Lucious Boyd v. State of Florida

CHIEF JUSTICE: THE NEXT CASE IS BOYD VERSUS STATE OF FLORIDA. NOT MEANING TO CUT YOU OFF, MR. SCHER, BUT WE NEED TO MOVE ALONG. THANKS TO BOTH OF YOU, FOR ANSWERING OUR QUESTIONS. YOU ARE HERE. I DIDN'T KNOW WHY YOU WERE HERE. SO YOU ARE DEFINITELY READY. VERY NICE OF US, TO GIVE YOU BACK-TO-BACK ARGUMENTS.

MADAM CHIEF JUSTICE, MAY IT PLEASE THE COURT. GARY CALDWELL ON BEHALF OF LUCIOUS BOYD, A CAPITAL CASE. I HAVE A WEALTH OF ISSUES BUT LIMITED TIME. I BELIEVE I WOULD LIKE TO DISCUSS, FIRST, ISSUE NUMBER ONE, WHICH PERTAINS TO A MATTER CONCERNING SOME JURORS. THEN, WITH THE COURT'S INDULGENCE, MOVE TO ISSUE SIX AND SEVEN, WHICH ARE MORE OR LESS TWIN ISSUES RELATED TO THE DEFENDANT'S COMPETENCY, AND THEN MOVE BACK BRIEFLY, IF I HAVE TIME, TO THE SECOND ISSUE, WHICH IS A DISCOVERY ISSUE. WITH RESPECT TO THE JURY ISSUE, THE LEGAL STANDARD REGARDING THE REQUEST FOR AN INTERVIEW OF A JUROR, IS SET OUT IN THE BAPTIST HOSPITAL CASE, ALSO IN THE KIERST CASE. I THINK THERE IS A AGREEMENT IN THE BRIEF THAT THIS IS THE STANDARD THAT APPLIES, WHICH IS WHETHER THERE ARE SWORN ALLEGATIONS THAT, IF TRUE, WOULD REQUIRE A TRIAL COURT TO ORDER A NEW TRIAL. SO OBVIOUSLY THE FIRST QUESTION IS, DID THAT HAPPEN IN THIS CASE. WHERE THERE SUCH SWORN ALLEGATIONS.

NOW, THIS IS THE ISSUE CONCERNING WHETHER OR NOT A WITNESS HEARD SOME JURORS DISCUSSING EXTRA RECORD MATERIAL, CONCERNING MR. BOYD, CORRECT SOME.

THAT'S CORRECT, JUSTICE QUINCE.

AND THE TRIAL JUDGE, BASICALLY, SAYS THAT THE JURORS WOULD NOT HAVE BEEN IN THE POSITION THAT THIS WITNESS SAYS. THAT THE JURORS WOULD NOT HAVE BEEN IN THE PUBLIC BATHROOM, SO TELL ME WHAT IS WRONG WITH THAT STATEMENT BY THE TRIAL JUDGE.

WELL, THE, WHAT HAPPENED WAS THE JUDGE HAD INSTRUCTED THE JURORS IN THE AFTERNOON, SUPPOSEDLY THIS HAPPENED DURING THE AFTERNOON, IN THE AFTERNOONS, THEY WERE TO DISPERSE FOR LUNCH. THEY WERE TO COME BACK TO THE AREA OF THE COURTROOM. THERE WOULD BE, AT ONE POINT, THE JUDGE MENTIONED THAT THERE WOULD BE TWO BAILIFFS OUTSIDE, WHO, WHEN THEY SAW THE JURORS, WHICH SHEPARDED THEM DOWN TO A JURY AREA, AT OTHER TIMES THE JUDGE SIMPLY TOLD THE JURORS TO, AFTER LUNCH TO COME BACK TO THE AREA OUTSIDE THE COURTROOM. THIS BATHROOM WAS APPARENTLY RIGHT OUTSIDE, WELL, NOT DIRECTLY OUTSIDE THE COURTROOM, AND IT IS NOT ENTIRELY CLEAR FROM THE RECORD. THEY ASKED HER WAS THE BATHROOM RIGHT OUT HERE, AND SHE SAID, NO, IT WAS SOME OTHER BATHROOM, BUT IT WAS IN THAT GENERAL AREA, SO IT IS QUITE POSSIBLE THAT THESE JURORS, BEFORE ARRIVING AT THE COURTROOM OR BEFORE BEING SEEN BY THE BY THE BAILIFFS, COULD HAVE GONE INTO THIS BATHROOM. THERE IS NO, THE POSSIBILITY --

I THOUGHT IT WAS NOT DURING THE LUNCH BREAK THAT THIS OCCURRED.

HER ANSWER TO THAT QUESTION WAS SOMEWHAT AMBIGUOUS. SHE SAID IT WAS IN THE AFTERNOON. AND SHE SAID THAT, HER ANSWER, THE EXACT QUOTE I CAN'T GIVE YOU, BUT IT WAS, NO, BUT THEN WAS SOME SORT OF A QUALIFICATION, SO THAT IT IS POSSIBLE THAT IT COULD HAVE HAPPENED IN THIS BATHROOM AREA, IN THE AFTERNOON, UNDER THOSE

CIRCUMSTANCES. ALSO --

IT IS REALLY ON AN ISSUE, I MEAN, THIS WHOLE MATTER, THE TRIAL JUDGE HAD THIS WOMAN COME IN AND TESTIFY AS TO WHAT SHE CLAIMED HAPPENED. RIGHT?

YES, SIR.

AND THEN WE HAVE GOT THE TRIAL JUDGE MAKING A DETERMINATION, WHICH IS ESSENTIALLY A CREDIBILITY DETERMINATION, CORRECT?

WELL, IF, THAT IS THE WAY THE TRIAL JUDGE VIEWED IT, YES, JUSTICE WELLS.

BUT THAT, HOW ELSE CAN IT, CAN THIS GO FORWARD? WE HAVE GOT A SITUATION IN WHICH IT WOULD AND VERY SERIOUS MATTER, IN THE MIDDLE OF THIS TRIAL, WHERE THE TRIAL JUDGE CALLS THE JURY IN AND START INTERROGATING THE JURY ABOUT ANYTHING! ISN'T THAT RIGHT?

YES, SIR.

AND SO THE TRIAL JUDGE HAS, DID WHAT SEEMS TO ME, IS A REASONABLE THING, IS TO, INQUIRE AT LENGTH, REALLY, AS TO WHAT THIS PERSON SAYS HAPPENED, AND THEN TO EVALUATE THAT AND MAKE A JUDGMENT, BASED ON UPON THE CREDIBILITY OF ALL THAT SHE SAYS, AS TO WHETHER IT IS GOING TO BE NECESSARY TO FURTHER INTERROGATE THE JURY. NOW, IS THAT NOT WHAT THIS IS ALL ABOUT?

JUSTICE WELLS, LET ME ASK A QUESTION THIS WAY. I UNDERSTAND THAT IS THE WAY THE JUDGE VIEWED WHAT HE WAS DOING. THE INITIAL QUESTION IS, WHAT SHOWING HAS TO BE MADE TO TRIGGER THE JURY INTERVIEW? OBVIOUSLY IT IS FAIRLY HIGH STANDARD. YOU CAN'T JUST COME IN AND, WELL THERE, IS SOME CASE WHERE THERE WAS A LETTER TO THE UP IN, FOR INSTANCE, AND SOMEBODY COMES IN AND SAYS, LOOK, THIS SHOULD BE ENOUGH FOR US TO GET A JURY INQUIRY. THE STANDARD SET OUT IN THIS COURT'S CASE LAW IS SWORN ALLEGATIONS WHICH, IF TRUE, WOULD JUSTIFY A MISTRIAL IN THE CASE. THAT, SO THE INITIAL QUESTION, WHEN BRINGING THE WOMAN IN, HAVING HER TESTIFY UNDER OATH, IS THAT THAT INITIAL SHOWING MET, AND THAT, I SUBMIT THAT, INITIAL SHOWING WAS MET, WHICH, UNDER OUR CASE LAW, TRIGGERS FURTHER INQUIRY. AND OBVIOUSLY ONE ISSUE IS THE SERIOUSNESS.

BUT IS THE INQUIRY THAT IS TRIGGERED, DOES IT HAVE TO BE OF THE JURORS, OR DIDN'T HE TALK WITH THE BAILIFF IN THIS SITUATION AND, TO FERRET OUT THE TIME PERIOD AND WHERE THESE JURORS WERE AT THAT TIME? I MEAN, IS THAT ENOUGH OF AN INQUIRY, OR ARE YOU SAYING THAT YOU HAVE TO HAVE AN INQUIRY OF THE JURORS?

WELL, I BELIEVE THAT THE ADEQUACY OF THE INQUIRY VARIES WITH THE SERIOUSNESS OF THE ALLEGATIONS. THIS IS A VERY SERIOUS MATTER, OBVIOUSLY.

IT COULD BE SERIOUS AS AN AFFIDAVIT, YOU KNOW, WITHOUT KNOWING THE SURROUNDING CIRCUMSTANCES, WHICH IS THAT THIS WAS SUPPOSEDLY OVERHEARD DURING THE GUILT PHASE, BUT NOT BROUGHT TO ANYONE'S ATTENTION, UNTIL AFTER THE GUILTY VERDICT CAME IN, WHICH ALREADY RAISES SOME SUSPICION ABOUT THE MOTIVE FOR THE TESTIMONY. THIS IS A PERSON THAT IS NOT A MEMBER OF THE PUBLIC THAT HAS NO RELATIONSHIP TO ANYONE. THIS IS SOMEBODY THAT HAD A RELATIONSHIP TO MR. BOYD. THERE WAS SOME STATEMENTS THAT SHE MADE ABOUT HAVING MAYBE HER MEMORY WASN'T SO GOOD BECAUSE SHE HAD A BRAIN TUMOR, AND SHE HAD AN OPERATION TO REMOVE IT, AND MAYBE THE TRIAL JUDGE WAS BEING KIND IN HOW HE WAS CHARACTERIZING HER TESTIMONY, BECAUSE TO ME, I WOULD LOOK AT THAT IN ALL OF THESE CIRCUMSTANCES, AND THINK THAT THIS HAD ALL OF THOSE REASONS FOR NOT COMING TO THE COURT'S ATTENTION IMMEDIATELY, IF THIS WAS A SERIOUS VIOLATION, BUT WAITING. THIS WAS ONLY AT SOME STRATEGIC MANEUVER ON THE PART OF THE DEFENDANT OR

HIS FRIEND, AND I MEAN, I DON'T, YOU KNOW, WHETHER OUR LAW SAYS, IF TRUE, IT JUSTIFIES FURTHER INQUIRY, I CANNOT IMAGINE A JUDGE GOING INTO THESE MATTERS, DURING A TRIAL, WHEN THEY WERE BROUGHT TO HIS ATTENTION OR HER ATTENTION AND THE, AN ADEQUATE INQUIRY WAS MADE OF THE WITNESS THAT SUPPOSEDLY OVERHEARD THIS. SO DO WE NOT LOOK AT THE CIRCUMSTANCES OF HOW THIS WAS BROUGHT FORTH AND WHO IS BRINGING FORTH THE INFORMATION?

