

>> ALL RISE.
>> THE SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
PLEASE BE SEATED.
>> WE COME NOW TO THE THIRD CASE
ON TODAY'S DOCKET, THE STATE OF
FLORIDA V. MURRAY.
>> CHIEF JUSTICE CANADY,
JUSTICES OF THE COURT, MAY IT
PLEASE THE COURT, MY NAME IS
JENNIFER DONAHUE, AND I
REPRESENT THE STATE IN THIS
MATTER.
THE STATE APPEAL IN THIS MATTER
IS THE LOWER COURT'S GRANTING OF
HURST RELIEF IN THIS CASE.
I WOULD RESERVE THE REMAINDER OF
MY TIME IN REBUTTAL.
THANK YOU.
>> MAY IT PLEASE THE COURT,
BRIEFLY ABOUT HURST--
>> EVERYBODY JUST HOLD A SECOND
HERE.
YOU'RE NOT GOING TO BE ABLE TO
USE ALL YOUR TIME IN REBUTTAL.
THAT'S NOT THE WAY THIS PROCESS
WORKS.
YOU NEED TO, YOU NEED TO--
THAT'S NOT ACCORDING TO THE WAY
THE PROCESS WORKS.
YOU NEED TO PRESENT AN ARGUMENT,
AND THEN COUNSEL CAN RESPOND,
CERTAINLY CAN RESERVE SOME OF
YOUR TIME FOR REBUTTAL, BUT YOU
REALLY DON'T NEED TO BE BRINGING
UP IN YOUR REBUTTAL THINGS THAT
YOU HAVE NOT BROUGHT UP IN YOUR
INITIAL ARGUMENT.
EXCEPT TO EXTENT THAT THEY'RE IN
RESPONSE TO SOMETHING THAT'S
BEEN MADE, AN ARGUMENT THAT'S
BEEN MADE BY OPPOSING COUNSEL.
SO I'VE BEEN HERE TEN YEARS, AND
I'VE NEVER SEEN THAT MOVE.
>> I UNDERSTAND, YOUR HONOR.
ON THE HURST ISSUE, THIS COURT'S
PRECEDENT IS CLEAR.
YOU HAVE FOUND NO NON-UNANIMOUS
CASES TO BE HARMLESS BEYOND A
REASONABLE DOUBT.

THE STATE THIS OUR BRIEF ARGUES THAT IT IS HARMLESS BEYOND A REASONABLE DOUBT.

WE LIST MULTIPLE REASONS WHY WE BELIEVE THAT IS SO.

WE HAVE COMPARED THE CASES TO ALL THE UNANIMOUS CASES, AND THIS CASE IS MOST COMPARABLE WITH JONES WHICH WAS A UNANIMOUS CASE.

THE MITIGATION, ALL OF THE AGGRAVATION WAS PROVEN IN THIS CASE AS THE AGGRAVATION WAS PRIOR VIOLENT FELONIES, CONTEMPORANEOUS FELONIES X THEN THE HAC WAS PROVEN BEYOND A REASONABLE DOUBT BY THE MEDICAL EXAMINER.

THE CLIENT-- MURRAY WAIVED MITIGATION IN THIS CASE, SO THERE IS NO CONSIDERATION OF WHETHER THE AGGRAVATION OUTWEIGHED THE NONEXISTENT MITIGATION.

THERE'S NO WEIGHING.

SO THE ISSUE IS WITH THE NON-UNANIMOUS JURY VERDICT.

AND IT WAS AN 1101.

THE STATE WOULD CONTEND THAT THAT, A RATIONAL JURY PROPERLY INSTRUCTED ON THE REQUIREMENT OF UNANIMITY IN THIS CASE WOULD HAVE FOUND THIS VERDICT UNANIMOUSLY.

I WOULD RESERVE THE REMAINDER OF MY TIME FOR REBUTTAL.

THANK YOU.

>> THANK YOU.

>> JUSTICES OF THIS COURT, I'M RICK SICHTA, AND I REPRESENT MR. MURRAY.

I AM THE CROSS-PETITIONER.

AND ON THE HURST ISSUE, I THINK I CAN BE BRIEF.

THIS COURT HAS NEVER UPHELD A SENTENCE THAT HAS BEEN NON-UNANIMOUS WHEN A JURY HAS BEEN IMPANELED.

I THINK AT THE TIME OF THIS BRIEFING THERE WAS 55 CASES THAT

WERE REVERSED.

SO I URGE THIS COURT TO FOLLOW THE PRECEDENT.

THIS WAS AN 11-1 VERDICT. EVEN THOUGH MURRAY WAIVED MITIGATION, THERE WERE STILL MITIGATORS.

AS A MATTER OF FACT, THE COURT WENT INTO THE EXTREME EMOTIONAL DISTURBANCE AND THINGS LIKE THAT.

I WOULD LIKE TO FOCUS ON THE GUILT PHASE, BECAUSE IN THIS CASE SIGNIFICANT PILLARS OF THE STATE'S CASE HAVE CRUMBLLED IN POST-CONVICTION.

AND I THINK THE COURT NEEDS A REMINDER AS TO PROCEDURAL HISTORY OF THIS CASE.

THIS CASE HAS BEEN REVERSED TWICE.

DNA ISSUES, CROSS-CONTAMINATION, GENERAL SLOPPINESS OF FORENSIC EVIDENCE.

IN THE LAST OPINION, IT WAS A 4-3 DECISION WHERE THREE OF THE JUSTICES WOULD HAVE REVERSED ON A JURY ISSUE.

IN THE LAST OPINION IN THE SUFFICIENCY OF THE EVIDENCE REVIEW, THIS COURT WAS MISLED NOT BY MS. DONAHUE, BUT BY WHOEVER DID THE BRIEFING TO FIND TWO FACTORS THAT THEY FOUND WAS INDICATIVE OF MURRAY'S GUILT WHICH WERE NOT TRUE.

ONE WAS THE FOOTPRINTS.

THIS COURT FOUND IN THE LAST MURRAY OPINION THAT THE FOOTPRINTS WERE INDICATIVE.

THEY DID LIKE AN EIGHT POINTS OF GUILT BECAUSE THIS CASE IS LARGELY CIRCUMSTANTIAL.

THE WITNESS FOR THE STATE TESTIFIED AT TRIAL, AND IT'S CLEAR IN MY BRIEF HE COULD NOT SAY WHETHER THERE WAS TWO FOOT PRINTS.

HE WAS ASKED ON CROSS-EXAMINATION, WELL, COULD I

BE THE SAME FOOTPRINT YOU WERE
LOOKING AT THE WHOLE TIME, AND
HE SAID, YES, THAT'S EXACTLY
WHAT I WAS SAYING.

SO STRIKE THAT WHEN YOU REVIEW
THIS, WHEN YOU REVIEW THIS CASE.
SECOND, THE JEWELRY, THIS COURT
FOUND THAT THE JEWELRY WAS
LINKED TO MR. MURRAY.

THE STATE EVEN CONCEDES IN THEIR
ANSWER BRIEF ON PAGE 55 THAT
THAT WAS ALSO ERROR.

THEY TRIED TO LINK TO MURRAY,
THAT WAS WRONG, THIS COURT FELL
FOR IT, AND THEY USED IT IN
SHARE SUFFICIENCY EVIDENCE.

>> LET ME ASK YOU THIS, YOU SAID
THAT'S WRONG, IT WAS LINKED TO
HIM, HE DID NOT TRY TO PAWN ANY
OF THIS JEWELRY?

>> THAT'S CORRECT.

IT WAS FOUND IN THE
CO-DEFENDANT'S BACKYARD.

>> I KNOW IT WAS FOUND IN THE
CO-DEFENDANT'S BACK OR YARD, BUT
I THOUGHT THERE WAS SOME
EVIDENCE THAT BOTH OF THEM TRIED
TO PAWN THINGS.

>> NO.

THE PAWN WAS IN A NEWLY
DISCOVERED EVIDENCE CLAIM
DEALING WITH A NEW WITNESS, AND
HE LISTS THE ACTUAL CULPRIT,
WHICH IS ONE OF MY ISSUES--

>> WAIT, WHICH ONE IS THAT?

>> YES, IT'S MR. DIXON.

>> SO THE DIRECT EVIDENCE WOULD
BE HIS STATEMENTS TO THE PERSON
HE ESCAPED WITH?

>> THAT'S CORRECT.

>> AND THEN WOULD IT ALSO BE
DIRECT EVIDENCE THAT HE WAS,
THERE WAS A WITNESS WHO
TESTIFIED THAT HE SAW MR. MURRAY
WITH THE CO-DEFENDANT IN THE
AREA OF THE CRIME SHORTLY BEFORE
THE CRIME.

>> THAT'S EVIDENCE.

>> OKAY.

