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Robert Eugene Hendrix v. State of Florida

THE NEXT CASE ON THIS MORNING'S CALENDAR IS HEN {DRIKS} VERSUS THE STATE OF FLORIDA. ARE THE PARTIES READY? MR.^BRODY, YOU MAY PROCEED.

MAY IT PLEASE THE COURT, HARRY BRODY, REPRESENTING ROBERT HENDRIX AND JEFF HAZEN WITH ME. MR.^HENDRIX IS APPEALING THE DENIAL OF HIS 3.850 MOTION AFTER A HEARING. I WOULD LIKE TO FOCUS ON FOUR CLAIMS. MR.^HENDRIX CONTENDS THAT HIS COUNSEL WAS INEFFECTIVE, PRIMARILY IN THE PENALTY PHASE, ALTHOUGH IT IMPACTS THE GUILT PHASE AS WELL, OF HIS TRIAL. COUNSEL, MR.^TURNER, CONCEDED AT THE EVIDENTIARY HEARING THIS WAS HIS FIRST DEATH PENALTY CASE. HE FILED A MOTION WITH THE COURT TO ASK PERMISSION HE HAD ACTUALLY BEEN INVOLVED IN OTHER DEATH PENALTY CASES.

YES, YOUR HONOR. HE HAD SETTLED TWO OTHERS.

WELL, NOT SETTLED THEM BUT PLED THEM OUT BUT THIS WAS THE FIRST PENALTY PHASE TO BE MORE SPECIFIC, THAT HE HAD DONE. HE DID SEEK ADVICE

HE OTHERWISE WAS A VERY EXPERIENCED CRIMINAL DEFENSE LAWYER, CORRECT?

WELL, YES, HE HAD BEEN A U.S. ATTORNEY WHITE COLLAR ATTORNEY.

ALSO MR.^KIRKLAND WAS INVOLVED IN THIS CASE, WAS HE NOT?

MR.^KIRKLAND WAS INVOLVED AND MR.^KIRKLAND WAS TOO OLD HE WAS STILL ALIVE BUT TOO OLD TO TESTIFY AT THE HEARING. I SPOKE TO HIM AND HE WAS 98.

HE WAS WIDELY KNOWN AS A VERY EXPERIENCED CRIMINAL DEFENSE LAWYER IN CENTRAL FLORIDA.

YES, YOUR HONOR. THAT'S NOT IN THIS RECORD EXACTLY AND THE JUDGE INDICATED THAT BUT THE RECORD INDICATES, THOUGH, THAT MR.^TURNER WAS BROUGHT ON AND THERE IS REALLY NO INDICATION OR CONTENTION THAT MR.^KIRKLAND DID ANY OF THE WORK ON THE PENALTY PHASE. THE INVESTIGATORS SAID THAT HE DID THE INVESTIGATION, EISENBURG DID THE INVESTIGATION. MR.^KIRKLAND BROUGHT TURNER IN, BUT TURNER DID THIS TRIAL. KIRKLAND WAS THERE AT THE SENTENCING, BECAUSE TURNER HAD TAKEN A JOB AS A U.S. ATTORNEY AND LEFT.

YOU SAID YOU WERE GOING TO FOCUS ON FOUR POINTS. LET'S GET IT LISTED AS FAR AS WHAT IS IT THAT YOU SAY THE DEFENSE ATTORNEY DIDN'T DO THAT WAS INEFFECTIVE.

THEY DIDN'T DO VERY INADEQUATE INVESTIGATION. HE DIDN'T DO ANY PENALTY PHASE INVESTIGATION.

LET'S GO RIGHT FOR THE JUGULAR, YOU KNOW, IN OTHER WORDS HE DIDN'T DO ANYTHING AND THERE WAS LOTS TO BE DONE AND SO TELL US WHAT DID HE TESTIFY?

YES.

ALL RIGHT.

AND DID HE TESTIFY I DIDN'T DO ANYTHING?

NO.

WHERE DOES THE EVIDENCE COME FROM THAT HE DIDN'T DO ANYTHING?

WELL, ANYTHING IS TOO HARSH.

WELL ^.

THEY FILED A MOTION ASKING THE COURT IF THEY COULD NOT PRESENT ANY MITIGATION. THE COURT DENIED THAT MOTION ON A WEEK BEFORE TRIAL. THEY TESTIFIED THAT BEFORE THAT, THEY DID MR.^TURNER DID MAYBE A HOUR'S WORK ON THIS.

THE INVESTIGATOR HAD GOTTEN THE DEFENDANT'S SCHOOL RECORDS, CORRECT?

YES, THEY HAD GOTTEN SCHOOL RECORDS.

THEY HAD GOTTEN THE RECORDS AND, IN FACT, THERE WAS TESTIMONY BY DR.^TELL.

YES.

BUT A DOCTOR WHO HAD TREATED THIS PERSON IN THE PAST.

CORRECT.

DR.^PASKOWITZ?

WHO WAS IN TELL'S OFFICE.

AND WHO HAD ALSO TREATED HIM IN THE PAST?

YES.

THEY HAD ALSO GOTTEN THE PRISON RECORDS FROM HIS PRIOR PRISON MATERIALS?

YES. .

TERMS?

YES.

TALKED TO HIS SISTERS.

ONE SISTER TESTIFIED.

AND THE FATHER?

YES.

OKAY. AND SO IT IS A LITTLE BIT INCORRECT TO SAY THAT NOTHING WAS DONE. THERE HAD BEEN AN INVESTIGATION BY THIS LAWYER.

RIGHT. THEY DID NOT I MEAN, THIS WAS THE FAMILY AND THEY WERE AVAILABLE. I'M GOING BY

THE BILLING RECORDS OF THE INVESTIGATOR. THAT'S WHAT HE PUT ON. HENDRIX HAD SEEN DR. ^TELL WHEN HE WAS 15, THE PART OF SOCIAL SERVICES, AND HE HAD BEEN IN VARIOUS PROGRAMS, SO THERE WAS SOME TESTIMONY FROM TELL, I'M SURE HIS MOTHER SAID HE HAD SEEN TELL. ABOUT A LEARNING DISABILITY. BUT THERE WAS A TREMENDOUS AMOUNT OF INFORMATION THAT WAS NOT PUT ON.

THEY ALSO SAW DR. ^CROP.

THE PUBLIC DEFENDER WHO HAD THE CASE BEFORE MR. ^TURNER HAD ASKED DR. ^CROP TO GIVE AN OPINION ABOUT IT, BUT IT WAS NOT ABOUT THE MITIGATION. DR. ^CROP WAS NEVER PROVIDED ANY RECORDS. HE WAS NOT PROVIDED THE INFORMATION ABOUT THE DEFENDANT'S LONG HISTORY. HE DID, YOUR HONOR, AND THAT WAS AT THE BEGINNING OF THE CASE AT THE PUBLIC DEFENDER'S REQUEST AND IT WAS PRIMARILY TO DETERMINE WHETHER THERE WAS ANY COMPETENCY ISSUES OR A GUILT PHASE DEFENSE, BUT THERE WAS NO DOCTOR THAT WAS PROVIDED RECORDS OR INFORMATION SUCH AS WE PRESENTED ABOUT MR. ^HENDRIX LONG BRAIN DAMAGE. MR. ^HENDRIX, AS THE STATE'S EXPERT SAYS, HAS BRAIN DAMAGE. THAT INFORMATION WAS NOT PRESENTED TO THE JURY. THE INFORMATION ABOUT HIS LONG SINCE THE AGE OF NINE HE HAD BEEN DRINKING. SINCE THE AGE OF 11 HE HAD BEEN ABUSING DRUGS HEAVILY. NONE OF THAT WAS PRESENTED TO THE JURY. THESE PEOPLE WERE ALL IN TOWN, WERE EASILY AVAILABLE, BUT NO INVESTIGATION WAS DONE ON THIS CASE.

