

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN  
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. F01-007975

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CLERK OF DISTRICT COURTS  
DADE COUNTY, FLA  
CIRCUIT CRIMINAL#2  
SHERROD

STATE OF FLORIDA,  
  
Plaintiff,  
  
vs.  
  
SEAN CASEY,  
  
Defendant.

1351 NW 12th Street,  
Miami, Florida,  
Wednesday, April 25, 2001.

The above-entitled cause came on for  
hearing before The Honorable DARYL TRAWICK, Circuit  
Judge, pursuant to notice of hearing.

1 APPERANCES:

2 KATHERINE FERNANDEZ-RUNDLE, State Attorney, by  
3 ANTHONY ACCETTA, Assistant State Attorney,  
Attorney for Plaintiff.

4  
5 MILTON HIRSCH, P.A., by  
6 MILTON HIRSCH, Esq.,  
Attorneys for Defendant.

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1           MR. HIRSCH: Your clerk tells me it's  
2           customary for the clerks to keep the passport  
3           in the vault. That's what we were referring  
4           to. We don't want the passport in the case  
5           file.

6           MR. ACCETTA: State calls Officer Nagel.

7                         STEPHEN NAGEL

8           was called as a witness, and having been duly sworn,  
9           was examined and testified as follows:

10                        DIRECT EXAMINATION

11          BY MR. ACCETTA:

12           Q. State your name.

13           A. Stephen Nagel, Miami Beach Police  
14          Department.

15           Q. How long have you been employed by the  
16          Miami Beach Police Department?

17           A. Twenty-three years.

18           Q. What are your duties in the Miami Beach  
19          Police Department?

20           A. Assigned to the patrol division, traffic  
21          homicide investigator.

22           Q. Were you working on March 11, 2001?

23           A. I was the on call; traffic homicide  
24          investigator off duty.

25           Q. Just briefly, could you explain to the

1 judge what does that mean?

2 A. Every month two investigators are assigned  
3 to be on call to be to the homicide to assist in  
4 investigations.

5 Q. Do you have personal training in traffic  
6 homicide?

7 A. Yes.

8 Q. What does that entail?

9 A. Approximately 320 hours conditional  
10 traffic investigation courses.

11 Q. Did you respond to a scene on 79th Street  
12 and Harding Avenue on March 11, 2001?

13 A. Yes.

14 Q. Can you please tell the Court what you  
15 observed when you arrived?

16 A. When I arrived, I observed the scene was  
17 cordoned off and Officer Salie was on the right hand  
18 of Harding Avenue which is three lanes. There was a  
19 body of a white female deceased which had been  
20 struck by a vehicle later identified as the victim,  
21 Marie Montgomery.

22 Q. When you say struck by a vehicle what  
23 evidence did you observe at the scene that would  
24 have indicated to you that a vehicle was used?

25 A. We had several witnesses that witnessed

1 the accident plus pieces of the vehicle--

2 Q. They indicated to you at that time what  
3 kind of vehicle?

4 A. Witnesses stated it was a late model black  
5 BMW. BOLO was issued via police radio.

6 Q. Did there come a point in time were you  
7 actually responded to a black BMW?

8 A. Yes. Officer Bower at approximately 10:34  
9 the same morning while looking through the area for  
10 the suspect vehicle came across the late model black  
11 BMW appears to have been involved in a traffic crash  
12 in front of 72, 71 Gary Avenue, he roped off the  
13 scene; preserved it for myself and crime scene  
14 units.

15 Q. Did you have an opportunity to observe the  
16 vehicle?

17 A. Yes.

18 Q. What observations did you make of the  
19 vehicle?

20 A. The vehicle appeared to have damage  
21 consistent with that of striking a pedestrian.

22 Q. Specifically what did you notice?

23 A. It had a damage to the right front  
24 corner. The vehicle extending across the hood up to  
25 the right section, the windshield and right

1 A-pillars. The windshield was crushed all the way  
2 through. There was also further evidence of  
3 groceries that were believed to have been carried by  
4 the victim that were found on the roadside were also  
5 in plain view on the side of the vehicle.

6 Q. The witness' testimony that you indicated  
7 prior, what was that?

8 A. That a black BMW driving at a high rate of  
9 speed struck the pedestrians and then continued  
10 southbound on Harding Avenue without any attempt to  
11 stop.

12 Q. Did they indicate that the person that was  
13 walking across the street was the same person that  
14 you saw on the roadway deceased?

15 A. Yes, sir.

16 Q. And items that you indicated such as  
17 groceries, were there groceries on the floor as well  
18 as in the vehicle?

