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Dolan Darling v. State of Florida

SC04-2379 | SC05-2020

FINAL CASE IS DARLING VERSUS
THE STATE OF FLORIDA.

>>> MAY IT PLEASE THE COURT.
GOOD MORNING.

MY NAME IS DAVID HENRY.
HONOR TO BE HERE ON BEHALF
OF THE DOLAN DARLING.
I AM SITTING WITH MARK
GRUBER.

I WANT TO TALK ABOUT ISSUES
IN THE PARTICULAR CASE.
IN THE FIRST ISSUE THAT I
WANT TO TALK ABOUT IS
DEPRIVATION OF POST-CONVICTION
COUNSEL ON THE CASE WHICH
SERVED AS THE PRIOR VIOLENT
FELONY, THE AGGRAVATOR, THE
SHOWCASED FEATURED
AGGRAVATOR IN THE CAPITAL
MURDER CASE, I HOPE TO SPEAK
ABOUT THE DNA EVIDENCE
BECAUSE THAT IS ALSO A VERY
IMPORTANT ISSUE.

OUR POSITION CLEARLY ON
POINT WITH THE CASE IN 2002
FROM THIS COURT WHICH WAS
OVERTURNED.

WHAT I WANT TO START WITH
FIRST US THE DEPRIVATION OF
COUNSEL ISSUE.

>> CAN I ASK ONE THRESHOLD
QUESTION AS CONCERN.
IT APPEARS THAT TALK ABOUT
THE INEFFECTIVE ASSISTANCE
IN GOING TO TRY CHALLENGE
THE PLEA TO THAT UNDERLYING
CASE WAS IN APRIL OF 1997
BUT THE INDICTMENT IN THE
CASE WAS NOT UNTIL MUCH
LATER.

DOES THAT HAVE AN IMPACT?
IF SO, WHY?
IF NOT, WHY NO?
BECAUSE THAT PLEA WAS MADE
AT THAT TIME.

>> EXACTLY.

THAT PLEA WAS MADE BEFORE
THE MURDER INDICTMENT CAME
DOWN.

WHAT THAT MEANS IS THAT
DOLAN DARLING UNKNOWINGLY
BARGAINED FOR SENSE OF
DEATH.

WHAT THOUGHT HE WAS
BARGAINING FOR WAS A TEN-YEAR
PRISON SENTENCE ON THE
TAXICAB CASE.

WHAT ACTUALLY GOT, HE
UNKNOWINGLY BARGAINED FOR A
DEATH SENTENCE BECAUSE HE
DIDN'T KNOW, THE PLEA FORM
DIDN'T STATE SHOULD YOU
PLEAD GUILTY TO THIS
OFFENSE, THAT THIS CAN SERVE
AS AGGRAVATOR IN A CAPITAL
MURDER CASE THAT IS GOING TO
BE FILED IN LESS THAN TWO
MONTHS.

>> HOW ABOUT WOULD THAT
APPLY FROM A JURISPRUDENCE
STANDPOINT THAT TEN YEARS
AGO AN INDIVIDUAL GINS TO,
THEY HAVE A CERTAIN DEFENSE
TO A CASE AND THEN TEN YEARS
LATER, THERE IS THIS CHARGE
CAPITAL MURDER COMES CAN UP,
WE WANT TO GO BACK IN AN
EVALUATE WHAT THE BEE MAY
OFIER WAS TEN YEARS EARLIER
IN LIGHT OF TODAY AND SAY,
TRY TO SAY THAT THERE IS
INEFFECTIVE ASSISTANCE THAT
EARLIER TEN YEARS BEFORE.
I AM STRUGGLING WITH THAT.

>> WELL, UNDER, UNDER THIS
ISSUE HERE, IT IS NOT JUST
DEPRIVATION OF COUNSEL, BUT
THIS ISSUE, WHAT HAPPENED
PROCEDURE RALLY IN THIS CASE
RAISES SEVERAL ISSUES, THE
FIRST ONE BEING SIX
AMENDMENTS AND THE
FUNDAMENTAL RIGHT TO
COUNSEL, THAT IS DIFFERENT.
AND THEN GIDEON VERSUS
WAYNE, THE U.S. SUPREME
COURT SAID SOMEONE CHARGED
WITH A CRIMINAL OFFENSE,
THEY SHOULD BE ENTITLED,

THEY SHOULD BE AFFORDED COUNSEL, THAT IS JUST, THAT COULD BE A THIRD-DEGREE FELONY, WHEN SOMEONE IS FACING SIMPLY FIVE YEARS IN PRISON, OR, SORRY, JUST MISDEMEANOR, BUT IN ALL CRIMINAL PROSECUTIONS, EVEN A MISDEMEANOR, WHEN THEY ARE GOING TO TAKE YOUR LIBERTY AWAY, YOU HAVE THE RIGHT TO COUNSEL, WE ARE SAYING THIS CASE IS SO UNIQUE, SO SPECIAL, BECAUSE DOLAN DARLING SITS ON DEATH ROW, HE ACTUALLY WAS DENIED POST CONVICTION COUNSEL ON THIS, ON THIS TAXICAB CASE WHICH SERVED AS THE AGGRAVATOR FACTOR, THE FEATUREED CO CASED AGGRAVATOR.

>> LET ME ASK THIS YOU, IT SEEMS TO ME FUNDAMENTALLY WHAT YOU ARE SAYING THAT IS THE ATTORNEY WHO REPRESENTED HIM ON THE PRIOR CASE, WAS THAT A CARJACKING?

>> YES, IT WAS.

>> ON THE CARJACKING SHOULD HAVE TOLD HIM OR THE COURT SHOULD HAVE TOLD HIM THAT THIS CASE CAN BE USED TO AGGRAVATE ANY FUTURE CASE?

>> THAT IS CORRECT.

>> THAT THE ATTORNEYS SHOULD HAVE KNOWN THAT THIS INDICTMENT WAS COMING DOWN AND THAT THE ATTORNEY THEN SHOULD HAVE TOLD HIM THAT, YOU KNOW, IF YOU PLEAD TO THIS, THIS IS A FELONY, A VIOLENT FELONY, IT CAN THEN BE USED AS AN AGGRAVATING CIRCUMSTANCES IN THIS CASE THAT YOU ARE GOING TO BE INDICTED ON?

>> WELL, YOU CAN'T, YOU CAN'T PARTICULARLY FAULT CHRISTOPHER SMITH FOR NOT BEING ABLE TO PERCEIVE THE FUTURE, BUT WHAT YOU CAN FAULT, WHAT WE CAN DO IS LOOKING BACK AT THE PARTICULAR CASE AN LET'S

LOOK AT THE ACTIONS OF THE FIFTH DISTRICT COURT OF APPEALS.

>> BUT I WANT TO FOCUS ON AT THE TIME HE ACTUALLY CAME BEFORE THE COURT WAS THERE ANY OBLIGATION ON THE PART OF THE COURT OR THE ATTORNEY TO TELL HIM WHAT WAS GOING TO HAPPEN IF HE CAME BEFORE THE COURT ON SOME FUTURE CASE, WHAT -- HOW THE COURT COULD USE THAT PARTICULAR CASE HE WAS PLEADING TO?

>> WAS THERE A REQUIRE.

>> WAS THERE ANY OBLIGATION ON THE PART OF THE COURT OR COUNSEL TO DO THAT?

>> NOT -- THERE WAS NO.

I WOULD HAVE TO THAT I HAVE WAS NO.

