Arthur Barnhill III v. State of Florida

SC06-275 | SC06-1803

WHEN ONE OF THEM INDICATED
THAT BECAUSE OF HIS, BELIEF
IN THE DEATH PENALTY.
HE WAS MORE INCLINED TO
TREATING A VATORS STRONGER
THAN MITIGATORS.
AND THEN THERE WAS, JUROR
MR. LOWE, ROSE HIS HAND WHEN
JUDGE ASKED IF ANYBODY
SITTING HERE WOULD BE MORE
INCLINED TO GIVE THE DEATH
PENALTY BECAUSE --
>> WHAT HAPPENED TO THOSE
JURORS, THOSE PERSPECTIVE
JURORS.
>> MR. HALF THE TRIAL
COUNSEL, CONDUCTING VOIR DIR,
PASSED RETURNED QUESTIONING
THEM AND NEVER FOLLOWED UP
ON THOSE ISSUES AGAIN.
>> DID THEY SERVE ON THE
JURY?
YES THEY DID.
NOTION OF A 9-3 VOTE MEANS
ONLY THREE ADDITIONAL,
JURORS HAD TO CHANGE THEIR
MINDS.
THE ISSUE AS TO, THE, START
OF MR. BARNHILL'S, BRIEF,
REACTIVE PSYCHOSIS, IS
ANOTHER MATTER THAT, IS
ADDRESSED IN THE BRIEFS, AND
OF PARTICULAR INTEREST IS
THE FACT THAT, DIFFERENT
TRIAL COUNSEL, MR. CAUDILL
HAD TWICE ON OCTOBER 15, THE
DAY AFTER THE PLEA,
EXPLAINED TO THE JUDGE THAT
MR. CAUDILL MARKED CHANGE IN
BEHAVIOR CHANGED BEFORE THE
PLEA.
HE REQUESTED THE JUDGE WHO
ALREADY SAID HE WAS GOING TO
HAVE MR. BARNHILL EVALUATED,

MR. CAUDILL REQUESTED THE JUDGE TO EXTEND THAT VALUATION NOT JUST FOR THE COMPETENCY ISSUE AS HOW MR. BARNHILL WAS IN COURT THAT DAY BUT TO INCLUDE AN EVALUATION WHETHER THE DAY BEFORE, THE AFTERNOON BEFORE, THERE WAS A POSSIBILITY, THAT HE WAS INCOMPETENT AT THE TIME OF GIVING THE PLEAS.

>> ON THIS PARTICULAR CLAIM, I AM CONCERNED AS, TO, WE WERE IN A CASE YESTERDAY ON THE STANDARD, IS YOUR CLAIM THAT THE PLEA SHOULD BE WITHDRAWN AND, THAT HE SHOULD, ON THAT ISSUE, IF THAT'S SO, HOWEVER YOU FRAME IT, WHETHER YOU FRAME IT AS ONE HE WAS INCOMPETENT TO ENTER THE PLEA, OR, HE WASN'T GIVEN GOOD ADVICE OR SOMETHING, DON'T YOU HAVE TO PROVE AND HAVE YOU, THAT, BUT FOR THIS, HE WOULD HAVE WITHDRAWN HIS PLEA AND GONE TO TRIAL?

AND SO, EXPLAIN HOW OUR CASE LAW INTERACTS WITH YOUR CLAIM THAT CARRY IT OUT TO ITS LOGICAL CONCLUSION AS TO WHAT IS ACTUALLY BEING CLAIMED AND WHAT THE PREJUDICE PRONG WOULD CONSIST OF.

>> THE ECHOLS CASE WE ALREADY RECOGNIZED AS DISTINGUISHABLE BECAUSE IT WAS A NO COUNSEL PLEA.

BUT NEVERTHELESS BECAUSE OF MAYBE THE FEW TIMES THAT ISSUE COMES ABOUT COMPETENCY OF A PLEA, AS CITED IN THE BRIEF, ECHOLS SAYS THAT, IF A DOUBT IS RAISED ABOUT SANITY OR COMPETENCY, THEN BY RIGHT, THE PLEA SHOULD BE ALLOWED TO BE WITHDRAWN.

