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William James Deparvine v. State of Florida

SC06-155

>> ALL RISE.

O YE, O YE, O YE.

THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

ALL WHO HAVE BUSINESS BEFORE THE
COURT DRAW NIGH, GIVE ATTENTION
AND YOU SHALL BE HEARD.

GOD SAVE THE UNITED STATES, THE
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.

LADIES AND GENTLEMAN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING FRIENDS, WELCOME
TO THE FLORIDA SUPREME COURT AND
THE ORAL ARGUMENT.

THE FIRST CASE IS DEPARVINE
VERSUS STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT, I AM
STEVE BOLOTIN FROM THE PUBLIC
DEFENDER'S OFFICE AND
REPRESENT --

THE ISSUES IN THIS CASE ARE TOO
NUMEROUS AND COMPLEX TO ARGUE IN
30 MINUTES SO I'M GOING TO LEAD
WITH THE ISSUE DEALING WITH THE
TESTIMONY OF BILLIE FERRIS AND
WHATEVER I DON'T GET ARGUED I'M
GOING TO RELY ON --

THE TESTIMONY IS ESSENTIALLY THE
CORNERSTONE OF THE STATE
CIRCUMSTANCE.

WHAT ENABLED THEM -- I MEAN THIS
IS A CIRCUMSTANCE OR CASE ON
BOTH SIDES WITH A LOT OF
EVIDENCE GOING BOTH WAYS BUT IT
IS NOT A TIGHT CIRCUMSTANCE.
IT IS A LOOSE RULE, A LOT OF
STRANDS FLYING AROUND
EVERYWHERE.

>> DID IT HAVE DNA EVIDENCE?

>> YOUR CLIENT, WHERE THE TWO
MURDERS OCCURRED.

>> THERE WERE SIX SMALL SPOTS OF

BLOOD.

>> I MEAN THERE WAS BLOOD.

>> YOUR CLIENT THERE --

ARE YOU GOING TO ADDRESS THE
SPONTANEOUS STATEMENT?

>> YES I AM BUT I NEED TO ADJUST
WHAT YOU SAID BECAUSE THERE WERE
SIX DNA SPOTS ON THE STEERING
WHEEL OF THE JEEP CHEROKEE BUT
THERE ARE CONFLICTS ON WHERE IT
WENT.

SO THEY DO NOT NECESSARILY --

>> WHAT ARE THE TWO CONFLICTING
VERSIONS.

ONE, THAT HE CUT HIS FINGER.

>> THE STATE'S VERSION IS THAT
THEY GOT THERE WHEN HE --
PRESUMABLY THEY MUST BE
SPECULATING HE MUST'VE CUT
HIMSELF WHEN USING A KNIFE WHICH
WAS USED ON KARLA AND THAT WAS
USED TO CUT THE SEAT BELT AND
SOMEHOW GOT THE SIX SPOTS OF
BLOOD ON THE STEERING WHEEL BUT
NOWHERE ELSE IN THE CAR, NOT ON
THE PURSE THAT HE RIFLED THROUGH
LOOKING FOR THE TITLE, NOT IN
THE POCKETS WHICH WERE TURNED
OUT, BUT SOMEHOW THESE SPOTS HAD
GOTTEN ON THE STEERING WHEEL
ONLY AT THE TIME OF THE CRIME.
THE DEFENSE THEORY IS IT
HAPPENED TWO DAYS EARLIER ON
SUNDAY DURING THE TEST DRIVE
WHEN HE CUT HIMSELF ON THE
CARBURETOR, SO THERE ARE TWO
COMPETING THEORIES AS TO HOW AND
WHEN THOSE BLOOD SPOTS GOT
THERE.

>> THERE IS NO DIRECT
CORROBORATION FOR THE FACT THAT
HE CUT HIS HAND.

THERE IS NO DIRECT CORROBORATION
FOR THE SPECULATION THAT HE CUT
HIMSELF DURING THE MURDER
EITHER.

>> I UNDERSTAND, BUT I'M TALKING
ABOUT THE EVENTS SURROUNDING THE
DAY WHEN HE ALLEGEDLY GOT
INVOLVED, ANY CORROBORATION OF
THEM BEING SEEN TOGETHER,
ANYTHING AT ALL?

>> THAT IS KIND OF HARD TO SAY
BECAUSE ONE OF THE STATE'S

WITNESSES, PAUL LANIER, PUTS THEM TOGETHER BUT HIS TIMELINE, IS THAT RIGHT?

THEY HAD BEEN TOGETHER A WEEK BEFORE THE CRIME OCCURRED WHEN, ACCORDING TO THE STATE'S THEORY THE VAN DUSEN'S HAD NOT EVEN MET.

THE HEARSAY ISSUE, I WANT TO MAKE IT CLEAR THAT I'M NOT MAKING ANY KIND OF CRAWFORD VERSUS WASHINGTON ARGUMENT. IT IS GOVERNED BY THE STATE LAW.

>> LET'S DEAL WITH THE SPONTANEOUS STATEMENT.

CAN A DESCRIPTION OF ANY EVENT THAT IS HAPPENING IN FRONT OVER THE PHONE BE A SPONTANEOUS STATEMENT?

>> CAN IT BE?
YES.

>> WHAT ARE THE DIFFERENTIATING FACTORS?

ONE, SPONTANEOUS ADMISSIBLE AND THE OTHER NOT.

>> OKAY NOW, THIS ARGUMENT ESSENTIALLY HAS THREE PRODUCTS AND THE FIRST ONE UNDER FLORIDA'S SPONTANEOUS STATEMENT EXEMPTION IN THE STATE HAS THE BURDEN OF SHOWING THE CRITERIA FOR AN EXCEPTION, THAT A STARTLING OR EXCITING EVENT IS REQUIRED.

>> WHERE IS THAT IN THE STATUTORY DEFINITION OF SPONTANEOUS STATEMENT?

>> OKAY, IT IS NOT DIRECTLY WRITTEN INTO THE STATUTE ITSELF. IT IS IN THE CASE LAW.

>> THE STATEMENT IN THE EVIDENCE CODE.

THERE IS NOTHING IN THE STATUTE ITSELF TO REQUIRE IT.

HOWEVER IT WAS REQUIRED UNDER THE OLD EXCEPTION, WHICH CARRIED FORWARD INTO ITS COMPONENT PARTS UNDER THE EVIDENCE CODE IN THE CASE LAW CONSTRUING THE POST CODE, THE EXCEPTION, IT IS NOT JUST THE HUTCHINSON CASE, IT SAYS CASE AFTER CASE AFTER CASE.

>> IF WE AGREE WITH THE STATE THAT REALLY DOES NOT REQUIRE A

STARTLING EVENT BUT IT JUST HAS TO BE DONE AT THE TIME THAT THE EVENTS ARE UNFOLDING.

WHERE DOES THAT LEAVE YOU?

>> WHERE THAT LEAVES ME, IN ORDER TO DO THAT HUTCHINSON, SUMMARIZING THE STATE OF THE LAW, LYLES IS NOT DICTA BUT IT IS A D.C. CASE.

THE COURT WOULD BE FREE TO CONCLUDE THAT PROFESSOR EHRHARDT IS RIGHT AND THE COURT IS WRONG. THIS SPONTANEOUS STATEMENT DOES NOT --

THE COURT WOULD BE FREE TO DO THAT.

[INAUDIBLE]

IF THEY BOTH REQUIRE A STARTLING EVENT, THEY ARE ESSENTIALLY THE SAME.

>> TO ANSWER THAT, HUTCHINSON AND -- SAY THERE IS CONSIDERABLE OVERLAP WITH THE DIFFERENCES ARE IN ONE TIME LAPSE ALLOWABLE AND THE ONE RELATES TO THE EVENT WHILE THE OTHER DESCRIBES THE EVENT, BUT WHAT YOU ARE SAYING MAKES SENSE AND THE FEDERAL COURTS AND MANY OTHER STATE COURTS HAVE A PRESENT SENSE IMPRESSION EXCEPTION.

THAT IS EHRHARDT'S VIEW AND THE COURT IS FREE TO ADOPT THAT.

[INAUDIBLE]

[INAUDIBLE]

>> NOW WE GET BASICALLY JUSTICE QUINCE'S QUESTION, WHICH IS IF THE COURT DOES THAT WHERE DOES IT LEAVE US AND WHERE IT LEAVES US IS THIS.

LET'S SAY THE COURT ADOPTS EHRHARDT'S VIEW.

EHRHARDT'S VIEW IS THIS.

THE FLORIDA SPONTANEOUS STATEMENT EXCEPTION IS ESSENTIALLY THE SAME THING AS THE FEDERAL PRESENT TENSE IMPRESSION EXCEPTION AND THAT ALSO MANY OTHER STATES HAVE. THIS SAME EVIDENCE IS ADMISSIBLE UNDER BOTH, SO THEN LOOK TO THE CASE LAW INTERPRETING THE FEDERAL AND THE OTHER STATES PRESENT TENSE IMPRESSION

EXCEPTION AND IT IS ABSOLUTELY CLEAR THAT KARLA VAN DUSEN'S STATEMENTS DO NOT FIT FOR SEVERAL REASONS.

