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Leonardo Franqui v. State of Florida

SC04-2380 | SC06-36

>> THE NEXT CASE ON CALENDAR
THIS MORNING IS -- THANK
YOU.

>> FRANKIE VERSUS STATE OF
FLORIDA.

>>,,
SNIECH PLAY IT PLEASE THE
COURT BELIEVE CHIEF JUSTICE
I'M HERE REPRESENTING MR.
FRANKIE, AND, I'M ASKING THE
COURT A VERY CAREFULLY
CONSIDERED EACH OF THE
ISSUES US THE RELATE TO EACH
OUR MAIN CONTENTION ON THE
PETITION FOR MOTION TO
VACATE THE SENTENCE BEFORE
JUDGE IMUS WAS THAT THERE
WAS NO LITIGATION WHATSOEVER
OF SUPPRESSION.

>> YOU ARE VERY SOFT-SPOKEN,
WOULD YOU --

>> I'M SORRY.

>> TAKE THAT MIKE PHONE THAT
WE HAVE PROVIDED FOR YOU
THERE.

>> DOES THAT HAEP ALL SIR.

>> YES, IT DOES.

>> OH.

GREAT.

WE PRESENTED IN OUR MOTION
TO VAI KAILT -- VACATE ONE
OF THE PRIMARY ISSUES WAS
THAT INEFFECTIVE ASIF --
ASSISTANCE OF COUNSEL THAT
COUNSEL DID NOT LITIGATE THE
SUPPRESSION OF A CONFESSION.
HE DID NOT LITIGATE IT AT
ALL.

I HAVE TO DROP A FOOT NOTE
FROM THAT, HE READOPTED
SOMETHING THAT HE HAD DONE
IN ANOTHER CASE.

THIS IS SUCH A COMPLEX CASE

THERE WERE FOUR FELONY TWO
INDICTMENTS AND TWO
INFORMATION!!\$\$!!!!!!!!!!!!!!!
INFORMATIONS, THAT CAME FROM
A THREE-MONTH PERIOD OF
TIME, FOUR -- FOUR SEPARATE
CASES TWO SEEKING THE DEATH
PENALTY.

MR. FRANKIE RECEIVED THE
DEATH PENALTY ON BOTH OF
THEM, HE WAS REPRESENTED BY
THE SAME COURT-APPOINTED
COUNSEL ON ALL FOUR OF THEM.
AS YOU BEGIN TO READ THE
RECORD AND I KNOW THIS COURT
HAS VISITED THIS GROUP OF
CASES MANY TIMES, AS YOU
BEGIN TO READ THE RECORD YOU
BEGIN TO SEE THAT WHAT'S
HAPPENING IS BOTH THE SAME
TRIAL JUDGE IN ALL FOUR
CASES AND THE SAME DEFENSE
LAWYER AND THE SAME BASIC
TEAM OF PROSECUTORS,
ALTHOUGH PERHAPS WOULD YOU
FAIRLY DISTINGUISH BETWEEN
TWO DIFFERENT TEAMS BUT FROM
THE SAME OFFICE AND PERHAPS
THE SAME DIVISION, ALL
STARTED IN SHORTHAND TO
TREAT THIS MATTER AS ONE BIG
CASE.

HOWEVER!!\$\$!!!!!!!!!!!!!!!
HOWEVER, TWO DEATH PENALTY\$\$!!!!!!IES
WERE SOUGHT AND TWO WERE
OBTAINED!!\$\$!!!!!!!!!!!!!!!
OBTAINED.

>> YOU ARE SPEAK -- OF
HIALEAH CASE THIS BANK
ROBBERY!!\$\$!!!!!!!!!!!!!!!
ROBBERY.

>> IM SHOULD SIR, JUDGE SO
ARE ED ONNO SAT ON ALL FOUR
CASES ONE OF THE CONTENTIONS
WE BROUGHT UP A PRACTICE CAL
CONSIDERATION PERHAPS THE
ASSIGNMENT RULE IN DADE
COUNTY, CAUSED A GREAT DAILY
OF THE PREJUDICE, THAT
HAPPENED TO MR. FRANKIE.
LET ME GO TO THE SUPPRESSION
HEARING THERE, WAS A
SUPPRESSION HEARING, FIRST
MR. FRANKIE WAS INCARCERATED

WAS TAKEN FROM HIS PLACE OF INCARCERATION ON A SATURDAY. AND HE WAS QUESTIONED. HE WAS QUESTIONED PRIMARILY BY TWO DIFFERENT DETECTIVES, WHO WERE BEGINNING LEAST IN THE QUESTIONING OF THE ADMINISTERED OF OFFICER BOWER THE NORTH MIAMI CASE. IN THE THEY ELICITED FROM HIM OVER THE COURSE OF 20 HOURS OF INTERROGATION THREE CONFESSIONS, TWO TO THE FIRST DEGREE MURDERS, TWHE WAS LITIGATED THE SUPPRESSION ISSUE WAS LITIGATED IT WAS GLAITED AS ONE LITIGATED AS ONE BIG DAY, IT WAS ONE BIG DAY BECAUSE IT HAD BEEN STRUCTURED AS ONE BIG DAY. WHETHER SOMEONE THIS DADE COUNTY STATE ATTORNEYSOFFS WAS SO BRILLIANT THAT THEY SAW THAT THIS CONFLUENCE WAS GOING TO HURT MR. FRANKIE, OR NOT THAT IS EXACTLY WHAT HAPPENED.

SO MR. FRANKIE'S HEARING ON SUPPRESSION WAS -- HAD BEFORE JUDGE SO ARE ON THEO SORONTO ONLY IN THE CASE IN HIALEAH!!\$\$!!!!!!!!!!!!!! HIALEAH.

>> ON THAT POINT HOW MANY OF THE WITNESSES AS FAR AS THE JAIL HOUSE FOR THE SUPPRESSION HEARING, YOU ARE CONTESTING THE FACT THAT YOU HAD TWO SUPPRESSION HEARINGS REGARDING THE DIFFERENT CASES ON THE SAME DAY BASICALLY!!\$\$!!!!!!!!!!!!!! BASICALLI; RIGHT?

.
>> NO, SIR I'M SAYING THERE WAS ONE SUPPRESSION HEARING THAT WAS UNDER THE CASE NUMBER FROM THE HIALEAH CASE, THAT THE JUDGE SITTING AS WELL AS ONE OF THE DEFENSE ATTORNEYS MENTIONED SPECIFICALLY WE ARE NOT TALKING ABOUT THE BOWER THE

NORTH MIAMI CASE AT ALL.

>> HOW MUCH DID THE WITNESS!!\$\$!!!!!!!!!!!!!!

WITNESSES FOR THAT

SUPPRESSION HEARING DIFFER?

>> FROM THE HIALEAH VERSUS
THIS CASE?

>> WELL, MR. FRANKIE WAS
QUESTIONED BY TWO OFFICERS,
SMITH AND CRAWFORD, ON THE
CASE THAT HAD TO DO WITH
OFFICER BOWER AND WAS
QUESTIONED LATER BY HIALEAH
POLICE.

THEY ELICITED THREE SEPARATE
CONFESSIONS.

SO ACTUALLY IT WAS FAIRLY
TRUNCATED IN THAT ONLY SMITH
AND CRAWFORD COULD SPEAK TO
WHAT OCCURRED WHAT YOU
OFFICER BOWER TO SOME EXTENT
ONE OF THE HIALEAH OFFICERS.
BUT THE COURT MADE THE
ABSOLUTE DISTINCTION THAT IT
WAS NOT DEALING WITH THE
BOWER CASE.

NOW, WHY DOES THIS BECOME
IMPORTANT IF THERE WERE NO
NEW INFORMATION NO NEW
EVIDENCE!!\$\$!!!!!!!!!!!!!!