NOW, ON THE INTOXICATION, AND ALSO ON THE AND I'M REALIZING WHEN I WAS THINKING OF THE FACTS AND I WAS ASKING THE COUNSEL IN ELLEDGE AND IN THIS CASE, THIS IS THE PERSON WHO WAS KILLED SOMEBODY BECAUSE HE DIDN'T WANT THEM TO TESTIFY AGAINST HIM.

CORRECT.

IT WAS A PLANNED CRIME. IT WAS A BRUTAL CRIME AND WHAT EVIDENCE IS THERE THAT HE WAS INTOXICATED OR UNDER EXTREME EMOTIONAL DISTURBANCE THE NIGHT OF THIS? AND REALLY I'M JUMPING TO THE NEXT PRONG. I REALLY HAVE A HARD TIME SEEING THAT EVEN WITH EVERYTHING YOU PRESENTED AND PUT ON A GOOD POST CONVICTION EVIDENTIARY HEARING CASE, THAT OUR CONFIDENCE IN THIS OUTCOME IS UNDERMINED. CAN YOU EXPLAIN THAT?

I THINK ON THE PREJUDICE PRONG. THERE WERE TWO RECOMMENDATIONS OF DEATH AND I DON'T THINK THAT'S SURPRISING BECAUSE I REALLY DON'T THINK THERE WAS ANY RESISTANCE TO THE DEATH PENALTY AS OPPOSED TO A LIFE SENTENCE. THE

WELL, AGAIN, BUT I THINK NOW YOU'RE GOING BACK TO THE DEFICIENCY PRONG. I MEAN, THE ISSUE IS THIS IS NOT A CASE, WE'VE SEEN CASES WHERE A DEFENSE LAWYER DOES NOTHING AND GETS UP AND QUOTES THE BIBLE AND THAT'S THE PENALTY PHASE. HERE IS SOMETHING WE'VE HAD MANY CASES WHERE SCHOOL RECORDS ARE NOT OBTAINED, WHERE MEDICAL EXPERTS ARE NOT OBTAINED. ALL OF THAT HAPPENED HERE, SO YOU'VE GOT A VERY FIRST OF ALL ON THE FIRST PRONG YOU'VE GOT A VERY, VERY HIGH ROAD TO CLIMB TO GET THERE, BUT EVEN IF YOU ASSUME THAT THERE, YOU KNOW, THAT THERE IS SOME DEFICIENCY THAT YOU CAN POINT OUT IN THE CONDUCT, HOW DOES IT UNDERMINE OUR, YOU KNOW, OUR CONFIDENCE IN THE OUTCOME? IT WAS A 12-0, WHICH IT IS NOT A 8-4 OR 9-3. AND YET THERE WAS MITIGATION THAT WAS PRESENTED, SO WHERE IS IT? WHAT'S THE MOST COMPELLING EVIDENCE THAT WOULD REALLY AT THIS THAT THIS COURT SHOULD LOOK AT AND SAY, MY GOODNESS, THIS WASN'T PRESENTED AND THAT PUTS THIS WHOLE SAYS CASE IN A DIFFERENT LIGHT?

WELL, THERE WAS EVIDENCE OF BRAIN DAMAGE THAT WAS NOT PRESENTED THAT HE IS AND WAS HAD BRAIN DAMAGE. THERE IS EVIDENCE THAT BOTH STATUTORY MENTAL HEALTH MITIGATORS SHOULD HAVE

AND THAT'S WHERE I GUESS WE CAN ALWAYS FIND, THERE ARE EXPERTS THAT WILL SAY THIS,

BUT WHAT I'M CONCERNED WITH IS HOW DOES THAT CONNECT UP WITH THE WAY THIS CRIME OCCURRED TO REALLY GIVE IT SOME REAL CREDIBILITY? THAT IS, THAT SOMEHOW HE REALLY, YOU KNOW, WHEN HE WAS PLANNING THIS CRIME THAT, YOU KNOW, HE WAS BRAIN DAMAGED OR HOW DOES THAT FACTOR IN TO REALLY MITIGATING AGAIN THE SUBSTANTIAL AGGRAVATION IN THIS CASE?

WELL, I THINK IN THE AND IN WAYS THE HAT COULD HAVE BEEN CONTESTED THAT THERE WAS A LOT OF THAT THIS JURY REALLY DIDN'T KNOW MR.^HENDRIX. THEY THOUGHT THIS WAS JUST A SIMPLE CASE WHERE HE WAS TRYING TO ELIMINATE THE WITNESS. HE WAS AFRAID, HE WAS 15 WHEN HE FIRST WENT TO PRISON. HE WAS VERY AFRAID OF GOING BACK. THIS PERSON WAS HIS COUSIN. THERE WERE REASONS AS WE HAVE SET OUT WHERE I DON'T BELIEVE IT WAS REALLY MR.^HENDRIX WAS INTRODUCED TO THE JURY IN ANY KIND OF REAL WAY.

BUT DIDN'T THE ATTORNEY SEEM TO TAKE THE APPROACH, I WOULD LIKE TO PRESENT THIS, AND CORRECT ME IF YOU THINK I'M WRONG, BUT PRESENTED IT AS THOUGH THE SYSTEM FAILED THIS PERSON AND THAT THEY DID POINT OUT THESE INCIDENTS IN HIS LIFE AND HOW SOCIETY FAILED HIM AND HE TOOK THAT APPROACH AS OPPOSED TO LET'S PAINT THIS WITH ALL OF THE DRUGS AND THAT KIND OF THING FOR THE JURORS IN THIS COMMUNITY? NOW, IS THAT JUST AN OFF THE WALL KIND OF OBSERVATION THAT I HAVE?

WELL, THE FACT IS HE NEVER DIDN'T KNOW AND HE DIDN'T FIND OUT ABOUT THE DRUGS SO NO CHOICE WAS MADE. THAT WAS WHAT HE SAID HIS STRATEGY WAS THAT IT WAS GOING TO BE THE SYSTEM FAILED HIM, BUT I DO THINK THAT HE STILL NEEDED TO GIVE THEM A LITTLE MORE THAN THAT ARGUMENT.

THE DOCTORS DIDN'T KNOW ABOUT

CONSIDERING THE NATURE OF THE CRIME.

NONE OF THE DOCTORS KNEW ABOUT THE ALCOHOL CONSUMPTION AS A YOUNG PERSON AND HOW IT FLOWED OVER INTO DRUGS?

NO, NO.

NO ONE EVER HEARD THAT?

NOTHING COMPARED TO

THE TRIAL JUDGE FOUND TO THE CONTRARY. THE TRIAL JUDGE SAYS, FINALLY JUDGE PATTERNER, WHILE UNAWARE OF THE DEFENDANT'S VALIUM USE WAS AWARE THE DEFENDANT HAD A HISTORY OF OTHER DRUG USE.

