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James Belcher v. State of Florida
SC05-1732 | SC06-866

THE NEXT CASE ON THE MORNING
CALENDER, HE FINAL CASE,
BELCHER VERSUS THE STATE OF
FLORIDA.

>>> GOOD MORNING.

MAY IT PLEASE THE COURT.

I AM CHRIS ANDERSON, COURT-
APPOINTED COUNSEL.

>> WOULD YOU MOVE THE
MICROPHONE OVER A LITTLE SO
YOU CAN SPEAK INTO IT.

>> THAT IS BETTER?

>> BETTER.

>> THANK YOU.

I AM COURT-APPOINTED COUNSEL
FOR JAMES BELCHER, MY NAME
IS CHRIS ANDERSON.

JAMES BELCHER FOR THE SEXUAL
BATTERY AND FIRST-DEGREE
PREMEDITATED MURDER OF A
COLLEGE STUDENT NAMED
JENNIFER EMBRY.

YOU HAVE SEVERAL POINTS THAT
YOU PRESENTED IN THE BRIEF.

IF YOU ARE GOING TO
CONCENTRATE ANY ONE OF
THOSE, CUE IDENTIFY THOSE TO
SORT OF CAPTURE OUR FOCUS ON
THE ONES YOU ARE GOING TO
ADDRESS.

WE HAVE SEVERAL IN THE
BRIEFING.

>> YES, SIR.

IF I HAD MY CHOICE, I WOULD
LIKE TO TALK ABOUT NUMBER 7
CONCERNING THE SEX BATTERY
HAD OCCURRED.

MITIGATION AN HABEAS CORPUS
CIRCUMSTANTIAL EVIDENCE
RULE.

I DON'T KNOW IF I WILL GET
TO DID ALL OF THEM.

>> OKAY.

>> BUT WITH REGARD TO THE
FIRST BUN, OUR CLAIM THAT
COUNSEL WAS IN EFFECT FOR

CONCEDING A SEXUAL BATTERY
HAD OCCURRED.

WHAT HAPPENED WAS DURING THE
STATE'S OPENING ARGUMENT,
THE GUILT PHASE, THE STATE
ARGUED THAT THE DEFENDANT
RAPED AND MURDERED THE
VICTIM.

WHEN TRIAL COUNSEL CAME
FORWARD FOR HIS OPENING
ARGUMENT, HE TOLD THE JURORS
THAT DOESN'T REALLY DISPUTE
WHAT THE STATE CLAIMS, THE
ONLY REAL ISSUE IS WHO DID
IT AN MY POSITION IN THIS
APPEAL, YOUR HONOR, ALL OF
YOUR HONOR, IS THAT BY
LUMPING THE RAPE AND THE
MURDER TOGETHER AND SAYING
THE ONLY REAL ISSUE IS WHO
DID IT, THE TRIAL COUNSEL
EFFECTIVELY CONCEDED THAT
THE SAME PERSON THAT
MURDERED TO THE DEFENDANT
RAPED HER.

>> DIDN'T THE TRIAL COUNSEL
ACT WHEN HE MADE THAT
STATEMENT HE SAID THESE KIND
OF THINGS SO HE WAS
APPOINTED TO SOME SPECIFIC
THINGS THAT HE WAS IN
AGREEMENT AND THAT WAS NOT
IN DISPUTE IN THIS CASE.
AND THAT STATEMENT, HE NEVER
MENTIONED THAT IT IS NOT IN
DISPUTE THAT A SEXUAL
BATTERY OCCURRED.

HE SAID THINGS SUCH AS WHAT
IS NOT IN DISPUTE THAT SHE
LIVES ALONE AND THAT HER
BROTHER FOUND HER AND WHEN
SHE DIDN'T SHOW UP TO WORK
AND SO HE IS SAYING THOSE
THINGS ARE NOT IN DISPUTE.
HOW DO WE JUMP FROM THERE TO
HE SAID THE SEXUAL BATTERY
IS NOT IN DISPUTE.

>> THAT IS CORRECT, YOUR
HONOR.

I BELIEVE HE SAID WE ARE NOT
DISPUTING ALL OF THOSE
THINGS AND IN OPENING
ARGUMENT, THE PHRASE THAT I
AM FOCUSING ON IS HIS

STATEMENT THAT THE ONLY REAL
ISSUE IS WHO DID IT.

WHO?

YOU KNOW, HE DIDN'T SAY
THERE WAS AN ISSUE OF
WHETHER ONE PERSON DID THE
RIP AN ANOTHER PERSON DID
THE MURDER, THERE IS MORE
THAN ONE WHO, BY LUMPING
THEM ALL, WHO DID IT, HE EOF
COURSEIVELY MELDED THEM
TOGETHER AN MADE THE MURD IR
AND THE RAPE AS ONE.

>> HAVE WE EVER HELD THAT
COUNSEL INEEFFECTIVE OR
CONCEDING THAT A RAPE
OCCURRED WHEN HE DOESN'T
CONCEDE THAT THE DEFENDANT
COMMITTED THE RAPE.

I KNOW THAT THERE ARE CASES
THAT HAVE SAID, THAT YOU
CONCEDE THE GUILT OF THE
DEFENDANT, THEN THAT IS
INEFFECTIVE OR COULD BE, BUT
I AM NOT FAMILIAR WITH THE
CASE A CRIME OCCURRED
WITHOUT CONCEDING THE
DEFENDANT COMMITTED THE
CRIME THAT IS
INEFFECTIVENESS. INEFFECTIVENESS.

>> I'M NOT SURE I UNDERSTAND
THE QUESTION YOUR HONOR BUT
I THINK -- I CAN NOT I COULD
NOT FIND A PINT CASE RIGHT
ON POINT THAT STANDS FOR
PROPOSITION THAT CONCEDING
ONE AND THE SAME PERSON
COMMITTED BOTH CRIMES IS
INEFFECTIVE ASSISTANCE OF
COUNSEL.

>> YES YOU DO UNDERSTAND MY
QUESTION.

>> OKAY.

>> BUT I DO THINK THAT COULD
BE SEED CONCEDING "SOMEBODY
CHARGED WITH MORE THAN ONE
OFFENSE CONCEDING ANY ONE OF
THOSE OFFENSES UNLESS IT IS
PART OF A STRATEGY AGREED
UPON IN ADVANCE, AND
PROBABLY!!\$\$!!!!!!!!!!!!!!
PROBABLY.

>> HERE THE STRATEGY US THE
DEFENDANT DIDN'T COMMIT

EITHER OF THESE CRIMES;
CORRECT?

>> THAT IS CORRECT.

>> WHY WOULD IT BE INEFFECT
I NEED -- INFECTIVE TO COULD
BE SEED THE SAME PERSON
COMMITTED BO HE GO TO IF YOU
ARE ARGUING THIS DEFENDANT
COMMITTED NEITHER?

>> COUNSEL MADE BOTH ARGUES
COUNSEL MADE THE ARGUE AT
TRIAL THAT THIS DEFENDANT
DID NOT COMMITMENT EITHER
CRIMES PARTICULARLY COUNSEL
ARGUED THAT THERE WAS SOME
STRONG EVIDENCE IN CLOSING
ARGUMENT THAT THE MURDER AND
THE RAPE DID NOT OCCUR AT
THE SAME TIME.

