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**Eddie Junior Brigham v. State of Florida  
SC05-245**

GOOD MORNING.

>> LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.  
PLEASE BE SEATED.

>> THE FINAL CASE ON THE  
CALENDAR THIS MORNING IS  
BINGHAM VERSUS THE STATE OF  
FLORIDA.

MR. ANDERSON.

>> THANK YOU.

MAY IT PLEASE THE COURT.  
MY NAME IS JEFFREY ANDERSON,  
I REPRESENT THE APPELLANT.  
TO LET YOU KNOW WHERE I AM  
GOING WITH THIS BECAUSE  
THERE IS A LOT OF ISSUE ON  
APPEAL.

>> YES.

I WILL START OUT WITH POINT  
THREE AND THEN COVER THE  
FIRST TWO SUFFICIENCY  
ISSUES.

IN POINT 3 INVOLVES THE  
DENIAL OF THE MOTION TO  
DISMISS BECAUSE OF THE  
FAILURE TO DISCLOSE THE  
STATE WITNESS, DETECTIVE  
HALL AND THE TRIAL ATTORNEY  
INDICATED THAT  
NON-DISCLOSURE IMPACTED HIS  
PREPEREMPTORY CHALLENGE  
DECISIONS AND THE LAW IS  
CLEAR THAT IF THERE IS AMON  
DISCLOSURE THAT IS RELEVANT  
AND MATERIAL AS TO  
INFORMATION AND THERE IS NOT  
A LACK OF DUE DILIGENCE  
REVERSALS WARRANTED GIVING  
THIS AS A TYPE OF  
INFORMATION THAT IS, OF  
COURSE, RELEVANT, JUROR  
KNOWING A WITNESS AND THE  
KEY ISSUE IS, IS IT  
MATERIAL?  
AND MATERIALALITY IS WHETHER

IT IMPACTS MAKING AN INFORMED DECISION AS TO JURY SELECTION AND IN THE CASE, I THINK THERE IS TWO THINGS TO CONSIDER, ONE IS THE IMPORTANCE OF THE WITNESS, AND THIS WAS A VERY IMPORTANT WITNESS IN THIS CASE, IT WAS DETECTIVE WHO IS THE LEAD INVESTIGATOR AND HE DID THE INVESTIGATION AND HE ASSIGNED VARIOUS PARTS OF THE INVESTIGATION AND WHEN HE WAS CROSS-EXAMINED BY THE DEFENSE, --

>> WHAT IS THE STRONGEST EVIDENCE?

THAT YOU POINT TO ABOUT THE CONNECTION BETWEEN THIS JUROR AND THE WITNESS? HOW CLOSE WERE THEY? HOW OF OFTEN DO THEY SEE EACH OTHER?

>> HE TESTIFIED THAT HE WORKED AS SECURITY OFFICER IN A BAR FOR A PERIOD OF TWO YEARS AND THAT HALL WOULD COME IN THREE OR FOUR TIME AS MONTH AND THEY TALK AND HAVE CONVERSATIONS AND I THINK THAT NEXUS COMBINED WITH HOW IMPORTANT THIS WITNESS IS IS REALLY IMPORTANT BECAUSE IT WOULD IMPACT A DECISION WHETHER TO EXERCISE A PEREMPTORY ON HIM, NOT ONLY ARE YOU WORRIED ABOUT THE SUBCONSCIOUS BIAS THAT THE JUROR WOULD HAVE TOWARD DETECTIVE HALL, YOU HAVE TO CONSIDER, ALSO, YOU KNOW THAT THE DEFENSE IS GOING TO ATTACK THE HALL AS THE LEAD INVESTIGATOR IN A CASE WHERE THEY CLAIM WAS NOT INVESTIGATED GOOD AND ALL YOU HAVE IS CIRCUMSTANTIAL EVIDENCE, SO YOU WORRY ABOUT A BACKLASH.

>> WHAT WAS THE QUESTION ASKED OF THE JUR ZY DOES ANYBODY KNOW DETECTIVE HALL?

>> A SPECIFICALLY FIRST TOLD THE JURY TO LISTEN CAREFULLY

TO THE WITNESS LIST AND THEN  
THEY SAID, OKAY, HERE --  
THESE WITNESSES MAY OR MAY  
NOT BE CALLED DURING THE  
COURSE OF THE TRIAL.

THIS IS HOW IT STARTS OUT.  
BILL HALL DETECT WHICH HAVE  
THE 4th FT. PIERCE POLICE  
DEPARTMENT.

THEN THEY DO THAT WITH FIVE  
WITNESSES.

THEY REALLY SINGLE THEM OUT.  
THEN, AT THE END, THEY JUST  
START GOING, YOU KNOW,  
OFFICER RICK RUSS, SERGEANT  
HARRISON, THEY GROUP THE  
NAMES, BUT IN THE BEGINNING,  
THEY SPECIFY AND SINGLE OUT.

>> WHAT DID THEY ASK THE  
JUROR?

WHAT IS THE QUESTION TO THE  
JURORS THAT THEY TO RESPOND  
TO?

>> WHETHER THEY KNOW ANYONE  
ON THE WITNESS LIST.

YOU GOT A LOT OF RESPONSES,  
THERE WERE APPROXIMATELY ONE  
DOZEN RESPONSES FROM JURORS  
WHO KNEW WITNESSES.

IN FACT, ONE OF THEM, I  
THINK IT IS JUROR VULCHER  
KNEW DETECTIVE HALL.

>> NOW, THIS JUROR HERE,  
WHEN IT DID BECOME KNOWN,  
WHEN DID HE MAKE IT KNOWN?

>> HE MADE IT KNOWN AFTER  
CROSS-EXAMINATION, THERE WAS  
A RECESS AND THE BAILIFF AT  
THE END OF THE RECESS CAME  
IN AND TOLD EVERYONE THAT A  
JUROR JUST TOLD ME THAT HE  
KNOWS DETECTIVE HALL.

>> WHAT WAS THE VOIR DIRE OF  
THE JUROR WHAT IT DID REVEAL  
MOOL THIS THERE ARE CASES  
WHERE JURORS DON'T KNOW  
PEOPLE'S NAME THEN THEY  
REALIZE, OH, I KNOW THAT  
PERSON.

THEN, THEY DISCLOSE IT.  
IS THIS THAT CASE?

>> YES, THAT IS THAT TYPE OF  
CASE, REALLY, THE  
RECOGNITION OF THE NAME

REALLY DOESN'T POP INTO  
THEIR MIND UNTIL THEY SEE  
THE ACTUAL FACE.  
AND THIS IS A SITUATION, I  
THINK, THAT GOES TO WHETHER  
CONCEALMENT ASPECT OF IT  
FROM DEFENSE COUNSEL AND OUR  
ARGUMENT ON THAT, IT DOESN'T  
HAVE TO DEAL WITH THE  
CULPABILITY OF THE JUROR.  
THITS DO WHETHER THIS  
INFORMATION IS CONCEALED  
FROM THE PARDON.

>> HE DIDN'T KNOW, IF THE  
JUROR DIDN'T KNOW WHO DIDN'T  
COME TO MIND UNTIL THEY SAW  
THE WITNESS, HOW CAN THAT BE  
CONCEAL AM.

>> WELL, LIKE SAID, IT IS  
NOT CULPABILITY, HE MAY NOT  
HAVE THOUGHT OF THAT.  
YOU KNOW, THERE ARE VARIOUS  
REASONS, UM, HE MIGHT NOT  
CONNECT IT UP AT THAT  
PARTICULAR MOMENT.

BUY DOES CONNECT IT UP THAT  
HE KNOWS THIS GUY LATER.

>> THEN WHAT HAPPENED?

>>> THEN, WELL, JUROR SAID I  
RECOGNIZED HIM WHEN HE TOOK  
THE STANDND I KNEW I KNEW  
HIM.

AFTER A FEW RECESSES, HE  
FINALLY REVEALED THAT  
INFORMATION TO EVERYBODY.  
UNFORTUNATELY, FOR THE  
DEFENSE, IT IS AFTER  
CROSS-EXAMINATION, WHERE  
DEFENSE HAS REALLY TORN INTO  
DETECTIVE HALL.

>> DID YOU ASK THE  
SUBSTITUTE FOR ALTERNATE?

>> YES.

THE DEFENSE DID ASK FOR  
DISMISS THE JUROR AND HAVE  
TWO ALTERNATES AVAILABLE,  
THE STATE DIDN'T WANT AN  
ALTERNATE TO SERVE AND I  
SUBMIT BECAUSE THEY KNEW  
THEY HAD A TACTICAL  
ADVANTAGE, THEY HAVE A JUROR  
WHO KNOWS THE LEAD  
INVESTIGATE ORN THE CASE.  
YOU SAY THAT IS THE ERROR,

NOT THAT THEY DISCLOSED AT THE TIME OF VOIR DIRE REMOVE THE JUROR WHEN IT WAS REVEALED?

>> IT IS WHEN DEFENSE COUNSEL SAID, I MOVE TO DISMISS THE JUROR, UM, BECAUSE I WOULD HAVE EXERCISED PEREMPTORY CHALLENGE IF I HAD KNOWN ABOUT THIS INFORMATION.

>> YOU HAVE GOT LIMITED TIME.

I AM CONCERNED AND YOU HAVE RAISED A SUBSTANTIAL ISSUE ON THIS JUDGMENT OF THE ACQUITTAL ON THE PREMEDITATED MURDER AN I WOULD ASK YOU TO, IN WHAT IS UNUSUAL IN THE CASE, AT LEAST, FOR ME, THAT THE JUDGE HAD ALREADY DIRECTED A JUDGMENT OF ACQUITTAL ON THE SEXUAL BATTERY.

>> RIGHT.

>> BUT YET, THE SEXUAL, THE EVIDENCE OF THE SEXUAL ACT, IT WOULD AGREE WAS GOING TO BE OF WHAT THE JURY WOULD HEAR, EVEN THOUGH THEY WERE NOT GOING TO HEAR IT WAS SEXUAL BATTERY.

>> RIGHT.

>> OKAY.

YOU COULDN'T AVOID THAT.

>> SO NOW WHAT YOU HAVE THOUGH IS SEXUAL ACT HAS OCCURRED AND HASN'T THE STATE PUT ON SUFFICIENT EVIDENCE THAT AT THE TIME THIS PERSON, AT THE TIME THE VICTIM IS MURDERED, THAT SHE IS IN THE SAME POSITION AS AFTER IMMEDIATELY AFTER SEX, IN OTHER WORDS, THERE WAS NO GETTING UP, THERE WAS NO DRESSING, IS THAT MOST VALUABLE TOLL THE STATE FIRST, THAT IS ESTABLISHED? ON PAGE 13 OF THE BRIEF, THEY LISTED THAT. THEY SAY THAT IS THE CASE.

>> I THINK THAT ACTUALLY GOES TO THE ISSUE OF

IDENTITY IN THE EVIDENCE  
WILLING.

