

>> NEXT CASE IS ANDERSON VERSUS STATE.

COUNSEL, WHENEVER YOU'RE READY.

>> MAY IT PLEASE THE COURT, COUNSEL, MY NAME IS MARTIN MCCLAIN.

I'M HERE TODAY ON BEHALF OF CHARLES ANDERSON AND HIS APPEAL FROM THE DENIAL --

>> I'M HAVING TROUBLE HEARING YOU.

>> I ALWAYS FORGET TO RAISE THAT.

I'M SORRY.

IN HIS APPEAL FOR THE DENIAL OF RELIEF.

ARGUMENT ONE OF THE BRIEF CONCERNS INEFFECTIVE ASSISTANCE OF COUNSEL.

THIS COURT IN 2001 AMENDED RULE 3851 AND INDICATED AT THE TIME THAT THERE WAS A PRESUMPTION THAT THERE WOULD BE AN EVIDENTIARY HEARING.

IN GASKIN THE COURT SAID THERE SHOULD BE A PRESUMPTION OF AN EVIDENTIARY HEARING ON FACT-BASED CLAIMS.

IN THE RULE THIS COURT SPECIFICALLY INDICATED IN ADOPTING IT THAT THEY WERE MANDATING -- THIS COURT WAS MANDATING EVIDENTIARY HEARINGS ON FACT-BASED CLAIMS; I.E., INEFFECTIVE ASSISTANCE OF COUNSEL, BRADY CLAIMS, NEWLY-DISCOVERED EVIDENCE CLAIMS WHEN THEY WERE RAISED.

IN THIS CASE, THE CLAIM WAS SPECIFICALLY PLED.

ALLEGATIONS WERE MADE.

SPECIFICALLY, THAT IN THE COURSE OF THIS CASE THE GUILT PHASE TRIAL ATTORNEY REPLACED OTHER COUNSEL WHO HAD BEEN ON THE CASE FOR A NUMBER OF YEARS.

THEY HAD RETAINED EXPERTS TO LOOK INTO AREAS OF EXPERTISE -- OR EXPERT TESTIMONY CONCERNING A TIRE PRINT, CONCERNING BLOOD,

CONCERNING FIBER, CONCERNING A GREASE PATTERN.
BUT THE ATTORNEY WHO WENT TO TRIAL NEGLECTED TO LEARN THE FACTS, READ THE FILE, LEARN WHAT WAS PRESENT AND PRESENT ANY EVIDENCE IN THE CASE.
>> THERE WAS AN EVIDENTIARY HEARING ON THE PENALTY PHASE?
>> YES.
>> AND YOU'RE NOT RAISING ANY ERRORS ON THE TRIAL COURT'S CONCLUSION IN THE PENALTY PHASE?
>> I DON'T SEE THAT I HAVE ANY BASIS.
>> I WAS SORT OF STUNNED TO SEE THAT, SO I JUST -- BUT -- OKAY. SO EVERYTHING HERE IS JUST THAT THERE WAS AN ERROR IN SUMMARILY DENYING THE GUILT PHASE INEFFECTIVE ASSISTANCE OF COUNSEL.
>> YES, YOUR HONOR. THAT'S THE ARGUMENT. AND --
>> DID YOU -- LET ME ASK YOU THIS. DID YOU PLEAD IN YOUR MOTION PREJUDICE? DID YOU EXPLAIN IN YOUR PLEADINGS THE PREJUDICE THAT RESULTS FROM THESE ALLEGED DEFICIENCIES OF COUNSEL?
>> WHAT WAS PLED IS THAT THERE SHOULD HAVE BEEN A FRYE OBJECTION TO THE EXPERT TESTIMONY AND HAVE IT EXCLUDED AND THAT ALTERNATIVELY THAT THE EXPERT TESTIMONY SHOULD HAVE BEEN IMPEACHED THROUGH CROSS-EXAMINATION AFTER CONSULTING WITH THE EXPERTS AND --
>> DID YOU HAVE ANY ALLEGATIONS ABOUT PREJUDICE?
>> WELL, THAT AS A RESULT THE TESTIMONY WOULD EITHER HAVE NOT BEEN ADMITTED OR WOULD HAVE BEEN IMPEACHED TO THE POINT THAT IT WAS NOT CREDIBLE.

>> BUT IF WE CONCLUDE -- THIS IS CONCLUSIVE PRESUMPTION -- THAT ON THE FRYE ISSUE, BECAUSE THAT WOULD BE -- IF IT WAS EXCLUDED, OBVIOUSLY YOU COULD THEN LOOK AT THE SITUATION.

BUT IF THERE WASN'T A BASIS FOR A FRYE CHALLENGE, THEN THAT WOULD BE CONCLUSIVE REFUTING. YOU WOULDN'T NEED AN EVIDENTIARY HEARING THEN.

WOULD YOU AGREE WITH THAT?

>> BUT I DON'T KNOW HOW THERE CAN BE A DETERMINATION OF A FRYE ISSUE WHEN THERE'S NOT BEEN A FRYE HEARING.

THERE'S BEEN NO EVIDENCE --

>> THE FIRST TIME WE MAY HAVE USED A TOOLMARK EXPERT.

PROBABLY FRYE TESTED THAT.

BUT 50 CASES DOWN THE ROAD YOU DON'T HAVE TO HAVE A FRYE HEARING EVERY TIME AN EXPERT TESTIFIES.

IS THAT WHAT YOU'RE SAYING?

>> I'M NOT SAYING THAT.

BUT I AM SAYING IN THIS INSTANCE, FOR EXAMPLE, WITH THE TIRE, THE PERSON WHO TESTIFIED WAS NOT AN EXPERT WITH TIRE IMPRINTS.

HE'D NEVER BEEN QUALIFIED AS AN EXPERT.

HE WAS UNFAMILIAR WITH THE FIELD.

>> IS THAT A FRYE ISSUE?

>> THAT GOES TO HIS QUALIFICATIONS.

>> RIGHT.

>> BUT THAT'S PART OF WHAT WAS RAISED, THERE SHOULD HAVE BEEN A FRYE OBJECTION, AN OBJECTION TO THE QUALIFICATIONS OF THE EXPERT.

AND IN THIS INSTANCE SPECIFICALLY AS TO THE TIRE --

>> BUT I GO BACK TO MY QUESTION ABOUT PREJUDICE.

DON'T YOU HAVE SOME OBLIGATION TO PLEAD HOW YOU ARE PREJUDICED

BY THOSE THINGS?

I MEAN, AND WITH RESPECT TO -- ON THE ISSUE OF PREJUDICE, FOR INSTANCE, WITH THESE EXPERTS OR THIS CLAIM ABOUT THE TIRE, ALL THAT EVIDENCE WAS SO -- WAS REALLY QUITE INCONCLUSIVE AND WAS CHALLENGED AS BEING NOT THAT CONCLUSIVE BY DEFENSE COUNSEL, WASN'T IT?

>> YES, AND THIS COURT RELIED UPON IT IN FINDING SUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION.

>> WELL, IT'S PART OF THE PICTURE, BUT IT'S NOT A VERY DISPOSITIVE PART OF THE PICTURE.

