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## **Manuel Pardo v. State of Florida**

CHIEF JUSTICE: THANK YOU. THE THE LAST CASE ON THIS MORNING'S DOCKET IS PARDO VERSUS THE STATE OF FLORIDA.

CHIEF JUSTICE: GOOD MORNING.

MAY IT PLEASE THE COURT, MY NAME IS LEOR VELEANU AND I REPRESENT THE APPELLANT, MANUEL PARDO JUNIOR. THIS COMES FROM AN APPEAL OF A MOTION FOLLOWING A LIMITED EVIDENTIARY HEARING. THIS COURT KNOWS MR. PARDON IS CONVICTED AND SENTENCED TO DEATH FOR NINE MURDERS WHICH OCCURRED IN 1986. HIS CONVICTION WAS IN 1988. I WOULD LIKE TO FOCUS MY TIME ON CLAIM 1 AND ALSO ON CLAIM 3 OF MY BRIEF.

CHIEF JUSTICE: COULD YOU ON CLAIM 1 IT SEEMS THAT YOU HAVE PUT TOGETHER A VARIATION OF AN A CLAIM, INEFFECTIVE ASSISTANCE CLAIM, WHAT WE ARE REALLY DEALING WITH IN CLAIM 1 IS THIS IDEA THAT YOUR CLIENT IS NOW CLAIMING NOT ONLY WAS HE, HE DIDN'T CLAIM HE WAS INSANE, HE CLAIMED HE WAS SANE BUT NOT ONLY AN INSANITY DEFENSE BUT THAT HE WAS INCOMPETENT AT THE TIME OF HIS TRIAL IN 1986, CORRECT?

THAT'S EXACTLY CORRECT.

CHIEF JUSTICE: AND THAT'S VERY -- SO THE QUESTION IS AND OF COURSE IT WAS ON DIRECT APPEAL SO THERE WAS NO ERROR IN THE TRIAL COURT NOT HAVING A COMPETENCY EVALUATION. COMPETENCY NOT BEING WHAT CAUSED THE INCOMPETENCY, BUT WHAT ARE THE PRESENT MANIFESTATIONS THAT WOULD PUT SOMEONE ON NOTICE THE PERSON WAS NOT COMPETENT TO PROCEED. SO TELL ME HOW DID THE THREE -- WHAT CLAIMS ARE YOU ACTUALLY MAKING REGARDING IT BECAUSE THIS WAS DENIED WITHOUT AN EVIDENTIARY HEARING SO WE'VE GOT TO -- THIS HAS GOT TO BE BASED ON YOUR BEST ALLEGATIONS AS TO WHAT THERE WOULD BE AN EVIDENTIARY HEARING ON.

YOU ARE CORRECT THAT I DID CONSOLIDATE THE CLAIMS BECAUSE THEY ALL DEAL WITH THE FACT THAT MY ALLEGATION THAT MR. PARDON WAS INCOMPETENT AT THE TIME OF TRIAL AND THEY WOULD INCLUDE THAT SUBSTANTIVE CLAIM OF BEING FORCED TO GO TO TRIAL WHILE INCOMPETENT AS WELL AS THE FACT THAT HIS TRIAL ATTORNEY WAS --.

CHIEF JUSTICE: BUT THE FACTS THAT HE WAS, THE ISSUE OF HIS COMPETENCY ABSENT A CLAIM THAT THIS IS NEWLY DISCOVERED EVIDENCE IS PROCEDURALLY BARRED. IT WAS RAISED AND DECIDED ADVERSELY TO YOU ON DIRECT APPEAL.

LET ME GET TO EXACTLY WHY THIS IS NOT WHAT OCCURRED ON DIRECT APPEAL. ON DIRECT APPEAL THE ISSUE WAS WHETHER THE COURT SHOULD HAVE HELD A COMPETENCY HEARING. WHAT THIS COURT RULED WAS BECAUSE THE COURT' APPOINTED DOCTORS THEY DID EVALUATIONS TO DETERMINE SANITY AND THEY FOUND NOT ONLY THAT MR. PARDON WAS SANE, BUT THAT HE WAS COMPETENT AND SO THIS COURT FOUND ON DIRECT APPEAL THERE WAS NO NEED FOR A COMPETENCY HEARING BECAUSE IT WOULDN'T HAVE BENEFITED MR. PARDON SINCE THE DOCTORS FOUND HIM COMPETENT. WE ARE ALLEGING NOW THAT AFTER MR. PARDON WAS SENT TO DEATH ROW A PHYSICAL AND BLOOD TEST REVEALED HE HAD A SEVERE THYROID DISORDER AND THE ACTUAL MANIFESTATIONS OF THAT THYROID DISORDER WERE CLEARLY

INDICATED IN THE ACTUAL COMPETENCY REPORT THAT COURT' APPOINTED DOCTORS AND A DEFENSE EXPERT DURING THEIR EVALUATIONS PRETRIAL.

CHIEF JUSTICE: YOU PLED INEFFECTIVE THAT COUNSEL WAS INEFFECTIVE IN FAILING TO TELL THE DOCTORS THAT HIS CLIENT HAD SYMPTOMS OF HAIR LOSS AND WEIGHT GAIN? I MEAN WOULD THAT -- WAS THAT AN ALLEGATION MADE?

THE ALLEGATION IS THAT TRIAL COUNSEL HAD AN OBLIGATION TO OBTAIN A COMPETENT EXPERT AND THE EXPERT THAT HE DID OBTAIN WAS INCOMPETENT AND SPECIFICALLY --.

