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Ernest D. Suggs v. State of Florida

MARSHAL: PLEASE RISE. HEAR YE.HEAR YE.HEAR YE. THE SUPREME COURT O F THE GREAT STATE OF FLORIDA IS NOW SESSION. ALL WHO HAVE CAUSE TO PLEA , DRAW NEAR, GIVE ATTENTIONAND YOU SHALL BE HEARD. GOD SAVE THE UNITED STATES , THE GREAT STATE OF FLORIDAAND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED .

CHIEF JUSTICE: GOOD MORNING LADIES ANDGENTLEMEN.THE FIRST CASE ON TODAY'S DOCKET, IS SUGGS VERSUS THE STATE OF FLORIDA . ARE THE PARTIES READY? ALL RIGHT. YOU MAY PROCEED.

GOOD MORNING , YOUR HONOR . HILLIARD MOLD OFF ON BEHALF OF APPELLANT ERNEST SUGGS, APPEALING TODAY

CHIEF JUSTICE: YOU HAVE MANY ISSUES THAT YOU RAISED.ARE YOU GOING TO FOCUS ON ANY IN PARTICULAR?

YES . WHAT I FOCUSED ON IN THE BRIEF , REGARDING GUILT , THE BRADY CLAIM , CITING VIOLATION, THE BRADY CLAIM , CITING DR . ATKINSON 'S MEMO TO DR . KEEL MAN.

GIVE US A THUMBNAIL FACTUAL SKETCH OF THE FACTS SURROUNDING THE FIRST BRADYCLAIM THAT YOU MENTIONED , AND THEN IF YOU WOULD [TECHNICAL DIFFICULTIES] MR . ATKINSON , 24 HOURSBEFORE THE AUTOPSY. LIKE , 30 HOURS BEFORE THE AUTOPSY , M R . SUGGS WAS ALREADY IN CUSTODY , SO BY PROSECUTOR ATKINSON HAVING THAT CONCERN, IF MR . KIMMEL HAD THAT , WHETHER OR NOT MR . KIMMEL TRIED TO DILUTE THAT BY SAYING, WELL , IT WOULDN'T HAVE BEEN VERY EFFECTIVE , BUT THE REALITY IS , WHEN THE DOCTOR IS ON THE STAND, IF YOU CAN SOMEHOW DILUTE HIS EFFECTIVENESS AND SHOW THAT THE DOCTOR DOESN'T KNOW WHATHE IS TALKING ABOUT, YOU DON'T KNOW WHAT IMPACT THIS WILL HAVE ON THE JURY. CERTAINLY YOU WANT TO ATTACK THE DOCTOR IF YOU CAN , AND IF YOU CAN SHOW THE PROSECUTOR , I THINK THAT WAS IMPORTANT. [TECHNICAL DIFFICULTIES]

IF THE TIMES WAS WRONG , IN OTHER WORDS, IT I S SO PATENTLY OBVIOUS THAT IT WAS WRONG , I CAN MAKE THE CONCLUSION THAT I AM REALLY WASTING MY TIME, IF I GET INTO THAT. WHY ISN'T THAT AN ARGUABLE THING, IF IT FALLS INTO THAT CATEGORY?

BECAUSE THERE WAS SOME ARGUMENT , NOT QUESTIONING OF DR . ATKINSON BUT ARGUMENT LATER ON TO THE JURY THAT , THE DOCTOR 'S CONCLUSIONS WERE PERHAPS INEFFECTIVE . THEY WERE BLAMING STEVEN CASE FOY THIS MURDER , AND WHAT I THINK IS IMPORTANT IS, IF YOU HAD ATTACKED THE DOCTOR ON THE FACT THAT HIS BOTTOM LINE ASSERTIONS ARE INFIRM, I THINK YOU, THEN , HAVE THE JURY QUESTION WHETHER THEY SHOULD BE LEAVE ANYTHING FROM THE DOCTOR.

WASN'T THAT DIRECTED PRIMARILY, TO A BROAD SPECTRUM O R BROAD RANGE TIME FRAME? ISN'T THAT THE REFERENCE, AND THAT WAS THE OUTER POINT? IT SEEMS TO B E THE ARGUMENT TO THE CONTRARY , THAT WE ARE GETTING A FRAME OF REFERENCE AS TO THE TIME OF DEATH , AND THAT CERTAINLY IT RAN UNTILTHE POINT OF DISCOVERY OF THE BODY, S O ISN'T THAT THE ARGUMENT THAT THEY AREMAKING HERE? I MEAN, IT IS A HUGE , A HUGE TIME PERIOD, WASN'T

IT?

IT WAS A , BUT WITH THEFACT THAT MR . SUGGS WAS IN CUSTODY , I THINK THAT WAS FERTILE GROUND FOR THE DEFENSE LAWYER TO GO INTO , WHAT WAS ARRANGED.

IT WAS AT THE TIME , WAS IT?

ATKINSON HAD A CONCERN ABOUT IT IS WHAT I THINK IS IMPORTANT , IS HE DIDN'T GOAFTER THAT. THE OTHER INEFFECTIVE CLAIM IS -- [TECHNICAL DIFFICULTIES]

HAVE YOU DONE THAT BEFORE US? YOU ARE SAYING THEY COULD HAVE. HAVE YOU?

HAVE WE SHOWN WHAT TREATMENT THAT TAYLOR GOT?

SHOWN THE PREJUDICE.

THE PREJUDICE WAS THAT THEY DIDN'T EVEN RAISE A RICHARDSON HEARING : POINTED OUT.

JUST AS YOU ARE SAYING,WELL, THEY COULD HAVE TAKEN THE DEPOSITION AND THEREFORE ESTABLISHED THIS AND THEREFORE THAT WOULD HAVE BEEN BENEFICIAL TO THE DEFENSE OPPOSE THE CONVICTION, DON'T YOU HAVE AN OBLIGATION TO PLAY THAT OUT, THEN , AND SAY, WELL , WE HAVE DONE , NOW , WHAT THEY SHOULD HAVE DONE , AND DONE, IT WE HAVE DEMONSTRATED THAT THIS WAS , THEY ABSOLUTELY SHOULD HAVE DONE, IT BECAUSEIT WOULD HAVE BENEFITED THEIR CASE OR IT WOULD HAVE HURT THE STATE'S CASE , BUT YOU HAVEN'T DONE THAT .