YOU WANT TO KNOW WHY.

FIRST OF ALL WHAT SHE IS DOING, SHE IS NOT DESCRIBING WHAT IS OCCURRING.

WHAT SHE IS DOING IS NOT -- WHAT SHE IS DOING IS NECESSARILY BASED ON HER PROCESSING OF PAST EVENTS AND ANTICIPATED FUTURE EVENTS.

WHAT THE STATE INTRODUCED WAS STATEMENTS TO THE EFFECT, A 37 MINUTE CONVERSATION, A LEISURELY CONVERSATION WHERE BILLIE HEARS WHAT SOUNDS LIKE A CAR MOTOR RUNNING.

SHE SAYS I AM FOLLOWING RICK AND AND THE GUY THAT BOUGHT THE TRUCK.

HE KNOWS WHERE WE CAN GET THE PAPERWORK DONE AND IN RESPONSE TO ANOTHER QUESTION SHE RESPONDS -- SHE ALSO SAYS THINGS TO THE EFFECT THAT RICK WAS GLAD TO BE DONE, GET RID OF THE TRUCK.

HE DIDN'T WANT TO BRING IT TO CAROLINA WITH HIM.

THEN ON REDIRECT EVEN MORE COMES OUT, SOMETHING ABOUT PAUL LANIER LOOKING AT THE HOUSE ON SUNDAY, WHICH IS INCONSISTENT WITH PAUL LANIER'S OWN STATEMENT.

>> IN TERMS OF OFFERING THIS TESTIMONY AND WHAT THE OBJECTION OR OBJECTIONS WERE, FOR INSTANCE UNDER THIS SCENARIO THAT YOU ARE IMPOSING NOW, YOU SEEM TO BE SUGGESTING THAT IF WE ADOPT EHRHARDT'S VIEW AND PERHAPS THE FEDERAL PARALLEL PROVISION HERE THAT THERE COULD HAVE BEEN TESTIMONY OF WHAT THE PERSON IN THE CAR WAS SAYING.

>> BUT THAT THERE WAS A LIMIT AND THAT IN THIS CASE I THINK, WHAT YOU ARE SAYING IS THAT THE STATE WENT WELL PAST THE LIMIT OF WHAT THIS EXCEPTION MIGHT HAVE CONTEMPLATED, SO TELL ME, HOW WAS THE OBJECTION MADE AND

WAS THERE AN OBJECTION TO THAT EFFECT?

THE JUDGE, EVEN IF YOU ACCEPT THAT THIS MIGHT BE ADMISSIBLE IN PART, CERTAINLY ALL OF THIS, IT DOES NOT COME WITHIN THAT HEARSAY EXCEPTION. TELL US ABOUT THAT.

>> THEY NEVER GOT TO THAT POINT BECAUSE THE STATE'S ARGUMENT WAS HUTCHINSON WAS WRONG UNDER SPONTANEOUS STATEMENT AND THE FORCE RULING WAS THAT THERE IS ADDITIONAL RELIABILITY.

FLORIDA INTENTIONALLY HAS NO LIABILITY EXCEPTION.

>> BUT THE OBJECTION PRESERVED THAT.

>> THIS IS AN ALTERNATIVE ARGUMENT THEY NEVER GOT TO.

>> I REALIZE, BUT THE STATE IN EFFECT IS SAYING, HOW DO YOU GET OVER ASSUMING THAT IS GOING TO BE A HUMP?

HOW DO YOU GET OVER THAT HUMP OF NO OBJECTION ON THESE PARTICULAR GROUNDS?

>> THIS WAS SOMETHING THAT WOULD HAVE HAD TO HAVE BEEN ANTICIPATED.

WHAT WE DO IF THE FLORIDA SUPREME COURT RECEIVES THE CASE LAW?

I DON'T THINK THAT IS AN INSUFFICIENT OBJECTION.

I DON'T THINK THE COUNSEL COULD HAVE ANTICIPATED THAT BUT I WANT TO MAKE THE POINT ALSO.

>> YOU ARE SAYING THEY COULD NEVER ANTICIPATED WE MIGHT GO THE WAY OF EHRHARDT.

>> I THINK IT WAS WHAT THE STATE WAS ARGUING AND WHAT THE COURT WAS DOING.

WHAT I WANT TO MAKE CLEAR IS THAT WE ARE NOT SAYING THAT THE STATE WENT TOO FAR.

I AM SAYING NONE OF THIS IS ADMISSIBLE AS A PRESENT TENSE IMPRESSION.

>> WHEN SHE TALKED ABOUT THAT, SHE WAS DRIVING THE VEHICLE AND FOLLOWING RICK AND THE GUY WHO BOUGHT RICK'S TRUCK.

THAT SEEMS TO BE THE PRESENT TENSE.

>> WHAT MIGHT HAVE BEEN SENSORY, ASSUMING SHE CAN SEE THE TRUCK WHEN SHE WAS TALKING, I'M NOT SURE THE EVIDENCE MAKES THAT CLEAR ABOUT WHAT WOULD BE SENSORY WOULD BE SOMETHING LIKE, OH MY GOD IT LOOKS LIKE RICK HAS A FLAT TIRE OR THERE'S AN OIL LEAK OR HE IS GOING TOO FAST, THAT IS WHAT SHE SEES.

>> A DESCRIPTION OF WHAT SHE IS DOING IS NOT A PRESENT TENSE IMPRESSION?

>> IT CAN'T BE A PRESENT TENSE IMPRESSION IF IT REQUIRES PROCESSING AND ALL OF THIS ESSENTIALLY.

>> DRIVING IN A VEHICLE, DOESN'T THAT REQUIRE -- LET US FINISH THE QUESTIONS BEFORE YOU START ANSWERING.

WHAT IS REQUIRED TO PROCESS IN ORDER TO SAY THAT SHE IS DRIVING IN A VEHICLE?

>> TO SAY SHE IS DRIVING IN A VEHICLE -- TO SAY SHE IS DRIVING IN A VEHICLE WOULD BE FINE. THE PROBLEM IS THE GUY WHO BOUGHT THE CAR.

>> WE ARE FOLLOWING RICK.

>> FOLLOWING RICK IS OKAY IF WE ASSUME SHE CAN SEE RICK AT THAT TIME.

>> ASSUMING NOW THAT WE UNDERSTAND THERE ARE SOME PARTS OF THE STATEMENT THAT ARE ADMISSIBLE, ARE THE OTHER PARTS OF THE STATEMENT ADMISSIBLE JUST TO COMPLETE THE STATEMENT TO GIVE IT SOME CONTEXT?

>> THE CONTEXT IS WHAT MAKES IT --

[INAUDIBLE]

IT CANNOT INVOLVE RETROSPECTIVE PROCESSING OF INFORMATION AND THAT IS WHAT SHE IS DOING.

HOW DOES SHE KNOW WHO WHO IS -- SHE CANNOT SEE, EVEN ASSUMING SHE CAN SEE THE BACK OF THE HEAD IN A TRUCK UP AHEAD WHICH I DON'T EVEN KNOW WE CAN ASSUME THAT, BUT THE WAY SHE KNOWS SHE

IS FOLLOWING THE GUY WHO BOUGHT THE CAR IS BASED ON WHAT OCCURRED EARLIER.

>> SO IF SHE SAID I AM GOING TO MY GIRLFRIEND'S HOUSE, ACCORDING TO YOU THAT WOULD BE INADMISSIBLE BECAUSE IT REQUIRED PROCESSING OF PRIOR INFORMATION, WHICH SHE KNEW WHICH HOUSE WAS HER GIRLFRIEND'S?

>> I DON'T THINK THAT FITS THE PRESENT TENSE IMPRESSION BECAUSE IT IS NOT DESCRIPTIVE.

[INAUDIBLE]

[INAUDIBLE]

>> YOU ALMOST HAVE TO LOOK AT THE SPECIFICS OF IT TO SAY. THE BOTTOM LINE OF IT IS IT IS A NARROW EXCEPTION THAT NEEDS TO BE DESCRIPTIVE AND SENSORY.

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> AGAIN, IT DEPENDS ON HOW MUCH YOU FACTOR INTO IT.

[INAUDIBLE]

[INAUDIBLE]

>> LET'S SAY YOU ARE RUNNING AROUND A LAKE AND TALKING SOMEBODY ON A CELL PHONE AND YOU TELL THEM YOU ARE RUNNING AROUND THE LAKE.

THAT IS PROBABLY FIVE.