19 A. Correct.

20 Q. Were you able to run the tag of the  
21 vehicle?

22 A. Yes. That was done by Officer Bower at  
23 the scene. The registration came back to a Sean  
24 Casey.

25 Q. Eventually did you obtain a registration

1 that matched that vehicle?

2 A. Eventually, yes.

3 Q. Did it match Sean Casey?

4 A. Yes.

5 Q. Is that vehicle currently in the possession  
6 of Miami Beach Police Department under  
7 investigation?

8 A. Correct.

9 MR. ACCETTA: I have no further questions.

10 THE COURT: Cross examination.

11 CROSS EXAMINATION

12 BY MR. HIRSCH:

13 Q. Officer Nagel, you indicated you were  
14 first directed to the scene--give me a second  
15 here--you were first directed to answer at about  
16 79th and Harding; is that correct?

17 A. Correct.

18 Q. And at that point, you were given  
19 information about a description of a vehicle?

20 A. Correct.

21 Q. Did you yourself speak to witnesses at  
22 that scene?

23 A. No, I did not.

24 Q. You were' relayed--this was by brother  
25 officers?

1 A. Correct.

2 Q. Do you recall which officers you spoke to  
3 on the scene?

4 A. Officer S-a-l-i-e specifically.

5 Q. Can you spell it?

6 A. S-a-l-i-e.

7 Q. Do you recall--did you speak to Officer  
8 Salie briefly or did he give you a full description  
9 what he had learned?

10 A. No. We spoke in detail.

11 Q. Did he indicate to you that he had spoken  
12 to witnesses on the scene?

13 A. Yes.

14 Q. And that is where he had obtained the  
15 description of the car?

16 A. Right.

17 Q. Did the witnesses offer a description of  
18 the driver?

19 A. No.

20 Q. Who put out the BOLO?

21 A. I don't know which officer put the BOLO  
22 out.

23 Q. It was not you?

24 A. It was not me.

25 Q. How long have you remained on the scene at

1 79th and Harding, approximately?

2 A. Approximately and hour and-a-half.

3 Q. Now, at that time, were you directed to I  
4 believe you said 72, 71 Perry; is that the address?

5 A. Gary Avenue.

6 Q. G-a-r-y?

7 A. Correct.

8 Q. Do you recall what time you were directed  
9 to that address?

10 A. I was advised shortly after I arrived on  
11 the scene that a suspect vehicle was located there.  
12 I responded there approximately at 10:30.

13 Q. Like 10:30?

14 A. Yes.

15 Q. Now, clearly you were not the first  
16 officer. It was Officer Bower who was the officer,  
17 first officer that found the car?

18 A. Yes.

19 Q. Did you ask Officer Bower where he found  
20 the car?

21 A. He found it right were it was parked.

22 Q. Had he moved it by the time you got there?

23 A. No.

24 Q. No one had moved it?

25 A. No.

1 Q. It was exactly where you found it?

2 A. Correct.

3 MR. HIRSH: Your Honor, I am going to ask  
4 that these photographs be marked for  
5 Identification, please.

6 THE COURT: All right.

7 Q. While the clerk is marking the exhibits,  
8 officer, let me ask you this: When you arrived at  
9 72, 71 Gary, were any officers other than Officer  
10 Bower present?

11 A. Crime scene technician Knowles was there.  
12 Officer, Dr. Dolan from the medical examiner's  
13 officer was there. Sergeant Butler, I believe,  
14 arrived at about the same time I did and Officer  
15 Salie also responded.

16 Q. At the time that you and the other  
17 officers arrived, did you make any determination  
18 whether Officer Bower or any of the other officers  
19 who had gotten there before you had done anything to  
20 the car?

21 A. I don't recall. I don't believe they  
22 did. The scene was roped off with crime scene tape.

23 Q. None of the other officers at that point  
24 had attempted for example to photograph the car?

25 A. Well, crime scene technician was there and

1 was in the process of starting her focus and Dr.  
2 Dolan from the medical examiner's office had also  
3 been there and started taking photos.

4 Q. Was that process completed while you were  
5 present?

6 A. I believe I left before our crime scene  
7 unit finished. Dr. Dolan had left before I left.

8 Q. But at the time you left, the crime scene  
9 tech was still in the process of taking the  
10 photographs, correct?

