

>> 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 WE HAVE TODAY IS
WYATT VERSUS THE STATE OF
FLORIDA.

>> WE HAVE TWO OF THEM.

>> THAT IS 08-655.

>> YOUR HONOR, I BELIEVE ON THE
DOCKING SCHEDULE 656 WAS
SCHEDULED TO BE FIRST.

WE CAN GO WHICHEVER WAY THE
COURT WOULD PREFER.

>> THIS IS DOMINO'S PIZZA?

>> FIRST ON DOCKET.

>> ARE YOU MORE COMFORTABLE

WITH STARTING WITH, ARE YOU
READY TO START ON 656?

>> 656, THAT'S WHAT THE WEBSITE
SAID AND I CAN START ON 655
IF THE COURT PREFER THAT.

>> DESCRIBE THE CASE YOU'RE
GOING WITH, 656.

THERE'S A DOCKET THAT IS
PROVIDED. IT IS OUT THERE.

IT IS SOMETHING THAT YOU REALLY
SHOULD CONSULT BEFORE YOU COME
IN HERE. BUT YOU CAN PROCEED.

>> 655, YOUR HONOR, IF YOU
PREFER.

I WANT TO, IN ANY EVENT BOTH OF
THE CASES HAVE SIMILAR ISSUES
SO THEY'RE NOT THE SAME I WOULD
STRESS THAT 655 AND 656 BOTH
HAVE THE ISSUES OF COMPARATIVE
BULLET LEAD ANALYSIS WHICH I
WOULD LIKE TO ADDRESS FIRST
BEFORE YOUR HONOR.

IN THESE CASES AGENT JOHN
REILLY FROM THE FBI TESTIFIED
HE COULD MATCH BULLETS FOUND IN
THE VICTIMS OF BOTH DOMINO'S
AND THE OTHER CASE WITH BULLETS
HELD IN MR. WYATT'S POSSESSION.

THIS COURT RELINQUISHED
JURISDICTION TO THE LOWER COURT
ON A COUNT OF LESSER THAT WAS
RECEIVED BY RYAN BUTLER, THE
STATE'S ATTORNEY IN THIS CASE
FROM THE FBI.

SUGGESTING THAT THE TESTIMONY
EXCEEDED THE SCIENCE IN
RELATION TO THE COMPARATIVE
BULLET LEAD ANALYSIS.

THE COURT LAST YEAR
RELINQUISHED THIS CASE BACK FOR
AN EVIDENTIARY HEARING ON THAT
ISSUES AMONG OTHER ISSUES AND
I'D LIKE TO ADDRESS THAT ISSUE
FIRST IF I MAY.

>> WHAT I WOULD SUGGEST YOU DO
IS ASSUME THAT IT CONSTITUTES
NEWLY DISCOVERED EVIDENCE.
THAT IS THE LETTER THAT WAS
RECEIVED SPECIFICALLY REGARDING
THE WYATT CASES.

I'D LIKE YOU TO ADDRESS THE
SECOND PRONG OF JONES AND I
WOULD DO IT WITH RESPECT TO
THIS CASE OF COURSE AT THIS
POINT AND THEN THE OTHER CASE.
IN OTHER WORDS, LET'S ASSUME

THAT THAT, THAT THE BULLET
ANALYSIS IS NOW CALLED INTO
QUESTION.

HOW CAN YOU ESTABLISH THAT IT
WOULD PROBABLY PRODUCE AN
ACQUITTAL OF MR. WYATT FOR
THESE MURDERS?

>> I THINK THERE ARE SEVERAL
THINGS WE CAN LOOK AT IN THE
RECORD OF THE PREVIOUS
EVIDENTIARY HEARING, YOUR
HONOR.

FIRST OF ALL, THE PROSECUTOR IN
BOTH CASES DAVID MORGAN, SAID
THAT THIS TESTIMONY WAS
EXTREMELY RELEVANT TO THE CASE.

I MEAN, IT WAS THERE.

IT WAS TESTIFIED TO.

THIS IS THE FBI.

THIS IS NOT THE INDIAN RIVER
COUNTY SHERIFF'S OFFICE, YOUR
HONOR.

IT'S THE FBI WHO IS PROBABLY
THE BEST KNOWN LAW ENFORCEMENT
AGENCY IN THE WESTERN WORLD.

IT IS CLOAKED IN
HYPERCREDIBILITY.

I THINK, GIVEN THAT SITUATION I

THINK JURY WOULD HAVE PROBABLY
GIVEN A GREAT DEAL MORE
CREDENCE AND WEIGHT TO
TESTIMONY OF AN FBI AGENT,
PERHAPS THAN TO JUST A REGULAR --
>> I THOUGHT
THE CBLA EVIDENCE WOULD LINK
THE VICTIM'S BULLETS TO WYATT.
THIS IS NOW IN THE DOMINO PIZZA
BUT IT DOESN'T INDICATE WHO
PURCHASED THE BULLETS OR WHO
FIRED THE WEAPON.
AND WE HAVE A CODEFENDANT HERE.
BUT ON THE OTHER HAND, AND YOU
TELL ME IF THIS HAS BEEN CALLED
INTO QUESTION, AS TO THE DOMINO
PIZZA'S MURDER, THE DNA,
MR.^WYATT'S DNA WAS FOUND
INSIDE ONE OF THE VICTIMS.
HE ADMITTED TO STEALING THE
CADILLAC WHICH WAS LESS THAN A
MILE FROM THE MURDERS.
HE MADE INCULPATORY STATEMENTS
AND, AND HE POSSESSED THE .38
CALIBER PISTOL.
PLUS OF COURSE, AND I KNOW
YOU'RE GOING TO ATTACK IT
SEPARATELY, BUT YOU HAVE THE

TESTIMONY OF MR. McCOOMBS.

SO YOU MAY WANT TO DO A
CUMULATIVE ON THAT BUT IF YOU
ACCEPT WHAT THE TRIAL COURT
FOUND WHICH MR. McCOOMBS DID
NOT RECALL.

HIS TESTIMONY IS NOT CALLED
INTO QUESTION. THEN WE HAVE
MR. McCOOMBS TESTIMONY
IN ADDITION TO THE DNA EVIDENCE
THAT I MENTIONED AS WELL AS TO
THE ADMISSIONS HE MADE.

>> YEAH.

I MEAN, THE CBLA EVIDENCE IS
THE PIECE THAT LINKED MR. WYATT
TO THE SHOOTING I WOULD SAY.

YEAH --

>> AGAIN, DOES IT SHOW WHO HAD
FIRED THE WEAPON?

>> NO. IT DOES NOT.

>> SO IN OTHER WORDS, IT'S,
DOESN'T THE, I MEAN TO ME, THE
MOST COMPELLING EVIDENCE THAT
LINKS HIM TO THE CRIME SCENE
AND TO THE CRIME IS HIS DNA
FOUND INSIDE OF THE VICTIM, ONE
OF THE VICTIMS.

YOU'RE NOT, THERE IS NOTHING

ABOUT -- THE LIGHT IS BACK.

