

>> WHENEVER YOU'RE READY.
SOMETIME TODAY WOULD BE A GOOD
IDEA.
>> [INAUDIBLE].
>> SORRY FOR THE DELAY.
GOOD MORNING AND MAY IT PLEASE
THE COURT.
MY NAME IS ANDREW STANTON.
I'M A PUBLIC DEFENDER AND I'M
HERE ON RAFAEL ANDRES THE
APPELLANT IN THIS CASE.
I WOULD LIKE TO ADDRESS THE
ERRORS IN CLOSING ARGUMENT AND
BURDEN SHIFTING ARGUMENTS.
THE STATES BEYOND A REASONABLE
DOUBT IS AT THE COURT OF OUR
JUSTICE SYSTEM.
THEY HAD NOT PRESENTED EVIDENCE
IN HIS OWN DEFENSE IS A KEY PART
OF THAT.
IN THIS CASE THE STATE ARGUED
THAT THERE IS NO EVIDENCE THAT
THIS DEFENDANT IS NOT GUILTY, NO
EVIDENCE AT ALL.
>> DIDN'T AT THE FIRST
STATEMENT, WHOSE WHAT IS ON THE
GUILTY SIDE?
NOTHING.
THE JUDGE SUSTAINED THE
OBJECTION, CORRECT?
>> YES.
>> AND TOLD, AND ASKED FOR A
CURATIVE INSTRUCTION.
SO--
>> COURT SAID TO DISREGARD.
>> IT IS SECOND ONE.
AFTER THEY'RE TOLD.
THEN THE, THEY, TRIAL COURT THEN
OVERRULED THE OBJECTION, THAT
THERE IS NO EVIDENCE AT ALL.
>> THAT'S RIGHT.
>> AND SO--
>> IMMEDIATELY AFTER, BEING TOLD
NOT TO DO IT, THE STATE WENT
BACK INTO THE SAME ARGUMENT.
DEFENSE OBJECTED AGAIN AND
AGAIN.
AS AN ASIDE, YOU WILL SEE AS THE
COURT REVIEWS OTHER ISSUES IN
THIS CASE, THIS WAS A FAMILIAR

PATTERN, WHEN THE JUDGE
SUSTAINED AN OBJECTION.
THE SAME THING WOULD BE DONE
AGAIN.

>> THIS IS ONE OF THE MOST
OBJECTED TO TRIALS ON YOUR
PUBLIC DEFENDER LAWYER, QUITE A
IMPRESSIVE SHOWING OF
OBJECTIONS.

I DON'T KNOW HOW THAT,
UNFORTUNATELY AT SOME POINT THAT
CAN WORK BUT GO AHEAD.

>> THE COURT IS RIGHT, RISK OF
ALIENATING JURY.

WE HAD TO PRESERVE THE RECORD
AND WE DID THE BEST WE COULD.
THE STATE ALSO ARGUED THAT THERE
WAS, ARGUED, WHERE IS THE
EVIDENCE, WHERE IS THE EVIDENCE,
WHERE IS EVIDENCE BEFORE YOU?
THESE ARGUMENTS AND OTHERS IN
THE SAME VEIN WERE PRESERVED BY
OBJECTION AND THEY FLIPPED THE
SYSTEM OF JUSTICE ON ITS HEAD
AND IT IS IMPORTANT TO
UNDERSTAND THE CONTEXT IN WHICH
THESE OBJECTIONS WERE MADE.

THE STATE SAYS IT IS FAIR REPLY.
I DON'T THINK IT IS POSSIBLE TO
TELL THE JURY THAT THE DEFENDANT
HASN'T PROVED INNOCENCE CAN BE A
FAIR REPLY TO ANYTHING BUT LET'S
LOOK WHAT WAS SAID.

WHEN THE STATE CHANTED, WHERE IS
THE EVIDENCE, IT HAD JUST GOTTEN
DONE EXPLAINING OR MISEXPLAINING
WHAT FIRST-DEGREE MURDER WAS AND
PREMEDITATION.

AND THEN IT MOVED ON AND SAID,
WELL, INNOCENT PEOPLE, REFERRING
TO MR. RUIZ, THE DEFENSE WAS
THAT MR. RUIZ MUST HAVE BEEN THE
PERSON THAT DID THIS, INNOCENT
PEOPLE DON'T NEED ALIBIS AND
WHERE IS THE EVIDENCE, WHERE IS
THE EVIDENCE AND WHERE IS THE
EVIDENCE?

>> WHAT PAGE ON CLOSING ARGUMENT
WAS THAT?

>> I'M SORRY.

>> WHAT PAGE OF THE RECORD WOULD THAT BE?

>> 6563 TO 64.

AND, JUST TO FINISH THAT REMARK, STATE SAYS, ALL KINDS OF POLICE COMING IN.

YEAH.

THE STATE HAD ALL KINDS OF POLICE COMING IN TO TESTIFY BUT WHERE WAS THE EVIDENCE, WHERE WAS THE EVIDENCE, WHERE WAS THE EVIDENCE?

MR. ANDRES WAS NOT GUILTY.

THE CONTEXT THAT THERE IS NO EVIDENCE THAT THE DEFENDANT IS NOT GUILTY, NO EVIDENCE AT ALL, THAT CAME UP.

THAT STATE CAME UP, NOT INN RESPONSE TO ANYTHING-- I WANT TO TALK TO BUT THE SCALES OF JUSTICE.

AND IT PRESENTED THIS.

I DON'T KNOW IF THE FULL COURT CAN SEE IT.

>> CAN I SEE FROM THIS SIDE?

>> AND THEN, HAVING PRESENTED SCALES OF JUSTICE THAT, IS THE CONTEXT THAT THERE IS NO EVIDENCE THAT THE DEFENDANT IS NOT GUILTY, NO EVIDENCE AT ALL. THE SUSTAINED OBJECTION GIVES EVEN GREATER CONTEXT BECAUSE THE STATE SAID WHAT IS ON THE NOT GUILTY SIDE?

NOTHING.

AND THEN SAYS, THERE IS NO EVIDENCE THAT THE DEFENDANT IS GUILTY, NO EVIDENCE AT ALL. UNLESS THERE BE ANY DOUBT THAT THE STATE MEANT WHAT IT SAID, THE STATE AT THE MOTION FOR MISTRIAL WHICH WAS MADE, AS TO THE ONE SUSTAINED OBJECTION, SAID THAT, I--

>> AS I RECALL, DURING THE COURSE OF THIS, THERE IS NO EVIDENCE, WASN'T THERE, WASN'T THE STATE ACTUALLY TALKING ABOUT YOUR DEFENDANT SAID HIS CAR WAS STOLEN OR SOMETHING.

HE WAS AT, WHAT DO YOU CALL IT?

>> MICCOSUKEE--

>> THE CASINO.

>> SORRY.

>> HE SAYS HIS CAR WAS STOLEN,
AND YET THE STATE AS I READ
THEIR ARGUMENT WAS SAYING, WELL,
HE SAID HIS CAR WAS STOLEN BUT
THERE WAS NEVER ANY POLICE
REPORT MADE OF THIS STOLEN CAR.
IN THAT CONTEXT THEY WERE
TALKING ABOUT, WHERE IS THE
EVIDENCE THAT THIS CAR WAS
STOLEN, AND THAT KIND OF THING.
ISN'T THAT WHAT WAS GOING ON
HERE?

>> NO, YOUR HONOR.

THERE WAS ONE REMARK IN THAT
VEIN.

THERE IS A REASON WHY THAT ISN'T
FAIR RESPONSE EITHER BECAUSE THE
STATE SUCCESSFULLY OBJECTED TO
THE DEFENSE MAKING ARGUMENT THAT
THESE CIRCUMSTANCES INDICATED
THAT THE VAN HAD BEEN STOLEN,
AND, AS I WAS POINTING OUT, TWO
OTHER REMARKS, SOME OF THE
OTHERS WERE NOT RELATING TO THE
CAR.

THE CHANT OF WHERE'S THE
EVIDENCE, CAME BEFORE THE STATE
STARTED TALKING ABOUT THE CAR.

>> LET ME ASK THE QUESTION ABOUT
THE SCALES OF JUSTICE AND THE
BURDEN OF PROOF.

I SEEM TO RECALL THROUGHOUT MY
MANY YEARS ON THE TRIAL COURT
TRYING CASES THAT ONE OF THE BIG
EXAMPLES THAT WERE USED BY
DEFENSE AND PROSECUTORS DURING
VOIR DIRE IS THE SCALES OF
JUSTICE EXAMPLE.