YOU ARE RIGHT. I HAVE NOT BEEN ABLE TO SHOW , BEYOND THOSE ITEMS THAT WE HAVE MENTIONED, ABOUT THE DISPARATE TREATMENT THAT TAYLOR GOT , IN TERMS OF BEING RELEASED .

WHAT ABOUT YOUR CLAIMABOUT THE FABRICATED TESTIMONY OF CASEY AND HAMILTON AND THE FACT THAT THEY DIDN'T DISCOVER THE FACT THAT HE WAS LYING , UNTIL AFTERWARDS . WHAT , JUST GIVE THAT LITTLE, BECAUSE I SEE YOU ARE IN YOUR REBUTTAL.

WHAT HAPPENED WAS THEY ATTACKED CASEY. THING HE DID THE MURDER. THEY FOUND THE INSURANCE POLICY AND THREAT YET THEY DON'T HIRE A N INVESTIGATOR. NEITHER KIMMEL OR STEWART NEVER HIRED AN INVESTIGATOR . THEY SAID THEY DON'T BELIEVE INVEST GATEORS. STEWART GOES OUT AND INVESTIGATES THAT AND THEN THEY ACCUSE HIM OF BEING PART OF THE DEFENSE TEAM. THAT IS THE WHOLE REASON YOU HIRE AN INVESTIGATOR. CASEY'S ALIBI I S I SOLD A CAR THE NIGHT OF THE MURDER .

AFTER THE TRIAL?

AFTER THE TRIAL , AFTER THE VERDICT, AFTER THE PENALTY, THEY PUT AN INVESTIGATOR OUT AND FOUNDIT WAS A LIE.

HOW DID THEY EXPLAIN THAT THEY PUT AN INVESTIGATOR OUT AFTER THE TRIAL, RATHER THAN BEFORE THE TRIAL?

I ASKED STEWART THAT. HE SAID IN THE EVIDENTIARY HEARING, I THINK HE ASSIGNED IT TO LUCK HAD, THAT HE HAD AN INVESTIGATOR G O AND DO THAT AFTER THE FACT.

NOW , GOING BACK TO THE ASSIGNMENT CLAIM FOR A MOMENT. YOUR ARGUMENT HERE IS THATTHERE WAS A VIOLATION, BECAUSE THE INMATES WERE PUT BACK IN THE CELL WITH MR . SUGGS , CORRECT?

CORRECT.

THEY HAD ALREADY GIVEN A STATEMENT AT THAT POINT .

CORRECT.

WHAT ADDITIONAL INFORMATION , I DON'T THINK I REMEMBER SEEING ANY ADDITIONAL INFORMATION THAT WAS ELICITED FROM THESE INMATES , AFTER THEY WERE PUT BACK IN THE CELL. HAVE YOU OUTLINED THAT FOR US?

YES , AND ACTUALLY --

WHAT WAS THAT ADDITIONAL INFORMATION? IT WAS BEYOND THEIR ORIGINAL STATEMENT.

THEIR ORIGINAL STATEMENT WAS JUST I BELIEVE, IF I RECALL CORRECTLY, THE ORIGINAL STATEMENT WAS TALKING ABOUT MR . SUGGSMAKING AN ADMISSION THAT H E DIDN'T LEAVE A WITNESS THIS TIME OR SOMETHING T O THAT EFFECT. LATER ON , THEY GO BACK , AND THEY TALK TO MR . SUGGS ABOUT WHERE SOME EVIDENCE MIGHT BE , ABOUT HIS KNIFE , ABOUT HIS WEAPONS. THERE IS OTHER TESTIMONY THAT COMES FOLLOWING THE STATEMENT IN 1990, WHEN THEY CONTINUALLY, THEY GO BACK AND TALK TO SUGGS ABOUT IT , ABOUT WHAT WAS HIS PLAN AND HOW DID HE PLAN IT THE. I CAN'T REMEMBER THE EXACT QUOTE BURKES THE TRIALRECORD IS ACTUALLY ON THE CROSS BY STEWART , DEMONSTRATES THE FURTHER STATEMENTS THEY TOOK FROM HIM.

DID YOU TOUCH ALL THE POINTS THAT --

DIDN'T TOUCH ON THEPENALTY PHASE. OBVIOUSLY WITH REGARD TO THE U.S. SUPREME COURT CASES OF WIGGINS AND THIS COURT'SCASE OF ROSE , IN TERMS OF HOW DO YOU NOT PUT ON ANY PSYCHOLOGICAL MITIGATION ? WE PUT ON DR . CROWN AT THE EVIDENTIARY HEARING, TO TALK ABOUT NEUROLOGICAL IMPAIRMENT , SIGNIFICANT PSYCHOLOGICAL FACTORS.

WASN'T THERE EVIDENCE THAT HE DID NOT COOPERATE WITH DR . LARSEN?

THAT IS THE PROBLEM. LARSEN IS HIRED BY THE PUBLIC DEFENDER S OFFICE , ANDHOW OFTEN DOES PRIOR COUNSEL REPLACE THE PUBLIC DEFENDER , AND THE INMATE WAS NOT COOPERATIVE, BECAUSE HE SAID IN LARSEN'S REPORT, HE WORKED FOR THE STATE. HE DIDN'T WANT TO COOPERATEBECAUSE HE WORKED FOR THE STATE, SO COUNSEL SAID E"A)##`aQQ HE WASN'T COOPERATIVE , *S TTHROW OUR HANDS UP. THERE IS NOTHING TO DO. THE REALITY IS YOU GO AFTER HIM WITH A PRIVATE LAWYER. START NEW WITH A CLEAN SLATE. WORK AND GET A PSYCHOLOGIST AND LOOK AT THE MITIGATION AND SEE WHAT YOU GET.