THE JUDGE DID DO THAT. THE WOMAN WAS NOT A CLOSE FRIEND OF THE DEFENDANT. SHE KNEW HIS FAMILY. SHE HADN'T SEEN HIM FOR TEN YEARS. SHE HEARD ABOUT THIS CASE. SHE APPARENTLY CAME TO THE TRIAL FOR A WHILE. IT WAS AT THAT TIME, THAT SHE HEARD THIS. SHE HAD NOT COMMUNICATED TO THE DEFENDANT, UNTIL AFTER THE PENALTY VERDICT, AND THEN IN FACT DURING THE PENALTY, I AM SORRY, DURING THE PENALTY PHASE IS WHEN THIS WHOLE THING CAME UP. I SUBMIT TO YOU, HOWEVER, THAT THE INITIAL QUESTION IS THE SERIOUSNESS OF THE ALLEGATIONS AND THE FACT THAT THIS IS MADE UNDER OATH. THE COMPARISON IS WITH OTHER CASES, WHERE THERE AREN'T ALLEGATIONS UNDER OATH, AND SUCH --

WAS THERE AN ATTEMPT TO BRING THIS UP, AFTER THE CONCLUSION OF THE CASE? THAT IS, AFTER THE PENALTY PHASE? WAS THERE A --

THERE WAS NO FURTHER INQUIRY.

THERE WAS NO MOTION FOR NEW TRIAL, BASED ON THIS?

NO. THERE WAS NO FURTHER, NOTHING BEING DONE BY ANYBODY ON THIS.

COUNSEL DID NOT MAKE A MOTION IF A NEW TRIAL, BASED ON THIS, AND SAID, JUDGE, NOW THE JURY IS GONE, AND IN TERMS OF DISTURBING THE JURY DELIBERATING OR CONSIDERING THE CASE, WOULD YOU RECONSIDER, AND AT LEAST ALLOW SOME LIMITED INTERVIEWS OF THE JURY? NOTHING LIKE THAT HAPPENED.

NO, SIR.

DROPPED.

BY ALL PARTIES, RIGHT. THERE WAS SOME DISCUSSION ABOUT THE STATE TRYING TO GET SOME MORE INFORMATION FROM THE WOMAN. THERE WAS NOTHING DONE WITH THAT.

BUT THE DEFENSE LAWYER, IN OTHER WORDS, DIDN'T INTERVIEW THIS WOMAN AGAIN AND HAVE HER GIVE ADDITIONAL INFORMATION OR TESTIMONY, OR THE DEFENSE LAWYER DIDN'T DO ANY OTHER INVESTIGATION INTO THIS AND BRING IT UP, AS I SAY, AS A BASIS FOR A MOTION FOR A NEW TRIAL?

NO, JUSTICE ANSTEAD, THAT DID NOT HAPPEN, BUT THE WAY IT WAS LEFT, THE DEFENSE HAD REMARKED DURING THIS COLLOQUY, WE DON'T HAVE ANY POWER AFTER THIS IS OVER, TO INVESTIGATE THIS ANY FURTHER. I DON'T SUBMIT THAT, I MEAN, TO, YOU KNOW, INTERVIEW THE JURORS OR INVESTIGATE THE JURORS. THE WITNESS HAD TESTIFIED TO WHAT SHE TESTIFIED TO. I DON'T THINK THERE WAS ANYMORE TESTIMONY THAT COULD HAVE BEEN GOTTEN FROM HER. SHE WAS, SHE DISCUSSED THE MATTER AT LENGTH. THE MATTER WAS PUT BEFORE THE JUDGE --

I SUPPOSE WHAT I AM SAYING IS, OF COURSE WE DON'T KNOW, THAT, IF THERE WERE OTHER PEOPLE ALLEGEDLY IN THE RESTROOM THAT THIS WOMAN KNEW, THAT THE DEFENSE LAWYER OR INVESTIGATOR COULD HAVE INTERVIEWED OR, IN OTHER WORDS, COULD HAVE COME BACK, NOW, AND IN A MORE DELIBERATE MANNER AND PRESENTED ADDITIONAL EVIDENCE AND IN ADDITION TO WHAT THE WOMAN HAD TO SAY, AS OPPOSED TO THIS ARISING DURING THE

COURSE OF THE TRIAL, GRANTED THAT THE GUILT PHASE WAS OVER WITH. HOW MANY DAYS BEFORE, HAD THIS ALLEGEDLY HAPPENED?

IT HAD HAPPENED FIVE WEEKS BEFORE. LET ME SAY THIS, THE DEFENSE HAD NOTED THAT THEY DIDN'T HAVE ANY FURTHER POWER TO INVESTIGATE THE JURORS. IT IS TRUE THEY DIDN'T PRESENT ANY FURTHER EVIDENCE. THERE IS NO RULE OF PROCEDURE FOR A MOTION FOR NEW PENALTY PHASE, CORRESPONDING TO A MOTION FOR NEW TRIAL. THE JUDGE HAD MADE CLEAR HIS RULING ON THE MATTER. I DON'T, I SUBMIT THAT THERE IS NO REQUIREMENT FOR THE DEFENSE TO DO ANYTHING FURTHER, TO ESTABLISH THE CASE FOR THIS COURT'S CONSIDERATION.

DO YOU WANT TO MOVE ON TO YOUR OTHER POINTS?

YES. I APOLOGIZE. I WAS GETTING CARRIED AWAY WITH THE FIRST ISSUE. THE NEXT ISSUE PERTAINS, IS THE ISSUE SIX AND SEVEN, WHICH PERTAIN TO THE DEFENDANT'S COMPETENCY. THE, WHAT HAPPENED ON THIS ISSUE WAS VERY STRANGE. THE DEFENSE HAD MADE A MOTION FOR A COMPETENCY HEARING, AND THEY HAD TWO PSYCHOLOGICAL REPORTS ATTACHED TO THE MOTION, FINDING THE DEFENDANT INCOMPETENT. AND ANOTHER REPORT FROM A WITNESS, FINDING HIM COMPETENT, AND THEN AT THE HEARING, THE DEFENSE PRESENTED ONLY THE EVIDENCE OF THE WITNESS WHO WAS COMPETENT.

BUT WASN'T THAT BECAUSE THE DEFENDANT AND HIS LAWYER DID NOT WANT THE OTHER COMPETENCY DETERMINATION TO BE CONSIDERED BY THE JUDGE? SO WHERE IS THE ISSUE HERE?

THE ISSUE IS, LET ME PUT IT ANOTHER WAY, CAN THE DEFENSE WAIVE HIS OWN COMPETENCY? AND THE SUPREME COURT RULED IN PATE VERSUS ROBINSON THAT THE DEFENDANT CANNOT, IF THERE IS SUFFICIENT RECORD MATERIAL BEFORE THE JUDGE TO GIVE RISE TO A LEGITIMATE QUESTION ABOUT THE DEFENDANT'S COMPETENCY.

WHAT DO THESE OTHER REPORTS DEMONSTRATE?

THEY, IN SUMMARY, THEY HELD, THEY SAID THAT THE DEFENDANT WAS INCOMPETENT. THE FIRST WITNESS SAID THAT THE TESTING SHOWED THAT HE WAS EXTREMELY DEFENSIVE IN HIS TESTING. SO THE EXACT UNDERLYING MENTAL ILLNESS COULD NOT BE DETERMINED.

WAS THAT INEFFECTIVENESS OF COUNSEL OR AN ISSUE OF THE TRIAL COURT'S ACTION HERE?

WELL, OBVIOUSLY AT THIS STAGE IT IS A QUESTION OF THE TRIAL COURT'S ACTION, UNDER BOTH --

WHAT WAS PRESENTED TO THE TRIAL COURT THAT WOULD TRIGGER THIS?

ATTACHED TO THE MOTION IN THE COURT FILE, WERE THE TWO REPORTS. ANOTHER REPORTS FINDING THE DEFENDANT INCOMPETENT.

INCOMPETENT. YES, SIR.

AND THE JUDGE READ THAT, RIGHT?

EXCUSE ME?

AND THE JUDGE READ THAT REPORT.

HE READ ONE OF THEM.

RIGHT.

THE OTHER REPORT, THE OTHER DOCTOR'S REPORT WAS MAINLY BASED UPON THE ONE THAT WAS ATTACHED, AND THE COURT READ, AND THE COURT SAID, YOU KNOW, THIS IS VERY UNUSUAL, BECAUSE THE DEFENDANT HAS STIPULATED THAT THIS SHOULD NOT BE CONSIDERED AND IS NOT PRESENTED, ISN'T THAT WHAT HAPPENED?

WELL, AS TO WHICH OF THE TWO REPORTS THE JUDGE HAD BEFORE HIM, IT WAS THE REVERSE. THE FIRST REPORT WAS DR. SCHAPIRO, WHICH THE JUDGE SAID HE DIDN'T HAVE AT ALL, WHICH, AS I SAY, IT WAS IN THE COURT, THEN, THERE WAS DR. GARFIELD, WHO TO SOME EXTENT RELIED UPON THAT EARLIER REPORT. THE JUDGE SAID I HAD THAT REPORT BUT I DON'T KNOW WHAT I AM SUPPOSED TO DO WITH IT. I HAVE READ IT. BUT THE JUDGE APPARENTLY DID NOT WEIGH IT INTO HIS DETERMINATION OF THIS ISSUE. SO THE QUESTION --

THIS WAS THE DEFENDANT WHO HAD FAIRLY RECENTLY, BEFORE THIS TRIAL, BEEN IN OTHER TRIALS?

IN HIS PAST, RIGHT.

IN '98 HE WAS ACQUITTED, CORRECT?

RIGHT. YES, SIR.

AND FIVE SEPARATE CHARGES, ONE OF MURDER, CORRECT? ONE OF SEXUAL BATTERY. I MEAN, THIS WAS A DEFENDANT THAT WASN'T A STRANGETORY THESE PROCEEDINGS. CORRECT?

