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**Mark Allen Gerald v. State of Florida**

**SC06-761 | SC07-716**

THE NEXT CASE ON THE DOCKET IS  
MARK ALLEN GERALDS V. STATE OF  
FLORIDA.

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>> FOR EXAMPLE, ONE THING THAT  
THE TRIAL COURT NEVER ADDRESSED  
WAS THE FDLE LAB NOTES.

>> IS THIS THE CASE WHERE THE  
TRIAL ATTORNEY IS NOW DEAD?

>> YES, YOUR HONOR.

>> AND ACTUALLY HE WAS -- NO ONE  
HAD A CHANCE TO DEPOSE HIM ON  
WHAT EVIDENCE HE HAD?

>> CORRECT.

>> MY CONCERN IS, AND MAYBE YOU  
WILL FOCUS ON JUST ONE CRITICAL  
ASPECT, IS THE TRIAL JUDGE DID  
MAKE FINDING THAT THIS EVIDENCE  
WAS EITHER MADE AVAILABLE OR IN  
THE POSSESSION OF THE DEFENDANT.  
AND SINCE THERE SEEMS TO BE A  
LOT OF DISCOVERY THAT WAS  
PRODUCED, MY CONCERN IS HOW YOU  
GET OVER YOUR BURDEN OF SHOWING  
IT WASN'T PRODUCED IF THE JUDGE,  
IF THE DATA SAID WE DID PRODUCE  
IT, AND THE JUDGE MADE THAT  
FINDING.

[INAUDIBLE] THAT'S TRUE FOR  
THESE FIVE, BUT NOT FOR THAT, SO  
MAYBE IF YOU WANT TO FOCUS ON  
WHAT YOU THINK IS THE STRONGEST  
CASE THAT WASN'T PRODUCED AND  
THEN GO THROUGH THAT ANALYSIS.

>> SURE.

I MEAN, WE KNOW FOR SURE THAT  
THE FDLE BENCH NOTES WEREN'T  
PRODUCED.

THE TRIAL PROSECUTOR  
SPECIFICALLY TESTIFIED TO THAT.  
THOSE BENCH NOTES WERE IMPORTANT  
BECAUSE THEY GAVE A LOT MORE  
DETAIL ABOUT THE TESTING, FOR  
EXAMPLE, ON THE HAIR ANALYSIS.  
THERE WAS HAIR FOUND IN THE

VICTIM'S HAND, AND IT WAS TESTED.

IT WAS FOUND NOT TO BE MR. GERALDS.

THERE WAS ALSO HAIR FOUND IN THE OTHER CAR THAT WASN'T TESTED TO BE MR. GERALDS AND AROUND THE HOUSE, BUT UNLESS YOU GO TO THE NOTES, YOU DON'T SEE WHAT THE TESTING WAS DONE OF THE VICTIM'S.

BECAUSE IF YOU ACTUALLY READ THE NOTES, YOU CAN SEE THAT THE DESCRIPTIONS WOULD RULE OUT THE VICTIM AS WELL AS MR. GERALDS, SO THAT WOULD BE --

>> THIS IS THE HAND NOTES FROM MR. -- THE DETECTIVE -- THE INVESTIGATOR?

>> NO, THIS WAS LAB NOTES, SO ANALYST SMITH WHO DID THE HAIR ANALYSIS --

>> THIS IS THE EIGHT-PAGE REPORT, THE EIGHT-PAGE CRIME LAB REPORT FROM APRIL?

>> WELL, NO.

>> I'M TRYING TO FIGURE OUT WHICH OF THESE YOU'RE TALKING ABOUT SINCE THERE'S SO MANY OF THEM.

>> SURE.

NUMBER 34 WAS ANALYST SMITH'S HANDWRITTEN NOTES REGARDING HAIR ANALYSIS.

NUMBER 32 WAS ZIEGLER'S HANDWRITTEN NOTES REGARDING THE BLOOD ANALYSIS.

NUMBER 31 WAS ANALYST HOAG'S HANDWRITTEN NOTES REGARDING THE FINGERPRINT AND PALM PRINT AS WELL AS THE SHOE TRACK ANALYSIS.

SO THOSE ARE THE THREE DOCUMENTS THAT WE KNOW FOR SURE WERE NOT DISCLOSED TO TRIAL COUNSEL.

AND EACH ONE OF THOSE IN THE BRIEF, YOU KNOW, THERE'S

ARGUMENT AS TO WHAT'S IMPORTANT IN THOSE NOTES, BUT CERTAINLY

THERE WAS INFORMATION IN THOSE NOTES THAT WOULD HAVE BEEN EXCULPATORY TO MR. GERALDS, AND THOSE SHOULD HAVE BEEN TURNED OVER.

AND THE EXCUSE THAT, WELL, I

DIDN'T HAVE THEM, THEREFORE, I  
COULDN'T DISCLOSE THEM IS JUST  
CONTRARY TO THE LAW.

SO THOSE THREE WE KNOW.

OTHER NOTES THAT ARE -- THERE  
WERE TWO REPORTS THAT,  
OBVIOUSLY, ARE CRITICAL.

>> LET'S STICK TO THIS, AND  
LET'S ASSUME THEY SHOULD HAVE  
BEEN PRODUCED, AND THEY'RE  
EXCULPATORY, THAT IS THEY WOULD  
BE HELPFUL.

YOU HAVE TO, OF COURSE,  
ESTABLISH THE PREJUDICE OF  
UNDERMINING OR CONFIDENCE IN THE  
OUTCOMES.

SO TAKE, YOU KNOW, ONE OR TWO OR  
THREE, AND I UNDERSTAND, YOU  
KNOW, YOU CAN'T LOOK AT EACH  
THING IN A VACUUM, BUT I'M  
HAVING -- I MEAN, BECAUSE  
THERE'S SO MUCH HERE TO TRY TO  
EXPLAIN WHAT IT IS THAT COULD  
HAVE BEEN DONE WITH THIS  
INFORMATION AND HOW IT WOULD  
CHANGE OR UNDERMINE THE  
CONFIDENCE IN THE OUTCOME OF THE  
[INAUDIBLE]

>> SURE.

I MEAN, AT THE TRIAL NO EVIDENCE  
WAS PRESENTED TO THE JURY  
REGARDING ANY OF THIS ANALYSIS,  
THE HAIR ANALYSIS, THE  
FINGERPRINT ANALYSIS, AND THERE  
WAS -- AND THE BLOOD ANALYSIS.

SO THE JURY NEVER HEARD THAT  
THERE WAS BLOOD FOUND AT THE  
SCENE THAT DIDN'T MATCH  
MR. GERALDS TO THE VICTIM.

THE JURY NEVER HEARD THERE WERE  
FINGERPRINTS FOUND AT THE SCENE  
THAT DON'T MATCH MR. GERALDS,  
THE VICTIM, THE VICTIM'S FAMILY  
MEMBERS, AND MANY PEOPLE WERE  
SUBMITTED IN TERMS OF ANALYSIS  
THAT DIDN'T MATCH THEM.

WE HAVE FINGERPRINTS NEAR THE  
VICTIM, ON THE JEWELRY BOX.

ONE WAS OF SUCH GOOD QUALITY  
THAT THE EXAMINER SUBMITTED IT  
TO THE APHID SYSTEM, AND WE  
NEVER KNEW WHAT HAPPENED.

HE SAID THAT WOULD BE FOLLOWED  
UP IN A REPORT.

THERE'S NO REPORT TELLING US WHAT HAPPENED WITH THAT PRINT. THE PICTURE OF THIS CASE COULD HAVE BEEN ENTIRELY DIFFERENT. THE JURY DID NOT KNOW THERE WAS ALL OF THIS EVIDENCE AT THE SCENE THAT COULD NOT BE LINKED TO MR. GERALDS AND WAS NOT, YOU KNOW, CONSISTENT WITH THE VICTIM OR ANYONE WHO THEY THOUGHT WOULD HAVE HAD ACCESS TO THE HOUSE. THAT PUTS SOMEONE ELSE IN THERE. I MEAN, THAT CHANGES THE CASE ENTIRELY.

IT CHANGES THE THEORY OF THE CASE WHICH WAS THAT HE PLANNED THIS BURGLARY OR ROBBERY, HE WENT THERE, HE COMMITTED THE MURDER, AND HE DISPOSED OF EVIDENCE.

