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**Steven Maurice Evans v. State of Florida  
SC05-161 | SC05-1526**

LET'S MOVE TOW THIS FINAL  
CASE OF THIS MORNING.  
THAT IS EVANS VERSUS THE  
STATE OF FLORIDA.

>> MR. HENDRY.

MATE PLEASE THE COURT I REP  
SUSPECT THE APPELLANT IN THE  
MATTER STEVEN MAURICE EFENS,  
WE ARE FROM MIDDLE REGION,  
IT IS HONOR TO SPEAK BEFORE  
YOU THIS MORNING ON THIS  
CASE.

WILL START WITH ISSUE NUMBER  
1 IN OUR BRIEF.

I MOVE ON TO ISSUE NUMBER 2.

I BELIEVE I WILL HAVE TIME  
TO ADDRESS, ADDRESS THE  
ISSUE NUMBER 3 IN THE BRIF.

THE FIRST ISSUE DEALS WITH  
THE 8th AMENDMENT AGAINST  
CRUEL AND UNUSUAL PUNISHMENT  
AND IN THIS CASE KRB --

>> ISN'T THAT PREMATURE?

THE CLAIM PREMAY SURE?

EYE DON'T BELIEVE SO.

THE REASON WHY IT IS NOT  
PREMATURE IS THAT WHEN YOU  
LOOK AT DECISIONS AN ACTIONS  
THAT WE ARE TALKING ABOUT IS  
THE CLASS OF PEOPLE AND  
CERTAINLY MR. EVANS, THE  
ARMINGS, THE CLASS OF PEOPLE  
A SEVERELY MENTALLY ILL, YOU  
LOOK AT THE ATKIN'S CASE,  
THAT IS PROHIB BUY AGAINST  
THE EXCUSE OF THE MIDDLE  
EAST.

>> AS FOR WHAT HAPPENED AT THE TIME OF TRIAL, THAT IS MENTAL RETARDATION AT THE TIME OF THE OH FENCE. IT HAS ONSET AT 18, SO YOU ARE TALKING ABOUT SOMETHING LIKE ME, I THOUGHT YOU WERE YOU TALKING ABOUT WHAT COULD BE EX KULTED.

YOU ARE NOT ALLEGING THAT SOMETHING THAT COULD OCCUR AFTER THE CRIME COULD BE SOMETHING THAT WE WOULD DETERMINE NOW AS TO WHETHER THEY WOULD BE PROPERLY EXECUTED.

WHAT IF SOMEONE STARTS TO DEVELOP DEMENTIA, IT IS ONGOING THING.

WE DON'T KNOW WHERE THEY ARE GOING TO BE AT THE TIME OF, CUSHION.

WHY SET UP THAT SOMETHING THAT NEEDS TO BE EXPLORED WHEN AN IF A WARRANT IS SIGNED?

>> BECAUSE IF YOU LOOK AT WHEN THIS CRIME OCCURRED. THIS CRIME OCCURRED IN 1996. AT THE TIME OF 1996, STEVEN MAURICE EVAN WAS SUFFERING FROM A MAJOR ILLNESS. THERE WERE SEVERAL PSYCHIATRIST WHO WERE INVOLVED IN THE CASE AND THE EXAMINATION OF STEVEN MAURICE EVANS.

>> I THOUGHT WERE YOU TALKING ABOUT IN THE CLAIM THIS DISEASE THAT OCCURRED THAT HAD ITS ON SETH MORE RECENTLY.

>> THERE IS TWO COMPONENTS. IT INVOLVES AT THE TIME OF THE OFFENSE, STEVEN MAURICE EFEN WAS SEVERELY MENTALLY ILL.

HE WAS PARANOID SCHIZOPHRENIC.

THAT IS IN THE REPORT AND THE REPORT, THERE IS DIAGNOSIS, SCHIZOPHRENIA, BUY POLL RAR DISORDER.

>> US WHAT THE THRESHOLD

THAT YOU WOULD ASK FOR?  
I MEAN, HE HAS BEEN FOUND  
COMPETENT?

CORRECT.

>> IF YOU HAVE A COMPETENT  
PERSON.

WHAULS THE TLRBHOLD THAT  
WOULD YOU SUGGEST TO THIS  
COURT?

>> MY SUGGESTION IS BECAUSE  
ACTIONS PROHIBIT THE  
EXECUTION, BECAUSE --

>> AS THRESH HOMD, WE AGREE  
ON MENTALLY RETARDED.

THE GAT ARE CAT FOR ARE IN  
THE RULE, RIGHT?

>> CORRECT.

>> WHAT OBJECTIVE THRESHOLD  
WOULD YOU SUGGEST FOR US?  
IN THE ARGUMENT?

>> THE THRESHOLD IS IN  
GENERAL I WOULD SAY SEVERELY  
MENTALLY ILL, A DIAGNOSIS  
THAT GIVE A PARANOID  
SCHIZOPHRENIC INDIVIDUAL, I  
WOULD SAY, THAT HAS ITS  
PLACE IF YOU LOOK AT THE  
RESULTS OF THE CASE WHICH I  
BELIEVE IN 1998, ADDRESS THE  
CASE.

THAT SAID IT IS CRUCIAL AN  
UNUSUAL PUNISHMENT, YOU  
SHOULD NOT BE EXECUTING  
PEOPLE.

SO BECAUSE OF THE DY  
DECISION, BECAUSE OF THE  
EVOLVING STANDARDS, OUR ARE  
OUR ARGUE AM IS THAT IT IS  
CRUEL AND UNUSUAL  
PUNISHMENT.

ONE OF THE CLASS OF PEOPLE  
WHO COULD BE ELIGIBLE.

>> DIAGNOSIS WOULD BE, YOU  
COULD NOT BE EXECUTED.

>> I DON'T KNOW IF I WOULD  
ARGUE THAT.

I WOULD STICK TO THE CASE,  
THE INDIVIDUAL CASE.

>> LET'S STICK TO HIS CASE  
THEN.

HOW WAS THIS ISSUE PRESENTED  
TO THE TRIAL COURT?

WAS IT PRESENTED TO THE  
TRIAL COURT?

>> THIS ISSUE WE RAISED THIS IN OUR 3851 MOTION. WE RAISED IT AS A CLAIM OF CRUEL AND UNUSUAL PUNISHMENT AGAINST STEVEN MAURICE EVANS BECAUSE HE HAD THIS DIAGNOSIS OF PARANOID SKITS SCHIZOPHRENIA, SOMETHING WHICH CAME LATER, BUT I THINK IT WAS ACTUALLY THERE IN HIS SYSTEM AT THE TIME HE WAS ON TRIAL.

THAT WAS -- WE HAVE AN YID THAT IS SHOT ONLY PARANOID SCHIZORENIC, HE WAS ON COCAINE THE NIGHT OF OH FENCE, BUT WE ALSO HAVE A SITUATION WHERE IN 1996 -- EYE UNDERSTAND, THE SITUATION THAT YOU ARE TALKING ABOUT, BUT THIS D THE TRIAL JUDGE ACTUALLY RULE ON THIS PARTICULAR ISSUE?