AND I AM KIND OF -- GOING
BACK ON WHAT YOU SAID
JUSTICE QUINCE EARLIER
DEFENSE COUNSEL DID NOT FIRM!!\$\$!!!!!!
FIRMLY AND UNEQUIVOCALLY
THROUGHOUT THE WHOLE TRIAL
SAY THAT THEY WERE THE SAME
PERSON.

IN CLOSING ARGUMENT DEFENSE
COUNSEL DID POINT OUT TO THE
JURY THAT THERE WAS AN ISSUE
OF CONCURRENCY OF THE RAPE
AND THE MURDER.

MY ARGUMENT HERE IS THAT IT
ALREADY LUMPED THE TWO
TOGETHER, AT THE BEGINNING
OF THE TRIAL, AND IN HIS
OPENING ARGUMENT BY SAYING
THE ONLY REAL IRIS WHO DID
IT TO THE POINT THAT THE
DEFENSE WAS IRRETRIEVELY
LOST IN ON THE JURORS.

>> FIRST OF ALL THIS IS A
CASE UNDER THE NEW RULE
3.851, AND I WOULD LIKE TO
AT LEAST ACKNOWLEDGE, IN
OPEN COURT, SINCE BOTH
COUNSEL AND THE TRIAL JUDGE
IN THIS CASE DILIGENTLY
WORKED TO DO WHAT WE HAD
REQUESTED, AND THIS IS CASES
MOVED ALONG IN AN
EXPEDITIOUS WAY, ALONG WITH
THAT, THE JUDGE ACTUALLY HAD
IN THIS CASE EVIDENTIARYING

HERE ON THIS PARTICULAR
POINT DIFFERS FROM OTHER
CASES WE HAVE SEEN AND
QUESTIONED AND YOU HAD THE
OPPORTUNITY TO QUESTION, THE
DEFENSE LAWYER, ABOUT HIS
STRATEGY IN THIS CASE, AND
HE SPECIFICALLY SAID THAT IT
WASN'T HIS STRATEGY, AND HE
DID NOT CONCEDE SEXUAL
BATTERY, BUT THAT THE \$\$
DEFENDANT'S DNA WHICH YOU
DON'T CONTEST ON APPEAL HERE
WAS FOUND IN THE -- IN THE
VICTIM.

AND SO HIS JOB WAS TO -- SAY
THAT THERE WAS CON SENSUAL
SEX, SO NOT OM DIDN'T HE
CONCEDE SEXUAL BATTERY BUT
HE HAD TO WORK AROUND THE
FACT THAT HER DNA OR HIS DNA
WAS FOUND IN THE VICTIM,
AND, THEREFORE, THAT HE HAD
TO EXPLAIN THAT AWAY WITH
THAT WITH THE TESTIMONY NOT
ONLY THE PURE STATEMENTS, OF
TAKING ONE STATEMENT HERE OR
THERE, BUT WE HIS AN
EXPERIENCED DEFENSE LAWYER,
EXPLAINING STRATEGICALLY WHY
HE DID WHAT HE DID I DIDN'T
I ASSUME YOUR CLIENT DIDN'T
SAY, WELL, I TOLD HIM NOT TO
DO IT OR YOU KNOW, SOMETHING
OF THAT NATURE THIS I GUESS
NO TESTIMONY ABOUT THAT.
HOW DO YOU GET TO THE
DEFICIENCY PRONG OF
STRICKLAND TO SAY THAT THIS
COUNSEL WAS NOT FUNCTIONING,
AS REASONABLY COMAT THE TIME
COUNSEL UNDER 6TH AMENDMENT
I DON'T SEE YOU BEING CLOSE
TO THAT MARK.

-- CHASED -- BASED ON THIS
PARTICULAR ARGUMENT.
>> AND ENIN COUNTER, TO THE
COURT I WILL SAY IN THE END
IN CLOSING ARGUMENT TRIAL
COUNSEL DID MAKE AN ARGUMENT
THAT THERE IS AN ISSUE OF O
HE --
>> THIS ASSISTANT CASE WHERE
THE DEFENDANT WHERE THE LIKE

-- LIKE NIXON, WHICH U.S.
SUPREME COURT OVERTURNED
WHERE SOMEONE B ESSENTIALLY
THREE IN THE TOWEL ON THE
GUILT PHASE AND SAID YOU
KNOW I'M GOING TO SAVE ALL
MY CREDIBILITY FOR THE
PENALTY PHASE.

THIS WAS A VIGOROUSLY
CONTESTED FIRST DEGREE
MURDER CASE WASN'T IT?

.

>> YES YOUR HONOR THIS IS --
THIS IS -- HOW HE DID IT.
HOW I THINK HE GOT INTO
TROUBLE.

IS A MENTION A MOMENT AGO IN
OPENING ARGUMENT HE LUMPED
TOGETHER THE MURDER AND RAPE
BY SAYING THE QUESTION IS
WHO DID IT.

THEN, IN TRIAL THIS WAS THE
TESTIMONY, THE VICTIM WAS
LAST SEEN ALIVE AT 10:30 AT
NIGHT JANUARY 8,\$\$!!!!TH, THE
VICTIM'S BODY WAS DISCOVERED!!\$\$!!!!!!!!!!!!!!!!!!!!

DISCOVERED, BY HER BROTHER
23 HOURS LATER 9:00 THE NEXT
DAY, THE STATE MEDICAL
EXAMINER!!\$\$!!!!!!!!!!!!!!!!!!!!

EXAMINER, DR. FLORO,
EXAMINED THE SEMEN SWAP FROM
THE VICK \$\$SYSTEM'S BODY 14
HOURS AFTER THAT OBSERVED
THAT APPROXIMATELY HALF
SPERM HAD TAILS MISSING
INDICATED TO HIM THAT THAT
IS A CONDITION THAT STERM --
SPERM IS FOUND IN

APPROXIMATELY THREE TO SIX
DAYS AFFIRMATIVE DEPOSIT SO
A DAY AND A HALF AFTER THE
VICTIM WAS LAST SEEN ALIVE
DR. FLORO, BASICALLY GAVE
TESTIMONY INDICATING THAT
THE SEMEN HAD BEEN DEPOSITED
DAY 1/2, DAYS BEFORE THE
MURDER THIS IS IMPORTANT
BECAUSE IT WAS ALSO EVERY
DAY -- EVIDENCE PRESENTED AT
TRIAL THERE I CAN'TS NO
FORCED ENTRY THE VICTIM AND
DEFENDANT WERE ACQUAINTED
WITH EACH OTHER.

>> ARE YOU GOING TO ANOTHER POINT?

>> NO.

NO.

I'M -- I'M TRYING TO ILLUSTRATE, WHY IT WAS HARM!!\$\$!!!!!!
HARMFUL.

>> I'M STILL HAVING WE HAVEN'T GOTTEN INTO THE FIRST STAGE, WHICH IS HOW IT IS DEFICIENT PERFORMANCE, YOU HAVE THE LUXURY SITTING DOWN, AS WE ALLOW, LAWYERS TO DO IN POSTCONVICTION, AND READY THIS -- READ THIS RECORD WITH FINE-TOOTH COMB SAY YOU KNOW WHAT I THINK THAT WAS OBVIOUSLY -- CONVICTED SO SAY GEE WHAT ELSE COULD I HAVE TRIED, BUT WE'RE NOT SUPPOSED TO BOOK -- BOOK BACKWARD YEAR SUPPOSED TO LOOK AT THE POINT THAT THIS CASE WAS BEING TRIED WERE THESE REASONABLE DECISIONS OR WAS THAT DEJUST SCOMPLETELY BROPE -- DROP THE BALL WITH THE TRIAL COURT FINDING MR. BUSY!!\$\$!!!!!!!!!!!!!!
MR. BUSIEL TESTIMONY OUR CASE LAW I THINK, YOU KNOW THIS IS HE MADE GOOD ARGUMENT AS YOU CAN BUT I DON'T SEE HOW WE REALLY COULD EVER CREDIBLY SAY, OVERALL IN THE TRIAL JUDGE THAT THIS WOULD BE DEFICIENT PERFORMANCE!!\$\$!!!!!!!!!!!!!!
PERFORMANCE.

