

THE COURT WILL NOW PROCEED WITH THE NEXT CASE, SIEVERS V. THE STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT, MY NAME IS KAREN KINNEY.

I REPRESENT MARK SIEVERS IN THIS--

>> COULD YOU PULL THE MICROPHONE DOWN A LITTLE BIT?

I THINK THAT'LL GIVE YOU BETTER COVERAGE.

>> IS THAT BETTER?

I'D LIKE TO RESERVE FIVE MINUTES FOR REBUTTAL.

THE STATE HAD A PROBLEM IN THIS CASE, AND THE PROBLEM WAS THAT THE ENTIRE CONVICTION OF MARK SIEVERS DEPENDED ON THE JURY CREDITING THE TESTIMONY OF ONE WITNESS, CURTIS WRIGHT.

AND THE PROBLEM THAT THE STATE HAD IS THAT WRIGHT WAS ESSENTIALLY A BAD WITNESS BECAUSE HE HAD PREVIOUSLY MADE STATEMENTS TO THE DETECTIVES THAT SIEVERS HAD NOT HIRED HIM, THAT HE KNEW NOTHING ABOUT ANY MARITAL DIFFICULTIES WITH THE SIEVERS', AND HE WENT INTO HIS PLEA PROFFER WITH THE DETECTIVES AND THE PROSECUTORS AND HE TOLD AN INCONSISTENT STORY FROM WHAT ENDS UP BEING HIS STORY AT THE TRIAL.

HE TOLD THEM THAT HE WAS ACTUALLY NOT PRESENT AT TIME OF THE MURDER AND THAT JIMMY ROGERS DID THE MURDER ALONE.

AND IT'S ONLY HALFWAY THROUGH THAT PROFFER THAT HE CHANGES THE STORY WHEN THEY TELL HIM HE'S NOT BEING BELIEVED.

AND AT THAT POINT, HE SAYS HE PRAYED-- WHICH WE OBJECTED TO THAT WAS OVERRULED-- HE SAID HE TALKED TO HIS ATTORNEYS, AND HE CAME BACK AND DECIDED TO TELL THE TRUTH.

SO THE STATE APPROACHES THIS CASE BY PUTTING UP FRONT ON DIRECT IN THEIR CASE THESE PRIOR INCONSISTENT STATEMENTS WITH THE ATTEMPT TO CONVINCING THE JURY

THAT NOW THAT HE'S MADE THIS  
DEAL WITH THE STATE, HE IS GOING  
TO BE TELLING THE TRUTH.  
SO THERE'S AN INHERENT VOUCHING  
FOR HIS CREDIBILITY JUST IN THE  
FACT THAT THEY GAVE HIM THE  
DEAL.

>> HOW IS THAT NOT TRUE THEN OF  
EVERY COOPERATING WITNESS?

>> WELL, I DON'T KNOW THAT EVERY  
COOPERATING WITNESS HAS MADE  
INCONSISTENT STATEMENTS AND HAS  
MADE A PLEA AGREEMENT THAT, I  
MEAN, OBVIOUSLY THE STATE USES  
COOPERATING WITNESSES.

BUT THIS CASE IS RATHER UNIQUE  
BECAUSE THERE'S NO  
CORROBORATION--

>> WHAT ABOUT ROGERS' CELL  
PHONE?

THAT MOVES THROUGH TRAFFIC,  
RIGHT?

THAT CORROBORATES THE MOVEMENT  
OF MR. WRIGHT AND MR. ROGERS,  
DOESN'T IT?

>> THERE IS PLENTY OF EVIDENCE  
THAT MR. WRIGHT, CURTIS WRIGHT  
AND JIMMY ROGERS DID THIS CRIME.  
SO THE STATE DID NOT NEED TO  
MAKE A DEAL WITH CURTIS WRIGHT  
TO CONVICT WRIGHT OR ROGERS.  
THE ONLY REASON IT NEEDED TO  
MAKE A DEAL WAS TO GET TO  
SIEVERS BECAUSE IT HAD NO  
EVIDENCE THAT TIED SIEVERS TO  
THE CRIME WITHOUT CURTIS WRIGHT.

>> I UNDERSTAND THAT ARGUMENT.  
I GUESS WHERE I'M LOSING YOU IS  
I DON'T UNDERSTAND WHY THIS IS  
ALL THAT DIFFERENT FROM ANY  
OTHER CASE WHERE THE STATE HAS  
CONFERRED A BENEFIT ON A  
COOPERATING WITNESS WHO HAS  
CHANGED HIS OR HER TESTIMONY  
WHICH I THINK, I THINK YOU'D  
STRUGGLE TO FIND A COOPERATING  
WITNESS WHO DIDN'T CHANGE HIS OR  
HER TESTIMONY OVER TIME, DIDN'T  
ENGAGE IN SOME PROGRESSIVE TRUTH  
TELLING.

SO HELP ME UNDERSTAND THE  
LIMITED PRINCIPLE OF THE RULE  
YOU'RE ASKING US TO ADOPT WITH  
RESPECT TO MR. WRIGHT.

>> THE RULE I'M ASKING YOU TO ADOPT, I MEAN, WHERE I'M GOING WITH THIS ARE THE EVIDENTIARY ERRORS THAT OCCURRED WHEN-- OKAY.

SO WRIGHT TELLS HEM THAT SIEVERS IS NOT INVOLVED.

SO IN ORDER TO TAKE HIS DEAL, HE HAS TO RENOUNCE HIS PRIOR OFFICIAL STATEMENTS AND POLICE INTERROGATION.

IN ORDER TO-- AND THIS DEAL GIVES THE STATE THE RIGHT TO FIND THAT HE HAS BREACHED THE AGREEMENT EVEN AFTER HE TESTIFIES AND HE HAS NO JUDICIAL REMEDY FOR THAT.

IT'S VERY ONE-SIDED, THIS CONTRACT THAT HE'S ENTERED INTO. THEY CAN FIND THAT HE BREACHED, AND HE HAS NO WAY OF ARGUING ABOUT THAT.

AND THE OTHER THING WAS THAT--

>> AND DIDN'T MR. SIEVERS' TRIAL COUNSEL TRY TO EXPLOIT THAT WEAKNESS IN THE STATE'S CASE BY THOROUGHLY CROSS-EXAMINING THE WITNESS ABOUT THOSE PRIOR INCONSISTENT STATEMENTS AND HIS MOTIVE TO LIE AND ALL OF THOSE THINGS?

I MEAN, THE CREDIBILITY ISSUES WERE PLAYED OUT IN FRONT OF A JURY LIKE YOU WOULD EXPECT IN A CASE WHERE THE STATE HAS THOSE PROBLEMS, CORRECT?

>> WELL, NO, BECAUSE THE DEFENSE WAS HAMPERED.

AND THAT'S WHERE-- MY FIRST THREE ISSUES GO TO THAT.

BECAUSE WHAT HAPPENED HERE WAS THE DEFENSE WAS TRYING TO SHOW THAT THE STATE HAD A CONTRACTUAL BENEFIT IN THAT PLEA AGREEMENT WHICH WAS BEING ABLE TO TEST WRIGHT WITH A POLYGRAPH EXAM.

AND IT DECLINED TO DO THAT.

AND WHEN YOU THINK ABOUT IT, THE REASON IT DECLINED TO DO THAT WAS BECAUSE THEY PROBABLY THOUGHT THERE WAS-- IF HE DIDN'T PASS, THEN THAT WOULD ESSENTIALLY SCUTTLE THE ENTIRE PROSECUTION OF SIEVERS IF THERE

WAS ANY KIND OF EXAM RESULT THAT SHOWED THAT HE WAS NOT DEEMED CREDIBLE.

AND SO WHEN THEY DIDN'T-- SO THE DEFENSE WAS TRYING TO EXPLOIT THE FACT, WHICH WAS A FAIR ARGUMENT, THAT THE STATE HAD DECLINED TO GIVE THE POLYGRAPH EXAM.

AND MY FIRST ISSUE GOES TO THAT. BECAUSE WHAT HAPPENS IS THERE'S A PUSHBACK EVERY TIME THE DEFENSE IS TRYING TO MAKE THAT POINT, AND THAT'S THEIR KEY POINT.

AND SO THE DEFENSE CLOSES HIS CLOSING ARGUMENT BY ASKING THE JURORS DO YOU TRUST CURTIS WRIGHT AND WOULD YOU FEEL DIFFERENTLY IF A POLYGRAPH HAD BEEN GIVEN?

