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## **Ronnie Johnson v. State of Florida**

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 S AVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. YOU M AY BE SE ATED.

CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT.THE FI RST CASE WE HAVE GOT IS JOHN SON VERSUS STATE , ANDI SE E WE HAVE TWO CA SES W ITH A COMBINED EVIDENTIARY HEARING YE T WE HAVE THEM FOR TWO SEP ARATE O RA L ARGUMENTS AND WE HAVE B OTH COUNSEL AR E THE SAME , AND I KNOW MANY , M ANY IS SUES ARE IDENTICAL , SO MY SUGG ESTION I S GOING TO BE THAT , RATHER THAN TREAT THEM TOTA LLY SEPARATELY , THAT YOU CAN, G IVING YOU CERTAINLY MORE THAN THE 20 MINUTES , BUT TO GO A HEAD AND , REALLY, ADDRESS BOTH CASES , SINCE THE COURT I S FAMILIAR WITH THE FACTS , AND SEE IF WE CAN'T SORT OF REDUCE THE TIME FO R THE TWO TOGETHER.IS THAT ALL RIGHT?

CERTAINLY , YOUR HO NOR. Y ES.

CHIEF JUSTICE: YES .

I DON'T WANT TO BE , MA DAM JUSTICE, DOES THAT MEAN MY LIGHT IS STILL GOING TO GO ON AF TER 2 0 M INUTES?

CHIEF JU STICE: IF IT DOES , DON'T WORRY AB OUT IT.

THANK YOU. MAY IT PLEASE THE COURT. MY NAME IS CHARLES WHITE. I AM FROM MIAMI. I AM THE REGISTRY ATTORNEY FOR RONNIE JOHNSON IN BOTH OF THESE CASES. AS THE COURT IS WELL AWARE , THERE ARE TWO DEATH SENTENCES THAT WERE IMPOSE ED , B ASED UPON TWO MURDERS THAT TOOK PLACE, B ACK IN MARCH AND APRIL OF 19 89 , AND MR . JOHNSON WAS REPRESENTED AT TRIAL BY THE SAME ATTORNEY , A MAN BY THE NAME OF RAYMOND BODINI, AND THE IS SUES THAT ARE MO STLY SIMILAR , HAVE TO DO WITH THE PENALTY P HASE D EATH SENTE NCE TYPE ISS UES , W HICH WERE COMMON AS TO BOTH CASES , AND THEN THERE WERE S OME ISSUES THAT P E RTAIN MOSTLY TO THE GUILT PH ASE OF THE TR IAL , W HICH G O T O E ACH INDIVIDUAL CASE , AND THERE W AS, ALSO , A CONFESSION THAT WAS INTRODUCED INTO EVIDENCE IN BOTH CASES , THAT WAS SUBJECT OF A MO TION TO SUPPRESS, AND IF THE COURT WOULD RECA LL, WHEN THE CASE WAS ON DIRECT AP PEAL , THAT WAS CONSOLIDATED , ALSO, FOR ORAL ARGUMENT PURPOSES, AND THE OPINI ONS CAME OUT ADDRESSING EACH O P INION , ADDRESSING THE SUPPRESSION ISSUES AT THAT MOMENT.

ARE YOU GOING TO ARGUE THE ISSUE INVOLVING THE SUBSTITUTION OF COUNSEL? THAT IS A ISSUE THAT IS COMMON 234 IN BOTH OF THESE, CORRECT?

YES -- COMMON IN B OTH OF THESE , CORRECT?

YES.

AND ARE YOU PLANING TO ARGUE THAT TODAY?

YES. IN MANY ISSUES, INVOLVING THE INEFFECT IVENESS OF COUNSEL AND ALSO THE

SUBSTITUTION OF COUNSEL THAT WERE RAISED, ONLY ONE AND IT WAS LIMITED TO ONE, RESULTED IN AN EVIDENTIARY HEARING, AND THAT WAS THE FAILURE, COMPLETE FAILURE OF MR. BODINI TO HAVE PRESENTED ANY OR BASICALLY LEARNED ABOUT HIS CLIENT'S MENTAL CONDITION, PRIOR TO THE TRIAL.

DIDN'T MR. BODINI ARGUE THAT HE, IN FACT, HAD MR. JOHNSON EXAMINED BY A MENTAL HEALTH EXPERT, AND THE EXPERT BASICALLY TOLD HIM THAT THERE WAS NOTHING THERE THAT, OF A MITIGATING NATURE?

WELL, THERE WAS A LITTLE BIT MORE THAN THAT. OKAY. WHAT HAPPENED WAS THAT THERE WAS APPROXIMATELY 31 MONTHS, PRIOR TO, BETWEEN THE TIME OF MR. JOHNSON'S INDICTMENT AND THE FIRST TRIAL. DURING THE JURY SELECTION OF THE FIRST TRIAL, AND THERE IS NO RECORD THAT I HAVE SEEN, GOING THROUGH THE VOLUMES OF BOXES THAT I HAVE IN THIS CASE THAT, SHOWS THAT, BETWEEN, IN THAT 31 MONTHS THAT, MR. BODINI FILED ANY MOTIONS WITH THE COURT, ASKING THEM TO APPOINT EXPERTS. DURING THE JURY SELECTION PROCESS, HE TOLD THE JUDGE THAT HE WAS UNABLE TO FIND SOMEBODY WHO WOULD BE WILLING TO EVALUATE MR. JOHNSON FOR PURPOSES OF THE PENALTY PHASE.

YOUR CLIENT DID TESTIFY IN THE EVIDENTIARY HEARING, THAT CORRECT?

THAT IS CORRECT.

AND HE TESTIFIED THAT A MENTAL HEALTH EXPERT DID INTERVIEW HIM, DID HE NOT?

YES. HE SAID THAT --

SO AS FAR AS THERE BEING SOME KIND OF AN INTERVIEW BY A MENTAL HEALTH EXPERT, HASN'T THAT BEEN CONCEDED BY YOUR CLIENT? NOW, WHAT IT WAS AND WHEN IT WAS AND ALL OF THAT, MAY BE UP IN THE AIR, BUT WOULD YOU AGREE THAT THE EVIDENCE IS UNDISPUTED. OFF YES. THE EVIDENCE IS CLEAR THAT THERE WAS ONE, THAT DR. LLOYD MILLER DID INTERVIEW MR. JOHNSON. I THINK IT IS IMPORTANT, THOUGH, WHEN HE INTERVIEWED, AND I THINK IT IS IMPORTANT WHAT HE WAS TOLD. MR. BODINI DIDN'T GIVE HIM ANY BACKGROUND INFORMATION, DIDN'T GIVE HIM ANY INDICATION AT ALL OF WHAT TO LOOK FOR.

DID THE LAWYER SAY THAT HE PAID THAT EXPERT HIMSELF, OUT OF HIS OWN POCKET?

NO. I THINK HE DID IT AS A FAVOR.

HE SAID THE MENTAL HEALTH EXPERT DID THE EXAMINATION AS A FAVOR TO THE LAUFER?

RIGHT. HE DIDN'T BOTH ER TO SUBMIT A BILL, BECAUSE HE DIDN'T THINK HE WOULD GET PAID. THIS WAS A SITUATION, I AM NOT REALLY QUITE SURE WHY MR. BODINI WOULD WAIT UNTIL THE TRIAL TO BRING THIS UP TO THE COURT, BUT APPARENTLY THERE WAS A PROBLEM WITH GETTING EXPERTS PAID.

WHAT SIGNIFICANT DIFFERENCES BETWEEN THE REPORT BY THE LAWYER, SAYS THAT THE MENTAL HEALTH EXPERT THAT HE SENT OUT, REALLY, WASN'T ABLE TO COME UP WITH ANYTHING, WHAT DRAMATICALLY WAS DIFFERENT ABOUT THE EXPERT THAT YOU HAD TESTIFY AT THE EVIDENTIARY HEARING, TO SHOW THAT THERE WAS SOME BLOCKBUSTER THING OUT THERE IN THIS MAN'S BACKGROUND OR MENTAL HEALTH HISTORY, THAT WOULD HAVE MADE SOME DRAMATIC DIFFERENCE IN THIS TRIAL? WOULD YOU PINPOINT THAT FOR US.

YES. DR. MARY HABER, WHO DID EVALUATE MR. JOHNSON EXTENSIVELY AT MY REQUEST, DID FIND THAT HE, FELT AFTER GOING THROUGH ALL THIS BACKGROUND INFORMATION AND INTERVIEWING HIM AND HIS FAMILY, THAT HE HAD SUFFERED FROM ADJUSTMENT DISORDERS,

WHICH WERE PERSONALITY DISORDERS THAT WERE BASED UPON THE CIRCUMSTANCES --

THESE ARE PROBABLY SOFT TERMS, ARE THEY NOT? WHAT IS THE MOST DRAMATIC DIAGNOSIS OR FINDING THAT DR. HABER MADE, THAT SHOWS THERE WAS SOMETHING OUT THERE, LIKE BRAIN DAMAGE OR MENTAL RETARDATION OR WAS THERE SOMETHING VERY DRAMATIC OUT THERE?

SHE DID NOT FIND THAT THERE WAS MENTAL RETARDATION OR BRAIN DAMAGE. SHE DID FIND, HOWEVER, THAT HE HAD ENGAGED, HE HAD ENGAGED IN EXTREME BEHAVIOR, THAT HIS JUDGMENT WAS IMPAIRED AS A RESULT OF THESE ADJUSTMENT DISORDERS THAT WERE CAUSED BY VARIOUS TRAGEDIES IN HIS LIFE AND ABOUT THE REPRESSED HOMOSEXUALITY THAT HE WAS NOT ADJUSTING TO PROPERLY.