THERE IS NOTHING ABOUT THE, THE
DNA THAT HAS BEEN CALLED INTO
QUESTION, IS THERE?

>> NOT BY THE CBLA, NO, YOUR
HONOR.

>> OR BY ANYTHING THAT YOU --
TELL ME, I FIND THAT,
COMPELLING EVIDENCE.

HOW DOES THAT NOT PLACE HIM AT
THE SCENE COMMITTING THE
SEXUAL BATTERY AND THEREFORE,
BEING, WHETHER HE'S THE SHOOTER
OR A EQUAL PARTICIPANT, HE'S
STILL THERE?

>> HE'S STILL THERE, YOUR
HONOR, BUT I THINK WE HAVE TO
LOOK AT OTHER FACTORS WE
BROUGHT UP INCLUDING, I MEAN
THAT THE EVIDENCE RELATED
TO McCOOMBS, NOT ONLY THE
STATEMENTS MADE BY ROLLINS AND
MORRISON AT THE EVIDENTIARY
HEARING BY PERPETUATION OF
TESTIMONY WHICH ALSO IS THE EMILIO
BRAVO AFFIDAVIT.

>> NOW YOU'RE, AND I UNDERSTAND
YOU HAVE A CUMULATIVE ANALYSIS.

IF YOU CAN STATE THAT THAT
EVIDENCE THAT HE, THAT McCOOMBS
RECALLED IS CREDIBLE BUT WE'VE
GOT AN EVIDENTIARY HEARING.
WE HAVE A TRIAL JUDGE WHO
ENTERED A LENGTHY ORDER THAT
FOUND THAT McCOOMBS NOT ONLY
DIDN'T RECAL, BUT HE
REAFFIRMED THAT HE HAD DETAILS
THAT ONLY COULD BE SUPPLIED BY
MR. WYATT.

THEY WOULDN'T BE GENERALLY
KNOWN.

THE OTHER WITNESSES GAVE
SOMETHING ABOUT THAT HE TALKED
ABOUT THE MURDER WEAPON.

WELL, IN THIS CASE, THE
DOMINO'S PIZZA CASE, THE MURDER
WEAPON WASN'T FOUND.

SO, IT IS NOT EVEN CONSISTENT.

SO AGAIN I ASK YOU ASSUMING
FIRST OF ALL THAT McCOOMBS'S
TESTIMONY IS STILL THERE, HOW
DOES JUST THE CBLA EVIDENCE
LEAD TO THE PROBABILITY OF AN
ACQUITTAL?

>> AGAIN, YOUR HONOR, -- FROM

THE NEWLY DISCOVERED EVIDENCE
ARGUMENT, THAT IN YOUR TERMS OF
THE NEWLY DISCOVERED EVIDENCE
-- BRADY.

WHEN WE LOOK AT THE TESTIMONY
FROM THE EVIDENCE, PARTICULARLY
RELATING TO THE TESTIMONY FROM
PROFESSOR SPIEGELMAN AND
MR. ^TOBIN, IT'S VERY CLEAR THAT
THE FBI KNEW AT THE TIME THAT
THERE WAS NO SCIENTIFIC BASIS
FOR THIS PARTICULAR, ASSERTION
THAT A SINGLE BULLET IN A
VICTIM COULD BE TIED AND HELD
TO BE IDENTICAL WITH BULLETS IN
A BOX AND THEREFORE CAME FROM A
PARTICULAR BOX.

I THINK IF YOU LOOK AT THE
TESTIMONY FROM PROFESSOR
SPIEGELMAN PARTICULARLY, HE WAS
VERY CLEAR THERE HAD NEVER BEEN
ANY MEANINGFUL OR COMPREHENSIVE
SCIENTIFIC STUDY ON THE PART OF
THE FBI THAT WOULD HAVE EVER
SUPPORTED THAT KIND OF
TESTIMONY.

>> BUT AT THE TIME OF THIS
TRIAL DID WE HAVE ANY EVIDENCE

THAT THAT WAS CALLED INTO
QUESTION AT THAT TIME?
NOT AT THIS EVIDENTIARY HEARING
BUT AT THE TIME THIS TRIAL TOOK
PLACE?

>> YES WE DO, YOUR HONOR.

WE HAVE THE TESTIMONY OF
MR. ^TOBIN WHO HAD BEEN INVOLVED
WITH THE FBI CRIME LAB FOR A
VERY LONG TIME AS A
METALLURGIST, AND HE TESTIFIED
IN THE SECOND EVIDENTIARY
HEARING ABOUT THE FEELING OF
METALLURGIST CALLED VINCENT
GUINN, WHAT HE DESCRIBED AS
THE GRANDFATHER OF METHOD, HE HAD
RECEDED FROM THIS METHOD AND
TRYING TO TELL THE FBI FOR A
VERY LONG TIME THIS HAD NOT
BEEN SCIENTIFICALLY HELD.

>> ARE YOU NOW SAYING THAT THE
STATE, THE STATE OF FLORIDA
KNOWINGLY PRESENTED FALSE
TESTIMONY?

>> KNOWINGLY OR NEGLIGENTLY,
YOUR HONOR.

>> EXCUSE ME.

>> KNOWINGLY OR NEGLIGENTLY?

>> SO GIGLIO CAN'T BE ESTABLISHED BECAUSE THERE IS NO EVIDENCE THAT THEY KNEW THEY WERE PRESENTING FALSE EVIDENCE, NOT A SCINTILLA OF EVIDENCE ON THAT BECAUSE YOU MADE A POINT TO SAY THIS WASN'T THE INDIAN RIVER COUNTY SHERIFF'S OFFICE. THIS WAS THE FBI.

>> STILL A LAW ENFORCEMENT AGENCY.

>> I DON'T KNOW OF ANY CASE, AND I KNOW WE'VE EXTENDED BRADY TO FAVORABLE EVIDENCE THAT'S WITHIN THE GOVERNMENTAL ENTITY BUT THAT WOULD TAKE SOMETHING THAT, AGAIN, I'M NOT EVEN SURE THE FEDERAL GOVERNMENT KNEW BUT SOMETHING THE FBI MAY HAVE KNOWN AND IMPUTED THAT TO THE STATE OF FLORIDA.

WHERE IS THAT CASE?

>> THERE ISN'T A CASE THAT OUGHT TO BE, YOUR HONOR.

>> YOU KNOW, AGAIN I UNDERSTAND THE BRADY. I CAN ACCEPT THAT THERE IS AN IMPUTATION BETWEEN ALL OF THE, THE PROSECUTOR OR

ANYONE ASKING ON THE PROSECUTOR'S
BEHALF AND THE INVESTIGATIVE TEAM
BUT THE FBI IS NOT PART OF THE
INVESTIGATIVE TEAM.

IN ADDITION, AS JUSTICE QUINCE
SAID, I DON'T THINK YOU
ESTABLISHED THAT ANYBODY IN THE
FBI AT THAT TIME KNEW THAT THIS
WAS QUESTIONABLE EVIDENCE.

