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Seburt Nelson Connor v. State of Florida

SC04-1283

THE COURT WILL TAKE THE LAST CASE FOR THIS MORNING. WHICH IS CONNOR VERSUS STATE OF FLORIDA. PARTIES READY?

YES.

CHIEF JUSTICE: ALL RIGHT.

GOOD MORNING. MY NAME IS ISRAEL ENCINOSA, AND I REPRESENT THE APPELLANT, SEBURT CONNOR IN THIS CASE.

CHIEF JUSTICE: ARE YOU PRIVATELY RETAINED COUNSEL OR REGISTRY?

NO, I AM REGISTERED.

JUSTICE: AND IN THAT VAIN, HOW LONG HAVE YOU BEEN ON THE REGISTRY?

I HAVE BEEN ON THE REGISTRY SINCE THIS CASE. APPROXIMATELY TWO OR THREE SINCE THE BEGINNING OF THIS CASE.

JUSTICE: JUST AT THE BEGINNING OF THIS CASE?

YES.

JUSTICE: IN YOUR BRIEF BEFORE THIS COURT YOU RAISE A NUMBER OF ISSUES CONCERNING INEFFICIENT ASSISTANCE OF APPELLATE COUNSEL WHICH ARE NOT ISSUES THAT ARE RAISED IN A 3.850 OR 851 MOTION, SO I WAS WONDERING WHY YOU HAVE NOT FILED A SEPARATE HABEAS PETITION WITH THE COURT.

OKEY. BASICALLY I DID IT TO THE BRIEF AND I DON'T RECALL EXACTLY WHAT WAS PRESENTED IN THE POST-CO NVIC TION MOTION.

JUSTICE: HAVE YOU ATTENDED ANY OF THE DEATH PENALTY POST-CO NVIC TION EDUCATIONAL SEMINARS?

YES, SIR.

JUSTICE: ONE OF THE REASONS FOR A QUESTION LIKE THAT IS THAT MOST OF THOSE SEMINARS, THEY CLEARLY POINT OUT THE USE OF HABEAS CORPUS IN THIS COURT OR ANY APPELLATE COURT TO CHALLENGE THE CONDUCT OF PRIOR APPELLATE COUNSEL. DID YOU HAVE THAT?

NO, IT WAS MY FAULT, YOUR HONOR.

JUSTICE: WITHOUT GOING MUCH FURTHER, CAN YOU OUTLINE FOR US WHAT YOU'RE

EXPERIENCE IN DEATH PENALTY CASES ?

IN DEATH PENALTY CASES I HAVE TRIED ONE DEATH PENALTY CASE IN MIAMI, TERRY WEST, NOT TERRY WEST, I'M SORRY. I FORGET THE DEFENDANT'S NAME. IT WAS AWHILE BACK, WITH THE ATTORNEY MANY VASQUEZ. I USED TO WORK WITH RUDY SO RANOWHO WAS A CIRCUIT COURT JUDGE AND I ASSISTED HIM IN PREPARING THE TRIAL ORDER BEFORE HE WAS JUDGE AND NOW HE IS WORKING FOR HOLLAND AND KNIGHT.

JUSTICE: THANK YOU FOR BEING RESPONSIVE TO OUR QUESTIONS.

CHIEF JUSTICE: YOU MAY PROCEED.

YES, ONE OF THE FIRST ISSUES THAT I WOULD LIKE TO ADDRESS IS THE SECOND ISSUE WHICH I RAISE IN THE BRIEF WHICH WAS CRAFTED. AS YOU ARE AWARE, CRAFTED HAS BEEN HELD BY THIS COURT NOT TO BE RETROACTIVELY APPLIED. UNDER BREED LOVE AND CHANDLER. HOWEVER, I JUST LEARNED THAT THE U.S. SUPREME COURT HAS ACCEPTED CERTAIN TO THIS PARTICULAR IRL AND THEREFORE WE DON'T CONCEDE IT. WITH REGARD TO THE INEFFICIENT ASSISTANCE OF COUNSEL.

JUSTICE: YOU HAVE ABOUT 14 ISSUES HERE.

I'M GOING TO ADDRESS TWO. I'M GOING TO ADDRESS THE ONE IN THE PENALTY PHASE AND THE ONE DURING THE GUILTY PHASE.

JUSTICE: THE INEFFICIENT ASSISTANCE?

THAT'S CORRECT, OKAY. AND FIRST OF ALL, WE BELIEVE THAT THERE WAS A CLEAR INEFFICIENT ASSISTANCE OF COUNSEL DURING THE PENALTY PHASE. I THINK THE WHOLE PROBLEM PROBABLY STEMMED FROM THE FACT IT WAS A HUGE CASE AND THE TRIAL ATTORNEY DID NOT SEEK A SECOND COUNSEL TO HELP HIM PREPARE FOR THE CASE. COUNSEL MADE, HIS GOAL DURING THE PENALTY PHASE WAS OUTLINED IN THE BRIEF AND BASICALLY HE WAS TRYING TO AVOID, HE WANTED TO PRESENT AS A MISTAKE OR THE FACT THAT MR. CONNOR DID NOT HAVE A SIGNIFICANT CRIMINAL HISTORY AND THE REASON HE WAS DOING THAT WAS TO TRY TO AVOID THE PROSECUTOR GETTING INTO SEVERAL CRIMINAL ACTS SUCH AS BOMB THREATS OVER A PARKING SPACE THAT HE DID A WORK, HE ASSAULTED A WORKER WITH A MACHETE.

JUSTICE: DID THE LAWYER TESTIFY AT THE POST-CONVICTION HEARING?

