

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.  
PLEASE BE SEATED.  
>> OUR NEXT CASE FOR THE DAY IS WILCOX V. STATE OF FLORIDA.  
YOU MAY PROCEED.  
>> MAY IT PLEASE THE COURT, EXCUSE ME, MAY IT PLEASE THE COURT, GARY CALDWELL ON BEHALF OF MR. WILCOX, AND I WOULD LIKE TO CONFINE MY ARGUMENT TO THE FIRST TWO POINTS ON APPEAL --  
>> COME AGAIN?  
CAN YOU SPEAK A LITTLE CLOSER?  
>> YEAH, I THINK WE'VE GOT A LITTLE PROBLEM.  
MY NAME'S GARY CALDWELL --  
>> I KNOW WHO YOU ARE.  
[LAUGHTER]  
>> -- FOR MR. WILCOX.  
I WILL CONCENTRATE ON THE FIRST TWO ISSUES ON APPEAL BUT, OF COURSE, IF THE COURT HAS QUESTIONS ABOUT THE OTHER ISSUES, I WILL BE HAPPY TO --  
>> MR. CALDWELL, AS WE START OFF --  
>> YES, SIR.  
>> -- I HAVE A FUNDAMENTAL CONCERN.  
HERE WE HAVE A CASE WHERE THE DEFENDANT BASICALLY DIDN'T LIKE THE WAY THE ATTORNEYS WERE PROCEEDING, AND EVERYTHING HERE IS, ESSENTIALLY, WELL, I DID THIS BECAUSE I HAD TO DO IT BECAUSE THEY WEREN'T PROCEEDING AS I WANTED THEM TO.  
YOU UNDERSTAND?  
THIS IS A CASE WHERE WE HAVE THE FARETTA HEARINGS AND WE HAD THE NELSON INQUIRY, AND THE DEFENDANT REPRESENTED HIMSELF, YET MOST OF THE ARGUMENTS HERE ON THIS DIRECT APPEAL ARE THINGS THAT WEREN'T ACCOMPLISHED BECAUSE HE REPRESENTED HIMSELF. THAT'S WHAT I'M STRUGGLING WITH IN THIS CASE, IS THAT HOW DO WE, YOU KNOW, AS FAR AS TRANSCRIBING

CERTAIN TESTIMONY, THAT KIND OF THING.

SEE THE DVD.

WELL, HE COULDN'T SEE IT BECAUSE THAT'S WHAT THE LAWYER WOULD HAVE DONE.

YOU UNDERSTAND WHERE I'M GOING WITH THIS?

>> UH-HUH.

>> AND IT'S JUST VERY TROUBLESOME TO TRY TO GET TO THE MEAT OF IT --

>> UH-HUH.

>> -- WITHOUT ADDRESSING THAT FIRST, THAT FIRST ISSUE.

I MEAN, YOU'RE ESSENTIALLY SAYING HE GOT ANGRY, AND THEY MADE HIM FRUSTRATED, SO THAT'S WHAT CAUSED HIM TO REJECT THE LAWYER.

SO ALL THE PROBLEMS OF THE WHOLE WORLD ARE BECAUSE OF THAT, AND I'M ENTITLED TO A NEW TRIAL.

>> WELL, IN FAIRNESS TO MR. WILCOX, I BELIEVE THAT HIS FRUSTRATION CAME ABOUT BECAUSE THE LAWYERS WERE ACTUALLY NOT DOING ANYTHING IN THE CASE SO FAR AS THE RECORD SHOWS.

HE IS, HE WENT THROUGH -- THERE WERE SEVERAL LAWYERS WHO WERE APPOINTED BUT WITHDREW FOR CONFLICTS BECAUSE OF ALL OF THESE WITNESSES INVOLVED IN THE CASE.

AND, APPARENTLY, HAD NOT DONE ANYTHING.

AND THEN HE HAD AN ATTORNEY, MR. GERSHON, WHO IS A VERY GOOD LAWYER, BUT I BELIEVE HE WAS, HE WAS COMPLETELY TAKEN UP WITH ANOTHER CASE.

AND SEEMINGLY, NEVER DID ANYTHING ON THIS CASE.

SO THAT WAS WHAT HAD LED TO HIS REPRESENTING HIMSELF.

BUT THAT'S BESIDE THE POINT.

I MEAN, I JUST DON'T THINK IT'S FAIR TO SAY HE WAS JUST ANGRY OR ANYTHING LIKE THAT.

>> WELL, HE -- BECAUSE OF WHAT YOU SAID AND THAT MAY BE TRUE -->> RIGHT.

>> BUT THAT HE WAS FED UP WITH LAWYERS, AND I'M GOING TO DO IT MYSELF.

>> I THINK IT'S NOT JUST BEING FED UP WITH LAWYERS.

HE WAS IN JAIL ON AN EXTREMELY SERIOUS CHARGE, AND FROM SO FAR AS HE COULD TELL, ABSOLUTELY NOTHING WAS BEING DONE FOR HIM. AND THAT SEEMS TO BE BORNE OUT, BECAUSE WE DON'T HAVE DEPOSITIONS OF THESE, OF THESE PEOPLE THAT -- AND WE DON'T HAVE, THE LAWYERS NEVER GOT TRANSCRIPTS OF THESE STATEMENTS WHICH ANY COMPETENT LAWYER WOULD DO.

SO HE WAS IN THIS SITUATION. BUT SET THAT ASIDE.

LET'S GO TO THE FIRST ISSUE.

HE, THE MAIN ACCUSERS AGAINST HIM WERE THE PEOPLE LIVING NEXT DOOR TO THE MURDER VICTIM, AND THEY MADE STATEMENTS TO THE POLICE ON FEBRUARY THE 3RD WHICH HE FELT PROVIDED HIM A DEFENSE TO THIS CASE.

HE WANTED THOSE STATEMENTS. THE STATE HAS A DUTY TO PROVIDE THE STATEMENTS TO HIM.

>> JUST TO BE CLEAR, THE STATEMENTS HAD NOT BEEN TRANSCRIBED.

>> THEY HAVE TO PROVIDE THE STATEMENTS.

>> OKAY.

BUT GIVE HIM A COPY OF THE DVD OR WHATEVER.

>> WELL, IF YOU ASKED ME A QUESTION AND I SAY I HAVE AN ANSWER TO YOUR QUESTION BUT IT'S IN THIS BOX AND YOU CAN'T OPEN UP THE BOX, WOULD YOU FEEL LIKE I HAD ANSWERED YOUR QUESTION? NO.

>> BUT IS THERE ANYTHING IN THE RULES THAT REQUIRES THE STATE TO

TRANSCRIBE?

>> NO, NO.

THE RULE SAYS THE STATE HAS TO MAKE AVAILABLE THE STATEMENTS. NOT JUST THE DVDs.

AND THE DVDs WEREN'T AVAILABLE TO HIM ANYWAY.

YOU KNOW, HE'S IN JAIL.

>> SO IF A DEFENDANT CHOOSES TO REPRESENT HIMSELF OR HERSELF, THEN THE STATE HAS AN ADDITIONAL OBLIGATION, IN YOUR VIEW, THAT IT DOES NOT HAVE TO SOMEONE WHO HAS A LAWYER?

>> THE STATE ALWAYS HAS THE DUTY, THE AFFIRMATIVE DUTY TO MAKE THE STATEMENTS AVAILABLE.

>> BUT IN THIS CASE I THINK THE REAL ISSUE IF THE LAWYERS HAD BEEN IN THIS CASE AND THE STATE GAVE THEM THE DVD, THAT WOULD BE FINE.

>> THE LAWYER --

>> YOUR ARGUMENT REALLY IS THAT BECAUSE IT WAS A PRO SE DEFENDANT, THE STATE HAD TO DO MORE THAN WHAT THEY WOULD HAVE DONE FOR A LAWYER.

>> STATE AGENTS WERE MAKING IT UNAVAILABLE TO HIM.

IT WAS THROUGH STATE AGENCIES --

>> BECAUSE THEY DIDN'T OFFER A DVD PLAYER, IS THAT WHAT --

>> THE JUDGE SAID THE ONLY THING YOU'RE ENTITLED TO IS THE DVDs.

YOU'RE NOT ENTITLED TO ANYTHING ELSE.

THE JUDGE, AND THE JUDGE SAID AND THE JAIL ISN'T GOING TO LET YOU USE THESE THINGS.

AND THE DEFENDANT FILED A THING SAYING I CAN'T USE --

>> THE PROBLEM IS THIS GUY IS PRO SE.

HE'S DECIDED HE WANTS TO REPRESENT HIMSELF THROUGH FARETTA, MANY, MANY TIMES THROUGH THE PROCEEDING OFFERED HIM AN OPPORTUNITY TO GET AN

ATTORNEY, AND IF YOU'RE IN PRISON, IF YOU'RE LOCKED UP, I MEAN, YOU'LL HAVE THE SAME ACCESSIBILITY AS SOMEBODY WHO ISN'T.