THERE WAS SOME HISTORY BUT THERE WAS NOTHING THERE WERE NO WITNESSES, WE HAD PROBABLY TEN WITNESSES FROM THE LOCALITY THAT SHOWED IT WAS CONSISTENT AND WENT BACK AS FAR AS IT DID AND WAS ANYWHERE NEAR AS SEVERE AS IT WAS.

LET ME GET BACK TO DR.^CROP. EXPLAIN TO ME WHAT THE RECORD SHOWS AS TO DR.^CROP'S REPUTATION, EXPERIENCE AND WHATEVER AS I THINK FROM MY EXPERIENCE PRIMARILY A DEFENSE EXPERT IS WHERE I'VE SEEN HIM MOSTLY IN MY BRIEF EXPERIENCE, AND USED FAIRLY OFTEN BY CRIMINAL DEFENSE ATTORNEYS IN ORDER TO PREPARE MITIGATION OR IN THESE TYPES OF PROCEEDINGS WE HAVE BEFORE US TODAY. WHAT WAS IT IN 199 IN THE EARLY 1990'S WHEN THIS WAS TAKING PLACE?

YOU'RE RIGHT IT JUST SHOWS HOW THESE THINGS GO IN CYCLES. MY EXPERIENCE WOULD BE THAT DR.^CROP IS USUALLY ON THE STATE SIDE, SO I'M NOT SURE, BUT IN THE RECORD, THE

DEFENSE DID SEE MR. ^CROP OUT. I DON'T THINK THERE IS ANYTHING IN THE RECORD REGARDING THE QUALITY OF HIS REPRESENTATION OR REPUTATION OR ANYTHING LIKE THAT, BUT I DON'T THINK

ANYTHING ABOUT HIS EXPERIENCE?

NO, HE IS WELL ALL I WOULD SAY IS THAT EVERYBODY WOULD AGREE HE IS WELL-KNOWN IN THE COMMUNITY AND THAT CAN BE GOOD OR BAD, I SUPPOSE, BUT I THINK THE PUBLIC DEFENDER CONSULTED HIM EARLY ON BUT HE WAS REALLY NOT GIVEN THE MISSION TO FIND FOR MITIGATION, AND HE WAS NOT TOLD ABOUT THE EXTENT OF THE DRUG USE.

I GUESS THAT'S WHY I WANT TO FOCUS ON A LITTLE BIT, SO IT IS YOUR POSITION THE RECORD REFLECTS THAT DR. ^CROP WAS A CON CONSULTED FOR COMPETENCY?

I THINK EARLY ON THERE WAS AN ISSUE OF WHETHER THERE WAS GOING TO BE A COMPETENCY ISSUE OR WHETHER IT WAS RIGHT WHEN THE CASE STARTED. THEY PROBABLY SAID WILL YOU TALK TO HIM AND SEE IF THERE IS ANYTHING THAT WE SHOULD LOOK AT RIGHT AT THE BEGINNING HERE.

SO IS DR. ^CROP A LOCAL TO WHERE THIS CRIME WAS BEING TRIED?

I THINK HE COMMONLY TESTIFIES IN THAT AREA, YES. I DON'T KNOW EXACTLY WHERE HE IS FROM, BUT, YES. HE COMMONLY TESTIFIES THERE.

IS IT WHAT TRANSPIRED WITH DR. ^CROP THAT THE DEFENDANT SAW DR. ^CROP AND THE DEFENDANT UNLOADED THE DETAILS OF THE CRIME TO DR. ^CROP AND WAS QUITE OPEN WITH DR. ^CROP ABOUT THE FACT THAT HE COMMITTED THIS MURDER AND SO THAT MR. ^TURNER CAME TO THE CONCLUSION HE DIDN'T WANT TO EXPOSE ANY OTHER EXPERT TO THAT TYPE OF THING BECAUSE HOW DAMAGING THAT WOULD BE.

THAT'S TRUE. THAT WAS, ALTHOUGH IT TURNED OUT THAT THAT WAS INTRODUCED, THAT EVIDENCE WAS INTRODUCED BY MR. ^LA FORCE, ANYWAY, AND WHICH BRINGS ME TO THE BRADY CLAIM, WHICH IS THAT, AND THE LOWER COURT FOUND THAT THIS INFORMATION SHOULD HAVE BEEN TURNED OVER, BUT THIS JAIL HOUSE {SNICH} HAD LONG BEEN SNITCH HAD LONG BEEN ON THE STATE'S NARCOTICS TASK FORCE IN THE AREA. THAT INFORMATION WAS NOT PROVIDED TO THE DEFENSE IN THIS CASE.

MR. ^BRODY, I WANT TO MAKE YOU AWARE YOU ARE IN YOUR REBUTTAL SO YOU CAN DO WHAT YOU WANT.

BUT BY THE TIME THIS CASE HAPPENS, THAT WITNESS' USE WAS OVER, HOW DOES THAT RELATE TO THIS CASE? HE HAS FINISHED HIS WORK WITH THE DRUG TASK FORCE, HADN'T HE, A COUPLE OF YEARS BEFORE THIS MURDER WAS ACTUALLY COMMITTED?

WELL, NO, THE DRUG TASK FORCE DISBANDED IN 1989 OR '90, I THINK. I THINK HE WAS

AND THIS IT WAS '88 AND THIS MURDER OCCURRED IN 1990?

YES. BUT THE POINT IS HE HAD TESTIFIED NUMEROUS TIMES HE WOULD GET REARRESTED AND WOULD TESTIFY. THE OTHER POINT IS THAT JUDGE LOCKETT ALSO KNEW THAT HE HAD BEEN THE STATE'S WITNESS AND HAD BEEN WORKING IN THIS PROGRAM. THAT INFORMATION, JUDGE LOCKETT DID NOT DISCLOSE. SO JUDGE LOCKETT NOT ONLY HAD CONSULTED WITH THE ATTORNEYS FOR THE CODEFENDANT WHO TESTIFIED, AND THAT ISSUE WAS RAISED ON DIRECT APPEAL, BUT JUDGE LOCKETT ALSO HAD BEEN THE PERSON THAT HAD SENTENCED MR. ^LAFORCE, AND HIS SIGNATURE IS ON THE PLEA AGREEMENT.

SO WHAT WAS HIS OBLIGATION AT THAT POINT?

I THINK THE JUDGE THE STATE SAYS THERE IS NO OBLIGATION AND I THINK THE JUDGE HAS AN OBLIGATION TO DISCLOSE TO BOTH SIDES. I THINK AT TRIAL WHEN MR.^GROSS OBJECTED {FER} VENTLY WHEN FERVENTLY WHEN LAFORCE WAS ASKED DO YOU HAVE ANY OTHER CRIMES HE JUMPED UP AT THAT TIME AND OBJECTED. IT IS OBVIOUS WILL GROSS WAS AWARE THERE WAS A HISTORY THERE. AT THE HEARING HE SAID HE DIDN'T REMEMBER BUT AT TRIAL HE STOPPED THE QUESTIONING ON A DIME, SO

WAS THAT OBJECTION BASED BECAUSE THE QUESTION WAS NOT BASED ON CONVICTIONS OR CHARGES FOR CRIMES? WAS IT THE NATURE OF THE QUESTION?

