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Lenard James Philmore v. State of Florida Docket Number: SC04-1036 | SC05-250

” ” ” ” ” ” ” ”

THE MARSHAL: PLEASE RISE . LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED .

CHIEF JUSTICE: GOOD MORNING AGAIN. THE NEXT CASE ON THIS MORNING'S DOCKET IS PHILMORE VERSUS THE STATE OF FLORIDA .

MAY IT PLEASE THE COURT , MY NAME IS JAMES VIGGIANO , AND I REPRESENT LENARD PHILMORE IN THE CIRCUIT COURT'S DENIAL OF HIS 3.851 ACTION. I WOULD LIKE TO ARGUE ISSUE NUMBER 2 OF THE INITIAL BRIEF THAT COUNSEL WAS INEFFECTIVE IN THE PRETRIAL PREPARATION AND REPRESENTATION OF MR. PHILMORE, AND AS TIME PERMITS I WOULD LIKE TO ARGUE ISSUE NUMBER 1 THAT THE TRIAL COURT ERRED IN ALLOWING THE STRIKE OF JUROR HOLT TO GO FORWARD AS AN ONPRETEXTUAL AND THAT THE --.

CHIEF JUSTICE: ON THAT ISSUE , DIDN'T WE ALREADY RULE ON THAT IN THE CASE ON APPEAL?

YES, YOUR HONOR. HOWEVER --.

CHIEF JUSTICE: SO THAT WOULD BE RELITIGATING SOMETHING THAT WE ALREADY --

I WOULD LIKE TO POINT OUT THAT MILLER CAME OUT AND THE TOTALITY OF THE CIRCUMSTANCES SHOULD BE CONSIDERED.

ON ISSUE NUMBER 2 , DO WE HAVE TO DECIDE REALLY THE THRESHOLD ISSUE IS WHETHER THERE IS ANY RIGHT OF COUNSEL BEFORE CHARGES HAVE BEEN FILED IN THAT SPECIFIC CASE.

YES, YOUR HONOR, AND I BELIEVE THE CASE LAW RELATES THAT THE RIGHT TO COUNSEL IS CHARGED SPECIFIC, HOWEVER, THE RIGHT TO COUNSEL ALSO WOULD COME INTO PLAY WHEN THERE IS CUSTODIAL RESTRAINT . IN THIS CASE , MR. PHILMORE WAS ARRESTED FOR THE TRESPASS IN A ROBBERY BUT NOT THE MURDER , BECAUSE THE STATE DID NOT KNOW WHETHER MURDER HAD BEEN COMMITTED OR AN ABDUCTION. THEY WERE QUESTIONING MR. PHILMORE ON NOVEMBER 15TH REGARDING THE TRESPASS AND THE ROBBERY OF THE INDIAN TOWN BANK , AND WHEN THE QUESTIONING EVOLVED TO THE ABDUCTION OR POSSIBLE ABDUCTION OF MS. PERRON, AT THAT POINT MR. PHILMORE HAD THE GOOD SENSE TO TERMINATE AND SHUT DOWN THE QUESTIONING AND REQUEST COUNSEL . THE LAW ENFORCEMENT OFFICERS AT THAT POINT HAD COUNSEL APPOINTED AND A PUBLIC DEFENDER HETHERINGTON , THE LAW ENFORCEMENT AGENTS NEWLY WERE QUESTIONING MR. PHILMORE ABOUT A POSSIBLE ABDUCTION . MR. PHILMORE EXERCISED HIS RIGHT TO COUNSEL BECAUSE THEY WERE QUESTIONING ABOUT THE ABDUCTION. MR. HETHERINGTON CAME --

WAS HE UNDER ARREST FOR THE ABDUCTION AT THAT POINT?

NO, HE WAS NOT. HE WAS UNDER ARREST FOR THE ARMED TRESPASS.

ISN'T THAT THE THRESHOLD ISSUE WHETHER HE IS NOT UNDER A REST FOR THE PARTICULAR OFFENSE, DOES HE HAVE THE RIGHT, I MEAN HE COULD INVOK E COUNSEL AND THEY COULD AS A MATTER OF COURTESY GIVE HIM COUNSEL IF HE WANTS BUT DOES HE HAVE A CONSTITUTIONAL RIGHT TO COUNSEL AT THAT POINT?

WELL, IF HE WAS READ HIS MIRANDA WARNINGS EACH TIME THEY QUESTIONED HIM, AND EVERY ONE KNEW WHAT THE QUESTIONING WAS REGARDING OR REGARDING THE ABDUCTION, AND IF HIS RIGHT TO COUNSEL IF HE DIDN'T HAVE A RIGHT TO COUNSEL UNDER THE SIXTH AMENDMENT IT WOULD RENDER THE MIRANDA WARNINGS MEANINGLESS BECAUSE THERE SAY YOU HAVE THE RIGHT TO THE ATTORNEY AND ONE WILL BE APPOINTED IF YOU WISH.

IS IT PART OF YOUR ARGUMENT HERE THAT, IN FACT, THE ATTORNEY TOOK OVER THAT RESPONSIBILITY? IN THIS PARTICULAR INSTANCE? THAT IS THE ATTORNEY ASSUMED THE ROLE OF REPRESENTING HIM WITH REFERENCE TO THE MURDER? >> YES, YOUR HONOR, BECAUSE MR. HETHERINGTON WHEN HE CAME ON, HE WAS QUESTIONING MR. PHILMORE ABOUT, I MEAN THE CONCERN BY MR. HETHERINGTON WAS THE ABDUCTION.

HOW ABOUT MOVING ON, THOUGH, TO OBVIOUSLY THE LAWYER TESTIFIED EXTENSIVELY AND THE COURT BELOW, AND WE KNOW THAT THERE ARE MANY INSTANCES OF WHEN THERE ARE CODEFENDANTS OR MULTIPLE DEFENDANTS OR WHATEVER THAT THE ONE THAT GETS THERE FIRST WITH THE STATE IN TERMS OF PERHAPS HAVING SOMETHING TO OFFER OR WHATEVER THAT MAY GET BETTER TREATMENT FROM THE STATE OR THAT MAY GET A DEAL FROM THE STATE SAVE THEIR LIVES OR EVEN, YOU KNOW, A GREAT DEAL, SO HELP ME NOW IF YOU WOULD ADDRESS THE MERITS HERE WITH REFERENCE TO THE EVIDENCE IN THE CASE WHY COULDN'T A TRIAL JUDGE CONCLUDE APPARENTLY THE JUDGE DID HERE THAT UNDER THE CIRCUMSTANCES THAT THIS WAS NOT INEFFE CTIVE REPRESENTATION. THAT THE LAWYER WAS LOOKING OUT FOR YOUR CLIENT OR HIS CLIENT AT THE TIME. IT IS JUST THAT THE CLIENT CONSISTENTLY MISREPRESENTED THE CIRCUMSTANCES TO HIM, AND SO IT WASN'T THE LAWYER, IT WAS THE CLIENT THAT DID HIMSELF IN. SO HELP US WITH THOSE CIRCUMSTANCES.

YES, YOUR HONOR. THE ATTORNEY DIDN'T DO ANY INVESTIGATION. HE WAS RECEIVING HIS INFORMATION IN TOTAL FROM LAW ENFORCEMENT WITH RESPECT TO THE CASE. HE DIDN'T SEND OUT ANY INVESTIGATOR, HE DIDN'T CONDUCT ANY --.