>> DOES IT ESTABLISH THAT  
SHE WAS MURDERED IN THE SAME  
POSITION AS SHE WAS AFTER  
SHE HAD SEX WITH WHOEVER SHE  
HAD SEX?

DOES IT ESTABLISH THAT ON  
THE LIGHT MOST VALUE  
FAVORABLE TO THE STATE?

>> NO.

FOR VARIOUS -- I THINK YOU  
HAVE TO --, NO I DON'T THINK  
SO.

>> SO TELL US AGAIN, YOU  
THINK THE EVIDENCE THAT WAS  
PROPERLY PUT IN WHY IT IS,  
THERE ISN'T CIRCUMSTANTIAL  
EVIDENCE OF PREMEDITATION?

>> WELL, I THINK -- BECAUSE  
THERE IS NOT A LINK OF THE  
VIOLENCE, UM, LET ME DO THE  
IDENTITY BECAUSE I THINK  
THAT WILL FILL IN SOME  
THINGS BECAUSE THIS IS A  
CASE WHERE, UM, OKAY, THE  
STATE DID PROVE THAT THEY  
WERE TOGETHER.

THE DEFENDANT AND THE  
VICTIM.

THEY PROVE THEY HAD SEX, BUT  
THEY DIDN'T PROVE THE  
STRANGULATION WAS BY THE  
DEFENDANT.

AND BUT TO MAKE THE  
INFERENCE.

>> YOU AGREE SHE DIED BY  
STRANGULATION?

>> YES, THAT IS NO DOUBT.  
THAT WAS STIPULATED TO.

>> OKAY.

THIS DIFFERS IN THAT REGARD,  
CORTFORD, THE ISSUE WAS  
WHETHER THERE WAS DEATH BY  
STRANGULATION.

>> WELL, I THOUGHT THERE WAS  
A DEATH BY STRANGULATION IN  
THAT CASE, THE WAY I READ IT,  
THE ISSUE WHETHER THERE WAS  
STILL PREMEDITATION PROVEN.

IN A THINK CARPENTER AND  
GREEN WERE MANUAL  
STRANGULATIONS.

>> ARE YOU ADVANCING THAT

THIS COULD HAVE HAPPENED,  
THAT KEY HAVE BEEN THE  
PERSON THAT STRANGLERED HER,  
BUT DID IT AT THE END OF THE  
SEX ACT?

>> I AM SAYING WE DON'T HAVE  
ANY IDEA AS TO REGARD  
HIMSELF OF WHO DID THIS, HOW  
AND WHEN IT HAPPENED.

>> I GUESS THAT I WHERE I AM  
THINKING THAT BECAUSE IT IS  
ESTABLISHED, HIS SEMEN IS IN  
HER, SHE HAS NOT BEEN MOVED  
FROM WHERE SHE WAS AT THE  
TIME SHE HAD SEX AND IT IS  
ONLY, YOU KNOW, IT IS MORE  
LOGICAL THAT HE IS THE LAST  
PERSON TO HAVE SEX WITH HER  
RALTER THAN HER HUSBAND, THE  
JURY CAN INFER, THAT THEN,  
WHY IT ISN'T ALSO LEAD TO  
INFERANCE THAT HE IS THE ONE  
THAT HAS STRANGLERED HER AFTER  
HAVING SEX?

>> WELL, I DON'T THINK THERE  
IS INFERENCE, THAT IS THE  
PLACE WHERE THE BODY WAS  
FOUND IS WHERE THEY HAD SEX.  
BECAUSE IN MATURE -- THE  
BODY HAS NO DIRT ON THE BODY,  
AND YOU KNOW, THERE HAS GOT  
TO BE SOME PHYSICAL ACTIVITY  
TO PRODUCE THAT, THERE IS  
MORE LIKELY SCENARIO, THAT  
IS WHERE THE BODIES PLACED,  
UM, AND -- WHAT ABOUT THE  
CONTINUING PRESENCE OF THE  
CONDOM?

>> THE MEDICAL EXAMINER, THE  
KEY BECOMES WHERE WAS THE  
CONDOM WHEN SHE WAS ALIVE?  
THE MEDICAL EXAMINER SAID WE  
DON'T KNOW.  
IT IS PURE SPECULATION.  
BECAUSE YOU HAVE MOVEMENT OF  
THE BODY BY THE POLICE, AND  
THEY TURNED IT OVER, WHICH  
COULD EFFECT THE POSITION,  
EVEN AFTER HER DEATH, THE  
MEDICAL EXAMINER SAID, THERE  
COULD BE MOVEMENT OF THE  
CONDOM DUE TO THE STATE OF  
THE BODY, ALTHOUGH, IT IS  
PROBABLY MORE ESTABLISHED

ONCE THE COMPOSITION BEGIN,  
YOU KNOW?

IT IS JUST DOESN'T PROVE  
PREMEDITATION OR IDENTITY.  
THE ONE POINT THAT I WANT TO  
GET AT THAT MAY --

>> WHY DOESN'T IT PROVE  
IDENTITY OR, IN OTHER WORD,  
PART OF THE CHAIN OF  
CIRCUMSTANCES THAT THE, THAT  
THE DEFENDANT WAS ASSOCIATED  
WITH THE CONDOM, THAT IS  
CORRECT?

>> CORRECT.

>> THE CONDOM IS STILL  
THERE.

ALL RIGHT.

SO WHY, WHY CAN'T FACT  
FINDER DRAW INFERENCE THAT,  
THAT THE KILLING THEN WOULD  
HAVE OCCURRED VIRTUALLY AT  
THE SAME TIME OR VERY CLOSE  
IN TIME TO THAT BECAUSE  
ORDINARILY, THE CONDOM, FIT  
WAS JUST USED FOR SEX WOULD  
HAVE BEEN REMOVED AND THERE  
WOULD HAVE BEEN A GAP IN THE  
TIME.

>> WELL, FIRST OF ALL, YOU  
HAVE TO INFER A LOT OF  
THINGS ABOUT THE VICTIM IN  
THIS CASE AND THE EVIDENCE  
SHOW THAT SHE HAD DRUGS,  
ALCOHOL IN HER SYSTEM.  
WE DON'T KNOW IF SHE WAS  
AWARE OF THE PRESENCE OF THE  
CONDOM.

ONE THING I WOULD LIKE TO  
POINT OUT IS THAT THE  
STATE'S OWN EVIDENCE SEEMS  
TO SHOW THAT THE VICTIM HAD  
SEX WITH THREE INDIVIDUALS  
A DEFENDANT, AND IF YOU LOOK  
AT AND I THINK -- THIS IN MY  
BRIEF -- ITEM 14, PAGE 1127,  
LINE 17 ON, THE DNA EXPERTS  
FORTITUDE STATE SAYS THEIR  
SWBAI. S, VAGINAL SWABS SHOWED  
SEMEN FROM TWO INDIVIDUALS IN  
THE VAGINA, TWO -- SPERM --

>> CONSISTENT WITH EDDIBE  
BIGHAM AND THE -- BUT --  
WASN'T 54 THE EXPERT SAYS WE  
KNOW IT IS NOT THE HUSBAND.

SO THAT LEAVES A THIRD INDIVIDUAL, AND IF YOU WOULD HAVE THE STATE'S THEORY IN THIS CASE THEY SAID AFTER THE DEFENDANT HAD VAGINAL -- -- FACT THERE WAS BEING NO REMAINING SPERM OR POERM'S SPERM THE HUSBAND WRAES MOVED THAT WOULD ON THE THIS THIRD INDIVIDUAL WOULD HAVE TO HAVE HAD SEX WITH THE VICTIM AFTER THE DEFENDANT.

>> WAS THAT A THEORY ADVANCED ARGUED TO THE JUDGE AT THE TRIAL?

>> TO THE JUDGE?

>> WITH THE, ON THE -- OF ACQUITTAL PORTION -- I -- I'M --

>> THAT WASN'T -- THE WAY THAT THIS NOW BEING ARTICULATED, BUT, SO READING BETWEEN THE LINES.

>> READING BETWEEN THE LINES WHETHER EVERYBODY TOOK THAT TO MEAN THAT THAT WAS THE HUSBAND AND NOT THAT IT WAS A THIRD PARTY -- WHEN DID THAT FIRST -- IF IT EVER DID, WHAT DID THAT GET ARTICULATED, DURING THE COURSE OF THE TRIAL?

THAT IS THAT THERE WAS A THIRD PARTY SEMEN, WHILE THAT WAS NOT THE HUSBAND AND NOT -- >> TEST OF -- THE AND LIKE I SAID THAT IS WAS -- 1127, THAT WASN'T THE -- ARGUMENT TO THE TRIAL COURT.

>> THE ARGUMENT WAS BASICALLY, NOT LINKING THE CIRCUMSTANTIAL EVIDENCE TO THE TEST, LET ME GO BACK TO THE QUESTION AS FAR AS THE -- PROOF THAT THE VICTIM DIDN'T RISE -- THE LOCATION WHERE THE BODY WAS -- THAT IS AN INFERENCE THEY USED TO INFER THAT THE DEFENDANT WAS KILLED IN THIS CASE.

TO REACH THAT INFERENCE THE EVIDENCE THEY USE IS THE INFERENCE THAT SHE -- DRESS -- AND NEXT -- BASICALLY SUPPORTED BY ANOTHER INFERENCE, THAT SHE NEVER PUT

ON HER PANTIES, NOR DID SHE  
PUT ON HER SHORTS, AND OTHER  
INFERENCES THAT THE --  
INFERENCES LEFT -- AND PART OF  
IT WOULD BE IF SHE PUT ON HER  
PANTIES WOULD YOU EXPECT TO  
SEE THE SEMEN IN HER PANTS,  
AND YOU WOULD EXPECT TO SEE --  
FECAL MATTER -- SO BOTH OF TO  
GET TO BOTH INFERENCES YOU  
HAVE TO INFER FURTHER THAT  
SEMEN SHOULD BE IN THE PANT!!\$\$!!!!!!  
PANTIES, AND IF THEY DO THAT  
BY WELL YOU CAN INFER DRAIN!!\$\$!!!!!!  
DRAINAGE, AND, YOU CAN INFER,  
THAT THE DEFENDANT PUT ENOUGH  
SEMEN TO DRAIN, AND THERE'S  
JUST NOT THE EVIDENCE TO  
SUPPORT THAT.

THE EVIDENCE WASN'T PRESENTED  
ON THAT.

