Jason Demetrius Stephens v. State of Florida

SC05-1301 | SC06-1729

PLEASE RISE.
>> LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT.
PLEASE BE SEATED.
>> OKAY THE NEXT CASE ON THE CALENDAR THIS MORNING IS STEPHENS VERSUS STATE OF FLORIDA.
MR. DOSS, ARE YOU READY TO PROSNEED YES, SIR.
THANK YOU.
MAY IT PLEASE THE COURT.
IN THE POST CONVICTION CASE.
>> PLEASE USE MICROPHONE.
LIFT IT UP A LITTLE BIT IF YOU WOULD.
I WILL DO THAT.
>> OKAY.
>> IN THE POST CONVICTION CASE, THE TRIAL COURT BELOW ACTUALLY FOUND DEFICIENT PERFORMANCE ON THREE SEPARATE AREAS; HOWEVER, THE COURT DID NOT FIND PREJUDICE, THE FIRST WAS THE FAILURE OF TRIAL COUNSEL TO ATTEND MANY OF THE DEPOSITIONS THAT WERE TAKEN IN THE CASE WITHIN THE TRIAL COURT ORDER --.
[INAUDIBLE]
[LOW AUDIO]
>> WELL, WE DO AGREE IT DOES APPLY BECAUSE HE DID DO SOME THINGS SO U.S. SUPREME COURT HAS TOLD US THAT MISSING A HEARING OR NOT DOING CERTAIN THINGS DOES NOT CAUSE THE CHRONIC STANDARD APPLY, SO YOU DO AGREE THAT STRICKLAND DOES APPLY SO YOU MUST SHOW PREJUDICE?
>> YES, WHAT WAS THE

TESTIMONY AT THE EVIDENTIARY HEARING ABOUT WHY WAS THEIR ANY ATTORNEY AT THE DEPOSITIONS WHAT SOEVER?
>> NO, SIR.
[LOW AUDIO]
>> MR. NICHOLS, RIGHT?
[LOW AUDIO]
[LOW AUDIO]
-- ON THE ORDER BY SAYING THAT ALL THOSE TRANSCRIPTS WERE AVAILABLE, THE FAILURE TO ATTEND WAS DEFICIENT THE DECISION NOT TO PARTICIPATE IN THE DISCOVERY PROS SINCE ORDER TO AVOID THE STATE BEING --.
[LOW AUDIO]
>> DEPOSITIONS WERE TAKEN IN THE CASE TOTAL?
>> I THINK ABOUT 17 OR 18 AND I BELIEVE THAT THERE WAS 10 THAT WERE NOT ATTENDED INTERESTINGLY ENOUGH, ONE OF THE ONES NOT ATTENDED WAS THAT OF DIXON WHO MR. STEPHENS ENDED UP PLEADING GILLTY, MR. DIXONS ACTUALLY TESTIFIED THAT NO MONEY HAD BEEN TAKEN FROM HIM AN THE COURT GRANTED A JUDGMENT OF ACQUITTAL AS TO THE CODEFENDANT INSTRUCTED MR. NICOLES TO FILE A MOTION TO WITH DRAW PLEA WHICH MR. NICHOLS NEVER DID, THAT WAS ACTUALLY ONE OF THE AREAS WHERE THE TRIAL COURT FOUND MR. NICHOLS DEFICIENT IN HIS PERFORMANCES TO REP ZJT MR. STEPHENS WAS AS TO THE DIXON MATTER AND WITH THE ARMED ROBBERY.
THE FACT WAS THIS MR. STEPHENS WALK HAS TO THE HOUSE THAT IS KNOWN FOR SELLING DRUGS AN HELD MANY PEOPLE AT GUNPOINT AND SEVERAL ARMED ROBBERY ACCOUNTS.
MR. STEPHENS ON TRIAL IN A PLEA TO SEVEN OF THE ROBBERY COUNTS AS WELL AS THE KIDNAPPING, THE TRIAL COURT

ALSO FOUND MR. NICHOLS SUFFICIENT IN ADVISING MR. STEPHENS TO PLEAD GUILTY TO THE KIDNAPPING BECAUSE THAT WAS THE UNDERLYING FELONY, THAT RESULTED IN THE FELONY MURDER CONVICTION IN THIS CASE.
>> SO HOW -- LET'S GET BACK TO THE PREJUDICE FROM HIS FAILURE TO ATTEND THE DEPOSITIONS, WHAT IS THE PREJUDICE THAT YOU ARE ALLEGING FROM THE FAILURE TO ATTEND THESE DEPOSITIONS? WHAT WAS -- WHAT COULD HE HAVE DISCOVERED OR SHOULD HAVE BEEN DISCOVERED THAT WAS NOT DISCOVERED THAT WAS NOT PRESENTED OR SOMETHING? WHAT?
PINPOINT EXING A WLA THE PREJUDICE IS IN THE CASE?
>> THE MOST GLARING CRISIS THAT DERRICK DIXON WAS NOT BY COUNSEL FOR MR. STEPHENS, EVENTUALLY, THAT WAS THE COUNT THAT WAS GRANTED A JUDGMENT OF ACQUITTAL. THERE WAS NO ONE THERE ASKING QUESTIONS ON BAE HALF MR. STEPHENS, MR. WHITE AN MR. CHIPPERFIELD THAT ACTUALLY REPRESENTED THE CODEFENDANT TESTIFIED ALT THE EVIDENTIARY HEARING THAT THEY HAD NEVER ASKED ANY QUESTIONS ON BEHALF OF STEPHENS, THEY WERE "COVERING FOR MR. NICK COMES" AND SO NO ONE WAS THERE TO DEVELOP A CASE FOR -- SO THE PREJUDICE ARE ALGING AT LEAST AS FAR AS THAT ONE WITNESS IS THAT THERE WOULD HAVE BEEN NO ROBBERY CONVICTION AGAINST HIM?
OKAY?
AND THEN OKAY, SO HOW DOES THAT PLAY INTO WHETHER OR NOT HE WOULD HAVE BEEN CONVICTED OF FIRST-DEGREE MURDER?

I MEAN, WHAT?
I AM STILL HAVING A HARD TIME CONNECTING FAILURE TO ATTEND THESE DEPOSITIONS WITH PREJUDICE?
>> I THINK PART OF IT IS AS THE TRIAL COURT HAS SAID THAT PRESUMPTIVELY, PRESUMPTIVELY DEFICIENT WHEN YOU COUPLE IT UP WITH THE FACT HE IS PLEADING THIS YOUNG MAN GUILTY ALL THE WAY THROUGH TO THE UNDERLYING FELONY WITHOUT EVEN ATTENDING THE DEPOSITION, THE WAY IT WORKED OUT, THE POST-CONVICTION HEARING WITH MR. ELD ARD TESTIFIED THAT MR. NICHOLS CAME IN THE DAY THE JURY SELECTION WAS TO BEGIN, MET WITH MR. STEPHENS, BASICALLY ASKED WHAT HE THOUGHT HE DID, WHAT HE THOUGHT HE DIDN'T DO.
AT THAT POINT, I THINK THAT WHILE IT DOESN'T RISE TO COMPLETE LEVEL OF THE STANDARD, WE'RE GETTING PRETTY CLOSE, EXCUSE ME, WHERE WHAT THE POINT OF HAVING AN ATTORNEY IF THE ATTORNEY IS NOT GOING TO FOLLOW THROUGH.
>> DID HE SAY THERE HAD NEVER BEEN ANY DISCUSSIONS WITH MR. STEPHENS PRIOR TO THAT MORNING?
OR THAT HE WAS NOT PRIVY TO ANY DISCUSSIONS THAT TOOK PLACE?
FRYER THAT MORNING?
>> MR. ELLER HAD ONE DISCUSSION AS OF THAT WAS ON THE RECORD AS I THOUGHT LOOKING AT THE BILL, THERE WAS ONE THAT WAS REFLECTED IN THAT BILL, MR. NICHOLS HAD ACTUALLY LOST THE FILE.
WE HAVE NO IDEA AS TO WHEN HE ACTUALLY SAW HIM.
ALTHOUGH, PART OF THE SOMEWHAT SEGUES INTO PART OF THE POINT WE VUN THE HABEAS