BUT I WOULD ALSO SAY THAT RECENTLY THIS COURT JUST ENACTED THE RULE THAT BEFORE SOMEONE PLEADS TO A FELONY, THEY HAVE TO BE NOTIFIED THAT THERE COULD BE PHYSICAL EVIDENCE THAT COULD BE AVAILABLE FOR DNA TESTING, IN THAT CASE, IF YOU LOOK AT WHAT IS HAPPENING THERE, BEFORE SOMEONE PLEADS GUILTY TO A FELONY, LET'S MAKE SURE THEY KNOW THAT THERE MAYBE EVIDENCE THROUGHOUT AVAILABLE FOR DNA TESTING.

>> HOW IS THAT CLAIM PLED IN THE POST-CONVICTION NOTES? AUTOS THIS CLAIM WAS PLED, I HAD TO CONCEDE AT THE CIRCUIT COURT THAT IT WAS NOT PLED VERY SPECIFICALLY. IT ACTUALLY FITS INTO, I BELIEVE, IT WAS CLAIM FOUR WHICH WAS FAILURE TO INVESTIGATE THE CLIENT'S BACKGROUND AND EFFECTIVENESS.

I DON'T THINK WE SAID ACTUALLY SPAF SYCALLY CHALLENGE THE PRIOR AGGRAVATOR.

>> WAS THIS CLAIM NOT PLED THEN IN YOUR POST

CONVICTION?

>> NOT, NOT DETAILS.

NOT SPECIFICALLY.

>> YOU KNOW, THIS IS

OBVIOUSLY, WE HAVE TO TALK ABOUT LAWYERS, YOU ARE A LAWYER.

YOU GOT TO TELL US WHETHER YOU MADE THIS CLAIM IN YOUR PLEADING IN THE TRIAL COURT HERE.

A PLEDING, A PETITION FOR POST-CONVICTION RELIEF.

AS YOU KNOW, THESE ARE VERY IMPORTANT THINGS AND MANY, MANY TIMES THIS COURT AND OTHER COURTS RULE THAT THERE ARE PROCEDURAL BARS THAT THESE ARE NOT OBSERVABLE DEATH PENALTY CASE, WE ARE TALKING ABOUT LIFE OR DEATH, SO WAS THIS CLAIM PLED IN YOUR POST-CONVICTION PETITION?

>> IT WAS NOT PLED IN OUR CAPITAL MURDER CASE AN ONE THING WHICH I WOULD LIKE TO BRING UP --

>> IT WAS NOT PLED IN THESE PROCEEDINGS.

>> NOT SPECIFICALLY.

I MEAN, THIS IS, THIS IS THE MURDER CASE, AND SO THIS CLAIM THAT YOU ARE ADDRESSING OR TALKING ABOUT NOW WAS NOT THE SUBJECT OF CONSIDERATION PROPERLY BEFORE THE TRIAL COURT, THAT IS RIGHT?

>> THAT IS CORRECT.

THAT IS BECAUSE WHAT WE ARE REALLY TALKING ABOUT, ONE OF THE THINGS WE'RE TALKING ABOUT IN INEFFECTIVENESS OF COUNSEL IN THE TAXICAB CASE AND UNDER CHAPTER 27 ACTUALLY SPECIFICALLY FORBIDDEN AND THE STATE RAISED THAT ISSUE IN THE TRIAL COURT THAT PCRC DOESN'T HAVE THE RIGHT TO CHALLENGE THE TAXICAB.

>> HOW'S THE CASE -- THIS ISSUE BEFORE US NOW?

>> THE ISSUE BEFORE YOU NOW

BECAUSE WE RAIDS ISSUE OF
INEFFECTIVENESS OF ASSIST
APS OF COUNSEL FOR FAILURE
TO INVESTIGATE DOLAN DAR
LUNG'S BACKGROUND.

UNDER ROMPILLA, THERE IS A
DUTY ON COUNSEL AND CAPITAL
CASE TO INVESTIGATE THE
COURT FILED.

>> SO DID YOU FILE A CLAIM
AS FAR AS PREVIOUS COUNSEL
IN THE CASE WHO WAS
DEFENDING THIS DEFENDANT
PRETRIAL.

RAISING THIS ISSUE UNDER
THAT ISSUE THAT YOU RAISED
IN THE TRIAL COURT?

>> RAISING IT UNDER CLAIM
FOUR OF THE POST-CONVICTION
MOTION.

>> WOULD YOU THEN DISCUSS
HOW ROMPILLA APPLIED.
THAT THERE WAS A PRIOR
CONVICTION THAT THEY WERE
DEALING WITH, THEY HAD THE
FILES ON THE TABLE
SOMEPLACE, THE LAWYER DIDN'T
LOOK AT THEM AT ALL AND
PLAYED SOME ROLE IN THE
ULTIMATE CASE.

HOW DO YOU SEE THAT
IMPLICATED HERE?

>> ONE THING THAT IS
INTERESTING IS THAT CAPITAL
POST-CONVICTION -- CAPITAL
ACCOUNT FOR TRIAL COUNSEL
WAS APPOINTED, WAS APPOINTED
SEPTEMBER 16th OF 1997, NOW
DOLAN DAR LUNG'S EVIDENTIARY
HEAR WAS ACTUALLY OCTOBER
8th OF 1997, HAD THE TRIAL
COUNSEL, HAD MEANINGFUL
DISCUSSION WITH DOLAN
DARLING, HE WOULD HAVE TUNED
INTO THE FACT, WOE, THIS IS
-- MY CLIENT IS GOING TO
POST-CONVICTION HEARING ON
THE CARJACKING CASE THAT IS
THE SHOWCASE AGGRAVATOR IN
THE CAPITAL MURDER CASE AND
ROMPILLA HAVE A DUTY, TRIAL
COUNSEL AT THAT VERY MOMENT,
TRIAL COUNSEL SHOULD HAVE
BEEN ALERTED, MOTION TO

WITHDRAW THAT PLEA NEEDS TO BE DONE.

NOW CHRISTOPHER SMITH, THE NON-CAPITAL ATTORNEY WAS APPOINTED IN FEBRUARY OF '97 PLEAD DOLAN DARLING TO THAT OFFENSE ONLY WITHIN TWO MONTHS WITHOUT TAKING ONE DEPOSITION.

>> DONE IN APRIL?

>> I AM SORRY.

>> THAT WAS DO IN APRIL.

>> CORRECT.

>> YOU ARE SAYING AT THE TIME THIS DEFENSE LAWYER WAS APPOINTED IN THIS CASE.

>> YES.

>> THAT THE COLLATERAL PROCEEDINGS WERE ONGOING ON THE TRIAL LEVEL AND THAT UNDERLYING CASE AND WHAT ARE THOSE DATES YOU ARE LOOKING AT?

>> HE FILED 3.850 MOTION IN THE CASE.

>> WHO DID?

>> DOLAN DARLING.

>> HE DID IT PRO SE.

EFILED IT IN JULY OF 197.

ALONG WITH THAT MOTION, HE FILED A REQUEST FOR THE APPOINTMENT OF COUNSEL.

RIGHT OFF THE BAT, JUDGE McKINNON DENIED THAT MOTION OF COUNCIL, ALTHOUGH, SHE DID RESPOND TO 3.850 MOTION.

>> WHAT WAS THE OUTCOME IN THE CONVICTION OF THE CARJACKING WAS FIRM? THAT IS WHAT HAPPENED?

>> AWESOME SORRY.

>> I AM SORRY.

>> WAS 3.850 RELIEF DENIED AND THEREFORE HIS CONVICTION STOOD IN THE CARJACKING CASE?

>> THAT IS CORRECT.