SO HE SORT OF MADE THAT DETERMINATION, DIDN'T HE?

>> WELL, HE EXERCISES, OBVIOUSLY -- WHICH I DON'T THINK --

>> HE HAS A RIGHT.

>> HIS CONSTITUTIONAL RIGHT. BUT HE ALSO HAS, HE DOES NOT SURRENDER HIS RIGHT THAT THE STATE MAKE AVAILABLE TO HIM THE STATEMENTS THEMSELVES.

>> IF THE JUDGE -- I MEAN, I GUESS, THE STATE -- WE'RE NOT GOING TO SPEND THE TIME, MONEY TO TRANSCRIBE STATEMENTS.

SO IF THE, YOU KNOW -- AND, AGAIN, I ASSUME IT WAS IN THIS ISSUE, WAS IT BROUGHT BEFORE THE JUDGE?

>> YES.

>> I MEAN, IT WOULD SEEM THAT THE JUDGE COULD HAVE MADE ARRANGEMENTS FOR SOME OF THE PRETRIAL HEARING FOR HIM TO VIEW IT, YOU KNOW, IN THE COURTHOUSE. BUT, YOU KNOW, I GUESS THAT GOES TO -- IT DOES CONCERN ME.

I'M THINKING SOMEBODY CAN'T SEE, AND YOU SAY, WELL, HERE ARE THE PICTURES AND, YOU KNOW, GO AHEAD, WE'RE NOT TELLING YOU WHAT THEY LOOK LIKE, AND WE'RE NOT GOING TO GIVE YOU ANYBODY THAT CAN --

>> EXACTLY.

>> -- THE PICTURES.

BUT WHAT IS -- COULD YOU GO TO LET'S ASSUME IT WAS ERROR, THAT THERE SHOULD HAVE BEEN SOME ACCOMMODATION OF IT?

HOW IS IT, HOW CAN IT BE REVERSIBLE ERROR?

HOW WAS HE AFFECTED BY THIS SUCH THAT THERE'S A REASONABLE POSSIBILITY OF, YOU KNOW, THAT

IT AFFECTED THE VERDICT?  
WHAT CROSS-EXAMINATION, WHAT  
WOULD HE HAVE DONE WITH IT THAT  
WOULD HAVE AMOUNTED TO NOT BEING  
ABLE TO DO IT, HARMFUL ERROR?

>> WELL, AS TO HARM, AGAIN,  
OBVIOUSLY THE ISSUE --

>> I UNDERSTAND HE WASN'T ABLE  
TO EFFECTIVELY CROSS-EXAMINE ON  
THE PRIOR STATEMENT.

BUT AGAIN, THE GUY'S PRO SE,  
AND, YOU KNOW, WHAT IS IT THAT  
NOT WHAT A REASONABLY COMPETENT  
LAWYER COULD HAVE DONE WITH IT,  
BUT WHAT WOULD THIS DEFENDANT  
HAVE DONE WITH IT?

YOU SEE HOW HE WAS SORT OF  
INEPTLY, YOU KNOW, TRYING TO  
ESTABLISH PREDICATES ON OTHER  
ISSUES.

WHERE'S THE HARM?

>> WELL, THE HARM IS HOW DOES  
THIS AFFECT HIS PREPARATION?  
HIS PREPARATION WAS, HIS  
STRATEGY WAS THE FEBRUARY 3RD  
STATEMENTS ARE GOING TO SHOW  
THAT THESE PEOPLE MADE UP THIS  
STORY ONLY AFTER THE ACCUSATIONS  
BEGAN TO COME IN THEIR  
DIRECTION.

AND HE WANTED TO, HE WANTED  
ACCESS TO THESE FEBRUARY 3RD  
STATEMENTS --

>> I APPRECIATE, BUT THIS ISN'T  
LIKE RICHARDSON, YOU KNOW?  
THAT IT'S A PROCESS ISSUE.

I THINK YOU HAVE TO SHOW MORE  
THAN JUST, YOU KNOW, HE COULD  
HAVE DONE A BETTER JOB OF  
PREPARING.

SO DO YOU HAVE ANYTHING NOW  
LOOKING -- I ASSUME YOU HAVE THE  
STATEMENTS?

>> NO, NO, WE DON'T.

>> OH, SO WE'RE JUST  
SPECULATING?

>> EXACTLY.

THAT'S THE PROBLEM.

THAT'S THE PROBLEM.

>> BUT YOU --

[INAUDIBLE CONVERSATIONS]

>> THAT IS THE PROBLEM IN RICHARDSON.

>> YOU DIDN'T LOOK AT THE DVD?

>> IT'S NOT IN THE RECORD. THE DVDS AREN'T IN THE RECORD. THEY'VE NEVER BEEN PROVIDED BY, YOU KNOW?

THEY'RE NOT IN THE RECORD. THAT'S EXACTLY THE ISSUE IN RICHARDSON.

RICHARDSON SAID THAT THIS HAS TO BE SET OUT ON THE RECORD BY THE JUDGE, BY AN INQUIRY TO FIND OUT WHAT THE MATERIALS ARE.

THE JUDGE MISSED MAKING A SEARCHING INQUIRY AS TO WHAT THE PROCEDURAL PREJUDICE IS, AND THAT IS NOT WHAT'S HAPPENED HERE, AND NOW --

>> BEFORE WE GET INTO THE HARMLESS, I'M STILL BACK TO SQUARE ONE AGAIN BECAUSE HAVING BEEN A TRIAL JUDGE, HAVING GONE THROUGH THIS MANY, MANY TIMES, JUDGE BACHMANN IN THIS CASE CONDUCTED A PRETTY THOROUGH FARETTA INQUIRY.

>> RIGHT.

>> AND THAT, HE EVEN WENT ABOARD -- ABOVE WHAT'S REQUIRED AND TOLD HIM REPEATEDLY, YOU UNDERSTAND THAT, YOU KNOW, YOU'RE SITTING IN JAIL, AND YOU CAN'T JUST WALK OVER TO THE STATE ATTORNEY'S OFFICE.

YOU CAN'T MAKE A PHONE CALL.

YOU CAN'T DO THOSE THINGS.

A LAWYER CAN.

I MEAN, PRACTICALLY PLEADED WITH HIM, DON'T DO THIS.

AND HE INSISTED.

I MEAN, I DON'T KNOW THAT FARETTA OR ANY OTHER CASE LAW REQUIRES THE STATE ATTORNEY OR THE TRIAL JUDGE TO DO ANYTHING DIFFERENTLY WITH AN UNREPRESENTED DEFENDANT THAN IT REQUIRED A REPRESENTED DEFENDANT.

I MEAN, I JUST DON'T KNOW  
BECAUSE I CAN JUST SEE EVERY  
SINGLE DAY THERE WILL BE A NEW  
DEMAND.

TRANSCRIBE THIS, TRANSCRIBE  
THAT, GET AN INVESTIGATOR TO GO  
TALK TO THIS GUY, GET AN  
INVESTIGATOR TO TALK TO THAT  
GUY.

WHAT'S THE DIFFERENCE BETWEEN  
THAT AND TRANSCRIPTION?

>> WELL, AGAIN, THIS IS FOCUSED  
ON THESE PEOPLE WHO WERE THE  
MAIN ACCUSERS AGAINST HIM.

>> RIGHT.

>> WHO TALKED TO THE POLICE ON  
THE DAY OF THE MURDER AND MADE  
STATEMENTS WHICH HE FELT  
SUPPORTED HIS THEORY.

AND HE HAD A GOOD FAITH BASIS  
FOR THIS BASED ON THIS PROBABLE  
CAUSE AFFIDAVIT WHICH THE STATE  
SAID AT TRIAL FOR THE FIRST TIME  
WHILE HE WAS CROSS-EXAMINING ONE  
OF THESE MAIN WITNESSES, AND THE  
STATE TOLD THE JURY THIS CASE  
COMES DOWN TO THE CREDIBILITY OF  
THESE TWO PEOPLE.

FOR THE FIRST TIME, THE STATE  
SAID THIS AFFIDAVIT YOU'RE  
RELYING ON IS NOT TRUE.

IT'S NOT TRUE.

HE'S SAYING, LOOK, IT SAYS RIGHT  
HERE SHE SAYS SHE KNEW NOTHING  
ABOUT THIS PRIOR BURGLARY.

AND THE PRIOR BURGLARY IS WHAT,  
YOU KNOW, THE THEORY OF THE CASE  
REVOLVES AROUND IN THIS PRIOR  
BURGLARY.

AND SO HE'S -- I MEAN, THAT'S,  
THAT'S THE KIND OF --

>> LET ME MAKE SURE I UNDERSTAND  
EXACTLY WHERE WE ARE.

