

THE NEXT CASE IS KING
VERSUS THE STATE OF FLORIDA.
BLANK OFFENCIVELY
>> PROCEED.

>> I'M STEVE BULLETIN FROM THE
PUBLIC DEFENDER'S OFFICE, AND
REPRESENT THE APPELLATE.
TIME PERMITTING I'M GOING TO
ARGUE THE FIRST THREE POINTS ON
APPEAL, DEALING WITH ROBERT
SALVADOR AND THE BALLISTICS
COMPARISON AND IF TIME DOESN'T
PERMIT I'LL RELY ON THE BRIEFS
FOR THOSE ISSUES.

ROBERT SALVADOR WAS A KEY STATE
WITNESS IN THE TRIAL AND KEY
FIGURE IN APPELLANT'S THEORY OF
DEFENSE AND WAS A SUSPECT IN THE
MURDER BUT THE POLICE QUICKLY
DROPPED HIM AS A SUSPECT AFTER
MICHAEL KING'S ARREST.

EVEN THOUGH ROBERT SALVADOR WAS
EVASIVE AND MADE INCONSISTENT
STATEMENTS CONCERNING HIS
WHEREABOUTS AN INTERACTIONS WITH
KING AND AFTER HE TESTIFIED ON
BEHALF OF THE STATE ABOUT HIS
ACTIVITIES AT THE GUN RANGE
EARLIER ON THE DAY IN QUESTION,
DEFENSE COUNSEL CROSS EXAMINED
ROBERT SALVADOR REGARDING HIS
OWN POSSIBLE INVOLVEMENT IN
MURDER.

>> THAT IS AN UNDERSTATEMENT.

>> YES, IT WAS AN
UNDERSTATEMENT, AN ACCUSATORY
QUESTION.

>> YES.

>> AND THIS WAS DONE WITHOUT
OBJECTION BY THE STATE.

A SERIES OF ABOUT, APPROXIMATELY
6 QUESTIONS, ASKED AND ANSWERED,
AND NO OBJECTION WAS MADE BY THE
STATE.

SUBSEQUENTLY ONE OF THE
PROSECUTORS, MS. O'DONNELL GETS

UP AND DOES REDIRECT OF ROBERT SALVADOR AND GOES OVER SOME OF THE SAME GROUND, GETS INTO TO REITERATE HIS DENIAL OF ANY INVOLVEMENT AND AFTER ROBERT SALVADOR STEPPED DOWN FROM THE STAND THE OTHER PROSECUTOR, APPROACHED THE BENCH AND EXPRESSED HIS GRAVE CONCERN OVER WHAT HAPPENED IN THE COURTROOM. AND WHAT WAS GOING ON IS HE... MR... HE HAD A GRAVE CONCERN AND WITHHELD HIS OBJECTION AND DID NOT --

>> SHOULD WE DECIDE THIS CASE ON A WAIVER, PROCEDURAL BASIS OR DO WE APPROACH THE SUBSTANCE?

>> I THINK YOU APPROACH THE SUBSTANCE AND IS NOT A STATE APPEAL THE STATE WAIVES BY FAILING TO OBJECT.

THIS HAS TO DO WITH AN ENTIRE SEQUENCE OF EVENTS.

>> LET'S TALK ABOUT THE LAW.

IS THE COURT, TRIAL JUDGE AUTHORIZED TO BECOME INVOLVED WHERE THERE IS PRESENTED THROUGH A QUESTION FABRICATED EVIDENCE THAT DOESN'T EXIST?

>> I WOULD TAKE ISSUE WITH THE -- BEING FABRICATED EVIDENCE.

>> OKAY...

>> WHERE IS THE EVIDENCE THAT THIS MR. ROBERT SALVADOR DID THE SHOOTING?

>> THERE IS CIRCUMSTANTIAL EVIDENCE THROUGHOUT THE CASE THAT INDICATES THAT ROBERT SALVADOR MIGHT HAVE DONE IT. WE DON'T OF HAVE TO SHOW PROOF BEYOND A REASONABLE DOUBT.

>> I UNDERSTAND.

YOU HAVE TO HAVE --

>> RIGHT, DEFENSE COUNSEL HAD ONLY TO HAVE A GOOD FAITH BASIS FOR ASKING THE QUESTIONS.

>> WE'D DETERMINE FROM LOOKING AT THE EVIDENCE PRESENTED, ROBERT SALVADOR, THE GUN RANGE, WHERE HE WAS, AND WHAT THE EVIDENCE WOULD INDICATE WHERE HE WAS AT THE TIME OF THE ALLEGED SHOOTING, WE'D DETERMINE THAT THERE IS NOT A GOOD FAITH BASIS FOR THESE ACCUSATIONS MADE TO A WITNESS IN A COURTROOM BEFORE A JURY, THE LAW OF FLORIDA IS YES, WE CAN AFFIRM THIS TRIAL JUDGE'S EXCLUDING OF THAT EVIDENCE.

>> EXCEPT A GREAT DEAL WENT ON BEYOND THAT.

>> I'M SAYING, LET'S GO THROUGH THAT STEP, OKAY?

YOU ARE SAYING IT IS BEYOND THAT.

LET'S GO TO THAT.

>> WELL THE FIRST -- I MEAN, THERE'S A LOT OF DIFFERENT THINGS, I DON'T WANT TO BE ALL OVER THE MAP HERE.

BUT THE FIRST ARGUMENT I HAVE TO MAKE IS THERE CLEARLY WAS A GOOD FAITH BASIS FOR THE QUESTION, THAT IS ALL DEFENSE --

>> WHAT IS IT BASED ON.

>> THIS:

FIRST OF ALL, WELL, BEFORE GETTING INTO THE CIRCUMSTANTIAL EVIDENCE THE JURY WILL THINK HE GOT THE INFORMATION FROM HIS FILE AND IT MAY BE THAT HE DID AND HE -- DEFENSE COUNSEL DIDN'T SAY I GOT IT FROM KING. BECAUSE THE TRIAL JUDGE SPECIFICALLY SAID I DON'T WANT TO HEAR THAT.

I DON'T WANT TO TOUCH THAT WITH A TEN FOOT POLE AND I DON'T WANT TO GO INTO PRIVILEGED COMMUNICATIONS AND THE PROSECUTOR WAS CERTAIN HE GOT IT FROM THE CLIENT AND IF HE DID,

THAT WOULD BE A GOOD FAITH BASIS FOR THE QUESTIONING RIGHT THERE AND I WOULD CITE SKULL VERSUS U.S. FOR THAT BUT IN ADDITION, LOOKING AT THE CIRCUMSTANTIAL EVIDENCE IN THE CASE YOU HAVE ROBERT SALVADOR'S INITIAL STATUS AS A SUSPECT AND ROBERT SALVADOR'S EVASIVENESS ABOUT HIS WHEREABOUTS, WITHHOLDING OF INFORMATION, INCONSISTENT STATEMENTS AND THERE'S EVEN A REPRESENTATION AT A SUBSEQUENT RICHARDSON HEARING WHERE IT COMES UP LATER IN THE SITUATION WHERE -- ON THE MOTION, AT THE TIME OF THE MOTION FOR MISTRIAL AND RICHARDSON HEARING HAVING TO DO WITH THE LATE DISCLOSURE OF ROBERT SALVADOR'S WIFE AS A POTENTIAL ALIBI WITNESS AND, THE EVIDENCE THAT ROBERT SALVADOR FAILED THE POLYGRAPH.

>> I AM A LITTLE CONCERNED ABOUT WHY MR. SALVADOR WAS A SUSPECT FROM THE BEGINNING, AS I READ ALL OF THIS IT SEEMS TO ME WE HAVE A LOT OF EVIDENCE PEOPLE WHO SAW... [INAUDIBLE] AND DESCRIBING THE PERSON IN THE MARY ROY AND FROM MY UNDERSTANDING...

>> MR. KING AND THE CAMARO. I HAVE CONCEDED ANY ERROR IS HARMLESS, NO QUESTION IT WAS KING IN THE CAR WITH THE VICTIM IN THE CASE, NO QUESTION THE VICTIM WAS IN KING'S HOUSE AND NO QUESTION ABOUT DNA EVIDENCE...

>> HIS FACE ON THE...

>> IT WAS KING THAT THE WITNESSES... MS. KOWALSKI AND, JOHNSON, I THINK -- ABSOLUTELY. THIS EVIDENCE IS ABSOLUTELY OVERWHELMING IN THIS CASE AS TO

THE KIDNAPPING AND AS TO THE
SEXUAL BATTERY.

>> HERE'S THE THING.

YOU ARE AN EXCELLENT ATTORNEY
AND ALWAYS PREPARED AND ALWAYS
WILLING TO CONCEDE THINGS.

LET'S JUST TAKE THAT THE JUDGE
ALLOWED THEM TO CROSS EXAMINE
ROBERT SALVADOR AND SAY, DIDN'T
YOU FIRE THE SHOT THAT KILLED
AND TOOK THE LIFE OF DENISE LEE.
ABSOLUTELY NOT.

THE JURY -- HE WAS ABLE TO ASK
THE ULTIMATE QUESTION, DID YOU
SHOOT HER?

NOW, THE CROSS-EXAMINATION --
DIDN'T YOU GO TO THE HOUSE?
AND WASN'T THE PURPOSE... IF IT
IS IN OR OUT, HOW DO YOU GET TO
A SITUATION WHERE A JURY IS
GOING TO BELIEVE THAT AFTER A
DEFENDANT KIDNAPS, RAPES AND
TERRORIZES A VICTIM OVER HOURS
AND JUST AS YOU AGREE, THE MOST
HORRENDOUS AND 911 CALL AND
EVERYTHING, SOMEHOW HE NEEDED
HELP FROM A FRIEND TO SHOOT HIM.

>> HE DIDN'T NEED HELP FROM THE
FRIEND BUT IT MAY BE...

>> ARE YOU SAYING, SALVADOR --
THE THEORY THAT HE WAS WITH THAT
-- HIM THE WHOLE TIME.

>> NO, THE THEORY WAS -- HE
DIDN'T MATERIALIZE AT THE SCENE
WHICH IS WHAT DEFENSE COUNSEL
WAS FORCED TO ARGUE.

THE ARGUMENT IS THAT HE WAS IN
ON THIS FROM THE BEGINNING BUT
WAS NOT PARTICIPATING...

