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State of Florida v. Thomas Knight

NEXT CASE ON THE COURT'S DOCKET IS STATE VERSUS MUHAMMAD AND MUHAMMAD VERSUS CROSBY. GOOD MORNING.

GOOD MORNING, YOUR HONOR. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. SANDRA JAGGARD, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE. WE ARE HERE, THIS COURT REMAENDED THIS CASE FOR AN EVIDENTIARY HEARING ON A BRADY VIOLATION. THE TRIAL COURT HELD THAT EVERYDAY YEAR HEARING, AND AT THE END OF IT ISSUED AN ORDER IN WHICH HE ASSUMED INTO EXISTENCE, TWO OF THE, AT LEAST TWO IF NOT THREE PRONGS OF THE THREE OR FOUR-PRONG BRADY TEST, AND THEN MADE A MATERIALIALITY DETERMINATION, INCLUDING DISCLOSED EVIDENCE AS UNDISCLOSED BRADY INFORMATION.

BEFORE -- WELL, BEFORE YOU GET STARTED, WE HAVE HAD A RECORD PROBLEM IN THIS CASE, AND I THINK IT IS VERY IMPORTANT FOR BOTH OF YOU TO ADDRESS THAT DURING THE COURSE OF YOUR ARGUMENT, AND SO LET ME ASK YOU FIRST, WHETHER YOU ARE CONFIDENCE THAT THE RECORD THAT, AS IT NOW STANDS, THAT HAS BEEN FILED WITH THIS COURT, CONTAINS ALL OF THE MATERIAL THAT WAS PLACED IN EVIDENCE IN THE TRIAL COURT RECORD THAT THE TRIAL COURT MAY HAVE BEEN DEALING WITH AT THE TIME HE RENDERED HIS DECISION. CAN YOU --

I HAVE NOT HAD THE OPPORTUNITY TO REVIEW THE OTHER EXHIBITS THAT WERE SENT TO YOU. THERE WAS AN ISSUE, AND THIS COURT REFERRED TO IT AS EXHIBIT 1. THE LETTER IS, IN FACT, EXHIBIT 2. EXHIBIT 1 WAS THE --

IS THIS THE LETTER WITH THE ATTACHMENTS?

YES. DIDN'T HAVE THE ATTACHMENTS. I THINK WE HAVE CLEARED UP THE ISSUE ABOUT THE ATTACHMENTS, BUT THE LETTER AND THE ATTACHMENTS ARE EXHIBIT 2. THEY ARE THE NOT EXHIBIT 1. EXHIBIT 1 IS THE REPORTS, AND THE TRANSSCRIBED STATEMENTS.

SO EXHIBIT 2 IS THE LETTER AND THE ATTACHMENTS, AND YOU ARE FAIRLY CONFIDENT NOW, THAT THAT HAS BEEN RESOLVED, THAT THOSE ARE FILED AND THE RECORD LODGED IN THIS COURT NOW. IS THAT CORRECT?

I BELIEVE THEY ARE.

OKAY.

SO HOW MANY INMATES AND EMPLOYEES' STATEMENTS SHOULD THERE BE ATTACHED TO EXHIBIT 2? BECAUSE I AM CONCERNED, BECAUSE THE TRIAL COURT'S ORDER SEEMS TO TALK ABOUT INMATES WHO ACTUALLY TESTIFIED AT THE EVIDENTIARY HEARING, AS OPPOSED TO THE STATEMENTS THAT WERE ALLEGEDLY ATTACHED TO THIS LETTER.

THE ALLEGED BRADY VIOLATION HAD NOTHING DO WITH, FIRST OF ALL, THERE ARE NO INMATE STATEMENTS ATTACHED TO THE LETTER. THERE ARE SEVEN UNSIGNED, UNDADE, UNATTRIBUTED STATEMENTS THAT APPEAR TO BE FROM GUARDS.

APPEAR TO BE FROM WHO?

FROM THE GUARDS.

OKAY. FROM THE GUARDS.

THERE DON'T APPEAR TO BE ANY INMATE STATES MUCH THE BRADY VIOLATION AS ORIGINALLY ALLEGED, CONCERNED GUARD STATEMENTS. THERE WAS NO CLAIM ABOUT INMATE STATEMENTS, AND THE INNATES MAITS WHO TESTIFIED ON-AND THE INMATES WHO TESTIFIED AT THE EVIDENTIARY HEARING, ALL SAID THEY HAD HE BEGIN THEIR STATEMENTS TO THE STATE, AND IF WE DON'T HAVE IT, WE ARE NOT RESPONSIBLE FOR TURNING IT OVER.

WHEN WE WERE REMANDED THE CASE, AND I HATE TO INTERRUPT YOUR ARGUMENT FROM THE OUTSET, BUT WHEN WE REMANDED THIS, THEN, FOR THIS LIMITED BRADY ISSUE, WERE THE ONLY ALLEGATIONS IN THE PETITION FOR RELIEF, THIS LETTER AND THE ATTACHMENTS TO THE LETTER, OR WAS THERE, HELP ME WE THAT.

THE ALLEGATIONS WERE THAT WE NEVER GAVE THEM ANY OF THE INCIDENT REPORTS OR ANY OF THE TRANSSCRIBED STATEMENTS FROM ANY OF THE GUARDS. IT IS MY UNDERSTANDING OF WHAT THE ALLEGATIONS WERE. WHAT HAPPENED AT THIS EVIDENTIARY HEARING, AND THE REASON THE TRIAL COURT ERRED, NUMBER ONE, YOU CAN'T ASSUME INTO EXISTENCE, PRONGS TO GRANT RELIEF ON A CLAIM. YOU HAVE TO FIND AND PROVE IT, AND IN THIS RECORD THERE, IS NO COMPETENT, IS SUBSTANTIAL EVIDENCE THAT WOULD SUPPORT SUCH A FINDING, SO THERE IS NO WAY TO MAKE A FINDING THAT THE STATE FAILED TO DISCLOSE THIS INFORMATION.

THIS INFORMATION, BEING THE STATES THAT WERE GATHERED IN THE COURSE OF THE INVESTIGATION, THE STATE OF THE GUARDS.

OF THE GUARDS.

THERE IS NO EVIDENCE IN THE RECORD THAT THAT, THOSE STATEMENTS, WHICH THE PROSECUTOR SAID, BACK IN 1982, THERE ARE NO STATEMENTS RELATIVE TO THE DEFENDANT, MADE BY THE EMPLOYEES, AND THE DEFENSE LAWYER SAID I NEVER GOT THESE STATEMENTS OR I WOULD HAVE USED THEM, THAT THAT, THERE IS NO EVIDENCE THAT --' THERE IS NO DEFENSE LAWYER. THERE IS A PRO SE DEFENDANT.

BUT IS THAT WHAT AWE ARE TALKING ABOUT, YOU ARE TALKING ABOUT, JUST LET'S STICK TO THE GUARD STATES. ARE YOU IS SAYING THAT -- THE GUARD STATEMENTS. ARE YOU SAYING THAT THERE IS NO COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT THE FACT THAT THE STATE EVER TURNED THOSE OVER?

