

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.

>> NEXT CASE IS PAUL DUROUSSEAU
V. STATE.

>> I'D LIKE TO JUST JUMP INTO
IT.

THERE'S A NOVEL QUESTION FOR
THIS COURTHOUSE TO LOOK AT.
AND I'D LIKE TO BEGIN BY GIVING
THE COURT A FRAMEWORK TO HOW TO
APPROACH THIS ISSUE.

THERE ARE MANY, MANY DETAILS IN,
I THINK, THE LEGAL FRAMEWORK.
THE NOVEL ISSUE IS THAT IN THIS
CASE THE STATE WAS ALLOWED TO
INTRODUCE EVIDENCE OF TWO
MURDERS OR TWO CRIMES FOR WHICH
THERE IS NO CONCLUSIVE EVIDENCE
OF THE DEFENDANT'S GUILT.
THE TWO COLLATERAL CRIMES, WHICH
WERE COMMITTED IN 2003 WERE
INTRODUCED --

>> CONVINCED OR CONCLUSIVE?
OR CLEAR AND CONVINCING?

>> I SAID CONCLUSIVE BUT I MEANT
CLEAR AND CONVINCING.

YES, CLEAR AND CONVINCING.
IN EVERY OTHER CASE, WHERE
MURDER CRIMES HAVE BEEN INDUCED,
THERE HAS BEEN A CONFESSION OR
CONVICTION.

SO THIS IS A VERY UNUSUAL CASE
IN TERMS OF HOMICIDE.
THE QUESTION OF THE COURT REALLY
HAS TO LOOK AT IS WHAT EVIDENCE
MEETS THAT STANDARD OF CLEAR AND
CONVINCING.

>> BEFORE THE OTHER HOMICIDE.

>> THAT'S JUST PART 1.

THAT'S AN IMPORTANT ISSUE.
OTHERWISE, WOULD BE BEYOND
REASONABLE DOUBT THAT IF YOU
DON'T HAVE THE OTHER KINDS OF
THE SUBJECT TO CLEAR AND
CONVINCING EVIDENCE THAT THE

DEFENDANT WOULD BE A PERPETRATOR
WE'D REALLY HAVE A BOOTSTRAPPING
GOING ON.

I THOUGHT THE JUDGE MADE THAT
DETERMINATION THAT THERE WAS
THESE OTHER TWO MURDERS CLEARLY
CONVINCING EVIDENCE THAT THE
MURDERER WAS THE PERPETRATOR.

>> WELL, THE TRIAL COURT FOUND
CLEAR AND CONVINCING EVIDENCE.

HE SAID THE SIMILARITIES WERE
CLEAR AND CONVINCING.

I HAVE TO ASSUME HE ALSO FOUND
THAT THE PROOF THAT THE
DEFENDANT WAS AS PERPETRATOR WAS
CLEAR AND CONVINCING, BUT I'M
NOT SURE WE STATED THAT
CORRECTLY.

I'VE GOT TO ASSUME HE FOUND THAT
THE BASIS OF HIS FINDINGS ONCE
THAT DEFENDANT HAD RELATIONS
WITH EACH OF THOSE TWO VICTIMS
AROUND THE TIME OF THEIR DEATHS.
THAT WAS THE ONLY EVIDENCE THAT
HE ACTUALLY COMMITTED THE
HOMICIDE.

>> DO THEY HAVE DNA EVIDENCE?

>> WELL, THE DNA EVIDENCE PROVES
THAT HE HAD SEXUAL RELATIONSHIPS
WITH THEM.

I FOUND THE TIME THAT THEY WERE
KILLED, EACH OF THEM.

>> EACH OF THEM WERE FOUND
MURDERED, DISTRESSED IN THE
STATE OF DISROBING, PRETTY
SIMILAR.

WHAT IS IT THAT SHE SAYS IS
MISSING?

IT'S NOT SO MUCH WHAT IS
MISSING.

>> HE DENIED KNOWING THESE
WOMEN?

>> WELL, HE TESTIFIED AT TRIAL
THAT HE KNEW EACH OF THEM.

>> WHEN HE WAS FIRST ARRESTED HE
DENIED KNOWING --

>> ALL OF THEM.

>> HE DID NOT DENY KNOWING THE
COLLATERAL CRIMES VICTIMS.

[INAUDIBLE]

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>> MY RECOLLECTION IS THAT HE SAID HE HAD NOT -- HE HAD PICKED MS. MCALLISTER OUT THAT THE CAB FARE, BUT DID NOT DENY KNOWING HER.

THAT'S MY RECOLLECTION.

I BELIEVE HE SAID HE DID NOT KNOW MS. KILPATRICK AND HE SAID HE DID NOT KNOW MS. MACK.

BUT I'D BE HAPPY TO CHECK OUT.

I THINK THAT'S RIGHT.

>> WHAT IS MISSING?

YOU ARE SAYING -- AND WE WANT TO FOLLOW THAT THIS IS TRUE, THERE ARE A LOT OF GREAT SIMILARITIES. WHAT ARE THE ELEMENTS MISSING LINKS TO ESTABLISH WHAT YOU CAN CAST WOULD BE NECESSARY TO ESTABLISH CLEARLY AND CONVINCINGLY THAT THIS DEFENDANT COMMITTED THOSE OTHER TWO? WHAT ELSE IS NEEDED THAT WE'RE MISSING?

>> IT'S NOT SO MUCH SOMETHING IS MISSING.

IT'S THAT THERE ARE FACTS THAT CUT AGAINST HIM AS A PERPETRATOR OF A HOMICIDE.

IN EACH CASE, THERE WERE OTHER SUSPECTS AND THERE'S AN OPPORTUNITY FOR OTHERS TO HAVE COMMITTED THE HOMICIDE.

IN BOTH CASES, EACH OF THESE WOMEN, IT WAS SHOWN, HAD A LIFESTYLE WHERE THEY HAD ASSOCIATIONS WITH MANY MEN, SEVERAL MEN AT THE SAME TIME GOING IN AND OUT OF THE APARTMENT.

AND MS. MCCALLISTER ESCAPED, SHE WAS ALSO PRESENT AT OR NEAR THE

TIME OF DEATH AND HIS SEMEN WAS ALSO FOUND IN HER WHEN HER BODY WAS FOUND.

NOT ONLY THAT, THERE WAS SEMEN ON THE SHEET THAT WAS THE MIXED-TYPE OF SEMEN, THAT WAS NOT LINKED TO MR. DUROUSSEAU. THERE IS EVIDENCE THAT OTHER

PEOPLE COULD HAVE BEEN INVOLVED WITH HER.

>> THAT'S IN WHICH CASE?

>> THAT'S IN THE MCCALLISTER CASE.

>> WHAT EVIDENCE IS THERE WE HAVE SOMEONE ELSE IS THERE ABOUT THE TIME THIS MURDER TOOK PLACE?

>> IN THE KILPATRICK CASE?

>> YES.

>> IN HER CASE, THE BODY WAS FOUND JANUARY 1st, I BELIEVE. AND SHE WAS LAST SPOKEN TO ON THE 29th.

THERE'S A COUPLE DAYS PERIOD OF TIME WHEN I WENT BACK TO WORK. SHE ALSO HAD ASSOCIATIONS WITH THREE DIFFERENT MEN AND ONE OF HER EX-BOYFRIENDS, WHO WAS THE FATHER OF HER UNBORN CHILD.

>> WAS THERE ANY EVIDENCE THAT THAT THESE OTHER MEN WERE AT THE SCENE AT OR NEAR THE TIME OF THE MURDER?

>> NO, THERE WASN'T.

>> THE MURDER WAS COMMITTED ON THE 27th.

>> AT THE LIKELY TIME IT WAS COMMITTED, YES.

>> WERE ANY OF THESE PEOPLE AT OR NEAR THE SCENE AT THAT TIME?

>> IN THE KILPATRICK CASE, NO.

[INAUDIBLE]

YOU ARGUE THAT THESE CRIMES DON'T MEET THAT.

LET'S PUT THAT ISSUE ASIDE.

I'M GOING TO ASK THE STATE ABOUT THE THRESHOLD ISSUE, WHEN YOU HAVE SEVERAL CRIMES THAT ARE SIMILAR.

BUT YOU MAY NOT HAVE TRUTH BEYOND A REASONABLE DOUBT THAT

THE DEFENDANT COMMITTED ANY ONE
OF THEM, IF THEY WERE TRIED
INDIVIDUALLY.

IS THIS YOUR ARGUMENT IN
DETERMINING WHETHER THERE WAS
CLEAR AND CONVINCING EVIDENCE OF
BANDING TOGETHER TWO CRIMES,

THAT THEY CAN'T USE -- THAT THE JUDGE CAN'T USE THE FACT THAT THERE IS A SIMILARITY BETWEEN ALL THREE IF YOU DON'T KNOW BEYOND A REASONABLE DOUBT ARE CLEAR AND CONVINCINGLY IF THEY SUBMITTED ONE OF THEM?

>> THAT'S CORRECT.

>> IT DOES STRIKE ME AS BEING POSSIBLE FOR THE DUE PROCESS PROBLEM.

ALL OF A SUDDEN INSTEAD OF THERE BEING BEYOND A REASONABLE DOUBT STANDARD, YOU END UP HAVING THREE OR FOUR MURDERERS AND THEY ARE PUT TOGETHER AND NONE OF THEM INDIVIDUALLY ARE PUT TO A HIGHER STANDARD.

IS THERE ANY CASE THAT DISCUSSES OTHER CLEAR AND CONVINCING EVIDENCE AS ONE OF THE CRIMES MUST BE DETERMINED WITHOUT CONSIDERING ALL THE COLLATERAL CRIMES?

>> YES, YOUR HONOR.

THE THREE CASES, I DISCUSSED INSIDE OF THEM ALL AND THEY ALL REFER TO THAT ARGUMENT.

ONE CASE INVOLVED ARSENIC POISON GAS.

SHE WAS BEING TRIED FOR ONE OF OUR SINS IN THE ATTEMPTED.

AND ADMITTED TO OTHER INCIDENTS WHERE HE HAS BEEN, AND ANOTHER PERSON, WHO SHE WAS CLOSELY ASSOCIATED WITH AFTER HER HUSBAND'S DEATH, HAD ALSO ARSENIC IN THEIR BODIES.

AND THE COURT SAID, SHE HAD AN OPPORTUNITY TO POISON ALL THREE OF THEM.

BUT THAT'S ONLY HALF.