>> AND WHERE WOULD THE JURY GET
THAT AND SOMEHOW, AGAIN, TO
CARRY OUT THIS HORRIBLE SCHEME,
HE DIDN'T HAVE THE ABILITY TO
SHOOT THE VICTIM?

>> HE HAD THE ABILITY...

>> IT IS PREPOSTEROUS.

I MEAN, WHETHER... SHOULD HAVE BEEN ALLOWED TO CROSS-EXAMINATION, IT IS A PREPOSTEROUS THEORY.

>> I HAVE TO TAKE ISSUE WITH THAT UNDER THE CIRCUMSTANCES OF THE CASE.

FIRST WE KNOW, IF YOU CAN BELIEVE, TAKING AT FACE VALUE THE TESTIMONY OF THE FDLE GUNSHOT EXAMINER, ROMEO WE HAVE A PRETTY GOOD IDEA THE VICTIM WAS SHOT WITH SALVADOR'S AMMUNITION AND KNOW ROBERT SALVADOR HAD A .9 MM FIREARM WHICH HE USED AT THE FIRING RANGE AND THE STATE HAD IN ITS POSSESSION AND NEVER RAN BALLISTICS TESTS ON THAT.

>> DID THAT COME INTO EVIDENCE.

>> YES.

YES.

>> IN OTHER WORDS, YOU HAD A BASIS TO SAY IT WAS ROBERT SALVADOR'S AMMUNITION, EXPLAINED BY THE FACT THAT HE SAYS THAT THE DEFENDANT MUST HAVE TAKEN THE AMMUNITION.

MAYBE I'LL TRY -- ON THIS POINT, FIRST OF ALL, AS JUSTICE LEWIS WAS ASKING, WHERE IS THE GOOD FAITH BASIS FOR ASKING THOSE THREE QUESTIONS, IF THERE ISN'T ONE, OR EVEN IF THERE IS, WHAT I'D ASK YOU, WHERE IS THE HARM IN THE JUDGE SAYING TO DISREGARD THESE THREE QUESTIONS, WHEN YOU HAD NO OTHER EVIDENCE, TO PUT IN TO ACTUALLY SUBSTANTIATE IT.

>> I HAVE TO ANSWER -- THAT IS ABOUT SIX QUESTIONS AND I'LL TRY AND DO THAT.

FIRST THE JUDGE DIDN'T MERELY SAY DISREGARD THOSE QUESTIONS AND ANSWERS, AFTER THE STATE DIDN'T OBJECT TO THEM FOR

TACTICAL REASONS.

THE PROSECUTOR WASN'T OKAY WITH THAT.

THE PROSECUTOR SAID YOU HAVE TO DO MORE, AND YOU HAVE TO TELL THE JURY THERE IS NO BASIS IN FACT AND EVIDENCE OR INFERENCE FROM THE EVIDENCE FOR THE ASKING OF THESE QUESTIONS, MAKING DEFENSE COUNSEL LOOK BAD, WORSE THAN IF HE NEVER ASKED THE QUESTIONS IN THE FIRST PLACE, A COMMENT ON EVIDENCE WHICH IS STRICTLY FORBIDDEN UNDER FLORIDA LAW BUT --

>> --

THE QUESTION.

IN THIS COURTROOM TO ASK THE QUESTION.

>> I THINK THERE IS, FIRST OF ALL, LIKE I SAY, IF YOU GOT THE INFORMATION, THAT WOULD BE A BASIS AND, THE FACT THAT HE HAD INFORMATION --

>> THE STANDARD HERE DEALING WITH IS WHAT, ABUSE OF DISCRETION?

>> I THINK IT WOULD BE AN ABUSE OF DISCRETION, AND, THE GUN IS VERY IMPORTANT HERE.

SALVADOR DIDN'T SAY THAT KING PROBABLY TOOK MY AMMUNITION WHEN I WASN'T LOOKING AND ALLOWED AS HOW THAT WAS POSSIBLE AND BELIEVED KING DIDN'T HAVE AMMUNITION...

>> YOUR ARGUMENT ABOUT, GOT THE INFORMATION FROM THE CLIENT, IF THE COUNSEL GOT IT FROM THE CLIENT, THAT PER SE IS A REASONABLE...

>> PLAYS WITH OTHER FACTORS TO CREATE A GOOD FAITH BASIS.

>> SO, YOU HAVE TO LOOK AT THE CONTEXT, AND THE PROBLEM IS, THAT IS ALL SPECULATIVE.

>> ALL COUNSEL NEEDS IS A --
>> NEEDS TO BE BASED ON
ADMISSIBLE EVIDENCE, IF HE KNEW
AS HE REPRESENTED, ROBERT
SALVADOR FAILED THE POLYGRAPH IT
PLAYS INTO A GOOD FAITH BASIS
AND THE MOST IMPORTANT THING IS
THE GUN, BECAUSE, KING WAS
ARRESTED SHORTLY AFTER IT WOULD
HAVE OCCURRED AND MOST OF THE...
I MEAN, THE BODY IS FOUND, AND
CLOTHING IS FOUND AND KING IS
WET AND DISHEVELED AND ALL THE
EVIDENCE FOUND IN THE CAR AND
THE HOUSE, I MEAN, IF HE MADE
ANY EFFORT TO DISPOSE OF
EVIDENCE, HE SURE WASN'T GOOD AT
IT BUT, IN THE MEANTIME, OVER
TWO YEARS, NEARLY TWO YEARS OF
INVESTIGATION, THEY NEVER FOUND
THE EXPOSED.9 MM GUN ACCORDING
ONLY TO ROBERT SALVADOR KING
HAD, AND THAT IS THE ONLY
EVIDENCE, HE EVER HAD A.9 MM AND
ROBERT SALVADOR SAYS HE AND
ROBERT SALVADOR HAD A.9 MM AND
IT WASN'T TESTED AND IF KING HAD
A GUN WHERE IS IT.
THEY LOOKED FOR IT FOR TWO YEARS
AND THE SITE OF HIS ARREST AND
COMBED THE GRASSY AREA UP TO THE
TREE LINE AND BACK AND FORTH
THROUGH THE EXIT AND ANY PLACE A
GUN COULD CONCEIVABLY BE THROWN,
THEY DIDN'T FIND IT AT THE
BURIAL SITE OR CLOTHING SITE OR
IN OR NEAR KING'S HOME.
DREDGED LAKES, RETENTION PONDS,
SEWERS, I MEAN, THEY LOOKED UP
AND DOWN FOR THIS GUN, AND NEVER
FOUND THE GIVEN.
GOOD FAITH BASIS COUNSEL'S
VANTAGE POINT, HE NEVER HAD A
GUN, ROBERT SALVADOR HAD A GUN,
IT WAS IN THE POSSESSION OF THE
POLICE AND THEY COULD HAVE

TESTED IT WHEN ROMEO DID THE
COMPARISON OF EYE BALLING IN THE
MICROSCOPE THE CARTRIDGE CASES,
AND THEY WERE SATISFIED THAT
ROBERT SALVADOR... ROBERT
SALVADOR --

>> CAN'T THEY LOOK AT WHAT THE
EVIDENCE IS?

>> WHAT?

>> THEY'RE NOT ALLOWED TO LOOK
AT WHAT THE EVIDENCE IS?

GOODNESS.

THE NEIGHBOR SEES THE VEHICLE.

>> SURE, THEY ARE --

>> AND THIS DEFENDANT AVOIDS A
WITNESS ON THE ROADWAY...

>> THEY ARE ABSOLUTELY ALLOWED
TO LOOK AT -- NO QUESTION KING
IS GUILTY OF SERIOUS CRIMES
HERE.

HE'S GUILTY OF A KIDNAPPING,
GUILTY OF SEXUAL BATTERY, AND
WOULD BE GUILTY OF MURDER, BUT
FOR THE FACT THAT THE
INSTRUCTIONS THE STATE CHOSE FOR
REASONS I HOPE I GET A CHANCE TO
GET INTO TO HAVE THE JURY
INSTRUCTED.

HE WAS NOT GUILTY OF MURDER
UNDER THE INSTRUCTIONS OF THE
CASE.

BUT, IF THE -- THE STATE CHOSE
TO MAKE IT A DEFENSE.

IT WAS PRESENTED TO THE JURY.

YOU CAN'T CONVICT KING OF
PREMEDITATED OR FELONY MURDER
UNLESS YOU FIND HE WAS
PERSONALLY RESPONSIBLE FOR THE
SHOOTING.

THAT WAS IN BOTH PARTIES CLOSING
ARGUMENTS, WHY WOULD MR. AARON,
EXPERIENCED PROSECUTOR, NOT ASK
FOR PRINCIPLES OR STANDARD
FELONY MURDER INSTRUCTION THAT
YOU DON'T HAVE TO BE THE TRIGGER
MAN.

>> HELP ME UNDERSTAND YOUR THEORY OF ROBERT SALVADOR'S INVOLVEMENT.

YOU SAID HE WAS IN ON THIS FROM THE BEGINNING.

WHAT IS "THIS"?

OBVIOUSLY THE END RESULT IS THIS HORRIFIC MURDER BUT WHAT WAS THE THEORY OF HIS INVOLVEMENT, SHOWS UP THERE TO ADMINISTER THE SHOT THAT KILLED THE VICTIM?

>> THE ONLY OTHER POSSIBILITY I CAN THINK OF...

>> WHAT POSSIBILITY... I MEAN, IT JUST STRAINS CREDULITY.

IF IT STRAINS CREDULITY, HOW CAN IT BE A GOOD FAITH BASIS FOR ALL OF THIS.

>> WAIT A MINUTE, NOW, THE ARGUMENT IS ROBERT SALVADOR MAY HAVE BEEN IN ON THIS FROM THE BEGINNING AND THERE IS CIRCUMSTANTIAL EVIDENCE THAT TENDS TO SUPPORT THAT AND THERE IS HIS EVASIVENESS.

>> YOU KNOW, I READ THROUGH THIS AND THE GUY IS DRIVING UP AND DOWN THE STREET, THREE AND FOUR TIMES, AND, I MEAN, HOW DID ROBERT SALVADOR KNOW WHO THE PERSON WAS, WHERE HE WAS GOING TO STOP?

I MEAN, WAS THERE PHONE RECORDS OR SOMETHING, CALLED ROBERT SALVADOR AND TOLD HIM THAT.

