Marshall Lee Gore v. State of Florida

THE THE LAST CASE ON OUR DOCKET THIS MORNING IS GORE VERSUS STATE AND GORE VERSUS CROSBY. GOOD MORNING. IF YOU ARE READY TO PROCEED, YOU MAY PROCEED.

THANK YOU.

IF IT PLEASE THE COURT, I AM GLENN ARNOLD FROM MARSHALL GORE. THIS CASE OCCURS 30 YEARS AGO, WHEN MARSHALL GORE LEFT TENNESSEE WITH A YOUNG LADY BY THE NAME OF SUSAN MARIE YORK. THE NEXT AFTERNOON, THE NEXT EVENING GORE WAS ARRESTED IN MIAMI ACTUALLY ON A TRAFFIC VIOLATION AND FOUND TO BE DRIVING MS. ROURKE'S VEHICLE, AND I THINK SUBSEQUENT TO THAT THERE WAS ACTUALLY AN INVESTIGATION WHICH DISCOVERED THAT HE HAD, ALSO, PAWNED CERTAIN ARTICLES OR ITEMS OF JEWELRY THAT BELONG TO MS. ROURKE.

WHERE WAS THE VICTIM'S BODY FOUND?

APRIL 2, A COUPLE OF DAYS LATER, IN COLUMBIA COUNTY RIGHT OUTSIDE OF LAKE CITY. THERE WAS SOME SCANT, VERY LITTLE EVIDENCE, NO EVIDENCE IN FACT, PHYSICALLY CONNECTING GORE TO THAT SCENE, BUT BECAUSE OF CERTAIN ADMISSIONS AND STATES THAT HE MADE, AND THEN OTHER EVIDENCE DEVELOPED LATER ON, IT WAS BASICALLY A CIRCUMSTANTIAL CASE BROUGHT AGAINST HIM. HE WAS SUBSEQUENTLY INDICTED, AND I THINK IN 1989, AND CHARGED WITH, CHARGED ONLY WITH PREMEDITATED MURDER, KIDNAPING AND ROBBERY.

WHAT ISSUES ARE YOU GOING TO BE, WHERE DO YOU SEE THAT THE TRIAL COURTERED IN ITS DENIAL OF THE POSTCONVICTION

JUDGE, THE MAIN TWO AREAS DEAL WITH INEFFECTIVENESS OF THE TRIAL LAWYER IN DEALING WITH MENTAL HEALTH ISSUES AND WHETHER OR NOT HE OFFERED SUFFICIENT MITIGATION IN THE PENALTY PHASE, AND THEN THE OTHER AREA DEALS WITH A PREMEDITATION CHARGE, ITSELF.

WHAT WAS THE, DID YOU HAVE, GET AN EVIDENTIARY HEARING ON THE PENALTY PHASE, INEFFECTIVE ASSISTANCE?

YES, MA'AM. WE HAD THE TRIAL JUDGE ACTUALLY DENIED SUMMARILY, ALL OF THE CLAIMS WHICH ARE INITIALLY RAISED. I MIGHT POINT OUT THAT CCR ACTUALLY FILED THE MOTION THAT WE ULTIMATELY WENT TO THE EVIDENTIARY HEARING ON THE. THERE WAS SOME 42, 43, 45 COUNTS. THE TRIAL JUDGE SUMMARILY DENIED ALL OF THEM, WITH THE EXCEPTION OF TWO, THOSE BEING CLAIM IS HE NOT AND CLAIM 18.

BUT MOST -- CLAIM 7 AND CLAIM 18.

BUT MOST OF THOSE WERE REPHRASED ISSUES THAT SHOULD HAVE BEEN RAISED ON DIRECT APPEAL O.

YES, MA'AM. THE COUPLE OF ISSUES -- APPEAL.

YES, MA'AM. THE COUPLE OF ISSUES, I THINK ONE WAS 20 AND ONE IN FOUR, WHICH WAS SUMMARILY DENIED, THOSE IN ADDITION TO CLAIM 18, WHICH WAS ACTUALLY HEARD, DEALT IN