THAT WAS A THEORY, AND IT COMPLETELY CHANGES THAT.

>> WHAT WAS PUT ON, I MEAN, AGAIN, THEY MUST HAVE RULED OUT THE OTHER FINGERPRINTS FOR A REASON.

I MEAN, UNLESS, AGAIN, WE'VE GOT A CONSPIRACY TO FRAME MR. GERALDS HERE.

SO WHAT IS IN THE EVIDENTIARY HEARING WHAT WAS PUT ON OR ANYTHING -- DID YOU QUESTION THE STATE ABOUT WHAT THE SIGNIFICANCE WAS OF THE BLOOD THAT WASN'T LINKED TO MR. GERALDS OR THE FINGERPRINTS THAT WEREN'T LINKED TO HIM OR THE -- SO WHAT WAS PUT ON REGARDING AN EXPLANATION OTHER THAN THERE HAD TO BE SOMEONE ELSE THAT COMMITTED THIS MURDER OR COMMITTED IT WITH HIM?

>> I MEAN, THE STATE'S POSITION HAS ALWAYS BEEN THAT MR. GERALDS COMMITTED THE MURDER, AND EVEN IN THE BRIEF THEY SAY THAT WAS THE RIGHT GUY.

AND SO, THEREFORE, I THINK WHEN THEY WERE TALKING ABOUT SOME OF THE SUPPLEMENTAL INFORMATION THAT WE HAD BROUGHT FORWARD --

>> WELL, I GUESS WHAT I'M SAYING, YOU KNOW, IF YOU TOOK ANYONE'S HOUSE, THERE'S GOING TO

BE AT ANY ONE TIME OTHER  
FINGERPRINTS IN THE HOUSE.  
I MEAN, PEOPLE COME IN.  
I MEAN, THAT ALONE DOESN'T SAY  
THOSE FINGERPRINTS WERE, MUST  
HAVE BEEN DONE BY THE PERSON WHO  
MURDERED THE VICTIM.  
SO THAT'S WHAT I'M TRYING TO GET  
AT.

>> IF I'M CORRECT, THERE'S A  
PALM PRINT IN BLOOD NEAR THE  
VICTIM, SO OBVIOUSLY WE KNOW  
THAT THAT PRINT IS MADE DURING  
THIS STRUGGLE.  
SO, AND THERE'S FINGERPRINT ON  
THE JEWELRY BOX WHICH WE KNOW  
WAS RIFLED THROUGH THAT DOESN'T  
MATCH ANY OF THE FAMILY MEMBERS,  
AND IT DOESN'T MATCH  
MR. GERALDS.

I MEAN, THIS IS EVIDENCE THAT A  
JURY -- THIS IS EVIDENCE THAT  
SOMEONE ELSE DID THIS CRIME, AND  
THEY NEVER HEARD ANY OF THIS.  
THIS COURT ON DIRECT APPEAL SAID  
THIS IS AN ENTIRELY  
CIRCUMSTANTIAL CASE, AND WHILE  
THERE'S EVIDENCE YOU COULD SAY  
IMPLICATES MR. GERALDS, THERE'S  
THIS FORENSIC EVIDENCE WHICH IS  
INCREDIBLY STRONG EVIDENCE, THAT  
EXONERATES HIM AND SAYS, YOU  
KNOW, SOMEONE ELSE WAS ACTUALLY  
AT THE HOUSE AND AT THE CRIME  
SCENE AND IN THE CAR.  
SO THOSE NOTES WERE DEFINITELY  
SUPPRESSED, THERE'S NO DOUBT  
ABOUT IT.

THIS TRIAL COURT NEVER EVEN  
ADDRESSED THOSE NOTES IN HIS  
ORDER.

HE DIDN'T ADDRESS THE  
SUPPRESSION, AND HE DIDN'T  
ADDRESS THE PREJUDICE.  
NOW, THERE WAS SOME --

>> [INAUDIBLE]

>> I CAN'T RECALL, YOUR HONOR,  
I'M SORRY.

I DON'T REMEMBER IF I RAISED  
THAT OR NOT.

>> THE RULING WAS THERE

[INAUDIBLE]

>> THAT'S CORRECT.

HE NEVER, HE NEVER ADDRESSED  
THEM IN HIS ORDER DENYING  
RELIEF.

IS THAT A PROBLEM?

>> [INAUDIBLE]

>> I DON'T THINK THAT'S A  
PROBLEM.

I MEAN, WE PRESENTED IT, WE  
PRESENTED TO HIM IN THE CLOSING  
ARGUMENT AS PART OF THE CLAIM,  
WE PRESENTED THE EVIDENCE, AND,  
YOU KNOW, I THINK IT'S HIS  
OBLIGATION TO RULE ON WHAT WE'VE  
PRESENTED.

>> [INAUDIBLE]

>> I DID FILE A MOTION FOR  
REHEARING.

I JUST DON'T RECALL RIGHT NOW --

>> [INAUDIBLE]

>> I JUST DON'T REMEMBER IF I  
BROUGHT THAT TO THE TRIAL  
COURT'S ATTENTION.

>> [INAUDIBLE]

>> I DON'T THINK THAT'S A  
PROBLEM.

I MEAN, I THINK THAT THE PROBLEM  
IS THAT, YOU KNOW, WE TOLD HIM  
THIS IS OUR CLAIM, WE GAVE THEM  
THE NOTICE OF WHAT WE ARE  
PUTTING ON, WE PUT IT ON AND  
THEN WE CLOSED.

AND SO, NO, I DON'T THINK WE DID  
ANYTHING WRONG IN THIS CASE.

I THINK THAT IT'S BEFORE THE  
COURT SORT OF DE NOVO BECAUSE  
THERE'S NOTHING, THERE'S NO  
FACT-FINDING, THERE'S NO  
ANALYSIS OF WHAT THAT EVIDENCE  
WOULD HAVE MEANT FOR THE TRIAL.

>> THIS IS PART OF, PART OF  
CLAIM WHAT?

DO YOU KNOW?

>> CLAIM, IN THE 3850?

OR IN THE BRIEF?

>> NO, IN THE 3850 LOOKING AT  
THE JUDGE'S ORDER, CLAIM 6?

>> YES, CLAIM 6 WAS OUR BRADY  
ISSUE.

RIGHT.

>> OKAY.

SO WHAT YOU'RE REALLY SAYING IS  
HE DENIED THAT CLAIM BUT DIDN'T

SPECIFICALLY REFER TO 31, 32,  
34?

>> RIGHT.

BECAUSE HE WENT THROUGH SOME OF  
THE OTHER EXHIBITS  
INDIVIDUALLY --

>> THE JUDGE DOESN'T HAVE, I  
MEAN, WE PREFER IT, BUT THEY  
DON'T HAVE AN OBLIGATION TO  
REFUTE EVERYTHING THAT YOU BRING  
UP IF HE'S DENIED THAT CLAIM.  
I MEAN, I'M JUST TRYING TO  
FIGURE OUT WHAT THE POSTURE IS.

>> RIGHT.

I THINK IT'S ENTIRELY PROPER OF  
YOU TO BE BEFORE THIS COURT  
WHETHER OR NOT IT WAS RAISED IN  
A HEARING.

HE DIDN'T RULE ON THAT ISSUE,  
AND, THEREFORE, THERE'S NOTHING  
BEFORE THE COURT IN TERMS OF  
DEFERENCE TO THE LOWER COURT'S  
ORDER.

THERE ARE SOME OTHER ISSUES IN  
TERMS OF THE REPORTS THAT I  
THINK WE ARE CLAIMING WERE  
SUPPRESSED, BUT IF THEY WEREN'T  
SUPPRESSED, WE'RE SAYING TRIAL  
COUNSEL WAS INEFFECTIVE --

>> AS YOU READ BRIEFS AND YOU'RE  
TRYING TO DISSECT AN ARGUMENT,  
IT BECOMES VERY PROBLEMATIC WHEN  
WE'RE NOT SURE WHAT YOU'RE  
SAYING.

FOR EXAMPLE, DID -- WAS IT  
DISCLOSED BECAUSE OF THE PERSON  
THAT APPEARS WAS LISTED AS A  
WITNESS, THIS PERSON THAT  
SUPPOSEDLY SOLD THE HERRINGBONE,  
A HERRINGBONE NECKLACE TO THE  
DEFENDANT, DID THAT PERSON  
APPEAR ON A PRETRIAL WITNESS  
LIST OR NOT?