AND THE SAME WITH HER THE  
FECAL MATTER WOULD -- THE  
CONDOM, AND YOU HAVE THE  
MEDICAL EXAMINER, TESTIFYING  
THAT IS PURE SPECULATION AND  
THE BOTTOM LINE WHAT IS I'M  
SAYING IS YOU HAVE A SERIES OF  
SPECULATIONS EVEN TO GET HIM  
IDENTIFIED INTO KILLING IN  
THIS CASE --

>> THE STATE ARGUES IN -- THAT  
THEY WERE -- EACH OTHER,  
VICTIM, AND THE DEFENDANT, AND  
THEY SAY THEN THE TRIAL  
EVIDENCE CLEARLY SHOWED THAT  
SHE WAS DRAGGED FROM THE --  
SECLUSION WADDED LOTS,  
WHERE -- THEM HAD -- ANAL SEX  
THE VEGETATION -- PINE NEEDLES  
OH, I'M ASKING YOU, WITH IT  
BEING -- WE HAVE -- WHICH IS  
JUDGMENT OF ACQUITTAL ON THE  
SEXUAL BATTERY IS THAT STILL  
SOMETHING FOR THEM PERMISSIBLY  
TO ARGUE, THAT BEING THE  
PREMEDITATED MURDER THAT IS  
SHE WAS DRAGGED FROM THE  
STREET IN SECLUSION OF A  
WOODED LOT WHERE THEY HAD SEX?

>> I THINK YOU CAN LOOK AT ALL  
THE EVIDENCE AND DETERMINE  
PREMEDITATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!  
PREMEDITATION.

I WOULD ALSO NOTE THAT THE KIDNAPPING WAS -- THERE WAS A KIND OF -- COULD COUNT OF KIDNAPPING

>> I DON'T KNOW HOW HE CAN LOOK AT IT INTERPRET SOMETHING DIFFERENTLY THAT SHE WAS DRAGGED AGAINST HER WILL, THAT IS HELPFUL TO YOU -- WITH THAT, AND I MIGHT INFER THAT, BUT THE JUDGES ARE -- DETERMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! DETERMINATION.

>> RIGHT.

I MEAN, I GET TO THE UNDERCURRENT THERE WAS NO EVIDENCE OF DIRECT -- RELATED TO THIS CASE, THAT IS WILD SPECULATION THIS WAS AN AREA THAT WAS OFFICER CALLED IT A\$\$!!!!

A --

>> ONE OF THE THINGS YOU ALREADY -- THAT YOU ARGUED EARLIER -- ARGUED AGAIN IN JOA NOT EVIDENCE OF INVOLUNTARY DRAGGING --

>> YES, I CONTINUE THINK IT IS CORRECT TO SUBVERT THE RULING OF THE TRIAL COURT.

>> WHAT DID HE SAY IN HIS STATEMENT ABOUT THE WOODS?

>> THE STATEMENT, HE GAVE ABOUT THE WOODS WAS HE DIDN'T GIVE THE SPECIFIC PLACE HE WAS IN THAT AREA, THAT THEY HAD SEX A SECOND TIME THAT NIGHT. AND HE SAID THAT THE \$\$COURT'S STATEMENT THAT IS HE DIDN'T KILL HER OR RAPE HER ANY VIOLENCE -- WHEN HE WAS LEAVING SHE WAS IN THE PROCESS OF DRESSING.

>> IN THE WOODS, I MEAN HE DID ACKNOWLEDGE BEING IN THE WOODS!!\$\$!!!!!!!!!!!!!! WOODS.

>> HE WAS -- HE TALKED ABOUT -- BUSHES, BUSHES ARE CLOSER TO THE ROADWAY THAT IS WHERE THE CONDOM -- ALL THAT -- YOU KNOW, HE -- I DON'T KNOW HOW HE CHARACTERIZES IT AS BEING IN THE WOODS OR NOT, HE IS IN THE AREA AND LIKE I SAID I

DON'T THINK -- WHERE BODY IS  
FOUND WHERE IS THE SEX KURD,  
THE BODY --

>> HMM?

>> WHAT YOU DO BASE THAT ON?  
I MEAN IT SEEMS TO ME THAT WE  
ARE TALKING ABOUT A RELATIVELY  
SMALL AREA, THAT -- SOME THIS  
IS NOT SOME AREA THAT IS NOT!!\$\$!!!!  
NOT --

>> WELL, THE ROADWAY.

>> WHAT -- WHY YOU DO SAY THAT  
THE PLACE WHERE THE BODY IS IS  
NOT THE PLACE WHERE THE SEX --  
TOOK PLACE?

>> BECAUSE THE PLACE WHERE THE  
BODY IS FOUND IS -- 20, 25  
YARDS OFF THE ROAD.

AND IT IS THE NATURE OF THE  
CONDITION OF THE BODY IS THAT  
THERE IS THERE IS PINE NEEDLES  
WHEN YOU TURN IT OVER BECAUSE  
PINE NEEDLES AROUND THERE, BUT  
IF THERE WERE ANY ACTIVITY  
THERE, WOULD YOU EXPECT TO SEE  
YOU KNOW, DIRT ON THE BODY,  
BECAUSE IT WAS -- YOU KNOW,  
PINE NEEDLES NOT THICK -- BUT  
UNDERNEATH WAS DIRT WOULD YOU  
EXPECT TO FIND SOME TRACE OF  
THE DIRT SO THAT IS WHY I'M  
SAYING IT IS PROBABLY  
SOMETHING ELSE IN THE BODY IS  
PLACED THERE BY WHOEVER DID  
THIS.

>> WHEN TIME RANGE DID THE  
MEDICAL EXAMINER GIVE, AS THE  
TIME OF DEATH?

>> HE GAVE A BALL PARK FIGURE  
OF BETWEEN 1:00 AM AND 2:00  
AM, BASED ON THE -- BODY  
TEMPERATURE OF -- DERRING PER  
HOUR AND HE SAID -- DEGREE PER  
HOUR SAID USUALLY BODY  
TEMPERATURE DROPS BETWEEN WERE  
A DEGREE AND A DEGREE AND A  
HALF HERE HOUR SO HE SAYS BASE!!\$\$!!!!!!  
BASED IF WE USE THE DEGREE AN  
HOUR, YOU KNOW SOMEWHERE, 1:00!!\$\$!!!!!!  
1:00, 2:00 AM I DID  
CALCULATIONS IF YOU USE A  
DEGREE AND A HALF, HE WOULD  
YOU KNOW COULD IT BE SOMEWHERE  
AROUND, AFTER 3:00.

AND IF YOU ALSO LOOK AT THE EVIDENCE, AT THE CONDOM WAS PARTIALLY FOUND INSIDE THE -- THE WITH MIXTURE OF SEMEN ON IT, THE -- EXPERTS TESTED THAT WOULD ONLY SURVIVE A FEW HOURS AT MOST.

>> IF YOU ACCEPT THAT -- SEVERAL MINUTES AGO, THAT HE HAS SEX WITH HER IN THAT POSITION PRESIDENT BUSH THAT YOU HAVE GOT TO PUT IN IN THE MIX IT IS NOW THAT IT IS NOT SEXUAL BATTERY IT IS CONSENSUAL SEX, GIVE ME THE BEST CASE THAT THE STATE HAS TO BE ABLE TO INFER THAT AFTER SEX THERE IS A PREMEDITATED MURDER THAT OCCURRED?

>> MY CLIENT.

>> YOU KNOW AGAIN, BECAUSE ONE IS HE DIDN'T DO IT THERE IS NO EVIDENCE HE DID IT THE OTHER IS, THERE IS EVIDENCE HE DID IT BUT AT THE MOST NOW GOING TO BE SECOND DEGREE MURDER, SO LET'S ASSUME THAT SHE -- I ACCEPT THE \$\$\$STATE'S INFERENCES, THAT MURDER O OCCURS -- WHERE DOES THAT LEAVE ME AS FAR AS ON THE PREMEDITATION?

>> ON THE I THINK THE BEST ARGUMENT AND IT HAS TO BE BASICALLY!!\$\$!!!!!!!!!!!!!!!!!!!!!! BASICALLY, IS THAT STRANGULATION IS PER SE EVIDENCE OF PREMEDITATION. AND YOU DON'T NEED OTHER EVIDENCE PRESIDENT BUT I THINK THAT IS ALSO THE WEAKNESS IN THE ARGUMENT, BECAUSE I THINK -- THIS COURT --

>> HAVE WE HELD THAT IF THERE IS NOT EVIDENCE AS INDICATED, WHERE THERE IS, SOMEONE SAYS, I -- SEX ACT, THAT IS NOT HERE, IS THERE -- DO WE HAVE CASES THAT SAY THE STRANGULATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! STRANGULATION, IS SUFFICIENT TO SUPPLY -- EVIDENCE OF PREMEDITATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! PREMEDITATION?

>> YOU DON'T HAVE CASES THAT

SAY THAT.

YOU HAVE THE CARPENTER CASE,  
WHERE -- UPON SUFFICIENCY OF  
THE EVIDENCE IDENTITY  
REJECTING SOME OF THE THINGS  
MR. CARPENTER SAID BUT THE  
TALK WAS ABOUT NECK  
COMPRESSION WOULD THINK TO  
THREE MINUTES, WASN'T GOING TO  
BE SUFFICIENT TO PROOF PRE--  
APPROVE PREMEDITATION SEEMS TO  
ME THE ARGUMENT FOR  
STRANGULATION AND MEDICATION  
IS THE AMOUNT OF TIME BUT NOT  
THE AMOUNT OF TIME WHICH  
PROVES PREMEDITATION OTHERWISE  
SHOWING JUST CONTESTANTS TAKE  
A FRACTION OF A SECOND WOULD  
AUTOMATICALLY!!\$\$!!!!!!!!!!!!!!!!!!!!!!  
AUTOMATICALLY, BE PRED  
MEDITATE!!\$\$!!!!!!!!!!!!!!  
MEDITATED, IT IS I THINK THE  
STRANGULATION COULD BE A A  
FACTOR BUT THERE'S GOT TO BE  
OTHER FACTORS.

>> THERE IS NO PROCUREMENT OF  
A WEAPON TO THAT -- THE CASE  
THAT WOULD BE SAID THAT.

>> HE RIGHT.

>> -- INDICATION OF SOME  
PLANNED METHOD OF CCP, BUT  
SOMETHING --

>> RIGHT.

>> -- AS OPPOSED TO -- ARE --  
IN THE LIGHT AGAINST MOST --  
WOULD YOU ADVANCE, IS HOW  
COULD THIS HAVE HAPPENED IN  
THE WAY THAT -- PREMED -- AT  
THE END OF THE SEX ANTH WE ARE  
ASSUMING -- SAID SOMETHING TO  
HIM, OR LOSES IT AND BEGINS TO  
STRANGLE HER?

>> I THINK IT IS THE VOID OF  
WE KNOWING HAPPENED IS -- WE  
KNOWING HAPPENED US JUST THERE  
WE DON'T KNOW WHAT WENT ON --  
-- OUR SYSTEM THAT BE ABLE TO  
PROOF OF WHAT HAPPENED.

>> DO WE KNOW IF SHE PASSED  
OUT, WAS THERE, BECAUSE HERE  
IS SOME -- SHE HAD HAD -- A  
CASE HALF -- OR DRUGS WHAT!!\$\$!!!!!!  
WHATEVER, WHAT IS THE  
KNOWLEDGE OF WHAT CONSCIOUS --

HER STATE OF CONSCIOUSNESS WAS DURING THIS TIME PERIOD?

