Labrant D. Dennis v. State of Florida

MR. CHIEF JUSTICE: THE FINAL CASE ON THE ORAL ARGUMENT CALENDAR THIS MORNING IS DENNIS VERSUS STATE. MS. SPALDING.

THANK YOU, YOUR HONOR. I WOULD LIKE TO FOCUS ON THE THIRD ISSUE RAISED IN THE INITIAL BRIEF, WHICH IS THE LEAD ISSUE WALLACE -- LETETIA WALLACE IMPEACHMENT. IT IS SUBJECT TO ABUSE, TO ALLOW THE STATE'S IMPEACHMENT OF ITS OWN WITNESS, AND THAT IT IS NOT ABUSE, IF CALLED FOR THE PRIMARY PURPOSE OF OTHERWISE INTRODUCING IN ADDMISSIBLE EVIDENCE UNDER THE GUISE OF IMPEACHMENT. THERE CAN NO IN QUESTION IN THIS CASE THAT THE STATE'S PRIMARY PURPOSE IN THIS CASE OF CALLING LATETIA WALLACE, TO PROVIDE THE EVIDENCE THAT SHE HAD HIRED SOMEONE TO STEAL AND BURN HER CAR IN THE COMMISSION OF THESE MURDERS.

IS YOUR ARGUMENT THAT THERE WAS IN LEGITIMATE EVIDENCE THAT THE STATE WAS ATTEMPTING TO ELICIT FROM HER THAT WOULD HAVE BEEN HELPFUL TO THE STATE?

THE ONLY FAVORABLE EVIDENCE THAT LATETIA WALLACE PROVIDEED AS TO UNDISPUTEABLE FACTS, THAT HE HAD LEFT HIS CAR PARKED IN FRONT OF A FRIEND'S HOUSE, WHILE OUT OF TOWN ON THE WEEKEND OF THE MURDERS, AND IT WAS OSTENSIBLY THERE. THE PURPOSE FOR CALLING A WITNESS BY A PARTY DOES NOT NEGATE THE KIND OF RECORD THAT WE HAVE IN THIS CASE THAT SHOWS THAT THE PRIMARY PURPOSE OF THE STATE IN CALLING IT THIS WITNESS WAS TO IMPEACH HER. IN US VERSUS HOGAN --

THE STATE SAYS THAT ITS PRIMARY PURPOSE IN CALLING THIS WITNESS WAS TO SHOW BIAS.

BUT VERY CONVENIENTLY THE STATE'S THEORY OF BIAS OVERLAPPED COMPLETELY WITH THE SUBSTANTIVE THEORY, FOR WHICH THE EVIDENCE WAS, BY THE STATE'S OWN ADMISSION, NOT ADMISSIBLE. THE STATE'S THEORY WAS THAT WALLACE HAD BURNED THE CAR, IN AN EFFORT TO BE HELPFUL TO THE DEFENDANT, BY DESTROYING EVIDENCE. THE STATE WAS VERY CAREFUL TO ELICIT THAT WALLACE VISITED THE DEFENDANT FREQUENTLY WHILE IN JAIL AND WAS THERE IN CONSTANT COMMUNICATION WITH HIM. THIS IS EVIDENCE OF GUILT, BUT AS THE STATE CONCEDED, IT WAS NOT ADMISSIBLE AS SUCH, BECAUSE THEY COULD NOT TIE THE CAR BURNING DIRECTLY TO THE DEFENDANT.

I GUESS I UNDERSTOOD THAT THE STATE'S PRIMARY REASON FOR CALLING HER WAS TO DEMONSTRATE THAT THE DEFENDANT HAD ACCESS TO HER CAR, AND BECAUSE OF ON THE NIGHT OF THE MURDERS, THERE WAS SOMEONE WITH A SIMILAR KIND OF CAR AT OR NEAR THE PLACE WHERE THESE TWO VICTIMS HAD BEEN PARTYING, SO I GUESS I UNDERSTOOD THIS TO BE THE PRIMARY FOCUS OF THE STATE.

IT IS NOT, YOUR HONOR, AND IT IS ACTUALLY VERY CLEAR, FROM THE STATE'S OWN COMMENTS TO THE TRIAL JUDGE. THEY EXPLAINED BEFORE TRIAL THAT THE PROSECUTOR SAYS THE FACT THAT THE DEFENDANT'S GIRLFRIEND, WHO VISITS HIM IN JAIL, BURNS THE CAR THAT WAS USED IN THIS CRIME, SHOWS HER BIAS, THAT SHE IS TRYING TO PROTECT HIM AND LIE FOR HIM. THAT IS, QUOTE, THE MAIN CRUX OF THIS CASE. WHEN SHE IS ACTUALLY --

HAVING ACCESS TO THE KEY TO THE CAR.

NO, YOUR HONOR. IT IS VERY CLEAR, WHEN YOU LOOK AT WHEN SHE IS ACTUALLY CALLED, THAT THIS IS A CHAR AID, AND THEY ADMIT THAT -- A CHARADE, AND THEY ADMIT THAT THIS IS A CAREFUL ORCHESTRATED PLOY. THEY CALL WHAT WILL ANSWER -- WALLACE AND ELICIT THAT THEY HAVE A CHILD TOGETHER AND HE WAS FOUND IN HER BED AND SHE LEFT A CAR PARKED IN FRONT OF THE FRIEND'S HOUSE ON THE WEEKEND OF THE MURDERS, WHILE SHE WENT TO DAYTONA BEACH, THE STATE HAD ALREADY PRESENTED TRACY LITTLE, WHO HAD TESTIFIED TO THAT. IT IS SIGNIFICANT AND THE STATE WAS SO EAGER TO GET TO THE IMPEACHMENT EVIDENCE THEY DID NOT EVEN BOTHER TO ASK WALLACE ABOUT THE FACT THAT THE DEFENDANT VISITED HER AT SARAH FINCH'S HOUSE BEFORE THEY LEFT FOR DAYTONA BEACH. WITH RESPECT TO THEY HAD ELICITED THAT FROM TRACY LITTLE. THEY DIDN'T EVEN BOTHER TO ASK WALLACE ABOUT THAT FACT.

WOULD YOU ADDRESS, IS IT SUBJECT TO HARMLESS ERROR,, TO BEGIN WITH IT?

IT CERTAINLY, COURTS HAVE OBJECTED IT -- SUBJECTED TO A HORM LESS ERROR ANALYSIS. I THINK IN THIS CASE IT WOULD BE IMPOSSIBLE TO SAY THIS IS HARMLESS ERROR. THE TRIAL PROSECUTOR, HERSELF, WHO WAS MORE FAMILIAR WITH THIS CASE THAN ANYONE ELSE, CHARACTERIZED IT AS BEING THE CRUX OF HER CASE. CERTAINLY THE STAYED WILL -- THE STATE WILL STAND UP AND CITE A LIST OF CIRCUMSTANTIAL EVIDENCE, AND THERE IS NO DISPUTE THAT THERE WAS CIRCUMSTANTIAL EVIDENCE IN THIS CASE TYING THE DEFENDANT TO THIS CRIME. HOWEVER, IT WAS A CASE IN WHICH THAT IS NOT THE STANDARD. THE STANDARD IS WHETHER WE CAN SAY, BEYOND A REASONABLE DOUBT, WHETHER THE STATE CAN PROVE, BEYOND A REASONABLE DOUBT, THAT THIS JURY IGNORED THE VERY EVIDENCE THAT THE TRIAL PROSECUTOR CHARACTERIZED AS BEING THE CRUX OF HER CASE. THIS WAS A CONTESTED CASE, IN WHICH THE DEFENDANT PRESENTED AN ALIBI. THERE WAS NO PHYSICAL EVIDENCE CONNECTING HIM TO THE CRIME, AND SIGNIFICANTLY, ONE OF THE MOST DAMAGING EFFECTS OF THIS CAR BURNING EVIDENCE WAS THAT IT NEGATED COMPLETELY, THE EXCULPATORY EFFECT OF THE FACT THAT THERE WAS NOT A SHRED OF FORENSIC EVIDENCE FOUND IN LATETIA WALLACE'S CAR.

HOW WAS IT ARGUED BY THE STATE IN CLOSING? HOW WAS THE CAR BURNING INCIDENT USED? DID THEY ARGUE THIS WAS THE CRUX OF THE CASE OR YOU ARE SAYING THIS IS WHAT THEY SAID TO THE JUDGE?

THAT IS WHAT THEY SAID TO THE JUDGE, AND THEN IN CLOSING ARGUMENT, THEY SAID THE CAR USED IN THIS HOMICIDE, SHE, REFERRING TO WALLACE, BURNED IT, AND SHE PLED GUILTY TO BURNING IT. SHE SAID THAT SHE AND THE FRIENDS WERE JUST FRIENDS, AND YET WHEN SHE TOLD YOU, HE WAS IN HIS UNDERWEAR IN HER BED. WHAT IS SHE TRYING TO HIDE HERE? OSTENSIBLY THEIR THEORY OF BIAS OVERLAPS COMPLETELY WITH A SUBSTANTIVE THEORY OF GUILT, THAT THIS WAS EVIDENCE OF THE DEFENDANT'S CONSCIOUS GUILT. SHE IS TRYING TO HIDE SOMETHING.

WASN'T THIS IN THE INSTRUCTION OF EVIDENCE BEGIN TO THE JURY?

NO. THE INSTRUCTION SIMPLY SAID THAT THE DEFENDANT WAS NOT CHARGED WITH THE CAR BURNING AND THEY SHOULD NOT ASSUME THAT HE WAS GUILTY OF THE CAR BURNING. IT DID NOT TELL THEM THAT THEY COULD NOT CONSIDER THE CAR BURNING AS SUBSTANTIVE EVIDENCE OF HIS GUILT OF THE MURDERS.

DID THE DEFENDANT ASK THAT SUCH AN INSTRUCTION BE GIVEN?

THE DEFENSE COUNSEL OBJECTED CORRECTLY, I BELIEVE, THAT THERE WAS NO CAUTIONARY INSTRUCTION THAT WOULD BE EFFECTIVE IN THIS CASE, AND THAT IS CONSISTENT WITH THE CASE LOAD, BECAUSE THIS ED IS EQUIVALENT OF AN ADMISSION -- EVIDENCE IS EQUIVALENT OF ADMISSION BY THE DEFENDANT, AND IN THIS CASE IT IS HELD THAT THE PRECAUTIONARY

INSTRUCTION IS SUFFICIENT. -- IS INSUFFICIENT.

