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Marshall Lee Gore v. State of Florida

SC05-1848

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF FLORIDA IS

NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW

NEAR, GIVE ATTENTION AND YOU

SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,

THE GREAT STATE OF FLORIDA, AND

THIS HONORABLE COURT.

LADIES AND GENTLEMAN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO

THE ORAL ARGUMENT SESSION FOR

FEBRUARY 4, 2009.

THE FIRST CASE ON OUR DOCKET IS

GORE VERSUS STATE.

>> MAY IT PLEASE THE COURT.

MY NAME IS MELISSA MINSK DONOHO

AND I REPRESENT MARSHALL GORE.

MR. GORE IS BEFORE THIS COURT

AFTER THE DENIAL OF HIS

POST-CONVICTION MOTION.

MOST OF THE CLAIMS WERE
SUMMARILY DENIED BY THE LOWER
COURT, HOWEVER MR. GORE WAS
GRANTED AN EVIDENTIARY HEARING
ON INEFFECTIVE COUNSEL AT HIS
HEARING.

A FEW WEEKS BEFORE THE DEFENDANT
EVIDENTIARY HEARING TOOK PLACE,
WE HAD A STAFF CONFERENCE AND AT
THAT TIME THE TRIAL COURT FOUND
THAT MR. GORE'S CLAIM WAS WAIVED
AND CANCELED HIS EVIDENTIARY
HEARING.

>> IT WASN'T QUITE LIKE THAT.

I DON'T THINK THAT'S THE FIRST
THING THAT HAPPENED, IS THAT THE
JUDGE SAID THE CLAIM WAS WAIVED.
IS THAT CORRECT?

>> THAT IS CORRECT YOUR HONOR.

>> IT WAS A FAIRLY EXTENSIVE
HISTORY THAT WOULD CONSUME MOST
OF THE ORAL ARGUMENT IF HE WERE
TO TELL ABOUT IT.

EVENTUALLY, THE WAY I SEE IT IS
THAT OF COURSE, AS YOU SAID, IT
WAS ON THIS NARROW ISSUE OF
INEFFECTIVE COUNSEL AT THE
SPENCER HEARING AND COUNSEL HAD

PREPARED WITNESSES THAT THEY WERE GOING TO HAVE TESTIFY AND IT ISN'T, THE ISSUE IS THAT I REALIZED YOU HAVE A DIFFERENT VIEW OF THAT, BUT FROM THE TRIAL COURT'S VANTAGE POINT MR. GORE HAD ESSENTIALLY TOLD HIS LAWYER HE DID NOT WANT ANY OF THESE WITNESSES PRESENTED, THAT HE INTENDED TO ASSERT INNOCENCE CLAIM SO THAT IS REALLY, I THINK, THE CLASSIC WAIVER, BUT THAT IS ESSENTIALLY WHAT THE JUDGE FOUND.

SO, TELL US WHY THAT WASN'T A PROPER DISCRETIONARY CALL.

>> JUDGE, THE POSITION THAT WE HAVE REGARDING MR. GORE IS THAT HIS BEHAVIOR AND THE WAY HE IS AND THE WAY HE WAS DOESN'T LEAD ONE TO BE ABLE TO DETERMINE WHAT HE WAS REALLY SAYING.

HE IS ALL OVER THE PLACE.

SPECIFICALLY, WHEN WE LOOK AT THAT PART OF THE RECORD AT THAT HEARING, WHICH WAS AUGUST 8TH, HE SAYS, I WANT TO WAIVE THE WITNESSES BUT I DON'T WANT TO WAIVE THE WITNESSES.

I WANT TO WAIVE THE WITNESSES
BECAUSE MY LAWYERS DIDN'T TELL
ME WHAT THE WITNESSES WERE GOING
TO SAY, AND THEN PROCEEDED TO
SAY I DON'T WANT ANY PART OF
THIS.

>> WE HAVE A UNIQUE VANTAGE
POINT ALSO BECAUSE MR. GORE HAS
HAD TWO DIRECT APPEALS.

HE ALSO HAD A CASE IN COLUMBIA
COUNTY.

HE HAD APPROXIMATELY, AT LEAST,
TEN EXPERTS THAT HAVE EXAMINED
HIM AND THIS JUDGE HIMSELF HAD
AN EXTENSIVE HEARING AND FOUND
HIM TO BE COMPETENT WHEN HE
WANTS TO BE.

HE IS ABLE TO BE ENGAGED IN THE
PROCEEDINGS, SO WHAT WE REALLY
HAVE HERE IS THE JUDGE'S VISION
THAT THIS WAS NOT SOMEBODY THAT
WAS JUST ALL OVER THE PLACE
BECAUSE OF HIS MENTAL
INCAPACITY, BUT SOMEONE WHO WAS
ESSENTIALLY-- AND HAS BEEN
GAMING THE SYSTEM IN ORDER TO
FRUSTRATE THE PROCEEDINGS, AND
FRANKLY FROM MY POINT OF VIEW,

IN LOOKING AT ALL OF THIS IN THE
PLEADINGS, I AM HAVING A HARD
TIME UNDERSTANDING WHY THAT IS
NOT CORRECT.

>> JUDGE, I SEE YOUR POINT.

THERE IS NO DOUBT ABOUT IT.

FROM OUR POSITION AND FROM
HAVING BEEN WITH THE CLIENT, AND
OVER THE COURSE OF THE YEARS, IF
YOU LOOK AT THE COMPETENCY
EVALUATION, AS IT GOES, THE
DEFENSE COMPETENCY, THE DEFENSE
COUNSEL FIND HIM COMPETENT, SO
AND THEN THE JUDGES FIND HIM
COMPETENT.

>> I REALIZE YOU ARE IN A

DIFFICULT POSITION.

YOU HAVE TO ADVOCATE AND I GUESS
MAYBE RATHER THAN TALK ABOUT
YOUR OWN OBSERVATION, THE FIRST
ISSUE IS HE DIDN'T-- THE JUDGE
FOUND HE HAD WAIVED THE
EVIDENTIARY HEARING AND WAS
BASICALLY SAYING HIS CONDUCT--
BY HIS CONDUCT, HE DIDN'T WAIVE
IT.

