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Eric Simmons v. State of Florida

MARSHA L: PLEASE RISE. PLEASE BE SEATED.

CHIEF JUSTICE: BEFORE WE CALL THE LAST CASE ON THE CALENDAR , I WOULD LIKE TO ACKNOWLEDGE CERTAIN VERY SPECIAL VISITORS THAT WE HAVE TODAY IN OUR COURTROOM. FIRST OF ALL TO MY RIGHT , I WOULD WELCOME ON BEHALF OF THE COURT , THE STUDENTS FROM THE TAMPA HILLSBOROUGH COUNTY YOUTH COUNCIL . WE HAVE VARIOUS HIGH SCHOOLS AND SELECTED FOR THIS VISIT ON THEIR EXCELLENT ACADEMIC RECORD, AND THEY ARE ESCORTED BY MRS. RENE COCROFT. THAT IS THE FIRST GROUP , AND RAISE YOUR HANDS OVER THERE. ALL RIGHT. OKAY. ALL RIGHT . THE SECOND GROUP , ALSO ON THE RIGHT , ARE STUDENTS FROM HILLSBOROUGH COUNTY WHO , AND THIS IS REALLY REMARKABLE , I COMMEND EACH OF YOU , AFTER PARTICIPATION IN AFTER-SCHOOL PROGRAM SPONSORED BY THE RED LAND CHRISTIAN MIGRANT ASSOCIATION , EXCEL ACADEMICALLY BY EARNING A 3.5-PLUS G.P. A. , THIS POST GRADUATION PERIOD . CONGRATULATIONS TO ALL OF YOU AND WE HOPE YOU CONTINUE WITH THAT EXCELLENCE TODAY AND TODAY THEY ARE ESCORTED BY THEIR TEACHER OR ESCORT , TONY VALDEVANAS. THIS GROUP , THANK YOU AND CONGRATULATIONS TO YOU. AND LASTLY TO MY LEFT FROM THE BROWARD COUNTY PUBLIC SCHOOLS, WE UNDER EACH OF YOU RECENTLY PARTICIPATED IN AND WERE WINNERS IN THE ANNUAL PRESIDENT'S ESSAY AND ART CONTEST, AND THEY ARE ESCORTED BY MR. JOEL VOSS, AN ATTORNEY FROM BROWARD COUNTY. WE THANK YOU FOR BEING HERE , AND WITH THAT WE WILL HEAR OUR LAST CASE, WHICH IS , I KNOW I HAVE IT HERE. GET MY NOTES. SIMMONS VERSUS STATE OF FLORIDA.

MAY IT PLEASE THE COURT. MY NAME IS JANIS ORR. IT IS WITH GREAT HONOR THAT I REENTER I CAN SIMMONS. IT IS ALSO IT IS WITH GREAT HONOR THAT I REENTER I CAN SIMMONS AND ALSO WITH THAT I REPRESENT ERIC SIMMONS . IT IS AN HONOR TO APPEAR BEFORE YOU . BUT WE MUST BE HERE TODAY TO BRING CREDIT TO THE ERRORS IN THE SYSTEM OF JUSTICE . WITH TIME PERMITTED TODAY

MISS ORR , ARE YOU WITH THE PUBLIC DEFENDERS OFFICE? OR ARE YOU AN INDEPENDENT ATTORNEY ?

YES. WERE YOU HIRED BY THE DEFENDANT IN THIS CASE? MORE OR LESS THE FAMILY. THEY FELT THIS CASE NEEDED ASSISTANCE.

SINCE YOU HAVE BEEN INTERRUPTED ALREADY , ONE OF THE ISSUES THAT YOU DISCUSSED THROUGHOUT YOUR BRIEF, REALLY, IS THE SUFFICIENCY OF THE EVIDENCE ISSUE.

YES, SIR.

WOULD YOU, AND I ASSUME YOU INTEND TO ADDRESS THAT HERE TODAY.

YES, SIR.

BY YOUR , WOULD YOU TAKE THE ELEMENTS OF THE CRIME OF FIRST-DEGREE MURDER AND TELL US WHICH ELEMENT YOU FEEL WAS NOT PROVEN IN THIS PARTICULAR CASE, OR WHICH THERE WASN'T SUFFICIENT EVIDENCE PRESENTED TO THE JURY , YOU KNOW, WHICH RENDERED A VERDICT OF GUILTY , SO WOULD YOU TAKE IT ELEMENT BY ELEMENT , FOR US ,

AND THEN DEMONSTRATE IN YOUR VIEW AND THROUGH YOUR ARGUMENT , WHERE THE PROOF WAS NOT THERE FOR A PARTICULAR ELEMENT.

I THINK THE

I THINK THE ARGUMENT GOES TO THE SEARCH ISSUES , WHICH WERE PREVALENT , BUT THOSE ISSUES DEAL WITH THE SEARCH ISSUE , AND HOWEVER WE GOT THERE

YOU CAN FAIRLY ADDRESS THE MOTIONS TO SUPPRESS , BUT ASSUME FOR RIGHT NOW THAT THE EVIDENCE THAT WENT IN WHERE THE JUDGE DENIED THE MOTION TO SUPPRESS , WAS VALID EVIDENCE , WOULD YOU POINT OUT TO US , I MEAN, DO YOU STILL HAVE AN ARGUMENT THEN?

YES, SIR.

ON THE SUFFICIENCY OF EVIDENCE?

YES.

WHAT IS THAT?

THE ISSUES ON THAT POINT ARE , SIR , THE ONLY REAL HARD EVIDENCE THAT THEY HAD , PHYSICAL EVIDENCE , WAS THE SUCCEED CUS HION . THERE WERE SLIGHT , THERE WAS NO CONNECTION BETWEEN , LET ME START THIS OVER. THERE ARE THREE DIFFERENT CASES. IF YOU WANT , DO YOU SPECIFICALLY WANT THE HOMICIDE?

LET US START WITH THE PROPOSITION , THERE IS NO QUESTION IN THIS CASE THAT THERE WAS A VICTIM , IS THAT CORRECT?

YES.

SO YOU ARE NOT CHALLENGING THE FACT THAT THERE WAS A KILLING.

OF COURSE.

AND THAT IT WAS A HOMICIDE.

YES.

IS THAT CORRECT?

YES.

ALL RIGHT. NOW, IF I UNDER IT CORRECTLY , THE STATE FIRST OF ALL , HAD EVIDENCE FROM SEVERAL WITNESSES THAT YOUR CLIENT'S AUTOMOBILE WAS SPOTTED AND IDENTIFIED BY THESE WITNESSES THAT HAD NO OTHER CONNECTION , TO THE CASE , UNDER CIRCUMSTANCES IN WHICH APPARENTLY THE VICTIM WAS INSIDE AND ATTEMPTING TO GET OUTSIDE , AND ASKING FOR HELP. LET'S JUST TAKE THAT PIECE OF EVIDENCE , YOU KNOW

THERE WAS JUST

GO AHEAD. WAS THERE , WAS THAT EVIDENCE PRESENTED BY THE STATE?

THAT EVIDENCE WAS PRESENTED. THE PROBLEM WITH THAT EVIDENCE IS THERE WAS ONLY ONE WITNESS WHO ACTUALLY CLAIMS THAT SHE SAW THE VICTIM FROM THE VICTIM , THE PERSON WHO SHE SAW , THE DESCRIPTION DID NOT MATCH THE VICTIM AT THE TIME THAT SHE MADE THE REPORT . NOR DID THE DESCRIPTION OF THE VEHICLE.

BUT WE END UP , INSOFAR AS CREDIBILITY AND EVALUATIONS LIKE THAT THAT DRAW LINES, THAT IS ALL FOR A JURY TO SORT OUT, IS IT NOT?

CORRECT.

SO HERE WE HAVE TO , REALLY , TAKE THE CASE IN THE LIGHT MOST FAVORABLE TO THE STATE, WHO PREVAILED IN THIS CASE, ACCORDING TO THE JURY. RIGHT?

DE NOVO REVIEW YOU DO N'T HAVE TO

SO NOW WITH THE JURY HAVING SEND THE TESTIMONY OF , FIRST OF ALL , THE ONE WITNESS THAT IDENTIFIED THE VICTIM ATTEMPTING TO GET OUTOF THE DEFENDANT'S CAR , AND THEN AN OTHER WITNESS, WHO, ALSO, IDENTIFIED THE DEFENDANT'S CAR AT THE SAME LOCATION, AND IDENTIFIED THAT THERE WAS A WOMAN ATTEMPTING TO ESCAPE FROM THE AUTOMOBILE AT THAT TIME. IS THAT CORRECT?

YES.

OKAY.

AND THAT WOMAN, AS THAT WOMAN WAS IDENTIFIED , WAS WEARING WHITE , SPECIFICALLY A WHITE T- SHIRT .

WELL , SEE, AGAIN, WHAT YOU ARE POINTING OUT TO US , ARE ISSUES FOR THE FACT FINDER TO SORT OUT. THAT IS WHY I AM HAVING SOME DIFFICULTY , LET ME OPEN THE QUESTION AGAIN. WHAT , IN TERMS OF THE ELEMENTS OF HOMICIDE , FIRST-DEGREE MURDER , WHAT ELEMENT IS IT THAT YOU ARE CONTENDING WAS NOT PROVEN IN THIS CASE?

YOUR HONOR , I BELIEVE THAT THE ISSUE IS THE FACT THAT THE EVIDENCE THAT WAS PRESENTED , WAS NOT , THE FACT THAT THE JURY BOUGHT IT , IS FINE , BUT I DON'T BELIEVE THAT YOUR REVIEW NEEDS TO BE STRICTLY LIMITED AS TO WHETHER OR NOT THEY COULD CONCEIVABLY GET THERE. THEY OBVIOUSLY CONCEIVABLY COULD BECAUSE THEY DID. I DON'T BELIEVE THAT THAT MAKES THE EVIDENCE SUFFICIENT ON YOUR REVIEW. AND IF I AM IN ERROR ON THAT , I APOLOGIZE , BUT I THOUGHT THAT YOUR REVIEW IS A DE NOVO REVIEW , IN WHICH CASE YOU LOOK AT THE EVIDENCE TO SEE WHETHER , IN FACT, THERE IS SUBSTANTIAL EVIDENCE

IT IS NOT A DE NOVO REVIEW, IS IT , IN THE SENSE THAT WE HAVE TO TAKE THE CASE NOW THAT THE JURY HAS ADJUDICATED IT IN THE LIGHT MOST FAVORABLE ON THE STATE, DO WE NOT?

BUT I DON'T BELIEVE THAT YOU HAVE TO TAKE IT IN THE LIGHT MOST FAVORABLE TO THE STATE WITH BLINDERS ON , AND I THINK THAT IGNORING THE FACT THAT THE TESTIMONY WAS THAT SHE HAD ON WHITE WHEN SHE WAS IN THE CAR , WHOEVER THIS SHE WAS , WITH SHORT BROWN HAIR, IS NOT

WHO HAD TO DECIDE, THEN , WHETHER THAT WITNESS SAW

A JURY.

OR SAW SOMEBODY ELSE?

A JURY HAD TO MAKE THAT DETERMINATION.

WELL , SO AREN'T WE, THEN, TO TAKE IT , SINCE THE JURY FOUND YOUR CLIENT GUILTY, THAT THE JURY DECIDED THAT , YES , THAT WAS THE VICTIM?

I GUESS IN MY QUESTION , IS WHAT WOULD BE THE POINT IN YOUR REVIEWING IT , IF YOU JUST HAVE TO TAKE WHAT THEY SAID.

