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**State of Florida v. Jay Junior Sigler  
SC04-1934**

MARSHAL: 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 SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLE MEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: CHIEF GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT. CHIEF JUSTICE PARIENTE IS RECUSED IN THE FIRST TWO CASES THIS MORNING, AND SO WE WILL PROCEED. I KNOW THAT SHE IS DISAPPOINTED NOT TO BE HERE, BECAUSE WE HAVE OUR BRAND NEW CARPET FOR THE FIRST TIME. WHICH SHE WAS INSTRUMENTAL IN GETTING PUT IN TO COURT. SO WE WILL PROCEED WITH THE FIRST CASE, STATE VERSUS SIGLER. MR. BONAVIDA.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS AUGUST BONAVIDA, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE APPELLANT CROSS APPELLEE, THE STATE OF FLORIDA. JAY SIGLER ALONG WITH HIS CODEFENDANT WERE EACH CHARGED WITH FIRST-DEGREE FELONY MURDER WITH THE UNDERLYING FELONY BEING ESCAPE. CHRISTOPHER MITCHELL WAS ALSO CHARGED WITH A SEPARATE COUNT OF VEHICULAR MANSLAUGHTER. BOTH DEFENDANTS PROCEEDED TO JURY TRIAL AND WERE FOUND GUILTY ON THE LESSER OFFENSE OF SECOND-DEGREE MURDER DEPRAVED INDIFFERENCE. MR. SIGLER TOOK THE APPEAL TO THE FOURTH DISTRICT COURT OF APPEAL, ARGUING THAT THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE SECOND-DEGREE MURDER. THE FOURTH DISTRICT COURT OF APPEAL AGREED AND PURSUANT TO SECTION 924.34 FLORIDA STATUTES AS WELL AS THIS COURT'S DECISION IN IT, REMANDED THE MATTER FOR IMPOSITION OF CONVICTION OF THIRD-DEGREE FELONY MURDER WITH THE UNDERLYING FELONY BEING HARBORING AN ESCAPE FELON.

JUSTICE: NOW, WHEN THE MATTER CAME BACK TO THE FOURTH DISTRICT AND THE FOURTH DISTRICT IS SUE THAT IS SECOND DECISION, WAS THERE AT THAT POINT, A MOTION BY THE STATE FOR THE FOURTH DISTRICT TO CONSIDER THE MATTER IN BANK?

THERE WAS, ON -- EN BANC?

THERE WAS THE MOTION FOR APPEAL HEARING AND REHEARING EN BANC, RIGHT.

JUSTICE: WHICH WAS DENIED?

THAT'S CORRECT. WHEN THE MATTER WAS REMANDED BACK TO THE TRIAL COURT FOR IMPOSITION OF THIRD-DEGREE FELONY MURDER, THE DEFENDANT FILED A MOTION FOR DISCHARGE, ARGUING THAT THE FOURTH DISTRICT'S PROCEDURE UNDER 924.34 VIOLATED HIS SIXTH AMENDMENT RIGHT TO A JURY TRIAL AS WELL AS THE PRONOUNCEMENTS BY THE UNITED STATES SUPREME COURT IN APPRENDI AND BLAKELY.

JUSTICE: LET'S DISCUSS THE WHOLE NOTION OF THE IMPOSITION OF A THIRD-DEGREE MURDER CONVICTION. IN ORDER TO BE CONVICTED OF THIRD-DEGREE MURDER, WOULD IT, YOU WOULD HAVE TO AGREE THAT THERE HAS TO BE AN UNDERLYING FELONY.

YES. I WOULD AGREE WITH THAT.

JUSTICE: AND IN THIS CASE, THE FOURTH DISTRICT INDICATED THAT THE UNDERLYING FELONY WAS THAT OF HARBORING AN ESCAPED CRIMINAL?

THAT IS CORRECT.

JUSTICE: AND SO WHAT DO WE HAVE IN THE WAY OF THE , A JURY PRONOUNCEMENT THAT WOULD INDICATE THAT THE JURY NECESSARILY CONSIDERED AND FOUND THAT THIS DEFENDANT WAS GUILTY OF THE ELEMENTS OF THAT OFFENSE?

THE, DURING THE TRIAL OVER DEFENSE OBJECTIONS ON UNRELATED GROUNDS --

JUSTICE: SPEAK UP JUST A LITTLE.

I AM SO RE I DURING THE TRIAL OVER THE DEFENDANT'S OBJECTION ON UNRELATED GROUNDS, THE TRIAL COURT SUBMITTED THE QUESTION TO THE JURY. THE CHARGE WAS ACTUALLY SUBMITTED TO THE JURY FELONY THIRD-DEGREE WITH THE UNDERLYING FELONY BEING HARBORING , AND WE WOULD SUBMIT BASED ON THAT , THE MATTER WAS PRESENTED TO THE COURT.

JUSTICE: WHAT DID THE JURY DO WITH THAT?

THE JURY CAME BACK WITH A FINDING ON THE GREATER CHARGE AS THEY ARE INSTRUCTED BY THE COURT TO DO . WHICHEVER THE GREATEST CHARGE THAT THE EVIDENCE SUPPORTS, THE JURY CAME BACK WITH THAT , WHICH IN THEIR MIND WAS SECOND-DEGREE MURDER, BUT WE WOULD SUBMIT THAT, IN DOING SO, THERE IS ABSOLUTELY NOTHING IN THE RECORD WHICH SUGGESTS THAT THE JURY NEVER CONSIDERED -- WHICH SUGGESTS THAT THE JURY NEVER CONSIDERED FELONY THIRD -DEGREE MURDER. IT WAS GIVEN TO THE M. THE EVIDENCE IN THE CASE SUPPORTS IT.

JUSTICE: YOU SAY THE EVIDENCE IN THE CASE SUPPORTS A CHARGE OF HARBORING AN ESCAPED FELON. WHAT IS THAT EVIDENCE IN THE RECORD?

OKAY. WELL, THE EVIDENCE STARTS FROM , THERE WAS A PRISON BREAK IN DADE COUNTY . AND JAY SIGLER 'S INVOLVEMENT IN THIS WAS HE WAS , AS THE FOURTH FOUND IN THE FIRST OPINION , HE WAS THE SO-CALLED MASTERMIND BEHIND THE ENTIRE THING ON , SO THE EVIDENCE WE HAVE --

JUSTICE: HE WAS THE ACTUALLY PRISONER . MR. SIGLER WAS THE PERSON WHO WAS IN PRISON.

THAT IS CORRECT AND MITCHELL SON IS THE PERSON WHO WAS GOING TO BREAK HIM OUT ALONG WITH SEVERAL OTHER PARTICIPANTS AS WELL, BUT THESE WERE THE TWO MAIN INDIVIDUALS, SO YOU HAVE THE PRISON BREAK , AND THERE ARE SERIES OF RECORDED TELEPHONE CALLS THAT WERE RECORDED BY DEPARTMENT OF CORRECTIONS .

JUSTICE: I GUESS I WANT THE ACTUAL EVIDENCE THAT WOULD SUPPORT A HARBORING OFFENSE.

