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## Byron Bryant v. State of Florida

CHIEF JUSTICE: THE LAST CASE ON THIS MORNING'S CALENDAR IS BRYANT VERSUS THE STATE OF FLORIDA. ARE THE PARTIES READY?

YES. JO ANN KOTZEN ON BEHALF OF MR. BRYANT. THERE ARE TWO APPEALS WE FILED AND ARE HERE ON THIS MORNING. ONE WAS THE INITIAL BRIEF AND THE OTHER PETITION WAS THE WRIT FOR HABEAS CORPUS ALLEGING INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. THE FACTS OF THE CASE IS THAT THIS IS MR. BRYANT'S SECOND TRIAL. IT IS A RETRIAL IN 1998, IN FEBRUARY.

CAN I ASK YOU A QUESTION RIGHT TO THE POINT OF YOUR FIRST ISSUE.

YES.

ISN'T, REALLY, THE WAY TO ANALYZE THIS FIRST ISSUE, IS, WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN STRIKING THE INITIAL MOTION IN THE FIRST PLACE, WITHOUT GRANTING LEAVE TO AMENDMENT, BEFORE THE PERIOD EVER EXPIRED? THAT WOULD BE A GOOD WAY TO SAY THAT. BECAUSE THE TRIAL COURT DID NOT STRIKE THE INITIAL POSTCONVICTION MOTION, BRIEF, WITH PREJUDICE, IT IS TO BE ASSUMED THAT IT WAS WITHOUT PREJUDICE AND WE WERE ALLOWED TO HAVE IT BE AMENDED AT LEAST FOR THE 20-TO-30 DAYS AFTER IT WAS STRICKEN, AND I BELIEVE I DID FILE IT WITHIN THAT 20-TO-30 DAY TIME LIMIT.

YOU SEEMED TO HAVE PHRASED THE ISSUE ON APPEAL DIFFERENTLY, IN THAT WHETHER THE TRIAL COURT COULD HAVE ACCEPTED, HAD JURISDICTION TO ACCEPT THE MOTION FILED MONTHS LATER, NOT WHETHER IT ABUSED ITS DISCRETION IN STRIKING IT ORIGINALLY.

WELL, I BELIEVE JUDGE MOUNTS HAD DISCUSSED - - HAD DECIDED HAD THAT HE WANTED TO STRIKE THE BRIEF. HE HAD GIVEN US TWO HEARINGS ON THAT ISSUE. HE ASKED IF COUNSEL COULD WORK OUT AND WHETHER WE COULD AGREE TO AMEND THE MOTION, AND THAT COULDN'T HAPPEN, AND SO I HAD DECIDED THAT IT WOULD BE BEST TO ASK THE TRIAL COURT, IN THIS CASE IT HAVING TO BE ANOTHER JUDGE NOT THE ORIGINAL JUDGE, TO GO AHEAD AND AMEND, ALLOW US TO AMEND THE POSTCONVICTION MOTION AND NOT TO BRING IT IN FRONT OF THIS COURT, AND SO I DID PHRASE IT IN THAT ASPECT, AS FAR AS HAVING JURISDICTION, BECAUSE I BELIEVE THE AMENDED POSTCONVICTION MOTION DID RELATE BACK TO THE TIME OF THE INITIAL POSTCONVICTION MOTION. SO IT WOULDN'T BE SIMPLY A JURISDICTIONAL ISSUE.

NOW, ULTIMATELY, AND AN ALTERNATIVE WAY, WERE THE ISSUES THAT YOU RAISED TREATED?

PARDON ME.

DID THE JUDGE ACTUALLY ISSUE AN ORDER ON THE MERITS OF THE ISSUES THAT YOU RAISED?

YES. YES. JUDGE BROWN, WHO SUBSEQUENTLY CAME INTO THAT DIVISION, DID AUTHOR AN ORDER, FIRST SAYING THAT IT DIDN'T HAVE JURISDICTION TO ENTERTAIN THIS MOTION, BUT THEN

IN THE ALTERNATIVELY

YES , ALTERNATIVELY SHE DID DE NY THE POSTCONVICTION MOTION.

ARE YOU GOING TO ADDRESS THE MERITS OF THAT MOTION?

WHAT I WOULD LIKE TO ADDRESS , I WOULD LIKE TO RELY FOR MOST OF THE ISSUES , JUST TO RELY ON MY BRIEF ANDTHE ARGUMENT AND THE CASESIN THE BRIEF , B UT I WOULD LIKE TO ADDRESS THE TWO ISSUES ON THE INITIAL BRIEF AND TWO ISSUES ON THE HAB EAS CORPUS PE TITION. THE FIRST ONE WOULD BE THE SHACKLING ISSUE IN THE INITIAL BRIEF, AND THE FAILURE OF THE TRIAL COUNSEL TO PROP ERLY PRESERVE THIS ISSUE FOR APPEAL.

LET ME ASK YOU, JUST AS A PRELIMINARY MA TTER B E FOREYOU GET INTO THAT , WHEN WEREYOU APPOINTED TO THIS CASE?

I BELIEV E I WAS APPO INTED IN AP RIL OF 2002.

AND YOU WERE THE ONE WHO HAD ASKED FOR SOME ADDITIONAL TIME IN THIS COURT?

YES. I BELIEVE THAT MY CLIENT DIDN'T WANT TO SIGN THE POSTCONVICTION MOTION, AND I HAD STRUGGLED WITH MY CLIENT AS TO SWEARING TO THE TRUTH OF MATTER.

YOU ARE REGISTRY ATTORNEY.

YES .

SO YOU ARE GOING TO DEAL WITH THE SHACKLING ISSUE?

YES , AS FAR A S COUNSKOUNS HE WILL FAILING TO PROPERLY PRESERVE THIS ISSUE FORDIRECT APPEAL AND I WOULD ALSO LIKE TO ADDRESS THE ISSUE REGARDING CONFESSION. THOSE ARE THE TWO ISSUES IN THE INITIAL BRIEF AS WELL AS IN THE HABEAS , I WOULD LIKE TO ADDRESS THE FACT THAT APPELLATE COUNSEL FAILED TO PRESENT TO THIS HONORABLECOURT IN THE DI RECT APPEAL , THE CONF ESSION ISSUE , THE TRIAL COURT DENES THE MOTION TO SUPP RESS THE CONFESSION , AS WELL AS APPELLATE COUNSEL FAILING TO PRES ENT FOR DIRECT APPEAL , THE AVOID-ARREST AGGRAVATOR. THE FIRST ISSUE I WOULD LIKE TO ADDRESS WOULD B E THE SHACKLING ISSUE. WHILE TRIAL COUNSEL DID OBJECT TO MR . BRYANT BEING SHACKLED FOR THE FULL TRIAL , TRIAL COUNSEL DID FAIL T O PROFFER OR ATTE MPT TO PROFFER ANY SIGNIFICANT CHANGES O F MR . BRYANT'S CONDUCT AND DEMEANOR.

WAS THERE AN OFFER HERE OF SOME OTHER FORM OF RESTRAINT , OTHER THAN THE SHACKLING?

