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Connie Ray Israel v. State of Florida

SC05-1739 | SC06-653

NEXT CASE ON CALENDAR THIS MORNING IS ISRAEL VERSUS STATE OF FLORIDA.

>> GOOD MORNING.

ROBERT STRAIN, FOR CONNIE RAY ISRAEL THE APPLE LANT IN THIS CASE.

BRIEFLY, THE COURTS ARE AWARE RECORD AT TRIAL SHOWED THAT CLOSING ARGUMENT DURING PENALTY PHASE BY THE DEFENSE COUNSEL WAS ABOUT, THREE MINUTES INCURSION.

IT TAKES UP JUST THREE PAGES OF THE RECORD ON APPEAL.

>> ARE THERE ANY CASES FROM THIS COURT SAYING THAT THE MERE FACT OF A DEFICIENT CLOSING ARGUMENT, NOT THAT YOU'VE CON HE SEEDED ANYTHING AT CLOSING BUT JUST THAT YOU WEREN'T FORCEFUL ENOUGH, DIDN'T ARGUE ENOUGH AT CLOSING THAT THAT WAS ENOUGH TO PROVE BOTH DEFICIENT PERFORMANCE AND PREJUDICE?

>> LET ME START, WHAT IS A PREJUDICE, FIRST, JUSTICE CANTERO.

I POINTED OUT I BELIEVE ESPECIALLY IN THE REPLY REPLY BRIEF, COMBINATION OF JURY NEVER HEARING A WORD ABOUT NONSTATUTORY MITIGATION OR WHAT THE COURT INSTRUCTIONS WERE GOING TO BE FOR THEIR CONSIDERATIONS FOR THE ADVISORY OPINION, COMBINED WITH THE ZERO ARGUMENT OR INFORMATION PROVIDED AT THE SPENCER AND FAILURE TO FILE THE SENSING MEMORANDUM, MEANT THAT, CONNIE RAY ISRAEL ENDED UP WITH A SENTENCING ORDER THAT WAS WRITTEN BY THE STATE.

THE STATE PROVIDED THE LANGUAGE
THAT SAID THAT CONNIE RAY
ISRAEL'S --

>> YOU'RE COMBINING ALL OF YOUR
ARGUMENTS THOUGH THEY ALL LEAD

--

>> THEY ALL LEAD TO THE
PREJUDICE AND THE PREJUDICE IS,
THAT EVEN THE TRIAL COURT DID
NOT HEAR THE SLIGHTEST WORD OF
ARGUMENT BEYOND THE STATUTORY
EVIDENCE THAT HE HEARD FROM
DR.^KROPP.

THE PREJUDICE THAT THE WORDS OF
THE ECONOMY RAY ISRAEL'S HAVING
A BAD CHARACTER, HAVING A BAD
RECORD, CHARACTERER IS WORSE
AND OFFENSE IS HORRIBLE, THAT
WAS WRITTEN BY THE STATE IN
THEIR SENTENCING MEMORANDUM.

>> I GUESS I'M TRYING TO GO
ARGUMENT BY ARGUMENT.
YOU'RE MELDING THEM ALL
TOGETHER, SAYING CUMULATIVELY
YOU SHOW PREJUDICE.

YOU MAY BE RIGHT.

BUT YOU STARTED ARGUMENT SAYING
THIS WAS A THREE-PAGE CLOSING
ARGUMENT.

>> OKAY.

WELL, SIMPLY I CITED IN ONE OF
MY BRIEFS THE NOTION IS, NO, I
DO NOT HAVE A CASE THAT SAYS
THAT A 3-MINUTE CLOSING
ARGUMENT TO THE PENALTY PHASE
JURY OR AUTOMATICALLY OR PER SE
INEFFECTIVE.

BUT MY BRIEF DOES CITE AT LEAST
SIX OR SEVEN CASES THAT
INDICATE, IF THE COURT HAD
LIMITED DEFENSE COUNSEL TO 30
MINUTES OR LEFT FOR CLOSING
ARGUMENT ESPECIALLY IN CAPITAL
CASE THAT LIKELY WOULD HAVE
BEEN REVERSEABLE ERROR.

>> THIS IS MY PROBLEM.

I, I AM, -- THREE MINUTE, THREE
PAGE CLOSING ARGUMENT --

[INAUDIBLE]

SOME PEOPLE MIGHT BE VERY
EFFECTIVE IN THREE MINUTES AND
THREE PAGES BUT THIS IS ALMOST,
I THINK AN EMBARASSMENT OF A
CLOSING ARGUMENT AND, YET, THIS

IS, IN TERMS OF THE PREJUDICE, LET'S ASSUME THAT THE, ISSUE IS THE DEFICIENCY OF THE CLOSING NOT MENTIONING STATUTORY MITIGATION AND THERE IS NO SENTENCING MEMORANDA SO WE END UP SAYING ON DIRECT APPEAL THAT, THERE IS NO BASIS FOR FINDING THE NONSTATUTORY MITIGATION, THE NONSTATUTORY MITIGATION IS THE DRUG ABUSE, BRAIN DAMAGE, THE, LOW IQ, BUT, THERE IS NO DEFICIENCY IN THE PRESENTATION OF THE MITIGATION, THAT I CAN SEE.

THAT IS WHAT WAS ACTUALLY PRESENTED.

THE TRIAL JUDGE DOES FINE THE TWO STATUTORY MITIGATORS AND THE STATUTORY MITIGATORS REALLY INCORPORATE WHAT WOULD BE THE NONSTATUTORY MITIGATION BECAUSE TALKING ABOUT THE MUCH MORE SIGNIFICANT THAN, SAYING, WELL HAS HISTORY AFTER DRUG ABUSE.

SO MY CONCERN IS IS THAT ALTHOUGH YOU MAY BE ABLE TO ESTABLISH DEFICIENT PERFORMANCE AND YOU MAY BE ABLE TO SHOW AN EFFECTS ON THE SENTENCING ORDER, THE ISSUE IS, THAT THE UNDERMINE THE CONFIDENCE, THE OUTCOME OF THE, DEATH SENTENCE IN THIS CASE.

THAT'S WHAT I THINK YOU'RE GOING TO NEED TO REALLY ADDRESS.

WHAT IS THE, SO COMPELLING ABOUT WHAT WAS PRESENTED THAT WOULD HAVE BEEN, RESULTED IN A LIFE SENTENCE IN THIS CASE?

>> WELL, JUSTICE PARIENTE, IT'S A DIFFICULT POSITION FOR ALL OF US INVOLVED.