THE COMPETENT SUBSTANTIAL EVIDENCE IS THAT THE STATE DID TURN THOSE OVER.

DID THE STATE TESTIFY THAT THEY TURNED THEM OVER?

KEEP IN MIND, BRADY IS ABOUT HAVING THE INFORMATION, NOT THE DOCUMENTS. THE DOCUMENTS ARE NOT ADMISSIBLE. THEY ARE NOT SUBSTANTIVE EVIDENCE. THEY CAN'T COME IN AS SUBSTANTIVE EVIDENCE. THE BEST YOU CAN DO IS HAVE THE PEOPLE TESTIFY TO WHAT THEY SAID IN THE REPORTS, AND IF THEY DON'T SAY WHAT THEY SAID IN THE REPORTS, YOU CAN IMPEACH THEM WITH THEM BUT IT DOESN'T MAKE IT SUBSTANTIVE EVIDENCE. IT WOULD THEN ONLY GOING GOE TO THE CREDIBILITY.

EVEN IMPEACHMENT EVIDENCE, THOUGH, IS DISCOVERABLE -- ONLY GOING TO GO TO THE CREDIBILITY.

EVEN IMPEACHMENT EVIDENCE IS, THOUGH, DISCOVERABLE -- ONLY GOING TO GO TOE THE

CREDIBILITY.

> THIS DEFENDANT STABBED A GUARD TO DEATH IN A HALLWAY ON DEATH ROW, WHERE HE AND THE GUARD WERE THE ONLY TWO PEOPLE IN THE HALLWAY AND THE HALLWAY WAS LOCKED, SO THERE IS, THEY ATTEMPTED TO IMPEACH THE WITNESSES AT THE TIME OF TRIAL, AND AS MY OPPONENT ADMITS IN HER BRIEF, NO AMOUNT OF IMPEACHMENT WOULD HAVE CHANGED THE FACT THAT THEY WERE GOING TO CONVICT THIS PERSON. IT IS ONLY IF YOU CAN USE THEMACY SUBSTANTIVE EVIDENCE TO SHOW AN INSANITY DEFENSE, THAT THEY BECOME RELY VAENT.

THE JUDGE DETERMINED THAT THIS DID NOT GO TOE INSANITY -- THAT THEY BECK RELEVANT.

THE JUDGE -- THAT THEY BECOME RELEVANT.

THE JUDGE DETERMINED THAT THIS DIDN'T GO TOE EVIDENCE.

THIS INFORMATION WAS DISCLOSED IN THE DEPOS, AND COUNSEL ADMITTED HE KNEW THE IMPORTANT FACTS THAT THE DOCTOR TESTIFIED, THAT THE DEFENDANT'S EYES WERE WIDE, THAT HE HAD A BLANK EXPRESSION, THAT HE WAS CALM, THAT HE WAS UPSET IN THE MORNING ABOUT LOSING HIS VISIT WITH HIS MOTHER. COUNSEL KNEW ALL OF THOSE FACTS. HE KNEW WHO HAD TESTIFIED TO THEM. HAD HE HAD DEPOSITION TESTIMONY FROM THE WITNESSES WHO HAD TESTIFIED TO IT, AND THE TRIAL COURT MAKES NO FINDING ON GUILT PHASE AT ALL. IT IS THE STATE'S --' MY QUESTION IS IT IS BRADY MATERIAL, IF IT IS EITHER IMPEACHMENT OR EXCULPATORY. HAVE WE HELD THAT EVIDENCE THAT GOES TO MITIGATION ALONE, IS CONSIDERED EXCULPATORY EVIDENCE THAT MUST BE PRODUCED?

YES, BECAUSE IT IS EXCULPATORY AS TO PUNISHMENT, AND THE UNITED STATES SUPREME COURT HAS SAID --' AT LEAST BY IMPLICATION, HAS THE TRIAL COURT DENIED ANY RELIEF AS TO THE GUILT PHASE?

YES.

IT IS ONLY GRANTED --' YES, TAN IS THE STATE'S POSITION THAT HE DID THAT WRONGLY, BECAUSE THE RECORD REFLECTS THAT COUNSEL KNEW THESE FACTS. HE HAD HE THESE DEPOSITIONS FROM THESE WITNESSES. IF THE DEFENDANT, THE REASON WHY DEFENDANT FIRED COUNSEL IS COUNSEL WANTED TO PRESENT AN INSANITY DEFENSE AND THE DEFENDANT DIDN'T WANT TO PRESENT AN INSANITY DEFENSE.

WAIT A MINUTE. YOU SAID THAT DEFENSE COUNSEL HAD THE DEPOSITION OF THESE WITNESSES. ARE YOU SAYING THAT THE DEFENSE COUNSEL DEPOSED ALL OF THESE GUARDS OR PRISON EMPLOYEES, THAT, WHOSE STATEMENTS WERE ATTACHED TO THIS LETTER?

WHO, THEY ARE UNATTRIBUTED STATEMENTS IN THE LETTER, SO YOU CAN'T EXACTLY BE SURE THAT THEY ARE EXACTLY THESE PEOPLE, BUT FROM THE ACTIONS THEY DESCRIBED IN THE LETTERS, IN THE REPORTS, IN THESE UNSIGNED, UNATTRIBUTED, UNDATED STATEMENTS, THEY APPEAR TO BE THE SAME PEOPLE THAT HE WAS DEPOSING.

AND DURING THESE DEPOSITIONS, THE SUBSTANCE, ARE YOU TELLING US THAT THE SUBSTANCE OF INFORMATION IN THESE UNSIGNED, UNDATED STATEMENTS, WAS A PART OF THE DEPOSITIONS?

YES, AND COUNSEL ADMITTED TO BEING AWARE OF EVERYTHING THAT THE DEFENSE HAS CLAIMED IS IMPORTANT HERE. THE BIG EYES. THE BLANK STARE. THE CALMNESS AND THE BEING UPSET ABOUT LOSING THE VISIT WITH HIS MOTHER.

SO THERE IS REALLY NOTHING NEW ABOUT THOSE THINGS THAT THE TRIAL COURT SEEMED TO

PLACE SPECIAL EMPHASIS ON.

WHAT THE TRIAL COURT ACTUALLY SAID IS HE COUNTS DEPOS AS UNDISCLOSED BRADY INFORMATION AND SAYS IT IS MATERIAL BECAUSE THE INFORMATION IS IN THE DEPOS. THE DEPOS SHOULD HAVE BEEN COUNTED AS DISCLOSED INFORMATION, AND YOU SHOULD HAVE COMPARED IT TO THE STATEMENTS, TO SEE IF IT IS CUMULATIVE, AND THAT WAS THE TRIAL COURT'S OTHER ERROR IN GRANTING RELIEF, OTHER THAN FINDING --' THE IMPLICATION --' THE IMPLICATION FROM THE TRIAL COURT'S ORDER, IF I AM GIVING IT A FAIR READING, IS THAT THERE IS A LOT OF THIS INFORMATION ABOUT HOW THE DEFENDANT LOOKED, IMMEDIATELY AFTER COMMITTING THIS CRIME, THAT WASN'T DISCLOSED TO THE DEFENSE, AND THAT SEEMS TO BE THE THRUST OF THE, AND THAT THIS WOULD HAVE BEEN IMPORTANT FOR THE TRIAL JUDGE, WHO IS THE SAME TRIAL JUDGE, CORRECT?

