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## Ernest Whitfield v. State of Florida

PLEASE RISE .

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT . PLEASE BE SEATED .

THE NEXT CASE ON THIS MORNING'S CALENDAR IS ERNEST WHITFIELD VERSUS THE STATE OF FLORIDA. PARTIES READY ? MR. CANNON, YOU MAY PROCEED .

MADAM CHIEF JUSTICE, MEMBERS OF THE COURT, MY NAME IS PETER CANNON . HERE ON BEHALF OF ERNEST WHITFIELD. MAY IT PLEASE THE COURT , ERNEST WHITFIELD'S CAPITAL DEATH PENALTY CASE WAS RUSHED TO TRIAL.

CAN YOU SPEAK UP A LITTLE BIT?

I'M SORRY.

WAS RUSHED TO TRIAL IN 91 DAYS BY AN ATTORNEY WHO TESTIFIED AT THE EVIDENTIARY HEARING THAT HE WAS UNPREPARED TO GO TO TRIAL .

IT WAS RUSHED TO TRIAL BECAUSE THE DEFENDANT DEMANDED IT , DIDN'T HE?

ABSOLUTELY, CORRECT.

LIKEWISE THE ONLY DEFENSE EXPERT AT TRIAL TESTIFIED BOTH DURING THE TRIAL AND AT THE EVIDENTIARY HEARING THAT HE WAS LIKEWISE UNPREPARED .

WHAT SHOULD THE TRIAL JUDGE HAVE DONE ONCE THE DEFENDANT DEMANDED SPEEDY TRIAL, INSTEAD THAT HE WANTED A SPEEDY TRIAL ? WHAT SHOULD HAVE BEEN THE NEXT STEP OF EITHER THE TRIAL COURT OR TRIAL COUNSEL?

THE LOWER COURT, THE TRIAL COURT SHOULD HAVE INQUIRED OF THE TRIAL ATTORNEYS , MR. WILLIAMS, ARE YOU READY TO TRY THIS CASE? WHEN YOU FILE A MOTION DEMANDING SPEEDY TRIAL UNDER THE RULES YOU ARE ANNOUNCING TO THE COURT , I'M READY FOR TRIAL. BOTH ATTORNEYS TESTIFIED THAT THEY WEREN'T READY FOR TRIAL. AS A MATTER OF FACT, WHAT IS CLEAR EVIDENCE IS WHEN THEY FILED THE MOTION DEMANDING SPEEDY, WHICH THEY THOUGHT WAS A BAD IDEA , THEY ALSO FILED A MOTION TO CONTINUE . AT THE SAME TIME.

DOESN'T THAT DEMONSTRATE THAT THE RIGHT OF THE SPEEDY TRIAL BELONGS TO THE INDIVIDUAL AND NOT THE LAWYER AND THAT THROWS THIS INTO THE CONFLICT THAT THE TRIAL JUDGE WAS FACED WITH? I MEAN, ISN'T THIS RECORD VERY, VERY CLEAR THAT THE TRIAL JUDGE AND THE LAWYERS WERE ALL CONCERNED THAT THIS INDIVIDUAL WAS INSISTING ON THIS SPEEDY TRIAL RULE , AND THAT, IN FACT , ISN'T THERE EVIDENCE THAT HE THOUGHT HE COULD USE THIS FOR HIS OWN TACTICAL AND STRATEGIC BENEFIT AND MAY BE CREATE A MISTRIAL AND PROBLEMS? ISN'T THAT PART OF THE EVIDENCE HERE?

THAT IS PART OF THE EVIDENCE, BUT IT'S VERY EAR RATIONALE THINKING AS THIS COURT'S DIRECT OPINION REVEALS, HE WAS IRRATIONAL DURING TRIAL. HE SUFFERED FROM MAMMAYI

LLNESSES, P T S D , P A R A N O I A A N D S E V E R E C R A C K C O C A I N E .

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

T H E R E W E R E H E A R I N G S A N D H E W A S D E T E R M I N E D T O B E C O M P E T E N T . H O W E V E R , T H E R I G H T T O S P E E D Y T R I A L , W E H A V E T O D I S T I N G U I S H B E T W E E N C O N S T I T U T I O N A L S P E E D Y T R I A L A N D S P E E D Y T R I A L O N T H E 3.191. T H I S C O U R T I N S E V E R A L O T H E R L O W E R C O U R T S H A V E C O N S I D E R E D T H A T T H E R I G H T T O W A I V E S P E E D Y T R I A L C A N B E W A I V E D B Y A N A T T O R N E Y W I T H O U T C O N S E N T O F T H E A T T O R N E Y S . A S A M A T T E R O F F A C T , T H E R E A R E N U M E R O U S C A S E S W H E R E A B A T T O R N E Y A N D W E H E A R D T H I S M O R N I N G E X P E R I E N C E D T R I A L J U D G E S W H E R E A T R I A L A T T O R N E Y W I L L G O A H E A D A N D A C Q U I E S C E T O A T R I A L D A T E T H A T ' S B E Y O N D S P E E D Y . O N C E H E D O E S T H A T , H E W A I V E S S P E E D Y U N D E R T H E R U L E S B Y M I S T A K E , S O T H E R I G H T T O D E M A N D S P E E D Y T R I A L U N D E R 3.191 I S W H O L L Y S T R A T E G I C . I T ' S A R I G H T T H A T ' S D E S I G N E D T O P R O T E C T , B U T I T I S A L S O A S T R A T E G I C D E C I S I O N T H A T I S I N T H E D I S C R E T I O N O F T H E A T T O R N E Y .

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

W E L L , 3.191 I S N O T E S S E N T I A L L Y A C O N S T I T U T I O N A L R U L E . I T I S A P R O C E D U R A L R U L E .

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

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

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

C O R R E C T .

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

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

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

T O B E G I N W I T H W E H A V E T O S T E P B A C K A N D R E M E M B E R W H A T T H E S U P R E M E C O U R T O F T H E

UNITED STATES TELLS US WITH REGARDS TO STRATEGY I N O R D E R T O M A K E A S T R A T E G I C D E C I S I O N Y O U H A V E T O H A V E A L L O F T H E I N F O R M A T I O N T O G O Y E S I ' M G O I N G T O P R E S E N T T H E S E W I T N E S S E S O R N O . T H E Y N E V E R C O N D U C T E D T H E A P R O P R I A T E I N V E S T I G A T I O N O N A L O T O F T H E S E W I T N E S S E S , N E V E R K N E W T H E I R E X I S T E N C E , P E G G Y L A R U E W H O D I D T E S T I F Y T H E D E F E N S E O R T H E I N V E S T I G A T O R O R T H E E X P E R T N E V E R T A L K E D T O H E R . W I T H R E G A R D S T O T H E A C T U A L C L A I M T H A T I T W A S C U M U L A T I V E , W E S E E F R O M T H E J U D G E ' S L O W E R C O U R T , T H E T R I A L J U D G E ' S O R D E R T H A T H E S T A T E S , L I S T E N , T H E E V I D E N C E O F I N T O X I C A T I O N I S A L L H E A R S A Y . I T I S B A S E D O N L Y O N M R . W H I T F I E L D ' S S T A T E M E N T S . D R . R E N A E W A S R E P E A T E D L Y C R O S S - E X A M I N E D B Y T H E S T A T E ' S A T T O R N E Y W H O T H E N U S E D I T I N H I S C L O S I N G A R G U M E N T S W H O S A I D T H I S I S A L L M R . W H I T F I E L D ' S S T A T E M E N T S .