>> THE TRIAL JUDGE RULED, I BELIEVE, THAT THIS ISSUE IS BARRED AND RAISED ON DIRECT APPEAL.

THE MAIN PROBLEM WITH THE ORDER IS THAT THE JUDGE DID NOT ANALYZE WHETHER OR NOT THIS WAS CRUEL AN UNUSUAL PUNISHMENT AS APPLIED TO STEVEN MAURICE EVANS, THE JUDGE, I BELIEVE, IN HIS HORDER, WHEN HE SPOKE UP, BASICALLY, THE FLORIDA'S DEATH PENALTY TEAM HAS BEEN RULED CONSTITUTIONAL.

>> IF HE, IN FACT, WAS DIAGNOSEED WITH THESE ILLNESSES, WHY WASN'T THAT AN ISSUE THAT COULD HAVE BEEN OR SHOULD HAVE BEEN RAISED ON DIRECT APPEAL?

>> WELL, IT WAS RAISED AS THE MAIN DISCUSSION ON APPEAL.

IT WAS DISCUSSED VERY THUNDERSHOWER ALY. WAS -- THOROUGHLY. WAS THE MAIN ARGUMENT WAS HOW COULD THERE BE THIS FINDING CERTAIN AGGRAVATEORS,

CALCULATED AN PREMEDITATED,  
AND YET, AT THE SAME TIME,  
THE TRIAL COURT FOUND THE  
STATUTORY MIT GITORS UNDER  
EXTREME MENTAL STRESS AN THE  
INABILITY TO CONFORM HIS  
CONDUCT THROUGH REQUIREMENTS  
OF LAW, SO IT WAS ADDRESSED.  
IT WAS TALKED ABOUT ON  
DIRECT APPEAL.

>> SO THEN, IF IT WAS TALKED  
ABOUT ON DIRECT APPEAL, HOW  
DO WE GET TO IT HERE?  
IS A UNDERSTAND THIS RECORD,  
THIS GENTLEMEN HAD THREE  
MEPAL HEALTH EXPERTS TESTIFY  
AT HIS MENDTE PHASE.

THEY TALKED ABOUT WHAT KIND  
OF MENAL PROBLEMS HE HAD.  
AND AS A RESULT OF, THAT THE  
TRIAL JUDGE DID IN FACT GIVE  
WAY TO ONE OF THE MENTAL  
HEALTH MIT GITOR, HE  
CERTAINLY CONSIDERED AND HE  
GAVE SOME WEIGHT TO THE  
OTHER MENTAL HEALTH MIT  
GITOR.

THAT IS WHAT THE STATE OF  
RECORD WOULD DEM TRAT?  
EYE DON'T KNOW -- I DONE  
KNOW.

>> HE GAVE, HE GAVE THAT ONE  
MORE WEIGHT THAN HE GAVE THE  
OTHER ONE.

ONE OF THEM HE GAVE MER  
WEIGHT THAN THE OTHER.

CORRECT?

BOTH OF THEM WERE, IN FACT,  
DISCUSSED FOUND BY THE TRIAL  
JUDGE.

>> THAT IS CORRECT.

>> I SEE A DIFFERENCE  
BETWEEN MENTAL RETARDATION  
AN MENTAL ILLNESS.

IT SEEMS LIKE MENTAL RETARD  
AIR, YOU CAN'T CURE, AN ONCE  
IT IS ONSET, IT DOESN'T  
AWAY.

MENTAL ILLNESS IS DIFFERENT.  
IT SEEMS LIKE THE  
JURISPRUDENCE OF COMPETENCY  
ADDRESSES YOUR CONCERN AS HE  
IS SO MENTALLY ILL THAT HE  
IS INCOMPETENT AT THE TIME

OF HIS SCHEDULED EXECUTION.  
THEN HE WON'T BE EX SKUTED.  
EVEN IF HE IS MENTALLY ILL  
NOW, THERE IS NOTHING TO SAY  
HE WILL STILL BE MENTALLY  
ILL AT THE TIME OF EX, COULD  
YOU VICE VERSA, IF HE IS NOT  
NOW, HE MAY BE AT THE TIME  
OF EXECUTION.

SO GOING BACK TO JUSTICE  
PARIENTE'S CONCERN, WHY  
DOESN'T IT ASSUME AN  
ADEQUATELY'S DRESS THE  
ARGUMENT THAT HE SHOULD NOT  
BE EXECUTED BECAUSE HE IS  
MENTALLY ILL?

I WOULD SAY THAT BECAUSE  
THAT ISSUE ISN'T ADDRESSED.  
IT ISN'T ADDRESSED.

IT IS NOT, IT IS NEATH ARE  
ADDRESSED IN THE FORD CASE  
WHICH DEALS WITH THE  
EXECUTION OF THE INSANE.  
THE MAIN ARGUMENT IS THAT  
YOU CAN'T EXECUTE THOSE  
GROUPS OF PEOPLE BASED ON  
THE RECENT CASES IN THE U.S.  
SUPREME COURT.

IN THE STEVEN MAURICE EVANS  
CASE, YOU SHOULD NOT BE ABLE  
TO EXECUTE PARANOID  
SCHIZOPHRENIC WHO IS  
MENTALLY INCOMPETENT TO  
STAND TRIAL DUE TO THE MENAL  
INESS.

>> HE HAS BEEN CONFIDENT  
NOURK RIGHT?

>> HAS HE BEEN JUDGED COME  
TENT NOW?

>> THERE WAS FINDING POST-  
CONVICTION.

>> OKAY, IF THERE IS A  
FINDING IN POST CONVICTION  
NOW HE IS COME TEN, AT LEAST  
WE CAN SAY THAT HE IS  
SOMETIMES COMPETENT AND  
SOMETIMES INCOMPETENT.  
HE MAY BE COMPETENT AT THE  
TIME OF EXECUTION.

WHY ISN'T THAT TIME WHEN WE  
DETERMINE WHETHER HE CAN BE  
EXECUTED OR NOT?

>> WHEN HIS DIAGNOSIS IS A  
RARE FORM.

THAT CAME FROM THE DOCTOR WHICH IS KNOWN, WHICH MR. EVANS, HE IS GOOD AT MAXING MENTAL ILLNESS. HE DOESN'T WANT TO APPEAR MENTALLY ILL.

THE LAST THING HE WANTS TO DO IS FOR PEOPLE TO SEE THAT HE IS MENTALLY ILL.

>> THAT IS ONE VIEW OF HIS SITUATION.

THE OTHER IS THAT HE IS JUST REFUSING TO COOPERATE WITH HIS ATTORNEYS AN NOT NECESSARILY DOO DUE TO MENTAL ILLNESS SO I AGREE THERE IS ONE POSSIBILITY THAT YOUR EXPERTS PUT FORTH, BUT THAT IS NOT DEALING AGAIN WITH WHAT IS THE FIPING OF THE TRIAL COURT ON THIS ISSUE.

THE TRIAL COURT FIP AS HE WAS PRESENTLY ILL AND UNABLE TO ASSIST WITH HIS DEFENSE, YOU ARE NOT APPEALING -- ARE YOU APPEALING THAT PART OF THE TRIAL COURT'S ORDER?