>> CORRECT.

I AM SAYING THAT, AND I WANT TO
POINT OUT TO THIS COURT TOO THAT

THE CASE CAME OUT WITH THE
UNITED STATES SUPREME COURT,
EDWARDS V. INDIANA.

>> THAT IS THE CORRETTA CASE.

>> IT IS THE EXTENSION OF THE
CORRETTA CASE THAT SAYS COURTS
CAN FIND MENTALLY DERANGED,
INCOMPETENT, DIFFICULT CLIENTS
CAN BE FORCED TO BE REPRESENTED
BY COUNSEL AND IN THAT CASE IT
WAS INTERESTING, THEY CITED AN
OLD FLORIDA CASE IN 1967.

THEY SAID THERE WERE TWO STATES
IN THE COUNTRY THAT ALLOWED FOR
JUDGES TO APPOINT COUNSEL IN
OPPOSITION TO WHAT CLIENTS WANT
WHEN THEY HAVE MENTAL
DERANGEMENT, WHEN THEY ARE BEING
DIFFICULT, AND THERE IS A LIST
OF THINGS IN THAT CASE, WHICH IS
IN CORRETTA, WHICH IS CITED IN
THIS NEW INDIANA V. EDWARDS
CASE-- 1967 CASE REVERSED ON
OTHER GROUNDS AND THIS STATE HAS
SAID FROM THEN, THAT THE TRIAL
JUDGE MUST DETERMINE IF THE
DEFENDANT HAS INTELLIGENTLY AND
CONFIDENTLY WAIVED IT, NO

UNUSUAL CIRCUMSTANCES EXIST
WHICH WOULD PRECLUDE THE
DEFENDANT FROM DEFENDING
HIMSELF, WHERE THE ACCUSED BY
REASON OF AGE, MENTAL
DERANGEMENT, LACK OF KNOWLEDGE--
AND IT GOES ON, SO MY POSITION
TO THIS COURT IS THAT MR. GORE
HAS DONE EXACTLY WHAT JUSTICE
PARIENTE HAS STATED.

OUR POSITION OF COURSE IS THAT
HE IS MENTALLY DERANGED, THAT HE
IS INCOMPETENT.

HE HAS BEEN FOUND COMPETENT TO
PROCEED TO TRIAL BUT NOT
COMPETENT TO REPRESENT HIMSELF.
HE HAS NEVER BEEN ABLE TO PULL
IT TOGETHER.

>> HE HAS CAUSED COURTS ALL OVER
THE PLACE TO BE OUT OF THEIR
MINDS WITH FRUSTRATION.

>> SO, WHAT DO WE DO WITH THE
INFORMATION FROM SEVERAL OF
THESE EXPERTS WHO SAY THIS IS
THE KIND OF CONDUCT HE ENGAGES
IN BECAUSE HE IS MANIPULATING
THE SYSTEM?

>> JUDGE, YOU KNOW, LIKE I SAID,
IT IS BACK AND FORTH.

>> WHEN YOU READ WHAT WENT ON,
THERE ARE PLACES WHERE I THINK
HE IS TERRIBLY LUCID.
HE IS TALKING ABOUT, HE IS GOING
TO DO THIS AND HE IS GOING TO DO
THAT AND HE WANTS THE SUPREME
COURT TO BE ABLE TO LOOK AT THIS
ON APPEAL, AND HE IS MAKING
THESE STATEMENTS THAT REALLY ARE
THE KIND OF STATEMENTS THAT ONE
WOULD MAKE IN ORDER TO BRING
THESE THINGS TO THE ATTENTION OF
THE COURT ON APPEAL, SO I'M JUST
TRYING-- HAVING A HARD TIME.
WHEN WE LOOK AT THIS RECORD WE
HAVE MULTIPLE EXPERTS WHO ARE
SAYING THE MAN IS MANIPULATING
THE SYSTEM.
IT CERTAINLY SEEMS LIKE IT.
HE HAS HAD MULTIPLE ATTORNEYS.
SOMEONE ELSE IS APPOINTED AND
SOMEONE ELSE IS APPOINTED, AND
IT GOES ON TO THE DIRECT APPEAL,
BOTH CONVICTIONS AND HOW ARE WE
GOING TO SIT HERE AND SAY, FACED
WITH THIS KIND OF INFORMATION,
THAT HE IS NOT IN FACT
MANIPULATING THE SYSTEM?

>> WELL, FROM MY POSITION, FROM OUR POSITION, IF YOU LOOK AT THE RECORD, HE IS LUCID BUT THEN HE SAYS THINGS THAT MAKE ABSOLUTELY NO SENSE.

AS A MATTER FACT, THE COURT SAYS SPECIFICALLY HE HAS PUT ALL OF HIS OBJECTIONS, TO THE EXTENT AT LEAST THAT THEY MAKE ANY SENSE, IN WRITING AND THERE HAVE BEEN A COUPLE OF TIMES EVEN IN THE TRANSCRIPT WHERE THE LOWER COURT SAYS-- WHEN A DEFENDANT HAS DECIDED TO GO OUT ON HIS OWN SO TO SPEAK, AND TALKED ABOUT MEETINGS WITH THIS COURT, I THINK THAT WE CAN TAKE NOTICE THAT THESE PLEADINGS USUALLY, BECAUSE THEY ARE NOT BY A LAWYER, WHAT IS GOING ON WITH MR. GORE, MR. GORE WANTS TO ASSERT HIS INNOCENCE AND HE DIDN'T WANT TO MESS AROUND WITH WHETHER HE WAS-- AT THE SPENCER HEARING.

THIS IS A CASE OF SERIOUS AGGRAVATION OF MULTIPLE PRIOR VIOLENT FELONIES, AND WHAT WAS GOING TO MAKE A DIFFERENCE IN

THE SPENCER HEARING.

I GUESS THAT COULD BE YOUR OTHER
PRONG IS THAT THE JUDGE, NOT
GIVING IT EVIDENTIARY HEARING,
IS PREJUDICED ON THE RECORD.