11 A. I believe so.

12 Q. Nothing was impeding her from doing that?

13 A. No.

14 Q. She was photographing as far as you can  
15 tell both the inside and the outside?

16 A. To the best she could there. Many of them  
17 were taken at the police station.

18 Q. You indicated one of the windows was  
19 smashed?

20 A. The front windshield.

21 Q. Entirely smashed?

22 A. On the right side.

23 Q. Was it possible to see in the interior of  
24 the car?

25 A. Yes.

1 Q. You looked inside the interior of the car?

2 A. Yes.

3 Q. Did the crime scene technician as far as  
4 you were able to observe take photos of the interior  
5 of the car?

6 A. She should have been able to. I don't  
7 know whether she did or not.

8 MR. HIRSCH: For the record, I am showing  
9 marked photographs to Mr. Accetta.

10 THE CLERK: Defense Exhibit A1 through A8  
11 for Identification.

12 Q. Now you indicated, officer, that you have  
13 a specialty in traffic homicide investigation and  
14 scene examination; is that correct?

15 A. Correct.

16 Q. And for the record, you are looking over  
17 Mr. Accetta's shoulder and also looking at these  
18 photographs.

19 MR. ACCETTA: For the record, there are  
20 markings of a marker on one of the photographs  
21 circled.

22 Q. You understand that it's important when a  
23 car is found to try to process the car properly; is  
24 that correct?

25 A. Yes.

1 Q. If the car is in a possible homicide?

2 A. Right.

3 Q. And the reason is because of the  
4 contamination of evidence as time passes?

5 A. Right.

6 Q. So you see to it that the process is done  
7 properly and when we say process, we mean like  
8 photographs taken, right?

9 A. Right.

10 Q. Which was done in this case?

11 A. Yes. I believe so.

12 Q. Well, you saw them taking photographs,  
13 didn't you?

14 A. Right.

15 Q. Sometimes fingerprint examinations,  
16 dusting for fingerprints as a form of process--

17 MR. ACCETTA: I object to relevance.

18 THE COURT: Mr. Hirsch, it sounds like  
19 discovery here.

20 MR. HIRSCH: Your Honor, here is my  
21 concern. Part of probable cause they have to  
22 determine means of preventing any kind of  
23 evidentiary value. My position is there is no  
24 need for an evidentiary hearing; that they have  
25 done everything they intend do to the cars. I

1 would like to determine what was done to the  
2 car and what remains to be done.

3 THE COURT: Go ahead.

4 MR. ACCETTA: For the record, I don't know  
5 where defense counsel is pointing to that  
6 rule. The rule he sites in his motion, the  
7 only determination Your Honor has to make is  
8 whether or not the car was involved in a crime  
9 and whether or not that's a probable cause. I  
10 don't know where he has that other wording and  
11 all of the testing was done because at this  
12 point in time, State's position is actually  
13 that we not only have a right to keep it for  
14 evidentiary ongoing investigation but we can--

15 THE COURT: Has the State initiated for  
16 future examination of the vehicle?

17 MR. ACCETTA; No, Judge, but he also  
18 indicates only reason he has asked these  
19 questions is to see if all the evidentiary  
20 steps were done with the vehicle. Did you  
21 comply with all the other investigations? The  
22 answer can be no.

23 MR. HIRSCH: Excuse me, Mr. Accetta. Let  
24 me read from the motion that now has been  
25 delivered to Mr. Accetta. I am quoting from

1 the opinion of Dan Barquet 588 So.2d. 995 and  
2 6. "The preliminary hearing shall be held as  
3 soon as it is reasonable and possible to  
4 determine whether continued seizure of the  
5 property is the least restrictive means  
6 warranted by the circumstances to protect  
7 against disposal of the property pending final  
8 disposition" That's the other thing we have to  
9 determine. May I proceed?

10 THE COURT: You may.

11 MR. ACCETTA: Over State's objection. I  
12 don't think all this line of questioning is  
13 necessary for a probable cause hearing.

14 THE COURT: Okay. Objection is overruled.

15 Q. Were fingerprints processed done on the  
16 scene?

17 A. I don't know if it was done on the scene  
18 or at station.

19 Q. Do you believe it has been done?

20 A. To the best of my knowledge, yes.

21 Q. Did you personally process the car in any  
22 way?

23 A. In regards to our traffic homicide  
24 investigation, yes.

25 Q. How?

1           A.     We have to do an inspection of the vehicle  
2 including tire pressure and any damage to the  
3 vehicle; the general condition, whether lights are  
4 functioning.

5           THE COURT:   Let me stop you, counsel.   How  
6 long do you think this cross is going to take?

7           MR. HIRSCH:   Ten more minutes at least,  
8 Judge.

9           THE COURT:   State, you have two more  
10 witnesses?

11          MR. ACCETTA:   Judge, I was going to  
12 conclude with this witness.   I don't know how  
13 it's relevant.   It's only whether or not this  
14 vehicle was used in a crime and whether there  
15 is an ongoing investigation.   I can tell you as  
16 a state attorney there is an ongoing  
17 investigation based on things I want done with  
18 the vehicle.