PETITION WHERE HE HAD
ACTUALLY WRITTEN A LETTER TO
THE COURT ASKING FOR ANOTHER
LAWYER WHEN IT CAME CUP ON
DIRECT APPEAL TO THIS COURT
THAT LETTER WAS ACTUALLY NOT
IN THE RECORD AND IT HAD
BEEN CHARACTERIZED AS BEING
A MISCOMMUNICATION BETWEEN
THE ATTORNEY AND THE CLIENT
AND I HAVE SOME OF THAT HERE
THAT I THINK IS VERY, VERY
IMPORTANT THAT IN PARAGRAPH
THREE OF THAT NOTE,
MR. STEPHONS ACTUALLY STATED,
HE HAS DEMONSTRATED
UNPREPARED WILL YOUNESS, I
FEEL HIS REPRESENTATION WILL
BE INEEFFECTIVE.
THEN IN PARAGRAPH FOUR OF
THE NOTE, MR. STEPHENS
STATES MR. NICHOLS HAS ALSO
SHOWN A LACK OF --.
[INAUDIBLE]
ADEQUATE COUNSELING FROM HIM
IN PARAGRAPH UNMISTAKEBLY
STATES I WANT A NEW LAWYER.
DURING THAT SAME HEARING, HE
HAD INDICATED THAT
MR. NICHOLS HAD NOT COME
TOLL SEE HIM, HE HAD NOT
RECEIVED ANYTHING OTHER THAN
A POLICE REPORT, THE JUDGED
ASKED MR. STEPHENS WHETHER
HE WAS SATISFIED WITH HIM?
HIS QUOTE WAS "I AIN'T EVER
SEEN HIM.
I DON'T KNOW HIM."
THAT THIS IS SITUATION THAT
WE HAVE LEADING UP TO THIS
TRIAL AND I THINK THAT WE
HAVE TO LOOK AT IT MORE IN A
CUMULATIVE SENSE.
>> WASN'T THAT ALTHOUGH
WORKED OUT IN FRONT OF THE
TRIAL COURT JUDGE?
IN OTHER WORD, DIDN'T THE
TRIAL COURT JUDGE HEAR THOSE
COMPLAINTS, THEN TELL THE
LAWYER TO GO SEE HIM.
THEY WORKED IT OUT, YOU
KNOW?
IN OTHER WORDS, WHAT
HAPPENED AS RESULT OF THOSE

COMPLAINTS?
DIDN'T THEY COME BEFORE THE TRIAL COURT JUDGE?
>> THEY DIDN'T COME BEFORE.
>> HOW WAS IT RESOLVED?
>> IT WAS RESOLVED AS BEING A VISITATION --.
[LOW AUDIO]
[INAUDIBLE]
>> HOW ARE YOU ARGUING IT NOW THE?
THAT IS, ARE YOU USING THAT AS AN ARGUMENT FOR PREJUDICE FOR FAILURE TO ATTEND DEPOSITION?
I AM HAVING DIFFICULTY WITH HOW WE SEEM TO BE MOVING FROM ONE ISSUE TO THE OTHER WITHOUT RESOLVING THE ISSUE THAT YOU STARTED WITH.
WHAT, WHAT ARE YOU USING THAT INDICATION IN THE RECORD AS EVIDENCE OF TO SUPPORT WHAT ARGUMENT YOU ARE MAKING HERE?
>> IT IS PORS THE CLAIM WITH THE HABEAS AS ALLOWING THIS COURT TO CORRECT ERROR OF THE FACT WHENEVER THIS COURT ANALYZED THIS CASE ON DIR RK APPEAL AND RECORDED THE RECORD WITHOUT THAT ACTUAL LETTER BEING THE FACT ABOUT WHETHER OR NOT HE WAS SEEKING NEW COUNSEL OR WHAT?
>> YES.
ABSOLUTELY.
AND THAT IT DIRECTLY DEALT WITH THE DEFICIENCY BECAUSE I WILL JUST QUOTE FROM THIS CURT'S OPINION.
IT SAYS THE RECORD DOES NOT CONTAIN THE HANDWRITTEN NOTE, STEPHENS TRIAL COURT EXPRESSING CONCERN; HOWEVER, THE TRIAL COURT SAYS THE CONCERNS OF LACK OF CONTACT BETWEEN STEPHENS AND HIS ATTORNEY, ADDITIONALLY, STEPHENS STATEDEN ADDITION TO THE LACK OF CONTACT, HE WAS CONCERNED ABOUT W THE FAILURE OF COUNSEL TO GIVE HIM PAPERWORK.

[LOW AUDIO]
AS TO THE PAYMENT THAT I HAD STARTED BUT IT WAS TO THE LETTER THAT HE CAME BEFORE THE COURT AND THIS ISSUE WAS RESOLVED TO HIS SATISFACTION, THAT IS NOT CORRECT?
>> I DON'T -- NO, BECAUSE AT THE END, HE ACTUALLY, HE ACTUALLY ENDED THAT POLICY WITH THE JUDGE THAT I STILL AIN'T SATISFIED WITH THE QUOTE.
I DON'T, I DON'T THINK IT WAS SOLVED IN MR. STEPHENS MIND AS TO THE COMPETENCY ISSUE THAT HE HAD EXPRESSED WITH THE JUDGE ON THAT PARTICULAR OCCASION.
I WAS USING THAT MORE AS BEING THE FACT OF THE INEFFECT OF THE ASSISTANCE OF TRIAL COUNSEL PARTICULARLY --.
[LOW AUDIO]
THERE WAS SUBSTANTIAL MITIGATING EVIDENCE THAT WAS LEFT UNPRESENTED THAT WE PRESENTED IN THE FIRST CONVICTION HEARING BELOW.
THERE WERE CO COUNSEL IN THE CASE.
>> AS TO MR. STEPHENS?
HOW MANY LAWYERS REPRESENTED MR. STECHBS?
>> TWO AT THE TRIV LEVEL,.
>> DID THEY SDRID THE WORK UP BETWEEN THEM AS FAR ASPEN TY PHASE?
>> ABSOLUTELY.
MR. NICHOLS PRESENTED THE GUILT PHASE.
MR. ELLER TESTIFIED HOW SURPRISED HE WAS THEY WENT IN AND PLED GUILTY TO SO MANY OF THE COUNTS AND HAD SPECIFICALLY TOLD THE TRIAL COURT HE WAS NOT IN FAVOR OF IT AN DISAGREEMENT WITH THE COUNSEL REGARDING THAT.
A ON THE PENALTY PHASE, DIDN'T THE ATTORNEY REALLY JUST TAKE A DIFFERENT APROP?
HE TOOK THE GOOD GUY