THERE WAS. INITIALLY , THE JUDGE HADASKED FOR MR . BRYANT TO HAVE A STUN BEL T, AND ONCE MR . BRYANT HAD PUT THE STUN BELT ON, APPARE NTLY IT WAS A BIG STUN BELT . IT WAS TW ELVE BY TWELVE. HE WAS VERY UNCOMFORTABLE WITH IT.HE WAS SCARED THAT THE DEPUTIES WOULD TRY SH OCK HIM ARBITRARILY. HE DID NOT WANT TO WEAR THE STUN BELT, SO THE JUDGE HAD SAID, WELL, IT IS E ITHETHE STUN BELT OR THE SHACKLES. YOU CAN CHOOSE. AND SO THE JUDGE, THEN , WENT WENT AH EAD AND SHAC KLED MR . BRYANT, BOTH HIS ARMS AND HIS LEGS, SO THE JURY DEFINITELY DID SEE THE SHACKLES. MATTER OF FACT , ONE JUROR DID COM MENT TO THE TRIAL COUNSEL THAT THEY WERE CONCERNED ABOUT THE SHACKLES AND THE FACT THAT IT SHO WED SOME K IN D OF CRIMINALITY ON MR. BRYANT'S PART, AND THAT IS DURING THE GUILT PHASE. TRIAL COUNSEL FAILED TO PROFFER ANY KI ND OF L ESS RESTRICTIVE MEANS. THE ONE IN STANCE WAS MR . BRYANT, IN HIS FIRST TRIAL , HE HAD THROWN A CHAIR , ALLEGEDLY THROWN A CH AIR A FTER THE RENDITION OF THE V ERDICT , AND THAT WAS THE ONE OUTBURST THAT MR . B RYANT HAD HAD IN THE TEN YE ARS THAT HE HAD BEEN PROSECUTED . TRIAL COUNSEL COULD HAVE SUGGESTED , PERHAPS , MR . BRYANT JUST

BEING SHACKLED FOR THE RENDITION OF THE VERDICT. TRIAL COUNSEL COULD HAVE SUGGESTED , THAT WOULD HAVE BEEN A L ESS RESTRICTIVE ALTERNATIVE.HE COULD HAVE

BU T DO YOU AGREE THAT DEFENSE COUNSEL DID OBJECT TO THE SHACKLES.

I DO. I DO AGREE WITH THAT, BUT I THINK THERE IS A DIFFERENCE BETWEEN DEFE NSE COUNSEL FAILING TO OBJECT AND JUST NOT PRESE RVING THE ISSUE AT ALL FOR APPEAL , AND TRIAL COUNSEL FAILING T O PROPERLY PRESERVE THE ISSUE FOR APPEAL.

S O WHAT DO YOU SAY THAT COUNSEL SHOULD HAVE DONE THAT HE DIDN'T DO , IN OBJECTING?

TRIAL COUNSEL SHOULD HAVE PROFFERED OR ATTEMPTED TO PROFFER THE SIGNIFICANT CHANGES OF MR . BRYANT WITHIN THE NE XT SIX YEARS. MR . BRYANT HAD ONE VIOLENT OUTBURST IN 19 92 , DU RING HIS FIRST TRIAL , AND THEN BASED ON THAT, THAT IS W H Y THE TRIAL JUDGE S AID, WELL , WE ARE GOING TO HAVE HIM SHACKLED OR WE ARE GOIN G TO HAVE THE STUN BELT ATTACHED TO HIM. TRIAL COUNSEL FAILED TO SAY , JUDGE, THERE ARE ALL OF THESE LESS RESTRICTIVE MEANSTHAT WE COULD DO FOR MR . BRYANT. WE COULD MO VE MR . BRYANT TO ANOTHER TA BLE THAT IS NOTCLOSE TO THE JURY OR TO THE PROSECUTOR. WE COULD PUT A LEG BRACE ON MR. BRYANT. I WANT TO PRODUCE PR ISON RERDZ RECORDS TO SHOW HOW PRISON RECORDS TO SHOW HOW WELL-BEHAVED MR . BRYANT HAS BEEN IN THE PAST SIX YEARS. I WANT TO SHOW HOW VERY WELL BEHAVED MR . BRY ANT HAS BEEN WITH ME , MY PSYCHOLOGISTS.

WHAT DID THE RECO RD SHOW AS TO THE PRI SON OR J AIL BEHAVIOR?

MR . BRYANT HAS BEEN FINE SINCE HE HAS BEEN ON DEATH ROW .

NO.AT THE TIME THAT COUNSEL WAS DOING, THIS I F COUNSEL HAD LOOKED AT THE JAIL RECORD AND PRISON REC ORDS, WOULD IT SHOW WHAT? WHAT WOULD IT SHOW?

THAT IS A GOOD QUESTION. THE TRIAL COUNSEL DID NOT LOOK AT ANY OF THOSE RECORDS. HE DID NOT PRESERVE ANY

I AM ASKING YOU , NOW THAT YOU HAVE HAD THE OPPORTUNITY TO LO OK AT IT, WHAT WOULD HIS JAIL RECORD AND HISPRISON RECORD HAVE SHOWN THEJUDGE , IF IT HAD BEEN PRESENTED TO THE JUDGE?

THERE WAS ONLY ONE AGGRAVATED BA TTERY THAT MR . BRYANT WAS AC CUSED OF COMMITTING WHILE IN CUSTODY. THAT CASE, I D O NOT KNOW WHAT HAPPENED TO THAT CASE.

WAS IT PENDING AT THE T IME OF THE RETRIAL?

IT WAS NOT.

WELL , YOU DIDN'T HAVE AN EVIDENTIARY HE ARING ON THIS ISSUE .

NO , YOUR HONOR.

WHAT DID YOU ALLEGE? IN OTHER WO RDS, WHAT DID YOU ALLEGE IN YOUR MOTION , THAT WAS AVAILABLE FOR COUNSEL TO DEMONSTRATE TO THE TRIAL COURT THAT WOULD HAVE CONVINCED THE TRIAL COURTNOT TO HAVE THE DEFENDANT SHACKLED?

I ALLEGED I N THE MOTION , THE POSTCONVICTION MOTION THAT, TRIAL COUNSEL COULDHAVE BROUGHT IN VARIOUS WITNESSES REGARDING MR . BRYANT'S CON DUCT IN THE LAST S IX YEARS AFTER THAT FIRST TRIAL.MR . , THE TRIAL COUNSEL COULDHAVE, ALSO

WHAT WOULD THE WITNESSES HAVE SAID?

THE WITNESSES WOULD HAVE TESTIFIED .

WHAT DID THE EMOTIONAL EDGE THAT WITNESSES WOULD HAVE TESTIFIED?

AS TO HIS GOOD BEHAVIOR , AND GOOD DE MEANOR. MATTER OF FACT WITH THIS ISSUE

GOOD BEHAVIOR UNDER WHAT CIRCUMSTANCES? FOR INSTANCE , IF HE HAD HAD THIRTY COURT APPEARANCES , OKAY , AND HE HAD COME TO COURT, HAD BEEN IN COURT FOR SEVERAL HOURS , THIRTY DIFFERENT TIMES OR SOMETHING , WITHOUT SHACKLES SHACKLES, AND HIS DEMEANOR , WERE THERE ANY ALLEGATIONS LIKE THAT, THAT IS THAT , IN THE INTERVENING SIX YEARS , JUDGE , HE HAS CLEANED UP HIS ACT BECAUSE HE HAS COME TO COURT , AND WE HAVE HAD ALL KINDS OF MOTIONS TO SUPPRESS AND ALL KINDS OF PROCEEDINGS , BUT HIS CONDUCT HAS ALWAYS BEEN IMPECCABLE .

THAT IS TRUE.WE DID ALLEGE THAT HE HAD SEVERAL PRE TRIAL HEARINGS REGARDING A MOTION TO SUPPRESS AND THE MOTION ON THE COMPETENCY. MR. BRYANT'S CONDUCT WAS FINE DURING THOSE HEARINGS, AND WE DID ALLEGE THAT, THAT DURING THE PRETRIAL HEARINGS

DURING ALL THOSE THINGS , THAT HE WAS NOT SHACKLED , BUT THAT HIS CONDUCT WAS FINE?

HE WAS SHACKLED. HIS LEGS WERE SHACKLED.

