

>> HEAR YE, HEAR YE, HEAR YE.  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.  
ALL WHO HAVE CAUSE TO PLEA, DRAW  
NEAR, GIVE ATTENTION.  
YOU SHALL BE HEARD.  
GOD SAVE THESE UNITED STATES,  
GREAT STATE OF FLORIDA AND THIS  
HONORABLE COURT.  
>> LADIES AND GENTLEMEN, SUPREME  
COURT OF FLORIDA.  
PLEASE BE SEATED.  
>> GOOD MORNING.  
WELCOME TO THE FLORIDA SUPREME  
COURT.  
THE FIRST CASE ON THE DOCKET IS  
BOGLE VERSUS STATE.  
COUNSEL?  
>> GOOD MORNING.  
LINDA MCDERMOTT ON BEHALF OF  
BRETT BOGLE.  
THE ISSUES THAT I WANTED TO  
ADDRESS THIS MORNING ARE IN  
ARGUMENT TWO, THREE AND FOUR OF  
THE BRIEF.  
THEY RELATE TO THE DUE PROCESS  
VIOLATIONS AT THE TRIAL, THE  
INEFFECTIVE ASSISTANCE OF  
COUNSEL AT THE GUILT PHASE AND  
THEN THE NEWLY-DISCOVERED  
EVIDENCE AND THEY'RE REALLY  
LARGELY INTERRELATED.  
SO, FOR EXAMPLE, THE NEW YSTR  
DNA EVIDENCE THAT WAS INTRODUCED  
IN POSTCONVICTION NOW SHOWS THAT  
THE DNA BENEATH THE FINGERNAILS  
BELONGS TO TWO UNKNOWN MALE  
INDIVIDUALS.  
AND SO THAT EVIDENCE CERTAINLY  
IS EXCULPATORY AND BENEFICIAL TO  
MR. BOGLE, BUT IT ALSO TIES INTO  
THIS INEFFECTIVE ASSISTANCE OF  
COUNSEL CLAIM THAT TRIAL COUNSEL  
DIDN'T INVESTIGATE THE CAR  
ACCIDENT THAT HAD OCCURRED THE  
WEEK BEFORE THE CRIME IN THIS  
CASE.  
>> THEY KNEW OF THE CAR  
ACCIDENT.  
I MEAN, AND THEY TALKED ABOUT

WHY THEY DIDN'T WANT TO PUT ON EVIDENCE OF THE CAR ACCIDENT AND THAT THEY WOULD DO SOMETHING BY CROSS-EXAMINATION,

SO IT'S NOT LIKE THEY DIDN'T KNOW ABOUT THE CAR ACCIDENT.

>> RIGHT.

WELL, TRIAL COUNSEL SAID HE KNEW ABOUT THE CAR ACCIDENT, BUT WHAT WE KNOW IS HE DIDN'T GO AND GET THE MEDICAL RECORDS.

HE DIDN'T GET THE PHOTOGRAPHS THAT WERE TAKEN WHILE MR. BOGLE WAS IN THE HOSPITAL.

AND HE DIDN'T CONSULT WITH AN EXPERT LIKE DR. WILLIE, WHO TESTIFIED AT THE EVIDENTIARY HEARING AND GAVE A GREAT DEAL OF INFORMATION ABOUT THE WOUNDS, THE HEALING PROCESS AND IN HIS COMPARISON OF THE PHOTOGRAPHS TAKEN OF MR. BOGLE POST-ARREST, HE SAYS THAT THOSE WOUNDS ARE NOT FRESH WOUNDS, AS THE DETECTIVE STATED IN HIS TESTIMONY AT TRIAL.

THEY WERE CLEAN, THEY WERE DEPRESSED, THEY DON'T LOOK LIKE THEY WERE REINJURED OR REOPENED, AND HE SAID THAT THEY'RE CONSISTENT WITH THE WOUNDS THAT ARE DESCRIBED IN OUR SCENE IN THE PHOTOGRAPHS OF MR. BOGLE FOLLOWING THE ACCIDENT.

SO THE STATE MADE THESE -- THE BLOOD UNDER THE VICTIM'S FINGERNAILS A SIGNIFICANT ASPECT OF HER CASE WHEN SHE ARGUED TO THE JURY THAT THE ONLY WAY THAT SHE WOULD HAVE HAD BLOOD UNDER HER FINGERNAILS WAS FROM THE STRUGGLE WITH MR. BOGLE AND THEN LOOK AT THESE PHOTOGRAPHS OF HIS FACE.

THAT'S WHERE THE BLOOD CAME FROM.

SO WHAT WE KNOW -- AND THEN SHE HAD EVERY WITNESS WHO TESTIFIED AT TRIAL AND SAW BOGLE ON THE NIGHT OF THE CRIME SAY THAT THE

INJURIES WEREN'T THERE UNTIL  
LATER IN THE EVENING.

>> CAN I JUST ASK YOU ABOUT THE  
UNDER THE FINGERNAIL EVIDENCE?  
AND IT GOES ALONG WITH THIS IS A  
1995 CONVICTION AND WE'RE NOW  
ALMOST 20 YEARS POST.

WHEN WERE THE FINGERNAILS -- THE  
SUBSTANCE UNDER THE FINGERNAILS  
TESTED?

>> THE F.B.I. DID PRESUMPTIVE  
TESTING FOR BLOOD, WHICH CAME  
BACK POSITIVE, AND THEN THAT  
EVIDENCE WAS INTRODUCED.  
IN POSTCONVICTION IN 2008, I  
BELIEVE, OR IN 2006 I REQUESTED  
THAT WE BE ALLOWED TO CONDUCT  
OUR OWN TESTING OF THOSE  
FINGERNAILS AND WE WERE  
PERMITTED TO DO THAT.

>> HERE'S THE PROBLEM.  
SO WHAT YOU WOULD SAY IS, WELL,  
THE DEFENDANT'S ATTORNEY SHOULD  
HAVE TESTED IT BACK IN 1995.  
BUT ISN'T THERE -- THE ISSUE IS  
IT'S 11 YEARS LATER, AND I  
THOUGHT THERE WAS TESTIMONY --  
SO THIS WOULD BE  
NEWLY-DISCOVERED EVIDENCE --  
THAT THERE WAS POSSIBILITY OR  
THAT HIS DNA COULD HAVE BEEN  
UNDER THE FINGERNAILS, BUT THAT  
THE TIME LAPSE WOULD HAVE  
DEGRADED THAT EVIDENCE.  
SO THAT'S -- DON'T YOU HAVE TO  
EVALUATE THAT CLAIM AS A  
NEWLY-DISCOVERED EVIDENCE CLAIM?

>> IT IS A NEWLY-DISCOVERED  
EVIDENCE CLAIM.

>> BUT WHAT ABOUT THAT CASTING  
DOUBT ON THE SIGNIFICANCE OF  
THAT -- THOSE FINDINGS BECAUSE  
OF THE 13-YEAR OR MORE DELAY IN  
THAT ACTUALLY BEING TESTED?

>> I'M NOT SURE I COMPLETELY  
UNDERSTAND.

>> I THOUGHT THAT THERE WAS --  
THAT THE TRIAL JUDGE -- OR THERE  
WAS TESTIMONY AS TO WHY HIS DNA  
MIGHT NOT HAVE BEEN -- OR THE

TESTING MAY NOT HAVE SHOWN  
EVIDENCE OF HIS GENETIC  
MATERIAL.

>> WELL, THERE'S -- I MEAN, THE  
REASON THAT YSTR WAS CONDUCTED  
AFTER JUST REGULAR STR WAS  
BECAUSE THE YSTR IS SO SENSITIVE  
IT CAN PICK OUT JUST THE MALE  
PROFILES.