>> YES, HE APPEARED ON A  
PRETRIAL WITNESS LIST.

>> OKAY.

SO CERTAINLY THE NAME OF THE  
WITNESS IS DISCLOSED IN THAT  
CASE.

>> YES.

>> AND IS THERE SOME CLAIMANT --  
THIS WAS DONE UNDER THE TABLE  
ALLEGEDLY OR SOMETHING?

THERE'S NO DOCUMENTS THAT GO TO

THIS.

>> NO, THERE IS.

>> THERE'S DOCUMENTS.

OKAY, LET'S GO TO THE NEXT ONE.

>> AS TO THAT SPECIFIC ISSUE  
WITH THE HERRINGBONE CHAIN,  
THERE'S A COUPLE THINGS.

DEFENSE EXHIBIT 7 WAS A  
HANDWRITTEN NOTE THAT WE  
RECEIVED FROM THE POLICE  
DEPARTMENT, AND WE BELIEVE IT TO  
BE THE LEAD INVESTIGATOR, HIS  
HANDWRITTEN NOTES, BECAUSE IT  
WAS IN HIS FILE SAYING HIS  
HANDWRITTEN NOTES.

IT WAS AN INTERVIEW WITH TONY  
SWOBODA CONFIRMING THAT HE DID,  
IN FACT, SELL MR. GERALDS A  
HERRINGBONE NECKLACE UNDER THE  
TABLE A FEW MONTHS PRIOR TO THE  
CRIMES.

AND NOW TRIAL COUNSEL KNEW ABOUT  
SWOBODA BECAUSE HIS CLIENT TOLD  
HIM, I GOT THE NECKLACE FROM  
SWOBODA, AND THAT'S WHAT HE WENT  
AND PAWNED.

>> [INAUDIBLE]

>> SO --

>> THAT'S THE INFORMATION.

>> RIGHT.

THE SPECIFIC PART OF HIM GOING  
TO LAW ENFORCEMENT ISN'T KNOWN.

>> AND HOW ABOUT ZIEGLER?

I'M NOT SURE I REALLY HAVE A  
FULL APPRECIATION FOR YOUR  
ARGUMENT IN THAT BECAUSE SOMEONE  
ELSE DID TEST SHOES, THEY DID  
FIND OR DISCLOSE EVIDENCE OF  
BLOOD, AND THEN THERE'S A SECOND  
ONE, AND THAT WITNESS ALSO WAS  
LISTED.

SO WHAT'S THE STORY WITH THAT?

>> WELL, ON ZIEGLER SHE  
TESTED -- SHE WAS A SEROLOGIST,  
AND SHE GOT THE SHOES AFTER THEY  
WERE TESTED AT THE SCENE, AND  
THEY TESTED POSITIVELY FOR  
PRESUMPTIVE BLOOD.

>> RIGHT.

>> WHEN ZIEGLER GETS THEM, SHE  
TESTS THEM IN THE LAB AND SAYS  
THEY DON'T -- THERE'S NO BLOOD  
FROM MY TESTING.

SO WHAT --

>> AND WAS THERE BLOODY SHOE PRINTS AROUND THROUGH THE HOUSE? BECAUSE THERE WERE SOME KIND OF PRINTS, RIGHT?

>> YEAH, SHOE TRACKS THROUGH THE HOUSE, BLOODY SHOE TRACKS.

>> RIGHT.

>> BUT OUR ARGUMENT IS, YOU KNOW, THEY CALLED ZIEGLER AT TRIAL, BUT THEY DON'T PUT THIS ON.

THEY DON'T PUT ANYTHING ELSE ON ABOUT THE SHOES, THEY DON'T PUT ANYTHING ELSE ON ABOUT BLOOD AT THE SCENE THAT DOESN'T MATCH MR. GERALDS OR THE VICTIM, AND DEFENSE COUNSEL DOESN'T ASK. SO, YOU KNOW, IT JUST SEEMS MISLEADING BECAUSE THE JURY HEARS INFORMATION THAT THERE'S BLOOD ON HIS SHOES OR PRESUMPTIVE BLOOD, BUT THEY DON'T GET ANY INFORMATION ABOUT WHAT THAT MEANS, THAT THAT MEANS THAT IT COULD HAVE BEEN ANY NUMBER OF THINGS ON HIS SHOE. IT COULD HAVE BEEN PLANT MATERIAL, IT COULD HAVE BEEN SOME SORT OF PAINT, IT COULD HAVE BEEN ANYTHING.

AND WHEN IT WAS RETESTED AT THE LAB UNDER THE CIRCUMSTANCES WHICH STUART JAMES SAID SHOULD HAVE BEEN TESTED ORIGINALLY, THERE'S NO BLOOD.

SO, AND PART OF OUR, YOU KNOW, BRADY ANALYSIS IS WE'RE SAYING THAT THAT REPORT WAS SUPPRESSED. NOW, THE STATE ARGUES THAT IT WOULD HAVE BEEN GIVEN OVER BECAUSE THE NAME WAS GIVEN OVER, BUT ON THEIR LIST OF THINGS THAT THEY TURNED OVER, THAT REPORT DOESN'T SHOW UP.

AND NEITHER DOES LARRY SMITH'S REPORT FROM JANUARY 25TH, FOUR DAYS BEFORE TRIAL, HIS REPORT DOESN'T SHOW UP EITHER.

SO THOSE ARE THE TWO FDLE REPORTS THAT WE'RE SAYING --

>> REFRESH ME ON THE, REFRESH ME ON THE FDLE.

>> THE REPORT, THE HAIR ANALYSIS OR --

>> NO, NO, NO, THE ONE YOU JUST MENTIONED.

>> LARRY SMITH?

>> RIGHT.

>> OKAY.

NOW, THE STATE SUBMITTED THESE VERY DETAILED LISTS OF THIS IS WHAT WE'RE TURNING OVER, BUT NEITHER SHIRLEY ZIEGLER'S REPORT --

>> RIGHT, I UNDERSTAND THAT.

>> -- DOESN'T MATCH, AND NEITHER WAS LARRY SMITH'S REPORT FROM JANUARY THAT SHOWED THAT THERE WAS HAIR IN THE VICTIM'S HANDS, AROUND THE BODY, IN THE CAR THAT DOESN'T MATCH MR. GERALDS, DOESN'T MATCH -- WELL, THE NOTES, YOU'D NEED THE NOTES TO GET TO THAT PART.

SO THOSE ARE THE TWO REPORTS. WE'RE NOT -- ALL THE OTHER REPORTS WE'RE CONCEDING THOSE WERE TURNED OVER.

THEY'RE LISTED ON THE SHEETS, BUT THOSE ARE THE TWO REPORTS. OBVIOUSLY, I THINK THOSE ARE TWO OF THE MOST IMPORTANT REPORTS.

>> BECAUSE THERE ARE SO MANY OF THESE, WOULD YOU JUST SPECIFICALLY LIST -- TELL ME THOSE TWO AGAIN --

>> SURE.

>> -- THAT YOU SAY WERE NOT TURNED OVER TO THE DEFENSE.

>> AS TO -- OKAY, AS TO THE FDLE REPORTS, THE TWO THAT WE'RE SAYING WERE NOT TURNED OVER WERE NUMBER 36 AND NUMBER 20 THAT WERE INTRODUCED AT THE EVIDENTIARY HEARING.

AND THEN THE NOTES, THE FDLE NOTES, ANY OF THE NOTES --

>> FDLE NOTES?

>> 31, 32 AND 34.

>> RIGHT.

THE JIMMERSON NOTES AT THE FIRST PART OF THE EVIDENTIARY HEARING THE STATE ATTORNEY WHO PROSECUTED THE CASE TESTIFIED HE DIDN'T HAVE NOTES, HE DIDN'T TURN THEM OVER, SO THOSE WOULD BE NUMBERS 1, 7, 13, 11, AND 16. NOW, AT THE SECOND PART OF THE

EVIDENTIARY HEARING, HE WENT BACK AND SAID HE FOUND SOME DOCUMENT, THAT HE BELIEVED NUMBER 1 AND 16 WERE TURNED OVER, BUT HE DIDN'T HAVE ANY OTHER EXPLANATION FOR ANY OF THOSE OTHER ONES, SO WE'RE MAINTAINING THAT ALL OF THOSE WERE SUPPRESSED.