THEY WERE SHACKLED.

YES. JUST BECAUSE, IT DOESN'T SAY THAT IN THE RECORD. I AM ASSUMING , I DID NOT HAVE CONTACT WITH MR. BRYANT AT THAT TIME. I AM ASSUMING THAT HIS LEGS WERE SHACKLED , ONLY BECAUSE IT IS CUSTOMARY IN PALM BEACH COUNTY THAT ANYONE CONVICTED OF FIRST-DEGREE MURDER, ANYONE THAT IS DEEMED TO BE VIOLENT, THEY ARE SHACKLED WHEN THEY ARE BROUGHT INTO THE COURTROOM. THE RECORD DOES NOT REFLECT WHETHER HE WAS ACTUALLY SHACKLED OR NOT. I AM JUST ASSUMING THAT HE WAS SHACKLED BECAUSE THAT IS THE CUSTOM IN THE TRIAL COURTS IN PALM BEACH COUNTY, TO HAVE SOMEONE THAT HAS BEEN CONVICTED , TO BE SHACKLED. AS LONG AS THEIR LEGS ARE SHACKLED NOT THEIR ARMS.

IF YOU WANT TO TOUCH ON THOSE COUPLE OF OTHER ISSUES, I NOTICE THAT YOUR TIME , SO

YES, IF I COULD. I ALSO ALLEGE IN THE POSTCONVICTION MOTION THAT THE TRIAL COUNSEL COULD HAVE SUBMITTED SOME KIND OF FACTUAL FINDINGS REGARDING THE OPERATION OF THE STUN BELT. I BELIEVE THAT THERE WAS SOME ISSUE REGARDING THE STUN BELT VERSUS THE SHACKLING, AND TRIAL COUNSEL COULD HAVE ADDRESSED ISSUES SUCH AS THE CRITERIA FOR TRIGGERING THE BELT AND THE POSSIBILITY

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL. I DON'T KNOW IF YOU WANTED TO TOUCH ON OTHER ISSUES THAT YOU SAID YOU WERE GOING TO TOUCH ON.

YES .

CHIEF JUSTICE: I KNOW YOU WANT TO SAVE SOME TIME.

THANK YOU , YOUR HONOR. YES. I WILL ALSO TOUCH ON THE ISSUE REGARDING TRIAL COUNSEL'S CONDUCT WITH CONFESSION. MR. BRYANT IS ALLEGING THAT TRIAL COUNSEL WAS INEFFECTIVE FOR THEIR FAILURE TO BE SUCCESSFUL, ACTUALLY, WITH THE CONFESSION ISSUE. THERE WAS NO FALSE CONFESSION EXPERT THAT REVIEWED THE CONFESSION. THERE WAS NO

FALSE CONFESSION EXPERT THAT WAS CALLED DURING THE EVIDENTIARY HEARING , IF THE JUDGE WOULD HAVE GRANTED AN EVIDENTIARY HEARING.

IS THAT SOMETHING THAT IS NORMALLY DONE, WHEN PEOPLE ALLEGE THAT THEIR CONFESSION WAS NOT VOLUNTARY , DID THEY BRING IN A FALSE CONFESSION EXPERT?

WELL , HERE THE CONFESSION IS CRUCIAL, BECAUSE THIS WAS THE ONLY PIECE OF EVIDENCE THAT WAS LINKING MR . BRYANT TO THE CRIME. THERE WAS NO

THERE WASN'T ANY WITNESS , PEOPLE HE HAD TALKED TO ABOUT, I THOUGHT THERE WERE SEVERAL PEOPLE , AND THAT I SHOW THEM TO HIM , THAT SAID THAT HE TOLD THEM WHAT HE HAD DONE .

NONE OF THOSE WITNESSES TESTIFIED.THERE WERE FOUR, I CALL THEM THE FOUR UNRELIABLES. THERE WERE FOUR PEOPLE WHO CAME TO THE DETECTIVE AND SAID BY RON BRYANT COMMITTED THIS CRIME. NONE OF THOSE PEOPLE TESTIFIED TESTIFIED AT THE MOTION TO SUPPRESS THE CONFESSION NOR DID THEY TESTIFY AT TRIAL. THERE WAS A CODEFENDANT. HE DID NOT TESTIFY AT TRIAL. THERE WERE TWO OTHER PEOPLE AT THE STORE , MRS. ANDREAS WELL AS TWO OTHER PERSONS IN THE BACK . THERE WAS NOTHING LINKING MR . BRYANT TO THE CRIME.

IN YOUR POST CONVICTION MOTION, DO YOU ALLEGE THAT YOU HAVE NOW HIRED A FALSE CONFESSION EXPERT , AND THE FALSE CONFESSION EXPERT WOULD TESTIFY THAT THIS WAS, IN FACT, A FALSE CONFESSION?

THERE WAS A FALSE CONFESSION EXPERT THAT COULD HAVE BEEN USED, IF I WOULD HAVE CALLED MR . DUBINER AT THE EVIDENTIARY HEARING

LET ME CLARIFY IF YOU DIDN'T UNDERSTAND MY QUESTION, DID YOU ALLEGE IN THE POSTCONVICTION MOTION THAT YOU HAD NOW OBTAINED A FALSE CONFESSION EXPERT , AND THE FALSE CONFESSION EXPERT WOULD TESTIFY THAT THIS WAS, IN FACT, A FALSE CONFESSION?

NO , YOUR HONOR. WHAT I HAD ALLEGED IS THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CALL THIS FALSE CONFESSION EXPERT.

DON'T YOU HAVE TO ALLEGE SOME PREJUDICE IN THE MOTION AS WELL, AND DON'T YOU HAVE TO SHOW PREJUDICE BY SAYING COUNSEL SHOULD HAVE PRESENTED THIS KIND OF EXPERT. WE NOW HAVE THIS KIND OF EXPERT, AND THE EXPERT WOULD HAVE PROVIDED SOME DAY TESTIMONY FAVORABLE TO THE DEFENDANT.DON 'T YOU HAVE TO ALLEGE THAT IN THE MOTION?

THAT WOULD HAVE BEEN PREFERABLE. I WOULD HAVE BEEN ABLE TO PRODUCE RICHARD OSHEA FROM CALIFORNIA WHO WOULD HAVE TESTIFIED AT THE EVIDENTIARY HEARING.

ISN'T THAT ONE THING TO SAY I KNOW AN EXPERT THAT I CAN CALL, ISN'T THAT DIFFERENT THAN SAYING LATER WE DISCOVERED THAT THE DEFENDANT HAD BRAIN DAMAGE? A GOOD LAWYER SHOULD HAVE , THE WAY THAT YOU WOULD TREAT THAT WOULD SAY THAT WE NOW KNOW THE DEFENDANT DOES HAVE BRAIN DAMAGE , AND THAT ANY COMPETENT LAWYER WHO HAD HIM EXAMINED BY A MENTAL HEALTH EXPERT, WOULD HAVE DISCOVERED HE HAD , SO HERE ARE YOU ABLE OR DID YOU ALLEGE THAT WE HAVE HAD A NANCY CONFESSION EXPERT A FALSE CONFESSION EXPERT LOOK AT THIS , AND THE FALSE CONFESSION EXPERT NOW - - CONFESSION EXPERT NOW SAYS THIS IS A CLASSIC CASE AFTER FALSE CONFESSION , AND WE ARE NOW PREPARED TO DO WHAT COUNSEL DIDN'T DO?

NO. I DID NOT ALLEGE THAT AND I SHOULD HAVE ALLEGED THAT.

WAS THERE A HUFF HEARING?

NO , THE RE WAS NOT.

O K AY. I THINK YOU ARE SIGNIFICANTLY IN YOUR REBUTTAL.

