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I UNDERSTAND THAT ATTORNEY FOR THE RESPONDENT IS NOT PRESENT IN THE NEXT CASE, AND WE WILL PROCEED, NEXT, WITH GLENN EDWARD ROGERS VERSUS THE STATE OF FLORIDA.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM ANN OWNS, AND I AM HERE, TODAY -- I AM ANN OWENS, AND I AM HERE, TODAY, TO TALK ABOUT GLEN EDWARD ROGERS. I AM HERE TO TALK ABOUT THE STATE DIDN'T PROVE FIRST-DEGREE MURDER, BECAUSE THEY DIDN'T PROPHETS FELONY OR PREMEDITATED MURDER, AND THEN I AM GOING TO TALK A LITTLE BIT ABOUT THE PROSECUTORIAL ISSUE.

WOULD YOU MIND PULLING THE MIKE DOWN CLOSER TO YOU?

OKAY. ROGERS WAS CONVICTED IN 1997, OF THE 1995 STABBING OF A WOMAN IN TAMPA, HILLSBOROUGH COUNTY. IN THE CASE, IT WAS ENTIRELY CIRCUMSTANTIAL. THE EVIDENCE SHOWED THAT THE VICTIM WAS LAST SEEN WITH ROGERS, LEAVING A LOCAL BAR, WHERE SHE HAD MET HIM, THAT ROGERS WAS APPREHENDED SIX DAYS, SEVEN DAYS AFTER HER BODY HAD BEEN FOUND IN HIS MOTEL ROOM, SO HE WAS IN KENTUCKY AND DRIVING HER CAR.

HE WAS APPREHENDED IN HER CAR.

IN HER CAR.

THEY FOUND THE WALLET THAT WAS HER WALLET, WITH HIS FINGERPRINTS.

THEY FOUND A WALLET IN JACKSONVILLE, NO, NORTH FLORIDA, AT A ROAD STOP OR -- AND I THINK HIS FINGERPRINT WAS ON A GAS, RECEIPT FOR GAS. IN THE WALLET.

DIDN'T THEY, ALSO, FIND THE KEY TO THE HOTEL ROOM WHERE THE VICTIM'S BODY WAS FOUND? IT WAS IN HIS SUITCASE?

IN HIS SUITCASE.

AND THERE WAS SOME CORROBORATION OF THE -- HIS HANDWRITING ON THE SIGN? IS THAT RIGHT?

HE STIPULATED THAT HE WROTE THE SIGN. HE PUT A "DO NOT DISTURB" SIGN.

WHEN YOU ARE TALKING ABOUT CIRCUMSTANTIAL, THERE WAS NO QUESTION THAT HE WAS WITH THE VICTIM IN THE MOTEL ROOM, AND THAT HE THERE, SUBSEQUENTLY, SEVERAL DAYS LATER, HAD HER VEHICLE.

THAT IS TRUE. IT IS VERY STRONG CIRCUMSTANTIAL EVIDENCE. I AM NOT ARGUING, AT THIS POINT, THAT HE DIDN'T COMMIT THE MURDER. I AM ARGUING THAT THE STATE DIDN'T PROVE IT WAS PREMEDITATED OR FELONY MURDER, AND THE REASON, WELL, THE PREMEDITATION IS FAIRLY OBVIOUS, BECAUSE NO ONE KNOWS WHAT HAPPENED FROM WHEN SHE LEFT, WHEN THEY LEFT THE BAR, AND THEY HAD BEEN DRINKING TOGETHER AND HAVING A GOOD TIME, APPARENTLY.

WHY ISN'T THE STATE'S THEORY TWOFOLD, WHICH IS THAT YOU HAVE HIM WITHOUT A VEHICLE. HE GOES TO A BAR. HE HAS -- HE EXPRESSLY SAYS HE WANTS A -- TO BE WITH A WOMAN THAT ISN'T MARRIED AND DOESN'T HAVE CHILDREN, A SINGLE PERSON. HE LEAVES WITH HER IN THE VEHICLE, AND THAT, THE STATE COULD ARGUE, WAS PART OF A CAREFUL PLAN TO ROB HER AND

TAKE HER VALUABLES AND HER VEHICLE? I MEAN ASIDE FROM THE FACT OF HOW THE ACTUAL DELIBERATE NATURE OF THE STAB WOUNDS, AS A SEPARATE POSSIBLE INFERENCE OF THE PLANNING OF THIS.

I THINK THAT IS SPECULATION, BECAUSE HE NEVER SAID, AT ANY POINT THAT, HE NEEDED MONEY, AND HE DID HAVE MONEY AT THE BAR. HE NEVER SAID THAT HE WANTED A CAR. IF HE WANTED A CAR, HE COULD HAVE GONE OUT AND STOLEN A CAR OFF THE STREET. APPARENTLY IT IS NOT THAT DIFFICULT TO DO, WITHOUT KILLING SOMEONE AND SPENDING THREE HOURS IN A BAR GETTING DRUNK, AND I INTERPRETED THE COMMENT ABOUT LOOKING FOR AN UNMARRIED WOMAN IS THAT HE WANTED TO HAVE SEX, AND HE DIDN'T WANT TO BE INVOLVED WITH SOMEONE WHO IS MARRIED OR IN A RELATIONSHIP, THAT YOU KNOW WOULD COMPLICATE THINGS. BUT, YOU KNOW, YOU ARE INTERPRETING IT DIFFERENTLY, BUT THAT IS THE WAY I INTERPRETED THAT, THAT HE DIDN'T LIKE TO GO OUT WITH MARRIED WOMEN.

I AM JUST SUGGESTING THAT THAT IS ONE OF THOSE REASONABLE INFERENCES TO BE DRAWN, THAT THE JURY COULD REASONABLY DRAW, FROM THE FACTS THAT I JUST ENUMERATED, THAT IS IN SUPPORT OF FINDING A PREMEDITATION.

I THINK THE FINDINGS SUPPORT THE FACT THAT HE INTENDED TO TAKE HER BACK FOR SEXUAL REASONS, TOO, AND, YOU KNOW, NEVER EVEN THOUGHT ABOUT ROBBING HER AT THE TIME. I DON'T KNOW IF HE KNEW SHE HAD A CAR OR NOT. WELL, HE DID BEFORE THEY LEFT THE BAR. I DON'T KNOW INITIALLY, WHETHER HE KNEW SHE HAD A CAR OR WHAT.

THE PLAN DOESN'T HAVE TO BE HOURS BEFORE. RIGHT. RIGHT. BUT I JUST THINK THAT THERE IS NO PROOF THAT THAT IS WHAT HE WAS THINKING OR THAT HE HAD ANY PLAN, BECAUSE THEY COULD EASILY HAVE GOTTEN TO HIS MOTEL ROOM, AND PERHAPS SHE DIDN'T WANT TO HAVE SEX, AND HE GAME ANGRY, AND -- HE BECAME ANGRY AND DIDN'T HAVE MUCH IMPULSE CONTROL. HE MAYBE BECAME ANGRY WITHOUT A GOOD REASON AND STABBED HER TO DEATH.

WHAT ABOUT THE NATURE OF THE WOUNDS? CAN WE UTILIZE THAT IN OUR EVALUATION OF THE CIRCUMSTANTIAL EVIDENCE? OF COURSE YOU CAN, YES. THERE WERE TWO WOUNDS, ONE THROUGH HER BUTTOCKS AND ONE THROUGH HER CHEST. I WOULD THINK, IF SOMEONE WAS SETTING OUT TO KILL, GENERALLY THEY WOULD SLIT THEIR THROAT OR SOMETHING. A STAB WOUND IN THE BUTTOCKS WOULDN'T BE A WOUND WHERE YOU WOULD WANT TO KILL SOMEBODY. THEY MADE A BIG DEAL ABOUT HIM TURNING THE KNIFE AT A 90-DEGREE ANGLE, BUT IT MAY BE THAT HE WAS AT THAT ANGLE AND THEY WERE STRUGGLING, AND IT MAY HAVE BEEN WHILE HE WAS PULLING THE KNIFE OUT. THERE WERE TWO STAB WOUNDS, AND THEY WERE DEEP, BUT IF SOMEONE IS ANGRY, AND WE DON'T KNOW WHERE THE KNIFE CAME FROM, AND IT WAS NEVER FIND. IF IT WAS IN THE MOTEL ROOM AND WAS A KITCHEN KNIFE OR SOMETHING.

THEY BOTH HAD THIS PECULIAR ANGLE. IS THAT CORRECT?

YES. YES. AND, AS FAR AS THE FELONY MURDER ASPECT OF IT, WHAT MY ARGUNIT IS THAT THE TAKING OF THINGS WAS AN AFTERTHOUGHT, THAT HE TOOK HER CAR, OBVIOUSLY, ONCE HE KILLED HER. HE NEEDED TO LEAVE, AND HER CAR WAS THERE, AND HER CAR KEYS WERE THERE, AND HER WALLET, HER FRIEND WAS IN THE BAR TESTIFIED THAT SHE KEPT A WALLET IN THE CAR, AND SHE WENT OUT TO THE CAR TWICE TO GET MONEY, SO THERE IS NO PROOF SHE WAS WEARING THAT JEWELRY, ACCEPT THAT HER MOTHER SAID THAT SHE ALWAYS WORRY IT, BUT NO ONE REMEMBERED IF SHE HAD IT ON IN THE BAR, SO IT COULD HAVE EVEN BEEN IN THE CAR, BUT REGARDLESS, YOU KNOW, ONCE HE KILLED HER, HE NEEDED A CAR TO ESCAPE, AND HE MAY HAVE TAKEN THE WALLET BECAUSE IT WAS THERE. THERE IS A CASE, MAHN, WHERE --

THERE WAS SOME EVIDENCE THAT HE WAS PRETTY CALM AND DELIBERATE WITH REFERENCE TO HIS LEAVING THE SCENE, WAS THERE NOT? THAT IS THAT DIDN'T HE GO TO THE MOTEL PEOPLE AND EXPRESSLY TELL THEM THAT HE DIDN'T WANT TO BE DISTURBED AND HE DIDN'T WANT

ANYBODY IN THAT ROOM, AND HE ASKED THEM FOR A SIGN THAT HE COULD PUT ON THERE. IS THAT RIGHT?

YEAH. BUT I BELIEVE THAT WAS AFTER HE KILLED HER. WE DON'T KNOW EXACTLY WHEN HE KILLED HER. BUT THAT WAS SUNDAY NIGHT, SO I MEAN --

BUT YOU ARE NOT SUGGESTING THAT THE CIRCUMSTANCES INDICATE THAT HE KILLED HER ACCIDENTALLY OR IN A PANIC AND THEN HE PANICKED AND TOOK THE CAR, IN RUNNING AWAY?