APPROACH RATHER THAN THE
BACKGROUND IS SO BAD, THIS
IS SUCH A BAD SITUATION,
THAT THIS IS WHAT IT
PRESENTED?
DIDN'T HE TAKE THE OTHER AND
CALL FAMILY MEMBER, PRESENT
A LOVING FAM MY LEBS AND
THAT KIND OF A THING?
I MEAN, IN HIND SIGHT, YOU
MAY DISAGREE THAT, BUT I
UNDERSTAND THAT, BUT ISN'T
THAT THE APPROACH THAT WAS
IN CONTINUATIONLY TAKEN?
>> THE APPROACH THAT WAS
INTENTIONALLY TAKEN WAaa
ABSOLUTELY THAT HE WAS GOOD
GUY THAT LOVED KIDS.
>> RIGHT.
>> WITH THE FACT OF THIS
CASE, THAT IS COME PLOTLY
IRRATIONAL TRAGEDY THAT WAS
DONE WITHOUT ANY
INVESTIGATION AND OVERLOOKED
MANY OF THE FACTS THAT WE
PRESENTED IN THE POST
CONVICTION COURT BECAUSE --
>> DIDN'T PREVENT FAMILY
MEMBERS TO SUPPORT HIM?
DID THEY LIE THROUGH THE
TRIAL?
ISN'T THAT WHO HE
YOU US SNOOD HE USED A
MOTHER AND ONE BROTHER.
THEY DIDN'T HAVE A FULL
PICTURE OF WHATS WITH GOING
ON IN MR. STEPHEN'S LIFE.
MR. STEPHENS HAD BEEN AWAY
FROM FAMILY FOR AWHILE.
HE WAS ESTRANGED FROM HIS
FAMILY.
HE WAS THE BLACK SHEEP OF
HIS FAMILY, SO THAT IS NOT
ACCURATE PICTURE.
WE HAVE PROVIDED PEOPLE THAT
WERE ASSOCIATED WITH HIM
CLOSE IN TIME THAT COULD
TESTIFY.
YOU SAID MOTHER AN BROTHER?
THERE WERE OTHER PEOPLE WHO
ACTUALLY PRESENTED AT THIS
PENALTY PHASE AS I
UNDERSTAND IT, THERE WERE
LIKE EIGHT OR TEN PEOPLE WHO

WERE SPRENLTED AT THE
PENALTY PHASE INCLUDING
PEOPLE THAT HE WORKED WITH
AND OTHER PEOPLE WHO KNEW
HIM AND ALL OF THESE PEOPLE
IS A REMEMBER DIDN'T HAVE
ANY INFORMATION ABOUT DRUG
USE, THAT KIND OF A THING,
SO I AM HAVING A HARD TIME
OL LOWING THAT HE DIDN'T
PRESENT AND INVESTIGATE
MITIGATING EVIDENCE HERE.
>> THESE PEOPLE THAT WERE
PRESENTED WERE DISTANCE IN
TIME FROM THE TIME OF THE
CRIME.
HE PRESENTED PRIEST.
>> IT WAS CLOSE IN TIME?
>> WE PRESENTED TWO PEOPLE
THAT WERE IN CONTACT WITH
HIM ON A DAILY BASIS, TWO
WOMEN, TYRA WILKINSON WHO
TESTIFIED AS TO BIZARRE
BEHAVIOUR, AS TO THE PARAGLI
DUE TO THE DRUG USE.
>> WHAT DID THEY SAY
SPECIFICALLY ABOUT DRUG US?
>>
>> THAT HE WAS USING COCAINE
AND MARIJUANA ON A DAILY
BASIS.
THEY SPOKE OF PARANOIA,
WALKING AROUND IN A
BULLETPROOF VEST LOOK OUT
THE WINDOW, TALKING ABOUT HE
HAS TO GET THEM BEFORE THEY
GET HIM.
FOR SOMEONE THAT HAD BEEN IN
THE DEPARTMENT OF JUVENILE
JUSTICE PROGRAM THAT HAD
BEEN IN, HAD PRIOR VIOLENT
FELONIES, THE STATE STATE
ACTUALLY TOOK ON, UM,
EVIDENCE THAT HE DRUG A
WOMAN OUT OF HER HOUSE AT
1:30 ON THE MORNING, PUT A
SAWED OFF SHOTGUN TO HER
HEAD.
THOSE TYPES WILL COME IN.
EVERY SINGLE OPPORTUNITY TO
SHOW THAT JUST HOW ERATIONAL
THIS WAS AN REALLY, REALLY
FOR THIS PART, WHUN LOOK AT
THE FACTS OF THE DAY, IT IS

NOT A RATIONAL SENSE, HE
WASN'T USING DRUGS WHEN HE
ADMITTEDLY WENT A DRUG HOUSE
TO GET DRUGS AN ENDED UP
ROBBING THE DRUG USERS --.
[LOW AUDIO]
BEATING HIS MOTHER IN FRONT
OF HIM.
>> WASN'T THAT TESTIMONY
THAT A LOT OF THIS WAS HIS
OWN RESTRICTING HIS ATTORNEY
AS TO WHAT KIND OF DEFENSES
THIS THEY COULD PRESENT?
>> I DON'T KNOW.
I DON'T RECALL.
>> I DON'T KNOW.
>> I CAN RELATE.
GOOD MORNING.
MY NAME IS MEREDITH CHARBULA,
AIM ASSISTANT ATTORNEY DEN
RAL AND I REPRESENT THE
STATE.
LIKE TO TAKE WITH PERMISSION
THE ORDER IN REVERSE BECAUSE
JUSTICE CANTER ROW, YOU ARE
ABSOLUTELY CORRECT THAT
MR. ELLER TESTIFIED THAT
JASON STEVENS WAS CLOSE TO A
VOLUNTEER THAT HE EVER HAD,
THAT THEY HAD TO PERSUADE
HIM TO ALLOW HIM TO PUT MIT
IS GOING ON AND THEY WERE
ALLOWED, THEY PUR SIDED HIM
TO PUT MIT IS GOING ON AND
YOU ARE RIGHT, THERE WERE
TEN WITNESSES WHO TESTIFIED
AT THE EVIDENTIARY HEARING
THAT WERE FAMILY MEMBERS.
THERE WERE A SCHOOLTEACHER,
THERE WERE PEOPLE WHO WORKED
WITH HIM, WERE STEPHENS
VOLUNTEERED, HE WORKED WITH
KIDS BASICALLY.
YOU SAY AT THE EVIDENTIARY
HEARING, YOU MEAN AT THE
PENALTY PHASE?
YES, SIR.
I AM SORRY, JUSTICE, AT THE
PENALTY PHASE, THERE TEN TWO
TESTIFIED AT THE PENALTY
PHASE REGARDING -- IT WAS
ALL FOCUSED ABOUT JASON
STEPHENS COULD NOT HAVE IN
TENED TO KILL THIS CHILD,