BUT ON THE OTHER HAND WHEN YOU LOOK AT WHAT YOU ACTUALLY PRESENTED AT THE EVIDENTIARY HEARING FROM THESE WITNESSES, WE H A V E M I S S F O R D W H O S A I D H E A E A R E D H I G H A T T I M E S , A N D T H A T H E W A S V I O L E N T W H E N H E A E A R E D H I G H . M I S S L A R U E W H O T E S T I F I E D A N D I N D I C A T E D A T T R I A L T H A T S H E T H O U G H T M R . W H I T F I E L D W A S H I G H . T H E O T H E R S N E V E R - - T H E O T H E R T W O W I T N E S S E S T H A T Y O U P R E S E N T E D N E V E R A C T U A L L Y S A W H I M H I G H . S O W H A T A R E Y O U R E A L L Y A D D I N G T O T H E T E S T I M O N Y T H A T W A S A L R E A D Y P R E S E N T E D A T T R I A L C O N C E R N I N G H I S I N T O X I C A T I O N A T T H E T I M E O F T H E O F F E N S E ?

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

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

C O R R E C T . B U T W E --

B U T A T T H E T I M E O F T H E O F F E N S E .

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

S H E C A L L E D - - W A S S H E C A L L E D O R N O T C A L L E D ?

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

I M E A N , E V E N I F , A N D I R E A L L Y D O N ' T S E E T H I S , I M E A N I T H I N K T H E S E L A W Y E R S , I H A V E T O T E L L Y O U , D I D U N D E R T H E C I R C U M S T A N C E S , A T R E M E N D O U S J O B I N G E T T I N G A 7-5 D E A T H R E C O M M E N D A T I O N . H E R E I S A P E R S O N W H O S A Y S W E E K S B E F O R E , I ' M G O I N G T O K I L L Y O U . I ' M G O I N G T O K I L L A L L T H R E E O F Y O U B I T C H E S . H E T H E N N O T O N L Y G O E S A N D C O M E S I N A N D D O E S S O M E T H I N G T H A T M I G H T B E A F R E N Z I E D K I L L I N G . H E C O M E S I N A N D H E R A P E S O N E O F T H E V I C T I M S A N D T H E N G O E S O N . I M E A N , S O T H I S I S - - E V E N I F Y O U H A D S O M E O T H E R W I T N E S S E S T H A T C O U L D T A L K A B O U T T H E C O C A I N E U S E , F I R S T O F A L L R A P E I S N ' T A S P E C I F I C I N T E N T C R I M E , I S I T ?

N O , N O , C O R R E C T .

B U T Y O U S T I L L H A V E - - Y O U ' V E G O T F E L O N Y M U R D E R , D O N ' T Y O U ?

I T W A S N O T P R E S E N T E D T H A T W A Y A N D I T W A S N O T A R G U E D T H A T W A Y .

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

FAC TS OF THIS C AS E AND I DON 'T K NO W I 'VE EVER SEEN A S UC CE SSFU L VOLUNTARY INTOXIC ATION DEFENSE BUT M AYBE WE DON'T SEE THEM UP H ER E , HOW A DDITIONAL W IT NE SS ES C OULD HAVE EVE R C HA NGED THE C OMPLEX O F T HE - - COM PLECTION OF THE GUILT PHASE. COULD YOU PLEASE JUS T BRIEFLY ADDRESS THAT?

SURE. WITH REGARDS TO THE PREJUDICE I JUST WANT TO MAKE ONE COMMENT WITH REGARDS TO VOLUNTARY INTOXICATION. IT IS I NTERESTING AND THAT'S WHY THIS CASE IS SO INTERESTING. JUDGE WILLIAMS , W HO I S T HE TRIAL ON THAT, JUST PRIOR T O THIS CASE HAD T RIED A VOLUNTARY INT OXICATION D EFENSE WITH S IM IL AR F ACTS , AND GOT, IT W AS FIRST DEG REE MURDER AND GOT A LESSER CHARGE. H E U SE D A T OX IC OLIG IST.

THE JUDGE WHO WAS T HE DEFENSE ATTORNEY?

CORRECT. HAD JUST P RE VIOU SLY C OME OUT OF A VOL I NT OX .

THAT'S WHY HE M AD E A STRATEGIC D ECISION NOT TO CALL THE T OXIC OL OG IS T H E THOUGHT WOULD BE I NCON CLUSIVE.

HE NEVER TESTIFIED TO THAT. AS A MATTER OF FACT , JUDGE WILLIAMS SAYS I DON'T R ECAL L TALKING TO A T OX ICOL OGIS T. HE D OES S TATE I T WOU LD H AVE BEEN HELPFUL.

HIS C O- COUN SEL T ALKED T O ONE, RIGHT?

THAT I S A Q UEST IO N T HA T WE FIND IN DISPUTE. SHE TESTI FIED T HA T SHE - -

THE TRIAL C OU RT RES OL VE D THAT DISPUTE IN THE STATE'S FAVOR?

CORRECT, I N THE ORDER. HOWEVER , B UT - -

I T WAS A F AC T THA T THE TRIAL COURT FOU ND WERE THAT THE CO-CO UNSEL SPO KE T O A TOXICOL OGIST AND THEY S AID THAT THERE WAS NO WAY THEY WERE GOING TO G ET WHA T TH EY WERE LOOKING FOR. THAT THEY WERE BARKING UP THE WRONG TREE?

WELL , I T W AS B ASED MAI NL Y ON T AL KI NG T O F OLKS A ND S MITH-KLEIN. IT WAS SPEAKING TO A TOXICOLOGIST. THERE IS NO PHONE CALL TO A TOXIC OLOGIST AND SHE H AD NO RECOLLECTION .

HOW A BOUT H EL PING U S , YOU ARE TALKING B RO AD LY ABO UT THESE VARIOUS THINGS AND ORDINARILY WHAT WE SEE I N A CASE THAT H AS M ERIT , SOMETHING REALLY DRA MA TIC. T HAT IS , T HA T W E H AVE HAD CASES, OF COURSE , W HERE I T HAS BEEN THE F IR ST C AS E THA T A DEFEN SE L AWYER - - T HE FIRST DEATH PEN ALTY CASE THAT A DEFENSE LAWYER HAS HAD AND THE LAWYER D IDN'T HAVE A C LUE ABO UT D OI NG INVESTIGATION AND D IDN'T DO IT , A ND WE H AV E C AS ES W HE RE WE HAVE G RA NTED R EL IE F I N THOSE SITUATION S . YOU BROUGHT C LA IM S OF INEFFECTIVENESS BOTH DURING THE GUILT A ND THE PEN AL TY PHASE. HOW ABOUT SINGLING OUT F OR US WHAT YOU BELIE VE T O BE THE M OST DRA MA TI C , O KA Y , DEFICIENCY ON T HE P AR T O F COUNSEL HERE AND T HE N B ACK THAT UP W IT H , YOU KNO W , WHERE THE TRI AL JUDGE WEN T WRONG A ND I N R EJ EC TING T HA T CLAIM? Z WHAT'S THE MOST D RA MATI C THING THAT YOU CAN THINK O F HERE O N THI S R EC OR D A ND TEL L US WHY THE JUDGE W AS W RONG IN HIS RULING ON THAT?

SURE. I WOULD THINK THE M OST DRAMATIC ASPECT OF ANY TRIAL IS WHEN YOU HAVE YOUR EXP ER T UP ON DIREC T E XAMINATI ON AND YOU ARE THE TRIAL ATTORNEY AND T HE U LTIM ATE ISSUE OF THE CASE IS W HE TH ER M R. W HITFIELD IS GOING TO BE CONVICTED OF FIRST DEGREE MURDER OR NOT. IS ASKING Y OU R E XP ER T , BAS ED ON EVERYTHING YOU'VE R EAD , DR. RANAE, B ASED O N YOU R OBS ERVATIONS AND YOUR TESTING, CAN YOU GIVE U S A N

OPINION WHETHER MR. WHITFIELD COULD PERFORM THE REQUISITE INTENT TO PERFORM FIRST DEGREE MURDER?