HE JUST JUMPED UP AND STOPPED THE QUESTIONING MUCH AS EVERY TIME WE TRIED TO GET INTO THIS CONFLICT ISSUE OR THIS ISSUE ABOUT THE JUDGE AT ALL TO TAKE HIS DEPOSITION OR THE DEPOSITION OF SOME OTHER PEOPLE ON THIS QUESTION OR TO ASK A WITNESS, WE WERE STOPPED IMMEDIATELY. NOW, I THINK THAT NOW WE HAVE A CASE THE JUDGE WHO PRESIDED ALSO HAD INFORMATION ABOUT ONE OF THE WITNESSES BEING A LONG-STANDING COOPERATING WITNESS IN THIS NARCOTICS TASK FORCE. LAFORCE'S TESTIMONY WAS IMPORTANT BECAUSE IT PROVIDES INFORMATION THAT THE ATTORNEY DIDN'T WANT DR.^CROP TO PROVIDE.

WAS LAFORCE IMPEACHED THEN ANYWAY?

HE WAS IN JAIL. IT WAS SHOWN HE HOPED TO GET A DEAL OUT OF THIS TESTIMONY, BUT THE HISTORY, A FIVE-YEAR HISTORY OF HIS DRUG CONVICTIONS AND THEN TESTIMONY AND DRUG, SEVERAL TIMES, AND HIS PARTICIPATION IN THIS IS FAIRLY, THIS TASK FORCE WAS THERE WAS BIG NEWS ABOUT IT IN THE AREA. IT WAS SOMETHING THAT PEOPLE IN THE AREA DID NOT WOULD NOT HAVE WANTED TO PUBLICIZE, ANYWAY. I'M NOT SURE WHAT HAPPENED WITH IT.

I'M GOING TO AGAIN REMIND YOU ABOUT YOUR REBUTTAL. DID YOU WANT TO SIT DOWN?

MY LAST POINT WOULD BE THAT THERE WAS MR.^HENDRIX WAS SHACKLED THROUGHOUT THIS TRIAL. EVERYBODY IN LAKE COUNTY AT THAT TIME WAS SHACKLED ROUTINELY WITHOUT ANY HEARING ON THE QUESTION AND WE HAVE RAISED THAT ISSUE AS WELL.

YOU ARE RAISING THAT AS AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM?

ALSO INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. THERE WAS A STATE HABEAS THAT SHOULD HAVE BEEN ADDRESSED AS THE LOWER COURT AT THE EVIDENTIARY HEARING FOUND ON APPEAL. IT WAS NOT.

WAS THERE ANY EVIDENCE THAT THE JURY NOTICED THAT HE WAS SHACKLED?

NO, NO, THERE ISN'T, BUT I BELIEVE UNDER CASE LAW THE STATE HAS THE BURDEN OF SHOWING THERE WAS NO PROBLEM BECAUSE OF THE FUNDAMENTAL INTERESTS THAT ARE IMPACTED AND WE PRESENTED THAT CASE LAW IN OUR BRIEF.

WHAT WAS THE EVIDENCE IN THE RECORD THAT HE WAS SHACKLED AT ALL?

EVERYBODY WAS ALWAYS SHACKLED. THE JUDGE TESTIFIED TO THAT EFFECT.

WHO DID?

IN THE TRIAL RECORD, YOUR HONOR?

IN THE TRIAL RECORD WHAT WAS THE EVIDENCE THAT THIS DEFENDANT WAS SHACKLED?

I'M NOT SURE THERE WAS ANY SUCH BUT APPELLATE COUNSEL WOULD HAVE KNOWN ABOUT IT, OTHER THAN EVERYBODY THERE, I MEAN EVERY TIME HE WAS BROUGHT IN IT WAS JUST ROUTINELY IN HANDCUFFS AND SHACKLED TO THE TABLE. IT WAS THE PROCEDURE IN THE AREA AT THE TIME.

NOW YOU WANT TO NOW, HOW MUCH TIME? ALL RIGHT. WELL, I TRIED TO WARN YOU. SEVERAL TIMES.

MAY IT PLEASE THE COURT, MY NAME IS BARBARA DAVIS. I REPRESENT THE STATE OF FLORIDA. FIRST I'D LIKE TO POINT OUT FOR THE RECORD THAT THIS WAS A DOUBLE HOMICIDE WITH A JURY RECOMMENDATION OF 12-0 ON BOTH HOMICIDES. THE TRIAL JUDGE FOUND FIVE AGGRAVATING CIRCUMSTANCES ON EACH HOMICIDE.

DO TELL US WHAT THE ROLE OF DR.^CROP WAS IN THE CASE.

YES, SIR. AND THAT IS IN THE EVIDENTIARY HEARING TRANSCRIPT AT 3037, MR.^TURNER TESTIFIED THAT DR.^CROP WAS A REPUTABLE PSYCHOLOGIST WHO WAS DEFENSE ORIENTED.

WHAT WAS HIS ROLE IN THE CASE? IN OTHER WORDS, WHEN HE WAS HE FIRST CONSULTED AND FOR WHAT PURPOSE WAS HE CONSULTED?

ORIGINALLY THIS WAS A PUBLIC DEFENDER CASE AND THEY HAD HIM APPOINTED AS THEIR PSYCHOLOGIST.

FOR WHAT PURPOSE?

FOR EVERY PURPOSE. HE WAS THEIR PSYCHOLOGIST.

SO DID HE EVALUATE THE DEFENDANT FOR COMPETENCY PURPOSES?

HE EVALUATED THE DEFENDANT FOR EVERYTHING.

SO DID HE RENDER A REPORT?

THERE WAS NOT IT WASN'T BROKEN DOWN TO COMPETENCY OR ANYTHING ELSE.

HOW DID THIS COME OUT ABOUT WHAT HE WAS APPOINTED FOR EVERYTHING? IS THIS IN A REPORT OR JUST THE LAWYER TESTIFYING ABOUT IT OR DID DR.^CROP TESTIFY?

DR.^CROP DID NOT TESTIFY AT THE EVIDENTIARY HEARING BUT MR.^TURNER TESTIFIED THAT DR.^CROP DID A COMPLETE INTERVIEW, 3 1/2 HOURS WITH THE DEFENDANT.

SO THE INFORMATION ABOUT DR.^CROP ALL COMES FROM THE DEFENSE LAWYER?

YES.

OKAY. AND NOW I TAKE IT THAT DR.^CROP DID THIS BEFORE THIS DEFENSE LAWYER WAS IN THE CASE?

YES. AND WHEN

HOW LONG BEFORE?

IT WASN'T THAT LONG, BECAUSE THE PUBLIC DEFENDER WAS APPOINTED AND THEN THE FAMILY HIRED MR.^KIRKLAND AND MR.^TURNER, SO WHEN THEY WERE APPOINTED THEY CONTACTED

DR.^CROP TO SEE IF THEY COULD USE HIM AS THEIR PSYCHOLOGIST FOR THE CASE, GUILT, PENALTY, EVERYTHING. HE IS A RENOWNED DEFENSE-ORIENTED EXPERT. THEY WANTED TO USE HIM. DR.^CROP SAID I HAVE SPENT A LOT OF TIME WITH HIM. HE WAS VERY CLEAR WITH ME IN HIS RECOLLECTION OF THE EVENTS. WHAT HE ACTUALLY SAID WAS HE HAD A COLD, CLEAR RECOLLECTION OF ABSOLUTELY EVERYTHING THAT HAPPENED. HE HAS NO MENTAL DISORDER. HE KNEW EXACTLY WHAT HE WAS DOING AND YOU DON'T WANT TO USE ME.

