

>> THE NEXT CASE ON THE DOCKET
WILL BE WRIGHT V. STATE.
>> LET'S WAIT FOR THINGS TO CALM
DOWN A LITTLE BIT.
>> OKAY.
>> MARSHALL, IS THAT OTHER GROUP
COMING IN?
OKAY, SO THIS IS IT?
OKAY, I THINK EVERYBODY HAS
SETTLED DOWN, AND YOU MAY
PROCEED WHENEVER YOU'RE READY.
>> MAY IT PLEASE THE COURT, MY
NAME IS KAREN KINNEY, I'M HERE
ON BEHALF OF RALPH WRIGHT.
THIS CASE INVOLVES THE MURDERS
OF PAULA AND ALIJAH O'CONNOR IN
JULY 2007.
AND THE TRIAL OCCURRED IN 2013.
IT WAS A LONG TRIAL.
THE STATE PUT ON OVER 60
WITNESSES.
AND AT THE END OF THE TRIAL, THE
STATE DID NOT PROVE THAT RALPH
WRIGHT WAS PRESENT AT THE SCENE
OF THE CRIME.
THEREFORE, I'M ASKING YOU TO
REVERSE AND REMAND FOR A
DISCHARGE IN THIS CASE.
THE STATE'S CASE WAS UNDER AN
UNUSUAL THEORY THAT IT COULD
SHOW THAT OTHERS WHO WERE
ASSOCIATED WITH THE VICTIMS HAD
A LOVING AND CARING RELATIONSHIP
WITH THEM AND WOULD NOT HAVE
COMMITTED THE MURDERS.
AND IT WENT WITH THIS THEORY IN
ADDITION TO SHOWING THAT RALPH
WRIGHT HAD A MOTIVE AND ONLY HE
HAD A MOTIVE, AND HE DIDN'T CARE
ABOUT THE VICTIMS, HE DIDN'T
CARE ABOUT HIS CHILD AND,
THEREFORE, HE WAS THE ONLY ONE
WHO COULD HAVE COMMITTED THESE
MURDERS.
SO IT WAS A CASE BASICALLY A
CONTEST, A FALSE DICHOTOMY PUT
FORTH THAT THERE WAS A CHARACTER
DECISION TO BE MADE BETWEEN THE
VICTIM'S DAUGHTER TORI, HER
BOYFRIENDS, OTHER PEOPLE THAT

WERE INVOLVED WITH THE VICTIMS
AND RALPH WRIGHT WHO WAS SOMEONE
THAT WAS THE FATHER WHO WAS
BEING PROSECUTED IN A PATERNITY
ACTION AT THE TIME OF THE
MURDERS.

>> LET'S ASSUME THAT YOU'RE
CORRECT THAT THEY WANTED TO
DEMONSTRATE THAT TORI, THE
DAUGHTER, WAS NOT THE
PERPETRATOR OF THIS CRIME AS
UNDER THE CIRCUMSTANTIAL
EVIDENCE STANDARD THAT SHE WAS
NOT-- HOW ABOUT LET'S LOOK AT
WHAT'S THERE WITH REGARD TO THE
THE DEFENDANT.

AND HELP ME--

>> OKAY.

>>-- WORK THROUGH THAT.
BECAUSE THE STATE DID PUT ON THE
MOTIVE, AND THAT WAS HE DIDN'T
WANT TO TAKE CARE OF THIS CHILD
THAT WAS BORN OUT OF WEDLOCK.

>> RIGHT.

>> THEY DID-- I DON'T KNOW
WHETHER THEY SUCCESSFULLY DID,
BUT THEY CERTAINLY ATTEMPTED TO
HOOK THE DNA TO THE GLOVE.

>> RIGHT.

>> AND THE GLOVE THAT WAS
AVAILABLE TO THIS DEFENDANT
THROUGH HIS MILITARY BASE AT
MacDILL--

>> RIGHT.

>> AND OPPORTUNITY TO DO THAT AS
WELL.

SO THEY HAD THOSE KINDS OF
THINGS.

AND SO DOES THAT NOT TIP IT
OVER, THE CIRCUMSTANTIAL BURDEN
THAT WOULD BE FACED IN THIS
CASE?

>> WELL, I THINK THAT THE STATE
FAILED TO LINK THE GLOVE TO
RALPH WRIGHT, AND THAT IS
CRITICAL BECAUSE WHAT THEY DID
WAS THEY HAD-- WE HAD A TOTAL
OF THREE DNA ANALYSTS TESTIFY
HERE.

AND THE STATE PUT ON TWO

ANALYSTS.

AND THE GLOVE WAS-- FIRST OF ALL, THE STATE COULDN'T SHOW THAT THE GLOVE WAS INVOLVED WITH THE MURDERS, BECAUSE THIS GLOVE IS FOUND ON THE SIDE OF HER SOFA NEXT TO A GUITAR, AND IT WASN'T, IT'S NOT APPARENT THAT THIS GLOVE HAD SOMETHING TO DO WITH THE MURDERS.

>> WELL, BUT THEY ARGUED AND SAID THERE'S EVIDENCE ABOUT THE SCRAPINGS OR SOMETHING, ABOUT THE STRANGULATION?

THE ROUGH EVIDENCE LEFT ON THE NECK?

WASN'T THERE SOMETHING ABOUT THAT?

>> THE ONLY THING ABOUT THAT-- OKAY.

EACH VICTIM HAD A SHARP FORCE INJURY TO THEIR NECK, AND THERE WAS EVIDENCE--

>> WHAT KIND-- I'M SORRY, WHAT KIND OF INJURY?

>> THEY HAD A SHARP, FORCED INJURY, LIKE A PUNCTURE--

>> PUNCTURE.

WAS THERE BLOOD?

>>-- IN THE NECK THAT WENT THROUGH THE SKIN.

EACH VICTIM DID.

THAT WAS NEVER EXPLAINED.

>> THERE WASN'T SOME ABRASION FROM THE--

>> OKAY.

WHEN THE BABY WAS SUFFOCATED, THE DOCTOR TESTIFIED THAT THERE WAS AN ABRASION ON THE BABY'S NECK WHICH COULD HAVE BEEN CAUSED BY ANY TYPE OF RUBBING. SO THE DOCTOR SAID IT COULD HAVE BEEN CAUSED BY THE BABY'S ONESIE BEING RUBBED ON THE NECK.

SO THAT HAS-- THERE'S NO CONNECTION--

>>

[INAUDIBLE]

>> THAT WAS JUST SOMETHING THE TATE WAS SAYING, WOULD A GLOVE

HAVE CAUSED AN ABRASION?
>> THAT IS NOT SUFFICIENT
EVIDENCE TO CONNECT ABRASIONS TO
THE GLOVE.

THAT'S YOUR POSITION OF DEFENSE
HERE.

>> TO THIS PARTICULAR GLOVE--

>> THAT'S WHAT I MEAN.

>> YES, YES.

>> WHAT KIND OF-- IS IT A
LEATHER GLOVE?

>> SO IT'S A GLOVE THAT IS,
IT'S, IT'S LIKE A CLOTH GLOVE,
BUT IT HAS A LEATHER PALM.
AND SO IT'S SORT OF, THEY CALL
IT-- IT'S LIKE A REGULAR DUTY
GLOVE.

AND THIS IS KIND OF IMPORTANT
BECAUSE THERE WERE TWO KINDS OF
GLOVES THAT THESE PEOPLE HAD IN
THEIR, IN THE MILITARY
STOREROOM, AND THERE WAS
SOMETHING CALLED KEVLAR
PATROLMAN'S GLOVES THAT WOULD
HAVE BEEN GOOD FOR GRIPPING.
THIS WAS NOT A GLOVE THAT WAS
GOOD FOR GRIPPING.

SO THERE'S CERTAIN CIRCUMSTANCES
THAT MAKE IT SOUND LIKE THIS
REALLY PROBABLY WASN'T WORN BY
THE PERPETRATOR.

AND YOU HAVE TO UNDERSTAND THAT
PAULA O'CONNOR WAS AT MacDILL
AIR FORCE BASE FOR AN AIR SHOW
IN APRIL OF 2007.

AND SHE HAD HUNG AROUND THE BASE
ALL DAY WITH THE BABY AND WITH
HER DAUGHTER.

SHE HAD GONE UP THERE TO MEET
HER DAUGHTER.

AND SO SHE WOULD HAVE HAD AN
OPPORTUNITY TO GET A GLOVE IF
THERE WAS, IF THERE WAS A GLOVE
AT THE AIR FEST.

SO THERE'S NO--

>> ISN'T IT ALSO POSSIBLE THAT
THE DEFENDANT HERE COULD HAVE
TAKEN A GLOVE OVER THERE WHEN
THEY HAD AN ONGOING RELATIONSHIP
BEFORE THE RELATIONSHIP HAD

ENDED, THAT HE COULD HAVE BROUGHT A GLOVE FOR SOME REASON AND THAT IT COULD HAVE BEEN LEFT THERE, TOTALLY UNRELATED TO THIS CRIME?

>> THIS-- WELL, THERE'S SO MANY POSSIBILITIES OF HOW THE GLOVE COULD HAVE GOTTEN THERE BECAUSE SHE WAS--

>> COULD YOU ANSWER MY QUESTION?

>> OKAY.

THERE'S A LITTLE BIT OF A PROBLEM I SEE WITH THAT--

>> OKAY.

>> BECAUSE THESE GLOVES WERE TRACKED TO HAVING ARRIVED AT MacDILL AIR FORCE BASE IN FEBRUARY OF 2007, SO--

>> I THOUGHT THAT WAS JUST, IT WAS POSSIBLE IT WAS A PART OF THAT GROUP.

I DID NOT--

>> RIGHT.

>>-- UNDERSTAND THE RECORD TO SAY THIS IS DEFINITELY--

>> RIGHT.

>>-- A GLOVE FROM THAT GROUP.

>> ABSOLUTELY.

BECAUSE THERE WERE THOUSANDS OF THESE GLOVES THAT MATCHED THE MARKINGS.

BUT HE'S ASKING ME COULD RALPH WRIGHT HAVE BROUGHT IT TO HER, AND I'M SAYING I DON'T KNOW THAT THERE'S EVIDENCE THAT HE WAS EVER WITH HER OR WENT OVER TO HER HOUSE AFTER FEBRUARY OF 2007.

SO IF HE HAD GOTTEN THE GLOVE--

>> BUT IF THE GLOVE WAS NOT IN THAT BATCH--

>> RIGHT.

>>-- FROM FEBRUARY--

>> RIGHT.

>>-- THEN THERE'S A POSSIBILITY--

>> YES.

THIS GLOVE, THESE GLOVES WERE SENT ALL OVER THE WORLD, AND THERE WAS A LOT OF TESTIMONY AT

THE TRIAL ABOUT HOW THESE GLOVES WERE DISTRIBUTED, WHERE THEY ORIGINATED FROM.

AND THE BOTTOM LINE IS NOBODY KNOWS IF THIS GLOVE WAS EVER AT MacDILL AIR FORCE BASE.

>> OKAY, BUT HERE'S THE THING AGAIN--

>> OKAY.