YES.

IN CONSIDERING MITIGATION. I AM JUST TRYING, NOW, TO PARAPHRASE MY READING OF WHAT THE TRIAL JUDGE HAS SAID IN THE ORDER. DO YOU AGREE WITH THAT PARAPHRASE?

NO. WHAT THE TRIAL COURT IS SAID IN THE ORDER WAS THIS INFORMATION WASN'T DISCLOSED TO ME.

OKAY. SO HE DID NOT FIND --' AND HE ACCIDENT COUNT.

HE DOES NOT FIND THAT THIS INFORMATION WAS DISCLOSED TO THE DEFENSE.

NO. BECAUSE HE IS COUNTING THE DEPOSITION AS UNDISCLOSED EVIDENCE. THE DEFENSE TOOK THE DEPOSITIONS.

THAT MAY BE A REASON TO REACH THAT CONCLUSION, BUT YOU ARE SAYING THAT THIS ORDER DOES NOT SAY THAT THIS INFORMATION HAD WRONGFULLY BEEN BE HELD FROM THE DEFENSE.

NO. WHAT HE SAYS IS, ASSUMING IT IS SUPPRESSED, THIS INFORMATION IS ONLY CONTAINED IN REPORTS, TRANSSCRIBED STATEMENTS AND DEPOSITIONS. AND I DIDN'T HAVE IT.

SO THAT IS PART OF THE FLAW OF HIS DECISION. YOU HAVE, JUST HOLD ON A MINUTE, THAT YOU HAVE BROKEN UP YOUR TIME TEN AND TEN, AND, OF COURSE, WE ALL HAVE QUESTIONS, AND ESPECIALLY ABOUT THIS RECORD ISSUE HERE, SO WE ARE GOING TO CONTINUE WITH THE QUESTIONS, BUT REALIZE THAT WE ARE NOW OVER THAT INITIAL --

I WANTED TO RESERVE TIME, IN CASE MY OPPONENT CHOSE TO --' YOU ADMITTED THIS IS A PRO SE CASE NOT AN ATTORNEY. TWO CASE. WERE THE -- TO QUESTIONS. WERE THE DEPOSITIONS TRANSSCRIBED, AND IF SO, WERE THEY PROVIDED TO THE DEFENDANT?

YES. THEY WERE FILED IN THE COURT FILE AND THE RECORD SHOWS THAT. I WILL RESERVE THE REMAINING REBUTTAL TIME.

MAY IT PLEASE THE COURT.

CHIEF JUSTICE: GOOD MORNING.

MAY IT PLEASE THE COURT.

CAN YOU HELP US WITH THE RECORD ISSUE, TOO, THAT IS THAT, IF IT IS EXHIBIT 2, ARE YOU CONFIDENT, NOW, THAT AT LEAST EXHIBIT 2, THE LETTER, AND THE ATTACHMENTS TO THE LETTER, THAT THOSE NOW HAVE BEEN FILED WITH THE COURT?

I HAVE NOT COME BACK INTO THIS COURT TO CHECK WHAT WAS SUBSEQUENTLY, TO OUR STIPULATION THAT WE ENTERED, SO I WOULD LIKE TO DOUBLECHECK THAT BEFORE SAYING I AM CONFIDENT AS TO EXHIBIT 2 AND 1. I AM CONFIDENT THAT DAFS EXHIBIT NO. 1 -- THAT DEFENSE EXHIBIT NO. 1 DOES INCLUDE THE LETTER, THE JUNE 1, 1981 LETTER, AND THE SEVEN TYPED STATEMENTS.

I WANT TO URGE BOTH OF YOU TO COME TOGETHER, YOU KNOW, ONE MORE TIME AFTER THE ARGUMENTS IN THIS CASE, AND GO TO THE CLERK'S OFFICE, AND, ALSO, TO TRY TO BE ABSOLUTELY CERTAIN THAT EVERYTHING THAT WAS BEFORE THE TRIAL COURT JUDGE, TO THE BEST OF YOUR ABILITY AND KNOWLEDGE, HAS BEEN LODGE IN THIS COURT, TOO, SO THAT WE CAN PROPERLY PROCEED TO RESOLVE THIS. ALL RIGHT. WOULD YOU GO ON. I WOULD LIKE YOU TO ADDRESS, FIRST OFF, REALLY, I DID HAVE SOME DIFFICULTY WITH THE TRIAL COURT'S ORDER, IN UNDERSTANDING, STARTING WITH THE PROPOSITION THIS THAT THIS COURT REMANDED THIS ON A VERY LIMITED BASIS OF THE BRADY ISSUE, AND THAT IS A BRADY ISSUE BEING UNDISCLOSED EXCULPATORY INFORMATION, YOU KNOW, WHETHER IT GOES TO MITIGATION OR GUILT, AND THAT THAT WAS THE NARROW ISSUE TO BE TRIED BY THE COURT. NOW, IN THE STATE'S APPEAL, THEY CHARACTERIZE THE TRIAL JUDGE AS, IN ESSENCE, SAYING THAT HE DID NOT CONCLUDE THAT THIS WAS INFORMATION NOT DISCLOSED TO THE DEFENSE, THAT HE REALLY CONCLUDED THAT THIS IS INFORMATION THAT WASN'T MADE AVAILABLE AND CALLED TO THE ATTENTION OF THE COURT, SO THE COURT COULD CONSIDER IT IN MITIGATION. AND HE CERTAINLY DWELLS ON THE POSSIBLE IMPACT OF THAT. IS SHE CORRECT, THAT THAT IS REALLY WHAT THE JUDGE WAS SAYING, AS OPPOSED TO THE BRADY PARAMETERS OF SOMETHING BEING WITHHELD FROM THE DEFENSE?

SURE. I WOULD ARGUE, YOUR HONOR, THAT IT IS IMPLICIT IN JUDGE CHANCE'S ORDER, THAT THIS EVIDENCE WAS NOT DISCLOSED, AND THAT HE KNEW SPECIFICALLY, WHAT HIS DUTIES WERE, IN ASSESSING BRAID. HE STAERTS OUT, HIS QUESTION IS WHETHER THE STATE WITHHELD EXCULPATORY MATERIAL E MATERIAL FROM THE DEFENDANT FROM DEFENSE -- MATERIAL FROM THE DEFENDANT, FROM THE DEFENSE. THEN HE GOES AND CITES BRADY AND YOUNG --' IT SEEMS TO BE UNDISPUTED -- IT SEEMS TO BE UNDISPUTE --

IT SEEMS TO BE UNDISPUTED, THINGS THAT WERE TAKEN AND THE COURT RECORD, AND HOW COULD THAT CONSTITUTE BRADY MATERIAL?

