

ALL RISE

>> THE PEOPLE COURT OF  
FLORIDA IS NOW IN SESSION,  
ALL WITH CALLS TO PLEAD,  
DRAW NEAR, PAY ATTENTION,  
AND YOU SHALL BE HEARD.

GOD SAVE THESE GREAT STATES,  
THE GREAT STATE OF FLORIDA,  
AND THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.

PLEASE BE SEATED.

GOOD MORNING AND WELCOME.

THE FIRST CASE ON THE DOCKET  
IS JACKSON VERSES THE STATE  
OF FLORIDA.

>> GOOD MORNING, I'M  
REPRESENTATIVING MICHAEL  
JACKSON.

ON JANUARY 23RD, 2007,  
ANDREA BOYER WAS A VET  
TECHNICIAN IN CLAY COUNTY.  
THE ONLY EVIDENCE CONVICTING  
MR. JACKSON WAS THAT DNA WAS  
FOUND IN MRS. BOYER'S

VIRGINIA --

VAGINA, AND IT WAS HIS DNA

--

>> WELL THAT'S PRETTY STRONG

DNA.

>> WHEN THEY WERE

QUESTIONING HIM AT THAT

POINT THEY ALREADY HAD THE

TESTS BACK THAT CONFIRMED IT

WAS HIS DNA?

>> THAT'S CORRECT.

>> SO THEY ARRESTED HIM?

>> YES.

>> IS THERE ANY PART OF THE

INTERROGATION THAT YOU AGREE

WOULD BE RELEVANT TO COME IN

OF THE PART THAT WAS --

THERE WAS A LOT THAT WAS

EXCLUDED, BUT THERE WAS A

LOT ABOUT, AND I'LL GIVE YOU

THE ONES THAT SEEM TO ME TO

BE PRETTY RELEVANT IS BEING

ASKED ABOUT DOES HE WALK TO

WORK OR NOT.

AND THERE'S QUESTIONS AND

ANSWERS AND NOT ACCUSATIONS.

>> WELL, THIS WAS A REDACTED  
STATEMENT TO BEGIN WITH,  
THEY TOOK OUT THE WORST  
PART, BUT THEY LEFT IN A LOT  
OF STUFF.

AND STATEMENTS ABOUT YOU  
KNOW HE WALKED TO WORK --

>> THE ONES YOU'RE CONCERNED  
ABOUT ARE THE ONES WHERE  
THEY'RE SAYING "LISTEN I  
LOOK AT YOU AND I KNOW YOU  
DID IT" ALL OF THOSE --

>> YES, IT'S THOSE  
STATEMENTS WHICH I  
APOLOGIZE, I CANNOT  
PRONOUNCE THAT POLICE  
OFFICERS NAME, BUT HE  
REPEATEDLY IS MAKING  
ACCUSATIONS WHY DID YOU KILL  
HER.

WE HAVE PHYSICAL EVIDENCE AT  
THE SCENE.

THE DNA IS HERE, IT'S A 100%  
MATCH.

IT'S ACCUSATIONS, THE DNA,  
IT'S NOT MISTAKEN, IT'S 100%  
SURE, IT'S UP TO YOU TO TELL  
ME WHY IT HAPPENED.

IT'S CONSTANT ACCUSATIONS  
THAT DO NOT GO ANYWHERE >>

ISN'T PART OF THAT TRUE?

THEY DID HAVE DNA EVIDENCE  
AND IT DID MATCH, THAT  
STATEMENT IS TRUE, AND THE  
POLICE ARE ALLOWED TO  
CONFRONT YOU.

>> IF THE CONFRONTATION LEAD  
TO SOMETHING.

IF YOU SAID YOU GOT ME, I  
CAUGHT HER, YES.

ALL YOU HAVE IS YES YOU  
KILLED HER OR NO I DIDN'T.

THAT'S ALL WE HAVE.

AND BECAUSE OF THAT, BECAUSE  
THEY WENT NOWHERE, AND WE  
HAVE THE POLICE OFFICER  
SAYING I GOT YOU, I BELIEVE  
YOU COMMITTED THE MURDER,  
THAT IS WHAT THE JURY HEARS

--

>> DURING THE TRIAL, THE  
TRANSCRIPT REFLECTED THAT  
THE JUDGE PARTICIPATED IN  
REDACTING A MAJOR PORTION OF  
THE TRANSCRIPT AND THE  
VIDEOTAPE.

WHY WERE THESE THINGS NOT  
REDACTED?

THE DEFENSE COUNSEL WAS  
PRESENT, THE POLICE OFFICER  
SAYS I KNOW YOU DID THIS,  
I'M CONVINCED BEYOND A  
SHADOW OF --

SHADOW OF A DOUBT, AND HOW  
CAN YOU MISSES THAT?

>> THE PROSECUTOR SAYS WE'RE  
HITTING HIM WITH FACTS OR  
NOT THEORIES OF WHAT THEY  
THINK HAPPENED.

HE SAYS IT'S AN EXCHANGE.  
THE QUESTION ABOUT THE DNA,  
THEY HAVE A FULL PROFILE,  
HIS SEMEN IS IN THE VICTIMS  
VAGINA, SO THE POINT THAT WE

LET THIS COME IN IS THESE  
ARE FACTS THAT SHOULD BE  
ABLE TO COME IN.

>> WELL THE DETECTIVE WITH  
THE LONG NAME, HERE IS WHAT  
HE SAYS, I KNOW YOU DID IT,  
YOU USED A FIRE  
EXTINGUISHER, I KNOW YOU DID  
IT, YOU KNOW I'M RIGHT  
BECAUSE OF THE WAY YOU'RE  
LOOKING AT ME.

I DON'T UNDERSTAND IF YOU'RE  
REDACTING A STATEMENT, A LOT  
OF THINGS ARE TAKEN OUT OF  
THAT, HOW DID YOU MISS THAT,  
ARE YOU TALKING ABOUT TRIAL  
COUNSEL?

>> YES.

>> HE DIDN'T MISS IT HE  
CONTINUED TO SAY THIS SHOULD  
NOT BE THE IN.  
IF A DEFENDANT DOES NOT  
ACCEPT IT BEING TRUE, THEN  
IT CAN'T COME IN, THE POLICE  
OFFICER THE IS SIMPLY SAYING

I KNOW YOU COMMITTED THIS  
MURDER.

>> I THINK THE POINT IS WHY  
IS THAT QUESTION NOT  
REDACTED PRIOR TO --  
ALONG WITH THE OTHER THINGS.

>> ARE WE TALKING ABOUT A  
WAIVER PROBLEM HERE BECAUSE  
I DON'T SEE IT.

>> YOU JUST HAVE TO ANSWER  
IS IT PART OF WHAT DEFENSE  
COUNSEL OBJECTED?

>> YES, HE OBJECTED TO ALL  
OF IT COMING IN.

>> THE REMEDY TO KEEP OUT OF  
THE STATEMENT --

HE WANTED TO KEEP OUT THE  
WHOLE THING, AND THERE WAS  
THIS EFFORT BETWEEN THE  
LAWYERS, AND LATER THE

JUDGE, I BELIEVE, IN  
REDACTING PORTIONS OF THE  
STATEMENT THAT THE DEFENSE  
COUNCIL FOUND TO BE  
OFFENSIVE.

SO THERE WAS SOME WORK DONE,

I'M JUST WONDERING --

>> YES, AND I DON'T WANT TO

GIVE YOU THE IMPRESSION THAT

THEY'RE GOING ALONG WITH

WHAT IS NOT REDACTED BECAUSE

HE IS OBJECTING TO THE

STATEMENTS THAT THE COURT IS

LETTING COME IN.

>> DO WE NEED TO LOOK AT,

THE PROSECUTOR CERTAINLY

COULD NOT SAY THIS, AND THE

DETECTIVE COULD NOT SAY IT

ON THE STAND --

I'M SURE THE STATE WILL NOT

DISAGREE WITH THAT, THEY

COULD MAYBE SAVE IT FOR

CLOSING ARGUMENT, BUT NOT

TESTIMONY.

IT COMES IN ESSENTIALLY AS

TESTIMONY BECAUSE IT'S --

THE JURY HEARS IT AND THERE

IS A VIDEOTAPE SO THEY SEE

IT.

THE QUESTION THAT HAVE IS

THAT I EITHER SAY SOMETHING  
INCRIMINATING THAT  
ORDINARILY COULD NOT COME  
IN, BUT THE STANDARD IS IF I  
PUT AN ANSWER IN CON TEX OR  
I ANSWER SOMETHING THAT IS  
INCRIMINATING.