AND SO I BELIEVE THAT WHEN THEY  
TESTED THE EVIDENCE THEY DID  
ORIGINALLY TEST IT FOR STR AND  
THEY DIDN'T GET A RESULT AND  
THEN THEY RETESTED IT AND GOT  
THE RESULT.

SO IT'S A NEWLY-DISCOVERED  
EVIDENCE CLAIM.

MY POINT IS THAT THIS EVIDENCE  
IS CRITICALLY EXCULPATORY AND IT  
GOES TO SHOW THE WEAKNESSES OF  
THE STATE'S CASE AT TRIAL AND  
THE WITNESSES WHO TESTIFIED  
THERE WERE NO SCRATCHES.

AND MY POINT IS THAT DEFENSE  
COUNSEL COULD HAVE ATTACKED THAT  
VERY ISSUE EVEN THEN HAD HE JUST  
GOTTEN THE MEDICAL INFORMATION,  
THE PHOTOGRAPHS AND CONSULTED  
WITH AN EXPERT.

NOW, HE DID INVOKE THIS  
STRATEGIC I WANTED THE LAST  
CLOSING ARGUMENT, BUT THIS COURT  
HAS FIRMLY HELD THAT YOU CANNOT  
CLAIM THAT YOU HAVE COME TO A  
REASONABLE STRATEGY WHEN YOU  
HAVEN'T EVEN CONDUCTED THE  
INVESTIGATION.

AND THAT'S WHAT HAPPENED HERE.  
IN THAT CASE, AS TO THE DNA, THE  
RFLP DNA, AS TO THE HAIR  
EVIDENCE FOR TRIAL.

NO EXPERTS WERE CONSULTED IN  
THIS CASE.

NO FORENSIC EXPERTS WERE  
CONSULTED IN THIS CASE.

AND THE TRIAL COUNSEL'S  
EXPLANATION WAS THIS WAS  
MUMBO-JUMBO AND I DIDN'T THINK  
THERE WAS ANYBODY WHO I COULD GO  
TO TO GET INFORMATION ABOUT THIS

VARIOUS -- THESE VARIOUS PIECES  
OF FORENSIC EVIDENCE.  
WE KNOW THAT THAT'S JUST NOT THE  
CASE.

AND I WOULD SUBMIT THAT IF  
YOU'RE GOING INTO YOUR CASE  
THINKING THAT FORENSICS AND DNA  
EVIDENCE IS MUMBO-JUMBO, THEN  
YOU ARE ACTING VERY UNREASONABLY  
FOR YOUR CLIENT, BECAUSE YOU  
HAVE TO UNDERSTAND THAT EVIDENCE  
AND YOU HAVE TO UNDERSTAND WHAT  
ARE THE WEAKNESSES.

IN THIS CASE THERE WERE  
WEAKNESSES.

EVEN HAD HE GONE AND GOTTEN THE  
MALONE FILE ON THE HAIR  
EVIDENCE, HE WOULD HAVE FOUND  
THE DISCREPANCIES IN THAT FILE  
AND HE COULD HAVE PRESENTED THAT  
TO THE JURY TO SHOW THAT THERE  
WERE INCONSISTENCIES BETWEEN THE  
TESTIMONY AND THE BENCH NOTES  
THAT WOULD HAVE UNDERCUT THIS  
IDEA ABOUT THE PUBIC HAIR BEING  
FOUND ON MR. BOGLE'S PANTS.

IN EVERY PIECE OF EVIDENCE THAT  
WAS PRESENTED AT TRIAL, THERE  
WERE THINGS THAT TRIAL COUNSEL  
COULD HAVE DONE AND HE DID NOT.  
IN THE FITZPATRICK CASE, THIS  
COURT --

>> WELL, LET ME ASK YOU ABOUT  
THE PUBIC HAIR.

HAVE YOU IN POSTCONVICTION  
DEMONSTRATED THIS WAS NOT IN  
FACT THE PUBIC HAIR OF  
MISS TORRES?

>> WHAT WE'VE -- WHAT'S BEEN  
PRESENTED THUS FAR IS THAT THE  
REVIEW, AN INDEPENDENT REVIEW  
OCCURRED OF THIS CASE BECAUSE OF  
MALONE'S INVOLVEMENT.

WHAT WAS FOUND --

>> MALONE TESTIFIED ALSO,  
CORRECT?

>> IN POSTCONVICTION, YES.  
YES.

>> AND HE TESTIFIED ABOUT BOTH  
HIS REPORT AND THE BENCH NOTES.

>> YES.  
>> AND HE -- AND THE TRIAL JUDGE FOUND HIS TESTIMONY CREDIBLE ABOUT WHY THERE WAS A DISCREPANCY BETWEEN THE BENCH NOTES AND HIS REPORT AND HIS TESTIMONY.  
>> YES.  
MALONE, A KNOWN PERJURER, WAS FOUND CREDIBLE, EVEN THOUGH STEVE ROBINSON, THE INDEPENDENT REVIEWER, SAYS WE DON'T KNOW WHAT THAT HAIR IS THAT'S IN EVIDENCE.  
WE DON'T KNOW IF IT'S A PUBIC HAIR OR HEAD HAIR.  
WE KNOW THAT THERE'S A DISCREPANCY.  
>> HE DID NO TESTIMONY OF HIS OWN?  
>> WHAT WAS FOUND AT THE EVIDENTIARY HEARING -- NO.  
>> LET ME ASK YOU, HOW IN THE WORLD DO WE SAY THAT THAT IS NOT THE PUBIC HAIR OF THE VICTIM THAT WAS FOUND ON THE PANTS? THAT'S WHERE IT WAS FOUND, RIGHT?  
IF WE DON'T HAVE ANYONE WHO HAS SAID THAT?  
THEY'VE CALLED INTO QUESTION -- AND I SEE THAT VERY CLEARLY -- MR. MALONE.  
>> RIGHT.  
WELL, THAT'S NOT THE ANALYSIS. WE DON'T HAVE TO PROVE THAT IT WASN'T THE PUBIC HAIR, I DON'T THINK.  
WE'VE GOT TO UNDERMINE CONFIDENCE IN THE OUTCOME OF THE VERDICT.  
>> BUT IF WE HAVE -- IF WE STILL HAVE ON THIS RECORD THAT THIS WAS HER PUBIC HAIR, I MEAN, IT MAY DEMONSTRATE THAT THERE WAS SOME VERY SLOPPY WORK, BUT DOES IT REALLY UNDERMINE OUR CONFIDENCE?  
>> BUT THAT'S WHAT -- HIS NOTES DON'T SAY THAT.