HE STATES, I DON'T KNOW. I DIDN'T HAVE ENOUGH TIME. I WOULD HAVE LIKED TO HAVE HAD MORE TIME BUT I DIDN'T HAVE ENOUGH TIME AND I WOULD LIKED TO HAVE DONE MORE TESTING. I THINK THAT IS VERY DRAMATIC. SO WHEN WE HAVE THE TESTIMONY OF PEGGY LARUE TALKING ABOUT BRIGHT EYES CONSISTENT WITH DRUG USE THE JURY IS LOOKING AT THE DEFENSE'S ONLY EXPERT AND HE IS TELLING THE JURY I CAN'T TELL YOU WHETHER HE WAS -- WHETHER HE HAD PREMEDITATION OR NOT. I THINK THAT'S VERY DRAMATIC.

DON'T WE KNOW DR. THE DOCTOR'S TESTIMONY THAT ONE OF THE PROBLEMS WAS THE DEFENDANT'S LACK OF COOPERATION WITH HIM?

THE DEFENDANT'S LACK OF COOPERATION PERMEATES EVERYTHING, THE DEMAND FOR SPEEDY WHICH THE ATTORNEY SHOULD HAVE WAIVED AND LIKEWISE AND DR. MASH AND DR. FISHER WHO TESTIFIED. NOW, WHAT WE SHOULD REMEMBER IS THE LOWER COURT --

COULD YOU ANSWER MY QUESTION FIRST?

SURE. DR. FISHER AND DR. MASH BOTH TESTIFIED THAT MR. WHITFIELD WOULD NOT HAVE BEEN ABLE TO ACT RATIONALLY AT THAT TIME AND ABLE TO AID IN HIS DEFENSE BECAUSE OF HIS SEVERE CRACK COCAINE PROBLEM, HIS SEVERE PARANOIA AND HIS FEAR -- SEVERE POSTTRAUMATIC STRESS DISORDER AND HE HAS BRAIN DAMAGE.

DID THE DOCTOR TESTIFY THAT THE PROBLEM WITH HIS TESTIMONY WAS THE DEFENDANT'S LACK OF COOPERATION? HE COULDN'T SUFFICIENTLY FORM AN OPINION BECAUSE OF THE DEFENDANT'S LACK OF COOPERATION? YES OR NO?

NO, I WOULD THINK THAT A BETTER WAY TO CHARACTERIZE IT IS THAT THE DEFENDANT WAS UNCOOPERATIVE, BUT IF HE HAD MORE TIME HE WOULD HAVE BEEN ABLE TO GET MR. WHITFIELD TO COOPERATE MORE. THESE 91 DAYS WERE NOT PRODUCTIVE 91 DAYS, EITHER. --

HOW DO YOU REACH THAT CONCLUSION THAT YOU JUST MADE THAT IF THERE HAD BEEN MORE TIME HE COULD HAVE GOTTEN HIM TO COOPERATE WHEN WE HAVE EVIDENCE THAT THE DEFENDANT IS SAYING THAT I WANT IT, I WANT THIS BECAUSE I WAS TRYING TO GET A POSSIBLE MISTRIAL, SO HOW -- BASED ON THAT, HOW CAN YOU SAY THAT THE DEFENDANT WOULD HAVE GIVEN MORE TIME, COOPERATED?

I WOULD SAY BASED ON MR. WHITFIELD'S STRATEGY, IT HASN'T WORKED SO FAR. IT HASN'T, AND IT IS BAD STRATEGY AND I DON'T THINK ANY LAWYER WOULD ACT THAT WAY WITH REGARDS TO STRATEGY. IT WOULD BE UNETHICAL FOR A LAWYER TO ACT THAT WAY UNDER STRATEGY.

THIS IS THE DEFENDANT'S OWN STRATEGY.

CORRECT. AND IT WAS BAD STRATEGY.

AND SO IT SEEMS TO ME THAT YOUR ARGUMENT GETS BACK TO THE QUESTION OF SHOULD THE TRIAL JUDGE OR ARE YOU ADVOCATING THAT THE TRIAL JUDGE SHOULD HAVE AT THE TIME MR. WHITFIELD REQUESTED THE SPEEDY TRIAL HAVE HAD SOME KIND OF COMING QUEE WITH HIM TO MAKE SURE HE -- COLLOQUY WITH HIM?

HE DID HAVE A COLLOQUY. MR. WHITFIELD WANTED TO FIRE HIS ATTORNEYS. HE PASSED HIS COMPETENCY TEST. THE ATTORNEYS PASSED A NELSON BUT MR. WHITFIELD FAILED THE F

AR ETTA H EARI NG . THE COURT SAID YOU ARE NOT C OMPETENT TO REP RE SENT YOURSELF. MEANING YOU ARE NOT COMPETENT TO MAKE STR ATEGIC DECISIONS F OR YOU RS EL F A T THE TRIAL AND YOU NEED THE AID OF THE ATT ORNEYS.

YOU ARE IN YOUR R EBUT TAL , MR. CANNON.

I SEE. I WILL SIT D OW N .

GOOD MORNING. MAY IT PLEASE THI S H ON ORAB LE COURT. MY NAME I S CATHE RINE B LA NCO. I A M WIT H THE A TT ORNE Y GENERAL'S OFFICE REPRESENTING THE STATE OF FLORIDA IN THIS POS T CONVICTION CASE.I WOULD L IKE TO J US T B RIEFLY EMP HASIZE SOMETHING T HAT' S VERY IMPORTANT. MR. CANNON MENTIONED IT DURING HIS ARGUMENT WHEN H E WAS ADDRESSING THE U NITED STATES SUPREME COURT PRECEDENT , AND T HA T I S A QUOTE FROM THE W IGGI NS C ASE AND IT IS SO IMPORTA NT THA T I MUST QUOTE IT VER BA TI M . AND THIS IS IN W IGGI NS , UNITED STATES SUPREME COURT EMPHASIZING THAT S TRIC KL AN D DOES NOT REQUIRE COUNSEL TO INVESTIGATE EVERY CONCEIVEABLE LINE O F MITIGATING EVIDENCE, NO MATTER HOW U NL IKEL Y T HE EFFORT WOULD BE TO A SS IS T THE DEFENDANT IN SENTENCING. N OR DOE S STRIC KLAN D R EQUI RE DEFENSE COUNSEL T O P RE SENT EVIDENCE IN EVE RY SINGLE CASE. BOTH CONCLUSIONS WOULD ENT ER NEAR WITH THE CONSTITUTIONALL Y PROTE CTED INDEPENDENCE OF COUNS EL AT THE HEART OF STRICKLAND AND THAT'S IN THE W IGGI NS CASE , WHICH, OF COURSE , T HE DEFENSE RELIES O N QUITE FREQUENTLY.

WELL, CAN WE THEN DISTINGUISH BETWEEN, ANDTHIS IS WHAT' S I MP ORTANT TO ME, WHAT EVE N W IT H H IN DS IG HT REALLY WOULD HAVE STILL B EEN A STR AT EGIC D EC IS IO N A ND WHAT MIGHT BE A R ESUL T O F HAV ING THIS RUS H T O T RI AL ? A GAIN , I T LOO KS T O M E LIKE A LOT WAS A CT UALLY C ONSIDERED, BUT COULD Y OU TALK A BO UT WHETHER THE - - J US T I F W E LOOK AT T HE PRE JU DICE P RONG , LET'S JUST, YOU K NO W --

FOCUS ON PRE JU DI CE WHAT WOULD HAVE BEEN DIFFERENT?

WHETHER IT U ND ERMINE S OR SHOULD UND ERMI NE OUR CONFIDENCE IN THE OUTCOME.