CHIEF JUSTICE: BUT THAT IS REALLY AGAIN, NOW, WHETHER IT IS CONCLUSIVE, YOU'VE GOT FOUR EXPERTS INCLUDING TWO MEDICAL DOCTORS WHO ALL EXAMINED HIM, WHO ALL TESTIFIED THAT HE WAS COMPETENT AND SO I DON'T, YOU KNOW, AS FAR AS WHETHER THIS IS AN UNDERMINING CONFIDENCE IN THE OUTCOME SITUATION CONCLUSIVELY REFUTED, I'M JUST NOT SURE HOW YOU GET TO, YOU KNOW, THE EVIDENTIARY PORTION OF THIS.

LET ME EXPLAIN IT. WHAT WE ARE ASKING FOR THE EVIDENTIARY HEARING FOR IS TO SHOW THAT THE EVALUATIONS THEMSELVES THAT FOUND MR.^PARDO TO BE COMPETENT ARE INVALID AND UNRELIABLE. IT HAS TO BE SCIENTIFICALLY VALID AND IN THIS CASE IF I COULD READ TO YOU FROM THE REPORTS, DR.^JACOB SEND, A PSYCHIATRIST AND MEDICAL DOCTOR HE SAID HE DID NOT APPEAR TO BE ANXIOUS DURING AN INTERVIEW BUT THERE MIGHT BE MORE STRESS THAN MEETS THE EYE. HE NOTICED LOSING SOME HAIR AND TALKS ABOUT THE LOSS OF MUSTACHE, HAIR LOSS, PART OF HIS EYEBROWS AND LOSS OF HAIR ON HIS ARMS AND LEGS. THE DEFENSE DOCTOR WENT EVEN FURTHER SAYING THAT SINCE HE HAS BEEN IN JAIL MR.^PARDO HAS LET HIMSELF GO AND BECOME FLABBY.

CHIEF JUSTICE: MY PROBLEM IS WITH THIS IS THAT YOU ARE NOT ALLEGING A FAILURE TO PRESENT MENTAL MITIGATION OR FURTHER EVIDENCE OF THAT INSANITY. COMPETENCY HAS TO DO WITH HOW IS THE PERSONABLE TO CONSIST THEIR COUNSEL. SO HOW WOULD EVEN KNOWING THE CAUSE OF WHATEVER HIS DISORDER IS WOULD BE LIKE SAYING, WELL, THEY DIDN'T DISCOVER THAT HE, YOU KNOW, THAT HE HAD BRAIN DAMAGE, BUT IF HE IS STILL ABLE TO COMMUNICATE WITH COUNSEL HOW DOES THAT CHANGE THE COMPETENCY PICTURE?

THAT'S EXACTLY WHAT HE CANNOT DO. HE CANNOT COMMUNICATE WITH ANY RATIONAL DEGREE OF UNDERSTANDING AND THIS ACTUALLY IS PLAYED OUT WITH WHAT HAPPENED IN COURT, AND THE NEED FOR COMPETENCY IS WELL-ESTABLISHED. HE HAS TO BE ABLE TO ASSIST HIS ATTORNEY IN A DEFENSE AND HERE THE DEFENSE WAS INSANITY.

HAS HE PRESENTED ANY EVIDENCE THAT THYROID DISORDERS PRODUCE MENTAL PROBLEMS TO THE POINT OF NOT BEING ABLE TO COMMUNICATE WITH YOUR ATTORNEY TO HELP AND ASSIST IN TRYING THE CASE?

THAT'S EXACTLY WHAT I AM PREPARED TO --

BUT HAVE YOU PRESENTED THAT IN YOUR PLEADINGS?

SURE, I PRESENTED IT. WE HAVE AN EXPERT PSYCHIATRIST PREPARED TO TESTIFY THAT THERE IS A VERY LONG HISTORY IN THE MEDICAL TEXTBOOKS OF A RELATIONSHIP BETWEEN A THYROID DISORDER AND PSYCHOSIS.

SO YOU SEE THE PSYCHOSIS SO THE ONLY THING YOU ARE GOING TO BE ARGUING IS HE HAD A PSYCHOSIS AS A RESULT OF THE THYROID PROBLEM? BUT SHOULDN'T THESE EXPERTS, AS JUSTICE PARIENTE WAS SAYING, SHOULDN'T THEY HAVE BEEN ABLE TO SEE THE PSYCHOSIS?

HIS BEHAVIOR IN THE CONTEXT OF A THYROID DISORDER IS DIFFERENT THAN THESE DOCTORS

FINDING THAT HE IS COMPETENT AND SO HE IS JUST TALKING CRAZY OR HE JUST HAS POLITICAL BELIEFS THAT ARE EXTREME, BUT SEEN IN THE LIGHT OF SOMEONE WHO HAS A SEVERE THYROID DISORDER AND CLINICAL DEPRESSION AND A MOOD DISORDER THAT'S THE CAUSE OF THAT THYROID DISORDER THAT'S WHAT MY EXPERT IS WILLING TO TESTIFY.

CHIEF JUSTICE: DO YOU HAVE ANY MEDICAL RECORDS THAT BEFORE THE TIME OF THE MURDER THAT HE HAD A HISTORY OF A THYROID DISORDER?