YOU SAY THAT SOMEBODY HIRED --

YES, MR . LOVE LESS WAS HIRED. LOOK AT THE REPORT T HAS A WONDERFUL OUTLINE FOR WHAT THEY SHOULD DO. IT SAYS NEUROLOGICAL IMPAIRMENT , CHILDHOOD FACTORS , AND THIS IS WHAT YOU DO, INTERVIEW THE PARENT , MEDICAL RECORDS , PSYCHOLOGICAL RECORDS , AND THEY PUT ON NOTHING. THEY DIDN'T INVESTIGATE IT.

WAS THE FACT THAT COUNSELKNEW THE FAMILY AND KNEW , PERSONALLY, THAT THIS COULDOPEN A REAL CAN OF WORMS? HOW DOES THAT WORK?

I THINK THAT WORKS TO THE DETRIMENT. THESE ARE TWO ATTORNEYS. STEWART NEW THE FAMILY. HE SAYS I KNEW THE FAMILY. I THINK PERHAPS THE WAY THE RECORD COMES OUT AND STEWART WOULD HAVE ADMITTED IT. I DIDN'T WANT TO EMBARRASS THE FAMILY AND SHOW A BAD CHILDHOOD OR BAD FAMILY BACKGROUND, AND YET KIMMEL HIRED AN EXPERT WHO

KNOWS PENALTY.HE COULD HAVE SAT KIMMEL DOWN AND SAID , LOOK , I AM THE STATE EXPECT . I KNOW -- THE STATE EXPERT. I KNOW ABOUT MITIGATION. HE DOESN'T EVEN PUT IT ON. HE DOES NOTHING. HE SAYS I TRIED OTHER CAPITAL CASES AND WITHOUT PSYCHOLOGIST S AND GOT LIFE RECOMMENDATION S BEFORE AND IPSA FACTO, YOU DON'T NEED A PSYCHOLOGIST . AND COUNSEL WORKED VERY HARFORM -- VERY HARD ON IT. THE THINGS THEY DIDN'T DO. PUT ON SOME PSYCHOLOGICAL IMPAIRMENT AND YOU WOULD GET ANOTHER VOTE .

YOU ARE MUCH INTO YOUR REBUTTAL.

I WILL SIT DOWN AND SAVE IT. SORRY.

GOOD MOFERJT MEREDITH CAR BULL, A ASSISTANT ATTORNEY GENERAL FOR THE STATE OF FLORIDA. I WOULD LIKE TO ANSWER YOUR GET. WHAT EVIDENCE WAS RECEIVED , PURSUANT TO SEARCH WARRANT --.

YOU WOULD HAVE TO AGREETHAT THAT SEARCH WARRANT WAS DEFECTIVE.

I THINK THE COURT COULD CERTAINLY FIND THAT IT DIDN'T DESCRIBE THE TIC LARTS , THE ITEMS TO BE CEASED . -- TO B E SEIZED. HOWEVER , THERE WAS NOTHINGIN THE RECORD T O DEMONSTRATE WHAT EVIDENCE WAS SEIZED , PURSUANT TO THE SEARCH WARRANT , THAT WASN'T ALREADY SEIZED AND APPROVED BY THIS COURT , A CONSENT SEARCH.

DOESN'T THAT REALLY FALL WITHIN INEFFECTIVE ASSISTANCE O F TRIAL COUNSEL, IN THAT , ONE , TRIAL COUNSEL , EVEN THOUGH PRO S E , THIS DEFENDANT ASKED ABOUT THE MATTER OF PARTICULARITY , WHICH , CERTAINLY , THAT WARRANT WAS DEFECTIVE ABOUT , AND THEN , DIDN'T , PUT IN THE RECORD , WHAT WAS ACTUALLY SEIZED, BECAUSE THAT WOULD HAVE BEEN SUBJECT TO BEING SUPPRESSED. I MEAN , WASN'T THAT INEFFECTIVE ?

I THINK THE RECORD ESTABLISHES THAT . MR. SUGGS CONSENTED TO BOTH THE SEARCH OF HIS VEHICLEAND THE SEARCH OF HIS HOME , WHICH THIS COURT FOUND WAS AN AUTHORIZED CONSENT SEARCH AND THAT THAT EVIDENCE WOULD HAVE BEEN ADMISSIBLE , REGARDLESS OF THE SEARCH WARRANT , BECAUSE REALLY WHAT WAS AT ISSUE IN HIS HOME, WAS THE MONEY FOUND PURSUANT TO THE CONSENT SEARCH , AND THE BOOK , PARTICULARLY THE MONEY.

I THOUGHT THE TESTIMONYWAS THAT THE OFFICERS SAID THAT THEY SAW THE MONEY BUT THEY DIDN'T TOUCH I T OR COUNT IT , UNTIL THEYOBTAINED A SEARCH WARRANT.

ACTUALLY I BELIEVE THEY DID A QUICK COUNT, WHICH REVEALED DENOMINATIONSS CONSISTENT WITH WHAT WOULD HAVE COME FROM THE BAR.

LET ME REVERT TO THE FIRST QUESTION. WOULD YOU AGREE THAT TAYLOR AND BUYERS , WERE -- AND B.Y. ERS , WERE -- AND BYERS WERE CONFIDENTIAL INFORMANT S .

I DON'T THINK SO . TO VIOLATE MR. SUGGS 'S SIXTH AMENDMENT RIGHT TO COUNSEL, IT WOULD HAVE HAD TO BE NECESSARY .

WHAT IS TO DEMONSTRATE WHETHER THESE TWO INDIVIDUALS RECEIVED FAVORABLE TREATMENT THERE IN THE JAIL?

I THINK THAT TRIAL COUNSEL EXPLORED THAT VERY WELL , BUT LENIENT TREATMENT DOES NOT EQUAL A MESSIAH VIOLATION . TERRY McMILLAN TESTIFIED AT THE EVIDENTIARY HEARING THAT HE DID NOT INSTRUCT MR . TAYLOR OR MR. BYERS TO ELICIT ANY INCRIMINATING EVIDENCE FROM MR . SUGGS.