O KAY.

I BELIEVE THAT THERE IS A SERIOUS ISSUE THERE.

SO YOU WOULD HAVE US REEVALUATE THE EVIDENCE AND SUBSTITUTE OUR VIEW THAT WE WOULD CONCLUDE AS THE FACT FINDERS?

I DON'T THINK YOU WOULD HAVE TO SUBSTITUTE YOUR OPINION . I THINK YOUR FACTS SHOULD NOT SUBSTANTIATE THE JURY'S FINDINGS AND I THINK THAT IS THE ISSUE. THERE ARE TREMENDOUS LEGAL ISSUES THAT GO TO THAT AS WELL. HOWEVER, I THINK THAT YOU NEED TO TAKE A LOOK AT WHETHER OR NOT, FOR INSTANCE, THE FACT THAT THE IDENTIFICATIONS WERE SUCH THAT THEY WERE SO HIGHLY SUGGESTIVE THAT THEY , THEY WERE, THEY CHANGED TREMENDOUSLY, BETWEEN WHAT WAS ACTUALLY SEEN AT THE TIME AND WHAT WAS SEEN LATER. THE FACT THAT THE JURY WAS NOT PERMITTED TO HEAR THE DEFENSE EXPERT ON WHY WITNESS TESTIMONY , HOW THAT CAN HAPPEN, HOW THOSE CHANGES CAN OCCUR, I BELIEVE , WAS HIGHLY PREJUDICIAL ADDITIONAL TO THE DEFENSE PREJUDICIAL TO THE DEFENSE, BECAUSE THE JURY IS GOING TO JUST BELIEVE WHAT THEY HEAR IN COURT.

BUT THOSE ARE ALL SEPARATE ISSUES ON APPEAL , ARE THEY NOT?

YES, THEY ARE.

IT DOES NOT INCLUDE SUBSTANTIAL COMPETENT EVIDENCE AS TO WHETHER THE DEFENDANT COMMITTED THE MURDER?

I THINK THAT, BEGIN THE CHANGE IN THE IDENTIFICATION TESTIMONY , EVEN IF NOBODY SAW THE DEFENDANT IN THAT CAR WHICH WAS DESCRIBED BY BOTH WITNESSES AS A CORPORA , GIVEN THAT FACT AND NOBODY EVER SAW MR . SIMMONS IN THAT VEHICLE , AND SO THE PERSON THAT WAS SEEN WAS WEARING WHITE , SHE AT A MINIMUM, HAD TO GO CHANGE CLOTHES.

WE HAVE THE DEFENDANT'S CONFESSION, DON'T WE?

NO, SIR. THERE IS NO CONFESSION.

I GUESS IF YOU FOUND THE DNA, THEN , I DID IT , DIDN'T HE SAY SOMETHING TO THAT EFFECT?

NO. WHAT HE SAID APPARENTLY WHICH WAS NOT ON TAPE, BECAUSE THE LAW ENFORCEMENT OFFICERS SOMEHOW STOPPED TAPING THE INTERVIEW IN THE MIDDLE OF THE INTERVIEW , THE OFFICER'S TESTIMONY WAS THAT HE SAID, IF YOU FOUND BLOOD, I MUST HAVE DONE IT.

OKAY. ISN'T THAT ENOUGH OF A CONFESSION, ISN'T THAT DIRECT EVIDENCE OF GUILT THAT HE COMMITTED THE HOMICIDE ?

I DON'T BELIEVE THAT A SARCASTIC COMMENT WHICH THAT CLEARLY IS GIVEN , THE WAY IT IS STATED , CONSTITUTES A CONFESSION.

WHO DETERMINES WHETHER THAT IS A SARCASTIC COMMENT OR IT IS A LEGITIMATE CONFESSION? ISN'T THE JURY ENTITLED TO DETERMINE THAT THAT WAS A LEGITIMATE CONF ESSION AND THAT IN ITSELF IS SUBSTANTIAL COMPETENT EVIDENCE OF HIS GUILT?

THEY DIDN'T MAKE THAT DETERMINATION.

HE WAS THE LAST PERSON SEEN WITH HER , CORRECT ? THERE WAS EVIDENCE THAT HE WAS , Y
OUR CLIENT WAS THE LAST PERSON TO BE SEEN WITH THE VICTIM.

THERE WAS EVIDENCE TO THAT E FFECT .

AND HIS SIEMEN WAS FOUND IN HER AND HIS SEMEN WAS FOUND IN HER VAGINAL WASHINGS,
WHICH HE SAID THE LAST TIME THEY HAD HAD SEX WAS A COUPLE OF WEEKS BEFORE.

WHICH WAS TRUE AND IT WAS STIPULATED BY THE STATE THAT THAT HAD NO BE ARING ON THIS
CASE.

THE SEMEN THAT WAS FOUND HAD NO BEARING?

CORRECT. THAT IS NOT THE SEXUAL BATTERY.

SO THAT WAS NOT, ARE YOU TELLING US THAT THAT WAS NOT HIS SEMEN?

IT WAS HIS SEMEN. THE STATE STIPULATED DURINGTHE COUR SE OF THE TRIAL, THAT THE SEMEN
FOUND HAD NOTHING DO WITH THE SEXUAL BATTERY OR THE HO MICIDE OR ANYTHING. THERE
WAS NO ALLEGATION THAT THAT, THE SEXUAL CONTACT THAT THEY H AD HAD, HAD ANY
BEARING WHAT SOEVER

IT WAS ALLOWED INTO EVIDENCE. WHAT WAS THE REL EVANCE OF IT?

IN MY E YES, IT WAS NOT RELEVANT.

BUT YOU HAVE NOT RAISED THAT AS A SEPARATE ISSUE , THAT IT WAS ERRONEOUS TO
INTRODUCE HIS , THE FACT THAT THEY FOUND HIS SEMEN IN HER . IS THAT A SEP ARATE ISSUE?

I DID NOT MAKE THAT A SEPARATE ISSUE.

CAN I CLARIFY THAT? ARE WHAT YOU ARE SAYING IS, THE STATE STIPULATED THAT THEY COUL
DN'T PR OVE WHETHER THEY HAD CONS ENTUAL OR NONCONSENTUAL VA GINAL INTERCOURSE
THAT DAY .

NO. THEY SAID IT WAS CONSENTUAL INTERCOURSE SOMETIME PRIOR.

BUT UP TO WEEKS BEFORE THE SEMEN WAS FOUND IN THE VAGINAL YOU ARE SAYING THAT THE
STATE STIPULATED THAT THE SEMEN FOUND THEIR , T HEY COULD NOT DISTINGUISHWHETHER IT
WAS SEMFRIENDTHAT DAY OR THEREABOUTS OR AROUND THE TIME OF THE C RIME , VERSUS A
WEEK OR WEEKS EARLIER.

IT WAS NOT PUT I N THAT FASHION IS WHAT I AM SAYI NG.

THAT IS MY POINT IS , I THINK THE EVIDENCE OF THE SEXUAL BATT ERY HERE, WAS THE DAMAGE
TO HER RE CTUM .

CORRECT.

THAT IS WHERE THE PROOF OF THE , AS OPPOSED TO SEXUAL , VOLUNTARY SEXUAL
INTERCOURSE.

YES, SIR .

CHIEF JUSTICE: WE HAVE , OF COURSE, ALLOTTED 30 MINUTES AS WE NORMALLY DO , BUT WE
HAVE USED UP A LOT OF YOUR TIME.YOU SAID THAT THERE ARE MANY SUBSTANTIAL ISSUES,

AND, OF COURSE, WE HAVE READ YOUR BRIEF. ARE YOU GOING TO FOCUS, IN YOUR REMAINING TIME, ON ANY PARTICULAR ISSUES?

I THINK PARTICULARLY, OF IMPORTANCE WAS THE USE OF THE SEARCH WARRANT ON THE VEHICLE, AND THE MITOCHONDRIAL DNA USE. ALSO I BELIEVE THAT THE EXPERTS, BUT I DON'T BELIEVE I AM GOING TO HAVE TIME AND I BELIEVE I WOULD ADDRESS THAT IN MY BRIEF. AS TO THE ISSUE OF THE SEARCH WARRANT ON THE VEHICLE, ACCORDING TO FRANCE V DELAWARE, YOU TAKE OUT THOSE ITEMS WHICH ARE NOT PROPER. THE AFFIDAVIT FOR THE WARRANT ARE INCLUDED IN THE SUPPLEMENTAL RECORD IN VOLUME ONE AT PAGES 12-TO-14. IN THAT AFFIDAVIT, THERE ARE NUMEROUS ERRORS. IT SAYS THAT THE VEHICLE WAS LOCATED AT THE HOME OF MR. SIMMONS'S PARENTS. THEY ALLEGED THAT THE CAR WAS IN FACT, AT THE SHERIFFS OFFICE IN THE SALLY PORT, WHEN THE AFFIDAVIT WAS WRITTEN.

HOW DID THE VEHICLE GET TO THE SHERIFFS OFFICE IN THE FIRST PLACE?

THE SHERIFFS OFFICE TOWED IT.

AT WHAT POINT?

MR. SIMMONS WAS, I WOULD ALLEGE, TAKEN INTO CUSTODY, WHICH IS ANOTHER ONE OF THE ISSUES THAT I RAISED SO THAT THE ALLEGED CONFESSION WOULD NOT HAVE BEEN IN, ANYWAY, AT THAT POINT, WHILE HE WAS GONE, THEY LEFT A DEPUTY WITH THE CAR, AND IT WAS, AT SOME POINT LATER, THAT EVENING, TOWED TO THE SHERIFFS OFFICE.

AFTER THE SEARCH WARRANT WAS ISSUED?

THAT WAS MY CONTENTION, YES.

YOU ARE SAYING THAT THERE WERE SUBSTANTIAL MISSTATEMENTS IN THE AFFIDAVIT MISSTATEMENTS?

YES.

WHAT ARE THOSE? WHAT YOU END UP WITH IS A FRANK VERSUS DELAWARE, A SUBSCRIPTION, THE FACT AFTER DEATH, THE CAR, THE SUSPICIOUS DESCRIPTION, WHICH IS THE WAY THEY PUT IT IN THERE THE DESCRIPTION MATCHED THAT OF THE CAR AND THE CHEVY CORSICA TYPE OF CAR. THAT WAS THE FIRST TIME THAT THIS CORSICA CAME IN. IT WAS A POLICE-MADE STATEMENT, AND THEN A SHEET WITH NUMEROUS THINGS

WHY WOULD YOU TAKE OUT THE DESCRIPTION OF THE CAR? IT IS MY UNDERSTANDING THAT ONE OR OF TWO THE WITNESSES INDICATED THAT IT WAS THAT TYPE CAR.

THEY SAID IT WAS A CORSICA. THEY DIDN'T SAY THAT TYPE OF CAR. THEY SAID IT WAS A CORSICA AND ONE IN FACT, SPELLED IT.

