The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

02-1617

MARSHAL: PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING EVERYONE AND WELCOME TO THE FLORIDA SUPREME COURT. WE APPRECIATE COUNSEL BEING READY ON THE FIRST CASE. WITHOUT ANY FURTHER ADO, WE WILL CALL THE CASE OF PEDRO HERNANDEZ-ALBERTO VERSUS STATE. IF COUNSEL IS READY, YOU MAY PROCEED.

GOOD MORNING AND MAY IT PLEASE THE COURT. MY NAME IS JOHN FISHER. I REPRESENT THE APPELLANT PEDRO HERNANDEZ-ALBERTO. HE WAS CONVICTED AND SENTENCED TO MURDER FOR THE MURDERS OF HIS TWO STEPDAUGHTERS, ONE 11 AND ONE 29. THEY WERE VIRTUALLY CONTEMPORANEOUS MR.^CHIEF JUSTICE

YOU HAVE A SOFT VOICE AND THAT MICROPHONE DOESN'T ALWAYS HELP, BUT IF YOU CAN BE AWARE OF THAT. YOU CAN ASSUME THAT WE KNOW THE FACTS AND CIRCUMSTANCES AS YOU ALL HAVE DESCRIBED THEM TO US, AND SO YOU HAVE A LIMITED AMOUNT OF TIME, SO IF YOU CAN TELL US WHICH ISSUES YOU INTEND TO ADDRESS DURING YOUR {ORL} ORAL PRESENTATION -- DURING YOUR ORAL PRESENTATION SO WE CAN FOCUS ON THOSE, THEN IF YOU WILL DIRECTLY PROCEED INTO THOSE ISSUES.

OKAY. I BELIEVE THAT THE CRUCIAL ISSUES ARE THAT, DURING THE TRIAL FROM HERNANDEZ-ALBERTO WAS ALLOWED TO PROCEED PRO SE AND WAS REQUIRED TO DO SO WITHOUT TIME TO PREPARE. THERE WAS A LENGTHY COLLOQUY THAT PRETTY MUCH FOLLOWED THE MODEL COLLOQUY IN FLORIDA RULES OF CRIMINAL PROCEDURE, AS FAR AS INQUIRY, BUT MR. HERNANDEZ'S RESPONSES WERE NOT RESPONSIVE. HE DID NOT INDICATE THAT HE KNOWINGLY KNEW WHAT HE WAS WAIVING. HE DID INDICATE HE WANTED TO WAIVE COUNSEL.

WHAT WAS THE PROBLEM WITH COUNSEL?

MR. HERNANDEZ INITIALLY WAS FOUND INCOMPETENT. HE WAS SENT TO THE STATE MENTAL HOSPITAL. THEY FOUND HIM TROUBLESOME AND THEY FELT HE WAS MALINGERING. THEY SENT HIM BACK. SUBSEQUENTLY HE WAS REEXAMINED. DR. MAHER, WHO ORIGINALLY FOUND HIM INCOMPETENT, FOUND INCOMPETENT. IT WENT ON AND ON. AT EVERY HEARING, MR. HERNANDEZ REFUSED TO COOPERATE WITH COUNSEL. HE WAS TROUBLESOME AND DISRUPTIVE IN COURT. HE CURSED THE COURT. HE CURSED HIS ATTORNEYS. HE WAS REGULARLY REMOVED FROM THE COURTROOM.

CHIEF JUSTICE: SEVERAL OF THOSE HEARINGS WERE ON THE COMPETENCY ISSUE?

YES.

AND EACH TIME, THE COURT FOUND HIM COMPETENT?

THAT'S CORRECT, YOUR HONOR, AND THERE WERE NELSON HEARINGS AND ATTEMPTED NELSON HEARINGS, AND --

YOUR ISSUE ABOUT THE COMPETENCE, HIM REPRESENTING HIMSELF. NOW, IT IS TRUE THAT HE FIRST HAD A SET OF ATTORNEYS, THREE OF THEM, I BELIEVE. THAT HE CAME BEFORE THE COURT AND WANTED THESE ATTORNEYS DISCHARGED, CORRECT?

THE PUBLIC DEFENDER, YES.

AND THE COURT DISCHARGED THEM. EVEN THOUGH THE COURT FOUND THAT THEY HAD PERFORMED ADEQUATELY, THE COURT DISCHARGED HIM AND NONETHELESS GAVE MR. HERNANDEZ-ALBERTO OTHER COUNSEL, CORRECT?

YES. HE GOT APPOINTED COUNSEL AT THAT POINT.

AND THIS WENT ON FOR SEVERAL MONTHS, AND THEN ON THE DAY OF TRIAL, MR. HERNANDEZ-ALBERTO COMES IN AND WANTS TO DISCHARGE THE NEXT SET OF COUNSEL.

HE COMPLAINED ABOUT COUNSEL CONSISTENTLY AT EVERY HEARING AND WOULD NOT COOPERATE WITH COUNSEL.

COMPLAINTS ABOUT COUNSEL, IS INDICATION THAT HE WAS INCOMPETENT? BECAUSE IT IS PRETTY CLEAR THAT THESE COUNSEL WERE DOING EVERYTHING, AT LEAST ON THIS RECORD, THAT, AS FAR AS DOING INVESTIGATION, THEY CONTACTED RELATIVES IN MEXICO. THEY GOT SCHOOL RECORDS. THEY TRIED TO GET HIM EXAMINED. WHAT IS IT, WHAT MORE SHOULD THIS JUDGE HAVE DONE THAN HE DID?

AS FAR AS COMPETENCE OR AS FAR AS THE FERETTA INQUIREY?

WELL, YOUR ISSUE, YOUR FIRST ISSUE IS THAT HE SHOULD HAVE HELD MORE COMPETENCY HEARINGS?

WELL, I THINK THAT MORE COMPETENCY HEARINGS COULD HAVE BEEN HELD, BUT ULTIMATELY ONE WAS HELD IMMEDIATELY BEFORE TRIAL, SO WHETHER OTHERS SHOULD HAVE BEEN HELD PRIOR TO THAT SORT OF BECOMES MOOT. THE COMPETENCY HEARING BEFORE SENTENCING WAS NOT A TRUE HEARING, BECAUSE THERE WAS A MOTION FOR ANOTHER COMPETENCY EVALUATION. THERE WAS TESTIMONY PRESENTED FROM A DEFENSE DOCTOR.

WELL, IF THE JUDGE HELD WHAT HE WAS REQUIRED TO HOLD, THEN THERE IS NO ABUSE OF DISCRETION IN FINDING HIM COMPETENT, THEN WHAT IS WRONG WITH THE FERETTA INQUIRY, IN TERMS OF THE FACT THAT THIS DEFENDANT WHO, HAD ALREADY, AS JUSTICE WINS POINTED OUT, HAD TWO SETS OF EXTREMELY COMPETENT ATTORNEYS OR, AGAIN, SO IT APPEARS ON THE RECORD, SO HE COULD REPRESENT HIMSELF, AND THEN THE JUDGE OBSERVED THAT, DURING HIS REPRESENTATION, HE ACTUALLY ACTED VERY APPROPRIATELY. HE DIDN'T ACT DISRUPTIVE. HE ASKED APPROPRIATE QUESTIONS AND THEN, IN FACT, HAD HIS ATTORNEY DO THE CLOSING ARGUMENT.

WELL, -- SO WHAT IS WRONG WITH WHAT HAPPENED?

SAYING THAT HIS QUESTIONS WERE APPROPRIATE, HIS QUESTIONS WERE TOTALLY OFF THE MARK. DURING THE TRIAL, THE JUDGE CONTINUALLY HAD TO --

BUT WHERE DOES THAT TAKE US? IN OTHER WORDS HE WAS WARNED, WAS HE NOT, THAT THE COURT WAS NOT GOING TO USE THIS ISSUE TO CONTINUE THE TRIAL. HE WAS ALSO, THE LAWYERS, IF I UNDERSTAND IT CORRECTLY, WERE PROVIDED FOR HIM ON A STANDBY BASIS. THAT HIS LAWYERS THAT WERE THOROUGHLY FAMILIAR WITH THE CASE, AND ACTUALLY AT SOME POINT, HE ACTUALLY DID UTILIZE THOSE LAWYERS AGAIN. BUT HE WAS ADVISED, WAS HE

NOT, THAT THIS WOULD NOT BE A MEANS OF CONTINUING THE CASE. REPEATEDLY. AND IN TERMS OF HIS CHOICE OF SELF REPRESENTATION. IS THAT CORRECT?

HE CONTINUED, YEAH, HE REPEATEDLY ASKED FOR TIME TO PREPARE, AND WAS TOLD THAT HE WOULD NOT GET IT, AND GOING PRO SE WAS NOT GOING TO GET IT FOR HIM. HOWEVER, THAT COLLOQUY, AS LENGTHY AND AS MUCH AS IT FOLLOWS THE MODEL COLLOQUY, DID NOT ESTABLISH A KNOWING AND VOLUNTARY WAIVER. IT WAS NO COMMUNICATION. THERE WAS NO MEETING OF THE MINDS.

WHAT WAS THE FLAW, INSOFAR AS --

WELL, WHEN YOU ASK MR. HERNANDEZ DO YOU UNDERSTAND THAT YOU ARE WAIVING THIS RIGHT AND THAT RIGHT, MR. HERNANDEZ DID WHAT HE ALWAYS DID. HE SAID THEY ARE PREVENTING ME FROM SEEING MY FAMILY. NOBODY IS TREATING MY BROKEN BACK, MY BROKEN NECK.

