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Jesse Guardado v. State of Florida

SC05-2035

ALL RISE.
HEAR YE, HEAR YE, HEAR YE.
THE SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA,
COME AND YOU WILL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA,
PLEASE BE SEATED.
GOOD MORNING ALL AND WELCOME
TO THE ORAL ARGUMENT CALENDAR
FOR MONDAY FEBRUARY 12th.
I WOULD LIKE TO WELCOME THE
FUTURE BUSINESS LEADERS OF
AMERICA PHI BETA, ALL THE
STATE OFFICERS ARE CURRENTLY
HERE.
WELCOME. ENJOY YOUR MORNING AND
YOUR VISIT TO TALLAHASSEE.
FIRST CASE THIS MORNING IS
GUARDADO vs. THE STATE, IF I AM
PRONOUNCING THAT CORRECTLY.
MAY IT PLEASE THE COURT,
I'M WILLIAM McCLAIN
REPRESENTING JESSIE GUARDADO.
MR.^GUARDADO WAS ININDICTED FOR
FIRST-DEGREE MURDER FOR THE
HOMICIDE OF JACKIE MALONE.
SHE WAS FOUND IN THE LIVING ROOM
OF HER HOUSE. SHE HAD BEEN
BEATEN AND STABBED.
MR. GUARDADO CONFESSED TO THE
CRIMES, FREELY CONFESSED TO THE
CRIME, EXPRESSED A GREAT DEAL
OF REMORSE OVER WHAT HE HAD
DONE.
AS I UNDERSTAND IT.
BUT THEY HAD TO WITHDRAW.
BUT HE ALSO WAIVED HIS RIGHT TO
COUNSEL SPECIFICALLY AT
ARRAIGNMENT.
OKAY. AND ENTERED A GUILTY PLEA
TO THE CHARGES AFTER WAIVING

COUNCIL.
AND THERE'S NO --
[INAUDIBLE]
[INAUDIBLE].
I WOULD HAVE TO REVIEW THE
RECORD TO BE SURE OF THAT.
IT WAS SHORTLY AFTER
ARRAIGNMENT.
[INAUDIBLE]
YES, YOUR HONOR.
REALLY IT'S COMING AT THE
SPENCER HEARING STAGE.
THAT'S REALLY WHERE YOUR
ALLEGATIONS ARE IS AT THAT
POINT.
SO WHY DON'T YOU PICK THERE AND
PRESENT YOUR ARGUMENT GOING
THROUGH THERE THAT--
AFTER THE PENALTY PHASE
TRIAL WAS CONCLUDED, THE
SPENCER HEARING -- AT THE SPENCER
HEARING IS WHERE MR.^GUARDADO
STARTED TO LODGE COMPLAINTS
ABOUT THE ADEQUACY OF HIS
REPRESENTATION.
FIRST HE SEEMED TO WAIVE.
HE DIDN'T WANT TO HAVE --
HE DIDN'T WANT THE HEARING
SPECIFICALLY.
BUT THE COURT HELD A SPENCER
HEARING OVER OBJECTION.
THEY DIDN'T ACCEPT THE SPENCER
HEARING.
AND THE STATE, AT THAT
POINT, AT SOME POINT DURING THE
SPENCER HEARING VERY EARLY
STAGES NEITHER SIDE PRESENTED
ANY ADDITIONAL EVIDENCE AT
SPENCER HEARING.
DIDN'T THE DEFENSE ACTUALLY
PRESENT THE WRITTEN REPORT --
THE WRITTEN REPORT.
FROM THE DOCTOR WHO HAD
TESTIFIED AT THE PENALTY PHASE.

YES.
WAS THAT ANYTHING ADDITIONAL TO
WHAT THE DR.^ --^DOCTOR HAD
SAID AT THE PENALTY PHASE?
THERE WAS NOTHING REALLY
SUBSTANTIALLY DIFFERENT.
SO IF THERE WAS NOTHING
ACTUALLY PRESENTED BY EITHER
PARTY AT THE PENALTY PHASE

--^AT THE SPENCER HEARING, THEN
WHAT IS -- I'M AT A LOSS HERE AS
TO WHY THIS ISSUE.
WHAT IS THE REAL PROBLEM HERE? .
THE REAL PROBLEM HERE IS
THAT MR.^GUARDADO AT THE EARLY
STAGE AT THE BEGINNING OF THE
SPENCER PROCEEDING INDICATED TO
THE COURT THAT HE DIDN'T WANT A
LAWYER ANYMORE.
BUT WASN'T THIS ALSO THE
PROCEEDING WHERE HE SAYS, WELL
IF YOU WOULD --^IF I CAN TALK
TO YOU BY YOURSELF.
YES.
WELL THERE WAS --^THERE WAS
A DISCUSSION GOING ON --^THERE
WAS SOME AMBIGUITY AS TO ABOUT
THE COMPLAINTS AT FIRST.
I THINK AT FIRST THEY THOUGHT
MR.^GUARDADO DIDN'T WANT ANY
MORE MITIGATION PRESENTED SO
THEY STARTED A PEN HEARING TYPE
OF INQUIRY.
ITS DURING THE KOON HEARING
ADDITIONALLY WHAT I'M TRYING TO
TELL YOU I DON'T HAVE
REPRESENTATION ANYMORE.
THAT'S WHAT HIS STATEMENT WAS.
[INAUDIBLE]
THAT'S CORRECT.
[INAUDIBLE].
WELL, AT THE SPENCER
HEARING COUNSEL DID CONTINUE TO
REPRESENT HIM TO THE EXTENT HE
INTRODUCED ADDITIONAL
PSYCHOLOGICAL REPORT.
THE COURT INDICATED TO BOTH THE
STATE AND THE DEFENSE THAT THEY
WERE TO EVALUATE AND FILE ANY
ADDENDUMS TO THE MEMORANDUM AND
--
AND WERE ANY FILED?
NONE WERE FILED.
HE WAS HIS MAIN COMPLAINT WAS
THAT HE DID NOT FEEL THAT
ADEQUATE MITIGATION HAS --^HAD
BEEN PRESENTED AT THE PENALTY
PHASE.
[INAUDIBLE].
WELL, THE REMEDY WE'RE
SEEKING HERE, BECAUSE HE
CONTINUED TO SAY, I DON'T WANT
THE LAWYERS TO REPRESENT ME