SO CORSICA AS TO TYPE OF CAR

ALL ON THEIR OWN SPECIFICALLY DESCRIBED IT AS A CORSICA WITH NO IDENTIFYING FEATURES AND ABSOLUTELY AS A CORSICA, ONE EVEN SPELLED OUT CORSICA FOR THE OFFICER ON THE TAPE. AND THEY, YOU, THEN, END UP WITH A DESCRIPTION OF THE INCIDENT, A DESCRIPTION OF MR. SIMMONS'S CAR BY LICENSE PLATE AND VIN NUMBER, AND THE IDENTIFICATION OF THE VICTIM, WHICH IS NOT PROBABLE CAUSE FOR A SEARCH WARRANT. WITHOUT PROBABLE CAUSE YOU COULD BRING IN SOMETHINGSUCH AS THE CAROL DOCTRINE THAT WOULD APPLY, WHICH IS THE STATE BROUGHT THAT UP BECAUSE THEY WEREN'T TOO SURE

OF THE PROB ABLE CAUSEFOR THE SEARCH WARR ANT, I BELIEVE. THE CAROL DOCTRINE , I DON'T SEE HOW THAT IS APPLICABLE AT ALL. IF YOU HAVE QUESTIONS ON I T , I WOULD BE H A PPY TO ADDRESSTHEM. I DON'T SEE THAT THAT IS IN ANY WAY APPLICABLE. THERE WAS NO STOP. YOU HAVE TO HAVE PROBABLE CAUSE FOR THAT AS WELL.THERE WAS NO STOP.I DON'T SEE HOW CAROL APPLIES.

WHAT WAS AC TUALY SEIZED FROM THE VEHI CLE? IN OTHER WOR DS, IF WE WERE TO AGREE WITH YOU THAT THESEARCH OF THE VEHICLE WAS IMPROPER, WHAT , WAS , WHAT WAFSD OBTAINED FROM THEVEHICLE?

WHAT EVIDENCE WAS OBTAINED FROM THE VEHICLE?

THERE WERE SOME SLIGHT DROPPINGS , SLIGHT B LOOD SPECS , ONE MIXED IN S LIGHT BL OOD S PECKS , AND ONE MIXED IN WITH DOG SAL I H AVE.

AND THAT WAS SALIVA .

AND THAT WAS FOUND IN THE SEAT CUSHION?

YES AND THE DNA , WHICH WAS THE MIGHTCHONDRIAL ISSUE.

AND THAT ISSUE WAS WHETHER THAT BLOOD DID NOT MATCH UP WITH THE VICTIM 'S. IT WAS JUST A QUESTION OF WHETHER IT WAS BLOO D OR NOT , I S THAT, WAS THAT THE ISSUE?

THERE WAS NO IN DICATION. THE REASON THAT WE DID NOT DO A FRYE HEARING IS THERE WASN'T A QUESTION ABOUT THE SCIENTIFIC VALIDI TY OF MIGHT CONNED REAL DNA OF MITOCHONDRIA LDN A WAS THE ISSUE HERE. BECAUSE MITOCHONDRIAL DNA WAS SUFFICIENT, IT WOULD NOT HAVE BEEN IN HIS VEHICLE. ANY SKIN CELLS SHE HAD SHED. PERSPIRATION, HE AND HIS F ATER HAD BEEN WOR KING AT LANDSCAPING WORK , P U LLING TREE LIMB S AND THINGS. ANY PERSPI RATION WOULD HAVE GOTTEN HER MITOCHONDRIAL DNAAS WELL.THERE IS NO INDICATION THAT ANY OF IT CAME FROM ANY OF HER BLOOD . IN FACT , THE DEFENSE EXPERT , DR . BLAKE , FOUND TWO MALE DNA SAMP LES , PAR TIAL DNA SAMPLES FROM THE SAME AREA . AND IT IS JUST, HE , HE STATED YOU COUL D NOT TELL IF IT WAS SOMETH ING IN THE CUSHION, IN THE MA TERIAL , IN THE FOAM , OR IF IT WAS FROM WHAT APPEARED TO BE JUST A VERY OLD BLOODSTAIN .

WOULDN'T THAT GO TO THE WEIGHT, THOUGH, OF THAT TESTIMONY, AS OPPOSED TO ITS ADMISSIBILITY ? IN OTHER WORDS AGAIN I F THAT IS SOMETHING AS WE WERE SAYING EARL IER , FOR THE JURY TO DECIDE WHETHER THEY BELIEVED THE DEFENSE EX PERT OR THEY BELIEVED THE STATE'S EXPERT.

WELL , THE STATE'S EXPERT WAS NOT QUALIFIED, HOWEVER , UNDER MAGLETTI, BECAUSE HE WAS UNABLE TO TESTIFY AS TOANY OF STATISTICS. HE JUST DIDN'T HAVE BOTH QUALIFICATIONS. AND SOME HOW THE JU DGE DIDN'T FEEL THAT THAT WAS THAT IMPORTANT, I GUESS . HE GLOSSED OVER THAT. THEY HAD ANOTHER EXPE RT TESTIFY O N THE P HONE DURING THE COURSE OF TRIAL , ON STATISTICS ON TEST TESSING, WHICH THE STATE, THEN , DID NOT O N TESTING, WHICH THE STATE, THEN , DID NOT PROVIDEDURING THE TRIAL, ITSELF. MR. SLONE WAS NOT QUALIFIED TO TESTIFY .

AND WAS THAT RA ISED BELOWAS AN ISSUE ?

YES, IT WAS.

I TH OUGHT IT SAID IT IS NOT WHETHER OR NOT THE WITNESS CA N DO IT . IT IS A QU ESTION OF WHETHER , YOU ARE TALKING ABOUT THE QUALIFICATIONS OF THE WITNESS?

YES. HE STATED HE WAS NOT QUALIFIED TO DO THE STATISTICAL ANALYSIS.

SIMILARLY , THE EXPERT , ALLEGED EXPERT ON THE ENTOMOLOGIST WAS SIMILARLY NOT A FORENSIC ENTOMOLOGIST. THE OTHER, I THINK, AS FAR AS THE IDENTIFICATION GOES , THE IDENTIFICATIONS WERE VERY HIGHLY SUGGESTION I HAVE, AND I THINK THAT IT IS EXTREMELY PROBATIVE TO LOOK AT THE DIFFERENCES IN WHAT OCCURRED, WHICH I BELIEVE IS REQUIRED UNDER NEAL V DIGER, TO LOOK AT WHETHER OR NOT THERE WAS A MAJOR CHANGE. MR. MOUNT , FOR INSTANCE , NOTED THE SIMILARITIES A YEAR LATER , THAT HE SAW IN THE CAR WHERE THE SPOKE WHEELS WHICH HAD BEEN PLACED ON THE CAR BY THE SHERIFFS OFFICE AT THE TIME THEY TOOK THE TIRES OFF TO SEND THEM TO FDL E , THEY PUT THE SPOKE TIRES ON THE CAR. HE REMEMBERED THOSE FROM THE NIGHT HE SAW IT ON THE , ON THERE. HE SAID THAT , IT WAS VERY DIRTY. THE DIRT THAT WAS ON THE CAR THAT HE SAW , WAS FROM FINGERPRINT DUST . AND THE TRIM WAS DIFFERENT , WHICH I DON'T KNOW HOW THAT HAPPENED, AND THE DENTS WERE DIFFERENT . BUT THEY JUST SAID THAT IT WAS THE SAME CAR. THEY TOOK THAT AS THE SAME CAR.

THE TRIAL JUDGE AGREED THAT THERE WAS A SUGGESTIVE METHOD OF IDENTIFICATION , CORRECT? THEN THAT DOESN'T END THE INQUIRY UNDER NEAL V DIGERS. THE NEXT PART HAS TO BE THAT THEY HAVE A SUFFICIENT OPPORTUNITY TO OBSERVE THESE , THIS, BOTH AS TO NOT ON THE CAR BUT , I THINK , YOU ARE ALSO CHALLENGING THE IDENTIFICATION BY , OF THE VICTIM.

CORRECT. BECAUSE SIMILARLY AS THEY WERE SHOWN ONE CAR IN THE SHERIFFS OFFICE SALLY PORT , THEY WERE , ALSO , SHOWN ONE OLD HEAD SHOT OF THE , SHERRI RENFRO WAS SHOWN ONE HEAD SHOT OF THE VICTIM , OF ERIC TRESSLER, NOT SHOWN IN ARRAY , NOT ASKED TO DESCRIBE , NOT ASKED TO GIVE SOME KIND OF A COMPOSITE DRAWING , NOTHING LIKE THAT , AND SHE HAD IDENTIFIED THE WOMAN AS BEING A ELDERLY WOMAN WITH SHORT BROWN HAIR. AND AS I SAID , BOTH IDENTIFIED THE WOMAN AS WEARING WHITE. AND MOST SPECIFICALLY A WHITE T- SHIRT, AND SHE WAS FOUND IN BLACK PANTS AND A GRAY SWEATSHIRT.

AND DID THE DEFENSE COUNSEL RAISE ALL THOSE QUESTIONS IN THE CROSS-EXAMINATION OF THE WITNESSES IN THE PRESENCE OF THE JURY ?

SOME OF IT I WAS NOT PERMITTED TO GET INTO AS TOO MUCH. I COULDN'T GET INTO THE WARRANT ISSUES AT ALL. THE JUDGE DID NOT PERMIT. THAT SOME OF THE IDENTIFICATIONS , YES , WHEN I WENT TO RECALL MS. RENFRO , SHE WAS NOT AVAILABLE. SHE WOULD NOT COME BACK , AND THE JUDGE DID NOT DO ANYTHING ABOUT THAT .

BUT YOU WERE ABLE TO CROSS-EXAMINATION HER AFTER THE STATE PRESENTED HER TESTIMONY.

YES , BUT I WAS SAVING SOME OF MINE FOR WHEN I BROUGHT HER BACK ON MY CASE. ON THE DEFENSE CASE. AND SHE DID NOT COME BACK .

DID YOU HAVE HER UNDERSUBPOENA?

YES .

ONE OF THE ARGUMENT THAT YOU HAVE MADE IN THIS CASE SEEMS TO BE THE SUPPRESSION OF THE ACTUAL ARREST OF THE DEFENDANT OR THE STATEMENTS THAT WERE MADE AS A RESULT OF THE DEFENDANT'S ARREST , AND ONE OF THE ISSUES THAT I HAVE HERE IS, YOU ARGUE, AT LEAST IN YOUR MOTION, THAT THE SURROUNDING CIRCUMSTANCES DEMONSTRATE THAT HIS GOING TO THE POLICE STATION WAS NOT VOLUNTARY, AND I NEED YOU TO EXPOUND ON THAT . WHAT WAS THE PROBLEM? WHY WAS IT NOT A VOLUNTARY ACCOMPANIMENT OF THE OFFICERS

TO THE POLICE STATION?

FOR A WEEK PRIOR TO THEIR FINDING MR. SIMMONS, THEY APPARENTLY THOUGHT THAT HE HAD RUN, BECAUSE THEY COULDN'T FIND HIS VEHICLE. THEY FOUND OUT HIS VEHICLE WAS IN THE SHOP. WHEN THEY FOUND THE VEHICLE, THEY HAD VIRTUALLY THE ENTIRE SHERIFFS OFFICE PLUS SOME SURROUNDING JURISDICTIONS OUT. THEY HAD BEEN DOING FLIERS TO TRY TO FIND MR. SIMMONS. HE DIDN'T KNOW THAT, BECAUSE HE WASN'T GOING THOSE ROUTES, BUT IN ANY EVENT, THEY ALL CAME TO, DESCENDED UPON MR. SIMMONS'S PARENTS' HOME, BY WHAT THE LEAD DETECTIVE DESCRIBED AS THE THUNDERING HEARD ARRIVED. THERE WERE HELICOPTERS OVERHEAD, MARKED UNITS, UNMARKED UNITS. THERE WERE PROBABLY 20, DEPENDENT UPON WHO YOU TALKED WITH BUT ABOUT 20 OFFICERS OUT THERE SURROUNDING HIM, ALL AROUND THE AREA WHERE HE WAS.

