANSCRIPT.

BUT IN CRIMINAL YOU HAVE THIS,
THIS PETITION TO PERPETUATE
TESTIMONY.

I THINK COUNSEL DID NOT
APPROACH IT FROM THAT ANGLE BUT
THAT'S ALWAYS BEEN THE
PROCEDURE I'VE BEEN AWARE OF.

WHY WASN'T THAT DONE HERE?

>> JUSTICE LABARGA, I WENT
THROUGH THAT TRANSCRIPT AGAIN,
THERE WAS NO MENTION OF DID
ANYBODY ASK TO PERPETUATE THE
TESTIMONY VIA DEPOSITION.

I THINK IT MAY BE ATTRIBUTABLE

TO THE FACT THAT THERE WAS NO,
I'M SORRY.

IT MAY BE ATTRIBUTABLE TO THE
FACT THAT THE TESTIMONY HAD
ALREADY BEEN GIVEN AND SO THERE
WAS NO NEED TO PERPETUATE IT.

AS A MATTER OF FACT, THE STATE
ORIGINALLY HAD OBJECTED OR IT
FILED A MOTION IN LIMINE WITH
RESPECT TO SOME OF THE
QUESTIONS THAT DEFENSE HAD
ASKED AT DEPOSITION OF THIS
PARTICULAR WITNESS AND WITHDREW
THAT AND SAID, LET HER
TESTIMONY IN.

WHATEVER QUESTIONS YOU WANT
FROM THAT.

BUT IT DOES CERTAINLY QUALIFY
AS FORMER TESTIMONY.

AND THE TRIAL COURT MADE
SEVERAL FINDINGS.

THEY FOUND SAME PARTY.
IDENTICAL ISSUE.

THE WITNESS VOLUNTARILY
APPEARED.

THIS IS NOT A WITNESS THAT IS
HIDING OUT.

SHE INTENDED TO APPEAR EXCEPT
FOR HER MEDICAL CONDITION.
THAT SHE MET THE CRITERIA FOR
UNAVAILABILITY AND THE
DEFENDANT, THE DEFENSE DID HAVE
A PRIOR OPPORTUNITY TO
CROSS-EXAM.

SO IT CAME IN AS A FORMER
TESTIMONY AS FORMERLY ROOTED
HEARSAY EXCEPTION.

IT WAS ADMISSIBLE UNDER THIS
COURT'S DECISIONS IN MURRAY,
HENRY AND MUEHLEMAN.

>> IF YOU'RE GOING TO FOLLOW THAT
PROCEDURE IN CRIMINAL CASES I
DON'T KNOW OF A CRIMINAL CASE
THAT WENT TO TRIAL WITH AT
LEAST ONE POLICE OFFICER WASN'T
ON VACATION.

IT JUST HAPPENS EVERY TIME.
SO THAT WOULD MEAN THAT THE
DEPOSITION TESTIMONY OF THAT
OFFICER WILL BE PERMITTED TO

COME IN AND BE READ TO THE JURY
IN A CRIMINAL CASE.

>> YOUR HONOR, I THINK BECAUSE
OF THIS, BECAUSE IT MET THE
UNAVAILABILITY BY THEN EXISTING
MEDICAL CONDITION, BUT AS
JUSTICE QUINCE NOTED EARLIER,
EVEN IF THE COURT WERE TO
INCLINED TO SAY MAYBE THEY
SHOULD NOT HAVE DONE IT THIS
WAY, MAYBE THERE IS SOME KIND
OF ERROR IT IS CLEARLY
HARMLESS.

WHY IS IT HARMLESS?

>> LET'S GO BACK TO THE
PROCEDURE.

>> CERTAINLY.

>> IS THERE DIFFERENCE BETWEEN
SOMETHING TAKEN IN A DEPOSITION
IN A CASE OR IF IT IS FORMER
TESTIMONY IN ANOTHER TRIAL?

DOES THE, 90.804 MAKE A
DISTINCTION BETWEEN WHAT HAS TO
BE SHOWN?

>> WELL, IT'S YOUR FORMER

TESTIMONY.