CHIEF JUSTICE: LET ME STOP YOU THERE, BECAUSE THIS MAY TIE INTO THE FIRST ISSUE. I, YOU KNOW, I THINK THAT IF SOMEONE HAS INVOKED THE RIGHT TO COUNSEL BECAUSE OF QUESTIONING THERE HAS GOT TO BE -- COUNSEL HAS TO PERFORM COMPETENTLY BUT THERE IS ALSO AN ISSUE OF WHAT THE SCOPE OF THE REPRESENTATION WAS AT THAT TIME, BECAUSE IF HE WASN'T BEING CHARGED WITH THE ABDUCTION, HE WAS THERE TO ADVISE MR. PHILMORE ABOUT WHETHER HE SHOULD CONTINUE TO COOPERATE OR NOT. SO NOW YOU ARE SAYING, WELL, HE SHOULD HAVE STARTED TO INVESTIGATE THESE CHARGES THAT HADN'T YET BEEN FILED; IS THAT WHAT YOU ARE SAYING?

THAT'S PART OF THE ARGUMENT, YOUR HONOR.

CHIEF JUSTICE: WELL, LET'S JUST -- SO IS THAT AN ISSUE ABOUT WHETHER A COMPETENT COUNSEL BEING CALLED IN UNDER THESE CIRCUMSTANCES WOULD START TO INVESTIGATE A CRIME FOR WHICH HE OR SHE HAD NOT YET BEEN APPOINTED TO REPRESENT IN THE DEFENSE OF THE CASE?

WELL, COMPETENT COUNSEL IN THIS PARTICULAR CASE DEFINITELY WOULD HAVE TOLD HIS CLIENT AND INNOCENT IN TERMS FROM THE MOMENT HE MET THE CLIENT, DON'T MAKE ANY STATEMENTS TO LAW ENFORCEMENT OR ANYONE ABOUT THE CASE

WHATSOEVER.

CHIEF JUSTICE: THAT WOULD BE THEN, THEN YOU WOULD REALLY BE ARGUING FOR A PER Z - R U L E , WHICH IS T H A T I F - - P E R S E R U L E WHICH I F SOM EONE W AN TS A RIG HT TO COUNSEL Y OU 'V E G OT THE RIGHT T O E XERCIS E Y OU R RIGHT TO REMAIN SILEN T T H A T YOU WOULD BE DEFIC IENT I F Y OU EVER ALLOWED THA T P E R S O N T O CONTINUE TO T AL K T O P O L I C E ?

NO , YOUR HONOR, I 'M N OT ARGUING FOR A P E R S E R U L E A T ALL BECAUSE THERE M AY B E CIRCUMSTANCES ALBEIT RAR E C I R CUMSTANCES WHERE AN ATTORNEY WOULD H AV E T HE I R C LIEN T S P EAK T O L AW E NFORCEMENT, BUT T H A T W OULD B E AFTER A V ERY T H O R O U G H INVESTIGATION WAS CONDUCTED. NOW, TO A N S W E R Y O U R Q U E S T I O N REGARDING W H E R E T H E A T T O R N E Y WAS WITH RESPECT TO THEIR CHARGES, THE ATTORNEY C A M E O N B O A R D A N D D I D S A Y TO M R. P H I L M O R E WITH REGARD TO THE B A N K R O B B E R Y A T T H E V E R Y I N I T I A L STAGES HE DID TALK T O T H E M ABOUT T H E POSSIBLE TERM OF YEARS, S O O N C E T H E Y G O T O F F THE B A N K R O B B E R Y , T H E Y W E R E A L L ABOUT TALKING A B O U T T H E P O T E N T I A L A B D U C T I O N . M R. H E T H E R I N G T O N WAS R E C E I V I N G T H E I N F O R M A T I O N F R O M L A W E N F O R C E M E N T ABOUT THEIR SUSPECTED ABDUCTION . H E T H E R I N G T O N TESTIFIED THAT HE WAS D E V E L O P I N G A T I M E L I N E B Y I N F O R M A T I O N G I V E N T O H I M F R O M T H E S T A T E . I T WAS T H E C I R C U M S T A N T I A L T I M E L I N E W H E R E T H E C A R W A S T A K E N A T 1:00 , T H E B A N K R O B B E R Y T O O K P L A C E A T 2 : 0 0 , A N D S P A N N A N D M R. P H I L M O R E W E R E C A P T U R E D A T 3:0 0 .

LET M E A S K Y O U R E G A R D I N G T O G E T Y O U R P O S I T I O N S T R A I G H T ABOUT THE I N V E S T I G A T I O N . I S I T Y O U R P O S I T I O N T H A T I F A D E F E N S E C O U N S E L A S K S T H E D E F E N D A N T , D I D Y O U C O M M I T T H I S M U R D E R , A N D T H E D E F E N D A N T S A Y S N O , A B S O L U T E L Y N O T , C O U N S E L I S N E V E R T H E L E S S U N D E R A D U T Y T O I N V E S T I G A T E W H E T H E R H I S C L I E N T , I N F A C T , C O M M I T T E D T H E M U R D E R ?

YOUR H O N O R , T H E A T T O R N E Y S H O U L D C H E C K T O F I N D O U T I F T H E C L I E N T I S D E L U S I O N A L . I N T H I S C A S E T H E R E W A S E V I D E N C E A N D T E S T I M O N Y P R E S E N T E D A T T H E P E N A L T Y P H A S E T H A T M R. P H I L M O R E W A S P S Y C H O T I C . Y O U S H O U L D C H E C K O U T --

LET M E S E E I F I G E T T H A T P O S I T I O N S T R A I G H T . I F C O U N S E L S P E A K S T O H I S C L I E N T A N D H I S C L I E N T D O E S N ' T A P P E A R T O B E D E L U S I O N A L F A C I A L L Y W H E N H E M E E T S T H E C L I E N T C O U N S E L I S N E V E R T H E L E S S U N D E R A D U T Y T O B E F O R E H E D O E S A N Y T H I N G E L S E T O C O N D U C T A P S Y C H O L O G I C A L E V A L U A T I O N O F H I S C L I E N T T O S E E W H E T H E R H E C A N B E L I E V E A N Y T H I N G H I S C L I E N T S A Y S ?

YOUR H O N O R , T H E - - .

I J U S T W A N T T O S E E I F T H A T ' S Y O U R P O S I T I O N .

M Y P O S I T I O N I S T H A T T H E A T T O R N E Y S H O U L D A T L E A S T G E T T O K N O W T H E C L I E N T , G E T H I S F E E T O N T H E G R O U N D , G E T G R O U N D E D I N T H E F A C T S O F T H E C A S E . I F H E I S B E I N G F E D I N F O R M A T I O N F R O M L A W E N F O R C E M E N T , W H I C H W A S A V E R Y U N I Q U E S I T U A T I O N I N M R. H E T H E R I N G T O N ' S C A S E , I T N E E D S T O B E C H E C K E D O U T . H E N E E D S -- H E H A D D I S C R E P A N C I E S B E T W E E N W H A T L A W E N F O R C E M E N T W A S T E L L I N G H I M A N D W H A T M R. P H I L M O R E ' S V E R S I O N W A S .

I T S E E M S L I K E Y O U A R E A S K I N G U S I N T H I S C A S E T O H O L D W H E R E T H E D E F E N D A N T S P E C I F I C A L L Y T O L D H I S L A W Y E R I D I D N ' T D O I T , I D I D N ' T D O T H I S , I D I D N ' T D O T H A T , I D I D N ' T D O T H A T , T H A T T H E L A W Y E R M U S T D I S B E L I E V E H I S C L I E N T A N D E I T H E R C O N D U C T A P S Y C H O L O G I C A L E V A L U A T I O N T O S E E I F H I S C L I E N T I S C A P A B L E O F B E I N G D E L U S I O N A L O R C O N D U C T A N I N D E P E N D E N T I N V E S T I G A T I O N T O P R O V E A N E G A T I V E .