EVIDENCE, IT PROBABLY WOULD
PASS MUSTER, HOWEVER, PRIOR
TO THE HIALEAH SUPPRESSION
HEARING MR. -- MR. FRANKIE'S
COUNSEL SOUGHT TO HAVE HIM
EVALUATED BY DR. TOO MANY --
TOOMER HE WAS THEN EVALUATED!!\$\$!!!!!!!!!!!!!!

EVALUATED, NO REPORT WAS
WRITTEN UNTIL AFTER THE
HIALEAH SUPPRESSION HEARING.
HOWEVER!!\$\$!!!!!!!!!!!!!!

HOWEVER, IT WAS WRITTEN A
YEAR BEFORE THEY BEGAN THE
TRIAL IN THIS CASE.

THIS IS ONLY IMPORTANT
BECAUSE OF THE FINDINGS OF
DR. TOOMER, AND THEY WERE
INCREDIBLY IMPORTANT ON THE
ISSUE OF VOLUNTARY\$\$!!INESS, HE
SAID THAT THIS MAN WAS
BASICALLY MENTALLY ILL THAT
HE WAS PARANOID, HE WAS
SCHIZOID PARANOID VARIETY.
HE WAS LABELED, HE COULD BE
EASILY LED.

HE HAD AN IQ OF 60.

>> SO ARE YOU ALLEGING THEN THAT THE MOTION TO SUPPRESS SHOULD HAVE NOT FOCUSED ON WHEN OR NOT -- WHETHER OR NOT MR. FRANKIE HAD BEEN COERCED INTO CONFESSING, BUT THAT THE MOTION TO SUPPRESS IN THIS CASE SHOULD HAVE BEEN FOCUSED ON WHETHER OR NOT HE JOINTLY AND VOLUNTARILY GAVE THE CONFESSION BECAUSE OF HIS MENTAL STATUS

>> I'M SAYING AT THAT POINT SHOULD OF COURSE BEEN ADDED. ONE OF THE PROBLEMS WITH THE SENTENCE WITH THE ORDER FROM THE LOWER COURT IS THEY SAY THAT MR. FRANKIE WAS QUOTE MARRIED TO HIS PRIOR TESTIMONY.

AND HIS TESTIMONY AT THE HEARING IN FRONT OF JUDGE. SO IN RONTO, IN THE HIALEAH CASE WAS IT DEALT DEALT WITH INTIMIDATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! INTIMIDATION, AND COION, COERCION, HOWEVER, COUNSEL FOR MR. FRANKIE ADMITTED THAT HE KNEW THAT THE CONCEPT EXISTED OF MENTAL HEALTH PROBLEMS INTELLIGENCE MENTAL ILLNESS IMPACTING ON THE ABILITY TO WAIVE YOUR RIGHTS, TO KNOWINGLY VOLUNTARILY WAIVE YOUR RIGHTS.

>> IS NOT THAT SORT OF A FAR STRETCH THOUGH ADMITTING THAT THERE MIGHT BE SOME CONSIST LIKE THAT OUT THERE AND -- CONSIST OUT THERE AND HAVING A CLIENT AT A TELL US HIM YEAH, I CONFESSED, THEY BEAT IT OUT OF ME, AND THEN HE FILES A -- HE FILES SEPARATE MOTIONS TO SUPPRESS!!\$\$!!!!!!!!!!!!!!!!!!!!!! SUPPRESS, DID HE NOT?

>> YES, SIR.

>> OKAY.

AND THEN, THERE WAS A HEARING, IN THE ONE CASE, AND COUNSEL JUST STIPULATED

JUNG, YOU HEARD THAT
TESTIMONY, AND I WILL
STIPULATE THAT YOU CAN
CONSIDER THAT SAME EVIDENCE
OR TESTIMONY.

>> YES, SIR.

>> AND I WILL -- HAVING SOME
DIFFICULTY HE DIDN'T HAVE
THE \$DOCTOR'S REPORT, WHEN HE
FILED THE MOTION TO SUPPRESS!!\$\$!!!!!!!!!!!!!!
SUPPRESS;; IS THAT CORRECT?

>> HE DID NOT HAVE IT.

>> SO -- TELL ME HOW HE ACT!!\$\$!!!!
ACTED LESS THAN COMPETENT
COUNSEL IN NOT DEVELOPING
THIS THEORY WHEN HE FILED
HIS MOTION TO SUPPRESS BASED
ON WHAT HIS CLIENT HAD TOLD
HIM WHAT IS -- WAS THE BASES
THE IMPROPER BASIS OF HOW
THESE STATEMENTS HAD COME
OUT IS IT HAVING SOME
DIFFICULTY -- CONNECTING UP!!\$\$!!
UP --

>> I UNDERSTAND THIS IS THE
MOST COMPLEX CASES I
UNDERSTAND FACTUALLY,
HOWEVER!!\$\$!!!!!!!!!!!!!!
HOWEVER, I WOULD HATE TO SAY
AGREE WITH YOU YOUR HONOR
BECAUSE POSSIBLY -- I WENT
AGREE BUT YOUR.

>> WELL I'M NOT I'M ASKING
YOU TO -- EXPLAIN TO ME.

>> I KNOW SIR.

>> I WOULD HAVE MUCH LESS
DIFFICULTY!!\$\$!!!!!!!!!!!!!!
DIFFICULTY -- WHAT'S
HAPPENING HERE IS THAT YOUR
QUESTIONING ME ABOUT WHAT HE
ALLEGED AND WHAT HE HAD IN
HIS HAND AT THE TIME OF THE
HIALEAH HEARING.
WHAT I'M SAYING IS THAT
THERE WAS A -- A EVALUATION
OF MR. FRANKIE THERE WAS A
MOTION FILED FOR SUPPRESSION
IN BOTH CASES WERES -- CASES!!\$\$!!!!!!
CASES, THERE WAS THEN AN
EVIDENTIARY HEARING THEY SO
HE WILL LEE -- BASED SOLELY
ON THE HE COULDERION ISSUES
IN HIALEAH THEN THE WRITTEN
REPORTS WHICH ILLUMINATED

ALL OF THESE MEDICAL SHSZ,
MENTAL HEALTH ISSUES, THEN
IT CAME INTO THE POSSESSION
OF COUNSEL.

AND WHAT I'M ALLEGING IS NOT
HIS FAILURE NOT TO BRING IT
UP IN HIALEAH BECAUSE HE
DIDN'T HAVE IT, AND I'M NOT
REPRESENTING HIM IN A
HIALEAH CASE, WHAT I'M
SAYING IS THAT HE HAD IT IN
HIS HAND FOR A YEAR AND
NEVER AMENDED THE MOTION TO
SUPPRESS IN THIS CASE.

NOR DID HE EVER SEEK TO
SUPPLEMENT IN ANY WAY --
HAVE MORE OF AN EVIDENTIARY
HEARING EVERYBODY -- EACH IF
HE CHOSE TO ACCEPT THE
TESTIMONY BEGIN BY POLICE
OFF SFOOESHS LET ME ASK YOU
THIS DIDN'T THE ATTORNEY --
SAY AT THE EVIDENTIARY
HEARING SOMETHING TO THE
EFFECT THAT HE EVEN AFTER
READING DR. TOOMER'S REPORT
THAT HE HAD SOME DIFFICULTY
WITH IT BECAUSE HE DIDN'T
SEE I MEAN HE WAS YOU HAVE
ACKNOWLEDGED HE REPRESENTED
THIS GUY -- IN FOUR
DIFFERENT CASES, AND HE
REALLY DIDN'T SEE THIS SAME
KIND OF MENTAL PROBLEM THAT
DR. TOMMER -- TOOMER TALKED
ABOUT IN HIS RECORD.