ANYMORE.
THEN BUT THE POINT SHE'S
MAKING THAT'S
NOT UNTIL WELL AFTER THE
PENALTY PHASE WAS OVER.
THAT'S DURING THE SPENCER
HEARING.
RIGHT.
YOU'RE ALREADY THROUGH.
WHAT WOULD BE THE CIRCUMSTANCES
IF THIS SAME OBJECTION HAD BEEN
RAISED JUST SHORTLY BEFORE
CARRYING OUT OF THE ACTUAL
SENTENCE OF DEATH?
WILL WE SAY WE HAVE TO GO BACK
AND DO EVERYTHING ALL OVER
AGAIN?
WELL, THE SENTENCING
PROCEEDING IS A IMPORTANT PART
OF THE CASE.
HE WAS ASSERTING THAT RIGHT.
AND TO THAT END, AND YOU ARE
CLAIMING HE SHOULD HAVE HAD A
MELKIN HEARING.
HE HAD A PARTIAL HEARING.
THE JUDGE MADE INQUIRY AS TO
THE CONCERNS HE HAD ABOUT
COUNSEL AND THEN IT SORT OF
DRIFTED.
WHERE --^WHAT WERE THE
ALLEGATIONS THAT WOULD HAVE
TRIGGERED A REAL NELSON
HEARING?
BECAUSE AS I READ THIS RECORD
THE JUDGE JUST SORT OF LET HIM
MAKE VARIOUS STATEMENTS ON THIS
RECORD, BUT WHAT KIND OF
ALLEGATION THAT THIS DEFENDANT
MAKE THAT WOULD HAVE TRIGGERED
A FULL NELSON HEARING?
HE INITIALLY STATED "I DON'T
FEEL LIKE I HAVE REPRESENTATION
ANYMORE.
I THINK MY LAWYERS ARE
INCOMPETENT IN THE WAY THEY'VE
HANDLED THE CASE."
WHEN QUESTIONING CONTINUED WITH
THE COURT HE INDICATED THAT
THEY DIDN'T PRESENT A
SUFFICIENT MITIGATION.
HOE SAID AFTER THE END OF THE
PENALTY PHASE HE WAS SURPRISED
THEY HAD ONLY CALLED ONE
WITNESS WHICH WAS A

PSYCHOLOGIST.
HE MADE A NUMBER OF ALLEGATIONS
THAT HE DIDN'T FEEL LIKE THEY
HAD PROPERLY PREPARED THE
MITIGATION.
SO WHEN HE SAID, WHAT OTHER
MITIGATION WOULD YOU PRESENT,
YOU KNOW MR.^GUARDADO WASN'T
JUST PARTICULARLY ARTICULATE.
I THINK HE FELT LIKE WHERE HERE
I AM.
I'M STUCK.
I CAN'T DEVELOP IT.
WELL THE FACT THAT HE SAID I
WANT TO TALK TO YOU IN PRIVATE.
THEY SAID I CAN'T DO IT.
THAT'S CORRECT.
AND THE JUDGE ASKED HIM A
COUPLE OF TIMES.
WHAT MITIGATION SHOULD THEY
HAVE PRESENTED THAT WAS NOT
PRESENTED AND HE NEVER ANSWERED
THE QUESTION.
THAT'S CORRECT.
I THINK WHAT MR.^GUARDADO WAS
INDICATING WAS I'M NOT IN A
POSITION TO DEVELOP IT NOW THAT
THE AT THIS POINT SINCE THE
COUNSEL HASN'T DONE SO WHAT
ELSE CAN I DO.
DID MR.^GUARDADO AT ANY
POINT IN THE PENALTY PHASE, NOT
THE SPENCER HEARING --^HE
TESTIFIED AT THE PENALTY PHASE;
DIDN'T HE?
YES, YOUR HONOR YOU DID HE
SAY AT ANY POINT THAT THERE WAS
ADDITIONAL MITIGATION?
BECAUSE I BELIEVE ON THE RECORD
HE ACTUALLY STATED THERE WAS NO
MORE MITIGATION TO BE
PRESENTED.
DURING THE PENALTY PHASE
--^PHASE.
THAT HE WAS AWARE OF THAT
TIME.
YES.
WHAT WE'RE LEFT WITH HERE HE
THREW OUT THE SPENCER HEARING.
AND THE WAY THE NELSON
PROCEEDING WOULD TYPICALLY WORK
BY THE COURT DIDN'T FOLLOW
THROUGH WITH IS OUR POSITION,
IF HE HAD HE WOULD HAVE --^IT

WOULD HAVE TRIGGERED THE
RECOGNITION THAT MR.^GUARDADO
WAS ASSERTING --^I MIGHT ADD
REASSERTING HIS RIGHT TO
SELF-REPRESENTATION.
HE HAD DONE SO AT THE AND HE
INDICATED DURING THE SPENCER
HEARING HE SAID I RELUCTANTLY
ACCEPTED COUNSEL FOR THE
PENALTY PHASE.
WHAT WOULD HAVE HAPPENED
--^I MEAN, MR.^GUARDADO HAS
SAID SEVERAL TIMES ON THE
RECORD THAT THERE WERE NO MORE
MITIGATION TO BE PRESENTED.
SO IF THE JUDGE HAD SAID, OKAY
I'M NOT --^THESE ATTORNEYS ARE
NOT INEFFECTIVE, BUT IF YOU
DON'T WANT THEM ANY MORE, YOU
CAN REPRESENT YOURSELF.
WHERE WOULD WE BE THEN?
I THINK --^WHAT HE WAS
SAYING IT WAS NO MORE
MITIGATION HE WAS AWARE OF THAT
HE PRESENTED.
HE ALSO COMPLAINED HE FELT LIKE
THE COUNSELS --^THE ADEQUACY OF
THEIR MITIGATION INVESTIGATION
HAVE NOT?
WHAT --^IF AT THAT SPENCER
HEARING THE JUDGE SAID OKAY YOU
ARE NOW REPRESENTING YOURSELF,
WHAT WOULD HAVE BEEN THE NEXT
STEP?
I DON'T THINK WE CAN ONLY
SPECULATE YOUR HONOR.
WE HAVE NO WAY OF KNOWING.
WE DO KNOW HE SAID THERE'S
NO MORE MITIGATION THAT HE
COULD PRESENT?
AT THAT POINT.
AT THAT POINT.
.
DID YOU WANT TO ADDRESS ANY
OF THE OTHER --^YOU HAVE A
CLAIM ABOUT THE HHC AND THE
CCP.
YES, YOUR HONOR, DO.
I THINK BOTH OF THOSING A
SURVEY --^AGGRAVATED
CIRCUMSTANCES WERE IMPROPERLY
FOUND.
THE HEINOUS ATROCIOUS AND CRUEL
FACTOR ESSENTIALLY WHAT WE ARE

SAYING.
EVEN THE BEST CASE SCENARIO IN THE STATE'S EVIDENCE THROUGH THE MEDICAL EXAMINER WAS THAT THE HOMICIDE IN THIS CASE WAS ACCOMPLISHED VERY QUICKLY.
EVEN THOUGH IT INVOLVED A BEATING AND A STABBING, THE MEDICAL EXAMINER SAID THE WOUNDS WOULD HAVE BEEN ADMINISTERED EXTREMELY QUICKLY.

IF THAT'S THE CASE, NOW DO YOU AGREE THAT THE RECORD DEMONSTRATES THAT THE BEATING ACTUALLY TOOK PLACE FIRST?
YES, YOUR HONOR.
AND THEN THE STABBING AND THE SLASHING OF THE NECK.
THAT'S CORRECT.
AND THE MEDICAL EXAMINER TESTIFIED THAT THERE WERE WOUNDS ON HER HANDS INDICATING SHE ATTEMPTED TO GRAB THE KNIFE.
THE WOUNDS TO THE HANDS --^HER FINGERS HAD BEEN FRACTURED BY THE MEDICAL EXAMINER AGREED COULD HAVE HAPPENED WITH THE SECOND BLOW IF SHE PUT HER HANDS UP.
THAT DOESN'T NECESSARILY INDICATE A PROTRACTED TIME PERIOD FOR THE DEATH.
THE INCREASED WOUND.
THERE WAS ONE INCISED IN THE WEBBING OF THE FINGER BY THE MEDICAL EXAMINER SAID IS CONSISTENT WITH A BLOCK KNIFE ATTACK.
HOWEVER, THE MEDICAL EXAMINER COULD NOT RULE OUT THAT IT COULD HAVE JUST BEEN THE HAND HAD BEEN IN A POSITION WHERE IT WAS NICKED DURING THE STABBING AND IN FACT SHE MAY HAVE BEEN DAZED OR SEMI CONSCIOUS OR UNCONSCIOUS AT THE TIME.
WHAT SHOULD WE DO WITH THE THERE WAS TESTIMONY OR AT LEAST EVIDENCE FROM THE DEFENDANT THAT THIS PERSON JUST WOULDN'T DIE AND WASN'T THERE SOME KIND OF STATEMENT TO THAT EFFECT