ONLY AS TO THE ISSUE OF CHILDHOOD. THAT'S THE ONLY ISSUE THAT WAS ALLOWED FOR THE CIRCUIT COURT JUDGE.

JUSTICE: DID YOU ATTEMPT TO GET INTO THAT?

YES, YES. I MEAN, I'M SORRY.

JUSTICE: YOU SAID HE DIDN'T TESTIFY ABOUT THIS ISSUE. DID YOU ATTEMPT TO QUESTION HIM AT THE EVIDENTIARY HEARING?

WELL, I WAS LIMITED TO THE ISSUE OF WHETHER OR NOT HE INVESTIGATED THE CHILDHOOD OF MR. CONNOR. THAT'S WHAT SHE LIMITED THE POST-CONVICTION HEARING.

JUSTICE: AND WHAT WAS COUNSEL'S TESTIMONY ABOUT THAT INVESTIGATION?

AS FAR AS THE CHILDHOOD?

JUS TICE : AS FAR AS WHAT THE TRIAL COURT ALLOWED YOU TO QUESTION THE LAWYER ABOUT.

WELL , HE BASICALLY TESTIFIED THAT HE BRIEFLY TALKED OR THAT HE TALKED TO THE DOCTOR EISENSTEIN AND HE HAD TALKED TO THE FAMILY. HE DID NOT RECALL TALKING TO THE ONLY PERSON THAT ACTUALLY KNEW MR. CONNOR FROM CHILDHOOD THAT LIVES IN MIAMI. AS YOU KNOW MR. CONNOR IS FROM THE HONDURAS . HE GREW UP IN AN ISLAND RIGHT OFF OF THE HONDURAS AND HE WAS VERY POOR. HE HAD A TROUBLED CHILDHOOD . THERE WAS INSTANCES OF ABUSE THAT HE BASICALLY WAS NOT AWARE OF IN THIS CASE.

JUSTICE: WHO DID , IN FACT , TESTIFY AT THE ACTUAL PENALTY PHASE ? THERE WERE WITNESSES WHO TESTIFIED , CORRECT?

YES, THERE WERE DOCTORS THAT TESTIFIED I THINK THE DAUGHTER .

JUS TICE : THE PARENTS?

NO , THE PARENTS ARE DECEASED . THE DAUGHTER TESTIFIED , THE MOTHER TESTIFIED, I BELIEVE , AND BASICALLY WHAT THE TRIAL ATTORNEY TRIED TO PRESENT AT THAT POINT IN TIME WAS THAT HE WAS A GOOD FATHER , A GOOD PROVIDER .

JUS TICE : AND THE SEPEOPLE WHO , THE INVESTIGATOR OR THE ATTORNEY TALKED TO PRIOR TO THE PENALTY PHASE DID NOT SAY THAT MR. CONNOR WAS AN ABUSIVE FATHER BUT THOSE KINDS OF THINGS WHICH YOU ARE NOW BRINGING TO THE COURT ; IS THAT CORRECT?

EXACTLY , YES . BASICALLY THERE WAS ALSO EVIDENCE , THERE WERE INSTANCES WHERE THE HRC HAD BEEN CALLED ON THE -- ON MR. CONNOR AS FAR AS A BUSINESS THE CHILDREN. THAT COULD BE INTERPRETED ALSO AS AN INDICATION THAT HE WAS HIMSELF ABUSED.

CHIEF JUSTICE : BOY , I'LL TELL YOU WHAT , WE TALK ABOUT SLIPPERY SLOPES A LOT THIS MORNING . YOU KNOW , I'M NOT SURE HOW A BUSINESS YOUR CHILDREN IS SEEN BY A JURY AS BEING AMITIGATOR.

I AGREE WITH YOU. I THINK THAT'S COUNTER PRODUCTIVE. I BASICALLY DO FEEL THAT THAT PUT THE ATTORNEY ON NOTICABLE BECAUSE BASICALLY EVEN DR. EISENSTEIN EXPLAINS THAT CHILD ABUSE , ABUSING A CHILD BEGETS.

CHIEF JUSTICE : HOW OLD WAS THIS DEFENDANT ?

AT THAT TIME HE WAS IN HIS 50s .

CHIEF JUSTICE: AND I'M A BIG FAN OF MITIGATION , BUT I AM JUST NOT GETTING SOMETHING THAT WOULD BE LET'S JUST SAY AND THAT THERE WAS SOME EVIDENCE OF SOME CHILDHOOD ABUSE THAT YOU NOW ARE TALKING ABOUT A MAN IN HIS 50s THAT ESSENTIALLY COMMITTED A PLANNED , HORRIBLE MURDER OF A FATHER AND CHILD AND SORT OF SET THE MUP. YOU KNOW , MAYBE IF THERE WAS MENTAL MITIGATION THAT WAS STRONGER, BUT DIDN'T THE DEFENSE ATTORNEY REALLY PURSUE MENTAL MITIGATION AT THE ORIGINAL TRIAL?

HE PURSUED MENTAL MITIGATION.

CHIEF JUSTICE: AND HE DID A , WE SEE CASES WHERE SOMEBODY TALKS TO WITNESSES W

HEN T HE Y COM E T O THE C OURTHOUSE , AND W E THI NK T HAT'S O KA Y . WHA T I S THI S SIN CE Y OU ARE AN ATTOR NE Y D O T O A N I NVESTI GA TION OF THIS C AS E?

H E HIR ED , I D ON 'T K NO W I F H E HIR ED O R H IS P REDE CE SSOR , T HERE W AS A N A TT ORNE Y B EFORE HIM . H E HIR ED A MIT IG ATIN G EXP ER T AND A LS O THE RE W ER E P SYCHOLOGISTS T HA T MET W IT H MR. CON NOR. S OME FRO M THE STA TE S OME FRO M THE DEF EN DANT.