>> ROBERT SALVADOR DELETED ALL PHONE CALLS THAT HE RECEIVED FROM KING ON THAT DAY.

>> WHAT ABOUT KING'S PHONE.

>> THERE IS NO EVIDENCE DEALING WITH THAT.

BUT I DO.

I REALLY REGRET GOING HERE BUT I HAVE TO SAY, BECAUSE YOU SAY WHAT COULD POSSIBLY HAVE ROBERT SALVADOR'S MOTIVE HAVE BEEN.

I MEAN, YOU KNOW, SPECULATE ON THAT.

THE PROSECUTOR RIDICULED IT IN CLOSING ARGUMENT AFTER DEFENSE WAS PRECLUDED FROM ARGUING IT. PROSECUTOR SAYS, WELL, I ALWAYS WANTED TO SHOOT SOMEBODY, SURE, MIKE I'LL HELP YOU OUT AND MIKE SAYS, WELL, I'LL RAPE YOU AND KIDNAP YOU BUT I DRAW THE LINE AT MURDER.

>> IN FAIRNESS... I SAY IT WAS PREPOSTEROUS AND YOU SAID THAT IS GOING TOO FAR.

WHAT WE ARE STRUGGLING WITH HERE, AND JUST ON THE FIRST POINT ABOUT THE THREE QUESTIONS, NOT ONLY DOES IT -- DOES IT APPEAR TO BE A GOOD FAITH BASIS TO HAVE ASKED THE QUESTION, BUT EVEN IF YOU SAY, WELL, HE DIDN'T HAVE THE GUN AND ROBERT SALVADOR HAD A GUN, THE IDEA THAT -- AND JUSTICE PARIENTE IS ASKING YOU THIS WAY AND JUSTICE CANADY, SOMEHOW HE'S PICKING SOMEONE UP AT RANDOM, NO COMMUNICATION. ALL THESE HORRENDOUS THINGS HAPPEN OVER A PERIOD OF, WHAT, SEVERAL HOURS AND SOMEHOW, HE'S COMMUNICATING HOW TO ROBERT SALVADOR, SHOW UP AT THE LAST PLACE?

WITH THE GUN SO HE COULD SHOOT HIM?

THAT IS WHAT WE'RE HAVING -- STRUGGLING WITH.

>> NUMBER ONE, HE MAY HAVE COMMUNICATED IT TO HIM AT THE GUN RANGE, THAT WAS ONE QUESTION ASKED BUT I HAVE TO GO HERE AND I REGRET IT BUT AS LONG AS YOU ASK WHAT POSSIBLY COULD HAVE BEEN HIS MOTIVATION, ROBERT SALVADOR'S MOTIVATION COULD HAVE BEEN THE SAME AS KING'S

MOTIVATION.

I MEAN, WE KNOW FROM THE PHYSICAL EVIDENCE, MEDICAL EXAMINER TESTIFIED THAT EVIDENCE OF SEXUAL ASSAULT, BOTH VAGINALLY AND ANALLY AND INCONSISTENT WITH ANY SORT OF CONSENSUAL SEX AN KING'S DNA AND SEEM MEN WAS FOUND IN THE VAGINAL SAMPLE AND NO BIOLOGICAL FLUIDS WERE FOUND IN THE ANAL SAMPLE WHICH RAISES THE POSSIBILITY THAT ROBERT SALVADOR'S MOTIVATION FOR HIS INVOLVEMENT COULD HAVE BEEN THE SAME AS KING'S, IN OTHER WORDS...

>> THERE IS ABSOLUTELY NO -- TO THE CRIME SCENE OR ANY OF THESE PLACES WHERE THE VICTIM WAS, IS THAT CORRECT.

>> THAT'S CORRECT.

>> WASN'T THERE VIDEO EVIDENCE TO SHOW HE WAS SOME OTHER PLACE WHILE ALL OF THIS WAS GOING ON?

>> ACTUALLY, NO.

>> I'M NOT TALKING ABOUT THE SHOOTING BUT THE...

>> YES.

>> ASSAULTS, A POINT I WOULD LIKE TO GET INTO.

THE POLICE OFFICER, LEAD DETECTIVE, MORALES WHEN ASKED, WHY DID YOU... QUICKLY AS A SUSPECT, WE BELIEVED HIS ALIBI AND WHAT WAS THAT?

HE HAD A RECEIPT FROM CHECKERS AND A VIDEO FROM HOME DEPOT IN VENICE AROUND THE PERIOD OF 3:30 OR 4:00 IN THE AFTERNOON.

ACCORDING TO ROBERT SALVADOR, HE, EXPANDED ON WHAT HE HAD DONE AND ANY ONE OF THESE VERSIONS ARRIVED HOME 5:30 OR 6:00

ACCORDING TO HIM AND THE MURDER CLEARLY HAPPENED AFTER 6:14,

BECAUSE...

>> YOU ARE SAYING HE WAS PART OF THE...

>> IT DIDN'T OCCUR IN KING'S HOUSE, THOUGH, IF HE WAS PART OF THE ASSAULT, IT OCCURRED BETWEEN 6:00 AND 9:00.

IN OTHER WORDS, YOU KNOW, JUSTICE PARIENTE SAYS, WHY ON GOD'S GREEN EARTH WOULD ROBERT SALVADOR COME OUT HERE JUST TO SHOOT THIS SHOT?

AND I'M SUGGESTING A POSSIBLE REASON THAT IS CONSISTENT UNDER THE EVIDENCE, WHICH WOULD BE THAT A SEXUAL ASSAULT OCCURRED AT...

>> EVEN IN THE CROSS-EXAMINATION THAT WENT TOO FAR, THEY DIDN'T SAY... WHY DIDN'T HE SAY, DIDN'T YOU ALSO RAPE THE VICTIM AS WELL?

I MEAN, YOU ARE TELLING ME THAT WAS A THEORY THAT THE DEFENSE ADVANCED AT TRIAL?

>> NO, I'M SAYING THAT THAT IS MY RESPONSE TO YOUR QUESTION ABOUT, SAYING THAT IT IS PREPOSTEROUS THAT HE COULD HAVE HAD ANYTHING TO DO WITH THIS.

>> WE'RE REALLY HERE TO SEE IF THE GUILT PHASE WAS FAIR AND THERE ARE ERRORS THAT REQUIRE A REVERSAL.

SO YOU MAY WANT TO... WHAT I THINK YOU -- THE FIRST POINT IS, IF THERE IS NO GOOD FAITH BASIS WE CAN DISCERN IN THE RECORD AND IT WASN'T OFFERED, THERE WAS NO ERROR IN WHAT THE JUDGE DID. FURTHER, MY POINT OF VIEW, EVEN IF HE HAD BEEN ALLOWED TO ASK THOSE QUESTIONS, IT DOESN'T... LIKE, ASKING A QUESTION AND NOT HAVING EVIDENCE TO SUPPORT IT, ISN'T GOING TO GET YOU VERY FAR.

>> I'LL BEAT THE DEAD HORSE BEER
A LITTLE MORE.
NUMBER ONE, THERE IS A REAL
DOUBLE STANDARD GOING ON AS FAR
AS THE STATE TRYING TO SEIZE A
TACTICAL ADVANTAGE, THE WHOLE
PROBLEM WOULD HAVE GONE AWAY
UNDER YOUR THEORY ASSUMING THAT
THE JUDGE COULD HAVE SUSTAINED
AN OBJECTION, THEY SHOULD HAVE
OBJECTED AND SHOULDN'T HAVE
WAITED...
>> THERE IS NOT A WAIVER IN THE
TRIAL COURT.
THAT IS FOR AN APPELLATE...
>> I UNDERSTAND IT GOT WORSE.
>> THIS IS LIKE... A DEFENSE
LAWYER, FORCING THE OPPOSITION
TO JUMP UP AND START OBJECTING,
AND IT LOOKS LIKE THE STATE IS
TRYING TO HIDE SOMETHING.
COME ON, YOU ARE A SEASONED
LAWYER AND IT CUTS BOTH WAYS AND
YOUR ARGUMENT CUTS EXACTLY THE
OPPOSITE WAY AS WELL.
>> IS THE STATE SUPPOSED TO
STAND UP AND SCREAM AND --
ANSWER THE OBJECTION AND IT
SIGNALS TO THE JURY THE STATE IS
TRYING TO HIDE THE LINE OF
QUESTIONING.
>> OLD STYLE DEFENSE ATTORNEYS
USED TO SAY I NEVER OBJECT TO
THINGS BECAUSE THE JURY WILL
HOLD IT AGAINST ME BUT AT SOME
POINT...
>> YOUR A ARGUMENT IS IT MAKES
THE DEFENSE LAWYER LOOK BAD.
>> A COUPLE THINGS OCCURRED
LATER DURING THE ENTIRE SEQUENCE
OF EVENTS AND GETTING BACK TO
THE QUESTION OF HARMLESS ERROR
IT IS ONE THING THAT -- THIS IS
SOMETHING AND IT WASN'T
INADVERTENT AND PERVADED THE
TRIAL AND I'M PLAY THE THIS IS

AMERICA CARD, EVERYBODY GETS ONE
FAIR TRIAL AND I DON'T THINK
THIS WAS IT AND EVEN IF YOU
DON'T LIKE THE DEFENSE YOU GET
TO PRESENT YOUR DEFENSE AND HE
DIDN'T GET TO.

IT WAS TORPEDOED AND
EVISCERATED.

WHEN THE JUDGE BASICALLY SAID,
OKAY, WHAT IS THE REMEDY HERE,
IF I THINK THERE IS NO GOOD
FAITH BASIS, I INSTRUCT THE JURY
AND DISREGARD IT AND THE STATE
SAID, NO THAT IS NOT GOOD ENOUGH
AND YOU HAVE TO TELL HIM IT WAS
IMPROPER AND NO BASIS IN FACT
AND NO EVIDENCE OR INFERENCE
FROM THE EVIDENCE.

SO, THEN HE DOES THAT AND
CLOSING ARGUMENT THE DEFENSE IS
TOLD, WELL YOU CAN ARGUE ROBERT
SALVADOR SOMEHOW MATERIALIZED
AND CAN'T ARGUE ANY OF THIS
OTHER STUFF, DEFENSE LAWYERS
RELUCTANTLY SAYS I UNDERSTAND
YOUR RULING, AND WHAT IS THE
PROSECUTOR DOING?