I MEAN--

>> JUSTICE, BUT--

>> I MEAN, I KNOW IT'S ONLY CIRCUMSTANTIAL THAT HE COMMITTED THE CRIME, BUT IN LIGHT OF THAT EVIDENCE THAT HE WAS WITH THE CO-DEFENDANT, DOESN'T EVIDENCE THAT PLACES THE CO-DEFENDANT, THE JEWELRY IN THE CO-DEFENDANT'S HAND ALSO, ISN'T THAT PROBATIVE AS TO YOUR CLIENT'S GUILT AS WELL?

>> NO, SIR.

THE REASON IS MR. MURRAY LIVED FOUR BLOCKS AWAY FROM THE VICTIM'S HOUSE.

HE WAS SEEN THE NEXT DAY IN HIS OWN HOUSE REPAIRING HIS STEREO. THE TRUCK THAT WAS FOUND NEXT TO VICTIM'S HOUSE AT 4:30 IN THE MORNING-- THERE WAS A PASSER-BY THAT WENT BY.

THERE WAS THIS FORD RANCHERO THAT WAS FOUND THERE WHICH, APPARENTLY, THE STATE WAS SAYING WAS LINKED-- THAT THAT'S THE ONLY TRUCK THAT WAS LINKED, THAT'S HOW THEY WENT IN THE HOUSE, WAS FOUND 20 MILES AWAY. THAT TRUCK BELONGED TO WALTER HOLTON.

WALTER HOLTON IS THE GUY MR. DIXON SAYS COMMITTED THIS MURDER THAT WE HAVE AN AFFIDAVIT FROM.

SO MURRAY--

>> WELL, LET'S LOOK AT THAT ASPECT.

AND ONE OTHER THING, I KNOW THE HAIR, YOU HAD SOME PROBLEMS WITH THAT.

>> YES, SIR.

>> BUT THE SCRAPINGS OFF OF THE NIGHTGOWN, THERE WAS NOTHING WITH REGARD TO THIS DEFENDANT WITH REGARD TO DNA?

>> THE DNA ISSUE IS TRICKY. THE STATE FOUND EVIDENCE THAT WERE NEVER TESTED BEFORE IN THE CO-DEFENSE FILE ON POST-CONVICTION.

IF YOU NOTICE, THE COURT DIDN'T GO TOO MUCH INTO DNA BECAUSE THERE WERE SIX DIFFERENT SOURCES FOUND ON THE DNA IN POST-CONVICTION, SO I DON'T WANT TO TALK ABOUT THAT, THAT'S NEVER COMING IN, AND I'LL TELL YOU WHY, JUDGE.

THE HAIR ITSELF IS A BIG ISSUE--

>> WELL, I DON'T KNOW IF IT IS. MAYBE TO YOU, IT'S NOT TO ME.

>> YES, SIR.

>> WHAT ABOUT THE DNA FROM THE SCRAPINGS ON THE NIGHTGOWN? I GO BACK TO MY DIRECT QUESTION.

[LAUGHTER]

VERY SIMPLE.

EITHER, YES, IT PUTS HIM THERE, OR, NO, IT DOESN'T.

>> I DON'T KNOW.

>> YOU DON'T KNOW.

>> NO, SIR.

BECAUSE WHAT HAPPENED, THEY TESTED DNA IN POST-CONVICTION THAT WAS FOUND IN THE CO-DEFENDANT'S FILE, AND THEY TESTED SIX HAIRS.

HAIR NUMBER FIVE--

>> I'M TALKING ABOUT THE, WASN'T THERE SEMEN FOUND ON THE--

>> NOT LINKED TO MURRAY, I'M SORRY.

>> NOT LINKED TO-- WHO'S THAT LINKED TO?

>> THAT WAS LINKED TO THE CO-DEFENDANT, MR. TAYLOR. I'M SORRY, I DIDN'T UNDERSTAND THE QUESTION.

>> NO, THAT'S--

>> SO THE DNA, I JUST WANT TO MAKE SURE WHERE WE ARE ON THIS.

>> RIGHT.

>> IT WAS PUBIC HAIRS HAD THE SAME MICROSCOPIC CHARACTERISTICS.

IT WAS THAT DNA THAT CAUSED A REVERSAL TWICE ABOUT-- PRIOR TO THIS CASE.

>> IN PART WITH CHAIN OF

CUSTODY, YES.

>> WHAT IS, WHAT WAS-- YOU HAVE-- I'M TRYING TO FIND OUT WHAT WAS THE SUMMIT OF AN EVIDENTIARY HEARING AND WHAT WAS SUMMARILY DENIED.

IN YOUR CASE, WE ALSO HAVE TAYLOR IN A DIFFERENT POSTURE. WHAT IS THE, WAS THE SMITH ISSUE OF DIXON AND SMITH, ARE THOSE THE TWO--

>> CORRECT.

>> OKAY.

WHAT DID DIXON, WAS THERE AN EVIDENTIARY HEARING ON DIXON?

>> THERE WASN'T, JUDGE.

AND THE COURT'S ORDER, AS YOU NOTED, WAS ERRONEOUS BECAUSE ALL THE COURT DID IS SAY, WELL, THIS IS ESSENTIALLY INCREDIBLE, AND IT DID NOT USE THE NEWLY-DISCOVERED EVIDENCE TEST THAT THIS COURT ANNOUNCED IN JONES.

AND IT NEVER WENT THROUGH THE PRIOR EVIDENTIARY HEARING TESTIMONY.

IT NEVER ANALYZED--

>> SO HE WAS NOT GIVEN--

WHATEVER HE WAS GOING TO SAY WHICH IS, AGAIN, A LITTLE SUSPECT TO ME, FRANKLY, BECAUSE NOW HOLTON'S DEAD, NOW HE'S GOING TO TALK ABOUT IT.

BUT THAT'S NOT-- THERE'S NO CREDIBILITY FINDING AS TO DIXON.

>> THERE WAS A CREDIBILITY FINDING THAT HE WAS NOT CREDIBLE, BUT IT WAS SUMMARILY DENIED.

WE NEVER--

>> BUT IT WAS NOT, I MEAN, YOU CAN'T-- WELL-- ALL RIGHT.

>> WHAT'S THE BASIS OF DIXON'S KNOWLEDGE?

>> HE WAS A DRUG RUNNER FOR MR. HOLTON.

>> I UNDERSTAND THAT, BUT WHAT'S THE BASIS OF HIS KNOWLEDGE?

>> HOLTON TOLD HIM--

>> HOW DOES THAT COME INTO--

>> UNDER CRAWFORD, JUDGE.

IT WOULD COME IN UNDER
ADMISSION.

THIS IS HOLTON'S VEHICLE FOUND
NEXT TO CRIME SCENE THAT'S
LOCATED ON THE NORTH SIDE OF
TOWN AWAY FROM MURRAY'S HOUSE
THE NEXT DAY RIGHT AROUND THE
PLACE, A MILE AND A HALF FROM
DIXON'S MOM, THREE OR FOUR
BLOCKS FROM HOLTON'S WORK.

HOLTON'S GIRLFRIEND, ANGELA
SMITH, PROVIDES-- REMEMBER NOW,
HOLTON IS A PERSON OF INTEREST
IN THIS CASE.

MURRAY WASN'T EVEN ARRESTED FOR
TWO YEARS.

HE WASN'T EVEN A SUSPECT.

HOLTON WAS A PERSON OF INTEREST,
PROVIDES AN ALIBI SAYING,
THROUGH HIS GIRLFRIEND, THAT HE
WAS HOME THAT NIGHT.

DIXON SAYS IN HIS AFFIDAVIT OR
IN OUR MOTION THAT ANGELA SMITH
WAS LYING, AND HE KNOWS THAT
BECAUSE HE WAS OUT SELLING DRUGS
WITH MR. HOLTON THAT NIGHT.

I MEAN, THAT'S CORROBORATING
EVIDENCE.

MY ARGUMENT IS THAT'S
CREDIBLE--

>> HE IS OUT SELLING DRUGS WITH
MR. HOLTON CORROBORATES THE
MURDER.

>> NO.

IT CORROBORATES THE FACT THAT
HOLTON'S TRUCK IS NEXT TO
VICTIM'S HOUSE.

IT SHOULDN'T BE THERE AT 4:30 IN
THE MORNING.

EVERYBODY IS ALLEGING THAT TRUCK
WAS USED IN COMMISSION OF THIS
CRIME TO GET TO THAT HOUSE, AND
THEN IT'S FOUND THE NEXT DAY--

>> WAS THERE A RELATIONSHIP
BETWEEN HOLTON AND MURRAY AND
TAYLOR?

>> NO.

WELL, WE DON'T KNOW YET BECAUSE

WE HAVEN'T DEVELOPED THE EVIDENCE.