WHAT COULD HAVE BEEN BROUGHT UP
IN THE SPENCER HEARING AND WHAT
CAN YOU TELL US TODAY THAT WOULD
HAVE MADE A DIFFERENCE IN THE
PENALTY PHASE OF THIS CASE?

>> INTERESTINGLY ENOUGH JUDGE,
WE MAY HAVE A FEW THINGS ON
THAT.

MR. GORE HAD BEEN IN MENTAL
HOSPITALS BEFORE.

THERE WAS A FAMILY BACKGROUND OF
ABUSE AND NEGLECT, ALL KINDS OF
STUFF THAT NEVER CAME OUT, AN
ABUSIVE FATHER.

SOME OF THE STUFF CAME OUT OF
THE PENALTY PHASE AT HIS OTHER
HEARING.

>> THESE ARE SOME VAGUE
ASSERTIONS BUT I UNDERSTAND THAT
THE WITNESSES THAT WERE PREPARED
TO TESTIFY WERE ACTUALLY SOME
FAMILY MEMBERS AND THOSE ARE THE
ONES THAT MR. GORE SAID, I DON'T

WANT THOSE PEOPLE TESTIFYING.

I DIDN'T KNOW SOMEONE HAD

UNEARTHED SOME VERY SIGNIFICANT

INFORMATION ABOUT HIM THAT COULD

HAVE REALLY CHANGED THE NATURE

OF THE PENALTY PHASE.

>> I THINK THIS COURT HAS HELD

IN THE PAST THAT IT IS THE RIGHT

OF THE PERSON TO BE ABLE TO

PRESENT THAT EVIDENCE TO THE

COURT OR THE JURY OR THE DEFENSE

ATTORNEY TO MAKE THAT

DETERMINATION AND TO MAKE THOSE

JUDGMENTS, AND WE NOW HAVE THAT

IN THIS RECORD.

I UNDERSTAND YOUR QUESTION AND

TO THE POINT I'M GOING TO SAY

THERE WAS A PART IN A BRIEF THAT

I WROTE, AND AS IT IS A REALLY

IMPORTANT PART OF THIS CASE, WE

WERE DENIED ACCESS TO 80 BOXES

OF RECORDS AND THIS CASE HAD

GONE THROUGH A FEW LAWYERS, AND

WHEN WE GOT THE CASE, ANOTHER

LAWYER IN THE NORTH FLORIDA CASE

GOT THE CASE.

THE PREVIOUS LAWYER HAD BOTH

CASES SEND ALL BOXES TO THE ONE

LAWYER.

WE NEVER HAD ACCESS TO THOSE.

>> DID YOU FINALLY, OF THE 80
BOXES, EVEN THOUGH IT WAS ONLY
30 DAYS BEFORE, DID YOU GET 59
BOXES?

>> WE GOT THROUGH TEN BOXES.
THE LAWYER UP NORTH COULD ONLY
GIVE US ONE BOX AT A TIME.

>> IN THE TEN BOXES, HE LOOKED
AT, HAVE YOU BEEN ABLE TO SHOW
US ONE DOCUMENT THAT MIGHT HAVE
BEEN USEFUL OR OF ASSISTANCE IN
DEVELOPING THE POST-CONVICTION
MOTION OR IN BEING ABLE TO
ADVOCATE FOR AN EVIDENTIARY
HEARING?

>> I CAN'T TELL YOU THAT JUDGE.
OFF THE TOP OF MY HEAD, IF
SOMETHING STOOD OUT, I WOULD
TELL YOU.

>> IN OTHER WORDS, AND HERE IS
ANOTHER EXAMPLE, IT IS A LITTLE
ODD, THE BOXES AND WHERE THEY
WENT, BUT IN THE END I AM
LOOKING AT--

>> GIVE ME ONE EXAMPLE IN THESE
59 BOXES THAT WOW, NOW WE FOUND
THIS ONE, WE ARE REALLY GOING TO

BE ABLE TO SHOW HIS INNOCENCE,
SOMETHING ELSE ABOUT THE MURDER.

>> THERE IS A LOT THAT IS UNDER
SEAL THAT WE NEVER HAD ACCESS TO
ABOUT WHAT HAPPENED.

THE STATE DIDN'T WANT US TO SEE
THEM EITHER.

I SUPPORTED THE JUDGE'S POSITION
THAT THERE IS ATTORNEY-CLIENT
PRIVILEGE BETWEEN GORE AND HIS
OTHER LAWYER.

>> AGAIN, THIS SEEMS TO GO BACK,
AND, AGAIN, NOT SHOOTING THE
MESSENGER BUT IT SEEMS TO GO
BACK TO THE CONTINUING PROBLEM
AND THAT WAS THIS PARTICULAR
DEFENDANT REFUSED AND ASSERTED
PRIVILEGES WITH REGARD TO
MATERIAL.

AND SO, THAT-- YOUR HANDS MAY BE
TIED WITH THAT, BUT WAS IT NOT A
RECOGNIZED LEGAL BASIS UPON
WHICH THE TRIAL JUDGE WOULD MAKE
A RULING?

IT SEEMS TO ME HE WENT THROUGH A
CAMERA ANALYSIS.

>> I RESPECTFULLY DISAGREE.

WHAT HAPPENS IS, WHEN HE BRINGS
POST-CONVICTION MOTION, HE

WAIVES HIS RIGHT TO CONFERENCE
WITH THE TRIAL COUNSEL SO ALL
THOSE MATERIALS ARE NOW FOR US
TO REVIEW.

>> AND HE CANNOT CONTROL THEM?

>> IF YOU WANT TO REASSERT HIS
PRIVILEGE, I GUESS HE CAN
WITHDRAW HIS WHOLE PETITION AND
SAY I AM WITHDRAWING EVERYTHING
AND TAKING BACK MY PRIVILEGE.

>> BUT HE IS THE CLIENT AND HE
IS DETERMINED TO BE COMPETENT.
IF HE SAYS, I DON'T WANT YOU
GETTING INTO THAT, WHY WOULDN'T
YOU BE GOVERNED BY THAT?

