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State of Florida vs John Steven Huggins

DOES NOT KNOW WHEN THAT OBSERVATION WAS MADE. HE IS VERY BAD WITH DATES, AS HE TESTIFIED ON NUMEROUS OCCASIONS.

DID HE NOT TRY TO PINPOINT IT MORE THAN THAT FIVE-DAY PERIOD? AND THERE MAY BE SOME DISPUTE, BUT DID HE NOT TRY TO AT LEAST --

HE TRIED TO PINPOINT THE DATE. HE MADE SOME EFFORTS. THE EFFORTS WERE -- ONE FURTHER, FINAL THING ABOUT THE CHARACTER, THE CHARACTER OR THE QUALITY, IF YOU WILL, OF THE ALLEGED BRADY EVIDENCE, ACCORDING TO MR. ALSLEY, THE HAIRSTYLE OF THE DRIVER OF THE EXPLORER THAT HE SAW, IN 1997, REMINDED HIM OF THE HAIRSTYLE OF THE DEFENDANT'S EX-WIFE THAT HE OBSERVED, APPARENTLY, IN BROADCAST NEWS COVERAGE OF THE TRIAL, IN 1999. HE NEVER TESTIFIED THAT HE WAS MAKING AN IDENTIFICATION OF THE DRIVER OF THAT EXPLORER AS BEING HUGGINS' EX-WIFE. THE TRIAL COURT'S GRANT OF RELIEF IS WRONG, AS A MATTER OF FACT, AND IT IS WRONG, AS A MATTER OF LAW. THIS COURT SHOULD REVERSE THE ORDER GRANTING A NEW TRIAL, REINSTATE THE CONVICTION AND SENTENCE OF DEATH AND ALLOW THE DIRECT APPEAL TO GO FORWARD.

WHAT IS OUR STANDARD OF REVIEW?

STANDARD OF REVIEW WOULD BE DISCRETION SIR, AS IN STATE VERSUS SPAZIANO. HOWEVER, I HAVE ARGUED A TWO-PRONG, TWO-TRACK ARGUMENT IN MY BRIEF. THE FACT EW ARGUMENT BEING -- THE FACTUAL ARGUMENT BEING THAT, BASED UPON THE EVIDENCE FROM HUGGINS' TRIAL, THE ONLY WAY THAT ALSLEY'S TESTIMONY, AT THE EVIDENTIARY HEARING, CAN BE RECONCILED WITH THE REST OF THE FACTS THAT ARE BASICALLY UNDISPUTED, IS BY FINDING OR BY MAKING THE DETERMINATION THAT IS COMPELLED BY ALL THOSE FACTS, WHICH IS THAT HE SAW THE VICTIM DRIVE IN TO WORK, ON THE MORNING SHE WAS KILLED. I HAVE SET OUT ALL OF THE FACTS SURROUNDING THE FACTUAL PROBLEM OR PROBLEMS THAT AFFECT THE CIRCUIT COURT'S ORDER, IN MY BRIEF. THEY ARE SOMEWHAT CONVOLUTED. I HOPE I HAVE SET THEM OUT AS CLEARLY AND CONCISELY AS POSSIBLE. I DO WANT TO TALK IN A LITTLE MORE --.

LET ME ASK YOU THIS, BEFORE YOU MOVE TOO FAR. YOU SAID THAT THE POSSIBLE SCENARIO, HERE, IS THAT HE SAW THE VICTIM THAT MORNING. WHAT TIME DOES HE ALLEGE THAT HE SAW --

BETWEEN SEVEN THIRTY --

THERE IS NO DISPUTE THAT, WHENEVER THIS OBSERVATION TOOK PLACE, IT TOOK PLACE BETWEEN 7:30 A.M. AND 8 A.M., ON -- IN THE MORNING, BETWEEN JUNE 10 AND JUNE 15, AND TO KIND OF BRIEFLY BRUSH OVER WHAT -- KIND OF COVER A LITTLE BIT OF WHAT WE HAVE, FACTUALLY --

DO WE HAVE A DESCRIPTION OF THE VICTIM?

YES, MA'AM. HER DRIVER'S LICENSE, I BELIEVE, IS IN THE RECORD. THERE IS A FACTUAL DESCRIPTION, CONTAINED WITHIN THE RECORD AND THE SUPPLEMENTAL RECORD, OF BOTH THE VICTIM AND MR. HUGGINS' EX-WIFE. BOTH OF THEM HAVE BLONDE HAIR. THAT IS UNDISPUTED.

ISN'T IT A SIGNIFICANT THING, AND WHAT JUDGE PERRY FOUND, IS THAT THIS UNBIASED,

OBJECTIVE WITNESS, WHEN HE SAW THE DEFENDANT WIFE ON THE TELEVISION, SAID THIS LOOKS LIKE THE PERSON THAT I SAW, AND FELT THAT THAT WAS SO IMPORTANT THAT HE CAME FORWARD, AS CITIZEN, TO REVEAL THAT INFORMATION. THE STATE, THEN, HAD THAT INFORMATION AND THOUGHT IT WAS IMPORTANT ENOUGH TO PUT IN THE FORM OF A RECORDED STATEMENT, AND THEN MADE A TACTICAL DECISION NOT TO GIVE THAT INFORMATION TO THE DEFENSE, SO THAT THEY COULD USE IT TO IMPEACH THE DEFENDANT'S WIFE, AND THAT IS WHAT JUDGE PERRY FOUND. NOW, IT SEEMS TO ME, THAT WHEN WE TALK ABOUT BRADY AND UNDERMINING COMPETENCE IN THE OUTCOME, IS JUST WHAT JUDGE PERRY WAS TALKING ABOUT, AND SAID THIS IS SOMETHING THAT COMPLETELY UNDERMINED THE STATE'S CASE, AND WE CAN'T SPECULATE WHAT IT WOULD HAVE BEEN, BECAUSE THE DEFENSE DIDN'T HAVE THAT INFORMATION TO USE AT THE TRIAL.