>> IT SHOULD NOT BE PART OF THE PICTURE.

FOR EXAMPLE, WITH THE TIRE, THERE WERE FOUR TIRE PRINTS FROM WHERE THE BODY WAS FOUND.

PICTURES WERE TAKEN, CASTS WERE MADE BECAUSE THE FOUR TIRE PRINTS APPEARED TO BE FROM ONE CAR LEAVING THE SCENE.

ONE OF THE TIRES DEFINITELY DID NOT MATCH ANDERSON'S, AND THE DEFENSE DIDN'T POINT OUT, DIDN'T BRING OUT, BECAUSE HE DIDN'T CONSULT WITH AN EXPERT, THAT MEANT IT WASN'T ANDERSON'S CAR.

YOU CAN'T HAVE ONE TIRE CONCLUSIVELY NOT BE FROM ANDERSON'S CAR AND SAY --

>> WELL, BUT THAT'S ASSUMING THAT ALL THE TIRE MARKS WERE MADE BY THE SAME CAR.

AND THERE COULD BE CIRCUMSTANCES WHERE THAT WOULD NOT BE SO.

>> BUT THAT WAS THE TESTIMONY.

FROM THE INDIVIDUAL WHO FOUND THE PRINTS, THE TIRE PRINTS, PHOTOGRAPHED THEM, HE TESTIFIED HE DID IT BECAUSE THEY APPEARED TO BE FROM THE SAME CAR.

IF THE DEFENSE COUNSEL CONSULTED WITH AN EXPERT, HE WOULD HAVE KNOWN HOW IMPORTANT THAT WAS.

THAT MEANT IT WASN'T ANDERSON'S CAR UNLESS THE STATE WANTED TO TAKE THE POSITION ALL OF A SUDDEN THAT SOMEHOW SOMEBODY ELSE'S TIRES CROSSED OVER THREE OUR TIRE PRINTS?

THE DEFENSE DIDN'T PURSUE THAT, BECAUSE HE DIDN'T CONSULT WITH HIS EXPERTS.

>> WHAT WAS THE TRIAL COURT'S BASIS FOR DENYING AN EVIDENTIARY HEARING ON THESE -- YOUR GUILT PHASE CLAIMS?

>> THE STATE FILED A RESPONSE RELYING ON KENNEDY FROM THIS COURT IN 1989 AND ON THE BRYANT CASE.

THE JUDGE'S ORDER BASICALLY TAKES THE STATE'S RESPONSE AND ADOPTS IT AS ITS OWN.

SO IN KENNEDY THIS COURT IN '89, WHICH IS PRE-38.51 HAD DENIED IS CLAIM WITHOUT AN EVIDENTIARY HEARING, BUT HAD GIVEN DEFERENCE TO THE TRIAL COURT'S FINDINGS WITHOUT AN EVIDENTIARY HEARING. THIS COURT IN STEVENS SAID KENNEDY WAS WRONG.

>> SO ARE YOU PREPARED -- I MEAN, IF THERE WAS AN EVIDENTIARY HEARING, YOU'RE PREPARED TO OFFER WHAT TYPE OF -- WHAT EXPERTS DO YOU HAVE TO OFFER?

>> WELL, THEY'RE NOT IDENTIFIED IN THE MOTION.

OFF THE TOP OF MY HEAD, I DON'T REMEMBER THE NAMES, BUT THEY WERE THE EXPERTS --

>> IT NEVER GOT TO A HEARING WHERE YOU WERE TO IDENTIFY WHO YOU WERE CALLING.

>> YES.

>> IT DID NOT.

>> THE EXPERTS HAD BEEN RETAINED BY THE ORIGINAL PUBLIC DEFENDER WHO WAS HANDLING THE CASE, AND AS WAS PLED IN THE MOTION, THEY WERE PREPARED TO BE CALLED TO TESTIFY THAT THEY NEVER HAD ANY

CONTACT WITH THE GUILT PHASE
ATTORNEY WHO ACTUALLY WENT TO
TRIAL.

HE NEVER CONTACTED THEM, NEVER
SPOKE TO THEM.

THEY EVEN TRIED TO CALL HIM TO
SHARE INFORMATION WITH HIM AND
NEVER HEARD FROM HIM.

SO THOSE EXPERTS WERE
SPECIFICALLY HIRED BY THE PRIOR
ATTORNEYS AND NOT USED.

>> NOW, LET ME ASK YOU THIS
ABOUT THE -- SO WE CAN ASSUME
DEFICIENCY.

BUT GOING BACK TO JUSTICE
CANADY'S QUESTION ABOUT
PREJUDICE, THE UNDERMINING
CONFIDENCE, IN THIS CASE -- I
MEAN, HE SEEMS LIKE THE MOST
LIKELY CANDIDATE FOR BEING THE
PERPETRATOR OF THIS CRIME.

WHAT OTHER -- IF YOU TAKE THE
TIRE -- YOU'RE ATTACKING THE
TIRE MARKS, TIRE -- WHAT ELSE
WERE YOU ATTACKING?

>> THE BLOOD.

>> BLOOD.

>> THERE WERE EXPERTS WHO WOULD
HAVE TESTIFIED THAT THE AMOUNT
OF -- THE STATE'S THEORY WAS
SHE'S HIT ON THE ROAD, PUT IN A
CAR, DRIVEN 12 MILES AND HER
BODY IS DUMPED.

AND THERE IS A SPECK OF BLOOD IN
THE PASSENGER SEAT.

>> SO BLOOD.

WHAT ELSE?

>> FIBER.

THERE'S ONE FIBER.

AND A GREASE MARK PATTERN.

>> SO IS THERE ANY FORENSICS
THAT WOULD BE LEFT TO -- JUST
FORENSICS THAT TIE THE DEFENDANT
TO THE CRIME?

>> NO.

AND THE STATE'S RESPONSE BELOW
ACTUALLY SPECIFICALLY SAID THAT
EXCEPTING THESE ALLEGATIONS AND
EXCLUDING ALL THAT EVIDENCE, THE
EVIDENCE THAT WOULD BE LEFT WAS

SUFFICIENT TO SHOW MOTIVE,
OPPORTUNITY AND CRIMINAL AGENCY.
THE IMPORT OF THIS EVIDENCE
WOULD NOT HAVE BEEN DIMINISHED
AND HAD COUNSEL SUCCESSFULLY
EXCLUDED THE CHALLENGED FORENSIC
EVIDENCE OBTAINED FROM THE CAR
AND TIRE TRACKS FROM THE
ROADWAY.

HE HAS FAILED TO SHOW THE
OUTCOME OF HIS CASE WOULD HAVE
BEEN DIFFERENT AND HAS FAILED TO
SHOW PREJUDICE.

>> IF WE TOOK CASE A WHERE THERE
WAS A FULL CONFESSION AND THERE
WERE FINGERPRINTS, WHATEVER, YOU
COULD SAY AS A MATTER OF LAW
THAT IT DOESN'T UNDERMINE
CONFIDENCE.