YES, MY EXPERT PSYCHIATRIST LOOKING THROUGH MILITARY RECORDS THERE IS NOTATIONS OF CERTAIN PHYSICAL ILLNESSES THAT ARE CONSISTENT WITH A THYROID DISORDER.

YOU KEEP ALLUDING TO YOUR EXPERT. HOW EXTENSIVELY DID YOU PRESENT THE EVIDENCE OR OPINION THAT YOUR EXPERT WOULD BE PREPARED TO RENDER AT AN EVIDENTIARY HEARING?

I WOULD SUBMIT IN THE 3.850 MOTION IT WAS CERTAINLY MORE THAN THE REQUIREMENTS OF 3.850. WE ACTUALLY NAMED THE EXPERT --

SO YOU ALLEGE THAT YOU HAVE THE EXPERT AND THIS IS MORE THAN WE ORDINARILY SEE, BUT NEVERTHELESS DID YOU END UP SAYING IN EFFECT THAT YOUR EXPERT WOULD SAY THAT A REASONABLY COMPETENT -- REASONABLY COMPETENT PSYCHIATRIST OR PSYCHOLOGIST OR OTHER EXPERT WOULD HAVE NOTED THESE CONDITIONS AT THE TIME AND WOULD HAVE REASONABLY CONCLUDED THAT A DEFENDANT IN THAT CONDITION WAS INCOMPETENT TO STAND TRIAL. ISN'T THAT REALLY WHAT YOU HAVE TO END UP SHOWING HERE? THAT IS, THAT BOTH THE PEOPLE THAT ACTUALLY DID EXAMINE THE DEFENDANT HERE AND SAW THESE THINGS, THAT REALLY THAT THEY COMMITTED MEDICAL MALPRACTICE IN TERMS OF A COMPETENCY EVALUATION?

THAT'S EXACTLY MY POINT, YOUR HONOR.

BUT DID YOU ALLEGE THAT? IN OTHER WORDS, YOU ARE SAYING YOU ARE ENDING UP NOW WITH SOMEBODY YOU HAVE CONSULTED WHO IS A RECOGNIZED EXPERT, AND THAT EXPERT IS PREPARED TO SAY THAT THESE GUYS REALLY BLEW IT AND THAT YOUR CLIENT WAS BLATANTLY INCOMPETENT AT THE TIME BASED ON SYMPTOMS THAT WERE EXHIBITED AT THE TIME AND HE WAS INCOMPETENT TO ASSIST HIS ATTORNEY, ET CETERA, ET CETERA. IS THAT WHAT YOU ARE -- YOUR CLAIM IS?

THAT'S FAIRLY ACCURATE. WHAT I WANT TO DIFFERENTIATE IS THAT WE ARE NOT CLAIMING OUR EXPERT IS JUDGING THESE OTHER EXPERTS BUT MAKING AN INDEPENDENT KNOWLEDGE BASED ON HIS KNOWLEDGE OF THYROID DISORDER AND THE FACT THAT THESE EXPERTS MADE NOTATIONS OF --

BUT DON'T YOU HAVE TO SHOW THAT IN EFFECT THEY COMMITTED MALPRACTICE?

THAT'S MY ALLEGATION. I ALLEGE THAT BASED ON THE RECORD AND BASED ON THE EXPERT'S REPORTS THEY COMMITTED MALPRACTICE AND THAT THE ALLEGATIONS ARE THEIR EVALUATIONS WERE INVALID AND UNRELIABLE. MY DOCTORS TO TESTIFY HE IS PREPARED FOR TESTIFY ON THE RAMIFICATIONS OF HAVING A THYROID DISORDER ON COMPETENCY, SO I WANT TO BE STRAIGHTFORWARD WITH THE COURT THAT IT WASN'T PLED THAT THE EXPERT IS CLAIMING THESE OTHER DOCTORS MADE A MISTAKE. I'M THE ONE THAT'S ALLEGING THAT BASED ON THE EVIDENCE.

CHIEF JUSTICE: WHAT I AM HAVING TROUBLE WITH IS THERE WAS AN INSANITY DEFENSE. COMPETENCY RELATES TO WHAT WAS HAPPENING DURING THE PERIOD OF TRIAL. YOU NOW SAID THERE WERE MEDICAL RECORDS GOING BACK THAT SHOULD INDICATE HE HAD A LONGSTANDING THYROID DISORDER. WHY THEN DIDN'T YOU PLEAD THIS AS SOME INEFFECTIVE ASSISTANCE IN

HOW THE DEFENSE LAWYER PLED OR PRESENTED HIS INSANITY DEFENSE OR IN MENTAL MITIGATION AND THINGS THAT MIGHT HAVE GIVEN YOU AN EVIDENTIARY HEARING ON THAT ISSUE? THIS IS VERY STRANGE TO US BECAUSE IT IS COMING IN IN A WAY OF SAYING THIS POINT IN TIME IN THE TRIAL 20 YEARS AGO THAT FOUR EXPERTS, A DEFENSE LAWYER, A TRIAL JUDGE ALL OBSERVING THIS PERSON FOR A PERIOD OF TIME SHOULD HAVE BEEN ABLE TO TELL THAT HE WAS INCOMPETENT BECAUSE HE HAD SOME THINGS GOING ON, SOME STRANGE PHYSICAL SYMPTOMS?

THAT'S WHAT WE HAVE TO SHOW IN AN EVIDENTIARY HEARING.