THAT WAS WHAT THE DEFENSE
WAS FROM THE VERY BEGINNING.
>> CAN YOU FOCUS ON
SOMETHING THAT CONCERNED ME
WHICH WAS THE PLEADING
GUILTY TO THE UNDERLYING
FELONY OF ARMED KIDNAPPING.
THE COURT FOUND BY PLEADING
GUILTY THAT THEY WERE, THE
STATE WAS ASSURED A
CONVICTION FELONY MURDER AND
THAT SEEMS TO BE THE CASE.
SO COULD YOU ADDRESS HOW WE,
IF WE FIND THAT THAT WAS
DEFICIENT PERFORMANCE HOW DO
WE LOOK AT THE PREJUDICE
BECAUSE AGAIN THE JURY
SEEMED TO HAVE QUESTIONS
ABOUT WHETHER, YOU KNOW,
THIS IS A TERRIBLE CRIME,
BUT THEN, THE WHOLE FOCUS IS,
WELL, WHAT WAS DOING WITH
THE CHILD?
DID HE INTEND TO KILL HIM?
CUE FOCUS ON THAT?
>> YES, MR. ELLER WAS ABLE
TO TESTIFY AS HE SAID, HE
WAS DEAD AT THE TIME OF
TRIAL.
HE WAS VERY ACTIVE FILING
PRETRIAL MOTIONS DURING THE
GUILT PHASE.
>> I AM SORRY, I HAVE SEEN
THE MULZS WHAT DID YOU SAY?
>> MR. ELLER WAS PRIMARILY
PENALTY PHASE COUNSEL BUT
ALSO ASSISTED DOORK THE
GUILT PHASE.
AND MR. ELLER TESTIFIED AT
THE ED EVIDENTIARY HEARING
THAT THEIR TACTIC WAS
TWOFOLD.
NUMBER ONE, TO DEFEAT
PREMEDITATION, TO SHOW THERE
WAS NO TINT TO KILL.
NUMBER TWO WAS TO CONVINCE
THE JURY THAT THE KIDNAPPING
HAD ENDED PRIOR TO THE
DEATH.
THE DEFENSE THEORY WAS THE
CHILD DIED OF HYPOTHERMIA
WHICH WOULD HAVE BEEN 30
MINUTES ACCORDING TO DR. 'S
TESTIMONY.

SO THE DEFENSE THEORY WAS TO CONVINCE THE JURY, THE WHITE JURY, THE KIDNAPPING HAD ALREADY ENDED.
MR. ELLER TESTIFIED WHILE HE WITH WOULD NOT ENTERED THE PLEA OF KIDNAPPING, HE UNDERSTAND BECAUSE --
>> AS PRACTICAL MATTER, THAT IS, IT WOULD ALLOW THE STATE TO ARGUE, FELONY MURDER HERE BECAUSE YOU HAVE GOT THE UNDERLYING FELONY, AS LONG AS IT IS IN THE COURSE OF THE KID NAP, I MEAN, OBVIOUSLY, STILL, I MEAN, AS A 3-YEAR-OLD KID IN A VEHICLE, IT SEEMS UNREASONABLE TO BE ABLE TO SAY, WELL THE KIDNAPPING ENDED BEFORE THE MURDER, SO HOW DID THAT WORK?
WHY WOULD THAT BE, YOU KNOW, I UNDERSTAND THE OTHER CHARGE, WHY THAT IS, WELL, THIS WAY, SHOW THE JURY WE'RE CREDIBLE, AS OPPOSED TO, EVENTUALLY GAR REASON TEEING A FIRST-DEGREE MURDER CONVICTION?
>> WELL, THINK, THIS COURT ACTUALLY KAURFULLY CONSIDERED THE ISSUE OF THE SUFFICIENCY OF THE FELONY MURDER ON THE ARMED KIDNAPPING AN CAME TO THE CONCLUSION BECAUSE THE CHILD HAD NEVER REACHED A POSITION OF SAFETY THAT THE KIDNAPPING WAS ONGOING.
SO FIRST OF ALL, THE EVIDENCE WAS ABSOLUTELY OVERWHELMING THAT MR. STEPHENS WAS GUILTY OF ARMED KIDNAPPING INCLUDING HIS OWN PROCESS.
>> OKAY, NOW IF WE ASSUME DEFICIENCY WHICH WE'RE SAYING IS BASED ON THIS EVIDENCE, THERE IS NO PREJUDICE BECAUSE, THAT IS HOW WE LOOK AT IT?
IT IS BECAUSE A JURY WOULD AND HE WAS ARMED DURING THE TIME OF THE ROBBERY.

SO THE EVIDENCE IS
ABSOLUTELY OVERWHELMING.
>> LET ME ASK YOU -- I AM A
LITTLE CONFUSED ABOUT WHAT
STANDARDS SHOULD APPLY
BECAUSE THE ARGUMENT IS THAT
IT WAS INEEFFECTIVE
ASSISTANCE OF COUNCIL IN
AGREEING TO A PLEA TO
KIDNAPPING.
SO WHY DOESN'T THE STANDARD
OF HILL VERSUS LOCKHART
APPLY AS TO THAT ISSUE.
I NOTICED NEITHER SIDE CITES
IN THE BRIEFS IS THEIR A
REASON WHY IT IS NOT THAT
STANDARD?
>> REGARDING THE -- GUILTY
AND GONE TO TRIAL?
>> CORRECT.
ON --
>> MR. STEPHENS NEVER
TESTIFIED AT THE EVIDENTIARY
HEARING HAD ABOUT
MR. NICHOLS TOLD HIM THAT
WOULD ESSENTIALLY BE A
GUILTY PLEA OF FELONY MURDER
HE WOULD HAVE NOT ENTERED
THAT.
HE NEVER TESTIFIED TO THAT.
THAT'S WHY I DIDN'T ARGUE
THAT STANDARD.
>> ISN'T THAT THE CORRECT
STANDARD AND THEY CAN'T
ESTABLISH THAT STANDARD?
>> WELL I THINK, --
>> YOU'RE SAYING
OVERWHELMING EVIDENCE OF
GUILT THAT DOESN'T SEEM TO
BE THE STANDARD UNDER HILL
VERSUS LOCKHART.
>> AS YOU SAY, YOUR HONOR,
MR. STEPHENS NEVER TESTIFIED
THAT THAT INFLUENCED HIS
DECISION TO TESTIFY ON HIS
BEHALF OR EVEN TO GO TO
TRIAL.
HE DIDN'T PROVIDE A SINGLE.
HE DIDN'T TESTIFY AT THE
EVIDENTIARY HEARING.
>> WHAT DID MR. ELLER SAY
ABOUT IT?
DID HE SAY ANYTHING ABOUT
THE ADVICE THAT WAS GIVEN TO