MR . FAIL O R TESTIFIEDTHAT IT WASN'T -- MR . TAYLOR TESTIFIED THAT IT WASN'T HIS POLICY TO

DO THAT. NO ONE , NEITHER THE STATE NOR DEFENSE COUNSNECESSARILY POSTCONVICTION, CALLED THE DEPUTY -- COUNSEL , IN POSTCONVICTION, CALLED THE DEPUTY THAT ACTUALLY RAN THE JAIL OR ANYONE THAT DEALT HANDS-ON, WITH WHY TAYLOR AND BYERS WERE PLACED IN THIS CELL WITH SUGGS, DIDTHEY? I MEAN THE RECORD IS JUST KIND OF DEVOID ON THAT.

ACTUALLY YOU ARE CORRECTTHAT NO DEPUTY WAS CALLED , BUT SHERIFF McMULLEN WAS ASKED SPECIFICALLY , DID HE INSTRUCT TAYLOR TO ELICIT INCRIMINATING STATEMENTS FROM MR. SUGGS, AND HE SAID,NO. HE WAS ALSO ASKED SPECIFICALLY ABOUT MR . BYERS , AND HE SAID NO.

WOULD YOU TREAT COUNSEL'S ARGUMENT THAT THAT AT LEAST AFTER THE FIRST STATEMENTS WERE GIVEN AND THE INMATES GAVE THAT INFORMATION , TO THE STATE , THEN THEY WERE PLACED BACK IN THE SAME CELLS WITH THE DEFENDANT , THAT ANY EVIDENCE THAT WASSECURED AFTER THAT , WAS A VIOLATION OF THE DEFENDANT'SRIGHTS, BECAUSE THEY BECAME STATE AGENTS AT THAT POINT.

I DO NOT AGREE WITH THAT CHARACTERIZATION, JUSTICE ANSTEAD.FIRST OF ALL , I THINK THE RECORD IS NOT THAT WELL-DEVELOPED THAT , THEYWERE INTENTIONALLY PLACED BACK IN THE CELLS. HOWEVER , THE ISSUE --

LET'S TAKE SOME , JUST SORT OF, NOW, EXCUSE ME IF I SAY WHAT PROBABLY WOULD BE JUST LOGICAL INFERENCE , THAN IS THAT, IF THOSE INMATES CAME FORWARD AND GAVE THE STATE STATES THAT THIS DEFENDANT CAME IN AND FIRST THING HE STARTED DOING WAS BRAGGING ABOUT HIS ROLE IN THIS CRIME, AND THEN THEY TOOK ALL THAT, AND THEN THEY SAID, NOW, WE ARE GOING TO PUT YOU BACK IN THE CELL WITH THAT DEFENDANT. WOULDN'T YOU ORDINARILY THINK THAT, EVEN IF IT IS NOT SPOKEN , THAT THE ARRANGEMENT WOULD BE YOUKEEP LISTENING , AND REPORT TO US ANYTHING ELSE THAT THAT DEFENDANT SAYS. HELP ME WITH THAT ASPECT O F IT. THAT IS LOGICALLY , IF YOU PLACE THESE INFORMANTS BACK IN THE CELL WITH THEDEFENDANT , THE INFORMANTS HAVE COME FORWARD BEFORE AND GIVEN INFORMATION OF WHAT THAT DEFENDANT SAID, THAT ISSORT OF A LOGICAL UNDERSTANDING , WOULD BE IF WE PUT YOU BACK IN , YOU ARE GOING TO KEEP LISTENING , AND REPORT TO US WHAT ADDITIONAL INFORMATION.HELP ME WITH THAT.

I THINK THIS COURT HAS MADE CLEAR IN ROLLINGS , THAT IN ORDER TO ESTABLISH A MESSIAH VIOLATION, THERE HASTO BE AFFIRMATIVE EFFORT ON LAW ENFORCEMENT , AND THERE IS ABSOLUTELY NO INDICATION IN THE RECORD, NO EVIDENCE IN THE RECORD THAT MR. TAYLOR AND M R . BOOIRS , EVEN ASSUMING IT WAS TRUE IF THEY WERE PUT BACK IN THE CELL , KNEW THAT THEIR ROLE WAS T O KEEP LISTENING AND KNEW THAT THEIR ROLE WAS T O KEEP REPORTING.

ISN'T IT TRUE THAT THERE IS NO INFORMATION HERE THAT THEY WERE PUT BACK IN THECELL? BECAUSE I THOUGHT THAT THERE WAS EVIDENCE THAT WAS SECURED FROM THEM , AFTER THE INITIAL REPORTS WERE MADE TO THE SHERIFF.

I THINK MR . TAYLOR TESTIFIED THAT HE WAS CROSS-EXAMINED VISIONSLY ON WHAT HE HAD NOT -- VIGOROUSLY ON WHAT HE HAD NOT STATED IN HIS DEPOSITION , AND HE STATED THAT THERE WERE ONGOING CONVERSATIONS. WHERE THOSE OCCURRED, I AM NOT EXACTLY CERTAIN , BUT, AGAIN , I THINK THE ISSUE IS , DID LAW ENFORCEMENT PLACE THEM BACK IN THE CELL WITH INSTRUCTIONS TO ELICIT ANY STATEMENTS .

ON THIS , YOU WOULD HAVE THOUGHT THAT THAT KIND OF THING WOULD HAVE OCCURRED IN THE PAST, AND SOME COURT WOULD HAVE HAD TO DEAL WITH IT, THAT IS THE FACT THAT AN INMATE CAME FORWARD, THEN WAS PUT BACK IN THE CELL. IS THERE ANY CASE LAW THAT DISCUSSES WHETHER OR NOT THAT , PUTTING THEM BACK IN THE CELL WOULD CONSTITUTE A

VIOLATION ?

I WAS NOT ABLE OR NOT AWARE OF ANY CASE LAW WHERE THAT, ALONE , WOULD ESTABLISH A MESSIAH VIOLATION. I THINK ROLLINGS INDICATESTO THE CONTRARY , THERE MUST BE SOME AFFIRMATIVE ACTION.