WELL, I AM SUGGESTING HE TOOK THE CAR IN RUNNING AWAY, AND HE MAY HAVE PANICKED, BUT HE DIDN'T RUN AWAY THE MINUTE HE KILLED HER. APPARENTLY HE STAYED ALL NIGHT. SO, I MEAN, MAYBE HE WAS THINKING ABOUT IT, OR MAYBE HE WAS SO DRUNK THAT HE WASN'T THINKING RATIONALLY. THE CAB DRIVER THAT TOOK HIM THERE SAID THAT HE HAD BEEN DRUNK FOR TWO DAYS.

HE STIPULATED THAT HE HAD WRITTEN THE SIGN "DO NOT DISTURB". RIGHT. BECAUSE THEY DIDN'T HAVE ANY "DO NOT DISTURB" SIGNS THERE.

WASN'T THERE SOME EVIDENCE THAT HE WAS LIVING IN THE CAR.

WELL, WHEN HE WAS CAPTURED IN KENTUCKY, THERE WAS FOOD IN THE CAR AND SO FORTH. SO IT SOUNDED LIKE HE WAS LIVING IN THE CAR, ALTHOUGH I DON'T THINK ANYBODY REALLY KNOWS WHERE HE SLEPT OR WHAT HE DID, BUT I DON'T KNOW THAT THAT HAS ANYTHING TO DO WITH PREMEDITATION AND FELONY MURDER, UNLESS YOU ARE SUGGESTING THAT HE STOLE THE CAR TO SLEEP IN. IT WAS A FORD FESTIVE A. I MEAN, IF YOU ARE GOING TO STEAL A CAR TO SLEEP IN, YOU WOULD PROBABLY TAKE A VAN. ALTHOUGH MAYBE HE TOOK WHAT WAS THERE.

IN SO MANY OF THESE CASES, DIDN'T WE SEE, WHERE WE HAVE A HOMICIDE, AND THEN WE HAVE SOME PROPERTY OR SOMETHING TAKEN, IS THIS DISPUTE BETWEEN WHEN IS IT AN AFTERTHOUGHT AND WHEN IS IT A PART OF THE CRIME, SEEMS TO COME OUT ALL OF THE TIME. WHERE IS THE LINE? WHERE IS THE PHILOSOPHICAL LINE THAT YOU USE TO DRAW A PROPER ANALYSIS, IN YOUR VIEW OF THAT ISSUE?

I THINK IT IS HARD TO TELL, BECAUSE, LIKE, IN FINNEY, HE SOLD THE VCR. HE PAUNLED THE VCR RIGHT AFTER THE MURDER. IN THIS CASE NOTHING WAS PAWNED TO SHOW THAT HE WAS TRYING TO GET MONEY. HE DIDN'T SELL ANYTHING, AND I DON'T THINK THAT HE WAS INTENDING TO SELL THE CAR. YOU KNOW, HE WAS INTENDING TO DRIVE IT UNTIL HE ESCAPED.

BUT WHAT IS THE LEGAL THEORY?

LEGALLY I THINK THAT THE STATE HAS TO PROFITS CASE, AND THE STATE HAS TO PROVE THAT THE KILLING WAS COMMITTED DURING A ROBBERY. AND THERE WASN'T ANYBODY THERE, AND THERE WEREN'T ANY -- WASN'T ANY EVIDENCE. THERE IS A CASE WHERE A WOMAN WAS FOUND STABBED AND STRANGLED AND MR. GREEN HAD THREATENED TO KILL HER THREE TIMES, AND THE COURT SAID NO ONE WAS THERE AT THE CIRCUMSTANCES, AND GREEN SAID THAT SHE GOT ANGRY OR OUT OF CONTROL AND HE KILLED HER, AND THIS COURT FOUND THAT THAT WASN'T PREMEDITATED. THAT IS THE PREMEDITATION, THOUGH. YOU ARE TALKING ABOUT THE FELONY MURDER. YEAH. I AGREE THAT IT IS A HARD-LINE TO DRAW. I JUST THINK THAT THE STATE HAS TO HAVE SOME PROOF, AND I DON'T THINK THEY REALLY PROVED THAT HE TOOK THE WALLET, OTHER THAN HE TOOK IT WHEN HE TOOK THE CAR, IF IT WAS IN THE CAR, AND I AM NOT SURE THAT THEY EVER -- I DON'T THINK THEY EVER PROVED THAT HE TOOK THE JEWELRY, ALTHOUGH HE MAY HAVE, BUT THEY NEVER PROVED THAT SHE HAD IT ON, AND THE ONLY WITNESS THAT TESTIFIED ABOUT THE JEWELRY WAS HER MOTHER. HE DID TAKE THE CAR, OBVIOUSLY. BUT I FEEL LIKE THAT WAS AN AFTERTHOUGHT.

WHY ISN'T IT ENOUGH TO PROVE THAT THERE WAS, IN FACT, A ROBBERY?

WELL, BECAUSE THE MURDER HAS TO BE COMMITTED DURING A ROBBERY, TO BE A FELONY MURDER.

IF THE STATE PROVES THAT IT WAS ALL ONE EPISODE, SHOULDN'T THAT BE ENOUGH?

NO. BECAUSE THERE HIS CASE LAW THAT SAYS THEIR MOTIVE HAS TO AT LEAST BE, IN PART, TO ROB SOMEONE.

ISN'T THE FACT THAT THE ROBBERY TOOK PLACE AT LEAST CIRCUMSTANTIAL EVIDENCE OF THE INTENT AND MOTIVE?

WELL, IN FACT, IT IS NOT A ROBBERY, IF SHE WAS ALREADY DEAD. IT IS THEFT.

WELL, BUT, IF THE MOTIVE FOR WHY HE -- THIS REALLY GOES BACK, IN THIS CASE, THE FELONY MURDER AND THE PREMEDITATION HAVE SOME OVERLAPPING IN FRINZ, WHICH, IF -- INFERENCES, WHICH, IF THEY ARE DRAWN UNFAVORABLY TO YOUR CLIENT, REALLY, HAS HIM ON BOTH THE FELONY MURDER AND THE PREMEDITATION, WHICH IS THAT HIS PLAN IN TAKING HER BACK, RATHER THAN THERE BEING A SEXUAL PLAN, BECAUSE THERE IS NO EVIDENCE OF SEXUAL ACTIVITY, WAS ACTUALLY A PLAN TO KILL HER AND TAKE HER PROPERTY, SO THAT, REALLY, SOME OF THE SAME FACTS THAT WOULD SUPPORT THE PREMEDITATION SUPPORT, IN THIS CASE, SUPPORT ROBBERY, AND DOES IT REALLY SHOW IT AS BEING AN AFTERTHOUGHT? I MEAN, WHERE SINCE HE KNEW, OBVIOUSLY, THAT SHE HAD THE VEHICLE. HE MOST LIKELY KNEW SHE HAD THE WALLET, IF SHE WAS GOING BACK AND FORTH TO GET MONEY FROM THERE, AND THE JURY COULDLOGICALLY FIND THAT SHE ALWAYS WORRY THIS JEWELRY AND DIDN'T -- ALWAYS WORE THIS JEWELRY AND DIDN'T HAVE IT IN THERE, THAT THIS JEWELRY WAS ALSO TAKEN AS PART OF THE PLANNED CRIMINAL ACTIVITY?

I THINK THAT THE STATE HAS TO PROVE THAT. IT IS SPECULATION. YOU KNOW, AS TO WHETHER THAT HAPPENED. YOU CAN DRAW THAT INFERENCE, BUT ANOTHER REASONABLE INFERENCE IS THAT HE WENT OVER THERE TO PICK UP A GIRL TO SLEEP WITH AND HE WAS DRUNK AND SHE WAS DRUNK WHEN THEY LEFT THE BAR, AND THEY WENT BACK TO HIS HOOM WILL ROOM AND MAYBE SHE DIDN'T WANT TO HAVE -- TO HIS ROOM AND MAYBE SHE DIDN'T WANT TO HAVE SEX AND HE BECAME OUTRAGED AND STABBED HER. THEN HE HAD TO DECIDE WHAT TO DO, SO HE DECIDED NOT TO -- HE DECIDED TO PUT UP THE "DO NOT DISTURB" SIGN AND HE LEFT AND TOOK HER CAR.

WAS THERE ANY EVIDENCE THAT THE BODY WAS OTHER THAN WHERE IT WAS FOUND?

NO. IT MAY HAVE BEEN THAT HE PUSHED HER INTO THE BATHROOM.

I MEAN THE STRUGGLE ON THE BED AND THEN TAKING HER -- BECAUSE SHE WAS FOUND IN THE BATHTUB, WITH HER CLOTHES ON, WITH THESE DELIBERATE STAB WOUNDS.

NO. THERE REALLY WASN'T ANY EVIDENCE AS TO WHERE THE STRUGGLE TOOK PLACE.

YOU WANT TO TELL US A LITTLE BIT ABOUT THE TESTIMONY RELATIVE TO THE PRIOR CONVICTIONS IN CALIFORNIA?

YEAH. I WAS GOING TO TALK -- THAT WAS THE OTHER THING I WANTED TO TALK ABOUT WAS THE PROSECUTORIAL MISCONDUCT, AND THE THREE ISSUES, ONE WAS THE CALIFORNIA WITNESSES THAT YOU JUST MENTIONED, AND ONE WAS THE CELL SEARCH THAT THE PROSECUTORS SEARCHED ROGERS' CELL A MONTH BEFORE TRIAL, AND THE OTHER ONE WAS CLOSING ARGUMENT. IN CLOSING ARGUMENT, DEFENSE COUNSEL DID NOT OBJECT TO THOSE CLOSING, BUT

I WAS, IN RUIZ, YOU SAID THAT, IF SOME ARGUMENT WERE OBJECTED TO AND OTHERS WEREN'T THAT, YOU COULD CONSIDER, IN THE PROSECUTORIAL MISCONDUCT, THOSE THAT WEREN'T OBJECTED TO, AND I THOUGHT THAT THERE WAS PROSECUTORIAL MISCONDUCT IN THESE OTHERS, FOR REASONS I WILL EXPLAIN IN A MINUTE, IN THESE OTHER THINGS, THAT MADE THE WHOLE TRIAL TAINTED AND UNFAIR. AND AS FAR AS AS FAR AS -- I WAS GOING TO DO THE CELL SEARCH FIRST, SINCE YOU ASKED ABOUT THE CALIFORNIA WITNESSES. I NEED A DRINK OF WATER. THE PROSECUTOR INTRODUCED TWO WITNESSES FROM CALIFORNIA, AND THAT WAS THEIR SOLE CASE ON PENALTY, AND ROGERS HAD COMMITTED A CRIME IN CALIFORNIA, AND THEY HAD A JUDGMENT, AND IT WAS A MISDEMEANOR, BUT THE STATE ATTORNEYS OFFICE PRESENTED AS A FELONY, FOR A PRIOR VIOLENT FELONY, AND THE JUDGE APPARENTLY COULDN'T REALLY DECIDE WHICH IT WAS. DEFENSE COUNSEL ARGUED, YOU KNOW, THAT IT WAS A MISDEMEANOR, AND THE STATE ARGUED THAT IT WAS A FELONY.