GETS UP AND IN THE CLOSING
ARGUMENT, SAYS THAT, YOU KNOW,
COMPARING WITH THE VICTIM,
TALKING ABOUT THE DAY OF THE
MURDER BEING THE LAST DAY, WORST
DAY IN THE VICTIM'S LIFE HE SAYS
LAST WEDNESDAY WAS THE WORST DAY
IN ROBERT SALVADOR'S LIFE.

MAKES THE DEFENSE LOOK LIKE HE'S
PERSECUTING POOR ROBERT
SALVADOR.

OKAY?

THE PROSECUTOR RIDICULES THE
DEFENSE, THE DEFENSE ATTORNEY
WAS TOLD YOU CAN'T ARGUE THAT,
YOU CAN'T ARGUE THAT THERE WAS
ANY AGREEMENT.

AND THE PROSECUTOR RIPS THE VERY
THING HE CAN'T ARGUE APART.

THEN, HE ATTEMPTS TO SHIFT THE BURDEN OF PROOF BY SAYING, YOU KNOW, THE DEFENSE SAID, OPENING ARGUMENT THAT THE EVIDENCE WOULD SHOW THAT SOMEONE OTHER THAN MICHAEL KING FIRED THE FATAL SHOT, WELL, ASK THEM TO SHOW -- FOR THAT EVIDENCE.

CLEAR COMMENT -- THERE WAS AN OBJECTION, A MOTION FOR MISTRIAL, DENIED.

AND I THINK BASICALLY THE PROBLEM HERE, THIS IS A HARD CASE, IT IS A HARD CASE, NOT A SINGLE ERROR AND, AGAIN ON THE HARMLESSNESS QUESTION, MR. AARON CLEARLY DIDN'T THINK IT WOULDN'T HAVE MATTERED.

IF HE THOUGHT IT WOULDN'T HAVE MATTERED HE WOULDN'T HAVE CONDUCTED HIMSELF THE WAY HE DID AND I NEED TO GET BACK TO THE IMPORTANT THING HERE.

WHY WOULD HE NOT HAVE REQUESTED THE PRINCIPAL'S INSTRUCTION ON PREMEDITATED MURDER AND TALK ABOUT A SEASONED ATTORNEY, HE KNOWS ABOUT THAT AND THE REASON HE DIDN'T IS HE DIDN'T WANT HIS PENALTY PHASE MUDDIED UP WITH QUESTIONS ABOUT ROBERT SALVADOR AND WANTED TO TAKE THE POSITION ROBERT SALVADOR HAD NOTHING TO DO WITH THIS...

>> I'M MISSING SOMETHING.

THE STATE BY HOLDING ITSELF TO A HIGHER BURDEN, CREATED ERROR HERE.

>> I DON'T THINK THEY CREATED ERROR... THERE WAS A REASON WHY THEY CHOSE TO HOLD THEMSELVES TO A HIGHER BURDEN AND THAT REASON, THEY WERE CONCERNED ABOUT THIS. THIS WAS NOT SOMETHING THEY THOUGHT WOULDN'T HAVE MADE ANY DIFFERENCE, IF THEY THOUGHT IT

WOULDN'T, WHY DO ALL THE THINGS
THEY DID?

WHY FIGHT SO HARD TO GET... SAY
IT'S NOT ENOUGH TO INSTRUCT THEM
TO DISREGARD.

YOU HAVE TO TELL THEM IT WAS
COMPLETELY BOGUS?

WHY DO THE THINGS HE DID IN
CLOSING ARGUMENT?

>> YOU ARE NOW DOWN TO
FIVE-AND-A-HALF MINUTES.

INTO YOUR REBUTTAL.

>> INTO MY REBUTTAL?

>> A TOTAL OF FIVE-AND-A-HALF
MINUTES.

>> I BETTER USE THAT ON THE
OTHER ISSUES, REALLY QUICKLY.
FIREARMS EXAMINER, ROMEO
COMPARED THREE CARTRIDGE CASES
FROM GUN RANGE AND THE CASE
FOUND IN THE BRUSH AREA WHERE
THE BURIAL SITE WAS.

AND ORDINARILY THIS WOULD BE THE
KIND OF THING, OKAY YOU SHOW A
DEFENDANT'S CONNECTION WITH A
FATAL... BULLET THAT YOU KNOW
WAS USED IN THE CRIME.

BY SHOWING THAT IT MATCHES A
BULLET THAT HE WAS KNOWN TO HAVE
FIRED OR GUN HE WAS KNOWN TO
HAVE POSSESSED OR SOMETHING.
IN THIS CASE WE HAVE CIRCULAR
REASONING AND DON'T HAVE EITHER
OF THOSE THINGS.

WE HAVE A CARTRIDGE CASE, AND NO
PROJECTILE WAS RECOVERED...

>> WE KNOW HE FIRED AT THE
FIRING RANGE.

>> WELL, WE KNOW WHAT ROBERT
SALVADOR SAYS.

I'LL CONCEDE THAT HE FIRED SHOTS
AT A FIRING RANGE AS DID ROBERT
SALVADOR.

>> REALLY, IT WOULDN'T BE
PREJUDICIAL BECAUSE IT COULD
SUPPORT THAT IT WAS ROBERT

SALVADOR THAT SHOT HIM JUST AS MUCH AS IT SUPPORTS...

>> TWO THINGS, THE BULLETS RECOVERED WERE NOT CONNECTED TO ROBERT SALVADOR OR KING AND COULD HAVE BEEN LITERALLY DOZENS OF PEOPLE THAT FIRED THEM. THERE WERE THOUSANDS OF BULLETS, AND HE DIDN'T EVEN SPECIFICALLY REMEMBER...

>> FIRING RANGE?

>> THOUSANDS...

>> ROBERT SALVADOR, THOUGH, SHOWED THE DETECTIVE WHICH ONES WERE THEIRS.

>> NO, NO.

>> HE DIDN'T GO BACK OUT WITH THE DETECTIVE.

>> HE DIDN'T KNOW WHICH -- FIRST OF ALL, ROBERT SALVADOR DIDN'T REMEMBER WHETHER THEY WERE AT THE TEN FOOT OR 25 FOOT RANGE AND GOES OUT THERE AND TESTIFIES THERE IS LITERALLY THOUSANDS OF BULLETS IN THE VICINITY.

WHAT THEY WERE DOING IS PICKING UP EVERY.9 MM BULLET THEY COULD FIND.

AND HE CAN'T IDENTIFY THIS IS MY NINE MILLIMETER...

>> YOU CANNOT TAKE THIS IN ISOLATION.

WE HAVE AT THE SCENE OF AN AWFUL CIRCUMSTANCE A CASING.

THERE IT IS.

ARE THERE ANY OTHER CASINGS SOMEWHERE ELSE THAT MATCH THIS?

OH, YES, THERE WERE, AT THIS LOCATION AND WE CONNECT THE TWO TOGETHER.

I'M MISSING WHY... YOU SAY THIS CAN'T COME INTO EVIDENCE AT ALL, AND, I'M MISSING THAT.

I HAVE A PIECE OF EVIDENCE.

AND IF I CAN TRACE IT BACK TO WHERE THE DEFENDANT WAS, FIRING

WEAPONS, THAT IS SOME EVIDENCE THAT CONNECTS THOSE TWO EVENTS, SEEMS TO ME.

IF I HAVE AN EXPERT THAT SAYS THIS CASING MATCHES CASINGS THAT WERE FOUND AT LOCATION A.

>> FIRST THE EXPERT'S TESTIMONY WAS INADMISSIBLE -- I WON'T HAVE TIME TO GET INTO IT.

THE CASING FOUND AT THE CRIME SCENE -- IS IT POSSIBLE THAT THAT WAS FROM THE SHOT THAT KILLED THE VICTIM?

SURE BUT, ON THE OTHER HAND THIS IS AN ABANDONED CONSTRUCTION SITE, NO PROJECTILE RECOVERED AND THE...

>> WHAT ARE THE INFERENCES TO BE DRAWN?

CASING, THAT HAPPENS TO BE WHERE THE AWFUL THING SCENE IS AND, WOW WE HAPPEN TO HAVE THE SAME CASING AND WHERE THE PERSON WAS, EARLIER THAT DAY... FIRING WEAPONS AND YOU ARE SAYING THAT THAT IS NOT AND IN FENCE OR -- INFERENCE OR CIRCUMSTANCE WHERE THE JURY CAN CONNECT THOSE TWO SITES.

>> IF IT IS, GET BACK TO JUSTICE PARIENTE'S QUESTION, IT STILL WOULD BE JUST AS CONSISTENT WITH ROBERT SALVADOR AS WITH --

>> YOU COULD ARGUE THAT AND IT DOESN'T AFFECT THE ADMISSIBILITY...

>> IF YOU ARE SAYING -- THE ERROR WAS HARMLESS OR NOT SIGNIFICANT OR...

>> NO ERROR.

>> BECAUSE IT WAS JUST AS CONSISTENT ATE ROBERT SALVADOR THAT, AGAIN, IF YOU ARE GOING TO HOLD THAT, IT GOES TO THE FIRST ISSUE, WHY THE EVISCERATION OF THE ROBERT SALVADOR --

>> I DIDN'T SAY JUST AS CONSISTENT, I'M SAYING THE DEFENSE LAWYER COULD ARGUE IT WAS ROBERT SALVADOR THAT LEFT THOSE BULLETS.

I THINK IT IS --

>> I DON'T SEE ANY WAY IT COULD BE LESS CONSISTENT WITH ROBERT SALVADOR SINCE WE KNOW THOSE WERE HIS BULLETS.

YOU KNOW, HE THOUGHT THAT KING DIDN'T HAVE AMMUNITION WHEN HE LEFT THE GUN RANGE.

IT IS CONCEIVABLE...

>> MORE CONSISTENT BECAUSE, IT IS CONNECTED TO THE DEFENDANT BECAUSE OF ALL THIS OTHER EVIDENCE THAT PHYSICALLY CONNECTS THE DEFENDANT TO THESE CRIMES AND THE TOTAL ABSENCE OF ANY PHYSICAL EVIDENCE THAT CONNECTS MR. SALVADOR TO THE CRIME, THAT IS WHY IT'S MORE REASONABLE.

>> I HAVE TO CONCEDE...

>> OVERWHELMINGLY...

