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Harold Gene Lucas v. State of Florida

CHIEF JUSTICE: LAST CASE ON THE DOCKET IS LUCAS VERSUS STATE. JUSTICE QUINCE IS RECUSED ON THIS CASE. GOOD MORNING. ROBERT STRAIN AND DAPHNE GAYLORD FOR THE DEFENDANT, HAROLD GENE LUCAS. AS THE COURT IS AWARE, THIS IS MR. LUCAS'S SIXTH TIME BEFORE THE COURT. FIVE TIMES THE CASE CAME UP THROUGH THE 1970s AND '80s AND EVEN '90s, BEFORE A 1991 SENTENCING WAS UPHELD. THE EFFECT OF THAT LONG AND MAYBE FAIRLY-UNIQUE HISTORY INDICATES THAT THE TRIAL COURT WAS NOT GETTING THE SENTENCING CORRECT THE FIRST FOUR TIMES THAT MR. LUCAS WAS BEING SENTENCED. OUR POSITION TODAY IS THAT THE SIXTH TIME THAT MR. LUCAS IS HERE IS THAT THE TRIAL COURT STILL DID NOT GET IT CORRECT. IT ALL GOES BACK TO THE SENTENCING ORDER OF 1991, IN WHICH AT LEAST SIX TIMES, WHEN PRESENTING THE ANALYSIS FOR THE HAC AGGRAVATOR, THE TRIAL COURT REPEATEDLY REFERRED TO A SEVERE BEATING AND A SAVAGE BEATING OF THE VICTIM, IN BETWEEN WHAT APPEARED TO BE TWO SERIES OF GUNSHOTS. WE TRIED, IN OUR BRIEF AND TODAY, I WOULD LIKE TO ARGUE THAT IT WAS INEFFECTIVE, FOR COUNSEL IN 1987, NOT TO PICK UP ON WHAT THIS COURT SAID IN THE INITIAL 1979 OPINION, THAT THE FACTS AT TRIAL WERE UNCLEAR AS TO WHAT HAPPENED AFTER THE FIRST SERIES OF GUNSHOTS. NOW, WE FEEL THAT THE COURT ERRED IN THAT 1979 OPINION, BECAUSE IT SOLELY RELIED ON THE TESTIMONY OF THE FRIEND OF THE VICTIM, THE RICKY BYRD, FOR WHOM MR. LUCAS WAS CONVICTED OF ONE OF THE TWO ATTEMPTED MURDER CASES, AND COMPLETELY IGNORED THE CONTRADICTORY EXPLANATIONS THAT THE OTHER SURVIVOR, IF YOU WILL, GAVE ABOUT WHAT HAPPENED.

IS IT NOT, THOUGH, IN THAT PERIOD OF TIME, DIRECT EVIDENCE OF SCREAMING, OF SOME TYPE OF ALTERCATION, OF SOME TYPE OF BEGGING, IF YOU WILL, AND TURMOIL GOING ON WITHIN THE HOME, AFTER THE SHOTS OUTSIDE? DO WE NOT AT LEAST HAVE THOSE ELEMENTS INVOLVED IN THE HOME OR THAT CAN BE TAKEN FROM THE RECORD?

WELL, JUSTICE LUIS, I THINK THAT IS THE WHOLE THRUST OF WHAT THE EVIDENTIARY ENDED UP BEING IS WHETHER THOSE FACTS THAT YOU JUST DETAILED ACTUALLY CAME FROM RICKY BYRD, AND WERE LARGELY CONTRADICTED BY TERRY RICE'S TESTIMONY AND REPORTS TO THE POLICE. IN OTHER WORDS, I THINK THE REPORT IS -- THE RECORD IS PRETTY CLEAR THAT TERRY RICE DID NOT HEAR ANY -- TERRY RYCE DID NOT HEAR ANY SCREAMING, DID NOT HEAR ANY SLAPPING OR COMMOTION GOING ON, DID NOT HEAR THE, WHAT, AGAIN, WHAT THE TRIAL JUDGE AND WHAT YOU JUST REFERRED TO AS THE BEGGING, THE WORDS AMOUNTING TO BEGGING FOR LIFE, AND THIS IS WHAT, AND THIS IS WHAT THE RESENTENCING OR THE ATTORNEY FOR RESENTENCING KNEW HE WAS FACING FROM THIS COURT'S ANALYSIS, FROM THE 1977 -- EXCUSE ME --

HOW ABOUT RESETTING THE STAGE NOW, IN TERMS OF THE ACTUAL SUMMARY OF THE OCCURRENCE OF THIS OFFENSE, THAT IS THE PEOPLE THERE AT THE HOUSE THAT HAD APPARENTLY ARMED THEMSELVES IN PREVENTION OF YOUR CLIENT?

YES -- IN APPREHENSION OF YOUR CLIENT?

YES. THE TRIAL --

FOCUS ON THE PARTICULAR ISSUE THAT YOU ARE GOING TO ADDRESS FIRST. OKAY?

THE TRIAL RECORD WAS SUMMARIZED BY THE COURT SUCCINCTLY, BUT, AGAIN, THAT WAS

PROPER BECAUSE OF THE FACT, PRESENTED AT TRIAL.

YOU ARE TALKING ABOUT FOUR PEOPLE.

THERE WAS HAROLD GENE LUCAS, THE EX-BOYFRIEND, IF YOU WILL, OF THE VICTIM, AND THERE WERE THE TWO FRIENDS WHO WERE WITH JILL PIPER, CARRIE RYCE AND RICKY BYRD. AS THEY TEST -- TERRY RYCE AND RICKY BIRD. AS THEY TESTIFIED --

WHERE WERE THEY?