DID THEY HAVE A CONVICTION BEFORE?

THEY HAD A CONVICTION. THAT IS WHAT I WAS GOING TO SAY. WHEN THE OFFICER FROM CALIFORNIA TESTIFIED, DEFENSE COUNSEL ASKED HIM, IN PROFFER AND CROSS, AND HE SAID THAT IT WAS A MISDEMEANOR, THEN, AFTER THE TESTIMONY AT CHARGE CONFERENCE, SOMEBODY WENT TO THE LAW LIBRARY AND BROUGHT THE CALIFORNIA PENAL CODE BACK, AND IT WAS, THEN, OBVIOUS THAT IT WAS A MISDEMEANOR, BECAUSE IT DEPENDS ON SENTENCING. IF THEY DON'T GET STATE PRISON TIME, IT IS A MISDEMEANOR, AND IT WAS SENT TO THE MUNICIPAL COURT, WHICH DOESN'T EVEN HAVE JURISDICTION.

HOW IS THAT PROSECUTORIAL MISCONDUCT? I THOUGHT THE ARGUMENT WAS THIS WOULD AND FELONY IN FLORIDA, AND THAT IS WHY WE THINK WE SHOULD --

SHE DID ARGUE THAT, BUT SHE, ALSO, I MEAN, THAT IS ONLY VALID, IF YOU CAN'T TELL IF IT IS A MISDEMEANOR OR A FELONY, WHICH IS WHAT SHE WAS ARGUING, AND SHE COULD HAVE GONE TO THE LIBRARY OR ASKED HER OWN WITNESS WHETHER OR NOT IT WAS A FELONY. OR MISDEMEANOR. I MEAN, I FEEL LIKE SHE MISLED THE JUDGE A LITTLE BIT, ON WHETHER IT WAS OR NOT, AND YOU LOOK AT CASES TO SEE IF THEY ARE VIOLENT. IF YOU CAN'T TELL BY THE WORDING. BUT IT HAS TO BE A FELONY FIRST, TO BE AN AGGRAVATOR, AND THEN THE JUDGE, WHEN THE JUDGE FOUND OUT, SHE CAUTIONED THE JURY NOT TO, YOU KNOW --

WAS THERE SOME ACTUAL QUESTION, THOUGH, AS TO WHETHER OR NOT THIS COULD BE A FELONY, BUT, IN FACT, THEY ALLOWED THE DEFENDANT TO PLEAD TO A MISDEMEANOR? I THOUGHT THAT WAS --

THAT'S RIGHT.

BUT UNDER CALIFORNIA LAW --

EITHER/OR.

-- IT COULD HAVE BEEN --

BUT THEY HAD THE JUDGMENT, YOU KNOW, THAT SHOWED WHAT IT REALLY WAS. WHAT IT WAS DECIDED TO HAVE BEEN. BUT YOU KNOW, THAT IS AGGRAVATED BATTERIES. AS FOR THE CELL SEARCH, WHICH I WANTED TO MENTION FOR A MOMENT, TOO. A MONTH BEFORE TRIAL, THE PROSECUTOR, WHICH WAS KAREN COFF, HAD HER INVESTIGATORS FROM THE STATE ATTORNEYS OFFICE GO IN AND SEARCH ROGERS CELL, AND THEY CONFISCATED ALL THE PAPERS. THEY SEARCHED SOME OTHER CELLS, TOO. THE REASON I I FEEL THAT IS PROSECUTORIAL -- THE REASON I FEEL THAT IT IS PROSECUTORIAL MISCONDUCT IS THE DEFENSE COUNSEL WAS OUT OF TOWN. SHE AND THE DEFENSE COUNSEL WERE GOING TO BE IN WASHINGTON FOR DEPOSITIONS IN THE CASE.

IS THAT IN THE RECORD?

YES. A LOT OF THIS IS JUDICIAL NOTEIES THAT MR. LANDRY FILED. ON THE MORNING, SHE CALLED A MEETING AT NINE O'CLOCK IN THE MORNING, BEFORE THEY WENT TO WASHINGTON, WITH THE OTHER PROSECUTOR AND THE INVESTIGATOR, AND SHE SAID WE HAVE TO DO SOMETHING ABOUT THIS RUMOR THAT THEY ARE CONSPIRING TO GET LONDON TO TAKE THE FALL FOR ROGERS, AND SHE SAID THE DEFENSE COUNSEL AND HIS INVESTIGATOR, HAVE BEEN TO VISIT ONE OF THESE PEOPLE, AND THEY WERE QUESTIONING HOTEL MANAGERS, AND DEFENSE COUNSEL HAD ASKED THE JUDGE OR FILED A MOTION TO REVIEW LONDON'S ARREST REPORT, SO SHE SAID THAT MAKES IT -- APPARENTLY SHE THOUGHT THOSE MADE THE RUMOR TRUE. WE, I THINK THEY WERE JUST INVESTIGATING THE CASE. BUT, ANYWAY, SHE, AND THIS IS BASED ON FOURTH HAND HEARSAY. SUPPOSEDLY AN INFORMANT THAT THEY HAD, MITCHELL, TOLD THEIR INVESTIGATOR THAT HE HAD HEARD FROM SOMEBODY IN THE JAIL THAT ROGERS AND LONDON WERE IN THIS CONSPIRACY. AND THEN THE INVESTIGATOR TOLD KAREN COX. AND JUDGE FUENTES, IN THE LONDON CASE, AND THE HEARINGS ARE IN JUDICIAL NOTICE, HE FOUND THERE WAS NO PROBABLE CAUSE TO THINK THAT THERE WAS A CONSPIRACY, AND HE LOOKED AT THE PAPERS IN LONDON'S CASE, THAT HAD BEEN TAKEN, AND KAREN COX CLAIMED THAT, BECAUSE SHE HANDLED OSCAR RAY BOWL AND'S CASE, SHE HANDLED ALL OF THIS AND DIDN'T NEED A WARRANT, BUT BOLAND'S CASE, THEY FOUND THAT IT WAS OKAY FOR PRISON OFFICIALS TO GO INTO THE CELL AND GET A SUICIDE NOTE, BECAUSE HE HAD TRIED TO COMMIT SUICIDE, WHICH IS FAR DIFFERENT FROM THIS CASE, AND AS SOON AS, ACTUALLY, AS SOON AS THIS HAPPENED, AND THE NEXT DAY DEFENSE COUNSEL FILED A MOTOR VEHICLES, KAREN COX -- A MOTION, KAREN COX ALL TESTIFIED THEY DIDN'T READ ANY OF IT, BUT THEY WOULD BE GLAD TO RETURN IT AND THEY WANTED TO MAKE COPIES OF IT, WHICH THE JUDGE ALLOWED THEM TO DO, MAKE COPIES, WHICH I ASSUME ARE STILL IN THE STATE ATTORNEY'S OFFICE.

HOW CAN THAT -- I CAN UNDERSTAND THE ISSUE THAT THE PROSECUTOR MAY HAVE DONE SOMETHING IMPROPER, BUT HOW DOES THAT TRANSLATE INTO HAVING PREJUDICED THE DEFENDANT IN THIS CASE, WHO WARRANTS A GRANTING OF A NEW TRIAL?

WELL, FIRST HE WAS DEPRIVED OF HIS PAPERS FOR ABOUT A WEEK, BUT THAT IS NOT A MAJOR THING. ADDITIONALLY, NO ONE KNOWS FOR SURE IF THEY GOT ANY INFORMATION THAT THEY USED AT THE TRIAL.

THEY SAID THEY DIDN'T. WE HAVE GOT -- THESE ARE OFFICERS OF THE COURT. WE HAVE GOT TO ASSUME THAT WHAT THEY REPRESENTED IS THE TRUTH. DON'T WE?

WELL, I THINK -- I AGREE THAT, WITH THAT GENERALLY, BUT THIS PARTICULAR OFFICER OF THE COURT IS THE ONE THAT TOLD HER INVESTIGATORS WHO GO SEARCH THE CELLS, AND DIDN'T THINK ABOUT ATTORNEY-CLIENT PRIVILEGE AND DIDN'T TELL DEFENSE COUNSEL, AND IT WASN'T OFFICERS GOING IN THERE. WAS INVESTIGATORS, TAKING EVERYTHING OUT OF THE CELL AND BRINGING THEM BACK.

INVESTIGATORS FROM THE STATE ATTORNEYS OFFICE?

YEAH. THE JAIL HAD NOTHING TO DO WITH IT, AND SHE NEVER TRIED TO GET A WARRANT, SO THAT IS WHY I SAY, CONSIDERING THAT, THE TESTIMONY THAT SHE DIDN'T READ IT IS MORE QUESTIONABLE, ALTHOUGH YOU ARE RIGHT. GENERALLY YOU DO ACCEPT THAT THE WORD OF AN ATTORNEY OF THE COURT.

DIDN'T YOU SAY SHE HAD GONE -- SHE WAS GOING OUT OF TOWN THAT SAME DAY?

UM-HUM.

THEN THEY GOT THE DOCUMENTS BACK, THE NEXT DAY, AND WOULDN'T THAT SORT OF SUPPORT THE WHOLE ARGUMENT THAT NONE OF THE -- THAT SHE DIDN'T HAVE AN OPPORTUNITY --

WELL, THEY DIDN'T REALLY GET THEM BACK THE NEXT DAY. THEY HAD A HEARING THE NEXT DAY, WHICH, I THINK, WAS A FRIDAY, AND THEN THE JUDGE TOLD THEM TO NOT LOOK AT THEM AND BRING THEM INTO COURT ON MONDAY, AND THEN THEY ORDERED THAT THEY WOULD BE COPIED WITHIN TWO DAYS AND RETURNED TO THE DEFENDANT. I BELIEVE THAT WAS THE SEQUENCE OF IT. AND I MEAN, PRESUMABLY, I MEAN, AFTER THEY WERE SEALED UP IN THE STATE ATTORNEYS OFFICE, I WOULD HOPE NOBODY LOOKED AT THEM THEN.