>> THERE IS NO PHYSICAL EVIDENCE THAT TIES HIM TO THE CRIMES BUT THERE'S A CONSIDERABLE AMOUNT OF CIRCUMSTANTIAL EVIDENCE THAT SUGGESTS THAT HE COULD HAVE BEEN INVOLVED.

AND I THINK THAT WAS PREJUDICIAL NOT ONLY AS TO THE GUILT PHASE BUT CERTAINLY AS TO THE PENALTY PHASE BECAUSE IF THE JURY FOUND THAT HE WAS OR COULD HAVE BEEN INVOLVED AND HE WAS WALKING OFF SCOTT FREE THAT COULD VERY EASILY HAVE MADE THEM LESS INCLINED TO VOTE FOR A DEATH RECOMMENDATION AND I'LL RESERVE THE REST OF MY TIME FOR REBUTTAL.

>> AND I'LL GIVE YOU A COUPLE OF EXTRA MINUTES.

>> GOOD MORNING, SCOTT BROWN AND
HALF OF THE STATE.

-- ON BEHALF OF THE STATE.

THE DEFENSE COUNSEL IN THIS CASE
FAR EXCEEDED THE BOUNDS OF
CROSS-EXAMINATION WHEN HE ASKED
SPECIFIC QUESTIONS OF WITNESS
ROBERT SALVADOR WHICH INSERTED
SPECIFIC FACTS FROM WHICH
COUNSEL HAD ABSOLUTELY NO GOOD
FAITH BASIS.

I WOULD ARGUE THERE WAS NO BASIS
ARTICULATED BELOW.

GOOD FAITH OR OTHERWISE.

DEFENSE COUNSEL WAS REPEATEDLY
PRESSED BY THE TRIAL JUDGE.

I DON'T SEE THE BASIS FOR THESE
QUESTIONS.

WHERE DO YOU GET THOSE FACTS?
DEFENSE COUNSEL SAID, WELL, HE
REPEATEDLY DENIED THEM.

THE WITNESSES DENIAL OF THE GOOD
FAITH BASIS?

NO.

HE DID NOT EVEN POINT TO A
HEARSAY, DOUBLE HEARSAY, TRIPLE
HEARSAY STATEMENT OUT OF COURT
DISCOVERY, ANYTHING TO SUPPORT
THOSE FACTS.

CONTAINED IN THOSE QUESTIONS.

>> AND THE FACTS BEING THAT
AFTER THEY LEFT THE... THE
SHOOTING RANGE, THAT HE ARRANGED
TO COME BACK TO THE HOUSE.

>> AND BROUGHT SPECIFIC ITEMS,
LAWNMOWER AND GAS CAN AND AGREED
TO LATER ON MEET HIM ON
PLANATION BOULEVARD.

>> AND THE JUDGE ALLOWED THE
QUESTION, DIDN'T YOU SHOOT THE
DEFENDANT?

VICTIM?

BASED ON THE FACT THAT... COULD
THAT -- WAS THE GOOD FAITH BASIS
FOR THAT, THAT THESE -- BULLET
CASINGS AT THE RANGE MATCHED

WHAT WAS FOUND AT THE SCENE?

>> THAT IS A SUPPOSITION.

I WOULD CONTEND THE JUDGE GAVE
CONSIDERABLE LEEWAY TO THE
DEFENSE BECAUSE HE COULD HAVE
VERY WELL, I WOULD CONTEND THERE
WERE FOUR IMPROPER QUESTIONS.
THE QUESTION DEFENSE COUNSEL WAS
ALLOWED TO ASK AND WASN'T IT YOU
THAT SHOT THE VICTIM... THERE'S
ABSOLUTELY NO EVIDENCE,
PHYSICAL, NOT ANY EVIDENCE, NONE
LINKING ROBERT SALVADOR TO THE

--

>> I GUESS IT WOULD BE THIS WAY,
WHICH IS... I CALL IT
PREPOSTEROUS BUT AS FAR AS THE
EVIDENCE OF THE COMPARISON OF
THE TOOL MARKS SINCE WE KNOW
THEY WERE BOTH SHOOTING AT THE
RANGE, THEN WHOEVER IT COULD
HAVE BEEN EITHER OF THEIR BULLET
CASINGS, AND IF -- SINCE IT WAS
HIS, ROBERT SALVADOR'S BULLET,
THAT IS HIS BULLET AT THE... AT
THE SCENE.

THAT DOESN'T MEAN HE'S AT THE
SCENE BUT SEEMS TO ME THAT THAT
IS AT LEAST A GOOD FAITH BASIS
TO ASK, AREN'T YOU THE ONE THAT
SHOT THE VICTIM?

SO, THAT IS FOR THE SAME REASON,
I DON'T THINK THAT THE BULLET
CASING THING IS ALL THAT -- JUST
SAYS WHOEVER WAS SHOOTING AT THE
RANGE IS MOST LIKELY THE ONE
THAT SHOT THE VICTIM.

AND, IT IS...

>> LET'S GO BACK...

>> AM I WRONG ABOUT THAT?
IN THE WAY, IT IS LIKELY THAT
THE... HIGHLY PROBABLE THE
SHOOTER WAS MR. -- THE
DEFENDANT.

>> ABSOLUTELY, YOUR HONOR.

>> BUT THE COMPARISON OF THE

BULLETS SIMPLY SAYS, WHOEVER WAS SHOOTING AT THE RANGE, USING THOSE BULLETS, IS THE SAME PERSON THAT SHOT THE VICTIM AT THAT CONSTRUCTION SITE.

>> AGREED.

I GUESS, I DON'T SEE THE GOOD FAITH BASIS BECAUSE THERE WAS NO EVIDENCE ASIDE FROM DETECTIVE MORALES WHO TESTIFIED THAT HE LOOKED INTO KING'S ALIBI AND HAD A RECEIPT FOR 4:00 AT CHECKERS, THAT PANNED OUT AND LOOKED AT A VIDEOTAPE, THAT IS THE EVIDENCE THAT CAME FROM THE WITNESS STAND AND WE'RE TALKING ABOUT THREE QUESTIONS, DISALLOWED, AND THE JUDGE INSTRUCTING THE JURY, REDUNDANTLY, THERE WAS NO EVIDENCE TO SUPPORT THOSE QUESTIONS AND WITH OR WITHOUT THE INSTRUCTION THE JURY WILL KNOW THAT THERE WAS NO EVIDENCE TO SUPPORT THOSE FACTS.

SO, AGAIN, MR. BOLTON IS GOOD AT MAKING A MOUNTAIN INTO A MOLE HILL BUT WE DON'T EVEN HAVE AN ANT HILL HERE.

>> WHAT ABOUT THE ARGUMENT HERE THE PROSECUTOR --

>> MOLE HILL INTO A MOUNTAIN!
[LAUGHTER].

>>... ADDRESS THE ARGUMENT THE PROSECUTOR USED ARGUMENT IN CLOSING THAT THE DEFENDANT'S ATTORNEY COULDN'T RESPOND TO.

>> WELL, I DISAGREE.

THERE WAS NO ARGUMENT FROM THIS RECORD, THERE IS ABSOLUTELY NO PROFFER OF ANY ARGUMENT DEFENSE COUNSEL WOULD HAVE MADE OTHER THAN THE ONE HE DID AND HE TRIED TO SHIFT SUSPICION TO MR. SALVADOR AND THERE WAS NO IMPROPER ARGUMENT AND WHAT THE DEFENSE DID IN OPENING STATEMENT

THEY DIDN'T ACCUSE HIM OF
MURDER.

THEY SAID THE EVIDENCE WILL SHOW
THAT SOMEONE OTHER THAN MR. KING
FIRED THE FATAL SHOT THAT KILLED
DENISE LEE.

THE PROSECUTOR GOT UP AND SAID,
OKAY.

YOU HEARD ALL THE EVIDENCE.
IS THERE ANY EVIDENCE OTHER THAN
THE FACT THAT MR. KING FIRED
THAT FATAL SHOT?

AND I THINK THAT WAS A
LEGITIMATE COMMENT ON THE
EVIDENCE AND, HE IS CONTENDING
THERE WAS HANDCUFFING OF THE
DEFENSE AND I THINK CARROTABLY
THE DEFENSE WAS ALLOWED TO
PURSUE AND IMPLAUSIBLE,
UNREALISTIC THEORY WITHOUT ANY
EVIDENCE AND ROBERT SALVADOR MAY
HAVE SHOT THE VICTIM COMING IN
AT THE LAST MOMENT AND, THE
STATE TRIED TO PRESENTS HIS
WIFE, WHO THOROUGHLY REBUT THE
THEORY, THE DEFENSE JUMPED UP
AND DOWN AND SAID DISCOVERY
VIOLATION.

WHAT HE HAS THE BENEFIT OF IS
COMPLETELY ARGUING THE THEORY
AND PREVENTING THE STATE FROM
CONCLUSIVELY REBUTTING THE
EVIDENCE BY BRINGING IN HIS WIFE
BECAUSE WE KNOW THAT HE WAS HOME
BETWEEN 5:30 AND 6:00 AND HE WAS
AWAKENED AT 2:00 A.M. AND AGAIN,
IF I CAN GO BACK TO THE EVIDENCE
HERE, THIS IS NOT A CASE WHERE
THE DEFENSE WAS CRIPPLED BY
REINSTRUCTION ON
CROSS-EXAMINATION.

WHAT CRIPPLED THE DEFENSE IN
THIS CASE -- NOT IN FAIRLY, WAS
THE OVERWHELMING EVIDENCE
SHOWING KING KIDNAPPED, RAPED
AND MURDERED DENISE LEE.

>> I'M CURIOUS, HOW WAS IT MR. KING SHOWED DENISE LEE IN THIS CASE, HAD HE SEEN HER BEFORE OR WAS HE CRUISING THROUGH THE NEIGHBORHOOD TO SEE IF HE COULD FIND A VICTIM?

>> IDID NOT SEE ANYTHING IN THE RECORD AND HE WORKED AS A PLUMBER AND MAY HAVE TARGETED HER PREVIOUSLY AND WE DON'T HAVE THE EVIDENCE BUT KNOW HE CIRCLED THE NEIGHBORHOOD IN HIS DISTINCTIVE DARK GREEN CAMARO AND HE PULLED INTO THE DRIVEWAY AND ABDUCTED HER.

