Thomas M. Overton v. State of Florida

SC04-2071 | SC05-964 | SC06-237

>> NEXT CASE ON THE CALENDAR,
OVERTON VERSUS STATE.
>> MAY IT PLEASE THE COURT.
>> SOFT-SPOKEN, PLEASE PULL
THAT DOWN SO WE CAN HEAR YOU.
THERE YOU GO.
>> MATE PLEASE THE COURT.
COUNSEL, MY NAME IS CHRISTINE
-- I REPRESENT MR. OVERTON,
REETED AT COUNSEL TABLE WITH ME
IS MS. BACKUS AND THE TWO OF US
REPRESENT THE APELLANT.
>> WILL YOU CONCENTRATE ON ANY
PARTICULAR ARGUMENTS THIS
MORNING.
>> YES, I WOULD REALLY LIKE TO
CONCENTRATE ON THE ISSUES
SURROUNDING THE DNA EVIDENCE
AND IN CONTEXT, IF TIME
PERMITTING THE FIRST WOULD BE
THE EVIDENCE THAT WAS ADMITTED
AT TRIAL AND THE SECOND WOULD
BE THE ISSUE SURROUNDING THE
EVIDENCE OF THE DNA ALLOWED TO
BE SUBMITTED AT THE EVIDENTIARY
HEARING AND WAS NOT SUBMITTED
AND THEN DENIAL OF THE REQUEST
FOR DNA TESTING.
AND AT EACH ONE OF THESE STAGES
THE PROBLEM THAT IS INHERENT IS
THERE HAS NEVER BEEN AN
ADVERSARIAL TESTING IN EACH
STAGE OF THE PROCEEDING AT THE
FREY HEARING, THE FIRST ISSUE
IS INEFFECTIVE ASSISTS TANS OF
COUNSEL FOR FAILING TO PREPARE
FOR AND PRESENT ANY EVIDENCE AT
THE HEARING --
>> YOU SAID YOU WERE GOING TO
DISCUSS THE DNA.
THAT IS PRETTY SIGNIFICANT
ISSUE, MAYBE.
IF YOU CAN JUST, SO WE DON'T
GET THAT LOST, COULD YOU JUST

SUMMARIZE YOUR BEST ARGUMENT
BOY WHY THERE SHOULD HAVE BEEN
TESTING OF THESE HAIRS.
LIMITING IT TO HAIRS THAT WERE
ON A TAPE THAT WAS USED TO --
TO BIND ONE OF THE VICTIMS?
>> YES.
WITH THE UNDERSTANDING THAT
THIS CASE IS A DNA CASE.
THE ONLY PHYSICAL EVIDENCE
AGAINST MR. OVERTON WAS THE DNA
PRESENTED AT TRIAL.
THERE WERE NO OTHER INDICATION
OF ANY OF HIS ENTRANCE ON THE
PROPERTY, OTHER THAN THE
SNITCH'S TESTIMONY THAT THIS IS
A DNA CASE, AND IS CLEAR BY THE
RECORD AND BOTH JUDGE SHEA AND
JUDGE JONES' DECISION IT IS A
DNA CASE, THE HAIR IN THE
BINDING AROUND THE ANKLES OF
THE VICTIM, A COUPLE OF HAIRS
WERE THERE AND HAS BEEN DENIED
TESTING.
>> IS THAT THE ONLY -- BECAUSE
THERE ARE OTHER, AS YOU SAID,
DNA CASE, SO, THEIR ARGUMENT IS
THAT THIS HAIR -- SOMEBODY
ELSE'S HAIR, THERE ARE LOTS OF
WAYS HAIR CAN GET ON TAPE AND
THAT SEEMS TO ME TO BE PRETTY
LOGICAL.
HOW WOULD THAT LEAD TO THE
PROBLEM ABILITY OF AN ACQUITTAL
GIVEN THE OTHER DNA AND
EVIDENCE IN THIS CASE.
>> WELL, IT IS NOT JUST THE
PROBABILITY OF AN ACQUITTAL BUT
ALSO WHETHER OR NOT THE
PROPORTIONALITY OF THE SENTENCE
WOULD BE QUESTIONABLE ALSO.
AND WITH THE HAIR IN THE TAPE,
THIS IS THE ONLY EVIDENCE AND
IT GOES TO THE CHAIN OF CUSTODY
AND IS INTERTWINED IN THE SENSE
THIS IS THE ONLY EVIDENCE WE
KNOW THERE IS A TOTALLY INTACT
CHAIN OF CUSTODY, THAT THAT
HAIR WAS REMOVED FROM THE TAPE
AT THE LAB, AND THAT THAT HAIR
WOULD HAVE BEEN USED -- WOULD
HAVE BEEN ATTACHED TO THE
BINDINGS WHILE SHE WAS BEING --
THE VICTIM WAS BEING BOUND.

I KNOW THAT THE JUDGE ALSO DETERMINED THAT THERE WERE A VARIETY OF WAYS THAT THE HAIR COBB PICKED UP.
HOWEVER, WE SHOULD IT TO YOU THAT THERE REALLY IS ONLY ONE WAY THAT THAT HAIR COULD HAVE BEEN PUT IN THAT BINDING AND THAT WOULD HAVE BEEN BY THE PERPETRATOR.
>> WE WOULD HAVE TO ACCEPT THAT THAT THIS IS MOST LIKELY -- MOST LIKELY THAT IT ONLY COULD HAPPEN IN ONE WAY IN ORDER TO THINK THAT TESTING OF IT WOULD BE A -- LEAD TO SOME PRODUCTIVE ARGUMENT.
CORRECT?
>> IF IT IS TESTED AND SHOWN TO BE SOMEONE ELSE'S HAIR, IT COULD GET THERE IN MANY DIFFERENT WAYS AND IS A -- NOTHING HAS CHANGED.
>> WE HAVEN'T BEEN ABLE TO PRESENT THE -- ALL THE EVIDENCE WITH -- SURROUNDING THE AIR, BUT SUFFICE IT TO SAY THAT THIS IS NO -- THERE WERE NO OTHER FIBERS, NO OTHER MATERIAL IN THAT TAPE THAT WAS WITH THAT HAIR.
IT IS JUST SOLELY HAIR IN THAT BINDING.
AND --
>> WAS THAT REQUEST TO TEST THAT AIR A PART OF YOUR INITIAL REQUEST FOR TNA TESTING OR AS THE HAIR SOMETHING THAT YOU FILED IN A SUBSEQUENT MOTION AFTER THE FIRST MOTION WAS DETERMINED?
>> IT WAS FILED WITHIN DAYS OF THE FIRST MOTION, A SUBSEQUENT MOTION FOR DNA TESTING.
>> AND WAS THERE ANY PARTICULAR REASON IT WASN'T INCLUDED IN YOUR INITIAL MOTION.
>> IT WAS AND IN ADD VERNTED ERROR.
>> AND HASN'T THIS COURT ALREADY LOOK AT SEVERAL CASES INVOLVING HAIR ATTACHED TO TAPE AND OTHER BINDINGS KINDS OF CASES AND CONCLUDED THAT IT WAS

NOT ERROR TO DENY THE TESTING ON THOSE FOR THE VERY REASON THAT THERE ARE SO MANY, MAN DIFFERENT WAYS THAT THE HAIR COULD HAVE FOUND ITS WAY ONTO A PIECE OF TAPE, HAVEN'T WE ALREADY CROSSED THAT BRIDGE IN SELF CASES.
>> YES, HOWEVER, AGAIN, BECAUSE IT IS JUST THE SINGLE HAIRS AND NOTHING ELSE, WITHIN THAT TAPE BINDING AND THE FACT THAT BACK TO THE FACTS OF THE CASE, THAT IT WAS DETERMINED AND IT WAS PRESENTED AT TRIAL THAT THE BINDINGS WERE USED FROM WHATEVER WAS FOUND IN THE HOME, THEY WERE NOT BROUGHT IN. THERE WERE TIES AND BELTS AND THERE WERE --
>> I THINK THE OPINION REALLY MENTIONED FROM THE DRAWER, THAT THERE WAS CLOTHESLINE AND THERE WAS ALL KINDS OF THINGS BROUGHT FROM THE OUTSIDE, AND EVEN REFERENCED IN THE OPINION, WASN'T THERE?
>> LIKE THE CLOTHESLINE.
>> FROM OUTSIDE LIKE AT THE SCENE.
>> OUTSIDE, WHEREVER IT CAME FROM, THERE ARE OTHER THINGS THAT CAME, CORD AND OTHER THINGS THAT MADE ITS WAY INTO THE SCENE AND THIS ONLY SENTENCE IN THE PRIOR PRIF THAT TALKS IN TERMS OF -- ON THE SCENE WERE FROM THE DRAWER.
>> THAT'S TRUE.
>> THERE WAS NOT REALLY A STATEMENT --
>> THAT'S TRUE.
>> THAT IS WHAT I'M SAYING AND WE DON'T KNOW REALLY WHERE THE TAPE REALLY CAME FROM.
>> BUT WE KNOW IT WAS FOUND AT THE SCENE AND THE TAPE WAS DUCT TAPE AND STILL INTACT AND ROLLED AND THAT TA TAPE, PRESUMABLY WAS USED TO BIND THE VICTIM AND THAT THAT TAPE IS NOT STICKY SUBSTANCE UNTIL IT IS OPEN UP AND NOT STICKY ON THE OUTSIDE, IT IS SMOOTH ON

