

In the
Supreme Court of the United States

DONALD FELIX SCHNEBLE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

No. 68-5009

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE
JAN 25 3 43 PM '72

Washington, D. C.
January 17, 1972
January 18, 1972

Pages 1 thru 41

HOOVER REPORTING COMPANY, INC.

Official Reporters
Washington, D. C.

546-6666

IN THE SUPREME COURT OF THE UNITED STATES

- - - - - X
DONALD FELIX SCHNEBLE,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.
- - - - - X

No. 68-5009

Washington, D. C.,

Monday, January 17, 1972.

The above-entitled matter came on for argument at
2:53 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

CLYDE B. WELLS, ESQ., P. O. Box 669, DeFuniak Springs,
Florida, for the Petitioner.

GEORGE R. GEORGIEFF, ESQ., Assistant Attorney General
of Florida, for the Respondent.

C O N T E N T S

<u>ORAL ARGUMENT OF:</u>	<u>PAGE</u>
Clyde B. Wells, Esq., for the Petitioner	3
George R. Georgieff, Esq., for the Respondent	24
<u>REBUTTAL ARGUMENT OF:</u>	
Clyde B. Wells, Esq., for the Petitioner	38

[Second day - page 8]

-- -- --

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 68-5009, Schneble against Florida.

Mr. Wells, you may proceed.

ORAL ARGUMENT OF CLYDE B. WELLS, ESQ.,

ON BEHALF OF THE PETITIONER

MR. WELLS: Mr. Chief Justice, may it please the Court:

This is the case of Donald Felix Schneble versus the State of Florida, and I am here representing the petitioner, Donald Felix Schneble.

I'd like to give you a little background on this case.

The crime was committed in July of 1965. The defendant and his co-defendant, Edward Frank Snell, was picked up several days after the alleged commission of the crime. They were lodged in the Palm Beach County Jail. The crime allegedly occurred in Walton County, Florida, several hundred miles from where they were picked up.

They were charged initially with a traffic violation, the driver of the car, the co-defendant Snell. Mr. Schneble was charged with vagrancy at that time.

He was taken to court on the morning after he was picked up in the middle of the night, and sentenced for vagrancy, given a 24-hour sentence, and given credit for time served, which would have started his time at 5:00 a.m. that morning.

During the course of that day blood was found in the area of the front seat of the car, on the right side, and other damaging evidence against the defendant and his co-defendant, and so the following day, some six or eight -- some five or six hours after the defendant Schneble's sentence had expired, he was taken back before the same judge and given an additional sentence of 15 days, giving him credit for time served, to allow the authorities to investigate the evidence that they found in the vehicle.

Q That was also -- that was just a revised sentence on the vagrancy?

MR. WELLS: Yes, sir. It was 'cause -- the previous sentence of 24 hours was withdrawn or vacated, and a new sentence was imposed after the expiration of the 24-hour sentence.

Q And for vagrancy?

MR. WELLS: Yes, sir.

Then, from that point, the defendant Schneble was taken from the Palm Beach County Jail by two detectives, Herron and Haley, and they were his constant companions for a period of time ranging from, from the testimony, oh, from 48 or 40 to 60 hours. During that period of time the detectives, Haley and Herron, carried him to three different jails. They carried him to an airport, where they kept him for three hours and questioned him. They had fellow policemen come up behind them

at a high rate of speed and throw firecrackers out and harassed the defendant, and scared him. They told him that, or suggested to him that his co-defendant Snell had put a price of \$5,000 on his head.

They walked out of the jail with him with a cocked pistol, to be sure nobody would shoot him on the way out. And kept him under constant harassment, surveillance, for this period of 40 to 60 hours. They even put a detective in the cell next to him, to keep him awake and harass him during the daytime on one occasion while they rested.

After some 40 to 60 hours of this type of treatment, the defendant Schneble made a statement to him. During this same period of time the defendant Snell was being questioned by other officers, and he made certain limited statements against his interest and against the interest of both of them, which was also introduced at the trial.

Now, these defendants were then brought back to Walton County, Florida, after the body had been discovered as a result of Mr. Schneble's statement, and there they were indicated by a grand jury.

The grand jury returned separate indictments against these two defendants, but upon the -- and I might add, at that grand jury session there was an unauthorized person in the grand jury room, in that a civil case was being tried at the same time and a witness in one of the civil cases wound up in

the grand jury room and sat there all afternoon, during the deliberations of the grand jury.

A hearing was held on this, and the trial judge determined that it was nothing improper, or not improper, so that the indictment should be quashed.

Q Let me get clear, Mr. Wells. How did they come on the information as to where the body of the dead woman was located?

MR. WELLS: That was from the statements made by the defendant Schneble, after some 40 to 60 hours of continuous --

Q None of this at that time had come from Snell or anyone else?

MR. WELLS: The only statement that had come from Snell was that he had told them the route they had taken; he had told them that when they found her she would -- well, I don't know how he said they'd find her. But the Lieutenant, Larry Yates, in questioning, stated that he -- that she had been sitting in the right front of the car and that Schneble, the defendant, was seated in the back seat, and Snell was driving, and he had choked her with a cord.