CERTAINLY NOTHING DURING EITHER THE GUILT PHASE O R THE PENALTY PHASE. YOU HAVE BOTH DEF EN SE COUNSEL AT THE EVIDENT IA RY HEARING T ESTIFYING T HA T T HE Y D EPOSED ALL OF THE WIT NESSES THAT THEY NEEDED TO DEPOSE. THEY WERE R EADY , CER TA INLY FOR THE G UI LT P HA SE A ND I 'L L ADDRESS THE PENALTY SUBSEQUENTLY BUT CERTAINLYFOR THE GUILT PHASE THEREWERE NO WITNESSES THAT WERE NOT D EPOSED. MOST IMP ORTANTLY I F COUN S EL H AS THE S TRAT EGIC A BILI TY T O WAIVE SPEEDY TRIAL, WHICH HE CERTAINLY DOES, A S MR. CANNON HAS EMPHASI ZE D THIS MORNING THEN HE CERTAINLY CAN ASS ERT IT IN ACCORDANCE WITH HIS C LIEN T' S STEADFAST D EMANDS. THIS WAS A VER Y STRAIGH TFORWARD CASE. THERE WAS --

IS IT S OM ET HI NG THAT, YOU KNOW, BECAUSE IT IS NOT THE CONSTITUTIONAL RIGHT BUT T HE FLORIDA RULE RIGHT. IS THAT S OMEHING THA T BELONGS TO T HE CLI EN T O R I S IT - - C AN THE ATT ORNEY D O IT ONE WAY OR ANOTHER W ITHOUT THE CLI EN T' S A ROVA L?

IN THI S CAS E , I T I S N OT D EFIN ED AS A P ER SO NA L FUNDAMENTAL RIGHT OF THECLIENT. THOSE RIGHTS THAT WERE RECOGNIZED IN FLORIDA VERSUS NIXON DISCUSSED ORIGINALLY, I THI NK , B Y T HE U NITE D STATES SUPREME COURT AND THOSE, OF COURSE , T HE PERSONAL RIGHTS THAT THE DEFENDANT MUST CONSENT TO ARE WHETHER TO ENTER A G UILTY PLEA, T O WAIVE A J URY AND WHETHER TO TESTIFY ON ITS O WN BEHALF OR WHETHER T O TAKE AN A EAL S O THIS IS NOT ONE OF THOSE RIGHTS. THIS IS, IN FAC T , A R IG HT THAT IS WITHI N THE R EA LM O F STRATEGY, A ND WE H AVE O N T HE R ECORD DURING THE TIME O F TRIAL , TRIAL C OU NS EL ANNOUNCING, I WIL L F IL E A DEMAND FOR SPEEDY TRIAL I F I CAN CONTINUE TO T AK E DEPOSITIONS, IF I CAN GET THE STATE 'S COO PERA TION , A ND WITH THAT UND ERSTAN DI NG ,

BECAUSE IT IS SO IMPORTANT FOR ME TO HAVE - - TO BUILD ESSENTIALLY AN ALLIANCE WITH HIS CLIENT, TO HAVE A GOOD WORKING RELATIONSHIP WITH HIS CLIENT, TRIAL COUNSEL AT THE TIME OF THIS TRIAL ANNOUNCES ON THE RECORD THAT HE HAS MADE A STRATEGIC DECISION ACKNOWLEDGING THAT HE CAN -- HE CERTAINLY CAN WAIVE IT, BUT INSTEAD, IN FACT, DOES, IN FACT, FILE HIS DEMAND FOR SPEEDY TRIAL.

THEN THE DEPOSITION CONTINUED ON THEN?

ABSOLUTELY, DEPOSITIONS CONTINUED ON AND NOT ONLY THAT, YOUR HONOR, BUT OCCASIONALLY THIS COURT WILL SEE CASES THAT INVOLVE COMPLAINTS ABOUT THE STATE THAT SOMEHOW THE STATE WAS NOT AS FORTHCOMING AS THEY SHOULD HAVE BEEN IN A PARTICULAR CASE AND IN THIS CASE THERE ARE CERTAINLY NO PROBLEMS IN CONNECTION WITH THE STATE'S ROLE IN ACCOMMODATING THIS DEFENDANT'S DEMAND, IN RESPONDING TO THE TRIAL COURT'S DIRECTIVE THAT YOU WILL MAKE SURE THAT THOSE WITNESSES ARE AVAILABLE, THAT THIS CASE IS GOING TO BE FAST TRACKED. IT WILL BE TRIED WITHIN 60 DAYS, AND, INDEED, IT WAS AND CERTAINLY WE SEE NO COMPLAINTS RAISED.

NOW, THE ONE THAT YOU SAID YOU WERE GOING TO GET TO THE PENALTY PHASE.

YES, YOUR HONOR.

IT WAS A 7-5.

REMARKABLE, WASN'T THAT?

YOU SHOULD LOOK AT IT THAT WAY OR SAY OH, MY GOODNESS IT WAS THAT CLOSE BECAUSE THIS DICK TESSIMONY HAD SOME VERY, VERY SIGNIFICANT -- THIS PARTICULAR DEFENDANT HAD VERY, VERY SIGNIFICANT BACKGROUND ISSUES. I WAS STRUCK BY THE DRAMATIC TESTIMONY PRESENTED BY CCR OF MR. ATKINS WHO HAD ACTUALLY COUNSELED THE FAMILY AND SAID THAT THIS WAS THE MOST DYSFUNCTIONAL FAMILY HE HAD EVER SEEN IN ALL OF HIS YEARS OF COUNSELING AND THEN I DIDN'T GET A SENSE BUT THE EMPLOYER APPARENTLY HE ACTUALLY THIS MAN WAS ACTUALLY EMPLOYED AROUND THE PERIOD OF TIME WHICH IS UNUSUAL, YOU KNOW, PEOPLE ARE MORE LIKELY THAT ARE THIS KIND OF SITUATION NOT TO BE, AND COULD HAVE TESTIFIED TO THAT, SO AS TO THOSE TWO WITNESSES, COULD YOU TELL US, ESPECIALLY THE EMPLOYER, WHETHER -- WHAT THEIR TESTIMONY WAS AND WAS THAT EITHER A STRATEGIC DECISION NOT TO CALL ANY ONE FOR THE EMPLOYMENT OR WAS IT A -- JUST A QUESTION OF TIME OR LACK OF COOPERATION?

NO, ACTUALLY WITH RESPECT TO THE EMPLOYER, MR. WILLIAMS, JUDGE WILLIAMS NOW, TESTIFIED THAT HE -- HE MET WITH MR. PETERSON AND DID NOT CALL HIM. DECIDED NOT TO CALL HIM.

SO HE KNEW ABOUT THIS?

YES, HE KNEW ABOUT HIM. NOW, THE REASONABLENESS OF THAT STRATEGY IS BORNE OUT BY THE FACT OF, WELL, WHAT IS MR. PETERSON TESTIFIED TO AT THE EVIDENTIARY HEARING. THAT THIS WAS A GOOD WORKER. I NEVER HAD ANY PROBLEMS WITH HIM. HE SHOWED UP ON TIME. WELL, THAT'S OBTAINED TO AN ALLEGATION AT THE TIME OF TRIAL THAT THIS DEFENDANT USES COCAINE WITH SUCH FREQUENCY THAT HE IS REALLY UNABLE TO COP E IN SOCIETY. NOW, MR. ATKINS, LET'S TALK ABOUT MR. ATKINS. MR. ATKINS IS A VERY PROMINENT MEMBER OF THE SARASOTA COMMUNITY. HE WAS THE FIRST AFRICAN-AMERICAN ELECTED OFFICIAL THERE. BOTH TRIAL ATTORNEYS WERE FAMILIAR WITH MR. ATKINS BUT UNAWARE OF HIS CONNECTION WITH THIS CASE. NOW, HIS CONNECTION WITH MR. WHITFIELD GOES BACK TO 1983-84. AND IT ENDS -- AND HIS CONNECTION IS HE IS WHAT'S CALLED AN OUTREACH COUNSELOR AT A STORE FRONT, A REALLY A PROGRAM FOR FAMILIES THAT THEY CAN VOL