I KNOW YOU HAVE GONE A GREAT DEAL INTO YOUR REBUTTAL. IF YOU WANT TO SAVE ANY TIME, YOU MAY.

LET ME MENTION HAD, IN CLOSING ARGUMENT, YOU PROBABLY KNOW THIS, THE WORST THING, ONE THING SHE SAID THAT MITIGATION WAS NOT -- SHE SAID THAT BE WILLING DRUNK -- THAT BEING DRUNK WAS NOT MITIGATION, AND SHE SAID THAT HE WASN'T DRUNK, WHICH THERE WAS LOTS OF EVIDENCE THAT HE WAS.

CAN'T SHE ARGUE FROM THE EVIDENCE? IT IS HER INTERPRETATION, FROM THE EVIDENCE, THAT HIS DRINKING WAS NOT A RIBT CONTRIBUTING FACTOR? -- WAS NOT A CONTRIBUTING FACTOR? ISN'T SHE FREE TO ARGUE THAT?

FIRST SHE ARGUED THAT THERE WAS NO DRINKING, WHICH WASN'T TRUE, AND THEN SHE ARGUED THAT IT IS NOT MITIGATING, THAT THAT IS NO EXCUSE AND THAT SORT OF THING, BUT THE FIRST ONE WAS THAT SHE ARGUED IN RUIZ, AND SHE ARGUED ALMOST WORD FOR WORD ABOUT HER FATHER BEING A PHYSICIAN IN THE GULF WAR AND HE DID HIS DUTY, EVEN THOUGH HE HAD CANCER AND HE WENT AND FOUGHT IN THE GULF WAR, AND IT IS DIFFICULT TO DO YOUR DUTY, AND THAT THIS CRIME AND THE JUSTICE MUST FIT IT. IT ISN'T EASY. WE ASK YOU TO CONSIDER THESE THINGS, BECAUSE THEY ARE NOT EASY, BECAUSE WE ALL KNOW THEY ARE DIFFICULT AND NOT RIGHT. YOU HAVE THE COURAGE AND MORAL STRENGTH TO DO JUSTICE IN THIS CASE, SO SHE IS INSINUATING THAT THEY HAVE TO DO THEIR DUTY BY SENTENCING HIM TO DEATH, YOU KNOW, LIKE HER FATHER DID HIS DUTY, AND OF COURSE IT, ALSO, INJECTS A LOT OF EVIDENCE THAT WASN'T AT TRIAL.

WE HAVE ALREADY SAID THAT ARGUING WAS IMPROPER, BUT IT WAS NOT OBJECTED TO, AS WE SAID BEFORE, IN RUIZ, IT WASN'T PROPER.

NO. I AM SAYING, THOUGH, THAT IT IS FUNDAMENTAL, BECAUSE IT IS SO SERIOUS AND COMBINED WITH THE OTHER PROSECUTORIAL MISCONDUCT IN THE TRIAL THAT HE DIDN'T GET A FAIR TRIAL. I WILL SIT DOWN. I THINK I MIGHT HAVE TWO MINUTES LEFT.

MAY IT PLEASE THE COURT. MY NAME IS BOB LANDRY, REPRESENTING THE STATE ON THIS AND', WITH RESPECT TO THE POST ISSUE THAT HAS BEEN ARGUED TODAY, CONCERNING THE PREMEDITATION AND FELONY ASPECT OF THIS CRIME, WE THINK THE EVIDENCE IS ADEQUATE AND SUFFICIENT TO SUPPORT A FIRST-DEGREE MURDER CONVICTION ON EITHER THEORY. YOU HAVE THE NATURE OF THE WOUNDS INFLICTED IN THIS CASE. THERE WERE TWO FATAL STAB WOUNDS INFLICTED WITH A KNIFE, EACH OF THEM SEVEN OR EIGHT INCHES IN DEPARTMENT, WITH A TURNING, TWISTING MOTION IN EACH WOUND, TO WHERE FORMING LIKE A L-SHAPED INJURY, A 90-DEGREE ANGLE, SO OBVIOUSLY IT WAS THOUGHT AN ACCIDENT OR AN INADVERTENT TYPE OF INFLICTION OF THE WOUND IN THAT INSTANCE, AND IN ADDITION, WE HAVE A THIRD WOUND, A DEFENSIVE WOUND, WHICH WAS FOUND ON THE WRIST THE OF THE VICTIM, INDICATING A STRUGGLE IN THE MOTEL ROOM. IN ADDITION, WE POINTED OUT AND THE EVIDENCE, I THINK, SUPPORTS THE STATE'S ARGUMENT THAT THE DEFENDANT WAS CERTAINLY IN NEED OF AN AUTOMOBILE AT THIS TIME. HE HAD CHECKED INTO THE TAMPA 8 MOTION BY A CAB. HE -- THE TAMPA 8 MOTEL BY A CAB. HE ARRIVED AT THE SHOWTIME LOUNGE AND GRILL THE

SUNDAY, FOLLOWING AFTERNOON, BY CAB. HE REALLY HAD NO TRANSPORTATION. HE HAD ONLY SIGNED UP FOR THE MOTEL IN TAMPA FOR TWO DAYS. HE OBVIOUSLY HAD AN OPPORTUNITY, AT THAT POINT, TO FORM AN INITIAL CONTACT WITH THE VICTIM, CONTINUE A MARIE CRIBBS, AND THERE IS TESTIMONY BY HER ASSOCIATES AND FRIENDS THAT MR. ROGERS DISPLAYED, REALLY, VERY LITTLE INTEREST IN ANYONE ELSE WHO WAS NOT SINGLE AT THE TIME. AND CONTINUE A CRIBBS WHAT IS THE ONLY SINGLE PATRON AT THE BAR AT THAT TIME. HE, THEN, ASKED HER FOR A RIDE BACK TO HIS HOME OR HIS MOTEL, AND SHE AGREED --

THE DEFENSE ARGUES THAT THAT INFORMATION, THAT WANTING TO GET THE ONLY SINGLE PERSON IN THE GROUP, REALLY, IS JUST AS INDICATIVE OF WANTING TO HAVE SOME KIND OF RELATIONSHIP WITH THE PERSON AS OPPOSEED TO A PLAN TO ROB THE PERSON, SO WHAT IS THE STANDARD WE SHOULD USE HERE, IN EVALUATING THIS EVIDENCE?

I THINK YOU HAVE TO LOOK AT THE TOTALITY OF THE EVIDENCE, AS TO WHAT HAPPENED, AND AS A RESULT OF ALL OF THIS. MS. CRIBBS, FOR EXAMPLE, HAD INDICATED, TO HER, THE BARMAID, LYNN JONES, I THINK IT WAS, THAT SHE WAS GOING TO GIVE HIM A RIDE HOME, AND THAT SHE WAS GOING TO RETURN, BECAUSE SHE A PREVIOUS ENGAGEMENT THERE WITH HER MOTHER. SHE WAS SUPPOSED TO MEET HER THERE FOR DINNER, SO CLEARLY MS. CRIBBS WAS UNDER THE IMPRESSION THAT SHE WAS DRIVING, SIMPLY GIVING THIS GUY A RIDE AND COMING BACK, AND WHEN THE MOTHER ARRIVED, MARY DICKEY ARRIVED, ABOUT A HALF AN HOUR LATER, YOU KNOW, SHE SAW THAT CONTINUE A MARIE CRIBBS' BEER -- THAT TINA MARIE CRIBBS' BEER WAS ON THE TABLE WHERE IT WAS USUALLY FOUND. SHE WAITED A HALF AN HOUR OR SO AND THEN STARTED MAKING CALLS ON HER BEEPER.

WAS THERE ANY EVIDENCE ON THIS RECORD AS TO HOW FAR AWAY THIS BAR WAS FROM THE HOTEL ROOM AND HOW MUCH TIME IT WOULD HAVE TAKEN?

I DON'T KNOW THAT THE RECORD REFLECTS IT. I HAVE CERTAINLY, I AM FAMILIAR WITH THE AREA. I HAVE DRIVEN BY THERE FROM TIME TO TIME IN THE TAMPA BAY AREA. IT IS ABOUT A TENOR 15-MINUTE DRIVE ON US 41. IT IS NOT THAT FAR. IT IS NOT THAT FROM FROM TAMPA, AND THE TAMPA 8 MOTEL IS RIGHT OFF OF THE TURN OFF AT US 41 AND.

th STREET IN TAMPA, SO IT IS ABOUT A -- AND 50th STREET IN TAMPA. I DON'T KNOW THAT THE RECORD REFLECTS. I DON'T KNOW THAT THERE WAS TESTIMONY AS TO HOW LONG THE DRIVE WOULD TAKE.

HOW WOULD THE STATE FORM THE PRINCIPLE TO BE APPLIED OR STANDARD TO THESE SITUATIONS OF IT IS JUST AN AFTERTHOUGHT?

I WOULD THINK THAT SOME OF THE COURT'S OPINIONS IN PARKER AND YOUNG AND SOME OF THE OTHER ONES, THE COURT HAS SAID, OBVIOUSLY, WHERE THERE WAS A CONTINUOUS SERIES OF EVENTS, WHICH IS ALL PART OF THE EPISODE, THEN THE AFTERTHOUGHT ARGUNIT DOES NOT PREVAIL, AND WHAT WE HAVE HERE IS A SITUATION IN WHICH, I MEAN, THEY LEAVE THE BAR AFTER FOUR OR FIVE HOURS, AND THEN HE IS SEEN OUTSIDE OF THE MOTEL ROOM, APPARENTLY PUTTING LUGGAGE INTO THE WHITE FESTIVE A CAR. SEEN BY MOTEL EMPLOYEES. THAT SAME EVENING. HE IS, ALREADY, PREPARING. SHE IS PRESUMABLY ALREADY DEAD AT THAT POINT, BECAUSE THE MOTHER HAD TESTIFIED THAT, WHEN IT BECAME APPARENT THAT TINA WAS NOT RETURNING TO THE BAR THAT NIGHT, SHE WAS FRANTICALLY CALLING HER ON THE BEEPER AND MADE ABOUT 30 CALLS, YOU KNOW, AT THAT TIME. NONE OF WHICH WERE RETURNED, AND THE VICTIM ALWAYS IMMEDIATELY RETURNED PHONE CALLS FROM THE MOTHER. SO CLEARLY, BY THAT EVENING, THE DEFENDANT HAD KILLED THE VICTIM, TINA CRIBBS. HE IS SEEN, AS I SAY, ATTEMPTING TO, PUTTING LUGGAGE INTO THE CAR THAT NIGHT. HE, THEN, GOES INTO THE MOLTH AND CHECKS IT AND DECIDES TO PAY FOR AN EXTRA NIGHT. HE GIVES INSTRUCTION TO SAY EVERYONE NOT TO BE DISTURBED. THEY HAVE A DO NOT DISTURB SIGN. THEY TELL HIM

THEY DON'T. HE HAS TO MAKE HIS OWN "DO NOT DISTURB" SIGN, AND SO HE LEAVES THE NEXT MORNING IN A VERY COLD AND PREMEDITATED FASHION, AS JUSTICE ANSTEAD INDICATED EARLIER.