HERE WASN'T THERE A LOT OF OTHER
-- YOU MAY DISAGREE WITH THIS --
EVIDENCE THAT THIS DEFENDANT,
WHO HAD BEEN CONVICTED OF SEXUAL
--

>> ATTEMPTED SEXUAL.

>> ATTEMPTED AND GIVEN PROBATION
AND TOLD TO STAY AWAY FROM THIS
VICTIM, WHAT OTHER EVIDENCE IS
THERE THAT HE WANTED TO SEE HER
DEAD?

AREN'T THERE STATEMENTS FROM THE
DEFENDANT HIMSELF?

>> NO.

WHAT IT IS IS THE STATE HAD TWO
THEORIES.

ONE IS THAT HE WAS JEALOUS OF
THIS OTHER INDIVIDUAL WHO WORKED
AT THE PUBLIX.

AND THEN THE INCONSISTENT THEORY
THAT HE WANTED HER DEAD.

I DON'T SEE HOW IT CAN BE BOTH.
AND SO THEY WERE ALTERNATIVE
WAYS OF ARGUING MOTIVE.

>> I UNDERSTAND ARGUING, BUT
WHAT OTHER -- IF YOU
THEORETICALLY EXCLUDED ALL OF
THE FORENSICS, AGAIN, WHICH MAY
BE TO CALL IT INTO QUESTION ON
THE TIRE MARKS, WHAT WOULD BE
LEFT TO CONVICT THE DEFENDANT?

>> MERELY CIRCUMSTANTIAL EVIDENCE, AND THIS COURT DID NOT FIND THAT SUFFICIENT ON DIRECT APPEAL WITHOUT RELYING UPON THE EVIDENCE LINKING THE CAR TO THE CRIME SCENE.

>> NOW, DO YOU BELIEVE THAT YOU HAVE -- AGAIN, GOING BACK TO JUSTICE CANADY'S QUESTION, IN YOUR MOTION THAT YOU ADEQUATELY ALLEGED THAT THIS WOULD HAVE UNDERMINED CONFIDENCE IN THE OUTCOME?

>> YES.

I MEAN, THE STATE'S ARGUMENT BELOW WAS THAT WITHOUT THIS EVIDENCE, THERE'S SUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION, WHICH IS NOT THE TEST UNDER KYLES.

>> THE QUESTION IS ABOUT WHAT YOU ALLEGED IN YOUR MOTION ABOUT PREJUDICE AND HOW YOU WOULD BE PREJUDICED BY THESE DEFICIENCIES OF COUNSEL.

>> IT WENT THROUGH THE TIRE, IT WENT THROUGH THE BLOOD AND SAID THAT ALL OF THESE EITHER WOULD HAVE BEEN EXCLUDED OR WOULD HAVE BEEN IMPEACHED TO THE POINT OF NOT BEING CREDIBLE.

>> BUT PREJUDICE IS A DIFFERENT MATTER.

PREJUDICE, IT GOES BEYOND THAT. YOU'VE GOT TO -- IN ESTABLISHING PREJUDICE YOU GOT TO SHOW WHY THAT WOULD HAVE MADE A DIFFERENCE AND WOULD HAVE UNDERMINED CONFIDENCE IN THE CONTEXT.

BUT LET ME ASK YOU THIS.

ONE OF THE OTHER THINGS WE'VE GOT HERE, I THINK IF YOU WANT TO SAY MORE ABOUT THAT, YOU CAN, BUT ISN'T IT TRUE THAT ONE OF THE OTHER CIRCUMSTANCES HERE WAS THAT THERE WAS TESTIMONY FROM EDWINA THAT ON THE FRIDAY BEFORE THE MURDER THE DEFENDANT HAD SAID TO HER, I'M GOING TO

PRISON, BUT SOMEBODY'S GOING TO BE DEAD, I BET YOU THAT.

OKAY?

AND ALSO THAT ON THE DAY OF THE MURDER THE DEFENDANT CALLED HER AND ASKED IF THE VICTIM WAS WORKING THAT DAY AND ASKED WHAT TIME SHE GOT OFF WORK.

THERE WAS TESTIMONY OF THOSE CIRCUMSTANCES.

>> AND IN CONTEXT, THERE'S THE TESTIMONY OF PATRICK ALLEN THAT HE WAS FOLLOWED BY A BLACK CAR THAT HE ASSUMED WAS MR. ANDERSON'S, PUSHED AT 85 MILES AN HOUR THROUGH STREETS OF FORT LAUDERDALE, THROUGH RED LIGHTS.

HIS GUN IN HIS GLOVE BOX FELL OUT DURING THIS CHASE.

HE REACHES OVER AND STARTS FIRING WILDLY AT PRESUMABLY MR. ANDERSON.

SO THE FACT THAT AFTER THIS INCIDENT SOMEBODY MAY END UP DEAD DOESN'T MEAN THE VICTIM IN THIS CASE.

PATRICK ALLEN ALLEGED THAT -- OR CLAIMED THAT HE HAD BEEN SHOOTING AT MR. ANDERSON.

AND THERE WAS SOME INDICATION OF BULLET HOLES IN THE VEHICLES.

AND IN FACT THAT'S THIS AREA WHERE IT SHOWS THE DEFENDANT HASN'T READ THE FILE WHERE HE HAS PATRICK ALLEN ON THE STAND AND ACCUSES HIM OF NOT HAVING AN ALIBI.

THE PROSECUTOR SAYS OFF GOT A TIME SHEET FROM PUBLIX SHOWING HE WAS WORKING IN YOUR FILE.

DEFENSE COUNSEL SAYS NO, I DON'T.

GO CHECK.

I SAW IT YESTERDAY.

HE COMES BACK AND HAS TO ACKNOWLEDGE TO THE JURY HE HAD BEEN MISTAKEN.

HE DIDN'T KNOW HIS FILE.

HE DIDN'T KNOW WHAT HE HAD.

HE DIDN'T KNOW HE HAD EXPERTS
RETAINED.

AND IN TERMS OF PREJUDICE, THE
QUESTION IS WHETHER OR NOT
EXCLUDING THAT EVIDENCE CAST THE
CASE IN A WHOLE NEW LIGHT.

AND IT DOES.

AND THAT'S THE ALLEGATION.

AND I SUBMIT THAT UNDER THE NEW
RULE, AN EVIDENTIARY HEARING WAS
REQUIRED IN THIS CASE.

AND IF IT ISN'T REQUIRED IN THIS
CASE, THEN THE NEW RULE MEANS
NOTHING.

BECAUSE THE NEW RULE WAS
ADOPTED, AS THIS COURT
EXPLAINED, TO REQUIRE
EVIDENTIARY HEARINGS.

BRIEFLY I WANT TO TURN TO
ARGUMENT TWO, BECAUSE HURST V.
FLORIDA HAD CERT GRANTED NEXT
MONTH.

I HAVE NO DOUBT HOW IT'S GOING
TO COME OUT.

THE EIGHTH AMENDMENT IS GOING TO
BE FOUND TO APPLY TO FLORIDA.