AND THEY BASICALLY, IN MAKING
THE PRESENTATION, THEY COMPARE
THE BURDEN OF PROOF IN CIVIL
CASES WITH THE CRIMINAL CASES,
AND IN CIVIL CASES THEY'RE TOLD,
YOU KNOW, THE SCALES OF JUSTICE
JUST NEED TO BE TILTED AT 1%,
WITH A FEATHER ON ONE SIDE I

HEARD A LAWYER SAY, THAT'S WHAT WE HAVE TO DO IN A CIVIL CASE IN A CRIMINAL CASE, NOT ALL THE WAY DOWN BUT PRETTY FAR DOWN ON BEYOND A REASONABLE DOUBT. USING THAT WHAT IS WRONG WITH THE PROSECUTOR DURING CLOSING ARGUMENT USING THAT SAME EXAMPLE?

SCALES OF JUSTICE, I DO HAVE A THE BURDEN OF PROOF.

I HAVE A HUGE BURDEN OF PROOF BUT DON'T NEED A PERFECT CASE. HERE IS THE BURDEN OF PROOF AND HERE'S HOW I MEANT IT.

THERE WAS BASICALLY DNA, I PROVED THERE WAS THIS OR THAT. SHOWING NOTHING ON THE DEFENSE SIDE.

IS THERE A PROBLEM WITH?

>> THERE IS BECAUSE IT IS NOT A QUESTION OF WEIGHING THE TWO SIDES.

IT IS A VERY RISKY EXAMPLE BECAUSE YOU ARE IMPLYING THERE HAS TO BE SOMETHING TO WEIGH AGAINST THE STATE'S CASE NOT TO BE PROOF THE UNREASONABLE DOUBT BECAUSE IF THERE'S NOTHING ON THIS SIDE, THE STATE SAYS, HAS TO BE GUILTY.

FOR THAT REASON IT IS INAPPROPRIATE AND PARTICULARLY INAPPROPRIATE WITH THE STATE SAYING THERE IS NO EVIDENCE THE DEFENDANT IS NOT GUILTY.

THIS JURY WAS TOLD TO GO BACK AND CONSIDER THIS CASE IN THE LIGHT OF THE FACT THE DEFENDANT DIDN'T PUT ANY EVIDENCE.

>> LET ME GO INTO SOMETHING ABOUT THE CLOSING ARGUMENT IN THIS CASE.

THERE WAS HIS DNA FOUND ON A BLOODIED RAG IN THE VICTIM'S HOME, CORRECT?

>> YES.

>> HE WAS SEEN WITH THE RED CAN WITHIN MINUTES OF THIS MURDER. IF THIS ARGUMENT WOULD HAVE BEEN

PROPER UNQUESTIONABLY, LOOK AT THE EVIDENCE WE PRODUCED TO SHOW HE IS GUILTY.

THERE IS NOTHING WRONG WITH THAT.

>> THERE IS NOTHING WITH THAT.

>> WHEN SHE IS SAYING IS LIKE INNOCENT PEOPLE DON'T NEED ALIBIS, WHERE IS THERE EVIDENCE, THAT IS THE PROBLEM.

HAVING THIS, TO HEAR ALL THE FACTS WE HAVE PROVEN.

>> NOTHING WRONG WITH TELLING THE FACT THEY APPROVED.

I EXPECT THEM TO DO THAT.

I DON'T EXPECT THEM TO TELL THE JURY THE DEFENSE HAS TO PROVE SOMETHING.

>> JUST TO FOLLOW UP, ISN'T THAT WHAT THAT SIDE IS?

THE EVIDENCE THAT THE STATE HAS PRODUCED TO SHOW THAT THE DEFENDANT COMMITTED THIS CRIME.

I CAN'T SEE FROM HERE BUT I WOULD ASSUME IT WOULD HAVE THE DNA EVIDENCE, THE DEFENDANT'S USE OF DEBIT CARDS, THE WITNESS WHO SAID THEY SAW THE DEFENDANT WHO WOULD HAVE THE RED CONTAINER, WE ASSUME THE GASOLINE IN IT.

THOSE THINGS WOULD BE WHAT WOULD BE ON THAT SIDE.

>> WHERE IS THE EVIDENCE?

>> THAT IS WHERE IT TIPS OVER AND THE JUDGE FIRST SUSTAINED IT AND RECOGNIZING THE ERROR.

YOU HAVE RAISED A NUMBER OF SUBSTANTIVE POINTS AND I ASSUME YOU WILL NOT STAY WITH THE PENALTY PHASE.

>> I STAND ON MY BRIEF.

>> THE RICHARDSON ISSUE.

MY QUESTION THERE IS IS THERE EVIDENCE, CLEARLY IN MY VIEW THIS MAN IN HIS DEPOSITION FIVE YEARS BEFORE HAD GIVEN A CLEAR ANSWER NO MATTER WHAT THE PROSECUTOR SAID THAT HE WAS IN THE VICINITY THE DAY OF THE

SHOOTING, THE DAY OF THE MURDER.
THE DEPOSITION WAS 5 YEARS
BEFORE.

THE STATE KNEW BEFORE THIS
WITNESS TOOK THE STAND THAT HE
WAS NOT GOING TO SAY HE WAS IN
THE VICINITY.

>> HE SAID AS MUCH HIMSELF, TOLD
THE STATE THAT.

>> DO WE KNOW WHEN IT WAS
CONVEYED?

YOU HAVE A WITNESS READ A
DEPOSITION AND SEE ERRORS THAT
ARE CORRECTED AND THE OTHER SIDE
KNOWS THEY ARE CORRECTED SO YOU
ARE NOT LEAD TO THEY WILL SAY
SOMETHING DIFFERENT?

DO WE KNOW FROM THIS RECORD WHEN
THE STATE LEARNED, NOT ABOUT THE
MOTHER'S NAME BUT WHEN HE WAS
GOING TO SAY I WASN'T IN THE
VICINITY THAT DAY, I WAS
CONFUSED.

>> YOU CAN'T ATTACH A DATE TO IT
BUT IT WAS CLOSE TO TRIAL
BECAUSE HE SAYS HE CAME IN TO
TALK TO THE PROSECUTOR, WENT
OVER HIS TESTIMONY.

>> MY ISSUE GOES TO A FORM OF
HARMLESSNESS.

THIS SHOULD HAVE BEEN DISCLOSED
WHETHER IT IS UNDER RICHARDSON
OR NOT, THE WITNESS SAYS
SOMETHING DIFFERENT.

PROCEDURAL PREJUDICE, THEIR
WHOLE DEFENSE WAS GOING TO BE
THIS GUY OR SOMEONE ELSE AND GOT
THIS GUY ON THE STAND ON
CROSS-EXAMINATION, THE DEFENSE
LAWYER DID A GOOD JOB ASKING THE
QUESTION AND WAS SURPRISED,
WHICH IS MORE EFFECTIVE THAN
KNOWING HE WILL CHANGE HIS
TESTIMONY AND THEY IMPEACH HIM
WITH -- SHE HAD IT RIGHT THERE,
WHERE IS, IN THIS CASE, THE
PROCEDURAL PREJUDICE IF THEY HAD
KNOWN THE DAY BEFORE THAT HE WAS
GOING TO SAY SOMETHING
DIFFERENT, DIDN'T YOU SAY IT AND

CHANGE YOUR TESTIMONY THE DAY BEFORE, THAT IS MY QUESTION. IF THE JUDGE HAD DONE THE RICHARDSON HEARING, ANY IN -- ANYTHING ELSE THAT COULD BE DONE?

>> NO INDICATION BECAUSE THE COURT DID NOT FIND THE DISCOVERY VIOLATION.

>> NOT LIKE YOU WENT FROM SOMEONE BEING NOT AN EYEWITNESS TO BEING AN EYEWITNESS.

HE WAS BEING TARGETED, MIGHT HAVE BEEN THE PERPETRATOR AND HAD THEM 5 YEARS BEFORE SAYING HE WAS IN THE VICINITY. NOW THEY WERE ABLE TO IMPEACH HIM.

>> IMPEACHMENT ISN'T AN ADMISSION THAT HE WAS RIGHT THERE, LESS THAN A MILE AWAY.

>> HE SAID HE WAS GOING TO SAY UNDER OATH I WASN'T THERE.