NOW, THE JURY LEAVES FOR A SHORT BREAK, AND THE PROSECUTOR IS MAKING AN OBJECTION AND CONVINCED THE JUDGE TO ADDRESS THE JURY WHEN IT COMES BACK.

AND THE JUDGE ADDRESSES THE JURY AND SAYS IF CURTIS WRIGHT HAD BEEN GIVEN A POLYGRAPH EXAM, IF HE PASSED IT, THAT RESULT WOULD NOT BE ADMISSIBLE IN THIS TRIAL.

>> COUNSEL, CAN YOU TELL ME WHERE IS THE ERROR IN THAT STATEMENT?

IS THAT A MISSTATEMENT OF THE LAW?

IT'S NOT AN OPINION ON THE CASE, SO HOW IS THAT AN ERROR?

>> OKAY.

WELL, WE HAVE BLACK LETTER LAW IN FLORIDA THAT A JUDGE MAY NOT SUM UP EVIDENCE, COMMENT TO THE JURY ON THE WEIGHT OF THE EVIDENCE, THE CREDIBILITY OF THE WITNESSES OR THE GUILT OF THE ACCUSED.

>> BUT THAT'S A STATEMENT OF THE LAW, UNLESS I'M MISSING SOMETHING.

>> I WAS WONDERING WHICH CATEGORY YOU WERE GOING TO PLACE THIS STATEMENT IN AMONG THOSE.

>> OKAY.

THIS IS NOT A STATEMENT OF THE

LAW--

>> IS IT AN ACCURATE STATEMENT OF THE LAW THAT POLYGRAPH RESULTS ARE NOT ADMISSIBLE IN EVIDENCE?

>> THAT'S NOT WHAT HE SAID.

HE SAID IF WRIGHT HAD BEEN GIVEN A POLYGRAPH AND PASSED IT, THAT RESULT WOULD NOT HAVE BEEN ADMISSIBLE IN THIS TRIAL.

AND, I'M SORRY, I DON'T THINK THAT IS A CORRECT STATEMENT OF THE LAW.

>> YOU'RE SAYING IF HE'D BEEN GIVEN A POLYGRAPH AND PASSED IT, THAT WOULD HAVE BEEN ADMISSIBLE?

>> OKAY.

WELL, THE WAY THAT IT CAME OUT THAT HE WASN'T GIVEN A POLYGRAPH, WAS THAT SIEVERS ASKED THE DETECTIVE, WAS HE GIVEN A POLYGRAPH.

SIEVERS ASKED WRIGHT, WERE YOU GIVEN A POLYGRAPH?

AND THERE WAS NO OBJECTION TO THAT.

>> MAYBE I'M MISSING SOMETHING HERE, BUT I THINK THIS WHOLE THING ABOUT THE POLYGRAPH JUST SEEMS LIKE AN ENORMOUS DIVERSION AND KIND OF AN IMPROPER AREA OF INQUIRY.

NOW, IF-- ASSUMING THAT THE AGREEMENT DID NOT EXIST AND WRIGHT'S ON THE STAND AND MR. SIEVERS' COUNSEL SAYS HAVE YOU TAKEN A POLYGRAPH EXAMINATION THAT VERIFIES WHAT YOU'RE TELLING THE COURT TODAY, THAT WOULD OBVIOUSLY BE IMPROPER, WOULDN'T IT?

>> YES.

>> WELL, I DON'T UNDERSTAND WHY IN PRINCIPLE THIS IS DIFFERENT.

>> WELL, I THINK THAT THE TRIAL JUDGE HAD THE SAME PROBLEM. BUT THIS IS DIFFERENT BECAUSE, BECAUSE WE HAVE A-- HE IS TESTIFYING UNDER A CONTRACT, AND THERE ARE CONTRACT PROVISIONS--

>> HE'S TESTIFYING UNDER OATH.

[LAUGHTER]

HE'S TESTIFYING UNDER OATH, AND THE CONTRACT-- I JUST, JUST

CAN'T UNDERSTAND HOW THAT AFFECTS--

>> OKAY.

>>-- WHY IT'S PROPER TO TALK ABOUT A POLYGRAPH WHEN A WITNESS IS BEING EXAMINED.

>> BECAUSE THE STATE PUT HIM ON AND SAID THE REASON WHY HE'S NOW GOING TO TELL US THE TRUTH IS BECAUSE HE HAS PROMISED TO DO SO IN THIS PLEA AGREEMENT.

AND THE PLEA AGREEMENT WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION BY THE STATE, AND IT HAS THESE PROVISIONS ABOUT THEM GIVING HIM A POLYGRAPH, AND THEY DECLINED TO DO THAT.

SO SIEVERS CAN'T PROVE THAT WRIGHT IS LYING, BUT HE CAN SHOW THAT HE WASN'T PROPERLY VETTED WITH THE INVESTIGATIVE TOOL THAT THE STATE HAD BARGAINED FOR.

>> ISN'T IT THOUGH-- I'M SORRY TO INTERRUPT YOU, BUT ISN'T THAT THE BOTTOM LINE, WHAT JUSTICE LAWSON ASKED YOU ABOUT, THE LYING, THE WANTING TO GET, YOU KNOW, HIS WIFE OUT OF THE PROBLEM, THE KIND OF IMPLICATION THAT THE STATE WAS SORT OF WILLFULLY IGNORANT WITH POSSIBLE PROBLEMS WITH THE TESTIMONY?

ALL OF THAT WAS BROUGHT OUT THROUGH THE QUESTIONING.

IT WAS ARGUED IN THE CLOSING, IT WAS, YOU KNOW, IT WAS COMPLETELY THERE FOR THE JURY TO ACCEPT OR REJECT THAT VIEW OF THINGS AND, OBVIOUSLY, THEY REJECTED IT.

SO WHAT'S THE PROBLEM?

>> WELL, I DISAGREE THAT EVERYTHING WAS BROUGHT OUT BECAUSE ONE OF THE THINGS THAT WE WEREN'T ABLE TO BRING OUT WAS THIS ENTIRE VIDEO THAT HAD A LOT OF INFORMATION IN IT AND ALSO INFORMATION ABOUT THE WIFE.

>> THE ISSUE WITH THE VIDEO THAT YOU TALKED ABOUT IS THIS WHOLE THING WITH THE BLIP, THE BLIP STUFF.

BOTH SIDES ASKED I THINK BOTH WRIGHT AND LEAVITT ABOUT THE EXCHANGE ABOUT THE WIFE BEING A

BLIP AND, YOU KNOW, THE WHOLE  
BACK AND FORTH ABOUT WHETHER IT  
WOULD SOMEHOW BE IN WRIGHT'S  
BENEFIT TO SAY WHAT THE STATE,  
YOU KNOW, TO GIVE THIS TESTIMONY  
IN EXCHANGE FOR THE WIFE NOT  
HAVING ANY FURTHER SCRUTINY FROM  
THE STATE.

I MEAN, THAT WAS, AGAIN, PUTTING  
ASIDE THE MERITS OF ALL THAT, IT  
WAS BROUGHT OUT AND IT WAS PUT  
IN FRONT OF THE JURY.

I DON'T UNDERSTAND HOW THAT  
VIDEO CLIP WOULD HAVE-- YOU  
KNOW, WHAT DIFFERENCE THAT WOULD  
HAVE MADE.

>> WE WERE TRYING TO PUT IN THE  
ENTIRE VIDEO.

THAT'S A SHORT CLIP, BUT YOU  
HAVE THE TRANSCRIPT OF THE  
ENTIRE VIDEO.

AND THAT VIDEO HAS A TON OF  
INFORMATION IN IT WHERE-- AND  
THEY GO THROUGH THE PLEA  
AGREEMENT.

THE PROSECUTOR GOES INTO THIS  
WHOLE SITUATION WITH HIM WHERE  
WRIGHT WANTED TO--

>> AND IF I REMEMBER CORRECTLY,  
THE OBJECTION AT THE TIME THAT  
IT WAS SOUGHT TO BE INTRODUCED  
WAS HEARSAY?

IS THAT CORRECT?

[INAUDIBLE CONVERSATIONS]

THE TRANSCRIPT WAS USED TO--  
OKAY.

>> YEAH.

THE STATE SAID THAT IT WAS  
HEARSAY.

>> RIGHT.

>> AND THE DEFENSE SAID YOU'VE  
OPENED THE DOOR, AND THIS SHOWS  
HIS BIAS.

>> IS THERE AN OPEN-THE-DOOR  
EXCEPTION TO HEARSAY?

>> YES.