>> WELL, HE DID SAY HE DID
USE AS PART OF JUSTIFICATION
THAT HE IS A LAWYER DIDN'T
SEE THIS MAN AS HAVING AP IQ
OF 60 OR HAVING A MAJOR
MENTAL ILLNESS HOWEVER MOST
OF US DO NOT CONSULT WITH
OTHER LAWYERS WHEN WE HAVE
HEALTH OR MENTAL HEALTH
PROBLEMS.

>> IQ OF 60 WAS TLPT SOME
OTHER INFORMATION THAT HE
ACTUALLY ON THE OTHER IQ
SCALE WAS IN 80S SO ARE
SOMETHING.

>> YES, THAT CAME IN AS THE
SECOND AT THE SECOND
SENTENCING, I BELIEVE.

>> YOU KNOW, I GUS THIS
WHOLE THING ABOUT DR. \$\$
TOOMER'S REPORT IS SOME WRA
TROUBLE TO GO ME, BECAUSE
WHEN YOU LOOK AT WHAT WAS
ACTUALLY FOUND AT BY THE
TRIAL JUDGE, THERE WERE NO
MENTAL -- WAS THERE ANY
MENTAL HALT MITIGATION
ANYTHING FOUND BY THE TRIAL
JUDGE, BASED ON DR. TOOMER'S
REPORT OR ANYTHING?

>> DR. TUM -- \$TOOMER'S
REPORT WAS ONLY INTRODUCE
ORDER DR. TOOMER WAS ONLY
INTRODUCED AS A WITNESS IN
HIALEAH ON, THE MENTAL
MITIGATION!!\$!!!!!!!!!!!!!!!!!!!!
MITIGATION.

AND ON THE MENTAL MITIGATION!!\$!!!!!!!!!!!!!!!!!!!!
MITIGATION, IN HIALEAH, HE
THE JUDGE SAID I'M NOT GOING
TO GIVE IT MUCH CREDENCE IT
IS NOT YOU KNOW IT IS
SUBJECTIVE HE MISUNDERSTOOD
THERE WERE ACTUALLY TWO
TESTS WHICH WERE
ADMINISTERED OR THREE TESTS
WHICH WERE ADMINISTERED TO
MR. FRANKIE SO IT WASN'T
SUBJECTIVE BUT OBJECTIVE AS
WELL, THAT ERROR IN THE
SUPPRESSION ORDER HAS BEEN
SNOWBALL HAS SNOWE BUILD A
AND SNOWE BUILD A\$\$.

IN SO THAT SNOWBALLED SO
JUDGE IMUS NOW THE JUDGE
BEFORE WHOM WE HAD THE
HEARING, HAS EVEN ADOPTED
THE FACT THAT JUDGE.

SO I RONTFOUND SUCH AND
SUCH, JUDGE.

SO I RONTWAS WRONG HE FOUND
THESE THINGS NOW THE ERROR
WE HAVE WITH JUDGE IMUS\$!!IN THE
CURRENT ORDER IS THAT HE
ATTEMPTS TO IN SPITE OF THE
FACT THAT THE LAWYERS SAID I
MISSED IT WILL I JUST NEVER
THOUGHT OF IT.

I KNEW IT WAS CONCEPT IN THE
LAW, I DIDN'T THINK ABOUT
IT.

YES I GOT THE REPORT IN MY

HAND YEAH I READ IT I KNOW
WHAT IT SAID.

HE DID NOTHING WITH IT.
HE DIDN'T AMEND MY MOTION TO
SUPPRESS!!\$\$!!!!!!!!!!!!!!!

SUPPRESS -- DIDN'T ASK FOR
ANOTHER HEARING, I DIDN'T
RAISE IT IN ANY WAY.

>> IS NOT THERE SOME OTHER
TESTIMONY THOUGH THAT THERE
WERE VERY FEW EXPERTS
AVAILABLE ON HIS SUBJECT
WILLING TO -- TO HELP THE --
IN OTHER WORDS, ON THIS --
SOPHISTICATED APPROACH THAT
WELL WHETHER OR NOT A
STATEMENT IS VOLUNTARY OR
INVOLUNTARY!!\$\$!!!!!!!!!!!!!!!

INVOLUNTARY, THAT THE
PERSONALITY TRAITS AND
MENTAL HEALTH HISTORY OF THE
DEFENDANT MIGHT WORK TO END
UP THE THING WOULD BE
INVOLUNTARY IF YOU ACCEPTED
IN OTHER WORDS, THAT THAT
WASN'T SOMETHING THAT
EVERYBODY WAS DOING, IN
TOWN, EVERY TIME THEY HAD A
DEFENSE CLIENT WHO HAD
RENDER!!\$\$!!!!!!!!!!!

RENDERED A CONFESSION THEY
WEREN'T RUNNING OUT, CON
SUPPLEMENT!!\$\$!!!!!!!!!!!!!!!
SUPPLEMENTING A MENTAL HALT
EXPERT.

IS THAT OH --

>> THERE WERE -- IS THAT
WHAT RECORD SHOWS IT WRARS
THING?

>> THERE ARE TWO ASPECTS,
ONE OF THEM IS WHEN --
WHETHER A MENTAL HEALTH
PROBLEM A LOW IQ LOW
FUNCTIONING!!\$\$!!!!!!!!!!!!!!!
FUNCTIONING, CAN IMPACT ON
THE CONSENT, THE SECOND
ISSUE IS THE ONE TO WHICH
YOU ARE SPEAKING NOW, WHICH
IS NOT THE ONE I WAS SPEAK
TO GO JUST A MOMENT AGO BUT
THAT IS WHETHER CERTAIN
TECHNIQUES CAN BE COERCE!!\$\$IVE
IN THEM.

>> LET ME ASK THE QUESTION

IN A DIFFERENT WAY.

ALL RIGHT?

DID YOU PUT ON EVIDENCE TO
ESTABLISH FOR THIS TRIAL
JUDGE THE POSTCONVICTION
TRIAL JUDGE DID THAT TO THAT
JUDGE'S SATISFACTION THAT
THE MENTAL HEALTH OF THIS
DEFENDANT RENDERED HIS
STATEMENT IN THIS CASE
INVOLUNTARY!!\$\$!!!!!!!!!!!!!!!!!!!!
INVOLUNTARY?

>> NO THE EXPERTISE THAT WE
PUT ON WAS THAT THE
QUESTIONING THE FORM OF
QUESTIONING IF THE EXPERT
WERE TO TAKE AS TRUE WHAT
MR. FRANKIE SAID ABOUT THE
MANNER IN WHICH HE WAS
QUESTIONED, WAS BEING
QUESTIONED, WAS IN ITSELF
COERCIVE COULD LEAD --

>> WOULD YOUR BURDEN HERE BE
TO PUT ON SOMEBODY, AND
CONVINCE THE TRIAL JUDGE,
JUDGE YOU KNOW, THIS
PARTICULAR DEFT HAS
CONDITION X, AND THE DEFENSE
LAWYER SHOULD HAVE KNOWN IT.

OR HE SHOULD HAVE HIRED AN
EXPERT TO BRING IT OUT, AND
FURTHERMORE!!\$\$!!!!!!!!!!!!!!!!!!!!
FURTHERMORE, I'M GOING TO
DEMONSTRATE TO YOU THAT
CONDITION X!!ABSOLUTELY RENDERS
THE STATEMENT THAT THIS
DEFENDANT GAVE INVOLUNTARY?

NOW, AND YOU CANDIDLY, I
THINK, SAID NO I DIDN'T DO
THAT.

AT THIS HEARING.

>> I DID NOT BRING IN MENTAL
HEALTH EXPERTISE.
HOWEVER!!\$\$!!!!!!!!!!!!!!

HOWEVER, I FRAMED THIS
MOTION AS AN INEFFECTIVENESS
IN NOT UTILIZING THE CON
TELL ME TRAINOUS REPORT OF
DR. -- CONTEMPORANEOUS
REPORT.