THE FIRST QUESTION THAT JUSTICE QUINCE WAS ASKING, WHICH IS THAT DID THE STATE HAVE A LEGITIMATE REASON FOR CALLING THE WITNESS, OTHER THAN TO ELICIT WHAT WOULD OTHERWISE BE INAPPROPRIATE EVIDENCE? IS THAT THE FIRST PRONG?

NO. YOUR HONOR, THE FIRST PRONG IS WHAT THE STATE'S PRIMARY PURPOSE IN CALL GOT WITNESS WAS. THE CASE LAW IS VERY CLEAR ON THAT. IT IS WHAT MORTON SAYS, AND IT INDICATES THAT YOU ONLY GET TO TO THE QUESTION THAT THE STATE RELIES ON IN ITS BRIEF, OF SAYING WHETHER THE WITNESS OFFERED BOTH FAVORABLE AND UNFAVORABLE TESTIMONY, WHEN THE STATE'S MOTIVE IS NOT SO CLEAR, AND THE CASES ARE UNIFORM ON THIS. THE COMMON THEME, THROUGHOUT ALL OF THE FLORIDA AND FEDERAL UNIFORM CASES IS THE GOOD FAITH OF THE PARTY CALLING THE WITNESS AND IN THIS CASE THE STATE MADE IT ABUNDANTLY CLEAR, THEY TOLD THE JUDGE THERE IS NO RECORD IN ANY OF THE CASES THAT IS ANY CLEARER THAN THIS AS TO THE INTENT OF THE PROSECUTOR TO CALL THIS WITNESS FOR THE PRIMARY PURPOSE OF IMPEACHING HER. IF YOU LOOK AT THE TRANSCRIPT AND SEE THE QUESTIONS THAT THEY ARE ASKING HER, AND WE POINT OUT WITH RESPECT I DIDN'T GET TO ON JUSTICE QUINCE'S QUESTION, IT IS VERY APPEALING ABOUT THE KEYS. WALLACE EXPLAINS ABOUT THE KEYS DURING A SIDE BAR, OUTSIDE THE PRESENCE OF THE JURY, AND THE REASON THE TRIAL JUDGE ULTIMATELY ALLOWS THE IMPEACHMENT TO GO FORWARD IS BECAUSE THE STATE CLAIMS THAT THE CAR BURNING WILL REALLY SHOW THAT WALLACE SAYS THAT THEY HAD TWO SETS OF KEYS, WHEREAS WALLACE HAD EARLIER SAID THAT THE REASON SHE BELIEVED WALLACE COULDN'T HAVE USED HER CAR WAS BECAUSE SHE HAD HER SET OF KEYS WITH HER IN DAYTONA BEACH, SO THAT IS THE REASON THAT THE STATE IS ALLOWED TO GO FORWARD WITH IMPEACHMENT. WHEN WALLACE IS CALLED IN FRONT OF THE JURY, THE STATE DOESN'T BOTHER TO ELICIT THE TESTIMONY ABOUT THE KEYS BEFORE IT MOVES TO IMPEACH HER. IT IMMEDIATELY GOES FORWARD AND ESTABLISHES THAT SHE VISITED HIM FREQUENTLY IN JAIL AND THAT SHE WAS PRESENT IN COURT, WHEN THE IMPORTANCE OF HER CAR WAS DISCUSSED, AND THAT SHE NEVERTHELESS WENT OUT AND HIRED SOMEONE TO STEAL AND BURN HER CAR, AND THEY EXPLAINED TO THE JUDGE, DURING THAT SIDE BAR, JUDGE, WE WAITED VERY CAREFULLY FOR HER TO OPEN THE DOOR. THEY JUST ASKED HER A FEW PRELIMINARY QUESTIONS, MOST OF WHICH, INCIDENTALLY, ARE DEDICATED TO SHOWING HER BIAS. THEY, THEN, ASKED HER COULD HE HAVE USED YOUR CAR, THE WEEKEND OF THE MURDERS, WHEN SHE SAYS, GIVES HER SUBJECTIVE OPINION, NO HE COULDN'T HAVE, THEY POUNCE, AND THAT IS THE POINT AT WHICH THEY ARE TELLING THE JUDGE, SEE, WE WAITED CAREFULLY. WE MADE SURE WE GOT A FALSE ANSWER, SO THAT IT WOULD OPEN THE DOOR TO THIS IMPEACHMENT. THAT WAS THEIR PURT. -- THEIR PURPOSE. THEY WERE UNINTERESTED IN THE FATAL TESTIMONY THAT WALLACE COULD HAVE PURPORTED. THE STATE CITES IN ITS ANSWER BRIEF, THAT ONE OF THE REASONS FOR CALLING WALLACE WAS SO THAT SHE COULD IDENTIFY A PHOTOGRAPH OF HER CAR. WHEN WALLACE IDENTIFIES THE PHOTOGRAPH OF HER CAR, IT IS ONLY IN THE CONTEXT OF THE IMPEACHMENT. THEIR ONLY INTEREST IN THAT WAS TO CONTRAST THOSE PHOTOGRAPHS WITH THE FOUR PHOTOGRAPHS OF THE BURNED-OUT HULK OF THE WALLACE CAR THAT IT PASSED AROUND FOR THE JURY'S EXAMINATION.

IF WE CONCLUDE THAT THE PRIMARY PURPOSE WAS NOT AN IMPROPER PURPOSE, IS IT STILL YOUR ARGUMENT THAT THIS WAS NOT PROPER IMPEACHMENT, THAT IT DOESN'T GO TO BIAS, OR DO YOU AGREE THAT IT IS PROPER IMPEACHMENT, IF THEY APPROPRIATELY CALLED HER AS A WITNESS?

I BELIEVE IT IS SET OUT IN THE REPLY BRIEF THAT, STILL, EVEN IF THE COURT WERE TO SAY THAT THIS WASN'T THE PRIMARY PURPOSE, WHICH I BELIEVE WOULD BE CONTRARY TO A VERY CLEAR RECORD HERE, THERE WOULD STILL BE A SIGNIFICANT 403 PROBLEM. I MEAN, IN THIS CASE, THE PREJUDICIAL VALUE, THE DANGER THAT THE JURY WOULD MISUSE THIS EVIDENCE IS SUBESTABLISHMENT I HAVE EVIDENCE OF GUILT -- IS SUBSTANTIVE EVIDENCE OF GUILT WHICH

THE STATE CONCEDED IT WAS NOT ADMISSIBLE FOR, WAS OVERWHELMING, BECAUSE --

DOES THAT MEAN THAT YOU DO NOT AGREE THAT IT WAS PROPER IMPEACHMENT BUT JUST SUBJECT TO A WEIGHING TEST?

I MEAN, I THINK THAT THERE IS SOME DISPUTE WHETHER, HOW PROBATIVE IT IS FOR IMPEACHMENT. IN FACT THERE, IS A VERY BIG DISPUTE. I SHOULD, AS EMPHASIZED IN THE REPLY BRIEF, THE QUESTION OF IMPEACHMENT ISN'T SIGNIFICANTLY HARMFUL TO THE STATE'S CASE. COULD HE HAVE USED YOUR CAR THAT WEEKEND? NO. IF THE STATE ARGUES IN THE SIDE BAR, HOW COULD SHE HAVE KNOWN IF IT WAS NOT THERE. SHE CONCEDES THAT HE COULD HAVE MADE A COPY ON ONE OF THE OCCASIONS WHEN HE BORROWED THE KEYS. HER TESTIMONY THAT SUPPOSEDLY OPENS THE DOOR TO THIS IMPEACH. WASN'T -- IMPEACHMENT WASN'T AFFIRMATIVELY HARMFUL. YOU COULD PUT IT IN THE 403 ANALYSIS AND SAY DOES IT HAVE PROBATIVE VALUE OF IMPEACHMENT, BECAUSE SHE SAID NOTHING THAT WAS HARMFUL TO THE STATE'S CASE, BUT THE BOTTOM LINE IS IT DOESN'T COME IN, AND THE CASES THAT I CITED ARE FACTUALLY VIRTUALLY IN DISTINGUISHABLE. IN US VERSUS HOGAN, EXACTLY LIKE THIS, THE PROSECUTION EXPLAINED BEFORE TRIAL THAT IT HAD EVERY INTENTION OF CALL AGO WITNESS WHO THEY EXPECTED TO LIE, FOR THE PURPOSE OF ELICITING THEIR PRIOR INCONSISTENT STATEMENT, WHICH WAS INCULPATORY TO THE DEFENDANT. ON APPEAL --

HOW DOES THIS ALL FIT INTO THE FACT THAT THE JURY WAS ACTUALLY TOLD THAT THE STATE HAD EXAMINED THIS CAR, AND THEY COULD FIND NO FIBERS, NO HAIRS, NO ANYTHING THAT LINKED THIS CAR TO THE MURDER, SO WHEN YOU LOOK AT THAT, IN THE CONTEXT OF EVEN WHAT YOU ARE SAYING, LET'S EVEN ASSUME THAT THIS EVIDENCE SHOULD NOT HAVE COME IN, DON'T YOU GET, THEN, TO JUSTICE SHAW'S QUESTION ABOUT THE HARMLESSNESS OF THIS?

NO, YOUR HONOR, BECAUSE THE REASON THIS EVIDENCE WAS SO DEVASTATING, IS IT COMPLETELY NULLFIED THE EXCULPATORY EFFECT OF THE FACT THAT THERE WAS NO EVIDENCE FOUND IN THE CAR.

BUT THE JURY HEARD IT, THAT WE GOT NOTHING OUT OF THIS CAR. WE HAVE THIS CAR. WE WENT THROUGH IT. WE GOT NOTHING. HOW DOES IT CHANGE?