WELL, HAVING ADJUDICATED COMPETENT TO PROCEED, AND THEN HAVING THE LAW THAT SAYS YOU MUST ADVISE THEM OF THESE THINGS, THEN HAVING TO MAKE SOME EVALUATION, AS FAR AS WHAT THE MOTIVATIONS OF THE DEFENDANT ARE IN DOING SOMETHING, WHAT MORE COULD A TRIAL COURT DO, IN CIRCUMSTANCES LIKE THAT, WHERE IT APPEARS THAT THE TRIAL JUDGE WAS EVALUATING YOUR CLIENT, REALLY, AS DOING, UTILIZING THIS, REALLY, AS A MEANS, EITHER TO CONTINUE THE CASE INDEFINITELY, OR TO DISRUPT THE PROCEEDINGS AND NOT FACE UP TO THE MUSIC THAT THERE WAS GOING TO BE A TRIAL. AM I IMPROPERLY CHARACTERIZING WHAT IT APPEARS THE JUDGE WAS EVALUATING HERE?

WELL, I BELIEVE THAT THE JUDGE ABUSED HIS DISCRETION BY SAYING, YES, I WILL LET YOU GO PRO SE, WHEN HE WOULD NOT RESPOND TO THE QUESTIONS "DO YOU UNDERSTAND THE RIGHTS THAT YOU ARE GIVING UP."

BUT HAVEN'T WE SAID, BASED ON WHAT THE SUPREME COURT SAID, IS THAT IT IS LARGELY A COMPETENT ISSUE PLUS PROVIDING INFORMATION, THAT IS THAT ONCE SOMEBODY IS DETERMINED TO BE COMPETENT TO PROCEED IN THE LEGAL PROCEEDINGS, THAT BEING ADVISED WHAT THE CONSEQUENCES ARE, IT IS LARGELY THEIR CHOICE THAT THE COURT SHOULD NOT INTERFERE WITH A COMPETENT PERSON'S DECISION, AFTER PROVIDING THEM, YOU KNOW, THE INFORMATION, ISN'T THAT THE STATE OF THE LAW NOW?

AS FAR AS THE COMPETENCY, YOU MEAN THE COMPETENCY STANDARD?

THE COMPETENCY STANDARD AND THE FERETTA STANDARD. THAT IS THE U.S. SUPREME COURT HAS SAID I BELIEVE, AND YOU HELP ME OUT ON THAT, AND WE, THEN, HAVE FOLLOWED THAT WITH SAYING WE HAVE TO FOLLOW THAT LAW, THAT IF SOMEBODY IS COMPETENT, AND THEY ARE INFORMED OF ALL OF THESE THINGS, THEN THE COURTS CANNOT INTERFERE WITH THEIR DECISION TO REPRESENT THEMSELVES.

HOWEVER, FERETTA DOES REQUIRE THAT A RECORD SHOWS THAT IT IS A KNOWING AND VOLUNTARY WAIVER. THAT IS WHAT THE COLLOQUY IS ALL ABOUT.

BUT THE KNOWING AND VOLUNTARINESS PART, DOES NOT GO SO FAR AS TO GET INTO THE HEAD OR THE MIND OF THE ACTUAL PERSON AND SAY, WELL, WE FIND THAT HE REALLY KNOWS WHAT HE IS DOING IN A SENSIBLE, YOU KNOW, WAY, AS FAR AS UNDERSTANDING THIS LIKE A LAWYER WOULD UNDERSTAND IT. YOU KNOW, THEREFORE, CERTAINLY THERE IS NO REQUIREMENT THAT THE PERSON THAT IS ELECTED TO DO THAT, IS REALLY GOING TO BE AS QUALIFIED AS A LAWYER IS QUALIFIED, TO REPRESENT THEMSELVES.

I BELIEVE IT IS OBVIOUS THAT MOST DEFENDANTS ARE NOT GOING TO BE AS QUALIFIED AS AN

ATTORNEY. HOWEVER, I BELIEVE THAT THERE IS A REQUIREMENT THAT THE RECORD SHOW THAT IT WAS A KNOWING AND VOLUNTARY WAIVER.

HOW DO YOU SHOW THAT ON THE RECORD, IF THE DEFENDANT WILL NOT ANSWER THE QUESTION, THAT LEADS TO CIRCULARITY, IF THEY ARE COMPETENT WHEN THE COURT IS ASKING THE QUESTION AND HE IS BEING AS EXTRAPARIS WITH THE COURT AS HE HAD BEEN WITH COUNSEL. WE ALL UNDERSTAND AND HOPE FOR A GOOD DIALOGUE AND IF HE IS COMPETENT AND THE JUDGE IS ASKING THE RIGHT QUESTIONS BUT THE GUY IS REFUSING, UNABLE AND UNWILLING TO ANSWER THE QUESTIONS, WHAT MORE CAN THEY DO BUT MAKE SURE THEY ARE COMPETENT, ASK THE QUESTION, DISCERN WHETHER OR NOT THE PERSON IS COMPETENT TO ANSWER THE QUESTION AND DETERMINE, AS TRIAL JUDGES ARE ASKED TO DO ALL OF THE TIME, WHICH IS IS THIS PERSON REALLY UNDERSTANDING WHAT IS GOING ON OR AS JUSTICE ANSTEAD STEAD, IS HE DOING IT JUST TO TRY TO DELAY THE PROCESS.

THERE WOULD HAVE BEEN NO ABUSE OF DISCRETION TO DENY A REQUEST TO GO PRO SE.

SO YOUR ARGUMENT IS THAT THE JUDGE SHOULD HAVE DENIED THAT REQUEST TO GO PRO SE AND FORCED THE DEFENSE TO BE CONTROLLED BY COUNSEL.

YES. AND WHERE HE DID NOT SAY THAT HE UNDERSTOOD WHAT RIGHTS HE WAS GIVING UP, WHERE IT IS A MATTER OF PRESUMING THAT HE IS --

BUT ISN'T THAT PART OF THE COMPETENCY EVALUATION THAT EVALUATERS HAVE TO DO, IS GO THROUGH WHETHER OR NOT HE UNDERSTANDS THE PROCESS OF THE TRIAL AND TO COOPERATE WITH COUNSEL AND ET CETERA AND ET CETERA, THAT IS PART OF A COMPETENCY EVALUATION, IS IT NOT, IN ADDITION TO THE FERETTA?

I AM SORRY. I AM MISSING THE QUESTION A LITTLE BIT.

WHEN A COMPETENT, YOU ARE SAYING THAT, IN THE FERETTA HEARING, WE NEED TO BE ABLE TO ASSURE THAT THE DEFENDANT KNOWS WHAT RIGHTS HE HAS AND WHAT RIGHTS HE IS WAIVING. OKAY. I AM JUMPING BACK TO THE COMPETENCY EVALUATION. PART OF THE COMPETENCY EVALUATION IS TO MAKE SURE THAT THE DEFENDANT UNDERSTANDS THE PROCESS, RIGHT?

YES.

WHICH INCLUDES --

WELL --

-- HIS RIGHTS, RIGHT?

TO FIND OUT IF HE IS COMPETENT TO PROCEED, IF HE CAN HELP COUNSEL IN PROCEEDING WITH THE CASE. EXCUSE ME.

DID THE COLLOQUY BETWEEN, IN THE FERETTA INQUIRY TAKE PLACE IN ENGLISH OR WAS THERE A TRANSLATOR IN SPANISH?

AFTER THE FIRST COUPLE OF HEARINGS, I BELIEVE THERE WAS A TRANSLATOR AT ARRIVE HEARING.

SO WHATEVER WE ARE READING IS ACTUALLY, SO HOW, HOW DID HE QUESTION THE WITNESSES? DID HE QUESTION THEM IN SPANISH OR --

I BELIEVE SO. HOWEVER, I WAS NOT THERE. THERE WAS A TRANSLATOR PROVIDED FOR HIM.

SOMETIMES THERE WERE TWO TRANSLATORS. THERE WAS ONE IN THE COURT AND THERE WAS ONE WITH HIM IN THE SEPARATE ROOM, WHERE HE WAS PRESENT BY TELEVISION, BECAUSE OF HIS DISRUPTION OF THE PROCEEDINGS.

SO WHEN THE COURT SAYS CAN YOU READ OR WRITE THE ENGLISH LANGUAGE, HE ANSWERED NO, HE COULD NOT READ OR WRITE IN ENGLISH. IS THAT ESTABLISHED IN THIS RECORD, THAT HE COULDN'T DO THAT?

I BELIEVE THAT THAT IS ESTABLISHED. I BELIEVE THAT, THROUGHOUT, PEOPLE HAVE USED INTERPRETERS WHENEVER DEALING WITH HIM BECAUSE OF HIS INABILITY TO --

HE, JUST ONE OTHER, DID HE CONTINUE TO REPRESENT HIMSELF IN THE PENALTY PHASE, OR DID LAWYERS TAKE OVER AT THAT POINT?

ACTUALLY, HE WAS REPRESENTED BY COUNSEL AFTER THE CLOSE OF THE CASE, THE CLOSE OF ALL OF THE EVIDENCE AT THE TRIAL. HE CONSULTED WITH THE MEXICAN CONSULATE ON THE LAST DAY OF TRIAL. AND THEN --

OF THE GUILT PHASE.

YES.

SO WHAT HAPPENED IN THE PENALTY PHASE?

HE WAS REPRESENTED BY COUNSEL, WHO WAS REAPPOINTED, COUNSEL WAS REAPPOINTED UPON MR. HERNANDEZ'S REQUEST.

SO REALLY, IN TERMS OF THIS WAIVER OR WHAT HAPPENED, WE ARE REALLY TALKING ABOUT THE GUILT PHASE, WHERE HE CONFESSED TO KILLING THESE, HIS STEPDAUGHTER, HE CONFESSED, THE CONFESSION WASN'T SUPPRESSED, AND THERE IS NO, I MEAN, YOU ARE NOT CONTESTING, IN TERMS OF ANY GUILT PHASE ISSUE, THAT THERE IS ANY QUESTION BUT THAT HE WAS THE SHOOTER IN BOTH OF THE --

NO, BUT I AM CONTESTING THAT THERE WAS PREMEDITATION AS TO THE FIRST MURDER.