IS THAT THE WAYS YOU LOOK AT  
IT IN TERMS OF SEEING  
WHETHER IT SHOULD COME IN?

>> I THINK THAT'S WHAT CASE  
THAT THE DISTRICT COURTS ARE  
SAYING, THEN THE POLICE  
OFFICERS --

>> I'M TRYING TO FIGURE OUT  
HOW A HEARSAY STATEMENT THAT  
DOESN'T EVEN CATCH THAT ONE.

THERE ARE A SERIES WHERE  
THEY KEEP SAYING I KNOW YOU  
DID IT, AND AS JUSTICE  
QUINCE WAS SAYING, THE DNA  
IS THERE, SO WHAT ARE YOU  
TRYING TO GET OUT OF THIS  
DEPARTMENT AT THIS POINT,  
BUT HE IS CONSENTING TO

SPEAK.

THE ONE THAT'S A LITTLE

DIFFERENT AND I'M NOT SURE

IF YOU RAISED DIRECTLY, IS

THAT THE DETECTIVE CALHOUN

IS TALKING ABOUT THE VICTIM,

AND IT SAYS SHE GOT MARRIED,

SHE WANTED A FAMILY, HER

FAMILY IS WELL TO DO, THIS

ISN'T A NOBODY, THIS IS A

SOMEBODY WHO WAS A RISING

STAR IN HER COMMUNITY.

THIS IS IN THE GUILT FAZE,

IN THE PENALTY FAZE WE'RE

CAREFUL ABOUT VICTIM IMPACT

STATEMENT BECAUSE WE HAVE TO

BE CAREFUL ABOUT THIS.

DID THAT TESTIMONY ABOUT WHO

THE VICTIM WAS OTHERWISE

COME OUT IN THE STATE'S

CASE?

>> IT WILL COME OUT THAT SHE

HAD THREE ABORTIONS, THERE

WAS SOME SOMEBODY FROM OTHER

ASSOCIATES THAT SHE WAS A

WONDERFUL WORKER, SHE GOT  
THERE, WORKED HARD, AND  
WORKED HARDER THAN ANYBODY  
ELSE, BUT SPECIFICALLY THAT  
SHE WANTED TO START A  
FAMILY, THAT SHE WAS A  
RISING STAR IN THE COMMUNITY  
AND HER PARENTS WERE WELL TO  
DO, NO.

>> BECAUSE THAT ONE  
ASSISTANTS OUT AS SOMETHING  
OF THEM SAYING, WELL --  
WAS THAT SPECIFICALLY SAID?  
YOU CAN PUT IN SOME OF THESE  
THINGS, BUT IT HAS NOTHING  
TO DO WITH HIS GUILT AND IT  
DIDN'T INVOKE ANYTHING THAT  
I, YOU KNOW, AND AT THE END  
OF IT, THEY SAID SHE'S  
TRYING TO MAKE A LIVING AND  
YOU HAVE A MOM AND DAD, THE  
ONLY THING THAT CAME OUT  
FROM THE STATEMENT.  
WAS THAT SEPARATELY BROUGHT  
TO THE ATTENTION OF THE

JUDGE?

I UNDERSTAND YOU MAY HAVE  
PRESERVED IT --

>> I DON'T RECALL

SPECIFICALLY AS TO THAT.

I DIDN'T REALLY SEE THIS AS

A WAIVER ISSUE --

>> BUT YOU SEE SEE THAT AS

DIFFERENT IN KIND --

>> YES, I TALK ABOUT THIS IS

VICTIM SYMPATHY.

THAT'S CLEARLY WHAT IT IS.

THEY COULD NOT HAVE GOTTEN

THIS OUT IN THE GUILT FAZE

AND BEEN QUESTIONABLE AND

GOTTEN IT OUT IN THE PENALTY

PHASE.

>> PUTTING ASIDE FOR A

MOMENT IF THIS SHOULD HAVE

BEEN ADMITTED, AND LET'S

LOOK AT THE PREJUDICE PART

FOR A SECOND, THERE ARE, AS

JUSTICE PARIENTE MENTIONED

EARLIER, THERE ARE A NUMBER

OF THINGS IN THE STATEMENT

THAT WOULD HAVE BEEN

ADMISSIBLE.

HE WAS ASKED WHERE HE LIVED

WHICH IS RELEVANT TO WHERE

THE MURDER TOOK PLACE AND IF

HE HAD AN OPPORTUNITY TO DO

IT.

WHERE HE WORKED BECAUSE HE

WALKED PAST THE CLINIC --

CLINIC TO GO TOWORK

EVERYDAY.

SO ALL OF THOSE THINGS WOULD

HAVE BEEN SOMETHING THAT

COULD HAVE COME IN IN THE

STATE'S CASE.

SO THE NEXT THING WE HAVE TO

DO, I GUESS, IS LOOK AT THE

OFFENDING STATEMENTS MADE BY

THE OFFICERS, I KNOW YOU DID

IT.

AND WE HAVE TO DO A BALANCE

TO DETERMINE --

SO EXPLAIN TO ME HOW THE

PREJUDICE OF THE OFFICER'S

TESTIMONY WILL OUTWAY THE

VALUE OF THE PORTION OF THE  
STATEMENTS ADMITTED.  
>> THE THINGS THAT DON'T  
HAVE ANY SIGNIFICANT  
OBJECTION TO, LIKE THE BIO  
GRAPHICAL DETAILS, THAT HE  
LIVED IN A WITHIN A QUARTER  
MILE OF THE VET CLINIC, BUT  
WHERE THE PREJUDICE COMES IN  
IS THIS POLICE OFFICER SAYS  
I KNOW YOU DID IT, I,  
A POLICE OFFICER, WITH ALL OF  
THE GUNS AND STUFF, I  
BELIEVE YOU KILLED HER, AND  
THAT'S THE PREJUDICE.  
THERE'S CASES THAT I SIGNED  
IN THE BRIEF, WHEN THE  
POLICE --  
THE PROSECUTOR COULD NOT  
HAVE SAID THIS AND THE  
POLICE OFFICER ON THE STAND  
COULD NOT SAY THIS, BECAUSE  
IT'S AN OPINION BY THE  
POLICE OFFICER, IT'S AN  
OPINION OF HIS GUILT WHICH

IS AN ISSUE FOR THE JURY TO  
DETERMINE AND --  
>> I THINK WHAT HE'S TRYING  
TO GET AT WOULD YOU GET TO A  
403 BALANCING TEST, YOU HAVE  
TO FIRST DECIDE IF THOSE  
STATEMENTS ARE RELATIVE TO  
ANYTHING, THE ONES THAT YOU  
SAID --  
YOU TALKED ABOUT THE BIO  
GRAPHICAL INFORMATION, AND  
THAT IT WOULD BE RELEVANT  
AND YOU --  
RELEVANT AND YOU WOULD NOT  
SEE PREJUDICE THERE, AS  
OPPOSED TO THE ONE I CAN  
TELL IN YOUR EYES THAT YOU  
DID IT --  
IS THERE ANY CONCEIVABLE  
RELEVANCE IN --  
>> YOU KNOW, I KNOW --  
I DIDN'T I DIDN'T SEE ANY  
RELEVANCE TO IT, BUT TO DO A  
403 ANALYSIS, YOU HAVE TO  
SAY THERE IS A LITTLE

RELEVANCE HERE.

JUST FOR ARGUMENT'S SAKE

LET'S SAY THERE IS, GIVEN

THAT CONCESSION BY MY PART,

LET'S LOOK AT THE PREJUDICE,

IT OUTWEIGHS WHATEVER

LIMITED NARROW PROBATIVE

VALUE IT HAS.

I COUNT THIS ISSUE HAS A 403

ANALYSIS.

THE ACCUSATIONS THAT THE

POLICE OFFICER IS MAKING,

WHICH IS THE DEFENDANT ADD

--

HE DENIES IT'S HIS DNA DOING

EVERYTHING HE CAN, AND HE

NEVER SAYING YOU'RE RIGHT,

MAYBE I WAS WRONG --

IT'S ALWAYS A REFUSE --

REFUSAL.

THEN YOU CAN PRESENT

EVIDENCE OR THE STATE CAN

PRESENT EVIDENCE THAT THE

COP CONFRONTED HIM WITH THE

DNA --

>> WAS NOG --

>> I'M SORRY DID --

>> DID THE COPS LATER ON IN  
THIS INTERROGATION CONFRONT  
HIM WITH ANY OTHER EVIDENCE  
THEY HAD AGAINST HIM?

>> THEY HAVE INDISPUTABLE  
EVIDENCE, AND THE DNA IS A  
BIG PART OF IT, BUT THEY --

>> WHAT ELSE?

