

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE FLORIDA SUPREME COURT IS

NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA DRAW

NEAR, GIVE ATTENTION AND YOU

SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,

THE GREAT STATE OF FLORIDA AND

THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO

THE FLORIDA SUPREME COURT.

THE FIRST CASE ON OUR DOCKET

TODAY IS CRAIN VERSUS THE STATE

OF FLORIDA.

>> GOOD MORNING, MR.^CHIEF

JUSTICE, ROBERT STRAIN FROM

TAMPA, REPRESENTING MR.^CRAIN.

IF IT PLEASE THE COURT, THE

PRESENTATION OF OUR

POST-CONVICTION EVIDENCE AND

ARGUMENT TODAY IS RATHER SIMPLE

AND STRAIGHTFORWARD.

MARGINALLY DUE TO OUR FAILED  
ATTEMPTS TO FIND SOME NEW  
EVIDENCE, IF YOU WILL FROM THE  
POST-CONVICTION DNA TESTING.  
I WISHED THE POST-CONVICTION  
COURT WHO WAS ALSO THE  
TRIAL COURT FOUND WE MET  
REQUIREMENT OF THE NEW RULE  
38.53.

THE BOTTOM LINE IS --

>> AS YOU WERE INTRODUCING DID  
YOU SAY THERE WAS MORE DNA  
TESTING?

>> IN POST-CONVICTION?

OH, YES, MA'AM.

OVER STRONG STATE OBJECTIONS I  
MIGHT ADD.

>> DOES THAT CONFIRM WHAT WAS  
PRESENTED AT TRIAL?

>> WE STRUCK OUT ON EVERY  
SINGLE ITEM THAT WENT DOWN.

>> WHEN YOU SAY STRIKE OUT,  
MAKE SURE WE'RE HERE, OF COURSE  
OUR INTEREST IS THAT THIS HAS

BEEN A FAIR AND JUST RESULT.

>> RIGHT.

>> SO IT CONFIRMS THE DNA  
CONFIRMED IT WAS A MIXTURE  
OF --

>> NO, MA'AM.

THE RESULTS OF THE  
POST-CONVICTION LABORATORY  
TESTING WAS NO RESULTS.  
THEY DID NOT OBTAIN DNA THROUGH  
ANY DEGRADATION.

>> ANY ADDITIONAL DNA?

>> THEY HAD NO RESULTS FROM ANY  
TESTS THEY PERFORMED.

>> DOES THAT CAST DOUBT ON THE  
ORIGINAL EVIDENCE?

>> NO, MA'AM.

AND WE NEVER ARGUED THAT.

>> ALL RIGHT.

>> JUST PARTLY RELEVANT IF I MAY  
HAVE ONE MOMENT ON THAT.  
THE POST-CONVICTION COURT, AS  
YOU MAY RECALL IN ITS ORDER  
CONSIDERED THE RELIABILITY OF  
THE TWO DNA EXPERT WHO HAS

TESTIFIED AND HE, IF YOU WILL,  
CRITIQUED OUR EXPERT,  
DR. ^BROWN, FOR SPECULATION.

WELL HE DID NOT POINT OUT IN  
HIS ORDER THAT THE RECORD  
REFLECTS THE REASON SHE WAS  
SPECULATING AT THE  
POST-CONVICTION HEARING BECAUSE  
OF THE NO RESULTS FROM THE  
POST-CONVICTION LAB TESTS.

>> BUT THAT DOESN'T, ALL RIGHT.

SO THE POINT IS THAT ON YOUR,  
YOU'VE MADE TWO POINTS DIRECTED  
TO THE TWO PIECES OF PHYSICAL  
EVIDENCE, ONE ON THE BLOOD AND  
ONE ON THE SCRATCHES.

>> SCRATCHES.

>> ON THE BLOOD MY CONCERN IS  
THAT IN THIS CASE THERE WAS A  
STIPULATION THAT IT WAS BLOOD  
AND THE DEFENSE LAWYERS HIRED  
THEIR OWN PRIVATE, OR  
CONFIDENTIAL EXPERT AND THEY  
MADE A STRATEGIC DECISION,  
INFORMED STRATEGIC DECISION TO

STIPULATE IT WAS BLOOD BECAUSE  
MR. ^CRAIN HAD TALKED ABOUT HOW  
BLOOD GOT THERE BASED ON HIS  
KNOWLEDGE THAT THERE WAS, THERE  
WAS BLOOD FOUND.

SO YOU'VE GOT TO GET PAST,  
FIRST OF ALL, WHY THAT WASN'T A  
REASONABLE STRATEGIC DECISION  
AND THEN EVEN IF YOU DO, YOU  
WOULD HAVE TO SHOW THAT THERE  
WAS PREJUDICE, THAT IS, THAT  
YOU WOULD BE ABLE TO ESTABLISH  
AT A NEW TRIAL THAT IT PROBABLY  
WASN'T BLOOD.

>> WELL I DISAGREE ON TWO MAIN  
PARTS OF WHAT YOU JUST RELATED  
TO ME, JUSTICE PARIENTE.

MR. ^CRAIN NEVER KNEW THERE WAS  
BLOOD FOUND AS PART OF THE  
STATE'S EVIDENCE BECAUSE NO  
ONE, MEANING THE STATE OR  
DEFENSE, WAS EVER GIVEN A  
CONCLUSIVE TEST SHOWING THAT  
THE SPECK OF REDDISH BROWN  
MATERIAL FOUND ON THE TOILET

SEAT OR THE DNA MATERIAL FOUND  
ON THE BOXER SHORTS WAS BLOOD.

>> SHE HAD A TOOTH PROBLEM AND  
THAT THE TOOTH WAS LOOSE AND IT  
WAS BLEEDING.

I MEAN, HE TESTIFIED ABOUT HOW  
THERE WAS POSSIBLY BLOOD IN HIS  
BATHROOM, CORRECT?

>> WELL, BY THE TIME OF THE  
TRIAL MR. ^CRAIN CERTAINLY KNEW  
BUT IF YOU ANALYZE THE STATE,  
OR EXCUSE ME, THE DEFENSE  
COUNSEL'S TESTIMONY ABOUT WHY  
THEY STIPULATED, AND THIS IS  
THE THRUST AND IT IS A SIMPLE  
THRUST BUT A POWERFUL THRUST  
OF OUR ARGUMENT.

AS TO THEIR STIPULATION OF THE  
DNA EVIDENCE, BY THEM  
STIPULATING TO IT BEING BLOOD  
THEY PREVENTED THE JURY FROM  
HAVING AN EXPLANATION OF  
ALTERNATE SOURCES OF THAT DNA.

>> I GUESS WHAT I'M ASKING,  
LET'S GO BACK -- NOT THAT HE

TESTIFIED AT TRIAL BUT HE  
TALKED TO THE NEWS MEDIA AFTER  
THE TRIAL, I MEAN, I'M SORRY,  
AFTER HE WAS ARRESTED, OR AT  
SOME POINT BEFORE TRIAL AND  
TALKED ABOUT HOW SHE HAD A  
LOOSE TOOTH AND THERE WAS  
BLEEDING.

BECAUSE, AND THAT'S WHAT THE  
DEFENSE LAWYERS WERE FACED  
WITH. IS THAT NOT TRUE?  
THAT HE DID TALK ABOUT A REASON  
THERE WOULD BE BLOOD IN HIS  
BATHROOM?

>> THE ISSUE WAS ALWAYS  
RAISED --

>> I'M ASKING YOU A DIRECT  
QUESTION.

YES, DID HE TALK TO THE NEWS  
MEDIA ABOUT A REASON THAT --

>> YES HE DID.

>> LET ME FINISH MY QUESTION.

>> OH, I'M SORRY.

>> THAT THERE WAS A REASON WHY,  
AN INNOCENT REASON WHY THERE

WOULD BE BLOOD FOUND IN HIS  
BATHROOM?

>> IN THE PRETRIAL MEDIA  
INTERVIEWS THERE WERE, BLOOD  
WASN'T A FOCUS.

IT WAS EXPLAINING WHAT HE WAS  
DOING WITH THE CHILD IN HIS  
CONTEXT WITH THE CHILD.

>> AND DID IT HAVE TO DO WITH A  
LOOSE TOOTH?

>> YES, MA'AM.

>> AND HE GAVE HER A TISSUE?

>> BUT --

>> YES. THAT HE GAVE HER A TISSUE.