THE OUTSIDE AND UNTIL ITS USED
TO BIND THE VICTIM, THAT THAT
IS WHERE YOU WOULD BE PICKING
UP THE ARTICLES WITH IT AND
THAT YOU WOULD ASSUME OR
PRESUME THAT IF YOU ARE TAKE
THE BINDING AND WRAPPING IT
AROUND SOMETHING AND IT
PICKSING UP ARTICLES FROM THE
FLOOR OR FROM WHATEVER ELSE
AREA THAT IT WOULD PICK UP MORE
THAN JUST A HAIR.
>> AND SO HOW -- IF SOMEONE
ELSE IS PRESENT IT DOESN'T
ELIMINATE THE INDIVIDUAL WITH
ALL THE DNA BINDINGS THAT WERE
THERE IF ONE OF HIS FRIENDS
WERE WITH HIM, THAT CHANGES IN
SOME WAY WHEN YOU HAVE THE DNA
SWABBING OFF THE BODY OF THE
FEMALE VICTIM, HOW DOES THAT
CHANGE THE -- IMPACT THE
SENTENCING.
>> THE STATE'S CASE IS --
THEORY WAS CONSISTENTLY AND THE
ONLY THING ARGUED AT TRIAL WAS
THAT HE ACTED ALONE.
THAT MR. OVERTON HAD A
COMPULSION TO RAPE THE VICTIM,
THE FEMALE VICTIM AND THAT HE
WAS TOTALLY ALONE.
THE TESTIMONY OF JAMES ZYTECK
PERSON.
>> THE SNITCH, QUOTED AT LENGTH
IN THIS COURT'S OPINION, PUTS
THE ENTIRE CRIME SCENE AND THE
ENTIRE ACTS OF THE CRIME, WAS
-- MR. OVERTON WAS ACTING
ALONE.
HE HAS ALWAYS ALLEGED HIS
INNOCENCE, IT HAS NEVER BEEN --
EXCUSE ME, UNWAIVERING IN HIS
--
>> I DON'T SEE HOW YOU ARE
SAYING, HE WAS NOT THERE, IS
THAT WHAT YOU ARE SAYING, THE
HAIR PROVES HE WAS NOT THERE?
>> NO.
IF THE HAIR IS NOT HIS, THEN IT
WOULD SHOW THAT THERE WAS
SOMEONE ELSE AT THE SCENE, THE
STATE'S CASE, THE THEORY OF THE
CASE, IS EVEN CORRECT THAT THE
SNITCH WAS NOT TELLING THE

TRUTH.
IT GOES TO MANY MORE VICTIMS.
>> COULD IT HAVE BEEN THE VICTIM'S HAIR.
>> IT COULD BE.
LET'S TEST IT.
>> ISN'T THAT WHAT HAPPENED IN ALLEN VERSUS STATE INTO YES.
HOWEVER --
>> WE DECIDED.
THEY ARGUED IT COULD HAVE BEEN THE -- ARGUMENT WAS IT COULD HAVE BEEN SOMEONE ELSE AND -- BUT WE SAY IT COULD HAVE BEEN, JUST WALES THE VICTIM'S.
>> IT COULD HAVE BEEN, HOWEVER THE VISUAL INSPECTION OF THAT HAIR ALREADY CONCLUDED THE VICTIM.
AND SO, WE DON'T HAVE THE TESTING TO FULLY EXCLUDE THE VICTIM.
IT HAS VISUALLY BEEN EXCLUDED.
>> HOW IS IT DIFFERENT FROM WHAT WE SAID IN ALLEN VERSUS STATE.
ISN'T THE SAME ARGUMENT BASICALLY MADE?
>> IT IS BASICALLY THE SAME ARGUMENT HOWEVER FACTUALLY, BECAUSE OF THE IMPORTANCE OF THIS DNA EVIDENCE, THE DISTINCTION IS THE CONVICTION IS BASED SOLELY ON THE DNA EVIDENCE, TRUTHFULLY.
>> MAY NOT HAVE BEEN WHOLLY DNA BUT IT WAS WHOLLY CIRCUMSTANTIAL, RIGHT?
INTO NO EYEWITNESS OR CONFESSION AND IT WAS ALL CIRCUMSTANTIAL IN ALLEN ALSO.
>> THAT'S TRUE.
BUT THIS ISN'T JUST CIRCUMSTANTIAL, THIS IS DIRECT EVIDENCE, OF THE DNA AND IT HAS BEEN FOR BASIC FOCUS OF EVERY COURT AND I'M CERTAIN OF THE JURY AND LEADS US BACK INTO THE OTHER ISSUE OF THE FAILURE TO PREPARE FOR AND TO PARTICIPATE IN THIS FREY HEARING BECAUSE UNDER THE PROPER ANALYSIS THE CHAIN OF CUSTODY WAS AN ISSUE AT THE FREY --

>> CAN YOU POINT TO US IN THE RECORD WHERE THAT WAS AN ISSUE AT THE FREY HEARING?
SEEMS AS THOUGH -- WAS THERE SEPARATE PLEADING ON THAT.
>> NO.
THAT IS THIS PROBLEM.
AND THAT -- THERE BELIES THE PROBLEM.
THERE WAS NO CHALLENGE AT THE FREY HEARING.
>> AND THE -- CERTAINLY WASN'T ON CHAIN OF CUSTODY AND WAS IT NOT THE STRATEGY OF THESE LAWYERS THAT THEY HAVE ALREADY MET WITH SUPER, DID THEY NOT AND THE LAWYERS MET WITH SUPERAND WERE ADVISED BY EXPERTS THAT THE STR AND RFL TESTING WERE IN 1999 STATE OF THE ART AND THAT WAS ACCEPTABLE EVERYWHERE.
SO THAT IS NOT THE EVIDENCE?
>> WHAT IS THE EVIDENCE.
>> THAT IS NOT THE EVIDENCE.
THE EVIDENCE -- FIRST OF ALL, THE TESTING WAS DONE IN 1993 AND --
>> AT THE TIME OF THE HEARING WAS 1999.
>> CORRECT AT THE TIME OF THE HEARING --
>> 1999 THIS IS CRITICAL DATE, , IS IT NOT.
>> IT IS THE CRITICAL DATE FOR WHEN THE EVIDENCE WAS PRESENTED.
HOWEVER, THE --
>> IS THAT NOT WHEN -- IF WE ARE DOING A HEARING ON IT, AS OF 1999.
ISN'T THAT THE DATE THE JUDGE WOULD HAVE USED TO DETERMINE WHETHER THE STATE OF THE SCIENCE WAS SUCH THAT IT WAS ACCEPTABLE FOR THIS PURPOSE AND WE SAID THAT IN CASES.
>> ABSOLUTELY.
>> OKAY.
WHY ARE YOU REFERRING TO 1993 IN THE, WHAT DOES THAT HAVE TO DO WITH IT.
>> JUST THE DATE OF THE TESTING.

