Dolan C. Darling, etc vs State of Florida

GOOD MORNING, AND WELCOME TO ORAL ARGUMENT CALENDAR FOR THE FLORIDA SUPREME COURT. THE FIRST CASE ON OUR CALENDAR IS DARLING VERSUS STATE. [TECHNICAL DIFFICULTIES] SO IF THE JUDGE DOESN'T THINK THAT WHAT HE SAID IN THAT, QUOTE, DENIAL, THAT THE STATE RELIES ON IS NOT INCRIMINATING AND HE DIDN'T EVEN GIVE THE STANDARD INSTRUCTION ON THAT, IT CLEARLY WASN'T -- I AGREE WITH HIM. THERE WAS NOTHING AT ALL IN THAT DENIAL THAT WAS INCRIMINATING.

JUSTICE SHAW.

WHY DON'T YOU MOVE ON INTO YOUR DNA EVIDENCE. YOU ARE TAKING UP ALL OF YOUR TIME ON YOUR FIRST ISSUE.

WELL, I WOULD RATHER TALK ABOUT LIMITATION OF CLOSING ARGUMENT, WHICH SORT OF TIES IN WITH THE FIRST POINT. MR. CHIEF JUSTICE: BEFORE YOU DO THAT, I THINK JUSTICE LEWIS HAD A QUESTION.

I JUST WANT TO GO BACK TO, IT SEEMS AS THOUGH THAT THE PREDICATE FOR YOUR STATEMENT, THAT THERE WAS SLOPPY POLICE WORK OR WHATEVER, IS BASED UPON THE TESTIMONY AS I READ THE RECORD. HE SAID HE ASKED IF HE KNEW HER. DOES THAT NOT IMPLY THAT, CERTAINLY, MUST HAVE HAD A NAME OR IDENTIFICATION OF AN APARTMENT, FOR THAT DENIAL TO BE CONNECTED WITH? IS THAT AN UNFAIR READING OF THAT QUESTION AND THAT LINE OF TESTIMONY?

I THINK IT IS. JUST I THINK THAT, WHEN YOU ARE TALKING ABOUT SOMEBODY ON TRIAL FOR THEIR LIFE, YOU NEED TO BE MORE SPECIFIC. DO YOU KNOW HER? REFERENCE TO A LADY'S DEATH THAT OCCURRED. I MEAN, PRIOR TO THAT, HE WAS TALKING ABOUT, WELL, WE WERE ASKING IF ANYBODY HEARD ANYTHING UNUSUAL, YOU KNOW, THE DAY BEFORE, FROM THIS GENERAL AREA. THAT IS JUST NOT CLOSE ENOUGH TO COUNT, I DON'T THINK. THE LIMITATION OF CLOSING ARGUMENT, ONE THING THAT THE DEFENSE RELIED ON WAS GRACE NOT ONLY WAS AFRAID OF HER HUSBANNED BACK BACK IN -- OF HER HUSBAND BACK IN POLAND, BUT SHE WAS, ALSO, AFRAID OF THE MAINTENANCE CREW, AND WHEN SHE CAME TO PAY THE RENT IN CASH, SHE CAME OUT OF THE LAUNDRY ROOM TO GET THE CASH FROM HIM. HE SAID SOME PEOPLE CAME OUT OF THEIR CAR. HE DIDN'T KNOW THE MAINTENANCE CREW. HE DIDN'T KNOW THE MAINTENANCE CREW BY SIGHT, BUT HE TOLD THE POLICE, WHEN HE FIRST REPORTED THE MURDER, THAT SHE WAS ALWAYS AFRAID OF THESE MAINTENANCE PEOPLE. SHE WAS ALWAYS AFRAID IN HER APARTMENT. SHE CHANGED HER LOCKS. APPARENTLY THE POLICE INVESTIGATED THESE MAINTENANCE PEOPLE, AND THE DNA EXPERT, WHEN HE WAS EXPLAINING THE DNA MATCH, HE HAD A SAMPLE FROM A MR. POWELL AND A MR. MARCUS, POINTING OUT THAT THE DNA DID NOT MATCH THEM, AND IN CLOSING ARGUMENT, THE DEFENSE COUNSEL WAS EMPHASIZING THE LACK OF EVIDENCE. HE TOLD THE JURY THE JUDGE WILL INSTRUCT YOU THAT ONE OF THE THINGS YOU CONSIDER IS LACK OF EVIDENCE. WELL, WHERE IS -- WHY WAS MR. MARCUS OR, ACTUALLY, YOU SAID MR. POWELL. WHY WAS MR. POWELL'S DNA COMPARED? WHY WAS HE A SUSPECT? OBJECTION. IS HE COMMENTING ON A WITNESS THAT THE STATE DID NOT CALL, WHICH THE DEFENSE COULD HAVE. THE DEFENSE COUNSEL SAID, NO, I AM NOT. I AM JUST -- I AM NOT ARGUING THAT THEY DIDN'T CALL THAT WITNESS. I AM POINTING OUT THE LACK OF EVIDENCE. YOU KNOW, WE HEARD TESTIMONY ABOUT THE MAINTENANCE PEOPLE. WHO ARE

THESE PEOPLE. AND THE JUDGE SUSTAINED THE STATE'S OBJECTION AND PRECLUDED THAT LINE OF ARGUMENT TO THE JURY, AND HE SUBSEQUENTLY PROFFERED WHAT HE WOULD HAVE ARGUED, NAMELY THAT HE WAS ARGUING THAT DNA WAS UNRELIABLE. DID THEY EXCLUDE THESE TWO SUSPECTS, MARCUS AND POWELL, ANY OTHER WAY. DID THEY COMPARE THEIR FINGERPRINTS TO ANY OF THE 179 LATENT FINGERPRINTS LIFTED FROM THE APARTMENT, DURING THE NINE DAYS THEY WERE PROCESSING THE CRIME SCENE, AND THE JUDGE WOULDN'T LET HIM DO THAT, AND I THINK THE CASES THAT THE STATE RELIED ON, BOTH LOWER AND ON APPEAL, ARE CLEARLY NOT APPLICABLE. HE WAS NOT COMMENTING ON THE FAILURE OF THE STATE TO CALL A WITNESS. HE WAS COMMENTING ON THE GENERAL LACK OF EVIDENCE, AND THIS IS A COMPLETELY CIRCUMSTANTIAL CASE. ABSOLUTELY CLEAR THAT IT IS, AND I THINK THAT IT WAS CLEARLY ERROR FOR AM NOT TO BE ABLE TO ARGUE WHAT WAS A LACK OF EVIDENCE.

HOW WAS IT HARMFUL?

WELL --

DID YOU SAY, BEFORE, THAT IT WAS BROUGHT OUT THAT POWELL POWELL'S BLOOD SLAMP HE WILL -- SAMPLE WAS TAKEN FROM POWELL?

APPARENTLY IT WAS.

NO. I AM ASKING -- YOU SAY APPARENTLY. WAS IT BROUGHT OUT THAT IT WAS? YOU SAID, A MINUTE AGO, THAT THE EXPERT SAID THAT HE HAD SAMPLES FROM A COUPLE OF OTHER PEOPLE AND THAT THOSE WERE EXCLUDED.

RIGHT.