HIS NOTES SAY THAT THE HAIR  
MATCHED A HEAD HAIR.  
AND HE'S SAYING IT'S A  
TRANSCRIPTION ERROR AS TO THE  
KNOWN SAMPLE.  
BUT IT COULD HAVE BEEN EQUALLY A  
TRANSCRIPTION ERROR AS TO THE  
INDICATION THAT IT WAS A HEAD  
HAIR, AN "H" VERSUS A "PH."  
THERE COULD HAVE BEEN A  
TRANSCRIPTION ERROR THE OPPOSITE  
WAY IF YOU WANT TO TAKE HIM TO  
BE A CREDIBLE WITNESS.  
BUT WHAT ROBERTSON SAID IS WE  
DON'T KNOW.  
WE HAVE NO IDEA.  
ROBERTSON WAS RESTRICTED IN HIS  
REVIEW.  
HE WASN'T ALLOWED TO GO AND LOOK  
AT THE EVIDENCE.  
AND THIS IS WHAT WE'VE LEARNED  
IN THE MOST REVIEW, IS THAT  
MALONE -- OR THAT THE F.B.I.  
SEVERELY RESTRICTED THE -- WHAT  
WAS SUPPOSED TO HAVE BEEN DONE  
WITH THE INDEPENDENT REVIEW.  
SO NOW IT'S BEEN REVIEWED AGAIN  
AND NOW WE HAVE THESE NEW  
RESULTS THAT I ASKED THIS COURT  
TO CONSIDER AND TO ALLOW US  
FURTHER TO DEVELOP WHICH NOW IS  
SAYING THAT THIS TESTIMONY WAS  
COMPLETELY UNRELIABLE.  
SO WE HAVE THAT.  
WE ALSO HAVE THIS WHOLE ISSUE  
ABOUT GUY DOUGLAS AND MARCIA  
TURLEY AND THIS OTHER SUSPECT  
INFORMATION, WHICH WE HAVE NOTES  
IN THE STATE ATTORNEY'S FILE.  
IT'S A SERIES OF SORT OF  
POST-ITS THAT ARE TOGETHER IN  
SEQUENCE.  
IT HAS MARCIA TURLEY, HER  
ADDRESS.  
IT HAS GUY DOUGLAS, HIS CRIMINAL  
CASE NUMBER.  
THEN IT SAYS TALK TO RAY,  
CONFESSED TO MURDER.  
THIS WAS NOT DISCLOSED TO  
MR. BOGLE'S COUNSEL.

NOW, THIS INFORMATION HAD TO COME FROM SOMEONE.

IT MAY HAVE COME FROM MARCIA TURLEY.

THAT WOULD BE THE LOGICAL I THINK CONCLUSION.

BUT IT CAME FROM SOMEONE.

IT WASN'T REVEALED TO THE DEFENSE COUNSEL.

TRIAL COUNSEL HAD NO OPPORTUNITY TO INVESTIGATE OR DETERMINE WHAT EXACTLY THAT WAS ABOUT, THIS IDEA THAT --

>> WELL, DID THEY KNOW ABOUT GUY DOUGLAS?

>> HE WAS AWARE OF GUY DOUGLAS BECAUSE HE WAS LISTED AS A WITNESS.

>> RIGHT.

SO THE QUESTION IS HAS GUY DOUGLAS -- THE PROSECUTOR EXPLAINED HER NOTES, AND PERHAPS IT QUALIFIES UNDER THE FIRST PRONG OF BRADY, BUT YOU DON'T HAVE ANYBODY OTHER THAN MARCIA TURLEY, WHO I THINK THE TRIAL COURT FOUND WAS NOT A RELIABLE WITNESS --

>> NO.

HE DID NOT FIND THAT.

HE DID NOT FIND THAT SHE WAS NOT A RELIABLE WITNESS.

>> DID HE FIND THAT -- WHAT WAS --

>> WELL, HIS FINDINGS ABOUT MARCIA TURLEY WAS HE SAID THAT -- FOR EXAMPLE, HE SAYS THAT WE DIDN'T PROVE THAT GUY DOUGLAS COMMITTED THE MURDER.

THEREFORE, WE HAVEN'T EXONERATED BOGLE, WHICH WE KNOW THAT'S NOT THE RIGHT STANDARD.

>> BUT I THOUGHT THAT THERE WAS SOME SIGNIFICANT PROBLEMS WITH WHAT MARCIA TURLEY WAS SAYING. I GUESS THE QUESTION ON THIS IS IS THERE REALLY CREDIBLE EVIDENCE IF YOU WERE TO GET A RETRIAL THAT YOU COULD PUT ON THAT GUY DOUGLAS EITHER



CONFESSED TO THE CRIME OR, YOU KNOW, IS LIKELY TO HAVE COMMITTED THE CRIME?

>> YES.

>> WHAT WOULD BE THAT EVIDENCE?

>> I THINK IT'S OUTLINED IN THE ARGUMENT TWO, IS THAT WHAT WOULD HAVE COME FROM THIS NOTE BEING DISCLOSED AND A REASONABLE TRIAL ATTORNEY INVESTIGATING IT, WOULD BE THAT THEY COULD HAVE -- I JUST ALSO WANT TO MAKE A QUICK POINT.

TRIAL COUNSEL DIDN'T TAKE THE DEPOSITIONS OF ANY OF THE PEOPLE THAT WERE WITH MR. BOGLE ON THE NIGHT OF THE CRIME, DOUGLAS, NONE OF THOSE PEOPLE.

>> SO WHAT HAS HE PUT ON ABOUT GUY DOUGLAS AND HIS INVOLVEMENT?

>> HE COULD HAVE PUT ON INFORMATION THAT THE NIGHT OF THE CRIME EVERYONE WAS OUT AT THE RED GABLES BAR.

THEY THEN GO TO CLUB 41, AND AT THAT TIME HE AND MARCIA ARE ARGUING.

SHE'S INTOXICATED.

SHE PASSES OUT IN A VEHICLE FOR SOME TIME.

DURING THAT TIME PERIOD, HER ESTRANGED HUSBAND, WHO IS LOOKING FOR HER, SEES GUY DOUGLAS WITH THE VICTIM.

THAT'S HIS TESTIMONY.

SO THEY COULD HAVE -- IF THEY HAD SPOKEN TO MARCIA, CERTAINLY THEY WOULD HAVE FOUND GARY TURLEY, THAT HER SISTER ALSO WAS THERE THAT NIGHT, AND THIS WOMAN PATRICIA DIAZ WAS THERE THAT NIGHT.

DIAZ SAYS I DROVE BOGLE HOME THAT NIGHT.

SO THERE IS THAT, THAT HAD COUNSEL ACTUALLY INVESTIGATED OR FOLLOWED THIS LEAD IF IT HAD BEEN TURNED OVER, CERTAINLY HE WOULD HAVE FOUND PATRICIA DIAZ. AND THEN THERE WERE -- SO MARCIA

WHEN SHE LEAVES THE BAR THAT NIGHT, SHE WAKES UP, SHE GOES AND HAS SOME WATER AND GOES HOME.

SHE'S LIVING IN A MOTEL AND DOUGLAS COMES THERE AND COMES INTO THE MOTEL AND THEY HAVE AN ALTERCATION.

HE GOES IN AND TAKES A SHOWER. HE COMES OUT AND SOMETIME DURING THE COURSE OF THIS INTERACTION, HE TELLS HER SOMETHING ABOUT THE ARREST OF BOGLE AND THAT I'M OKAY BECAUSE I WAS WITH YOU ALL NIGHT.

AND SHE CHALLENGES HIM AND SAYS, BUT WE WEREN'T TOGETHER ALL NIGHT.

AND HE TELLS HER, WELL, YOU BETTER STICK TO THAT OR THEY'RE NEVER GOING TO FIND YOUR BODY.

>> NOW, IS THAT GOING TO -- AND YOU'RE SAYING -- MARCIA TURLEY WOULD TESTIFY AND THAT WOULD GET INTO EVIDENCE, THAT GUY DOUGLAS, WHO'S NOT A DEFENDANT -- HOW WOULD THAT COME INTO EVIDENCE?

>> WELL, BECAUSE MR. -- IT WOULD COME IN BECAUSE IT WAS A THREAT RELATED TO -- HE WAS TELLING HER YOU HAVE TO BE MY ALIBI.

AND CERTAINLY THAT WAS --

>> I UNDERSTAND WHAT YOU'RE -- AND YOU'RE VERY MUCH -- YOU'RE IN YOUR REBUTTAL.

YOU'VE WAVED AN INTERESTING SERIES.