>> THERE IS ISSUES WITH REGARD TO COME PEN YOU SY. ONE OF THE CLAIMS INVOLVED. THE FAILURE TO SUPPORT THE NECESSARY INFORMATION AT THE TIME OF TRIAL.

>> YEAH.

I AM ASKING -- YOU HAVE RAISED IT TO BE EXECUTE. BUT DID YOU RAISE ON AN ISSUE OF APPEAL THAT THE TRIAL COURT FINING HIM COME TENT TO PROCEED WITH THIS PROCEEDING?

>> BECAUSE THE STANDARD INVOLVED IN THAT.

WE ARE NOT CHALLENGING THAT.

>> THAT GOES BACK TO WHAT THE JUST IS SAID WHICH SAID HE MAY BE OF DEP AT THE TIME.

HE MAY NOT.

HE IS REFUSING MEDICATION THAT MAY HELP OR MAY NOT HELP WITH HIS MENTAL ILLNESS.

>> ONE THING IS.  
-- A DOCTOR SPENT ONLY FIVE  
MINUTES WITH HIM.  
WITH MR. EVANS, HE HAD A  
SERIES OF REVIEWS.  
MY INTERACTIONS WITH  
MR. EVANS, HE DID NOT WANT  
TO PURSUE ANYTHING WITH  
REGARD TO MENTAL ILLNESS,  
PARANOID SCHIZOPHRENIA OR  
ANYTHING.  
WE DID IT BECAUSE WE HAVE TO  
DO IT.  
SETTING ASIDE THE ISSUE OF  
COMPETENT SY.  
HE HAS SEVERE MAJOR MENTAL  
ILLNESS.  
OUR ARGUMENT IS HE SHOULD  
NOT FIT IN THE SAME CLASS OF  
PEOPLE THAT ARE ELIGIBLE FOR  
THE DEATH PENALTY.  
I HOPE THE COURT CAN REVIEW  
THE DECISION.  
HE HAS QUESTION HE NEEDS TO  
ASK.  
>> PROBABLY GET YOU WHAT WAP  
THROUGH THIS QUESTION.  
IN ARTICLE 1:00 SECTION 17  
OF THE STATE CONSTITUTION,  
OUR STATE CONSTITUTION  
REQUIRES MANDATES THAT THIS  
COURT CONSTREW CRUEL AND  
UNUSUAL PUNISHMENT IN  
CONFORMITY WITH THE  
DECISIONS OF THE UNITED  
STATES' SUPREME COURT.  
HOW CAN WE DO THAT?  
>> QUESTION DO THAT.  
THIS COURT WILL REVIEW.  
THE CASE OF FITZPATRICK,  
THOSE ISSUES IN 1988.  
IN THIS CASE, THE COURT DID  
A PORTIONALITY ANALYSIS,  
AGAIN WITH THE CASE, AND  
ASKED IS THIS REALLY SOMEONE  
WHO CAN FIT THE CLASS OF  
PEOPLE WHO SHOULD BE  
EXECUTED?  
STATED THAT IT MUST BEGIN  
WITH A PREMISE THAT DEATH IS  
DIFFERENT.  
>> LET ME ASK YOU UNANOTHER  
WAY -- CAN YOU CITE TO ME,  
THE UNITED NATIONS' SUPREME

COURT CASE THAT HOLDS IT IS  
A VIOLATION OF THE FEDERAL  
CONSTITUTIONAL RIGHT AGAINST  
CRUEL AN UNUSUAL PUNISHMENT.  
TO EXECUTE SOMEBODY WHO IS  
COV DENT, BUT HAS A VE VEER  
EP MENTAL ILE ILLNESS.

I BELIEVE THAT WOULD BE THE  
FORD CASE, A 1988 CASE WHICH  
SAID THAT YOU CAN'T EXECUTE  
MENTALLY INSANE PEOPLE.

THIS COURT, THIS COURT CITED  
TO JUSTICE STEVENS WHEN HE  
SAID THE DEATH PENALTY IS  
UNIQUE IN THE TOTAL AND IT  
IS UNIQUE AS BASIC PURPOSE  
OF KRILL NAL JUSTICE, IT IS  
UNIQUE FINALLY ON THE  
RENUNSATON OF ALL THAT IS  
EMBODIED IN THE CONCEPT OF  
HUMANITY.

IN AUGUST OF 2004, THEY  
WHEELED -- HE WAS COMPLETELY  
FINE.

SEVERELY MAJORLY MENTALLY  
ILL.

THE POINT IS, HE SHOULD KNOB  
EXECUTED.

HE SHOULD NOT BE ON DEATH  
ROW.

HE DOESN'T FIT THAT CLASS OF  
CITIZENS.

HE SHOULDN'T BE THERE.

>> THAT IS NOT THE  
DISCUSSION THAT WOULD HAVE  
BEEN HELD AT THE CONCLUSION  
OF THE PENALTY PHASE AND ON  
THE SENTENCE AN DIRECT AHEAL  
RATHER THAN A SITUATION THAT  
WE ARE INTO NOW?

WOULD Y WOULD THAT NOT BE  
THE SCEN MAUR YO AS YOU GO  
THROUGH A PROCESS?

>> HERETOFORE, WE NEVER  
DISCUSSED HIS MAJOR PHYSICAL  
ILLNESS THAT IS RUNNING  
RAMPANT LUGE THE BODY.

IT?

COMPLETELY ATTACKED HIS  
EYES.

IT ACTS LIKE A CANCER.

IT IS SPREAD INTO THE WHITE  
BLOOD CELLS AND HE IS BLIND.

ETTE IS ON THE LUNG,

PANCREAS, STOMACH, AND THESE WERE ALL THINGS NOT KNOWN TO THE JURY WHEN THEY MADE RECOMMENDATION.

>> THEY DIDN'T EXIST THEN? CORRECT?

>> IT WASN'T DIAGNOSED.

>> HE WASN'T BLIND BACK THEN?

>> NO.

I LOOKED AT THE RECORDS, THERE WERE SIGN, SYMPTOMS WITH HIS SKIN.

HE WAS SCRATCHING HIS EYES.

>> THE PROBLEM I AM STILL HAVING IS THAT THERE ARE MANY CONDITIONS AS WE HAVE INCREASINGLY LARGER NUMBER OF INMATES ON DEATH ROW, THEY GET, AS THEY AGE, THEY MAY GET CONDITIONS THAT WILL MAKE IT AT THE TIME THE GOVERNOR SIGNS THE DEATH WARRANT THAT MAYBE HUMAN DEED-DEE SENSE SY IS GOING TO SAY THIS PERSON SHOULD BE PUT OUT OF HIS MISERY ANOTHER WAY OR SOMETHING. BUT WHAT YOU ARE ADVOCATING FOR WOULD REQUIRE CONSTANT HEARINGS AS SOMEBODY WHO HAS SOME TYPE OF ILLNESS, IT COULD BE CANCER, IT COULD BE ALZHEIMER'S TYPE, TO EARLY WAIT IF THE PERSON IS, YOU KNOW, DETERIORATED TO A POINT AT WHICH THEY SHOULD NO LONGER BE ON DEATH ROW AND AS JUSTICE SAID, HOW DO YOU, WHAT ARE THE STANDARDS THAT YOU USE TO EVALUATE AS WE TELL THE TRIAL JUDGE TO COME AT?