RIGHT --

AND HAD BEEN SUCCESSFUL, BY REASON OF GETTING FIVE ACQUITTALS, CORRECT?

YES, SIR.

AND THAT WAS ALL SOMETHING THAT HAS TO BE TAKEN INTO CONSIDERATION IN THIS WHOLE MATTER, DOESN'T IT?

WELL, I DON'T KNOW HOW THAT SHOWS WHETHER A PERSON IS COMPETENT OR INCOMPETENT.

WHAT IS A JUDGE TO DO, IF THE LAWYER SAYS WE DON'T WANT TO MAKE AN ISSUE OUT OF THIS, BUT WE DON'T WANT, AND THERE IS IN FRONT OF THE JUDGE, A BASIS FOR THAT. IN OTHER WORDS, THE JUDGE HAD EVIDENCE THAT THE DEFENDANT WAS COMPETENT. RIGHT?

RIGHT.

AND SO WHAT IS A JUDGE TO DO, WHEN --

WELL, UNDER --

-- THE VERY PARTY AND THEIR LAWYER ARE SAYING THAT THE JUDGE, WE DON'T WANT TO GO ANY FURTHER WITH THIS. THAT IS THE END OF IT. WE ARE CONFIDENT THAT OUR CLIENT IS COMPETENT, AND THERE IS EVIDENCE TO SUPPORT THAT.

WELL, JUSTICE ANSTEAD, TATE VERSUS ROBINSON, I SUBMIT AGAIN, PROVIDES THAT A DEFENDANT CANNOT WAIVE HIS OWN COMPETENCY.

HE DIDN'T DO HERE, DID HE? HE DIDN'T WAIVE HIS OWN COMPETENCY. HE HAD AN EXPERT THAT SAID HE WAS COMPETENT. HOW IS THAT WAIVING COMPETENCY?

JUSTICE ANSTEAD'S QUESTION IS WHAT HAPPENS IF THE DEFENSE IS SAYING WE DON'T WANT YOU TO INQUIRE INTO THIS ANY FURTHER, JUDGE.

WELL, ISN'T THAT IN ESSENCE WHAT HAPPENED HERE?

WELL, THAT, MY ANSWER IS THAT, OKAY, LET'S IMAGINE IT THIS WAY. IMAGINE IF THE DEFENDANT HAD, THE JUDGE HAD BEFORE HIM, THESE REPORTS, AND THE JUDGE DECIDES TO ORDER A COMPETENCY HEARING. THEY COME IN FOR A COMPETENCY HEARING. THE DEFENSE SIMPLY SITS THERE, AND THE JUDGE HAD ORDERED THE COMPETENCY HEARING, UNDER PATE AND UNDER THE RULE, WITH THE JUDGE ACTING ON HIS OWN MOTION,TO ORDER A COMPETENCY HEARING. THE JUDGE GETS HIS OWN EVALUATION,AND THEY COME UP WITH A COMPETENCY HEARING AND THEY SAY WE DON'T WANT TO HEAR THIS AT ALL. THE JUDGE READS THE REPORTS AND THERE IS ONE THAT SAYS HE IS COMPETENT AND TWO THAT SAY HE IS INCOMPETENT. DOES THE JUDGE HAVE A DUTY TO CALL THE WITNESSES, AND I SUBMIT THAT, UNDER PATE, THE JUDGE DOES. YOU DON'T REALLY HAVE A CONSTITUTIONALLY-ADEQUATE COMPETENCY HEARING, UNLESS THE JUDGE INFORMS HIMSELF OF ALL OF THE AVAILABLE EVIDENCE.

ON THE RECORD BEFORE US, HOW MANY TIMES HAD THIS TRIAL JUDGE DEALT WITH THIS DEFENDANT AND COMMUNICATED WITH HIM IN COURT?

QUITE A BIT.

SO HE KNEW THE DEFENDANT FAIRLY WELL, THE JUDGE, HIMSELF.

YES, JUSTICE BELL.

AND THE DEFENSE ATTORNEYS WERE EXPERIENCED AND HAD A GOOD WORKING RELATIONSHIP WITH THE DEFENDANT?

THAT IS WHAT THEY SAID, YES, SIR. IN THE PENALTY PHASE.

BUT AT THIS POINT THERE IS NO INDICATION OF ANY BREACH IN THE RELATIONSHIP BETWEEN THE DEFENSE COUNSEL AND THE DEFENDANT, CORRECT?

HUM-UM.

AND THE STATE HAD ALSO BEEN IN THE COURTROOM WITH THE DEFENDANT PRESENT.

YES, SIR.

AND THE STATE AND THE DEFENSE COUNSEL, THE DEFENDANT AND THE TRIAL COURT, ALL, AGREED TO THIS PROCESS. AND IS THERE ANYTHING IN THE RECORD THAT, OTHER THAN THESE REPORTS, ANYTHING THAT SHOWS, BY BEHAVIOR, TEMPERMENT, RESPONSE TO QUESTIONS OR ANYTHING ELSE, THAT WOULD HAVE GIVEN THIS TRIAL JUDGE ANY INDICATION THAT THERE WAS A CONCERN ABOUT COMPETENCY, OTHER THAN THOSE TWO REPORTS?

AT THAT STAGE OF THE PROCEEDING, NO, SIR. IT WAS THE TWO EXPERT REPORTS.

ARE YOU GOING TO TOUCH. YOU ARE IN YOUR REBUTTAL. DO YOU WANT TO TOUCH ON WHETHER THERE THEN SHOULD HAVE BEEN A SECOND COMPETENCY EXAM, AT THE TIME THAT THINGS, AS YOU SAID, CHANGED IN THE PENALTY PHASE, AND COUNSEL AT THAT TIME, WAS ATTEMPTING TO WITHDRAW. COULD YOU KIND OF JUST BRIEFLY TALK ABOUT THAT, BECAUSE THAT DOES CONCERN ME A LITTLE BIT, ABOUT WHAT HAPPENED AT THAT POINT IN TIME, TO RAISE THE, COUNSEL'S CONCERN THAT HIS CLIENT HAD GONE FROM BEING, EVERYTHING WAS OKAY TO SOMETHING HAD OCCURRED.

RIGHT. AT THAT POINT, THE, AS YOU SAID, JUSTICE PARIENTE, THE DEFENSE DID BEGIN TO EXPRESS CONCERNS ABOUT THE DEFENDANT'S COMPETENCY. THEY DID IT IN A RATHER AWKWARD WAY. THEY MOVED TO WITHDRAW AS COUNSEL, SAYING THAT THEY HAD DOUBTS ABOUT THE DEFENDANT'S COMPETENCY, THAT THEIR EXPERT WAS TELLING THEM THAT THE EXPERT HAD DOUBTS ABOUT THE DEFENDANT'S COMPETENCY. AND THE JUDGE, AGAIN, HAD A LITTLE COLLOQUY WITH THE DEFENDANT, AND LET ME SAY THAT, IN PATE VERSUS ROBINSON, IF YOU READ THE DISSENT, THE DISSENT SETS OUT THE, IN PATE VERSUS ROBINSON, SETS OUT IN GREAT DETAIL, SOME OF THE COLLOQUY THAT THE JUDGE IN THAT CASE HAD WITH THE DEFENDANT, WHICH, ALSO, INDICATED THE DEFENDANT'S COMPETENCY AT THE TIME OF THE TRIAL. THE, AND THE SAME SORT OF THING HAPPENS HERE. THE DEFENSE ATTORNEY REMARKED TO THE JUDGE, YOU KNOW, YOU CAN'T ASK SOMEBODY IF HE IS COMPETENT AND RELY UPON THAT, WHICH, OF COURSE, IS THE WHOLE QUESTION THAT IS HERE, AND THE JUDGE SEEMED TO RELY ON THE PRIOR EVALUATION, AND THEN THIS CAME UP AGAIN.

WHAT SPECIFIC THING, AGAIN, AS JUSTICE BELL WAS SAYING, HE WAS OBSERVING THIS DEFENDANT, AND PRESUMABLY THERE WASN'T AN OBSERVABLE DIFFERENCE IN HIS BEHAVIOR. WHAT WAS IT THAT THE DEFENSE LAWYER ARTICULATED, BESIDES THAT MAYBE THEY WEREN'T AGREEING ON THE STRATEGY FOR THE MITIGATION OR THE PENALTY PHASE, THAT WOULD HAVE PUT THE JUDGE ON NOTICE THAT, YOU KNOW WHAT? I BETTER PERFORM THIS COMPETENCY EXAMINATION NOW OR HAVE ANOTHER EVALUATION DONE? AND THEN JUST REAL SPECIFIC.

WELL, THEY WENT THROUGH A SERIES OF HEARINGS, WHERE THE DEFENDANT WOULD, AT ONE POINT, INDICATED THAT HE DIDN'T WANT TO HAVE ANYTHING DONE FOR THE PENALTY PHASE. AND THERE WAS A DISCUSSION, AND HE DID WANT T THEN HE DIDN'T WANT IT AGAIN. THERE WAS THIS IN CAMERA HEARING, WHERE THEY HAD THIS DISCUSSION WITH THAT HIM. AND AT THE END OF THE IN CAMERA HEARING, THE DEFENDANT SAID, YES, HE WOULD GO ALONG WITH ALL OF THIS MITIGATION, CONSIDERATION, BUT THEN AT THE NEXT HEARING, HE WAS SAYING, NO, HE WOULDN'T, AND IT WAS APPARENTLY DURING THIS PERIOD, ALTHOUGH WE CAN'T TELL FROM THE RECORD, THAT DR. SCHAPIRO HAD TOLD THE DEFENSE, I HAVE CONCERNS ABOUT THIS DEFENDANT'S COMPETENCY. THE DEFENDANT SEEMED TO HAVE IN HIS HEAD FROM ALL OF THESE LITTLE DISCUSSIONS, THAT SOMEHOW HE SHOULD GET ANOTHER LAWYER WHO WOULD SOMEHOW, IN SOME WAY THAT HE NEVER EXPLAINED, WOULD EXPLAIN TO HIM BETTER, HIS LEGAL POSITION, EVEN THOUGH THE COURT WOULD EXPLAIN IT TO HIM AND HE WOULD SAY THAT HE WOULD UNDERSTAND IT. THEN AFTER THAT, HE WOULD COME IN AND SAY, WELL, HE DIDN'T, HE NEEDED SOMEBODY TO EXPLAIN IT TO HIM BECAUSE HE DIDN'T UNDERSTAND IT, SO HIS REACTIONS WERE NOT VERY RATIONAL, AND MOST IMPORTANTLY, I WOULD SAY THAT THE PREMISE FOR A MAJOR PREMISE FOR FINDING HIM COMPETENT WAS SUPPOSEDLY HE WAS GOING TO BE FOUND NOT GUILTY, BUT HE WAS FOUND GUILTY, SO THIS PREMISE FOR FINDING HIM COMPETENT OR THAT THE STATE HAD RELIED ON AND DR. HABER HAD RELIED ON, WAS GONE BY THAT POINT. IT SIMPLY WAS NOT RATIONAL ANYMORE, TO THINK THAT HE WASN'T GOING TO BE FOUND GUILTY, BECAUSE HE HAD BEEN FOUND GUILTY.