THE NIGHT AFTER THE -- THE NIGHT OF THE SHOOTING, THEY WERE RETURNING IN DARKNESS TO MS. PIPER'S HOME. THE TRIAL PRESENTED TESTIMONY THAT THERE WERE DEATH THREATS, IF YOU WILL, AND A TRESPASS BY MR. LUCAS EARLIER IN THE WEEK --

DEATH THREATS AGAINST WHOM?

THE EX-GIRLFRIEND, JILL PIPER.

THE ACTUAL VICTIM IN THE CASE.

SHE, I BELIEVE, WAS 16 AT THE TIME OF THE CRIME AND WAS RETURNING TO THE HOME WITH HER TWO FRIENDS. THERE WERE NO OTHER FAMILY MEMBERS PRESENT AT THAT TIME, AND SHE WAS ARMED WITH A SHOTGUN, PRESUMABLY FOR, AS PROTECTION IN THE EVENT SOMETHING HAPPENED FROM MR. LUCAS, AND MR. BYRD HAD A PISTOL OF SOME KIND OF OR ANOTHER. HAROLD LUCAS, THE TESTIMONY SHOWED, WAS OUTSIDE AROUND THE GARAGE, IF YOU WILL, OF A SINGLE-STORY, RANCH-TYPE HOUSE, AND AFTER, AND HE WAS CARRYING A TEN-SHOT .22 CALIBER RIFLE. HE SHOT MS. BYRD, OR EXCUSE ME, MS. PIPER AS THEY WERE WALKING IN FRONT, THE FRONT BEYOND A REASONABLE DOUBT AND STARTING TO ENTER THE HOUSE. RICKY BYRD, IN FACT, HAD ENTERED THE HOUSE WHEN THE FIRST SHOTS RANG OUT, AND THAT IS WHEN TERRY RYCE RAN IN AFTERWARDS AND THE TWO OF THEM, EITHER IN ONE OR TWO BEDROOMS OR MAYBE EVEN A BATHROOM TRIED TO HIDE FROM HAROLD LUCAS OUT THERE, THINKING THAT HE VERY WELL MAY SHOOT THEM, AND IN FACT --

DID HE TESTIFY? -- DID THEY BOTH TESTIFY?

YES, THEY BOTH TESTIFIED.

COULD YOU SUMMARIZE THE TESTIMONY OF THE TWO.

WHAT JUSTICE LUIS, AND AGAIN I POINT THE COURT TO THE STATEMENT AND YOUR 1979 OPINION THAT, AFTER THAT FIRST SET OF SHOTS, IT IS UNCLEAR WHAT HAPPENED NEXT. BUT THEN THE COURT, IN 1979 --

MS. PIPER WAS WOUNDED OUTSIDE? I MEAN, THAT IS CLEAR. THAT IS UNDISPUTED.

THAT'S RIGHT.

OKAY.

SO, AGAIN, A DISTINCTION IS WHETHER, IN FACT, THERE WAS ANY KIND OF BEATING AT ALL, LET ALONE A SEVERE OR SAVAGE ONE, AS MR. BYRD TESTIFIED TO, IN CONTRAST TO WHAT TERRY RYCE DID, AND THAT WAS THE THRUST, AS THE COURT WAS WEAR OF THE TESTIMONY AT THE EVIDENTIARY HEARING.

WHAT WAS MR. BYRD'S TESTIMONY?

HIS WAS THAT HE HEARD A SERIES OF SHOTS. THEN HE HEARD MISS PIPER RUN INTO THE HOUSE, AND THERE THE WORDS COMING OUT OF, BEGGING FOR LIFE. HE HEARD SOME SLAPPING. HE CLAIMED. AND THEN ANOTHER SERIES OF SHOTS.

SO HE TESTIFIED THAT HE HEARD THE VICTIM BEGGING FOR HER LIFE AND THEN HE HEARD SOUNDS THAT HE IDENTIFIED AS A BEATING TAKING PLACE?

THE WAY HE DESCRIBED IT WAS SLAPPING AND WHAT HAVE YOU, BUT IMPORTANTLY, THE QUESTION, OR THE ISSUE IS, IF MR. BYRD'S TESTIMONY WAS ACCURATE, BECAUSE IT WAS SO DISTINGUISHABLE FROM TERRY RYCE'S, ABOUT THAT HAPPENING IN SIDE THE HOUSE, IF IT DID NOT HAPPEN INSIDE THE HOUSE, THEN WAS IT PROP PER FOR THE TRIAL COURT TO RELY SOLELY ABOUT ON -- TO RELY SOLELY ON MR. BYRD'S TESTIMONY?

WHAT EVIDENCE DID YOU PRESENT AT THE EVIDENTIARY HEARING?

AT THE EVIDENTIARY HEARING, WE PRESENTED TESTIMONY OF A CRIME SCENE ANALYSIS, WHO HAD BEEN ACCEPTED AS AN EXPERT BY THE STATE AND WAS VERY EXPERIENCED, AND HIS CONCLUSION AND PART OF HIS TESTIMONY, HE POINTED OUT THAT MR. BYRD'S TESTIMONY ABOUT SLAPPING GOING ON, BECAUSE HE HAD READ THE WHOLE RECORD, EVEN DROVE BY THE CRIME SCENE AND ANALYZED EVERYTHING, INCLUDING THE CLOTHING THAT THE VICTIM WAS WEARING AT THE TIME OF THE CRIME, THE CLERK'S OFFICE STILL HAD IT IN THEIR POSSESSION, TWO YEARS AGO, THERE IS NO INDICATION FROM MR. BYRD'S TESTIMONY THE SLAPPING WAS BY MR. LUCAS AGAINST JILL PIPER OR PERHAPS IT WAS SLAPPING OF MR. LUCAS BY JILL PIPER, BECAUSE HE, THE MEDICAL RECORD REFLECTS, SEVERAL CUTS WHICH THE SENTENCING COURT REFERRED TO AS POSSIBLY DEFENSIVE WOUNDS. PAUL KISH TESTIFIED AT THE EVIDENTIARY, THAT HIS ANALYSIS OF THE BLOOD OR WHAT THE POLICE REPORTS SHOWED ABOUT ANY TRACES OF BLOOD OR BLOOD SMEARS BLOODSTAINS, WHAT HAVE YOU, THAT JILL PIPER NEVER WENT INTO THE HOUSE. ALL THE CARTILAGE SHELLS, THERE WERE FIVE SHOTS THAT THE MEDICAL KPARMER SAID CAUSED EIGHT WOUNDS.