HIM, TO TAKE THE PLEA WHY
THEY ADVISED HIM AND WHAT HE
SAID?
>> MR. ELLER SAID HE WASN'T
PRIVY TO THE CONVERSATIONS
BETWEEN MR. NICHOLS AND
MR. STEVENS ABOUT THE GUILTY
PLEA.
HE DID OBSERVE THE LAST
CONVERSATION BUT HE COULDN'T
TESTIFY THAT MR. NICHOLS HAD
NEVER HAD ANOTHER
CONVERSATION.
AND MR. STEPHENS DURING THE
PLEA COLIQUY, IT WAS
EXTENSIVE PLEA COLIQUY THE
JUDGE TALKED ABOUT USE OF
THESE CONTEMPORANEOUS
CONVICTIONS AGAINST HIM.
AND, MR. STEPHENS SAYS HE
WAS SATISFIED.
SIR?
>> CAN YOU EXPOUND ON THAT?
TRIAL COURT SAID YOU'RE
PLEAING TO KIDNAPPING.
THIS ESTABLISHES FELONY
MURDER?
>> NO, SIR HE DID NOT
SPECIFICALLY SAY THAT BUT
WHAT HE DID SAY YOU
UNDERSTAND THAT YOUR PLEA,
THE PLEAS CONTEMPORANEOUS
FELONIES CAN BE USED AGAINST
YOU ON THE OTHER CHARGES?
HE ALSO MENTIONED THAT,
THESE, CONTEMPORANEOUS PLEAS
CAN BE USED IN AGGRAVATION
DURING THE PENALTY PHASE.
NO THE TRIAL JUDGE DID NOT
SPECIFICALLY SAY DO YOU KNOW
WE'RE PLEADING TO FELONY
MURDER BECAUSE MR. NICHOLS
CLEAR FROM THE RECORD DID
NOT INTEND TO PLEA TO FELONY
MURDER.
HIS VIEW WAS, WE HAVE GOT A
JURY, NOT TRAINED IN THE LAW
AS FAR AS, WHEN A PARTICULAR
CRIME ENDS.
WE'VE GOT A JURY AND, MY, MY
STRATEGY, IS TO CONVINCE THE
JURY THAT THE KIDNAPPING
ENDED.
IF YOU LOOK AT THE RECORD

DURING HIS CLOSING ARGUMENT
HE TALKS ABOUT HOW THE DEATH
HAD ENDED PRIOR TO THE
KIDNAPPING BEING ENDED AND
ESSENTIALLY THIS, AS A
RESULT WAS MANSLAUGHTER.
>> WASN'T THERE A REQUEST
FOR SPECIAL INSTRUCTION TO
THAT EFFECT.
>> THERE WERE.
THERE WERE THREE, IN FACT
THE DEFENSE REQUESTED THREE
INSTRUCTIONS REGARDING THE
END OF THE KIDNAPPING AND
THE DEATH.
THE TRIAL JUDGE DENIED THE
REQUEST.
THIS COURT UPHELD THAT ON
DIRECT APPEAL.
>> WELL NOW, LET ME ASK YOU,
THERE WERE SEVERAL OTHER
FELONIES THAT WERE INVOLVED
IN THIS CASE INCLUDING A
NUMBER OF ROBBERIES AND
BURGLARY.
AND, WOULD THOSE FELONIES
HAVE SUPPORTED A FELONY
MURDER CONVICTION ALSO?
>> BELIEVE THEY WOULD HAVE
BECAUSE, --
>> DID HE PLEAD TO ALL OF
THOSE?
>> HE PLED TO THREE OF THE
ARMED ROBBERY!!IES, ARMED
BURGLARY, AGGRAVATED BATTERY
ON CONSUELO AND TWO
ATTEMPTED ROBBERY!!IS.
HE PLED TO EIGHT COUNTS OF A
12-COUNT INDICTMENT.
HE WENT TO TRIAL ON FOUR.
THREE ROBBERIES AND
FIRST-DEGREE MURDER WAS
ACQUITTED OF TWO OF THE
ROBBERIES.
CON I CAN HAVE HAD OF ONE OF
THE ROBBERIES AND
FIRST-DEGREE MURDER ON A
GENERAL VERDICT FORM.
>> SO THE ROBBERY HE WAS
ACTUALLY CONVICTED OF AT
TRIAL WOULD THAT HAVE
SUPPORT AD FELONY MURDER
CONVICTION?
>> I BELIEVE IT WOULD HAVE

BECAUSE IT WAS, A CONTINUING COURSE OF EVENTS THAT BEGAN WHEN HE WRAUKED INTO THE HOME WITH THE FIREARM AND PUT SEVEN ADULTS EVENTUALLY ON THE GROUND AND ROBBED THEM OR ATTEMPTED TO ROB THEM AND, KIDNAPPED THE CHILD FOR INSURANCE TO GET AWAY FROM THE ROBBERY!!IS. AND THEN, LEFT THE CHILD IN THE CAR.
SO I THINK, WHEN WE LOOK AT THE GUILTY PLEA, WE SEE, AND THROUGHOUT THE ENTIRE TRIAL FROM THE VERY BEGINNING THROUGH THE PENALTY PHASE WE SEE THE STRATEGY OF CONVINCING THE JURY NO. 1, THERE WAS NO PREMEDITATION. AND, EVEN THE TRIAL JUDGE IN HIS SENTENCING ORDER FOUND REASONABLE DOUBT AS TO PREMEDITATION AND FOUND MITIGATION THAT MR. STEPHENS DID NOT INTEND TO KILL THE CHILD.
AND THEN, SECONDLY, CONVINCING THE JURY THAT THE KIDNAPPING HAD ENDED PRIOR TO THE DEBT BECAUSE, MR. STEPHENS TESTIFIED THAT HE LEFT THE CHILD IN THE CAR BELIEVING THAT THE PARENTS WOULD FIND HIM SHORTLY THEREAFTER AND RESCUE HIM.
>> SO WHEN WE TALK ABOUT THE MENTAL HEALTH MITIGATION OR THE MITIGATION THAT WAS PUT ON BY TRIAL COUNSEL, MR. ELLER, WHO WAS A VERY EXPERIENCED TRIAL LAWYER, TRIED CAPITAL CASES AND VERY EXPERIENCED YOU SEE HIS PENALTY PHASE IS ABSOLUTELY CONSISTENT WITH THE GUILT PHASE.
THEY WANTED TO CONVINCE THE JURY THAT STEPHENS WAS A PERSON WHO, LIKED KIDS.
WHO EVEN RESCUE AD CHILD FROM A MALL WHO HE PERCEIVED HIS MOTHER WAS DISCIPLINING HIM TOO HARSHLY.