PART AND PARCEL WITH MENTAL MITIGATION AND THE FACT THAT GORE CLAIMED THAT THE TRIAL LAWYER FAILED TO PROPERLY PREPARE THE TWO EXPERTS WHO EXAMINED HIM PRETRIAL. I MIGHT POINT OUT, AND AS WAS NOTED IN THE STATE'S ANSWER BRIEF HERE, THERE WERE TWO EXPERTS APPOINTED PRETRIAL, WHO HAD EXTREME DIFFICULTY IN TALKING WITH GORE, BECAUSE GORE WOULD NOT COOPERATE WITH THEM. THEN, LATER, IN 1998, IN FACT, AFTER TONS AND TONS OF PAPERWORK HIT THIS COURT AND HIT EVERY OTHER COURT, MR. GORE FILED LITERALLY EVERYTHING, EVERY KIND OF MOTION AND NOTE AND LETTER IN THE THE WORLD, AS DID THE LAURTION TRYING TO WITHDRAW. THERE WERE NUMEROUS LAWYERS INVOLVED. WELL -- LAWYERS, TRYING TO WITHDRAW. THERE WERE NUMEROUS LAWYERS INVOLVED. WELL, IN 1988, JUDGE DOUGLAS ACTUALLY OP OIPTED FOUR OTHER EXPERTS, TWO FOR THE STATE AND TWO TO THE -- APPOINTED TWO OTHER EXPERTS, TWO FOR THE STATE AND TWO FOR THE DEFENSE AND THE DEFENSE CAME IN AND SAID THEIR EXPERTS WERE UNABLE TO COMMUNICATE WITH THE CLIENT AND COLLATERAL COUNSEL. THAT IS THE ARGUMENT OF 18. IF, IN FACT, THESE EXPERTS, REASONABLE MEN CAN'T AGREE AS TO WHETHER OR NOT THIS GUY IS CRAZY ON ONE HAND OR DELUSIONAL ON THE OTHER HAND OR SIMPLY VERY INTELLIGENT AND MANIPULATIVE, HOW DO WE KNOW IF, IN FACT, THE TRIAL LAWYER DID NOT INSTRUCT THE TWO EXPERTS WHO EXAMINED GORE PRETRIAL, PER TRAIN TAINING TO -- PERTAINING TO THOSE COMMENTS THEY WERE ELICITED DURING THE EVIDENTIARY HEARING, DURING THE EVIDENTIARY HEARING, I AM SORRY TRIRBLINGS COUNSEL ADMITTED THAT -- I AM SORRY, TRIAL COUNSEL ADMITTED THAT IN HIS VARIOUS NOTES AND CONVERSATIONS WITH GORE, THAT GORE TALKED ABOUT THINGS SUCH AS GOD MAKING HIM DO IT OR HIS ALTER IGOR TONY DOING IT AND -- OR HIS ALTER EGG-, TONY, DOING IT -- EGO, TONY, DOING IT, AND I TRIED TO --.

SHARPEN THE FOCUS A LITTLE FOR US IN TERMS OF NOW YOU ARE ASSERTING THAT THE TRIAL COUNSEL, AT THE TIME OF THE ORIGINAL PENALTY PHASE IN THE CASE, WAS DERELICT, THAT HE DID HAVE MENTAL HEALTH EXAMINATIONS OF THE DEFENDANT, BUT THAT HE WAS DERELICT IN THE INFORMATION THAT HE PROVIDED TO THE MENTAL HEALTH EXPERTS. IS THAT WHAT THE, AND --

YES, SIR. JUSTICE ANSTEAD, IN THE EVIDENTIARY HEARING, JIM HUNT WAS THE TRIAL LAWYER. AND MR. HUNT CANDIDLY ADMITTED THAT HE HAD THOSE NOTES, BUT HE DID NOT GIVE THE NOTES, NOR DID HE TELL THE TWO EXPERTS ABOUT GORE'S DELUSIONAL STUFF ABOUT --

THIS WAS HIS OWN KNOWLEDGE IN DEALING WITH GORE.

THAT'S CORRECT, AND WE ACTUALLY INTRODUCED INTO THE RECORD, MR. HUNT'S PRETRIAL NOTES, WHICH HAD SOME OF THAT INFORMATION IN IT.

WOULDN'T WE ORDINARILY, THOUGH, EXPECT THAT, JUST LIKE A LAWYER IS ALL RIGHT ABOUT THE LAW AND EVALUATING THAT, THAT IF YOU ARE PLACING THE CLIENT IN THE HANDS OF A MENTAL HEALTH EXPERT, MENTAL HEALTH EXPERTS ARE THE ONE THAT KNOWS ABOUT HOW THE DEFENDANT IS ACTING OR WHAT HE SAYS AND WHAT HE NEEDS, WHAT THE MENTAL HEALTH EXPERT NEEDS TO KNOW, IN ORDER TO MAKE A PROPER EVALUATION. ISN'T THAT SORT OF THE ORDINARY WAY THAT THINGS WORK?

ABSOLUTELY. BUT WHAT I WAS TRYING TO SAY IN THIS PARTICULAR CASE, BECAUSE OF ALL OF THE DIFFICULTIES THAT EVERYBODY HAD WITH GORE, EVEN THOSE TWO PRETRIAL EXPERTS, IT WOULD APPEAR TO ME THAT, IF MR. HUNT HAD MADE THEM AWARE OF THIS DEL YOU GETAL STUFF, WHETHER OR NOT -- DRUGSAL STUFF, WHETHER OR NOT IT WAS -- DELUSIONAL STUFF, WHETHER OR NOT IT WAS TRUE, THEN LET THE EXPERTS MAKE THAT DECISION.

THAT IS WHERE YOU THINK THE TRIAL COURT WENT WRONG IN EVALUATING THIS CLAIM.

ABSOLUTELY.

WHAT ABOUT THE OTHER ISSUE, IN TERMS OF YOU SAID THAT YOU HAD TWO ISSUES THAT YOU WANTED TO TALK ABOUT.