IF 1 AND 16 WERE TURNED OVER, THEN I THINK IT'S SIMPLY, YOU KNOW, IT TURNS INTO SORT OF AN INEFFECTIVENESS CLAIM.

I SEE MY TIME IS RUNNING SHORT, SO I'D LIKE TO RESERVE THE REST FOR REBUTTAL.

>> ALL RIGHT.

THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS MEREDITH CARBULA, AND I REPRESENT THE APPELLEE IN THIS CASE.

IF YOU WOULD INDULGE ME FOR JUST A MOMENT, I'D LIKE TO TALK ABOUT, FIRST, EXHIBIT 7 WHICH ACCORDING TO MR. GERALDS IS THE RECORD OF A NOTE BY AN INVESTIGATOR WHERE HE INTERVIEWS TONY SWOBODA, AND TONY SWOBODA TOLD HIM HE --

>> NUMBER 7?

>> DEFENSE EXHIBIT 7.

SHE SAYS THAT A INVESTIGATOR TOOK, INTERVIEWED MR. SWOBODA, APPARENTLY, BY PHONE AND DISCOVERED HE SOLD HIM A HERRINGBONE CHAIN.

PLEASE LOOK AT EXHIBIT 7, IT SAYS A THIN, GOLD CHAIN.

THE FIRST TIME MR. SWOBODA SAYS ANYTHING ABOUT "HERRINGBONE" IS AT THE EVIDENTIARY HEARING.

HE DOESN'T SAY IT'S SIMILAR, HE CAN'T REMEMBER ANYTHING ABOUT IT --

>> WAS IT SHOWN TO HIM OR PHOTOGRAPHS?

>> I DON'T KNOW THAT, BUT HE SAID HE DIDN'T REMEMBER ANYTHING DISTINCTIVE ABOUT IT.

SO THE FIRST TIME SWOBODA SAYS SOMETHING ABOUT HERRINGBONE IS AT THE EVIDENTIARY HEARING, AND

I THINK ONE OF THE PROBLEMS, OF COURSE, IN THIS CASE IS WHEN YOU SAY THAT NOTES SAY SOMETHING BUT YOU DON'T CALL THE PERSON WHO MADE THEM TO INTERPRET THEM, WHAT MR. GERALDS WANTS YOU TO DO IS INTERPRET THOSE NOTES THE WAY HE WANTS YOU TO.

>> HOW ABOUT THE BLOOD ANALYSIS?

>> BLOOD ANALYSIS.

OKAY, FIRST OF ALL --

>> ON THE SHOES.

>> RIGHT.

LAURA ROUSSEAU TESTIFIED AT TRIAL THAT PRESUMPTIVE TESTS ON THE, ON THE LEFT SHOE, THE LEFT NIKE RECOVERED FROM MR. GERALDS' SHOE SHOWED PRESUMPTIVE ON TWO TESTS, LUMINOL AND ANOTHER TEST WHICH I CAN'T PRONOUNCE.

SHOW PRESUMPTIVE.

IT WAS NOT VISIBLE TO THE EYE.

WHEN SHIRLEY ZIEGLER TESTED IT, AND THAT'S DEFENSE EXHIBIT 20, THERE WAS NO CHEMICAL, THERE WAS NO CHEMICAL, THERE WAS NO BLOOD DETECTED.

NOW, STUART JAMES AT THE EVIDENTIARY HEARING TESTIFIED THAT PRESUMPTIVE TESTING WILL SOMETIMES DESTROY A SAMPLE, SO YOU CHIP SOME OFF TO PRESERVE IT AND THEN DO THE PRESUMPTIVE TEST, AND IT WASN'T VISIBLE TO LAURA ROUSSEAU, SO SHE DID THE LUMINOL TESTING AND THE OTHER TESTING THAT STARTS WITH A P AND DID THE TEST.

BUT STUART JAMES TESTIFIED A PRESUMPTIVE TEST CAN DESTROY A SAMPLE.

SO THE FACT THAT SHIRLEY ZIEGLER SAID THERE WAS NO CHEMICAL, YOU KNOW, SHE WASN'T ABLE TO DETECT BLOOD DOES NOT MEAN LAURA'S TESTIMONY WAS UNTRUTHFUL.

NOW, AS FAR AS THIS DECEMBER 20TH REPORT --

>> IS THIS NUMBER 20 THAT SHE WAS REFERRING TO?

>> YES, MA'AM.

YES, JUSTICE QUINCE.

>> I'M SORRY.

I'M TRYING TO KEEP THESE

STRAIGHT BECAUSE THERE'S SO MANY OF THEM.

>> WELL, IF YOU'LL LET ME, WHAT I'LL DO IS GO BLOOD, HAIR, AND INsofar AS I HAVE NEVER SEEN ANYTHING IN THE RECORD, THERE IS A BLOODY PALM PRINT THAT WAS NOT IDENTIFIED -- I DON'T SEE THAT IN THE RECORD, AND IF IT IS, THEN I'LL FIND IT, BUT THERE IS NOTHING IN THE RECORD ABOUT -- THAT I KNOW OF -- THERE'S A BLOODY PALM PRINT THAT DOES NOT MATCH GERALDS.

>> [INAUDIBLE]

>> THERE WAS AN UNIDENTIFIED FINGERPRINT ON THE JEWELRY BOX, BUT I DON'T KNOW WHETHER THAT WAS THE PERSON WHO SOLD IT TO HER, FROM SOMEBODY WHO LOOKED AT IT AT THE STORE BEFORE, I DON'T KNOW.

>> WAS IT A BLOODY PRINT?

>> NO.

>> THE ONE ON THE JEWELRY BOX, NOT THE BLOODY PRINT, LET ME JUST GO OVER THIS THOUGH.

DO YOU AGREE AS TO THE FINGERPRINT ON THE JEWELRY BOX THAT'S UNIDENTIFIED THAT THE JURY DID NOT KNOW ABOUT THAT?

>> I DON'T -- THE -- I DON'T RECALL ANYWHERE IN THE RECORD WHERE TRIAL COUNSEL BROUGHT OUT THAT SPECIFICALLY.

WHAT HE DID POINT TO WAS A LACK OF EVIDENCE.

>> WHAT WE'RE DEALING WITH HERE IS THAT THE ALLEGATION THAT TRIAL COUNSEL DIDN'T KNOW ABOUT THE UNIDENTIFIED PRINT BECAUSE THE FDLE BENCH NOTES ABOUT THE FINGERPRINT ON THE JEWELRY BOX WAS NOT DISCLOSED.

>> THAT'S NOT TRUE.

LAURA ROUSSEAU, THERE'S LAB REPORTS THAT TALK ABOUT THE FINGERPRINT THAT IDENTIFIES A PRINT TAKEN FROM THE JEWELRY BOX --

>> DID THE JUDGE MAKE A FINDING AS TO 31, 32 AND 34?

THAT'S WHAT MS. McDERMOTT SAID IS NOT CONTROVERTED, THAT THOSE

FDLE BENCH NOTES WERE NOT PRODUCED.

IS THERE A CONTROVERSY ABOUT THAT?

>> HE DID NOT RULE -- HE MADE NO SPECIFIC RULING ON 34 AND 3 -- I THINK THOSE WERE WHAT WAS RAISED IN THE BRIEF, AND ON THE REHEARING SHE DID NOT POINT OUT TO THE TRIAL COURT THAT HE HAD NEGLECTED TO RULE, BUT I THINK WHAT'S IMPORTANT IS --

>> I GUESS THERE'S TWO THINGS IT SEEMS RIGHT NOW TO BE OF CONCERN AT LEAST TO ME AS RAISED BY MS. McDERMOTT BECAUSE I WOULD SAY, AND THIS IS A PROBLEM, IT'S HARD TO TAKE THE THREAD OF EACH AND EVERY THING.

LET'S JUST SAY WITH THE PRINT ON THE JEWELRY BOX DID -- IT SHOULD BE EITHER, YES, THE JURY KNEW ABOUT IT OR, NO, THEY DIDN'T. NOT WHETHER THE DEFENSE LAWYER KNEW ABOUT IT, BUT DID THE JURY KNOW ABOUT IT.