IF I UNDERSTAND IT CORRECTLY, HE DIDN'T DISCLOSE HIS HOMOSEXUALITY TO ANYBODY, UNTIL HE WAS ON DEATH ROW OR IN PRISON FOR SEVERAL YEARS, THAT CORRECT?

HE DID NOT VOLUNTEER IT TO ANYBODY UNTIL THAT POINT, BUT THERE WAS NO EVIDENCE THAT HE WAS EVER ASKED. MR. BODINI DID NOT ENGAGE IN AN IN-DEPTH BACKGROUND INVESTIGATION. HE DID NOT HAVE ANYBODY REALLY GO IN THERE AND TALK TO HIM FOR MORE THAN 15 MINUTES. THAT WAS THE PROBLEM WITH MITIGATION.

LEAVING ASIDE FOCUSING ON PREJUDICE, THIS WAS A MURDER-FOR-HIRE CASE, CORRECT?

THAT'S CORRECT.

SO HE IS NOT TALKING ABOUT SOME, A HOMOSEXUAL MURDER OR SOMETHING, SOME ACT OF PASSION. IT WAS A COLD, DISPASSIONATE SHOOTING. AND I AM HAVING TROUBLE SEEING WHERE THE PREJUDICE IS, GIVEN THE NATURE OF THE MITIGATION PRESENTED, AND GIVEN THAT THERE WAS, I THINK IT WAS DR. HABER'S OPINION THAT THERE WAS SOME SEXUAL DEVIANCY AND HOW WOULD THE RESULTS BE COMPROMISED, HAD THE JURY NOT HEARD FROM EXPERTS OR SOMEONE LIKE THEM, NOT BEING PUT ON IN THE PENALTY PHASE?

I THINK THE ABILITY TO EXERCISE JUDGMENT. HIS NEED FOR STATUS. I THINK DR. HABER WAS VERY CLEAR UPON THAT, THAT HE SORT OF OVERCOMPENSATED FOR WHAT HE FELT WAS THE SHAME AND HUMILIATION OF HIS SEXUAL ORIENTATION, AND THE THINGS HE WAS DOING IN ORDER TO SATISFY THAT. THAT MADE HIM MORE SUSCEPTIBLE TO BEING ENTICED IN ORDER TO COME FORWARD AND COMMIT THESE CRIMES, THESE MURDERS FOR HIRE.

NOW, I KNOW YOU ARE SAYING THIS TO US WITH A STRAIGHT FACE, BUT WE REVIEW DEATH PENALTY CASES ALL THE TIME, AND I AM JUST HAVING A HARD TIME SEEING HOW A JURY WOULD HAVE SEEN THAT AS BEING COMPELLING MITIGATION, GIVEN THE AGGRAVATORS IN THIS CASE, AND I GUESS IT IS JUST A JUDGMENT CALL, BUT THE JUDGE CERTAINLY DIDN'T THINK AND DID A VERY CAREFUL EVALUATION OF THIS MENTAL HEALTH MITIGATION, AND CAME TO THE SAME CONCLUSION ON THE DEFICIENCY OR PREJUDICE, I AM SORRY, ON THE PREJUDICE PRONG, DID THEY NOT?

WELL, THE THING IS THAT, BECAUSE OF THE TESTIMONY OF THE FAMILY MEMBERS, SOME OF THESE STRESSORS, THE TRAGEDIES IN HIS LIFE, THE DEATH OF HIS GRANDMOTHER, THE DEATH OF HIS CLOSE FRIEND, ALL OF THESE DIFFERENT THINGS, MR. BODINI WAS TRYING TO FIT HIS CLIENT INTO THE EXTREME EMOTIONAL STRESS TUTORIAL MITIGATOR.

WHAT TROUBLES ME IS THAT THESE STRESSORS THAT DR. HABER IS TALKING ABOUT, ARE THE KINDS OF STRESSORS THAT MANY OF US GO THROUGH, FAMILY MEMBERS DYING, FRIENDS DYING, THOSE KINDS OF THINGS, AND SO WHAT ABOUT HIS MENTAL STATE MADE THOSE KINDS OF STRESSORS MORE STRESSFUL FOR HIM THAN FOR ANY OTHER PERSON? THAT IS THE CONNECTION I DON'T GET HERE.

DR. HABER SAID IT WAS A MIX OF THE DRUGS , THE HOME SEXUALITY -- THE HOME SEXUALITY , IT IS NOT A QUESTION OF BEING A DEVIANT , BUT HE JUST COULDN'T ADJUST TO IT RIGHT , PRIMARILY BECAUSE OF THE WORLD IN WHICH WE LIVE IN. THESE ARE THINGS THAT IS CAUSED HIM TO HAVE AN ADJUSTMENT DISORDER. HE WASN'T ABLE TO COPE WITH THESE THINGS, AND IT MADE HIM VULNERABLE, AND IT MADE HIM OPERATING UNDER EXTREME EMOTIONAL DISTRESS . I THINK THAT MR . BODINI , IN A SENSE , WAS ARGUING A RESULT OF THESE STRESSORS THAT HE SAW, AND HE UNDERSTOOD THEIR SIGNIFICANCE BUT DIDN'T HAVE --

EXTREME EMOTIONAL MENTAL DISTRESS , EXTREME . AN ADJUSTMENT DISORDER TYPICALLY GOES A WAY WITHIN SIX MONTHS, UNDER THE DSM-3 , CORRECT?

THAT CAN BE CASE , ALTHOUGH DR . HABER INDICATED THAT IT CAN CONTINUE UNTIL THE STRESSOR IS RELIEVED .

DID SHE TESTIFY AS TO ACTUALLY THE STATUTORY MITIGATOR OR ARE YOU ARGUING THE NONSTATUTORY MITIGATION?

BOTH. I MEAN, I AM ARGUING BOTH , BECAUSE THE STATUTORY MITIGATOR WAS SOMETHING THAT WAS PRESENTED.

DIDN'T SHE , HERSELF , STOP SHORT AND SAID THAT SHE DOUBTED THAT THIS WAS AN EXTREME , IN OTHER WORDS, IN TERMS , HELP US WITH THAT. THAT IS BEING CANDID ABOUT WHAT HER TESTIMONY WAS , THERE IS NO TESTIMONY FROM HER, HERE , THAT THESE TWO STATUTORY MENTAL MITIGATORS EXISTED IN HER OPINION , IS THERE?

NO, YOUR HONOR. THERE IS NO DIRECT TESTIMONY THAT SHE FELT THAT THIS WAS WHAT CAUSED HIM TO DO THIS. IT WAS NOT --

ORDINARILY WITH THE MENTAL HEALTH EXPERT IN A DEATH PENALTY PROCEEDING , THEY WILL BE VERY SPECIFIC , IF THEY BELIEVE THAT THOSE STATUTORY MITIGATORS EXIST , AND SHE STOPPED SHORT OF THAT, DID SHE NOT?

WELL , SHE STOPPED SHORT OF IT , BUT I DON'T THINK THAT IT WAS SOMETHING THAT YOU COULD SAY THAT THEY WOULDN'T AFFECT A JURY'S CONSIDERATION , NOT ONLY OF WHETHER --

HOW DO WE KNOW THAT HE WOULD HAVE EVEN DISCLOSED TO ANOTHER MENTAL HEALTH EXPERT , HIS HOMOSEXUALITY OR THESE THINGS, SINCE HE DIDN'T DISCLOSE IT UNTIL AFTER SEVERAL YEARS BEING IN PRISON? HOW DO WE KNOW THAT HE WOULD HAVE DISCLOSED IT?

I THINK THAT , DR . HABER BELIEVES, AND I THINK A LOT OF PSYCHOLOGISTS AND FORENSIC PSYCHOLOGISTS , BELIEVE THAT, WITH THE RIGHT TRAINING, YOU CAN BRING THINGS OUT IN PEOPLE. OBVIOUSLY THERE IS NO GUARANTEE 100 PERCENT THAT HE WOULD HAVE DISCLOSED IT , BUT I THINK IF HE WOULD HAVE HAD , IN THE TWO OR THREE YEARS THAT HE WAS PENDING TRIAL IN THESE CASES , SOMEBODY TO REALLY SIT DOWN AND TALK WITH HIM ABOUT WHAT WAS GOING ON --

LET ME ASK YOU A QUESTION. WHAT EVIDENCE OF HIS HOME SEXUALITY WAS PRESENTED , OTHER THAN HIS SELF REPORTING? DID HIS MOTHER TESTIFY TO HIS PROSTITUTING HIMSELF OUT AND USING MULTIPLE DRUGS?

NO. SHE DID NOT. HIS BROTHER DID TELL DR . HABER THAT HE HAD SEEN HIM DRESSED IN WOMEN'S CLOTHING SNEAKING OUT OF THE HOUSE IN THE MIDDLE OF THE NIGHT , AND THAT WAS SOMETHING THAT WAS NOT DISCUSSED DURING , BEFORE THE TRIAL , BUT IT WAS SOMETHING THAT DR. HABER DID RELY UPON , TO SHOW SOME CORROBORATION FOR HIS STATEMENTS THAT

HE WAS HOME SEX YUL -- HOME SEX YUL .

DO CTOR HABER DIDN'T INDICATE IT?

NO , BUT SHE BASED HER OPINION PARTLY ON WHAT THE BROTHER HAD TOLD HER.

THE POLICE RE PORTS AND THE HIRE FOR MURDER, ET C ETERA , D ID SHE HAVE THOSEREPORTS TO BE ABLE TO BALANCE HER OPINION?