ASSUMING I'M CORRECT,

MR. ANDERSON IS ENTITLED TO THE
SAME BENEFIT THAT MR. HURST
GETS, AND THE FACT IS IN THIS
CASE THE PRIOR CRIME OF VIOLENCE
WAS A QUESTION OF FACT THAT WAS
SUBMITTED TO THE JURY.

THE JUDGE RULED AS A MATTER OF
LAW ATTEMPTED SEXUAL BATTERY IS
NOT VIOLENT PER SE, AND SO THE
PROSECUTOR COULD INTRODUCE
EXTRINSIC EVIDENCE IN ORDER TO
PROVE THE VIOLENCE.

AND HE DID THAT.

SO THERE IS NOT THE AUTOMATIC
AGGRAVATOR IN THIS CASE THAT HAS
BEEN RELIED UPON THAT SAYING IT
WOULD NOT APPLY.

THIS COURT STRUCK TWO
AGGRAVATORS ON APPEAL.

THERE HAVE BEEN 12 MITIGATORS
IDENTIFIED.

AND IF HURST COMES OUT
FAVORABLY, MR. ANDERSON

PRESENTED THE SAME ARGUMENT.
THIS COURT REJECTED IT.
IF HURST PREVAILS, MR. ANDERSON
SHOULD GET THE SAME BENEFIT.
SO I JUST WANTED TO MAKE THAT
POINT.

>> YOU'RE INTO YOUR REBUTTAL
TIME.

>> I'D LIKE TO RESERVE THE REST
OF IT.

THANK YOU.

>> MAY IT PLEASE THE COURT, GOOD
MORNING.

LESLIE CAMPBELL WITH THE
ATTORNEY GENERAL'S OFFICE.

>> MISS CAMPBELL, IT'S BEEN A
LONG TIME SINCE WE'VE HAD
SOMETHING WHERE (INAUDIBLE)
PENALTY PHASE EVIDENTIARY
HEARING.

AND, AS YOU KNOW, OVER THE PAST
15 YEARS WE REALLY ENCOURAGE
TRIAL JUDGES TO GIVE EVIDENTIARY
HEARINGS SO WE DON'T HAVE THIS
HANGING OUT THERE.

ISN'T THE BETTER PRACTICE
CONSISTENT WITH OUR CASE LAW TO
LET MR. MCCLAIN ARGUE WHAT HE'S
ARGUING HERE BEFORE A JUDGE WITH
HIS EXPERTS AND LET THE JUDGE
DECIDE IF THIS UNDERMINES
CONFIDENCE?

I MEAN, COULDN'T WE JUST DO
THAT?

I KNOW YOU -- I JUST DON'T SEE
AS A MATTER OF LAW -- AND IT MAY
BE THERE IS AN ISSUE THAT
THERE'S JUST NO PREJUDICE AS A
MATTER OF LAW.

BUT SUFFICIENCY OF THE OTHER
EVIDENCE, AS YOU WOULD AGREE, IS
NOT PREJUDICE, RIGHT?

THERE'S A DIFFERENT INQUIRY.
SO TELL ME WHY THE SUMMARY
DENIAL IS APPROPRIATE.

>> THE SUMMARY DENIAL IS
APPROPRIATE FOR TWO REASONS.
ONE, NOT ALL OF THE ALLEGATIONS
WERE PLED SUFFICIENTLY.
BUT TO SHORT-CIRCUIT IT, TO

ANSWER THE QUESTION THE COURT SEEMS TO BE VERY CONCERNED ABOUT, THERE WAS NO PREJUDICE. EVEN IF YOU TAKE OUT ALL OF THAT EVIDENCE, ALL OF THE FORENSIC EVIDENCE FROM THE CAR, YOU'RE NOT GOING TO FIND PREJUDICE. WE HAVE MR. ANDERSON MAKING THREATS TO THE VICTIM BEFORE. WE HAVE MR. ANDERSON CHASING THE DEFENDANT'S FRIEND, MR. ALLEN, BEFORE.

WE HAVE MR. ANDERSON SAYING THAT SOMEBODY'S GOING TO DIE. HE WAS GOING TO WAIT THERE. IF HE COULDN'T GET ONE, HE WAS GOING TO GET --

>> AND WHO DID HE SAY -- WHO WAS THAT -- WHO DID HE MAKE THE STATEMENT TO?

>> TO EDWINA, TO HIS THEN WIFE. WE ALSO HAVE MR. ANDERSON AT FINDING OUT THE TIME THAT HIS STEPDAUGHTER WAS GOING TO BE RELEASED FROM PUBLIX ON SUNDAY. AND HE'S WAITING FOR HER. AND WE HAVE TESTIMONY THAT HIS CAR IS IN THE PARKING LOT.

WE ALSO HAVE TESTIMONY --
>> DID ANYONE ACTUALLY SEE HIM THERE?

>> SAW HIS CAR THERE.
THAT WAS MR. ALLEN.

WE ALSO HAVE THE TESTIMONY OF THE TWO EYE WITNESSES TO THE ACTUAL MURDER.

THEY IDENTIFIED THE CAR AS NOT EXACTLY MR. ALLEN'S, BUT -- I MEAN, EXCUSE ME, MR. ANDERSON'S, BUT THEY WITNESSED WHAT HAPPENED AT THE TIME OF THE MURDER.

THEY SAW SOMEBODY IN THE SIDE OF THE ROAD, MEDIAN OF THE ROAD. A CAR TURNED TO GO CHECK OUT THAT AREA AND THEN SAW MR. ANDERSON'S CAR DRIVE DIRECTLY TOWARDS THE VICTIM, WHO HAPPENED TO SIT UP IN THE MEDIAN AT THAT TIME, AND HE DROVE OVER HER.

>> WHAT'S THE STATE'S THEORY ABOUT HOW-- THE SEQUENCE OF EVENTS THAT GO FROM WHEN SHE LEAVES WORK TO HOW SHE ENDS UP AT THAT POINT?

>> WELL, SHE'S PICKED UP, I BELIEVE IT'S HOLLYWOOD, AND SHE'S TRANSPORTED WEST AND OUT TO STATE ROAD 27.

>> BY THE DEFENDANT.

>> BY THE DEFENDANT.

THAT HE EITHER PUSHES HER OUT OF THE CAR AT THIS VERY REMOTE, DARK LOCATION, OR SHE JUMPS OUT OF THE CAR.

HER HEAD HITS THE PAVEMENT, LEAVING SCALP AND HAIR, SO WE HAVE HER FORENSIC EVIDENCE ON THE ROADWAY, ALONG WITH SHOES, HER NAME TAG AND OTHER JEWELRY. SHE GETS OVER TO THE OTHER SIDE OF THE STATE ROAD 27 AND SHE LUNGES LOOKING FOR HELP.

IT APPEARED THAT SHE WAS LOOKING FOR HELP FROM ANOTHER VEHICLE. ENDS UP IN THE MEDIAN.

AND THEN MR. ANDERSON, AFTER HE MAKES HIS U-TURNS, COMES BACK AND HE'S WITNESSED BY ANOTHER COUPLE RUNNING OVER THE VICTIM.

>> NOW, AGAIN, HE -- LET'S JUST MAKE SURE.

THE CAR IS POSITIVELY IDENTIFIED?