>> BECAUSE GOING FORWARD WITH
THE POST-CONVICTION, WHEN HE
GOES FORWARD WITH
POST-CONVICTION, HE IS WAIVING
ANY PRIVILEGE HE HAS WITH TRIAL
COUNSEL.

>> WHY CAN'T HE, AS THE CLIENTS
SAY, I DON'T WANT YOU TO FOCUS
ON THESE THINGS.

I WANT YOU TO FOCUS ON SOMETHING
ELSE?

IT IS HIS CASE?

>> HE CAN SAY THAT BUT AGAIN,

GOING BACK TO MY POSITION THAT
HE IS MENTALLY DERANGED, HOWEVER
YOU WANT TO LOOK AT IT.

WHAT I WAS TRYING TO SAY FROM
THE BEGINNING IS THAT, WITH ALL
DUE RESPECT, THERE MAY BE A
DIFFERENCE BETWEEN MENTALLY
INCOMPETENT TO PROCEED TO TRIAL,
AND MENTALLY DERANGED AND
FRUSTRATING THE COURT TO FORCE
COUNSEL ON A PERSON.

I THINK, HAD THAT HAPPENED A
LONG TIME AGO, A LOT OF THINGS
WOULD BE DIFFERENT RIGHT NOW.
HAD HE BEEN FORCED TO HAVE
COUNSEL UNDER THESE CASES, A LOT
OF THINGS COULD BE DIFFERENT
RIGHT NOW, AND SO THE WHOLE
CAPTAIN OF HIS OWN SHIP, THAT IS
WHAT THEY ARE SAYING AND YOU
KNOW WHAT?

WITH THE WAY HE IS AND THE WAY
THE CASE IS, NO.

HE SHOULD HAVE HAD COUNSEL.
WE COULD HAVE PRESENTED, WE
COULD HAVE PRESENTED A PSI IN
MOHAMMED.

THE COURT SAID, OF COURSE,
MOHAMMED WAS A VOLUNTEER, BUT

YOU KNOW GO AHEAD AND PREPARE A
PSI.

PRESENT A PROFFER.

>> YOU ARE SAYING THAT, ONCE HE
HAS COUNSEL AND WE SAY YES OR
THE COURT SAYS YES, HE HAS TO
HAVE COUNSEL BECAUSE OF INDIANA
VERSUS EDWARDS FOR EXAMPLE?
AND HE HAS NO SAY IN WHAT
COUNCIL DOES?

>> I'M NOT NECESSARILY SAYING
THAT.

BUT--

>> IT SEEMS TO ME THAT IS WHAT
YOU ARE SAYING IF YOU SAY, OKAY,
WE ARE GOING TO FORCE HIM TO
HAVE COUNSEL AND HE IN ESSENCE
HAS TO SIT BACK AND TAKE
WHATEVER COUNCIL DECIDES TO DO.
HE CAN'T THEN TELL COUNSEL LOOK,
I WANT TO FOCUS ON THIS.

I BELIEVE THIS IS WHAT IS REALLY
GOING TO HELP ME.

HE HAS NO RIGHT TO DO THAT.

>> I THINK HE DOES, BUT I DON'T
THINK AT THAT POINT COUNCIL HAS
TO NECESSARILY DO WHAT HE SAYS.
I DON'T THINK, I AM LOOKING FOR

THIS QUOTE THAT I HAVE FROM ONE
OF THESE CASES THAT SAYS-- IT
MIGHT EVEN BE MOHAMMED.

>> DO WE HAVE A SITUATION IN
CASES AT THE TRIAL LEVEL WITH
COUNCIL, WHERE THE CLIENT WANTS
HIS LAWYER TO DEMAND A SPEEDY
TRIAL AND THE LAWYER IS NOT
READY?

AND THE LAWYER CAN BASICALLY
OVERRULE THE CLIENT AND SAY WE
ARE NOT DOING THAT?

THERE ARE SITUATIONS WHERE HE
CANNOT OVERRULE THE CLIENT AND
DO WHAT HE THINKS IS THE CORRECT
THING TO DO.

>> THERE ARE.

I DON'T THINK IT IS.

I THINK THAT IN THIS SITUATION
THERE ARE TIMES WHEN THIS COURT
AND THE SUPREME COURT HAS HELD
THAT A LAWYER TAKES OVER, THE
LAWYER WHO MAKES THESE
DECISIONS, BECAUSE IT IS THE
DEATH PENALTY SITUATION.

>> ARE YOU READING INDIANA
VERSUS EDWARDS AS BEING A
MANDATORY REQUIREMENT?

>> I AM NOT READING INDIANA

VERSUS EDWARDS TO BE A MANDATORY
REQUIREMENT.

I AM SAYING I THINK FLORIDA HAS
HELD THAT TO BE TRUE SINCE 1967.

>> WE HAVE ALSO HAD ANY NUMBER
OF CASES, WHICH WE HAVE SAID
THAT THE TRIAL COURTS--

>> I'M SORRY?

>> THE TRIAL COURT FOLLOWED
CORRETTA AND IT SEEMS TO ME THAT
IF WE WERE GOING TO SAY, WELL
THE LANDSCAPE HAS CHANGED FROM
WHAT WE SAID ABOUT CORRETTA
BECAUSE, IN THE END THAT IT
WOULD MEAN THAT WE WOULD BE
APPLYING THAT CASE
RETROACTIVELY, AND--

>> I DON'T THINK YOU WOULD HAVE
TO APPLY IT RETROACTIVELY.

>> WE WOULD HERE.

[INAUDIBLE]

>> I DON'T THINK-- THAT IS MY
POINT.

MY POINT IS THAT IT IS NOT USED
IN FLORIDA.

MY POINT IS THAT THIS COURT HAS
USED THAT LANGUAGE IN A CASE IN
1967 THAT THE SUPREME COURT USES

IN THEIR ANALYSIS.

>> BUT WE DIDN'T USE THAT CASE

AFTER CORRETTA CAME OUT.

IN ANY CASE, THAT I'M AWARE OF.

BECAUSE WE HAVE BEEN VERY

STEADFAST IN SAYING THAT YOU'VE

GOT TO FOLLOW CORRETTA.