WAS MR. SIMMONS ACTUALLY AWARE OF THE PRESENCE OF THESE OFFICERS AND THIS HELICOPTER THAT THEY WERE TALKING ABOUT? OH, YES. HE AND HIS FATHER WERE COMING IN ON ATVS. THEY WERE BOTH ON 4 WHEELERS. THEY HAD BEEN OUT IN THE WOODS, AND THEY WERE COMING IN AND SAW THEM AND KEPT COMING AND THEY HAD NOTHING TO HIDE AND THEY KEPT COMING IN, AND THE OFFICERS, AND HE WAS, ALSO, HANDCUFFED, THAT WAS ONE OF THE REASONS WHY IT TOOK FOUR DAYS FOR THOSE HEARINGS, BECAUSE AFTER THE FIRST DAY WHEN THEY SAID HE WASN'T HANDCUFFED, THEN THEY CAME AND THE ASSISTANT STATE ATTORNEY SAID, WELL, NO, THEY REALIZED HE WAS HANDCUFFED, SO THAT WE HAD TO COME BACK AGAIN, AND WHO HANDCUFFED HIM AND WHEN, CHANGED, IN BETWEEN HEARINGS. THERE WAS NO QUESTION THAT HE WAS HANDCUFFED. HE WAS TRANSPORTED IN THE BACK OF A LOCKED UNIT.

LET ME ASK YOU, WHEN DID THAT OCCUR RELATIVE TO RENFRO'S IDENTIFICATION OF THE VICTIM AND OF THE VEHICLE?

THEY, THE VEHICLE, SHE DID NOT IDENTIFY, INITIALLY THE VEHICLE IDENTIFICATION OF THE CORES I CAN A, AND OF THE CORSICA AND THE WOMAN AS THE SHORT BROWN HAIR WEARING WHITE, WAS PRIOR TO THEM ARRESTING MR. SIMMONS. AFTERWARDS, WHEN THEY HAD TAKEN HIS CAR AND TOOK HER DOWN AND SHOWED HER HIS CAR.

AND AT THE TIME THEY CAME TO SEE HIM, THEY WERE AFTER MR. SIMMONS BECAUSE HE WAS THE LAST PERSON THAT WAS

BECAUSE HE WAS ALLEGEDLY HER BOYFRIEND.

AND THE LAST PERSON, SO THEY DIDN'T HAVE, YET, IDENTIFICATION OF HIM.

YES. BUT THEY WERE, AND THEN

SO YOU SAY THAT HE WASN'T VOLUNTARILY, HE DIDN'T VOLUNTARILY GO, BUT AT WHAT POINT WERE THE MIRANDA WARNINGS ISSUED?

WHEN HE GOT TO THE STATION.

SO WAS THERE ANYTHING HE SAID THAT THEY USED AGAINST HIM, FROM THE TIME THAT HE WAS APPROACHED, UNTIL HIS MIRANDA WARNINGS WERE ISSUED?

WERE ISSUED?

BY THE CONCESSION OF THE OFFICERS, THEY DIDN'T HAVE PROBABLE CAUSE UNTIL THE TIME THAT HE ALLEGEDLY CONFESSED.

BUT THE MIRANDA WARNINGS WERE ISSUED BEFORE HE CONFESSED .

YES.

SO I GUESS WHAT I AM ASKING IS , LET'S ASSUME THAT HE WASN'T , HE DIDN'T VOLUNTARILY ACCOMPANY THEM , WHEN, BY ISSUE , BY GIVING HIM AT THAT POINT THE MIRANDA WARNINGS , DOESN'T THAT, THEN , DOESN'T THAT OBVIATE ANY ISSUE ABOUT HOW VOLUNTARY HIS STATEMENT WOULD BE, BECAUSE AT THAT POINT THEY GAVE HIM THE NECESSARY WARNINGS ABOUT WHAT HE SAID COULD BE USED AGAINST HIM.

THEY ALSO TOLD HIM HE COULD LEAVE AT ANY TIME.

YOU ARE IN YOUR REBUTTAL, IF YOU WANT TO SAVE SOME TIME.

THANK YOU.

CHIEF JUSTICE: MR. A KE.

MAY IT PLEASE THE COURT. MY NAME IS STEVE AKE. I AM REPRESENTING THE STATE OF FLORIDA IN THIS CASE. I GUESS I WOULD LIKE TO BEGIN , I DIDN'T THINK WE WOULD ACTUALLY HIT EVERY ISSUE BUT I THINK WE SOMEHOW MANAGED TO DISCUSS ALL OF THEM , AL BEIT BRIEFLY. I GUESS I WILL BE GIN WITH THE SUFFICIENCY OF THE EVIDENCE CLAIM. BASICALLY, I BELIEVE COUNSEL STIPULATED THAT THERE WAS A MURDER OF THIS VICTIM AND THE ONLY QUESTION WAS IDENTITY OF THE PERSON RESPONSIBLE. THE STATE WOULD SUBMIT THAT WE PRESENTED BOTH DIRECT AND CIRCUMSTANTIAL EVIDENCE IN THIS CASE AND UNDER THAT , BEING THAT WE HAVE PRESENTED DIRECT EVIDENCE, THAT WE ARE ENTITLED TO A FAVORABLE STANDARD OF REVIEW BY THIS COURT, BASED ON THAT , AND AS JUSTICE CAN CAN'T POINTED OUT , WHAT THE AS JUSTICE CANTERO POINTED OUT , WHAT THE APPELLATE COURT SAID WAS THEY FOUND BLOOD AND HE SAID , SINCE YOU FOUND BLOOD, I MUST HAVE DONE IT , AND THE COUNSEL SAID IT WAS SARCASTIC BUT IT WAS STATED THAT THAT WAS NOT THE CASE, THAT THE DEFENDANT WAS NEVER SARCASTIC OR FLIPPANT IN HIS DISCUSSIONS WITH THE DETECTIVES AND THEY VIEWED IT AS A LEGITIMATE CONFESSION, AND OBVIOUSLY THE JURY HAD THE RIGHT TO HEAR THAT EVIDENCE AND RELY UPON THAT AS DIRECT EVIDENCE. WE ALSO HAVE THE EVIDENCE OF THE EYEWITNESSES THAT OBSERVED THE KIDNAPING AT THE INTERSECTION OF 44 AND COUNTY ROAD 437.

GIVE ME YOUR BEST SHOT AT WHAT THOSE EYEWITNESSES TESTIFIED TO, THAT WOULD GIVE THE JURY A BASIS TO CONCLUDE THAT THE PERSON , THAT THE DEFENDANT WAS THE PERSON IN THE TRUCK .

WELL , YOUR HONOR , NEITHER SHERRI RENFRO OR ANDREW MOUNTS IDENTIFIED THE DEFENDANT AS DRIVING THE VEHICLE. WHAT THEY DID IDENTIFY AND VERY SPECIFICALLY, I WOULD , OUR VIEWS ON THAT ARE VERY DIFFERENT AS TO HOW SPECIFIC THEY WERE, BUT THEY IDENTIFIED THE CAR AND THE VICTIM. THE PROBLEM COMES WITH THE DEFENDANT'S STATEMENT TO LAW ENFORCEMENT OFFICERS THAT HE WAS NOWHERE IN THE VICINITY AND HIS CAR WAS NOT THERE , SO THAT IS A CIRCUMSTANTIAL REACH, TO FIND THAT THE DEFENDANT WAS ACTUALLY THE DRIVER, BECAUSE

I WANT TO UNDERSTAND WHAT THE STATE'S BEST POSITION IS ON WHAT THOSE EYEWITNESSES TESTIFIED .

THE BEST POSITION, YOUR HONOR, IS CLEAR , THAT BOTH SHERRI RENFRO AND ANDREW MOUNTS IDENTIFIED THE CAR WITH INCREDIBLE DETAIL AS MATCHING WHAT THE DEFENDANT'S CAR ACTUALLY LOOKED LIKE AND SHERRI RENFRO ACTUALLY WENT SO FAR AS TO IDENTIFY THE VICTIM . SHE GOT A GOOD LOOK AT HIM. THE VICTIM, HE PULLS UP TO WHAT IS A RED LIGHT

OR TURNING RED LIGHT. HE IS SLOWING DOWN. THE CAR DOOR, PASSENGER DOOR OPENS UP AND THE VICTIM IS TRYING TO GET OUT, YELLING FOR HELP, SAYING PLEASE HELP ME. PLEASE HELP ME. SHERRI RENFRO SAYS SHE APPROACHES AND GETS ABOUT 20 FEET AWAY. SHE IS FOCUSED ON THE VICTIM'S FACE. SHE ALSO NOTICES THE CAR'S INTERIOR IS BLUE AND SHE NOTICES AND TELLS THE OFFICER THAT IT IS A WHITE CAR THAT RESEMBLES A CORSICA. SHE NEVER SAID IT WAS ACTUALLY A CORSICA. NEITHER WITNESS SAID THAT. ANDREW MOUNTS SAID IT WAS EITHER A CORSICA OR A TAURUS BUT A CORSICA-LIKE CAR, WHICH IN DEED WITH WAS, A FOUR-DOOR LIKE A TAURUS. I WOULD LIKE THE JUSTICES TO LOOK AT PAGE 15 AND 16, A PHOTO OF A 1991 CORSICA AND ON PAGE 16 A PHOTO OF THE DEFENDANT'S TAURUS AND THEY LOOK SIMILAR, DOWN TO THE TRIM AND EVERYTHING, BUT GETTING BACK TO YOUR QUESTION, JUSTICE WELLS, THE ANDREW MOUNTS AND SHERRI RENFRO IDENTIFIED THIS CAR AND SHERRI RENFRO IDENTIFIED THIS VICTIM SCREAMING FOR HELP. THEY WERE VERY DETAILED IN THAT IDENTIFICATION. THAT WAS INFORMATION THAT LAW ENFORCEMENT HAD. THEY, ALSO, HAD JOSE RODRIGUEZ, WHO HAD JUST SEEN THE VICTIM AND THE DEFENDANT AT THE LAUNDROMAT ONLY A MILE OR TWO AWAY, YOU KNOW, ABOUT A HALF-HOUR BEFORE THIS INCIDENT AT THE INTERSECTION TOOK PLACE. AND, OF COURSE, WE HAVE THE DEFENDANT DENYING THAT HE WAS ANYWHERE IN THAT VICINITY AT THAT TIME.

YOU SAY EXTREME DETAIL.

YES.

WHAT DETAIL ARE YOU REFERRING TO?