AND, WHAT I, YOU'RE HITTING THE NAIL ON THE HEAD.

AND THE IDEA IS WHERE A COURT FINDS, AT THE CONCLUSION OF SPENCER HEARING, TWO STATUTORY MITIGATORS DOES THAT GIVE A WASH TO THIS TRIAL ATTORNEY TO NOT, TO NOT ADDRESS THE PENALTY PHASE JURY WITH ANYTHING ELSE?

>> IT'S JUST THE ISSUE THAT

THE, HAD EFFECT OR --

[INAUDIBLE]

>> WELL, SPECIFICALLY, MY BRIEF
LISTS MAYBE UPWARDS OF 20 OR SO
BROKEN DOWN SOME CASE LAW,
DIFFERENT NONSTATUTORY
MITIGATORS.

THAT COULD HAVE BEEN OUTLINED
BUT THE KEY IS THAT THE,
ATTORNEY NEVER TOLD THE JURY,
NOT ONE WORD CAME OUT OF HIS
MOUTH ABOUT WHAT THEY WERE TO
DO WHEN THEY WERE WORKING ON
THE ADVISORY SENTENCE.

HE DIDN'T MENTION THE LAW ABOUT
MITIGATORS, OR AGGRAVATORS,
ABOUT, STANDARD OF PROOF FOR
THE AGGRAVATORS BY THE
PROSECUTION --

>> I MEAN YOU GOT TO, YOU GOT
TO AGREE THAT HE ASKED THE JURY
TO, NOT GIVE A DEATH
RECOMMENDATION BUT TO GIVE A
LIFE SENTENCE, THAT THE MAN WAS
GOING TO SPEND THE REMAINDER OF
HIS LIFE --

>> HE TOUCHED ON THE TWO
STATUTORY MITIGATORS BY
REFERENCING DR.^KROPP'S
PREVIOUS TESTIMONY.

HE POINTED OUT THAT ESSENTIALLY
AS A NONSTATUTORY MITIGATOR
THAT CONNIE RAY ISRAEL WAS
ALREADY IN PRISON FOR LIFE AND
WOULDN'T BE GOING ANYWHERE
EVEN, --

>> HOW LONG DID DR.^KROPP'S
TESTIMONY LAST?

>> I DON'T REMEMBER THE NUMBER
OF PAGES BUT IT TOOK UP JUST
PART OF, PART OF THE MORNING.
HE MIGHT HAVE BEEN ON THE, I
WOULD ESTIMATE, MAYBE AN HOUR
OR HOUR AND A HALF ON THE
STAND.

AND, --

>> HOW LONG WAS THIS TRIAL?

>> PARDON ME?

>> HOW LONG WAS THE TRIAL?

>> MAYBE MR.^NUNNELLEY COULD
CORRECT ME BUT I BELIEVE THE
JURY SELECTION TOOK ALMOST 3
1/2 DAYS.

AND THERE WERE DNA EXPERTS AND

WHAT HAVE YOU.

SO THE TRIAL I BELIEVE WAS SIX
OR SEVEN DAYS ITSELF.

>> DR.^CROFT, AGAIN I STILL
DON'T --

[INAUDIBLE]

BUT IT IS TRUE THAT, SAYS, THIS
IS WHAT, DR.^CROFT TESTIFIED TO
JUST A FEW MOMENTS AGO.

SO I'M ASSUMING THAT, DR.^CROFT
TESTIFIED AND JUST SHORTLY
AFTER THIS CLOSING ARGUMENT,
ENSUED IS THAT CORRECT?

>> YES.

IN FACT, JUSTICE PARIENTE, IT
WAS JUST A BRIEF RECESS THAT
OCCURRED.

THERE YOU HAVE IT, A STATEMENT
TO THE JURY BY A DEFENSE
COUNSEL AT A PENALTY PHASE,
JUST CANNOT WASH WHEN THEY HEAR
NOTHING ABOUT THE LAW, NOTHING
ABOUT THEIR DUTIES, NOTHING
ABOUT THEIR --

>> AND THE STATE DIDN'T PUT ON
ANY PENALTY PHASE EVIDENCE?

>> THAT'S CORRECT.

DR.^CROFT'S TESTIMONY WAS
UNCONTROVERTED.

>> SO THE PENALTY PHASE IN THIS
CASE WAS ESSENTIALLY
DR.^CROFT'S TESTIMONY, THE TEN
PAGE CLOSING ARGUMENT BY THE
STATE AND THE THREE-PAGE
ARGUMENT HERE?

>> AND THAT'S THE KEY.

NOT JUST ESSENTIALLY BUT THAT'S
ALL IT WAS.

THAT'S WHERE THE, SPENCER
HEARING COMES IN.

THAT'S WHERE THE FAILURE TO
FILE THE REQUESTED, SENTENCING
MEMORANDUM COMES IN.

THIS ATTORNEY FOR WHATEVER
REASON, AND THAT'S WHY I ARGUE
AND HOPEFULLY WE CAN DISCUSS IT
THIS MORNING --

>> JUST THE POINT OF THAT
QUESTION IS, HOW LONG DOES THE
CLOSING ARGUMENT HAVE TO BE IF
THE ONLY EVIDENCE AT THE
PENALTY PHASE WAS DR.^CROFT'S
TESTIMONY WHICH OCCURRED RIGHT
BEFORE THE CLOSING ARGUMENT?

>> MY BRIEF CITE, JUSTICE CANTERO, I'M SURE YOUR BACKGROUND SHOWS, CLOSING ARGUMENT IS OFTEN DESCRIBED AS PINNACLE OF A TRIAL. WHEN A ATTORNEY GETS UP THERE YOU HAVE IT, THERE YOU JUST HEARD IT, THAT'S IT THERE IS NOTHING MORE THAT MAY WASH FOR, DRUG POSSESSION CASE OF, IN FELONY COURT BUT IT DOESN'T WASH FOR A PENALTY PHASE IN A CAPITAL CASE.

JUSTICE CANTERO, AGAIN MY BRIEF OUTLINES IF IN FACT THE ATTORNEY HAD REQUESTED AN HOUR AND A HALF OR TWO HOURS OR FIVE HOURS OF CLOSING TIME, AND THE JUDGE HAD SAID, NO, YOU ONLY GET A HALF HOUR, THEN, THIS COURT FROM THE CASES I CITED WOULD LIKELY HAVE REVERSED FOR ABUSIVE DISCRETION BECAUSE IT'S INCREDULOUS THAT SOMEBODY, -- >> DID COUNSEL TESTIFY ABOUT WHY IT WAS SO SHORT?