BECAUSE THE STATE ASK--

>> 9801 WHAT?

>> THE STATE WAS SAYING, OH, HE  
CAN'T ADMIT THIS BECAUSE IT'S  
HEARSAY.

AND IT WASN'T HEARSAY BECAUSE WE  
WERE NOT TRYING TO ADMIT IT--

>> WAS THAT ARGUED BELOW?

>> YES.

YES, THAT'S, THAT WAS THE ARGUMENT.

THE STATE BROUGHT THIS UP BEFORE THE JURY HAD COME BACK AND SAID THE DEFENSE HAS JUST SHOWED US A VIDEO, AND THEY KNEW WHAT IT WAS.

EVERYBODY KNEW WHAT IT WAS, THAT THE WHOLE TRANSCRIPT HAD BEEN PUT INTO EVIDENCE AT SIEVERS' BOND HEARING YEARS BEFORE, AND THE JUDGE WAS VERY FAMILIAR WITH THIS CASE.

>> OKAY, CAN YOU-- WHICH ISSUE ARE YOU TALKING ABOUT RIGHT NOW?

>> OKAY.

WELL, WE'VE KIND OF GONE BACK AND FORTH, BUT IT WAS THIS ASSERTION THAT WE HAD ALL OF THE ABILITY TO BRING, TO TEST WRIGHT'S CREDIBILITY.

AND I'M SAYING--

>> I SUGGEST THAT WE'RE GOING BACK AND FORTH BECAUSE IN RESPONSE TO QUESTIONS ABOUT ONE ISSUE, YOU'RE JUMPING TO ANOTHER ISSUE AND BRINGING UP SOMETHING COMPLETELY NEW.

SO NOW WHAT ISSUE ARE YOU TALKING ABOUT?

IT'S DIFFICULT TO FOLLOW.

>> OKAY.

WELL, I MEAN, I CAN GO TO WHATEVER ISSUE YOU WANT TO TALK ABOUT.

BUT IF YOU-- WE'RE TALKING ABOUT WHY THAT VIDEO SHOULD HAVE BEEN ADMITTED.

IF YOU GO THROUGH THE TRANSCRIPT OF THAT VIDEO, EVEN AT THE END THERE'S A LOT OF INFORMATION IN THERE THAT WOULD HAVE HELPED SIEVERS' CASE.

AND EVEN AT THE END OF IT, YOU KNOW, YOU CAN SEE IN THERE THAT THE PROSECUTORS, THEY'RE HELPING WRIGHT COME UP WITH HIS STORY.

AND AS THE-- AT THE END, THEY DO PUT TO HIM, THE ONE THING THEY CHALLENGE HIM ON IS THIS FACT THAT HE CALLED HIS WIFE FROM A BURNER PHONE AT 11:36 THE NIGHT AFTER THE MURDER.

AND THAT'S PUT TO HIM, AND THERE'S SOME EXCUSES MADE ABOUT THAT.

SO THEY'RE GETTING HIM READY FOR TESTIFYING BECAUSE THEY NEED HIM.

HE'S THE ONLY PERSON WHO HAS ANY INFORMATION--

>> COUNSEL, JUST GOING BACK, I THINK, TO JUSTICE LAWSON'S KIND OF ORIGINAL POINT, IS IT YOUR CONTENTION THAT THE CROSS-EXAMINATION ON THIS ISSUE WAS INSUFFICIENT?

BECAUSE IT SEEMED TO BE VERY EXTENSIVE, AND I THINK OUR QUESTION IS JUST WHAT WOULD THIS TRANSCRIPT OR VIDEO HAVE PROVIDED THAT WOULD HAVE BEEN DIFFERENT?

IT SEEMS LIKE THE SAME SITUATION.

YOU HAD THIS IMMENSE CROSS-EXAMINATION, AND THE VIDEO WOULD HAVE JUST BEEN THE SAME EVIDENCE IN A DIFFERENT WAY DISCUSSED.

SO I THINK THAT'S OUR QUESTION, IS WHAT EXACTLY WAS SO ESSENTIAL IN THE VIDEO THAT WAS NOT ALREADY THOROUGHLY DISCUSSED IN CROSS-EXAMINATION?

>> SO THE VIDEO COMES UP AFTER THE STATE HAS RESTED, AND THE DEFENSE DID NOT HAVE AN OPPORTUNITY TO PUT EVIDENCE IN DURING THE STATE'S CASE.

SO NOW IT'S THE DEFENSE'S TURN TO PUT ON HIS CASE.

AND THE STATE HAS ALREADY ASKED WRIGHT, AND HE SAYS, YES, I TOLD THE TRUTH DURING THAT HEARING, DURING THAT PROFFER SESSION WHERE-- THIS IS THE WHOLE MEETING WHERE HE'S GETTING HIS PLEA AGREEMENT.

OH, I TOLD THE TRUTH DURING THAT.

SO THE JURY SHOULD BE ENTITLED TO SEE WHAT THIS IS, BECAUSE IT IS A VERY-- THERE'S A LOT OF INFORMATION IN THERE THAT THEY DIDN'T ASK WRIGHT ABOUT.

THERE'S A LOT OF INFORMATION,

AND IT'S SHOWING THE  
RELATIONSHIP BETWEEN THE STATE  
AND WRIGHT.  
THEY GO THROUGH THE WHOLE PLEA  
AGREEMENT.  
THEY TALK ABOUT HIS WIFE.  
THERE'S A LOT MORE INFORMATION  
IN THAT THAT DID NOT COME OUT IN  
THE STATE'S CASE.  
THE STATE VERY SELECTIVELY  
BROUGHT OUT FACTS DURING THEIR  
CASE.

>> OKAY.

SO I'M NOW TRACKING WITH YOU ON  
ISSUE FIVE WHICH I BELIEVE IS  
THE ONLY PLACE THAT YOU BROUGHT  
UP A CHALLENGE TO THE TRIAL  
COURT'S SUSTAINING THE OBJECTION  
TO INTRODUCING THE ENTIRE VIDEO.  
IS THAT CORRECT?

THAT'S IN CONTEXT OF ISSUE FIVE.

>> YES.

>> OKAY.

AND IN ISSUE FIVE, THAT IS WHERE  
YOU WERE TALKING ABOUT THE BLIP.  
AND SO PORTIONS OF THE  
TRANSCRIPT WERE USED TO  
CROSS-EXAMINE WITNESSES, IS THAT  
CORRECT?

THROUGHOUT THE TRIAL.

>> PORTIONS OF THE TRANSCRIPT--

>> THE TRANSCRIPT FROM THE VIDEO  
THAT YOU WANTED INTRODUCED LATER  
WERE USED TO CROSS-EXAMINE  
WITNESSES, AND STATEMENTS WERE  
USED FROM THAT TRANSCRIPT,  
CORRECT?

IT'S IN THE RECORD, IT WAS USED  
AT TRIAL.

>> THERE WERE SOME  
CROSS-EXAMINATION--

>> OKAY.

>>-- ON THESE STATEMENTS.

>> SKIP THAT.

AT SOME POINT COUNSEL OFFERED  
THE VIDEO INTO EVIDENCE, WANTED  
TO PUT THE WHOLE THING TO  
EVIDENCE.

THERE WAS A HEARSAY OBJECTION,  
IS THAT CORRECT?

>> YES.

>> OKAY.

AND WHAT WAS THE HEARSAY  
EXCEPTION THAT WAS OFFERED IN

ARGUMENT TO THE TRIAL JUDGE?

>> THAT THIS SHOWED BIAS--

>> OKAY.

AND THAT IS NOT A HEARSAY  
EXCEPTION, IS IT?

>> WELL, IT'S A DIFFERENT--

>> IS IT HEARSAY OBJECTION?

THE OBJECTION IS HEARSAY--

>> RIGHT.

>> TRIAL COUNSEL'S RESPONDING TO  
THE TRIAL JUDGE AND ASKING  
WHAT'S YOUR RESPONSE TO THE  
OBJECTION?

>> HE SAYS, WELL, IT'S OFFERED  
TO SHOW BIAS.

THAT DOES NOT ADDRESS THE  
HEARSAY EXCEPTION-- OBJECTION,  
CORRECT?

>> THE PROPONENT OF THE HEARSAY  
OBJECTION, IT DOES.

IT IS A SEPARATE GROUNDS FOR  
ENTERING A PIECE OF EVIDENCE.

AND THE HEARSAY WILL NOT DEFEAT  
IT, BECAUSE THE DEFENSE HAS A  
RIGHT, CONSTITUTIONAL RIGHT TO  
SHOW BIAS ON THE PART OF THE  
WITNESS.

