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Robert Patton v. State of Florida

CHIEF JUSTICE: ALL RIGHT. WE KNOW THAT AT LEAST THE SENSES OF THE THREE OF THE JUSTICES ON THE BENCH HAVE BEEN SHARPENED BY THEIR INTERCHANGE WITH THE LAW STUDENTS AND WE CALL NOW THE LAST CASE ON THE DOCKET THIS MORE THAN -- DOCKET THIS MORNING. PATTON VERSUS THE STATE OF FLORIDA. YOU MAY PROCEED.

THIS IS A APPEAL OF MR. ROBERTER PATTON VERSUS THE STATE OF FLORIDA AND AN APPEAL OF MR. PATTON'S DENIAL AT THE GUILT PHASE OF TRIAL. I WILL ADDRESS THE 3.850 APPEAL THEN MY CO-COUNSEL MR. SHERER WILL ADDRESS THE HABEAS PETITION IN THE NEXT EIGHT MINUTES. THIS COURT REMANDED MR. PATTON'S CASE TO THE CIRCUIT COURT, IN ORDER TO ADDRESS TWO ISSUES AT AN EVIDENTIARY HEARING, THE FIRST WAS INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO PRESENT AN INVOLUNTARY INTOXICATION DEFENSE AND/OR AN INSANITY DEFENSE. THE SECOND IS INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO QUESTION JURORS DURING VOIR DIRE REGARDING MENTAL ILLNESS.

NOW, AS FAR AS THE FIRST ISSUE IS CONCERNED, WHICH IS IT SAYS FAILURE, COUNSEL'S FAILURE TO DO AN INSANITY DEFENSE, NOW, ARE YOU CONTENDING THAT, IS IT YOUR CONTENTION THAT COUNSEL ACTUALLY INVESTIGATED IT BUT IMPROPERLY DECIDED NOT TO PRESENT THAT DEFENSE?

THAT'S CORRECT. THERE IS EVIDENCE IN THE RECORD THAT SHE DID INVESTIGATE AN INSANITY DEFENSE. SHE CERTAINLY GATHERED NUMEROUS RECORDS. MR. PATTON HAD QUITE A HISTORY OF A PSYCHIATRIC BACKGROUND AND IN FACT, WAS PREVIOUSLY ADJUDICATED INSANE, PRIOR TO THIS OFFENSE. SHE DID ACCUMULATE THOSE RECORDS GOING BACK TO THE TIME THAT HE WAS AGE THREE.

WHY DOESN'T THAT PRESENT A CLASSIC CASE OF THE JUDGMENT OF THE LAWYER, AFTER HAVING BEEN FULLY INFORMED ABOUT WHAT THE EVIDENCE WOULD BE, AND THEN TO DECIDE, WELL, IS MY STRATEGY TO ASSERT THAT DEFENSE, OR IS MY STRATEGY NOT TO, AND WASN'T IT THE TESTIMONY OF THE LAWYER HERE BELOW, THAT THE EVIDENTIARY -- AT THE EVIDENTIARY HEARING THAT, IS EXACTLY WHAT HAPPENED HERE?

WELL, YOUR HONOR, THE REASONS THAT SHE GAVE AT THE EVIDENTIARY HEARING ARE INCONSISTENT WITH THE RECORD AND WITH HER OWN FILES IN THIS CASE. DR. TUMER WAS RETAINED, A PSYCHOLOGIST WAS RETAINED BY MISS LIONS, THE TRIAL COUNSEL -- MISS LIONS, THE TRIAL COUNSEL, PRY TO TRIAL. THERE IS NOTHING IN HER RECORDS TO INDICATE THAT SHE SPECIFICALLY CHARGED DR. TUMER WITH THE TASK OF LOOKING AT THE ISSUE OF INSANITY. HER TESTIMONY AT THE EVIDENTIARY HEARING WAS I AM SURE THAT I DID THAT, BUT I DON'T HAVE A RECOLLECTION OF IT. I DON'T HAVE A RECOLLECTION OF HOW I WENT ABOUT THAT. MS. LANG --

WHAT WAS HER EXPLANATION? WHAT TESTIMONY DID SHE OFFER IN EXPLANATION OF WHY SHE DID NOT PRESENT AN INSANITY DEFENSE?

YOUR HONOR, SHE STATED THAT SHE HAD CONCERNS THAT MR. PATTON WAS FEIGNING THE SYMPTOMS OF INSANITY. SHE ALSO CLAIMED THAT THE DOCTORS THAT WERE APPOINTED TO EVALUATE MR. PATTON FOR COMPETENCY, HAD COME BACK WITH A NEGATIVE EVALUATION.

SHE CLAIMED IT. WEREN'T THERE ACTUAL MEMOS THAT WERE THERE THAT, ABOUT PEOPLE THAT HE HAD CONCOCTED INSANITY?