>> SO YOU DO AGREE THE DATE IS 1999 WE SHOULD BE LOOKING TO, FOR WHATEVER IS -- WHATEVER THE STANDARD WAS AT THE TIME.
>> CORRECT.
>> OKAY.
AND THAT GOES BACK TO MY QUESTION, DID NOT THE -- THESE LAWYERS, AND YOU MAY CRITICIZE THEM, DID THEY NOT MEET AND TALK WITH EXPERTS WITH REGARD TO THOSE TWO KINDS OF DNA TESTING?
WE HAVE BOTH THE LAB THAT IS OUT OF STATE AND THE FTLE WE MUST LOOK TO.
>> CORRECT.
>> AND DID THEY NOT CHECK WITH EXPERTS AND DID EXPERTS TELL THEM THAT THIS KIND OF EVIDENCE IS ACCEPTED TODAY IN 189 -- 1999, THAT IS NOT THE STATUS OF IT.
>> I DON'T KNOW WHERE IN THE RECORD THAT HAS BEEN PRESENTED. I CAN PRESUME THEY WERE TOLD THAT.
BUT THAT IS NOTE END OF THE INQUIRY UNDER THE FREY --
>> THEY SELECT AID STRATEGY WITH REGARD TO THIS, WITH REGARD TO HOW THEY ARE GOING TO PROCEED, THEY WANT TO PRESERVE -- FELT THEY WERE TRYING TO PRESERVE ERROR ON THAT.
>> THEY WERE TRYING TO PRESERVE ERROR --
>> WE HAVE TO LOOK, IS THAT AN UNREASONABLE STRATEGY, WOULDN'T THAN THE PROPER ANALYSIS, THAT NO LAWYER WOULD ACCEPT THAT KIND OF STRATEGY HAVING THAT EVIDENCE AT THE TIME?
>> UNDER THE -- EFFECTIVENESS OF COUNSEL STANDARD WE'D LOOK TO WHETHER THEIR STRATEGY WAS REASONABLE, HOWEVER --
>> RIGHT.
>> HOWEVER THEIR STRATEGY WAS BECAUSE THEY HAD NOT RECEIVED THE BONE TECH PROTOCOLS AND PROCEDURES AND HAD NOT BEEN ABLE TO HAND IT OVER TO THEIR EXPERT, THEY COULD NOT PROCEED.

>> THAT IS NOT A FREY TESTING,
THAT IS A DEFENSE AGAINST IT,
ISN'T IT?
>> I'M SORRY.
I DON'T UNDERSTAND.
>> THE FREY TESTING IS A
QUESTION OF WHETHER YOU WILL
TEST IT AT THE TIME AND YOU SAY
THEY FAILED TO DO THAT, SO THAT
IS AN QUESTION OF
WHETHER THEY TEST IT AT THE
TIME.
THAT'S AN INEFFECTIVE
ASSISTANCE OF
DOWN -- COUNSEL.
THAT'S INEFFECTIVE
ASSISTANCE OF COUNSEL ISSUE
BUT IT IS INTERMINGLE WITH
THE FREY TESTING.
YOU CANNOT SEPARATE THOSE IN
THIS CASE.
BUT IT'S IN THE EVIDENCE.
>> BUT THE TRIAL JUDGE.
>> I DON'T KNOW IF IT'S COME
ACROSS HERE.
ON PAGE 23 OF THE FINDING HE
SAID THE DEFENDANT'S CLAIM
IS BASED UPON A
MISUNDERSTANDING OF THE
PURPOSE OF A FREY HEARING.
AGAIN THE PURPOSE IS NOT TO
TEST THE WEIGHT TO BE GIVEN
OF THE ITEM OF EVIDENCE
RATHER THE PURPOSE OF THE
FREY HEARING IS TO DETERMINE
WHETHER THE SCIENTIFIC
METHODOLOGY EMPLOYED THE
GENERALLY IS ACCEPTED.
>> EXACTLY.
>> ISN'T THAT -- IS THAT A
CORRECT STATEMENT?
>> THAT'S A JUDGE'S
STATEMENT.
I AGREE WITH THAT.
HOWEVER, I BELIEVE THAT THE
JUDGE HAS MISCHARACTERRISED
WHAT NEEDS TO BE DONE AT A
FREY HEARING.
THERE'S TWO PARTS TO THAT.
NOT JUST ONE PART.
THE SCIENCE MIGHT BE
ACCEPTABLE.
THE PROCEDURES MAY NOT BE.
THAT'S ON A CASE-BY-CASE

BASIS.
THIS COURT SAID IN THE HAYS DECISION THAT WHEN YOU TWO THINGS WERE IMPORTANT FROM THAT.
FIRST, THERE WAS A STAMP OF APPROVAL ON DNA TESTING IN THE STATE OF FLORIDA IN 1995 FOR THE FIRST TIME.
AND SECONDLY, THERE WAS REFERENCE TO AND ACKNOWLEDGEMENT OF WHO SETS THE STANDARD, WHICH IS A NATIONAL RESEARCH COUNCIL OF THE AMERICAN ACADEMY OF SCIENCES.
ALSO IN THAT HAYS CASE, THERE WERE ASSUMPTIONS AND ONE OF THE ASSUMPTIONS THAT WAS CITED WAS THE FORCED ASSUMPTION THAT EVEN IF THE SCIENCE IS ACCEPTABLE, THAT THIS IS A CASE BY CASE ASSESSMENT OF THE PROPER PROCEDURES AND PROTOCOLS BEING FOLLOWED.
LET ME JUST JUMP IN ON THE NEXT STEP.
WHAT PREJUDICE HAVE YOU SHOWN?
THAT REGARDING THE METHODOLOGY OR THE TESTING IN THIS CASE.
THE PREJUDICE IS THE CHAIN OF CUSTODY.
>> THAT'S NOT THE PROTOCAL.
THAT'S THE POLICE YOU'RE CHALLENGING NOT THE PROTOCOL USED AT THE LAB.
I DISAGREE WITH THAT.
WE UNDERSTAND WHAT YOU ARE SAYING IS YOUR ARGUMENT.
I WILL BE VERY CLEAR.
WE DO SAY THE CHAIN OF CUSTODY WITH DNA TEST SING A PART OF THE PROCEDURES THAT NEEDS TO BE ANALYZED.
>> BUT NOT AT THE LAB.
IS -- THIS IS AT THE LOWER LEVEL.
>> AT THE LOWER LEVEL AND AT THE LAB LEVEL.
AGAIN, YOU ARE MIXING THESE TWO THE POINT YOU ARE SORT

OF CONFUSING THE COURT.
WE NEED YOUR HELP.
>> OKAY.
>> WITHOUT TRYING TO PARCH THESE OUT.
I UNDERSTAND THE ARGUMENT TO BE THE CHAIN OF CUSTODY ARGUE.
YOUY POLICE WORK.
NOT THERE WAS A CHAIN OF CUSTODY PROBLEM WITH THE LAB.
>> CORRECT.
IT IS ABOUT THE POLICE PROCEDURES.
ARE LET ME GO BACK IF I CAN HELP YOU.
>> PLEASE.
>> AND MYSELF.
WITH THE NATIONAL RESEARCH COUNCIL REQUIREMENTS.
BECAUSE THEY HAVE ISSUE REPORTS AS RECITED BY THIS COURT IN THE HAYS DECISION.
AND ONE OF THESE REPORTS DISCUSSES AND CITES THE REQUIREMENT FOR A CRITICAL NEED FOR WELL DOCUMENTED AND THE SECURE CHAIN OF CUSTODY IN DNA CASES.
AND ESPECIALLY BECAUSE OF THE INDIVIDUAL NATURE OF THE DNA AND BECAUSE IT BECOMES THE PRIMARY FOCUS OF THE TRIAL AND THE OVERRIDING BASIS FOR THE GUILT OF A DEFENSE.
AND IT FURTHER SAYS THE RELATIVE EASE BY WHICH IT'S MISHANDLED AND MANIPULATED BY CARELESS OR UNSKAOUPLOUS OR THE INTEGRITY OF THE CHAIN OF CUSTODY THE PARAMOUNT.
METICULOUS CARE, ATTENTION TO DETAILS, THOROUGH DOCUMENTATION EVERY STEP OF THE PROCESS TO FINAL LAB REPORT.
NOW.
>> THEN WHEN YOU ANSWER JUSTICE BELL'S QUESTION IS THAT WITHIN THIS ONE IF IT WEREN'T HANDLE PROPERLY AND