CONTRARY TO WHAT OPPOSING COUNSEL IS SAYING, I WOULD ARGUE THAT ANDREW - - COUNSEL SAID, I WOULD ARGUE THAT ANDREW MOUNTS'S IDENTIFICATION OF THE VEHICLE IS INCREDIBLY DETAILED AND CORRECT. HE SAID IT WAS A WHITE CAR WITH A 3-INCH BLACK DECO TRIM RUNNING DOWN THE SIDE WITH SILVER IN IT AND IF YOU LOOK AT PAGE 17 IN THE SUPPLEMENTAL VOLUME, YOU WILL SEE THAT AND YOU WILL SEE HE SAID IT HAD DENTS ON THE PASSENGER DOOR WHICH IT DID AND HE SAID SPOKES ON THE WHEEL, AND THERE IS SOME CONFUSION IN THE RECORD ON THAT, BUT THE CAR ON PAGE 17 SHOWS THAT IT HAD SOMEWHAT SPOKE WHEELS. THOSE WERE THE DEFENDANT'S TIRES. SUBSEQUENTLY LAW ENFORCEMENT TOOK THOSE TIRES OFF AND PUT ON DIFFERENT ONES BECAUSE THEY WERE TRYING TO MATCH UP THE TIRE TRACKS TO THE SCENE. AND THEN, ANDREW MOTTS WENT TO AN AUTO PARTS STORE AND LOOKED AT RIMS AND TRYING TO FIND OUT WHAT KIND OF RIMS THEY WERE. HE SAID THERE ARE SOME THAT ARE REALLY SPOKE RIMS AND THAT WASN'T IT. HE WAS PRETTY DETAILED ON THE RIMS, BUT HE ALSO HAD THE DENTS, THE TRIM, THE WHITE FOUR-DOOR, THE FLAG HALVES HANGING ON - - THE FLAG THAT WAS HANGING ON THE BACK OF THE PASSENGER WINDOW, A PATRIOTIC AMERICAN FLAGS THAT YOU STICK ON YOUR WINDOW. THAT WAS ON THE CAR. HE IDENTIFIED THAT.

DID MOTTS, HE IDENTIFIED THOSE ASPECTS OF THE VEHICLE BEFORE HE WAS SHOWN A VEHICLE OF THESE CARS?

YES. YES.

SO, NOW

HE WASN'T SHOWN THE VIDEO UNTIL A YEAR LATER, AND HE HAD GIVEN THAT DESCRIPTION PRIOR TO WHAT HE GAVE TO DETECTIVE PERDUE.

WHAT ABOUT, THE SPOKE RIMS WERE OR WERE NOT CHANGED, WHEN HE SAID AFTER HE SAW IT A YEAR LATER, HE SAID THAT IS EXACTLY VICKI SAW?

NO. HE DESCRIBED EXACTLY THE VEHICLE I SAW.

HE DESCRIBED IT TO THE DETECTIVE AS HAVING SPOKE RIMS, AND THE CAR, YOU WOULD HAVE TO SEE A PICTURE TO REALLY GET A TRUE SENSE OF THE RIMS. BASICALLY IT WAS A WHEEL CAP AND AT THE END LITTLE SPOKES. THEY SUBSEQUENTLY CHANGED THE TIRES ON THE CAR AND THE RIMS, AND WHEN HE VIEWED THE VIDEO IT HAD THE DIFFERENT ONES ON THERE AND HE SAID THOSE AREN'T THE SPOKE RIMS THAT HE WAS TALKING ABOUT.

SO HE ACTUALLY DISTINGUISHED?

HE SAID THOSE AREN'T THE SPOKE RIMS FORM NO. HE SAID THE CAR DIDN'T HAVE , HE HAD GONE TO A Y ON THE PARTS STORE AND SEEN WHAT SPOKE RIMS LOOKED LIKE , I GUESS TRUE SPOKE RIMS, AND I GUESS IT WAS CONFUSING AND CONFUSING TO READ IN THE RECORD AS TO WHAT HE WAS TRYING TO SAY . HE WAS AN 18 YEAR-OLD KID AND I THINK HE WAS SOMEWHAT CONFUSED AS TO WHAT ALL TOOK PLACE, BUT THE RIMS WERE REALLY PART AND PARCEL OF HIS OVERALL DESCRIPTION. I THINK THE WHITE FOUR-DOOR TAURUS /CORSIKA WITH THE BLACK TRIM WITH THE SILVER IN THE MIDDLE OF IT WAS DEAD ON AND THE FLAG AND SO FORTH.

THE PROBLEM, AND THIS MAY BE , WE ARE TALKING ABOUT THE SUFFICIENCY OF EVIDENCE BUT, THEN, WITH RESPECT TO THESE IDENTIFICATIONS , LET ME GO BACK. THE ONLY PERSON THAT IDENTIFIED THE VICTIM AS BEING THE ONE IN THIS VEHICLE THAT WE ARE NOW ATTRIBUTING TO THE DEFENDANT , WAS RENFRO ?

SHERRI RENFRO. CORRECT.

NOW , WHAT IS IT THAT SHE SAID SHE SAW, AN OLDER WOMAN WITH SHORT BROWN HAIR?

SHE SAID

DID SHE SAY THAT BEFORE, ON DECEMBER 4?

HER ORIGINAL STATEMENT WAS SHE DESCRIBED HER AS BEING IN MID-50S . SHE WAS 48 YEARS OLD. IT WASN'T, THAT IS NOT A HUGE DISCREPANCY, I SUBMIT, AND SHE SAID SHE HAD A WHITE LONG-SLEEVED T-SHIRT ON.

WHAT ABOUT HER HAIR?

SHE SAID SHE HAD SHORT BROWN HAIR.

WHAT TYPE OF HAIR DID THE DEFENDANT, DID THE

I WOULD SAY PROBABLY BROWN/BLACK. I AM NOT GOOD AT THAT, EITHER, BUT I WOULD SAY THAT IT IS BLACK BUT THE WITNESS TEST NEED THAT SHE OFTEN WORRY IT UP SO WE DON'T KNOW WHAT SHE WAS DOING THE NIGHT IN QUESTION , BUT I WANT TO POINT OUT AS TO THE WHITE T-SHIRT THING THAT SHE IS MAKING A BIG DEAL OUT OF GRAY SWEATSHIRT , I WOULD ENCOURAGE THE COURT TO LOOK AT VOLUME ONE THE SUPPLEMENTAL RECORD. IT IS A GRAY SHIRT BUT IT IS SO FADED THAT IT LOOKS WHITE. ANOTHER PROBLEM THAT WE ARE HAVING ABOUT THIS UNNECESSARILY SUGGESTIVE SITUATION.

RIGHT.

BOTH AS TO RENFRO AND MOTTS, THAT YOU HAVE GOT A SITUATION WHERE SHE SAID , SHE WROTE A STATEMENT. SHE SAID IT WAS AN OLDER WOMAN WITH SHORT BROWN HAIR AND A WHITE T-SHIRT.

RIGHT.

INSTEAD OF DOING , WHICH THEY CERTAINLY WOULD HAVE BEEN THE BETTER THING, I AM SURE YOU WOULD AGREE, TO SHOW, HAVE A LINEUP, SHOW UP OF DIFFERENT , THEY GAVE HER ONE PICTURE AND THEN SHE SAID THAT IS THE PERSON . NOW , WHY , THAT IS UNNECESSARILY SUGGESTIVE . CORRECT?

THE TRIAL JUDGE , IN HIS RULING, FOUND THAT THE USE OF ONE PHOTOGRAPH WAS UNNECESSARILY SUGGESTIVE , AND HE RELIED ON THIS COURT'S OPINION IN DENNIS, WHICH I WOULD SUBMIT WOULD BE INCORRECT INTERPRETATION, THAT YOU DO NOT NEED TO DO A PHOTO LINEUP OF VICTIMS OR OF CARS OR WHAT HAVE YOU , THAT THE RATIONALE OF NEAL VERSUS BIGERS AND ALL OF THE U.S. SUPREME COURT CASE ON THIS, HAD TO GO WITH IDENTIFICATION OF THE HUMANFACE OF THE DEFENDANT NOT OF AN ANIMATE OBJECT LIKE A VEHICLE OR IN THIS OF AN INANIMATE OBJECT OF THE VEHICLE OR IN THIS CASE THE VICTIM. I DON'T THINK LAW ENFORCEMENT IS REQUIRED TO GIVE A SUBSTANTIAL LINEUP OF A VICTIM AND SAY CAN YOU PICK OUT WHO THE VICTIM WAS IN THIS CASE?

AREN'T THERE REASON, AND THIS COMES, OF COURSE , INTO THE CASE OF WHETHER THE EXPERT SHOULD HAVE BEEN ALLOWED TO TESTIFY , THAT WHEN SOMEBODY SEES ONE PERSON , THEY ARE MORE LIKELY TO SAYING THAT THE PERSON AS OPPOSED TO SEEING SIX DIFFERENT PEOPLE AND THE RELIABILITY OF THAT IDENTIFICATION, WHEN YOU ARE DEALING WITH SUCH A SERIOUS MATTER.

CORRECT. IT IS A LITTLE DIFFERENT WITH PEOPLE VERSUS INANIMATE OBJECTS LIKE VEHICLES. I WOULD SUBMIT THAT IS DIFFERENT FROM FACES AND THAT IS WHAT THE U.S. SUPREME COURT CASE LAW WAS DEALING WITH, FROM THE VANTAGE POINT OF IDENTIFYING THE DEFENDANT AND NOT THE VICTIM , BUT BE THAT AS IT MAY THE TRIAL JUDGE FOUND THAT IT WAS UNDULY SUGGESTIVE, BUT TAKING THE SECOND PRONG OF IT , HUH TO LOOK AT THE TOTALITY OF THE CIRCUMSTANCES TO FIND OUT IF IT WAS SHOWING, YOU KNOW, THAT THERE WAS AN IRREPARABLE MISIDENTIFICATION OR WHAT HAVE YOU , AND THAT WAS NOT PRESENT IN THIS CASE BECAUSE THE WITNESS GAVE SUCH A DETAILED DESCRIPTION THAT , AND SHE WAS SO CONFIDENT.

I GUESS THE DETAILED , THAT IS WHERE THE DETAIL BECOMES IMPORTANT , BECAUSE IF SHE DOESN'T HAVE SHORT BROWN HAIR.

SHE, THE HAIR SHE MAY HAVE MISSED AT TWELVE O'CLOCK AT NIGHT.

BUT THE DETAIL , THEN?

THE DETAIL IS HER FACIAL FEATURES. SHE RIRRENFRO SAID THAT SHE WOULD NEVER FORGET THAT LADY'S FACE FOR THE REST OF HER LIFE. SHE ACTUALLY CRIED WHEN SHE IDENTIFIED HER BECAUSE SHE SAID THAT SHE RECOGNIZED HER FACE AND WOULD NEVER FORGET THE FEAR THAT WAS IN THAT WOMAN'S FACE. SHE WAS VERY FOCUSED ON THE WOMAN'S FACE AND I THINK THE FACT THAT SHE SAID SHE WAS IN HER MID-50S WHEN SHE WAS ACTUALLY 48 , WE HAVE LAW ENFORCEMENT SAID THAT SHE APPEARED OLDER HER DRIVERS LICENSE PHOTO ANYWAY , SO, AND I DON'T THINK THE T-SHIRT THING WAS RIGHT AND YOU HAVE A FEW MILES AWAY SHE WAS TAKEN, AND YOU ARE AT THE JUNCTION OF 44 AND 437 AT A VERY UNPOPULATED AREA , RURAL AREA LATE AT NIGHT AND SOMEBODY MISSED THE DESCRIPTION OF A VICTIM TRYING TO JUMP OUT AFTER MOVING CAR , PRETTY DAMAGING TO THE DEFENDANT. LAW ENFORCEMENT KNEW THAT THIS DEFENDANT HAD A RELATIONSHIP WITH THE VICTIM, THAT THEY WERE , QUOTE/UNQUOTE BOYFRIEND GIRLFRIEND. THEY, ALSO , AS GOES TO THE SEARCH WARRANT AND THE PRETRIAL HEARING , THE TESTIMONY CAME OUT THAT THEY WERE AWARE THAT HE HAD THREATENED TO BE AT HER UP ON THURSDAY OR FRIDAY BEFORE THIS SATURDAY EVENING , AND THEY WERE AWARE THAT HE HAD BEEN RECENTLY RELEASED FROM JAIL FOR AN OTHER DOMESTIC VIOLENCE, SO ALL OF THAT WENT INTO THE KNOWLEDGE THAT

THEY HAD WHEN THEY WENT OUT TO THE DEFENDANT'S PARENTS' RESIDENCE, TO QUESTION HIM ABOUT THIS, AND I GUESS I AM KIND OF MORPHING INTO THE SUPPRESSION IS SUE AS TO THE SEIZURE OF THE VEHICLE AND HIS STATEMENT THAT SHE MOVED TO SUPPRESS THE DEFENDANT'S STATEMENTS, BASED ON THE ALLEGED COERCION BY THE LAW ENFORCEMENT THAT WAS AT THE SCENE, BUT THE TRIAL JUDGE FOUND THAT LAW ENFORCEMENT HAD PROBABLE CAUSE TO SEIZE BOTH OR TO ARREST THE APPELLANT AND TO SEIZE HIS VEHICLE WHEN THEY ARRIVED THE RE AT THE PARENTS' LOCATION. LAW ENFORCEMENT OFFICERS TESTIFIED THAT THEY HADN'T GOTTEN TOGETHER AND COMBINED ALL OF THEIR INFORMATION, PRIOR TO THAT. AND SO THEY

THEY OBVIOUSLY WERE FOCUSING ON HIM. I MEAN, YOU DON'T HAVE POLICE HELICOPTERS AND AWHOLE, HOW MANY POLICE CAME AFTER THE, HOW MANY CAME

THERE WERE DIFFERENT.