WAS THERE ANYTHING ELSE  
SPECIFICALLY OTHER THAN --

>> NO, I DIDN'T SEE --

>> NO FINGERPRINTS?

>> NO, I'M SORRY --

>> NO BLOOD, NO --

>> IT'S THE DNA, AND THE  
CIRCUMSTANTIAL EVIDENCE, BUT  
IT'S THE DNA THEY HAMMER HIM  
WITH.

THEY HAD HIM WEARING A BEIGE  
COAT UNTIL THE DAY OF THE  
MURDER AND THEN IT  
DISAPPEARED.

IS THERE WHERE HE SAYS THAT

HE DID NOT KNOW THE VICTIM?

>> I THINK SO, YES.

>> AT WHAT POINT DID HE SAY

YES, I KNEW HER, AND HE WENT

THROUGH THIS WHOLE THEY HAD

A RELATIONSHIP --

>> THAT WAS HIS TESTIMONY AT

TRIAL >> THAT WAS HIS

TESTIMONY AT TRIAL?

>> RIGHT.

>> AND WHEN HE TESTIFIED,

YOU WOULD AGREE THAT THE

PART WHERE HE HAD DENIED

THAT HE KNEW THE VICTIM,

WOULD COME IN AS

IMPEACHMENT.

>> LET ME SAY --

LET ME --

>> YES, BUT THAT'S NOT WHAT

HAPPENED.

WELL, YES.

HAD THE STATE HELD THAT

EVIDENCE OUT UNTIL HE HAD

TESTIFIED, YES, BUT THE

SO-CALLED ANTICIPATORY

IMPEACHMENT YOU DECENT THAT.

YOU CANNOT BRING OUT

IMPEACHING EVIDENCE AND USE

IT --

>> PLUS, THE PART OF AGAIN,

ARE THERE'S A STATEMENT I

KNOW YOU DID IT, YOU USED A

--

YOU KNOW I'M RIGHT BECAUSE

OF THE WAY YOU'RE LOOKING, I

KNOW.

THAT COULDN'T POSSIBLY COME

IN --

>> AGAIN, IT'S THE POLICE

OFFICER'S OPINION, I CAN

LOOK IN YOUR EYES AND SEE

THAT YOU'RE GUILTY.

>> A POLICE OFFICERS

QUESTIONS ARE ALLOWABLE IF

THEY PROVOTE CONTEXT IN THE

INTERVIEW, AND THE JURY

COULD RECOGNIZE THE

QUESTIONS AN INTERROGATION

TECHNIQUES, SO A POLICE

OFFICER SAYING TO SOMEONE, I

KNOW YOU DID IT, I'M LOOKING

AT YOUR EYES, I SEE YOU DID

IT, WHY IS THAT NOT AN

INTERROGATION TECHNIQUE >>

IF IT ILLICITTED A RESPONSE

--

>> IF IT DID IT WOULD

CHANGE?

>> YES, JACKSON NEVER,

NEVER, NEVER ADMITTED

KILLING THIS WOMAN OR DOING

ANYTHING --

>> I HAVE A PROBLEM WITH

SAYING, OKAY, IT'S IMPROPER

TO DO THAT UNLESS IT WORKS.

.

>> I HAVE A PROBLEM WITH IT

TOO, BUT THE DISTINCTION I

MAKE, IS IF THE DEFENDANT

DOES NOT ADOPT IT, ADOPT THE

POLICE OFFICERS ACCUSATIONS

AND CONFESS IS WHAT THEY

MEAN, THEN IT'S

INADMISSIBLE.

WHAT OTHER RELEVANCE DOES IT

HAVE OTHER THAN TO SHOW THE  
POLICE OFFICER THINGS HE  
GOTS HIS MAN.

IF THEY HAD GOTTEN SOMETHING  
FROM IT THEN IT WOULD HAVE  
BEEN RELEVANT.

>> I DON'T THINK THEY WOULD  
SIGH YOU KNOW I'M RIGHT  
BECAUSE OF THE WAY YOU LOOK

--

THEY CAN'T GIVE THAT KIND OF  
OPINION --

I MEAN I WOULD BE VERY  
CONCERNED IF SOMEONE WOULD  
SAY THOSE KIND OF STATEMENTS  
CAN STILL COME IN.

I HAVE SEEN SOME PRETTY  
OUTRAGEOUS TECHNIQUES, BUT  
I'VE NEVER SEEN IT WHERE  
IT'S JUST GOING NOWHERE AND  
IT COMES IN AS IF IT'S  
EVIDENCE.

>> THAT'S THE PROBLEM, EWE  
EXACTLY RIGHT.

IT'S GOING NOWHERE.

HE REPEATEDLY UP TO THE VERY  
END SAYS NO, NO, NO, NO, NO  
MATTER WHAT YOU'RE SAYING I  
DIDN'T DO THIS AND THAT  
DOESN'T MAKE IT RELEVANT.  
THAT'S WHAT STATE SAYS,  
WE'RE HITTING HIM WITH FACTS  
AND HE'S DENYING IT SO HE  
LYING, THAT'S THE GUEST OF  
WHAT YOU'RE GETTING OUT OF  
THIS INTERROGATION.

THEY BELIEVE THEY HAVE THEIR  
MAN AND THEY'RE NOT LETTING  
HIM GO, AND THAT'S IMPROPER,  
YOU JUST DECENT IT.

AGAIN, IF HE CONFESSED  
THAT'S A DIFFERENT STORY, I  
WOULD NOT HAVE RAISED THE  
ISSUE.

>> I THINK YOU WOULD HAVE  
RAISED THE ISSUE --

WELL, I CAN AFFORD TO GIVE  
THAT AWAY.

[LAUGHTER]

THE OTHER ISSUE I WOULD LIKE

TO TALK ABOUT IS ONE ON  
FACING A STEEP UPHILL CLIMB  
ON THAT'S ISSUE FOUR, THEY  
ASKED FOR INSTRUCTION  
TELLING THE JURY THAT --  
THIS IS DURING PENALTY PHASE  
THAT HE FACED A LIFE  
SENTENCE FOR THE BATTERY --  
>> I'M SOMEWHAT SYMPATHETIC  
TO YOU, BUT THE JURY IN  
THESE CASES NOW ARE COLD  
THEY KNOW IT'S LIFE, DEATH,  
OR THE POSSIBILITY --  
POSSIBILITY OF PAROLE.  
SO THEY THINK THE PERSON  
RIGHT GET OUT IN 25 YEARS,  
AND EVEN IF WE DON'T HAVE A  
RULE THAT SAYS YOU CAN  
INSTRUCT --  
HOW WOULD IT MATTER, THEY  
KNOW THAT IF THEY CONVICT  
HIM OF MURDER AND DON'T  
IMPOSE THE DEATH PENALTY  
THAT HE WILL GET, STILL,  
LIFE IN PRISON.

IT SEEMS TO ME, THE BIGGEST  
PROBLEM MR. JACKSON HASES IS  
THAT HE KNOWINGLY WAIVED ALL  
MITIGATION, AND SO THE JURY,  
THE HORRIBLE FACTS OF THIS  
CRIME, THAT THEY BE INCLINED  
TO GIVE A LIFE SENTENCE, I  
THINK THAT'S THE BIGGER  
HURDLE YOU HAVE.

WHEN YOU ALREADY HAVE THE  
IDEA OF LIFE OF DEATH, WHY  
DOES IT MATTER IF THEY KNOW  
THAT HE WILL GET LIFE --

>> THIS IS NOT 100% SLAM  
DUNK MITIGATION --  
BUT HE'S GETTING LIFE --

>> I AGREE WITH YOU.

>> I DON'T SEE AT ALL THE  
PREJUDICE.

>> THE PREJUDICE COMES IN  
THAT IT'S ONE MORE PIECE IN  
THE MITIGATION PIE THAT THE  
DEFENDANT IS TRYING TO GIVE  
TO THE JURY.

>> AGAIN, HERE THE

DEFENDANT DID KNOWLEDGEFULLY

THAT HE WASN'T --

>> I UNDERSTAND, BUT I'M

SAYING THIS CERTAINLY --

DEFENSE COUNSEL WANTED TO

ARGUE FOR THE JURY NOT ONLY

WILL BE GET LIFE FOR THE

MURDER, BUT ALSO FOR THE

SEXUAL BATTERY.

IS IT COMPELLING

OVERWHELMING MITIGATION, NO.

BUT IT NEVER THE LESS IS

ANOTHER PIECE THAT WILL HELP

THE JURY TO RECOMMEND A

SENTENCE LESS THAN DEATH.