I N T H I S C A S E M R. H E T H E R I N G T O N A C T U A L L Y H A D H I S R E S E R V A T I O N S . H E T E S T I F I E D A T T H E

EVIDENTIARY HEARING THAT HE WAS CONCERNED ABOUT THIS TIMELINE. HE WAS CONCERNED ABOUT MR. PHILMORE'S INVOLVEMENT IN THE ABDUCTION. HE ACTUALLY SAID HE DIDN'T BELIEVE MR. PHILMORE BUT HE ALSO SAID --

YOU ARE ASKING US TO SAY THAT THE LAWYER SHOULD NOT TAKE HIS CLIENT'S WORD IN ADVISING HIS CLIENT, EVEN THOUGH THE LAWYER HAS TOLD HIS CLIENT YOU HAVE TO TELL ME THE TRUTH IF I AM GOING TO ADVISE YOU CORRECTLY, YOU NEED TO TELL ME THE TRUTH. HE CAN'T ACCEPT HIS CLIENT'S ANSWER?

IN THIS PARTICULAR CASE HE RUSHED HEADLONG INTO A COURSE OF ACTION WHICH EFFECTIVELY HE WAS ACTING -- THE ATTORNEY WAS ACTING AS AN AGENT OF THE STATE.

CHIEF JUSTICE: LET'S ASSUME WE AGREE THAT, YOU KNOW, A LAWYER SHOULD HAVE JUST TOLD HIM NOT TO SAY ANYTHING AND WE'VE ALREADY HELD THAT THE CONFESSION WAS VOLUNTARY. SO WHAT WOULD BE THE REMEDY IN THIS CASE IF WE FOUND THAT MR. HETHERINGTON WAS DEFICIENT?

WELL, MR. HETHERINGTON WAS BEING LED TO BELIEVE THAT IF HE COOPERATED WITH LAW ENFORCEMENT THAT HE WOULD AVOID THE DEATH PENALTY, THAT IF HE COOPERATED WITH LAW ENFORCEMENT THAT ANY COOPERATION WOULD BE CONSIDERED AS MITIGATION.

CHIEF JUSTICE: BUT WHAT ARE YOU ASKING THEN? WHAT WOULD BE THE REMEDY BECAUSE UNDER PREJUDICE, THE QUESTION IS THAT DOES THIS UNDERMINE OUR CONFIDENCE IN THE OUTCOME? THERE HAS BEEN NOTHING ABOUT ANY OF THIS, OTHER THAN, YOU KNOW, AGAIN THIS IDEA THAT SOMEBODY THAT IS GUILTY SHOULDN'T BE CONFESSING THEIR GUILT TO THE POLICE, BUT THERE IS NOTHING THAT HAS BEEN PUT FORTH THAT WOULD QUESTION THE FACT THAT THE SECOND THAT THE STATEMENTS OF HIS INVOLVEMENT WERE TRUE AND THAT HE, IN FACT, WAS THE SHOOTER AND COMMITTED THESE MURDERS?

WELL, THERE WOULD BE TWO POSSIBLE REMEDIES. ONE, BECAUSE THE REPRESENTATION BY THE ATTORNEY THAT WAS SO DEFICIENT THAT THERE WAS REALLY NO ADVISORIAL TESTING WHATSOEVER. THE STATE'S CASE THROUGH THE ATTORNEY'S ACTIONS HE ESSENTIALLY CLEARED THE CASE WITHIN SEVEN DAYS FOR LAW ENFORCEMENT, COMPLETELY CLEARED THE CASE.

WELL, HOW DO YOU REALLY GET TO THAT POINT? THAT SEEMS LIKE SUCH A LEAP HERE. BECAUSE THE ATTORNEY SAYS SPECIFICALLY, YES, HE GOT SOME INFORMATION FROM LAW ENFORCEMENT ABOUT THESE VARIOUS CRIMES THAT HAD TAKEN PLACE, BUT THAT HE ALSO SAYS SPECIFICALLY THAT HE TALKED TO HIS CLIENT, THAT HIS CLIENT TOLD HIM UNEQUIVOCALLY THAT HE HAD NOTHING TO DO WITH THE ABDUCTION OF THE LADY AND THAT -- SO WHAT IS THE ATTORNEY SUPPOSED TO DO? THE CLIENT HAS TOLD HIM UNHEQUIVOCALLY AND HAS -- UNEQUIVOCALLY THAT HE WANTS TO MAKE A STATEMENT TO THE POLICE?

WHAT THE ATTORNEY DID, THOUGH, WITHIN THE FIRST THREE DAYS IS NOT DO ANY INVESTIGATION OR PREPARATION IN THE CASE WITHIN THE FIRST THREE DAYS. HE ARRANGES FOR -- > WHEN YOU SAY NO PREPARATION, YOU MEAN HE DIDN'T SEND SOMEONE OUT TO DO WHAT?

TO CHECK ANYTHING THAT HE WAS RECEIVING WITH RESPECT TO LAW ENFORCEMENT FROM LAW ENFORCEMENT. HE DIDN'T DO ANY INDEPENDENT INVESTIGATION. HE DIDN'T CHECK ANY OF THE WITNESSES WHO ALLEGEDLY SAW THIS CAR BEING STOLEN. >> CHIEF JUSTICE: CAN I JUST BECAUSE YOU ARE IN YOUR REBUTTAL I WANT TO MAKE SURE LET'S JUST ASSUME THAT ANOTHER LAWYER WOULD HAVE DONE IT DIFFERENTLY. JUST QUICKLY, WHAT IS THE REMEDY? WHAT ARE YOU ASKING THE COURT TO DO?

TWO REMEDIES. FIRST OF ALL BECAUSE THE REPRESENTATION WAS SO DEFICIENT AND THERE WAS NO INVESTIGATION OR REPARATION WHATSOEVER THAT HE COULD BE GRANTED A NEW TRIAL WITHOUT THE STATEMENT COMING INTO EVIDENCE. HOWEVER, THE ULTIMATE REMEDY WOULD BE TO GRANT MR. PHILMORE A LIFE SENTENCE BECAUSE HE WAS BEING LED TO BELIEVE AND PROMISED OR NOT - - THAT HE WASN'T AN OUTRIGHT PROMISE BUT HE WAS LED TO BELIEVE IF HE GAVE COOPERATION TO THE STATE THAT EVERYTHING WOULD BE OKAY.

AND WHAT CASE IS THAT WHERE WE HAVE HELD THAT YOU ARE ALLEGING AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM THAT THE REMEDY FOR INEFFECTIVE ASSISTANCE IS NOT A NEW TRIAL WITH A NEW LAWYER, BUT SIMPLY A LIFE SENTENCE. WHERE HAVE WE EVER DONE THAT?

WELL, THE SITUATION IS THAT THE STATE REALLY WAS KIND OF INVOLVED IN THIS THAT YOU WERE MAKING STATEMENTS TO MR. PHILMORE.

JUST ANSWER THAT QUESTION. WHERE HAVE WE EVER HELD THAT THAT'S THE APPROPRIATE REMEDY FOR INEFFECTIVE ASSISTANCE OF COUNSEL?

IT'S A DIFFICULT SITUATION, YOUR HONOR, BECAUSE IT IS SO UNUSUAL THAT AN ATTORNEY COMES ON BOARD AT SUCH AN EARLY STAGE AND IN SUCH A SERIOUS MATTER AND REALLY INEFFECTIVE CLEARS THE CASE FOR THE STATE.

CHIEF JUSTICE: THAT'S AGAIN GOING BACK TO WHAT JUSTICE QUINCE SAID WHICH IS BECAUSE THIS PARTICULAR DEFENDANT INSISTED THAT HE WAS INNOCENT OF THIS, DID NOT - - WAS NOT CANDID WITH HIS LAWYER AND HE OVER AND OVER AGAIN MR. HETHERINGTON AND HE STATED THAT HE KEPT ON A SKINNING HIS CLIENT AND HIS CLIENTS AID, NO, HE DIDN'T HAVE ANYTHING TO DO WITH IT AND THE NHEKEPT ON GETTING WORSE AND WORSE SO IT LOOKS TO ME LIKE IT WAS MR. PHILMORE THAT IS NOT ONLY RESPONSIBLE IN TERMS OF THE MURDER BEING THE SHOOTER BUT RESPONSIBLE FOR WHERE HE FOUND HIMSELF WHEN HE CONFESSED TO POLICE. BUT I KNOW THAT JUSTICE LEWIS, JUSTICE BELL - - JUSTICE QUINCE, DID YOU HAVE ANY FURTHER QUESTIONS? AND JUSTICE LEWIS, DO YOU HAVE ANY QUESTIONS? WELL, IF YOU WANT TO USE - - SAVE THE REST OF YOUR TIME FOR REBUTTAL.