SO NOW RECALL THAT IT WAS ON OCTOBER 14, 1998, --

>> ISN'T THERE TESTIMONY BY EXPERT MENTAL HEALTH EXPERTS

THAT HIS, LACK OF COMPETENCY
DEVELOPED AS A RESULT OF THE
PLEA AND HIS REALIZATION HE
JUST PLEADED GUILTY TO
MURDER?
ALMOST LIKE POST STRESS
TRAUMATIC SYNDROME.
>> THAT WAS CERTAINLY THE
OPINION OF DR. DANZIGER.
JUSTICE CANTERO.
>> ISN'T THE TRIAL COURT
ALLOWED TO RELY ON THAT
OPINION?
>> YES.
EXCUSE ME, TWO MATTERS, THE
BRIEFING BY BOTH SIDES
OUTLINES THE SYNOPSYS OR
CONCLUSIONS OF THE DOCTORS.
DR. DANZIGGER FELT IT WAS
LIKELY THE PLEA CHANGE
ITSELF WAS STRESSOR CAUSING
THIS EPISODE.
DR. FISHER FELT THAT IT MAY
HAVE BEEN OTHER STRESSORS,
THAT COMBINED WITH A
DEPRESSION CAUSED THE,
PSYCHOSIS THAT MAYBE BEFORE.
SO NOBODY, WAS TOTALLY
CERTAIN OR CONCLUSIVE BEYOND
A REASONABLE DOUBT, IF YOU
WILL, JUSTICE CANTERO.
THE --
>> HOW DID THE TRIAL COURT'S
ORDER RESOLVE THAT ISSUE?
>> WELL, TWO THINGS.
THE COURT RECOGNIZED THE
IMPACT AND RELIED MORE ON
DR. DANZIGER'S FEELINGS THAT
THE LIKELY STRESSOR WAS THE
PLEA CHANGE ITSELF.
BUT THE COURT TREATED, IN MY
OPINION, INCORRECTLY THE
FACT THAT 26 DAYS LATER IS
WHEN MR. CAUDILL WENT TO THE
JAIL.
AND THAT'S WHEN MR. BARNHILL
HIMSELF ASKED TO WITHDRAW
THE PLEAS BECAUSE
MR. BARNHILL FELT HE WAS
INCOMPETENT AT THAT TIME.
AND MR. CAUDILL TESTIFIED
THEN DURING THAT JAIL VISIT
THEY DISCUSSED THE,
POSITIVES AND THE NEGATIVES

AND ALL THE RAMIFICATIONS OF
A REQUEST TO WITHDRAW THE
PLEA.
AND WE RECOGNIZE THAT
MR. CAUDLE SAID BY THAT TIME
IT WAS A STRATEGIC DECISION
TO STAY WITH THE PLEA AND IN
THE WORDS OF MR. CAUDLE, HE
DIDN'T WANT THE COURT TO
THINK THAT, BY FILING A
MOTION TO WITHDRAW THEY WERE
JERKING THE COURT AROUND.
>> I GUESS I FEEL AGAIN
WE'RE COMBINING THEN THE
QUESTION WAS HE IN FACT
COMPETENT OR NOT TO ENTER
THE PLEA.
THAT'S SOMETHING THAT IS,
THAT THE JUDGE HAS MADE
BASED ON ALL THE EVIDENCE, A
CONTRARY FINDING HAS FOUND
THAT HE WAS COMPETENT, NO. 1,
THAT'S THE ONE POSSIBILITY
YOU COULD PREVAIL ON IF HE
WAS FOUND TO BE ACTUALLY
INCOMPETENT AT THE TIME.
BUT THE JUDGE HAS FOUND
CONTRARY TO YOU ON THAT.
NOW THE NEXT ISSUE IS,
SHOULD A REASONABLY
COMPETENT LAWYER REASONABLY
EFFECTIVE LAWYER HAVE, HAVE,
WHEN MR. BARNHILL ASKED THE
PLEA BE WITHDRAWN SHOULD HE
HAVE GONE AHEAD AND TRIED TO
DO THAT?
IS THAT A SEPARATE CLAIM
WHETHER HE WAS ACTUALLY
COMPETENT OR NOT AT THE TIME
OF THE PLEA?
>> I THINK THE BEST WAY TO
RESPOND, JUSTICE PARIENTE,
IS THAT THE, CLAIM IN THE
3851 MOTION GOES TO THE
FAILURE TO FILE A WRITTEN
WRITTEN MOTION TO COMPLIMENT
THE VERBAL REQUEST TO HAVE
EITHER THE PLEA WITHDRAWN OR
TO HAVE AN EVALUATION OF THE
DEFENDANT'S COMPETENCY AT
THE TIME OF THE PLEA, NOT
THE DAY AFTER.
THAT'S THE UNUSUAL FEATURE
ABOUT THIS AND DIFFICULTY.