YOU KNOW, IT STRIKES ME THAT THERE IS, ALMOST, NOT A CATCH-22 BUT YOU KNOW, MOST OF US I THINK, AS LAWYERS AND JUDGES, WOULD AGREE THAT SOMEBODY WHO, IN A DEATH-PENALTY CASE WOULD WANT TO REPRESENT THEMSELVES, THERE HAS GOT TO BE SOMETHING THAT IS A LITTLE OFF, BUT YET AGAIN AS JUSTICE ANSTEAD SAID, THE LAW NOT ONLY ALLOWS IT BUT REQUIRES THE JUDGE TO ALLOW THE DEFENDANT TO DO IT, EVEN THOUGH THE DEFENSE WILL BE QUALITATIVELY DIFFERENT, AND YOU UNDERSTAND OUR CONCERN THAT WE WOULD NEVER WANT AN OBSTRUCTIVE DEFENDANT TO TAKE THAT, GO THROUGH A WHOLE TRIAL AND THEN SAY, WELL, NOW I WANT A LAWYER NEXT TIME AND GET A SECOND CHANCE, AND HE SORT OF HAD HIS CHANCE, AND THE POLICY REASONS FOR UPHOLDING THAT ARE PRETTY STRONG, WHEN YOU HAVE GOT A DEFENDANT THAT, AS JUSTICE BELL SAYS, HAS BEEN FOUND TO BE COMPETENT. WHAT DO YOU SAY TO THAT POLICY ISSUE?

I UNDERSTAND THE POLICY ISSUE, BUT I UNDERSTAND THAT THIS WAS A BATTLE OF WITTS WITH SOMEBODY WHO WAS TOTALLY UNPREPARED.

NOW, WHEN YOU SAY HE WAS TOTALLY UNPREPARED, NOW, IT SEEMS TO ME THAT AT ONE POINT DURING THIS WHOLE COLLOQUY, THE TRIAL JUDGE BROUGHT IN SOME OF THE FORMER LAWYERS.

YES.

THE FIRST TEAM THAT HAD BEEN DISCHARGED. ISN'T THAT CORRECT?

YES.

AND WASN'T THERE SOME DISCUSSION CONCERNING THEM ACTUALLY HAVING BROUGHT A TAPE TO HIM THAT WAS IN SPANISH THAT HE LISTENED TO, CONCERNING HIS CONFESSION, THAT THEY ALSO HAD OTHER ITEMS OF DISCOVERY THAT THEY, AND IT WAS DISCUSSED WITH HIM IN SPANISH. I MEAN, TO SAY THAT HE TOTALLY KNEW NOTHING, YOU KNOW, WAS UNPREPARED, FOR WHAT WAS GOING TO BE PRESENTED HERE --

WHEN THE PUBLIC DEFENDER WAS TAKEN OFF THE CASE AND APPOINTED COUNSEL WAS REPRESENTED, THERE WAS THE SAME ATTORNEYS, JOHN SKYE, LOU ANN GOODY. I AM SORRY I DON'T RECALL WHO THE OTHER ONE WAS. THEY ALL TESTIFIED THAT THEY DID SEE HIM AND WERE ABLE TO CONVERSE WITH HIM AT A COUPLE OF INITIAL MEETINGS ONLY AND THEREAFTER THERE WAS NO COMMUNICATION WHATSOEVER. AT THAT HEARING WHERE THE JUDGE CALLED IN THE PUBLIC DEFENDERS TO ASK ABOUT WHAT DISCOVERY HAD BEEN SHOWN TO THEM, JOHN SKYE SAID HE HAD NO RECOLLECTION ABOUT WHETHER ANY DOCUMENTS WERE GIVEN TO HIM, AND SOME THINGS WERE DISCUSSED WITH HIM, SO THIS IS --

BUT HE ALSO WENT ON TO SAY HE WAS PRESENT, HOWEVER, WHEN OTHER PEOPLE DID, IN FACT, DISCUSS THESE THINGS WITH HIM IN SPANISH.

AND THIS WAS AT THE VERY ONSET OF THE CASE. SO FOR TWO YEARS AFTER THAT, HE DIDN'T REALLY, ALL THE RECORD INDICATES THAT HE HAD NO COMMUNICATION WITH ATTORNEYS WHATSOEVER.

AND AT SOME OTHER POINT DURING THIS COLLOQUY, DIDN'T THE DEFENDANT HIMSELF, SAY THAT HE HAD, IN FACT, DISCUSSED THIS CASE SEVERAL TIMES WITH THE PRESENT ATTORNEY? AT SOME POINT, WHEN THE JUDGE ASKED HIM AND POINTS OUT TO HIM HOW HE, HOW UNCOOPERATIVE HE WAS BEING WITH HIS ATTORNEYS, DOESN'T HE, IN FACT, SAY THAT I HAVE MET WITH THEM SEVERAL TIMES BUT THEY WOULDN'T DO THIS OR THEY WOULDN'T DO THAT? BUT HE DID, IN FACT, SAY HE HAD MET WITH THEM AT LEAST THREE OR FOUR TIMES, AS I RECALL.

AND THEY INDICATE THAT THEY MET WITH HIM AND WERE ABLE TO TALK TO HIM INITIALLY AS WELL. HE DEMANDED THAT HE GETS HIS FAMILY FROM XOACA TO TALK TO AND DEMANDED TO GET TREATMENT FOR HIS BROKEN BONES IN HIS NECK AND BACK. WHEN THEY DIDN'T DO THAT, THERE WAS NO MORE THAT THEY COULD DO FOR HIM. THEY DIDN'T PREPARE HIM FOR TRIAL, AND THERE IS NO EVIDENCE THAT HE HAD ANYTHING DOCUMENTARY ABOUT THIS TRIAL UNTIL THE TRIAL OCCURRED.

NOW YOU ARE TALKING ABOUT WHETHER HE COULD HAVE BEEN OF ASSISTANCE TO THEM. I MEAN, THEY HAVE NEVER SAID THAT THEY COULDN'T ADEQUATELY GO FORWARD, BECAUSE THEY DIDN'T, WEREN'T ABLE TO PREPARE THE DEFENSE IN THIS CASE, DID THEY?

WELL, THEY WERE PREPARING THE CASE. IT SEEMS LARGELY THEY WERE PREPARING, WHAT THE RECORD SHOWS IS A LOT OF PREPARATION FOR THE PENALTY PHASE THAT THEY DID REPRESENT HIM ON. WE HAVE NO IDEA WHAT THEY INTENDED TO DO FOR THE TRIAL. THE RECORD HAS NO INDICATION.

CHIEF JUSTICE: DO YOU HAVE OTHER ISSUES THAT YOU WANT --

YES, YOUR HONOR, BUT I WOULD LIKE TO STRESS ONCE AGAIN, THAT THERE WOULD BE NO ABUSE OF DISCRETION TO DENY SOMEBODY TO GO PRO SE, WHEN IT IS BROUGHT UP AT THIS POINT, AND THEY HAD OPPORTUNITIES TO WAIVE COUNSEL AND DIDN'T DO SO. FOR SOMEBODY WHO WAS AS DISRUPTIVE OF HIM, THERE WOULD BE NO ABUSE OF DISCRETION. LET'S SAY IN THEIR CASE IT IS

NO ABUSE OF DISCRETION TO DENY --

SO THEN WE WOULD HAVE HAD A JUDGE THAT WOULD HAVE HAD TO TAKE THIS DEFENDANT OUT OF THE ROOM AND KEEP HIM SOMEPLACE ELSE AND THEN THE APPEALABLE ISSUE --

WE HAVE DONE THAT WITH TRIALS. TO PRESUME THAT, BECAUSE HE REFUSES TO ANSWER ABOUT WHAT RIGHTS ARE BEING WAIVED, THAT HE UNDERSTANDS WHAT RIGHTS HE IS WAIVING, I THINK, IS NOT PROPER.

LET ME ASK THIS QUESTION. YOU KEEP MAKING THE STATEMENT THAT HE DID NOT RESPOND, DID NOT KNOW. AS I READ THE DISCUSSION, THE JUDGE'S READING CERTAIN RIGHTS AND HE JUST REMAINS ADAMANT I WANT TO DISCHARGE THEM. DO YOU UNDERSTAND THAT YOU CANNOT DO AS WELL AS A LAWYER WOULD DO? I WANT TO DISCHARGE THEM. WHY DOES THAT NOT SUBSUME AN UNDERSTANDING OF WHAT THE JUDGE IS SAYING AND THE RESPONSE, "I STILL WANT TO DISCHARGE THEM."

THAT IS NOT INDICATING WHAT HE IS WAIVING. MANY RESPONSES WERE ALSO THEY WON'T LET ME TALK TO MY FAMILY. THEY WON'T GET ME TREATMENT. THEY ARE ABUSING ME AT THE JAIL, WHICH WERE TOTALLY OFF THE MARK AS TO THE QUESTION BEING POSED.

HELP ME UNDERSTAND SOME OF THE FACTS HERE. JUDGE THARP, WAS HE THE JUDGE ON THE ENTIRE CASE FOR THE TWO AND-A-HALF YEARS?

I THINK FROM THE FIRST APPEARANCE HEARING, I THINK HE WAS.

BECAUSE THE MURDER OCCURRED IN JANUARY OF '99. HE WAS ARRESTED IN APRIL, I THINK, OR EXCUSE ME, ARRESTED RIGHT AFTER THAT, AND THEN IN APRIL HE WAS FOUND INCOMPETENT AND THEN REFOUND COMPETENT IN JULY '99, AND THEN FROM JULY OF '99 TO 11-01, HOW MANY TIMES WAS THE CASE SET FOR TRIAL IN THAT YEAR AND-A-HALF, TWO-YEAR PERIOD?

ION HOW MANY TIMES IT WAS SET FOR TRIAL, BUT THERE WERE ABOUT TWO DOZEN PRETRIAL HEARINGS.