>> AND THIS IS GOING TO BE, THIS IS A VERY-- YOU'VE GOT A LOT GOING FOR YOU AS FAR AS THIS BEING A VERY CIRCUMSTANTIAL EVIDENCE CASE JUST AS YOU SET OUT.

BUT IT'S THIS GLOVE THAT SORT OF BECOMES, WELL, IS THIS HIS FINGERPRINT, SO TO SPEAK.

AND THERE'S NO FINGERPRINTS OF RALPH WRIGHT IN THIS HOUSE--

>> NO.

>>-- IN THE CAR--

>> NO.

>> SO NOW WE GET BACK TO THE GLOVE, IF IT ABSOLUTELY POINTS TO HIM, THEN HE'S IN, YOU KNOW, THEN HE'S IN THE HOUSE.

BUT IF YOU COULD ON TOP OF THE FACT OF HOW IT COULD HAVE GOTTEN THERE, AND IT'S NEXT TO A GUITAR THAT SHE, APPARENTLY, STARTED PLAYING A GUITAR?

SO THE THEORY OF THE DEFENSE WAS-- COULD YOU USE THIS KIND OF GLOVE TO PLAY A GUITAR?

IS THAT WHAT SOMEBODY WAS ARGUING?

>> WELL, THAT WASN'T REALLY A THEORY OF DEFENSE.

THAT WAS SOMETHING I PUT IN MY BRIEF BECAUSE I LOOKED AT THE PICTURES, AND I SAID, WELL, THE STATE NEVER PROVED THAT THIS GLOVE WAS ANYTHING CONNECTED TO THE CRIME.

>> OKAY, THEN LET ME ASK YOU ABOUT THE DNA, BECAUSE THIS IS CRITICAL--

>> YES.

>> WHOEVER-- IF IT'S TO HAVE

BEEN USED IN THE CRIME, THEN THE PERPETRATOR WOULD HAVE WORN IT TO STRANGLE THE VICTIMS.

>> PRESUMABLY.

RIGHT.

>> WHO-- WHAT DID THEY PROVE?

>> OKAY.

>> WHAT DID THE STATE PROVE ABOUT THE DNA INSIDE THE GLOVE?

>> OKAY.

WELL, THE ONLY-- SO THE ONLY-- THE GLOVE, THERE WERE THREE EXTRACTS OF DNA TAKEN FROM INSIDE THE GLOVE.

AND THAT WAS, THE FIRST EXTRACT WAS TAKEN BY FDLE.

AND THAT IS THE ONLY EXTRACT OF DNA THAT DOES NOT EXCLUDE RALPH WRIGHT.

SO THE EXTRACT FROM FDLE IS SUCH THAT THEY, THE ONLY STATISTICS THAT CAN BE GIVEN WITH IT ARE THAT IT'S--

>> WASN'T PAULA O'CONNOR ONE OF THE MAJOR CONTRIBUTOR TO THE INSIDE OF THE GLOVE, OR AM I MISREMEMBERING THAT?

>> SHE CANNOT BE EXCLUDED, AND THERE WERE, I THINK IT WAS LIKE 11 OF HER-- NOBODY CAN TELL.

THERE'S NO, THERE'S NO WAY TO-- THERE'S MORE THAN THREE

CONTRIBUTORS TO THE MIXTURE OF DNA THAT IS TAKEN FROM THE FDLE EXTRACT.

AND SO THERE'S NO WAY TO SAY SHE'S DEFINITELY A CONTRIBUTOR, BUT THE FREQUENCY STATISTICS WERE SUCH THAT MANY PEOPLE COULD HAVE BEEN THE--

>> OKAY, SO YOU HAVE OF THE FOUR DNA EXPERTS, ONLY ONE SAID THAT HE WAS A POSSIBLE-- HE COULDN'T BE EXCLUDED.

>> RIGHT.

THAT'S ONLY-- THERE'S THREE DNA EXPERTS.

ONE-- THE STATE SENT THE GLOVES TO BODE LABS AFTER FDLE EXAMINED IT.

THE BODE LAB ANALYST DID A SCRAPING FROM INSIDE THE GLOVE WHERE THE PALM MEETS THE GLOVE, AND SHE FOUND AN EXTRACT OF DNA, A MIXTURE, AND SHE EXCLUDED RALPH WRIGHT.

>> SO YOU'VE GOT, SO FROM YOUR POINT OF VIEW AND LOOKING AT THIS IN THE LIGHT MOST FAVORABLE--

>> AND SHE COULD NOT EXCLUDE, I THINK-- WELL, ANYWAY--

>> COULDN'T EXCLUDE WHO?

>> I'M THINKING THAT-- OKAY, I'M NOT GOING TO, I HAVE TO GO BACK AND LOOK AT MY BRIEF.

>> THERE'S A LOT OF FACTS HERE, APPRECIATE IT.

>> YEAH.

>> BUT THIS, TO ME, THIS GLOVE IS SORT OF YOU THINK ABOUT, YOU KNOW, IS IT A, YOU KNOW, A GLOVE IF IT'S NOT, IF IT'S NOT HIM, YOU MUST ACQUIT KIND OF THING FROM 30 YEARS AGO, WHATEVER. BECAUSE IT'S A LITTLE BIZARRE, RIGHT?

TO HAVE THIS ONE GLOVE HERE.

>> YEAH.

>> DID THEY DO ANY TESTING OF DNA TO EXCLUDE ANY OF THE DAUGHTER'S BOYFRIENDS?

>> NO.

>> I MEAN, SHE HAD HOW MANY BOYFRIENDS AT THAT TIME?

>> OKAY, SO THE STATE CALLED AS WITNESSES THREE OF HER BOYFRIENDS-- ACTUALLY, SO THERE WAS MICHAEL COSMO, THAT'S THE MAN--

>> HE SHE HAD AT THE SAME TIME THREE BOYFRIENDS.

I'M JUST TRYING TO--

>> SHE WAS LIVING AT THE TIME WITH A BOY NAMED JESSE BAYNARD, AND SHE WAS INVOLVED WITH A BOY NAMED MICHAEL COSMO.

AND SO ON JULY 4TH, MICHAEL COSMO HAD BEEN AT THE HOUSE WITH HER TO DROP OFF PAULA.

AND HE WAS INVOLVED WITH SOMEONE AT THE TIME NAMED CHRISTIAN GARDINER WHO WAS NOT A WITNESS, BUT WHO WAS--

>> ALL RIGHT.

THERE'S TOO MANY NAMES HERE. THE QUESTION IS THEY DID NOT GET ASKED FOR DNA FROM ANY OF THE--

>> RIGHT.

AND THIS IS THE MAIN POINT THAT THE DEFENSE WAS BASED ON, WHICH WAS A SHODDY CAN, INSUFFICIENT INVESTIGATION THAT WAS SOLELY FOCUSED ON TRYING TO TIE RALPH WRIGHT TO THIS CRIME AND OVERLOOKING A LOT OF OTHER PEOPLE WHO COULD HAVE BEEN INVOLVED INCLUDING THE SECOND POLICEMAN WHO WENT THROUGH THE SCENE OF THE CRIME AND DIDN'T REPORT THAT HE WAS INVOLVED WITH HER AT THE TIME.

THAT WAS OFFICER TRONG.

>> DID THEY TAKE DNA AND FINGERPRINT EVIDENCE FROM THE DAUGHTER?

BECAUSE, YOU KNOW, THE STATE'S THEORY WAS THAT THE DEFENDANT WAS THE ONLY ONE WITH THE MOTIVE.

WELL, WE KNOW THAT THE DAUGHTER ENDED UP GETTING OVER \$500,000 IN INSURANCE MONEY, ONE OF THE INSURANCE POLICIES HAVING BEEN TO THE YOUNG-- TO THE BOY WHO WAS KILLED, THE BULK OF IT, I BELIEVE, \$400,000 POLICY--

>> RIGHT.

>>-- WAS TO THE BOY WHO WAS KILLED, BUT SHE ENDED UP GETTING IT BECAUSE, YOU KNOW, HE WAS KILLED.

SO WAS THERE ANY TESTING OF HER DNA, HER FINGERPRINTS?

WAS THERE ANY FOLLOW UP TO WHAT SHE DID WITH ALL THAT MONEY, WHICH I UNDERSTAND WAS GONE BY THE TIME--

>> IN A YEAR AND A HALF.

>>-- THE TRIAL TOOK PLACE.

>> AND THERE WAS NO FOLLOW UP ON THAT.

AND HER FINGERPRINTS WERE FOUND ON THE BACK WINDOW LOOKING INTO THE KITCHEN AREA, AND HER FINGERPRINT WAS ON THE DRIVER'S SIDE OUTSIDE WINDOW OF THE DOOR OF THE CAR.

AND KEEP IN MIND IT WAS--

>> BUT HER FINGERPRINT-- I MEAN, SHE DID LIVE THERE AT SOME POINT.

SHE NO LONGER WAS LIVING WITH HER MOTHER, BUT SHE DID LIVE AT THE HOUSE AT SOME POINT, RIGHT?

>> SHE HAD MOVED OUT OF THE HOUSE IN SEPTEMBER 2006.

HER MOTHER HAD TAKEN AWAY THE KEY, AND SHE WAS A VISITOR IN THE HOUSE AFTER THAT.

>> WELL, SHE WAS IN THE HOUSE THE TWO DAYS BEFORE THE CRIME.

NOW--

>> UH-HUH.

>> BUT HER FINGERPRINT WAS ONLY FOUND-- I MEAN, THE ODDITY IS WHERE THE FINGERPRINT IS FOUND--

>> RIGHT.

>>-- IS ON THE OUTSIDE--

BECAUSE THE THEORY IS WHOEVER DID THIS CAME IN THROUGH THE BACK DOOR?

>> YOU KNOW, THAT'S THE STATE'S THEORY.

I DON'T THINK THERE WAS ANY PROOF OF THAT.

I THINK THAT IT COULD JUST AS EASILY HAVE BEEN SOMEONE WHO KNOCKED ON THE FRONT DOOR AND CAME IN THROUGH THERE.

>> I GUESS YOU'RE TRYING-- YOU KNOW, WE'RE TRYING-- BUT HER FINGERPRINT IS FOUND-- WHY DID YOU MENTION THAT HER FINGERPRINT WAS FOUND--

>> ON A WINDOW.

THIS IS A PRETTY SMALL HOUSE, AND THERE'S A-- THE BACKYARD HAS A WINDOW THAT LOOKS INTO THE

KITCHENETTE AREA, AND HER FINGERPRINT IS ON THAT WINDOW LOOKING INTO THE KITCHENETTE/LIVING ROOM AREA. AND HER FINGERPRINT IS ON THE DRIVER'S SIDE DOOR OF THE CAR, AND I DON'T BELIEVE THERE WAS EVER DNA TESTING DONE WITH HER WHICH IS--

>> THAT WAS MY REAL QUESTION--

>> YEAH.

>> THERE WERE OTHER PEOPLE, I MEAN, THE VICTIMS, THE TWO VICTIMS, THE DEFENDANT, THEIR DNA WAS TESTED AGAINST WHAT WAS BOTH INSIDE AND OUTSIDE OF THE GLOVE.

WAS THE DAUGHTER'S DNA ATTEMPTED TO BE MATCHED WITH THAT GLOVE?

>> NO.