[INAUDIBLE]

ASSUMING THAT, I AM RUNNING AROUND THE LAKE, DESCRIBING WHAT YOU ARE DOING AND THAT IS PROBABLY OKAY UNDER THAT. BUT THEN YOU START GETTING INTO WHY YOU ARE RUNNING AROUND THE LAKE AND SOMETHING ABOUT YOU ARE PREPARING FOR A RACE.

[INAUDIBLE]

>> THAT MAY BE GOING TOO FAR.

>> I GUESS THE QUESTION IS TOO FAR IN WHAT WAY BECAUSE WHAT WE ARE REALLY CONCERNED ABOUT IS AGAIN, RELIABILITY.

[INAUDIBLE]

>> I WOULD AGREE THAT ON THE SURFACE, THE TRIAL COURT FOUND IT TO BE RELIABLE AND IF THAT WERE THE TEST I CAN SEE WHERE YOU WOULD FIND THAT.

I'M NOT CONCEDED AS A MATTER OF FACT THAT IT WAS RELIABLE. THINGS GET LOST IN TRANSLATION AND HEARSAY ESPECIALLY OVER CELL PHONES.

BILLIE FERRIS WAS 72 YEARS OLD AND HAD A STROKE.

THERE IS A PART OF BILLIE FERRIS'S TESTIMONY BROUGHT UP ON REDIRECT CLAIMING THE DEFENSE HAD OPENED -- WHICH WE KNOW IS EITHER WHAT BILLIE FERRIS SAID WAS WRONG OR PAUL LANIER IS PROBABLY YET ANOTHER LIE BUT BILLIE FERRIS IS SAYING SOMETHING TO THE FACT THAT KARLA HAD TOLD HER THAT THEY HAD SHOWN THE HOUSE, THAT A BLACK COUPLE WAS GOING TO BUY THE HOUSE AND THEY SHOWED IT TO THEM ON SUNDAY AND SHE CALLED HER REALTOR UP AND SAID SOMETHING LIKE, CAN I GET AROUND -- I DON'T HAVE TO PAY THE COMMISSION SINCE I SHOWED IT MYSELF?

SHE IS SAYING THIS ALL HAPPENED SUNDAY.

PAUL LANIER SAYS IT OCCURRED ON TUESDAY, JUST BEFORE KARLA AND RICK LEFT TO GO DROP OFF THE TRUCK, AND THE PROSECUTOR ARGUED, THE PROSECUTOR WENT SO FAR AS TO ARGUE THAT THE PERSON, MARTHA BAKER, IS A DEFENSE WITNESS WHO SAID SHE HEARD KARLA TALKING TO A WHITE MALE BETWEEN 7:00 AND 7:50.

IF THAT TESTIMONY WERE TRUE, IT WOULD BE POWERFUL TESTIMONY. THE STATE ARGUES THAT WHAT SHE PROBABLY HEARD WAS, SHE GOT HER -- SHE PROBABLY HEARD KARLA TALKING TO PAUL LANIER EVEN THOUGH THERE IS EXAMINATION THAT A LOT OF TIMES AFRICAN-AMERICANS SOUND LIKE CAUCASIANS, SO IF PAUL LANIER --

[INAUDIBLE]

THE STATE ARGUES PAUL LANIER WAS THERE TUESDAY BEFORE THEY WENT TO DROP OFF THE TRUCK BUT BILLIE FERRIS HAD IT ON SUNDAY.

>> THE PROBLEM I HAVE WITH YOUR WHOLE ARGUMENT ABOUT THE

SPONTANEOUS STATEMENT IS WE HAVE TO DO TOO MUCH PARSING THE WAY YOU ARE TALKING ABOUT IT. IS THIS PORTION OF IT A PRESENT TENSE IMPRESSION?

IS THIS PORTION JUST SOMETHING ELSE?

IT JUST MAKES FOR A VERY DIFFICULT DETERMINATION.

>> MY CONTENTION IS THE COURT HAS TO DO NO PARSING WHATSOEVER BECAUSE THE WHOLE THING IS A PRESENT TENSE IMPRESSION.

>> ANOTHER QUESTION IS THE -- PARTS MAY BE ALRIGHT.

HER SAYING, I'M IN MY CAR.

>> I AM IN MY CAR, THAT IS IRRELEVANT.

>> I AM IN MY CAR GOING SOMEPLACE.

I DON'T WANT TO TAKE UP ALL YOUR TIME ON THAT BUT THAT IS MY PROBLEM WITH YOUR ARGUMENT IS THERE'S JUST TOO MUCH SLICING AND DICING THAT HAS TO GO ON.

>> MY ARGUMENT WOULD BE THAT I'M NOT GOING AFTER THE SLICING AND DICING.

THE ENTIRE CONTEXT OF THIS STATEMENT SHOWS WHY THE ENTIRE THING IS INADMISSIBLE AND THE WHOLE THING IS GUIDED BY THE TRUCK.

THE PROSECUTOR USES THAT HE HAS GOT CASH.

HE ALSO USES THAT HE KNOWS WHERE TO GET THE PAPERWORK.

THE KEY TO IT IS THE GUY THAT BOUGHT THE TRUCK.

THE NEXT ISSUE, THAT THE STATE FAILED TO CHARGE A CRIME.

THERE IS NO SHOWING THAT THE GRAND JURY FOUND EITHER OF THE TWO ALTERNATIVE ELEMENTS ARE FIRST-DEGREE MURDER.

>> WHAT WERE THE STATUTES THAT WERE CITED?

>> THE GENERAL FIRST-DEGREE MURDER STATUTES, WHICH DO NOT SPECIFY WHAT YOU ARE TALKING ABOUT FELONY MURDER OR PREMEDITATED MURDER OR EVEN MURDER IN THE CASE OF SOME DRUG THING THAT IS NOT EVEN A

RELATIVE OF THE CITING OF THE STATUTE NUMBER IN NO WAY SHOWS WHERE THE GRAND JURY FOUND PREMEDITATION ONLY, FELONY MURDER OR BOTH.

>> WERE THERE TWO STATUTES CITED IN THE INDICTMENT?

>> WERE THERE TWO STATUTES? I ONLY RECALL.

THE ONE I RECALL IS THE GENERAL FIRST ONE.

I DON'T RECALL ANYONE THAT WOULD IN ANY WAY SHED LIGHT THAT YOU COULD SAY, OKAY THEY CITED THIS SUBSECTION.

>> HOW ABOUT 775?

THAT WAS CITED IN THE INDICTMENT ALSO.

>> OKAY, RIGHT.

>> AND WHAT IS THAT?

>> AGAIN, HAD THEY CITED THE SPECIFICS OF SECTIONS THAT SAY PREMEDITATION OR FELONY MURDER OR BOTH IN THE STATE MIGHT HAVE AN ARGUMENT THAT BY DOING THAT THEY SHOW WHAT WAS FOUND BUT BY NOT DOING THAT WE DON'T KNOW WHAT THEY FOUND AND IT HAS CONSEQUENCES.

>> BUT WAS THERE A MOTION TO DISMISS THE INDICTMENT?

>> IT WAS BROUGHT UP PRIOR TO TRIAL AND PROBABLY IT WAS CALLED TO THE ATTENTION OF THE COURT IN A MOTION OF PARTICULARS. WHICH WAS DENIED.

THAT IS THE WAY IT WAS BROUGHT UP.

>> THAT GOES TO THE QUESTION OF THE STATE TO DETAIL WHAT AGGRAVATORS AND MITIGATORS ARE SEEKING, NOT WHETHER THE GRAND JURY -- THERE WAS NO EFFORT TO TAKE IT BACK TO THE GRAND JURY.

>> OUR POSITION WOULD BE THAT ACTUALLY THE STATEMENT OF PARTICULARS -- THE ONLY WAY THEY COULD HAVE CURED IT WAS TO GO BACK.

>> AND SO THERE WAS NO MOTION TO DISMISS.

>> THEIR ARGUMENT IS PREMISE.

THERE IS ONE FACTOR THAT DISTINGUISHES ALL OF THE CASES

THAT THE STATE RELIES ON, THE FACT THERE IS A CONSTITUTIONAL PROVISION IN ARTICLE I, SECTION 15 THAT SAYS, THAT REQUIRES A VALID GRAND JURY INDICTMENT TO PROCEED.

>> IF IT SAYS 782.041 AND CONTAINED UNDER SUBSECTION ONE ONLY, IT IS PREMEDITATION AND FELONY, FIRST-DEGREE FELONY MURDER, WHY ISN'T THAT SUFFICIENT TO PUT A DEFENDANT ON NOTICE IF THAT IS WHAT HE'S BEEN CHARGED WITH, ALL OF WHAT IS CONTAINED UNDER SUBSECTION ONE.

>> THAT WOULD BE LIKE SAYING CHARGE SOMEBODY WITH KIDNAPPING. THAT IS LIKE SAYING YOU PUT THE DEFENDANT ON NOTICE JUST BY SETTING THE KIDNAPER STATUTE WITHOUT SPECIFYING WHICH ONE, TWO OR THREE OF THE ALTERNATIVE DEVELOPMENTS YOU ARE PROCEEDING ON.