I MEAN IT IS, CERTAINLY A RUDE
AWAKENING THAT WHEN WE HEAR
SCIENTIFIC EVIDENCE AND WE
THINK IT'S, THAT THE FBI SAYS
IT, WE GIVE IT A STAMP OF
APPROVAL.

I CAN AGREE THAT THIS IS
UNFORTUNATE BUT I ALSO AM GLAD
THAT THE FBI WAS ABLE TO COME,
AND BE FORTHRIGHT ABOUT IT SO
THAT WE CAN BRING THIS INTO,
YOU KNOW, IN A NEW LENS BUT I
DON'T SEE WHERE THE BRADY OR
GIGLIO CLAIM IS?

>> YOUR HONOR, THE BRADY
PARTICULARLY THE FBI TESTIFIED
IN THIS CASE THAT IT WAS THE
BASIS OF SCIENTIFIC RESEARCH.

IT HAD TO HAVE KNOWN IT WASN'T.

THERE WAS NO SCIENTIFIC
RESEARCH.

>> I DON'T KNOW THAT BRADY HAS
TO DO WITH WHAT SOMEBODY
NEGLIGENTLY MIGHT HAVE, MAYBE
IF THEY LOOKED SHOULD HAVE
KNOWN THE IDEA OF BRADY, LAST
TIME I LOOKED WAS THAT THE
STATE WITHOLDS EITHER
NEGLIGENTLY OR INTENTIONALLY
SOMETHING THAT MIGHT BE
FAVORABLE.

>> WELL, YOU KNOW, THE FACT THAT
IT'S NOT SCIENTIFICALLY
AVAILABLE, I MEAN, I'M SORRY,
SCIENTIFICALLY VERIFIABLE ISN'T
ANYTHING THAT THEY WERE, THAT
THEY HAD STUDIED.

NOT LIKE THEY SUPPRESSED A
STUDY THAT SAID, DON'T DO THIS
BECAUSE IT'S NOT SCIENTIFICALLY
RELIABLE.

>> BUT THEY GAVE THE
IMPRESSION, YOUR HONOR, THAT IT
HAD BEEN SCIENTIFICALLY
SUPPORTED, WHICH IT HADN'T BEEN.
SCIENCE INVOLVED FORMING A
HYPOTHESIS, TESTING THE

HYPOTHESIS, DOING EXPERIMENTATION.

STATISTICALLY VALIDATING, PEER
REVIEWING IT AND PUBLISHING IT.

NOTHING, NOTHING LIKE THAT
HAPPENED.

>> ARE YOU SAYING IT SHOULD
HAVE BEEN FREY TESTING?

>> YES, YOUR HONOR.

>> WHO WITH HAVE BEEN
RESPONSIBLE FOR ASKING FOR FREY
TESTING? THE LAWYER?

>> YES, YOUR HONOR.

>> WHAT DID THE JUDGE FIND
ABOUT THE LAWYER IN THIS CASE?

>> THAT IT WAS NONRECISION,
YOUR HONOR.

>> DID HE IN FACT GET A EXPERT
TO LOOK AT THIS?

>> HE GOT AN EXPERT BUT IT
DIDN'T GO VERY FAR IN THIS
PARTICULAR CASE, YOUR HONOR.

>> I'M SORRY, IF YOU WOULD
SPEAK --

>> HE DID GET AN EXPERT BUT THE
EXPERT WASN'T, NONE OF THIS
CAME TO LIGHT FROM THE FBI
WHICH IS VERY MUCH CLOAKED IN

SECRECY UNTIL LATER.

>> THAT'S WHY, AS I SAID WE
STARTED OUT, I THINK YOU HAVE A
GOOD NEWLY DISCOVERED EVIDENCE
CLAIM.

I DON'T AGREE THIS, AT LEAST I
DON'T AGREE IT IS PROCEDURALLY
BARRED BUT I THINK YOUR PROBLEM
IS THE SECOND PRONG, WHETHER IT
WOULD PROPERLY PRODUCE AN
ACQUITTAL.

CERTAINLY IN A CASE WHERE IT IS
CRITICAL PIECE OF EVIDENCE THAT
IS GOING TO BE A DIFFERENT
STORY.

I DON'T SEE IN THIS CASE, AND
WE CAN DISCUSS THE NYDEGGER
CASE SEPARATELY, HOW THIS WAS
THE CRITICAL PIECE OF EVIDENCE
IF IT DOESN'T LINK HIM TO BEING
THE SHOOTER AND WE KNOW HE WAS
THERE?

>> YES, YOUR HONOR, AGAIN I
WOULD COME BACK TO THE
CUMULATIVE ANALYSIS.

IT IS ONE THING.

LIKE I SAID, PATRICK McCOOMBS
IS NOT THE MOST CREDIBLE OF

WITNESSES, EVEN BACK AT TRIAL
BEFORE WE --

>> HOW --

>> BUT, THE POST-CONVICTION
COURT DECIDED THE CONTRARY,
DIDN'T IT?

I UNDERSTAND YOUR VIEW ABOUT
THE CREDIBILITY BUT ULTIMATELY
WE, UNLESS THERE IS NOT
COMPETENT SUBSTANTIAL EVIDENCE
TO SUPPORT THE TRIAL COURT, THE
POST-CONVICTION COURT HERE, WE
ARE BOUND BY THE FACTUAL
DETERMINATIONS, INCLUDING THE
CREDIBILITY DETERMINATIONS OF
THE POST-CONVICTION COURT.

ISN'T THAT WHAT THE LAW IS?

>> I WOULD PUT IT A LITTLE BIT
DIFFERENTLY, YOUR HONOR.

THE COURT HAS TO UNDERGO
ANALYSIS UNDER PORTER WHICH IS
NOT REALLY PART OF THIS CASE
BUT THAT BEING THE CASE, I
THINK THE COMPARATIVE
BULLET LEAD ANALYSIS IS
IMPORTANT IN THIS CASE.

IT WAS REFERRED TO IN CLOSING
ARGUMENT IN THE DOMINO'S CASE

AS SHOWING THE BULLET BEING
IDENTICAL TO THOSE IN
MR. WYATT'S POSSESSION.

AS I SAID TO ENHANCE
CREDIBILITY OF BRINGING SOMEONE
DOWN ALL THE WAY FROM
WASHINGTON, D.C. INTO THE
MIDDLE OF FLORIDA TO DO THIS
KIND OF --

>> I UNDERSTAND.

MAYBE THIS IS THE BEST YOU CAN
DO, BUT I JUST CAN NOT FATHOM
HOW THIS IS RELEVANT IN LIGHT
OF THE DNA EVIDENCE THAT YOU'RE
NOT CONTESTING, WHICH
ESTABLISHES THAT HE WAS THERE
AND COMMITTED A SEXUAL CRIME
AGAINST ONE OF THE VICTIMS?

>> AND THAT HASN'T BEEN
CONTESTED IN THIS BRIEF, YOUR
HONOR, BUT --

>> LET ME JUST GO BACK ON
McCOOMBS BECAUSE WE ALWAYS DO,
AT LEAST THERE HAS BEEN
CONCERNS FROM TIME TO TIME
ABOUT WHAT WE CALL THE
JAILHOUSE SNITCHES OR SOME
PEOPLE CALL JAILHOUSE SNITCHES.