THAT WAS THE POINT OF THE DEFENSE.

AND WHEN THE DEFENSE BROUGHT THAT UP IN CLOSING ARGUMENT, I THINK THE TRIAL JUDGE SUSTAINED THE STATE'S OBJECTION.

>> WELL, WHAT ABOUT THE DEFENDANT'S EXPERT?

ONE OF THE DNA EXPERTS WAS ACTUALLY PUT ON BY THE DEFENDANT, CORRECT?

>> RIGHT.

>> AND SO THE DEFENDANT'S DNA EXPERT HAVE ANY ACCESS TO TORI'S DNA TO ATTEMPT TO MATCH IT TO THE GLOVE?

>> NO.

THE DEFENSE GOT THE STANDARDS THAT FDLE HAD DEVELOPED OF THE, OF THE, OF PAULA, ALIJAH AND RALPH WRIGHT, AND THAT'S WHAT THE DEFENSE EXPERT WAS WORKING WITH.

SO THEY, THE DEFENSE ACTUALLY, THEIR EXPERT HAD ACTUALLY DEVELOPED MORE-- GOT A SAMPLE OF DNA FROM THE INSIDE OF THE GLOVE, AND THAT'S ALL THAT THEY TOOK FROM THE GLOVE.

AND THAT SHOWED THAT RALPH

WRIGHT WAS EXCLUDED.
THE, THERE WERE-- FDLE ALSO
TOOK SAMPLES FROM THE OUTSIDE OF
THE GLOVE, THE FINGERS AND THE
PALM, AND THE DEFENSE EXPERT
DIFFERED WITH THE, WELL, SHE
TESTIFIED THAT LOOKING AT THE
FDLE RESULTS FROM THE FINGERS
AND THE PALM THAT RALPH WRIGHT
WOULD BE EXCLUDED, BUT THAT
PAULA WAS THE MAJOR CONTRIBUTOR
THERE.

AND THERE'S ALSO, I JUST WANT TO
POINT OUT THAT THE FDLE ANALYST,
HER TESTIMONY SHOULD BE LOOKED
AT WITH-- IT'S A LITTLE BIT
SUSPECT BECAUSE OF HER SEMANTICS
THAT SHE USED.

SHE KEPT SAYING THAT RALPH
WRIGHT WAS INCLUDED, WHAT SHE
MEANT WAS POSSIBLY INCLUDED.
AND THEN WHEN SHE WOULD SAY HE
COULD NOT BE EXCLUDED, WHAT SHE
MEANT WAS SHE WAS NOT MAKING A
DETERMINATION.

SO THEY WERE USING SEMANTICS,
AND I THINK IT WAS VERY
CONFUSING TO THE JURY.
AND THIS WAS-- THE SECOND POINT
I HAD IN APPEAL WAS THE CLOSING
ARGUMENT WHERE THE STATE
PROSECUTOR TOLD THE JURY THAT IT
HAD PRESENTED TESTIMONY--
EVIDENCE THAT RALPH WRIGHT'S DNA
WAS INSIDE THE GLOVE.

>> BUT NO ONE POSITIVELY SAID
THAT WAS HIS DNA, SIMPLY THAT HE
COULD NOT BE EXCLUDED--

>> RIGHT.

>>-- AS THE CONTRIBUTOR.

>> AND WE'RE TALKING ABOUT
STATISTICS THAT ARE 1 IN 34
UNRELATED INDIVIDUALS.

>> WELL, YOU KNOW, IT'S VERY
INTERESTING TO ME BECAUSE THEY
SAID THAT PAULA'S-- THE
VICTIM-- DNA COULD NOT BE
EXCLUDED ALSO, AND SO I'M, IF
THAT WAS POTENTIALLY THE MURDER
WEAPON OR USED TO DO THE

STRANGULATION, WHY WOULD HER DNA HAVE BEEN INSIDE THE GLOVE?

>> I THINK THAT THAT ALSO IS-- HER DNA AND THE CHILD'S DNA INSIDE THE GLOVE.

AND I THINK THAT THAT COMES OUT IN THE BODE LAB ANALYST.

AND I THINK THAT IT POINTS TO THE FACT THAT THIS GLOVE WASN'T USED IN THE CRIME.

AND THAT'S WHY I HAVE A PROBLEM WITH THE STATE SAYING, TELLING THE JURY THAT IT WAS DEFINITELY USED IN THE CRIME, AND WE HAVE RALPH WRIGHT'S DNA INSIDE OF IT. SO I THINK THE CIRCUMSTANTIAL EVIDENCE IS VERY STRONG THAT IT WAS NOT PART OF THE CRIME.

>> ONE OTHER QUESTION ABOUT HOW THAT GLOVE GOT THERE.

WHEN WAS IT THAT THE VICTIM AND HER DAUGHTER ESSENTIALLY BROKE INTO WRIGHT'S APARTMENT?

WHAT MONTH WAS THAT IN RELATIONSHIP TO--

>> THAT WAS A LOT EARLIER.

THAT WAS, I THINK THAT MIGHT HAVE BEEN IN 2005 OR--

>> SO NOT IN CLOSE PROXIMITY TO THE CRIME.

>> NO.

THAT WAS JUST WHEN HE HADN'T BEEN COMING AROUND SO MUCH, AND SHE WENT OVER AND BROKE IN TO SNOOP AROUND INSIDE HIS, BROKE INTO THE SECOND FLOOR WINDOW, AND PAULA STAYED THERE.

>> DO WE HAVE ANY INDICATION THAT ANYTHING WAS TAKEN?

AT THE TIME THEY BROKE INTO THE DEFENDANT'S APARTMENT?

>> I DON'T THINK SO.

I MEAN, THIS WAS JUST-- SHE STAYED THERE, AND I TAKE IT THAT SHE WAS HOME-- SHE WAS IN HIS HOUSE WHEN HE GOT HOME.

BECAUSE THERE WERE STATEMENTS THAT HE MADE TO PEOPLE LIKE, OH, SHE'S CRAZY, SHE BROKE INTO MY HOUSE.

SO IT MAKES IT SOUND LIKE SHE WAS IN HIS HOUSE WHEN HE GOT HOME.

BECAUSE THE DAUGHTER AND HER FRIEND DROVE OFF AND HEFT THE MOTHER THERE.

THAT WAS--- AND LEFT THE MOTHER THERE.

THAT WAS THE STORY THAT HAPPENED THERE.

>> COULD YOU HELP ME UNDERSTAND THE DEFICIENCIES WITH REGARD TO THE ADMISSION INTO EVIDENCE OF THE E-MAIL THAT INDICATED THAT THE DAUGHTER ON OR ABOUT THE DATE OF THE MURDER HAD INQUIRED ABOUT THE LIFE INSURANCE?

IT SEEMS TO ME THAT THAT IS SUCH, I MEAN, FUNDAMENTAL, EASY THING TO PLACE INTO EVIDENCE.

AND I'M, I'M NOT SURE I UNDERSTAND ALL OF THE FACTORS. WHAT DID YOUR TRIAL LAWYER OR WHAT DID THE TRIAL JUDGE SAY YOUR TRIAL LAWYER FAILED TO DO THAT HE COULD NOT CORRECT TO GET THAT INTO EVIDENCE?

>> OKAY.

SO I'M NOT REALLY SURE WHY THE JUDGE EXCLUDED IT--

>> WELL, I MEAN, IT'S A POINT, ISN'T IT A POINT IN YOUR--

>> IT WAS A, IT WAS A, AN E-MAIL--

>> RIGHT.

>>-- THAT I THINK IT WAS BASED ON HEARSAY.

IT WAS AN E-MAIL--

>> WELL, ISN'T IT PART OF THE RECORDS OF THE PLACE SHE WORKED?

>> THIS WAS PROFFERED THAT--

LET ME SEE, WHAT WAS THAT WOMAN'S NAME?

SO TORI HAD CALLED PAULA'S OFFICE AND TALKED TO A WOMAN WHO WAS AN ADMINISTRATOR OF BENEFITS.

ACTUALLY, SHE DIDN'T TALK TO HER, SHE TALKED THE SOMEBODY, AND IT WASN'T CLEAR WHO SHE HAD

TALKED TO.
BECAUSE THE DEFENSE HAD TO
PROFFER THIS TESTIMONY.
SO WE--
>> IT'S GOT MORE PROBLEMS THAN
IT APPEARS SUPERFICIALLY?
>>-- THE WOMAN WHO WROTE THE
E-MAIL.
>> RIGHT.
>> AND SHE SAID I DIDN'T TALK TO
TORI, BUT SOMEBODY AT THE OFFICE
TOOK THE PHONE CALL AND TOLD ME
THAT TORI HAD CALLED TO FIND OUT
ABOUT THE LIFE INSURANCE.
SO THAT GENERATE-- THAT'S WHY
THE WOMAN GENERATED AN E-MAIL TO
NELSON BENEFITS SAYING THAT THE
DAUGHTER HAD CALLED TO ASK ABOUT
THE LIFE INSURANCE.
THIS IS ON JULY 9TH, AND THE
MURDERS OCCURRED ON JULY 6.
SO WHEN--
>> BUT THIS IS NOT SOMETHING OF
HER PERSONAL KNOWLEDGE, AND
SOMEONE ELSE HAD--
>> WELL, IT WAS A BUSINESS
RECORD.
WE WERE TRYING TO GET IT--
>> WELL, I MEAN, JUST BECAUSE
IT'S A BUSINESS RECORD DOESN'T
MEAN EVERYTHING COMES IN.
IF YOU'VE GOT HEARSAY WITHIN A
BUSINESS RECORD, YOU'VE GOT SOME
PROBLEMS THERE TOO.
SO--
>> SO SHE DIDN'T KNOW WHO HAD
SAID THAT TORI HAD CALLED, AND
THAT WAS WHAT HAPPENED WITH
THAT.
BUT--
>> I'M SURE AS FAR AS HEARSAY
THE JUDGE LET IN THIS, THE WEB
SITE--
>> RIGHT.
>> THIS WEB SITE WHICH-- DUD
THEY DO A 403 ANALYSIS OF
PREJUDICE OUTWEIGHING PROBATIVE
VALUE AS TO--
>> YOU KNOW, I THINK THE DEFENSE
ATTORNEY MADE EVERY OBJECTION

YOU COULD MAKE ON THIS, AND THERE WERE JUST-- THE JUDGE WAS INTENT ON THIS STATE ARGUMENT THAT ANYTHING THAT PAULA HAD SAID WOULD HAVE MADE RALPH WRIGHT MAD, AND THEN THAT WOULD BE, SOMEHOW GO TO HIS MOTIVE.

>> WAS THERE ANY EVIDENCE THAT HE READ THE WHOLE WEB SITE YOU KNOW, EVEN IF YOU'RE GOING TO GO STATE OF MIND, THAT'S, IT'S NOT HEARSAY--

>> RIGHT.

>> THAT HE READ THE WHOLE WEB SITE?

>> WELL, THE STATE-- HE KNEW ABOUT THE WEB SITE BECAUSE HE HAD TALKED TO SOME PEOPLE AT HIS JOB, AND HE SAID LOOK WHAT SHE'S GOING TO ME.