>> NO.

>> ALL RIGHT.

NOW, IT IS TRUE THAT THIS IS, THAT FORENSIC EVIDENCE WAS CRITICAL IN THIS CASE, SO WHY WOULDN'T -- JUST TAKING THAT KNOWING THERE WAS AN UNIDENTIFIED PRINT THAT WAS OF GOOD QUALITY ON THE JEWELRY BOX THAT IS NOT A FAMILY MEMBER, WOULD YOU AGREE THAT'S EXCULPATORY?

>> NO.

>> NOT EXCULPATORY.

>> OF COURSE IT'S NOT.

IT'S EXCULPATORY IF THE KILLER PUT IT THERE.

AND ONE THING I THINK'S --

>> YOU DON'T THINK IT EVEN MEETS BRADY THAT THE STATE DOESN'T HAVE AN OBLIGATION WHEN THERE'S FORENSIC EVIDENCE GATHERS TO TURN OVER -- AND THAT'S WHAT WE HAVE TO FERRET OUT.

ALL OF THE RESULTS OF THE FORENSIC TESTING AND WHAT WAS FOUND AT THE SCENE.

>> IT WAS.

IT WAS REVEALED IN A LAB REPORT THAT WAS DISCLOSED TO DEFENSE COUNSEL.

>> WELL, THEN WE GO BACK AROUND IN A CIRCLE.

TELL ME AGAIN WHAT YOU'RE SAYING BECAUSE IT WAS VERY CLEAR THAT MS. McDERMOTT SAID THERE WAS AN UNIDENTIFIED BLOODY PRINT, AND YOU'RE SAYING THERE'S NO SUCH EVIDENCE IN THIS RECORD THAT THERE WAS THAT TYPE OF FORENSIC EVIDENCE EITHER DISCLOSED OR NOT DISCLOSED.

>> I DID NOT SEE ANYWHERE IN THE RECORD WHERE THERE WAS A BLOODY PALM PRINT FOUND NEXT TO THE BODY THAT WAS UNIDENTIFIED.

>> AND YOU WOULD AGREE THAT SOMETHING LIKE THAT WOULD BE SOMETHING THAT EITHER -- SO IT'S NOT ARGUED IN THE CLOSING ARGUMENT, THE JUDGE, THIS BLOODY PRINT WAS NOT TURNED OVER AS CRITICAL FORENSIC EVIDENCE?

>> I DON'T RECALL ANY ISSUE REGARDING A BLOODY PALM PRINT. NOW, THERE WERE PALM PRINTS AND FINGERPRINTS FOUND IN THE HOUSE THAT WERE TESTED AGAINST NUMEROUS PEOPLE, AND THEY, AND THERE WERE SOME UNIDENTIFIED PRINTS IN THE HOUSE.

BUT INsofar AS A BLOODY PALM PRINT NEXT TO THE BODY, I DON'T KNOW WHERE THAT IS IN THE RECORD.

I DIDN'T SEE THAT IN THE RECORD. WHAT I DO KNOW IS THAT THE LAB REPORTS WERE TURNED OVER.

JOE GRAMMAR, THE PROSECUTOR, TESTIFIED HE TURNED OVER EVERY LAB REPORT THAT HE GOT.

>> IS THERE A DIFFERENCE BETWEEN LAB REPORTS AND BENCH NOTES?

>> WELL, I'D LIKE TO SAY, FIRST OF ALL, YES.

NOW, IF YOU LOOK AT SHIRLEY ZIEGLER'S BENCH NOTES AND THE REPORT, I DON'T SEE THERE'S ANYTHING DIFFERENT, AND THE REPORT WAS DEFINITELY DISCLOSED.

NUMBER ONE, MR. GRAMMAR TESTIFIED AT THE EVIDENTIARY

HEARING HE KNOWS IT WAS  
DISCLOSED.

NUMBER TWO, DURING THE ORIGINAL  
TRIAL, TRIAL COUNSEL BOB ADAMS  
ASKED SHIRLEY ZIEGLER, WHAT IS  
THE DATE OF YOUR REPORT?

AND SHE SAID, WELL, I DID TWO.

APRIL 3RD -- AND THAT'S THE ONE  
AT ISSUE -- APRIL 3, 1989, AND A  
FOLLOW UP ON APRIL 16TH.

AND HE IS SEGWAYING INTO ASKING,  
WELL, WHY WASN'T DNA DONE?  
BECAUSE I REQUESTED IT TO BE  
DONE.

>> I JUST WANT TO STOP YOU FOR A  
MOMENT BECAUSE I ASKED  
MS. McDERMOTT SPECIFICALLY IF  
WE WERE TALKING ABOUT THE REPORT  
FROM APRIL 3RD --

>> THAT'S IT.

>> SHE SAID THAT WAS NOT THE  
REPORT.

>> THAT'S IT.

THAT'S THE ONE SHE'S COMPLAINING  
ABOUT BECAUSE THAT'S THE ONE  
THAT TALKS ABOUT THE BLOOD ON  
THE HANDKERCHIEF AND THE FACT  
THAT NO BLOOD WAS FOUND ON THE  
SNEAKER.

THAT'S DEFENSE EXHIBIT 20, APRIL  
3, 1989, AND TRIAL COUNSEL ASKED  
HER, WHAT'S THE DATE OF YOUR  
REPORT?

>> BUT I THOUGHT SHE WAS TALKING  
ABOUT SOME OTHER REPORT THAT  
DEALS WITH FINGERPRINTS.

>> WELL, SHE WAS.

THERE'S HAIR REPORT, FINGER  
REPORT, BLOOD REPORT.

THE FINGERPRINT REPORT WAS  
DISCLOSED.

>> AND THAT --

>> THE BLOOD REPORT WAS  
DISCLOSED.

>> [INAUDIBLE] THE FINGERPRINT  
REPORT.

AND DO WE HAVE A DATE FOR IT?  
BECAUSE, QUITE FRANKLY, THIS IS  
REALLY JUST CONFUSING BECAUSE  
THERE'S SO MANY OF THESE  
REPORTS, AND SOME TALK ABOUT  
THIS AND SOME -- I'M JUST, I'M  
HAVING A HARD TIME FOLLOWING.

>> I UNDERSTAND.

>> HER ARGUMENT, THEN YOUR ARGUMENT IS ABOUT THE SAME PIECES OF EVIDENCE.

>> WELL, AS I SAY, I WOULD BE VERY HAPPY TO GO THROUGH HAIR, BLOOD, AND PRINTS, BUT THE PRINT REPORT I DON'T RECALL RIGHT THIS MOMENT WHO DID THE PRINT REPORT. LARRY SMITH DID THE HAIR REPORT, SHIRLEY ZIEGLER DID THE BLOOD REPORT, I CAN'T RECALL OFF THE TOP OF MY HEAD WHO DID THE PRINT REPORT, BUT I CAN SAY EVERY LAB REPORT ACCORDING TO JOE GRAMMAR WAS DISCLOSED, AND WE KNOW THAT SOME OF THOSE LAB REPORTS SPECIFICALLY BECAUSE HE PROVIDED THAT IN DISCOVERY, BUT WE ALSO KNOW APART FROM MR., MR. ADAMS AT ORIGINAL TRIAL, AGAIN, HE ASKED SHIRLEY ZIEGLER WHAT WAS THE DATE OF HER REPORT. SHE SAYS APRIL 3, 1989, AND HE DOESN'T CLAIM THAT HE DIDN'T GET THIS REPORT.

NOW, ONE MIGHT SAY, WELL, SILENCE IS SORT OF NEUTRAL. BUT IF YOU LOOK AT HIS CROSS-EXAMINATION OF LAURA ROUSSEAU BEFORE THAT, HE CLAIMS SOMETHING HAS BEEN WITHHELD FROM HIM, AND THAT'S HER NOTES.

AND HE HOLLERS ABOUT IT A LOT. I THINK THERE'S SOME EVIDENCE BESIDES JOE GRAMMAR SAYING HE GAVE IT TO HER, BESIDES THE FACT THAT MR. ADAMS DIDN'T SAY ANYTHING WHEN HE, WHEN SHE DISCLOSED THE DATE OF THE REPORT AND THE FACT THAT HE DID THAT TO ANOTHER WITNESS.