WAS THIS MATTER CONTINUED ON SEVERAL OTHER OCCASIONS BECAUSE OF THE INABILITY OF COUNSEL TO PREPARE FOR TRIAL FOR LACK OF COOPERATION?

YES, AT ONE POINT THERE WAS A CONFLICT BETWEEN THE EXPERTS AS TO WHETHER HE WAS COMPETENT. THE DEFENSE WAS HAVING TROUBLE. THEY COULDN'T COMMUNICATE WITH HIM. THIS IS WHEN THERE WAS NEW COUNSEL APPOINTED. THEY WANTED TO GET A DOCTOR PSYCHIATRIST TO EXAMINE HIM, HOPING THAT THEY COULD OPEN UP THE PATHS OF COMMUNICATION BY GIVING HIM WHAT HE WANTED, WHICH WAS MEDICAL TREATMENT, AND AT THE SAME TIME HAVE A MENTAL HEALTH PROFESSIONAL, A DOCTOR WHO WAS BOTH, BE ABLE TO PERHAPS WORK OUT SOMETHING HERE, TO GET HIM TO COMMUNICATE WITH COUNSEL.

SO BY THE TIME HE CAME TO TRIAL IN AUGUST OF '01, IT HAD BEEN TWO YEARS AND SEVEN MONTHS, BASICALLY, SINCE THE MURDERS.

YES.

OKAY.

DO YOU HAVE A POINT, A SEPARATE POINT ON APPEAL THAT THIS DEFENDANT HAD A SPECIFIC MENTAL ILLNESS THAT YOU CAN POINT TO, IN TERMS OF, AS OPPOSED TO A DEFENDANT THAT IS, WAS FOUND EARLY ON, ALTHOUGH FIRST INCOMPETENT, FOUND TO BE MALINGERING? YOU KNOW, JUST NOT WANTING TO DEAL WITH THIS WHOLE SITUATION. WHAT IS THE BEST, YOU

KNOW, IN TERMS OF TRYING TO EVEN PUT THE GUILT PHASE AND THE PENALTY PHASE TOGETHER, HE DOESN'T COOPERATE WITH SOME OF HIS OWN DOCTORS, AND NOW YOU SAY THAT POINTS TO THE FACT THAT HE IS MENTALLY ILL. WHAT HARD EVIDENCE DO WE HAVE IN THIS RECORD AS TO ANY SERIOUS MENTAL ILLNESS OR HISTORY OF MENTAL ILLNESS, FOR THIS PARTICULAR DEFENDANT?

WELL, DOCTORS DID ALL TESTIFY THAT HE HAD MENTAL PROBLEMS. THEY QUESTIONED WHETHER IT ROSE TO THE LEVEL OF --

WHAT IS, YOU KNOW, WHEN SOMEONE SAYS MENTAL PROBLEMS, I MEAN, YOU ARE FIRST SAYING THIS IS A GUY THAT REALLY WAS OUT OF IT. WHAT, WHERE IS THE SCIENTIFIC OR MEDICAL DIAGNOSIS OF WHAT THESE MENTAL PROBLEMS WERE? I MEAN, HE WAS EVALUATED IN SEVERAL COMPETENCY HEARINGS. AS OPPOSED TO JUST BEING OBSTRUCTIVE?

HE HAS A PARANOID PERSONALITY DEFECT, OR HE HAS A PARANOID PSYCHOSIS.

HOW WAS THIS EXHIBITED UP UNTIL THE TIME OF THESE MURDERS?

THERE WAS TESTIMONY THAT HIS WIFE HAD INDICATED THAT HE WAS VERY TROUBLESOME AND PARANOID AND SUSPICIOUS US OF EVERYBODY.

AND HOW, WAS THAT IN THE PENALTY PHASE? THERE WAS TESTIMONY?

I BELIEVE THERE WAS SOME OF IT AT TRIAL, BUT, YES, IT WAS STRESS THROUGHOUT THE TESTIMONY OF THE DOCTOR.

HE HAD SOUGHT MENTAL HEALTH TREATMENT BEFORE THIS EPISODE?

NO. THERE WAS A LOT OF REFERENCE TO AN AUTO ACCIDENT THAT HE HAD BEEN IN, BACK IN 1994, HEAD, NECK AND BACK INJURIES, AND HE WAS FOCUSED ON THIS THING AND CONTINUES TO BELIEVE THAT HE SUFFERS GRAVE INJURY FROM ALL OF THAT. HIS THEORY AT TRIAL WAS THAT THE POLICE WHO HIT HIS CAR IN AN ACCIDENT IN '94 WERE SOMEHOW RESPONSIBLE FOR EVERYTHING. THERE WAS A MOTION FOR PET SCAN, TO SEE WHETHER OR NOT HE HAD SUFFERED BRAIN INJURY IN THAT ACCIDENT, AND THERE WAS A THEORY OF DEFENSE THAT PERHAPS THAT WAS PART OF HIS MENTAL PROBLEM.

THE JUDGE AGREED TO ALLOW HIM A PET SCAN, DID HE NOT AT SOME POINT?

THE PRETRIAL PET SCAN WAS DENIED. THE POST --

I THOUGHT AT SOME POINT THE JUDGE, DID THOUGH.

AFT JURY PENALTY PHASE -- AFTER THE JURY PENALTY PHASE HEARING BUT BEFORE THE SPENCER HEARING, THE JUDGE GRANTED THE MOTION, AND THEN AT THAT POINT MR. HERNANDEZ WOULD NOT COOPERATE, AND SO IT DID NOT OCCUR. AT THE PENALTY PHASE HEARING, THE STATE STRESSED THAT THERE WAS ONLY SOFT SIGNS OF HIS MENTAL PROBLEMS. THAT IS WHAT THE EXPERTS WHO FOUND THE MENTAL PROBLEMS SAID THAT THEY FOUND IT THROUGH SOFT SIGNS, SOME TESTS THEY GAVE AT THE INITIAL PARTS OF ALL OF THESE PROCEEDINGS, WHEN HE WAS SOMEWHAT COOPERATIVE.

WHAT MITIGATION DID THE TRIAL COURT FIND IN THE SENTENCING?

THE TRIAL COURT FOUND, I AM SORRY, THERE WAS QUITE A NUMBER OF MITIGATORS, BUT THERE IS SOME IMPORTANT ONES THAT ACTUALLY THE COURT DID NOT FIND. AS FAR AS TO THE TWO STATUTORY MENTAL MITIGATORS, THE JUDGE FOUND THAT THEY WEREN'T THERE, AND

GRANTED, THERE WAS A CONFLICT IN THE EVIDENCE AS TO WHETHER THOSE WERE THERE. HOWEVER, THE JUDGE FOUND THAT THE DEFENSE EXPERT GAVE NO TESTIMONY TO SUPPORT THOSE, WHICH IS INCORRECT.

BUT HE DID, IN FACT, FIND THAT THE DEFENDANT HAD A BRAIN INJURY, DIDN'T HE, AS A MITIGATING CIRCUMSTANCE?

YES. HE GAVE IT LIGHTWEIGHT. HE DID FIND THAT ONE, DESPITE THE FACT THAT THERE HAD BEEN NO PET SCAN OR WHAT THEY WERE CALLING HARD EVIDENCE OF THAT, GAVE NO WEIGHT TO THE MITIGATOR OF HIS EXTREME IMPOVERISHED CHILDHOOD.

LET'S GO BACK TO IMPORTANT, I MEAN, YOU HAVE GOT TWO MURDERS HERE WITH ONE, WITH CCP. AND AS FAR AS WHAT WAS IT THAT LINKED UP? I THOUGHT WHAT THE JUDGE SAID IS, OKAY, YOU CAN HAVE ALL OF THESE SOFT SIGNS, BUT WHAT IS IT THAT LINKS UP THAT HE WAS UNDER, YOU KNOW, A SIGNIFICANT EMOTIONAL IMPAIRMENT AT THE TIME THAT THESE MURDERS OCCURRED? YOU SAID THERE WAS ERROR IN THE JUDGE NOT, YOU SAID THERE WAS A LOT OF MENTAL HEALTH TESTIMONY, BUT WHAT CONNECTED UP THE SOFT SIGNS WITH WHAT HAPPENED THIS DAY? WHO TESTIFIED ABOUT THAT?

BERLAND, DR. BERLAND'S TESTIMONY SUPPORTED IT AND THE ERROR IN THE ORDER IS THAT THE JUDGE FOUND THAT THERE WAS NOTHING. I AM SORRY. I AM ALMOST OUT OF TIME AND I WOULD LIKE TO RESERVE SOME FOR REBUTTAL.

BUT WOULD YOU CLEAR UP JUST WHAT YOU SAID. THE JUDGE FOUND THERE WAS NOTHING OF WHAT?

FOUND THAT THERE WAS NOTHING IN DR. BERLAND'S TESTIMONY TO SUPPORT THE MENTAL, STATUTORY MENTAL MITIGATORS. HOWEVER, DR. BERLAND'S TESTIMONY DID SUPPORT THAT HE WAS SUFFERING FROM THOSE MENTAL PROBLEMS, AT THE TIME OF THE INCIDENT.

AND DID DOCTOR BERLAND ARTICULATE, IN HIS TESTIMONY, THAT HE BELIEVED THAT THE TWO STATUTORY MENTAL MITIGATORS WERE PRESENT?

I BELIEVE THAT HE DID, BUT HE, HIS TESTIMONY DEFINITELY ESTABLISHED THAT HE WAS, FROM THOSE, AT THE TIME OF THE INCIDENT.

ESTABLISHED. THANK YOU.

THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM KIM HOPKINS FOR THE STATE OF FLORIDA. FOR THE MOST, THE MAJORITY OF ISSUES WE HAVE DISCUSSED TODAY SO FAR, THE MAIN POINT HERE IS WHETHER YOU BELIEVE THE DEFENDANT'S ASSERTION THAT HE WAS INCOMPETENT, BOTH TO PROCEED TO TRIAL AT ALL, OR TO REPRESENT HIMSELF.