YOU ARE PRETTY MUCH INTO YOUR REBUTTAL NOW.

ALL RIGHT. LET ME JUST SAY A COUPLE OF THINGS ABOUT THIS DISCOVERY ISSUE. IT ALL PERTAINS TO A WITNESS NAMED MR. MESACK. THERE WAS QUITE A BIT OF DISCUSSION ABOUT WHETHER THE DEFENSE SHOULD HAVE DEPOSED HIM.

THIS IS THE ONE ABOUT THE FINGERPRINT?

YES, MA'AM.

I AM A LITTLE CONFUSED. WHAT, EXACTLY, IS IT THAT WAS A DISCOVERY VIOLATION?

OKAY. OKAY. WHAT HAPPENED WAS THIS MR. MESACK, WHO WAS LISTED AS A "B" WITNESS.

LISTED AS WHAT?

A "B" WITNESS UNDER THE DISCOVERY RULES, WHICH MEANS IT WAS VERY DIFFICULT FOR THE DEFENSE TO BE ABLE TO DEPOSE HIM. THIS WITNESS HAD A 1999, I BELIEVE IT WAS 1999, HAD TAKEN THIS COMPUTER ENHANCED IMAGE OF THE FINGERPRINTS, RUN IT THROUGH THE COMPUTER SYSTEM, GOT A PRINTOUT OF 20 POSSIBLE MATCHES.

WHAT, EXACTLY, IS ON THAT PRINTOUT? IS IT PEOPLE'S NAMES OR SOME KIND OF NUMBERS? IT IS REALLY PRETTY CONFUSING. TOO IS VERY CONFUSING, AND HE DESTROYED IT.

WHAT IS HE LOOKING FOR?

HE DESTROYED IT, SO WE DON'T KNOW EXACTLY WHAT HE WAS LOOKING AT.

HOW DO YOU HAVE A BRADY VIOLATION, IF THERE WASN'T ANYTHING FOR THE STATE TO PRODUCE? ADOPT YOU HAVE TO GO TO, IS IT YOUNGBLOOD? I DON'T KNOW. THE CASE ABOUT THERE HAS TO BE BAD FAITH DESTRUCTION, SO YOU DON'T HAVE A BRADY VIOLATION, IF THERE IS NOTHING FOR THEM TO HAVE PRODUCED.

WELL, THE, TWO POINTS. YOUNG BLOOD IS WHETHER THE COURT DISMISSES THE CASE BECAUSE OF A DESTRUCTION OF EVIDENCE. THE SECOND POINT IS THE STATE AGREED BELOW, THAT THIS WAS A DISCOVERABLE ITEM. THE PROSECUTOR SAID, I WOULD HAVE GIVEN THIS TO THE DEFENSE, IF I HAD KNOWN ABOUT IT. THE DISCOVERY RULES, ALSO, REQUIRE DISCLOSURE OF THE WRITTEN RESULT OF A TEST. WHICH IS WHAT THIS WAS. AND IT DID HAVE A LIST OF POSSIBLE SUSPECTS OTHER THAN THE DEFENDANT --

WHAT IS IN THE REMEDY? IF THE JUDGE SAID, YES, YOU SHOULD HAVE DISCLOSED IT, ISN'T IT SORT OF A NONISSUEURE, I MEAN, AS FAR AS WHETHER THERE IS ANY PREJUDICE FROM IT?

WELL, THE PREJUDICE IS THAT THE WITNESS HAS TESTIFIED THAT HE HAS EXCLUDED THESE 20 OTHER PEOPLE, WHICH THE COMPUTER SYSTEM HAD IDENTIFIED AS POSSIBLE MATCHES, AND THE DEFENSE HAS NO WAY TO CROSS-EXAMINE HIM ABOUT THAT.

A LET ME ASK WHAT IS THE SCOPE OF WHERE THESE PEOPLE CAME FROM? IT IS A NATIONAL COMPUTER, RIGHT?

I BELIEVE IT WAS THE LOCAL BROWARD COUNTY DATABASE.

SO IT WAS JUST THEIR LOCAL DATABASE.

YES, SIR.

AND SO WE DON'T KNOW WHERE THESE PEOPLE, WHETHER THEY ARE STILL IN THE AREA OR WHAT IT WAS CONNECTED TO OR OTHERWISE.

RIGHT.

WOULD YOU DESCRIBE THEM AS SUSPECTS, BUT THEY REALLY HADN'T GONE TO THE POINT OF BEING IDENTIFIED AS SUSPECTS, HAD THEY?

YES, SIR. YOUR STATEMENT IS CORRECT, JUSTICE BELL. THE DEFENSE WAS CONTENDING, WE WERE PREJUDICED BECAUSE WE CAN'T CROSS-EXAMINATION THE WITNESS ABOUT THIS, AND WE CANNOT GO OUT AND DO OUR OWN EVALUATION AS TO WHETHER THESE PEOPLE WOULD HAVE MATCHED THESE FINGERPRINTS OR NOT, BECAUSE THIS THING HAS BEEN DESTROYED. SO WITH

THAT, WHAT LITTLE TIME I HAVE LEFT, I WOULD LIKE TO RESERVE FOR REBUTTAL. THANK YOU.

CHIEF JUSTICE: MS.^CAMPBELL.

MAY IT PLEASE THE COURT. GOOD MORNING AGAIN. LESLIE CAMPBELL WITH THE ATTORNEY GENERALS OFFICE ON BEHALF THE STATE. LET ME START, THEN, WHERE COUNSEL ENDED, WHICH IS WITH THE BRADY. BRADY CLAIM. THERE REALLY, THERE IS NO BRADY VIOLATION. AND EVEN IF SOMETHING SHOULD HAVE BEEN TURNED OVER, THERE CERTAINLY IS NO PREJUDICE. THE FINGERPRINTS THAT WERE INITIALLY COUNTRY THROUGH, WERE A DIGITAL ENHANCEMENT. NO MATCH WAS FOUND. THEY WERE DIGITALLY ENHANCED AGAIN, AND A MATCH WAS FOUND TO THE DEFENDANT'S GIRLFRIEND AND HER SON. SO THAT COULD HAVE BEEN --

WHEN YOU SAY NO MATCH WAS FOUND, WHAT, EXACTLY, ARE YOU SAYING, THAT --

WHAT --

BECAUSE I THOUGHT BY RUNNING THEM THROUGH, YOU ARE GETTING PEOPLE THAT COULD POSSIBLY BE THE FINGERPRINT.

IN LOOKING AT THE SYSTEM, IT LOOKS AT CERTAIN POINTS, AND IF IT SEES SOMETHING COMMON IN ONE POINT OR WHATEVER THE PARAMETERS ARE, IT WILL PRINTOUT SOMETHING. IT WILL SAY TAKE A LOOK AT THIS FINGERPRINT. THE FINGERPRINT WILL THEN COME UP ON THE SCREEN, AND THE EXAMINER WILL ACTUALLY EXAMINE AND COMPARE BETWEEN THE TWO FINGERPRINTS, THE ONE THAT IS ON THE SCREEN AND THE ONE THAT HE HAS. AND HE FINDS DIFFERENCES, AND THEREFORE THERE IS NO MATCH.

IS THERE ANY DISPUTE THAT THE FINGERPRINTS FOUND WERE THE FINGERPRINTS OF THE MOTHER OF THE GIRLFRIEND AND THE SON?

NO.

SO THAT HAS NOT BEEN DISPUTED?

NO. SO WHATEVER SHOULD OR SHOULD HAVE BEEN DONE WITH THAT PIECE OF PAPER --

THESE ARE FINGERPRINTS ON WHAT ITEM?

THESE FINGERPRINTS WERE FOUND ON THE BLACK TRASH BAG THAT WAS AROUND THE VICTIM'S HEAD.

SO THERE IS ONE MORE PIECE OF CIRCUMSTANTIAL EVIDENCE TO SHOW, I MEAN, THE DEFENDANT'S FINGERPRINTS WEREN'T FOUND.

NO.

SO REALLY IT IS NOT REALLY TERRIBLY INCRIMINATING, COMPARED WITH SOME OF THE OTHER EVIDENCE THAT THERE WAS.

THAT IS TRUE. AND ON TOP OF THAT, THE JURY KNEW THAT THERE WAS NO MATCH FOUND ON THAT INITIAL RUN, SO THERE REALLY IS NO, THERE IS NO BASIS FOR ANY ERROR HERE.

BUT EVEN THOUGH IT WASN'T THE DEFENDANT'S FINGERPRINTS, I MEAN, THIS WAS SORT OF CIRCUMSTANTIALALLY THESE PEOPLE ARE A PART OF THE DEFENDANT'S'S LIVES AND WERE IN AND OUT OF THIS SAME APARTMENT, SO IN SOME ASPECT, IT REALLY DOES TIE THE DEFENDANT TO --

WITH THE SECOND DIGITAL ENHANCEMENT, IT TIES THE DEFENDANT, AND THERE HAS BEEN NO DISPUTE THAT THOSE FINGERPRINTS DO MATCH THOSE TWO.

SO WHEN WAS THE, WHEN THE FIRST DIGITAL, WHEN THE FIRST RUN WAS MADE, AT THAT POINT, DOES HE, THEN, WHEN HE SEES THERE IS 20 POSSIBLE MATCHES, BUT HE DOES IT AGAIN, HE SAYS AT THAT POINT, HE JUST THROWS THIS FIRST SET OUT, IS THAT HOW IT HAPPENED? YOU SAID, YOU KNOW, IN OTHER WORDS, IF THIS, SHOULD THIS HAVE BEEN SOMETHING THAT SHOULD HAVE BEEN TURNED OVER?