THAT WAS A MATTER OF INTERESTING TESTIMONY DURING THE EVIDENTI ARY HEAR ING. SHE WAS GI VEN A MEMORANDUM , A DESCR IPTION OF WHAT HAD HAPPENED AND WHAT HE, WHAT, YOU KNOW, WHAT THE CASE WAS, AND THERE WAS SOME REPORTS THERE , BUT SHE DID NOT READ EVERY DEPOSITION. SHE DID NOT READ EVERY POLICE REPO RT. SHE DIDN'T THINK THAT , OTHER THAN THE BARE BO NES KNOWING, A S YOU HAVE EXPLAINED, THAT IT WAS A MURDER-FOR-HIRE, THAT THE FACTS OF THE CASE , REALLY , CONT AINED ANY INFORMATION THAT WOULD HAVE DISPUTED HER CONCLUSIONS AS FAR AS PERSONALITY.

THIS WAS TWO MURDERS FOR HIRE, CORRECT?

THAT'S CORRECT.

AND E AC H ONE, THE ONE MURDER WAS US ED AS AGGRAVATION IN THE OTH ER? IS THAT WHAT HAPPENED IN THIS CASE?

YES.

SO WE ARE FACED HERE, WITH A DEFE NDANT WHO WAS CONVICTED OF FIRST-DEGREE MURDER, H AD A PR IOR CONVICTION OF A FIRST-DEGREE MURDER , ALL FOR HIRE , FOR PECUNIARY GAIN , BASICALLY , AND BASICALLY NO REAL MENTAL HEALTH PRO BLEMS . THERE WAS NO PRIOR RECORDS OF ANY MENTAL HEALTH ISSUES , WERE THERE?

NO , NOT THAT WAS MADE A WARE FOR ANYBODY .

WERE N'T THERE ACTUALLY , WASN'T THERE, ALSO, AN ATTEMPTED MURDER ON MARSHAL KING THAT WAS ANOTHER MURDER-FOR-HIRE ?

THAT'S CORR ECT. THAT'S CORRECT. AND THAT WAS, ALSO , AN AGGRAVATOR THAT WAS PRESENTED AT THE TIME OF THE PENALTY PHASE.

LET ME ASK Y O U A DIFFERENT QUESTION, B EFORE YOU SIT DOWN , AND THAT IS , T HERE WERE TWO SEPARATE POSTCONVICTION MOTIONS FOR E AC H MURDER CASE , IS THAT CORRECT?

TH AT'S CORRECT.

ARE YOU CLAIMING , THAT I N O NE OF THE CASES , THAT THE TRIAL COURT FA ILED TO R ULE ON A N UMBER OF ISSUES THAT YOU RAISED IN THE MOTION

I AM NOT SURE, THE ORIGINAL TRIAL COURT?

KNOW THE TRIAL COURT IN THE POSTCONVICTION MOTIONS. YOU POINTED OUT IN THE ORIGINAL BRIEFING THAT THE JUDGE SAID HE WAS GOING TO RULE ON SOMETHING BUT L ATER , THERE WAS NO MENTION AFTER PARTICULAR ISSUE. I AM ASK ING IF YOU ARE MAKING A CLAIM HERE THAT THEJUDGE FAILED TO RULE ON A NUMBER OF ISSUES RA ISED IN ONE OF THE CASES.

THERE WAS AN ISSUE CONCERNING THE REFERRAL , WHERE I HAD ORIGINALLY PRESENTED A MOTION C ITING C ASES INVOLVING INTE RNS TRYING CASES, AND THE JUDGE C ITED THOSE

CASES, EVEN THOUGH THEY HAD BEEN DISCARDED .

LET ME BE MORE SPECIFIC, OKAY, BE CAUSE THE MOTIONS A PPEAR TO BE AM ENDED , AND IF I RECALL, ONE OF THE CASES, IT WE NT TO THE TRIAL COURT ON THE SE COND AMENDED MOTION FOR POST-CONVICTION R E LIEF . AND SO WHAT I AM ASKING YOU IS, ARE YOU MAKING ANY CLAIM THAT THE TRIAL COURT FAILED TO RULE ON THE ISSUES THAT YOU RAISED IN THE SECOND A MENDED MOTION? BUT INST EAD RULED ON AN EARLIER VER SION OF YOUR MOTION?

YES .

WELL , TELL ME WHAT YOU ARE CLAIMING. I SEEM TO BE HAVING DIFFICULTY.

I AM SO RRY .

COMMUNICATING MY CONC ERN . YOUR CLAIM HERE.

I THINK WHAT YOU ARE TALKING ABOUT IS WHAT I REFER TO AS THE ILLEGAL REFERRAL FROM MR . HUTTO.

THERE WAS ONE ISSUE?

THERE WAS ONE MA JO R ISSUE , WHERE HE USED AS THE BASIS FOR DENYIN G IT , THE ORIGINAL CASES THAT I USED TO BAC K THAT ISSUE UP , AND THEN I ABANDONED THOSE CASES AND FOUND OTHER CASES THAT HEDID NOT AD DRESS IN HIS ORDER. WE WERE DENIED AN EVIDENTIARY HEARING .

CHIEF JUSTICE: JUSTICE CANTERO HAS A QUESTION.

YOU WERE GOING TO ADDRESS ISSUE N UMBER TWO AND THE SUBSTITUTION OF COUNSEL. MY QUES TIONS ARE , NUMBER ONE, DID HE OBJECT TO THE SUBSTITUTION, AND NUMBER TWO , DID HE HAVE DI FFERENT COUNSEL ON APPEAL , AND ISN'T THIS SOMETHING THAT HE SHOULD HAVE RAISED ON AP PEAL FROM HIS CON VICTION?

THE AN SWER WAS THAT T HEREWAS NO , THERE WAS N EVER ANY COLLOQUY OR ANY OBJECTION THAT WAS MADE. THE COURT NEVER SEEM ED TO O B. NOBODY SEEMED TO BE CONCERNED THAT MR. BODINI SUDDENLY APPEARED ON BE HALF O F MR . HUTTO.

MY QUESTION IS , DID THE DEFENDANT OBJECT TO MR . B ODINI OR ANYBODY ELSE , THAT HE DID NOT WANT SUBSTITUTION OF COUNSEL , THAT HE WAS VERY CONTENT WITH HIS FIRST COUNSEL AND HE DIDN'T WANT HIM TO CHANGE. DID HE EVER EXPRESS THAT TO ANYBODY?

H E NEVER VOLUNTEERED THAT, NO.

DID HE HAVE DI FFERENT COUNSEL ON APPEAL IN CONVICTION?

YES.

AND IS THIS SOMETHING THAT SHOULD HAVE BEEN RAISED ON APPEAL FROM THE CONVICTION? ISN'T THAT A PROCEDURE --

I DON'T THINK THERE SHOULD HAVE BEEN FOR TWOREASONS. ONE IS THAT THE BE BEHIND THE -- IS THAT THE BEHIND THE SCENES ISSUE OF HOW THIS MATTER CAME ABOUT WITH REFERRAL IS NOT SOMETHING THAT WAS ON THE RECORD, AND THE SECOND REA SON IS THAT I DON'T THINK THAT WAS PART OF SYSTEM AT THAT TI ME, AND I THINK IT WAS ASKING A LOT FOR MR . LAPINSKI TO HAVE R AISED THAT ISSUE ON DIRECT DIRECT APPEAL.

IT WASN'T ON THE RECORD BECAUSE HE DIDN'T OBJECT , BUT ISN'T THE IMPROPER SUBSTITUTION OF COUNSEL -- THE IMPROPER SUBSTITUTION OF COUNSEL SOMETHING THAT SHOULD BE RAISED ON APPEAL , NOT SOMETHING FOR COLLATERAL RELIEF?

I DON'T THINK THAT THE VERY NAME THAT APPEARS AS SUBSTITUTION, WOULD BE PROPERLY BEFORE THE COURT , UNLESS THERE WAS SOME UNDERSTANDING OR REASON AS TO EXACTLY WHAT BROUGHT THAT ABOUT, WHICH WOULD HAVE TO HAPPEN DURING COLLATERAL PROCEEDINGS.

SO IT IS YOUR VIEW , YOU ARE NOT ASSERTING A PER SE REVERSAL, WITH REGARD TO SUBSTITUTION, BUT YOUR POSITION IS THAT THE SUBSTITUTION OR EXCHANGE SHOULD BE EXPLORED IN AN EVIDENTIARY HEARING?

THAT'S CORRECT.

AND WHAT WOULD BE THE NATURE OF THAT HEARING? FOR EXAMPLE WOULD THEY GO IN AND PRESENT TESTIMONY THAT MR. HUTTO WAS A FORMER CIRCUIT JUDGE AT THE END OF HIS CAREER AND MR . BODINI WAS A YOUNG UPCOMING LAWYER? WHAT WOULD BE THE NATURE? I AM TRYING TO UNDERSTAND WHAT KIND OF MINITRIAL WOULD YOU HAVE ON THIS ISSUE?

I THINK THE BUSINESS RELATIONSHIP BETWEEN MR . HUTTO AND MR . BODINI WOULD BE APPROPRIATELY EXPLORED. I THINK THE SPLIT OF FEES THAT WERE GOING TO BE RECEIVED.

WHAT WOULD THAT HAVE TO DO NECESSARILY, THOUGH, WITH THE MANNER IN WHICH THE ACCUSED WAS REPRESENTED IN THE CASE?