CHIEF JUSTICE: BUT, YOU KNOW, THAT'S LIKE YOU SHOW THAT EVERYBODY OBSERVING THIS PERSON REALLY MUST HAVE BEEN TOTALLY IN ANOTHER PLANET BECAUSE TO ALL OF THEM HE SEEMED TO BE ABLE TO ASSIST IN HIS OWN DEFENSE. HE TESTIFIED.

THAT'S WHERE I WOULD DISAGREE WITH YOU. HIS ABILITY TO ASSIST HIS COUNSEL IS NOT AN EXISTENCE. IF YOU LOOK AT WHAT HAPPENED AT TRIAL AND THIS IS ACTUALLY A CASE OF WHAT HAPPENS WHEN AN INCOMPETENT DEFENDANT GOES TO TRIAL. YOU HAVE AN INSANITY DEFENSE WHEN HE PLED NOT GUILTY BY REASON OF INSANITY AND YET HE TAKES THE WITNESS STAND AND TELLS THE JURY HE IS NOT INSANE.

CHIEF JUSTICE: IS HE STILL INCOMPETENT?

HE IS MEDICATED FOR --.

CHIEF JUSTICE: SO HE IS OBVIOUSLY BECAUSE YOU DIDN'T ASK FOR THESE PROCEEDINGS TO BE STAYED UNTIL HE RAINED COMPETENCY, CORRECT? HE IS ABLE TO ASSIST YOU NOW?

I HAVE NO EVIDENCE AT THIS POINT HE IS BEING INCOMPETENT. HE IS BEING TREATED NOW.

CAN I HAVE YOU FOLLOW UP ON JUSTICE BELL'S ORIGINAL QUESTION ABOUT THAT IN A SENSE WE ARE TALKING ABOUT THE PRESENTATION OF A PSYCHOSIS OR FACTORS THAT WOULD LEAD TO A DETERMINATION OF INABILITY TO ASSIST COUNSEL AND UNDERSTAND WHAT'S GOING ON KIND OF THING. AND THAT ONE ISSUE AS TO WHAT THE UNDERLYING CAUSE MIGHT BE, YOU KNOW, THAT LEADS TO THAT BUT IT IS A SEPARATE ISSUE IN TERMS OF HOW A DEFENDANT OR CLIENT OR PATIENT PRESENTS THEMSELVES TO THE EXPERT FOR THAT EVALUATION, AND HERE WE HAVE THE EXPERTS, IT IS UNDISPUTED ON THE RECORD THAT TAKE THE TEST SO TO SPEAK, YOU KNOW, THE 10-PART TEST FOR COMPETENCY TO ASSIST COUNSEL AND ESSENCE ALL TESTIFY THAT, WELL, I KNOW WHAT THE FACTS OF THE CASE ARE ROUGHLY, AND I QUESTION THE PATIENT ABOUT THAT AND HE SEEMS TO KNOW WHAT THE FACTS ARE ROUGHLY AND HE SEEMS TO TALK ABOUT, YOU KNOW, WHAT A TRIAL IS AND WHAT A DEFENSE LAWYER IS AND OF COURSE WE KNOW HERE WE ARE TALKING ABOUT SOMEBODY THAT HAS AN EDUCATION PERHAPS BEYOND THE AVERAGE DEFENDANT AT LEAST THAT WE SEE, BUT WOULD YOU RESPOND AGAIN BECAUSE I'M NOT SURE I UNDERSTOOD YOUR RESPONSE TO JUSTICE BELL'S QUESTION ABOUT WHAT IS THE DIFFERENCE THAT IT MAKES IF WE ARE REALLY EVALUATING HOW THE PATIENT OR THE DEFENDANT PRESENTS HIMSELF TO THESE EXPERTS IN TERMS OF HAVING THE ABILITY TO UNDERSTAND COURT PROCEEDINGS AND LAWYERS AND HELP ME WITH THAT AGAIN.

THE EXPERTS DIDN'T SEE THE TRUE MR.^PARDO AND BY WAY OF ANALOGY IF SOMEONE IS DEPRESSED AND HE SPEAKS TO SOMEBODY AND THE EXPERT DOESN'T DIAGNOSE THE CLINICAL DEPRESSION HE MIGHT THINK THIS PERSON IS REALLY DOWN, MIGHT HAVE A REAL NEGATIVE OUTLOOK. IF HE THINKS HE HAS CLINICAL DEPRESSION THEN THE WORDS HE IS SAYING MIGHT HAVE MORE SIGNIFICANCE.

TYPICALLY THESE EXPERTS NOT ONLY APPLY THE STATUTORY AUTHORITY FOR COMPETENCY BUT RECOGNIZED TESTING MECHANISMS, OTHER THAN JUST OBSERVATION, AND THEY DO THE

AXES OR WHATEVER, AND THOSE COME FROM THOSE TESTS AND THEY SHOW MAJOR DEPRESSION AS ONE OF THEM OR PSYCHOSIS AND THEY MAY NOT KNOW BECAUSE IT IS A BRAIN TUMOR OR BRAIN DEFECT, THYROID PROBLEMS OR WHAT THE CAUSATION MAY BE BUT THEY ARE AT LEAST ABLE TO DIAGNOSE THE SYMPTOMS OF A MENTAL ILLNESS THROUGH NOT ONLY INTERACTION WITH THE CLIENT BUT THROUGH THE TESTING MECHANISMS DESIGNED TO FLESH THIS OUT.