THE OTHER ISSUE, JUDGE, DEALT WITH THE FACT THAT HE WAS ONLY INDICTED FOR PRE34ED TATEED -- PREMEDITATED MURDER. THERE WAS NO FELONY MURDER ADD-ON AS WE COMMONLY DO NOWADAYS, NOR WAS A FELONY MURDER JURY INSTRUCTION GIVEN. IN THIS CASE AND I CITED A NUMBER OF FACTS IN THE BRIEF AND, I THINK, IN THE PETITION, THERE WAS NO DNA, NO FINGERPRINTS, NOTHING TO CONNECT GORE TO THIS SCENE, AND THERE WAS SCANT EVIDENCE ABOUT ANY PREMEDITATION OR ANYTHING LIKE. THAT IN FACT, THIS VERY COURT, THROUGHOUT THE CCP AGGRAVATOR, BECAUSE OF THAT, THERE WAS NO PREMEDITATION, REALLY, ESTABLISHED, AND THEN BASICALLY WHAT WE HAVE GOT IS EVIDENCE OF THE ROBBERY, AND THAT WAS CIRCUMSTANTIAL BECAUSE OF THE FACT THAT THEY FOUND THE JEWELS IN THE CAR AND ALL OF THAT STUFF DOWN IN SOUTH FLORIDA, AND THEN, OF COURSE GORE'S ATTITUDE DURING THE COURSE OF THE TRIAL, AN AND WE DON'T KNOW WHAT THE JURY CONVICTED HIM ON. WE HAVE NO WAY OF KNOWING FROM THE RECORD, WHETHER THEY SAYS, OKAY, HE HAD HER STUFF, AND WE THINK THAT HE MAY HAVE RAPED HER OR WHATEVER THOSE OTHER ITEMS OF EVIDENCE WERE INTRODUCED, AND THEN THEY CONVICTED HIM OF MURDER! JURIES, AS WE ALL KNOW, JURIES, THEY HEAR THESE JURY INSTRUCTIONS, BUT ALL THEY KNOW AND HEAR IS THIS GUY KILLED THIS PERSON, AND THEY CAME BACK WITH A MURDER CONVICTION.

JUST SO WE UNDERSTAND, BECAUSE --

YES, MA'AM.

WHAT IS YOUR ARGUMENT, THOUGH, TODAY, IS THAT WE SHOULD REVISIT WHETHER THERE WAS COMPETENT SUBSTANTIAL EVIDENCE TO CONVICT GORE OF PREMEDITATED MURDER?

YES, MA'AM.

EVEN THOUGH WE ALREADY DID THAT ON DIRECT APPEAL?

WELL, AND IT WASN'T REALLY DEALT W ALL YOU DEALT WITH ON DIRECT APPEAL WAS A CCP AGGRAVATOR. WHAT HAPPENED WAS APPELLATE COUNSEL NEVER RAISED A SUFFICIENCY OF THE PREMEDITATION EVIDENCE.

SO THIS IS, GOES TO THE --

THE WRIT.

HABEAS.

THERE WAS ANOTHER ITEM WITH REGARD TO THE BRIEF, TOO. TRIAL COUNSEL NEVER RAISED THAT ISSUE, EITHER.

IT WOULD BE THE SAME ANALYSIS.

YES, MA'AM, THE SAME ANALYSIS, AND BASICALLY MY ARGUMENT WOULD BE IN THAT CASE, THAT TRIAL COUNSEL JUST FAILED TO PRESERVE IT FOR APPEAL, AND SO THAT MAY HAVE BEEN WHY THE APPELLATE LAWYER DID NOT RAISE IT.

BUT YOU UNDERSTAND WHY THIS COURT HAS AN INDEPENDENT OBLIGATION TO DETERMINE THE SUFFICIENCY OF THE EVIDENCE, EVEN IF IT IS NOT RAISED.

ABSOLUTELY, YES, MA'AM, I UNDERSTAND THAT. WITH THAT SAID, I WOULD RELY ON THE BRIEF

AND THE PETITION.

THANK YOU VERY MUCH. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. CURTIS FRENCH REPRESENTING THE STATE OF FLORIDA IN THIS CASE. JUST LET ME, FIRST, ADDRESS THE QUESTION OF THE MENTAL HEALTH ASSISTANCE AND THE MITIGATION. THERE WERE ACTUALLY TWO SEPARATE CLAIMS IN THE MOTION ADDRESSING THIS. ONE WAS A STRAIGHT OUT SUBSTANTIVE CLAIM ALLEGEING THAT HE WAS DENIED MENTAL HEALTH ASSISTANCE. THAT WAS SUMMARILY DENIED, BECAUSE IT WAS SUBSTANTIVE CLAIM THAT COULD AND SHOULD HAVE BEEN RAISED AT TRIAL ON DIRECT APPEAL. HOWEVER, HE WAS, OR AT LEAST THE DEFENDANT WAS GIVEN AN EVIDENTIARY HEARING ON HIS CLAIM THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INVESTIGATE AND DEVELOP MITIGATION. THAT IS CLAIM 18. AND I WOULD REFER TO THE TESTIMONY THAT WAS ELICITED AT THE EVIDENTIARY HEARING OF DECEMBER 14, 2000, CONCERNING THIS SUBJECT. THERE IS NO TESTIMONY ABOUT ANY EXPERTS, EXCUSE ME JUST A MINUTE, WHO EVALUATED HIM FOR COMPETENCE, AND COMPETENCE, IN FACT, WAS NOT AN ISSUE. THE TESTIMONY THAT WAS ELICITED, AND REMEMBER THAT THE ONLY WITNESS AT THIS HEARING WAS THE TRIAL COUNSEL JIMMY HUNT. WE HAVE NO TESTIMONY AT THIS HEARING, FROM ANY DEFENSE MENTAL HEALTH EXPERT. MR. HUNT TESTIFIED THAT, FIRST OF ALL, AT THE TIME OF THIS PROSECUTION, THE DEFENDANT HAD ALREADY BEEN CONVICTED IN MIAMI, FOR THE RAPE AND ATTEMPTED MURDER OF TINA COROLIS. TRIAL COUNSEL WAS AWARE OF THAT, TALKED TO DEFENSE COUNSEL FROM MIAMI, AND IN THOSE CASES, AND IN THAT CASE, THE DEFENDANT HAD BEEN EVALUATED BY TWO MENTAL HEALTH EXPERTS. SO THIS COUNSEL, THIS ATTORNEY, JIMMY HUNT, OBTAINED THOSE EVALUATIONS AND REVIEWED THEM. AND IN ADDITION, HE GOT THE COURT TO APPOINT TWO MENTAL HEALTH EXPERTS, ONE BEING A PSYCHIATRIST, DR. UMES MANTRAS AND THE OTHER BEING PSYCHOLOGIST, DR. HARRY CROCK, TO EVALUATE THIS DEFENDANT.