>> YES.

>> AND WHAT WOULD HE BE TALKING  
ABOUT THAT FOR IF NOT TO  
EXPLAIN WHY THERE WAS EVIDENCE  
FOUND IN HIS BATHROOM?

>> BUT, JUSTICE PARIENTE,  
YOU'RE QUESTIONING IGNORES THE  
FACT THAT, AND HERE'S, LET ME  
PRESENT THE THRUST OF OUR  
ARGUMENT.

WHEN THAT DNA SPECK, FROM THE



SPECK ON THE TOILET SEAT, AND  
THE DNA FROM THE BOXER SHORTS  
WAS STIPULATED AS BLOOD,  
ENABLED THE STATE TO RUN WITH  
ITS THEORY THAT THERE WAS A  
BLOODY ENCOUNTER IN TERMS OF  
THE VICTIM'S DEATH AT THE HANDS  
OF MR. ^CRAIN AND IT PREVENTED  
THE JURY FROM UNDERSTANDING THE  
WAY THE POST-CONVICTION RECORD  
EMPHASIZED --

>> HELP ME UNDERSTAND WHAT'S  
GOING ON HERE.

AS I UNDERSTOOD IT THE  
CHALLENGE WAS THAT THIS WAS  
SOME KIND OF SUBSTRATA TEST  
THAT WAS PRESUMPTIVELY BLOOD,  
IS THAT CORRECT?

>> THAT'S RIGHT.

>> AND THESE DEFENSE LAWYERS, I  
THOUGHT, HAD HAD DISCUSSIONS,  
THEY HAD AN EXPERT AND THE  
EXPERT COULD NOT UNDERMINE THE  
FINDINGS OF THE STATE AT THAT  
TIME, ISN'T THAT CORRECT?

>> THAT'S CORRECT, JUSTICE

LEWIS.

>> OKAY.

AND THEN THE EXPERTS AGAIN CAME  
ON EVEN DURING POST-CONVICTION,  
EVEN DURING POST-CONVICTION AND  
SAID WE KNOW OF NO REQUIREMENT  
TO DO THUS AND SO.

THAT WHAT HAPPENED WAS DONE  
APPROPRIATELY, PROPERLY AND  
THEREFORE THERE ARE NO  
STANDARDS VIOLATED, THERE WAS  
NOTHING TO ATTACK?

WAS THAT PART OF THE TESTIMONY?

>> WELL, WITH ONE CAVEAT.

DR. ^YESHION, THE STATE'S  
EXAMINER, IN HIS WORDS, WHEN HE  
WAS WORKING AT FDLE BEFORE THE  
TRIAL, HE SAID IT WAS A  
SHORTCUT FOR HIM TO DO THE  
PRESUMPTIVE TESTING AND SEND  
THAT EVIDENCE STRAIGHT, AND  
CONVERT IT OR MOVE IT OVER TO  
THE DNA TESTING WITHOUT THE  
CONCLUSIVE TESTING.

>> I'M WRONG THEN WHEN I  
UNDERSTAND THAT THIS RECORD  
POST-CONVICTION, WOULD, THE  
EVIDENCE WOULD SUPPORT THAT  
THEY DID NOT VIOLATE ANY  
STANDARDS OR ANYTHING AT FDLE?  
THAT THIS IS THE WAY IT WAS  
DONE AT THAT TIME?

SO I'M INCORRECT ON THAT, THEN?

>> NO, YOU'RE CORRECT ON THAT,  
JUSTICE LEWIS, BUT AGAIN HERE'S  
THE THRUST, FOLKS.

THIS COURT WAS NOT UNANIMOUS IN  
TERMS OF THE EXTRAPOLATION OF  
LIMITED EVIDENCE, PHYSICAL  
EVIDENCE IN THIS CASE.

THE DIRECT APPEAL OPINION OF  
THIS COURT RAISES VERY UNIQUE  
QUESTIONS ABOUT THE  
CIRCUMSTANTIAL EVIDENCE BEING  
SUFFICIENT TO SHOW THE  
CONVICTION OF KIDNAPPING, OR  
THE FELONY MURDER WITH THE THAT  
COMPONENT OF THE KIDNAPPING AND  
THEN THE DEATH SENTENCE.

THAT LITTLE SPECK OF  
REDDISH-BROWN MATERIAL ON THE  
TOILET GOT EXTRAPOLATED TO  
BLOOD, BLOOD, BLOOD, BECAUSE,  
DEFENSE COUNSEL FELT IT WOULD  
NOT BE PREJUDICIAL.

AND CERTAINLY THEY DIDN'T --

>> ARE YOU SUGGESTING THEN IF  
IT WAS MUCOUS THAT BELONGED TO  
THIS LITTLE GIRL, ON HIS  
UNDERWEAR THAT CHANGES THE  
STORY?

WAIT, WAIT, IS THAT WHAT YOU'RE  
SAYING?

THAT THIS WAS, WHETHER IT'S  
MUCOUS, BLOOD, SOME OTHER  
SECRETION, IT DID BELONG TO  
THIS CHILD, IS THAT CORRECT?

>> THE DNA DID, JUSTICE LEWIS.

>> RIGHT.

>> BUT THERE IS NO TESTING OR  
MUCOUS AT THE DNA LAB.

THAT IS THE EMPHASIS AND  
AGAIN --

>> SO YOU'RE SAYING THAT THERE

WAS NO DNA OF THIS CHILD ON THE  
UNDERWEAR?

>> NO, I NEVER SAID THAT,  
JUSTICE LEWIS.

>> IS THAT THE CASE?

IS THAT WHAT THE EVIDENCE IS?

>> THERE IS DNA.

WE DON'T, BUT THE KEY OF OUR  
CASES WE DON'T KNOW WHERE THAT  
DNA CAME FROM BECAUSE --

>> IT WAS THE CHILD'S DNA?

>> IT WAS THE CHILD'S DNA.

>> THERE WAS NO QUESTION IN  
THIS CASE THAT THE DNA THAT WAS  
FOUND WAS THIS CHILD'S DNA?

>> THAT'S CORRECT.

WE NEVER ARGUED ELSEWISE.

>> LET ME TALK WITH YOU, YOU'RE  
GETTING DOWN IN YOUR TIME.

I THINK YOUR ARGUMENT ON THE  
SCRATCH MARKS, I WOULD LIKE  
YOU TO SPEND A LITTLE TIME ON  
THIS.

I AM CONCERNED ABOUT DR.^VEGA'S  
TESTIMONY AND WHAT YOUR NEW

EXPERT WAS ABLE TO SAY.

SO COULD YOU PLEASE EXPLAIN.

>> SURE.

>> WHETHER THE STATE RAN WITH  
SOMETHING WITH DR.^VEGA THAT  
THE COURT PICKED UP ON AND  
LOOKS LIKE WE DID NOT EVEN  
ACCURATELY STATE DR.^VEGA'S  
TESTIMONY IN THE DIRECT  
APPEAL OPINION AND USE THAT IN  
ORDER TO SHOW FURTHER EVIDENCE  
OF A STRUGGLE.

WHAT, TELL ME THE SIGNIFICANT  
DIFFERENCE IN TERMS OF YOUR  
EXPERT, DR.^WRIGHT, AND WHAT,  
HOW THIS WOULD HAVE INFLUENCED  
THE OUTCOME OF THIS CASE IF YOU  
HAD HAD YOUR OWN EXPERT AT THE  
CROSS-EXAMINING DR.^VEGA.

>> I START BY ACKNOWLEDGING  
THE, JUSTICE PARIENTE, THERE  
ARE NO CASES THAT SAY YOU HAVE  
TO HAVE AN EXPERT WHENEVER THE  
STATE BRINGS AN EXPERT.

BUT, BUT THAT --

>> I JUST WANT YOU TO, GET OVER  
WHETHER THEY SHOULD HAVE HIRED  
ONE.

I WANT TO KNOW IF THEY HAD ONE  
LIKE DR.^WRIGHT WHAT ARE THE  
SIGNIFICANT DIFFERENCES BETWEEN  
WHAT YOUR DR.^WRIGHT SAID AND  
WHAT DR.^VEGA SAID.

>> DR.^WRITE ANALYZED THE SAME  
20 SOME PHOTOGRAPHS THAT  
DR.^VEGA DID.