>> WE WOULD I DON'T KNOW FOR CERTAIN, SHE HAS A LOT OF COCAINE IN HER SYSTEM TOXICOLOGY REPORT SHOWED BUT WE DON'T YOU KNOW THERE WAS NO ONE -- JUMPS UP TESTIFIED AS EXPERT THAT AMOUNT OF COCAINE, AND SHE ALSO HAD SOME ON BEATES!!\$\$!!!!!!!!!!

BEATES, AND, ALCOHOL, WOULD PRODUCE WOULD NOT HAVE BEEN CONSCIOUS, BUT, YOU KNOW, NO ONE DIRECTLY, POINTED THAT OUT.

YOU DO HAVE SOME CIRCUMSTANCES LACK OF INDICATION OF A STRUGGLE I DON'T KNOW WHAT ROLE THAT PLAYS IN ALL THIS AS FAR AS HER CONDITIONP.

>> ASIDE FROM -- AND -- THIS COURT, SPECIFICALLY SAID THERE WAS NO MEDICAL EVIDENCE OR OF PHYSICAL TRAUMA TO THE NECK, SO, THERE WAS HERE.

AT LEAST.

>> THIS WAS A STRANGE PLACE, THAT IS A GIVEN --

>> WHAT I GUESS THE STRONGEST CASE YOU DO THINK IN YOUR FAVOR!!\$\$!!!!!!!!!!

FAVOR?

>> I THINK, I DON'T THINK THIS COURT IS -- DIRECTLY HAVE TO DEAL WITH THE ISSUE BUT I THINK THE REASONING OF CASES LIKE CARPENTER AND GREEN HELP SUPPORT.

>> GREEN -- MARTA -- THE GIRL ON THE TRUCK?

>> I'M NOT CERTAIN, YOUR HONOR.

>> SPEAK BRIEFLY TO THE AGGRAVATED FINDINGS OF -- FINDING IS -- PHOTOGRAPH SHOWED -- SIGNS OF STRUGGLE IT WAS EVIDENT THE VICTIM EUROPEANITE INDEED UNDERWEAR A BLOW TO HER FACE.

>> -- THROES THREE PIECES OF EVIDENCE THERE WERE THE DEFENDANTS DNA UNDER THE FINGERNAIL!!\$\$!!!!!!!!!!!!!!!!!!!!!!

FINGERNAIL, AND -- WAS ASKED,  
BY PROSECUTOR THIS AN  
INDICATION OF A STRUGGLE OR  
VIOLENCE!!\$\$!!!!!!!!!!!!!!  
VIOLENCE, AND HE SAID NO, WE  
CAN'T SAY THAT BECAUSE THERE  
WOULD BE AN -- IF THIS WERE  
THE CASE THAT IS ABSENT HERE,  
URINATION IN THE PANTIES WE  
DON'T HAVE ANY IDEA WHEN THAT  
OCCURRED COULD HAVE OCCURRED,  
THAT IS WOMAN WHO HAD ALCOHOL,  
SMOKED COCAINE, LOOKS LIKE  
COULD HAVE OCCURRED AT SOME  
TIME AND THAT MAY BE A REASON  
WHY SHE WOULDN'T WEAR THE PANT!!\$\$!!!!!!  
PANTIES LATER, AND THE THIRD  
-- OH, THE -- BY THE MEDICAL  
EXAMER THAT WAS A VERY  
SUPERFICIAL -- AND WE CAN'T  
KEK THE PANTIES, SO WEAK.  
AND, I'D LIKE TO SAVE MY TIME  
FOR REBUTTAL --

>> SURE.

>> GOOD MORNING, MAYBE IT  
PLEASE THE COURT LISA MARIE,  
FOR THE STATE OF FLORIDA.  
WITH THE ATTORNEY GENERAL'S  
OFFICE.

>> ADDRESSING SOME OF THE \$\$  
COURT'S CONCERNS AND  
QUESTIONING ON MR. ANDERSON.

>> BEFORE YOU DO THAT JUST,  
THAT COULD YOU -- THIS -- TO  
ME WHAT IS UNUSUAL ABOUT THIS  
IS THE DIRECTED VEERED ON THE  
JOA -- ON THE SEX BUT EXPLAIN,  
HERE IS A MARRIED WOMAN, AND  
THEY HAVE -- AND THEY HAD SEX  
WHAT IS UNDER THE STATE THEORY  
IS SHE, SOMEBODY THAT WAS --  
PROSTITUTING HERSELF SHE HAD A  
DRUG PROBLEM SO SHE WAS -- AT  
NIGHT NOT BECAUSE SHE HAD A  
FIGHT WITH HER HUSBAND OR  
ANYTHING ELSE, BUT WITH ADDED  
KNOWLEDGE TO GO AND -- HAVE  
SEX?

>> WELL THE TESTIMONY OF AT  
TRIAL WAS THATP -- THE  
VICTIM'S NAME, WOULD GO OUT  
FROM TIME TO TIME, NOT EVERY  
SINGLE NIGHT BUT FROM TIME TO  
TIME AND VISIT HER FRIEND --

AND SHE AND LUP-E WOULD PARTY  
THEY WOULD DRIVE AND WHAT NOT  
AND IF IN THE MORNINGS SHE  
WOULD CALL THE HOUSE TO SAY  
I'M OVER AT LUP-ES HOUSE OR  
HUSBAND WOULD CALL HER AT LUP \$\$  
AYE'S HOUSE THAT WAS PATTERN  
SHE WOULD GO OUT AT NIGHT TO  
HANG OUT AND DRINK WITH  
LICHLTH UP-E.

>> I'M LOOKING AT THIS --  
DAUGHTER.

>> -- SAY THAT THAT WAS --  
SAYING THAT IS NOT -- AN  
EXCUSE OR -- ANYTHING, TO --  
HAVING -- IN FACT -- WAS A  
PROSTITUTING HERSELF FOR DRUGS!!\$\$!!!!!!!  
DRUGS.

>> THAT ON \$\$VICTIM'S STATEMENT.

>> -- BIGHAM\$\$'S STATEMENT TO  
THE POLICE HE SAID SHE WAS  
ASKING HIM TO FOR MONEY IN  
EXCHANGE FOR SEX, I BELIEVE  
THAT IS WHERE THE TRIAL COURT  
WAS BASING THAT ON.

P.

>> I ALSO WANTED TO POINT OUT,  
IN THE TRIAL COURT GRANTED THE  
JOA ON THE KIDNAPPING AND  
SEXUAL BATTERY CHARGE, HE DID  
NOT MAKE A FINDING THAT IT WAS  
CONSENSUAL SEX IN FACT HE MADE  
COMMENTS WHEN HE GRANTED THE  
JOA, THE JOA WAS BROUGHT UP BY  
THE DEFENSE ATTORNEY THE  
DEFENSE ATTORNEY ESSENTIALLY  
DIDN'T ARGUE IT, EXTENSIVELY  
HE JUST SAID I DON'T BELIEVE  
THE EVIDENCE HAS SHOWN ANY OF  
THE THREE CHARGES IT WAS VERY  
BRIEF SORT OF -- ALMOST.

>> WHAT WAS THE BASIS OF THE  
TRIAL JUDGE GRANTING A JOA  
SECTION BATTERY I I MEAN WE  
KNOW THAT SEX TOOK PLACE HE  
SAID HE HAD SEX WITH HER SO  
EVIDENTLY THE TRIAL JUDGE FELT  
IT WAS NOT AGAINST HER WILL.

>> NO.

ACTUALLY THE TRIAL JUDGE, MADE  
SPECIFIC COMMENTS THAT THERE  
WAS NO EVIDENCE THAT SHE WAS  
-- ALIVE AT THE TIME OF SEX --  
>> ANY EVIDENCE SHE WAS NOT

ALIVE?

>> JUST THE FACT THAT THERE WAS URINE IN HER PANTS, TESTIMONY FROM THE -- FORENSICS EXPERTS, ANOTHER COEXAMINER WAS SHE WAS UPRIGHT WHEN THE -- OCCURRED.

>> WHAT WAS RATIONALE FOR NOT -- AND THE KIDNAPPING --

>> SAME THING SHA NO EVIDENCE THAT SHE WAS ALIVE, IT WAS VERY ODD.

THERE WAS NO EVIDENCE SHE WAS ALIVE WHEN SHE WAS DRAGGED FROM THE STREET.

>> THERE WAS HEAD OF THE SHE WAS ALIVE DURING THE SEX, BECAUSE THE DEFENDANT NOTICE HIS STATEMENT SHE WAS ALIVE? WELL THERE IS EVIDENCE FROM THE DEFENDANT.

BUT THERE WAS NO --

>> --

>> I UNDERSTAND BUT I'M -- THIS IS -- TRIAL COURT SAID --

>> SEXUAL -- SEXUAL BATTERY ESSENTIALLY IS NONCONSENSUAL!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!  
NONCONSENSUAL --

>> RATE -- RIGHT, WITH --

>> YOU SAY THE NUANCE HERE, THIS IS -- WAS FINDING THAT THE STATE DIDN'T PROVE SHE WAS ALIVE WHEN THE SEX OCCURRED.

>> THAT IS WHAT THE TRIAL JUDGE SAID.

>> DESPITE THE FACT THE DEFENDANT GAVE A STATEMENT THAT HE HAD SEX WITH HER --

>> YES THAT IS WHAT THE TRIAL JUDGE SAID THEN IN CLOSING ARGUMENTS!!\$\$!!!!!!!!!!!!!!!!!!!!

ARGUMENTS, THERE WAS THIS ISSUE ABOUT WHETHER OR NOT THE STATE COULDN'T MENTION THE WORD "SEXUAL ASSAULT", SEXUAL BATTERY BUT SEXUAL ASSAULT THE JUDGE -- I NEVER SAID THEY COULDN'TING THERE ARE A WASN'T A SEXUAL ASSAULT, SO --

>> THE JUDGE APPARENTLY ALLOWED THE STATE TO ARGUE THAT THERE WAS A SEXUAL ASSAULT, BUT THEN WOULDN'T ALLOW THE DEFENDANT TO WITH

REGARD TO CONTRAST TO THAT;;  
IS THAT CORRECT.

>> ACTUALLY THE OTHER WAY  
AROUND IN THE FIRST ARGUE  
DEFENSE WAS ARGUING THE STATE  
DIDN'T PROVE SEXUAL BATTERY,  
AND THE DEFENSE ACTUALLY USED  
THE CHARGING WORD -- TO AND  
JUDGE SAID NO, NO, NO, YOU  
CAN'T -- OFFER THEY DIDN'T  
PROVEN CHARGES ARGUED THEY  
DIDN'T PROVE -- THE THEORY OF  
THE CASE -- THE STATEMENT, THE  
DEFENSE WENT AHEAD AND ARGUED  
DIDN'T PROVE THEIR ORANGE  
THEORY, AND THE CLOSING  
ARGUMENT WAS THAT --  
>> WHAT IS -- ORIGINAL O  
THEORY.