>> YES, HE DID.

AND ADMITTEDLY HIS RECOLLECTION, HE JUST NEVER CAME UP AND I MADE REFERENCE IN MY BRIEF A NUMBER OF TIMES, I TRIED TO PRESS HIM FOR STRATEGY.

BECAUSE I WAS FULLY AWARE OF THE YARBOROUGH CASES AND THE STATE CASES THAT TALK ABOUT THE GREAT DEFERENCE AND, THAT WE HAVE TO GIVE TO ATTORNEYS FOR CLOSING ARGUMENT.

BUT, MR.^WOLF JUST COULDN'T RECALL ANY, ANY REASON WHY HE, NOT ONLY, HAD SUCH AN ABBREVIATED CLOSING ARGUMENT, THAT WHY, AT THE SPENCER HEARING HE DID NOT ADDRESS THE JUDGE ONCE ABOUT ANY, ABOUT ANYTHING.

AT THE SPENCER HEARING IT WAS SOLELY LIMITED TO DETAILS OF A, MOTION FOR NEW TRIAL AND THE COURT'S RULING AND MR.^ISRAEL TOOK THE STAND.

>> HOW CAN WE VIEW ALL OF THIS IN LIGHT OF WHAT THIS COURT

SAID IN MR. ^ISRAEL'S DIRECT
APPEAL?

WHERE MR. ^ISRAEL ATTEMPTED TO,
ARGUE THAT THE TRIAL COURT DID
NOT CONSIDER NONSTATUTORY
MITIGATING EVIDENCE AND THAT,
THIS, WE SAID IN THAT SENSE,
THAT NOTHING WAS PRESENTED TO
THE COURT OR NOTHING WAS ARGUED
OR POINTED OUT --

>> THAT'S CORRECT.

>> -- TO THE KATE OF MITIGATING
NATURE, NON-STATUTORY
MITIGATING NATURE.

HOW DOES THAT FIT INTO YOUR
ARGUMENT.

>> THAT CAME FROM LUCAS AND A
NUMBER OF OTHER CASES.

THAT IS THE CASE, JUSTICE
CANTERO AND JUSTICE QUINCE,
THIS COURT AS ALL THE ATTORNEYS
TRAINED AND LEARNED FROM
EXPERIENCE THEY HAVE, SOME
OBLIGATION TO OUTLINE NOT ONLY
FOR THE JURY BUT FOR THE JUDGE
WHAT THE MITIGATION IS GOING TO
BE, STATUTORY OR NONSTATUTORY.

>> BUT IN THIS CASE THE JUDGE
FOUND TWO MENTAL STATUTORY
HEALTH MITT {FWAT} TORES.

>> THAT'S CORRECT.

>> SO IT SEEMS LIKE YOU'RE
ARGUING SHOULD HAVE FOUND THE
LESSER WHEN HE FOUND THE
GREATER?

>> THAT IS THE DILEMMA OF THE
RECORD IN THIS CASE, JUSTICE
CANTERO.

NO TWO WAYS ABOUT IT.

WHEN THE COURT FINDS TWO
STATUTORY MITIGATORS, THAT'S
PRETTY POWERFUL STUFF.

>> WHAT DID THE COURT ACTUALLY
SAY ABOUT THOSE STATUTORY
MITIGATORS THOUGH?

>> WELL THE SENTENCING ORDER,
THAT BARELY TAKES UP TWO THIRDS
OF A PAGE.

IT ESSENTIALLY POINTED OUT IT
WAS UNCONTROVERTED THAT STATE
DID NOT BRING ANY.

EACH ONE, IS ESSENTIALLY GIVEN
A ONE SENTENCE FINDING THAT

THEY WERE ESTABLISHED AND,
GIVEN SOME CREDENCE.

THIS COURT ON DIRECT APPEAL
THAT YOU MENTIONED, JUSTICE
QUINCE, WAS, VERY, VERY
GENEROUS WHEN IT REFERRED TO
THE JUDGE'S, CONCLUSORY
COMMENTS ON NONSTATUTORY
MITIGATORS WHEN THEY ADOPTED
THE 4 1/2 LINE STATEMENT THAT
CONNIE ISRAEL'S RECORD WAS BAD,
HIS CHARACTER WAS WORSE AND
THIS CRIME WAS HORRIBLE.

IF THIS COURT HAS EVER RECEIVED
ANOTHER FOUR-LINE ANALYSIS OF
WHAT WAS SUPPOSED TO BE THE
INDIVIDUAL ASPECTS OF A
NONSTATUTORY MITIGATORS, IF
THAT BECAME A BOILERPLATE
RULING OUT OF THAT COURT IN
PUTNAM COUNTY I WOULD VENTURE
TO SAY THIS COURT WOULD HAVE
EXTREME PROBLEMS.

AND YET YOU SAY IT WAS
CONCLUSORY, YET IT DIDN'T EVEN
QUALIFY IN TERMS OF ONE
NONSTATUTORY WAS MENTIONED TO
THE JURY.

NOT ONE NONSTATUTORY MITIGATOR
WAS MENTIONED TO THE JUDGE AT
THE SPENCER HEARING AND AGAIN,
THE --

>> HOW DOES THAT, GETTING TO
THE PREJUDICE PRONG, HOW DOES
THAT UNDERMINE OUR CONFIDENCE
IN THE OUTCOME WHEN HE DID
ARGUE AND THE JUDGE DID FIND
TWO STATUTORY MITIGATORS THAT
ARE, MENTAL HEALTH MITIGATORS
SO VERY RELEVANT TO THE
NONSTATUTORY YOU ARGUE HE
SHOULD HAVE PRESENTED?

>> WELL, --

>> AS FAR AS THE PREJUDICE?

>> THE BROWNLEE CASE I CITE,
INDICATES, JUSTICE CANTERO, IS
IT RIGHT, CAN THIS COURT
DETERMINE THAT, THAT THE TRIAL
COURT CAN CURE THE DEFICIENCY
OF THAT DEFICIENT CLOSING
ARGUMENT?

IN OTHER WORDS, WHEN AN
ATTORNEY, ABSOLVES HIMSELF OF
ALL HIS RESPONSIBILITY TO GIVE

SOME KIND OF EXPLANATION OF THE LAW AND THE FACTS, DURING PENALTY PHASE, IS THE FACT THAT UNDER OUR BIFURCATED SYSTEM, THE JUDGE HEARD IT ALL, HE WAS THERE IS HE KNOWS THE NONSTATUTORIRIES.

