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## **Charles Anderson v. State of Florida**

FINAL CASE FOR THIS MORNING ON THE ORAL ARGUMENT CALENDAR IS ANDERSON VERSUS STATE. MR. GREEN. -- MR. GREENE.

MAY IT PLEASE THE COURT. MY NAME IS RICHARD GREENE, COUNSEL FOR THE APPELLANT CHARLES ANDERSON. THIS CASE INVOLVES A DIRECT APPEAL FROM A CONVICTION FOR FIRST-DEGREE MURDER, AND AN IMPOSITION OF THE DEATH PENALTY, AFTER A JURY RECOMMENDATION OF DEATH BY A VOTE OF 8-TO-4. IT ARE A RISES OUT OF BROWARD COUNTY, FLORIDA. THIS CASE INVOLVES THE DEATH OF A TEENAGED GIRL WHO WAS KILLED, IT WAS STIPULATED THAT SHE WAS KILLED BY A MOTOR VEHICLE. THE PRIMARY ISSUE AT THE GUILT PHASE WAS IDENTITY, ALTHOUGH THERE WAS, ALSO, A DISPUTE AS TO THE DEGREE OF THE HOMICIDE. MR. ANDERSON CONSISTENTLY DENIED HIS GUILT. IN HIS POLICE STATEMENTS, AND ALTHOUGH THERE WERE TWO PEOPLE THAT SAID THEY SAW THE OFFENSE, THEY WERE NOT ABLE TO IDENTIFY A PERPETRATOR AND WERE NOT ABLE TO IDENTIFY A CAR. THE STATE'S CASE IS ENTIRELY CIRCUMSTANTIAL. I WOULD LIKE TO TURN TO THE SECOND ISSUE RAISED IN MY BRIEF, WHICH INVOLVES THE ADMISSION OF COLLATERAL OFFENSE EVIDENCE. IN MY INITIAL BRIEF, I RAISED SEVERAL PIECES OF COLLATERAL DEFENSE EVIDENCE, BUT HERE TODAY I WOULD LIKE TO FOCUS ON ONE SPECIFIC PIECE OF EVIDENCE, WHICH I THINK IS MOST CLEARLY IRRELEVANT AND HIGHLY INFLAMMATORY, AND THAT IS THAT THE STATE BROUGHT OUT, THERE MR. ANDERSON'S PROBATION OFFICER THAT HE WAS ON PROBATION FOR ATTEMPTED CAPITAL SEXUAL BATTERY OF A MINOR. IN THIS CASE, THERE WAS ABSOLUTELY NO RELEVANCE AS TO THE NATURE OF WHAT OFFENSE MR. ANDERSON WAS ON PROBATION FOR, EVEN IF THERE WAS ARGBLY SOME RELEVANCE TO THE FACT THAT HE WAS ON PROBATION OR THAT HE FACED A POSSIBLE SENTENCE FOR VIOLATION OF PROBATION, ACCORDING TO THE STATE'S THEORY FOR HAVING CONTACT WITH MISS SMITH BY DRIVING HER TO AND FROM WORK, THE NATURE OF WHAT HE WAS ON PROBATION FOR --

ISN'T THIS WHOLE CASE ABOUT, AT LEAST FROM THE STANDPOINT OF THE STATE'S CASE, THE RELATIONSHIP BETWEEN THIS DEFENDANT AND THE VICTIM. WASN'T THAT PART AND PARCEL TO THIS WHOLE CASE? I MEAN, DIDN'T WE HAVE, WEREN'T THERE FACTS THAT DEMONSTRATED THAT SHE HAD COME HOME A COUPLE OF NIGHTS BEFORE THIS, AND HE HAD BEEN UP, AND THERE HAD BEEN SOME COMMOTION BETWEEN THEM. HE HAD GONE OUT AND CHASED SOMEBODY IN A VEHICLE, AND THAT THE MOTHER HAD CALLED OR SHE HAD CALLED 911, AND THERE WAS A WHOLE SET OF FACTS ABOUT THE RELATIONSHIP, AND IN ORDER TO UNDERSTAND WHAT THIS WHOLE THING WAS ABOUT, DIDN'T YOU HAVE TO UNDERSTAND SOMETHING ABOUT THE RELATIONSHIP BETWEEN THESE PEOPLE?

I THINK THE INCIDENT TWO DAYS -- I THINK THAT IS THE STATE'S ARGUMENT, AND THE STATE'S THEORY OF THE CASE, BUT I DON'T, AND THAT MAY MAKE HIS PROBATION STATUS RELEVANT, BUT IT DOES NOT MAKE RELEVANT WHAT HE WAS ON PROBATION FOR. THAT HAS ABSOLUTELY NO RELEVANCE TO THIS OFFENSE, AND IT IS AN ATTEMPT TO INTRODUCE A HIGHLY HIGHLY-INFLAMMATORY ELEMENT INTO THIS CASE, ATTEMPTED SEXUAL BATTERY ON A MINOR, ATTEMPTED CAPITAL SEXUAL BATTERY.

THE MINOR HAPPENED TO BE THIS GIRL. IS THAT RIGHT?

IT WAS THE SAME VICTIM, YES.

DID THE JURY, IN THE GUILT PHASE, IN TRYING TO UNDERSTAND THE TERMS IN WHICH THE STATE WAS TRYING TO INTRODUCE IT, I WOULD AGREE WITH YOU THAT, IF THE STATE WAS SIMPLY TRYING TO INTRODUCE IT BECAUSE HE WAS ON PROBATION AND HE DOESN'T WANT TO HAVE TO GO BACK TO PRISON, THEN HE IS ON PROBATION IS, SOMETHING SEEMS TO BE RELEVANT, BUT FOLLOWING UP ON WHAT JUSTICE WELLS AND JUSTICE HARDING IS ASKING, DID IT COME OUT IN THE GUILT PHASE, AS PART OF THE MOTIVE FOR THIS CRIME, THAT HE HAD HAD A PRIOR SEXUAL HISTORY WITH THIS PARTICULAR VICTIM, AND THAT SOMEHOW THE CRIME WAS INTERTWINED WITH HIS FEELINGS ABOUT THIS VICTIM? WAS THAT PART OF THE EVIDENCE IN THE GUILT PHASE?

NOT THAT EXACTLY. WHAT CAME OUT IN THE GUILT PHASE IS THAT HE WAS ON PROBATION FOR ATTEMPTED -- IT WAS ONCE DESCRIBED AS ATTEMPTED CAPITAL SEXUAL BATTERY AND ONCE DESCRIBED AS ATTEMPTED SEXUAL BATTERY ON A MAIN OR.

OF HER?

SO IT CAME OUT OF HER. WAS THERE ANY MORE ATTEMPT BY THE STATE, IN THE GUILT PHASE, TO GO INTO WHAT THE NATURE OF THAT RELATIONSHIP WAS? WERE THERE DETAILS OF THE ATTEMPTED --.

NOT ON A SEXUAL BASIS, NO, AND IT WAS UNDISPUTED IN THIS CASE THAT THE SEXUAL ACTIVITY HAD ENDED OVER THREE YEARS EARLIER.

BUT THEN THERE WAS -- WAS THERE EVIDENCE RELATED TO HIS BEING UPSET ABOUT HER BEING IN A SETTLE RELATIONSHIP WITH OTHER PEOPLE -- IN A RELATIONSHIP WITH OTHER PEOPLE.

THERE WAS AN INCIDENT AS JUSTICE WELLS INDICATED, THAT SHE GOT HOME FROM WORK THREE HOURS LATE. SOMEONE ELSE HAD APPARENTLY GIVEN HER A RIDE HOME, AND THE DEFENDANT'S EX-WIFE, WHO IS THE DECEASED MOTHER, STATED THAT BOTH OF THEM WERE VERY UPSET ABOUT HER BEING LATE, THAT THEY WERE BOTH YELLING ABOUT HER BEING LATE, AND AT ONE POINT, SHE SAID THAT BOTH MY CLIENT AND SHE HIT THE DECEASED AT ONE POINT, AND SHE STATED THAT THE DECEASED PICKED UP THE PHONE AND STARTED TO DIAL AND THEN HUNG UP AND SAID, ALL RIGHT, I WILL CALL THE POLICE, BUT THEN HUNG UP.

WHEN WAS THERE A STATEMENT MADE ATTRIBUTED TO HIM AND WHO THE TESTIMONY CAME FROM THAT I WILL KILL YOU -- I WILL KILL HIM OR YOU?

THAT WAS IN THE SAME VERY HEATED INCIDENT, AND SUPPOSEDLY IT CAME FROM A COUSIN OF THE DECEASED WHO WAS LIVING IN THE HOUSE.

THAT WAS THE NIGHT AFTER SHE HAD COME HOME LATE.

IMMEDIATELY THEREAFTER. WHICH WAS TWO NIGHTS BEFORE THE HOMICIDE.

I HAVE GOT ONE OTHER QUESTION ABOUT THE FACTS HERE. DESCRIBE THIS DISTANCES THAT WE ARE TALKING ABOUT. WHERE WAS THIS PUBLIX, AND WHERE DID THIS, THESE PEOPLE SEE THIS BODY OR THIS PERSON SIT UP IN THE MEDIAN AND GET HIT BY THE CAR, AND WHAT IS THE DISTANCE HERE, AND IS THERE ANY EXPLANATION IN THE RECORD AS TO HOW THAT, THIS VICTIM GOT FROM THE PUBLIX OUT THERE WHERE THEY WERE GOING, WHERE SHE WAS GOING OR ANYTHING LIKE THAT.