RIGHT NOW I CAN'T TELL YOU--

>> I'M MORE INTERESTED, GOING BACK TO PUBIC HAIRS.

THAT'S THE-- THAT WERE FOUND. WHAT WAS THE TESTIMONY AT TRIAL AS TO DEGREE OF CERTAINTY THAT THESE WERE MURRAY'S PUBIC HAIR?

>> JUSTICE PARIENTE, ALL THEY SAID WAS THEY WERE CONSISTENT. AND THAT'S ANOTHER THING, THAT HAIR DOESN'T LINK MURRAY TO CRIME BECAUSE THE EXPERT ALSO SAID THIS IS NOT AN ABSOLUTE MEANS OF IDENTIFICATION.

>> ALL RIGHT.

NOW, LET'S GO TO WHAT YOU'VE DEVELOPED OR WHAT-- REGARDING THE POSSIBILITY OF CONTAMINATION, THE FBI REPORT, ANY OF THAT AND WAS THAT GIVEN AN EVIDENTIARY HEARING?

BE I'M JUST TRYING, YOU KNOW, I UNDERSTAND YOU'VE GOT A LOT TO DO IN A SHORT TIME.

>> YEAH.

>> SOCIAL SECURITY THAT EVIDENCE OF-- IT'S THAT EVIDENCE OF HIM ACTUALLY BEING THERE--

>> LET ME TALK ABOUT THAT, JUDGE.

SO TO ANSWER YOUR QUESTION ABOUT THE EVIDENTIARY HEARINGS FIRST, SMITH WAS GIVEN AN EVIDENTIARY HEARING.

DIXON WAS NOT, OKAY?

SMITH TOOK A LARGE PART UP. IN REGARDS TO HAIRS UNDER CLAIM THREE OF MY BRIEF, IT WAS SUMMARILY DENIED IN REGARDS TO WHETHER COUNSEL SHOULD HAVE OBJECTED TO THESE HAIRS COMING INTO EVIDENCE IN THE FOURTH TRIAL.

AND LET ME TELL YOU WHY.

FOR THE FIRST TIME IN FOUR TRIALS THE EXPERT GOT ON THE STAND, AND IN THE THIRD RE-CROSS-EXAMINATION AFTER ALL

THIS EVIDENCE IS IN-- NOW,
WE'RE TALKING ABOUT ALL THE
HAIRS, KNOWN HAIRS FROM THE
CLIENT AND THE UNKNOWN HAIRS
THAT WENT TO FBI.

HE SAID THOSE ARE NOT MY
INITIALS ON THE SLIDES.
TO THIS DAY, I ASKED THE
PROSECUTOR IN ONE OF THE
EVIDENTIARY HEARINGS, I HAD HIM
ON THE STAND, DO YOU KNOW WHO'S
RESPONSIBLE FOR THE CHAIN OF
CUSTODY THAT OPENED UP THESE
SLIDES, AND HE SAID TO THIS DAY
I DO NOT KNOW.

THAT-- WE DO NOT HAVE AN
AUTHENTICATION OF THESE HAIRS.
IN A NEW TRIAL, THESE HAIRS ARE
NOT COMING IN.

NO HAIRS--

>> SO YOU'RE, SO THERE WAS AN
EVIDENTIARY HEARING--

>> YES.

>>-- ON WHETHER THE TRIAL
COUNSEL PERFORMED DEFICIENTLY
WITH REFERENCE TO HAIRS COMING
IN?

WHAT'S YOUR CLAIM AS TO THAT
ISSUE.

>> IT'S A DIFFICULT ISSUE TO
ANSWER--

>> WELL, YOU'VE GOT-- REALLY,
IT SHOULD BE PRETTY
STRAIGHTFORWARD.

>> IT'S NOT BECAUSE--

>> WELL, EITHER HE WAS DEFICIENT
OR HE WASN'T.

YOU'RE CLAIMING HE WAS OR
WASN'T, AND THAT WAS--

>> THE CLAIM WAS SUMMARILY
DENIED, BUT HE WAS DEFICIENT
BECAUSE WE WERE ALLOWED TO ASK
SOME QUESTIONS ABOUT THAT, BUT
WE WERE NOT GRANTED AN
EVIDENTIARY HEARING.

>> THERE WAS NO EVIDENTIARY
HEARING ON THE WAY THE DNA WAS
HANDLED, IS THAT CORRECT?

>> CORRECT.

BUT WE WERE-- THAT CLAIM WAS

NOT GRANTED AN EVIDENTIARY HEARING, BUT WE WERE ALLOWED TO ASK SOME QUESTIONS WHICH IS WHY IT WAS A DIFFICULT QUESTION TO ANSWER.

I ASKED COUNSEL.

HE DID NOT OBJECT TO THIS.

HE OBJECTED AT THE END OF THE QUESTIONING OF THIS EXPERT.

HE DID NOT MOVE FOR A MISTRIAL.

MORE IMPORTANTLY, HE DID NOT MOVE FOR A RICHARDSON HEARING.

MORE IMPORTANTLY, AS THE STATE WILL NOTE, HE TRIED TO ARGUE ON DIRECT APPEAL, BUT THE ATTORNEY GENERAL-- RIGHTFULLY-- SAID THIS ISSUE'S NOT PRESERVED.

YOU DIDN'T ADDRESS IT UNTIL THE END OF QUESTIONING.

AND I ASKED COUNSEL, PERHAPS I DIDN'T OBJECT ON TIME.

THIS ISSUE WAS NOT PRESERVED.

IF HE WOULD HAVE, CAN YOU IMAGINE?

ANY TRIAL ATTORNEY HERE WOULD HAVE SAID, JUDGE, WE WANT A RICHARDSON HEARING, THIS--

>> OKAY.

NOW, YOU ALSO BRING UP SOMETHING TO DO WITH THE FBI LETTER--

>> YEAH.

>> TELL ME THE STATUS OF THAT.

>> SO I DON'T THINK THAT'S A BIG ISSUE BECAUSE OF THE AUTHENTICATION ISSUE.

ALSO THE FBI LETTER SAID WE HAD ERRORS IN OUR TESTIMONY AT TRIAL.

SO NOW ADD ANOTHER LAYER TO PROBLEM OF THIS CASE.

>> HOW DOES THE LIMITATION THAT THE WITNESS PROVIDED FACTOR INTO THIS?

>> IT FACTORS--

>> YOU KNOW, READ THE LETTERS AND THE QUOTES AND ALL THOSE THINGS.

BUT AS I WAS LOOKING AT IT IN THE BACK OF MY MIND IT'S TELLING ME, WELL, THIS IS NOT WHAT THE

EXPERTS SAY.
THEY SAY IT'S CONSISTENT AND IT
CAN BE CONSISTENT WITH OTHERS.
>> CANDIDLY, IT'S NOT OUR
STRONGEST ISSUE.

OKAY?

>> FAIR ENOUGH.
APPRECIATE YOUR CANDOR.

>> YES, SIR.
HOWEVER, DURING THE TRIAL THERE
WAS AN ISSUE WHERE THE DEFENSE
COUNSEL OBJECTED AND SAID THIS
GUY, YOU KNOW, WE HAVEN'T
PROVED-- THIS GUY CANNOT
TESTIFY, THERE'S TAMPERING,
THERE'S THINGS LIKE THIS.
AND THE EXPERT SAID, LIKE, I'VE
DONE X AMOUNT OF TESTS, AND I'VE
ONLY GOT A CERTAIN AMOUNT WRONG.
THAT'S A PROBLEM.

THEY CANNOT DO THAT.

>> WHAT'S YOUR STRONGEST ISSUE?
IF IT'S NOT THE PUBIC HAIRS--

>> THERE'S THREE.

ONE, THERE'S NO EVIDENCE LEFT.
AND THE ISSUES ARE SMITH.
SMITH, FOR TWO YEARS AFTER
MURRAY WAS CONVICTED, MISLED,
COMMITTED FRAUD UPON THE COURT,
FILED FAKE 3850s, TESTIFIED
UNDER OATH TO IMAGINARY
CONVERSATIONS HE HAD WITH THE
STATE ATTORNEY ABOUT GETTING A
SENTENCE REDUCTION.

HE WROTE LETTERS TO THE STATE
SAYING, HEY, LET'S BLAME IT ON
MY TRIAL ATTORNEY THAT SOMETHING
WENT WRONG, AND YOU CAN GET ME A
SENTENCE REDUCTION, YOU CAN HELP
ME--

>> WAS IT THE TRIAL COURT'S
FINDING THAT HIS RECATANTION
TESTIMONY WAS COMPLETELY
INCREDIBLE SUPPORTED BY
COMPETENT AND SUBSTANTIAL
EVIDENCE?

>> ABSOLUTELY NOT.