>> I THOUGHT THOSE WERE CASES
WHERE THEY DIDN'T FIND
SUBSTANTIAL SIMILARITY.

>> THAT WASN'T EVEN ADDRESSED IN
THAT CASE.

>> THAT'S WHAT I'M ASKING YOU.
AND THIS HAS COME UP BEFORE AND
I DON'T KNOW THAT WE'VE EVER

GIVEN A DEFINITIVE ANSWER.
THERE'S GOT TO BE SOMETHING MORE
THAN JUST A PERSON MIGHT'VE DONE
THIS AT THE TIME, BEFORE HE LEFT
A MAN.

BECAUSE IT'S COMING IN FOR
IDENTITY.

THAT WAS SET UP THE STANDARD BE
NOT THAT THE OTHER KIND OF THE
DEFENDANT, BEYOND A REASONABLE
DOUBT, BUT CONVINCING EVIDENCE.
SO THE QUESTION, AGAIN, I'LL ASK
IS, HOW HAS THE COURT AT THIS
COURT OR ANY OTHER COURT
ADDRESSED WHETHER YOU CAN
CONSIDER ALL OF THE CRIMES, WHEN
DECIDING WHETHER THE FIRST
COLLATERAL CRIME CAN BE ADMITTED
INTO EVIDENCE TO MAKE IT CLEAR
AND CONVINCING EVIDENCE
STANDARD?

AND I DON'T THINK THOSE CASES
ACTUALLY DEAL WITH THAT
THRESHOLD ISSUE.

>> RIGHT, YOUR HONOR.

THE COURT ALSO SAID THEY WERE
DISSIMILAR.

AND AS THE VETO, I DON'T
RECOLLECT THE COURT SAYING
ANY --

>> YOU SAID THIS WAS A UNIQUE
CASE.

IT'S NOT UNIQUE IF YOU APPLY
DRAKE AND YOU LOOK AT THE
SIMILARITIES BETWEEN THE
MURDERS.

BUT I AGAIN, IT WOULD BE UNIQUE
IF YOU WOULD SAY THAT YOU HAVE
NOT YET DECIDED THE ISSUE THAT I
KEEP ON ASKING ABOUT, WHICH IS
PLUS THE THRESHOLD OF
DETERMINATION AS TO THE OTHER

CRIMES.

>> WELL, I UNDERSTAND YOUR
QUESTION, YOUR HONOR.

IT IS AN AGE BECAUSE WE HAVE
HOMICIDES.

I DO BELIEVE THE DEATH VETO IS
SIMILAR IN TERMS OF THE
BOOTSTRAPPING ISSUE.

IN THAT CASE WE HAVE AN ARSENIC DEATH OF A GRANDDAUGHTER IN AN EARLIER CAR WITH AN ARSENIC DEATH THAT KILLED THE DAUGHTER. THEY BOTH WERE IN THE APARTMENT OF THE FATHER, SO THERE WAS A LOT OF SIMILARITY, POSSIBLY UNIQUE SIMILARITY.

AND THAT'S THE CASE WHERE THE COURT SAID NO, YOU CAN'T BOOTSTRAP THROUGH THE EARLIER CRIME BY A SIMILARITY TO A LATER CRIME, AS I DO THINK THAT CASES DO POINT.

IT'S NOT A HOMICIDE CASE. BUT I THINK THAT CASE IS ON POINT.

THE POINT IS, WHAT THEY'RE SAYING IN THE STATE HERE, THEIR THEORY OF THE CASE WAS THAT BECAUSE THEY ARE SIMILAR, WE GET MIGHT HAVE DONE IT TO MIGHT'VE DONE THIS ONE TO CLEAR AND CONVINCING THAN HE DID BOTH OF THEM THEM.

>> WE'RE ALL DONE IN COURT'S TRIAL, CORRECT?

IS THERE ANY KIND OF PROCEDURE WHERE THAT COULD'VE -- THAT COULD'VE BEEN A DETERMINATION ABOUT THESE OTHER TWO CASES PRIOR TO THE ACTUAL TRIAL?

>> WELL, WHAT SORT OF DETERMINATION?

>> THEY DO HAVE FILES AND KIND OF MOTION TO INCLUDE THEM AND HAVE A HEARING TO DETERMINE WHETHER OR NOT THERE REALLY WAS CLEAR AND CONVINCING EVIDENCE THAT MR. DUROUSSEAU ACTUALLY COMMITTED THOSE OTHER TWO CASES.

>> WELL, THERE WAS SECURING.

I MEAN, THEY USE THE STIPULATED
SIMILARITIES AS THE BASIS FOR
WHETHER THE MURDER SHOULD BE
ADMITTED OR NOT.
AND THE DEFENSE ARGUED THAT
THERE WASN'T PROOF HE COMMITTED.
>> THERE WAS A HEARING.
THIS DATES ANNOUNCED, WILLIAMS

RULE, THE STATE TO TEST A VICTIM THAT CAME BEFORE THE JUDGE. IT WAS BASED ON STIPULATED FACTS.

>> THAT'S WHY.

BECAUSE AT THAT POINT THERE HAD NEVER BEEN A TRIAL FOR EITHER OF THESE OTHER TWO MURDERS.

>> THE WHOLE IDEA OF THE WILLIAMS RULE'S HEARING IS TO DECIDE WHETHER IT'S CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT COMMITTED THE OTHER CRIMES.

AND IF THERE IS SUBSTANTIAL SIMILARITY UNDER THE DRAKE STANDARD.

BUT GOING BACK TO THE FIRST ONE, WERE THEY JUST ARGUED TOGETHER?

IT'S NOT SIMILAR SO THEREFORE IT'S NOT CLEAR AND CONVINCING EVIDENCE OR DID THIS DEFENDANT MAKE THE ARGUMENT THAT YOU HAVE NO PROOF THAT HE COMMITTED EITHER OF THOSE FIRST TWO?

>> THE DEFENDANT MADE THE ARGUMENT THAT THERE'S NO PROOF.

ALL WE HAVE IS PROOF, THE DNA, SHOWING THAT HE W HAD SEXUAL RELATIONS WITH EACH OF THOSE VICTIMS AT OR AROUND THE TIME OF THE MURDER.

>> WAS THERE ANY OTHER THAN THE STIPULATION PRESENTED?

>> AT THE HEARING ON THE WILLIAMS RULE?

NO.

THERE WAS NO EVIDENTIARY HEARING.

JUST BASED ON THE WRITTEN STIPULATION.

>> I GUESS THE LAWYERS ENTERED

THE STIPULATION AND PROVIDED TO
THE JUDGE THAT BASED ON THE
STIPULATION TO JUDGE MADE THE
INCRIMINATION.

>> THAT'S CORRECT.

>> IN THIS CASE, HAS HE BEEN
PROSECUTED FOR EITHER OF THESE
OTHER TWO MURDERS?

>> NO, HE WAS ORIGINALLY
INDICTED BUT THOSE CHARGES WERE
DROPPED.

ALL THE CHARGES WERE DROPPED
AFTER HE WAS CONVICTED HERE.
AND THIS MURDER OCCURRED IN
1999.

THE OTHER TWO OCCURRED IN 2003.

>> RIGHT.

>> BUT THERE WERE TWO OTHER
MURDERS THAT THEY CHOSE NOT TO
TRY TO INTRODUCE BECAUSE THEY
KNEW THEY MAY RUN THE RISK OF
OVERWHELMING THIS PARTICULAR
CASE.

>> YES AND I DON'T THINK THEY
WERE SIMILAR EITHER.

ALL OF THE OTHER CHARGES WERE
DROPPED.

>> WITHOUT THE OTHER TWO MURDERS
AND I GUESS THIS IS A QUESTION
TO ASK, DID THEY --

I MEAN, THERE STILL SEEMS TO BE
EVIDENCE UPON WHICH A JURY COULD
CONVICT THIS DEFENDANT OF THESE
MURDERS, EVEN WITHOUT THE OTHER
TWO MURDERS.

OR DO YOU DISAGREE THAT THEY
COULD NOT PROVE THIS CRIME
WITHOUT PUTTING ON THE OTHER TWO
MURDERS?

>> IF YOU TAKE THE TWO MURDERS
OUT, I DON'T THINK THEY DID HAVE
SUFFICIENT EVIDENCE IN THIS
TRIAL, NO.

>> THE DNA IN THIS CASE IS FOUND
IN HER, CORRECT?

>> RIGHT.

>> DID THEY HAVE ANY KNOWN
RELATIONSHIP?

>> ACCORDING TO HIS TESTIMONY
THEY DID, YES.

>> HE IS SEEN LEAVING THE
PREMISES IN AND AROUND THE SAME
TIME OF THE MURDERS, CORRECT?

>> YES, HE IS IN HIS WORK
CLOTHES WITH HIS NAME ON HIS
WORK CLOTHES.

>> HE IS SEEN TAKING A
TELEVISION OUT, WHICH WAS TAKEN

FROM THE PREMISE.

>> RIGHT, A VERY LARGE TV WHICH SHE GAVE TO HIM.

>> WAS THERE A FINGERPRINT THERE?

>> NO.

>> BUT SHE WAS THERE?

>> YES, HE HAD A RELATIONSHIP WITH HER.

THERE WERE NO FINGERPRINTS OF VALUE AT ALL TO COMPARE TO ANYONE.

SO I DON'T KNOW THAT THAT PROVES ANYTHING.

JUST GOING BACK TO THE WITNESSES, THERE WERE TWO WITNESSES WHO SAW HIM AT THE TIME THAT HE SAID HE WAS THERE DURING HIS LUNCH HOUR.

NOW ONE OF THE WITNESSES, MR. PINCKNEY CAME DOWN AND OPENED THE TRUNK OF HIS CAR AND THEN WENT BACK UPSTAIRS.

MR. PINCKNEY GOT ON THE BUS SOMETIME AFTER 1:00 BETWEEN 1:00 AND 1:20 WHEN THE BUS WAS SUPPOSED TO ARRIVE.

THE OTHER WITNESS TESTIFIED THAT SHE SAW HIM COME DOWN AND PUT A TV IN THE CAR AND THEN SHE LEFT AND WENT SOMEWHERE.

BUT IN HER ORIGINAL TESTIMONY TO POLICE, WHAT SHE SAID IS THAT SHE SAW HIM COME DOWN, OPEN THE TRUNK OF THIS CAR, GO BACK UPSTAIRS AND BRING A TV DOWN AND PUT IT IN HIS TRUNK AND THEN LEAVE.