LET ME ANSWER THAT IN TWO PARTS, JUSTICE PARIENTE. FACTUALLY, IF ALSLEY'S STATEMENT THAT HE SAW THIS WHITE FEMALE WITH BLONDE HAIR THAT WE REMINDED HIM OF THE DEFENDANT'S EX-WIFE, ON JUNE 11, THAT CAN'T BE, BECAUSE SHE WASN'T, THE EX-WIFE, ANGEL HUGGINS, WAS NOT IN ORLANDO ON JUNE 11, BASED UPON THE EVIDENCE FROM TRIAL, AND FROM THE EVIDENTIARY HEARING ON THE HABEAS PETITION. IF HE SAW -- MADE THE ALLEGED SIGHTING ON JUNE 12, ONCE AGAIN, IT CANNOT HAVE BEEN ANGEL HUGGINS, BECAUSE SHE WASN'T IN ORLANDO, AND LET ME LOOK AT MY NOTES RIGHT FAST, TO MAKE SURE I KNOW WHERE THE TRUCK WAS ON JUNE 11 -- ON JUNE 12. THE TRUCK'S WHEREABOUTS ARE, ALSO, ACCOUNTED FOR ON JUNE 12. IT WAS IN COCOA BEACH JUNE 13. THE TRUCK WAS IN COCOA BEACH JUNE 14. THE TRUCK WAS IN COCOA BEACH JUNE 15. THE TRUCK HAD BEEN PAINTED BLACK. THE -- JUDGE PERRY DIDN'T ADDRESS THE FACTUAL IMPOSSIBILITY OF WHAT HE FOUND OR SEEMS TO HAVE FOUND OCCURRED, AND LET ME TALK A LITTLE BIT ABOUT PRESTON ALWAYSLY'S QUESTIONABILITY -- ALSLEY'S CREDIBILITY, WHICH IS SOMETHING THAT WAS COMPLETELY UP ADDRESSED IN THE CIRCUIT COURT'S ORDER, EXCEPT TO STATE THAT JUDGE PERRY WAS NOT GOING TO ADDRESS ALSLEY'S CREDIBILITY.

BEFORE YOU DO THAT, IF YOU COULD CLARIFY IN MY MIND WHAT HAPPENED, IN THAT ALSLEY WAS DISCLOSED AS A WITNESS.

PRETRIAL.

PRETRIAL.

HOW DID HE, FIRST, SURFACE IN THIS MATTER?

PRESTON ALSLEY MADE A STATEMENT TO LAW ENFORCEMENT, SHORTLY AFTER THE VICTIM'S DISAPPEARANCE, IN WHICH HE STATED THAT HE HAD OBSERVED A WHITE FORD EXPLORER. I THINK HIS WORDS WERE "THE TRUCK YOU ALL ARE LOOKING FOR", WHEN IT CUT HIM OFF IN TRAFFIC, IN THE I-DRIVE AREA OF ORLANDO.

HE CALLED THIS INTO LAW ENFORCEMENT?

WELL, WHAT HE DID OR WHAT HE TESTIFIED THAT HE DID, JUSTICE WELLS, IS THAT HE WROTE DOWN THE TAG NUMBER OF THIS VEHICLE THAT CUT HIM OFF IN TRAFFIC. THIS IS BEFORE THE MURDER HAD HIT THE PRESS. OKAY. THEN --

IN DISCOVERY, THEN, IN ITS LISTINGS PRETRIAL, IN LISTING WITNESSES AND WHAT THE WITNESSES ARE GOING TO SAY, PURSANT TO THE CRIMINAL RULES, THE STATE DISCLOSED ALSLEY AS HAVING -- SOMEBODY WHO IS GOING TO MAKE A STATEMENT.

YES, SIR. I DON'T BELIEVE HE WAS EVER -- PRESTON ALSLEY WAS NOT ON THE STATE'S WITNESS LIST AT TRIAL. HIS CONTACT WITH LAW ENFORCEMENT WAS DISCLOSED. HIS WRITTEN OR THE WRITTEN NOTES OF LAW ENFORCEMENT'S INTERVIEW WITH HIM, IN CLOSE PROXIMITY TO THE

MURDER, WERE DISCLOSED.

LEAD 302, YES, SIR.

IS WHERE THEY WERE DISCLOSING THE FACT, AND WHAT, ON LEAD SHEET 302, WAS IT SAID THAT ALSLEY HAD SAID?

LEAD SHEET 302 HAD SAID THAT HE OBSERVED THE VEHICLE, TAG NUMBER MATCHING FIVE OUT OF SIX, BEING DRIVEN BY A WHITE MALE, WITH HAIR ABOVE THE SHOULDER. THAT WAS HIS STATEMENT.

THEN, DURING THE LAST WEEK OF THE TRIAL, IF I RECALL THE TRIAL WAS UP IN JACKSONVILLE.

YES, SIR. DUVAL COUNTY.

DID HE CALL UP TO JACKSONVILLE OR DID HE CALL THE COURTHOUSE?

HE CALLED THE STATE ATTORNEYS OFFICE IN ORLANDO AND SPOKE --

AND HE MADE ANOTHER STATEMENT THAT WAS AT VARIANCE WITH HIS EARLIER STATEMENT?

YES, SIR. THE SECOND STATEMENT WAS THAT HE SAW THE TRUCK, MATCHING THE TAG NUMBER, FIVE OUT OF SIX, DRIVEN BY A WHITE FEMALE, WITH SHOULDER-LENGTH BLONDE HAIR. THOSE TWO STATEMENTS ARE HOPELESSLY IRRECONCILABLE. THERE IS, ALSO, A DISCREPANCY BETWEEN THE FIRST AND SECOND ALSLEY STATEMENT, AS TO THE DATE OF HIS OBSERVATION, IF I AM NOT MISTAKEN.

DID HE ORIGINALLY SAY -- DIDN'T HE SAY THAT HE TOLD THE POLICE, ORIGINALLY, IT WAS A WOMAN, OR NOT?