THE STATE OFFERED THE DVD --

>> RIGHT.

>> AND THE DEFENDANT NEVER GOT  
IT --

>> RIGHT.

>> AND HE NEVER ASKED THE TRIAL  
JUDGE TO MAKE AVAILABLE TO HIM A



WAY TO SEE THE DVD.

>> RIGHT.

THE JUDGE SAID THE ONLY THING  
YOU GET IS THE DVDs.

YOU DON'T GET ANYTHING ELSE.

AND THE JUDGE --

>> YOU DON'T GET ANYTHING ELSE,  
MEANING WHAT?

>> THE JUDGE SAYS, HE SAID THE  
ONLY THING YOU GET IS THE  
DVDs.

>> BUT THE ISSUE OF HOW HE COULD  
VIEW IT DIDN'T COME UP.

HE WAS ASKING FOR A TRANSCRIBED  
STATEMENT, CORRECT?

>> RIGHT.

BUT THAT, BUT THAT -- WHEN THE  
JUDGE SAID THAT, THE DEFENDANT  
SAYS, BUT I'M INCARCERATED.  
AND THE JUDGE REPEATS, THE ONLY  
THING YOU GET IS THE DVDs.

>> DID HE HAVE STANDBY COUNSEL  
AT THAT TIME?

>> THERE WAS A STANDBY COUNSEL.

>> YOU KNOW, AGAIN, IN TERMS OF  
THIS CASE -- AND I HEAR WHAT  
EVERYONE IS SAYING, AND WE KNOW  
THAT THESE, THE TRIAL JUDGES  
HAVE TO PUT UP WITH INCREDIBLE  
OBSTACLES.

AND IT'S NEVER GOOD FOR THE  
DEFENDANT, AND THAT'S WHAT THE  
JUDGE REPEATEDLY TOLD THIS  
DEFENDANT.

BUT YOU'RE ASKING US,  
ESSENTIALLY, IF I'M  
UNDERSTANDING YOU CORRECTLY, TO  
SAY HE GETS A WHOLE NEW TRIAL  
BECAUSE THE JUDGE SHOULD HAVE OR  
THE STATE, WHAT, SHOULD HAVE  
TRANSCRIBED THE STATEMENT?  
OR THE JUDGE SHOULD HAVE ASKED  
FOR IT, MAKE IT AVAILABLE FOR  
VIEWING?

WHAT'S, WHAT WOULD BE THE  
HOLDING OF THIS CASE?

>> THE HOLDING OF THIS CASE IS  
THE STATE HAS NOT DEMONSTRATED  
PROCEDURAL PREJUDICE BEYOND A  
REASONABLE DOUBT.

THE --  
>> WAIT --  
>> PROCEDURAL PREJUDICE.  
>> YOU'RE SAYING, SO YOU'RE  
SAYING THAT THIS IS A RICHARDSON  
VIOLATION.  
>> YES.  
>> AND IF WE -- SO IF WE  
DISAGREE WITH YOU THAT IT'S A  
RICHARDSON VIOLATION, THEN WHERE  
ARE YOU?  
>> BUT THAT'S THE ISSUE.  
>> OKAY.  
SO IF WE DISAGREE, THEN THERE IS  
NO RELIEF.  
>> WELL, THE STATE HAS TO -- MY  
WHOLE ARGUMENT --  
>> I MEAN, HE KNEW,  
RICHARDSON -- HE KNEW ABOUT THE  
STATEMENTS, BECAUSE HE KEPT ON  
ASKING ABOUT IT.  
I DON'T KNOW IS THERE A WAY WITH  
PRO SE, UNREPRESENTED DEFENDANTS  
IN CRIMINAL CASES IF HE HAD  
WANTED TO USE A STANDBY COUNSEL  
TO SAY I WANT TO MAKE SURE WE  
DEPOSE THE MAIN WITNESS AGAINST  
ME?  
COULD THAT HAVE BEEN DONE?  
>> THAT COULD HAVE BEEN DONE,  
PERHAPS.  
I DON'T KNOW.  
>> OKAY.  
WELL, SO IT'S NOT AS IF HIS  
HANDS ARE TIED BEHIND HIS BACK  
AND A BLINDFOLD IS PUT ON HIM.  
>> NO, THE -- I TAKE BACK WHAT I  
SAY.  
THE ROLE OF STANDBY COUNSEL IS  
MERELY TO ADVISE.  
BUT THE POINT IS --  
>> WELL --  
>> THE STATE HAS TO MAKE THIS  
AVAILABLE.  
THAT'S, THAT'S MY ARGUMENT ON  
APPEAL.  
I'M NOT GOING TO STAND HERE AND  
START ARGUING SOMETHING THAT'S  
NOT ARGUED IN MY BRIEF.  
>> AND IF IT'S -- SO YOU WOULD

BE ARGUING A HIGHER STANDARD ON  
RICHARDSON OR UNREPRESENTED  
LITIGANT --

>> NO.

WELL, OKAY.

SO IT'S A LAWYER.

>> UH-HUH.

>> AND THE LAWYER AND THE STATE  
SAYS HERE'S THE DVD.

>> UH-HUH.

>> THAT'S A RICHARDSON -- AND  
THE LAWYER SAYS, MY DVD IS  
BROKEN.

>> IF THEY SAID TO THE LAWYER  
HERE'S THE DVD AND, BY THE WAY,  
WE AREN'T GOING TO LET YOU  
LISTEN TO IT BECAUSE WE HAVE  
STATE AGENTS WHO ARE GOING TO  
HOLD ON TO IT --

>> BUT DIDN'T THE JUDGE WARN HIM  
ON SEVERAL OCCASIONS ABOUT THE  
PERILS OF DISCOVERY, AND DIDN'T  
THE JUDGE OFFER TO APPOINT  
COUNSEL AND TO DELAY THE TRIAL  
TO GIVE COUNSEL A CHANCE TO LOOK  
AT THESE, LOOK AT THE  
TRANSCRIBED DVD?

>> OH, I DON'T THINK SO, NO.

I DON'T BELIEVE SO.

I DON'T THINK --

[INAUDIBLE CONVERSATIONS]

>> -- LATER TRIAL UNTIL HE HAD  
AN OPPORTUNITY TO EXAMINE THE  
DISCLOSED MATERIALS?

>> I'M SORRY, WHAT WAS THAT?

>> THE JUDGE OFFERED TO APPOINT  
COUNSEL AND TO DELAY THE START  
OF THE TRIAL IN ORDER TO ALLOW  
WILCOX TO EXAMINE THE DISCOVERY  
MATERIAL.

>> WELL, THE DISCOVERY MATERIAL,  
MEANING THE PAPERWORK THAT THE  
LAWYERS WERE GETTING --

>> WOULDN'T THAT ENCOMPASS THE  
STATEMENTS ON THE DVD ALSO?

>> NO.

I THINK WHAT THEY WERE TALKING  
ABOUT THERE WAS THIS PAPERWORK  
THAT THE LAWYERS --

>> BUT IF HE HAD COUNSEL, HE

COULD DO ANYTHING, COULDN'T HE?

>> IF HE HAD COUNSEL.

IF.

I MEAN, HE HAS THIS  
CONSTITUTIONAL RIGHT TO  
REPRESENT HIMSELF --

>> I UNDERSTAND THAT.

YOU HAVE THE RIGHT TO IF YOU  
WANT TO.

THIS IS WHAT HE DID.

>> I MEAN, I APOLOGIZE IF I SEEM  
TO BE ARGUING WITH YOU.

>> OH, NO.

WE AREN'T ARGUING.

>> THE POINT IS THE STATE HAS TO  
MAKE THIS AVAILABLE.

STATE AGENTS MADE IT  
UNAVAILABLE.

AND IF STATE AGENTS MAKE IT  
UNAVAILABLE, IF THEY TELL THE  
LAWYER HERE'S THE DVD BUT WE'RE  
GOING TO HOLD ON TO IT AND YOU  
CAN'T PLAY IT IN A DVD PLAYER --  
WHICH IS WHAT HAPPENED --

>> THAT'S NOT WHAT HAPPENED  
HERE.

>> YES, YES, IT IS.

IN EFFECT, THAT'S -- BECAUSE  
THEY GIVE IT TO THE JAILERS, AND  
HE HAS NO ACCESS TO THE THING.  
THAT'S WHAT HE'S SAYING.

>> BUT WE DON'T KNOW THAT.

>> THE JUDGE IS SAYING ALL YOU  
GET IS THE DVD.

>> THE POINT IS THE RECORD -- IF  
THEY GAVE IT TO A LAWYER AND THE  
LAWYER SAID, LISTEN, I CAN'T  
HEAR, I NEED SOME ASSISTANCE,  
BUT HE NEVER WENT TO THE NEXT  
STEP.