WELL, THAT IS WHAT I AM ASKING. WAS POWELL ONE OF THOSE?

YES. POWELL AND MARCUS WERE THOSE TWO PEOPLE. WHO THOSE TWO PEOPLE WERE IS NOT CLEAR FROM THE RECORD. I ASSUME THEY WERE MAINTENANCE PEOPLE.

BUT A PERSON NAMED POWELL WAS IDENTIFIED.

CORRECT.

OKAY. BY THE PERSON, THE EXPERT WHO TESTIFIED ABOUT THE DNA?

CORRECT.

HE SAID HE WAS GIVEN A SAMPLE OF HIS BLOOD?

CORRECT.

AND HE EXCLUDED POWELL.

RIGHT.

IS THAT CORRECT?

THAT'S CORRECT.

WELL, HOW WAS THIS HARMFUL, THEN, THE FACT THAT, AFTER THE DEFENSE LAWYER MADE THE COMMENT, DURING THE COURSE OF FINAL ARGUMENT, ABOUT POWELL, THAT THE TRIAL COURT SUSTAINED THE OBJECTION?

BECAUSE THE DEFENSE LAWYER WAS, ALSO, ARGUING THAT THE DNA EVIDENCE THAT THEY HEARD WAS COMPLETELY UNRELIABLE. HE EXPLAINED, TO THE JURY, THAT THE WITNESS WAS NOT A STATISTICIAN, THAT HE, NEVERTHELESS, PERFORMED CALCULATIONS AND SAID I CAN EXCLUDE THIS PERSON, HERE, AND I CAN SHOW THAT THE ODDS OF THIS DNA MATCHING ANYONE OTHER THAN THE APPELLANT, THE DEFENDANT, ARE A BILLION TO ONE, AND HE WAS ARGUING THE UNRELIABILITY OF THAT, AND HE WAS GOING TO GET INTO THE FACT, WELL, DID THEY EXCLUDE THESE WITNESSES -- I AM SORRY, THESE SUSPECTS IN ANY OTHER WAY. DID THEY COMPARE THEIR FINGERPRINTS. AND THAT IS WHAT HE WANTED TO ARGUE, AND HE WAS PRECLUDED FROM DOING THAT.

BUT DID HE PRESENT AN ARGUMENT THAT SOMEONE ELSE, REALLY, WAS INVOLVED IN THIS? WAS THAT NOT THE TEN OR OF THAT CLOSING ARGUMENT, THAT YOU MAY HAVE HAD SOME LIMITATIONS IN THAT AREA, BUT THE OVERALL CLOSING ARGUMENT, THAT WAS THE HEART OF IT.

THAT SOMEONE ELSE DID IT, YES.

AND THAT HE WAS ABLE TO PRESENT THAT ARGUMENT AND PRESENT IT, MAYBE, NOT AS FORCEFULLY. IS THAT WHAT YOU ARE SUGGESTING?

IT WAS GUTTED. I MEAN IT REALLY WAS. HE COULD POINT THE FINGER AT OTHER PEOPLE, INCLUDING JESSE, THE BOYFRIEND, WHICH HE DID, BUT HE WAS ABSOLUTELY PRECLUDED FROM POINTING THE FINGER, IN ANY REAL SUBSTANTIVE MANNER, AGAINST THE MAINTENANCE PEOPLE, MARCUS OR WHOEVER THEY ARE, OTHER THAN JUST SAYING, WELL, IT COULD HAVE BEEN SOMEBODY ELSE, JUST SAYING THAT, WITHOUT ANY HARD ARGUMENT THAT HE WAS PRECLUDED FROM FOLLOWING HERE, IS BASICALLY MEANINGLESS. IT, REALLY, DID GUT HIS CLOSING, AND YOU CAN SEE, FROM THE TRANSCRIPT, DEFENSE COUNSEL WAS EXTREMELY UPSET AND ARGUED IT VOCIFEROUSLY THAT, JUDGE, I WANT TO ARGUE THIS. THIS IS IMPORTANT. AND AFTER MUCH ARGUMENT ON IT, HE SAID, WELL, NO, I AM NOT GOING TO LET YOU, AND HE MADE A POINT OF PROFFERING IT LATER. HE THOUGHT IT WAS THAT IMPORTANT, AND I THINK, IF YOU LOOK AT THE RECORD, IT IS. I AM IN MY REBUTTAL TIME. PROPORTIONALITY. I, REALLY, DON'T HAVE TIME TO GET INTO DNA. ANYWAY, THE BRIEF PUTS IT OUT PRETTY WELL, I THINK, BUT EVEN IF YOU BELIEVE THAT DOLAN DARLING KILLED GRACE, THE JUDGE FOUND TWO AGGRAVATING CIRCUMSTANCES, ONE STATUTORY MITIGATING CIRCUMSTANCE, AND 18 NONSTATUTORY MITIGATING CIRCUMSTANCES, WHICH MERGED INTO A TOTAL OF 12, SIX OF THEM OVERLAPPED. WE CONTEND THAT, AS ARGUING POINT ONE, THE SEXUAL BATTERY WAS NOT PROVEN BEYOND A REASONABLE DOUBT. THEREFORE, REALLY, THERE IS ONLY ONE VALID AGGRAVATING CIRCUMSTANCE. PRIOR VIOLENT FELONY CONVICTION.

WAS THAT PRIOR VIOLENT FELONY, CONVICTED AFTER THE MURDER, BUT DID THAT OCCUR -- WHERE DID THAT OCCUR, IN POINT OF TIME, IN RELATIONSHIP TO THE MURDER? WAS THE ACTUAL CARJACKING, ALSO, BEFORE THE MURDER?

YES. THOSE THREE FELONY CONVICTIONS AROSE FROM ONE INCIDENT, WHICH, I AM PRETTY SURE, OCCURRED AFTER THE MURDER OF GRACE.

WHEN -- IN OTHER WORDS --

HE WAS CONVICTED IN '97. THE MURDER OCCURRED IN '96. I JUST -- IT DOESN'T SEEM LIKE IT WAS LAID OUT IN THE RECORD. IN OTHER WORDS, THIS WASN'T A SITUATION WHERE HE WAS CONVICTED, AT SOME POINT IN TIME, SERVED JAIL TIME, AND THEN THIS MURDER OCCURRED.

NO.

HE WAS CONVICTED AFTER?

RIGHT. AND AS A MATTER OF FACT, THE GUN THAT THEY SEIZED ON HIS ARREST, FOR THE CARJACKING AND AG BATTERY, THEY TESTED, AND THAT WAS NOT THE GUN USED TO MURDER GRACE, SO THAT WAS AN INDICATION THAT IT WAS DEFINITELY AFTERWARDS. I THINK HE BECAME A SUSPECT IN GRACE'S MURDER, AFTER HIS ARREST FOR THE CARJACKING, AND I AM NOT SURE PRECISELY, YOU KNOW, MONTHS OR A YEAR.

OKAY. BUT YOU ARE DEFINITE THAT IT WAS AFTERWARDS.

YES.

IT WAS A PARTICULARLY VIOLENT CARJACKING, WAS IT NOT?

IT WAS PRETTY VIOLENT.