>> THE DEFENSE CAME TO THIS TRIAL KNOWING THIS MAN HAD TO ADMIT HE WAS LESS THAN A MILE AWAY WHEN THE CRIME HAPPENED. AND LEARNED SUDDENLY AND WITHOUT AN OPPORTUNITY TO PREPARE THE THAT WAS NOT GOING TO HAPPEN. NOT TRY TO TESTIFY WHAT THE DEFENSE WOULD HAVE DONE, THE DEFENSE WOULD HAVE HAD AN OPPORTUNITY HAD THE COURT FOUND DISCOVERY VIOLATION WOULD HAVE BEEN THE STATE BURDEN TO ESTABLISH NO PROCEDURAL PREJUDICE BUT THIS COURT CAN IMAGINE OTHER AVENUES OF INVESTIGATION THE DEFENSE MIGHT HAVE PURSUED AT THAT POINT. IF I CAN JUST ADDRESS THE OTHER HALF, ANOTHER PART OF THE IMPROPER ARGUMENTS HERE AND ADDRESS THE HARM.

>> YOU DON'T WANT TO GO -- I AM NOT DEBATING, YOU CAN TALK ABOUT CLOSING ARGUMENT, I AM JUST TRYING TO SEE ON YOUR SUBSTANTIVE POINTS WHICH SEEM

LIKE NOT ALLOWING
CROSS-EXAMINATION ON ONE
QUESTION, THESE HYPOTHETICALS TO
THE MEDICAL EXAMINER, PROSECUTOR
WAS MAKING HER CLOSING ARGUMENT,
DO YOU WANT TO JUST REST ON YOUR
BRIEF ON THOSE?

>> I WOULD LOVE TO TALK ABOUT
EACH AND EVERY ONE OF THEM BUT I
WILL NOT HAVE TIME HERE AND I
WANT TO ADDRESS ANYTHING THE
COURT IS INTERESTED IN.

>> THAT WAS THE WORST OF THE
CLOSING ARGUMENT.
WHAT ELSE?

>> THERE WAS THE DENIGRATION OF
THE DEFENSE IN PARTICULAR.
IN WHICH -- PARDON ME.
THE STATE REPEATEDLY MADE
ARGUMENTS THAT HAVE BEEN CLEARLY
WRONG FOR YEARS.

DON'T GET YOURSELF CAUGHT UP IN
A WAY TO DISTRACT YOU.

YOU DON'T HAVE TO LOOK ANY
FURTHER BACK THAN CARDONA.

>> CARDONA WAS A CASE THAT WE
REVERSED CLOSING ARGUMENTS
BECAUSE JUSTICE FOR LUCERO
ARGUMENT WAS SO OVERWHELMING AND
PERVASIVE.

THIS CASE IN TERMS OF THE
CLOSING ARGUMENT, YOU PICK OUT
CERTAIN PARTS AND I AM NOT
SAYING EVERYTHING WAS PROPER,
BUT I DON'T WANT TO GO BACK AND
SAY HARMLESS ERROR BUT AT SOME
POINT IF THERE IS NOTHING ELSE
SUBSTANTIVELY WRONG IN THE CASE,
THAT IS WHY I WANTED TO SEE WHAT
YOU THOUGHT YOUR STRONGEST POINT
WAS IN THE GUILT PHASE THAT
WOULD ALSO YOU LOOK AT
CUMULATIVELY.

THERE IS DENIGRATION, SARCASM.
WHAT ELSE IN CLOSING ARGUMENTS?

>> THE JURY WAS MEAN AND
INSULTING TO SUGGEST HE WAS THE
GUILTY PARTY WHICH WAS THE
DEFENSE.

>> I DON'T -- IN A CASE LIKE

THIS, THE DNA IS THERE, IN THE VICINITY, IT IS LIKE WHY GO AND RISK A PROBLEM IN CLOSING ARGUMENT.

I DON'T UNDERSTAND WHY PROSECUTORS DO THAT.

SAYING IT IS INSULTING, IS THAT THE INFLAMMATORY THING THAT IS GOING TO BE THAT THE JURY IS GOING TO LOOK AT AND SAY IT IS AN INSULTING ARGUMENT?

>> WHEN BOUND UP TOGETHER YES.

>> YOU WANT US TO LOOK AT THE CLOSING ARGUMENT AS A WHOLE AND SEE IF WE THINK AS A WHOLE THEY KEPT CROSSING THE LINE.

>> IN CONNECTION WITH OTHER ERRORS IN THIS CASE, I WOULD SUBMIT THE REASON PROSECUTORS KEEP MAKING THESE ARGUMENTS IS THEY ARE ALMOST ALWAYS FOUND TO BE HARMLESS ERROR.

IT IS THE RARE CASE IT IS THIS THOROUGHLY PRESERVED.

THE ERRORS IN THIS CASE WERE TIED UP NEATLY TO DO AWAY WITH DEFENSE IN THIS CASE.

FOR INSTANCE THE HEARSAY.

HERE IS THE DEFENSE, A DISCOVERY VIOLATION GETS RID OF ONE OF YOUR STRONGEST POINTS.

WHAT ABOUT THE POLICE INVESTIGATION?

THE POLICE FIGURED OUT HE WASN'T A SUSPECT.

THE DETECTIVE TALKED TO HIM, THE COURT DID NOT ALLOW HIM TO GIVE HIS OWN OPINION BUT LET IT IN REPEATEDLY THROUGH THE OTHER DETECTIVES.

WHY DIDN'T YOU SEEK HIS PHONE RECORDS OR DRIVE HIS ROUTE?

HE WASN'T A SUSPECT AFTER DETECTIVE SAFARI SPOKE TO HIM.

I SPOKE TO THE PEOPLE AT THE MILK COMPANY AND FROM THAT I KNEW HE WASN'T A SUSPECT.

THAT IS OBVIOUSLY DESIGNED TO KNOCK OVER THE DEFENSE --

>> THE OBJECTION WAS HEARSAY.

DETECTIVES THAT WERE SAYING THIS
DIDN'T THEMSELVES DO THE
INVESTIGATION.

>> IT WAS HEARSAY BECAUSE WE
DON'T KNOW WHAT THIS INFORMATION
IS BUT THEY RELIED ON SOME
INFORMATION TO MAKE THIS
DETERMINATION.

>> IF THEY SAID WE DROVE THE
ROOT OURSELVES, AND WE CAME UP
THAT HE COULDN'T HAVE BEEN IN
THE VICINITY, WITH THAT HAVE
BEEN APPROPRIATE?

>> THAT WOULD BE EVIDENCE ON THE
STATESIDE THAT THEY DIDN'T HAVE
TO DO THAT.

>> WE DIDN'T DO IT BECAUSE WE
DIDN'T THINK HE WAS A SUSPECT.

>> THE BLACK BOX OF THE POLICE
DEPARTMENT, WE KNOW THE JURORS
WANT TO TRUST POLICE AS WE ALL
DO.

WE NEVER GOT TO SAY TO THE JURY
THERE IS A PROBLEM WITH THAT
EVIDENCE.

>> THE JUDGE SAYS IT WASN'T
HEARSAY BECAUSE THEY WERE SAYING
WHAT THEY DID IN THE
INVESTIGATION.

WHERE DO YOU CROSS THE LINE
BETWEEN IT IS HEARSAY BECAUSE
THE REASON YOU ELIMINATE HIM AS
A SUSPECT IS SOME OTHER
DETECTIVE TALKED TO SOMEBODY WHO
IS NOT UNDER CROSS-EXAMINATION?

>> BAIRD SAYS THERE IS NO COURSE
OF THE INVESTIGATION EXCEPTION
BUT IT ALLOWS THE POSSIBILITY IF
YOU NEED TO EXPLAIN WHAT THE
POLICE DID NEXT -- IN THE BRIEF.
THE COURT HELD THEIR IS NO
EXCEPTION JUST BECAUSE THE STATE
WANTS TO SHOW NATURAL COURSE OF
THE INVESTIGATION.

IT IS NOT A RELEVANT ISSUE.

>> THAT WASN'T THE OBJECTION.

>> NO.

BAIRD WAS ADDRESSING WHETHER
THAT HEARSAY WAS ADMISSIBLE OR
HEARSAY AT ALL AND THE COURT

SAID YES IT IS AND NO YOU CAN'T.
THIS WAS NOT EVEN SHOWING THE
COURSE OF THE INVESTIGATION.
IT WAS SHOWING WHY THEY DIDN'T
CONDUCT AN INVESTIGATION.