SO FOR THAT REASON I'M

SAYING MITIGATION AND THE

JURY SHOULD NOT HAVE BEEN

APPRISED OF THAT FOR THOSE

REASONS AND THE REASONS I

MENTIONED I ASK THE COURT TO

REVERSE FOR A NEW TRIAL,

THANK YOU VERY MUCH.

>> GOOD MORNING, MAY IT

PLEASE THE COURT.

ASSISTANT ATTORNEY GENERAL.

IF I CAN DISPOSE OF THE ONE  
I CAN QUICKLY, THE SIMMONS  
CASE, THE INSTRUCTION ISSUE,  
I THINK THIS COURT  
IDENTIFIED THAT THERE IS NO  
REQUIREMENT OF NEED FOR  
SIMMONS AFTER OCTOBER 1,  
1994 BECAUSE THE JURY IS  
TOLD THAT THE SENTENCES ARE  
DEATH AND LIFE IN PRISON OUT  
PAROLE.

ANY NOTION OF WHAT  
DEPARTMENT MIGHT GET IS  
REALLY NOT LOGICAL BECAUSE  
THEY DON'T KNOW IF HE WILL  
GET IT, WHAT THAT MEANS, IF  
HE WILL BE ENTITLED TO GOOD  
TIME, IF IT'S CONCURRENT OR  
CONSECUTIVE, THAT WOULD BE  
SO MUCH MORE CONFUSING, BUT  
IN ANY EVENT, SIMMONS IS  
INAPPLICABLE OR SATISFIED  
BECAUSE THE JURY KNOWS THE  
OPTIONS ARE DEATH OR LIFE

WITHOUT PAROLE.

THE COURT HAS HELD THIS MANY  
TIMES.

WHEN YOU LOOK AT IT  
LOGICALLY, BECAUSE THE JURY  
IS TOLD ONLY THE TWO  
POSSIBLE SENTENCES LIFE  
WITHOUT THE POSSIBILITY OF  
PAROLE, THERE'S NOT ANYTHING  
CLEARER THAN THAT.

SO I THINK I SET THAT FORTH  
IN MY BRIEFLY REST WITH  
THAT.

MR. JACKSON HAS ADMITTED  
THAT THE POLICE OFFICERS CON  
FRONTING JACKSON --  
THERE'S NOT AND ALLEGATION  
OR EVIDENCE THAT ANYTHING IN  
THIS INTERROGATION THAT WAS  
NOT TRUE, THE DNA --

>> WELL WERE THEIR  
SUBJECTIVE DETERMINATION IN  
A HE WAS IN FACT GUILTY AT  
THAT POINT WAS NOT TRUE.  
SO I'M NOT SURE THAT WE CAN

SAY THEY DIDN'T SAY ANYTHING

--

>> I THINK WE KNOW IT IS

TRUE, IT WAS TRUE, BUT THE

THING IS, JUSTICE, THE

DEFENSE ADMITTED THAT

EVIDENCE OF THE POLICE

OFFICERS CONFRONTING THE

DEFENDANT IN THIS WAY WOULD

BE ADMISSIBLE IF IT

ILLCITTED A RESPONSE, AND

I'M SAYING IT DID AND HERE

IS WHY.

HE WAS SHOWN A PHOTOGRAPH OF

THE VICTIM AND HE SAID HE

NEVER SAW HER BEFORE.

THIS IS RELEVANT RIGHT UP

FRONT.

SUBSTANTIVE EVIDENCE OF A

STATEMENT BY THE DEFENDANT

THAT IS INCONSISTENT WITH

THE EVIDENCE AT THIS SCENE.

THE COURT UPHELD THAT IS A

SIGNIFICANT FACTOR IN

DETERMINING THE EVIDENCE, SO

THE DEFENDANT'S INCONSISTENT  
STATEMENTS WITH THE PHYSICAL  
EVIDENCE AT THE SCENE IS  
ADMISSIBLE AS EVIDENCE OF  
GUILT.

>> WHICH ONE ARE YOU SAYING  
HE DIDN'T KNOW HER IS  
INCONSISTENT WITH THE  
EVIDENCE.

>> DNA IN HER VAGINA AND  
ANUS ARE INCONSISTENT WITH  
HIM SAYING HE HAD NEVER SEEN  
THIS GIRL BEFORE.

>> OKAY, I THINK WE ALREADY  
AGREE THAT SOME OF THOSE  
BEGINNING STATEMENTS ABOUT  
HOW HE WALKS TO WORK OR  
DOESN'T WALK AND THE  
PHOTOGRAPHS ARE NOT REALLY  
WHAT WE'RE TALKING ABOUT AND  
I THINK YOU KNOW THAT.

WE'RE TALKING ABOUT THE  
ONES, LET'S GO TO THE ONES  
THAT SEEM TO BE THE MOST OF  
CONCERN WHERE THEY TALK

ABOUT SAYING, I'M LOOKING IN  
YOUR EYES AND I KNOW YOU'RE  
GUILTY.

WE KNOW THAT THE POLICE  
OFFICER COULD NOT GET ON THE  
STAND AND SAY TO THE JURY,  
AFTER YOU LOOKED AT THIS AND  
INTERROGATED HIM, WHAT  
CONCLUSIONS DID YOU COME TO?  
AND THE OFFICER COULD SAY  
AFTER I LOOKED AT THE FACTS  
AND LOOKED IN HIS EYES I AM  
TO THE CONCLUSION WITH 100%  
CERTAINTY THAT HE WAS GUILTY  
OF THE MURDER AND RAPE.

>>ING OF THAT'S NOT  
ADMISSIBLE, BUT THE STATE  
NEVER SAW IT FOR THE  
DETECTIVE'S STATEMENTS, I  
WANT TO GET BACK TO  
ILLCITTING A RESPONSE, WHEN  
THE POLICE OFFICERS  
CONFRONTED THE DEFENDANT  
WITH EVIDENCE THAT HE KNEW  
THE VICTIM, AND THAT HE HAD

INTERCOURSE WITH THE VICTIM  
AND CONTINUED TO DENY IT.  
THEY CONTINUED TO CONFRONT  
HIM WITH THE ABSOLUTE  
PHYSICAL EVIDENCE THAT YOU  
DO KNOW THIS PERSON, IN FACT  
YOU HAD SEX WITH HER ON THE  
DAY THAT SHE WAS KILLED.  
>> HOW LONG COULD THEY KEEP  
ON DOING IT AND HE WOULD  
JUST KEEP ON SAYING, NO I  
DIDN'T, AND THEY WOULD COME  
UP WITH EVERY WAY THAT IT  
COULD HAVE HAPPENED AND EACH  
THEORY THEY HAD WOULD THEN  
BE BEFORE THE JURY?  
SEE, THAT'S WHAT --  
IF THEY HAD --  
MAYBE IF THEY HAD ONE OF  
THESE STATEMENTS IN, BUT  
IT'S --  
IT JUST KEEPS ON GOING FOR  
MOST OF THE 37 MINUTES OF  
THINGS THAT DID NOT ILLICIT  
A RELEVANT RESPONSE --

>> YES IT DID, YOUR HONOR,  
AND THE RESPONSE WAS I  
DIDN'T DO IT, I DON'T KNOW  
THIS GIRL, I HAVE NEVER SEEN  
HER BEFORE.

>> THOSE TO ME CAN BE  
SEGRAGATED INTO DIFFERENT  
ARENAS, THOSE ARE IN A  
DIFFERENT CATEGORY OF  
ADMISSION OF A CRIME.  
AS YOU BLEND THEM TOGETHER  
IT SEEMS MORE LOGICAL, BUT  
WHEN YOU LOOK AT THE  
CHALLENGES AND DIFFERENT  
THEORIES OF A CRIME, IT  
DOESN'T SEEM TO ME THAT A  
CASE WITH ALL OF THIS  
EVIDENCE SHOULD BE POISENNED  
BY THOSE KINDS OF  
STATEMENTS.

I MEAN WHAT IS THE STATE  
TRYING TO DO?  
YOU HAVE THE EVIDENCE THAT  
IS NEEDED AND YOU GO IN AND  
PLAY STUFF THAT IS SO

QUESTIONABLE THAT IT POISENS  
WHAT OTHERWISE COULD BE A  
PILL?

>> JUSTICE, --

>> WOULD YOU PUT THAT INTO  
THE RECORD, A PERSON JUDGING  
THE DEFENDANT AND PUT MAKING  
UP THEORIES.

>> I DISAGREE THEY'RE MAKING  
UP THEORIES THEY'RE  
CONFRONTING HIM WITH THE  
EVIDENCE OF THE DNA.