>> SO YOU'RE SAYING THAT RULES  
OF EVIDENCE DO NOT APPLY IF THE  
PURPOSE OF SUBMITTING THE  
EVIDENCE IS TO SHOW BIAS?

THAT'S YOUR ARGUMENT TO US AS TO  
WHY THE TRIAL COURT WAS  
INCORRECT--

>> FIRST OF ALL--

>>-- IN SUSTAINING THE  
OBJECTION?

>> IT WASN'T HEARSAY.

>> WAS THAT--

[INAUDIBLE]

TO THE TRIAL JUDGE?

>> YES.

>> IT WAS NOT ARGUED TO THE  
TRIAL JUDGE.

THE ONLY THING THAT WAS ARGUED  
WAS IT'S OFFERED TO SHOW BIAS.

YOU ARGUE IN YOUR BRIEF THAT IT  
WASN'T OFFERED TO PROVE THE  
TRUTH--

[INAUDIBLE]

>> WELL, IT WAS BEING OFFERED TO  
SHOW BIAS.

>> OKAY.

>> SO IT WAS BEING OFFERED TO

SHOW BIAS, AND IT WAS-- AND THE STATE HAD OPENED THE DOOR BY ASKING HIM IF HE HAD BEEN TRUTHFUL--

>> BUT YOU RECOGNIZE BIAS IS NOT A HEARSAY EXCEPTION, CORRECT?

>> IF YOU'RE TALKING ABOUT THE LIST OF STATUTORY EXCEPTIONS, I'M ASSUMING THAT--

>> THE VIDEO WAS AN OUT-OF-COURT STATEMENT.

THIS WAS A HEARSAY OBJECTION, CORRECT?

>> YES.

>> OKAY.

AND BASED ON THE ARGUMENT TO THE TRIAL JUDGE, THE RESPONSE WAS, WELL, IT OFFERED TO SHOW BIAS.

AND YOU'RE ARGUING THAT THE TRIAL JUDGE WAS INCORRECT IN RULING ON THAT OBJECTION?

>> YES.

BECAUSE WE HAD A RIGHT TO SHOW THAT THE BIAS WAS HIS, HIS RELATIONSHIP WITH THE STATE.

AND THAT WAS COMING OUT THROUGH THIS WHOLE VIDEO WHERE HE'S MAKING THIS DEAL WITH THEM TO TESTIFY AND CHANGE HIS STORY TO SATISFY WHAT THE STATE WANTED.

>> LET ME GO BACK TO JUSTICE GROSSHANS' QUESTION FROM A WHILE AGO.

WOULD IT HAVE SHOWN THAT YOU DIDN'T PRESENT IN CROSS-EXAMINATION?

>> WELL, I COULD WRITE A WHOLE ENTIRE BRIEF ON THAT BECAUSE IT'S A VERY-- IT'S A 200-PAGE TRANSCRIPT, AND THERE'S A LOT OF INFORMATION IN THERE.

>> THAT'S WHY I'M ASKING YOU THE QUESTION.

WHAT SPECIFICALLY COULD IT HAVE GIVEN YOU THAT WOULD BE, THAT WAS PREJUDICIAL TO YOUR CLIENT THAT WOULD, THAT WAS IN ERROR HERE?

>> THEY'RE GOING THROUGH AT THE BEGINNING OF THE VIDEO, THEY'RE GOING THROUGH THIS PLEA AGREEMENT.

THE PROSECUTOR IS TELLING HIM THEN THAT, YOU KNOW, WE HAVE

THIS INFORMATION ABOUT YOUR WIFE, AND IF YOU'RE NOT GOING TO GO ALONG WITH THIS, I'M GOING TO TEAR THIS UP.

AND THE ENTIRE SCENARIO SHOWS THAT WRIGHT IS AGAINST THE WALL. AND THEN THEY GO THROUGH VERY CAREFULLY OVER AND OVER AGAIN THIS STORY.

AND THEY'RE VERY FRIENDLY WITH HIM.

THEY MAKE, HELP HIM MAKE EXCUSES AND CRAFT THIS STORY.

AND AT THE END THEY EVEN ASK HIM ABOUT, THEY'VE FIGURED OUT THAT HIS WIFE HAD THIS BURNER PHONE AND THERE WAS THIS COMMUNICATION, BUT THEY HELP HIM MAKE AN EXCUSE ABOUT THAT.

OH, YOU WERE JUST MARRIED, AND YOU'RE PROBABLY JUST CALLING HER TO SAY HI.

>> SO WHAT SPECIFIC FACTS ARE IN THAT VIDEO, NOT ON CROSS, THAT WOULD BE A WINNER FOR YOUR CLIENT THAT WOULD CAUSE US TO REVERSE THIS CASE?

DON'T TELL ME WHAT THE WHOLE VIDEO SHOWS.

WHAT SPECIFICALLY IS PREJUDICIAL ERROR BY EXCLUDING THE EVIDENCE?

>> SPECIFICALLY THE RELATIONSHIP BETWEEN THE PROSECUTORS AND WRIGHT.

AND HIS--

>> SO IN LEGAL TERMS, HOW IS THAT PREJUDICIAL?

>> BECAUSE HE WAS A BIASED WITNESS WHO WAS, HAD TO SATISFY THE STATE.

HE WASN'T AN UNBIASED WITNESS, HE WAS A BIASED--

>> BUT IT WAS KNOWN THAT HE HAD A DEAL, RIGHT?

>> BUT THIS IS THE BEST EVIDENCE OF THIS DEAL AND MORE THAT THE INVOLVING OF HIS WIFE AND-- IT WASN'T JUST THAT HE SIGNED A PIECE OF PAPER.

IT WAS HOW THIS WHOLE THING CAME ABOUT AND WHAT WAS, WHAT WAS-- WHAT THEY KNEW, WHAT HE WAS TELLING THEM.

THERE WAS A LOT MORE IN THAT.

AND SO, I MEAN, THAT ALONE SHOULD HAVE BEEN ADMITTED, AND THAT WAS A BIG PART OF SIEVERS' CASE.

BUT I REALLY THINK THAT IT'S, YOU SHOULDN'T OVERLOOK THIS ARGUMENT HE HAD ABOUT THE POLYGRAPH.

AND WHEN THE JUDGE WAS MAKING THIS COMMENT TO THE JURY, IT WASN'T-- IT WAS STRANGE BECAUSE IT'S NOT REALLY A LEGAL CONSTRUCTION.

IT'S REBUTTING THE FACTUAL, IT'S REBUTTING THE ARGUMENT THAT SIEVERS' COUNSEL HAD JUST ENDED ON CLOSING.

AND IT'S DELVING INTO THE CREDIBILITY OF WRIGHT BECAUSE IT'S TELLING THE JURY THAT SOMETHING THAT JUST HAPPENED IN CLOSING THAT SIEVERS WAS RELYING ON, THE FACT THAT THEY DIDN'T GIVE HIM THE POLYGRAPH EXAM, SHOULD BE CONSIDERED AS NOT HAVING DONE ALL OF THEIR DUE DILIGENCE BEFORE THEY PUT HIM ON.

AND THEN IT'S REBUTTING THAT BY SAYING THERE'S SOMETHING WRONG WITH THAT ARGUMENT.

AND IT'S GOING INTO THE FACTS BECAUSE THE FACTS ARE THE FACT THAT HE DIDN'T GET THE POLYGRAPH EXAM THAT THE, THAT THE STATE HAD BARGAINED FOR.

AND IT'S GOING INTO THAT BY TELLING, INVADING THE PROVINCE OF THE JURY AND TELLING THEM ESSENTIALLY THAT THEY SHOULDN'T CONSIDER THAT FACT.

SO THERE ARE A LOT OF ISSUES--

>> I MEAN, I DO QUESTION YOUR CHARACTERIZATION THERE THAT THE JUDGE TOLD THE JURY YOU CAN'T CONSIDER THAT BECAUSE THE JUDGE ALLOWED THE ARGUMENT AND THE QUESTIONS ABOUT THE AGREEMENT INCLUDING THE FACT THAT THE STATE DID HAVE THE OPPORTUNITY TO CONDUCT THE POLYGRAPH EXAM, IS THAT CORRECT?