BECAUSE I THINK THAT YOU WERE ALREADY TALKING ABOUT \$40 AND \$50 AN HOUR FOR OUT OF COURT AND IN-COURT TIME AND NOW YOU ARE SPLITTING THAT ALMOST IN HALF. I THINK YOU ARE REALLY CREATING A CONFLICT HERE , WHEREFORE MR . HUTTO IT IS LIKE GRAVY. HE GETS HIS MONEY AND DOESN'T HAVE TO DO ANYTHING , AND HE GIVES THE CASE TO SOMEBODY THAT MAY NOT BE QUALIFIED , AND I THINK THAT HAS TO BE EXPLORED.

DIDN'T THE ISSUE GO BACK TO WHERE WE WOULD HAVE TO EXPLORE THAT MR . BODINI WAS INEFFECTIVE IN THE ASPECT OF REPRESENTATION, WHEN YOU HAVE RAISED SOME ISSUES WHERE HE , BUT THE VERY FACT OF THE REFERRAL , DOESN'T REALLY CHANGE WHETHER MR . BODINI IS OR IS NOT EFFECTIVE.

WELL , I THINK THAT THERE , AND I SUGGESTED THIS IN MY PLEADINGS , THAT THERE SHOULD BE A MIDDLE GROUND. THERE SHOULD BE , I MEAN, PRESUMABLY , THAT EITHER YOU COULD HAVE SOMEBODY WHO GETS A CASE AND REFERS IT TO THE NEXT ROY BLACK , AND THE PERSON IS BETTER REPRESENTED , BUT I THINK THAT THERE HAS TO BE SOME EVALUATION , SOME BALANCING OVER EXACTLY WHY THAT REFERRAL, WHETHER IT IS TO A SUPERIOR ATTORNEY OR TO AN ATTORNEY WITH LESS EXPERIENCE, AND IF IT IS GOING TO BE AN ATTORNEY OF LESS EXPERIENCE, THEN IT SHOULDN'T BE , IT SHOULDN'T BE ALLOWED, BECAUSE THE JUDGE IS SUPPOSED TO MAKE THE DETERMINATION , WHEN HE MAKES THE APPOINTMENT, THAT HE IS PROVIDING AN ATTORNEY WITH THE REQUISITE EXPERIENCE AND KNOWLEDGE TO BE ABLE TO PROPERLY DEFEND THE CASE.

DID YOU ALLEGE THAT IN YOUR MOTION , THAT IT WAS AN ATTORNEY WITH LESS EXPERIENCE OR COMPETENCE?

I BELIEVE I DID .

LET ME JUST MAKE SURE , RIGHT NOW SO YOU UNDERSTAND, THE LIGHT IS RED, WHICH JUST MEANS YOU HAVE USED 20 MINUTES. IS THAT WHAT IT MEANS ? SINCE WE ARE GOING TO GIVE YOU 30 MINUTES, NOW, YOU WOULD BE INTO YOUR REBUTTAL , BUT CONTINUE , BECAUSE I THINK

IF YOU TAKE AN OTHER COUPLE OF MINUTES, AND THEN YOU CAN SAVE THE REST FOR REBUTTAL.

I WOULD LIKE TO YOU ADDRESS THE ISSUE THAT YOU RAISED HERE , ABOUT , THE SUPPRESSION ISSUE , AND I AM NOT QUITE ASSURE I UNDERSTAND YOUR ARGUMENT ABOUT THE ADMINISTERING AN OATH MEANS THAT HE WAS COMPELLED TO MAKE THE STATEMENT THAT HE MADE.

YES. THE BRAN CASE GOES INTO GREAT DETAIL AS REGARDS THAT MOTION.

AS I UNDERSTAND , HE VOLUNTARILY WENT TO THE POLICE STATION , DID HE NOT , TO THE POLICE STATION AND MADE STATEMENTS, THAT CORRECT?

THAT'S CORRECT.

AND THEN WHAT EVER THIS OATH WAS THEN ADMINISTERED AT THE POINT WHERE HE WAS GOING TO, THEY WERE ACTUALLY GOING TO MAKE A RECORDING OF HIS STATEMENT. HE HAD ALREADY MADE HIS CONFESSION AT THAT POINT? BEFORE THAT ?

I RECALL , AND MY RECOLLECTION OF THE RECORD WAS THAT, WHEN HE WAS ADMINISTERED, BEFORE HE WAS ADMINISTERED HIS MIRANDA RIGHTS, HE WAS PUT UNDER OATH. I BELIEVE THAT IS WHAT HAPPENED.

WHEN HE FIRST GOT TO THE POLICE STATION.

RIGHT. THEY ADMINISTERED , THEY PUT HIM UNDER OATH , AND THEN THEY ADMINISTERED THE MIRANDA RIGHTS. THAT IS WHAT MY UNDERSTANDING OF WHAT THE RECORD WAS. IF, YOU KNOW , I MAY BE , THAT IS MY RECOLLECTION .

NOW, THE REST OF THE ISSUES THAT YOU HAVE RAISED FOR BOTH CASES , ALL WERE SUMMARILY DENIED , AND SO WHAT YOU WOULD ASK US TO DO FOR EACH OF THOSE ISSUES ISSEE IF THERE IS ANYTHING THAT HAS BEEN PLED THAT , REALLY , WOULD WARRANT AN EVIDENTIARY HEARING. IN YOUR FEW MINUTES REMAINING, IS THERE ANY ISSUE WHERE YOU THINK THAT YOU CAN REALLY POINT OUT TO US WHERE AN EVIDENTIARY HEARING WOULD PRODUCE SOMETHING DIFFERENT THAN JUST LOOKING AT THE RECORD TELLS US? AND YOU KNOW , ESPECIALLY SOME OF YOUR VOIR DIRE ISSUES, WHERE YOU TALK ABOUT CHALLENGES FOR CAUSE , BUT YET THERE IS REMAINING PREEMPTORY CHALLENGES , SO EVEN IF THE JUROR WAS SUCCESSFULLY CHALLENGED FOR CAUSE , THE STATE STILL COULD HAVE STRUCK A JUROR OR TWO , SO ANYTHING IN THOSE MANY ISSUES THAT YOU REALLY , STANDS OUT AS CRYING OUT FOR AN EVIDENTIARY HEARING?

I THINK THE RECORD AS A WHOLE, INDICATES THAT MR . BODINI WAS VERY DEFICIENT ON ALL DEATH PENALTY ISSUES , BUT I THINK WHERE HE WAS DEFICIENT THE MOST , OTHER THAN WHAT WE HAVE ALREADY DISCUSSED , HAS TO DO WITH THE DEATH QUALIFICATION PORTION OF VOIR DIRE. HE BASICALLY DID NOT PARTICIPATE IN THE QUESTIONING OF THE JURY ABOUT WHAT THEY FELT ABOUT THE DEATH PENALTY, IN TERMS OF PEOPLE WHO DO EXIST OUT THERE, AND WHO , YOU KNOW , HAVE TO BE IDENTIFIED BY ANY COMPETENT DEFENSE LAWYER WHO BELIEVE THAT DEATH IS ALWAYS THE PROPER PENALTY FOR ANY MURDER CASE , ANY FIRST-DEGREE MURDER CASE. NONE OF THOSE QUESTIONS WERE BROUGHT UP. IN ONE CASE, HE TALKED ABOUT EIGHT PAGES OF THE TRANSCRIPT, TALKING ABOUT COLORS AND HOW AGGRAVATORS ARE LIKE COLORS, AND IN THE SECOND CASE , THE LAWRENCE CASE, HE DIDN'T SAY ANYTHING AT ALL.

DIDN'T THE COURT ACTUALLY QUESTION THE JURORS ABOUT THEIR , WHETHER OR NOT THEY COULD, IN FACT , IMPOSE THE DEATH PENALTY , AND PERSONS WHO SAID THAT THEY WOULD IMPOSE IT, ALWAYS , BECAUSE OF THEIR BELIEF, WERE EXCUSED ?

I BELIEVE THAT, I RECALL , AND, AGAIN, IF THE RECORD IS DIFFERENT , BUT MY RECOLLECTION IS THAT I DON'T THINK ANYBODY WAS EXCUSED BECAUSE THEY BELIEVED THAT THE DEATH PENALTY SHOULD BE IMPOSED IN ALL INSTANCES. PEOPLE WERE EXCUSED BECAUSE THEY BELIEVED THAT THE DEATH PENALTY SHOULDN'T BE IMPOSED . I THINK THERE WAS A LOT OF PEOPLE WHO DIDN'T BELIEVE IN THE DEATH PENALTY , WHO WERE EXCUSED. I DON'T RECALL ANYONE --

SO THAT, BUT THE QUESTIONS WERE ASKED. I MEAN , AND I GUESS YOU HAVEN'T ANSWERED THE QUESTION, IS WHAT WOULD AN EVIDENTIARY HEARING PRODUCE , OTHER THAN OUR BEING ABLE TO LOOK AT THE TRANSCRIPT OF THE VOIR DIRE, TO SEE IF THIS WAS A DEFICIENTLY DEFICIENT VOIR DIRE , THAT WOULD RISE TO THE LEVEL OF A SIXTH AMENDMENT VIOLATION FOR YOUR CLIENT.