19          THE COURT:   Mr. Hirsch, if you can wrap it  
20 up in five minutes; is it possible?

21          MR. HIRSCH:   I will do the best I can.

22          THE COURT:   All right.   Let's proceed.   Is  
23 this the officer that has to leave?

24          MR. ACCETTA:   No.   The sergeant, Sergeant  
25 Handulah, I would profer we have met with and--

1 THE COURT: Given the fact I have a jury  
2 coming back at 10:30 and a calendar to get  
3 through, I am going to end this in five  
4 minutes. If it's not completed, I will have to  
5 continue the matter. Go ahead, Mr. Hirsch.

6 MR. HIRSCH: Complete as to all  
7 witnesses?

8 THE COURT: State says they are not going  
9 to call any other witnesses.

10 MR. HIRSCH: Very well, Your Honor.

11 MR. ACCETTA: Depends on Your Honor. If  
12 you want to hear more, we can.

13 THE COURT: Go ahead.

14 Q. Did you complete your processing for  
15 traffic homicide purposes?

16 A. For the time being, unless the State would  
17 like any further--

18 Q. Do you have any further processing?

19 A. At this time, no.

20 Q. Let me show you photographs marked  
21 Defendant's A1 through A8. You have seen these just  
22 a minute ago, correct?

23 A. Correct.

24 Q. Now, on A8, there is a car circled in a  
25 parking space. Do you see that?

1 A. Yes.

2 Q. That is where the car that you examined  
3 was parked, correct? The very same parking space?

4 A. I don't recall off the top of my head  
5 without looking at our own photos.

6 Q. Did you see that appear to be consistent  
7 with where the car was parked?

8 A. In the general area.

9 Q. Have you been able to flip through these  
10 photos of the parking area? For the record, I am  
11 moving rapidly through the photos.

12 A. Okay.

13 Q. All right. Can we agree that this at  
14 least depicts a parking area along the side a small  
15 type apartment building?

16 A. Right.

17 Q. And the parking spaces are actual parking  
18 spaces, right?

19 A. Right.

20 Q. In other words, the car were it was found  
21 was not abandoned on the side of the road'; it was a  
22 parking space?

23 A. I believe so.

24 Q. Lawfully parked parking space?

25 A. If my recollection serves me, yes.

1 Q. Very good. Did you attempt to obtain a  
2 warrant for the search or seizure of the car?

3 A. No.

4 Q. Did any other officer, to your knowledge,  
5 obtain or attempt to obtain a warrant for the  
6 seizure or search of the car?

7 A. No.

8 Q. Did you or any of your fellow officers in  
9 your presence discuss with any supervisor or members  
10 of the state attorney's office the advisability of  
11 obtaining a warrant for the search or seizure of the  
12 car?

13 A. Not to my knowledge.

14 Q. Was the car towed?

15 A. Yes.

16 Q. By what authority? Did you order it  
17 towed?

18 A. Me specifically?

19 Q. You personally.

20 A. No.

21 Q. Do you know who ordered it towed?

22 A. No.

23 Q. Do you know if any application--

24 MR. ACCETTA: Objection; relevance;

25 whether the vehicle was towed or not; it's

1           whether the vehicle was involved in a crime.

2           THE COURT: Overruled. Go ahead.

3           Q.    Do you know of your own knowledge whether  
4 any effort was made to obtain a judicial order  
5 pertaining to the towing as a condition precedent  
6 to the towing of that car?

7           A.    Not that I know of.

8           Q.    You indicated a moment ago that you have  
9 completed your processing of this car. Who else  
10 processed this car? Strike that. Where was the car  
11 taken?

12          A.    It was taken to the Miami Beach police  
13 station.

14          Q.    Was it further processed there?

15          A.    Yes.

16          Q.    Has it remained there since March 11th?

17          A.    Yes.

18          Q.    About five, six weeks, correct?

19          A.    Correct.

20          Q.    Has it been processed at that location at  
21 the Miami Beach impound lot?

22          A.    Yes.

23          Q.    It's been examined, I understand or  
24 whatever your fellow officers need to do?

25          A.    Yes.

1 Q. Do you know of any police officer employed  
2 with the Miami Beach Police Department that has any  
3 additional processing or examination to do of this  
4 car?

5 A. Without conferring with Officer Salie  
6 unless he has something further that he wants to do.

7 Q. He hasn't mentioned to you, has he, that  
8 he has additional work to do in connection with this  
9 automobile?

10 A. No.

11 Q. Nor has any other officer mentioned that  
12 to you?

13 A. Officers, no.

14 Q. And consistent with our earlier  
15 discussion, the appropriate and standard procedure  
16 to process the car properly, correct?