OKAY. WHEN HE TESTIFIED, AT THE EVIDENTIARY HEARING ON THE HABEAS PETITION, PRESTON ALSLEY EXPLAINED EVERY DIFFERENCE BETWEEN HIS JUNE 1997 STATEMENT AND HIS 1999 STATEMENT, AS BEING THAT, IN JUNE OF 1997, LAW ENFORCEMENT GOT EVERYTHING WRONG. PRESTON ALSLEY CONTRADICTED EVERYTHING LAW ENFORCEMENT SAID. THE LAW ENFORCEMENT OFFICER TESTIFIED AT THE HABEAS HEARING, AS WELL, BY THE WAY, AND EVERYTHING THAT THAT OFFICER SAID THAT HE DID, WITH RESPECT TO PRESTON ALSLEY, SUCH AS SHOWING HIM A COMPOSITE OF THE SUSPECT, AND ASKING FOR THE PIECE OF PAPER ON WHICH ALSLEY ON WHICH ALSLEY HAD JOTTED DOWN THE TAG NUMBER. ALSLEY SAID THAT NEVER HAPPENED.

JUSTICE SHAW WAS GOING TO ASK A QUESTION.

I WAS GOING TO ASK THE SAME QUESTION. HAD HE NOT TOLD THE POLICE EARLIER THAT IT WAS MALE, RATHER THAN A FEMALE?

THAT'S CORRECT. HE FIRST TOLD THEM IT WAS A MALE.

THAT IS WHAT THE POLICE SAID, BUT HE SAID TO THE CONTRARY.

WELL, THE FIRST TIME HE SAID IT WAS A MALE DRIVING. THE SECOND TIME, AFTER HE SAW THE NEWS COVERAGE, HE SAID IT WAS A WOMAN DRIVING.

DIDN'T HE TESTIFY AND DIDN'T JUDGE PERRY FIND THAT HE HAD INITIALLY TOLD THE POLICE IT WAS A WOMAN?

I DON'T BELIEVE JUDGE PERRY MADE THAT FINDING. I WOULD DEFER TO THE ORDER ON THAT. I

WOULD HAVE TO DEFER TO THE ORDER. I DON'T RECALL JUDGE PERRY MAKING A FINDING THAT CREDITED ALSLEY OVER LAW ENFORCEMENT.

LET ME FOLLOW-UP WHERE I AM TRYING TO UNDERSTAND, AND THAT IS THAT, THEN, DURING THE LAST WEEK OF THE TRIAL, ORANGE COUNTY STATES ATTORNEY GETS A CALL, TO WHICH MR. ASHTON BECOMES AWARE THAT THIS --

THAT'S CORRECT.

AND THAT HE LOOKS THIS FELLOW UP ON THE DISCOVERY, CORRECT?

AND HE -- YES, SIR, AND --

AND HE DETERMINES THAT WHAT HE SAID, NOW, WAS DIFFERENT THAN WHAT IS ON THAT SHEET OF DISCOVERY.

THAT'S CORRECT, AND HE, ALSO, DETERMINED THAT ALWAYS -- THAT ALSLEY HAD BEEN MADE KNOWN TO THE DEFENSE.

BUT MY QUESTION IS THAT, UNDER CASES THAT HAVE NO OBJECTION, I THINK IT IS REESE, THIS COURT CAME OUT WITH WHAT THE OBLIGATION IS, ON THE STATE, ON CONTINUING MATTERS OF DISCOVERY, HOW TO DO WITH WHETHER TO GET INFORMATION FROM A WITNESS AT THE LAST MINUTE THAT WAS DIFFERENT THAN WHAT WAS IN THE WITNESSES' DEPOSITION, AND I BELIEVE THAT THIS COURT SAID THAT THERE WAS AN OBLIGATION TO DISCLOSE THAT DIFFERENCE. WOULDN'T THAT APPLY HERE, TO MR. ASHTON?

I DON'T DISPUTE, JUSTICE WELLS THAT, THE PREFERABLE COURSE OF ACTION, THE MUCH EASIER COURSE OF ACTION WOULD HAVE BEEN TO MAKE THIS KNOWN TO THE DEFENSE AND LET THEM DECIDE WHAT THEY WANTED TO DO WITH IT. HOWEVER, WHAT IS A GOOD IDEA AND WHAT ONE MUST DO OR -- AND WHAT ONE MUST DO ARE SOMETIMES DIFFERENT, AND I WOULD SUGGEST IN THIS CIRCUMSTANCE, BASED UPON MR. ASHTON'S KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES OF THE CASE, HE DETERMINED, BASED UPON HIS KNOWLEDGE OF THE CASE, AND HE TESTIFIED TO THIS AT THE EVIDENTIARY HEARING ON THE HABEAS, THAT HE FIGURED OUT THAT WHAT MR. ALSLEY SAW WAS THE VICTIM, ON HER WAY TO WORK. I AM ABOUT TO RUN OUT OF MY OPENING ARGUMENT.

I CALL YOUR ATTENTION AND LOOK ON PAGE 3, AND JUDGE PERRY SAID, AT THE EVIDENTIARY HEARING, MR. ALSLEY CLAIMED HE TOLD THE DETECTIVE THAT THE INDIVIDUAL HE SAW DRIVING THE VEHICLE WAS A WHITE FEMALE IN HER LATE TWENTIES TO EARLY THIRTIES, WITH BLONDE HAIR JUST BELOW THE SHOULDER. HOWEVER, THE DETECTIVE'S NOTE INDICATES THAT MR. ALSLEY SAID HE SAW A WHITE MALE OF THE SAME DESCRIPTION, DRIVING THE VEHICLE, SO JUDGE PERRY DID HEAR MR. ALSLEY SAY HE GAVE A CONTRARY STATEMENT TO THE DETECTIVE.

YES, SIR. NO DISPUTE ABOUT THAT.

AND SO I GUESS WHAT MY QUESTION WITH STANDARD OF REVIEW IS JUDGE PERRY, EVIDENTLY, HOW LONG WAS THIS HEARING? EVIDENTIARY HEARING.

ABOUT A FULL DAY OR THREE-QUARTERS OF A DAY.

AND HE HEARD ALL OF THESE WITNESSES, AND MY QUESTION IS HAVING HEARD ALL THESE WITNESSES, MADE ALL THESE FINDINGS, HOW CAN WE SAY THAT THAT IS AN ABUSE OF DISCRETION?