THIS KILLING TOOK PLACE WHEN?

YOU MEAN AT WHAT TIME OF DAY?

NO. WHAT YEAR?

1976.

AND THIS EXPERT, NOW,, YOU KNOW, INVESTIGATED THE CASE WHEN?

FOR THE EVIDENTIARY. BUT HE IS SUMMARIZING THE MATERIALS FROM THE POLICE REPORTS. WHERE DID THE POLICE FIND ALL THE SHELL CASINGS, NOT JUST FIRST THREE THAT. MR. BYRD THOUGHT HE HEARD BUT ALL THE ONES THAT LIKELY HAPPENED? THERE WERE NO SHELL CASINGS IN THE HOUSE. NO BLOOD IN THE HOUSE. AULT SHELL CASINGS WERE OUTSIDE THE HOUSE, AND THAT IS WHY JILL PIPER'S BODY WAS FOUND.

I AM HAVING DIFFICULTY SEEING EXACTLY WHERE YOU ARE HEADED HERE. ARE YOU HEADED TOWARDS, BASED ON THIS EXPERT'S TESTIMONY IN AN ATTEMPT TO RECONSTRUCT FROM THE RECORDS THERE, THAT THE TESTIMONY OF THE WITNESS IN THE HOUSE WAS SO INCREDIBLE THAT IT COULDN'T BE RELIED ON?

THAT'S CORRECT. AND THE IMPORTANT THING --

THAT IS PRETTY HARMFUL STUFF.

WHAT JUSTICE ANSTEAD, NOT ONLY DID PAUL KISH TESTIFIED BUT WE TOOK THE EVIDENTIARY, TOOK THE DEPOSITION OF ROBERT GRAVE, THE MEDICAL EXAMINER, AND HE WENT OVER HIS AUTOPSY AND OTHER MATERIALS FROM THE TIME AT TRIAL, AND THERE WAS NOT ONE PHOTOGRAPH, NOT ONE NOTE OR ANY OTHER POSSIBILITY THAT DR. GRAVES, THE STATE'S MEDICAL EXAMINER, COULD SAY THAT THERE WAS ANY SIGN OF ANY BEATING WHATSOEVER. THE ONLY QUESTION OF WHAT KIND OF COMMOTION PHYSICALLY MIGHT HAVE HAPPENED WERE SOME RATHER SMALL DEFENSIVE WOUNDS TO JILL PIPER'S HANDS.

HOW CAN YOU AVOID A FINDER OF FACT, THEY ACTUALLY HAVE A WITNESS THAT TESTIFIES THAT I HEARD A PERSON PLEADING FOR HER LIFE, AND THEN I HEARD SOUNDS OF SLAPPING OR BEATING, WHY COULDN'T A FINDER OF FACT LOGICALLY FIND FROM THAT EVIDENCE, THAT THERE WAS A BEGGING FOR LIFE, AND THAT THERE WAS A BEAT SOMETHING.

WELL, JUSTICE ANSTEAD, THIS COURT RECOGNIZED THAT, AFTER THE, AND IT IS 1979 OPINION, THAT AFTER THE INITIAL ROUND OF SHOTS, IT WAS UNCLEAR WHAT HAPPENED. INORD OTHER TO BELIEVE RICKY BYRD AND NO ONE ELSE, IT MEANT THAT THE TRIAL COURT AND THIS COURT WOULD HAVE TO IGNORE THE CONTRADICTORY EXPLANATIONS OF WHAT TERRY BYRD SAID, WHAT THE MEDICAL EXAMINER SAID, THE LACK OF BRUISES AND ANY SIGN ON THE BODY OF ANY BEATING, COMBINED WITH WHAT PAUL KISH SAID ABOUT THE CLOTHING LACK ANY SIGN OF A DRAGGING. AT TRIAL THE PROSECUTOR ARGUED TO THE JURY THAT, AFTER JILL PIPER WENT INTO THE HOUSE, SHE WAS, DIED THERE AND DRAGGED OUTSIDE.

THIS ALL GOES TO AGGRAVATION, IS THAT CORRECT?

THAT'S CORRECT.

AND RELYING ON AGGRAVATION, WHAT ARE WE TALKING ABOUT?

JUSTICE ANSTEAD, AGAIN, THIS IS THE HAC AGGRAVATOR.

THIS IS AN INEFFECTIVE ASSISTANCE CLAIM. IT IS NOT REALLY HAC.

ATTACHING TO THE HAC.

WHAT DID THE LAWYER NOT DO THAT THE LAWYER SHOULD HAVE DONE IN THIS CASE, AND CONNECT THAT WITH THE PREJUDICE, BECAUSE WE HAVE BEEN TALKING ABOUT THE UNDERLYING FACTS, SO LET'S DIRECT US TO THE LEGAL ISSUE WE NEED TO ANALYZE.