WAS, ENTRUSTED WITH THE CARE
OF CHILDREN BY FRIENDS AND
FAMILY MEMBERS.
CALLED FATHER PARKER, A
ROMAN CATHOLIC PRIEST, WHO
TESTIFIED ABOUT HIS
PARTICIPATION AS AN ALTAR
BOY.
ALSO TESTIFIED AND INSISTENT
THROUGHOUT WAS THE FACT THIS
WAS A LOVING, CARING FAMILY,
STEPHENS, PLAYED GUITAR AND
WAS A BOY SCOUT AND PLAYED
BASEBALL AND HIS DAD WENT TO
ALL HIS GAMES.
HE WENT CAMPING WITH HIM.
>> THE DEFENSE'S ARGUMENT
REALLY SEEMS TO BE THERE WAS
THIS EVIDENCE IN HIS
BACKGROUND ABOUT USE OF
DRUGS, AND, THAT, THAT THAT
WOULD HAVE BEEN A BETTER WAY
TO GO BASICALLY IN THIS CASE
BASED ON THE FACT THAT THIS
WAS A CHILD INVOLVED AND TO
TRY TO SHOW HIM AS A GOOD
GUY REALLY ISN'T VERY
HELPFUL IN THAT KIND OF
SITUATION.
>> WELL I DARE SAY THAT IF
HE WOULD HAVE PUT ON
DR. HUMER WE WOULD HAVE BE
HERE AS WELL.
WE WOULD PUT ON EVIDENCE HE
WAS A LOVER HAVE OF
CHILDREN.
BECAUSE FIRST OF ALL,
MR. ELLER AND MR. NICHOLS
HIRED DR. MILLER AND, ALSO
DR. KNOCKS.
EVEN THOUGH THEY WERE
OFFICIALLY HIRED FOR
COMPETENCY, MR. ELLER
TESTIFIED AT THE HOST
TRIHEARING HE ASKED BOTHENT
GENTLEMEN, DR. MILLER WAS
THE PREMIER PSYCHIATRIST IN
JACKSONVILLE AT THE TIME, TO
LOOK AT POSSIBLE MITIGATION.
DR. MILLER OPINED THAT HE
HAD A CHARACTER DISORDER.
MR. STEPHENS ADMITTED TO
DR. MILLER HE HAD A HAIR
TRIGGER TEMPER.

HE HAD FASCINATION WITH FIRE
AND HE AT AGE 11 PARTIALLY
BURNED DOWN HIS NEIGHBOR'S
HOUSE.
MR. ELLER SAID HE DIDN'T
WANT TO HEAR, DIDN'T WANT
THE JURY TO HEAR THAT
EVIDENCE.
DR. KNOX IN HIS OPINION HIS
TEST RESULTS INDICATED HE
WAS SOCIOPATH.
MR. ELLER SAID HE DID NOT
WANT TO HEAR THAT, THE JURY
TO HEAR THAT TESTIMONY.
>> AT EVIDENTIARY HEARING WE
HAVE DR. TUMOR HE SAID THESE
MENTAL MITIGATETORES ARE AM
PABL, CORRECT.
>> HE DID.
>> AND WHAT DOES HE BASE
THAT ON?
HE SAYS --
>> HE BASES IT NO. 1
DIAGNOSIS OF BORDERLINE
PERSONALITY DISORDER.
AND, JUDGMENT DISORDER.
AND PSYCH OWE ACTIVITY SUB
STUDENTS ABUSE.
WHEN DR. MILLER EVALUATE
MR. STEPHENS, STEPHENS
DENIED ALCOHOL ABUSE AND
DRUG USE AND SAID HIS FAMILY
LIFE WAS HAPPY.
DR. TUMOR'S TESTIMONY WAS,
PRIMARILY BASED ON HIS,
BELIEF THAT, MR. STEPHENS'S
FAMILY LIFE WAS CHAOTIC AND
UNFURTHERING UNCARING AND
ABUSIVE.
AND IF YOU LOOK AT
COLLATERAL COURT'S ORDER.
THE COLLATERAL COURT SAID
THE FACT THAT DR. TUMOR
SEEMED TO IGNORE THE FACT
THAT ALL THE FAMILY MEMBERS
AND FRIENDS INCLUDING
DR. PARKER CAME IN AND
TESTIFIED THAT STEPHENS'S
FAMILY WAS A LOVING FAMILY.
THAT THE FATHER WAS VERY
PARTICIPATORY.
WENT CAMPING.
WENT TO ALL HIS BALLGAMES.
THEY ATTENDED CHURCH

REGULARLY, TRIAL COUNSEL WAS ABLE THROUGH THESE FAMILY MEMBERS AND FRIENDS TO KEEP THIS VERY NARROW.
ONE OF THE DANGERS OF CALLING DR. MILLER OR DR. KNOX TO TESTIFY BESIDES THEIR DIAGNOSIS WHICH WAS HARMFUL, WHICH THIS COURT RECOGNIZED AS HARMFUL AND NOT MITIGATION AND EVEN DR. TUMOR SAID BEING A SOCIOPATH OR ANTISOCIAL PERSONALITY IS NOT MITIGATING BY BRINGING OUT DR. TUMOR OR, LIKE, EXPERT, AND ACTUALLY THE EXPERTS HIRED WAS DR. KNOX AND DR. MILLER THE JURY WOULD HAVE BEEN EXPOSED TO THINGS LIKE HE WAS IN JUVENILE HALL.
THE JURY NEVER HEARD MR. STEPHENS HAD BEEN IN JUVENILE HALL.
THEY NEVER HEARD HE SHOT HIS PROPERTY IN THE FACE ALBEIT PERHAPS ACCIDENTALLY.
THEY NEVER HEARD HE HAD BURNED DOWN HIS NEIGHBOR'S HOUSE.
THEY NEVER HEARD THAT HE HAD MURDERED A MAN IN A ROBBERY BY YOU CAN WAG UP TO HIS TRUCK AND, WITH A BULLETPROOF VEST AND SHOOTING HIM FIVE TIMES.
THEY NEVER HEARD HE HAD ROBBED A LOGAN'S MEAT MARKET BY PUTTING THEM DOWN ON THE FLOOR AND ROBBING THEM.
THEY NEVER HEARD THAT HE TRIED TO KILL A MAN IN A ROAD RAGE INCIDENT AND TOOK HIS TRUCK.
AND THOSE, CRIMES HE PLED GUILTY TO AFTER THIS WAS OVER.
SO BY, PUTTING THAT HUMAN TOUCH, AND THIS COURT HAS RECOGNIZED, THAT IT IS NOT INFECT TAIF ASSISTANCE OF COUNSEL TO HUMANIZE A DEFENDANT.

GIVEN THE DEVASTATING,
DIAGNOSIS BY DR. MILLER AND
DR. KNOX, GIVEN DEVASTATING
TESTIMONY THAT WOULD HAVE
COME BEFORE THE JURY
MR. ELLER'S STRATEGY WAS
REASONABLE TO PAINT HIM AS A
HUMAN BEING, WHO LIKED KIDS
BECAUSE THAT WAS REALLY THE
ONLY ISSUE.
THERE WAS NEVER ANY ISSUE
THAT HE TOOK THAT CHILD OUT.
THERE WAS A DISPUTE BETWEEN
THE STATE AND THE DEFENSE OF
HOW THAT CHILD DIED.
BUT EVEN DR. DUNN TON, IF
YOU ACCEPT THE DEFENSE
THEORY HE LEFT HIM IN THE
CAR AND HE DIED OF
HYPOTHERMIA, DR. DUNTON
TESTIFIED ABOUT THE
PROLONGED MISERABLE DEATH
THAT YOUNG ROBERT SPARROW
ENDURED.
AND, WHAT THEY DECIDED TO DO,
WAS TRY TO SHOW THAT HE DID
NOT HAVE THE INTENT TO KILL.
BELIEVING THAT THAT WOULD
RESULT IN HOPING THAT WOULD
RESULT IN A LIFE SENTENCE.
>> I'M STILL BACK AT THE
GUILTY PLEA.
I'M TRYING TO FIGURE OUT
WHAT, WHAT PURPOSE IS SERVED
WHEN YOU HAVE A MURDER
CHARGE TO PLEADING GUILTY ON
OTHER CHARGES THAT ARE
RELATED WHEN THE MURDER
CHARGE IS STILL GOING TO GO
TO TRIAL?
>> AGAIN, YOUR HONOR, WHAT
THE MR. ELLER AND, WHAT YOU
SEE DURING THE TESTIFIED TO
AT EVIDENTIARY HEARING AND
WHAT YOU ACTUALLY SEE IN THE
RECORD WAS THAT CREDIBILITY
OF JASON STEPHENS WAS
ABSOLUTELY CRITICAL TO
MR. NICOLE'S TRIAL STRATEGY.
HE HAD TO GET THE JURY TO
BELIEVE JASON STEPHENS THAT
HE DID NOT INTEND TO KILL
THAT CHILD.
SO WHAT WE HAVE AND