I MEAN--

>> HE, WELL, HE--

>> YES?  
IS THAT CORRECT OR NOT?  
>> I MEAN, ALLOWED-- RIGHT.  
THERE WAS NO OBJECTION.  
>> OKAY, OKAY.  
>> TO THE CONTRACT GOING INTO--  
PLEA AGREEMENT GOING INTO  
EVIDENCE.  
>> OKAY.  
>> SO THEY HAD THAT BEFORE THEM,  
AND THEY HAD THE INFORMATION  
THAT HE WAS NEVER GIVEN ONE.  
SO FOR THE JUDGE TO SAY IF HE  
HAD--  
>> COULDN'T THAT, COULDN'T-- I  
MEAN, READING THE WHOLE LINE OF  
QUESTIONING, WHAT WAS SAID ABOUT  
THE POLYGRAPH IN FRONT OF THE  
JURY, THEY COULD HAVE BEEN LED  
TO BELIEVE, SEEMS TO ME, THAT  
POLYGRAPH RESULTS ARE  
ADMISSIBLE.  
AND IF THE STATE HAD JUST DONE  
THAT, THEN THE JURY WOULD KNOW  
THE POLYGRAPH RESULT.  
IS THAT CORRECT?  
I MEAN, THAT'S--  
>> WELL, WE NEVER SAID THAT.  
I MEAN, THE ISSUE WAS DID THEY  
GIVE IT TO HIM.  
DID THE STATE USE THEIR  
INVESTIGATIVE TOOLS TO GIVE IT  
TO HIM.  
SO, AND SIEVERS' DEFENSE SAID  
WE'RE NOT MAKING AN ISSUE ABOUT  
ADMISSIBILITY.  
THE QUESTION WAS DID THEY GIVE  
IT TO HIM--  
>> RIGHT.  
>> AND SO WHEN THE JUDGE GOES  
INTO THIS, POLYGRAPH EXAMS, THE  
GENERAL RULE COULD BE THAT  
IT'S-- AND I BELIEVE IT IS--  
THEY'RE NOT ADMISSIBLE TO SHOW  
THE GUILT OR INNOCENCE OF THE  
ACCUSED.  
AND THIS WAS NOT BEING USED FOR  
THAT.  
THIS IS DIFFERENT BECAUSE THIS  
IS A WITNESS WHO THE STATE IS  
USING AND HAS MADE A CONTRACT  
WITH AND USED THAT AS A  
PROVISION OF THE CONTRACT.  
SO THE ONLY-- SO THE QUESTION

HERE ON ADMISSIBILITY OF WHETHER  
A WITNESS WHO MAKES A CONTRACT  
AND WHETHER OR NOT THEIR TEST  
RESULT WOULD BE ADMISSIBLE, I  
THINK IT IS INCORRECT TO SAY IF  
HE PASSED IT WOULD NOT BE  
ADMISSIBLE BECAUSE THE STATE  
CAN-- I MEAN, THE DEFENSE CAN  
ASK HIM ABOUT THAT--

>> SO YOU REALLY THINK THE LAW  
IN FLORIDA IS THAT IF HE PASSED  
THE POLYGRAPH TEST, THAT THE  
JURY WOULD GET TO KNOW THAT?  
THAT'S EXACTLY WHAT YOU JUST  
SAID--

>> AND YOU WOULDN'T OBJECT TO  
IT?

>> WELL--

[LAUGHTER]

I MEAN, IF THE DEFENSE ASKED  
ABOUT IT, IF THE DEFENSE ASKED  
THE QUESTIONS THAT THEY HAD  
ASKED IN THIS TRIAL, THEN THE  
RESULT WOULD COME IN.

THEY ASKED DID YOU GIVE IT TO  
HIM.

SO NOT NECESSARILY THE RESULT,  
BUT--

>> WOULDN'T THAT BE, WOULDN'T  
THAT BE INEFFECTIVE ASSISTANCE  
OF COUNSEL--

[LAUGHTER]

IF YOU SKILLFULLY MANEUVERED TO  
GET ADMITTED A POLYGRAPH RESULT  
THAT SHOWS THIS IS A WITNESS  
THAT IS ADVERSE TO YOUR CLIENT,  
WHO'S TELLING THE TRUTH?

>> IF THE QUESTION-- OKAY.

THEY'RE PUTTING HIM ON AS  
SOMEONE WHO'S TELLING THE TRUTH,  
AND THEY'RE SAYING HE'S TELLING  
THE TRUTH.

SO IF THEY SAY DID YOU GIVE HIM  
THE POLYGRAPH AND THE ANSWER IS  
YES, WELL, WE'RE NOT NECESSARILY  
GOING TO GO TO WHETHER OR NOT HE  
PASSED.

BUT IF HE DIDN'T PASS, THEN THEY  
PROBABLY WOULDN'T HAVE EVEN BEEN  
HAVING THIS TRIAL.

SO--

>> MS. KINNEY, YOU HAVE USED  
MOST OF YOUR REBUTTAL.

WE'VE HELPED YOU --

>> OKAY.

[LAUGHTER]

OH, I'M SORRY--

>>-- GET THROUGH THAT.

BUT WHAT I WILL DO, I'LL GIVE  
YOU FOUR MINUTES FOR REBUTTAL.

>> OKAY, THANK YOU.

>> GOOD MORNING, YOUR HONORS,  
AND MAY IT PLEASE THE COURT.  
MY NAME IS CHRISTINA PACHECO,  
AND I REPRESENT THE STATE IN  
THIS CASE.

THE PROBLEM THAT MS. KINNEY  
STATES IS THE MAIN PROBLEM WITH  
THIS CASE IS NOT A PROBLEM AT  
ALL.

AS YOUR HONORS ACKNOWLEDGED,  
CURTIS WRIGHT WAS-- THE JURY  
KNEW ALL OF THIS INFORMATION  
ABOUT CURTIS WRIGHT.

THIS JURY KNEW THAT CURTIS  
WRIGHT ENTERED INTO A PLEA  
AGREEMENT FOR HIS TESTIMONY.

HE WAS GIVEN 25 YEARS.

THAT WAS NEVER HIDDEN.

THAT WAS THE DEFENSE'S THEME  
THROUGHOUT THE TRIAL.

THE JURY KNEW ABOUT THE  
INCONSISTENCIES IN HIS  
STATEMENT.

THE JURY KNEW THAT HE INITIALLY  
LIED TO LAW ENFORCEMENT AND SAID  
HE WASN'T INVOLVED, AND THEN HE,  
THEN HE ONCE HE WAS ARRESTED HE  
ENTERED--

[INAUDIBLE]

HE TALKED WITH THE STATE FOR A  
PLEA STATEMENT, AND THEN DURING  
THE-- EXCUSE ME, PLEA STATEMENT  
THERE WERE SOME INCONSISTENCIES.  
THE JURY KNEW ABOUT ALL OF THESE  
TIMES THAT WRIGHT WAS  
INCONSISTENT.

THE JURY KNEW ABOUT THE TERMS OF  
THE PLEA AGREEMENT AND WHEN  
AGREEMENT WAS ENTERED, THE  
CONVERSATIONS ABOUT THE  
PROSECUTOR AND HIS WIFE BEING A  
BLIP ON THE RADAR.

THE QUESTIONS ASKED OF WRIGHT  
DURING TRIAL INCLUDED THE FACT  
THAT HE WAS CONCERNED ABOUT HIS  
WIFE BEFORE HE ENTERED INTO THIS  
PLEA AGREEMENT.

OF COURSE HE WOULD WANT TO DO  
WHAT HE COULD TO PROTECT HIS  
WIFE.

ALL OF THAT WAS BROUGHT OUT  
DURING CROSS AND RECROSS AND  
ALSO THE DETECTIVE'S TESTIMONY.  
SO THE JURY KNEW ALL OF THIS  
INFORMATION, AND THEY CHOSE TO  
BELIEVE WRIGHT.

ON APPEAL THERE'S REALLY NOTHING  
THAT WE CAN DO ABOUT THAT AS  
YOUR HONORS KNOW IN TERMS OF THE  
FACT THAT THE JURY CHOSE TO  
BELIEVE WRIGHT.

IN TERMS OF THE, THIS, THE  
JUDGE'S INSTRUCTIONS, JUSTICE  
GROSSHANS AND CANADY BOTH  
ACKNOWLEDGE THAT THE JUDGE  
INSTRUCTION TO THE JURY WAS JUST  
A CORRECT STATEMENT OF THE LAW.  
I'D LIKE TO POINT OUT THAT IT  
WASN'T ACTUALLY PRESERVED, THE  
ARGUMENT THAT THIS IS AN  
INCORRECT STATEMENT OF THE LAW.  
THAT WAS NEVER PRESERVED.