BUT REMEMBER WHAT DEFENSE COUNSEL TESTIFIED AT THE EVIDENTIARY HEARING.
AND IT'S CLEAR THAT THE PLEA WAS OVER THEIR OBJECTIONS.
THE PREJUDICE BECOMES, FROM THEIR INABILITY TO ARGUE AND, MANAGE AS BEST THEY COULD IN THE GUILT PHASE OF THIS CASE THE, PARDON ME THE, THE CUP PABLT OF WHAT THEY SAID WERE -- CULPABILITY, WHAT THEY WERE TRYING TO SHOW WITH WHAT WAS THE GO DEFENDANT, JACKSON'S INVOLVEMENT.
WHEN MR. BARNHILL SAID I SHOWED UP THAT AFTERNOON AFTER THE SUPPRESSION HEARING AND SAID, NOPE I JUST WANT TO PLEA, IT WAS AGAINST THEIR ADVICE AND THEY KNEW THEY HAD THEIR KNEES CUT OFF ON HALF OF THEIR ABILITY.
>> AGAIN SO WHERE, BUT HE WASN'T AD PLEA.
THE JUDGES FOUND HE WAS COMPETENT TO PLEA GUILTY.
I DON'T SEE WHERE THE CLAIM IS.
I UNDERSTAND --, IF HE WANTED TO PLEAD, THEY DIDN'T WANT HIM TO, ENTERS KNOWINGLY VOLUNTARY PLEA.
THE JUDGE HERE HAS VERIFIED BASED ON ANY EVIDENCE THAT YOU PRESENTED THAT HE WAS COMPETENT TO ENTER THAT PLEA.
NOW WE GO TO, AFTER, THE FACT CAN SOMEBODY BE HELD TO BE IN AN EFFECTIVE IN NOT SUBSEQUENTLY MOVING TO WITHDRAW A PLEA BASED ON WHAT?
A CHANGE OF HEART, THE FACT THAT HE NOW REALIZES HE WASN'T COMPETENT?
WHAT WOULD BE THE BASIS FOR SAYING HE IS INEFFECTIVE AND NOT SUBSEQUENTLY MOVING TO WITHDRAW THE PLEA?
>> REMEMBER, JUSTICE