I THINK, YOUR HONOR, THAT IT IS A REASONABLE READING THAT WHAT THE JUDGE WAS DOING, WHEN HE SAID ASSUMING THE EVIDENCE, ASSUMING THAT IT WAS NEWLY-DISCOVERED, WHICH BECOMES WHAT IMPACT OF IT, AND THEN HE REFERENCED, HE MAKES REFERENCE TO THE DEPOSITIONS, THE STATEMENTS OF GUARDS AND THEN INMATE STATES, AND I THINK THEN HE IS HE MAKING HIS COLLECTIVE ANALYSIS, HIS CUMULATIVE ANALYSIS, WHICH HE HAS TO DO UNDER KYLES AND --

BUT WOULD YOU AGREE THAT THE DEPOSITIONS COULD NOT POSSIBLY BE BRADY MATERIAL?

RIGHT. RIGHT. IF --

COULD YOU ADDRESS, THEN FERTION THE DEPOSITIONS, WHAT IS REPRESENTED TODAY IS THAT THE STATEMENTS OF THESE GUARDS, THAT TALK ABOUT THE WIDE-EYED OR THAT, IN ESSENCE THAT THE GUARDS, IN THEIR DEPOSITIONS, TESTIFIED TO WHAT IS IN THE STATEMENTS. ARE THERE ANY MATERIAL VARIATIONS THAT SIGNIFICANT, WAS SIGNIFICANT TO JUDGE CHANCE, BUT SIGNIFICANT AS FAR AS THE, EITHER, YOU KNOW, THE MIGHT, THE -- THE MITIGATE -- THE PENALTY PHASE, THE GUILT PHASE.

YES, YOUR HONOR, AND SPECIFICALLY ONE OF THE DEPOS REFERRED TO MUHAMMAD AS HAVING A BLANK FACE, AND ANOTHER DEPOSITION DESCRIBED MR. MUHAMMAD'S EYES AS BEING BLOOD

SHOPPED AND MAYBE THAT WAS THE REASON THAT THEY APPEARED RED, AND THE DEPOSITIONS, WELL, THEY FURTHER WENT ON TO THERE WAS A BLANK, NO-CARE ATTITUDE, BUT IT DIDN'T EXPLAIN WHEN THAT WAS OR THE CIRCUMSTANCES, AND THEN NEXT SIMILAR TESTIMONY AT TRIAL, BECAUSE ASKARI MUHAMMAD ACTUALLY ASKED CERTAIN WITNESSES WHAT DID YOU OPEN OBSERVE ABOUT ME AND MY -- WHAT YOU -- WHAT DID YOU OBSERVE ABOUT ME AND MY DEMEANOR, AND THE WITNESS SAID JUST A NORMAL EXPRESSION, LIKE YOU HAVE GOT NOW. HOWEVER, THE ISSUE ATTACHED TO OUR LETTER IN JUNE 1, 1982, INCLUDE STATEMENTS THAT HE WAS VERY DISTURBED AND UPSET, WHEN HE WAS TOLD REGARDING HE COULDN'T SEE, YOU KNOW, COULDN'T HAVE HIS VISIT, THAT HIS FACIAL EXPRESSION WAS TO SAY I HAVE DONE SOMETHING TERRIBLE, AND HIS EYES APPEARED TO BE STRETCHED AT AN UNUSUAL SIZE. THAT IS WHEN HE WAS BEING ESCORTED OFF THE WING AFTER THIS HAD HAPPENED, AND THE OTHER UNDISCLOSED STATEMENT WAS SAYING THAT, ATTRIBUTED ASKARI MUHAMMAD TO BE LOOKING DOWN AT THE VICTIM WITH A BLANK EXPRESSION ON HIS LOOK. MR. BREWER, WHO DID NOT DESCRIBE ASKARI MUHAMMAD'S DEMEANOR IN HIS DEPOSITION OR AT TRIAL, SAYS A MUCH DIFFERENT, HE WAS MUCH DIFFERENT THAN NORMAL. EYES BIG AND LOOKED SCARY. REAL LARGE. AND THEN, IN ADDITION TO THAT, WE HAVE THE INMATES WHO OBSERVED THIS, WHICH WE INVESTIGATED AS A RESULT OF, OKAY, THERE IS SOMETHING WRONG HERE. THERE ARE OBSERVATIONS OF GUARDS SAYING HE DOESN'T APPEAR NORMAL, AND THEN THAT EVIDENCE WAS THAT HE WAS PACING IN HIS CELL, TALKING TO HIMSELF DURING THE DAY WHILE THIS WAS GOING ON.

YOU ARE SAYING THERE ARE OTHER MATERIAL DIFFERENCES. I HAVE ONE OTHER QUICK QUESTION, WHICH IS ON THE DEPOSITIONS, THE JUDGE SAID THAT THE INFORMATION IS IN DEPOSITIONS, INCIDENTS, REPORTS AND INTERVIEWS WHICH WERE NOT MADE PART OF THE OFFICIAL COURT RECORD AND WAS CONCERNED ABOUT IT, BECAUSE WE HAVE GIVEN THE COURT AN ADDITIONAL RESPONSIBILITY, UNDER FARR -- UNDER PHARR, TO FIND MITIGATION IN THE RECORD. WERE THE DEPOSITIONS MADE PART OF THE RECORD OR NOT?

SOME OF THEM. IT APPEARS. AND THE PROBLEM WITH THIS CASE IS THAT THERE HAVE BEEN PROBLEMS WITH THE RECORD, EVER SINCE THE TRIAL AND THE DIRECT APPEAL. CERTAIN ITEMS WEREN'T TRANSSCRIBED OR THEY WERE LOST BY THE CLERK, AND IT HAS BEEN A NIGHTMARE RECORD WEISS, AS FAR AS WHAT -- RECORD WISE, AS FAR AS WHAT HAS BEEN HELD IN THE CLERK'S FILE IN BRADFORD COUNTY, AND WHAT MAY HAVE BEEN IN THERE AT THE TIME.

WOULD YOU SAY, THE REMAND WAS NARROW AND IT WAS ON THE BRADY CLAIM, WOULD YOU TELL THIS COURT QUITE EXPLICITLY, WHAT MATERIAL OR INFORMATION IN THE RECORD THAT THE DEFENDANT IS RELYING ON TO SAY THAT THEY ESTABLISHED, BEFORE THIS TRIAL COURT JUDGE, THAT THERE WAS INFORMATION WITHHELD FROM THE DEFENSE, THAT CONSTITUTES BRADY MATERIAL, THAT NOW IS IN THIS RECORD FOR US TO EXAMINE. WHAT IS THE DEFENDANT RELYING ON THAT IS IN THIS RECORD NOW THAT, THE TRIAL COURT COULD HAVE RELIED ON, TO ESTABLISH A BRADY VIOLATION?

FROM THE EVIDENTIARY HEARING, YOUR HONOR. RIGHT.

FROM THE EVIDENTIARY HEARING.