>> MY QUESTION IS A LITTLE DIFFERENT.

>> I THINK THAT GOES BACK, I DON'T THINK I HEARD AN ANSWER TO MY QUESTION WHICH WAS ESSENTIALLY WHAT JUSTICE CANTERO JUST ASKED, WHICH IS YES, THERE SHOULD HAVE BEEN A SENTENCING MEMORANDUM. YES, PROBABLY, THERE SHOULD HAVE BEEN ANOTHER NONSTATUTORY MITIGATOR FOUND IN THE SENTENCING ORDER BUT, HOW WAS HAVING THE STATUTORY MITIGATOR, WHICH INCORPORATES NONSTATUTORY, HOW IS THAT, UNDERMINE THE CONFIDENCE IN LIGHT OFING A -- AGGRAVATOR?
S.

>> WELL REALLY --

>> YOU CAN'T TALK IN GENERALITIES.

YOU HAVE TO SAY IN THIS CASE, OH, MY GOD THIS IS WHAT WOULD HAVE BEEN SHOWN WITH A GOOD LAWYER AND A SENTENCING ORDER, THERE IS NO WAY THE JURY WOULD HAVE RECOMMENDED DEATH OR THE JUDGE WOULD HAVE RECOMMENDED DEATH IF THIS HAD BEEN ARGUED OR PRESENTED IN THE CLOSING ARGUMENT.

>> BUT JUSTICE PARIENTE, ALL I CAN SAY AS BEFORE, IS NOT ONLY DID THE ATTORNEY NOT GIVE THE JURY ANY INDICATION ABOUT WHAT THE LAW WAS AND THEIR DUTY WAS WITH NONSTATUTORY MITIGATION, HE DIDN'T GIVE THEM AN EXAMPLE OR, WHAT HAVE YOU. THIS JURY DID NOT HEAR WHY CONNIE ISRAEL'S RECORD WAS BAD.

DID NOT HEAR WHY HIS CHARACTER WAS WORSE OR, WHY THIS CRIME WAS SO HORRIBLE, EXCEPT FROM THE WORDS, DR. ^CROFT.

WHEN AN ATTORNEY SAYS, WELL,
THERE YOU HEARD IT, I DON'T
NEED TO REPEAT IT, THAT IS NOT
THE PINNACLE OF A TRIAL.
IT IS NO THE PINNACLE OF A
DEATH PENALTY PROCEEDING.
>> SAVE SOME TIME FOR REBUTTAL.

MR. ^NUNNELLEY.
>> MAY IT PLEASE THE COURT.
I'M KEN NUNNELLEY I REPRESENT
THE STATE IN THIS APPEAL.
THE, LET ME START OUT BY SAYING
I'M NOT GOING TO CONCEDE
DEFICIENT FAULT.
YOU KNOW I'M NOT GOING TO DO
THAT.
>> WHY NOT, IF THIS IS
DEFICIENT

HAVE PUT THIS RECORD UP
AGAINST THE DOCTOR'S TRIAL
TESTIMONY, YOU HAVE DR. FISHER,
THE PSYCHOLOGIST FROM NORTH
CAROLINA, WHO SAYS, I AGREE
WITH DR. CROP.
DR. CROP DID A REALLY GOOD JOB,
BECAUSE MR. ISRAEL WOULD
COOPERATE WITH HIM.
DR. CROP WENT BACK TO SEE
MR. ISRAEL A BUNCH OF TIMES
AND DR. CROP GOT HIM TO TALK
AND GOT HIM TO COMMUNICATE
WITH HIM, AND I COULDN'T GET
HIM TO TALK TO ME, VERY MUCH,
SO I COULDN'T REALLY DO ANY
TESTING.
YOU HAVE DR. LITMAN, THE
NEUROPHARMACOLOGIST WHO, ONCE
WE GOT PAST HIM TRYING TO
TESTIFY AS A PSYCHOLOGIST AND
OTHER EXPERT DISCIPLINES AS
WELL, COULD RELATE NOTHING
ABOUT MR. ISRAEL'S DRUG
HISTORY TO THE CRIME.
THEN YOU HAVE DR. MCLAREN, THE
STATE'S EXPERT WHO TESTIFIED
AGAIN, PRETTY MUCH IN
ACCORDANCE WITH DR. CROP'S
TRIAL TESTIMONY.
THAT MR. ISRAEL HAD
ANTI-SOCIAL PERSONALITY
DISORDER, HE'S AND HYPER CON
DESCRIBINGAL PERSONALITY.

ALSO STRONG ELEMENTS OF
PARAPLYLIA, GIVEN H CRIME AND
PRIOR CRIMES, BUT AGAIN,
ISRAEL TALKED TO HIM TWO HOURS
AND TOLD HIM HE WASN'T GOING
TO TALK TO HIM ANY MORE, SO
WHEN YOU GET DOWN TO THE
BOTTOM LINE OF THIS CASE,
THERE IS NOTHING THAT HAS
CHANGED FROM TRIAL.

WE DON'T HAVE A SITUATION
WHERE YOU HAVE A WHOLE PILE OF
NONSTATUTORY MITIGATION OF
SOME SORT, THAT IS COMING IN,
IN THE POST-CONVICTION HEARING,
THAT WASN'T IN THE TRIAL
HEARING AND LET ME BACK UP.
THIS CASE ISN'T BROWNLEE.
I HAD BROWNLEE WHEN I WAS IN
ALABAMA.

AND THERE IS NO SIMILARITY
BETWEEN THE TWO CASES AND IT
IS NOT DON DUNCAN.

THIS IS CASE -- THIS CASE IS
ONE WHERE THE POST-CONVICTION
HEARING BASICALLY TURNS OUT TO
BE A FLASH IN THE PAN BECAUSE
THE FIRST CONVICTION MIDDLE
STATE EVIDENCE -- BLESS YOU!
-- IS THE SAME AS THE TRIAL
STATE EVIDENCE.

IF THE FIRST CONVICTION
EVIDENCE HAD BEEN GREATLY
DIFFERENT, A WHOLE LOT OF
INFORMATION THAT WE DIDN'T
HAVE BEFORE, I WOULD HAVE A
PROBLEM, BUT WE DON'T HAVE
THAT HERE.

WE HAVE EVIDENCE BASICALLY
THAT MATCHES.