>> WE ALL AGREE THE  
CONFRONTATION, IT'S THE NEXT  
DISCUSSION --

>> WHAT I'M TRYING TO TELL  
YOU IS WHEN HE TESTIFIED AT  
TRIAL, THE PROSECUTION KNEW  
THAT HIS THAT THE DEFENSE  
WOULD --

>> WHEN JACKSON TESTIFIED AT  
THE TRIAL?

>> YES, DURING OPENING  
STATEMENT, HE REVEALED HIS  
INTENT TO CONSENT.

NOW, WHAT IS RELEVANT IS  
THAT DURING THE ENTIRE  
INTERVIEW --

>> WHAT HAPPENS IF HE DID  
NOT TESTIFY?

THEN WE HAVE ALL OF THIS  
INFORMATION THAT COMES IN,  
AND HE NEVER TESTIFIES, HE  
WOULD NOT HAVE BEEN ON THE  
STAND SAYING YES I DID KNOW  
HER.

SO DOES THE STATE GET TO PUT  
THAT IN EVEN THOUGH THE  
DEFENDANT MAY IN FACT NOT  
TESTIFY, AND A LOT OF THESE  
CASES THE DEFENDANTS DO NOT  
TESTIFY?

>> WE HAD A CASE YESTERDAY  
HERE WHERE THE DEFENSE  
LAWYER TOLD THE JURY THE  
SAME THING.

MY CLIENT WILL TESTIFY AND  
TELL YOU WHAT REALLY  
HAPPENED AND THEN THEY  
CHANGED THEIR MIND AND HE

DIDN'T TESTIFY.

>> AGAIN, MY ARGUMENT IS  
THAT THE CONTINUOUS  
CONFRONTATION WITH THE FACTS  
OF THE CASE GAVE THE  
DEFENDANT AMPLE OPPORTUNITY  
TO COME UP WITH THE STORY HE  
EVENTUALLY CAME UP WITH ON  
THE STAND AND HE NEVER SAID  
IF IT WAS IN FACT TRUE THAT  
HE HAD CONSENSUAL SEX WITH  
THE VICTIM, AND HE'S BEING  
CONFRONTED WITH THE FACT  
THAT HIS SEMEN IS IN THIS  
WOMAN, AND NOT ONCE DID HE  
SAY --

>> IS THE DEFENDANT REQUIRED  
TO?

I MEAN THAT'S ALMOST TO ME  
AN ARGUMENT THAT ONCE A  
DEFENDANT IS A CONFRONTED  
WITH ANY KIND OF  
INCRIMINATING EVIDENCE, HE  
HAS AN OBLIGATION TO SAY  
SOMETHING AND THAT IS

CERTAINLY NOT THE CASE.

>> I DISAGREE, HE WAIVED HIS  
MIRANDA RIGHTS, HE WAIVED  
HIS RIGHT TO SILENCE AND  
TESTIFIED --

>> IT'S NOT WHAT HE SAID,  
IT'S WHAT DETECTIVE SAID  
THAT'S OBJECTIONABLE.

>> EXACTLY, BUT MY POINT IS,  
YOUR HONOR, WHEN THE  
DETECTIVE CONFRONTED HIM  
WITH THE ACTUAL EVIDENCE,  
JACKSON NEVER SAID WAIT A  
MINUTE, MAYBE THAT'S THE  
PERSON I HAD SEX WITH THE  
MORNING OF THE MURDER.

>> I GUESS THE ROOT OF THE  
PROBLEM THAT I'M HAVING WITH  
THE CASE, IS THAT WE HELD  
LAST YEAR IN TOMLIN AND THE  
DISTRICT COURT OF APPEALS  
HOLDING THIS, AND I'LL QUOTE  
WHAT WE SAID "POLICE  
OFFICERS BY VIRTUE OF THEIR  
POSITIONS RIGHTFULLY BRING

WITH THEIR TESTIMONY AN AIR  
OF AUTHORITY AND LEGITIMACY,  
THE JURY IS ENTITLED TO GIVE  
GREAT WEIGHT TO THEIR  
OPINIONS.

SO WHEN YOU HAVE A POLICE  
OFFICER ON TAPE SAYING I  
KNOW YOU DID IT, I'M  
CONVINCED YOU'RE GUILTY OF  
THIS, THAT BRINGS WITH IT  
AUTHORITY WHICH IS THE  
QUESTION THAT WAS ASKING  
COUNCIL.

OKAY, HOW CAN WE BALANCE  
THAT WITH THE PORTIONS OF  
THE STATEMENT THAT'S ARE  
ADMISSIBLE FOR A 403  
BALANCE.

>> YOU HAVE TO UNDERSTAND ON  
4093 BALANCING TEST YOU  
BALANCE THE PROBATIVE IF  
IT'S SUBSTANTIALLY  
OUTWEIGHED, SO THE MORE  
PROBATIVE THE MORE  
OUTWEIGHED --

>> YOU'RE NOW SAYING THE RELEVANCE IS HE DENIED IT, AND THAT COULD HAVE BEEN DONE IN ABOUT ONE QUESTION AND ONE ANSWER, AND THE OFFICER COULD SAY DURING THE INTERROGATION THAT YOU DID, WHEN YOU HAD THE DNA, HE DENIED IT, AND YOU DENIED KNOWING HER, WHICH I THINK THEY ASKED THOSE QUESTIONS OF THE DETECTIVE AFTER IN A SUMMARY FASHION.

THAT'S WHY, AND MY CONCERN IS, BECAUSE YOU ARE AN EXCELLENT ADVOCATE, AND YOU KNOW, YOU'VE BEEN --

YOU'RE ONE OF THE PEOPLE WE LOVE TO SEE HERE BECAUSE WE KNOW YOU'RE GOING TO BE PREPARED.

MY CONCERN IS WE'RE LOOKING AT NOT JUST THIS CASE, THIS CASE OTHER HAS GOT EVIDENCE. AND SUBSTANTIAL EVIDENCE,

BUT THE --

WHY WOULD THE STATE BE

THINKING TO PUT THIS IN.

FOR US TO SAY IT'S PERFECTLY

APPROPRIATE WHEN THERE ARE

THREE OR FOUR OF US SAYING

--

WE HAVEN'T SEEN ANYTHING

LIKE THIS.

AND IT'S CONCERNING, SO

WE'RE TRYING TO GET

SOMETHING TO BE IS IT JUST

THAT IT WENT TOO FAR, AND

WOULD YOU JUST CONCEDE THE

PARENT WHERE IT SAYS I'M

LOOKING AT YOU AND IN YOUR

EYES SAY YOU DID IT, MAYBE

THAT STATEMENT WENT TOO FAR?

OR THE STATEMENT AND WE

HAVEN'T DISCUSSED IT YET

WHERE THEY GO THROUGH ALL

ABOUT THIS IS A RISING STAR

IN THE COMMUNITY AND HER

PARENTS ARE WELL TO DO, AND

SHE'S STARTING A FAMILY --

I MEAN IS THAT --

WHERE IS THAT --

IT DIDN'T EVOKE ANYTHING.

>> THE THING IS, I WILL HAVE

--

A COUPLE THINGS, FIRST OF

ALL, ONE OF THE REASONS YOU

HAVEN'T SEEN THIS VERY MUCH

IN YOUR MANY YEARS OF

EXPERIENCE IS THAT NOW, THE

ABA SUGGESTED THAT POLICE

START VIDEOTAPING

INTERROGATIONS, THE

INNOCENCE COMMISSION WANTS

THE POLICE OFFICERS TO

VIDEOTAPE CONFESSIONS.

BEFORE YOU WOULD HAVE A

POLICE OFFICER GET ON THE

STAND AND SAY WHAT DID THE

DEFENDANT SAY WHEN YOU ASKED

IF HE DID, THEY DON'T KNOW

WHO KILLED HER OR WHO DRANK

MORE AT THE BAR.