AND ALL OF THIS HAPPENED BEFORE MR. PINCKNEY GOT ON HIS BUS, WHICH MEANT IT WOULD'VE HAPPENED WHILE SHE WAS STILL ALIVE

BECAUSE SHE MADE A CALL ON THE
PHONE WITH SOMEONE AT 1:25.
THERE WAS CERTAINLY SUFFICIENT
EVIDENCE IN THE RECORD TO CREATE
REASONABLE DOUBT THAT HE WAS THE
ONE THAT KILLED HER.
>> ESSENTIALLY, THE DEFENDANT
HAD TO PUT ON THE CASE TO DEFEND

HIMSELF ON ALL THREE.

>> I THINK THAT'S WHERE THE DUE PROCESS ISSUE COMES IN.

>> AND AGAIN, IF THEY MEET THE THRESHOLD, WE'VE ALLOWED WILLIAMS -- I MEAN, YOU AGREE THERE IS SUBSTANTIAL SIMILARITY, WILLIAMS EVIDENCE CAN COME INTO PROVE IDENTITY.

>> YES.

>> AND THIS ONE EVEN THOUGH I HAVEN'T SPENT A LOT OF TIME TALKING ABOUT IT, SEEMS LIKE THERE ARE A GREAT DEAL OF SIMILARITIES BETWEEN THESE THREE CRIMES.

THAT'S REALLY THE SECOND CRIME OF THIS CLEAR AND CONVINCING EVIDENCE, HE COMMITTED THE OTHER TWO.

BUT IF THE STATES GET PAST THAT, THERE SEEMS TO BE ONE THAT HAS A FAIRLY UNIQUE FINGERPRINT.

I KNOW YOU ARGUE AGAINST IT, BUT LOOKING AT OTHER CASELAW, IT SEEMS THAT IT FITS IN TWO CASES WHERE THE SIMILARITIES ARE FAIRLY UNIQUE.

>> WELL, I HAVE TO STRONGLY DISAGREE WITH YOU THERE.

I THINK SIMILARITIES HERE ARE GENERAL.

THEY WERE YOUNG, BLACK WOMEN. THEY WERE FOUND PARTIALLY NAKED AND THERE WAS A CORD AROUND THEIR NECK.

THERE IS NOTHING UNIQUE OR UNUSUAL ABOUT THAT.

>> HIS SEMEN IS FOUND IN AND AROUND ALL OF THE THREE WOMEN. THEY ARE ALL IN SMALL APARTMENTS.

THEY ARE ALL FOUND IN THEIR
BEDROOM OR AROUND VERY CLOSE TO
THE BEDROOM.

THEY ARE FOUND WITH CORDS THAT
ARE NOT ALL THE SAME CORD, BUT
THEY ARE FOUND WITH CORDS THAT
ARE TAKEN FROM THE ACTUAL --
FROM THE ACTUAL PLACE, IN SUCH

OF A TELEPHONE CORD OR THE CABLE CORD.

SO THOSE SEEM TO BE, YOU KNOW, IN DUO OF HOW WILLIAMS BILL EVIDENCE THAT I'M A LITTLE CONCERNED ABOUT IT, BUT THOSE SEEM TO BE MORE THAN JUST GENERAL SIMILARITIES.

>> OKAY, LET ME JUST GO BACK TO THE VERY BEGINNING.

FIRST OF ALL, THE DNA IS NOT A SIMILARITY.

IT'S ONLY A SIMILARITY IF HE COMMITTED THE CRIME.

THE DNA IS A COINCIDENCE.

IT COULD SIMPLY MEAN THAT HE WAS THERE, HE IS IN RELATIONSHIPS WITH THESE WOMEN BEFORE THE CRIME WAS COMMITTED.

>> I DON'T THINK THAT'S A SIMILARITY.

>> YOUR POSITION IS THAT ALL THIS REALLY IS COINCIDENTAL AND THIS IS THE UNLUCKIEST MAN IN THE WORLD WHO HAS TO HAVE SEX WITH WOMEN AND THEN SOMEBODY IN THESE THREE CASES, SOMEBODY SHOWS UP RIGHT AFTER HE HAS SEX. AND WHILE THEY ARE STILL DISROBED.

AND NEITHER SEXUAL ASSAULTS ON AGAIN AND THEN MURDERS AND THIS IS A COINCIDENCE OF THAT HAPPENING IN THESE THREE CASES?

>> OUR POSITION IS THAT IT COULD BE A COINCIDENCE AND IT MAY SEEM IMPLAUSIBLE, BUT POSSIBILITY IS THE STANDARD HERE.

THERE HAS TO BE PROOF.

>> WHAT I'M SAYING ABOUT THE DNA IS THERE WAS PROOF OF EACH OF THEM INVOLVED IN A SEXUAL EITHER

RELATIONS OR BATTERY BECAUSE OF
THE DNA.

SO THE FACT THAT HIS DNA HELPS
TO FURTHER SOLIDIFY IDENTITY.

THE FACT THAT THESE ARE SEXUAL
CRIMES IS COMMON TO ALL THREE OF
THEM INTO BEING PARTIALLY
DISROBED, WITH ONLY THE TOP

STILL ON.

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AND HOW THEY ARE MURDERED WITH THE CORDS AROUND THEIR NECK. SO I UNDERSTAND WHAT YOU'RE SAYING, THAT THE DNA WOULDN'T ALONE -- I MEAN, IT'S A SIMILARITY IN THAT IT SHOWS THERE WAS SEXUAL PRIVATION IN ALL THREE CERTAINLY BEFORE THEIR MURDER.

>> AND JUST GOING BACK TO THE SIMILARITY, I THINK THIS CASE REALLY IS DIFFERENT FROM THE CASES WHERE THE COURT HAS SAID THERE IS A UNIQUE SIMILARITY. I MEAN, THIS IDENTITY IS PROVING IDENTITY BY SHOWING MOTIVES OF THE ROUNDUP, WHICH MEANS THAT IT HAS TO BE UNUSUAL AND UNIQUE. IN THIS CASE, YOU'VE GOT A LOT OF DISSIMILARITY AND THERE'S NOTHING UNIQUE THERE.

>> IS THIS UNIQUE IN THE SENSE OF YOU KNOW ALL OF THESE THINGS COME TOGETHER AND ALL OF THESE, ALL THREE MURDERS?

I MEAN, THE WAY YOU USE UNIQUE IS LIKE IT HAS TO BE SOMETHING UNUSUAL.

BUT, WHEN YOU PUT A NUMBER OF THINGS TOGETHER, ISN'T THAT UNIQUE ENOUGH?

>> EVEN IF IT'S A COMBINATION, THE COMBINATION HAS TO BE UNIQUE AND UNUSUAL.

IT POINTS TO ONLY ONE PERSON. I DON'T THINK THE SIMILARITIES POINT TO ONLY ONE PERSON.

>> THEY HAD SOME KIND OF RELATIONSHIP WITH THEM THAT HE HAD RELATIONS WITH EACH OF THESE WOMEN, JUST AROUND THE TIME THAT

THEY WERE MURDERED.
YOU DON'T THINK THAT IS UNIQUE
IN AND OF ITSELF?
YOU'VE ALSO SAID THERE WERE
THESE OTHER THINGS THAT SAYS
THAT ALL OF THIS OTHER SEMEN WAS
THE SAME PERSON.

I JUST DON'T UNDERSTAND WHY, IT SEEMS TO ME, YOU USING UNIQUE TO SAY UNUSUAL.

>> BY THEIR WORD WORKS.

IT'S THE MOTIVE OFFERED AROUND US.

THE WAY IT WAS COMMITTED, IT HAS TO BE UNIQUE.

THIS ASSOCIATION ISN'T ANY PART OF THE MOTIVE.

>> IF YOU BREAK DOWN EACH ONE, AND YOU WOULD NEVER, YOU WOULD NEVER HAVE WILLIAMS RULE IF YOU APPROACH IT IN THE WAY YOU SUGGEST THIS, YOU MUST TAKE EACH ELEMENT.

BUT IS IT NOT THE COMBINATION BECAUSE HERE WE GO THROUGH A WHOLE SCENARIO OF EVENTS.

WE DON'T LOOK AT THEM COLLECTIVELY AT THE EVENT, RATHER THAN JUST INDIVIDUALLY.

ONE PERSON IS BEATEN WITH A RAWLINGS BASEBALL BAT AND ANOTHER IS BEATEN WITH A SPALDING.

THAT'S NOT THE SAME.

BUT WHEN YOU START PUTTING THINGS TOGETHER -- AM I MISSING SOMETHING HERE?

>> YOUR HONOR, I THINK YOU MISUNDERSTAND YOUR ARGUMENT. I'M NOT SAYING THERE HAS TO BE ONE UNIQUE THING.

>> YOU'RE SAYING YOU'RE PICKING THEM ONE IN THE SAME BECAUSE THEY WERE STRANGLERED, SAYING YOU ONLY LOOK AT THAT ONE TO DETERMINE IF THESE ARE SIMILAR.

>> NO, I'M NOT TALKING ONLY ABOUT THE MATTER OF DEATH. I'M TALKING ABOUT THE WHOLE

CRIME.

>> WE HAVE THE VICTIMS ALL
INVOLVED IN THE SEXUAL ISSUE.

WE FIND DISROBED WITH LIGATURES
AROUND THE NECK.

IN ALL THESE CASES WE HAVE
EVIDENCE OF THERE BEING A
LIGATURE MARK IN SOME FIGHT OVER

THAT.

BEDROOMS WERE TOTALLY
DISHEVELED.

>> THERE'S A LOT OF
DISSIMILARITY.

MS. MACK -- THERE WAS A CORD
LOOSELY DRAPED AROUND HER NECK.
THERE WAS NO EVIDENCE THE CORD
WAS USED TO KILL HER.

SHE WAS MOST LIKELY SUFFOCATED
WITH A TOWEL.

EVEN THE STATE EXPERT AGREED TO
THAT.

THERE WAS NO SIMILARITY IN THE
FINDING.

THERE WAS NO EVIDENCE AT ALL
THAT MS. KILPATRICK WAS BOUND
WITH WAIST AND ANKLES IN ANY
WAY.

>> LET ME GO BACK TO WHEN YOU
WERE SAYING ABOUT THE VICTIMS
ARE NOT --

WHAT WE'VE SEEN IN OTHER CASES
THOUGH IS THE NATURE OF THE
VICTIMS IN THOSE CASES, THEY
WERE PROSTITUTES OF A CERTAIN
AGE.