WAS THERE NO HUFF HEARING , BECAUSE THE PLEADINGS HAD BEEN STRICKEN ?

I REALLY CAN'T TELL THE COURT WHY THERE WAS NO HUFF HEARING. IT WAS TOUGH TO GET HEARINGS IN FRONT OF THIS COURT DURING THE TIME FRAME THAT WE HAD TO WORK WITH.

THE TRIAL COURT.

YOU ASKED FOR ONE. YOU ASKED FOR A HUFF HEARING.

NO. I DID NOT . I WILL RESERVE THE REST OF MY TIME. THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. LESLIE CAMP BELL WITH THE ATTORNEY GENERAL'S OFFICE.

MS. CAMPBELL , DURING THE RELEVANT TIME THAT THIS WAS GOING ON, WAS OUR NEW RULE IN PLACE , OR ARE WE OPERATING UNDER THE

YES , YOUR HONOR. NEW RULE . IT WAS A NEW RULE CASE.

SO SHOULDN'T THERE HAVE BEEN SOMETHING LIKE A HUFF HEARING?

THERE WAS A HUFF HEARING, YOUR HONOR. IT WAS ON JULY 3. CASE MANAGEMENT, HUFF HEARING, BUT WE HAD ONE .

WELL , WHAT DO YOU MEAN CASE MANAGEMENT , HUFF HEARING? WHAT HAPPENED AT THIS HEARING THAT YOU COULD CONSIDER IT A HUFF HEARING?

WE WENT THROUGH EACH CLAIM , YOUR HONOR , AND WE MADE OUR, THE STATE MADE ARGUMENT AS TO WHETHER THE CLAIM WAS LEGALLY INSUFFICIENT, PROCEDURALLY BARRED OR REFUTED FROM THE RECORD. WE HAD A FULL , WHAT THE COURT WOULD CALL A HUFF HEARING, AND WHAT IS NOW CODIFIED AS A CASE MANAGEMENT .

IN OTHER WORDS A HEARING TO DETERMINE WHETHER OR NOT , WHETHER THERE WAS AN EVIDENTIARY HEARING GOING TO BE NEEDED TO RESOLVE THE ISSUE.

THAT IS CORRECT , YOUR HONOR. WE HAD A FULL CASE MANAGEMENT, HUFF HEARING.

EXCUSE ME. I WANT TO GET BACK , BECAUSE I INTERRUPTED , WE WERE JUST ASKING QUESTIONS AT THE SAMETIME. I WOULD LIKE TO GET BACK TO JUSTICE CAN'T PLEASE.

THANK YOU. TO JUSTICE CANTERO PLEASE.

THANK YOU. I AM CONCERNED ABOUT THE FIRST ISSUE. IS THE STATE ARGUING ON APPEAL THAT THE PROCEDURES THAT WERE USED TO STRIKE AND THEN PREVENT AN AMENDMENT OF THIS POSTCONVICTION MOTION, IS THE TYPE OF PROCEDURES THAT WE NORMALLY CONDONE , WHICH SEEMS TO ME , TO BE A GOTCHA KIND OF THING THAT HAPPENS HERE. THEY HAVE HAPPENED HERE. THEY STRUCK THE INITIAL MOTION RATHER THAN GIVING LEAVE TO AMEND, AND THEN AFTER THE PERIOD EXPIRED, NO, SIR, I AM SORRY. WE DON'T HAVE JURISDICTION OVER IT? DON'T WE REGULARLY SAY YOU SHOULD ALLOW THE AMENDMENT OF THESE PLEADINGS AND HAVE THEM ATTEMPT TO COMPLY WITH THE RULE, BEFORE YOU GO AHEAD AND DISMISS IT?

YOUR HONOR , WHEN THIS PARTICULAR RULE WAS ENACTED IN 2 001 , NOT EN ACTED BUT PUT INTO PLACE IN 2 001 , THE COURT'S CONCERN WAS THE TIME D ELAY AND THE WAY THAT THE 3.851 CASE S WERE LAG ING IN THE TRIAL COURT, SO C ERTAIN R ULES WERE PUT IN PLACE, INORDER TO MAKE SURE THAT THE PLEADING WAS F I LED WITHIN ONE YEAR THAT , IT WAS FULLY PLED, AND THAT IS UNDER 3.851.

BUT IN EV ERY OTHER TYPE OF CASE , IF SOMETHING IS NOT F ULLY PLED, WE GRANT LEAVE TO AMEND TO FULLY PLEAD IT , EXCEPT IN A DEATH-PENALTY CASE?

WELL , THERE ARE CE RTAIN THINGS THAT GO INTO THECONSIDERATION. THE STATE NEEDS A FULLY PLED, AND THE COURT , MORE IMPORTANTLY , NEEDS A FULLY PLED MOTION , IN ORDER T O MAKE A DETERMIN ATION WHETHER OR NOT TO GRANT A HEARING OR NOT.

I ABSOLUTELY AGREE , SO WHY DOESN'T THE JUDGE JUST SAY I AM GOING TO DISMISS THIS MOTION WITH LE AVE TO FILE AN AMENDED MOTION THAT COMPLIES WITH THE RULE S?

BECAUSE THIS MOTION WAS STRICKEN A FTER THE ONE YEAR AND, IN FACT , AFTER , AFTER THE 30-DAY EXTENSION HAD BEEN, HAD EXPI RED.

MY UNDERSTANDING THAT THEFIRST TIME THE JUDGE STRUCK IT, IT WAS WITHIN THE TIME PERIOD. IT WASN'T STRICKEN FOR UNHAD TIMELINESS. IT WAS STICK FOR UNTIMELINESS. IT WAS STRICKEN FOR FAILURE TO PLEAD.

IT WAS STRICKEN

IT WAS FILED WITHIN THE PERIOD.

IT WAS FILED WITHIN THE PERIOD.

SO IT WAS FILED WITHIN THE PERIOD. SO THERE IS NO TIMELINESS ISSUE, SO ALL OF THESE CONCERNS ABOUT HAVING THINGS FILED WITHIN A YEAR DID NOT APPLY , BECAUSE IT WAS TIMELY. WITH THE EXTENSIO N THAT WE GRANTED, WHY DID N'T THE COURT WHEN IT STRU CK THE MOTION BECAUSE YOU DIDN'T TAMPA CO PY OF THE SENTENCING OR WHATEVER IT IS.

IT WAS MORE THAN THAT , YOUR HONOR. IT WAS MUCH MORE.

FOR WHATEVER IT WAS , WHY DIDN'T THE COURT JUST SAY GO BACK AND GET IT RIGHT, AT LEAST ONE TIME . IN CIVIL CASES WE GI VE YOU TWO OR THREE TIMES BEF ORE IT IS DISMISSED WITH PREJUDICE.

EVEN IF WE HAD DONE THAT, YOUR HONOR, WE K NOW WHAT WOULD HAVE EVEN IF HE HAD DON E THAT, YOUR HONOR , WE KNOW WHAT WOULD HAVE BEEN FILED WITH THE AMENDMENT.

THAT IS NOT THE PO INT . THE POINT THAT WE ARE GOINGTO HAVE AN OPINION FROM OUR COURT CONDONING STRIKE AGOMOTION WITHOUT LEAVE TO AMEND.IS THAT WHAT YOU WANT AND IT IS FINE , JUST STRIKE IT WITHOUT LEAV E TO AMEND?