>> NOT POSITIVELY IDENTIFIED, BUT IT LOOKS LIKE THE CAR.

>> OKAY.

BUT WHEN YOU SAY -- BUT DOES ANYONE IDENTIFY HIM?

>> IN THE CAR?

NO.

>> OKAY.

SO THE ISSUE NOW OF THE FORENSICS, DID THE STATE RELY ON THE TIRE MARKS AS JUST THAT IT'S HIS CAR, RIGHT?

SO BUT YOU'RE SAYING THAT THE CAR IS IDENTIFIED BY EYE WITNESSES.

>> YES.

>> OKAY.
WHAT ABOUT THE BLOOD?
WHAT DID THEY USE THE BLOOD
EVIDENCE FOR?
>> PLACING THE VICTIM AT THE
SCENE ON ROUTE 27, NOT 15 MILES
DOWN THE ROAD.
>> SO NOT FORENSICS PUTTING HIM
WITH THE BLOOD.
>> NO, BUT THERE WAS BLOOD IN
THE CAR.
>> HIS CAR.
>> HIS CAR.
>> HER BLOOD WAS FOUND IN HIS
CAR.
>> HER BLOOD WAS FOUND USING DNA
ANALYSIS IN HIS CAR.
>> AND IS THAT ONE OF THE THINGS
-- BECAUSE THAT PUTS, OF COURSE,
HER POSITIVELY IN HIS CAR, HER
BLOOD.
IS THAT ONE OF THE POINTS OF THE
FORENSICS THAT MR. MCCLAIN SAYS
IS -- THAT THERE WAS A PROBLEM
WITH IT BEING HER BLOOD OR THE
CONCLUSION ABOUT WHERE THE
MURDER OCCURRED.
>> THERE'S NOT CHALLENGE ABOUT
THAT BLOOD BEING HER BLOOD.
THERE'S A CHALLENGE AS TO WHEN
IT WAS PLACED THERE AND THE
AMOUNT.
>> SO REALLY -- AGAIN, SO
THERE'S NOT A CHALLENGE THAT
IT'S HER BLOOD IN THE CAR.
AND WHAT ABOUT THE FIBER AND THE
HAIR OR -- WHAT DOES THAT DO?
>> AGAIN, IT'S OUTSIDE THE CAR,
BUT IT SHOWS -- IT'S ON THE
ROADWAY.
IT SHOWS WHERE THE MURDER TOOK
PLACE.
>> SO NOTHING OF THE FORENSICS
REALLY -- IF YOU ACCEPT THAT
IT'S -- IF YOU ACCEPT THAT THE
IDENTIFICATION OF THE CAR IS A
GOOD IDENTIFICATION, DOES THE
TIRE MARKS -- AGAIN, MAYBE I
ASKED YOU THIS, BUT THAT
STRENGTHENS THAT IT'S HIS CAR.

SO THAT'S SORT OF -- AS FAR AS BEING ABLE TO ATTACK THAT, IT COULD BE THE STRONGEST PIECE OF EVIDENCE THAT IF THEY CAN EITHER KEEP THE TIRE MARK EVIDENCE OUT -- AND WHAT KIND OF CAR IS IT THAT HE WAS DRIVING?

>> EL DORADO, 1981 CADILLAC EL DORADO.

>> SO PRETTY EASY CAR TO IDENTIFY?

>> OTHERS HAVE IDENTIFIED IT, YES.

>> SO WOULD YOU SAY THAT WOULD BE THE STRONGEST PIECE OF FORENSICS, THOUGH, THAT REALLY SAY IT'S HIS CAR BECAUSE IT'S HIS TIRE MARKS, THAT IF THEY CAN IMPEACH THE TIRE MARKS, THAT THAT'S AT LEAST A SIGNIFICANT PIECE OF EVIDENCE?

IT STILL MAY NOT AMOUNT TO PREJUDICE, BUT IT SOUNDS LIKE THAT COULD BE THE MOST SIGNIFICANT PIECE?

>> I WOULDN'T EVEN SAY IT'S THE MOST SIGNIFICANT PIECE OF FORENSIC EVIDENCE.

>> WHAT IS THE MOST SIGNIFICANT PIECE OF FORENSICS?

>> I THINK THE DAMAGE TO THE UNDERSIDE OF THE CAR IS VERY SIGNIFICANT ALSO.

THE PAN WAS DAMAGED.

THE RADIATOR IS DAMAGED FROM -->> HIS CAR.

AND THAT'S NOT BEING CHALLENGED.

>> THAT'S NOT BEING CHALLENGED HERE, NO.

>> HOW ABOUT THE FABRIC?

>> OH.

THE FIBER?

>> FIBER.

>> THAT WAS FOUND?

YES.

THAT IS BEING CHALLENGED HERE. HOWEVER, IF YOU LOOK AT THOSE PARTICULAR PIECES OF FORENSIC EVIDENCE TOGETHER, YES, THEY CERTAINLY SHOW GUILT.

BUT TAKING THEM OUT, YOU'RE STILL LEFT WITH ALL OF THE OTHER EVIDENCE THAT I'VE JUST GONE THROUGH.

>> BUT THEY DON'T REALLY SHOW GUILT.

I MEAN, BECAUSE THAT'S JUST -- THE IDEA IS THAT IT'S -- IF I UNDERSTAND WHAT THE TESTIMONY WAS, THAT THERE WAS A FIBER OR FIBERS THERE WERE CONSISTENT WITH, NOT NECESSARILY THAT YOU COULD SAY THAT THAT CAME FROM -- THAT FIBER CAME FROM HER.

>> THAT'S CORRECT, YOUR HONOR. THE SIGNIFICANCE WAS ALL OF THE STUFF TOGETHER, ALL OF THOSE ITEMS TOGETHER.

AND EVEN WITH THE TIRE MARKS, IT WASN'T A MATCH.

IT WAS, AGAIN, CONSISTENT WITH.

>> LET ME ASK YOU ABOUT THE COUPLE THAT SAW A CAR LIKE MR. ANDERSON'S TURN AROUND AND THEN RUN OVER SOMEONE IN THE MEDIAN.

THAT WAS NOT THE PLACE -- THIS PLACE WAS NOT THE PLACE WHERE THE BODY WAS EVENTUALLY FOUND?

>> THAT'S CORRECT, YOUR HONOR. IT WAS NOT THE PLACE WHERE THE BODY WAS FOUND.

>> SO MY QUESTION TO YOU THEN IS DID THE COUPLE SAY THAT THEY SAW THE DEFENDANT -- HOW -- I'M TRYING TO FIGURE OUT HOW THE VICTIM GOT BACK INTO THE CAR TO BE TRANSPORTED TO ANOTHER LOCATION.

DID THE COUPLE SEE HIM PICK UP THE BODY, WHOMEVER IT WAS, PICK UP THE BODY AND PUT IT IN THE CAR?

>> NO, THEY DID NOT, BECAUSE THEY -- WELL, THEY FOLLOWED HIM. THEY LOST HIM.

AND SO THEN THEY WENT TO A GAS STATION AND EVENTUALLY TO I BELIEVE IT WAS --

>> AT WHAT POINT?