HE CLAIMED DISCOVERY OF VIOLATION, ASKED FOR A RICHARDSON HEARING AND DIDN'T GET IT --

>> BUT WAS THERE WITH REGARD TO THE ZIEGLER REPORT, DID THE TRIAL HAVE THE EVIDENCE WITH REGARD TO THE ABSENCE OF BLOOD, AND WAS THERE A DISCUSSION OF DURING THE TRIAL ITSELF AS TO WHY THAT IT WOULD NOT BE FOUND?

>> HE DID NOT ASK HER SPECIFICALLY --

>> SO ANYTHING ABOUT THE LACK OF BLOOD JUST WAS NOT PART OF THE ORIGINAL TRIAL AT ALL?

>> THAT'S CORRECT.

HOWEVER, HE DID ASK LAURA ROUSSEAU WHEN SHE ASKED WHETHER THE PRESUMPTIVE TESTS -- HE DID ASK HER, WELL, YOU CAN'T TELL WHETHER THAT'S HUMAN BLOOD OR FISH BLOOD, CAN YOU, AND SHE SAID, NO, I CAN'T.

HE ARGUED THE LACK OF EVIDENCE LINKING GERALDS TO THE SCENE. IN REGARDS TO THE HAIR, BECAUSE I THINK THIS IS IMPORTANT, THERE IS ABSOLUTELY NO EVIDENCE THAT THE HAIR FOUND ON HER BODY OR IN HER HANDS IS NOT HERS.

IT IS SIMPLY NOT THE CASE.

THERE HAS NEVER BEEN AN ANALYSIS --

>> WAIT A MINUTE, LET'S GO BACK ON THIS THEN.

IT SEEMS TO ME THE ARGUMENT OF THE OPPOSITION WAS THAT THIS FDLE REPORT ESTABLISHES THAT.

>> THE FDLE REPORT WHICH WAS DISCLOSED SAYS THAT THE HAIRS WERE NOT GERALDS.

IT SAYS ABSOLUTELY NOTHING THAT THE HAIRS WERE NOT MS. PETTIBONE'S.

>> I THINK SHE --

>> I THINK SHE SAID THE FDLE NOTES SAID THEY WEREN'T. THAT'S NOT TRUE.

IF YOU LOOK AT THE HAIRS IN THE NOTES -- I MEAN, THE REPORT ITSELF DOES NOT EVEN DISCUSS A COMPARISON BETWEEN THE HAIRS FOUND ON HER BODY AND IN HER HAND AND HER -- IT DISCUSSES ONLY THAT THEY'RE NOT, THEY'RE MICROSCOPICALLY DIFFERENT FROM GERALDS.

SO THE REPORT WHICH WAS DISCLOSED SAYS DIFFERENT FROM GERALDS.

THEN YOU LOOK AT THE NOTES WHAT YOU SEE IN THE NOTES, YOU'VE GOT CAUCASIAN BROWN HAIRS, BODY HAIRS, AND HEAD HAIRS.

MS. PETTIBONE WAS BRUNETTE.

YOU ALSO HAVE EVIDENCE OF SOME

CHEMICAL TREATMENT, SO THERE'S NOTATIONS ABOUT CHEMICAL TREATMENT IN THE HAIR.

NOW, AT TRIAL IT DIDN'T COME OUT, AT THE EVIDENTIARY HEARING IT DIDN'T COME OUT WHETHER SHE'D EVER HIGHLIGHTED HER HAIR, BUT YOU SEE IN A REPORT AND YOU ALL MIGHT UNDERSTAND THIS IS JUST --

>> WHO ARE YOU LOOKING AT?

>> LOOKING AT IT AS LAY PEOPLE.

[LAUGHTER]

LOOKING AT IT AS LAY PEOPLE THAT SOME OF THE HAIRS WERE DARKER AT THE ROOTS AND LIGHTER AT THE TIPS.

WELL, THAT HAPPENS WHEN YOU COLOR YOUR HAIR.

I KNOW.

SO THE FACT IS THAT THERE'S ABSOLUTELY NOTHING IN THE NOTES. I'VE LOOKED OVER THE NOTES.

THE THING IS, AGAIN --

>> WELL, I KNOW YOU HAVE SAID A NUMBER OF TIMES THAT ALL OF THE LAB REPORTS WERE DISCLOSED, BUT WHAT ABOUT THESE NOTES?

>> MR. GRAMMAR SAID HE DOESN'T RECALL SPECIFIC HANDWRITTEN NOTES, BUT WHAT HE DID DO --

>> HE DOESN'T RECALL SPECIFIC HANDWRITTEN NOTES BEING DISCLOSED.

>> THAT'S RIGHT.

WHAT HE DID WAS, NUMBER ONE, HE GAVE EVERYTHING THAT CAME INTO HIM WAS GIVEN.

>> THAT WAS THE PROSECUTOR?

>> THAT'S RIGHT, JOE GRAMMAR, THE PROSECUTOR.

THERE WAS, LIKE, 543 PAGES, AND THAT'S IN THE ORIGINAL RECORD OF TRIAL THAT WAS DISCLOSED CALLED INVESTIGATIVE MATERIALS.

>> IF YOU WOULD AGREE UNDER BRADY THAT IF THE FDLE DID NOT DISCLOSE IT TO THE PROSECUTOR, THE STATE IS STILL CHARGED WITH EXCULPATORY EVIDENCE THAT IS IN THE POSSESSION OF THE STATE.

>> THAT'S TRUE.

ABSOLUTELY.

>> OKAY.

SO IT IS NOT -- SO IF MR. -- SO

IF IT'S NOT IN THE WHATEVER 500  
AND HOW MANY PAGES OF DISCOVERY,  
ISN'T IT A PROPER FINDING THAT  
IT -- THOSE BENCH NOTES WHICH  
ARE 31, 32 AND 34 WERE NOT  
DISCLOSED?

>> I'M NOT SURE YOU COULD GET  
THAT FROM THE TESTIMONY, BUT  
WHAT I CAN SAY ON THE LAB  
REPORTS THEY MADE CONSISTENT  
NOTES.

FOR INSTANCE, THE FOOTPRINT  
NOTICE.

THE FOOTPRINT LAB REPORT SAID  
ALL THE PHOTOGRAPHS OF THE  
FOOTPRINTS WERE RETAINED AT  
FDLE.

SO WE LOOK AT STRICKLER, AND WE  
SAY, YOU KNOW, WE SAY AN  
OPEN-FILE POLICY IS NOT ENOUGH  
IF THE THINGS THAT ARE NOT  
THERE, THE DEFENSE HAS NO WAY OF  
KNOWING MIGHT BE THERE.

BUT THE THING IS IF YOU LOOK AT  
THE LAB REPORTS, IT SAYS  
"PHOTOGRAPHS ARE RETAINED AT  
FDLE."

SO THOSE THINGS WERE AVAILABLE  
TO HIM.

BUT WHAT IS MORE CRITICAL EVEN  
IF YOU SAY, OKAY, THERE'S NO  
EVIDENCE THEY WERE DISCLOSED  
WHICH IS SORT OF TURNING IT  
AROUND ON THEIR HEAD A LITTLE  
BIT, BUT NONETHELESS, THERE'S NO  
EVIDENCE THEY WERE DISCLOSED.  
THEN YOU GO TO THE MATERIALITY  
PRONG OF BRADY.

THE THING IS IF YOU WANT TO SAY  
THAT THE HAIRS WERE NOT  
MS. PETTIBONE'S, YOU KNOW HOW  
YOU SHOW IT?

YOU ASK THE HAIRS TO BE ANALYZED  
AND SOMEONE COMES IN AND  
TESTIFIES, I ANALYZED ALL THE  
HAIRS THAT WERE FOUND ON HER  
BODY.

THERE WERE, YOU KNOW, HAIRS  
FOUND ON HER CHEST, SHE WAS  
DRESSED AT THE TIME.

THERE ARE HAIRS ON HER BODY,  
THERE'S DEBRIS IN HER HANDS, AND  
THOSE HAIRS WERE NOT  
MICROSCOPICALLY SIMILAR TO THE

VICTIM'S, AND THAT DID NOT HAPPEN.

>> AND THAT WASN'T OFFERED AT THE EVIDENTIARY HEARING?