THAT, THAT CAME IN EXPECTED THE
BLOWS WOULD HAVE BEEN ENOUGH TO
TAKE THE LIFE, BUT THIS
WOULDN'T.
YES.
THAT IS --
WE HAVE TO DEAL WITH THAT IN
SOME WAY?
HE DID CONFESS TO THAT.
HOWEVER, ALL OF THE EVIDENCE
POINTS TO THIS --^ALL OF THIS
HAPPENING VERY, VERY QUICKLY IN
THE BLOWS TO THE HEAD AND THE
STAB WOUNDS.
THE MISS MALONE WAS FOUND JUST
INSIDE IN THE LIVING ROOM OF
HER HOME WHERE HE SAID HE
ENTERED THE OUTSIDE.
SHE HAD TURNED TO ALLOW HIM TO
ENTER.
THEY KNEW EACH OTHER AND HE
STRUCK HER IMMEDIATELY WITH THE
BAR AND THEN HE CONTINUED TO
STRIKE HER AND THEN THE
STABBING OCCURRED.
SHE WAS RIGHT THERE IN THE
LIVING ROOM.
THERE WAS NO EVIDENCE OF THE
STRUGGLE AROUND THE ROOM.
AND SHE DIED RIGHT THERE VERY
PROMPTLY.
SO I THINK THIS COURT'S CASE
LAW SAYS THAT EVEN THOUGH THERE
MIGHT BE A BEATING AND A
STABBING EVEN THOUGH THERE
MIGHT HAVE BEEN SOME PAIN, SOME
PAIN IS NOT ENOUGH TO QUALIFY
FOR THE AGGRAVATED CIRCUMSTANCE
IF THE HOMICIDE OCCURS IN A
VERY QUICK --
WHERE WOULD IT HAVE BEEN IN
IT WEREN'T A PROPERLY PART
--^WOULD THAT TAKE US TO NEW
PROCEDURE OF SOME KIND?
I THINK IT WOULD REQUIRE
RESENTENCING OF THE FOURTH
COURT.
NOT SUFFICIENT AGGRAVATORS
OTHERWISE?
I'M SORRY.
NOT SUFFICIENT AGGRAVATORS
OTHERWISE?
I THINK THAT WOULD BE FOR
THE TRIAL COURT TO RESIDE.

I MEAN HEINOUS, ATROCIOUS AND
CRUEL AND PRECALCULATED AND
PREMEDITATED THIS COURT
RECOGNIZES THOSE ARE MAJOR
AGGRAVATING CIRCUMSTANCES.
WE TAKE THOSE OUT, WEIGHING IT
AGAINST THE 19 NONSTATUTORY
MITIGATING CIRCUMSTANCES THAT
THE COURT FOUND GIVING VARIES
DEGREES OF WEIGHT I THINK IT
WOULD REQUIRE AT LEAST A COURT
RESENTENCING.
[INAUDIBLE]
.
WELL IN THE ELIM CASE WAS AN
ATTACK WITH THE BRICK.
THE VICTIM WAS BEATED WITH A
BRICK AND HE SUFFERED
DEFENSESIVE WOUND.
THE MEDICAL EXAMINER SAID THE
ATTACK WAS A QUICK ONE.
AND THE VICTIM A MINUTE OR
LESS.
SO UP TO A MINUTE.
AND THE VICTIM WITHIN A MINUTE
THE VICTIM WAS MEDICAL EXAMINER
CONCLUDED THE VICTIM WAS LIKELY
UNCONSCIOUS.
AND NO PROLONGED SUFFERING.
THEREFORE HEINOUS AND CRUEL IS
NOT FOUND TO BE APPROPRIATE.
SO THAT WOULD BE THE PRIMARY
CASE.
[INAUDIBLE]
.
THAT'S NOT CLEAR, EITHER.
THE MEDICAL EXAMINER SAID SHE
COULD VERY WELL HAVE BEEN DAZED
OR SEMICONSCIOUS.
AFTER THE BLOWS TO THE HEAD --

[INAUDIBLE]
THAT'S CORRECT.
RIGHT.
THEN THERE'S ALSO THE HERZEG
CASE WHERE THEY FOUND THE
HEINOUS AND CRUEL WHILE THE
VICTIM UN --^WAS UNCONSCIOUS OR
SEMICONSCIOUS.
SEMI-CONSCIOUS WAS IN THE
HERD --^HERZOD CASE AS WELL.
[INAUDIBLE]
.
I UNDERSTAND THIS COURT

DRAWS THESE LINES ALL THE TILE.

AND I THINK THERE'S CASES GOING
BOTH WAYS FRANKLY, YOUR HONOR.

[INAUDIBLE]
WELL IN THIS CASE THE STABBING,
I MEAN THE VERY FIRST STAB
WOUND COULD HAVE WELL BEEN THE
ONE THAT PENETRATED HER HEART
WHICH THEY SAID WOULD HAVE
CAUSED THE HEART TO STOP.
BUT PRIOR TO THAT POINT, THE
DEFENDANT ADMITTED ACCORDING TO
THE TRIAL COURT THE DEFENDANT
FURTHER STATED HE HAD HIS
MRS.^MALONE PRE --^REPEATEDLY
BECAUSE SHE PUT HER HANDS UP.
.
HER FINGER --^PART OF HER HAND
WAS NOT ONLY CUT BUT A FINGER
HAD BEEN FRACTURED.
YES, YOUR HONOR.
BY THE BEATING.
THAT'S CORRECT.
ISN'T IT SAVAGE BEATING
ASSUMING THE STABBING OCCURRED
LATER.
ISN'T THAT BEATING ITSELF
ENOUGH UNDER OUR CASE LAW?
NOT UNDER THE ALEM CASE IT
ISN'T.
THAT WAS BEATING DEFENSE
--^DEATH.
DEFENSIVE WOUNDS.
QUICK ATTACK,.
HAVE WE SORT OF MOVED AWAY
FROM THAT?
THAT CASE WAS HOW LONG AGO?
WELL.
ABOUT 23 --^12 TO 13 YEARS
AGO.
UNFORTUNATELY I DIDN'T WRITE
DOWN THE DATE OF THE OPINION.
IT WAS IN VOLUME 636 OF THE
REPORT.
BUT --^AND AGAIN HEINOUS,
ATROCIOUS AND CRUEL --^I MEAN
--^I'M SORRY YOUR HONOR.
ARE WE HAVING A MOVING TARGET
ON WHAT THE LAW IS ON THAT?
.
HOW ABOUT ON THE CCP?
WELL ON THE CCP FACTOR,

EVERYONE AGREED IN THIS CASE
THAT THE HIS CRACK COCAINE
ADDICTION AND THE FACT THAT HE
WAS ON A CRACK COCAINE BINGE AT
THE TIME OF THE CRIME WAS
REALLY THE PRECIPITATING EVENT
IF YOU WILL, TO LEAD HIM TO
THIS BEHAVIOR.
THE COURT ACKNOWLEDGED THAT THE
PROSECUTION ACKNOWLEDGED IT.
THE POSITION IS THAT GIVEN THAT
STATE OF MIND, FOCUSING ON THE
STATE OF THE MIND OF THE
DEFENDANT, AS WE HAVE TO BE
THIS AGGRAVATING CIRCUMSTANCE.