18 OF THEM HE EXPRESSED HIS  
OPINION THEY JUST COULD NOT AND  
NEVER SHOULD HAVE BEEN ALLUDED  
TO AS POSSIBLE SCRATCHES FROM A  
HUMAN LET ALONE A YOUNG CHILD.

>> AND HOW DID THAT DIFFER --  
SO 18 OF THE 20 WERE POSTIVELY  
IN HIS VIEW EXCLUDED AS BEING  
SCRATCH MARKS COMING FROM A  
CHILD OR HUMAN BEING?

>> THAT'S CORRECT.

>> WHAT DID DR.^VEGA SAME ABOUT  
THOSE EIGHT SAME 18 SCRATCH  
MARKS.

>> IT WAS ONLY I BELIEVE THE  
ACTUAL NUMBER NOT ONLY THE TWO  
THAT DR.^WRIGHT ACKNOWLEDGED AS  
POSSIBLY SCRATCH MARKS FROM A  
HUMAN BUT DR.^VEGA SAID, AND IN  
EACH CASE RECALL THAT THERE  
WERE TWO OTHERS THAT  
HE ALLUDED TO AS POSSIBLE  
SCRATCH MASHES BUT THEN HE  
CONCEDED THEY WERE, ALL THE  
SCRATCH MARKS WERE CONSISTENT  
WITH INJURIES THAT A CRABBER  
COULD HAVE WITH CRAB TRAPS AND  
WIRING AND ALL THAT.  
BUT ONE OF THE KEY FEATURES OF  
DR.^WRIGHT'S ANALYSIS, AND HE  
HAD HIS EXPERIENCE IN BROWARD  
COUNTY AND ELSEWHERE INCLUDED  
OVER 14,000 AUTOPSIES I  
BELIEVE.  
HE SAID THERE WERE ONLY TWO OR  
THREE CASES WHERE THE SCRATCH  
MARK WOULD NOT BE, CURVICULAR I  
BELIEVE IS THE TERM THE WAY  
MOST PEOPLE TRIM THEIR NAILS.



THE ONLY EXCEPTIONS WERE A FEW  
HOMICIDE VICTIMS WHO HAD  
SCRATCH MARKS FROM WHAT THE  
POLICE THEORY WERE WITCH CASES.  
IN OTHER WORDS, TWO OR THREE  
TIMES IN HIS LONG CAREER DID HE  
GET EXPOSED TO ANYBODY FILING  
THEIR FINGERNAILS DOWN INTO  
POINTS AS LITTLE WEAPONS.  
AND SO OUR ARGUMENT ABOUT THE  
SCRATCHES IS, GOODNESS SAKE,  
WHEN YOU READ THE PROSECUTOR'S  
CLOSING ARGUMENT, THE BLOOD AND  
THE SCRATCHES, HOW THIS COURT  
RAN WITH THAT PICTURE IN THE  
STATE'S CASE.

>> SO IF YOU HAD AN EXPERT,  
WOULD THIS, ARE YOU SUGGESTING  
THAT THIS SHOULD HAVE BEEN FREY  
TESTED?

THAT THE EVIDENCE SHOULD NOT  
HAVE COME IN AT ALL ON THE  
SCRATCH MARKS?

>> NO, AGAIN, JUSTICE PARIENTE.  
I'M NOT TRYING TO DELUDE THE

COURT SAYING THIS IS A CASE  
WHERE WE HAVE MONUMENTAL CASE  
PRECEDENT THAT EVERY EXAMINER  
IN A NO-BODY CASE HAS TO HAVE  
ANOTHER PATHOLOGIST TESTIFY.  
WE RECOGNIZE THAT.

BECAUSE EVEN DR.^WRIGHT'S  
ACKNOWLEDGED AS YOU KNOW THAT  
DR.^VEGA'S WRITTEN REPORT THAT  
BECAME PART OF THE RECORD, HE  
DIDN'T HAVE ANY, MANY  
DISAGREEMENTS WITH THAT.

SO --

>> BUT THE BOTTOM LINE HERE,  
LET ME SEE IF I CAN UNDERSTAND  
WHAT THE BOTTOM LINE IS HERE  
AND THAT IS THAT BOTH  
DR.^WRIGHT AND DR.^VEGA  
ACKNOWLEDGED THAT THESE, SOME  
OF THESE WERE IN FACT POSSIBLY  
HUMAN SCRATCH MARKS, IS THAT  
CORRECT?

>> TWO FOR DR.^WRIGHT.

AND REMOTELY POSSIBLE.

THE ADJECTIVES HE USED WERE

VERY UNLIKELY AND AGAIN, HE WAS

EXPLAINING --

>> SO WHY DO YOU HAVE HIM

SAYING THAT --

>> EXCUSE ME A MINUTE.

HE SAID ALL BUT TWO SCRATCH

MARKS.

HE DIDN'T SAY TWO SCRATCH

MARKS.

HE SAID ALL BUT TWO.

>> NO.

I BELIEVE DR.^WRIGHT'S

TESTIMONY WAS THAT ONLY TWO

WERE POSSIBLY CAUSED BY HUMANS.

>> NO. I THINK IT'S THE OTHER

WAY AROUND.

>> SO, HOW DO WE GET TO HIM

ALSO SAYING THAT HE ESSENTIALLY

FOUND NOTHING WRONG WITH THE

WRITTEN REPORT THAT DR.^VEGA

DID?

I MEAN THE TWO SEEM TO BE

INCONSISTENT TO ME.

>> AND THAT'S WHERE, I NEED TO

EMPHASIZE TO YOU THE REASONS

TRIAL COUNSEL GAVE FOR THE  
BLOOD STIPULATION THEY  
DETERMINED BEFORE TRIAL IT  
WOULD NOT BE PREJUDICIAL.  
THE REASON THEY GAVE FOR NOT  
RETAINING THEIR OWN PATHOLOGIST  
TO COUNTERACT DR.^VEGA'S  
TESTIMONY IS THEY THOUGHT BY  
THEIR HANDLING OF DR.^VEGA ON  
CROSS THAT THAT SCRATCH  
TESTIMONY WOULD NOT BE  
DAMAGING. THOSE --  
>> WASN'T THERE --  
>> IF I MAY, JUSTICE QUINCE,  
I'M SORRY TO INTERRUPT YOU BUT  
THOSE TWO EXPLANATIONS FOR WHY  
THIS COURT EXTRAPOLATED FROM  
THE STATE'S CLOSING ARGUMENT OF  
A BLOODY STRUGGLE PROVEN OR  
SHOWN BY SCRATCHES ON  
MR.^CRAIN'S ARM IS JUST WRONG  
AND IT IS INEFFECTIVE.  
AND IF THE JURY HAD HEARD FROM  
AN EXPERT HOW MANY OTHER  
SOURCES OF DNA COULD HAVE

GOTTEN ON THAT TOILET SEAT OR  
THE BOXER SHORTS, IF THE JURY  
HAD HEARD FROM AN EXPERT HOW --  
>> DIDN'T THIS EXPERT, DIDN'T  
DR.^VEGA HAVE TO ACKNOWLEDGE  
DURING HIS TESTIMONY THAT  
ALTHOUGH HE BELIEVED SOME OF  
THESE WERE HUMAN SCRATCH MARKS,  
THAT ALL OF THESE MARKS WERE  
CONSISTENT WITH ANYTHING THAT  
COULD HAVE CAUSED A SCRATCH?  
DIDN'T HE HAVE TO ACKNOWLEDGE  
THAT DURING THE CROSS-EXAMINATION?

>> THAT'S RIGHT.

AND I STARTED TALKING ABOUT THE  
SCRATCH MARKS, ACKNOWLEDGING  
THERE ARE NO CASES IN  
MR.^CRAIN'S FAVOR THAT EXIST TO  
HAVE THEIR OWN EXPERT COUNTER  
THE OTHER. BUT --

>> MR.^STRAIN, YOU CAN  
CONTINUE.

I WANT YOU TO KNOW YOU'RE DOWN  
TO THREE MINUTES.

>> ONE LAST THING.

WHEN YOU GO TO THE LAW LIBRARY  
AND READ OUT OF AN  
EFFECTIVE TRIAL COUNSEL,  
CRIMINAL OR CIVIL, THE BOOKS  
AND ARTICLES ARE LEGION THE  
BATTLE OF THE EXPERTS AND HOW  
RISKY IT IS IN ANY TYPE OF CASE  
FOR A LAWYER TO RELY SOLELY ON  
THEIR CROSS-EXAMINATION, NO  
MATTER HOW GOOD IT IS.