I STILL CAN'T GET AWAY FROM THE VERY ISSUE OF STILL THE DNA EVIDENCE, INCLUDING THE PUBIC HAIR AND THE VAGINAL SWABS, AND ALSO THE MOTIVE EVERY THE ANIMUS BETWEEN THE VICTIM AND THE DEFENDANT OVER THE WEEKS LEADING UP TO THIS MURDER.

SO I JUST -- I SAY THAT BECAUSE I'M STILL -- DON'T KNOW WHETHER YOU MET EITHER PRONG OF EITHER BRADY, STRICKLAND OR CERTAINLY JONES IN ALL THAT YOU'VE PUT

FORTH HERE.

>> WELL, BEFORE I SIT DOWN, I THINK I HAVE TO ADDRESS THIS IDEA OF THIS DNA ON THE VAGINAL SWABS BECAUSE WHAT HAS NOW BEEN SHOWN IS THAT THE DNA FROM THE PANTIES AND THE DNA FROM THE VAGINAL SWABS ARE CONSISTENT. BUT SHE WASN'T WEARING HER PANTIES AT THE TIME THAT SHE WAS MURDERED.

SO AS IN FITZPATRICK, THIS OPENS UP SORT OF THE WINDOW OF -- AND DR. TRACEY SAID THAT THAT DNA COULD HAVE BEEN DEPOSITED WITHIN 72 HOURS OF THE CRIME.

SO NOW WE HAVE THE SITUATION WHERE THERE'S AN INNOCENT EXPLANATION FOR THE DNA, BECAUSE THEY COULD HAVE HAD CONSENSUAL SEX AT SOME POINT IN THE PREVIOUS 72 HOURS.

AT THE BAR SHE WAS HIGHLY INTOXICATED.

HER BLOOD ALCOHOL WAS .26. AND SO THERE COULD HAVE BEEN -->> YOU'RE WAY INTO YOUR REBUTTAL.

>> I UNDERSTAND, BUT I THINK -- SO IN FITZPATRICK THAT WAS IMPORTANT TO THIS COURT, THAT IT PROVIDED THE FACT THAT THE DNA IN THE PANTIES THEN PROVIDED THAT EXPLANATION.

AND SO I THINK THAT THAT IS THE SAME HERE.

THIS NEW DNA TESTING, FIRST OF ALL, CANNOT BE CONSIDERED IN RELATION TO THE BRADY AND THE IEC.

BUT EVEN IF YOU'RE GOING TO CONSIDER IT IN RELATION TO THE NEWLY-DISCOVERED EVIDENCE, I SUBMIT THAT IT'S ACTUALLY HELPFUL TO THE CASE IF YOU LOOK AT IT FROM THAT PERSPECTIVE BECAUSE IT PROVIDES AN EXPLANATION FOR IT IN TERMS OF THE SCIENCE.

SO -- AND THEN AS TO THE --

>> SO HOW DO WE EVALUATE THAT RELATIONSHIP TO THE FACT THAT MR. BOGLE SAYS THAT HE NEVER HAD SEX WITH HER?

>> WELL, FIRST OF ALL, FITZPATRICK ALSO SAID HE NEVER HAD SEX WITH THE VICTIM WHEN HE WAS ORIGINALLY INTERVIEWED AND THIS COURT FOUND THAT CONFIDENCE WAS UNDERMINED BASED ON THE NEW EVIDENCE.

BUT SECOND OF ALL, WHEN DETECTIVE LINGO SAID THAT AT THE EVIDENTIARY HEARING, THAT INFORMATION WASN'T CONTAINED IN HIS NOTES, AND HIS REPORT WAS PREPARED NINE DAYS AFTER HE INTERVIEWED BOGLE.

SO CERTAINLY, AGAIN, I THINK THAT THERE'S A QUESTION THERE ABOUT WHY THAT'S -- AND HE SAID I PUT IN MY NOTES VERY IMPORTANT THINGS, THINGS THAT I KNOW I NEED TO REMEMBER.

AND YET IT'S NOT IN THERE. SO CERTAINLY I THINK THERE'S -- AGAIN, THERE'S PLACES TO CHALLENGE ON THAT PARTICULAR EVIDENCE AND PEOPLE LIE ABOUT THEIR SEXUAL EXPLOITS ALL OF THE TIME.

I THINK A JURY WOULD CERTAINLY UNDERSTAND THAT A DEFENDANT WHO DENIES SEXUAL INTERCOURSE MAY BE LYING ABOUT THAT, BUT THAT DOESN'T MEAN THAT HE IS LYING ABOUT THE MURDER IN THE CASE. AND AS TO THE OTHER EVIDENCE, I WOULD ASK THAT I COULD RESERVE THE REST OF MY TIME FOR REBUTTAL, PLEASE.

>> MAY IT PLEASE THE COURT, I'M REPRESENTING THE STATE OF FLORIDA IN THIS CASE.

FIRST OF ALL, WITH REGARD TO THE CONSENSUAL SEX, BOGLE WAS ASKED WHEN HE WAS ARRESTED, DID YOU HAVE CONSENSUAL SEX.

HE SAID NO.  
THEY HAD A TRIAL.

IT WAS NEVER ARGUED AT TRIAL  
THAT THERE WAS CONSENSUAL SEX.  
>> WHEN DO WE FIND OUT HE SAID  
NO?

BECAUSE HER -- MISSMCDERMOTT'S  
STATEMENT IS THAT THE DETECTIVE  
NEVER SAID THAT, IT WAS NOT IN  
HIS NOTES, AND NOW HE'S SAYING  
THAT.

>> HE TESTIFIED AT TRIAL.

>> HE TESTIFIED AT TRIAL, BUT IT  
WAS NOT IN HIS NOTES THAT

MR. BOGLE --

>> I BELIEVE THERE WAS A  
SUPPLEMENTAL POLICE REPORT THAT  
DID CONTAIN THAT EVIDENCE, BUT  
HE DID TESTIFY TO THAT AT TRIAL.  
DEFENSE COUNSEL NEVER ARGUED  
THAT BOGLE HAD CONSENSUAL SEX.  
AND TO THIS DAY THEY HAVE NOT  
PRESENTED ANY EVIDENCE, THEY  
DIDN'T PRESENT TESTIMONY FROM  
BOGLE, OH, BY THE WAY, WE HAD  
CONSENSUAL SEX THE DAY BEFORE.  
SO THE WHOLE CONTENTION THAT  
THIS COULD HAVE BEEN CONSENSUAL  
SIMPLY BECAUSE THE DNA WAS ALSO  
FOUND ON THE PANTIES SIMPLY  
HASN'T BEEN ESTABLISHED.  
THERE'S A WHOLE ARGUMENT THAT  
HER CLOTHES WERE NEATLY REMOVED  
AND BESIDE THE BODY.  
WE DON'T KNOW WHAT HAPPENED IN  
THAT 45 MINUTES DURING THAT  
ATTACK.

BUT WHEN YOU LOOK AT THE  
PHOTOGRAPHS FROM THAT CRIME  
SCENE, YOU WILL SEE THAT HER  
CLOTHES ARE DUMPED IN A PILE  
WITH HER BODY IS LYING UPON.  
SO WHETHER HE HAD SEX WITH HER  
VAGINALLY, THEN RIPPED OFF HER  
CLOTHES SO HE COULD ANALLY RAPE  
HER AND BEAT HER TO DEATH, I  
DON'T KNOW.

BUT THE FACT IS IT IS LYING  
THERE NEXT TO HER.

WHETHER HE WIPED HIMSELF WITH  
IT, I DON'T KNOW.