BECAUSE IT IS TANTAMOUNT TO AN ADMISSION BY THE DEFENDANT THAT, YES, EVEN THOUGH NOTHING WAS FOUND IN THE CAR, I USED THAT CAR TO COMMIT THE MURDERS, AND WE HAD IT BURNED, TO MAKE SURE THAT THE POLICE COULDN'T GO BACK AND FIND ANYTHING MORE. WHAT IS SHE TRYING TO HIDE HERE? THAT IS EXACTLY WHAT THE STATE WAS TRYING TO CONVEY TO THE JURY IN CLOSING ARGUMENT. THE OTHER THING THAT IS IMPORTANT ON THAT POINT IS, ON CROSS-EXAMINATION, DEFENSE COUNSEL TRIED TO ASK WALLACE WHETHER SHE KNEW WHETHER ANY EVIDENCE HAD BEEN FOUND IN THE CAR. THE STATE OBJECTED, ON THE GROUNDS OF HEARSAY, AND IT WAS SUSTAINED. EVIDENCE WASN'T HEARSAY. IT WAS COMING IN TO SHOW WALLACE'S STATE OF MIND. DID SHE KNOW WHETHER ANY EVIDENCE HAD BEEN FOUND IN THE CAR. THE STATE HAD MADE HER STATE OF MIND A MATERIAL ISSUE, BUT THE JURY NEVER FOUND OUT THAT VERY LIKELY WALLACE DID KNOW THAT NO EVIDENCE HAD BEEN FOUND IN HER CAR. IF THAT HAD COME OUT, THEN THAT MIGHT HAVE SLIGHTLY MITIGATED, THIS BUT YOU STILL HAVE EXACTLY THE REASON AND THE THEORY THAT THE STATE ARGUED IN CLOSING, IS THAT THIS EVENT, THE DEFENDANT'S INTENT OR THE DEFENDANT'S CONSCIOUSNESS OF GUILT THAT, YES IN FACT HE DID USE THIS CAR. WHY ELSE WOULD SHE BURN IT?

THEY MADE THAT ARGUMENT? IT ARGUED WHAT IS SHE TRYING TO HIDE HERE, AND I SUBMIT THAT THEY EMPHASIZED, OVER AND OVER AGAIN, THE FREQUENCY WITH WHICH WALLACE VISITED HIM IN JAIL, SO THEY WERE TRYING TO CONNECT THIS TO THE DEFENDANT. THEY WERE TRYING TO SUGGEST THAT THEY WERE TRYING TO HIDE EVIDENCE. AND THAT WAS, HAD A DEVASTATING EFFECT IN A CASE WHERE THE JURY OTHERWISE MIGHT VERY EASILY HAVE FOUND

A REASONABLE DOUBT. I MEAN, IT WAS A CONTESTED CASE. THERE WERE SERIOUS CREDIBILITY PROBLEMS WITH THE STATE'S MAIN WITNESS. THERE WAS A LOT ABOUT THE STATE'S CASE THAT SIMPLY DOESN'T MAKE SENSE, THAT THE DEFENDANT, WHO WAS 5 FOOT 7, 175 POUNDS, CONFRONTED A 6 FOOT, 228-POUND LINEBACKER FOR THE UNIVERSITY OF MIAMI FOOTBALL TEAM, ARMED ONLY WITH A SHOTGUN HE HAD BEEN TOLD WAS NOT FUNCTIONING, AND IN A SUPPOSEDLY CLEVER FLAN TO BLUDGEON THE VICTIMS TO DEATH, THAT HE -- CLEVER PLAN TO BRUGE ONE THE VICTIMS TO DEATH, THAT HE -- TO BLUDGEON THE VICTIMS TO DEATH. HE WENT THERE EARLY IN THE MORNING TO AN APARTMENT THAT THE UNIVERSITY LINEBACKER SHARED WITH TWO OTHER ROOMMATES IN THIS CASE.

WE HAVE THE BLUDGEONING VICTIMS. IS IT THE STATE'S THEORY THAT THE DEFENDANT ACTED ALONE?

IT WAS THE STATE'S THEORY THAT THE DEFENDANT ACTED ALONE. IT WAS THEIR THEORY THROUGHOUT THIS CASE. ON CROSS-EXAMINATION, DEFENSE COUNSEL RAISED THE POSSIBILITY THAT THERE COULD HAVE BEEN MORE THAN ONE ASSAILANT, BUT THE STATE VIGOROUSLY ASSERTED THAT IT WAS A SINGLE ASSAILANT.

JUSTICE SHAW HAS A QUESTION.

HOW DO YOU GET AROUND THE PHYSICAL EVIDENCE AND STEWART'S VERY DAMAGING TESTIMONY THAT HE GOT THE GUN FROM HIM. HE PUT IT IN A DUFFLE BAG, AND THE PERSON, WELL, THE PHYSICAL EVIDENCE, THEN, INDICATED THAT YOU ALMOST HAD STRIATION MARKS ON THE BODIES FROM DIFFERENT PORTIONS, OR DIFFERENT PARTS OF THE SHOTGUN, THE TRIGGER GUARD WAS BROKEN. THEY FOUND PART OF IT THERE IN THE APARTMENT. THERE WERE MARKS ON THE FACE THAT WOULD MATCH THE TRIGGER MARKS AND GUARD AND SO FORTH, RATHER COMPELLING CASE, AND THEN STEWART SAYING THAT, HOW THE DUFFLE BAG WAS BROUGHT BACK TO HIM AND HE THREW IT IN THE CANAL OR SOMETHING.

THAT IS PART OF WHAT DOESN'T MAKE SENSE. CERTAINLY WHAT THE DEFENSE SUGGESTED THEIR THEORY AT TRIAL WAS THAT STEWART, HIMSELF, MAY WELL HAVE BEEN INVOLVED IN THIS. HE OWNED THE MURDER WEAPON. HE WAS THE ONE WHO DISPOSED OF THE MURDER WEAPON. THERE WAS NO DISPUTE THAT IT WAS THE MURDER WEAPON, BUT THEN THAT IS PART OF WHAT --

WOULDN'T THAT BE A QUESTION FOR THE JURY?

IT WAS. YOUR HONOR, THE QUESTION IS, UNDER THIS COURT'S HARMLESS ERROR STANDARD, IS WHETHER THIS INCREDIBLY POWERFUL HE HAVE OF -- POWERFUL EVIDENCE OF CONSCIOUSNESS OF GUILT COULD HAVE AFTER HE CAN'TED THE JURY'S VERDICT, EVIDENCE THAT THE PROSECUTOR, HERSELF, CHARACTERIZED AS THE CRUX OF THE CASE. THERE WAS, ABOUT STEWART'S TESTIMONY, THERE WERE SERIOUS PROBLEMS WITH IT. HE DOESN'T REMEMBER, UNTIL APPROXIMATELY, I BELIEVE, TWO MONTHS AFTER HE WAS FIRST SWER VIEWED BY THE -- INTERVIEWED BY THE POLICE, THAT THE POLICE SUPPOSEDLY MADE INCRIMINATING STATEMENTS TO HIM. THE FACT THAT THE DEFENDANT WOULD SUPPOSEDLY BORROW A NONWORKING SHOTGUN IN A CLEVER PLAN THAT THE WEAPON COULD NEVER BETRAYED TO HIM IN A PLAN TO USE IT AS A CLUB AND THEN TO RETURN IT IN A BLOODY GYM BAG, WHEN HE IS CONCERNED ABOUT AVOIDING DETECTION, THERE ARE A LOT OF ELEMENTS IN THIS CASE THAT SIMPLY DON'T ADD UP, THAT WOULD HAVE BEEN THE INGREDIENTS OF REASONABLE DOUBT, IF NOT FOR THIS INCREDIBLY POWERFUL IMPEACHMENT EVIDENCE.

THE TIRE MARKS ON THE CAR AND THEN, WHEN THE DUFFLE BAG WAS BROUGHT BACK, STEWART DIDN'T PUT A KNIFE IN IT, BUT WHEN THE DUFFLE BAG WAS BROUGHT BACK TO STEWART, NOT ONLY DID HE HAVE A SHOTGUN IN IT, BUT IT WAS A KNIFE.

THAT IS ASSUMING, YOUR HONOR --

AND A DARK UNIFORM.

THAT IS ASSUMING THE TRUTH OF STEWART'S TESTIMONY, WHICH WAS, ITSELF, A VIGOROUSLY DISAPPOINTED ISSUE AT TRIAL, AND ONCE AGAIN, THIS IMPROPER IMPEACHMENT EVIDENCE, WHICH SUGGESTED A VERY STRONG CONSCIOUSNESS OF GUILT, WOULD HAVE DISPELLED ANY DOUBTS THAT THE JURY MIGHT HAVE HAD ABOUT STEWART. THAT IS EXACTLY WHERE COUNTER THE PROSECUTION WANTED THIS EVIDENCE IN THE CASE, BECAUSE IT WOULD ELIMINATE REASONABLE DOUBTS THAT THE JURY MIGHT WE WILL HAVE ENTERTAINED, BECAUSE THE STATE'S WITNESSES DID HAVE CREDIBILITY PROBLEMS, AND THEIR THEORY OF THE CASE SIMPLY DIDN'T ADD UP. THIS WAS A CASE WHERE THERE WERE GROUNDS FOR REASONABLE DOUBT, AND IF THIS COURT FAITHFULLY APPLIES THE HARMFUL, ITS CASES ON HARMLESS ERROR, I SUBMIT THAT THERE IS NO FAIR CONCLUSION, EXCEPT THAT THIS EVIDENCE AFFECTED THE JURY'S VERDICT, OR AT LEAST WE CERTAINLY CANNOT SAY BEYOND A REASONABLE DOUBT, THAT IT DIDN'T. AND, AGAIN, I WOULD JUST DIRECT THE COURT'S ATTENTION TO THE CASES, WHICH ARE DISCUSSED IN DETAIL IN THE REPLY BRIEF, BECAUSE ON THEIR FACTS, THEY ARE DIRECTLY ANALOGOUS TO THIS CASE. I MEAN, THE FEDERAL CASES, FLORIDA AND FEDERAL CASES, THE FEDERAL CASES WHICH MORGAN -- MARTIN IS SPECIFICALLY BASED ON, LOOKED TO A VARIETY OF FACTORS, IN DECIDING WHETHER A PARTY HAS USED IMPEACHMENT AS A SUBTERFUGE. THIS CASE HAS ALL OF THE EARMARKS OF IMPROPER IMPEACHMENT YOUR HONOR.