>> AND, YOUR HONOR THE STATE POINTED OUT IN ITS ANSWER BRIEF WE ARE DEALING WITH TWO EXPERIENCED TRIAL ATTORNEYS HERE AND I KNOW IT IS EASY FOR ME TO SIT HERE, IN HINDSIGHT SAY YOU COULD HAVE WOULD HAVE SHOULD HAVE DONE THIS, BUT, SERIOUSLY, THOUGH, NOT ONLY DID COUNSEL LUMP THE MURDER AND RAPIST TOEB AS ONE PERSON ONLY ARGUMENT I SUGGEST IF THEY DIDN'T CONNECT THE DOTS AT THE END OF THE CASE COUNSEL

DID NOT POINT OUT TO THE
JURY AND THIS GO TO MY
CIRCUMSTANCES HAIB OOHSH AS
-- HABEAS ISSUE AS WELL
BASED ON DR. FLORO\$\$'S
TESTIMONY IT IS NOT POSSIBLE
THAT THIS PERSON WAS SEXUAL!!\$\$!!!!!!!!!!
SEXUALLY -- BATTER AND
MURDERED AT THE SAME TIME.
THERE WERE DAYS THAT
SEPARATED THESE EVENTS,AND
THAT IS WHERE THE
INEFFECTIVENESS IS, HE DID
-- HE DID PLENGS TO THE JURY
IN CLOSING ARGUMENT THERE IS
A QUESTION OF CONCURRENCY
DID BRING UP DR. FLORO'S
TOURNAMENT OF MY ARGUMENT
HERE IS HE DIDN'T PUT IT
TOGETHER.

--

>> AND THAT IS THE
CIRCUMSTANTIAL EVIDENCE
ARGUMENT IF I CAN SEGUE INTO
THAT NEXT.

>> BUT IS THAT REAL WHAT
THAT EVIDENCE DEMONSTRATES?
YOU -- EVIDENCE -- YOU SAID
THE SEXUAL BATTERY AND THE
MURDER OCCURRED AT DIFFERENT
TIMES, I THOUGHT YOUR
ARGUMENT REALLY WAS THAT
YOUR CLIENT\$\$'S SEX WITH THE
VICTIM OCCURRED AT A
DIFFERENT TIME.

NOT THAT THERE WAS NO A
SEXUAL BATTERY AT THE TIME
OF THE MURDER.

>> I MADE --

>> THE SAME THING --

>> I MADE BOTH ARGUMENTS
YOUR HONOR I MADE THE USUAL
ARGUMENT THAT THE MEDICAL
EVIDENCE OR FORCED -- WAS
AMBIGUOUS COULD HAVE BEEN
BECAUSED BY ROUGH -- THE
ARGUMENT WE MAKE IN EVERY
SEX BATTERY CASE AS DEFENSE
COUNSEL I ALSO MADE THE
ARGUMENT, THAT THERE IS NO
EVIDENCE LINKING THIS
DEFENDANT, TO THIS VICTIM,
THE SEMEN --
>> -- IN WAS NO EVIDENCE --

>> LINKING THIS, DEFENDANT,
TO THIS VICTIM?

>> YES.

>> DIDN'T THEY KNOW EACH
OTHER I MEAN DIDN'T HE --
APPROACH HER AT SCHOOL, OR
-- THERE IS SOME KNOWLEDGE
ON HIS PART OF THIS VICTIM
ISN'T THERE.

>> I'M -- MEANT TO REFOEFR
TO DO INA EVIDENCE THE DNA
WAS FOUND FROM SEMEN FOUND
IN HER SLIPPER, THE DNA IN
HER BODY WAS NOT PRESERVED
FOR DNA TESTING IT WAS
EXAMINED BY MICROSCOPICALLY
FOR THE COMPANY OF SPERM BUT
WASN'T DNA TESTED IT WAS
SEMEN ON HER SLIPPER THAT
WAS DNA TESTED.

>> ON THIS ISSUE --

>> THE --

>> OH, THAT WAS HIS, YOUR
HONOR THAT WAS HIS SEMEN ON
THE SLIPPER.

>> WHAT I'M HAVING DIFFICULT!!\$\$!!!!!!!!!!!!!!!

DIFFICULTY WITH IS -- ONE
OF THE -- THE MORE COMMON
WAYS, OF APPROACHING A CLAIM
OF INEFFECTIVENESS OF
COUNSEL, IS TO PRESENT TO
THE TRIAL COURT IN A POST
JUDGMENT THIS IS WHAT AN
EFFECTIVE COUNSEL SHOULD
HAVE DONE.

TELL US WHAT YOUR APPROACH
HERE CAS IN CONTRASTING IN
TERMS OF CONTRASTING WHAT
COUNSEL DID HERE APPARENTLY
WAS TO FACE UP TO THE DNA
SEMEN EVIDENCE HERE, AND SAY
WELL, MY CLIENT MAY HAVE HAD
CONSENSUAL SEXUAL RELAKES,
BUT HE WAS NOT THE
PERPETRATOR OF THE SEXUAL
BATTERY AND A MURDER.
IS THAT --

>> THAT IS THE ARGUMENT --

>> TELL US WHAT YOUR IN
OTHER WORDS WHAT -- WHEN --
RATIONAL OR REASONABLE
STRATEGY DID YOU PRESENT TO
THE TRIAL COURT JUDGE THAT
THE JUDGE SHOULD HAVE TAKEN

INTO CONSIDERATION AND SAID

"AHA!!\$\$!!!!!!

"AHA!

IT IS OBVIOUS IN THIS CASE
THAT THAT IS WHAT A RATIONAL
EFFECTIVE COUNSEL SHOULD
HAVE DONE? "

.

>> YES, YOUR HONOR THE
ARGUMENT MADE BELOW WAS THAT
IN OPENING AND CLOSING
ARGUMENTED ARGUMENTING.

>> STRATEGY, STRATEGY,
STRATEGY --

>> LET'S -- STRATEGY.

>> WHAT DEFENSE DID YOU POST
TOUR THE TRIAL COURT JUDGE
THAT IN -- INFECT I NEED
COUNSEL SHOULD HAVE PRESENT!!\$\$!!!!!!!!!!!!!!
PRESENTED, TO -- INETHIVE
COUNSEL SHOULD HAVE
PRESENTED TO THIS JURY UNDER
STISHGS AND EVIDENCE HERE
EFFECTIVE COUPES SHOULD HAVE
DONE WHAT.