IT WAS DEGRADED WHERE IS THE EVIDENCE WITH REGARD TO THE FALSE POSITIVE COMING BACK DEGRADED DNA.
THAT'S GOES TO THE PREJUDICE QUESTION YOU ASKED ABOUT.
DOES THE EVIDENCE SHOW IT PRODUCES FALSE POSITIVE?
DOES THE EVIDENCE PROVE JUST THE OPPOSITE THAT IT DOES NOT PRODUCE FALSE POSITIVE AS IT OCCURS?
>> THE EVIDENCE SHOWS THAT IT DOES NOT PRODUCE FALSE POSITIVES.
>> ALL RIGHT.
>> ALTHOUGH WE DID HAVE ONE EXPERT SAY THERE CAN BE A FALSE POSITIVE.
THAT'S NOT THE ISSUE.
THE ISSUE IS THE PROPER PROCEDURES THAT SHOULD HAVE BEEN CHALLENGED AND SHOULD HAVE BEEN SCRUTINIZED AT THE TRY HEARING AT THAT LEVEL PRIOR TO THE ADMISSION INTO EVIDENCE.
AND BACK TO AIDING THE COURT IN OUR -- HOW OUR ARGUMENT FLOWS, THE PROCEDURE START LIKE YOU SAY AT THE CRIME SCENE.
HOWEVER, THE NATIONAL RESEARCH COUNCIL DOESN'T EXPECT THE LABORATORIES TO BE RESPONSIBLE FOR WHAT IS EVIDENCE AS BEING COLLECTED IN THE CRIME SCENE AND HOW IT'S BEING COLLECTED.
IT IS RESPONSIBLE FOR THE LAB PROCEDURES ITSELF.
NOW.
>> DID YOU PRESENT EVIDENCE AT THE EVIDENTIARY HEARING THAT THE PROTOCALS WERE INAPPROPRIATE OR HAVE THEM PRESENTED TO ANYONE?
>> YES.
>> THAT WAS PRESENTED A PROTOCAL THAT THIS OPERATION WAS --
>> AND ALSO DFLE.
THE TRY HEARING CONCERNED BOTH THE RFLP AND THE FTR

TESTING NOT JUST ONE TESTING
AND EVEN THOUGH COUNSEL NEW
IT AND WOULDN'T ASK THE
QUESTION OR PRESENT A
WITNESS AT THE FREY HEARING
THEY HAD ALL THE MATERIALS
FOR THE FRLP TESTING FROM
FDLE.
THEY JUST WERE REASKING FOR
THEM FROM BOTH SIDES.
I'M GOING BACK TO THE ACTUAL
CHAIN OF CUSTODY.
I KNOW YOU'RE FAMILIAR WITH
THE PROBLEMS INHERENT.
RATHER THAN GOING THROUGH
THOSE LET'S TALK ABOUT THE
ACTUAL EVIDENCE THAT WAS
PRESENTED WHICH WERE
CLIPPINGS, NA EVIDENCE FOUND
ON TWO OF THE CLIPPINGS THAT
WERE TAKEN FROM THE BEDDING
AND WE KNOW THAT THE COURT
IN ITS ORDER DENYING RELIEF
CONCENTRATED ON AND SAID
LOOK BASICALLY TO PARAPHRASE
THAT IF THOSE -- IF THE DNA
IS INTACT THE CHAIN OF
CUSTODY IS INTACT ALL THE
OTHER ISSUES ARE BECOME LESS
SIGNIFICANT.
WHICH, OF COURSE, I DON'T
BELIEVE IS TRUE.
I THINK THAT EVERY ISSUE IS
SIGNIFICANT AND NEEDS TO BE
LOOKED AT ON ITS OWN.
HOWEVER, THE OVERRIDING
EVIDENCE THAT YOU FIND A
SHEET AND THAT SHEET IS WHAT
THE COURT IS FOLLOWING WHERE
HAS THAT SHEET GONE.
WHERE HAS THE BEDDING B AND
HE SHOWS BY THE ATTACHMENT
OF THE RECORD HOW IT FINALLY
HAS CLEARED UP ANY ISSUE OF
CHAIN OF CUSTODY.
THE SHEET IS NOT THE
EVIDENCE THAT WAS USED AGAIN
MR. OVERTON.
IT'S THE CLIPPING TAKEN FROM
THE SHEET THAT WAS MISSING
OR NOT EVER PLACED INTO
EVIDENCE UNTIL AFTER
DR. POPE LEFT THE LAB AND
THEY WERE PRESENTED TO DIANE

ODEL AT THE PROPERTY ROOM OF THE MONROE COUNTY SHERIFF'S OFFICE.
HOW ABOUT THE SWABS THAT WERE COLLECT TATD SCENE AND BY THE OTHER VICTIMS SKWRAOPL THE SWABS WERE MISSING ALSO IN SENSE THEY WEREN'T DOCUMENTED PROPERLY.
THEY WERE WITHIN THE DNA KIT, THOUGH AND WE KNOW THEY WERE AT LEAST ONLY OUTSIDE OF THE PROPER REALM FOR THE 24 HOURS ALTHOUGH THEY WEREN'T DOCUMENTED.
>> WHAT DID THOSE SWABS SHOW?
>> THAT HAS NEVER BEEN TESTED.
>> THEY NEVER TESTED ANY OF THOSE?
IT DOESN'T SHOW THE SCENE COLLECTED FROM THE BODY OF VICTIM BELONGS TO DNA TESTING CAME FROM MR. OVERTON.
>> IT'S NOT BEEN TESTED.
THAT WAS ALLOWED TO BE TESTED IN THE COURT AND INEXPLICABLY WERE THE TESTING NOT PREFP -- FINISHED.
>> I WANT TO FINISH UP ON CHAIN OF CUSTODY.
DIANE ODEL DISCUSSED TO THE COURT AND SAID THE CHAIN WAS INTACT.
SOMEHOW SHE REFUSE -- RECEIVED THE ENVELOPE AND THE CLIPPINGS FROM STKEUPLERMAN WHO HAD BROUGHT THEM FROM THE LAB AFTER DOC POPE LEFT.
THEY WERE IN A TUBBER WAEUR CONTAINER UNSEALED ENVELOPES.
HER TESTIMONY WAS THAT THE LAB -- EXCUSE ME SHE KNEW THEY WOULD GO TO FDLE AND THEY WOULDN'T ACCEPT THEM IN AN UNSEALED CONDITION.
AND, ALSO, THAT WE, MEANING THE PROPERTY ROOM OF MONOCOUNTY SHERIFF'S WAS DON'T ACCEPT AN UNSEALED

CONDITION.
SO THEREFORE, SHE SEALS
THEM.
SHE SEALS THEM; SHE ACCEPTS
THEM EVEN THOUGH SHE SAID WE
DON'T ACCEPT THEM IN AN
UNSEALED CONDITION.
SHE ACCEPTS THEM AND PUTS
THE TAPE ON HIM AND SHE PUTS
HER INITIALS ON THAT TAPE.
>> I STILL THINK THE BOTTOM
LINE HERE THE IF WE ACCEPT
YOUR ARGUMENT THAT THERE WAS
SOME PROBLEMS WITH THE CHAIN
OF CUSTODY OF THESE PIECES
OF EVIDENCE, WHERE DOES THAT
TAKE US?
WHAT IS THE PREJUDICE TO
MR. OVERTON?
>> I THINK TO THE TESTIMONY
OF DR. WHO TESTIFIED AT THE
EVIDENTIARY HEARING THAT
THEY HAVE SPECIFIC CONTROL
MEASURES IN PLACE AT THEIR
LAB.
AND THAT THESE OF COURSE ARE
ADHERING TO THE NATIONAL
RESEARCH DOWN -- COUNSELS
PROCEDURES THAT HAVE BEEN
SET UP.
>> EVEN IF WE ACCEPT THAT.
I REALLY WANT YOU TO TELL
ME.
OKAY ALL OF THIS TOOK PLACE.
THERE WAS AN ERROR.
TRIAL COUNSEL SHOULD HAVE
BROUGHT IT TO THE ATTENTION
OF THE COURT.
>> AND IT WOULDN'T HAVE COME
INTO EVIDENCE.
>> AND THE RELIEF GIVING TO
MR. OVERTON.
>> IT SHOULD NOT HAVE COME
INTO EVIDENCE.
DR. POLLARD EVIDENCE
TESTIFIED THEY WOULD NOT
ACCEPT THE ENVELOPES IF THEY
WERE NOT SEALED.
THE ENVELOPES WERE SEALED
IMPROPERLY AND ACCEPTING
THEM FROM A PERSON WHO HAD
NO LINK IN THE CHAIN OF
CUSTODY.
THEY HAD BEEN NOT EVEN IN