IF THEY HAD KNOWN, AND THEY SHOULD HAVE KNOWN THAT HE HAS A PHYSICAL ILLNESS THAT HAS MENTAL HEALTH MANIFESTATIONS HIS ANSWERS WOULD HAVE AND SHOULD HAVE HAD A DIFFERENT MEANING TO THEM. LET ME BACK UP.

SO DOES YOUR EXPERT SAY THAT HE GAVE OBJECTIVE TESTING THAT SHOWED DIFFERENT RESULTS OR HOW DO WE KNOW THIS FROM A MORE OBJECTIVE SCIENTIFIC BASIS?

OBVIOUSLY THERE IS NO EVIDENTIARY HEARING --

WE HAVE YOUR EXPERT'S REPORT.

I'M OBVIOUSLY GIVING INFORMATION THAT'S NOT IN THE RECORD BUT MY EXPERT, HE IS WILLING TO TESTIFY TO THE FACT THAT A THYROID DISORDER HAS A LONG HISTORY OF ASSOCIATION WITH CLINICAL DEPRESSION AND WITH MOOD DISORDERS AND THAT IS WHAT HE DIAGNOSED MR.^PARDO WITH. THE MOOD DISORDER SECONDARY TO A MENTAL ILLNESS.

DOES THE RECORD EXPLAIN WHY THIS MOTION WAS FIRST FILED IN MAY OF 1992 AND THERE WAS NOT A HEALTH HEARING -- HUFF HEARING UNTIL MARCH OF 2002?

IT DOES IN TERMS OF THE CHIEF JUDGE IN MIAMI-DADE COUNTY HAD ASKED FOR REPORTS FROM BOTH THE STATE AND FROM THE DEFENSE AS TO WHY WAS THIS DELAY AND BRIEFLY IF I COULD EXPLAIN BETWEEN 1992 AND 1997, MR.^PARDO'S CODEFENDANT, ROLANDO GARCIA, HIS CONVICTIONS WERE OVERTURNED BY THIS COURT AND HE WAS BEING RETRIED AND WE HAD NO ACCESS TO THE STATE FILES AND THERE WAS AN AGREEMENT BETWEEN THE STATE AND THE DEFENSE THAT THE CASE WOULD BE ON HOLD BECAUSE MR.^PARDO COULDN'T HAVE ACCESS TO THE STATE FILES. AND FROM 1997 TO 2000, THAT'S WHEN THE PUBLIC RECORDS LITIGATION WAS GOING ON AND SINCE THEN THIS CASE HAS BEEN ACTIVELY LITIGATED. SO THE BIGGEST TIME PERIOD REALLY HAD TO DO WITH THE FACT THAT IT WAS DURING THE CODEFENDANT'S RETRIAL, THE STATE DID NOT OPEN UP THEIR FILES TO US. ONE MORE THING BEFORE I SIT AND I WANT TO SAVE TIME FOR REBUTTAL IS I WANT TO MAKE THE POINT THAT HIS ACTIONS AT TRIAL DEMONSTRATE HIS INCOMPETENCY. ONE, HE TELLS THE JURY TO DISREGARD WHAT THE ACTUAL DEFENSE WAS AND SECONDLY HE TELLS THE JURY THAT -- HE TELLS THE JURY AS A POLICE OFFICER HE UNDERSTANDS WHAT THE DEFINITION OF MURDER IS.

CHIEF JUSTICE: I DON'T WANT TO STOP YOU ON THAT BUT THAT CLAIM IS PROCEDURALLY BARRED BECAUSE THAT WOULD BE ON THE FACE OF THE RECORD AND THAT IS SOMETHING WE WOULD CONSIDER IN DECIDING WHETHER HE APPEARED ON THE FACE OF THE RECORD TO BE INCOMPETENT BUT DO YOU WANT TO SAVE THE REST OF YOUR TIME?

I DO, THANK YOU.

MAY IT PLEASE THE COURT, SANDRA JAGGARD, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE.

CHIEF JUSTICE: IT WAS EASIER WHEN WE HAD A RECORD RATHER THAN GUESSING ABOUT THESE THINGS AND THIS IS COMING UP KIND OF A STRANGE WAY, BUT WHY ISN'T HE AT THE VERY LEAST ENTITLED TO AN EVIDENTIARY HEARING ON THIS ISSUE TO FLESH OUT EXACTLY WHAT THIS THYROID HAS TO DO WITH HOW CLEAR IT SHOULD HAVE BEEN THAT MR.^PARDO WAS INCOMPETENT AT THE TIME OF TRIAL?

BECAUSE HE DIDN'T PLEAD IT SUFFICIENTLY. HE JUST PLED THAT THE THYROID DISORDER CAUSED AN ALTERED MENTAL STATE. AN ALTERED MENTAL STATE DOES NOT MAKE ONE INCOMPETENT AND WHEN FOUR EXPERTS FIND HIM COMPETENT AS THIS COURT THROUGH THE QUESTIONS HAS BEEN RECOGNIZING THIS MORNING, COMPETENCY IS AN EXTRAORDINARILY LIMITED ISSUE, WHETHER OR NOT THE DEFENDANT UNDERSTANDS THE NATURE OF THE PROCEEDINGS AND HAS THE CAPACITY TO ASSIST COUNSEL.

HE PLED INSANITY, CORRECT?

YES.

AND OBVIOUSLY THERE ARE PEOPLE WHO ARE AT LEAST ALLEGING THEY ARE INSANE THAT GO TO TRIAL EVERY DAY AND PLEAD INSANITY DEFENSE AND GO TO TRIAL SO WE HAVE TO DISTINGUISH BETWEEN WHETHER HE WAS INSANE OR INCOMPETENT TO STAND TRIAL?