AND THIS IS CERTAINLY YOUR

FORMER TESTIMONY.

CERTAINLY SOMETIMES DEPOSITIONS

ARE FOOTLOOSE AND THEY DON'T

KNOW THEY'RE TO PERPETUATE

TESTIMONY, THEN THE DEFENSE IS

GOING TO BE JUMPING THROUGH ALL

KINDS OF HOOPS.

THEY KNOW THAT WAS NOT THE

PURPOSE OF IT.

WE DID NOT KNOW THAT THE

TESTIMONY THAT WE WERE GOING TO

HAVE TO LIVE WITH.

SO DID IT HAVE TO BE DONE HERE?

NO.

DID THE DEFENSE ASK FOR IT TO

BE DONE HERE? NO.

THE STATE WAS RELYING ON THE

FORMER TESTIMONY PRESENTED AT

TRIAL AND THE TRIAL COURT WENT

THROUGH THE REQUIREMENTS OF

90.804.

AND SO TO, FOR THE DEFENSE TO

SUGGEST SOMEHOW THAT THAT

ALTERNATIVE THAT WAS NEVER
SUGGESTED TO THE TRIAL COURT
BELOW SHOULD HAVE BEEN USED,
AND I DON'T SEE THE DEFENSE
ACTUALLY SUGGESTING THAT BUT
WERE THEY TO SUGGEST THAT NOW
WE WOULD SAY NO.
THAT IS CERTAINLY A
PROCEDURALLY BARRED ARGUMENT.
BUT WHERE THE TESTIMONY IS AT
TRIAL, SO YOU HAVE THE
OPPORTUNITY TO CROSS-EXAMINE
THE WITNESS, CROSS-EXAMINE THE
WITNESS. IT'S THE SAME COUNSEL
AS A MATTER OF FACT WHO DID
CROSS-EXAMINE THE WITNESSES AND
THE STATE WITHDREW THEIR
OBJECTION TO SOME OF THE
QUESTIONS THAT WERE ASKED WITH
RESPECT TO A DEPOSITION.
SAID YOU CAN BRING THOSE IN
TOO, YOU KNOW.

>> THE IMPORTANT PART ABOUT
RECALL, FORMER TESTIMONY VERSUS
DEPOSITION TESTIMONY IS THAT

WITH FORMER TESTIMONY YOU
BASICALLY HAVE THE SAME MOTIVES
IN YOUR CROSS-EXAMINATION TO
BRING OUT INFORMATION VERSUS
WHAT YOU MIGHT BE EXPLORING IN
A DEPOSITION.

>> THANK YOU, YOUR HONOR.

I INARTFULLY TRIED TO CONVEY
AND WAS UNABLE TO.

YES, EXACTLY.

CERTAINLY THE MOTIVE FOR THAT.

BUT, IF I COULD JUST

HIGHLIGHT --

>> THE POINT THERE WAS FULL
OPPORTUNITY THAT THE DEFENDANT
HAD TO CONFRONT THAT WITNESS?

>> EXACTLY, YOUR HONOR.

>> I MEAN THERE'S NO SUGGESTION
THAT SOMEHOW THAT WAS
INADEQUATE. IT WAS IN THE TRIAL.

>> THEY WANTED HER TO DRIVE
3,000 MILES I GUESS FOR OVER
THREE DAYS, WHEN SHE COULDN'T
FLY, YOU KNOW.

THE REAL, AND YOU SAY IS THAT

SOMETHING YOU WOULD HAVE TO DO?

AND JUSTICE PARIENTE'S

QUESTIONS EARLIER I THINK

ADDRESSED THAT CERTAINLY.

>> LET'S JUST SAY SINCE WE HAVE

TO CARRY THIS THROUGH,

SAY THE JUDGE ERRED FINDING HER

UNAVAILABLE ALTHOUGH FRANKLY

I'M NOT SURE HOW THAT WOULD

HAVE HAPPENED BUT IS IT PER SE

REVERSIBLE ERROR IF IT'S UNDER

THIS RULE?

OR DO THEY HAVE TO SHOW SOME,

SOME HARM?

>> NO, YOUR HONOR, IT IS NOT

PER SE REVERSIBLE ERROR.