17 A. Correct.

18 Q. You have no reason to believe that any  
19 investigative work on this case has waited six weeks  
20 to be done now, do you?

21 A. Like I said, unless there is anything  
22 further the State would like to--

23 Q. Are you aware of any such things?

24 A. Not at this time.

25 Q. Has any state attorney directed you to do

1 any particular investigative task in connection with  
2 this car?

3 A. Specifically instructed to do it, no.

4 Q. Or invited you, requested to you?

5 A. Discussions have come up.

6 Q. When was that?

7 A. Today.

8 Q. Today?

9 A. Yes.

10 Q. Today with Mr. Accetta?

11 A. Yes.

12 Q. Prior to this hearing?

13 A. Prior to this hearing.

14 Q. What did he say to you?

15 MR. ACCETTA: Objection.

16 MR. HIRSCH: I am asking the witness.

17 A. It was with regards to the windshield  
18 glass.

19 MR. ACCETTA: I object. Defense counsel,  
20 one thing he has not indicated; he hasn't  
21 demanded discovery and this is his way to  
22 elicit what the State is going to do in their  
23 investigation. I am going to remain, Judge, as  
24 and officer of the court, there is and ongoing  
25 investigation; several things I want done to

1 the vehicle and I am waiting for certain things  
2 to come back to me.

3 MR. HIRSCH: That's what I want to find  
4 out. That's what I wants to find out because  
5 if there is no further--

6 THE COURT: I don't know whether you are  
7 going to get anything else from this officer.

8 Q. Have you ever spoken to Sean Casey Ken?

9 A. No.

10 Q. As far as your aware you have never spoken  
11 to Sean Casey about this case in any way?

12 A. Directly, no. I haven't specifically  
13 spoken with him.

14 Q. What officer spoke with him in your  
15 presence?

16 A. Servany and Sergeant Hunty.

17 Q. And they would be the best ones to testify  
18 to that?

19 A. Yes.

20 Q. What evidence do you have, officer, that  
21 this car to the exclusion of all other black BMWs in  
22 South Florida was involved in the death of Marie  
23 Montgomery?

24 A. Well, in my opinion, it's my belief that  
25 this vehicle was involved in a crash involving a

1 pedestrian based on evidence that was found at the  
2 scene and inside the vehicle.

3 Q. What is that evidence?

4 A. Specifically there was tissue samples and  
5 hair samples taken from the inside of the vehicle  
6 and windshield glass. There is also groceries that  
7 we believe Ms. Montgomery was carrying. They were  
8 on the scene. They were also the same specific  
9 groceries, same type food inside the vehicle in this  
10 vehicle on the front passenger side.

11 Q. Have you completed your investigation  
12 examination of those groceries?

13 A. Of the groceries, yes.

14 Q. Do you know where the groceries retrieve  
15 are?

16 A. Most of the groceries were disposed of due  
17 to it being perishable.

18 Q. So you had no ongoing use for the  
19 groceries?

20 A. For the groceries, no.

21 THE COURT: Do you have anything else?

22 MR. HIRSCH: Of this witness?

23 THE COURT: Yes.

24 MR. HIRSCH: I can curtail my examination  
25 of this witness if the Court wishes me to do

1 so. Thank you, officer..

2 THE COURT: MR. Accetta, based upon what  
3 you have just said that you yourself are going  
4 to--additional examination of this vehicle--

5 MR. ACCETTA: Yes, Judge.

6 THE COURT: How much time because Mr.  
7 Hirsch is right. According to Supreme Court  
8 that given the fact that you have a motor  
9 vehicle here at the time when this car no  
10 longer has any evidentiary value. It should be  
11 turned over to the defendant unless forfeiture  
12 proceedings have begun.

13 Now since future proceedings are not at  
14 issue--

15 MR. ACCETTA: Judge, I apologize for  
16 interrupting but he indicates, he quotes and he  
17 says to protect against the disposal of the  
18 property. There is disposal of this vehicle.  
19 It's not a perishable item where it's going to  
20 be disposed of.

21 THE COURT: Let me ask the State, how much  
22 more time do you need on this case because, I  
23 mean, just to hold a car for an indefinite  
24 period, you arenot going to bring the car into  
25 the courtroom. What evidentiary value is this

1 going to have for an extended period?

2 MR. ACCETTA: Judge, that is an ongoing  
3 investigation. I can profer to defense counsel  
4 and I know defense counsel has not demanded  
5 discovery. The State has evidence that was  
6 recovered in the defendant's home. That is the  
7 State's position, links this defendant because  
8 this is an ID case to the vehicle.