>> THERE IS NO APPEAL OF THE CARJACKING CASE.

THERE WAS ONLY THE POST CONVICTION.

THAT IS RIGHT?

>> CORRECT.

HE FILED 3.850 MOTION CITING

MANY THINGS, ONE WAS FAILURE TO INVESTIGATION INVESTIGATE VOLUNTARY INTOXICATION.

>> GIVES, WHAT WAS THE TESTIMONY OF COUNSEL THAT REPRESENTED HIM IN THE CASE AS TO THAT KNOWLEDGE OF THE OTHER CASE?

WHAT WAS THE TESTIMONY OF THE DEFENSE LAWYER IN THAT OTHER CASE AS TO HIS KNOWLEDGE OF THIS MATTER AT THE TIME OF THE PLEA?

>> WELL, IT IS INTERESTING BECAUSE TRIAL COUNSEL AND THE CAPITAL CASE AT THE EVIDENTIARY HEARING HE WAS ASKED ABOUT WHAT DID DO YOU TO INVESTIGATE OR CHALLENGE THE TAXICAB CONVICTION.

HE SAID I LOOKED INTO IT BUT I DIDN'T FIND ANYTHING THAT WAS ABLE TO BE CHALLENGED. BUT HE DIDN'T, HE WASN'T SPECIFIC AT ALL ABOUT WHAT HE -- WHAT RESEARCH HE DID, WHAT CASE HE LOOKED AT.

>> DID HE TESTIFY WHEN HE FOUND OUT ABOUT THAT?

>> I DON'T RECALL AT THE TOP OF MY HEAD WHEN THAT MIGHT HAVE BEEN.

>> IN OTHER WORDS --

>> THE QUESTIONING OF HIM?

I MEAN, YOU SAID HE DIDN'T GO TO ANY DETAILS, BUT DID YOU QUESTION HIM TO BRING OUT THESE DETAILS ABOUT WHAT HE ACTUALLY DID AND HOW HE CAME TO THE CONCLUSION THAT THERE WAS NOTHING THERE?

>> IT WAS MORE ON THE PART, I BELIEVE IT WAS REBUTTAL WHEN THE STATE, NOT A REBUTTAL, BUT WHEN THE STATE WENT BACK AND DID REDIRECTION EXAM MATION. OH, NOW KNOW, WHAT I HAVE A FILE HERE.

I HAVE NOTES SHOWING THAT I LOOKED INTO THE TAXICAB CASE.

I DIDN'T SEE ANY WAIVE POSSIBLYBLY CHALLENGING.

>> WHAT WAS YOUR
CROSS-EXAMINATION OF HIM?
>> THE INQUIRY ENDED THERE.
ONE THING I WILL SAY ABOUT
THIS IS IT WOULD BE ONE
THING IF IN THE COURT FILE
OF THAT TAXICAB CASE, WE HAD
MOTION TO WITHDRAW THE PLEA,
WHERE A MOTION TO SEEK
APPOINTMENT OPP THE TAXICAB.
WE DON'T HAVE THAT.
ALL WE HAVE HERE IS SOME
VERY VAGUE TESTIMONY FROM
TRIAL COUNSEL THAT LOOKED
INTO IT, I DIDN'T SEE
ANYTHING.
>> YOU HAD EVIDENTIARY
HEARING ON THIS, CORRECT?
>> CORRECT.
>> WHAT EVIDENCE DID YOU
PLACE BEFORE THAT TRIAL
JUDGE TO SHOW THAT THERE WAS
SOMETHING TO SATISFY THE
PREJUDICE PRONG THAT YOU
REQUIRED TO PROVE THAT THAT
IF THIS LAWYER HAD DONE X,
WHICH WAS STANDARD PRACTICE,
THAT THE RESULT, WOULD
UNDERMINE THE CONFIDENCE IN
THE CASE, WHAT IS THE
STANDARD THAT YOU MUST SHOW
WITH REGARD TO THAT PRIOR
CLEAR, THAT WOULD YOU HAVE
TO PROVE OR ESTABLISH AT THE
TRIAL?
>> WE BOTH CONCEDED THAT IF
WE ARE REQUIRED THROUGH,
THERE WOULD BE VERY EXTREME
HURDLES TO OVERCOME, IF WE
ARE REQUIRED TO SHOW
PREJUDICE DIGGING ALL THE
WAY DOWN TO THE TAXICAB
CASE.
>> BUT WHAT YOU MUST
NECESSARILY DO, IT IS NOT
PER SE IS IT.
ARE YOU SUGGESTING THAT YOU
CAN SHOW A STRICT VIOLATION
WE ARE SAYING AS LONG AS
SOMEONE DIDN'T CHALLENGE A
PRIOR FELON.
>> OUR POSITION THAT THERE
SHOULD BE AND WE BELIEVE
THAT GRAHAM TALKS ABOUT NO

REQUIREMENT FOR SHOWING
PREJUDICE.

FOR INSTANCE, IF SOMEONE IS
CHARGED WITH ANY CRIMINAL OFFENSE,
REGARDLESS WHETHER
THERE IS TEN EYEWITNESSES,
DNA EVIDENCE, FINGERPRINT,
EVERYWHERE, WE DON'T SAY,
NOW KNOW, WHAT WE ARE NOT
GOING TO APPOINT LAWYER.
UNDER YID GIDEON VERSUS
WAINWRIGHT.

>> WELL, HE HAD COUNSEL.

>> HE DID HAVE COUNSEL.

HE KNEW HE WAS SUSPECT?
THE INDICTMENT ACTUALLY
DIDN'T COME OUT, BUT EVEN AS
DEFENSE WAS I WAS HAVING AN
AFFAIR, NOT THAT I WAS NOT
THERE OR ANYTHING.

I MEAN AT THE TIME.

THERE WAS A CONNECTION HE
HAD BEEN INTERVIEWED.

HE KNEW THIS WAS HANGING
OVER HIS HEAD, RIGHT?

>> I -- I DON'T KNOW THAT.

>> DID HE TESTIFY ONE WAY OR
THE OTHER?

>> NO.

>> THE PENDING INDICTMENT
FOR MURDER?

>> NO, DID HE NOT.

>> WELL, FOR INSTANCE,
THOUGH, A LAWYER IN THE CASE
THAT SERVED AS AGGRAVATOR
SAID, LOOK, NO BIG DEAL,
ENTER A PLEA, YOU ARE OUT
OF HERE, AND IT WAS PLEA OF
CONVENES.

>> YES.

>> IT SENDS UP BEING AN
AGGRAVATOR.

THAT IS NOT THE CASE, YOU
KNOW, SO YOU SAY, WELL, WITH
IT A MINUTE, YOU KNOW?

HE WAS REALLY ISN'T OF THAT
OTHER THING, UNDER NO
CIRCUMSTANCES COULD IT HAVE
EVER SERVED AS AN
AGGRAVATOR.

NOW WE DON'T HAVE A CLAIM
LIKE THAT DO WE HERE?

WE DON'T HAVE A CLAIM, WELL,
EVEN IF I DIDN'T PLEA, IF

THIS THING HAD GONE TO TRIAL,
IN THE OTHER CASE, I
WOULDN'T HAVE BEEN CONVICTED
BECAUSE THEY DIDN'T HAVE A
CASE.

THERE WAS SOMETHING LIKE
THAT THAT, YOU KNOW, I
REALIZED PART OF WHAT THE
ARGUMENT THAT YOU ARE MAKING
THAT YOU SHOULDN'T HAVE TO
DEMONSTRATE PREJUDICE RIGHT
NOW BECAUSE THE LAWYER
DIDN'T EVEN DO ANYTHING AS
FAR AS INVESTIGATING THE
CIRCUMSTANCES OF THAT
AGGRAVATOR.