UNTEER O R C AN E S S E N T I A L L Y , I G U E S S , B E C O U R T O R D E R E D T O A T T E N D . N O W , C C R H A S R E L I E D I N T H E I R R E P R E S E N T A T I O N S A N D T H E I R B R I E F S , T H A T T H I S W A S A C O U R T O R D E R E D A O I N T M E N T T O T H E S T O R E F R O N T O R T O , I B E L I E V E I T I S F L I P , F A M I L I E S , L I F E , I N V E S T I G A T I O N P R O G R A M . B U T I N A N Y E V E N T , T H A T T H E F A M I L Y W A S O R D E R E D I N T O T H I S P R O G R A M S O M E T I M E I N T H E E A R L Y 8 0 s . W E L L , A N D T H E Y R E P R E S E N T T H A T , W E L L , T H E R E F O R E , T H E C O U R T R E C O R D S W O U L D H A V E C O N F I R M E D T H I S A N D T H E Y S A Y T H E Y W O U L D G E T - - F R O M T H E T E S T I M O N Y O F T H E D E F E N D A N T ' S M O T H E R , W H O W A S I N T E R V I E W E D A T T H E T I M E O F T R I A L , W H O W A S D E P O S E D A N D L I S T E D A S A S T A T E ' S W I T N E S S . S H E S H O W E D U P F O R T R I A L I N W H A T D E F E N S E C O U N S E L B E L I E V E D W A S A N I N T O X I C A T E D S T A T E A N D N O M E N T I O N W A S E V E R M A D E O F F R E D S T A N L E Y A T K I N S . N O W , A C T U A L J U V E N I L E R E C O R D S W E R E N E V E R I N T R O D U C E D A T T H E P O S T C O N V I C T I O N H E A R I N G . W H A T W E H A V E I S T H E T E S T I M O N Y O F M R . A D K I N S W H O S A Y S I T H I N K T H E Y W E R E C O U R T O R D E R E D . I T H I N K T H E Y W E R E C O U R T O R D E R E D , B U T C R I S T I L L D O E S N ' T H A V E T H O S E R E C O R D S C O N F I R M I N G T H A T . S O W H A T D E F E N S E C O U N S E L C E R T A I N L Y A T T H E T I M E O F T R I A L W A S R E L Y I N G O N W O U L D B E T H E I N T E R V I E W S W I T H T H E M O T H E R , T H E I N T E R V I E W S W I T H T H E S I S T E R , T R Y I N G T O G E T B A C K G R O U N D I N F O R M A T I O N O N T H I S . R E M E M B E R , T H I S I S A 1 9 9 5 M U R D E R .

S O E X A C T L Y 1 2 Y E A R S E A R L I E R T H E R E W A S A S I N G L E O U T R E A C H C O U N S E L O R T H A T C O U L D H A V E B E E N E S S E N T I A L L Y A G O O D W I T N E S S . W E L L , Y O U K N O W , I T I S A L M O S T A S I F Y O U A R E S A Y I N G U N L E S S I H A V E T H E L A T E J O H N N I E C O C H R A N , Y O U K N O W , A V A I L A B L E T O H A V E R E P R E S E N T E D T H I S D E F E N D A N T , W H I C H H E A C T U A L L Y A S K E D F O R O R M E N T I O N A T T H E T I M E O F T H E T R I A L , A N D A N E X P E R T W I T N E S S O F T H E C A L I B E R O F D R . H E N R Y L E E F R O M N E W E N G L A N D , T H A T T H E C A L I B E R O F T H E W I T N E S S I S G O I N G T O S O M E H O W B E C R I T I C A L , A N D T H A T ' S C E R T A I N L Y N O T A Q U E S T I O N F O R C O N S I D E R A T I O N .

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

W E H A V E A C T U A L L Y A V E R Y L E N G T H Y , A 1 2 - P A G E S E N T E N C I N G M E M O T H A T ' S F I L E D A T T H E T I M E O F T R I A L , Y O U R H O N O R S , A N D D E F E N S E C O U N S E L I N T H A T A N D I T A E A R S I N T H E R E C O R D , 2 0 5 9 T H R O U G H 2 0 6 1 , I B E L I E V E , O U T L I N I N G W H A T D R . R I N E E R P R I M E L E T T E R -- P R I M A R I L Y R E V I E W S . H E R E F E R S T O P O L I C E R E C O R D S , H O S P I T A L R E C O R D S , R E C O R D S S U R R O U N D I N G A S H O O T I N G T H A T T H E D E F E N D A N T W A S S H O O T I N A P R I L O F 1 9 9 5 . T H E Y H A V E I N T E R V I E W S . H E H A S A L S O D O N E I N T E R V I E W S W I T H F A M I L Y M E M B E R S A N D S O T H E - - W I T H R E S P E C T T O S C H O O L R E C O R D S , I N T E R E S T I N G L Y E N O U G H , F R E D A T K I N S , T H E W I T N E S S W H O T E S T I F I E D A T T H E E V I D E N T I A R Y H E A R I N G A T P A G E 1 2 6 2 O F T H E P O S T C O N V I C T I O N R E C O R D , M R . A T K I N S S T A T E S : I T R I E D T O G E T I N F O R M A T I O N F R O M T H E S C H O O L S . I T R I E D T O F I N D O L D P R I N C I P A L S A N D T E A C H E R S T H A T M I G H T H A V E R E S P O N D E D B U T Y O U K N O W T H E Y H A V E B A S I C A L L Y N O T M A I N T A I N E D A N Y O F T H E I N F O R M A T I O N F R O M M Y E X P E R I E N C E W I T H H I M . S O T H E B O T T O M L I N E I S , T H E R E W A S N O W A Y F O R A N Y R E A S O N A B L E C O U N S E L T O D I S C O V E R T H E N A M E O F F R E D S T A N L E Y A T K I N S F R O M R E V I E W I N G T H E M A T E R I A L S T H A T T H E Y H A D A V A I L A B L E T O T H E M A T T H E T I M E A N D U N L E S S T H E D E F E N D A N T ' S F A M I L Y W A S G O I N G T O B E F O R T H C O M I N G W I T H I N F O R M A T I O N F R O M A N O U T R E A C H C O U N S E L O R T H A T T H E Y H A D K N O W N 1 2 Y E A R S E A R L I E R , A N D I N T E R E S T I N G L Y E N O U G H , M R . A T K I N S W A S V E R Y G E N E R O U S T O T H I S P A R T I C U L A R D E F E N D A N T . H E A C T U A L L Y O P E N E D H I S H O M E T O T H E D E F E N D A N T A N D G A V E H I M A N O O R T U N I T Y T O L I V E W I T H H I S F A M I L Y . A F T E R A B O U T S I X M O N T H S , A A R E N T L Y T H E D E F E N D A N T W A S B R I N G I N G H O M E U N D E R S I R E A B L E O T H E R Y O U N G M E N I N T O T H E H O M E A N D M R . A T K I N S G A V E H I M A C H O I C E . Y O U A B I D E B Y T H E R U L E S I N T H I S A R E N T L Y A V E R Y S T A B L E H O M E O R Y O U H A V E T O B E L I E V E A N D M R . W H I T F I E L D E L E C T E D T O L E A V E T H A T S T A B L E E N V I R O N M E N T . S O I T I S N O T A P A R T I C U L A R L Y I M P A S S I O N E D P L E A T O S A Y T H A T E V E R Y T H I N G I N T H I S C A S E W O U L D H A V E B E E N D I F F E R E N T H A D M R . A T K I N S B E E N D I S C O V E R E D A N D H E S H O U L D H A V E B E E N D I S C O V E R E D . Y O U H A V E A T T O R N E Y S T H A T W O U L D H A V E U S E D M R . A T K I N S T H A T K N E W A B O U T H I M , C H A R L I E A N N S C O T T S A Y S S H E D O E S N ' T R E C A L L