WELL, WHEN YOU LOOK AT THE HAC, AND YOU TRY TO DISH THIS FROM A CASE SUCH -- TO DISTINGUISH THIS FROM A CASE SUCH AS SHERER VERSUS STATE, WAS THERE ANY UNNECESSARY OR OR EXTRAORDINARY TORTURE IN THIS? NO. WAS THERE A POSSIBILITY THAT THE GUNSHOT WOUNDS HAPPENED RATHER QUICKLY, RATHER THAN A PROLONGED LENGTH OF TIME?

HAVEN'T WE CROSSED THAT LINE AND ARE TRYING TO SEE WHETHER COUNSEL WAS INEFFECTIVE AND WHETHER HE APPROACHED THIS, AND THAT IS ALL I NEED TO KNOW.

COUNSEL TESTIFIED THAT THE SOLE REASON HE DID NOT HIRE ANY CRIME SCENE EXPERTS OR OTHER ADVISORS WHO HANDLE THE ISSUE OF WHO TO BELIEVE, RICKY BYRD OR JILL PIPER, WAS THAT HE FELT, HIMSELF, WITHOUT THE ASSISTANCE OF ANY EXPERT, THAT THE GUN SHOT HEAD TO THE WOUND MIGHT BE OBLITERATED ANY SIGN OF A BRUISEING FROM A PEEINGT.

SO THE THEORY IS THAT THE TRIAL ATTORNEY WAS -- FROM A BEATING.

SOUGHT THEORY IS THAT THE TRIAL ATTORNEY WAS INEFFECTIVE FOR NOT HIRE AGO CRIME SCENE EXPERT.

AT MINIMAL. AND FOR NOT BRINGING DR. GRAVES BACK FOR RESENTENCING AND SAY, DR. GRAVES, IN 1979 WHERE THE SUPREME COURT SAID THIS, THIS IS HE ESPECIALLY HEINOUS -- THIS IS AN ESPECIALLY HEINOUS CRIME BECAUSE OF THE TESTIMONY ABOUT THE BEATING. WHERE IS THE SIGN OF THE BEATING? YOU KNOW, AND IT KIND OF TIES IN WITH WHAT WE, THE OTHER CLAIM OF THE INEFFECTIVENESS OF TRIAL COUNSEL AT GUILT PHASE, FOR NOT REALIZING HOW IMPORTANT IT WAS TO GET CORROBORATION OF PCP USAGE. THAT TRIAL COUNSEL HANDLED GUILT PHASE, HAD BEEN OUT OF LAW SCHOOL THREE YEARS. THE PUBLIC DEFENDERS OFFICE IN FORT MYERS NO ATTORNEYS AT THAT TIME WHO HAD EVER DONE A CAPITAL CASE AND WHAT HAVE YOU TARNTION IS A TIE-IN TO HOW THE CASE -- WHAT HAVE YOU AT THAT TIME, AND IT IS A TIE-IN TO HOW THE CASE ENDED UP IN 1981. WHEN YOU READ THE 1981 SENTENCING ORDER, JUSTICE LUIS, AND THAT REFERENCE TO SALVAGE SEVERE BEATING, IF THERE WAS NO SAVAGE SEVERE BEATING, HOW CAN THAT BE HAC? THEN YOU GO AND SAY, WELL, TRIAL COUNSEL OR RESENTENCING IN 1987, KNEW HOW THIS COURT WAS TAKING HAC YOU WILL RECALL, TOO, WHEN YOU ANALYZE THE RECORD OF THE FIVE APPEALS, THAT TRIAL COUNSEL ESSENTIALLY DID A REAL GOOD JOB IN GETTING RID OF THE COLD, CALCULATED AND PREMEDITATED AGGRAVATOR THAT AT ONE TIME WAS FOUND BY THE COURT. AND MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME. I JUST WANT TO BE ASSURE TO REMIND YOU SO -- TO BE SURE TO REMIND YOU, SO YOU SAVE SOME TIME FOR REBUTTAL.

YES, SIR. THANK YOU.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. I AM CAROL DITTMAR FROM THE ATTORNEY GENERAL'S OFFICE REPRESENTING THE APPELLEE, STATE OF FLORIDA AND RESPONDENT MOORE. THE SUGGESTION THAT HAC IS NOT APPLICABLE IN THIS CASE, DUE TO THE CRIME SCENE EXPERT TESTIMONY AT THE POSTCONVICTION HEARING, WAS REJECTED BY THE TRIAL JUDGE BELOW, AND IS FACTUALLY UNSUPPORTED IN THIS RECORD. AS TO TERRY RICE'S INABILITY TO REMEMBER DETAILS IS WHAT WAS HAPPENING AT THE HOME, THAT IS NOT A BAR TO HAC, AND CERTAINLY SHE CORROBORATED, TO A GREAT DEAL, RICKY BYRD'S TESTIMONY THAT THERE WAS A STRUGG PELL INSIDE THE HOUSE, AND SHE TESTIFIED AT THE INITIAL TRIAL, THAT SHE HEARD, ONCE THEY HAD RUN INTO THE HOUSE, SHE IS GOING IN WITH RICKY, AND SHE HEARD JILL, IN THE HOUSE, CRYING AND SCREAMING. SHE HEARD HER SAYING, GENE, WHY ARE YOU DOING THIS? SHE DID NOT RECALL HEARING THE THREE SHOTS THAT FOLLOWED THAT. SHE WAS ON THE PHONE, TRYING TO GET AHOLD OF THE POLICE. SHE WAS FOCUSING ON OTHER THINGS, SO THE FACT THAT SHE MAY NOT REMEMBER AS MANY DETAILS AS RICKY BYRD REMEMBERS DOES NOT IMPEACH RICKY BYRD'S TESTIMONY. RICKY BYRD WAS VERY DETAILED ABOUT WHAT HE RECALLED AND THAT HE RECALLED THE SLAPPING SOUNDS, FIGHTING NOISES IS HOW HE DESCRIBED IT, SCREAMING, BEGGING, THE THINGS THAT HE HEARD THAT ARE RECOUNTED IN THE TRIAL COURT'S ORDER. ALL OF THAT IS SUPPORTED BY HIS TESTIMONY AND IS NOT REFUTED BY THE TESTIMONY AT THE EVIDENTIARY HEARING.