WE DON'T HAVE FAMILY MEMBERS
TESTIFYING AT THE EVIDENTIARY
HEARING AND DIDN'T HAVE IT AT
THE TRIAL PROCEEDING, EITHER.
AND THE FATHER DISAPPEARED AND
MOTHER AN SISTER, I BELIEVE IT
WAS, FOR THE TRIAL COUNSEL,
COULDN'T SAY ANYTHING THAT WAS
GOING TO HELP.

DR. KROM WAS THE BEST WITNESS
HE HAS HAD AND HAD TO KEEP HIM
LIMITED, BECAUSE CROP HAD
PRETTY BAD STUFF ABOUT THE GUY,
TOO, BUT AT THE BOTTOM LINE,

THERE IS NO PREJUDICE
WHATSOEVER AND WITH RESPECT TO
THE CLOSING ARGUMENT, AGAIN,
I'M NOT --

>> LET ME ASK YOU ABOUT THE
TIME SEQUENCE OF THIS TRIAL.
THE JURY SELECTION TOOK THREE
DAYS.

>> I BELIEVE THAT IS RIGHT,
JUSTICE WELLS.

>> AND THERE WAS FOUR DAYS OF
TESTIMONY.

>> I THINK THAT'S CORRECT.

>> AND DID THE PENALTY PHASE
FOLLOW IMMEDIATELY AFTER THE
GUILT PHASE.

>> I CAN'T REMEMBER IF THERE
WAS A BREAK OF, YOU KNOW,
STOPPING AND STARTING BACK UP
THE NEXT DAY AND I'M THINKING
THERE WAS A STOP WITH THE
VERDICT AND THEN THEY ROLLED
INTO THE PENALTY PHASE THE
NEXT DAY OR COUPLE DAYS LATER
I CAN'T REMEMBER OFF THE TOP
OF MY HEAD.

AND THE HAD OBVIOUSLY THE SAME
JURY THAT WAS THERE.

>> YES.

IT IS A COMPACT PENALTY PHASE
AND -- FROM THE PRESENTATION
OF EVIDENCE COMPONENT AND JURY
SELECTION WAS A LITTLE BIT
LONG, FOR REASONS OTHER THAN
-- THAT AREN'T REALLY
PERTINENT HERE.

>> LET ME ASK THAT, THOUGH.
WHEN WAS THE PRIOR CONVICTION
TRIED?

BECAUSE WASN'T ME IN JAIL FOR
THE 1993 OFFENSE WHEN THEY
TOOK HIS BLOOD AND MATCHED THE
DNA?

>> THAT'S CORRECT.

THIS WAS THE DNA HIT CASE, IS
WHAT THIS WAS.

THE PRIOR -- WELL, THIS
OCCURRED AT THIS END OF 1991.
AND IT WAS A COUPLE OF YEARS
LATER THAT WE GOT THE DNA
MATCH, IN ABOUT 1993, I
BELIEVE IT WAS 1993.

>> IT WAS A MARCH 1993
BURGLARY AND RAPE --

>> YEAH AND HE WAS ACTUALLY IN THE FLORIDA DEPARTMENT OF CORRECTIONS. WHEN WE DNA MATCH CAME ABOUT AND THIS CASE CAME BACK FOR TRIAL, THE FIRST TRIAL MISTRIED AND THAT IS WHY YOU HAVE A -- WE HAVE A PRETTY GOOD LAG IN THIS CASE AND THE FIRST CASE AS I RECALL, WAS THAT MR. ISRAEL WENT THROUGH -- I BELIEVE IT WAS FOUR ATTORNEYS AND WENT THROUGH A PHASE OF WANTING TO REPRESENTING HIMSELF AND ACTUALLY -- MR. WOLF WAS ORIGINALLY APPOINTED AS STAND BY COUNSEL AND THEN, MY MEMORY SERVES AND THE MISTRIAL WAS NOT NECESSARILY ONE I FOCUSED MUCH ON, OBVIOUSLY BUT IT SEEMS TO ME LIKE THEY WERE ACTUALLY INJURY SELECTION WHEN MR. ISRAEL DECIDES HE NO LONGER WANT TO REPRESENT HIMSELF AND HAVE MR. WOLF AS STAND BY AND WOLF STEPS UP HIS FULL COUNSEL AND THEY -- MY MEMORY IS THEY TOOK A MISTRIAL CHARGEABLE TO THE DEFENSE AND

--

>> WHAT.
>> AND STOPPED AND RESTARTED DOWN THE ROAD.
>> WELL, HOW DID THE INFORMATION -- IF THE PENALTY PHASE WAS JUST DR. CROP, HOW DID THE JURY GET THE INFORMATION ABOUT THE PRIOR CONVICTION?
>> THE STATE I'M SURE PUT ON -- PUT THAT EVIDENCE IN. I DON'T REMEMBER --
>> THE GUILT PHASE.
>> NO.
>> THE PENALTY PHASE. IT WAS PROBABLY --
>> MY MEMORY IS IT WAS STIPULATED.

I DON'T THINK THERE WAS ANY -- THERE WAS NO QUESTION, THAT HE HAD A PRIOR FELONY, AND IT WAS ALSO A SEXUAL BATTERY OF AN ELDERLY BLACK LADY.

>> I WOULD LIKE TO GO BACK TO A MOMENT OF -- WHEN WE'RE LOOKING AT THIS, WHETHER OR NOT MY CONFIDENCE IN THE OUTCOME OF THIS PENALTY PHASE IS UNDERMINED WHEN WE LOOK AT THE FACT THAT MR. WOLF MAY HAVE -- MAY HAVE HAD A KRSRY CLOSING ARGUMENT. HE MADE NO ARGUMENT AT THE PENALTY PHASE, AT THE SPINSTER HEARING, AND REFUSES, EVEN AFTER THE JUDGE HAS -- YOU KNOW, REQUESTED HIM AND THEN GIVES HIM ANOTHER OPPORTUNITY TO FILE NOTICING MEMO AND STILL DOES NOTHING AND THEN WE LOOK AT THE TRIAL JUDGE'S ACTUAL SENTENCING ORDER, WHEN YOU TALK ABOUT THE AGGRAVATED CIRCUMSTANCES IS DETAILED AND WE GET TO THE MITIGATING CIRCUMSTANCES, EVEN THE TWO MENTAL MITIGATING THAT YOU -- WE ALL AGREE HE FOUND AND GAVE, WHEN HIS WERE -- IN HIS WORDS, SOME CREDENCE TO EACH AND REALLY DOES A VERY -- NOT VERY DETAILED DISCUSSION OF THOSE TWO MENTAL MITIGATING AND THEN, AS FOR THE CATCH-ALL, HE'S REALLY -- PEA-PEAS A CATCH-ALL BY SAYING THE MAN HAS A BAD RECORD AND CHARACTER AND THE CRIME -- [INAUDIBLE] SO GIVEN ALL OF THOSE FACTORS, AND THERE WAS IN FACT INFORMATION THAT THE TRIAL ATTORNEY COULD HAVE ARGUED TO BOTH THE JURY AND TO THE TRIAL JUDGE, WHY SHOULD OUR CONFIDENCE NOT BE UNDERMIND IN THIS CASE?