WHAT KIND OF INFORMATION DID MR. HUNT GIVE TO THESE MENTAL HEALTH EXPERTS TO ASSIST THEM IN THEIR EVALUATION? WERE THEY GIVEN RECORDS, SCHOOL RECORDS? WERE THEY GIVEN THESE EVALUATION THAT IS YOU SAY MR. HUNT, HIMSELF, READ AND EVALUATED? JUST WHAT?

THE ONLY TESTIMONY WE HAVE IN THAT REGARD, I WOULD REFER TO PAGE 37 OF THE HEARING TRANSCRIPT, AND I AM NOT SURE WHAT PAGE IN THE RECORD THAT IS, BUT IT IS THE DECEMBER 14, 2000 HEARING. HUNT TESTIFIED I PROVIDED BOTH OF THE EXPERTS WITH EVERYTHING THAT I HAD AT MY DISPOSAL THAT MIGHT ASSIST THEM IN EVALUATING HIM. AND THAT IS ALL WE KNOW FROM THE HEARING. THERE IS SOME REFERENCE TO HE ALSO STATED I RECEIVED INFORMATION FROM MR. GORE THAT HE HAD EXPERIENCED POLYSUBSTANCE ABUSE IN THE PAST. I PROVIDED THAT INFORMATION TO THE PSYCHIATRIST ANSWER PSYCHOLOGISTS. THEIR CONCLUSIONS -- PSYCHIATRISTS AND PSYCHOLOGISTS. THEIR CONCLUSIONS WERE THAT GORE DIDN'T HAVE ANY MENTAL ILLNESS. HE HAD ANTISOCIAL PERSONALITY DISORDER. DR. MANTRA WAS CALLED AT THE PENALTY PHASE A DR. CROP WAS NOT CALLED. HE DISCUSSED THIS WITH DR. CROPP AND DR. CROPP TOLD HIM THAT, REALLY, DIDN'T HAVE ANYTHING TO SAY THAT WOULD BE HELPFUL AT THE PENCIL PHASE.

AND -- AT THE PENALTY PHASE.

AND WERE ANY MENTAL MITIGATORS FOUND BY THE TRIAL COURT? DID THEY FIND SOME AS NONSTATUTORY MENTAL MITIGATING CIRCUMSTANCES?

I DON'T RECALL, BUT I DO HAVE THE SENTENCING ORDER HERE.

WELL, THE TRIAL COURT'S ORDER SAID THE COURT FOUND THAT NONSTATUTORY MITIGATION HAD BEEN ESTABLISHED, BASED ON --

CORRECT, AND THERE WAS SOME CHILDHOOD ABUSE THAT DR. MANTRA TEASFIED ABOUT THAT THE COURT FOUND WAS MITIGATING. HE DIDN'T FIND ANYTHING IN PARTICULAR, INSOFAR AS PERSONALITY DISORDERS OR ANYTHING THAT HE MENTIONED.

YOU SAY HUNT WAS THE ONLY WITNESS THAT TESTIFIED ON THIS ISSUE?

THAT'S CORRECT.

THERE WAS NO MENTAL HEALTH EXPERT PRESENTED THAT SAID, IF I HAD BEEN PRESENTED WITH THIS INFORMATION, THAT THE LAWYER'S OBSERVATIONS OR WHATEVER, THAT IT WOULD HAVE MADE A DRAMATIC DIFFERENCE IN THIS CASE, AND THAT WOULD HAVE LED ME TO CONCLUDE A AS POPE OPPOSED -- CONCLUDE "A", AS OPPOSED TO WHAT I DID CONCLUDE.

FIRST OF ALL, THERE HAS BEEN NO SHOWING OF DEFICIENT ATTORNEY PERFORM'S. AS MR. HUNT TESTIFIED -- PERFORMANCE. AS MR. HUNT TESTIFIED, HE DID HAVE A SHOWING OF THIS. THERE WAS NOTHING ELSE OUT THERE THAT HE COULD HAVE OR SHOULD HAVE LOCATED AND OF COURSE THERE HAS BEEN NO DEMONSTRATION OF PREJUDICE, BECAUSE OF THE VERY LACK OF THAT INFORMATION THAT YOU WERE TALKING ABOUT. IN THE SENSE THAT THERE IS NO INDICATION THAT ANYTHING COULD HAVE BEEN PRESENTED THAT WOULD HAVE MADE A DIFFERENCE.

GORE ENDED UP, IF I UNDERSTAND IT THEN, WITH THE EXAMINATION PASS IN THE OTHER CASE, THERE WERE, WHAT, TWO OF THEM?

THERE WERE TWO EVALUATIONS IN THE TINA COROLIS CASE, AS I UNDERSTAND MR. CROP'S -- DR. CROPP'S TESTIMONY.