GIVEN THAT STATE OF MIND THAT
HE WAS UNABLE TO HAVE COOL AND
CALMLY REFLECTED ON THE CRIME
AND SO THE COLD REFLECTION
ELEMENT COULD NOT BE SUSTAINED
FOR THIS AGGRAVATING FACTOR.
THAT'S ESSENTIALLY A POSITION ON
THAT CIRCUMSTANCE.

THAT'S ALL I HAVE, THANK
YOU.
THANK YOU VERY MUCH.
MISS MILLSAPS.
MAY IT PLEASE THE COURT.
CHARMAINE MILLSAPS REPRESENTING
THE STATE.
I WILL DISCUSS THE SAME THREE
ISSUES THAT WE DISCUSSED WITH
OPPOSING COUNSEL.
[INAUDIBLE]

VOLUME 1, PAGE 17, WHATEVER
DATE IS ON THERE IS WHERE THE
APPOINTMENT OF CONFLICT COUNSEL
IS.
ALL RIGHT.
BUT THE DEFENDANT DIDN'T
EXPLAIN WHY HIS CHANGED HIS
MIND.
THE DEFENDANT SAID HIS MOTHER
WAS SO UPSET WITH THE FACT THAT
HE WAS NOT GOING TO BE
REPRESENTED AT THE PENALTY
PHASE THAT, THAT'S WHY HE
AGREED TO COUNSEL.
HE DID NOT WANT COUNSEL.
HIS OWN EXPLANATION WAS MY
MOTHER TALKED ME INTO COUNSEL.

SO HE AT ANY TIME WANT COUNSEL
AND THEN BECAUSE OF HIS MOTHER
HE DID ACCEPT COUNSEL.
[INAUDIBLE]
.
LET ME TELL YOU WHAT
HAPPENED --
[INAUDIBLE]
.
RIGHT.
TALK ABOUT DURING THE PENALTY
PHASE.
PENALTY PHASE --^I WILL TELL
YOU THE PAGES I WILL QUOTE
FROM.
311, 312 AND 318 AND WHAT
HAPPENS THERE IS THEY ASK HIM,
IS THERE ANY MORE MITIGATION?
AND HE SAYS, NO.
BUT THE JUDGE WANTS TO MAKE
SURE THAT THEY HAVE HAD TIME TO
TALK ABOUT IT.
SO HE SAID, WELL DO YOU WANT TO
TALK ABOUT THIS?
WHY DON'T YOU ALL GO TALK ABOUT
THIS.
THEN THEY COME BACK ON THE
RECORD AT 3:18 AND THEY
REAFFIRM THERE'S NO ADDITIONAL
MITIGATION.
SO NOT ONLY DOES HE SAY NO WHEN
DIRECTLY ASKED, BUT THE JUDGE
TAKES A LITTLE BREAK AS THEY
OFTEN DO AND LET HIM TALK TO
THEIR COUNSEL.
SO NOT ONLY DID THE DEFENDANT
HIMSELF SPECIFICALLY PUT ON THE
RECORD HE HAD NO MORE
MITIGATION TO PRESENT DURING
PENALTY PHASE, BUT THE JUDGE
LETS HIM TALK TO HIS LAWYER,
THEY GO FALK.
THEY COME BACK ON THE RECORD
BACK ON THE RECORD AND THERE'S
A REAFFIRMATION.
THERE'S NO ADDITIONAL PENALTY.

THERE'S NO ADDITIONAL
MITIGATION TO BE PRESENTED AT
THE PENALTY.
BUT THEN IT SEEMS TO RE
--^ERUPT DURING OR SHORTLY
TOWARDS THE END OF THE SPENCER

HEARING?
RIGHT.
THAT'S WHEN HE --^.
THAT'S WHEN ALL THIS STUFF
STARTS HAPPENING AGAIN
APPARENTLY.
RIGHT.
BUT HE GOES THROUGH A SERIES OF
COMPLAINTS.
I WILL GO THROUGH THEM AS WELL.

THEY ARE BASICALLY FOUR OF
THEM.
AND THREE OF THEM DO NOT UNDER
THIS COURT'S CASE LAW TRIGGER
THE REQUIREMENT OF A NELSON
HEARING.
HE COMPLAINS HIS LAWYER HAS NOT
MET WITH HIM ENOUGH IN JAIL.
THAT DURING THE 9-10 MONTHS
THAT HE'S ONLY MET HIM ONCE
OVER TWICE.
FAILURE TO MEET WITH THE
CLIENT, OH, AND LET ME BACK UP.

NOT ONLY IS COUNSEL --^NOT ONLY
DOES HE HAVE COCOUNSEL, HE HAS
COCOUNSEL, HE HAD LEAD COUNSEL,
COCOUNSEL AND THERE'S A MOTION
TO APPOINT AN INVESTIGATOR.
SO HE HAD --^ALL OF WHICH WERE
GRANTED.
SO THERE'S TWO COUNSEL HEAR AND
AN INVESTIGATOR.
HE COMPLAINS THAT THIS
PARTICULAR LAWYER HAS NOT COME
TO SEE HIM ENOUGH.
THIS COURT'S CASE LAW IS VERY
CLEAR ON THAT.
THAT DOESN'T TRIGGER THE
REQUIREMENT.
THEN HE COMPLAINS THAT HIS
LAWYER DID NOT OBJECT WHEN
HEARSAY CAME IN.
IT BECOMES CLEAR THAT WHAT HE
IS TALKING ABOUT THE STATE'S
MEDICAL EXAMINER DR.^MANIARD
DID NOT PERFORM THE AUTOPSY.
THEY THE ONE WE'RE TALKING
ABOUT IN TERMS OF THE
DESCRIPTION OF THE VICTIM'S
INJURIES.
BUT IT WAS DR.^KELLY WHO
PERFORMED THE AUTOPSY.

AND WHAT HE IS COMPLAINING
ABOUT IS THAT ONE OF THE
MEDICAL EXPERT IS BEING ALLOWED
TO TESTIFY ALTHOUGH THE OTHER
ONE WAS THE ONE THAT PERFORMED
THIS.
THEY REPEATEDLY SAID THAT.
YOU HAVE SEVERAL CASES WHERE
YOU HAVE ALLOWED THAT.
THE JUDGE KNOWS AS A MATTER OF
LAW THAT'S MERITLESS.
HE DOESN'T NEED TO INQUIRE INTO
THAT ONE IN THE THIRD ONE HE
COMPLAINED ABOUT THE PROJECTOR
OF THE VICTIM'S INJURIES IN
PROJECTION DURING THE MEDICAL
EXAMINER'S TESTIMONY.
AND IT WAS VERY NEAR HIS HEAD
AND IT UPSET HIM.
WELL, THE JUDGE WAS THERE AND
HE KNOWS WHAT HAPPENED.
AND HERE'S WHAT HAPPENED.
THE DEFENDANT COUNSEL DOES
OBJECT.
HE OBJECTED TO THAT.
THEY MOVE THE JURY OUT.
THEY REARRANGE EVERYTHING SO
IT'S NOT THAT CLOSE TO HIM.
THEY THEN TELL THE JURY IT WAS
FOR PURPOSES OF NOT INTERFERING
WITH THE PROJECTION.
ALL RIGHT.
SO THE JUDGE --^THAT HAPPENED
RIGHT IN FRONT OF HIM.
HE KNOWS THAT'S NOT TRUE.
DEFENSE COUNSEL DID OBJECT AND
THE WHOLE THING WAS REARRANGED
TO ACCOMMODATE THE DEFENDANT'S
OBJECTION.
SO HE CERTAINLY DOESN'T NEED TO
INQUIRE INTO THAT ONE.
SO THE ONLY ONES THAT THERE IS
ANY THING THAT TRIGGERS A
NELSON-LIKE REQUIREMENT IS HIS
LAST COMPLAINT WHICH IS THE
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM FOR FAILING TO
PRESENT ADDITIONAL MITIGATION.