WHAT HE RULED UPON, JUSTICE--

>> HE TESTIFIED THAT HE, HIS
RECATANTION AND HIS 3850s WAS

AN ATTEMPT TO GET RELIEF FOR HIMSELF, THAT IT WASN'T TRUE.

>> CORRECT.

BUT WHAT THE JUDGE FOUND, WHAT THE JUDGE FOUND IN HIS ORDER, HE JUST SAID BECAUSE SMITH STILL STICKS TO HIS STORY THAT MURRAY CONFESSED TO HIM, I'M FINDING THAT CREDIBLE.

HE IGNORED ALL OF THE OTHER THINGS I'M TALKING ABOUT.

HE IGNORED --

>> BUT HE, I WAS UNDER THE IMPRESSION THAT THE TRIAL JUDGE HERE WAS SAYING THIS GUY'S TRYING TO PLAY THE SYSTEM. HE'S OUT OF OPTIONS, AND HE'S GOT A LAST DITCH EFFORT TO TRY TO GET SOME RELIEF OF SOME KIND, AND HE'LL SAY EVERYTHING YOU GIVE HIM.

WASN'T THAT WHAT THE TRIAL JUDGE WAS FINDING HERE?

>> HE ACTUALLY FOUND SMITH CREDIBLE IN THE FACT THAT MURRAY ACTUALLY CONFESSED TO HIM.

>> ISN'T THAT, THOUGH, WHAT THE TRIAL JUDGE-- THAT'S THE REASON FOR THIS RECANTATION.

THE WHOLE THING WAS TO GET AROUND HIS SENTENCE, WASN'T IT?

>> I DON'T THINK SO BECAUSE THE PROPER TEST IS THE NEWLY-DISCOVERED EVIDENCE TEST. HE HAS TO INCLUDE THE TOTAL PICTURE.

>> BUT WHAT WE'VE GOT HERE IS THAT THIS GENTLEMAN RECANTED HIS RECANTING.

ISN'T THAT CORRECT?

>> CAN YOU IMAGINE THE CROSS-EXAMINATION--

>> I UNDERSTAND, I UNDERSTAND ALL THAT.

BUT ULTIMATELY--

>> CROSS-EXAMINATION--

>> HIS CREDIBILITY DETERMINATION.

I MEAN, OBVIOUSLY, THIS PERSON MIGHT NOT BE THE MOST CREDIBLE

PERSON IN THE WORLD, BUT THAT'S NOT REALLY THE QUESTION.

THE QUESTION IS WHETHER THE FINDER OF FACT HERE MADE A CREDIBILITY DETERMINATION, AND THERE IS SOME BASIS FOR IT.

AND IT SEEMED TO ME THAT THE GENTLEMAN WAS KIND OF EXPLAINING, WELL, YOU KNOW, I WAS TRYING TO PLAY 'EM.

I WAS TRYING TO GET SOME ADVANTAGE.

AND, YOU KNOW, I WAS DOING THE BEST I COULD.

BUT WHAT I SAID ORIGINALLY WAS TRUE.

>> RESPECTFULLY, JUSTICE--

>> ISN'T THAT WHAT HE SAID?

>> YES.

BUT THAT'S A WRONG ANALYSIS.

IT'S NOT--

[LAUGHTER]

>> I'M NOT ANALYZING ANYTHING.

I'M JUST SAYING WHAT HAPPENED.

>> MAY I EXPLAIN?

>> YES.

>> A NEWLY-DISCOVERED EVIDENCE TEST DOESN'T DEAL WITH CREDIBILITY.

THE CORRECT TEST IS WHETHER THIS WEAKENED THE CULPABILITY OF MR. MURRAY TO A REASONABLE DOUBT.

>> SO ALL THAT WOULD BE THEN IS IMPEACHMENT--

>> CAN YOU IMAGINE THAT IMPEACHMENT?

>> WAIT.

LET ME-- IT WOULD BE IMPEACHMENT OF HIS TESTIMONY AND HE'D EXPLAIN IT.

BUT HE WAS ALSO, SMITH WAS IMPEACHED AT THE TRIAL ON MANY LEVELS.

SO WHEN WE DEAL WITH JUST IMPEACHMENT EVIDENCE AS OPPOSED TO-- HE STILL WOULD TESTIFY THAT THIS IS WHAT MURRAY TOLD HIM, AND THE FACTS HE TOLD HIM ARE CONFIRMED BY WHAT APPEAR,

YOU KNOW, IN THE CRIME SCENE.
WE'VE STILL GOT THAT EVIDENCE
THAT THE JURY HEARD, CORRECT?
>> THAT PALES IN COMPARISON TO
WHAT CAME OUT IN
POST-CONVICTION.

THIS GUY CREATED AN IMAGINARY
STORY WHERE HE WAS SITTING WITH
THE PROSECUTOR ABOUT HOW TO COME
UP WITH A SUBSTANTIAL SENTENCE
REDUCTION, HAD TO LIE ON THE
STAND--

>> I WANT TO GIVE YOU A CHANCE
TO ADDRESS MY CONCERN ABOUT--
ACCORDING TO THIS COURT'S
OPINION WHEN A CLAIM OF NEWLY
DISCOVERED EVIDENCE IS BASED
UPON THE RECANTATION OF
TESTIMONY BY A WITNESS OR THE
PROSECUTION, THE SECOND PRONG OF
THE JONES FROM THE FLORIDA
SUPREME COURT CASE IS MET ONLY
WHEN THE DEFENDANT FIRST
ESTABLISHES THAT THE RECANTED
TESTIMONY IS TRUTHFUL.
SO YOU DID NOT ESTABLISH THE
TRIAL COURT FOUND THAT THE
RECANTED TESTIMONY WAS TRUTHFUL,
CORRECT?

>> I DON'T THINK IT WAS
RECANTATION, JUSTICE.
THAT'S THE ISSUE.
IF HE TRULY RECANTED, IT WOULD
BE THE RECANTATION--

>> IT'S RECANTATION TESTIMONY.
THAT'S THE PROPER LEGAL
FRAMEWORK IN WHICH SOMEBODY SAYS
WHAT I SAID AT TRIAL WAS NOT
TRUE, AND I DIDN'T DISCLOSE IT.
SO IF YOU'RE CORRECT THAT THE
FACT THAT SOMEONE SAID SOMETHING
UNTRUE IN THE RECANTATION MEANS
THAT SOMEBODY COULD GET A NEW
TRIAL BECAUSE NOW THERE'S NEW
CROSS-EXAMINATION EVIDENCE,
DOESN'T THAT COMPLETELY UNDO THE
ENTIRE LEGAL FRAMEWORK UNDER
WHICH WE HAVE HISTORICALLY
PROCESSED THIS KIND OF CLAIM?
IN OTHER WORDS, IF THE GUY MADE

IT UP, THE TRIAL JUDGE HAS AN EVIDENTIARY HEARING AND SAYS THE GUY MADE UP HIS RECONTATION, THERE'S NO TRUTH TO IT WHATSOEVER, THEREFORE, IT WOULDN'T MAKE A DIFFERENCE AT TRIAL.

BUT UNDER YOUR THEORY NOW, THAT DOESN'T MATTER BECAUSE THERE'S NEW, THERE'S NEW IMPEACHMENT EVIDENCE THAT COULD BE USED IF IT WAS TRIED AGAIN.

IS THERE ANY CASE THAT SUGGESTS THAT YOUR ANALYSIS, THE FACT THAT THERE WAS A RECONTATION EVEN IF IT'S FOUND TO BE UNTRUTHFUL CAN FORM A BASIS FOR A NEW TRIAL SIMPLY BECAUSE IT WOULD BE IMPEACHMENT EVIDENCE THAT WASN'T THERE BEFORE?

>> I DON'T KNOW.

>> OKAY.

>> HOWEVER, IT'S NOT ONLY-- AGAIN, I STAND BY MY ARGUMENT THAT THIS, HE DID NOT RECONT HIS ORIGINAL TRIAL TESTIMONY.

WHAT HE DID IS HE STUCK TO THAT BECAUSE, OBVIOUSLY, HE'S FACING THE DEATH PENALTY FOR HIS OWN BRUTAL MURDER THAT HE COMMITTED. AND HE'S TRYING TO GET SENTENCE REDUCTIONS FROM THE STATE.

SO HE CAN'T GIVE UP THE FACT THAT HE MADE UP THIS ISSUE ABOUT MURRAY, BECAUSE OTHERWISE HE LOSES EVERYTHING.

IT'S CLEAR HE'S GETTING DESPERATE LIKE JUSTICE LEWIS POINTED OUT.

HE'S NOT GOING TO GIVE THAT UP. HOWEVER, HE ALSO SAID--

>> YEAH, BUT THE NEWLY DISCOVERED EVIDENCE THAT YOU SAID WAS HIS RECONTATION IN HIS OWN 3850, SMITH'S OWN 3850--

>> AS WELL AS IT'S A LOT--

>> AND YOU HAVE TO ESTABLISH IT'S TRUTHFUL.