BUT THERE IS ANYTHING LIKE
THAT SUGGESTED IN THE
RECORD?

ANYTHING THAT, YOU KNOW,
THAT WOULD SHOW IF A GOOD
LAWYER HAD JUMPED AND BEEN
AGGRESSIVE, THAT MAYBE THIS
AGGRAVATION, YOU KNOW,
WOULDN'T HAVE BEEN USED
IN THE CASE?

>> ONE THING ABOUT THIS.
IN GIDEON VERSUS WAINWRIGHT
TALKS ABOUT HOW THEIR
DECISION, WE SHOULDN'T HAVE
PEOPLE NOT AFFORDED COUNSEL
IN CRIMINAL CASES AND IN
THIS PAR TUCK CURE LAR CASE,
THERE WAS WITH THIS
AGGRAVATOR BECAUSE IT WAS
NOT A PRIOR VIOLENT FELONY.
THIS TAXICAB OFFENSE
OCCURRED A WEEK AFTER THE
ALLEGED MURDER OF GRACE
MLYNARC ZYK, YOU HAVE NOT A
PRIOR VIOLENT FELONY.
IT IS SUBSEQUENT.

WE UNDERSTAND HE PLEAD
GUILTY BEFORE IT BEFORE.
>> OUR CASES HAVE GEN ACROSS
THAT BRIDGE, HAVEN'T THEY?
WE HAVE DEFINED, AND WHETHER
WE APREWITH OR NOT, WE
DEFINED AS NOT NECESSARILY
PRIOR TO THE CRIME INVOLVED,
IN FACT, MYRIAD CASES WHERE
THERE WAS A CONTEMPORARY
VIOLENT FELONY AND WE HAVE
IN TERM OPERATED THAT AS

SUFFICIENT TO BE A PRIOR
VIOLENT FELONY.

>> THE POSITION IS ON
SEPTEMBER 16th OF 1997 WHEN
TRIAL COUNSEL HEARS HE IS
GOING EVIDENTIARY HEARING ON
A PRIOR VIOLENT FELONY, HE
NEEDS TO DO SOMETHING.

IT IS AN EMERGENCY AT THAT
TIME.

THIS IS THE EMERGENCY ROOM.
HE NEEDS TO GET IN THERE AND
FILE A MOTIONS.

>> WE UNDERSTAND.

>> BUT I THINK YOU HAVE LEFT
UNANSWERED THE QUESTION THAT
JUSTICE ANSTEAD BOOSTS, CUE
PLEASE ADDRESS THAT?

WHAT IS IT THAT YOU NEED TO
SHOW OTHER THAN THE LAWYER
WAS NOT THERE?

YOU NEED TO SHOW SOMETHING
ABOUT THAT UNDERLYING
TAXICAB CASE IN THE
PRECEDING TO BE ENTITLED TO
RELIEF, IF SO, WHAT DO YOU
NEED TO SHOW?

HOW WOULD YOU SHOW IT?
USEEM TO BE MOVING IN THE
DIRECTION OF MAYBE SAYING,
WELL, IF HE HAD JUMPED IN,
HE COULD HAVE DELAYED OR
SOMEHOW GOTTEN A CONVICTION
VACATED, IS THAT WHAT YOU
ARE SAYING?

>> IT WOULD BE REASONABLE TO
GO INTO THE TAXICAB CASE AND
SAY, YOUR HONOR, DOLAN
DARLING HAS BEEN CHARGED
WITH CAPITAL OH FENCE, WE
ARE GOING TO ASK THE TAXICAB
CASE BE HELD UP, IT HAPPENED
AFTER THE MURDER, LET'S WAIT
TO SEE HOW THE CAPITAL
MURDER CASE.

YOU ARE TALKING ABOUT BEING
HELD UP AT A TIME AFTER
THERE HAS BEEN A CONVICTION,
AFTER THE TIME FOR APPEAL
HAS EXPIRED AND NOW YOU ARE
IN A POST-CONVICTION RELIEF.
IN OTHER WORDS, THE TRIAL
WOULD BE LOGICAL FOR A TRIAL
JUDGE IN THAT CASE TO SAY, I

AM SORRY.

>> I TAKE IT THERE WAS NO
APPEAL IN THE OTHER CASE.

>> IN THE TAXICAB CASE?

>> PARDON.

>> IN THE TAXICAB CASE.

>> SO THE JUDGE HAD A POST-
CONVICTION HEARING WOULD
HAVE BEEN IN A POSITION OF
SAYING, THERE HAS BEEN A
CONVICTION, THERE WAS NO
APPEAL, IT IS FIG.

IT IS FINAL.

THE ONLY THING CAN I DO FIS
SOMEBODY CAN DEM STRIT A
VALID GROUNDS FOR RELEASE
POST CONVICTION.

>> WE HAVE GONE WAY INTO --

>> I THINK THE ONLY -- YOU
DIDN'T TOUCH AT ALL ON THE
PENALTY PHASE.

YOU ARE ALMOST OUT OF TIME.

I WILL ASK POLICE DAVIS
ABOUT IT.

YOU MAY WANT TO ADDRESS IN
REBUTTAL OR RELY ON YOUR
BRIEF.

>> AS FAR AS MIT SGHATION

>> CORRECT.

I WILL SAY THE ORDER IS NOT
SUPPORTED BY OF SUBSTANTIAL
EVIDENCE BECAUSE THERE WAS
STATUTORY MITIGATOR
ESTABLISHED BY POST
CONVICTION.

HA WOULD BE THE INABILITY TO
PERFORM THE REQUIREMENTS
THAT, THE REQUIREMENTS OF
THE LAW.

DR. DEE GAVE US THAT
MITIGATOR, THAT WAS NOT
GIVEN, THAT WAS NOT
ADDRESSED BY THE TRIAL
COURT.

>> BASED ON WHAT?

>> SORRY.

>> THAT WAS BASED ON WHAT?
WHY WASN'T HE ABLE TO
CONFORM HIS CONDUCT?

>> BECAUSE OF FRONTAL LOBE,
LOBE DAMAGE, SERIOUS HEAD IN
QUARRYS --

>> JUSTICE IS TRYING TO GET
IT TO ADDRESS WHAT DID YOU

SHOW IN THIS PROCEEDING THAT
COULD HAVE BEEN PRESENTED AS
MITIGATION, MENTAL HEALTH
MITIGATION AT TRIAL BUT WAS
NOT.

I THINK YOU WERE STARTING TO
TALK ABOUT THE STATUTORY,
THE STATUTORY MITIGATEOR,
BUT DIDN'T THE TRIAL COUNSEL
HAD MENTAL HEALTH EXPERT AND
TO RELAY ON THAT MENTAL
HEALTH EXPERT AS TO WHAT
THEY COULD COME UP WITH EVEN
IF IT WAS NOT AS GOOD AS YOU
CAN COME UP WITH.

>> WHAT YOU HAD IN TRIAL WAS
BASICALLY LET'S THROW UT OUT
THERE.

WHAT WE DID IN POST
CONVICTION, HE WAS BEATEN.
THIS IS WHAT THIS MEANS.
THE UNUSUAL BRIEF HAS 60
PAGES OF THE EX TENSE
MITIGATION THAT WE PRESENT.
WE WOULD LIKE TO STAY ON THE
BRIEF.