WELL, JUDGE PROCEEDS TO HOLD A
NELSON INQUIRY THE WAY HE IS
SUPPOSED TO.
HE SAID, FINE, ALL RIGHT LET'S
EXPLORE THAT ONE AS WELL.

THE QUESTION HERE IS THIS:
YOU SAY THE JUDGE PROCEEDED TO
HAVE A NELSON INQUIRY BUT THE
ARGUMENT THAT THE DEFENDANT IS
MAKING IS THAT THERE'S TWO
STEPS TO NELSON.
NOT ONLY DO YOU ASK ABOUT THE
DEFICIENT PERFORMANCE OF THE
DEFENSE ATTORNEY, BUT EVEN IF
THE TRIAL JUDGE DECIDES THAT
THE DEFENSE ATTORNEY IS NOT
INEFFECTIVE, THAT YOU HAVE TO
TELL THE DEFENDANT THAT AND
WARN THE DEFENDANT THAT YOU
WON'T GIVE HIM ANOTHER ATTORNEY
AND TELL THE DEFENDANT IF YOU
WANT ALLOW HIM THE OPPORTUNITY
TO REPRESENT HIMSELF BASICALLY.

SO THAT'S HIS ARGUMENT THAT THE
TRIAL JUDGE NEVER GAVE HIM THAT
OPPORTUNITY TO REPRESENT
HIMSELF.
ALL RIGHT.
BUT REMEMBER THAT'S STEP TWO.
WHAT I'M SAYING IS WE NEVER GOT
THROUGH STEP ONE.
YOU NEVER WHAT?
WE NEVER GOT THROUGH STEP
ONE.
THE JUDGE'S INQUIRIES
ABOUT WHAT HIS COMPLAINTS WERE
THAT'S WHAT NELSON IS.
NELSON THE DEFENDANT SAYING I
DON'T LIKE MY LAWYER BECAUSE
HE'S DOING SOMETHING OR NOT
DOING SOMETHING.
IF YOU WILL NOT ANSWER THE
JUDGE'S INQUIRIES THAT ENDS
NELSON RIGHT THERE.
THIS WHOLE THING IS WAIVED.
YOU CANNOT COMPLAINT ABOUT YOUR
LAWYER AND THEN REFUSE TO
ANSWER THE JUDGE'S QUESTION.
NELSON STOPPED THE MINUTE HE
WOULD NOT ANSWER THAT JUDGE'S
QUESTION.
WE NEVER GET TO STEP 2.
MOREOVER ON THIS PARTICULAR
RECORD, YOUR HONOR, IF WE HAD
GOTTEN TO STEP 2, ON THIS
PARTICULAR RECORD, HE KNOWS HE
HAD THE RIGHT TO REPRESENT
HIMSELF.

HOW DOES HE KNOW THAT?
HE DID IT AT THE PLEA
COLLOQUY.
WE HAVE A FULL INQUIRY DURING
THE PLEA COLLOQUY.
MOREOVER DURING THAT INQUIRY HE
TELLS THE JUDGE, OH I
REPRESENTED MYSELF BEFORE IN
ANOTHER CASE.
HE IS REPRESENTING HIMSELF IN
THIS PARTICULAR CASE.
THERE'S NO WAY HE DOESN'T KNOW
HE HAS THE RIGHT TO REPRESENT
HIMSELF.
ARE YOU SAYING THAT EVEN IF
THERE WAS REQUIRED TO BE A
NELSON INQUIRY HERE AND EVEN IF
IT WAS REQUIRED TO GO TO THE
NEXT STEP, THAT HAVING DONE
THIS IN A PREVIOUS PROCEEDING
WOULD SATISFY THAT NEXT STEP?
.
IF THE REQUIREMENT IS THE
DEFENDANT KNOWS THAT HIS LAWYER
WILL NOT BE --
NO.
THE REQUIREMENT IS THAT THE
JUDGE TELLS HIM THAT.
OKAY BUT WE REQUIRE A JUDGE TO
TELL THINGS.
IF THE RECORD CLEARLY
ESTABLISHES THAT HE KNOWS THAT
RIGHT, WHAT --^WHY CAN THERE BE
ANY POSSIBLE ERROR FROM THE
DEFENDANT NOT --^FROM THE JUDGE
NOT TELLING YOU WHAT YOU
ALREADY KNOW?
HE KNEW HE HAD THE RIGHT TO
REPRESENT HIMSELF.
HE REPRESENTED HIMSELF AT THE
PLEA COLLOQUY IN THIS
PARTICULAR CASE AND WE WENT
THROUGH A FULL NELSON PERETTI
INQUIRY BEFORE THEY LET HIM DO.

THEY ASKED HIM ALL THE TYPICAL
QUESTIONS.
AND AS PART OF THAT INQUIRY HE
WAS ASKED AGAIN.
THE REASON WE HAVE THE JUDGE
TELL HIM THAT IS SO THAT HE
WILL KNOW THAT RIGHT.
NOW THAT'S PROBABLY NOT A
PARTICULARLY GOOD IDEA.

BUT BECAUSE IN ONE BREATH YOU
TELL THE DEFENDANT YOU HAVE THE
RIGHT TO REPRESENT YOURSELF AND
THEN AS PART OF THE FERETTI
INQUIRY YOU WILL TELL HIM
EXACTLY WHAT THE JUDGE TOLD HIM
HERE.
ANY DEFENDANT WHO REPRESENTS
HIMSELF HAS A FULL --^FOOL FOR
A CLIENT AND EVEN LAWYERS THIS
IS WHAT THE JUDGE TOLD THE
DEFENDANT AT THE EARLIER
FERETTI HEARING.
EVEN LAWYERS HAVE LAWYERS
REPRESENT THEMSELVES.
COMING BACK TO THE PRINCIPLE
OF LAW IS WHAT YOU ARE TRYING
TO CAPSULE A PRINCIPLE OF LAW
THAT WITHIN A CAPITAL CASE IN
FLORIDA THAT A JUDGE INDUCTS A
FERETTI HEARING AND THE
DEFENDANT ACTUALLY REPRESENTS
HIM ELF OR HERSELF, AT ONE
STAGE OF THE PROCEEDING, THAT
IF THAT ISSUE ARISES AGAIN IT'S
NOT NECESSARY TO GO THROUGH A
FERETTI HEARING THE SECOND TIME
IN THE SAME PROCEEDING.
IS THAT WHERE YOU ARE HEADED?
YES.
BECAUSE IT'S CLEARLY --
IS THERE CASE LAW IN FLORIDA
OR ELSEWHERE THAT ADDRESSES
THAT --^WHETHER JUST THE
TECHNICAL POINT THAT YOU HAVE
TO FOLLOW IT EACH OCCASION AT
THIS ARISES OR IS IT JUST ONE
IN A CASE SUFFICIENT.
IS THERE CASE LAW SPECIFICALLY
ON THAT POINT.
WELL, YOUR RULE 3.111, UH-HUH.