LET ME GET STRAIGHT IN MY HEAD THAT THE GUILT PHASE TRIAL IS BEING EVALUATED IN POSTCONVICTION, IS THE 1977 TRIAL, CORRECT?

CORRECT.

THE JURY RECOMMENDATION, WHICH IS BEING EVALUATED, WAS THE 1987 JURY RECOMMENDATION.

YES, YOUR HONOR.

AND THEN THERE WAS A RESENTENCING BY COUNSEL, BY JUST JUDGE IN 1991?

YES.

THAT DIDN'T GO TO THE JURY.

NO.

OKAY. SO --

THAT WAS BASED ON THE RESENTENCING FROM 1987.

SO EVALUATION OF THE PERFORMANCE OF COUNSEL IN THE PENALTY PHASE WOULD BE DIRECTED TO WHAT WAS PRESENTED IN THE 1987 JURY TRIAL?

THAT'S CORRECT. BUT I BELIEVE THAT RICKY BYRD AND TERRY RYCE BASICALLY REPEAT WHAT HAD THEY HAD SAID AT THE INITIAL TRIAL IN THE 1987 RESENTENCING, SO IT IS THE SIMILAR, VERY SIMILAR TESTIMONY ON THOSE FACTS.

AND THEIR TESTIMONY CORROBORATED EACH OTHER'S, IS THAT --

IT CORROBORATES EACH OTHER'S, AND IT ALSO CORROBORATES THE MEDICAL EXAMINER'S TESTIMONY. NOW, HE DOES TALK ABOUT HOW HE DID NOT SEE PHYSICAL SIGNS AFTER SEVERE BEATING, OTHER THAN DEFENSE WOUNDS. SHE HAD NUMEROUS CUTS, BRUISES, AND ABRASIONS ON HER FINGERS, HER HANDS AND HER ARMS, WHICH HE DESCRIBES REALLY IN DETAIL AT THE DEPOSITION, FOR POSTCONVICTION, WHICH WAS ADMITTED INTO EVIDENCE AT THE POSTCONVICTION HEARING AS TESTIMONY. HE DID NOT GET THAT DETAILED AT THE TRIAL, BUT IN THE, FOR THE POSTCONVICTION TESTIMONY, HE TALKED IN DETAIL ABOUT THE DEFENSIVE WOUNDS THAT HE HAD SEEN ON HER BODY, AND ADDITIONALLY HE SAID THAT, ALTHOUGH HE COULD NOT IDENTIFY DAMAGE, TRAUMA TO HER HEAD THAT, IT IS LIKELY THE TWO GUNSHOT WOUNDS SUFFERED TO HER HEAD MIGHT HAVE OBSCURED ANY OTHER DAMAGE THAT MAY HAVE BEEN CAUSED FROM A BEATING, SEW CERTAINLY DID NOT SAY THAT SHE HAD NOT BEEN BEATEN, BASED ON THE EVIDENCE.

-- SO HE CERTAINLY DID NOT SAY THAT SHE HAD NOT BEEN BEATEN, BASED ON THE EVIDENCE.

DID ANYBODY TESTIFY AS TO THE TIME SEQUENCE HERE AND THE PASSAGE OF TIME? THAT IS WE GO BACK TO THE SETTING OF THESE PEOPLE ARMING THEMSELVES BECAUSE THERE HAD BEEN SPECIFIC DEATH THREATS AGAINST THE VICTIM, THAT WAS EVENTUALLY KILLED. THE VICTIM WAS SHOT OUTSIDE THE HOME INITIALLY, THAT CORRECT?

YES. YES.

DO WE KNOW HOW MANY WOUNDS WERE INFLICTED AND, WHERE SIDE? IN OTHER WORDS THE BODY?

ALL OF THE CASINGS WERE FOUND OUTSIDE THE HOME.

BUT AS FAR AS, WHAT WARTS -- WHAT PARTS OF THE BODY?

WE KNOW THAT WHAT RICKY BYRD OBSERVED WAS, WHEN HE SAW JILL RUN INTO THE HOUSE, AND WHAT HAPPENS IS HE IS IN THE LEAD AS THEY GET OUT OF THE CAR AND HE IS WALKING TOWARDS THE HOUSE AS LUCAS COMES AROUND FROM THE SIDE OF THE HOUSE WHERE HE HAD BEEN WAITING. RICKY AND TERRY GO INTO THE HOUSE AND HE HEARS SHOTS AT THAT POINT. HE TURNS AROUND AND HE OBSERVES THAT TERRY IS, IN HIS WORDS, FROZEN STIFF, AND HE PULLS HER TOWARDS THE BACK OF THE HOUSE AND HE SEES JILL COME IN BEHIND HIM AND HE SEES THAT JILL HAS TWO WOUNDS HER BACK.

SO SHE HAS BEEN SHOT AT LEAST TWICE AT THAT POINT.

YES. AT THAT POINT. THEY GO INTO THE BEDROOM. TERRY AND RICKY GO INTO THE BEDROOM AND RICKY CLOSES THE BEDROOM DOOR AND THAT IS WHEN HE HEARS THE SOUNDS OF THE STRUGGLE, SCREAMING, THE FIGHTING AND THE SLAPPING AND THE BEGGING, AS HE DESCRIBES IT, AND THEN HE HEARS THREE MORE SHOTS, AND WE KNOW FROM THE CRIME SCENE THAT THOSE CASINGS WERE ALSO OUTSIDE, THAT SHE WAS SHOT TWICE IN THE HEAD AND THAT ONE OF THEM WOULD HAVE BEEN FATAL IMMEDIATELY.