WELL, IT IS SPECULATIVE HOW SHE GOT THERE. THE PUBLIX WAS IN THE SOUTHERN PART OF BROWARD COUNTY, AND WHERE THE CLOTHING WAS FOUND AND WHERE THE TWO WITNESSES WHO WERE DATING AT THE TIME OF THE OFFENSE AND LATER MARRIED, MR. GOWDY AND MISS STRINGER TESTIFIED WAS IN THE NORTHWESTERN PART OF BROWARD COUNTY, APPROXIMATELY 25 MILES IN TWT. IT IS UNCLEAR HOW SHE -- IN BETWEEN. IT IS UNCLEAR HOW SHE GOT OUT

THERE, AND THEN THE BODY WAS FOUND IN ANOTHER PART OF BROWARD COUNTY THE NEXT DAY. IT IS UNCLEAR.

SHE LIVED IN THAT DIRECTION?

SHE ACTUALLY LIVED ON THE DADE BROWARD LINE, NEAR WHERE SHE WORKED.

SO THIS WAS NOT GOING TO HER HOUSE.

THAT'S CORRECT. AND IS THERE EVIDENCE IN THE RECORD AS TO WHAT TIME SHE CLOCKED OUT OF THE PUBLIX THANK -- THAT EVENING?

I BELIEVE IT WAS APPROXIMATELY SIX O'CLOCK.

AND WHAT TIME IS THIS DESCRIBED AS GOING ON OUT IN THE MEDIAN OF THE ROAD?

THERE IS A LITTLE DIFFERENCE ON THE TIME. SEVEN TO SEVEN-THIRTY IS WHAT MOST OF THE TESTIMONY WAS. THERE IS SOME SLIGHT VARIATION.

WAS THERE ANY EVIDENCE THAT YOUR CLIENT PICKED HER UP FROM WORK?

THERE WAS ONE WITNESS, PATRICK ALLEN, WHO STATED, FOR THE FIRST TIME AT THE TIME OF TRIAL HE STATED THIS. HE HAD NOT SAID THIS, EVEN THOUGH HE HAD BEEN INTERVIEWED MANY TIMES EARLIER, FOR THE FIRST TIME RIGHT BEFORE THE TRIAL, HE SAID THAT HE SAW HER WALK, HE SAW MY CLIENT IN THE PARKING LOT AND HE SAW HER WALKING TOWARDS THE CAR. HE DID NOT SAY HE SAW HER GET IN THE CAR.

BUT THE OBVIOUS INFERENCE WAS THAT SHE WAS WALKING TO HIS CAR TO BE PICKED UP. HE HAD PICKED HER UP MANY TIMES BEFORE FROM WORK.

HE HAD PICKED HER UP IN THE PAST. HER -- ON THAT PARTICULAR NIGHT, ACCORDING TO THE POLICE INVESTIGATION, A COUSIN OF HERS WAS SUPPOSED TO PICK HER UP.

AND HE HAD, ALSO, MADE SOME THREATS IMMEDIATELY BEFORE THIS, IS THAT CORRECT?

WELL, TWO DAYS EARLIER, WHEN THERE WAS THIS HEATED INCIDENT. THERE WAS A LOT OF YELLING BACK AND FORTH, AND THERE WAS THE COMMENT --

JUST COULD YOU COME BACK TO THE POINT THAT YOU ARE PRESENTING TO US AT THIS TIME. MANY TIMES, OBVIOUSLY, IN THESE CASES WHERE WE WERE A -- -- WHERE WE HAVE A CRIME, THE RELATIONSHIP BETWEEN THE PARTIES IS AT ISSUE. THAT IS THE NATURE OF THE RELATIONSHIP PROVIDES SORT OF THE BACKGROUND FOR WHATEVER HAPPENED IN A DOMESTIC CASE, WHERE THERE HAS BEEN A ROMANTIC RELATIONSHIP OR AN INTIMATE RELATIONSHIP, WHETHER THEY HAVE HAD A STORMY RELATIONSHIP OR A PEACEFUL RELATIONSHIP. ALL KINDS OF THINGS LIKE THAT ARE ORDINARILY BROUGHT OUT AS RELEVANT TO WHAT EVENTUALLY OCCURRED. NOW, WHY WOULDN'T THIS, HIS STATUS OF BEING ON PROBATION FOR A SEXUAL CRIME AGAINST HER, BE PART OF THAT BACKGROUND, IN TERMS OF THE STATUS OF THE RELATIONSHIP, AND BE ADMISSIBLE FOR THAT PURPOSE ALONE? ANOTHER PROBATIONARY STATUS MAY BE RELEVANT, BUT THE I DON'T THINK THE NATURE OF THE CRIME IS RELEVANT, AND EVEN IF IT IS RELEVANT, THE PREJUDICE FAR OUTWEIGHS PROBATIVE VALUE, GIVEN THE INFLAMMATORY NATURE OF THE CRIME N THIS COURT'S OPINION, IN GARRIN VERSUS STATE, THAT I CITED IN MY BRIEF, I THINK IS VERY USEFUL HERE. IN GARRIN, THE DEFENDANT KILLED HIS WIFE AND ONE OF HIS STEP DAUGHTERS AND SHOT AT ANOTHER STEPDAUGHTER AND MISSED, AND THE SURVIVING STEPDAUGHTER TESTIFIED THAT, ON THE NIGHT, THE VERY NIGHT OF THE INCIDENT, HE HAD PUT HIS HAND ON HER THIGH IN WHAT SHE CONSIDERED ALLUDE MANNER, AND MADE AN OBSCENE

GESTURE TO HER. THE STATE BROUGHT IN, DURING THE TRIAL, THE SEXUAL MISCONDUCT WITH BOTH STEP DAUGHTERS, THE SURVIVING WITNESS STEPDAUGHTER AND THE DECEASED STEPDAUGHTER, TWO YEARS EARLIER, ON THE THEORY OF MOTIVE, WHICH IS EXACTLY THE THEORY THE STATE IS PUTTING FORWARD HERE -- THE THEORY THAT THE STATE IS PUTTING FORWARD HERE, AND THIS IS, BECAUSE OF THE NATURE THAT IT WAS OF AN INFLAMMATORY NATURE, IN THIS CASE IT IS UNDISPUTED THAT THE SEXUAL ACTIVITY HAD ENDED OVER THREE YEARS EARLIER. THERE IS NO ALLEGATION THAT, ON THIS NIGHT AND THIS INCIDENT, THERE WAS ANY SEXUAL ASPECT TO THIS CRIME, SO I THINK GARRIN IS VERY IMPORTANT CASE HERE.

WELL, WHY, IN TERMS OF THE DEFENDANT KNOWING THE SERIOUS CONSEQUENCES OF THE VIOLATION OF PROBATION, FOR INSTANCE, WHY WOULDN'T THAT --

THAT MAY BE RELEVANT.

-- WOULDN'T THAT BE A DIFFERENT ASPECT OF IT? THAT IS THAT HERE, OBVIOUSLY, IF HE WAS ON PROBATION FOR CAPITAL SEXUAL -- THE CONSEQUENCES OF VIOLATING PROBATION, OBVIOUSLY WOULD BE SUBSTANTIALLY DIFFERENT THAN IF HE WAS JUST ON PROBATION FOR SOME OTHER --

THAT MAY BE RELEVANT, THE NATURE, THE POTENTIAL PENALTIES, BUT THAT IS DIFFERENT THAN THE NATURE OF THE CRIME. THERE ARE TWO CASES, ALSO, OUT OF THE FOURTH DISTRICT, THAT I CITED IN MY BRIEF, BANE AND MacINTOSH, WHICH I THINK ARE SOMEWHAT SIMILAR TO THIS ISSUE. IN BOTH OF THOSE CASES, A DEFENDANT TOOK THE STAND AND ADMITTED THAT HE WAS ON PAROLE. THE STATE TRIED TO BRING OUT, ON CROSS, WHAT CRIME THE DEFENDANT WAS ON PAROLE FOR, AND IN BOTH CASES, THE FOURTH DISTRICT REVERSED AND SAID, EVEN IF THE PAROLE STATUSES COME OUT, THE NATURE OF THE UNDERLYING CRIME IS NOT RELEVANT.

WELL, IN THE ABSTRACT, IT SEEMS TO ME TO MAKE SENSE, BUT IN THE PARTICULAR INSTANCE, DOES IT MAKE SENSE? THAT IS IN THIS CASE, HE WAS ON PROBATION FOR VERY SERIOUS CRIMES AGAINST THIS PARTICULAR VICTIM. ONE OF THE CONDITIONS OF HIS PROBATION, IF I UNDERSTAND IT CORRECTLY, WAS THAT HE HAVE ABSOLUTELY NO CONTACT WITH THIS VICTIM. IS THAT CORRECT?

THAT'S CORRECT, YOUR HONOR.

YET HE APPARENTLY WAS WILLY-NILLY CONTINUING TO MAINTAIN A RELATIONSHIP WITH HER IN VIOLATION OF HIS TERM OF PROBATION.