ALL I KNOW IS IN THAT 45 MINUTES

WHEN HE WAS SEEN FOLLOWING HER OUT AND THEN SHORTLY AFTER WHEN HE WAS SEEN COMING BACK AND HE WAS SUDDENLY DIRTY AND HAD A WET CROTCH AND FRESH SCRATCHES, WHICH WERE TESTIFIED TO BY BOTH THE ALFONSOS, WHO HAD PREVIOUSLY SAID HE CAME UP TO THEM IN THE BAR AND TALKED TO THEM ABOUT THE ACCIDENT AND SHOWED THEM HIS INJURIES.

AND BOTH OF THEM IN THAT TIME SAID THERE WERE NO FRESH INJURIES.

THE IDEA THAT THE PROSECUTOR THEN ARGUED IN CLOSING THAT THE SCRATCHES THAT HE HAD WERE SOLELY THE RESULT OF HER SCRATCHING IS NOT WHAT SHE SAID. WHAT SHE SAID WAS HE HAS THESE FRESH SCRATCHES AND -- WHICH WERE A RESULT OF THE STRUGGLE WITH THE VICTIM.

AGAIN, IF YOU LOOK AT THE CRIME SCENE PHOTOS, YOU WILL SEE THAT THERE WERE -- THAT HE USED THESE CONCRETE BLOCKS TO BEAT HER TO DEATH.

THEY'RE UNDER A BUNCH OF SHRUBBERY.

THERE ARE MANY WAYS HE COULD HAVE GOTTEN SCRATCHED.

SHE REFERENCED THE FACT THAT THE VICTIM HAD BLOOD UNDERNEATH HER FINGERNAILS.

IT WAS THE SAME BLOOD TYPE. THEY DID NOT HAVE DNA TO CONNECT IT AT THAT TIME.

WITH REGARD TO THE SUBSEQUENT TESTING THEY DID ON THE FINGERNAILS, WHEN THEY FIRST DID THE TESTING FOR DNA, IT CAME BACK THAT IT WAS A WOMAN AND SO TO TAKE OUT THE FEMALE DNA, THEY ASKED FOR NEW DNA TESTING. BUT THE MAJORITY OF THE DNA FOUND UNDER HER FINGERNAILS WAS HERS.

THEY THEN FOUND TRACE DNA FROM TWO UNKNOWN MALES.

>> WERE THEY ABLE TO DETERMINE,  
WAS IT BLOOD UNDER THE  
FINGERNAILS?

>> IT WAS BLOOD.

>> HOW WOULD HER BLOOD --

>> HER HANDS -- SHE HAD HAND  
POOLING BESIDE HER.  
HER HANDS WERE THERE.

>> GO AHEAD.

THEN THE SUBSEQUENT TESTING --

>> THE SUBSEQUENT TESTING SHOWED  
TRACE EVIDENCE OF THE MALE DNA.  
COUNSEL HERSELF HAS ARGUED  
REPEATEDLY THAT THERE IS TOUCH  
DNA, THAT YOU CAN PICK UP DNA  
FROM PEOPLE TOUCHING YOUR  
CLOTHING.

BUT THERE IS NO EVIDENCE OF WHO  
THAT DNA BELONGS TO, ANYTHING  
CONNECTING IT TO THIS CRIME.

AT THE TIME WHEN THAT CAME OUT  
BECAUSE THEY WERE POINTING SO  
HEAVILY AT GUY DOUGLAS, JUDGE  
TIMMERMAN SAID HAS ANYBODY DONE  
DNA TESTING ON GUY DOUGLAS?

WE FOUND GUY DOUGLAS.

WE ASKED HIM IF HE WOULD GIVE  
HIS DNA FOR TESTING AND HE  
VOLUNTARILY GAVE IT.

IT CAME BACK NEGATIVE.

>> WAIT A MINUTE.

WHAT WAS TESTED ON GUY DOUGLAS?

>> THE DNA THAT WAS FOUND UNDER  
THE FINGERNAILS.

BUT THERE IS A CAVEAT HERE.

BECAUSE WE DID THE SDR TESTING  
AND HE -- PROSECUTOR TOLD  
DEFENSE COUNSEL, IF YOU WANT TO  
DO ANY FURTHER TESTING, GO RIGHT  
AHEAD.

BUT THIS IS WHAT WE'VE DONE.

HE'S EXCLUDED FOR THAT.

AND -- BUT I THINK THE MORE  
IMPORTANT FACT IS THAT IF GUY  
DOUGLAS HAD HAD A PART IN THIS  
CRIME, THERE'S NO WAY THAT THIS  
SEASONED CRIMINAL, WHO HAS BEEN  
IN AND OUT OF THE DEPARTMENT OF  
CORRECTIONS EVER SINCE THEN FOR  
BATTERY ON A LAW ENFORCEMENT

OFFICER --

>> GUY DOUGLAS?

>> GUY DOUGLAS, YES.

HE ALSO HAD A CHARGE FOR BATTERY AND ASSAULT ON MARCIA TURLEY WHILE SHE WAS PREGNANT WHICH HE ALSO SERVED TIME FOR.

BUT HE CLEARLY KNOWS HIS RIGHTS. AND HE VOLUNTEERED HIS DNA.

THE WHOLE CONFESSION THAT THEY SAY THAT THEY GOT -- MARCIA TURLEY HAD FROM GUY DOUGLAS.

GUY DOUGLAS NEVER TOLD HER HE WAS INVOLVED IN THIS CRIME.

GUY DOUGLAS SIMPLY SAID THEY'RE TALKING TO BRETT, BUT I DON'T HAVE TO WORRY ABOUT IT BECAUSE I WAS WITH YOU.

SHE WAS LIKE YOU WERE WITH ME ALL NIGHT AND HE THREATENS HER. THE EVIDENCE SHOWS HE WAS INDEED WITH HER.

BECAUSE SHE AND GUY DOUGLAS BOTH WENT BACK TO THE MOTEL TOGETHER.

JEANIE, WHO LATER COMES IN AND SAYS HE WASN'T THERE, SHE TOLD THE DETECTIVE AT THE TIME THAT THAT NIGHT WHEN SHE GOT HOME, GUY DOUGLAS AND MARCIA TURLEY WERE IN THAT MOTEL ROOM AND THAT GUY DOUGLAS STAYED THERE UNTIL LATE THE NEXT AFTERNOON.

>> COULD YOU JUST GO BACK ON THE BLOOD.

SO THE BLOOD IS ARGUED AT TRIAL THAT IT WAS BLOOD COULD HAVE -- WAS -- OCCURRED DURING A STRUGGLE.

>> CORRECT, WHICH IT WAS.

>> OKAY.

WHEN IT'S TESTED AFTER THE SECOND TESTING, EXCLUDES THE DEFENDANT AS ONE OF THE CONTRIBUTORS.

>> CORRECT.

>> OKAY.

SO IS THAT NOT -- WOULD YOU AGREE THAT'S AT LEAST NEWLY-DISCOVERED EVIDENCE?

>> WELL, IT IS NEWLY DISCOVERED,



CIRCUMSTANTIAL EVIDENCE, YES.  
>> SO THE ISSUE THEN GOES WOULD  
IT PROBABLY PRODUCE AN  
ACQUITTAL.

>> EXACTLY.

>> NOW, ON THE AUTOMOBILE  
ACCIDENT THERE SEEMED TO BE A  
LOT THAT THIS DEFENSE LAWYER --  
EVERY TIME THAT THEY ASKED WHY  
DIDN'T YOU DO THIS OR PUT THAT  
EVIDENCE ON, HE GOES, WELL, I  
WANTED TO SAVE THE CLOSING.  
AND BEFORE THE RULE CHANGE, --  
WE'VE SEEN A LOT OF THAT, WHERE  
SOMEONE SAYS THIS SEEMED  
EXCESSIVE.

I DIDN'T PUT THAT ON.

I DIDN'T PUT THIS ON.