HOW MANY CAME THERE?

THE DETECTIVE TESTIFIED THAT THERE WERE APPROXIMATELY 15 OFFICERS, AND I BELIEVE THE APPELLANT CALLED WITNESSES THAT SAID THERE WERE PROBABLY UP TO 30.

ANGEL I DON'TERS. SO THEY ARE OBVIOUSLY NOT JUST THERE ON A FACT FINDING MISSION.

NO. NO. THEY WERE OUT LOOKING FOR THE APPELLANT AT VARIOUS LOCATIONS, AND THEY HAD SOME OFFICERS GOING TO HIS UNCLE'S HOUSE AND SOME GOING HERE AND THEN THEY COMBINED, ONCE THEY FOUND OUT HE WAS THERE. OF COURSE THE APPELLANT NEVER TESTIFIED, SO WE DON'T KNOW HOW THE HELICOPTER, WHERE IT WAS AT AND WHETHER THAT WAS ANY FACTOR IN ANYTHING, BUT THE TRIAL JUDGE MADE GREAT FACTUAL FINDINGS IN HIS RULING ON THAT SUPPRESSION THING, AND BASICALLY SAID THAT DESPITE THE FACT THAT THERE ARE ALL OF THESE OFFICERS THERE, TWO PLAIN CLOTHES DETECTIVES ACCOMPANIED THE DEFENDANT OVER TO AN OFF-- TO A STAND OF PINE TREES, WHERE THEY SAT DOWN AND TALKED. THEY DENIED THE RULING THAT ALL OF THE OFFICERS WERE THERE, BUT THEY WEREN'T INVOLVED IN THE DISCUSSION BETWEEN THE TWO PLAIN CLOTHES DETECTIVES AND THE APPELLANT. THEY TOLD HIM THAT HE WASN'T UNDER ARREST.

EVEN THOUGH THEY TOLD HIM THAT HE WASN'T UNDER ARREST AND ALL OF THE OTHER OFFICERS WERE NOT INVOLVED THERE, WOULDN'T A REASONABLE PERSON BELIEVE THAT HE WAS FREE TO GO WITH WOULD A REASONABLE PERSON BELIEVE THAT HE WAS FREE TO GO, WITH SO MANY POLICE OFFICERS AND OVERHEAD?

FIRST, I DON'T THINK HE WAS SURROUNDED BY SO MANY POLICE OFFICERS, BUT THEY WERE ON THE SCENE.

YOU SAID THAT THERE WERE A NUMBER OF POLICE OFFICERS WHO WERE AROUND HIS PROPERTY. RIGHT.

IF THEY, WERE THEY, WOULD A REASONABLE PERSON WITH THAT KIND OF SHOW OF FORCE, FEEL THAT HE WAS FREE TO SAY, NO, I AM NOT GOING TO GO?

BASED ON WHAT DETECTIVES TOLD HIM, I DON'T SEE WHY NOT. HE COULD VERY EASILY SAID I AM WORKING WITH MY FATHER AND I CAN'T GO RIGHT NOW.

HE WAS PLACED IN HANDCUFFS TO BE TRANSPORTED TO BE INTERROGATED, RIGHT?

WHAT HAPPENED THERE IS, YOUR HONOR, AFTER THE DETECTIVES ASKED HIM IF HE WOULD ACCOMPANY THEM AND HE SAID HE WOULD, IT WAS ALL VOLUNTARY CONSENT, APPARENTLY

A UNIFORMED OFFICER WAS GOING TO TRANSPORT WIL L TO TRANSPORT HIM TO THE SHERIFFS OFFICE, AND PER REQUIREMENTS FOR OFFICER SAFETY REASONS, HE WAS HANDCUFFED IN THE BACK OF THE CAR. THIS WAS RIGHT AFTER DETECTIVE CHILDERS AND BEL L IN TA MPA HAD THE EVEN TS HAPPEN WHEN THEY WERE TRANSPORTING SOMEBODY, SO I THINK THAT IS PRE TTY MUCH A REQUIREMENT NOWADAYS , THAT

ONLY AF TER HE WAS PL ACED IN THE VEHICLE?

EXCUSE M E?

ONLY AFTER HE WAS PLACED? VEHICLE?

WHEN HE WAS RIGHT THERE AND THEN THEY IMMEDIATELY UNHANDCUFFED HIM, WHEN HE GOT TO THE STAT ION.

LET'S ASSUME THAT , TO A REASONABLE PERSON IT WOULD LOOK LIKE THE PERSON WAS I N C USTODY.

RIGHT.

BECAUSE WE KEEP ON, DO ESIT, SINCE THEY ADMINISTERED THE MIRA NDA WARNINGS BE FORE THEY START TALKING TO HIM.

RIGHT .

DOESN'T THAT OBVIATE , REALLY , HAVING TO DECIDE

THAT IS THE FACT THAT THE LOWER COUR T FOUND THAT THEY HAD PROBABLE CA USE TO ARREST HIM AT THE TI ME, BUT , YES , YOU ARE RIGHT. THERE WAS NOTHING CAME OUT OF THE , FR OM THE TIME THE OFFICERS GOT THERE TO THE TIME THEY GO T TO THE STATION AND GAVE HIM HIS MIRANDA ON T APE , N OTHING FROM THAT TRANSPIRED OR CAME OUT AT TRIAL. THERE IS NO EVIDENCE AS TO ANY STATEMENTS HE MAY HAVE MADE AT THAT T IME. HE WENT TO THE POLICE STATION AND WAS ON VIDEOTAPE AND SIGNED MIRANDA.

SO YOU ARE TE LLING US THAT, EVEN IF THE TAKING OF HIM TO THE POLICE STATION , WAS IN FACT AN ARREST BY THE OFFICERS , THAT ILLEGALITY WAS NOT , THAT DI DN'T T A INT THE STATEMENT THAT HE LATER MADE?

WH AT I AM ARGUING IS THAT THERE IS EVIDENCE TO SUPPORT THE TRIAL COURT'S CONCLUSION THAT THEY HAD PROBABLE CAU SETO ARREST HIM , RIGHT WHEN THEY GOT TO THE PARENTS HOUSE, THAT THEY CAN HAVE ARRESTED HIM RIGHT THERE.

LE T'S ASSUME THAT THEY DID. THEY HAD NOT HAVE PROBABLE CAUSE TO ARREST HIM , AND HE WAS ILLE GALLY ARRESTED .

WELL , I WOULD SUBMIT THAT HE WASN'T ILLEGALLY ARRESTED , BECAUSE HE WAS TOLD OVER AND OVER AGAIN YOU NORTH UNDER ARREST.

I AM L A YING OUT A SCENARIO THAT , IF IN FACT HE WAS ILLE GALLY ARRESTED , YOUR ARGUMENT SEEM S TO BE THAT , BY TAKING HIM TO THE STATION , WHICH IS THE ILLEGAL ARREST, THEN G IVING HIM THE MIRANDAS , THAT THAT TAKES CARE OF THE ILLEGALITY. IS THAT YOUR ARGUMENT?

NO , THAT IS NOT MY ARGUMENT ACTUALLY, BECAUSE I AM NOT CONC EDING TH OSE TO BE FACTS .

UNDERSTAND, BUT IF IN FACT WE SAY THAT HE WAS ILLEGALLY ARRESTED , THEN WHAT?

HE SIGNED HIS MIRANDA AND GAVE A VOLUNTARY STATEMENT. FURTHERMORE , NO THING CAME OUT OF HIS STATEMENT THAT WAS INTRODUCED THAT WAS HARMFUL TO HIM.

DIDN'T YOU SAY THAT HE MADE A STATEMENT THAT THE POLICE AND THE JURY , OBVIOUSLY , INTERPRETED IT AS A CONFESSION?

THAT WAS AFTER THE FACT. YOU ARE CORRECT. THAT IS TRUE. I KEEP FORGETTING THAT PART BUT THAT WAS NOT ON THE ACTUAL TAPE THAT WE PLAYED TO THE JURY.

THAT WAS THE MOST EVIDENCE THAT WE HAD , ISN'T IT?

I WOULD SAY THERE ARE QUITE A FEW PIECES OF EVIDENCE THAT ARE VERY STRONG IN THIS CASE , INCLUDING THE DNA.

SPECIFICALLY WHAT?

SPECIFICALLY THE DNA. WE HAD BLOOD SPATTERING INSIDE THE CAR, BOTH ON THE TRIM DOWN BY THE PASSENGER SEAT AND ON THE INTERIOR DOOR JAMB , WHICH IS A VERY STRANGE PLACE , AND THE STATE ARGUED THAT THE DOOR WAS OPEN WHEN THE ATTACK WAS TAKING PLACE AND IT HIT UP IN THAT AREA OF THE DOOR JAMB.

WAS THERE SOME EVIDENCE OF HER WORKING ON THIS FARM OR WHATEVER IT WAS AND THAT

NO. THERE WAS EVIDENCE THAT SHE WORKED WITH THE APPELLANT AT HIS FATHER'S LANDSCAPING BUSINESS, BUT THERE WAS NO EVIDENCE THAT SHE WAS EVER CUT , SCRATCHED , BLED OR ANYTHING LIKE THAT . THAT WAS ALL JUST IN COUNSEL'S BRIEF, NOW, THE POSSIBLE ARGUMENT, BUT THERE IS NO , QUOTE , EVIDENCE AS TO THAT.

WHAT ABOUT THE PRESENCE OF THE SEMEN? WHAT DOES THE PRESENCE OF THE SEMEN? WHAT DOES THE STATE SAY ABOUT THAT?

THE SEMEN WAS FOUND IN HERE IN HER AND THE MEDICAL EXAMINER STATED THAT THE SEMEN WOULD ONLY LAST 3-TO-6 DAYS AND THE DEFENDANT TESTIFIED HE HAD SEX WITH HER TWO WEEKS PRIOR TO THAT AND THAT IS ALL THAT CAME IN IT WASN'T GOING TO THE SEXUAL BATTERY BECAUSE IT WENT TO THE INJURIES THE VICTIM RECEIVED TO HER ANUS AND NOT AS TO. THAT THE STATE WASN'T ARGUING AS TO ANY SIGNS OF SEXUAL BATTERY BUT MERELY TO REBUT THE DEFENDANT'S STATEMENT THAT HE HAD HAD SEX WITH HER TWO WEEKS AGO.