NOT A SEXUAL RELATIONSHIP. HE WAS TAKING HER TO AND FROM WORK AT HER MOTHER'S REQUEST. WHICH IS A VERY DIFFERENT THING. YOU ARE CORRECT, IT IS A VIOLATION OF THE --

THAT IS WHAT I AM SAYING IS IT JUST SEEMS LIKE THERE ARE MANY DIFFERENT ASPECTS OF THIS THAT MAKE POTENTIALLY MAKE WHAT HE WAS ON PROBATION FOR AND HOW IT INVOLVED THE VICTIM AND HOW SERIOUS IT WAS, AND THE NATURE OF IT, DIFFERENT THAN THE CASES THAT YOU HAVE CITED TO US, THAT THOSE CASES MAY BE DISTINGUISHABLE BECAUSE OF THAT. I AM JUST ASKING FOR SOME HELP ON THAT.

I UNDERSTAND YOUR QUESTION, YOUR HONOR, AND TO A POINT, I THINK THERE IS LOGIC TO WHAT YOU SAY, THAT THE POTENTIAL PENALTY MAY BE RELEVANT, PROBATIONARY STATUS MAY BE RELEVANT, BUT HOW IS THE NATURE OF THE UNDERLYING CRIME RELEVANT?

BECAUSE IT APPLIES TO THIS PARTICULAR VICTIM. THAT IS THAT HE HAD HAD A -- I MEAN AN UNLAWFUL RELATIONSHIP, OF COURSE. HE HAS HAD A TERRIBLY ABUSIVE RELATIONSHIP WITH THIS VICTIM THAT HAS CULMINATED IN HIS CONVICTION FOR MURDERING THIS VICTIM. AND WHY WOULDN'T A JURY, IN TERMS OF DETERMINING THIS, BE ENTITLED TO KNOW, AS THEY MIGHT KNOW ABOUT A STORMY RELATIONSHIP IN OTHER CASES OR WHATEVER, KNOW THAT THIS WAS

NOT A HEALTHY FATHER-DAUGHTER OR WHATEVER RELATIONSHIP. THIS WAS A TERRIBLY UNHEALTHY RELATIONSHIP THAT WAS GOING ON UP HERE THAT EVENTUALLY CALMNATED IN THIS TERRIBLE TRAGEDY.

I THINK TO FOLLOW THAT LOGIC OUT, THIS COURT WOULD HAVE TO OVERRULE GARRIN. I THINK THOSE EXACT SAME ARGUMENTS COULD HAVE BEEN MADE FOR ADMISSIBILITY IN GARRIN, IN FACT MUCH STRONGER. IN THIS CASE IT IS UNDISPUTED THE SEXUAL ACTIVITY HAD ENDED OVER THREE YEARS EARLIER.

JUSTICE HARDING.

BUT WASN'T THERE SOME EVIDENCE ABOUT A FELLOW EMPLOYEE PATRICK ALLEN, BRINGING HER HOME ONE NIGHT. THIS MAN WAS WAITING IN THE DRIVEWAY, WHEN HE SAW THE GIRL GET OUT OF THE CAR. HE CHASED PATRICK ALLEN AWAY, AND THEN ON ANOTHER NIGHT HE ACTUALLY FIRED SHOTS AT PATRICK ALLEN?

PATRICK ALLEN FIRED SHOTS AT HIM.

PATRICK ALLEN FIRED SHOTS AT HIM.

THERE IS NO EVIDENCE HE EVER FIRED SHOTS.

THERE WAS EVIDENCE THAT THE DEFENDANT WAS EXERCISED ABOUT THIS GIRL SEEING SOMEONE FROM PUBLIX.

NOT NECESSARILY SEEING HIM. SHE, WHAT THE MOTHER TESTIFIED TO WAS A STATE WITNESS, WAS THAT SHE WAS THREE HOURS LATE, WITHOUT CALLING OR WITHOUT TELLING ANYONE, AND THAT BOTH OF THEM WERE VERY UPSET OVER THAT, AND THERE WAS A VERY HEATED ARGUMENT. THERE IS NO EVIDENCE THAT IT WAS ANY SORT OF A JEALOUSY OR WHATEVER, WHICH JUSTICE HARDING, YOUR QUESTION, I THINK, SHOWS THE PREJUDICE OF ALL OF THIS, TO BRING THIS THING IN, THIS PROBATION FOR A SEXUAL RELATIONSHIP THAT ENDED AT LEAST THREE YEARS EARLIER, IMMEDIATELY PLANTS THE SEED IN THE JURY'S MIND THAT THIS OFFENSE WAS SEXUALLY-RELATED, WHEN THERE IS ABSOLUTELY NO EVIDENCE OF THAT, AND IT IS A COMPLETELY DIFFERENT THING. IT IS A COMPLETELY DIFFERENT CATEGORY OF EVIDENCE AND FAR MORE PREJUDICE ADDITIONAL THAN MERELY -- PREJUDICIAL THAN MERELY THAT HE WAS ON PROBATION AND THERE WAS A VIOLATION. IT IS WHAT THE CONSEQUENCES BRING. IN THE TAYLOR CASE, WHICH I THINK IS ALSO VERY INSTRUCTIVE, IN THAT CASE THE DEFENDANT WAS CHARGED WITH WITNESS TAMPERING, AND THE PROSECUTION BOUGHT BROUGHT OUT THAT THE UNDERLYING -- BROUGHT OUT THAT THE UNDERLYING CHARGES EVERS FACING -- CHARGES HE WAS FACING, AND THE THIRD DISTRICT SAID THE INFLAMMATORY NATION OF ACCUSATIONS OF IRREGULAR SEXUAL CONDUCT. ONCE THIS WAS BROUGHT OUT, THERE WAS NO WAY THIS MAN COULD GET A FAIR TRIAL. IT WAS PERHAPS THE MOST INFLAMMATORY POSSIBLE ACCUSATION ACCUSATION.

WAS THE STATE, SO THE STATE'S THEORY, BECAUSE I GUESS WHAT THIS IS SAYING, AND I SUPPOSE YOU ARE RIGHT, THAT ONCE WE KNOW THAT HE WAS ON PROBATION FOR ATTEMPTED SEXUAL BATTERY OF HER, THEN THE CRIME SEEMS TO BE NOT MOTIVATED BY JUST I DON'T WANT MY PROBATION VIOLATED BUT BY JEALOUSY AND THINGS OF A SEXUAL NATURE. YOU ARE SAYING THE VERY FACT THAT WE ARE ASKING THOSE QUESTIONS SHOWS, AND THE STATE HAD NO OTHER EVIDENCE OF THAT, AND THAT THIS EVIDENCE WAS TOO REMOTE IN TIME TO BE SUPPORT I SUPPORTIVE OF A MOTOR SNIFF.

I THINK THAT IS EXACTLY -- OF A MOTIVE?

I THINK THAT IS EXACTLY RIGHT. THE MEMBERS OF THIS COURT, WHO ARE TRAINED JUDGES AND

TRAINED TO PUT THESE KINDS OF IN FRIENDS OUT OF -- INFERENCES OUT OF YOUR MINDS, WOULD BE ASKING THESE SORT OF QUESTIONS, WHAT WOULD A JURY BE THINK SOMETHING.

IF THE STATE HAD WANTED TO PUT INTO EVIDENCE ALL OF THE EVIDENCE THAT WAS IN THE PENALTY PHASE, THAT IS ABOUT THE NATURE OF WHEN IT STARTED, WHAT IT CONSISTED OF, WHEN IT STOPPED, ALL THOSE DETAILS, WOULD, YOU WOULD BE ARGUING THAT IT IS PREJUDICE OUTWEIGHS PROBATIVE VALUE, BUT THEN WE WOULD BE SAYING TO YOU BUT DOESN'T THAT EXPLAIN WITH WHAT MIGHT HAVE LED UP TO THIS MURDER?

BUT THERE IS NO EVIDENCE OF ANY SEXUAL CONTENT FOR UP TO THREE YEARS EARLIER.

WASN'T SHE IN A DISROBED CONDITION WHEN SHE WAS FOUND?

PARTIALLY. BUT NOBODY -- BUT THERE IS NO EVIDENCE, THERE WAS NO SEMEN. THERE WAS NO EVIDENCE OF ANY SEXUAL ACTIVITY.

WHAT ARE THE FACTS WITH REGARD TO THE RELATIONSHIP, THOUGH? BECAUSE YOU SEEM TO BE GLOSSING OVER, JUST A LITTLE BIT, AND I THINK WE ARE ALL TROUBLED, SOMEWHAT, BY THIS, THESE HE -- EPISODES WITH THE YOUNG MAN AND THAT IT SEEMED TO PROVOKE HIM, FROM LOOKING AT THE BRIEFS AND LOOKING AT WHAT WE HAVE SEEN, SO WHY DON'T YOU TELL US AND HELP US WHAT THE STATUS OF THE EVIDENCE WAS, WITH REGARD TO THESE EXPLOSIVE EVENTS REGARDING THIS YOUNG MAN, BECAUSE AS YOU INDICATE, THE QUESTIONS ARE IN THAT AREA, BECAUSE THAT IS IN THEIR MINDS, BECAUSE THAT IS WHAT WE ARE SEEING FROM SOME OF THE FACTS. WHAT ARE THE FACTS, AS YOU SEE THEM, WITH REGARD TO WHAT A JURY COULD TAKE A VIEW OF THESE, WITH REGARD TO THIS RELATIONSHIP WITH THE YOUNG MAN. HOW MANY TIMES DID THIS EXPLOSIVE KIND OF THING OCCUR. WHY DON'T YOU CENTER ON THAT JUST A LITTLE BIT, BECAUSE BY SAYING THAT THIS RELATIONSHIP ENDED THREE YEARS AGO DOESN'T ANSWER THESE OTHER FACTS. WHAT WERE THE FACTS, AS OPPOSED TO WHAT WAS THE NEGATIVE. COULD YOU HELP US WITH THAT?