THAT HIS EXCUSE IT SEEMED LIKE  
FOR EVERYTHING WAS, WELL, I  
WANTED TO HAVE THE CLOSING.  
SO MY QUESTION ON THE AUTOMOBILE  
ACCIDENT, IT SEEMS THAT THE IDEA  
THAT HE WAS IN THIS -- AN  
AUTOMOBILE ACCIDENT THAT WAS  
SEVERE ENOUGH TO, WHAT, CAUSE  
HIM TO BE HOSPITALIZED.

>> HE WAS HOSPITALIZED.

>> AND THEN HE HAD A  
PNEUMOTHORAX.

>> YES.

>> AND HE DID HAVE GLASS FROM,  
WHAT, THE WINDSHIELD SHATTERED?  
AND THAT WAS TEN DAYS BEFORE?

>> IT WAS ABOUT TEN DAYS BEFORE.

>> SO THE IDEA THAT MAYBE HE  
WOULD HAVE STILL BEEN SUFFERING  
-- NOW I'M NOT BUYING THIS ISSUE  
OF -- THAT HE WAS INCAPACITATED  
TO BE ABLE TO PERFORM THIS  
CRIME, BUT THAT THE REASON FOR  
HIS FACE SCRATCHES COULD HAVE  
COME FROM THE AUTOMOBILE  
ACCIDENT, SEEMS LIKE THAT'S  
PRETTY GOOD EVIDENCE.

SO I GUESS THE QUESTION ON IT IS  
DID THE DEFENSE LAWYER REALLY  
INVESTIGATE IT ENOUGH TO AT  
LEAST LOOK AT THE PICTURES TO  
KNOW THAT THIS WOULD BE -- IF

YOU COULD SHOW THOSE PICTURES FROM RIGHT AFTER THE ACCIDENT, A FEW DAYS AGO, AND SOMEONE HAD SAID THAT HE LOOKED FINE EARLIER THAT EVENING MAYBE WOULD PUT THAT IN A DIFFERENT LIGHT.

SO THE QUESTION IS THE AUTOMOBILE ACCIDENT, WHY IT WASN'T INVESTIGATED, WHY THE PHOTOGRAPHS WEREN'T LOOKED AT AS A WAY TO GIVE HIM A CHANCE AT A NOT GUILTY VERDICT.

>> THE PROBLEM WITH THAT IS, FIRST OF ALL, OBVIOUSLY BRETT BOGLE KNOWS HE WAS IN A CAR ACCIDENT, COUNSEL KNOWS HE'S IN A CAR ACCIDENT.

YOU HAVE THESE MINOR SCRATCHES, WHICH --

>> WELL, THAT'S WHAT I'M ASKING. YOU'RE SAYING THEY'RE MINOR. DO WE HAVE THE PHOTOGRAPHS IN THE RECORD?

>> YES.

>> AND THEY'RE JUST LIKE LITTLE -- ARE THEY NOT VISIBLE?

>> AFTER THE CRIME IT JUST LOOKS LIKE REDDENING.

THE PHOTOGRAPHS ARE DARK, NOT THE BEST PHOTOGRAPHS IN THE WORLD.

IT LOOKS LIKE A SCRATCH HERE.

THE PHOTOS AFTER THE CAR ACCIDENT SHOWED MORE ABRASIONS AND SUPERFICIAL LACERATIONS. BUT THE NOTION -- THERE'S SO MANY PARTS TO THAT QUESTION THAT I WANT TO GET TO.

HE REPEATEDLY SAID I KNEW ABOUT THAT, I HAD THAT INFORMATION, BUT I WOULD NOT HAVE PRESENTED THAT UNLESS IT WAS SOMETHING SUBSTANTIAL.

>> SO WHEN HE SAID HE KNEW ABOUT IT, IT'S ONE THING TO KNOW YOUR CLIENT WAS IN THE ACCIDENT. THE QUESTION IS DO YOU GET THE PHOTOGRAPHS AND DO THE PHOTOGRAPHS AT LEAST START TO SAY, LISTEN, THIS IS SOMETHING

PRETTY POWERFUL.

I MEAN, YOU MIGHT HAVE BEEN ABLE TO -- EVEN IF YOU DIDN'T WANT TO PUT ON YOUR OWN WITNESS, YOU MIGHT HAVE BEEN ABLE TO CROSS-EXAMINE ABOUT HAVE YOU SEEN THE PHOTOGRAPHS.

YOU KNOW, YOU MIGHT HAVE BEEN ABLE TO STILL DO IT IN THE STATE'S CASE.

BUT IF YOU DON'T HAVE IT, IF YOU HAVEN'T LOOKED AT THE HOSPITAL RECORDS TO KNOW HOW SERIOUS THE ACCIDENT WAS, YOU --

>> WELL, IN FACT --

>> HE'S AT LEAST DEFICIENT IN NOT DOING THAT.

>> OBVIOUSLY IF YOU'D HAD THE PHOTOGRAPHS, YOU KNOW, HE WOULD HAVE SEEN WHAT BRETT BOGLE HAD ALREADY CLEARLY DESCRIBED TO HIM.

AND BRETT BOGLE'S DESCRIPTION OF THE ACCIDENT WAS ACTUALLY MUCH WORSE THAN THEIR OWN EXPERT WAS ABLE TO TESTIFY TO.

THEIR OWN EXPERT SAYS THERE'S NO EVIDENCE OF CRACKED OR BROKEN RIBS.

SO WHAT YOU ARE TALKING ABOUT IS A DEFENSE COUNSEL WHO BELIEVES HIS CLIENT IS INNOCENT AND BELIEVES THE STATE HAS LOCKED ON TO THE FIRST GUY THAT IT COULD BE AND HAS DONE A SHODDY JOB OF REVIEWING THE EVIDENCE.

THE FOCUS OF HIS WHOLE DEFENSE IS TO SHOW HOW THEY DIDN'T DO THE THINGS THAT THEY COULD HAVE DONE TO FIND THE REAL KILLER.

>> SO IN RESPECT TO THAT, MALONE IN NOT GETTING THE BENCH NOTES, I MEAN, YOU GOT SOMEBODY, MALONE, WHO I GUESS WE'VE SEEN IN SOME OTHER CASES, QUESTIONS ABOUT HIS METHODS FOR GOING ABOUT THE TESTING.

AND SO WHY DIDN'T HE DO -- YOU KNOW, IF HE'S SO SURE ABOUT HIS INNOCENCE, DIDN'T TAKE

DEPOSITION ONE.

>> NO.

THAT'S NOT TRUE.

HE DID TAKE DEPOSITIONS.

>> OH.

>> SHE DID SAY THAT, BUT HE TOOK DEPOSITIONS.

IN FACT, THAT'S ONE OF THE THINGS THEY'RE COMPLAINING ABOUT, THAT HE DIDN'T INTRODUCE THIS DEPOSITION THAT HE TOOK.

>> WELL, HE DIDN'T INTRODUCE -- WAS IT MR. KELLY?

>> MR. KELLY.

>> WHO'S ALLEGEDLY HEARD AN ARGUMENT BETWEEN THE VICTIM AND GUY.

>> RIGHT.

>> CORRECT?

HE TOOK THAT DEPOSITION.

BUT WHAT OTHER -- I ASSUME WHAT SHE WAS SAYING IS HE DIDN'T TAKE DEPOSITIONS OF A LOT OF THE MAJOR WITNESSES.

AND IS THAT THE CASE?

>> WHETHER HE TOOK DEPOSITIONS OR HE HAD HIS INVESTIGATOR TALK TO THEM, HE SIMPLY TALKED TO THEM, HE KNEW WHAT THIS EVIDENCE WAS.

>> DID HE TAKE THE DEPOSITION OF MR. MALONE?