I THINK IN ORDER TO ANSWER YOUR QUESTION , JUSTICE QUINCE, I THINK IT IS IMPORTANT TO UNDERSTAND THAT THE FACTS LEADING, THERE IS A TREMENDOUS AMOUNT OF FACTS LEADING UP TO THE BREAK OUT , WHICH THE FOURTH RELIED ON AND WE ARE SUBMITTING TO THIS COURT SHOWS THAT AT ALL TIMES JAY SIGLER NOT ONLY INTENDED TO BREAK OUT, BUT HE HAD A STRONG RESOLVE TO REMAIN OUT OF PRISON. AFTER THE BREAK, WHEN THEY MADE IT TO THE HOTEL IN LAKE WORTH , THAT NIGHT ON TELEVISION, THEY WERE WATCHING THEMSELVES . MITCHELL SON HAD TURNED HIMSELF IN AND ENCOURAGED MR. SIGLER TO DO SO. HE REFUSED. THEY GET UP AND BY THIS TIME WERE THE NUMBER ONE AND NUMBER TWO FUGITIVES IN

SOUTH FLORIDA AND THEY GET INTO THEIR VE HICLE AND HEAD SOUTH ON A 1A TO WARD FORT LAUDERDALE.

JUSTICE: I GUESS THE P ERSON WHO IS THE ESC APED CONVICT , HARBOR HI MSELF ?

THE AN SWER TO THAT QUESTION IS WE BE LIEVE THAT THEY CAN, ESPECIALLY UNDER THE EVIDENCE OF THIS CASE , AND I THINK THE FOURTH DISTRICT WAS VERY CAREFUL TO POINT THAT OUT IN ITS FIRST OPINION THAT, GI VEN THEFACTS AND CIRCUMSTANCES OF THIS CASE , THIS IS CLEARLY A SITUATION WHERE SIGLER JUST DIDN'T SIT I DLY BY AND I THINK AS JU DGE OWENSWORTH SAID AS A PASSEN GER I N THE C AR. THEY CLEA RLY WERE ON A1A .

JUSTICE : WHERE DOES THAT TAKE US IN RESOLVING THE ISSUE?

WE S T ILL HAVE THE NECESSARY LE SSER INCLUDED CRIME OF MANSLAUGHTER BY CULPABLE NEGLIGENCE, WHICH CLEARLY I DON'T THINK THEREIS ANY AR GUMENT THAT , BY THEJURY FI NDING THE DEFENDANT GUILTY OF SECOND -DEGREE MURDER THAT THEY NECESSARILY FOUND ALL THE EL EMENTS SUPPORTING THAT AM OFFE NSE, SO THAT WOULD -- THAT OFFENSE , SO THAT WOULD OBVIOUSLY AVOID THE CONSTITUTIONAL QUESTION WEARE ADDRESS HEARING THIS MORNING.

JUSTICE: WAS THAT PARTICULAR OFFENSE ARGUE D ORIGINALLY?

ORIGINALLY IT WAS ARGUED AT ORAL ARGUMENT ON IN THE FOURTH AND THE N AT RE HEARING.

JUSTICE: WHAT ABOUT THEJURY? WERE THEY GIVEN ALTERNATIVES BETWEEN THE THIRD DEGREE FELONY BY HARBORING AS OPPOSED TO CULPABLE NEGLIGENCE?

I BELIEVE TH OS E CH ARGES WERE GIVEN TO THE JURY .

JUSTICE: CULPABLE NEGLIGENCE WAS?

CULPABLE. I DON'T WANT TO M ISS SPEAKBUT I BELIEVE THAT THEY WERE.

JUSTICE: LET ME GET BACK TO A QUESTION FROM A FEW MINUTES AGO, WHERE YOU ANSWERED THAT THE JURY WAS GIVEN THE INSTRUCTION AND DID CONSIDER THE THIRD D EGREE FELONY COUNT. I GUESS THE PROBLEM THAT APPRENDI CREATES IS THAT NOT ONLY MUST JURY CONSIDER IT , BUT WE HAVE TO KNOW WHAT THE JURY'S DETERMIN ATION OF THAT ISSUE IS , AND B E CAUSE THE JURY DETERMINED THE SECOND-DEGREE MURDER , IT NEVER HAD THE OPPORTUNITY O R THE NECESSITY OF DETERMININGTHE THIRD DEGREE MURDER, SO WE DON'T KNOW HO W THE JURY WOULD HAVE COME OUT ON THE HARBORING A FUGITIVE COUNT.

MY RESPONSE AND I THINK ONE OF THE THIN GS WE DO HAVE TO KEEP IN MI ND IS IT IS THE STATE'S POSITION AND HAS BEEN THE STA TE'S P O SITION ALL ALONG THAT APPRENDI AND BLAKELY HAVE ABSOLUTELY NO APPLICATION TO THIS CASE , AND I THINK IN MY BR IEF S I THINK I HAVE ARGUED THAT EXTENSIVELY AS TO WHY THAT IS NOT APPLICABLE. IN RESP ONSE TO YOUR QUESTION A BOUT NOT K N OWING WHETHER THE JURY NECESSARILY P A SSED , I WOULD SUBMIT THAT IN FLORIDA, IT IS MY UNDERSTANDING THAT, WHEN THE TRIAL JUDGE INSTRUCTS THEJURY, THEY ARE NOT PRECLUDE FROM CONSIDERING LESSER OFFENSES, AND ALTHOUGH WE DON'T, WE CAN'T SAY FOR CERTAIN, IT IS OUR POSITION THA T THE SI XTH AM ENDMENT IS SATISFIED , SO LONG LUNGE AS THE JURY IS GIVEN THE -- SO L ONG AS THE JURY IS BEGIN THE OPPORTUNITY AND THEEVIDENCE IS TO SUPPORT THECHARGED OFFENSE AND IN THIS CASE THAT WAS UNDISPUTEBL Y DONE.

JUSTICE: THE JURY INSTRUCTION , DOE SN'T IT SAY THAT THE JURY SHOULD CONVICTFOR THE

MAXIMUM LEVEL OF THE CRIME?

YE S.THE INSTRUCTION DOES STATE THAT THEY SHOULD COME BACK WITH THE CONVICTION FOR THE HIGHEST CRIME THAT THE EVIDENCE WOULD SUPPORT.

JUSTICE: HOWEVER IF THEY FOUND SECOND-DEGREE MURDER , THEY ARE NOT GOING TO FIND THIRD-DEGREE MURDER , EVEN IF THE FACTS WOULD EXIST FOR THAT COUNT.

I WOULD RESPECTFULLY DISAGREE, ONLY BECAUSE IN REACHING SECOND-DEGREE MURDER, IT IS VERY WELL THAT THEY COULD HAVE GONE THROUGH THIRD-DEGREE FELONY MURDER. THEY HAD THE CHARGE. THEY HAD THE EVIDENCE, AND WHEN YOU LOOK AT UNITED STATES VERSUS GORDON , WHICH WAS CITED BY CARYN ON THE FIRST SIGHT IN THIS ISSUE , I THINK IT WAS CLEAR -- FIRST DISTRICT IN THIS ISSUE , I THINK IT WAS CLEAR THAT GORDON TAKES THE ISSUE OUTSIDE OF THE JURY'S CONSIDERATION , TAKES IT A WAY , WHICH IS EXACTLY WHAT HAPPENED IN GORDON AND PRECLUDES THE JURY , EXPRESSLY PRECLUDES THE JURY FROM PASSING ON THE ISSUE. THEN WE WOULD CERTAINLY HAVE A SIXTH AMENDMENT JURY CAUSE ISSUE , BUT IN THAT CASE, IN THIS CASE, THAT CLEARLY WAS NOT WHAT HAPPENED HERE.