CHIEF JUSTICE: AND WAS THERE A NUMBER O F WIT NESSES THAT WERE INTERVIEW ED B Y T HE MIT IGATION SPE CIAL IS TS AND THE INVESTIGATOR?

THE MIT IGAT IO N SPE CIAL IS T I N EVER GOT T O S EE T HA T REPOR T. I DID SEE DR. E ISEN ST EIN' S REPORT AND HE OUT LI NE D T HE P EOPL E H E INT ERVI EW ED . OF COU RS E IN THE END W E W ER E A BL E T O L OC AT E V IN CENT C ONNO R W HO I S A DIS TA NT R EL AT IV E O F S EBUR T C ONNO R W HO K NE W H IM F RO M THE C HILDHO OD A ND THAT'S T HE WITNESS W E PRESENTED I N T HE P OST- CONVICTION RELIEF.

JUSTICE: BUT IN T HI S C AS E , ISN 'T THE RE ALS O E VIDE NC E T HA T T HE DEF ENSE A TT ORNE Y H AD S OME K NO WLEDGE O F P OSSIBLE ABU SE , A ND H E E VE N DIS CU SSED IT W ITH T HE M ENTA L H EALTH EXP ER T AND T HE N THE Y COME T O A DEC IS IO N T HA T I T W AS BET TE R T O G O D OWN T HE R OA D O F P RESE NT IN G MEN TA L H EALT H M ITIG AT IO N E VIDE NC E AS O P P OS ED T O GET TING INT O T HIS W HO LE ABU SE A RE A?

I A GR EE . I THINK T HAT' S WHA T I W AS JUS T NOT IC ING. I AGREE THAT' S A G OO D S TRATEGY. THE ONLY THING IS H E WAS O N N OTIC E T O F UR THER I NVES TI GATE M R. C ONNO R' S C HILD HO OD .

CHIEF JUSTICE: BUT YOU ARE NOT G OING TO BE ABLE T O GET ONE WITHO UT T HE O THER . I N OT HER WORDS , I F PER C HANCE H E H AD D EC IDED THA T HE N EEDE D T O G O F ARTH ER A ND I NVES TIGATE I T , H E W OULD HAVE FOUND IT AND S AID , O KA Y , A BUSE WHE N H E I S A C HILD , I N H IS 5 0s A ND I T WIL L C OME O UT THAT HE H AS A BU SE D H IS C HILDRE N, I S UR E D ON 'T W AN T T HAT C OMING O UT.

I AGREE WITH Y OU.

CHIEF JUSTICE: SO H OW WOU LD YOU --

IT P UT S H IM O N N OTIC E. H E S HO UL D H AV E CHE CK ED INTO T HE BAC KG ROUN D.

CHIEF J US TICE: BUT H E CHECK S IT AND T HE RE I S N OT A W AY THA T A T T HA T P OINT T HA T I T IS N OT G OING T O C OME O UT . I 'M A DDRE SS ING T HE P RE JUDI CE PRONG , BUT T HA T YOU WOU LD B E ABLE T O GET I N T HE N WHA T H E C URRE NTLY , HIS C UR RE NT A CTIO NS , T HA T I S O F A BU SING H IS O WN C HILD RE N. R IGH T?

W EL L , THAT S UPPO SE S T HA T T HAT I NFOR MA TION W AS P UBLIC INFORMATION.I DON'T THINK I T W AS A T THE T IME. I T HI NK THE RE W ER E CAS E A RRES TS , CAS ES OPENE D U P. I T W AS ONL Y K NOW N THRO UGH T HE FAMIL Y S O I D ON'T K NO W I F THE Y WOU LD H AV E B EE N ABLE TO GET INTO THA T O R NOT .

CHIEF J USTICE: SO I T IS S PECULA TIVE, R EALLY.

I MEAN I D ON 'T KNO W I F I T W OULD H AV E B EEN , B UT I D O K NOW THAT THE C HI LDHO OD I S VER Y I MP OR TANT . H E GRE W U P V ER Y POO R. H E WAS BAS ICAL LY P ASSE D OFF FRO M ONE H OU SE D OW N T O T HE O THER D OW N I N THE I SLAN D I N T HE H ON DURA S .

J USTI CE : W HA T D ID T HE T RIAL JUDGE F IN D A S M ITIG ATING EVIDENCE IN THI S CASE?

I THINK THE Y FOUND T HA T I B ELIEVE THE LAC K O F CRI MI NA L H ISTORY THAT W AS EVE NT UALL Y ARG UE D A ND I DON 'T T HI NK S HE A CCEPT E D I T . I T WAS P RESE NT ED TOW AR DS T HE E ND AFT ER HIS STRAT EG Y F AILE D. B ASICALLY WHAT H E WAS T RYIN G TO DO I S AVO ID G ET TING I NT O T HESE CRI MI NA L ACT S B Y NOT S EEKI NG THA T P AR TICU LAR M ITIG ATOR , B UT D URIN G T HE T RIAL A ND I C ITED A CAS E I N M Y BRI EF HE B ASIC ALLY GET S C AUGHT O FF GUARD W HE N H E S AYS THA T H E STA RT S O BJECTING , A SK S F OR A M ISTR IAL S AYIN G T HA T T HE E VIDE NC E ABOUT T HE BOM B T HREA T OVE R A P AR KING S PA CE I S P RE JU DICI AL , B UT H E D IDN'T R EA LI ZE - - [INAUDIBLE] .

CHIEF J USTI CE : NOW , T HAT'S AN EXA MPLE OF SOMETHING THAT SEE MS P RETT Y C ARELESS . ONE THING , B UT HOW DOE S T HA T O NE THI NG T HE N T RA NSLA TE INTO THE R EST?

