

# State Supreme Court hears appeal in Carlie Brucia case

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*TALLAHASSEE* - Attorneys for the man sentenced to death for the abduction, rape and murder of 11-year-old Carlie Brucia argued today that he should receive a new trial because of mishandled DNA evidence.

The challenge of Joseph P. Smith's conviction is the first part of a mandatory appeal for all defendants sentenced to the death penalty. He was sentenced to death in 2005 by a Sarasota County judge.

Smith, 42, an unemployed auto mechanic and convicted drug abuser, was high on cocaine when a surveillance camera captured him in the act of abducting Carlie behind a car wash on Bee Ridge Road on Feb. 1, 2004.

The videotape, and the discovery of Carlie's body several days later, captivated the nation and outraged the community.

DNA lab results connected Smith to a semen stain found on the 11-year-old's red shirt. That evidence is the crux of his appeal.

During Smith's trial in 2005, defense attorney Adam Tebrugge, questioned why two local evidence technicians did not find the DNA on the shirt, a key piece of evidence, before it went to the FBI crime lab and was found by technicians there.

Tebrugge then objected seven times and called four bench conferences during an FBI agent's testimony because she did not test the shirt at the FBI lab, only reviewed the results.

Circuit Judge Andrew Owens allowed the FBI agent to testify. Attorneys said there is a chance appeals judges could have construed that as hearsay evidence, which is not allowed.

During the trial, prosecutors said DNA evidence from the FBI lab has been introduced in the same manner in numerous other cases. They likened it to a doctor reading lab reports and blood samples taken by medical technicians.

In general, anything that was contested by the defense during the trial is going to be the basis for an appeal.

Tebrugge attacked all the major evidence that painted an overwhelming picture of guilt: the DNA, a surveillance video of the abduction and recorded jailhouse admissions by Smith, plus a letter to his brother about the crime in a code the Smiths used as boys.

The appeal points out twelve other areas where the trial may have been unconstitutional or the trial judge erred, including allowing the jury to see crime scene photos and allowing Smith's brother to testify.

Tips generated by the videotape led to Smith's arrest, and he later told his brother where to find Carlie's body, behind a church on Proctor Road, detectives say.