THEY ARE DISTINCTLY DIFFERENT SITUATIONS LEGALLY. INSANITY IS WHETHER OR NOT YOU UNDERSTOOD THE NATURE AND CONSEQUENCES OF YOUR ACTIONS AND HAD THE ABILITY TO CONTROL THEM AT THE TIME YOU WERE COMMITTING THE CRIMES. COMPETENCY IS WHETHER YOU UNDERSTAND THE NATURE OF THE PROCEEDINGS AND CAN ASSIST COUNSEL AT THE TIME OF TRIAL. SO THEY REALLY DON'T HAVE VERY MUCH TO DO WITH ONE ANOTHER. ONE CAN BE COMPETENT AND HAVE BEEN INSANE AT THE TIME. ONE COMMITTED THE CRIME, ONE COULD HAVE BEEN SANE AT THE TIME ONE COMMITTED THE CRIME AND BE INCOMPETENT AT THE TIME OF THE TRIAL.

CHIEF JUSTICE: SO YOU ARE SAYING THAT THE PLEADING ONLY PLEADS THAT HE WOULD HAVE HAD AN ALTERED MENTAL STATE. WHAT ELSE ABOUT WHY THERE SHOULDN'T BE AN EVIDENTIARY HEARING.

THIS COURT ON DIRECT APPEAL DETERMINED THAT THERE WAS NO REASON FOR A COMPETENCY HEARING BECAUSE THERE WERE FOUR EXPERTS WHO FOUND HIM COMPETENT.

CHIEF JUSTICE: WHAT IF AFTERWARDS THE DEFENDANT SAYS I HAVE EXPERTS THAT WILL SAY THAT ALL FOUR OF THOSE FORGOT TO DO THE, YOU KNOW, X, Y, Z TEST AND THAT X, Y, Z TEST CONCLUSIVELY SHOWS THAT SOMEBODY THAT ACTS THIS WAY, THAT IS KEPT UP AND ADMITS NINE MURDERS AND CONTRADICTS THAT HE IS SANE, AND THAT THOSE PEOPLE ARE DEFINITELY INCOMPETENT. IS THERE EVER A SITUATION WHERE WHAT WE FIND OUT AFTER, YOU KNOW, WE'RE LOOKING AT THE RECORD BUT WHERE YOU HAVE SOMETHING AFTERWARDS THAT SAYS, WELL, EVERYBODY WAS OPERATING WITH THE WRONG SET OF ASSUMPTIONS ABOUT THIS PERSON.

YES, TO PLEAD A SUBSTANTIVE INCOMPETENT CLAIM THE DEFENDANT HAS TO PLEAD CLEAR AND CONVINCING EVIDENCE THAT HE WAS, IN FACT, INCOMPETENT AT THE TIME OF TRIAL. ONE HAS TO CONSIDER THE RETROACTIVE COMPETENCY DETERMINATIONS ARE SUSPECT, AND ONE HAS TO CONSIDER THAT IT IS WELL-RECOGNIZED THAT BEING ILL IS NOT THE SAME AS BEING INCOMPETENT, MENTALLY OR PHYSICALLY.

CHIEF JUSTICE: YOU SAID THAT AGAIN ALL WE ARE TALKING ABOUT WAS WHETHER THERE SHOULD BE A HEARING WHERE THIS ONE EXPERT WOULD HAVE SAID THIS IS WHAT THE EVIDENCE IS AND WE WOULD HAVE SORT OF HAD TO --

A SPECIFIC PLEADING BECAUSE OF THIS ILLNESS HE DID NOT UNDERSTAND THE NATURE OF THE CHARGES IN X, Y AND Z WAY. HE DID NOT UNDERSTAND THE NATURE OF THE PENALTY IN X, Y AND Z WAY. HE DID NOT UNDERSTAND THE FUNCTION OF THE PROSECUTOR.

AND HE HAS NOT PLEADED ALL OF THAT?

NO, HE HAS NOT.

CHIEF JUSTICE: AND THERE WAS AN EVIDENTIARY HEARING ON THIS -- IN THIS CASE ON SEVERAL ISSUES.

THERE WAS AN EVIDENTIARY HEARING ON A CLAIM OF CONFLICT OF INTEREST BASED ON A MEDIA CONTRACT ENTERED AFTER THE CASE IS OVER. THAT IS NOT AN ISSUE ON APPEAL. THERE WAS AN EVIDENTIARY HEARING ON THE STRATEGIC DECISION TO JOIN ALL OF THE CHARGES IN THIS CASE, INCLUDING ONE MURDER CHARGED IN A SEPARATE INDICTMENT, AND COUNSEL TESTIFIED AND THE TRIAL COURT FOUND --

YOU AGREE IF HE PROPERLY PLED THIS COMPETENCY CLAIM IN THE WAY THAT YOU HAVE OUTLINED, THAT IS THAT THERE WAS A BLATANT CASE OF INCOMPETENCY THAT WAS MISSED BY THE EXPERTS OR WHATEVER, THAT HE WOULD AT LEAST BE ENTITLED TO A HEARING ON IT; IS THAT RIGHT? WHAT I AM TRYING TO DO IS NARROW DOWN OUR FOCUS. SO OUR FOCUS HAS TO REALLY BE ON WHETHER HE DID OR DID NOT STATE THAT. CLAIM ADEQUATELY.