I MEAN HE SHOT AND APPARENTLY KILLED -- THE DRIVER DID SURVIVE, BUT ONLY AFTER FEIGNING DEATH AND WAS LEFT PERMANENTLY SHOT IN THE HEAD, AS I RECALL.

CORRECT. NEVERTHELESS, IT IS ONLY ONE STATUTORY AGGRAVATOR, AND WE THINK THAT, IF YOU LOOKED AT ALL OF THE CIRCUMSTANCES, THAT THIS IS NOT ONE OF THE MOST AGGRAVATED, AT LEAST MITIGATED, FIRST-DEGREE MURDERS THAT THIS COURT CONSIDERED.

CERTAINLY BE AWARE OF YOUR TIME.

THANK YOU. I BELIEVE I WILL SAVE THE REST OF IT.

MISS RUSH.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM JUDY TAYLOR RUSH, ASSISTANT ATTORNEY GENERAL REPRESENTING THE STATE OF FLORIDA IN THIS CASE. IN MR. QUARLES'S ARGUMENT, HE MENTIONED THAT THE MITIGATING EVIDENCE IS THE STRONGEST THAT THEY HAVE. THAT IS NO ISSUE AT ALL. THEY HAVE TO PROVE, TO THE COURT, THAT THE TRIAL COURT ERRED IN DENYING ITS MOTION FOR ACQUITTAL. THE STATE IS ENTITLED TO ALL REASONABLE INFERENCES FROM THE EVIDENCE, AS THE STANDARD OF REVIEW BEFORE THE COURT. THERE WERE A NUMBER OF REASONABLE INFERENCES FROM THE EVIDENCE, THAT SHOW THAT THE SEX OCCURRED, IN THIS CASE, AT THE TIME OF THE MURDER. ONE OF THOSE IS THAT THERE WAS A SUBSTANCE FOUND ON THE OUTSIDE OF THE VICTIM'S BODY. THE TRIAL ATTORNEY --

DO WE KNOW WHAT THAT SUBSTANCE WAS?

WE DO NOT KNOW DEFINITIVELY WHAT THAT SUBSTANCE WAS. HOWEVER, THERE IS REASONABLE INFERENCE, FROM WHAT WE DO KNOW, THAT IT WAS SEMEN. THE MEDICAL EXAMINER TESTIFIED THAT THE WHITE SUBSTANCE ON THE BODY, AND HE DID GO TO THE SCENE, SO HE WAS THERE AND SAW IT, HIMSELF, WAS SEMINAL PURILENT OR SOMETHING CONSISTENT WITH SEM NATURAL FLUID -- SEMINAL FLUID, AND THERE WAS HAIR.

IS THERE ANY REASON THAT IT WASN'T TESTED?

I BELIEVE THAT SOMEONE THAT CAME ON THE SCENE EARLY ON, AFTER THE VICTIM WAS DISCOVERED, PLACED A TOWEL OVER THE NAKED LOWER PART OF HER BODY, AND IT APPEARS THAT, PERHAPS, THERE WAS NOT ENOUGH OF THAT SUBSTANCE LEFT FOR TESTING. THAT IS NOT CLEAR, ON THE RECORD, AS TO WHY IT WASN'T TESTED, BUT NEVERTHELESS, THE MEDICAL EAMINER, WHO IS AN EXPERT IN THESE MATTERS, WAS AT THE SCENE, DID SEE IT, AND TESTIFIED THAT THAT SUBSTANCE APPEARED TO BE SEMINAL PIRULENT, SOMETHING CONSISTENT WITH SEMINAL FLUID, SO IT IS CONSISTENT WITH THE EVIDENCE, ESPECIALLY WHEN YOU CONSIDER

THAT THERE WAS A VIOLENT SEXUAL BATTERY HERE AND THAT THERE WAS, ALSO, SEMEN INSIDE OF THE VICTIM. FURTHERMORE, IN ARGUING THAT JUDGMENT OF ACQUITTAL, WHICH IS AT ISSUE HERE, TWICE STATED THAT THE SEMEN, THAT IT WAS SEMEN ON GRACE'S BODY, AND, FURTHER, ARGUED THAT THAT WAS THE ONLY FACTOR THAT SUPPORTED, THAT THE INFERENCE FROM THAT FACT, THAT IT WAS ON HER BODY, SUPPORTED A DENIAL OF THE MOTION. IN OTHER WORDS IT SUPPORTED THAT THE INFERENCE THAT SEX OCCURRED AT THE TIME OF THE MURDER, SO THE DEFENSE ATTORNEY ARGUED THAT, WHEN ARGUING HIS MOTION, AND THEY ARE STUCK WITH THAT CONCESSION, ON APPEAL. THEY CAN'T, SUDDENLY, SAY, AS THEY ATTEMPT TO DO, OH, WELL, THE EVIDENCE DIDN'T SUPPORT THAT IT WAS SEMEN ON HER BODY.

WELL, EVEN IF YOU DON'T HAVE THAT, WHAT IS YOUR COUNTERARGUMENT TO THE DEFENSE CONTENTION THAT THERE COULD HAVE BEEN A CONSENTUAL RELATIONSHIP BETWEEN THE DEFENDANT AND THE VICTIM, THAT THERE IS NO EVIDENCE IN THE RECORD THAT THEY KNEW EACH OTHER. HOW DOES THE STATE -- WHO HAS WHAT BURDEN, IN THAT SITUATION. IN OTHER WORDS, THERE IS NO EVIDENCE. THEY ARE IN THE SAME APARTMENT COMPLEX, AND SOMEBODY IS ARGUING, DEFENSE IS ARGUING THERE IS A REASONABLE HYPOTHESIS THAT IT COULD HAVE BEEN CONSENTUAL. MAYBE THEY KNEW EACH OTHER.

THAT'S CORRECT, AND, AGAIN, THIS IS RAISED BEFORE THIS COURT, AS AN ERROR IN DENYING THE MOTION FOR JUDGMENT OF ACQUITTAL, SO THIS ISSUE IS ONE THAT THE STATE IS ENTITLED TO ALL THE REASONABLE INFERENCES FROM THE EVIDENCE FOR, AND IT IS THEIR BURDEN TO PROVE THAT THE JUDGE ABUSED HIS DISCRETION IN DENYING THE MOTION FOR JUDGMENT OF ACQUITTAL. THERE IS A NUMBER OF THINGS THAT SHOW THAT THIS WAS NOT CONSENTUAL SEX. FIRST AND FOREMOST IS THE MEDICAL EXAMINER'S TESTIMONY. HE TESTIFIED THAT THE SPECIFIC ABRASIONS ON GRACE WERE NOT SCRATCH-TYPE ABRASIONS. THAT IS IN THE RECORD, AT PAGE 474. HE, FURTHER, TESTIFIED THAT THERE, QUOTE, WASN'T ANYTHING IN THE LABIA THAT WOULD EXPLAIN THOSE ABRASIONS, OTHER THAN TRAUMA. THAT IS AT PAGE 474. HE, ALSO, TESTIFIED THAT VAGINAL INJURIES WOULD NOT BE CONSISTENT WITH CONSENTUAL SEX, AND THAT IS AT PAGE 460. SO THOSE FACTORS, ALL, SHOW THAT IT WAS NOT CONSENTUAL. FURTHERMORE, WHEN MR. DARLING WAS INTERVIEWED BY THE POLICE OFFICER, WHO WAS DOING A CANVASS OF THE AREA AFTER THE BODY WAS FOUND, HE WAS ASKED, BY THE OFFICER, IF HE KNEW GRACE. HE WAS, ALSO, ASKED --

THE OFFICER ACTUALLY SAID YOU KNOW GRACE, WHATEVER HER LAST NAME IS?