>> IF YOU ARE GOING TO FAULT
COUNSEL FOR NOT SEEING THIS
AND BRINGING THAT OUT YOU
KNOW, AT THE TIME WHEN THESE

PROCEEDINGS WERE GOING ON,
WHY AT THE VERY LEAST YOU
BEING MUCH MORE AWARE OF ALL
OF THIS, NOW, WHY WOULDN'T
HAVE YOU THE BURDEN TO
ESTABLISH AS A PREDICATE FOR
ANY CLAIM THAT YOU MAKE ON
THIS THAT THAT IN ORDER FOR
US NOT TO HAVE CONFIDENCE IN
THE OUTCOME WHICH IS THE
ULTIMATE -- HERE, THAT WAIT
A MINUTE, IF -- IF THE
LAWYER HAD NOTE HAD DONE
THIS WE WOULD HAVE ENDED UP
WITH A CONFESSION, THAT
WOULD HAVE BEEN SUPPRESSED?
>> WELL, YOUR HONOR, THE ON
IN PRO TURNING NATURE 15
YEARS LATER WOULD BE NOP!!\$\$!!!!
NOPRTIFRMENT UNC NATURE
WOULD BE DIFFICULT AS WELL
WE RELIED SOLELY ON THE FACT
THAT WE HAD A LAWYER WHO HAD
AN REPORT IN HIS HANDS FROM
A PRUDENTIAL DOCTOR AND
MISSED USING IT.

NOT MADE A CONSIDERED
DECISION NOT TO USE IT.

>> WHAT ELSE BECAUSE TIME IS
RUNNING DOWN YOU ARE IN
REBUTTAL ACTUALLY YOU MAY
WANT TO PAUSE SAVE THAT
TIME.

>> OKAY SIR ISHAL THANK YOU.

>> I JUST WANTED TO I HAD A
QUESTION ARE YOU GOING TO
ARGUE THE SUBPOENA ISSUE?

>> AM I GOING TO ARGUE THE
SUBPOENA ISSUE?

I HAVE TWO MINUTES, 34
SECONDS YOUR HONOR I DO THE
ONLY THING I CAN SAY.

>> I ASKED THAT SEVEN MINTS
AGO.

>> WHAT I CAN SAY ABOUT
SUBPOENA ISSUE I WHAT THEYS
INCREDIBLY IMPORTANT IT IS
THE ABUSE OF A SUBPOENA BY
THE STATE ATTORNEY'S OFFICE
ALLEGES\$!!!!ING THAT THEY STATUTE
REQUIRES THAT THEY HAVE TO
BE INVESTIGATING A CRIME,
THERE ARE WAS NO CRIME
ARTICULATED THERE WERE

HYPOTHETICALS ARTICULATED THAT WE WERE INVESTIGATING THE BOWER MURDER, ET CETERA I THINK THEY VIOLATED THIS I THINK THEY VIOLATED MY RIGHT TO DISCOVERY IF THEY ARE GOING TO HAVE DISCOVERY OF THIS GENTLEMAN AND --

>> WHAT WOULD REMEDY BE IF WE AGREED.

>> THAT IS THE PROBLEM YOUR HONOR AT THIS POINT THE REMEDY WOULD HAVE TO BE I SUPPOSE A REMAND FOR A FULL DEPOSITION WE HAVE HAD THE TRIAL TESTIMONY.

I UNDERSTAND.

THAT IT MAY BE I HATE TO SAY IT WOULD BE A WRONG WITHOUT A REMEDY I THINK IT IS VERY WRONG AND I THINK IT WAS OVERUSE ABUSE OF RAW POWER.

THAT DID THIS WITH FOUR LAWYERS ON ONE SIDE, AND MR. FRANKIE AND I ON THIS SIDE AND NOBODY EVEN TELLING US.

>> MATE PLEASE THE COURT ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE FIRST OF ALL, MR. COHEN WAS NOT ORIGINALLY APPOINTED COUNSEL MR. COHEN WAS RETAINED BY THE FRANKIE FAMILY, TO REPRESENT HIM IN THE FIRST -- LAST OF THE FOUR CRIMES COMMITTED THE FIRST ONE ON WHICH MR. FRANKIE WAS ARRESTED, THE REASON THEY RETAINED MR. COHEN THAT IS THEY HAD PREVIOUSLY RETAINED MR. COHEN WHO HAD PREVIOUSLY REPRESENTED THE DEFENDANT BEFORE THESE CRIMES EVEN OCCURRED.

SO HE HAD A LONG HISTORY OF KNOWING THE DEFENDANT AND HAD NEVER HAD ANY QUESTION ABOUT HIS MENTAL PROBLEM.

>> WHAT WAS DR. TOOMER --

>> HE WAS --

>> TO DO.

>> TO VALUE AILT FOR MENTAL MITIGATION FOR THE HIALEAH

CASE HE CAME BACK WITH THIS REPORT, THAT COMES IN AFTER THE HIALEAH SUPPRESSION CASE, I AT HIALEAH SUPPRESSION HEARING, THE REASON THE SUPPRESSION HEARING TAKES PLACE IN THE HIALEAH CASE INCLUDES ALL THREE CASES IS THE FIRST THREE CRIMES WERE ALL COMMITTED WITH THE SAME GUNS IN THE SAME WAY, WE KNOW THAT THE SAME GROUP OF PEOPLE HAS BEEN COMMITTING THESE CRIMES, AFTER THEY KILL A POLICE OFFICER THEY DUMP THOSE GUNS IN THE MIAMI RIVER CHANGE THE MO, COMMIT THE LAST CRIME -- THEY ARRESTED DURING THE COMMISSION OF THE VANESQUE CRIME FRANKIE AND MARTINE CONFESS ARE TAKEN TO DADE COUNTY JAIL.

FERN ANDEES ONE OF THE CODEFENDANTS PAN THAIKS THEY ARE IN JAIL GOES TO SEE A ASSISTANT \$REA PRIEST TO GET A CHARM SANTA \$REA PRIEST TURNS HIM IN FOR THE -- REWARD MONEY FOR IT.

AND WHEN WE THEN PICK UP MR. FERN ANDEES ON FRIDAY AFTERNOON SPEAK TO HIM THROUGH THE NIGHT FIND OUT THAT THE REST OF THE GANG IN THESE CRIMES ARE THE REST OF THE GANG IN THESE CRIMES AND WE PICK THEM UP ON SATURDAY MORNING MR. FRANKIE, IS ACTUALLY QUESTIONED BY ABOUT FIVE DIFFERENT DETECTIVES ON REGARDING THREE CASES, FIRST QUESTIONED BY --

>> BUT WILL HAVE IN VEIL LET ME SEE IF I UNDERSTAND WHAT YOU ARE SAYING IN THE IS ALREADY IN JAIL, ON VANESQUE CASE.

>> VERY LAST CRIME.

>> THE VERY LAST CRIME WE DIDN'T KNOW WAS CONNECTED, UNTIL FERN ANDEES, GOES TO THE BOB LUE TURNS HIM IN WE

PICK UP FERN ANDEES TELL US
US WHO EVERYBODY ELSE IS
HAPPENS FRIDAY NIGHT INTO
SATURDAY MORNING AND THAT
WHO IS WE END UP GOING
ASSEMBLING THE TASK FORCE TO
DOING THE OTHER THREE CRIMES
WHICH WE KNOW ARE CONNECTED,
BECAUSE THE SAME GUNS ARE
USED IN THEM.

AND WE KNOW THAT HE HAS
VOLUNTARILY WAIVED HIS
RIGHTS CONFESSED IN THE
VANESQUE CASE WE BRING HIM
DOWN HAVE TO THE POLICE
STATION AS SOON AS WE CAN
AFTER WE GET THIS
INFORMATION HAPPENS TO BE
SATURDAY MORNING, AND WE
BRING HIM IN, AND WE CHAT
WITH HIM.