I THINK YOU ARE REFERRING TO TWO LETTERS FROM LOVED ONES, HOWEVER, THE TRIAL COUNSEL MISS LIONS -- MISS LYONS DID STATE, HOWEVER, IF SHE HAD HAD THE INSANITY DEFENSE --

I THOUGHT THERE WAS AN ETHICAL OBLIGATION NOT TO ADVANCE THAT TYPE OF DEFENSE.

BUT SHE DID HAVE AN EXPERT THAT COULD EXPLAIN THE PROCESSES THAT WERE GOING ON IN MR. PATTON'S MIND.

HOW DOES THAT COMPARE, FOR INSTANCE, WITH WHAT WE HAVE ALL PROBABLY VISUALIZED AND THAT IS OF PRESENTING SOMETHING LIKE THAT AND THEN BEING CONFRONTED WITH ACTUALLY, THESE ARE NOTES IN THE DEFENDANT'S OWN HANDWRITING, ARE THEY NOT?

THEY WERE LETTERS, CORRECT.

LETTERS IN HIS OWN HANDWRITING, IN WHICH HE SETS OUT IN THERE, THAT HE IS GOING TO FOOL THE DOCTORS OR SOMETHING TO THAT EFFECT. AND DOESN'T COUNSEL HAVE AN OBLIGATION TO CONTEMPLATE AT TRIAL, HOW DEVASTATING OR HOW EXPLAINABLE THAT MIGHT BE, AND IF COUNSEL CHOOSES THAT, BASED ON THOSE AND OTHER CIRCUMSTANCES, NOT TO ASSERT THAT DEFENSE, ISN'T THAT THE VERY THING THAT WE CHARGE THE TRIAL COURT TO EVALUATE IN DETERMINING WHETHER OR NOT COUNSEL ACTED WITHIN THE BROAD BOUNDS OF COMPETENCY, IN DEFENDING THE DEFENDANT?

CERTAINLY THAT IS THE TRIAL COURT'S JOB. WHAT I AM POINTING OUT HERE, IS THAT WHAT THE TRIAL COURT BASED ITS DECISIONS ON IS INCONSISTENT WITH MISS LYONS'S TESTIMONY AND INCONSISTENT WITH THE RECORD AND WITH HER FILE. AS I SAID, SHE HAD AN EXPERT WHO COULD EXPLAIN THESE LETTERS. DR. CROPP HAD EXPLAINED IN 19990 --

YOU SAID THAT IN CONCLUDING THERE WAS NO DEFICIENT PERFORMANCE WAS IN CONSISTS WENT THREE FINDINGS OF THE TRIAL COURT? IN OTHER WORDS WHAT ARE THOSE THREE POINTS THAT ARE CLEARLY WRONG, UNDER THE RECORD THAT WE HAVE?

I AM NOT SURE WHICH THREE POINTS YOU ARE REFERRING TO.

YOU REFERRED TO THE THREE, YOURSELF, SO THAT IS WHAT I AM LOOKING FOR.

MISS LYONS'S TESTIMONY IS INCONSISTENT WITH THE TRIAL RECORD IN THIS CASE AND INCONSISTENT WITH HER OWN FILES. ONE OF THE REASONS THAT THE TRIAL COURT CONCLUDED THAT SHE WAS NOT DEFICIENT FOR PRESENTING THE INSANITY DEFENSE, WAS THESE LETTERS THAT DID EXIST AND THE FACT THAT MISS LYONS WAS CONCERNED THAT THE DEFENDANT WAS FAKING THE SYMPTOMS. HOWEVER, DR. CROPP WAS AVAILABLE AND AS HE TESTIFIED IN 1989, HE EXPLAINED IT, THAT THE DEFENDANT HIMSELF, WOULD NOT HAVE MUCH IN SIGHT INTO HIS OWN PSYCHOSIS AND CERTAINLY IN WRITING LETTERS TO LOVED ONES OR A GIRLFRIEND, AS IT WAS IN THIS CASE, WOULD HAVE AN INTEREST IN DOWNPLAYING WHATEVER MENTAL ILLNESS HE MAY HAVE, SO RELYING ON --

WHAT MENTAL ILLNESS DID DR. CROPP ACTUALLY INDICATE THAT OUR DEFENDANT, MR. PATTON, HAD, BECAUSE I AS I UNDERSTAND IT, HE SAID HE HAD IMPAIRED JUDGMENT, BUT I DON'T BELIEVE THAT HE EVER ASSOCIATED THAT WITH ANY MENTAL DEFECTOR DISEASE, WHICH IS A -- DEFECT OR DISEASE, WHICH IS A PART OF THE MacNORTON INSANITY TEST, ISN'T IT?