>> I AM STRUGGLING WHY DIMINISH
IT IS HEARSAY, HEARSAY IS
NORMALLY AN OUT-OF-COURT
STATEMENT OFF OF THE TRUTH OF
THE MATTER.

WHAT WAS THE OUT-OF-COURT
STATEMENT?

>> THIS IS INFERENTIAL HEARSAY,
STILL HEARSAY.

ONE CAN INFER THE FACT, ALREADY
TALKED TO RUI'S AND AFTER THAT,
NO LONGER A SUSPECT, THEN WE
KNOW THERE MUST HAVE BEEN
SOMETHING, EVIDENCE THAT HE
ISN'T GUILTY, WE KNOW SOMETHING
WAS SAID IN THAT TALK AND
SUFFICIENT FOR DETECTIVES TO SAY
NO PROBLEM.

>> IF YOU HAVE AN INSTANCE WHERE
THERE IS INVESTIGATION BY AN
OFFICER AND SOME, THE SECOND
OFFICER ON THE STAND, AND I HAVE
BEEN LENT TO MISTER RUIZ'S
HOUSE, THAT IS HEARSAY, DOING IT
BASED ON WHAT THE OTHER OFFICER
SAID OR DID.

>> DEPENDS ON THE CIRCUMSTANCE,
I CAN'T REMEMBER THE CASE.

>> OFFICER DOES SOME
INVESTIGATION, THE FIRST
OFFICER, THE SECOND OFFICER
KNOWS THE RESULT OF THE
INVESTIGATION AND GOES A STEP
FURTHER AND DOES SOMETHING AND
TESTIFIES TO THAT EFFECT.

>> UNLESS THE STATE INTRODUCED
WHAT THE FIRST OFFICER DID.

>> TALK TO THE OFFICER TO KNOW
WHAT HE DID.

>> CAN'T REMEMBER THE NAME.

>> THE DEFENSE, THEY NEVER
CONSIDER HIM A SUSPECT, DIDN'T
DRIVE THE ROOT, THEY WERE SAYING
THAT IN THE OPENING.

ON CROSS-EXAMINATION, THEY ASKED

THE POLICE OFFICER, NEVER DID THIS, AT THAT POINT WOULD IT BE DIFFERENT?

YOU DIDN'T DO THIS WITH HIM, WE DIDN'T CONSIDER HIM A SUSPECT. AT SOME POINT YOU OPEN THE DOOR ON THAT LINE OF QUESTIONING.

>> OPENING STATEMENT ISN'T EVIDENCE.

>> ON CROSS-EXAMINATION --

>> IT DOES NOT AUTHORIZE THE ADMISSION OF HEARSAY.

THEY COULD HAVE SAID NO I DIDN'T DO IT AND IF THEY WANTED TO SHOW WHY THROUGH ADMISSIBLE EVIDENCE THEY COULD HAVE BUT INSTEAD THEY USED HEARSAY, INFERENTIAL HEARSAY THROUGH THIS BLACK BOX. I AM INTO MY REBUTTAL AND I WOULD LIKE TO ADDRESS FURTHER ARGUMENTS.

>> CAN AN INVESTIGATOR -- I WOULD THINK AN INVESTIGATOR COULD TESTIFY WHO THEY CONSIDER A TARGET OR A SUSPECT BASED ON HIS PERSONAL KNOWLEDGE, CORRECT? THAT IS NOT HEARSAY.

>> DEPENDS WHAT THAT PERSONAL KNOWLEDGE IS.

>> I LOOKED AT THIS NOT HEARSAY, I LOOKED AT THIS NOT HEARSAY, OR I JUST DIDN'T CONSIDER HIM A SUSPECT, YOUR CLIENT FOR THE CRIME.

>> A DETECTIVE CAN TESTIFY BASED ON HIS PERSONAL KNOWLEDGE AS TO WHAT THOSE WORKING WITH HIM DID, DETECTIVE DID THIS COME OF IT IS NOT HEARSAY.

>> NOT IF HE HAS PERSONAL KNOWLEDGE AS TO WHAT THEY DID BUT WHETHER OR NOT BASED ON WHAT WAS TOLD --

>> THE TESTIMONY, BASED ON WHAT WAS SAID, DETERMINE HE WAS NOT A SUSPECT, TESTIMONY WAS TWO THINGS THAT ARE NOT HEARSAY, THE DETECTIVE DID THIS, HE WASN'T A SUSPECT, I DON'T SEE HOW -- YOU ARE MAKING AN INFERENTIAL LINK,

BECAUSE OF WHAT WAS SAID IN THE TESTIMONY AND AN INFERENTIAL LINK.

>> FOR INSTANCE DID YOU SEND HIM TO INTERVIEW LOUISE?

YES.

THAT INTERVIEW, WAS HE A SUSPECT?

WE KNOW SOMETHING HAPPENED.

>> NO WE DON'T.

CLEARLY THE POINT BEING MADE IS AFTER THE INTERVIEW, THAT INTERVIEW COULD CONCEIVABLY HAVE NO CONNECTION WITH WHERE THIS WENT ON.

DID YOU SPEAK TO HIM PERSONALLY?

WHO DID YOU ASSIGN THAT TO?

ANY TIME DURING YOUR INVESTIGATION, IS IT HE A SUSPECT?

SUSPECT OVERRULED.

>> HE WAS NEVER A SUSPECT.

>> BECAUSE OF THE CONVERSATION WITH RUIZ.

READING A COUPLE OF THE EXCHANGES IF THE COURT LOOKS BACK AT IT THERE IS NO INFERENCE THAT CAN BE MADE OTHER THAN THE FACT THAT HE CHECKED OUT RUI'S AND THAT IS IT.

THAT WAS GOOD ENOUGH.

WHATEVER HAPPENED IN THERE, WE DON'T KNOW BUT WE KNOW THERE WAS INVESTIGATION BEING DONE.

I POINT Z COURT THAT --

>> WAS ARE YOU ASKING US TO DO? HE IS ENTITLED TO A NEW TRIAL BASED ON THAT.

>> ON THE TOTALITY OF THE ARGUMENT IN THIS CASE --

>> THAT PARTICULAR ARGUMENT, IF WE AGREE WITH YOU AND NOTHING ELSE, YOU ARE SAYING YOUR DEFENDANT IS ENTITLED TO A NEW TRIAL.

>> YES, EXACTLY TO THE HEART OF THE DEFENSE, AS DID THE STATE WAS ABLE TO CONSTRUCT THESE ERRORS, YOU CAN UNDERSTAND WHY, MAKING SURE NOBODY COULD BELIEVE

RUI'S DID IT.

>> YOU ARE SAYING THE POLICE SAYING THIS DEFENDANT, WAS NOT A SUSPECT, IS ENTITLED YOUR DEFENDANT TO A NEW TRIAL.

>> YES.

>> YOU GOT TO:43.

>> I WOULD LIKE TO ADDRESS THE HARM ISSUES.

>> IT IS YOUR TIME.

>> GOOD MORNING, CHIEF JUSTICE, MAY IT PLEASE THE COURT, MY NAME IS MELISSA ROCA, ASSISTANT ATTORNEY GENERAL FOR THE STATE OF FLORIDA.

>> THE ARGUMENT HERE AS FAR AS IMPROPER CLOSING ARGUMENTS, HERE IS WHAT THE PROSECUTOR SAYS. INNOCENT PEOPLE DON'T NEED OUR BIAS AND WHERE IS THE EVIDENCE. WHERE IS THE EVIDENCE BEFORE YOU?

ALL KINDS OF POLICE PEOPLE COMING IN.

THEN LATER ON A FEW SENTENCES DOWN THERE IS NO EVIDENCE TO THE CONTRARY.

WE SEE THAT A LOT HERE BUT WE SEE IT MOSTLY IN THESE HOMICIDE CASES WHERE LAWYERS DOWN BELOW HAVE GOT TO KNOW THAT THESE CASES ARE GOING TO BE LOOKED AT CAREFULLY BY THIS COURT, 11TH CIRCUIT COURT OF APPEALS AND UNITED STATES SUPREME COURT. ONE WOULD THINK, ONE WOULD THINK, WE DON'T SEE -- IS NOT RAISED IN OTHER CASES, I SEE THESE ALL THE TIME IN THESE DEATH PENALTY CASES.