LET ME MAKE SURE I UNDERSTAND YOU. THE PUTTING OF THE LUGGAGE IN THE CAR WAS ACTUALLY THE DAY BEFORE HE LEFT?

THE TESTIMONY, I BELIEVE, OF THE MOTEL PERSON, I THINK IT WAS MISS PAYTAG, SAID THAT SHE SAW HIM STANDING OUTSIDE ROOM 119 AT THE CAR, AND SHE -- MAYBE SHE DREW THE INFERENCE THAT HE WAS PUTTING LUGGAGE IN THE CAR. HE WAS DOING SOMETHING WITH THE CAR AT THAT POINT. IT IS NOT EXACTLY CLEAR WHETHER HE WAS ACTUALLY LOADING OR UNLOADING.

BUT IT WAS CLEAR THAT THIS WAS THE DAY BEFORE HE ACTUALLY LEFT.

THAT WAS AT 9:30 SUNDAY NIGHT, AND AT TEN O'CLOCK OR 10:30 IS WHEN HE GOES INTO THE CLERK'S OFFICE AND REQUESTS AN EXTRA NIGHT'S LODGING AND PAYS FOR IT AT THAT TIME, AND REQUESTS A "DO NOT DISTURB" SIGN AND THEY SAY WE DO NOT HAVE A "DO NOT DISTURB" SIGN AND BASICALLY TELLS HIM TO PUT HIS OWN SIGN ON THERE, WHICH HE DOES, AND HE TELLS THEM THAT HE DOESN'T WANT ROOM SERVICE AND DOESN'T WANT TO BE DISTURBED. THE NEXT DAY, AT NINE O'CLOCK IN THE MORNING, IS WHEN HE WAS SEEN DRIVING OFF IN THE VICTIM'S CAR, AND, OF COURSE, THE MOTEL PEOPLE DID NOT MAKE ANY ENTRY INTO THE MOTEL AT THAT TIME BECAUSE THERE IS A "DO NOT DISTURB" SIGN. HE HAS MADE PAID FOR THAT PARTICULAR -- HE HAS PAID FOR THAT PARTICULAR DAY. THEY GO IN THE NEXT MORNING AND FIND THE VICTIM. HE APPARENTLY LEAVES AN EXPENSIVE WATCH LYING UNDERNEATH THE VICTIM'S BODY. ALL OF HER JEWELRY, WHICH HER MOTHER SAID SHE HABITUALLY WORRY, IS MISSING AND NEVER SHOWS UP AGAIN. THE -- SHE TRADITIONALLY WORE, IS MISSING AND NEVER SHOWS UP AGAIN. THE WALLET, THE PURSE WALLET, IS FOUND AT A REST STOP AREA ON I 10, I BELIEVE IT WAS, AT NOON ON MONDAY.

GOING BACK TO JUSTICE LEWIS'S QUESTION, WHICH IS TRYING TO ASSIST THE COURT IN UNDERSTANDING WHAT ARE -- WHEN SOMETHING -- BECAUSE SOMETHING THAT IS AN AFTERTHOUGHT IS STILL PART OF THE CRIMINAL EPISODE. IT JUST -- BUT THE USE AFTERTHOUGHT SEEMS TO IMPLY THAT IT WAS SOMETHING THAT DID NOT OCCUR TO THE DEFENDANT, UNTIL AFTER THE MURDER, SO THAT IT WASN'T THE MOTIVE. WOULD YOU AGREE THAT IT IS WHETHER THE INFERENCES ARE THAT THE TAKING OF THE PROPERTY WAS THAT THE MURDER WAS DONE WITH THE THOUGHT THAT THE PROPERTY WOULD BE TAKING, TAKEN, THAT DISTINGUISHS THE CASES, WHERE WE ARE SAYING THERE IS AN AFTERTHOUGHT, VERSUS THOSE THAT ARE CONSIDERED TO BE FELONY MURDERS? BECAUSE IT IS --

I THINK -- LET ME TRY TO ANSWER THAT. I THINK THE AFTERTHOUGHT CASES, LIKE MAHN, I THINK, ARE CASES IN WHICH THERE REALLY IS NO APPARENT ROBBERY MOTIVE AT THE BEGINNING. I MEAN THE ENTIRE EVIDENCE, ALMOST, OF THE ROBBERY OR THE TAKING DEMONSTRATES AN AFTERTHOUGHT.

OKAY. SO THE FOCUS SHOULD BE ON WHETHER -- ON THE INTENT FOR THE MURDER, AS MUCH AS ANYTHING ELSE, BECAUSE IN TERMS OF THE SERIOUSNESS OF THIS, IF SOMETHING IS NOT A ROBBERY, THEN YOU DON'T HAVE FELONY MURDER.

I THINK, AGAIN, THE FELONY MOTIVE STATUTE, THE FELONY MOTIVE STATUTE TALKS ABOUT HOMICIDE OCCURRING DURING THE COMMISSION OF A ROBBERY, IF THE ROBBERY IS A FELONY, THE ATTEMPT THERE FOR OR THE ESCAPE THEREAFTER. SO IT CAN BE -- IT DOESN'T HAVE TO BE EXACTLY AT THE VERY MOMENT OF THE KILLING. I MEAN THERE IS A THAT TIME FRAME.

THE TAKEN DOESN'T HAVE TO BE, BUT AS -- THE REASON FOR THE KILLING HAS TO HAVE

SOMETHING TO DO WITH WANTING TO TAKE THE PROPERTY.

YOU KNOW, I DON'T KNOW THAT YOU ARE GETTING, THERE, AGAIN, INTO THE MOTIVE. I DON'T KNOW THAT MOTIVE IS A ELEMENT OF THE CRIME. I THINK WHAT THE CASE LAW DEMONSTRATES IS THAT, SO LONG AS THE UNDERLYING FELONY IS PART OF THE CONTINUING SERIES OF EVENTS OF THAT EPISODE.

HOW DOES THE ROBBERY OCCUR, WITH THE MURDER, UNLESS THE MURDER WAS THE REASON THAT THE TAKING OF THE PROPERTY WAS NOT DONE MERELY AS AN AFTERTHOUGHT? ISN'T THAT WHAT THE -- ISN'T THAT WHY THAT AFTERTHOUGHT CONCEPT IS SO IMPORTANT, BECAUSE THE ONLY REASON YOU CAN HAVE FELONY MURDER IS BECAUSE YOU SUBSTITUTE THE INTENT OF THE MURDER FOR THE UNDERLYING FELONY, WHICH, IN THIS CASE, IS THE ROBBERY? SO YOU CAN'T BE SAYING THAT IF SOMEONE TAKES PROPERTY AFTER THE FACT, THAT THAT IS GOING TO SUPPLY AN ELEVATED, OTHERWISE UNPLANNED MURDER, INTO A FELONY MURDER.

WELL, I DON'T THINK THAT SIMPLY BECAUSE THE EVIDENCE WAS TAKEN AFTER THE ROBBERY, THE PROPERTY WAS TAKEN AFTERWARD, DEMONSTRATES THAT IT WAS ONLY AN AFTERTHOUGHT.

I AGREE WITH YOU ON THAT, THOUGH, BUT I THOUGHT WHAT YOU WERE HEADING FOR BEFORE WAS THAT THE LINE IS THAT THERE HAS GOT TO BE CIRCUMSTANCES, LIKE YOU ARE ARGUING THERE ARE IN THIS CASE, THAT SHOWS THAT THE ROBE FOR THE MURDER -- THAT THE REASON FOR THE MURDER WAS FOR THE TAKING OF THE PROPERTY.

RIGHT. THERE REALLY WAS NO OTHER BASIS IN THE EVIDENCE TO SUPPORT ANY OTHER THEORY OF THE MURDER, OTHER THAN HIS DESIRE FOR THE PROPERTY. I MEAN, THERE WAS NO EVIDENCE OF ANY SEXUAL ASSAULT OR ANYTHING LIKE THAT, IN THE APARTMENT, AND CLEARLY HIS -- HE HAD A DEMONSTRATED NEED FOR A VEHICLE. HE HAD OBVIOUSLY -- IT APPEARS THAT HE FORMULATED THE PLAN WHEREBY HE COULD ISOLATE HIS VICTIM AND GET HER BACK TO HIS MOTEL ROOM, AND IN A LOCKED MOLTH ROOM, STAB HER, TWICE, TO DEATH, SO WE WOULD SUBMIT THAT, BASED ON BOTH PREMEDITATION AND A FELONY MURDER, TO WIT THE TAKING OF THE JEWELRY AND THE AUTOMOBILE, THAT THERE IS SUFFICIENT EVIDENCE FOR THE JURY'S VERDICT TO BE SUSTAINED.

WOULD YOU EXPLAIN ABOUT HOW THIS HAPPENED THAT SOMETHING THAT WAS CLEARLY SHOWN TO BE A MISDEMEANOR BY THE JUDGMENT, HOW THE STATE RISKED A REVERSIBLE ERROR IN THIS CASE, BY PUTTING THIS TYPE OF EVIDENCE FORT?