AND WE JUST FEEL AND WE URGE  
THIS COURT TO SEE HOW BUILDING  
ONE INFERENCE TO THE OTHER FROM  
THE BLOOD AND THE SCRATCHES AS  
THE ONLY POSSIBLE WAY TO UPHOLD  
THE FELONY MURDER CONVICTION  
WITH THE KIDNAPPING WITH INTENT  
TO HARM HAS TO BE SEEN AS  
ENTIRELY DIFFERENT TODAY THAN  
AT THE TIME OF DIRECT APPEAL.

>> GOOD MORNING.

SCOTT BOWNE ON BEHALF OF THE  
STATE OF FLORIDA.

AS TO THE STATE --

>> I JUST WOULD LIKE TO GO

RIGHT OF SOMETHING THAT  
CONCERNS ME GREATLY AND  
INVOLVES WHY NOBODY BROUGHT  
THIS TO THE COURT'S ATTENTION  
BEFORE.

IN THE DIRECT APPEAL OPINION IT  
SAYS, ALTHOUGH THE PATHOLOGIST  
COULD NOT IDENTIFY THE SOURCE  
OF THE SCRATCHES WITH CERTAINTY  
HE TESTIFIED THAT ALL BUT TWO  
OF THE SCRATCHES WERE MORE  
LIKELY TO BE CAUSED BY THE  
FINGERNAILS OF A 7-YEAR-OLD  
THAN BY ANOTHER CAUSE.

NOW, DR. ^WRIGHT SAYS ONLY TWO  
OF THE SCRATCHES CAN NOT BE  
EXCLUDED.

LOOKS LIKE WE EITHER, WE EITHER  
MISUNDERSTOOD DR. ^VEGA'S  
TESTIMONY OR THAT'S A  
SIGNIFICANT DIFFERENCE.

AND ME READING DOCTOR VEGA'S  
TESTIMONY LOOKS LIKE WE  
MISUNDERSTOOD WHAT HE WAS  
SAYING.

WHAT IS IT, MR. ^BROWNE?

IS THAT CORRECT?

IS THAT STATEMENT THAT THE  
PATHOLOGIST COULD NOT IDENTIFY  
THE SOURCES OF THE SCRATCHES  
WITH CERTAINTY BUT HE TESTIFIED  
ALL BUT TWO OF THE SCRATCHES  
WERE MORE LIKELY TO BE CAUSED  
BY THE FINGERNAILS OF A  
7-YEAR-OLD THAN BY ANOTHER  
CAUSE?

>> HE DID SAY LIKELY.

SOME OF THE SCRATCHES WERE MORE  
LIKELY.

I DON'T BELIEVE HE SAID ALL BUT  
TWO.

BUT HE DID SAY THAT THE SPACING  
ON SOME OF THE SCRATCHES WERE  
CONSISTENT WITH THE SPACES  
BETWEEN WHAT YOU WOULD FIND ON  
A 7-YEAR-OLD CHILD.

BUT THE KEY IS THIS CASE, THE  
STATE MADE THOSE FAVORABLE  
ARGUMENTS AND THIS COURT MADE  
THOSE FAVORABLE INFERENCES ON



APPEAL.

>> WHAT I'M CONCERNED ABOUT  
FRANKLY I READ DR.^WRIGHT AND  
IT IS VERY CLEAR TO ME THAT THE  
FOLLOWING IS CORRECT.

FIRST OF ALL, DR.^VEGA  
TESTIFIED THESE WERE ALL MADE  
WITHIN 24 HOURS OR A DAY OR  
TWO. VERY SIGNIFICANT EVIDENCE.  
FOR THE JURY I WOULD ASSUME.  
THAT ALL, AND THEN HE ALSO  
TESTIFIED THAT POSTIVELY WITHIN  
A REASONABLE DEGREE OF MEDICAL  
CERTAINTY THAT ALL BUT, THAT  
THESE SCRATCHES HE WOULD NOT  
SAY THEY WERE CAUSED BY  
FINGERNAILS.

HE SAID, OR THAT, THERE WAS NO  
REASONABLE DEGREE OF MEDICAL  
CERTAINTY.

AND THEN HE SAID, ONLY TWO OF  
THE SCRATCHES COULDN'T BE  
EXCLUDED AT ALL.

I FIND THAT TO BE VERY  
DIFFERENT THAN WHATEVER

DR.^VEGA WAS SAYING AND  
WHATEVER THE STATE WAS TRYING  
TO INFER FROM IT.  
AND THE REASON IT'S IMPORTANT  
IN THIS CASE THERE'S NO  
QUESTION THERE IS ENOUGH  
EVIDENCE, IN MY VIEW, TO  
CONVICT MR.^CRAIN OF MURDER.  
THE ISSUE IS, FIRST-DEGREE  
MURDER AND THE ISSUE THERE IS  
THE UNDERLYING FELONY AS  
MR.^STRAIN POINTED OUT, IS  
FELONY MURDER, KIDNAPPING WITH  
INTENT TO COMMIT BODILY HARM.  
THE COURT APPEARS IN ITS  
ANALYSIS TO HAVE FOCUSED ON THE  
BLOOD BUT ALSO ON THE SCRATCH  
MARKS.  
DO YOU, IS IT YOUR VIEW THAT IT  
WAS AT THE SCRATCH MARKS,  
LET'S SAY, TAKE THE SCRATCH  
MARKS OUT.  
THAT THERE IS ENOUGH EVIDENCE  
TO SUSTAIN KIDNAPPING WITH  
INTENT TO COMMIT BODILY HARM IN

THIS CASE?

>> ABSOLUTELY, YOUR HONOR.

>> OKAY. TELL US WHY.

>> THERE IS, THAT WAS ONE PIECE

OF A VERY BIG PUZZLE THAT

PAINTED AN UNMISTAKEABLE

PICTURE OF MR. ^CRAIN AS THE ONE

WHO TOOK AMANDA BROWN FROM THE

BED WHERE SHE LAY SLEEPING WITH

HER MOTHER.

TOOK HER BACK TO HIS TRAILER.

WE KNOW THAT AMANDA WAS BACK IN

HIS TRAILER BECAUSE WE HAVE

THREE ITEMS WITH HER BLOOD ON

IT.

TWO WERE A MIXTURE.

ONE SPECK WAS AMANDA'S

ON THE TOILET SEAT.

AND WE HAVE ONE DROP OF BLOOD

OF AMANDA'S ON MR. ^CRAIN'S

BOXER SHORTS.

SO WE KNOW THAT SHE WAS TAKEN

BACK AFTER BEING IN MR. ^CRAIN'S

TRAILER EARLIER THAT DAY TO HIS

TRAILER.

THERE IS NOT AN INNOCENT  
EXPLANATION FOR THE STATE'S  
BLOOD EVIDENCE IN THIS CASE.

SHE WAS TAKEN WITHOUT CONSENT  
BACK TO HIS TRAILER.

THE EVIDENCE SHOWS CONCLUSIVELY  
THEY WERE BOTH BLEEDING AT THAT  
TIME.

AND REMEMBER, THERE IS, THIS IS  
JUST A SMALL PIECE OF EVIDENCE.  
AND I COULD BE UP HERE HALF AN  
HOUR TELLING YOU EACH PIECE OF  
EVIDENCE.

HIS BATHROOM LIT UP LIKE A  
CHRISTMAS WITH BLEACH.

IT WREAKED OF BLEACH.

HE CLEANED UP A MUCH LARGER  
BLOOD SPILL IN THE BATHROOM.

BUT THE KEY POINT IS THOSE  
SPOTS OF BLOOD MR. ^CRAIN MISSED  
ESTABLISHED THAT AMANDA WAS  
BLEEDING AND MR. ^CRAIN WAS  
BLEEDING.

BOTH MEDICAL EXAMINERS  
TESTIFIED THOSE SCRATCH MARKS

WERE INFLICTED WITHIN 24 HOURS.

>> I THOUGHT DR.^WRIGHT SAID

THAT THAT WASN'T THE CASE?

>> NO.

IN FACT HE CONCLUDED, HE AGREED

EXACTLY WITH DR.^VEGA, THAT

THOSE, THE SCRATCH MARKS WERE

-- CAN'T TELL WITHIN THE HOUR

BUT THEY WERE CERTAINLY RECENT

INJURIES.