I WOULD AGREE THAT A SUBSTANTIVE INCOMPETENT CLAIM CAN BE RAISED IF HE CAN PRESENT CLEAR AND CONVINCING EVIDENCE THAT HE WAS, IN FACT, INCOMPETENT AT THE TIME OF TRIAL TAKING INTO CONSIDERATION THAT RETROSPECTIVE COMPETENCY EVALUATIONS ARE SUSPECT AND PLEADING IT IN TERMS OF COMPETENCY AND NOT JUST A GENERAL PRESENTATION AND HE DID NOT.

CHIEF JUSTICE: WHAT'S YOUR BEST CASE, I MEAN WHAT'S THE CASE ON THAT ISSUE?

THE CASE ON THE DISTINCTION BETWEEN A SUBSTANTIVE AND COMPETENCY CLAIM?

CHIEF JUSTICE: YOU SAID IF YOU PLED IT A CERTAIN WAY.

I WOULD USE JAMES VERSUS SINGLETARY AND MEDINA VERSUS SINGLETARY WHICH TALKS ABOUT THAT A DEFENDANT CAN BE ILL BUT STILL BE COMPETENT.

HAVE WE EVER GRANTED A NEW TRIAL BASED ON THE FACT THAT THE INITIAL THREE OR FOUR COMPETENCY EVALUATIONS WERE INVALID OR INSUFFICIENT AND THE DEFENDANT COMES UP ON POST-CONVICTION AND SAYS I HAVE THIS NEW COMPETENCY EVALUATION WHICH SAYS I WAS INCOMPETENT AT THE TIME OF TRIAL AND THEIRS WAS INSUFFICIENT AND SO WE ARE GOING TO REVERSE AND GRANT FOR A NEW TRIAL. HAVE WE EVER DONE THAT?

I AM NOT AWARE OF ANY SUCH CASE. YOU HAVE IN MASON REMANDED A CASE THAT CAUSED THE EXPERT TO MISS ORGANIC BRAIN DAMAGE REMANDED FOR A RETROSPECTIVE COMPETENCY RECOMMENDATION.

CHIEF JUSTICE: I WANT TO MAKE SURE I GOT THE ANSWER. THIS WAS NEVER PLED AS INEFFECTIVE ASSISTANCE OF COUNSEL IN PREVENTING THE INSANITY DEFENSE OR INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILURE TO PRESENT MITIGATION.

IT WAS PLED AS A FAILURE TO PREVENT AN INSANITY ISSUE BELOW AND THAT HAS NOT BEEN BRIEFED.

IS THERE ROOM IN THE 3.850 ALLEGATION CONCERNING THIS NEW EXPERT OF A -- THAT THE FAILURE THAT THIS EXPERT SHOULD HAVE BEEN USED AS A PART OF THE IN INSANITY DEFENSE

BECAUSE IT SEEMS TO ME WHAT WE ARE REALLY TALKING ABOUT HERE IS MORE OF -- MORE INFORMATION CONCERNING HIS MENTAL STATE AS OPPOSED TO HIS COMPETENCY, AND SO THAT ASSUMES, SUBSUMED IN THE ALLEGATION THAT IS MADE IN THE 3.850 MOTION.

THAT IS A SEPARATE CLAIM IN THE RULE 3.850 MOTION THAT THE DEFENDANT HAS NOT BRIEFED BEFORE YOU AND HAS THEREFORE WAIVED ANY ISSUE REGARDING.

AND WAS THE SAME EXPERT ALLEGED IN THAT ALLEGATION?

YES.

AND SO WHY WAS THERE NO EVIDENTIARY HEARING ON THAT ASPECT OF THE 3.850?

THE CLAIM ON THAT ASPECT WAS THAT IT WOULD JUST GIVE A DIFFERENT BASIS FOR THE INSANITY ALLEGATION, AND NOT THAT IT WOULD HAVE CHANGED, NUMBER ONE, YOU'VE GOT A NEW EXPERT. YOU DON'T HAVE AN EXPERT WHO -- COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE AND PRESENT THE UNDERLYING BASIS FOR THE INSANITY DEFENSE. AGAIN, WITH REGARD TO INSANITY THE QUESTION IS DID THE DEFENDANT UNDERSTAND THE NATURE AND CONSEQUENCES OF HIS ACTIONS? AND THEY WEREN'T ALLEGING ANY CHANGE IN TESTIMONY REGARDING AN ABILITY TO UNDERSTAND THE NATURE AND CONSEQUENCES OF HIS ACTIONS. THEY WERE JUST CLAIMING THAT THERE WOULD BE A DIFFERENT BASIS ON WHICH TO ALLEGE THAT HE HAD THE SAME INSANITY, AND THAT WOULD BE WHY THAT WOULD HAVE BEEN DENIED PARTICULARLY WHEN ONE CONSIDERS THE METICULOUS PLANNING AND OTHER THINGS THAT WENT INTO THESE MURDER. THESE WEREN'T SPUR OF THE MOMENT MURDERS THAT SOMEBODY CRAZY JUST COMMITTED. THE ALLEGED INSANITY WAS THAT MR.^PARDO FELT A NEED TO BE SUPER COP AND ELIMINATE VERMIN WHO WAS WHAT HE CALLED DRUG DEALERS.

WAS THERE CCP FOUND FOR ANY OF THE MURDERS?