9 There has to be testing on the vehicle if  
10 at this point we decide to test certain parts  
11 of the vehicle to make sure that the property  
12 that was recovered from the defendant's home  
13 is, in fact, the same property that belonged to  
14 the vehicle.

15 Now, getting into detail, what property we  
16 will be testing and how we are going to be  
17 testing I don't believe is relevant at this  
18 time. The only thing I can profer to Your  
19 Honor is that it involves experts. I have to  
20 possibly fly experts from different states and  
21 we have to take pieces of the vehicle and have  
22 them sent out to a lab; compared to pieces that  
23 were recovered from the defendant's home.

24 Now, I don't know at this point if those  
25 pieces are going to link up. I don't know if

1 we are going to go actually forward and do  
2 that. This is a very new case, Judge. It just  
3 came in as you know.

4 THE COURT: The arrest was in March.

5 MR. ACCETTA: This is not like a year ago.

6 This is a few months. Those particular  
7 pieces, number one. Number two, photographs,  
8 yes; the vehicle was photographed by Crime  
9 Scene. I have several photos taken of the  
10 vehicle. I believe they weren't sufficient and  
11 I asked the officer this morning as well that I  
12 am going to sit down with him back at my office  
13 and have photographs taken in more details,  
14 specifics of the vehicle that were not taken  
15 previously so I can anticipate use of those  
16 photographs at trial.

17 THE COURT: You said you need to get  
18 pieces or samples from the vehicle.

19 MR. ACCETTA: Correct.

20 THE COURT: Why wouldn't you be able to do  
21 that and then be able to return the vehicle?

22 MR. ACCETTA: Judge, it's just not one  
23 specific piece and sample. It's the vehicle's  
24 damage that was created by the victim. The  
25 fact that she got thrown through the

1 windshield, it's almost like a puzzle. We are  
2 trying to link all the pieces that were  
3 recovered and pieces that were found to the  
4 vehicle.

5 This is an ongoing investigation where if  
6 an expert comes to me and says we wanted not  
7 only that piece. We wanted this piece. Now,  
8 the vehicle is gone and this is a homicide,  
9 Judge, and it's an ongoing investigation. I  
10 see no rule. I see the part he sees. All it  
11 says is the least restricted means. At this  
12 time we don't believe it's restricted at all.

13 THE COURT: How much time, State, do you  
14 need?

15 MR. ACCETTA: Judge, I would ask for a  
16 report back in a month or at least 30 days to  
17 give you an answer. I don't know, Judge. If I  
18 have to fly experts, I will have to go  
19 according to their schedule and it will take  
20 time to find out when they are going to be  
21 available; how much time they need to test  
22 these particular items. I can't sit here in  
23 good faith and give you a date but I can tell  
24 you if you give me a 30-day reset, I can come  
25 back with a more specific date and indicate to

1           you that we are not going to actually go  
2           forward on the investigation but at this point  
3           in time I don't know.

4           THE COURT: Mr. Hirsch?

5           MR. HIRSCH: Your Honor, this is not the  
6           adversary preliminary hearing that the law  
7           entitles them to. The prosecutor has announced  
8           there are undescribed, undefined, unrevealed  
9           tests that he and he alone has conceived of.  
10          No officer is aware of them. No expert has  
11          agreed to conduct them. No expert has  
12          acknowledged competency to conduct them. No  
13          witness can come here and testify to them and  
14          this officer of the court, this attorney  
15          refuses to tell Your Honor in my presence what  
16          the nature of these tests are.

17          In other words, I am being completely  
18          denied precisely what the adversary preliminary  
19          hearing entitled me to; a basis to know whether  
20          there is some reason to hold this car for  
21          further investigative purposes and if so, what  
22          that reason is. There is no forfeiture  
23          pending. They have taken their photos. If  
24          they need more photos, they can run right out  
25          there this afternoon and take them. They have

1 the rest of today and we can pick up the car  
2 tomorrow but with the prosecutor's refusal,  
3 the Court has no basis to deny my application.

4 Additionally, from what I understand and I  
5 don't purport to understand, he is going to  
6 dismantle the car or cut swabs of it and send  
7 it hither and beyond. He can't do that without  
8 an order of this Court. This Court nor any  
9 court has ever authorized the seizure and  
10 continued detention of this automobile nor the  
11 search.