I WOULD LIKE TO BRIEFLY
TOUCH ON THE DNA, JUST SEVEN
POINT, NO NEGATIVE CONTROLS
WERE PERFORMED, ELECTRONIC
DATA DESTROYED, WE HAVE NO
CONSTRUCTION AVAILABLE,
THERE WAS A FAINT BAND, A
MATCH CALLED, KNOWNS WERE
RUN INTO EXUNKNOWN, THREE TO
FOUR BANDS WERE CALLED, IF
THERE IS MORE THAN TWO BANDS
ACCORDING TO OWN PROTOCOLS
THEY SHOULD NOT BE
ADDRESSED.

I WOULD ASK --

>> LET ME ASK A QUESTION:
WE ARE TRYING TO DO JUSTICE
HERE.

YOU DON'T HAVE TO RUN THEM.
ON THE DNA, THERE IS OR WAS
THERE SUFFICIENT MATERIAL
LEFT TO DO TESTING?

>> WE, WE DID NOT LOOK INTO
THAT.

>> WELL WHY -- WHY WOULDN'T
YOU LOOK INTO THAT INTHIS IS
WHAT THE CASE IS ABOUT.
WHETHER THAT IS HIS DNA OR

NOT.

THE DEFENSE TO THIS IS THE STATE HONORS HE WAS HAVING AN AFFAIR, HE KNEW IT WAS GOING TO SHOW ANYWAY, BUT IT SEEMS TO ME THAT THAT WOULD BE EPART OF THE DNA KIND OF ANALYSIS RATHER THAN JUST, YOU KNOW, SAYING WELL THEY DIDN'T DO IT RIGHT AS TO SHOW SOMETHING.

>> BECAUSE OF THE VERY EXTREMELY SHODDY LAB PRACTICES WE HAVE SPOKEN TO DNA EXPERT, SHE SAID THERE IS A GRAVE RISK FOR CONTAMINATION OF MISHANDLING BY THE WILLING BE LAS SHE DOES NOT RECOMMEND ANY SUBSEQUENT TESTING.

>> MAY IT PLEASE THE COURT. MY NAME IS BARBARA DAVIS. I REPRESENT THE STATE OF FLORIDA.

AS FAR AS THE PRIOR VIOLENT FELONY.

THIS ISSUE NEVER RAISED BOOFER THE TRIAL JUDGE. THE FIRST THING WE HEARD ABOUT THIS WAS WHEN THEY KPLALD SMITH HAS A WITNESS IN THE TRIAL.

WE RECEIVED A NOTICE OF LISTING HIM AS A WITNESS THE SECOND DAY OF TRIAL AND THAT WAS OUR FIRST MTS.

WAYS NOT PLED IN CLAIM FOUR WHICH WAS ABOUT THE MENTAL HEALTH MITIGATION THAT IS ON PAGE 1283 OF THE RECORD AND WHAT THEY ARE NOW CLAIMING IN THEIR APPELLATE BRIEF IS THEY ARE CHALLENGING CHRISTOPHER SMITH THE ATTORNEY IN THE TAXI CAB ROBBERY CASE WITH I WHICH WAS PLED BEFORE HE WAS EVEN INDICT ON THE MURDER.

THE DNA TESTING DIDN'T COME IN ON THE MURDER UNTIL IT WAS ABOUT A MONTH AND A HALF AFTER HE PLED AND HE WAS INDICTED AFTER THAT, SO THIS IS ALL PROCEDURALLY BARRED,

THERE WAS 3850 APPEAL TO THE DA, THIS COURT DOES NOT HAVE JURISDICTION ON WHETHER MR. SMITH IN UNRELATED CASE TEN YEARS AGO IN FRONT OF JUDGE McKINNON WAS INEFFECTIVE.

THEY HAVE NOT RAISED ON APPEAL WHETHER MR. LEBLANC AND IENNACO WERE FAILING TO INVESTIGATE.

ALL OF THIS CAME BEFORE THE TRIAL JUDGE.

>> IT SEEMS THE TIMED ARGUE, WE UNDERSTAND THOSE ASPECTS WHAT HE IS TRYING TO SAY, YOU HAD CAPITAL COUNSEL REPRESENTING THIS PERSON AND THAT THAT COUNSEL KNEW AND SHOULD HAVE LOOKED AT THIS OTHER DAYS WAS STILL OUT THERE, STILL ACTIVE, ALTHOUGH, THE LATERAL STAGES AND THAT HAD THEY DONE, SO THEY WOULD HAVE HAD, OR PROPER COUNSEL SHOULD HAVE DONE SO AND THEN WHAT, SO I MEAN, LET'S GO ONE STEP FURTHER.

WE HAVE ALL OF NA IN THE BRIEFS ABOUT THE -- HOW ABOUT THE CONTENT ON IT, IS THERE A SHOWING?

HAS THERE BEEN?

HAS THERE BEEN ANYTHING AT ALL SHOWN?

>> IF WE GET ABOUT PAST THE PROCEED DURAL BAR OF THE TRIAL JUDGE, THEY DIDN'T RAISE IT AN APPEAL.

IT IS NOT EVEN RAISED IN THEIR APPEAL THAT IENNACO AND MR. LE BLANK WERE INEFFECTIVE.

WE DID OFFER TESTIMONY ON THIS AND MR. IENNACO, IF YOU LOOK AT THE RECORD 1016 AND WE ASKED MR. IENNACO, WERE YOU AWARE OF THIS.

ABC ABSOLUTELY.

HE ABSOLUTELY LOOKED INTO THIS.

HE FILED A MOTION THAT I WAS NOT PRIOR BECAUSE IT WAS

ACTUALLY AFTER WARD, HE SAID
THE STATUTE WAS
UNCONSTITUTIONAL.

HE RENEWED THAT MOTION AT
THE OPINION TY PHASE AN
HEARING IN FRONT OF THE
JUDGE.

THEY, UM, THEY, HE HAD
COMPLETE CASE FILE LOG AND
WHAT HAPPENED IS WHEN WE
WERE AT THE END, WE -- OF
HIS TESTIMONY ABOUT THE
CLAIMS THAT WERE REALLY
RAISED.

HIS TESTIMONY ABOUT THE
INVESTIGATION THAT HE DID
INTO THE PRIOR CONVICTION
AND HE COMPLETELY
INVESTIGATED IT.

HIS QUOTE, HE SAYS IF THERE
WAS ANY WAY TO DOWN THAT
CONVICTION, I WOULD HAVE
DONE IT.

HE TALKED TO MR. SMITH.

HE GOT ALL OF THE FILES.

THERE WAS NOTHING THAT THEY
COULD DO.

THEY WERE OUT OF TIME TO TRY
TO WITHDRAW THE PLEA.

THE EVIDENTIARY HEARING WAS
OVER, PAILED, ABANDONED, IN
THAT CASE, AN AND THEN AFTER
THAT WE TOOK A RECESS FOR
THE NEXT WITNESS.

HE BROUGHT HIS FILE UP.

HE SAID I FOUND THE COMPLETE
FILE.

YOU KNOW, THEY HAD A TRIAL
FILE THAT WAS ON A DOLLY OF
ABOUT 3 TO 4-FEET HIGH.

SO WE PUT HIM BACK ON THE
STAND JUST TO PROPER THAT HE
FOUND THE TRIAL FILES AND ON
PAGE 19 HE SAYS AND I FOUND
MY FILE AND IT HAS ALL MY
NOTES OF WHY I COULD DO
NOTHING ON THIS, BUT HE
ABSOLUTELY INVESTIGATED
THIS.