>> WHAT IS THE STATE THAT  
EVIDENCE THAT THIS DEFENDANT  
IN-- OCCURRED OR NOT --  
>> THERE THE STATE -- THERE --  
SUFFICIENT EVIDENCE OF A  
STRUGGLE, THAT SHE URINATED  
WHILE STANDING UP THROUGH HER  
OATH HE CLOTHES THERE WAS --  
TWO DIFFERENT EXPERTS -- IF  
SHE WERE -- TERRIFIED BEING  
KILLED, AND, OR BEING KILLED,  
THERE WAS EVIDENCE THAT SHE  
HAD DRAWN -- FORENSICALLY,  
THERE WAS -- AND HER SHORTS --  
>> THE EVIDENCE, THAT THERE  
WAS A STRUGGLE, IS NOT  
SUFFICIENT, IS IT, TO PROVE  
PREMEDITATED MURDER, I IT MADE  
BE SECOND DEGREE BUT NOT FIRST  
DEGREE.

>> WELL THAT IS TRUE BUT  
COMBINE THE EVIDENCE OF THE  
STRUGGLE, WITH THE FACT THAT  
THIS WAS -- STRANGULATION,  
THAT SHE WAS CONSCIOUS, NOT  
THERE WAS NO EVIDENCE AT ALL  
THE THAT SHE WAS UNCONSCIOUS  
WHEN SHE WAS STRANGLED.  
THE --

>> WAS THAT --

>> YES.

>> THERE WAS EB --

>> BLOATED HEAD, MISS ANDERSON  
SAID SUPERFICIAL THERE WAS  
TESTIMONY SHE WOULD SAY NOT

UNCONSCIOUS BECAUSE -- IT WAS  
JUST A --  
>> -- OVER.  
>> WE DON'T KNOW.  
>> I CAN'T -- TO ME, THE  
JUDGES -- THINKING SEXUAL BART!!\$\$!!!!!!  
BARTRY OCCURS AFTER SHE IS  
DEAD, I NEED TO KNOW --  
UNDERSTANDING WHAT THE JURY  
COULD HAVE POSSIBLY FOUND,  
WHAT A REASONABLE INFERENCE IS  
OF SEQUENCE OF EVENTS.  
AND THAT -- WHAT IS THE JUDGE  
-- COULD ARGUE THAT SHE WAS  
DRAGGED FROM THE STREET,  
DRAGGED ALIVE OR DEAD.  
>> THE \$\$STATE'S FIRST THESIS  
AND THIS WAS THAT SHE WAS  
DRAGGED FROM THE STREET ALIVE,  
AND ATTACKED, AND KILLED.  
BUT THEN THE JUDGE MADE THE  
JOA AND SAID THERE IS NO  
EVIDENCE SHE I WAS LIVE FOR  
THE STATE -- BY THAT RULE --  
>> I THINK --.  
>> I'M HAVING A LOT OF  
PROBLEMS, BECAUSE THEN I THINK!!\$\$!!!!!!  
THINK, NOTHING MAKES SENSE TO  
ME ABOUT -- HOW THIS WOULD BE  
A -- WHERE THE THAT  
PREMEDITATED KILLING --  
USUALLY THERE IS SOMETHING  
THAT OCCURS BEFORE THE SET  
SOMEBODY OFF AND YOU START TO  
INFER WHAT PROBABLY HAPPENED  
IN TERMS OF MOTIVE, OR INTENT,  
AND I DON'T SEE THIS --  
DEFENSE HAVING SAID THEN SHAH  
THAT SHE WAS KILLED -- SHE  
SEXUALLY BATTERED, KILLED  
BEFORE, THEN WE GO AND SAY  
THIS WHAT HAPPENED IN THE  
WOODS, WHEN THE JUDGE IS  
SITTING -- IN TERMS OF RULINGS!!\$\$!!!!!!!!!!!!  
RULINGS --  
>> BASICALLY, I DON'T THINK IT  
REALLY MATTERS IF SHE WERE  
STRANGLER!!\$\$!!!!!!!!!!!!!!  
STRANGLER, OR LYING DOWN OR  
STRANGLER WHILE SHE WAS  
STANDING UP, THERE IS EVIDENCE  
THAT SHE STRUGGLED, SHE DREW  
BLOOD FROM HIM, THERE WAS A  
FIGHT.

AND THEN YOU HAVE A MAN --  
>> SAID DIDN'T -- SAY THAT NO,  
THAT HAPPENED WHEN SHE WAS HE  
WAS ON TOP OF HER, AND SHE  
WANTED HIM TO GET ALL -- THAT  
IS WHAT HE -- SHE -- SCRATCHED  
HIM, HE EXPLAINED IT IN A WAY  
THAT WOULD BE AND THIS IS NOT  
LIKE WE'VE GOT A LOT OF CASES  
WHERE THERE IS EXTENSIVE  
WOUNDS OR THERE'S YOU KNOW  
BATTERED PEOPLE THAT IS NOT --  
WE'VE GOT -- HERE, ONE FINGER!!\$\$!!!!!!!!!!!!  
FINGERNAIL.

>> SO, ACTUALLY MORE THAN,  
THAT IT WAS DNA, SUBSTANTIAL  
DNA UNDER ALL FIVE OF HER  
FINGERNAILS ON HER RIGHT HAND.  
THERE WAS NO -- EFFECT ON THAT  
SKIN CELLS UNDER THERE.

SO -- HOWEVER, BIG LAM\$\$'S  
STATEMENT EVEN IF YOU TAKE IT  
FACE VALUE, SELF-SERVING IT  
WAS SHE SCRATCHED HIM, TO GET  
HIM OFF OF HER, WHICH SOUNDS  
LIKE A STRUGGLE, EVEN IN HIS  
STATEMENT, THEN --

>> I SAY -- THINKS TO ME, THE  
POSSIBLY!!\$\$!!!!!!!!!!!!!!!  
POSSIBLY, MURDER CASE --  
DECIDING IN -- FELONY MURDER  
CASE, BECAUSE, THE KILLING  
BECAUSE OF THIS AD SHE IS HE  
IS ON TOP AND HE IS SHE IS  
STRUGGLING!!\$\$!!!!!!!!!!!!!!!  
STRUGGLING, THAT IS THE --  
OCCURRING DURING A SEXUAL  
BATTERY.

>> BUT YOU ALSO HAVE SIGNS OF  
A STRUGGLE YOU HAVE MANUEL  
STRANGULATION!!\$\$!!!!!!!!!!!!!!!  
STRANGULATION.

>> YOU SAY YOU ALSO HAVE SIGNS  
OF STRUGGLE WHAT SIGNS?

>> WELL, ON THE FACE.

>> WHAT WAS THAT.

>> SHE HAD A BLOW TO HER  
TEMPLE AREA, WHICH DREW BLOOD  
AND BRUISE.

>> THIS -- WHAT WAS IS A SAID  
THAT WAS CAUSED BY A FAVORITE?

>> THEY COULD NOT SAY WHAT IT  
WAS CAUSED BY.

>> THE \$\$STATE'S WITNESSES DID

COUNT, IN OTHER WORDS, ALL OF THE WITNESSES, PRESENTED BY THE STATEP THAT TALKED ABOUT MANY THE MARK ON THE FACE, OR UNDER THE THEY SKOUNLTED THAT, DISCOUNTED THAT AS NOT BEING EVIDENCE OF A STRUGGLE OR A FIGHT, OR WHATEVER DID THEY NOT?

IN OTHER WORDS THAT WAS THE \$\$ STATE'S OWN PROOF WHEREAS THAT THE FACT-FINDER COULD NOT RELY ON THOSE THINGS.

>> WELL, THE --

>> IS THAT RIGHT?

>> WELL, SORT OF, THE EXPERT SAYS THAT THE FWHOUND AND OF ITSELF, HE COULD NOT SAY WITH CERTAINITY THAT IT WAS SIGNS OF A STRUGGLE, BECAUSE THAT TYPE OF WOUND COULD ALSO OCCUR FOR EXAMPLE IF SHE WERE HIT WITH A TREE BRANCH SO HE COULD NOT SAY CONCLUSIVELY IT WAS STRUGGLE OS IT WASN'T STRUGGLEL THAT WAS HIS RESPONSE, HOWEVER, THAT COME BIND WITH HER SCRATCHING BIGHAM AMEND THEN MULTIPLE MANUALLY STRANGLING HER, THAT WAS EXPERT TESTIMONI, THAT SHE WAS CONSCIOUS DURING THE STRANGULATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! STRANGULATION, AND SHE WOULD NOT HAVE LOST CONSCIOUSNESS FOR UP TO TWO MINUTES, BECAUSE SHE WOULD BE ALIVE, AND LOOKING AT THIS MAN, WHILE HE WAS STRANGLING HER, SHE WAS -- LOSE CONSCIOUS AFTER MAYBE TWO MINUTES AND THEN TO KILL HER.

>> AFTER MAYBE TWO MINUTES OR DID THEY SAY A MATTER OF SECONDS OF THE TWO MINUTES.

>> THEY SAID 15 SECONDS TO TWO MINUTES, TO KILL HER AFTER SHE LOSES CONSHUSNESS WOULD TAKE ADDITIONAL NUMBERS OF MINUTES THAT WAS EXPERT TESTIMONY SO YOU HAVE A SITUATION IF SOMEONE IS STRANGLING A WOMAN, SHE LOSES CONSCIOUSNESS, IF HE DOES NOT MEAN TO KILL HER -- O MIKE, GOODNESS SHE LOST

CONSCIOUS!!\$\$!!!!!!!!!!!!!!!

CONSCIOUSNESS.

>> THE EXPERT ASKED ABOUT THE EFFECTS OF THE OR THE QUANTIFY THE DRUGS, OR ALCOHOL, OR OTHER THINGS, THAT WERE --

>> THERE WAS NO EVIDENCE OTHER THAN BIGHAM\$\$'S STATEMENT DURING THE DPULT AND PENALTY PHASE THAT SHE INGESTED DRUGS.

THE TO BEINGS COL --

>> THE MEDICAL EXAMINER DID NOT FIND ANY SIGNS OF ALCOHOL OR DRUGS?

>> NO -- WHETHER OR NOT HE DID, WE DON'T KNOW, BECAUSE HE DID NOT TESTIFY TO IT.

THE TOXICOLOGY REPORT WAS BROUGHT IN BY THE DEFENSE DURING THE SPENCER HEARING SHOWING THAT SHE HAD COCAINE, IN HER SYSTEM AND ALCOHOL I BELIEVE!!\$\$!!!!!!!!!!!!!!!

BELIEVE.08, THE EVIDENCE AT THE TRIAL ITSELF WAS FROM HER HUSBAND THAT SHE DRANK SIX BEERAROUND 8:30 AT NIGHT KILLING HAPPENED MAYBE 5 TO 6 HOURS, LATER.