PARIENTE, MR. CAUDLE AGREED THAT THE, CHANGE OF PLEA WAS IMPRUDENT BY, AN IMPRUDENT DECISION BY THEIR CLIENT.
REMEMBER THAT MR. BARNHILL HIMSELF ON NOVEMBER 10th, TOLD AND ASKED MR. CAUDLE TO WITHDRAW THE PLEA BECAUSE BARNHILL HIMSELF FELT HE WAS INCOMPETENT.
YOU COMBINE THAT WITH THE FACT THAT MR. CAUDLE TWICE TOLD THE COURT ON OCTOBER 15, BEFORE THE, BEFORE THE, INITIAL EVALUATIONS CAME IN THAT DAY, THAT, BARNHILL'S BEHAVIOR WAS CHANGING DURING THE SUPPRESSION HEARD, OR MOTION AND BEFORE HE INTERRUPTED THEM AND SAID HE WANTED TO DO IT.
SO THE WHOLE ISSUE IS THERE.
AND UNDER ECHOLS, IF MR. CAUDLE HAD FILED A MOTION TO EITHER AS THE COURT ASKED ON OCTOBER 15th, FILED A MOTION TO HAVE, MR. BARNHILL, EVALUATED FOR COMPETENCY AT THE TIME OF THE PLEA.
MR. CAUDLE DID NOT DO THAT.
MR. CAUDLE DID NOT FILE A MOTION TO WITHDRAW THE PLEA BASED ON THE REQUEST OF HIS CLIENT.
SO --
>> SO ARE YOU REALLY SAYING THAT, AN ATTORNEY AND HIS CLIENT, CANNOT SIT DOWN TOGETHER DISCUSS THE WISDOM OR NOT OF, WHETHER TO WITHDRAW A PLEA OR NOT, AND IF THEY COME TO A DECISION NOT TO, THAT'S GOING TO BE INEFFECTIVE ASSISTANCE OF COUNSEL?
>> ONLY WITH THIS CLARIFYING FACTOR, JUSTICE QUINCE.
NO DOCTOR AT THAT TIME DURING THAT MONTH WHEN THIS WHOLE MATTER CAME UP, MR. ,
NO DOCTOR EVALUATED MR. BARNHILL TO SEE IF HE COULD HAVE BEEN INCOMPETENT

ON OCTOBER 14th.
THE JUDGE DENIED THAT
REQUEST AND MR. CAUDLE SAID,
WELL, BESIDES THAT, THEN GO
AHEAD AND DO THE COMPETENCY
EVALUATION TO PROCEED.
>> THAT SEEMS TO, I MEAN I
KNOW THAT'S WHAT YOU'RE
ARGUING BUT WHEN YOU LOOK AT
WHAT THE HEALTHCARE
PROFESSIONAL ACTUALLY SAID
ABOUT MR. BARNHILL, HE
TALKED ABOUT THE FACT THAT
THE PLEA WAS PROBABLY, FOR
LACK OF A BETTER WORD, THE
STRAW THAT BROKE THE CAMEL'S
BACK, SENT HIM INTO THIS
BRIEF PSYCHOTIC EPISODE.
HE TALKS ABOUT THE FACT THAT
IT PROBABLY WAS NOT THERE ON
THE 14th.
MR. CAUDLE SAYS THAT HE HAD
NO REASON TO BELIEVE THAT HE
WAS, AT THIS, PSYCHOTIC
EPISODE HAD STARTED AT THE
TIME OF THE PLEA.
SO I'M TRYING TO PIECE
TOGETHER YOUR ARGUMENT HERE
AS TO WHY BASED ON THOSE
KINDS OF FACTS THE DEFENSE
ATTORNEY AFTER DISCUSSING IT
WITH HIM AND TALKING ABOUT
THE PROS AND CONS, WOULDN'T
BE ABLE, -- A STRATEGIC
REASON NOT TO.
>> JUSTICE QUINCE, ONE
CORRECTION TO THE WAY YOU
RELATED THE FACTS IF I MAY.
MR. CROWD DILL TWICE TOLD
THE JUDGE ON OCTOBER 15,
THAT BARNHILL'S BEHAVIOR WAS
CHANGING EARLIER THAT
AFTERNOON OR THAT DAY AND HE
WAS CONCERNED THAT
COMPETENCY AND VOLUNTARY!!INESS
AND EVERYTHING ABOUT THE
PLEA MIGHT HAVE BEEN AT
ISSUE AND THAT'S WHY HE
ASKED THE JUDGE TO EVALUATE
FOR COMPETENCY, NOT JUST TO
PROCEED.
>> DIDN'T HE ALSO STATE WHEN
DIRECTLY ASKED BY THE TRIAL
JUDGE, DID YOU HAVE ANY