HE DIDN'T SAY, WELL, GET THE  
DVD.

AND THEN HE COMES BACK AND SAYS  
I CANNOT PLAY IT IN PRISON.

I MEAN, THERE'S NO OTHER RECORD  
ON WHAT HAPPENED.

HE JUST SAID, YOU KNOW, I DIDN'T  
GET THE -- I WANT IT

TRANSCRIBED, AND IF IT WASN'T  
GOING TO BE TRANSCRIBED, THAT'S

THE END OF IT.

SO WE DON'T KNOW.

>> WELL, HE FILED A HANDWRITTEN FILING WITH RESPECT TO THE JAIL PHONE CALLS THAT SAID I CANNOT USE THE DVD, THE RECORDINGS, SO I NEED A TRANSCRIPT TO KNOW WHAT'S ON THOSE RECORDINGS. HE DID HAND FILE THAT. THAT WAS ON JANUARY 25TH, I THINK.

>> MR. CALDWELL --

>> THE, BUT THE POINT IS EVERYONE AGREED THAT HE COULDN'T DO ANYTHING WITH THESE THINGS. IT WAS JUST NO DISPUTE ABOUT THAT.

>> WHAT EVERYBODY AGREED TO OTHER THAN THE DEFENDANT IS THAT THE STATE HAS NO OBLIGATION TO TRANSCRIBE WHEN THEY'RE DVDS AND CDS AVAILABLE.

THAT'S -- YOUR WHOLE BRIEF AND ARGUMENT IS SHIFTING THIS MORNING FROM REALLY THE THRUST. THE THRUST OF THE ENTIRE PROCEEDING UP TO THIS POINT HAS BEEN THE REQUIREMENT ON THE STATE PROVIDE TRANSCRIPTS.

>> THE STATE HAS TO MAKE IT AVAILABLE.

HE SAID THERE ARE THESE DVDS, I CAN'T USE THEM, SO I NEED TRANSCRIPTS OF THEM.

THAT'S WHAT HE WAS SAYING.

THE JUDGE WAS SAYING YOU ONLY GET THE DVDS.

PERIOD.

>> HE'S NOT GOING TO REQUIRE THE STATE TO TRANSCRIBE THEM.

>> WELL, THE --

>> -- THE SHERIFF OF THE COUNTY BE REQUIRED TO GIVE HIM FREE TIME OR ACCESS TO ANYTHING ELSE, IS THERE?

>> WELL, THESE ARE STATE AGENTS WHO ARE MAKING IT UNAVAILABLE TO HIM.

>> I'VE JUST ASKED A QUESTION, VERY SIMPLE QUESTION.

>> I'M SORRY.  
WHAT WAS THE QUESTION?  
>> I UNDERSTAND YOU'RE EMOTIONAL ABOUT THIS, BUT WE'RE TRYING TO GET DOWN TO WHAT HAPPENED. HE DIDN'T FILE ANY MOTIONS, MAKE ANY REQUEST TO FORCE THE SHERIFF OF THE COUNTY TO RELEASE HIM FROM HIS CELL TO GO DO ANYTHING.  
>> NO.  
BUT, AGAIN --  
>> HE ASKED FOR TRANSCRIPTS.  
>> AGAIN, AS I SAY, HE FILED THE THING ABOUT THE JAIL PHONE CALLS SAYING I'M IN JAIL, I CAN'T USE THESE RECORDINGS.  
AND WHEN THE JUDGE SAID YOU ONLY GET THE DVDs, HE POINTED OUT, BUT I'M INCARCERATED.  
AND THE JUDGE SAYS, YOU ONLY GET THE DVDs.  
AND THEN THE PROSECUTOR IS SAYING, WELL, I'LL GIVE HIM THESE THINGS, AND THE JUDGE SAYS THEY WON'T LET HIM HAVE THEM. SO JUST BEING PREVENTED FROM ACCESS TO THE STATEMENTS. THAT'S WHAT HE'S ENTITLED TO.  
>> MR. CALDWELL?  
YOU MENTIONED EARLIER THAT YOU ALSO PLANNED TO ARGUE POINT TWO ON APPEAL.  
I'M VERY ANXIOUS TO HEAR THAT.  
>> OKAY.  
>> THAT PARTICULAR ISSUE IS ONE THAT REOCCURS AT THE TRIAL LEVEL OVER AND OVER AGAIN, AND PERHAPS THIS IS A TIME WHEN THAT CAN BE CLARIFIED.  
AND PROSECUTORS SEEM TO GET IT WRONG.  
>> RIGHT.  
>> AND DEFENSE LAWYERS SEEM TO GET IT WRONG ON HOW TO IMPEACH WITNESSES WITH PRIOR FELONY CONVICTIONS.  
>> UH-HUH.  
>> CAN YOU ADDRESS THAT ISSUE, PLEASE?  
>> UH-HUH, YES, YES.

OKAY, WELL, LET ME MOVE TO THAT.  
AGAIN, AS YOU SAY, IT'S OFTEN  
GOTTEN WRONG, AND I'M SURE THAT  
MY FRIEND WOULD BE THE FIRST  
PERSON TO AGREE THAT JUSTICE  
PARIENTE'S OPINION FOR THE  
FOURTH DISTRICT IN 1994 WAS A  
BRILLIANT OPINION --

[LAUGHTER]

AND IT SPECIFICALLY SAYS THAT  
THE QUESTION, THAT THE  
APPROPRIATE QUESTION IS HAVE YOU  
EVER BEEN CONVICTED OF A FELONY.  
THAT'S THE APPROPRIATE QUESTION  
IN A SITUATION LIKE THIS.

>> WHAT ABOUT INVOLVING  
DISHONESTY?

>> EXCUSE ME?

>> HOW ABOUT A CRIME INVOLVING  
DISHONESTY SUCH AS IN THIS CASE?

>> WELL, A CRIME OF DISHONESTY  
IS EXPLAINED IN THE ATTIS CASE,  
AND THERE'S NO RECORD SHOWING  
THAT HE HAD THAT.

THE PROSECUTOR WAS TRYING TO GET  
INTO THE GRAND THEFT AND THE  
ROBBERY AS CRIMES OF DISHONESTY.  
WHICH HE CANNOT DO.

I MEAN, BOB IS CLEAR ON THAT.  
THE APPROPRIATE QUESTION WHERE  
IT'S A FELONY IS HAVE YOU BEEN  
CONVICTED OF A FELONY.

BARKUM SAYS THE SAME THING --

>> WELL, THERE'S LOTS OF  
QUESTIONS THE STATE ASKED  
MR. WILCOX; HAVE YOU BEEN  
PREVIOUSLY CONVICTED OF A  
FELONY?

OR A CRIME INVOLVING DISHONESTY?  
IS THAT AN IMPROPER QUESTION?

>> YES.

>> BECAUSE?

>> BECAUSE THE CRIME OF  
DISHONESTY -- BECAUSE AS BOB  
EXPLAINS, THE QUESTION IS HAVE  
YOU EVER BEEN CONVICTED OF A  
FELONY, YES.

THEN IF HE HAS MISDEMEANOR  
CRIMES INVOLVING DISHONESTY,  
THEN THE STATE MAY ASK A SECOND

QUESTION, HAVE YOU EVER BEEN  
CONVICTED OF A CRIME, OR I THINK  
BARKUM SAYS MISDEMEANOR  
INVOLVING DISHONESTY?

>> WAS THERE AN OBJECTION TO THE  
QUESTION?

>> HE WAS -- WAIT, HE WAS --

>> WAS THERE AN OBJECTION TO THE  
QUESTION?

>> HE WAS OBJECTING, I DON'T  
UNDERSTAND THIS.

NOW --

>> THAT'S NOT AN OBJECTION TO  
THE QUESTION, THAT'S A  
CONFESSION OF A LACK OF  
UNDERSTANDING.

>> WELL --

>> THAT'S A DIFFERENT -- AND I  
UNDERSTAND, THIS IS AN ODD  
SITUATION BECAUSE HE'S  
SELF-REPRESENTED.

BUT IT SEEMS LIKE TO ME THAT  
THERE HAS GOT TO BE AN OBJECTION  
TO THE QUESTION IF WE'RE GOING  
TO FIND THAT THERE IS ERROR  
ASSOCIATED WITH THAT UNLESS YOU  
CAN SHOW IT'S FUNDAMENTAL.

>> RIGHT.

>> AND I DON'T, I MEAN, IT'S  
KIND OF A STRETCH TO THINK THIS  
WOULD BE FUNDAMENTAL.

>> WELL, THIS IS WHERE HE'S, YOU  
KNOW, THE WITNESS IS CONFUSED BY  
THE QUESTION.

THE PROSECUTION HAS ASKED AN  
IMPROPER QUESTION.