>> SHOULD SHOULD IMMEDIATELY
POINTED OUT THAT THE -- \$\$
STATE'S EVIDENCE ON CONCUR!!\$\$!!!!!!!!!!!!!!
CONCURRENCY OF THE SEX
BATTERY AND MURDER IS --
THAT THE -- INCOMPLETE THAT
THE EVIDENCE STATE POSE OWN
EVIDENCE IS THAT THE --
SEXUAL PENETRATION WAS
VOLUNTARY, WAS CONSENSUAL,
AND DID NOT OCCUR AT THE
SAME SOMETIME AS THE MURDER.
AND THERE IS NO EVIDENCE
THAT THIS DEFENDANT WAS THE
ONE WHO SEXUALLY PENETRATED
THE VICTIM.

>> LET ME ASK A QUESTION ON
THAT, AT -- IN OUR OPINION
BELOW IT, PAGE 679 THROUGH
81 WE CITE THE FACTS, AND
THAT SAYS THAT JAMES POLLACK
LAB ANALYST, TESTIFIED SEMEN
DESCRIBED IN THE VAGINA AND
BEDROOM SLIPPER FOUND IN THE
BATHROOM NEAR HER BODY
CONTAINED DNA MATCHING --
ROO DNA PROFILE.

>> THAT SAYS THAT HIS SEMEN
FOUND NOT ONLY ON THE

SLIPPER BUT IN HER VAGINA.
>> YOUR HONOR, I READ THAT,
AND I READ THE \$\$\$STATE'S REPLY
BRIEF I HAVE THAT IMPRESSION
THEN I THOUGHT HOW COULD I
BE MISTAKEN ABOUT THAT?
AND THEN I READ THE
MATERIALS AGAIN, AND I
BELIEVE THAT IS AN ERROR.
I BELIEVE THAT THE ONLY DNA
THE ONLY PLACE WHERE THE
EVIDENCE WAS PRESERVED FOR
DNA ANALYSIS WAS THE
SLIPPERS IT WAS EXAMINED
MICROSCOPICALLY!!\$\$!!!!!!!!!!!!!!!!!!!!!!
MICROSCOPICALLY, WITH A SWA
AB, SMEAR IN VERY GINA.
>> DID YOU PUT THAT IN YOUR
REPLY BRIEF BECAUSE THAT IS
AN IMPORTANT.
>> IN MY BRIEF I ASSUMED
THAT EVERYBODY CAME TO THE
SAME CONCLUSION I DID, THAT
THE ONLY DNA TESTED SEMEN
WAS FROM THE SLIPPERS THAT
IS SOMETHING --
>> BECAME SORT OF A DISPUTED
ISSUE, WASN'T THERE
EXAMINATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!
EXAMINATION, WITH REGARD TO
DEGRADATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!
DEGRADATION, UNDER WATER,
AND ALL THOSE -- WASN'T THAT
-- PART OF THIS WHOLE I MEAN
WASN'T THAT EXAMINATION
DIDN'T THAT OCCUR AT THE
TRIAL?
>> THE DEGRADATION, THERE
WAS A MICROSCOPIC
EXAMINATION ON A MICROSCOPE
OF THE CONDITION OF THE SIR.
EMEN SWABBDE. FROM HER
VAGINA JUSTICE BELL LET ME
JUST SAY THAT, THAT I HOPE
I'M RIGHT ON THIS I'M TRYING
TO BE CANDID WITH THE COURT
I DID REEXAMINE CALL THE
EVIDENCE, AND I CONCLUDED
THAT I WAS RIGHT THAT THE
ONLY THE SEMEN FROM THE
SLIPPERS WAS DNA TESTED,
WOULD I BET MY LIFE ON THAT.
>> I STILL HAVE RESERVATIONS
BECAUSE THE COURT SOMETHING

OBVIOUSLY LED THIS COURT TO BELIEVE OTHERWISE IN IT'S ARE DIRECT APPEAL OPINION, BUT -- EVERYTHING I HAVE CHECKED, OUT INDICATES THAT ONLY THE SLIPPERS WERE DNA TESTED.

>> SO THEREFORE THEN THAT WOULD LEAD INTO YOUR NEXT ARGUMENT IS THAT THE FIRST POINT ON THE ANALYSIS BY THIS COURT ON DIRECT APPEAL ABOUT THE COMPETENT SUBSTANTIAL EVIDENCE THERE WOULD NOT BE IT WOULD NOT BE SUF TO CONNECT THIS -- SUFFICIENT TO CONNECT THIS DEFENDANT TO THESE ACTS?

>> I THINK.

>> THAT IS WHERE IT GOES --

>> I DON'T WANT TO ARGUE AGAINST MYSELF YOUR HONOR TRUTHFULLY IN THE FACT THAT DNA SEMEN WAS FOUND OP SLIPPERS WHERE HER DEAD BODY WAS I CAN'T DENY THAT.

>> OKAY.

>> YOU ARE DOWN TO A COUPLE MINUTES YOU DO WANT TO CONTINUE OR SAVE TIME FOR REBUTTAL.

>> I JUST WANT TO GO OVER MITIGATION QUICKLY IF I MIGHT.

AND I'M GOING TO TALK FAST. AT THE TRIAL COURT LEVEL THE MITIGATION HE WAS ESSENTIALLY WHAT A GREAT INMATE THE DEFENDANT WAS HOW HE TALKED ON THE INMATES HOW TO READ, HE HOW TO GET ALONG WELL WITH PRISON PERSONNEL, AND JUST SUMMARIZING I BROUGHT SIX OTHER PEOPLE AT THE TO TESTIFY AT THE EVIDENCIARY HEARING, AND WITHOUT THE SORT OF MEANDER!!\$\$!!!!!!!!!!!!!! MEANDERING SPEECHES I GIVE IN THEY BRIEF WILL SUMMARIZE QUICKLY!!\$\$!!!!!!!!!!!!!! QUICKLY, ONE REDICK FAMILIAR TREND TESTIFIED A AFFAIR -- A FATHERU ACTIVE INVOLVED FAMILY MEMBER, BAKER

TESTIFIED A GREAT FATHER
FIGURED URMD EMPLOYMENT
SOIST SUFFICIENTLY SUFRY
BAKER TESTIFIEDED THE
DEFENDANT ENCOURAGED HIM TO
BE A LEADER NOT A FOLLOWER I
BROUGHT THE \$\$DEFENDANT'S
FATHER JAMES BELTER SENIOR
INTO COURT HE DESCRIBED IN A
WAY THAT JUST CAN'T BE DONE,
ANY OTHER WAY HOW THE
DEFENDANT HAD POTENTIAL TO
BE A PRO BASKETBALL PLAYER,
HE WAS A TEAM PLAYER.
HE TALKED ABOUT HOW HIS
DIVORCE FORCED HIS SON TO
LIVE IN A -- HOUSING PROJECT
IMMEDIATELY HIS SON FELL
INTO A LIFE OF CRIME.
BERNICE JOHNSON HIS AUNT, WE
BROUGHT DOWN FROM NEW YORK,
TO TESTIFY, AND SHE WAS A
GREAT STUD IN CONTRAST
TALKED ABOUT WHO YOU HER OWN
SEVEN KIDS WERE NOT RAISED
IN A PROJECTS, ALL GREW UP
TO BE FINE UPSTANDING
CITIZENS, EVEN ONE OF HER
SONZ SHE SPOKE WITH PRIDE
HOW FIRST AFRICAN-AMERICAN
MALE ELECTED TO THREE
POLITICAL OFFENSES IN NEW
YORK CITY SAND BERNAISE
JOHNSON HE THE SAME AUNT
SEVEN KIDS TESTIFIED THAT
THE DEFENDANT WAS A FINE
YOUNG MAN HE GOT LONG WELL
WAS LOVING CARING UNTIL HE
WENT BACK TO HIS PROJECTS
AND FELL LIGHTED RACK INTO A
LIFE OF CRIME.
-- RIGHT BACK INTO A LIFE OF
CRIME THE LAST COUPLE
MITIGATION ONCE --
WITNESSES, TALKED ABOUT HIS
ABILITY TO MEDIATE FAMILY
DISPUTES HOW HE HELPED OUT
WITH YARD WORK ACTED AS A
BIG WROER TO CHILDREN --
BROTHER TO CHIRP BESIDES HIS
OWN CHILDREN, HELEN TALKED
ABOUT HOW THE DEFENDANT WAS
A SUPPORT I NEED FAMILY
MEMBER HELPED WITH HOUSEHOLD