MR. NICHOLS USING THAT IN
FACT THE TRIAL JUDGE FOUND
IT AS MITIGATION AND NOTED
IT IN HIS SENTENCING ORDER,
THAT CREDIBILITY, WELL, AS
FAR AS THE GUILTY PLEA AS
BEING, MITIGATION, WAS, THAT,
MR. NICHOLS WANTED JURY TO
BELIEVE JASON STEPHENS.
THAT HE HAD LEFT THAT CHILD,
ESPECIALLY GIVEN THE FACT
THAT THE CAUSE OF DEATH WAS
CONTESTED.
THEY WANTED THE JURY TO
BELIEVE JASON STEPHENS THAT
HE DID NOT INTEND TO KILL
THAT CHILD.
AND HOW THEY PLANNED TO DO
IT WAS TO PLEAD HIM GUILTY
TO THE THINGS THAT HE SAID
HE DID, ESTABLISH THAT
CREDIBILITY, AND TAKE THAT
FROM THE VERY BEGINNING ALL
THE WAY THROUGH TRIAL TO
PROMOTE THEIR TRIAL STRATEGY.
NO INTENT TO KILL AND THE
KIDNAPPING HAD ENDED PRIOR
TO THE MURDER.
AND IF THEY COULDN'T
CONVINCE THE JURY ON THE
LEGAL ISSUE, THEY STILL
WANTED TO CONVINCE THE JURY
THERE WAS NO PREMEDITATION.
AND AS A RESULT, THE DEATH
PENALTY IN THIS CASE WASN'T
APPROPRIATE.
IN THE --
>> THE DID YOU TOUCH AT ALL
ON THE FAILURE TO ATTEND THE
DEPOSITIONS?
>> I DIDN'T.
>> THAT SEEMS LIKE IN A CASE
WHERE THERE WERE 15 OR 20
DEPOSITIONS, AND HE DOESN'T
ATTEND HALF OF THEM AND HOW
DOES KNOW WHAT IS GOING ON
IN THIS CASE?
>> FIRST OF ALL THERE IS
ABSOLUTELY NO EVIDENCE
MR. NICHOLS DIDN'T READ AND
CONSIDER EVERY SINGLE
DEPOSITION.
STEPHENS HASN'T POINTED TO A
SINGLE THING IF TRIAL

COUNSEL WOULD HAVE ATTENDED
THE DEPOSITIONS, THAT HE
WOULD HAVE BEEN ABLE TO
LEARN OR CROSS-EXAMINE.
FIRST OF ALL WE SEE, THERE
IS ACTUALLY EIGHT.
>> WHO WERE AT THESE
DEPOSITIONS?
>> THE TWO, SEVERAL OF THE
DEPOSITIONS OF WHICH WERE
CITED TO WERE POLICE
OFFICERS WHO WERE
ESSENTIALLY RESPONDING TO
THE SCENE.
NONE OF THOSE FACTS WERE
CONTESTED.
DR. FLORO'S DEPOSITION CITED
BY MR. STEPHENS THAT WAS
ATTENDED BY MR. WAYNE ELLIS,
ASSOCIATE OF MR. , YOU CAN
SEE THAT ON THE DEPOSITION.
THAT WAS SUBMITTED AS
EVIDENCE IN THIS CASE.
>> HE WAS AN ASSOCIATE OF
MR. STEPHENS?
>>P AREN'TPY!!ILY AN ASSOCIATE.
DID HE ASK ABOUT HYPOTHERMIA.
HE WAS APPARENTLY GRADE INTO
THE CASE.
I DON'T KNOW THE
PROFESSIONAL ASSOCIATION.
IT'S NOT APPARENT FROM THE
RECORD.
DR. FLORO WAS ATTENDED BY
SOMEONE FOR MR. STEPHENS
FENCES.
DEREK DIXON.
MR. ELLER TESTIFIED AT
EVIDENTIARY HEARING HE
SUMMARIZED AND READ DEREK
DIXON'S DEPOSITION.
THE OTHER WAS HARAI GRAM,
AGAIN, THIS WAS A 7-YEAR-OLD
CHILD AND, AS I SAY THERE IS
NO EVIDENCE THAT HE DIDN'T
READ AND CONSIDER.
THIS ISSUE OF DEREK DIXON,
FAILING TO WITHDRAW THE
PLEA.
DEREK DIXON TOLD THE POLICE
THAT JASON STEPHENS HAD
TAKEN MONEY FROM HIM.
HE SAID THE OPPOSITE IN HIS
DEPOSITION.

JASON STEPHENS AT TRIAL SAID
HE WAS WRONG.
I ACTUALLY TOOK MONEY FROM
HIM.
>> YOU UTILIZED ALL YOUR
TIME.
IF YOU WITH WOULD BRING YOUR
REMARKS TO A CONCLUSION.
>> YES.
THANK YOU.
MANY OF THAT, THE TRIAL
JUDGE CORRECTLY, FOUND THAT,
TRIAL COUNSEL, WAS NOT
INEFFECTIVE APPLYING BOTH
PRONGS OF THE STRICKLAND
STANDARD.
AND, THE STATE URGES THIS
COURT TO AFFIRM.
THANK YOU.
>> REBUTTAL?
>> JUST A --
>> PLEASE PULL THE
MICROPHONE UP PLEASE, SIR.
THANK YOU.
>> AS TO YOUR QUESTION
REGARDING.
GUILTY PLEA, PERHAPS THERE
WAS TESTIMONY INTRODUCED
ABOUT THAT AND MR. ELLER
AGREED WITH MR. STEPHENS
NEVER INDICATED HE WANTED TO
PLEAD GUILTY TO FIRST AGREE
MURDER.
-- FIRST-DEGREE MURDER.
HE ALSO TESTIFIED
MR. STEPHENS POSITION FROM
DAY ONE HE DIDN'T INTEND TO
KILL ANYONE.
CERTAINLY THAT WAS
CONSISTENT WITH HIS DESIRE
NOT TO PLEAD GUILTY TO THAT
COUNT.
THAT IS ON THE TRANSCRIPT,
PAGE 249.
MR. ELLER, FURTHER STATED HE
DIDN'T AGREE WITH THE
DECISION TO PLEAD GUILTY AS
TO THE KIDNAPPING COUNT.
WITHIN OUR BRIEF --
>> WHY DIDN'T HE MENTION
SOMETHING, WHEN THE JUDGE
WAS, ENGAGED IN HIS COLIQUY,
AND TOLD THE JUDGE, NO, I
DON'T WANT TO PLEA?