>> NO.

AND THAT'S WHAT I'M SAYING. SHE WANTS YOU TO LOOK AT EXHIBIT 34, INTERPRET THOSE NOTES AS THE LAB PERSON MADE IT.

INTERPRET WHAT THAT LAB PERSON MEANT AND SOMEHOW READ INTO THOSE LAB NOTES THAT THEY'RE NOT MS. PETTIBONE'S HAIR, AND THAT'S JUST NOT THE CASE BECAUSE I DIDN'T SEE ANYWHERE OPINING IN THOSE NOTES THAT THEY WERE NOT MS. PETTIBONE'S HAIRS.

THEY WERE RANGING FROM BROWN HAIR TO LIGHT BROWN AND SOME NOTATIONS OF DARKER AT THE ROOTS AND LIGHTER AT THE TIPS.

>> IN NUMBER 31 LET'S ASSUME THOSE ARE THE BENCH NOTES. IN THE LAB REPORTS, IS THERE A MENTION THAT AN UNIDENTIFIED FINGERPRINT IS FOUND ON THE JEWELRY BOX?

>> ABSOLUTELY.

IT IS IN THAT REPORT.

>> AND THAT'S THE [INAUDIBLE] REPORT.

>> APRIL 3RD IS THE BLOOD REPORT.

I'M NOT CERTAIN OF THE DATE OF THE FINGERPRINT REPORT.

BUT I THINK THERE'S TWO FINGERPRINTS FOUND ON THE JEWELRY BOX.

ONE IS TRACED TO BART PETTIBONE, AND ONE IS UNIDENTIFIED.

BUT AS I SAY, IF IT'S THE KILLER'S, THEN IT'S EXCULPATORY.

NOW, ONE THING ALSO --

>> LET'S JUST GO BACK BECAUSE IT'S SORT OF DIFFERENT FROM WHAT YOU SAID AT THE BEGINNING.

IT'S SIGNIFICANT TO ME IF THE BENCH NOTES WERE NOT PRODUCED, BUT THE REFERENCE TO AN UNIDENTIFIED FINGERPRINT WAS MADE IN THE LAB REPORTS THAT WERE PRODUCED, IS THAT WHAT YOU'RE SAYING NOW?

>> YES, MA'AM.

THE LAB REPORT THAT HAS, THAT TALKS ABOUT THE FINGERPRINTS WAS DISCLOSED, IT HAS RIGHT THERE "FINGERPRINT TAKEN FROM THE JEWELRY BOX" ON THE BACK PAGE OF THE ANALYSIS.

IT SAYS "DOESN'T MATCH."  
"UNIDENTIFIED."

IT DOESN'T MATCH BART, KEVIN AND OTHER FINGERPRINTS THEY COMPARED TO.

>> AND YOU WOULD SAY, THEN, WELL, IF THEY WERE PRODUCED, THEN IT COULD BE AN EFFECTIVE -- IF THE ORIGINAL TRIAL ATTORNEY DIDN'T DEVELOP THIS UNIDENTIFIED FINGERPRINT, IF THERE WAS SOME WAY TO SHOW THAT THIS WOULD POINT TO A DIFFERENT MURDERER, BUT THERE WAS NO TESTIMONY AT THE EVIDENTIARY HEARING THAT WOULD HELP US TO EITHER, YOU KNOW, TO EITHER SUPPORT THAT OR REFUTE THAT.

IS THAT ALSO YOUR ARGUMENT?

>> YES.

THAT IS PART ONE, YES, THAT'S ABSOLUTELY TRUE.

IN ORDER TO SHOW PREJUDICE, YOU HAVE TO SHOW IT WAS PUT DOWN ON THE DAY OF THE MURDER BY SOMEONE ELSE.

BUT THE THING IS THE FACT THAT THERE WAS SOMEBODY ELSE --

>> WELL, YOU DON'T HAVE TO QUITE DO THAT.

DEFENSE CAN CREATE REASONABLE DOUBT BY SHOWING THERE IS A LOT OF SUSPICIOUS, UNIDENTIFIED FINGERPRINTS, BLOOD, WHATEVER THAT MIGHT POINT TO SOMEONE ELSE.

IT'S NOT THE, IT'S NOT THE DEFENSE'S OBLIGATION TO SHOW THERE WAS ANOTHER KILLER. THE DEFENSE'S OBLIGATION TO SHOW THAT THE STATE'S CASE MAY HAVE A REASONABLE DOUBT.

>> THAT'S TRUE, BUT THAT UNIDENTIFIED FINGERPRINT DOESN'T DO AWAY WITH THE FACT THAT MARK GERALDS PAWNED A HERRINGBONE NECKLACE FOUR HOURS AFTER THE MURDER THAT --

>> JUST FOR ONE SECOND IT SEEMS THAT THIS BECAME DURING THE TRIAL SORT OF FLIP-FLOPPED, AND AT POINTS IT WAS DISCUSSED THAT THIS WAS HER BLOOD RATHER THAN CONSISTENT WITH -- AND WAS THERE EVER A DNA REPORT?

WHAT'S THE SUBSTITUTE -- THAT'S THE ARGUMENT BEING MADE.

>> I'M GLAD YOU ASKED ME THAT, JUSTICE LEWIS, BECAUSE WHAT GERALDS SAYS IN THE GIGLIO CLAIM IS THE POLICE OFFICER TESTIFIED AT THE RESENTENCING THAT THAT WAS HER BLOOD, BUT I'D LIKE YOU TO LOOK AT PAGE 406 OF THE RECORD BECAUSE THAT'S A MISQUOTE, I'M SURE INADVERTENT. WHAT HAPPENED IS THAT THE QUESTION WAS, "AND DID THEY DETERMINE THAT THE TYPE" -- THEY'RE TALKING ABOUT THE BLOOD -- DID YOU, "AND DID THEY DETERMINE THAT THE TYPE WAS OF MS. PETTIBONE?"

THE ANSWER, "YES."

THAT'S ABSOLUTELY TRUE.

IT WAS, A, DOWN TO FIVE ENZYMES.

NOW, AT THE ORIGINAL TRIAL MS. ZIEGLER DIDN'T TESTIFY THAT THE PERCENTAGE AT THE RESENTENCING WAS 3.9 PERCENT. IT ALSO DIDN'T ELIMINATE THE TIES FOUND IN HIS CAR, IT DIDN'T ELIMINATE ANY OF THAT EVIDENCE --

>> DNA TESTING ON --

>> I'M SORRY, YOUR HONOR, MS. ZIEGLER SAID THERE WAS AN INSUFFICIENT AMOUNT TO DO DNA, AND THAT WAS AT THE ORIGINAL TRIAL, AND IF I COULD JUST HAVE A FEW SECONDS TO CLOSE. THE FACT THAT EVEN IF YOU WANT TO ASSUME THERE WAS ANOTHER KILLER, WHICH GERALDS HAS NEVER SAID, THEN THAT DOESN'T ABSOLVE HIM OF GUILT OR DO AWAY WITH ANY OF THE EVIDENCE LINKING TO CRIME.

AS FAR AS MOTIVATION, THE FACT THAT ANOTHER KILLER IS PRESENT BY ITSELF IS NOT MITIGATING. ONLY IF HE CAN SHOW HE WAS UNDER

THE SUBSTANTIAL DOMINATION OF ANOTHER DOES THE PRESENCE OF ANOTHER PERSON MITIGATE, AND HE HAS NEVER SAID, OH, I WAS THERE, BUT I JUST STOOD BY AND WATCHED AS THEY KILLED.

AND THE FACT IS THAT THIS NOTION THAT ANOTHER KILLER WAS THERE AND MAY HAVE PUT THIS BLOOD ON THIS HANDKERCHIEF IS REALLY REFUTED BECAUSE THE POSSIBILITY OF INJURY TO A KILLER, FIRST OF ALL, HER HANDS WERE BOUND SO SHE WASN'T ABLE TO FIGHT, WOULD BE, PERHAPS, BLOOD ON THE KNIFE OR BLOOD -- BECAUSE IT MIGHT BE CONCEIVABLE THAT ANOTHER KILLER WOULD DO THAT.

THE ONLY BLOOD ON THE KNIFE WAS MS. PETTIBONE'S.