FIRST OF ALL, AS TO THE SUPPRESSION ISSUE, THE STATEMENTS, THE IS HE NOT TYPED STATEMENTS WERE GENERATED AS A RESULT OF THE TYPED LETTER THAT THEY ARE ATTACHED TO. THAT WAS JUNE 1, 1981. ASKARI MUHAMMAD, THE DEPOSITIONS WERE TAKEN PRIOR TO THAT, IN 19, IN APRIL OF 1981, AND SO THESE STATEMENTS THAT WERE ATTACHED TO THE JUNE LETTER DIDN'T EVEN EXIST AT THE TIME THE DEPOSITIONS WERE TAKEN.

WELL, I AM TRYING, IS IT, FIRST OF ALL, YOUR CLAIM THAT THIS LETTER AND THE STATEMENTS ATTACHED TO THE LETTER ARE BRADY MATERIAL?

ABSOLUTELY, YOUR HONOR.

NOW, LET'S STOP RIGHT THERE FOR A MINUTE.

OKAY.

AND THOSE ARE NOW IN THIS COURT FILE. THEY WERE INTRODUCED BEFORE THE TRIAL COURT JUDGE. IS THERE ANY OTHER MATERIAL THAT WAS INTRODUCED BEFORE THE TRIAL COURT JUDGE AND THAT YOU CLAIM WAS BRADY MATERIAL?

WELL, THERE ARE NOTES OF THE INMATE INTERVIEWS THAT WERE TAKEN, HANDWRITTEN NOTES, HANDWRITTEN NOTES, ALSO, THAT PRETTY MUCH DUPLICATE THESE TYPEWRITTEN STATEMENTS, THAT THE INVESTIGATORS ACTUALLY TOOK, BUT --' AND THE HANDWRITTEN NOTES ARE IN THIS RECORD?

YES, YOUR HONOR.

AND YOU ARE CLAIMING THAT THOSE HANDWRITTEN NOTES, TOO, SHOULD HAVE BEEN DISCLOSED AND WEREN'T DISCLOSED?

WELL, I BELIEVE THEY SHOULD HAVE BEEN DISCLOSED, BUT THE MEAT OF EVERYTHING, AS FAR AS THE ITEMS THAT WERE NOT DISCLOSED AND THE PREJUDICE THAT RESULTS FROM THEM, THAT IS THE SEVEN INMATE STATEMENTS THAT, THE SEVEN TYPED STATEMENTS.

IS THAT THE GIST OF THE DEFENDANT'S CLAIM --

YES, YOUR HONOR.

-- IS THAT LETTER AND THE ATTACHMENTS TO THAT LETTER THAT CONSTITUTE THE BRADY MATERIAL.

YES, YOUR HONOR.

WELL, IT IS REALLY THOSE IS HE NOT STATEMENTS THAT WERE THE LIMITED BASIS UPON WHICH THIS COURT REMANDED IT BACK TO THE TRIAL COURT IN 1992, CORRECT?

RIGHT. THE EVIDENCE WAS, IT WAS ALLEGED EVIDENCE OF INMATE, GUARD STATEMENTS RELATIVE TO MR. MUHAMMAD'S MENTAL --

THOSE ALLEGED STATEMENT, THOSE SEVEN STATEMENTS THAT ARE TALKED ABOUT IN THIS COURT'S OPINION IN 1992, THOSE HAD BEEN DISCLOSED PRIOR TO 1992?

NO, THEY WERE NOT DISCLOSED. THEY WERE FOUND BY POSTCONVICTION COUNSEL.

IN 19, BEFORE, I MEAN, THEY WERE TALKED ABOUT IN THIS 1992 DECISION, SO AM I CORRECT?

RIGHT.

AND SO FROM 1992 UNTIL THIS COURT, UNTIL THE TRIAL COURT RULED IN 2001, THOSE STATEMENTS WERE ALWAYS THERE? WHAT WAS ALL OF THIS OTHER DISCOVERY ABOUT?

WELL, TO TRY TO MAKE SURE THAT WE DID HAVE EVERYTHING, WE HAD LOTS OF PROBLEMS TRYING TO CREATE THE RECORD. THERE WAS A PERIOD OF TIME WHEN I WAS NOT ON THE CASE, BETWEEN 1992, BUT FROM WHAT I CAN TELL, THERE WAS A CHANGE OF COUNSEL, AND PUBLIC RECORDS ISSUES BEGAN AGAIN, WHEN THE RULE CHANGED, AND THEY WERE TRYING TO MAKE CERTAIN THAT THEY HAD HE THE ACTUAL FILE. THE PROBLEM WITH THE FILE, FROM DOC, IS IT IS

NOT -- FROM D.O.C., IS IT IS NOT AN ORIGINAL FILE, A AND ANGST RECORD SHOWS BELOW THAT IT IS MISSING ITEMS. THERE IS NO TAPE RECORDINGS ANY LONGER.

WOULDN'T YOU AGREE THAT THIS REVERSAL AND REMAEND TO THE TRIAL COURT WAS ON A DISCREET PIECE OF INFORMATION IN 1992?

IT WAS, YOUR HONOR, IT WAS, YES, DISCREET AS TO --' THOSE SEVEN STATES.

THOSE SEVEN STATEMENTS. BUT I THINK THAT YOU CAN'T NARROW IT, THEN, SO NARROWLY AS TO CONSIDER IT IN A VACUUM THEN. I THINK YOU NEED --

ANY TIME THIS COURT REMANDS ONE OF THESE CASES, IT IS GOING TO JUST OPEN UP THE WHOLE CAN. IS THAT THE POSITION THAT THE DEFENSE --

NO, BUT I DO THINK THAT ALL OF THE OTHER ISSUES, ESPECIALLY IN THIS CASE, COME INTO PLAY, WHERE INSANITY WAS THE DEFENSE FROM THE GET-GO, ACCORDING TO HIS INITIAL ATTORNEY, WHO ALSO, I MEAN, WAS PRECLUDED AT ONE POINT, FROM PRESENTING ANY EVIDENCE ABOUT INSANITY. THEY WERE VERY CONCERNED ABOUT MR. MUHAMMAD'S BEHAVIOR, AND SO I THINK YOU HAVE TO TAKE, YOU HAVE TO LOOK AT ALL OF THE CIRCUMSTANCES IN THIS CASE, ESPECIALLY REGARDING MR. MUHAMMAD, WHO WAS VERY SERIOUSLY MENTALLY ILL, FROM THE RECORDS, AND GIVEN THE CIRCUMSTANCES WHICH LED UP TO THIS TRAGIC EVENT OF OFFICER BURKE'S DEATH. THEY ARE EXTREMELY RELEVANT, AND YOU CAN'T JUST TAKE THE STATEMENTS IN A VACUUM. I THINK YOU NEED TO KNOW THAT MR. MUHAMMAD HAD AN EDIP -- AN AEDIPOUS COMPLEX AND HIS GUIDANCE --

I THINK WHEN YOU LOOK AT WHETHER THE LETTER INDICATES, THE JUNE OR JULY LETTER, WHATEVER WE HAVE BEEN TALKING "B" THAT INDICATES ATTACHED ARE THE STATEMENTS, AND THEY TALK ABOUT CALM AND ORDINARY MR. MUHAMMAD WAS, AND WHEN YOU READ THROUGH THE IS HE NOT STATEMENTS, UNSIGNED STATEMENTS, I MEAN, BASICALLY THEY SAY THAT, HOW DOES THIS FIT INTO BEING EXCULPATORY, BECAUSE TO ME IT SEEMS THEY REFLECT WHAT THESE PEOPLE SAID IN THEIR DEPOSITIONS, SO JUST EXPLAIN TO ME HOW IT IS HELPFUL TO MR. MUHAMMAD.