ONE OF THE PROBLEMS HERE, THOUGH, IS THAT IT DOESN'T SEEM THAT DEFENSE COUNSEL, I MEAN, HERE YOU HAVE THESE TWO JAILHOUSE SNITCHES, ANDYOU HAVE GOT SOME PRETTY SUSPICIOUS US CIRCUMSTANCES . WHAT IS THE EXPLANATION FOR WHY DEFENSE COUNSEL DOESN'T VISIONSLY GO AFTER THIS -- VIGOROUSLY GO AFTER THIS TESTIMONY AND TRY TO FIND OUT WHAT IS GOING ON . I MEAN THE CIRCUMSTANCES CERTAINLY LOOK VERY SUSPICIOUS. HE FOUND OUT IN JANUARY THERE WAS THIS AUGUST STATEMENT AND THAT THE INMATE REMAINED IN THE CELL. WHY ISN'T THAT DEFICIENT PERFORMANCE , BECAUSE MAYBENOW IS HARD 15 YEARS LATER, WHATEVER THIS IS, TO KNOW EVERY DETAIL , BUT CERTAINLYIF YOU WERE ON THE SCENE , YOU WOULD HAVE A FAR BETTER OPPORTUNITY TO FIND OUT EXACTLY WHAT WAS GOING ON , AND I TELL YOU FROM MY POINT OF VIEW WHAT WAS GOING ON , SORT OF THERE IS SOMETHING WRONG WITH WHAT WAS GOING ON WITH THIS, WITH THEM BEING PLACED IN THE CELL, SO HOWDO YOU RESPOND? WE ARE NOT ON DIRECT APPEAL , SO THERE IS NOT , YOU DON'T HAVE THIS RECORD AS FULLYDEVELOPED , BUT WHY WEREN'T THEY INEFFECTIVE FOR NOTDOING THAT, THAT LINE O F INVESTIGATION?

FIRST OF ALL , TRIAL COUNSEL TESTIFIED THAT HE TOOK, HE TOOK THE DEPOSITIONS OF BYERS AND TAYLOR . THAT THERE WAS NOTHING , NO INDICATION WHATSOEVER THERE WAS A MESSIAH VIOLATION.

DID HE KNOW AT THAT TIME, WHEN HE TOOK THEIR DEPOSITION , THAT THEY HAD GIVEN A STATEMENT IN AUGUST AND THEN THAT THEY CONTINUED TO REMAIN IN THE CELL?

IT APPEARS THAT HE WAS FULLY AWARE OF THE CIRCUMSTANCES.

DID HE QUESTION THEM ABOUT THAT?

DURING THE DEPOSITIONS , I WAS UNABLE TO FIND ANY DIRECT QUESTIONING ABOUT WHETHER THEY HAD BEEN PLACED IN THE CELL, BUT NONE OF THE --

THAT IS THE WHOLE POINT. HE MIGHT HAVE TAKEN THEDEPOSITION, BUT IF HE IS NOTLOOKING FOR THE KIND OF THING THAT YOU EXACTLY WANT TO DO TO KEEP THEIR TESTIMONY OUT, THEN HE IS MISSING , HE IS MISSING THE BOAT.

WELL , I THINK WHAT THE RECORD I S ABSOLUTELY FULL O F , IS THAT TRIAL COUNSEL'S STRATEGY WAS TO DEMONSTRATE THAT MR. TAYLOR AND MR . BUYERS WERE UNWORTHY OF BELIEF, BECAUSE THEY WERE ATTEMPTING TO CURRIE FAVOR AND ATTEMPTING TO OBTAIN LENIENT TREATMENT FROM JAIL PERSONNEL. ADDITIONALLY TRIAL COUNSEL VIGOROUSLY ATTACKED MR . BYERS'S CREDIBILITY, AS FARAS HIS CONFIDENCE. THEY MADE A MOTION TO EXCLUDE HIS TESTIMONY IN ITS ENTIRETY.

LET ME ASK YOU THIS , BECAUSE YOUR TIME IS FLYING. WITHOUT BYERS AND TAYLOR'S TESTIMONY HERE, WE HAVE GOT A SITUATION IN WHICH THE JEEP , REALLY , TURNED OUT NOT TO HAVE ANY PHYSICAL EVIDENCE, WITH THE EXCEPTION OF THE FINGERPRINT , ONE , THE FINGERPRINT AND PALM PRINTON THE WINDOW , AND THEN THERE IS THIS ALLEGATION THAT THERE WERE CERTAIN LACK OF INVESTIGATION AND WITNESSES THAT WERE AVAILABLE TO SAY THAT THE VICTIM AND THE DEFENDANT HAD BEEN TOGETHER SOME OTHER TIME, OTHER THAN THE NIGHTOF THE MURDER.

IN FACT , JUSTICE WELLS, TRIAL COUNSEL VIGOROUSLY CONTESTED THAT ISSUE. HE EXPLORED ,

BOTH WITH STEVE CASEY AND RAY HAMILTON , THE PERSON HE POINTED THE FINGER AT AS THE ACTUAL MURDERERS , THE FACT THAT HE AND PAULINE HAD A FRIENDLY CONNECTION , AND IN FACT STEVE CASEY SAID ISN'T IT TRUE SHE REFERRED TO SUGGS AS MY FRIEND FROM ALABAMA. YES.

WHAT I AM CONCERNED ABOUT IS THERE IS A REASONABLE EXPLANATION AS TO THAT FINGERPRINT , BUT WHAT I DON'T UNDERSTAND IS THAT IDEA PHYSICAL EVIDENCE OR THAT BLOOD IN THE JEEP, THIS MURDER OCCURRED , WITH MULTIPLE STABBINGS , OUT ADJACENT TO WHERE THE STATE'S POSITION I S THE JEEP ENDED UP AND CERTAINLYWOULDN'T IT BE REASONABLE TO EXPECT IT?