AT THE TIME THAT DR. CROPP WAS RETAINED, HE WAS NOT RETAINED TO ADDRESS INSANITY. HE

WAS BROUGHT IN AS A PENALTY PHASE EXPERT, AND HE DID DIAGNOSE MR. PATTON WITH A SUBSTANCE ABUSE DISORDER WHICH RELATES TO THE FAILURE TO PRESENT AN INTOXICATION DEFENSE HERE, AND I BELIEVE, ALSO, DIAGNOSED HIM WITH ANTISOCIAL PERSONALITY DISORDER. WHAT DR. CROPP EXPLAINED IS THAT MR. PATTON EXERCISED POOR JUDGMENT AND A LACK OF IMPULSE CONTROL, BECAUSE HE WAS INTOXICATED AT THE TIME OF THE CRIME AND THAT IMPACTING ON THE ANTISOCIAL PERSONALITY DISORDER WOULD HAVE CAUSED HIM TO HAVE POOR JUDGMENT AT THE TIME. CERTAINLY THAT WAS CONSISTENT WITH THE INVOLUNTARY INTOXICATION DEFENSE.

WHAT EVIDENCE DID HE HAVE THAT MR. PATTON WAS INTOXICATED AT THE TIME OF THE OFFENSE?

HE HAD THE LONG HISTORY OF MR. PATTON'S DRUG ABUSE. HE HAD WAS ABLE TO DETERMINE THAT MR. PATTON VERY CLEARLY WAS ADDICTED TO DRUGS, WAS ON A BINGE LEADING UP TO THE TIME OF THE CRIME FOR WEEKS, EVEN MONTHS, USING SPEED BALLS, WHICH ARE A MIX OF HEROIN AND COCAINE. HE HAD INDEPENDENT CORROBORATIVE EVIDENCE, INCLUDING A STATEMENT MADE BY MR. PATTON'S GIRL FRIEND, CHRISTINA CASTLE, THAT HE WAS VERY, VERY HIGH WHEN HE LEFT HER AT3:30 IN THE MORNING.

AND THIS OFFENSE TOOK PLACE AT 10:30 IN THE MORNING, AND WASN'T THERE A COUPLE OF WITNESSES WHO SAID HE WAS NOT INTOXICATED AT THE TIME? WEREN'T THERE A COUPLE OF OTHER PEOPLE IN THE CAR WITH HIM?

THAT'S CORRECT.

YOU WANTED TO BE REMINDED AT THE END OF EIGHT MINUTES. WE ARE NOW ABOUT NINE OR TEN INTO THAT.

IF I COULD JUST ADDRESS THAT QUESTION THEN I WILL TURN IT OVER TO MY CO-COUNSEL. THE TWO MEN THAT WERE IN THE CAR WITH HIM, THEY DID TESTIFY THAT THEY DIDN'T THINK HE WAS HIGH. HOWEVER, DR. CROPP STATED THAT DID NOT AFFECT HIS OPINION, THAT THESE WERE LAY WITNESSES. THEY DID NOT KNOW ROBERT PATTON BEFOREHAND. THEY DID NOT KNOW HOW HE WOULD REACT TO DRUGS, AND THEY CERTAINLY DID NOT SEE HIM AT THE TIME OF THE SHOOTING, TO SEE HOW THE ADRENALIN AND THE DRUGS WOULD INTERACT AT THAT POINT IN TIME.

HOW LONG HAD THEY BEEN WITH HIM?

IN THE CAR?

UM-HUM.

THEY HAD BEEN WITH HIM FOR A COUPLE OF HOURS.

HOW LONG WAS THE TESTIMONY THAT THE DRUGS WOULD HAVE IMPACTED HIM, BECAUSE WE KNOW COCAINE WOULD NOT HAVE STILL IMPACTED HIM THREE HOURS.

DOCTOR CROP'S DIAGNOSIS WAS SIMPLY BASED ON THE INFORMATION THAT HE HAD. AT THE TIME OF SECOND PENALTY PHASE, THERE WAS NO DOCTOR TO SPECIFY HOW THESE DRUGS INTERACT. I BELIEVE THAT WOULD REQUIRE ANOTHER EXPERT. DR. CROPP --

SO THERE WAS NO CONSUMPTION, AS FAR AS THE WITNESSES WITH HIM, THERE WAS NO CONSUMPTION OF DRUGS THREE HOURS BEFORE --

THOSE WITNESSES NEVER SAW IT.

BUT THEY WERE WITH HIM FOR THREE HOURS.

THEY WERE WITH HIM IN AND OUT OF THE CAR, IN AND OUT OF THE STORE. YES.

OKAY.

I AM GOING TO TURN IT OVER TO CO-COUNSEL AT THIS TIME

CHIEF JUSTICE: MR. MARSHAL, HOW MUCH TIME, TOTAL IS LEFT? CAN YOU JUDGE THAT? TEN MINUTES.

INCLUDING REBUTTAL.

CHIEF JUSTICE: A TOTAL OF TEN MINUTES.

JUST BRIEFLY, I WANT TO ADDRESS SOME OF THE RING VERSUS ARIZONA ASPECTS.

IF YOU WOULD PUT YOUR NAME ON THE RECORD. WE RECORD THESE.