WELL, I THINK WHAT HAPPENED IS, AND IT IS JUST MY READING OF THE RECORD, MY INTERPRETATION OF THE RECORD, I THINK WHAT HAD HAPPENED WAS THAT IT WAS VERY CONFUSING WHAT CALIFORNIA LAW WAS, BECAUSE THERE WAS A DISCUSSION GOING ON BACK AND FORTH, BETWEEN THE TRIAL JUDGE AND THE PROSECUTOR AND DEFENSE COUNSEL, AAPPARENTLY CALIFORNIA HAS SOME KIND OF A HYBRID SYSTEM, WHEREBY SOMETHING MAY EITHER BE A FELONY OR MISDEMEANOR, DEPENDING ON HOW THE DISTRICT ATTORNEY DEALS WITH IT, ET CETERA, ET CETERA. WHAT HAD HAPPENED WAS THE STATE ATTORNEY APPARENTLY HAD THOUGHT, BASED UPON THE JUDGMENT FORM THAT THEY HAD PLUS THE WITNESSES' TESTIMONY, THAT THIS WAS GOING TO BE A FELONY, AND IT WAS -- IT TURNED OUT TO BE A MISTAKE. AS A MATTER OF FACT, THE FORM IS SO CONFUSING, THAT WHEN THE DETECTIVE WAS SHOWN THE FORM BY THE DEFENSE COUNSEL, ON CROSS-EXAMINATION, IT SAYS WHAT DOES THIS LOOK LIKE TO YOU, HE SAYS, WELL, IT LOOKS LIKE A MISDEMEANOR. NOW, I DON'T KNOW WHETHER IT WAS A MISDEMEANOR OR FELONY, BUT CLEARLY IT WAS CONFUSING, AND THE TRIAL JUDGE SAID THAT SHE WOULD LIKE, YOU KNOW, SOME RESEARCH DONE, TO FIND OUT WHAT IT WAS, BEFORE SHE PROCEEDED TO ACT IN THE CASE. WHEN THE STATE ATTORNEY WAS UNABLE, THEREAFTER, TO DEMONSTRATE THAT THEY COULD REALLY SHOW THAT IT WAS A

FELONY, THEN THE TRIAL JUDGE HAD SOME OPTIONS TO MAKE, AND SHE DENIED THE MISTRIAL REQUEST.

AGAIN, JUST SO I WANT TO UNDERSTAND WHAT WAS SO CLEAR AND WHAT WASN'T, IS THAT THE JUDGMENT, ITSELF, AND I DON'T HAVE A COPY OF IT HERE, INDICATES THAT BOTH COUNTS WERE MISDEMEANOR. NOT THE CHARGING DOCUMENT. WOULD YOU AGREE WITH THAT, THAT THE JUDGMENT, ITSELF, WHICH WAS LOOKED AT IN THE PENALTY PHASE, INDICATED WAS A MISDEMEANOR?

THAT IS APPARENTLY WHAT I GATHERED THE DETECTIVE FROM CALIFORNIA TESTIFIED TO, WHEN HE WAS SHOWN THAT EXHIBIT ON THE STAND. I MEAN IT WAS CLEARLY --

IT SHOULD NOT HAVE COME IN.

IT SHOULD NOT HAVE COME IN, AND THE TRIAL JUDGE, THEN, BASICALLY SAID, TO THE DEFENSE, WELL, ASIDE FROM A MISTRIAL, IS THERE ANY OTHER REMEDIES THAT YOU ARE SUGGESTING, AND HE SAID, WELL, I WOULD LIKE A CAUTIONARY INSTRUCTION GIVEN TO THE JURY. THE TRIAL JUDGE SAYS YOU ARE ABSOLUTELY RIGHT. YOU DRAFT THE INSTRUCTION. THE DEFENSE COUNSEL DRAFTED THE INSTRUCTION, AND THE JURY WAS INSTRUCTED THEREAFTER THAT YOU SHALL NOT CONSIDER THE TESTIMONY OF THESE TWO WITNESSES. ANYTHING THEY HAD TO SAY WAS TOTALLY IRRELEVANT TO ANY ISSUE IN THIS CASE, THAN INSTRUCTION WAS GIVEN TO THE JURY, AND PRESUMABLY THEY FOLLOWED THE INSTRUCTIONS OF THE COURT. THE STATE ATTORNEY DID NOT, THEREAFTER, IN CLOSING ARGUMENT, ARGUE ANYTHING OTHER THAN THE TWO AGGRAVATING FACTORS, WHICH WERE SUPPORTED BY THE EVIDENCE, TWIT THE HAC FACTOR AND THE ROBBERY, PECUNIARY GAIN FACTOR. THE TRIAL JUDGE, UNLIKE THE SITUATION IN THE FIRST AMERICA APPEAL, DID NOT UTILIZE IT AS AN IMPROPER STATUTORY AGGRAVATING FACTOR, AND IN FACT IN HER SENTENCING ORDER IN THIS CASE, EXPLAINED THAT SHE WAS NOT USING IT, AND THAT THE JURY HAD BEEN INSTRUCTED TO DISREGARD IT.

JUST SO WE ARE CLEAR, THIS PRIOR INCIDENT ACTUALLY INVOLVED A -- ROGERS PUT AGO KNIFE TO SOMEONE'S THROAT. SO ALTHOUGH THIS IS ALREADY AT THE PENALTY PHASE, THE FACT IS THAT THE JURY HEARD THAT THIS PERSON HAD A PRIOR VIOLENT INCIDENT WITH A KNIFE.

RIGHT. THAT WAS THE TESTIMONY OF THE CALIFORNIA VICTIM, I BELIEVE.

I THOUGHT THAT YOUR ARGUMENT WAS VERY NOVEL, ABOUT WHY WE SHOULDN'T REVERSE ON THIS BASIS, IS THAT YOU HAVE REPRESENTED AND SHOWED US A CERTIFIED COPY OF THE JUDGMENT, THAT THIS DEFENDANT HAS NOW BEEN CONVICTED, IN CALIFORNIA, OF A MURDER, AND THAT THAT, IF WE REVERSE FOR A NEW PENALTY PHASE, YOUR ARGUMENT IS THAT THAT WOULD COME N IS THERE ANY CASE LAW THAT WE COULD ARGUE AS TO WHAT MIGHT COME IN THIS A SUBSEQUENT CASE AND DECIDE THAT THIS IS A HARMLESS ERROR?

I AM ARGUING THAT A REMAND IS UNNECESSARY IN THIS CASE. WE HAVE A JURY RECOMMENDATION OF 12-0, BASED ON TWO VALID AGGRAVATORS, BASED ON EVERYTHING THAT THE DEFENSE HAS OFFERED IN MITIGATION. THE JURY WAS TOLD TO DISREGARD THE IMPROPER TESTIMONY OF THE ASSAULT VICTIM IN THAT CASE, AND WE, NOW, HAVE, IT WOULD APPEAR TO BE, AT LEAST TENT, A THIRD VALID AGGRAVATOR THAT THE STATE COULD USE IN ANY RESENTENCING PROCEEDINGS TO WHAT A -- TWIT A JUDGMENT OUT IN CALIFORNIA. THAT CLEARLY WOULD QUALIFY AS A PRIOR VIOLENT FELONY CONVICTION, WERE THE COURT TO REMAND TO A NEW SENTENCING AT THAT TIME. I AM SAYING THAT, SHOULD THIS COURT DEEM THE TRIAL COURT'S CORRECTION AND INSTRUCTION TO THE JURY TO DISREGARD THE IMPROPER TESTIMONY, AS INSUFFICIENT IN THAT CASE, I DON'T SEE HOW A REMAND FOR ANOTHER RESENTENCING PROCEEDING IS GOING TO YIELD A DIFFERENT RESULT.

BUT IS THERE ANY CASE LAW THAT SUPPORTS THAT WE CAN, REALLY, LOOK AT THAT?

YOU CAN LOOK AT IT, IN THE SENSE OF THIS IS A JUDGMENT FORM, AN ACTION BY THE, A COEQUAL STATE, IF YOU WILL, UNDER THE NOTICE OF JUDICIAL AUTHORITY STATUTE. I MEAN, IT IS THERE IS NOTHING AT ALL -- I MEAN, IT -- THERE IS NOTHING AT ALL TO INDICATE THAT THAT JUDGMENT IS IMPROPER OR THAT THAT JUDGMENT OUT IN CALIFORNIA IS SUSPECT FOR ANY REASON.

THERE IS NOTHING THAT YOU KNOW THAT WOULD INDICATE IT WOULD NOT BE ADMISSIBLE AS A SUBSEQUENT PROCEEDING?

I HAVE -- NO. IT IS MY UNDERSTANDING OF THE LAW IS THAT IT WOULD BE FULLY ADMISSIBLE AT THIS STAGE, IF THIS COURT WERE TO SEND IT BACK DOWN AND HAVE A NEW PROCEEDING. WITH RESPECT TO THE --

DID YOU HAPPEN TO KNOW, JUST AS -- I AM NOT SURE WHAT ISSUE INJECTED THIS INTO IT. IF WE WERE TO OVERTURN THE PENALTY PHASE, WOULD IT MEAN THE CALIFORNIA PHASE-OUT NOW, WOULD THEY HAVE THE PRIOR CONVICTION, SO THAT HE WOULD BE A WAITING EXECUTION IN CALIFORNIA BEFORE FLORIDA?

MY UNDERSTANDING OF CALIFORNIA LAW IS THEY WOULD PROBABLY -- THEY MAY WELL NEED THE FLORIDA JUDGMENT TO FORM A SPECIAL CIRCUMSTANCES FOR THE CALIFORNIA DEATH PENALTY.

THEY RELIED --

THEY RELIED ON THE FLORIDA JUDGMENT FOR THEIR DEATH PENALTY?

AS ONE OF THOSE SPECIAL CIRCUMSTANCES. IF THIS COURT WERE TO REMAND FOR, SAY, A NEW PENALTY PHASE, I DON'T KNOW THAT THAT WOULD AFFECT ANYTHING, BUT IT STILL WOULD BE THE JUDGMENT OF GUILTY. WITH RESPECT TO THE ALLEGED IMPROPRIETY BY THE PROSECUTOR IN THE -- ON THE MOTION TO DISQUALIFY THE STATE ATTORNEYISH USE, I THINK -- THE STATE ATTORNEY ISSUE, I THINK, AS WE HAVE TRIED TO MAKE CLEAR UNDER OTHER NOTICE OF JUDICIAL AUTHORITY, THAT THERE WAS A FULL HEARING IN WHICH BOTH KAREN COX AND GOWDY TESTIFIED IN THE LUND GR. GREEN CASE, IT IS CERTAINLY NO LONGER UNCLEAR. THEY HAD RECEIVED INFORMATION FROM THEIR INVESTIGATORS THAT FROM MAY WELL AND PROSECUTE OR CONSPIRACY, WHEREBY MR. LUNDEEN WOULD EITHER TAKE THE BLAME FOR OR THE BLAME WOULD BE PUT ON HIM FOR THE TINA MARIE CRIBBS HOMICIDE. THERE IS FACTS WHICH WOULD GIVE SUPPORT TO THAT, FOR EXAMPLE, KAREN COX TESTIFIED THAT, IN THE ROGERS CASE, AS THE CASE WAS PROGRESSING AND GETTING CLOSER TO TRIAL, THE DEFENSE ATTORNEY IN THE ROGERS CASE WAS ASKING FOR THE POLICE RECORDS OR STATE ATTORNEY FILES ON MR. LUNDEEN.