DID HE GET THE DEFENDANT'S BACKGROUND AND, YOU KNOW, KNOW ABOUT THE HISTORY OF DRUG USE OR ANYTHING ABOUT THE DEFENDANT'S BACKGROUND?

WELL, SINCE HE DIDN'T TESTIFY WE DON'T KNOW AND IT IS THEIR BURP. BURDEN OF PROOF.

SO THE LAWYER DIDN'T TESTIFY AS TO WHETHER DR.^CROP INVESTIGATED THE DEFENDANT'S BACKGROUND?

NO, AS SOON AS DR.^CROP TOLD HIM YOU JUST DO NOT WANT TO USE ME, HE GOT TWO OTHER PSYCHOLOGISTS.

SO WOULD YOU PAINT A PICTURE, I GUESS YOU WERE GIVING US WHAT THE AGGRAVATION IS, ABOUT THIS ISN'T A CASE WHERE DEFENSE COUNSEL DID NOTHING. COULD YOU COMPARE FOR US WHAT WAS PUT ON IN THE PENALTY PHASE AND WHETHER IT IS QUALITATIVELY DIFFERENT THAN WHAT WAS PUT ON IN THE GUILT PHASE OF THIS? ESPECIALLY ABOUT THIS LANGUAGE STANDING HISTORY OF DRUG USE AND WHETHER THAT COULD HAVE CAUSED HIM TO BE UNDER EXTREME EMOTIONAL DISTRESS AT THE TIME OF THE MURDER AS STATUTORY MITIGATION?

YES, AND LET ME PREFACE THIS WITH THE DEFENDANT DID NOT WANT A PENALTY PHASE AT ALL. HE TOLD HIS FAMILY, DO NOT COOPERATE WITH THE INVESTIGATOR OR THE ATTORNEYS. DO NOT TALK TO THEM ABOUT MY BACKGROUND AND THAT'S WHEN THE ATTORNEYS ASKED THE JUDGE, WELL, ARE WE ALLOWED TO DO THIS? THIS IS WHAT THE DEFENDANT IS ORDERING US TO DO. ARE WE ALLOWED TO DO THIS AND THE JUDGE SAID, NO, YOU PUT ON A PENALTY PHASE. IN THE MEANTIME THE INVESTIGATOR HAD BEEN TRYING TO TALK WITH HIM, HAD BEEN DOING ALL OF THE INVESTIGATION AND WHAT THEY PRESENTED AND

THAT'S SORT OF AN ODD SITUATION. WHERE YOU ARE YOU SAYING ON THE RECORD THIS DEFENDANT SAID HE DID NOT WANT TO PUT ON A PENALTY PHASE?

I'M NOT SURE IF IT WAS ON THE RECORD, BUT IT WAS THEY HAD TOLD THEIR ATTORNEYS SO THE ATTORNEYS FILED A MOTION ASKING THE TRIAL JUDGE ARE WE ALLOWED TO DO WHAT THE DEFENDANT SAYS?

WHEN WAS THAT FILED IN REFERENCE TO WHEN THE PENALTY PHASE STARTED?

THAT WAS IN ABOUT AUGUST, THE MIDDLE OF AUGUST AND THE PENALTY PHASE STARTED ABOUT THE MIDDLE OF SEPTEMBER.

SO WOULD THAT MEAN THEN THAT THERE HAD BEEN NO INVESTIGATION OR ANYTHING DONE IN THE PENALTY PHASE?

TO THE CONTRARY, THEIR INVESTIGATOR HAD BEEN WORKING ON THIS. THEY HAD ACTUALLY TALKED TO THE MOM TWICE.

SO THE IDEA THAT THE INVESTIGATORS SPENT ONLY ONE HOUR IS NOT CORRECT?

THE THING IS WHEN YOU BREAK THIS DOWN, NO, THE ONE HOUR ON THE INVESTIGATOR AND THAT'S ALL IN THE RECORD, BECAUSE WHEN MR.^TURNER WAS THERE, MR.^EISENBERG TESTIFIED

AT THE EVIDENTIARY HEARING, TOO, ABOUT WHAT HE DID, AND MR. TURNER, AND WHAT THEY PRESENTED IS THEY KNEW ABOUT SOME DRUG AND ALCOHOL ABUSE IN HIS PAST BECAUSE HE WAS ARRESTED WHEN HE WAS 15. HE HAD THIS JUVENILE HISTORY. DR. TELL WAS HIS PSYCHOLOGIST, AND SAID AND THE STRATEGY, THE THEORY WAS THAT THIS IS A CHILD WHO WAS SHOWING THESE PROBLEMS THAT WAS ACTING OUT AGGRESSIVELY. HE HAD A PASSIVE AGGRESSIVE PERSONALITY DISORDER. HE HAD CONDUCT DISORDER. HE WAS SHOWING THE SIGN SHOWINGS SIGNS OF THE ANTISOCIAL PERSONALITY AT 15 AND 16 AND DR. TELL CAME IN AND SAID YOU NEED TO DO SOMETHING ABOUT THIS AND THE FAMILY WENT TO A COUPLE OF COUNSELING SESSIONS AND THEN JUST STOPPED.

YOU MENTIONED A MOMENT AGO THAT THE DEFENSE LAWYER HAD OBVIOUSLY DECIDED NOT TO USE DR. CROP.

YES.

AND THAT HE THEN HIRED TWO OTHER EXPERTS. ALL RIGHT. WHO WERE THESE TWO OTHER EXPERTS THAT HE HIRED?

DR. TELL WHO SAW HIM AT 16 AND DID ALL OF THE TESTING AND DR. PASCOWITZ.

AND DID THEY EXAMINE THE DEFENDANT?

DR. TELL HAD EXAMINED THE DEFENDANT WHEN HE WAS 16. HE WAS 24 WHEN HE DID THIS CRIME. DR. PASCOWITZ CAME IN AND EXAMINED HIM LATER.

BUT IN OTHER WORDS I'M TRYING TRYING, MY IMPRESSION WAS HE HIRED TWO OTHER EXPERTS TO EXAMINE THE DEFENDANT AND GET HIS HISTORY AND ALL OF THAT, BUT THEY DIDN'T DO THAT OR ONE OF THEM DID IT OR WHAT?

DR. PASCOWITZ DID.

DR. TELL DIDN'T EXAMINE HIM AGAIN?

NOT AS FAR AS I KNOW. DR. TELL TESTIFIED ABOUT HIS BACKGROUND, AND THAT HE WAS AND THE THEORY WAS HE WAS CRYING OUT FOR HELP. THAT THIS WAS STARTING TO DEVELOP. HE HAD BEEN ABUSED BY HIS FATHER. HIS BROTHER THAT HE WAS VERY CLOSE TO HAD DIED. HERE IS AN EMOTIONALLY CHALLENGED CHILD AND THE SYSTEM FAILED HIM.

SO THAT WAS BASED ON HIS PREVIOUS EXAMINATION OF THE DEFENDANT AND JUST THE NORMAL COURSE OF EVENTS; IS THAT CORRECT?