IT DOES NOT TELL THEM, WE DO NOT KNOW WHETHER THE GRAND JURY FILED PREMEDITATION ONLY OR FELONY MURDER OR BOTH.

>> ISN'T THAT THE PURPOSE OF THE OPPORTUNITY FOR A MORE DEFINITE APPROACH?

>> IT IS JURISDICTIONAL AS WELL AS FUNDAMENTAL.

AGAIN, THE FLORIDA CONSTITUTION REQUIRES A VALID GRAND JURY INDICTMENT TO PROCEED ON CAPITAL CRIME OR FIRST-DEGREE MURDER.

THAT DID NOT OCCUR HERE.

IT IS FUNDAMENTAL TO CHARGE SOMEBODY WITHOUT CHARGING THEM WITH ALL THE ELEMENTS OF THE DEFENSE.

THE COURT HAS TENDED TO MOVE AWAY FROM WHAT IT CALLS HYPERTECHNICAL PLEADING REQUIREMENTS BUT THIS IS DIFFERENT FOR A COUPLE OF REASONS.

FIRST OF ALL IS THE GRAND JURY, AND WE DON'T KNOW WHAT THEY HAVE DONE, SO BY INSTRUCTING ON PREMEDITATION WHEN FOR ALL WE KNOW, THE GRAND JURY MAY HAVE FOUND ONLY FELONY MURDER

EXPANDED WITH THE INSTRUCTIVE AMENDMENT, EXPANDED THE GROUND, WHICH IS VIOLATION OF DUE PROCESS.

IN ADDITION, BY FAILING -- THIS INDICTMENT FAILED TO ALLEGE FELONY MURDER, FAILED TO ALLEGE PREMEDITATION.

IT DID NOT ALLEGE CULPABLE NEGLIGENCE OR ANY FORM OF ATTEMPT.

IT WHOLLY FAILED AT -- WHAT I'M SAYING HERE IS THAT THIS COULD BE -- THE STATE HAS AN OBLIGATION HERETO.

THE STATE HAS AN OBLIGATION TO DO THINGS RIGHT OR THERE ARE CONSEQUENCES TO WHAT THEY DO WRONG AND THE CONSEQUENCE HERE IS THEY WILL HAVE TO GO BACK AND GIVE A VALID CONSTITUTIONAL INDICTMENT.

[INAUDIBLE]

NOW THEY MAY HAVE TO GO BACK, BUT IF YOU DON'T RAISE IT AND FILE THAT --

>> THIS IS NOT JURISDICTIONAL.

>> IF THIS WERE NOT A JURISDICTIONAL FUNDAMENTAL DEFECT, THAT WOULD BE CORRECT.

>> WHAT I'M SAYING IS YOU HAVE A CASE THAT IS CHARGING IT THIS WAY AND AN INDICTMENT CITING THE FIRST-DEGREE MURDER STATUTE IS NOT ADEQUATE?

>> THERE ARE NO CASES THAT SAY IT IS AND NO CASES THAT SAY IT ISN'T.

THERE ARE NO CASES WHERE AN INDICTMENT WAS -- BUT THE BOTTOM LINE IF IT WAS.

>> YOU ARE WELL INTO REBUTTAL. YOU CAN USE IT AS YOU WANT, I'M NOT TRYING TO TERMINATE YOU. MAY IT PLEASE THE COURT, I AM THE ASSISTANT ATTORNEY GENERAL STEPHEN AKE.

I THINK THIS COURT HAS THE OPPORTUNITY TO CLEAR UP THE LANGUAGE THAT WAS WHAT WE CONTEND IN HUTCHINSON AND CLARIFY EXACTLY THE DIFFERENCE BETWEEN THE SPONTANEOUS STATEMENT AND EXCITED UTTERANCE.

>> HELP US IF YOU WILL BECAUSE I HAVE A SUBSTANTIAL AMOUNT OF DIFFICULTY THAT THIS SPONTANEOUS STATEMENT BECOMES LIKE AN OPEN SESSION AND THAT IS THAT, FOR INSTANCE, WE MIGHT HAVE THE WOMAN, THE DRIVER OF THE CAR SAYING WELL, MY HUSBAND IS DRIVING THE TRUCK IN FRONT OF ME WITH THE PURCHASER OF THE TRUCK, AND WE MET WITH THE PURCHASER OF THE TRUCK AND I DON'T LIKE HIM. I FEEL VERY QUEASY AROUND HIM AND HE JUST GIVES ME THE CHILLS. AND SO ON AND SO ON AND SO ON, AND IT APPEARS HERE THAT THERE WAS NO SCRUTINY.

AM I CORRECT THAT THIS WAS LIKE A 37 MINUTE CONVERSATION?

>> CORRECT.

>> SO, ASSUMING IN OUR EARLIER DISCUSSION WE TALKED ABOUT WHERE WE ARE GOING WITH THE DEFINITION AND AS YOU SAY WITH AN OPPORTUNITY TO CLARIFY, BUT I AM VERY TROUBLED BY THE FACT THAT THIS MAN IS AN OPEN SESAME AND NOW ANYTHING THAT THE WITNESS SAYS TO THE MOTHER MAY, JUST REGARDLESS OF IT, BECAUSE IT IS IN THE CONTEXT OF OBSERVING, SO WHY SHOULDN'T THERE BE A SHARP LIMITATION, JUST VISUAL OBSERVATION OF ACTION, BUT WITHOUT RECOUNTING ANY CONVERSATION OR THE SUBSTANCE OF CONVERSATION, HELP US WITH THAT.

>> I THINK WHAT HELPS YOU IS THE ACTUAL LANGUAGE IN THE STATUTE THAT SAYS THAT IT HAS TO DESCRIBE OR EXPLAIN AND WHILE THE PERSON PERCEIVING IT, AND IT HAS TO BE A STATEMENT MADE UNDER CIRCUMSTANCES THAT INDICATE --

>> WHAT IS THE EVENT?

>> THE EVENT IN THIS CASE IS EXACTLY WHAT SHE DESCRIBED, FOLLOWING RICK AND THE GUY WHO BOUGHT THE TRUCK, THAT IS THE EVENT.

SHE SAID I AM FOLLOWING RICK. TO SAY, THE GUY THAT BOUGHT THE TRUCK.

>> IT IS OKAY TO SAY SHE IS

FOLLOWING RICK.

WE WILL TALK ABOUT WHETHER NOT,
BECAUSE NOW IF HE IS GOING TO
TALK ABOUT THE GUY THAT BOUGHT
THE TRUCK, AS YOUR OPPONENT
SAYS, SHE REALLY HAS TO GO BACK
TO AN EARLIER EVENT.
SHE HAS TO DO THAT FOR HER
HUSBAND TOO.

>> WHY DID SHE HAVE TO DO THAT
WITH THEIR HUSBAND TOO?

[INAUDIBLE]

THAT SHE WOULD BE ABLE TO
DESCRIBE THAT AS HER HUSBAND AND
SHE KNOWS HER HUSBAND, EVEN THAT
THERE IS ANOTHER PERSON IN THE
TRUCK WOULD SEEM TO BE -- SO NOW
WHEN WE START TALKING ABOUT THAT
HE WAS THE ONE THAT BOUGHT THE
TRUCK, AND BEYOND THAT SO WHERE
IS THE LIMIT?

>> THAT IS HER IDENTIFICATION OF
THIS STRANGER TO HER MOTHER.
HE IS THE GUY THAT BOUGHT THE
TRUCK.

SHE KNOWS HER HUSBAND BASED ON
PRIOR EXPERIENCE.
SHE KNOWS THE GUIDE THAT BOUGHT
THE TRUCK FROM PRIOR EXPERIENCE.
IT IS THE SAME THING.

IT IS NOT ANY GREAT STRETCH TO
IDENTIFY.

SHE RECOUNTS TO THE MOTHER.

>> DOES SHE RECOUNT WHAT THE
OTHER PERSON IN THE TRUCK SAID
TO HER EARLIER?

>> I THINK YOU MIGHT STRAY AWAY
FROM DESCRIBING THE EVENTS IF
YOU START GETTING INTO THE
HYPOTHETICAL ABOUT, I FEEL
QUEASY, BUT I THINK THEN YOU
MIGHT -- BUT THEN YOU HAVE TO
USE THE ANALYSIS HOW INARDUOUS
ARE THESE STATEMENTS TO BEGIN
WITH?

IN THIS CASE THEY ARE CLEARLY
NOT PREJUDICIAL.

>> THE QUESTION I HAVE IS, NOT
EVERY EVENT THAT IS DESCRIBED IN
A HEARSAY STATEMENT COULD BE
COVERED BY THIS EXCEPTION
BECAUSE WHAT IT SAYS IS THAT IT
IS A SPONTANEOUS STATEMENT AND
SO DON'T WE HAVE TO, IN ORDER TO

COME TO GRIPS WITH THIS, DEFINE THE TERM SPONTANEOUS? WHAT IS SPONTANEOUS AND WHAT SEPARATES THIS FROM THE FACT THAT SHE PICKED UP THE PHONE AND SAID, BY GOLLY I'M GOING TO BUY A HOUSE THAT IS RED.