IT SEEMS TO PLAY A PART.

SO HERE'S THE FACT THAT YOU'VE
GOT TO VICTIM, THE DEFENDANT
KNEW THAT HE HAD SEXUAL
RELATIONS WITH HER, THERE WAS NO
FORCED ENTRY AND THEY WERE ALL
YOUNG BLACK WOMEN AROUND THE
SIMILAR WEIGHT, SIMILAR
HAIRSTYLE, SIMILAR COMPLEXION.

JUST ON THAT, AS OPPOSED TO JUST
HOW THEY WERE KILLED, DON'T WE
CONSIDER THAT IN TERMS OF THE
SIMILARITY OF THE BIG TERMS?

IN OTHER WORDS, THE SITUATION
WAS THEY WERE ALL KILLED THE

SAME WAY, BUT ONE WAS A
60-YEAR-OLD WHITE WOMAN AND
SOMEBODY ELSE WAS A 30-YEAR-OLD
LATINA WOMAN AND THERE WERE
DIFFERENT TYPES OF VICTIMS.
YOU'D BE ARGUING THOSE WERE
DISSIMILAR, CORRECT?
SO SHOULDN'T WE BE LOOKING AT

THE SIMILARITY OF THIS RELATION
OF THE VICTIMS AND THE FACT HE
KNEW THEM AND KEEP THEIR TRUST
AS BEING A SIMILARITY.

>> THOSE ARE SIMILARITIES, I
AGREE.

I THINK WHAT YOU HAVE TO LOOK AT
IS NUMBER ONE, ARE THE
SIMILARITIES STRIKINGLY SIMILAR?
IN THIS CASE I SAY NO, THEY'RE
NOT.

>> THERE ARE A LOT OF
DIFFERENCES.

LET ME ASK YOU, IN MCCASLLISTER
I BELIEVE THE DNA WAS EXTRACTED
FROM CONDOM FOUND.

THAT SEEMS TO HAVE BEEN THE ONLY
CASE WHERE A CONDOM WAS USED.
IS THAT A DISSIMILARITY?

>> OR OTHER ITEMS.

IN ONE CASE THERE WAS A FINGER
CUT DOWN THERE THAT WAS
HYPOTHESIZED TO BE PART OF SOME
SORT OF SEXUAL ACT.

THE WAY THEY WERE KILLED.

ALSO, THE 2003 MURDERS WERE IN A
VERY COMPLETELY DIFFERENT PART
OF TOWN FROM THE CHARGED CRIME.
AND THREE YEARS LATER.

>> 5 MILES AWAY.

YOU CAN SAY ACROSS THE BRIDGE OR
ACROSS TOWN.

THEY WEREN'T -- LET ME GO
THROUGH SOME OF THE CASES WHERE
THEY ARE STRIKINGLY SIMILAR.
NOT ONLY DO THEY HAVE TO BE
STRIKINGLY SIMILAR, THERE HAS TO
BE SOMETHING UNUSUAL OR UNIQUE,
EITHER AT ONE OF THE FACTORS OR
IN A GROUP OF THE FACTORS.

SO IF YOU LOOK AT GORE, THEY
INTRODUCED EVIDENCE OF A RAPE TO

PROVE A MURDER.
TWO DIFFERENT TYPES OF CRIMES.
IT'S NOT ONE THING YOU LOOK AT.
YOU LOOK AT THE WHOLE THING.
AND THE PLAINTIFFS -- CAN YOU
LOOK AT THIS AND SAY
CONCLUSIVELY THAT THE PERSON WHO
COMMITTED THIS CRIME, FOR THESE

CRIMES ALSO COMMITTED THIS ONE.
AND THAT'S WHAT YOU LOOK AT AND
THAT'S WHY IN THE COURT CASE
YOU'VE GOT -- HE DIDN'T HAVE A
CAR.

HE GOT PICKED UP BY THESE WOMEN,
MET WITH THEM.

HE WENT TO THE ATTACK SITE IN
THEIR CAR.

HE SPENT A LOT OF TIME WITH THEM
BEFORE.

HE REFERRED TO HIMSELF AS TONY
IN BOTH CASES.

AND THAT'S A FAIRLY UNIQUE
IDENTIFIER THERE, VERY UNUSUAL
THAT HE WOULD CALL HIMSELF TONY
BOTH TO THIS VICTIM AND TO THE
HOMICIDE VICTIM.

HE STOLE THEIR JEWELRY.

>> I'M NOT SURE I UNDERSTAND WHY
THAT'S SO UNIQUE.

I MEAN, LOTS OF PEOPLE CALL
THEMSELVES TONY.

>> TO TWO DIFFERENT VICTIMS?

>> I'M NOT SURE WHY PICKING THAT
OUT MAKES THAT UNIQUE AS OPPOSED
TO THIS MAN'S DNA BEING THERE AT
ALL OF THESE SCENES, DOESN'T
MAKE YOU UNIQUE.

>> AGAIN, THE DNA IS NOT A
FACTOR.

I THINK IT IS UNUSUAL THAT HE
WOULD IDENTIFY HIMSELF BY A
DIFFERENT NAME AND IT WOULD
HAPPEN TO BE TONY.

BUT HE ALSO ATTACKED BOTH OF
THEM ON A TRASH PILE ON DIRT
ROADS.

HE ALSO STOLE THEIR JEWELRY AND
PAWNED IT IMMEDIATELY
AFTERWARDS.

HE ALSO TOOK THEIR CARS TO

ANOTHER STATE AND TOLD THE
PERSON HE WAS STAYING WITH THE
CAR HAD BEEN LOANED TO HIM BY A
GIRLFRIEND.

SO THERE WERE VERY, VERY

SIMILAR --

>> THE DNA --

[INAUDIBLE]

WHY IS THE DNA NOT A FACTOR?
AND WHY IS THAT NOT A FACTOR IF
HE'D BEEN ALL THREE PLACES HE'D
BEEN SEEN GOING IN THE DOOR
RIGHT BEFORE THE MURDERS, WOULD
THAT BE A FACTOR?

>> THIS IS THE MOST TROUBLING
ISSUE AND I UNDERSTAND WHY IT
TROUBLES THE COURT.

IT'S AN UNCOMFORTABLE FACT IS
WHAT IT IS.

IT'S NOT PART OF THE CRIME
UNLESS HE COMMITTED THE CRIME.
AND THE TRIAL HERE DETERMINES
WHETHER HE COMMITTED THE CRIME.
SO IF YOU ASSUME THE DNA --

>> THE FACT THAT THE DEFENDANT
WAS SEEN ENTERING THE THREE
PARAMETERS RIGHT BEFORE THE
MURDER WAS COMMITTED DOES NOT
NECESSARILY ESTABLISH THAT HE
COMMITTED THE CRIME, BUT IS
CERTAINLY A FACTOR THAT A JURY
WOULD LOOK AT.

AND YOU SAY THAT'S NOT A FACTOR,
THAT JUST STRIKES ME --

>> LET ME TRY AGAIN.

IT'S NOT PART OF THE
SIMILARITIES THAT MAKE UP THE MO
OF THE CRIME UNLESS YOU ASSUME
HE COMMITTED THE CRIME.

YOU'RE ASSUMING HE COMMITTED THE
CRIME.

THEN IT BECOMES PART OF THE MO.
BUT WE CAN'T ASSUME THAT.

WE'VE GOT TO LOOK AT THE
SIMILARITIES APART FROM THAT.
OTHERWISE WE'RE BOOTSTRAPPING
EVERYTHING.

>> SO THERE IS A DIFFERENCE --
ARE YOU SAYING THAT HE MADE THE
CONVICTION THERE HAS TO BE A

CONVICTION?

>> NOW, THERE DOES NOT HAVE TO
BE A CONVICTION.

THAT'S NOT THE STANDARD.

THERE HAS TO BE CLEAR AND
CONVINCING PROOF THAT HE
COMMITTED EACH OF THOSE

COLLATERAL CRIMES INDEPENDENTLY OF THE OTHERS.

AND IF YOU LOOK AT EACH OF THEM INDEPENDENTLY, YOU LOOK AT THE KILPATRICK CRIME.

ALL YOU HAVE IS EVIDENCE THAT HE HAD SEXUAL RELATIONS WITH THIS WOMAN WITHIN A DAY OR TWO OF HER MURDER.

IF YOU LOOK AT MCCASLLISTER, YOU'VE GOT THE EXACT SAME THING. ALL YOU HAVE IS EVIDENCE HE HAD SEXUAL RELATIONS WITH HER AROUND THE TIME OF HER MURDER AND THAT SOMEONE ELSE DID TOO, HER FIANCÉ.

>> IT'S NOT NOT THE ONE WHERE HE CALLED THE POLICE DEPARTMENT AND SAID THE BOYFRIEND DIDN'T AND HE DESCRIBED HOW IT WAS DONE AND WORK WAS DONE IN THE RECOGNIZED HIS VOICE?

>> THAT'S RIGHT.

>> HE WENT BACK TO THAT APARTMENT AFTER HE LEFT.

THE FIANCÉ WAS TRYING TO GET IN.

>> OKAY, MS. CAREY, YOU'RE WELL BEYOND YOUR TOTAL TIME FOR THIS ARGUMENT AND I JUST WANT TO FINALLY UNDERSTAND YOUR YOUR ARGUMENT REALLY HERE SEEMS TO BREAK DOWN TO THAT EACH OF THESE CASES, THE WILLIAMS BILL CASES, HAVE TO BE DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE THAT HE COMMITTED THE CRIME WITHOUT REFERENCE TO ANY OF THE OTHER CASES.

>> THAT'S CORRECT.

OTHERWISE, YOU ARE SAYING MIGHT PLUS MIGHT EQUALS CERTAINTY AND THAT'S NOT THE STANDARD.

>> THANK YOU VERY MUCH.

>> GOOD MORNING.

I'M FROM THE ATTORNEY GENERAL'S
OFFICE.

>> WE ALL AGREE THAT YOU HAVE TO
PUT THE COLLATERAL TIME --

[INAUDIBLE]

20

>> WE ALSO AGREE THAT THE PARTICULAR CRIME THAT IS BEFORE THE JURY BEYOND A REASONABLE DOUBT.

>> THAT'S CORRECT.