THE TRIAL COUNSEL CA\$DQ" THREE WITNESSES IN ORDER { _ TO REFUTE THE PRIMARY EVIDENCE. THEY CALLED A ~r MICROAND LIST WHO TESTIFIED -- A THERE WAS}i NO { _ }i HAIR AND THEY CALLED SEROLOGIST TO TESTIFY THAT THE BLOOD EVIDENCE WAS NOT RELIABLE .

WAS THE STATE ATTEMPTING TO PROVE THAT THE MURDER OCCURRED IN THE STATE OR WASTHE STATE ATTEMPTING TO PROVE THAT THE MURDER OCCURRED ACTUALLY AT THE PLACE WHERE THE BODY WASFOUND OR WHAT WAS THEIRTHEREY?

THE THERE I HAVE THE CASE WAS THAT SHE WAS KILLED AT A SITE SHORTLY AWAY FROM THE SITE THAT SHE WAS ACTUALLY FOUND , AND THAT HE DRAGGEDHER TO THE SITE , AND THEREWAS N O THEORY ON , OR THE STATE OFFERED NO THEORY THATSHE WAS KILLED IN THE JEEP. IN FACT, PROBABLY JUST OPPOSITE.

AS FAR AS THE FAILURE TO INVESTIGATE , WHICH IS BOTH IN THE GUILT PHASE AND PENALTY PHASE , EXPLAIN TO ME , WHAT THE EXPLANATION WAS FOR HAVING SHOCKLY GO OUT AFTER THE TRIAL IS OVER , AND THEN FOUND EVIDENCE THAT WOULD HAVE BEEN VERY SIGNIFICANT IMPEACHMENT OF THE HUSBAND , WHO HAD AN INSURANCE POLICY , THAT HE SAID WHERE HE WAS ON THE DAY OR THE NIGHT OF THE MURDER WAS HE WAS SELLING A VEHICLE , AND THEY , THROUGH POST-JUDGMENT INVESTIGATION, FOUND THAT THAT WAS NOT TRUE. THAT WAS A LIE !

FIRST OF ALL , INVESTIGATOR SHOCKLY WAS OBTAINED BY COLLATERAL COUNSEL NOT BY TRIAL COUNSEL.

OKAY. TO AVOID , WHAT IS THE STATE'S POSITION FOR NOT HAVING DONE ANY OF THAT KIND OF INVESTIGATION?

MR . STEWART TESTIFIED AT THE EVIDENTIARY HEARING THAT THEY TRIED EVERYTHING , INCLUDING GOING TO TALLAHASSEE , SEARCHING THE RECORDS ON THEIR OWN, MR . STEWART DID THE INVESTIGATION , AND COULD NOTLOCATE ANY DOCUMENTARY EVIDENCE THAT THAT TRUCK WAS SOLD THE DAY BEFORE, BUT THIS TRUCK I S A COMPLETE READ HER IN G , AND THE REASON WHY THE TRUCK IS A COMPLETE READ HER ING , IS BECAUSE HE HAVE ENASSUMING -- IS BECAUSE EVEN ASSUMING THAT HE SOLD THE TRUCK THE NIGHTBEFORE, AND WE ARE TALKING ABOUT A SUBSTANTIAL SALE IN RURAL WALTON COUNTY , NOW, HE DIDN'T EXPLAIN WHAT HE MEANT BY THE TERM "SALE" , AND IT IS REASONABLE TO INCLUDE THAT THE SALE BETWEEN INDIVIDUALS INVOLVES A LOT OF STEPS. HE WASN'T EVER PURSUED , BUT THE SALE OF THE TRUCK IS A RED HERRING , BECAUSE HE, ON DIRECT }i TESTIMONY TESTIFIEDTHAT HE SOLD THE TRUCK B Y SIX O'CLOCK THAT NIGHT, SO STEVE CASEY HAD NO ALIBI AND HE HAD NO TRUCK. EVEN IF YOU BUY THE DEFENSE'S THEORY, HE HAD NO TRUCK TO GO OUT AND KILL PAULINE AND BE BACK AT MIDNIGHT, WHEN LAW ENFORCEMENT ANSTEAD VALENCIA CALLED HIM AND SAID YOUR WIFE IS MISSING.

WHAT DOES THE RECORD REVEAL OR DOES IT , AS TO WHO CALLED IN THE DESCRIPTION OF THE DEFENDANT , WAS THAT RAY HAMILTON?

YES. CORRECT.NOW , WHEN RAY HAMILTON AUKD TAUKD TO STEVE CASEY AT THE -- WHEN RAY HAMILTON TALKED TO STEVE CASEY AT THE BAR AT AND PROXNATIONAL MATHLY { _ }i 9:-- AT APPROXIMATELY 9:45 P.M. RAY HAMILTON TALKED TO HIM SHORTLY AFTER STEVE, BECAUSE RAY CALLED STEVE AND COMPLAINED THAT HE HAD BEEN ON THE PHONE TOO LONG AND THEY TALKED ABOUT THE SALE OF THE TRUCK, BUT RAY HAMILTON TESTIFIED THAT STEVE TOLD HIM HE SOLD THE TRUCK, SO UNDER EITHER THEORY , WHETHER HE SOLD THE TRUCK AT 6:00 P.M. THAT NIGHT OR WHETHER HE SOLD THE TRUCK THE DAY BEFORE, RAY HAMILTON 'S TESTIMONY IS STILL CREDIBLE. RAY HAMILTON IS THE LAST PERSON TO SEE PAULINA LIVE , EXCEPT FOR ERNEST SUGGS , PAULINE CASEY, AND BROUGHT HIM DOWN. HE EVEN GAVE A DESCRIPTIONIN THE JEEP , EVEN IDENTIFYING THE COOLER IN THE BACK OF THE JEEP , GIVING A DESCRIPTION OF MR. SUGGS, AND THAT IS WHEN THE BOLO WAS PUT OUT AND HE WAS DETAINED AT ABOUT 5 A.M. THAT MORNING .

THE THIFER THE STATE WAS THAT THIS WAS A N ABDUCTION.

ABSOLUTELY.

FOR ROBBERY PURPOSES.

THAT'S CORRECT .

THERE WAS NO SEXUAL CONTENT OF THIS CRIME AT ALL .