>> YES, YOUR HONOR.

>> AND THIS, CERTAINLY IF
McCOOMBS RECANTED HIS
TESTIMONY, OR WAS FOUND TO BE,
HAVE LIED, THAT WOULD BE VERY
SERIOUS IN THIS CASE BECAUSE
HIS TESTIMONY DOES ESTABLISH
HAC.

AND IT IS VERY GRAPHIC.

HOW, IS THERE, HOW ELSE, OTHER
THAN FROM MR.^McCOOMBS, I'M
SORRY, FROM MR.^WYATT, COULD
MR.^McCOOMBS OBTAINED THE
DETAIL THAT HE OBTAINED?

YOU KNOW, YOU HAD BRAVO BUT
THEY NEVER ESTABLISHED THAT
LOVETTE AS IN THE SAME PLACE AS
BRAVO.

IS THERE ANYTHING OTHER THAN
MERE SPECULATION AS TO HOW
MR.^McCOOMBS COULD HAVE
OBTAINED THIS DETAILED
DESCRIPTION OF THE CRIME?

>> I MEAN HE COULD HAVE MADE IT
UP. YOU KNOW --

>> BUT IT WAS COLLABORATED AT
EVERY POINT INDEPENDENTLY.

>> NOT SOME OF THE THINGS THAT,

I MEAN THE REMARK ABOUT THE,
LISTEN VERY CAREFULLY.
THAT, THAT WAS PURE McCOOMBS.
IT COULDN'T HAVE COME FROM
ANYBODY ELSE.

I MEAN, McCOOMBS'S TESTIMONY
SUPPORTED A LOT OF AGGRAVATING
CIRCUMSTANCES, NOT JUST HAC.

>> NO QUESTION ABOUT THAT BUT,
BUT BACK TO WHAT THE TRIAL
COURT FOUND. THE TRIAL COURT
DIDN'T FIND THAT HE WAS, THAT
HIS CREDIBILITY HAD BEEN
IMPEACHED TO THE EXTENT THAT IT
WOULD CHANGE THE OUTCOME.

AND THAT'S WHAT I'M ASKING
YOU, YOU KNOW, AND YOU
MENTIONED THESE TWO INMATES.

WELL THERE IS SOME CRAZY THINGS
THAT GO ON I GUESS IN THE
FEDERAL PROTECTION SYSTEM WHERE
THEY'RE ALL TRYING TO VIE FOR
BETTER PLACES TO STAY AND, BUT
NOTHING THEY SAID WOULD EVEN
REMOTELY RELATE TO SOMETHING
THAT McCOOMBS WOULD HAVE TOLD
THEM.

SO I MEAN I THINK THAT

EVALUATION OF THEIR CREDIBILITY
WAS ALSO DONE.

>> WELL, I THINK WE HAVE TO LOOK
NOT ONLY AT THE LIVE WITNESSES
BUT ALSO McCOOMBS'S VOLUMINOUS
WRITINGS AND HIS CONTINUING
RELATIONSHIP WITH THE STATE
ATTORNEY'S OFFICE IN VERO
BEACH.

>> EXCEPT THAT, AGAIN, THERE IS
NO EVIDENCE AND BOTH, THE
PROSECUTOR TESTIFIED TO THIS, OF
ANY OTHER AGREEMENT OTHER THAN
WHAT WAS, YOU KNOW, EXPLAINED
AT TRIAL.

>> AGAIN AFTER TRIAL, THE
PROSECUTOR MIRMAN DID WRITE
TO THE ASSISTANT U.S. ATTORNEY
WHO WAS DEALING WITH McCOOMBS
AND HE WENT TO FEDERAL RULE OF
CRIMINAL PROCEDURE 35, ASKED
FOR SOME TREATMENT TO BE, SOME
FAVORABLE TREATMENT TO BE
GRANTED TO McCOOMBS, WHICH IN
FACT HAPPENED.

HE WAS GIVEN A 20-MONTH
REDUCTION IN HIS SENTENCE.

>> WHAT IS HIS SENTENCE?

>> I DON'T REMEMBER EXACTLY

WHAT HIS SENTENCE WAS.

>> IT WAS PRETTY LENGTHY

SENTENCE.

>> IT WAS LENGTHY SENTENCE.

>> NOT ALL OF SUDDEN HE WOULD
BEING INCARCERATED FOR YEARS TO
BEING OUT.

>> 20 MONTHS, WHICH IS NEARLY
TWO YEARS.

I MEAN, HE WAS GIVEN
CONSIDERATION AND HE WAS PUT IN
THE WITNESS PROTECTION PROGRAM.

SO I MEAN HE WAS GIVEN SOME
FAVORS FOR HIS TESTIMONY, YES.

SO THERE IS THAT.

AND THE TIMELINE, I MEAN,
MR. ^MORGAN'S LETTER TO THE
ASSISTANT U.S. ATTORNEY
HAPPENED JUST WEEKS AFTER THE
DOMINO'S TRIAL.

SO THE TIMELINE IS VERY
INTERESTING.

MOVE TO THE PENALTY PHASE OF
THIS PARTICULAR CASE.

>> I --

>> OKAY.

>> YOU'RE WAY INTO YOUR

REBUTTAL TIME.

YOU NEED TO BE AWARE OF THAT.

YOU'RE WELCOME TO KEEP GOING.

>> I WILL SAVE REMAINDER OF MY

TIME, THANK YOU, YOUR HONOR.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

LISA-MARIE LERNER WITH THE

ATTORNEY GENERAL'S OFFICE.

ON THE COMPARATIVE BULLET LEAD

ANALYSIS, AS THE COURT POINTED

OUT PREVIOUSLY, MR. WYATT CAN

NOT MEET THE SECOND PHASE OF

THE JONES TEST AS HIS TESTIMONY

AT THE ORIGINAL TRIAL WAS

ACTUALLY AN ANCILLARY ISSUE.

IT DID NOT POINT TO WYATT AS

BEING THE SHOOTER, AND IN FACT

WYATT TESTIFIED AT THIS TRIAL

AND ADMITTED THAT HE POSSESSED

THE BULLETS AND THE GUN BUT

THAT HE WAS IN THE BAR AND THAT

LOVETTE TOOK THEM --

>> I THINK WE'RE IN THE WRONG

CASE. WE'RE STARTING WITH THE

DOMINO'S PIZZA CASE.

>> RIGHT.

>> THE BAR CASE IS NYDEGGER.

I'M CONFUSED OR ARE YOU
CONFUSED?

>> NO. THEY WENT TO MANY BARS.

IN THE DOMINO'S CASE --

>> OKAY. I AM CONFUSED.

I THOUGHT, --

>> GARDENS BAR.

>> THIS IS THE CASE THOUGH THAT
HE WAIVED HIS PENALTY PHASE, IS
THAT CORRECT?

>> THAT'S CORRECT.

>> AND HE TESTIFIED ON HIS OWN
BEHALF IN BOTH CASES?