BECAUSE, JUSTICE HARDING, JUDGE PERRY, AND I MEAN NO DISRESPECT TO HIM, EXPLICITLY DID

NOT DECIDE THE ISSUE OF ALSLEY'S CREDIBILITY. YOU CAN'T -- THERE IS NO IMPLICIT CREDIBILITY DETERMINATIONS IN HERE. JUDGE PERRY EXPLICITLY SAID I AM NOT DETERMINING MR. ALSLEY'S CREDIBILITY, AND YOU CAN'T DETERMINE CREDIBILITY -- RATHER YOU CAN'T DETERMINE THE MATERIALITY PRONG OF BRADY, WITHOUT DETERMINING CREDIBILITY. AND THAT IS WHERE, LEGALLY, THIS ORDER FALLS DOWN. IN ADDITION TO THE FACTUAL DEFICIENCIES, THAT SUGGEST THAT WHAT -- THAT INDICATE AND SHOW THAT WHAT THE TRIAL COURT APPEARS TO HAVE FOUND OR DID FIND, AS TO ALSLEY'S OBSERVATION BEING ON JUNE 11, SIMPLY CANNOT BE TRUE.

I AM SORRY. YOU ARE IN YOUR REBUTTAL. MR. WESLEY.

MAY IT PLEASE THE COURT. GOOD MORNING, MR. CHIEF JUSTICE. MEMBERS OF THE COURT. MY CO-COUNSEL IS TYRONE KING. MR. KING AND I TRIED THIS CASE ALONE H THIS IS A CIRCUMSTANTIAL EVIDENCE CASE IN WHICH THE DNA EVIDENCE DID NOT MATCH MR. HUGGINS. THERE WAS NO CONFESSION. WE TRIED THE CASE. AS INDICATED BY JUDGE PERRY, THE CORNERSTONE WAS ENTIRELY THE TESTIMONY OF THE EX-WIFE, ANGEL HUGGINS. THIS COURT ALWAYS TALKS ABOUT A COLD RECORD. I REMIND THE COURT THAT THE EVIDENCE BROUGHT FORWARD BY PRESTON ALSLEY OCCURRED LESS THN A MONTH AFTER THE SENTING ORDER WAS ENTERED, SO WE FILED A NOTICE OF APPEAL AFTER THE HEARING, SO THIS WAS THE WARMEST RECORD THAT COULD BE, OF THE TRIAL JUDGE WHO TRIED THE CASE AND LESS THAN 30 DAYS AFTER THE CAPITAL SENTENCING HAD TAKEN PLACE.

IS IT --

IS THERE ANY EVIDENCE THAT MR. ALSLEY HAS ANY AX TO GRIND IN THIS CASE, ONE WAY OR THE OTHER? IS THERE ANY INDICATION OF THAT? DID HE KNOW ANY OF THE PARTIES?

NO, JUDGE, AND IF I MAY CLARIFY SOME OF THE HISTORY, HE WAS AN ENGINEER AT A HOTEL ON THE INTERNATIONAL DRIVE AREA, WHEN HE HAD THE SIGHTING IN 1997. WHEN HE CAME FORWARD LAST YEAR, HE WAS THE CHIEF ENGINEER FOR THE NEW ORANGE COUNTY COURTHOUSE, AND WHAT HE ACTUALLY DID WAS WALK RIGHT INTO LAWSON LAMAR'S OFFICE, THE STATE ATTORNEY, WHO WAS THEN UNAVAILABLE, AND HE WAS SHOWN DOWN THE ALL, AND THE ATTORNEY GOT A FULL STATEMENT, AND SHE SAID YOU COME BACK TOMORROW MORNING SO THAT WE CAN PURSUE THIS. HE PROCEEDED. SHE THEN PLACED A CALL, AT 8:00 A.M., TO THE STATE ATTORNEYS IN JACKSONVILLE.

WHAT PROMPTED THIS OR WHAT HAD HE SEEN?

HE WAS SEEING NEWS COVERAGE IN DUVAL COUNTY, WHICH WAS THEN BEING SHOWN IN ORANGE COUNTY. HE SAW MRS. HUGGINS TESTIFYING, AND THAT IS WHEN HE SNAPPED TO. JUSTICE, YOU ARE RIGHT. WHEN STANDING ALONE, THE NEW INFORMATION BY PRESTON ALSLEY WOULD BE BRADY INFORMATION. IF HE HAD JUST APPEARED, ON FEBRUARY 28, AND SAID I SAW SOMEBODY DRIVING A TRUCK AND I SAW IT IN JUNE, THAT WOULD STAND ALONE. IT IS SO HELPFUL TO US, BECAUSE IT PROVES THAT HE DID DO THESE THINGS CLOSE IN TIME. ONLY ONE PERSON IN THIS WHOLE CASE HAS SUGGESTED THAT THE CITING TOOK PLACE ON UNE 10, AND THAT WAS MR. NUNNELLEY. THE TRIAL COURT DIDN'T FIND THAT. IN FACT, I HAVE ASKED YOU, DETECTIVE BAZERCHUCK TESTIFIED, IN THE HEARING, IN HIS CHRONOLOGY, WAS THAT HE INTERVIEWED MR. ALSLEY ON JUNE 16. LAW ENFORCEMENT RECORDS REFLECT THAT. ALSLEY HAD CALLED ON JUNE 14. SO THE CALL CAME IN. THERE WERE ABOUT TWO DAYS AGENTS HARN -- THERE WERE TWO DAYS TO GET AROUND. THERE WERE SO MANY REPORTS, AND HE SAID HE SAW HIM ON THE 12th. ALSLEY CALLED HIM AND SAID I SAW SOMETHING ON THE NEWS, AND WHEN THEY MET, MR. NASTERCHUCK DETERMINED THAT IT HAD HAPPENED ON THE 10th. THE TRIAL JUDGE DID NOT, EITHER THINK THAT BECAUSE HE GAVE THE TIME PERIODS DIFFERENT. ALSO MR. NAZERCHUCK DOES NOT HAVE THE NOTES. WE ASKED DO YOU HAVE YOUR NOTES, FROM WHEN

YOU FIRST SPOKE TO PRESTON ALSLEY? I DO NOT. IN FACT, WHAT YOU SEE, IS WE WERE PROVIDED A WITNESS LIST AND A NUMEROUS RECORD OF CALLS THAT HAD COME IN, AND IT BOILED DOWN TO THE 10th. THERE WAS NO ADDRESS OR CONTACT NUMBER OF PRESTON ALSLEY. IT DOES NOT, IN ANY WAY, INDICATE THAT THE TAG NUMBER MATCHED FIVE OF THE SIX DIGITS. THAT INFORMATION DIFFERS COMPLETELY FROM THE LEAD SHEET. INSTEAD IT SAYS THAT HE SAW THIS WHITE MALE ON INTERNATIONAL DRIVE ON THIS DATE, SO IT COULD VERY MUCH BOIL DOWN.