SEEING HIS NAME I N JUVENILE RECORDS. CERTAINLY THAT WOULD HAVE ALERTED HER TO HIS P RE SENC E A ND THEY CERTAINLY WOULD HAVE USED HIM. WE D ON'T D ISPU TE THAT , BUT WHAT YOU HAVE AT THE TIME O F TRIAL IS A D EFENSE R EL YING IN PART ON A N I M P O V E R I S H E D BACKGROUND AND WHAT I S W H A T MR. ATKINS CAN TESTIFY TO. THE T R I A L C O U R T D O E S , I N FACT, A D D R E S S T H E I M P O V E R I S H E D BACKGROUND, THE CRACK COCAINE ADDICTION T H A T ' S PROFFERED AND DOES F I N D H E C A M E F R O M A N I M P O V E R I S H E D B A C K G R O U N D A N D I G I V E T H I S CONSIDERABLE RATE. NOW , J U S T S U O S E T H A T T H E I M P O V E R I S H E D B A C K G R O U N D T H A T HE HAS V I A S T A N L E Y A T K I N S A G A I N S T T H E V E R Y P O W E R F U L A N D S I G N I F I C A N T A G G R A V A T E - - A G G R A V A T I N G F A C T O R S I N T H I S C A S E . H E T H R E A T E N S T H E V I C T I M S A F E W W E E K S BEFORE THE M U R D E R . H E U S E S A M E A N S O F E N T R Y T O G E T I N T O H E R H O M E , H E R A P E S O N E V I C T I M A T K N I F E P O I N T I N O R D E R T O D O T H A T H E T H R E A T E N S T H E V I C T I M ' S S L E E P I N G O N E - Y E A R - O L D C H I L D N E X T T O H E R A N D H E M A K E S A M O T I O N A S I F A S T A B B I N G M O T I O N W I T H H I S H A N D W I T H T H E K N I F E . H E G O E S T O T H E V I C T I M ' S R O O M N E X T D O O R A N D S T A B S H E R 2 1 T I M E S S O T H I S W A S N O T A N U N K N O W N V I C T I M T O H I M . T H I S W A S A V I C T I M W H O W A S S O U G H T O U T B Y T H I S D E F E N D A N T W H O H E P U R R S E E F E D W A S P E R H A P S - - P E R C E I V E D A S A N O B S T A C L E F O R H I M R E U N I T I N G W I T H H I S F O R M E R G I R L F R I E N D . H E S T A B S H E R I N T H E N E C K , I N T H E H E A R T , H E S T A B S H E R I N B O T H L U N G S . S H E S T U M B L E S O U T A N D S H E I D E N T I F I E S E R N E S T S T A B B E D M E . I ' M D Y I N G A N D H E S T A B S H A D W O M A N W I T H H E R F I V E C H I L D R E N S L E E P I N G I N T H E B E D R O O M W I T H H E R . S O H E I S N O T A P A R T I C U L A R L Y S Y M P A T H E T I C D E F E N D A N T , Y O U R H O N O R .

A N D D I D T H E D E F E N D A N T C O N F E S S T O H A V I N G C O M M I T T E D T H E A C T S T H A T L E D T O T H E V I C T I M ' S D E A T H ?

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

L A R U E W A S C A L L E D B Y T H E S T A T E ?

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

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

I T W O U L D H A V E B E E N W I T H I N A T W O - H O U R W I N D O W . I T W A S A R O X I M A T E L Y 7 : 0 0 A . M . S H E S A I D T H A T T H E D E F E N D A N T S H O W E D U P O N H E R D O O R S T E P A N D H E T E L L S H E R , I S T A B B E D T H E G I R L A N D I S T A B B E D H E R 1 8 T I M E S . N O W , T H A T ' S R E M A R K A B L E Y C L O S E T O T H E 2 1 T I M E S T H A T T H E M E D I C A L E X A M I N E R F O U N D . N O T O N L Y T H A T , B U T H E T H E N H A S H A D T H E W H E R E W I T H A L T O H A V E C L E A N E D U P , C H A N G E D C L O T H E S A N D H E D I S C A R D E D T H E M U R D E R W E A P O N T O P O F A R O O F A N D W H E N H E I S A R E H E N D E D B Y L A W E N F O R C E M E N T T H E F I R S T T H I N G H E S A Y S I S I ' M H E R E , I D I D I T A N D H E T A K E S L A W E N F O R C E M E N T T O T H E L O C A T I O N O F T H E M U R D E R W E A P O N S O V E R Y C O N S C I O U S .

D I D H E C O N F E S S T O T H E R A P E A L S O ?

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

SPEEDY TRIAL AND THEY DID NOT HAVE DNA. WHAT THEY HAD WAS BLOOD EVIDENCE THAT LINKED THE BLOOD TYPE.

LET ME GO BACK ON ATKINS. WHAT DOES THE RECORD REFLECT HOW WE NOW KNOW ABOUT THAT WITNESS?

I DON'T KNOW THAT IT DOES, YOUR HONOR. PRESUMABLY IT IS BECAUSE WITH THE LUXURY OF TIME YOU HAVE MORE OPPORTUNITIES TO SAY, WELL, LET'S GO BACK TO THE YEAR BEFORE THAT AND THE YEAR BEFORE THAT AND THE YEAR BEFORE THAT. MR. CANNON MAY BE ABLE TO SPEAK AND SAY, WELL, WE FOUND MR. ATKINS, YOU KNOW, AFTER TALKING WITH MY CLIENT.

THAT'S NOT IN THE RECORD?

IT DOESN'T SHOW HOW HE WAS ACTUALLY DISCOVERED. WHAT IT DOES IS YOU HAVE TESTIMONY FROM THE MOTHER OF THE DEFENDANT WHO SAYS THAT MR. ATKINS WAS THE IR OUTREACH COUNSELOR AND THAT SHE BELIEVED IT WAS COURT ORDERED. THIS DEFENDANT'S MOTHER HAS SIX CHILDREN BY I BELIEVE THREE DIFFERENT FATHERS. SO THERE ARE MULTIPLE LAST NAMES AND THE DEFENDANT'S MOTHER HAS BEEN MARRIED SEVERAL TIMES, TOO, SO SHE IS REFERRED TO IN THE RECORD BY VARIOUS LAST NAMES SO ACTUALLY HOW ABOUT ATKINS WAS DISCOVERED I DON'T BELIEVE IS REFLECTED IN THE RECORD IN LIGHT OF THE FACT THAT THERE WERE NO JUVENILE RECORDS THAT ARE OFFERED.

WHAT WAS -- MR. WHITFIELD SOUNDS LIKE HE WAS SOMEWHAT OF A SOPHISTICATED DEFENDANT THEN. HE WAS MAYBE, HIS COMPETENCE IS MARGINAL. WHAT WAS THE PRIOR, HIS PRIOR CONTACT WITH THE CRIMINAL JUSTICE SYSTEM?

HE HAS SEVERAL PRIOR VIOLENT FELONY OFFENSES, YOUR HONOR.

OVER WHAT PERIOD OF TIME?

FROM '91 PRIMARILY, FROM 1991 AND THIS MURDER IS 1995.

AND HOW OLD AT THE TIME OF THIS MURDER? WAS MR. WHITFIELD?

I BELIEVE HE WAS, WELL, HE WAS BORN IN 1967. I DIDN'T KNOW I WAS GOING TO HAVE TO DO MATH, YOUR HONOR.

SO CRIMINAL ACTIVITY OVER HIS THRU OUT HIS 20S?