AS FAR AS THE INCIDENT WITH PATRICK ALLEN, APPROXIMATELY TWO NIGHTS BEFORE THIS HOMICIDE, SHE CAME HOME ABOUT THREE HOURS AFTER SHE WAS SUPPOSED TO FROM WORK.

THAT IS ONLY ONE OCCASION.

CORRECT. THE MOTHER SAID THAT, BOTH SHE AND MR. ANDERSON, HER EX-HUSBAND WHO WAS THE DECEASED'S STEPFATHER, WERE VERY UPSET, AND SHE SAID THAT BOTH OF THEM HIT HER. BOTH OF THEM YELLED AT HER. AT ONE POINT THE DECEASED PULLED OUT A KNIFE AND STARTED DIALING 911 AND THREATENED TO CALL THE POLICE, AND HE TOOK OFF CHASING THIS PATRICK ALLEN. PATRICK ALLEN SUPPOSEDLY SHOT AT HIM, AND HE CAME BACK AND STARTED YELLING AT HER THAT, YOU KNOW, THE BOY SHOT AT ME AND THIS SORT OF THING.

THE GUNFIRE WAS ON THE SECOND.

I AM SORE I THERE WAS A SECOND INSIDE -- I AM SORRY. THERE WAS A SECOND INCIDENT. THEY WERE A COUPLE OF NIGHTS BEFORE. THE LAST INCIDENT WAS BEFORE THE FIRST INCIDENT, TWO NIGHTS BEFORE.

WHY WAS HE IN A CAR, TRYING TO CHASE HIM DOWN?

I THINK IT IS SPECULATIVE. MR. ANDERSON DIDN'T TAKE THE STAND IN THE GUILT PHASE.

DID THE MOTHER TESTIFY ABOUT WHAT ANDERSON'S RELATIONSHIP --

SHE SAID HE WAS VERY ANGRY AND UPSET.

WHY?

I THINK THAT IS SOMEWHAT SPEC SPECTIVE.

SO IN OTHER WORDS NOBODY TESTIFIED ABOUT ANDERSON'S RELATIONSHIP WITH THE STEPDAUGHTER, THE VICTIM. THERE WAS NO TESTIMONY AS TO THE NATURE OF THE RELATIONSHIP?

JUST TESTIMONY OF WHAT HE WAS ON PROBATION FOR.

BUT THE STATE DIDN'T -- OKAY. SO THE STATE DIDN'T TRY TO GET IN, IN ORDER TO EXPLAIN WHY HE WOULD BE EXPLOSIVE, OR DID THEY OR DIDN'T THEY TRY TO GET IN THE DETAILS OF THE PRIOR SEXUAL RELATIONSHIP?

NOT IN THE GUILT PHASE. THE ONLY THING THAT CAME OUT --

THEY DIDN'T EVEN -- SO WHAT YOU ARE SAYING IS THE PROBLEM HERE, WHETHER THEY -- MAYBE WITH THE PROFFER OF WHAT THEY WERE GOING TO PUT IT IN FOR, THEY ARE THROWING OUT HE IS ON PROBATION FOR ATTEMPTED SEXUAL BATTERY BUT NOT REALLY TRYING TO GET IN THE NATURE OF THE RELYING SHIP -- RELATIONSHIP, SHOWS THEY WEREN'T REALLY TRYING TO GET IT IN TO SHOW MOTIVE BUT REALLY WHAT THE JURY SPECULATES.

THAT'S CORRECT. THAT'S CORRECT.

BUT WE HAVE AT LEAST TWO, GOING BACK TO YOU UNDERSTANDING AND HELP US WITH THIS -- AND YOUR HELPING US WITH THESE FACTS THERE IS NO UNDERSTANDING WITH REGARD TO THIS RECORD ABOUT THE CHASE OR WHY IT HAPPENED, JUST SPECULATIVE TO WHY IT HAPPENED.

IT IS SPECULATIVE AS TO WHY IT HAPPENED.

YOU ARE SAYING THERE IS NO TESTIMONY. THAT IS THE ONLY HE HAVE THAT WE HAVE.

-- THAT IS THE ONLY EVIDENCE THAT WE HAVE.

THAT'S CORRECT.

AND WHAT ABOUT THE EVIDENCE, WAS THERE A THREAT AGAINST THIS VICTIM BY YOUR CLIENT, BEFORE THE MURDER?

WHAT -- THE SECOND INCIDENT, AGAIN, AFTER ALL THIS ARGUING BACK AND FORTH AND AFTER THE DECEASED HAD PULLED A KNIFE ON HIM AT ONE POINT, THE COUSIN TESTIFIED, ADRONA BROWN TESTIFIED THAT HE SUPPOSEDLY SAID I AM GOING TO GO TO PUBLIX AND WAIT 24 HOURS. IF I CAN'T GET PATRICK, I WILL GET YOU.

I WILL KILL YOU?

GET YOU, I THINK, WAS THE PHRASE.

BUT HE SAID THAT TO THE VICTIM?

THAT IS WHAT ONE WITNESS TESTIFIED TO.

YOU ARE IN REBUTTAL.

IF I COULD BRIEFLY MENTION, I KNOW I AM INTO MY REBUTTAL TIME, IS TWO OTHER ISSUES, ISSUE SIX AND ISSUE EIGHT, WHICH I THINK ARE INTERRELATED, THE IMPROPER PROSECUTORIAL

ARGUMENTS AT THE GUILT PHASE AND AT THE PENALTY PHASE, ALTHOUGH ONLY ONE OF THESE ARGUMENTS IS OBJECTED TO IN THE GUILT PHASE, I MENTIONED IN MY BRIEF THE RUIZ CASE OUT OF THIS COURT, WHERE THIS COURT SAID, IN DETERMINING CUMULATIVE ERROR, IN DETERMINING WHETHER A MISTRIAL IS REQUIRED OR A NEW PENALTY PHASE IS REQUIRED, THIS COURT HAS A DUTY TO CONSIDER BOTH THE OBJECTED TO AND UNOBJECTED TO ARGUMENTS. IN THE GUILT PHASE, THE PROSECUTOR STARTED ARGUING, WHEN THE DEFENSE HAD MENTIONED THAT MR. ANDERSON HAD TALKED TO THE POLICE, ALLOWED HIS CAR TO BE SEARCHED, HAD NOT OBJECTED TO ANYTHING THE POLICE WANTED TO DO THE PROSECUTOR STARTED ARGUING DON'T YOU HEAR, ALL THE TIME, ABOUT PEOPLE, DRUG DEALERS DRIVING KILOS OF COCAINE OUT OF MIAMI AND ALLOWING THEIR CARS TO BE SEARCHED? THE OBJECTION WAS SUSTAINED TO THIS, AND THE JURY WAS IN STRUCKED TO DISREGARD, BUT A MISTRIAL WAS DENIED. THE PROSECUTOR MADE OTHER IMPROPER ARGUMENTS IN THE GUILT PHASE, DESCRIBING THE, SAYING THAT THE DEFENSE WAS TRYING TO SHROUD YOU IN ANING FOR, AND -- SHREWD YOU IN A FOG, AND IN REFERENCE TO OUR CRIMINALS, BUT I WOULD LIKE THE COURT TO LOOK AT THE PENALTY-PHASE ARGUMENT. ALTHOUGH THERE IS NO OBJECTION TO THE PENALTY PHASE ARGUMENT, IT IS OUR POSITION THAT YOU CAN CONSIDER THIS, IN LIGHT OF THE GUILT-PHASE ARGUMENT UNDER RUIZ, BUT EVEN IF NOT, IT RISES TO A FUNDAMENTAL ERROR. THE PROSECUTOR MENTIONED JEFFREY DAHMER, JOHN WAYNE GAYS I, TED BUNDY -- JOHN WAYNE GACY, TED BUNDY, ALL OF HIS CLOSING ARGUMENTS. HE SPECIFICALLY COMPARED TO THAT THE ROLLINS CASE, ALTHOUGH MR. ANDERSON HAD NO OTHER MURDER CHARGES SIMILAR TO ROLL SNINS.

-- TO ROLLINS?

THE JURY'S VOTE WAS CLOSE, AND WHEN IT IS CLOSE, SUCH AS IN PENALTIES OF 7-TO-5 OR 8204, IT IS MORE LIKELY TO FIND FUNDAMENTAL ERROR, AND IN THIS CASE --

PROSECUTORIAL ARGUMENT. THAT IS WHAT YOU ARE TALKING ABOUT.

THAT'S CORRECT.

AND YOU ARE SAYING THAT THAT IS WHAT --

I CITED THE KING CASE, WHERE THIS COURT REVERSED FOR A NEW PENALTY PHASE, BASED ON THIS FUNDAMENTAL ERROR, AND IN MY REPLY BRIEF, WHEN FORMER CHIEF JUSTICE BARKETT GOES THROUGH THE CASES AND FOUND THE COURT FOUND FUNDAMENTAL ERROR, BUT I WOULD ARGUE UNDER RUIZ, THIS COURT SPECIFICALLY TALKED ABOUT OBJECTED TO AND UNOBJECTED TO COMMENTS THAT CUMULATIVELY CAUSED AN UNFAIR TRIAL, AND I WOULD ARGUE THAT THIS COURT HAS A DUTY TO REVERSE FOR A NEW TRIAL. AT THE VERY LEASTED A NEW PENALTY PHASE. I WILL RESERVE THE REST OF MY TIME FOR REBUTTAL. THANK YOU.