THE P EN ALTY P HA SE I S V ER Y D YNAMIC I N N ATURE. I THINK YOU JUS T D ON'T G O I N THE RE AND WING IT. YOU HAVE TO PLAN I T O UT . H AD H E S POKE N T O D R. EIS ENSTEIN HE WOULD H AV E KNOWN THE D OCTOR R EL IE D O N THO SE P ARTICULAR I NS TA NCES.

CHIEF JUSTICE: HE DIDN'T SPEAK TO D R. E IS EN ST EI N B EFORE P UT TING HIM O N T HE STA N?

D URIN G P OS T- CO NVIC TI ON R ELIE F H E SAI D H E S POKE T O HIM BRIEFLY . THE DOCTO R S AI D H E DID N' T TALK TO HIM I N DET AIL.

CHIEF J USTICE: AND DO YOU H AVE HIS R EP ORT?

D R. EISEN ST EI N?

CHIE F J US TI CE : Y OU'R E SAYING HE DID N'T READ THE REPORT TO K NOW IT WAS I N T HERE.

I T I S RIG HT T HE RE O N P AG E 2 O F HIS R EP OR T. >> CHIEF J USTICE: I B EL IEVE YOU. I B ELIEVE Y OU .

S O T HAT 'S O NE O F T HE THINGS THAT HE FAILED T O PREPARE. I MEAN, AT THE V ER Y L EAST H E SHOULD HAVE TALKED TO THE DOCTOR BEFORE P UT TING H IM O N T HE S TAND , Y OU K NO W , A ND A LSO H E S HO UL D H AV E R EA D THE R EPORT A ND H E WOU LD H AV E SEEN IT.

CHIEF JUSTICE: YOU SAID YOU HAD ONE G UI LT P HASE , I NEFF ECTIVE ASS IS TANCE CLAIM YOU WANTED TO ARGUE?

Y ES . J UDGE, WIT H R EGAR D T O THA T P HA SE, T HIS I S A F AC T I KNO W YO UR HONOR HAS B EE N T HROU GH THIS CASE S EVER AL T IM ES BUT THE P ATTERN H ER E I S V ER Y S TRAN GE. THERE ARE A LOT O F T HI NG S T HAT DON 'T M AK E TO O MUC H S ENSE . O NE O F THE T HI NG S FOR I NSTA NCE T HA T , AND I T WAS M ENTION ED I N T HE TRIAL AND M ENTI ONED E VERY WHERE , W AS THE FACT THAT THE B OD Y WAS N OT FOU ND D URIN G T HE F IR ST S EARCH W HI LE M R. CON NO R WAS I N THE CUSTODY OF T HE POLICE. THE O THER S TRAN GE THING I S NO BLOOD WAS F OUND .

J US TICE : W HAT D OE S T HA T ACT UALL Y MEA N ? W HA T DOES THA T THA T S TATE MENT MEAN?

IT COULD B E A M IS TAKE .

JUS TI CE: IT COULD BE T HA T THEY OVERLOOKE D IT?

THE POL ICE OVE RLOO KE D I T , O KAY. IT ALSO COU LD BE THAT I T COULD BE A SIGN T HA T S OMEB ODY WAS , I N F AC T , T RYIN G T O FRA ME M R. C ON NO R FOR THE EVENT.

JUS TI CE : B UT I N THE H AB EAS, I M EA N I N T HE SE 3 .851 PRO CE EDIN GS I T I S T HE DEFENDANT WHO HAS THE BUR DE N TO DEM ON STRA TE W HA TEVE R I T I S H E I S C LA IM IN G , C OR RECT ?

RIG HT .

JUSTICE: AND SO W HA T HAV E Y OU D EMON STRA TED J US T B Y S AYING T HA T T HE B OD Y W AS NOT F OUND W HEN THE P OL ICE L OOKED IN THE ROOM THE FIR ST TIM E?

T HA T B Y I TS ELF , I A GR EE , CO UL D BE A MIS TA KE B UT THE RE A RE O THER UNU SUAL T HING S ABOUT THIS C ASE AND MR. CONNO R'S D EFENSE AT TRIAL WAS THAT HE WAS F RA ME D. H E C LA IMED THA T I T W AS B Y T HE POL IC E , B UT - - .

J US TICE : A NO THER AREA THAT CONCERNS ME I S T HA T T HAT ISS UE , L IK E O THER S T HA T YOU H AV E I N Y OU R B RIEF AND I T M AK ES RHE TO RICA L T YP E QUE STIONS , BUT T HERE I S NO A NSWER T O THE M. SO W E'RE S UP PO SE D T O D O W HAT?

THA T'S W HAT I A M GET TI NG TO. I THI NK ONE OF THE REL IE FS T HAT SHOULD BE GRA NTED I S W E H AV E A LLEG ED S PECI FIC FAC TS . W HI CH HAV E N OT B EEN R EBUT TE D B UT THI S C ASE SHOULD BE R EMAN DED FOR A FUL L E VIDENT IARY HEARING.

CHIEF JUSTICE: THERE WAS NOT AN E VI DE NTIA RY H EAR I NG ?

ONLY A S TO T HE C HILD HO OD ISS UE. THAT'S THE ONL Y E VI DENT IARY HEA RI NG B Y T HE CIR CU IT C OURT J UDGE . WITH REGARDS TO THI S I SSUE, T HERE IS A LOT O F U NUSUAL THING S.