I THINK IN THIS PARTICULAR CASE, YE S, THE DEFENDANT NEEDS TO PLEAD THE MOTION FULLY, WHICH IS WHAT THIS COURT HAS REQUIRED.THIS COURT HAS GOTTEN AWAY AND HAS SAID WE DO NOT WANT SHELL MOTIONS , WHICH IF YOU LOOK AT THIS , IT IS IN ESSENCE A SHELL MOTION WITH A LITTLE LAW. THAT IS WHAT IN MOTION WAS. E ACH CLAIM WAS CONCLUSIONARY PLED. THERE WERE NO F ACTS. THE STATE IN RESPONDING, HAD TO MORE OR LESS LAY OUT EXACTLY WHAT THE DEFENDANT WAS ATTEMPTING TO SAY .

WELL , I THOUGHT THAT THE DEFENDANT WAS GIVEN THE OPPORTUNITY TO AMEND. WHERE DID

THE AMENDED MOTION COME FROM THEN? IT WAS FILED , AS I UNDERSTAND, IN MA RC H OF '03. THE DEFENDANT FILED AN AMENDED MOTION. WAS THAT WITH PERMISSION OF THE COURT OR NOT?

IT WAS WITH PERM ISSION OF THE COURT. MAYBE IT WOULD BE HELPFUL, IF I JUST DID A QUICK PROCEDURAL OUTLINE. IN NOVEMBER OF , EXCUSE ME , NOVEMBER OF '02, NOV EMBER 12, '02, THE INITIAL MOTION WAS SUPPOSED TO BE FILED. IT WASN'T FILED THEN BUT AN EXTENSION WAS GIVEN UN TIL DECEMBER 13 OF THAT Y EAR. THE MOTION WAS STRICKEN ON THE 19 th OF DE CEMBER , AND AN ORDER WAS RE NDERED , A W RITTEN ORDER WAS RENDERED ON THE 3 0 th OF DECEMBER. IT WAS NOT UNTIL JANUARY 16 OF '03 , THAT MR . BRYANT MOVED TO E ITH ER SUPPLEMENT OR AMEND HIS INITIAL MOTION.

AND DID HE, WAS THE SUPPLEMENT INCLUDED IN THERE, THE AMENDMENT , OR WAS IT JUST A MOTION? WAS IT A MOTION WITH THE AME NDED

NO , IT WAS NOT , YOURHONOR.IT WAS JUST MOTION TO SUPPLEMENT OR AMEND , AND THEN IN FEBRUARY , JUDGE WINET HAD A HE ARING ON IT AND DECID ED THAT , YES , THE STATE WAS CORRECT, THE RE WAS NOT HING TO AMEND BECAUSE THE MOTION WAS STRICKEN , AND THAT THE PROPER PROCEDUREWOULD HAVE BEEN BECAUSE THERE IS NO PE NDING MOTION, WOULD HAVE BEEN TO COME BACK TO THIS COURT AND GET ANOTHER EXTENSION OF TIME. HOWEVER , HE FELT THAT IT WOULD HAVE BEEN A , IT WOULD HAVE BEEN JUST AS EASY FOR THE TRIAL COURT TO GIVE THAT ADDITIONAL TIME TO AMEND. HOWEVER , THAT WAS BEYOND WHAT THE RULE SAYS. HE WAS BEYOND HIS JURISDICTION TO DID THAT. THIS - - TO DO. THAT COURT TOOK AWAY THAT RIGHT FROM THE TRIAL COURT AND PLACED BA CK IN THIS COURT'S HA NDS, IN ORDER

HE ALLOWED AN AMENDMENT EVEN THOUGH IT WAS BEYOND THE TIME.

THAT IS CORRECT.

THE STATE , LET ME ASK YOU , THE STATE, THOUGH , KNOWS THAT THIS IT IS THIS COURT THAT IS THERE TO G RANT THE AMENDMENT.I GUESS WHAT WE ARE ALL GETTING TO IS THAT THIS RULE WAS MEANT TO TRIAL T O WASMEANT TO TRY TO EXPE DITE POSTCONVICTION PROCEEDINGS, AND THE FACT THAT THIS CASE IS UP HE RE AND BEING AR GUED ON ITS, I GU ESS ON THE MERITS IN PART, SHOWS THAT AT LEAST SOMETHING IS WORKING.THERE WERE HEARINGS AND G OING ALON G, BUT THE PURPOSE WAS NOT TO PLAY GOT CHA GAME , AND YOU KNOW , IF WE HAVE GOT , IT WENT FROM JUDGE MOUNTS, WHO HAD THE CASE IN DECE MBER '02.

HE RETIRED, YOUR HONOR .

HE RETIRED , SO JUDGE WINET , YOU KNOW, THES E ARE T RIAL JUDGES THAT ARE TR YING TO DO THE BEST THIS THEY CAN. WHY ISN'T THE STATE THERE HELPING TO GET THESE CASES TO HEARING, R ATH ER THAN TRYING TO YOU KNOW , PUT A REGISTRY COUNSEL IN A SITUATION WHERE SHE MA YBE DIDN'T UNDERSTAND WHERE SHE WAS SUPPOS ED TO ASK FOR THE EXTENSION?

WELL , YOUR HO NOR , I WOULD HAVE TO GO BEYOND THE REC ORD AS TO WHAT DISCUSSIONS I HAD WITH REGISTRY COUNSEL.

BUT YOU KNOW WE D ON'T HAVE CLAIMS OF INEFFECTIVE ASSISTANCE OF REGI STRY COUNSEL.

THAT IS CORRECT.

SO WE TRY TO GET THIS RIGHT SO THAT WE CAN GET THESE CASES HEARD ON THEIR MERITS.

IF YOUR HONOR WOULD LI KEME TO DISCLOSE WHAT I HAVE SAID TO REGISTRY COUNSEL , I WOULD BE MORE THAN HAPPY TO DO SO. IN ANY CASE THERE, IS NO GOTCHA TACT IC. THE STATE WAS ME RELY ASKING FOR MR . BRYANT TO COM PLY WITH THE RULE AND GIVE A F ULLY PLED MOTION, WHICH COULD BE RULED UPON BY THE TRIAL COURT .

SO WHY DIDN'T T HE STATESAY THAT AT THE FIRST MOTION , INSTEAD OF SAYING , JUDGE , YOU SHOULD STRIKE THIS MOTION. SAY , JUDGE , YOU SHOULD DISMISS THIS WITH LEAVE TO AMEND SO T HAT WE CAN PROPERLY RESPOND TO IT.

WHAT WE SAID THERE WAS THAT IT SHOULD BE STRICKEN BECAUSE IT WASN'T PROP ERLY PLED HARKS THAT IT DIDN'T HAVE CERTAIN ATTACHMENTS TO IT , WHICH WE ONLY HAD IN THERE BECAUSE IT DIDN'T COMPLY AS PART OF THE RULE, B UT THE MAIN FOCUS WAS THAT IT DIDN'T HAVE THE FACTUAL BASIS, AND IT DIDN'T HAVE INDIVIDUALLY PLED CLAIMS. IT WAS ALL INCLUDES AREA. WE TOLD THE IT WAS ALL CONCLUSIONARY. WE TOLD THE COURT AT THAT FIRST HEARING THAT IT SHOULD BE STRICKEN, THAT THE REME DY WOULD BE TO GET A N EXTENSION OF TIME FROM T HIS COURT TO PROPERLY PLEAD THIS. THAT WAS SAID BACK IN DECEMBER. NOTHING WAS DONE UNTIL JANUARY, AND THEN OF COURSE THE AMENDMENT, W HICH IS VIRTUALLY THE SAME AS WHAT WAS FILED IN NOV EMBER , WAS THE AMENDMENT THAT WE ARE WOR KING ON. AND IN FACT , THE TRIAL COURT, WHEN , IN FEBRUARY WHEN THE TRIAL COURT G A VE THE ADDITIONAL TIME TO AMEND , DIDN'T SAY , O H, THIS WASN'T STRICKEN, THIS WAS STRICKEN IMPROPERLY. THE TRIAL COURT MERELY ALLOWED THE AMENDMENT .