YES, AND HE HAD THE SCHOOL RECORDS AND THE MEDICAL RECORDS AND, IN FACT, DEFENSE COUNSEL HAD BEEN OBJECTED ABOUT THE JUVENILE CONVICTION COMING IN.

BUT THE SECOND EXPERT DID EXAMINE THE DEFENDANT?

YES.

AND WHO WAS THAT?

THAT WAS DR. PASCOWITZ.

HE IS A PSYCHOLOGIST OR PSYCHIATRIST?

PSYCHOLOGIST.

AND TALKED ABOUT HIM BEING BEAT BY HIS FATHER, THE BROTHER DYING, THE INTENSE EFFECT THIS HAD. NOW, AS FAR AS THE DRUG AND ALCOHOL ABUSE, MR.^TURNER KNEW ABOUT SOME OF THIS, BUT HE SAID IT IS A LAKE COUNTY JURY. I'M NOT GOING TO ALIEN ATE THEM WITH THIS DRUG AND ALCOHOL ABUSE WHICH HAS NOTHING TO DO WITH THE CRIME. DEFENDANT WHEN HE RECOUNTED THE CRIME TO MR.^TURNER HE WAS COMPLETELY CLEAR ABOUT ABSOLUTELY EVERYTHING AND THAT HE WAS VERY CLEAR NOT TO LEAVE ANY EVIDENCE. HE WENT IN THERE WITH GLOVES, A MASK.

AND HE WAS NOT UNDER THE INFLUENCE OF DRUGS AND ALCOHOL?

ABSOLUTELY NOT. THE PART ABOUT THE VALIUM, THE ONLY PERSON THAT EVER SAID ANYTHING ABOUT THAT WAS THE DEFENDANT SELF REPORTING.

BUT THE DEFENSE LAWYER TESTIFIED THAT IN HIS CONVERSATIONS WITH THE DEFENDANT, THE DEFENDANT DID NOT SAY THAT HE WAS UNDER THE INCLUDE OF DRUGS OR ALCOHOL AND THAT WAS DISCUSSED?

YES.

OKAY. AND DENISE TESTIFIED, THE GIRLFRIEND, THE CODEFENDANT THAT GOT 75 YEARS, TESTIFIED THAT THEY HAD SMOKED MARIJUANA EARLIER IN THE AFTERNOON BUT BY 11:00 THERE WAS NO EFFECT AT ALL. THEY HAD THIS COMPLETELY PLANNED OUT, HOW SHE WOULD DROP HIM OFF. HE HAD HIS MASK, HIS GLOVES AND HIS SILENCER WITH HIS GUN THAT HE HAD TEST FIRED.

WHEN WAS IT THAT THE DEFENSE LAWYER HIRED THESE TWO OTHER EXPERTS AND THEN WHAT DOES THE RECORD SHOW IN TERMS OF THE TIME HE SPENT CONSULTING WITH THEM?

AND, YOU KNOW, THEY WERE TALKING ABOUT THAT AT THE EVIDENTIARY HEARING AND SINCE HE WAS RETAINED BY THE PARENTS HE DIDN'T KEEP VERY, YOU KNOW, HE DIDN'T HAVE TO BILL LIKE WHEN YOU ARE PAID BY THE STATE.

IN OTHER WORDS WHEN WAS IT THAT HE HIRED THESE TWO OTHER EXPERTS AND THEN HOW MUCH CONSULTATION DID HE DO WITH THEM?

IT WAS MR.^EISENBERG WAS AN ATTORNEY FOR 30 YEARS AND HE WAS THE PRIVATE INVESTIGATOR. HE WAS WORKING AS A PRIVATE INVESTIGATOR. HE HAD CONTACTED DR.^TELL AFTER HE HAD GOTTEN THE HRS RECORDS AND ALL OF THE JUVENILE RECORDS.

SO MR.^TURNER ISN'T THE ONE THAT CONTACTED THEM?

YES, THEY TALKED TO HIM. THEY WERE ALL, AND THEN THE STATE DEPOSED THEM BOTH, DR.^TELL.

IN ADVANCE OF THE TRIAL OR THE PENALTY PHASE?

YES, SIR. IN ADVANCE OF EITHER THE TRIAL OR IT HAD TO HAVE BEEN BEFORE THE TRIAL.

HOW LONG BEFORE?

I DON'T KNOW.

ON THE HRS RECORDS, HOW THOROUGH WERE THOSE TYPICALLY THIS YOUNG MAN WAS COMMITTED TO THE DEPARTMENT TWICE, I GUESS, AND SO THERE WOULD TYPICALLY BE A PREDISPOSITION REPORT AND A PSYCHOLOGICAL EVALUATION. WAS THAT AVAILABLE IN THIS

CASE IN PART OF THE RECORD?

I DON'T KNOW IF IT IS PART OF THE RECORD OF THE THEY TALKED ABOUT IT ALL, THOUGH, AND IN THE ORIGINAL TRIAL, YOU SEE, THEY TALKED ABOUT HIS BACKGROUND AND HE WAS A TROUBLED YOUTH CRYING FOR HELP. THAT HIS FATHER BEAT HIM. AND THAT ALL CAME IN AS FAR AS THE MITIGATION.

THAT'S WHAT I AM SAYING IN THE PREDISPOSITION REPORT IT WILL SAY FAMILY HISTORY, SUBSTANCE ABUSE. IT HAS THE SEGMENTS THAT ARE SUPPOSED TO BE FILLED OUT. IS THAT AVAILABLE? WAS IT AVAILABLE TO COUNSEL HERE OR YOU JUST DON'T REMEMBER?

IF THAT WAS AN EXHIBIT, I DON'T GET THE EXHIBITS SO I'M SORRY, I DON'T KNOW AT THE ORIGINAL TRIAL IF THAT WAS INTRODUCED AS AN EXHIBIT BUT THAT WAS HOW THEY FOUND DR.^TELL.

SO THE HISTORY OF CHILDHOOD ABUSE CAME IN THROUGH THE MEDICAL EXPERT?

AND THROUGH THE SISTER.

AND YOU SAID THE FATHER TESTIFIED?

THE FATHER STARTED TO TESTIFY

AND ADMITTED WHAT HE HAD DONE TO THIS CHILD?

YES, AND THEN HE BROKE DOWN, AND MR.^HENDRIX WAS EXTREMELY UPSET AND SAID AND YOU'RE NOT PUTTING MY MOTHER THROUGH THIS. SO HE BASICALLY PREVENTED FROM THE BEGINNING DEFENSE COUNSEL FROM DOING THIS INVESTIGATION AND THEN AT SOME POINT

THAT'S A STRONG STATEMENT, BECAUSE, YOU KNOW, AGAIN WHEN WE GO THROUGH DIFFERENT TACTS WHICH WAS THIS WAS A REALLY GOOD PRESENTATION AND THIS WAS A THEY DID THE INVESTIGATION THEY NEEDED AND THEY DECIDED TO GO BASED ON THE FACT THAT THIS WAS A CHILD CRYING OUT FOR HELP. THAT'S ONE THING. ANOTHER WAY TO LOOK AT IT IS THEY REALLY WOULD HAVE LIKED TO HAVE PUT ON MUCH MORE BUT THEY COULDN'T BECAUSE HE WOULDN'T LET THEM. I SEE THOSE AS SOMEWHAT MUTUALLY EXCLUSIVE. THAT'S USUALLY WHY YOU DON'T PUT MORE ON. DID THE DEFENSE SAY THEY WANTED TO DO MORE AND THEY JUST COULDN'T BECAUSE HE WASN'T ALLOWING THEM TO CONTACT PEOPLE? I MEAN, THEY HAVE ALL OF THE SCHOOL RECORDS, THEY HAVE THE HRS RECORDS, TALKED TO THE SISTER, TALKED TO THE FATHER, WAS EXAMINED BY AT LEAST ONE, WELL, TWO, DR.^CROP AND DR.^PASCOWITZ SO IT DOESN'T LOOK TO ME LIKE YOU'RE SAYING THAT HE PREVENTED MUCH OF ANYTHING FROM HAPPENING.