>> I UNDERSTAND THAT.

I DO FIND IT INTERESTING,

HOWEVER, THE SUPREME COURT OF

THE UNITED STATES SITES THAT

TAPE AS EVIDENCE OF THE STATES

WHO DO THAT.

>> WE HAVE NEVER SAID-- BUT THAT

IS REALLY A REASON TO FORCE HIM

TO HAVE COUNSEL.

WE NORMALLY SAY, IF THAT PERSON

IS INCOMPETENT AND INTELLIGIBLY

WAIVES COUNSEL, THAT HE IS

ENTITLED TO REPRESENT HIMSELF.

ISN'T THAT WHAT OUR LONG LINE OF

CASES HAS HELD SINCE THE TIME OF

THAT CASE?

>> I WOULD SAY YES, BUT I WOULD

NOT SAY THERE IS NOT PRECEDENT

THERE TO LOOK INTO THAT.

I AM CONFUSED, WHAT ISSUE DOES

THAT GO TO?

IN OTHER WORDS, HERE HE HAD

COUNSEL THROUGHOUT THE FIRST
CONVICTION PROCEEDINGS.
THE ONLY ISSUE WAS ON CERTAIN
THINGS, AND I GUESS THAT IS
WHERE WE GOT INTO IT, WHETHER
THE JUDGE WAS CORRECT IN
ALLOWING MR. GORE TO ASSERT HIS
OBJECTION TO THE PRODUCTION OF
RECORDS THAT WERE IN THE
POSSESSION OF OTHER COUNCIL.
IS THAT CORRECT?

>> THAT IS NOW, YES, BUT TO BE
HONEST, I THINK IT ALL TIES IN
TOGETHER WITH THIS PARTICULAR
DEFENDANT.

>> WHAT IS THE PRINCIPLE OF LAW,
THE GUIDING PRINCIPLE THAT YOU
ARE URGING, BECAUSE IT CAN'T BE
JUST-- EVERY CASE IS WHATEVER
YOU WANT IT TO BE.

WHAT IS THE LEGAL PRINCIPLE AND
WHAT IS THE CRITERION TO WHICH--
IT CAN'T BE JUST SOMEBODY IS
HARD TO DEAL WITH, SO THEREFORE
WE CAN DO WHATEVER ON A CASE BY
CASE BASIS, CAN WE?

MUST THERE NOT BE SOME
PRINCIPLE, SOME GUIDELINES, SOME

PARAMETERS AND THEN WHAT ARE YOU
ASSERTING AS THE PARAMETER?
NOT JUST THE NEBULOUS, REACH IN
THE BOWL OF MUSH.
WHAT IS THE TRIAL JUDGE TO
FOLLOW?
BY WHAT ARE WE EVALUATING AND
WHAT IS YOUR POSITION ON THAT?

>> WELL, I THINK, OF COURSE,
THERE SHOULD ALWAYS STILL BE THE
CORRECTA INQUIRY.

THERE HAS TO BE.

I THINK IN A CASE AS OBVIOUS AS
GORE, AND I CAN'T STAND BEFORE
THE COURT AND SAY HERE LET'S
MAKE A LIST OF TEN THINGS, WHICH
THE TRIAL COURT CAN FIND,
COUNSEL HAS TO BE FORCED ON
SOMEBODY BECAUSE THEY ARE
MENTALLY DERANGED.

HE MAY NOT BE MENTALLY
INCOMPETENT TO GO FORWARD, BUT
HE IS MENTALLY DERANGED AND HE
IS DIFFICULT.

ALL OF THESE OTHER THINGS HAVE
CAUSED A LOT OF PROBLEMS FROM
YEARS AGO, WHICH MAKES ME WANT
TO SAY THAT HE IS CERTAINLY NOT
MALINGERING.

HE HAS POINTS OF LUCIDITY AND
POINTS WHERE HE MAKES ABSOLUTELY
NO SENSE, SO THAT IN AND OF
ITSELF WOULD BEAR OUT IN THE
TRIAL COURT TIME AND TIME AND
TIME AGAIN.

THIS WASN'T SOMETHING WHERE THE
TRIAL COURT HAD A COUPLE OF
HOURS WITH THE CLIENT, AND SO AS
YOU LEAVE THAT KIND OF
DETERMINATION TO THE TRIAL
COURT, THE RECORD WILL BE
REplete WITH THE DIFFICULTY AND
THE COMPETENCY EVALUATION BACK
AND FORTH, AND IT GIVES THE
COURT THE OPPORTUNITY TO SAY,
THESE ARE ALL THE THINGS I SEE,
I HAVE HEARD, AND I HAVE BEEN IN
CONTACT WITH AND THAT IS WHY I
AM MAKING THIS DECISION.
IN THIS PARTICULAR CASE, IN THIS
PARTICULAR CASE, I THINK IT WAS
CLEAR THAT SOMETHING SHOULD HAVE
HAPPENED FOR US AT THE
POST-CONVICTION STAGE, BUT EVEN
IF YOU GO BACK TO THE TRIAL, THE
SPENCER HEARING, WHY DID THE
JUDGE ORDER A PSI?

THAT IS WHY THE TRIAL COURT, IN

THIS CASE, NOTHING HAPPENED.

AT THE SPENCER HEARING, MARSHALL

GORE WENT THERE AND ARGUED HIS

MOTION FOR A NEW TRIAL.

NOTHING HAPPENED, AND MOHAMMED,

THE COURT SAYS, IF THE DEFENDANT

DOESN'T WANT TO DO ANYTHING OR

VOLUNTEER TO GET A PSI, GET THE

LAWYER TO PRESENT TO MAKE A

PROFFER, DO SOMETHING.

NOTHING EVER HAPPENED.

NOTHING.

>> WITH THAT, THAT IS YOUR TIME.

>> I'M SORRY, THANK YOU.

>> MAY IT PLEASE THE COURT,

SANDRA JAGGARD.

MR. GORE IS NOT MENTALLY ILL.

THE MENTAL HEALTH EVALUATIONS

THAT HAVE BEEN ACCEPTED BY THE

TRIAL COURT SAY MR. GORE HAS A

PERSONALITY DISORDER.