I FIND THIS ATTORNEY'S PERFORMANCE HERE REALLY, REALLY TRYING.

>> JUSTICE QUINCE THE ANSWER TO THAT IS FOUND IN THE EVIDENCE OR LACK THEREOF THAT CAME IN AT THE POST-CONVICTION HEARING.

>> BUT EVEN IF WE CONSIDER JUST THE EVIDENCE THAT WAS THERE, RIGHT THERE, AT THE

PENALTY FARKZ AT THE SENSE OF
-- AT THE HEARING THAT COULD
HAVE BEEN DISCUSSED, COULD
HAVE BEEN ANALYZED, COULD HAVE
BEEN CONSIDERED BY THE TRIAL
JUDGE.

>> AND TO FIND PREJUDICE --
I'M JUMPING OVER PERFORMANCE
AND -- JUMPING STRAIGHT TO
PREJUDICE FOR PURPOSES OF YOUR
QUESTION, BUT TO FIND
PREJUDICE, THERE HAS TO BE
SOMETHING THAT SHOULD HAVE
BEEN FOUND THAT WAS NOT AND WE
DON'T HAVE THAT HERE.

WE HAVE A SPECULATIVE ARGUMENT
THAT IF COUNSEL HAD ARGUED
MORE TO THE JURY THAN HE DID,
AND IF COUNSEL HAVE FILED A
SENTENCING MEMORANDUM AT THE
-- FOR THE PURPOSE OF THE
SPENCER HEARING, THEN THERE
MAY HAVE BEEN SUMMITGATION
THAT COULD HAVE BEEN FOUND BUT
THAT MITIGATION IS
UNIDENTIFIED.

>> THE PROBLEM I GUESS WHAT I
HAVE IS THAT -- MAYBE IT'S THE
PICTURE, THAT GETS PAINTED, I
THINK WHAT I AM MOST IMPRESSED
WITH, IN TERMS OF THE STATE IS
THAT REALLY, IT PUTS A
DIFFERENT SPIN ON WHAT
DR. CROP SAYS AND ALTHOUGH THE
-- YOU KNOW, -- [INAUDIBLE]
EMOTIONAL SERVICE AT THE TIME
IT HAPPENED IS REALLY, GIVEN
THE STATUTORY MITIGATION,
DOESN'T BECOME VERY COMPEL, SO
I GUESS IT WOULD BE LIKE
HAVING THE -- HAVING TO LOOK
AT THIS AND SAY, IT HAS BEEN
THE BRAIN DAMAGE, DRUG ABUSE
AND LOW IQ, ALL CONTRIBUTE TO
THE COMMISSION OF THIS CRIME
AND THE BACK DROP AND I GUESS,
AGAIN, OF -- THAT HE HAD TAKEN
THE STAND AND SAID HE DIDN'T
DO THIS, AND -- YOU KNOW, IT
FOUND -- SO, IS THAT REALLY --
GOING BACK TO THE -- JUDGE
FINDS THE STATUTORY MITIGATION,
DOESN'T EXPLAIN ANYTHING ABOUT
IT AND ISN'T THAT WHERE THE

SUFFICIENCY -- [INAUDIBLE]
BECAUSE THERE IS NOTHING FOR
THE TRIAL JUDGE ON HIS OWN TO
DO WITH -- [INAUDIBLE] --
NOTHING HAS BEEN PRESENTED.
ISN'T THAT WHY AN ARGUMENT
COULD BE MADE THAT HIS
CONFIDENCE IS UNDERMINED
BECAUSE THERE IS REALLY NO
TRUE ADVERSARIAL ADVANCEMENT
OF HOW DR. CROP'S TESTIMONY
FITS IN TO ARGUE MITIGATION
OUT WAYS THE AGGRAVATION.
>> THAT IS WHERE JUSTICE
PARIENTE, YOU FALL BACK TO
THERE BEING NO PREJUDICE,
BECAUSE THE DEFENDANT HAS
READY TO MAKE THAT SHOWING.
HE STILL -- MR. ISRAEL STILL
HAS NOT SHOWN WHAT COULD HAVE
BEEN.

>> YOU SEEM TO BE ARGUING FOR
ALMOST THE REVERSE PER SE RULE
AND THAT IS UNLESS A DEFENDANT
COMES UP WITH ADDITIONAL
EVIDENCE THAT WILL CAST THE
CASE IN A NEW LIGHT, AS A PER
SE RULE THERE CAN BE NO
INEFFECTIVE ASSISTANCE OF
COUNSEL BUT LET ME GIVE YOU
THE REVERSE HYPOTHETICAL,
LET'S ASSUME THIS IS NOT MUCH
DIFFERENT THAN THE FELLOW
SLEEPING THROUGH THE LAST
PENALTY PHASE AND NOTHING ELSE
COMES IN THAT IS DIFFERENT BUT
HE SLEPT THROUGH THE PENALTY
PHASE AND DIDN'T ATTEND,
DIDN'T GO TO THE SPENCER
HEARING BECAUSE HE DIDN'T
REALLY OPEN HIS MOUTH VERY
MUCH.

ARE WE THEN TO SAY, UNLESS
THERE IS SOME EVIDENCE THAT
HAS COME IN, THAT THAT PER SE
CANNOT BE, AN EFFECTIVE
ASSISTANCE OF COUNSEL, BECAUSE
IT IS A MATTER OF DEGREE AND
CERTAINLY THEN PAGES, THREE
PAGES, FALLING ASLEEP, BUT I
THINK YOU HAVE HEARD FROM THE
BENCH, MOST OF THE MEMBERS OF
THE COURT SEEM CONCERNED, IT
IS VERY LIKELY, VERY CONCERNED

WITH THE LAST -- HOW THE PENALTY PHASE WAS CONDUCTED AND IT IS A PROCESS ISSUE AS WELL.