JUSTICE: I U ND ERSTAND Y OU H AV E A LLEG ED FAC TS B UT YOU H AV E NOT , A S I SEE THI S , E VEN S AID W HA T T HE SE F AC TS M EAN. Y ES, T HE B OD Y W AS NOT FOUND T HE FIR ST TIM E T HE P OL IC E W ENT T O T HE PLA CE . THE RE W AS SOM E BLO OD S OMEP LACE THAT T HE POL IC E DI D NOT SAY A NYTH IN G A BOUT O R MRS . WO UL D EN DID N' T SAY ANY THING A BOUT I NITI ALLY. E VEN IF W E A CCEP T T HOSE F ACTS .

I THI NK T HAT' S WHA T T HE T RIAL ATT OR NEY S HOUL D H AV E I NVESTI GATED. I MEAN, THERE ARE A L OT O F U NUSUAL THING S.

JUSTICE: I SN'T THAT W HA T YOU R ROLE I N THE CAS E I S I N P OST-CO NVIC TION ?

YES.

JUSTICE: IF Y OU B EL IEVE D THERE WAS E VIDENC E?

I CAN ONL Y G O S O F AR .

JUSTI CE : L ET M E F INIS H. Y OU BEL IEVE THERE WAS EVIDENCE THAT YOU ARE SAYIN G THAT DEFEN SE C OU NSEL U NDER A P ROPE R I NV ESTIGATION WOULD HAV E DIS CO VE RE D AND PRE SENTED I N THE DEF EN SE O F YOU R C LI EN T T HEN I SN'T T HA T WHA T YOU R O BL IG AT IO N IS T O S AY THA T , W EL L , Y OU K NO W W E H AV E A W ITNE SS THA T S AID H E S AW T HE POL IC E BR I NG T HE B OD Y I N LAT ER A ND P UT I T I N T HE D EF EN DANT 'S H OME. I N OT HER W OR DS W HA T I NVES TIGATION HAV E Y OU DONE I N O RDER T O DEM ON STRA TE THA T COU NS EL W AS I NEFF ECTI VE A T T HE G UILT PHASE?

WELL , JUDGE , THO SE FAC TS W ERE T HE RE FRO M THE BEG INNI NG. IT IS NOTHI NG T HAT I DISCOVERED NOW. THEY WERE THERE .

J US TICE : W HA T FAC TS ARE ARE THERE? IN OTHER WORDS, I S IT Y OU R P OSITIO N N OW T HAT

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

I T H I N K I N T H I S C A S E --

L E T ' S J U S T S T O P W I T H T H A T Q U E S T I O N . > > T H A T ' S T H E R O U T E T H A T T H E Y C H O S E T O G O .

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

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

C H I E F J U S T I C E : Y O U H A V E A B O U T T W O M I N U T E S L E F T . I F Y O U W A N T T O T R Y T O E I T H E R S A V E T I M E F O R R E B U T T A L .

Y E S , I W I L L S A V E I T .

C H I E F J U S T I C E : O K A Y . A L L R I G H T . I ' M S O R R Y .

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

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

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

C H I E F J U S T I C E : T H I S I S B E F O R E T H E N E W R U L E W E N T I N T O E F F E C T ?

I B E L I E V E T H I S I S A F T E R T H E R U L E . T H E E V I D E N T I A R Y H E A R I N G W A S G R A N T E D I N 2 0 0 2 , 2 0 0 3 .

J U S T I C E : B U T I T W A S A F T E R T H E R U L E S ? .

Y E S .

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

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

ACTS THAT ARE NOT IN DISPUTE. HE CLAIMS THERE ARE FACTUAL DISPUTES.

JUSTICE: LET'S STAY WITH WHERE WE ARE ON HIS. WHAT HE SAYS HERE I SHE BELIEVES THAT THERE WAS A WHOLE LOAD OF EVIDENCE TO SHOW THAT HIS CLIENT WAS FRAMED, AND THAT COUSIN EL DIDN'T PROPERLY PRESENT THAT DEFENSE TO THE JUDGE AND JURY. WAS THAT A CLAIM MADE IN THE POST-CONVICTION MOTION?

THAT WAS NOT THE CLAIM MADE IN THE POST-CONVICTION MOTION, BUT IF I COULD ADDRESS HOW THE RECORD REFUTES THE SE CLAIMS.

JUSTICE: WE NEEDED TO KNOW WHAT THE CLAIMS JUST ONE SECOND. HE'S GONE INTO GREAT DETAIL ALSO IN THE BRIEF ABOUT THE IRBANK ACCOUNTS AND THERE ARE REASONS AND MOTIVES THAT ARE SHOWN ALL THROUGH HERE SO YOU ARE SAYING THAT THAT'S NOT EVEN A SUBJECT MATTER THAT THIS TRIAL COURT EVEN LOOKED AT?

WELL, YOUR HONOR, MANY OF THOSE MORE SPECIFIC CLAIMS IN THE BRIEF WERE NOT RAISED BELOW. THERE WAS A VERIFICATION AS TO THE MONEY. THERE WAS NO ALLEGATION AS TO WHAT MONEY WAS THERE.

JUSTICE: I THINK IN THE READING HE IS TALKING ABOUT AS IT IS LAID OUT THE RE WAS MONEY THERE AND THERE IS A REASON FOR THE DEATH OF THIS CHILD. THERE IS A REASON FOR THE DEATH OF THE GENTLEMAN, AND THAT IF YOU HAD GONE INTO THE PROBATE RECORDS AND ALL OF THESE THINGS THAT WAS NOT AT ALL DISCUSSED WHETHER IN DIFFERENT PARAGRAPHS BUT THE TOTAL THEME OF THIS THAT HE HASTIED IT TO GET HER BEFORE US ARE ALL OF THOSE THINGS AND YOU'RE SAYING NONE OF THAT WAS BEFORE THE TRIAL JUDGE?