THE EVIDENCE, AT TRIAL, THAT SHE USED DRUGS CAME FROM BIGHAM SAYING SHE TOOK A HIT OFF A -- PIPE.

>> WHAT DOES THE JUDGE ORDER MEAN WHEN IT SAYS, THAT THE DEFENDANT, THAT ADMITTED ANOTHER EXHIBIT TO BEINGSOLOGY REPORT, ON THE VICTIM, SHOWING SHE HAD COCAINE PRESENT IN HER BLOOD, ENOUGH ALCOHOL TO MAKE HER DUI?

>> THAT WAS THE TOXICOLOGY REPORT THE DEFENSE GAVE TO THE COURT DURING THE SPENCER HEARING.

AND IT DID SHOW THAT SHE HAD!!\$\$!!!!!!!!!!!

HAD.08, FOR DUI AND COCAINE BUT EVEN AT THE SPENCER HEARING THERE WAS NO EXPERT TESTIMONY, TO EXPLAIN, WHAT THESE -- LEVELS OF COCAINE MEAN, AND FOR MR. ANDERSON AND I NEITHER ONE OF US CAN STAND UP HERE AND SAY O SHE WAS

REALLY HIGH OR JUST A LITTLE  
BIT, THERE IS JUST NO  
EVIDENCE.

>> -- BEING WITH ANOTHER  
FRIEND HER PAT UNDER PENALTY  
OF PERJURY THE PAST -- PATTERN  
IN THE PAST WAS THERE ANYBODY  
OTHER THAN HER FAMILY, THAT  
SAW HER AFTER SHE LOT OF THE  
HOUSE?

>> NO.

>> SO THAT WAS A BLANK IN  
TERMS OF ANY --

>> THAT IS CORRECT.

>> LET ME ASK YOU SOMETHING  
THAT IS CONCERNING ME.

YOU'VE USED THE STRANGULATION  
AS BEING THE EVIDENCE OF  
PREMEDITATION THE  
STRANGULATION THEN ALSO  
BECOMES THE BASIS FOR -- MY  
CONCERN IS THAT AND I DON'T  
KNOW IF WE HAVE EVER HELD THAT  
-- SINGLE SITUATION, WHERE --  
HAVE A 94 -- THEY MAY NOT --  
NOT HAVE STARTED OUT WITH  
THEYED WHERE THEY ARE GOING TO  
KILL SOMEBODY BUT NOW BECAUSE  
THE STRANGULATION, THE  
STANDING BY ITSELF,  
APPROXIMATE HE HAVE WE EVER  
TELL THATTED THAT IS THEN  
GOING SUPPLY WITHOUT ANY OTHER  
EVIDENCE OF ANY OTHER EVIDENCE  
BOTH EE PREMEDITATION, AS WELL  
AS THE AGGRAVATING  
CIRCUMSTANCES OF HAC, THAT  
STRANGULATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!  
STRANGULATION, MURDERS WOULD  
ESSENTIALLY BE, ELEVATED TO --  
DEATH ELIGIBLE, EVEN THOUGH,  
SHE -- SHOOTING MRDZ OR --  
MURDERS WOULD NOT BE?

>> YES IN.

BLACK -- IT IS A 2000 CASE  
FROM THIS COURT, IT WAS A  
STRANGULATION MURDER THERE  
WERE NO OTHER AGGRAVATE OWING.

>> BUT WAS HAC THE WAS IT A  
FELONY MURDER, WAS THERE OTHER  
EVIDENCE OF PREMEDITATION IN  
BLACKWOOD!!\$\$!!!!!!!!!!!!!!!!!!!!!!  
BLACKWOOD?

>> IT WAS A PREMED INDICATED

MURDER I WAS WAS NOT FELONY  
MURDER.

>> BUT STILL WAS THERE OTHER  
EVIDENCE SUGGEST STRANGULATION  
OR PREMEDITATION AN ISSUE IN  
BLACK!!\$\$!!!!!!!!!!

BLACKWOOD?

I DON'T --

>> YES, BOTH PREMEDITATION AND  
HAC WERE ISSUES IN BLACKWOOD  
IT WAS A SITUATION, WHERE A  
HUSBAND --

>> I KNOW THE CASE I JUST YOU  
DIDN'T THINK WE WERE IN THAT  
CASE AN ISSUE -- EVIDENCE OF  
PREMEDITATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!  
PREMEDITATION, WAS SOMETHING  
THAT WAS OF CONCERN.

>> THE COURT DIDN'T -- FULL  
DISCUSSION ON THE PREMED!!\$\$!!!!!!!!!!  
PREMEDICATION BASED ON  
CIRCUMSTANTIAL EVIDENCE.

>> IT WAS ONLY THE  
CIRCUMSTANTIAL EVIDENCE IN  
THAT CASE WAS ONLY THAT THERE  
WAS STRANGULATION?

>> YES.

>> LET ME ASK YOU THIS.

-- CERTAIN -- BACK FLOW

ANDERSON!!\$\$!!!!!!!!!!!!!!!!!!

ANDERSON'S YOU KNOW THIS PART  
OF THE ORDER, WHAT EVIDENCE  
OTHER THAN THE SEMEN, THERE  
THAT THE STATE RELIES UPON,  
THAT THIS DEFENDANT WAS THE  
ONE THAT DID THE STRANGLING OF  
THIS DEFENDANT -- WAS THERE  
ANY -- EVIDENCE, HAIR STRANDS,  
OR FINGERPRINTS ON THE NECK,  
OR WAS THERE ANY EVIDENCE THAT  
-- TO CLOSE UP AND PUT HIM ON  
TOP OF HER?

>> WELL THE EVIDENCE WAS THAT  
ON THE CLOTHES THEMSELVES,  
WERE FECAL MATTER AND SEMEN  
MOST OF THE SEMEN ON THE  
CLOTHES BELONGED TO BIGHAM  
THERE, WERE TRACE AMOUNTS  
BELONG TO GO --AKER, NO OTHER  
SEMEN ON THE CLOTHES BELONGED  
TO ANY MYSTERIOUS THIRD PERSON  
JUST THOSE TWO PEOPLE MOST OF  
IT BEING FROM BIGHAM.

>> UNDER THE SHORTS, WHICH

WERE PLACED UPON THE CHEST,  
AND -- FACE AREA, WERE FIVE  
BODY HAIRS FROM BIGHAM, ONE OF  
THE HAIRS HAD A -- ON IT WHICH  
THEY ALLOWED FORENSIC EVIDENCE  
TO DNA ANALYSIS, THE TESTIMONY  
WAS THAT THAT HAIR BELONGED TO  
BIGHAM!!\$\$!!!!!!!!!!

BIGHAM, BASED ON DNA THE  
TESTIMONY ALSO SAID ALL FIVE  
HAIRS WERE SIMILAR, ANDP HE O  
PINED THEY CAME FROM THE SAME  
PERSON HOWEVER THE OTHER FOUR  
HARRIS DIDN'T HAVE ON THEM SO  
THEY CONTINUE DO DNA.

>> WERE THESE HARRIS ON TOP OF  
THE CLOTHING.

>> NO.

THEY WERE ON HER SHOULDER AND  
CHEST AREA, UNDER THE SHORTS,  
THERE WEREN'T STUCK TO ANY  
FLUID OR ANYTHING.

INDICATING THAT IF SHE HAD  
STOOD UP, THEY WOULD HAVE  
FALLEN OFF.

NOR WERE THEY STRUCK TO THE  
CLOTH THEMSELVES BECAUSE WHEN  
THE CRIME SCENE PERSON FROM  
THE POLICE DEPARTMENT WAS  
THERE, HE SAW ONE OF THE HAIR!!\$\$!!!!!!!!!!

HAIRS, STICKING OUT -- A  
SIGNIFICANT HAIR, UNDER THE  
CLOTHING!!\$\$!!!!!!!!!!!!!!!!!!

CLOTHING, AND EP TOOK  
PHOTOGRAPHS OF IT, TO  
MEMORIALIZE IT IN ITS POSITION  
WHICH ALL GOES TO INDICATE  
THAT BIGHAM WAS THE LAST  
PERSON WITH HER BEFORE SHE  
DIED, AT LEAST THE LAST  
PERSON, THAT WITH HER WHEN HER  
BODY WAS --

>> HOW LONG AFTER HER DEATH  
WAS HER BODY FOUND?

>> HER BODY WAS FOUND AT 7:30  
IN THE MORNING, BY MR. LUS WHO  
IS A CIVILIAN AND THE TODAY A  
WAY INTERESTINGLY ENOUGH I  
WANTED TO COMMENT ON THE DRAG  
MARK THE WAY HE FOUND THE  
BODY, WAS HE WENT INTO THE  
WOODS, TO DO IT WAS A -- USE  
OF FACILITIES IF YOU EXCUSE  
THE EXPRESSION AND HE SAW

SIGNIFICANT DRAG MARKS HE USED  
THOSE WORDS EVERY DAY, HE IS  
-- NOT SEEN THOSE DRAG MARKS  
BEFORE, HE FOLLOWS THE DRAG  
MARKS DIRECTLY TO HER BODY.  
AND HE THAT IS THE DRAG MARKS  
-- GOT HIS ATTENTION, THE  
FIRST PLACE, HE SAW BROKEN  
BRANCHES BRAN CHZ PUSHED OUT  
OF THE WAY WHICH HE HADN'T  
SEEN BEFORE HE FOLLOWED IT AND  
SAW HER NUDE BODY.

>> DID THE MEDICAL EXAMINER  
TESTIFY AS TO WHETHER OR NOT,  
SHE WAS ALIVE, WHEN THAT --  
TOOK PLACE OR THAT OR  
DETESTIFY AT ALL ABOUT THAT?

>> THERE WAS NO TESTIMONY  
ABOUT WHEN OR NOT SHE WAS  
ALIVE DURING THAT DRAGGING,  
AND NO INDICATION OF IF SHE  
WAS DRAGGED WITH JUST HER TOES  
ON THE GROUND WITH HER HEAD ON  
THE GROUND THERE, WAS NOTHING.  
THERE WAS DIRT ON HER FEET.

>> HE BOO REFERRING TO BATTERY  
KIDNAPPING COUNTS I'M CURIOUS  
YOU HAVEN'T -- YOU HAVEN'T  
CROSS APPEAL THOSE COUNTS  
WHICH I GUESS IF YOU DID CROSS  
APPEAL WOULD HAVE FOUND THE  
COURT HADN'T OR ERRONEOUSLY,  
GRANTED JOA ON THAT, BUT WE  
FIND THERE IS NO PROCEED --  
PREMEDITATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!  
PREMEDITATION, I GUESS WE  
COULD REMAND FOR RETRAIL OR  
COULDN'T WE AS TO FELONY  
MURDER, BUT YOU HAVEN'T CROSS  
APPEALED THAT WE WOULDN'T BE  
ABLE TO DO THAT.