I AM SURE THAT HE DID, BUT THE WAY IT WAS PRESENTED, HE READ IT ACCURATELY, WHEN HE READ IT TO THE COURT. THAT IT WAS PRESENTED TO THAT WAY. BUT IT IS JUST A MATTER OF COMMON SENSE THAT THE -- IF THE OFFICER SAID DO YOU KNOW HER, THAT HE HAD TOLD HIM WHO HER WAS, AND MADE HIM AWARE OF WHO "HER" WAS. PLUS THE EVIDENCE WAS THAT DARLING LIVED WITHIN FOUR APARTMENTS OF GRACE'S APARTMENT, AND THAT HE SAID, IN RESPONSE TO THE OFFICER'S INQUIRE, THAT HE WAS WORKING AT THE TIME. WELL, OBVIOUSLY, IF HE WAS WORKING AT THE TIME, HE COULD NOT HAVE BEEN THERE TO HAVE CONSENTUAL OR OTHER SEX WITH THE VICTIM, SO HIS OWN TESTIMONY FLIES IN THE FACE OF ANY CLAIM THAT THEY HAD CONSENTUAL SEX.

WAS THERE ANY EVIDENCE ABOUT THAT AT TRIAL, BY THE WAY, WHETHER HE WAS WORKING AT THE TIME?

I BELIEVE THE POLICE OFFICER SAID THAT THAT IS WHAT DARLING TOLD HIM, WAS THAT HE WAS WORKING.

BUT NOTHING REGARDING HIS WHEREABOUTS AT THE TIME.

NO, NOT THAT I CAN RECALL, YOUR HONOR, NO, I DON'T BELIEVE THERE WAS.

WOULD YOU CLEAR UP, AGAIN, THE LOCATION OF HIS APARTMENT, VIS-A-VIS HER APARTMENT. WHAT WAS THE LOCATION?

ACCORDING TO THE TESTIMONY, HIS APARTMENT WAS WITHIN FOUR APARTMENTS OF HERS. IT WAS IN A BUILDING NEXT TO HIS. I BELIEVE IT WAS -- HIS WAS NORTH OF HER BUILDING, IMMEDIATELY NORTH, THE NEXT BUILDING OVER.

HE WAS IN A SEPARATE BUILDING.

HE WAS IN A SEPARATE BUILDING. THAT'S CORRECT.

AND WHAT WAS THE TIME OF DEATH IN THIS CASE? WE WERE JUST TALKING ABOUT DARLING HAVING SAID HE WAS AT WORK AT THE TIME, AND DO WE HAVE A LONG-RANGE, HERE, OF THE POSSIBILITY OF WHEN SHE DIED?

WELL, IT IS MY RECOLLECTION THAT THE MEDICAL EXAMINER -- HE DID GIVE A RANGE OF POSSIBILITIES, BUT I BELIEVE HE, ALSO, INDICATED THAT IT WAS HIS OPINION THAT SHE PROBABLY DIED AROUND 10:30 THAT MORNING. NOW, THAT MAY HAVE BEEN BASED SOMEWHAT ON THE FACT THAT JESSE TESTIFIED THAT HE TALKED TO HER ON THE TELEPHONE, AT 10:15 THAT MORNING, SO SHE HAD TO HAVE DIED AFTER THAT.

AND HER BODY WAS FOUND LATE IN THE AFTERNOON?

IT WAS AFTER FOUR O'CLOCK IN THE AFTERNOON. EXACTLY WHEN, AFTER THAT, I AM NOT SURE, BUT I REMEMBER JESSE HADTRIED TO GET AHOLD OF HER, LAST, AT FOUR, AND HAD LEFT ANOTHER MESSAGE ON HER ANSWERING MACHINE, WHICH HE HAD BEEN DOING ALL AFTERNOON. AND WHEN HE DIDN'T GET AHOLD OF HER THEN, BELIEVING THAT SHE CERTAINLY WOULD HAVE BEEN BACK FROM HER DOCTOR'S APPOINTMENT AND SO FORTH AT THAT POINT, HE WENT OVER THERE, SO IT WAS SOMETIME AFTER THAT, BUT I AM NOT SURE EXACTLY WHAT TIME AFTER THAT.

DO WE HAVE SOME OUTSIDE TIME? IN OTHER WORDS BEFORE SIX O'CLOCK OR BEFORE SEVEN O'CLOCK OR?

THERE IS, IN THE RECORD. I DON'T RECALL JUST WHAT IT WAS, BUT THE RECORD WILL ESTABLISH IT. I AM PRETTY SURE IT WAS FAIRLY CLOSE AFTER FOUR O'CLOCK, BECAUSE HE CALLED HER AROUND THAT TIME AND WENT RIGHT ON OVER. I WOULD LIKE TO COMMENT, BRIEFLY, WELL, LET ME JUST FINISH UP ON THE CONSENTUAL SEX. I WOULD, ALSO, LIKE TO ARGUE TO THE COURT THAT THIS IS A MATTER OF COMMON SENSE. IF A PERSON IS FOUND NAKED, ON THE FLOOR, OF HER BEDROOM, AND THEY HAVE GOT VAGINAL AND ANAL INJURIES THAT WERE THE RESULT OF TRAUMATIC PENETRATION, AS THE MEDICAL EXAMINER TESTIFIED, AND THEY, ALSO, HAVE A BULLET HOLE IN THE BACK OF HER HEAD, THAT THAT IS AMPLE EVIDENCE THAT THE SEXUAL BATTERY OCCURRED AT THE TIME OF THE MURDER AND THAT IT WAS NOT A CONSENTUAL ACT. AS FAR AS THE FINGERPRINT ON THE LOTION BOTTLE, ON APPEAL, THEY MAKE THIS WILD CLAIM THAT, PERHAPS, THAT FINGERPRINT WAS CLAYSED -- WAS PLACED THERE WHEN MR. DARLING WAS SHOPPING IN THE SAME STORE THAT THE VICTIM ULTIMATELY BOUGHT THE LOTION BOTTLE FROM, AND SO IT JUST HAPPENED TO BE ON THERE. FIRST OF ALL, THAT ISSUE IS NOT PRESERVED. IT IS NOT PROPERLY BEFORE THE COURT, BECAUSE IT WAS NEVER RAISED IN THE TRIAL COURT. AS A MATTER OF FACT, THE PROSECUTOR POINTED OUT, TO THE JURY, THAT THERE WAS NO ALTERNATE EXPLANATION FOR THE FINGER PRINT. IN OTHER WORDS THEY HAD DONE NOTHING TO EXPLAIN HOW THAT PRINT GOT THERE, AND THERE WAS NO OBJECTION OR ARGUMENT TO THE CONTRARY, FROM THE DEFENSE, AND THE RECORD SHOWS THAT THEY NEVER DID TRY TO EXPLAIN HOW IT GOT THERE. THERE WAS NOTHING IN THIS CASE, LIKE THERE WAS IN JAMILLO, WHERE JAMILLO TESTIFIED THAT HE HAD BEEN IN THE HOW IS THE DAY BEFORE, AND HE HAD TOUCHED THAT SPECIFIC ITEM IN THE HOUSE THAT HIS FINGERPRINTS WERE FOUND ON. THEY