THERE IS NOT A POINT OF

CONTENTION THERE.

THIS CLAIM COMES TO THIS COURT

AS INEFFECTIVE ASSISTANCE OF

COUNSEL CLAIM.

DENNIS HERNANDEZ WAS A

EXPERIENCED TRIAL ATTORNEY.

HAD 200 FELONY JURY TRIALS.

15 FIRST-DEGREE MURDER CASES.

HE DEPOSED DR.^VEGA AND

DETERMINED REASONABLY, IT WAS A

TACTICAL DECISION HE COULD

HANDLE HIS TESTIMONY ON

CROSS-EXAMINATION.

>> DID THE, THE RECORD DOES  
REFLECT, DOES IT NOT, THAT THE  
DEFENSE COUNSEL HAD  
CONFIDENTIAL EXPERTS, JUST  
DIDN'T USE THEM ON THE DNA  
ISSUE?

>> CORRECT.

HE HIRED DR.^BILL, WILLIAM  
SHIELDS ON THE BLOOD DNA.

>> HE DID HIRE AN EXPERT.

>> YES, HE DID.

>> DID THAT EXPERT HAVE  
ACCESS -- MY UNDERSTANDING THE  
EXPERT HAD ACCESS TO  
INFORMATION ABOUT THE DNA.

>> YES, YOUR HONOR.

>> IS THAT ESTABLISHED?

>> ABSOLUTELY.

DR.^SHIELDS, THERE IS NO  
QUESTION, YOUR HONOR, THAT  
DR.^SHIELDS, AGAIN THAT DOESN'T  
NECESSARILY GO TO THE SCRATCH  
MARKS.

>> OH, NO, NO, I UNDERSTAND.

I UNDERSTAND.

>> BUT IF I CAN GO BACK

BRIEFLY, YOUR HONOR, TO THE  
SCRATCH MARK EVIDENCE, THE  
INTERESTING THING HERE IS THE  
DEFENDANT'S POST-CONVICTION  
EXPERT, DR. ^WRIGHT AGREED THAT  
THE DEFENSE ATTORNEY BROUGHT  
OUT THE NATURE OF AND THE  
LIMITATIONS OF THE STATE  
EXPERT'S TESTIMONY.

HE SAID --

>> I'M MORE CONCERNED THAT THIS  
COURT APPEARS TO HAVE GIVEN IT,  
THE TESTIMONY, GREATER WEIGHT  
AND NOW LOOKING AT WHAT  
DR. ^WRIGHT SAID THAN I WOULD  
THINK -- IN OTHER WORDS, IF WE  
CONCLUDED SOMETHING THAT MADE  
THAT SCRATCH MARK EVIDENCE MORE  
SIGNIFICANT, THAN CERTAINLY  
A LOGICAL THING THAT THE JURY MAY  
HAVE.

LISTEN I, WE'VE ALL BEEN TRIAL  
LAWYERS AND YES, YOU CAN DO A  
JOB ON CROSS-EXAMINATION BUT TO

REALLY GET THE JURY'S  
ATTENTION, HAVING YOUR OWN  
EXPERT GIVE DIRECT TESTIMONY,  
WHEN THAT EVIDENCE, IMPORTANT  
EVIDENCE.

NOW I UNDERSTAND WE'RE HERE  
SECOND-GUESSING BUT WHAT IS THE  
DEFENSE LAWYER, WAS HE ASKED  
WHETHER HE CONSIDERED HIRING A  
CONFIDENTIAL EXPERT TO RELOOK  
AT THE SCRATCH MARKS TO SEE  
WHETHER DR.^VEGA'S TESTIMONY  
WAS REALLY COULD BE  
SIGNIFICANTLY IMPEACHED?  
AND THIS IDEA, AGAIN, ALL BUT  
TWO OF THE SCRATCH MARKS WERE  
ACTUALLY EXCLUDED AS BEING FROM  
A HUMAN BEING, TO ME IS PRETTY  
SIGNIFICANT AS FAR AS THE  
SCRATCH MARKS THEMSELVES?  
>> YOUR HONOR, I THINK YOU'RE  
OVERSTATING DR.^WRIGHT'S  
POST-CONVICTION TESTIMONY.  
HE TESTIFIED ON  
CROSS-EXAMINATION THAT HE COULD



NOT RULE OUT THE POSSIBILITY  
THAT THESE SCRATCH MARKS, ALL  
OF THEM, WERE MADE BY THE  
FINGERNAILS OF A 7-YEAR-OLD  
GIRL.

THAT IS IN THE RECORD.

I BELIEVE I QUOTED HIS  
TESTIMONY.

HE COULDN'T RULE IT OUT.

AND HE DID AGREE AT LEAST TWO  
OF THE SCRATCH MARKS WERE  
MILDLY SUGGESTIVE OF FINGERNAIL  
SCRATCHES FROM A  
7-YEAR-OLD GIRL.

SO IF YOU ADD DR.^WRIGHT TO THE  
MIX THE STATE IS STILL GOING TO  
ARGUE THE FAVORABLE INFERENCES  
FROM DR.^VEGA.

NOW HE HAS GOT A DEFENSE EXPERT  
SAYING YOU KNOW WHAT, HE AGREED  
THESE TWO ARE MILDLY SUGGESTIVE  
OF A SCRATCH MARKS FROM A  
7-YEAR-OLD GIRL.

SO YOU'VE GOT CONFIRMATION, IF  
YOU WILL, ALBEIT THE DEFENSE

WOULD ARGUE WEAK CONFIRMATION,  
FROM A DEFENSE EXPERT.

AGAIN YOU HAVE THE FACTS THAT  
MR.^CRAIN IS BLEEDING IN HIS  
BATHROOM AND AMANDA IS BLEEDING  
IN HIS BATHROOM.

AGAIN THOSE BLOOD, THAT BLOOD  
WAS NOT THERE, KATHRYN HARTMAN  
TESTIFIED AMANDA WAS NOT  
BLEEDING.

SHE USED MR.^CRAIN'S BATHROOM  
ONCE. THERE WAS NO BLOOD.  
THERE WAS SOMETHING AROUND THE  
BOTTOM OF THE TOILET.

THERE WERE NO CLOTHES ON THE  
BACK OF THE TOILET.

AGAIN, AMANDA WAS TAKEN  
BACK TO MR.^CRAIN'S TRAILER AND  
SHE IS BLEEDING AND MR.^CRAIN  
IS BLEEDING.

>> LET ME ASK YOU ANOTHER  
QUESTION ABOUT THE SCRATCH  
MARKS.

THE STATE ARGUED IN ITS CLOSING  
ARGUMENT A COUPLE THINGS.

FIRST OF ALL WHEN HE ASKED  
ABOUT THE SCRATCH MARKS,  
MR. ^CRAIN, HE SAID IT CAME FROM  
CRABBING.

THEN WHEN THE POLICE OFFICER  
ASKED FOR HIM TO EXPLAIN HOW  
THAT HAPPENED, HE BECAME  
DEFENSIVE.

>> CORRECT, YOUR HONOR.

>> SO THAT TESTIMONY COULD  
STILL COME IN?

>> EXACTLY.

>> THEN THE OTHER, THE OTHER  
QUESTION IS THAT THE STATE ALSO  
ARGUED ABOUT THE LOCATION OF  
THE SCRATCH MARKS.

WE DON'T HAVE THE PHOTOGRAPHS  
UP HERE. I CHECKED.

I GUESS THE EXHIBITS, THE  
PHOTOGRAPHIC EXHIBITS DON'T  
COME BACK UP.

BUT WHAT IS IT ABOUT, WAS THERE  
SOMETHING ABOUT WHERE THE  
SCRATCH MARKS WERE AND THAT  
THEY WERE ONLY IN A CERTAIN

PLACE VERSUS, THAT MIGHT ALSO  
EXCLUDE THAT THEY CAME FROM  
SOMEBODY WHO WOULD BE CRABBING?  
IN OTHER WORDS, THERE WAS  
SOMETHING ABOUT WHERE THEY ARE  
IN THE ARM.

>> YOUR HONOR, ALSO, MR.^CRAIN  
WAS VERY EVASIVE.

WHEN HE SAID, OH, I GET THESE  
CRABBING PULLING UP TRAPS AND  
WHAT NOT.