And Snell made the statement to him that he had -- he had painted a hypothetical of actually what happened. And when they found her, to "do not overlook the obvious", that was his statement to them.

He also told them the route they took when they left

New Orleans on their way to Panama City, and then on down through Tampa.

Q This is -- oh, I'm sorry.

MR. CHIEF JUSTICE BURGER: We'll resume at the usual time in the morning.

[Whereupon, at 3:00 o'clock, p.m., the Court was recessed, to reconvene at 10:00 o'clock, a.m., Tuesday, January 18, 1972.]

EM

IN THE SUPREME COURT OF THE UNITED STATES

----- X	:	
DONALD FELIX SCHNEBLE,	:	
	:	
Petitioner,	:	
	:	
v.	:	No. 68-5009
	:	
STATE OF FLORIDA,	:	
	:	
Respondent.	:	
----- X	:	

Washington, D. C.,

Tuesday, January 18, 1972.

The above-entitled matter was resumed for argument
at 10:02 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

[Same as heretofore noted.]

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGFR: Mr. Wells, you may continue whenever you're ready.

ORAL ARGUMENT OF CLYDE B. WELLS, ESQ.,

ON BEHALF OF THE PETITIONER -- [Resumed]

MR. WELLS: Yes, sir.

Mr. Chief Justice, and may it please the Court:

Continuing where we left off yesterday afternoon in the case of Schneble versus Florida, I would like to point out to the Court, in the development of my factual background on the case, that at the time the defendant Schneble, the petitioner Schneble, was taken back over to the Court of Record of Palm Beach County for a re-sentencing, he at that time requested the services of the Public Defender, as evidenced by the deposition you have in the record. But because -- apparently because the Public Defender determined that he was only charged with vagrancy at that time, the services were not made available to him.

I want to further point out to the Court that neither the petitioner nor his co-defendant were taken before a committing magistrate on the charge of murder or unlawful homicide until July 23rd or thereafter, even though they were arrested on July 14th, and the investigation began immediately.

Although I know that that, in and of itself, is not fatal to their -- the charges against them, and certainly it is

a circumstance to be considered in looking at the over-all circumstances of this case.

Q Mr. Wells, this grant of certiorari is limited, isn't it, to --

MR. WELLS: Yes, sir.

Q -- whether the conviction was in violation of Bruton?

MR. WELLS: Yes, sir. The only reason --

Q Well, how do the facts that you're reciting bear on that issue?

MR. WELLS: It's not directly on the issue, Justice Brennan, but on the over-all background -- I'm trying to just give you the over-all background of the case at this point.

Q But the question is, as I understand it, -- what happened? His co-defendant -- they were not tried together, were they?

MR. WELLS: Yes, sir.

Q They were?

MR. WELLS: They were jointly tried.

Q I see. Jointly tried and his co-defendant's confession as well as Schneble's own confession --

MR. WELLS: Yes, sir.

Q -- were admitted, is that it?

MR. WELLS: I would not characterize the co-defendant's as a confession, --

Q Well, whatever it was.

MR. WELLS: -- but statements were made that --

Q This statement was testified to --

MR. WELLS: Yes, sir.

Q -- and that statement -- by a police officer, wasn't it?

MR. WELLS: Yes, sir.

Q And that statement implicated Schneble?

MR. WELLS: Yes, sir.

Q And the co-defendant did not take the stand and was, therefore, not cross-examined?

MR. WELLS: That is correct.

Q And on that basis you're claiming a violation of Bruton, isn't that it?

MR. WELLS: Yes, sir.

Q Very well. I wonder if we can't get to that question.

Q Tell us specifically what statements were testified to by the officer that you consider a violation of Bruton.

MR. WELLS: Let's see now. We had, as to the defendant Snell, the co-defendant, as I said he made no out-right confession, such as we have with the petitioner Schneble. But from the beginning of their arrest by Trooper Maddox, the Highway Patrolman -- Trooper Maddox was allowed freely to

testify about statements made to him by the defendant Snell, relating to the absence of a driver's license; statement as to the car that defendant Snell was in possession of; statement as to the gun that he had in his possession. And throughout Maddox's testimony, it's sprinkled with statements made by the co-defendant Snell. Maddox being the Highway Patrolman that arrested them initially on the faulty tail light charge; he had stopped them for that.

Q Well, did Snell's statement place him and Schneble together?

MR. WELLS: Yes, sir. Well, certain of it did and certain of -- they were inconsistent statements. One started off, he said, he picked him up; was a hitchhiker. And later on he told some officer that they had left New Orleans together.

But they were -- Snell made inconsistent statements to various people.

Q Well, did he say Schneble -- where did he say Schneble was riding in the car, in the back seat or the front seat?

MR. WELLS: He told one of the officers, and that was Lieutenant Yates of the Palm Beach Sheriff's Department, that Schneble was riding in the back seat of the car.