I SEE, I MEANT YOU ARE IN THE REBUTTAL?

THAT IS MY PROBLEM IS THAT IT IS ONGOING SITUATION AND YOU ARE ASKING US TO FIX IT AT A PERIOD OF TIME THAT REALLY INDETERMINATE.

>> I WOULD RESPOND TO THAT. I WOULD ASK THE COURT TO REVIEW THAT OPINION.

YOU HAVE, GOING TO THE OTHER

ISSUE HERE.

WHAT MR. EVANS WAS DOING ON  
THE NIGHT OF THE OH FENCE.

IF YOU LOOK AT THE CASE.

THERE IS A DISCUSSION ON THE  
WAY HE LOOKED ON THE NIGHT  
HE WAS CRAZY.

NOW, IN THE EVANS CASE, YOU  
HAVE ONE OF THE MAIN ISSUES  
HERE IS THAT THE FAILURE  
COUNSEL FAILED TO SUPPORT  
THIS REPORT TO THE MENTAL  
HEALTH EXPERTS UNTIL THAT  
WEEK BEFORE RILE.

ANOTHER ISSUE THAT WE  
BROUGHT UP HERE --

>> WAS THAT ALL?

I REMEMBER THAT DR. GUTMAN  
SAID THAT, BUT I THOUGHT  
THAT THE OTHER EXPERTS SAID  
THAT THEY DID IN FACT READ  
THE STATEMENTS OF THE CO-  
DEFENDANTS.

>> THEIR LETTERS, MY  
RECOLLECTION OF THE EVIDENCE  
IN THE HEARING IS THAT THERE  
IS WRITTEN DOCUMENTATION  
SAYING THIS INFORMATION WAS  
MET FORWARD TO EITHER  
DOCTORS THIS THE WEEK BEFORE  
THE TRIAL.

>> WELL, ISN'T THERE A  
LETTER FROM THE DEFENSE  
ATTORNEY TO ONE OF THE  
EXPERTS WHERE SHE ACTUALLY  
TALKED ABOUT THE TWO  
CODEFENDANTS CAN AN THEM  
SAYING THEY WERE DRINKING  
AND DOING MARIJUANA.

>> SEPTEMBER OF 1998, THIS  
WAS A WILLING LETTER FROM  
THE TRIAL COUNSEL.

ABOUT IT TALKED ABOUT  
DRINKING.

IT DID NOT TALK ABOUT  
COCAINE USE.

>> IT TALKED ABOUT, WELL,  
THEY INITIALLY SAID THAT  
THERE WAS DRINKING AND USE  
OF MARIJUANA.

IT WAS LATER ON THAT SOMEONE  
SAID AND THERE WAS SOME  
COCAINE.

EYE DONE REMEMBER I DON'T

REMEMBER COCAINE BEING  
DISCUSSED.

>> YOU ARE DOWN TO TWO  
MINUTES INTO REMAINING, SO  
USE YOUR TIME AS YOU PLEASE.  
I WANTED REMIND.

>> DEFENSE COUNSEL HAS DUE  
DUTY TO OBTAIN FILE, PAST  
FILES OF MR. EVAN, THAT WAS  
NOT DONE IN THE CASE.  
THE TRIAL COUNSEL DIDN'T  
KNOW KNOW ABOUT IT OUT  
THERE.

LEAKED OUT WHEN EVANS TOOK  
THE STAND THAT HE HAD BEEN  
CONVICTED OF ESCAPE.

WE CALLED PUBLIC KEY FENER  
TO EXPLAIN THIS WAS NOT WITH  
KILLING GUARDS OR ANYTHING  
LIKE THAT.

>> WAS IT PRESENTED TIP THAT  
MANNER?

>> IT WAS RESENTED AT THE  
EVIDENTIARY HEARING.

>> NO, I AM SAYING AT THINK  
TIME THE EVIDENCE CAME  
BEFORE THE JURY, THERE WAS  
NOTHING SAID EXCEPT ESCAPE.  
THERE WAS NO INDICATION THAT  
THIS WAS SOME KIND OF  
VIOLENT ACTION.

NO INDICATION THAT THIS WAS  
SOME KIN OF TUMBLING AN ULF  
THIS?

IT JUST SAID HE ESCAPED,  
CORRECT?

>> THAT IS CORRECT.

>> ONCE THE JURY HEARD  
ESCAPE CONVICTIONS THEY  
THINK IT IS A DANGEROUS MAN,  
HE COULD ESCAPE AGAIN.  
WE'LL IM PO POSE THE DEATH  
PENALTY.

I WOULD LIKE TO OBSERVE.  
THANK YOU VERY MUCH.

>> MR. NUNNELLEY?

>> MAY IT PLEASE THE COURT,  
I REP SBT THE STATE OF  
FLORIDA IN THIS SPREADING.  
WITH RESPECT TO THE FIRST  
CLAIM, WHAT WE'RE LABELING  
FOR EXECUTION CLAIM, IT IS  
REALLY NOT THAT.  
IT IS NOT A FORWARD CLAIM.

WE HAVEN'T LITIGATED THIS  
UNIR FORD BECAUSE THE  
DEFENDANT DID NOT ATTEMPT TO  
DO SO, IF HE HAD, IT WOULD  
HAVE BEEN UNTIMELY BECAUSE  
THERE IS NO DEATH PAR  
WARRANT.

WHAT WE HAVE IS A PREMATURE  
-- IT WINCE OF TWO THINGS,  
AND I AM NOT SURE IT IS.

IT IS EITHER A PREMATURE  
CLEMENCY ARGUMENT OR IT IS  
AN ATTEMPT TO RELITIGATE THE  
DIRECT APPEAL FINDING OF  
THIS COURT THAT DEATH IS AN  
APPROPRIATE STHINT CASE.  
I AM NOT QUITE SURE WHAT IT  
IS.

IT SEEMS TO MUTATE BETWEEN  
THE ONE OR THE OTHER BUT TO  
THE EX DENT THAT WE ARE  
TALKING ABOUT  
PROPORTIONALITY.

IT IS NOT REQUIRED UNTHE 8th  
AMENDMENT BY THE WAY.

BUT ASSUMING THAT IS WHAT WE  
ARE TALKING ABOUT.

THE TRIAL COURT GAVE  
SUBSTANTIAL WEIGHT TO THE  
EXTREME EMOTIONAL  
DISTURBANCE AGGRAVATEOR AN  
GAVE SOME WEIGHT OR I AM  
SORRY MIT GITOR.

AND GAVE SOME WEIGHT TO THE  
UNABLE TO APPRECIATE AND  
CONFIRM MITIGATOR.