SHOW ME HOW YOU DO THAT.  
HOW WOULD THAT HAPPEN?  
HE BECAME IMMEDIATELY EVASIVE.  
THAT WOULD BE A FAVORABLE  
INFERENCE THE STATE WOULD  
ARGUE.

BUT MR.^CRAIN, HIS BOAT IS  
QUIPPED WITH A WINCH TO PULL UP  
THE CRAB TRAPS.

HE NEVER REALLY POSITED AN  
EXPLANATION FOR ALL THOSE  
SCRATCH MARKS.

AGAIN IF YOU LOOK AT THE  
TOTALITY OF THE CIRCUMSTANCES

HERE YOU STILL HAVE DR.^VEGA'S  
TESTIMONY.

>> THE QUESTION SHE ASKED ABOUT  
THE LOCATION OF THE SCRATCHES.

>> CORRECT. DOCTOR --

>> CAN YOU READ ANYTHING FROM  
THAT?

>> DR.^WRIGHT ATTEMPTED TO.  
HE TRIED TO STATE THAT THE  
LOCATION OF THESE SCRATCH MARKS  
WERE INCONSISTENT WITH WHAT HE  
WOULD EXPECT.

>> WHAT IS THAT LOCATION?  
I THINK THAT'S PART OF THE  
QUESTION IS, WHERE WERE ALL OF  
THESE SCRATCH MARKS LOCATED?

>> SHE HAD SOME ON BOTH  
ARMS AND FOREARM AND GOING  
BACK UP.

I WISH I COULD READ YOU THE  
EXHIBIT.

TWO OF THE EXHIBITS MORE LIKELY  
TO BE CAUSED BY FINGERNAILS  
WERE EXHIBITS 34 AND 32.

I UNDERSTAND THIS COURT DOESN'T

HAVE THE PHOTOGRAPHS.

I'M SURE WE CAN OBTAIN THOSE

BUT --

>> BUT THEY WERE NOT ON HIS

LEGS? THEY WERE NOT ON HIS BACK.

>> NO.

>> YOU'RE SAYING ALL OF THE

SCRATCH MARKS WERE ON THE ARMS?

>> THE ONES WE ARGUED WERE THAT

WERE CONSISTENT WITH HIM

ATTACKING AMANDA, AND AGAIN,

REASONABLE INFERENCES CAN BE

MADE AND ARGUED FROM THIS

EVIDENCE AND THEY WOULD BE

GIVEN THE POST-CONVICTION

TESTIMONY OF DR. ^WRIGHT.

AGAIN THIS VERY EXPERIENCED

TRIAL ATTORNEY AFTER DEPOSING

THE DEFENSE EXPERT, INDICATED

I'M GOING TO HANDLE THIS ON

CROSS-EXAMINATION.

THIS COURT'S CASES INDICATE

THAT A DEFENSE ATTORNEY MAY, IN

FACT, RELY UPON

CROSS-EXAMINATION RATHER THAN

HIRE HIS OWN EXPERT, IF YOU  
BRING OUT THE NATURE OF THE  
LIMITATIONS OR THE LIMITATION  
OF THE TESTIMONY --

>> I APPRECIATE THAT.

AND IN ALMOST EVERY CASE I  
AGREE WITH YOU.

MY CONCERN HERE IS THAT BECAUSE  
OF THE CIRCUMSTANTIAL EVIDENCE  
CASE, FIRST YOU HAVE ONE  
JUSTICE, JUSTICE WELLS, WHO  
DISSENTED.

DIDN'T EVEN THINK THERE WAS  
ENOUGH EVIDENCE TO SUSTAIN THE  
CONVICTION.

THE COURT SPENT A LOT OF TIME  
LOOKING AT ALL THE PIECES OF  
THE EVIDENCE.

AND THEN THE ISSUE WAS BECAUSE  
THERE WAS, YOU KNOW, IT WAS A  
GENERAL VERDICT AND FOCUSED ON  
THE KIDNAPPING.

AND THEN BECAUSE, WE COULD  
SPECULATE THAT HE BROUGHT THIS  
GIRL, LITTLE GIRL BACK AND HAD

EITHER SEX OR SEXUALLY ABUSED  
HER AND GOT PANICKED AND, YOU  
KNOW, KILLED HER AFTER THAT BUT  
WE DON'T, YOU KNOW, WE DON'T  
KNOW THAT. WE HAVE NO EVIDENCE.  
THAT WOULD BE SPECULATION.  
SO YOU NOW HAVE TO GO TO THE  
EVIDENCE OF WHAT MIGHT HAVE  
HAPPENED.  
AS YOU SAID, BUT FOR THERE  
BEING THE BLOOD IN THE  
BATHROOM, HE WOULD BE REALLY,  
YES, HE TOOK HER BUT THEN WHAT  
HAPPENED FROM WHEN HE TOOK HER  
TO WHEN SHE'S KILLED, YOU KNOW?  
WE DON'T KNOW THAT.  
HOW DO YOU KNOW, HOW ARE YOU  
ABLE TO ESTABLISH THAT HE  
INTENDED TO COMMIT BODILY HARM  
FROM THE BLOOD AND THEN THE  
SCRATCH MARKS?  
NOW, THAT'S WHY THOSE TWO BITS  
OF PHYSICAL EVIDENCE BECOME  
MORE IMPORTANT IN THIS CASE  
THAN THEY WERE IF IT WAS, THERE



WAS AN EYEWITNESS.

HE HAD, MR. ^CRAIN HAD, YOU

KNOW, GIVEN A CONFESSION.

THIS WOULD BE ALMOST

IRRELEVANT.

BUT THAT'S WHY IT BECOMES SO

IMPORTANT.

SO I THINK YOU'VE EXPLAINED HOW

YOU THINK, EVEN WITHOUT THE

SCRATCH MARKS THERE'S ENOUGH

EVIDENCE THAT HE TOOK HER.

THAT THERE WAS A STRUGGLE.

THAT THERE WAS BLOOD WITHOUT

THE SCRATCH MARKS.

I'M JUST FOCUSING ON THE FACT

THAT THE COURT MADE A BIG DEAL

ABOUT THE SCRATCH MARKS.

>> AND, YOUR HONOR, AGAIN, I

THINK DIRECTLY ON POINT AS THIS

COURT'S OPINION IN BRANCH V.

STATE, IN POST-CONVICTION THEY

BROUGHT IN TWO EXPERTS AND THE

COURT SAID LOOK, THE PROSECUTOR

INTRODUCES EVIDENCE BUT THE

DEFENSE COUNSEL BROUGHT OUT

NATURE AND LIMITATIONS OF  
THE TESTIMONY, THIS TESTIMONY.  
THE INTERESTING THING ABOUT  
THIS CASE IS DR.^WRIGHT AGREED  
THAT THE DEFENSE ATTORNEY DID  
AN EFFECTIVE JOB ON  
CROSS-EXAMINATION BECAUSE THE  
DEFENSE ATTORNEY ELICITED FROM  
THE STATE EXPERT, DR.^VEGA,  
THAT HE COULD NOT CONCLUDE TO A  
REASONABLE DEGREE OF MEDICAL  
CERTAINTY THAT ANY ONE  
PARTICULAR IMPLEMENT OR  
INSTRUMENT OR HAND CAUSED THOSE  
SCRATCH MARKS.

SO AGAIN --

>> ALSO, COULDN'T SAY THAT IT  
WAS MORE LIKELY TO BE CAUSED BY  
THE FINGERNAILS OF A, MORE  
LIKELY.

THAT TO ME TALKS IN TERMS OF  
SOME PROBABILITY, NOT  
POSSIBILITY AND YET DR.^WRIGHT  
IS SAYING, NO, IT'S NOT A  
POSSIBILITY.

IF IT'S ANYTHING AS TO THESE  
TWO SCRATCH MARKS, IT'S A  
REMOTE POSSIBILITY.

I JUST, THAT IS QUALITATIVELY  
DIFFERENT.

YOU'RE NOT GOING TO CONVINCE ME  
OTHERWISE THAT IS NOT  
QUALITATIVELY DIFFERENT.

>> YOU'RE MAKING A LEAP THAT  
THIS, DR.^WRIGHT WAS MORE  
CREDIBLE FIRST OF ALL THAN  
DR.^VEGA.

I DON'T THINK THIS COURT WOULD  
MAYBE THAT LEAP.