>> LAWYERS ARE CONFUSED ALL THE  
TIME AND DON'T MAKE OBJECTIONS,  
AND THAT DOESN'T EXCUSE THE  
FAILURE TO MAKE THE OBJECTION.  
AND TO PRESERVE THE ERROR, IF  
ANY.

>> WELL, THE RULE -- THIS COURT  
HAS EXPLAINED IN THE F.B. AND  
J.S. CASES THAT THE ISSUE IS ONE  
OF FAIRNESS AND PRACTICALITY.  
IF THE JUDGE IS MADE AWARE OF  
THE ISSUE, WHICH THE DEFENDANT  
WAS, YOU KNOW, HE WAS, IT WAS  
CLEAR WHAT THE ISSUE WAS, THAT,



YOU KNOW, HE DIDN'T UNDERSTAND THE QUESTION.  
AND THE REASON HE DIDN'T --  
WELL, LET ME GO BACK AND EXPLAIN HOW THIS CAME UP.  
IN THE OPENING STATEMENT, THE DEFENDANT CONCEDED THAT HE HAD A CRIMINAL RECORD.  
HE CONCEDED THAT.  
HE SAID YOU WILL PROBABLY HEAR I'VE BEEN CONVICTED OF A CRIME.  
THEN WHEN THE STATE RESTED, THE JUDGE ENGAGED IN A COLLOQUY WITH HIM ABOUT HIS RIGHT TO TESTIFY.  
AND AT THE END OF THAT, THE JUDGE SAID, OKAY, AS I UNDERSTAND IT, IT'S FOUR CONVICTIONS.  
THE PROSECUTOR SAID, YES, SIR.  
THEN THE -- OR, YES, YOUR HONOR.  
THEN THE JUDGE SAYS, OKAY.  
MR. WILCOX, THE STATE WILL BE ABLE TO BRING UP THE FACT THAT YOU HAVE FOUR FELONY CONVICTIONS.  
SO THAT'S WHAT HE WAS READY FOR.  
HE WAS TOLD BY THE JUDGE THAT'S WHAT IT WAS GOING TO BE, FOUR FELONY CONVICTIONS.  
THAT'S WHAT HE WAS PREPARED FOR.  
THEN HE GETS THIS QUESTION ABOUT THE CRIMES OF DISHONESTY, AND HE'S -- ALL HE'S SAYING IS HE ADMITS HE HAS COMMITTED THE CRIME.  
HE ADMITS IT ON THE STAND, YES, I HAVE BEEN CONVICTED OF A CRIME.  
IT'S THE DISHONESTY THAT HE'S DISPUTING.  
AND --  
>> BUT THE, I UNDERSTAND THAT.  
BUT THERE'S NOTHING IN WHAT HE SAID THAT WOULD HAVE APPRISED THE JUDGE OF THE LEGAL POINT AT ISSUE HERE, AND THAT IS THAT IT'S NOT PROPER FOR THE STATE TO BE INQUIRING ABOUT WHETHER THE FELONIES INVOLVED DISHONESTY.  
THAT ONLY COMES INTO PLAY WITH

RESPECT TO MISDEMEANORS WHICH WEREN'T AT ISSUE.

ISN'T THAT WHAT THIS IS ABOUT?

>> RIGHT.

>> I DON'T SEE HOW THERE'S ANYTHING, AND CORRECT ME IF I'M WRONG --

>> UH-HUH.

>> BUT I DON'T SEE HOW THERE'S ANYTHING IN WHAT HE SAID THAT WOULD HAVE APPRISED THE TRIAL COURT OF THAT LEGAL POINT. AND IF IT'S THERE, IF YOU COULD POINT ME TO WHAT WOULD HAVE APPRISED THE TRIAL COURT OF THE SPECIFIC LEGAL POINT THAT YOU'RE TRYING TO MAKE OTHER THAN THE FACT THAT HE WAS CONFUSED, I MEAN, THAT'S NOT THE LEGAL POINT.

>> UH-HUH.

>> THEN THAT'S WHAT I THINK YOU NEED.

>> WELL, I THINK, I THINK THAT THE LEGAL POINT IS THAT WHERE THE PROSECUTOR IS CONFUSING THE WITNESS ON THIS ISSUE, THE COURT IS SUPPOSED TO EXPLAIN OR MAKE CLEAR WHAT THE NATURE OF THE ISSUE IS, WHAT THE QUESTIONING IS, WHAT IS MEANT BY A CRIME OF DISHONESTY.

AND THAT'S THE McCLELLAND CASE WHICH I CITED IN THE BRIEF. BUT THE MAIN POINT IS THAT THE DEFENDANT, IT WASN'T THAT THE DEFENDANT WAS PURPOSELY LETTING SOMETHING GO BY TO PRESERVE AN ISSUE FOR APPEAL.

THAT WASN'T WHAT WAS HAPPENING HERE.

THAT'S THE CONCERN OF THIS COURT IN J.S. AND F.B.

THE JUDGE UNDERSTOOD WHAT WAS HAPPENING.

I MEAN, IT'S --

>> I DON'T KNOW HOW YOU, HOW WE WOULD KNOW THAT THE JUDGE UNDERSTOOD THAT, WAS FOCUSED ON THIS LEGAL POINT.

>> WELL --  
>> IT WASN'T BROUGHT UP.  
AND, YOU KNOW, THE JUDGE MIGHT  
NOT HAVE KNOWN THAT OR MIGHT NOT  
HAVE REFLECTED ON IT.  
>> MR. CALDWELL, I'M FOCUSED ON  
HELPING TRIAL JUDGES.  
>> UH-HUH.  
>> AND TRIAL LAWYERS DEAL WITH  
THIS ISSUE.  
JUSTICE LEWIS ASKED YOU  
INITIALLY ABOUT THE INITIAL  
QUESTION ASKED BY THE  
PROSECUTOR, AND THE INITIAL  
QUESTION WAS, MR. WILCOX, HAVE  
YOU EVER BEEN CONVICTED OF A  
FELONY OR CRIME INVOLVING  
DISHONESTY?  
>> UH-HUH.  
>> AND YOU SAID THAT QUESTION  
WAS IMPROPER BECAUSE OF THE  
DISHONESTY PART OF IT.  
>> UH-HUH, RIGHT.  
>> WELL, I'M READING 90.610, THE  
EVIDENCE CODE.  
IT SAYS, SUBSECTION 1: "THE  
PARTY MAY ATTACK THE CREDIBILITY  
OF ANY WITNESS, INCLUDING THE  
ACCUSED, BY EVIDENCE THAT THE  
WITNESS HAS BEEN CONVICTED OF A  
CRIME IF THE CRIME WAS  
PUNISHABLE BY DEATH OR IN PRISON  
IN EXCESS OF A YEAR, A FELONY  
UNDER WHICH THE DEFENDANT IS  
CONVICTED OR IF THE CRIME  
INVOLVED DISHONESTY OR FAULT  
STATEMENT."  
THE EVIDENCE CODE PROVIDES FOR  
THAT.  
SO WHAT IS WRONG WITH THE  
QUESTION HAVE YOU BEEN CONVICTED  
OF A FELONY OR A CRIME OF  
DISHONESTY?  
THAT'S WHAT THE CODE ASKED FOR.  
>> BECAUSE THE COURTS HAVE  
INTERPRETED OVER THE YEARS AND  
IT'S BEEN MADE CLEAR SINCE AT  
LEAST 1994 THAT THE STATE  
DOESN'T GET DOUBLE COUNTING.  
IT CAN'T COUNT ROBBERY, SAY, AS

BOTH A FELONY AND AS A MISDEMEANOR.

IF IT'S A FELONY INVOLVING DISHONESTY UNDER THIS COURT'S PREVIOUS INTERPRETATION OF CRIMES OF DISHONESTY, THEN IT'S A FELONY.

AND A SEPARATE CATEGORY FOR MISDEMEANORS INVOLVING DISHONESTY.

AND THAT WAS DISCUSSED AT SOME LENGTH, I THINK, IN THE ATTIS CASE.

AND THE BOB CASE WAS BINDING ON THIS PROSECUTION.

IT CAME OUT OF THIS PROSECUTOR'S OFFICE, IT WAS A FOURTH DCA CASE, BINDING ON WHAT HAPPENED IN THIS CASE.

SO WITH THAT, I WILL RESERVE MY REMAINING TIME FOR REBUTTAL.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, LISA-MARIE LERNER FOR THE STATE OF FLORIDA.

I WANT TO ADDRESS JUST THE FACTUAL --

[INAUDIBLE]

UNDER ISSUE NUMBER ONE.

MR. WILCOX WENT PRO SE ON JANUARY 15TH, AND THE TRIAL BEGAN ON FEBRUARY 23RD.