BASIS TO BELIEVE HE WAS INCOMPETENT ON THE 14th? DIDN'T HE SAY --
>> NO, ABSOLUTELY.
AT THE TIME OF THE HE PLEA HE INDICATED, AND SO TESTIFIED, TOLD THE COURT THEN AND IN EVIDENTIARY THAT HE FELT THAT -- AND CLEARLY THAT WAS, AN ITEM OF REFLECTION BUT NEVERTHELESS, BEFORE THE COURT ADJOURNED THE PROCEEDINGS ON OCTOBER 15, MR. CAUDLE ALERTED THE COURT THAT THERE IS SOMETHING GOING ON, THAT QUESTIONED THE VOLUNTARINESS AND UNDERSTANDING AND THE FREEDOM --
>> WHAT DID THE COURT DO? DIDN'T TWO PSYCHOLOGISTS EVALUATE HIM ON OCTOBER 15th?
>> YES.
AND THEN THE NEXT DAY, JUDGE, THE, BOTH OF THOSE DOCTORS WERE ABLE TO FURNISH EVEN WRITTEN REPORTS TO THE COURT.
>> THEN ON THE 17th, DR. DANZIGER THE PSYCHIATRIST EVALUATED --
>> ON THE 16th THE COURT ESSENTIALLY DID TWO THINGS. RECOGNIZED THAT BOTH DOCTORS, TO SOME, YOU KNOW TO LARGE EXTENT AGREED THAT THE DEPRESSIVE STATE OF BARNHILL WAS KIND OF OVERWHELMING. AND THAT, PROCEEDING NEEDED TO BE CONTINUED.
SO HE ORDERED THEN DR. DANZIGER'S INVOLVEMENT AS AN MD PSYCHIATRIST TO DO AN EVALUATION AND ALSO DID THE TREATMENT.
>> IN THE FACTS AS FOUND BY THE TRIAL COURT BASICALLY WAS, THERE WASN'T ANY INDICATION OF PROBLEMS ON THE 14th.
TRIAL COUNSEL NOTICED BEHAVIOR PROBLEMS ON THE 15th.

NOTIFIED THE TRIAL COURT TWO PSYCHOLOGISTS INTERVIEW HIM THAT DAY.
TWO DAYS LATER A PSYCHIATRIST INTERVIEWS HIM?
>> WELL, WITH THIS CLARIFICATION.
THAT ON, THE 15th WHEN THE JUDGE DENIED MR. CAUDLE'S REQUEST TO EVALUATE FOR COMPETENCY AT THE TIME OF THE PLEA IN CONTRAST TO EVALUATING FOR COMPETENCY TO PROCEED.
>> RIGHT.
>> THE JUDGE SAID, I WILL DENY YOUR QUESTION AT, FOR THIS TIME WITH THE IMPLICATION, THAT IF MR. CAUDLE HAD INSISTED, WE ALL MIGHT KNOW BECAUSE, WE, BECAUSE, NOBODY EVALUATED HIM FOR COMPETENCY ON THE 14th OR THE 13th OR WHAT HAVE YOU.
ONLY COMPETENCY TO --
>> BEFORE YOU SIT DOWN, YOU'RE IN YOUR REBUTTAL I NOTICE.
>> I'M SORRY.
>> WHAT ARE THE NAMES OF THE JURORS THAT YOU WERE REFERRING TO IN YOUR BRIEF?
>> MR. ROBINSON AND MR. LOWE.
>> YOU SAY THAT THEY ACTUALLY SERVED?
>> I BELIEVE THEY DID.
AND, THE STATE MAY BE ABLE TO, THE STATE DIDN'T SAY ELSEWISE AND I BELIEVE THEY WERE IN CONCURRENCE WITH THAT.
>> I THOUGHT THERE WAS AN ARGUMENT ABOUT, AT LEAST ONE OF THEM BEING IN PEREMPTORY CHALLENGE BEING USED AGAINST MR. ROBINSON?
THERE WAS NO PEREMPTORY CHALLENGE USED AGAINST HIM?
>> I MAY STAND CORRECTED, JUSTICE QUINCE BUT I DON'T BELIEVE SO.
>> MR. DAVIS.