CERTAINLY EVERY STATEMENT LIKE THAT IS NOT INTENDED TO --

>> I THINK THE CASE LAW HAS DONE THAT IN CONTRASTING A SPONTANEOUS WITH EXCITED UTTERANCES, IT CAN GO A PERIOD OF TIME AND THEY CAN MAKE A STATEMENT.

WHILE THEY ARE PERCEIVING THAT, THAT IS WHAT WE HAVE IN THIS CASE.

>> ANY EVENT THAT IS PERCEIVED BY A WITNESS IS GOING TO COME IN THROUGH HEARSAY.

>> IF IT DOESN'T SHOW THAT IT LACKS TRUSTWORTHINESS THEN IT'S FINE TO COME IN.

>> OBVIOUSLY THE PROBLEM WITH ANY HEARSAY EXCEPTION THAT GIVES THAT WE ARE NOT PROVIDING THE BASIS UPON WHICH THE PERSON THAT ACTUALLY MADE THE STATEMENT CAN BE CROSS-EXAMINED, AND SO THAT IS THE REASON THAT WE HAVE TO, IT SEEMS TO ME, TO BE VERY CLEAR AS TO WHAT THE BOUNDARIES ARE OF WHAT IS SPONTANEOUS.

>> RIGHT, AND I THINK THE TRIAL COURT DID THAT IN THIS CASE. EXAMINE, ONE, THE SPONTANEOUSNESS OF THE STATEMENT AND THE RELIABILITY THE STATEMENT AND WENT THROUGH THAT.

>> SO WHAT DO YOU THINK SPONTANEOUS MEANS?

>> WHAT DO I THINK SPONTANEOUS MEANS?

>> WHAT DOES SPONTANEOUS MEAN UNDER THE STATUTE.

>> THE MOTHER ASKED HER THE QUESTION AND SHE RESPONDED INTO AN ANSWER.

THIS IS WHAT IS GOING ON, LIKE A PLAY-BY-PLAY ANNOUNCER OF A SPORTING GAME DESCRIBING.

>> I KNOW THERE'S A CASE LAW THAT TALKS ABOUT HOW TO BE

SPONTANEOUS EVEN IF IT IS THE QUESTION BUT IT SEEMS TO ME THAT SPONTANEOUS MEANS MORE THAN JUST ANSWERING QUESTIONS THAT SOMEONE MIGHT ASK YOU.

>> I THINK YOU HAVE TO LOOK AT THE CONTEXT OF THE CASE. YOU HAVE THE MOTHER IN THE CAR AND THAT IS A SPONTANEOUS STATEMENT.

I DON'T KNOW ANY OTHER WAY OTHER THAN HAVING A CASE BY CASE ANALYSIS WHERE THE TRIAL COURT IS GOING TO CONDUCT AN ANALYSIS.

[INAUDIBLE]

[INAUDIBLE]

ARE THERE SOME OUT-OF-STATE CASES THAT HELPED TO PROVIDE THE PARAMETERS?

>> I AM SURE UNDER THE FEDERAL SYSTEM THERE ARE QUITE A FEW.

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> YES AND NO.

I THINK THE EVENT IS, I AM FOLLOWING MY HUSBAND AND SEATED NEXT TO HIM IS THE GUY THAT BOUGHT THE TRUCK.

THAT IS WHAT SHE IS DESCRIBING TO HER MOTHER.

[INAUDIBLE]

[INAUDIBLE]

>> I THINK THE ALTERNATIVE WOULD BE TO SAY I AM FOLLOWING RICK AND HER MOTHER IS NOT GOING TO KNOW WHO DEPARVINE IS.

KARLA MAY KNOW WHO DEPARVINE IS BUT SHE KNOWS HIM AS THE GUY THAT IS BUYING A TRUCK AND THAT IS HOW SHE DESCRIBES HIM.

THE EVENT QUESTIONS WHETHER SHE IS FOLLOWING, BUT OBVIOUSLY SHE IS FOLLOWING BECAUSE SHE DOESN'T KNOW WHERE THEY ARE GOING. SHE IS THERE IN HINDSIGHT AND DESCRIBES THE TWO PEOPLE IN FRONT OF HER.

[INAUDIBLE]

IS THERE A DIFFERENCE?

IT IS NOT BEING DESCRIBED AS --

>> I THOUGHT HUTCHINSON WAS THE GUY COMING IN AND SAYING HE WAS GOING TO KILL SOMEONE.

[INAUDIBLE]

>> I THINK THAT WOULD FALL UNDER -- IT SEEMS TO ME THAT WOULD FALL UNDER MULTIPLE EXCEPTIONS AND THAT SCENARIO UNDER BOTH EXCITED AND SPONTANEOUS.

I'M NOT SUPERFAMILIAR WITH THE CASE UNFORTUNATELY.

>> LET ME ASK JUST A BROAD FOUNDATIONAL QUESTION.

YOU DO AGREE THE COMPLICATION BY STATUTE, THAT THE SPONTANEOUS STATEMENT DID REQUIRE SOME ELEMENTS OF AN EVENT, OF AN EXCITING NATURE THAT PROVOKED SOMETHING.

DO YOU AGREE THAT IS WHERE IT STARTED?

>> THE COMMON LAW SORT OF HAD THAT VIEW AND THEN WE CODIFIED, NOW WE BUT IT WAS CODIFIED AT SOME POINT AND THEY STILL KEPT THAT ELEMENT IN THERE OF THE DESCRIPTION OF THE EVENT, AND I'M TRYING TO MAKE SURE I CAN UNDERSTAND WHY THAT, EVEN WITH THE PRESENT WORDING, IT STILL DOES NOT REQUIRE SOME TYPE, SOMETHING MORE THAN JUST DESCRIBING A STROLL DOWN THE STREET, THAT THERE IS SOMETHING THAT PROVOKES IT.

>> I THINK THE CLEAR LANGUAGE, AS YOU SAID, THE UTTERANCE AND SPONTANEOUS STATEMENTS, YOU'LL SEE THAT ONE REQUIRED AN EVENT UNDER THE STRESS OF EXCITEMENT. THAT LANGUAGE IS NOT SPONTANEOUS.

>> I UNDERSTAND THAT IT'S NOT, BUT IT STILL DESCRIBES IT WITH REGARD TO AN EVENT.

IT DOESN'T JUST SAY THAT ANYTHING IN THE WORLD CAN COME IN, CORRECT?

THERE HAS TO BE SOME KIND OF EVENT AND I'M TRYING TO GET TO THE POINT, IF OUR COMMON LAW AND OUR EVIDENCE BEFORE SAID THAT THIS IS THE TYPE OF EVENT THAT IS CONTEMPLATED.

HOW WE GET BEYOND IN CASES AFTERWARD SEEMED TO INDICATE

THAT AS WELL AND WHILE IT MAY NOT BE SEEN IN THE SAME GENRE AS AN EXCITED UTTERANCE BUT IT STILL REQUIRES SOME KIND OF STRESSFUL OR SOME KIND OF EVENT.

>> I DISAGREE.

THERE ARE CASES -- EVEN FROM THIS COURT WHERE THERE WAS A LADY GOING TO A SUPERMARKET THAT SHE WAS DESCRIBING AND THAT WAS ADMISSIBLE SO I DON'T THINK -- ALL THE STATUTE SAYS IS THAT HAS TO BE DESCRIBING AN EVENT OR A CONDITION THAT A PERSON IS PROCEEDING AND IN THIS CASE --

>> IT IS VERY BROAD THEN ISN'T IT?

THE PROBLEM I COME BACK TO IS THE STATUTE DOES NOT MAKE EVERY STATEMENT DESCRIBING AN EVENT ADMISSIBLE.

IT MAKES A SPONTANEOUS STATEMENT, BECAUSE THE WHOLE THESIS, THESE EXCEPTIONS, BOTH EXCITED UTTERANCE AND THIS ONE THAT GREW OUT OF COMMON LAW, AS I UNDERSTAND, IT WAS THAT THE LACK OF CONTEMPLATION AND THE FACT THAT IT WAS JUST COMING OUT WAS WHAT THE RELIABILITY OF BEING ABLE TO GET SOMETHING FROM A THIRD PARTY IN THE COURT, SO IT HAS GOT TO BE SOME KIND OF STANDARD OF SPONTANEITY IN ORDER TO COME IN.

>> YOU HAVE THAT IN A STATEMENT BECAUSE SHE IS TALKING ON THE PHONE.