DO YOU WANT TO ADDRESSTHE SHACKLING ISSU E.

I CAN ADDRESS THE SHACKLING ISSUE. I HAVE TO MAKE A FEW FACTUAL CORRECTIONS. NUMBER ONE, M R. BRYANT WAS SHACKLED AT ALL PRETRIAL HEARINGS AFTER HIS INITIAL CHAIR-THROWING INCIDENT, AND THAT YOU CAN SEE FROM THE RECORD. AT ONE POINT IN THE SUPPRESSION MOTION , HE ASKED TO HAVE ONE HAND R E LEASED SO HE COULD WRITE, SO WE KNOW HE WAS SHACKLED AT THAT TIME. ALSO, THE AGGRAVATED BA TTERY WAS PENDING DURING THE RETRIAL , AND THAT WAS AN ISSUE THAT WAS DISC USSED WITH JUDGE MOUNTS AT THE RETRIAL AND , A LSO , WAS A MATTER THAT WAS DISCUSSED WITH THIS COURT ON DI RECT APPEAL .

WAS THERE AN AGGRAVATED ASSAULT AND AGGRAVATED BATTERY OR AGGRAVATED ASSAULT?

AGGRAVATED BATTERY AND IBELIEVE IT WAS BROUGHT DO WN TO AN AGGRAVATED ASSAULT.

WOULD YOU ADDRESS THE ISSUE, WAS THE FALSE CONFESSION EXPERT , WAS THAT SOMETHING THAT WAS PLED IN THE POSTCONVICTION MOTION?

NO T IN THE MOTION. IT WAS DISCUSSED IN THE HUFF HEARING THAT, A FALSE CONFESSION EXPERT SHOULD HAVE BEEN FO UND OR SHOULD HAVE BEEN PRESENTED. HOW EVER , A N AME WAS NOT GIVEN, WHAT THAT EXPERT WOULD TESTIFY TO , NOTHING LIKE THAT WAS OFFERED.

WELL , THE JUDGE DIDN'T MAKE ANY SPECIFIC REFERENCE TO THAT CLAIM , IN THE ORDER DEN YING POST-CONVICTIONRELIEF.

NO, BECAUSE THE WH OLE C LAIM , AS FAR AS A CONFESSION WAS CONCERNED , WAS REALLY FOCUSED A S TO WHETHER OR NOT IT WAS PRESERVED FOR APPEAL AND THE TRIAL COURT FOUND THAT IT HAD BEEN PRES ERVED FOR APPEAL. THERE WERE TWO CONFESSION MOTIONS, ONE IN THE FIRST TRIAL, THEN INCORPORATED INTO THE SE COND TRIAL 'SSUPPRESSION MOTION.

THAT IS A DIFFERENCE AS TO WHETHER IT IS PROCEDURAL BARRED BECAUSE THE ISSUE OF CONFESSION WAS PROPERLY PRESERVED , WHICH WOULD THEN G ET US IN TO THE OTHER

QUESTION, WHY WASN'T IT RAISED ON APPEAL, BUT, SECOND, IF COUNSEL WAS AT ALL DEFICIENT IN HOW HE ARGUED THE CONFESSION ISSUE, AND, AGAIN, WE HAVE, I HAVE NOT SEEN A FALSE CONFESSION EXPERT TESTIFYING IN ANY OF THESE CASES, SO I DON'T KNOW IF THIS IS EVEN SOMETHING THAT IS PROPERLY ALLOWED, BUT THAT IS DIFFERENT. THAT WOULDN'T, IF COUNSEL WAS DEFICIENT

THERE ARE NO FACTS. WE DON'T KNOW WHY MR. BRYANT IS NOW CLAIMING THAT HIS CONFESSION IS FALSE. WE DON'T KNOW WHAT THIS EXPERT WOULD TESTIFY TO. I MEAN, THIS IS, TODAY IS THE FIRST TIME THAT WE HEARD THAT IT WAS DR. OF SHE THAT MR. BRYANT WAS CONSIDERING. THERE IS REALLY NOTHING TO RESPOND TO. NOW, AS FAR AS WHAT HE MIGHT BE ABLE TO RESPOND TO AND THIS MAY HELP THE COURT, AS JUSTICE QUINCE WAS ALLOWING TO EARLIER, MR. - - AS JUSTICE QUINCE WAS ALLOWING TO EARLIER, MR. BRYANT TESTIFIED TO A GUN BEING PLACED TO HIS HEAD AT ONE POINT DURING THE CONFESSION AND ALSO TESTIFIED THAT HIS MOTHER WAS BROUGHT IN, IN EXCHANGE FOR A STATEMENT. BOTH OF THOSE GO MORE TOWARDS THE VOLUNTARINESS OF HIS CONFESSION, NOT WHETHER OR NOT THAT CONFESSION IS FALSE. THEREFORE, THERE ARE NO FACTS THAT ARE OFFERED TO THE TRIAL COURT, IN THE POSTCONVICTION MOTION, TO SUGGEST THAT COUNSEL WAS INEFFECTIVE OR DEFICIENT IN ANY WAY.

WHAT ABOUT ON THE APPELLATE POINTS THAT I DON'T THINK MS. KOTZEN GOT, TO BUT I WAS CONCERNED ABOUT FAILURE TO RAISE, AT LEAST IT SEEMED LIKE AN ARGUABLE POINT CONCERNING THE AVOID-ARREST AGGRAVATOR, AND SECOND OF ALL, ON WHAT WAS RAISED ABOUT, THAT THE CONFESSION WAS IMPROPERLY ALLOWED INTO EVIDENCE, THAT IT SHOULD HAVE BEEN SUPPRESSED? WHY, WAS APPELLATE COUNSEL DEFICIENT IN EITHER OF THOSE REGARDS, RESPECTS?

WITH REGARD TO THE, BECAUSE MY TIME IS GETTING SHORT, LET ME JUST GO RIGHT TO THE PREJUDICE PORTION OF THE INEFFECTIVENESS OF APPELLATE COUNSEL WITH REGARD TO THE AVOID ARREST. THIS COURT, ON DIRECT APPEAL, CONSIDERED WHETHER OR NOT THE SENT WAS PROPORTIONAL, AND IN DOING SO, SAID MR. BRYANT IS RAISING THE ISSUE THAT HIS KILLING OF MR. ANDRE WAS MERELY A ROBBERY GONE AROUND. THEN THE COURT SAID WE HAVE REJECTED THAT IN THE PAST AND WE HAVE ALSO AFFIRMED A DEATH SENTENCE WHERE WE ONLY HAVE TWO AGGRAVATORS, THE FELONY MURDER AGGRAVATOR AND THE PRIOR VIOLENT FELONY, AND IN THIS PARTICULAR CASE, THE PRIOR VIOLENT FELONY WAS A ROBBERY, ANOTHER ARMED ROBBERY, A AGGRAVATED ASSAULT WITH A MASK, AND A MASK WAS USED IN THIS CASE, A SEXUAL BATTERY. SO THIS COURT HAS ALREADY MADE A DETERMINATION THAT, EVEN WITHOUT THE AGGRAVATED BATTERY, THE SENTENCE WOULD BE PROPORTIONAL.

WITHOUT THE AVOID ARREST.

WITHOUT THE AVOID ARREST, THE SENTENCE WOULD BE PROPORTIONAL.

AS I RECALL, THERE WERE NO STATUTORY MITIGATORS?