MAY IT PLEASE THE COURT. TODD SCHER ON BEHALF MR. PATTON. I AM ADDRESSING CLAIM ONE OF THE PETITION FOR HABEAS CORPUS, WHICH ADDRESSES WHAT I PERCEIVE TO BE MERITORIOUS ARGUMENTS AS TO RING VERSUS ARIZONA'S APPLICATION TO MR. PATTON'S CASE. ONE OF THE CRITICAL DISTINCTIONS I THINK, BETWEEN THIS CASE AND SOME OF THE OTHER CASES, AS A MATTER OF FACT ALL OF THE OTHER CASES IN WHICH THE COURT HAS ADDRESSED RING, IS THIS 6-TO-6 VOTE THAT OCCURRED AT THE ORIGINAL PENALTY PHASE IN MR. PATTON'S TRIAL. THE COURT, I AM SURE, IS AWARE THE JURY CAME BACK INDICATING THAT THEY WERE DEADLOCKED AT 6-TO-6 AND ASKED A QUESTION AS TO WHETHER OR NOT THEY NEED ADD MAJORITY VOTE TO RECOMMEND LIFE, I BELIEVE IT WAS. IT WAS A DISCUSSION ON THE RECORD. NOBODY REALLY SEEMED TO UNFORTUNATELY KNOW, THAT AT THAT POINT THAT WAS A LIFE RECOMMENDATION. THE JUDGE GAVE AN ALLEN CHARGE. THEY CAME BACK 7-TO-5 FOR DEATH THIS. COURT ON APPEAL, REVERSED, FINDING ERROR AS TO THE GIVING OF THE ALLEN CHARGE BUT REMANDED FOR A JURY RESENTENCING, DECLINING TO ACCEPT THE STATE'S INVITATION AT THAT POINT TO TREAT THE 6-TO-6 VOTE AS A LIFE RECOMMENDATION, WHICH I THINK REALLY SHOULD HAVE BEEN THE PROPER COURSE HERE, AND I THINK RING MAKES THAT VERY CLEAR THAT, AT THAT POINT, THOSE, THAT JURY, THE SIXTH AMENDMENT WAS NOT SATISFIED IN TERMS OF WHAT HAPPENED WITH RESPECT TO THE ORIGINAL PENALTY PHASE.

SINCE WE ARE HERE OPPOSE THE CONVICTION, WE NOT ONLY HAVE TO AGREE WITH YOU ON THE MERITS. WE, ALSO, HAVE TO GO BEYOND AND SAY THAT RING APPLIES RETROACTIVELY, CORRECT?

THAT'S CORRECT. I BELIEVE, I BELIEVE RING DOES APPLY RETROACTIVELY. I BELIEVE THAT THIS COURT, IN EVERY INSTANCE WHERE IT HAS ADDRESS ADD RING ISSUE, HAS ADDRESSED THE MERITS OF THE CLAIM. THE COURT AT LEAST AS ONE COURT, HASN'T SPECIFICALLY ADDRESSED THE WHITT ANALYSIS, BUT I THINK SUBSALENS YO BY REJECTING THE MERITS THAT THE COURT ADDRESSED, THE COURT FOUND IT RETROACTIVE, BUT UNDER THE WHITT ANALYSIS, IT COULD NOT BE RETROACTIVE. IT CERTAINLY MEETS ALL THE CRITERIA.

HOW IS THE VALIDITY OR THE REASON THAT THE 6-TO-6 VOTE WAS NOT TREATED AS A LIFE RECOMMENDATION, HAS ALREADY BEEN LITIGATED AND REALLY DIDN'T INVOLVE A SIXTH AMENDMENT ISSUE. I AM TRYING TO UNDERSTAND HOW RING WOULD RESURRECT THAT PARTICULAR ISSUE.

BECAUSE I THINK IT CERTAINLY DID RAISE SOME SIXTH AMENDMENT ISSUES, AND JUST LIKE, I MEAN, IN A CASE THAT IS PENDING BEFORE THIS COURT, THE STATE HAS CONCEDED THAT, IN AN

OVERRIDE SITUATION, A DEFENDANT HAS A VALID APPRENDI OR A RING TYPE OF CLAIM. I THINK WHAT YOU HAVE JUST LIKE IN ANY OTHER OVERRIDE SITUATION, WHAT HAPPENED --

DOES THE STATE IN THIS PARTICULAR CASE, CONCEDE IT?

NO. IN THE ALTERNATE CASE, THEY CONCEDED -- IN AN ALT CASE, THEY CONCEDED IN AN OVERRIDE, I DON'T THINK IT IS MERITORIOUS BUT IN EVERY OTHER CASE THEY ARE SAYING RING DOESN'T APPLY TO FLORIDA, WHICH I DON'T THINK CAN REALLY BE A FAIR READING OF THIS COURT'S PRECEDENT OR --

WE HAVE TO GET AROUND SPAZIANO TO MAKE IT APPLICABLE AT ALL, CORRECT?

WELL, I BELIEVE CERTAINLY SPAZIANO HOLDS OTHERWISE, BUT --

U.S. SUPREME COURT HAS NOT RECEDED FROM SPAZIANO.