WELL , I THINK IT IS DEFICIENT, AND I THINK THAT THE QUESTION WOULD COME TO MR. BODINI AS TO WHY HE DIDN'T FEEL THAT, IN A DEATH-PENALTY CASE , THAT HE WOULD ASK ANY QUESTIONS AT ALL ABOUT THOSE JURORS WHO WOULD VOTE FOR DEATH, NO MATTER WHAT , AS LONG AS THE PERSON , DEFENDANT WAS CONVICTED EVER FIRST-DEGREE MURDER. THANK YOU. --

MAY IT PLEASE THE COURT. SANDRA JAGGARD ON BEHALF OF THE CASE. MAKE STARTING OFF WITH THE LAST QUESTION , THE STATE AND COURT ASKED ABOUT VIEWS OF THE DEATH PENALTY , BOTH FOR AND AGAINST AND MS. MOSE WAS SOMEONE THAT AUTOMATICALLY IDENTIFIED TO IMPOSE THE DEATH PENALTY AND WAS THEREAFTER EXCUSED FOR CAUSE, BASED UPON THE DEATH PENALTY , AND SO THOSE WERE QUESTIONS FOR CAUSE AND THAT IS THERE FOR NOT --

COULD YOU ANSWER THE QUESTIONS I HAVE , BECAUSE I SAW MORE THAN ONCE IN THE BRIEFING, A CLAIM THAT THE TRIAL JUDGE MAY NOT HAVE RULED IN ONE OF THE CASES. ON ALL OF THE ISSUES RAISED IN THE SECOND AMENDED MOTION , AND THAT INSTEAD HE APPEARED TO BE RULING ON THE MOTION IMMEDIATELY PRECEDING THE SECOND AMENDED MOTION , AND HELP ME WITH THAT. DO WE HAVE ANY KIND OF A PROBLEM HERE OF LOOSE ENDS THAT, PERHAPS , WE NEED TO ASK THE TRIAL JUDGE , TO BE CERTAIN THAT HE HAS RULED ON ALL OF THE ISSUES RAISED IN THE SECOND AMENDED MOTION?

THE CLAIM IS NOT THAT HE DID NOT RULE. THE CLAIM IS THAT HE RULED UNDER THE FIRST LEGAL THEORY ON THE CLAIM REGARDING SUBSTITUTION. AND NOT ON THE SECOND LEGAL THEORY OF THE CLAIM REGARDING SUBSTITUTION. BUT THE CLAIM REGARDING SUBSTITUTION, HAS NO MERIT. IT IS A STRICKLAND CLAIM. THERE WAS NEVER ANY PREJUDICE PLED. AND THERE WAS NOTHING TO HAVE AN EVIDENTIARY HEARING UNDER EITHER LEGAL THEORY , BUT THE CLAIM WAS RULED UPON. IT IS JUST A QUESTION OF WHICH LEGAL THEORY.

EXPLORE THIS ISSUE ABOUT THE SUBSTITUTION OF COUNSEL , FOR INSTANCE. THIS IS A TROUBLING ASPECT OF THE CASE THAT , WITHOUT ANY COURT ORDER THAT THE ORIGINAL LAWYER WHO WAS DISQUALIFIED FROM THE CASE , WHAT WERE THE CIRCUMSTANCES OF HIM COMING OFF THE CASE? ANOTHER CIRCUMSTANCES WERE THAT HE WAS APPOINTED AND HE REFERRED THE CASE TO MR . BODINI, WHO APPARENTLY WORKED WITH HIM. MR . BODINI HAD --

HELP ME WITH THAT, IN TERMS OF THE ABILITY OF AN APPOINTED LAWYER, NOW , TO JUST GIVE THE CASE TO SOMEBODY ELSE. AND I DON'T SEE ANY INDICATION OF IT IN THIS CASE, AT LEAST SUPERFICIALLY RIGHT NOW , BUT IT SEEMS LIKE THERE IS VERY SERIOUS POTENTIAL PROBLEMS THERE , IF ONE LAWYER , THE JUDGE SAYS , WELL , I AM GOING TO APPOINT THIS LAWYER. THE LAWYER HAS GOT 25 YEARS' EXPERIENCE IN CRIMINAL DEFENSE. HE HAS HANDLED A DOZEN DEATH PENALTY CASES , AND HE IS VERY HIGHLY REGARDED IN THE COMMUNITY OUT THERE, AND HE IS WILLING TO TAKE THE CASE , AND HE GETS APPOINTED, AND THEN HE SAYS , I DON'T WANT THIS CASE , AND I AM HIM GOING TO, THERE IS A YOUNG LAURIE KNOW IN THE SAME BUILDING OR ON THE SAME FLOOR. HE NEEDS THE WORK. ILL JUST GIVE THIS TO HIM -- I WILL

JUST GIVE THIS TO HIM , AND THAT IS WHAT HAPPENS. ISN'T THERE A SERIOUS PROBLEM WITH THAT?

AT THE TIME, NO , THERE WAS NOTHING ILLEGAL OR A PROBLEM WITH THAT, AND UNLESS YOU MEET THE BURDEN OF STRICKLAND , THEN THERE IS NO PROBLEM WITH THAT.

IF WE HAVE AN APPOINTMENT PROCESS , WHICH HOPEFULLY IS BASED ON A TRIAL JUDGE THINKING ABOUT HAVING A VERY WELL-QUALIFIED LAWYER REPRESENT A DEFENDANT IN A DEATH-PENALTY CASE , AND I , WHEN YOU SAY THERE IS NO PROBLEM WITH IT , I WOULD BEG TO DIFFER, THAT I SEE A VERY SERIOUS PROBLEM , IF THE TRIAL JUDGE NEVER HAS ANY INPUT IN THE SELECTION OF THIS LAWYER TO BE SURE THE LAWYER IS WELL-QUALIFIED , TO HANDLE SUCH A CASE , AND SO WHY IS THERE NO PROBLEM?

BECAUSE IN MORRIS VERSUS SLAPPY, THE UNITED STATES SUPREME COURT SAID THERE IS NO PROBLEM UNLESS YOU MEET THE BURDEN OF STRICKLAND. AT THIS POINT TODAY , YOU COULDN'T DO IT. THERE IS A STATUTE THAT FORBIDS IT , BUT AT THE TIME THIS CASE WAS BEING TRIED, THERE WAS NO PROBLEM WITH IT , AND THE DEFENDANT HAS NOT MET HIS VEHICLE LAND BURDEN . -- HIS STRICKLAND BURDEN.

WAS THERE ACTUALLY A SUBSTITUTION OR JUST AN ADDITION ?

WAS THERE A SUBSTITUTION?

THERE WAS NEVER A SUBSTITUTION .

DID MR . HUTT ACTUALLY WORK ON THE CASE ?

MR . HUTTO GOT THE CASE . MR. BODINI DID ALL OF THE WORK.

THERE IS ANOTHER ASSOCIATION, A CAR, ALSO. WHAT IS THE ASSOCIATION BETWEEN THOSE THREE ATTORNEYS?

MR . BODINI AND MS. CARR , ACCORDING TO THE MOTION , LEASED SPACE FROM MR . HUTTO. ACCORDING TO THE EVIDENTIARY HEARING , IT WAS KIND OF AN ASSOCIATE PARTNERSHIP RELATIONSHIP, AND THEY STILL DISCUSSED THINGS WITH MR . HUTTO.

SO IF WE LOOKED BACK AT THE WHOLE TRANSCRIPT, A JUDGE APPOINTS MR . HUTTO, AND I DON'T KNOW, I SEEM TO RECALL IN THE BRIEFS OR SOMEPLACE THAT, MR. HUTTO EVENTUALLY GOT CAUGHT UP IN OPERATION COURTROOM. IS THAT CORRECT OR NOT?

NO. MR. HUTTO WAS NOT CAUGHT UP IN OPERATION COURTROOM . THE SYSTEM OF DOING THIS AT THE TIME, DADE COUNTY JUDGES JUST PICKED ATTORNEYS AND APPOINTED THEM .

BUT MR . HUTTO, THEN , WE DON'T KNOW WHY , JUST STOPPED WORKING ON THE CASE, AND THE FIRST TIME MR . BODINI SHOWS UP , WITH ALL OF THE HEARINGS AND THE TRIAL , IS THERE EVER ANY INQUIRY BY THE TRIAL COURT , LIKE , WHERE IS MR . HUTTO OR , ANYTHING AT ALL?

NO , YOUR HONOR , AND THERE IS NO OBJECTION ABOUT -- THERE IS NO OBJECTION BY THE DEFENDANT TO MR . BODINI REPRESENTING HIM, BEGINNING AT THE ARRAIGNMENT.

SO AT THE VERY FIRST COURT APPEARANCE BY THE LAWYER, IT WAS MR . BODINI .

MR. BODINI . I DON'T RECALL WHETHER MR. HUTTO EVER SHOWED UP , BUT I KNOW FROM ARRAIGNMENT FORWARD, IT WAS MR . BODINI.

JUSTICE LEWIS .

THE UNDER CURRENT HERE FROM PRACTICING IN THE COMMUNITY, IS MR. HUTTON AS A FORMER CIRCUIT JUDGE, AND THERE WAS A RELATIONSHIP AND HE WAS GETTING THE CASES AND HE WAS LETTING OR BROKERING THOSE TO OTHER ATTORNEYS. IS THAT THE UNDER CURRENT OF WHAT WE ARE TALKING ABOUT?

YES.

BUT EVEN THOUGH WE HAVE THAT DISTASTEFUL TOP LAYER, WE STILL HAVE THE PREJUDICE, TO TRY DETERMINE WHETHER THERE WAS SOME PREJUDICE HERE. COUNSEL SAYS YOU REALLY HAVE IT ALL BUILT IN, BECAUSE WHAT IT AMOUNTS TO IS THIS DIVISION OF FEES, THAT YOU HAVE LAWYERS COMING IN, WORKING FOR LESS THAN ADEQUATE PAY TO DO THESE CASES, AND THAT LEADS TO INADEQUATE REPRESENTATION. THAT SEEMS TO BE THE THING. WHAT IS YOUR RESPONSE TO THAT KIND OF --

MY RESPONSE IS THAT IN MICKENS VERSUS TAYLOR, THE COURT SAID THAT THE AMOUNT OF FEES DOES NOT DIRECTLY REFLECT AMOUNT OF INTEREST THAT HE IS CLAIMING. THE CONFLICT OF INTEREST REPRESENTING MULTIPLE DEFENDANTS IN A SINGLE TRIAL. THAT DID NOT HAPPEN HERE.