I BELIEVE THERE MAY HAVE BEEN, YES, YOUR HONOR. IF THE COURT HAS NO FURTHER QUESTIONS THE STATE WOULD RESPECTFULLY REQUEST YOU AFFIRM.

CHIEF JUSTICE: THANK YOU. REBUTTAL.

I WOULD LIKE TO JUMP RIGHT IN ABOUT THE SUFFICIENCY OF THE PLEADING BECAUSE I THINK WHAT THE STATE HAS TOLD THE COURT IS MISLEADING IN TERMS OF WHAT IS IN THE 3.850. IT WASN'T SIMPLY THAT MR.^PARDO HAD AN ALTERED MENTAL STATE. IT WAS VERY SPECIFIC THAT HE HAD A MOOD DISORDER THAT WAS SECONDARY TO A THYROID DISORDER. THEY HAD CLINICAL DEPRESSION, THAT THE ACTUAL REPORTS OF THE EVALUATEORS INDICATE TELL-TALE SIGNS OF A THYROID DISORDER.

CHIEF JUSTICE: DON'T YOU THINK IN ORDER TO GET THROUGH WHAT YOU'VE GOT TO GET THROUGH IS THAT YOUR EXPERT WOULD HAVE TO BE ABLE TO BE PREPARED TO TESTIFY THAT BASED ON THIS IT WOULD HAVE BEEN ABSOLUTELY CLEAR THAT HE WAS NOT COMPETENT IN 1986.

NO, THE QUESTION IS MORE NOT WHETHER AN EXPERT COULD SAY WHAT HAPPENED IN 1986. THE QUESTION IS WHETHER THESE EVALUATIONS THAT THIS COURT RELIED ON ON DIRECT APPEAL WERE RELIABLE AND SCIENTIFICALLY VALID AND HOW CAN FOUR EXPERTS, INCLUDING A MEDICAL DOCTOR SAY THIS MAN IS MISSING HIS EYEBROWS, HAIR ON HIS ARMS. IT IS NOT MALE PATTERN BALDNESS HERE, HE IS MISSING CHUNKS OF EYE LASHES, NO HAIR ON HIS ARM AND THEY COMPLETELY DROPPED THE BALL ON THIS SO I ASKED FOR AN EVIDENTIARY HEARING ON THAT ISSUE.

LET ME ASK YOU THE SAME QUESTION I ASKED YOUR OPPONENT WHICH IS HAS THIS COURT EVER

GRANTED A CLAIM BASED ON THE FACT THAT THE ORIGINAL COMPETENCY EVALUATION BY THREE EXPERTS WAS INSUFFICIENT OR SOMEHOW INVALID AND NOW YOU HAVE A NEW COMPETENCY EVALUATION THAT YOU INTEND TO PRESENT?

IN MASON VERSUS STATE THIS COURT DID, IT WASN'T FOR A NEW TRIAL. THEY DID REMAND IT FOR AN EVIDENTIARY HEARING ON THE SUFFICIENCY OF THE COMPETENCY EVALUATIONS BUT MASON HAS BEEN COMPLICATED BECAUSE THERE WASN'T AN ACTUAL COMPETENCY EVALUATION IN THE CASE THAT WAS AT BAR. IT WAS CONTEMPORANEOUS.

THIS COURT OR THIS U.S. SUPREME COURT HAS EVER GRANTED A NEW TRIAL BASED ON THE THEORY THAT THE ORIGINAL MENTAL HEALTH EXPERTS WERE INCOMPETENT THEMSELVES OR THAT THE REPORTS WERE INSUFFICIENT TO DETERMINE COMPETENCY.

THE MOST ON PINT WOULD BE MASON ON THE ISSUE OF WHETHER THE EVALUATIONS WERE SUFFICIENT. GOING ON THE INSANITY IS GOING OFF ON A TANGENT. THE QUESTIONS ARE WHETHER THE EVALUATIONS ARE SCIENTIFICALLY VALID.

IT STARTED WITH THE IDEA THAT YOU SAID, WELL, THERE ARE THINGS THAT HAPPENED AFTERWARDS WHEN HE WAS IN JAIL AND I SAID WAS THERE ANYTHING IN THE RECORDS THAT WOULD HAVE PUT ANYONE ON NOTICE THAT THIS WAS OCCURRING AT OR ABOUT THE TIME OF THE TRIAL. BUT REALLY YOU NEVER RAISED AS A SEPARATE CLAIM THAT THERE WAS ANYTHING INEFFECTIVE IN THE WAY THE -- AT LEAST BEFORE THIS COURT THE WAY THE INSANITY DEFENSE WAS PRESENTED OR ANY MENTAL HEALTH MITIGATION.

THAT'S CORRECT. NONE IN TERMS OF MITIGATION AND IN TERMS OF INEFFECTIVENESS REGARDING THE INSANITY ONLY THAT THE TRIAL ATTORNEY FAILED TO OBTAIN A COMPETENT EXPERT SO THE REAL QUESTION IS AN EVIDENTIARY HEARING, WE WOULD BE ABLE TO SHOW THAT THE ACTUAL EVALUATIONS WERE UNRELIABLE AND SCIENTIFICALLY INVALID AND AKIN TO A MEDICAL MALPRACTICE. WITH THAT I WOULD ASK YOU TO REVERSE THE LOWER COURT.

CHIEF JUSTICE: THANK YOU TO BOTH OF YOU. THE COURT WILL BE IN RECESS UNTIL 8:30 TOMORROW MORNING.

THE MARSHAL: PLEASE RISE.