>>!!\$\$!!

>>.

>> WHAT DO YOU THINK THE --  
STATUTED!!\$\$!!!!!!!!!!!!!!!!!!!!  
STATUTED'S -- \$\$STATE'S POSITION  
ON THE CLOSEST CASE THAT WE  
UPHELD PREMEDITATION UNDER  
THESE CIRCUMSTANCES?

>> I BELIEVE -- LOOKWOOD IS  
VERY CLOSE.

>> OTHER THAN BLACKWOOD BLACK!!\$\$!!!!!!!!!!  
BLACKWOOD WAS A LITTLE BIT  
DIFFERENT THERE WAS A DEMOCRAT

EVIDENT!!\$\$!!!!!!!!!!!!

EVIDENTIC, SITUATION.

>> YES, THERE WAS AN INDICATION, IN HOLTON THERE, WAS A STRANG LAIGS, SCRATCH MARKS I BELIEVE SIMILAR TO THIS SITUATION, AND, INDICATING THERE WERE SIGNS OF A STRUGGLE.

THE SIGNS OF THE STRUGGLE I BELIEVE MAY HAVE BEEN SOME DEFENSIVE WOUNDS THERE WHICH IS NOT THE CASE HERE, BUT, IN HOLTON THE COURT FRIEND MEDICATION.

>> BUT THERE WAS NO DOUBT THE IDENTITY OF THE DEFENDANT OR THE -- THE STRANGLER, IN ANY OF THOSE CASES, WAS THERE? NO, I DON'T BELIEVE SOVENLT BUT -- AS YOU KNOW I DON'T BELIEVE THERE IS A DOUBT IN THIS CASE --

>> I UNDERSTAND, I'M JUST TRYING TO --

>> THE OTHER COUPLE THINGS IP WANTED TO POINT OUT IS THE -- CAN MAKE NO COMMENTS ABOUT THE POSITIONING OF THE CONDOM, AND, AGAIN, I BELIEVE THAT THAT IS EVIDENCE, INDICATING THAT BIGHAM WAS THE LAST PERSON WITH HER, AND SHE DIED IMMEDIATELY SURROUNDING THE SEX ACTS THE POSITION OF THE CONDOM, THE MEDICAL EXAMINER WAS QUERIED DURING TESTIMONY OF ABOUT WHEN OR NOT GASSES COULD PUSH OUT THE POSITION OF THE CONDOM, IF IT HAD BEEN STUCK UP INSIDE OF HER BODY. HE SAID, WELL, WHAT HE SAID IS TECHNICALLY IT IS POSSIBLE, IF THE BODY HAD GENE COMPOSING, HOWEVER IN THIS SITUATION, IT IS HIGHLY UNLIKELY BECAUSE THIS BODY WAS NOT DECOMPOSING IT WAS A FRESH BODY. AND I REFER THE COURT TO THE RECORD TRANSCRIPT NUMBER 1253, WHERE THE STATE IS ASKING THE MEDICAL EXAMINER SAYING, IF YOU DIE IMMEDIATELY YOU DON'T GET GASSES, IN THERE.

AND HE SAYS ESSENTIALLY THE MOST LIKELY SCENARIO IN THIS SITUATION, WOULD BE THAT A CONDOM, SOMEONE WAS PULLING OUT AND A CONDOM CAME OFF, AND THAT IS WHAT THE MEDICAL EXAMINER TESTIFIED TO, FINALLY IN TERMS OF WHETHER OR NOT THERE WAS ANY EVIDENCE OF A THIRD PERSON HAVING SEX WITH THIS WOMAN, THAT NIGHT, THERE IS NONE, AND THERE WAS NONE AT TRIAL.

THE EVIDENCE SHOWED THAT THE ONLY SEMEN INSIDE OF HER VAGINAL CAVITY WAS -- FROM BIGHAM THERE, WAS NO EVIDENCE OF AKER SEMEN INSIDE THE VAGINAL CAVITY BASED ON THE DNA ANALYSIS.

>> DID THAT COME OUT -- IN THE --

>> INSIDE THE CONDOM WAS ONLY BIGHAM!!\$\$!!!!!!!!!!!!  
BIGHAM.

THERE WAS NO SEMEN INSIDE HER ANAL CAVITY, AT ALL, THE ONLY EVIDENCE OF BIGMAN IN HER ANL CAVITY CAME FROM THE -- TIP OUTSIDE TIP OF THE CONDOM, WHERE THERE WERE TRACE AMOUNTS FROM AKER ALSO SOME FROM BIGHAM THIS WAS ON THE OUTSIDE TIP, AND --

>> EXFORENSIC EXPERT TESTIFIED THIS WAS CONSISTENT WITH BIGHAM HAVING SEX WITH THIS WOMAN AFTER SHE HAD HAD SEX WITH HER HUSBAND.

THERE WAS NO ONE \$ELSE'S DNA THERE

>> YOU HEARD, YOUR OPPONENT, THERE REFERRAL READ A PART OF THE TESTIMONY -- THAT ALLUDED TO A THIRD PARTY.

>> I -- I DON'T HAVE THAT TESTIMONY IN FRONT OF ME, BUT I BELIEVE THAT THAT IS A MISREADING OF THE TRIAL TESTIMONY.

>> I TAKE IT THIS WAS NOT A FOCUS OF ANY MOTIONS OR ARGUMENTS AT THE TRIAL.

>> IT WAS ABSOLUTELY NOT AND

THERE WAS NO DISCUSSION DURING THE TRIAL DURING CLOSING ARGUMENTS, OR ANYTHING ABOUT A THIRD PERSON.

THE DEFENDANT'S THEORY WAS THAT OSCAR MAY HAVE COME BACK AFTER SHE HAD HAD SEX WITH BIGHAM AND THEN, HAD SEX WITH HER AGAIN AND KILLED HER.

BUT, AGAIN, THE FORENSIC EVIDENCE DOES NOT SUPPORT THAT THEORY!!\$!!!!!!!!!!!!!!

.  
>> WOULD YOU TALK ABOUT THE -- ISSUE?

.  
>> NO -- I -- IN TERMS OF JUROR NICE, THE OBJECTION THAT THE DEFENSE ATTORNEY RAISED AT TRIAL WAS A CAUSE CHALLENGE AND THIS WAS BROUGHT UP WHEN MR. NICE -- SAID WAIT A MINUTE!!\$!!!!!!!!!!!!!!

MINUTE, I KNOW DETECTIVE PAUL, AND THE JUDGE ALLOWED -- VOIR DIRE THE DEFENSE ATTORNEY DID EXTENSIVE VOIR DIRE APPROXIMATELY 5 TO 6 PAGES\$' WORTH, QUESTIONING JUROR NICE WHETHER HE COULD BE FAIR IMPARTIAL WHETHER OR NOT HE HAD CONVERSATIONS OF SUBSTANCE WITH MR. -- AND SO ON AND SO FORTH, THE JUROR SAID HE COULD BE FAIR HE DID NOT HAVE A RELATIONSHIP WITH THIS DETECTIVE WAS STILL WILLING TO SERVE,

>> AND HOW WOULD YOU DESCRIBE THE RELATIONSHIP, WHAT IS A FAIR DESCRIPTION OF THE RELATIONSHIP THAT THIS JUROR WITH THE WITNESS?

>> WELL, WHAT THE JUROR SAID WAS THAT AS MR. ANDERSON SAID, HE WORKED AT A BAR -- AND DETECTIVE HALL WOULD COME IN THREE OR FOUR TIMES A MONTH.

>> HE WAS THIS -- DESCRIPTION!!\$!!!!!!!!!!!!!!!!!!!!!!  
DESCRIPTION --

>> YES, BUT, I WANT TO POINT OUT IT WAS 5 TO 7 YEARS BEFORE THE TRIAL. IT WAS A SUBSTANTIAL PERIOD OF TIME, BEFORE THE TRIAL IT WAS

BAR WHICH A LOT OF POLICE OFFICERS FREQUENTED THEY NEVER DISCUSSED HIS WORK, PLANNED NICE SPECIFICLY SAID I DIDN'T KNOW HIS NAME I DIDN'T REMEMBER HIS NAME, BUT I RECOGNIZED HIS FACE WHEN HE STARTED TESTIFYING.

>> AND -- AS I UNDERSTAND IT THAT SOME TYPE OF --

>> SOMETHING LIKE THAT.

>> YES.

>> DOES THAT COME AFTER --

QUESTION, HAVE I DIER INITIALLY HE WAS ASKED THE QUESTION WHAT KIND OF WORK YOU DO WAS THAT DISCUSSED.

>> YES IN FACT HIS WORK CAME OUT AND I ALSO WANTED TO POINT OUT VERY INTERESTING, DURING ADMISSION OF VOIR DIRE THEY DID JURY QUESTIONNAIRES ON THE JURY QUESTIONNAIRE THIS PARTICULAR JUROR MR. NICE WROTE DOWN ON THE QUESTION OF!!\$\$!!

OFFOI ARE YOU RELATED TO OR FRIENDS WITH ANY POLICE SNFRS" MR. NICE WROTE YES.

AND THIS WAS DURING THE INITIALLY VOIR DIRE ON THE JURY QUESTIONING.

THE DEFENSE ATTORNEY NOR THE STATE, PURSUED THAT TO ASK HIM OKAY WHAT IS -- WHO ARE YOUR FRIENDS OR HOW -- TALK ABOUT WORK OR ANYTHING, NO QUESTIONING WAS DONE.

ADDITIONALLY IN TERMS OF THE -- MATERIALITY TEST, THE DEFENSE HAD THE INFORMATION, THAT THIS JUROR KNEW POLICE OFFICERS!!\$\$!!!!!!!!!!!!!!

OFFICERS, WAS FRIENDS WITH POLICE OFFICERS, DURING -- DURING INITIAL VOIR DIRE, WHICH ISES IN MORE THAN WHAT CAME OUT DURING TRIAL.

>> THERE IS NO DISPUTE, THAT NICE SIMPLY DID NOT PUT TOGETHER A FACE WITH THE NAME, UNTIL THE OFFICER TESTIFIED AT THE TRIAL?

>> THAT IS CORRECT, AS WELL.

AND IN FACT, DURING THE SECOND

VOIR DIRE DURING THE TRIAL  
WHEN THE DEFENSE ATTORNEY WAS  
ASKING HIM, LOOK I UNDERSTAND,  
IT WAS LONG TIME AGO, AND WE  
READ THOSE NAMES VERY QUICKLY,  
IT IS UNDERSTAND BELIEVE YOU  
WOULDN'T HAVE, HEARD THE NAME  
AND ROINGD IT.

SO THERE IS NO INDICATION FROM  
THE DEFENSE DURING THE TRIAL,  
BASED ON THE RECORD, THAT  
THERE WAS ANY SORT OF WILL  
FULL HIDING.