I UNDERSTAND THAT IN SOME STATEMENTS, THERE ARE STATEMENTS THAT SAY HE WAS CALM, COOL AND COLLECTED. THOSE STATEMENTS ARE REGARDING HIS INTERVIEW AFTER HE WAS TAKEN TO THE COLONEL'S OFFICE, AFTER THIS HAS HAPPENED, BUT THE STATEMENTS WHICH ARE NOW REVEALED, WHICH THE EVIDENCE DOESN'T REVEAL BEFORE, WHETHER IT IS THROUGH DEPOSITIONS OR THE ACTUAL INCIDENT REPORTS, ARE THAT MR. MUHAMMAD WAS VERY, VERY DISTURBED, UPSET.

AND WHO MADE THOSE STATEMENTS?

WELL, THOSE ARE STAMTHS ATTACHED -- STATEMENTS ATTACHED, THE SEVEN STATEMENTS ATTACHED TO THE LETTER, SO WE DON'T KNOW EXACTLY WHO HAD SAID IT. IT WAS SOMEONE WHO HAD TOLD MR. MUHAMMAD ABOUT HIS VISIT. YOU CAN TELL FROM READING THE EXCERPT OF THE STATEMENT THAT IS IN THE BRIEF OR ATTACHED TO THE DOCUMENT. I MEAN, THEY ARE UNSIGNED, UNATTRIBUTED, BUT THAT IS ALL THAT WERE GIVEN.

THERE IS NO ATTEMPT TO IDENTIFY WHO PROVIDED THAT INFORMATION?

WELL, AT THE EVIDENTIARY HEARING, WHEN WE PRESENTED OUR LEGAL EXPERT WITNESS, MR. SALMON, HE DID GO IN AND TRY TO IDENTIFY, SAY, FOR INSTANCE, "X" PERSON WORKED ON "L" WING AT A CERTAIN PERIOD OF TIME. IT RELATES TO IT COULD BE THIS CERTAIN GUARD WHO ALSO WORKED THAT WAS IDENTIFIED AS WORKING AT THAT TIME, IN TIME FRAME.

YOU ARE BEING WARNED, TOO. HOW MUCH TIME HAS EXPIRED? SHE HAS FIVE MINUTES LEFT. OKAY. YOU HAVE FIVE MINUTES, SO IF YOU WANT TO SAVE SOME TIME.

YES.

WHAT EVIDENCE DO YOU HAVE THAT THE DEPOSITIONS WERE FILED IN THE COURT RECORD?

THERE WAS A PRETRIAL HEARING, ACTUALLY A SERIES OF PRETRIAL HEARINGS, IN WHICH THE DEFENDANT WAS COMPLAINING ABOUT NOT GETTING HIS COUNSEL'S FILE, AND THE TRIAL COURT HAD COUNSEL FILE ALL THE DEPOSITIONS. HE, THEN, HAD COUNSEL GIVE HIS FILE TO THE CLERK, SO THAT THE CLERK MADE SURE THE TWO FILES WERE IDENTICAL, AND THEN THEY GAVE THE FILE TO THE DEFENDANT.

SO WHEN THE JUDGE, WHO WAS THE ORIGINAL TRIAL JUDGE, WHO FELT HIS RESPONSIBILITY, UNDER PHARR, TO HAVE SEEN, AND HE SEEMS TO CONSIDER THAT THIS WOULD HAVE BEEN MITIGATING TO HIM, WHO WAS THE SENTENCER, SAYS IT WASN'T MADE PART OF THE OFFICIAL COURT RECORD. WHAT DO WE DO WITH THAT FINDING? AND I SAY THAT AS A CONCERN, BECAUSE WHEN WE HAVE THESE SITUATIONS WHERE A DEFENDANT GIVES UP HIS RIGHT TO PRESENT MITIGATION, WE NOW HAVE A PERSPECTIVE PROCEDURE THAT WOULDN'T HAVE APPLIED TO THIS PERSON. THE JUDGE, THOUGH, DOES THE STATE HAVE, I GUESS, SOME ADDITIONAL OBLIGATION TO SAY, WELL, THESE DEPOSITIONS, WE WANT TO OFFER THEM TO YOU, JUDGE. THIS JUDGE SEEMS TO THINK THAT NONE OF THAT WAS OFFERED TO HIM BY THE STATE.

NO. IT IS NOT THE STATE'S RESPONSIBILITY TO PRESENT THE DEFENSE'S MITIGATION CASE, AND CERTAINLY IT WASN'T AT THAT TIME. BUT IN ADDITION TO THAT, IF YOU WERE TO MAKE THAT THE STATE'S OBLIGATION, YOU WOULD HAVE A PROBLEM WITH INTERFERING WITH THE DEFENDANT'S RIGHT TO SELF-REPRESENTATION, IN THAT THE REASON HE DISCHARGED HIS COUNSEL AND REPRESENTED HIMSELF WAS TO KEEP THIS OUT OF THE RECORD.

THE DEFENDANT HERE, IF I UNDERSTAND IT CORRECTLY, WAS FOUND TO BE COMPETENT?

YES. AT THE TIME OF TRIAL.

AND GIVEN A FERETTA INQUIRY, AND HE WAS ALLOWED TO REPRESENT HIMSELF.

YES.

AND FOR INSTANCE, HE MADE THE DECISION, EVEN PREVIOUSLY, NOT TO ALLOW COUNSEL TO RAISE THE INSANITY DEFENSE, AND HE CERTAINLY DIDN'T RAISE IT. IS THAT CORRECT?

HE WAS INTENTIONALLY NOT COOPERATING WITH THE DOCTORS, BECAUSE HE DIDN'T WANT TO PRESENT IT. HE IS ON THE RECORD, EVEN BEFORE HE GETS TOE REPRESENT HIMSELF, SAYING HE ACCIDENT WANT IT PRESENTED. HE DID NOT WANT THIS INFORMATION PRESENTED, AND THAT IS WHY IT DIDN'T GET PRESENTED.