EXISTENCE ACCORDING TO
RECORDS FOR OVER 18 MONTHS,
THEY HAD BEEN
COMPLETELY -- IN FACT WOULD
HAVE KNOWN THEY EXISTED.
HAD NOT DOC POPE LEFT THE
SHERIFF'S OFFICE.
AND THEY WERE DELIVERED IN
THE TUBERWARE CONTAINER.
THEY WERE DELIVERED IN AN
UNSEALED ENVELOPES AND THAT
IS THE UNBELIEVABLE BREAK IN
THE CHAIN OF CUSTODY.
THEY WOULD NOT HAVE BEEN
ACCEPTED BY THE LAP -- LABS
AND ACCORDING TO THE
NATIONAL RESEARCH COUNSEL
STANDARD PROCEDURES IN THE
COLLECTION ARE CHALLENGEABLE,
PROCEDURES IN THE PROCESSING
AND PROCEDURES IN THE
STORAGE.
>> DID ANYBODY TESTIFY THAT
AS A RESULT OF THIS BREAK IN
CHIP OF CUSTODY OR THESE
IMPROPRIETIES THAT YOU
OUTLINED THAT THE SAMPLES
WERE CONTAMINATED AND WERE
THEREFORE NOT RELIABLE
SAMPLES TO TEST?
>> THERE||
NOT -- NO.
ONE MORE QUESTION.
YOU'VE GONE OVER FIVE
MINUTES.
>> I JUST WANT TO UNDERSTAND
THIS.
YOU ARE SAYING THAT
BASICALLY WE WOULD NEVER GET
TO WHETHER OR NOT THEY WERE
CONTAMINATED, BECAUSE THEY
WOULD HAVE BEEN EXCLUDED
SIMPLY BECAUSE THE CHAIN OF
CUSTODY HAD BEEN BROKEN.
IS THAT REALLY WHAT YOUR
ARGUMENT IS?
>> YES.
>> THANK YOU.
>> GOOD MORNING.
MAY IT PLEASE THE COURT,
CELIA TERENZIO ON BEHALF OF
THE PEOPLE OF FLORIDA.
START RIGHT THERE.
>> WHAT'S THE QUESTION?

>> PULL YOUR MICROPHONE UP A LITTLE BIT.
THERE YOU GO.
>> OKAY.
>> GREAT.
>> THERE WAS NO TESTIMONY FROM THE TKRB.
MY CONCERN IS EVERYBODY IS TALKING ABOUT A BREAK IN THE CHAIN OF CUSTODY.
THERE HAS NOT BEEN ANY EVIDENCE ANYWHERE AT TRIAL, AT THE EVIDENTIARY HEARING THAT THERE WAS A BREAK IN THE CHAIN OF CUSTODY.
THEY TAKE HOME PUT IN REFRIGERATOR.
IT'S NOT THE TYPE OF BREAK IN THE CHAIN.
>> IN TERMS OF THE STORAGE AND THAT'S WHAT THAT IS, IT'S NOT A BREAK IN THE CHAIN OF CUSTODY, THE STORAGE OF THE BED SHEETS FOR THOSE TWO OR THREE DAYS AT THE SERELOGIST HOUSE.
THE DOCTOR WAS AWARE OF THAT INFORMATION AT THE FREY HEARING.
THAT WAS FLUSHED OUT, AGAIN, THEY TALKED ABOUT -- IT WAS UNCONVENTIONAL, HOWEVER, THEIR ONLY CONCERN THAT, THAT WAS DONE THAT IT WOULD HAVE DEGRADED THE EVIDENCE AND IN THIS CASE AT THE EVIDENTIARY HEARING IN 2004 AND AT THE FREY HEARING IN 1999 BOTH THE BODE DOCTOR AND THE DOCTOR FROM FDLE SAID THAT THIS SEE MONEY.
THIS DNA WAS NOT DEGRADED AT ALL.
IT WAS PERFECTLY INTACT.
SO THE FACT THAT THERE WAS STORAGE AT SOMEONE'S HOME, ALTHOUGH CLEARLY NOT ACCEPTABLE HAD NOTHING TO DO WITH THE CHAIN OF CUSTODY.
THAT GOES TO TAMPERING ISSUE.
THE STORAGE GOES TO THE QUALITY OF THE INTEGRITY OF THE DNA ITSELF.

AND THERE HAS BEEN NO
CHALLENGE IN -- NOR CAN
THERE BE THAT THIS TNA WAS
IN ANY WAY DEGRADED.
>> WHAT -- JUST SO I
UNDERSTAND THE SEPARATE
ARGUMENT THAT THERE WAS
TESTIMONY THAT IF IT HADN'T
BEEN SEALED THERE WOULD NOT
HAVE EVEN ACCEPTED IT FOR
TESTING TO DO CLARIFY WHERE
THAT CAME IN AND I DON'T
REMEMBER THAT TESTIMONY.
BUT DR. POLLOCK AT THE
EVIDENTIARY HEARING.
NOW THIS DNA EVIDENCE WAS
GIVEN TO FDLE BACK IN 19993.
AND I GUESS THE RESULTS CAME
BACK IN 1994.
NOW THE CHAIN OF CUSTODY WAS
INTACT AND THERE HAD NEVER
BEEN ANY EVIDENCE PRESENTED
OR DISCUSSED AT THE TRIAL
REGARDING THAT AND THERE WAS
NEVER ANY TESTIMONY THAT
DR. POLLOCK WOULD HAVE SAID
WE NEVER WOULD HAVE ACCEPTED
THAT.
THE POINT --
>> WHAT I HEAR THEM SAYING
NO THERE WASN'T TESTIMONY AT
TRIAL BECAUSE THAT'S HOW
TRIAL COUNSEL WAS DEFICIENT
BUT NOT ATTACKING IT ON THAT
BASIS.
LET'S ASSUME BECAUSE IT'S
BEEN REPRESENTED THAT THIS
TESTIMONY OF THE EVIDENTIARY
HEARING SAYING IT'S NOT
SEALED AND THEY WOULDN'T
HAVE ACCEPTED THAT FOLLOWED
THAT ARGUMENT THAT
IS -- DOES THAT MEAN, THEN
THAT IT DOESN'T EVEN -- EVER
GET TESTED OR IT GETS
EXCLUDED FROM EVIDENCE
BECAUSE OF THAT FACT?
NOT HAVING ANY
TESTIMONY -- AGAIN -- WHATEVER
THE PROTOCOLS WERE IN 1993
OR 1994, I DON'T BELIEVE
THEY ARE SAY IMAGE NOW THAT
PACK IN '9 THE FACT THAT IT
WAS UNSEALED THAT IT WOULD

NOT HAVE BEEN ACCEPTED.
BUT THAT'S EXACTLY WHAT YOU SAID.
>> BACK IN '93 OR, YOUR HONOR I THOUGHT THEY WERE DISCUSSING WHAT HAPPEN AT THE FREY HEARING.
THE FREY HEARING WAS SIX YEARS LATER, AFTER THIS WAS ACTUALLY TESTED.
AND, AGAIN, TO LOOK BACKWARDS --
>> ARE YOU MAKING THE DISTINCTION BETWEEN WHAT THEY WOULD HAVE ACCEPTED IN 1993 VERSES WHAT THEY WOULD HAVE ACCEPTED IN 1999.
>> YES.
YES, MA'AM.
AND, AGAIN, BECAUSE THIS WAS ACCEPTED IN 1993 TO 1994.
>> BUT I MEAN THE QUESTION -- BECAUSE THEY DIDN'T KNOW IN 1993 THAT THERE MIGHT HAVE BEEN SOME PROBLEMS WITH THEM NOT HAVING BEEN SEALED.
SO I'M NOT SURE I FOLLOW YOUR ARGUMENT PARSING OUT WHAT THEY WOULD HAVE ACCEPTED IN '93 VERSUS 19 --
>> I WAS UNDER THE IMPRESSION WHAT THEY ARE DISCUSSING AT THE FREY HEARING THAT I WOULD HAVE SAID IN 1999 -- AS OF 1999 NOW THEY WOULD NOT HAVE ACCEPTED THAT.
THAT'S MY POINT.
AND, AGAIN, I'M KIND OF AT THE DISADVANTAGE BECAUSE I DON'T KNOW WHERE IN THE TESTIMONY THAT DR. POLLOCK SAID HE WOULD NOT HAVE TAKEN THIS AS IT WAS UNSEALED.
>> I GUESS WHAT WE HAVE TO DO IS LOOK AT WHETHER ANY OF THIS WOULD CONTRIBUTE ASSUMING THEIR DEFICIENCIES TO UNDERMINE CONFIDENCE.
AND I THINK THE KEY THING YOU HAVE SAID AND I DON'T THINK THEY REFUTED IS THAT THIS DNA EVIDENCE, WHATEVER