CORRECT. BUT I DO BELIEVE THAT THIS COURT, AS JUSTICE PARIENTE OBSERVED RECENTLY IN THE BUTLER CASE AND AS JUSTICE SHAW INDICATED IN BOTTOSON, THIS COURT HAS AN OBLIGATION TO LOOK AT SUPREME COURT PRECEDENT AND DETERMINE HOW THAT PRECEDENT AFFECTS THIS COURT'S JURISPRUDENCE AND CERTAINLY UNDER THIS COURT'S JURISPRUDENCE, A 6-TO-6 VOTE IN THE RIGHT CASE, A VOTE FOR A LIFE RECOMMENDATION.

MAYBE I AM, YOU HAVE TO FIRST GET THROUGH THE FIRST POINT THAT THE COURT NEVER DECIDED THAT THIS WAS A LIFE RECOMMENDATION. THAT IS WHAT I AM ASKING. NOT GETTING, THE NEXT HURDLE AS TO WHETHER SPAZIANO STILL IS GOOD LAW, BUT AS TO THE FACT THAT IT WAS REJECTED ON, SUBSEQUENTLY, THAT THIS EVER WAS A FINAL RECOMMENDATION OF LIFE.

CORRECT. I BELIEVE THAT IS CORRECT THAT THIS COURT GENERALLY DIRECT ODD APPEAL THAT THIS WASN'T A SITUATION OF LIFE.

BUT IT WASN'T A FINAL VOTE.

IT SHOULD HAVE BEEN 6-TO-6 AND THEN THERE IS A ALLEN CHARGE. THAT WAS THE ERROR.

BUT THAT ARGUMENT, ALSO, HAS SUBSEQUENTLY BEEN REJECTED BY THE COURT, HASN'T IT?

BEEN REJECTED BUT JUST THIS MORNING I DID SUBMIT SUPPLEMENTAL AUTHORITY, TWO CASES, ONE THE McBRIDE CASE, AND I WOULD URGE THE COURT THAT, IN TERMS OF LOOKING BACK AT THAT ORIGINAL DECISION, I KNOW JUSTICE ANSTEAD, IN THE LAST OPINION, FOUND THAT TO BE A MANIFEST IN JUSTICE IN TERMS OF IT THAT ORIGINAL DECISION. I THINK THAT THE MANIFEST IN JUSTICE THAT THE COURT ENGAGED IN IN McBRIDE, CERTAINLY SHOULD APPLY IN THE CONTEXT OF WHAT I THINK SHOULD BE CLEARLY AN ERRONEOUS DECISION ON THE DIRECT APPEAL, IN TERMS OF TREATING THAT 6-TO-6 RECOMMENDATION AS A NONFINAL RECOMMENDATION, BECAUSE WHEN THE JURY CAME BACK AND SAID 6-TO-6 AND WHAT NOW, THE JUDGE SHOULD HAVE SAID THAT IS THE END OF IT.

NOTHING ABOUT RING REALLY IMPACTS WHETHER THE MANIFEST IN JUSTICE ISSUE.

THAT IS A SEPARATE, THE MANIFEST IN JUSTICE IS A SEPARATE ISSUE, BUT CERTAINLY I THINK RING HAS OTHER IMPLICATIONS HERE. I DON'T WANT TO GO INTO --

IS THAT YOUR STRONGEST RING ARGUMENT?

I THINK THERE IS ALSO RING IMPLICATION ANSWER I DON'T WANT TO GO INTO REBUTTAL, BUT THERE IS RING IMPLICATIONS. I THINK WE HAVE A DOUBLING PROBLEM IN THIS CASE.

CHIEF JUSTICE: THAT IS WHAT THE MARSHAL HAS DONE IS REMINDED YOU THAT THERE IS JUST FOUR MINUTES LEFT.

I WILL RESERVE THE REST OF THE TIME BUT OBVIOUSLY IN THE PETITION ITSELF AND THE REPLY, WE, I THINK, LAID OUT THE VARIOUS RING ARGUMENTS, AND IF THE COURT HAS OTHER QUESTIONS, AND I UNDERSTAND THAT THE McBRIDE CASE IS RECENT, IF THE COURT WANTS SOME SORT OF SUPPLEMENTAL BRIEF ON THIS PARTICULAR INSTANCE OR ISSUE, I CAN FILE THAT.

YOU DID FILE A SUPPLEMENTAL AUTHORITY.

I DID FILE A SUPPLEMENTAL AUTHORITY. YES. THANK YOU.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. SANDRA JAGGARD, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE. WITH REGARD TO THE INEFFECTIVE ASSISTANCE OF ATTORNEY AT TRIAL, THE COURT DECIDED NOT TO PLEAD INSANITY. AT THE TIME OF TRIAL, COUNSEL HAD NO ONETOLOGY TESTIFY TO INSANITY. DR. TUMER EXPLAINS THE CHANGE IN HIS TESTIMONY AND DR. TUMER IS THE ONLY PERSON TO FIND THIS PERSON INSANE. DR. CROPP FOUND THE DEFENDANT SANE.