THOSE ISSUES HAVE BEEN  
CONSIDERED TO THE EXTENT  
THAT THIS IS THE ATTEMPT TO  
RELITIGATE THOSE ISSUES,  
THAT RELITIGATION IS  
PROCEDURALLY BARRED.

IT HAS ALREADY BEEN DECIDED,  
TO THE EXTENT THAT WE ARE  
TALKING ABOUT COMPETENCY FOR  
EXECUTION, WE ARE NOT THERE  
YET.

THAT WASN'T WHAT WE WERE  
TALKING BEEN THE HEARING IN  
ORLANDO THE WEEK LEADING UP  
TO HURRICANE FRANCIS.

WHAT WE WERE TALKING ABOUT  
DOWN THERE WAS, WE HAD ONE  
WITNESS WHO TESTIFIED ABOUT

THAT.

THIS IS SOME KIND OF  
AUTOIMMUNE SYSTEM DISEASE.

I DON'T DISPUTE THAT

MR. EVANS IS BLIND.

WE HAVE EXPERT TESTIMONY  
FROM OPHTHOLOGIST WHO HAS  
TREATED HIM TO THAT EFFECT.  
TO THE EXTENT THAT WE HAVE A  
SUGGESTION THAT THE FACTS OF  
THAT DISEASE HAVE CARRIED  
OVER INTO HIS LIVER, SFOM  
ACHE AND PANCREAS LUNGS,  
STOMACH AND PAN CREE YIX I  
DON'T RECALL WHAT COUNSEL  
SAID EXACTLY.

I DON'T BELIEVE THE RECORD  
WILL SUPPORT THE NOTION THAT  
THAT IS WHAT HE IS GOING ON  
WITH MR. EVANS.

IT MAY BE WHAT IS GOING ON  
NOW.

AFTER TWO YEARS, AFTER THE  
TWO YEARS HE HAS LAPSED SUNS  
THE EVIDENTIARY HEARING.

WE DON'T KNOW THAT.

>> DID I UNDERSTAND TO SAY  
YOU, HE WAS NOT BLIND AT THE  
TIME OF THE EDARY HEARING?

>> NO, MA'AM.

HE WAS BLIND AT THE TIME OF  
THE EVIDENTIARY HEARING.

I DO NOT DISPUTE THAT.

I DO NOT DISPUTE THAT.

>> WAS THERE ANY EVIDENCE AS  
TO HIS EXPECTED LIFE  
EXPECTANCY AT THE TIME OF  
THE POST CONVICTION HEARING?

>> I AM GOING TO GIVE YOU A  
TWO-PART ANSWER.

I AM NOT TRYING TO DEFLECT  
YOU HERE.

WE HAD TWO MD DOCTORS WHO  
TESTIFIED HE SAID, YOU KNOW,  
THEOTOMY IMMUNE SYSTEM  
DISEASE, I DON'T KNOW THAT  
MUCH ABOUT IT.

HIS TESTIMONY IS VERY, VERY  
LIMITED.

THE OTHER WITNESS WHO  
TESTIFIED WAS AN OPTH  
OPHTHOLOGIST WHO HAS DRAETED  
MR. EVANS IN EARLY 2000 FOR  
BLINDNESS.

SHE DIAGNOSED THIS DISEASE.  
SHE DESCRIBED MR. EVAN'S  
CONDITION AS THE MOST SEVERE  
CASE SHE HAD EVER SEEN.  
I WILL GIVE HIM THAT.  
SHE DID NOT SAY THAT HIS  
PROGNOSIS IS OF A LIFE  
EXPECTANCY OF 3 YEARS OR  
ANYTHING OF THAT NATURE.  
IT DID NOT GO TO THAT POINT.  
THAT WITNESS WAS NOT AND DID  
NOT PROPOR TO BE A  
SPECIALISTS IN THE AREA OF  
THE DISEASE.  
MY UNDERSTANDING IS THAT  
RATHER UNUSUAL CONDITION  
THAT REQUIRES A -- THAT  
THERE ARE PEOPLE WHO  
SPECIALIZE IN IT, THERE WAS  
NO SUCH TESTIMONY.  
WE DO NOT KNOW WHAT  
MR. EVAN'S LIKE EXPECTANCY  
IS.  
I AM SORRY.  
THAT EVIDENCE IS NOT IN THE  
RECORD.

>> MR. NUN NELLLY, IT  
APPEARS YOUR OPPONENT IS  
SAYING THAT WE HAVE A PERSON  
WHO HAS GONE THROUGH THE  
PROCESS AND IS NOW IN SUCH A  
CONDITION THAT HE OR SHE  
OUGHT NOT BE EITHER ON DEATH  
ROW OR EVEN CONSIDERED FOR  
EXECUTION AND THIS IS SOME  
WHERE BETWEEN THE TRIAL AND  
A WARRANT.

I THINK THAT IS REALLY WHAT  
THEY ARE ARGUING AND SO DO  
WE HAVE ANY KIND OF ROW SEED  
DURES?

IS THEIR LAW THAT AFFORDS  
REMEDY OR RELIEF OF THE LAW  
TO AFFORD REMEDY OR RELIEF  
UNDER THAT SCENARIO?

I GUESS THAT IS WHAT WE ARE  
REALLY TALKING ABOUT THIS  
MORNING.

>> HIS REMEDY, CHIEF JUSTICE  
IN CLEMENCY, THAT IS WHERE  
IT BAE LONGS.

THIS IS NOT AN ATKINS-  
SIMONS CIRCUMSTANCE.  
ATKIN AN SIMONS ARE FOUND BE

THE RELATIVE CULLENABILITY  
OF THE OFFENDER.  
BE HE MENTALLY RETARDED OR  
OF YOUNG AGE.  
THOSE FACTORS THAT ARE  
PERSONAL TO THE DEFENDANT  
RELATE DIRECTLY UP ARE THE  
SUPREME COURT'S PRECEDENT TO  
THE CULPABILITY OF THAT  
OFFENDER.

>> WAS THERE AN INSANITY  
DEFENSE PRESEN SNOOD NO,  
SIR.

MR. EVANS REFUSED TO ALLOW  
AN INSANITY DEFENSE TO BE  
PRESENTED.

>> THAT SEEMS TO BE THE  
ARGUMENT TOO, HE WAS INSANE  
AT THE TIME.

THAT SEEMS TO BE INSANITY SO  
HE DID NOT HAVE THE INTENT  
TO COMMIT THE CRIME.

THAT KIND OF ARGUMENT.

>> WELL, MR. EVANS WANTED TO  
USE AN ALIBI DEFENSE.

THE ALIBI DEFENSE BLEW UP ON  
HIM WHEN HIS ALIBI WITNESS  
ADMITTED TO HAVING PURGERED  
HERSELF BY PROVIDING AN  
ALIBI IN DEPOSITION BY THE  
TRIAL.

OBVIOUSLY TRIAL COUNSEL  
COULD NOT TELL THAT WITNESS.  
ON THE EXERCISE OF  
REASONABLE PROFESSIONAL  
JUDGMENT.

MR. EVANS TESTIFIED OVER  
COUNSELS STRONG  
ENCOURAGEMENT NOT TO DO SO,  
BUT IN COMING BACK TO YOUR  
QUESTION.