>> RIGHT AFTER THE -- RIGHT AFTER SHE WAS RUN OVER.

>> AND WHEN THEY LEFT THAT SCENE, THAT CAR THAT THEY IDENTIFIED WAS STILL AT THE SCENE?

>> NO.

IT ALSO TOOK OFF AT A HIGH RATE OF SPEED.

NOW, WHAT WE HAVE IS WHEN THE POLICE GET OUT THERE SOMETIME SAY 45 MINUTES LATER AFTER THEY'VE BEEN CONTACTED AND THEY RESPOND TO THE SCENE, THEY FIND THE EVIDENCE OF THE VICTIM BEING HIT.

AND WHAT IS IMPORTANT, AGAIN, TO REMEMBER IS THAT SHE WAS -- SHE WAS KICKED OUT OR SHE GOT OUT OF THE CAR, AND SHE HIT HER HEAD, SO SHE'S ON ONE SIDE OF THE ROAD.

HER SCALP AND HAIR IS ON ONE SIDE OF THE ROAD.

AND SHE MAKES IT TO THE OTHER SIDE OF THE ROAD.

SO SHE'S AMBULATORY AT THAT POINT.

>> SO WE HAVE TO ASSUME AFTER WHOEVER IT WAS RAN OVER THE VICTIM, THEY LEFT THE SCENE, THE PEOPLE WHO WITNESSED IT LEFT THE SCENE, AND THEN WE HAVE TO ASSUME THE FIRST PERSON WHO RAN OVER HER CAME BACK TO THE SCENE.

>> YES, YOUR HONOR, AND THE REASON WE HAVE TO ASSUME THAT OR THAT IT IS REASONABLE TO ASSUME THAT IS THAT HER PELVIS WAS BROKEN.

SHE WAS NO LONGER ABLE TO GET UP AND WALK 15 MILES TO A FISHING CAMP IN DADE COUNTY.

>> WAS THE BLOOD EVIDENCE IN THE CAR THAT SHOWED THAT -- WELL, I ASSUME SHE WAS VERY BLOODY AT THAT POINT.

>> NOT NECESSARILY, YOUR HONOR. THERE WAS BLOOD ON THE PAVEMENT, BUT SHE WAS KILLED AND DIED

RAPIDLY.

SO THERE ISN'T TESTIMONY AS TO HOW MUCH BLOOD SHE WOULD HAVE LOST AT THAT POINT.

AND ALSO YOU HAVE TO TAKE --

>> WHAT ABOUT HER CLOTHING?

WAS THERE BLOOD ON HER CLOTHING?

>> THERE WAS SOME BLOOD ON THE CLOTHING.

SHE WAS HIT IN THE HEAD.

>> WELL, I'M TALKING ABOUT, YOU KNOW, LIKE -- I KNOW THERE MIGHT HAVE BEEN FROM THE HEAD, BUT YOU SAY SHE HAD A BROKEN PELVIS?

>> BROKEN PELVIS.

>> WAS THERE ANY BLOOD ON THAT PART OF THE BODY?

>> I DO NOT RECALL ANY BLOOD BEING REPORTED AS BEING ON THAT PART OF THE BODY.

>> THERE'S GOING TO BE SOME BLOOD IF YOU'VE BEEN RUN OVER, ONE WOULD THINK.

>> YES.

ONE WOULD THINK, YES.

HOWEVER, WE HAVE THAT EVIDENCE AT THE SCENE.

WE HAVE HER BEING TRANSPORTED TO ANOTHER LOCATION 15 MILES DOWN THE ROAD.

AND IN ADDITION TO THAT --

>> WELL, BUT THE BLOOD EVIDENCE HERE -- WHERE'S THE BLOOD EVIDENCE FOUND IN THE CAR?

>> IN THE CAR.

I BELIEVE IT'S THE PASSENGER SEAT.

>> IN THE FRONT PASSENGER SEAT.

>> YES.

>> OKAY.

AND IT'S ESSENTIALLY A SPECK OF BLOOD?

>> IT'S A SPOT OF BLOOD.

>> OKAY.

AND WAS THAT ARGUED BY THE DEFENSE ATTORNEY, THAT LOOK AT THE CONDITION OF THIS BODY, THAT WITH THAT CONDITION YOU WOULD HAVE HAD MORE THAN A SPOT OF BLOOD ON THE PASSENGER SEAT?

>> IF YOU LOOK AT THE
CROSS-EXAMINATION OF EACH
FORENSIC EXPERT, HE DID
CHALLENGE ALL OF THOSE FACTORS,
THAT IT'S NOT ENOUGH EVIDENCE
HERE.

IT'S INCONCLUSIVE HERE.
HE MADE A VERY GOOD CASE, AS
BEST A CASE HE COULD, THAT IT
WAS NOT MR. ANDERSON.

HE DID NOT NEED EXPERTS TO
IMPEACH THE STATE'S EXPERTS.
HE DID THAT THROUGH
CROSS-EXAMINATION.

>> THAT'S WHERE WE GET TO
NORMALLY WE'RE DECIDING THAT
ISSUE BASED -- AFTER AN
EVIDENTIARY HEARING.

I MEAN, YOU GOT THE DEFENSE
LAWYER WAS CALLED TO TALK ABOUT
THE PENALTY PHASE.

I MEAN, HAVING HIM SAY WHY HE
DID IT, WHY HE DIDN'T GET AN
EXPERT, WHY HE DIDN'T -- DECIDED
THAT WAS NOT A GOOD STRATEGY IS
SOMETHING WE USUALLY HAVE A
RECORD ON.

I MEAN, I THINK THE STRONGEST
ARGUMENT THAT I'M SEEING -- AND,
AGAIN, I GUESS MR. MCCLAIN WILL
ARGUE AGAINST IT -- IS THAT
ALTHOUGH WE DO TALK ABOUT THERE
BEING FORENSICS TO LINK THE CAR,
WE REALLY DON'T TALK ABOUT THE
STRENGTH OF THOSE FORENSICS.
BUT FOR US TO GO AND SAY, WELL,
NO, IT WAS VIGOROUSLY DEFENDED
WHEN WE DON'T HAVE WHAT ANOTHER
EXPERT MIGHT HAVE SAID IS A
LITTLE BIT SPECULATIVE ON OUR
PART.

>> I DON'T THINK IT'S
SPECULATIVE, YOUR HONOR, BECAUSE
THAT IS OF THE RECORD.
THE RECORD REFUTES THE CLAIM
THAT ADDITIONAL EVIDENCE WOULD
HAVE DISCOUNTED ALL OF THE
FORENSICS EVEN FURTHER.
AND THE OTHER PRONG OF
STRICKLAND IS PREJUDICE.

AND THERE JUST IS NO PREJUDICE SHOWN HERE.

BECAUSE IF YOU TAKE OUT THE FORENSICS THAT ARE BEING CHALLENGED HERE, YOU'RE STILL LEFT WITH SOME FORENSICS ON THE CAR, SUCH AS THE DAMAGE UNDERNEATH, AND YOU HAVE ALL OF THE EYE WITNESS TESTIMONY AND YOU HAVE HIS THREATS.