REQUIRES THAT CLEAR AND
UNEQUIVOCAL RESPONSE.
I WANT TO GET RID OF MY LAWYERS
NOT CLEAR AND
UNEQUIVOCAL REQUEST TO
REPRESENTATIVE YOURSELF.
YOUR RULE YOU SAY YOU HAVE TO
READ AT EACH STAGE.
REAFFIRM --^TELL THE DEFENDANT
THAT I'LL GIVE YOU A LAWYER.
IT'S EXACTLY THE OPPOSITE.
WHAT WE USUALLY WANT TO DO IS

THAT EACH STAGE TELL THEM,
LOOK, YOU REPRESENTED YOURSELF
AT THE PRIOR PHASE BUT WE WILL
GIVE YOU A LAWYER.
YOU ARE ANSWERING THE FLIP
SIDE.
YOU TELL HIM HE HAS A LAWYER.
MY QUESTION WAS: IS THERE ANY
CASE LAW IN FLORIDA OR
ELSEWHERE THAT ADDRESSED THE
CIRCUMSTANCES?
WE KNOW IF A FERETTI
CIRCUMSTANCE ARISES.
IF WE ASSUME THAT HE MADE THAT
REQUEST, NUMBER ONE -- WELL, WE
SAW --^ASSUME THAT BECAUSE
THAT'S WHAT HE SAYS THAT
THERE'S A REQUIREMENT --^HAS IT
BEEN ADDRESSED THAT YOU GO
THROUGH A FERETTI HEARING THE
SECOND TIME AFTER THE DEFENDANT
ALREADY REPRESENTED HIM OR
HERSELF DURING THE TRIAL.
THERE'S NO CASE LAW ON THAT?
I CAN TELL YOU THIS.
MOST OF THE FEDERAL CASE LAW
DOESN'T REQUIRE YOU REDO
FERETTI IN THE SAME CASE.
SAME CASE TWO TIMES.
AND I WILL CERTAINLY
SUPPLEMENT WITH WHAT SEVERAL
--^THAT WILL BE VERY EASY FOR
ME TO MIND --^FIND.
THAT'S SEEMS TO BE WHAT HE'S
ARGUING THAT HE COULD REPRESENT
HIMSELF THE SECOND TIME AROUND.

APPARENTLY THERE'S NOT A NELSON
PROBLEM.
WHAT YOU ARE SAYING IT'S BEEN
SATISFIED AND HE SAYS WELL IF
NELSON WASN'T A PROBLEM HE
WOULDN'T GIVEN AN OPPORTUNITY
TO REPRESENT HIMSELF.
HIS ARGUMENT IS ALSO THIS.
IS THAT THE END OF --^THAT
THERE ARE TWO STEPS TO NELSON.

HE SAYING --^I'M SAYING WE
DIDN'T GET THROUGH THE FIRST
STEP.
WE DIDN'T GET TO THAT SECOND
STEP.
HE'S NOT RAISING AN INDEPENDENT

CLAIM, WHAT HE IS RELYING ON IS
THIS COURT'S CASE LAW THAT SAYS
AT THE END OF A NELSON INQUIRY
YOU'RE SUPPOSED TO TELL HIM
THAT I WILL NOT DISCHARGE
COUNSELL.
[INAUDIBLE]
DISCHARGE COUNSEL.
[INAUDIBLE]
[INAUDIBLE]
[INAUDIBLE]
[INAUDIBLE]
.
OKAY.
BUT YOUR HONOR, IF WE WILL DO
NELSON --
[INAUDIBLE]
.
NO, YOU'VE TOLD HIM WHAT THE
PROBLEM WAS.
I DIDN'T SEE HIM UNTIL
YESTERDAY.
AND THAT --
[INAUDIBLE]
.
NO HE WOULDN'T TELL HIM WHAT
THE MITIGATION WAS.
HE WOULDN'T ANSWER THE
QUESTION.
WHAT'S THE PROBLEM IS WHAT THE
JUDGE WAS ASKING.
AND HE WOULDN'T TELL HIM WHAT
THE PROBLEM WAS.
YOUR HONOR, I'M NOT SAYING
--^OF COURSE NOTTING THE VERY
GOOD PROCEDURE --^I DON'T AGREE
WITH THE AUTOMATIC REREVERSAL
PART OF NELSON BUT OF COURSE WE
SHOULD STOPPING EFFECTIVE
ASSISTANCE BEFORE WE GO THROUGH
A WHOLE TRIAL AND WORSE WE
RAISE A NELSON CLAIM ON APPEAL.

YOU FINISHED THE TRIAL AND YOU
ARE UP ON APPEAL.
BY THE TIME YOU'VE REVERSED FOR
NELSON.
YOUR HONOR, THE JUDGES SHOULD
HAVE THE DISCRETION --^SAY A
LAWYER WAS ASLEEP DURING A
PENALTY PHASE.
JUDGES SHOULD HAVE THE
DISCRETION TO REPLACE
INCOMPETENT COUNSEL IF IT'S

RIGHT IN FRONT OF THEIR FACE.
BUT IF THE --^AND THEY SHOULD
HAVE A LOT OF LEEWAY FOR
INSTANCE APPROACHING THE BENCH,
ANY SORT OF THE NORMAL THINGS
THAT TRIAL JUDGES DO TO MAKE
PEOPLE COMFORTABLE ABOUT
ANSWERING THE QUESTION.
BUT YOU MUST HAVE THE COUNSEL'S
RESPONSE.
I CAN'T JUDGE TALK TO THE
DEFENDANT HIMSELF.
THAT'S NOT HOW NELSON LOOKS.
WHAT NELSON LOOKS LIKE IS THIS.

I ASK YOU A QUESTION.
WHAT YOUR COMPLAINT IS, THE
DEFENDANT'S COMPLAINT AND THEN
HE TURNS TO COUNSEL AND SAYS
OKAY WHAT ABOUT THAT?
THAT'S WHAT THE TYPICAL NELSON
INQUIRY LOOKS LIKE.
YOUR CLIENT SAID YOU ARE NOT
DOING X, Y AND Z AND YOU GET
HIS EXPLANATION.
YOU HAVE TO DO IT IN FRONT OF
COUPLE.
NOW, IF HE BECOME MORE
PROBLEMATIC, FOR INSTANCE,
COUNSEL'S RESPONSE WAS GOING TO
REVEAL SOME SORT OF TRIAL
STRATEGY, YOU MIGHT MAKE THE
PROSECUTOR GO SIT DOWN AT THIS
TABLE AND JUST TALK TO THE TWO
OF THEM.
BUT THE LAWYER HAS TO BE THERE.