I THINK IF SHE WOULD HAVE CALLED HER MOTHER AN HOUR LATER AND TOLD HER WHAT HAD HAPPENED IT WOULD BE DIFFERENT, BUT THE FACT THAT HER MOTHER HEARS THE CAR RUNNING AND SHE IS IN THE CAR, I THINK THAT IS A SPONTANEOUS EVENT.

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> I THINK IT STILL HAS TO BE LOOKED AT IN THE CONTENT OF WHAT IS TAKING PLACE HERE.

[INAUDIBLE]

>> I THINK THAT IT IS STILL

TAKEN WITHIN THE CONTEXT OF THE
EVENT AND I THINK THE COURT HAS
TO LOOK AT THE ISSUE OF
RELIABILITY TO DETERMINE THAT.
I UNDERSTAND.

[INAUDIBLE]

[INAUDIBLE]

>> I THINK, I AM FOLLOWING RICK
AND THE GUY THAT BOUGHT THE
TRUCK, IS CLEARLY WITHIN THAT
REALM.

THE PART ABOUT HIM HAVING CASH
MAY NOT BE.

THAT MAY NOT FALL UNDER IT, BUT
I AM FOLLOWING RICK AND THE GUY
THAT BOUGHT THE TRUCK IS WITHIN
IT BECAUSE IT IS WHAT SHE IS
VISUALLY OBSERVING AT THE TIME
SHE IS TALKING ON THE TELEPHONE.

>> YOU ADDRESS THE ISSUE OF
HARMLESS ERROR IF THERE ARE SOME
PARTS, AND LET'S JUST MAKE IT AS
NARROW AS POSSIBLE, THE PARTS
THAT ARE REALLY, REALLY, REALLY
ADMISSIBLE AND SOME THAT MAY NOT
HAVE BEEN ADMISSIBLE, CAN YOU
ADDRESS THE HARMLESS ERROR
ISSUE?

>> YOU HAVE HER SAYING THAT WE
ARE GOING TO GET THE PAPERWORK
DONE TONIGHT.

DOES THIS CELL PHONE EVIDENCE
SHOW THAT THIS WAS A 37 MINUTE
CONVERSATION SHE STARTED NEAR
WHERE THE APPELLANT WAS AND THAT
CONVERSATION TRACKED ALL THE WAY
TO OLMART.

THE STATE INTRODUCED EVIDENCE
THAT MR. DEPARVINE HAD BEEN IN
ANOTHER NEGOTIATION WITH ANOTHER
INDIVIDUAL FOR HIS TRUCK AND HAD
BASICALLY - IT WAS A PARALLEL
STORY OF WHAT WAS GOING ON WITH
VAN DUSEN IN THIS CASE AND THAT
INDIVIDUAL, HE TOLD THEM I NEED
TO BUY YOUR TRUCK BUT I WANT TO
TAKE IT TO HAVE A MECHANIC LOOK
AT IT AND HE HOLDS THE MONEY SO
HE CAN COMPLETE THE DEAL THERE.
I WILL GIVE YOU A BILL OF SALE
AND YOU GET IT NOTARIZED AND
HAVE READY FOR ME AND THEN WHEN
THAT INDIVIDUAL SAID, I CAN'T DO
THAT UNLESS MY DAD TAKES ME OR

WHAT HAVE YOU, MR. DEPARVINE
EVENTUALLY BACKED OUT OF THE
DEAL AND WOUND UP INSTEAD
PURCHASING VAN DUSEN'S TRUCK SO
I THINK YOU HAVE EVIDENCE THAT
SHOWS --

>> WHAT OTHER EVIDENCE WAS THERE
THAT HE COMMITTED A CRIME?

>> THE DNA ON THE STEERING WHEEL
WAS CRITICAL EVIDENCE AND HIS
STORY JUST DID NOT FLY ABOUT
HAVING TEST DROVE THE CAR AND
RAN OUT OF GAS.

THE STATE CONTRADICTED THAT
STORY OF PEELING OFF A SCAB OR
WHATEVER DURING THE CARBURETORS
THING.

THE STATE INTRODUCED EVIDENCE
FROM MR. LANIER THAT HE HAD SEEN
RICHARD VAN DUSEN COMING BACK
FROM THEIR TEST DRIVE IN THE
1971 TRUCK AND THEY WERE NOT
DRIVING THE JEEP AT THE TIME.

THERE IS NO OTHER EXPLANATION TO
WHY THERE WAS BLOOD IN THE JEEP.

>> DOES THE STATE CLAIM THERE
WASN'T A SUFFICIENT OBJECTION TO
THE CONVERSATION?

>> NO YOUR HONOR, HE MADE A
DETAILED STATEMENT PRIOR TO
TRIAL FOR THE STATEMENT SO I
WOULD DEFEND HE PRESERVED IT
UNDER THAT SCENARIO.

HE TYPICALLY ADDRESSED THESE AND
SAID IT WAS NOT A SPONTANEOUS
STATEMENT UNDER HUTCHINSON.
IN HIS CASE HE SAID IT WAS A
STARTLING EVENT.

THE OTHER THING I WOULD LIKE TO
BRIEFLY GET TO IS THE
DEFENDANT'S STATEMENTS RIGHT
AFTER -- WHEN THEY FIRST FOUND
THE TRUCK RELATING TO THE STORY
OF HOW BLOOD GOT INTO THE SUV.
HE SAID THAT HE HAD TEST DRIVEN
THE CLASSIC TRUCK AND IT RAN OUT
OF GAS.

HE WALKED BACK TO THE HOUSE AND
PICKED UP KARLA AND ALL THREE OF
THEM WENT BACK.

UNDER THAT SCENARIO HE NEVER
DROVE THE JEEP SUV.

IT WASN'T UNTIL TRIAL WHEN HE
GOT THE STORY ABOUT HOW THE

BLOOD -- IT WAS ALSO FOUND THAT ONE OF THE STAINS WAS ON THE STEERING WHEEL.

[INAUDIBLE]

>> APPARENTLY THERE WERE SIX OR SEVEN DROPS OF VARIOUS --

[INAUDIBLE]

[INAUDIBLE]

>> THERE WAS QUITE A BIT OF BLOOD STAIN EVIDENCE FROM THE VICTIMS AND THEIR RESPECTIVE POSITIONS ON THE DRIVER AND PASSENGER SIDE, THE BACK OF THE HEAD IN THE FRONT.

[INAUDIBLE]

>> SUV, THE JEEP.

>> WASN'T THERE ONE OF THESE BLOOD SPOTS THAT HAD A MIXTURE OF BOTH THE DEFENDANT'S BLOOD AND THE VICTIM'S BLOOD?

SO HOW DO YOU EXPLAIN THAT?

>> I DON'T KNOW HOW HE EXPLAINS IT.

I DON'T THINK HE DID EXPLAIN IT. I THINK THE JURY REJECTED HIS EXPLANATION.

>> IF HE DID THAT ON A COUPLE OF DAYS, HE CUT HIS HEAD AND A COUPLE OF DAYS BEFORE THE VICTIMS WERE KILLED, AND THIS WAS BASICALLY AROUND THE STEERING WHEEL OF THE CAR, WHERE WAS THE VICTIM'S BLOOD?

>> UNDER THIS SCENARIO IT HAPPENED TO -- WE ALSO HAVE EVIDENCE THAT MR. VAN DUSEN DROVE THE JEEP THE DAY OF THE MURDER TO WORK AND A CO-WORKER TESTIFIED THAT IT WAS AN IMMACULATELY CLEAN VEHICLE.

[INAUDIBLE]

>> YES YOUR HONOR.

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> WE KNOW, ACCORDING TO THE THEORY THAT THEY CAME TO DROP OFF THE TRUCK SO THEY WERE TOGETHER UNDER HIS OWN TESTIMONY AT HIS APARTMENT. THE ONLY OTHER EVIDENCE PLACING HIM IS THE BLOOD ON THE STEERING WHEEL.

>> WHAT IS THE STATE'S THEORY OF HOW THE BLOOD GOT ON THERE? HIS BLOOD?

>> THAT HE MUST HAVE CUT IT WITH THE KNIFE THAT HE USED TO STAB KARLA VAN DUSEN AND CUT THE SEAT BELT.

I GUESS HE MUST HAVE CUT HIMSELF DOING THAT, THEN HE HAD TO DRIVE THE JEEP SUV FROM THE MURDER SCENE.

HE HAD TO DRIVE THAT SOMEWHERE ELSE AND THEN GO PICK UP THE CLASSIC TRUCK.

HE PLANTED A DRIVER'S LICENSE OUTSIDE THE DOOR TO THROW OFF LAW-ENFORCEMENT OFFICERS.

>> WHAT IS THE EXPLANATION THAT THE ONLY BLOOD, IF WE ASSUME THAT IT HAPPENED DURING THE EVENT, WAS THE BLOOD ON THE STEERING WHEEL?

>> I DON'T FOLLOW.

>> YOUR OPPONENT ARGUES HE DID NOT HAVE ANY BLOOD ANYWHERE ELSE, NO BLOOD ON HIM FROM THE VICTIM.