AND TWO EVALUATIONS IN THIS CASE?

THERE COULD HAVE BEEN FOUR.

AND THE DEFENSE LAWYER HAD ALL OF THAT INFORMATION, AS FAR AS BEING AWARE OF THAT AT THE TIME?

THAT WAS HIS TESTIMONY.

WOULD YOU ADDRESS THE CLAIM OF INADEQUACY OF COUNSEL, ABOUT THE SUFFICIENCY OF THE EVIDENCE.

ACTUALLY, IT WAS NOT A CLAIM OF INSUFFICIENCY OR INEFFECTIVENESS OF COUNSEL. WHAT THE MOTION CONTAINED WAS A NUMBER OF SUBSTANTIVE CLAIMS THAT WERE PROCEDURALLY BARRED, BECAUSE, OF COURSE, THEY COULD AND SHOULD HAVE BEEN RAISED AT TRIAL AND ON DIRECT APPEAL. SOME BUT NOT ALL OF THESE SUBSTANTIVE CLAIMS CONTAINED A ONE-SENTENCE CONCLUSORY ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL. AND, OF COURSE, THIS COURT HAS SAID NUMEROUS TIMES THAT, THOSE KINDS OF INCIDENTAL AND CONCLUSORY ALLEGATIONS OF INEFFECTIVENESS ARE INSUFFICIENT TO OVERCOME THE PROCEDURAL BAR. I DON'T RECALL RIGHT OFFHAND IF THIS PARTICULAR CLAIM CONCERNING THE SUFFICIENCY OF THE EVIDENCE, WHICH WOULD BE CLAIM 17, CONTAINED EVEN THAT ONE SENTENCE, CONCLUSORY ALLEGATION, BUT IT CERTAINLY DID NOT CONTAIN ANYTHING MORE THAN THAT, SO WE THINK IT WAS PROPERLY DENIED. FURTHER --

IT WAS SUMMARILY DENIED, RIGHT?

SUMMARILY DENIED, YES, SIR. FURTHERMORE, THE SUFFICIENCY OF THE EVIDENCE IS A CLAIM THAT COULD AND SHOULD HAVE BEEN RAISED ON DIRECT ANN APPEAL AND IN FACT MADE A

MOTION FOR JUDGMENT OF ACQUITTAL AND IN ADDITION, HE ARGUED TO THE JURY THAT THE EVIDENCE WAS INSUFFICIENT.

DID HE ARGUE IT BASED ON PREMEDITATION? WAS HIS JUDGMENT OF ACQUITTAL MOTION BASED ON THE LACK OF PREMEDITATION?

I DO NOT, AT THIS TIME, RECALL. I KNOW HE ARGUED A NUMBER OF THINGS, WHICH WAS THE LACK OF EVIDENCE TO SHOW THAT HE HAD COMMITTED THE CRIME OR HOW THE CRIME OCCURRED OR THAT EVEN THAT IT WAS A HOMICIDE, WHICH WOULD, OF COURSE, ENCOMPASS, I THINK, THE ISSUE OF PREMEDITATION. THERE WAS A PERIOD OF TIME ELAPSED BEFORE THE BODY WAS FOUND, AND THERE WAS CERTAIN DEGENERATION OF THE BODY, ESPECIALLY IN THE NECK AREA, SO THEY COULDN'T TELL EXACTLY WHAT MIGHT HAVE HAPPENED, EXCEPT THERE WAS A NICK ON THE VERTEBRAE, NECK VERTEBRAE, AND THERE WAS TESTIMONY THAT THIS WAS CAUSED BY A KNIFE, AND FOR THIS REASON AND OTHER REASONS, THE TWO EXPERTS TESTIFIED THAT THIS WAS, IN FACT, A HOMICIDE.

REFRESH MY MEMORY. WERE THERE, WAS THERE SIMILAR FACT EVIDENCE INTRODUCED AT THE GUILT PHASE OF THIS TRIAL?

IN THIS ONE, YES.

OKAY.

JUST ONE, AND I AM SURE YOU ARE AWARE OF THE OTHER CASES PENDING UP HERE, THAT THERE ARE OTHERS, BUT THE TINA COROLIS ATTEMPTED MURDER AND RAPE WAS INTRODUCED AS WILLIAMS RULE EVIDENCE IN THIS CASE, AND IN THAT CASE, THERE WERE A NUMBER OF SIMILARITIES, BUT HE KIDNAPPED HER AND TOOK HER IN HER CAR TO A SITE SOME 50 MILES AWAY, AND AT THAT PLACE ASSAULTED HER WITH A KNIFE AND BEAT HER AND STRANGLED HER AND I AM NOT SURE EXACTLY WHAT HE DID, BUT HE LEFT HER FOR DEAD AT THE SCENE.

IS IT CLEAR THAT THE STATE RELIED ON THAT, IN PART, IN TERMS OF PROVING HIS INTENTIONS?

ABSOLUTELY.

WELL, WAS THERE A DEFENSE ARGUMENT MADE THAT, TO THE JURY, THAT THIS WAS NOT PREMEDITATED, OR WAS THE DEFENSE THAT THIS WAS NOT THE RIGHT PERSON?

ONE OF THE ARGUMENTS THAT I RECALL THAT HE MADE WAS THAT, WELL, MAYBE SHE JUST HAD, THEY WERE TAKING DRUGS. MAYBE SHE HAD A DRUG OVERDOSE AND HE JUST DUMPED HER BODY OUT THERE.