I WOULD SAY IT DOESN'T HAVE TO BE TURNED OVER. THERE IS NO REAL VALUE TO IT.

THIS WAS LIKE THE PRELIMINARY INVESTIGATION, WHERE THEY COMPARED ALL KINDS OF FINGERPRINTS TO, IT IS JUST, ENDED UP BEING IN A SMALLER POOL OF ONES THAT MAY HAVE HAD SOME SIMILARITY TO THE THING, BUT WERE ULTIMATELY ELIMINATED. IS THAT CORRECT?

THAT'S CORRECT.

NOW, DID THE DEFENDANT HAVE HIS OWN FINGERPRINT EXPERT EXAMINE ANY OF THIS AND SAY THAT THIS WAS WRONG?

HE DIDN'T HAVE ANYONE TESTIFY TO THAT, NO, YOUR HONOR. TO ANSWER THE QUESTION WITH REGARD TO COULD THIS HAVE BEEN DUPLICATED, IT COULD NOT HAVE BEEN DUPLICATED, BECAUSE AS TIME PASSES, ADDITIONAL FINGERPRINTS ARE ENTERED INTO THE SYSTEM, AND THEREFORE A DIFFERENT MIX CAME OUT, SO THERE WAS NO WAY TO GET THAT ORIGINAL 20.

BUT IS IT STANDARD PROCEDURE TO DISCARD, IF A MATCH IS ULTIMATELY MADE, THE PRELIMINARY STEP, I MEAN, THERE WAS NOTHING THAT WAS SHOWN TO BE UNUSUAL ABOUT WHAT THIS EXPERT DID.

THAT IS WHAT THE EXPERT'S TESTIMONY WAS, THEIR STANDARD PROCEDURE. IF THEY DON'T GET A MATCH ON THAT, THEY THROW OUT THAT INITIAL --

LET ME CLARIFY WHAT YOU JUST SAID. THE SAME DATA ASE WAS THERE. IT HAD JUST BEEN ADDED TO WITH THE ADDITIONAL FINGERPRINTS.

THAT'S CORRECT.

SO THERE WAS NOTHING LOST, WITH THAT HAVING BEEN DUMPED. THIS COPY WAS THROWN AWAY, BUT AS FAR AS THE DATA BASE FROM WHICH THOSE NAMES WERE DRAWN, THE DATABASE WAS STILL THERE, SO IF YOU RAN THE ENHANCED PHOTOS AGAIN, YOU MAY NOT GET THE SAME LIST, BUT YOU SHOULD GET A LIST.

DID HE ASK FOR THAT?

HE ASKED TO HAVE IT REPRODUCED, AND THE COURT FOUND THAT, BECAUSE YOU COULDN'T GET THE SAME COPY, THAT THERE WOULDN'T BE ANOTHER RUN, AND THAT SECOND SET --

IF THE CONCERN WAS --

-- WAS NEVER RUN THROUGH.

-- IF THE ACCURACY OF THE MATCH WITH THE GIRLFRIEND AND THE SON, NOTHING STOPS THE DEFENDANT FROM BEING ABLE TO ASK FOR FURTHER EXAMINATION TO BE DONE, TO SEE IF HE COULD COME UP WITH SOMETHING IN DISPUTE. I MEAN, I THINK THAT IS WHAT WE ARE GETTING AT, IS REALLY WHY IT IS A NONISSUE, BECAUSE THERE IS STILL THE DATABASE TO BE ABLE TO

SHOW THAT THEY REALLY JUMPED TO THE CONCLUSION THAT IT WAS THE FINGERPRINT OF THE GIRLFRIEND AND THE SON, BECAUSE, LOOK, THERE WERE TWENTY OTHER PEOPLE THAT WERE EQUALLY LIKELY TO HAVE HAD IT HAVE BEEN THEIR FINGERPRINTS, RIGHT? I MEAN, THAT IS WHAT, OR HOWEVER THEY COULD DO IT NOW AND SHOW THERE ARE FORTY PEOPLE WHOSE FINGERPRINTS IT COULD HAVE BEEN.

RIGHT, EXCEPT THEY DO HAVE THESE FINGERPRINTS AND THE, WHAT DO THEY CALL THEM, THE ONES THAT THEY RUN, THAT THEY PRINT, THEMSELVES. SO THEY HAVE THE GIRLFRIEND AND THE SON'S, AND THEN THEY HAVE THE DIGITAL ENHANCEMENT, AND YOU CAN MAKE ANY ARGUMENT YOU WANT.

RIGHT, ABOUT WHETHER THERE IS ENOUGH POINT FOR MATCHING OR, BUT TO USE THE DATABASE TO SHOW THAT THERE ARE OTHERS THAT HAVE THE SAME --

A SWIRL IN ONE SPOT OR A CURL IN ANOTHER. TURNING TO ISSUE ONE.

WHY DON'T YOU GO TO THE ISSUE THAT HAS TO DO WITH WHAT HAPPENED, WHEN HE SAID THAT HE, OR IT WAS PRESENTED TO THE TRIAL JUDGE THAT HE WAS GOING TO WEIGH WAIVE MITIGATION -- GOING TO WAIVE MITIGATION, AND IT READS TO ME LIKE, THIS TRANSCRIPT READS TO ME LIKE THE TRIAL JUDGE WAS TRYING TO SAIL BETWEEN ONE OF THE TWO ROCKS THERE AT THE ENTRANCE TO THE MEDITERRANEAN SEA, BETWEEN THE ARCHAESES OF COON AND MORA, IS THAT YOUR TAKE ON IT?

YES, AND MORA SHOULD CONTROL IN THIS PARTICULAR CASE.

NOW, WHAT ABOUT THE ISSUE OF WHETHER HE WAS COMPETENT TO OR THE TRIAL COURT COULD RELY UPON HIS COMPETENCE, TO PARTICIPATE IN THE DECISION, AS TO WHETHER HE WAS GOING TO WAIVE THE MITIGATION OR NOT?

THERE WAS NOTHING THAT OCCURRED DURING THE TRIAL, AFTER THE INITIAL COMPETENCY HEARING EVALUATION, AND THIS FINAL DISCUSSION OR THE LATTER DISCUSSION, WHERE THERE WAS SOME INDICATION FROM COUNSEL THAT MAYBE THERE SHOULD BE A LITTLE FURTHER INQUIRY. NOTHING THAT WAS VISIBLE TO THE COURT, THAT THE DEFENDANT DID, THAT WOULD REALLY CALL INTO QUESTION HIS COMPETENCY.

BUT THERE WAS NEVER ANY COMPETENCY DETERMINATION IN THIS CASE AT ALL, IS THAT CORRECT?

NO. THEY A HEARING AND HE WAS FOUND COMPETENT.

THAT WAS ONE --

THAT WAS THE INITIAL HEARING.

THE GUILT PHASE.

THAT'S CORRECT.

BUT THE QUESTION IS GOING, NOW, THINGS CHANGED, IN THAT IN THE FIRST COMPETENCY HEARING, EVEN THOUGH THERE WAS A REPORT SHOWING THAT SHE WAS INCOMPETENT -- THAT HE WAS INCOMPETENT, FOR SOME REASON THE LAWYER DIDN'T WANT THE JUDGE TO HAVE THAT INFORMATION, AND MADE A STRATEGIC DECISION, NO, I THINK MY CLIENT IS COMPETENT, SO I AM HIM OKAY, EVEN THOUGH I HAVE GOT THESE REPORTS THAT SHOW HE IS NOT COMPETENT, I AM GOING TO STAY WITH, THAT HE IS COMPETENT. NOW WE GO TO SOMETHING HAS HAPPENED. HE IS FOUND GUILTY, AND NOW HE, THE LAWYER IS SAYING I HAVE BECOME CONCERNED. HE IS NOW

NOT FOLLOWING MY SUGGESTIONS ABOUT HOW TO PUT THE PENALTY PHASE O I HAVE CAUSE -- PENALTY PHASE ON. I HAVE CAUSE TO THINK THAT HE MAY NOT BE COMPETENT. I HAVE AN EXPERT THAT IS CONCERNED ABOUT THIS. ISN'T THAT ENOUGH TO ALERT THE JUDGE AND NOW HE IS CHANGING HIS MIND ABOUT HE WANTS, HE WILL JUST GO WITH THIS GUY WITH NO SIGNIFICANT HISTORY OF CRIMINAL ACTIVITY, RIGHT, NO PRIOR VIOLENT FELONIES, NO CRIMES.

NO CONVICTIONS.

NO CONVICTIONS. CERTAINLY CRIMINAL --

WELL, HE FOUND THAT MITIGATOR, THOUGH, WAS FOUND.

HE DID.

DO WE HAVE CAUSE TO BE CONCERNED ABOUT HE IS NOT QUITE, HE IS SORT OF LIKE MORA, PROBABLY IS CLOSER TO THAT, THE OTHER PERSON THAT WASN'T QUITE ALL THERE BUT WE SORT OF LET HIM SAIL THROUGH, BUT YOU HAVE A SITUATION, NOW, WHERE THE LAWYER IS ALERTING THE JUDGE. {J} ISN'T AT THAT POINT, IT -- WHY ISN'T IT AT THAT POINT APPROPRIATE FOR THE JUDGE, KNOWING THAT THERE WAS THIS REPORT THAT SAID HE WAS INCOMPETENT, BUT TO HAVE NOW A BETTER COMPETENCY HEARING, WHERE HE COULD HEAR FROM THE INDIVIDUALS THAT THE LAWYER FIRST FELT SHOULDN'T BE PUT ON?

I THINK IT IS IMPORTANT TO LOOK AT THE TWO, WHAT DR. SCHAPIRO SAID INITIALLY, AND THEN WHAT WAS REPORTED BY COUNSEL AS TO WHAT DR. SCHAPIRO SAID LATER. THE SAME DR. SCHAPIRO. WHEN HE FIRST EVALUATED THE DEFENDANT, AS HAS BEEN DISCUSSED, MUCH OF WHAT HE, MUCH OF WHAT DR. SCHAPIRO RELIED UPON, WAS THAT THE DEFENDANT HAD THIS CONFIDENCE, BASED ON HIS FIVE PRIOR ACQUITTALS, THAT HE WAS GOING TO BE ACQUITTED AGAIN. IN ADDITION TO HIS VOICED FAITH THAT HIS GOD WOULDN'T LET THIS HAPPEN. SO IT WAS BASED ON HIS RELIGIOUS BELIEFS AND HIS ACTUAL HISTORY OF ACQUITTAL. DR. GARFIELD SAID THAT, WHEN SHE SPOKE TO THE DEFENDANT, HE WAS DEFENSIVE ABOUT THIS, BUT THE DEFENDANT ALREADY KNEW THAT HE HAD BEEN FOUND BY DR. SCHAPIRO TO BE NOT COMPETENT TO WAIVE THE PENALTY-PHASE JURY. AND SHE SAID, WELL, LOOK, HE IS A LITTLE DEFENSIVE WITH ME, AND THEREFORE I AM GOING TO JUST RELY ON DR. SCHAPIRO, SO DR. GARFIELD'S REPORT, REALLY, IS NOTHING MORE THAN AN ADVOCATION OF HER -- AN ABDICATION OF HER INDEPENDENT DUTY AND RELIED ON DR. SCHAPIRO, SO I THINK DR. GARFIELD'S REPORT DOESN'T GIVE ANY WEIGHT TO THE DEFENSE ARGUMENT.