AND THAT, IF IN FACT HE COMMITTED THE MURDER, THEN THERE WOULD BE A SUBSTANTIAL AMOUNT OF BLOOD.

>> YOUR HONOR I BELIEVE HE WAS SEATED IN THE BACK SEAT WHEN HE SHOT THESE TWO INDIVIDUALS.

I HAVE NO IDEA IF HE HAD A CHANGE OF CLOTHES BUT THERE WAS EVIDENCE HE PROBABLY HAD A BACKPACK WITH HIM.

HE ALWAYS CARRIED A BACKPACK. I DON'T NOW HOW HE MANAGED NOT TO -- PRESUMABLY SHOOTING THEM IN THE BACK OF THE HEAD IN THE BACK SEAT WOULD'VE SET EVERYTHING FORWARD.

I DON'T KNOW WHEN HE STABBED KARLA VAN DUSEN AND THE SEATBELT BUT SOMEWHERE IN THIS EVENING HE GOT INTO THE DRIVER'S SEAT OF THE SUV AND DROVE AWAY AND AT THAT POINT IN TIME I WOULD SUBMIT HE GOT HIS HAND ON THE STEERING WHEEL AND THAT IS WHERE HE GOT THE BLOOD STAINS.

>> SO THE EXPLANATION IS THAT IT

OCCURRED.

[INAUDIBLE]

WHOEVER MURDERED THESE TWO VICTIMS WAS IN THE BACK SEAT OF THE VEHICLE.

>> CORRECT.

BULLETS WERE FOUND IN THE CAR AND WHAT HAVE YOU AND DEFINITELY THE BLOODSTAINS MATCHED UP WITH MR. VAN DUSEN DRIVING AND KARLA VAN DUSEN IN THE PASSENGER SEAT. THE APPREHENSION OF THE SUSPECT WAS SEVERAL DAYS LATER?

>> THE TRUCK WAS FOUND SEVERAL DAYS LATER.

HE WAS NOT ARRESTED UNTIL I BELIEVE JANUARY.

IT WAS SOMETIME LATER, BUT HE WAS INITIALLY QUESTIONED AND HE PRODUCED THE BILL OF SALE, WHICH THE STATE'S THEORY IS SOMEWHERE ALONG THE WAY HE WENT BACK AND GOT THE BILL OF SALE THAT HE HAD MR. VAN DUSEN NOTARIZE PRIOR TO THIS EVENT.

HE HAD THIS ALL PLANNED OUT. HE DID NOT TAKE THE \$86 IN HIS POCKET FOR THE BILL OF SALE.

[INAUDIBLE]

>> THE ONLY OTHER THEORY ON THAT WAS THE DRIVER'S LICENSE THAT WAS PLANTED OUTSIDE OF THE SUV BY AN INDIVIDUAL NAMED HENRY SULLIVAN AND DEPARVINE LIVED IN THE SAME APARTMENT COMPLEX AS THIS GENTLEMAN AND AT THIS TIME HENRY SULLIVAN LOST HIS DRIVER'S LICENSE SO MR. DEPARVINE UTILIZED THAT.

I BELIEVE HE IS --

[INAUDIBLE]

>> HE GRADUATED LAW SCHOOL I BELIEVE IN OHIO AND WAS NEVER ADMITTED INTO THE BAR BECAUSE I BELIEVE HE HAD FELONY CONVICTIONS STEMMING BACK FROM THAT TIME PERIOD.

THIS WHOLE STORY PROVIDES THAT HE OBTAINED A ROLEX WATCH WHILE HE WAS IN PRISON AND THEN MANAGED TO HIDE IT FROM THE AUTHORITIES FOR THREE YEARS AND TRANSPORT IT NOT ONLY FROM PRISON BUT INTO A CORRECTIONAL

OR HALFWAY HOUSE AND BURY IT.
THAT IS HOW WE FINANCED IT.
HE HAD QUITE AN ELABORATE PLAN
FOR THIS MURDER AND SUCCEEDED IN
DOING IT UP UNTIL HIS BLOOD WAS
FOUND.

HIS BLOOD WAS NOT FOUND IN THE
CAR BUT IT WOULD HAVE BEEN A
MUCH MORE DIFFICULT CASE.

>> HOW LONG AFTER THE MURDER WAS
HE PICKED UP?

>> THE MURDER HAPPENED LATE AT
NIGHT EITHER ON THE 25TH OR THE
26TH AND THE CAR WAS FOUND ON
THE 27TH, THE VERY NEXT DAY BY
LAW ENFORCEMENT.

AT THAT POINT IN TIME, THE
QUESTIONING SEIZED AND THEY
THOUGHT HE WAS A LEGITIMATE
PERSON AND THERE WAS A
SUBSEQUENT INVESTIGATION OF HIM
AS A SUSPECT.

>> SO HE WAS NOT ARRESTED AT
THAT TIME?

WAS THERE ANY TESTIMONY THAT AT
THE TIME SPOKE TO POLICE, THAT
THE POLICE NOTICED ANY SCARRING
ON HIS HAND?

>> THAT IS WHY I BELIEVE THAT
YOUR HONOR.

HE DID INTRODUCE EVIDENCE THAT
HE WAS A CONSTRUCTION
STEELWORKER AND IN HIS CASE THAT
HE HAD CUTS ON HIS HAND BUT
THERE'S NO EVIDENCE AT THAT TIME
THAT HE WOULD SUPPORT THAT HE
HAD ANY CUTS ON HIS HAND.

I BELIEVE PART OF THE PROBLEM IS
IN THE COLD RECORD IS WE DON'T
GET TO SEE IT, BUT THE
PROSECUTOR MADE A BIG DEAL OUT
OF TELLING THE JURY TO LOOK AT
THE PHOTOGRAPHS OF THE ENGINE,
LOOK AT HOW MR. DEPARVINE
TESTIFIED HOW INFEASIBLE IT WAS
THAT HE WOULD APPARENTLY HAVE
PULLED A SCAB OFF THE PALM OF
HIS HAND WHILE PRIMING HIS
CARBURETOR, WHICH WAS THE STORY.

>> COULD YOU BRIEFLY TOUCH ON
THE INDICTMENT THAT WAS IN THIS
CASE AND HOW A DEFENDANT WOULD
BE ON NOTICE AS TO WHAT FORM OF
MURDER HE IS ACTUALLY CHARGED

WITH?

>> THE INDICTMENT SERVES AS GIVING NOTICE FOR PENDING CHARGES IN THIS CASE, CITING FIRST-DEGREE MURDER STATUTES IN THIS SUBSECTION ONE WHICH DEALS WITH FELONY MURDER.

THE CAPTION OF THE CHARGE WAS MURDERED IN THE FIRST DEGREE, IN CAPITAL FELONY SO WE WOULD SAY THAT PUTS A DEFENDANT ON NOTICE AS TO THE CHARGES PENDING AGAINST HIM.

COUNSEL TALKED ABOUT IT BEING A JURISDICTIONAL ISSUE.

THE JURISDICTION IS IN ORDER TO BE CHARGED WITH A CAPITAL FELONY IT HAS TO BE BY INDICTMENT.

THIS WAS AN INDICTMENT BY THE GRAND JURY.

THE CIRCUIT COURT DID IN FACT HAVE JURISDICTION TO HEAR THIS PLACE.

>> I THINK HIS ARGUMENT IS A LITTLE DEEPER THAN THAT.

HE IS SAYING THAT JUST BY READING THIS INDICTMENT WE HAVE NO IDEA OF WHAT THE GRAND JURY ACTUALLY DETERMINES WAS A FORM OF MURDER THAT THIS DEFENDANT SHOULD BE CHARGED WITH.

>> THERE ARE TWO PROBLEMS WITH THAT.

IT NEVER WAS BROUGHT UP UNTIL THE JUDGMENT OF ACQUITTAL MOTION DURING, AFTER THE STATE ARRESTED BUT THEN THE OTHER PROBLEM IS COUNSEL CONCEDED THIS WAS NOT A NOTICE ISSUE, THAT HE KNEW.

IT WASN'T LIKE HE DID KNOW HE WAS FACING PREMEDITATION AND FELONY MURDER.

HE KNEW THAT.

HIS DEFENSE WAS NOT PREJUDICED IN ANY WAY.

HE NEVER LEFT ANY SUCH PREJUDICE IN PREPARING HIS DEFENSE OR PRESENTING HIS DEFENSE AT TRIAL AND WHEN YOU LOOK AT HIS DEFENSE, HIS DEFENSE IS, I DIDN'T DO IT.