CHOERZ REVERENT, AND A
RELIABLE INDIVIDUAL, AND SO.
>> LET ME ASK YOU THIS.
>> YES?
>> IT SEEMS TO ME IN THIS
CASE, THERE WERE 15 OR SO
NONSTATUTORY MITIGATING
CIRCUMSTANCES THAT WERE
FOUND BY THE TRIAL JUDGE,
INCLUDING THE FACT THAT HE
WAS GOOD TO HIS FAMILY, HE
WAS A ROLE MODEL, TO PEOPLE
IN HIS FAMILY, THAT HE GREW
UP, IN THIS HOUSING PROJECT,
THAT YOU ARE TALKING ABOUT,
SO WHAT DID THESE WITNESSES
WHAT EQUAL TATES\$!!!!IVELY DID
THESE THE WITNESSES ADD TO
THE MITIGATION EVIDENCE THAT
WASN'T PRESENTED AT THE
PENALTY PHASE?
>> NUMBER ONE, THE DIRECT
CAUSAL RELATIONSHIP BETWEEN
HIS BEING SITUATED IN THE --
TOMKINS HOUSING PROJECT AND
FALLING INTO A LIFE OF
CRIME, AND NUMBER TWO, THE
FACT THAT HE WAS A GOOD
PERSON, OUTSIDE OF PRISON
WAULZ NOT JUST -- INMATES
BUT DID ALL THESE THINGS
MENTORING!!\$\$!!!!!!!!!!!!!!
MENTORING, THE GUIDANCE,
OUTSIDE THE PRIVATE
INDIVIDUALS OF FAMILY
MEMBERS.
THAT IS THE DIFFERENCE.
>> YOU HAVE EXHAUSTED YOUR
YOU TIME WITH OUR ASSISTANCE
YOU HAVE EXHAUSTED ALL OF
YOUR TIME WITH OUR
ASSISTANCE THANK YOU.
>> THANK YOU YOUR HONOR.
>> MAY IT PLEASE THE COURT,
REPRESENTING THE STATE --
I'M GOING TO GO THROUGH THE
EXACT SAME THREE THINGS WE
TALKED ABOUT, FIRST OF ALL,
WHAT HE IS SAYINGS DEFENSE
COUNSEL SHOULD HAVE
PRECELEBRITIED AS DEFENSE
WAS EXACTLY WHAT THEY
PRESENTED AS THEIR DEFEND
WHEN YOU SAY WHO DID IT, AND

THE PERSON WHO DID THIS, IT
AND THIS WHAT DEFENSE
COUNSEL WAS SAYING WAS THE
RAPE AND ADMINISTERED DID
OCCUR TOGETHER -- MURDER DID
OCCUR TOGETHER BUT MY CLIENT
HAD SEX CONSENSUAL SEX WITH
THE VICTIM THREE TO # DAYS
BEFORE THE RAPE/MURDER, ALL
RIGHT ND WHAT HE WAS DOING
HERE, \$\$COUNSEL'S SEPARATING
THEM.

AND HE DIDN'T DO THAT.
HE PUT THEM TOGETHER AND
JUST SAID IT IS NOT MY
CLIENT!!\$\$!!!!!!!!!!

CLIENT, FIRST OF ALL, THIS
IS INFECTIVE ASSISTANCE OF
COUNSEL CLAIM OF YOU NEVER
HELD A HELD YOUR NIXON CASE
WAS OVERRULED BRING UNITED
STATES SUPREME COURT YOUR
NIXON CASE INVOLVED SURE YOU
ALL HE REMEMBER DEFENSE
COUNSEL GOT UP IMMEDIATELY
CHECK THE BOX GUILTY OF
FIRST DEGREE MURDER, HE
ADMITTED HIS CLIENT WAS THE
PERPETRATOR OF THE CRIMES,
WHAT DEFENSE COUNSEL HERE
SAYS, YOU JUST CANNOT HAVE A
NIXON CLAIM, WHEN DEFENSE
COUNSEL IS SAYING HIS CLIENT
IS NOT THE PERPETRATOR, THAT
JUST -- ENDS NIXON RIGHT
THERE UNDER YOUR OLD VIEW OF
NIXON!!\$\$!!!!!!!!!!

NIXON, OBVIOUSLY, NOW WE ARE
DOING SOMETHING ELSE, WHICH
IS NIXON VERSUS FLORIDA, AND
THEY ARE GOING TO HAVE TO
PROVE BOTH PRONGS EVEN UNDER
OLD NIXON BEFORE THE UNITED
STATES THIS JUST IS NOT
NIXON!!\$\$!!!!!!!!!!

NIXON.
WHEN YOU SAY YOUR CLIENT WAS
NOT THE PERPETRATOR, THAT IS
NOT A NIXON CLAIM.

AND THAT IS WHAT COUNSEL DID
HERE.

>> HOW -- UNDERLYING FACTUAL
CIRCUMSTANCE, THAT -- YOUR
-- DISCUSSED AND THAT IS

THAT THE SEMEN IN THE VAGINA
WAS NOT IDENTIFIED AS THE
SEMEN OF THE DEFENDANT BUT
ONLY SEMEN ON A SLIPPER WAS
IDENTIFIED SO --

>> OKAY -- YOUR HONOR I
LOOKED OVER MY INITIAL BRIEF
FROM THE DIRECT APPEAL THE
BEST RECORDS THAT I COULD
FIND WAS VOLUME 17, 1134, AS
I UNDERSTAND,I UNDERSTAND IT
EXACTLY LIKE YOUR OPINION
UNDERSTANDS IT.

THAT IT WAS BOTH THE DNA,
THE MEDICAL EXAMINER,
DEFINITELY TOOK THE SEMEN
FROM INSIDE HER BODY AS
WELL.

I UNDERSTOOD THAT SEMEN WAS
DNA TESTED AS WELL AS SEMEN
ON GREEN SLIPPERS LET ME
EXPLAIN TO YOU WHERE THE
GREEN SLIPPERS WERE THIS
VICTIM WAS FOUND STROJ HE
BOUND AND STRANGLED IN BATH
TUP WITH WATER THERE WAS
FOAM RIGHT OUTSIDE THE
BATHTUB EXACTLY AS THOUGH
WOULD YOU TAKE YOUR SLIPPERS
OFF AND STEP INTO THE
BATHTUB WHERE WERE THESE
GREEN SLIPPERS WERE, ALL
RIGHT?