JUSTICE: WHY ISN'T THE EFFECT OF THE STATUTE , THOUGH, REALLY TO IN ESSENCE, ENTER A DIRECTED VERDICT IN FAVOR OF THE STATE ?

I AM SORRY.

JUSTICE: THE EFFECT OF THE STATUTE UNDER THESE CIRCUMSTANCES TO ENTER A DIRECTED VERDICT IN FAVOR OF THE STATE. ISN'T THAT THE EFFECT OF THE STATUTE? THAT IS THAT THE COURT , NOW , IS DIRECTING A VERDICT IN FAVOR OF THE STATE , AND WHEN WE PUT IT IN THOSE TERMS , OF COURSE , THAT IS ALWAYS PROHIBITED, THAT A JURY WOULD HAVE TO PASS ON IT, BUT ISN'T THAT THE NET EFFECT , IS THAT A DIRECTED VERDICT IN FAVOR OF THE STATE ON A CHARGE THAT WE DON'T KNOW WHAT A JURY WOULD HAVE DONE WITH IT.

I WOULD DISAGREE , CHARACTERIZING IT IN THAT TERM, JUSTICE ANSTEAD

JUSTICE: ISN'T THAT WHAT IT DOES? ISN'T THAT WHAT THE COURT IS DOING IS DIRECTING THAT THERE BE A VERDICT IN FAVOR OF THE STATE ON THIS LESSER CHARGE?

FOR WHICH THE EVIDENCE CLEARLY SUPPORTS AND, AGAIN --

JUSTICE: BUT FOR WHICH WE HAVE NO IDEA OF WHAT THE JURY WOULD DO.

AGAIN , I SUBMIT THAT THE JURY WAS BEGIN THE CHARGE AND TO SAY THAT WE HAD NO IDEA THAT THEY DIDN'T NECESSARILY PASS ON IT, IS , REALLY , TAKING THE SIXTH AMENDMENT AND STANDING IT ON ITS HEAD, BECAUSE NOW UNDER THE FOURTH DISTRICT'S HOLDING AS IT STANDS TO DAY , THE STATE AND THE TRIAL COURTS ARE GOING TO HAVE TO SUBMIT TO THE JURY SPECIAL VERDICT FORMS FOR ALL PERMISSIVE LESSER OFFENSES, SO THAT IN THE EVENT THE JURY COMES BACK WITH GREATER OFFENSE , THEY ARE GOING TO HAVE TO GO BACK AND MAKE A DETERMINATION AS TO WHETHER OR NOT THE DEFENDANT WOULD BE GUILTY OF ANY PERMISSIVE LESSER OFFENSES .

JUSTICE: WHAT IS YOUR UNDERSTANDING OR YOUR POSITION ON WHAT , IF WE AFFIRM THE FOURTH DISTRICT , WHICH ORDERED A NEW TRIAL , WHAT IS GOING TO HAPPEN NEXT HERE? IN THE FORTH , IN THE TRIAL COURT.

WELL , AT THIS POINT THE OPINION OUT OF THE FOURTH AS IT STANDS NOW , IS IT SIMPLY GOES BACK FOR A NEW TRIAL ON THIRD-DEGREE FELONY MURDER WITH THE UNDERLYING FELONY BEING ESCAPE. I SUSPECT THAT THERE MAY BE SOME LEGAL MOTIONS FILED. I DON'T KNOW. I

CAN'T SPEAK TO THAT.

JUSTICE: BUT THE UNDERLYING FELONY BEING WHAT?

I PRESUME IT WOULD BE ESCAPE. THAT IS THE ORIGINAL FELONY THAT THE STATE USED.

JUSTICE: BUT IS ESCAPE A FELONY THAT CAN BE USED FOR --

I AM SORRY. I MISS POKE . EXCUSE ME. I MISS SMOKE. I MEANT TO SAY -- I MISS POKE . I MEANT TO SAY HARBORING AN ESCAPED PRISONER. I APOLOGIZE .

JUSTICE: JUSTICE QUINCE .

I AM WONDERING IF, IN ORDER TO DO THAT DO YOU NECESSARILY HAVE TO HAVE A SEPARATE COUNT FOR THAT FELONY? I MEAN, GENERALLY WHEN WE HAVE FIRST-DEGREE MURDER AND FIRST-DEGREE FELONY MURDER , THERE IS MORE OFTEN THAN NOT , A COUNT OF ROBBERY OR BURGLARY OR WHATEVER THE UNDERLYING FELONY IS , THAT WE USE FOR THE FIRST-DEGREE FELONY MURDER. DO YOU NECESSARILY NEED THAT FOR A THIRD-DEGREE MURDER COUNT ?

I WOULD SUBMIT NOT BECAUSE IT IS STILL A LESSER CRIME IN DEGREE OF FIRST-DEGREE MURDER, WHICH WAS CHARGED IN THE INDICTMENT .

JUSTICE: NOW , THE STATUTE IN THIS CASE ONLY SPEAKS TO NECESSARILY INCLUDED OFFENSES, CORRECT?

AND BY EXTENSION , IN THIS COURT'S DECISION IN IT EXTENDED THAT TO PERMISSIVE LESSERS.

JUSTICE: SO WHAT REALLY IS AT ISSUE IS THIS COURT'S CASE IN IT AND NOT THE EXPRESS LANGUAGE OF THE STATUTE .

THAT'S CORRECT.

JUSTICE: AND THIS STATUTE IS IN COMPLIANCE WITH THE FEDERAL RULE 31-C, I BELIEVE IT IS.

I AM NOT FAMILIAR WITH 31-C FEDERAL BUT IF IT READS IN TANDEM WITH THAT, THAT IS --

JUSTICE: SO THE REAL ISSUE IS WHETHER OR NOT IT STILL STANDS, IN LIGHT OF APPENDI.

I THINK THAT IS THE ISSUE AND I THINK THAT IS WHAT, ACTUALLY IN THE CARYN DECISION OUT OF THE FIRST DISTRICT, WHICH I BELIEVE THE PENDING RESOLUTION , THE COURT FELT THAT THE FEDERAL CONSTITUTION TRUMPS OVER THE STATUTE AND WE WENT ON TO I GUESS IMPLICITLY OVERRULE THIS COURT'S DECISION IN IT

JUSTICE: YOU ALLUDED EARLIER TO YOUR ARGUE -- YOU ALLUDED EARLIER TO YOUR ARGUMENT THAT APPENDI DOESN'T APPLY IN THIS DECISION. TELL US WHY.

SPECIFICALLY BECAUSE YOU HAVE IN BOTH APPENDI , IT DOESN'T APPLY. AFTER THE PLEA THE TRIAL COURT OUTSIDE THE CONTEXT OF THE PLEA , MADE ADDITIONAL FINDINGS OF FACT , THE RESULT OF WHICH WAS THAT BOTH OF THEIR SENTENCES WERE INCREASED. IN APPENDI SITUATION , THE RESULT WAS A FINDING OF SECOND-DEGREE TO FIRST-DEGREE AND IN BLAKELY IT WAS A GUIDELINE 53 MONTHS IN AN ADDITIONAL THREE YEARS.

JUSTICE: SO YOU BELIEVE THAT THE UNDERLYING HOLDING OF APPENDI IS ANY FACTS THAT IS NECESSARY FOR A CONVICTION NEEDS TO BE FOUND BY THE JURY.