AND FIRST HE CHATS WITH THE
OFFICERS ABOUT BOWER CASE HE
ORIGINALLY REFUSES TO GIVE
US A RECORDED CONFESSION TO
THE BOWER CASE THOSE
OFFICERS LEAVE HAND HIM OFF
TO OFFICERS ON HIALEAH CASE
HE IS QUESTIONED ABOUT
HIALEAH CASE, HE THEN AGREES
TO GIVE CITIZEN GRAPHICALLY
RECORDED CONFESSION, HE
STENOGRAPHICALLY CONFESSION
HEAD ANDED OFF TO OFFICERS
BEFORE THE STENOGRAPHICALLY
RECORDED CONFESSION TO
INVESTIGATING THE FIRST
CRIME REPUBLIC NATIONAL BANK
ROBBERY THEY QUESTION HIM
AND HE GIVES THE RECORDED
STATEMENT IN REVERSE ORDER.
SO YOU HAVE TO LITIGATE
SUPPRESSION ON ALL OF THESE
TOGETHER, BECAUSE IF THE
BOWER CONFESSION IS
ININVOLVE FREE THE HIALEAH
CONFESSION INVOLVED
IMMEDIATELY, THEN THAT IS
GOING TO BE INVOLUNTARY TOO
THAT IS WHY THERE IS ONE
SUPPRESSION HEARING IN THE
HIALEAH CASE, OR THERE ARE
NO DIFFERENT WITNESSES
BECAUSE THIS IS ALL ONE BIG

SET OF CONFESSIONS, ALL OF ONE TIME.

AND THAT IS WHY IT TAKES 20 HOURS TO DO IT.

TOO.

>> AS THERE EVER BEEN AN -- BEING A -- CLAIM MADE.

>> NO THE DEFENDANT IQ IS 83 ON -- THAT 60 ON A BETA.

SO, THERE THIS BIG SUPPRESSION HEARING IN HIALEAH CASE THEY THEN GO TO THROUGH TRIAL, THEY PRESENT DR. TOOMER AND HIS FINDINGS, AT THE HIGHLY SENTENCING HEARING, AND DR. TOOMER GETS KILLED.

JUDGE.

SO I RONTO SAYS EVERYTHING HE SAYS IS COMPLETELY --

>> BEFORE WE EVER EVEN GET TO A SUPPRESSION HEARING OR A TRIAL IN THIS CASE, WE ARE HAVING HIALEAH -- HEARING DR. TOOMER IS PRESENTED, AND JUST KILLED DR. -- JUDGE.

SO I RONTO COMPLETELY REJECTS HIM AS INCREDIBLE EVERYTHING HE SAYS IS CONTRARY TO THE FACTS OF THE CASE WE THEN SHOW UP, TO DO A HIGH LEE TO DO THE BOWER SUPPRESSION HEARING, MENTAL STATE ONLY RELEVANT IF THERE IS UNDER COLORADO VERSE CONNELLY IF POLICE ACTION ON MENTAL STATE OR IF IT RENDER!!\$\$!!!!!!!!!!!!
RENDERED HIM INCOMPETENT WHY I INCOMPETENT SO HE COULD NOT UNDERSTAND WAIVE MIRANDA RIGHTS UNDER CARDENAS VERSUS MIRANDA COMPETENCY TO STAND TRIAL THERE HAS NEVER BEEN AN ISSUE ABOUT MR. FRANK POSE COMPETENCE TOO STAND TRIAL COUNSEL SAID I HAVE NEN HIM SINCE BEFORE THESE CRIMES WERE EVERY COMMITTED THERE IS NEVER BEEN AN ISSUE ABOUT HIS COMPETENCE, THAT IS WHY HE HAD ISSUES WITH DR. TOOMER\$\$'S REPORT. HE MR. FRANKIE, AT THE HIALEAH SUPPRESSION HEARING

TESTIFIED BEFORE HE IS EVER
READ HIS RIGHTS --
REPEATEDLY INVOKING THEM
THAT POLICE NEVER PROPERLY
READ HIM MIRANDA RIGHTS FORM
ONLY READ HIM THE PORTION
WITH THE RIGHTS, NEVER READ
THE WAIVER PORTION, THAT
THEY BEAT HIM AND COERCED
HIM, THAT WHEN THEY FINISHED
WHEN THEY WOULDN'T LET HIM
GO AFTER THEY DIDN'T READ
HIM THE FULL RIGHTS THAT HE
HE SAID YOU KNOW, WHY ARE
YOU STILL QUESTIONING ME I
HAVE A LAWYER I WANT THEM.
AND DIRECTLY ASKED DO YOU
UNDERSTAND YOUR MIRANDA
RIGHTS DID YOU UNDERSTAND
THEM.

>> YES, I UNDERSTOOD THEM.
WE GET TO THIS EVIDENTIARY
HEARING WHERE THEY SAY
COUPES WAS INEFFECTIVE FOR
FAILING TO LIT GIT
SUPPRESSION ALL OFFICERS
THERE ARE ON IN ARE CALLED,
THEY BRING IN THIS DR. WHO
HE TESTIFIED THAT MR. !!\$#!!!!!
MR. FRANKIE UNDERSTOOD
MIRANDA RIGHTS.
AND THEN HE PROCEEDS TO
TESTIFY THAT IF YOU BELIEVE
MR. FRANKIE THAT HE WAS
BEATEN, NOT READ MIRANDA
RIGHTS, NOT FORCED TO WAIVE
THEM, PROMISED 15-YEAR
SENTENCE HIS CONFESSION IS
COERRED IF YOU BELIEVE THE
DECKIVES THERE IS NOTHING
WRONG WITH THIS CONFESSION,
WELL I THINK A FIVE YEAR OLD
CHILD COULD TELL THAT IF YOU
BEAT SOMEBODY, YOU QUOTE
ACKNOWLEDGE REPEATED
INVOCATION OF RIGHTS WON'T
READ THEM RIGHTS THAT THEIR
CONFESSION IS COERRED,SO THE
STATE'S POSITION IS THERE
WAS A COMPLETE FAILURE OF
PROOF AND WITH REGARD TO
THIS SUBPOENA ISSUE, THE
STATE NOT ONLY HAS A DUTY TO
INVESTIGATE TO SEE THAT WE

CAN PROSECUTE SOMEONE, BUT WE HAVE A DUTY TO MAKE SURE THAT WE HAVE DONE JUST -- JOEFZ JUSTICE, THAT INCLUDES MAKING SURE THAT WE HAVE GIVEN THE DEFENDANT A FAIR TRIAL, AND THE CRIMES WE WERE INVESTIGATING IN THIS CASE WERE THE MURDER OF OFFICER BOWER, THE --

>> IF THE STATE IS GOING TO EXERCISE WHATEVER RIGHTS IT HAS TO QUESTION THE DEFENSE LAWYER HIS CONDUCT IS BEING CHALLENGED IN A POSTCONVICTION PROCEEDING, DOESN'T THE STATE HAVE AN OBLIGATION TO DO IT IN THE POSTCONVICTION PROCEEDINGS? WITH NOTICE, TO THE POSTCONVICTION LAWYERS WITH NOTICE TO THE JUDGE PRESIDING OVER THOSE POSTCONVICTION CLAIMS, ALL IN THE LIGHT OF DAY, AND NOT DO IT IN A SEPARATE WAY AS FAR AS USING THIS SUBPOENA POWER THAT IT HAS? I HAVE A LOT OF THE DIFFICULTY!!\$\$!!!!!!!!!!!!!!!!!!!! DIFFICULTY, WITH SORT OF DOING AN END RUN AROUND THE --

>> THERE ARE NO --

>> LET MIM FINISH HIS QUESTION.