THERE WAS A CONCLUSION ALLEGATION THAT THERE WAS APPROPRIATE PROCEEDING. THERE WAS NOT A SPECIFIC ALLEGATION THAT THERE WAS MONEY THERE OR WHO THAT MONEY WAS GOING TO BE GIVEN TO, AND IN ANY EVENT, THE PREJUDICE OF ANY OF THAT BEING BROUGHT OUT WOULD HAVE BEEN THE SUGGESTION THAT IT WAS MARGARET, THE CHILD'S MOTHER, WHO MURDERED HER CHILD.

JUSTICE: THAT'S WHAT HE IS SAYING.

I DON'T THINK THAT'S HIS CLAIM, YOUR HONOR, THAT IS NOT WHAT HE IS ASSERTING THAT MARGARET WAS THE KILLER. BUT IF I COULD ADDRESS HOW THIS WAS TREATED AT THE TRIAL BECAUSE THIS IS THE RECORD OF THE TRIAL COURT I'M LOOKING AT, AND THE REASON WHY IT IS SUMMARILY DENIED. FOR EXAMPLE, HE ARGUES A LOT ABOUT THIS FIRST SEARCH, FAILURE TO FIND THE BODY AS WELL AS THE BLOOD IN THE VICTIM'S HOME. THIS WAS A HUGE PART OF THE DEFENSE CASE AT TRIAL AND THE RECORD FLESHES IT OUT NOT ONLY ON CROSS EXAMINATIONS OF EACH AND EVERY SINGLE ONE OF THE LAW ENFORCEMENT WITNESSES BUT IT WAS THE THEME INFORMATION, THE INCOMPETENCE OF THE POLICE THAT HOW COULD THEY HAVE MISSED A CHILD'S BODY IN A 10 BY 10 FOOT HOME. THIS IS WHAT THE TRIAL ATTORNEY DID. SO SAYING HE SHOULD HAVE DONE IT MORE IS JUST NOT ENOUGH TO HAVE A FACTUAL DISPUTE, YOU KNOW, THAT WOULD BE CLEARED UP IN AN EVIDENTIARY HEARING. THERE SIMPLY IS NO DISPUTE. THIS IS WHAT THE TRIAL ATTORNEY DID. HE HIGHLIGHTED IT IN EVERY TURN OF THE CASE. AS FAR AS THE PENALTY PHASE IF I MAY ADDRESS THAT FOR A MINUTE, I WANTED TO CLEAR UP THAT THE MITIGATION THAT WAS FOUND WAS THE DEFENDANT'S MENTAL HEALTH. NOT STATUTORY, BUT THE COURT DID FIND AND GIVE SUBSTANTIAL WEIGHT TO THE DEFENDANT'S MENTAL HEALTH. STATUTORY.

JUSTICE: AND IT WAS BASED ON THE TESTIMONY OF DR. EISENSTEIN?

IT WAS BASED NOT ONLY ON THE TESTIMONY OF DR. EISENSTEIN AND MOSMANN WHO TESTIFIED AT THE PENALTY PHASE BUT ALSO WELL AS FOUR ADDITIONAL MENTAL HEALTH EXPERTS. THIS DEFENDANT WAS EVALUATED BY SEVERAL DIFFERENT MENTAL HEALTH EXPERTS THROUGHOUT THE PROCEEDINGS BECAUSE THERE HAD BEEN TWO COMPETENCY EVALUATIONS AND THERE WAS A THIRD ONE IMMEDIATELY PRIOR TO THE EVIDENTIARY HEARING BEING HELD, SO HE HAS BEEN EVALUATED THOROUGHLY.

JUSTICE: AND WHAT WAS THE BASIS OF THOSE EVALUATIONS? I MEAN, WHAT WAS HAPPENING THAT LED DEFENSE ATTORNEYS TO BELIEVE HE NEEDED EVALUATIONS?