NEVER OFFERED ANYTHING LIKE THAT HERE. THE BEST THEY CAN DO ON APPEAL IS RAISE AN ISSUE NOT RAISED IN THE TRIAL COURTS, THAT IS PRETTY ABSURD. ANOTHER THING, WE SHOULD CONSIDER, IF WE WERE GETTING TO THE MERITS IN THIS CLAIM, IS THAT THE LOTION BOTTLE WAS FOUND OUT OF PLACE IN THE BATHROOM. THE TESTIMONY WAS THERE WERE ONLY FOUR ITEMS OUT OF PLACE IN THE ENTIRE APARTMENT. ONE OF THOSE WAS THE LAUNDRY BASKET. APPARENTLY GRACE, AS SHE WAS RETURNING FROM DOING HER LAUNDRY, COMING IN THE DOOR, WAS ACCOSTED BY DARLING, WHO ENTERED THE APARTMENT WITH HER. THE LAUNDRY BASKET WAS IN THE MIDDLE OF THE FLOOR, IN THE ENTRY AREA OF THE APARTMENT. THE ONLY OTHER THINGS THAT WERE OUT OF PLACE WERE INSIDE THE BATHROOM, WHICH WAS ADJACENT TO THE BEDROOM WHERE THE BODY WAS FOUND, AND THEY WERE A PILLOW, WITH A BULLET HOLE IN IT, WHICH WAS USED TO SILENCE THE SOUND OF THE GUN SHOT GOING IN THE BACK OF GRACE'S HEAD IN THE BATHTUB. THERE WERE HER UNDERWEAR, HER PANTIES, ON THE TOP OF THE CLOSED LID TO THE TOILET. BOTH OF THOSE ITEMS OBVIOUSLY WERE CONNECTED TO THE CRIMES WE HAVE HERE. THE ONLY OTHER ITEM OUT OF PLACE WAS THE LOTION BOTTLE. IT WAS FOUND IN THE SINK. AND IT HAS DARLING'S THUMB PRINT, RIGHT THUMB PRINT ON IT. THE REASONABLE INFERENCE IS ALL OF THESE ITEMS WERE CONNECTED TO THE CRIME, INCLUDING THE BOTTLE.

IS THERE ANYTHING TYING THE LOTION BOTTLE TO THE CRIME? WAS THERE LOTION USED DURING THE SEXUAL --

THERE WAS NO TESTIMONY IN THE RECORD, AT TRIAL, ABOUT THAT. IT WAS TIED TO THE CRIME BY ITS PROXIMITY TO THE TWO ITEMS THAT WERE DEFINITELY CONNECTED TO THE CRIME, AND THE FACT THAT IT WAS ONE OF THE FOUR ITEMS THAT WAS OUT OF PLACE IN THE APARTMENT.

AND THE MURDER WEAPON WAS NEVER FOUND OR WAS IT FOUND?

NO. NO. IT WAS NOT FOUND.

AND THERE WERE NO OTHER FINGERPRINTS THAT WERE LIFTED THAT WERE ABLE TO TRACE TO MR. DARLING OR TO -- THAT WAS THE ONLY THING.

THAT WAS THE ONLY FINGERPRINT OF DOLAN DARLING THAT THEY LIFTED FROM THE APARTMENT, WAS ON THE LOTION BOTTLE.

HOW MANY OTHER FINGERPRINTS WERE LIFTED FROM THE APARTMENT?

I BELIEVE THAT THEY LIFTED 170-SOME. A GOOD PORTION OF THOSE WERE NOT OF VALUE. SO THERE WERE A LOT OF OTHER FINGERPRINTS. MOST OF THOSE BELONGING TO GRACE OR JESSE.

WERE THERE ANY THAT WERE OF VALUE THAT WERE LINKED TO THESE OTHER SUSPECTS, THE MAINTENANCE PEOPLE.

NO. AS A MATTER OF FACT, NOT TO MY KNOWLEDGE OR RECOLLECTION OF THE RECORD. I DON'T BELIEVE THERE WAS A SINGLE ONE, BUT, AS A MATTER OF FACT, ON THE ISSUE OF POWELL AND MARCUS, WHEN THE ARGUMENT WAS OCCURRING, ABOUT WHETHER HE SHOULD BE ALLOWED TO ASK THESE QUESTIONS, IT WAS POINTED OUT, WELL, YOU HAD THE FINGERPRINT EXAMINER ON THE STAND. YOU COULD HAVE ASKED HIM IF YOU WANTED TO KNOW, IF POWELL AND MARCUS'S FINGERPRINTS HAD, ALSO, BEEN COMPARED AND EXCLUDED, AND BY THE WAY, THEY WERE. SO HAD THOSE QUESTIONS BEEN ASKED --

YOU SAID BY THE WAY, THEY WERE.

THEY WERE CLUEDED. YES. THAT'S IN THE RECORD, THAT -- BUT NOT IN TRIAL. NO. NOT DURING TESTIMONY AT TRIAL. THAT IS WHAT THE PROSECUTOR WAS SAYING. THE DEFENSE ATTORNEY

KNEW THAT THEY HAD BEEN TESTED AND EXCLUDED. HE COULD HAVE ASKED -- HE DIDN'T EXPLAIN, ON THE RECORD, HOW THE DEFENSE ATTORNEY KNEW THAT, BUT NEITHER DID THE DEFENSE ATTORNEY SAY OH, NO. I DIDN'T KNOW. I HAD NEVER HEARD OF THAT BEFORE. AND HE REPRESENTED THAT THE DEFENSE ATTORNEY DID KNOW THAT THEY HAD BEEN EXCLUDED. AND, ALSO, THAT HE HAD THE OPPORTUNITY TO ASK THE FINGERPRINT EXPERT, WHEN HE CROSS-EXAMINED HIM AT TRIAL. IF HE WANTED TO ARGUE THAT, HE SHOULD HAVE GOTTEN THE FACTS IN EVIDENCE AND THEN AN ALTERNATE BASIS FOR THE TRIAL JUDGE TO UPHOLD HIS DECISION TO EXCLUDE THAT ARGUMENT IS THERE WERE NO FACTS IN EVIDENCE ON WHICH HE COULD BASE THOSE ARGUMENTS, AND FURTHERMORE IT WAS HARMLESS.

IT IS ADDITIONAL DEFENSE ARGUMENT, IS IT NOT, IN ARGUING THAT THE STATE DIDN'T PROFITS CASE OR REASONABLE DOUBT OR WHATEVER, TO ARGUE THE ABSENCE OF EVIDENCE?