>> WHAT WE NEED TO A JUDGE  
COULD AT THAT POINT HAVE  
EXERCISE DZ HIS OR HERS  
DISCRETION AND  
CONSTITUTIONALITY\$\$!!!!IED ALTERNATE  
JUROR THEY COULD HAVE DONE  
THAT; CORRECT?

>> I SUPPOSE BUT IT WOULDN'T  
HAVE BEEN BASED ON A CAUSE  
CHALLENGE, BECAUSE UNDER THE  
STATUTE DELINEATING CAUSE THIS  
JUROR WOULD NOT WAS NOT  
EXCUSABLE FOR CAUSE SO THE  
JUDGE WAS FOLLOWING THE LAW IN  
KEEPING HIM ON THE JURY, BASED  
ON THE \$\$JUROR'S ANSWERS.

>> IS NOT THIS IS THE VERY  
PURPOSE OF HAVING ALTERNATES?  
THAT IS THAT SOMETHING  
UNEXPECTED UNEXPECTED COMES UP  
THAT IT ALLOWS YOU IT HAS A  
SAFEGUARD!!\$\$!!!!!!!!!!!!!!!  
SAFEGUARD, HERE WHERE THERE  
ARE TWO ALTERNATES ACTUALLY?

>> YES, YES.

>> SO DID THOSE ALTERNATES,  
THEY MAY -- NEVER DID SERVE;  
IS THAT CORRECT?

>> NO THAT IS TRUE THEY DID  
NOT SERVE.

>> AND BETTER PART OF VALOR  
FOR THE TRIAL JUDGE, TO SAY  
WELL, JUST TO BE SAFE HERE,  
LET'S JUST HAVE THE ALTERNATES  
SERVE?

>> WELL, PERHAPS, BUT WHAT THE  
JUDGE DID WAS IN KEEPING WITH  
THE LAW.

AND THAT IS WHAT WE HAVE TO  
LOCK AT.

HE DENIED A CAUSE CHALLENGE

BECAUSE THIS JUROR WAS NOT  
EXCUSABLE BASED ON CAUSE.  
I ALSO WANTED TO POINT OUT  
THAT IN THE DELLA ROSA  
SITUATION, THAT I BELIEVE,  
ADDRESSES A SITUATION, WHERE  
SOMEONE DOESN'T HAVE A -- IN  
THIS CASE CAME UP DURING  
TRIAL, THE DEFENSE HAD AN  
OPPORTUNITY TO WALK -- VOIR  
DIRE AND THERE WAS --  
>> GET BACK TO WHERE THE  
OTHERS THAT SAID THERE IS NO  
OBLIGATION, THE QUESTION --  
COULD HAVE EXERCISE DISCRETION  
IS TO DO IT BUT THE ONLY WAIP  
IT WOULD BE REVERSIBLE ERROR  
NOT TO DO IT IS IF JUROR THAT  
THE POINT ABOUTE WOULD BE --  
TO CAUSE IS THAT YOUR  
POSITION.

>> YES AND ALSO DELA\$\$!!-ROSA A  
CIVIL CASE THIS CRIMINAL THIS  
COURT NAIFR APPLIED DL# L-ROOS!!\$\$!!!!!!!!!!  
L-ROOS.

>> THE JUROR DIDN'T --  
ANYTHING?  
I MEAN.

>> THE THEORY DELLA ROSA  
TRYING TO -- THEORY, CIVIL OR  
CRIMINAL, YOU ARE THAT IS WHAT!!\$\$!!!!!!  
WHAT --

>> INSURE.

>> THANK YOU VERY MUCH.

>> THANK YOU THERE ARE A  
COUPLE MINUTES FOR REBUTTAL.

>> ALL RIGHT, JUST TO CLARIFY,  
I THINK THAT MOTION FOR --  
ACQUITTAL ON SEXUAL BATTERY  
WAS GRANTED, BECAUSE MEDICAL  
EXAMINER!!\$\$!!!!!!!!!!!!!!

EXAMINER'S TESTIMONY, I THINK  
MADE -- THAT THERE WAS NO  
EVIDENCE, OF ANY FORCED SEX  
AND THE ONLY EVIDENCE WE HAVE  
THAT THERE IS CONSENSUAL SEX.

>> I THINK THAT IS THIS IS  
THIS BY THE TIME WE -- WE  
PROBABLY HAVE AT LEFT AN  
AGREEMENT ON WHAT THE FACTS  
ARE, AND YOU ARE SAYING THAT  
THIS DOESN'T APPEAR ANYWHERE  
IN THE RECORD BUT THE JUDGE  
WAS CONCERNED AND THE REASON

OF JOA WAS THE STATE COULD NOT PROVE THAT IT WAS A LIVE PERSON O YOU ARE SAYING THAT IS NOT IT THIS --

>> I THINK THAT THE STATE DIDN'T PROVE NONCONSENSUAL SEX, THAT IS WHY HE DID IT BASED ON THE MEDICAL EXAM --

>> YOUR OPPOSITION STATED IN THE RECORD OTHERWISE.

>> I THINK HE SAID AS FAR AS EVIDENCE OF A STRUGGLE, AND THE DRAG MARKS AND STUFF, HE SAID THERE IS NO EVIDENCE SHE WAS ALIVE WHEN THAT OCCURRED SO KIDNAPPING I THINK THAT IS PRIMARILY IN RELATION TO THAT. AS FAR AS THE DEFENSE BLOOD I JUST WANT TO CLARIFY, IT HAS BEEN ALLEGED THAT -- WAS STRUGGLING -- JUST WANT YOU TO LOOK AT PAGE -- 1186, WHERE THE EXPERT EXPLAINS THE MARK SO MINUTE WE CAN'T REALLY MAKE INFERENCES FROM IT.

AND THE STATE TRIED TO GET HIM TO DO SO.

AND.

>> HOW ABOUT SAYS THAT HE MADE A LARGE POINT BEFORE DURING YOUR PRESENTATION, THAT THERE IS DNA EVIDENCE FROM A THIRD PARTY THAT THAT IS A FEATURE OF THIS TRIAL AND YOU ARE --

>> THAT IS AT PAGE, I WILL READ THE PAGE VOLUME 14, PAGE 1127, AND THEN --

>> ATTORNEY MADE THE POINT DURING THE TRIAL THIS THE PERSON THERE, AND THEN -- OPPOSE -- CLOSING ARGUMENT --

>> DIDN'T SPECIFICALLY REFER TO THIS BUT HIS THEORY OF THE DEFENSE IS EVIDENCE DIDN'T LINK THE DEFENDANT TO THIS KILLING.

THERE ARE OTHER PEOPLE NOT JUST THE HUSBAND, REFERRED TO THREE MEN IN A JEEP THE STATE DIDN'TP -- PROPERLY AND THE HUSBAND THEY JUST SAY IT WAS SOMEONE ELSE, THEY DIDN'T NECESSARILY KNOW EXACTLY WHO IT WAS.

THEY DID -- POSSIBILITY -- AND ONE THING IF YOU LOOK AT THE \$\$ DEFENDANT'S STATEMENT THAT THE STATEMENTS USED IN THE EVIDENCE IN THIS CASE, HE TALKS APPROXIMATE THE VICTIM TRIPPING!!\$\$!!!!!!!!!!!!!! TRIPPING, NOT KNOWING -- SENTENCED WHEN HE IS WITH HER AFTER SHE HAD GOTTEN THE COCAINE.

EVEN TALKED ABOUT HER SMOKING THE COCAINE.

>> IS THAT -- IS THAT COULD SFLAIN THE BLOW -- EXPLAIN THE BLOW --

>> JUST A SUPERFICIAL SCRATCH THE MEDICAL EXAMINER -- MEDICAL EXAMINER SAID WELL SHE COULD HAVE BEEN AT THE WOODS JUST BRUSHED UP AGAINST A TREE BRANCH IT IS NOT A BLOW.

NO ONE CHARACTERIZES IT AS THAT AS FAR AS THE WITNESSES, THE ONE SINGLE AREA.

>> IDENTIFIED THE DEFENDANT.

>> HE AGAIN, THE STATE WINS SAID THAT COULD HAVE COME WITTES INNES SAID COULD HAVE COME FROM EXPOSING WHEN PLACED ON TOP OF THE VICTIM THEY DON'T IT JUST SHOWS HE WAS WITH HER THAT NIGHT DOESN'T SHOW THE VIOLENCE.

AND THE DRAGGING, IT IS THERE IS NO EVIDENCE OF ANY RASH ON THE SKIN IN ANY WAY, THAT CLOTHING IS NOT -- WORN OR STRETCHED IN ANY WAY.

>> THE STATE INCORRECT ON THE TEST OF THE WITNESS TO MADE DISCOVERY THAT FOLLOWED THE DRAG MARKS THAT I LED DIRECTLY TO AS A WHEEL WOULD BEING ORGANIZE WHEEL MARK.

>> HE SAID DRAG MARKS THEY WERE IN THAT AREA THERE WAS ALSO ONE OF PATH WHERE PEOPLE FREQUENTED IT QUITE OFTEN.

>> SO YOUR VIEW OF THE RECORD IS THAT HE DID NOT SAY THAT HE FOLLOWED THE DRAG MARKS DIRECTLY --

>> I THINK THAT IS A --

INTERPRETATION OF THE  
TESTIMONY --

>> WHAT YOU ARE SAYING IS THAT!!\$\$!!!!!!  
THAT -- THE DRAGGING, THOUGH,  
EXPECT SO SEE SOMETHING, ON  
HER BODY.

>> EVIDENCE IN THE CLOTHING OR  
BODY, AND HIS -- THERE IS SOME  
DIRT ON THE CLOTHES BUT THAT  
IS NOT THERE HAS TO BE MORE  
ANDP IF DRAGGING YOU ARE GOING  
TO GET, A TEARS OF DISTORTION!!\$\$!!!!!!!!!!!!!!!!!!!!!!  
DISTORTION --

>> -- THE ONLY THING THAT THEY  
ARE DRAGGING IS FEET -- WELL.  
>> THERE WERE NO RASHES ON THE  
FEET.

>> WHAT WAS THERE WAS SOME  
DIRT, THAT --

>> WHAT WAS THE -- CERT --  
>> JUST -- BY DIRT ALONG THAT  
AREA!!\$\$!!!!!!

AREA, PINE NEEDLES AND  
BRANCHES!!\$\$!!!!!!!!!!!!!!  
BRANCHES -- THEY WERE BE  
DRAGGING ALL THE BRANCH SNEEZE  
WITH OUR ASSISTANCE OF YOU  
EXHAUSTED YOUR TIME WE THANK  
YOU BOTH OF YOU FOR YOUR  
PRESENTATIONS AND WE WILL TAKE  
THESE UNDER ADVISEMENTS THANK  
YOU VERY MUCH, COURT WILL  
STAND IN RECESS UNTIL 9:00  
TOMORROW MORNING.

>> PLEASE RISE!!\$\$!!!!!!!!!!!!!!!!!!!!!!!!!!!!,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,