DO WE KNOW THE PASSAGE OF TIME FROM THE INFLICTION OF THE FIRST SHOTS?

NO. NO.

NOBODY ACTUALLY --

THEY DID NOT TRY TO PUT ANY KIND OF TIME FRAME ON IT AS TO HOW LONG THINGS TOOK.

THERE WAS AT LEAST ENOUGH TIME FOR ALL OF THAT TO HAVE HAPPENED THOUGH.

YES. YES.

AND ACCORDING TO BOTH OF THOSE OTHER PEOPLE, THE VICTIM WAS IN THE HOUSE AT SOME POINT.

YES. THEY BOTH TESTIFIED THEY HEARD HER IN THE HOUSE. RICKY SAW HER AND HEARD HER, AND ACCORDING TO TERRY SHE HEARD THEM FIGHTING IN THE HOUSE.

NOW, THIS CRIME SCENE TECHNICIAN, DID HE TESTIFY THAT IT WOULD HAVE BEEN IMPOSSIBLE FOR HER TO HAVE BEEN IN THE HOUSE?

NO. ACTUALLY WHAT HE TESTIFIED, PAUL KISH TESTIFIED AT THE EVIDENTIARY HEARING THAT THERE WAS NOTHING THAT HE OBSERVED, FROM HIS REVIEW OF ALL OF THE EVIDENCE AVAILABLE AND EVERYTHING THAT HE HAD, NOTHING COULD REFUTE THE SCENARIO THAT BYRD HAD HEARD JILL INSIDE THE HOUSE, SCREAMING AND SLAPPING OR GETTING SLAPPED, AFTER SHE HAD BEEN SHOT OUTSIDE, THAT SHE WAS SHOT, CAME INSIDE, SCREAMING, TUSSLING, RAN OUT AND THEN WAS SHOT AGAIN. WHERE HE HAD A SPECIFIC DISAGREEMENT WAS THE USE OF THE WORD DRUG, THAT SHE HAD BEEN DRUG OUTFIT HOUSE. HE SAID THAT THE PHYSICAL EVIDENCE DID NOT SUPPORT THAT BECAUSE SHE WAS BLEEDING FROM THE BACK AND THERE WASN'T A TRAIL OF BLOOD AND ALSO THAT HER CLOTHES THAT HE EXAMINED DID NOT SHOW ANY SIGN OF HAVING BEEN PULLED OVER THE PAVEMENT.

ON THIS DRAGGING ASPECT --

THE FOCUS IS ALL ON THERE WAS NOT A DRAGGING, AND ALTHOUGH COUNSEL MENTIONED --

THE COURT DID NOT RELY ON THAT, RIGHT, IN OPPOSING THE FACTOR.

IT IS NOT MENTIONED. WHAT HAPPENED, AND I THINK I HAVE GOT THE DIRECT QUOTE ACTUALLY IN MY BRIEF, THE PROSECUTOR'S CLOSING ARGUMENT, HE SAID WHETHER SHE WAS DRUG OUT OR PULLED OUT OR RAN OUT OR WHATEVER, AGAIN, THE EXACT QUOTE, I THINK, IS IN THE BRIEF, HE MENTIONED THAT AS A POSSIBILITY THAT SHE HAD BEEN DRUG OR PULLED OUT, AND THEN YOU HAVE GOT PAUL KISH SAYING MAYBE SHE WAS PULLED OUT BUT SHE WASN'T DRUG OUT. THE SENTENCING ORDER DOES NOT SAY SHE WAS DRUG OUT. THIS COURT'S OPINION, WHERE YOU UPHELD HAC ON A SPECIFIC CHALLENGE ON DIRECT APPEAL, LOOKING AT THE EVIDENCE, DIDN'T USE THE WORD "DRAG", SO I THINK THAT IS WHERE THE REAL DISAGREEMENT AS TO WHAT HAPPENED IN THE HOUSE AND HOW SHE ACTUALLY GOT OUTSIDE THE HOUSE, WHETHER SHE WAS RUNING FROM LUCAS TO GET OUTSIDE THE HOUSE OR WHETHER HE PULLED HER OUT, THAT IS

THE PART WE DON'T KNOW, BUT I WOULD SUBMIT IT REALLY IS NOT SIGNIFICANT, IN ORDER TO FIND HAC ON THESE FACTS.

WHAT ABOUT DID THE DEFENSE LAWYER TESTIFY AT THE EVIDENTIARY HEARING HERE?

YES, HE DID, AND WHAT HE TESTIFIED TO, AND IT IS ROBERT JACOBS, WHO IS A VERY EXPERIENCED CAPITAL DEFENSE ATTORNEY, HAS TRIED MANY CAPITAL CASES. HE STATED THAT, IN HIS OPINION IN HINDSIGHT, HAVING THIS INFORMATION ABOUT THE CRIME SCENE WOULD NOT BE MEANINGFUL TO THE PENALTY-PHASE JURY. HE DID NOT THINK IT WAS SIGNIFICANT. HE FELT LIKE THE RELEVANT ASPECTS OF THE CASE THAT HE WAS TRYING TO ATTACK AND CERTAINLY HE DID ATTACK HAC IN EVERY WAY. HE TRIED TO ARGUE THAT THIS WAS INSTANTANEOUS, THE POSSIBILITY THAT THE FATAL SHOT HAD OCCURRED FIRST. HE WAS ARGUING THAT EVERYTHING DID TAKE PLAYS OUT SIDE. THAT WAS HIS ARGUMENT. THAT IS WHERE THE CASINGS WERE FOUND, SO HE HAD SOME BASIS TO ARGUE THAT, AND HE MADE THAT ARGUMENT. CERTAINLY TO THE JURY. HE MADE THE ARGUMENT TO THE TRIAL JUDGE, AND THE ARGUMENT WAS ALSO MADE IN THIS COURT, SO HE CHALLENGED THAT TO, VERY VIGOROUSLY AT THE RESENTENCING, AND HE STATED, IN HINDSIGHT, AT POSTCONVICTION, THAT HE DIDN'T THINK HE WOULD DO ANYTHING DIFFERENTLY IN THAT REGARD.