BUT WHAT WE DON'T HAVE HERE OR AT LEAST I AM A LITTLE CONFUSED AS TO WHETHER WE DO, IS WHETHER WE HAVE ALL OF THAT IN FRONT OF A JUDGE.

THAT IS IN FRONT OF A JUDGE.

ALONG WITH THE DEMEANOR AND EVERYTHING, AND THEN THE JUDGE MAKES THE DETERMINATION ABOUT COMPETENCY AT THAT TIME. COME BACK AND HELP ME CHRONOLOGICALLY. OKAY. THERE WAS A DETERMINATION AND THERE WERE EXAMINATIONS, BEFORE TRIAL.

AND I THINK --

-- ABOUT COMPETENCY. NOW, TELL ME ABOUT WHAT WHAT HAPPENED AFTER THAT, IN TERMS OF THIS DEFENDANT SEEING A PSYCHIATRIST OR MENTAL HEALTH EXPERTS, AFTER THAT INITIAL HEARING. WAS, WAS HE EXAMINED AFTER THAT, BY MENTAL HEALTH EXPERTS, DURING THE COURSE OF THE TRIAL, OR ANY TIME AFTER THAT ORIGINAL DETERMINATION, AND IF SO, WHEN, AND WHAT DID THOSE EXPERTS HAVE TO SAY, WHEN THOSE EXAMINATIONS TOOK PLACE?

TWO THINGS ARE IMPORTANT FOR THAT. NUMBER ONE, THE INITIAL COMPETENCY WAS REQUESTED MERELY AS A PROTECTION FOR THE DEFENSE COUNSEL, BECAUSE THE DEFENDANT HAD DECIDED OR HAD VOICED THAT HE WAS THINKING OF WAIVING MITIGATION, SO THIS WAS A PURELY DEFENSIVE MOVE ON COUNSEL'S PART. I WANT TO SEE IF HE IS CAPABLE OF WAIVING MITIGATION. THEY DO HAVE DR. HABER'S REPORT AND TESTIMONY, THAT THE DEFENDANT WAS COMPETENT AND UNDERSTOOD EVERYTHING, IF NOT BETTER THAN MANY OF THE STATE ATTORNEYS, AND THEY, GOING FORWARD.

WHAT HAPPENED?

GOING FORWARD, AGAIN, DR. SCHAPIRO IS CALLED IN.

WHEN? WHEN?

THIS IS SOMETIME AFTER OR IN THE GUILT PHASE, BEFORE THE FINAL PENALTY PHASE DECISION. HE WAS CALLED IN TO TALK TO THE DEFENDANT FURTHER, AND THE DEFENDANT REFUSED TO TALK TO HIM. SO THE DEFENDANT MADE THE DECISION HE WAS NOT GOING TO SPEAK WITH THIS OR WAS VERY LIMITED ON HOW HE SPOKE TO DR. SCHAPIRO. HE WAS NOT COOPERATIVE.

THIS WAS PURSUANT TO COUNSEL'S REQUEST.

THAT IS TRUE.

HE WAS CALLING THE SHOTS ABOUT THAT.

PLEASE GO SEE THIS DOCTOR, AND THEN MR. BOYD REFUSED TO COOPERATE. IT WAS AT THAT POINT THAT DR. SCHAPIRO SAYS, WELL, LOOK, I CAN'T GIVE YOU A DECISION. I CAN'T SAY, NOW, HE IS COMPETENT, INCOMPETENT, BECAUSE HE IS NOT COOPERATING. SO WHAT THEY ARE RELYING UPON IS THIS INITIAL REPORT THAT HE IS NOT COMPETENT TO WAIVE MITIGATION, BASED ON DR. SCHAPIRO'S CONCLUSIONS THAT MR. BOYD'S RELIGIOUS BELIEFS AND PRIOR FAITH IN BEING ACQUITTED, WASN'T, WOULD SHOW THAT HE WAS INCOMPETENT.

SO THERE IS NOTHING FROM, THAT WE KNOW OF BY DEFENSE COUNSEL'S INTERACTION WITH THE DEFENDANT, OR JAIL RECORDS OR JAIL REPORTING OR ANYTHING ELSE? IS THERE ANYTHING ELSE, OTHER THAN WHAT YOU HAVE SAID?

NO. NOT IN THIS RECORD THAT ACTUALLY SAYS THIS PERSON IS NOW DOING VERY STRANGE THINGS. OTHER THAN NOT WANTING TO PUT ON MITIGATION.

WELL, THE SEQUENCE OF EFFECTS WAS THAT THERE WAS -- THE SEQUENCE OF EFFECTS WAS THAT THERE WAS -- THE SEQUENCE OF EVENTS WAS THAT THERE WAS, FOLLOWING THE GUILT PHASE, THAT THERE WAS THIS RATHER EXTENSIVE MEETING IN THE JURY ROOM, I TAKE IT, BETWEEN THE TRIAL JUDGE, DEFENSE COUNSEL, AND MR. BOYD.

MR. BOYD WAS VERY UPSET THAT HE WAS CONVICTED. HE -- SO THEY ALL MET WITHOUT THE STATE BEING PRESENT.

THAT'S CORRECT. IT WAS ALL EXPARTE.

OKAY. AND THEN, SO THAT, BUT THAT IS ON THE RECORD.

RIGHT. THEY HAVE SEVERAL DISCUSSIONS.

TO THAT, AND AT THAT POINT, COUNSEL WAS INITIALLY SAYING, WELL, HE IS NOT GOING TO ALLOW US TO PRESENT ANY MITIGATION, BUT THEN AT THE END OF THAT DISCUSSION, THE

DEFENDANT SAID HE WOULD ALLOW THERE TO BE SOME DEVELOPMENT. THEN THERE WAS A PERIOD OF TIME, ABOUT HOW LONG WAS IT?

THE DATES ON THAT ARE, I DIDN'T WRITE THEM DOWN BUT IT WAS A VERY SHORT PERIOD OF TIME, LIKE FIVE WEEKS THAT THEY HAD. MARCH 27, EXCUSE ME, WAS BETWEEN JANUARY 30 AND MARCH 12. THEY HAD, LIKE, THREE OR FOUR MEETINGS. ANOTHER CASE HAD BEEN SET FOR THE PENALTY PHASE A COUPLE OF TIMES?

NO. THE PENALTY, WELL, THEY MOVED THE PENALTY PHASE ONCE. IT WAS THE SPENCER HEARING THAT THEY CONTINUED FOR FOUR DAYS.

OKAY. THEN THE, THEN THERE WAS THIS, THE MOTION THAT WAS FILED BY COUNSEL TO WITHDRAW, AND THERE WAS ANOTHER DISCUSSION WITH THE DEFENDANT, AND A DISCUSSION AT THAT TIME, BY THE TRIAL JUDGE, WITH THE DEFENDANT, ABOUT WHETHER, ABOUT DR. SCHAPIRO, CORRECT?

YES.

AND THEN FOLLOWING THAT, THERE WAS SORT OF A COMPROMISE REACHED, OF SOME DEGREE, IN WHICH THERE WAS GOING TO BE SOME TESTIMONY PUT ON, AND WHAT ENDED UP HAPPENING WAS THAT HE PUT HIMSELF ON.

AND THE JAIL MINISTER.

MINISTER.

AND THAT WAS AFTER FINAL DISCUSSIONS WITH COUNSEL AND THE FAMILY.

OKAY. NOW, DID COUNSEL EVER ACTUALLY WITHDRAW?

NO.

THE JUDGE DIDN'T ALLOW HIM TO WITHDRAW. I THOUGHT THE JUDGE.

HE DIDN'T.

SO WHAT WAS THE COUNSEL'S ROLE, THEN, IN THE PENALTY PHASE?

HE PUT ON, HE CALLED THE PASS TORO-THE PASTOR, AND HE QUESTIONED THE PASTOR.

I GUESS THE ISSUE AS TO WHAT MIGHT HAVE HAPPENED WILL BE PART TWO IN POSTCONVICTION, BUT IN TERMS OF YOU HAVE GIVEN EVERYTHING THAT IS SWITCHING BACK AND FORTH AND EVERYTHING AND KIND OF WAIVING BUT NOT REALLY WAIVING MITIGATION, AND EVERYTHING THE JUDGE HAD WAS STILL NOT ENOUGH, EVEN THOUGH THE DEFENDANT, THE DEFENSE LAWYER HAD ASKED FOR A COMPETENCY HEARING, WAS NOT ENOUGH TO WARRANT A SECOND COMPETENCY HEARING.

NO. BECAUSE I THINK IF YOU LOOK AT THE CONTEXT OF THE CONVERSATIONS, IT WAS A DEFENDANT WHO WAS ANNOYED WITH THE SYSTEM, DISAPPOINTED IN THE SYSTEM, NOT THAT HE WASN'T COMPETENT TO MAKE A DECISION.

OR WASN'T IT DR. SCHAPIRO, REALLY, SAYING HE WAS UNDER THIS ILLUSION THAT, I GUESS IF HE PRAYED HARD ENOUGH TO GOD, HE, THAT WORKED FOR FIVE OR SIX PRIOR CASES, IT DIDN'T WORK NOW, AND THAT MAYBE HE BECAME UNRAVELED, AND ISN'T THAT SORT OF WHAT THE DEFENSE LAWYER IS SUGGESTING, IN SAYING, LOOK, I AM NOW, TALKED TO THIS DOCTOR AGAIN AND I THINK WE HAVE GOT SOME PROBLEMS WITH THIS DEFENDANT. HIS BELIEVE SYSTEM,

WHICH WAS SOMEWHAT, MAYBE, DELUSIONAL, HAS BEEN DESTROYED, AND WE NEED TO HAVE A SERIOUS LOOK AT WHETHER HE IS COMPETENT TO BE MAKING THE DECISIONS HE IS MAKING.