>> OTHER STUFF WAS TRUTHFUL, JUDGE.

IN HIS LAST 3850, HE SAID THAT HE WAS GOING TO GET PAROLE AFTER 25 YEARS.

AND HE SAID ON THE STAND, YEAH, THAT WAS TRUE.

HE DIDN'T BRING THAT UP AT TRIAL.

HE SAID I'M DOING LIFE, I'M DOING LIFE.

THAT "AMERICA'S MOST WANTED" VIDEO, HE WROTE A LETTER TO STATE SAYING, HEY, HELP ME OUT WITH PAROLE, OTHERWISE I MIGHT HAVE TO SAY THAT I GOT ALL MY INFORMATION FROM "AMERICA'S MOST WANTED" VIDEO WHICH, BY THE WAY, HE ADMITTED HE WATCHED IN THE ILLINOIS COUNTY JAIL.

I MEAN, THAT'S POWERFUL STUFF FOR A JURY TO HEAR--

>> YOU'VE EXHAUSTED ALMOST ALL OF YOUR REBUTTAL TIME.

I WILL GIVE YOU TWO MINUTES IN ADDITION TO THE 41 SECONDS--

>> THANK YOU, JUDGE.

>> YOUR HONOR, FIRST I WOULD ADDRESS THE JEWELRY ISSUE.

THE JEWELRY WAS LINKED TO MURRAY.

THERE WAS TESTIMONY AT TRIAL THAT MURRAY AND TAYLOR MET ALONE AND THAT DIRECTLY AFTER THEY MET ALONE, TAYLOR WENT TO HIS FORMER RESIDENCE AND WAS SEEN GOING INTO THE BACKYARD WHERE THE JEWELRY WAS ACTUALLY FOUND AND THAT PEOPLE TESTIFIED THAT HE CAME BACK INTO THE HOUSE WITH DIRTY HANDS.

SO IT WAS, THAT'S CERTAINLY CIRCUMSTANTIAL EVIDENCE--

>> BUT, WAIT, WHAT PART-- WAS MURRAY SEEN WITH THE JEWELRY?

>> NO, MURRAY WAS NOT SEEN WITH THE JEWELRY.

THAT'S CORRECT, YOUR HONOR.

>> WE SAY IN THE SUFFICIENCY OF EVIDENCE THAT THERE WAS EVIDENCE THAT TIES HIM TO JEWELRY.

HE DIDN'T PAWN IT, AND HE DIDN'T

HAVE IT IN HIS POSSESSION.

>> NO.

ALL WE HAVE IS THAT THE TWO OF THEM TALKED TOGETHER ALONE--

>> AND WHO SAID-- AND WHO TESTIFIED TO THAT?

>> THE TWO, THAT THEY TALKED TOGETHER ALONE?

IT WAS MURRAY'S BROTHER AND, I BELIEVE, JASON LEASTER?

>> THEY TALKED ALONE AT WHAT POINT AFTER THE MURDER?

I MEAN, TALKING ALONE--

>> IT WAS ABOUT A YEAR LATER, AND THE TWO OF THEM MET TOGETHER, AND THEN TAYLOR DIRECTLY WENT BACK TO THE HOUSE RIGHT AFTER THAT CONVERSATION AND WAS SEEN GOING INTO THE BACKYARD AND COMING BACK OUT WITH DIRTY HANDS.

UNFORTUNATELY FOR HIM, THE JEWELRY HAD ALREADY BEEN TURNED OVER TO POLICE AT THE TIME, SO HE DIDN'T FIND WHAT HE WAS LOOKING FOR IN THE BACKYARD. BUT THAT'S THE EVIDENCE LINKING MURRAY AND TAYLOR TO JEWELRY THAT WAS FOUND AT TAYLOR'S RESIDENCE.

>> YOUR OPPOSITION SAYS THAT THIS AFFIDAVIT SETS FORTH ADMISSIBLE TESTIMONY BY MR. DIXON AND PROVIDES WHO THE ACTUAL KILLER WAS.

THIS THING TO BE TRIED, DIXON COMES IN AND TELLS THE WHOLE STORY.

NOW, BELATEDLY, WE UNDERSTAND-- AND HOLTON'S DEAD, BUT HE STILL SAYS THIS ALL COMES FROM, WHAT'S THE POSITION OF THE STATE ON WHAT, IF ANY, FIRST, CAN THIS BE UTILIZED AND, SECOND, WHAT'S THE IMPACT OF THAT.

THEY DIDN'T GET AN EVIDENTIARY HEARING ON IT.

>> YOUR HONOR, IT CANNOT BE UTILIZED UNDER THE HEARSAY EXCEPTIONS.

IT WOULDN'T WITH FALL INTO AN EXCEPTION BECAUSE THERE IS NO CORROBORATION OF HIS STATEMENT THAT HOLTON TOLD ME HE COMMITTED THE MURDER.

ADDITIONALLY, THE NEWLY-DISCOVERED EVIDENCE--

>> THE ARGUMENT WAS THAT THE TRUCK CORROBORATED IT.

YOU WANT TO ADDRESS THAT SINCE THAT WAS--

>> YES.

>> OKAY.

>> THAT'S WHERE I WAS GOING, YOUR HONOR.

HOLTON WAS KNOWN ABOUT AT TRIAL BECAUSE HIS TRUCK WAS FOUND SEEN CLOSE TO WHERE THE MURDER TOOK PLACE ON THE MORNING OF THE MURDER.

SO EVERYBODY WAS AWARE THAT HOLTON EXISTED.

HE TESTIFIED BY AFFIDAVIT AT TAYLOR'S TRIAL BECAUSE HE WAS UNDERGOING CHEMOTHERAPY TREATMENTS.

SO EVERYBODY KNEW HOLTON EXISTED.

THEN THE TRUCK--

>> I'M SORRY, HOLTON TESTIFIED AGAINST TAYLOR.

>> YES, YOUR HONOR.

>> AND WHAT WAS HIS TESTIMONY AT TAYLOR'S TRIAL?

>> HIS TESTIMONY WAS MY CAR WAS STOLEN.

I REPORTED IT STOLEN AT 6:30 IN THE MORNING THE MORNING OF THE MURDER, AND IT WAS LATER RECOVERED ABOUT A MILE AWAY FROM TAYLOR'S RESIDENCE.

SO HE WAS KNOWN AT THE TIME OF TRIAL.

SO THE NEWLY-DISCOVERED EVIDENCE, YOU KNOW, THAT THERE'S A POSSIBLE ALTERNATE SUSPECT IS UNTIMELY IN THIS CASE BECAUSE THEY COULD HAVE EXPLORED THIS AVENUE, CERTAINLY, AT THE TIME OF TRIAL THAT SOMEBODY ELSE'S

CAR WAS SEEN NEAR THE RESIDENCE
AT THE TIME OF THE MURDER.

>> ADDITIONALLY, DIXON'S
AFFIDAVIT DOESN'T REFUTE ANY OF
THE TESTIMONY FROM ANY OF THE
EVIDENCE ON THE RECORD.

IT DOESN'T REFUTE THAT MURRAY'S
PUBIC HAIRS WERE FOUND AT THE
SCENE, IT DOESN'T REFUTE THAT
TAYLOR'S SEMEN WAS FOUND AT THE
SEEN--

>> WHAT'S THE EVIDENCE THAT HIS
PUBIC HAIRS WERE FOUND THERE?

>> THE EVIDENCE THAT MURRAY'S
PUBIC HAIRS WERE FOUND THERE
WERE BASED OFF OF TWO LOCATIONS;
ONE OFF THE BODY OF THE VICTIM
AND ONE OFF A NIGHTGOWN.

>> BUT WHAT IS THE EVIDENCE THAT
THEY WERE HIS?

>> THE EVIDENCE PRESENTED AT
TRIAL THAT THEY WERE HIS WERE
THE TESTIMONY THAT THE
MICROSCOPIC CHARACTERISTICS OF
THE UNKNOWN HAIR WERE CONSISTENT
WITH--

>> WELL--

[LAUGHTER]

THAT SEEMS TO BE, SAYING THAT
THAT ESTABLISHES THEY WERE HIS
SEEMS TO KIND OF GO ALONG WITH
THE ARGUMENT THAT OPPOSING
COUNSEL IS MAKING HERE--

>> WELL, THAT'S--

>> BECAUSE WE KNOW TO SAY THAT
HE CAN'T BE EXCLUDED OR THAT
IT'S CONSISTENT WITH HIM DOES
NOT MEAN THAT THEY'RE HIS.

>> ABSOLUTELY, YOUR HONOR.