WAS THERE ALSO, BECAUSE THEY RAISE, ON, AS A PETITION FOR HABEAS CORPUS IN THE FIRST CLAIM, THAT THEY WERE, COUNSEL WAS INEFFECTIVE FOR NOT RAISING INSUFFICIENCY OF EVIDENCE, PREMEDITATION, ON DIRECT APPEAL.

CORRECT.

FIRST OF ALL, AS TO THE CHARGES IN THIS CASE, WAS IT, IS IT CORRECT THAT IT ONLY WENT TO THE JURY ON PREMEDITATION?

THAT'S CORRECT. THERE WAS NO --

THERE WASN'T A FELONY MURDER ON THE KIDNAPING.

NO JURY INSTRUCTION ON THE FELONY MURDER, FOR WHATEVER REASON.

WAS THE ISSUE OF THE SUFFICIENCY OF THE EVIDENCE OF PREMEDITATION, RAISED BY COUNSEL ON DIRECT?

NOT BY COUNSEL. BUT WHAT I WOULD SAY IS THAT THIS COURT HAS SAID, A NUMBER OF TIMES, THAT IN A CAPITAL CASE, THIS COURT REVIEWS THE EVIDENCE FOR SUFFICIENCY OF THE EVIDENCE, WHETHER OR NOT IT IS RAISED, AND BY AFFIRMING THIS CONVICTION, THIS COURT IN EFFECT FOUND THAT THE EVIDENCE WAS SUFFICIENT.

WELL, YOU ARE FAMILIAR WITH WILSON V WAINWRIGHT CASE, WHERE WE SAID THAT THE FAILURE OF APPELLATE COUNSEL TO RAISE SUFFICIENCY OF EVIDENCE ON APPEAL COULD CONSTITUTE INEFFECTIVENESS?

I THINK I HAVE COME ACROSS IT. IF IT IS THE CASE I AM THINKING ABOUT, THAT IS A VERY OLD CASE, IS IT NOT?

WELL, 1985. I GUESS IT IS --

I THINK SINCE THEN, THIS COURT, WELL --

WE USUALLY DO IT EXPLICITLY. YOU ARE RIGHT THAT WE TAKE THAT, BUT WE USUALLY DEVOTE, YOU KNOW, A PARAGRAPH OR SOMETHING IN THE OPINION, TOO.

THAT'S CORRECT, AND THIS COURT DID NOT DO THAT IN CASE. AT THE SAME TIME WHAT THIS COURT HAS SAID IN OTHER CASES IS THAT, EVEN THOUGH WE DIDN'T ADDRESS IT EXPLICITLY, WE STILL REVIEW THE EVIDENCE.

I TAKE IT THAT IT IS YOUR POSITION THAT THE RECORD DEMONSTRATES A SUFFICIENT EVIDENCE OF PREMEDITATION.

WELL, I THINK IT DOES IN A NUMBER OF THINGS. FIRST OF ALL, YOU KNOW, HE MET HER IN TENNESSEE AND THEY DROVE ALL THE WAY TO FLORIDA, AND THEN HER NUDE AND BOUND BODY WAS FOUND OUT IN THE MIDDLE OF A FIELD, AND ACCORDING TO THE MEDICAL EXPERTS, IT WAS OBVIOUSLY A HOMICIDE.

WAS THERE ANY DISPUTE THAT THE BODY WAS BOUND?

THERE WAS, AGAIN, SOME DETERIORATION, BUT THERE WAS A STRING ON HER WRISTS, AS I RECALL THE EVIDENCE. THEN HE TOOK HER CAR AND PAWNED THE VICTIM'S JEWELRY IN TAMP.

DID THE MEDICAL EXAMINER TESTIFY THAT SHE WAS BOUND?

WELL, AGAIN, MY RECOLLECTION IS THAT THERE WAS EVIDENCE THAT SHE HAD BEEN TIED. I BELIEVE AT THE WRISTS WITH SOME SORT OF STRING.

WHY DID WE STRIKE CCP?

THIS COURT DETERMINED THAT THERE WAS INSUFFICIENT EVIDENCE OF HEIGHTENED PREMEDITATION.

SO BY IMPLICATION --

SO THIS COURT --

I GUESS IT IS A QUESTION OF WHETHER YOU SAY, YES, YOU ARE RIGHT. WE ALREADY DECIDED IT.

ONE WOULD THINK SO. THIS COURT ADDRESSED HEIGHTENED PREMEDITATION AND SAID THERE

WAS NO SUFFICIENT EVIDENCE FOR THAT, AND ONE WOULD THINK THAT THIS COURT DETERMINED IT WAS SUFFICIENT TO SUPPORT A CLAIM --

CCP, COUNSEL DID RAISE THE INADEQUACY OF THE EVIDENCE TO SUPPORT CCP.

CORRECT. HE DID DO. THAT AND COUNSEL DON'T ALWAYS RAISE THE SUFFICIENCY OF THE EVIDENCE. I HAVE HAD SEVERAL CASES RECENTLY, YOU KNOW, APPELLATE COUNSEL, I THINK, MIGHT, QUITE REASONABLY THINK THAT I AM GOING TO ARGUE THE THINGS THAT I HAVE A CHANCE TO WIN, AND I AM GOING TO NOT BOTHER WITH SOME OF THESE OTHER ISSUES, BUT I KNOW THAT IT HAPPENED. IT IS NOT UNREASONABLE OR EVEN PARTICULARLY UNUSUAL FOR A CASE LIKE THIS, WHICH I THINK THE EVIDENCE WAS VERY STRONG.