THE ONLY BLOOD ON THE RAG BELOW IT WAS MS. PETTIBONE'S, SO ANY OTHER NOTION THAT THERE WAS BLOOD ON THE HANDKERCHIEF -- AND THAT WAS IN THE LAB REPORT -- WAS A STRANGER'S IS SIMPLY NOT SUPPORTED BY THE EVIDENCE AT ALL.

SO THE STATE WOULD ASK THIS COURT AFFIRM THE COLLATERAL COURT'S ORDER DENYING MR. GERALDS' MOTION FOR POSTCONVICTION RELIEF.

>> THANK YOU VERY MUCH.  
MS. McDERMOTT?

>> MS. McDERMOTT, THERE'S A SERIOUS -- I HAVE A SERIOUS CONCERN, AND I THINK WE NEED TO GET TO THE BOTTOM OF THIS IMMEDIATELY.

WAS THERE -- ARE YOU CONTENDING THAT THERE WAS A BLOODY FINGERPRINT?

>> [INAUDIBLE] WHICH WAS A PCPD DETECTIVE WHO WENT TO THE SCENE AND WAS ASSISTING FDLE, HE SAYS IN HERE THAT HE RETURNED TO THE SCENE ON FEBRUARY 2ND WITH LAURA ROUSSEAU AND JAN JOHNSON TO DO FURTHER PROCESSING AND MAKE A VIDEOTAPE.

HE WAS PROCESSING THE KITCHEN AND FAMILY ROOM AREA.

ON THE LINOLEUM FLOOR DEVELOPED BY THE PROCESS OF USING A CHEMICAL YOU USE WHEN YOU'RE DOING TESTING WHERE THERE'S BLOOD, AND HE SAYS A LAY TENT SHOE PRINT WAS DEVELOPED, PALM PRINTS WERE ALSO OBSERVED BY THIS OFFICER IN THE SAME AREA, AND I THINK THERE IS A REPORT --

>> WELL, WAIT, THAT DOESN'T SAY -- THAT SAYS A BLOODY SHOE PRINT --

>> AND PALM PRINT.

>> BLUE ONLY BRINGS OUT BLOOD, THAT'S THE CHEMICAL FOR BLOOD.

>> THAT'S NUMBER 15.

NOW, WE WERE TALKING ABOUT 31, 32 OR 34, WELL, THE BLOOD --

>> WELL, NO.

THEY DON'T SPECIFICALLY IN --

>> THAT TESTIMONY THAT YOU JUST READ DOES NOT SAY THAT IT WAS A BLOODY PRINT.

THAT SAYS THAT THERE WERE "PRINTS."

>> RIGHT.

BY USING BLUE HE SAW --

>> IT DOESN'T CONNECT THAT.

WELL, ANYWAY, WE'LL READ IT.

HOW ABOUT DID YOU MAKE THE STATEMENT THAT THE HAIR THAT WAS IN THE HAND WAS IDENTIFIED AS THE VICTIM'S HAIR?

>> MY STATEMENT IS THAT IF YOU LOOK AT THE NOTES, THE BENCH NOTES, AND YOU LOOK AT THE DESCRIPTION OF THE VICTIM'S HAIR AND YOU LOOK AT THE DESCRIPTION OF THE HAIR THAT'S IN HER HAND, THEY DON'T MATCH.

>> DON'T YOU HAVE AN OBLIGATION, AND, YOU SEE, WE'RE HERE TRYING TO FERRET THIS OUT, AND THERE ARE SOME SERIOUS ALLEGATIONS, AND I UNDERSTAND YOU HAVE THE DEFENSE LAWYER IS DECEASED, BUT YOU'RE AN EXPERIENCED LAWYER. YOU'RE, YOU KNOW, DO A LOT OF POSTCONVICTION CASES, WOULDN'T THE BEST -- THE WAY TO BE ABLE TO ESTABLISH YOUR ARGUMENT BE TO PUT ON AN EXPERT TO SAY I'VE LOOKED AT THIS, I'VE LOOKED AT

THIS, IT'S NOT THE VICTIM'S HAIR  
IN HER HAND, IT'S NOT  
MR. GERALDS, UNIDENTIFIED,  
THAT'S SIGNIFICANT, AND, TWO, TO  
EXPLAIN SO WE DON'T HAVE TO  
EXTRAPOLATE THAT THERE WAS  
ACTUALLY A BLOODY PALM PRINT OR  
FINGERPRINT FOUND AND THAT ALSO,  
AND WHAT THAT DOES IS IT SHOWS  
THIS?  
BECAUSE RIGHT NOW WE'VE GOT SOME  
ARGUMENTS THAT WE'RE GRAPPLING  
WITH.  
AND YOU DIDN'T DO THAT, CORRECT?  
I MEAN, YOU DIDN'T DO IT, THAT  
IS, SHOW HOW IT'S ALL CONNECTED  
IN TERMS OF EXPERT TESTIMONY AT  
THIS HEARING.

>> RIGHT.

I MEAN, STUART JAMES WAS A  
CRIMINALIST WHO CAME IN AT THE  
HEARING AND TESTIFIED WHAT WAS  
FORENSICALLY SIGNIFICANT TO THE  
CASE, FORENSICALLY SIGNIFICANT  
WHERE THERE'S BLOOD AT THE  
SCENE --

>> DID HE SAY THE HAIR --

>> YEAH.

HE SAID THAT THE HAIR -- HAVING  
HAIR IN HER HAND AFTER A  
STRUGGLE WOULD BE FORENSICALLY  
SIGNIFICANT.

>> AND DID HE SAY THAT THAT HAIR  
WAS NOT HERS?

>> NO, HE DIDN'T SAY THAT.

>> BUT IF THAT WERE THE CASE --

>> WELL, I DON'T HAVE TO SHOW, I  
MEAN, ALL I HAVE TO SHOW IS  
THERE'S EVIDENCE THAT WASN'T  
PRESENTED TO THE JURY, AND THAT  
TOTALLY CHANGES THIS CASE.

>> IF YOU HAVE AN EXPERT THAT  
YOU'VE PUT ON, I MEAN, A PERSON,  
A FORENSIC PERSON THAT YOU PUT  
ON AND YOU DON'T ASK THEM THE  
KEY QUESTIONS WHICH YOU'RE NOW  
ARGUING --

>> WELL, HE'S NOT A HAIR  
ANALYST, HE'S A CRIMINALIST.  
SO HE CAME IN AND TESTIFIED  
ABOUT WHAT SHOULD HAVE BEEN, YOU  
KNOW, WHAT PIECES OF THE  
EVIDENCE AT THE SCENE WERE

IMPORTANT AND SHOULD HAVE BEEN KNOWN, YOU KNOW, BY THE JURY, OR, YOU KNOW, IF A DEFENSE ATTORNEY WANTED THE JURY TO GET THE ACCURATE PICTURE, THESE ARE THE THINGS THAT THEY SHOULD KNOW ABOUT, THIS TYPE OF EVIDENCE.

SO, I MEAN, I SEE I'VE RUN OUT OF TIME, I JUST --

>> [INAUDIBLE] A CONCLUDING STATEMENT.

>> I'LL JUST SAY THIS, THAT THE STATE KEEPS SAYING THAT NOTHING MR. GERALDS HAS SHOWN ELIMINATES HIM AS BEING -- THEY JUST SAID IT AGAIN TODAY, AND THAT IS NOT THE STANDARD.

THE STANDARD IS, DOES THIS EVIDENCE UNDERMINE CONFIDENCE IN THE OUTCOME, AND HOW CAN YOU HAVE BLOOD AT THE SCENE, FINGERPRINTS AT THE SCENE, A SHOE PRINT AT THE SCENE AND HAIR AT THE SCENE THAT DOESN'T MATCH HIM?

AND IT'S IN FORENSICALLY SIGNIFICANT PLACES AND NOT SAY THAT DOESN'T UNDERMINE CONFIDENCE IN THE OUTCOME? SO I WOULD ASK THAT YOU REDUCE THE TRIAL COURT'S ORDER AND REMAND FOR A NEW TRIAL.

>> OKAY.

THANK YOU, BOTH, FOR YOUR ARGUMENTS, AND THE COURT WILL BE IN RECESS FOR TEN MINUTES.

>> PLEASE, RISE.

>> SUPREME COURT'S NOW IN RECESS.