I KNOW THAT THERE WERE DOCTORS WHO WERE APPOINTED TO DETERMINE MR. PATTON'S COMPETENCY BEFORE TRIAL. WERE THOSE DOCTORS ALSO ENGAGED TO DETERMINE MR. PATTON'S SANITY OR INSANITY AT THE TIME OF THE OFFENSE?

YES. THOSE DOCTORS WERE APPOINTED WITH REGARD TO THE NOTICE OF INTENT TO PRESENT IN SAN-KNOW SANITY. THEY DID, IN FACT -- INSANITY. THEY DID, IN FACT, EACH OPINE ON HIS SANITY AT THE TIME OF THE OFFENSE. BECAUSE THEY DIDN'T HAVE FULL INFORMATION, THREE OF THE FOUR LATER TESTIFIED AT PENALTY PHASES THAT THE ADDITION OF INFORMATION DOES NOT CHANGE THEIR OPINION THAT THE DEFENDANT WAS MALINGERING AND NOT INSANE AND THE FOURTH DOCTOR WAS NEVER PRESENTED TO SAY WHETHER OR NOT IT CHANGED HIS OPINION, SO UNDER OATH, THAT IS IN EFFICIENT TO SHOW COUNSEL WAS INEFFECTIVE. DR. TUMER CHANGED HIS OPINION AND AT THE ORIGINAL PENALTY PHASE WHILE HE NEVER SAYS THE DEFENDANT WAS INSANE, HE DOES SAY THE DEFENDANT KNEW THE DIFFERENCE BETWEEN RIGHT AND WRONG AND THE CONSEQUENCES OF HIS ACTIONS.

DID HE SAY THAT AT THE FIRST OR SECOND PENALTY PHASE?

THE FIRST WON. -- THE FIRST ONE. THE SECOND TIME HE SAID HE IS EXTREMELY INSANE. HE SAYS THE CAR IS HOT AND THE POLICE ARE FOLLOWING HIM AND HE RUNS AWAY AND NOT INSANE WHEN HE RUNS ACROSS I-95 AND STEALS STAELS CAR AND GOES INSIDE TO HIDE THE EVIDENCE AND HE IS NOT INSANE UNTIL HE JUMPS OUT AT OFFICER BROOM AND SHOOTS HIM.

WAS COUNSEL AWARE, NOT ONLY THE NOTES BUT ALSO THE DOCTOR'S OPINION ABOUT MALINGERING BEFORE MAKING THE DECISION WHETHER TO ADVOCATE THE INSANITY DEFENSE?

COUNSEL WAS AWARE OF THE LETTERS AND COUNSEL WAS AWARE OF HER OWN DISCUSSIONS WITH THE DEFENDANT IN WHICH HE TOLD THE TWO ATTORNEYS THAT HE WAS GOING TO FEIGN AN INSANITY OFFENSE AND COUNSEL WAS AWARE OF ALL FOUR DOCTORS' OPINIONS.

ABOUT MALINGERING.

YES. AND THEREFORE COUNSEL MADE A VALID STRATEGIC DECISION NOT TO PRESENT AN INSANITY DEFENSE.

WHAT ABOUT THE ALCOHOL USE? WHAT WAS THE EVIDENCE?

THE EVIDENCE WAS DR. CROPP, ON IS -- WHO IS OPINEING, BASED ON HEARSAY EVIDENCE, KRISTIN CASTLE, WHO SAYS HE WAS VERY HIGH SEVEN HOURS BEFORE THE CRIME AND THE TWO PEOPLE WITH THE DEFENDANT FOR TWO TO TWO AND-A-HALF HOURS BEFORE THE CRIME, WHO BOTH HAVE EXTENSIVE EXPERIENCE WITH PEOPLE USING DRUGS, WHO SAID HE WASN'T INTOXICATED. THERE WAS, IN FACT, A INTOXICATION INSTRUCTION GIVEN TO THE JURAT TRIAL AND THE JURY REFUSED IT, AND IT IS THE STATE'S POSITION THAT COUNSEL TESTIFIED THEY DID NOT PRESENT ANYMORE EVIDENCE ABOUT LONG-TERM DRUG ABUSE, WHICH IS WHAT DR. CROPP REALLY PRESENTS, BECAUSE THEY DID NOT WISH TO ASSOCIATE THE DEFENDANT WITH THE DRUG CULTURE IN MIAMI AT THE TIME. AT THE TIME MIAMI HAD A SEVERE PROBLEM WITH COCAINE COWBOYS AND THEY WERE AFRAID THAT THE JURY MIGHT HAVE AN EXTREME BACKLASH TO THAT. THIS COURT HAS RECOGNIZED MANY TIMES THAT IT IS A VALID STRATEGIC DECISION NOT TO PRESENT INTOXICATION, WHERE COUNSEL IS CONCERNED ABOUT BACKLASH.

WHAT WAS THE DEFENSE IN THIS CASE?