Q Was that introduced?

MR. WELLS: Yes, sir.

And I point out that this was -- these statements were

allowed into evidence without the trial judge even giving the jury any cautionary instructions about they were not to be used against the defendant Schneble.

Q But none of Snell's statements accused Schneble of any crime. As a matter of fact, Snell stayed a long ways away from saying that there was a crime committed at all.

MR. WELLS: Well, no, sir. I wouldn't say that. His statement to Lieutenant Yates indicated -- I mean he didn't deny the crime. And Lieutenant Yates testified that he asked him: "Did you and Schneble, or did Schneble kill her?" And he didn't even respond.

The absence of a response, in my opinion, would be an admission that there was -- that she had been killed. And then he asked for the seating arrangement, and he was told the seating arrangement by the defendant Snell, and Snell went further and said, "When you find the body you will find a polyethylene cord", similar to the cord --

Q Well, why was Snell's conviction reversed?

MR. WELLS: Snell's was reversed on Bruton.

Q Was it on Bruton or because of an involuntary statement?

MR. WELLS: No, sir. It was not -- I contend that my client made the involuntary statement. But the Court didn't entertain that.

Q All right. So they reversed Snell's conviction

because of admitting Schneble's confession which implicated Snell?

MR. WELLS: Yes, sir.

Q And -- but apparently it was not thought that Snell's admissions implicated Schneble sufficiently to require a reversal?

MR. WELLS: Well, of course, the first time this case came up here, both cases were reversed.

Q I understand.

MR. WELLS: And sent back to the Florida Supreme Court.

Q They were vacated, the judgments were vacated.

MR. WELLS: Yes, sir; and sent back to the Florida Supreme Court for -- I don't believe they were vacated, they were just sent back to the Florida Supreme Court for further proceeding in light of Bruton.

Q Yes.

MR. WELLS: The Florida Supreme Court then reconsidered the cases and vacated judgment as to Snell, affirmed Schneble, and from that we took cert back up here. And that's --

Q Well now, as I understand it, as to Schneble's Bruton question, the Florida Supreme Court held that Bruton did not apply because Schneble's own confession was not an -- was not unconstitutionally admitted; wasn't that right?

MR. WELLS: Yes, sir; that -- well --

Q Now, why did the Florida Supreme Court say that

Snell was entitled to a reversal based on Bruton?

MR. WELLS: Because Schneble made more statements, that he talked more.

Q You mean he implicated Snell?

MR. WELLS: Yes, sir. Now, whether he implicated -- yes, sir, he implicated both of them. And I contend that Snell did, also.

But --

Q Snell implicated Schneble as well as Schneble implicated Snell?

MR. WELLS: Yes, sir. The heat was put more on Schneble, and he did most of the talking. They got the gist of the story out of Schneble.

Q Well, do I correctly read the decision of the Florida Supreme Court as holding that Schneble was not entitled to the benefit of Bruton, not because Snell hadn't sufficiently implicated him, but rather because Schneble's own confession was not an unconstitutional --

MR. WELLS: Well, probably that is -- was their holding. I mean, that was their rationale. I didn't understand it to mean that. I think they just found that Snell didn't make any statements --

Q Implicating Schneble --

MR. WELLS: -- sufficiently strong to implicate, or that his confession, Schneble's own confession, standing alone,

would have been sufficient. But --

Q They didn't turn it on harmless error, though, did they? They never reached the question of harmless error.

MR. WELLS: No, sir. No, sir. They did not.

Of course, it's my position that although the statements made by the defendant Snell were not as strong as those made by the defendant Schneble, they stood as corroborating testimony, and certainly without that corroboration the State would have been in a much weaker position and my client would have been in a much stronger position.

Of course, we had the testimony of the officers indicating that they would have recommended some kind of a deal for my client, for his cooperation; but the jury didn't buy that, which is evidence to me that they made my client stand in the same shoes as the defendant Snell.

So certainly we'd have to say that my client was prejudiced by the very presence of Snell, by his appearance, his statements, his demeanor, all of these things had a bearing on it; and would have entitled him to the protection of the Bruton decision.

There's just no question but that this gave the State a much stronger case, to have both of them standing together.

I think this is further evidenced by the fact that they were separately indicted and, on the motion of the State, they were tried jointly. Which indicates to me that they felt

like their case would be much stronger against each of the defendants by having it jointly tried.

Q Mr. Wells, did you try the case for the defendant in the --

MR. WELLS: Yes.

Q In your argument to the jury, how did you treat your client's confession?

MR. WELLS: I treated it as a coerced confession, and I dwelt at length on the time that was consumed in securing it, and the credibility that should be given to it as a result of that; and I urged the jury to consider it as an involuntary confession. The judge ruled that it was admissible for the jury's consideration. And, therefore, the jury had to determine whether or not it was coerced or not.

And so the thrust of my argument was on that basis, that it was a coerced confession, subject to undue influence, because of some of these things that I had mentioned to you yesterday afternoon.

Q The jury did not agree with you on that issue?