WELL , I THINK, I WOULD SUBMIT THAT THERE IS AN ADDITIONAL REQUIREMENT THERE. I

THINK SPECIFICALLY THOSE CASES STAND FOR THE PROPOSITION THE RESULT OF WHICH IS TO INCREASE A DEFENDANT'S SENTENCE AND CLEARLY HERE WE DON'T HAVE THAT STATUTE.

JUSTICE: ARE YOU CLAIMING THAT A JUDGE WITHOUT A JURY CAN FIND SOME OF THE FACTS NECESSARY TO CONVICT THE DEFENDANT OF A PARTICULAR CRIME, IF A CRIME REQUIRED INTENT, ARE YOU SAYING THAT A JUDGE MAY SAY, WELL, FOR THE REST OF THE ELEMENTS OF THE CRIME, THE ELEMENTS OF THE CRIME I WILL LET THE JURY DECIDE, BUT I AM GOING TO DECIDE AS A MATTER OF LAW THAT THERE WAS INTENT.

NO, AND I THINK THAT WOULD RUN DIRECTLY IN CONTRARY TO GORDON AND THOSE CASES, BECAUSE IN THAT CASE IN THAT HYPOTHETICAL YOU ARE TAKING THE ISSUE SQUARELY OUTSIDE THE JURY'S CONSIDERATION. APPRENDI AND BLAKELY NEVER DID APPRENDI AND BLAKELY DID THAT AS WELL, BUT THE RESULT OF THAT WAS TO END UP INCREASING A SENTENCE.

CHIEF JUSTICE: YOU INTRODUCE YOUR REBUTTAL TIME.

THANK YOU.

MAY IT PLEASE THE COURT. GOOD MORNING. MY NAME IS PAUL PETILLO, ASSISTANT PUBLIC DEFENDER ON BEHALF OF JAY SIGLER.

JUSTICE: CAN I ASK YOU A THRESHOLD QUESTION ON WHAT SIGLER 2 DID TO SIGLER ONE. THEY SAID THEY CAN'T APPLY THE CASE BECAUSE IT WAS A MANIFEST INJUSTICE. I UNDERSTAND IT WAS A PANEL OF THE FOURTH DISTRICT THAT DID THAT.

RIGHT.

JUSTICE: CAN A SEPARATE PANEL IN THE SAME CASE COMING UP ON REVIEW AGAIN, ESSENTIALLY OVERRULE THE DECISION OF THE PRIOR PANEL WITHOUT GOING ON EN BANC?

ALL I CAN TELL YOU, JUSTICE CANTERON ON THAT, IS THAT DID OCCUR TO ME AT ONE TIME AND I PREPARED PANELS IN PREVIOUS CASES, AND DON'T HOLD ME TO THIS, I THINK THEY WERE DIFFERENT PANELS OR THEY DIDN'T HAVE THE SAME MEMBERS. I JUST SAY IMPLICITLY THAT CAN HAPPEN.

CHIEF JUSTICE: MR. MARSHAL, EXCUSE ME, THE TIME IS NOT --

JUSTICE: ARE YOU SAYING THAT A DECISION WITH CAN OVERRULE A PRIOR PANEL?

I AM SUGGESTING THAT A PANEL CAN DECIDE IN THOSE RARE CASES TO RELAX THE CASE DOCTRINE.

BUT THAT REVERSES THE FIRST DECISION. ISN'T THAT HOW THAT OPERATES? YOU ARE SAYING THAT THE APPLICATION OF THE PRIOR DECISION IS RENDERED AS A MANIFEST INJUSTICE?

THAT IS REALLY ONE REASON THAT THE COURTS ALLOW CASE DOCTRINE, BUT THAT IS NOT THE ONLY ONE. IT DOESN'T NECESSARILY HAVE TO BE. THERE IS A NUMBER OF REASONS WHY AN APPELLATE COURT MIGHT RELAX THE LAW OF THE CASE DOCTRINE.

JUSTICE: SUCH AS? THAT WOULD APPLY HERE?

WELL, YOU KNOW, I MIGHT AS WE WILL SAY THAT I THINK THE FOURTH DCA DIDN'T EVEN NEED TO REALLY RELAX THE LAW OF THE CASE DOCTRINE. I MEAN, WELL, LET ME SET THAT ASIDE FOR A MOMENT. I THINK BECAUSE I THINK APPRENDI'S APPLICATION HERE IS SO CLEAR.

JUSTICE: WHY WOULD THAT NOT HAVE BEEN EBBS PLORD PARAMETERS -- EXPLORED

PARAMETERS AND THAT DEFINED COMING OUT THE FIRST TIME , BECAUSE APPRENDI WAS 200 0 AND THIS IS 2002.

TRUE.

JUSTICE: SO WHY WOULD THAT NOT HAVE OCCURRED AT THAT TIME?

IT SEEMS PERFECTLY CLEAR TO ME NOW. IT CERTAINLY DOES . AT THE TIME THAT I WROTE SIGLER ONE , W HEN THE SIGLER ONE SIT UATION CAME OUT AND THE COURT DECIDED A THIRD-DEGREE FELONY MURDER WAS THE APPROPRIATE REMEDY IN THE CASE , OF COURSE THEN IT STRIKES YOU VERY HARD THAT, HAY , THIS IS -- THAT , HEY, IT THIS IS A ENTIRE OTHER CRIME THAT THE APPELLATE COURT CAN FIND.

JUSTICE: WHAT WERE THE LESSER INCLUDED OFFENSES IN STRUKTED AND ARGUED BEFORE THE JURY? -- INSTRU CTED AND ARGUED BEFORE THE JU RY?

THE LESSERS THAT WERE INSTRUCTED ON WERE FIRST-DEGREE FELONY M URDER , SECOND-DEGREE MURDER. I BELIEVE MANSLAUGHTER AND THIRD-DEGREE FELONY MURDER. I DON'T KNOW IF THAT WAS THE L AST. I DON'T KNOW IF THAT WAS THE ONLY LESSERS . YOU KNOW , IN REVIEWING THECLOSINGS ARGU MENTS IN THECASE, IT WAS CLEAR THE PAR TIES WERE TALKING SO LELY ABOUT FIRST-DEGREE FELONY MURDER IN THIS CASE OR AT LEAST THE STATE D THE STATE DIDN'T PUT FORWARD ANY PLAUSIBLE THE ORY THAT MY CLIENT WAS GUILTY OF THIRD-DEGREE FELONY MURDER IN THIS CASE.

BUT THE JURY WAS INSTRUCTED ON BOTH THIRD-DEGREE FELONY AND MAN SLAUGHTER?

YES. YES.

JUSTICE: AS A PART OF THETHIRD DE GREE INSTRUCTIONS , WERE THEY GIVEN AN INSTRUCTION AND THAT OFFENSE WAS ASSIGNED B EFORE THEJURY?

AS I RECALL , YES. JUST SJUTS DID YOU OPPOSE THE STATE --

JUSTICE: DID YOU OPPOSE THE STATE'S MOTION TO GO EN B ANC IN THIS CASE?

WHEN THEY MOVED FOR REHEARING? YEAH. ON TRADITIONAL GROUNDS THAT YOU WOULD ARGUE. THE STATE , I WOULD HAVE T O CORRECT. I DON'T BELIEVE AND I THOUGHT THAT WAS WHAT YOUR QUESTION WAS DIREC TED TO AND IT IS AN INTERESTING ISSUEON THE DIFFERENT PANELS FORLAW OF THE CASE, BUT THE STATE DIDN'T MOVE TO HAVE THE CASE HE ARD E N BANC , WHEN THE CASE WAS PRESENTED TO THE FOURTH ON THE SECOND GO AROUND.