SO -- BUT I UNDERSTAND IT
THAT BOTH THE GREEN SLIPPERS!!\$\$!!!!!!!!!!!!!!
SLIPPERS, THE SEMEN ON THE
GREEN SLIPPERS DEFINITELY
WAS DFA TESTED BUT AS I
UNDERSTOOD IT WHY THERE WAS
DEGENERATION AND THAT IS
WHAT THEY RELIED ON IT WAS
NOT DEGENERATED TO THE POINT
WHERE YOU COULDN'T DO DNA
TESTING ON IT SO MY
UNDERSTANDING IS THAT THE
DNA BOTH FROM THE SLIPPERS!!\$\$!!!!!!!!!!!!!!
SLIPPERS,AND FROM THE VICTIM
WERE TESTED.

>> WELL, AT THE TIME OF THE!!\$\$!!!!
THE --

>> I WILL IF I UNDERSTAND
YOU -- YOUR HONOR I WILL GO
LOOK AT THE RECORD I WILL
SUPPLEMENT WITH THE PAGE.

>>, I GUESS,\$\$!!!! -- AT THIS ON
APPEAL AS WELL AS ORIGINAL
TRIAL, NOBODY HAS SET FORTH
A ARGUMENT THAT THIS THAT
THE DNA ON THE SLIPPER
WASN'T HIS DNA; CORRECT?
>> ONE IN TWO TRILLION YOUR
HONOR FROM THE FBI
AFRICAN-AMERICAN DATABASE.
WE'VE GOT ONE IN TWO
TRILLION, REMEMBER WHAT THAT
KIND OF NUMBER MEANS.
AND INCIDENTALLY I WILL SLIP
INTO THE CIRCUMSTANCES AEFLD!!\$\$!!!!!!!!
AEFLD --

>> WANTED TO ASK YOU THIS
QUESTION DOES HE WAS HIS
ARGUMENT BELOW THAT YES,
THEY HAD SEX, BUT THAT IT
WAS BEFORE THE MURDER SEXUAL
BATTERY, OR THAT IT SEXUAL
BATTERY HAD NEVER TAKEN
PLACE?

THAT THERE WAS EARLIER SEX
AND A MURDER, OR WAS IT
EARLIER SEX AND THEN A
DIFFERENT SEXUAL BATTERY
MURDER AT THE SAME TIME?
>> THE MOST OF THE DEFENSE,
WAS THE LATTER AND BY THAT I
MEAN MY CLIENT HAD
CONSENSUAL SEX DAYS BEFORE,
THIS CRIME THE CRIME BEING,
BOTH RAPE AND SESSION -- IN
OTHER WORDS, THE A SECOND
PERSON, COMMITTED BOTH THE
RAPE, AND THE MURDER.

>> BUT -- DNA OF ANYONE ELSE
IS FOUND, ON THE SLIPPER OR
WITHIN -- IN THE OH, NO YOUR
HONOR.

>> VICTIM'S BODY.

>> NO YOUR HONOR.

>> THEN WHAT ABOUT THIS
ARGUMENT THAT HE REALLY
SHOULD SHOULD HAVE SHOWED
THAT ALL THE SEX WAS
CONSENSUAL!!\$\$!!!!!!!!!!!!!!!!!!!!
CONSENSUAL.

BUT THE WITNESSES THAT WAS
PUT ON -- WITNESS PUT ON
CONFIRMED THAT THIS VICTIM
HAD SHOWED EVIDENCE OF
NONCONSENSUAL SEX SEEMS LIKE

THIS WITNESS PIT ON IN THIS
CASE ACTUALLY RECON FIRMS
EVERYTHING THE STATE DID IN
THE CASE BELOW.

>> THE STATE MOSS MEDICAL
EXAMINER DR. FLORO SAID THIS
WAS SEXUAL BATTERY THAT THE
DAMAGE INJURIES TO THE
VICTIM WERE CONSISTENT WITH
SEXUAL BATTERY, THEN, AT THE
THE EVIDENCIARY HEARING O
PORESING COUNSEL PRESENTED
DR. BERLIN, AND HE IS A GONE
COLGIST!!\$\$!!!!!!!!!!!!

COLGIST, AND -- GYNECOLOGIST
ENDED UP AGREEING BASICALLY
MORE LIKELY SCENARIO WAS
THAT THIS WAS RAPE ROUGH A
SEX POSSIBILITY BUT HE ENDED
UP AGREEING, WITH DR. FLORO,
HE DID NOT DISAGREE.
SO THE BOTTOM LINE IS WE
HAVE BOTH A MEDICAL EXAMINER!!\$\$!!!!!!!!!!!!!!
EXAMINER, AND AN INDEPENDENT
GYNECOLOGIST ONE PRESENTED
DURING TRIAL ONE PRESENTED
DURING THE EVIDENCIARY
HEARING AGREE THE DAMAGE TO
THIS WOMAN INDICATES SEXUAL
BATTERY.

NOT JUST ROUGH SEX OR -- AND
BEYOND CONSENSUAL -- ROUGH
SEX --

>> REMEMBER THE DEFENDANT
ALSO HAS ANOTHER PROBLEM, A
DETECTIVE DETECTIVE HINSON
TALKED TO HIM -- THIS CASE
WAS COLD HIT ON THE DNA
DATABASE, ALL RIGHT, THAT IS
-- IT WAS THE DNA THAT IS
HOW WE FOUND THIS MR. !!\$\$!!!!!!
MR. BELCHER.

HE WAS COLD HIT ON THE DNA
DATABASE, THE DETECTIVE WENT
TO TALK TO HIM, HE SHOWED
HIM MUT-- MULTIPLE
PHOTOGRAPH OF THE VICK TIM
AND VICTIM'S HOUSE DEFENDANT
AT THAT TIME DENIED EVERY
KNOWING HER DENIED EVERY
BEING INSIDE HER HOUSE.
AND WE FIND HIS SEMEN --
LET'S STICK WITH HIS SIEMEN
ON -- SEMEN OUTSIDE BATHTUB

WHERE VICTIM IS FOUND ONE IN TWO TRILLION OVER THE ENTIRE POPULATION OF THE MALE POPULATION OF THIS PLANET SEVERAL TIMES OVER THERE IS NO DOUBT THAT HE WAS IN THAT HOUSE, AND DID AND HAD HAD SEX WITH THIS VICTIM.

>> NOW, YOUR HONOR, AS TO INFECTIVE ASSISTANCE OF COUNSEL FOR NOT RAISING CIRCUMSTANTIAL EVIDENCE? FIRST OF ALL, THIS COURT AND -- REYNOLDS I DISCUSSED REYNOLDS IN MY HABEAS RESPONSE, THIS COURT HAS HELD THAT DNA WHEN THERE IS DNA IN A CASE THAT DOES NOT MAKE THIS A WHOLLY CIRCUMSTANTIAL EVIDENCE SO KAY SO YOU ALL REJECTED WHEN THERE IS DNA INVOLVED IN AT THIS LEVEL, YOU ALL HAVE REJECTED THE NOTION THAT YOU HAVE TO MEET THE HIGHER STANDARDS -- STANDARD TO GET OVER JUDGMENT OF ACQUITTAL. MORE OVER, YOUR HONOR YOU SEE ALL KNOW, YOU ALL REVIEW SUFFICIENCY OF THE EVIDENCE EACH THOUGH WASN'T RAISED ON APPEAL IN MY ANSWER BRIEF IN THE DIRECT APPEAL ON PAGE 31, I DISCUSSED -- THE EVIDENCE IN THIS CASE, I ALWAYS DISCUSS THE SUFFICIENCY OF THE EVIDENCE WHETHER RAISE ORDER NOT THAT ISSUE WAS BEFORE THIS COURT. AND YOU FOUND THIS EVIDENCED SUF YOU ALL REVIEWED THAT WHETHER OR NOT. OPPOSING COUNSEL, APPELLATE COUNSEL IN THIS CASE IS WAS -- WAS ASSISTANT PUBLIC DEFENDER!!\$\$!!!!!!!!!!!!!! DEFENDER, THEY WILL WELL AWARE THAT YOU REVIEWED THAT. HE JUST DIDN'T THINK HE HAD A GOOD ARGUMENT. HE WAS RIGHT. HE DID NOT HAVE A GOOD ARGUMENT.