MR. WELLS: Obviously.

Q How did you treat Snell's statement?

MR. WELLS: Sir?

Q How did you treat Snell's statement?

MR. WELLS: I was not arguing Snell's case.

Q Well, I know you weren't, but you were -- I suppose

: if you thought that Snell's confession, which was introduced, implicated or harmed your client, you would have said something about it?

MR. WELLS: Well, I don't recall any comments that I made on the defendant Snell's statement at that time, because the defendant Snell was represented by counsel, and of course I was primarily pleading for my own man, --

Q Right. Right.

MR. WELLS: -- to try to get him off with his life. Basically that's what my argument was aimed at when I made it to the jury.

And of course I treated them, as I recall, that each one should stand on his own feet, and the jury should measure them separately, not collectively.

Q Did the prosecutor in his summation to the jury urge Snell's admission as a part of his case against your client?

MR. WELLS: I specifically recall him mentioning the statement to Lieutenant Yates about the positions in the car, the -- I think he mentioned the route they took, and the polyethylene cord would be found with the body, and "do not overlook the obvious"; I recall the prosecutor making a strong point of that. But now, the extent beyond that to which he went, I am not sufficiently refreshed to tell you.

Q Well, didn't Schneble at one point confess that

he had strangled the lady who was sitting in the front seat? While he -- and he leaned over from the back seat and strangled her with this cord; wasn't there something about that?

MR. WELLS: Yes, sir. That's true, that's the gist of the statement that he --

Q And what Snell told Yates was that he confirmed the fact, Snell did, that Schneble was sitting in the back seat; is that it?

MR. WELLS: Yes, sir. And he also -- Schneble also told him that he strangled her with the cord, and then that the defendant Snell took the pistol and shot her in the head.

Now, there was further testimony from, I believe it was the expert, Leslie Smith, ballistics expert, who testified that the gung that was taken off the defendant Snell was the murder weapon -- was probable, "highly probable", that was his testimony. He could not positively identify it; but he said it was highly probable.

The reason he couldn't positively testify was because the bullet was --

Q Yes, but so far as there's any Bruton point, it is that Yates saying that Snell had put Schneble in the back seat, confirmed the story that Schneble himself had given, that from the back seat he had leaned over and strangled the lady sitting in the front seat; wasn't that it?

MR. WELLS: Yes, sir. And, further, that --

Q And if there's anything to your Bruton point --

MR. WELLS: Well --

Q -- it's because that was admitted?

MR. WELLS: That is the strongest, but, Justice Brennan, I don't concede that that is the only way that Bruton would apply. Because he also told Lieutenant Yates about the route they had taken from New Orleans, that Schneble was in the car from New Orleans, along with the girl. He also told --

Q Well, is that the only way the two men were ever placed together in the same car, through, well, Schneble's admission which was confirmed by Snell, that they were together in the car?

MR. WELLS: Yes, sir. I think that -- now, there was some weak testimony from New Orleans, but I -- the girl that saw then, the girl that saw the girl with these two boys; but she didn't see them leave. So I think I am correct in saying that the only testimony connecting them, putting the two of them in the car, was from the two defendants themselves.

Q Well now, is it the Florida rule that a man can't be convicted on his own confession? Must it be, have some kind of corroboration?

MR. WELLS: Well, no, sir -- there has to be proof of the corpus delicti independent of the statements, which we contend would not be there without the statements of the --

Q Of Snell?

MR. WELLS: Of Schneble and/or Snell. Yes, sir.

One or the other. And of course you can't use the confession of the defendant in proving the corpus delicti; it's got to be proven independent.

So I say that you cannot, in this case, use the testimony of the defendant Snell, either, in proving the corpus delicti.

Q What do you mean by the corpus delicti?

MR. WELLS: Sir?

Q What do you mean by the corpus delicti?

MR. WELLS: That a crime was committed by the criminal agency of another. That's generally what I'm -- there had been a crime committed and it was by the criminal agency of another.

And without the statements of these two defendants, either or both of them, that you --

Q Do you say that without -- let's assume that Snell's testimony had been ruled inadmissible, wholly. Well, let's assume they'd been tried independently, separately. Separately. And no attempt was made to introduce Snell's testimony against Schneble. Could there have been a verdict against Schneble?

MR. WELLS: It is my position that in that situation there never would have been a corpus delicti proven, and there never would have -- they never would have gotten to the confession stage. They never would have got it in. And,

therefore, they could not -- there could not have been a conviction.

Q Well, I don't know, I suppose they could have still introduced Schneble's confession against him, as long as it was voluntary.

MR. WELLS: Not without proving the corpus delicti, independent of the statement.

Q Well, I understand that.

MR. WELLS: But, you see, without his statement there would have been no body.

Q Well, without whose statement?

MR. WELLS: Without the defendant Schneble's statement.

Q Well, I agree with you on that, but let's assume that you introduce Schneble's testimony, or confession, it's ruled voluntary and admissible; could the State have proved its case without Snell's admissions?