MS. DALE. MAY IT PLEASE THE COURT. MELANIE DALE, ON BEHALF OF THE ATTORNEY GENERAL'S OFFICE. WITH RESPECT TO THE COLLATERAL BATTERY, THAT CRIME SPECIFICALLY GOES TO THE DEFENDANT'S MOTIVE. IT DOES EXPLAIN THE RELATIONSHIP. THE STATE DID EXPLAIN TESTIMONY FROM OTHER WITNESSES REGARDING THE CURRENT POSSESSIVE RELATIONSHIP BETWEEN THE DEFENDANT AND THE VICTIM.

MS. DALE, LET ME START AND ASK YOU ABOUT A COUPLE OF ASSERTIONS THAT ARE MADE IN THE STATE'S BRIEF. ONE IS THAT HER BODY WAS TRANSPORTED 15 MILES FROM WHERE IT WAS RUN OVER AND DUMPED. NOW, IS IT REASONABLE TO INFER THAT HER BLOOD MIGHT HAVE GOTTEN ON THE CAR THAT TRANSPORTED HER? NOW, THAT GIVES ME THE IMPRESSION THAT THERE IS SOME EVIDENCE IN THIS RECORD THAT THIS VICTIM WAS KILLED SOMEWHERE AND THEN TRANSPORTED 15 MILES. IS THAT IN THE RECORD?

YES. THE RECORD REFLECTS THAT THE VICTIM WAS TRANSPORTED 30 MILES FROM WHERE HER PLACE OF EMPLOYMENT WAS FROM PUBLIX. AFTER SHE WAS KILLED, SHE WAS THEN TRANSPORTED 15 MILES FROM THE LOCATION WHERE --

WHAT IS THE EVIDENCE AS TO WHERE SHE WAS KILLED?

THAT IS WHERE ALL OF THE CLOTHING WAS FOUND, THE I.D. CARD, THE NAME TAG, HER SNEAKER. PIECES OF HER CLOTHING WERE FOUND ON THE ROADWAY.

THE CLOTHING. IS THERE ANY EVIDENCE THAT SHE WAS KILLED THERE?

YES. WE HAVE THE TESTIMONY OF TWO EYEWITNESSES WHO WERE DRIVING ON US 27, JOHN GOWDY AND MS. STRINGER WHO ACTUALLY SAW THE VICTIM RUN OVER IN THE MEDIAN.

WAS IT THE STATE'S THEORY THAT THIS BODY WAS PUT BACK IN THE CAR AND TRANSPORTED ANOTHER 15 MILES?

YES. THE TESTIMONY FOUND, BASED ON THE TESTIMONY OF JOHN GOUDY AND MS. STRINGER, THAT FIRST THIS CAR DID U-TURNS, RAN THE VICTIM OVER, SPED AWAY AT A SPEED AT OVER 100 MILES AN HOUR, AND MADE ANOTHER U TURN BACK TOWARD THE BODY AND AMELIA STRINGER AND JOHN GOUDY PROCEEDED TO GO AND TELL THE POLICE WHAT THEY HAD SEEN.

WAS THERE ANY EVIDENCE THAT THE BODY HAD BEEN PUT IN THE CAR?

YES. THERE WAS THE DNA EVIDENCE OF THE BLOOD SPOT ON THE SEAT. IN THE PASSENGER --

WHAT I AM TRYING TO GET AT IS I AM HAVING A HARD TIME PUTTING TOGETHER WHERE THE EVIDENCE COMES FROM THAT THIS BODY WAS PUT IN THE CAR. THERE IS A INFERENCE, THERE IS BLOOD IN THE CAR. I UNDERSTAND THAT. BUT I DON'T KNOW WHAT THE LINK IS BETWEEN THAT BLOOD THAT IS IN THE CAR AND SOMEBODY PUTTING THE BODY IN THE CAR AND DRIVING IT 15 MILES. WHERE IS THAT EVIDENCE?

WELL, THE BODY WAS FOUND 15 MILES AWAY. THE ONLY WAY IT WOULD GET THERE IS IF IT WAS TRANSPORTED, SO THE EVIDENCE WE HAVE IS THERE WAS BLOOD SPOTS IN THE VICTIM -- -- OF THE VICTIM IN THE CAR OF THE DEFENDANT. THAT MEANS THAT THE DEFENDANT TURNED AROUND AND PICKED THE BODY UP AND DROVE IT 15 MORE MILES INTO A DESOLATE AREA OF THE EVERGLADES AND THREW THAT BODY ON THE SIDE OF THE ROAD.

THE OPPOSING COUNSEL HAS INDICATED THAT, IN READING THE BRIEFS, I GATHER THERE WAS A JEALOUSY MOTIVE SOMEPLACE HERE, BUT OPPOSING COUNSEL HAD INDICATED THERE IS NOTHING TO PUT YOUR FINGER ON CONCRETELY THAT WOULD SHOW THAT THERE WAS A JEALOUSY MOTIVE. WHAT IS THE STRONGEST EVIDENCE THE STATE HAS THAT JEALOUSY WAS INVOLVED HERE?

WELL, THERE IS A NUMBER OF WITNESSES WHO TESTIFY ABOUT THIS DEFENDANT'S JEALOUSY OF THE VICTIM. DARONDA BROWN SPECIFICALLY TESTIFIES THAT, WHEN THE VICTIM RECEIVES TELEPHONE CALLS AT HOME FROM BOYS, THE DEFENDANT WOULD LISTEN IN ON THE TELEPHONE. TROY VERNON, THE NEXT DOOR NEIGHBOR, TESTIFIES THAT THIS DEFENDANT ASKED HIM IF HE HAD HAD SEX WITH THE VICTIM AND THEN TOLD HIM DON'T HAVE SEX WITH HER. THEN WE HAVE PATRICK ALLEN WHO, FOUR NIGHTS BEFORE THE MURDER, TOOK THE VICTIM, KEINYA SMITH HOME, WAS FOLLOWED BY THIS DEFENDANT AS HE GOT HOME. THE DEFENDANT, THERE IS TESTIMONY FROM CHANDRA BROWN THAT, TWO NIGHTS BEFORE THE MURDER, WHEN THE DEFENDANT AGAIN FOLLOWED PATRICK ALLEN AND PATRICK ALLEN TESTIFIED THAT THE DEFENDANT WAS BUMPING HIS CAR INTO TRAFFIC AND PATRICK ALLEN SHOT AT THE

DEFENDANT'S CAR, THERE IS TESTIMONY FROM CHANDRA BROWN THAT THE DEFENDANT WAS YELLING AT THE VICTIM WHAT DID YOU TELL HIM? DID YOU TELL HIM ANYTHING? AND THEN WE HAVE THE TESTIMONY THAT, AFTER THE 911 CALL, THE DEFENDANT STAYS IN THE HOME AND CHANDRA BROWN TESTIFIES TO THIS, THAT THE DEFENDANT SAID I AM GOING TO GO AND WAIT 24 HOURS AT PUBLIX, AND IF I DON'T GET HIM, I AM GOING TO COME BACK AND GET YOU. THE MOTHER DID NOT TESTIFY AT THE GUILT PHASE. SHE TESTIFIED AT THE PENALTY. THE ONLY TESTIMONY WE HAVE IS DARONDA BROWN, WHO SHARED A BEDROOM WITH THE VICTIM.

THE STATE'S EXPLANATION TO THE VICTIM WHAT IS THAT JEALOUSY WAS THE MOTIVE?

BOTH.

WE WILL LOOK AND SEE ARGUED THIS THIS TRANSCRIPT THAT HE MURDERED HER BECAUSE HE WAS JEALOUS. IS THAT AN ARGUMENT THAT THE STATE MADE?

IT IS COMBINED WITH THE ARGUMENT, YES. IT IS IN THE RECORD.

BEING THAT IS THE CASE, WHY DOESN'T THE STATE TRY TO GET IN THE NATURE OF THEIR PRIOR RELATIONSHIP? IN OTHER WORDS RATHER THAN JUST SAY, WELL, HE IS ON PRONATION -- PROBATION FOR AMENDMENTED SEXUAL BATTERY, RATHER THAN HE WAS ON PROBATION, WHY WASN'T JEALOUSY THE ISSUE, THE NATURE OF THE RELATIONSHIP, OVER A SEVERAL-YEAR PERIOD OF TIME, WOULD BE SOMETHING THAT THE STATE WAS SEEKING TO PUT INTO EVIDENCE IN THE GUILT PHASE?

THE STATE DID. AND DARONDA BROWN TESTIFIED HOW THE DEFENDANT WAS VERY POSSESSIVE AND PROTECTIVE OVER THE VICTIM AND HOW HE LISTENED TO HER TELEPHONE CALLS. TROY VERNON TESTIFIED, THE NEXT-DOOR NEIGHBOR, THAT HE WAS TOLD "DON'T HAVE SEX WITH THE VICTIM". AND IT IS EVIDENCE. PATRICK ALLEN DROPPED HER OFF, AND THE DEFENDANT IS UPSET THAT BOYS WERE DROPPING HER OFF.