WHAT ABOUT THAT ISSUE OF REPRESENTING HIMSELF? OBVIOUSLY THERE ARE TIMES OUT THERE, WHEN TRIAL COURTS DENY REQUESTS FOR SELF REPRESENTATION. AND THOSE, IT HAS BEEN CONCLUDED THAT THOSE WERE NOT ABUSES OF DISCRETION WHEN LATER THE DEFENDANTS ASSERTED THAT. WHY DOESN'T THIS PRESENT A CLASSIC CASE OF, THAT THIS PERSON HAS DEMONSTRATED NO ABILITY ON THIS RECORD, TO REPRESENT HIMSELF, AND IN FACT, IT APPEARS TO HAVE BEEN A DISASTER TO ALLOW HIM TO REPRESENT HIMSELF, REGARDLESS OF THE MERITS OF THE, YOU KNOW, OF THE ISSUE HERE AND THE EVIDENCE. HELP ME WITH WHY YOUR OPPONENT IS NOT CORRECT. THIS LOOKS LIKE ONE OF THOSE CLASSIC SITUATIONS THAT THE JUDGE SHOULD HAVE SAID YOU ARE DOING THIS, NOW, AND AT THE BEGINNING OF OR THE EVE OF TRIAL, AND THERE IS JUST NO WAY THAT WE HAVE GOT A LANGUAGE ISSUE. WE HAVE GOT

SERIOUS MENTAL HEALTH ISSUES, I HAVE DETERMINED YOU TO BE INCOMPETENT TO PROCEED AT A TIME IN THE PAST. AND YOU HAVE GOT GOOD REPRESENTATION BY THE LAWYERS. I AM GOING TO DENY YOUR REQUEST. INSTEAD OF SAYING NOW IT IS THE EVE OF TRIAL AND I AM NOT GOING TO ALLOW YOU ACCESS TO THE LIBRARY OR TO THIS OR TO THAT. IF THIS IS WHAT YOU WANT TO DO, THEN YOU ARE STUCK WITH THE SITUATION AS IT EXISTS. SO HELP ME WITH WHY THIS ISN'T A CLASSIC CASE OF WHERE THE TRIAL JUDGE SHOULD HAVE DENIED HIS REQUEST FOR SELF REPRESENTATION.

I BELIEVE THE DEFENDANT'S OWN ACTIONS TAKE IT OUT OF THAT REALM OF THAT PARTICULAR KIND OF CASE THAT YOU ARE DISCUSSING.

HAVEN'T THE DEFENDANT'S OWN ACTIONS, ISN'T THAT THE BEST CASE FOR DENYING HIMSELF REPRESENTATION?

BECAUSE HE PROCEEDS ALONG A COURSE THAT IS DESIGNED TO MANIPULATE THE SYSTEM AND TO AVOID THE CONSEQUENCES OF HIS ACTIONS, AND IT IS APPARENT TO ALL THE MAJORITY OF THE MENTAL HEALTH EXPERTS, TO SPEND ANY AMOUNT OF TIME WITH HIM. IT IS APPARENT TO THE TRIAL JUDGE, WHO HAS THE ABILITY TO PERCEIVE HIM ONE-ON-ONE IN THE COURTROOM AND SEE HIS BEHAVIOR, AND WHAT THEY CONCLUDE IS THAT HE IS MALINGERING AND THAT HE IS PURPOSELY TRYING TO AVOID GOING TO TRIAL, AND YOU CAN SEE THAT, WHEN YOU LOOK THROUGH THE TIME LINE, OF HOW THIS BEGINS FROM THE VERY BEGINNING.

WHAT WAS THE STRONGEST, IN OTHER WORDS, POINT OUT TO US, THAT, WHAT WAS THE STRONGEST TESTIMONY OFFERED, AND WHO OFFERED THAT TESTIMONY, AS FAR AS THIS MANIPULATION?

I THINK THE STRONGEST TESTIMONY COMES FROM DR. BAUSER, WHO IS AT THE TREATMENT CENTER WHERE HE IS INITIALLY FOUND INCOMPETENT, WHERE HE SPENDS FIVE WEEKS AT THIS TREATMENT CENTER, SO THE DOCTORS AT THE TREATMENT CENTER ARE THE BEST ONES TO TESTIFY TO WHAT HIS TRUE SITUATION IS.

WHAT WAS DR. BAUSER'S --

THAT HE WAS MALINGERING AND HIS MAIN POINT IN HIS TESTIMONY IS THAT HE CLAIMS TO HAVE MEMORY GAPS BUT THEY ARE SELF-SERVING MEMORY GAPS, AND ALSO I THINK IT IS APPARENT THROUGH THIS RECORD AS HE PROCEEDS TO THE REST OF TRIAL. BECAUSE YOU HAVE HIM BEFORE YOU BECAUSE HE DOES PRESENT HIMSELF. HE HAS HIS OWN MEMORY OF WHAT OCCURRED AND IS ALSO EFFECTIVE IN CROSS-EXAMINING A POLICE OFFICER FROM TEXAS AND ALSO THERE ARE THINGS BETWEEN THEM THAT DON'T APPEAR, THAT YOU CAN'T HEAR ON THE AUDIOTAPE OF THE CONFESSION, AND HE IS ALSO CROSS-EXAMINED BY THE PROSECUTOR, AND I THINK YOU HAVE TO REALLY, TRULY READ THE WHOLE TRIAL AND SEE HOW HE IS OBSTREPIUS AND HOW HE DOES EVERYTHING TO NOT COOPERATE WITH WHAT IS GOING ON AND THEN THAT MOMENT THAT THE PROSECUTOR STARTS TO CROSS-EXAMINE HIM AND HE BECOMES COMPLETELY COGENT. HIS RESPONSES ARE TO THE QUESTIONS THAT ARE ASKED, AND HE IS COGENT. HE DOESN'T START RAMBLING ABOUT FAMILY MEMBERS THAT COULDN'T COME OR HIS BACK INJURIES OR THINGS THAT, IN THAT EXCHANGE, YOU SEE HIM SPEAK RELATIVE TO QUESTIONS THAT ARE PRESENTED TO HIM. FOR INSTANCE, HE TALKS ABOUT ONE OF THE MOTIVES FOR THIS WAS THE POSSIBILITY THAT HE WANTED TO BE PUT ON THE OWNERSHIP OF HIS WIFE'S RESTAURANT. IT WAS IN HER NAME, AND THE HOUSE WAS IN HER NAME, AND ONE OF THE THINGS THAT THEY WERE ARGUING ABOUT WAS THAT HE WANTED TO BE ON THAT, SO THE PROSECUTOR IS CROSSING HIM ON THAT, AND HE POINTS OUT THAT AN IMMIGRATION PERSON SUGGESTED THAT AND THAT IS REALLY WHY HE DID IT, AND HE DIRECTLY --

TIE THAT IT INTO SUPPORTING THE TRIAL JUDGE'S DECISION TO ALLOW HIM TO REPRESENT HIMSELF.

IT IS ONE OF THOSE THINGS THAT YOU HAVE IN THE RECORD, BUT WITH REGARD TO REPRESENTING HIMSELF, WE INITIALLY HAVE HIM FOUND INCOMPETENT, WHEN TWO DOCTORS SO HIM AND HAVE ONLY ONE OPPORTUNITY TO DEAL WITH HIM, AND I THINK WHAT YOU SEE IN THIS RECORD IS, IF A DOCTOR HAS JUST ONE TIME TO MEET WITH HIM, HE IS ABLE TO FOOL THAT DOCTOR, BUT ANYBODY THAT SPENDS A PROLONGED PERIOD OF TIME WITH HIM, HE IS ABLE TO SEE.

WE ARE NOT DEALING, NOW, ABOUT THE DECISION OF COMPETENCY.

CORRECT. AND I SUGGEST THAT DEFENSE COUNSEL CONCEDED THAT THAT WAS MOOT, BUT WITH RESPECT TO REPRESENTING HIMSELF, AS YOU POINTED OUT, HE ONLY HAS TO BE COMPETENT TO WAIVE COUNSEL, AND IT HAS TO BE KNOWING AND VOLUNTARY TO DO SO, AND WE HAVE TO LOOK AT THE COLLOQUY AS IT HAPPENED, AND WHILE DEFENSE COUNSEL ARGUES THAT HE IS NOT RESPONDING, I POINT TO THE PROSECUTOR'S CROSS THAT SHOWS THAT, WHEN HE WANTS TO, HE IS ABLE TO RESPOND AND HE SHOULD NOT GET THE BENEFIT OF HIS OWN ACTIONS TO TRY TO MANIPULATE THE SYSTEM, WHICH IS TRYING TO DO THROUGHOUT HIS COLLOQUY.

WOULD IT HAVE BEEN AN ABUSE OF DISCRETION TO DENY HIM THE ABILITY TO REPRESENT HIMSELF?

I THINK WE COULD CLEARLY BE HERE ARGUING THAT, YES, THE STATE WOULD BE ARGUING THAT IT WOULD BE ABUSE OF DISCRETION OR IT WOULDN'T BE ABUSE OF DISCRETION. HE COULD HAVE MADE A DECISION EITHER WAY, BUT YOU HAVE TO LOOK AT THE FACTS OF THIS CASE AND WHAT THE REVIEW IS NOW IS WHETHER HE ABUSES DISCRETION.

EITHER WAY, UNDER, AS LONG AS SOMEONE IS COMPETENT, THE JUDGE CAN EITHER SAY YES OR NO.

CORRECT. AND YOU HAVE TO GIVE HIM A PRESUMPTION OF CORRECTNESS IN THIS INSTANCE, WHERE HE IS THE ONE DEALING ONE-ON-ONE WITH HIM.