YOUR OPPOSITION MAKES A SUBSTANTIAL ARGUMENT , WITH REGARD TO THE ONLY REASON THE STATE WAS ABLE TO OBTAIN THE BLOOD EVIDENCE , WAS IN VIOLATION OF THE RIGHTS OF THIS DEFENDANT WITH REGARD TO A FALSE AFFIDAVIT TO PROCURE A SEARCH WARRANT TO SEIZE THE VEHICLE AND SEARCH ITS INTERIOR.

I BELIEVE

HOW WOULD YOU ADDRESS

I BELIEVE, THE TRIAL COURT IN ITS ORDER DENYING THAT, BASICALLY FOUND THAT NONE OF THOSE STATEMENTS MADE WERE INACCURATE. COUNSEL FIRST

THERE IS ONE THAT I THINK YOU WOULD HAVE TO AGREE, WITH REGARD TO THE SPOTS ON THE SHEETS, WHICH IS PRETTY SUBSTANTIAL.

I WOULD ARGUE THAT YOU COULD REMOVE THAT AND YOU WOULD STILL HAVE GOTTEN THAT SEARCH WARRANT SIGNED, EVEN WITH WITHOUT THAT ONE SENTENCE ABOUT THE SHEET. THAT BE AS IT MAY, THE DETECTIVE THAT DRAFTED THE AFFIDAVIT THAT ACTUALLY OBSERVED THAT SHEET, TESTIFIED AT THE HEARING, AND COUNSEL NEVER ASKED HIM, YOU KNOW, HERE IS THE SHEET. DOES IT LOOK LIKE IT LOOKED WHEN YOU SAW IT IN THE BACK OF THE CAR, SO IT WAS THEIR BURDEN BELOW TO SHOW THAT AND THAT NEVER CAME OUT, BUT YOU CAN BASICALLY EXCISE OUT THE SHEET, AND YOU ARE STILL GOING TO HAVE PROBABLE CAUSE TO SEARCH THAT VEHICLE. I MEAN, THEY HAD QUITE A BIT OF EVIDENCE ON THAT. I WOULD JUST LIKE TO GO BACK REAL QUICK, TO THE DNA THAT I WAS DISCUSSING ON THE CARTRIM AND IN THE DOOR. THAT WAS DONE, THAT WAS TESTED USING STR DNA. THERE WERE 13 BLOOD SPATTER SPOTS THAT WERE, AND THEY TESTED THOSE AND THOSE CAME BACK TO BE THE VICTIM'S AND IT IS THE 1 IN 12 BILLION NUMBERS, AND THEY TESTED AND COUNSEL ALLUDED TO VARIOUS THINGS AND I WOULD LIKE TO CORRECT SOME OF THOSE, IN THAT SHE SAID THE STATE'S EXPERT WAS NOT QUALIFIED TO TESTIFY REGARDING THE MIGHTY CONNED THE MITOCHONDRIAL DNA. SHE NEVER TESTED THAT BELOW WHETHER HE WAS QUALIFIED. SHE FIRST SAID WE ARE ACCEPTING THIS AND THEN ON THE EVE OF TRIAL SAID, NO, NO, I DON'T BELIEVE THE STATISTICS ARE RIGHT AND THE STATE CALLED AN OTHER INDIVIDUAL, DR. SLOAN, WHO WAS THE STATE'S EXPERT SUPERIOR BOSS THAT, AND HE TESTIFIED AS TO THE STATISTICS INVOLVING THE, WHAT THEY CALL THE 95 PERCENT CONFIDENCE INTERVAL, WHICH WAS SET FORTH IN MAGLETTI, BUT THE INMEGELETTI, BUT THE STATE'S EXPERT AT TRIAL WAS NEVERWHETHER HE HAD THE QUALIFICATION TO SAY DO THE COMPUTATIONS AND IN FACT COUNSEL NEVER ASKED HIM ABOUT THAT, AND THERE WAS NO TESTIMONY THAT HE WAS NOT QUALIFIED TO DO THAT. THE FACT IS THAT THE STATE UTILIZED THIS OTHER INDIVIDUAL, THINKING THAT THE DEFENSE WAS RAISED AGO FRYE HEARING AS TO THE QUALIFICATIONS, AND BASICALLY THAT KIND OF DISAPPEARED, BUT THERE WAS NO EVIDENCE THAT THE STATE'S EXPERT THAT THEY USED ON THE MITOCHONDRIAL DNA WAS NOT QUALIFIED TO TESTIFY AS TO THE RESULTS HE OBTAINED FROM THE

WOULD YOU COME BACK TO THE QUESTIONS YOU WERE BEING ASKED BY THE SEARCH WARRANT, PROBABLE CAUSE FOR THAT, BECAUSE YOU HAD ANOTHER ISSUE ON YOUR MIND.

OKAY. I HAVE BEEN JUMPING ALL OVER THE PLACE.

IN DISCUSSING THAT, ONE OF THE STATEMENTS THAT YOU MADE WAS THAT THERE WAS PLENTY IN THE

AFFIDAVIT.

TO SUPPORT THE ISSUANCE OF THE SEARCH WARRANT.

RIGHT. RIGHT.

COULD YOU ANSWER THAT IN GREATER DETAIL.

THAT WAS BASICALLY THE OFFICERS HAD INFORMATION THAT, FROM WITNESSES, JOSE RODRIGUEZ IN PARTICULAR THAT, THE VICTIM AND THE DEFENDANT WERE SEEN AT THE LAUNDROMAT AT ABOUT ELEVEN O'CLOCK AT NIGHT ON SATURDAY NIGHT AND THEN YOU HAD SHERRI RENFRO OBSERVING HIS CAR AND THE VICTIM AT THE INTERSECTION OF 44 AND 437, WHERE SHE WAS ATTEMPTING TO JUMP OUT OF A MOVING VEHICLE, AND A SHORT TIME LATER, AND THAT ALONE, THE FACT THAT THE VEHICLE WAS IDENTIFIED AS INVOLVED IN THIS KIDNAPING AND THIS MURDER, THAT ALONE, WOULD HAVE GIVEN A JUDGE REASON TO SIGN THE SEARCH WARRANT.

SO HAD SHE IDENTIFIED THE VEHICLE BY THAT TIME?

NO. SHE HAD NOT SEEN THE VEHICLE AT THAT TIME. SHE HAD JUST GIVEN THE DESCRIPTION OF THE VEHICLE AND OF THE VICTIM .

WAS THAT IN THE AFFIDAVIT FOR THE SEARCH WARRANT?

YES.

THE DESCRIPTION THAT IT WAS A WHITE FEMALE MID-50S , WHITE T-SHIRT , AND THEN A CORSICA-TYPE CAR.

WAS THE INFORMATION FROM THE OTHER WITNESS, THE MALE WITNESS

AND REMON OTTS , AT THE TIME OF THE SEARCH, NO , THAT WAS NOT GIVEN YET. ANDREW MOTTS DID NOT , I DON'T BELIEVE HE HAD TALKED OR SPOKEN TO DETECTIVE PERDUE UNTIL AFTER THAT WAS OBTAINED IN THE CAR. BASICALLY, WHEN THEY WENT OUT TO THE PARENTS' PROPERTY AND SPOKE WITH THE DEFENDANT, THEY TOOK HIM BACK TO THE STATION , AND AT THE SAME TIME THEY WERE SECURING THE CAR AND TO WING IT BACK, SO IT CAME TO THE POINT THAT ACTUALLY DURING THE INTERROGATION , ONE OF DETECTIVES WENT DOWNSTAIRS TO THE SALLY PORT WHERE THEY HAD OBTAINED THE INFORMATION AND LOOKED AT THE CAR.

AT THE SAME TIME THEY WERE ARRESTING THE DEFENDANT, THEY ARE TOWING HIS VEHICLE BEFORE THEY OBTAIN THE SEARCH WARRANT?

RIGHT. RIGHT.

WHAT AUTHORITY DID THEY HAVE TO TOW THE VEHICLE?

PROBABLE CAUSE AND THE CAROL DOCTRINE. THAT IS WHAT THE COURT FOUND BELOW IS THAT THEY HAD PROBABLE CAUSE TO SEIZE THE VEHICLE RIGHT THEN AND THERE , JUST LIKE THEY HAD PROBABLE CAUSE TO ARREST THE DEFENDANT , AT THE TIME THEY WENT

WHY DID THEY NEED A SEARCH WARRANT?

JUST AS A STANDARD PROCEDURE THAT THEY WERE DOING. UNDER THE CAROL DOCTRINE , THEY DIDN'T NEED THE SEARCH WARRANT , BUT THEY WENT AHEAD AND OBTAINED ONE , ANYWAY.

SO THEY IMPOUNDED THE VEHICLE FIRST AND THEN OBTAINED THE SEARCH WARRANT TO SEARCH THE VEHICLE.

CORRECT. MY UNDERSTANDING IS , BY THE TIME THE TOW TRUCK DRIVER HAD GOTTEN BACK TO THE LAKE COUNTY SHERIFFS OFFICE, THEY WERE IN THE PROCESS OF GETTING THE WARRANT SIGNED RIGHT THEN.

DID THE WITNESS AT THE LAUNDROMAT WHO HAD OBSERVED THE DEFENDANT AND VICTIM TOGETHER, WAS IT AN HOUR OR AN HOUR AND-A-HALF BEFORE?

HE TESTIFIED THAT AN HOUR OR AN HOUR AND-A-HALF BEFORE?

HE TESTIFIED THAT HE WOULD GO UP THERE TO ACCEPT A CALL AT THE PAYPHONE AND HE USUALLY SPOKE TO HIS GIRLFRIEND FOR ABOUT 35 MINUTES. ON THIS EVENING HE GOT THERE AND THE LAUNDROMAT , HE GOT THERE AND THEY WERE CLOSED AT 10:15 IN THE EVENING AND HE WENT AND TALKED TO HIS GIRLFRIEND ON THE TELEPHONE FOR 30 MINUTES AND WHEN THEY CAME BACK , THEY WERE THERE.

DID HE GIVE A DESCRIPTION OF THE VICTIM'S CLOTHING OR SOMETHING.

NO. I DON'T BELIEVE HE WAS ASKED ABOUT THE VICTIM'S CLOTHING AND I DON'T BELIEVE THAT HE DID. THIS CAME OUT AT PRETRIAL, MOTION HEARINGS, AND WHAT HAD HAPPENED WAS HE WAS CONCERNED FOR THE VICTIM BECAUSE SHE HAD JUST TOLD HIM THAT THE BOYFRIEND HAD BEATEN HER UP AND THREATENED TO KILL HER, SO WHEN HE SAW THE BOYFRIEND THERE, HE WAS CONCERNED. HE TAPPED ON THE GLASS AND CALLED THE APPELLANT OUTSIDE, AND WHILE THE APPELLANT WAS LEAVING THE LAUNDRY MAT, HE ASKED ARE YOU OKAY, AND SHE INDICATED THAT SHE WAS OKAY.

THAT TESTIMONY WAS NOT PRESENTED AT TRIAL. IS THAT CORRECT?