JUSTICE: IT JUST STRIKES ME THAT WE ARE IN A PECULIAR SITUATION I N WHICH THERE , WE ORIGINALLY DIDN'T HAVE JURISDICTION. IN SIGLER ONE. WE COME BACK AND WE GET A DIFFERENT PANEL THAT, THEN , DOE SN'T CERTIFY A QUES TIONTO US BUT H O LDS A STATUTE UNCONSTITUTIONAL AS APPLIED ON THE BA SIS OF A CASE THAT WAS AL READY OUT THERE AT THE TIME THE FIRST PANEL DECIDED THE CASE, AND THAT IS WHAT G IVES US OUR JURISDICTION.

RIGHT.

JUSTICE: SO THAT IS K IND OF --

YEAH. SO, WELL, AND I MIGHT AS WEWILL SAY NO W, YOU KNOW , ON SIGLER 2 , THE ISSUE OF THE SIXTH AMENDMENT AS APPLIED IN THIS CASE WAS NOT ARGUED IN THE BRIEFS ON SIGLER ONE. I BROUGHT IT UP FOR THEFIRST TIME ON REHEARING. THAT REHEARING WAS DENIED. THE N THE ISSUE WAS RERAISED IN THE TRIAL COURT AND THEN AGAIN ON SIGLER TWO.

JUSTICE: WHY ARE YOU NOT PRECLUDE FROM RAISING IT? YOU CERTAINLY CAN RAISE ARGUMENTS ON HEARING FOR THE FIRST TIME, SO ALL OF THIS AT THE TIME THAT THE CASE WAS GIVEN TO THE FOURTH DISTRICT, WAS IT NOT FOR INITIAL CONSIDERATION?

THE RULE SAYS I AM NOT SUPPOSED TO BE BRINGING UP NEW MATTERS ON REHEARING AND THEY MAY HAVE DENIED REHEARING FOR THAT VERY REASON. WHAT I AM TRYING TO GET ACROSS HERE, AND IT IS EMBARRASSING TO SAY IT, THAT THE SECOND, SIGLER TWO PANEL PROBABLY WAS NOT BOUND BY LAW OF THE CASE ANYWAY.

JUSTICE: WHY?

BECAUSE THIS ISSUE IN SIGLER ONE WAS NEVER PROPERLY PRESENTED, AND IT IS MY UNDERSTANDING THAT THE FLORIDA DEPARTMENT OF TRANSPORTATION VERSUS GULIANO, AND WE DON'T KNOW WHY THE SIGLER ONE PANEL DENIED REHEARING. IT MIGHT BE BECAUSE THIS WAS A NEW MATTER BROUGHT UP FOR THE FIRST TIME. IT IS MY UNDERSTANDING THAT THE FLORIDA DEPARTMENT OF TRANSPORTATION VERSUS GULIANO THAT ONLY THOSE ISSUES THAT WERE ACTUALLY ADJUDICATED IN THE FIRST GO AROUND ARE PRECLUDED BY LAW OF THE CASE.

JUSTICE: SO UGH T CONSTITUTIONALITY, YOU DON'T PRESERVE IT THE FIRST TIME AROUND AND A DECISION IS MADE, AND THEN ON THE APPLICATION OF THE VERY STATUTE, AND THEN ON THE SECOND GO AROUND, YOU CAN GO IN AND DO AN AS-APPLIED CHALLENGE. THAT WOULD BE THE ANALYSIS IS WHERE YOU ARE HEADING WITH THIS.

WELL, YEAH. I MEAN, YOU KNOW, I WISH THEY HAD GRANTED REHEARING. IT SEEMED APPARENT TO ME AT THAT POINT. IT JUST DIDN'T HAPPEN.

JUSTICE: LET ME SWITCH TO ANOTHER SUBJECT. I ASKED THE STATE'S COUNSEL WHAT DO YOU THINK IS GOING TO HAPPEN NEXT, IF WE SIMPLY AFFIRM THE FOURTH DCA.

THIS CASE WOULD GO BACK FOR A TRIAL ON THE LESSER OFFENSE OF THIRD-DEGREE FELONY MURDER. WITH THE UNDERLYING FELONY BEING HARBORING AN ESCAPED PRISONER.

JUSTICE: WHY WOULDN'T IT GO BACK ON THE MAN SLAUGHTER?

WELL, BECAUSE WE WOULD, THEN, NEED TO, EITHER THIS COURT OR THE FOURTH DCA, WOULD HAVE TO REACH SOMETHING THAT WAS RAISED THE FIRST TIME BUT NEVER ADDRESSED, EXCEPT IMPLICITLY WHICH IS THIS, MY CLIENT SIGLER, WAS THE PASSENGER IN THIS CAR. AND SO HIS CULPABILITY FOR MANSLAUGHTER OR SECOND-DEGREE MURDER, AND THIS WAS BRIEFED EXTENSIVELY IN SIGLER ONE, HIS LIABILITY COULD ONLY BE AS THE PRINCIPLE FOR THE ACTS OF THE DRIVER, AND THERE IS ONLY TWO SITUATION THAT IS A PASSENGER CAN BE CRIMINALLY LIABLE FOR THE ACTS OF THE DRIVER, AND ONE IS, IF THE PASSENGER INCITES, CAUSE OR ENCOURAGES -- INCITES, CAUSE OR ENCOURAGES THE DRIVER TO DRIVE RECKLESSLY, BECAUSE THERE YOU HAVE THE TWO ELEMENTS OF PRINCIPLE, YOU HAVE THE INTENTION THAT THE CRIME BE COMMITTED AND YOU HAVE SOME ACT THAT ASSISTS, AIDS, AETS AND ENCOURAGES OR INCITES THE CRIME.

JUSTICE: WAS THAT ARGUED BELOW, THE FIRST TRIAL IN THIS CASE, SECOND-DEGREE MURDER, AND YOU SAID THAT MANSLAUGHTER WAS ONE OF THE MATTERS THAT WAS INSTRUCTED TO THE JURY.

UM-HUM.

JUSTICE: WAS THAT DONE AS A PRINCIPLE TO MANSLAUGHTER?

THAT WAS THE STATE'S THEORY AS TO SIGLER. IT HAD TO BE. HE WAS NOT THE DRIVER.



JUSTICE: SO THE OPPORTUNITY TO ARGUE ALL THAT ISSUE AND GET THE JURY PROPERLY INSTRUCTED WAS AVAILABLE IN THE INITIAL TRIAL.

CERTAINLY YES BUT IT WAS ALSO AVAILABLE IN SIGLER ONE, IN WHICH WE ARGUED THE EVIDENCE WAS LEGALLY INSUFFICIENT AND I STILL MAINTAIN IT IS LEGALLY INSUFFICIENT FOR MANSLAUGHTER.

JUSTICE: WHAT DEGREE OF CRIME IS MANSLAUGHTER?

SECOND-DEGREE FELONY.

JUSTICE: AND THIRD-DEGREE MURDER IS WHAT?

SECOND-DEGREE FELONY.

JUSTICE: SO THEY ARE NOT LESSER INCLUDED OF EACH OTHER?