SO HE HAD APPROXIMATELY FOUR AND A HALF, FIVE WEEKS FROM GETTING REPRESENTING HIMSELF TO THE START OF THE TRIAL.

WHEN HE WENT PRO SE, HIS ATTORNEY TOOK THE MATERIAL --

>> I'M SORRY, IN THAT SCENARIO WHEN DID THE CRIME ACTUALLY, WAS COMMITTED?

HOW MANY MONTHS BEFORE HE WENT PRO SE?

>> ELEVEN.

>> AND IT WAS DURING THAT ENTIRE 11-MONTH PERIOD HE WAS REPRESENTED BY ATTORNEYS?

>> YES.

>> AND THOSE -- NONE OF THEM EVER ASKED FOR THESE STATEMENTS?

>> THEY HAD THE STATEMENTS.  
THEY HAD THE DVDs.  
HIS ATTORNEY MAILED THE  
DISCOVERY TO WILCOX IN THE JAIL.  
WILCOX ADMITTED THAT HE HAD IT.  
THE DVDs WERE IN THERE.  
I'M SORRY, THE DVDs, THE STATE  
ATTORNEY GAVE WILCOX IN THE  
COURTROOM.

AND THE BAILIFF SAID, I DON'T  
THINK THAT THEY'RE GOING TO LET  
HIM TAKE THEM BACK TO JAIL.  
AND SO JUDGE BACHMANN HAD HIS  
STANDBY ATTORNEY CALL THE  
SHERIFF'S LEGAL OFFICE AND  
ARRANGE TO HAVE THOSE DVDs PUT  
INTO HIS PROPERTY.  
THOSE DVDs WERE IN WILCOX'S  
PROPERTY IN THE JAIL.

>> BUT DID THE JAIL HAVE A  
PLAYER?

AND WAS HE EVER ASKED, DID HE  
EVER REQUEST TO PLAY THE DVD?

>> WE DON'T KNOW.

IT'S NOT ON THE RECORD.  
WILCOX NEVER SAID THEY'RE  
DENYING ME A DVD PLAYER.

>> THAT WOULD BE A DIFFERENT --  
I MEAN, MY CONCERN IS THAT I  
AGREE WITH THE STATE, THERE'S  
NO -- FIRST OF ALL, I DON'T  
THINK THE STANDARD HAS TO BE  
DIFFERENT FOR A DEFENSE LAWYER  
AND A PRO SE DEFENDANT IN TERMS  
OF WHAT HAS TO BE DONE.  
SO A REQUIREMENT OF TRANSCRIBING  
THE STATEMENTS IS NOT THERE.  
BUT IF THE RECORD, SO YOU'RE  
SAYING -- IF THE RECORD  
ESTABLISHED, THOUGH, THAT HE GOT  
THESE DVDs, TRIED EVERYTHING  
AND THERE WAS, HE WAS PROHIBITED  
FROM WATCHING THEM AND MADE A  
REQUEST THAT HE NEEDED TO BE  
ABLE TO WATCH THEM, WOULD THAT  
BE DIFFERENT?

OR ARE WE SAYING, WELL, TOO BAD,  
YOU KNOW, TOO BAD, MEANINGFUL  
REPRESENTATION EVEN OF YOURSELF  
IS A MOCKERY ANYWAY, AND SO WE

COMPLIED WITH THE -- WE GAVE YOU  
THE DVDS EVEN BE YOU CAN'T  
WATCH THEM?

>> NO, THE STANDARD WOULDN'T BE  
DIFFERENT.

I ALSO --

>> OKAY.

SO ARE YOU SAYING THAT IF HE HAD  
ASKED FOR ESTABLISHED IN THE  
RECORD THAT HE COULD NOT VIEW  
THEM BECAUSE THE JAIL WOULDN'T  
PERMIT IT AND THE JUDGE SAYS  
THAT'S JUST YOUR LUCK, YOU'RE A  
PRO SE DEFENDANT, WOULD THAT BE  
DIFFERENT THAN WHAT WE'RE  
DEALING WITH?

>> NO, BECAUSE THERE ARE OTHER  
AVENUES HE COULD HAVE TAKEN  
WHICH I POINTED OUT --

>> BUT I GUESS WE DON'T EVEN  
HAVE THAT, BUT YOU'RE SAYING WE  
DON'T EVEN HAVE THAT IN THIS  
RECORD, WE DON'T EVEN HAVE IT  
ESTABLISHED THAT HE COULDN'T  
WATCH IT.

>> THAT'S CORRECT.

>> OKAY.

SO WE DON'T HAVE TO GO TO THE  
NEXT STEP.

>> RIGHT.

BUT I ALSO WANTED TO POINT OUT  
HE HAD THE OPPORTUNITY, HE HAD  
FIVE WEEKS.

HE COULD HAVE ASKED THE COURT TO  
HAVE AN INVESTIGATOR APPOINTED,  
HE COULD HAVE ASKED THE COURT TO  
HAVE A COURT REPORTER APPOINTED  
TO TRANSCRIBE THESE.

HE COULD HAVE HAD HIS STANDBY  
ATTORNEY GO AND WATCH THEM OR  
THE INVESTIGATOR IF HE HAD ONE  
APPOINTED.

BUT WILCOX DIDN'T DO THAT.

HE WAS RELYING ON THE STATE TO  
PREPARE HIS OWN TRIAL.

THE OTHER THING I WANTED TO  
POINT OUT IS, UM, THERE ARE  
NUMEROUS STATEMENTS GIVEN TO THE  
POLICE BECAUSE WILCOX WASN'T THE  
IMMEDIATE SUSPECT.

THEY INTERVIEWED AND TAPED  
MULTIPLE WITNESSES ALL OVER THIS  
APARTMENT COMPLEX.

AND THE STATE ACTUALLY DID  
TRANSCRIBE THE STATEMENTS OF  
MR. COLLIER AND MR. WARD GIVEN  
ON FEBRUARY 7TH.

THOSE ARE THE STATEMENTS IN  
WHICH WILCOX IS POINTED OUT TO  
BE INVOLVED IN THE SHOOTING.  
WILCOX HAD THOSE STATEMENTS.  
THE ONLY -- TRANSCRIBED.

HE HAD THOSE TRANSCRIPTS.  
THE ONLY TRANSCRIPTS HE DIDN'T  
HAVE WERE THE FEBRUARY 3RD  
STATEMENTS WHERE MR. COLLIER AND  
MR. WARD SAID WE DON'T KNOW  
ANYTHING ABOUT ANYTHING.

AND THEY DIDN'T SAY ANYTHING  
ABOUT A BURGLARY.

MR. CALDWELL SAID THAT THIS WAS  
A CORNERSTONE OF HIS DEFENSE.  
HOWEVER, WILCOX BROUGHT OUT  
DURING MS. CURRY'S TESTIMONY AND  
MR. COLLIER'S TESTIMONY THAT  
COLLIER LIED ON THE 3RD.

HE ADMITTED THAT ON THE STAND,  
WILCOX GOT HIM TO ADMIT THAT.  
AND MS. CURRY ALSO ADMITTED ON  
THE STAND THAT THE REASON THAT  
SHE WENT BACK TO THE POLICE  
TOWARD THE END OF THE WEEK IS  
BECAUSE THE POLICE WERE FOCUSING  
ON HER BROTHER, AND SHE WOULD DO  
ANYTHING TO SAVE HER BROTHER.  
ALL OF THAT CAME OUT.

THESE TRANSCRIPTS HAD NO  
IMPEACHMENT VALUE.

THE ONLY THING THAT WILCOX WAS  
TRYING TO IMPEACH MS. CURRY ON  
WAS WHETHER OR NOT SHE HAD TOLD  
THE POLICE ON FEBRUARY 3RD ABOUT  
THE BURGLARY THE WEEK BEFORE.  
IN THE SUPPLEMENTAL RECORD WHICH  
MR. CALDWELL GOT, WE HAD A  
HEARING WHERE THE PROSECUTOR,  
MR. ROSSMAN, SAID I HAVE VIEWED  
THAT DVD OF MS. CURRY'S FEBRUARY  
3RD STATEMENT, AND THAT DVD IS  
COMPLETELY CONSISTENT WITH HER

TRIAL TESTIMONY.

SHE DID, IN FACT, TELL THE POLICE ON FEBRUARY 3RD ABOUT THE BURGLARY.

THERE'S NO IMPEACHMENT VALUE HERE.

AND EVEN IF THERE'S A RICHARDSON VIOLATION, MR. WILCOX'S ENTIRE DEFENSE WAS ALIBI AND THEY'RE FRAMING ME.

>> WELL, WE SHOULDN'T -- I MEAN, I THINK THAT TO GO TO EVEN, I MEAN, TO SAY IT MIGHT BE A RICHARDSON VIOLATION WOULD NOT BE REALLY, I DON'T THINK IT'S IN THE INTEREST OF OUR JURISPRUDENCE TO DO --

>> NO, IT'S CLEARLY NOT.