THEY DO, SOMETIMES, ARGUE THE ABSENCE OF EVIDENCE. IN THIS CASE, HOWEVER, HE DID ARGUE THAT, AND HE DID GET THAT BEFORE THE JURY. THAT IS ANOTHER REASON WHY IT IS HARMLESS. ANY ERROR IN CONNECTION WITH NOT LETTING THE DEFENSE ATTORNEY PROCEED ALONG THOSE LINES IS HARMLESS, BECAUSE HE DID GET SO FAR AS TO PLACE, BEFORE THE JURY, THAT THERE WERE THESE OTHER SUSPECTS, BY THE NAME OF POWELL AND MARCUS, AND THAT THEY HAD BEEN INVESTIGATED BY THE OFFICERS, SO THERE WOULD HAVE BEEN A VERY LITTLE ADDITIONAL ARGUMENT THAT COULD HAVE BEEN MADE, ABOUT THESE PEOPLE. THEY WERE LISTED AS SUSPECTS. AND WHEN YOU CONSIDER THE OVERWHELMING EVIDENCE OF DARLING'S GUILT, THE DNA MATCHED, THE FINGERPRINT ON ONE OF THE ONLY ITEMS FOUND OUT OF PLACE IN THE APARTMENT, IN CLOSE PROXIMITY TO THE OTHER ITEMS THAT WERE CONNECTED TO THE CRIME. THERE IS NO QUESTION THAT NOT LETTING HIM GO ON AND ON ABOUT THESE TWO WITNESSES WOULD HAVE BEEN HARMLESS ERROR.

WAS THERE ANY OTHER DISARRAY IN THIS APARTMENT?

NO, SIR. THERE WAS NO EVIDENCE OF A STRUGGLE. ALL OF THE EVIDENCE WAS THAT GRACE WAS A FULLY-COMPLIANT VICTIM, AND THAT SHE WAS ON HER KNEES, AT THE TIME THAT THE DEFENDANT TOOK THE PILLOW, PUT IT AGAINST THE BACK OF HER HEAD, PLACED THE GUN AGAINST THE PILLOW --

WAS THIS IN THE BEDROOM?

IN HER BEDROOM FLOOR NEAR HER CLOSET.

SHE WAS SORT OF STICKING OUT OF THE CLOSET?

HER LEGS WERE IN THE CLOSET, I BELIEVE WAS SOME OF THE TESTIMONY.

WHAT WAS THE CONDITION OF THE BED? IS THAT IN THE RECORD?

IF IT IS, I DON'T KNOW THE ANSWER TO THE QUESTION AS TO WHAT CONDITION THE BED WAS. IT IS MY UNDERSTANDING THIS TOOK PLACE ON THE CARPET. THERE WERE BURNS, CARPET BURNS ON HER ELBOW.

THIS WAS A GUNSHOT IN THE BACK OF IT IS HEAD THAT WAS AT CLOSE RANGE?

YES. IT WAS SO CLOSE, THE EVIDENCE WAS, THAT THE PILLOW WAS PLACED ON HER HEAD. THE GUN WAS PLACED UP AGAINST THE PILLOW WITH SUCH FORCE AND SO HARD, THAT WHEN IT DISCHARGED, THERE WAS LITTLE OR NO GUN POWDER LEFT ON THE PILLOW ITSELF. IT WENT ALL THE WAY THROUGH THE PILLOW AND INTO THE HEAD, AND THE GUNPOWDER WAS FOUND THEIR, DESPITE THE BARRIER BETWEEN THE TWO, SO, AND, THE STATE, JUST IN -- HE RAISED PROPORTIONALITY. I WILL ADDRESS THAT BRIEFLY. THE PROSECUTOR ASKED THE TRIAL COURT

TO INSTRUCT ON HAC, AND THAT WAS ONE OF THE REASONS FOR THE REQUEST, AND, OF COURSE, ALSO, THAT THIS WOMAN ENDURED VERY PAINFUL SEXUAL BATTERY, BOTH VAGINAL AND ANAL SEXUAL BATTERY. THE TRIAL JUDGE ELECTED NOT TO INSTRUCT ON THAT. THE STATE WOULD CONTEND THAT THAT IS AN ERROR, AND THAT THAT COULD BE CONSIDERED, THE CIRCUMSTANCES COULD BE CONSIDERED BY THIS COURT, WHEN LOOKING AT PROPORTIONALITY.

JUST ONE, TWO OTHER QUICK QUESTIONS ON THE CIRCUMSTANTIAL EVIDENCE. WAS THEIR MONEY OR OTHER THINGS OF VALUE THAT WERE IN THE APARTMENT THAT -- AND WERE NOT TAKEN? IN OTHER WORDS THERE IS NO ALLEGATION THAT ANYTHING WAS TAKEN --

NO.

-- BY THE DEFENDANT.

NO. AS A MATTER OF FACT, THE STATE DROPPED THE INITIAL CHARGE OF ROBBERY.

WAS THEIR MONEY ACTUALLY IN THE APARTMENT?

YES. THERE WAS CASH MONEY FOUND IN THE APARTMENT.

WHERE WAS THAT FOUND?

SOME OF IT WAS FOUND IN HER CLOSET. SOME OF IT WAS FOUND IN TWO BANK ENVELOPES. I AM NOT SURE WHERE, BUT THERE WERE TWO DIFFERENT PLACES WHERE MONEY WAS FOUND.

WHAT WAS THE STATE'S THEORY ABOUT WHY THIS DEFENDANT, WHY THIS OCCURRED? WAS THERE ANY HYPOTHESIS AS TO THE MOTIVE?

WELL, THE MOTIVE WAS SEXUAL BATTERY. HE WANTED TO HAVE SEX WITH THIS WOMAN, AND HE DID. ONE THING THAT I WOULD, ALSO, MENTION, IT IS VERY RELEVANT TO THE ISSUE THAT HE RAISED, NUMBER ELEVEN, I BELIEVE, IN THE BRIEF, ABOUT THE VIENNA CONVENTION, AND IT IS RELEVANT TO THAT ISSUE, IN THE SENSE THAT DARLING WOULD NOT BE ABLE TO SHOW ANY KIND OF PREJUDICE, FROM NOT BEING TOLD TO CONSULT WITH HIS CONSULATE, BECAUSE, HAD HE BEEN TOLD, HE WOULDN'T HAVE WANTED TO CONSULT WITH THEM, ANYWAY. HE WAS WANTED FOR A MURDER IN THE BAHAMAS. AS A MATTER OF FACT, HE HAD BEEN ARRESTED FOR MURDER IN THE BAHAMAS. AND WAS -- AND ESCAPED FROM THE BAHAMIAN AUTHORITIES, HOLDING HIM ON THAT CHARGE, WHEN HE CAME TO THE UNITED STATES. THAT WAS IN OCTOBER OF '95.

HOW WAS ALL OF THIS BROUGHT OUT?

THAT WAS NOT BROUGHT OUT AT TRIAL, BEFORE THE JURY.

WAS IT BROUGHT OUT IN THE PENALTY PHASE?

IT WAS BROUGHT OUT AT THE SPENCER HEARING, BY THE STATE. THE STATE BROUGHT THE EVIDENCE FORWARD. THE STATE ASKED THE JUDGE TO CONSIDER, AND THE JUDGE SAID, WELL, NO, I DON'T THINK I AM GOING TO CONSIDER IT, BECAUSE -- I GUESS HE WASN'T SATISFIED THAT THE STATE COULD PRESENT THAT KIND OF EVIDENCE AT THE SPENCER HEARING, ALTHOUGH HE DOESN'T SAY THAT SPECIFICALLY.