WHAT IS IT?

WE HAVE WRITTEN OPINIONS, WE HAVE ASKED YOU NOT TO DO THAT, WE HAVE REVERSED PERFECTLY GOOD CONVICTIONS BASED ON THIS KIND OF THING, YET IT KEEPS HAPPENING.

WHAT IS IT WE NEED TO DO?

>> I IN CONTEXT, TO MAKE SURE THE COURT UNDERSTANDS ALL OF

THESE COMMENTS THAT WERE RAISED INCLUDING THE ONE YOU JUST CITED WERE ALL IN REBUTTAL.

WHAT IS INTERESTING TO NOTE, MY OPPOSING COUNSEL TO SHOW YOU THERE WERE SCALES OF JUSTICE WITH EVIDENCE ON BOTH SIDES. IN TERMS OF WHERE IS THE EVIDENCE, YOU CAN SEE IN THE RANDOM COMMENT WE DON'T KNOW FROM THE RECORD WHAT THE PROSECUTOR WAS POINTING TO BUT SHE IS CITING, IT IS IMPORTANT TO NOTE WE ARE TALKING ABOUT ALL THE EVIDENCE THAT SUPPORTED A GUILTY CONVICTION AND IN THIS CASE SPECIFICALLY THOSE WORDS ABOUT MISTER RUIZ NOT NEEDING AN ALIBI, I OPPOSING COUNSEL IS SAYING THE HEART OF THEIR DEFENSE WAS MISTER RUIZ DID IT, IT WASN'T JUST MISTER RUIZ DID IT, IT IS IMPORTANT TO NOTE BECAUSE THAT IS ON PAGE 6504 WHERE DEFENSE CONCEDES IT IS NOT ABOUT WHETHER MISTER RUIZ DID IT OR WHETHER AMBER EDWARDS DID IT. ANYBODY BUT MISTER ANDRES DID IT.

TO ANSWER YOUR QUESTION WHERE IS THE EVIDENCE BEFORE YOU?

IN FAIR RESPONSE TO THE DEFENSE CLOSING AND IN RESPONSE TO CROSS-EXAMINATION, SOME OF THIS EVIDENCE, THERE WERE REASONABLE INFERENCES, THE STATE WAS SUBMITTING THAT IS NOT A REASONABLE INFERENCE.

THE EVIDENCE POINTING TO THE EVIDENCE ON THE GUILTY SIDE TO SHOW THE EVIDENCE WHEN WEIGHING THE EVIDENCE SUPPORTS A GUILTY CONVICTION.

>> YOU WOULD AGREE THE DEFENSE DOESN'T HAVE TO PUT ON A DEFENSE.

>> ABSOLUTELY.

>> IF THEY ATTEMPT TO PUT ON A DEFENSE AND IT IS RIDICULED, INNOCENT PEOPLE DON'T NEED

ALIBIS, YOU ARE SAYING THEY HAD TO DO IT BECAUSE THERE WERE THINGS IN THE DEFENDANT'S ARGUMENT THAT PROVOKED HER BUT THIS IS A TRIAL THAT STARTS WITH PUTTING ON A WITNESS, CROSS-EXAMINING, THINKING THEY ARE GOING TO GET THIS MAN, THE BOYFRIEND RIGHT IN THE AREA AND FIND OUT EVEN THOUGH HE SAID SO FIVE YEARS AGO THE STATE TALKED TO HIM AND THEY FIND WHEN HE IS ON THE STAND HE CHANGED HIS TESTIMONY AND THEN WE HAVE, WE CAN LOOK AT THIS IN DETAIL BUT SEEMS LIKE A REPETITIVE QUESTIONING BY THE STATE NOT IN RESPONSE TO SOMETHING THE DEFENSE BRINGS UP ON CROSS-EXAMINATION AND YOU DIDN'T CONSIDER HIM A SUSPECT, YOU DIDN'T CONSIDER HIM A SUSPECT, NOT WHAT DID YOU DO IN THE INVESTIGATION.

WE HAVE -- I HAVE PROBLEMS WITH NOT ALL OF THEM BUT SOME OF THEM.

I DON'T THINK IT IS LIKE CLEAN. THEN YOU HAVE GOT -- WE TALKED ABOUT THE CLOSING ARGUMENTS BUT SOME OF THE ISSUES LIKE TRYING TO CROSS-EXAMINE PEREZ ABOUT WHETHER ANDRES CAME BACK TO TAKE A QUESTION NOT BEING HE DIDN'T COME BACK BECAUSE YOU TOLD HIM NOT TO COME BACK, THE JUDGE DIDN'T ALLOW THAT CROSS-EXAMINATION, THE MEDICAL EXAMINER WHERE THEY RAISED HYPOTHETICALS, NEVER SEEN A HYPOTHETICAL LIKE IT WHERE THEY GIVE THEIR CLOSING ARGUMENT AS OPPOSED TO THE MEDICAL EXAMINER EXPLAINING HOW BASED ON HER EXAMINATION OF PHOTOGRAPHS AND WHAT OPINIONS SHE CAME TO, ARE YOU AT ALL CONCERNED THAT THERE ARE A NUMBER OF ERRORS HERE THAT MAYBE WE COULD SAY INDIVIDUALLY COULD BE HARMLESS BUT

COLLECTIVELY MAY CAUSE DOUBT
ABOUT THIS CONVICTION?

>> NO.

I WOULD SAY INDIVIDUALLY AND
CUMULATIVELY, THERE IS NO ERROR.

>> YOU WOULD ACTUALLY SAY THIS
PROSECUTOR, EVERYTHING MISTER
STANTON BROUGHT UP IN HIS BRIEF
THERE IS NO ERROR WHATSOEVER.

>> NOT THAT THERE IS IN TERMS OF
EACH THING INDIVIDUALLY, THERE
IS PERHAPS TIMES WHEN OBJECTIONS
ARE SUSTAINED, TIMES THAT WAS
PROPER FOR IT TO BE SUSTAINED
BUT CUMULATIVELY, WE ARE TALKING
ABOUT I CAN ADDRESS EACH ONE OF
THE INDIVIDUAL ISSUES YOU CITED
BUT SPECIFICALLY THERE WOULD NOT
BE CUMULATIVE ERROR IN THIS CASE
AND ANY ERROR WOULD BE HARMLESS
BEYOND A REASONABLE DOUBT GIVEN
THE OVERWHELMING EVIDENCE AND
UNCONTESTED EVIDENCE REGARDING
THE DNA WASHCLOTH FOUND WITH A
MIXTURE OF COMBINED IN THE
DEFENDANT'S DNA AND THE VICTIM'S
DNA WHICH WAS ONE TO 184 MILLION
IN THIS CASE.

>> WHAT MISTER STANTON IS SAYING
IS PROSECUTORS CAN GET AWAY WITH
THIS BECAUSE IN CASES OF A LOT
OF GUILT, WE WILL BE RELUCTANT
TO OVERTURN IT BUT THE FLIPSIDE,
WHY DO PROSECUTORS, THIS IS WHAT
YOU ARE ASKED INITIALLY, WHY DID
THEY DO SOMETHING WHEN YOU
ALMOST HAVE AN AIRTIGHT CASE ON
THE DNA TO GO AND CROSS CLOSE TO
THE LINE WITH ARGUMENTS THAT MAY
BE AND HAVE BEEN FOUND TO CAUSE
THIS COURT CONCERNING?

>> I UNDERSTAND THAT CONCERN.
WHAT I AM ARGUING TODAY IS
SPECIFICALLY, NOT THE
PROSECUTORS CAN NEVER SUGGEST
DEFENSE HAS TO PRODUCE EVIDENCE,
THAT IS NOT WHAT WE ARE
SUGGESTING.

WE ARE SUGGESTING WITHIN THE
CONTEXT, I BELIEVE THERE ARE

MANY PLACES NOT JUST IN THE DEFENDANT'S BRIEF BUT WHEN THE CONTEXT IS TAKEN AND OPPOSING COUNSEL MENTIONS IT IS WITHIN THE CONTEXT THAT WE LOOK TO THESE ARGUMENTS AND SAY THIS IS NOT IMPROPER GIVEN IT IS A FAIR RESPONSE BY ARGUMENTS MADE IN DEFENSE CLOSING AND DURING CROSS-EXAMINATION.

I WOULD LIKE TO TAKE A TOWARD THE ISSUES YOU MENTIONED SPECIFICALLY ABOUT THE RUIZ COMMENT.