MR. WELLS: Because I keep going back to this corpus delicti, and because of that requirement, I would say no, they could not have done it. Because I have to say that they would not have gotten to the confession of Schneble, had it not been for the allowing of the statement of Snell.

Q Well, what's your position, then, as to -- if they were tried together, I suppose that the reason for introducing Snell's statements are perfectly obvious, they were introduced against him, at least.

MR. WELLS: They were introduced to bolster or corroborate each other's, I mean to strengthen the position of the State; that's my position.

Q Did you request that Snell's statements not be used against Schneble?

MR. WELLS: No, sir; and I tell you why: By the time we had gotten to the point where we had argued till we were blue in the face, we had the jury out, we had taken extensive testimony on Schneble, his testimony -- or his --

Q Well, wasn't that the standard rule in Florida, before Bruton and since Bruton, that the admissions of the co-defendant should only be used against him?

MR. WELLS: Yes, sir. That's correct. And --

Q Well, why, then, if you thought those were damaging, it looks to me like you would have objected to their introduction or to their use against Schneble, or at least ask for an instruction.

MR. WELLS: By comparison, I have taken the position that these limiting instructions are not, have never been any good.

Q Well, that's what Bruton holds.

MR. WELLS: Yes, sir. And therefore I saw no reason to suggest that.

I'd like to take five minutes for rebuttal.

Thank you.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Wells.

Mr. Georgieff.

ORAL ARGUMENT OF GEORGE R. GEORGIEFF, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. GEORGIEFF: May it please the Court:

Of course hearing some of the questions from the Bench, I'm tempted to treat it cavalierly, but I don't mean to do that at all.

We've heard a long recitation here, I suspect he talks around much of what he should be saying very positively, if he's going to demonstrate a Bruton violation.

As I understood the Court's order, that's exactly what we're here for.

He makes reference to a series of pages of testimony, wherein you're supposed to find this implicating testimony that did so much harm to Schneble. I have some three pages of it here, and there are some 40-odd pages to which he makes reference.

I read it again last night, and if it's there, then the thing for you to do, of course, is reverse it. But if you find anything in there that implicate Schneble in any way, I think I'd be willing to eat it.

Q Well, did Snell's admissions at least place the two men together in the car?

MR. GEORGIEFF: No.

Q Didn't even -- he didn't even mention Schneble?

MR. GEORGIEFF: No, he sure did not.

Q He didn't say he was sitting in the back seat?

MR. GEORGIEFF: No. Now, I'll tell you this:

obviously, during the course of the trial it developed somewhere along the line that these two men were in the car --

Q How did --

MR. GEORGIEFF: -- but it didn't come from that, you see. It came from Schneble's confession. Not only did he confess in great detail, but he took them to where the body was.

Q Well, weren't they together in the car when they were first arrested by --

MR. GEORGIEFF: Oh, yes.

Q -- the Highway Patrolman?

MR. GEORGIEFF: No question about that; that's correct. Sure, they were.

And, obviously, all you've got to do is have Maddox's testimony to put them in the automobile, you see. What they did was they took a route from New Orleans, along the coast, all the way down to Key West, approximately, I would say, 11, 12, maybe 13 hundred miles. Somewhere along the way this woman was killed, and she was dumped in Hillsborough County, in the Greater Tampa area.

They went on down to Key West, came back up, were

picked up in West Palm, and that's when this series of events occurred.

So. You have nothing from Snell -- by the way, here
 ? ?
 in the Silver Cape Walk, I'm sure of that, his nickname is
 "Lucky". He didn't tell them anything! No complicity on his
 part, none on Schneble's part, none whatsoever. This is what
 he said:

"When you find this body -- if and when you find
 this body, you'll find a polyethylene cord, and don't overlook
 the obvious."

Now, I don't know what that's supposed to do to
 Schneble, that he hadn't already done himself.

Now, as I understood Bruton, and I think everybody
 else does, there wasn't any question. I represented the State,
 when you remanded this matter to the Florida Supreme Court,
 and the position I'm taking here is the position I took there.

We agreed that Snell suffered under Schneble's
 confession. He did not take the stand. There was no cross-
 examination. A clear Bruton violation.

He put Snell in the bag just as pretty as you please.

Q What was the ground -- I don't have the opinion
 here, neither of you cite to where we can find it; but I
 recall reading it last spring. I thought the Florida Supreme
 Court, while finding that Snell was entitled to the benefit of
Bruton, held that Schneble was not on some ground related to

the validity of one or the other confessions. Do you recall what I'm referring to?

MR. GEORGIEFF: Well, while it's not quite dicta, Mr. Justice Brennan, it really -- and I hope they forgive me -- it really has no place in this. They reversed --

Q All I'm trying to get you to say --

MR. GEORGIEFF: They do say that. If you'd like, I'll read it to you.

Q What I'm trying to get to is, as I recall that opinion, they do not rest it on what you're now arguing to us, you had already argued for that court, namely, that nothing that was testified to by Yates or anything else as to Snell's statements, in any wise prejudiced Schneble.