NO. THAT WAS ONLY IN THE SUPPRESSION HEARING THAT THAT CAME OUT. LIKEWISE THAT THE DEFENDANT HAD BEEN RELEASED FROM JAIL, THAT DIDN'T COME OUT AT TRIAL. THAT WAS ONLY IN THE PRETRIAL, BUT THAT WAS STUFF THAT LAW ENFORCEMENT HAD KNOWLEDGE IN THEIR POSSESSION THAT WENT TO ESTABLISHING THE PROBABLE CAUSE.

DID HE, ALSO, DESCRIBE THE DEFENDANT'S AUTOMOBILE?

YES. HE KNEW THAT HE DROVE A WHITE FOUR-DOOR CAR. HE DIDN'T KNOW THE MAKE BUT HE KNEW IT WAS A WHITE FOUR-DOOR VEHICLE.

AND THE POLICE HAD TALKED WITH HIM BEFORE SEEKING THE SEARCH WARRANT?

YES. HE WAS ONE OF THE FIRST WITNESSES THAT, REALLY, LINKED, THEY WERE TRYING TO IDENTIFY THE IDENTITY OF THE VICTIM'S BOYFRIEND. HE WAS THE ONE THAT WAS CRUCIAL IN THAT, BECAUSE HE HAD HAD A RELATIONSHIP WITH HIM AND HAD SPOKEN TO HIM AND KNEW THAT HIS NAME WAS ERIC AND WHAT HAVE YOU.

HOW WAS THE VICTIM ORIGINALLY IDENTIFIED BY THE AUTHORITIES?

FINGERPRINTS.

FINGERPRINTS.

FINGERPRINTS.

IN OTHER WORDS THEY TOOK FINGERPRINTS FROM HER, AFTER SHE WAS DEAD?

RIGHT.

AND THEN MATCHED THOSE FINGERPRINTS TO THOSE FINGERPRINTS THAT WERE ON RECORD?

CORRECT.

HOW UNIQUE WERE THE TIRE TRACKS WITH REGARD TO THE LOCATION WHERE THE VICTIM WAS FOUND AND THE PRINTS?

THE VICTIM WAS FOUND AND THERE ARE A LOT OF PHOTOS IN THAT SUPPLEMENTAL RECORD. AS TO THIS AREA WHERE SHE WAS FOUND, IT WAS AN AREA THAT WAS QUITE COMMON FOR DUMPING KIND OF A SPARSELY WOODED AREA WITH TWO DIRT TIRE TRACK ROADS GOING OUT INTO IT. THERE WERE A BUNCH OF TIRE TRACKS OUT THERE. THE LAW ENFORCEMENT OFFICERS THOUGHT THEY NOTICED WHERE ONE CAR HAD MAYBE TAKEN A 3-POINT TURN NEAR THE VICTIM'S BODY AND THEY FOUND FIVE TIRE TRACKS, AND THEY TOOK THE BEST CAST THEY COULD OUT OF THE BEST TRACKS THEY COULD, AND TWO OF THOSE MATCHED THE TIRES ON THE

APPELLANT 'S REAR TIRES , AND THOSE TIRES WERE DIFFERENT MANUFACTURER TIRES , AND SO THEY WERE TWO SEPARATE OR DISTINCT TIRES ON THE BACK , AND THE STATE INTRODUCED EVIDENCE THAT THE TIRE TRACKS WERE CONSISTENT WITH THOSE TWO REAR TIRES. SO THAT WAS, ALSO , INTRODUCED AS

CONSISTENT WITH OR WERE THE PRINTS OF THOSE TWOTIRES?

NO , CONSISTENT WITH. THERE WASN'T ANY UNIQUE IDENTIFY ARE THAT WOULD A LLOW THAT. JUST GENE RAL SI ZE . WIDTH.

WHERE WAS THIS IN RELATION TO THE PERSON WHO HAD FOLLOWED THE VEHICLE THEN LOST TRACK?

IT WAS VE RY CLOSE PROXIMITY.I BELIEVE IT WAS JUST AMATTER OF MILES A WAY . EVERYTHING MUCH THE LAUNDROMAT, THE INTERSECTION OF 4 4 AND 4 37 , I BELIEVE , WAS AL L IN A PRE TTY S SMALL RADIUS IS MY UNDERSTANDING. I A M NOT , COUNSEL CAN PROBABLY CORRECT M E ON THAT I F I AM MI STAKEN , BECAUSE SHE IS MUCH MORE FAMILIAR WITH THAT AREA.

WHO PRESENTED THE TESTIMONY OF THE OTHER WITNESS THAT IDENTIFIED AN O LDER GENT LEMAN NOT MAT CHING THE DESC RIPTION ? AS DR IVING A WHITE CAR IN THE SAME VICINITY.

I BELIEVE YOU ARE REFERRING TO COUNSEL CALLED , I BELIEVE , A VETERINARIAN THAT WAS IN THE LOCATION ON A SUNDAY MOR NING AND OBSERVED A CAR P ULL OFF INTO THAT AREA THAT WAS WHITE WITH MULTIPLE STICKERS ON I T . BUT , REALLY , THAT DIDN'T MATCH UP WITH ANY OF THE INFORMATION THAT WE HAD. IT WAS, I THINK , JUST A RED HERRING , BUT TH ERE IS NO INDICATION THAT THAT CAR WENT BACK TO WHERE THE VICTIM'S BODY WAS ACT UALLY FOU ND. HE JUST PULLED OFF THE RO AD. I SEE MY TIME IS UP. THANK YOU.

CHIEF JUST ICE: REBUTTAL .

> I WOULD JUST LIKE TO NOTE THAT , AND I APOLOGIZE , MY HEAD WAS ELSEWHERE , I, IN THIS SUFFICIENC Y OF THE EVIDENCE PROBLEM, AFTER THE INCIDENT WHICH THE DEFENSE WAS NEVER PLACED , MR . SIMMONS WAS NE VER PLACED AT THAT SPOT, THE AREA, THEDIRECTION THAT THE CAR , THAT CAR WAS GOING , W AS A WAY F ROM WHERE THE BODY WAS FOUND. MS. RENFRO SAID THAT IT TURNED TO THE LEFT.IT WAS HEADING NORTH. IT THEN WENT WEST. THE PLACE WHERE THE BODY WAS FOUND WAS S O UTH AND E AST OF THAT LOCATION . THERE WERE NO , THE RE WAS NO EVIDENCE OF ANY WEAPONS, NO EVIDENCE OF ANY PLACE THAT THE MURDER OCCURRED, WHICH IS WH Y THERE IS A VE NUE QUESTION, AND THAT IS AN ISSUE IN THE BRIEF. THERE IS , WAS NO INVESTIGATION INTO THE HOMICIDE, IT SELF. ALL THE OFFICERS INVESTIGATION WAS INTO FINDING MR. S I MMONS. THERE WAS NO LOCATION OF ANYTHING TO DO WITH ANY O F THESE KRI MENTS . THE ONLY EVIDENCE OF THESE CRIMES. THE ONLY EVIDENCE AS TO THE SEXUAL BATT ERY IS THAT ITOCCURRED. THE EVIDENCE IS OF THEINJURY. THERE IS NO EVIDENCE AS TO WHERE IT OCCURRED, HOW IT OCCURRED, WITH WHAT I T OCCURRED OR WHO DID IT . THERE IS NO , THERE WERE FOUR , I BELIEVE , DIF FERENT TYPESOF WEA PONS IFIED BY THE MEDICAL EXAM INER IDENTIFIED BY THE MEDICALEXAMINER, DIF FERENT TY PES. A KN IFE , PO SSI BLY TWO KNIVES, A T-SHAPED INSTRUMENT , A THREADED INSTRUMENT, AND A NONTHREADED , NONT-SHAPEDINSTRUMENT. THAT WOULD INDICATE THAT THERE WOULD BE MORE THAN ONEPERSON. THERE WERE NO INDICATIONS OF ANY BINDINGS HAVING BEEN ON THE VICTIM , FROM ANY MARKSON HER BODY.

SO THAT , AND YOU MA DETHOSE ARGUMENTS TO THE JURY.

YES .

WHAT YOU ARE SA YING IS ACTUALLY , SINCE HER D NA IS FOUND IN THE VEHICLE , A GAIN , HE IS

THE LAST PERSON SEEN WITH HER , AND SHE , THERE IS NO QUESTION NOT ONLY IS SHE BRUTALLY MURDERED BUT SHE IS BRUTALLY RAPED. THAT IS NOT A QUESTION.

YES. NO.

SO THE ISSUE IS WHO DID IT.

WHO DID IT.

NOT , THAT , AND NOW WE GO BACK TO WHETHER THERE WAS SUFFICIENT EVIDENCE TO LET A JURY MAKE THAT DECISION.

WHICH IS WHY IT WAS CRITICAL AS TO WHEN SHE WAS ACTUALLY KILLED. BECAUSE THE FACT THAT NOBODY SAW HIM AFTER MR . RODRIGUEZSAYS THAT HE SAW HIM SOMEWHERE IN THE VICINITY OF 10:30, THEN THE EVENING BEFORE, THE INCIDENT AT 437 AND 44 OCCURRED AT MIDNIGHT. IT IS ONLY A FIVE -MINUTE DISTANCE THERE . THAT IS, THERE IS NO DISTANCE AT ALL TO TRAVEL , SO WHAT TRANSPIRED IN THE INTERIM IS UNKNOWN. WHAT MAY HAVE TRANSPIRED AFTER THAT INCIDENT WITH THE CAR GOING THE OPPOSITE DIRECTION FROM WHERE THE BODY IS FOUND, IS UNKNOWN. IN FACT , WHERE ANYTHING HAPPENED TO HER IS ABSOLUTELY UNKNOWN , AND THE STATE , SO CONCEDED. I AM SORRY .

DID YOUR CLIENT'S CAR HAVE AN AMERICAN FLAG HANGING OUT THE PASSENGER SIDE ON THE BACK?

YES AND THE FLAG WAS NOT MENTIONED BY ANYONE UNTIL AFTER THEY VIEWED THE CAR, HIS CAR. NOT THE CAR AT THE TIME . NOBODY MENTIONED A FLAG. NEITHER MR. RENFRO NOR MR . MOTT'S MENTIONED THE FLAG , AND IT WAS ON THE PASSENGER WINDOW AND IT WAS ONE OF THOSE THAT HOOKS ON THE WINDOW AND STANDS UP.

DID MRS. RENFRO NEXT?

NO , SHE DID NOT. MRS. RENFRO SAID THAT, AFTER SHE SAW THE CAR SHE REMEMBERED A BUMPER STICKER ON THE DRIVERS SIDE WHICH SHE COULD NOT HAVE SEEN FROM THE PASSENGER SIDE. THERE WAS ALSO AN OFFICER WHO TESTIFIED ON THE STATE WHO SAID THAT HE USED TO WORK THAT AREA WITH A DEPUTY I BELIEVE AND SAID THAT IT WAS SO WELL LIT THERE THAT YOU COULD SEE ANYONE IN THE CAR AND THAT IS WHY THEY USED TO BE THERE , BECAUSE THE IDENTIFICATIONS WERE SO GOOD. ILL JUST LIKE TO SAY THAT, WHILE IT I WOULD JUST LIKE TO SAY THAT, WHILE IT MAY BE OF NO MOMENT TO THIS COURT, I BELIEVE IN MR . SIMMONS 'S INNOCENCE MORE THAN I HAVE EVER BELIEVED IN ANYONE'S AND JUST PLEASE LOOK AT IT VERY CAREFULLY.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL BE IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.