NOT AT ONE AND TWO TRILLION.
YOU DO NOT HAVE A GOOD
ARGUMENT THAT YOU ARE NOT
THE PERPETRATOR.
>> THEN I WOULD ALSO LIKE TO
GO THROUGH SOME MITIGATION.
FIRST OF ALL, JUST TOPPING
RIGHT TO PRIM DIS, THE
NONSTATUTORY AGGRAVATES\$!!!!OR
NUMBER # WAS THAT THE
DEFENDANT WAS A ROLE MODEL
AND NUMBER EIGHT THAT HE WAS
RAISED IN A BAD NEIGHBORHOOD!!\$\$!!!!!!!!!!!!!!!!!!!!!!
NEIGHBORHOOD.
SO BOTH OF THOSE WERE FOUND
BY THE TRIAL JUDGE HERE.
THEN I WOULD LIKE TO GO
THROUGH BOTH WHAT HAPPENED,
WHAT DEFENSE COUNSEL DID
PRESENT BOTH AT PENALTY AND
SPENCER AND GO THROUGH THESE
ADDITIONAL WITNESSES THAT
WERE PRESENTED AT THE
EVIDENCIARY HEARING, FIRST
OF ALL ISSUE DEFENSE COUNSEL
PRESENTED A -- 11 WITNESSES
AT THE PENALTY PHASE, AND
INCLUDED BELCHER'S MOTHER
HIS SISTER AND TWO AUNTS.
THEN AS PART OF THE SPENCER
PRESENTATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!
PRESENTATION, HE PRESENTS
THREE LETTERS, ONE FROM A
COUSIN!!\$\$!!!!!!!!!!!!
COUSIN, ONE FROM HIS FATHER
WHICH WE ARE GOING TO TALK
ABOUT BECAUSE AT THE
EVIDENCIARY HEARING THE
FATHER TESTIFIED LIVE, BUT
HIS -- HIS PLEA FOR MERCY
WAS INCLUDED IN A A LETTER
PRESENTED IN OTHER WORDS,
DEFENSE COUNSEL DID PRESENT
THE \$\$DEFENDANT'S FATHER, VIA
THIS ALERT THE THIRD LEAR
WAS FROM THE GRANDMA; ALL
RIGHT?
SO WE DID HAVE EXTENSIVE
FAMILY MITIGATION PUT FORTH.
THEN I'M GOING TO GO THROUGH
THE ADDITIONAL WITNESSES
THAT WERE PRESENT AT THE --
>> -- ON BELCHER SENIOR,
BECAUSE CERTAINLY, A A

LETTER THAT USED IN SPENCER
FOR MERCY IS NOT MITIGATION
TO THE JURY, WHAT WAS THE
JUST ON THE FATHER, WHAT WAS
THE DEFENSE \$LAWYER'S
TESTIMONY AS TO HAD HE DID
HE MAKE A STRATEGICDITION --
DECISION NOT TO CALL HIM
THERE WERE SOME WITNESSES
COULDN'T RECALL IF THEY HAD
CONTACTED OTHERS THAT THEY
JEK!!\$\$!!!!
JEKED, AND TO ME SAY THIS IS
NOT AT ALL LIKE A CASE WHERE
YOU SEE SO MANY OF THESE
CASES WHERE NOBODY IS
CALLED, HERE THEY CALL POINT!!\$\$!!!!!!!
POINTED OUT A LOT OF THE
MITIGATION EVIDENCE,
WITNESSES SO THAT WHAT WAS
NICE HERE IS BECAUSE WE DID
DO THIS EVIDENCIARY HEARING
SO QUICKLY TO THE TRIAL FOR
ONCE DEFENSE COUNSEL HAD HIS
NOTES, AND SO WHAT I'M GOING
TO TELL YOU WHAT DEFENSE
COUNSEL SAID HE IS LITERALLY
READYING HIS -- READING HIS
OWN TRIAL NOTES REGARD HEING
TALKED TO -- MR. BELCHER'S
SENIOR JAMES BELCHER SENIOR
INJURY -- FOUR TIMES
READYING FROM -- READING
FROM TRIAL NOTES HE TALKED
TO HIM FOUR TIMES, AND HE
DID NOT WANT TO PRESENT IT
HAS AT THE TOP OF HIS NOTES,
DON'T USE, THAT IS A DIRECT
QUOTE FROM HIS TRIAL RECORD.
AND WHAT HE TESTIFIED TO WAS
THE REASON I DID NOT USE HIM
IS BECAUSE MR. BELCHER WAS
UNREALISTIC!!\$\$!!!!!!!!!!!!!!!!!!!!
UNREALISTIC, ABOUT -- ABOUT
HIS \$SON'S CRIMINAL HISTORY.
AND -- THAT HE DIDN'T KNOW A
LOT ABOUT HIS \$SON'S LIFE.
SO THIS WAS -- HE NOT ONLY
FOUND THIS WITNESS TALKED TO
HIM HE TALKED TO HIM FOUR
TIMES, AND CLEARLY, HAS HIS
OWN NOTATION, I MADE A
REASONABLE STRATEGIC
DECISION NOT TO USE HIM AND

HIS TESTIMONY AT THE
EVIDENCIARY HEARING WAS
QUOTE UNQUOTE HE WAS
UNREALISTIC!!\$\$!!!!!!!!!!!!!!!!!!!!
UNREALISTIC.
HELEN DIAS WAS AN AUNT THEY
PRESENT HER AT THE
EVIDENCIARY HEARING AT THE
EVIDENCIARY HEARING SHE OPEN!!\$\$!!!!!!
OPENLY ADMITTED SHE DID NOT
WANT TO TESTIFY, BECAUSE
THIS WOULD OPEN OLD WOUNDS,
IN THE FAMILY.
SHE WAS NOT AVAILABLE.
COUNSEL CANNOT BE INFECTIVE
FOR NOT PRESENTING A WITNESS
THAT IS NOT AVAILABLE.
MORE OVER, HE TALKED TO HER,
HE TALKED TO HER, AND BASED
ON THOSE CONVERSATIONS, HIS
NOTES WERE SHE WAS NOT A
GOOD WITNESS THAT IS QUOTE
AGAIN, BEING MORE OVER
YOU'RE HONOR DURING THE
EVIDENCIARY HEARING, SHE WAS
SO SHE TESTIFIED THINGS LIKE
NO AMOUNT OF FACTS REGARDING
BELCHER!!\$\$!!!!!!!!!!!!!!
BELCHER'S CRIMINAL CONDUCT,
AND THAT IS THE OTHER THING
HERE, THIS OPENS UP, HIS
CRIMINAL CONDUCT, PRESENTING
ANY OF THESE WITNESSES WOULD
OPEN UP JUST AS WE DID AT
EVIDENCIARY HEARING THEIR
FAMILIARITY WITH HIS RECORD
THAT RECORD WHY WE DID HAVE
THREE REDID INTRODUCE THREE
CONVICTIONS HERE, WE DID NOT
USE THE ONES THAT WERE NOT
VIOLENT WE WOULD BE ABLE TO
ADMIT HIS ENTIRE CRIMINAL
HISTORY.
>> WHY WOULDN'T THAT BE THE
CASE WITH THE OTHER
MITIGATION WITNESSES THAT
WERE --
>> THEY JUST DIDN'T DO IT
OFTENTIMES THEY DIDN'T.
>> HERE WE DID IT AT THE
EVIDENCIARY!!\$\$!!!!!!!!!!!!!!!!!!!!
EVIDENCIARY.
>> WE ARE CERTAINLY ENTITLED
TO IT DEFENDS COUNCILS HAS