>> YES.

>> TELL ME WHAT HE TESTIFIED IN
THIS CASE.

>> HE ADMITTED TO POSSESSING
TWO GUNS, INCLUDING A .38 AND
THE AMMUNITION.

EVEN THOUGH THE STATE DECIDED
TO PUT ON THIS EVIDENCE IT WAS
AN ANCILLARY ISSUE.

>> WHAT WAS THE POINT OF THE
EVIDENCE?

IF IN FACT THE EVIDENCE DOESN'T
REALLY CONNECT MR. WYATT, THEN
WHAT WAS THE STATE TRYING TO
GET BY PUTTING ON THIS

EVIDENCE?

>> WELL, IT DID CONNECT

MR. ^WYATT WITH THE AMMUNITION.

THE COMPARATIVE BULLET LEAD

ANALYSIS DID TWO THINGS.

ONE, THERE WAS A CHEMICAL

ANALYSIS OF THE BULLETS.

THEY WERE SO MUCH LEAD, SO MUCH

CHROME, I'M MAKING THIS UP, AND

SO MUCH SOME OTHER METAL AND

THE BULLET IN THE BAG HAD THE

SAME CHEMICAL COMPOSITION AS

THE BULLETS LEFT AT THE SCENE.

THAT WAS --

>> IS THAT STILL IN QUESTION OR

HAS THAT BEEN CALLED INTO

QUESTION THAT PORTION OF IT?

>> NO. THAT IS STILL EXCELLENT

SCIENCE.

THE TESTIMONY AFTER THE

EVIDENTIARY HEARING SAID THAT

IS IT STILL GOOD SCIENCE.

THE PROBLEM CAME WITH THE

STATISTICAL ANALYSIS APPLIED TO

THAT SCIENCE SAYING THAT, SAYING

THEY COULD DEFINITELY MATCH UP

AN INDIVIDUAL BULLET WITH A

MANUFACTURING TIME AND BOX.

AND THAT WAS WHAT WAS THROWN
OUT.

SO WYATT ADMITTED TO HAVING THE
BULLETS.

IT WAS AN ANCILLARY ISSUE.

>> BUT DIDN'T THEY ACTUALLY,
THEY NEVER FOUND THE GUN?

>> NO. THEY NEVER FOUND THE GUN.

>> THEY NEVER FOUND THE GUN.

DID THEY OR DID THEY NOT FIND
ACTUAL AMMUNITION ON WYATT OR
IN HIS POSSESSION?

>> WELL THEY FOUND IT ON
FREDDIE FOX AND FREDDIE FOX
TESTIFIED THAT WYATT HANDED HIM
A GUN AND AMMUNITION.

ALSO THERE WAS TESTIMONY FROM
THE OWNER OF THE CADILLAC THAT
HE HAD A .38 SMITH & WESSON IN
THE CAR AT THE TIME IT WAS
STOLEN.

THEY NEVER FOUND THE MURDER
WEAPON FROM THE DOMINO'S CASE
HOWEVER THERE WAS TESTIMONY
WHICH WAS UNCONTROVERTED THAT
THE BULLETS FROM THE THREE
VICTIMS CAME FROM MOST LIKELY A

SMITH & WESSON .38 GIVEN THE
VERY UNIQUE RIFLING MARKS THAT
A SMITH & WESSON MAKES ON
BULLETS THAT OTHER
MANUFACTURERS DO NOT MAKE THE
SAME RIFLING MARKS.

SO YOU HAVE WYATT IN A CADILLAC
WITH A .38 SMITH & WESSON.

THERE WAS TESTIMONY A SMITH &
WESSON WAS USED TO KILL THESE
PEOPLE, THE SAME TYPE OF
BULLETS WAS FOUND WITH WYATT.

HIS SPERM WAS FOUND IN THE
WOMAN AND A 1 IN 32 BILLION
CHANCE IT WAS WYATT.

>> ONCE YOU GET THERE, I MEAN,
THAT'S TO ME THE THING TO START
WITH THE STATE IS BECAUSE THAT
IS DEVASTATING EVIDENCE, THAT
PUTS HIM AT THE CRIME, HAVING
COMMITTED THE CRIME, ONE OF THE
CRIMES AND THEN THE ONLY
QUESTION IS, I MEAN, WAS THERE
A QUESTION OF ACTUALLY WHO SHOT
THE VICTIMS?

THE CODEFENDANTS BOTH INITIALLY
GOT DEATH, CORRECT?

>> THAT'S CORRECT. LOVETTE --

>> WAS THERE AN ISSUE ACTUALLY

WHO WAS THE SHOOTER?

>> ACCORDING TO WYATT THERE

WAS.

LOVETTE, AS THE COURT REMEMBERS,

TURNED HIMSELF IN AND CONFESSED

AND CONSISTENTLY SAID

THAT WYATT WAS THE SHOOTER AND

THIS COURT IN LOVETTE'S DIRECT

APPEAL MADE A FACTUAL

DETERMINATION THAT WYATT WAS

THE SHOOTER.

>> HOW DID WE DO THAT?

THAT WOULDN'T BE BINDING ON

HERE.

>> NO.

>> I DON'T THINK THE COURT ON

APPEAL MAKES A FACTUAL

DETERMINATION OF WHO IS THE

SHOOTER.

>> BUT BE THAT AS IT MAY --

>> WAS THERE SOME TESTIMONY

THAT WYATT WAS UP FRONT

SOMEPLACE, EITHER DRINKING OR

EATING SOMETHING OR, WAS HE IN

THE SAME PLACE WHERE THE

SHOOTING TOOK PLACE OR WAS HE

SOMEPLACE AWAY FROM THAT? NOT

WYATT BUT LOVETTE, I'M

SORRY?

>> McCOOMBS TESTIFIED THAT

WYATT TOLD HIM THAT LOVETTE WAS

UP FRONT BECAUSE LOVETTE WAS

THE ONE WEARING DOMINO'S SHIRT.

IN CASE ANYONE LOOKED IN HE

LOOKED LIKE AN EMPLOYEE.

WHEN THEY FOUND THE DOMINO'S

SHIRT THEY FOUND LOVETTE'S HAIR

ON IT.

GRANTED HAIR ANALYSIS IS NOT

UNIQUE BUT LOVETTE'S HAIR AND

WYATT'S HAIR WERE VERY

DIFFERENT.

AND ADDITIONALLY --

>> THIS DID OCCUR IN A DOMINO'S

PIZZA.

WHEN YOU WERE TALKING ABOUT

DRINKING IN A BAR?

>> THAT WAS WYATT'S TESTIMONY

THAT HE WAS NOT AT DOMINO'S AT

ALL.

>> REALLY AGAIN THE DNA REFUTES

THAT 100%?

>> RIGHT. AND ON C

ROSS-EXAMINATION HE JUST SAID

THAT THE DNA EVIDENCE

WAS WRONG.

HE HAD NO EXPLANATION FOR THAT.

SO THE STATE CONTENDS THAT
WYATT CAN NOT MEET THE SECOND
PRONG OF JONES, THAT IT WOULD
RESULT IN AN ACQUITTAL.