>> MAY IT PLEASE THE COURT
MY NAME IS BARBARA DAVIS I
REPRESENT THE STATE OF
FLORIDA INSOFAR AS QUESTION
ON THE JURORS, JUROR
ROBINSON THE DEFENSE HAD
ASKED TO STRIKE HIM FOR
CAUSE.
THEY HAD TO USE A PEREMPTORY
ON HIM.
THEY ASKED FOR ADDITIONAL
PEREMPTORY.
IT WAS DENIED.
HE WAS STRICKEN IN THE
JUDICIAL RECORD.
THE JUDGE TOOK JUDICIAL
NOTICE OF THE ORIGINAL
RECORD.
PAGE 167.
JUROR LOWE WAS STRICKEN ON
PAGE 1693 BY THE STATE.
THAT IS THE CITES TO THE
ORIGINAL RECORD.
AS FAR AS, THE VOIR DIRE, IF
YOU READ IT IN ITS ENTIRE,
AND THE JUDGE EVEN MADE A
JOKE ABOUT ARTHUR HALF, WHO
IS PUBLIC DEFENDER HOW HE IS
MORE TALKATIVE THAN
MR. CAUDLE.
WHEN WE WERE AT EVIDENTIARY
HEARING, ARTHUR HALF'S
TESTIMONY TOOK ABOUT THREE
HOURS BUT MR. CAUDLE WILL
ONLY TAKE A HALF HOUR.
MR. HALF DID INCREDIBLY GOOD
JOB DURING THE VOIR DIRE.
>> ROBINSON OR LOWE SERVED
ON ACTUAL JURY?
>> KNOWS.
THEY DID DID NOT.
THOSE WERE THE CITES THEY
WERE ACTUALLY STRICKEN.
LOWE THE ONE THE DEFENSE
COMPLAINED B THE STATE
STRUCK LOWE.
THE VOIR DIRE IF YOU READ
ENTIRETY, DEFENSE COUNSEL,
DID STRIKE TWO JURORS OR
CAUSE AND PRESERVED TWO
ISSUES ON DIRECT APPEAL
ABOUT TWO CAUSE STRIKES
WHICH WERE DENIED.
AS FAR AS W DRAWING THE PLEA,

BOTH, NOW, UNDERSTAND THAT
MR. BARNHILL NEVER TESTIFIED
AT THE EVIDENTIARY HEARING.
HE NEVER SAID HE WANTED TO
WITHDRAW THE PLEA AT ANY
POINT.
THAT HE --
>> WELL HE DID SAY,
ACCORDING TO, -- HE DID IN
FACT SAY TO HIS ATTORNEY AT
SOME TIMES, MAYBE WE SHOULD
WITHDRAW THIS PLEA.
I MAY NOT HAVE BEEN
COMPETENT ON THAT DAY OR,
WORDS TO THAT EFFECT.
IS THAT CORRECT?
OR IS THAT NOT CORRECT?
>> THE TRIAL JUDGE FINDINGS
IN THE RECORD AT 1318 TO
1319, SAID THAT CO-COUNSEL,
TIMOTHY CAUDLE TESTIFIED HE
AND THE DEFENDANT SPOKE
ABOUT THE PLEA AFT WARDS AND
DISCUSSED WHETHER TO
WITHDRAW IT.
AND THAT'S, MY BRIEF IT AT
TEN.
>> THAT DOESN'T HE WAS THE
ONE, BARNHILL, DID HE GO TO
HIS ATTORNEY AND SAY, I
THINK I MIGHT HAVE BEEN
INCOMPETENT ON THAT DAY,
LET'S WITHDRAW THIS PLEA.
>> THERE IS NO EVIDENCE IN
THE RECORD ABOUT THAT.
>> THE LAWYER DIDN'T TESTIFY
WHAT BARNHILL SAID TO HIM?
>> NO, SIR.
WITH WHAT WE HAD WAS A NOTE,
WRITTEN BY MR. CAUDLE, THE
PUBLIC DEFENDER, WHICH I
CANNOT FIND IN THE EXHIBITS
BUT, THERE WAS A NOTE THAT
HE HAD WRITTEN, THAT HE
DISCUSSED WHETHER TO
WITHDRAW THE PLEA WITH
MR. BARNHILL.
THEY DISCUSSED THAT ON,
NOVEMBER 8th OR 10th AND,
THEY, AND, THEY, NOW,
UNDERSTAND, THESE DEFENSE
COUNSEL TALK COMPLETELY WITH
MR. BARN I WILL HEADLIGHT
AND ---- L -- BARNHILL.