AND IN FACT --

>> YOU'RE LEFT WITH A SPECK OF BLOOD.

WAS THERE ANY OTHER POSSIBLE EXPLANATION FOR HER BLOOD BEING IN THE CAR?

>> NO.

NO.

AND MR. ANDERSON HAD SOLE CONTROL OF THE CAR.

>> OPPOSING COUNSEL IS GOING TO GIVE ME A DIFFERENT VIEW OF THAT, I THINK.

IF I DETECT HIS HEAD MOTION CORRECTLY, UNDERSTAND THAT CORRECTLY.

>> EXCUSE ME?

>> THE DAMAGE TO THE CAR.

WAS THERE ANY ATTEMPT AT TRIAL TO DISCUSS THE DAMAGE ON THE CAR?

AND COULD THE DAMAGE HAVE BEEN MADE IN SOME OTHER WAY?

>> I BELIEVE THERE WAS TESTIMONY THAT THERE ARE OTHER WAYS TO GET DAMAGE UNDERNEATH A CAR, RUNNING OVER A LOG, RUNNING OVER OTHER OBJECTS.

>> I THINK THE THING ABOUT -- HE DID ADMIT THAT SHE -- HE HAD HER IN THE CAR.

>> HE ADMITTED PICKING HER UP.

>> I THINK THAT -- I'M STILL STRUGGLING WITH HOW IF HE TOOK HER FROM THE -- WHERE HE RAN OVER HER, ASSUMING HE'S THE -- WELL, IT'S PRESUMED AT THIS POINT, HOW -- AND SHE'S BLOODY, HOW THERE'S ONLY A SPECK OF -- A SPECK.

WHAT DOES A SPECK MEAN?
I MEAN, IS IT LIKE REALLY LIKE
MY GRANDDAUGHTER'S FINGER GOT
CAUGHT IN THE DOOR AND THERE'S
SOME BLOOD?
IS IT THAT KIND OF SPECK?
>> WELL, IF WE WISH TO
SPECULATE, HE MAY HAVE PUNCHED
HER IN THE NOSE WHEN HE TOSSED
HER OUT OF THE CAR AND WHEN HE
PUT HER BACK IN THE CAR AFTER
KILLING HER, HE HAD PLASTIC.
IT'S NOT LIKE THIS WAS A SPUR OF
THE MOMENT.
HE WENT OUT TO PICK HER UP THAT
NIGHT AFTER THREATENING HER.
HE TOLD HIS WIFE THAT HE WAS --
THAT SOMEBODY WAS GOING TO DIE.
HE ASKED HIS WIFE WHEN SHE WAS
GETTING OFF -- WHEN HIS
STEPDAUGHTER WAS GETTING OFF OF
WORK.
>> HOW OLD WAS SHE AT THE TIME?
>> 18.
AND HE'S SEEN PICKING HER UP.
HE ADMITS PICKING HER UP.
AND WHEN CONTACTED AFTERWARDS
--
>> WELL, HE SAID HE WAS JUST
KIDDING, RIGHT?
>> YES.
HE WAS JUST KIDDING.
>> WHERE WAS HE ARRESTED IN
RELATIONSHIP TO WHEN THE MURDER
ALLEGEDLY TOOK PLACE?
>> I DON'T REMEMBER THE ARREST
DATE, BUT A WEEK AFTERWARDS
THERE WAS A SEARCH WARRANT FOR
THE CAR.
>> A WEEK AFTER?
>> ABOUT A WEEK AFTER.
THEY SEARCHED THE CAR, AND HE
VOLUNTARILY ALLOWED THEM TO
SEARCH THE CAR.
HE ALSO, WHICH I THINK IS VERY
TELLING, HE ASKED HIS PROBATION
OFFICER, NOW THAT THE VICTIM IS
DEAD, MAY I GET MY FAMILY BACK?
SO THERE IS CLEAR MOTIVATION OF
HIS INTENT.

THIS COURT --

>> BUT HE WAS NOT SUPPOSED TO GO TO THE HOUSE WHERE THEY ALL LIVED?

>> THAT IS CORRECT.

>> HE HAD BIOLOGICAL CHILDREN WITH THE MOTHER OF THE VICTIM.

>> RIGHT.

HE WAS TO HAVE NO CONTACT, YET HE HAD PLENTY OF CONTACT AND HE WANTED ADDITIONAL CONTACT AT LEAST WITH HIS BIOLOGICAL FAMILY.

SO THERE CAN BE NO PREJUDICE SHOWN.

THERE HAS BEEN NO PREJUDICE SHOWN.

THERE WAS NO PREJUDICE PLED.

>> JUST AS FAR AS THE UNDERLYING FACTS, HE WAS -- HE MARRIED THE MOTHER.

SHE WAS FIVE YEARS OLD AT THE TIME.

THEN THE BIOLOGICAL CHILDREN CAME ALONG AFTERWARDS?

>> YES.

>> AND THEY -- THE VICTIM WAS STILL LIVING AT THE HOUSE?

>> YES.

>> SO UNDER THE TERMS OF THE PROBATION HE COULD NOT BE WITH HIS BIOLOGICAL CHILDREN IF THE VICTIM WAS AROUND.

>> RIGHT.

>> BUT THAT HAD BEEN GOING ON FOR HOW LONG, 13 YEARS?

>> NO.

BECAUSE THE MOLESTATION HAD BEEN GOING ON FOR QUITE SOME TIME.

IT WAS '92 WHEN HE WAS CHARGED AND GIVEN PROBATION.

>> OKAY.

HOW MANY YEARS BETWEEN THAT AND THE MURDER?

>> LESS THAN TWO YEARS.

>> '92?

>> THE MURDER WAS '94

>> OH, MY GOODNESS.

OKAY.

WE'RE DEALING WITH AN ANCIENT

CASE.

>> YES.

IN 1990 THE VICTIM TOLD HER MOTHER ABOUT THESE RAPES AND HER MOTHER MONITORED THE SITUATION FOR TWO YEARS BEFORE THE DEFENDANT ACTUALLY DISCLOSED --

>> HOW DID HE GET ON PROBATION?

>> I DON'T HAVE AN ANSWER FOR THAT, YOUR HONOR.

IF THERE ARE NO OTHER QUESTIONS ON THAT ISSUE, JUST WITH REGARD TO THE RING ISSUE, THERE WAS A CONVICTION, THERE WAS TESTIMONY FROM THE MOTHER IN THE GUILT PHASE AS TO THE ALLEGATIONS.

THE DEFENDANT WAS -- THE DEFENDANT HAD -- AT SOME POINT HE STARTED JUST --

>> IS THIS A UNANIMOUS VERDICT?

>> YES.

YES, FOR GUILT, NOT FOR PENALTY PHASE, NO.

>> WE DON'T KNOW WHAT THE U.S. SUPREME COURT IS GOING TO DO. THIS WOULD BE A PIPELINE CASE

--

>> HOWEVER, IT APPEARS THAT THE U.S. SUPREME COURT IS CONCERNED ABOUT THE MENTAL RETARDATION ISSUE.