>> SO HELP ME -- WITH THAT, I REALIZE THAT COUPES RAISED A -- COUNSEL RACE AND ISSUE ESSENTIALLY HEARS I KNOW -- BUT -- YOU THINK THE STATE IN ANY POSTCONVICTION PROCEEDING CAN USE IT'S SUBPOENA POWER TO DO DISCOVERY, AND ALL OF THAT AND POSTCONVICTION CASE WITHOUT ANY NOTICE, TO THE DEFENSE LAWYER, PROSECUTING THE POSTCONVICTION CASE OR ANY NOTICE TO THE JUDGE IN THE POSTCONVICTION CASE? IS THAT THE STATE'S SINGS TO.

>> THE \$\$STATE'S POSITION IS NORMALLY WE JUST.

>> JUST ANSWER.
>> MY QUESTION.
>> AND THE STATE.
>> --
>> IS THAT IT CAN USE IT'S
SUBPOENA POWER IN A
POSTCONVICTION CASE.
>> SO THE STATE HAS NO
OBLIGATION TO INFORM THE
TRIAL COURT PRESIDING OVER
THE POSTCONVICTION
PROCEEDINGS OR TO INFORM THE
LAWYER THAT IS PROSECUTING
THE POSTCONVICTION CLAIM?
>> NO.
THE STATE CAN INVESTIGATE
THE POSTCONVICTION MOTION AS
-- IF THE STATE'S POSITION.
>> HE DOESN'T THE STATUTE --
DESIGNED TO ALLOW THE STATE
ATTORNEY TO INVESTIGATE A
VIOLATION OF LAW, AND IN THIS
CASE, IT IS ALREADY
INVESTIGATED!!\$!!!!!!!!!!!!!!!!!!!!
INVESTIGATED, AND PROSECUTED
AND RECEIVED CONVICTION AND
A SENTENCE, AND CAN YOU
HONESTLY SAY THAT THEY WERE
STILL INVESTIGATING THE
CRIMES INVOLVED IN THE COX
CASE?
>> YES, BECAUSE WE A DUTY
NOT ONLY TO SEE THAT WE'VE
GOTTEN EVIDENCE AND
PROSECUTED THE DEFENDANT BUT
TO MAKE SURE WE PROSECUTED
THE RIGHT DEFT AND THAT WE
HAVE GIVE HIM HIS RIGHT TO A
FAIR TRIAL.
>> SO IF WE ACCEPT THAT
ARGUMENT, THEN THE STATE
ATTORNEY CAN SUBPOENA IN ANY
CASE, PRECONVICTION,
POSTCONVICTION CAN SUBPOENA
ANY WITNESS AND INTERVIEW
ESSENTIALLY -- REQUIRE THAT
WITNESS TO BE INTERVIEWED
WITHOUT GOING THROUGH THE
DISCOVERY PROCESS WITHOUT
INFORM!!\$!!!!!!!!!!!!
INFORMING A -- OPPOSING
COUNSEL WITHOUT EVEN PUTTING
HIM UNDER OATH.
>> NOT PRECONVICTION BECAUSE

DISCOVERY RULES THERE ARE NO
DISCOVERY RULES

POSTCONVICTION, YOU SAID THE
DISCOVERY RULES DON'T APPLY.

>> BUT YOU SAID THAT -- YOU
ARE STILL INVESTIGATING A
CRIME.

SO WHY WOULDN'T A STATE
ATTORNEY SAY HEY, EVEN
THOUGH WE ARE PROSECUTING
THEM WE ARE STILL
INVESTIGATING A CRIME HERE
SO WE CAN USE SUBPOENA O
POWER.

>> YOU CAN'T USE SUBPOENA
POWER TO WHERE IT CONFLICTS
WITH RULES OF DISCOVERY
THERE ARE NO RULES OF
DISCOVERY FOR POSTCONVICTION
SO IT CAN'T CONFLICT WITH
THEM.

>> WHAT ABOUT THE RIGHT OF
CONFIDENTIAL!!\$\$!!!!!!!!!!!!!!!!!!!!!!
CONFIDENTIALITY, BETWEEN A
LAWYER AND HIS CLIENT?
SINCE WHEN DOES THE STATE
HAVE RIGHT TO SUBPOENA A
LAWYER AND FORCE THE LAWYER
TO BREAK THAT CONFIDENTIAL!!\$\$!!!!!!!!!!!!!!!!!!!!!!
CONFIDENTIALITY ESPECIALLY
FOR INSTANCE IN A SITUATION
WHERE THEY FILE A
POSTCONVICTION MOTION, AND
IT IS BASED ON THINGS THE
STATE DID OR SOMETHING --
YOU KNOW THERE IS NO CLAIM
IT IN HYPOTHETICALLY OKAY,
SO TELL ME HOW THE STATE
GETS THE RIGHT TO VIOLATE
THIS CONSTITUTIONAL RIGHT OF
CONFIDENTIAL!!\$\$!!!!!!!!!!!!!!!!!!!!!!
CONFIDENTIALITY?

>> I DON'T BELIEVE IT IS A
CONSTITUTIONAL RIGHT I
BELIEVE IT IS A STATUTORY
PRIVILEGE!!\$\$!!!!!!!!!!!!!!!!!!!!!!
PRIVILEGE.
ATTORNEY-CLIENT PRIVILEGE.
HOWEVER, WE WOULD NOT BE
VIOLATING THE
ATTORNEY-CLIENT PRIVILEGE IF
THERE WERE NO CLAIMS RIDER!!\$\$!!!!!!
RIDERING \$COUPES'S CONDUCT WE
COULDN'T SUBPOENA COUNSEL

IN, WHEN YOU -- RAISE A CLAIM.

>> ALL RELATES, THEN TO THE POSTCONVICTION PROCEEDING THIS IS A STATE ATTORNEY, EXAMINING THE MOTION FOR POSTCONVICTION PROCEEDING, AND MAKING A DETERMINATION, BASED ON WHAT THE CLAIMS ARE THERE, WHETHER THEY ARE GOING TO IS THIS A PREVALENT PRACTICE IN DADE COUNTY.

>> THE PREVALENT PRACTICE IN DADE COUNTY -- COUNTY, DEFENSE ATTORNEYS SHOW UP AND TALK WHEN YOU RAISE INFECT!!\$\$!!!!!!!!!!!! INFECTIVE.

>> IS IT PREVALENT PRACTICE TO SUE OPEN AUNDER INVESTIGATIVE AUTHORITY OF THE STATE ATTORNEY.

>> NO --

>> IN OTHER WORDS IS THIS SOMETHING THISCOURT SHOULD BE CONCERNED ABOUT THAT IS GOING ON NOW EVERY DAY, IN DADE COUNTY.

>> NO BECAUSE MOST DEFENSE ATTORNEYS WHEN DEFENDANT RAISES CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, HE WAIVES HIS ATTORNEY-CLIENT PRIVILEGE WITH REGARD TO ANY MATTERS RELEVANT TO THAT CLAIM OF INTEREFFECTIVE ASSISTANCE OF COUNSEL MOST DEFENSE ATTORNEYS UNDERSTAND THEIR ETHICS ARE BEING CHALLENGED FREELY VOLUNTARILY WALKED IN SIT DOWN AND CHAT WITH THE STATE ATTORNEY, OWNED UNDERSTAND!!\$\$!!!!!!!!!!!!!!!!!!!! UNDERSTANDING THAT THE ATTORNEY CLIENT PRIVILEGE HAS BEEN WAIVED, AND IF WE TAKE THIS OUTSIDE OF THE SITUATION WHERE WE ARE TALKING ABOUT AN INEFFECTIVE ASSISTANCE CLAIM, THE STATE RECEIVES INFORMATION THAT MAYBE WE GOT THE WRONG PERSON, AND WE HAVE SOME NEW EVIDENCE THAT COMES TO LIGHT

TO US, THAT THIS OTHER
PERSON COMMITTED THE CRIME,
THIS OTHER PERSON MAY FLEE
IF WE LET THEM KNOW MAY FLEE
IF WE LET DEFENSE COUNSEL
KNOW THAT IS WHY WE HAVE SUE
PIENAAR POWER TO BE ABLE TO
DO THESE INVESTIGATION GAIGS!!\$\$!!!!!!!
GAIGSS.