TO GET TO THE BOTTOM OF AN
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM YOU HAVE TO HAVE
COUNSEL.
TELLING YOU, A, WHETHER OR NOT
HE DID IT.
AND LOOK AT THIS PARTICULAR
COMPLAINT AND A LOT OF THEM ARE
LIKE THAT.
I AGREE WITH YOU ON THIS CASE
ISN'T THE TROUBLING PART.
THE TROUBLING PART IS WHATEVER
LAW YOU WRITE ASSOCIATED WITH
THIS IS GOING TO APPLY TO THE
PENALTY PHASE AS WELL.
BUT IF HE CANNOT DO IT ALL BY
HIMSELF.

HE CANNOT TAKE THE DEFENDANT
BACK TO HIS CHAMBERS, BECAUSE
THAT'S ONLY GETTING HALF THE
ANSWER.
HE CAN'T DO THAT.
SO HE MUST BE ABLE TO TALK WITH
BOTH THE DEFENDANT AND COUNSEL
AND IT WOULD BE MUCH PREFERABLE
IF WE WILL REVIEW IT.
WE --^WE HAVE TO PUT THAT ON
THE RECORD.
MAYBE YOU CAN SEAL IT SOMEHOW
OR MAKE SURE THE PROSECUTOR
COULDN'T SEE IT OR SOMETHING
LIKE THAT.
YOU WOULD NOT --^YOU HAVE TO
HAVE COUNSEL THERE.
BECAUSE WE ARE INQUIRYING INTO
COUNSEL'S CONDUCT.
SO COUNSEL HAS --^DEFENSE
COUNSEL HAS TO BE GIVEN THE
OPPORTUNITY TO HEAR WHAT THE
COMPLAINT IS AND THE FUNT TO
RESPOND.
--^AND THE OPPORTUNITY TO
RESPOND.
MAYBE YOU DO THAT UP AT THE
BENCH IF IT'S EMBARRASSING FOR
INSTANCE DURING VOIR DIRE.
PEOPLE ALL THE TIME APPROACH
THE JUDGE AND WHEN THEY HAVE
PERSPECTIVE JURORS WHEN THEY
HAVE SOMETHING THAT'S
EMBARRASSING TO THEM, THEY WILL
COME UP TO THE JUDGE AND SAY IT
IN FRONT OF THE JUDGE AND JUST
THE TWO LAWYERS.
SO YOU KNOW, YOUR HONOR, WE
HAVE WAYS TO HANDLE THAT AND,
NO, I DON'T THINK A GOOD WAY IS
TO GO TO SECOND COUNSEL.
ESPECIALLY WHEN YOU HAVE NOT
ONLY LEAD COUNSEL BUT COCOUNSEL
HERE.
NOW YOU WILL HAVE THREE
COUNSEL.
OKAY ON THE HHC, JUST SO YOU
ALL WILL KNOW.
THE CASE HE WAS TALKING ABOUT
WAS CITED IN 1994.
HHC IS CLEARLY PRESENT IN THIS
CASE.
THIS COURT HAS ROUTINELY I'M
GOING TO --^THIS QUOTE IS

ROUTINELY HELD BOTH BEATING AND
STABBING DEATHS, THAT THIS IS A
DIRECT QUOTE FROM YOUR ANGLING
CASE.
THIS COURT CONSISTENTLY UPHELD
HHC AND BEATING DEATHS
THAT'S IN --.
CITES LAWRENCE, BOGAL, WILSON
AND THEN THIS COURT IS ALSO
SAID THIS COURT HAS
CONSISTENTLY UPHELD THE HHC
AGGRAVATOR WHERE THE VICTIM HAS
BEEN REPEATEDLY STABBED.
THAT'S OWEN CITING COX.
GOOSEMAN.
FINNEY AND PITLAND.
THIS IS BOTH A BEATING DEATH
AND A STABBING DEATH.
WE DON'T HAVE TO GUESS WHAT
HAPPENED HERE.
THE DEFENDANT TOLD US THAT THE
VICTIM PUT UP HER HAND.
THESE ARE EXTENSIVE DEFENSIVE
WOUNDS.
NOT --^SHE HAS FRACTURED HANDS
AND THE DEFENDANT TOLD US IN
HIS VIDEOTAPED AND AUTOTYPED
CONFESSION THAT THE VICTIM PUT
UP HER HAND.
THAT'S HOW HER HANDS GOT
DAMAGED.
FROM HIM HITTING HER WITH THE
BREAKER BAR.
WHAT THE MEDICAL EXAMINER
TESTIFIED IS THAT IT WAS
TEXTBOOK.
THAT'S THE DIRECT QUOTE FROM
THE MEDICAL EXAMINER.
THE CUT IN BETWEEN HER FIRST
AND SECOND FINGER ON THE RIGHT
HAND IS TYPICALLY WHAT HAPPENS
WHEN SOMEBODY GRABS A KNIFE
DURING A STABBING INCIDENT AND
THE KNIFE GETS PULLED THROUGH
THE HAND.
SHE CALLED THAT TEXTBOOK.
SO THERE WAS NO DOUBT ABOUT
WHAT SHE THOUGHT HAPPENED HERE.

AND, YES, ON CROSS THEY DID SAY
SOME THINGS TO HER.
BUT SHE BASICALLY SAID, LOOK,
THE MOST LIKELY SCENARIO AND
THAT IS A TEXTBOOK EXAMPLE OF

WHAT HAPPENS WHEN SOMEBODY IS
STABBED AND BOTH HER HANDS WERE
DAMAGED.
THIS YOU KNOW BOTH OF THEM FROM
THE BREAKER BAR AND THEN THE
RIGHT HAND HAD A IN --^INCISE
WOUND, A CUT FROM WHAT THE
MEDICAL EXAMINER SAID THE
VICTIM GRABBING THE KNIFE.
THAT'S WHAT CUT HER RIGHT HAND.

WE HAVE TO CO-CALCULATE IT.

ALL RIGHT.
HE SAID, I THINK HIS ARGUMENT
BASICALLY FOR CCP IS THAT
BECAUSE THIS MAN WAS ON COCAINE
OR MARIJUANA BINGE THAT HE
COULD NOT HAVE BEEN COOL AND
REFLECTION TO COMMIT THIS
MURDER.
.
YES, YOUR HONOR, AND THIS
COURT REJECTED I CITED
ROBINSON.
ROBINSON IS A VERY ANALOGOUS
CASE.
THIS COURT HAS ALREADY REJECTED
THAT ARGUMENT.
REMEMBER WHAT HAPPENS HERE.
YES, HE'S ON A TWO-WEEK BINGE.

ALL RIGHT.
BUT HE ISN'T HIGH AT THE TIME.

AND HOW DO WE KNOW THAT?
BECAUSE HE GOES TO THE
WINN-DIXIE AT 7:00, 7:30 THAT
NIGHT ATTACKS SOMEBODY ELSE TO
GET THE MONEY.
THEN HE LEAVES THE WINN-DIXIE.

THAT'S ONE OF OUR FIVE PRIOR
ROBBERIES HERE.
PRIOR --^THAT'S HOW WE
ESTABLISHED THE PRIOR VIOLENT
FELONIES, THAT WINN-DIXIE
EARLIER IN THAT VERY NIGHT WAS
A AN ATTEMPTED ROBBERY.
THE VICTIM OF THAT ATTEMPTED
ROBBERY YELLS AND SO A WHOLE
BUNCH OF PEOPLE COME OVER.
IT'S A GROCERY STORE.
AND SO HE DECIDES HE --^THIS IS

THREE HOURS BEFORE THIS MURDER.