WELL, THE STATE IS MAKING THAT INTO AN ARGUMENT THAT HE WAS SO OUTRAGED THAT THIS WOULD CAUSE HIM TO WANT TO GO KILL THESE PEOPLE.

AND THEY DON'T HAVE EVIDENCE TO SHOW THAT.

SO MY ARGUMENT WAS THAT THEY'RE REALLY STACKING INFERENCES TO GET TO A MOTIVE, STATE OF MIND FOR HIM.

AND SO THIS ITSELF, IT WAS HEARSAY.

IT WAS COMING IN FOR THE FACTS ASSERTED IN IT TO MAKE HIM LOOK BAD.

ON THE-- I ALSO WANTED TO JUST MENTION ON THAT E-MAIL, TORI GOT ON THE WITNESS STAND AND SAID SHE DIDN'T EVEN KNOW WHAT LIFE INSURANCE WAS AT THAT TIME.

I MEAN, THIS WAS-- THERE WAS SO MUCH EVIDENCE THAT SHE HAD NO IDEA ABOUT LIFE INSURANCE THAT THIS WOULD HAVE BEEN IMPEACHMENT.

>> WELL, DIDN'T THEY-- DID THEY CROSS-EXAMINE HER TO SAY DIDN'T YOU CALL THE AGENCY AND EVEN ASK THEM THREE DAYS AFTER MURDER?

WAS THAT CROSS-EXAMINATION--
>> YES, AND SHE ADMITTED IT.
BUT I STILL THINK THAT WE SHOULD
HAVE BEEN ABLE TO BRING--
>> SHE ADMITTED IT THAT SHE HAD
CALLED THE AGENCY?
>> YES.
>> BUT DIDN'T SHE ALSO SAY,
THOUGH, THAT SHE ONLY KNEW ABOUT
THE INSURANCE BECAUSE SOME
OFFICER MENTIONED IT TO HER?
>> RIGHT.
AND, YOU KNOW, THE STATE WENT ON
AND ON AND ON ABOUT HOW, YOU
KNOW, SHE DIDN'T HAVE ANY NEED
FOR MONEY, SHE DIDN'T CARE ABOUT
THIS INSURANCE.
THEY HAD TO KEEP BADGERING HER
TO THE COME IN AND SIGN THE
PAPERS.
SHE DIDN'T HAVE ANY, YOU KNOW,
SHE DIDN'T CARE ABOUT THE MONEY
AND, YOU KNOW, IT'S JUST-- IT
WAS A BIG PART OF THE STATE'S
CASE TO TRY TO MAKE HER LOOK
HIKE SHE HAD-- LIKE SHE HAD,
THERE WAS NO WAY SHE WOULD HAVE
BEEN MOTIVATED TO DO THESE
CRIMES.
I MEAN, THAT WAS A HUGE PART OF
THEIR CASE.
>> YOU'RE INTO YOUR REBUTTAL
TIME.
>> OKAY.
>> YOU'RE WELCOME TO CONTINUE,
BUT I'M JUST WARNING YOU.
>> WELL, THANK YOU.
>> MAY IT PLEASE THE COURT,
CHRISTINA ZUCCARO FOR THE STATE
OF FLORIDA.
TODAY I WOULD LIKE TO DISCUSS
SIX POINTS WITH THIS COURT, AND
THOSE ARE THE DEFENDANT'S MOTE I
TO COMMIT THESE MURDERS, THE
TIMING OF THE MURDERS, THE AIR
FORCE GLOVE THAT WAS LEFT AT THE
SCENE, THE DEFENDANT'S
OPPORTUNITY, HIS DISHONESTY AND
THE CRIME SCENE.
>> CAN I ASK JUST THIS?

IF THE GLOVE WASN'T-- IF THERE WAS NO GLOVE, DOES THE STATE STILL SAY THERE WAS ENOUGH CIRCUMSTANTIAL EVIDENCE TO CONVICT THIS DEFENDANT?

>> YES, WE WOULD.

AND ONE THING THAT WE DID NOT DISCUSS, WE HAVE THE MOTIVE. CERTAINLY--

>> SO YOU'RE SAYING MOTIVE, YOU DON'T HAVE AN ALIBI, SO IT COULD POSSIBLY BE ANYWHERE DURING THAT TIME INCLUDING AT THE DEFENDANT'S HOUSE, THE FACT THAT HE WAS THE FATHER OF THE CHILD, THAT WOULD HAVE BEEN ENOUGH TO CONVICT SOMEONE OF FIRST-DEGREE MURDER?

>> YES.

BUT WE DO HAVE, WE OBVIOUSLY HAVE MUCH MORE THAN THAT. BUT IT IS THE TIMING IN THIS CASE IS EXTREMELY SIGNIFICANT BECAUSE YOU HAVE THE 14 MONTHS LEADING UP TO THE MURDER WHERE PAULA IS CONTINUOUSLY TRYING TO GET THE DEFENDANT TO ACKNOWLEDGE THAT HE IS THE FATHER. AND BY DOING SO, SHE'S CAUSING A LOT OF PROBLEMS FOR HIM. HE'S A MARRIED MAN. HE WORKS AT MacDILL AIR FORCE BASE. SHE'S SENDING LETTERS TO HIS WIFE, INTERFERING WITH HIS MARRIAGE.

HIS WIFE WAS SO ANGRY--

>> I MEAN, I THINK WE AGREE WITH YOU THAT THERE'S ENOUGH EVIDENCE TO ESTABLISH BEYOND A REASONABLE DOUBT HIS MOTIVE.

>> YES.

>> SO THAT'S ALL YOU'RE TALKING ABOUT, RIGHT?

>> YES.

>> OKAY.

ISN'T THERE ENOUGH EVIDENCE TO ESTABLISH BEYOND A REASONABLE DOUBT TORI'S MOTIVE?

>> THERE IS NOT.

THE STATE CERTAINLY PRESENTED EVIDENCE THAT WAS INCONSISTENT WITH THAT THEORY THAT TORI COMMITTED THESE MURDERS.

>> SO--

>> WHAT EVIDENCE WAS THAT?

>> WELL, WE HAVE THIS GLOVE THAT WAS AT SCENE, AND THAT IS AN AIR FORCE GLOVE.

THERE ARE 2,762 OF THESE GLOVES THAT WERE EVER MADE.

WE KNOW THAT THE DEFENDANT WORKED AT MacDILL AIR FORCE BASE.

HE WAS ONLY ONE OF SIX OTHER PEOPLE-- WELL, SEVEN PEOPLE TOTAL WHO HAD ACCESS KEYS TO THE ROOM WHERE THESE GLOVES WERE CUT.

THE DEFENDANT'S OFFICE WAS RIGHT NEXT TO THESE BINS OF THE GLOVES.

>> WASN'T THERE ALSO EVIDENCE THAT THERE'S NO INVENTORY KEPT OF THESE GLOVES, PEOPLE COULD COME AND GET THEM, AND ANYONE COULD HAVE-- THAT WORKED ON THE BASE OR HAD EVER BEEN ON THE BASE COULD HAVE HAD A GLOVE AND LEFT IT ANYWHERE?

>> ANYONE THAT WORKED ON THE BASE THAT COULD HAVE BEEN GIVEN A GLOVE WOULD HAVE HAD ACCESS TO IT, BUT NONE OF THOSE PEOPLE ARE INVOLVED IN THOSE CASE.

TORI CERTAINLY DID NOT HAVE ACCESS TO A GLOVE.

SHE IS TESTIFIED AT TRIAL THAT SHE HAD NEVER SEEN THAT GLOVE BEFORE.

ALL OF HER FRIENDS TESTIFIED TO THE SAME.

WE HAVE UP UNTIL JULY 4TH, GOING INTO JULY 5TH WHERE THERE WAS, TORI WAS AT THE HOME, SHE DROVE HER MOTHER HOME AND THE BABY WITH HER FRIEND, MICHAEL COSMOS, AND THERE WAS NO GLOVE AT THAT HOUSE.

NOW, WITNESSES HAD SAID--

>> WELL, NO GLOVE THAT THEY SAW.
>> THAT THEY SAW.
>> OKAY.

>> BUT PEOPLE THAT FREQUENTED
THE HOUSE--

>> LET ME, SO THIS IS WHERE I'M
STRUGGLING IS THAT, YOU KNOW, I
THINK-- I'M NOT AWARE OF A CASE
WHERE THE ONLY FACTS THAT COULD
BE ESTABLISHED BEYOND A
REASONABLE DOUBT WERE MOTIVE AND
OPPORTUNITY.

AND SO WE COULD ADDRESS THAT
SEPARATELY.

IF THERE IS ONE, I'D LIKE THE
KNOW ABOUT IT.

BUT THEN THE OTHER PART OF IT IS
THAT I DON'T SEE HOW THERE'S
EVIDENCE TO SHOW ANYTHING
OTHER THAN MOTIVE AND
OPPORTUNITY BEYOND A REASONABLE
DOUBT.

SO I THINK WHAT WE'RE STRUGGLING
WITH IS WHAT IS THE EVIDENCE
THAT WOULD PUT HIM AT THE SCENE
OF THE CRIME, AT THE TIME OF THE
CRIME BEYOND A REASONABLE DOUBT.

>> I UNDERSTAND YOUR CONCERNS,
AND THE EVIDENCE--

>> IS IT-- OKAY, GO AHEAD.

>> THERE IS EVIDENCE IN ADDITION
TO MOTIVE AND OPPORTUNITY.

AND LIKE I SAID, WE HAVE THIS
GLOVE THAT WAS LINKED THE HIM,
BECAUSE HE HAD--

>> OKAY.

SO WITH THE GLOVE, THE STATE'S
THEORY IS THAT HE WAS THE
MURDERER, AND HE CAME WITH THE
GLOVE ON AND SOMEHOW DEPOSITED
THE GLOVE BEFORE HE LEFT BUT
STILL DIDN'T GET FINGERPRINTS ON
THE CAR AFTERWARD.

SO THAT'S THEIR THEORY, CORRECT?

>> YES.

>> OKAY.

NOW, IT WOULD, IT WOULD BE-- IT
WOULD CONCLUSIVELY DISPROVE THAT
THEORY IF IT WERE HER, THE
VICTIM'S DNA INSIDE THAT GLOVE,

WOULDN'T IT?

>> I DO NOT AGREE WITH THAT,
YOUR HONOR.

>> I MEAN, HOW WOULD THAT EVEN
MAKE SENSE THAT THE THEORY IS
THAT HE COMES WITH THE GLOVE,
STRANGLES HER AND DROPS THE
GLOVE BUT SOMEHOW HER DNA IS
INSIDE THE GLOVE?

>> WELL, YOUR HONOR, THERE WAS A
STRUGGLE.

GOING INTO THE HOME, THERE WAS A
PICTURE FRAME KNOCKED OVER, A
CLUMP OF PAULA'S HAIR WAS ON THE
GROUND, HER CONTACT FELL OUT, AN
EARRING, AND THAT WAS FROM THE
BACK OF THE HOME LEADING ALL THE
WAY THROUGH--

>> WHAT IS THE REASONABLE
HYPOTHESIS THAT PUTS HER DNA
INSIDE THE GLOVE IF HE COMES TO
THE HOUSE WITH THE GLOVE TO
COMMIT THE MURDER?