>> YOU ARE SAYING SOMEBODY
MAY HAVE FLED.

>> -- WHAT I'M SAYING.

>> YOU WERE SUBPOENAING THE
LAWYER FOR THE DEFENDANT.

>> I'M SAYING THAT YOU HAVE
TO LOOK AT THE SUBPOENA
POWER AND IT IS BROAD.

>> I'M LOOKING AT IT IN ON
THAT CONTEXT WHAT IS CLAIMED
IN THIS CASE AND THAT IS
THAT THE LAWYER FOR THE
DEFENDANT HE WITHOUT
RECEIVING A WAIVER OF
CONFIDENTIAL!!\$\$!!!!!!!!!!!!!!!!!!!!!!

CONFIDENTIALITY, OR HAVING
ANY DETERMINATION MADE BY A
COURT OF LAW THAT THERE HAS
BEEN A WAIVER THAT THE STATE
ATTORNEY EXERCISES IT'S
SUBPOENA POWER, TO HAVE THAT
ATTORNEY COME, IN AND
EXERCISE THAT WAIVER.

>> AND THIS CASE, THERE WAS
A DETERMINATION, AND THERE
IS A WAIVER AS MATTER OF LAW!!\$\$!!!!
LAW, WHEN YOU FILE THAT
INEFFECTIVENESS CLAIM YOU
HAVE THAT IN READY --

>> DETERMINATION --

>> EXCUSE ME.

>> THIS CASE THERE WAS
DETERMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!
DETERMINATION.

>> IN THIS CASE, THE --

>> WHAT -- I'M ASKING YOU
ABOUT THE DETERMINATION YOU
SAID IN THIS CASE THERE, WAS
A DETERMINATION.

WHEN WAS THAT DETERMINATION
MADE?

>> THE TRIAL DEFENSE
ATTORNEY MOVED TO QUASH THE
SUBPOENA BEFORE WE EVER
SPOKE TO HIM HE SET THE

MOTION FOR HEARING, HE BROUGHT IT UP IN FRONT OF THE TRIAL COURT HE SAID THERE IS ATTORNEY-CLIENT PRIVILEGE WE SAID LOOK WHEN YOU RAISE AN ISC CLAIM YOU WAIVE IT MATTERS OF LAW LOOK AT OUR -- LOOK AT READ AND THE TRIAL COURT SAID YES.

>> -- COUNSEL -- NOTICE -- MAY HAVE?

>> TRIAL COUNSEL DIDN'T NOTICE HIM TRIAL COUNSEL IS THE ONE FILED THE MOTION TRIAL COUNSEL US THE HE ONE WHO SET IT FOR HEARING WE ASULD THAT THEY HAD --

>> WAS POSTCONVICTION COUNSEL -- YOU UNDERSTAND THE DIFFERENCE BETWEEN POST CONVICTION COUNSEL, AND TRIAL COUNSEL?

>> YES YOUR HONOR WE --

>> POSTCONVICTION COUNSEL -- WAIT FOR MY QUESTION.

WAS POSTCONVICTION COUNSEL PUT ON NOTICE OF THIS HEARING?

>> WE ASSUMED.

>> THAT REQUIRES A YES OR A NO ANSWER.

>> MY ANSWER IS I DON'T KNOW.

TEA.

>> THE RECORD HERE DOESN'T SHOW.

>> THE NOTICE --

>> THE NOTICE THAT WAS FILED FOR THE HEARING WAS FILED BY THE TRIAL COUNSEL WHO FILED THE MOTION TO QUASH, IT DOESN'T SHOW SERVICE ON THEM.

THE STATE ASSUMED THAT THE DEFENSE THE TRIAL DEFENSE ATTORNEY WHO WAS SPEAKING PRIVATELY BY THE WAY TO POSTCONVICTION DEFENSE COUNSEL, WHILE SHE SAYS SHE WANTS EQUAL DISCOVERY SHE HAD THE OPPORTUNITY TO SPEAK TO HIM PRIVATELY.

THAT IS ALL WE WERE TRYING TO GET.

WAS AN EQUAL OPPORTUNITY TO
SPEAK TO HIM PRIVATELY.
HE WAS WILLING TO TALK TO
HER HE WASN'T WILLING TO
TALK TO US.

SHE DIDN'T HAVE TO DEPOSE
HIM.

AND THE POINT WAYS WERE
MAKING PHYSICIAN OF YOU A
CLAIM BASED ON NEWLY
DISCOVERED EVIDENCE WHERE
THE STATE RECEIVES
INFORMATION, THAT PERHAPS
SOMEBODY ELSE HAS COMMITTED
THE CRIME, THE STATE NEEDS
TO BE ABLE TO HAVE SOME WAY
OF INVESTIGATING THAT
WITHOUT TIPPING OFF THE
WORLD TIPPING OFF THIS
PERSON, BECAUSE WE NEED TO
MIKE SURE JUSTICE IS DONE,
AND IF WE'VE GOT THE WRONG
PERSON WE NEED TO BE ABLE TO
INVESTIGATE FWAIT THAT TO
MAKE SURE JUSTICE IS DONE.

>> THAT MAY BE TRUE, AND
MANY CASES, BUT MY CONCERN
IS IN THIS CASE, YOU WEREN'T
SUBPOENAING A WITNESS WHO
SAID I SAW THE CRIME AND HE
DIDN'T DO IT.

SOMEBODY ELSE DID IT.
OR SOMEBODY WHO WAS
RECATING TESTIMONY.

THE APPARENT PURPOSE OF THE
SUBPOENA WAS TO DETERMINE
WHAT THE DEFENSE COUNSEL WAS
GOING TO TESTIFY ABOUT AT
THE POSTCONVICTION HEARING
WHICH HAS NOTHING TO DO WHEN
-- WHETHER THIS DEFENDANT
COMMITTED THE CRIME OR NOT.

>> IT WOULD HAVE TO DO WHEN
OR -- WHETHER OR NOT THE
STATE HAD DONE JUSTICE IF WE
HAD BEGIN HIM AN UNFAIR
TRIAL.

AND THIS DEFENSE ATTORNEY HE
CHOSE TO WANT TO SUBPOENA HE

--

>> LET ME CLARIFY THAT FROM
MY EXPERIENCE, ANDING HELP
ME CLARIFY, IT IS THE CUSTOM
AND PRACTICE ON THIS THAT

WHEN THE INEFFECTIVE ASSISTANCE COUNSEL CLAIM IS FILED, BECAUSE IT WAIVES COULD HAVE DENTIALITY THOSE ISSUES THAT COUNSEL IS FREE TO TALK TO BOTH THE DEFENSE COUNSEL AND POSTCONVICTION, AND IS FREE TO TALK TO THE STATE ATTORNEY'S OFFICE THAT IS WHAT IS DONE IN DAY IN DAY OUT ALL THE TIME.

>> DAY IN DAY OUT THE DEFENSE ATTORNEYS SIM MROOEP SHOW UP ON THEIR OWN WITHOUT ANY NEED OR IN SUBPOENA -- WHAT THESOEVER STATE ATTORNEY SAYS HEY I WOULD LIKE TO CHAT WITH YOU THE GUY SAYS SURE COME ON DOWN, I WILL COME ON DOWN TO YOUR OFFICE AT X-TIME WE WILL CHAT THAT IS WHAT USUALLY HAPPENS THE ONLY REASON IT DIDN'T IN THIS CASE IS THE DEFENSE ATTORNEY SAID I WANT A SUBPOENA.