12 Now, I recognize that they are entitled on  
13 the scene to make plain view observations.  
14 They towed this car. My client has been  
15 deprived of his valuable property and to date,  
16 there has been no due process of law unless the  
17 the State is prepared. I will be happy to come  
18 back tomorrow unless the State is prepared to  
19 call a witness with an expert and investigator  
20 and officer or what have you, who can describe  
21 to Your Honor specific tests that can be done  
22 and will result in remissible evidence. This  
23 car must be returned.

24 MR. ACCETTA: Judge defense counsel has  
25 used the word indefinitely three times;

1 mentioned it in his motion, cites cases;  
2 property cannot be held indefinitely. This is  
3 not a case that applies because this is an  
4 ongoing investigation. The accident happened  
5 about approximately two months ago and nowhere  
6 indicated in any paperwork the State has  
7 indicated, "We are going to hold this vehicle  
8 indefinitely."

9 The test the State is seeking to--and I  
10 can profer to Your Honor--I know defense  
11 counsel defense counsel. I mean, hopefully  
12 even though he hasn't demanded discovery, what  
13 property was seized in this case and it was  
14 windshiled particles of a vehicle's  
15 windshield. At the time that's what it looked  
16 like that was recovered from the defendant's  
17 home; clothing that the defendant indicated was  
18 wearing on the date of the incident and the  
19 fact that we have a cracked broken windshield  
20 on the BMW itself.

21 Those are the articles. I don't know how  
22 much of the windshield the expert is going to  
23 require to test to see if that glass actually  
24 came from a windshield and if it's possible to  
25 link these pieces of glass to that vehicle and

1 I profer to Your Honor--because in other words,  
2 he is indicating I am moving in bad faith and  
3 that is not the case in this case, Judge. I  
4 profer to Your Honor and again I am not going  
5 to know specifically if there is and expert  
6 that could actually do that or if there is an  
7 expert that can come down and make that kind of  
8 finding.

9 Secondly, Judge, 932.703 subsection 2a  
10 indicates that personal property may be seized  
11 at the time of the violation or subsequently,  
12 if the person is entitled to notice and it goes  
13 onto when the person should be noticed has a  
14 right and this is post any warrant, indicates  
15 that any personal property used in the  
16 commission of a crime may be seized.

17 There is is no indication a warrant must  
18 be issued and it goes on to determine that  
19 after defense has requested an adversary  
20 hearing, you must make a finding that such  
21 probable cause is being used in violation of  
22 forfeiture and a vehicle used in the commission  
23 of a felony is under the forfeiture--

24 THE COURT: Let me stop you because I do  
25 need to go back into the calendar.

1           The court does make a finding that there  
2           is probable cause to believe the vehicle was  
3           used in the commission of this offense. Now,  
4           as far as the time that the State needs to  
5           conduct these tests, State, this is a homicide  
6           investigation. I am going to give you some  
7           latitude.

8           MR. HIRSCH: Your Honor, may I be heard on  
9           this? In terms of the least restrictive means  
10          analysis, if Mr. Accetta needs the windshield,  
11          let him remove the windshield. My client will  
12          need a new windshield put in. The windshield  
13          is smashed. The least restrictive means is to  
14          have his technical people remove the entire  
15          windshield and return the balance of the car to  
16          my client forthwith.

17          MR. ACCETTA: There is also other  
18          investigation I proffered; one which required I  
19          believe the most time--there are other things  
20          going down; photographing the vehicle of what I  
21          want of the vehicle and Judge, it's an ongoing  
22          investigation. There is no indication we are  
23          going to hold this car indefinitely. As soon  
24          as I am complete with the investigation, he can  
25          have the vehicle.

1 MR. HIRSCH: What are those other steps?

2 THE COURT: This is what I am going to do,  
3 State. I am going to reset this matter for one  
4 week from today.

5 MR. ACCETTA: Next week is my trial week.

6 THE COURT: The problem is two weeks from  
7 today I won't be here and I will be gone for  
8 three weeks.

9 MR. ACCETTA: Then I would ask for a  
10 month, Judge. This is a very--I mean, this is  
11 not my only case on the calendar. I have a lot  
12 of things to do, Judge. I have to see what the  
13 officer's schedules are like. They also have  
14 other cases. I believe it's very reasonable.

15 The case is not even set for trial within  
16 30 days tee. I don't know what the urgency is.  
17 I haven't heard anything that it's so urgent  
18 for the defendant to get into his vehicle, get  
19 it fixed and drive it around. Other than that,  
20 Judge, I don't see any reason why and the fact  
21 the defendant was charged with DUI manslaughter  
22 most likely his license will be suspended  
23 anyway so I don't see any reason.