BUT ONCE YOU GIVE THE PRESUMPTION, YOU HAVE GOT TO LOOK AT THE CIRCUMSTANCES OF THE PARTICULAR CASE, AND THERE OBVIOUSLY HAVE BEEN AND WILL BE INSTANCES IN WHICH A JUDGE SHOULD NOT ALLOW SOMEBODY TO PROCEED ON THEIR OWN. AND WHAT I AM TRYING TO HAVE YOU POINT OUT TO US, THE EVIDENCE THAT WOULD SUPPORT THIS DETERMINATION THAT HE CAN GO FORWARD IN THE FACE OF THE FACT THAT HE REALLY, THIS IS NOT SOMEBODY THAT HAS SAID, WELL, YOU KNOW, THE FIRST THING I NEED IS ALL OF THE FILES IN THE CASE, YOU KNOW, SO I CAN GO THROUGH THE DISCOVERY AND SEE THE EVIDENCE THAT THE STATE HAS AGAINST ME, AND THEN YOU KNOW, THIS IS NOT A CASE WHERE WE HAVE SOMEBODY THAT APPEARS TO HAVE THOUGHT THIS OUT, IN TERMS OF HOW THEY ARE GOING TO ORGANIZE A DEFENSE OR WHATEVER. WHAT I AM LOOKING FOR IS EVIDENCE THAT THE STATE WOULD URGE US IS RELEVANT TO SUPPORT HIM.

THE FACT THAT THIS COURT HAS INDICATED, THERE ARE FACTORS TO DETERMINE WHETHER IT IS A KNOWING AND INTELLIGENT WAIVER OF COUNSEL, AND THAT IS DISCUSSED IN THE PORTER CASE. I THINK WHAT IS MOST IMPORTANT IS THE FACTOR THERE, ABOUT WHETHER OR NOT THE DEFENDANT IS TRYING TO MANIPULATE THE TRIAL, AND THAT IS WHAT THIS DEFENDANT WAS TRYING TO DO, BUT I POINT TO --

ORDINARILY WE SEE RECORDS THERE WHERE SOMEBODY SAYS, I AM 25 YEARS OLD. I GRADUATED FROM HIGH SCHOOL. YOU KNOW, I CAN READ AND WRITE, AND YOU KNOW, I HAVE WORKED AT A CERTAIN JOB. IN OTHER WORDS THINGS THAT ARE DESCRIBING SORT OF A FUNDAMENTAL ABILITY TO COMMUNICATE AND UNDERSTAND OR WHATEVER. THOSE THINGS ARE TOTALLY LACKING IN THIS RECORD. THEY APPEAR TO BE LACKING IN THIS RECORD, THINGS THAT WOULD, I

CAN SPEAK AND READ AND WRITE ENGLISH, YOU KNOW, IN WHICH THESE PROCEEDINGS ARE CONDUCTED IN ENGLISH, OR I HAVE NO PROBLEM WITH THE TRANSLATOR. WHERE ARE THOSE, WHERE ARE THOSE THINGS ORDINARILY, THAT WE POINT TO OR APPELLATE COURTS POINT TO, WHEN THEY SAY, AND, OF COURSE, THE TRIAL JUDGES RELY ON, WHEN THEY SAY, WELL, I FIND THAT HE HAS GOT A SUFFICIENT EDUCATION AND MATURITY, ET CETERA, THAT HE CAN HANDLE HIS SELF-REPRESENTATION. WHAT ARE THE STRONGEST THINGS HERE THAT YOU WOULD POINT OUT?

WELL, AS JUSTICE BELL POINTED OUT, IT WOULD BE NICE IF WE HAD HIM ANSWER DIRECTLY, ALL OF THE LIST OF QUESTIONS THAT THEY WENT THROUGH IN THE COLLOQUY. HE DOESN'T DO SO, AND THAT IS WHY I SAY HE CANNOT BENEFIT FROM HIS DECISION NOT TO COOPERATE. BUT YOU DO HAVE, GOING BACK TO THE COMPETENCY EVALUATIONS, THE TESTIMONY OF DR. MAHER, THAT HE UNDERSTOOD ALL OF THE LEGAL CONSEQUENCES OF WHAT HE WAS FACING, AND DR. MAHER DOES TESTIFY TO THAT, AND IT IS PART OF UNDERSTANDING THE TRIAL.

WHAT IS HIS EDUCATION AND MATURITY AND ALL OF THESE OTHER THINGS?

HE WENT THROUGH SIX YEARS OF SCHOOL, AND I THINK LATER, THERE IS TALK THAT HE DID WELL IN SCHOOL. I THINK WHILE HE CAN SPEAK ENGLISH, I CHOSE NOT TO DO SO, AND WHILE IT WAS POINTED OUT THAT HE COULD NOT SPEAK ENGLISH, THE DOCTORS WHO TREATED HIM IN THE TREATMENT CENTER POINTED OUT THAT HE SPOKE ENGLISH FOR FIVE WEEKS, AND THERE IS A POINT WHERE HE CORRECTS THE TRANSLATOR AND SAID THAT IS NOT WHAT I UNDERSTOOD, SO HE CORRECTS THE TRANSLATOR --

THAT WAS SPONTANEOUS.

YES. SPONTANEOUS, AND EVEN IF HE DIDN'T, AS POINTED OUT BY JUSTICE QUINCE, HE HAS ATTORNEYS THAT SPEAK SPANISH AND A TEAM OF ATTORNEYS THAT UNDERSTAND HIM THROUGHOUT ANY TRIAL PREPARATION, AS WELL AS THE ACTUAL PROCEEDINGS AT ANY POINT IN TIME.

I WANT TO FOCUS THERE A LITTLE BIT, OFTEN IT IS COMMON EXPERIENCE, WHEN THE DEFENDANT PUSHES TO TRY TO CONTINUE THE TRIAL AND LOSES THAT, THAT THEY GIVE IN AND SAY OKAY, AND THEY CONCEDE TO COUNSEL REPRESENTING. THAT DIDN'T HAPPEN HERE. THE COURT APPOINTED STANDBY COUNSEL. WHAT KNOWLEDGE DID THIS COUNSEL HAVE, OF WAS IT THE COUNSEL THAT HAD PREPARED TO GO TO TRIAL?

HERNANDEZ, THE SAME TWO ATTORNEYS. THEY DID TRIAL. THEY BEGAN THE TRIAL. IT WAS AFTER JURY SELECTION THAT HE DECIDED TO REPRESENT HIMSELF, AND WHEN YOU GO THROUGH THE TIME LINE, HE IS TRYING DIFFERENT STRATEGIES TO AVOID TRIAL, AND WHEN THAT DOESN'T WORK, THIS ALSO GOES TO YOUR QUESTION ABOUT THE DELAY INCOMING TO TRIAL, BECAUSE HE COMES BACK FOR A SECOND COMPETENCY EVALUATION IN JULY '99. HE GETS TO FIRE HIS FIRST SET OF ATTORNEYS WHEN COMPETENCY DIDN'T WORK FOR HIM. AND WE HAVE A SECOND HEARING WHERE HE TRIES TO FIRE THE SECOND SET OF ATTORNEYS AND THE JUDGE DOESN'T LET HIM.

THE SECOND SET OF ATTORNEYS THAT HE GAVE THE CLOSING ARGUMENT IN THE GUILT PHASE AND THEN, ALSO, PRESENTED THE PENALTY PHASE.

YES. IT IS THE SAME ATTORNEYS.

OKAY. DID THEY, IN THE PENALTY PHASE, DID THEY USE, IN ANY WAY, BECAUSE, WAS IT THE SAME JURY THAT HEARD --

YES.

OKAY. DID THEY SAY, LOOK, YOU CAN SEE THAT THIS PERSON IS MENTALLY ILL, BY THE WAY HE CONDUCTED HIMSELF IN THIS TRIAL. WAS THERE ANY KIND OF ARGUMENT THAT --

NO. ACTUALLY WHAT THEY DID, WELL, IT IS A STRANGE SITUATION, BECAUSE HE REPRESENTED HIMSELF, AND HIS DEFENSE WAS BASICALLY NOT AN INSANITY DEFENSE BUT KIND OF IT WAS. THEY SAID HIS INJURIES, HE WAS TELLING THE JURY HIMSELF, HE NEVER SAYS HE DIDN'T DO IT. HE EVEN SAYS TO THE JURY POINT-BLANK, I AM NOT GOING TO TELL YOU I DIDN'T DO THIS, SO IT IS KIND OF AN ODD SITUATION, WHERE UNDER SELF REPRESENTATION, HE IS CLAIMING HE DOESN'T KNOW WHAT HAPPENED, AND I AM CRAZY BECAUSE OF THIS ACCIDENT. SO WHAT THE, IN CLOSING, WHEN THE ATTORNEYS COME BACK ON, WHAT THEY USED TO POINT OUT IS THAT YOU KNOW, HE IS BEING HONEST WITH YOU THAT HE IS NOT TELLING YOU HE DIDN'T DO IT. HE IS TELLING YOU HE DOESN'T KNOW WHAT HAPPENED, AND SO THAT IS KIND OF, I HOPE THAT ANSWERS YOUR QUESTION. THAT IS KIND OF LIKE HOW THEY TIE IN WHAT HIS TESTIMONY IS TO THEIR --

COUNSEL SAID THAT, IF WE READ THE ENTIRE TRANSCRIPT OF THE GUILT PHASE, WE WILL SEE THAT HE WAS ASKING INAPPROPRIATE QUESTIONS THAT WERE TOTALLY OFF THE MARK, THAT, WHEREAS THE JUDGE OBSERVED THAT THESE WERE APPROPRIATE QUESTIONS. SO WHAT WILL WE SEE?