BUT MORE IMPORTANTLY, IT'S THE  
JUDGE'S ROLE TO INSTRUCT THE  
JURY, AND THE JUDGE MERELY SAID  
THAT IF MR. WRIGHT HAD ACTUALLY  
TAKEN A POLYGRAPH, THOSE  
RESULTS-- IF HE HAD PASSED--  
WOULD NOT BE ADMISSIBLE DURING  
THE TRIAL.

AND THERE'S NOTHING WRONG WITH  
THAT STATEMENT.

IT IS CORRECT.

IF WRIGHT HAD PASSED THE  
POLYGRAPH AND THE STATE USED  
THAT DURING TRIAL, I SUBMIT WE'D  
BE UP HERE ARGUING THAT FACT.  
I DON'T AGREE WITH MS. KINNEY'S  
STATEMENT AND THIS BEING AN  
INCORRECT, INCORRECT  
INSTRUCTION.

AND I THINK THAT IT WAS PROPER  
AND WARRANTED GIVEN THE  
IMPLICATION OF DEFENSE COUNSEL'S  
ARGUMENT THAT LEFT THE JURY WITH  
THIS IMPLICATION THAT WRIGHT  
NEEDED TO HAVE A POLYGRAPH  
CONDUCTED IN ORDER TO SHOW THAT  
HIS TRIAL TESTIMONY WAS  
TRUTHFUL.

SO UNDER THOSE CIRCUMSTANCES, IT

WAS WARRANTED TO CORRECT THAT IMPLICATION.  
BUT IN TERMS OF MS. KINNEY'S ARGUMENT THAT THE DEFENSE WAS HAMPERED REGARDING THE POLYGRAPH, THERE WAS NO WAY THAT THE JUDGE HAMPERED THE ARGUMENT IN ANY WAY DURING THE TRIAL. THAT WAS THE DEFENSE'S MAIN THEME, AND IT PLAYED OUT THROUGHOUT THE ENTIRE TRIAL THAT WRIGHT ENTERED INTO THIS PLEA AGREEMENT.

THE STATE, WITH A PLEA AGREEMENT, HAD THE OPPORTUNITY TO GIVE WRIGHT A POLYGRAPH EXAM, AND THE STATE CHOSE NOT TO DO SO.

THE DEFENSE WAS NEVER EXCLUDED FROM ASKING ANY QUESTIONS OR MAKING ANY ARGUMENT REGARDING THAT FACT OF THE PLEA AGREEMENT. SO IS THAT CAME OUT THROUGHOUT--

[AUDIO DIFFICULTY]

IN TERMS OF-- THAT ADDRESSES ALL OF THE ISSUES.

IS THERE ANY, ANYTHING THAT THE COURT WANTED TO DISCUSS?

>> CAN WE GO TO ISSUE 12, PLEASE?

>> SURE.

>> THE STATE'S CONTENTION IN THAT--

[AUDIO DIFFICULTY]

>> YES, YOUR HONOR.

IT'S OUR CONTENTION THAT THE STATE DID SHOW GOOD CAUSE. THE JUDGE FOUND THAT THE STATE HAD GOOD CAUSE TO AMEND THE NOTICE.

>> WHAT WAS THE GOOD CAUSE?

>> THE GOOD CAUSE WAS THAT THE JUDGE FOUND THAT WHAT WAS PLEADED IN THE STATE'S, THE STATE'S NOTICE OR MOTION TO AMEND AND THE STATE SAID THAT THE DELAY WAS INADVERTENT. IT WAS JUST A MATTER OF FIVE DAYS BETWEEN THE ORIGINAL FILING OF THE NOTICE AND THEN THE MOTION TO AMEND WHICH INCLUDED THE INCLUSION OF THE AGGRAVATING FACTORS CAN ASK THAT NOTHING HAD

OCCURRED DURING THAT TIME FRAME  
IN TERMS OF DISCOVERY OR CASE  
PREPARATION, AND THERE WOULD  
HAVE BEEN NO PREJUDICE TO THE  
DEFENDANT.

>> SUFFICE--

[INAUDIBLE]

THAT, YOU KNOW, THERE IS A  
JUSTIFICATION AS OPPOSED TO AN  
EXPLANATION OF, YOU KNOW, IT  
SOUNDS LIKE YOU'RE SAYING IT WAS  
JUST TARDILY FILED, OOPS, AND  
THE COURT THEN FOUND GOOD CAUSE  
SHOWN.

I'M A LITTLE CONCERNED ABOUT  
THAT AS A BASIS FOR FINDING GOOD  
CAUSE SHOWN.

AND I'M CURIOUS IF THERE'S A  
CASE YOU CAN DIRECT ME TO THAT  
WOULD SAY THIS FINDING IS, IN  
FACT, SUFFICIENT AS A SHOWING OF  
GOOD CAUSE.

>> WELL, JUSTICE COURIEL, I  
UNDERSTAND YOUR CONCERN, AND THE  
JUDGE FOUND GOOD CAUSE BASED ON  
THOSE REASONS.

I BELIEVE THERE WAS A CASE CITED  
IN MY BRIEF THAT DEALT WITH A  
CLERICAL ERROR, AND THAT WAS THE  
REASON WHY THERE WAS A MISTAKE  
AND A NOTICE.

IT WASN'T IN STATUTE, BUT IT WAS  
A CLERICAL ERROR.

I THINK THE MORE IMPORTANT  
MATTER IS WHILE THE JUDGE DID  
FIND GOOD CAUSE, THE SPIRIT OF  
THE STATUTE WAS THE STATE  
COMPLIED WITH THAT.

THERE WAS SUBSTANTIAL COMPLIANCE  
WITH THE NOTICE--

>> I'M NOT, I'M NOT SURE I WOULD  
ARGUE ABOUT THE GHOSTS  
INHABITING THE STATUTE.

I WOULD DEAL INSTEAD WITH ITS  
WORDS.

AND I GUESS MY QUESTION FOR YOU  
IS, ISN'T YOUR BETTER ARGUMENT  
TO TELL US WHAT KIND OF  
DISCRETION WE SHOULD BE GIVING  
THE DISTRICT-- I'M SORRY, THE  
TRIAL COURT HERE?

WHAT DO YOU ARGUE OUR STANDARD  
IS ON THIS?

>> THE STANDARD IS ABUSE OF

DISCRETION.

IT WAS WITHIN THE JUDGE'S  
DISCRETION TO FIND GOOD CAUSE.  
HE LOOKED AT ALL THE  
CIRCUMSTANCES, HE HELD A  
HEARING, HE LISTENED TO THE  
ARGUMENT FROM PARTIES, AND WHILE  
THE JUDGE DIDN'T REALLY--  
EXCUSE ME, THE STATE DIDN'T  
REALLY ELABORATE ON THE FACT  
THAT IT WAS INADVERTENT, IT  
WAS-- THE STATUTE DID JUST  
CHANGE, AND IT WAS JUST A MATTER  
OF DAYS THAT THE STATE REALIZED  
AND ADDED THE ADDITION OF THE  
AGGRAVATING FACTORS.

>> IT IS THOUGH, I MEAN, I THINK  
THIS IS KIND OF A MESSY ISSUE  
FOR YOU THOUGH IN THE SENSE THAT  
THE DISCRETION, IT'S BOUNDED.  
I MEAN, SO FIRST OF ALL, THE  
STATUTE DOESN'T SAY ANYTHING--  
WE HAVE OUR RULE THAT'S KIND OF  
THE COUNTERPART THAT TALKS ABOUT  
GOOD CAUSE.