THANK YOU. >> GOOD MORNING, MAY I PLEASE THE COURT, LESLIE CAMPBELL WITH THE ATTORNEY GENERAL'S OFFICE. ON BEHALF OF THE STATE OF FLORIDA. MR. PHILMORE DID PLACE HIMSELF IN THE POSITION OF CONFESSING TO THE POLICE. MR. PHILMORE'S FULL CONFESSION IS AND SHOULD BE PLACED DIRECTLY WHERE IT HAS BEEN PLACED BY THIS COURT AT MR. PHILMORE'S FEET.

WHAT WAS THE - - WHEN AN ATTORNEY IS APPOINTED, IS THE ATTORNEY GIVEN THE SCOPE OF HIS APPOINTMENT? WAS HE THERE FOR THE ROBBERY AND THE TRESPASS AND A POSSIBLE ABDUCTION OR WHAT - - OF COURSE HE HAD NOT BEEN CHARGED WITH ABDUCTION BUT WHAT WAS HE TOLD ABOUT THE SCOPE OF HIS APPOINTMENT?

MR. HETHERINGTON WAS APPOINTED FOR THE ROBBERY AND THE TRESPASS. THAT WAS HIS APPOINTMENT. HOWEVER, HIS CLIENT IS TELLING HIM, I WANT TO CLEAR MY NAME FROM THIS - - FROM THE ABDUCTION AND THE KIDNAPPING. SO ALL OF THE QUESTIONING AND THE POLICE WERE ALSO INTERESTED IN ANYTHING MR. PHILMORE WOULD HAVE TO SAY ABOUT THE KIDNAPPING AND - -.

CHIEF JUSTICE: BUT AT THE POINT WHEN HE INVOKED HIS RIGHTS TO AN ATTORNEY, WHICH MIRANDA SAYS YOU HAVE THE RIGHT TO REMAIN SILENT. YOU HAVE THE RIGHT TO AN ATTORNEY. WERE THEY STARTING TO QUESTION THAT HE HAD BEEN ARRESTED FOR THE

ROBBERY ?

BUT HE HAD N'T BEEN ARR ESTED YET , YOUR HONOR. THE ROBBERY AND THE TRESP ASS HE WAS BEING Q UEST IONED A BOUT THAT.

CHIEF JUSTICE: HAD HE NOT BEEN ARRESTED FOR ANYTHING?

HE HAD NOT BEEN ARR ES TED UNTIL AFTER HE SPOKE ABOUT THE ROBBERY AND THE TRESP ASS.

CHIEF JUSTICE: WHAT WAS HE BROUGHT INTO QUESTIONING FOR?

REGARDING THE ROBBERY AND THE TRESPASS.

CHIEF JUSTICE: SO THEY ARE ASKING HIM ABOUT THAT. DO THEY THEN START TO ASK ABOUT THE ABDUC TION?

DETEC TI VE BACH W HO WAS QUESTIONING HIM ON THE 15TH , THE E ARLY M ORNI NG H OURS OF THE 15TH, THEY WERE ARRES TED ON THE 14TH IN THE ORA NG E G ROVE AND THEY WERE BEING QUE ST IO NED IN MARTIN COUNTY BY DETECTIVE BACH AND A FBI AGENT WITH REGARD TO THE R OBBERY.

CHIEF JUSTICE: SO THEY WERE ARRESTED?

THEY WER E TAKEN I NT O CUSTODY. I GUESS THEY WERE ARRESTED B UT NOT C HARGED. I APO LOGI ZE . THEY WERE NOT CHA RG ED AND THEY WERE NOT FORMALLY ARR ES TE D O N THOSE C HARGES UNTIL A FT ER MR. PHILMORE SAID, YES , I WAS INVOLVED IN THE ROBBERY.

CHIEF JUSTICE: THAT WAS BEFORE HE I NV OKED HIS RIG HT TO AN ATTORNEY?

BEFORE HE I NV OKED HIS R IGH T TO AN ATTORNEY.

CHIEF JUSTICE: SO HE HAS ALREADY IMPLICATED HIMSELF IN THE ROBBERY. ARE THEY NOW S TARTING TO QUESTION HIM ABOUT THE ABDUCTION?

NO.

CHIEF JUSTICE: THEN HE CONFESSES AND THEN HE SAYS I WANT AN ATTORNEY?

DETECTIVE BACH WAS T AL KING ABOUT THE ROBBERY, AND THEN MR. PHILMORE, AND THIS CAME OUT ALL IN THE S UP PR ES SION HEARING THAT IS I N THE R EC OR D ON APPEAL. MR. BACH, D ETEC TIVE BACH WAS UNDER T HE I MPRE SS IO N T HA T MR. PHILMORE WANTED TO SPEAK FURTHER. MR. PHILMORE SAID AFTER HE SPOKE ABOUT THE R OBBERY, I DON'T WANT TO GO ANY FURTHER UNTIL I T AL K T O A N ATT ORNE Y . AND THE I NTERAC TI ON T HA T DETECTIVE BACH AND MR. PHILMORE HAD L ED DET ECTI VE BAHAMA B ACH T O BEL IEVE T HERE WAS MORE TO COME AND THA T ALS O MR. PHILMORE SAID, LOOK , I'M NOT GOING TO TELL YOU WHO WAS INVOLVED IN THE ROBBERY WITH ME, BUT O NCE YOU RUN T HE FIN GERPRINTS ON THE CAR YOU WILL KNOW WHO WAS WITH ME . SO DET EC TI VE BACH S TO PP ED T HA T I NTERVIEW.

CHIEF JUSTICE: SO NOW HE INVOKED HIS RIGHT AND GOING BACK SO WHAT WAS IT THAT MR. HETHERINGTON WAS BEING CALLED INTO WHEN SOM EONE S AY S , YOU KNOW, I'M I NVOK I N G Y OU NEVER REALLY SEE THIS, YOU KNOW, USUALLY I GUESS WHEN THEY HAVE THAT TER M L AWYER UP , YOU KNOW , THEY DON'T SAY ANYTHING MORE. SO WHAT WAS IT T HAT MR. HETHERINGTON WAS BEING CALLED IN TO DO? WAS HE BEING CALLED IN J US T TO ADVISE MR. P

HI LM OR E O N WHE TH ER H E SHO UL D C ON TINU E T O T ALK O R NOT OR WAS HE BEI NG A SK ED T O REPRESENT H IM O N C HARG ES ?

I THINK IT WAS A N E VOLV IN G MATTER WITH M R. P HILMOR E. HE CLEARLY WAS APP OI NT ED O N THE ROB BERY AND T HE TRE SP AS S. THAT WAS THE APP OI NTME NT . MR. P HILMORE ASKED HIM W AS EVOLVED IN TRYING TO CLEAR HIS NAME SO M R. H ETHERI NG TON W AS HELPING HIM MAKE THAT D EC ISION AS TO WHETHER OR NOT TO TALK TO THE POLICE. BASED ON MR. PHILMORE W AN TI NG TO CLE AR HIS N AME , M R. PHILMORE SAID I WAS N OT INVOLVED.

CLEAR HIS NAME OF WHAT?

OF T HE K ID NA PPIN G , O F T HE ABDUCTION , OF T HE C AR JACK IN G , OF THE MURDER. I WAS N OT INV OLVED AT A LL I N ANY OF THOSE THINGS.