ON McCOOMBS, AGAIN THIS IS NOT
A RECONTATION BECAUSE McCOOMBS
REASSERTED WHAT HE TESTIFIED TO
WHEN THE STATE CONTACTED HIM
AFTER THEY FOUND OUT ABOUT
ROLLINS AND MORRISON.

HE CAME INTO COURT IN 2007 AT
THE EVIDENTIARY HEARING AND
TESTIFIED THAT HIS TRIAL
TESTIMONY WAS ACCURATE.

>> WELL I REALIZE HE DID THAT
BUT COULD YOU EXPLAIN, AS I WAS
TRYING TO UNDERSTAND, WHAT,
WHAT THE STATE ESTABLISHED, IF
ANYTHING, WAS THE MOTIVE OF
THESE TWO OTHER INMATES IN THE
FEDERAL PRISON WHO MAKE UP
SOMETHING ABOUT McCOOMBS?
IS THERE SOMETHING ABOUT THE
WHOLE – THIS IS WHERE ALL SNITCHES
GO AND THEY ALL THEN BECOME
SNITCHES OR SOMETHING?

>> APPARENTLY THIS IS A PARTICULARLY BAD UNIT. THERE WAS TESTIMONY THAT ROLLINS MET McCOOMBS IN 1989 OR 1990 WHEN THEY WERE BOTH IN FEDERAL CUSTODY AND ROLLINS READ MEDIA ACCOUNTS OF THE WYATT TRIAL. SO ROLLINS KNEW SOMETHING ABOUT THE TRIAL. AND McCOOMBS AND ROLLINS APPARENTLY HAD A FALLING OUT. THERE WAS TESTIMONY FROM MORRISON THAT THERE WAS REALLY BAD BLOOD BETWEEN ROLLINS AND McCOOMBS AND McCOOMBS ALSO TESTIFIED THAT ROLLINS KEPT TRYING TO GET McCOOMBS IN TROUBLE AND CAUSE HIM PROBLEMS. SO THAT'S THE GENESIS OF THAT. ALSO ROLLINS IN HIS VIDEOTAPE TESTIMONY ADMITTED THAT HE WAS JUST, WHEN HE WROTE, HE WROTE BOTH THE PRISON WARDEN AND THEN HE WROTE THE STATE ATTORNEY DIRECTLY SAYING THAT WYATT, I'M SORRY, THAT McCOOMBS WAS SIGNIFICANTLY UNTRUTHFUL.

HE DID NOT BOTHER TO CONTACT
WYATT'S DEFENSE ATTORNEY
THOUGH.

AND WHEN QUESTIONED ON
CROSS-EXAMINATION, ROLLINS
SAID, WELL HE WAS JUST, YOU
KNOW, PLAYING AROUND WITH THE
SYSTEM AND TRYING TO GET
SOMEONE FROM FLORIDA TO COME UP
AND VISIT HIM AND HE
ESSENTIALLY ADMITTED TO JUST
MANIPULATING THE SYSTEM.

>> McCOOMBS ALSO WAS TRYING TO
MANIPULATE THE SYSTEM.

>> YES.

>> THERE'S NO QUESTION ABOUT
THAT.

BUT HOW IS THE STATE ABLE TO
SAY, AND I JUST WANT TO MAKE
SURE BECAUSE YOU WOULD AGREE
THAT IF McCOOMBS'S TESTIMONY
WAS FOUND TO BE UNRELIABLE, THE
PENALTY PHASE IN THIS CASE IS
SERIOUSLY CALLED INTO QUESTION,
ESPECIALLY THE HAC.

DO YOU AGREE, DOES THE STATE
AGREE WITH THAT?

>> McCOOMBS --

>> THE TERRIBLE DETAILS ABOUT
HOW THE HUSBAND HAD TO WATCH
HIS WIFE UNDRESSED AND RAPED
AND ALL OF
THAT COME FROM WHAT McCOOMBS
SAYS, CORRECT?

>> THAT IS CORRECT, YOUR HONOR.
HOWEVER, McCOOMBS KNEW A NUMBER
OF FACTS THAT WERE NOT IN ANY
MEDIA REPORT AT THE TIME AND
WERE NOT CONTAINED IN THE
EXTRADITION PAPERS.

JUDGE MORGAN TESTIFIED TO THAT
AT THE EVIDENTIARY HEARING IN
2007.

HE ALSO TESTIFIED THAT THE
POLICE AND THE STATE DID NOT
SEND ANY POLICE REPORTS OR CASE
MATERIAL TO WYATT WHILE HE WAS
IN NORTH CAROLINA.

McCOOMBS TALKED TO WYATT WHEN
HE WAS IN NORTH CAROLINA, NOT
IN FLORIDA.

SO THE ONLY PAPERS THAT WYATT
HAD WAS THE EXTRADITION
REQUEST, WRITTEN AND SUBMITTED
BY JUDGE MORGAN AND JUDGE
MORGAN TESTIFIED ABOUT WHAT

THAT HAD IN IT.

McCOOMBS KNEW THAT WYATT AND
LOVETTE WENT INTO THE DOMINO'S
PIZZA SHORTLY AFTER 11:00 AND
ORDERED A PIZZA.

THERE WAS TESTIMONY AT THE
TRIAL THAT SOMEONE CALLED IN AT
11:00 FROM OUTSIDE.

ORDERED A PIZZA.

THAT CALL WAS TAKEN AND IT WAS
LOGGED IN ON THE REGISTER AT
11:01.

AND THE PERSON WHO CALLED IN
TESTIFIED AT TRIAL.

THE NEXT ORDER WAS AT 11:06 AND
THAT WAS AN IN-STORE ORDER.

THAT WAS TESTIFIED TO AT TRIAL.

THERE WAS NOT A RECEIPT BUT THE
CASH REGISTER RECORD SHOWED
THAT AT 11:06 SOMEONE ORDERED A
PIZZA.

THERE WERE OTHER WITNESSES WHO
TESTIFIED COMING AND GOING.

SO THIS CRIME HAPPENED BETWEEN
11:06 AND 11:30, ROUGHLY.

McCOOMBS KNEW THAT THEY ORDERED
A PIZZA.

THAT IS NOT SOMETHING THAT

WOULD BE IN THE NEWSPAPERS.

>> THAT IS NOT EXACTLY A -- IT
IS A DOMINO'S PIZZA PLACE SO
THEY --

>> I WILL GO DOWN MY LIST.

>> OKAY.

>> THAT IS NOT THE STRONGEST
PART.

>> I TRY TO WORK MY WAY UP.

>> TELL ME THE STRONGEST.

>> McCOOMBS ALSO KNEW --

>> BUT YOU'RE SAYING THE TIME
FRAME WAS --

>> RIGHT.

>> IS SIGNIFICANT.

>> RIGHT.

McCOOMBS ALSO KNEW THAT WYATT
HAD PISTOL-WHIPPED THE MANAGER
TO GET INTO THE SAFE AND THAT
WAS NOT IN ANY OF THE
DOCUMENTS.