FOR THE MOST PART, HE DID NOT CROSS A LOT OF WITNESSES, AND I SUBMIT THAT THE DEFENSE ATTORNEYS WOULDN'T HAVE, EITHER, BECAUSE YOU HAVE BALLISTICS EXPERTS AND THE MEDICAL EXAMINER AND THOSE KIND OF PEOPLE, AND WHEN YOU ARE PUTTING ON A DEFENSE WHERE YOU HAVE A CONFESSION, MOST LIKELY MY EXPERIENCE HAS BEEN THAT YOU ARE NOT GOING TO SEE A LOT OF CROSS ON POINTS THAT THERE IS NOTHING, THEY HAVE TO ACCEPT THAT, YES, THIS WAS THE GUN THAT WAS USED AND, YES, THE MEDICAL EXAMINER'S EVIDENCE SUBSTANCEIATED THE STORY THAT THE DEFENDANT, HIMSELF, TOLD THE POLICE, SO I GOT OFF MY TRAIN OF THOUGHT. ANOTHER LAWYER CAME BACK INTO THE CASE AT THE END OF THE GUILT PHASE, TO PRESENT CLOSING ARGUMENTS, IS THAT CORRECT?

AND THEY MADE JOA MOTIONS AND CLOSING AND WERE BACK ON THROUGHOUT.

AND THEY CONTINUED, THEN, THROUGHOUT, AS FAR AS UNTIL THE END OF THE PENALTY PHASE.

CORRECT.

AND THE SENTENCING PHASE.

IT IS ACTUAL -- IT IS ONLY A TWO-DAY TRIAL WHEN YOU TALK ABOUT HIM REPRESENTING HIMSELF. IT IS A TWO-DAY WINDOW WHERE HE REPRESENTS HIMSELF, AND IT IS ONLY THE TESTIMONY OF THE GUILT PHASE, AND AT EACH BREAK WHEN THEY COME BACK IN, THE TRIAL JUDGE GOES OVER, WE HAVE STANDBY, I CAN GIVE YOU YOUR ATTORNEYS. HE GOES OVER THAT EVERY SINGLE TIME. HE IS GIVEN THE OPPORTUNITY TO DO THAT.

AT EACH BREAK THE JUDGE REITERATED THAT COUNSEL IS READY, WHICH HE IS REQUIRED TO DO, AND AT NO TIME UNTIL CLOSING STATEMENT, DID HE TAKE THE OFFER?

SAY YES, I WANT THEM ON MY CASE.

BUT THAT OFFER WAS MADE THROUGHOUT THE TWO-DAY PERIOD AT EVERY SIGNIFICANT PORTION, AND CLEARLY THE TRIAL JUDGE DID THAT, BUT YOU ARE TELLING ME THIS TRIAL JUDGE DID IT WHEN THEY TOOK A BREAK?

YES, WHEN THEY CAME BACK FROM LUNCH AND WHEN THEY CAME BACK THE NEXT MORNING,

HE TOLD HIM. HE EVEN HAD THE JURY INSTRUCTIONS TRANSLATED INTO SPANISH SO HE COULD PREPARE, AND AT THE POINT THAT HE ASKED HIM ARE YOU PREPARED TO GO FORWARD WITH THAT, HE SAID HE WAS TOO TIRED TO READ THEM.

WAS THE DEFENDANT COHERENT? DID HE RESPOND TO THE JUDGE'S QUESTIONS DURING THE BREAK, WHEN THE JUDGE ASKED HIM IF HE WANTED STANDBY COUNSEL?

I WOULD ARGUE THAT HE WAS. I AM SURE DEFENSE COUNSEL WOULD SAY THAT HE WOULD BRING UP TOPICS THAT WERE OUTSIDE THAT QUESTION RANGE, BUT HE SAID THE SAME THING HE SAID INITIALLY, WHICH WAS, NO, THEY ARE DOING ME NO GOOD. WHY WOULD I WANT THEM? I DON'T WANT THEM, JUST AS JUSTICE LEWIS POINTED OUT.

I AM TRYING TO UNDERSTAND THIS PENALTY PHASE AND THE JUDGE'S SENTENCING ORDER, IT IS ESTABLISHED THAT HE HAD NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY. I PRESUME THAT MEANS HE HAD NO PRIOR VIOLENT FELONIES OR ANYTHING.

CORRECT.

HE IS 38 YEARS OLD OR SOMEWHERE IN HIS THIRTIES, AND YOU KNOW, YOU COULD LOOK AND SAY THIS PARTICULAR DAY WAS, MAYBE IT WOULD AND UNDERSTATEMENT TO SAY IT WAS OUT OF CHARACTER FOR THIS DEFENDANT. WOULD YOU AGREE WITH THAT?

WELL, HE HAD NEVER DONE A CRIME. HE HAD NEVER KILLED ANYONE BEFORE, BUT WE HAVE LEADING UP TO THAT, WHILE WE DON'T HAVE A DOMESTIC VIOLENCE SITUATION, AND SINCE COUNSEL TRIES TO ANALOGIZE TO YOU, YOU DO HAVE THE FACT THAT HIS WIFE IS TRYING TO GET HIM TO LEAVE. SHE WANTS A DIVORCE AND SHE WANTS HIM TO LEAVE THE BEST LIVING SITUATION HE HAS EVER HAD AND HE IS DOING EVERYTHING TO AVOID THAT, AND HE BLAMES THE CHILDREN FOR THE BREAK UP AND THAT IS THROUGH HIS OWN CONFESSION, SO YOU HAVE THROUGH HIS OWN WORDS THAT HE HAD A MOTIVE FOR ELIMINATING HIS CHILDREN, AS REVENGE AND ALSO BECAUSE HE FELT THAT THEY WERE RESPONSIBLE FOR WHAT HAPPENED.

THE, THE SENTENCING ORDER SAYS THAT DR. BERLAND CONCLUDED THAT THE DEFENDANT HAS SUFFERED FROM EXTREME MENTAL OR EMOTIONAL DISTURBANCES AND THEN HE GOES ON TO SAY DR. BERLAND COULD NOT SPECIFICALLY ADDRESS, HOWEVER, WHETHER THE DEFENDANT SUFFERED FROM EXTREME MENTAL OR EMOTIONAL DISTURBANCE, WHEN HE COMMITTED THESE DEFENSES. IS THAT A CORRECT CHARACTERIZATION OF DR. BERLAND'S TESTIMONY, IN OTHER WORDS THAT HE COULD NOT CONNECT UP EXTREME EMOTIONAL DISTURBANCES WITH THE TIME OF THE OFFENSES?

YES. IN FACT, WHAT DR. BERLAND BASES HIS OPINION, HIS SPECULATION ON, IS DOCUMENTARY EVIDENCE OF THE CASE AND A DISCUSSION THAT HE HAS WITH THE EX-WIFE. THE DEFENDANT NEVER COOPERATES WITH HIS OWN DEFENSE EXPERT.

AND THE EX-WIFE IS THE WIFE?

THE MOTHER OF THE CHILDREN THAT ARE KILLED.

OKAY. SO IT IS ONLY, THE PERSON THAT WAS --

THERE IS ONE WIFE. AND I THINK THAT IS IMPORTANT TO POINT OUT, BECAUSE I THINK HER NAME WAS MARIA CARMEN, WHATEVER HER LAST NAME WAS AT DIFFERENT TIMES. SOMETIMES SHE IS CALLED MARIA AND SOMETIMES SHE IS CALLED CARMEN IN DIFFERENT ORDERS. THAT IS THE WIFE THAT HE HAS THE ARGUMENT WITH THAT OWNS THE RESTAURANT AND IS THE MOTHER OF THE CHILDREN THAT HE KILLED AND THEY HAVE ONE CHILD THAT IS MUTUALLY THEIR CHILD.

WHAT WAS THE GIST OF DR. BERLAND'S TESTIMONY OR OPINION ABOUT MITIGATION?

WITH RESPECT TO MITIGATION, HE ADMITS THAT, WHEN HE SPOKE TO CARMEN, HE SPECIFICALLY DID NOT ADDRESS THE TIME OF THE OFFENSE, SO HE REALLY DOES HAVE NOTHING TO BASE THE EXTREME EMOTIONAL DISTURBANCE AT THE TIME OF THE OFFENSE ON, AND BY HIS --

WHAT VIEWS DOES HE EXPRESS THOUGH? DOES HE EXPRESS THE VIEW THAT HE WAS UNDER EXTREME DURESS AT THE TIME?

HE SAID THAT THE DEFENDANT WAS, WELL, THAT IS CONFORM OF CONDUCT. HE BELIEVES THAT HE HAS A BRAIN INJURY, BUT IT IS ALL SPECULATION, BECAUSE YOU HAVE NO COOPERATION WITH THE DEFENDANT FROM ANY OF THE DEFENSE EXPERTS, AND HE WOULDN'T GET THE PET SCAN, EVEN THOUGH IT WAS OFFERED TO HIM AT A LATER DATE, AND WITH THAT YOU STILL WOULDN'T HAVE BEEN ABLE TO TELL ANYTHING, BECAUSE THE STATE'S EXPERT DR. MAHER POINTED OUT, IT IS NOT ENOUGH ALONE, WITHOUT EXPRESSED OPINIONS.

WHAT OPINIONS SUPPORT MITIGATION?

THEY DON'T TRULY SUPPORT STATUTORY MITIGATION AT ALL.

SO HE DIDN'T EXPRESS OPINIONS THAT THE STATUTORY MENTAL MITIGATORS EXISTED?

HE TRIES TO DISCUSS THEM BUT NEVER EQUIVOCATES THAT THEY ARE NOT SCIENTIFIC OPINIONS. HE QUALIFIES THEM. ON ALL.

WHERE, HE HAD A GUN ON HIM WHEN HE SHOT THE FIRST STEPDAUGHTER AND ACTUALLY PUT THE BABY IN A SEPARATE ROOM. DOES THE STATE HAVE ANY EVIDENCE OF THAT? DID HE ALWAYS CARRY A GUN WITH HIM?