DID YOU GET TAT INFORMATION, ABOUT THE DESCRIPTION AND THE TAG NUMBERS AND ALL OF THAT?

WE DID NOT GET IT UNTIL FEBRUARY 1, JUDGE. MR. KING TOOK THE DEPOSITION OF THE TWO WOMEN THAT COMPILED THE TIP SHEET INFORMATION, TO UNDERSTAND THAT DISTILLATION PROCESS. WE ASKED TO SEE ALL OF THE EVIDENCE THAT WENT PHYSICALLY TO THE SHERIFF'S OFFICE FOR INFORMATION REVIEW, BUT THEY DID NOT SHOW US THAT PARTICULAR PIECE OF EVIDENCE. THEY SHOWED US THE PIECES OF EVIDENCE, THE CARDS AND ALL, BUT THEY DID NOT SHOW THAT. AND I ASKED DETECTIVE NAZERCHUCK, IN THE BRIEF AND IN THE RECORD, IT IS REFLECTED, AND I ASKED WHAT DID YOU DO IN THIS CASE? I PICKED UP INFORMATION AT THREE HOTELS AND INTERVIEWED OTHER WITNESSES. IS THAT RIGHT? YES. DID YOU DO ANYTHING ELSE? NO, I DIDN'T. WE TOOK THAT DEPUTY'S DEPOSITION, AND HE HE DID NOT TELL US THAT HE HAD BEEN INVOLVED IN A TIP SHEET, THAT HE EVER MET ANYONE OR THAT HE KNEW A PERSON NAMED PRESTON ALSLEY, SO WE TRIED TO PURSUE THAT ROUTE, AS BEST WE COULD, AND ALL OF THAT IS PLAIN IN THE RECORD, BUT EVEN STANDING ALONE ON FEBRUARY 1, WHEN A CITIZEN WALKS IN, IT, STILL, WOULD BE BRADY INFORMATION AT THAT POINT.

WAS YOUR DEFENSE AT TRIAL THAT ANGEL HUGGINS WAS SOMEHOW INVOLVED IN THIS?

ABSOLUTELY, JUDGE. THE COMPOSITE PICTURE THAT WAS DISTRICTED WAS A DEAD RINGER FOR A MAN NAMED KEVIN SMITH, WHO IS A PERSON IN THIS CASE. KEVIN SMITH IS THE ONE UPON WHOM THE STATE RELIES TO SAY I KNOW WHERE THE TRUCK WAS AND JOHN HUGGINS HAD THE TRUCK AND LEFT IT AT MY HOUSE. KEVIN SMITH SAID THAT JOHN HUGGINS LEFT IT THERE, SO TO SAY THAT IT WAS ACCOUNTED FOR, IT WAS ACCOUNTED FOR BY THE PERSON THAT WE SAY WAS INVOLVED. MR. SMITH WAS AN ASSOCIATE OF MS. HUGGINS. SHE TESTIFIED, IN THE TRIAL ITSELF, THAT SHE BOUGHT DRUGS AT HIS HOUSE ON FATHER'S DAY, AND SHE TESTIFIED THAT WAS THE PERIOD OF TIME BEFORE THE TRUCK WAS OBTAINED. SHE DOESN'T ACCOUNT FOR HER OWN TIME, AND THE IDENTITY OF KEVIN SMITH WAS A COMPOSITE, AND WAS SO IMPORTANT, AND WE SUGGESTED THAT WE COULD NOT PROPERLY IMPEACH MRS. HUGGINS, WITHOUT THAT INFORMATION.

HER STATEMENT WAS THAT SHE HAD NEVER BEEN IN THE VEHICLE. CORRECT? NOW, WHAT ABOUT MR. NUNNELLEY SAYING THAT IT WOULD BE A FACTUAL IMPOSSIBILITY FOR HER TO HAVE BEEN IN THE VEHICLE ON THE 11th, OR THE 12th OF JUNE?

THE REASON THAT HE SAYS THAT IS THAT, FIRST OF ALL, I MUST SAY THAT MRS. HUGGINS TESTIFIED THAT SHE HADN'T SEEN THE VEHICLE, AGAIN, AFTER THE 10th, AND THEN, LATER, SHE SAID AND GAVE A CONFLICTING STATEMENT, THAT SHE FOLLOWED HER HUSBAND TO GO AND PARK IT IN AN APARTMENT COMPLEX, WHERE IT WAS FOR THE 11th AND 12th, AT LEAST. THEY BE SHE TESTIFIED THAT SHE KNEW WHERE THE VEHICLE WAS, AND OBVIOUSLY IF SHE WAS WITH HER HUSBAND, HE WOULD HAVE HAD THE KEYS, AND THE MATTER THAT WE CAN ATTACK DIRECTLY IS SOMEBODY COULD HAVE SIGHTED HER IN THE VEHICLE AT THAT TIME. ALSO IT WAS PUT IN THE NOTES OF THE HEARING ON MAY 21, THAT JOHN HUGGINS CHECKED INTO A HOTEL, WITH A RECORD, YES, A HOLIDAY INN ON INTERNATIONAL DRIVE, ON JUNE 14.

HOW CLOSELY DID SHE RESEMBLE MRS. HUGGINS? DID THEY BOTH HAVE BLONDE HAIR?

BOTH WOMEN ARE APPROXIMATELY THE SAME AGE, BOTH WITH BLONDE HAIR.

IS THAT SOMETHING THAT WENT INTO THE EVIDENTIARY HEARING THAT WAS MISTAKEN, WASN'T THAT THE VICTIM, DID HE ASK ABOUT THAT IDENTIFICATION?

NO, YOUR HONOR, THERE WAS NOT. THERE WAS NO ATTEMPT TO SHOW HER TO MR. ALSLEY. HE TESTIFIED THAT HE HAD A MEAD RESPONSE TO THE WOMAN ON TELEVISION, AND HE SAID AS A GOOD CITIZEN, I HAVE GOT TO BRING THIS TO SOMEONE'S ATTENTION.