>> WAS THERE EVIDENCE THAT HE
WAS PISTOL-WHIPPED?

>> YES.

HE ALSO KNEW THAT WYATT ONLY
GOT \$1,000 FROM THE DOMINO'S
PIZZA.

AND THE AMOUNT OF THE ROBBERY

WAS NOT IN ANY OF THE PAPERS.

AT THE TRIAL THE DOMINO'S
GENERAL MANAGER TESTIFIED THAT
APPROXIMATELY \$1200 WAS TAKEN.
SO McCOOMBS WAS ACCURATE ON THE
AMOUNT OF MONEY THAT WYATT GOT.
HE KNEW THAT LOVETTE WORE A
DOMINO'S SHIRT AND IT WAS
DISCARDED BY THE CAR.
HE ALSO KNEW THAT WYATT GOT A
RIDE AT SOME POINT FROM A
CABBIE NAMED FAST EDDIE.
THE STATE BROUGHT IN SOMEONE,
EDDIE PUGH, WHOSE NICKNAME WAS
FAST EDDIE, TO TESTIFY THAT HE
PICKED WYATT AND LOVETTE UP.
>> JUST A QUESTION AS YOU'RE
GOING THROUGH THESE, WHAT WAS,
TELL ME AGAIN WHERE IT WAS THAT
WYATT AND McCOOMBS WERE IN JAIL
TOGETHER AND FOR HOW LONG.
BECAUSE THIS KIND OF EVIDENCE
IS THE FACT THAT, OH, THAT THEY
ACTUALLY TALKED ABOUT THE TIME
OF THE MURDER AND THE DETAILS
IS, SEEMS A LITTLE, DOES SEEM A
LITTLE STRANGE.
USUALLY SOMEONE MIGHT SAY, IF

THEY WERE GOING TO TALK, MIGHT
TALK ABOUT THE DETAILS OF THE
MURDER OR SAY SOME THINGS BUT
THIS IS UNUSUALLY DETAILED.

>> WELL, McCOOMBS TESTIFIED
THAT THEY HAD OVER 30
CONVERSATIONS AND THEY WERE,
YOU KNOW, RIGHT NEXT TO EACH
OTHER.

THEY WERE INCARCERATED IN NORTH
CAROLINA.

McCOOMBS WAS IN THERE ON HIS
OWN CHARGE AND WYATT HAD BEEN
PICKED UP AFTER HE WAS CAUGHT
DRIVING THE STOLEN TRUCK FROM
HIS EMPLOYER.

AND McCOOMBS TALKED TO WYATT
WHILE WYATT WAS IN, POSSIBLY UP
THERE APPROXIMATELY TWO MONTHS.
IT WAS OVER ABOUT A TWO-MONTH
PERIOD WHILE WYATT WAS WAITING
EXTRADITION.

>> WHEN WAS THE FIRST TIME THAT
McCOOMBS TOLD ANY AUTHORITY
ABOUT THESE CONVERSATIONS?

>> WITHIN A MONTH A COUPLE
MONTHS OF THESE CONVERSATIONS.

>> SO HE WAITED -- DID HE TAKE

NOTES?

>> NO.

>> SO HE HAD 30 CONVERSATIONS

OVER TWO MONTHS.

AND THEN HE WAITED ANOTHER TWO

MONTHS?

>> I'M NOT EXACTLY SURE BUT HE

NOTIFIED, HE TALKED TO HIS

FATHER AND DECIDED HE WAS GOING

TO NOTIFY AND HE WROTE A LETTER

TO THE STATE ATTORNEY IN

FLORIDA.

SHORTLY --

>> OTHER DETAILS THAT ONLY HE

WOULD HAVE KNOWN?

>> HE KNEW ABOUT FAST EDDIE AND

ALSO SIGNIFICANTLY HE KNEW THAT

WYATT USED TWO DIFFERENT KINDS

OF BULLETS. AND --

>> I BELIEVE McCOOMBS WHO WAS

IN SOUTH CAROLINA, NOT NORTH

CAROLINA, AT THE TIME.

>> I COULD BE WRONG.

>> YEAH, YOU ARE.

>> IS THERE ANY SUGGESTION IN

THIS RECORD AT ALL THAT

McCOOMBS WAS IN FLORIDA AT THE

TIME OF THIS MURDER?

>> NO.

>> AND NOTHING THAT McCOOMBS, I
MEAN THIS WOULD BE THE OTHER
CRITICAL THING, EVER SHARED A
JAIL CELL, INCARCERATED AT THE
SAME TIME AS LOVETTE?

>> THERE WAS NO EVIDENCE PUT ON
AT THE EVIDENTIARY HEARING THAT
McCOOMBS AND LOVETTE EVEN KNEW
EACH OTHER OR HOUSED IN ANY
UNIT AT THE SAME TIME.

>> AND THE STATE CAREFULLY
LOOKED AT THAT?
BECAUSE I WOULD ASSUME BEFORE
THE STATE'S GOING TO PUT
SOMETHING LIKE THIS ON, THEY'RE
GOING TO WANT TO MAKE SURE THAT
THIS IS RELIABLE TESTIMONY?

>> I WOULD ASSUME SO.

>> WE DON'T KNOW ANYTHING ABOUT
IT?

>> I DIDN'T SPEAK TO THE STATE
ATTORNEY, HOWEVER THIS ISSUE WAS
BROUGHT UP AT THE 2007 AND 2009
EVIDENTIARY HEARINGS,
ESPECIALLY THE 2009 WITH
MR. BRAVO'S AFFIDAVIT.
BUT NEITHER SIDE, WYATT OR THE

STATE, COULD PRODUCE ANY
EVIDENCE SHOWING THAT LOVETTE
AND McCOOMBS WERE EVER --

>> ACCORDING TO McCOOMBS, DID
LOVETTE PARTICIPATE IN THESE
MURDERS?

>> ACCORDING TO McCOOMBS,
LOVETTE WAS THERE AND WAS
PARTICIPATING IN THE ROBBERY.
BUT, AND, PULLED A GUN, WHAT
NOT, BUT McCOOMBS SAID THAT
WYATT ADMITTED TO BEING THE
SHOOTER.

>> ANY OTHER, THAT IS PRETTY
IMPORTANT.

ANY OTHER, AND HE GAVE THE
DETAILS OF THE SEXUAL BATTERY?

>> THAT'S INTERESTING.

THERE ARE TWO THINGS McCOOMBS
KNEW NOTHING ABOUT AND HE DID
NOT TESTIFY TO THEM AT TRIAL.
HE KNEW NOTHING ABOUT THE
SEXUAL BATTERY, WHICH WAS IN
THE NEWSPAPERS AND NEW NOTHING
ABOUT THE CADILLAC BEING BURNED
AND ABANDONED, WHICH WAS IN THE
NEWSPAPERS.

>> I THOUGHT, WASN'T THERE

TESTIMONY, WHEN I ASKED BUT THE
HAC, YOU SAID, YEAH, THAT THIS IS
PART OF THE HAC.