SHOULD WE CHANGE OUR VIEW AS TO PREJUDICE AT ALL, AND LOOK AT THE CIRCUMSTANCES THAT LED TO THIS REPRESENTATION? SHOULD IT IN SOME WAY ALTER THE EVALUATION PROCESS IN ANY WAY AND IF NOT, WHY NOT?

NO, IT SHOULD NOT, BECAUSE THE U.S. SUPREME COURT IN MORRIS SAID YOU GO UNDER STRICKLAND, AND UNDER STRICKLAND THERE WAS NO PREJUDICE IN THIS CASE FOR ANY OF THE CLAIMS.

ON THE FIRST ISSUE, WHICH THERE WAS AN EVIDENTIARY HEARING ON, THE LAWYER WAS QUESTIONED ABOUT WHY HE DIDN'T DO CERTAIN THINGS AND DID OTHER THINGS, AND WAS THERE ANY CROSS-EXAMINATION OR DIRECT QUESTION ABOUT, I MEAN -- OR DIRECT EXAMINATION ABOUT, I MEAN, I DON'T THINK THERE WOULD BE ANYTHING TO RESTRICT THAT SUBJECT THAT HE DIDN'T DO AS MUCH BECAUSE HE WASN'T GETTING PAID AS MUCH. OR IS THERE ANYTHING LIKE THAT? I GUESS THERE WOULD BE NOTHING TO HAVE PREVENTED THAT LINE OF INQUIRY.

NOT THAT I AM AWARE OF, AND THERE CERTAINLY WASN'T ANY QUESTIONS ABOUT IT. THE ONLY ISSUE WAS HE HAD HIM EVALUATED. THE EVALUATION OCCURRED BETWEEN THE GUILT AND PENALTY PHASE IN THE LARK I KNOW TRIAL, WHICH IS -- IN THE LARKINS TRIAL, WHICH IS THE FIRST OF THE MURDERS TO GO TO TRIAL.

YOU HAD HIM EVALUATED WITH AN UNPAID EVALUATION, IS THAT CORRECT?

ACCORDING TO MR. BODINI, DR. MILLER AGREED TO DO THIS PRO BONO FOR HIM.

ISN'T THAT A SERIOUS ISSUE, ALL BY ITSELF? FIRST WE HAVE A LAWYER APPOINTED THAT IS ACTING NOW AS A BROKER THAT APPARENTLY GETS FEES BUT THEN HAS ANOTHER LAWYER GET A PART OF THE FEE, FOR ACTUALLY DOING THE WORK IN THE CASE. WE HAVE THE OTHER LAWYER, NOW, THAT IS GETTING SOME, I ASSUME LESSER FEE, SINCE WE HAVE A BROKER THAT IS ACTING AND GETTING THE MAIN FEE, AND THAT LESSER FEE LAWYER, NOW, INSTEAD OF HIRING OR HAVING THE COURT APPOINT SOMEBODY TO DO A MENTAL HEALTH EVALUATION, ACTUALLY HAS THIS EVALUATION DONE WHICH WE HAVE NO RECORD OF. WE HAVE NO REPORT OR ANYTHING LIKE THAT, AND IT IS DONE, DE SAY AS A FAVOR? IS THAT WHAT --

HE SAID -- DID HE SAY AS A FAVOR?

HE SAID IT WAS DONE AS FAVOR TO HIM. Y ES.

ISN'T , AREN'T SOME OF THESE THINGS STA RTING TO ADD UP TO S MELL A LI TTLE B IT OR TO G I VE A BAD O DOR TO WHAT WAS GOING ON IN DADE COUNTY AT THE TIME AND SPECIFICALLY IN THIS CASE?

NOT UNLESS YOU MEET THE STRICKLAND PREJUDICE PRONG AND THAT IS NOT MET IN THIS CASE.

DID HUTTO GET ANY FEE IN THIS CASE OR IN THESE CASES?

HE ALLEGES THAT HUTTO RECEIVED SOME MUST NOT IF I F ROM THE CASE.

SHOULD N'T WE KNOW? -- SOME MO NEY FROM THE CASE.

SHOULDN'T WE KNOW?

NO , BECAUSE YOU HAVE T O M EET THE STRICKLAND CASE AND MORRIS, AND IT WASN'T MET.

DOESN'T THE LAWYER AT SOME POINT , FILE A REQUEST FOR PA YMENT , AND SO WE SHOULD AT LEAST HAVE SOME K IND OF PLEADING TO THAT EFFECT, SHOWING WHAT HO URS WERE CLAIMED AND HOW MUCH THE COUNTY PAID FOR IT, CORRECT ? D O WE HAVE THAT IN THE RECORD?

I DON'T BELIEVE THAT MADE THE RECORD , YOUR HO NOR .

IN THE JUDGE'S ORDER DENYING THE MOTION FOR POST-CONVICTION RELIEF , HE SAID THAT MR . BODINI TESTIFIED , AND HE SAID MR . BODINI STAT ED THAT HE ASKED DR. MILL TORY EVALUATE THE DEFENDANT AS A FAVOR TO M, AS THE COUNTY HAD RE FUSED TO PAY FOR A SECOND F UL L PSYCHOLOGICAL EVALUATION. IS THERE ANYTHING IN THE RECORD THAT THERE WAS A PRIOR PSYCHOLOGICAL EVALUATION?

NO, YOUR HONOR.

WAS THAT A MISSTATEMENT BY THE TRIAL COURT?

YES. IT WAS JUST DR . MILL ER, AND AT THE TIME THERE WAS A PROBLEM WITH THE COUNTY , PEOPLE BE WI LLING WILLING TO WORK FOR THE COUNTY RATE , AND HE GOT DR. MILL TORY EVALUATE HIM, BUT THERE IS NO MENTAL HEALTH MITIGATION HERE. THE DEFENDANT HAD TWO DOCTORS EVALUATE HIM FOR THE POSTCONVICTION MOTION . HE WAS FOUN D TO BE OF AVERAGE INTELLIGENCE. HE WAS FOUND TO HAVE NO BRAIN DAMAGE. HE WAS FO UND TO HAVE NO NEUROPSYCHOLOGICAL DIFFICULTIES. HE WAS FOUN D TO HAVE NO MAJOR MENTAL ILLNESS, AND THE ONLY CONDITION THAT WAS FOUND WAS THAT HE SUFFERED FROM THIS ADJUSTMENT DISORDER THAT IS BASED ON THE BE RE EFMENT, WHICH THE SM-3 SAYS YOU ARE NOT SUPPOSED TO COUNT BEREAVEMENT. AND THE HOMOSEXUALITY , WHICH HE DID NOT RE VEAL UN TIL AFTER TRIAL, AND THERE IS NO EVIDENCE THAT HE WO ULD HAVE REVEALED IT BE FORE TRIAL, AND SO YOU ARE BASICALLY LEFT WITH NO MENTAL MITIGATION, EVEN AFTER AN EVIDENTIARY HEARING ON THAT ISSUE .

WHAT WAS THE MOST SERIOUS THING , I F I CAN USE THAT WORD, THAT DR . HA BE R SAID , THAT SHE BELIEVED HE WAS SUFFERING FROM?

THE ADJUSTMENT DI SORDER , AND IN EXCH ANGE FOR THAT, THE STATE GOT TO BRING OUT THAT ADJU STMENT DIS ORDER DOESN'T REALLY M A TCH WHAT HE DID IN THIS CASE , G O ING OUT AND HIRING HIM SELF OUT , A GAIN AND AGAIN AND AG AIN AS A HIT MAN , BUT THE TEST RESULTS SHOW HE IS ANTISOCIAL AND THAT THAT DOES FIT WITH BEING A HIRED HIT MAN , THAT HE HAS A CRIMINAL HI STORY GOING BA CK TO THE TIME HE IS 14 , WHICH COMES OUT , BECAUSE YOU

ARE NOW PUTTING DR. HABER ON. HE HAS NOT BEEN A VERY GOOD BOY IN PRISON, WHICH COMES OUT, BECAUSE YOU ARE NOW PUTTING DR. HABER ON, SO NOT ONLY IS THIS VERY MINOR MENTAL MITIGATION, BUT THE STATE GETS TO JUST KILL YOU, WHEN YOU GO THERE. SO THE STATE'S POSITION IS THAT THERE IS ABSOLUTELY NO PREJUDICE IN THIS CASE. WITH REGARD TO THE SUBSTITUTION OF COUNSEL, IT IS STRICTLY A STRICKLAND CLAIM. THERE HAS BEEN NO PROOF IN THIS CASE, AND THE ALLEGATIONS AND THE MOTION ON THE OTHER CLAIM ARE CONCLUSIVELY REFUTED BY THE RECORD AND FACTUALLY INSUFFICIENT.

THAT SOUNDS LIKE A VERY GOOD ARGUMENT, AND IF THAT WAS WHAT WAS IN THE DEFENSE ATTORNEY'S MIND, AT THE TIME THAT HE DECIDED NOT TO PUT ON MR. MILLER OR GO FURTHER WITH ANOTHER EVALUATION OF HIM, BUT ON THIS RECORD, HOW DO WE KNOW THAT THE DEFENSE ATTORNEY KNEW THAT ALL OF THESE OTHER THINGS WOULD COME OUT, IF HE TRIED TO PUT MR. MILLER ON THE STAND?