CHIEF JUSTICE: SO B UT I F THAT HADN'T EVEN BEEN T HE SUBJECT -- DID THE POL ICE K NO W THAT THAT A BD UC TION AND CARJACKING HAD TAKEN P LA CE ?

YES, AND MAYBE IT W OULD B E HEL PFUL TO T HE COURT TO DO A LITTLE, A QUICK H IS TO RY O F THIS CASE. M R. PHILMORE AND M R. S PA NN WERE ARRESTED R UNNING OUT O F A N O RANG E G ROVE , R UNNING INT O AN ORANGE GROVE. THEY WERE IN T HE G OL D L EXUS T HAT BELONGED T O MIS S P ERRO N. THE POLICE HAD A LREA DY B EE N I N SEARCH OF A GOL D L EX US A ND A S UBARU BASED ON THE B ANK ROBBERY.THEY HAD THE SUB ARE YOU IN THEIR -- S UB AR U I N T HEIR POSSESSION AND A BLO OD Y SHI RT . WHAT PRECI PI TATE D T HE CHA SE FOR THEM IS T HA T M R. SPA NN HAD AN OUT ST ANDING WAR RANT FROM TALLAHASSEE FOR MURDER. THEY HAPPENED TO GO BACK DOWN FROM INDIAN TO WN A FTER T HE ROBBERY B ACK DOWN TO W ES T PAL M AND THEY HAPPENED TO BE SPOTTED BY AN U ND ERCO VE R OFFICER IN THAT ARE A W HO K NE W MR. SPANN AND KNEW THAT T HERE WAS A WARRANT FOR H IM . A C HA SE E NS UE D A ND T HE Y GOT ALL OF THE WAY UP T O M ARTI N COUNTY, THE T IR E B LE W , AND THEY RAN I NTO A G ROVE . SO NOW THE POLICE H AV E THE S UBARU AND THE L EX US AND THE Y HAVE THE TWO IND IVID UALS . THEY ALSO HAD B EE N I N S EARC H OF A GOLD L EXUS A ND THE P OL IC E HAD BEEN I N S EARC H O F M IS S P ERRON BECAUSE HER H USBAND HAD REPORTED HER MIS SING . SO ALL OF T HI S C OME S T OGET HER.

CHIEF JUSTICE: OBV IO USLY THEY WERE Q UESTIONING HIM ABOUT, I MEAN T HOSE ARE ALL CON NECTED UP , SO I MEA N --

THEY W ERE QUESTIO NI NG H IM ABOUT IT, B UT D ETEC TIVE B AC H HAD NOT B EEN QUE STIO NI NG HIM ABOUT IT BECAUSE THAT WAS BEING DONE B Y W EST PALM BEA CH . ONCE MR. PHI LM ORE S TARTED TALKING ABOUT THE MURDER AND THAT HE HAD NOTHING TO D O WITH IT AND HE HAD NOTHING TO DO WITH THE ABDUCTION.

CHIEF JUSTICE: THAT WAS AFTER SPEAKING W ITH M R. H ETHERINGTON?

THAT'S CORRECT.

CHIEF JUSTICE: SO NOW WE GO BACK TO MR. H ETHE RING TO N BELIEVED HE WAS THERE T O REALLY ADVISE ON ALL OF THE SE ISSUES, RIGHT? IT IS NOT LIKE HE SAYS , W ELL , I REALLY I W AS H IR ED O R I W AS RETAINED FOR THE MURDER I M EA N FOR THE ROBBERY B UT NOT F OR THE K ID NA PP IN G , I M EA N HE IS NOT SAYING THAT?

NO , H E WAS N OT S EP ARAT IN G T HEM AND HE D IDN' T S EP AR ATE THEM IN E IT HER HIS T ESTIMONY AT THE SUP PR ESSI ON HEA RING O R HIS TES TIMONY AT THE EVIDENTIARY HEARI NG . HOWEVER, H E W AS A PPOI NT ED O NL Y F OR THE K ID NA PPIN G AND I M EA N EXCUSE ME FOR T HE R OBBERY A ND THE TRESPASS .

NOW, THE TESTIMONY HE GAVE WAS, CORRECT ME IF I'M WRONG, THAT THE DEFENDANT -- HE ASKED THE DEFENDANT DID YOU DO THE SE THINGS, AND THE DEFENDANT SAID I DID NOT ABDUCT -- DID NOT MURDER, AND I WANT TO TALK ABOUT THOSE THINGS AND COUNSEL SAID YOU NEED TO TELL ME THE TRUTH. HE SAID THAT'S THE TRUTH, AND THEN HE SAID SOMETHING COMPLETELY DIFFERENT TO THE POLICE?

HE SAID SOMETHING COMPLETELY DIFFERENT TO THE POLICE DURING THE POLYGRAPH, YES, BUT HE HAD GIVEN A STATEMENT ON THE 18TH COMPLETELY EXCULPATORY. I WASN'T THERE. I DIDN'T KNOW ANYTHING ABOUT THE ABDUCTION AND I DIDN'T KNOW ANYTHING ABOUT THE MURDER.

AND DEFENSE COUNSEL HAD THIS WHEN HE WAS ADVISING THE DEFENDANT, THE ORIGINAL STATEMENT?

ON THE 15TH THERE WAS A STATEMENT THAT THERE WAS INVOLVEMENT IN THE ROBBERY AND THE TRASS. ON THE 18TH AFTER MR. HETHERINGTON HAD DONE SOME INVESTIGATION, HAD SPOKEN TO THE DEFENDANT'S MOTHER, KNEW ABOUT MR. SPANN'S MURDER CHARGES AND ALSO HAD TALKED TO HIS CLIENT AND KNEW SOMETHING ABOUT WHAT HIS CLIENT WAS TELLING HIM, ON THE 18TH MR. PHILMORE GIVES A STATEMENT SAYING I HAD NOTHING TO DO WITH THE ABDUCTION OR THE MURDER. >> AND THE ATTORNEY WAS THERE WHEN THIS --

FOR THAT STATEMENT, THE ONE ON THE 18TH. FOR THE ONE ON THE 20TH WHICH WASN'T A STATEMENT IT WAS SUPPOSED TO BE A POLYGRAPH TO CONFIRM AND THE STATEMENT ON THE 18TH, MR. HETHERINGTON WAS NOT PRESENT. AND IT WAS DURING THIS PREVIOUS INTERVIEW THAT MR. PHILMORE SAYS, YES, I WAS THERE FOR THE ABDUCTION. THAT INTERVIEW WAS STOPPED. MR. HETHERINGTON THEN SPEAKS AGAIN WITH HIS CLIENT AND IS ASSURED THAT HIS CLIENT IS NOW TELLING HIM THE TRUTH THAT IT WAS JUST THE ABDUCTION BUT THAT HE WASN'T THERE FOR THE MURDER. HE DID NOT COMMIT THE MURDER. HE IS NOT THE SHOOTER.

AT THIS POINT HAVING TALKED TO THE MOTHER AND TALKED TO MR. PHILMORE, WHAT WOULD, FROM THE RECORD, MR. HETHERINGTON HAD KNOWN ABOUT HIS COMPETENCY?

FROM THE RECORD I DON'T THINK THERE IS ANYTHING THAT SHOWS HE IS INCOMPETENT. I DON'T BELIEVE THAT THEY SPOKE ABOUT THOSE -- YOU KNOW, REALLY --

YOUR OPPONENT MENTIONED THERE SHOULD HAVE BEEN SOME SIGN OR HE SHOULD HAVE BEEN AWARE THAT HE HAD COMPETENCY ISSUES.