BUT WAS THERE EVIDENCE THAT HE COMMITTED A MURDER OR JUST EVIDENCE THAT HE WAS CHARGED?

THE PROSECUTOR PRESENTED THE EVIDENCE THAT HE WAS CHARGED AND WITH THE FACTS OF

IT. BUT --

IN OTHER WORDS THEY PRESENTED EVIDENCE OF THE FACTS OF ANOTHER MURDER?

HE PRESENTED EVIDENCE IN THE FORM OF THE CHARGING DOCUMENTS, AND THE FACT -- AND DOCUMENTATION THAT HE WAS IN CUSTODY. THE BAHAMIANS' CUSTODY.

I AM ASKING WHETHER OR NOT IT WAS PRESENTED THAT HE WAS GUILTY AFTER MURDER?

NO. OTHER THAN THE CHARGING DOCUMENTS THAT LIST THE CHARGES, AND THE FACT THAT HE WAS IN PRISON IN THE BAHAMAS ON MURDER CHARGES AND ESCAPED FROM THERE, WHEN HE CAME TO THE UNITED STATES.

I WANT TO STICK WITH THE GUILT PHASE. JUST ONE OTHER QUESTION ABOUT THE GUN. THE GUN WASN'T RECOVERED, AND THIS OTHER INCIDENT THAT FORMED THE BASIS FOR THE PRIOR VIOLENT FELONY, THE VIOLENT CARJACKING.

WITH THE TAXI DRIVER.

THAT WAS SHOT. THAT GUN, WHEN WAS THAT INCIDENT, IN RELATIONSHIP TO THIS MURDER?

IT IS NOT PINNED DOWN TO THE DAY, I DON'T BELIEVE, ON THE RECORD WE HAVE, BUT WHAT -- GRACE WAS KILLED ON OCTOBER 29, AND THE TAXI DRIVER VICTIM OF THE CARJACKING TESTIFIED THAT IT WAS IN NOVEMBER, SO IT WAS AFTER GRACE WAS KILLED.

DARLING WAS NOT ARRESTED, THEN, FOR THIS MURDER, UNTIL AFTER THE CARJACKING?

THAT'S CORRECT.

AND --

AND THE GUN WAS DIFFERENT GUN USED IN THE CARJACKING?

THAT'S CORRECT. IT WAS NOT THE GUN THAT KILLED GRACE IN THE CARJACKING.

WAS THERE ANY EVIDENCE THAT DARLING KNEW THE VICTIM, OTHER THAN, PERHAPS, SEEING HER IN THE COMPLEX, SINCE THEY LIVED THERE TOGETHER, THAT THEY HAD ANY SOCIAL INTERCOURSE OR ANYTHING?

NO, YOUR HONOR, THERE WAS NO EVIDENCE THAT LINKED THEM IN ANY WAY. THERE WAS EVIDENCE THAT GRACE HAD NO RELATIONSHIP, SEXUAL RELATIONSHIP WITH ANYONE OTHER THAN JESSE. THAT CAME IN FROM JESSE. THAT, ALSO CAME IN FROM HER FRIEND, LONG TIME FRIEND, WHO TESTIFIED.

AND THERE WAS NO EVIDENCE THAT HE HAD EVER BEEN IN THE APARTMENT BEFORE. IS THAT CORRECT?

NO EVIDENCE AT ALL OF THAT. HE MADE NO CONTENTION THAT HE HAD. HE DID NOTHING TO EXPLAIN THE FINGER PRINT, IN THE TRIAL COURT. BUT THE POINT OF BRINGING UP THE BAHAMIAN CHARGES WAS THAT HE WOULD NOT HAVE WANTED TO CONTACT THE BAHAMIANS, BECAUSE TO DO SO WOULD HAVE BEEN TO SAY HERE I AM. I AM THE ONE THAT ESCAPED, FROM YOU, ON THE MURDER OVER THERE, SO EVEN IF HE PROPERLY RAISED IT IN THE TRIAL COURT, WHICH, OF COURSE, WE CONTEND HE DID NOT. EVEN IF THE MOTION THAT WAS FILED, FOR WHICH HE DID NOT OBTAIN A RULING IN THE TRIAL COURT, WAS LEGALLY SUFFICIENT, AND WE CONTEND IT WAS NOT, HE COULD NOT ESTABLISH PREJUDICE. THE EVIDENCE IS THAT, HE WOULD HAVE WANTED TO, OR ALL INDICATIONS ARE THAT HE WOULD NOT HAVE WANTED THE

BAHAMIANS TO KNOW WHERE HE WAS. UNLESS THE COURT HAS OTHER QUESTIONS, WE WILL RELY ON THE BRIEF. WAS THERE ANY QUESTIONS ON THE DNA THAT THE COURT SPECIFICALLY WANTED ANSWERED? I KNOW YOU MENTIONED IT A COUPLE OF TIMES.

I GATHER THE DEFENDANT'S ONLY ATTACK ON THE DNA WAS THE QUALIFICATIONS OF THE EXPERT. IS THAT --

YES, YOUR HONOR. AS A MATTER OF FACT, HIS ATTACK IN THE TRIAL COURT WAS MORE SPECIFIC THAN THAT, EVEN. HE -- HIS COMPLAINT WAS THAT A STATISTICIAN WAS REQUIRED, IN ORDER TO TESTIFY TO THE CALCULATIONS THAT WERE MADE, AS FAR AS HOW LIKELY IT WAS THAT SOMEONE ELSE COULD HAVE THE SAME DNA THAT DARLING HAD, WHICH WAS THE DNA FOUND AT THE CRIME SCENE, AND ON APPEAL, IT IS COUCHED DIFFERENTLY. THERE THEY ATTEMPT TO CHALLENGE WHETHER THE STATISTICS, THEMSELVES, MEET THE FRYE TEST, SO SAY THAT THAT IS NOT PRESERVED, BECAUSE THAT IS NOT THE ISSUE THAT WAS ARGUED IN THE TRIAL COURT, BUT EVEN IF IT WAS PRESERVED, THERE IS AMPLE EVIDENCE THAT THE STATISTICS DO MEET THE FRYE TEST. ALSO IT IS NOT PRESERVED BECAUSE THE ISSUE WASN'T RAISED IN THE TRIAL COURT, IN THE COURSE OF TESTIMONY. THE TESTIMONY FROM THE STATE HAD ALREADY COME OUT, AND I FILED A SUPPLEMENTAL AUTHORITY, McDONALD VERSUS STATE, THAT, WHEN YOU WAIT AND RAISE THAT ISSUE AT TRIAL, YOU HAVE WAITED TOO LONG, AND IT WAS CLEARLY ON NOTICE THAT IT WAS GOING TO HAPPEN, THAT THAT WAS AN ISSUE. THEY HAD BEEN -- MR. BEAR HAD BEEN DISCLOSED TO THEM AS A WITNESS, SINCE AT LEAST SEPTEMBER THE 10th OF '97, AND DARLING HAD FILED HIS OWN MOTION, REQUESTING HIS OWN DNA EXPERT, ON AUGUST 11 OF '98, YET HE WAITS UNTIL THE TRIAL, WHICH WAS DECEMBER OF '98 OR, I BELIEVE IT WAS '98. DECEMBER OF '98 OR SOMETIME WELL AFTER THAT, AND NEVER RAISED THE ISSUE, EVEN THEN, UNTIL THE COURSE OF BEAR'S TESTIMONY. ARE THERE ANY OTHER QUESTIONS? IF NOT, WE WILL RELY ON OUR BRIEF.