HOW CLOSE DID HE SAY SHE RESEMBLED THE PERSON THAT HE SAW?

RESEMBLED IN HAIRSTYLE, JAW LINE. I THINK HE SAW THEM THROUGH THE SIDE MIRROR OF THE TRUCK. HE SAW THEM IN THAT REGARD. AGAIN, HE WAS UPSET BECAUSE HE HAD BEEN CUTOFF, AND HE REACHED OVER, AND WRITES ON THE ENGINE COVER IN THE VAN, AND DOESN'T GET THE FIRST NUMBER RIGHT. HE CAN'T READ HIS OWN WRITING BUT WRIST OTHER FIVE DIGITS, AND HE IS THE ONLY ERSON IN THIS CASE WHO HAS IDENTIFIED A TAG NUMBER. PEOPLE TALK ABOUT SORT AFTER GENERIC WHITE VEHICLE THAT THEY SAW. ALSLEY GOT FIVE OF SIX CHARACTERS AFTER TAG.

IN THE CORRECT SEQUENCE?

YES, SIR. THE ONLY THING HE COULDN'T READ WAS THE FIRST ONE. I THINK THAT IS UNDERSTANDABLE, IF YOU ARE TRYING TO JOT WHILE YOU ARE DRIVING. MR. SA. LSLEY'S CREDIBILITY WAS ADDRESSED -- MR. ALSLEY'S CREDIBILITY WAS ADDRESSED BY JUDGE PERRY, AND I THINK HE TALKS ABOUT THAT IN THE TRIAL COURT'S ORDER, WE TALKS ABOUT THE MELENDES CASE. HE TALKS ABOUT WHETHER THAT WAS FAVORABLE TO THE DEFENDANT AND THAT IS HOW HE MAKES THAT DETERMINATION, AND IT DOES HELP, BUT OF COURSE JUDGE PERRY SAYS THAT THE ULTIMATE DETERMINATION IS WITH THE JURY. THE JURY DETERMINES CREDIBILITY, BUT HE DOES REVIEW THAT, AS FAR AS FAVORABILITY, AND THAT IS WHERE HE DIFFERS FROM MELENDES.

IN TERMS OF USING THIS AT A RETRIAL, YOU -- YOUR INTENT WOULD BE TO PUT MR. ALSLEY ON, TO TESTIFY TO WHAT HE SAW, AND THAT HE SAW A WHITE FEMALE DRIVING, WITH HER OWN HANDS, THAT RESEMBLED MRS. HUGGINS, AND THEN TO IMPEACH MRS. HUGGINS, THEY WEREN'T, IN FACT, DRIVING THIS VEHICLE, AT THE TIME AFTER THE MURDER.

DEFINITELY. BECAUSE IT SHOWS THE CONNECTION WITH KEVIN SMET -- SMITH AND SHOWS THAT THIS DIFFERS FROM KEVIN SMITH'S DESCRIPTION, ALSO.

WAS THERE MORE THAN ONE PERSON IN THE VEHICLE?

I DON'T THINK AT THE HEARING -- I THINK THAT HIS AFFIDAVIT MAY HAVE DIFFERED, BUT THE ONLY ISSUE AT HEARING WAS THE DRIVER. JUDGE, WHAT IS IMPORTANT, I WILL TELL THE COURT WHAT IS IMPORTANT HERE, ALSO, IS WHAT JUDGE PERRY, IF I MAY GO BACKWARDS, JUDGE PERRY, IN THE SENTENCING ORDER, ACCEPTED THE STATE'S CONTENTION THAT JOHN HUGGINS WAS IN SOLE POSSESSION OF THE VEHICLE, FROM JUNE 10 TO JUNE 26, WHEN IT WAS ULTIMATELY DISCOVERED. THAT WAS ARGUED BY THE STATE, IN THEIR SENTENCING MEMORANDUM, AND OBVIOUSLY THE PROSECUTOR KNEW DIFFERENTLY OR HE HAD FACTS TO SUGGEST DIFFERENTLY AND THOSE WERE WITHHELD, SO THERE IS A ERRONEOUS FINDING OF FACT IN THE SENTENCING ORDER, ONE THAT GAVE THE TRIAL JUDGE PAUSE AND THE TRIAL JUDGE GRANTED A NEW TRIAL. ALSO, IN THE TRIAL, IN CLOSING ARGUMENT, THE PROSECUTOR, WHO DECIDED NOT TO DISCLOSE THE TAPE, ARGUED THAT ANGEL HUGGINS HAD NOT LIED. THAT THERE IS NO SHOWING THAT SHE LIED. AND ARGUED THAT THE TRUCK WAS WHERE IT WAS AND TESTIFIED TO BY M ATMORE AND THE OTHER NEIGHBOR, ARGUES ON THE CREDIBILITY, AND NOW, TO DATE, THREE OUT OF THE FOUR PROSECUTORS, MR. NUNNELLEY SAYS HE WOULD HAVE TURNED IT OVER. DOROTHY

SEDGEWICK, WHO WAS THE PROSECUTOR WHO ARRANGED FOR THE TAPE AND ARRANGED FOR THE PROCEEDING WITH MR. ALSLEY SAYS SHE WOULD HAVE TURNED IT OVER, MR. ALSLEY'S SUPERVISOR SAID HE WOULD HAVE TURNED IT OVER -- MR. ASHTON'S SUPERVISOR SAID HE WOULD HAVE TURNED IT OVER. AND FROM THE TAPE, IT SAYS WE JUST GOT A PHONE CALL FROM SOMEBODY AND HE IS NOT GOING TO DISCLOSE IT, I AM NOT GOING TO TURN IT OVER, AND HE DID SIT DOWN WITH AN INVESTIGATOR, IN ORLANDO, AND WE ARE LEFT WITH A SUMMARY OF WHAT THE PROSECUTOR HEARD.

DID YOU REQUEST STATEMENTS OF WITNESSES? IS THAT ONE OF THE AREAS FOR PRETRIAL DISCOVERY?