THERE WAS EXTENSIVE EVIDENCE HERE ABOUT HIS QUALIFICATIONS, THAT IS THAT IN THIS AREA OF THE STATE, HE WAS REGARDED AS PERHAPS THE MOST QUALIFIED CRIMINAL DEFENSE LAWYER IN DEATH PENALTY CASES.

YES. HE HAD VERY HIGH RESPECTS AND I BELIEVE HE EVEN LECTUREUOUS AT SOME OF THE LIFE-OVER-DEATH SEMINARS THAT THE PUBLIC DEFENDERS OFFICE PUTS ON AND HIS QUALIFICATIONS WERE ALL PART OF THE RECORD AND THE TRIAL JUDGE TOOK THAT INTO ACCOUNT AND MADE SPECIFIC DETERMINATIONS AS TO HIS QUALIFICATIONS.

AT THE TIME THAT THIS TRIAL WENT ON THAT IS IN ISSUE HERE, WAS THERE ANY INDICATION THAT ALL DEFENSE LAWYERS IN DEATH PENALTY CASES HIRED CRIME SCENE TECHNICIANS?

NO.

OR THEY HAD DONE ANYTHING LIKE THAT?

. THERE IS NO ALLEGATIONS -- NO. THERE IS NO ALLEGATIONS AND NO EVIDENCE THAT THIS WAS, HE DIDN'T REALLY WANT TO FOCUS ON IT, SO HE TRIED WORKING WITH WHAT HE HAD IN MAKING THE ARGUMENTS THAT HE HAD, BASED ON THE RECORD, AND, AGAIN, WITH THE CRIME SCENE EXPERT MR. KISH, UNABLE TO SAY THERE WAS NO STRUGGLE IN THE HOUSE, HE COULD NOT REFUTE THAT SCENARIO, THERE REALLY ISN'T ANYTHING MEANINGFUL THAT HAS BEEN ADDED IN THE POSTCONVICTION. THE OTHER ISSUES I DON'T THINK WE REALLY NEED TO DISCUSS IN DEPARTMENT, AND I WON'T GET INTO THEM, OTHER THAN I WOULD NOTE THAT, AS FAR AS THE ISSUE ON THE EIGHTH AMENDMENT CLAIM THAT MR. LUCAS HAS BEEN ON DEATH ROW VERY LONG, THE CONSTITUTIONAL AMENDMENT WHICH IS UP FOR BEING VOTED ON TODAY, I WOULD ASK THAT THIS COURT, IF THAT AMENDMENT PASSES, I THINK IT BINDS THIS COURT TO INTERPRET THE EIGHTH AMENDMENT CONSISTENT WITH THE US SUPREME COURT DECISIONS, AND I WOULD JUST POINT THAT OUT TO THIS COURT THAT, IF THAT PASSES, I THINK THAT IS SOMETHING THAT IS RELEVANT IN THIS CASE, AND ALTHOUGH IT IS CERTAINLY A CLAIM THIS COURT HAS ALREADY REJECTED, SO IT IS NOT LIKE IT WOULD CHANGE THIS COURT'S OPINION. THAT WOULD JUST BE FURTHER SUPPORT FOR OUR ARGUMENT.

WHAT ABOUT THE SIXTH AMENDMENT ISSUE?

HE HAD THE PRIOR VIOLENT FELONY CONVICTIONS, BASED ON THE CONTEMPORANEOUS ATTEMPTED MURDERS AND THAT IS WHAT THE TRIAL JUDGE FOUND IN AGGRAVATION, HE FOUND

THOSE PRIOR CONVICTIONS, SO I THINK THAT, UNDER THIS COURT'S OPINION, ANY POSSIBLE ERROR ON THOSE FACTS WOULD BE HARMLESS.

UNDER THE APRENDI RATIONALE THAT DEALS WITH A PRIOR VIOLENT FELONY?

RIGHT. YES. SO I WOULD ASK THIS COURT TO AFFIRM THE DENIAL OF POST-CONVICTION RELIEF AND ALSO TO DENY THE HABEAS PETITION. THANK YOU.

CHIEF JUSTICE: COUNSEL.

-- COUNSEL, WOULD YOU SPECIFICALLY ADDRESS THIS POSITION THAT, PART OF THE ARGUMENT AS I UNDERSTOOD IT BEFORE THAT COUNSEL SHOULD HAVE HIRED A CRIME SCENE TECHNICIAN BACK AT THE TIME, AND I AM NOT SURE WHAT STANDARD WE WOULD APPLY TO THAT, ABSENT SOME EXPERT TESTIMONY BY CRIMINAL DEFENSE LAWYERS, FOR INSTANCE, THAT JUST LIKE WITH MENTAL HEALTH, CONSULTING MENTAL HEALTH EXPERTS, THAT AT THAT TIME, IT WAS ROUTINE OR THAT ANY COMPETENT, CRIMINAL DEFENSE LAWYER --