>> WELL, AT SOME POINT THERE WAS
A STRUGGLE, AND HE WAS NOT
WEARING THE GLOVE.

>> HOW CAN YOU CONCEIVE A
STRUGGLE IN WHICH A GLOVE GETS
OFF OF HIS HAND AND ONTO HER
HAND AS SHE'S FIGHTING FOR HER
LIFE?

>> HE COULD HAVE BEEN NOT
WEARING THE GLOVES DURING THE
STRUGGLE AND PUT THEM ON TO
STRANGLE HER, AND IT WOULD HAVE
BEEN A TRANSFER OF HER DNA INTO
THE GLOVES IF HE WAS--

>> YOU SAY GLOVES.

IS IT GLOVES OR JUST ONE GLOVE?

>> WELL, WE HAVE ONE GLOVE THAT
WAS LEFT BEHIND, YES.

>> OKAY.

>> YES.

>> AND THE TRANSFER-- NOT BEING
ON THE OUTSIDE, TRANSFERS INTO
THE INSIDE?

HE HAS THE GLOVE ON HIS HAND,
AND A TRANSFER OF HER DNA GOES
INTO THE INSIDE OF THE GLOVE?

>> YES.

IF THERE'S A STRUGGLE AND HE'S
PUSHING HER AND THERE'S
OBVIOUSLY A FIGHT LEADING UP
INTO THE ROOM THAT WOULD HAVE
LASTED--

>> THEN HE PUTS ON A GLOVE AFTER
HE STRANGLERED HER BUT THEN TAKES
IT OFF TO LEAVE THE HOUSE?

>> WE DON'T KNOW EXACTLY WHAT
HAPPENED, BUT THE GLOVE WOULD
HAVE BEEN OFF DURING THE
STRUGGLE AT SOME POINT, AND IT
WOULD HAVE BEEN ON-- HE WOULD
HAVE PUT IT ON AT A POINT WHERE,
AFTER HE TOUCHED HER, WHERE HER
DNA WOULD TRANSFER.

>> ISN'T THIS A VERY ODD
CIRCUMSTANCE?

I MEAN, YOU THINK OF SOMEONE
USING GLOVES TO COMMIT A CRIME
OR COMING WITH GLOVES TO COMMIT
A CRIME.

THEIR MOTIVE FOR USING THE
GLOVES IS TO AVOID LEAVING
FINGERPRINTS OR DNA, RIGHT?

>> YES.

>> SO WE'VE GOT THIS SCENARIO
WHERE THERE'S ONE GLOVE LEFT.
HOW DOES SOMEONE LEAVE THE
HOUSE, GO TO THE DOOR, OPEN THE
DOOR, GO OUT AND GET IN THE CAR
AND-- WEARING ONE GLOVE AND
FORGET ABOUT THE OTHER GLOVE?
THIS IS A LITTLE DIFFERENT THAN
A CIRCUMSTANCE WHERE THE
PERPETRATOR HAS LEFT THE SCENE
AND DROPS A GLOVE.

WE MAY HAVE HEARD ABOUT A CASE
LIKE THAT.

BUT THIS IS, THIS IS SOMEONE
LEAVING THE HOUSE WITH ONE GLOVE
ON ONE HAND, A GLOVE ON ONE HAND
BUT A GLOVE NOT ON THE OTHER
HAND, I JUST-- I'M TRYING TO,
I'M TRYING TO UNDERSTAND HOW
THAT HAPPENS.

HELP ME UNDERSTAND THE THEORY.

>> WELL, YOUR HONOR, IT'S VERY
POSSIBLE THAT IT COULD HAVE BEEN
DROPPED.

HE COULD HAVE TAKEN THE GLOVES OFF, PUT THEM IN HIS POCKET, AND ONE FELL OUT HE DIDN'T REALIZE UNTIL HE WAS IN THE CAR AND GONE--

>> BUT NO FINGERPRINTS IN THE CAR.

NO-- I MEAN, AND AGAIN, THE DROPPING OF THE GLOVE, IF I'M UNDERSTANDING THIS-- AGAIN, I DON'T HAVE A PICTURE OF THE HOUSE-- BUT IT'S NOT, IT'S NOT DROPPED LIKE ON THE FLOOR. IT'S ON A COUCH ADJACENT THE A GUITAR.

SO IS THAT A PLACE WHERE IT WOULD BE DROPPED BY ACCIDENT BY HAVING-- AGAIN, AS YOU SAID IN ANSWER TO JUSTICE LAWSON'S QUESTION, HER DNA'S INSIDE THE GLOVE.

AND SO THE THEORY THEN HAS TO BE THAT HE STRANGLES HER BUT THEN GOES, OKAY, NOW I'M PUTTING ON MY GLOVES BECAUSE I DON'T WANT TO LEAVE FINGERPRINTS ANYWHERE, BUT, OH, WELL, I'LL JUST PUT 'EM ON, AND THEN I'LL JUST TAKE ONE OFF.

IT'S, I MEAN, AND I APPRECIATE YOU'VE GOT, YOU KNOW, WE'RE GOING BACK TO THIS BECAUSE YOU SAID IT DOESN'T MATTER IF THE GLOVE IS INVOLVED OR NOT, THERE WOULD BE ENOUGH EVIDENCE TO CONVICT THIS DEFENDANT OF FIRST-DEGREE MURDER WITHOUT THE GLOVE.

AND I THINK THAT'S WHERE WE WERE, YOU KNOW, YOU'RE GOING DOWN A ROUTE THAT PROBABLY IN YEARS FROM NOW YOU'LL LOOK AT IT AND SAY THIS SOUNDS VERY PREPOSTEROUS FROM THE POINT OF VIEW OF A THEORY THAT IS GOING TO CONVICT SOMEONE AND SUBJECT THEM TO THE DEATH PENALTY.

SO NOW LET'S JUST GO BACK TO ARE THERE CASES THAT WE HAVE IN THIS STATE THAT SAYS THAT WITHOUT THE

GLOVE, WITHOUT ANY EVIDENCE,
THAT THE DEFENDANT WAS INSIDE
THE HOUSE, THAT MOTIVE AND
OPPORTUNITY IS ENOUGH TO CONVICT
THE DEFENDANT OF MURDER?
AND WHAT ARE THOSE CASES?

>> OKAY.

IF I MAY ANSWER YOUR FIRST
QUESTION WHICH WAS HOW THE GLOVE
COULD HAVE FALLEN.

IT WAS RIGHT BY THE DOOR.
THE COUCH WAS DIRECT HI BY THE
DOOR.

SO WHEN HE WAS WALKING OUT THE
DOOR, IT COULD HAVE VERY EASILY
FALLEN OUT.

>> HERE'S THE THING WITH THE
GLOVE IS THAT, I MEAN, WE
UNDERSTAND THE EXPLANATION.
IT'S NOT THAT WE DON'T
UNDERSTAND THE EXPLANATION, IT'S
THAT WE QUESTION THE
PLAUSIBILITY, I THINK.

AND SO, I MEAN, I THINK YOU
PROBABLY GIVE ME THAT IT'S AT
LEAST AN IFFY EXPLANATION.

I MEAN, YOU CAN POKE A LOT OF
HOLES IN IT.

AND HOW DO YOU GET FROM AN
EXPLANATION THAT YOU CAN POKE A
LOT OF HOLES IN AND A GLOVE THAT
AT BEST HAS ONE DNA EXPERT
SAYING YOU CAN'T EXCLUDE THE
DEFENDANT TO PROOF BEYOND A
REASONABLE DOUBT THAT HE WAS
THERE AT THE TIME?

ENOUGH EVIDENCE THAT THE JURY
COULD CONCLUDE BEYOND A
REASONABLE DOUBT THAT HE WAS
THERE AT THE TIME?

>> WELL, YOUR HONOR, THE DNA
EVIDENCE ACTUALLY DID NOT QUITE
SAY THAT, AND I WOULD LIKE TO
CLARIFY WHAT MS. KINNEY TOLD THE
COURT.

THE FDLE EXPERT SAID THAT THE
DEFENDANT'S DNA WAS INCLUDED
WITHIN THE POSSIBLE MIXTURE.
AND THE DEFENSE EXPERT AGREED TO
THAT AS WELL.

>> WHAT DOES THAT--
>> DID HE SAY INCLUDED OR COULD NOT BE EXCLUDED?
I MEAN, IT'S A DIFFERENCE.
>> YES.
THE STATE'S EXPERT INCLUDED THE DEFENDANT, BUT THE DEFENSE EXPERT SAID THE DEFENDANT COULD NOT BE EXCLUDED.
SO THE DEFENSE EXPERT DID NOT ACTUALLY SAY THAT THE DEFENDANT'S DNA COULD NOT BE IN THERE.
SO THAT WAS A LITTLE BIT DIFFERENT THAN WHAT SHE HAD SAID.
>> WHAT ARE THE PROBABILITIES ASSOCIATED WITH THESE OBSERVATIONS?
[LAUGHTER]
BECAUSE THE PROBABILITIES MAKE ALL THE DIFFERENCE, RIGHT?
>> WELL, THE INSIDE OF THE GLOVE WAS A MIXTURE, AND THAT WAS OF TWO OR MORE, MOST LIKELY MORE, INDIVIDUALS.
SO WE HAVE THE MAJOR AND MINOR CONTRIBUTORS COULD NOT BE ISOLATED.
SO ANY PROBABILITY WOULD BE ASSOCIATED WITH THE ENTIRE MIXTURE, NOT ISOLATING THE DEFENDANT'S DNA AND SAYING THIS IS THE STATISTIC ASSOCIATED WITH THAT.
>> WOULD IT BE A FAIR SUMMARY TO SAY THAT IT IS AS LIKELY STATISTICALLY THAT THAT DNA WAS PAULA'S AFTER HAVING HANDLED HER CHILD AND HIS AS IT WAS HIS DNA?
>> NOT NECESSARILY.
THERE WERE 10 OUT OF 13 OF HIS LOCI WERE IN THE GLOVE, AND THERE WERE ALLELES THAT NEITHER PAULA HAD OR ALIJAH HAD THAT THE DEFENDANT HAD THAT WERE PRESENT IN THAT, THE DNA WITHIN THE GLOVE.
SO WE HAVE DNA EVIDENCE.
IT MAY NOT BE AS MUCH AS THE

COURT WOULD LIKE, BUT WE HAVE DNA EVIDENCE THAT IS CONSISTENT WITH THE DEFENDANT, HIS DNA BEING IN THE GLOVE.

NOW--

>> CONSISTENT WITH, YOU SAY "CONSISTENT WITH."

AGAIN, CONSISTENT WITH HOW MANY OTHER PEOPLE IN THE WORLD ALSO?

>> WELL, THE MIX--

>> THIS IS NOT THE KIND OF EVIDENCE THAT SAYS TO A HIGH DEGREE OF PROBABILITY THAT WAS HIS DNA INSIDE THE GLOVE, IS IT?

>> WELL, THE DNA MIXTURE SAID 1 OUT OF 83 AFRICAN-AMERICANS.

AND WHEN WE LOOK AT THAT, THAT'S, YOU KNOW, CONSIDERING THAT'S THE ENTIRE MIXTURE, NOT JUST HIS DNA, BUT WITH THIS CASE, HOW MANY PEOPLE HAD ACCESS TO THE GLOVE?