AND THAT'S FROM TRIAL--

>> YOU SAID, YOU JUST SAID THAT
THE EVIDENCE SHOWED THEY WERE
HIS.

>> BUT WE KNOW THAT IN
POST-CONVICTION, 1 IN 700
BILLION, WE KNOW THEY'RE HIS.
WE DIDN'T HAVE THAT INFORMATION
AT THE TIME OF--

>> WAIT, SO THAT-- OKAY.

SO THAT THE HAIR THAT WAS

TESTIFIED TO BY THE EXPERT AT TRIAL AS BEING CONSISTENT WITH MURRAY'S HAS BEEN TESTED AND IS A DNA MATCH?

>> THERE WERE HAIRS FROM THE SLIDES EXAMINED THAT WERE TESTED IN POST CONVICTION BY MS. LEE. HER TESTIMONY AT THE POST-CONVICTION EVIDENTIARY HEARING.

AND SHE TESTED THAT 1 IN 700 BILLION--

>> USING THE NEW MITOCHONDRIAL APPROACH?

>> YES, ABSOLUTELY.

>> OKAY.

>> AND THERE IS TESTIMONY FROM AN EXPERT WHO COULDN'T REPLICATE HER FINDINGS BECAUSE THERE WASN'T ENOUGH DNA LEFT-- JUST TO BE FULLY CANDID TO THE COURT-- BUT SHE DOESN'T DISAGREE WITH MS. LEE'S ANALYSIS.

>> THE WAY WE KNOW IS NOT THROUGH--

>> THE NOT AT TRIAL, SURE.

>> IT'S NOT AT TRIAL.

>> ABSOLUTELY.

>> WE KNOW I THROUGH THE DNA EVIDENCE SUBSEQUENTLY.

>> YES, YOUR HONOR.

>> IF THERE WAS A NEW TRIAL, THERE WOULD BE-- YOUR ARGUMENT, I GUESS, WOULD BE IT WOULD REALLY NAIL HIM.

>> AS LONG AS THE DNA COMES INTO EVIDENCE.

>> WELL, YOU KNOW, AGAIN, IF YOU READ WHAT WE SAID AND THEN WHAT'S BEING SAID ABOUT THE JEWELRY, WHICH SEEMS SOMEWHAT WEAK, AND THEN YOU DO HAVE HOLTON'S GIRLFRIEND HAVING ONE OF THE PIECES OF JEWELRY WHICH MADE HOLTON A SUSPECT, IT STARTS TO GET LIKE, WELL, ARE THEY-- WAS THERE A CONNECTION BETWEEN THEM.

AND SO THE PUBIC HAIRS, YOU

KNOW, SAYING THAT THEY'RE THE SAME MICROSCOPIC CHARACTERISTICS JUST DIDN'T SEEM VERY COMPELLING.

YET YOU'VE GOT-- AND YOU GO BACK TO SMITH.

SO, YOU KNOW, SINCE THIS IS A 1990 MURDER, IT BECOMES DIFFICULT TO SAY WHAT WAS THEN AND WHAT WAS NOW, SO WE'LL LOOK AT THAT EVIDENTIARY HEARING. IS THAT SOMETHING THE JUDGE RELIED ON TO SAY THAT THERE'S, YOU KNOW, EVEN IF THIS EVIDENCE WAS THERE, A NEW TRIAL WOULD NOT GRANT HIM ACQUITTAL BECAUSE THE EVIDENCE IS EVEN STRONGER NOW THAN IT WAS THEN?

>> NO, HE DIDN'T SPECIFICALLY COME TO THAT CONCLUSION IN HIS ORDER.

HE USED OTHER PIECES FROM THE TRIAL TO COME TO HIS CONCLUSIONS.

AND SPEAKING ABOUT--

>> LOOK, IN LIGHT OF THIS LINE OF QUESTIONING, CAN YOU ADDRESS COUNSEL'S ARGUMENT THAT THERE IS A CHAIN OF CUSTODY ISSUE WITH RESPECT TO THE HAIR THAT WOULD PREVENT ANY EVIDENCE, DNA OR OTHERWISE, OF COMING IN AT A FUTURE TRIAL?

>> ABSOLUTELY, YOUR HONOR. THE ISSUE THAT WAS BROUGHT FORWARD IS IN TRIAL THREE. THE EXPERT TESTIFIES, I THINK IT WAS MY TECHNICIAN.

AND THEN HE SAYS THE NAME OF A PERSON WHO RECEIVED THE BOX AND MOUNTED THE SLIDES.

AND THEN IN TRIAL FOUR HE SAYS, YOU KNOW, THE OTHER DAY, JUST TO CONFIRM, I WAS TALKING TO EVERYONE AROUND THE OFFICE, AND IT WASN'T ACTUALLY THAT PERSON, IT WAS A DIFFERENT PERSON NOW, THIS IS CERTAINLY SOMETHING THAT COULD HAVE BEEN EXPLORED IN PRETRIAL DISCOVERY, TALK TO

PERSON LISTED IN TRIAL NUMBER THREE AND THEY SAY, OH, NO, I DIDN'T DO THAT, OBVIOUSLY, YOU WOULD HAVE FOUND OUT IT WAS SOMEBODY ELSE.

IT'S NOT REALLY A SURPRISE AT TRIAL.

THIS IS INFORMATION THAT COULD HAVE BEEN DISCOVERED AT TRIAL. AND THE STATE IS NOT REQUIRED TO BRING THE ENTIRE CHAIN OF CUSTODY TO PROVE CHAIN OF CUSTODY.

AND HERE THERE'S NO INDICATION THAT ANYTHING WAS TAMPERED WITH--

>> THERE WAS SOME REFERENCE TO INITIALS THAT WERE NOT SOMEBODY'S INITIALS--

>> YES.

THE EXPERT TESTIFIED THAT IT WAS THEIR PRACTICE AT THE TIME IN 1991 THAT HE HAD A LAB TECH WHO WORKED FOR HIM, AND THAT LAB TECH WOULD PUT HIS INITIALS ON THE EVIDENCE FOR CHAIN OF CUSTODY PURPOSES BECAUSE IT WAS HIS LAB TECH, AND HE WAS GOING TO BE DOING THE EXAMINATION OF THAT.

OBVIOUSLY, THINGS HAVE CHANGED SINCE THAT PROTOCOL WAS IN PLACE, AND THAT IS NOT THE CASE ANYMORE.

AND THE EXPERT TESTIFIED TO THAT, THAT PROBABLY WASN'T THE BEST WAY TO DO IT, AND WE'VE SINCE CHANGED IT.

>> SO THERE'S NO CHAIN OF CUSTODY PROBLEM GOING FROM THE CRIME SCENE TO FBI LAB--

>> NO.

>> THE ONLY QUESTION IS GETTING ONTO THE SLIDE.

>> YES, YOUR HONOR.

>> OKAY.

>> TAYLOR AND MURRAY NEVER HAD A JOINT TRIAL?

>> NO.

NO JOINT TRIAL, YOUR HONOR.

>> OKAY.
SO TAYLOR ONLY ENDED UP WITH ONE
DIRECT APPEAL, I GUESS, BECAUSE
HE DIDN'T HAVE THAT DNA
EVIDENCE.
HE HAD THE BLOOD EVIDENCE.
>> YES, YOUR HONOR.
>> OKAY.
AND IS THE-- BECAUSE WE'VE GOT
TAYLOR ALSO HAVING THAT SAME
AFFIDAVIT.
IS THE EVIDENCE, WAS THERE A
FINDING IN EITHER CASE ABOUT WHO
WAS MORE CULPABLE, LIKE IF THERE
WAS A RINGLEADER OR--
>> NO, YOUR HONOR.
THEY BOTH POINTED THE FINGER TO
OTHER ONE AS PART OF THEIR
STRATEGY.
>> SO THAT IS WHY THERE WERE
SEPARATE TRIALS.
>> YES, YOUR HONOR.
THE MEDICAL EXAMINER TESTIFIED,
YOU KNOW, THAT IT SEEMED LIKE
THERE WERE TWO INDIVIDUALS
THERE.
AND IN MURRAY'S STATEMENTS HE
TRIED TO DOWNPLAY HIS ROLE, BUT
HE DID-- SMITH'S TESTIMONY IS
THAT HE HELPED TO STRANGLE THE
VICTIM WHICH WAS THE ULTIMATE
CAUSE OF DEATH.
>> WHO HELPED TO STRANGLE?
>> MURRAY HELPED TAYLOR TO
STRANGLE THE VICTIM.
>> BUT SHE WAS RAPED?
SHE WAS RAPED AS WELL?
>> YES, YOUR HONOR.
>> AND THAT WAS LINKED TO BOTH
OF THEM?
>> WELL, SMITH'S TESTIMONY WAS
THAT TAYLOR RAPED HER, AND THEN
IT WAS MURRAY'S TURN, AND HE
DIDN'T WANT TO DO THAT, SO HE
JUST GOT A BLOW JOB.
SO THE THEORY THERE WAS
PRINCIPAL LIABILITY, THAT, YOU
KNOW, TAYLOR RAPED HER-- SO IT
WASN'T DIRECTLY PROVEN THAT
MURRAY RAPED HER.