I KNOW WHAT YOU MEAN, JUSTICE ANSTEAD N THIS CASE, THAT SPECIFIC TYPE OF ATTORNEY EXPERT OPINION WAS NOT PROVIDED, BUT THE KICKER OR IN RESPONSE, I WOULD SAY, IS THAT MR. JACOBS WELL KNEW THAT PROVING THAT THIS WAS NOT AN UNNECESSARILY TORTUROUS KILLING, PROVING, IF YOU WILL, THAT MR. LUCAS DID NOT HAVE ANY EXTREME OR ANY DESIRE TO INFLICT TORTUROUS PAIN ON JILL PIPER, THAT THERE WAS NO SIGNIFICANT LAPSE OF TIME BETWEEN THE SERIES OF SHOOTINGS, TO WHERE JILL PIPER SUFFERED UNDULY TO PUT IT IN THAT UNIQUE CATEGORY OF CASES THAT TAKE IT AWAY FROM DIXON, TAKE IT AWAY FROM SHEER, TO SAY THAT THIS WAS MORE THAN A SIMPLE KILLING. THAT MR. JACOBS WOULD HAVE HAD TO KNOW HE WOULD HAVE TO HAVE SOME DIRECTION AND SOME ASSISTANCE IN POINTING AND HITTING THAT VERY PRECISE ISSUE THAT WE TRIED TO HIT AT THE EVIDENTIARY.

WHERE IS THERE SOME BASIS IN THIS RECORD THAT WOULD SUGGEST THAT HE SHOULD GET A CRIME SCENE TECHNICIAN TO COME TO COUNTER--

WELL, MR. JACOBS DID, ON HIS OWN, WITHOUT EVEN CONSULTING ANY EXPERT OR WHAT HAVE YOU, DECIDED NOT TO BRING, NOT TO FOCUS ON WHERE THE GUN CASINGS WERE DONE, WHERE THERE WAS NO BLOOD, MEANING IN THE HOUSE. ALL HE WANTED, ALL HE DID WAS RELY, AND IMPORTANTLY TRIED TO ARGUE THAT THE SHOOTING TOOK PLACE ENTIRELY OUTSIDE THE HOUSE, PARTLY IN AN ATTEMPT TO DISCREDIT MR. BYRD. HE DIDN'T EVEN BRING THE POLICE OFFICERS WHO HAD WRITTEN THOSE INITIAL REPORTS. HE DIDN'T BRING IN ANYBODY. HE JUST RELIED ON THE RECORD TO REPEAT THOSE FACTS, AND WHAT WE ARE SIGH SAYING IS, AGAIN, WHEN YOU READ THE 1991 SENTENCING ORDER THAT IS TALKING ABOUT SEVERE SAVAGE BEATINGS, AT LEAST SIX REFERENCES LIKE THAT, WHEN YOU READ THIS EVIDENTIARY HEARING ORDER, UPON FIRST READING IT IS HARD TO DETERMINE THAT THERE WERE THREE DAYS OF TESTIMONY FROM OUR DEFENSE EXPERTS. IT IS CLEAR THAT, CONTRARY TO THE STATE'S ARGUMENT THAT THERE WAS SUBSTANTIAL EVIDENCE FOR THE COURT'S FINDING, EITHER IN 1991 OR AFTER THIS EVIDENTIARY, THE COURTS ARE IGNORING ANYTHING THAT WAS PRESENTED ITSELF, THAT WAS COMPETENT AND SUBSTANTIAL THAT THERE WAS NO EXTRAORDINARY TORTURE IN THIS CASE.

YOU ARE TALKING ABOUT THE MERITS OF THE HAC FINDING, AND THE ISSUE HERE IS WHETHER COWAN HE WILL WAS IN EFFECT -- COUNSEL WAS INEFFECTIVE FOR NOT PRESENTING ON THAT FINDING, NOT THE MERITS OF THE FINDING, ITSELF.

THE QUESTION, AGAIN, JUSTICE CANTERO, IS IF ROBERT JACOBS HAD CALLED A CRIME SCENE TECHNICIAN, HAD RECALLED THE MEDICAL EXAMINER, LIKE WE DID AT THE EVIDENTIARY, COULD THAT COURT OR THAT JURY HAVE DECIDED HAC OR NOT? BECAUSE THE HAC WAS CERTAINLY A BIG COMPONENT, A LARGE COMPONENT OF THE RESENTENCING ARGUMENT. YOU

MAY RECALL THAT THE, THAT BY THE TIME IT CAME BACK FOR THE '91 HEARING FOR JUST REWRITING, THAT THE COURT ALLOWED MEMORANDUM OF LAW AT THAT TIME.

WHAT WAS THE EVIDENCE ABOUT THE DEFENSIVE WOUNDS?

UNDETERMINEABLE. THEY WERE CUTS, AND IN FACT, I BELIEVE DR. GRAVES, ON A QUESTION DURING THE DEPOSITION, INDICATED THAT EVEN POSSIBLY THEY MIGHT HAVE COME, THERE WEREN'T NUMEROUS ONES. I BELIEVE THE MORE ACCURATE, ALTHOUGH I I DON'T HAVE THE NUMBER OFF THE TOP OF MY -- ALTHOUGH I DON'T HAVE THE NUMBER OFF THE TOP OF MY HEAD, MIGHT BE A FEW CUTS AND THAT THEY MIGHT HAVE COME FROM FALLING TO THE GROUND OR GRABBING THE GUN BARREL WITH THE TIP ON IT OR WHAT HAVE YOU, NO EVIDENCE THAT THEY WERE SUBSTANTIAL OR SERIOUS OR EVIDENCE THERE.

WE THANK YOU VERY MUCH AND WILL RELY ON THE BRIEFS. WE THANK YOU VERY MUCH FOR YOUR PRESENTATIONS. THE COURT WILL STAND IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.