AND THAT IS THE KEY HERE.

IT'S NOT THE DNA, IT'S THE ACCESS TO THE GLOVE.

WE REALIZE THAT DNA IS THE GOLD STANDARD, BUT IF WE DIDN'T HAVE DNA IN THIS CASE AND WE JUST HAD THE GLOVE, THAT WOULD CERTAINLY BE SUFFICIENT.

AND THE DNA DOES NOT EXCLUDE HIM, SO THAT SHOULD NOT, THAT SHOULD NOT MAKE OUR CASE ANY LOWER.

IT JUST-- WE HAVE THE, WE HAVE THIS GLOVE.

ONLY HE HAD ACCESS TO IT.

OUR RESPONSIBILITY, OUR BURDEN WAS TO PRESENT EVIDENCE THAT WAS INCONSISTENT WITH HIS THEORY, AND WE DID THAT.

>> AND YOU DID THAT BY SAYING WHAT?

THAT ONLY HE HAD ACCESS TO THE A GLOVE? -- TO A GLOVE?

>> WE SHOWED--

>> AND HOW DID YOU SHOW THAT?

>> WE SHOWED THE EVIDENCE THAT HE, INDEED, HAD ACCESS TO THIS GLOVE.

THIS WAS AN AIR FORCE GLOVE THAT WAS AT--

>> BUT YOU DIDN'T ACTUALLY, NO ONE ELSE IN THIS SCENARIO. I MEAN, AS I READ THE RECORD, THE STATE DID NOT SHOW THAT PAULA DIDN'T HAVE ACCESS TO THIS GLOVE OR THAT TORI DIDN'T HAVE ACCESS TO THIS GLOVE.

I MEAN, I'M JUST, I'M JUST NOT FOLLOWING HOW YOU SAY THAT THIS GLOVE REALLY JUST COULD HAVE BEEN PUT THERE BY THIS DEFENDANT.

>> CERTAINLY.

WELL, TORI TESTIFIED AT TRIAL THAT SHE DID NOT HAVE ACCESS TO THE GLOVE, SHE'D NEVER SEEN THE GLOVE, SHE DID NOT KILL HER MOTHER, SHE DIDN'T PAY ANYONE TO DO SO OR HER BROTHER.

SHE-- ALL OF HER FRIENDS TESTIFIED THE SAME WAY.

WE'VE NEVER SEEN THIS GLOVE BEFORE.

WE WERE NOT INVOLVED IN THIS MURDER IN ANY WAY.

SO HE'S PRESENTING THIS HYPOTHESIS, AND WE ARE REFUTING IT BASED ON TESTIMONY OF ALL THE PEOPLE THAT COULD HAVE DONE IT SAYING WE DIDN'T DO IT, WE WEREN'T INVOLVED--

>> YOU CAN'T PROVE THOUGH THAT SOMEONE COMMITS A MURDER BECAUSE EVERYONE ELSE SAYS THEY DIDN'T. YOU AGREE WITH THAT--

[LAUGHTER]

>> I AGREE WITH THAT.

WE--

>> I MEAN--

>> I'M TALKING ABOUT THE REBUTTING HIS HYPOTHESIS.

>> THE GLOVE, AGAIN, I THINK WE HAVE THROUGH QUESTIONING REALLY QUESTION THE, IN A WAY, THE PREPOSTEROUS NATURE OF THIS GLOVE BEING EITHER INVOLVED IN THE MURDER OR HAVING BEEN LEFT BY THE MURDERER.

AND THERE ARE CERTAINLY OTHER WAYS.

IF TORI OR ANYONE ELSE DECIDED THAT THEY KNEW THERE WAS LIFE INSURANCE AND THEY DECIDED THEY WERE GOING TO COMMIT THIS MURDER, THAT THEY HAVE-- AND TORI SAID ON THE STAND SHE KNEW HOW TO HAVE ACCESS TO THIS DEFENDANT'S APARTMENT, THERE'S CERTAINLY A REASONABLE THEORY ESPECIALLY WITH, AGAIN, THE DNA OF PAULA BEING INSIDE THE GLOVE, THAT THIS COULD HAVE BEEN A SET-UP.

NOW, I JUST WANT TO, AGAIN, GO BACK TO MY QUESTION.

IF WE TAKE THE GLOVE OUT AND YOU ARE SAYING-- AND I THINK YOU SAID IT EARLIER, BUT-- THAT MOTIVE AND OPPORTUNITY WOULD BE ENOUGH, AND I WANT TO KNOW WHAT CASES YOU RELY ON THAT SAYS THAT MOTIVE AND-- THAT SOMEBODY WHO HAS A MOTIVE WHICH IS SHE'S REALLY BOTHERING ME AND I'M GOING TO KILL HER, THAT THAT MOTIVE WHICH IS I WANT HER OUT OF MY LIFE AND THEN THE OPPORTUNITY BECAUSE HE DIDN'T HAVE AN ALLY FOR THAT TIME PERIOD, NOR DID SHE, NOR DID THE DAUGHTER, THAT THAT'S ENOUGH TO ALLOW A MURDER CONVICTION TO STAND.

>> WELL, YOUR HONOR, OUR POSITION IS WE HAVE MORE THAN THAT--

>> OKAY.

JUST GIVE ME THE CASE LAW--

>> THE CASE, THERE'S THE, I MIGHT BE MISPRONOUNCING IT, BUT THERE'S THE GAZMINSKY CASE WITH THE RING, AND WHEN YOU LOOK AT THE DEFENDANT'S ACTIONS BEFOREHAND, I'M GOING TO GET THIS TWO-CARAT RING, AND THEN HE--

>> GOZMINSKI, THE CASE WHERE-- I THOUGHT THERE WAS A LOT OF

EVIDENCE THAT HE WAS IN THE
VICTIM'S HOUSE.
I MEAN, SHE WAS MURDERED RIGHT
INSIDE THE DOOR.
ARE YOU SAYING THERE WAS NO DNA
THAT PLACED MR. GOZMINSKI IN THE
HOUSE?

>> I'M NOT AWARE OF THAT, BUT I
KNOW EVIDENCE LINKED HIM INTO
TAKING THE RING, AND THERE WAS
DISHONESTY AFTERWARD WITH REGARD
TO HIM NOT SHOWING UP FOR WORK
AND GIVING DIFFERENT,
INCONSISTENT REASONS.

AND THAT'S EXACTLY WHAT WE HAVE
HERE WITH THE DEFENDANT--

>> DIDN'T THE PHONE IN THAT
CASE, THE PHONE TOWER PLACED HIM
IN THAT NEIGHBORHOOD.

>> WELL, WE HAVE--

>> ISN'T IT?

>> WE HAVE HERE, THE DEFENDANT,
WE HAVE HIM AT MacDILL AIR
FORCE BASE UP UNTIL TWO IN THE
MORNING.

WE KNOW THE MURDERS WERE
COMMITTED BETWEEN FOUR AND SIX
A.M., AND WE HAVE THE DEFENDANT
GOING TO STARBUCKS AT 7:54 A.M.
SO WE HAVE A PERFECT WINDOW OF
OPPORTUNITY.

AND--

>> BUT A MILLION PEOPLE-- WELL,
MAYBE THERE'S NOT A MILLION
PEOPLE IN THAT AREA, BUT THAT IS
A WINDOW OF OPPORTUNITY FOR
ANYONE.

I JUST DON'T SEE HOW-- THIS IS
REALLY TROUBLING TO ME--

>> OKAY.

>>-- BECAUSE I DON'T SEE HOW
JUST BECAUSE SOMEONE CAN'T SAY
WHERE THEY ARE, OR WON'T SAY
WHERE THEY ARE, FROM 2:00 IN THE
MORNING TIL, WHAT, 4:00 DID YOU
SAY THE MURDER TOOK PLACE?

>> BETWEEN FOUR AND SIX.

>> OKAY.

THAT THAT PUTS THEM AS THE
POSSIBLE MURDERER.

I MEAN, LOTS OF PEOPLE CAN'T TELL YOU WHERE THEY ARE AT THOSE TIMES OR WON'T TELL YOU.

>> EVERY WE HAVE NO ONE--

>> AS THE CASE MIGHT BE.

AND-- OKAY.

>> WE HAVE NO ONE TO VERIFY WHERE HE IS, BUT WE ALSO HAVE HIS VARIOUS STORIES WHICH I KNOW IN BALLARD THIS COURT MADE A POINT TO SAY THAT THE DEFENDANT-- THERE WAS NO SUSPICIOUS BEHAVIOR.

THIS WAS NO SORT OF ILL WILL TOWARD THE VICTIM--

>> SO WE HAVE HIM LYING ABOUT VARIOUS THINGS.

WE HAVE HIM NOT HAVING ANY ALIBI FOR THE TIME PERIOD THAT WOULD COVER THE MURDER, AND WE HAVE HIM OSTENSIBLY WITH A MOTIVE BECAUSE HE DIDN'T WANT TO PAY CHILD SUPPORT FOR THIS CHILD ALTHOUGH WE HAVE IN THE RECORD THAT HE SAYS THAT, YOU KNOW, HIS INSURANCE WITH MacDILL WOULD HAVE CERTAINLY COVERED THE CHILD FOR MEDICAL EXPENSES.

BUT NOT-- SUPPOSEDLY, ALTHOUGH NO ONE EVER SAID AND THERE'S NO EVIDENCE THAT HE EVER SAID HE DIDN'T WANT TO PAY CHILD SUPPORT OR.

NO ALIBI AND WHAT WAS THE OTHER INDICATION?

>> THE VARIOUS STORIES TO--

>> THE VARIOUS STORIES.

SO WE HAVE THOSE ITEMS TOGETHER, AND WE HAVE A FIRST-DEGREE MURDER CONVICTION.

>> YES, AND THE GLOVE AS WELL.

WE HAVE-- THE PATERNITY PETITION WAS SERVED ON HIM ON JUNE 12TH.

HE HAD TO RESPOND BY JULY 2ND, AND HE DID NOT DO THAT.

>> BUT YOU THINK GOZMINSKI IS YOUR BEST CASE AS FAR AS SHOWING THAT-- BECAUSE THERE THE RING WAS TAKEN FROM THE HOUSE.

I MEAN, IT WAS HER RING.
SO THAT'S A LITTLE DIFFERENT.
BUT I'M JUST ASKING ABOUT MOTIVE
AND OPPORTUNITY, AND YOU SAY
GOZMINSKI IS YOUR BEST CASE?

>> I WOULDN'T SAY IT'S MY BEST
CASE, BUT THE RING TO ME
SEEMS-- IF YOU LOOK AT THE RING
CONSISTENT WITH HIS MOTIVE IN
THIS CASE SAYING THAT HE
DOESN'T, HE DOES NOT WANT TO
HAVE-- ACKNOWLEDGING THAT HE--
ACKNOWLEDGE THAT HE NEEDS TO
SUPPORT THIS CHILD, HE DENIES--
>> I MEAN, HE IS GUILTY OF BEING
A TERRIBLE PHILANDERER AND CHEAT
AND A REALLY BAD PERSON.
AND NOBODY IS GOING TO DISPUTE
THAT.