>> IN ORDER TO PROTECT THE OLD STANDARD OF PRESUMED INNOCENT AND DUE PROCESS CONCERNS BEYOND A REASONABLE DOUBT THAT THERE NEEDS TO BE INDEPENDENT EVIDENCE OF EACH OF THE OTHER COLLATERAL CRIMES BY CLEAR AND CONVINCING EVIDENCE OR YOU GO TO THE NEXT STEP, WHICH IS ARE THEY SUBSTANTIALLY SIMILAR AND UNIQUE?

>> I THINK YOU DO HAVE TO PROVE THAT THE COLLATERAL CRIMES WERE COMMITTED IN CLEAR AND CONVINCING EVIDENCE THAT THE STANDARDS THIS COURT HAS SET FOR ADMISSION OF COLLATERAL CRIME EVIDENCE.

BUT WHEN YOU HAVE A SITUATION LIKE THIS, MR. DUROUSSEAU WAS CHARGED BY INDICTMENT WITH SIX MURDERS.

HE HASN'T BEEN TRIED FOR ANY EVIDENCE.

HE HASN'T CONFESSED TO ANY OF THEM, HASN'T BEEN CONVICTED OF ANY OF THEM.

SO WE'RE AT SQUARE ONE.

THERE'S REALLY NOTHING WE CAN DO AT THIS POINT TO GET THESE OTHER CRIMES AND THIS COLLATERAL CRIME EVIDENCE IN ONE OF THESE CASES UNLESS WE DO IT THIS WAY.

>> WE SAY DOING THIS WAY, MEANING THAT THE STATES ADMITTING THAT THEY CAN'T SHOW

FOR EACH OF THE OTHER TWO CRIMES
CLEAR AND CONVINCING EVIDENCE
INDEPENDENT OF ALL THREE THAT HE
COMMITTED THE OTHER TWO.
AS I KNOW YOU MENTIONED.
>> I THINK WE CAN'T, BUT I
ACCIDENTALLY DO NOT THINK WE

HAVE TO.

>> LET'S SAY WE CAN AND THEN WE REALLY DON'T HAVE TO DEAL WITH THE SITUATION --

>> I WOULD PREFER TO DEAL WITH A SITUATION WHERE IT'S ADDRESSED.

>> LET'S HEAR WITH CLEAR AND CONVINCING EVIDENCE IS THAT HE COMMITTED THE OTHER TWO CRIMES.

>> WITH REGARD TO EACH OF THEM, WHAT WE HAVE ARE SITUATIONS WHERE MR. DUROUSSEAU WAS INVOLVED WITH THE VICTIMS, WAS KNOWN TO HAVE SEX WITH THE VICTIMS ON THE DAY THE VICTIMS WERE KILLED.

EACH OF THE COLLATERAL CRIMES. I DON'T KNOW IF WE HAVE TWO OF THE COLLATERAL CRIMES TO EACH OTHER BUT THEY ARE BOTH VERY SIMILAR.

>> I WOULD THINK THERE WOULD HAVE TO BE -- HE'LL HAVE TO TELL ME IF THIS CASE WILL GO ONE WAY OR ANOTHER.

IT SEEMS THAT THE CONCERN WOULD BE THAT YOU GOT SOMEBODY IN THEIR CRIMES, WHATEVER AS YOU SAY AND YOU GO WELL, IT SURE LOOKS LIKE IT MUST BE THIS, BUT THE MORE WE CAN PUT IN, THE MORE WE WON'T HAVE TO WORRY ABOUT THE ONE TIME BECAUSE SOMEONE HERE WITH SIX KINDS, THE PERSON IS TRIED TO DEFEND HIMSELF AGAINST, YOU KNOW, HE DIDN'T DO THIS ONE, DIDN'T DO THAT ONE, HE MADE THE CALL, HE DIDN'T MAKE THE CALL. AND ALL OF A SUDDEN YOUR DEFENDING SEVERAL OCCURRENCE. SO WE DO HAVE TO HAVE THRESHOLD HEARD FIRST OF ALL, TELL ME IS

THERE ANY CASE LAW THAT HAS
ANSWERED THIS QUESTION AS TO
WHETHER CLEAR AND CONVINCING
REQUIRES INDEPENDENT PROOF OF
THE OTHER CRIMES OR NOT?

>> WELL, THIS COURT HAS NOT SAID
SO.

I UNDERSTAND APPELLANT'S

CONTENTION THAT NORTH SUGGEST THAT.

I THINK ALL OF THOSE CAN BE DISTINGUISHED ACTUALLY.

I DON'T THINK ANY OF THEM HAVE SAID THE PRINCIPLE OF LAW BUT UNDER NO CIRCUMSTANCES CAN COMPARISONS OF THE CHARGED CRIME BE USED TO DEMONSTRATE THAT THERE IS A HIGH ENOUGH STANDARD OF THE COLLATERAL CRIMES.

>> IS THERE ANY FROM ANY OF THE OTHER STATES?

BECAUSE WE WERE TALKING IN THE DUE PROCESS CONCERNS.

AND BECAUSE WE ARE ON THE REASONABLE DOUBT ON THE OTHER TWO.

>> THAT'S RIGHT.

IN FACT, IN MOST STATES IT'S A LOWER STANDARD.

>> DO THEY SAY IN ANY OTHER COURTS TO DETERMINE THIS ISSUE?

>> IN THE FEDERAL STANDARD?

>> IT IS.

>> AND THERE'S NOT A DUE PROCESS INVOLVED IN THAT.

>> WELL, THAT HAS BEEN DISCUSSED IN THE DOWLING DECISION.

>> WHY WOULDN'T IT BE A BETTER POLICY REALLY, YOU'RE TALKING ABOUT CRIMES THAT HAVE NOT BEEN CONCLUSIVELY DEMONSTRATED, THAT THIS DEFENDANT COMMITTED HERE AND HE DIDN'T CONFESS.

THERE'S BEEN NO CONVICTION.

SO WHY WOULDN'T IT BE A BETTER POLICY THAT FOR EACH OF THOSE CRIMES, THAT THE STATE WOULD HAVE TO DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT HE ACTUALLY COMMITTED THOSE CRIMES

INDEPENDENT OF BRINGING IN THE
OTHER CRIME.
IT JUST SEEMS TO ME THAT THAT
WOULD REALLY BE A BETTER WAY TO
DO DEAL WITH THIS AND WE
WOULDN'T HAVE THIS DUE PROCESS
KIND OF ISSUES.

>> IN ANGLO-AMERICAN JURISPRUDENCE COLLATERAL IS KILLED AS EVIDENCE. AND THIS KIND OF CASE, STRONGEST EVIDENCE THE STATE HAVE IS THAT THE CRIMES WERE EXTREMELY SIMILAR AND THEY ALL BOUGHT HIM A KIND OF A VERY CLOSE CONNECTION?

>> I CAN UNDERSTAND THAT'S WHAT THE STATES BEST EVIDENCE IS THAT ALL THESE CRIMES HAVE SOME SIMILARITIES AND SO HE MUST'VE COMMITTED ALL THESE CRIMES. BUT I'M SAYING WHY ISN'T IT-- HOWEVER, BECAUSE YOU DON'T HAVE TO DEMONSTRATE BEYOND A REASONABLE DOUBT THAT HE COMMITTED THOSE CRIMES, BUT AT LEAST THE STATE SHOULD NOT -- SHOULD HAVE TO PROVE THAT CLEAR AND CONVINCING EVIDENCE THAT HE COMMITTED THOSE CRIMES WITHOUT REGARD TO EACH OTHER.

>> I SIMPLY DON'T BELIEVE THAT IT IS GOOD POLICY TO PROHIBIT THE STATES FROM SHOWING SIMILARITIES OF THE CHARGED CRIME IN ORDER TO PROVE COLLATERAL CRIME IN A SITUATION LIKE THIS.

>> IT SEEMS LIKE A CIRCULAR. THERE IS SOME BOOTSTRAPPING. YOU GO AND SAY YOU FIRST EXERCISE THEY'RE SUBSTANTIALLY SIMILAR BEFORE YOU DECIDE WHETHER THERE WAS CLEAR AND CONVINCING EVIDENCE THAT IT SEEMS THAT I'VE ALWAYS UNDERSTOOD THAT DECISION HAD TO BE MADE INDEPENDENTLY BECAUSE OTHERWISE YOU RUN THE RISK OF IT

JUST BEING LUMPED TOGETHER AND
THEN ALSO YOU DON'T HAVE BEYOND
A REASONABLE DOUBT OR ANYTHING
CLOSE TO IT FOR EACH ONE.
BUT THE JURY HERE IS ABOUT ALL
OF THESE.
IT JUST SAYS THEY MUST BE GUILTY
OF SOMETHING.

THAT'S WHAT WE OF COURSE WANT TO AVOID.

WE'VE GOT TO PROTECT THE STANDARDS OF THE DUE PROCESS.

NOW IN THE FEDERAL CASES, IF THEY ONLY REQUIRE, DO THEY ADDRESS THE ISSUE I JUST ASKED?

>> I'VE NOT SEEN THIS ADDRESSED IN OTHER ISSUES.

>> THERE'VE BEEN PRETTY STRONG INDEPENDENT EVIDENCE THAT THEY COMMITTED AT THE TIME.

>> WELL, THAT'S ALWAYS THE CASE AND I THINK THERE WAS GOOD EVIDENCE HERE.

I DO THINK THE STRONGER EVIDENCE FOR THE CLASSIFICATION TOGETHER. AGAIN, WE'RE IN THE SITUATION SIMPLY BECAUSE WE'RE AT SQUARE ONE.

WE ARE AT THE FIRST CONVICTION. IT'S THE ONLY WAY THAT WE CAN SHOW, NOT THE ONLY WAY, BUT THE BEST WAY THAT WE CAN SHOW THAT THESE COLLATERAL CRIMES ARE RELATED OR RELEVANT IS TO SHOW THE SIMILARITIES.

>> BUT YOU ALSO SAID YOU THINK THAT THERE IS EVIDENCE.

TELL US, WHAT IS IN THE MCCASLLISTER CASE, WITHOUT REGARD TO THIS CASE OR THE KILPATRICK CASE.

WHAT IS THE EVIDENCE IN THE MCCALLISTER CASE TO DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT THIS DEFENDANT COMMITTED THAT CRIME.

>> I DON'T KNOW IF IT'S BY CLEAR AND CONVINCING EVIDENCE BECAUSE THE SIMILARITIES ARE PART OF THAT.