ADDITIONALLY, THERE WAS SEMEN FOUND IN HER BODY, BUT IT WAS INCONCLUSIVE AS TO WHO THAT BELONGED TO.

AND TO TALK ABOUT SMITH-- AND YOU'RE ABSOLUTELY CORRECT, JUSTICE LAWSON, THAT THE TEST IS NOT WHETHER OR NOT YOU WOULD HAVE IMPEACHMENT EVIDENCE. BUT EVEN IF THAT WERE THE TEST, HE WAS SIGNIFICANTLY IMPEACHED AT TRIAL.

HE ADMITTED THAT HE HAD EIGHT PRIOR FELONIES, THAT THE DEATH PENALTY WAS TAKEN OFF THE TABLE FOR HIS VERY BRUTAL MURDER, AND HE WAS CROSS-EXAMINED ABOUT WHETHER HE HAD SEEN AMERICA'S MOST WANTED AND SAID THAT HE HAD PROVIDED HIS ORIGINAL AFFIDAVIT IN THIS CASE PRIOR TO SEEING "AMERICA'S MOST WANTED."

>> WELL, AGAIN, WHEN YOU SAY-- AND I'M, DUE DEFERENCE ON THIS ISSUE, IMPEACHMENT-- HE WAS IMPEACHED SIGNIFICANTLY.

>> YES, YOUR HONOR.

>> ADDITIONAL IMPEACHMENT THEN GOES TO JONES STANDARD. BECAUSE IF A WITNESS IS CERTAIN AND THEN YOU FIND OUT AFTERWARDS THERE WAS A DEAL WITH THE STATE, ETC., ETC., WHERE HE COULD-- WELL, THEN YOU HAVE, YOU KNOW, BRADY TOO THAT YOU COULD HAVE SIGNIFICANT ENOUGH IMPEACHMENT OF A KEY WITNESS.

>> SURE.

BUT THAT IS NOT THE CASE HERE. ABSOLUTELY.

AND WE HAD PLENTY OF TESTIMONY THAT THERE WAS NOT AN EXTRA DEAL THAT HAPPENED WITH THE STATE, AND SMITH WAS VERY CANDID. AT THE EVIDENTIARY HEARING, HE TESTIFIED TWICE THAT, HEY, YOU KNOW, I HAD NOTHING TO LOSE. I WANTED A BETTER DEAL. I WAS MAD BECAUSE I THOUGHT I WAS ONLY GOING TO HAVE TO

TESTIFY ONCE, AND THEN IT ENDED UP BEING FOUR TRIALS, AND I HAD TO TESTIFY--

>> WHAT ABOUT DIXON?

THERE WAS NO EVIDENTIARY HEARING.

DIXON WAS, HAD THE-- DOES HE HAVE AN AFFIDAVIT?

>> YES.

AN AFFIDAVIT WAS SUBMITTED.

>> IS HE IN PRISON?

MR. DIXON?

>> NO.

NO, BUT HE DOES-- IT APPEARS HE HAS FELONY CONVICTIONS AS WELL FROM LOOKING AT--

>> BUT HIS TESTIMONY AS FAR AS WHY HE DIDN'T COME FORWARD BEFORE IS HE WAS FEARFUL OF HOLTON.

>> OF HOLTON, YES --

>> AND WHAT'S THE REASON THAT HIS AFFIDAVIT, IF HE WAS AVAILABLE TO TESTIFY, WASN'T TESTED IN AN EVIDENTIARY HEARING WHEN WE'RE HAVING ALL THESE-- SINCE WE'RE HAVING AN EVIDENTIARY HEARING?

>> OH, YOUR HONOR, THIS WAS FILED WAY AFTER THE EVIDENTIARY HEARINGS TOOK PLACE.

WE WERE ALREADY ON APPEAL WHEN THE SUCCESSIVE 3851 WAS FILED WHICH THE JUDGE SUMMARILY DENIED.

THERE WAS A REQUEST TO RELINQUISH JURISDICTION BACK TO TRIAL COURT IN ORDER FOR THE TRIAL COURT TO DEAL WITH THE SUCCESSIVE 3851 WHICH WAS DIXON'S AFFIDAVIT.

>> IF HIS, IF THE HEARSAY PART OF THAT HOLTON TOLD ME THIS COULDN'T COME IN BASED ON OUR CASE LAW, IS THERE ANYTHING ELSE IN THE DIXON AFFIDAVIT THAT COULD CONSTITUTE NEWLY-DISCOVERED EVIDENCE OTHER THAN THAT, YOU KNOW, ABOUT THE JEWELRY?

>> WELL, YEAH, I THINK THE DEFENSE'S ARGUMENT WOULD BE THAT THE SAILBOAT PIN BELONGED TO VICTIM.

BUT THE MAIN JEWELRY THAT WAS LINKED TO VICTIM WAS A BRITISH SOVEREIGN COIN.

AND SHE HAD A SAILBOAT NECKLACE, AND THE DEFENSE'S ARGUMENT IS THAT THERE WAS ALSO THIS SAILBOAT PIN, BUT THERE'S NOTHING TO SUGGEST THAT THERE'S ACTUALLY THIS EVIDENCE EXISTS OR THAT IT'S LINKED THIS CASE. IT COULD HAVE BEEN LINKED TO SOMETHING ELSE.

>> HAS ANGELA SMITH, DID SHE TESTIFY AT ANY OF THESE TRIALS?

>> NO.

>> NOBODY HAS BROUGHT HER UP AS TO--

>> NO.

NO, YOUR HONOR.

>> SHE WAS THE GIRLFRIEND OF HOLTON?

>> ALLEGEDLY, YES.

>> AND ONE MORE QUESTION ON THAT.

>> YES, YOUR HONOR.

>> WERE THEY-- HOLTON WAS A DRUG DEALER?

>> ALLEGEDLY.

>> OKAY.

IS THERE ANY ALLEGATION THAT THESE TWO WERE DRUG DEALERS, THIS WAS A DRUG-RELATED CRIME?

>> NO.

THERE'S NOTHING TO LINK MURRAY AND TAYLOR TO HOLTON OTHER THAN THE VEHICLE WHICH WAS HOLTON'S VEHICLE THAT WAS SEEN NEAR THE MURDER SCENE.

AND THEN-- SO MURRAY AND TAYLOR WERE DROPPED OFF AT A CERTAIN INTERSECTION.

THEN WE HAVE THEM, AN EYEWITNESS WHO PLACES THEM AT A PLACE AT 12:40 IN THE MORNING.

IN ORDER TO GET BACK TO VICTIM'S HOUSE FROM THAT PLACE, THEY

WOULD HAVE GONE PAST WHERE MR. HOLTON LIVED AT THE TIME. AND THEN THE STATE'S THEORY, OBVIOUSLY, IS THAT THEY STOLE A CAR, AND IT WAS PARKED ACROSS FROM THE VICTIM'S HOUSE, AND THEN IT WAS LATER DISCOVERED AT A USED CAR LOT WHICH WAS ABOUT A MILE FROM--

>> SO THEY STOLE A DRUG DEALER'S CAR.

>> WELL--

[LAUGHTER]

I GUESS THEY DIDN'T KNOW IT WAS A DRUG DEALER.

[LAUGHTER]

>> WERE THERE ANY PRINTS OR ANYTHING ASSOCIATED WITH THE VEHICLE?

>> NOTHING AT EVIDENTIARY--

>> I KNOW YOUR OPPONENT SAID THAT THERE ARE, OR MAYBE YOU SAID, THAT THERE WAS A REPORT OF A CAR BEING STOLEN.

DID THE POLICE ACTUALLY HAVE A REPORT THAT MR. HOLTON MADE THAT HIS CAR WAS STOLEN?

>> I BELIEVE SO.

YES, YOUR HONOR.

HE TESTIFIED AT TAYLOR'S TRIAL BY DEPOSITION THAT HE REPORTED HIS CAR STOLEN AT 6:30 THE NEXT MORNING.

AND THEN IT WAS LATER FOUND THAT SAME DAY AT THE USED CAR LOT A MILE FROM TAYLOR'S RESIDENCE.

>> WHAT WAS THE CONSCIOUSNESS OF GUILT EVIDENCE?

>> THE CONSCIOUSNESS OF GUILT EVIDENCE, FIRST, WE HAVE THE ESCAPE THAT MURRAY WAS INDICTED, AND I THINK IT WAS FOUR MONTHS LATER HE ESCAPED WITH SMITH TO AVOID TRIAL.