WHEN YOU HAVE A VIDEOTAPE

THE JURY CAN SEE WHAT

QUESTION AND RESPONSE WAS.  
IN THE PAST YOU DIDN'T HAVE  
THOSE ISSUES BECAUSE THERE  
WEREN'T THAT MANY THAT WERE  
VIDEOTAPED.  
AND I THINK WHAT, YOU KNOW,  
MY POSITION IN THIS CASE IS  
THE CONFRONTATION BY THE  
POLICE, OF MICHAEL JACKSON,  
WHICH IN TRYING TO GET HIM  
TO CONFESS AND MAKE  
INCRIMINATING STATEMENTS IN  
THE FACE OF ABSOLUTELY  
INCRIMINATING EVIDENCE THAT  
HE DID NOT ONLY IGNORE BUT  
HE SEXUALLY BATTERED HER.  
AND EVEN IF YOU WANT TO SAY  
THAT SOME OF THIS WOULD NOT  
HAVE BEEN ADMISSIBLE UPFRONT  
BECAUSE IT HAS TOO MUCH  
OPINION OF THE POLICE  
OFFICER, AND OF COURSE THE  
PROSECUTOR BELIEVES THE  
DEFENDANT IS GUILTY AT  
TRIAL, BUT THAT'S NOT

EVIDENCE AND --

>> AND YOU KNOW THE  
PROSECUTOR GOT UP IN CLOSING  
ARGUMENT AND SAID WHAT I'M  
GOING TO TELL YOU IS I'VE  
BEEN A PROSECUTOR FOR 30  
YEARS, AND I KNOW BEYOND ANY  
DOUBT THAT HE DID IT --  
OF COURSE NOT, AND THE  
PROSECUTOR WOULD NOT DO THAT  
IN THIS CASE, BUT WHAT I'M  
SAYING IS THE NOTION THAT  
THE JURY WILL GIVE TOO MUCH  
WEIGHT TO THE POLICE OFFICER  
IN THAT CONTEXT WHEN IT'S  
ARGUED AS SUBSTANTIVE  
EVIDENCE, THEY'RE NOT  
HEARING THAT --

>> THEY SEE THE VIDEO.

>> THEY'RE SEEING THE  
INTERROGATION TECHNIQUES OF  
THE OFFICERS ATTEMPTING TO  
GET THE DEFENDANT TO ADMIT  
HIS INVOLVEMENT IN THE  
CRIME.

>> DID THE JURY SEE THE  
VIDEO.

>> ABSOLUTELY.

>> AND YOU SHOULD SEE IT  
TOO.

>> SO THEY'RE SEEING A  
CONTINUAL STATEMENT OF WHAT  
POLICE OFFICER SAID, SO I  
DON'T SEE HOW IT IS IT THEY  
WOULD UNDERSTAND OTHER THAN  
THAT'S WHAT DETECTIVES FELT  
AT THAT TIME AND STILL FEEL.

>> THEY ALSO SAW HIS  
CONTINUOUS DENIAL OF IT.

>> I THINK EVERYONE  
UNDERSTANDS THIS IS THE  
WORDS OF THE ACCUSED.  
THE DEFENDANT, THAT'S THE  
TESTIMONY THAT'S SUPPOSED TO  
BE BEFORE THE JURY, AGREED?

IT'S NOT THE VIEWS OF THE  
POLICE TO THE EXTENT THAT  
YOU NEED TO HAVE THE  
QUESTION IN CONTEXT IS ONE  
THING, AND THE QUESTION

SHOULD BE THE ANALYSIS, DOES  
IT GO BEYOND THAT AND BECOME  
A MONOLOGUE BY LAW  
ENFORCEMENT AS TO THEIR  
THEORIES AND BELIEFS AND  
THAT BECOMES THE TESTIMONY  
OF THE POLICE OFFICER AND WE  
ALL RESPECT LAW OFFICERS AND  
THEIR AUTHORITY AND THE JOB  
THEY DO, AND I THINK ANY LAW  
ABIDING CITIZEN VIEWS LAW  
ENFORCEMENT OFFICERS  
DIFFERENTLY.

ISN'T IT OUR JOB TO MAKE  
SURE HAY DON'T GO TOO FAR?  
AS OPPOSED TO THE TESTIMONY  
OR STATEMENTS OF AN ACCUSED?

>> AGAIN, YOUR HONOR --

>> ISN'T THAT WHAT WE NEED?

>> I AGREE WITH THAT, AND  
WHAT MY ARGUMENT IS, AND IF  
YOU LOOK AT THE VIDEOTAPE,  
YOU'LL SHOW THIS IS VERY  
MUCH OF A GIVE AND TAKE, AND  
GOING BACK, RATHER THAN A

LONG MONOLOGUE BY THE POLICE

OFFICERS, AND AGAIN, IF YOU

WANT TO ASSUME THIS

CONTINUED CONFRONTATION IS

SOMETHING THAT SHOULD NOT

HAVE COME OUT INITIALLY, IT

WOULD HAVE BEEN RELEVANT IN

REBUTTAL BECAUSE THE

DEFENDANT THAT 34 MINUTES

AND 27 SECONDS, EVEN THOUGH

THEY CONTINUALLY CONFRONTED

HIM, THEY TOLD HIM SHE WAS A

VET TECH.

HE KNOWS --

>> FIRST OF ALL, AS JUSTICE

QUINCE SAID, WE DON'T KNOW

WHETHER HE WOULD OR WOULD

NOT HAVE TAKEN THE STAND IF

THIS HAD NOT COME IN.

AND HOW WOULD IT BE REBUTTAL

IF, AFTER HE TAKES THE

STAND, YOU WOULD HAVE THE

DETECTIVES SAY THERE'S NO

DOUBT IN MY MIND YOU DID IT,

IN OTHER WORDS, IT STILL

WOULD NOT BE THAT BECAUSE HE  
TOOK THE STAND THAT  
EVERYTHING IN THE  
INTERROGATION WOULD BE  
IMPEACHMENT.

IT WOULD BE THE PART OF  
DIDN'T YOU SAY YOU DIDN'T  
KNOW HER AND NOW YOU'RE  
SAYING YOU KNOW HER?

PROPER IMPEACHMENT, NOT THAT  
YOU DENIED IT NOW AND YOU  
DENIED IT THEN, ARE YOU AS  
GUILTY THEN AS YOU WERE  
THEN, HOW ARE YOU ON THE  
STAND WHEN YOU DID IT AND  
I'M LOOKING IN YOUR EYED AND  
I KNOW YOU DID IT, THE  
REGULAR ADVANCE IS WHEN  
THEY'RE GIVEN HIM MORE  
INFORMATION, ABOUT THE  
WEAPON, AND THE INFORMATION  
WHERE SHE WORKED, IT'S  
EVIDENCE THAT ALL THIS TIME  
HE HAD THE OPPORTUNITY TO  
SAY GOSH, I WONDER IF THAT'S

HAILEY, LET ME SEE THAT  
PHOTOGRAPH AGAIN.  
EVIDENCE THAT HE CONTINUED  
TO DENY, HE DIDN'T COME UP  
WITH THIS STORY HE TOLD ON  
THE STAND THREE YEARS LATER  
IN THE COURSE OF THIS  
INTERVIEW WHERE HE'S GETTING  
THAT INFORMATION WOULD BE  
ADMISSIBLE.  
SO EVEN IF YOU WANT TO SAY  
IT --  
SO, IT STILL WOULDN'T BE  
IMPEACHMENT IF HE DIDN'T  
OTHER THAN THE PART WHERE HE  
DENIES KNOWING HER.  
WE'LL HAVE TO GO BACK AND  
FORTH ON THIS, BUT ONCE HE  
TESTIFIED THE WHOLE  
VIDEOTAPE CAME IN AS  
IMPEACHMENT WHEN HE DENIED  
IT REPEATEDLY AND HE IS  
STILL DENYING IT.  
>> MY ARGUMENT IS THAT AS A  
DISTINCT PIECE OF EVIDENCE,

IF IS EVIDENCE AND RELEVANT  
EVIDENCE THAT'S PROBATIVE  
THAT THE POLICE OFFICERS  
CONFRONT THE DEFENDANT OVER  
A PERIOD OF TIME WITH MORE  
FACTS, AND HE DOESN'T COME  
UP WITH THE STORY.

THAT IN ZITS EVIDENCE.

JUSTICE PAR PARIENTE --

>> LET ME ASK YOU TO DO

THIS, WITHOUT SEEDING IT,

ASSUME THAT SIGNIFICANT

PORTIONS OF THIS VIDEOTAPED

STATEMENT SHOULD NOT HAVE

BEEN ADMITTED.

AND EVEN SOME PORTIONS OF IT

WOULD NOT HAVE COME IN IN

REBUTTAL LATER.

WHAT'S YOUR ARGUMENT THAT

THIS IS STILL AN ERROR HARM

LESS BEYOND A REASONABLE

DOUBT.

>> THEY NEVER ARGUED THAT

THE POLICE OFFICER'S

STATEMENTS HAD RELEVANCE.

THEY WERE CONFRONTING HIM AS  
OPPOSED TO EXPRESSING AN  
OPINION.