BUT THE EVIDENCE THAT HE
COMMITTED THE MCCASLLISTER
MURDERS ARE THAT HE DID HAVE SEX
WITH MS. MCCASLLISTER THAT DAY.
BUT AROUND THE TIME THAT HE WAS
KNOWN TO HAVE CONTACTED HER AND
HAVE SEX WITH HER, SHE WAS
KILLED BY LIGATURE

STRANGULATION.

THAT THE NEXT DAY SHE MADE A PHONE CALL ACCUSING SOMEBODY ELSE OF THE MURDER.

HE LATER ADMITTED THAT HE LIED ABOUT THAT.

>> NOW, IS THAT THE MURDER WHERE THE BOYFRIEND WAS LOCKED OUT OF THE HOUSE OR SOMETHING AND HE WAS AROUND THE SCENE AT THE SAME TIME, AT OR ABOUT THE SAME TIME?

>> THAT'S RIGHT.

BUT THE FACT HE LIED ABOUT WHETHER HE KNEW SHAWANDA MCCALLISTER.

I DON'T HAVE THE ACTUAL RECORD CITATION.

>> SO WHAT ABOUT THE KILPATRICK CASE, THAT'S THE MCCASLLISTER CASE, CORRECT?

WHAT IS THE CLEAR AND CONVINCING EVIDENCE ON THE KILPATRICK CASE?

>> JUST THE SAME.

WE KNOW THAT HE WAS IN NIKIA KILPATRICK'S APARTMENT AT THE SAME TIME AND HAD EXITED THERE. THERE IS STRONG EVIDENCE THAT THERE WAS A VIOLENT ENCOUNTER WITH MS. KILPATRICK AND WAS EVENTUALLY KILLED.

HE WOULD BE THE PRIMARY WITNESS. HE WOULD BE THE PRIMARY --

>> NOW, IS THAT THE MURDER WHERE THE BODY WAS FOUND A COUPLE OF DAYS LATER?

THE DATE HE INDICATED WAS TWO DAYS EARLIER AND IT WAS A MEDICAL EXAMINER SAID THAT WAS CONSISTENT WITH THE BODY AT THE TIME IT WAS FINE.

THAT'S WHAT THE STATE OFFERED IN THE WILLIAMS BILL HEARING.

I THINK THAT'S ENOUGH TO PERMIT
THEIR ADMISSION IN THIS CASE.
BUT, YOU KNOW, I REALLY DON'T
WANT TO SAY THAT THE STATE IS
NOT PERMITTED IN A CASE LIKE
THIS TO SHOW THOSE SIMILARITIES
IN ORDER TO SHOW THAT THEY'RE
ADMISSIBLE.

I UNDERSTAND THE CONCERN ABOUT BOOTSTRAPPING, I HONESTLY DO. AND I SEE WHAT HAPPENED IN THE CASE THAT COULD LEAD TO THIS WHERE YOU HAVE SOME CRIME COMMITTED A LONG TIME AGO AND IT SORT OF INVOLVED A DEFENDANT IN EACH OF THOSE CASES WHERE THERE WAS EVIDENCE THAT THE DEFENDANT HAD COMMITTED THE CRIME. AND JUST SAYING, THEY WERE SIMILAR, SO IT'S ADMISSIBLE BECAUSE OF SIMILARITIES AT THE MISTRIAL.

I UNDERSTAND THAT CONCERN. BUT IN A CASE LIKE THIS WHERE YOU'VE GOT A MULTIPLE MURDER AND THE STRONGEST EVIDENCE THAT THE STATE HAS, AS THE SIMILARITIES BETWEEN THESE CASES IN THEIR LINKS TO THE DEFENDANT.

I DON'T THINK THAT IT'S APPROPRIATE OR FAIR TO PROHIBIT STATE FROM SHOWING THOSE IN ORDER TO PERMIT THE ADMISSIBILITY OF THAT EVIDENCE. THERE'S ONE PRELIMINARY MATTER I THINK WAS MISSING DURING THE APPELLANT'S PRESENTATION THAT I WANT TO MAKE SURE THAT WE UNDERSTAND.

WHY WAS THIS EVIDENCE INTRODUCED AT ALL?

WHY DID THEY WANT TO INTRODUCE THAT?

IT WAS CERTAINLY ADMITTED FOR INTENT.

THEY WANTED TO DEMONSTRATE TO IT WAS THAT KILLED TYRESA MACK AND THIS EVIDENCE PRESUMABLY PROVES IDENTITY.

EXCUSE ME, I MEANT IDENTITY.

IDENTITY OF THE MURDER, THAT'S
TRUE.

BUT REALLY IT'S MORE THAN THAT.

AND SPECIFICALLY WHAT THAT
ADMITTED FOR IS WHAT JUSTICE
CANADY TALKED ABOUT AND THAT IS
ABSENCE OF COINCIDENCE.

I'VE SEEN THE TERM USED IN OTHER

JURISDICTIONS AS THE BASIS FOR
ADMITTING RULE 404 EVIDENCE.
ABSENCE OF COINCIDENCE.
HIS DEFENSE IN THIS CASE WAS YES
I HAD SEX WITH TYRESA MACK ON
THE AFTERNOON OF JULY 26.
I UNDERSTAND SHE WAS KILLED THAT
AFTERNOON.
I'M NOT THE ONE WHO KILLED HER.
IT'S JUST A COINCIDENCE.
THE FACT THAT THERE ARE TWO
OTHER WOMEN WHO HE HAD SEX WITH
THAT VERY DAY THAT DIED OF
LIGATURE STRANGULATION MAKES
THAT DEFENSE OF COINCIDENCE MUCH
LESS REASONABLE.
THAT IS WHY THE SENTENCE IS
BEING ADMITTED.
THAT'S WHAT'S GOING ON HERE.
SO WE'RE NOT TALKING THE TYPICAL
IDENTITY CASE.
WE'VE GOT A CRIME AND THERE'S
FEATURES OF THE CRIME THAT ARE
SIMILAR TO A PAST CRIME.
IT MUST'VE BEEN HIM.
IT WAS OMITTED TO REBUT THE
DEFENSE.
IT'S VERY SIMILAR TO THE ABSENCE
OF A MISTAKE.
>> BUT HE HAD TO MAKE THAT
DEFENSE BECAUSE THE THREE WERE
COMING IN.
I MEAN, IT SORT OF PUT THE
DEFENDANT -- ARE YOU NOW SAYING
THAT THE DRAKE RULE IS NOT TO
APPLY HERE?
THAT THE COURT DOESN'T HAVE TO
FIND THAT THE SIMILARITIES
PREVAILED BEFORE THE OTHER --
>> EXCUSE ME, I'M SORRY.
THE LEVEL OF CRIMINAL THAT -- A
GOOD EXAMPLE OF THAT IS

PETERSON, WHICH WAS DECIDED LAST
YEAR, WHERE YOU'RE REALLY JUST
TRYING TO IDENTIFY THE
PERPETRATOR OF A CRIME.
AND IT'S JUST SIMPLY SIMILAR.
>> WHETHER IT'S NOTHING THAT
LINKS THE PERPETRATOR TO THE
SCENE OF THE CRIME OR ABOUT THE

TIME THE CRIME WAS COMMITTED.
>> THEN THAT'S GOING TO BE THE
HIGHEST LEVEL OF SIMILARITY THAT
YOU NEED.
IN AN ABSENCE OF COINCIDENCE OR
ABSENT IT WOULD BE EXACTLY.
OBVIOUSLY, SIMILARITY AS CRITIC.
BUT I WOULD SAY THAT IT'S
PROBABLY NOT AS CRITICAL AS IT
IS FOR THE PEER IDENTITY -- HERE
THE SAME THEORY IS THAT HE RAPED
AND KILLED THESE WOMEN.
AND OBVIOUSLY HIS DEFENSE THAT
HE HAD SEX WITH THEM AND THEY
WERE KILLED BY SOMEBODY ELSE IS
WHAT THE EVIDENCE IS TRYING TO
REBUT.
SO, REALLY THE CRITICAL
SIMILARITIES I VOLUNTEER I THINK
IS DOMESTIC, YES.
I WANT TO TALK ABOUT THAT A
LITTLE BIT.
THE APPELLANT HAD SAID IN THE
BRIEF THAT LIGATURES STIMULATION
IS A FAIRLY COMMON METHOD OF
HOMICIDE AND IF WE'RE STRUGGLING
HOW TO DEAL WITH THAT BECAUSE I
DON'T AGREE WITH THAT AT ALL.
I'VE CHECKED CRIMINAL JUSTICE
STATISTICS AND I FOUND THAT IS
NOT A TRUE STATEMENT, THAT
STRANGULATION -- FIRST OF ALL,
HOMICIDE IS NOT A COMMON THING
TO HAPPEN.
AND STRANGULATION IS A VERY
UNCOMMON METHOD OF HOMICIDE, OF
MURDER.
>> WE'VE CERTAINLY SEEN A NUMBER
OF CASES WITH A FEW STIMULATION.
>> I WOULD SUGGEST THE REASON
THIS COURT SEES IT AS
STRANGULATIONS ARE PROBABLY

OVERREPRESENTED IN CAPITAL CASES
BECAUSE THEY TEND TO BE VERY
VIOLENT CRIMES OFTEN TIMES VERY
SEXUALLY VIOLENT CRIMES.
WE'RE NOT TALKING ABOUT THE
RANGE OF CAPITAL CASES.
WE'RE TALKING ABOUT THE WIDE

WORLD AND WHETHER IT'S A
COINCIDENCE THAT PAUL DUROUSSEAU
WAS INVOLVED IN THESE THREE
CASES.

LESS THAN 1% OF ALL MURDERS ARE
COMMITTED BY STRANGULATION.
NOT JUST LIGATURE STRANGULATION.
IF YOU EXTRAPOLATE THAT TO
FLORIDA.

I'M TRYING TO ADDRESS THE CLAIM
THAT I THINK NEEDS TO BE
ADDRESSED IN THE DEGREES THAT
THIS IS A FAIRLY COMMON METHOD
OF HOMICIDE.

[INAUDIBLE]

>> THERE IS EVIDENCE THAT'S
CERTAINLY ATTEMPTED
STRANGULATION, LIGATURES
STRANGULATION.

THAT'S THE ACTUAL CHARGES
OCCURRING.

[INAUDIBLE]

BUT IN TERMS OF LOOKING WE
DESCRIBED IT AS BEING UNIQUE
FINGERPRINTS.

GOES BEYOND A REASONABLE DOUBT
TO THIS DEFENDANT, SHORT --

[INAUDIBLE]

THIS IS THE KIND OF CRIME THAT
IS MISSING.