SECONDLY --

>> WHERE IS THAT, DID THE JUDGE  
MAKE THE, EVALUATE DR.^WRIGHT'S  
TESTIMONY AND FIND HIM NOT TO  
BE CREDIBLE?

>> HE INDICATED THAT THESE, NO,  
HE DIDN'T EVEN REACH THAT  
POINT.

>> SO HOW, THEN WHAT ARE WE  
SUPPOSED TO DO WITH THAT?

>> WELL YOU LOOK AT DR.^VEGA'S

TESTIMONY.

I THINK YOU DON'T EVEN NEED TO  
GET TO THE PREJUDICE PRONG  
BECAUSE THIS IS A VERY  
EXPERIENCED DEFENSE ATTORNEY  
WHO HIGHLIGHTED THE WEAKNESSES,  
IF ANY, OR LIMITATIONS OF THE  
EXPERTS.

NOW, IF YOU FIND THAT TRIAL  
COUNSEL, THIS VERY EXPERIENCED  
TRIAL ATTORNEY, WAS INEFFECTIVE  
FOR NOT HIRING HIS OWN EXPERT  
THEN YOU HAVE ARTICULATED  
ESSENTIALLY A PER SE RULE, HEY,  
YOU CAN'T RELY ON  
CROSS-EXAMINATION.

YOU HAVE TO HIRE --

>> DON'T YOU THINK SOMEBODY  
SHOULD HAVE CALLED TO THE  
COURT'S ATTENTION WAS SAID ON  
DIRECT APPEAL ON MOTION FOR  
REHEARING WAS NOT 100% CORRECT?

>> I'M NOT ENTIRELY SURE, YOUR  
HONOR.

I DON'T KNOW THAT THAT IS

FRANKLY WHAT THIS COURT SAID  
WAS INCORRECT.

I THINK THERE WERE FAVORABLE  
ARGUMENTS AND INFERENCES THAT  
ARE MADE AND THE STATE IS  
ENTITLED TO ON MOTION FOR  
JUDGMENT OF ACQUIT.

IF I MAY GET TO THE BLOOD ISSUE  
-- AQUITTAL.

>> I WILL ASK ONE MORE THING.  
DID HE TESTIFY THAT ALL BUT TWO  
OF THE SCRATCHES WERE MORE  
LIKELY TO BE CAUSED BY THE  
FINGERNAIL OF A 7-YEAR-OLD THAN  
ANOTHER CAUSE?

DID DR.^VEGA TESTIFY TO THAT?

>> I DON'T BELIEVE, AGAIN I  
HAVE TO GO BACK AND LOOK AT IT,  
YOUR HONOR.

I DIDN'T REVIEW IT BELIEVE IT  
OR NOT, PRIOR TO.  
MANY WERE, AND SOME OF IT WAS  
BASED ON THE SPACING.  
I DIDN'T KNOW IF HE SAID ALL BY  
TWO BUT MANY WERE LIKELY.

BUT HE ALSO SAID THEY COULD

HAVE BEEN CRAB TRAPS.

>> DOCTOR, HE SAID EXACT

OPPOSITE.

ALL BUT TWO COULD BE EXCLUDED.

>> YOU'RE OVERSTATING HIS

TESTIMONY.

I CAN'T RULE OUT THESE WERE IN

FACT CAUSED BY FINGERNAILS.

HE SAID IT WAS UNLIKELY BUT HE

COULDN'T RULE IT OUT EITHER.

SO IT IS SPECULATE -- YOU'RE

TAKING THIS DEFENSE EXPERT,

DR.^WRIGHT, WHO DOES TESTIFY

ALMOST ENTIRELY FOR THE DEFENSE

NOW IN HIS POST-MEDICAL EXAMINER

CAREER AND SAY EVERYTHING HE

SAID WAS GOSPEL.

WHAT HE SAID WAS THE DEFENSE

ATTORNEY BROUGHT OUT THE NATURE

AND LIMITATION OF DR.^VEGA'S

OPINION ON CROSS-EXAMINATION

AND SAID THERE WAS NOTHING

UNPROFESSIONAL ABOUT DR.^VEGA'S

OPINION IN THIS CASE.

SO THAT'S WHAT DR.^WRIGHT SAID.

AND AGAIN, IF I CAN BRIEFLY, I

KNOW I'M RUNNING SHORT ON TIME,

ON THE BLOOD EVIDENCE AS

MENTIONED BEFORE, THE

EXPERIENCED TRIAL ATTORNEY IS

HERE, LOOKED AT CHALLENGING THE

BLOOD EVIDENCE.

THEY HIRED A REASONABLE EXPERT

WHOSE QUALIFICATIONS HAVE NOT

BEEN CHALLENGED, DR.^SHIELDS.

THEY LOOKED AT CHALLENGING IT

BUT MR.^CRAIN HAD AN INNOCENT

EXPLANATION FOR THE BLOOD.

THAT SHE HAD A LOOSE,

POTENTIALLY BLEEDING TOOTH.

AND EVEN NOW, AFTER THE

POST-CONVICTION HEARING,

DR.^JOHNSON, WHO THE

POST-CONVICTION COURT STATED

MUCH OF HER TESTIMONY WAS BASED

ON SPECULATION, I WOULD SUBMIT

THAT ALL OF HER TESTIMONY WAS

BASED ON SPECULATION.

THAT REDDISH-BROWN MATERIAL

THAT LOOKED LIKE BLOOD, REACTED  
LIKE BLOOD AND YIELDED DNA  
RESULTS LIKE BLOOD WAS IN FACT  
BLOOD.

AND DR. ^TED YESHION, THE STATE  
EXPERT WHO TESTIFIED DURING THE  
POST-CONVICTION HEARING, HE  
COUNTED POSSIBILITY OF A  
FALSE-POSITIVE READING.

LET ME CLEAR UP WHAT  
MR. ^STRAIN SAID.

THERE WERE SOME DNA RESULTS  
OBTAINED IN 2007 BY RELIAGENE,  
THE DEFENSE LAB.

THEY WERE ON MR. ^CRAIN'S BOXER  
SHORTS, THE SAME BOXER SHORTS  
THAT HAD AMANDA'S BLOOD ON  
THEM.

THEY FOUND SPERM CELLS AND THEY  
WERE MATCHED TO MR. ^CRAIN.

SO THERE WERE SOME SUBSEQUENT  
DNA TEST RESULTS.

NOW THERE WERE, THE SUBSTRATE  
CONTROL TESTING THAT WAS DONE  
DID NOT YIELD ANYTHING.



DR. ^YESHION THOUGHT IT WAS NOT  
BECAUSE OF DEGRADATION BUT  
BECAUSE OF ADJACENT AREAS DID  
NOT HAVE ANY DNA BECAUSE  
OBVIOUSLYLY THOSE SHORTS  
YIELDED DNA RESULTS.

SO, AGAIN, WITH THAT POINT OF  
CLARIFICATION THESE HIGHLY  
EXPERIENCED DEFENSE ATTORNEYS  
OFFERED A THEORY AT TRIAL TO  
EXPLAIN AWAY THE STATE'S DNA  
EVIDENCE.

AND THEY WENT WITH THAT RATHER  
THAN A WEAK SPECULATIVE ATTACK  
UPON THE STATE'S DNA AND BLOOD  
EVIDENCE.

>> I WANT TO MAKE SURE.

I THINK MR. ^STRAIN ALLUDED TO  
IT.

IN ALL OF THE POST-CONVICTION  
THERE IS NO EVIDENCE THAT  
THERE'S ANOTHER EXPLANATION FOR  
AMANDA'S DISAPPEARANCE OR ALL  
THE OTHER EVIDENCE THAT  
20, MR. ^CRAIN AS BEING --

>> ABSOLUTELY NOT, YOUR HONOR.

THIS COURT DIDN'T EVEN MENTION

ALL THE EVIDENCE IN THE DIRECT

APPEAL OPINION.

SOME OF THE MOST COMPELLING

EVIDENCE IS THE WAY HE HAD FOUR

HOURS TO BE ALONE WITH AMANDA,

DISPOSE OF HER BODY.

THEN TWO HOURS AFTER PULLING

HIS BOAT IN AND FINDING,

GETTING A CALL FROM AMANDA

HARTMAN THAT AMANDA IS MISSING,

WHAT DOES HE DO?

HE PULLS OUT ON HIS BOAT AND IS

FOUND TWO HOURS LATER.

HE CHANGED HIS CLOTHES ON THE

BOAT.