MR. GEORGIEFF: Right.

Q That's what you're telling us.

MR. GEORGIEFF: Sure.

Q Yes. Yes. Now, but what I'm suggesting is, I don't recall the Florida Supreme Court rested the Bruton point as to Schneble on that ground, did it?

MR. GEORGIEFF: Well, yes, they did.

Now, the part that you may recall is really six lines. Let me read it to you.

Q Yes.

MR. GEORGIEFF: I'm reading from the slip opinion:

"Inasmuch as there was no prior unconstitutional

confession by Schneble, as in Bruton, and Schneble's confession was found to be admissible, we again confirm conviction in Schneble v. State, and hold that conclusion not inconsistent with Bruton, the authority cited by the Supreme Court of the United States, it is so ordered."

So, yes they do, and no they don't.

Q Well, my difficulty with that is that I have trouble reading into that that what they're saying is that Schneble is not entitled to the benefit of Bruton because nothing said by Snell in any wise implicated or prejudiced Schneble.

MR. GEORGIEFF: Well, I do, too, but perhaps not as much as do you.

Q I see.

MR. GEORGIEFF: Yes, I was there, and I remember what the argument was. That's no proof to you, because you don't have it written; I understand that. And yet, put cold, the way it is here today, you have the transcript from the first proceeding, by the way, before you. You can read it as many times as you like, and, unless you have some sort of magic, you just can't find any implication in there.

Now, whatever the reason, let's assume they have reached this reason -- or this result for the wrong reason. If their result is correct, it really doesn't make any difference.

Q Well, in any event, I gather what the State's arguing to use today is that if we look at the record we'll conclude, ourselves, that nothing testified to, in the way of a statement by Snell, in any wise implicated or prejudiced Schneble; is that it?

MR. GEORGIEFF: Well, hope springs eternal, I think you probably will. Yes, sir.

Q But that's what -- that's your submission?

MR. GEORGIEFF: Yes, sir. Exactly.

Q Right.

Q Mr. Georgieff.

MR. GEORGIEFF: Yes, sir.

Q Doesn't Snell's statement that Schneble was in the back seat at least tend to corroborate Schneble's own confession to the crime?

MR. GEORGIEFF: Well, to being with, Mr. Justice Rehnquist, he didn't say that.

Q He didn't say it?

MR. GEORGIEFF: No. All he said was -- well, I say all he said; that's not true. Among other things, he said: "You'll find that my fingerprints are only in the front seat."

Now, you know, either by casting out, denying, elimination, whichever way you want, if they were found together, the presumption has to follow, I suppose, that the other person was in the back seat. But he never mentioned his name, so,

conceivably, there could have been somebody else in there, don't you see?

Now, I don't know if we can reach back geographically and, both, historically, and determine that because they were found in the car in West Palm that on their trip, that Schneble was physically in the back seat. If he was, they didn't find that out from Snell, they didn't find out anything from him.

Q Let's assume that Lieutenant Yates testified that Snell told him that Schneble had occupied the rear seat of the automobile and that he, Snell, had occupied the driver's area. Is that --

MR. GEORGIEFF: All right.

Q Let's assume that was -- is that --

MR. GEORGIEFF: All right.

Q Would you suppose that if -- that that would verify Schneble's confession as to where he was sitting?

MR. GEORGIEFF: No. As a matter of fact, it collides with it.

Q Doesn't Schneble say he was sitting in the back seat?

MR. GEORGIEFF: Said he was sitting in the front.

Q Well, then it contradicts Schneble's statement?

MR. GEORGIEFF: I said it collides with it, you see.

Q Yes.

MR. GEORGIEFF: Snell is a smart --

Q But does Schneble say -- does Schneble say that she was strangled from the front -- from the back seat?

MR. GEORGIEFF: As I recall, he did. No, no -- did you say from the back seat? No, I think he said he reached over from the front and did it. That's my recollection of it; please don't hold me to it.

I haven't gone into the explicit details of Schneble's confession, because of the organic position I took based on your request here. But my recollection is that there was a reachover in the strangulation of this woman.

Now, corpus delicti in Florida is three things in a murder prosecution: that there is a dead body; that it has an identity; and that it was the result of the criminal agency of another.

Now, that darn sure didn't come from Snell. No way. As I read anything to which others say he testified to them or gave a statement to them.

Q Wasn't there testimony that Schneble had been a hitchhiker?

MR. GEORGIEFF: Oh, yes.

Q And that came from whom?

MR. GEORGIEFF: From the officer who testified that, as to the scene when they picked them up on this alleged -- well, as a matter of fact, they did have a light violation when

they stopped them. And I think the testimony will reveal that there was some confusion as to allegedly misunderstanding what the officer ordered them to do when he stopped the car.

Q But I'm asking about the hitchhiker part.

MR. GEORGIEFF: All right. Now, then the officer testified that Schneble told him that he was a hitchhiker that had been picked up by this man on his way out of the Keys, as I understand it.