MIGHT HAVE HAPPENED IN THIS COURSE WAS NOT DEGRADED, NOT AT THE LEAST.
AND THERE'S NOTHING -- SO THEREFORE, IT'S -- THERE'S NO REASON TO DOUBT THE VALIDITY OF THE DNA TEST RESULTS, WHICH OF COURSE -- IS REALLY WHERE WE GET CONCERNED.
WE WOULD HATE TO THINK THAT SOMEHOW SOMETHING HAPPENED TO CAUSE THERE TO BE A FINDING THAT MR. OVERTON'S DNA WHEN IN FACT BECAUSE OF SOMETHING OCCURRED IN HOW IT WAS COLLECTED OR STORED IT COULD HAVE BEEN SOMEONE ELSE'S.
THAT'S WHERE CONCERN CAME IN.
>> EXACTLY.
AND WE, AGAIN GO THE WHAT JUSTICE LEWIS WAS SAYING.
THERE'S A DIFFERENCE BETWEEN CHAIN OF CUSTODY WHICH WENT TO THEIR ARGUMENT FOR TAMPERING, VERSUS THE PROTOCALS AND THE TESTING THAT WAS DONE IN JUSTICE BELL WAS CORRECT THAT THE JUDGE AND ACTUALLY IT'S ON PAGE 2 OF THE JUDGE'S ORDER AND 2850 OF THE RECORD HE WENT RIGHT TO THE HEART WHEN HE WAS DENYING THE CLAIM.
HE SAID, LOOK, YOUR PROBLEM IS YOU ARE MIXING APPLES AND ORANGE, CHAIN OF CUSTODY GOES TO THE WEIGHT OF THE EVIDENCE, ONLY NOT TO THE INTEGRITY OF THE DNA OR THE TESTING OF THE DNA AND THERE WAS TESTIMONY AT THE EVIDENTIARY HEARING BY TWO DOCTORS THAT THERE'S NO SUCH THING AS A FALSE POSITIVE
WITH THIS, IF THERE WERE TAMPERING OR IN THE CHAIN OF CUSTODY THEY WILL NOT COME BACK A FALSE POSITIVE.
IT'S NOT GOING TO COME BACK AT FALSE POSITIVE.
I WILL COME BACK AS A ZERO.

>> I GUESS THE TAMPERING WOULD BE I DON'T THINK THEY ADVANCE THIS TEARRY THAT SOMEHOW SOMEONE PUT THEIR DNA THERE.
I GUESS THAT WOULD BE THEIR ARGUMENT.
>> WHICH IS KIND OF INCONSISTENT WITH EITHER -- EITHER IT IS HIS OR IT ISN'T.
HOW IT GOT THERE IS A COMPLETELY SEPARATE ISSUES.
THAT'S WHY THE ISSUE ARE SEPARATE AND SHOULD BE SEPARATE DOESN'T EFFECT DEFENSE DOWN -- COUNSEL WHEN THEY TRIED TO PURSUE THAT BEFORE THE FREY HEARING THEY ASKED THEIR DOCTOR ABOUT THAT AND HE SAID, NO WAY IT DOESN'T MATTER.
>> ISN'T PART OF THEIR ARGUMENT THAT THIS EVIDENCE WAS NOT TAKEN FROM THE CRIME SCENE DIRECTLY TO THE POLICE STATION THAT THERE WAS SOME TIME IN BETWEEN, YOU KNOW WHETHER YOU TALK ABOUT ONE THAT WAS THREE DAYS OR THE OTHER PIECE THAT WAS 18 MONTHS THAT IN THAT TIME IN BETWEEN YOU CAN'T REALLY ACCOUNT FOR WHAT MAY HAVE HAPPENED TO THAT EVIDENCE AND DOES THAT DOVETAIL INTO THE WHOLE ARGUMENT THAT MAYBE THIS EVIDENCE WAS PLANTED ON THE --
>> PLANTED, YES.
YES.
>> PLANTED.
BUT IT DOESN'T GO TO THE INTEGRITY OF WHOSE DNA IT IS.
>> THAT'S WHAT YOU POINTED TO.
TALK ABOUT THE ISSUE WITH REGARD TO THAT CHAIN OF CUSTODY.
THAT'S WHAT SHE IS ASKING.
I'M ASKING.
AS I UNDERSTAND THE ARGUMENT AT LEAST A PART OF THE CHAIN

OF CUSTODY ARGUMENT IS THAT
THERE'S THIS TIME THAT IS
NOT ACCOUNTED FOR AND THAT
DURING THAT TIME IS WHEN
SOMETHING MAY HAVE HAPPENED
TO THE EVIDENCE.
>> WHEN YOU SAY "NOT
ACCOUNTED FOR" I'M NOT SURE
I UNDERSTAND WHAT YOU ARE
SAYING --
>> WELL IT WASN'T IN POLICE
CUSTODY AT THE POLICE
STATION.
>> NO, IT WASN'T.
IT WAS APPROXIMATELY THREE
DAYS HE SIGNED OUT FOR IT
AND TOOK IT TO HIS HOME TO
DRY IT AND THEN BROUGHT IT
BACK.
WHEN YOU TALKED ABOUT.
>> IS THIS STANDARD
PROCEDURE?
>> NO, I DON'T THINK IT IS.
>> ARE THERE CASES THAT WE
HAVE ACROSS FLORIDA LAW IT'S
NOT UNUSUAL THAT JUST IN AN
EXPERIENCED POLICE OFFICERS
TAKE THINGS THERE THE SCENE
OF THE ACCIDENT, GOES HOME
WITH THEM OVERFIGHT AND THEN
COMINGS BACK AND THOSE
THINGS.
DOESN'T THAT HAPPEN FROM
TIME TO TIME?
DO WE HAVE ANY LAW ON THAT?
>> I'M SURE IT HAS.
IN HERE, I SUPPOSE THE
ARGUMENT IS THAT, AGAIN, IF
IT'S HOME THEN MAYBE
SOMETHING CAN CONTAMINATE IT
OR IT GETS DEGRADED.
WE KNOW THAT DIDN'T HAPPEN
HERE.
WE KNOW IT WASN'T DEGRADED.
>> RIGHT.
>> OKAY.
>> GO TO THE SAMPLING PART.
AS THIS COURT SAID IN ITS
DIRECT APPEAL OPINION
THERE'S NOT ONE CINTILA OF
EVIDENCE THAT
THERE'S -- THERE WAS
TAMPERING OF EVIDENCE THEY
WERE PROVIDED TO OPPORTUNITY