MORE THAN THREE HOURS BEFORE
THIS MURDER.
HOE DECIDED THAT WAS A VERY BAD
IDEA TO ATTACK SOMEBODY IN A
VERY PUBLIC PLACE.
HE GOES OUT TO THE VICTIM'S
HOME WHICH HE KNOWS IS IN A
RURAL AREA OF DEFUNIAK SPRINGS.

THAT'S THE REASON HE PICKS HER
BECAUSE IT'S A RURAL AREA.
AND SO HE HAS THREE HOURS WHERE
WE KNOW HE'S NOT ON COCAINE.
HE DOESN'T HAVE ANY MONEY NOR
--^FOR COCAINE WHERE HE'S
THINKING ABOUT THE FIRST TIME
DIDN'T WORK SO WELL BECAUSE IT
WAS IN PUBLIC.
I'M GOING TO --^AND HE TAKES
THE BREAKER BAR, AND THE KNIFE
WITH HIM THE KNIFE IS ON THE
FRONT SEAT HE TAKES THEM BEHIND
HIS BACK UP TO THE DEFENDANT
AND HE OPENLY ADMITS, YOUR
HONOR WE HAVE A VIDEOTAPED
CONFESSION.
HE OPENLY ADMITS HE WENT OVER
TO THE HOUSE TO KILL HER TO GET
MONEY FOR DRUGS.
SO THAT WAS THE WHOLE POINT OF
THIS CRIME.
SO WE HAVE EXTENSIVE CCP.
HE DOES SOMETHING TO GET MONEY,
WHICH FAILS.
HE DOES ROBBERY WHICH FAILS.
AND THEN HE FIXES WHAT HE
THINKS WAS WRONG WITH THAT
ROBBERY THAT THE PEOPLE CAME.
HE GOES TO A RURAL AREA WHERE
SOMEBODY HE KNOWS.
HE KNOWS FOR INSTANCE, HE HAS
LIVED IN THIS WOMAN'S --^RENTED
PROPERTIES TO THE DEFENDANT AND
HE KNOWS WHERE HER SPARE KEY
IS.
SO YOU KNOW, THERE WASN'T GOING
TO BE MUCH TROUBLE GETTING IN
EITHER.
HE KNEW --^SPARE KEY WAS
MISSING.
THAT'S WHY HE HAD TO KNOCK ON
THE DOOR AND TELL HER HE NEEDED

TO USE THE CELL PHONE.
BUT.
YOUR HONOR, YES, HE WAS A
CHRONIC DRUG ABUSER.
ALTHOUGH, DR.^LARSON DID SAY HE
DIDN'T THINK HE WAS A REAL ADDICT.
DR.^LARSON WAS PRESENTED BY THE
DEFENSE AT THE PENALTY REALLY
TO DO THE OPPOSITE OF MENTAL
HEALTH TO PROVE
HE WASN'T A PSYCHOPATH.
THAT'S WHAT THEY CALLED
DR.^LARSON FOR THAT HE WOULD
ADJUST WELL IN PRISON.
HIS TESTIMONY WAS THAT THE
DEFENDANT'S WHOLE PROBLEM HE
DOESN'T ADJUST WELL TO AN
ENVIRONMENT THAT ISN'T PRISON,
BECAUSE HE SPENT LITERALLY HALF
HIS LIFE IN PRISON.
21 OUT OF HIS 42 YEARS.
SO THAT'S WHY THEY PRESENTED
DR.^LARSON.
DR.^LARSON SAID HE WASN'T AN
ADDICT.
THE TRIAL JUDGE FOUND THAT AS A
NONSTATUTORY MITIGATOR.
SO THAT WAS FOUND AND BEGIN
WEIGHT.
I THINK IT WAS SOME WEIGHT.
SO ONE OF THE 19 NONSTATUTORY
MITIGATION OMIT GATORS HERE WAS
HIS --^OMIT GATORS HERE WAS HIS
NONSTATUTORY DRUG USE.
THANK YOU.
.
BRIEFLY.
REGARDING ISSUE 1, I GUESS I
WANT TO BE SURE WE STAY IN
FOCUS THAT THE QUESTION IS
DENIAL OF SELF-REPRESENTATION
AT THE SPENCER HEARING.
WHETHER THE NELSON HEARING
ISSUE WAS COMPLETELY FOLLOWED
THROUGH WITH OR NOT, THE POINT
IS I --^MY POSITION IS THERE
WAS SUFFICIENT POSITION FOR THE
NELSON HEARING BUT THIS
DEFENDANT NO LESS IN SIX TIMES
SAID I DON'T WANT THESE CLOTHES
IN I MORE -- THESE LAWYERS
REPRESENTING ME.
HE WAS PERSISTENT IN HIS
REQUEST.

WASN'T HE IN CONTEXT BETWEEN
THIS JUDGE.
I GET THE SENSE FROM READING
THIS TRANSCRIPT THAT WHAT HE
WANTED AS HE --^AS HE SAYS IN
PART OF THIS PROCEEDING, I NO
LONGER FEEL COMFORTABLE WITH
THE REPRESENTATION, YOUR HONOR.

I WILL ASK ONCE AGAIN THAT THE
STATE IMPOSE SENTENCE TODAY.
AND WASN'T IT A COMMON THEME
THROUGHOUT THIS.
I DON'T WANT THIS TO DRAG OUT,
TO JUST SENTENCE ME.
HE DID INDICATE THAT TO THE
COURT.
I THINK HE ALSO INDICATED THAT
HE WAS GO --^CONCERNED ABOUT
THE LACK OF MITIGATION
DEVELOPMENT AND WHAT ELSE COULD
HE DO AT THIS POINT.
HE DIDN'T EXFROM THAT AT THE
PENALTY PHASE?
NO.
THIS WAS AT THE SPENCER
HEARING.
HE DIDN'T WANT THE SPENCER
HEARING.
HE JUST WANTED TO BE
SENTENCED; CORRECT?
GIVEN THE FACT THAT HE
DIDN'T FEEL --^I THINK HE
THOUGHT THE MITIGATION
PRESENTATION THAT THE DEFENSE
HAD DEVELOPED WAS INADEQUATE.
AND HE DIDN'T HAVE THE
WHEREWITHAL TO DO ANYTHING
ABOUT IT AT THAT POINT.
HIS POINT WAS GET ME SENTENCED
TODAY SO I CAN BRING I THIS UP
LATER.
AS SORT OF THE THEME HE WAS
GOING THROUGH.
AS --^AT THE SPENCER HEARING.
NO WHAT WOULD BE THE REMEDY
HERE AS JUSTICE PARIENTE
ASKED EARLY.
RESENTENCING AND REHEARING
IN THIS MATTER.
AND, AGAIN UNDER THIS COURT'S
DECISION IN HARDWICK IF THE
DEFENDANT PERSISTENT IN HIS
REQUEST THAT I DON'T WANT THE

LAWYERS TO REPRESENT ME ANY
MORE THAT HAS TO BE TREATED AS
A REQUEST TO REPRESENT HIMSELF.

HE HAD, HAD A HISTORY OF
REPRESENTING HIMSELF IN PRIOR
CASES AND IN THIS CASE.
AND THE COURT THE TRIAL COURT
JUST IGNORED THE REQUEST.
THAT'S ALL.
THANK YOU VERY MUCH.
WE WILL TAKE A VERY SHORTLY
CREST.
RECONVENE THE COURT FOR ABOUT
TWO MINUTES.
ALL RISE.