DOES THE A LAW ALLOW THE STATE ATTORNEY, WHILE THEY ARE PROSECUTING TWO DEFENDANTS, INVESTIGATORS INTO SOMEBODY'S CELL, WITHOUT SEEKING THE WARRANT FROM A NEUTRAL MAGISTRATE?

WELL, I THINK YOU KNOW, PROSECUTOR COX INDICATED THAT HER READING OF THE BOLDING CASE WAS THAT THERE WAS NO PRECEDENT THERE, BECAUSE THE STATE DETAIN' HAD A PREAMENDMENT RIGHT. I THINK THAT MAY WELL BE THE CASE IN TERMS OF THE SIXTH AMENDMENT, STATE ATTORNEY -- ATTORNEY-CLIENT STUFF. IT IS EVIDENT THAT THE APPELLANT RELIES McCAUGHEY CASE. THAT WAS THE CASE WHERE THE PROSECUTOR BASICALLY SAID HE WAS GOING IN THERE TO GET INCRIMINATING EVIDENCE TO BE USED IN THE TRIAL AT HAND. THAT IS NOT WHAT WE HAD IN THIS CASE. WHAT WE HAD IN THIS CASE WAS THE STATE WANTED TO GET INFORMATION TO STOP OR TO NIP IN THE BUDDHA CONSPIRACY.

WAS THE CONSPIRACY TO DO WITH THIS CASE, THOUGH?

IT HAD TO DO WITH, YEAH, THE --

SO THEY WOULD NECESSARILY, BY GETTING HIS WORK PAPERS, BE GETTING INFORMATION THAT WAS IN THE DEFENSE OF THIS CASE? I AM JUST TRYING TO UNDERSTAND HOW THE STATE ATTORNEY'S OFFICE COULD THINK THAT THEY COULD GO AHEAD AND DO THAT ON THEIR OWN, WITHOUT BRINGING IN SOMEBODY THAT IS CONSIDERED TO BE A DETACHED THIRD PARTY, TO EVALUATE THIS.

AGAIN, FOR EXAMPLE, WHEN OPEN OSZING COUNSEL WAS UP -- WHEN OPPOSING COUNSEL WAS UP HERE ARGUING IT, THE CHRONOLOGY, AS STATED AT THAT TIME, MADE IT SOUND AS IF THE STATE WAS PLANNING TO MAKE THIS SEARCH WHILE COUNSEL WAS OUT OF TOWN, IN WASHINGTON, D.C., WHEREAS THE STATEMENT WAS THAT KAREN COX THOUGHT THAT ANY ACTION ALONG THAT LINE WOULD BE DELAYED UNTIL SHE GOT BACK FROM WASHINGTON, BUT THE INVESTIGATORS ACTED WHEN SHE WAS OUT OF TOWN. IN ANY EVENT, AS SOON AS IT HAPPENED OR AS SOON AS THE MATERIAL WAS SEIZED, EVERYONE TESTIFIED THE INVESTIGATORS WHO SEIZED IT AND THE -- BOTH COX AND GOWDY TESTIFIED AT THE LUNDEEN HEARING THAT NONE OF THIS MATERIAL WAS LOOKED AT. IT WAS ALL BOXED UP AND SEALED, AND IN ESSENCE AT THE ROGERS PRETRIAL HEARING, IT WAS MADE ABUNDANTLY CLEAR THAT THE STATE WAS NOT SEEKING TO GET INFORMATION ABOUT THIS TRIAL AND, IN FACT, GAVE ALL OF THE MATERIAL BACK TO THE DEFENSE, SEEKING ONLY TO HAVE SOME KIND OF A PROTECTIVE SCENARIO PRESENTED, SO THAT THERE COULD BE -- THEY COULD BE ASSURED THAT THEY WOULD NOT BE ACCUSED OF HAVING STOLEN OR NOT HAVING GIVEN BACK ALL OF THE MATERIALS, SO NOTHING WAS TAKEN OR NOTHING WAS LOOKED AT. IT IS AN UNFORTUNATE EPISODE.

YOU SAY AN UNFORTUNATE EPISODE. IS IT AN EPISODE THAT SHOULD NEVER BE REPEATED AGAIN, BECAUSE IT IS TALKING ABOUT THE STATE ATTORNEYS OFFICE IS PROSECUTING, GOING INTO THE DEFENDANT'S JAIL CELL. I MEAN, SO WE GOT -- WHETHER IT RUTS IN A NEUTRAL IN THIS CASE, IS IT -- WHETHER IT RESULTS IN A NEW TRIAL IN THIS CASE, IS IT CLEAR THAT THIS IS NOT JUST AN UNFORTUNATE EPISODE BUT SOMETHING THAT SHOULD NEVER BE REPEATED AGAIN?

LET ME SAY THAT I THINK IT WAS A TOUGH CALL. I THINK, DEPENDING ON WHAT MAY HAVE DEVELOPED, IN TERMS OF A CONSPIRACY, AND KAREN COX TESTIFIED THAT ANOTHER EFFORT WAS MADE IN THE MARTINEZ CASE THAT WAS ALMOST SUCCESSFUL, WHEREBY A FALSE DEFENSE WAS FABRICATED AND PUT BEFORE THE JURY. I DON'T KNOW THAT -- I CAN'T SAY, IN EVERY CASE, THAT THAT WOULD BE THE WRONG STEP TO MAKE. CERTAINLY IT TURNED OUT NOT TO BE ABSOLUTELY NECESSARY IN THIS CASE.

YOU WOULD SAY THAT THEY COULD DO THAT WITHOUT GOING TO A JUDGE TO GET A WARRANT. I GUESS I AM NOT SAYING WHETHER IT MIGHT BE APPROPRIATE TO INVESTIGATE IT BUT WHETHER THEY COULD TAKE THE STEPS, BASICALLY TAKE THE LAW INTO THEIR HANDS TO TAKE THE DEFENDANT'S OWN PAPERS.

WELL, I THINK IT WOULD BE, OBVIOUSLY, A BETTER PROCEDURE, YOU KNOW, IF THEY WOULD HAVE GOTTEN COURT APPROVAL FOR THIS, AND -- FOR THIS ACTION. I THINK THIS PARTICULAR SEARCH WAS A MATTER THAT REASONABLE MINDS COULD DISAGREE ON. LEON GOWDY TESTIFIED, FOR EXAMPLE, THAT SHE DIDN'T THINK IT WAS NECESSARY TO DO THIS. THEY COULD PROBABLY HAVE DESTROYED THE FAKE ALIBI DEFENSE, BECAUSE SHE THOUGHT THEY HAD INFORMATION THAT MR. LANDEEN WAS NOT IN THE STATE OF FLORIDA AT THIS TIME.

WHAT DID THE SECOND DISTRICT RULE IN THE BOLEN CASE?

I THINK THEY SAID THERE WAS NO FOURTH AMENDMENT VIOLATION IN THE JAIL HOUSE PEOPLE'S

MOVING INTO MR. BOLEN'S CELL AND FINDING MATERIAL. APPARENTLY THERE WAS AN AMENDMENTED SUICIDE EFFORT BY MR. BOLAND AT THAT TIME, AND THEY ENTERED THE JAIL AND TRIED TO RESCUE HIM, BUT, FOR EXAMPLE, THERE WAS DISCUSSION IN THE LOWER COURT, AS TO WHETHER OR NOT BOLAND INVOLVED THE SEIZURE OF PAPERS, AND KAREN COX SAID, WELL, IT REALLY DID, EVEN THOUGH THE APPELLANT OPINION MAY NOT HAVE REFLECTED IT, ET CETERA, ET CETERA, BUT IT WAS CLEARLY BOLAND WAS A LITTLE BIT DISTINGUISHABLE FROM THE INSTANT CASE. IT WAS NOT AN EFFORT, IN THIS CASE, TO SAVE SOMEONE FROM ATTEMPTED SUICIDE OR SOMETHING OF THAT NATURE, BUT CLEARLY IT WAS NOT A COMPLETELY, TOTALLY UNREASONABLE EXPLANATION BY THE PROSECUTOR, IN LIGHT OF THE INFORMATION THAT THEY HAD AT THAT TIME.

WHO DID THE SEARCH IN THE BOLAND CASE?

I THINK IT MAY HAVE BEEN THE JAIL HOUSE PEOPLE.

SO IT WAS A SEARCH OF HIS CELL BECAUSE OF CONCERN FOR THE INMATE'S SAFETY AND WELL-BEING. YOU THINK THAT IS JUST A LITTLE BIT DISTINGUISHABLE?

I THINK IT IS DISTINGUISHABLE. THE SAME TIME BY THE SECOND DISTRICT -- THE STATEMENT BY THE SECOND DISTRICT THAT THERE IS NO FOURTH AMENDMENT PRIVILEGE INVOLVED IS EQUALLY APPLICABLE HERE, BUT CERTAINLY IT IS A DISTINGUISHING SITUATION, JUST LIKE THE McCAUGHEY CASE WAS DISTINGUISHABLE FROM THE INSTANT CASE, IN THAT THERE THE PROSECUTOR WAS TRYING TO GET INCRIMINATING EVIDENCE TO BE PROSECUTED IN THE INSTANT CASE, BY THE ILLEGAL SEIZURE OF THE DEFENDANT'S PROPERTY. WITH RESPECT TO THE CLAIM ON THE IMPROPER PROSECUTORIAL COMMENT AND PENALTY PHASE, WE WOULD SUBMIT, ONCE AGAIN, THAT NONE OF THESE ARGUMENTS OR COMMENTS WERE -- WAS THERE ANY OBJECTION EVER PROPOSED BY THE DEFENSE BELOW. WE SUBMIT THAT THEABLE TRIAL DEFENSE COUNSEL COULD SIMPLY DECIDE THAT THEY COULD UTILIZE THE PROSECUTOR'S ARGUMENT AND TURN IT BACK ON THEM IN THEIR REBUTTAL ARGUMENT. THE COMMENT ABOUT EXCUSING A VOLUNTARY INTOXICATION BY MS. COX CERTAINLY HAD TO DO WITH THE TESTIMONY OF THE DEFENSE EXPERT, WHO, IN CROSS-EXAMINATION, INDICATED THAT HE DIDN'T KNOW HOW MUCH ALCOHOL THE DEFENDANT HAD AND BASICALLY HE WOULD HAVE TO ESTIMATE, HE WOULD JUST HAVE TO -- HE SAW NOTHING IN THE POLICE REPORT. THERE WEREN'T ANY OTHER EVIDENCE THAT HAD BEEN GIVEN TO HIM TO REVIEW, TO INDICATE WHETHER OR NOT THE DEFENDANT WAS -- HOW BADLY THE DEFENDANT WAS INTOXICATED OR IF HE WAS INTOXICATED AT THE TIME.