HE'S ALONE AT THAT TIME AND WE KNOW THERE IS AN UNBROKEN CHAIN OF CIRCUMSTANCES, EYEWITNESS AND FORENSIC SHOWING WHAT HAPPENED TO DENISE LEE.

AND HE WAS TAKEN BACK TO HIS HOUSE WHERE HER DNA TO THE EXCLUSION OF I THINK, ONE IN 3.5 TRILLION AND HER HAIR IS ON DUCT TAPE IN MR. KING'S KITCHEN. HER BLOOD IS IN HIS MASTER BEDROOM.

AND, WE NOTICE FROM DNA EVIDENCE, AND HIS DNA TO 1 IN 1.5 QUADRILLION, A ONE FOLLOWED BY 15 ZEROS, HIS SEMEN IS IN HER VAGINA, FOUND BURED IN A FOUR FOOD GRAVE AND HER WEDDING RING IS IN HIS CAR...

>> LET ME ASK YOU, IN MY MIND, THERE IS A SEQUENCE OF EVENTS, HE ABDUCTED HER IN THE AFTERNOON, 2:3:00 IN THE AFTERNOON...

>> WHEN WAS THE LAST TIME... WHEN DID THE MEDICAL EXAMINER... [INAUDIBLE].

>> THAT EVENING, JANUARY 17TH, TO THE EARLY MORNING --

>> TIME OF THE DAY...

>> WE KNOW SHE WAS ALIVE

BECAUSE... SAW MR. KING IN THE CAMARO AT 9:14 -- EXCUSE ME, I'M GETTING THAT WRONG, HE WAS PULLED OVER AT 9:15, 6:15 WE KNOW SHE'S STILL ALIVE AND HE'S DRIVING HER TO THE BURIAL SITE OFF OF PLANATION AND SHE'S SCREAMING FOR HELP AND TRIES TO GET IN BACK OF THE CAR...

>> THE LAST TIME HE WAS ACTUALLY SEEN WAS THAT THE 6:15, AROUND THAT TIME.

>> AROUND 6:15.

>> AND THE MEDICAL EXAMINER HAS PUT THE TIME OF DEATH, SOMEWHERE BETWEEN 6:00 AND 9:00.

>> I DON'T THINK HE COULD BE THAT PRECISE BUT THAT IS THE LOGICAL SEQUENCE.

IT WAS THAT EVENING AND SHE WAS CLEARLY BURIED AND MR. KING WAS PULLED OVER 9:15 AND HAD THREE HOURS TO DISPOSE OF HER BODY AND KNOW HER BLOOD IS ALL OVER HIS CAR.

AND

.
>> OR AT, THE GRAVESITE?
THE BLOOD EVIDENCE SUGGESTS THAT IT HAPPENED ON PLANATION AT THE DEVELOPMENT.

>> THAT IS WHERE THE BULLET AND WHERE --

>> THE SHELL WAS FOUND.

I HAVE TWO QUESTIONS, ONE IS JUST TO DO WITH THE EVIDENTIARY ISSUE OF THE TOOL MARK, IDENTIFICATION.

WE HAVE RECENTLY HAD, AND I'M SURE YOU HAVE BEEN INVOLVED, SERIOUS CASES WHERE, THERE ARE QUESTIONS RAISED, ABOUT THE BULLET ANALYSIS WHICH IS NOT THIS.

AND, THE CONCERN I HAVE, AND I GUESS WE HAVE ALLOWED IT BEFORE,

BUT, IS THIS IDEA THAT ANYTHING
IN THE WORLD IS 100

>> WE'VE RECENTLY HAD, AND I'M
SURE YOU'VE BEEN INVOLVED IN
THEM, SERIOUS CASES WHERE
THERE'S BEEN WHAT'S BEEN PHRASED
ABOUT COMPARATIVE LEAD BULLET
ANALYSIS, WHICH IS NOT THIS.

>> NOT THIS.

>> THE CONCERN I HAVE, AND I
GUESS WE'VE ALLOWED IT BEFORE,
BUT IS THIS IDEA THAT ANYTHING
IN THIS WORLD IS 100% CERTAIN.
AND THERE HAVE BEEN FEDERAL
COURTS THAT HAVE SAID THAT AN
EXPERT --

[INAUDIBLE]

BASED ON WHAT WE KNOW NOW.
BUT THE IDEA THAT WE'RE ALLOWING
EXPERTS TO TESTIFY TO 100%
CERTAINTY, WHAT IS THE, HOW
WOULD YOU COMPARE THE RATIONALE
OF THE COURTS THAT HAVE LOOKED
AT ALL THE STUDIES AND SAID THAT
ALTHOUGH YOU CAN MAKE A POSITIVE
IDENTIFICATION, YOU CANNOT SAY
THAT THESE THINGS, THIS
COMPARISON IS 100%, YOU KNOW,
EVEN ON DNA?

YOU'VE GOT A ONE IN WHATEVER THE
QUADRILLIONS.

BUT HERE WE'RE SAYING 100%.
SO WHAT IS -- AND I'M NOT
CONCERNED FOR THIS CASE, BUT
CASES IN THE FUTURE AND JUST
KNOWING THAT SOME OF THESE
FORENSIC TECHNIQUES THAT SEEM SO
INFALLIBLE MAY BE FALLIBLE.

>> WELL, FIRST OF ALL, IT'S KIND
OF AN INTERESTING ACADEMIC
QUESTION HERE BECAUSE WHAT YOU
HAVE IS A FIREARMS EXAMINER
WHOSE QUALIFICATIONS AND
EXPERIENCE ARE UNCHALLENGED BY
THE DEFENSE.
ONCE YOU ACCEPT THE MACHINE TOOL

MARK COMPARISONS HAVE BEEN IN YEARS, AND I CITE CASES GOING BACK TO 1937 IN FLORIDA, THERE'S A MICROSCOPIC COMPARISON OF THE SHELL CASINGS, IT'S NOT NEW TECHNOLOGY.

IT'S BEEN AROUND FOREVER. NOW, WHAT THESE LATER DISTRICT, FEDERAL DISTRICT COURT CASES WHICH, TO MY KNOWLEDGE, HAVE NOT BEEN FOLLOWED BY THE COURT OF APPEALS, AND IT'S CERTAINLY A FEDERAL DISTRICT COURT CASE JUDGE'S OPINION IS NOT BINDING ON THIS COURT, BUT THEY SEEM TO ARTIFICIALLY LIMIT THE EXPERT TO A REASONABLE DEGREE OF BALLISTIC CERTAINTY.

BUT THIS COURT'S DECISION IN U.S. SUGAR VERY HENSON AND OTHER CASES MAKE IT CLEAR THAT ONCE YOU ACCEPT THE TECHNOLOGY IS RELIABLE AND SUFFICIENT FOR ADMISSION INTO COURT, THE REMAINING PART OF THAT OPINION IS THE EXPERT'S OPINION AND NEEDS TO BE WEIGHED BY THE TRIER OF FACT.

SO WHAT YOU HAVE HERE IS YOU HAVE FIREARM EXAMINER ROMEO LIE ABOUT THE DEGREE OF CERTAINTY BECAUSE HE'S 100% CERTAIN BASED ON HIS KNOWLEDGE, TRAINING AND EXPERIENCE THAT THIS IS A MATCH. THOSE THREE SHELL CASINGS, THOSE MARKS EXACTLY MATCH THE ONES FOUND AT THE MURDER SCENE. SO ONCE YOU MAKE THE CONCLUSION IT'S RELIABLE AND SUFFICIENT FOR ADMISSION, ANYTHING ELSE IS RELIABLE.

NOW, THE DEFENDANT COULD HAVE BROUGHT IN HIS OWN EXPERT IF HE HAD ONE TO CHALLENGE THAT OPINION.

SO I THINK WE'RE, YOU KNOW,

WHAT'S THE NEXT LOGICAL QUESTION?

ARE YOU CERTAIN TO A REASONABLE DEGREE OF BALLISTIC CERTAINTY THAT IT'S A MATCH?

YES, I AM.

THE PROSECUTOR'S NEXT QUESTION, IS THERE ANY DOUBT IN YOUR MIND? NO.

SO ARE WE ARTIFICIALLY GOING TO LIMIT THE EXPERT IN HIS OPINION AND MAKE HIM SAY SOMETHING I'M ONLY 75% SURE WHEN HE'S REALLY 100% SURE?

REMEMBER, THIS IS --

>> I'M JUST MORE CONCERNED BECAUSE WE HAVE, AGAIN, THIS IS A PRETTY OVERWHELMING GUILT CASE THAT IS, THAT THIS SCIENCE IS STILL AS STRONG AND UNDER ATTACK, YOU KNOW, SO I THINK YOUR ANSWER IS A RESPONSIVE ONE, I APPRECIATE IT.

SECOND QUESTION JUST IS ABOUT THE PRINCIPLE INSTRUCTION. IF THE JUDGE HAD GIVEN THE PRINCIPLE INSTRUCTION, EVEN IF TO ONE TRILLION QUADRILLIONTH POSSIBILITY THAT SOME CRAZY IDEA AND SOMEHOW SALVADORE HAD TO COME UP, FINISH THIS OFF, IT WOULDN'T MATTER.

THERE WOULD HAVE BEEN A PRINCIPLE INSTRUCTION.

WAS THERE NO PRINCIPLE INSTRUCTION REQUESTED?

>> THERE WAS NOT, YOUR HONOR. AND THE REASON WHY IS THERE WOULD BE NO EVIDENCE TO SUPPORT THAT QUESTION.

HOW COULD A PROSECUTOR COME IN AND SAY, WELL, EVEN IF MR. SALVADORE CAME OUT THERE, THERE'S NO EVIDENCE TO SUPPORT THAT.

>> I GUESS IT'S NOT THE EVIDENCE

IF THEY HAVE AN ALIBI FOR THE TIME OF THE SHOOTING.

>> WE KNOW THAT HE DOES, YOUR HONOR, BUT HE WAS NOT ALLOWED TO PRESENT THAT DUE TO A VERY CHARITABLE RULING BY THE TRIAL JUDGE.

>> OKAY.

SO WE DON'T KNOW THAT, BUT WHAT WE KNOW IS THAT THE SAME BULLET THAT WAS AT THE SCENE WAS THE BULLET USED AT THE SHOOTING RANGE, AND WHAT WE KNOW IS THAT MR. SALVADORE SAYS HE AND THE DEFENDANT WERE OUT THERE. SO IT'S NOT AS THE OTHER ONE, IT'S FAR OUT THERE, BUT THAT WOULD BE THE BASIS.