THE JEALOUSY ISSUE, NUMBER SEVEN, REALLY, EVIDENCE OF THE DEFENDANT'S JEALOUS CHARACTER, I THINK THE STATE TRIED TO BRING THAT IN AS WILLIAMS RULE, IF I AM NOT MISTAKEN, DIDN'T THEY? OR THEY TRIED TO BRING IN THE JEALOUS NATURE.

RIGHT. AS BEING RELEVANT. I MEAN, THE PROSECUTOR, THE JUDGE, I AM SORRY, YOUR HONOR, THOUGH VERY FORTUNATE RIGHTLY SDRID SKRID IT AS BEING EVIDENCE -- DESCRIBED IT AS BEING EVIDENCE OF THE DEFENDANT'S AT ANY RATE OF JEALOUSY. I MEAN, WITH RESPECT TO HIS BEHAVIOR TOWARDS KATINA LYNN, WHICH I BELIEVE YOU ARE REFERRING TO, AND OUR CONTENTION WHICH IS LAID OUT IN THE INITIAL BRIEF AND THE REPLY BRIEF THAT THAT WAS EVIDENCE. IT IS BEING SUBMITTED TO SHOW THAT HE ACTED IN CONFORMITY WITH A PARTICULAR CHARACTER AT ANY RATE, WHICH WAS ERRONEOUS. I WILL RESERVE THE REMAINDER OF MY TIME FOR REBUTTAL. THANK YOU.

THANK, MS. SPAULDING. MR. FRENCH.

MAY IT PLEASE THE COURT. I AM CURTIS FRENCH, ASSISTANT ATTORNEY GENERAL, REPRESENTING THE STATE OF FLORIDA IN THIS CASE. I WILL BEGIN WITH THE ISSUE THAT IS THE PRIMARY AND BASICALLY THE SOLE ONE ARGUED BY MY OPPOSING COUNSEL HERE, TODAY. FIRST EVER ALL, IT IS CLEAR THAT THE STATE HAD SOME FOREWARNING, OF COURSE, THAT LATISHA WALLACE MIGHT STATE HER TESTIMONY IN THE STATE'S BEHALF. FOR ONE THING, SHE, BY HER VARIOUS ACTIONS AND SO FORTH, BUT THE STATE'S POSITION WOULD BE THAT SIMPLY BECAUSE THEY KNEW THE PROSECUTION KNEW, THAT MS. WALLACE HAD A RELATIONSHIP WITH THE DEFENDANT AND HAD TAKEN CERTAIN ACTIONS ON HIS BEHALF, AND MIGHT NOT TESTIFY TRUTHFULLY ABOUT CERTAIN THINGS, LIKE WHETHER OR NOT HE HAD A KEY TO HER CAR, OR --

WHY DON'T YOU JUST START WITH THE STATE'S PURPOSE, IN CALLING MS. WALLACE.

THE STATE'S PURPOSE IN CALLING MS. WALLACE WAS TO ELICIT TESTIMONY FROM HER ABOUT THIS CASE AND ABOUT THE DEFENDANT'S ACCESS TO --

WHAT IN PARTICULAR?

HIS ACCESS TO HER CAR THAT WEEKEND AND WHETHER OR NOT HE HAD A KEY. AND THE FACT OF THE MATTER IS THAT THE CAR WAS AN IMPORTANT ITEM OF EVIDENCE IN THIS CASE, BECAUSE

THERE WAS A NISSAN, A GRAY NISSAN SEEN AT THE AMOCO STATION, WHICH IS RIGHT ACROSS THE STREET FROM THE CHEVRON STATION, WHERE THE VICTIM'S EXPLORER WAS AS IT WAS BEING TOWED OFF, AND THE CLERK AT THE AMOCO STATION DESCRIBED THIS SILVER GRAY NISSAN WITH NO TAG AND TINTED WENT WIPD OWES, AND -- WINDOWS, AND SUSPICIOUS PERSON A COMPANYING THAT CAR, DRESSED ALL IN BLACK WHAT BLACK HOODED OUTFIT, AND SIMILAR TO THE DESCRIPTION GIVEN BY OTHERS ABOUT THIS OUTFIT THAT THE LOUISIANA BRANT DENNIS HAD, INCLUDING WHEN -- THAT LE BRANT DENNIS HAD, INCLUDING WHEN HE DID RAP PERFORMANCES AND WHEN HE WAS STALKING THE VICTIM, TAMIKA BRARNS HERE.

I THOUGHT THAT HE STATED THAT THE REASON FOR CALLING THIS WITNESS WAS INDEED TO IMPEACH HER AND TO CALL HER UP AND ASK HER ABOUT HER VEHICLE BEING BURNED. ISN'T THAT WHAT THE TESTIMONY WAS ALL ABOUT?

MY UNDERSTANDING WAS THAT WE WILL CALL HER AND ELICIT THE TESTIMONY, AND IF SHE DOESN'T TELL THE TRUTH, THEN WE WILL IMPEACH HER. THE THE PROSECUTION WAS -- THE PROSECUTION WAS WARNED THAT SHE MIGHT NOT TESTIFY IN ALL RELEVANT CIRCUMSTANCES FOR THE STATE, AND IN FACT SHE DID HAVE RELEVANT TESTIMONY TO GIVE, AND I DON'T THINK THE STATE SHOULD BE PRECLUDED FROM CALL AGO WITNESS, JUST BECAUSE A WITNESS HAS A RELATIONSHIP THROUGH THE DEFENDANT, AND SUCH WITNESSES SOMETIMES AREN'T VERY COOPERATIVE WITH THE STATE. I DON'T THINK THAT THAT MEANS THAT THEY SHOULD BE AVAILABLE TO THE STATE.

YOU MEAN IF SOME WITNESS LIKE THIS HAD, FOR INSTANCE, GONE OUT AND APPROACHED WITNESSES FOR THE PROSECUTION AND SAID I AM GOING TO PAY YOU MONEY NOT TO TESTIFY OR WHATEVER, THAT THE STATE COULD CALL HER AS A WITNESS, IN SOMETHING LIKE THIS, AND THEN BRING OUT THE FACT THAT SHE, AND NOT THE DEFENDANT, AND THE STATE IS NOT ABLE TO CONNECT WHAT SHE DID TO THE DEFENDANT, BUT THAT SHE WENT OUT AND TRIED TO INDUCE BY FINANCIAL MEANS, INFLUENCE THE WITNESSES FOR THE PROSECUTION NOT TO TESTIFY.

THAT WOULD BE A DIFFERENT CASE. I AM A LITTLE RELUCTANT TO --

HOW IS THAT A DIFFERENT CASE FROM THE CASE HERE, WHERE YOU HAVE GOT THIS VERY DRAMATIC THING ABOUT THE CAR HAVING BEEN --

-- WHICH WAS NOT CONNECTED WITH THE DEFENDANT.

-- HAVING BEEN BURNED AFTERWARDS, WHEN OBVIOUSLY THE INFERENCE THAT AT LEAST SHE BELIEVED THAT THERE WAS EVIDENCE IN THAT CAR CONNECTING HER BOYFRIEND TO THESE MURDERS.

RESPECTFULLY, I DON'T THINK THAT IS THAT A NECESSARY INFERENCE. CERTAINLY SHE KNEW, FIRST OF ALL SHE HAD A RELATIONSHIP WITH HIM. AS A MATTER OF FACT HE WAS ARRESTED IN HER BEDROOM, ON APRIL 30, A COUPLE OF WEEKS AFTER THE CRIME. SHE, ALSO, VISITED HIM IN JAIL. NOT ONLY THAT, SHE LATER BORE A CHILD THAT WAS CONCEIVED WHILE HE WAS IN JAIL AND GAVE IT THIS DEFENDANT'S LAST NAME, BUT THE CASES SAY, AND THIS IS MORTON V STATE I AM QUOTING FROM, WHERE A WITNESS I AM QUOTING FROM, WHERE THE WITNESS GIVES THE STATE IMPEACHMENTABLE TESTIMONY, SHOULD NOT BE USED TO CALL THE WITNESS. THIS WITNESS HAD IMPEACHABLE TESTIMONY TO GIVE. FIRST OF ALL, IF SHE HAD NOT ALLOWED HIM TO USE THE CAR OR BEGIN HIM KEYS TO THE CAR, THIS FAVORABLE TESTIMONY WOULD NEVER HAVE COME IN, AND I THINK IT WAS THE STATE'S RIGHT TO ASK HER ABOUT WHETHER OR NOT HE HAD A KEY TO THE CAR AND WHETHER OR NOT HE WOULD HAVE USED IT THAT WEEKEND, AND SHE SAID, NO, HE COULD NOT HAVE, BECAUSE HE PARKED IT IN THE SAME PLACE.

IF THE STATE HAS EVIDENCE THAT HE ACTED WITH THE CAR, ISN'T IT INCUMBENT UPON THE

STATE TO INTRODUCE THAT EVIDENCE THAT HE HAD ACCESS TO THE CAR OR KEYS TO THE CAR?

SHE WOULD HAVE BEEN DIRECT EVIDENCE, IF SHE HAD TESTIFIED TRUTHFULLY.

THE STATE KNEW WHAT HER TESTIMONY WAS GOING TO BE, DID IT NOT?

PERHAPS SO. I DON'T KNOW.

THAT SHE DID AND HE DIDN'T HAVE THE KEY.

I DON'T KNOW IF THEY KNEW AHEAD OF TIME WHAT THE ANSWER TO THAT QUESTION WOULD HAVE BEEN, BUT, NO, THE STATE DID KNOW WHAT THE ANSWER SHOULD HAVE BEEN, AND THE STATE WAS ENTITLED TO ELICIT THAT QUESTION, WE THINK.

BUT YOU ARE SAYING, IN THE FACE OF ALL OF THE STATEMENTS BY THE PROSECUTOR HERE, ON THE RECORD, THAT IT WASN'T THE PRIMARY PURPOSE OF THE STATE THAT USED THIS IMPEACHMENT EVIDENCE ABOUT THE CARBING BURNED, WHEN THEY CALLED HER AS A WITNESS?