AND THEN HE WAS ALSO CONFRONTED BY DETECTIVE OSTEEN WHO WAS THE MAIN HOMICIDE INVESTIGATOR IN THIS CASE WITH THE PUBIC HAIR MATCH, AND HE MADE SOME INCULPATORY STATEMENTS INCLUDING

TAYLOR TOLD ON HIMSELF BY COMING INSIDE HER AND THAT YOU CAN'T FIND MY CUM ANYWHERE.

AND HE WAS TRYING TO EXPLAIN HOW HIS PUBIC HAIR WOULD HAVE GOT TO SCENE.

AND HE HAD A REEFER BAG THAT HE WAS STORING IN HIS CROTCH, AND PERHAPS THE PUBIC HAIR STUCK TO THAT, AND WHEN HE GAVE IT TO TAYLOR, THAT'S HOW IT GOT THERE. OR ULTIMATELY SAID, WELL, WHEN TAYLOR-- TAYLOR MUST HAVE HAD MY PUBIC HAIR SOMEWHERE ON HIS PERSON, AND WHEN HE TOOK OFF HIS CLOTHES TO RAPE THE LADY, THEN IT CAME OFF.

PENDING ANY FURTHER QUESTIONS, THIS COURT SHOULD AFFIRM THE POST-CONVICTION COURT'S RULING OTHER THAN THE HURST ISSUE.

>> I'LL BE QUICK.

I HAVE FIVE ISSUES TO TALK ABOUT.

JUSTICE LAWSON, YOUR FIRST ONE. THE TRIAL COURT EVEN ADMITTED THAT MURRAY'S STATEMENTS TO THE DETECTIVE, THERE WAS A CONTROVERSY WHETHER MURRAY WAS EXPLAINING THE REED TECHNIQUE. JUSTICE LAWSON, I KNOW YOU WERE AT THAT CRIME SCENE.

NO, I WASN'T, MR. SICHTA, I WAS IN JAIL.

THAT'S ON PAGE 2131 OF OUR RECORD, THAT THERE WAS A CONTROVERSY INDICATING THAT'S NOT EVIDENCE, RIGHT?

THERE'S A LOT OF SPECULATION HERE I ASSUME THIS COURT'S POINTING OUT.

NUMBER TWO, THE FORGED INITIALS. TO THIS DAY, WE DON'T KNOW WHO OPENED THOSE SLIDES, MOUNTED THEM ON THERE, TOOK OUT THE KNOWN SLIDES OF MURRAY AND THE UNKNOWN SLIDES FOUND AT THE CRIME SCENE--

>> COULD YOU ADDRESS THE DNA MATCH?

>> ABSOLUTELY.
>> ONE, THERE'S NO AUTHENTICATION.
DNA DOES NOT COME IN.
IT WAS NOT A DNA MATCH.
HERE'S WHAT HAPPENED.
THE EVIDENCE WAS FOUND IN THE CO-DEFENDANT'S TRIAL.
I LITIGATED THIS ISSUE FOR A YEAR ARGUING BECAUSE OF THIS COURT'S PRIOR RULINGS, THIS SHOULDN'T COME IN.
THERE WAS TESTING DONE.
ON SIX OF THE HAIRS TESTED, ONE CAME BACK WITH A MIXTURE.
THEY WEREN'T EVEN ALLOWED TO SAY THAT THE HAIR WAS MURRAY'S.
IT WAS A MIXTURE IN SOME UNKNOWN INDIVIDUAL.
THERE WAS A HAIR ON THE VICTIM'S CHEST THAT CAME BACK TO SOMEBODY ELSE OTHER THAN MURRAY.
HAIRS 1-6 DID NOT MATCH MURRAY.
THE STATE'S EXPERT INCONVENIENTLY FORGOT TO SAY THAT UNTIL I CROSS-EXAMINED HER ON THE STAND.
THIS IS A WEIRD CASE.
I AM NOT--
>> WELL, COULD YOU JUST, BUT COULD YOU ADDRESS THE ISSUE OF THERE WAS A HAIR THAT--
>> HAIR FIVE CAME BACK HAVING MURRAY AS A DONOR.
>> AND WHAT WAS THE STATISTICAL--
>> IT WAS A HIGH STATISTIC.
BUT, AGAIN, SHE NOTED THERE WERE TWO CONTRIBUTORS, THOUGH THERE MAY BE MORE.
DOESN'T KNOW WHO THE SECOND DONOR IS, DOESN'T KNOW WHO THE HAIR BELONGS TO, DOESN'T KNOW IF THE RESULT WAS FROM PRIOR CONTAMINATION, OKAY?
THAT'S WHY THE JUDGE DIDN'T INCLUDE THIS IN HIS ANALYSIS, BECAUSE THIS IS A WEAK, WEAK DNA MATCH.
WE ALL KNOW ABOUT MIXTURES.

THERE'S STUFF COMING OUT EVERY DAY ABOUT HOW WEAK MIXTURES ARE. IF YOU TAKE THE LACK OF IDENTIFICATION-- AND, BY THE WAY, WE TRIED TO GET THE DISCOVERY ON THE OTHER SIDE, HEY, TEST THESE HAIRS FOR HOLTON OR TAYLOR, OTHER INDIVIDUALS, AND WE COULDN'T GET ANYBODY TO DO THAT.

WE FILED MOTIONS, YOU KNOW, TO COMPEL.

SO THE DNA, IT'S A NON-ISSUE. THE COURT ACKNOWLEDGED IT'S A NON-ISSUE.

THIS COURT SHOULD NOT BE CONCERNED WITH THAT.

SURE, IF WE DO HAVE A NEW TRIAL, THAT'S GOING TO BE HEAVILY LITIGATED.

IF YOU LOOK AT CUSTODY LAWS UNDER 90.901, AUTHENTICATION IS A CONDITION PRECEDENT TO ADMISSIBILITY.

JUSTICE LAWSON, WE DON'T EVEN KNOW IF THESE WERE THE SAME HAIRS THAT CAME FROM THE CRIME SCENE BECAUSE WE DON'T KNOW WHO FROM THE FBI TOOK THOSE SLIDES AND MOUNTED THEM ON THE PARAMOUNT.

NO ONE HAS EVER BROUGHT THAT TO COURT.

THAT HAS NEVER BEEN PRESENTED.

I ASKED THE STATE ON CROSS-EXAMINATION, DO YOU KNOW? HE DOESN'T KNOW.

ORIGINALLY IN THE FIRST TRIAL, HE SAID IN HIS ORDER DENYING THIS CLAIM THAT THE EXPERT TESTIFIED CONSISTENTLY ARE THROUGH THE FOUR TRIALS THAT HE WAS NOT RESPONSIBLE FOR PUTTING HIS INITIALS ON THOSE SLIDES.

IN MY BRIEF I PARAPHRASE THE WHOLE THING.

HE WAS ASKED, ARE THESE INITIALS ON YOUR SLIDES?

YES, THOSE ARE MY INITIALS.

DID YOU PUT THEM THERE?

YES.

TRIAL COURT ERRED IN THAT REGARD.

IT HAS SHIFTED EVERY SINGLE TRIAL, AND ONLY ON THE LAST TRIAL WHERE THE DEFENSE FAILED TO OBJECT DID HE SAY THAT HE WAS THE ONE NOT RESPONSIBLE FOR THE HAIRS, AND HE THINKS IT'S— AND FINALLY, ONE LAST THING.

ISN'T IT INTERESTING THAT THE EXPERT GOES BACK AND TRIES TO FIND OUT FROM THE FBI WHO'S RESPONSIBLE FOR THESE HAIRS.

THEY KNEW THEY HAD A PROBLEM WITH AUTHENTICATION.

THAT COULD HAVE BEEN DISCLOSED TO DEFENSE AND WASN'T.

THE DEFENSE IS FINDING THIS OUT IN A THIRD CROSS-EXAMINATION.

HE'S SO SHOCKED, HE DOESN'T OBJECT.

HAIR DOESN'T COME IN, FOOTPRINTS DOESN'T COME IN, CONFESSION DOESN'T COME IN.

WHAT ELSE IS THERE?

>> WHAT CONFESSION?

I'M SORRY.

>> WELL, THE STATE TRIED TO ALLEGE THIS WAS A CONFESSION. IT WAS AN EXPLANATION.

>> BUT SMITH COMES IN.

>> SURE.

WITH ALL THAT IMPEACHMENT EVIDENCE TO BOOT.

TWO YEARS OF FRAUDULENT FILINGS, JUDGE.

THANK YOU.

AND I APOLOGIZE FOR GOING OVER, JUSTICE CANADY.

THANK YOU.

>> WE THANK YOU BOTH FOR YOUR ARGUMENTS.

COURT IS NOW IN RECESS.