ACTUALLY WE DON'T HAVE DIRECT EVIDENCE THAT HE ACTUALLY HAD THE GUN, WELL, HE HAD A GUN WHEN HE SHOT HER, BUT WHEN HE OBTAINED IT. THE EVIDENCE THAT WE HAVE IS THAT HIS WIFE DIDN'T EVEN KNOW HE HAD A GUN AND THAT HE SAID HE KEPT IT IN HIS CAR AND HE WORE A FANNY PACK, AND IT WOULD BE IN THE FANNY PACK, AND WHEN HE WAS FOUND IN TEXAS, THE GUN WAS NOT ON HIS PERSON BUT IN A FANNY PACK IN THE CAR. SO IT WAS THE STATE'S CONTENTION THAT THERE WAS SOME NECESSARY STEPS TO RETRIEVE THE WEAPON, AS WELL AS THE FACT THAT WHEN YOU ARE TALKING ABOUT PREMEDITATION, I ASSUME, THAT HE REMOVED GABRIELA THE TWO-YEAR-OLD, BEFORE HE STRUCK AND SHOT DON, A SO THAT IS THE STATE'S CONTENTION WITH RESPECT TO PREMEDITATION ON THAT ISSUE. WITH REGARD TO JUSTICE PARIENTE'S QUESTION ABOUT WHETHER HE HAD SERIOUS MENTAL ILLNESS, I THINK THAT THE BEST THAT HE CAN ARGUE IS HE HAS A PARANOID PENALTY DISORDER AND HE CAN NEVER TRY TO ARGUE THAT IT IS ANYTHING MORE SERIOUS THAN THAT, BECAUSE OF HIS OWN ACTIONS AND HIS FAILURE TO COOPERATE WITH HIS OWN EXPERTS, EVEN THE MEDICAL DOCTOR THAT THEY TRIED TO HAVE LOOK AT HIM. HE WOULDN'T COOPERATE WITH HER AND SHE DIDN'T HAVE ANY BACKGROUND INFORMATION ANYWAY, SO THE CONCLUSION THAT IS ARE REACHED THAT ARE, CAN IN ANY WAY --

A MENTAL HEALTH MEDICAL DOCTOR, OR WAS THIS SOMEONE, IT SEEMS TO ME AT SOME POINT THAT DEFENSE ATTORNEY KEEPS TALKING ABOUT THE NECK INJURY AND SPINE INJURY. WAS THIS THE KIND OF MEDICAL DOCTOR THAT HE WOULD NOT COOPERATE WITH, OR --

HE GOES TO SEE A DOCTOR. MARTINEZ, AND MY MEMORY WAS THAT SHE WAS A PSYCHIATRIST. I COULD BE WRONG, BUT HE WAS REQUESTING A MEDICAL DOCTOR, AND THAT IS WHY SHE WAS APPOINTED, BUT HER FINDINGS ARE BASED ON A ONE-TIME MEETING WITH THE DEFENDANT, WHERE HE DOESN'T COOPERATE, AND DR. BERLAND EVEN SUBSTANTIAL YATES THAT IN HIS AFFIDAVIT FOR THE PET SCAN THAT HE DIDN'T COOPERATE WITH DR. BERLAND OR MARTINEZ,

AND IT WAS BERLAND'S IDEA THAT HE GO TO MARTINEZ, AND THAT IS ONE OF THE THINGS THAT HE SAYS EARLIER IS WHY HE SHOULD HAVE HAD A COMPETENCY HEARING BASED UPON THAT BUT NONE WAS REQUESTED AFTER DR. MARTINEZ'S EVALUATION, AND AS HAS BEEN POINTED OUT, HE HAD A THIRD COMPETENCY HEARING IMMEDIATELY PRIOR TO TRIAL. I THINK IT IS ALSO IMPORTANT, GOING BACK TO WHAT KIND OF MENTAL ILLNESS HE MAY HAVE HAD, IS THAT HE CLAIMS IT BEGAN WHAT CAR ACCIDENT. A CAR ACCIDENT HAPPENED BEFORE HIS MARRIAGE TO CARMEN, AND HER TESTIMONY IS THAT HE CHANGED AND BECAME POSSESSIVE AND MORE JEALOUS AFTER THEIR DAUGHTER WAS BORN, AND SO SHE DIDN'T SEE IT AS BEING SOMETHING THAT CAME FROM THIS CAR ACCIDENT AND WAS SOME KIND OF LONG-TERM PROBLEM WITH HIM, AND THERE IS NO EVIDENCE OF MEDICAL TREATMENT.

HOW LONG HAD THEY BEEN TOGETHER?

THE DAUGHTER WAS TWO AT THE TIME OF THE OFFENSE. I CANNOT TELL YOU WHEN THEY GOT MARRIED OR EVEN --

WAS THIS AUTOMOBILE ACCIDENT IN THIS COUNTRY?

YES.

SO HE HAD BEEN IN THIS COUNTRY FOR SEVERAL YEARS.

YES. BECAUSE HE HAD LIVED IN OTHER STATES BEFORE HE MOVED TO FLORIDA, WAS MY RECOLLECTION. AND JUST SIMPLY WITH REGARD TO WHETHER OR NOT HE WAS PREPARED TO GO TO TRIAL AND WHETHER HE WAS COGENT AND UNDERSTOOD WHAT WAS GOING ON, I THINK THAT IT IS IMPORTANT TO POINT OUT THAT THERE WAS TESTIMONY FROM TRIAL, BOTH TRIAL ATTORNEYS AS TO WHAT THEY DID IN PREPARATION WITH HIM, BUT, ALSO, THERE IS A POINT WHERE THE JUDGE ASKS HIM, WHEN HE IS PUTTING ON HIS OWN DEFENSE, IF HE HAS OTHER WITNESSES THAT HE WANTS TO CALL, AND AT THAT POINT HE IS ABLE TO REAL OFF A LIST OF NAMES, AND HE TELLS THE JUDGE AND THESE PEOPLE THAT HE WANTS TO CALL ON HIS BEHALF, AND IT IS ONLY BECAUSE THE DEFENSE ATTORNEYS TOOK THE STAND AND EXPLAINED, WELL, WE HAVE ALREADY INTERVIEWED THESE PEOPLE AND THERE WERE SOME PEOPLE THAT WERE JEHOVAH WITNESSES AT HIS CHURCH THAT REFUSED TO COOPERATE WITH THE DEFENSE, THINGS OF THAT NATURE, THEY WERE NOT GOING TO PROVIDE FAVORABLE TESTIMONY FOR THE DEFENDANT BUT HE WAS CLEAR IN COOPERATION THAT PROVIDED THE LIST OF NAMES.

SO ONCE THE DEFENSE ATTORNEY SAID IT WOULDN'T BE HELPFUL, HE GAVE UP ON TRYING TO CALL OTHER WITNESSES?

YES, AND IN TERMS OF COMPETENCY, THE MEXICAN CONSULATE WAS THERE AND TALKED TO HIM AND IT WAS AFTER HE TALKS TO THEM THAT HE DECIDES TO HAVE COUNSEL APPOINTED FOR CLOSING ARGUMENTS, AND BASED UPON THAT, WE WOULD RELY ON THE BRIEF FOR THE REST OF OUR ARGUMENTS. THANK YOU.

CHIEF JUSTICE: YOU HAVE GOT A COUPLE OF MINUTES.

AS FAR AS DR. BERLAND'S TESTIMONY BEING SPECULATION, SO WAS DR. MAHER'S. NOBODY EVER DID A COMPETENCY EVALUATION AND WENT OVER THE CRITERIA WITH HIM. IT IS ALL PRESUMED. AS FAR AS HIM BEING VERY EFFECTIVE AT TRIAL, I THINK THAT THE RECORD BELIES THAT, THE FACT THAT HE WANTED TO CALL WITNESSES AND DIDN'T KNOW THAT THEY WEREN'T GOING TO BE HELPFUL TO HIM, FURTHER ESTABLISHES THAT HE WAS NOT PREPARED WITH ALL OF THE --

BUT THIS COURT'S JURISPRUDENCE ON FERETTA IS PRETTY STRAIGHTFORWARD, AND THAT IS THAT THE COMPETENCE THAT IS IN QUESTION IS THE COMPETENCE TO PROCEED IN TRIAL. IT IS NOT THE COMPETENCE TO REPRESENT IN THE REPRESENTATION. ISN'T THAT RIGHT? THAT IS

EXACTLY WHAT THIS COURT SAID.

YES. THAT IS THE GUDINAS STANDARD. THE GUDINAS STANDARD DID ALLOW IT, AND I BELIEVE THAT THIS STATE SHOULD.

PINPOINT FOR US PRECISELY WHEN THIS CAME UP. HAD THE JURY BEEN SELECTED? HAD OPENING STATEMENTS BEEN MADE? PRECISELY WHERE, IN THE COURSE OF THE TRIAL, DID --

MR. HERNANDEZ WAS REMOVED FROM THE COURTROOM DURING JURY SELECTION BECAUSE HE WAS DISRUPTIVE AND WAS BROUGHT BACK IN WHEN THE SELECTION PROCESS WAS GOING TO BE DONE. AT THAT POINT HE COMPLAINED ABOUT COUNSEL AGAIN. AT THIS POINT, THE JUDGE SAID I AM NOT GOING TO GIVE YOU OTHER COUNSEL. YOU CAN CHOOSE TO GO FORWARD YOURSELF, PRO SE, AND HE SAYS I WANT TO BE RID OF THEM. I WILL REPRESENT MYSELF. THE JUDGE SAYS, IN THE MORNING WE WILL DEAL WITH THIS. SWORE IN THE JURY. IN THE MORNING, THEY HAVE FERRETTA. I WOULD LIKE TO RELY ON MY BRIEF.

CHIEF JUSTICE: OF COURSE. OF COURSE. THANK YOU BOTH VERY MUCH. THE COURT IS GOING TO TAKE A 15-MINUTE RECESS, BEFORE WE HEAR THE LAST TWO CASES ON THE DOCKET. WE WILL STAND IN RECESS.