I CAN'T READ THE THE PROSECUTOR'S MIND. I DON'T KNOW WHAT WAS IN THE STATE'S MIND WHEN THEY CALLED HER AS A WITNESS. ALTERNATIVELY, WE WOULD SUGGEST THAT, AT MOST, IT IS HARMLESS ERROR. FIRST OF ALL, THE STATE NEVER CONTENDED THAT THIS DEFENDANT, HIMSELF, HAD ANYTHING TO DO WITH THE CAR BURNING. THERE WAS NO EVIDENCE OF IT. IN FACT, THE JURY WAS EXPLICITLY INSTRUCTED BY THE TRIAL COURT THAT MISS WALLACE MAY ELUDE IN TESTIMONY TO CERTAIN FACTS RELATE TO GET BURNING OR DESTRUCTION OF AN AUTOMOBILE, WHICH MAY CONSTITUTE A CRY. WHAT DID THE STATE MEAN, IN ITS, I BELIEVE IT WAS IN ITS CLOSING ARGUMENT, WHEN IT WENT THROUGH THE FACT THAT SHE HAD VISITED HIM A NUMBER OF TIMES IN JAIL. THAT SHE ENDS UPBRINGING -- BURNING THIS -- SHE ENDS UP BURNING THIS CAR AND WHAT IS SHE TRYING TO HIDE. WHAT DOES THE STATE MEAN, BY THAT SERIES OF STATEMENTS?

WELL, THE PARAGRAPH QUOTED BY DEFENSE COUNSEL ON APPEAL IS TAKEN OUT OF CONTEXT. THERE ARE TWO PAGES RELATING TO LATISHA WALLACE, WHICH BASICALLY RELATES TO ARGUMENT ABOUT LATISHA'S WALLACE CREDIBILITY, STARTING WITH HER TESTIMONY THAT HE DIDN'T HAVE A KEY TO THE CAR, WHICH WAS CONTRIBUTED BY OTHER WITNESSES, ALTHOUGH SHE DID ACKNOWLEDGE THAT HE HELPED PAY FOR THE CAR.

WHO CONTRADICTED THAT?

TINA LYNN.

KATINA LIB.

-- LYNN.

BESIDES TAKIMA LUMPKINS, HE HAD THREE OTHER GIRLFRIENDS THAT I GUESS YOU WOULD CALL INTIMATE COMPANIONS DURING THAT TIME, INCLUDING KATINA LYNN, WHO WAS A DANCER WHEN HE DID HIS SHOWS AND SHE WOULD TESTIFY THAT HE WOULD DRIVE THREE DIFFERENT CARS, ONE A MAZDA AND ANOTHER ONE A GRAY NISSAN AND ANOTHER WAS A HONDA BELONGING TO TAMIKA.

SHE TESTIFIED THAT HE DID HAVE A KEY TO THAT CAR?

KATINA TESTIFIED THAT HE HAD HIS OWN PERSONAL KEY TO THAT CAR.

AT THE TIME.

THAT WAS HER TESTIMONY, YES.

DID THE STATE OFFER, IN REBUTTAL, EVIDENCE THAT A KEY, A SECOND KEY WAS SENT TO THEM? IN OTHER WORDS THERE WAS DIRECT EVIDENCE TO IMPEACH HER THAT THERE WAS ONLY ONE KEY TO THE CAR. CORRECT?

THAT CAME IN CONNECTION WITH THE CAR BURNING, TOO, BECAUSE WHAT HAPPENED, SOMEBODY SENT ANONYMOUS LETTER WITH THE KEY INSIDE THE LETTER, TO THE POLICE AND THAT IS HOW THEY FOUND OUT ABOUT THIS THING AND THE WHOLE INSURANCE FRAUD INVESTIGATION WAS STARTED, SO THERE WAS, ALSO, THAT EVIDENCE, THIS THIS WAS A NEW, FACTORY KEY, AND IT WAS TESTIFIED THAT THERE WERE GENERALLY TWO.

WHAT ABOUT THE KARIM PEACH THAT THE WITNESS SAID?

-- WHAT DID THE CAR IMPEACH THAT THE WITNESS SAID?

IT SHOWED HER TESTIFYING OR TAKING ACTION IN INTEREST TO THE DEFENDANT, IF SHE COULD DO SO, AND IT EXPLAINED OR TENDED TO IMPEACH HER TESTIMONY THAT HE DID NOT HAVE A KEY AND COULD NOT HAVE USED HIS CAR.

SO IT SHOWED THAT SHE WAS SO BIASED THAT SHE WAS WILLING TO BURN THAT CAR AND SUBJECT HERSELF TO A POSSIBLE CRIMINAL PROSECUTION, IN ORDER TO HIDE EVIDENCE THAT HE -- ING IT TENDED TO SHOW THAT.

THAT THE -- I THINK IT TENDED TO SHOW THAT.

THAT THE CAR WAS INVOLVED IN THE CRIME. ISN'T THAT RIGHT?

I THINK IT WOULD TEND TO SHOW THAT.

BUT ISN'T THAT THE VERY PURPOSE THAT THE STATE AGREED IT COULDN'T BRING OUT THE DIRECT EVIDENCE OF THE CAR BURNING TO SHOW?

WELL, HER BIAS IS IRRELEVANT, UNLESS AND UNTIL SHE FIRST TESTIFIES FOR THE DEFENDANT IN A WAY THAT IS UNTRUE OR ARGUABLY UNTRUE.

BUT DIDN'T THE STATE --

SO IT COMES IN AS IMPEACHMENT IMPEACHMENT.

DIDN'T THE STATE AGREE HERE THAT IT COULD NOT BRING OUT EVIDENCE OF THE CARBING BURNED?

DIRECTLY THAT WOULD BE CORRECT, BECAUSE THERE WAS NOTHING TO TIE IT TO THE DEFENDANT. AS THE COURT TOLD THE JURY THAT THE DEFENDANT HAD NOTHING TO DO WITH IT AND THAT THEY SHOULD NOT INFER ANY GUILT OR RESPONSIBILITY ON THE PART OF LOUISIANA BRANT DENNIS -- OF LABRANT DENIES FOR COMMITING THAT ACT.

IT WAS NOT AMONGST THE THE CHARGES AGAINST THE DEFENDANT.

AND THAT HE HAD NOTHING TO DO WITH IT, THAT HE NO RESPONSIBILITY FOR THAT ACT, AND IT IS A DIRECT QUOTE YOU SHOULD NOT INFER ANY RESPONSIBILITY OR ANY PART OF RESPONSIBILITY ON THE DEFENDANT, MR. LABRANT DENNIS, FOR COMMITING THAT ACT.

BUT IF SHE HAS GOT THAT INTIMATE RELATIONSHIP WITH THE DEFENDANT, THE ONLY WAY THAT SHE WOULD BURN THE CAR WAS IF SHE THOUGHT THERE WAS SOMETHING IN THERE TO HIDE. THE ONLY WAY THAT SHE WOULD KNOW THAT, BECAUSE SHE WASN'T AROUND THAT WEEKEND, WOULD BE IN THE DEFENDANT TOLD HER SOMETHING. I DON'T SEE THAT YOU CAN GET AROUND THAT IS WHAT HAD TO BE IN THE JURY'S MIND AND HAD TO BE WHAT WAS IN EVERYONE'S MIND AS TO THE RELEVANCE OF ANYTHING --

I DON'T THINK THAT IS A NECESSARY INFERENCE. SHE CARED ABOUT THIS DEFENDANT. SHE WANTED TO HELP HIM OUT IF SHE COULD, SO SHE COULD THIS -- SO SHE GOT THIS CAR BACK, EVEN THOUGH THERE WAS NO EVIDENCE, THEY HADN'T FOUND ANYTHING, AND SHE BURNED IT.

SHE BURNED IT.

SHE KNOWS HE IS BEING PROSECUTED FOR THIS MURDER AND THAT HE IS IN JAIL AND THAT HE IS PROSECUTED AND SHE IS HOPING HE WILL GET OUT. WHETHER OR NOT HE TOLD HER THAT HE WAS GUILTY, I DON'T KNOW THAT IS SHOWN FROM THE INFERENCE OF THE CAR BURNING, AND THAT WAS ARGUED TO THE STATE, IN THIS AND OTHER THINGS, AND IF YOU LOOK AT PAGES 468 AND 469 OF THE TRANSCRIPT, THIS YELLOWED OUT PART IS ALL THAT THE PROSECUTOR SAID TO LATISHA WALLACE ABOUT THE CAR BURNING. IT WAS NEVER THE CRUX OF THE STATE'S CASE. THE CAR, ITSELF, WAS CERTAINLY IMPORTANT TO THE STATE'S CASE, BUT THE CAR BURNING WAS NOT, AND IT WAS NEVER --

WEREN'T THERE SOME OTHER WITNESSES, OTHER THAN MISS WALLACE, WHO WAS CALLED ABOUT THIS CAR BURNING? DIDN'T WE HAVE A POLICE OR FORM AREA POLICE OFFICER WHO TALKED -- OR FORMER POLICE OFFICER WHO WAS CALLED TO TALK ABOUT THE INVESTIGATION OF THIS CAR BURNING, AND DIDN'T WE HAVE AN INSURANCE INVESTIGATOR OR SOMEONE WHO TESTIFIED ABOUT THIS CAR BURNING, SO IF THE CAR BURNING WASN'T IMPORTANT TO STATE, WHY DO WE END UP CALL HAVING TESTIMONY OF THESE OTHER WITNESSES?

THAT WERE AS TO HOW MANY KEYS OR SOMETHING LIKE. THAT I DON'T KNOW HOW MANY PAGES OF TRANSCRIPT TRRP IN THIS -- THERE WERE IN THIS CASE, BUT THE TOTAL AMOUNT RELATING TO CAR BURNING WAS MINISCULE, AND IN TERMS --

PRETTY DEVASTATING, IF, IN FACT, THE JURY TOOK THAT AS A SIGN OF SOME CONSCIOUSNESS OF GUILT ON THE PART OF THE DEFENDANT, BURNING OF THE CAR.