I THINK WE'RE LOOKING AFTER THE FACT AS TO WHAT HE MAY OR MAY NOT HAVE -- MAY OR MAY NOT HAVE KNOWN OR SHOULD HAVE KNOWN BASED ON, YOU KNOW, YEARS OF INVESTIGATION AFTWARDS. >> IS THERE ANYTHING, THE NURSING INTERVIEW AT THE JAIL OR ANYTHING AT THE TIME THAT WOULD HAVE PUT A REASONABLE ATTORNEY ON NOTICE THAT MR. PHILMORE WAS NOT COMPETENT?

I THINK THERE IS NOTHING IN THE RECORD THAT WOULD SHOW THAT A REASONABLE PERSON WOULD HAVE THOUGHT THAT MR. PHILMORE WAS NOT COMPETENT OR ABLE TO DISCUSS MATTERS WITH THE POLICE.

BUT WE ARE AT A POINT HERE WHERE MR. HETHERINGTON HAS BEEN ASSURED BY HIS CLIENT THAT HE HAD NOTHING TO DO WITH THE ABDUCTION, THE CHARGING, MURDER OF MISS PERRON. YET, YOU KNOW, A COUPLE OF DAYS LATER MR. PERRON IN THE REINTERVIEW THEN SAYS, YES, I WAS THERE WHEN THE ABDUCTION TOOK PLACE. DON'T YOU THINK THAT AFTER HAVING THIS ASSURANCE THAT I HAD NOTHING TO DO WITH ANY OF

THIS, NOW WE GET A STATEMENT THAT SAYS, WELL, YES, I WAS THERE, BUT A REASONABLE ATTORNEY WOULD THEN HAVE BEEN PUT ON SOME KIND OF NOTICE THAT I CAN'T RELY ON WHAT THIS MAN IS TELLING ME, YOU KNOW, THE BETTER PART OF VALOR HERE WOULD BE TO TELL HIM NOT TO SAY ANYTHING FURTHER UNTIL WE HAVE HAD SOME TIME TO DISCUSS THIS, TO DO SOME INVESTIGATION, BECAUSE IT IS OBVIOUS NOW THAT THE CLIENT IS NOT TELLING HIM THE TRUTH.

WELL, IT IS OBVIOUS THAT THE CLIENT DIDN'T TELL HIM THE TRUTH REGARDING THE ABDUCTION. HOWEVER, MR. HETHERINGTON DID DO INVESTIGATION, AS I MENTIONED BEFORE HE HAD SPOKEN TO MR. PHILMORE'S MOTHER AND HE KNEW MR. SPANN'S BACKGROUND. ALSO BY ADMITTING TO THE ABDUCTION, NOW WE HAVE A BOTTOM LINE OF FELONY MURDER, LIFE IN PRISON. SO MR. HETHERINGTON IS NOW LOOKING AT WHAT HE SHOULD ADVISE HIS CLIENT TO DO IN THAT SITUATION, AND OF COURSE IT WOULD BE BETTER TO BE THE NONSHOOTER COOPERATING WITNESS. THAT IS WHAT MR. HETHERINGTON WAS LOOKING AT. HE IS ALSO LOOKING AT THE FACT THAT MR. SPANN IS THE ONE WITH THE VIOLENT BACKGROUND.

CHIEF JUSTICE: WOULDN'T IT HAVE BEEN AND AGAIN I REALIZE SOME OF THIS IS, YOU KNOW, SECONDGUESSING OR HINDSIGHT AND AGAIN I'M TROUBLED BY WHAT THE REMEDY WOULD BE, A NYWAY. I REMEMBER WHEN I LOOKED AT THIS CASE ON DIRECT APPEAL AND I SAID MY GOODNESSES, THIS GUY HAD AN ATTORNEY AND HE IS CONFESSING TO ALL OF THESE THINGS. IT SEEMS KIND OF UNUSUAL. WOULDN'T HE HAVE WANTED TO GET, LISTEN, MY CLIENT IS GOING TO TESTIFY BUT CAN YOU GIVE ME SOME ASSURANCE THAT HE WILL GET A LIFE SENTENCE IF HE ENDS THIS ON MR. SPANN? AND ONCE THAT DOESN'T HAPPEN YOU CAN'T FAULT THE ATTORNEY BUT WOULDN'T YOU EXPECT THAT AT LEAST HE WOULD HAVE TRIED TO WORK OUT SOME DEAL WITH THE STATE, YOU KNOW, IF MY CLIENT TESTIFIES TRUTHFULLY AND PUTS THE - - ASSURANCE AS WAS SAYING AT THE VERY BEGINNING, YOU KNOW, BE THE FIRST ONE TO SPILL THE BEANS AND GET THE DEAL WITH THE STATE. SO DID ANY OF THAT, WAS EVOLVED IN TRYING TO GET HIS CLIENT A LIFE SENTENCE IF HIS CLIENT WOULD TESTIFY HONESTLY?

I WILL POINT YOUR HONOR AGAIN TO THE SUPPRESSION HEARING, AND IT WOULD BE MR. BAKKEDAHLS, THE ASSISTANT STATE ATTORNEY ON THIS AND ALSO TO MR. HETHERINGTON'S TESTIMONY. THERE WAS NO QUID PRO QUO. HOWEVER, THE STATE ALSO MADE IT CLEAR THAT THEY WERE NOT GOING TO BE OFFERING A NY PLEAS UNTIL THEY BELIEVED THAT THEY KNEW WHAT HAD HAPPENED. THEY WEREN'T JUST GOING TO OFFER ANYONE A LIFE SENTENCE UNTIL THEY HAD SOME SORT OF COMFORT LEVEL IN A BELIEF THAT THE Y KNEW WHAT THE FACTS WERE.

IN OTHER WORDS YOU ARE SAYING THAT THE POLYGRAPH WAS A PREREQUISITE TO ANY PLEA NEGOTIATION?

A PASSING OF A POLYGRAPH WAS A PREREQUISITE TO GOING FORWARD AND JUST BECAUSE MR. PHILMORE IS UNABLE TO LIE SUCCESSFULLY SHOULDN'T BE BLAMED ON HIS ATTORNEY. HIS ATTORNEY FELT COMFORTABLE WITH WHAT HE KNEW AT THE TIME SAYING, LOOK, IF YOU WERE NOT INVOLVED. IF YOU REALLY ARE TELLING ME YOU ARE NOT INVOLVED, OKAY, LET'S GO IN AND YOU CLEAR YOUR NAME. OF COURSE THE NEXT STEP IS MR. PHILMORE ADMITS TO SOMETHING BUT AGAIN MR. HETHERINGTON IS STILL CONFIDENT THAT AT LEAST MR. PHILMORE ISN'T THE SHOOTER, BECAUSE HE HAS THE MORE VIOLENT PERSON IN JAIL AND IN MR. SPANN. HE HAS AN OUTSTANDING WARRANT FOR A MURDER A LREADY, AND HE IS ALSO A KNOWN SUSPECT FOR MANY OTHER WEST PALM MURDERS AND IN SPEAKING TO MR. PHILMORE'S MOTHER, THERE WAS A COMFORT LEVEL THAT HE PROBABLY WAS NOT THE SHOOTER. THEREFORE, MR. HETHERINGTON IS TELLING HIS CLIENT, DO NOT TALK TO THE POLICE IF YOU ARE THE SHOOTER. LET'S STOP IT RIGHT NOW, AND MR. PHILMORE IS SAYING, NO, NO, IT'S OKAY. I'M NOT THE SHOOTER. I'M GOING TO GO FORWARD. MR. PHILMORE IS UNABLE

T O LIE SUCCESSFULLY IN THE SECOND POLYGRAPH.

HOW OLD IS MR. PHILMORE?

AT THAT POINT HE WAS 21 I BELIEVE.

CHIEF JUSTICE: AND HAD HE HAD A HISTORY OF INVOLVEMENT WITH, JUST REFRESH MY RECOLLECTION ON THAT?