CERTAINLY. AND THERE WERE CRIMES OF VIOLENCE, ONE OF THE COMPLAINTS WAS THEY WERE CRIMES OF VIOLENCE AGAINST FEMALE VICTIMS. AND THAT SOMEHOW THAT THE STATE SHOULD NOT HAVE BEEN ALLOWED TO RESPOND TO THAT FACT WHICH IS A MATTER OF FACT. HE WAS VERY ABUSIVE TO FEMALE VICTIMS. AS A MATTER OF FACT DURING THE PENALTY PHASE IT WAS ESTABLISHED THAT HIS EX-WIFE, HAIR YET MILLER, WHO AGAIN THEY HAVE EXPRESSED A CONCERN THAT SHE SHOULD HAVE BEEN CALLED BUT SHE WAS THE VICTIM OF A PRIOR VIOLENT AGGRAVATED BATTERY. TWO AGGRAVATED BATTERY CONVICTIONS THAT WERE PLEA BARGAINED DOWN. BOTH OF THEM WERE SEXUAL BATTERY CONVICTIONS AND THE JURY DIDN'T KNOW IT AND THE TRIAL JUDGE DID NOT RELY ON IT BUT SIMILAR CIRCUMSTANCES WITH TRYING TO GET INSIDE OF THE HOME IN THE MIDDLE OF THE NIGHT, KNOCKING ON THE EX-WIFE'S WINDOW, SHE LET HIM IN AND FORTUNATELY SHE LIVED TO REGRET IT. BUT CERTAINLY A MEAN AS A SNAKE DEFENDANT. VERY VIOLENT. A HISTORY OF VIOLENCE, AND VERY DELIBERATE ACTIONS AND A DEFENDANT THAT WAS REPRESENTED BY TWO EXPERIENCED TRIAL COUNSEL. BETWEEN THE TWO OF THEM THEY HAD ALMOST 20 YEARS OF EXPERIENCE. EACH OF THEM HAD DONE SIGNIFICANT FELONY CASES.

KNEW THE RESPONSIBILITY OF CAPITAL DEFENDANTS. TOOK THIS CASE TO TRIAL AFTER DEPOSING ALL OF THE WITNESSES AND TESTIFIED THAT THEY HAD DEPOSED ALL OF THE WITNESSES THAT THEY NEEDED TO. IT WAS NOT A DIFFICULT CASE. THE STATE DURING THE GUILTY PHASE CALLED 15 WITNESSES. THE TWO PRIMARY FACT WITNESSES WOULD BE, OF COURSE, THE RAPIST AND YOU ALSO HAVE WITH RESPECT FROM THE DEFENSE PERSPECTIVE A PRIMARY FACT WITNESS, THE PEGGY LARUE. THE REST OF THE OFFICERS WHO TESTIFIED WITH REGARD TO THE STATEMENTS MADE BY THE DEFENDANT AND ALSO THE DEFENDANT'S APEARANCE, SOME OF THE STATEMENTS WERE EXCLUDED BASED ON POST MIRANDA REQUESTS FOR COUNSEL BUT WHEN THE DEFENDANT IS ARRESTED HE IS RECITING THE MIRANDA. HE FINISHES RECITING THE MIRANDA WARNINGS. SO HE WAS A VERY SHREWD AS A FOX IN A LOT OF WAYS, AND QUINN DENT ALLEY WITH RESPECT TO -- COINCIDENTALLY THIS CASE WAS TRIED THE SAME WEEK THAT YOU ALLENTERED A CASE OF JOHN LANDRY IN WHICH A FIRST DEGREE MURDER DEFENDANT WAS ENTITLED TO OUTRIGHT DISCHARGE ON STATE CASES BASED ON SPEEDY TRIAL VIOLATION SO CERTAINLY THE TRIAL COURT'S CONCERN AND ATTEMPTINGS TO MAKE EVERY EFFORT TO ACCOMMODATE THE DEFENDANT'S REQUEST AND TO HONOR TRIAL COUNSEL'S DEMAND FOR SPEEDY TRIAL AND TO ENFORCE THE CLIENTS OBLIGATIONS, IN CYSTENT -- INSTANT DEMANDS BUT IN LIGHT OF THE FACT THAT TRIAL COUNSEL WAS, IN FACT, ABLE TO PREPARE FOR TRIAL IN TIME WITHIN THE SPEEDY TRIAL CONSTITUTIONS, NO DEFICIENCY HAS BEEN DEMONSTRATED NOR ANY PREJUDICE AND CERTAINLY BOTH PRONGS UNDER STRICKLAND ARE REQUIRED. THANK YOU, YOUR HONOR.

THANK YOU.

REBUTTAL?

YES, YOUR HONOR. JUST QUICKLY. MR. ATKINS IS SOMEONE WHO WAS ACTUALLY KNOWN BY DR. RANAE AT TRIAL AND MENTIONED HIM NOT BY NAME BUT DURING CROSS EXAMINATION BY DR. MORELAND, PAGE 1623 OF THE TRIAL RECORD, HE ANSWERS, YES, SHE SAID, THIS IS TALKING ABOUT THE MOTHER. SHE WAS UNAWARE OF IT BUT THIS MOTHER HAS BEEN A PERSON THAT HAS REALLY NEVER BEEN AROUND. SHE IS MOST OF THE TIME SHE IS INTOXICATED, MOST OF THE TIME I HAVE KNOWLEDGE OF HER SHE IS DRINKING EVEN WHEN SHE COMES TO SEE HER COUNSELOR SHE IS DRINKING HER SON'S COUNSELOR. THAT'S MR. ATKINS. THAT'S THE ONLY COUNSELOR THEY'VE HAD AND THE DOCTOR KNEW ABOUT THAT SO THAT EVIDENCE WAS THERE. THEY JUST DIDN'T HAVE THE TIME. WHEN I MADE A --

LET ME CLARIFY. IS THERE ANYWHERE ELSE ON THE RECORD IN THE POST CONVICTION WHERE YOU CLARIFIED WITH THE DOCTOR THAT THAT'S WHO THE COUNSELOR THAT HE WAS REFERRING TO WAS?

NO, NOWHERE ELSE BUT THAT WAS THE ONLY COUNSELOR HE HAD.

SO IS THERE ANYTHING IN THE RECORD THAT SHOWS HOW YOU OBTAINED MR. ATKINS' NAME? IN THE RECORD? NOT OF YOUR OWN KNOWLEDGE?

YOU MEAN FROM POST CONVICTION?

YES.

JUST A PROPER INVESTIGATION.

WELL, BUT I DON'T KNOW THAT THAT'S ENOUGH TO GET YOU THROUGH A HURDLE, BECAUSE JUST BECAUSE THERE IS ANOTHER WITNESS AND WE DON'T KNOW IF IT WAS -- IF HIS NAME IS IN THE RECORDS, CLEARLY THEY WEREN'T -- IT WASN'T SOMEBODY THAT THE DEFENDANT SPECIFICALLY TOLD THE DEFENSE LAWYERS ABOUT, UNLIKE SOME OF THE OTHER WITNESSES LIKE MR. PETERSON, SO FOR US TO JUST ASSUME THAT THERE IS SOME W

AY T HA T THE DEFENSE LAW YE R S HO UL D HAVE KNOWN ABOUT THIS WITNESS, WITHOUT Y OU TELLING , YOU KNOW, MAKING T HE CONNECTION, I THINK THERE IS -- THAT C RE ATES A P RO BL EM FOR US, A SS UM IN G THA T I T WOU LD EVEN MEET T HE SEC ON D PRONG.

CORRECT. M R. ATKINS TESTIFIED AND IT IS IN THE BRIEF THA T H E W AS VERY INVOLVED W ITH T HI S FAMILY. HE WAS R EF ERRE D T O B Y THE COURT S F OR T HI S C OUNSELING BECAUSE OF THE FAMILY TROUBLES. ALSO HE W OULD G ET C AL LS F RO M MR. WHITFIELD'S TEACH ER S A ND PRINCIPALS IN THE SCHOOLS AND SAY E RN ES T IS NOT IN SCHOOL TODAY. THE OTHER CHILDREN ARE NOT IN SCHOOL TODAY. DO YOU KNOW , M R. ATK IN S , W HY THEY ARE NOT AND HE WOULD GO OUT AND LOOK FOR THE MOT HER , AND HE WOULD FIND HER.