I THINK MR . SUGGS TOLD MR . BYERS THAT HE INTENDED T O RAPE HER BUT SHE STARTED TO STRUGGLE, SO HE WENT AHEAD AND KILLED HER.

THAT IS GOING BACK TO, I THINK , THE QUESTION ABOUT, REALLY STARTED WITH TAYLOR AND BYERS. THAT TESTIMONY WAS HEARD BY THE JURY, ABOUT HE THOUGHTHE WOULD RAPE HER BUT THEN HE KILLED HER. CORRECT? I MEAN, IN OTHER WORDS, THAT TESTIMONY WAS PRETTY CRITICAL TO THE STATE , TO OBTAIN, T O MAKE THIS A DEATH-PENALTY CASE. WOULD YOU AGREE WITH THAT?

I DON'T THINK S O AT ALL. IN FACT SEX EW BATTERY WAS NOT CHARGED NOR WAS THE DEFENDANT CONVICTED , NOR IS IT AN AGGRAVATING FACTOR NOR WAS IT ARGUED AS AN AGGRAVATING FACTOR.

DID THE JURY HEAR THAT OR WAS THAT EXCLUDED FROM EVIDENCE?

I HONESTLY CAN'T RECALL THAT FROM THE RECORD.

SO WE CAN LOOK AND SEEWETHER THAT TESTIMONY WAS TESTIMONY GIVEN.

IT REALLY WASN'T ARGUED DURING CLOSING ARGUMENT , WASN'T EMPHASIZED BY THE PROSECUTOR, WOUNT FOUND BY THE JUDGE. NOTHING REGARDING SEXUAL BATTERY WAS INVOLVED IN THIS TRIAL , AS FAR AS MADE A FOCUS OF THE TRIAL .

YOU DON'T REALLY SEE THAT TAYLOR AND BYERS GAVE MUCH IN THE WAY OF IMPORTANT TESTIMONY FOR THE STATE?

I CERTAINLY THINK THAT THEY CONTRIBUTED TO THE STATE'S EVIDENCE.

WITH NO CONFESSION. WAS THERE A CONFESSION IN THIS CASE?

THERE WAS NOT A CONFESSION TO THE MURDER.I THINK TRIAL COUNSELPOINTED OUT AT THE EVIDENTIARY HEARING THAT , WHAT HE BELIEVED WAS CRITICAL, WAS THE FINGERPRINTS ON

THE INSIDE OF MR . SUGGS'S JEEP , AND I WOULD SAY THAT TRIAL COUNSEL VISION SLY CROSS-EXAMINED THE STATE FINGERPRINT EXPERT AND ESTABLISHED , WITH THIS NOTION OF A FRIENDLY EXPLANATION, THAT THE PRINTS COULD HAVE BEEN THERE AS A RESULT OF HER BEING IN THE VEHICLE VOLUNTARILY . HER RIGHT AND MIDDLE FINGER WAS FOUND ON THE PASSENGER SIDE GLASS, AND THE PALM ON THE INTERIOR OF THE DOOR HANDLE, AND SHE WAS ASKED AND SAID , YES , TO WHETHER THAT COULD HAVE GOTTEN THERE FROM SOMEBODY PUSHING THE DOOR CLOSED BY THE WINDOW AND OPENING , REACHING IN AND OPENING THE DOOR AND TRIAL COUNSEL FULLY EXPLORED THE FACT THAT THERE WAS A FRIENDLY CONNECTION BETWEEN PAULINE CASEY AND ERNEST SUGGS , AND CERTAINLY RAISED THE INFERENCE THAT SHE HADBEEN IN THAT JEEP FOR INNOCENT REASONS , BUT AT THE HEARING , DESPITE THE FACT THAT MR . SUGGS SAYS IN HIS BRIEF THERE WERE A PLETHORA OF WITNESSES T O ESTABLISH THAT SHE BEEN IN THAT JEEP, NOT A SINGLE ONE WAS CALLED DURING THE EVIDENTIARY HEARING. NOT A SINGLE PIECE OF EVIDENCE, NOT A SINGLE WITNESS , EVEN TODAY , THAT PUT PAULINE CASE ANY MR . SUGGS 'S JEEP UNTIL HE KILLED HER.

THE ONLY, THE MURDER WEAPON WAS NEVER RETRIEVED , CORRECT?

THAT'S CORRECT.

THE ONLY EVIDENCE OF ANY BLOOD THAT WAS ON THE DEFENDANT AT ANY POINT HERE , WAS A SPOT O N THE SHIRT.

THAT'S CORRECT.

AND WHAT DID , WHAT TEST , I AM A LITTLE CONFUSED AS TO EXACTLY WHAT, EVEN IN THIS COURT'S OPINION , AS TO THE DETERMINATION WAS AS TO THE MEANING OF THAT BLOOD AND THE ENZYMES .

BLOOD , THE ONLY EVIDENCE THAT WAS ABLE TO , THE STATE BLOOD EXPERT WAS NOT ABLE TO GET ABO TYPING , AND PAULINE CASE AND THE DEFENDANT ARE THE SAME , ABO, AND THEY HAVE TWO DIFFERENT KINDS OF ENZYMES , ONE OF THEM BEING THE ABA ENZYME , MR . SUGGS WAS 2 DASH ONE AND MS. CASEY WAS ONE , AND THE ENZYME PRESENT ON MR. SUGGS'S SHIRT WAS 2 DASH 1. SO H E INCLUDED PAULINE CASEY AND 90 PERCENT O F THE POPULATION , HAVE AN ADA -1 ENZYME , S O WAS ABLE TO LESSEN THE IMPACT OF THAT , PLUS THE OWN BLOOD EXPERT TESTIFIED THAT THAT BLOOD SAMPLE COULD HAVE BEEN DEGRADE AND THE 2 DASH ONE COULD HAVE BEEN EXPIRED .