NO STATUTORY MITIGATORS. ONE WAS OFFERED WHICH WAS AGE AND THAT WAS REJECTED, AND THERE WAS ONE NONSTATUTORY MITIGATOR OF REMORSE, WHICH WAS GIVEN VERY LITTLE WEIGHT, AND IF YOU LOOK AT THE CASE IN THAT LIGHT, CERTAINLY THE SENTENCE WOULD HAVE BEEN AFFIRMED

HE WAIVED THE PENALTY PHASE?

NO. HE DIDN'T WAIVE THE PENALTY PHASE. HE WAIVED THE PENALTY-PHASE JURY. HE HAD A FULL PENALTY PHASE.

DO YOU AGREE THAT THE AVOID-ARREST AGGRAVATOR HERE , IS PRETTY FLIMS Y.

IT IS NOT THE STRONGEST OF AGGRAVATORS .

WHAT ABOUT ON THE CONFESSION?

ON THE CONFESSION ISSUE, YOUR HONOR.

ISN'T THERE A REAL QUESTION AS TO WHETHER THE INITIAL ARREST WAS LEGAL OR NOT?

NO, YOUR HONOR. THERE WERE FOUR OR FIVE WITNESSES, ACTUALLY , ALL FRIENDS , AND FRIENDS OF MR . BRYANT WHO TESTIFIED TO FACTS THAT ONLY THE DEFENDANT WOULD KNOW , SUCH AS THE BUCKET OF FISH BEING KNOCKED OVER, WHERE MR . ANDRE AND MR . BRYANT FIRST MET , THE SHOTS THAT WERE FIRED , THAT IT WAS A HAITIAN OWNER IN A MARKET THAT WAS KILLED. MR. BRYANT CAME BACK ON THE NIGHT AND IMMEDIATELY CONFESSED TO HIS GIRLFRIEND , CHERYL EVANS , CLEARLY THESE WITNESSES WHO ALL CAME FORWARD AND GAVE SWORN STATEMENTS TO THE POLICE , THEY ARE NOT UNKNOWN WITNESSES. THEY ARE NOT SOMEBODY WHO JUST CALLS UP ON A PHONE AND SAYS THERE IS A DRUG DEAL GOING ON DOWN THE STREET , AND THE POLICE HAPPEN TO ARRIVE. THE POLICE KNEW THAT HAPPEN TO ARRIVE. THE POLICE KNEW THAT A CRIME HAD TAKEN PLACE. THEY HAD EVIDENCE THAT THEY COULD CORROBORATE AGAINST WHAT THESE WITNESSES ARE SAYING, AND THEN THEY HAD THE CITIZEN INFORMANTS , THENAMED WITNESSES WHO HAD GIVEN SWORN STATEMENTS. CLEARLY THERE WAS PROBABLE CAUSE FOR THE ARREST. NOW, WITH RESPECT TO THE OTHER ISSUE THAT WAS BROUGHT UP AT TRIAL, AT THE SECOND TRIAL , WHICH WAS WHETHER OR NOT MR . BRYANT 'S CONFESSION WAS VOLUNTARY , BECAUSE HIS MOTHER WAS BROUGHT TO THE INTERVIEW ROOM ALONG WITH HIS FAMILY. THAT ISSUE CLEARLY , THE TRIAL COURT HAD SUFFICIENT EVIDENCE TO SUPPORT ITS FINDING THAT THE CONFESSION WAS VOLUNTARY. THE POLICE OFFICERS TESTIFIED THAT IT WAS MR . BRYANT WHO FIRST SAID , AFTER MR. BRYANT HAD HEARD THE STATEMENT BY DAMIEN REMY WHICH RELATED MR . BRYANT 'S STATEMENTS, THE DEFENDANT SAID TO THE POLICE OFFICERS , DO YOU THINK I AM GUILTY , AND THE POLICE OFFICERS RESPONDED THAT THEY THOUGHT HE WAS, AND HE SAID, THEN , WELL , LET ME SEE MY MOTHER , AND I WILL TELL YOU WHAT HAPPENED AFTERWARDS. SO THE POLICE OFFICERS ACCOMMODATED HIM. THEY BROUGHT HIS MOTHER IN . SHE VISITED WITH FAMILY , AND THERE WERE CHILDREN THERE AND OTHER FAMILY MEMBERS. THEY BROUGHT HIM FOOD , MR . BRYANT FOOD. THEY SPOKE FOR 30-TO- 60 MINUTES . AFTERWARDS MR. BRYANT THEN GAVE A TAPED STATEMENT IN THAT STATEMENT, HE CONFIRMED THAT HE KNEW HE DID NOT HAVE TO SAY ANYTHING , THAT HE COULD HAVE GONE STRAIGHT TO JAIL AND STRAIGHT TO TRIAL WITHOUT SAYING A WORD. HE ALSO SAID THAT HE WAS NOT PROMISED ANYTHING AND THERE WERE NO THREATS MADE, SO THE TRIAL COURT WAS WELL WITHIN ITS DISCRETION TO FIND THAT THIS STATEMENT WAS VOLUNTARY . SO AS FAR AS NOT BRINGING IT UP ON APPEAL , CLEARLY THERE IS NO MERIT TO THE CLAIM THAT

HOW MANY ISSUES WERE RAISED ON APPEAL?

SIX. SEVEN. EXCUSE ME. SEVEN. THE SHACKLING ISSUE , WHICH THIS COURT FOUND JUDGE MOUNTS SHOULD HAVE HAD A NEVIDENTIARY HEARING. HOWEVER , HE DIDN'T. BUT SUCH WAS HARMLESS , BECAUSE JUDGE MOUNTS WAS THE ONE WHO WITNESSED MR . BRYANT THROW A 26-POUND CHAIR IN THE AIR TOWARDS THE PROSECUTOR AND TOWARDS THE JURY. ALSO KNEW ABOUT A BOOK-THROWING INCIDENT THAT HAPPENED BEFORE AND KNEW ABOUT THE ONGOING AGGRAVATED BATTERY THAT OCCURRED AFTER THE FIRST TRIAL BUT BEFORE THE RESENTENCING. ALSO THAT ELECTROCUTION WAS CRUEL AND UNUSUAL AND THEN THREE ISSUES ON WHETHER THE MITIGATION THAT WAS OFFERED SHOULD HAVE BEEN FOUND.

SO NOTHING ATTACKING THE CONFESSION.

NO.THERE WAS NOTHING ATTACKINGTHE CONFESSION OR THE AVOID-ARREST AGGRAVATOR.

WHO WAS THE APPE LLATE COUNSEL?

MR . WILLINSKI. AND , A LSO , THE COMPETENCY AND PROPORTIONAL ITY . UNLESS THE COURT HAS ANY OTHER QUESTIONS , I WOULD ASK THE COURT TO AF FIRM AND RELY ON MY BRIEF FOR ANY OTHER ARGUMENTS. THANK YOU.

TO COR RECT MY MISSTATEMENT, THERE WAS A CASE MANAGEMENT HEARING IN JULY , BEFORE THE TRIAL COURT. I BELIEVE IT WAS JUDGE BROWN THEN DEN IED POSTCONVICTION MOTION.

THAT IS SOMEWHAT SIGNIFICANT, BECAUSE THAT GAVE THE WHOLE IDEA OF THIS CASE MANA GEMENT CONFERENCE , H UFF HEARIN G, WAS TO ALLOW COUNSEL THE OPPORTUNITY TO , REALLY, F LESH OUT IF THERE WERE , YOU KNOW, MAYBE THE PLEADING WAS NOT QUITE AS SPECIFIC BUT IT GA VE, WOULD GIVE YOU A CHANCE TO SAY , NO , I HAVE A SPECIFIC EXPERT , AND THIS IS WHAT THIS EXPERT WILL SAY, AND THIS IS HOW IT RELATES TO THE CASE , AND I AM HAVING A HARD TIME UNDERSTANDING WHY , WHAT DID Y OU SAY ABOUT IT AT THE TIME OF THE CASE MANAGEMENT CONFERENCE?