24 MR. HIRSCH: Your Honor, due process  
25 requires a resolution of this matter. The

1 Florida Department of Law Enforcement said that  
2 within ten days the hearing would be conducted  
3 within ten days of the request. We have had a  
4 very truncated hearing. Apparently the Court  
5 is at least provisional accepting these  
6 representations unsubstantiated by any  
7 evidentiary foundation. Please, Your Honor,  
8 the shortest reset.

9 MR. ACCETTA: 30 days is very reasonable  
10 in a case like this.

11 MR. HIRSCH: I am available next  
12 Wednesday. May 2nd is next Wednesday, Your  
13 Honor.

14 THE COURT: What do you have before me?

15 MR. ACCETTA: Yes, Judge; DelCalvo Cal  
16 pretrial conference and then I have the actual  
17 trial picking a jury next week. If we do  
18 proceed with a forfeiture proceeding we will  
19 present that to defense counsel.

20 THE COURT: That might change the  
21 circumstances but right now we are not dealing  
22 with that. All right.

23 I am going to give you until May 15th.  
24 Let's reset this for 9:30 on May 15th. At that  
25 time I won't be here. It will be in front of

1 Judge Leban but I will talk with Judge Leban  
2 about what last happened up to this point but I  
3 want you to be able to tell me what evidentiary  
4 value at that point this car still has; what  
5 additional tests still need to be conducted and  
6 how long it would need to be held by the State.

7 MR. ACCETTA: I will, Judge, and if I have  
8 an expert, I will have him WRITE a summary or  
9 some type of a motion affidavit to the effect  
10 of why he would need the vehicle. If he did  
11 you not need the vehicle, then at that point we  
12 could address the issue.

13 MR. HIRSCH: Your Honor, if there is an  
14 expert, I ask that he be produced for  
15 examination. This is supposed to be an  
16 adversary rehearing.

17 THE COURT: It is supposed to be an  
18 adversarial hearing.

19 MR. ACCETTA: Correct. The probable cause  
20 we believe and the case law is that I don't  
21 believe I have to bring in the expert.

22 MR. HIRSCH: This is no longer probable  
23 cause. Your Honor has resolved the probable  
24 cause.

25 MR. ACCETTA: Why is defense indicating to

1 the Court he wants to examine the expert?

2 THE COURT: Hold on a second, gentleman.  
3 Under the Supreme court case cited by the  
4 defense, the least restrictive means must be  
5 used here and I want to ensure that the least  
6 restrictive means is in fact being used.

7 Now, if and expert is able to tell the  
8 Court that this test needs to be done and that  
9 it needs--the car needs to be held for X period  
10 while these tests are conducted, fine. That  
11 will strengthen the State's case. Right now I  
12 am going solely on your own representations. I  
13 will need more than that.

14 MR. ACCETTA: Not a problem, Judge, and we  
15 will present the evidence at that point in  
16 time; if we have and expert and what we are  
17 doing with the vehicle and if we are not doing  
18 anything, I guess Your Honor will make a ruling  
19 at the time.

20 MR. HIRSCH: So we are going to have live  
21 witnesses?

22 THE COURT: Well, if the State doesn't  
23 have live witnesses, that would certainly  
24 affect the Court's ruling.

25 MR. ACCETTA: And again, Judge, this is

1 something where it's set on the 15th.  
2 Availability of my expert, I have no idea, so  
3 we would ask if we do have at that time to  
4 speak to the judge who is hearing the issues,  
5 you let him address the fact that we were not  
6 on notice at that point of when my experts  
7 would be available and if he is available--

8 MR. HIRSCH: Your Honor, you are affording  
9 the State three weeks to make arrangements for  
10 their experts.

11 THE COURT: State, if there is going to be  
12 a problem, I want a motion filed immediately.

13 MR. ACCETTA: I will.

14 THE COURT: Okay. Then we will reset to  
15 accommodate the experts but don't expect very  
16 much. I might move it up so--

17 MR. ACCETTA: That's fine.

18 THE COURT: All right. Thank you.

19 [Thereupon, the proceedings were  
20 concluded.]

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CERTIFICATE

STATE OF FLORIDA     )  
                              :    SS.  
COUNTY OF DADE     )

I, KATHIA CAMACHO, a Shorthand Reporter and Notary Public in and for the State of Florida at Large, hereby certify that the foregoing transcript, pages numbered 1 through 39, is a true and correct transcription of my stenographic notes of the trial had in the above-entitled cause, before the Honorable LEON M. FIRTEL, at the Richard E. Gerstein Building, Miami, Florida on the 25th day of April 2001.

DATED at Miami, Dade County, Florida, on this 8th day of May, 2001.

  
Kathia Camacho, Court Reporter