BUT YOU'RE SAYING NOBODY REQUESTED IT, AND THAT'S THE END OF THAT STORY.

>> NO.

AND MR. SALVADORE, I MEAN, WHILE THE DEFENSE WANTS TO CHARACTERIZE HIM AS A CRITICAL WITNESS, YOU KNOW, THE GUN RANGE LOG HAS MR. KING'S SIGNATURE ON IT.

HE WAS IN POSSESSION OF AN UNRECOVERED 9MM HANDGUN AT THE TIME.

YOU COULD ENTIRELY TAKE THAT TESTIMONY OUT, AND --

>> WHO WAS IN POSSESSION OF THE --

>> MR. KING.

>> OH, BECAUSE --

>> THAT'S THE ONLY UNRECOVERED GUN.

MR. SALVADORE TURNED HIS 9MM OVER TO THE POLICE.

THEY CHOSE NOT TO TEST IT FOR OBVIOUS REASONS.

>> OKAY.

SO IT'S MR. SALVADORE THAT SAID THAT MR. KING ALSO HAD A 9MM

GUN?

>> YES, HE PUT IT IN HIS BAG
BECAUSE MR. KING WAS UNFAMILIAR
WITH GUN RANGE FACILITIES.
BUT, AGAIN, WE KNOW MR. KING WAS
THERE SHOOTING.

>> WHAT'S THE DEAL WITH THE
BULLETS?

HE THEN RAN OUT OF BULLETS, HE
WAS USING MR. SALVADORE'S
BULLETS?

>> CORRECT.

HE HAD NONE FOR HIS GUN, AND THE
OBVIOUS IMPLICATION,
MR. SALVADORE DIDN'T KNOW IF HE
GOT AHOLD OF ANY BULLETS OF HIS
OR NOT, SO EITHER HE HAD HIS OWN
BULLETS AND LOADED IT ELSEWHERE,
OR HE TOOK SOME OF THE
AMMUNITION AT THE RANGE.

>> WELL, IT HAD TO BE THE
AMMUNITION AT THE RANGE, BECAUSE
IT'S THE AMMUNITION AT THE RANGE
THAT MATCHES THE AMMUNITION --

>> CORRECT.

AND WE KNOW THAT MR. SALVADORE
PROVIDED AMMUNITION.

AND, AGAIN, I BRIEFLY ADDRESSED
THE RELEVANCY.

JUSTICE LEWIS, YOU HAD IT
EXACTLY RIGHT.

THERE'S A LOGICAL CHAIN HERE TO
SHOW THE SHELLS WERE RELEVANT.
MR. SALVADORE SHOWED DETECTIVES
THE DAY AFTER THEY WERE SHOOTING
AT THE RANGE WHERE HE WAS
STANDING WITH MR. KING, AND THEY
COLLECTED SHELLS THAT WERE
LIKELY THE SAME, WELL, 9MM.
AND OF THOSE 47 SHELL CASINGS,
THEY NARROWED IT DOWN TO THREE
THAT ACTUALLY MATCHED THE ONE
SHELL CASING FOUND AT THE MURDER
SCENE.

SO, I MEAN, THERE'S A LOGICAL
NEXUS BETWEEN ALL OF THE

EVIDENCE AND, FRANKLY, IT'S SO OBVIOUSLY RELEVANT I DON'T BELIEVE I NEED TO WASTE ANY MORE OF THE COURT'S TIME ON THAT ISSUE.

AND AGAIN --

>> WHY WOULD THEY HAVE TO DO ALL 47?

YOU ONLY HAVE THREE OF THEM THAT REALLY WERE MATCHES HERE.

WHY NOT JUST --

[INAUDIBLE]

>> WELL, TO SHOW THAT THERE WAS A PAINSTAKING ANALYSIS, I THINK. AND YOU'RE RIGHT, THEY COULD HAVE JUST SAID THESE THREE AND JUST MENTIONED THE OTHER, YOU KNOW, 40-SOME-ODD SHELLS THAT WERE THERE.

BUT I THINK THEY NARROWED IT DOWN, AND THEN THROUGH MICROSCOPIC ANALYSIS THEY COULD FIND THREE THAT ACTUALLY MATCH FROM THE RANGE.

IT WAS A LOGICAL SEQUENCE OF EVENTS HERE, AND THEY WERE CLEARLY RELEVANT.

>> SO, YOU KNOW, WHEN I ASKED YOU ABOUT THE TIME SEQUENCE BEFORE, I GUESS IN MY MIND I'M TRYING TO FIT THE ARGUMENT INTO WHEN COULD MR. SALVADORE HAVE GOTTEN TO THE SCENE?

THE LAST TIME HE WAS SEEN, KING WAS SEEN BY A WITNESS, WAS AT AROUND 6:00.

THE MURDER OCCURRED SOMETIME THEREAFTER.

DO WE HAVE ANYTHING IN OUR RECORDS THAT SHOWS WHERE MR. SALVADORE WAS FROM 6:00?

>> OTHER THAN MR. SALVADORE'S TESTIMONY SAYING HE WAS AT HOME, HE WENT TO A STORAGE SHED, AND HE WAS AT HOME.

AND, AGAIN, THAT'S ADMISSIBLE

EVIDENCE.

SO YOU HAVE MR. SALVADORE SAYING
WHERE HE WAS, HE WAS AT HOME.

SO, YEAH, I MEAN, TO -- JUSTICE
PARIENTE HAD IT EXACTLY RIGHT.

IT'S PREPOSTEROUS TO THINK THAT
SALVADORE GALLOPED IN AT THE
LAST MINUTE.

HOW WOULD HE EVEN KNOW WHERE
MR. KING WAS?

THERE ARE NO CELL PHONE RECORDS,
NO EVIDENCE OF ANY CONTACT
WHATSOEVER --

>> THEY SAY KING ERASED HIS CELL
PHONE, ALTHOUGH, YOU KNOW, IT
SEEMS TO ME UNDER THESE
TECHNOLOGIES THEY SEEM TO HAVE
TODAY THEY CAN STILL PICK OUT
ANYTHING FROM YOUR CELL PHONES
THAT THEY WANT TO GET.

BUT MR. KING -- BUT DIDN'T
SALVADORE ERASE THE CELL PHONE
RECORD OF CALLS FROM KING?

>> ALL BUT ONE, YOUR HONOR.

BUT, AGAIN, WE HAVE PHONE
COMPANIES HERE THAT HAVE CELL
PHONE RECORDS, AND THERE WAS NO
EVIDENCE OF A SINGLE CONTACT
BETWEEN MR. KING AND
MR. SALVADORE.

>> WE HAVE KING'S CELL PHONE.

>> YEAH, WE HAVE KING'S CELL
PHONE.

>> NO CALLS TO SALVADORE.

>> EXACTLY RIGHT, YOUR HONOR.
WE HAVE KING'S CELL PHONE, THE
ONE THAT DENISE CRIED OUT FOR
HELP ON --

>> AND DO WE HAVE, AND WE
ACTUALLY --

>> HAVE THE PHONE RECORDS.

>> ACTUALLY GOT A PHONE RECORD
THERE HIS CELL PHONE?

>> EXACTLY.

YES, YOUR HONOR.

WE HAD, THE STATE INTRODUCED

EVIDENCE FROM THE PHONE COMPANY TO SHOW WHEN CERTAIN CALLS WERE MADE, AND IT WAS A CELL PHONE REGISTERED TO MR. KING FROM WHICH THE VICTIM WAS PLEADING FOR HER LIFE AND TO BE LET GO. SO, AGAIN, JUST ONE OTHER PIECE OF MANY.

WE HAVE FORENSIC EVIDENCE LINKING KING TO ALL THREE CRIME LOCATIONS HERE.

HE WAS CAUGHT RED-HANDED LEAVING THE VICINITY OF THE BURIAL, STILL WET AND MUDDY FROM HAVING BURIED THE VICTIM.

NOW, THE FACT WE HAVEN'T FOUND A GUN, MR. KING WAS BURYING EVIDENCE.

HE HAD THREE HOURS TO DISPOSE OF ITEMS, AND WE KNOW THAT HE BURIED THE BODY, HE BURIED THE SHORTS, HE BURIED ITEMS AND PLACED THOSE ITEMS HUNDREDS OF YARDS AWAY FROM WHERE HE BURIED DENISE, SO HE CERTAINLY WAS TRYING TO --

>> I GUESS THE LOGICAL QUESTION, THOUGH, IS WHY WASN'T THE GUN BURIED WITH ALL THE REST OF THAT?

>> WELL, IT PROBABLY WAS.

WE HAVEN'T FOUND IT.

HE HAD A SHOVEL, AND HE WAS BURYING THINGS.

HE HAD THREE HOURS.

NOW, WE WERE LUCKY, AND WE FOUND -- THE POLICE FOUND THE BODY THE VERY NEXT DAY, SO WE HAVE ABSOLUTELY COMPELLING EVIDENCE TO OTHERWISE ESTABLISH HIS GUILT IN THIS CASE.

>> HOW OLD WAS THE DEFENDANT AT THE TIME OF --

>> I BELIEVE HE WAS 34 AT THE TIME OF THE CRIME, 35.

>> IS THERE, YOU KNOW, NOT --

[INAUDIBLE]

I MEAN, I DON'T SEE ANY BASIS AT ALL.

WE HAD A CASE YESTERDAY, YOU KNOW, THERE ARE ALL SO MANY HORRIBLE MURDERS THAT WE SEE. BUT IS THERE ANY, IN TERMS OF THE MENTAL HEALTH ISSUES, THERE IS A GUY -- WHAT -- ANY IDEA OF THE MOTIVE?

HAS HE SAID ANYTHING REMOTELY SIMILAR TO THIS AS FAR AS HIS THOUGHTS OF WOMEN?

WHAT WAS GOING ON THAT DAY IN HIS LIFE THAT OUT OF NOWHERE HE WOULD JUST --

>> YOU KNOW, YOUR HONOR, I DON'T KNOW, BUT I DO BELIEVE HE PLANNED THIS IN ADVANCE.

HE HAD THE DUCT TAPE, THE MEANS TO -- IT WAS A WELL-PLANNED, THOUGHT-OUT CRIME.