SO YOU ARE SAYING AGAIN, IF WE LOOK AT THESE STATEMENTS, EVEN ASSUMING THE STATEMENTS WEREN'T PRODUCED TO THE DEFENDANT, THAT THE DEPOSITIONS, THEMSELVES, WILL MIRROR WHAT IS IN THE STATEMENTS, BUT BEYOND THAT, WHAT YOU ARE REALLY SAYING IS THAT, IF WE LOOK AT THESE DEPOSITIONS AND THE STATES, THAT WE COULD SEE, IN OUR INDEPENDENT REVIEW, THAT THIS REALLY ISN'T, WOULDN'T EVEN CONSTITUTE STATUTORY OR NOT STATUTORY MITIGATION, BECAUSE YOU THINK IT SHOWS THAT HE WAS CALM AROUND THE TIME OF THE --

WELL, IT IS CERTAINLY THE STATE'S POSITION THAT INFORMATION HE IS HE CALM IS CONSISTENT WITH THIS BEING A COLD, CALCULATED AND PREMEDITATED MURDER, THAN IT IS WITH ANY

MENTAL ILLNESS, BUT --

THE LETTER THAT WAS SEND BY -- THAT WAS SENT BY THE INVESTIGATOR SEEMED TO THINK IT WOULD HELP THE STATE NOT THE DEFENDANT.

YES.

HOW DO WE EXACTLY OR IN THE FACT THAT A LOT OF THESE FACTS THAT WERE ALLEGEDLY NOT DISCLOSED WERE WITHIN THE DEFENDANT'S KNOWLEDGE, WHETHER HE WAS CALM, HOW HE FELT BEFORE THE MURDER, AND THAT HIS MOTHER WAS SUPPOSED TO VISIT HIM AND THEN WASN'T ALLOWED, AND ALL THOSE CIRCUMSTANCES THAT WERE ABOUT HIM?

THAT MAKES THE FAILURE TO TURN IT OVER CUMULATIVE AND NOT MATERIAL. THAT IS HOW YOU FACTOR THAT IN.

I GUESS THE ONLY ISSUE IS THAT THERE WERE OTHER WITNESSES TO THIS THAT HE COULD HAVE PRESENTED, WITHOUT HAVING TO TESTIFY, HIMSELF, SO IN THAT SENSE, THE FACT THAT THERE WERE OTHER WITNESSES WHO SAW HOW HE FELT AND WHO NOTICED HIM WAS RELEVANT, BECAUSE HE COULD, THEN, PRESENT THEM AT TRIAL WITHOUT HAVING TO TESTIFY.

WELL, OF COURSE IF HE WERE THERE, WHICH HE WAS, HE KNEW WHO SAW HIM. AND HE, ALSO, HAD THEIR DEPOSITIONS.

WELL, THAT IS, IS IT THE STATE'S POSITION THAT THERE REALLY IS NOTHING IN THESE ATTACHED STATEMENTS THAT ISN'T IN THE DEPOSITIONS OR OTHER INFORMATION DISCLOSED? IS THAT --

THE ONLY STATEMENT I HAVE LISTED AT PAGE 34 OF MY BRIEF, WHERE EACH PERSON TESTIFIES TO THE INFORMATION IN THEIR DEPOSITION, AND THE VARIOUS EXHIBIT NUMBERS, THEY SHOULD BE UNDER IN THE RECORD, SHE SAID NO ONE TALKED ABOUT THE DEFENDANT BEING UPSET. KEEP IN MIND THESE STATEMENTS ARE UNSIGNED, UNDATED, UNATTRIBUTED, SO SHE SAYS THEY WERE MADE UP AFTERWARD. WE HAVE NO IDEA WHETHER THAT IS TRUE. THESE STATEMENTS ARE UNSIGNED, UNDATED AND UNATTRIBUTED. WE HAVE NO IDEA WHO ACTUALLY MADE THEM. WE CAN GUESS, BASED ON WHAT THEY DID. THE STATEMENT SHE IS TALKING ABOUT HIM BEING UPSET, THE PERSON WHO DID THE ACTIONS THAT APPEAR TO BE CONSISTENT WITH THAT WAS DANA PADGETT. DANA PADGETT TESTIFIED IN HIS DEPOSITION THAT THE DEFENDANT WAS UPSET. SHE SAYS MR. BREWER NEVER TESTIFIED IN HIS DEPOSITIONS ABOUT HIS OBSERVATIONS OF THE DEFENDANT'S DEemeanor. MR. BREWER TESTIFIED THAT THE DEFENDANT LOOKED LIKE NOTHING WAS GOING ON. THE ONLY STATEMENT THAT YOU WON'T FIND IN THE DEPOSITIONS DIRECTLY IS ABOUT THE EYES BEING WIDE, BUT COUNSEL ADMITTED AT PAGES 192 AND 193 OF THE RECORD, FROM THE EVIDENTIARY HEARING, THAT HE KNEW THAT INFORMATION, TOO. ALL OF THIS INFORMATION WAS AVAILABLE, DISCLOSED. IT WASN'T PRESENTED, BECAUSE THE DEFENDANT DIDN'T WANT IT PRESENTED. COUNSEL TESTIFIED AT THE EVIDENTIARY HEARING, AND THIS IS THE ONLY EVIDENCE WE HAVE ON THIS ISSUE, THAT NONE OF THIS INFORMATION WOULD HAVE MADE ANY DIFFERENCE TO THE DEFENDANT'S DECISION, NOT TO PRESENT THIS INFORMATION. AND AT THAT POINT THERE, IS NO COMPETENT SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING THAT THIS EVIDENCE WAS SUPPRESSED OR THAT IT IS MATERIAL, AND THEREFORE THE TRIAL COURT SHOULD HAVE DENIED THE MOTION IN ITS ENTIRETY ANDER HAD IN GRANTING PENALTY PHASE RELIEF, AND THE STATE WOULD REQUEST THAT YOU REVERSE THE ORDER GRANTING PENALTY PHASE RELIEF, RETHEY STATE THE DEATH PENALTY IN THIS CASE AND AFFIRM THE ORDER DENYING GUILT PHASE RELIEF. THANK YOU.

CHIEF JUSTICE: COUNSEL, YOU STILL HAVE, HOW MUCH TIME DOES COUNSEL HAVE?

FIVE MINUTES.

COUNSEL, CAN YOU ADDRESS THE PREJUDICE PRONG. LET'S ASSUME THAT THIS WAS EXCULPATORY EVIDENCE AND ASSUME THAT IT WAS SUPPRESSED. THE DEFENDANT REPRESENTED HIMSELF AS TRIAL. THE DEFENDANT DECLINED TO PROVIDE ANY EVIDENCE OF MITIGATION, SO WHAT EVIDENCE WAS THERE PRESENTED AT THE EVIDENTIARY HEARING THAT HAD THE DEFENDANT HAD THIS ADDITIONAL INFORMATION, HE WOULD HAVE THEN DECIDED HE WAS GOING TO PRESENT MITIGATION, AND HE WAS GOING TO PRESENT THIS TYPE OF MITIGATION?

ABSOLUTELY, YOUR HONOR. EVIDENCE IN THE TRIAL THAT MR. MUHAMMAD INQUIRED AS, OF THE STATE'S WITNESSES ABOUT HIS DEMEANOR, AND THOSE CAN BE FOUND AT PAGES 1046, 1111, 1175, 1177, SO ON, 1387. HE REPEATEDLY INQUIRED ABOUT WHAT DID YOU OBSERVE ABOUT ME HE? WHAT DID THEY SAY?