THE EVIDENCE WAS UNCLEAR  
THAT HIS DNA WAS ON HER WHEN  
SHE WAS KILLED, HER BODY WAS  
LAID IN A POSITION THAT  
SHOWED CLEARLY WHO MURDERED  
HER ALSO RAPED HER.

THE DENIALS THAT WERE  
INCONSISTENT WITH THIS STORY  
ON THE WEEKEND AND THE  
PLAUSIBILITY OF THAT WAS  
EVIDENCE THAT AND I HAVE TO  
SAY, THERE WAS ABSOLUTELY NO  
SUGGESTION BY ANY PARTY, BY  
THE JUDGE OR PARTIES OR  
PROSECUTOR THAT THE JURY  
SHOULD CONSIDER THE POLICE  
OFFICERS WORDS AS  
SUBSTANTIVE EVIDENCE ON THE  
VIDEOTAPE.

SO GIVEN THE FACT THAT MUCH  
OF IT WAS ADMISSIBLE, IT  
ILLICITED A REGULAR --

RELEVANT RESPONSE.

>> --

HARMLESS ERROR?

>> I'M NOT SURE I DID --

>> YOU DON'T HAVE TO ARGUE

HARMLESS ERROR.

>> I'M ASKING IF THAT WAS --

SHOCKING --

WHAT I WOULD SAY JUSTICE

PARIENTE, THE STATE'S

POSITION IS IT'S NOT

REVERSIBLE ERROR, BUT ONE

CUSHION, FOR CONSIDERING

CASES IN THE FUTURE, IS THIS

COURT SHOULD TALK ABOUT A

JURY INSTRUCTION WHEN THIS

HAPPENS.

IN THE MICHAEL JAMES JACKSON

WHERE THE ISSUE WAS

CONFRONTATION AS OPPOSED TO

403 BALANCING THE JUDGE GAVE

THE JURY AN INSTRUCTION THAT

STATEMENTS FROM THE POLICE

OFFICERS ARE NOT TO BE USED

AS EVIDENCE, IT'S PART OF

THE INTERROGATION TECHNIQUES  
THAT MAY OR MAY NOT BE TRUE,  
WHAT IS EVIDENCE IS THE  
DEFENDANT'S STATEMENTS.  
YOU CAN CONSIDER THE POLICE  
OFFICER'S STATEMENTS AS  
RELEVANT FOR CONTEXT AND  
GAUGES TO RESPONSES.  
THAT INSTRUCTION WAS GIVEN  
OUT.  
THE DEFENSE COUNCIL DID NOT

--

>> DID YOU FINISH YOUR  
RESPONSE ABOUT THE HARMLESS  
ERROR?

>> I'M SORRY, YOUR HONOR, MY  
OPINION IS THE FACT THAT NO  
ONE ARGUED THE POLICE  
OFFICER'S STATEMENTS COULD  
BE USED, THE JURY WAS  
INSTRUCTED THEY WERE ONLY TO  
CONSIDER THE EVIDENCE  
ADMITTED AND THE JURY  
INSTRUCTIONS.

THE FACT THAT THE

DEFENDANT STATEMENTS TO THE  
POLICE WERE INCONSISTENT  
WITH NOT ONLY THE PHYSICAL  
EVIDENCE AT TRIAL, BUT ALSO  
HIS TESTIMONY ON THE WITNESS  
STAND, THE FACT THAT THE  
CONFRONTATION OF THE  
DEFENDANT WAS A SUFFICIENT  
AMOUNT OF TIME FOR HIM TO  
COME UP WITH THE STORY AND  
DIDN'T WAS ALSO RELEVANT,  
AND IN MY VIEW, THAT MAKES  
WHAT ESTABLISHED IT WAS  
HARMLESS ERROR COUPLED WITH  
ONE MORE FACT IS THAT THE  
STATEMENTS, I THINK, THAT WE  
CAN COME DOWN TO WERE VERY  
FEW THAT WE SHOULD NOT HAVE  
COME IN AT ALL WELCOME FOR  
INSTANCE, I CAN TELL BY YOUR  
BODY LANGUAGE.  
THAT WAS THE MOST EGREGIOUS  
STATEMENT THAT MIGHT HAVE  
BEEN REDACTED, BUT WHEN YOU  
LOOK AGAIN AT THE ENTIRE

CONTEXT OF IT INCLUDING THAT  
MANY, MANY PORTIONS OF THE  
TAPE WERE ADMISSIBLE.

IF YOU LOOK AT THE TAPE  
YOU'LL SEE THE INTERACTION,  
YOU KNOW IT WAS VERY MUCH  
GIVE AND TAKE BY THE  
DEFENDANT AND THE POLICE  
OFFICERS SO THE STATE WOULD  
SUBMIT IT IS HARMLESS ERROR

--

>> IT'S AN INTERESTING  
ARGUMENT THAT --  
AND WE HAVE SEEN A LOT OF  
VIDEOTAPES, AND NOT  
SOMETHING WHERE IT IS  
ADMITTED, IS THE STATE'S  
ARGUMENT THAT THE VIDEOTAPE  
ITSELF IS EVIDENCE TO SHOW  
JUST HOW THE DEFENDANT  
LOOKED OR REACTED BACK  
CLOSER IN TIME TO THE  
MURDER?  
SF IT THAT COMES IN JUST TO  
SEE WHAT HE OR SHE LOOKED

LIKE AT THAT TIME?

>> WELL, I THINK, SOME OF

THE --

TAKING A HYPOTHETICAL, PART

OF THE VIDEO THAT WAS CUT

OUT BECAUSE YOU HAVE THE

UNREDACTED AND TRIPLE S,

ALSO, IN THE BACK OF VOLUME

SIX, AND WHEN THE DEFENDANT

IS TOLD THAT HIS DNA WAS A

HIS FROM CODIS, THIS DID NOT

COME BEFORE THE JURY, OF

COURSE, YOU COULD SEE

SURPRISE, AT LEAST I COULD

IN THE VIDEOTAPE, THAT HE

SEEMED TAKEN ABACK BY THE

FACT THAT UT OH, MY DNA WAS

IN CODIS, HE THOUGHT HE

COMMITTED A PERFECT CRIME,

NO FINGERPRINTS OR HIS BLOOD

AT THE SCENE, BUT BY THE

FACT THAT HIS DNA WAS IN

CODIS AND THAT'S HOW THEY

MATCHED HIM.

SO I THINK THE VISIBLE

REACTION MAY BE RELEVANT,  
BUT THE STATE DID NOT ARGUE  
THAT AND THAT PART OF THE  
TAPE WAS TAKEN OUT, AND THE  
NOTION OF WE SHOULD  
VIDEOTAPE THE INTERROGATIONS  
TO EVERYONE CAN SEE WHILE  
THE DEFENDANT WAS MAKING  
THESE STATEMENTS, THEY  
WEREN'T HITTING HIM WITH  
BATS OR MAKING HIM STAND ON  
ONE FOOT IN THE CORNER --  
>> RIGHT, AND THAT'S WHERE  
IT BECOMES MOST USEFUL TO  
SEE THAT THESE ARE NOT  
COERCIVE.

I DON'T KNOW IF YOU  
RESPONDED TO THE PART WHERE  
THEY DID TALK ABOUT WHAT THE  
VICTIM WAS LIKE, AND THE  
RISING STAR, THE FACT THAT  
SHE WORKED IN A VETERINARY  
CLINIC, AND SHE WAS THERE  
EARLY HAD COME OUT, BUT THIS  
WERE ALSO OTHER THINGS I

GUESS THAT CAME OUT ABOUT  
WHETHER SHE WAS USING DRUGS  
OR HAD ABORTIONS --

>> RIGHT --

>> SO WHERE IS THAT PART  
ABOUT HER FAMILY BEING WELL  
TO DO AND ALL OF THAT.  
WHERE WOULD THAT BE RELEVANT  
IN THE GUILT PHASE?

>> I DON'T THINK THAT IS  
RELEVANT IN AND OF ITSELF,  
IT WAS AN INTERROGATION  
TECHNIQUE THE OFFICER WAS  
TRYING TO PUT A HUMAN FACE  
ON THIS PERSON TO SOMEONE  
WITH A CONSCIOUS THAT WOULD  
CONFESS, I THINK IT'S AN  
INTERROGATION TECHNIQUE TO  
MAKE SOMEONE HUMAN.

>> WHAT YOU'RE SAYING IS  
AFTER THE DEFENDANT OBJECTED  
AND IT'S COMING IN NOW, THE  
JURY DOESN'T KNOW IT'S  
COMING IN AS INTERROGATION  
TECHNIQUES BECAUSE THERE'S

NO INSTRUCTION ABOUT THAT.