I THOUGHT HIS TESTIMONY,
McCOOMBS, I THOUGHT THAT THERE
WAS TESTIMONY WHICH WE RECITED
IN THE DIRECT APPEAL, ABOUT,
ABOUT THE HUSBAND WATCHING THE
AS THE SEXUAL BATTERY TOOK
PLACE.

>> I RECALL THAT.

>> WHO WOULD HAVE TESTIFIED TO
THAT?

>> McCOOMBS.

AND McCOOMBS ALSO, I'M SORRY.

I THINK THAT WAS THE STATE
ARGUMENT.

I DON'T BELIEVE THERE WAS ANY
TESTIMONY DIRECTLY ABOUT THE
HUSBAND BEING PRESENT DURING
THE RAPE.

I THINK THAT WAS --

>> WE PUT THAT IN THE DIRECT
APPEAL EVEN THOUGH THERE WAS NO
EVIDENCE OF THAT?

>> McCOOMBS DID NOT TESTIFY
ABOUT THE SEXUAL BATTERY.

WHAT McCOOMBS DID TESTIFY TO

WAS WYATT MAKING A STATEMENT TO
BORNOOSH OR BORNOOSH ABOUT
LISTENING TO THE WIND AS THE
BULLET ENTERED HIS EAR.

>> LET ME MAKE SURE.

THIS, IN OUR DIRECT APPEAL
SAID, NEXT WYATT ARGUES THE
TRIAL COURT ERRED FINDING THE
HEINOUS ATROCIOUS AND CRUEL.
WE CANNOT AGREE.

THE EVIDENCE SHOWS THE VICTIMS
WERE SUBJECTED TO A 20 MINUTES
OF ABUSE PRIOR TO THEIR DEATHS.

THEY TALK ABOUT THE
PISTOL-WHIPPED.

THAT'S WHAT YOU SAID HE
TESTIFIED TO.

AND IT SAYS, UNDRESSED FRANCIS
EDWARDS COMPLETELY
AND RAPED HER A SHORT DISTANCE
FROM WHERE THE OTHER TWO
EMPLOYEES WERE BEING HELD.

IS THAT JUST BASED ON --

>> THE PHYSICAL EVIDENCE.

>> THE PHYSICAL EVIDENCE.

OKAY. OKAY.

EDWARDS BEGGED FOR HIS LIFE.

THAT'S FROM --

>> McCOOMBS, YES.

>> AND STATED THAT HE AND
FRANCIS, HIS WIFE, HAD A
2-YEAR-OLD DAUGHTER AT HOME.

>> FROM --

>> OKAY. SO YOU'RE -- UPON
SEEING HER HUSBAND SHOT,
FRANCIS EDWARDS BEGAN TO CRY.

THAT IS ALSO --

>> McCOOMBS.

>> SO INTERESTINGLY, SO THE
ONLY THING, THE ONLY DETAIL
THAT WYATT LEFT OUT OF
ANYTHING WAS SEXUAL BATTERY?

>> AND BURNING THE CAR.

IN TERMS OF THE PENALTY PHASE,
EVIDENCE, THE DEFENSE ATTORNEY
DID A LOT OF INVESTIGATION AND
WAS PREPARED TO PUT ON 12
WITNESSES AND THE STATE WOULD
ASK THE COURT TO RELY ON MY
BRIEF AND THE ARGUMENTS IN
THERE.

WE ASK YOU TO AFFIRM.

>> LET ME COME BACK TO THE
PENALTY PHASE, YOUR HONOR.
TRIAL COUNSEL RELIED HEAVILY ON

AN INVESTIGATIVE REPORT FROM A
NORTH CAROLINA STATE
INVESTIGATOR AND WITHOUT DOING
ANY FURTHER INVESTIGATION INTO
THE WITNESSES THAT THAT STATE
INVESTIGATOR TALKED TO, IN
PARTICULAR, MR. WYATT'S
EX-WIFE, AND ONE OF HIS SCHOOL
TEACHERS, SARA COX. SHE
DECIDED NOT TO
TALK TO THESE PEOPLE AND DID
NOT DO THE SOCIAL HISTORY THAT
WOULD HAVE COME FROM THESE
PEOPLE.

>> NOW THIS ONE THOUGH INVOLVES
A WAIVER OF MITIGATION.

SO WHAT DO YOU HAVE TO
ESTABLISH IN ORDER TO ESTABLISH
THAT THEY WERE INEFFECTIVE?
THEY ACTUALLY WENT AND GOT AN
INVESTIGATOR.

DID, AS FAR AS I CAN SEE, A VERY
THOROUGH SOCIAL HISTORY AND,
EVEN THOUGH HE CONSISTENTLY
TOLD THEM HE DIDN'T WANT TO PUT
ON MITIGATION IN THIS CASE.

SO ARE YOU SAYING THAT IF HE
HAD KNOWN ABOUT THESE TWO

WITNESSES, SAID, OH, EVERYTHING I SAID FOR THE LAST X-NUMBER OF MONTHS I REALLY DO WANT TO PUT MITIGATION ON?

>> I THINK HE WASN'T AWARE OF MITIGATION THAT COULD HAVE BEEN PUT ON BECAUSE IT WASN'T INVESTIGATED FULLY.

WHAT THE RECORD SHOWS IS THAT MR. WYATT DID NOT, HE ASKED HIS COUNSEL TO ASK FOR CONTINUANCE OF THE PENALTY PHASE.

>> THAT'S WHEN HE AT THE POINT THE NIGHT BEFORE WHEN HE FINALLY DECIDED HE WANTED TO PUT ON HIS MOTHER AND SISTER OR SOMETHING.

>> YES, YOUR HONOR.

THEY WERE UNAVAILABLE DUE TO MEDICAL REASONS. HE --

>> WASN'T THERE A CHANGE OF MIND THE DAY BEFORE?

>> HE HAD BEEN VACILLATING BUT POINT OF THE MATTER BEING IN CASES SUCH AS BLANCO AND A NUMBER OF OTHER CASES AFFIRMATIVELY FIRM STAND FOR THE PROPOSITION YOU CAN'T WAIVE

MITIGATION KNOWINGLY WITHOUT
KNOWING WHAT THE MITIGATION IS
AND THAT'S THE SITUATION WE
HAVE IN THIS PARTICULAR CASE.
TRIAL COUNSEL DID NOT DO THE
NECESSARY DILIGENCE,
INVESTIGATION THAT WIGGINS
VERSUS SMITH AND THE
WELL-SETTLED DIFFERENT COURT
CASE LAW REQUIRES.

>> YOU ARE, YOU HAVE EXHAUSTED
TIME. I WILL GIVE YOU ANOTHER
30 SECONDS TO SUM UP.

>> SO IN OTHER WORDS, YOUR
HONOR, I WOULD ASK THIS COURT
TO REVERSE AND REMAND
APPROPRIATELY, THANK YOU.

>> WE THANK BOTH OF YOU.
THE COURT WILL NOW TAKE A TEN
MINUTE RECESS.

>> PLEASE RISE.
THE COURT WILL BE IN RECESS FOR
10 MINUTES.