THAT STILL DOE SN'T R EALLY ANSWER THE QUESTION ABOUT WHETHER HIS N AM E WAS RIGHT THERE IN FRONT OF SOM EB ODY IN THE RECOR DS O R W HETH ER THERE WAS S OM E A DD ITIO NA L INVES TIGATION? THAT DOESN'T HELP ME O R H EL P US UND ER ST AN D H OW E AS IL Y I T WOULD H AVE BEE N F OR DEF EN SE COUNSEL TO HAVE O BT AINE D THIS I NDIVID UA L'S NAME O R THE R ECOR DS THAT HIS N AM E WERE MENTIONED IN.

W EL L --

A RE THE RE R ECOR DS I N THE COURT FILE THAT R EV EA L T HE NAME OF M R. ATK IN S?

WELL, THE R EC ORDS I NDICATE THAT H E W AS REFERRED TO A PROGRAM I N WHICH M R. ATKIN S P ARTI CIPATED IN, AND HE WAS THE ONLY COUNSELOR THAT T HEY HAD. THESE RECORDS WERE AROUND AT THE TIME OF T HE TRI AL I N 199 5.

SO --

AND D R. R A NAY EVE N K NE W ABOUT.

RAC ED - - BAS ED O N WHA T YOU JUST TOLD US?

AND THE DOC TO R K NEW ABOUT THAT.

WAS THIS S PE CI FIC P RO GRAM NAMED - - THE W IT NE SS N AMED S PECIFIC OR JUST SAID HE WAS REFERRED TO COUNSELING?

THE SPECIFIC PROGRAM NAME. NOT IN THE TRIAL RECORD BUT THE SPECIFIC P RO GR AM N AM E , AND THAT'S HOW W E GET T O M R. ATKINS.

WHERE DID THE SPECI FIC PROGRAM NAME AEAR IN THE RECORDS THAT WERE AVAILABLE OR SHOULD H AVE BEEN AVAILABLE TO TRIAL C OUNSEL?

THOSE WOULD HAVE BEE N I N , I APO LOGI ZE . THEY WERE - - T HEY WOULD HAVE BEEN IN HIS J UVEN IL E RECORDS , BECAUSE HE WAS REFERRE D TO THAT P RO GR AM B Y THE C OU RT , AND THAT WAS WHA T W AS TESTIFIED TO.

S O B UT M IS S BLA NC O HAS TOLD US THAT T HE J UVEN IL E R ECOR DS WERE NOT E NTERED INTO EVIDENCE IN THE EVIDENTIARY HEARING.

BECAUSE WE COULD NOT G ET ACCESS TO THEM ANY MOR E B UT AT THE TIME IN 1 995 THO SE RECORDS WOULD HAV E B EE N A CCESSIBLE OR E VERYON E KNEW --

THE PROBLEM I S - -

IF YOU DON 'T H AV E T HEM, COULDN'T GET THEM , H OW D O YOU KNOW WHAT THEY S AY ?

BECAUSE THIS IS WHAT MR. ATKINS TESTIFIES TO. HE TESTIFIED THAT THIS IS HOW HE MET THE FAMILY. HE IS REFERRED TO THEM. PEOPLE DON'T COME INTO MR. ATKINS. HE IS NOT A PRIVATE COUNSELOR.

THE QUESTION THAT WE ARE ASKING YOU IS WHAT YOU ARE SAYING IS THAT IT IS ABSOLUTELY CLEAR THAT DEFENSE COUNSEL SHOULD HAVE KNOWN ABOUT THIS WITNESS.

CORRECT.

SO THE QUESTION IS: WHERE ON THIS RECORD DOES IT SHOW WHY HE SHOULD HAVE KNOWN? IN OTHER WORDS, DID THE DOCTOR THAT INTERVIEWED THE DEFENDANT TELL THE LAWYER, YOU KNOW, HEY, DURING THE COURSE OF MY INTERVIEW, HE TOLD ME THAT HE HAD A COUNSELOR AND THE COUNSELOR'S NAME WAS SO AND SO AND IT WAS IN SUCH A PROGRAM? OR ON THE FRONT PAGE OF HIS SCHOOL RECORDS SAY THAT THIS STUDENT IS BEING COUNSELLED BY MR. ATKINS AT SUCH AND SUCH A PROGRAM, YOU KNOW, WHERE IS THE SMOKING GUN SO TO SPEAK, OF WHY THE DEFENSE COUNSEL WAS NEGLIGENT IN NOT DISCOVERING THIS WITNESS?

RIGHT. I SEE I'M OUT OF TIME BUT I WOULD JUST ANSWER REAL QUICK. THE SMOKING GUN IS IN THE RECORD BECAUSE THEY KNEW ABOUT THE COUNSELOR. THIS IS NOT AN INSTANCE WHERE THEY DIDN'T KNOW ABOUT THE COUNSELOR. DR. RANAE KNEW ABOUT THE COUNSELOR FROM INTERVIEWS WITH MR. WHITFIELD AND INTERVIEWS OF OTHER WITNESSES. MR. ATKINS WAS WELL-KNOWN THROUGHOUT THE COMMUNITY AND DR. RANAE TESTIFIED ABOUT MR. ATKINS. HE DIDN'T MENTION SPECIFICALLY, BUT THAT WAS THE ONLY COUNSELOR MR. WHITFIELD HAD. THAT'S THE SMOKING GUN. THEY KNEW ABOUT IT BUT BECAUSE OF THE FAILURE TO INVESTIGATE --.

ONE LAST QUESTION ABOUT THAT. WAS DR. RANAE CALLED AT THE POST CONVICTION HEARING?

YES, HE WAS LIKEWISE.

AND WAS HE ASKED ABOUT THAT?

HE WAS NOT ASKED SPECIFICALLY ABOUT THAT, BUT JUDGE WILLIAMS --

WOULDN'T THAT HAVE BEEN A LOGICAL THING TO INQUIRE IF YOU ARE SAYING THAT HE WAS KNOWN TO THIS DOCTOR, YOU KNOW, THAT EXAMINED THE DEFENDANT SO EARLY, AND, YOU KNOW, DON'T WE -- A REN'T WE LEFT WITH THE QUESTION OF WHY HE WASN'T THEN QUESTIONED ABOUT, YES, I DID KNOW ABOUT ATKINS AND I KNEW ABOUT THIS COUNSELING PROGRAM AND I TOLD THE LAWYER OR WHATEVER, BUT HE WASN'T ASKED?

NO, THE OTHER TWO ATTORNEYS WERE ASKED ABOUT THAT. AND THEY RECOGNIZED THE NAME FROM THE COMMUNITY BUT THEY ALSO RECOGNIZED THAT THIS COULD HAVE BEEN SOMEONE WHO WAS IN THE TRIAL AND THAT WAS FROM THE POST CONVICTION HEARING THAT JUDGE WILLIAMS WAS ASKED SPECIFICALLY ABOUT THAT. I SEE THAT I'M OUT OF TIME BUT I WOULD JUST LIKE TO SAY THAT THIS IS NOT AN EASY CASE IN THAT WE SHOULD NOT BE SENDING A MESSAGE TO TRIAL LAWYERS THAT IT IS OKAY TO GO AHEAD AND DO THESE CASES IN 91 DAYS. THE TREND IS TO GO AHEAD AND DEMAND BETTER REPRESENTATION OF CLIENTS IN DEATH PENALTY ARENA AND THIS IS THE MESSAGE WE ARE SENDING OUT TO THESE FOLKS OUT THERE THAT WE SHOULD DEMAND BETTER. THIS IS A CASE WHERE THE ATTORNEYS, THE EXPERTS, THEY SAID WE WERE UNPREPARED. THEY FILED TWO MOTIONS TO CONTINUE. THIS IS NOT A CASE THAT THIS COURT SHOULD AFFIRM.

MR. CANNON, THANK YOU VERY MUCH. MISS BLANCO, THANK YOU VERY MUCH FOR YOUR RES

PO NS IVEN ES S TO OUR QUESTIONS , AND F OR YOU R BRIEF N S T HI S M AT TE R .