>> BUT, I MEAN, ON THE OTHER POINT WHICH IS STILL FAIRNESS OF THE PROCEEDING WITH THE DEATH PENALTY'S IMPORTANT.

YOU'RE SAYING IN THIS RECORD IT CONTAINS AN INDICATION THAT THE STATEMENT WAS CONSISTENT.

SO --

>> YES.

AND IT'S ON SUPPLEMENTAL RECORD VOLUME 10, PAGE 283.

AND I ALSO WANTED TO MAKE SURE THAT EVERYONE UNDERSTANDS MR. WILCOX DID HAVE TRANSCRIBED STATEMENTS FROM THESE WITNESSES WHEN THEY WERE IMPLICATING HIM.

>> I'M A LITTLE CURIOUS.

YOU SAID THAT IT WAS THE PROSECUTOR WHO SAID THAT THE DVD IS CONSISTENT WITH HER TESTIMONY?

>> YES.

>> AND UNDER WHAT CIRCUMSTANCES WAS THAT MADE?

>> IT WAS ONE OF THE PRE-- IT WAS ONE OF THE HEARINGS OUTSIDE OF THE JURY.

I DON'T REMEMBER EXACTLY WHEN IT OCCURRED.

>> SO THE JUDGE NEVER SAW IT, AND HIS STANDBY ATTORNEY NEVER LOOKED AT IT?



>> I DON'T KNOW IF THE STANDBY  
LOOKED AT IT OR NOT, BUT THE  
JUDGE DIDN'T VIEW THE DVDs.  
AS THE JUDGE REPEATEDLY SAID  
THROUGHOUT THIS TRIAL, HE HAD TO  
REMAIN A NEUTRAL ARBITER.  
HE COULDN'T, LIKE, HELP THE  
DEFENSE OR HELP THE PROSECUTION.  
AND, UM, IN TERMS OF ISSUE TWO,  
I DO MAINTAIN THAT IT WAS  
UNPRESERVED.

THERE WAS NO OBJECTION, AND IT  
HAD NO FUNDAMENTAL ERROR GIVEN.  
THE NATURE OF THE EVIDENCE  
AGAINST MR. WILCOX, HE HAD --

>> BUT DID MR. WILCOX IN THE  
COURSE OF THAT QUESTIONING ASK,  
EXPRESS SOME CONFUSION ABOUT  
WHAT THE PROSECUTOR MEANT ABOUT  
CRIMES OF DISHONESTY?

>> HE SAID THAT, BUT FROM MY  
READING OF THE TRANSCRIPTS,  
WILCOX WAS BEING VERY CAGEY WITH  
THE PROSECUTOR AND SORT OF  
PLAYING AROUND WITH HIM.

AND I AM GOING TO ANSWER YOUR  
QUESTION, BUT THEN I WOULD LIKE  
TO READ FROM THE TRANSCRIPT.  
HE DID SAY YOU'VE GOT TO MAKE ME  
UNDERSTAND.

BUT WILCOX HAD REPEATEDLY DONE  
TWO THINGS THAT HE CHOSE AS AN  
INDIVIDUAL REPRESENTING HIMSELF  
NOT TO DO HERE.

HE DID NOT APPROACH THE JUDGE  
AND SAY, JUDGE, CAN YOU EXPLAIN  
THIS TO ME.

HE DID THAT NUMEROUS TIMES IN  
THE TRIAL.

ALSO HIS STANDBY ATTORNEY WAS  
RIGHT THERE.

HE DID NOT TURN TO A STANDBY  
ATTORNEY AND SAY, YOU KNOW, WHAT  
IS HE TALKING ABOUT?

INSTEAD, HE ENGAGED IN THIS  
LITTLE GAME PLAYING WITH THE  
PROSECUTOR.

IN VOLUME 16, PAGE 866, THE  
PROSECUTOR STARTS OUT SAYING  
HAVE YOU BEEN CONVICTED OF A

FELONY OR CRIME INVOLVING  
DISHONESTY.  
WILCOX SAYS, I WOULDN'T SAY  
DISHONESTY.  
AND THE PROSECUTOR SAYS, THE  
ANSWER IS YES OR NO.  
AND HE SAID, FELONY OR CRIME OF  
DISHONESTY.  
WILCOX SAYS, NO.  
THEN THE PROSECUTOR APPROACHES  
THE BENCH AND THEN STARTS  
QUESTIONING MR. WILCOX AGAIN.  
HE ASKS THE SAME QUESTION.  
MR. WILCOX SAYS, I'VE BEEN  
CONVICTED OF A CRIME.  
HE DOESN'T SAY "FELONY."  
HE SAYS "CRIME."  
AND SO HE ASKS THE QUESTION  
AGAIN, A THIRD TIME, HAVE YOU  
BEEN CONVICTED OF A FELONY OR A  
CRIME INVOLVING DISHONESTY?  
THEN WILCOX SAYS, YOU'VE GOT TO  
MAKE ME UNDERSTAND.  
HE ASKED THE QUESTION A FOURTH  
TIME AND AGAIN WILCOX SAYS NO.  
HE SAID NO TWICE --  
>> LET ME ASK YOU THIS.  
OBVIOUSLY WILCOX WAS HAVING  
PROBLEMS WITH THE DISHONESTY  
PART OF THE QUESTION.  
>> HE DIDN'T HAVE A PROBLEM WITH  
FELONY?  
>> DID THE PROSECUTOR HAVE  
ACCESS TO HIS RECORD AT THE  
TIME?  
>> YES.  
>> WAS THERE ANY CRIMES OF  
DISHONESTY IN THE RECORD?  
>> THAT CHARGED.  
>> WAS THAT A FELONY AS WELL?  
>> YES, THEY WERE FELONIES.  
>> SO HAVE YOU EVER BEEN  
CONVICTED OF A FELONY, YES,  
THAT WOULD HAVE ENDED IT.  
>> HE SAID NO TO BOTH.  
FELONY --  
>> HE WASN'T BUYING THE  
DISHONESTY PART OF IT.  
HE DIDN'T THINK, HE WAS CONFUSED  
ABOUT THAT.

SO WHY NOT ASK HIM HAVE YOU BEEN CONVICTED OF A FELONY, THAT WOULD HAVE ENDED THE WHOLE THING.

IT WAS A YES.

>> BUT HE SAID NO TWICE.

>> BUT, BOB, WHICH WAS THE FOURTH DISTRICT CASE, I JUST, AS WE READ IT, EXPLAINS HOW PROSECUTORS SHOULD ASK THE QUESTION.

ACTUALLY IN THAT CASE THE DEFENSE WAS TRYING TO EXPAND BECAUSE IT WAS A WITNESS FOR, THE DEFENSE WANTED TO IMPEDE.

SO IT GOES BOTH WAYS.

YOU ASKED THE QUESTION, HAVE YOU EVER BEEN CONVICTED OF A FELONY? IF, YOU DON'T, AND THEN IF YOU ALSO KNOW THAT THEY HAVE BEEN CONVICTED OF A MISDEMEANOR INVOLVING DISHONESTY YOU ASK THE SECOND QUESTION.

BUT HERE I THOUGHT THERE WAS, AT LEAST AT A PRIOR HEARING, IT WAS DISCUSSED HE HAD THESE FOUR FELONIES.

YOU KNEW, WHAT ABOUT WHAT MR. CALDWELL SAID ABOUT THAT? THAT THE PROSECUTOR KNEW HE DIDN'T HAVE A MISDEMEANOR INVOLVING DISHONESTY, KNEW THAT THERE WERE FELONIES? SO THE QUESTION SHOULD HAVE BEEN, HAVE YOU EVER BEEN CONVICTED OF A FELONY?

YES.

HOW MANY TIMES?

FOUR.

END OF THE STORY.

WHAT WAS, WHERE WAS THIS DISHONESTY PART COMING FROM THE PROSECUTOR'S MOUTH.

>> THE PROSECUTOR WAS ASKING A ROUTINE QUESTION ENCOMPASSING --

>> IT IS NOT REALLY ROUTINE BECAUSE IF YOU --

>> IT IS ROUTINE.

HE WAS TRACKING THIS RULE. TRACKING THE RULE.

>> THAT'S WHAT MOST PROSECUTORS,  
INARTFUL MAYBE, BUT THAT WAS  
WHAT THE MAJORITY OF PROSECUTORS  
AND DEFENSE ATTORNEYS ASK.  
THEY ASK IT IN A DISJUNCTIVE  
LIKE THAT.

THEY DON'T SEPARATE IT INTO TWO  
SEPARATE QUESTIONS.

>> I HAVE NO PROBLEM WITH THE  
QUESTION.

YOU KNOW, I THINK IT IS PROPER  
TO ASK THAT QUESTION.