IT WAS THAT THIS WAS NOT A PREMEDITATED CRIME. THIS IS NOT A FELONY MURDER. THE TWO UNDERLYING FELONIES WOULD BE CARRYING A CONCEALED, POSSESSION OF A WEAPON BY A CONVICTED FELON AND GRAND THEFT AUTO, WHICH WOULDN'T GET AWE FIRST-DEGREE FELONY MURDER, SO IT WAS ONLY A PREMEDITATED MURDER, THAT THIS MURDER WAS NOT PRE-MED MATED -- PREMEDITATED, THAT THIS DEFENDANT PANICED AND BECAUSE OF SOME OF THE DRUG USE THAT THEY DID PRESENT, THAT HE PANICKED AND WASN'T THINKING, IT IS NOT PREMEDITATED. WITH REGARD TO THE RING ISSUE, AS THIS COURT HELD IN THE ORIGINAL DIRECT APPEAL OPINION, THERE WAS NEVER A LIFE RECOMMENDATION. THERE WAS A NOTE THAT CAME OUT FROM THE JURY SAYING WE ARE TIED 6-6. WHAT DO WE DO? WE DON'T KNOW WHAT THE JURY WOULD HAVE DONE, HAD THE JUDGE SAID THAT IS A LIFE RECOMMENDATION. THEY MAY HAVE COME BACK 6-6 OR MAY HAVE CONTINUED TO SPEAK AND COME BACK 7-5. WE HAVE NO IDEA H THIS COURT HAS ALREADY DETERMINED THAT THAT IS NOT A LIFE RECOMMENDATION AND RING SAYS NOTHING ABOUT THAT. IN ADDITION, THERE IS A PRIOR VIOLENT FELONY IN THIS CASE, AND AS THIS COURT HAS RECOGNIZED RING COMES FROM APPRENDI. APPRENDI HOLDS OTHER THAN THE FACT OF A PRIOR CONVICTION, AND INCREASING THE STATUTORY MAXIMUM AND IT MUST BE PRESENTED TO THE JURY AND THERE IS STATUTORY MAXIMUM FOR CONVICTION AND OUR STATUTORY MAXIMUM IS DEATH TARNKS IS NOT RETROACTIVE. AS EVERY CIRCUIT COURT HAS HELD FROM THE UNITED STATES CIRCUIT COURTS, AS NUMEROUS STATE COURTS HAVE HELD, AND --

IT BEING RING?

IT, BEING RING. YES.

WHAT COURTS HAVE ADDRESSED THE RETROACTIVITY? I KNOW THAT ARIZONA HAS.

RING OR APPRENDI. THE SEVENTH CIRCUIT HAS RECENTLY ADDRESSED RING AND APPRENDI, ITSELF, BUT RING IS NOT THE RULE AND THE CIRCUIT COURT DECIDED IT WAS NOT RETROACTIVE.

THE CIRCUIT COURT DECIDEDED WAS NOT RETROACTIVE?

YES, AND AFTER THAT YOU HAVE TO GET OVER SPAZIANO, WHICH THE UNITED STATES SUPREME COURT HAS NOT OVERRULED, AND RING HAS NOTHING WHATSOEVER TO DO WITH WHETHER OR NOT THERE SHOULD HAVE BEEN A DOUBLING INSTRUCTION, BECAUSE RING IS ABOUT THE FINDING OF AN AGGRAVATING FACTOR AND HAS NOTHING TO DO WITH WEIGHING, WHICH IS DOUBLE ACCOUNTING IN WEIGHING AND THEREFORE THE STATE RESPECTFULLY REQUESTS THAT YOU AFFIRM.

CHIEF JUSTICE: COUNSEL, REBUTTAL?

I DID JUST WANT TO ADDRESS BRIEFLY, THE ADDITIONAL EVIDENCE THAT WAS IN THE FILE, WHICH CORROBORATED DR. CROPP'S OPINION. THERE WAS DRUG PARAFERN ALE YEAH -- PARAPHERNALIA FOUND IN THE CAR THAT MR. PATTON WAS DRIVING. THERE WAS A JAIL REPORT OF FRESH TRACK MARKS AT THE TIME THAT MR. PATTON WAS ARRESTED. THERE, ALSO, WAS A "BE ON THE LOOKOUT" RADIO BROADCAST, THAT MR. PATTON, WHEN HE STOLE THE VEHICLE, THE SECOND VEHICLE, HE WAS DESCRIBED AS BEING HIGH AND HIS EYES WERE BUGGING OUT OR WERE BULGING, SO THERE WAS ADDITIONAL EVIDENCE IN THE RECORD TO SUPPORT DR. CROPP'S OPINION THAT HE WAS INTOXICATED AT THE TIME OF THE OFFENSE. ADDITIONALLY, THEY, THREE DOCTORS, THREE OF THE DOCTORS THAT WERE APPOINTED BY THE COURT, ALSO TESTIFIED THAT HE MAY HAVE BEEN INTOXICATED AT THE TIME OF THE CRIME. THEY DID NOT DISPUTE DR. CROPP ON THAT MATTER. IN FACT, ONE OF THE DOCTORS MADE THAT STATEMENT AFTER TESTIFYING THAT HE WAS NOT AWARE OF ANY OF THESE OTHER FACTORS. HE HAD NEVER HAD ANY INFORMATION REGARDING THE STATEMENT OF MISS CASTLE, REGARDING THE DRUG PARAFERN ALE YEAH IN THE CAR AND REGARDING THE -- PARAPHERNALIA IN THE CAR AND REGARDING THE FRACK TRACK MARKS, AND IN LIGHT OF THAT INFORMATION, HE SAID THAT MR. PATTON MAY VERY WELL HAVE BEEN INTOXICATED?