NO. BUT THEY CHARGED, THEY INSTRUCTED ON BOTH OF THOSE LESSERS.

JUSTICE: ONE IS, IS IT TRUE OR NOT TRUE THAT THE MANSLAUGHTER WOULD BE A NECESSARILY-INCLUDED OF THE SECOND-DEGREE.

YES. I AGREE THERE.

JUSTICE: AND THE THIRD DEGREE HARBORING FELONY WOULD BE A PERMISSIVE.

YES.

JUSTICE: BUT IN THIS CASE BOTH WERE PRESENTED TO THE JURY.

THEY WERE BOTH INSTRUCTED ON.

JUSTICE: ONE NECESSARY AND ONE PERMISSIVE BUT THEY FOUND ON THE PRIMARY.

THEY FOUND HIM GUILTY OF THE LESSER SECOND-DEGREE DEPRAVED MIND MURDER, YES.

JUSTICE: ON THE APPEAL, DID THE STATE ARGUE THAT THERE SHOULD BE A VERDICT FOR MANSLAUGHTER CHARGE AS OPPOSED TO A THIRD-DEGREE MURDER CHARGE? I AM TRYING TO SEE IF THIS WAS AN ISSUE THAT WAS PRESERVED DURING THE COURSE OF THE APPEAL BEFORE THE FOURTH DCA.

YOU YOU WILL HAVE TO ASK, I HOPE MR. BONAVITA CAN ANSWER THAT. I CAN'T REMEMBER NOW HOW THAT WAS FRAMED. I AM SURE THEY DID, BECAUSE - -

JUSTICE: WE KNOW IN THE CODEFENDANT'S CASE, THAT WAS CERTAINLY ARGUED, MR. MITCHELSON'S CASE, CORRECT?

YES.

JUSTICE: SO YOU DON'T RECALL WHETHER OR NOT THEY MADE THAT SAME ARGUMENT IN SIGLER'S CASE?

I AM SURE THAT THEY ARGUED THAT, AGAINST ME THAT THE INITIAL PART OF MY BRIEF IN SIGLER ONE WAS THAT EVIDENCE WAS LEGALLY INSUFFICIENT FOR EITHER SECOND-DEGREE MURDER OR MANSLAUGHTER UNDER A PRINCIPLE THEORY, GOING THROUGH ALL OF THE CASES

THAT DISCUSSED HOLDING A PASSENGER CRIMINALLY LIABLE FOR THE ACTS OF THE DRIVER, AND I AM SURE THE STATE MADE THEIR COUNTER ARGUMENT TO THAT AND ASK ED THAT THE JUDGMENT AND SENTENCE BE AFFIRMED , AND I, IT WOULDN'T SURPRISE ME A GAIN IF THEY ARGUED, BECAUSE SIGLER HAD TWO ARGUME NTS ON SECOND-DEGREE MURDER. HE HAD ONE WAS THAT THERE WAS NO DEPRAVED MIND, NO ILL WILL, H A TRED , SPITE OR EVIL INTENT, BUT THE SECOND ONE , THE N UMBER ONE ARGUMENT WAS SIGLER AS THE PAS SENDER COULD NOT BE CRIMINALLY LIABLE FOR THE ACTS OF THEDRIVER IN THIS CASE , AND THE REASON IS THERE WAS NO EVIDENCE THAT HE AID , ABET ED OR ENCOUR AGED MITCHELSON TO DRIVE RECKLESSLY. THIS IS NOT A SITUATIONWHERE HE ENCOURAGED THE RECKLESS DRIVING. THE ONLY ENCOURAGEMENT IS THAT HE TOLD MIT CHELSON TO STOP AND PULL OVER, SO T HAT IS THE OPP OSITE OF ENCOURAGING AND INCI TING THE COMMISSION OF THE CRIME.

JUSTICE: LET ME MAKE SURE THAT I UNDERS TAND , GOINGBACK TO THIS SIGLER ONE. SIGLER ONE WAS REMANDED TO THE TRIAL COURT SOLELY FOR THE PUR POSE OF SENTENCING SIGLER.

WELL , AND TO IMPOSE JUDGMENT AND SENTENCE FOR THIRD-DEGREE FELONY MURDER.

JUSTICE: OKAY. BECAUSE IT WAS THE DIRECTION BY THE FOURTH DISTRICT TO DO THAT.

YES, SIR .

JUSTICE: AND THEY ISSUED A MANDAT E TO DO THAT. AND THEN WAS ANYTHING PRESENTED BELOW IN THE TRIAL COURT , UPON THAT REMAND , THAT WAS ANYTHING DIFFERENT THAN HAD BEEN AT THE FOURTH DISTRICT IN SIGLER ONE?

WE LL, NO , IF YOU INCLUDE WHAT I ARGUE ON REHEAR ING, WHEN THE JUDGE, WHEN IT WENT BACK FOR THE JUDGE TO ENTER JUDGMENT AND SENT ENCE.

JUSTICE: R IGH T.

I WA NTED TO MAKE SURE THAT THE DEFENSE ATTORNEY , AND HE DID, OBJECTED TO THE ENTRY OF JUDGMENT AND SENTENCE ON THE GROUND THAT THIS VIOLATED THE SI XT H AMENDMENT. WHICH IT DOES !

JUSTICE: THAT WAS WHAT YOU HAD ARGUED ON REHEARING.

YES, SIR.Y ES, SIR. AND THIS DOES V I OLATE THE SIXTH AMENDMENT FOR , IF WE WANT TO T ALK AB OUT WHETHER SECTION 924. 34 IS UNCONSTITUTIONAL AS APPLIED IN A CASE LIKE THIS, IT CLEARLY IS. EVERY COURT THAT I COULD FIND THAT HAS ADDRESSED IT HAS SAID SO. MICHIGAN SUPREME COURT IN PEOPLE VERSUS BE HRS SAW HOW APPRENDI APPLIED IN THIS SITUATION. A FE DERAL INDICATION , FRANKS VERSUS ALOE' A FE DERAL CASE , FRANKS VERSUS AL FRED , SAW APP ELLATE COURT REMAND WHEN THE JURY HAS NOT FOUND ALL OF THE ELEMENTS OF OFFENSE AND THAT APPE LLATE REMAND FOR DESCRIBE OF THE PERMISSIVE LESSER THAT DOESN'T INCLUDE ALL OF THE LESSER ELEMENTS THAT ARE REFLECTED IN THE VERD ICT , VIOLATES THE JURY CAUSE AND VIOLATES PROOF BEYOND A REASONABLE DOUBT OF THOSEELEMENTS.

JUSTICE: IS YOUR ARGUMENT THAT SECTION 924.34 IS UNCONSTITUTIONAL AS TO PERMISSIVE LESSER INCLUDED OFF ENSES OR THAT I T SIMPLY DOES NOT APPLY TO PER MISSIVE LESSER INCLUDED OFFENS ES?

WELL , THIS COURT'S DECISION IN I. IT WAS A STRETCH BECAUSE -- IN I. IT WAS A STRETCH, BECAUSE THE P LAIN AND UNAMBIGUOUS LANGUAGE OF THE STAT UTE SAYS NECESSARILY LESSER INCLUDED OFFENSES, AND I DON'T WANT TO, OF COURSE , QUIBBLE WITH THAT, BUT THAT SEEMED TO ME , OF COURSE, THAT THAT WOULD HAVE BEEN THE M ORE APPROPRIATE WAY TO

INTERPRET THE STATUTE, JUST TO USE THE UNAMBIGUOUS LANGUAGE OF THE STATUTE, SO I THINK IF YOU, YOU OBVIOUSLY WOULD AVOID ANY SIXTH AMENDMENT ISSUES , IF YOU JUST CONSTRUED THE STATUTE IN TERMS OF ITS UNAMBIGUOUS LANGUAGE .