HE PREVENTED THE MOTHER AND THEN THE MOTHER TESTIFIED AT THE EVIDENTIARY HEARING AND WHEN THE FATHER BROKE DOWN.

EVIDENTIARY HEARING IN THE 3.850?

YES.

AND ACTUALLY A SECOND SISTER TESTIFIED IN THE PENALTY PHASE.

DORIS ANN.

SO TWO SISTERS TESTIFIED.

OKAY. AND JUST A FEW OTHER POINTS, MR.^TURNER WAS A CERTIFIED CRIMINAL DEFENSE

ATTORNEY.

BEFORE YOU DO THAT I WANT TO MAKE SURE WE HAVE ENOUGH TIME. I AM CONCERNED ABOUT LAFORCE AND ESPECIALLY IF JUDGE LOCKETT HAD KNOWLEDGE OF THAT, MR.^LAFORCE, SO AFTER YOU CONCLUDE THIS BUT PLEASE MAKE SURE YOU ADDRESS THAT.

JUST A COUPLE OF CITES TO THE RECORD ABOUT HIS HISTORY AND HE ALSO CONSULTED EXTENSIVELY WITH DON WEST WHO WAS A RENOWNED CAPITAL ATTORNEY. HE HAD A LOT OF TRIAL EXPERIENCE. HE HAD DONE TWO CAPITAL CASES. MR.^KIRKLAND HAD MUCH EXPERIENCE SO AS FAR AS THE EXPERIENCE, AS FAR AS THE ALCOHOL AND DRUGS, THAT WAS HIS STRATEGY. HE DID NOT WANT TO PRESENT ALL OF THAT TO ALIENATE THE JURY. HE WAS NEVER TOLD BY THE DEFENDANT THAT HE WAS OUT OF HIS MIND. AT THE TIME OF THE MURDER. DR.^LIMMAN AND DR.^CROWN, THE DEFENDANT, DENIED THAT HE HAD COMMITTED IT SO THE TRIAL JUDGE'S QUANDARY WAS HOW CAN THEY TESTIFY IT IS EXTREME EMOTIONAL AND CAN'T APPRECIATE THE CRIMINALITY IF HE IS NOT TELLING THEM WHAT HIS MENTAL STATE IS AT THE TIME? THERE WAS NO EVIDENCE OF THE

PLUS AS YOU SAID HE WAS ABLE TO CLEARLY RECOLLECT WHAT HAD HAPPENED THAT NIGHT?

YES. AND EVEN THIS COURT ON DIRECT APPEAL, THERE WAS VAST EVIDENCE OF THE HEIGHTENED PLANNING AND PREMED {TATION}.

SO REALLY NOTHING OF THIS REALLY TAKES AWAY FROM, I MEAN, THERE WASN'T ANYTHING CONTRADICT OTHER THAT HE DIDN'T PLAN THIS ALL OUT, WHETHER HE OBVIOUSLY HAD IMPAIRED THOUGHT PROCESSES TO THINK IT WOULD BE A GOOD IDEA TO KILL SOMEBODY IN ORDER TO AVOID FOUR YEARS IN PRISON.

WELL, IT IS LIKE MR.^TURNER SAID AT THE HEARING HE TOLD HALF OF THE COUNTY BEFOREHAND HE WAS GOING TO DO IT AND HE TOLD THE OTHER HALF AFTERWARDS HE WAS HAD DONE IT. HE WAS OUT LOOKING FOR GUNS. HE HAD THIS PLANNED AND THEN THE NIGHT BEFORE ELMER WAS GOING TO GO IN AND MAKE THE DEAL AND PLEA, HE KILLED HIM, AND HIS WIFE IN A BRUTAL, BRUTAL CRIME AND TRY AND PURPOSELY ELIMINATED ALL OF THE EVIDENCE. HE KEPT TELLING PEOPLE THEY WON'T GET ME. I DIDN'T LEAVE ANY EVIDENCE. UNFORTUNATELY, THE CODEFENDANT, DENISE, MADE A DEAL. AS FAR AS MR.^LAFORCE AND HIS RELATIONSHIP TO THE JUDGE.

NOW, I WANT TO MAKE SURE THE JUDGE, THIS IS NOT DIRECTLY BEFORE US. THIS JUDGE ACTUALLY HAD SOME INDIRECT KNOWLEDGE OF THIS CASE BECAUSE HE WAS CONSULTED BY THE CODEFENDANT'S LAWYER REGARDING THE CODEFENDANT; IS THAT CORRECT?

YES, AND THAT WAS ALL DECIDED ON DIRECT APPEAL. THERE HAD BEEN A HEARING AT THE TRIAL LEVEL AND THE DEFENSE ATTORNEY HAD COME IN AND TALKED ABOUT HER CONTACT WITH JUDGE LOCKETT. THAT WAS ALL TAKEN CARE OF ON DIRECT APPEAL, AND

AND WE REJECTED THAT CLAIM?

ABSOLUTELY.

NOW WE HAVE AN ADDITIONAL FACT ABOUT NOT ONLY THE PROSECUTOR KNOW OR THE PROSECUTION OR SOMEONE KNEW THAT MR.^LAFORCE WAS AN INFORMANT FOR THE PROSECUTION, BUT DID THE JUDGE ALSO KNOW THAT?

FIRST OF ALL, THIS IS NOT PROPERLY BEFORE THE COURT, BECAUSE THEY ASKED TO TAKE THE DEPOSITION ON THE TURBIVILLE CONFLICT. DURING THE HEARING IT CAME UP THAT JUDGE LOCKETT'S NAME HAPPENED TO BE ON THE PLEA DEAL THAT HE WAS THE JUDGE. LAFORCE WAS

THE COOPERATING DEFENDANT. HE WAS CAUGHT WITH OTHER CODEFENDANTS AND HE AGREED TO TESTIFY AGAINST THEM, AND THEN HE GOT IN IN-HOUSE REHABILITATION ON A DRUG CHARGE. NOEL GRIFFIN WHO WAS AN INVESTIGATOR IN THE TASK FORCE SAID I KNOW HE WAS A COOPERATING DEFENDANT. I KNOW WE HAD USED HIM ON THINGS. I DON'T KNOW WHAT CASES HE MADE FOR US.

WHAT YOU ARE SAYING IS ALL WHAT OCCURRED IN THIS HEARING?

YES.

I MEAN, THIS QUESTION THAT THE DEFENSE WAS NEVER MADE AWARE OF THIS ADDITIONAL ASPECT OF MR. LAFORCE, THAT IS, THAT IN ADDITION TO HIM MAKING A DEAL TO BE A JAIL HOUSE SNITCH IN THIS CASE, HE HAD A LENGTHY INVOLVEMENT WITH THE STATE? I MEAN, WHETHER IT IS GOOD, BUT THAT WAS NOT KNOWN TO THE DEFENSE?