I THINK, AGAIN, IF --

I DID READ THAT. I DID LOOK AT ALL OF THOSE, THE TRANSCRIPT, AND IT IS SORT OF LIKE YOU DON'T GET THE FLAVOR, BUT YOU SORT OF KNOW THAT, JUST AS YOU THINK THE DEFENDANT IS ABOUT TO SAY, SURE, I WILL LET MY LAWYER DO WHATEVER HE NEEDS TO DO, NEXT TIME AROUND, SOMETHING ELSE HAPPENS, SO IT IS NOT, YOU DON'T GET, YOU DO GET, AS JUSTICE WELLS SAID, A CLEAR IDEA THAT THE JUDGE IS TRYING HIS BEST TO TRY TO SEE HOW HE IS GOING TO ACCOMMODATE THIS, BUT YOU KNOW, I AM JUST WONDERING, YOU KNOW, JUST CONCERNED ABOUT WHETHER HE WAS ACTING IN AWAY THAT SHOULD HAVE ALERTED THE JUDGE TO HAVE DONE THIS EXAMINATION.

I DON'T THINK A MERE INABILITY TO MAKE A DECISION, ESPECIALLY AT THAT TIME, IS NECESSARILY EVIDENCE OF INCOMPETENCE.

BUT YOU DON'T THINK THAT, AGAIN, COUPLED WITH THE IDEA THAT, AT THE INITIAL HEARING, THAT THERE WAS THAT REPORT THAT THE DEFENSE LAWYER DECIDES NOT TO PUT ON, NOW IS SAYING, YOU KNOW WHAT? I AM CONCERNED THAT THAT, THAT WE ARE DEFERRING TO COUNSEL'S STRATEGY TO THE FIRST ONE, WHICH IS THAT WE ARE, I AM ASSUMING, YOU ARE SAYING THAT THE JUDGE DIDN'T HAVE TO REACH OUT AND GET DR. SCHAPIRO'S REPORT. HE COULD RELY ON DEFENSE COUNSEL, SO WHY DIDN'T HE LIKEWISE --

HE RELIED ON DEFENSE COUNSEL TO NOT NECESSARILY PUT INTO EVIDENCE THOSE REPORTS. HOWEVER, WE HAVE DOCTOR --

HE REVIEWED THOSE REPORTS?

THEY ARE IN THE RECORD. HE DID NOT RELY ON THEM TO FIND COMPETENCY OR IN COMPETENCY, BUT YOU DO HAVE THE TESTIMONY OF DR. HABER, WHO FOUND THE DEFENDANT COMPETENT, SO EVEN SO, EVEN IF YOU HAD THAT EVIDENCE FROM DR. SCHAPIRO AND DR. GARFIELD, IT IS WEIGHED AGAINST WHATEVER DR. HABER FOUND, AND DR. HABER FOUND HIM COMPETENT, AND THE JUDGE IS WELL WITHIN HIS RIGHTS TO DISREGARD THOSE OTHER TWO REPORTS AND GO WITH DR. HABER, SO YOU DO HAVE A COMPETENCY FINDING, AND YOU DON'T HAVE ANYTHING IN THE RECORD, OTHER THAN THE DEFENDANT'S INABILITY TO MAKE A DECISION OR WHATEVER REASON, IS HE DECIDING THAT HE IS GOING TO VACILLATE OR VOICE A VACILLATION.

THE DEFENDANT ENDED UP CALLING THE SHOTS, IS THAT CORRECT, AS FAR AS WHAT MITIGATION WAS, THIS LIMITED MITIGATION.

AS IS HIS RIGHT. HE CAN MAKE THAT DECISION UNDER MORA.

OKAY. BUT I AM WONDERING HOW THAT PLAYS IN AS A FACTOR, IN NOT HAVING THIS COMPETENCY DETERMINATION. BECAUSE THE SO-CALLED COMPROMISE, REALLY, WAS A COMPROMISE, ALL RIGHT, YOU CAN HAVE YOUR WAY, AND YOUR WAY IS TO HAVE THIS VERY LIMITED MITIGATION PRESENTED, AS OPPOSED TO ALLOWING COUNSEL TO GO FORWARD AND DO COUNSEL'S JOB. AND HOW WOULD YOU SAY THAT WE SHOULD CONSIDER THAT, IN DETERMINING THIS NEED FOR ANOTHER COMPETENCY EVALUATION?

AGAIN, THE PERSON THAT WAS VIEWING THE DEFENDANT, WATCHING THE DEFENDANT, AND HAD TO MAKE THAT DECISION, WAS THE TRIAL COURT. AND THE TRIAL COURT FOUND NOTHING THAT WOULD REQUIRE ANYTHING, ANY FURTHER --

WHY WASN'T IT JUST AS MUCH THE TRIAL LAWYER? THAT IS THE TRIAL LAWYER THAT WAS, OF COURSE, ON THE SPOT HERE, AND BUT AT ONE POINT, BECAUSE OF THE IRRATIONALITY OF THE DEFENDANT, AS PERCEIVED BY THE DEFENSE LAWYER, YOU KNOW, WAS SAYING I AM FINALLY GOING TO BAIL OUT OF THIS THING, YOU KNOW, THAT I HAVE BEEN BACK AND FORTH AND BACK AND FORTH.

THERE IS ALSO ANOTHER REASON WHY HE WANTED TO BAIL OUT AND THAT IS ALSO VOICED ON THE RECORD, AND THAT WAS BECAUSE MR. BOYD TOOK HIM TO TASK. HE VOICED ON THE RECORD, HIS DISAGREEMENT WITH COUNSEL, BECAUSE OF THE CONVICTION. SO THAT ALL PLAYS INTO COUNSEL WISHING TO WITHDRAW. I THINK THAT HAS TO BE TAKEN INTO ACCOUNT. OTHER THAN THAT, THERE WAS NOTHING THAT THE JUDGE, REALLY, SAW THAT WOULD HAVE REQUIRED AN ADDITIONAL TESTING, STOPPING THE TRIAL AND HAVING ANOTHER COMPETENCY HEARING. IF, THE LAST ISSUE WOULD BE WHETHER OR NOT JUROR INTERVIEWS WERE REQUIRED. THE STATE, IT IS THE STATE'S POSITION THAT THIS WITNESS, MS.^ELCID, WAS COMPLETELY NONCREDIBLE, AND THE COURT DID EVERYTHING THAT WAS NECESSARY, IN ORDER TO DETERMINE IF FURTHER INQUIRY WAS NECESSARY OF THE JUROR.

THE JUDGE DID HAVE A HEARING ABOUT THIS, CORRECT?

THAT'S TRUE. THE COURT INQUIRED OF EL CID, AND THE STATE ATTORNEY MADE SEVERAL INQUIRIES.

THE SWORN STATEMENT, IF TRUE, WOULD REQUIRE A FURTHER INQUIRY, THE COURT SAID.

THAT IS TRUE. HOWEVER --

AND THAT IS HOW TO BASICALLY RESOLVE OUR PRIOR CASES WITH THIS SITUATION. IT IS USUALLY THE AFFIDAVIT MAY COME FROM COUNSEL, WHO HAS TALKED TO WHERE A JUROR HAS COME FORWARD OR SOMETHING LIKE. THAT.

I THINK THAT IS IMPORTANT. IT IS AN AFFIDAVIT. IT IS SOMETHING SWORN. THE INITIAL ALLEGATIONS DID NOT BECOME SWORN, AND THEN MS.^EL CID TOOK THE STAND AND TESTIFIED. AS FAR AS BEING CONCERNED, THE COURT DID, AFTER PENALTY PHASE THE JURY CAME BACK WHAT RECOMMENDATION WHICH WAS UNANIMOUS. HE DID INQUIRE OF THE JURY AS A WHOLE, AS HE DID PRIOR, ON EVERY TIME THEY CAME BACK TO COURT, DID YOU HAVE ANY DISCUSSIONS WITH ANYBODY? DID YOU READ ANYTHING? ANY MEDIA CONTACT? AND IN THAT LAST DISCUSSION, AFTER THE VERDICT CAME IN, HE SAID DID YOU HAVE ANY DISCUSSIONS WITH ANYONE IN THE BATHROOM, ANY PLACE IN THIS COURTROOM, ANYWHERE, ANYHOW, ANYTHING? AND THEY ALL SAID NO. SO THAT, IN AND OF ITSELF, WOULD, SHOULD SATISFY INQUIRY OF THE JURY. UNLESS THE COURT HAS ANY FURTHER QUESTIONS --

ALTHOUGH NOT MENTIONED DURING THE ORAL PRESENTATION, YOUR OPPONENT HAS CHALLENGED THE KIDNAPING CONVICTION HERE. COULD YOU HELP ME UNDERSTAND IF THERE WAS REALLY A DIFFERENCE BETWEEN THE CASE OUT OF THIS COURT WITHIN THE LAST TWO OR THREE YEARS, WHERE THERE WAS THE YOUNG GIRL, AND THE STEPFATHER WHO DID NOT WANT THE YOUNG WOMAN SEEING OTHER YOUNG MEN, PICKED HER UP FROM A PUBLIX. SHE VOLUNTARILY ENTERED --

YOU ARE TALKING ABOUT CHARLES ANDERSON?

-- VOLUNTARILY ENTERED THE CAR. TAKES HER OUT TO THE EVERGLADES, AND THEN THE NEXT THING WE KNOW, SHE IS FOUND DEAD ALONG THE SIDE OF THE ROAD. AND COMPARE THOSE WITH HERE, BECAUSE IT APPEARS THAT THERE IS A VOLUNTARY, IF THE EVIDENCE IS CORRECT, VOLUNTARY ENTRY TO THE MOTOR VEHICLE, AND THEN WE FIND THE BODY IN THE ALLEY WAY A FEW DAYS LATER. HOW WOULD YOU DRAW A DISTINCTION BETWEEN IT, BECAUSE OUR COURT

CLEARLY SAID THAT YOU COULD NOT FIND A KIDNAPING IN THE CASE INVOLVING THE YOUNG LADY WHO WORKED AT PUBLIX.