>> THE LAST MENTAL HEALTH

EVALUATION THAT WAS DONE WAS IN

2003?

>> YEAH, LAST I AM AWARE.

>> HAS THERE BEEN ANY REASON FOR

A NEW EVALUATION?

>> NO.

MR. GORE CONTINUES TO BE MR.

GORE AND INTENT ON DOING THIS.

>> THIS WAS SOMETHING FOR THE

TRIAL JUDGE, AS IT HAS BEEN

PREVIOUSLY.

>> THIS TRIAL JUDGE ORDERED ONE

OF THREE MENTAL HEALTH

EVALUATION ENDS.

DR. MCINNES, DR. SUAREZ,

DR. SUAREZ FOUND THAT HE WAS

CONFIDENT, DR. RUIS DID AND

DR. MCINNES SAID HE WAS

INCOMPETENT AND HE HAD A

DELUSIONAL AND A PROFOUND

THOUGHT DISORDER, SO THE JUDGE,

SHE WAS WITH HIM A VERY LONG

TIME, BUT AS I UNDERSTAND, IN

THIS CASE THE JUDGE HAD A FULL

HEARING ON HIS COMPETENCY.

HE IS HERE SAYING MAYBE HE IS

DELUSIONAL, MAYBE HE IS NOT.

THE JUDGE, WHO IS IN THE BEST

POSITION TO MAKE THAT DECISION,

DETERMINED THAT HE WAS

MANIPULATIVE, NOT THAT HE WAS

SEVERELY MENTALLY ILL, CORRECT?

>> THE JUDGE ACCEPTED DR. RUIS

AND DR. SUAREZ AFTER HAVING THE

DEFENDANT QUESTION DR. RUIS
INCLUDING DOING FOLLOW-UP
QUESTIONS.

>> I WOULD LIKE TO GO TO SOME OF
THE, THE QUESTION OF THE MERITS
ON WHATEVER IS GOING ON.

IT SEEMS TO ME THAT MR. GORE IS
ASSERTING HIS INNOCENCE, SO THE
GUILT PHASE CLAIMS IN THIS CASE
WERE SUMMARILY DENIED.

IS THERE ANY EVIDENCE THAT THERE
WAS ANOTHER WITNESS OUT THERE
THAT COULD HAVE HAD-- CAST SOME
DOUBT ON HIS GUILT?

WHERE IS THE MEAT ON THE GUILT
PHASE?

ANYTHING?

>> THERE IS NO MEAT ON THE GUILT
PHASE.

THAT IS WHY THEY WERE DENIED.

>> AGAIN THAT IS WHAT I AM
TRYING TO SEE, WHEN WE TAKE AWAY
ALL THIS MANIPULATION OR
DELUSION, WHATEVER YOU WANT TO
CALL IT, SOMEBODY THAT HAS
KILLED AND IS FOUND GUILTY OF
KILLING-- TWO MURDERS-- WE ARE
NOT GOING TO SAY THIS IS A
NORMAL-FUNCTIONING MEMBER OF

SOCIETY.

>> HE IS ANTISOCIAL.

>> NOTHING YOU CAN SAY THAT
REALLY, ALTHOUGH GORE IS SAYING
HE IS INNOCENT AND THAT IS WHAT
HE WANTED TO PROCEED ON, THERE
WAS NOTHING PRESENTED IN ANY WAY
IN THE PLEADINGS, IN THE
HEARINGS THAT CAST DOUBT?

>> THERE WAS A CLAIM ABOUT
RECHALLENGING THE WILLIAMS RULE.
TRIAL COUNCIL SAID AT THE TIME
THE TRIAL, BECAUSE MR. GORE
REHIRED COUNSEL, THAT HE WOULD
NOT RELITIGATE IT BECAUSE HE
BELIEVED HE HAD GOTTEN THE BEST
HE COULD AND WAS AFRAID IT COULD
GET WORSE.

IN THE MOTION PROPOSED
CONVICTION, COUNCIL FAILED TO
RELITIGATE THE WILLIAM'S RULE.
AT THE HUFF HEARING IT IS-- I
CAN TELL YOU THE RESULT WOULD BE
ANY DIFFERENT.
COUNCIL SHOULD HAVE RELITIGATED
IT.

>> SO, THERE ARE TWO NEW
WITNESSES OR DIFFERENT

WITNESSES?

>> WE HAD A LIST OF NAMES OF
WITNESSES, WITHOUT A WORD ABOUT
WHAT THESE PEOPLE WOULD SAY.

>> THEY WERE GIVEN THE CHANCE AT
THE HUFF HEARING?

>> THE THOUGHT WAS I DON'T NEED
TO PLEAD PREJUDICE.

HE SAID THERE WERE WITNESSES
AVAILABLE FOR THE EVIDENTIARY
HEARING.

THAT IS NOT TRUE.

ONE OF THE REASONS WE GOT INTO
THIS ISSUE ABOUT THE WITNESS
LIST WAS NOT ONLY MR. GORE DID
NOT WANT HIS FAMILY MEMBERS
GOING UP, BUT THAT ISSUE CAME UP
IN FRONT OF HIM BECAUSE THE
STATE GOT A WITNESS LIST THAT
WAS UNSATISFACTORY, AND WE THEN
HAD TWO OR THREE MORE WITNESS
LISTS.

IT LISTED WITNESSES THE STATE
ATTORNEY CALLED, WHO HAD NEVER
HEARD ABOUT THE CASE AND HAD NO
IDEA WHY THEY WERE ON A WITNESS
LIST.

THERE WERE NOT WITNESSES
AVAILABLE.

THERE WAS JUST NOTHING.

>> THE REASON JUDGE MILLER DECIDED TO NOT ALLOW THE EVIDENTIARY HEARING WAS BECAUSE, AT A CERTAIN POINT, MR. GORE SAID, WHOEVER THESE WERE, DEAD OR ALIVE, HE DID NOT WANT THEM PRESENTED.

>> YES, MR. GORE HAD A HEARING ON THE AUGUST COURT, OR HE SAID, I'M NOT WILLING TO TALK ABOUT THAT.