>> I DON'T -- I DON'T KNOW.

>> YOU KNOW, WHEN YOU GOT DNA EVIDENCE, SORT OF LIKE THAT'S -- YOU CAN SAY YOUR CLIENT'S INNOCENT AND WHATEVER.

BUT YOU GOT THE DNA EVIDENCE AND YOU GOT, YOU KNOW, THE WET PANTS, IT SEEMS TO ME THAT YOU'VE GOT TO LOOK AT THAT.

SO I GUESS THE QUESTION THERE IS IT SEEMS DID HE GET THE NOTES AHEAD OF TIME?

>> HE DID NOT GET THE NOTES AHEAD OF TIME.

THE EVIDENCE WAS YOU DID NOT GET NOTES, THAT IT WAS NOT COMMON TO GET NOTES.

THE PROSECUTOR TESTIFIED SHE

NEVER GOT THE NOTES.

>> BUT WHY?

THIS ISN'T 1845.

THIS IS IN 1995.

HOW DO YOU NOT GET THE NOTES  
UPON WHICH SOMEBODY BASES THEIR  
OPINION?

>> YOUR HONOR, THEY GET THE  
ULTIMATE REPORT.

THEY JUST DIDN'T GET THE BENCH  
NOTES.

IT WAS NOT COMMON TO GET THE  
BENCH NOTES.

IN FACT, HE SAID HE'D NEVER SEEN  
BENCH NOTES IN ANY OF THEM, THAT  
MALONE WAS THE F.B.I., THE GO-TO  
GUY, AND THE FACT OF THE MATTER  
IS THAT MALONE IS TESTIFYING  
ABOUT THIS PUBIC HAIR.

DEFENSE COUNSEL HAD AN INNOCENT  
EXPLANATION FOR THIS PUBIC HAIR.  
SO HE WAS NOT CONCERNED ABOUT  
IT.

THAT PUBIC HAIR WAS FOUND ON A  
PAIR OF PANTS THAT BELONGED TO  
KATIE ALFONSO'S SON, THAT THE  
EVIDENCE SHOWED HE HAD REMOVED  
FROM THAT TRAILER DURING THAT  
BURGLARY FROM THE COMMON WASHING  
MACHINE OF THE FAMILY.

HE SAID MALONE HELPED HIM  
BECAUSE HE SHOWED THAT IT WAS  
NOT FORCIBLY REMOVED.

HE ARGUED HEAVILY IN CLOSING  
HE'S GOT THE KID'S PANTS ON, HE  
TOOK IT OUT OF THE FAMILY  
WASHING MACHINE, WHERE THERE ARE  
ALL THESE HAIRS ON IT, IT'S  
NATURALLY SHED.

THERE'S NO EVIDENCE THIS HAIR  
WAS TRANSFERRED DURING AN  
ATTACK.

AND CLEARLY THAT WAS THE BEST HE  
COULD DO.

AND EVEN TODAY THEY HAVE NOT  
BEEN ABLE TO PRESENT AN EXPERT  
WHO SAYS THESE TWO HAIRS ARE NOT  
CONSISTENT.

SO -- AND MY UNDERSTANDING OF  
THE EVIDENCE IS BOTH MALONE AND

ROBERTSON HAVE RE-REVIEWED THIS HAIR AND FOUND THAT MALONE TESTIFIED FAIRLY, WHICH ALL MALONE TESTIFIED TO IS THAT HAIR IS CONSISTENT, THAT YOU CAN NEVER SAY IT'S A MATCH.

>> BUT, YOU KNOW, IT IS TROUBLING THAT THERE WAS SOME CONFUSION ABOUT WHETHER THIS WAS A HAIR FROM THE HEAD OR HAIR FROM THE PUBIC AREA, WHICH I WOULD ASSUME MAKES A DIFFERENCE IN THE JURY'S MIND IF YOU'RE TALKING ABOUT A SEXUAL BATTERY TOOK PLACE AND THIS SORT OF HELPS TO LINK THIS DEFENDANT TO THE SEXUAL BATTERY.

>> YOUR HONOR, MALONE SAID THERE WAS NO CONFUSION.

THE ONLY CONFUSION IS HE WROTE DOWN THE WRONG NUMBER.

HE SAID UNDER NO CIRCUMSTANCES WOULD YOU EVER CONFUSE A PUBIC HAIR WITH A HEAD HAIR, THAT THERE IS NO WAY THAT HE WAS REFERRING TO A HEAD HAIR IN HIS NOTES, THAT HE JUST WROTE DOWN THE WRONG NUMBER.

AND THAT WHEN IT WAS REEVALUATED AFTERWARDS, IT IS AGAIN STILL CONSISTENT.

SO THERE'S NO EVIDENCE WHATSOEVER THAT HE WAS LOOKING AT A HEAD HAIR OTHER THAN THE FACT IN HIS NOTES, WHICH HE THEN CORRECTED WHEN HE MADE HIS REPORT, ACCIDENTLY HAD THE WRONG NUMBER.

>> COULD YOU -- THIS IS REALLY MORE JUST FOR MY CONCERN THAT WE ALL HAVE.

THIS WAS A 1995 MURDER.

>> IT WAS IN '91.

>> '91 MURDER.

HE WAS CONVICTED THEN IN '95.

WE'RE IN 2014.

>> YES.

>> WHAT WAS GOING ON UNTIL THE TRIAL COURT RENDERED ITS DECISION IN --

>> 2011.

>> 2011.

>> WE HAD MULTIPLE INTERLOCUTORY APPEALS.

WE HAD MULTIPLE STAYS AND ABATES OVER THE STATE'S OBJECTION TO DO THIS REPEATED DNA TESTING.

THERE WAS A STAY AND ABEY FOR THEM TO BE ABLE TO DO TESTING ON THE PUBIC HAIR AT SOME POINT WHERE THEY COULD NEVER AGREE WHICH SLIDE WAS THE PUBIC HAIR, WHICH WE HAVE ULTIMATELY NOW -- THEY'VE AGREED ON WHAT THE PUBIC HAIR IS AND IT IS MY UNDERSTANDING THAT IT HAS JUST BEEN SENT DESPITE THE FACT THAT AN ORDER WAS SENT IN JUNE, FOR TESTING.

>> WHAT WAS JUST SENT?

>> THE PUBIC HAIR.

>> IS THAT PART TWO?

>> YES, MA'AM.

YES.

>> AND WHAT'S -- WHAT IS THE POINT OF FURTHER TESTING OF THAT?

>> WELL, CLEARLY WE ARGUED IT WAS UNNECESSARY, BUT DURING THE COURSE OF THIS 14-YEAR STAY IN CIRCUIT COURT THEY HAD MADE A MOTION FOR DNA TESTING OF THE PUBIC HAIR AND THE COURT HAD GRANTED IT.

WHEN THIS COURT REMANDED THIS COURT BACK BASED UPON CONCERN ABOUT THE JAC CONTRACT AND REPRESENTATION AND ALSO A CLAIM ABOUT MALONE AND A NEW DOJ REPORT, COUNSEL THEN RENEWED HER REQUEST TO DO DNA TESTING.

THE STATE SAID SINCE IT'S ALREADY BEEN ORDERED BY THE COURT, WE DON'T OBJECT.

SO WE FEEL THAT IT DOES NOT EXONERATE HIM, DOES NOT SATISFY THE TEST OF 3853, BUT WE DID NOT OBJECT TO TESTING OF IT.