COULD YOU RESPOND TO THAT? THAT SEEMS TO BE WHERE YOU ARE GOING.

>> WELL, I DON'T -- I'M RELUCTANT TO ADVANCE A PER SE RULE OF ANY SPORT IN CONNECTION WITH THE INEFFECTIVENESS OF COUNSEL, BECAUSE THESE CLAIMS ARE ALSO DIFFERENT.

BUT TO TAKE THE HYPOTHETICAL OF THE GUY THAT SLEEPS THROUGH THE PENALTY PHASE, DOESN'T PUT ON ANY EVIDENCE AND WANDERS AROUND THE COURTHOUSE AFTER IT IS OVER WITH, THAT THAT IS THIS EXTREME EXAMPLE AND I HOPE -- I CERTAINLY WOULD HOPE THE COURT WOULD DEAL WITH IT AND DEAL WITH IT DIRECTLY IF IT HAPPENED.

BUT -- PUTTING THAT ASIDE, AND ASSUMING THAT HYPOTHETICAL, TO PREVAIL ON AND IN EFFECT IFNESS OF COUNSEL CLAIM, UNDER THOSE CIRCUMSTANCES, TO SHOW PREJUDICE, THE DEFENDANT WOULD STILL HAVE TO COME FORWARD AND -- THE GUY WITH THE BURDEN OF PROOF HAS TO PROVE HIS CASE.

>> LET ME ASK IF HE QUESTION IN A LITTLE DIFFERENT WAY, REALIZING YOUR TIME.

AFTER LENGTHY DISCUSSION IN STRAKLAND, THE SUPREME COURT REALLY END U. SAYING THAT WHAT WE'RE CONCERNED ABOUT IS THAT WE HAVE AN ADVERSARIAL SYSTEM OF JUSTICE AND THAT THAT ADVERSARY SYSTEM OF JUSTICE RELIES ON ADVOCACY AND THAT WHAT WE ARE REALLY CONCERNED ABOUT HERE IS WHETHER OR NOT THERE WAS LEGITIMATE ADVERSARIAL TESTING OF THE STATE'S CASE AND OF COURSE WHEN WE TALK ABOUT THE ADVERSARIAL SYSTEM, WE ARE TALKING ABOUT COUNSEL BEING THE ONE RESPONSIBLE FOR THAT.

SO AREN'T THERE GOING TO BE SOME CASES WHERE COUNSEL JUST DOESN'T TAKE THAT RESPONSIBILITY OF ADVERSARIAL TESTING TO HEART AND REGARDLESS OF THE FACTS AND CIRCUMSTANCES, IF THERE IS AN ENTITLEMENT TO AN ADVOCATE, YOU KNOW, FOR YOUR CASE AND THERE IS NO ADVOCACY FOR YOUR CASE, THEN REGARDLESS OF THE WAY THAT THE EVIDENCE GOES HERE, ISN'T THAT WHY THE SUPREME COURT ENDED UP WITH SAYING THERE WAS -- THERE SHOULD BE EFFICIENT ADVERSARIAL TESTING SO THAT IT DOESN'T UNDERMINE OUR CONFIDENCE THAT AN ADVERSARIAL PROCESS TOOK PLACE.

SO AS OPPOSED TO THE ORDINARY THING WHERE YOU WOULD SAY YES,, YOU KNOW, THE EVIDENCE IS SO OVERWHELMING, DOESN'T MATTER WHETHER HE'S GOT A LAWYER OR NOT.

BUT THE SUPREME COURT DIDN'T REACH THAT POINT.

THEY EMPHASIZED YES, IN OUR SYSTEM, YOU'VE GOT TO HAVE A LAWYER AND THE LAWYER HAS TO ADVOCATE.

DID WE HAVE A LAWYER HERE IN REALITY THAT -- LAWYER THAT DOES THIS THREE PAGES AND THEN DOESN'T ADVOCATE IT ALL AT THE SPENCER HEARING AND THEN DOESN'T EVEN, AFTER BEING SPOON-FED BY THE JUDGE, WELL, THE STATES FILED A MEMORANDUM IN -- AND ARE YOU GOING TO FILE ONE AND THE LAWYER, YOU KNOW, DOESN'T DO IT.

DID WE HAVE ADVERSARIAL TESTING HERE?

>> WE HAD NO PREJUDICE.

>> WORNT -- AND PART AND PARCEL OF STRICKLAND IS THE -- IS THE RECOGNITION AND THIS CARRIES OVER INTO YARBROUGH AND BAIL IN THE MORE RECENT CASES AS WELL, THERE IS MORE THAN ONE WAY TO TRY THE CASE AND AS I SAY AT THE START, I

AM NOT CONCEDED PREJUDICE AND I DEFINITELY AM NOT CONCEDED PREJUDICE AND DEFECTIVE PERFORMANCE BUT ON THE OTHER HAND THIS IS A PREJUDICE CASE AND YOU HAVE TWO PRONGS OF STRICKLAND AND YOU HAVE TO HAVE THEM BOTH.

THAT RULING HAS NEVER, EVER BEEN CHANGED BY THE UNITED STATES SUPREME COURT.

YOU DO NOT HAVE PREJUDICE IN THIS CASE BECAUSE NOTHING THAT CAME IN AT THE EVIDENTIARY HEARING IN ANY FASHION SHOULD UNDERLINE THIS CORE'S CONFIDENCE IN THE VERDICT AND SENTENCE FROM TRIAL.

THANK YOU.

>> I APOLOGIZE IF I WAS CONFUSING.

DR. CROP WAS -- [INAUDIBLE].

>> WHAT DID THE -- WHAT DID THE STATE PUT ON, OTHER THAN

--

>> THESE OFFICERS READ IN -- CERTIFIED COPIES OF CONVICTIONS AND SENTENCES AND THEN HAD A WITNESS ABOUT THE TWO AGGRAVATORS OF PRIOR VIOLENT FELONIES.

>> DID THEY GO INTO THE DETAILS OF THE PRIOR OFFENSE.

>> NOT THE FIRST ONE, BUT WAS THE RECORD OF THE JUDGMENT SINCE I BELIEVE IT WAS --

BERKELEY WITH A BATTERY AND THE SECOND ONE THEY DID.

>> AND IS THAT THE -- ALSO THE RAPE OF AN ELDERLY BLACK WOMAN.