I GUESS IF WE READ THE RULE AND  
THE, SORT OF THE BASELINE  
3.0-5.0 ABOUT EXTENSIONS OF TIME  
AND IT TALKS ABOUT GOOD CAUSE ON  
THE FRONT END AND THEN EXCUSABLE  
NEGLECT IF YOU MISS THE  
DEADLINE, AND I THINK WHAT  
JUSTICE CURIEL'S QUESTIONS ARE  
GETTING TO OUR PERSPECTIVE IN  
TERMS OF PRECEDENT, IT SEEMS  
LIKE IT WOULD BE A STRETCH FOR  
US TO CALL THIS EITHER GOOD  
CAUSE OR EXCUSABLE NEGLECT WHEN  
JUST LOOKING AT THE RECORD  
FAIRLY, IT SEEMS LIKE THE  
PROSECUTORS JUST WEREN'T AWARE  
OF THE NEW LAW OR FORGOT ABOUT  
IT OR WHATEVER, YOU KNOW?  
THE INITIAL NOTICE ONLY REFERRED  
TO THE DISCOVERY THING.  
AND SO IT SEEMS LIKE IF WE GET  
TO THE END, YOU KNOW, SO THERE  
WAS NO-- EVEN THOUGH CERT WAS  
SOUGHT, THAT DIDN'T HAPPEN.  
SO WE GET TO THE END, YOU KNOW,  
ARGUABLY WE DEFAULT TO THE  
HARMLESS ERROR STATUTE.  
OBVIOUSLY, IF YOU GET-- IF THE  
QUESTION IS JUST WAS THERE

PREJUDICE, IT SEEMS 100% OBVIOUS  
THERE WAS NO PREJUDICE.  
BUT WHATEVER WE SAY ABOUT THIS  
SEEMS LIKE ALSO HAS TO INFORM  
WHAT COURTS WOULD DO IF IT WERE  
TAKEN UP IN A CERT PROCEEDING,  
AND IT SEEMS LIKE, YOU KNOW, IN  
THIS CASE YOU BASICALLY JUST HAD  
A SORT OF DROPPED BALL  
SITUATION, AND YOU HAVE A NOTICE  
THAT WAS REALLY KIND OF, I  
THINK, I'M NOT EVEN SURE IF YOU  
CAN GET TO THE AMENDMENT ISSUE  
WHEN THE NOTICE ITSELF IS SO  
DEFECTIVE IN THE SENSE THAT, YOU  
KNOW, YOU'RE SUPPOSED TO SAY  
THAT YOU INTEND TO SEEK THE  
DEATH PENALTY AND WHAT THE  
AGGRAVATORS ARE.  
IF YOU DON'T EVEN HAVE THE  
AGGRAVATORS IN THERE TO BEGIN  
WITH, I THINK YOU COULD ARGUE  
THAT IT'S THE SAME AS  
ESSENTIALLY NOT HAVING GIVEN  
NOTICE AT ALL.  
SO YOU'RE NOT EVEN, YOU KNOW, IF  
YOU'RE WORKING UNDER THE WORD OF  
THE STATUTE, YOU'RE NOT EVEN IN  
THE AMENDMENT CATEGORY BECAUSE,  
YOU KNOW, YOU CAN'T SEEK THE  
DEATH PENALTY IF YOU DON'T KNOW  
THAT YOU'RE TO GOING TO BE ABLE  
TO PROVE ANY AGGRAVATORS.  
AND IF YOU DON'T SAY WHAT THE  
AGGRAVATOR IS, HAVE YOU EVEN  
REALLY SORT OF GIVEN NOTICE  
PERIOD.  
SO HELP US KIND OF THINK  
THROUGH, YOU KNOW, WHAT WE SAY  
ABOUT THIS THAT COULD INFORM NOT  
JUST IN A SITUATION LIKE THIS  
WHERE IT DOES GO TO THE END AND  
YOU ARGUABLY CAN DO HARMLESS  
ERROR, BUT IF IT IS TAKEN UP IN  
A CERT PETITION, YOU KNOW, WOULD  
THE RIGHT ANSWER AT THAT STAGE  
HAVE BEEN THAT THE STATE'S OUT  
OF LUCK AND THERE'S NO  
POSSIBILITY OF THE DEATH PENALTY  
IN THIS CASE?  
>> WELL, NO, YOUR HONOR, BECAUSE  
THE STATUTE DOES PERMIT THE  
AMENDMENT TO OCCUR.  
SO I THINK IF THERE WAS NO-- IF

THE STATE WOULD BE OUT OF LUCK  
AND THERE'S NO DEATH PENALTY, I  
THINK THAT SHOULD BE  
EXPRESSLY--

>> SO UPON A SHOWING OF GOOD  
CAUSE.

SO WE WOULD HAVE TO SAY THAT  
IT'S ESSENTIALLY IGNORANCE OF  
THE NEW LAW IS GOOD CAUSE FOR  
ALLOWING--

>> OR YOUR, OR YOUR HONORS COULD  
FIND THAT IF YOUR HONORS DID NOT  
BELIEVE THAT THE STATE OR THE  
JUDGE'S FINDING WAS CORRECT IN  
FINDING GOOD CAUSE, THAT THE  
ERROR WAS HARMLESS AND THERE WAS  
NO PREJUDICE AND THAT THE STATE  
SUBSTANTIALLY COMPLIED BY--

>> AND THAT'S THE PROBLEM.

SO THAT SOLVES THIS CASE, BUT IT  
SEEMS LIKE IF IT, WHEN YOU'RE AT  
THE CERT STAGE, THERE IS NO--  
YOU DON'T GET THE BENEFIT OF THE  
HARMLESS ERROR SAFETY VALVE.  
THEY HAVE TO DECIDE IT ON THE  
MERITS THEN.

AND IF THE SAME-- IF THIS CASE  
HAD BEEN DECIDED BY WHATEVER DCA  
IT WAS AT CERT STAGE, IF THEY  
HADN'T DISMISSED IT, WOULD THE  
RIGHT ANSWER HAVE BEEN YOU  
EITHER CAN'T MEET GOOD CAUSE IF  
WE ONLY LOOK AT THE STATUTE, OR  
IF WE LOOK AT THE RULE, YOU  
CAN'T SHOW EITHER GOOD CAUSE OR  
EXCUSABLE NEGLIGENCE?

>> WELL, I THINK THAT WE'RE  
ASSUMING THAT THE-- I THINK WE  
HAVE TO JUMP AND MAKE AN  
ASSUMPTION THAT THE STATE-- THE  
ISSUE IS THAT IF YOU'RE NOT  
AGREEING WITH THE JUDGE'S  
DECISION BUT THE RECORD IS  
REALLY OTHER THAN THE STATE  
SAYING IT'S INADVERTENT, I THINK  
WE'RE MAKING CONCLUSIONS AS TO  
WHY THE NOTICE OF THE  
AGGRAVATORS WAS NOT INCLUDED.

>> RIGHT.

AND THE STATE IN ITS-- I THINK  
IN ITS RESPONSE TO THE MOTION TO  
STRIKE, IT SAID-- BASICALLY IT  
FOCUSED ON THE ABSENCE OF  
PREJUDICE, WHICH SEEMS LIKE

THAT'S A SEPARATE QUESTION FROM GOOD CAUSE.

>> YES.

>> GOOD CAUSE IS LOOKING AT WHAT WAS AFFECTING THE FAILURE TO FILE OR THE NEED TO AMEND. YOU KNOW, THE ABSENCE OF PREJUDICE IS KIND OF A SEPARATE QUESTION.

SO IT SEEMED LIKE BY FOCUSING ON THAT, THE STATE WAS KIND OF, YOU KNOW, THEY SAID IT WAS INADVERTENT, AND THEN THEY MOVED STRAIGHT TO THE ABSENCE OF PREJUDICE.

WE OBVIOUSLY DON'T WANT A PRECEDENT THAT SAYS JUST INADVERTENCE IS GOOD CAUSE, RIGHT?

>> YES.

I THINK THEN THE RECORD NEEDS TO BE EXPANDED IN TERMS OF WHAT WENT WRONG.

I THINK WE CAN'T REALLY READ INTO IT IN TERMS OF WHY IT WASN'T INCLUDED OTHER THAN IT WAS INADVERTENT.

BUT I UNDERSTAND THE CONCERN. HOWEVER, I THINK THAT IF THIS COURT WANTS TO GIVE INSTRUCTIONS AS TO WHAT SHOULD BE INVOLVED WITH A FINDING OF GOOD CAUSE, THAT WOULD BE COMPLETELY UNDERSTANDABLE.

IT NEEDS TO BE A MORE ELABORATE FINDING.

BUT I THINK IN THIS CASE THE ULTIMATE CONCLUSION SHOULD BE THAT IT WAS HARMLESS UNDER THESE CIRCUMSTANCES OF JUST THE FIVE DAYS BETWEEN THE INITIAL NOTICE AND THE AMENDED NOTICE, AND THE THREE, OVER THREE YEARS BETWEEN WHEN THE AGGRAVATORS WERE PROVIDED AND THE TRIAL OCCURRED. SO THE PURPOSE OF PROVIDING THE AGGRAVATORS TO PREPARE FOR TRIAL, IT WAS NOT HAMPERED IN ANY WAY, AND THE PURPOSE OF NOTICE WAS SUBSTANTIALLY COMPLIED WITH THE SPIRIT OF THE STATUTE, AND IT DID NOT PREVENT--

>> HAS THERE EVER BEEN A CASE

FROM THIS COURT THAT ADDRESSED THIS SITUATION?