BEING THAT YOU HAD THAT EVIDENCE, WHY WOULDN'T IT HAVE BEEN ENOUGH, GETTING IN THE ISSUE THAT HE WAS ON PROBATION, WOULDN'T IT BE ENOUGH, SEEING THAT THERE IS REMOTENESS AND THAT THERE IS NO PROOF THE SEXUAL RELATIONSHIP CONTINUED FOR A THREE-YEAR PERIOD BEFORE THIS MURDER, THAT IT WOULD BE SPECULATIVE AND INFLAMMATORY FOR THE JURY TO HEAR ANYTHING, OTHER THAN HE WAS ON PROBATION, AND THEN THAT WAS ANOTHER MOTIVE FOR THIS MURDER, SEPARATE FROM THE FACT THAT IT WAS ABOUT A LONG-TERM RELATIONSHIP WITH THIS VICTIM. DO YOU UNDERSTAND WHAT I AM SAYING? IN OTHER WORDS --

YES, I DO. IT IS INEXTRICABLY INTERTWINED THROUGHOUT THE ENTIRE CONTEXT OF THIS RELATIONSHIP, FROM THE TIME THAT HE WAS ON PROBATION FOR THE VICTIMS SEXUAL BATTERY TO THE TIME THAT HE KILLED HER.

YOU SAID THAT ONE OF THE TERMS OF PROBATION WAS THAT HE COULDN'T HAVE CONTACT WITH HER. THAT WAS IN THE GUILT PHASE?

YES.

AND THAT HE REPEATEDLY WAS VIOLATING THAT.

YES, AND DARONDA BROWN TESTIFIED THAT, SINCE SHE HAD COME TO LIFE WITH THEM, THE DEFENDANT WAS ALWAYS LIVING THERE. HOWEVER, TWO NIGHTS BEFORE THE VICTIM WAS MURDERED IS THE FIRST TIME SHE EVER CALLED 911 ON HIM, AND IT IS THE FIRST TIME THAT THIS DEFENDANT WAS EVER THREATENED THAT SHE WAS GOING TO TELL SOMEONE THAT HE WAS VIOLATING PROBATION, SO IT PUTS THE ENTIRE CRIME IN CONTEXT, AS TO WHAT HAPPENED,

HOW IT HAPPENED AND WHY IT HAPPENED.

I AM STILL NOT SURE I UNDERSTAND HOW THE STATE WORKS THE NATURE OF THE CRIME HE WAS ON PROBATION FOR. AS PART OF IT. IN OTHER WORDS, IF I UNDERSTAND IT, THE STATE'S THEORY WAS THAT HE NOW FEARS THAT SHE WOULD BLOW THE WHISTLE ON HIM ABOUT VIOLATING PROBATION?

THAT IS PART OF THE STATE'S THEORY.

AND, WELL, WHAT WAS THE OTHER THEORY?

THE THEORY COINCIDES WITH THE THEORY, THROUGH TESTIMONY OF DARONDA BROWN AND TROY VERNON, THAT THIS DEFENDANT WAS POSSESSIVE OF THE VICTIM, SO HE ALWAYS HAD HAD CONTROL OF HER. HE HAD ALWAYS BEEN ABLE TO KEEP TRACK OF WHAT SHE WAS DOING. ALL OF A SUDDEN, NOW HE COULDN'T DO IT, AND ALL OF A SUDDEN HE IS THREATENED THAT HE IS GOING TO GET A PROBATION VIOLATION AND POSSIBLY SERVE LIFE IN JAIL.

> NOW, LET ME SEPARATE OUT AND ASK YOU TO SEPARATE OUT THIS OTHER MOTIVE OR THEORY FROM THE PROBATION VIOLATION THEORY. TELL ME, AGAIN, HOW -- WHAT THE SEPARATE THEORY IS?

WELL, IT IS A COMBINED THEORY. IT IS NOT SPRA. YOU NEED TO LOOK AT THEM -- IT IS NOT SEPARATE. YOU NEED TO LOOK AT THEM IN CONTEXT.

IT IS ALL SEPARATE TO THE PROBATION VIOLATION?

YES.

WHY, THEN, DO YOU NEED TO KNOW OR DOES THE JURY NEED TO KNOW OBVIOUSLY PREJUDICIAL EVIDENCE THAT COLORS THE CASE IMMEDIATELY, THAT THE THING HE WAS ON PROBATION FOR WAS SEXUAL BATTERY OR AMENDMENTED SEXUAL BATTERY AGAINST THE MINOR, THE VICTIM?

WELL, IT PUTS ANDOONDA BROWN AND TROY VERNON'S TESTIMONY IN CONTEXT, AS TO WHY HE ORDERED TROY VERNON NOT TO HAVE SEX WITH THE IS VICTIM AND THAT HE LISTENED IN ON THE PHONE CALLS SHE GOT.

HOW WAS THAT TESTIMONY GOTEN?

HE WAS STILL LIVING IN THE HOME AND STILL WAS CONTROLLING THE VICTIM.

BUT I AM TRYING -- HOW DOES IT PUT -- IS BEING CONCERNED ABOUT HER RELATIONS WITH OTHERS AND HIS POSSESSIVENESS --

IF SHE HAD RELATIONS WITH OTHERS, THERE IS ALSO A POSSIBILITY THAT SHE WOULD TELL HIM ABOUT HIS PROBATION VIOLATION, THAT SHE HAD HAD SEX WITH HER FATHER. THAT WAS THE REASONING BEHIND THE DEFENDANT. WE NEED TO REMEMBER THAT, TWO NIGHTS BEFORE THE MURDER, HE WAS SCREAMING AND YELLING AT HER, DID YOU TELL PATRICK ALLEN AND WHAT DID YOU TELL HIM AND WHAT DID HE KNOW, AND THE VICTIM WAS INSISTING THAT SHE DIDN'T TELL HIM ANYTHING. IF THE DEFENDANT WAS FEARFUL THAT HE WAS GOING TO BE VIOLATED ON HIS PROBATION AND SPEND LIFE IN JAIL, SO IT PUT --

THERE YOU ARE SAYING HE WAS FEARFUL THAT THESE OTHERS WERE GOING TO KNOW THAT HE HAD COMMITTED THE CRIME AGAINST THE VICTIM. ISN'T THAT RIGHT?

YES. AND THAT WOULD, THEN, GO TO SHOW THAT SOMEONE COULD TELL ON HIM, AND HE

WOULD BE VIOLATED ON HIS PROBATION. SO IT ALL LINKS TOGETHER. IT LINKS THE TESTIMONY OF THE TWO WITNESSES TO EXPLAIN WHY HE WAS ON PROBATION. HE HAD BEEN HARASSING THIS GIRL SINCE SHE WAS A CHILD, BEEN CONTINUING. HE HAD ALWAYS HAD CONTROL OVER THE VICTIM. SUDDENLY, TWO NIGHTS BEFORE, 911 IS CALLED. THERE IS A POSSIBILITY THAT OTHER PEOPLE KNOW. THIS DEFENDANT WANTED TO PROTECT HIS PROBATION STATUS. THE STATE, ALSO, PRESENTED TESTIMONY FROM THE PROBATION OFFICER, LISA WHITE, THAT HE WAS ON PROBATION AND HE WASN'T SUPPOSED TO BE HAVING CONTACT WITH THE VICTIM, SO THERE WAS ENOUGH EVIDENCE PRESENTED TO SHOW HE WAS ON PROBATION. HE WAS VIOLATING HIS PROBATION BY LIVING IN THE HOME. HE DIDN'T WANT ANYBODY TO KNOW HE WAS VIOLATING HIS PROBATION, IF HE CONTINUED TO TRY AND CONTROL THE VICTIM BY NOT ALLOWING HER TO HAVE RELATIONSHIPS WITH OTHER BOYS AND NOT ALLOWING HER TO SPEAK WITH TROY VERNON NEXT DOOR.

WHAT DID THE STATE ARGUE, IN CLOSING, ABOUT THE FACT THAT THE NATURE OF THE VIOLATION WAS FOR ATTEMPTED CAPITAL SEXUAL BATTERY. WHAT DID THEY SAY ABOUT THE NATURE OF THE CRIME THAT HE WAS ON PROBATION FOR, LINKING IT UP TO THE MURDER? WAS THERE AN ARGUMENT MADE IN CLOSING, CONCERNING THAT?

YES. IN CLOSING, THE ARGUMENT WAS THIS DEFENDANT WAS ON PROBATION FOR ATTEMPTED CAPITAL SEXUAL BATTERY ON THE VICTIM. HE HAD BEEN -- HAD BEEN TERRORIZING THIS VICTIM SINCE SHE WAS A CHILD AND CONTINUED TO HAVE CONTROL OVER THE VICTIM, AS WE CAN SEE THROUGH THE TESTIMONY OF ANDRONDA BROWN AND TROY VERNON.

AND THAT WAS THE STATE'S TESTIMONY.

YES.

LET ME TURN TO ONE PART OF THE JUDGE'S ORDER, AND I GO BACK TO MY CONCERN ABOUT WHERE THE UNDERLYING EVIDENCE IS THAT, ABOUT WHAT WAS HAPPENING OUT THERE, WHEN THE VICTIM WAS HIT BY THE CAR, AND THE COURT, THE TRIAL COURT SAID THAT IT IS CLEAR THAT THIS RIDE TURNED AGAINST KEINYA SMITH'S WILL, WHEN SHE JUMPED OUT OF THE DEFENDANT'S MOVING CAR. NOW, ONE, WHAT EVIDENCE IS THERE FROM WHICH THERE COULD BE A REASONABLE INFERENCE THAT SHE WAS INVOLUNTARILY IN THIS CAR?