TO ADDRESS THAT IN 2004 AND
THEY PRESENTED NO EVIDENCE
OF TAMPERING.
WHEN YOU TALK
ABOUT -- DR. POPE, SAID I
TOOK IT HOME.
WHEREVER THIS EVIDENCE WAS
IS ACCOUNTED FOR.
IT'S NOT THAT IT WAS LOST
SOMEWHERE.
AND I BELIEVE THAT'S WHAT
YOU ARE TALKING ABOUT WHEN
YOU TALK ABOUT INTACT CHAIN
OF CUSTODY.
IS OKAY WHO TOOK IT?
WHO SIGNED FOR IT?
WHEN DID IT COME BACK.
WHERE WAS IT WHEN IT WASN'T
HERE?
>> THAT'S THE QUESTION.
IF YOU HAVE A LAB IN THE
POSSESSION OF A POLICE
OFFICER IS EVIDENCE UNDER
FLORIDA LAW THEREFORE JUST
AUTOMATICALLY EXCLUDED?
>> ABSOLUTELY.
OBVIOUSLY NOT BECAUSE THIS
WAS ALL LITIGATED AT THE
TRIAL.
ALL OF THIS INFORMATION.
AS A MATTER OF FACT
EVERYTHING THAT HEY ARE
DISCUSSING THEY GET FROM THE
TRIAL CRYPTS.
SO THIS ISN'T ANYTHING NEW.
WHAT THEIR ARGUMENT IS AS TO
WHAT HAPPENED AT THE FREY
HEARING, CORRECT?
>> RIGHT.
AND THE JUDGES ORDER ARE
GOING BACK TO THE PAGE YOU
VERY REFRING TO SAID THAT
EVEN IF THIS PLANTED
EVIDENCE THEORY HAD BEEN
GIVEN A DEGREE OF
CREDIBILITY IT WOULD HAVE
KEPT THE ANALYSIS METHOD
FROM PASSING MUSTER AT THE
FREY HEARING.
SO THAT -- THAT'S SEEMS TO
BE THE ISSUE IS WHETHER THIS
CHAIN OF CUSTODY ARGUMENT
PUTS SOME LACK OF
CREDIBILITY INTO THE STRDNA

TESTING THAT WAS DONE.
>> AND, AGAIN THE TESTIMONY AT THE EVIDENTIARY HEARING WAS YOU WILL NOT GET A FALSE POSITIVE ON THAT.
YOU WILL COME BACK WITH NOTHING.
AND THAT DIDN'T HAPPEN HERE.
>> I GUESS IT ALSO GOES TO THE ISSUE THAT THE DNA TESTING CAN NEVER RULE OUT THAT SOMEBODY GAVE THEM THE WRONG SAMPLE.
OF COURSE.
UNTIL HE GETS TO THAT POSSESSION.
THAT'S --
>> EXACTLY.
DID YOU ADDRESS THE 3.8523 ISSUE -- LIKE THE POSSIBILITY OF HIS HAIR BEING ANOTHER PERSON'S HAIR ON THE TAPE AND WHY THAT SHOULDN'T BE DNA TESTED?
>> THE TRIAL COURT FOUND -- FIRST OF ALL, WE DON'T KNOW IN THE DEFENDANT BROUGHT THAT TAPE WITH HIM OR IF IT WAS ALREADY AT THE SCENE.
I MEAN, EVERYBODY IS SPECULATING.
THERE'S ABSOLUTELY NO EVIDENCE AS TO WHEN THAT TAPE GOT ON THE SCENE.
THAT'S NUMBER ONE.
NUMBER TWO, AS THE COURT SAID THERE'S NO WAY TO KNOW WHEN -- WHOSE HAIR IT IS --
>> BUT THEIR THEORY IS IT IS PLAUSIBLE THAT YOU KNOW IF IT WAS JUST CONTAMINATED AGAIN BECAUSE IT HAD BEEN UNROLLED BEFORE -- AT SOME OTHER TIME THERE WOULD BE OTHER THINGS ON NOT JUST A HAIR.
I GUESS WHAT I WOULD LIKE YOU TO DO IS LET'S ASSUME THAT THERE WAS TESTING AND TESTING REVEALED THAT SOMEONE'S HAIR.
>> OKAY.
>> TELL ME HOW THAT YOU KNOW

REFUTE THE ARGUMENT THAT, THAT STILL WOULDN'T LEAD TO A PROBABILITY OF AN ACQUITTAL OR A PROPORTIONALITY ISSUE.
THEY CONCEDED AT THE HEARING WHEN THEY REQUESTED THE DNA.
THEY CONCEDED TWICE THAT THIS WOULD NOT EXONERATE THEIR CLIENT.
OKAY.
SO THAT IS OBVIOUSLY TAKING CARE OF.
AND IT GOES BACK TO THE BIGGER GRAND QUESTION IF IT IS NOT THE DEFENDANTS AND THEY ARE SAYING THERE'S A PROPORTIONALITY ARGUE.
WHY DON'T THEY TELL US WHO THAT OTHER PERSON WAS?
THEY DIDN'T GIVE ANY OF THAT INFORMATION TO THIS JUDGE.
THEY ARE SAYING JUDGE, LET'S TEST THIS HAIR.
IF IT'S NOT THE DEFENDANTS AND IT'S NOT THE VICTIM THEN IT HAS TO BE THE OTHER -- IT THOSE BE THE COPERPETRATOR.
>> THAT'S A HUGE LEAP AND UNTIL THEY CAN FILL IN THAT HUGE GAP THAT YOU GO FROM HAIR ON TAPE TO BEING A COPERPETRATOR YOU'VE GOT TO FILL IN SOME GAPS WHICH THEY HAVE YET TO DO.
>> I GUESS JUST FROM A PURSUING JUSTICE POINT OF VIEW WOULDN'T THE STATE BE CONCERNED OR INTERESTED EVEN IF IT DOESN'T EXONERATE OR MINIMIZE THE CULPABILITY IN THIS CASE IF THERE'S ANOTHER PERSON THERE THAT, THAT PERSON OUGHT TO BE PURSUED.
WHAT'S THE STATE'S -- I KNOW WE HAD LOOKED AT THIS ISSUE OF BEING SOMEONE ELSE THERE.
>> BECAUSE THERE ISN'T ANY EVIDENCE THAT THERE WAS SOMEBODY ELSE THERE.
AND AS A MATTER OF FACT THE GAMESMANSHIP ON HOW THEY PRESENTED THIS CLAIM EVEN UNDERSCORES THE FACT THAT

THERE WASN'T ANYBODY ELSE THERE.
I MEAN, THEY ARE TRYING TO SAY NOW THAT IN A MITGATED SENSE, OKAY SO THAT MEANS THEY CONCEDED THEY ADMITTED HE WAS THERE.
AND AS JUSTICE LEWIS SAID IT DOESN'T NEGATE THE FACT THAT HE RAPED MISSY McTKPWAOEUFER.
WHY AREN'T THEY TELLING THE PERSON.
YOU SEE IT'S A SHELL GAME THAT THEY ARE PLAYING AND KEEPING EVERYBODY ELSE IN THE DARK.
THERE'S ABSOLUTELY NO EVIDENCE THAT THERE WAS NOT PERPETRATOR.
>> THEY DIDN'T ARGUE ALTERNATIVELY THAT EVEN AS A MATTER OF FACT THE STATE VIGOROUSLY OPPOSED THAT THEORY AND AT TRIAL THEY PRESENTED A CRIME SCENE EXPERT TO SUGGEST THAT, THAT MAY HAVE BEEN, AND OBVIOUSLY THE STATE PRESENTED EVIDENCE THAT NO THIS WAS THOMAS OVERTON WAS THE ONE AND ONLY PERSON THERE.
AND OBVIOUSLY THOMAS OVERTON IS THE ONLY PERSON WHO KNOWS IF THAT IS TRUE OR NOT AND IF THERE WAS SOMEBODY ELSE THERE HE COULD GIVE THAT INFORMATION TO CONNECT THE DOTS AND THEN MAYBE THAT HAIR WOULD BECOME RELEVANT.
BUT AT THIS POINT HE'S NOT PRESENTED THAT TO THE TRIAL COURT OR TO THIS COURT.
NOW BACK -- JUST IN TERMS OF THE CHAIN OF CUSTODY, AGAIN, THERE HAS BEEN NO EVIDENCE THAT THERE WAS A BREAK IN THE CHAIN.
AS A MATTER OF FACT IN, THE 3850 OPINION OF THE COURT THE COURT GOES THROUGH THE TESTIMONY AND ATTACHES IT TO THE COURT'S ORDER DEMONSTRATING THAT THIS WAS A PERFECTLY INTACT CHAIN OF