I DID INDICATE THAT THERE WAS A FALSE CONFESSION EXPERT THAT WOULD BE AVAILABLE TO TESTIFY AT AN EVIDENTIARY HEARING.

BUT YOU HAD NEVER ACTUALLY TALKED TO THIS P ERSON AND HAD THIS PE RSON GO OVER THE CONFESSION.

I DID TALK T O THIS, THAT PERSON, B UT I DID NOT SEND HIM ANY OF THE DO CUMENTS. I WAS WAITING TO SEE IF I COULD GET AN EVIDENTIARY HEARING .

WHAT MS. CAMPBELL IS SAY ING IS THAT, REALLY , HOW, WHAT IS IT A BOUT , EVEN THE FACTS SURR OUNDING THE CONFESSION THAT WOULD SHOW THAT IT IS A FALSE CONFESSION ?

IT WOULD BE ARGUED THAT, BECAUSE I T WAS , I T IS TERMED A TYPICAL FALSE CONFESSION, THE FACT THAT THE DEFE NDANT SAID, WELL , W E STRUGGLED FORTHE GUN. OFTEN IN FALSE CONFESSIONS THE DEFENDANT THEN COMES ANDSAYS IT WASN'T FIRST-DEGREE MURDER. IT WAS FELONY MURDER.WHAT HAPPENED WAS THAT THIS PER SON CAME AND TRIED TO TAKE MY GUN FOR ME AND WE STRUGGLED FOR THE GUN N ALOT OF FALSE CONFESSION CASES, THAT IS TYPICAL OF WHAT IT IS.

IS THAT WHAT YOU ARGUED IN THE AMENDED MOTION?

I DIDN'T ARGUE IT VERY WELL IN THE AMENDED MOTION. I TOUCHED ON IT , BUT I COULDHAVE DO NE A BETTER J OB.

HOW OLD IS MR . BRYANT OR HOW OLD WAS HE AT THE TIME OF THE CONFESSION?

24.

IS THERE ANYTHING ABOUT HIS MENTAL STATE , AS FAR AS WHETHER HE IS OF A SUBSTANDARD IQ OR INTELLIGENCE , ANYTHING ELSE THAT WOULD BE SOME OF THE INDICIA OF INDIVIDUALS THAT MIGHT TEND TO CONFESS TO CRIMES THEY DID NOT COMMIT?

YES. THERE WAS A COMPETENCY HEARING , AND THERE WAS A DOCTOR UPH ELD WHO WAS A FORENSIC NEUROPSYCHOLOGIST, WHO INDICATE ADD THAT MR . BRYANT HAD SIGNIFICANT NEUROLOGICAL PROBLEMS, DUE TO CHILDHOOD MENINGITIS , SOME BLOOD L OSS, AND THERE WAS A BL OW TO HIS HEAD THATYOU COULD ACTUALLY SEE , DR . PELL TESTIFIED THAT YOU

COULD SEE THE INDENTATION FROM THE PIPE WHERE HIS BRAIN HAD BEEN SOFTENED.

WAS THAT PUT ON AS MITIGATION EVIDENCE?

THAT WAS PUT ON NOT AS MITIGATION EVIDENCE. THAT WAS PUT ON AS FAR AS THE COMPETENCY HEARING, AS FAR AS MR. BRYANT, WHETHER HE WAS COMPETENT TO STAND TRIAL.

WHAT WAS PUT ON IN THE PENALTY PHASE ABOUT, FOR MITIGATION?

THERE WAS SOME INFORMATION REGARDING MR. BRYANT'S CHILDHOOD. THERE WAS PUT ON, SOME INFORMATION REGARDING HIS CHILDHOOD ILLNESSES AND A LOT OF ABUSE BY HIS FAMILY.

THE DOCTOR PELL DID NOT TEST SNI.

SHE DID NOT COME BACK AND TESTIFY.

AND YOU HAVEN'T ALLEGED HERE THAT THERE WAS ANY DEFICIENCY IN THE PENALTY PHASE PERFORMANCE BY TRIAL COUNSEL.

NO. I HAVE NOT. JUST TO CLEAR UP ONE OR TWO MATTERS REGARDING THE INITIAL POSTCONVICTION MOTION AND THE STRIKING OF IT, WHAT HAPPENED WAS THAT THE INITIAL POSTCONVICTION MOTION WAS FILED ON NOVEMBER 21. THEN THE STATE STRUCK THE, MOVED TO STRIKE THAT INITIAL POSTCONVICTION MOTION ON A DAY THAT THE POSTCONVICTION MOTION WAS DUE. AND THEREFORE THE HEARING WAS THE DAY AFTER, ON DECEMBER 12, AND THEN THE TRIAL COURT ASKED FOR US TO COME BACK ON DECEMBER 19, AND THEN THE TRIAL COURT DID NOT ISSUE AN ORDER REGARDING STRIKING THAT MOTION, ALTHOUGH HE DID SAY AT THE HEARING ON THE 19th, YES, I AM STRIKING THAT MOTION.

BUT BY HAVING, WHEN THE JUDGE ENDED UP IN JULY HAVING THE STATUS CONFERENCE, AND, IN TERMS OF, IF WE ACCEPT, NOW, THAT THE TRIAL JUDGE HAS RULED ON THE MERITS, WHAT IS, YOU KNOW, IF IT WAS DONE WRONG BUT NOW ON THE MERITS, THERE REALLY SHOULD HAVE BEEN A SUMMARY DENIAL, I GUESS THIS JUST GOES TO THE ISSUE OF DID IT AFFECT THE HEARING? I MEAN, WAS THE MAJORITY OF THE HEARING ABOUT WHETHER THERE WAS SUBJECT MATTER OVER THERE, AS OPPOSED TO ON WHETHER THERE SHOULD BE AN EVIDENTIARY HEARING?

NO. THE JUDGE ALLOWED US TO ARGUE WHAT WAS IN DISPUTE AS FAR AS FACTUAL ISSUES, WHETHER WE NEED AN EVIDENTIARY HEARING AND WHAT WERE THE LEGAL ISSUES, SO SHE DID ALLOW US TO

THEN SHE GAVE AN ALTERNATIVE ORDER REGARDING OTHER ISSUES.

YES, SHE DID, YOUR HONOR. I DID WANT TO ADDRESS WHAT THIS COURT BROUGHT UP AS FAR AS THE INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL REGARDING THE SUPPRESSION ISSUE AND THE AGGRAVATOR OF AVOID ARREST. I WOULD ARGUE THAT THIS COURT SHOULD REMAND, IF YOUR HONORS FIND THAT THE AVOID-ARREST AGGRAVATOR WAS IMPROPERLY APPLIED, REMAND TO THE TRIAL COURT FOR ANOTHER SENTENCING HEARING. ALSO REGARDING THE INEFFECTIVE ASSISTANCE OF COUNSEL, APPELLATE COUNSEL WITH THE CONFESSION ISSUE, THAT IS A CRUCIAL ISSUE, BECAUSE OF THE FACT THAT, WITHOUT, BUT FOR THAT CONFESSION, THERE WOULD BE NOTHING LINKING MR. BRYANT TO THE CRIME, AND THEREFORE IT WAS DEFICIENT PERFORMANCE BY APPELLATE COUNSEL, FOR FAILING TO RAISE THIS ON DIRECT APPEAL. THANK YOU VERY MUCH.

CHIEF JUSTICE: THE COURT WILL BE IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING. MARCH HARMARCH PLEASE RISE.

MARSHAL: PLEASE RISE.