AND WHO KNOWS WHAT HE WAS DOING
FOR THOSE FIVE HOURS.
MAYBE HE HAD ONE MORE PERSON
THAT HE DIDN'T WANT TO DIVULGE
THAT HE WAS WITH.
BUT HERE IS THE OTHER THING, AND
LET'S-- BECAUSE YOU'VE SPENT
MOST OF YOUR TIME ON
CIRCUMSTANTIAL EVIDENCE WITH OUR
HELP.

THIS IS ONE WHERE THE, NOT ONLY
DID THE STATE GET UP AND SAY IT
WAS HIS DNA AND THE JUDGE SAID,
YEAH, THAT'S A FAIR COMMENT, BUT
THE JUDGE-- THE ASSERTION THAT
HE WAS THE ONLY ONE THAT COULD
BE GUILTY, SETTING UP THE
STRAWMAN AND THEN-- ALIBI AND
THEN DEFEATING IT, WALKING UP TO
THE TABLE AND SHOWING THE JURY
THIS MAN'S HANDS TO SHOW THAT
THESE ARE THE HANDS THAT MUST
HAVE STRANGLERED THIS PERSON, AND
THEN GETTING INTO EVIDENCE
EVERYTHING THAT WOULD MAKE YOU,
YOU KNOW, LIVID ABOUT WHO THIS
DEFENDANT IS AS A HUMAN BEING,
AND THE WEB SITE WRITTEN BY HER.
TO ME, THE MULTIPLE ISSUES THAT
ARE, WOULD CONSTITUTE, IN MY
VIEW, REVERSIBLE ERROR FOR A NEW

TRIAL-- I DON'T KNOW YOU'LL
EVEN HAVE TIME TO, DO YOU WANT
TO JUST SORT OF RESPOND TO THE
FACT THAT THE CLOSING ARGUMENT,
THE ADMISSION OF THE WEB SITE,
THAT THAT WAS IMPROPER ON THE
PART OF THE PROSECUTOR AND THE
TRIAL JUDGE IN LETTING IN THAT
WEB SITE?

>> WELL, THE WEB SITE WAS,
SHOWED THE DEFENDANT'S
KNOWLEDGE, THE FACT THAT SHE WAS
CLAIMING THAT HE WAS THE FATHER,
HE WASN'T GOING TO SUPPORT
HER--

>> BUT IT SAID SO MUCH MORE.
IT SAID YOU ARE A, YOU ARE THE
MOST VILE HUMAN BEING THIS SIDE
OF, YOU KNOW, TAMPA, THE WORLD.
I MEAN, IT PAINTED HIM IN SUCH A
LIGHT.

AND EVIDENCE THAT HE WAS TOLD
THAT THIS WAS HIS CHILD AND SHE
WAS GOING AFTER IT WAS, THERE
WAS AMPLE EVIDENCE.

SO IF IT CAME IN FOR HIS STATE
OF MIND, THEN IT DIDN'T COME IN
FOR THE TRUTH OF THE MATTER?
IS THAT WHAT YOU'RE SAYING?

>> IT DID NOT, AND THE JURY WAS
ACTUALLY INSTRUCTED ON THAT.

>> SO ALL, EVERYTHING-- YOU'D
HAVE TO SHOW, WOULDN'T YOU, THAT
HE HAD READ EVERYTHING ON THE
WEB IDENTITY TO SHOW THAT HE
HAD-- WEB SITE TO SHOW THAT
THAT WAS PART OF HIS STATE OF
MIND.

WERE YOU ABLE TO SHOW THAT HE
READ THE ENTIRE WEB SITE?

>> WE DID.

WE HAD HIM ACTUALLY SHOWING
PEOPLE AT THE AIR FORCE BASE THE
WEB SITE SAYING LOOK WHAT SHE'S
CLAIMING, LOOK WHAT THIS WOMAN'S
DOING TO ME, I DON'T EVEN KNOW
HER.

>> AND WHEN HE SAID THAT TO ALL
THESE PEOPLE, WHAT KIND OF STATE
WAS HE IN--

>> HE WAS OUTRAGED.
>> THE TESTIMONY WAS THAT HE WAS OUTRAGED?
>> YES.
HE WAS VERY ANGRY.
>> AND WHAT ABOUT THE BALANCING THE PROBATIVE VALUE VERSUS PREJUDICE?
DID THE JUDGE ENGAGE IN THAT AS TO THE WEB SITE?
>> THE JUDGE DID AND FOUND THAT IT WAS NOT OVERLY PREJUDICIAL BECAUSE IT WAS-- IT SHOWED THE DEFENDANT'S KNOWLEDGE, AND THE COURT GAVE THAT LIMITING--
>> I THOUGHT HE ACTUALLY ALSO RAISED ON HIS OWN A FORFEITURE BY WRONGDOING EXCEPTION.
>> YES.
>> NOW, ISN'T THAT EXCEPTION UNDER GILES, THE UNITED STATES SUPREME COURT, REALLY PROBLEMATIC?
BECAUSE IF YOU DON'T KNOW WHETHER THE DEFENDANT IS THE GUILTY PERSON AND THEN YOU LET IN EVERYTHING THAT THE VICTIM HAS SAID OR DONE AGAINST THE DEFENDANT CAN, AREN'T YOU JUST SORT OF TAKING THAT EXCEPTION AND FINDING HIM GUILTY BEFORE YOU ALLOW THAT EVIDENCE IN?
>> WELL, IT DID COME IN AS A NON-HEARSAY EXCEPTION.
BUT IF WE LOOK AT THAT, THERE'S GOING-- IF WE LOOK AT THAT EXCEPTION, THERE'S GOING TO HAVE TO BE A FINDING THAT THE DEFENDANT WAS THE PERSON WHO ELIMINATED THE PERSON SO THAT THAT IS THE STANDARD.
SO--
>> SO WHO MAKES THAT?
YOU MEAN THE JUDGE DECIDED IT WAS HIM AND, THEREFORE, I'M GOING TO LET THIS EVIDENCE OF THE WEB SITE IN TO MAKE SURE THE JURY FINDS THAT IT'S HIM?
I MEAN, I JUST-- THERE'S SOMETHING CIRCULAR ABOUT THAT

THAT CAUSES ME CONCERN.

>> I THINK THE JUDGE'S RULING WAS MORE SO THAT IT WAS NON-HEARSAY BECAUSE IT SHOWED HIS KNOWLEDGE.

I THINK THAT WAS, THE FORFEITURE CLAUSE WAS MENTIONED, BUT I DON'T THINK THAT WAS THE MAIN REASON.

AND I WOULD ALSO LIKE TO POINT TO THE-- WE HAVE THIS TIMING WHERE WE DON'T HAVE THE DEFENDANT ACCOUNTED FOR, BUT WE HAVE HIS VARIOUS ACCOUNTS OF WHERE HE WAS AND WHAT HE WAS SUPPOSED TO DO THAT WEEKEND. HE TOOK OFF WORK, JULY 4TH THROUGH 6TH.

THE MURDER WAS ON JULY 6TH. HE TOLD ONE PERSON THAT HE WAS SUPPOSED TO GO TO ORLANDO, AND HE DIDN'T END UP GOING, THAT HE EXPLAINED THAT THE REASON WHY HE DIDN'T HAVE TO GO WAS BECAUSE HE WAS ON A SECRET MISSION.

NOW, WE KNOW THAT HE WAS NOT ON A SECRET MISSION AND PRESENTED EVIDENCE THAT HE WAS NOT ON THIS SECRET MISSION--

>> BUT ISN'T THAT CONSISTENT WITH THE KIND OF LIFESTYLE THE DEFENDANT LED, I MEAN, IN THE WAY HE PLAYED ONE WOMAN OFF AGAINST ANOTHER--

[LAUGHTER]

>> IT CAN BE, BUT IT ALSO SHOWS THAT THIS IS VERY SUSPICIOUS BEHAVIOR, AND HE'S GIVING VARIOUS ACCOUNTS AS TO WHERE HE WAS WHEN HE WAS CONFRONTED WITH LAW ENFORCEMENT, HE SAID THAT HE WAS WORKING AND THAT HE DIDN'T KNOW PAULA AT ALL.

HE COMPLETELY DENIED EVER KNOWING HER.

HE DENIED-- OR, I'M SORRY, HE DENIED HAVING--

>> A SEXUAL RELATIONSHIP, BUT HE KNEW HER.

>> TO OTHER WITNESSES HE DENIED

KNOWING HER.

>> BUT, I MEAN, AGAIN, IF WE REALLY TALK ABOUT WHAT HIS REACTION WAS, SURE, SEARCH MY CAR.

SEARCH MY HOUSE.

I MEAN, YOU KNOW, THERE'S THAT OTHER EVIDENCE ABOUT HIM BEING NOT A NICE PERSON, RIGHT?

WE--

>> YES.

>>-- DON'T WANT TO CONVICT PEOPLE.

IN YOUR REMAINING TIME ON THE HEARST ISSUE, THIS IS TWO 7-5 JURY VOTE WITH NO PRIOR VIOLENT FELONY-- NO CRIMINAL HISTORY. WOULD YOU AGREE UNDER OUR PRECEDENT THAT THIS WOULD BE A REVERSAL FOR A NEW PENALTY PHASE?

>> UNDER YOUR CURRENT PRECEDENT, YES.

WE ACKNOWLEDGE YOUR CASES. HOWEVER, WE MAINTAIN THAT THE PRIOR-- OR THE CONTEMPORANEOUS CONVICTION SHOULD TAKE HIM OUTSIDE--

>> SO IN THIS CASE UNDER THAT THERE WOULD BE BECAUSE THERE WERE TWO MURDERS, HE-- HEARST WOULD NOT APPLY--

>> HEARST WOULD NOT APPLY IN THE ALTERNATIVE THAT THE HARMLESS ERROR ANALYSIS SHOULD STILL BE CONDUCTED ON THIS CASE, AND IT SHOULD BE APPLIED TO ALL THEIR CASES THAT ARE NOT JUST UNANIMOUS CASES.

>> AND HOW WOULD YOU IN THIS ONE ARGUE HARMLESS ERROR OR WITH 7-5 AND THE STATUTORY MITIGATION? HOW--

>> WELL, WE HAD--

>> THE JURY MUST HAVE BEEN TROUBLED ABOUT SOMETHING BECAUSE, YOU KNOW, TO GIVE A 7-5 FOR THE MURDER OF A DEFENSELESS LIT CHILD--

>> WE HAD-- OH, EXCUSE ME.

>> IS SORT OF--

>> WE HAD VERY STRONG AGGRAVATION IN THIS CASE AND VERY LITTLE MITIGATION OTHER THAN THE FACT THAT HE DID NOT HAVE A CRIMINAL HISTORY. THERE'S THE CONTEMPORANEOUS MURDER, THERE'S HAC, CCP, THERE'S THE FINANCIAL GAIN ASPECT THAT IT IS COMMITTED DURING THE COURSE OF A BURGLARY, AND THERE WAS VERY LITTLE MITIGATION OTHER THAN THE FACT THAT HE HAD NO, NO PRIORS, HE HAD SOME SUPPORTIVE FAMILY, HE PRESENTED MENTAL HEALTH TESTIMONY THAT WAS COMPLETELY REFUTED BY THE STATE.