FELONY OR CRIME INVOLVING  
DISHONESTY.

THAT'S WHAT THE RULE SAYS.

MY PROBLEM HERE IS THAT ONCE  
THE PROSECUTOR REALIZED THAT HE  
WAS HAVING PROBLEMS AT ADMITTING  
TO COMMITTING A CRIME OF  
DISHONESTY, HE WAS LOOKING TO  
ADMIT HE WAS CONVICTED OF A  
FELONY WHICH IS WHAT THE  
PROSECUTOR WANTED, HE SHOULD  
HAVE JUST ASKED THE QUESTION AND  
LET IT GO.

BUT INSTEAD HE ENGAGED HIM IN  
THIS DIALOGUE HERE THAT ONLY  
CAUSED MORE PROBLEMS?

THAT IS MY PROBLEM.

I DON'T HAVE A PROBLEM WITH THE  
QUESTION AS ASKED.

>> BUT, THE PROSECUTOR, ENDED UP  
ASKING IT FOUR TIMES.

THAT WAS THE ESSENTIAL DIALOGUE.

>> WELL I GUESS --, I GUESS IF  
THE PROSECUTOR THOUGH KNOWS  
THERE IS NO SEPARATE MISDEMEANOR  
INVOLVING DISHONESTY, AND,  
WHATEVER THE, YOU KNOW, AGAIN  
LOOKING BACK AT BOB IT WAS  
PRETTY CLEAR THAT THE QUESTION,  
FIRST QUESTION THAT SHOULD BE  
ASKED, WHETHER PEOPLE FOLLOW I  
HAD OR NOT, IS IT IS, HAVE YOU  
EVER BEEN CONVICTED OF A FELONY,  
HOW MANY TIMES?

IF THE PROSECUTOR KNOWS THERE IS  
NO OTHER CRIME OF DISHONESTY,  
YOU DON'T COUNT, YOU CAN'T COUNT  
THEFT AS BOTH A FELONY, HAVE

BEEN CONVICTED OF FOUR FELONIES AND I WAS ALSO CONVICTED OF ONE OF THOSE FELONIES WAS A CRIME OF DISHONESTY FOR THE REASON THAT YOU'RE NOT SUPPOSED TO GO BEHIND THE, THE NATURE OF THE CRIME OF THE SO I DON'T UNDERSTAND, YOU SAID HE ASKED FOUR TIMES BUT HE KNEW WHAT THE CRIMES WERE. WASN'T IT, WASN'T THERE GAMESMANSHIP ON THE PART OF THE PROSECUTOR?

>> NO, HE WAS TRYING TO GET A YES AND HE KEPT GETTING NOS.

>> DIDN'T HE ADMIT FROM THE BEGINNING THAT HE HAD PRIOR FELONIES?

>> NO, HE DIDN'T. HE SAID NO.

>> IN THE STATEMENT?

>> HE SAID HE HAD PRIOR CRIMES. HE NEVER SAID FELONY.

AND WHEN THE PROSECUTOR ASKED HIM HERE, HE SAID, NO TWICE. I AGREE, PERHAPS THE PROSECUTOR WAS INARTFUL AND SHOULD HAVE BROKEN IT DOWN BUT THAT DOESN'T MAKE WHAT HAPPENED ERROR, IN THIS CASE.

>> NOW THAT'S A DIFFERENT STORY ABOUT WHETHER THERE'S ERROR OR, WHETHER IT IS HARMLESS.

I MEAN THAT'S, I THINK, SO, WHAT IS YOUR ARGUMENT ON THAT?

>> CLEARLY IT IS NOT FUNDAMENTAL ERROR BUT EVEN IF THIS COURT WERE TO SAY IT WAS PRESERVED AND IT WAS AN ERROR, I DON'T BELIEVE IT WAS HARMFUL IN THIS CASE, GIVEN THE AMOUNT OF EVIDENCE THAT LINKED WILCOX TO THE CRIME. THERE'S NO WAY THAT THE FACT THAT THE JURY FOUND OUT ABOUT THE NATURE OF HIS PRIOR CONVICTIONS, IT WOULD HAVE CAUSED THEM TO CONVICT HIM SOLELY FOR THIS, OR THIS CONTRIBUTED TO THE VERDICT. THERE WAS, MR. WILCOX'S DNA INSIDE MR. JOHNSON'S APARTMENT,

ON THE MARIJUANA CIGARETTE.  
THE THREE WOMEN SAID TWO MEN  
SMOKED.  
HE WAS CAUGHT WITH THE FIREARM  
THAT KILLED MR. JOHNSON IN THE  
CAR.  
THE POLICE SAW HIM BAIL OUT OF  
THE CAR.  
HE WAS HOLDING THE CELL PHONE  
THAT MADE THE CAUSE TO  
MR. COLLIER UP IN BROWARD  
COUNTY.

I MEAN CLEARLY THERE IS  
SUBSTANTIAL EVIDENCE OF HIS  
GUILT THAT ANY ERROR, IF THERE  
WERE ERROR, WOULD BE HARMLESS.  
IF THE COURT HAS NO FURTHER  
QUESTIONS I ASK YOU TO AFFIRM  
BOTH THE GUILT AND PENALTY  
PHASES.

>> THANK YOU FOR YOUR ARGUMENTS.  
REBUTTAL?

>> THE FOLLOW-UP ON THE LAST  
QUESTION WAS THE, THE DEFENDANT  
SAID IN HIS OPENING STATEMENT HE  
HAD BEEN CONVICTED OF A CRIME.  
THEN BEFORE HE, WHEN THE STATE  
REST, WHEN THERE IS COLLOQUY THE  
JUDGE SAYS TO HIM, ALL THE JURY  
WOULD KNOW IS THAT YOU HAVE HAD  
FOUR PRIOR FELONY CONVICTIONS.  
DO YOU UNDERSTAND THAT?

MR. WITH WILCOX, YES, SIR.  
THAT IS AT PAGE 797 OF THE  
TRANSCRIPT.

SO THE, THAT'S WHAT HE WAS TOLD,  
IT WAS GOING TO BE, AT PAGE 797.  
THAT WAS WHAT DEFENSE WITNESSES  
TESTIFIED.

SO HE WAS COMPLETELY THROWN BY  
THIS DISHONESTY QUESTION WHICH,  
REGARDLESS OF WHETHER LAWYERS  
VIOLATE THE LAW ALL THE TIME BY  
ASKING THE WRONG QUESTION, THE  
BOB CASE WAS BINDING ON THIS  
PROSECUTOR ON THIS COURT.

>> ASSUMING IT WAS ERROR, HOW  
WAS IT HARMFUL?

>> WELL THE STATE IS BASICALLY  
MAKING AN ARGUMENT OF

OVERWHELMING EVIDENCE OF GUILT.  
THIS IS A MURDER CASE AND ARMED  
ROBBERY CASE AND THE JURY IS  
HEARING THE DEFENDANT HAS A  
PRIOR CONVICTION OF MURDER AND  
ARMED ROBBERY.

THAT'S OBVIOUSLY AN EXTREMELY  
HARMFUL PIECE OF INFORMATION FOR  
THE JURY.

THE PROSECUTOR IS ATTACKING THE  
DEFENDANT'S CREDIBILITY AND HIS  
CREDIBILITY IS ABSOLUTELY  
CRUCIAL TO HIS CASE.

BUT THE STATE CAN NOT, I MEAN I  
UNDERSTAND THE STATE SAYING,  
WELL WE HAVE OVERWHELMING  
EVIDENCE OF GUILT BUT  
THAT IS NOT THE ISSUE.

THE ISSUE IS THE DEFENDANT'S  
CASE RESTS ON HIS CREDIBILITY  
WHICH IS REALLY DESTROYED BY  
THIS KIND OF EVIDENCE COMING IN.  
I MEAN THIS IS VERY PREJUDICIAL  
EVIDENCE.

IT IS NOT HARMLESS BEYOND A  
REASONABLE DOUBT.

THE JURY COULD HAVE SAID,  
WELL, HE HAD A STORY TO TELL AND  
HE HAD EXPLANATIONS FOR WHERE HE  
WAS AND ALL OF THAT, BUT LOOK AT  
THIS, HE HAS DONE THIS BEFORE.

THAT IS OBVIOUSLY PREJUDICIAL.

THE JURY COULD HAVE USED THAT  
AND IN REACHING ITS VERDICT  
WHICH IS HOW THE ANALYSIS  
SHOULD BE DONE FOR, FOR HARMFUL  
ERROR.

IT IS NOT OVERWHELMING EVIDENCE  
OF GUILT.

NOW AS TO THE FIRST ISSUE --

>> YOU'RE OUT OF TIME.

THANK YOU FOR YOUR ARGUMENTS.

>> ALL RIGHT.