Q So that --

MR. GEORGIEFF: That came from Schneble, though, you see.

Q That came from Schneble --

MR. GEORGIEFF: Never from Snell.

Q Right. And Snell's statement, testified to at the trial, was, made it clear that Schneble had not been a hitchhiker and that Schneble had been along on the ride all the way from New Orleans; is that right?

MR. GEORGIEFF: Well now, I don't know that it makes it clear that he wasn't a hitchhiker. He doesn't mention the man's name at all. Don't you see?

Q But the point is, if Schneble was a hitchhiker who got in the automobile only after the murder had been committed, that makes it quite a different case.

MR. GEORGIEFF: Oh, I would think that it would, Mr. Justice Stewart.

Q It's Snell's statement that puts Schneble in the car.

MR. GEORGIEFF: No, I understand. If that were the case, I would agree that there is at least something here that ought to be examined, at least more closely.

Q Right.

MR. GEORGIEFF: But that isn't so. You see, --

Q What isn't so?

MR. GEORGIEFF: Beg pardon?

Q What isn't so? I thought just said --

MR. GEORGIEFF: Snell never said anything --

Q -- that he was a hitchhiker, picked up after the --

MR. GEORGIEFF: Yes, but that --

Q -- murder was committed.

MR. GEORGIEFF: But that came from Schneble, you see.

Now, if we're talking about what Snell said --

Q We are.

MR. GEORGIEFF: -- to put him under Bruton, I tell you there is nothing.

Q That puts Schneble in the car?

MR. GEORGIEFF: No.

Q From New Orleans on --

MR. GEORGIEFF: No. I mean yes, whichever one applies.

Q Right. That there's nothing?

MR. GEORGIEFF: That's correct.

Q Right.

MR. GEORGIEFF: Because, you see, there is an individual in the car, but he never mentions him by name; and I say that if you're going to find out that it was Schneble, you're going to have to surmise that going back from West Palm to Key West, all the way back up Florida's Gulf Coast into New Orleans, you're going to have to place Schneble in there, based on Snell's testimony; and you cannot do it.

Because he denies any complicity himself, and he certainly never mentions Schneble. All he said was: "If and when you find this body, don't overlook the obvious, and there will be a polyethylene cord."

Now, what does that mean? Not a great deal to me, if anything.

Q Mr. Georgieff.

MR. GEORGIEFF: Yes, sir.

Q Do you happen to have the citations of the opinion of the Florida Supreme Court on remand, not the original?

Q Yes, it's 215 Southern 2d.

MR. GEORGIEFF: I think that's correct, Mr. Justice Douglas.

Q Page 661.

MR. GEORGIEFF: Right. Now, I was reading from the slip opinion, sir.

Q Yes. Thank you.

MR. GEORGIEFF: Which I had in my file.

Q Mr. Georgieff.

MR. GEORGIEFF: Yes, sir.

Q Was the girl's body eventually located and viewed by someone other than either Schneble or Snell?

MR. GEORGIEFF: Yes.

Q So the testimony as to the existence of a dead body did not depend simply on someone reciting what Snell had told them?

MR. GEORGIEFF: No. It did not.

And we contend, of course, that we did then, and I suppose we will tomorrow if it comes up again, and I have a funny feeling that it will; I think the Chief Justice will remember Pettijohn, with the Miranda warnings. There were no infections here with regard to an absence of warnings.

You heard Mr. Wells mentioning something about nobody being taken before a magistrate. But Miranda warnings were properly given at every occasion, to all these men.

You got everything out of Schneble, you got nothing out of Snell. I really am at a loss to figure how Snell's alleged statements could ever put Schneble --

Q Mr. Georgieff.

MR. GEORGIEFF: Yes, sir.

Q Is there anything in this record where Snell

gave any hint that the man that was in the car when they were picked up with the bad tail light was the same person who was with him all along, without naming him?

MR. GEORGIEFF: Well, I guess, really, Mr. --

Q You mean we just have to stretch it a little?

MR. GEORGIEFF: In my view you would. I hesitate to say no. I would like to, but -- you'd have to stretch it a great deal, you'd have to engage in a little bit of activity in order to reach one before you could start on the other.

As I read it, no. As others may read it, of course, you could conceivably come up with that. But as I understand Bruton, if we're talking about the specter of not being able to cross-examine, what in the name of Heaven could they cross-examine him about that had anything to do with the crime? If that's the touchstone of Bruton, and I think it was, then where do we have anything?

Let's assume that everything that's in the record is ironclad truth; what would you examine him about? I don't know how articulate another lawyer could be. What could he say to him? "Are you sure you took this route down here?" What difference does it make as to the criminal involvement?

Now, they might say, "Well, are you sure Mr. Schneble was in the car?"

Q Well, what about that piece of rope, somebody might -- I would assume that defense counsel would be afraid to

get into that aspect -- I don't know what is needed, do you?

MR. GEORGIEFF: No more than you, sir.

Q Yes. I mean, if somebody would cross-examine on that, I don't know what would happen.