THANK YOU, MISS TAYLOR RUSH, AND MR. QUARLES.

FIRST OF ALL, I DON'T THINK McDONALD STANDS FOR THAT PROPOSITION THAT THE STATE RELIES. READ IT CAREFULLY. I MAY BE READING IT WRONG, BUT I DON'T THINK THAT IS TRUE, AND THE FIRST OBJECTION THAT DEFENSE COUNSEL MADE, TO ANY DNA EVIDENCE, THE TRIAL COURT DENIED IT IS PREMATURE. HE SAID THAT IS NOT RIGHT. YOU NEED TO WAIT UNTIL -- THEY CAN TALK ABOUT IT A LITTLE BIT, BUT UNTIL THEY INTRODUCE SOMETHING, YOU CAN'T OBYET, SO THE STATE IS SAYING, NOW, THAT IT IS TOO LATE, I THINK, FLIES IN THE FACE OF THAT.

DID COUNSEL ASK FOR A FRYE HEARING?

HE DID. AT TRIAL HE DID. YES.

I MEAN, IN OTHER WORDS, IN THOSE WORDS, HE SAID WE HAVE TO HAVE A FRYE HEARING ON THIS?

HE HAD THREE DIFFERENT PROBLEMS WITH THE DNA. FIRST OF ALL, DAVID BEAR, THE ONLY WITNESS THAT TESTIFIED FOR THE STATE, WAS -- ADMITTED HE WAS NOT A STATISTICIAN, SO THE DEFENSE COUNSEL SAID THAT THE STATE CANNOT MEET THEIR PREDICATE IN ESTABLISHING THAT THIS IS RELIABLE CALCULATION. HE IS NOT FAMILIAR ENOUGH WITH THE DATABASES. THERE ARE PROBLEMS WITH THE DATABASES. THAT WAS THE SECOND PROBLEM. HE SAID THAT, EVEN THOUGH THERE WAS A BAHAMIAN DAYS A BASE AVAILABLE -- THERE WAS A BAHAMIAN DATABASE AVAILABLE IN BROWARD COUNTY, THEY DID NOT GET IT. THEY RELIED ON AFRICAN THEY WERE DATE -- ON AFRICAN-AMERICAN DATABASES AND THE FDLE HAD SIX SAMPLES, AND THE STATE SAID A MINIMUM OF 200 WAS ENOUGH TO CHALLENGE, WITH THE DATABASE THAT THE DEFENSE COUNSEL HAD.

WAS IT A CHALLENGE TO THE EXPERT OR TO QUALIFICATIONS?

QUALIFICATIONS.

NOT HIS CREDIBILITY AS TO THE STATISTICAL ANALYSIS?

HIS LACK OF QUALIFICATIONS IN THAT FIELD RENDERED HIS TESTIMONY INCREDIBLE, I BELIEVE, WAS THE GENERAL CONSENSUS OF DEFENSE COUNSEL.

WOULD YOU SHARE, WITH US, WHERE YOU SEE THE VIRGIN ISLANDS VERSUS PENN DECISION AS FAILING, WITH REGARD TO THE BAHAMIAN POPULATION STATISTICS NOT BEING UTILIZED IN THIS CASE. THAT IS THE CASE WHERE THE FEDERAL CASE THAT DISCUSSED THE SUBSTRUCTURES OF THE SUBGROUPS IN THE DNA ANALYSIS.

I AM SORRY. I -- I AM NOT FAMILIAR ENOUGH WITH THAT OR I DON'T REMEMBER IT, OFFER THE TOP OF MY HEAD THIS MORNING. I AM SORRY.

THIS IS THE ONE THAT DEALT WITH WHETHER THEY HAD USED AFRICAN-AMERICAN DATA, AS WAS USED HERE, FOR A MAN LOCATED IN THE ISLANDS, AND THE ARGUMENT WAS THEY DID NOT USE THE VIRGIN ISLANDS POPULATION, AND THEY USED THE AFRICAN-AMERICAN POPULATION STATISTICS, AND THE COURT FELT OR THE OPINION SEEMS TO SUGGEST THAT THIS DIDN'T HAVE ANY FORENSICALLY SIGNIFICANT EFFECT ON WHAT WAS INVOLVED IN THE ANALYSIS, AND I WAS WONDERING, IT SEEMED TO BE A PRETTY SIGNIFICANT CASE. IF YOU HAD A POINT WHERE THIS ANALYSIS WOULD FAIL, AS WE ARE LOOKING AT THE CASE WE ARE DEALING WITH HERE.

I AM SORRY. I MISSED THAT.

OKAY.

AS FAR AS COMPARING THE LATENT FINGERPRINTS THAN.

LET ME ASK YOU JUST A FOLLOW-UP TO THE DNA. ANALYSIS, WHY NOT USE THE BAHAMIAN DATABASE, OR THE RARITY OR THE I AM PROBABILITY OF THE MATCH.

THE STATE'S EXPERT ADMITTED THAT FREQUENTLY ISOLATED POPULATIONS HAVE "WILDLY DIFFERENT" AS HE SAID, GENETIC DNA COMPARISON, AND IT IS NOT LIKE ANY DNA DATABASE IN THE WORLD.

WHAT WOULD HAVE PREVENTED THE DEFENSE, THEN, FROM PUTTING ON THEIR OWN EXPERT, TO TALK ABOUT THIS?

NOTHING, AND I DON'T KNOW WHY THEY DID NOT. I CAN'T -- THAT IS NOT IN THE RECORD. THEY DIDN'T PUT ON THEIR OWN EXPERT.

BUT THE DEFENSE SAID THERE WAS NO PROBLEM, HERE, WITH USING THE --

THE STATE CONTENDED THAT THE DEFENSE EXPERT WAS NOT QUALIFIED TO MAKE THAT CONCLUSION. THE COMPARISON OF LATENT PRINTS ON THE BOTTLE, THE PROSECUTOR DOES MAKE AN ASSERTION THAT TONY MOSS, THE FINGERPRINT LATENT EXAMINER, TESTIFIED THAT HE DID CHECK THE PRINTS AND THEY WERE EXCLUDED, WHICH WAS THE TRUTH. HE IS TALKING ABOUT DEPOSITION. THAT DIDN'T COME OUT. THE DEFENSE COUNSEL RESPONDS, AND THIS IS JUST AN ARGUMENT ABOUT WHETHER OR NOT HIS CLOSED ARGUMENT WAS LIMITED. I DON'T BELIEVE THAT IS WHAT THE DISCOVERY SHOWS, SO HE DISPUTED THE ASSERTION BY THE PROSECUTOR THAT THEY HAD BEEN COMPARED AND HAD BEEN EXCLUDED, BUT NONE OF THAT CAME BEFORE THE JURY.

THANK YOU, MR. QUARRELS.