>> WHAT I WOULD LIKE TO
MAYBE SPEND A LITTLE TIME
WITH YOU ON IS MITIGATING
EVIDENCE AND WE ALWAYS GET
INTO THESE CASES ABOUT

WHETHER IT IS CUMULATIVE,
AND QUALITATIVELY DIFFERENT.
I AM LOOKING AT THE JUDGE'S
SENTENCING ORDER AND IT
REALLY SEEMS THAT IN THE
JUDGE SORT OF PAID LIP
SERVICE TO MOST OF THESE
MITIGATING FACTS, HE HAD
ALCOHOLIC FATH PER, VIOLENCE
WITH HIS MOTHER, I GUESS THE
ORIGINAL DEFENSE LAWYER LISTS
HUMAN BEING, THAT THAT WAS
-- HERE IS A 20-YEAR-OLD
BAHAMIAN THAT ADMITTED THIS
TREMENDOUS MURDER.
WE NOW HAVE MENTAL HEALTH
EXPERTS TESTIMONY IN THE
FORM OF DR. DEE THAT FINDS
BRAIN DAMAGE AND CREATING
SUBSTANTIAL IMPAIRMENT IN
THE ABILITY TO PERFORM ONE'S
CONDUCT REQUIREMENTS BY THE
LAW.

SEEING THAT THIS WAS AS SON
SO MANY MURDERS ARE, BUT
PARTICULARLY VIOLENT MURDER
WHERE IF HE IS FOUND GILL
THAT I THERE HAS GOT TO BE
SOMETHING MORE THAN YOU ARE
JUST A HUMAN BEING.

DID ORIGINAL LAWYER PAY LIP
SERVICE GOING THROUGH THE
MOTIONS OF MENTAL HEALTH
MITIGATION AN REALLY NEVER
QUALITATIVELY EVALUATED IT?
AND CAN YOU SORT OF HELP IN
TERMS OF PREPARING WHAT WAS
PRESENTED AT THE ORIGINAL
TRIAL AND POST CONVICTION OR
DO WE HAVE MORE OF THE SAME
HERE JUST DRESSED UP A
DIFFERENT WAY.

IT IS MORE OF THE SAME
DRESSED UP AS A DIFFERENT
WAY.

AS DR. DAVID PRANK WAS OUR
MENTAL HEALTH EXPERT.
HE IS PSYCHIATRISTS WHO
WORKS WITH THE DEPARTMENT OF
CORRECTION INMATE, HE SAID
THAT THEY JUST EXPLODE PTED
IT INTO DIFFERENT PARTS.
FIRST OF ALL, THEY HAD AN
INVESTIGATOR, SHE WAS A VERY

EXPENSED INVESTIGATOR,
INVESTIGATED CAPITAL CASE
FORCE THE PUBLIC DEFENDER
FOR YEARS, SHE WENT TO THE
BAHAMAS, SPENT FOUR DAYS IN
THE ABOUT A HOME MARKS
EXTREMELY DIFFICULT, IF YOU
LOOK IN THE RECORD AT PAGES
323 OF THE EXHIBIT GETS YOU
INTO HER INVESTIGATIVE
NOTES, LETTER AFTER LETTER
AFTER LETTER.

>> I GUESS LET'S GO FIRST,
IT MAY BE THERE IS NO
SUFFICIENCY, I AM LOOKING AT
PREJUDICE WHICH IS THAT
FIRST AND I ASSUME THE STATE
DOESN'T THINK THERE IS EVEN
PREJUDICE, WHEN YOU LOOK AT
A SENTENCING ORDER IN A
CASE, NOW SUBSEQUENTLY, WE
ARE TALKING ABOUT
ESTABLISHING OF STATUTORY
MITIGATOR OR A JURY HEAR
ABOUT PIT.

THERE IS NOTHING ABOUT
MENTAL HEALTH MITIGATION IN
THE SENTENCING ORDER, DO YOU
-- I DON'T WANT TO USE SEE,
DO YOU SEE HERE, THIS KIND
OF TESTIMONY COULD HAVE BEEN
VERY POWERFUL FOR THE JURY
FIT HAD BEEN PREVENTED, WHAT
WAS PRESENTED AT THE
EVIDENTIARY HEARING?

>>

>> THE TRIAL JUDGE ERRED IN
HIS FINDINGS, THAT WOULD BE
A DIRECT APPEAL ISSUE.
THE ISSUES THE INVESTIGATION
OF THE PRESENTATION OF THE
DEFENSE COUNSEL.

NOW WHETHER THE JUDGE MADE
FINDINGS, THEY WERE VERY,
VERY AGGRESSIVE ON THEIR
MITIGATION.

>> SO WHAT WAS THE MENTAL
HEALTH MITIGATION THAT WAS
PREVENTED?

>> I WILL GET TO THE TRIAL.

>> ALL OF THE WITNESS.

>> FIRST OF ALL, THE
INVESTIGATOR WANTS THE
BAHAMA FOR FOUR DAY, TOOK

STATEMENTS FROM EVERYBODY,
DETAILED INFORMATION, THEY
ARRANGED FOR THE ENTIRE
FAMILY TO COME, DESHANE CLER
THE GIRLFRIEND, VERONIKI
BUTLER, SHE WAS IN THE HOUSE
WITH HIM UNTIL HE WAS 16.
THAT IS WHEN HE LEFT.

ELEANOR SMITH, THE MOM
TESTIFIED ALL ABOUT THE
ABUSE.

SHE TESTIFIED THERE.

DR. HERKOV WAS READING FROM
CARLTON DARLING'S DEP POE,
THE DAD, ABOUT ALL OF THE
ABUSE, NOW THE DAD HAD GIVEN
A DEPOSITION, THEN DIDN'T
GET ON THE PLANE, SO THEY
WANED HIM THERE TO TESTIFY
ABOUT THIS DIRECTLY, BUT HE
DID NOT GET ON THE PLANE.
THEY SAID AT THE HEARING,
THEY BEGGED HIM TO COME.
HE DID NOT COME.

BUT DR. HERKOV READ LINE AND
VERSE FROM MR. DAR LUNG'S
DEPOSITION.

DR. HERKOV FRAED STATEMENTS
FROM DEAN THE FELLOW AT THE
YOUTHFUL OFFENDER FACILITY
THAT ALLEGEDLY SEXUALLY
ABUSED HIM, DEBORAH RALLY,
THE MOTHER, DESHANE CLAE RE
AND SISTER.

>> DID HE TESTIFY TO A
MENTAL HEALTH MITIGATOR?

>> NO, IN FACT, HE SAID, HE
TESTED -- HE DID THE WASTE
TEST, I THINK THAT WAS
BEFORE THE WASTE THREE CAME
OUT, HE DID THE WASTE TEST
AND THE MMPI.

HE TESTIFIED THAT THERE WAS
NO DSM, I THINK ON THE DIE
HE.

>> TESTIFIED AT THE ORIGINAL
TRIAL?

>> YES.

>> ALL RIGHT.