MR. GEORGIEFF: Well, I don't know how much -- I guess that turns a great deal on strategy and wisdom. We could speculate for a long time on many things that could occur, and yet it occurs to me that if Bruton is to mean anything, it has to mean that when you deprive a man of a situation in a joint trial, where he cannot cross-examine an individual, then you've done something to him which he can't possibly avoid, even by a jury instruction. Which, by the way, we understand are a little less than compelling in most instances; and that's why you reach your conclusion.

But, in the last analysis, when the court got what it did from you on remand, it occurs to me that they treated it as it should be treated. A disaster as to Snell, and really nothing as to Schneble, because there was no connection between anything that he said in the crime which involved Schneble, or, indeed, himself.

And I think that the matter either should be sent back as improvidently granted or affirmed as is.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Georgieff.

Mr. Wells, do you have anything further?

REBUTTAL ARGUMENT OF CLYDE B. WELLS, ESQ.,

ON BEHALF OF THE PETITIONER

MR. WELLS: Yes, sir.

Mr. Justice Rehnquist, you asked the question about the body, and I would like to point out that those who viewed the body viewed it as a result of the confession, and therefore would be the fruits of the confession and not, could not be considered as part of the corpus delicti, in my position in the case.

Q Mr. Wells, where, in the record, is this statement that Snell said that Schneble was in the back seat?

MR. WELLS: I have that in my hand. I was going to read it to the Court, if the Court would permit me.

This is Lieutenant Yates testifying.

Q What page of the transcript? 409?

MR. WELLS: Page 409, yes, sir.

And he was talking to -- Lieutenant Yates was questioning Snell. He said, "What did he say in response to that?"

"During the time, that time he told me that I had, during a previous interview, painted a hypothetical picture of what had happened. I asked him what he meant by this. He said that during the processing of the automobile that there was a piece of polyethylene line that had been found in this automobile, and he said, 'If and when they find this body,

look for a piece of polyethylene line, and don't overlook the obvious.'

"Did he later say where each of these people had been riding?" That was Lieutenant Yates' question.

"Answer: Yes, sir. He stated that if they processed this automobile for fingerprints, that they would not find his prints probably anywhere in the automobile except in the driver's area; that Schneble had occupied the rear seat of the automobile, and he had occupied the driver's seat."

Now, that is where he made the statement that put him in the back seat. There was more to it than that.

Q And he used the name Schneble? As you just read.

MR. WELLS: Yes, sir. Lieutenant Yates used the name Schneble as -- quoting Snell; quoting Snell.

Mr. Georgieff indicated that in Schneble's confession he never admitted he was in the back seat, but, on page 280 of the transcript you will find that he did admit that he was in the back seat. And his answer to a question was:

"After they went for a walk on the beach" -- talking about Snell and the victim, he said, "they came down the road and when they stopped, Snell dropped the plastic cord into his lap and motioned with his hand," and he said at that point, "he put the cord around her neck and started to squeeze."

Now, I got the impression that "down the road" in the automobile. He said, "He pulled as hard as he could and

held as long as he could, but she was a good-sized woman and gave out, then he relaxed", and so on.

So I feel like there's other places in the testimony where Schneble admitted he was in the back seat, but that points out, for the purpose of argument, what I'm trying to show you.

Now, I would further say that the corroboration of the defendant Snell's testimony is the main thrust of this Bruton argument in this case that I'm here on today. Not just these two things that I've pointed out to you, but the whole bit, from start to finish: the testimony of the Trooper; the testimony of the FBI agent Kellogg, where he is quoting Snell; Trooper Maddox is quoting Snell; Lieutenant Yates is quoting Snell. All of these things corroborate the testimony, the confession that's given by the petitioner Schneble.

Also I want to point out to you that I feel that this harm that's done in these situations is the reason for the rule in Bruton, it was also the reason for the criminal rule 14 of the Federal Rules of Criminal Procedure, which I recognize is not binding on the State of Florida, but they are indicative of the opinion that exists with regard to what constitutes a violation of a person's right.

And so when you put these two cases together, put them in the same sack, and require them to stand together, on trial together, certainly there's no way that you can say that

the defendant Schneble was not prejudiced by the defendant Snell's presence in that courtroom, being tried on a joint trial.

And although it's a matter of degree, I concede that, that it is a matter of degree; but certainly he was prejudiced by Snell's presence there just the same as Snell was prejudiced by Schneble's presence there.

And we're arguing about the question of degree, and that should not be the controlling factor, because if Schneble would have come out of there on his own with a life sentence, whereas, by standing with Snell, he got the death sentence; then he has been prejudiced in this instance, because otherwise he'd be walking out with his life not in jeopardy as he stands today.

Q Has Snell been retried?

MR. WELLS: No, sir. Well, he entered a plea to manslaughter and was given five years, with credit for time served, and he's on the streets now; he's out.

Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Wells.

Thank you, Mr. Georgieff.

The case is submitted.

[Whereupon, at 10:40 o'clock, a.m., the case was submitted.]