THEY WERE INSTRUCTED NOT TO DO SO, AND I THINK, UNDER THE --

THEY WERE INSTRUCTED NOT TO SAY THAT HE, IN FACT, DID THE BURNING OF THE CAR. AND THAT IS PRETTY OBVIOUS. BECAUSE HE WAS ON --.

OR HAD ANY RESPONSIBILITY FOR IT, NOT JUST DO IT.

HE WAS IN JAIL. THAT IS PRETTY OBVIOUS THAT HE DIDN'T BURN THE CAR.

BUT ALSO THAT HE DIDN'T HAVE ANY RESPONSIBILITY FOR BURNING IT. THAT IS WHAT THE COURT, ALSO, TOLD THEM.

THE PREJUDICIAL VALUE HERE, DID IT SO OUTWEIGH ANY PROBATIVE WORK, HOW DO WE ADDRESS THAT? DOES THAT PLAY INTO HARMLESS ERROR, AGAIN, OR JUST --

WELL, I SUPPOSE IF IT IS --

NORMALLY IT WILL BE IN ADDMISSIBLE IN SOME IN STANDS, IF THE PREJUDICIAL VALUE OUTWEIGHS ANY POSSIBLE PROBATIVE WORK.

WELL, THE PREJUDICIAL VALUE, THIS COURT COULD DETERMINE THAT THE PREJUDICE OUT WEIGHED THE PROBATIVE VALUE, WITHOUT FINDING THAT IT WAS HARMFUL ERROR, AND CERTAINLY IF YOU LOOK AT THE ENTIRETY OF THE CASE AND THE ENTIRETY OF THE EVIDENCE IN THIS CASE, THE FACT THAT LATISHA WALLACE COMMITTED THIS ACT, AGAIN, RELATES TO HER CREDIBILITY. IT DOESN'T --

IT WAS PUT IN TO IMPEACH WALLACE, AND LEAVE, IN THE JUROR'S MINDS, AN INFERENCE, A IMPROPER INFERENCE, THEN WE HAVE AN ISSUE HERE THAT THE STATE HAS TO ADDRESS. THEY JUST CAN'T SAY IT IS HARMLESS ERROR AND IT WILL GO AWAY. WHY IS IT SO HARMLESS?

WELL, I THINK THE INFERENCE, THE INFERENCE THAT IS DRAWN FROM THIS RELATES TO HER CREDIBILITY. I DON'T SEE IT AS A STRONG INFERENCE OR EVEN A NECESSARY INFERENCE OR A REASONABLE INFERENCE THAT THE DEFENDANT, HIMSELF, INSTRUCTED HER TO DO THIS OR HAD ANY PART IN DOING IT. I WOULD POINT OUT THAT, IN THE DEFENDANT'S CLOSING ARGUMENT, THIS IS AT 4935 AND 36 OF THE TRANSCRIPT. THE DEFENSE COUNSEL SAID THE BURNING OF THAT VEHICLE HAD NOTHING DO WITH THIS CASE FORM THE POLICE ALREADY HAD THAT VEHICLE. THEY TESTED IT IN EVERY WAY IMAGINABLE AD THEY FOUND NOTHING, SO SOME ACT THAT SHE DOES WHILE IT IS ILLEGAL AND HE IS IN JAIL, HE HAS NEVER BEEN CHARGED WITH THAT AND HE HAS GOT NOTHING TO DO WITH IT. THAT VEHICLE WAS BURNED FOR INSURANCE FRAUD. IT HAS NOTHING TO DO WITH THIS INCIDENT. THE POLICE HAD ALREADY TESTED IT. THERE WAS NOTHING THERE.

WHAT WAS THE REASON THAT THE STATE PUT IN THE PHOTOGRAPHS OF THE BURNT-OUT CAR?

I GUESS TO ESTABLISH, IN FACT SHE DID BURN IT.

THEY SAID IT WASN'T IMPORTANT TO THIS CASE.

WELL, DID I SAY THAT?

YES.

I SAID IT WASN'T THE CRUX OF THE CASE, AND YOU KNOW, THE FACT THAT SHE BURNT THE CAR HAS SOME RELEVANCE THROUGH CREDIBILITY AND IS IMPORTANT TO THAT EXTENT, BUT IT IS NOT THE -- WELL, THERE IS PLENTY OF REALLY STRONG EVIDENCE IN THIS CASE THAT POINTS RIGHT TO THIS DEFENDANT. AS A MATTER OF FACT, I WOULD CHARACTERIZE THE EVIDENCE AS OVERWHELMING, AND IT IS NOT JUST FACT THAT JOSEPH STEWART TESTIFIED ABOUT THE SHOTGUN BUT ALSO THE CONFESSION THAT HE MADE TO JOSEPH STEWART.

IF THE TESTIMONY WAS RELEVANT TO SHOW IMPEACHMENT OR HER BIAS, THEN WASN'T IT HE WILL VANITY ERROR FOR THE -- WASN'T IT RELEVANT ERROR FOR THE COURT NOT TO ALLOW, BY ALLOWING HER TO BE IMPEACHED, IF SHE WAS AWARE IF THEY FOUND ANY EVIDENCE WHEN THEY SEARCH THE CAR. WHETHER OR NOT SHE KNEW ABOUT WHETHER THERE WAS EVIDENCE WOULD DIRECTLY GO TO WHETHER OR NOT HER MOTIVE OR BIAS --

THAT QUESTION DIDN'T COME UP, AS FAR AS I KNOW, UNTIL THE REPLY BRIEF. THERE WAS NO OFFER OF PROOF MADE AS TO WHAT SHE WOULD HAVE SAID. I DON'T KNOW HOW SHE WOULD HAVE ANSWERED THAT QUESTION, SO I THINK NO ERROR COULD BE OFFERED FROM THAT, ABSENT PROOF.

YOU DON'T KNOW WHAT HER ANSWER --

I DON'T KNOW WHAT HER ANSWER IS.

YOU WOULD AGREE THAT IT WAS PROPER CROSS-EXAMINATION.

I WOULD BE INCLINED TO AGREE THAT, FRANKLY, BUT, AGAIN, THAT PARTICULAR QUESTION WASN'T PRESERVED ON APPEAL, AND WASN'T ARGUED ON APPEAL, AND I DON'T KNOW THAT I HIM PREPARED TO ARGUE THAT, THE LEGITIMACY OF THAT QUESTION OR REGARDING, YOU KNOW, THE COURT'S RULING ON THAT QUESTION.

YOU HAVE SAID, SEVERAL TIMES, THAT THIS WASN'T IMPORTANT TO THE CASE. YOU USED, HE HAVE EN, THE -- YOU USED, EVEN, THE WORD THE CRUX OF THE CASE, BUT WHAT DO YOU DO WITH THE PROSECUTOR'S LANGUAGE, WHEN HE SAYS DIRECTLY THE OPPOSITE, IN ARGUING THE ADMISSIBILITY OF THIS, WHEN HE SAYS IT WAS THE CRUX OF THE CASE. EYE THOUGHT THE PROSECUTOR WAS TALKING ABOUT WHETHER OR NOT THE CAR, ITSELF, BEING THE CRUX, AND WHETHER OR NOT, I JUST DON'T SEE HOW THE CAR BURNING, ITSELF, COULD POSSIBLY BE THE CRUX, IN LIGHT OF ALL OF THE OTHER EVIDENCE AS PRESENTED IN THIS CASE. AND I DON'T THINK IT WAS. CLEARLY IT WASN'T. I DON'T KNOW WHY THE PROSECUTOR WOULD HAVE SAID THAT, AND I DON'T THINK SHE DID, BUT --

THE WORDS, THAT DOESN'T GO TO SHOW HER BIAS WHEN SHE IS TRYING TO PROTECT HIM AND LIE FOR HIM? THAT IS THE MAIN CRUX OF THIS CASE. WHAT DOES A PROSECUTOR MEAN, WHEN HE SAYS THAT?

WELL, I AM NOT SURE I CAN ANSWER. THAT THE PRR -- THE PROSECUTOR WAS ARGUING OFF THE CUFF, IN A QUESTION RESPONDING TO THIS IMPEACHMENT TESTIMONY OF MISS WALLACE. TO ME, I DON'T KNOW THAT IT MATTERS WHAT THE PROSECUTOR SAYS OR HOW THE PROSECUTOR DECIDED IT TO BE THE CRUX OF THE CASE. ALL YOU HAVE TO DO IS READ THE MOUNTAIN OF EVIDENCE AND THE RECORD AND SEE ALL OF THE EVIDENCE AGAINST MR. DENNIS. TO ME, THAT WOULD SEEM PRETTY MINISCULE. THAT IS HOW I WOULD CHARACTERIZE IT. ANT JURY KNEW THAT THIS CAR WAS BURNT UP AFTER THE POLICE HAD SEIZED THAT CAR, HAD SEARCHED IT HAD FOUND NOTHING, HAD RETURNED IT TO HER SEVERAL WEEKS LATER. YOU HAVE GOT ALL OF THE EVIDENCE CONCERNING THE ABUSIVE AND CONTROLLING RELATIONSHIP THAT LABRANT DENNIS HAD WITH KATIMA MONICA, THE THREATS AND THE DAY AFTER SHE MOVED OUT ON HIM, ONE WEEK BEFORE SHE WAS MURDER, LABRANT DENNIS GOT A SHOTGUN FROM JOSEPH STEWART. A COUPLE OF DAYS LATER HE GOT SHELLS FOR THAT SHOTGUN. FOR WHAT REASON I AM NOT EXACTLY ASSURE, BUT THEN FRIDAY HE BORROWED A CAR.

DOES THAT MEAN THAT THE SHOTGUN WAS NOT INOPERABLE? I BELIEVE THAT DEFENSE COUNSEL SAID THAT THE GUN WAS INOPERABLE INOPERABLE.