SO I GUESS, QUALITATIVELY,
YOU CAN'T BE THE SAME IF
SOMEBODY, EVEN IF THERE IS
-- IT MAY BE NOT SUFFICIENT
PERFORMANCE, BUT QUALITATIVELY,

YOU HAVE AN EXPERT THAT CAN
LINK UP ALL OF THIS IN HIS
UNDERLYING
NEUROPSYCHOLOGICAL PROBLEMS
WHY THIS CRIME OCCURRED.
THAT IS NOT QUALITATIVELY
THE SAME AS CHILDHOOD
WITNESSES AN, YOU KNOW, JUST
PUTTING IT IN THERE.
DO YOU AGREE THAT THAT, THAT
IS DIFFERENT?
THAT IS HAVING AN EXPERT
TESTIFY TO A STATUTORY
MITIGATOR VERSUS JUST
SAYING, WELL, THERE IS, THAT
THERE ISN'T ANY STATE TO
STATUTORY MITIGATOR.
WELL, YOU GOT TO UNDERSTAND,
THOUGH, DR. DEE'S TESTIMONY
WAS REBUTED BY DR. FRANK,
WHO SAID THAT THERE IS
ABSOLUTELY NO BRAIN INJURY,
BRAIN DAMAGE THAT ACCIDENTS
WOULD CAUSE BRAIN INJURY AND
NOT BRAIN DAMAGE.
ALL OF DR. DE'S TESTIMONY AS
FAR AS WHY THERE WAS
STATUTORY MITIGATORS WAS
REBUTED BY DR. FRANK.
OH SAID, NO, THIS CRIME
SHOWS A LOT OF PREPLANNING.
I MEAN, HE TOOK A GUN AND
USED A PILLOW AS A SILENCER.
HE GOT RID OF THE GUN.
I MEAN, --
>> DID THE TRIAL JUDGE IN
THE CASE FIND THAT DR. DEE
WAS NOT A CREDIBLE WITNESS?
>> HE REALLY DIDN'T MAKE ANY
FINDINGS ON THE CREDIBILITY
OF THE WITNESSES.
HE JUST SAID IT WAS
CUMULATIVE.
THE FACT THAT HE NOW FOUND
AN EXPERT TO SAY SOMETHING
DIFFERENT DOESN'T MEAN THE
ORIGINAL EXPERT IS WRONG.
>> AND I GUESS, THAT IS WHY
I AM STILL TRYING -- THAT
PROOFS JUST BECAUSE YOU FINE
ANOTHER EXPERT DOESN'T MEAP
IT IS SUFFICIENT
PERFORMANCE.
I THIR ARE PROBABLY THERE ON

PERFORMANCE, BUY SOMETIMES
GET A LITTLE CONCERNED THAT
WE STILL HAVE CUMULATIVE AND
HOW IT CAN'T BE CUMULATIVE
IF ONE EXPERT IS TESTIFYING
THERE IS MENTAL HEALTH
MITIGATOR AND THE OTHER IS
STAYING SAYING THAT SOME,
YOU KNOW, SOME OTHER FORM OF
MENTAL ILLNESS, SO LET'S AT
LEAST AGREE QUALITATIVELY
DIFFERENT, THE JURY MAY NOT
HAVE ACCEPTED IT, BUT IT
WOULD SEEM TO ME, THAT YOU
CAN'T SAY IT IS CUMULATIVE
WHEN IT IS EQUAL TATE
YOUIVELY DIFFERENT?

>> WELL, IN THE SAME JUDGE
WHO MAY HAVE WORDED HIS
SENTENCING ORDER MAY ARE
WORDED THAT, BUT I THINK HIS
BOTTOM LINE IS THE TRIAL
JUDGE LOOKED AT THE PENALTY,
WHAT AND THE ISSUE IS NOT
WHETHER THE MENTAL HEALTH
EXPERT IS EFFECTIVE.
THAT IS PROCEED PROCEDURALLY
BARRED.

>> I AGREE WITH YOU, IT
SEEMS THIS DEFENSE LAUREN
THE ORIGINAL PHASE DID DO
DILIGENCE AND THAT OUR CASE
LAW IN THAT REGARD PROBABLY
MEANS THAT THEY CANNOT
ESTABLISH THE FIRST.

I WOULD REALLY SORT OF
FOCUSING ON WHAT I SAID TO
YOU WHICH IS THAT IT SEEMS
THAT IT WAS LIP SERVICE PAID
TO THE QUALITATIVE
DIFFERENCE IN THE TESTIMONY.

>> THIS WAS THE SAME TRIAL
JUDGE AS POST-CONVICTION
JUDGE?

>> I THOUGHT IT WAS.

>> YEAH, IT IS.

>> JUDGE ADAM.

>> YES, SIR.

>> I THOUGHT YOU SAID IT
WASN'T.

>> YES, SIR, IT WAS.

JUDGE ADAM.

HE WAS FAMILIAR THE --

ACTUALLY DEFENSE COUNSEL WAS

STILL ARGUING AT THE 3850
HEARING ABOUT WHETHER THE
JUDGE GRANTED THE JUDGMENT
OF ACQUITTAL.

THEY WERE SO ZEALOUS IN THE
CASE.

THEY WENT TO THE ENDS OF THE
EARTH ON THIS CASE AND TO
HAVE THEM CHALLENGE THIS
INEFFECTIVE, AND IF YOU LOOK
AT THEIR TESTIMONY,
MR. LeBLANC AND MR. IENNACO,
THEY DID EVERYTHING THAT THE
CASES ALWAYS SAY YOU NEED TO
DO.

THEY HAD A VERY EXPERIENCED
INVESTIGATOR.

HE MOVED FROM COUNSEL.

THEY DID THEIR INVESTIGATION.

THEY ASKED FOR -- I WILL
JUST MOVE INTO DNA, IF THAT
IS OKAY.

THEY ASKED FOR DNA EXPERT,
ONE WAS APPOINTED, AND THEN,
WHEN THE DEFENDANT WROTE
THEM, TOLD THEM THAT THERE
IS NO QUESTION, IT IS MY
DNA, WE ARE BEEN HAVING AN
AFFAIR FOR TWO MONTHS.

HIS NOTE IS IN THE EXHIBIT'S
EVIDENCE ON PAGE 255 TELLING
THEM AND SO AT THAT POINT
THEY SAID, WELL, AND THEY
HAD EVEN GOTTEN MORE MONEY
FROM THE JUDGE TO HIRE THE
DNA EXPERT THEY WANTED.

AT THAT POINT, THEY SAID,
WELL, OKAY, WE CAN'T REALLY
CHALLENGE THE VALIDITY OF
THE DNA RESULTS.

SAME THING WITH THE
FINGERPRINT.

THERE IS NO QUESTION THAT IS
HIS FINGERPRINT.

HE IS THE NEXT-DOOR
NEIGHBOR.

HE IS IN THE APARTMENT ALL
OF THE TIME.

SO THEY, THEY DID NOT WASTE
THEIR BULLET ON THINGS THAT
WERE NOT RELEVANT.

THERE WERE TWO OTHER PEOPLE
THAT HAD BEEN INVESTIGATED.

THIS GENE MARGUS AND ANOTHER

FELLOW THAT THAT WAS THEIR
THE RIFF DEFENSE.

IT WAS NOT HIM.

HE IS IN THE APARTMENT.

THEY THEY ARE NEIGHBOR.

THEY HAVE SEX.

THEY THAT DOESN'T MEAN HE
KILLED HER.

THAT WAS THEIR DEFENSE AT
TRIAL.

SO AS FAR AS THE, IF YOU
WANT ME TO ADDRESS THE DNA
ISSUE, THEY DID NOT FILE THE
3853 MOTION AT ANY TIME.

GENEEN WHO THEY BROUGHT IN
WHO THE INVESTIGATOR MET HER
AT DEFENSE SEMINAR BECAUSE
SHE IS AN AUDITOR WHO COMES
IN AND CHALLENGES THE
PROTOGETHER CALLS THAT ARE
USED IN LABORATORIES.

SHE TOLD THE JUDGE, WHEN THE
JUDGE SAID, LET'S GET TO THE
BOTTOM LINE, SHE TOLD THE
JUDGE, I DON'T KNOW ANYTHING
ABOUT DNA.