>> AND THIS IS ONE OF THE RARE CASES, AND THIS MAY GO -- WHERE THE STATE ATTORNEY'S VALUE OF THIS CASE ACTUALLY CAME PRIOR TO THE RECORD ON THE DAY WAYNE HENDERSON, NUMBER 3, WAS ALLOWED TO WITHDRAW AND MR. WOLF WAS APPOINTED, BECAUSE THERE, MORE GREATLY INFORMED THE COURT THAT MR. ISRAEL'S MENTAL ILLNESS ESSENTIALLY PREVENTED HIM FROM ACCEPTING THE OFFER

TO SECOND DEGREE MURDER AND CONCURRING SENTENCES TO TWO EXISTING LIFE SENTENCES HE HAD, THAT IS UNUSUAL FOR US TO KNOW THAT AS PART OF THE RECORD BUT IT PUTS THINGS INTO PERSPECTIVE.

>> LET ME ASK YOU, MR. STRAIN, I'M CONCERNED WITH SOME OF THE COMMENTS MADE BY THE STATE AND THE BENCH THAT THIS IS NOT -- YOU ARE NOT ARGUING THAT THIS IS A CHRONIC-TYPE --

>> NO, JUDGE.

>> AND THERE IS NOT A PER SE CASE, RIGHT?

>> NO, NO.

I'M NOT --

>> NIXON VERSUS FLORIDA ANSWERED THAT QUESTION PRETTY SOUNDLY, DIDN'T IT.

>> OH, ABSOLUTELY.

JUSTICE WELLS HERE'S THE "CATCH-22" WE'RE IN UNTIL THE COURT IS ABLE TO ADDRESS SPREE SIGHTLY MY EQUAL PROTECTION VIOLATION, OUR INABILITY TO INTERVIEW JURORS LIKE ATTORNEYS IN OTHER STATES ARE ALLOWED TO DO.

WE DON'T KNOW WHY OR HOW THIS LACK OF AN EXPLANATION OR CLARIFICATION OF THE ISSUES HAS -- AS YARBROUGH ALSO REQUIRED, THE FAILURE TO DO THAT TO THIS JURY --

>> THE "CATCH-22" IS TO ANALYZE THE TOTALITY OF THIS RECORD.

FROM THE TRIAL RECORD AND THE POST-CONVICTION RECORD IN LIGHT OF THE FACT THAT WE HAVE GOT TO EVALUATE WHETHER REGARDLESS OF THE DEFICIENCIES OF THIS COUNSEL THERE WAS PREJUDICE.

>> AGAIN, THE OBVIOUS ITEM OF PREJUDICE IS THAT THE DEFENSE COUNSEL'S ABDICATION AND HIS DUTIES AN RESPONSIBILITIES ALLOWED OR CREATED A SITUATION WHERE THE NOTICING COURT ADOPTED PRECISELY THE STATE ATTORNEY'S VERBIAGE ON

NONSTATUTORY MITIGATION.
BUT THE PREJUDICE GOES TO THE
INABILITY, JUSTICE WELLS, OF
US TO KNOW OR YOU TO KNOW WHAT
THIS JURY MUST HAVE BEEN
THINKING WHEN THEY WEREN'T
GIVEN ANY EXPLANATION OF THE
LAW.

>> REALIZING -- TO -- FOR A
MINUTE, ORDINARILY IN A CASE
WHERE WE FIND PREJUDICE, OR
OUR CONFIDENCE IS UNDERMINED,
POST CONVICTION COUNSEL COMES
UP WITH A WHOLE SLEW OF
MITIGATION.

THAT IS, IT WATCH EITHER
INVESTIGATED OR FOUND BY THE
DEFENSE LAWYER.

AND THAT IS USUALLY WHAT
SHAPES OUR CONFIDENCE AND THAT
IS THERE THERE WAS SOMETHING
OUT THERE THAT THE LAWYER
DIDN'T COME UP WITH AND DIDN'T
PRESENT.

AND THIS IS YOUR -- YOUR
OPPONENT HAS BEEN VERY CANDID
WITH US HERE, AND HAS NOT
EXACTLY HELD THIS LAWYER UP
FOR PRAISE.

IN TERMS OF THE DEFICIENCIES
YOU POINTED OUT BUT HE KEEPS
RETURNING TO THE FACT THAT,
YOU KNOW, WHERE IS THE
PREJUDICE IN TERMS OF THE
EXISTENCE OF NONSTATUTORY
MITIGATION OR OTHER EVIDENCE
THAT WOULD THEN SHAKE OUR
CONFIDENCE AND WHAT WAS
PRESENTED, YOU KNOW, BY THIS
LAWYER.

AND REALIZING YOU ARE OVER
YOUR TIME, WHERE IS THIS THE
EVIDENCE?

IN OTHER WORDS, THAT WASN'T
DISCLOSED HERE?

>> WELL, AGAIN, JUSTICE
ANSTEAD, MY BRIEF ON PAGES 15
AND 16 I'D EMIZES THE MULTIPLE
NONSTATUTORY MITT GATORS THAT
COULD HAVE BEEN BUT COMBINE IT
WITH THE FACT THE JURY HEARD
NOT ONE WORD OF WHAT THEIR
LEGAL ONLY GAING WAS, THAT
THERE WAS NO EDIFICATION GIVEN

TO THEM.

>> I HEARD ALL THAT FROM THE JUDGE, DID THEY NOT?

>> ONLY -- WELL, WHEN THEY WERE -- GIVEN THE JURY INSTRUCTIONS, THAT'S CORRECT. AND THAT'S ALL THEY HEARD AND SO THE IDEA IS CAN THIS COURT CAN THIS COURT OR THE TRIAL COURT CURE ANY DEFICIENCY WHERE THE JURY WAS NOT GIVEN THE OPPORTUNITY TO DO BECAUSE THE ATTORNEY ABDICATED HIS BURDEN IN THAT RESPECT.

SO I WOULD ARGUE THAT THE TRIAL COURT, THE FACT THAT HE WAS IN THE COURTROOM THE WHOLE TIME LISTENING TO ALL OF IT AND NOT GIVING ONE ARGUMENT, ONE WAY OR THE OTHER ABOUT WHAT THE LAW WAS, OR WHAT THE FACTS WERE AND HOW THEY MESHED TOGETHER, THE FACT THAT THE JURY DIDN'T HEAR WHAT THE LAW WAS OR THE DETAILS OF HOW ISRAEL CAME TO BE THIS PERSON MEANS THAT THE TAINT CANNOT BE CURED BY THE COURT AND SHOULD BE RETURNED FOR RESENTENCING. THANK YOU.

>> COURT WILL TAKE IT'S MORNING RECESS.