BUT YOU DON'T THINK THAT YOUR ISSUE, AS TO WHETHER IT WAS OBJECTED TO OR NOT, THAT THAT PARTICULAR ARGUNIT WAS NOT IMPROPER? ALL WAS NOT IMPROPER.

WERE THERE ANY ARGUMENTS THAT WERE NOT IMPROPER, OTHER THAN THE ONE WE CONDEMNED?

I THINK THE ONLY THING THAT WAS IMPROPER WAS THE DESERT STORM ARGUMENT, AND THAT WAS REJECTED AND, OF COURSE, IT IS NOT AN ATTEMPT BY THE PROSECUTOR TO FLOUT ITS OPINIONS, BECAUSE THAT WAS BEFORE THE COURT HAD GIVEN ITS OPINION IN RUIZ, AND I SAY THAT, IN ADDITION, IT IS NOT UNDULY PREJUDICIAL IN THIS CASE. THE DEFENSE, WE HAVE CITED IN OUR BRIEF, A NUMBER OF EXAMPLES WHERE THE DEFENSE, ALSO, CITED EXAMPLES THAT WERE OUTSIDE. THE DEFENSE ATTORNEY, FOR KPAMPL HE WILL, SAID, NOW, THIS -- FOR EXAMPLE, THIS DEFENDANT'S MOTHER DIDN'T TESTIFY. YOU SAW SHE DIDN'T LOVE HIM VERY MUCH AND SHE APPEARED IN THE COURTROOM IN THE PENALTY PHASE. IF I WAS ON TRIAL, YOU WOULD NEED SOMETHING TO KEEP MY MOTHER OFF THE STAND. THESE KINDS OF ANECDOTES WERE SHOWN TO THE TRIAL COURT AS WELL. AND I THINK, PERHAPS, SUE A SPONTE -- PERHAPS SUA SPONTE, TO THE TRIAL COURT, WOULD BE THE THING TO DO. WE SUBMIT NONE OF THE ARGUMENTS, EXCEPT FOR THE DESERT STORM. DESERT STORM WAS IMPROPER. IT WAS NOT OF A

FUNDAMENTAL NATURE, AND WE WOULD ASK THE COURT TO REAFFIRM THE SENTENCE. IF THE COURT HAS ANY QUESTIONS, I WILL TRY TO ANSWER THEY. OTHERWISE I WILL...

THANK YOU. REBUTTAL?

I WANTED -- JUSTICE PARIENTE ASKED ABOUT DETERMINING WHETHER THE ROBBERY WAS PART, IF IT WAS A ROBBERY, PART OF THE CRIMINAL EPISODE. I THINK THAT IS THE STANDARD FOR WHETHER IT IS ADMISSIBLE EVIDENCE, AND IF HE WAS ROBBED OR AFTERWARD, IT WOULD BE ADMISSIBLE EVIDENCE, BUT I THINK THE FELONY MURDER STANDARD IS THAT IT MUST BE, YOU KNOW, THAT THE STATE HAS TO PROVE THAT, BEYOND A REASONABLE DOUBT, THEY HAVE TO DISPROVE ANY OTHER REASONABLE THEORY. AND, AS FAR AS TO GO ALONG WITH THAT, THE WOMAN PICKED UP ROGERS, WHOM SHE KNEW FOR THREE HOURS IN A BAR, AND SHE WASN'T LEAVING, BUT SHE TOOK HIM HOME. ALLEGEDLY SHE WAS GOING TO MEET HER MOTHER, BUT SHE TOLD, WELL, SHE HAD ASKED HER FRIENDS AND TOLD HER FRIENDS EARLIER SHE WAS INTERESTED IN, AND THAT IS WHY THEY LEFT, AND THEN SHE TOLD ONE OF HER FRIENDS, WHEN SHE LEFT, THAT SHE WOULD GIVE HER THE DETAILS TOMORROW, SO THERE IS INDICATION THAT SHE WAS INTERESTED IN SEX. YOU KNOW. UNLESS SHE WAS REALLY DUMB, WHY WOULD YOU TAKE SOMEBODY HOME, WHEN YOU WEREN'T LEAVING THE BAR, AND IT IS SOMEBODY THAT YOU DIDN'T KNOW, UNLESS SHE WAS JUST SO OVERLY KIND AND KNIFE? I MEAN THAT IS A POSSIBILITY. BUT I THINK IT IS THE STATE'S BURDEN TO PROVE IT WAS INCONSISTENT WITH ANY REASONABLE HYPOTHESIS, OTHER THAN DID HE INTEND TO ROB HER, AND THAT STANDARD IS THAT YOU HAVE TO INTEND TO ROB THE VICTIM AT THE TIME OF THE MURDER. IF YOU DON'T INTEND TO ROB HER UNTIL AFTER SHE IS DEAD, THAT IS DIFFERENT.

IF YOU DON'T -- IF YOU ROB SOMEBODY AFTER THEY ARE KILLED AND HADN'T INTENDED TO TAKE THEIR PROPERTY BEFORE, IS THAT ROBBERY OR THEFT?

IT IS AN AFTERTHOUGHT. IT IS THEFT.

IT IS THEFT. UM-HUM. UNLESS THAT IS THE REASON, OR AT LEAST PART OF THE MOTIVE FOR THE MURDER. AS FAR AS CALIFORNIA LAW, YOU KNOW, AS TO WHETHER IT WAS A FELONY OR A MISDEMEANOR, IT WAS IN THE LAW LIBRARY, AND ALL ANYONE HAD TO DO WAS GO AND, AS SOON AS THE JUDGE SAW THE LAW, SHE KNEW RIGHT AWAY THAT IT WAS A MISDEMEANOR.

WERE THE JUDGMENT FORMS, THEMSELVES, CONFUSING?

I DON'T THINK SO. BUT I DIDN'T SEE IT, MYSELF, BUT IT SAID IN THE MUNICIPAL COURT OF. IT MAYBE DIDN'T SAY MISDEMEANOR OR FELONY, BUT A MUNICIPAL COURT IS NOT A FELONY COURT. I DON'T THINK THE OFFICER, AT ALL, WAS CON TUSED. HE SAID IT WAS A MISDEMEANOR, BUT BECAUSE HE WASN'T A LAWYER, HE DIDN'T WANT TO GUARANTEE THAT HE WAS RIGHT.

DID THE STATE KNOW WHAT IT WAS AND THAT IS WHY IT DIDN'T COME IN, OR DID --

I THINK, READING BETWEEN THE LINES, THEY WERE TRYING NOT TO SAY TOO MUCH. THEY WERE TRYING TO ARGUE WHY IT SHOULD BE TREATED AS FLORIDA, BECAUSE I THINK THEY REALLY KNEW IT WAS A FELONY.

YOU MEAN A MISDEMEANOR.

I MEAN A MISDEMEANOR. THERE ARE SOME THING THAT IS INDICATE THAT, ALTHOUGH IT IS NOT PERFECTLY CLEAR, SO I MEAN, THERE MIGHT HAVE BEEN, I DON'T KNOW WHETHER THERE WAS CONFUSION OR NOT. TO ME, I CAN'T SEE WHY DEFENSE COUNSEL WASN'T CONFUSED AT ALL AND KNEW IT WAS A MISDEMEANOR. AND THE STATE IS SUPPOSED TO VERIFY THAT THEIR EVIDENCE IS GOOD, BEFORE THEY PUT IT IN. AS FAR AS USING THE CALIFORNIA CONVICTION AS AN AGGRAVATOR, I MEAN, WHETHER OR NOT IT COULD BE OVERTURNED AND BE NOT AVAILABLE,

BUT EVEN ASSUMING IT IS AVAILABLE, FOR A NEW TRIAL, UNDER SULLIVAN V LOUISIANA AND THOSE CASES, EVERYONE IS ENTITLED TO A JURY TRIAL, AND SO THE COURT CAN'T DECIDE WHAT THE JURY WOULD DECIDE, BECAUSE THEN PEOPLE WOULDN'T NEED TO HAVE A TRIAL, YOU KNOW, IF THEY ARE NOT --

YOU WOULDN'T AGREE THAT THIS JUDGE DID NOT RELY ON THIS PRIOR CALIFORNIA MISDEMEANOR, WHEN SHE ENTERED HER SENTENCING ORDER, SO THAT DISTINGUISHS THIS CASE FROM AMERICA AND SOME OF THE OTHERS, THAT THERE IS NO QUESTION THAT THIS JUDGE, IN WEIGHING THE AGGRAVATORS AND MITIGATORS, DID NOT CONSIDER THE CALIFORNIA MISDEMEANOR.

THAT IS PROVED. SHE DIDN'T. BUT I DON'T THINK THAT THE JURY COULD TEETHALLY PUT THAT OUT OF -- COULD TOTALLY PUT THAT OUT OF THEIR MINDS. THEY MAY HAVE BEEN TOLD NOT TO, BUT IT WAS IN THE STATE'S PENALTY PHASE, THAT AND THE CLOSING ARGUMENTS, WHICH HAD OTHER PROBLEMS, BUT I DON'T THINK IT IS LIKE THE BELL BEING RUNNING OR THE HORSE BEING OUT OF THE STABLE, AS DEFENSE COUNSEL SAID. SO, ANYHOW, I THINK THAT IS -- OH, ONE OTHER THING I WANTED TO MENTION WAS THAT, WHEN KAREN COX DID THE CELL SEARCH, BOTH SHE AND LEE ANN GOWDY, BOTH KNEW THAT HE WAS OUT-OF-STATE AT THE TIME OF THIS MURDER, SO THEY KNEW ALL ALONG THAT HE COULDN'T DO IT, SO IF IT WAS BROUGHT UP AT THIS TILE TROO, THEY COULD BLOW -- AT THIS TRIAL, THEY COULD BLOW THEM OUT OF THE WEATHER, BECAUSE THEY -- OUT OF THE WATER, BECAUSE THEY COULD PROVE THAT HE WAS OUT-OF-STATE AND THEY COULD USE THAT EVIDENCE, IF, IN FACT, THEY HAD TO.

THANK YOU.