THAT IS IMPORTANT BECAUSE AT THE HEART OF THIS, THIS WAS JUST LACK OF INVESTIGATION.

NOT THAT RUIZ HAD DONE IT SPECIFICALLY.

THEY DECIDED ON 6504 OF THE RECORD.

SPECIFICALLY, THEIR BASIS WAS THE POLICE DID NOT DO A THOROUGH INVESTIGATION AND THAT WAS BROUGHT FROM THE OPENING ARGUMENT WHERE THEY SAID YOU WILL SEE THERE IS INTERNALLY INCONSISTENT EVIDENCE IN THE STATE'S CASE.

FROM THAT MOMENT ON THROUGHOUT EACH CROSS-EXAMINATION THERE WAS EVIDENCE BROUGHT OUT ON CROSS-EXAMINATION ABOUT THIS NOT BEING A THOROUGH INVESTIGATION.

I WANT TO POINT OUT, REGARDING THE HEARSAY, WHAT THE STATE CONTENDS WAS NOT HEARSAY BECAUSE THERE WAS NOT AN OUT-OF-COURT STATEMENT MADE BUT BARRED SAID WHERE MOTIVE OF POLICE OFFICERS INVESTIGATION WAS NOT MADE AT ISSUE IT IS NOT PROPER FOR POLICE TO BRING THAT OUT IN THE COURSE OF THEIR INVESTIGATION.

AND IN HERE, THE MOTIVE OF INVESTIGATIONS THIS WAS AN IMPROPER INVESTIGATION, THEY TARGETED THIS ONE INDIVIDUAL IS AT ISSUE AND THAT IS WHY BARRED IS APPLICABLE.

>> I THOUGHT THESE QUESTIONS,
YOU AGREED THE OPENING STATEMENT
IS NOT EVIDENCE.

I GOT THE QUESTIONING OF THE
DETECTIVE THAT WASN'T INVOLVED
WAS THE SUPERVISOR, CAME OUT IN
THE DIRECT EXAMINATION.

>> AFTER THE TESTIMONY, NOT THAT
WE HAD LIKE IN TEEN OR ANY OTHER
PLACE WHERE SOMEONE WHO IS
ANONYMOUS HAS SOMEHOW GIVEN A
STATEMENT THAT NOW THE POLICE
ARE RELYING ON.

THE DETECTIVE TESTIFIED BEFORE
DETECTIVE GALLAGHER IS NOT ONE
DETECTIVE, IN EVERY PIECE OF
EVIDENCE, THAT IS WHY BASED ON
WHAT THAT QUESTION WAS IN THE
CONTEXT IN WHICH IT WAS SAID,
TALKING ABOUT THE INVESTIGATION
AND IT STARTS TO UNFOLD, WHAT
BARRED STANDS FOR.

>> WHAT WAS HIS ROLE IN THE
INVESTIGATION?

>> HE WAS THE LEAD DETECTIVE WHO
CONDUCTED MANY PIECES OF
EVIDENCE, STATEMENTS FROM OTHER
WITNESSES --

>> MISS LEVINE, THE PROSECUTOR,
ANYTIME THE INVESTIGATION AFTER
SPEAKING, AT ANY TIME WAS RUIZ A
SUSPECT.

HE WAS NOT A SUSPECT.

ASKING ALL THESE QUESTIONS,
SEEMS TO ME TO ANTICIPATE WHAT
MIGHT HAVE BEEN THE
CROSS-EXAMINATION BUT COMING OUT
THAT THE POLICE, THIS CAME AFTER
RUIZ CHANGED HIS TESTIMONY.

ON THE DAY OF THE MURDER.

IT IS ANTICIPATORY, IN REBUTTAL
AFTER THE CROSS-EXAMINATION
MIGHT BE UNDERSTOOD, THE
EXAMINATION.

AND EXPERT OPINION, THE PERSON
WHO ONE WAY COULD HAVE BEEN A
SUSPECT, WASN'T A SUSPECT TO ME.

>> DETECTIVE GALLAGHER WAS THE
WITNESS, ONE OF THE LAST
WITNESSES TO TESTIFY, MY ANSWER

WOULD BE THROUGH
CROSS-EXAMINATION ON OTHER
WITNESSES THE DEFENSE OPENS THE
DOOR FOR THE PROSECUTOR IN THIS
CASE, WHY DIDN'T YOU DO THIS?
>> THE ARGUMENT WASN'T HEARSAY.
GOT TO BE CAREFUL, WHETHER IT IS
REVERSIBLE OR NOT.

WE ARE CONCERNED ABOUT POLICE
OFFICERS LENDING THEIR WEIGHT TO
REFUTING A DEFENSE, ANOTHER
SUSPECT, WE DIDN'T CONSIDER A
SUSPECT, AND HOW MUCH DO YOU GO
INTO AND WHY DON'T YOU CONSIDER
HIM A SUSPECT BECAUSE SOMEBODY
ELSE TALKED TO THE SUPERVISOR,
IT DOES ACROSS THE LINE AT SOME
POINT.

>> I UNDERSTAND YOUR CONCERN.
THE BASIC CONTENTION, BECAUSE
THIS IS NOT HEARSAY AND NO
DETAILS DISCUSSING A QUESTION
THAT HAPPENED BETWEEN TWO
WITNESSES THAT WERE PRESENTED.

>> GIVING A STATEMENT, YOU DON'T
CONSIDER HIM A SUSPECT, IT WILL
GO TO THE DEFENSE WOULD HAVE TO
SAY WHY DIDN'T YOU CONSIDER HIM
A SUSPECT FOR THESE HEARSAYS?
THE ISSUE WAS THE FIRST TIME
THAT QUESTION, SHOULDN'T -- THAT
IS NOT A PROPER LINE FOR
SOMEBODY THE WASN'T TO ASK THAT
QUESTION BECAUSE THE DEFENSE IS
NOT GOING TO CROSS-EXAMINATION
AND ASK HIM TO BRING OUT THE
HEARSAY.

>> THE STATE CONTENDS THE DOOR
WAS OPEN BEFORE WHETHER IT WAS
ON OR THE REDIRECT AFTER THE
CROSS THAT IT WAS ALREADY OPEN
AND INSINUATIONS THAT HE COULD
HAVE DONE IT, SPECIFIC TO RUIZ
WHICH IS WHY THAT WAS ASKED IN
THE LINE OF QUESTIONING BUT WE
HAD STATEMENTS THAT INCULCATED A
DEFENDANT.

HERE WE HAVE A STATEMENT THAT
EXCULPATE THIS ONE WITNESS AND
GOING BACK THIS WAS NOT PART OF

THE DEFENSE, IT WAS JUST RUIZ,
THAT IS WHY IT WAS PROPER.
TURNING TO THE
CROSS-EXAMINATION, LIMITATION OF
PEREZ, THE QUESTION WAS DID YOU
EVER SEE THE DEFENDANT AGAIN AS
OPPOSED TO DID YOU HEAR FROM THE
DEFENDANT AGAIN?

THAT WAS WITHDRAWN AND
SPECIFICALLY AS TO THE SCENE AND
WHAT THE COURT DID WAS LIMIT ON
CROSS-EXAMINATION, THE -- MISTER
PEREZ AT THAT POINT TOLD THE
DEFENDANT.

IF ANYTHING THAT IS HARMLESS
ERROR BUT I DON'T BELIEVE THAT
WAS INAPPROPRIATE GIVEN THE FACT
THE QUESTION WAS SPECIFIC TO DID
YOU SEE HIM AGAIN BEFORE THIS
COURT ROOM.

>> OVER DEFENSE OBJECTION THE
PROSECUTOR ASKED IF IN THE
PROCESS OF RECONSTRUCTING YOUR
HOME AND NEEDING WORKERS DID YOU
HEAR ABOUT HELPING YOU WITH THE
RECONSTRUCTION PROJECT?

THEY MAKE AND OBJECTION,
OBJECTION OVERRULED, DID YOU SEE
THE DEFENDANT AGAIN?

NEGATIVE.

THE DEFENDANT ASKED THAT THIS
NOT BE PURSUED, WHEN THEY ASK ON
CROSS WHY DID YOU TELL HIM NOT
TO COME BACK WHICH IS DIFFERENT
THAN THE INFERENCE OF
CONSCIOUSNESS OF GUILT THEY SAY
IT IS BEYOND THE SCOPE.

I DON'T GET THAT.