I WANT TO TALK ABOUT THEM FIRST. I WANT TO TALK TO MY COUNSEL ABOUT THE WITNESSES, SO WE RESET IT.

>> I HAVE A QUESTION ABOUT THE SUMMARY DENIAL OF THE INEFFECTIVE ASSISTANCE OF THE PENALTY PHASE.

I KNOW THAT MR. GORE WAS THE LAST PER SE, AND WE OSTENSIBLY WENT INTO THAT ON DIRECT APPEAL BUT WE LEFT OPEN THE POSSIBILITY THAT THERE COULD BE A POST-CONVICTION CLAIM, THAT THE REASON HE PROCEEDED PER SE TO THE COUNSEL-- BECAUSE HIS

COUNSEL WAS INEFFECTIVE IN
PREPARING FOR THE PENALTY PHASE.
IN THAT REGARD, THE RECORD
BELOW, THE 1999 RECORD, SHOWS
THAT COUNSEL HAD A WITNESS LIST
OF SEVEN WITNESSES THAT HE HAD
CONCLUDED THAT THEY, AT LEAST
TWO OF THE FAMILY MEMBERS,
WOULDN'T BE FAVORABLE AND
REMOVED DR. HABER BECAUSE GORE
WOULD NOT MEET WITH HER, BUT WAS
THERE ANY ATTEMPT TO EITHER, FOR
THAT OR THEN AT THE SPENCER
HEARING, TO SAY THAT PEOPLE I
GUESS-- HE LISTED A LEE NORTON,
A DOCTOR BARRY CROWN-- THAT THEY
MIGHT HAVE BEEN ABLE TO SHED
LIGHT TO THE JURY THAT THIS WAS,
AGAIN, A MENTALLY-DERANGED
PERSON THAT SHOULD BE FOUND,
PERHAPS MENTAL MITIGATION IN HIS
FAVOR?

>> ACTUALLY, IF YOU LOOK BACK AT
THE END OF THAT NELSON HEARING,
AND THE MEMO SHOULD BE IN THE
POST-CONVICTION RECORD, THE
COUNCIL HAD IN FACT SPOKEN TO
BOTH DR. NORTON AND DR. CROWN
AND BOTH OF THEM SAID THEY HAD

NOTHING MITIGATING TO PRESENT
AND REFUSED TO TESTIFY.
THAT IS WHY TRIAL COUNSEL DIDN'T
CALL DR. NORTON OR DR. CROWN.
THEY WEREN'T COMING.

>> WHAT IS YOUR POSITION ON THE
INDIANA CASE THEY CITE?

>> MY FIRST POSITION IS MR. GORE
WOULD NEED TO WAIVE COUNSEL.
MR. GORE DID NOT WAIVE COUNSEL.
MR. GORE, AT ONE POINT, SAID HE
WOULD LIKE TO PROCEED WITH
COUNSEL AND MR. GORE IMMEDIATELY
SAID HE DID NOT WISH TO PROCEED
PER SE, SO A CASE ABOUT THE
PROCEEDING PER SE WITH THE
DEFENDANT REPRESENTED WAS
IRRELEVANT, PLUS THE MENTAL
HEALTH EXAMINATION, THE
DEFENDANT WAS SCHIZOPHRENIC.
HE COULD BE MEDICATED TO THE
POINT WHERE HE WAS COMPETENT.
THE MENTAL HEALTH EXAMINATION IS
THAT MR. GORE HAD PERSONALITY
DISORDERS WHICH UNDER PANACEAS
ARE NOT EVEN MENTAL ILLNESSES,
SO HE IS NOT MENTALLY ILL.
HE IS JUST ANTISOCIAL AND

MANIPULATIVE.

>> THE COURT HAS NO FURTHER
QUESTIONS.

>> COULD YOU CLARIFY THE RECORD,
THE 80 BOXES OF RECORDS AND WHAT
THESE RECORDS ARE, WHY THEY
DIDN'T GET TO COUNCIL AND AGAIN,
SMOKE AND MIRRORS AS OPPOSED TO
ANY SUBSTANCE?

>> ACCORDING TO WHAT MR. TASSONE
SAID.

>> WERE THESE 80 RECORDS ABOUT
THIS CASE OR THE COLUMBIA COUNTY
CASE?

>> THEY WERE IN THE COLUMBIA
COUNTY CASE.

THERE WERE FILES COVERED IN
THE-- WHICH IS WHY THEY DIDN'T
GO TO MR. HAMMER BECAUSE THEY
WERE-- MR. ARNOLD CONTINUED TO
REPRESENT MR. GORE ON THE
COLUMBIA COUNTY CASE, SO HE KEPT
HIS BOXES ABOUT THE COLUMBIA
COUNTY CASE, AND HE GAVE THEM
OVER TO HIS SUCCESSOR IN THE
COLUMBIA COUNTY CASE.

MR. HAMMER WAS GOOD ENOUGH TO
ADMIT THAT ONE REASON HE DIDN'T
HAVE MENTAL-HEALTH RECORDS ON

MR. GORE IS MR. GORE REFUSED TO
PROVIDE HIM WITH A WAIVER.
HE REFUSED TO PROVIDE ACCESS TO
THE BOXES, SAYING THE STATE
WOULD USE THEM AGAINST HIM.
WHEN TRIAL COUNSEL BROUGHT UP
MR. GORE'S COMPETENCY, THE STATE
DID GET RECORDS FROM THE
COLUMBIA COUNTY CASE.

>> I GUESS WHAT THESE RECORDS
THAT HAD ALREADY BEEN PRODUCED
IN THE COLUMBIA COUNTY CASE,
WERE THESE REPOSITORY RECORDS?

>> THE COLUMBIA COUNTY--
REPOSITORY CASE AND WENT
DIRECTLY TO COUNSEL.

>> SO THEY ARE NOT RECORDS OF--
AGAIN, WE THINK OF
ATTORNEY-CLIENT PRIVILEGE, WERE
THEY RECORDS FROM POLICE
AGENCIES?

>> ALL I KNOW, WHAT MR. -- SAID,
THESE WERE THE FILES COLLECTED
IN THE COLUMBIA COUNTY CASE.