WELL, THE DEFENDANT'S OWN ACTIONS HINTED AT SOME SORT OF PARANOIA PERSONALITY AND THAT WAS THE ESSENCE OF THE TESTIMONY AND IT WAS REFUTED BY THE STATE, THE STATE'S OWN EXPERT TESTIFIED THAT THERE WAS FEATURE OF PARANOIA PERSONALITY BUT IT DID NOT RISE TO THE LEVEL OF A DISORDER THAT WOULD SUBSTANTIALLY IMPAIR THE DEFENDANT'S ABILITY TO APPRECIATE HIS CONDUCT AND THAT IS WHY THE TRIAL COURT DOES NOT FIND THE STATUTORY MITIGATOR BUT DOES GIVE SUBSTANTIAL WEIGHT. THIS WAS A LSOBORNE OUT BY THE FACTS OF THE CASE. THIS WAS NOT AN ISOLATED MURDER THAT HAD BEEN AN EXTREMELY LONG PERIOD OF DIFFERENT EVENTS THAT HAD LED UP TO THE MURDER INCLUDING THE EXTREMELY CALCULATED MOVE BY THE DEFENDANT OF PURCHASING A CAR THAT WAS IDENTICAL TO MARGARET'S CAR SO THERE WAS QUITE A HISTORY OF PARANOIA /GELS EU THAT HAD RETURNED - - JEALOUSY FROM THE RELATIONSHIP HAVING GONE SOUTH AND COUNSEL ARGUES THAT THE REASON WHY IT WAS PREJUDICIAL NOT TO HAVE BROUGHT OUT THE OTHER BAD ACTS WAS IT PRECLUDED, WELL, TWO FOLD. ONE THAT IT PRECLUDED THE DEFENSE ATTORNEY FROM ARGUING OR THE REASON THAT HE HAD THE M BROUGHT OUT HE WANTED TO ARGUE THAT, I'M SORRY. HE DID NOT WANT TO ARGUE THAT HE HAD NO SIGNIFICANT PRIOR HISTORY, BUT THE PROBLEM WITH THAT IS, NUMBER ONE, THAT DURING THE GUILTY PHASE WERE TALKING ABOUT TWO DIFFERENT BAD ACTS. WE HAVE SOME BAD ACTS THAT WERE ADDRESSED TO THE VICTIMS. THAT THERE WAS THE THREATENING PHONE CALLS AND THE SHOOTING INTO THE VICTIM'S HOME AND A WITNESS THAT TESTIFIED DURING THE TRIAL THAT SHE HAD SEEN THE DEFENDANT COME OUT OF THE CAR FROM WHICH THE GUN, THE SHOTS HAD BEEN FIRED WITH A THREATENING PHONE CALLS, THE NUMEROUS BURGLARIES OF THE GOODINE HOME SHOWING NO SIGNS OF FORCIBLE ENTRY WHICH CLEARLY INDICATED IT WAS SOMEBODY THAT HAD ACCESS TO THE HOME SO THOSE HAD COME OUT AT THE GUILTY PHASE, SO TO SUGGEST HE COULDN'T ARGUE THAT HE HAD NO SIGNIFICANT HISTORY, THAT WAS PART OF AND THAT WAS ARGUED ON DIRECT APPEAL AND THIS COURT AFFIRMED THAT NO FINDING OF LACK OF SIGNIFICANT CRIMINAL HISTORY BECAUSE THOSE ACTS WERE NOT SUCH THAT THEY WERE PART OF THE MURDER AND THEY WERE DISTINCT ACTS SO THAT THE COURT WAS CORRECT IN THAT FINDING. BUT THE TWO OTHER BAD ACTS REFER TO TWO ACTS THAT THE DEFENDANT COMMITTED THAT DID NOT HAVE TO DO WITH THE VICTIM. THERE WAS A BOMB THREAT AND A THREAT WITH A MACHETE AT WORK AND WITH THE CLAIMS AS FAR AS THE PREJUDICE PRONG OF THAT IS A LSO CLEARLY REFUTED BY THE RECORD BECAUSE THAT'S EXACTLY WHAT THE DEFENSE ATTORNEY DID AT TRIAL AND EVEN IF HE WAS CAUGHT OFF GUARD WHAT TURNS OUT TO BE THE ACTUAL TESTIMONY IS THAT BOTH OF HIS MENTAL HEALTH EXPERTS USED THOSE AND TURNED THOSE INSTANCES AROUND TO SUPPORT THEIR ALLEGATION THAT HE WAS PARANOIA AND HE HAD THIS EXTREME DISORDER BECAUSE THESE WERE UNUSUAL VIOLENTS ACTS THAT A PERSON WITH A SOUND MIND WOULD NOT ENGAGE IN AND THAT'S EXACTLY WHAT THE TESTIMONY WAS AT THE PENALTY PHASE SO THERE IS NO PREJUDICE WHATSOEVER ALLEGED SUFFICIENT TO HAVE A FACTUAL DETERMINATION, A FACTUAL DISPUTE. IF THERE ARE NO OTHER QUESTIONS, I ASK THIS COURT TO AFFIRM THE TRIAL COURT'S ORDER DENYING POST-CONVICTION RELIEF. THANK YOU.

CHIEF JUSTICE: THANK YOU. REBUTTAL?

WIT H REG ARDS T O N O P REJUDI CE, I T HINK WIT H REGARDS TO THE I SSUE O F THE P ENALTY P HA SE , THE RE I S C LEAR PRE JU DI CE I N T HERE , B ECAUSE T HE RE WAS A 8 -4 S PLIT . THE F AC T I T S HOUL D HAV E BEE N P ROPE RL Y DEV EL OPED AS FAR AS THE CHILDHOD , T HE M ITIGATOR S, DR. J AY SOB SO N W HO W AS A STA TE 'S OWN W IT NESS A LSO IND IC ATED H E D ISCOVE RED ORG AN IC BRA IN D AMAGE AND P AR AN OI D S YMPT OM S O N M R. C ON NOR. T HA T MIGHT H AV E B EE N E NO UGH TO PUT THE J UR Y A T A 5 0/50 O R P ER HA PS IT W OULD HAV E S PARED H IS L IF E . T HE J UR Y WAS T HINK I N G A BOUT THE CAS E. T HEY VOT ED FOR L IF E WITH REG ARDS TO THE FATHER. THEY WER E S OM EW HA T S PL IT WITH REGARDS TO THE DAUGHTER. I THINK THERE IS P REJU DICE THAT HAS BEE N S HO WN BUT A T T HE V ER Y LEAST I THI NK I T SHOULD BE S EN T BAC K T O DETER MI NE T HE O THER FAC TS .

CHIEF J USTICE: DID THE J UDG E DEN Y AN E VIDE NT IARY H EA RING BECAUSE O F I NSUFFI CIENT P LE AD I N GS O R B ECAU SE T HI S WAS C ONCLUSIV ELY REF UT ED B Y T HE R ECORD?

I D ON 'T THI NK S HE DID , I T W AS I NSUF FI CIENT , I M EA N I T W AS PLED. S HE JUS T F OUND THA T I T D IDN'T H AVE A NY MER IT S T O IT. THAT'S WHAT I RECALL.

CHIE F JUSTICE: ALMOST E VERY S I N GL E POI NT T HA T YOU RAI SE D H AD TO D O WIT H S OMETHING T HA T COULD BE LOOKED, THE R EC OR D CO UL D B E L OO KED A T AND I T COUL D B E C ONCL USIVE?