HE HAD A CRIMINAL HISTORY FROM JUVENILE AND ALSO OTHER ROBBERIES. IN FACT, TWO OF THE AGGRAVATED ROBBERIES WERE FOR ROBBERIES IN NOVEMBER OF '97 JUST SHORTLY BEFORE THIS WILL MURDER, AND I BELIEVE HE ALSO HAD A BATTERY ON A CORRECTIONS OFFICER FOR SOMETHING THAT HAD HAPPENED, I BELIEVE IN '95 ABOUT A YEAR OR TWO EARLIER THAN THAT SO HE HAD EXPERIENCE WITH LAW ENFORCEMENT. AS HE SAID, HE KNEW THROUGHOUT HIS SUPPRESSION HEARING, HE KNEW HE HAD THE RIGHT TO TALK OR NOT TO TALK TO THE POLICE, AND THIS COURT HAS ALREADY FOUND THAT THAT WAS A VOLUNTARY WAIVER. SO MR. HETHERINGTON WAS COMFORTABLE WITH WHAT MR. PHILMORE IS TELLING HIM, NOT ONLY BASED ON WHAT MR. PHILMORE IS TELLING HIM BUT WHAT OTHER INVESTIGATION HE DID DO. MERELY BECAUSE MR. PHILMORE ENDS UP CONFESSING TO THE CRIME AFTERWARDS, EVEN THOUGH MR. HETHERINGTON TELLS HIM NOT TO SPEAK IF HE IS INVOLVED. MR. HETHERINGTON DID TRY AND GET ADDITIONAL MITIGATION FOR HIM, REMORSE, YOU KNOW, COOPERATION WITH THE POLICE, ALL OF THOSE WHICH ARE ACCEPTABLE, MITIGATED TO THIS COURT, SO THAT NOT EVERYTHING WAS LOST EVEN THOUGH MR. PHILMORE CONFESSED FULLY TO THIS CRIME. UNLESS THERE ARE ANY OTHER QUESTIONS OR IF THE COURT WISHES ME TO DISCUSS AN ISSUE.

JUST ONE QUICK ONE. YOUR OPPONENT MENTIONED THAT COUNSEL SHOULD DO MORE INVESTIGATION, BUT IT IS ACTUALLY WHO WAS THE SHOOTER, DID THE ULTIMATE FACTS EVEN IN HINDSIGHT SHOW THAT IT WAS ONLY THE TWO -- THERE WERE NO WITNESSES OF THE ACTUAL SHOOTING, AND THE ONLY WITNESSES WERE THOSE WHO PARTICIPATED.

AND THOSE ARE THE ONLY TWO THAT WOULD KNOW WHAT HAPPENED AT THAT TIME. WHAT OTHER INVESTIGATION COULD BE, YOU KNOW, WOULD SHOW OTHER THAN ONE OF THEM CONFESSING TO BEING THE SHOOTER, THERE WASN'T ANY FURTHER OTHER THAN MR. PHILMORE'S SHIRT BEING FOUND AT THE SCENE WITH BLOOD ON IT. I SUPPOSE THAT THAT COULD -- THEY COULD DRAW A CONCLUSION FROM THAT THAT IT REALLY WAS MR. PHILMORE BUT THAT HADN'T BEEN TESTED YET. THANK YOU. I RELY ON MY BRIEF TO ASK THIS COURT TO UPHOLD THE TRIAL COURT'S DENIAL OF POST-CONVICTION RELIEF, AND ALSO TO DENY ANY HABEAS RELIEF.

CHIEF JUSTICE: THANK YOU VERY MUCH. MR. VIGGIANO, REBUTTAL?

IN REBUTTAL, WHAT HAPPENED ON THE 15TH FROM THE PERSPECTIVE OF LAW ENFORCEMENT, FROM THE PERSPECTIVE OF MR. PHILMORE AND MR. HETHERINGTON IT WAS ALL ABOUT THE ABDUCTION. IT WASN'T ABOUT THE TRASPAS AND IT WASN'T ABOUT THE ROBBERY. APPOINTED ATTORNEYS DON'T SPEND TWO AND THREE HOURS MEETING WITH THEIR CLIENTS IN THE FIRST FEW DAYS OF REPRESENTATION MEETING THEM IN 10 AND 20 TIMES IN THE 12-DAY PERIOD ON A TRASPAS OR A ROBBERY. I MEAN THIS WAS ALL ABOUT THE ABDUCTION IN THE BEGINNING.

DID THEY MEET WITH HIM 10 AND 20 TIMES THAT KIND OF GOES AGAINST YOUR ARGUMENT OF INEFFECTIVE ASSISTANCE IF HE IS THAT INVOLVED.

YOUR HONOR, WAS NOT CHECKING OUT WHAT WAS -- HE WAS BEING TOLD BY THE STATE. HE HAD THIS TIMELINE FROM THE STATE. HE HAD WHAT HE BELIEVED THE STRONG CIRCUMS

TANTIAL CASE AND THEN HE GETS A V E R S I O N F R O M H I S C L I E N T A N D I T I S N O T M A T C H I N G U P B Y H I S O W N A D M I S S I O N A T T H E E V I D E N T I A R Y H E A R I N G S I T I S N O T M A T C H I N G U P Y E T I N T H E F A C E O F T H I S H I S C L I E N T S A Y S O H , I W A N T T O C L E A R T H I S . I W A N T T O G E T T H I S O V E R W I T H , A N D H E R U S H E S H I S C L I E N T I N T O L A W E N F O R C E M E N T T O G I V E A S E R I E S O F S T A T E M E N T S .

Y O U S A Y H I S C L I E N T , L E T M E S T O P Y O U R I G H T T H E R E . Y O U S A Y H E R U S H E S H I S C L I E N T I N . W A S T H E R E E V I D E N C E A T T H E E V I D E N T I A R Y H E A R I N G T H A T I T W A S T H E C L I E N T T H A T I N S I S T E D O N S P E A K I N G T O T H E P O L I C E A N D M A K I N G S U R E T H A T T H E Y U N D E R S T O O D A N D A B S O R B - - A B S O L V E D H I M O F T H E M U R D E R , N O T T H E L A W Y E R P U S H I N G T H E C L I E N T T O D O I T ?

A T T H E E V I D E N T I A R Y H E A R I N G M R . H E T H E R I N G T O N T E S T I F I E D H E W A S S A Y I N G T H I N G S L I K E Y O U S H O U L D C O O P E R A T E , I T W O U L D B E B E N E F I C I A L T O Y O U .

D I D H E S A Y T H A T B E F O R E O R A F T E R H I S C L I E N T T O L D H I M T H A T H E W A S N O T I N V O L V E D I N T H E A B D U C T I O N O R T H E M U R D E R ?

H E C O U L D N ' T R E A L L Y N A I L I T D O W N B E C A U S E H E W A S M E E T I N G W I T H T H E M O V E R A P E R I O D O F T I M E A N D H E C O U L D N ' T S P E C I F I C A L L Y S A Y W H E N H E W A S S A Y I N G C E R T A I N T H I N G S T O M R . P H I L M O R E .

I T S E E M S T O M E T H A T T H E R E C O R D S H O W S T H A T F I R S T H I S C L I E N T S A I D I W A S N O T I N V O L V E D I N T H E A B D U C T I O N O R T H E M U R D E R A N D T H E N T H E L A W Y E R S A I D , W E L L , I F T H A T ' S T R U E A N D Y O U N E E D T O T E L L M E T H E T R U T H H E R E B U T I F T H A T ' S T R U E T H E N Y O U S H O U L D C O O P E R A T E .

B U T H E K N E W I T W A S N ' T T R U E B E C A U S E H E H A D C O N C E R N S A B O U T H O W D I D T H I S C A R G E T F R O M W H E R E I T W A S T A K E N A T 1 : 0 0 . > > Y O U M A Y H A V E S U S P E C T E D B U T H O W C A N Y O U S A Y H E K N E W I T W A S N ' T T R U E ?