WHAT THEY SAID WAS TO PUT IT IN A NUTSHELL, THAT YOU APPEAR JUST AS NORMAL, AS YOU DO, LIKE YOU ARE NOW, AND THAT WAS OWENS. JUST A NORMAL EXPRESSION LIKE YOU HAVE GOT RIGHT NOW. THAT IS WHAT HE SAID, BUT THAT IS A FAR DIFFERENT PICTURE IN THE SEVEN TYPED STATEMENTS, WHERE HE IS VERY UPSET, WHERE HE IS LOOKING DOWN WITH, VERY UPSET WHEN HE IS REFUSED --' SO AND THIS IS AN USUAL POSTURE. YOU ARE SAYING THERE IS EVIDENCE IN THIS RECORD, AND IT SEEMS IT WOULD ALMOST HAVE TO BE FROM MR. MUHAMMAD, WHO ADAMANTLY REFUSED TO PRESENT ANY TYPE OF DEFENSE AND ANY MITIGATION THAT, IF HE HAD THESE SEVEN STATEMENTS, HIS WHOLE CONCEPT OF WHAT HE WOULD HAVE DONE IN THIS CASE WOULD HAVE BEEN "I WANT TO PRESENT MITIGATION, I WANT TO PRESENT THESE GUARDS, I WANT TO COOPERATE." ISN'T THAT JUST A LEAP, BASED ON WHAT I SEE AS, THESE STATEMENTS SEEM PRETTY THIN TO ME.

WELL, NO, YOUR HONOR. I DON'T AGREE WITH THAT, BECAUSE MR. MUHAMMAD DID ARGUE FOR HIS LIFE IN MITIGATION, BEFORE JUDGE CHANCE. HE DENT PRESENT WITNESSES -- HE DIDN'T PRESENT WITNESSES, BUT HIS WHOLE ARGUMENT WAS JUST BECAUSE THERE IS A DEATH IT DOESN'T MEAN MURDER, AND THE WITNESSES PRESENTED THAT.

WHAT WOULD YOU ARGUE WOULD BE THE THEORY, WHEN HE WAS ASKING THESE WITNESSES WHAT WAS MY DEMEANOR AND HOW DID I LOOK, HAVING ADAMANTLY TAKEN THE POSITION BEFORE THAT HE WANTED NO INSANITY OR THAT HE WAS MENTALLY DISTRESSED, SO WHERE THERE WAS THERE INDICATION THAT WHAT HE WAS LOOKING FOR WAS FOR THEM TO SAY, WELL, YOU LOOKED LIKE YOU WERE OUT OF YOUR MIND, WHICH SORT OF THE THRUST NOW OF WHAT IS GOING ON HERE. ISN'T IT ALL TO THE CONTRARY THAT HE WAS NEVER, AT ANY TIME, ASSERTING ON TO THE TRIAL COURT JUDGE, HEY, BOY, IF YOU COULD HAVE SEEN ME AT THE TIME, YOU WOULD HAVE SEEN THAT I WAS OUT OF MY MIND, AND THEREFORE THAT SHOULD BE, SO IS THERE ANY INDICATION HERE THAT HE WAS LOOKING FOR SOMETHING LIKE THAT, SO THAT HE COULD ASSERT THE MENTAL MITIGATION IN THE FORM OF HIM BEING, AS I USE THE PHRASE, PERHAPS INAPPROPRIATELY, BUT OUT OF MY MIND?

I BELIEVE THE RECORD CITE AT 1550, WHEREAS CARRY ARGUED AGAINST CHANCE, HE ARGUED THAT, GIVEN HIS DEMEANOR, THERE WAS NOTHING TO SHOW THAT IT WAS FIRST-DEGREE MURDER. I MEAN, HE WAS TRYING TO PICK HOLES WHEREVER HE COULD, TO SHOW THE CASE WAS INCONSISTENT, BUT HE ALSO ARGUED IN PENALTY PHASE, TO JUDGE CHANCE, THAT THERE WAS NOTHING HERE TO SHOW THAT IT WAS FIRST-DEGREE MURDER. THESE STATEMENTS --

WHAT DOES THAT MEAN, IF YOU DON'T GIVE IT CONTEXT? IN OTHER WORDS DID HE SAY I DIDN'T REALLY INTEND TO DO THIS OR I WAS OUT OF MY MIND? HE NEVER SAYS ANYTHING LIKE THAT, DOES HE HE?

HE ACCIDENT SAY THAT, YOUR HONOR, AND I THINK THAT IS PART OF THE PROBLEM FROM THE VERY BEGINNING OF THIS CASE IS THAT HE WAS EVEN ALLOWED TO REPRESENT HIMSELF. I

UNDERSTAND THERE WAS A FINAL HEARING, HE WAS DETERMINED COMPETENT, BUT TWO JUDGES PRIOR TO THAT HAD FOUND THAT HE WAS NOT COMPETENT. THEY WERE NOT GOING TO ALLOW HIM TO PROCEED PRO SE, AND IN FACT JUDGE GREEN MADE MR. BERNSTEIN GUARDIAN AD LITEM.

THAT IS WATER, THAT IS A DONE THING.

WELL, YOUR HONOR, I THINK THAT, TO THE DEGREE THAT MR. MUHAMMAD COULD ASSIST HIS COUNSEL, HIS DEFENSE COUNSEL, ALSO DETERMINES ON HOW HE CAN RECOLLECT WHAT WAS GOING ON AT THE TIME, AND I THINK THERE IS EVIDENCE OF WHEN THIS OCCURRED, THAT HE WAS NOT IN HIS RIGHT MIND. AND THAT EVEN THOUGH THE STATE SAYS, WELL, HE WAS THERE, HE MUST HAVE KNOWN WHO WAS THERE AND OBSERVED HIM --' BUT THERE ISN'T ANY INDICATION THAT --' BUT THERE ISN'T ANY INDICATION THAT HE WAS GOING TO --

BUT THERE ISN'T ANY INDICATION THAT HE WAS GOING TO OFFER THAT IN SOME DEFENSE OF MITIGATION OF THIS CRIME, IS THERE?

I THINK WHEN HE LOOKED AT THIS CRIME, HE WAS GOING TO BRING OUT IN INCONSISTENCY THAT HE COULD AND HE WAS NOT ARGUING I AM NOT GUILTY OF FIRST-DEGREE MURDER. YOU ARE DEALING WITH A CLIENT, HERE, WHO IS VERY MENTALLY ILL. I WOULD ARGUE THAT IT WAS SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE AND SHOULD BE GIVEN DEFERENCE AND THAT THE COURT EITHER GRANT A NEW TRIAL FOR GUILT PHASE, REMAEND FOR GUILT PHASE DETERMINATION -- REMAND FOR GUILT PHASE DETERMINATION, AND AT THE VERY LEAST, CONFIRM THE COURT'S FINDING AND REMAEND ON BOTH.

CHIEF JUSTICE: THE COURT IS GOING TO TAKE ITS REGULAR MORNING RECESS AT THIS TIME. THE COURT WILL TAKE A 15-MINUTE RECESS AT THIS TIME.

MARSHAL: PLEASE RISE.