I AM NOT SUGGESTING THAT YOU USE THAT FOR THE DEFICIENCY PRONG. THE DEFICIENCY PRONG IS HE HAD HIM EVALUATED. THE EVALUATION CAME BACK WITH NO MITIGATION. ON THE PREJUDICE PRONG, YOU HAVE TO LOOK AT NOT ONLY THE GOOD THING THAT IS COME OUT WHEN YOU DO THIS BUT THE BAD THINGS THAT ARE GOING TO COME OUT THAT, IF YOU BRING THIS UP, AND WEIGH ALL OF THAT AGAINST THE AGGRAVATION IN THIS CASE. AND THESE ARE MURDERS FOR HIRE. THEY DID GO IN AND SPRAY UP A LAUNDROMAT AND RISK THE LIVES OF SEVERAL PEOPLE IN THE LAUNDROMAT. THEY DID GO IN AND SPRAY UP A GROCERY STORE.

JUSTICE LEWIS HAS A QUESTION.

WITH REGARD TO THE SUPPRESSION ASPECT AND TAKING THE DEFENDANT INTO CUSTODY OR VOLUNTARILY GOING DOWN FOR THE STATEMENT, HOW DO YOU, WHAT DO YOU UNDERSTAND THE OPPOSITION'S ARGUMENT TO BE, IN CONNECTION WITH THAT, WITH REGARD TO THE WITNESSES, AND THERE WERE OTHER WITNESSES THAT THE ATTORNEY SHOULD HAVE PROFFERED. THE EVIDENCE AND TAKING THIS DEFENDANT INTO CUSTODY BEFORE THE STATEMENT?

THE DEFENDANT HAS RAISED THIS, BOTH AS A BRADY CLAIM AND AS AN INEFFECTIVE CLAIM. HIS CLAIM IS THAT THE WITNESSES WOULD TESTIFY THAT THE DEFENDANT DID NOT VOLUNTARILY ACCOMPANY THE POLICE.

AND THEREFORE?

THERE FOR THAT THAT SOMEHOW WOULD HAVE RESULTED IN SUPPRESSION OF HIS CONFESSION. HOWEVER, THE EVIDENCE SHOWED THAT THE POLICE HAD MR. JOHNSON IDENTIFIED AS THE KILLER OF MR. , MS. LARKINS, BEFORE THEY EVER WENT TO GET HIM, SO WHETHER HE VOLUNTARILY ACCOMPANIED THE M OR NOT, WE HAVE PROBABLE CAUSE AND WE COULD HAVE ARRESTED HIM.

LET'S ASSUME THAT THAT IS NOT THE CASE. THAT IS A LITTLE DIFFERENT FROM CHAVEZ. IN CHAVEZ, YOU FOUND THE LITTLE BOY'S BOMB BAG IN THE SHED, AND THAT REALLY LED THEM DIRECTLY TO MR. CHAVEZ. LET'S ASSUME THAT WE DID NOT HAVE THE ONE LINK THAT HE IS TALKING ABOUT, WITH REGARD TO THAT THIS IS THE INDIVIDUAL. WHERE DO WE GO, THEN, LEGALLY?

AT THAT POINT, I THINK YOU WOULD NEED AN EVIDENTIARY HEARING, BUT YOU ACTUALLY HAVE MORE THAN ONE LINK, BECAUSE THE DEFENDANT WAS ALSO TIED TO THE MURDER WEAPON, WHICH IS HOW WE END UP GOING AND GETTING THE IDENTIFICATION. AND WE HAVE THE IDENTIFICATION. WE HAVE PROBABLE CAUSE, AND IT DOESN'T MATTER WHETHER OR NOT HE VOLUNTARILY ACCOMPANIED --

JUSTICE BELL HAS A QUESTION.

WITH REGARD TO THE OATH , THE ONLY ALLEGATION IN THE MOTION IS THAT HE WAS PUT UNDER OATH AT SOME POINT. THE RECORD REFLECTS THAT THE ONLY OATH THAT WAS GIVEN WAS DURING THE SWORN STATEMENT THAT OCCURRED AFTER --

IS THAT TYPICAL? WHEN YOU , AFTER YOU HAVE MADE A STATEMENT AND YOU ARE GOING TO NOW HAVE THE SWORN STATEMENT, YOU PUT SOMEONE UNDER OATH?

I AM NOT ENTIRELY SURE. I MEAN, IF YOU ARE GOING TO TAKE A SWORN STATEMENT, THEN CERTAINLY YOU PUT THEM UNDER OATH, AND IN DADE COUNTY , THEY USE STENOGRAPHICALLY RECORDED STATEMENTS AFTER THEY HAVE DONE THE PREINTERVIEW.

SO THERE WAS A COURT REPORTER THERE.

YES .

SO SHE WAS ABLE AND AUTHORIZED TO PLACE SOME BODY UNDER OATH?

YES.

I DO HAVE A QUESTION BUT I FORGOT IT . GO AHEAD . THE PRIOR JUVENILE RECORD . WAS THERE EVIDENCE PRESENTED OR WHAT WAS THE PRIOR JUVENILE RECORD? HERE IS WHERE I WANT TO GO. TYPICALLY WITH A JUVENILE RECORD, YOU DO PREDISPOSITION REPORTS , EVALUATIONS OR WHATEVER. IS THERE ANY OF THAT IN THIS RECORD FROM HIS PRIOR JUVENILE RECORD?

NO. IT JUST CAME OUT THAT HE HAD BEEN COMMITTING CRIMES SINCE HE WAS 14 , WHEN DR . HABER TESTIFIED .

SO THAT WASN'T FLESHED OUT , AS FAR AS WHAT THE CONSEQUENCE OF THESE OTHER CRIMES OR WHAT THESE OTHER CRIMES WERE? IT WAS JUST THAT BLAND STATEMENT?

NOT THAT I RECALL. YES. THAT HE HAD BEEN IN TROUBLE SINCE HE WAS 14. IF THE COURT HAS NO FURTHER QUESTIONS, THE STATE RESPECTFULLY REQUESTS YOU AFFIRM.

CHIEF JUSTICE: THANK YOU .

WHAT HAPPENED , AS FAR AS THE PENALTY PHASE WAS CONCERNED , IS THAT MR . BODINI PRESENTED A PICTURE OF MR . JOHNSON THAT WAS NOT TRUE. HE DID THAT , BECAUSE HE HAD NO CHOICE , BECAUSE HE HAD NO OTHER EVIDENCE. HE HAD NO OTHER TESTIMONY, PARTICULARLY EXPERT TESTIMONY TO DISCUSS THE DIFFERENT THINGS THAT GO INTO A DECISION BY A JURY , TO MAKE A RECOMMENDATION .

DIDN'T HE GET A 7-5 JURY RECOMMENDATION?

YES. WHICH ACTUALLY , I THINK , UNDERLIES THE IMPORTANCE OF THIS OTHER TESTIMONY THAT PUSHES YOU OVER THE EDGE, SO TO SPEAK . IF THIS WAS AN UNANIMOUS, YOU KNOW, RECOMMENDATION , WE PROBABLY WOULDN'T, I WOULDN'T BE ABLE TO MAKE THIS ARGUMENT WITH A STRAIGHT FACE , BUT I THINK THAT SOME OF THESE WERE PRETTY CLOSE.

EXCEPT THAT THEY WOULD HAVE HEARD ALL OF THIS OTHER , REALLY, NEGATIVE STUFF. SOMETIMES WE GO IT IS A TRADE-OFF, BECAUSE THEY ARE GOING TO HEAR IT ANYWAY, BUT THIS IS LIKE A PLETHORA OF NEGATIVE INFORMATION THAT WOULD HAVE COME OUT ABOUT HIM. I MEAN , MAYBE THE PICTURE PRESENTED TO THE JURY WASN'T CORRECT , BUT IT WAS A , CERTAINLY A SYMPATHETIC PICTURE. YOU ADD THIS STUFF ON , IT BECOMES PRETTY

UNSYMPATHETIC.

IT WASN'T VERY PERSUASIVE TO THE JUDGE. IN FACT , I THINK HE MADE A COUPLE OF COMMENTS WHEN HE IMPOSED THE DEATH PENALTY THAT, THE NONSTATUTORY MITIGATING TESTIMONY WAS PRACTICALLY NEGATED BY THE AGGRAVATING CIRCUMSTANCES, BUT I DO WANT TO JUST READ TO THE COURT BRIEFLY , A COUPLE OF SENTENCES FROM THE U.S. SUPREME COURT'S CASE IN WIGGINS. TALKING ABOUT THAT , EVIDENCE ABOUT THE DEFENDANT'S BACKGROUND AND CHARACTER IS RELEVANT BECAUSE OF THE BELIEF, LONG HELD BY THIS SOCIETY , THAT DEFENDANTS WHO COMMIT CRIMINAL ACTS THAT ARE ATTRIBUTABLE TO A DISADVANTAGED BACKGROUND , MAY BE LESS CULPABLE THAN DEFENDANTS WHO HAVE NO SUCH EXCUSE.

WHAT IS THE DISADVANTAGED BACKGROUND HERE? I MEAN, WHAT WE HAVE HEARD HERE, BASICALLY, IS THAT HE HAS HAD SOME TRAUMA BECAUSE THERE WERE PEOPLE IN HIS FAMILY AND OTHERS WHO HAVE DIED, AND THAT HE POSSIBLY HAS HOMOSEXUAL TENDENCIES. SO WHAT IS THE DISADVANTAGED BACKGROUND?