AND JUDGE, ALSO, IN THE ORDER STANDARD, WE MADE THE SPECIFIC REQUEST FOR ALL BRADY AND KILS INFORMATION, SO WE -- AND KYLES INFORMATION, SO IT WAS PRODUCED UNDER DISCOVERY.

WOULD IT HAVE MADE A TAPE-RECORDED STATEMENT, UNDER DISCOVERY?

YES, YOUR HONOR, IT SHOULD HAVE BEEN DISCLOSED, EVEN UNDER DISCOVERY, YET WE THINK THERE ARE CONSTITUTIONAL RAMIFICATIONS THAT MADE THIS NOT RELIABLE. THERE WAS A WITHHOLDING OF THE EVIDENCE.

WAS THERE ANY PHYSICAL EVIDENCE THAT CONNECTED YOUR CLIENT TO THE MURDER?

JUSTICE QUINCE, THERE WAS NO CONNECTION TO THE VEHICLE, ITSELF, NO PERSON EVER PUT JOHN HUGGINS IN THE VEHICLE, DRIVING THE VEHICLE. THEY SAID THEY SAW THE VEHICLE AT CERTAIN TIMES. THE CLOSEST THAT IT CAME, AD THIS IS, ALSO, IMPORTANT TO THE IMPEACHMENT OF ANGEL HUGGINS, THERE WAS AN EXHAUSTIVE SEARCH OF THE HOME WHERE SHE LIVED WITH HER MOTHER. LAW ENFORCEMENT EVEN EXRAID CHAIRS, -- EX-RAID CHAIRS, TRYING -- EX-REYED CHAIRS, TRYING TO FIND SOMETHING. AND SHOWING THAT ANGEL HUGGINS WAS IN THE VEHICLE, AT OR NEAR OR SHORTLY AFTER THE TIME OF THE CRIME, SUPPORTS THE WAY THAT SHE FOUND THIS JEWELRY THAT LAW ENFORCEMENT COULD NOT FIND IN THE HOUSE, AFTER AN EXHAUSTIVE SEARCH, THAT THERE WAS NO CONNECTION BETWEEN JOHN HUGGINS. ENTIRELY CIRCUMSTANTIAL. ENTIRELY CIRCUMSTANTIAL.

WOULD YOU ELABORATE, A LITTLE FURTHER, ON YOUR RESPONSE TO THE STATE'S CLAIM THAT THE JUDGE'S ORDER IS FLAWED, BECAUSE IT DIDN'T RULE ON THE CREDIBILITY OF THIS WITNESS.

MELENDES IS THE CASE THAT THEY ARGUED, BOTH, IN THE TRIAL COURT AND HERE, BUT, JUDGE PERRY DID SAY THAT THAT IS PART OF THE FAVORABILITY TO DETERMINE WHETHER THE EVIDENCE IS FAVORABLE, THE FIRST PLANK OF BRADY, THAT THE EVIDENCE IS FAVORABLE TO THE DEFENDANT, AND JUDGE PERRY SAYS THAT IS WHAT YOU MUST DO, IN FAVORABILITY TO THE DEFENDANT, THAT YOU MUST MAKE THAT DETERMINATION, AND HE DOES SAY THAT IN HIS ORDER, BUT HE DOES SAY THAT THE ULTIMATE DETERMINATION RESTS WITH THE JURY. THIS IS THE JUDGE THAT TRIED THE CASE AND IS A VERY EXPERIENCED LITIGATE OR AND CAPITAL TRIAL JUDGE HAD, WHO KNOWS WHAT THE DEFENSE'S POSITION WAS AND HOW THIS EVIDENCE WOULD HAVE FIT.

WAS IT HIS OBLIGATION TO MAKE A DETERMINATION OF CREDIBILITY, EITHER TO FIND THAT THE WITNESS WAS TELLING THE TRUTH OR THAT THE WITNESS WASN'T TELLING THE TRUTH? IN OTHER WORDS WAS IT HIS OBLIGATION TO DO THAT, AS PART OF HIS ANALYSIS HERE?

I DON'T THINK IT IS, UNDER BRADY STANDARDS. I THINK THAT HE HAS -- THE JUDGE, IN MELENDES, HAD SOMEONE WHO HAD GIVEN THREE SEPARATE STATEMENTS IN THREE DIFFERENT LOCATIONS, TO LAW ENFORCEMENT, AND THEN CLAIMED IT WAS COERCED AND WAS PRESSURED, AND I THINK THAT THERE IS SORT OF A RATIONALITY BASIS THAT EVERY COURT MUST INVOLVE

IN, JUST BECAUSE YOU SAY IT HAPPENED DOESN'T GET YOU A HEARING. BUT HERE THE CREDIBILITY WAS THERE HAD BEEN A PRIOR REPORT. I THINK THAT STANDING ALONE, MY POSITION WOULD BE THAT THE FEBRUARY 1 STATEMENT WAS STILL BRADY MATERIAL, BUT IT WAS HELPED AND AIDED BY THE FACT THERE HAD BEEN SOME DOCUMENTED REPORT EARLIER. THAT IS ACTUALLY WHAT BUTTRESSED PRESTON ALSLEY SO MUCH, THAT IT WASN'T SOMEONE THAT CAME FORWARD AFTER THREE YEARS AND MADE A WILD ALLEGATION, BUT COOPERATED IN THE PAST AND STILL IS A GOOD CITIZEN INCOMING FORWARD AND TRYING TO GET THE INFORMATION OUT. MR. ALSLEY WAS TOLD THAT, BECAUSE HE CAME TO THE STATE, THE INFORMATION WOULD BE PRESENTED TO THE DEFENSE, AND THEN HE WAS WAIVED AWAY AFTER THAT SECOND DAY, FEBRUARY 2, AND ULTIMATELY HE CAME TO MY TRIAL PARTNER AND SAID WHATEVER HAPPENED? NOBODY EVER CONTACTED ME? THAT IS THE FIRST TIME IT CAME TO OUR ATTENTION. SO I THANK BUT FOR THE -- WE RELY ON OUR BRIEF AND, ALSO, ON THE TRIAL COURT'S ORDER. SPAZIANO IS VERY, VERY IMPORTANT IN OUR CASE. A SIMILAR CASE, WITH JUDGE EATON, EXCEPT FOR SPAZIANO WAS NEWLY-DISCOVERED EVIDENCE WITH A MUCH MORE STRINGENT STANDARD, BUT THIS COURT, ALSO, EMPHASIZED THERE THAT SUBIT INSTITUTING THE TRIAL COURT'S EVIDENCE FOR SOMEONE THAT SAW AND HEARD THE EVIDENCE. I EMPHASIZE THAT JUDGE PERRY MADE THIS RULING SHORTLY AFTER TRIAL AND AFTER SENTENCING, WITH NO OTHER INFORMATION. I THANK YOU FOR YOUR TIME.