BUT SHOOTING IS MORE COMMON ON
THE OTHER HAND.

IF THEY WERE SHOOTING IN AN
APARTMENT WHERE THESE WERE YOUNG
BLACK VICTIMS AND WE HAD KNOWN
THEIR PERPETRATOR AND THEY WERE
SEXUAL BATTERY.

MAYBE YOU'RE TRYING TO FOCUS ON
STRANGULATION AS NOT COMMON.
BUT TO ME, YOU CAN JUST FOCUS ON
THE STRANGULATION HERE.

>> ABSOLUTELY.

I WANT TO MAKE IT CLEAR THAT THE STRANGULATION IS A VERY UNCOMMON METHOD TO DEATH.

LIGATURES STRAGULATION IS ONE MORE KIND OF STRANGULATION.

>> THE CHORDS ARE TAKEN FROM WITHIN THE PREMISE I ASSUME IS EVEN A LOWER POSSIBILITY.

>> THERE A NUMBER OF SIMILARITIES IN THIS CASE. BUT THE BOTTOM LINE IS THERE WERE THREE WOMEN IN JACKSONVILLE, KILLED BY LIGATURES STRANGULATION WITHIN 5 MILES OF EACH OTHER IN EACH OF THEM HAD SEX WITH PAUL DUROUSSEAU THE DAY THEY WERE KILLED.

>> WAS AROUND THE TIME, NOT JUST THE DAY.

>> THERE IS A PERIOD OF TIME THAT WE CAN LINK TO THE TIME --

>> IS A SYMPTOM OF EVIDENCE WITH LIGATURE.

>> WITH MS. MACK, THERE WAS BRUISING. THE MEDICAL EXAMINER. MS. MCCASLLISTER DID HAVE BRUISING ON HER. WITH MS. KILPATRICK WE DIDN'T FIND ANYTHING THAT WE DIDN'T FIND HER BODY FOR A COUPLE DAYS AFTER THE DEATH. SO THAT MAY HAVE SOME MORE TO DO WITH IT. THERE ARE NUMEROUS EXAMPLES. WE DON'T CONNECT THEM DIRECTLY TO MR. DUROUSSEAU, THESE ARE A YOUNG, SINGLE --

>> AND DIDN'T HE DENY KNOWING ALL THESE PEOPLE?

>> HE DID. THAT'S RIGHT. THEY DID LIVE IN A 5-MILE RADIUS OF EACH OTHER, ALL KILLED THE SAME WAY, ALL KILLED AT A TIME THAT THEY HAD SEXUAL INTERCOURSE. NO SIGN OF FORCED ENTRY. IN THE CASE WAS A HOUSEHOLD

ELECTRICAL CORD THAT WAS USED
WITH THE LIGERATURE AND THERE
WAS IN FACT BROKEN ELECTRICAL
CORDS EVEN WHEN THERE WASN'T AN
ELECTRICAL POWERED COMMON THEMES
OF THE STIMULATION RECORD SURE.
IT WAS AFTER THE VICTIMS BACK.

IN EACH CASE THERE WAS KIND OF A VIOLENT STRUGGLE.

[INAUDIBLE]

IN THE TWO COLLATERAL CRIME CASES THEY WERE SIMILAR IN IT WAS FOUND MORE LOOSELY TIED TO TYRESA MACK'S CASE.

>> WHAT IS THE ISSUE IN THIS CASE AND I KNOW THERE IS A SIMILARITY TO THE FACTS OF THIS CASE, THAT HE'S DEFINITELY IDENTIFIED AS BEING -- CARRYING A TV OUT FURTHER THAN AN APARTMENT IN THIS CASE.

I MEAN, HE IS GUILTY OF BOTH ROBBERY AND SEXUAL BATTERY.

>> YES, MA'AM.

>> WHAT'S THE SIGNIFICANCE OF THE TIMING THAT WAS BROUGHT UP THAT HE WAS IN BROAD DAYLIGHT AT A CERTAIN TIME AND WE KNOW SHE WAS MURDERED.

>> THERE ARE SOME MINOR CONSISTENCIES OF IN THE TIMING. BUT ALL OF THEM DID IN FACT SAY THAT THEY SAW MR. DUROUSSEAU LEAVE TYRESA MACK'S APARTMENT IN THE EARLY AFTERNOON JULY 26 WITH A TELEVISION.

THERE WAS AN INCONSISTENCY BUT I DON'T THINK THOSE INCONSISTENCIES CERTAINLY CHALLENGE THE CONSISTENCY OF IT.

>> DID HE NOT TESTIFY THAT THE VICTIM GAVE HIM TELEVISION BECAUSE IT WAS BROKEN.

>> YES, HE DID.

>> THERE WAS TESTIMONY THAT THE VICTIM AND HER COUSIN WATCHED THE SAME TV THE SAME DAY.

>> THAT'S RIGHT.

THERE'S OBVIOUSLY INDEPENDENT

EVIDENCE.

THERE WAS MUCH MORE EVIDENCE
OBVIOUSLY OF THE DEFENDANT'S
GUILT TO THE MURDER OF TYRESA
MACK INTRODUCED TO MISTRIAL.

>> DO YOU MAINTAIN THE EVIDENCE,
OTHER THAN THE COLLATERAL CRIME
EVIDENCE IS SUFFICIENT IN THIS

CASE?

>> I DO.

I THINK IT IS SUFFICIENT.

>> WOULD YOU JUST WALK ME THROUGH WHAT THAT EVIDENCE IS OUTSIDE OF THE COLLATERAL CRIME EVIDENCE THAT MR. DUROUSSEAU COMMITTED?

>> OKAY, OBVIOUSLY THE FACT THAT HE WAS OBSERVED AT THE SCENE OF THE CRIME AROUND THE TIME OF THE MURDER AND THE FACT THAT --

>> ON THAT POINT, YOU'RE TALKING ABOUT WHEN HE HAD THE TELEVISION SET, CORRECT?

>> THAT'S CORRECT.

>> AND I WAS IN THE EARLY AFTERNOON?

THE LATTER WAS THE MEDICAL EXAMINER STATEMENT AS TO THE TIME OF DEATH?

>> I'M NOT SURE IF THEY GIVE A SPECIFIC TIME OF DEATH THAT IT WAS CERTAINLY IN THE TIMEFRAME THAT WOULD'VE INCLUDED.

>> WHAT ARE YOU TALKING ABOUT? HOURS OR WHAT.

>> I'M NOT CERTAIN.

BUT IT CERTAINLY WASN'T A FRAME.

>> THOUGH WE HAVE THEM IN THE POINT DURING THE DAY THAT SHE WAS KILLED.

>> THAT'S RIGHT.

WE DO HAVE EVIDENCE THAT DNA --

>> WHICH COULD'VE BEEN PUT THERE AT THE TIME OF THE TV INCIDENT, CORRECT?

WE DON'T HAVE ANY TIME AS TO WHEN THE DNA --

>> OBVIOUSLY THE STATES CONTENTION IS THIS HAPPEN AT THE SAME TIME AND THERE IS

SUFFICIENT EVIDENCE TO AT LEAST
LEAD TO AN INFERENCE THAT THEY
OCCURRED AT THE SAME TIME TO
REBUT THE CONTENTION THAT THESE
WERE TWO SEPARATE INSTANCES,
WHICH IS WHAT THE DEFENDANT

ARGUES.

THE FACT THAT THE DEFENDANT'S CLOTHES WERE RIPPED.

THIS IS AN ARTICLE OF CLOTHING THAT SHE USED FOR JOB INTERVIEWS IN THERE WITH THIS CONTENTION WOULD BE UNLIKELY THAT SHE WOULD ALLOW THIS DRESS TO BE RICH DURING THE COURSE OF CONSENSUAL SEX.

WHICH SAYS THERE WAS A SEX BATTERY.

IT WAS HIS DNA IN TYRESA MACK. THAT'S WHY YOU BELIEVE HE COMMITTED SEX BATTERY.

>> WAS HE IN QUESTION AFTER THE MURDER?

WAS HE A SUSPECT AT THAT TIME?

>> I DON'T THINK HE WAS.

I DON'T THINK THERE IS ANYTHING THAT LED TO HIM UNTIL AFTER THE 2003 MURDERS, WHEN THEY REALIZED THEY HAD A SERIAL KILLED OR AND SENT THE FILE TO THE COLD CASE TO DETERMINE --

>> THAT'S WHEN THE IDENTIFICATION TOOK PLACE, IN 2003?

>> YES.

>> THE IDENTIFICATION HASN'T BEEN ATTACHED?

>> YEAH, TO BE HONEST, IT COULD BE THE IDENTIFICATIONS WERE MADE IN 1999 AND THAT THEY WERE NOT PERFECTED UNTIL 2003.

>> THEY CERTAINLY DIDN'T THINK THERE WAS ENOUGH EVIDENCE TO INDICT HIM.

SO REALLY, WITHOUT THE WILLIAMS BILL EVIDENCE, THERE'S REALLY NOT ESSENTIAL EVIDENCE TO RELATE THESE CRIMES.

>> I WOULDN'T AGREE WITH THAT.
WE WOULD NOT HAVE GONE TO THE
POINT WHERE WE GOT THE
IDENTIFICATIONS.

>> NO, I GUESS I UNDERSTOOD YOU
SAID HE WASN'T EVEN A SUSPECT

BACK THEN.

>> HE WAS NOT A SUSPECT BY NAME,
BUT DO NOT HAVE EVIDENCE THAT
HER AS A PERSON WEARING A BLUE
UNIFORM, DESCRIBED ASIDE,
145 POUNDS.

THERE WASN'T A NAME ATTACHED TO
IT.

>> THERE WAS THE NAME OF THE
UNIFORM.

>> THERE WAS AN ID ATTACHED INTO
A BUS.

>> I DON'T KNOW IF THERE WAS A
NAME IDENTIFIED BACK IN 1999.

>> BUT THERE WAS A DESCRIPTIVE
IDENTITY.

>> I BELIEVE SO.

>> WOULD IT BE A SAFE POSITION
FOR SOME REASON WE DETERMINED
THAT THE WILLIAMS BILL EVIDENCE
WAS IMPROPERLY ADMITTED, THAT
THAT WOULD BE ARMED A REASONABLE
DOUBT.

>> I THINK I WOULD BE A TOUGH
ARGUMENT.

AND I WANT TO KIND OF ADDRESS
YOUR CONCERN ABOUT THE DUE
PROCESS PROBLEMS ASSOCIATED WITH
WILLIAMS BILL EVIDENCE.