>> I GUESS THE BROADER QUESTION IS SFERNL THERE ARE OTHER WITNESSES COME UP DURING THE PROCEED THAT IS A STANDARD PRACTICE IF OF YOU WITNESSES THAT WON'T VOLUNTARILY APPEAR, THAT YOU DO USE THE SUBPOENA POWER 20 CALL THOSE WITNESSES IN, AND DOES THE OPPOSITION NOT RECEIVE NOTICE OF THAT I GUESS THAT IS REALLY THE BROADER THAT IS -- THIS HAPPENS TO BE LAUER IN THIS CASE HOW ABOUT OTHER WITNESS!!\$\$!!!!!!!!!!!!!! WITNESSES IS THAT A PROBLEM NOT A PROBLEM.

>> LIKE I SAID IF WE HAD A WITNESS WE THOUGHT THERE WAS NEWLY DISCOVERED EVIDENCE IT WOULD BE A HUGE PROBLEM IF WE COULDN'T SPEAK TO THAT PERSON PRIVATELY BEFORE WE FOUND OUT IF IT REALLY WAS WE CONVICTED THE WRONG PERSON, AND WE ARE NOW TIPPING OFF THE RIGHT PERSON AND THEY ARE GONE.

THAT WOULD BE A HUGE PROBLEM, WE THIS IS THE ONLY CASE I KNOW WHERE THERE HAS BEEN A NEED TO USE A SUBPOENA AT ALL.

>> THE STATUTE SEAMS TO TALK IN TERMS OF SUBPOENAING SOMEBODY TO 2E69 -- TESTIFY BEFORE THE STATE ATTORNEY WHICH TO ME, IMPLIES TESTIMONY UNDER OATH. RECORDED STATEMENTS, SOMETHING LIKE THAT.

AND YOUR -- ARGUING THAT IT ALSO AUTHORIZES INFORMAL INTERVIEW OF A FORCED INFORMAL INTERVIEW.

>> IF HE HAS -- PERHAPS IT WOULD HAVE BEEN BETTER IF PROSECUTOR PUT HIM UNDER OETHTH TAKEN A SWORN -- HE DIDN'T, FEEL THE NEED TO DO THAT.

BUT --

>> YOU SAID THERE IS NO DISCOVERY RULES IN POSTCONVICTION!!\$\$!!!!!!!!!!!!!!!!!!!!!! POSTCONVICTION, BUT DEPOSITIONS ARE AREN'T THEY TAKEN ALL THE SOMETIME.

>>.

>> LEWIS VERSUS STATE WHERE YOU AUTHORIZED TAKES TAKING OF DEPOSITIONS YOU EXPRESSLY SAID DISCOVERY RULES DONT'S APPLY AND WE DON'T MEAN THIL I TO IMPLY THEY DO.

>> WOULDN'T BETTER PRACTICE BE TO NOTICE DEPOSITION SUBPOENAED HIM TO THE DEPOSITION!!\$\$!!!!!!!!!!!!!!!!!!!!!! DEPOSITION?

>> AGAIN, IN A SITUATION WITH ATTORNEY PERHAPS BUT IN A SITUATION WHERE OF YOU -- SNOOUF THAT IS WHAT WE ARE TALKING ABOUT NOT GENERAL USE OF THE.

>> WELL, THAT --

>> GENERALLY YOU CAN NOT DO -- SUBPOENAS AT ALL IN POSTCONVICTION THE \$\$STATE'S POINT IS THERE ARE VALID USES OF SUPBOENAS IN

POSTCONVICTION.

AND IF WOOF THE POWER TO USE
THEM WE HAVE THE POWER TO
USE THEM.

>> THE COURT HAS NO FURTHER
QUESTIONS STATE RESPECTFULLY
REQUESTS TO AFFIRM.

>> THANK YOU.

>> -- OKAY.

>> THE STATE IN THIS CASE
SET FOR DEPOSITION TWO OF
THE WITNESSES THAT I PRESENT!!\$\$!!!!!!!!!!!!
PRESENTED.

THE ONLY ONE THEY HID FROM
VIEW WAS MR. --

>> YOU TALKED TO HAVE YOU
TALKED TO MR. COHEN.

>> I TALK BRIEFLY TO MR. MY
EXPERT WITNESS, MR. BLACK
HAD SPOKEN WITH HIM.

>> BRIEF YOU TALKED TO
MR. COHEN IT WASN'T LIKE
MR. COHEN WASN'T ACCESSIBLE
UP.

>> HE WAS ACCESSIBLE, WE
DIDN'T SPEAK TO HIM TOO MUCH
BUT HE WAS ACCESS --
ACCESSIBLE.

IF HE CHOSE NOT TO SPEAK TO
THE STATE ATTORNEY I WOULD
SUGGEST FLAPS HAD SOMETHING
DO WITH PERSONALITY OF THE
PARTICULAR PERSON WHO ASKED
HIM, AND STILL WHY DIDN'T
THEY SERVE HIM WITH A
SUBPOENA.

FOR DEPOSITION.

AND WHEN THE STATE SAYS THAT
THE DEFENDANT ARGUED THAT
THERE IS NO USE OF SUBPOENAS
IN POSTCONVICTION, THAT
WASN'T ME.

THAT WAS THE TRIAL LAWYER.
WAS MAKING THOSE ARGUMENTS.
I WAS NOT THERE.

FRANKIE WAS NOT THERE.

ONE THING THAT HAS NOT COME
UP THAT IS THE PARAMETERS OF
THE ATTORNEY-CLIENT
PRIVILEGE CAN ONLY BE
PROTECTED BY SOMEONE WHO IS
REPRESENTING MR. FRANKIE.

>> BUT YOU AGREE ALL THE
TIME THAT I MEAN THAT THE

STATE COULD HAVE TALKED TO HIM, VOLUNTARILY ONCE YOU FILED YOUR MOTION, THE ATTORNEY-CLIENT PRIVILEGE WAS WAIVED.

>> THE ATTORNEY-CLIENT PRIVILEGE WAS WAIVED ONLY AS TO THOSE ISSUES WHICH WERE RAISED IN THE MOTION TO VACATE.

IT IS NOT THAT THEY WERE RAISED EVERYTHING TO IF PAINS IN COME IN CONFESSED TO HAVING KILLED KENNEDY I DON'T THINK THAT COULD HAVE BEEN DISCLOSED IN A CHAT WITH MR. LASER.

I JUST -- IT IS THE PARAMETERS OF IT HAVE A -- HAVE TO BE DEFENDED OF THE ATTORNEY-CLIENT PRIVILEGE AND THE BREADTH OF IT'S WAIVER AND IT WAS NOT DEFEND!!\$\$!!!!!!!!!!!! DEFENDED BECAUSE I WASN'T THERE --

>> WE HAVE USED UP ALL OF YOUR TIME DO YOU HAVE A QUESTION.

>> YOU DO AGREE HOWEVER THAT THE USUAL PRACTICE IS THAT THE ATTORNEY JUST AGREES AND THE STATE ATTORNEY WILL EITHER GO TO WHO I WAS OR HE WILL GO TO THE STATE ATTORNEY'S OFFICE, AND WHEN THESE THREE -- 3.850 MOTIONS ARE FILED?

>> WHAT I HAVE NORMALLY SEEN AND I DON'T HAVE A DEPTH OF KNOWLEDGE OF THEIR PRACTICES IN DADE COUNTY, BUT IN OTHER PLACES I'VE SEEN THEM SET FOR DEPOSITION, I HAVE NO IDEA HOW COMMON IT IS AND --

>> POSTCONVICTION?

>> YES.

>> TALKING ABOUT POST CONVICT --

>> YES, I BROUGHT MY EXPERT IN TWO EXPERTS FOR DEPOSITION IN THIS CASE. BY THE STATE THE SAME STATE.

>> THANK YOU VERY MUCH.

>> THANK YOU VERY MUCH WE'LL

TAKE THE CASE UNDER A ADVISEMENT STAND IN RECESS
UNTIL 8:30 TOMORROW MORNING,
THANK YOU.
PLEASE RISE