I. IT WAS DECIDED BEFORE -- I. IT WAS DECIDED BEFORE APPRENDI, SO IT DID NOT HAVE TO USE THE CANON OF STATUTORY CONSTRUCTION THAT A STATUTE SHOULD BE INTERPRETED TO CONFORM TO THE CONSTITUTION AT THE TIME .

THAT'S RIGHT AND IT WAS A JURY TRIAL CASE, A JUVENILE CASE, SO MAYBE THAT IS WHY IT DID NOT OCCUR TO ANYONE , BUT APPRENDI , YOU YOU ARE RIGHT, WAS NOT OUT YET AT THAT TIME.

JUSTICE: BUT WHAT WAS SAID EARLIER TO THAT, THIS STATUTE THAT ONLY PERTAINS , REALLY , THE PLAIN LANGUAGE OF THE STATUTE IS NECESSARILY LESSER-INCLUDED OFFENSE.

THAT IS WHAT IT SAYS.

JUSTICE: O KAY.

YES. AND I HOPE I HAVE ADDRESSED WHY I THINK SIGLER CAN'T BE CONVICTED OF, AND I THINK THIS IS TRUE EVEN OF THE FOURTH DCA IN THE FIRST SIGLER ONE , INTIMATED THIS BUT DIDN'T COMPLETELY HOLD IT, WHICH IS PROBABLY WHY THEY JUMPED TO THIRD-DEGREE FELONY MURDER ABOUT, THE ISSUE OF WHETHER HE , SIGLER AS A PASSENGER, COULD BE CRIMINALLY LIABLE FOR THE ACTS OF THE DRIVER . THERE WAS ONE OTHER SITUATION WHERE THE PASSENGER COULD BE CRIMINALLY LIABLE FOR THE ACTS OF THE DRIVER , AND THAT IS WHERE THE OWNER OR PERSON IN CONTROL OF THE AUTOMOBILE PUTS IT IN THE HANDS OF AN INTOXICATED DRIVER OR A DANGEROUS DRIVER LIKE A CHILD. AND THAT IS THE MICHAEL CASE AND THE MORRIS CASE THAT ARE IN THE BRIEFS . OF COURSE WE DON'T HAVE THAT HERE WHATSOEVER . AND YOU REALLY DO NEED TO SCRUTINIZE PRINCIPLE LIABILITY, IF YOU YOU THINK ABOUT IT , BECAUSE YOU ARE HOLDING ONE PERSON CRIMINALLY LIABLE FOR THE ACTIONS OF ANOTHER. SO YOU HAVE TO STRICTLY LOOK AT THE EVIDENCE AND SEE IF THE METHOD OF TWO ELEMENTS OF PRINCIPLE LIABILITY AND INTENTION THAT THE ACT BE COMMITTED AND THEN AIDING AND ABETTING AND ASSISTING OF THE CRIMINAL , OF THE CRIME, AND HERE WE DON'T HAVE. THAT THIS IS NOT A CASE WHERE , FOR EXAMPLE , THE PERSON IN A LIMO ORDERS HIS CHAUFFEUR TO DRIVE A WAY WHILE TWO POLICEMEN ARE HANGING ON TO THE CAR, WHICH IS ONE CASE.

JUSTICE: BUT AS TO THE THIRD DEGREE MURDER COUNT , AND THAT IS BASED ON HARBORING , WOULD YOU AGREE THAT THIS DEFENDANT DID IN FACT, DO ALL OF THE PLANNING AND DECIDE WHAT WAS GOING TO HAPPEN, BOTH AT THE TIME OF THE ESCAPE AND SUBSEQUENT TO THE ESCAPE , AND SO CAN HE IN FACT , BE , HE WAS AIDING AND EXCITING AND THE OTHER PERSON TO COMMIT THIS HARBORING , SO COULDN'T HE BE A PRINCIPLE TO THE HARBORING OFFENSE?

WELL , LET ME , WELL , TWO ANSWER TO SAY THAT. ONE IS THERE IS NO DOUBT THIS GROUP OF PEOPLE WERE DEEPLY INVOLVED IN THE ESCAPE. I DON'T THINK THERE IS MUCH EVIDENCE ABOUT WHAT THEY WERE GOING TO DO AFTERWARDS. LET ME GIVE YOU AN EXAMPLE.

JUSTICE: THERE IS NOT MUCH WHAT?

THERE IS NOT MUCH EVIDENCE OF WHAT THESE GUYS WERE GOING TO DO AFTER THE ESCAPE. LET ME GIVE YOU AN EXAMPLE. IT IS HARD TO WRAP YOUR , TO CONCEPTUALIZE MY CLIENT'S GUILT AS A PRINCIPLE -- AS A PRINCIPAL IN HARBORING , BUT SAY YOU HAVE AN INMATE THAT OVERHEARD SIGLER SAYING TO MITCHELSON WHO WAS OUTSIDE , OKAY , MITCHELSON , AFTER THE ESCAPE I AM GOING TO NEED A SAFE HOUSE THERE. IS A PLACE UP IN LAKE WORTH THAT WE CAN GET. I AM GOING TO ARRANGE TO HAVE MONEY SENT TO YOU FOR THAT PURPOSE , AND THE ESCAPE , AND THEY GO TO THE SAFE HOUSE THAT MITCHELSON HAS ARRANGED AT MY CLIENT'S

DIRECTION. IN A CASE LIKE THAT MAYBE YOU WOULD HAVE MY CLIENT BEING A PRINCIPAL TO HIS OWN HARBORING.

YOU HAVE TO BE THAT SPECIFIC. THE WHOLE PLAN CERTAINLY WASN'T I AM GOING TO ESCAPE AND THEN BE CAUGHT. THE WHOLE PLAN WAS I AM GOING TO ESCAPE, AND I AM GOING TO DO, WE ARE GOING TO DO WHAT IS NECESSARY SO THAT I DON'T GO BACK TO JAIL, SO ISN'T THAT ENOUGH, ISN'T THAT THE HARBORING, AND ISN'T THAT ENOUGH TO BE A PRINCIPAL TO THAT AS OPPOSED TO SAYING SPECIFICALLY WE ARE GOING TO DO THE HARBORING BY DOING X, Y AND Z?