THE ONE MITIGATOR FOUND, AND THERE WASN'T --

>> I MEAN, A WELL-THOUGHT-OUT CRIME YOU WOULDN'T BE DRIVING THROUGH THE STREETS OF A BUSY STREET WHERE HE'S SEEN BY AT LEAST SEVERAL PEOPLE.

BUT BE THAT AS IT MAY, I MEAN, I GUESS IF THE RECORD DOESN'T SHOW ANYTHING THAT WOULD HAVE BEEN, YOU KNOW, THAT WOULD BE SOMETHING HAPPENED IN THE DAYS BEFORE THAT WOULD HAVE PRECIPITATED THAT, YOU KNOW, WHAT WAS THE MENTAL -- THEY FOUND SOME MENTAL HEALTH MITIGATION.

WHAT, WAS THERE AN EXPLANATION --

>> YOUR HONOR, THERE IS NO EXPLANATION FOR THIS KIND OF EVIL, IN MY OPINION, AND THERE WAS NONE PRESENTED OTHER THAN DR. WU COMING IN AND SAYING HE

HAD AN ABNORMAL PET SCAN WHICH SHOWED SOME BRAIN DAMAGE WHICH WAS REBUTTED BY DR. DAMACHE.

>> HOW DOES THE TRIAL JUDGE EVEN CONSIDER IT AS A MITIGATOR?

>> THAT IS A GOOD QUESTION, BECAUSE I WENT BACK AT 35. HE FOUND IT.

THIS IS, I THINK, A VERY CAUTIOUS TRIAL JUDGE.

>> BUT AT 35, I MEAN, I CAN'T EVEN SEE WHY THERE WOULD HAVE BEEN ANY CONSIDERATION OF A 35-YEAR-OLD AND USING THE AGE MITIGATOR FOR HIM UNLESS THERE'S EVIDENCE THAT HE WAS FUNCTIONING AT SOME CHILD-LIKE LEVEL OR SOMETHING.

DO WE HAVE ANYTHING LIKE THAT?

>> WELL, HE WAS CLEARLY -- NO, YOUR HONOR.

WE DO HAVE EVIDENCE THAT HE WAS OF LOWER THAN AVERAGE, AND THERE'S A DISPUTE, EITHER BORDERLINE, BUT PRIOR IQ TESTING SHOW HE'S IN THE AVERAGE TO BELOW AVERAGE RANGE.

BUT, NO, THERE WAS VERY LITTLE -- THERE WAS NOTHING PSYCHOLOGICALLY.

THERE WASN'T AN MMPI THAT WE COULD POINT TO.

>> BUT DOES THE DEFENSE ARGUE AGE AS A MITIGATOR?

>> I DID FIND THAT CURIOUS LIKE YOUR HONOR DOES BECAUSE 35 SEEMS TO BE THIS ZONE OF YOU CLEARLY WOULDN'T FIND IT.

I THINK IT WAS JUST A CHARITABLE AND VERY CAUTIOUS FINDING BY THE TRIAL JUDGE.

AS WAS HIS FINDING OF A SINGLE STATUTORY MITIGATOR.

AND MY FINAL COMMENT HERE IS MR. BOLTON SEEMS TO RECOGNIZE THAT THIS ERROR IS GETTING HIM

NOWHERE ON THE GUILT PHASE, BUT HE NOW SUGGESTS THAT SOMEHOW HE WAS PREJUDICED IN THE PENALTY PHASE IN THAT THE JURY COULD HAVE FOUND THAT HE WAS SOMEHOW LESSER, LESS RESPONSIBLE THAN SOME CO-PERPETRATOR.

BUT THE PROBLEM WITH THAT THEORY IS THE DEFENSE DIDN'T EVEN ARGUE THAT WHEREAS IN THE GUILT PHASE THEY HELD UP MR. SALVADORE AND DID WHAT THEY COULD WITH HIM, BUT IN THE PENALTY PHASE, THEY DIDN'T ARGUE THAT MR. SALVADORE WAS INVOLVED.

THEY DIDN'T WANT TO INSULT THE JURY'S INTELLIGENCE.

BUT THAT THEORY WAS NEVER PRESENTED, SO THIS COURT WOULD HAVE NO EVIDENCE IN THIS RECORD AND CERTAINLY NONE THAT WAS OFFERED BY THE DEFENSE TO SUGGEST THAT ANY ERROR IN THE GUILT PHASE AND, AGAIN, NOT CONCEDED IT, HAD ANY IMPACT ON THE PENALTY PHASE.

THE DEFENSE NEVER ARGUED, AND WISELY IN THE STATE'S OPINION, THAT ANYONE OTHER THAN MR. KING WAS INVOLVED IN THIS CRIME.

THE STATE HAS NOTHING FURTHER. THANK YOU.

>> VERY BRIEFLY, WE COULDN'T ARGUE IN THE PENALTY PHASE THAT SALVADORE WAS INVOLVED BECAUSE THAT DEFENSE WAS EVISCERATED IN THE GUILT PHASE.

NOW, ON THE QUESTION OF THE BALLISTICS COMPARISON, UM, YEAH, IT'S TRUE THAT THE STATE CITES NINE OR TEN CASES AND THE COURT COUNSEL FOUND THREE OR FOUR MORE GOING BACK TO 1937 WHERE EVIDENCE OF BALLISTIC COMPARISONS HAVE COME IN, BUT IN THE OVERWHELMING MAJORITY OF

THOSE CASES, THEY WEREN'T EVEN CHALLENGED.

THAT WASN'T EVEN A SUBJECT OF AN ISSUE IN THOSE APPEALS.

IT WAS JUST A FACT THAT WAS PUT IN THE RECITATION OF FACTS IN THOSE OPINIONS.

I HAVE NOT FOUND ANY CASES, AND THE STATE HAS NOT CITED ANY CASES WHERE EVEN TRADITIONAL BALLISTICS TESTIMONY HAS BEEN FRY TESTED IN FLORIDA.

>> WELL, I MEAN, THE SIMPLE ANSWER IS THAT IF SOMETHING IS WELL ACCEPTED, YOU DON'T FRY TEST IT.

>> WELL, PROFESSOR EARHART THINKS OTHERWISE.

>> OUR CASE LAW SAYS IF A BASIC SCIENCE IS WELL ESTABLISHED AND ACCEPTED, IT DOES NOT HAVE TO BE FRY TESTED.

YOU CAN READ THE CASES.

IT SAYS VERY CLEARLY.

>> I DON'T THINK IT HAS BEEN ESTABLISHED OR ACCEPTED.

>> IN THIS CASE, DID SOMEONE PRESENT THAT EVIDENCE THAT IT WAS NOT?

>> WE WERE NOT GIVEN A FRY HEARING.

THAT'S WHAT WE DO AT A FRY HEARING.

THAT'S WHAT YOU DO AT A FRY HEARING, AND WE ASKED FOR A FRY HEARING, AND WE WERE TOLD YOU'RE NOT GETTING ONE.

WHAT I'M SAYING IS THIS WAS NOT EVEN TRADITIONAL BALLISTICS COMPARISON ANYWAY.

TRADITIONAL BALLISTICS COMPARISON INVOLVES TEST FIRING A KNOWN FIREARM, AND IN THIS CASE THERE WAS NO KNOWN FIREARM, IT WAS JUST A MICROSCOPIC EYEBALL COMPARISON OF TWO -- OR,

I GUESS, FOUR CARTRIDGE CASES.

>> HAD THERE BEEN NO TESTIMONY IN THIS TRIAL AT ALL ABOUT THE CASINGS AND THERE HADN'T EVEN BEEN ONE FOUND AT THE SCENE OF THE BODY, WE WOULD STILL HAVE, IN MY ESTIMATE, ALL OF THIS EVIDENCE OF MR. KING BEING SEEN WITH HER, AND I STILL THINK WE WOULD BE IN THE SAME POSITION WE'RE IN RIGHT NOW.

>> AND I'M GOING TO CLOSE WITH JUST ONE COMMENT WHICH I'VE ALREADY MADE BEFORE, AND I HAVE TO MAKE IT AGAIN.

THE EVIDENCE IN THIS CASE IS ABSOLUTELY OVERWHELMING AND THE FACT THAT THE DEFENSE DIDN'T EVEN PRESENT -- THEY DIDN'T CONCEDE IT, BUT THEY DIDN'T PRESENT A DEFENSE TO THE SEXUAL BATTERY, THERE'S NO QUESTION THAT KING COMMITTED THOSE. THE QUESTION AS TO WAS THIS A FAIR TRIAL, I MEAN, I KNOW, I UNDERSTAND THAT YOU DON'T LIKE THE SALVADORE DEFENSE. YOU KNOW, IT'S NOT ONE ANYBODY WOULD HAVE CHOSEN, BUT IT COULD BE THE TRUTH.

AND IT WAS OVER THE COURSE OF DAYS OF TRIAL, IT WAS TORPEDOED, IT WAS SABOTAGED, IT WAS EVISCERATED --

>> IT JUST SEEMS TO ME THAT NO MATTER HOW YOU LOOK AT IT, WHEN YOU LOOK AT THIS EVIDENCE AND THE EVIDENCE THAT YOU CONCEIVE AS OVERWHELMING, KIDNAPPING AND THE SEXUAL BATTERY, THE REST OF IT FOLLOWS THAT HE ALSO COMMITTED THE MURDER.

>> THAT WOULD BE --

>> IT SEEMS TO ME THAT THERE IS NO OTHER EVIDENCE FOR WHICH YOU COULD CONCLUDE THAT SOMEONE ELSE

ACTUALLY --

>> I BELIEVE THAT THE ROBERT SALVADORE DEFENSE HAD NOT BEEN UNFAIRLY SABOTAGED, THAT WOULD NOT NECESSARILY BE THE CASE, AND I BELIEVE THE PROSECUTOR BELIEVED IT, AND THAT'S WHY HE DID WHAT HE DID.

EVERYBODY, EVEN MICHAEL KING, GETS ONE FAIR TRIAL, AND HE DID NOT GET ONE.

>> COULD YOU SUM UP NOW IN 15 SECONDS --

>> I THINK I ALREADY HAVE.

>> YOU ALREADY DID.

WE THANK YOU BOTH FOR YOUR ARGUMENTS.

THE COURT WILL NOW TAKE A TEN-MINUTE RECESS.

>> ALL RISE.