I CAN NOT CHALLENGE THE
RELIABILITY OF THE RESULT.
I HAVE HO REASON TO THINK
THIS IS NOT DOLAN DAR LUNG'S
DNA WHICH WE ALSO KNOWN FOR
TEN YEARS.

AND THE JUDGE, BUT WHAT SHE,
THE JUDGE LET HER GO IN AND
BASICALLY CONDUCT AN AUDIT.
THE ANALYSTS WHO HAD DONE
THE EXAM CAME IN AN THEY HAD
HAD THE EXTERNAL AUDIT FIVE
MONTHS BEFORE THESE DNA
TESTS BY MIAMI-DADE AND
IMPLEMENTED THE PROD
>> DURES THAT WERE TEST
SUGGEST.

SIX MONTHS BEFORE, THEY HAD
DONE THE INTERNAL AUDIT.
IT IS ZFERTFIED WHICH IS IN
3853 THEY NEED TO BE ZRTSFIED
THEY ARE COMPLYING WITH ALL
OF THESE THINGS, BUT THEY
BRING IN AN AUDITOR WHO
BASICALLY GOES THROUGH AND
SEE IF THEY GOT CALIBRATIONS
AN ALL OF THESE OTHER THINGS
AND THEY COMPARED THIS BUT

THIS CASE IS NOT ANYWHERE
CLOSE TO MURRAY WHERE YOU
HAD THE SECOND ANALYSTS COME
KIN AND SAY THESE TESTS ARE
COMPLETELY UNRELIABLE, THERE
IS NO QUESTION THAT THESE
DNA TEST RESULTS ARE HIM.
AND I MEAN, AS A FOOTNOTE,
HE HAS BEEN MATCHED, THE DNA
TEST RESULTS MATCH WHEN HE
WAS ADMITTED TO DOC AND ALSO
FROM THE BROWARD COUNTY
BECAUSE HE WAS WANTED ON BOW
HIM AIAN WARRANT FOR MURDER
AN RAPE, BUT ESCAPED FROM
THE BAHAMAS.

IF THERE IS NO FURTHER
QUESTIONS, I WOULD JUST ASK
THE COURT TO AFFIRM THE
TRIAL JUDGE'S ORDER.
THANK YOU.

I WILL GIVE YOU TWO
MINUTES.

YOU USED UP YOUR TIME.

I WILL GIVE YOU A COUPLE
MINUTES.

>> THANK YOU, JUDGE.

THE STATE CONCEDED TO
EVIDENTIARY HEARING ON THE
OPINION TY PHASE.

WE ALLEGED THAT TRIAL
COUNSEL IN EFFECT OF THE
PENALTY COUNSEL PHASE AN OUR
ARGUMENT HERE IS THAT PART
OF THE INEFFECTIVENESS OF
THE COUNSEL OF THE PENALTY
PHASE WAS THE FAILURE TO
INVESTIGATE THE PRIOR I HAVE
LIPT FELONY, THEY DID NOT SO
DO SO.

THERE IS ABSOLUTELY NOTHING
TO ON THE RECORD IN THE
TAXICAB CASE WHERE THERE WAS
MOVE IN THE CAPITAL CASE TO
MOVE THE CHALLENGE OF THAT
PRIOR VIOLENT FELONY,
ALTHOUGH, HE MIGHT HAVE
TESTIFIED AN LOOKED NIGHT.
I DIDN'T SEE ANYTHING.

THERE IS ABSOLUTELY NO
EVIDENCE IN THE COURT RECORD
ON THE TAXICAB CASE THAT
ANYTHING WAS DONE.

>> POINT TO A CASE FROM OUR

COURT THAT SAYS EFFECTIVE ASSISTANCE NOT TO GO INTO ANOTHER CASE AN CHALLENGE THAT.

>> I AM SORRY.

>> CAN YOU POINT TO ANOTHER CASE THAT WE INEFFECTIVE ASSISTANT OF COUNSEL NOT TO GO AND MAKE SOME KIND OF DEFENSE IN A SEPARATE CASE?

>> I DON'T HAVE A CASE.

>> WELL, WHAT CONCERNS ME ALSO ABOUT THIS WHOLE ARGUMENT IS THAT WE SEE ALL OF THE TIME CASES WHERE THE DEFENDANT MAY HAVE BEEN ON SORT OF A CRIME SPREE AND HE COMMITTED A LOT OF OTHER CRIMES AN THOSE CRIMES MAY HAVE BEEN PROSECUTED BEFORE THE FIRST-DEGREE MURDER CASE, THAT EVEN IF IT IS NOT A PART OF THE SPREE, HE MAY HAVE COMMITTED ANOTHER CRIME, AND THAT CRIME IS PROSECUTED FIRST AN USED AS AGGRAVATING CIRCUMSTANCE, SO WHAT YOU ARE REALLY SAYING, AS I HEAR IT, WHENEVER THERE IS ANOTHER CASE, THAT MAY HAVE BEEN SORT OF CLOSE IN TIME TO THE MURDER CASE, THAT TRIAL COUNSEL FOR THE MURD KAER CASE NEEDS TO IMPOSE HIMSELF INTO THE OTHER CASE BECAUSE IT POTENTIALLY BE USED AS AN AGGRAVATING CIRCUMSTANCE.

>> YOU HAVE DUTY TO IMPOSE HIMSELF INTO THAT CASE UNDER

--

>> YOU ARE ASKING US TO SAY THAT AN ATTORNEY HAS A DUTY TO IMPOSE HIMSELF INTO THE OTHER CASE.

>> THEY SHOULD.

THEY SHOULD MAKE MOVE.

THERE IS A KILBOR CASE THAT I CITED.

ACTUALLY FILING IT, IN THE 1978.

>> THAT CASE HERE.

WE ACCEPTED JURISDICTION, THAT IS FOR ARGUMENT AT A

LATER DATE.

>> CORRECT.

YOUR LON ARE AREOR, CAN I
HAVE A FEW MOMENTS ON THE
DNA?

>> REAL QUICK.

ONE MOMENT.

>> DOLAN DARLING DID NOT
THAT I HAVE IS NO QUESTION
THAT IS GOING TO BE MY
QUESTION.

TRIAL COUNSEL STATE ON THE
RECORD THAT I ASSUMED DOLAN
DARLING WAS TELLING US US
THAT THIS WAS DNA.

I WAS HAVING AN AFFAIR.

HE DIDN'T SAY THAT IS
DEFINITELY GOING TO BE MY
DNA.

>> DID YOU REQUEST A DNA
ANALYSIS WHERE THEY CAN SHOW
THAT IT WAS SOMEBODY ELSE'S
DNA?

>> BECAUSE OF POST
CONVICTION?

>> YES.

>> BECAUSE OF WHAT HE SAID
ABOUT THE LABORATORY
PRACTICE, WE HAVE MOT DONE
SO.

>> CAN YOU SEND IT TO
ANOTHER LAB BE?

> I AM SORRY.

>> TALKING ABOUT THE DFLE
LAB.

>> DEPENDING ON THE STATE OF
THE SAMPEL, MISLABELING, SHE
SAID SHE HAS NO FAITH AND OF
DINTSP THE SAMPLES THEY SET
IN EVIDENCE.

>> THANK YOU VERY MUCH.
WE HAVE GONE WAY BEYOND.
THANK YOU FOR THE ARGUMENTS.
WE'LL TAKE THE CASE UNDER
ADVISEMENT.
THE COURT WILL STAND IN
RECESS.

>> PLEASE RISE.