>> DID GUY ROBERTS -- YOU SAID HE AGREED TO THE DNA -- TO THE

DNA SAMPLE.  
HAS HIS -- WAS HE -- DID HE  
TESTIFY IN THIS EVIDENTIARY  
HEARING?  
>> DOUG ROBERTS?  
DEFENSE COUNSEL?  
>> NO.  
GUY ROBERTS.  
>> GUY DOUGLAS.  
>> GUY DOUGLAS.  
>> NO.  
THEY DID NOT CALL HIM.  
>> DID HE TESTIFY -- HE DIDN'T  
TESTIFY AT TRIAL.  
>> NO.  
>> WAS A DEPOSITION EVER TAKEN  
OF HIM?  
>> I DO NOT KNOW, YOUR HONOR.  
>> IT JUST SEEMS, AGAIN, JUST TO  
KIND OF TAKE HIM OFF, IT WOULD  
BE NICE TO HAVE HIS VERSION OF  
WHAT HAPPENED.  
>> WELL, HIS VERSION OF WHAT  
HAPPENED IS HE WAS WITH MARCIA  
TURLEY AND THEN HE WENT BACK TO  
HIS TRAILER THAT AFTERNOON AND  
HE WAS AT THE TRAILER WHEN THEY  
CAME TO ARREST BRETT BOGLE.  
>> HOW DO WE KNOW WHAT HE'S  
SAYING IF NO DEPOSITION WAS  
TAKEN, WHAT?  
>> THROUGH PUTTING TOGETHER THE  
EVIDENCE THAT WAS BEFORE US.  
I MEAN, THE FACT IS THIS --  
THAT'S WHAT HAPPENED.  
>> SO WAS HE INTERVIEWED BY THE  
POLICE?  
WAS HE INTERVIEWED BY THE  
DEFENSE ATTORNEY?  
HOW DO WE KNOW --  
>> HE WAS INTERVIEWED BY THE  
POLICE.  
YES, HE WAS.  
THERE IS A SUPPLEMENTAL POLICE  
REPORT WHICH CONTAINS HIS  
STATEMENT AND THAT'S WHAT HE  
SAID HAPPENED, THAT HE AND  
MARCIA WENT BACK TO THE GABLES  
MOTEL, THEY LEFT BRETT BOGLE  
THERE AND THAT JEANIE THEN CAME



IN LATER.  
HE WENT OVER TO THE TRAILER THAT  
AFTERNOON.

HE ANSWERED THE DOOR WHEN THEY  
KNOCKED AND SAID WE'RE LOOKING  
FOR BRETT BOGLE.

>> BUT DO THEY EVER SEE HIM AS A  
SUSPECT, THE POLICE?

>> I DON'T BELIEVE THEY DID.  
THERE WAS REALLY NOTHING TO  
POINT TO HIM BEING THERE BECAUSE  
ALL THE WITNESSES HAD SAID THAT  
HE HAD LEFT.

THERE WAS NOTHING POINTING TO  
HIM BEING AT THE SCENE OF THE  
CRIME.

>> DID HE HAVE A RELATIONSHIP --  
I THINK YOU WERE ABOUT TO ASK.  
DID HE HAVE A RELATIONSHIP WITH  
THE VICTIM?

>> YOUR HONOR, THERE IS SO MUCH  
INTERRELATIONSHIPS HAPPENING  
WITH ALL OF THESE PEOPLE, BUT IT  
IS MY UNDERSTANDING THAT THEY --  
THESE TWO PEOPLE -- HE AND THE  
VICTIM KNEW EACH OTHER BECAUSE  
THEY HUNG OUT AT THE SAME BARS.  
I DON'T THINK THEY KNEW EACH  
OTHER WELL.

THERE'S NO EVIDENCE OF ANY  
ANIMOSITY BETWEEN THEM.  
THERE'S NO EVIDENCE AS THERE WAS  
WITH BOGLE THAT HE WAS  
THREATENING TO KILL HER.

SO OBVIOUSLY THEY ALL KNEW EACH  
OTHER BECAUSE THEY HUNG OUT AT  
THE SAME BAR.

BUT THERE'S NO EVIDENCE THAT THE  
TWO WERE ACTUALLY FRIENDS OR  
ANYTHING OF THAT NATURE.

>> THANK YOU.

>> THANK YOU.

>> JUST AS FAR AS THE  
PHOTOGRAPHS GO, IN EVIDENCE IS  
-- AT 3614 THERE'S A PICTURE OF  
BRETT BOGLE AT THE HOSPITAL AND  
YOU CAN SEE HE ACTUALLY HAD  
SUTURES FOR ONE OF HIS CUTS AND  
HE HAS ALL THESE LACERATIONS UP  
ON HIS FACE AND ON HIS

CHEEKBONE.

THEN YOU CAN LOOK AT 3622, WHICH IS THE PHOTO THAT WAS TAKEN UPON HIS ARREST AND YOU CAN SEE THAT THERE'S THESE FAINT SORT OF MARKS UP ON HIS FOREHEAD THAT ARE IN THE EXACT SAME AREA THAT THE MARKS ARE IN HIS PICTURE FROM AT THE HOSPITAL.

SO I THINK THAT THOSE ARE VERY COMPELLING, PARTICULARLY TO SHOW A JURY, THAT THIS ENTIRE IDEA OF THE BLOOD UNDER THE FINGERNAILS BEING HIS BECAUSE THEY HAD A STRUGGLE AND THESE ARE THE SCRATCHES THAT SHE INFLICTED, WOULD HAVE BEEN COMPLETELY UNDERCUT BY SIMPLY JUST A PHOTOGRAPH, NOT TO MENTION THAT THEN THERE WAS DR.WILLIE AND THEN THERE WAS ALSO THE MEDICAL RECORDS THAT CORROBORATE THAT PARTICULAR ISSUE.

AS TO THE -- THERE WERE NO DEPOS OF DOUGLAS, BOWERLY, DIAZ, ANY OF THOSE PEOPLE WITH BOGLE THAT NIGHT.

JUDGE TIMMERMAN NEVER MENTIONS DIAZ, BUT SHE TESTIFIED UNDER OATH SHE GAVE BOGLE A RIDE HOME THAT NIGHT.

AND THERE WERE NO DEPOSITIONS OF ANY OF THE F.B.I. AGENTS.

>> EXCUSE ME.

THE SIGNIFICANCE OF HER POSSIBLY HAVING GIVEN HIM -- WE ASSUME SHE GAVE HIM A RIDE HOME, IS WHAT?

I MEAN, IS SHE NOT SEE HE WAS WET, DIDN'T SEE ANY SCRATCHES ON HIM, DIDN'T -- WHAT ELSE BEYOND HAVING GIVING HIM A RIDE HOME?

>> WE DID ASK HER ABOUT THAT.

SHE DOESN'T HAVE A STRONG MEMORY ABOUT ANYTHING THAT NIGHT.

SHE RECALLED WHAT HE WAS WEARING.

SHE REMEMBERS DRIVING HIM HOME THAT NIGHT.

IT JUST TAKES HIM OUT OF THE

SCENE AT A PARTICULAR TIME  
BEFORE THE MURDER.

>> SUPPOSEDLY SHE DROVE HIM HOME  
WHILE THE VICTIM WAS STILL AT  
THE BAR.

>> RIGHT, BECAUSE SHE GIVES A  
TIME LINE, THAT SHE DID REMEMBER  
THE TIME LINE.

AND THE OTHER THING I WOULD JUST  
SAY IS THE FACT THAT THE CIRCUIT  
COURT WANTED TESTING TO BE DONE  
OF GUY DOUGLAS CERTAINLY WAS  
INDICATIVE THAT THAT INFORMATION  
UNDERMINED CONFIDENCE IN THE  
OUTCOME OF THE TRIAL.

I WOULD ASK THIS COURT TO  
REVERSE AND GRANT A NEW TRIAL.

>> THANK YOU, COUNSEL, FOR YOUR  
ARGUMENTS.