HOW ALL OF THESE ADJUSTMENT DISORDERS FIT INTO HIS NEED TO BE ACCEPTED BY THE PEOPLE WHO WERE CONTROLLING HIS NEIGHBORHOOD , WHICH MADE HIM MORE SUSCEPTIBLE TO THE OFFER TO GO OFF AND COMMIT THIS MURDER-FOR-HIRE. THIS WAS NOT A COLD-BLOODED --

THIS IS NOT A CASE LIKE WE SEE SOMETIMES, WHERE THE DEFENDANT WAS ABUSED , EITHER PHYSICALLY OR SEXUALLY BY ONE OF THE PARENTS OR WHERE ONE OF THE PARENTS PROSTITUTED HER SELF OR WHERE THE FATHER ABUSED THE WIFE OR THE MOTHER , ANYTHING LIKE THAT IN HIS BACKGROUND , WHEN YOU SAY DISADVANTAGED BACKGROUND?

WELL , HE WAS ACTUALLY PROSTITUTING HIMSELF.

NO. NO. CAN YOU ADDRESS THE EXAMPLES THAT I SAID. DO WE HAVE ANY OF THAT IN THIS CASE?

THERE IS NOTHING, EXCEPT FOR HIS STEPFATHER'S ALCOHOLISM AND THE RESULTS OF THAT. SPECIFICALLY, NO, BUT THERE WAS , BY HIM BEING AT A DISADVANTAGE HIMSELF , BEING A HOMOSEXUAL , LIVING THAT LIFE, THE SHAME , AND IN THAT COMMUNITY , I THINK, WAS SOMETHING WHICH SHOULD HAVE, COULD HAVE MITIGATED THE COLD, CALCULATED , HEARTLESS KILLER WHO MURDERS SOMEBODY FOR HIRE. I THINK THAT CERTAINLY IS SOMETHING THAT THE COURT, THE JURY SHOULD HAVE CONSIDERED AND THE COURT SHOULD HAVE CONSIDERED.

IN LOOKING AT THAT , SINCE THE FACT OF HIM SAYING HE IS A HOMOSEXUAL DIDN'T EVEN COME OUT UNTIL HE WAS ON DEATH ROW FOR SEVERAL YEARS , HOW CAN WE FAULT THE ORIGINAL TRIAL COUNSEL , FOR NOT EXPLORING SOMETHING THAT WAS ESSENTIALLY , THERE WAS NO EVIDENCE THAT WOULD HAVE EVEN LED HIM TO IT?

WHAT WAS VERY IMPORTANT WAS THE EVIDENCE THAT HE DID PUT ON. THE FAMILY MEMBERS WHO TESTIFIED TO SOME OF THESE STRESSORS , DR . HABER WAS VERY CLEAR AND EVEN MR . BODINI ADMITTED THAT HE SAW THAT THERE WAS SOMETHING THERE. HE CALL IT AN ENIGMA THAT NEEDED TO BE UNLOCKED , BUT HE DIDN'T DO ANYTHING TO UNLOCK THAT ENIGMA . I THINK IT IS REASONABLE TO SAY THAT, IF HE HAD DONE SOMETHING, IF HE HAD GOTTEN PEOPLE TO EVALUATE THIS MAN BACK THEN , NOT JUST A 15-MINUTE PRO BONO TYPE THING BUT TO REALLY EXPLORE THIS MAN'S CHARACTER , IN ORDER TO PUT ON A PROPER PENALTY PHASE, THEN HE WOULD HAVE HAD THAT AS AN OPTION , BUT SINCE HE DIDN'T DO THAT , HE DIDN'T HAVE THAT TO PRESENT , AND HE PRESENTED SOMETHING ELSE THAT WAS ENTIRELY INADEQUATE , AND DEFICIENT , AND WHICH PREJUDICED MR . JOHNSON. I WANTED TO ADDRESS ONE OF THE QUESTIONS THAT WAS RAISED ABOUT THE PROBABLE CAUSE IS SUE ON THE SUPPRESSION. THE , JERRY BRIGGS , WHO WAS THE ALLEGED EYEWITNESS , WHO HAD

SUPPOSEDLY IDENTIFIED THE DEFENDANT AS BEING IN THE LAUNDROMAT, DID NOT MAKE A POSITIVE IDENTIFICATION, AND DETECTIVE -- POSITIVE I.D., AND DETECTIVE HALL WHEN HE TESTIFIED AT THE ORIGINAL SUPPRESSION HEARING, KNEW THIS, AND THAT IS WHY WHEN HE WAS ASKED DO YOU HAVE PROBABLE CAUSE TO BELIEVE THAT MR. JOHNSON COMMITTED THIS CRIME AT THE TIME THAT YOU SENT SOMEBODY OVER THERE TO GET HIM, I AM SORRY, IT WAS DETECTIVE BAREGO, WHO WAS ASKED THE QUESTION. OFFICER HALL, I APOLOGIZE, WAS SENT OVER TO PICK HIM UP. HE SAID, NO, HE DID NOT HAVE PROBABLE CAUSE, AND HE WAS THE ONE WHO HAD DEALT WITH JERRY BRIGGS AND HE WAS THE ONE WHO HAD SHOWED JERRY BRIGGS THE PHOTO LINEUP. HE KNEW THAT THERE WAS NO PROBABLE CAUSE, AND THAT IS WHY IT IS IMPORTANT THAT THEY ASSUME AND PRESENT TESTIMONY THAT HE VOLUNTARILY ACCOMPANY THE POLICE OFFICERS TO THE POLICE STATION.

YOUR CLIENT, HOWEVER, KNEW THAT THESE PEOPLE WERE PRESENT AT THE TIME, CORRECT? AND COULD HAVE CALLED THEM AT THE EVIDENTIARY HEARING FOR THE SAME PURPOSE.

WE WERE NOT, WE WERE LIMITED AT THE EVIDENTIARY HEARING THAT WAS TAKING PLACE, TO THE ONE ISSUE, AND I HAD A PROBLEM IN ANOTHER CASE WHERE THE, YOU KNOW, WHERE I ASKED A COUPLE OF QUESTIONS ABOUT AN ISSUE THAT WAS NOT GIVEN THE EVIDENTIARY HEARING, AND WE DIDN'T GO INTO A FULL-BLOWN --

WELL, DIDN'T YOUR CLIENT TESTIFY AT THE MOTION TO SUPPRESS, THAT HE DIDN'T GET HANDCUFFED UNTIL HE WAS TAKEN FROM THE SUBSTATION TO THE POLICE STATION? SO THAT THIS TESTIMONY WOULD HAVE BEEN CONTRADICTORY TO HIS OWN TESTIMONY AT THE SUPPRESSION HEARING?

NO. THE WITNESSES THAT WERE LISTED --

I AM NOT TALKING ABOUT THE WITNESSES. I AM TALKING ABOUT YOUR CLIENT'S TESTIMONY AT THE MOTION TO SUPPRESS HEARING, WASN'T IT HIS TESTIMONY THAT HE VOLUNTARILY WENT TO THE SUBSTATION, AND THEN AT THE SUBSTATION HE WAS HANDCUFFED AND TAKEN TO THE POLICE STATION?

I THOUGHT HE TESTIFIED THAT HE WAS HANDCUFFED BEFORE HE WAS PUT INTO THE POLICE CAR.

IN YOUR MOTION BEFORE THE TRIAL JUDGE, DID ANY OF THE STATEMENTS THAT YOU TOOK FROM THE THREE WITNESSES, DID ANY OF THEM STATE THAT THEY SAW HIM HANDCUFFED?

NO. NO. THAT WAS CERTAINLY SOMETHING THERE, THAT WAS NOT STATED BY THOSE WITNESSES THAT COULD NOT RECALL. HOWEVER, THEY DID DESCRIBE CIRCUMSTANCES WHERE HE WAS SUMMONED OFF OF THE PORCH, AND HE WAS, YOU KNOW --

BUT THEY WOULDN'T HAVE BEEN ABLE TO TESTIFY THAT THEY SAW HIM HANDCUFFED AT THE TIME TO CORROBORATE HIS TESTIMONY.

THAT'S CORRECT.

WHAT IS THE NEXUS TO THE WEAPON?

THE WEAPON, I BELIEVE, WAS SEIZED FROM SOMEONE ELSE, WHO, AND IT WAS DETERMINED TO BE, IT WAS, THERE WAS A MARIJUANA ARREST, I BELIEVE, AND THERE WAS SOMEONE ELSE WHO WAS ARRESTED FOR MARIJUANA POSSESSION, WHO HAD THE WEAPON THAT WAS DETERMINED TO BE THE MURDER WEAPON, AND THAT IS WHY THEY THOUGHT THAT HE WAS WITH MR. JOHNSON. THEY THOUGHT THAT THEY MIGHT GO OVER AND GET MR. JOHNSON TO COME OVER TO THE POLICE STATION, BUT THEY WENT OVER AND ARRESTED HIM 2347D. THEY DID NOT -- ARRESTED HIM INSTEAD. THEY DID NOT HAVE PROBABLE CAUSE AT THE TIME. THAT WAS MY

MOTION BEFORE THE TRIAL COURT. THANK YOU VERY MUCH , AND I THINK THAT WE PRESENTED BOTH THE STRICKLAND ISSUES CONCERNING THE FAILURE TO HAVE PRESENTED AN ADEQUATE MITIGATING CIRCUMSTANCES FROM MENTAL HEALTH STANDPOINT. WHEN WE HAD THE EVIDENTIARY HEARING, I THINK THAT THE WHOLE COURT , I THINK WE NEED HAVE ANOTHER EVIDENTIARY HEARING, TO ADDRESS ALL OF THE OTHER ISSUES , BECAUSE THEY ARE ALL, REALLY , RELATED TO MR . BO DINI 'S DEFICIENCIES IN HANDLING THIS CAPITAL CASE. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. THANK YOU TO BOTH OF YOU , AND WE WILL CONSIDER THE ARGUMENTS IN BOTH CASES.