>> BUT THOSE, YOU KNOW, CCP AND HAC AND ALL THOSE THINGS REQUIRE FACTUAL FINDINGS BY THE JURY, AND WE HAVE A 7-5 HERE. AND SO IT SEEMS TO ME THAT IF YOU'RE GOING TO BE SPECULATING, THEN SOME OF THEM DIDN'T THINK THAT THOSE AGGRAVATORS MAY BE APPLICABLE.

>> WELL, THE JURY WASN'T TOLD THAT THEIR RECOMMENDATION HAD TO BE UNANIMOUS.

SO IF WE LOOK AT WHAT A RATIONAL JURY WOULD DO BASED ON THE CIRCUMSTANCES, WE COULD FIND THAT THERE'S HARMLESS ERROR. BUT WE CERTAINLY ACKNOWLEDGE THIS COURT'S PRECEDENT, AND I WOULD LIKE TO JUST USE THE REMAINING, REMAINDER OF MY TIME TO FOCUS ON THE FACT THAT WE DID PRESENT COMPETENT, SUBSTANTIAL EVIDENCE OF THE FIRST-DEGREE MURDERS IN THIS CASE, AND THE EVIDENCE REFUTED THE DEFENDANT'S THEORY OF INNOCENCE.

WE MET OUR BURDEN BY PRESENTING EVIDENCE THAT EVERY SINGLE THEORY THAT HE THAT HAD, THE EVIDENCE WAS INCONSISTENT WITH THOSE THEORIES.

WE HAVE HIS MOTIVE, THE TIMINGS

WHICH IS VERY COMPELLING-- THE
TIMING WHICH IS VERY COMPELLING
IN THIS CASE.

THE GLOVE, IT'S AN AIR FORCE
GLOVE THAT ONLY HE HAD ACCESS TO
THAT THE DNA EXPERT--

>> YOU KEEP SAYING ONLY HE HAD
ACCESS TO.

SEEMS TO ME AT A MILITARY BASE,
LOTS OF PEOPLE HAVE ACCESS TO
VIRTUALLY EVERYTHING.

>> BUT NONE OF THEM WERE
INVOLVED THAT KNEW THESE--

>> WELL, GOOD.

THAT DOESN'T MEAN THAT ONLY HE
HAD ACCESS.

OTHER PEOPLE CAN HAVE THEM, AND
THEY CAN BE OTHER PLACES.

I DON'T UNDERSTAND HOW YOU MAKE
THAT ARGUMENT.

>> OTHER PEOPLE HAD ACCESS TO
THESE GLOVES, BUT WHEN WE LOOK
AT THE PEOPLE WHO KNOW THESE
WITNESSES WHO WOULD WANT TO
ELIMINATE A 15-MONTH-OLD CHILD?
WHEN WE'RE LOOKING AT THE
CONTEXT OF THESE CASES AND THE
PEOPLE ACCUSED OF DOING SO BY
THE DEFENDANT, ONLY HE WAS THE
ONE WHO HAD ACCESS TO THE
GLOVES.

ALL OF THE OTHER WITNESSES
DENIED EVER SEEING THE
GLOVE, THEY WEREN'T ABLE-- THIS
WASN'T A GLOVE THAT WAS
AVAILABLE TO THE GENERAL PUBLIC.
IT'S NOT SOMETHING THAT THEY
COULD HAVE PICKED UP ANYWHERE.
THE DEFENDANT WAS THE PERSON WHO
WAS IN THE AIR FORCE.

THIS WAS AN AIR FORCE GLOVE, AND
WE HAVE THE--

>> WHAT DO YOU SAY ABOUT WHETHER
HE COULD HAVE TAKEN THE GLOVE TO
HER HOUSEHOLD AT SOME TIME OTHER
THAN THE TIME OF THE CRIME?

>> WELL, THERE WERE VARIOUS
WITNESSES THAT FREQUENTED THE
HOUSE THAT SAID THEY HAD
NEBRASKA SEEN THE GLOVE--

>> ANYTHING ELSE?
BECAUSE I FIND THAT VERY
UNPERSUASIVE.

[LAUGHTER]

I MEAN, I'VE GOT GLOVES IN MY
HOUSE THAT NOBODY WOULD EVER SEE
BECAUSE AT THAT PARTICULAR TIME
THEY HAPPEN TO BE IN A DRAWER.
SO WHAT ELSE HAVE YOU GOT?

>> THAT WAS IT.

ALL THE WITNESSES HAD SAID THEY
HAD NEVER SEEN IT BEFORE--

>> SO FROM YOUR PERSPECTIVE,
THERE'S NO OTHER REASON THAT WE
WOULD ASSUME THAT HE COULD, IF
HE GOT-- IF THE GLOVE IS TIED
TO HIM, THAT IT ONLY COULD HAVE
BEEN PUT THERE AT THE TIME OF
THE CRIME.

>> YES.

HE WAS NOT AT THE HOUSE FOR MORE
THAN A YEAR.

THERE WERE PEOPLE ON THAT COUCH
ON JULY 4TH SITTING RIGHT WHERE
THE GLOVE WAS, AND THE GLOVE
WASN'T THERE.

SO FOR HIM TO HAVE LEFT IT THERE
OVER A YEAR BEFORE AND FOR IT TO
JUST SUDDENLY TURN UP ON THE
COUCH RIGHT BEFORE THE MURDERS
IS JUST, IT'S NOT REASONABLE.
AND WE-- THIS WAS EVIDENCE THAT
WE PRESENTED--

>> BUT THAT'S, THAT'S THE ONLY,
THE ONLY REASON.

I DON'T MEAN TO DENIGRATE IT,
BUT THAT'S YOUR REASON.

>> YES.

>> AND YOU'RE OUT OF TIME.

>> THANK YOU, YOUR HONORS.

>> THANK YOU.

>> I WOULD RELY ON THE REST OF
THE ARGUMENTS CONTAINED IN MY
BRIEF AND RESPECTFULLY REQUEST
THAT THIS COURT AFFIRM THE
CONVICTIONS IN THIS CASE.

THANK YOU.

>> THE CIRCUMSTANTIAL
EVIDENCE FOR IDENTITY IS
INSUFFICIENT, AND THE STATE--

IF THEY'RE RELYING ON MOTIVE AND OPPORTUNITY, THOSE ARE NOT ELEMENTS OF THE CASE.

THIS COURT IN BALLARD, HODGKINS, DAUSCH, THERE WAS MORE EVIDENCE IN THOSE CASES THAT WOULD BE CIRCUMSTANTIAL EVIDENCE TOWARD THE DEFENDANT, AND THOSE CASES WERE REVERSED.

THIS COURT HAS SAID THAT EVEN DEEP SUSPICION IS NOT ENOUGH IN A CIRCUMSTANTIAL CASE OF IDENTITY.

SO EVEN IF THERE WAS DEEP SUSPICION, THAT IS NOT ENOUGH. AND THE STATE HAS SAID THAT RALPH WRIGHT PRESENTED A CERTAIN HYPOTHESIS.

I DISPUTE THAT.

THE ONLY THING THAT WE PRESENTED WAS A CASE THAT SHOWED HOW SHODDY THE INVESTIGATION WAS, HOW MANY MORE PEOPLE COULD HAVE BEEN INVESTIGATED.

THEY NEVER LOOKED AT HER COMPUTER TO SEE WHO SHE WAS INVOLVED WITH.

NO ONE HAD SEEN HER FROM JULY 4TH WHEN SHE WAS DROPPED OFF BY HER OR DAUGHTER UNTIL THE BODIES WERE FOUND.

AND NOBODY KNOWS WHO SHE WAS INVOLVED WITH AT THAT TIME.

THERE WAS A LOT OF-- THERE WAS TESTIMONY ABOUT HER GETTING WHITE SUPREMACIST E-MAILS THAT WAS NOT TOLD TO THE JURY THAT WAS EXCLUDED.

THERE WAS TESTIMONY ABOUT--

>> WHEN WERE THOSE E-MAILS--

THIS IS, THE DEFENSE, AFRICAN-AMERICAN AND THE VICTIM IS WHITE.

>> RIGHT.

>> WHEN WERE THOSE E-MAILS SENT TO HER?

>> I THINK THEY WERE SENT ON THE 6TH.

ON THE DAY THAT SHE DIED.

SO THESE WERE--

>> AND THOSE WERE THREATENING
E-MAILS?

>> YES.

THESE WERE FOUND ON HER COMPUTER
WHICH WAS NOT LOOKED AT UNTIL
THE TRIAL IN 2013.

AND THAT WAS WHEN THERE WERE
THOUSANDS OF E-MAILS IN THIS
GMAIL ACCOUNT, AND THAT WAS
SOMETHING THAT ONE OF HER
COWORKERS HAD PULLED UP, AND THE
STATE PRINTED OUT THESE E-MAILS,
AND IT WAS IN THE MIDDLE OF
TRIAL, AND THEY WEREN'T ALL
LOOKED AT.

BUT THERE WAS A SEARCH DONE BY
THE DEFENSE FOR A CERTAIN WORD,
AND THIS CAME UP, AND THEY WERE
JUST POINTING OUT THAT SHE HAD
BEEN GETTING THREATENING
E-MAILS--

>> BUT THAT WAS IN THE
INTRODUCED INTO EVIDENCE, YOU
SAID, OR IT WAS?

>> THE JUDGE EXCLUDED IT, SAYING
THAT WE'RE NOT GOING TO GO INTO
THAT.

SO THESE WERE PROFFERS OF A
WHITE SUPREMACIST E-MAIL.

>> YOU WEREN'T GOING TO GO INTO
IT BECAUSE-- WHAT WAS THE
JUDGE'S-- DID YOU RAISE THAT AS
A POINT ON APPEAL?

>> YES.

THE JUDGE DIDN'T WANT TO GO DOWN
THAT RABBIT TRAIL.

THIS IS PART OF THE THINGS THAT
WERE EXCLUDED, AND THERE'S AN
ISSUE IN MY BRIEF ON DIFFERENT
THINGS THAT WERE EXCLUDED.

SO THE LIST OF--

>> I ASK YOU ABOUT THE DNA
EVIDENCE?

>> OKAY.

>> I VIEWING THE EVIDENCE IN THE
LIGHT MOST FAVORABLE TO THE
STATE, WHAT DOES THE DNA
EVIDENCE ON OR IN THE GLOVE E--
SHOW ABOUT ITS CONNECTION WITH
THE DEFENDANT?

>> THE DNA IN THE GLOVE, THERE'S ONE SAMPLE, OKAY--

>> I'M ASKING IN THE LIGHT MOST FAVORABLE TO THE STATE, JUST CUT TO THAT.

>> OKAY.

SO IN THE FIRST SAMPLE THAT WAS TAKEN FROM FDLE, THERE WAS A MIXTURE OF THREE OR MORE INDIVIDUALS, AND THE FREQUENCY STATISTIC OF UNRELATED INDIVIDUALS IS 1 IN 34, AND HE CANNOT BE EXCLUDED AS A CONTRIBUTOR BASED ON THOSE STATISTICS.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.

>> OKAY.

>> THE COURT'S IN RECESS UNTIL TOMORROW AT 9:00.