>> I DON'T BELIEVE SO, YOUR HONOR.

I WOULD BE HAPPY TO CONDUCT SOME MORE RESEARCH AND PROVIDE ANY CASES THAT MAY HELP THIS COURT IN REACHING A DECISION.

THE ONLY CASE THAT I KNOW OF FROM THIS COURT DEALT WITH THE RETROACTIVITY OF WHEN A CASE GOES BACK FOR RESENTENCING AFTER HEARST.

AND THAT, OBVIOUSLY, IS NOT THE SITUATION HERE.

BUT I'D BE HAPPY TO CONDUCT FURTHER RESEARCH ON THE ISSUE OF GOOD CAUSE AND SUPPLEMENT IT FOR THIS COURT'S REVIEW.

ARE THERE ANY OTHER FURTHER QUESTIONS?

THE STATE, THEREFORE, RESPECTFULLY REQUESTS THIS COURT AFFIRM THE DEFENDANT'S CONVICTIONS AND SENTENCING.

>> THANK YOU.

REBUTTAL ARGUMENT.

>> ON THE ISSUE OF THE STATE'S NOTICE, THE STATE FILED THEIR NOTICE AFTER SIEVERS MOVED TO STRIKE THEIR 3.202 DISCOVERY NOTICE, AND IT FILED IT THE SAME DAY.

THAT WAS 49 DAYS FROM THE MAY 9TH DATE AND 53 DAYS FROM THE MAY 5TH DATE.

>> SO SHOULD WE, SHOULD WE JUST KIND OF GO WITH THE SPIRIT OF THE STATUTE AND SAY THAT EVEN THOUGH UNDER YOUR THEORY THE ARRAIGNMENT WAS WAIVED, THAT WE SHOULD ACT AS IF THERE WERE AN ARRAIGNMENT AND THAT IT HAPPENED FOUR DAYS BEFORE THE SCHEDULE DATE?

>> WELL, UNDER MY-- UNDER THE CASE LAW AT THE TIME, THE WAIVER ACTED AS THE ARRAIGNMENT.

>> WHERE THAT ONE SECOND DCA CASE WHERE THE COURT SAID WE DON'T SEE ANY REASON WHY-- I THINK THE EXTENT OF ITS, QUOTE-UNQUOTE, ANALYSIS WAS ONE SENTENCE WHERE IT SAID WE DON'T

SEE ANY REASON WHY WE DON'T  
START THE CLOCK NOW.

>> YES.

>> SO IT SEEMS LIKE-- AND I  
LIKE FORMALISM, BUT YOU'RE  
ASKING US TO BE  
HYPER-FORMALISTIC WITH THE  
45-DAY THING AND SAYING THAT,  
YOU KNOW, THE AMENDMENT, IT'S  
NOT EVEN AN AMENDMENT BECAUSE  
THE NOTICE WAS DEFECTIVE.  
BUT THEN WE'RE SUPPOSED TO  
IGNORE THE FACT THAT ON YOUR  
THEORY THERE CERTAINLY WASN'T AN  
ARRAIGNMENT.

AND IF THERE WASN'T, THEN THE  
STATUTE DOESN'T EVEN APPLY.

>> THERE WAS A DATE WHERE HE WAS  
BROUGHT IN AFTER THE PROSECUTOR  
TOLD THE JUDGE THAT HIS, HIS  
WRITTEN PLEA OF NOT GUILTY  
ACTUALLY WASN'T A WRITTEN PLEA.  
SO HE'S BROUGHT THIS ON MAY  
9TH--

>> I'M SORRY TO INTERRUPT YOU,  
BUT IF WE, IF YOU'RE GOING TO GO  
DOWN THAT PATH, THEN THERE WAS  
AN ARRAIGNMENT.

THE INITIAL NOTE WAS TIMELY.  
WHETHER IT WAS KIND OF FATALLY  
DEFECTIVE FOR NOT HAVING HAD THE  
AGGRAVATORS, I THINK, ISN'T IT  
CONCEDED THAT IF YOU START WITH  
THE, I GUESS, MAY 9TH OR  
WHATEVER THE DATE WAS, YOU START  
THE 45-DAY CLOCK FROM THERE,  
THIS RULE WAS ISSUED ON DAY 44.

>> WHICH HAD NO AGGRAVATING  
FACTORS IN IT, WASN'T UNDER THE  
STATUTE, AND I'M SAYING YOU  
CAN'T RELATE BACK TO THAT  
BECAUSE THAT WASN'T THE NOTICE  
THAT THE STATUTE REQUIRES.  
THEY NEED TO RELATE BACK TO  
THAT.

AND THEN THEY NEED TO SAY THAT  
HE HAD GOOD CAUSE TO AMEND.  
SO THEY NEED TO TAKE TWO LEAPS.

>> SO CAN YOU TELL US--

>> TO GET THERE.

>> CAN YOU TELL US WHY, AND I  
COMPLETELY UNDERSTAND IF WE  
FOCUSED ON THE FRONT END, I  
UNDERSTAND THE ARGUMENTS YOU'RE

MAKING.

BUT WHY-- WHAT WOULD THE REASON FOR OUR COURT HAVE FOR NOT DEFAULTING TO THE HARMLESS ERROR STATUTE WHERE THE LEGISLATURE OR IN 782 WHATEVER IS SILENT ON A REMEDY, BUT IT DOES TELL US, IT DOES HAVE THIS KIND OF CATCH-ALL REMEDIAL HARMLESS ERROR STATUTE? WHAT BASIS WOULD WE HAVE FOR NOT APPLYING THAT HERE?

BECAUSE YOU AGREE THAT IF WE DO LOOK AT PREJUDICE, THERE'S ZERO PREJUDICE, RIGHT?

>> WELL, I DON'T THINK THAT THAT'S EVEN A CONSIDERATION.

>> OKAY, RIGHT.

SO YOU THINK THE HARMLESS ERROR STATUTE SHOULDN'T EVEN APPLY.

SO TELL ME WHY.

>> NO, BECAUSE THIS IS A LEGISLATIVE TIME BAR THAT I DON'T THINK THAT-- HOW CAN YOU MAKE A HARMLESS ERROR ANALYSIS?

>> WELL, ARE YOU SAYING IT CONSTITUTES FUNDAMENTAL ERROR?

>> I'M SAYING THAT IT'S A TIME BAR THAT THE LEGISLATURE PUT IN PLACE AS A BENEFIT TO THE DEFENDANTS.

AND I DON'T THINK THAT THERE'S ANY ROOM FOR, YOU KNOW, ALMOST LIKE A JURISDICTIONAL BAR TO THE DEATH PENALTY.

THEY HAVE TO MEET THIS TIME BAR.

AND THERE'S NO, THERE'S NO WIGGLE ROOM THERE--

>> SO, COUNSEL, YOU VIEW THIS LIKE A STATUTE OF LIMITATIONS TYPE ISSUE--

>> YES.

>>-- THERE'S NO HARMLESS ERROR BECAUSE THERE WAS NO JURISDICTION.

>> YES.

FOR THE DEATH PENALTY.

THAT'S HOW THIS COURT SHOULD APPLY IT BECAUSE--

>> OKAY.

YOU'VE USED YOUR TIME UP, BUT YOU CAN TAKE ANOTHER 30 SECONDS TO SUM UP.

>> OKAY.

I JUST WANT TO SAY THAT WITHOUT

CURTIS WRIGHT'S TESTIMONY, THE STATE HAS NO EVIDENCE THAT SIEVERS WAS INVOLVED IN THIS MURDER.

AND A NUMBER OF ERRORS THAT WERE DISCUSSED IN THE FIRST PART OF THE BRIEF, THEY COMBINE TO BOLSTER THE CREDIBILITY OF WRIGHT.

SO I'M ASKING THIS CASE TO REVERSE FOR A NEW TRIAL BECAUSE THESE ERRORS ENHANCED THE VIEW OF WRIGHT'S CREDIBILITY AND GAVE UNDESERVED CREDENCE TO HIS STORY.

AND IT SHOULD GO BACK FOR A NEW TRIAL WITH THE UNDERSTANDING THAT THIS SHOULD NOT BE A DEATH PENALTY CASE.

THANK YOU.

>> WE THANK YOU BOTH FOR YOUR ARGUMENT IN THIS CASE TODAY. THE COURT WILL NOW STAND THIS RECESS.