>> THAT'S WHERE THE ADVICE OF COUNSEL NEED TO COME INTO PLAY SO HE WOULD UNDERSTAND THE FELONY MURDER, BY PLEADING TO THE UNDERLYING FELONY HE WOULD BE SUBJECTING HIMSELF TO A POSSIBLE FIRST-DEGREE MURDER CHARGE.
MR. CHIPPERFIELD ADDRESSED IT, REFERENCED THAT IN OUR, IN OUR BRIEF.
HE WAS ARGUING FOR SEVERANCE ON BEHALF OF HIS CODEFENDANT AND, TALKS ABOUT, THEM COMING IN AND, PLEADING THAT.
>> SEVERANCE OF WHAT?
A SEVERANCE OF WHAT?
THE COUNTS OR?
>> NO MR. CHIPPERFIELD AND MR. WHITE WANTED TO SEVER MR. CUMMINGS CASE FROM MR. STEPHENS'S CASE WHERE MR. CHIPPERFIELD ACTUALLY CAME IN AND STARTED ADDRESSING THAT.
HE ACTUALLY SAID, GOT THE QUOTE HERE, SAYS, JUDGE, I GUESS THERE IS JUST ONE MORE THING I WOULD POINT OUT I DON'T WANT TO BEAT DEAD HORSE TOO MUCH ON THE SEVERANCE.
I THINK THERE IS ONE MORE THING.
ALTHOUGH MR. STEPHENS HAS NOT PLED GUILTY TO THE MURDER HE HAS PLED GUILTY TO THE FELONY WHICH UNDERLINES THE MURDER.
IN COUNT ONE HE IS CHARGED WITH ALTERNATIVE EITHER PREMEDITATED MURDER, FELONY MURDER.
DURING THE KIDNAPPING.
THEN THE STATE WENT ON, TO CAPITALIZE ON THAT BLUNDER, AT EVERY OPPORTUNITY.
FOR EXAMPLE, WITHIN THE TRIAL TRANSCRIPT AT 996, VOLUME TEN, THIS IS MR. , SHORE SEEN IS ARGUING YOU WILL HEAR EVIDENCE THAT HE POSSIBLY DIED OF

HYPOTHERMIA.
HYPE THERM I CAN'T WOULD BE TRUE WITH WOULD BE MEDICAL CAUSE OF DEATH AND IT WOULD STILL BE MURDER.
GOES ON TO STATE, 14, 1791.
I MISSED HAVE MISSED SOMETHING ON DR. FLORO I DON'T MEAN TO BE SARCASTIC I DON'T WANT TO ASK A QUESTION RIGHT NOW.
I DON'T HAVE THE SLIGHTEST IDEA.
CAN SOMEONE TELL ME WHAT DIFFERENCE IT MAKES IN THIS CASE WHETHER THE CHILD DIED OF HYPOTHERMIA OR SUFFOCATION.
IT IS FELONY MURDER EQUALLY.
I DON'T HAVE THE SLIGHTEST IDEA AND CAN'T ENVISION THE LEGAL THEORY DURING THE COURSE OF BURGLARY, ROBBERY, KIDNAPPING YOU LEAVE A CHILD IN A CAR --
>> IN THE POST-CONVICTION HEARING, THE EVIDENCE, WHAT DID MR. ELLER, IS IT YOUR POSITION THAT THIS, THE PLEA TO THE KIDNAPPING, WAS, BY, CHEM TRAITED THAT THE LAWYER WAS -- DEMONSTRATED THAT THE LAWYER WAS NOT COMPETENT, IS THAT YOUR POSITION OR ARE YOU ARGUING AGAINST PREJUDICE?
>> I THINK IT'S PREJUDICE SINCE HE IS PLEADING HIM GUILTY TO FELONY MURDER UNDER THE FACTS.
>> WAS THERE AN ARGUMENT MADE TO THE TRIAL JUDGE BELOW IN THE POST-CONVICTION THAT, BY REASON OF PLEADING HIM GUILTY THAT THE LAWYER WAS INCOMPETENT?
THAT THAT WAS A FAILURE, INEFFECTIVE?
>> YES THERE WAS.
HE ACTUALLY, HE ACTUALLY FOUND THAT THE LAWYER WAS DEFICIENT AND THAT IT WAS NOT --
>> NO HE SAID HE DIDN'T

REALLY MAKE A FINDING AS I
READ THIS ORDER ON THAT
ASPECT OF IT.
HE SAID IT WAS UNWISE.
BUT, DID HE SAKE MAKE AN
ACTUALLY FINDING THAT THE
LAWYER WAS INEFFECTIVE?
>> WHERE I HAVE IT SAYS --?
>> WHAT PAGE ARE YOU
LOOKING?.
>> I BELIEVE IT'S 255 OR 256
OF THE POST-CONVICTION
RECORD I BELIEVE.
>> I SEE A 266 HE SAYS,
ALTHOUGH THE COURT FINDS THE
RECOMMENDATION TO PLEAD
GUILTY TO THE UNDERLYING
FELONY WAS UNWISE.
>> THIS ONE ACTUALLY, THIS
IS A AT 257.
>> OKAY.
>> AND HE STATES, HOWEVER,
THE COURT DOES FIND THAT
NICHOLS RECOMMENDATION TO
PLEAD GUILTY TO THE
KIDNAPPING WAS NOT A
REASONABLE RECOMMENDATION.
IT IS A QUESTIONABLE
STRATEGY TO ENTER A PLEA OF
GUILTY TO UNDERLYING FELONY
KIDNAPPING WHEN CHARGED WITH
A FELONY MURDER.
>> "O.K." I SEE THAT.
THANK YOU.
>> HE GOES ON TO SAY ANY
CREDIBILITY ISSUE WOULD HAVE
BEEN ADDRESSED BY PLEAD
TOGETHER OTHER SEVEN COUNTS.
I TAKE ISSUE WHAT THE STATE
SAID AS FAR AS WHETHER THAT
WOULD BEFELL ANY MURDER OR
NOT.
I BELIEVE JUSTICE QUINCE
ASKED THAT QUESTION.
THOSE ARE ALL CLEARLY BEFORE
THE TIME THE CHILD EVER LEFT
THE CAR.
BECAUSE THOSE ENDED WHENEVER
MR. STEPHENS LEFT THE HOUSE.
HE --
>> WAS HE ATTEMPTING TO
ESCAPE FROM THOSE AT THE
TIME HAD THE CHILD IN THE
CAR?

I MEAN --
>> SORRY I MISSED FIRST PART OF YOUR QUESTION.
>> WAS HE ATTEMPTING TO ESCAPE FROM THE COMMISSION OF THE ROBBERIES AND THE BURGLARY AT THE TIME HE HAD THE CHILD IN THE CAR?
>> HE DID FLEE.
THERE WAS NO EVIDENCE THAT ANYBODY HAD PURSUED HIM BUT HE DID, HE DID LEAVE AND HE LEFT WITH, WITH THE CHILD, ABSOLUTELY.
>> YOU HAVE EXHAUSTED ALL YOUR TIME PLUS ADDITIONAL TIME.
>> SORRY.
>> NOT A PROBLEM.
WE THANK YOU VERY MUCH.
WE'LL TAKE THIS CASE UNDER ADVISEMENT.