FRIDAY NIGHT THE VICTIM HAD A PROBLEM WITH THE DEFENDANT. HE THREATENED THAT HE WAS GOING TO WAIT AT PUBLIX 24 HOURS TO GET PATRICK ALLEN. IF HE DIDN'T GET HIM, HE WAS GOING TO GET KEINYA. KEINYA DID NOT GO TO WORK ON SATURDAY BECAUSE SHE WAS AFRAID. THAT WAS TESTIFIED TO BY ANDRONDA BROWN. SUNDAY KEINYA WENT TO WORK, AND PATRICK ALLEN TESTIFIED THAT HE SAW THE DEFENDANT'S CAR OUTSIDE OF PUBLIX AT SIX O'CLOCK.

WASN'T THERE TESTIMONY THAT HE SAW, BY ALLEN, THAT HE SAW HER GOING TOWARD THAT CAR?

YES. PATRICK ALLEN TESTIFIED THAT HE SAW HER --

NO PHYSICAL -- SHE WASN'T BEING MADE TO GO TOWARDS THE CAR. SHE WAS GOING TOWARDS THE CAR.

THERE IS ABSOLUTELY NO TESTIMONY WHETHER SHE WAS GOING TO GET IN THE CAR OR WHETHER SHE DIDN'T. HOWEVER, THE VICTIM WAS BEING DRIVEN 30 MILES AWAY FROM WHERE SHE LIVED, SO EVEN IF SHE GOT IN THE CAR VOLUNTARILY, WHICH, BASED ON THE TESTIMONY FROM THE WITNESS, FROM ANDRONDA BROWN ABOUT THE VICTIM NOT WANTING TO GO TO WORK BECAUSE SHE WAS AFRAID THE DEFENDANT WAS GOING TO BE THERE, THE INFERENCE IS SHE WOULD UNLIKELY VOLUNTARILY GOTTEN IN THE CAR, HOWEVER, EVEN IF SHE HAD VOLUNTARILY GOTTEN IN THE CAR DRIVING 30 MILES AWAY FROM THE HOME, THE VICTIM

JUMPED FROM THE CAR, BECAUSE SHE HAD TO KNOW THAT SHE WASN'T GOING WHERE SHE WAS SUPPOSED TO.

HOW DO YOU KNOW THAT SHE JUMPED OUT OF THE CAR? WHO TESTIFIED THAT THEY SAW HER JUMP OUT OF THE CAR?

THERE WAS NO TESTIMONY THAT SHE JUMPED OUT OF THE CAR, YET THERE WAS NO OTHER EXPLANATION FOR HOW SHE GOT OUT OF THE CAR, SMACKED HER HEAD ON THE STREET, LEAVING SCALP IN THE ROADWAY, AND THEN SOMEHOW GETTING TO THE MEDIAN. IT IS THE ONLY REASONABLE INFERENCE THAT SHE WAS AFRAID OF THE MAN AND SHE WANTED TO GET AWAY FROM HIM, AND THAT WAS THE STATE'S THEORY AND THERE WAS NO OTHER EVIDENCE AS TO ANY OTHER WAY OF HER GETTING OUT OF THE CAR.

WITNESSES ON 27 DID NOT SEE THE BODY LEAVE THE VEHICLE? ANOTHER TWO WITNESSES AT TRIAL, YES, AMELIA STRINGER AND JOHN GOUDY.

DID OR DID NOT.

THEY DID NOT SEE HER JUMP OUT OF VEHICLE.

WHAT WAS THE EVIDENCE OF KIDNAPING?

THE EVIDENCE OF KIDNAPING IS THAT SHE WOULD NOT HAVE VOLUNTARILY GOTTEN IN THE CAR WITH THIS DEFENDANT WHETHER LEAVING PUBLIX, BECAUSE SHE WAS SO AFRAID TO GO TO WORK ON SATURDAY, HOWEVER, EVEN IF SHE GOT IN VOLUNTARILY, THE FACT THAT SHE WAS DRIVING 30 MILES AWAY FROM HER HOME, THERE WAS NO REASON FOR HER TO GO 30 MILES AWAY FROM HER HOME WITH THIS DEFENDANT, WHO SHE WAS AFRAID OF.

DOES THAT REALLY PROVE KIDNAPING?

WE HAVE --

WASN'T THERE EVIDENCE THAT THIS DEFENDANT REGULARLY PICKED HER UP FROM WORK?

YES, THERE WAS. HOWEVER, THIS DEFENDANT HAD NORMALLY BEEN LIVING IN THE HOME ALSO. ANDRONDA BROWN SAID FRIDAY NIGHT AFTER THE INCIDENT, THIS DEFENDANT NEVER CAME HOME AGAIN, AND THIS VICTIM WAS AFRAID TO GO TO WORK ON SATURDAY BECAUSE SHE DIDN'T WANT TO SEE THE DEFENDANT. SHE DIDN'T WANT TO GET IN THE CAR WITH HIM. SHE DIDN'T WANT TO BE NEAR HIM, BECAUSE HE HAD THREATENED HER --

HOW WAS SHE GOING TO GET HOME THIS PARTICULAR EVENING IF SHE WASN'T KILLED?

THERE NO TESTIMONY TO THAT. THERE WAS IN THE PENALTY PHASE SOME TESTIMONY ABOUT HOW SHE WAS GOING TO GET THERE AND GET BACK. THERE WAS SOME TESTIMONY ABOUT A COUSIN WAS COMING TO PICK HER UP AND THAT WAS REALLY IT. OTHER THAN THAT, THERE WAS NEVER ANY TESTIMONY ABOUT HOW SHE WAS TO GET HOME FROM PUBLIX THAT NIGHT.

BUT THERE WAS TESTIMONY THAT THIS DEFENDANT REGULARLY PICKED HER UP FROM WORK?

YES, THERE WAS. HOWEVER, ON THIS INSTANCE, THIS VICTIM DIDN'T WANT TO SEE HIM. SHE DIDN'T WANT TO GO TO WORK ON SATURDAY, BECAUSE SHE WAS AFRAID THAT HE WOULD BE THERE LIKE HE PROMISED.

THERE WAS EVIDENCE THAT THERE WAS -- WHAT WAS ON THE SIDE OF THE ROAD TO INDICATE THAT SHE HAD EITHER JUMPED OUT OR WAS PUSHED OUT OF THE CAR?

THE CRIME SCENE WAS UNUSUAL. THERE WAS CLOTHING ON BOTH SIDES OF ROAD. IT WASN'T CONSISTENT WITH A NORMAL HIT AND RUN ACCIDENT. THERE WAS NAME TAGS AND AN I.D. FROM PUBLIX ON ONE SIDE AND ONE OF HER SNEAKERS WAS ON ONE SIDE OF ROAD, AND THEN AT SOME POINT THE VICTIM GOT INTO THE MEDIAN SIDE, WHERE THEY FOUND OTHER PIECES OF HER CLOTHING, HER OTHER SHOE, A WATCH. I BELIEVE THERE WAS SOME OTHER PIECES OF CLOTHING AND OTHER PARTS AND PIECES OF NAME TAGS AND THINGS LIKE THAT ON BOTH SIDES OF THE ROAD, SO IT WAS TESTIFIED TO BY THE OFFICERS THAT THEY FOUND HER CLOTHING, EVIDENCE FROM THIS VICTIM, ON BOTH SIDES OF THE ROAD.

AT APPROXIMATELY THE SAME LOCATION.

YES.

WAS THE DEFENDANT'S CARRIED FIED BY THE WITNESSES? -- CAR IDENTIFIED BY THE WITNESSES?

AMELIA STRANGER AND -- AMELIA STRINGER AND JOHN GOUDY COULDN'T TESTIFY EXACTLY ABOUT THE CAR. HOWEVER, THEY SAID IT WAS A DARK CAR IN JANUARY AT 7:00 P.M., SO THERE WAS EVIDENCE THAT IT WAS A DARK CAR, MAYBE BLACK, GRAY OR BLUE. HOWEVER, THERE WAS EVIDENCE LINKING THE DEFENDANT'S CAR TO THE LOCATION. THERE WAS A FIBER UNDERNEATH, WHICH MATCHED THE FIBER ON THE PANTS THAT KEINYA WAS WEARING THAT DAY. WE HAVE THE SPLASH PAN, THE UNDER CARRIAGE. THE GREASE WAS WIPED AWAY. WE HAVE THE COILS FROM THE BOTTOM OF THE CAR THAT ARE CONSISTENT WITH TWO COIL MARKINGS MADE ON HER JACKET. SO IT LINKS THE DEFENDANT'S CAR TO THAT VICTIM. WAS THERE A TIRE?