HE DIDN'T COME BACK, LEFT IT
WITH THE IMPRESSION OF THE
GUILTY PERSON.

>> THE COURT LIMITED, THE
DEFENDANT IN THIS CASE THAT HE
COULDN'T COME BACK, MIGHT NOT BE
TRUE ANY WAY AND THAT IS WHY WE
CAN'T RELY ON A HEARSAY
STATEMENT BUT GOING BACK TO THE
HARMLESS ERROR EFFECT, THIS
WOULD NOT HAVE HELPED TO TRADE,
AND THE UNCONTESTED EVIDENCE THE

DNA WASHCLOTH, AND THE EYEWITNESS IN THIS CASE. THE COMMENTS COMING BACK TO JUSTICE QUINN'S, AND GOING BACK TO THE COMMENT, SOMETHING THAT WAS INCLUDED, MY ARGUMENT GIVEN THE FACT THERE WERE A LOT OF ISSUES ABOUT BURDEN SHIFTING. MAKING A FALSE REPORT, AND ONE INFERENCE, SOMEONE ELSE HERE. AND THIS COMES WITH COUPLING OF THE FACT OF AN EYEWITNESS WHO SAW MISTER ANDRES WITH THE GAS CONTAINER ENTERING INTO THE VAN, COULD NOT HAVE BEEN ABANDONED BUT HAD TO HAVE BEEN STOLEN BUT THAT WAS NOT THE EVIDENCE AND EVIDENCE SPECIFICALLY SAID IT WAS MADE TO LOOK LIKE IT WAS STOLEN AND AT THAT POINT THE VAN WAS ABSOLUTELY RIGHT FOR THE PROSECUTION IN REBUTTAL TO SAY LET'S TALK ABOUT THE VAN BECAUSE THAT IS NOT REASONABLE EVIDENCE FROM WHAT YOU HEARD BEFORE, POINTING TO THE FACT THIS WAS IN DEFENSE'S BURDEN, THE STATE SHOWED YOU THE EVIDENCE. ALL THE EVIDENCE CAME FROM THE SEAT AND THAT IS REASONABLE.

>> I WANTED TO COST ABOUT THE CHIEF JUSTICE'S POINT ABOUT THE SCALES OF JUSTICE THOMAS SPECIFICALLY IN THIS CASE, ON PAGE 1507 OF THE RECORD OF THE TRANSCRIPT THERE IS NO OBJECTION TO TALK ABOUT WEIGHING THE SCALES OF JUSTICE AND THAT IS IN THE CONTEXT THE JURY HEARD ON REBUTTAL, THEY HEARD IT UNDERSTANDING THE PROSECUTOR POINTING TO EACH POINT OF EVIDENCE SUPPORTING THAT CONVICTION OF GUILT.

>> WHO USED THE EXAMPLE?
WHO USED THE EXAMPLE?
THE SCALES OF JUSTICE?

>> THE STATE.

>> WAS THERE EVIDENCE ON THEIR IN THE SCALES?

>> NO THAT IS HIS POINT.
THERE IS NOTHING WRONG WITH
SAYING HERE IS THE EVIDENCE THAT
SHOWS WE PROVED THIS CASE BEYOND
A REASONABLE DOUBT.

THERE IS NO EVIDENCE ON THEIR
SIDE, YOU DON'T SEE THAT IS
CROSSING THE LINE OF THE BURDEN
SHIFTING?

>> NO BECAUSE THE SCALES OF
JUSTICE IN EVERY CONTEXT IT WAS
BROUGHT UP WAS TALKING ABOUT THE
WEIGHING OF EVIDENCE AND WHERE
EVIDENCE SUPPORTS A CONVICTION
OF GUILTY THERE ARE ONLY TWO
VERDICTS, NOT GUILTY OR GUILTY.
IT IS NOT SAYING BY ANY MEANS OR
SUGGESTING DEFENSE HAD TO PUT
SOMETHING ON THAT SIDE BUT EVERY
INFERENCE POINTING OUT THE
WEAKNESS AT EVERY INFERENCE
DEFENSE MADE TO ALLEGE THIS HAD
TO HAVE BEEN A NOT GUILTY.
THAT IS WHAT IT IS POINTING OUT
BECAUSE THAT IS WHAT THEY ARE
SAYING, THERE'S ONLY ONE
REASONABLE INFERENCE AND IT IS
THIS AND THE STATE COMES BACK,
WE HAVE THE RECORD AS IT IS,
COULD HAVE BEEN BETTER STATED.

>> SHE REALIZES SOMETHING IS
GOING ON, SO MANY OBJECTIONS,
YOU COULD SEE THROUGHOUT THIS
TRIAL SIDEBARS, THEY DON'T LET
THEM KNOW ABOUT THE CHANGE OF
TESTIMONY.

WHETHER IT IS RICHARDSON OR NOT,
THE STATE AFTER THERE HAS BEEN A
DEPOSITION THE STATE FINDS THERE
HAS BEEN A CHANGE, NOT WHETHER
THE MOTHER'S NAME WAS DIFFERENT
BUT I WAS THERE IN THE VICINITY
OR I WASN'T THERE, THE STATE
HAVE AN OBLIGATION TO LET THE
DEFENDANT KNOW OF A CHANGE IN
SWORN DEPOSITION WHETHER IT IS
MATERIAL CHANGE, IMPORTANT
CHANGE OF THE DEPOSITION?

>> YES, WHEN THERE IS A MATERIAL
CHANGE THE STATE SHOULD LET THE

DEFENSE KNOW AHEAD OF TIME.

>> TO SAY I WAS IN THE VICINITY,
5 YEARS AGO AND THEY MEET WITH
THE STATE A FEW DAYS BEFORE AND
I WASN'T IN THE VICINITY, THAT
WAS NOT SOMETHING THE STATE HAD
AN OBLIGATION TO LET THEM KNOW
BEFORE THE TRIAL STARTED.

>> IN THIS CASE IT WASN'T A
MATERIAL CHANGE, PAGE 46 OF THE
DEPOSITION, WHAT THE COURT DOES
NOT HAVE IS THE ENTIRE
DEPOSITION IN WHICH MISTER RUIZ
TALKED ABOUT MANY ROUTES HE HAD.
I'M NOT SAYING, FIVE DAYS OR
FIVE YEARS IS CONFUSING, AND
THAT DAY, AND IN THE DEPOSITION,
AND --

>> THE DEPOSITION TO OTHER
QUESTIONS THAT WERE CONFUSING,
WHETHER THE -- HE WAS ASKED --

>> GOING TO THAT QUESTION, PAGE
46 IN CONTEXT WE DON'T HAVE --
IT GOES TO THE FACT THIS
SPECIFIC CHANGE WAS A
CLARIFICATION, A CLARIFICATION
BASED ON WHAT ROUTE HE WAS
TAKING.

IF THE ROUTE TOOK THEM ANYWHERE
IN THAT VICINITY WHETHER 1-MILE
OR 7 MILES, WASN'T IN THE AREA,
AND THAT IS NOT WHAT HE SAID.

>> IF IT IS NOT MATERIAL, THE
STATE DECIDES THAT WAS A
MATERIAL CHANGE I AM NOT GOING
TO LET THE DEFENDANT KNOW IN
ADVANCE OF TRIAL.

>> IT WAS A CLARIFICATION, DID
NOT SAY THIS WAS SOMETHING WE
TOLD DEFENSE BEFORE.

AND CONTINUE TO IMPEACH HIM
REGARDING SPECIFICS.

HOW CLOSE HE WAS, THEY DON'T DO
THAT.

THE JUDGE IN THIS CASE DOES MAKE
RECOGNITION OF THE PRONGS SHE
WOULD HAVE GONE THROUGH.

AND MAKING HIMSELF AND
EYEWITNESS AND THIS IS HARMLESS
ERROR.

>> TIME IS COMING TO AN END, IN TERMS OF DENIGRATION IN THIS CASE.

THIS IS, THE COURT AT SOME POINT, THE CHANGES WE ARE GOING THROUGH, VERY IMPORTANT, DON'T GET CONFUSED WHICH MY COLLEAGUE POINTING OUT, AND JURY INSTRUCTIONS WERE READ OUT TO THE JURY BY THE PROSECUTOR. THE THEFT MUST HAVE OCCURRED ON THE 24TH.