WHY ISN'T THAT A TWO-EDGED SWORD, AS FAR AS YOU ARE KIND OF SKATING HERE BECAUSE TRACK MARKS AND DRUG PARAPHERNALIA, AGAIN, WE ARE TALKING ABOUT AN ATTORNEY'S REASON, STRATEGIC DECISION, THAT THERE WOULD BE A CONCERN THAT MIAMI, AT THE TIME THIS CASE WAS TRIED, THAT THAT WOULD ACTUALLY BE VERY NEGATIVE, THAT THAT WOULD NOT HELP THE DEFENDANT'S CASE.

WELL, THAT IS WHAT MISS LYONS CLAIMED, BUT THEN ESSENTIALLY DURING THE TRIAL, THE ARGUMENT THAT SHE MADE PAINTED THIS PICTURE OF MR. PATTON AS A DRUGGY, SOMEONE STRUNG-OUT ON DRUGS, TRYING TO BUY DRUGS. CERTAINLY IT DOESN'T FIT WITH HER CONCERN WITH MIAMI ANY THE 1980s AND THE DRUG TRADE. ALSO MISS LYONS DID TESTIFY THAT SHE HAD NO INFORMATION THAT WOULD HAVE INDICATED MR. PATTON WAS PART OF THIS LARGE DRUG TRADE IN MIAMI. HE WAS NOT PART OF A DRUG CARTEL. HE WAS NOT SELLING DRUGS. EXCEPT FOR HIS OWN BENEFIT TO MAYBE GET MORE DRUGS, SO IT CERTAINLY WAS NOT THIS 1980s DRUG CRIME SCENE THAT MR. PATTON WAS INVOLVED IN.

WELL, BUT THERE WASN'T WAS -- BUT THERE WAS AN INSTRUCTION ON VOLUNTARY INTOXICATION.

CORRECT.

AND THERE WAS SOME EVIDENCE PRESENTED, SO MAYBE YOUR ARGUMENT IS THAT THERE WAS CONSTITUTIONALLY-DEFICIENT PERFORMANCE BECAUSE THERE SHOULD HAVE BEEN MORE EVIDENCE PRESENTED?

WELL, THERE WAS SOME EVIDENCE THAT WAS GLEANED FROM THE CROSS-EXAMINATION. WHAT THE PROBLEM IS, IS THAT, THEN SHE, IN HER CLOSING ARGUMENT, SO THAT MR. -- IS HE THAT MR. PATTON -- SAID THAT MR. PATTON WAS STRUNG-OUT ON DRUGS AND TRYING TO BUY DRUGS. I SEE THAT MY TIME IS UP.

CHIEF JUSTICE: FINISH YOUR ANSWER.

TRYING TO BUY DRUGS, AND SO THE JURY WAS LEFT WITH VERY LITTLE EVIDENCE TO SUPPORT THAT VOLUNTARY INTOXICATION, WHEREAS IF SHE HAD HAD AN EXPERT, CERTAINLY DR. CROPP WAS AVAILABLE, THAT COULD HAVE EXPLAINED THAT THIS WAS NOT SOMEBODY THAT WAS CAUGHT UP IN THE DRUG CARTELS, THAT THIS WAS SOMEBODY THAT WAS USING DRUGS BECAUSE OF HIS PRIOR ABUSE, AND EXPLAINED TO THE JURY WHY THIS WOULD HAVE NEGATED

THE SPECIFIC INTENT OF PREMEDITATED MURDER, WHICH FITS RIGHT WITH HER THEORY.

CHIEF JUSTICE: OKAY. THANK YOU VERY MUCH. THANK ALL THREE OF YOU VERY MUCH. THIS IS THE LAST CASE ON THE COURT'S DOCKET THIS MORNING. WE, AGAIN, WELCOME THE STUDENTS AT THE FSU PROGRAM. I WANT TO REMIND ALL OF YOU THAT THIS IS ONE OF THE FINEST PROGRAMS THAT THE FSU LAW SCHOOL HAS BEEN RECOGNIZED FOR AND WE ENCOURAGE YOU TO FULLY PARTICIPATE, INCLUDING THIS COURT WILL BE IN SESSION ALL THE REMAINDER OF THIS WEEK, SO WE HOPE TO SEE YOU OVER HERE AGAIN. GOOD LUCK TO ALL OF YOU. COUNSEL, THANK YOU ALL VERY MUCH. THE COURT WILL STAND IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.