HOW RELEVANT WAS THE SIMILAR FACT EVIDENCE TO THE ISSUE OF PREMEDITATION?

WELL, I THINK THE WHOLE NATURE OF THE CRIME AND THE SIMILARITIES, THIS WAS HIS MO. WHERE HE MEETS SOME WOMAN AND HE DOESN'T HAVE A CAR, SO HE GETS IN HER CAR AND KIDNAPS HER AND RAPES HER AND ATTACKS HER AND BEATS HER. MS. COROLIS ONLY FORT TUTLY SURVIVED. CLEARLY HE TRIED TO KILL HER AND HE LEFT HER FOR DEAD AT THE SCENE. I WOULD POINT OUT THAT TRIAL COUNSEL, IN TERMS OF WHETHER OR NOT THIS WAS HOMICIDE, RETAINED THE SERVICES OF HIS OWN EXPERT. HE HIRED DR. BURTON OUT OF ATLANTA, WHO IS THE MEDICAL EXAMINER IN THE METRO ATLANTA AREA, AND HE REVIEWED THE AUTOPSY FINDINGS AND THE REPORTS OF THE STATE'S TWO EXPERTS AND IN ESSENCE SAID HE AGREED WITH THEM. I WOULD ALSO POINT OUT THAT --

IS THAT IN THE EVIDENTIARY HEARING?

YES, IT IS. I DON'T HAVE THE PAGE NUMBER, BUT HE DID TESTIFY TO THAT. TRIAL COUNSEL ALSO TESTIFIED THAT, IN FACT, THE DEFENDANT CONFESSED TO HIM, AND WHAT HE DID WAS HE AC NOODLE TO TRIAL COUNSEL THAT HE HAD MET THIS YOUNG WOMAN IN TENNESSEE, AND TALKED TO HER, AND, WELL, HE CLAIMED, HE CLAIMED THAT SHE VOLUNTARILY WENT WITH HIM TO FLORIDA, THAT HE WAS GOING TO SELL SOME COCAINE, I BELIEVE, AND MAKE A LOT OF MONEY, AND THEY GOT AS FAR AS LAKE CITY AND HE WOULDN'T DESCRIBE THE DETAILS OF IT, BUT HE TOLD TRIAL COUNSEL THAT SHE DIED PAINLESSLY AND THAT HE DROVE TO TAMPA BY HIMSELF, AND THEN OF COURSE, ULTIMATELY, THE VICTIM'S CAR IN THIS CASE WAS FOUND ABANDONED IN MIAMI AFTER IT HAD BEEN WRECKED. THE EVIDENCE CONNECTING HIM TO IT WAS, OF COURSE, THAT THERE WAS A TRAFFIC TICKET ISSUED TO MR. GORE, IN THE INSIDE OF THE MUSTANG, AND SO MR. GORE TOLD POLICE, AND I THINK HIS STATEMENTS, THAT HE LIED TO THE POLICE ARE, ALSO, INCRIMINATING. THIS COURT HAS SAID SUCH STATEMENTS CAN BE EVIDENCE OF GUILT. HE TOLD THE POLICE THAT HE NEVER HAD SEEN THE VICTIM THAT, HE HAD NEVER SEEN HER MUSTANG, NEVER BEEN IN HER MUSTANG. OF COURSE THE EVIDENCE WAS TO THE CONTRARY. HE, ALSO, TOLD THE POLICE THAT HE HAD NEVER MET MS. COROLIS, EVEN THIS THOUGH THERE WAS EVIDENCE THAT THEY HAD KNOWN EACH OTHER PREVIOUSLY, THAT HE HAD NEVER BEEN INSIDE HER CAR AND NEVER DRIVEN HER CAR, EVEN THOUGH HE WAS DRIVING HER CAR WHEN HE WAS ARRESTED, SO ALL OF THESE THINGS CERTAINLY SHOW THAT THE EVIDENCE WAS SUFFICIENT, AND IN ANY EVENT WE THING THAT THE TRIAL COURT CORRECTLY SUMMARILY DENIED THIS AND OTHER SUBSTANTIVE ISSUES, PROPERLY, AND ARE NOT PROCEDURALLY BARRED BECAUSE THEY COULD AND SHOULD HAVE BEEN RAISED AT TRIAL AND ON DIRECT APPEAL. IF THERE ARE NO OTHER QUESTIONS, WE WOULD ASK THE COURT TO AFFIRM.

CHIEF JUSTICE: THANK YOU, COUNSEL.