MR. EVANS CONFIDENCE SY TO  
PROCEED AND WE ALL, I MEAN,  
THERE ARE VARIOUS LEVELS,  
AND IT IS RELATIVELY LOW  
STAN TARTED OF COMPETENT SY  
AND WHILE TO PROCEED IS WHAT  
HIGHER.

HIS COMPETENT SY HAS BEEN  
LIT GAYED THROUGHOUT THESE  
PROCEEDINGS.

HE WAS SENT OFF TO FLORIDA  
STATE HOSPITAL FOR  
EVALUATION AND OBSERVATION

AND ULTIMATELY HE WAS FOUND COMPETENT.

THAT WAS NOT, AS I RECALL, A MAJOR ISSUE ON DIRECT APPEAL, BUT THE BOTTOM LINE IS COV TENT SY, AT THE TIME OF TRIAL, HAS BEEN DETERMINED.

THIS COURT WROTE OF THE ISSUE.

AND POINTED OUT THAT THE REPORTS OF EXPERT WITNESSES ARE ADVISORY TO THE COURT. THEY ARE TO THE TRIAL COURT. THEY ARE NOT BINDING ON THE TRIAL COURT.

THE TRIAL COURT RETAINS THE RESPONSEK FOR MAKING THE DETERMINATION AS TO WHETHER OR NOT THIS INDIVIDUAL IS COMPETENT TO GO TO TRIAL.

MR. EVANS THEN LITIGATED HIS COMPETENT TO ROW SEED IN THE 3.851 SPREEINGD UNDER THE PROCEDURES SET OUT IN THE RULES AND THE TRIAL COURT FOUND THAT HE WAS, IN FACT, CONFIDENT TO GO FORWARD. THAT ISSUE IS RIGHT BEFORE THIS COURT ON DIRECT APPEAL. ON THIS APPEAL, I AM SORRY, WHAT WE HAVE IS A HYBRID SORT OF ISSUE.

I AM NOT SURE WHAT IT IS HYBRID BETWEEN, IT IS NOT ATKINS OR SIMONS BECAUSE THOSE CASES ARE DIFFERENT. IT IS NOT FORD BECAUSE WE DON'T HAVE A SHOWING THAT MR. EVANS DOESN'T UNDERSTAND WHAT IS GOING TO HAPPEN TO HIM AND WHY.

AND WITH A FOOTNOTE WE DON'T HAVE A WARRANT ACTIVE ANYWAY SO WE ARE NOT TO THE DETERMINATION YET.

WHAT WE SEEM TO HAVE IS SORT OF A MID GROUND CLAIM THAT WHILE THE EXTREME MENTAL EMOTIONAL DISTURBANCE MIT GITOR WAS APPLIED TO THIS DEFENDANT AND WHY WHILE THE PROPORTIONALITY ANALYSIS CONDUCTED BY THIS COURT ON

DIRECT APPEAL AFTER I FIRMED  
THE DEATH SENTENCE  
NONETHELESS WE GET THE  
DEFENDANT GETS TO COME BACK  
IN POST-CONVICTION AND  
RELITIGATE PROPORTIONALITY  
USING THE SAME EVIDENCE THAT  
WAS BEFORE THIS COURT ON  
DIRECT APPEAL AND ARGUE THAT,  
OKAY, I GOT THIS MITIGATEOR,  
I STILL GOT A DEATH  
SENTENCE, OKAY, THE LABEL  
THAT GOES TO IT IS PARANOID  
SCHIZOPHRENIA OR PIE POLAR  
DISORDER.

THEREFORE, I AM NOT ELIGIBLE  
FOR THAT.

>> LET ME ASK THIS YOU -- ON  
THIS ISSUE, I THOUGHT THAT  
WHAT WAS RAISED IN THE TRIAL  
COURT, AT 3.850 LEVEL FOR  
LIKE 2 DIFFERENT KIND OF  
ISSUES, I THOUGHT HE RAISED  
ISSUE OF HIS COMPETENT SY TO  
PROCEED AND I THOUGHT HE  
ALSO RAISED THE ISSUE OF  
WHETHER OR NOT OUR WHOLE  
PROCEDURE WAS  
UNCONSTITUTIONAL BECAUSE IT  
ALLOWED FOR US TO EXECUTE  
SOMEONE WHO HAD BEEN FOUND  
INCOMPETENT.

NOW ARE THOSE ISSUES THAT  
WERE LIT LITIGATED BELOW OR  
WAS THIS PARTICULAR ISSUE IN  
THE FRAMEWORK THAT WE HAVE  
IT NOW LITIGATED BELOW?

>> JUST I AM NOT CERTAIN IN  
MY OWN MIND THAT THE  
ARGUMENTS THAT ARE BEING  
PREVENTED TO THIS COURT  
TODAY WERE THE ARGUMENTS  
THAT WERE LITIGATED IN THE  
TRIAL COURT.

IN THE TRIAL COURT, MY -- I  
DON'T MEAN TO RECITE THE  
RECORD, I AM AFRAID, THAT IS  
WHAT I AM ABOUT TO DO.

MY TAKE ON THE TRIAL COURT  
CLAIM IN MY UNDERSTANDING OF  
THE CLAIM ON THE TRIAL COURT  
WAS THAT THE EXISTENCE OF  
THE DISEASE ENTITLED  
MR. EVANS TO EITHER A NEW

OPINION TY PHASE OR RELIEF FROM HIS DEATH SENTENCE. THAT IS THE RELIEF THAT HE ASKS FOR.

I THINK IT IS PLAINLY ABSURD TO SUGGEST THAT A CONDITION THAT MANIFESTED ITSELF AFTER DIRECT APPEAL WAS OVER OR CLOSE TO THE TIME DIRECT APPEAL WAS OVER, I THINK THEY PINPOINT THE ONSET AS THE YEAR 2000 WHICH WOULD HAVE BEEN SHORTLY BEFORE DIR RK APPEAL IS NOT SOMETHING THAT WOULD ENTITLE HIM TO A NEW OPINION TY PHASE.

>> DO YOU KNOW IF THERE HAS BEEN OTHER INSTANCES OF PEOPLE ON DEATH ROW WHO HAVE DEVELOPED SOME KIN OF MAJOR IMNESS ILLNESS ONCE THEY WERE ON DEATH ROW?

DO WE HAVE ANY CASE WHERE ANY KIND OF CLAIM CONCERNING THAT THOSE ILLNESSS WERE BROUGHT TO THE COURT?

>> JUSTICE QUINCE, THE TWO CASES THAT COME TO PLIND THE HUFF CASE AND ANOTHER CASE. I THINK THERE HAS BEEN ANOTHER, I KNOW THERE HAVE BEEN OTHER, BUT THROWS THE TWO THAT I AM THE MOST FAMILIAR WITH.

BOTH OF THOSE INDIVIDUALS DIED ON DEATH ROW OF CANCER. ONE DIED OF STOMACH CANCER. I THINK THAT IS ALSO WHAT DID AWAY WITH MR. HUFF, BUT I AM NOT ENTIRELY CERTAIN ABOUT THAT.