>> NONE, REQUESTED, YES.

>> IT'S NOT COMING IN AS

SUBSTANTIVE EVIDENCE.

>> RIGHT, AND I THINK THE

FIRST TIME WE HAVE SEEN THAT

IN A CASE WAS MICHAEL JAMES

JACKSON DECIDED AFTER THIS,

WHICH, YOU KNOW MY POINT ON

SUGGESTING THAT IS

SOMETHING THAT YOUR CONCERN,

WE HAVE TO NOT ONLY CONSIDER

THIS CASE BUT --

>> MY CONCERN NOW ABOUT

HARMLESS ERROR IS NOT IS IF

THE JUDGE HAD ON HIS OWN OR

WITH THE STATE SAID LISTEN,

YOU'RE GOING TO HEAR THESE

STATEMENTS FROM THE POLICE,S

IF NOT TO COME IN AS WHAT

THEY THINK OR WHATEVER, IT'S

ONLY TO COME IN TO SEE THAT

THE DEFENDANT --

WHAT DEFENDANT SAID IN

RESPONSE.

YOU KNOW, YOU MIGHT HAVE  
ANOTHER ARGUMENT FOR WHY IT  
WOULD BE HARMLESS, BUT NO  
LIMITING INSTRUCTION CALM  
IN.

>> CERTAINLY.

HAD THE COURT INSTRUCTED --  
HAD THE DEFENSE REQUESTED  
AND THE COURT SUGGESTED --

>> I'M NOT SURE WHY THE  
STATE, IF IT'S ERROR, I  
DON'T KNOW WHY AND WE'RE  
LOOKING AT HARMLESS ERROR,  
WHY IT'S ALWAYS THE  
DEFENDANT THAT NEEDS TO  
REQUEST IT, WHY CAN'T THE  
STATE THAT KNOWS WHAT'S  
GOING ON STATEWIDE, AND IF  
THEY'RE GOING TO TRY TO PUSH  
THE ENVELOPE, OKAY, JUDGE,  
THIS IS WHAT THIS IS, BUT WE  
SUGGEST THIS INSTRUCTION,  
WOULDN'T THAT BE ALSO --

>> ABSOLUTELY, I WOULD LOVE  
FOR PROSECUTORS TO

ANTICIPATE CURES, AND I  
THINK FROM NOW ON AFTER  
MICHAEL JAMES JACKSON THAT  
WILL BE ONE OF THE CURES THE  
STATE WOULD SUGGEST.

>> WHAT WAS THE ACTUAL  
REASON FOR PUTTING THIS TAPE  
IN AT ALL?

>> IT WAS RELEVANT NUMBER  
ONE --

>> I UNDERSTAND THERE WERE  
THINGS ON THERE ABOUT WHERE  
HE LIVED AND WALKING BY --  
BUT THE STATEMENT ITSELF,  
WHY IT WAS SO IMPORTANT FOR  
THE STATE TO PUT THAT IN?

>> PRIMARILY BECAUSE HE WAS  
SHOWN A PHOTOGRAPH, AND  
THAT'S DEPICTED IN THE  
VIDEO, SHE'S SHOWN A  
PHOTOGRAPH OF THE VICTIM, HE  
DENIED NOT ONLY KNOWS HER  
BUT SEEING HER, AND THAT WAS  
CRITICAL TO THE CASE.

>> AND THE DETECTIVE ALSO

TESTIFIED TO THE SAME FACTS.  
>> THE DETECTIVE TESTIFIED  
TO THE SAME FACTS AND THE  
JURY WAS ABLE TO SEE THAT  
AND THERE WAS NO ABILITY TO  
SAY WE DON'T KNOW WHAT HE  
SAID BECAUSE WE ONLY HAVE  
THE POLICE OFFICERS  
TESTIMONY, THE JURY CAN SEE  
FOR THEMSELVES THAT HE IS  
SHOWN A PICTURE, HE LOOKS AT  
THE PICTURE, HE SAYS NEVER  
SAW HER BEFORE IN MY LIFE,  
AND THAT'S HIGHLY HIGHLY  
RELEVANT NOT ONLY TO THE  
STATE'S CASE, BUT CERTAINLY  
TO REBUT THE STATE'S  
TESTIMONY.  
OUT OF TIME AND I REQUEST  
THE COURT AFFIRM THE  
CONVICTION AND SENTENCE TO  
DEATH.  
>> I THINK YOU HAVE A GOOD  
SENSE OF WHAT THE ISSUE IS  
HERE.

>> I THINK YOU HAD NEED TO  
ADDRESS THE HARMLESS ERROR.

>> YES, JUSTICE CANADY, THE  
STATE HAS THE BURDEN TO SHOW  
HARMLESSNESS --

>> WHAT DID YOU SAY?

>> I ASKED THE STATE HOW  
THEY --

>> I GOT THE IMPRESSION THAT  
IT WAS MY DUTY TO SHOW  
HARMLESSNESS.

MY IMPRESSION WAS --

>> I'LL HAVE TO LOOK AT THE  
TRANSCRIPT --

IF I MISUNDERSTOOD, IT'S THE  
STATE'S BURDEN TO SHOW  
HARMLESSNESS ON APPEAL.

>> OKAY, I MAY HAVE  
MISUNDERSTOOD YOU, AS TO  
WHAT IS HARMLESS AROUND THE  
STANDARD IT IS BEYOND A  
REASONABLE DOUBT THAT HAD NO  
IMPACT ON THE JURY'S VERDICT  
BECAUSE OF ALL OF THE  
REASONS YOU'RE TALKING ABOUT

HERE.

>> LET'S LOOK AT THE STATE'S  
CASE FOR A SECOND.

YOU HAVE DNA EVIDENCE THAT  
WAS FOUND, CLEARLY, POINTING  
TO THE DEFENDANT AS BEING  
THE DONOR, SO THEN YOU HAD A  
CONSENT DEFENSE THAT DIDN'T  
WORK AND WHEN SHE ARRIVED  
AND DEACTIVATED THE SECURITY  
SYSTEM.

HOW HOW IS IT THAT THE  
ADMISSION OF THE OFFICERS  
VIDEOTAPE WOULD HAVE CHANGED  
THE OUTCOME?

>> THAT'S NOT THE TEST.

>> I KNOW THAT'S THE THE  
TEST.

>> WE HAVE TO FOCUS ON THE  
TEST, IF WE'RE TALKING  
OVERWHELMING EVIDENCE, OKAY,  
DID THIS INTERROGATION, THE  
JURY SAW THE 37 MINUTES HAVE  
AN IMPACT ON THE JURY'S  
VERDICT.

IT DID NOT HAVE AN IMPACT  
AND YOU CAN'T SAY THAT  
BECAUSE IT'S SO DAMMING, AND  
LIKE JUSTICE PARIENTE SAID,  
ALL OF THE QUESTIONS BEING  
BROUGHT UP, THEY'RE GIVING  
THE POLICE OFFICERS OPINION,  
AND WE HAVE IN, JUST LIKE  
YOU'RE SAYING, YOU NEED TO  
EXPLAIN, AND SO IT'S  
PLANNING, IT'S CERTAINLY  
PLANNING IN THE JURY'S MIND  
THAT THEY HAVE THE BURDEN TO  
EXPLAIN THIS AND THAT WILL  
CERTAINLY HAVE AN IMPACT ON  
THEIR DELIBERATIONS, SO FOR  
THAT REASON I SAY IT'S NOT  
HARM LESS BEYOND A  
REASONABLE DOUBT.

>> YOU THINK A JURY IS GOING  
TO BELIEVE THAT A POLICE  
OFFICER BY LOOKING IN THE  
GUY'S EYES KNOWING HE IS  
GUILTY THAT WILL PERSUADE  
THEM.

>> WHEN OFFICER FRIENDLY  
STOPS ME, I TEND TO BELIEVE  
HIM THAT I'M SPEEDING.  
THAT'S WHAT YOU SAY, POLICE  
OFFICER VS. THIS TRAINING.  
THEY KNOW HOW TO LOOK IN  
PEOPLE'S EYES AND SEE THEIR  
SOULS, THAT'S JUST WHAT WE  
BELIEVE, ALL OF THIS COMES  
IN AND AGAIN AND AGAIN, AND  
THE DEFENDANT KEEPS SAYING I  
DIDN'T DO THIS I DIDN'T DO  
THIS AND THAT'S JUST NOT  
HARMLESS.

THANK YOU VERY MUCH.

>> THANK YOU WE THANK YOU  
BOTH OF YOUR ARGUMENTS.  
WE NOW MOVE TO THE SECOND  
CASE ON THE DOCKET.