AND COLLOQUY IT AT SOME POINT BY THE DEFENDANT, AND THE ATM CARD IN THIS CASE, DIDN'T MAKE SENSE WITH THE THEORY OF THE THEFT THAT OCCURRED ON THE 24TH AND THAT IS WHERE THE CONFUSION COMMENT IS ABOUT, AFTER SHE READS JURY INSTRUCTIONS, THIS IS A ROBBERY.

HE CAME AND TOOK THOSE ATM DEBIT CARDS AND TORTURED HER FOR THOSE NUMBERS.

THAT IS WHAT THAT DENIGRATION COMMENT IS ABOUT, DON'T GET CONFUSED BECAUSE THEY ARE LYING TO YOU, DON'T GET CONFUSED BECAUSE JURY INSTRUCTIONS CAN BE CONFUSING IF THAT IS WHAT YOU BELIEVE THE DEFENSE'S THEORY IS. AS IN THAT IS INCONSISTENT WITH WHAT THE EVIDENCE PRESENTED, NOT THAT HE EVER TOOK IT AT A DIFFERENT TIME.

GOING TO THE JUSTICE COMMENT, THERE WAS NO MENTION OF THE VICTIM IN THIS CASE, WHY WE NEED TO FIND GUILTY FOR THE DEFENDANT, NOTHING TO DO WITH THAT IN THIS CASE.

INSULTING AND MEAN COMMENT GOES TO THE WEIGHT OF THE TESTIMONY MISTER RUIZ GAVE, SPECIFICALLY HE LOVED HIS GIRLFRIEND, HE IS TESTIFYING ABOUT WHERE HE WAS THAT DAY BUT THE MEAN AND INSULTING COMMENT IMPROPER, BORDERLINE, DOES NOT GO TO DENIGRATING THE DEFENSE THAT

THEY I MEAN AND INSULTING AND
ALTHOUGH I UNDERSTAND I
ACKNOWLEDGE THE LAWS REGARDING
HURST I WOULD BE REMISS NOT TO
MAKE THE ARGUMENT EVEN THOUGH
THIS WAS A 9-3 VERDICT, THE
REASONABLE JURY BEEN INSTRUCTED
THEY HAD TO HAVE A UNANIMOUS
VOTE FOR DEATH OR RECOMMENDATION
FOR DEATH THAT THEY WOULD HAVE
CONSIDERING MITIGATION WAS VERY
MINIMAL, SPECIFICALLY AS TO THE
AGGRAVATED IS IN THIS CASE WHICH
WAS HE KILLED A WOMAN IN THE
SAME FASHION IN 1987 STABBING
HER AND CHOKING HER LIKE HE DID
IN THIS CASE THAT THEY WOULD
HAVE FOUND A RECOMMENDATION FOR
DEATH.

IF THERE ARE NO FURTHER
QUESTIONS I WILL RELINQUISH THE
PODIUM AND ASKED THE COURT TO
AFFIRM THE LOWER COURT'S
DECISION.

>> LET ME ASK YOU THIS.
YOU SPEND A LOT OF TIME ON THE
CLOSING ARGUMENT ISSUE.
AS MENTIONED BY COUNSEL THE
STATEMENTS THAT YOU ARE CLAIMING
TO BE OFFENSIVE OCCURRED DURING
THE REBUTTAL OF THE CLOSING
ARGUMENT.

MY QUESTION IS THIS.
ARE THERE ANY CIRCUMSTANCES IN
WHICH A PROSECUTOR CAN GET UP IN
REBUTTAL?

AND SAY LADIES AND GENTLEMEN
CONFINED TO THE EVIDENCE YOU
HEARD DURING THIS TRIAL, YOU
HEARD NO EVIDENCE, THAT IS THIS
OR THAT OR AN ALIBI.

>> IN THE CASE OF AN ALIBI.
>> CAN PROSECUTORS SAY THAT,
WHAT IF THE DEFENSE COUNSEL
MAKES THAT UP?

>> THAT WAS DUE FOR WHERE THE
DEFENSE SAID THE INFORMANT READ
THE DEFENDANT'S LEGAL PAPERS AND
THAT IS WHERE THE INFORMANT GOT
THIS FROM, NOT A DEFENDANT'S

STATEMENT, THE STATE, NEW
EVIDENCE THE PAPERS EXIST.

>> THIS SAYS SELF-DEFENSE AS
DEFENSE, LADIES AND GENTLEMEN
YOU MUST CONFINE YOUR VERDICT TO
THE EVIDENCE PRESENTED DURING
THE TRIAL THAT THE JUDGE WILL
INSTRUCT YOU ON.

IN THIS CASE YOU HEARD NO
EVIDENCE THAT WOULD SUPPORT
SELF-DEFENSE.

WOULD THAT BE A UNIVERSAL ERROR?

>> I BELIEVE IT WOULD.

>> IF THERE IS NO EVIDENCE THE
DEFENDANT IS NOT GUILTY IN THIS
CASE.

>> BASICALLY LAY DOWN AND NOT
EVER CONTRADICT ANYTHING?

WHAT CAN THEY DO ABOUT THAT?

>> POINT OUT WHAT THE EVIDENCE
DOES SHOW, THEY CAN'T SAY THE
DEFENSE DIDN'T PROVE OTHERWISE.

>> SELF-DEFENSE ALIBI OUR
DEFENSES, ISN'T THAT DIFFERENT?
THE IDEA THEY RAISE SELF-DEFENSE
AS A DEFENSE AND THERE WILL BE
INSTRUCTION ON IT, THE STATE CAN
SAY THERE IS NO EVIDENCE OF SELF
DEFENSE.

>> IT IS A LITTLE MIX BECAUSE OF
SHIFTING BURDEN IN SELF DEFENSE.
55 SECONDS IF I COULD TAKE A
SWING.

THERE WAS DNA EVIDENCE, EVIDENCE
NOT OF MISTER ANDRES'S BLOOD BUT
THE INEFFICIENCY HE HAD BEEN
WORKING ON EXTENSIVELY TAKING
DOWN WALLS, PUTTING IN NEW
WINDOWS, THE DEFENDANT'S BLOOD
WAS EVERYWHERE.

THE FIRST RESPONDER SAID WHEN HE
PULLED HER OUT HIS JACKET WAS
SOAKED WITH BLOOD.

THE STATE SAID HE HAD GASOLINE,
THAT PROVED HE WAS INNOCENT
BECAUSE THOSE TENNIS SHOES HAD
NOT ONE SPOT OF BLOOD ON THEM.
THERE WAS BLOOD ON THE FENCE,
BLOOD ON THE GAS CAN, NO BLOOD
ON THE SHOES, NO BLOOD ANYWHERE

IN THE VAN THAT HE WALKED FROM
THE BLOOD HE SEEN AND GOT INTO
RIGHT AWAY.

THE STATE BRINGS UP THE VAN, THE
DEFENSE WANTED TO ARGUE BECAUSE
THE VAN WAS FOUND WITH ITS
STEERING COLUMN BROKEN MAYBE IT
WAS NOT EVIDENCE THAT HE WAS OF
GUILT THAT HE WAS TRYING TO
ABANDON HIMSELF, MAYBE IT WAS
STOLEN, EVIDENCE MISTER RUIZ
RIGHT THERE NEARBY WENT AWAY,
THAT IS ANOTHER REASON THIS
WASN'T HARMLESS, EVIDENCE THE
DEFENDANT DIDN'T FLEE MISTER
PEREZ, THAT WASN'T ALLOWED IN
BUT THAT WENT TO NOT GUILTY IN
THIS CASE.

I AM IN THE RED.

THE POINT BEING THE STATE SAYS
THE EVIDENCE WAS OVERWHELMING,
THAT IS NOT THE STANDARD.

THERE WERE ABSENTEE ERRORS, ROOM
FOR REASONABLE DOUBT.

IF THERE IS SUCH A THING, IF
THERE WERE SUCH A THING AS
STRUCTURAL ERROR, CLOSING
ARGUMENT, TELLING THE JURY THERE
IS NO PROOF THE DEFENDANT ISN'T
GUILTY.

HOW COME THE JURY NOT BEEN
INFECTED?

WHEN THEY TOLD THAT IN REBUTTAL
BEFORE THEY WENT IN, THE STATE
SAID THIS SHOULDN'T BE USED
BECAUSE IT WOULD BE TOO
INFLAMMATORY TO THE COURT.

>> THANK YOU FOR YOUR ARGUMENT,
THE COURT IS IN RECESS FOR TEN
MINUTES, THANK YOU.