JUST A QUESTION WITH REGARD TO THE RICHARDSON ISSUE. DID ANYONE EXPLORE OR WAS IT EXPLORED DURING DEPOSITION, WITH REGARD T O , BEFORE THE JUDGE CAME TO TESTIFY, AS TO THE MOVEMENT WITHIN THE JAIL FACILITY OF THESE INDIVIDUALS OR ANYTHING AT ALL WITHIN THE DEPOSITION , BECAUSE THE DEPOSITION CERTAINLY WAS TAKEN AFT JANUARY DATE , SO WAS THERE ANY QUESTION , ANYTHING AT ALL IN THE DEPOSITION, T O ALERT ANYONE AS TO THE MOVEMENT , AS -- TAKEN AFTER THE JANUARY DATE , SO WAS THERE ANY QUESTION, ANYTHING AT ALL IN THE DEPOSITION, TO ALERT ANYONE AS TO THE MOVEMENT, AS TO WHAT HAPPENED ?

I DON'T RECALL AT ALL , BUT INSOFAR AS THE RICHARDSON TRIAL COUNSEL TESTIFIED THAT HE WAS PREPARED TO CROSS-EXAMINE JUDGE LINDSEY THAT , HE FELT THAT HE WOULDN'T BE ABLE TO DEMONSTRATE TO THE TRIAL JUDGE , THAT HE WAS PREJUDICED IN THE PREPARATION OF HIS CASE , AND UNDER RICHARDSON INQUIRY , A REMEDY IS ONLY APPROPRIATE, IF THE JUDGE FINDS THAT IT PREJUDICED THE PREPARATION OF THE CASE N ANY EVENT, MR . KIMMEL SAID THAT THE MOST HE WOULD HAVE GOTTEN , IS A SHORT DELAY TO TAKE HIS DEPOSITION. HE HAD OTHER WITNESSES AVAILABLE, READY TO CALL , AND BECAUSE HE ALREADY KNEW WHAT JUDGE LINDSEY WAS GOING TO SAY , WAS PREPARED FOR CROSS-EXAMINATION IN HIS VIEW, THERE WAS NO REASON TO TAKE A DELAY AND, OF COURSE , EXCLUSION OF THE WITNESSES, NOT THE

PREFERRED REMEDY FOR RICHARDSON VIOLATION, AND MR . KIMMEL TESTIFIED HE DIDN'T THINK HE WAS GOING TO GET THAT.

CHIEF JUSTICE: THANK YOU. THANK YOU VERY MUCH. YOU HAVE TWO TENTHS OF ONE MINUTE, BUT WE WILL GIV E YOU--

JUST VERY QUICKLY TO ANSWER I FORGET WHOSE QUESTION IT WAS BUT IN THE DEPOSITION BY MR. KIMMEL , SUBSEQUENT TO FIND ING OUT THAT THE INMATES HAD BEEN PLACED BACK IN THE CELL, YOUSAY WHAT ELSE DID THEY SAY, IN THE DEPOSITION MR . TAYLOR TELLS MR. KIMMEL , THAT THEY, THEN , HAVE , MR. SUGGS COMES IN AND SAYS MY LAWYER WANTS TO DECLINE THE STATEMENTTHAT, I DIDN'T MAKE ANY STATEMENTS IN FRONT OF YOU, SO THEY THRILL FIND OUT THAT SUGGS IS NOW , COUNSEL IS HAVING THEM SIGN STATEMENTS THAT WE DIDN'T, I DIDN'T MAKE ANY STATEMENTS TO ANY OF THESE INMATES IN THECELL. THAT IS AFTER THEY ARE PUTBACK IN THE CELL. THEY ARE GIVEN THEIR INITIAL STATEMENT. THEY THEN STAY WITH SUGGS AND SUGGS ASKS THEM TO SIGN A STATEMENT THAT I HAVEN'T CONFESSED TO YOU, I HAVEN'T SAID ANYTHING IN FRONT OF YOU. KIMMEL LEARNS THAT IN DEPOSITION AND STILL HASN'T FILED A MOTION TO SUPPRESS, THINKING THAT IT IS GOING TO GET HIM NOWHERE , WHEN COUNSEL WOULD CERTAINLY TAKE A CHANCE THAT THE JUDGE WOULD GRANT THAT.IT IS NOT A FOREGONE CONCLUSION BY ANY STRETCH , SO I THINK A MESSIAH VIOLATION , I DON'T KNOW HOW COMPETENT COUNSEL COULDN'T HAVE DONE THAT.

AGAIN, THAT GOES BAG TO -- THAT GOES BACK TO YOU DON'T KNOW HOW COMPETENT COUNSEL WOULDN'T HAVE RAISED IT.

RIGHT.

DON'T WE HAVE TO DECIDE HERE THAT, BASED O N WHAT YOU HAVE PRESENTED, THAT THERE IS A MESSIAH VIOLATION?

I BELIEVE THERE IS.

I JUST WANT TO UNDERSTAND.

I AGREE , OF COURSE.

QUESTION WAS ASKED OF OPPOSING COUNSEL , WHETHER OR NOT THERE IS ANY CASE LAW , ANY CASE, THAT THE MERE PUTAGO PERSON BACK IN THE CELL , IS A MESSIAH VIOLATION. DO YOU HAVE ANY CASES TO THAT EFFECT?

I HAVE NOT FOUND ANY CASES OF THAT FACT , ALL FOUR OF THESE FACTUAL SITUATIONS WHERE THE STATE THEN TRIES TO DENY }i IT. LOGICALLY PRESUME THAT THESTATE WOULD THEN SAY THEY CERTAINLY ARE OUR AGENTS. AS I SAID , BYERS'S TESTIMONY, PAGE}i}i 3399 OF HIS TESTIMONY , WHERE BYERS TESTIFIES THAT THERE WAS A RAPE, THAT IT WAS A STRUGGLE , HISINTENTION WAS TO RAPE }i HER AND THE TRIAL TESTIMONY , SEE , THAT DID COME OUT IN THE TRIAL TESTIMONY AS WELL. I KNOW MY TIME IS UP.

CHIEF JUSTICE: ALL RIGHT. THANK YOU VERY MUCH. THANK BOTH OF YOU FOR ANSWERING OUR QUESTIONS AND BEING RESPONSIVE TO THEM.