I THINK THE MAJOR DISTINCTION WOULD BE THE FAMILIAL RELATIONSHIP BETWEEN THE TWO, TO BEGIN WITH, THAT THEY WERE GOING TOGETHER, AND THEN POSSIBLY A FIGHT WOULD HAVE STARTED IN THE CAR. SO THAT, AS INITIAL REACTION, WOULD BE THAT, WHEREAS HERE, THE INITIAL AGREEMENT WOULD HAVE BEEN, OKAY, I WILL TAKE YOU BACK TO YOUR CAR. THE CAR WAS EAST OF THE, EAST OF THE GAS STATION, EXCUSE ME, WEST OF THE GAS STATION, AND I BELIEVE HIS APARTMENT WAS EAST, SO THEY WERE GOING IN THE OPPOSITE DIRECTION IMMEDIATELY.

THAT HAPPENED IN THE OTHER CASE AS WELL. THEY WENT TO THE EVERGLADES, AS OPPOSED TO GOING HOME.

BUT THERE IS A FAMILIAL RELATIONSHIP THERE TO BEGIN WITH. THERE IS ALSO THE TORTURE ASPECT. ONCE SHE GOT INTO THE, INTO HIS HOME, HE WOULD HAVE KEPT HER THERE, AND HE TORTURED HER BEFORE MURDERING HER.

THE EVIDENCE FROM THE, BEING IN THE STRUCTURE, YOU THINK, IS THE REAL KEY THEN.

I THINK THAT DOES, THAT DOES, SO EVEN IF SHE WENT WILLINGLY WITH HIM, HE, THEN, SECRETED HER, HE KEPT HER HIDDEN IN HIS HOME, WHERE THERE WAS NO PLACE TO ESCAPE.

AND WE KNOW THAT FROM WHAT?

THAT HE KEPT HER THERE?

HOW DO WE KNOW? THAT LAST STATEMENT THAT YOU MADE, THAT EVEN IF SHE WENT WILLINGLY, WE KNOW HE SECRETED HER IN THE HOME. HOW DO WE KNOW THAT?

HER BLOOD WAS FOUND IN THE HOME. AND THERE WERE 36 STAB WOUNDS.

WHAT ARE THE ELEMENTS AFTER KIDNAP SOMETHING.

THERE HAS TO BE A FORCEFUL TAKING, OF THE PERSON, AND THERE HAS TO BE A, IT HAS TO BE FOR A PURPOSE OTHER THAN JUST TO MOVE HER FROM ONE SPOT TO THE OTHER, AND IN THIS PARTICULAR CASE, IT COULD BE FOR TORTURE OR IT COULD BE FOR SOME OTHER FELONY N THIS CASE IT WAS BOTH THE TORTURE AND A FELONY.

BUT IF WE ASSUME THAT, HE, AGAIN, OFFERS TO TAKE HER, I GUESS, EITHER BACK TO THE CAR, BUT WHEN THEY, SHE GETS IN THE CAR, HE SAYS, IT IS REALLY LATE. COME BACK TO MY HOUSE. I MEAN, THAT IS AN INFERENCE. GETS BACK TO THE HOUSE, AND THAT IS WHEN THE STRUGGLE OCCURS. HOW IS THAT KIDNAPING VERSUS JUST THAT YOU HAVE GOT MURDER AT THAT POINT? CAN YOU, YOU KNOW, THAT, I MEAN, ISN'T THERE AN INFERENCE THAT SHE ACTUALLY WOULD HAVE COME TO THE HOUSE WILLINGLY?

I THINK HIS, THERE HAS TO BE A REASONABLE INFERENCE.

THERE IS NO EVIDENCE OF A STRUGGLE IN THE VEHICLE OR IS THERE?

THE VEHICLE WASN'T SEIZED UNTIL ABOUT THREE MONTHS LATER.

IN OTHER WORDS WE HAVE NO EVIDENCE TO SHOW THAT SOMETHING HAPPENED IN --

SHE WAS HIT WITH A RECIPROCATING SAW, WITH A FACE PLATE.

THAT SHOWS TORTURE AND THE HAC, BUT WHERE IS THE KIDNAPING.

OR THAT THAT IS HOW HE SUBDUED HER, IN ORDER TO GET HER TO HIS HOUSE. HIS DEFENSE WAS I DON'T KNOW HER. I HAVE NEVER SEEN HER BEFORE. THAT IS HIS DEFENSE. SO WE HAVE TO REBUT THOSE, WE HAVE TO REBUT THAT DEFENSE. AND IT IS NOT REASONABLE, NOT REASONABLE THAT, TO SAY I DON'T KNOW SOMEBODY, AND YET SHE IS TAKEN TO HIS HOUSE, AND THEN TORTURED AND --

WAS THIS A GENERAL VERDICT FORM?

YES, I BELIEVE SO.

SO THERE IS ALSO EVIDENCE OF PREMEDITATION, EVEN IF THE KIDNAPING ISN'T SUSTAINABLE.

THAT'S CORRECT.

WHAT ABOUT THE SEXUAL BATTERY, BECAUSE AS I UNDERSTAND THE MEDICAL EXAMINER'S TESTIMONY, IS THAT, YES, THERE IS EVIDENCE OF SEXUAL INTERCOURSE, SO WHERE DO WE GET BEYOND THAT, TO A SEXUAL BATTERY?

HIS TESTIMONY WAS THAT THE BRUISING IN THE VAGINAL AREA WAS CONSISTENT WITH EITHER CONSENTUAL OR NONCONSENTUAL SEX. HE SAID THAT IT COULD BE NONCONSENTUAL, SO THAT OVERCOMES HOME.

MORE THAN HIM SAYING THAT IT COULD HAVE BEEN NONCONSENTUAL, TO ACTUALLY SHOW THAT IT WAS NONCONSENTUAL.

WELL, THE DEFENSE WAS I DON'T KNOW HER, AND YET WE HAVE THE DEFENDANT'S SPERM IN HER AND HIS DNA UNDERNEATH HER FINGERNAILS, AND HIS HAIR ON HER, SO, PLUS SHE HAS BEEN STABBED MULTIPLE TIMES.

WAS THERE ANY EVIDENCE THAT THESE TWO PEOPLE KNEW EACH OTHER BEFORE THIS?

NONE. NONE.

WAS THERE SOME EVIDENCE, HERE, THAT BEFORE SHE, HE HAD A CHURCH VAN, RIGHT?

YES.

IT SAID "HOPE" ON THE SIDE OF IT.

YES.

AND WAS THERE SOME EVIDENCE THAT SHE TRIED TO GET A RIDE WITH OTHER FEMALES, BEFORE THIS?

THERE WERE TWO OTHER WOMEN WHO WERE AT THAT PARTICULAR GAS STATION. THEY WERE OUTSIDE, BECAUSE AT THAT TIME YOU COULDN'T GO IN, AND SHE ASKED FOR A RIDE FROM THEM, AND THEY COULDN'T GIVE IT TO HER, AND MR. BOYD HAPPENED ON THE SCENE, AND SHE ENDED UP GOING WITH MR. BOYD. I SEE MY TIME IS UP. I ASK YOU TO AFFIRM.

CHIEF JUSTICE: THANK YOU VERY MUCH.

THANK YOU.

CHIEF JUSTICE: MR. CALDWELL, TWO MINUTES FOR REBUTTAL.

> LET ME ASK THIS, WAS THIS A CONVICTION FOR ARMED KIDNAPING?

I BELIEVE SO.

AND SO WHAT WAS THE PROOF, WHAT WAS THE ARMED WITH?

THAT IS OUR SUBMISSION IS THAT THAT WASN'T PROVED. THE, WHAT WE HAVE IS WE HAVE THE FACT THAT THERE ARE THESE TOOLS WHICH ARE IN THE VAN, WHICH COULD HAVE CAUSED THE INJURIES TO THE VICTIM.

AND WERE THE TOOLS FOUND AFTERWARDS? I KNOW THE VAN WAS NOT RECOVERED FROM THE CHURCH OR, UNTIL THREE OR FOUR MONTHS LATER, AND WERE THE TOOLS, THEN, SEIZED ALSO?

I DON'T BELIEVE THE EXACT TOOLS WERE SUBSEQUENTLY SEIZED. IT IS NOT ENTIRELY CLEAR WHAT HAPPENED WITH THEM, BECAUSE LATER ON, THE OWNER OF THE VEHICLE, GOES WITH THE DETECTIVE TO HOME DEEP OR SOMEPLACE LIKE THAT, AND -- HOME DEPOT OR SOMEPLACE LIKE THAT AND BUYS SIMILAR INSTRUMENTS, SO IT WASN'T REALLY CLEAR TO ME, WHAT HAPPENED WITH THOSE TOOLS. BUT I BELIEVE THAT THAT IS THE STATE'S POSITION OR THAT WAS THE STATE'S CLAIM, AS TO WHAT WAS THE WEAPON FOR THE ARMED KIDNAPING. THERE WAS NO EVIDENCE THAT THESE TOOLS WERE ACTUALLY USED IN THE KIDNAPING AS SUCH, IN THE SENSE OF THE KIDNAPING EVIDENCE.

THERE WAS EVIDENCE THAT THEY WERE USED IN THE DEATH.

YES, SIR. THAT IS CORRECT, JUSTICE ANSTEAD.

WOULD YOU WANT TO REBUT ANY OTHER POINTS?

JUST VERY BRIEFLY, I WANTED TO MENTION THAT THERE WAS NO TESTIMONY, ONE WAY OR THE OTHER, AS TO WHETHER THE DATABASE OF THIS COMPUTER SYSTEM REGARDING THE FINGERPRINTS, WAS SUCH THAT THEY COULDN'T LIMIT A SEARCH TO DATE AN ENTERED ON A PARTICULAR DAY, AND SO THE ONLY OTHER THING I WANTED TO MENTION, WAS THAT IT WAS NOT AT ALL CLEAR FROM THE DISCUSSION AFTER THE, CONCERNING COMPETENCY AFTER THE GUILT VERDICT, WHAT WAS THE BASIS OF DR. SCHAPIRO'S CLAIM, WHETHER IT WAS HIS PRIOR EVALUATION OR HIS SUBSEQUENT DISCUSSION WITH THE DEFENDANT.

CHIEF JUSTICE: THANK YOU VERY MUCH. THANK BOTH OF YOU FOR BEING RESPONSIVE TO OUR QUESTIONS. THE COURT WILL TAKE ITS MORNING RECESS, BUT WE ARE GOING TO HAVE A SHORTENED RECESS, BECAUSE OF OUR DOCKET THIS MORNING, SO WELL JUST TAKE A TEN-MINUTE RECESS.

MARSHAL: PLEASE RISE.