IT IS NOT A LACK OF INTENT FOR PREMEDITATION SO WE WOULD SUBMIT

THE INDICTMENT PUTTING ON NOTICE
AND THEN --

>> IS THIS A DIFFERENT KIND OF
INDICTMENT BECAUSE GENERALLY
WHEN WE SEE THESE FIRST-DEGREE
MURDER CASES THERE IS SOME
LANGUAGE IN THERE ABOUT, FROM A
PREMEDITATED DESIGN TO DO
WHATEVER AND WE KNOW THAT KIND
OF INDICTMENT, YOU CAN BE
CHARGED OR FOUND GUILTY OF
EITHER PREMEDITATED MURDER OR A
FELONY MURDER.

I DON'T THINK I'VE EVER SEEN ONE
WHERE THERE IS NONE OF THAT KIND
OF LANGUAGE IN AN INDICTMENT.

>> I THINK THAT CAUSE WAS
COMMITTED SOMEHOW.

I THINK IT WAS A SIMPLE
TYPOGRAPHICAL ERROR OR THAT
CLAUSE WOULD BE PLUGGED IN THERE
AND THIS WAS SUBMITTED FOR
WHATEVER REASON AND THERE WAS NO
CAUSE BY THE GRAND JURY.
IT IS NOT THERE AND I WOULD
AGREE WITH YOU.

I DON'T THINK THAT IT MAKES IT
FUNDAMENTALLY FATAL BUT IT DOES
NOT HAVE IT.

I SEE MY TIME IS OUT.

>> REBUTTAL?

>> LET ME ASK A PLENARY QUESTION
BEFORE YOU GET INTO THAT.

I NOTICED THERE WEREN'T ANY
PENALTY ISSUES HERE.

>> THERE WERE PENALTY -- ISSUE.

>> REMIND ME THEN.

>> THERE WAS, ONE OF THE PENALTY
PHASE ISSUES WAS THAT THERE WAS
EXCESSIVE AND UNDULY EMOTIONAL
VICTIM IMPACT.

>> THE DAUGHTER'S TESTIMONY?
THE DAUGHTER.

>> THERE WERE FIVE WITNESSES, IT
WAS EACH OF THEIR DAUGHTERS,
SEVERAL SISTERS AND THE MOTHER,
BILLIE FERRIS.

I KIND OF HESITATE -- I REALLY
WILL RELY ON MY BRIEF ON THAT.
THERE'S ALSO A PENALTY PHASE OF
JURY SELECTION ISSUE.

THERE IS AN ISSUE THAT THE
SENTENCING ORDER WAS DEFECTIVE.
I WANT TO ANSWER JUDGE

PARIENTE'S QUESTION DEALING WITH PRESENT TENSE AND THE TWO CITED IN THE BRIEF THAT I WOULD EMPHASIZE THE MOST ARE STATE VERSUS PHILLIPS OUT OF WEST VIRGINIA, 461 SOUTH SECOND, 75 AT PAGE 89.

THE OTHER IS ONE THAT I UNFORTUNATELY MISCITED IN MY INITIAL BRIEF AND CITED IT CORRECTLY IN THE REPLY BRIEF. THIS CITE IS 354 ATLANTIC, 545 AT PAGE 554 PENNSYLVANIA IN 1976.

THERE ARE MANY OTHER CASES CITED ON THE SUBJECT AS WELL BUT THOSE ARE THE TW THAT DEAL WITH IT THE MOST.

ON THE HARMLESS ERROR THING --

[INAUDIBLE]

[INAUDIBLE]

THE PHILLIPS CASE, THE PHILLIPS CASE WAS 1995.

[INAUDIBLE]

>> AND I HAVE SOME OTHER CASES AND I THINK MAYBE THEY WOULD BE MORE RECENT BUT THOSE ARE THE TWO THAT DISCUSS IT THE MOST. I WOULD ALSO SAY THE FLORIDA DCA CASES DEAL WITH JUSTICE WELLS' QUESTION ABOUT THE IMPORTANCE OF THE CONTEXT AND THE CONTEXT MUST SHOW THE ABSENCE OF REFLECTIVE THOUGHT.

ON THE HARMLESS ERROR THING, BILLIE FERRIS'S TESTIMONY, HEARSAY TESTIMONY, WAS THE ONLY PIECE OF EVIDENCE IN THIS 89 WITNESS TRIAL THAT COULD NOT PUT DEPARVINE -- IT WAS THE ONLY PIECE OF EVIDENCE THAT PUTS THE CHEVY TRUCK ANYPLACE NORTH OF CENTRAL ST. PETERSBURG WERE DEPARVINE WAS, SO IT IS CRITICAL EVIDENCE AND AS PROOF OF THAT, THE STATE MOVES PRETRIAL TO PERPETUATE BILLIE FERRIS'S TESTIMONY.

[INAUDIBLE]

>> AGAIN NOW WE GET TO THE QUESTION OF WHO IS PARSING HERE. IF THE ENTIRE CONTEXT OF THE STATEMENT WAS I AM FOLLOWING IN THE TRUCK THAT WOULD BE

ADMISSIBLE.

IN THE CONTEXT OF ALL THIS, I'M NOT CONCEDING THAT WOULD HAVE BEEN INADMISSIBLE BUT CERTAINLY THE MAIN COMES FROM THE GUY WHO BROUGHT THE TRUCK.

>> I WANT TO READ THIS IN HIS EIGHTH AND LAST REFERENCE TO IT IN HIS OPENING AND CLOSING ARGUMENTS.

HE LEAD WITH IT, IT IS ABOUT THE ONLY PIECE OF EVIDENCE HE REFERRED TO.

THREE TIMES IN HIS CLOSING ARGUMENTS.

HE USED IT TO CROSS EXAMINE DEPARVINE, HE REPRESENTED THAT THE STATE OF FLORIDA CANNOT GET A FAIR TRIAL WITHOUT THIS.

HE PULLED OUT ALL THE STOPS TO GET THE EVIDENCE TO ADMIT AND THERE'S SOMETHING INHERENTLY WRONG WITH THIS THEY BASICALLY FIGHTING SO HARD AT TRIAL TO GET SOME EVIDENCE AND AND COME BACK ON APPEAL AND SAY, WE DIDN'T NEED THIS ANYWAY AND START RATTLING OFF PIECES OF EVIDENCE OUT OF CONTEXT LIKE PAUL LANIER, WHERE IF I HAD THE TIME, I COULD BASICALLY SHOW HOW COMPLETELY INCREDIBLE AND SELF-CONTRADICTIONARY HE WAS BUT I NEED TO READ THIS, WHICH IS THE LAST THING THE PROSECUTORS SAID IN CLOSING ARGUMENTS.

LADIES AND GENTLEMEN, HE/SHE SENDS UNSPOKEN MESSAGES TO HIS OR HER MOTHER, THE INFANT'S CRY WILL TRIGGER BIOLOGICAL RESPONSES TO THE BREAST-FEEDING MOTHER.

THE MOTHER CAN DETERMINE WHETHER THE CHILD IS HAPPY, IN LOVE OR AFRAID AND UNBEKNOWNST TO KARLA VAN DUSEN SHE IDENTIFIED THE KILLER TO HER MOTHER ON THE TELEPHONE.

HE KNOWS WHERE TO GET THE PAPERWORK DONE.

SHE IDENTIFIED WILLIAM DEPARVINE AND LEFT HIS BLOOD AT THE SCENE WHEN HE WAS IN POSSESSION OF THAT TRUCK.

I WANT TO REFER QUICKLY TO A COUPLE OF PIECES OF EVIDENCE THAT THE STATE ATTORNEYS TALKED ABOUT, THE BLOOD SPOTS ON THE STEERING WHEEL.

IT RAISES THE QUESTION.

IF HE -- DID THE COPS SEE THAT HE HAD CUTS ON HIS HAND WHEN THEY INTERVIEWED HIM?

THE STATE'S THEORY IS HE CUT HIMSELF PRESUMABLY ON THE HAND TO GET THE BLOOD ON THE STEERING WHEEL AND THEY ARE SAYING HE DID IT IN THE COURSE OF CUTTING KARLA OR CUTTING THE SEAT BELT. THEN THE QUESTION BECOMES, AND THIS IS MORE TELLING THAN THE ONE THEY RAISED OF WHY WASN'T THEIR BLOOD ON THE STEERING WHEEL OF THE TRUCK WHICH OF COURSE THERE WAS NO -- BUT WHY WASN'T THERE BLOOD IN THE PURSE THAT SUPPOSEDLY THE KILLER RIFLED?

WHY WASN'T THERE BLOOD IN THE POCKETS THAT WERE TURNED OUT?

[INAUDIBLE]

>> THOSE WERE ALL QUESTIONS FOR THE JURY.

>> ABSOLUTELY THOSE WERE QUESTIONS FROM THE JURY BUT THEY ARE USING IT TO SHOW HARMLESS ERROR.

I'M NOT MAKING A JURY ARGUMENT. I AM SAYING THIS COURT NEEDS TO LOOK AT THE DEVASTATING EFFECT OF THESE EVENTS AND HOW THE --

>> THANK YOU FOR YOUR TIME.

>> WE'LL TAKE THE CASE UNDER ADVISEMENT.