CORRECT. WHAT JOSEPH STEWART TOLD LABRANT DENNIS WAS HE WASN'T SURE IF IT WORKED OR NOT. HE HAD TRIED IT ONCE, HE SAID, AND IT HADN'T WORKED. I DON'T KNOW IF HE GOT SHOTGUN SHELLS AND TESTED OR NOT OR WHAT. LABRANT ALREADY HAD A PISTOL. ONE THING THAT YOU CAN INFER THIS TO MEAN IS THAT HE USED A CAR THAT WASN'T HIS AND HE GOT A MURDER WEAPON THAT WASN'T HIS, AND WHEN HE WAS THERE AT THE NIGHTCLUB, WAITING FOR THE WRECKER TO COME AND TAKE THIS EXPLORER AWAY WITH TWO FLAT TIRES, THAT HE WAS WEARING A HOODED OUTFIT AND THE APPROPRIATE RIGHTORS OF THE GAS -- AND THE PROPRIETORS OF THE GAS STATION COULDN'T RECOGNIZE HIM, BECAUSE HE GOT THE CARANT MURDER WEAPON IN ADVANCE AND HAD A HOOD OVER HIS FACE.

YOU ARE SAYING THERE IS NO EVIDENCE CONNECTED TO THIS DEFENDANT, BUT ISN'T IT CORRECT THAT THE WOOD SPLINTERS FROM THE DEFENDANT WERE DIRECTLY TRACED TO THE SHOTGUN WHICH WAS RECOVERED FROM STEWART?

NOT ONLY JUST WOOD SPLINTERS BUT ALSO THE TRIGGER PIECE OF METAL, THAT WAS FRACTURE-TRACED TO THAT GUN CONCLUSIVELY, SO THAT GUN WAS THE MURDER WEAPON AND THERE IS NO QUESTION ABOUT IT, AND JOSEPH STEWART TESTIFIED THAT HE GAVE IF TO LABRANT DENNIS AND ACTUALLY THE SUNDAY, A WEEK BEFORE THE MURDERS, GOT IT BACK

THE SATURDAY MORNING AFTER THE MURDERS AND IT WAS ALL TORN TO PIECES, AND NOW JOSEPH STEWART, YOU HAVE GOT TO UNDERSTAND, DID NOT KNOW EITHER OF THESE TWO VICTIMS. DIDN'T KNOW WHERE THEY LIVED OR AT LEAST THERE IS O EVIDENCE THAT HE KNEW THEM OR KNEW WHERE THEY LIVED. HE HAD NO REASON TO KILL THEM. THERE WAS A LOT OF MONEY AND VALUABLES IN THIS APARTMENT THAT WAS TAKEN, WHICH IS CERTAINLY THE CASE THAT THE MOTIVE FOR THIS THING WASN'T ROBBERY. JOSEPH STEWART HAD AN ALIBI, BECAUSE HE SPENT FRIDAY NIGHT WITH DOROTHY DAVIS. SHE TESTIFIED THAT THEY WERE TOGETHER THAT NIGHT. HE CLOCKED IN AT WORK AT 6:30 IN THE MORNING, JOSEPH STEWART DID. HE HAS GOT WORK RECORDS TO SHOW THAT AND PHONE RECORDS TO SHOW THAT LABRANT DENNIS CALLED HIM THAT MORNING. WE HAVE THE TESTIMONY 6 TWO PEOPLE THAT -- TESTIMONY OF TWO PEOPLE THAT LABRANT DENNIS CAME BY DRESSED ALL THIS BLACK AT 7:00 A.M. LOOKING FOR LEMORRY WILSON, AND HE TESTIFIED OF DROPPING OFF TAMIKA BARNES AT 5:30 OR 6:00 A.M. AND IT WOULD TAKE A HALF AN HOUR TO GET TO THE APARTMENT.

WAS THE WRECKER DRIVER THAT CAME TO THE SERVICE STATION ASKED TO GIVE AN IDENTIFICATION OF THE PERSON IN THE AUTOMOBILE AUTOMOBILE AT THE TIME?

HE COULDN'T SEE IN THE TINTED WINDOWS. HE JUST TALKED TO THE PERSON AND DID IDENTIFY THE CAR AND SAID IT WAS A SILVER GRAY NISSAN TWO-DOOR. THE PROPRIETOR OF THE GAS STATION SAID THAT IT WAS A '86 OR '87 NISSAN SILVER GRAY AND NO TAG AND TINTED WINDOWS. SHE CALLED IT A TWO DOOR INITIALLY BUT SHE ASSUMED IT WAS A FOUR DOOR, BUT SHE EXPLAINED THAT ON CROSS-EXAMINATION THAT SHE SAW IT FROM THE FRONT AND THE REAR AND SHE ASSUMED IT WAS A FOUR-DOOR AND IT WASN'T.

SHE SAW THE PERSON IN THE CAR THERE AS DRESSED IN DARK CLOTHING BUT NOT TO IDENTIFY THE DEFENDANT.

SHE COULD NOT IDENTIFY HIM, BECAUSE HE KEPT THE HOOD DOWN OVER HIS FACE, BUT HE WORRY AN ALL-BLACK OUTFIT, BLACK HOOD AND SWEATER AND HE KEPT THE HOOD OVER HIS FACE, EVEN THOUGH IT WAS A HOT NIGHT AND HE WAS ACTING SUSPICIOUSLY.

WHERE WAS THE BLUE DUFFLE OBTAINED?

JOSEPH SURETY.

WHAT WAS ON IT WHEN -- JOSEPH STEWART.

WHAT WAS ON IT WHEN IT WAS FOUND? THE GUN WAS PUT DOWN THE SEWER, BUT WHAT HAPPENED WITH THE DID YOU HAVE SNELL.

LABRANT DENNIS CAME OVER TO TALK TO MAURY STEWART AND THEY WENT OVER TO HIS MOTHER'S PLACE AND HE HAD A LITTLE APARTMENT HE KEPT THERE, ALSO, TO GET THE GUN AND HE STARTED TO WRAP IT IN A SHEET, AND LABRANT DENNIS SAID THAT LOOKED TOO MUCH LIKE A GUN SO LET'S GET A BLUE DUFFLE BAG AND PUT IT IN THERE, SO JOSEPH STEWART TESTIFIED WHEN HE GOT IT BACK IT WAS A LOT BIGGER, BECAUSE IT HAD THE GUN AND THE KNIFE THAT HE HAD NEVER SAW BEFORE, AND BLACK CLOTHING, SO HE GOT SCARED AND THREW THE GUN DOWN THE SEWER AND THE KNIFE AND TALKED TO LABRANT DENNIS LATER AND ASKED HIM ABOUT THE CLOTHES, SO HE SAID THROW THEM AWAY AND HE PUT THEM IN A DUMPSTER. THEY WERE NEVER RECOVERED. DUFFLE BAG WAS HIS AND THEY NEVER FOUND ANYTHING WRONG WITH IT, OTHER THAN SOME BLOOD ON IT THAT HE COULD IDENTIFY AS NOTHING OTHER THAN BLOOD. HE DIDN'T KNOW THAT IT HAD BLOOD ON IT, BECAUSE IT WAS DARKER BLEW AND THEY COULDN'T IDENTIFY IT AS BLOOD.

THERE WAS NO CONNECTION TO THE KNIFE?

IT WAS USED TO SLASH THE TIRES. BASICALLY THERE IS A/THIS WIDE WHERE SOMEBODY STABBED THE TIRE. THE TESTIMONY WAS IT WAS A PHILIPPINE KNIFE AND THE TESTIMONY WAS IT DIDN'T HAVE DISTINCTIVE MARKINGS BUT IT WAS ABOUT THE RIGHT SIZE TO SLASH THE TIRES.

THERE WAS NO INVOLVEMENT WITH THE VICTIM, THE KNIFE.

THEY WERE NOT STABBED. THEY WERE JUST BEATEN. OKAY. JOSEPH STEWART ALSO TESTIFIED THAT LABRANT DENNIS, BECAUSE HE WENT UP TO LABRANT AFTER HE THREW AWAY THE CLOTHES OR BEFORE AND SAID I DON'T WANT ANY PART OF THIS. KEEP ME OUT OF IT. AND LABRANT DENNIS SAID DON'T WORRY ABOUT IT IT. THEY HAVE GOT NO REASON TO COME HERE. I JUST DID WHAT I HAD TO DO AND I DIDN'T EVEN USE MY OWN CAR. IF YOU LOOK AT ALL OF THE CIRCUMSTANCES AND ALL OF THE EVIDENCE, AND I HAVE BASICALLY SCRATCHED THE SURFACE OF IT HERE IT SEEMS ANYTHING ABOUT THIS CAR-BURNING INCIDENT HAS TO BE, AT MOST, HARMLESS ERROR, AND THAT WOULD BE OUR POSITION. I WANT TO TALK ABOUT ONE OTHER ISSUE BRIEFLY, SINCE I HAVE A LITTLE BIT OF TIME LEFT. THAT CONCERNS THE IDENTIFICATION OF THE CAR BY NEEDY, AND I AM NOT SURE HOW YOU PRONOUNCE HER LAST NAME. ANOTHER PERSON AT THE SERVICE STATION?