THERE WAS A TIRE IMPRINT AT THE LOCATION WHERE THE BODY WAS FOUND. ONE OF THE TIRE I AM PRINTS MATCHED THE TIRE, ONE OF THE TIRES THAT WAS ON THE -- TIRE IMPRINTS MATCHED THE TIRE, THE IMPRINT THAT WAS ON THE CAR. WE HAVE THE TESTIMONY OF JOHN GOUDY AND AMELIA STRINGER THAT IT LOOKED LIKE THE CAR THAT WAS ON US 27 THAT NIGHT. SO IT GOES TO SHOW THAT ALL OF THE EVIDENCE GOES TO LINK THIS DEFENDANT TO THIS CRIME, THE COLLATERAL CRIME AND THE -- THE CHROLRAL -- THE COLLATERAL CRIME AND THE CIRCUMSTANTIAL EVIDENCE. THE JUDGE GAVE THE JURY A CIRCUMSTANTIAL CHARGE. TRIAL COUNSEL WENT ON WITH HIS CLOSING ARGUMENT. NO OTHER ARGUMENTS WERE OBJECTED TO BY DEFENSE COUNSEL AND, AGAIN AT PENALTY PHASE, THERE WAS NOT ONE OBJECTION MADE DURING THE CLOSING ARGUMENTS. MOREOVER, WITH RESPECT TO THE REDUCTION OF THE CRIME TO SECOND-DEGREE MURDER, THE WITNESSES TESTIFIED THAT HE MADE TWO U TURNS, SO HE WENT BY THE BODY ONE TIME AND THEN CAME BACK AND RAN OVER THE BODY, WITHOUT HITTING HIS BRAKES AT ANY TIME, WITH THE VICTIM SITTING UP AND THE EYEWITNESSES TESTIFIED THAT HE GOT IMMEDIATELY INTO TRAFFIC AND SPED AWAY.

WHAT IS YOUR RESPONSE TO THE ARGUMENT ABOUT THE PRIOR VIOLENT FELONY, THAT IT WAS FOR ATTEMPTED SEXUAL BATTERY, BUT THAT UNDER THE DONALDSON CASE IT WAS ERROR, FOR THERE TO BE TESTIMONY ABOUT HIM HAVING ACTUALLY COMPLETED THE SEXUAL BATTERY?

THE TRIAL JUDGE FOLLOWED THE LAW IN THIS CASE. HAD HE TO MAKE SURE THE EVIDENCE WAS PRESENTED, THAT THIS CRIME HAD VIOLENCE OR THE THREAT OF VIOLENCE, SO WE HAD THE TESTIMONY OF THE VICTIM'S MOTHER AND THE TESTIMONY OF THE OFFICER WHO INVESTIGATED THE CRIME AS TO WHAT THE VICTIM TOLD HIM ABOUT THE SEXUAL BATTERY, THAT SHE HAD BEEN PINNED DOWN AND HE FORCIBLY PENETRATED HER. WHEN THE DEFENDANT GOT ON THE STAND AT PENALTY, HE SAID I PLED TO ATTEMPTED CAPITAL SEXUAL BATTERY SO I WOULDN'T BE IN PRISON. HE ALSO SAID HE PENETRATED THE VICTIM. SO WE HAVE THE EVIDENCE FROM THE DEFENDANT. WE HAVE THE EVIDENCE FROM THE POLICE OFFICER WHO INVESTIGATED THE CRIME, AND WE HAVE EVIDENCE FROM THE VICTIM'S MOTHER THAT THIS WAS CRIME OF FORCE. THEREFORE THE PRIOR VIOLENT FELONY AGGRAVATOR IS SUPPORTED. AT THIS TIME, THE STATE WOULD REQUEST, RESPECTFULLY REQUEST THAT HAD COURT AFFIRM THE CONVICTION AND

SENTENCE.

THANK YOU. COUNSEL. MR. GREEN. REBUTTAL?

YES. THE MEMBERS OF THE COURT ASKED WHAT DID THE PROSECUTOR ARGUE, AS TERMS OF MOTIVE FOR THIS CASE. IN THE STATE'S CLOSING ARGUMENT, IN THE GUILT PHASE, FROM 2266-TO-68, HE SPECIFICALLY ARGUES THE MOTIVE OF THE VIOLATION OF PROBATION. HE DOES NOT ARGUE THE JEALOUSY MOTIVE. SO I THINK WHAT HAPPENED HERE IS EXACTLY WHAT JUSTICE PARIENTE WAS ASKING ABOUT, THAT THE STATE THROUGH THE PROBATION OFFICER'S TESTIMONY, THROUGHOUT THE EVIDENCE OF THE SEXUAL CONTACT AND THEN IT WAS JUST LEFT OUT THERE, AS A RED HERRING, EVEN THOUGH IT WAS UNDISPUTED THAT THE SEXUAL ACTIVITY HAD ENDED THREE YEARS EARLIER.

WHAT ABOUT THIS TESTIMONY THAT WAS DISCUSSED ABOUT THE POSSESSIVENESS AND THE RELATIONSHIP? WAS THAT NOT PART AND PARS SNELL.

HE WAS HER STEPFATHER AND WAS LIVING THERE, AND SHE WAS A TEENAGED GIRL, AND THE MOTHER TESTIFIED THAT SHE WAS POSSESSIVE, TOO. THEY WERE BOTH CONCERNED ABOUT WHO SHE WAS SEEING, WHEN SHE GOT HOME. ON THE NIGHT OF THIS ANGRY --

I THOUGHT I UNDERSTOOD THAT THE MOTHER DID NOT TESTIFY DURING THE GUILT PHASE.

I AM SORRY. THAT IS TRUE. SHE TESTIFIED IN THE PENALTY ONLY. I AM SORRY. SHE TESTIFIED IN THE PENALTY ONLY. THERE WAS NO TESTIMONY IN GUILT PHASE THOUGH. THE ONLY TESTIMONY IN GUILT PHASE WAS DARONDA BROWN, WHO SAID HE WAS CONCERNED ABOUT HER PHONE CALLS AND SEEING BOYS, BUT THAT COULD HAVE, SINCE HE WAS HER STEPFATHER AND WAS LIVING THERE AND IN A QUASI PARENTAL ROLE, THAT --

WHAT ABOUT WHAT HE SAID TO HER THE NIGHT SHE WAS WITH ALLEN, WHICH IS WHAT DID YOU TELL HIM? WHAT ABOUT THOSE COMMENTS?

DID YOU TELL HIM ANYTHING. NUMBER ONE, HE WAS ANGRY BECAUSE HE HAD SHOT AT -- ALLEN HAD SHOT AT HIM, SO THAT WAS KIND OF UNDERSTANDABLE HE MIGHT BE CONCERNED WHAT WAS GOING ON, AND DID YOU TELL HIM ANYTHING, AGAIN COULD GO TO THE VIOLATION OF PROBATION, TO THE FACT THAT HE WAS GIVING HER RIDES HOME AND HE WAS IN THE HOME. IT DIDN'T NECESSARILY GO -- IT IS ALSO INTERESTING THAT, WHEN THE JUDGE FOUND THE AVOID-ARREST AGGRAVATOR, HE SPECIFICALLY FOUND THAT, HE HAD TO, BY LAW, FIND THAT THE DOMINANT OR ONLY MOTIVE FOR THIS OFFENSE WAS TO ELIMINATE HER AS A WITNESS TO A VIOLATION OF PROBATION, WHICH IS A DIFFERENT MOTIVE THAN THE JEALOUSY MOTIVE, SO I THINK THIS JEALOUSY IS INCONSISTENT WITH THE TRIAL JUDGE'S FINDINGS ON ONE OF THE AGGRAVATORS. ONE OTHER COMMENT --

IS IT IMPOSSIBLE TO HAVE BOTH OF THOSE AS THE MOTIVE FOR THIS MURDER?

IT IS NOT IMPOSSIBLE, BUT THE AVOID-ARREST AGGRAVATOR HAS TO BE THE DOMINANT OR ONLY MOTIVE.

BUT HE DIDN'T SAY THAT, AND, BUT THAT DOESN'T MEAN THAT HE DID NOT HAVE THE MOTIVE OF, ALSO WHILE ONE COULD BE DOMINANT, AND THAT IS THE AVOID ARREST, IT DOESN'T NEGATE THE FACT THAT HE WAS ALSO JEALOUS AND POSSESSIVE AND DIDN'T WANT HER SEEING OTHER PEOPLE.

BUT THAT IS NOT WHAT THE STATE ARGUED TO THE JURY.

I AM ASKING YOU. IF YOU HAVE EVIDENCE THAT WOULD SUPPORT THAT, DOES IT NEGATE, ONE

OR THE OTHER DOESN'T NEGATE THE OTHER, RIGHT?

DOESN'T TOTALLY NEGATE. IT MAKES IT FAR LAST LIKELY, AND I DISAGREE THAT THE EVIDENCE SUPPORTS IT. THE EVIDENCE COULD HAVE BEEN A NORMAL STEPFATHER CONCERNED ABOUT A TEENAGED GIRL. IT DOESN'T NECESSARILY SHOW A SEXUAL CONCERN. A BRIEF POINT ABOUT THE EVIDENCE OF GUILT IS IT IS VERY IMPORTANT TO NOTE THAT THE TWO PEOPLE IN THE CAR, JOHN GOUDY AND AMELIA STRINGER, JOHN GOUDY SPECIFICALLY TOLD THE POLICE THAT IT WAS A GRAY FOUR-DOOR CAR. MR. ANDERSON'S CAR WAS A BLUE TWO-DOOR CAR, SO HIS ORIGINAL, ONE OF THE TWO WITNESSES' ORIGINAL DESCRIPTION OF THE CAR IS INCONSISTENT WITH MR. ANDERSON'S CAR. WHEN HE WAS ORIGINALLY SHOWN A PICTURE OF MR. ANDERSON'S CAR, HE SAID, NO, NO, IT WAS GRAY. LATER ON HE SAID IT COULD HAVE BEEN HIS CAR, BUT HE ORIGINALLY SAID, AND THERE IS A FHP OFFICER TESTIFIED THAT HE GOT A CALL FIVE DAYS AFTER THE CRIME, AGAIN REITERATING A GRAY FOUR-DOOR CAR. MR. CHIEF JUSTICE: THANK YOU, MR. GREEN. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.