YES.

WAIT, WAIT. CORRECT IT WAS NOT KNOWN?

IT WAS NOT KNOWN TO THE DEFENSE. IT WAS NOT EVEN KNOWN TO THE STATE AND ALTHOUGH THE TRIAL JUDGE FOUND THAT THIS WAS NOT MATERIAL AND THE STATE AGREES BECAUSE

WHEN YOU SAY IT WASN'T KNOWN TO THE STATE. ISN'T IT ATTRIBUTABLE TO THE STATE?

WELL, AND THAT'S AN INTERESTING QUESTION.

WHO KNEW ABOUT IT?

THE INVESTIGATOR AND MR. LAFORCE, AND THE JUDGE WHO TOOK THE PLEA, WHO KNOWS. THE BURDEN OF PROOF IS THEIRS. WE DON'T EVEN KNOW, MR. GRIFFIN DOESN'T RECALL GOING IN AND TESTIFYING FOR HIM. WE DON'T KNOW IF THE STATE MADE HIM A NEGOTIATED PLEA, IF HE GOT THAT DEAL BASED ON SUBSTANTIAL ASSISTANCE, IF HE GOT ANY DEAL BASED ON SUBSTANTIAL ASSISTANCE, AND, I MEAN, THE STATE WINS ON THE MATERIALITY PRONG BECAUSE THIS IS NOT MATERIAL, THIS LITTLE BIT OF ADDITIONAL IMPEACHMENT. DEFENSE COUNSEL OBLITERATED LAFORCE.

CAN YOU EXPLAIN HOW HE WAS IMPEACHED AT THE TRIAL?

WELL, FIRST OF ALL, HE HAD BEEN IN JAIL WITH HENDRIX, AND HIS WIFE HAD SEEN IT IN THE PAPER THAT ELMER SCOTT WAS KILLED. SO HE BUDDIES UP TO HENDRIX, GETS HIM INFORMATION AND IS CALLING THE STATE ATTORNEY LOOKING FOR A DEAL ON THE CHARGES HE WAS IN ON AT THE TIME. SO THE JURY KNEW ALL OF THIS. I MEAN, YOU KNOW, AS SOON AS HE INTENTIONALLY GETS INFORMATION, IMMEDIATELY CALLS THE STATE ATTORNEY AND IS TRYING TO GET A DEAL. SO THEY KNEW ALL OF THAT, AND I MEAN THE STATE DOESN'T WANT TO ACQUIESCE IN THE TRIAL COURT'S FINDING THAT THIS IS BRADY MATERIAL, BECAUSE THIS, WHAT HE HAD DONE AS A COOPERATING DEFENDANT.

IT IS IMPEACHING, RIGHT?

NO.

IT IS NOT?

I DON'T SEE HOW THAT IS EVEN ADMISSIBLE BECAUSE IT IS AN UNRELATED CASE. IT WAS THREE AND A HALF YEARS BEFORE THIS TRIAL. WE DON'T KNOW, I MEAN FROM THIS RECORD, I MEAN IT

IS THEIR BURDEN OF PROOF TO SHOW THIS. WE DON'T KNOW THAT ANYBODY TESTIFIED FOR HIM OR HE GOT SUBSTANTIAL ASSISTANCE. WE KNOW THAT NOEL GRIFFIN HAD USED HIM AS A COOPERATING DEFENDANT AND HAD USED HIM IN OTHER CASES BUT HE DOESN'T REMEMBER WAS THERE ANY CONSIDERATION FOR THAT? SO HOW IS THAT IMPEACHMENT IN A CASE THREE AND A HALF YEARS LATER COMPLETELY UNRELATED, DIFFERENT PROSECUTOR AND MR.^GRIFFIN HAD NOTHING TO DO WITH THE PRESENT CASE, AND AS FAR AS IMPUTING KNOWLEDGE, HOW FAR DOES THAT EXTEND? I MEAN, WE HAVE A HUGE ATTENUATION HERE. WE HAVE NO CONNECTION TO THIS CASE WHATSOEVER EXCEPT AT LAFORCE AND THE INVESTIGATOR IS IN A COMPLETELY DIFFERENT OFFICE. THE PROSECUTOR DIDN'T KNOW ABOUT THIS. SO, I MEAN, THE STATE WINS ON MATERIALITY, BUT I HATE TO SEE THAT GO IN THAT IT IS EVEN BRADY EVIDENCE BECAUSE IT IS NOT. IT IS NOT BRADY EVIDENCE. AND IF THERE ARE NO FURTHER QUESTIONS ON THAT AND THE OBJECTION, HE WAS TALKING ABOUT THE STATE WAS ALL OVER THEM. THE OBJECTION ON PAGE 1208 IN THE TRIAL TRANSCRIPT WAS WHEN THEY WERE TALKING ABOUT A WITHHOLD OF ADJUDICATION THAT LAFORCE HAD. SO WITH THAT, MY TIME IS UP. I THINK I'LL JUST SIT DOWN. THANK YOU.

THANK YOU, MISS DAVIS.

I WON'T BE LONG, YOUR HONOR.

YOU DON'T HAVE LONG.

LAFORCE WAS THERE WAS NOT ONE CASE, HE TESTIFIED FOR FIVE YEARS IN NUMEROUS CASES. THIS TASK FORCE, HE WAS WORKING WITH THE STATE TASK FORCE. WE WERE STOPPED FROM INQUIRING ABOUT THIS OR JUDGE LOCKETT'S KNOWLEDGE, BUT THERE WAS EVIDENCE ON THE PLEA FORM WHICH IS AN EXHIBIT THAT SHOWS IT HAS TASK WRITTEN ON IT, ON THE PLEA FORM THAT LAFORCE DID. LAFORCE TESTIFIED AT TRIAL THAT HE THE WAY HE FOUND THE WAY HE GOT AHOLD OF GROSS WAS HE CALLED GRIFFIN. HE TESTIFIED, I CALLED GRIFFIN AND GRIFFIN CALLED GROSS. GROSS AND GRIFFIN JUST SAID THEY DIDN'T SAY THEY DIDN'T KNOW ABOUT THIS. THEY SAID THEY DIDN'T REMEMBER. GROSS'S POSITION WAS HE DIDN'T THINK THIS WAS BRADY OR HE WOULD NEED TO DISCLOSE IT THEN. HE NOW KNOWS HE DID, BUT THEN HE DIDN'T THINK HE HAD TO DISCLOSE IT, SO IT ISN'T THAT NOBODY KNEW {P} IT. I SUGGEST IF YOU LOOK AT THE RECORD THEY PROBABLY DID. PROBABLY EVERYBODY IN THE COURTROOM. MR.^GRAVES, WHO WAS {TUR} BYVILLE'S ATTORNEY TURBIVILLE'S ATTORNEY, JUDGE LOCKETT HAD SENTENCED HIM. AND HE HAD TALKED TO KNOLL GRIFFIN AND THAT'S HOW GROSS FOUND OUT ABOUT THE HENDRIX CASE AND HIS INFORMATION IN IT.

MR.^BRODY, YOUR TIME HAS EXPIRED.

THANK YOU, YOUR HONOR.

THANK YOU VERY MUCH.