H E H A D T O C O M P A R E T H E S T A T E M E N T S G I V E N T O H I M B Y M R . P H I L M O R E T O W H A T H E W A S L E A R N I N G F R O M L A W E N F O R C E M E N T , C O M P A R E T H E T W O A N D H E H A D T O H A V E H I S C O N C E R N S , T H E R E I S S O M E T H I N G W R O N G H E R E .

H O W C A N Y O U D E D U C T F R O M T H A T T H A T H E K N E W I T W A S N ' T T R U E W H A T H I S C L I E N T W A S T E L L I N G H I M ?

H E S U R E L Y , H E S U S P E C T E D I T W A S N ' T T R U E F R O M T H E 1 5 T H T O T H E 1 8 T H W H E N M R . P H I L M O R E W E N T I N A N D G A V E T H E S T A T E M E N T W H E R E H E D I D N ' T I N C U L P A T E H I M S E L F . H O W E V E R , O N T H E 2 0 T H W H E N H E W E N T I N A N D A D M I T T E D T O T H E A B D U C T I O N , S U R E L Y H E K N E W T H A T T H E R E W A S A N I N C O N S I S T E N C Y A T T H A T P O I N T . N O W , H A D H E T H E R I N G T O N E V E N S H U T I T D O W N A T T H A T T I M E A T L E A S T T H E R E W O U L D H A V E B E E N A D V E R S E Y A R - - A D V E R S A R I A L T E S T I N G .

D I D N ' T H E T E L L H I M P O I N T B L A N K D O N O T S A Y A N Y T H I N G U N L E S S Y O U A R E T E L L I N G M E T H E A B S O L U T E T R U T H ? I T I S I N Y O U R I N T E R E S T N O T T O S A Y A N Y T H I N G I F Y O U H A D A N Y I N V O L V E M E N T , W A S N ' T T H A T C O N S I S T E N T T H R O U G H O U T T H E R E P R E S E N T A T I O N ?

A N D A T T H E S A M E T I M E H E I S T E L L I N G H I M Y O U N E E D T O G E T T H E C O O P E R A T I O N . T H E P E R S O N S A I D O H , I ' M N O T I N V O L V E D A N D T H E N H E S A Y S , O K A Y , G O A H E A D A N D G I V E T H E S T A T E M E N T . > > B U T W A S N ' T T H A T O K A Y C O N T I N G E N T A T A L L T I M E S O N W H A T M R . H E T H E R I N G T O N W A S L E A R N I N G F R O M H I S C L I E N T A S I D I D N ' T H A V E A N Y I N V O L V E M E N T , I W A S N ' T I N V O L V E D I N T H E A B D U C T I O N O R I D I D N ' T H A V E A N Y I N V O L V E M E N T I N T H E S H O O T I N G ?

W I T H I N T H E F I R S T T H R E E D A Y S , T H A T ' S W H A T M R . P H I L M O R E W A S T E L L I N G H I M , A N D A G A I N I T W A S N ' T A D D I N G U P , T H E T W O - -

S O W H A T M I S A D V I C E D I D M R. H E T H E R I N G T O N G I V E T O M R. P H I L M O R E ?

H I S M I S A D V I C E W A S U N D E R T H E S E C I R C U M S T A N C E S D O N O T M A K E A N Y S T A T E M E N T S T O L A W E N F O R C E M E N T O R A N Y O N E , N O C E L L M A T E S O R A N Y O N E U N D E R A N Y C I R C U M S T A N C E S B E C A U S E A L L T H A T H A P P E N E D A S A R E S U L T O F T H I S I S H E E N D E D U P A C T I N G A S A N A G E N T O F T H E S T A T E .

B U T T H A T A D V I C E W A S B A S E D U P O N H I S C L I E N T ' S R E P R E S E N T A T I O N O F T H E N A T U R E O F H I S I N V O L V E M E N T H O W C A N I T B E D E C L A R E D M I S A D V I C E ?

W E L L , S U R E L Y I T W A S M I S A D V I C E A T T H E 20 T H W H E N H E L E A R N E D T H A T H I S C L I E N T W A S , I N F A C T , I N V O L V E D I N T H E A B D U C T I O N Y E T T H E Y D I D N ' T H A V E T H E B O D Y Y E T A N D T H E N F R O M T H E 20 T H T O T H E 21 S T M R. H E T H E R I N G T O N A D M I T T E D A T T H E E V I D E N T I A R Y H E A R I N G H E U S E D T H E C H R I S T I A N B U R I A L R O U T I N E O N M R. P H I L M O R E . H E S A I D I T W O U L D B E T H E P R O P E R T H I N G T O D O T O E N S U R E T H A T T H E F A M I L Y G E T S A P R O P E R B U R I A L H E R E . H E U S E D A T E C H N I Q U E T H A T H A S B E E N C O N D E M N E D B Y T H E U N I T E D S T A T E S S U P R E M E C O U R T . A N D A D D I T I O N A L L Y S E N D I N G H I M I N T O T H E S E L I E D E T E C T O R T E S T S , T H A T ' S A R U S E . T H E Y A R E N O T A D M I S S I B L E I N C O U R T B E C A U S E T H E Y A R E N O T R E L I A B L E . T H E Y A R E U S E D A S A T O O L B Y L A W E N F O R C E M E N T .

D I D M R. H E T H E R I N G T O N K N O W T H A T A N D T E L L T H A T T O H I S C L I E N T ?

H E S A I D A T T H E E V I D E N T I A R Y H E A R I N G T H A T H E K N E W T H E Y W E R E U S E D A S A N I N V E S T I G A T O R Y T O O L .

D I D H E T E L L H I S C L I E N T I F Y O U A R E N O T T E L L I N G M E T H E A B S O L U T E T R U T H D O N ' T T A K E T H E P O L Y G R A P H ?

H E T O L D H I M T H E L A S T T H I N G T H A T H E W E N T I N H E T O L D H I M A C C O R D I N G T O M R. P H I L M O R E , H E S A I D Y O U B E T T E R D O W E L L . Y O U B E T T E R G E T I T R I G H T .

A N D W H A T W A S T H A T C O N T I N G E N T U P O N , T H O U G H ? W A S I T N O T C O N T I N G E N T U P O N Y O U B E T T E R B E T E L L I N G M E T H E T R U T H B E C A U S E I F Y O U T A K E T H I S P O L Y G R A P H A N D F A I L I T I S G O I N G T O C A U S E A L O T O F T R O U B L E ?

H E S U R E L Y T O L D H I M T H A T B E F O R E T H E 18 T H W H E N H E S E N T H I M I N F O R T H E F I R S T S T A T E M E N T O N T H E 18 T H .

C H I E F J U S T I C E : T H A N K Y O U V E R Y M U C H . T H E T I M E H A S E X P I R E D . I W A N T T O N O T E T H A T W I T H T H E T R I A L J U D G E I N T H I S C A S E H A S I S S U E D A 30 - P A G E D E T A I L E D O R D E R . I T L O O K S L I K E B O T H C O U N S E L , B O T H M I S S C A M P B E L L A N D Y O U R S E L F , M R. V I G G I A N O , H A V E B E E N I N V O L V E D I N B O T H T H E P O S T - C O N V I C T I O N B E F O R E T H E T R I A L C O U R T A N D I N O T E T H A T T H E T I M E S T A N D A R D S L O O K L I K E I N T H I S C A S E T H I S I S A N E X A M P L E O F T H E N E W R U L E W O R K I N G Q U I T E W E L L , A N D W E A P P R E C I A T E B O T H O F Y O U R C O O P E R A T I O N I N B R I N G I N G T H I S T O T H E C O U R T W I T H O U T D E L A Y . W E W I L L T A K E T H E M A T T E R U N D E R A D V I S E M E N T . T H A N K Y O U .

T H A N K Y O U , Y O U R H O N O R .