>> IS THERE CASE LAW?

>> RULING ON THE TRIAL COURT.

WHAT I'M SAYING --

>> IF THE TRIAL COURT ERRED,

ABUSED ITS DISCRETION?

THEN IS, WHAT'S THE STANDARD?

IS IT A PER SE REVERSAL THEN OR

DO THEY HAVE TO DEMONSTRATE,

YOU KNOW, A SIXTH AMENDMENT

VIOLATION AND SOME WAY

QUESTIONS THEY WOULD HAVE ASKED

THAT THEY DIDN'T ASK?

SOMETHING ELSE OR NOT?

>> YOU CAN NEVER SHOW A SIXTH

AMENDMENT VIOLATION BECAUSE

THERE WAS THE OPPORTUNITY FOR

CROSS-EXAMINATION.

>> WHAT IS THE STANDARD?

IS IT HARMLESS ERROR OR PER SE

REVERSAL?

>> IF IT IS HARMLESS ERROR YOU

LOOK AT IT UNDER DIGILIO

IF THERE IS ERROR.

>> I'M NOT ASKING HOW IMPORTANT

IT IS.

I'M ASKING WHICH IS THE

STANDARD.

>> IF IT IS ERROR IT IS

HARMLESS.

>> THAT'S THE STANDARD, NOT PER

SE REVERSAL?

>> THAT'S CORRECT, YOUR HONOR.

>> AND THAT IS CASE LAW THAT

HAS BEEN CITED?

>> THE DEFENSE HAS NOT CITED

ANY PER SE REVERSIBLE ERROR.

THEY HAVE CITED THAT THE TRIAL

COURT ABUSED ITS DISCRETION.

SO HAND IN HAND WITH A ABUSE OF

DISCRETION.

MAY I FINISH MY ONE THOUGHT,

YOUR HONORZ?

I SEE MY RED LIGHT ON WITH

RESPECT TO THE HARMLESS ON THE

TESTIMONY OF SUZANNE ULERY.

SHE TESTED THE CARPET.

SHE TESTED THE HAIRS.

THE, HER TESTIMONY WITH RESPECT

TO THE CARPET AND THE BLOOD

TYPING WAS CUMULATIVE TO BRIAN

HIGGINS.

HIGGINS DID NOT TESTIFY TO THE

CARPET.

HE DID TEST THE BLOOD ON THE

WALLS AND LINKED IT TO JOSHAN'S

PROFILE.

WITH RESPECT TO THE HAIR ON HER

LEFT HAND THAT PARTIN'S DNA

MATCHED THE ULERY TESTIMONY WAS

CONSISTENT WITH HIGGINS TESTIMONY

TO THE MATCH AND TO THE WIFE'S

TESTIMONY, SEAN WEISS.

ASK YOU TO AFFIRM THE SENTENCE

AND APPRECIATE YOU LETTING ME

GO OVER.

>> JUST HAVE ONE POINT I WANTED

TO MAKE WITH REGARD

TO THE MOTION IN

LIMINE PERTAINING TO THE FIGHT

THAT PARTIN WAS INVOLVED IN.

THE APPELLEE SEEMS TO BE TAKING

THE POSITION THIS IS RELEVANT

BECAUSE IT SOMEHOW SHOWS THAT

PARTIN HAD CONTACT WITH THE

POLICE BUT CONCEALED HIMSELF.

I DON'T SEE THAT ANYWHERE IN

THIS PART THAT HE TRIED TO

CONCEAL HIMSELF IN ANY WAY.

HE DIDN'T GIVE A FALSE NAME.

HE MENTIONED THE FACT THAT THE

POLICE DID NOT ASK FOR HIS

NAME.

AND TRUE, HE DIDN'T RUN UP TO

THE POLICE AND SAY I'M PHILLIP

PARTIN, I'M WANTED FOR MURDER

BUT HE DIDN'T DO ANYTHING

ACTIVELY TO CONCEAL HIMSELF.

THANK YOU VERY MUCH.

>> ALL RIGHT WE THANK YOU BOTH

FOR YOUR ARGUMENTS.