TO BE READ TO --

>> DOWNED WHAT I'M SAYING
THAT IF YOU ALREADY COULD
HAVE DONE IT.

THEN THE ISSUE ABOUT WHAT
THEY DIDN'T PRESENT ADDITION!!\$\$!!!!!!!!!!!!!!
ADDITIONAL WITNESSES IT
WOULD HAVE OPENED THE DOOR
DOES DOESN'T MAKE SENSE
SINCE THERE WERE ALREADY
WINZ THAT YOU WOULD -- COULD
HAVE DONE IT FOR, I'M NOT
SURE I UNDERSTAND YOUR
ARGUMENT.

>> I SEE THAT I'M SAYING
THAT DIDN'T IN FACT HAPPEN
AND IT COULD HAVE AND IT DID
IT DIDN'T HAPPEN AT PENALTY
PHASE BUT IT DID HAPPEN AT
THE EFRY HEARING, I DID THE
-- EVIDENCIARY HEARING I DID
TELL THEM START -- ON THAT
HE DIDN'T DO IT THE
PROSECUTOR DIDN'T DO IT BUT
HE KWO. YOUR HONOR WHAT
KWOIM GOING TO DO GO DOWN
ALL FIVE OR SIX OF THESE
WITNESSES, AND BASICALLY
TELL YOU THE EXACT SAME
THING, DEFENSE COUNSEL
TALKED TO THEM DECIDED THEY
WEREN'T GOOD WITNESSES,
DECIDED TO PRESENT THE
MOTHER TWO AUNTS AND THE
SISTER INSTEAD.

BUT, IF YOU BUT I CAN
CERTAINLY GO, BY THEM ONE BY
ONE -- BERNICE JOHNSON WHO
WAS AN AUNT, DEFENSE
COUNSEL, ALLENEN SHIPPER!!\$\$!!!!!!!!!!!!!!
SHIPPERFIELD TESTIFIED THAT
HE SPOKE WITH BERNICE
JOHNSON HE NETTED ONCE AGAIN
THAT DIRECT QUOTE, FROM HIS
NOTES SHE WAS NO HELP.
THAT IS JUST TRUE OF ALL
THESE WITNESSES, MORE OVER,
YOUR HONOR, THIS IS SHIPPER!!\$\$!!!!!!!!!!!!!!
SHIPPERFIELD IS THE -- LEWIS
BY ZELL WAS LEAD COUNSEL BUT
THEY WORKED TOGETHER LOUIS
BY ZELL LEAD COUNSEL IN
GUILTY FACE SHIP -- SHIPPER!!\$\$!!!!!!!!!!!!!!
SHIPPERFIELD LEAD COUNSEL IN

PENALTY PHASE.

>> YOU HAD TWO HIGHLY HIGHLY
EXPERIENCE -- EXPERIENCED
ASUFFICIENTANT PUBLIC
DEFENDERS!!\$\$!!!!!!!!!!!!!!!
DEFENDERS, WHEN OF YOU TWO
PUBLIC DEFENDERS, MEETING
THE STANDARD FOR INEFFECTIVE
ASSISTANCE OF KWOUNS WITH
PUBLIC DEFENDERS WITH THIS
KIND OF EXPERIENCE, YOU ARE
JUST NOT GOING TO HAVE
ANYBODY TRIAL PENALTY PHASE
BETTER THAN ALAN SHIPPER!!\$\$!!!!!!!!!!!!!!!
SHIPPERFIELD DOES, SO YOU
ALSO NEED TO IN INEFFECTIVE
ASSISTANCE COUNSEL CLAIM
TAKE INTO CONSIDERATION
THESE DAYS NOT ONLY ARE
RULES ARE REQUIRING TWO
COUNSEL, COCOUNSEL BEING
APPOINTED BUT YOU HAVE VERY
HIGH STANDARDS, AS TO THE
BACKGROUND WHO WAS QUALIFIED
TO TRY CAPITAL CASE, SO YOU
ARE GOING TO HAVE TWO HIGHLY
QUALIFIED ATTORNEYS AND THAT
IS EXACTLY WHAT WE HAVE
HERE.

AND WHEN YOU HAVE TWO HIGHLY
QUALIFIED ATTORNEYS WHY --
ANYBODY CAN HAVE A BAD DAY.
REMEMBER, CAPITAL GUYS ON
FOR A YEAR.

SO -- THE INFECTIVE
ASSISTANCE OF COUNSEL NEEDS
TO RECOGNIZE THESE ARE TWO
HIGHLY EXPERIENCED PUBLIC
DEFENDERS!!\$\$!!!!!!!!!!!!!!!
DEFENDERS.

AND IF THE COURT HAS NO
QUESTIONS -- QUESTIONS I ASK
YOU TO AFFIRM THE TRIAL \$\$
COURT'S DENIAL OF 3851.
THANK YOU.

>> -- YOU'VE USED YOUR TIME
I WILL GIVE YOU A COUPLE
MINUTES IF YOU NEED TO
ADDRESS ANYTHING ON REBUTTAL!!\$\$!!!!!!!!!!!!!!!
REBUTTAL.

>> THANK YOU YOUR HONOR.
THE TROUBLING THING ABOUT
THIS CASE IS THE FACT THAT
THERE IS A 93 -- 9-3 DEATH

RECOMMENDATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!

RECOMMENDATION, AND THERE IS
REASON TO BE CONCERNED THAT
IF THE JUROR JURY HAD BEEN
-- HAD -- POINTED OUT TO
THEM IN CLEAR TERMS, THAT
THE SEX BATTERY, AND THE
MURDER DID NOT OCCUR AT THE
SAME TIME INDEED THAT A SEX
BATTERY HAD NOT OCCURRED
THEN THE AGGRAVATE\$\$!!!!OR OF
MURDER BEING COMMITTED IN
THE COURSE OF THE SEX
BATTERY MAY NOT HAVE BEEN
FOUND, THIS DEFENDANT MAY
HAVE GOTTEN A THREE EXTRA
VOTES, TO GET HIM A LIFE
SENTENCE.

.

>> OKAY.

THANK YOU VERY MUCH, THE
COURT WILL STAND IN RECESS,
UNTIL 9:00 TOMORROW MORNING.

>> ALL RISE, PLEASE.,

FLORIDA SUPREME COURT IS NOW

ADJOURNED.