TWO MONTHS AGO I WAS HERE AND WE
TALKED ABOUT THE BIRD DECISION.

THIS IS AN APPLICATION OF WHAT
HAPPENS IN THAT DECISION.

OF COURSE, HE IS CHARGED FOR
SEVERAL MURDERS LIKE I SAID
WHERE IT'S ONE WE DON'T HAVE
ANYTHING.

WE DON'T HAVE ANY PRIOR
CONVICTIONS.

WE HAVE NO OMISSIONS, NOTHING.

SO THE STATE WANTS TO USE
COLLATERAL CRIME EVIDENCE IN

ORDER TO PROVE THE MURDER OF
TYRESA MACK AND THEY DO SO.
BUT BECAUSE OF HER, THEY CAN'T
TRY THE MURDERS OF NIKIA
KILPATRICK.
YOU WILL NEVER FACE JUSTICE FOR
THOSE TERMS BECAUSE OF THE BIRD

DECISION.

THERE'S A RISK OF ACQUITTAL IN THESE CASES WILL JEOPARDIZE THIS CASE.

SO HE'S NOT GOING TO BE TRIED FOR THESE CRIMES.

AND THAT IS WHY HE'S NOT GOING TO BE CHARGED FOR THESE KINDS. I'M NOT SAYING THAT THIS FACT MEANS THAT WE SHOULD BE ABLE TO JUST SIMPLY TRY HIM FOR THESE KINDS HERE, JUST TYPE THEM ALL IN AND TRY HIM.

I THINK IT DOES MAKE A DIFFERENCE WHEN YOU TALK ABOUT DUE PROCESS FOR THE FACT THAT HE IS IN FACT BASICALLY ANSWERING TO THESE CHARGES IN THIS CASE. HE'S NOT GOING TO FACE THESE CHARGES AGAIN.

>> AS I UNDERSTAND IT, THERE WERE SIX MURDERS OR 5?

>> THERE WERE SIX.

WHAT ABOUT THE OTHER THREE WHO WERE NOT USED AS WILLIAMS BILL CASES IN THIS CASE?

THOSE HAVE BEEN DISMISSED ALSO?

>> THEY HAVE.

IT IS MY UNDERSTANDING.

BUT EVEN BEFORE THEN THEY WERE NOT GOING TO TRY THOSE TWO CASES.

>> I REMEMBER NOW --

[INAUDIBLE]

>> IT WAS MEMORABLE EVENT.

>> TO SOME OF US.

>> ALWAYS MEMORABLE.

YOU KNOW, WE HEAR SO MUCH ABOUT IN A SENSE AND NOT CONVICTING SOMEONE BUT THEN YOU HEAR THESE STORIES ABOUT THE SERIAL MURDERER THAT THEY START

ADMITTING THAT MANY FIND OUT
LATER THEY COMMITTED THESE OTHER
MURDERS.

I THINK THE CONCERN REALLY IS
THAT IT'S HARD WHEN YOU LOOK AT
ALL THREE OF THESE IN THE OFFICE
OF IT AND START TO THINK HE'S

PROBABLY GUILTY.

BUT OF COURSE IF YOU GAVE EACH OF THESE INDIVIDUALLY, THERE'S JUST NOT MUCH THERE.

AND I THINK THAT'S WHERE MY CONCERN IS.

NOW, IF NOBODY HAS AS FAR AS A SEPARATE VIOLATION OF THE CONSTITUTION.

IF THAT'S NOT EVER BEEN DECIDED BY ANY COURT AND WE'RE GOING TO HAVE TO DECIDE HERE AS A MATTER OF FIRST IMPRESSION, WHICH IS CAN YOU USE THIS OTHER EVIDENCE AND MAYBE THEN YOU SAY IT WOULD HAVE TO BE SUBSTANTIALLY SIMILAR BEFORE YOU SAY THAT THERE IS ENOUGH TO SHOW IT.

IT JUST MEANS TO SAY THAT IT LOOKS LIKE HE MIGHT HAVE COMMITTED THESE OTHER TWO CARDS. HE STARTS TO GO DOWN A PATH THAT I'M CONCERNED WITH.

>> WELL, OBVIOUSLY THE RULES OF LAW ARE VERY, VERY WELL ESTABLISHED REGARDING SIMILARITY.

WE'RE NOT GOING TO JUST THROW IN A BUNCH OF DIFFERENT MURDERS UNLESS THEY BEAR A STRIKING --

>> SAID THE ISSUE WITH THEM AFTER HAVE TO FIRST SHOW SUBSTANTIAL SIMILARITY BEFORE THEY SHOW CLEAR AND CONVINCING EVIDENCE.

AND WE'VE DONE IT THE OTHER WAY.

>> THIS IS OBVIOUSLY NOT THE TYPICAL CASE.

WHEN YOU DO HAVE SOMEBODY WHO WAS CHARGEABLE TO PULL CURRENTS IN THE STATE WISHES TO PROVE ONE OF THE TERMS.

AND THEY COULD'VE TRIED ALWAYS
TOGETHER.
THE STATE WISHES TO PROVE ONE OF
THEM.
>> IT COULDN'T HAVE TRIED THEM
ALL AT ONCE.
>> WELL, I THINK ANY MOTION FOR
SEVERANCE PROBABLY WOULD HAVE

BEEN GRANTED.

>> THAT'S THE WHOLE ISSUE.

THE THREE OF THEM TOGETHER
HAVING TO DEFEND ALL THREE,
NEVER HAVING BEEN CHARGED WITH
THE DEFENSE --

>> WELL, HE HAS BEEN CHARGED.

>> I DON'T WANT TO GO AROUND IN
CIRCLES WITH YOU, BUT OBVIOUSLY
AFTER THE FIRST TIME THAT HE'S
BEEN TRIED THEM TO MAKE GOOD AND
I KNOW THAT THEY'RE NOT GOING TO
TRY HIM.

BUT OBVIOUSLY THEY HAVE THE
CONVICTION NOW THAT CONCEIVABLY
COULD BE USED AS WILLIAMS LAW.

IT PROBABLY WOULD NOT HAVE
REQUIRED THE SAME LEVEL OF PROOF
AS WE HAD TO DO IN HERE BECAUSE
AGAIN RESORTED FROM SQUARE ONE.
AND WITH THAT I WOULD ASK THAT
YOU AFFIRM THE JUDGMENT AND THE
DEATH SENTENCE.

>> THANK YOU VERY MUCH.

>> MS. CAREY NOW GIVE YOU A
MINUTE FOR REBUTTAL.

IF THERE IS ANYTHING SIGNIFICANT
TO WANT TO PRESENT TO US.

>> JUST A COUPLE THINGS.

I JUST WANTED TO GO BACK TO
JUSTICE.

THE PERIOD WHEN HE WAS ARRESTED
FOR THE TWO COLLATERAL CRIMES HE
WAS SHOWN PICTURES OF THE TWO
WOMEN.

HE RECOGNIZED ME AS THE
MCCASLLISTER.

HE SAID HE DID NOT DENY KNOWING
HER.

>> JUST CLARIFY FOR ME THAN IN
1999, WHAT WAS MR. DUROUSSEAU A
SUSPECT IN MS. MACK MURDER?

>> HE WAS NOT THE HANDYMAN WHO
WAS THE NERVE APARTMENT THAT
MORNING AND PICKS A DOOR LOCK.
HER DOOR AND THEN BROKEN.
HE WAS A SUSPECT WHO WAS
QUESTIONED FOR SIX HOURS.
>> DID THEY NOT HAVE THE
DEFENDANT DNA AT THE TIME LAGS

>> TO MY KNOWLEDGE IT WAS NOT LINKED UP UNTIL 2003.

>> IN ALL HONESTY, THIS DNA IS SIGNIFICANTLY IMPORTANT IN THIS CASE.

WITH A SEXUAL TYPE CRIME AND DNA.

I'M MISSING SOMETHING BECAUSE IF YOU'VE GOT A SEXUAL TYPE CRIME IN HIS DNA IS LINKED TO THAT AFTER SEEING WHERE THERE'S BEEN WHAT APPEARS TO BE A MURDER OR A BATTERY, THAT THERE'S NOT SUBSTANTIAL EVIDENCE THAT THIS IS THE GUY THAT DID IT.

>> THE DIFFERENCE YOUR HONOR IS THAT IN SOME CASES THE DNA AND THE SEX CRIMES ARE ABSOLUTELY ASSOCIATED WITH THE MURDER. IN OTHER WORDS, NO ONE ELSE COULD HAVE COMMITTED THE MURDER. THAT'S NOT TRUE IN THIS CASE. WE KNOW HE HAD SEX ON THE DAY THAT HE DIED AND THAT'S ALL WE CAN SAY.

>> ALL THESE EYEBALL WITNESSES AT MIDDAY.

>> HE ADMITTED HE WAS THERE. BUT THAT DOESN'T PROVE HE KILLED HER.

SHE WASN'T FOUND UNTIL 7:00 P.M. THAT NIGHT.

SO WE DON'T KNOW WHEN SHE WAS KILLED.

AGAIN, THE STANDARDS BEYOND A REASONABLE DOUBT.

AND JUST GO BACK TO THE CLEAR AND CONVINCING, IT'S A HEAVY BURDEN.

IT'S NOT TO BE MET BY SHOWING YOU THE MOST LIKELY PERSON TO HAVE COMMITTED THE CRIME.

THERE HAS TO BE A FIRM BELIEF OR
CONVICTION WITHOUT HESITANCY
THAN THERE IS HESITANCY.
THERE'S A LOT OF HESITANCY,
PARTICULARLY IF YOU LOOK AT EACH
GAME INDIVIDUALLY WHICH I THINK
YOU MUST DO.
I MEAN, THE REASON THAT WE DON'T

ALLOW BOOTSTRAPPING IS BECAUSE
IT'S AN IMPOSSIBLE TASK.

YOU CAN'T DO IT.

YOU CAN'T PULL YOURSELF UP BY
YOUR BOOTSTRAPS.

>> WITH THAT, YOU HAVE USED UP
MORE THAN YOUR TIME.

BUT WE APPRECIATE YOUR ARGUMENTS
AND PRESENTATIONS BEFORE THIS
COURT.

>> THANK YOU VERY MUCH, YOUR
HONOR.

>> LAST CASE, COURTS OF AGENDA
IS AMERICAN OPTICAL CORPORATION
V. WILLIAM.