TO MY KNOWLEDGE, NEITHER OF THOSE DEFENDANTS RAISED SUCH AN ISSUE.

MY UNDERSTANDING IS THAT A SIMILAR CLAIM HAD A RATHER LIFE IN VIRGINIA WITH AN UNMATE WHO WAS PARALYZED AS A RESULT OF A STABBING BY ANOTHER INMATE WHILE HE WAS ON DEATH ROW.

I WAS NEVER ABLE TO FIND A REPORTED DECISION THAT SET OUT ANY DETAILS OF THAT, OF

THAT CASE AND THAT IS WHY IT IS NOT, I COULD NOT FIND ANYTHING TO CITE, I MERELY HAVE ANECDOTAL INFORMATION ABOUT THAT.

>> IN NO OTHER STATE?

DID DO YOU ANY --

>> I HAVE BEEN AWARE OVER THE YEARS JUSTICE QUINCE OF INMATES BECOMING ILL AND AS JUSTICE PARIENTE POINTED OUT.

AS THEY GET OLDER, WE HAVE INMATES WHO DEVELOP HEALTH PROBLEMS.

I HAD AN IN MAINTAIN IN ALABAMA WHEN I WAS IN THAT ATTORNEY GENERAL'S OFFICE, I HAD A DEFENDANT THAT HAD SERIOUS HEART ARE PROBLEMS. LAST I HEARD, HE WAS STILL DOING JUST FINE, TOO.

>> YEAH, I THOUGHT WE SHOULD MAYBE AT LEAST TOUCH ON THE ISSUES RELATING TOURB SHOES 2 AND 3 ABOUT THE FAILURE TO PURSUE ISSUES REGARDING THE ESCAPE CHARGE AND SPECIFICALLY THIS ISSUE WHETHER THE EVIDENCE THAT THE TRIAL COUNSEL WAS INFCTIVE FOR FAILING TO FILE A MOTION TO SUPPRESS AS A RESULT OF THE ARREST ON ESCAPE AND FAULTY WARRANT. I AM -- COULD YOU GET THE FACTUAL SCENARIO CLARIFIED. WAS HE ARREST POR THE ESCAPE AT THE TIME HAD THE MURDER ALREADY OCCURRED AN EXPLAIN THAT AND THEN THEREFORE WHAT THE SEQUENCE IS?

>> HE WAS ARRESTED -- THE MURDER OCCURRED ON APRIL 26, HE WAS ARREST ON MAY 2nd OF 1996 AND INDICTED WAS RETURNED ON MAY 10th. I HOPE I SAID MAY 2 N FOR ARREST DATE.

>> WHEN WAES THE ESCAPES?

>> THE ESCAPE WAS SOMETIME PRIOR TO THAT?

>> HE COMMITTED THIS MURDER WHILE HE WAS -- HE WAS ON

ESCAPE STATUS.

>> WHILE HE ESCAPED FROM  
WORK RELEASE.

>> YES, MA'AM.

>> NOW, THAT FACT PART OF  
THE PROSECUTION'S CASE THAT  
THE SEQUENCE OF HOW THIS  
MURDER OCCURRED?

>> IN RELATION THOUGH  
ESCAPE?

HOO NO, MA'AM.

>> SO THIS ONLY CAME UP, THE  
ESCAPE ONLY CAME UP WHEN A  
DEFENDANT AGAINST HIS  
DEFENSE COUNSEL ADVICE WAS  
MENTIONED THE ESCAPE CHARGE?

>> THAT IS CORRECT.

YOUR HONOR, IN FACT, I WOULD  
REFER YOU TO 2326 OF THE  
ORIGINAL RECORD WHICH IS THE  
SENTENCING ORDER WHERE THE  
TRIAL COURT DITS CUSSES THE  
UNDERSSENTENCE OF  
IMPRISONMENT, A VATING  
CIRCUMSTANCES POINTING OUT  
IT WAS NOT PRESENTED TO ON  
THE JURY.

I WAS SUBSEQUENTLY ARGUED AT  
THE HEARING.

THE ONLY WAY THE ESCAPE GOT  
IN FRONT OF THE JURY WAS  
BECAUSE THE DEFENDANT TOOK  
THE STAND AGAINST THE ADVICE  
OF HIS LAWYER AND DIDN'T  
ANSWER THE QUESTIONS PUT TO  
HIM AS HIS LAWYER HAD  
COUNSELED HIM REPEATEDLY TO  
DO ONCE IT BECAME APPARENT  
TO HER HE WAS GOING TO  
TESTIFY DESPITE ADVICE NOT  
TO.

>> SO ARE THEY ARGUING THAT  
THE DEFENSE LAWYERS DIDN'T  
EVEN KNOW THE CIRKS OF THE  
ESCAPE?

THEY WERE DEFISH SENT IN NOT  
AREA IN STANDING, JUST  
SOMEBODY WALKING AWAY FROM  
WORK RELEASE PROGRAM?

>> I AM NOT ENTIRELY SURE  
WHAT THE ARGUMENT IS.

>> I GUESS, WHAT DID COUNSEL  
TESTIFY THAT HE OR SHE KNEW  
ABOUT THE ESCAPE CHARGE?

>> THEY KNEW HE WAS ALL  
ESCAPE AND DEFENSE, THAT HE  
HAD ESCAPED AND DEFENSE  
COUNSEL DID NOT RECALL  
WHETHER OR NOT SHE KNEW  
ABOUT THE HE IS ACT  
CIRCUMSTANCES OF THE HE IS  
STAP.  
ESCAPE.

AS IN THE COURSE OF THE  
ARMING, I AM SORRY, IN THE  
COURSE OF THE HEARING, THERE  
WAS AN INTERESTING  
DISCUSSION BETWEEN DEFENSE  
COUNSEL AND THE PRIVATE  
DEFENSE COUNSEL AND THE  
TRIAL JUDGE TO THE EFFECT  
THAT DEFENSE COUNSEL SHOULD  
HAVE TRIED TO MINIMIZE THE  
ESCAPE CHARGE BY ARGUING  
THAT OH IT WAS JUST A  
WALKOFF FOR WORK RELEASE.  
NOW, THE FACT OF THE MATTER  
IS, MR. EVANS WAS, WAS ON  
WORK RELEASE STATUS  
FOLLOWING A CONVICTION FOR  
THE OFFENSE, I BELIEVE, IF I  
AM NOT MISTAKEN.

HE HAD GOTTEN A BREAK AND  
THEN PUT ON WORK RELEASE  
STATUS.

AND THEN FOR HIM TO GO AND  
ESCAPE FROM WORK RELEASE  
STATUS.

IS A FAIRLY SERIOUS  
VIOLATION, IT IS NOT ONE  
THAT IS EASILY TURNED INTO  
SOMETHING THAT IS OF  
CHARACTER, YOU KNOW?  
AS JUDGE POINTED OUT.

THIS MAY HAVE GOT A BREAK  
AND IT BLEW IT BY WALKING  
OFF.