AGAIN I CAN ONLY GO BACK TO THE FACT WE DON'T KNOW WHAT THEY WERE GOING TO DO AFTER THE ESCAPE. WE DON'T KNOW IF THEY WERE GOING TO SPLIT UP. WE DON'T KNOW IF THEY WERE GOING TO JUST TRAVEL TOGETHER AND ONE WAS NOT GOING TO HARBOR THE OTHER. WE DON'T KNOW. BUT ALSO I WANT TO MAKE CLEAR AND I HAVE JUST A FEW SECONDS, THAT MY CLIENT COULDN'T BE GUILTY OF HARBORING ANYWAY, AS THE ESCAPED PRISONER, BECAUSE HARBORING IS A CRIME SO DEFINED THAT PARTICIPATION BY ANOTHER IS INEVITABLY INCIDENT TO ITS COMMISSION. FOR EXAMPLE, IF I WENT UP AND TRIED TO BUY SOME COCAINE AND I WAS SUCCESSFUL, I MIGHT BE GUILTY OF PURCHASE OF COCAINE, I MIGHT BE GUILTY OF POSSESSION OF COCAINE BUT I AM NOT GUILTY OF SALE OF COCAINE FOR MY ACTION IN ASKING THE DRUG SELLER TO SELL ME COCAINE. I WAS CLEARLY INCITED HIM, CAUSED HIM, ENCOURAGED HIM TO COMMIT THAT CRIME BUT I AM NOT GUILTY OF THAT CRIME. THAT IS ALL OF THE TIME I HAVE. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU. REBUTTAL.

THANK YOU. I JUST WANT TO QUOTE FROM THE RECORD, SOME QUOTES THAT WERE RECORDED. SIGLER TELLING MITCHELSON I AM NEVER GOING BACK NO MATTER WHEN I GET OUT OF HERE. I AM NEVER GOING BACK. LATER AFTER THE ACCIDENT AND THE POLICE APPREHEND HIM, HE TELLS THE POLICE OFFICER, QUOTE, I JUST WANTED TO BE FREE. I AM JUST TIRED OF BEING IN. THE HIGH-SPEED CHASE IN THIS SITUATION DIDN'T, THE ACCIDENT THAT LED TO, AS A RESULT OF THE HIGH SPEED CHASE, I THINK IT IS IMPORTANT TO KEEP IN MIND THAT IT WAS BECAUSE THEY WERE BEING PURSUED BY THE POLICE AFTER SIGLER WAS OUT OF JAIL. THAT NIGHT IN THE HOTEL, SPECIFICALLY HE WAS ASKED, SIGLER, TURN YOURSELF IN, WHEN HE EXPLAINED TO THE POLICE WHY HE DIDN'T WANT TO DO THAT, HE SIMPLY SAID IT IS ONE OF THOSE THINGS YOU PROCRASTINATE WITH. I WOULD SUBMIT TO THIS COURT IT IS OVERWHELMING EVIDENCE TO SHOW THAT SIGLER HAD NO INTENTION WHATSOEVER OF GOING BACK TO PRISON AND THAT DAY, THE FOLLOWING DAY IN THAT CAR WHEN THAT HIGH-SPEED CHASE ENDED, IT WAS ABSOLUTELY CLEAR THAT SIGLER'S ROLE IN THAT WAS SIMPLY MORE THAN A PASSENGER. AND I THINK THE FOURTH WAS RIGHT ON KEY, IN THE FIRST DECISION, IN MAKING THAT DETERMINATION. I JUST WANT TO POINT OUT, AND I THINK PROCEDURALLY IT IS IMPORTANT TO POINT OUT THAT THIS ISSUE REGARDING WHETHER OR NOT SIGLER COULD BE CONVICTED AS PARTY OF LAW OF HARBORING HIMSELF, THAT THAT ISSUE WAS NEVER ARGUED BELOW IN THE TRIAL COURT. THE MOTION WAS FILED FOR A DISCHARGE, BASICALLY ARGUING APPRENDI, AND THAT THE EVIDENCE DIDN'T SUPPORT A PRINCIPAL CONVICTION AS WELL.

JUSTICE: WOULD YOU GO BACK AND ADDRESS HIS LEGAL THERE THAT I BELIEVE WHAT HE IS SAYING THAT UNTIL THE FOURTH DISTRICT RENDERED SIGLER ONE, IS THE FIRST TIME THAT I THINK THAT HE WOULD HAVE BEEN ABLE TO ASSERT THAT POSITION, AND HE DID SO ON REHEARING, TRYING TO MITIGATE THE EFFECT OR IMPACT OF SIGLER ONE. WHAT IS THE STATE'S POSITION WITH REGARD TO THAT KIND OF CONCEPT ON THE LAW OF -- TO THAT KIND OF CONCEPT ON THE LAW OF THE CASE COMING FORWARD?

I THINK THAT, WITH THE FELONY THIRD-DEGREE MURDER, THAT WOULD HAVE BEEN THE OPPORTUNITY FOR HIM TO ARGUE.

JUSTICE: SO THEY DID PRESENT IT AT THE FIRST REASONABLE POINT IN TIME ?

ABSOLUTELY, BECAUSE WHEN YOU READ THE OPINION, IT SPECIFICALLY SAYS THAT WE ARE NOT GOING TO DISMISS THE CONCEPT THAT THE DEFENDANT WAS INTERPOSING SO LIGHTLY, THAN IS YOU CAN'T BE GUILTY OF HARBORING YOURSELF, SO THE ISSUE WAS OUT THERE, BUT MORE IMPORTANTLY WE HAVE TO KEEP IN MIND IN SIGLER TWO, THE REMEDY THAT THE APPELLANT WAS SEEKING OR THE APPELLEE WAS SEEKING IN THAT CASE WAS A NEW TRIAL ON THIRD-DEGREE FELONY MURDER. NOW WE ARE HERE IN FRONT OF THIS COURT, AND MR. SIGLER IS ASKING FOR AN OUTRIGHT DISCHARGE, BECAUSE HE IS ARGUING FOR THE FIRST TIME THAT AS A MATTER OF LAW HE CAN'T BE GUILTY AS A PRINCIPAL. I THINK THAT BEARS NOTING. BUT I WOULD SUBMIT TO THIS COURT THAT EVEN IF YOU DO REACH THE MERITS OF WHETHER OR NOT YOU CAN BE HARBORING YOURSELF, AGAIN, I WOULD SUBMIT IT IS A MATTER OF LAW, PARTICULARLY UNDER THE FACTS OF THIS CASE, THIS CASE PRESENTS A FINE EXAMPLE OF HOW IT IS THAT YOU CAN GO ABOUT AND AID IN YOUR OWN HARBORING, AND THAT IS EXACTLY WHAT THE FACTS OF THIS CASE SHOW. I WOULD ALSO POINT OUT, TOO, AND I MAY NOT HAVE MADE THIS CLEAR, BUT AT THE TIME THE CAR WAS, THE ACCIDENT, THERE WAS A GUN FOUND IN THE CAR, SO, AGAIN, I THINK THAT JUST GOES TO FURTHER SUPPORT THAT SIGLER WAS CLEARLY, CLEARLY COUNSELING AND AIDING AND ABETTING IN THIS CRIME. REGARDING HIS STATEMENT THAT HE WANTED MITCHELSON TO STOP, I WOULD POINT OUT TO THIS COURT THAT IS THE ONLY EVIDENCE THAT WAS PRESENTED, AND THAT WAS SIMPLY NOTHING MORE THAN A SELF-SERVING STATEMENT.

JUSTICE: WAS THE STATE CHARGED THE SEPARATE OFFENSE?

I CAN'T SPEAK TO THAT DIRECTLY BECAUSE IT HAPPENED IN DADE COUNTY.

JUSTICE: WAS HE EVER CONVICTED OF ESCAPE?

I DON'T BELIEVE SO.

JUSTICE: IT HAPPENED IN A DIFFERENT COUNTY?

THAT'S CORRECT. THE HOMICIDE WAS IN BROWARD. THAT'S CORRECT.

CHIEF JUSTICE: THANK YOU VERY MUCH. THANK YOU, COUNSEL.