HE WAS WEARING DARK DRESS

SLACKS AND A MAROON SHIRT.

AND WHEN HE IS FOUND HE IS

WEARING JEANS AND A BLUE SHIRT.

SO HE DISPOSED OF AMANDA AND

HIS BLOODY CLOTHES.

BUT YOU KNOW WHAT?

HE LEFT HIS BOXER SHORTS ON.

THE BOXER SHORTS THAT CONTAINED

AMANDA'S BLOOD.

AGAIN, IF YOU LOOK AT ALL --

>> THAT IS ABOUT 2:30, 3:00 IN

THE MORNING?

>> FROM 2:30, YOUR HONOR.

THEN PUTS HIS BOAT IN 6:15,

6:30.

THAT'S WHEN HE GETS THE CALL.

THEN HE IS OUT TWO HOURS ON THE

BAY BEFORE THE POLICE CAN FIND

HIM.

SO AGAIN --

>> HE IS IN HIS DRESS PANTS --

>> A MAROON DRESS SHIRT.

>> 6:30 IN THE MORNING.

>> TO GO GRABBING CRABBING AND

CHANGES.

HE HAS SOMETHING ROLLED UP

UNDER HIS ARM.

THIS IS DISINTERESTED WITNESS

WHO SAYS THAT IS VERY STRANGE.

YOU DON'T SEE SOMEBODY GO

CRABBING LIKE THAT.

HE PULLED HIS TRUCK BACK TO

THE FRONT TIRES WERE SUBMERGED

WHICH IS VERY UNUSUAL.

HE WAS IN A HURRY, MR. ^CRAIN

WAS, EVEN AFTER GETTING A

FRANTIC CALL FROM A MOTHER SAID

WHERE IS AMANDA?

>> BOTH SHIRTS HAD SHORT

SLEEVES, DO YOU KNOW?

>> I BELIEVE THEY WERE BOTH

WERE. MAROON SHIRT.

CLEARLY CHANGED ON THE BOAT.

WE NEVER RECOVERED THOSE

CLOTHING ITEMS AND NEVER

RECOVERED AMANDA BROWN'S BODY.

>> DRESS PANTS AND SHIRTS IS

WHAT HE WAS WEARING WHEN HE

WENT TO SLEEP THAT NIGHT AT THE

MOTHER'S HOUSE?

>> THEY'RE SIMILAR BUT WE DON'T

KNOW EXACTLY.

THERE ARE SIMILAR DESCRIPTIONS

BUT IT IS ABSOLUTELY CLEAR HE

MAY HAVE CHANGED TWICE.

AGAIN, BUT AMANDA'S BLOOD IS

FOUND ON THE BOXER SHORTS HE

WAS WEARING WHEN HE WAS FOUND  
ON THAT BOAT.

AGAIN, IF YOU LOOK AT ALL THE  
EVIDENCE IN THIS CASE,

MR.^CRAIN WAS DEFENDED NOT BY  
NOVICE ATTORNEYS BUT TWO OF THE  
MORE EXPERIENCED DEFENSE  
ATTORNEYS IN HILLSBOROUGH  
COUNTY.

THEY ROUTINELY ATTEND LIFE OVER  
DEATH SEMINARS.

THEY LOOKED AT THE STATE'S  
EVIDENCE.

THEY CHALLENGED IT.

THEY MADE MR.^CRAIN'S CASE IN  
COURT AND WE ASK THAT YOU  
EFFECTIVELY AFFIRM THE  
DECISION OF THE LOWER COURT  
BELOW.

THANK YOU.

>> WITH ALL DUE RESPECT,  
MR.^BROWN, I BELIEVE HE  
SKEWERED THE FACTS AGAIN IN HIS  
PRESENTATION RIGHT NOW.  
LET ME FIRST ANSWER YOU,

JUSTICE PARIENTE.

AT POST-CONVICTION DEFENSE

COUNSEL WAS SPECIFICALLY

ASKED, DID YOU EVER CONSIDERING

HIRING YOUR OWN PATHOLOGIST, TO

EITHER FIRST REVIEW DR.^VEGA'S

MATERIALS AND THEN MAYBE LATER

DECIDE TO HAVE HIM TESTIFY OR

NOT?

MR.^HERNANDEZ ANSWERED, AGAIN

AS I MENTIONED ON DIRECT, THAT,

FROM THE DAY THEY GOT

DR.^VEGA'S REPORT THEY DID NOT

BELIEVE THE SCRATCH EVIDENCE

WOULD BE DAMAGING.

AND THEY NEVER CONTEMPLATED

HIRING THEIR OWN EXPERT.

MR.^BROWN RIGHT NOW HAS TALKED

ABOUT BLOOD STAINS BEING PROVEN

AS BEING CLEANED UP.

I BELIEVE HE'S CONFUSED THE

FACT OF WHAT TIME THAT CELL

PHONE CALL CAME IN, WHEN

MR.^CRAIN, I BELIEVE IN FACT

RECEIVED IT AFTER HE WAS OUT ON

THE WATER.

>> WE KNOW, WHAT HAPPENED IN  
THE BATHROOM, MR.^CRAIN SAID HE  
SPILLED SOMETHING AND HE SPENT  
ALL NIGHT CLEANING UP HIS  
BATHROOM AND THEN IT ALL LIT UP  
WITH LUMINOL.

NOW LUMINOL IS, THOSE ARE  
REASONABLE INFERENCES.

I DON'T THINK MR.^BROWN WAS  
MISSTATING THE EVIDENCE.

>> BUT WHEN MR.^BROWN SAYS THAT  
THERE'S A PROPER INFERENCE THAT  
MR.^CRAIN CLEANED UP A LARGE  
BLOOD SPILL ON THE FLOOR --  
>> WAS LUMINOL ALL OVER THE  
BATHROOM?

>> AS I UNDERSTAND IT, IT WAS,  
IT WAS A BATHROOM IN A MOBILE  
HOME AND IT WAS RATHER MODEST  
IN SIZE.

THE LUMINOL THEY SPREAD ON THE  
FLOOR AS I UNDERSTAND IT.

IT LIGHTS UP BOTH FOR BLEACH --

>> DID MR.^CRAIN SAY HE SPENT

ALL NIGHT CLEANING UP HIS

BATHROOM?

>> I DON'T KNOW, THAT IS

GETTING CLOSE TO HIS EXACT

DESCRIPTION.

>> AND THE CARPETING IN THE

BATHROOM WAS FOUND IN A WASHING

MACHINE OR DRYER?

>> WELL, THAT WAS SOMETHING

EXTRA TOO THAT THEY -- BUT, AS

EVEN DEFENSE COUNSEL ARGUED TO

THE JURY, THERE WAS NO OTHER

EVIDENCE.

AND RECALL THAT THIS COURT

ITSELF, EVEN IN THE MAJORITY

OPINION RECOGNIZED THAT IT WAS

JUST AN INFERENCE UPON AN

INFERENCE THAT MR. ^CRAIN EVEN

KIDNAPPED AMANDA BROWN FROM THE

HOUSE.

>> DON'T MISREAD WHAT WE SAID

ON DIRECT APPEAL.

THERE WAS A WHOLE SERIES --.

>> APOLOGIZE FOR THE WAY I

PHRASED IT BUT WHEN THE COURT



REDUCED THE KIDNAPPING CHARGE  
TO FALSE IMPRISONMENT YOU WERE  
RECOGNIZING THAT THE TRIAL  
COURT AND STATE'S ARGUMENT WAS  
INFERENCE UPON INFERENCE ABOUT  
WHETHER OR NOT THERE WAS A  
KIDNAPPING WITH INTENT TO  
COMMIT HOMICIDE AS OPPOSED TO  
THE, TO THE INTENT TO COMMIT  
BODILY HARM.

SO, AGAIN, AS THE, THIS COURT  
DOUBLY HAS TO BE CAUTIOUS IN  
TERMS OF RULING ON WHAT THE  
EFFECT OF THIS STIPULATION  
BECAUSE DEFENSE COUNSEL DID NOT  
THINK IT WOULD BE PREJUDICIAL  
AND THE SCRATCH EVIDENCE  
BECAUSE THEY DID NOT THINK  
DR. ^VEGA'S TESTIMONY WOULD BE  
DAMAGING.

THANK YOU FOR YOUR TIME.

>> THANK YOU BOTH FOR YOUR  
ARGUEMENT.