>> SO YOU POINT, THAT WOULD  
BE ISSUE 3 THAT IS IT ONLY  
CAME OUT BECAUSE BECAUSE THE  
DEFENDANT MENTIONED IT THAT  
IT COULD HAVE BEEN A TWO-EDGED  
SWORD EVEN IF THEY KNEW  
ABOUT IT HOW MUCH OF THE  
ESCAPE WOULD HAVE DETAILED  
WOULD HAVE COME TO THE JURY.

>> WELL, THEY WERE CERTAINLY  
HOPING HE WOULDN'T TURN

AROUND AND NOT FOLLOW THEIR  
ADVICE AN TELL EVERYBODY HE  
HAD BEEN CONVICTED.

>> WHAT ABOUT THIS, NOT  
MOVING TO SUPPRESS THE  
EVIDENCE THAT THAT WAS  
SOMEHOW THEY COULD HAVE KEPT  
THE SHOES OUT AND THEN THAT  
WOULD HAVE KEPT HIM LESS  
LUCK LIE TO BE CONVICTED AS  
A MURDER?

>> I THINK YOU HAVE TREE  
ANSWERS TO THAT EACH OF  
WHICH IS EQUALLY  
APPROPRIATE.

THE SHOES WERE NOT A BIG  
PART OF THE CASE TO BEGIN  
WITH AND NOT EVEN MENDED.  
THE WARRANT THE ARREST WAR  
RAP FOR HIS CASE WAS ISSUED  
IN ACCORDANCE WITH FLORIDA  
STATUTES SIGNED BY THE  
DESIGNATED DEPARTMENT OF  
CORRECTIONS AND THE  
SECRETARY THE FATE OUT  
PROVIDES IT BEING DONE IN  
THAT FASHION, THERE IS NO  
BASIS TO MOVE BASED UPON  
THAT.

EVEN IF YOU CAN COME UP WITH  
SOME ARGUEABLE BASIS TO MOVE  
TO SUPPRESS AN EVEN IF YOU  
CAN COME UP WITH SOME  
PERHAPS DEFECT IN THE ARREST  
WARRANT, THE FERS WHO MADE  
THE ARREST CERTAINLY  
ENTITLED TO RELY IN GOOD  
FAITH ON THE WARRANT ITSELF.  
SO FOR ANYONE OR ALL THREE  
OF THOSE REASON, THE MOTION  
TO SUPPRESS ARGUMENT FAILS.

>> COULD VERY BEEN ARRESTED  
FOR THAT ESCAPE WITHOUT A  
WARRANT?

UNDER 901.15, THE FLORIDA  
STATUTES, THE STATUTE THAT  
TALKS ABOUT ARREST WAS AT A  
WAR RAP, IT SAYS THERE HAS  
BEEN A FELONY COMMITTED AN  
ESCAPE IS A FELONY, SO COULD  
VERY BEEN ARRESTED UNDER  
THAT WITHOUT A WAR RAP?

YES, MA'AM, I AM SORRY.

JUSTICE ASKED TO YOU SAID.

YES.

>> WITH OUR HELP, YOU HAVE EXHAUSTED YOUR TIME. THANK YOU FOR YOUR ARGUMENTS.

MR. HENDRY?

>> WE ARE ASKING THIS COURT TO DO TO RECONSIDER THE PROPORTIONALITY OF THIS DEATH SENTENCE UNDER FORD AND FITZPATRICK AND EVOLVING STANDARDS OF DECENCY.

IT REQUIRED THAT A DEATH WARRANT NEVER HAD THE OPPORTUNITY TO BE SEIBED IN THIS PAR TALK TOCLAR CASE. IT IS NOT THAT CLASS OF INDIVIDUALS WHO SHOULD BE ELIGIBLE FOR THE DEATH PENALTY.

OUR ARGUMENT THAT IS THE DEATH PENALTY AS APPLIED IN THE CASE SLIGHT THE 8th AMENDMENT AND THE LOWER COURT FAILED TO DO ANALYSIS. THEY ONLY DID GENERIC ANALYSIS.

>> AS APPLIED ANALYSIS WOULD INCLUDE THE FACT THAT HE IS SICK?

CORRECT?

>> THAT IS CORRECT.

>> BUT HOW COULD THAT STILL HAVING A PROBLEM BECAUSE HE WAS NOT IN THAT CONDITION AT THE TIME OF THE DEATH SENTENCE WAS IMPOSED. HOW DOES THAT HELP YOUR ARGUE.

HE WAS SICK, YOUR HONOR.

HE WAS SICK.

HE HAD DIAGNOSED.

>> I AM TALKING ABOUT THE PHYSICAL.

>> THERE WAS SYMPTOMS OF IT BUT IT WAS NOT DIAGNOSED AT THAT POINT.

THE JURY DIDN'T GET A CHANCE TO HEAR THAT HE HAD BEEN STRUCK WITH THIS ILLNESS BECAUSE IT WAS SO MUCH LATER IT PROGRESSED WHEN IT WENT TO THE EYES AN BODY.

>> WHERE US THE VIOLATION?

IT IS A CIRCUMSTANCE THAT IS APPROPRIATE FOR THE CLEMENCY WERE PROCESSES?

>> I AM SORRY.

>> WHERE US THE DILATION THAT WE HAVE GONE THROUGH, WE GOT A LITTLE CHANGE IN CIRCUMSTANCE, WHAT YOU ARE TALKING ABOUT, MAYBE A MAJOR CHANGE IN CIRCUMSTANCES, BUT WHERE'S THE CONSTITUTIONAL VIOLATION IF THIS IS ONE AS YOUR OPPONENT, THE STATE SAYS THIS IS REALLY SOMETHING THAT IS DESIGNED TO BE HANDLED THROUGH THE CLEMENCY PROCESS?

>> AT THIS POINT, JUSTICE WELLS DOES NOT COME OUT, I TRIED TO SEE HIM. I MAY HAVE SEEN HIM ONCE IN TWO YEAR, HE SITS IN A CELL COMPLETELY BLIND NEVER COMES OUT.

>> HAS THERE BEEN AN ATTEMPT MADE TO SEEK CLEMENCY? IN OTHER WORDS TO SEND THE MEDICAL RECORDS TO SAY OUR CLIENT IS BLIND. HE HAS A TERMINAL ILLNESS. ON THOSE CIRCUMSTANCES, TO LET HIM OFF DEATH ROW?

>> IT HAS NOT. WE WOULD ASK THIS COURT BEFORE IT NEEDS TO GET TO THAT POINT. WE ARE ASKING THIS COURT UNDER AUTHORITY EITHER UNDER APPEAL OR THE SAME ISSUE.

>> MR. HENDRY, YOU ARE FINISHED. WE UNDERSTAND YOUR PASSION FOR THE CASE.

MR. NUNNELLY, YOU HAVE EXCEEDED YOUR TIME. THANK YOU FOR ARGUMENTS. WE'LL TALK THE CASE UNDER ADVISEMENT.

THE COURT WILL STAND IN RECESS UNTIL 9:00 TOMORROW MORNING. THANK YOU. PLEASE RISE.....