THAT'S ONE OF THE ISSUES IN HURST.

AND THE QUESTION WAS WHO GETS TO DECIDE THAT.

WE HAVE A DEFENDANT WHO HAS A CONVICTION, AN ACTUAL CONVICTION, VERSUS JUST THE MENTAL RETARDATION CLAIM.

>> YOUR TIME IS UP.

>> THANK YOU, YOUR HONOR.

I ASK THAT YOU AFFIRM THE DENIAL.

>> THANK YOU.

JUST THE HISTORY.

IN 1992 WHILE GETTING TREATMENT FOR COCAINE ADDICTION, HE TOLD A COUNSELOR ABOUT HAVING SEX WITH HIS STEPDAUGHTER.

THAT'S HOW IT GOT REPORTED.

THE MOTHER KNEW ABOUT IT, HAD KNOWN ABOUT IT FOR A NUMBER OF YEARS.

SHE AND THE VICTIM AGREED TO THE PROBATION.

IT WAS ALL PART OF A DEAL.

EVEN THOUGH THERE WAS A CONDITION THAT HE NOT HAVE CONTACT, HE WAS HAVING CONTACT. HE WAS DRIVING HER TO WORK ON A REGULAR BASIS, WHICH IS WHEN THE SPECK OF BLOOD COULD HAVE GOTTEN ON THE SEAT.

SHE REGULARLY SAT IN THE PASSENGER SEAT.

SHE WAS IN THE CAR ALL THE TIME. HE DROVE HER TO WORK MOST OF THE TIME.

SO THAT WAS THE EXPLANATION FOR THE BLOOD.

AND WHAT THE DEFENSE DIDN'T PRESENT, THE EXPERTS WOULD HAVE SAID IT'S NOT POSSIBLE --

>> BUT THAT WAS -- BUT THAT WAS PRESENTED AT TRIAL.

>> YES.

WELL, THE FACT --

>> THE JURY WOULD HAVE KNOWN THAT BLOOD COULD HAVE GOTTEN THERE SOME OTHER WAY.

>> BUT WHAT THEY DIDN'T HEAR IS EXPERTS TESTIFYING IT WOULDN'T HAVE BEEN POSSIBLE TO PUT HER BLOODY BODY IN THE CAR AND NOT LEAVE BLOOD.

>> BUT YOU DON'T -- I'M STRUGGLING TO UNDERSTAND HOW A JUROR WOULD NEED EXPERT TESTIMONY TO UNDERSTAND THAT POINT, THAT IF A PERSON IS ALL BLOODY, IT'S GOING TO BE UNLIKELY THAT THERE'S JUST GOING TO BE A SPECK.

OF COURSE, YOU'VE ALSO GOT THE POSSIBILITY HERE THAT IT WAS CLEANED UP TO SOME EXTENT.

>> THE EVIDENCE IS IT WAS NOT CLEANED UP.

THE CAR WAS A MESS.

IT HAD NOT BEEN CLEANED.

>> (INAUDIBLE) THERE WAS IN FACT SOME KIND OF PLASTIC OR OTHER THING THAT THE BODY WAS LAID ON.

>> THERE WAS NO INDICATION OF THAT.

>> WELL, IT WAS A WEEK LATER.

>> IT WAS A WEEK LATER.

>> SO WE HAVE NO IDEA.

>> BUT THE CAR WAS A MESS, AND THE SPECK OF BLOOD WAS NOT VISIBLE TO THE NAKED EYE. THEY HAD TO SEARCH FOR IT TO FIND IT.

AND THAT WAS THE EXTENT.

AND THE STATE CHOSE TO PRESENT THAT EVIDENCE BECAUSE THEY FELT THEY NEEDED THE EVIDENCE BECAUSE THERE WAS NO POSITIVE IDENTIFICATION OF THE CAR OR POSITIVE IDENTIFICATION OF MR. ANDERSON.

NO ONE COULD SAY THAT WAS THE CAR.

>> DO WE HAVE ANY TESTIMONY THAT SAYS THE RANGE OF WHEN THE MURDER TOOK PLACE IN RELATIONSHIP TO HIM PICKING HER UP FROM WORK?

>> THE ONLY -- WELL, WITH A COUPLE -- I THINK THERE WAS MAYBE TWO HOURS OR SO AFTER SHE GOT OFF WORK.

AND THERE WAS NO INDICATION, OTHER THAN MR. ALLEN, WHO THE DEFENSE WAS CONTENDING WAS A SUSPECT IN THE CASE, THAT HE WAS PRESENTED.

>> THAT HE WAS PRESENTED.

>> THAT MR. ANDERSON WAS PRESENT WHEN SHE GOT OFF WORK.

>> BUT WE DO KNOW -- THERE'S TESTIMONY THAT HE ASKED WHEN SHE WOULD BE GETTING OFF WORK. HE ASKED HIS WIFE.

>> HE DID.

AND HE REGULARLY PICKED HER UP WHEN SHE GOT OFF WORK. HE WAS THE PERSON THAT NORMALLY GAVE HER A RIDE.

>> AND HIS CAR WAS SEEN THERE.

>> ALLEN IS THE ONLY PERSON --
>> I MEAN, THIS IS THE STATE OF
THE RECORD.
YOU SAY HE WAS A SUSPECT, ALL OF
THAT.
>> BUT THAT'S ALSO PART OF THE
RECORD, IS THAT ALLEN IS THE
PERSON WHO SAID HE HAD BEEN
PUSHED BY THAT CAR AND HE HAD
BEEN SHOOTING AT THAT CAR AND HE
TESTIFIED HE SAW THE CAR IN THE
PARKING LOT.
BUT NO ONE IDENTIFIED
MR. ANDERSON'S CAR AT THE SCENE,
WHERE THE INDIVIDUAL WAS SEEN
RUN OVER.
NO ONE KNOWS HOW SHE GOT THERE.
NO ONE SAW HER JUMP OUT OF A CAR
OR BE PUSHED OUT OF THE CAR.
THE FIRST TIME SHE IS SEEN IS
JUST A PERSON IN THE MEDIAN.
SO NO ONE KNOWS WHAT HAPPENED.
>> WELL, I WAS UNDER THE
IMPRESSION AT LEAST THE STATE
SAID THAT THERE'S PHYSICAL
EVIDENCE AT THAT LOCATION AWAY
FROM THE MEDIAN THAT WOULD
INDICATE THE STRIKING OF THE
ROADWAY.
SHE MENTIONED HAIR AND SCALP.
>> WHAT I'M SAYING IS NO ONE
KNOWS HOW SHE GOT THERE.
>> OKAY.
>> THERE IS EVIDENCE TO SHOW
BLOOD THERE AND ARTICLES OF
CLOTHING.
SO THERE IS EVIDENCE TYING HER
TO THAT SCENE.
THERE'S JUST NO EXPLANATION OF
HOW SHE GOT TO THAT SCENE.
I THINK I'M OUT OF TIME.
I WOULD ASK THIS COURT TO
REVERSE AND REMAND.
>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT WILL BE IN RECESS FOR
TEN MINUTES.
>> ALL RISE.