>> BUT WHY DID THE STATE OPPOSE
THEM BEING PRODUCED IN THIS
CASE?

>> THE STATE SIMPLY SAID IT WAS

MR. GORE'S RIGHT TO CHOOSE HOW
HIS CASE IS LITIGATED.

>> THESE ARE PUBLIC RECORDS.

IF SOMETHING IS PUBLIC, HOW CAN
YOU ASSERT PRIVILEGE ON
SOMETHING THAT IS PUBLIC?

>> THEY ARE MR. GORE'S FILES AND
MR. GORE HAD A WAIVER-- SO THEY
ARE NOT ALL PUBLIC RECORDS.

>> DID YOU HAVE A CHANCE TO LOOK
AT THE 59 BOXES?

>> I HAVE NEVER LOOKED AT ANY OF
THE BOXES.

I KNOW WHAT WAS SAID ON THE
RECORD ABOUT THEM, WHICH IS
THESE ARE THE FILES FROM THE
COLUMBIA COUNTY CASE AND IF MR.
GORE WANTED TO HAVE THE RECORD
PRODUCIBLE AS A PUBLIC RECORD,
MR. GORE COULD HAVE MADE THEM
PUBLIC RECORD.

HE DID NOT DO THAT.

ON THE EVE OF HAVING AN
EVIDENTIARY HEARING AFTER THE
HUFF HEARING, TO HAVE MR.
TASSONE GIVE ACCESS TO MR.
GORE'S RECORD BUT MR. GORE WAS
OBJECTING AND THE STATE'S
OBJECTION WAS NUMBER ONE, YOU

DELAY THIS WHEN YOU DON'T SEEK
PUBLIC RECORDS ON A DILIGENT
BASIS, YOU WAIVED YOUR RIGHTS TO
THOSE AND NUMBER TWO, THEY ARE
MR. GORE'S FILES.

THE FILES COLLECTED IN THE
LITIGATION BELONG TO THE--
EXCEPT THE ATTORNEYS WORK
PRODUCT, WHICH BELONGS TO THE
ATTORNEY HIMSELF.

>> I AM STILL CONFUSED BECAUSE
THE FILE OF HIS ATTORNEY WOULD
BE-- THAT IS WHAT THE STATE IS
USUALLY TRYING TO GET AHOLD OF.
THE FILES THAT WOULD BE OF THE
INVESTIGATION THAT MIGHT BE IN
THE SHERIFF'S POSSESSION ARE NOT
THE CLIENT'S FILES.

AM I CONFUSING SOMETHING?

>> HE GOT THE FILES OF THE
INVESTIGATION IN THIS CASE.
HE DID NOT GET WHAT THEY
DEVELOPED THROUGH PUBLIC RECORDS
LITIGATION AND WAIVERS OF
CONFIDENTIALITY FROM MR. GORE IN
COLUMBIA COUNTY.

>> MR. GORE GOT THEM THROUGH MR.
TASSONE.

THE COUNSEL DID NOT GET TO SEE

ALL OF THE BOXES.

THE 59 BOXES, WE HAVE NOT HEARD

ONE THING THAT MIGHT BE REMOTELY

RELEVANT FOR THIS CASE.

>> NO, AND I DON'T THINK WE HAVE

HEARD ANYTHING RELEVANT.

MR. GORE'S DEFENSE IS THE SAME,

THAT ALL THREE OF THESE WOMEN

WORKED FOR AN ESCORT SERVICE AND

THEY WERE KILLED ON ASSIGNMENT

BY A CLIENT.

SO, IF THERE WERE SOMETHING

RELEVANT TO BREAK UP THE PATTERN

AND SHOW THAT, DEFENSE WOULD

HAVE HEARD ABOUT IT IN COLUMBIA

COUNTY.

>> THERE IS MENTION OF THE

INDEXES OF THE TRIAL COURT GOING

TO DOCUMENTS.

THERE IS SOME ISSUE WITH REGARD

TO WHETHER THEY WERE PROPERLY

INDEXED OR ANYTHING WITH REGARD

TO THAT.

IT APPEARS THAT THERE WAS A

CAMERA INSPECTION?

>> THERE WAS NOT AN IN-CAMERA

INSPECTION.

WHAT HAPPENED WAS THE TRIAL

COURT, WHEN IT FIRST COMES UP,
SAYS, WHAT I'M GOING TO DO IS
I'M GOING TO HAVE MR. TASSONE
INDEX THE FILE, AND THEN I WILL
REVIEW ALL OF THAT.

WE COME BACK THE NEXT MONTH AND
IT IS NOT DONE.

WE COME BACK THE NEXT MONTH,
THAT IS NOT DONE.

MR. GORE INSISTS IT BE FILED
UNDER SEAL BECAUSE SOME OF THE
DESCRIPTION OF THE DOCUMENT IS
GOING TO DISCLOSE SOME
INFORMATION.

[INAUDIBLE]

>> THEN WE HAVE A PROTECTIVE
PRIVILEGE DONE AND A REDACTED
INDEX DONE AND THOSE TWO WERE
FILED AND THE WHOLE TIME MR.
GORE IS INSISTING HE IS NOT
GOING TO LET THEM SEE ANYTHING.
WHEN WE ARE FINALLY MONTHS DOWN
THE LINE AND THE JUDGE HAS MADE
A FINDING REPEATEDLY THAT THE
DEFENDANT IS DELAYING--

[INAUDIBLE]

THE JUDGE FINALLY SAYS, THIS IS
IT, NO FURTHER EXTENSIONS.

ALL OF A SUDDEN, MR. GORE SAYS,
I WILL LET HIM SEE SOME OF THEM,
AT WHICH POINT MR. GORE AND MR.
TASSONE WERE INSTRUCTED TO
PROVIDE A LIST TO MR. HAMMER OF
WHAT THEY COULD SEE, AND THEN
MR. HAMMER COULD GO AND SEE IT.

>> THANK YOU VERY MUCH FOR YOUR
ARGUMENT.

THANK YOU BOTH FOR YOUR
ARGUMENTS HERE TODAY.