IF IT PLEASE THE COURT. YOUR HONORS, FIRST OF ALL, THE ISSUE OF PREMEDITATION WAS NOT RAISED IN THE INITIAL 3.850 THAT WAS FILED. CLAIM TWO OF THAT MOTION RAISED THE ISSUE AS TO WHETHER OR NOT TRIAL COUNSEL KNEW THE DIFFERENCE BETWEEN JURISDICTION AND VENUE, BECAUSE THERE WAS, HE NEVER MADE A REQUEST FOR OR INSTRUCTION ON

JURISDICTION. HE DID MAKE AN ARGUMENT, IN CLOSING, CONCERNING VENUE, AND THERE WAS SOME OTHER COMMENTS BY TRIAL COUNSEL CONCERNING VENUE, BUT NEVER WAS THE ISSUE OF JURISDICTION RAISED. AND NEVER WAS THE ISSUE OF PREMEDITATION RAISED. THEN, IN THE PETITION FOR WRIT OF HABEAS, I RAISED THAT ISSUE DEALING WITH PREMEDITATION, AND LET ME POINT OUT, BECAUSE THE COURT ASKED THE STATE ABOUT THE EVIDENCE, ABOUT WHETHER OR NOT THIS YOUNG LADY WAS BOUND, THERE WAS A STRING ON HER WRIST, BUT THE MEDICAL EXAMINER HIRED BY THE STATE, DR. FLORO, TESTIFIED, AND HIS TESTIMONY WITH IN SPECIFIC REFERENCE, IS FOUND -- WITH THIS SPECIFIC REFERENCE, IS FOUND AT PAGES 1157 AND 1158 IN THE RECORD, WHERE IN THE MEDICAL EXAMINER INDICATED THAT NATURAL CAUSES COULD NOT BE RULED OUT AS THE CAUSE OF DEATH, AND THAT HE COULD NOT ACTUALLY DETERMINE THE CAUSE OF DEATH, ALTHOUGH HIS PIN -- HIS OPINION WAS THAT IT WAS IN FACT A HOMICIDE. THAT WAS THE EVIDENCE, AND THERE WAS NO OTHER EVIDENCE AT ALL CONNECTING GORE TO THE SCENE.

DID TRIAL COUNSEL PRESERVE THE ISSUE, AN ARGUMENT AGAINST PREMEDITATION?

NO, SIR.

SO APPELLATE COUNSEL DIDN'T HAVE A PRESERVED ERROR, IS THAT CORRECT?

THAT IS EXACTLY RIGHT. IT WAS NEVER RAISED AND IT WAS THERE FOR NEVER PRESERVED. OKAY.

WHAT WAS ARGUED BY TRIAL COUNSEL, IN THE MOTION FOR, THAT WAS A MOTION FOR JUDGMENT OF ACQUITTAL, CORRECT?

YES.

WHAT WAS ARGUED?

WHAT HE ACTUALLY ARGUED WAS THE VENUE, THAT THEY NEVER ESTABLISHED VENUE. WHAT HAPPENED, WAS THAT THE EVIDENCE WAS SO SCANT, THE ONLY THING THEY HAD TO PUT THE CRIME IN FLORIDA WAS THE BODY. TO BE HONEST WITH YOU, AND THEY WERE TRYING TO, AND THE STATE WAS ACTUALLY RELYING ON WHAT IS 911.05 OR WHATEVER IT IS, WHERE IT SAYS THAT IF ANY ELEMENT OF THE OFFENSE IS FOUND IN THE STATE OF FLORIDA, THEN WE HAVE JURISDICTION, BUT JURISDICTION WORD WAS NEVER USED. ALL OF THE LAWYER EVER ARGUED WAS VENUE, AND THAT IS SET OUT PRETTY CLEAR IN THE ORIGINAL MOTION FILED BY CCR.

WELL, YOU WOULD HAVE TO, LET'S JUST ASSUME, EITHER TRIAL COUNSEL WAS INEFFECTIVE FOR NOT ARGUING THIS PROPERLY OR APPELLATE COURT, TO ESTABLISH PREJUDICE, YOU WOULD HAVE TO ESTABLISH THAT THERE IS, IN FACT, NO COMPETENT, SUBSTANTIAL EVIDENCE TO SUPPORT PREMEDITATED MURDER, CORRECT?

YES. YES, MA'AM.

NOW, IN THIS CASE, AS IN THE, WAS THERE WILLIAMS RULE EVIDENCE?

YES, MA'AM. THE WILLIAMS RULE EVIDENCE DEALT WITH THE TINA COROLIS CASE OUT OF THE THIRD DISTRICT, AND TINA COROLIS ACTUALLY CAME AND TESTIFIED LIVE.

THAT HAD OCCURRED BEFORE THIS?

THAT HAD ACTUALLY OCCURRED BEFORE THIS CASE. THERE WAS A SUBSEQUENT ACE CASE AFTER THIS.

AND HE -- THERE WAS A SUBSEQUENT CASE AFTER THIS ONE.

AND HE TRIED TO KILL TINA COROLIS.

YES, MA'AM.

AND THEN WE USED THE WILLIAMS RULE EVIDENCE TO SHOW A PLAN FOR MURDER O.

YES, MA'AM. LET ME POINT OUT AND THIS HAS NEVER BEEN RAISED BY ANYBODY, BUT WHEN YOU ARE DEALING WITH WILLIAMS RULE EVIDENCE, THE SIMILARITY THAT WAS SUPPOSED TO BE ARGUED WAS NEVER ARGUED BY ANYBODY. THEY JUST PRESENTED THIS TINA COROLIS TESTIMONY.

YOU HAVEN'T ARGUED HERE THAT THAT WAS INEFFECTIVE.

NO, MA'AM, I HAVEN'T, AND IT HAS NEVER BEEN RAISED. IT WAS RAISED THE OTHER WAY.

CHIEF JUSTICE: THANK YOU BOTH. THE COURT WILL NOW STAND IN RECESS. THANK YOU VERY R BOTH VERY MUCH.

MARSHAL: PLEASE RISE.