JUDGE PERRY GOES THROUGH THE ANALYSIS ABOUT THE CREDIBILITY OF MR. ALSLEY, AND THEN HE CONCLUDES ON PAGE 7 BY SAYING, AFTER A CAREFULLY CONSIDERING HIS TESTIMONY, THIS COURT FINDS THAT IT IS FAVORABLE TO THE DEFENDANT, AND IT IS YOUR ASSESSMENT THAT THAT IS NOT AN ADEQUATE FINDING, AND HE DISCUSSES THE ASSESSMENT THAT THERE MUST BE A FINDING OF CREDIBILITY. HE SAID THE ULTIMATE CREDIBILITY OF THE WITNESS WOULD BE UP TO THE JURY, BUT FOR THE PURPOSE OF THIS ORDER, HE FOUND THAT THE TESTIMONY WAS FAVORABLE TO THE DEFENDANT AND THEREFORE GRANTED A NEW TRIAL.

I THINK HE FOUND THE TESTIMONY PRESENTED AT THE HABEAS HEARING WAS FAVORABLE. HAT HE DIDN'T DO AND WHAT HE SHOULD HAVE DONE IS WEIGHED THAT HABEAS HEARING TESTIMONY AGAINST ANALOGY SIDE THE TRIAL TESTIMONY THAT WAS COMPLETELY IGNORED IN THE TRIAL COURT'S ORDER AND AGAINST THE FACT THAT ALWAYSLY HAD -- ALSLEY HAD MADE A PRIOR INCONSISTENT STATEMENT.

BUT DIDN'T HE, REALLY, DO THAT, WHEN HE GOES THROUGH, ON PAGE 3, AS WE POINTED OUT, TALKING ABOUT THAT THE OFFICER SAID, HE SAID IT WAS A WHITE MALE, BUT THE DEFENDANT SAYS HE TOLD THE OFFICER IT WAS A WHITE FEMALE. ISN'T THE TRIAL COURT, REALLY, GOING THROUGH THE INCONSISTENCIES IN THAT PART OF HIS ORDER? HE EVEN TALKS ABOUT THE 12th VERSUS THE 11th, IN THAT SAME DISCUSSION.

JUSTICE QUINCE, I WOULD BE INCLINED TO AGREE WITH YOU, IF HE HAD NOT SAID, EXPLICITLY, THAT HE WAS NOT MAKING THE CREDIBILITY DETERMINATION, AND WHEN HE MAKES THAT STATEMENT, THAT I AM NOT MAKING A CREDIBILITY DECISION, THAT IS WHAT TAKES THAT OUT OF THE MIX. HE IS NOT MAKING THAT. YOU CAN'T TURN THAT DISCUSSION INTO A GENERIC --

YEAH, BUT HE MAKES ALL OF THE FINDINGS OF BRADY, ALL OF THE PRONGS. THE WAY I READ IT, I READ IT AND REREAD IT, JUDGE PERRY'S ORDER, I CAN'T SAY ULTIMATELY WHAT THE JURY IS GOINT DO WITH THIS INFORMATION AND HOW IT IS GOING TO PLAY OUT IN COURT, BUT MY GOODNESS, HAVE A FAIR TRIAL. THIS INFORMATION HAS TO HAVE BEEN DISCLOSED. I MEAN, ISN'T IT, THE VERY FACT THAT THIS CITIZEN GOES TO THE DEFENSE, AFTER HE IS NOT CONTACTED, AND TO ME IS EVEN FURTHER INDICATION OF HOW HE, AT LEAST, FELT, THAT THIS WAS SO IMPORTANT FOR THEM TO KNOW, AND YET THE PROSECUTOR CHOSE NOT TO DISCLOSE IT, AND SO IN OTHER WORDS WE HAVE ALL OF THE BRADY PRONGS. ISN'T ALL JUDGE PERRY IS SAYING IS I CAN'T SAY HOW, ULTIMATELY, THE JURY IS GOING TO ASSESS THIS?

I THINK WE ARE DISAGREEING ABOUT WHAT JUDGE PERRY'S ORDER SAYS. I DON'T --

THE ACTUAL ORDER SAYS, IT STARTS OUT, SIMILAR TO THIS COURT MUST FOCUS ON THOSE ISSUES, TO DETERMINE WHETHER A BRADY VIOLATION OCCURRED. WHILE SUCH A DETERMINATION MAY REQUIRE THIS COURT TO MAKE SOME PRELIMINARY ASSESSMENT OF MR. ALSLEY'S CREDIBILITY, AS PART OF THIS ANALYSIS OF A DEFENDANT'S BRADY CLAIM, THE ULTIMATE DETERMINATION, AS TO MR. ALSLEY'S CREDIBILITY AND THE WEIGHT OF HIS TESTIMONY, IS FOR THE JURY, AND THEN HE MAKES THE STATEMENT THAT I FOUND THAT THIS IS CREDIBLE. WHEN YOU READ IT ALL TOGETHER, ISN'T HE SAYING, AT LEAST AS A PRELIMINARY MATTER, I AM FINDING THIS TO BE CREDIBLE, BUT IT IS UP TO THE JURY TO MAKE THE FINAL DETERMINATION.

THEN, IF THAT IS WHAT HE IS DOING, THEN HE HAS ABUSED HIS DISCRETION BY NOT COMPARING AND CONSIDERING THE FAX FROM TRIAL THAT MAKE -- CONSIDERING THE FACTS FROM TRIAL THAT MAKE PRESTON ALSLEY'S TESTIMONY INCREDIBLE. I AM ASKING TO REINSTATE THE CONVICTION AND SENTENCE OF DEATH.

THANK YOU, MR. NUNNELLEY.