THE PERSON AT THE SERVICE STATION. SHE DESCRIBED THE CAR TO THE POLICE. IT WAS A FOUR-DOOR, '86 OR '87 SILVER GRAY NISSAN WITH NO TAG AND TINTED WENT WIPD OWES. THE POLICE -- AND I TINTED WINDOWS. THE POLICE SHOWED HER A CAR AFTER MAZDA, AND SHE SAID, NO, THAT IS NOT IT. AND IT HAD MILES AN HOUR OWED RATHER THAN TINTED WINDOWS AND DIFFERENT KIND OF WHEE.S LATER THEY SHOWED HER A PICTURE OF LATISHA WALLACE'S '92 SILVER GRAY NISSAN, WHICH DOESN'T HAVE A TAG WHERE IT IS SUPPOSED TO BE RIGHT ABOVE THE BUMPER BUT INSTEAD IN THE BACK WINDOW, AND IT IS HAD TINTED WINDOWS, AND SHE SAID THAT IS THE CAR. ONE OF THE ISSUES ON APPEAL, THEY SHOULD HAVE DONE A PHOTO LINEUP. THIS PROCEDURE WAS UNNECESSARILY SUGGESTIVE. OUR RESPONSE IS THAT THE NEAL STOGLE, BEERS KIND OF OBJECTS DOESN'T APPLY TO PHYSICAL OBJECTS. THE UNITED STATES SUPREME COURT HAS NEVER APPLIED THAT ANALYSIS TO ANYTHING EXCEPT IDENTIFICATION OF PERSONS. OF COURSE PEOPLE ARE DIFFERENT, AND IF YOU ARE IDENTIFYING A PERSON, I GUESS THE IDEA IS THAT YOU ARE SUPPOSED TO BE ABLE TO IDENTIFY THAT PERSON SPECIFICALLY. OBJECTS ARE DIFFERENT. THIS COURT, APPARENTLY, IN PITTMAN V STATE, THERE WAS AN UNDULY SUGGESTIVE IDENTIFICATION PROCEDURE ISSUE RAISED, CONCERNING IDENTIFICATION OF A WRECKER AND A PERSON, AND THIS COURT BASICALLY ANSWERED THAT BY SAYING THAT THERE WAS NO UNDULY SUGGESTIVE IDENTIFICATION PROCEDURE, WITHOUT SAYING EXPLICITLY THAT THE NEAL STOVEL, BIGGERS KIND OF ANALYSIS APPLIES TO IDENTIFY FIXES OF PHYSICAL OBJECTS. WE CITED THE NINTH CIRCUIT CASE AND A FOURTH CIRCUIT CASE, FEDERAL CASES, AND ONE OF THEM CITED AN ARIZONA CASE, WHICH IS STATE V ROSCO, AND I WOULD JUST RELY ON THAT AND WHAT THAT COURT SAID, IN ADDITION TO THE TWO FEDERAL CASES. THAT COURT SAID THAT THE GREAT WEIGHT OF AUTHORITY IS THAT THE NEAL STOVEL, BIGERS ANALYSIS, DOES NOT APPLY TO PHYSICAL OBJECTS, AND THEY CITE A NUMBER OF CASES IN THAT CASE, INCLUDING A CASE OUT OF COLORADO, DEL WEAR EYE -- -- DELAWARE, IOWA, ALASKA AND WASHINGTON, AND THEY QUOTE FROM THE WASHINGTON CASE. I JUST WANT TO READ THAT REAL QUICK T SAYS THE FAMOUS TRILOGY OF CASES THAT POINT OUT THE FAILURE OF DANGEROUS SHOW UP IDENTIFICATION ONLY FAILS AS TO IDENTIFY FIX OF PERSONS. A WITNESS WHICH IDENTIFIES PIECES OF CLOTHING, WHICH ESSENTIALLY IS THE SAME AS HUNDREDS OF THOUSANDS OF PIECES OF OTHERS IS NOT LIKELY TO CHANGE HIS MIND AND MAY READILY BE CHALLENGED, AND THE ARIZONA CASE SAID THAT APPLIES HERE READILY TO CARS. THE ARIZONA CASE, ODDLY ENOUGH, THE WITNESS DESCRIBED A 1998 FORD THAT HE SAW THE DEFENDANT IN, AND THEN IN THE PHOTOGRAPH HE SAID IT WAS A 1967 RAMBLER. AND IT WAS FOR THE JURY TO DECIDE WHETHER THE -- ABOUT THE WITNESS'S TESTIMONY AND NOTE THAT THE DEFENDANT, ON CROSS-EXAMINATION, BROUGHT OUT ALL OF THE FACTORS RELATING TO THIS IDENTIFICATION AND ARGUED TO THE JURY THAT IT WAS UNRELIABLE FOR ALL OF THESE VARIOUS REASONS. WE THINK THAT WAS SUFFICIENT AND THERE, IN FACT, CANNOT BE ANY NEAL

STOVEL, BIGGERS, KIND OF PROBLEM WITH RELATION TO THIS ISSUE. THANK YOU VERY MUCH.

FOR CLARIFICATION, DIDN'T THE STATE, IN FACT, IMPEACH TWO OF ITS WITNESSES? DIDN'T IT, ALSO, IMPEACH PITS?

THAT'S CORRECT. -- PITTS?

THAT'S CORRECT. AND THE PITTS IMPEACHMENT WAS BASICALLY A PIOR INCONSISTENT STATEMENT, AND IT WASN'T, THE QUESTIONS WEREN'T ALL IMPEACHING IN THIS SENSE. WHAT HAPPENED WAS THAT PITTS CLAIMED LOSSES OF MEMORY. THE STATE REFRESHED ITS RECOLLECTION WITH HIS PRIOR STATEMENTS. AT TIMES, HE REMEMBERED HIS PRIOR STATEMENTS AND THEN ADOPTED THEM. AT TIMES HE DID NOT. AGAIN, PITTS, TO SOME EXTENT IN OUR ANALYSIS, THE SAME AS WALLACE, IN THE SENSE THAT HE HAD RELEVANT AND HELPFUL TESTIMONY. THE STATE WAS ENTITLED TO ELICIT WHEN HE CLAIMED THE LOSS OF MEMORY ABOUT SOME THINGS, THE STATE WAS ENTITLED TO BRING UP THESE PRIOR INCONSISTENT STATEMENTS.

THANK YOU, MR. FRENCH. MS. SPAULDING.

I WILL TRY TO BE BRIEF. THE PROBLEM WITH RESPECT TO THE STATE'S ARGUMENT THAT THE CAR BURNING CAME IN TO IMPEACH THE NUMBER OF KEYS, OF COURSE, IS THEY DIDN'T BOTHER TO ASK HER ABOUT THE KEYS ON DIRECT, BEFORE THEY IMPEACHED HER. THAT TESTIMONY HAD BEEN ELICITED OUTSIDE THE PRESENCE OF THE JURY. THE STATE DIDN'T ASK HER ABOUT THAT, AGAIN, UNTIL IT WAS ON REDIRECT. WITH RESPECT TO THE CAR BURNING ESTABLISHING THE EXISTENCE OF A SECOND SET OF KEYS, WE WOULD JUST NOTE THE CAR BURNING OCCURRED SOME TWO MONTHS AFTER THE CRIME, SO ITS PROBATIVE VALUE, AS FAR AS ESTABLISHING HOW MANY SETS OF KEYS THERE WERE AND WHO HAD THEM, AT THE TIME OF THE CRIME IN THIS CASE, IS DUBIOUS. THE STATE, ALSO, IS ARGUING THAT IT SHOULD NOT HAVE BEEN PRECLUDED FROM CALLING WALLACE, BY THE FACT THAT SHE MIGHT HAVE OFFERED TESTIMONY THAT WAS NOT FAVORABLE TO THE STATE'S CASE, AND THAT IS A FALSE DILEMMA, BECAUSE THE OTHER OPTION THAT IS AVAILABLE IN THIS KIND OF SITUATION, THERE WAS NO NEED FOR THE STATE TO GO FORWARD AND TO DELIBERATELY ELICIT, AS THEY MADE CLEAR THAT THEY WERE DOING, TESTIMONY THAT IT BELIEVED WOULD BEFALLS, FOR THE EXPRESS PURPOSE OF IMPEACHING WALLACE. AND I WOULD JUST SUGGEST THAT, IN TERMS OF THE UNDERLYING PURPOSES OF THE RULES OF EVIDENCE, THE BETTER, I MEAN, IN THIS CASE, IF WALLACE, IT WAS VERY LIKELY THAT THE DEFENSE WOULD NEVER HAVE CALLED WALLACE, AS A WITNESS. I MEAN, IT IS VERY LIKELY THAT THE EXISTENCE OF THE IMPEACHMENT EVIDENCE OUT THERE WOULD BE SUFFICIENT TO EVER DETER THE DEFENSE FROM CALLING HER TO THE STAND AND ACTUALLY HE LISTTIC TESTIMONY THAT -- ELICITING TESTIMONY THAT THE STATE BELIEVED TO BEFALLS, AND BY SERVING THAT DETERRENT FUNCTION, THE TRUTH-SEEKING PURPOSE OF THE RULES OF EVIDENCE WOULD BE SERVED, AND YOU WOULD, ALSO, NEVER HAVE BEEN PRESENTED WITH THE PROBLEM OF THE JURY BEING PRESENTED WITH HIGHLY-PREJUDICIAL EVIDENCE THAT COULD BE MISUSED AS SUBSTANTIVE EVIDENCE OF GUILT, AS IT ALMOST CERTAINLY WAS IN THIS CASE, SO THE ALTERNATIVE HERE IS NOT THAT THE STATE WOULD BE COMPLETELY PRECLUDED FROM CALLING THE WITNESS BUT THAT IT WOULD SIMPLY BE PRECLUDED FROM DELIBERATELY ELICITING TESTIMONY TO CREATE A PRETEXT FOR THE IMPEACHMENT, WHICH IS WHAT HAPPENED HERE.

BUT WOULD YOU AGREE, DID YOU NOT, THAT IT IS SUBJECT TO THE HARMLESS ERROR TEST, BUT IT IS YOUR ARGUMENT THAT IT WAS NOT HARMLESS?

RIGHT, YOUR HONOR. CERTAINLY THE CASES THAT DO FIND ERROR DO GO ON AND ANALYZE, IT BUT I WOULD EMPHASIZE, AS IS CITED IN THE REPLY BRIEF HAD, THAT THE CASES ARE UNIFORM, IN SAYING FOR EXAMPEL THAT A CURETIVE INSTRUCTION IS NOT SUFFICIENT, WHEREAS HERE

THE IMPROPER IMPEACHMENT IS EQUIVALENT TO AN ADMISSION BY THE DEFENDANT, THAT WHEN THE EVIDENCE IS THAT POWERFUL, THE PREJUDICIAL EFFECT IS SIMPLY TOO STRONG TO BE CURED BY A CURETIVE INSTRUCTION. FOR THE SAME REASON, I THINK DEFENSE COUNSEL'S INSTRUCTIONS AND EFFORTS IN THE CLOSING ARGUMENT WERE WHISTLING INTO THE HURRICANE. HE HAD TO TRY TO ARGUE AS BEST HE COULD, TO MINIMIZE THE EFFECT OF, IT BUT IT WAS CERTAINLY OUT THERE FOR THE JURY TO KRR -- TO CONSIDER IT. THE QUESTION IS RAISED IN THE INITIAL BRIEF AND RAISED IN PART AND PARCEL OF THIS, DISCUSSED IN A FOOTNOTE. SO THERE ARE NO FURTHER QUESTIONS? THANK YOU.

THANK YOU, COUNSEL. THANK YOU, COUNSEL FOR YOUR ASSISTANCE IN THIS CASE.