I THINK A LOT O F TIM ES --.

CHIEF JUSTICE: WERE YOU READY WITH WITNESSES TO BE ABLE TO SHOW WHAT A T HORO UG H I NVES TIGATION WOULD HAV E R EVEA LE D A BO UT T HA T , I N F AC T, T HI S D EF ENDA NT W AS F RA ME D? D ID YOU HAVE W ITNE SSES?

I W OULD HAV E C AL LE D M RS. GOOD I NE, I WOU LD H AV E C ALLE D THE D IREC TO RS FRO M T HE CLE RK O F COU RT S HOWI NG THE G UARD IA NSHI PS , I W OULD H AV E C ALLE D THE R ECORDS FOR THE CLE RK OF COURT S HOWI NG T HA T M R. G OODINE HAD P ROPE RTY W HICH H E E VI CTED T HE P ERSON THAT LIVED T HE RE , P AID T HE JUD GMEN T S OO N A FTER A LL O F T HI S HAP PE NE D.

J US TICE: A ND T HA T W OULD H AVE DEM ONST RA TE D W HA T?

THE RE W AS A M OTIVE. T HE M OTIV E. T HE O THER --.

J USTICE: T HA T W OUL D HAV E S UPPO RTED A M OT IVE THA T S HE K ILLED H ER H US BA ND S O SHE C OULD H AVE THE P RO PERT Y?

L ET ME STA RT F RO M T HE P OI NT T HA T I THI NK .

CHIE F J USTICE: JUST B E R ESPONSIVE. Y OU ARE OUT OF YOU R TIM E.

B AS ICAL LY W HA T H AP PENS HERE I S SHE I S T OL D A T 6:0 0 P.M.. YOU R HUSBA ND AND YOU R D AUGHTER A RE M IS SING. SHE LEF T W OR K F OR 9 :0 0 I N THE MORNING. S UPPO SEDLY S HE SHO UL D HAV E BEE N BAC K A T 5 :3 0 I N THE A FTER NOON. SHE G ETS H OME T HREE A ND A H ALF HOURS L AT ER . W HEN S HE G ET S H OME T HE D ETECTI VES A RE T HE RE , MUR IA S A ND MOO RE . THEY ARE INV IT ED I N T O THE HOUSE. THEY DON'T S EE BLO OD A ND THEY DON'T SEE A THR OW R UG B Y T HE F RONT D OO R C OVER I N G WHA T 2 8 H OURS L AT ER P OLIC E D ISCOVE R TO B E BLO OD U NDER NEATH , AND MR. G OODI NE 'S BLO OD WHI CH I S V ER Y I MPORTANT. THERE IS NO TES TIMO NY B Y T HE D ETECTI VES I N HIS R EPOR T , I N H IS D EP OS ITION T HA T T HERE W AS ANY B LO OD FOU ND A T T HE S CE NE O N T HE 19T H. I T HINK THE KEY T O T HE W HO LE T HING . ALS O T HE O RIGI NA L T ESTI MO NY BY T HE Y OUNG G IRL T HA T LIV ED A CROS

S THE S TREET , S HE S AY S I THOUGHT S HE GOT I NT O M RS. GOODINE 'S C AR. HER D AD DY WAS D RIVING . I T WAS P AR KE D IN THE GAR AGE. THE I MPORTANT T HING I S MRS . GOODINE 'S OWN T ES TIMO NY I S S HE PAR KS H ER C AR I N T HE G ARAGE. S HE'S THE ONL Y ONE THA T PARKS IN T HE RE . SO I WOULD HAV E C AL LE D M RS. GOODINE. I WOULD HAVE P RESE NTED E VI DENCE TO FIN D O UT WHE RE SHE WAS. P ERHAPS T HERE I S LEG IT IMAT E ANS WE RS TO THE WHO LE THING . B UT I THI NK THA T W E H AV E P RESENTED FACTS THA T H AV E O N T HE RECOR D T HA T H AV E N OT B EEN R EBUT TE D , A ND I T HI NK T HAT L EN DS T O T HE DEF EN SE THAT THERE WAS A F RAME H ERE. I DON 'T KNO W EXA CT LY W HA T HAP PENED , B UT T HERE I S A LOT OF UNUSUAL T HI NGS THAT HAPPENED IN THIS CASE.

CHIEF JUSTICE: B EFORE YOU SIT DOWN , DO YOU H AV E C URRENT LY ANY A DD ITIO NA L C ASES THA T Y OU A RE HAN DL IN G A S R EG ISTR Y C OUNSEL ?

N O , I D O N OT.

CHIEF JUSTICE: S O T HE O NLY , W HA T W AS THE REA SO N T HAT THI S C AS E T HA T Y OU A CC EP TED T HI S C AS E?

I G OT I N THE REG IS TR Y , A ND I , Y OU K NO W , T HE Y GAV E M E THI S C AS E .

CHIEF JUSTICE: O KA Y . T HE C OU RT I S V ER Y C ONCERN ED A BOUT, YOU K NO W , S OM E O F T HE R EPRESENT A INGS H ER E - - REP RESE NTATIONS HERE AND AGAIN NOT UND ER STAN DING S OM E OF THE B ASIC S I N P OST- CO NVICTION J URIS PR UDENCE AND WE TAK E T HESE C ASES , THE LAW YE RS T HAT TAK E T HE SE O N HAV E V ER Y S ERIO US O BL IGAT IO NS T O THEIR CLIENTS.

I U ND ERSTAND.

CHIEF JUSTICE: THE COURT WILL BE IN REC ES S UNT IL 8 :3 0 T OMOR RO W M ORNI NG .

THE M ARSH AL : P LEASE RIS E