CUSTODY.
>> LET ME JUST ASK YOU THIS.
JUST TO CLARIFY.
THE EVIDENCE THAT WAS
MISSING FOR THREE DAYS, WHO
HAD THAT EVIDENCE?
>> IT WASN'T MISSING.
>> NOT MISSING.
BELIEVED CUSTODY AT THE
STATION THAT THOSE THREE
DAYS.
WHO HAD IT.
>> THE SERELOGIST DR. POPE
HAD IT AT HIS HOME.
>> IN HIS REFRIGERATOR.
>> NO, THIS WAS THE BED
SHEET.
>> WHAT WAS IN SOMEONE'S
REFRIGERATOR.
THAT WAS IN THE LAB.
THE REFRIGERATOR IN THE LAB.
AND I THINK YOU ARE TALKING
ABOUT THE SWABS.
>> I THINK THEY WERE
REFERENCING BEING IN
TUBERWARE SE -- TUBERWARE.
THERE WAS NO SEMON BECAUSE
IT HAD BEEN DEGRADED.
THAT WAS THE PRELIMINARY
TESTING.
THE TRIAL COURT, THOUGH, HAS
SENSE GRANTED THE DNA
TESTING OF THOSE -- OF THAT
SWAB AND AGAIN THAT -- WE
DON'T AN ANSWER.
>> THERE'S STILL SOMETHING
ONGOING?
>> I BELIEVE THERE IS.
AND I WOULD LIKE TO CLEAR UP
THE MISREPRESENTATION BY THE
DEFENSE THAT THE JUDGE
REFUSED TO CONTINUE THE
DNA -- EXCUSE ME -- REFUSE
TO CONTINUE THE EVIDENTIARY
HEARING SO THAT TESTING
COULD BE PROVIDED THAT COULD
NOT BE FURTHER FROM THE
TRUTH THE JUDGE GRANTED A
CONTINUIANS BECAUSE THE FDLE
HAD NOT COME BACK WITH THE
RESULTS.
THE HEARING WAS SUPPOSED TO
BE IN SEPTEMBER.
HE SET IT FOR NOVEMBER.

THE COUNCIL SAID THE RESULTS
MAY NOT BE IN YET SO WE NEED
ANOTHER CONTINUIANS.
THE COURT SAID WE WILL HAVE
A STATUS CONFERENCE IN
OCTOBER, LET'S WAIT AND SEE
IF FDLE HAS DONE -- HAS DONE
THE DECEMEMBER THEN WE WILL
REVIEW IT AT THAT TIME.
GOING BACK TO JUSTICE
QUINCE'S QUESTION ABOUT
WHETHER IT WAS MY
IT -- MISSING OR WHATEVER.
YOU SAID THE TUBERWARE WITH
THE SWABS IN.
YOU SAID THE BED SHEET WAS
TAKEN HOME.
IF BED SHEET WAS TAKEN HOME
FOR THREE DAYS TO DRY.
>> AND SO IT WAS AN IN-HOME
DRYING AND HE WAS COMING AND
GOING.
>> HIS HOME WAS LOCKED AND
HE SAID NOBODY ELSE -- HE
LIVES ALONE.
AND THEN HE BROUGHT THAT
BACK TO THE LAB.
AND THEN HE TOOK IT FROM THE
LAB BACK TO HIS OTHER LAB.
THAT ALL CAME OUT OF THE
ORIGINAL --
>> EVERYTHING THAT WE ARE
DISCUSSING CAME OUT AT THE
ORIGINAL TRIAL.
BUT I JUST WANT TO FINISH MY
POINT ON THE WAS
UNINTENTIONAL.
SO WE COULD $PIE.
>> THANK YOU.
AT THE OCTOBER 29th, STATUS
HEARING, THE DEFENSE
ATTORNEY WITHDRAW THE MOTION
FOR CONTINUANCE OF THE
EVIDENTIARY HEARING, SO THAT
IS WHY THE JUDGE DID NOT
GRANT A FURTHER CONTINUANCE.
THE OM THING HE DID DENY,
THERE WAS QUESTION QUEST TO
STAY THE ENTIRE 3851
PROCEEDINGS PENDING THE
TESTING OF THE SWABS, AND
THAT THE COURT DID DEMY.
IF THERE ARE NO FURTHER
QUESTION, WE ASK THE COURT

TO AFFIRM THE FACTUAL
FINDINGS OF THE TRIAL COURT
WITH RESPECT TO THE POST
CONVICTION AND THE DNA
MOTION.
THANK YOU.
>> YOU HAVE USED UP ALL YOUR
TIME PLUS FIVE MINUTES BUT I
WILL GAVE COUPLE MINUTES TO
FINISH UP.
IT IS SOMEWHAT COMPLEX.
>> UNEQUIVICALLY, I WANT TO
STATE ONE THING, MR. OVERTON
WAS IN THE AT THE SCENE.
HAS NEVER CONCEDED THAT HE
WAS AT THE CRIME SCENE.
THE SWABS ON THE TUPPERWEAR.
>> DID YOU ARGUE THE HAIR
WOULD EXONERATE THE
DEFENDANT?
>> NO.
>> DID YOU CONCEDE IT WOULD
NOT EXONERATE.
>> IT WAS CONCEDED IT WOULD
NOT EXONERATE UNDER THE
FACTSS OF THE CASE, THERE
HAS BEEN DNA THAT HAS LINKED
HIM.
THAT IS THE ONLY REASON WHY
THAT WAS CONCEDED.
>> THAT IS AN IMPORTANT --
SO WE ARE LOOKING AT ONE
THING, NOW, THE OH, WHEN YOU
SAID PROPORTIONALITY, THE
ONLY OTHER ISSUE THEN WOULD
IT SHOW THERE IS SOMEONE AT
THE SCENE, IF THE STATE IS
SAYING, THERE IS CERTAINLY
NOTHING ELSE THAT WOULD LEAD
TO A BAE LEAF, THERE IS
SOMEONE ELSE AT THE SCENE,
IT DOESN'T UNDERMINE THE
EVIDENCE THAT MR. OVERTON
WOULD BE THE PERPETRATOR OF
THE MURDER, SO I DON'T, I
JUST THINK IT IS A STRETCH
TO SAY THAT IT WOULD HAVE
ANY EFFECT ON THE PENALTY
PHASE ASSUMING IT SHOWS
ANOTHER PERSON.
>> WELL, THAT IS OUR
ARGUMENT.
BUT TO MAKE THE RECORD VERY
CLEAR, THERE WAS NOT JUST

SWABS ON THE TUPPERWEAR,
THAT IS NOT WHAT WE'RE
TALKING ABOUT.
WE'RE TALKING ABOUT,
EVERYONE LOSES TRACK OF THE
IMPORTANT EVIDENCE THAT
BECAME EVIDENCE AGAINST HIM
WHICH WAS THE CUTTINGS MADE
FROM THAT BEDDING, THAT WAS
NOT JUST MISSING FOR THREE
DAYS.
THOSE, THAT BEDDING WAS
TAKEN HOME IMPROPERLY.
WERE YOU ABLE TO ARGUE ABOUT
THAT CHAIN OF CUSTODY AT THE
TRIAL.
AND DID ARGUE THAT AT THE
TRIAL, CORRECT?
>> BUT NOT AT THE FRY
HEARING.
>> I UNDERSTAND THAT, BUT AT
THE TRIAL BEFORE THAT
EVIDENCE WAS INTRODUCED AT
TRIAL, YOU WERE ABLE TO
ARGUE THE CHACHB CUSTODY?
-- CHAIN OF CUSTODY?
>> PRELIMINARY, IT WAS
ARGUED AT THE TRIAL BEFORE
THE JURY TO, TO DISCOUNT,
YOU KNOW, THE EVIDENCE, BUT
IT WAS NOT ARGUED IN A
PREHEARING MOTION BECAUSE
THEY REFUSED TO PRESENT ANY
EVIDENCE.
AND THEY DIDN'T UNDERSTAND
HOW THE CHAIN OF CUSTODY WAS
IMPORTANT.
I DO WANT TO POINT TO THE
EVIDENCE.
>> AGAIN, YOU HAVE USED UP
YOUR TIME TODAY.
THANK YOU FOR THE ARGUMENTS.
AND FOR DIFFICULT CASE TO
UNRAVEL.
WE'LL CONSIDER YOUR
ARGUMENT.
WE THANK BOTH OF YOU FOR
GOOD ARGUMENTS?
OOCHLS THE COURT WILL TAKE
THE MORNING RECESS.
>> PLEASE SE.,,,,
THE COURT IS NOW IN RECESS.