AND DISCUSSED EVERYTHING.
>> CAUDLE NEVER TESTIFIED ONE OF THE THINGS BARNHILL SAID TO HIM, MAYBE I OUGHT TO WITHDRAW MY PRE, SOMETHING LIKE THAT?
>> NO, SIR.
BUT THE NOTE SAID DISCUSSION ABOUT BARNHILL'S DESIRE TO WITHDRAW A PLEA.
THAT'S WHAT THE NOTE, IN THE RECORD.
I CAN'T FIND THE NOTE BUT WHEN THE NOTE WAS WRITTEN --
>> THAT IS CLOSE AS THE RECORD COMES INDICATING BARNHILL HAD A DESIRE TO WITHDRAW THE PLEA?
>> YES, SIR.
AND WANTED TO DISCUSS WITH COUNSEL WHETHER THERE WERE GROUNDS TO WITHDRAW IT BECAUSE HE MAY NOT HAVE BEEN COMPETENT ON THE 14th.
THEY DISCUSS THE LED IT.
THEY SAID IN DISCUSSING IT TOGETHER THEY WOULD USE THAT PLEA IN MITIGATION TO SHOW THAT HE WAS COOPERATING, ADMITTING HIS GUILT AND SHOWING REMORSE AND THAT, IF HE DID TRY TO WITHDRAW THE PLEA, THE COURT COULD PERCEIVE THAT AS JERKING HIM AROUND.
>> THAT WAS THE BASIS OF THE STRATEGIC DECISION, NOT TO SEEK WITHDRAWAL?
>> WELL THAT, AND HE WAS COMPLETELY COMPETENT.
THERE WERE NO GROUNDS TO WITHDRAW THE PLEA.
>> THAT THE LAWYERS OPINION WAS THAT HE WAS REMAINED COMPETENT?
>> ABSOLUTELY.
AND BOTH LAWYERS TESTIFIED AT THIS EVIDENTIARY HEARING THERE WAS NO QUESTION ABOUT MR. BARNHILL'S COMPETENCY ON OCTOBER 14th WHEN THE PLEA WAS ENTERED.
HE, THEY HAD WORKED THIS CASE UP FOR THREE YEARS.

THEY WERE READY TO GO TO TRIAL.
THEY HAD SELECTED THE JURY.
THE JUDGE JUDGE, LET THE JURY GO TO DO MOTIONS AND THEN WHEN THE JUDGE DENIED THE MOTION TO SUPPRESS, AND REMEMBER WHEN MR. BARNHILL WAS ARRESTED IN NEW YORK, HE STILL HAD ON THE HORNETS JERSEY WITH MR. GALLIPEAU'S DNA, HIS BLOOD ON THE JERSEY.
>> HOW MANY DAYS AFTER THE MURDER WAS THAT 1234 TWO.
>> TWO.
THE MURDER WAS AT ABOUT 2:30 IN THE AFTERNOON, BETWEEN, WELL, HE GOT THERE ABOUT, BETWEEN 4:00 AND 6:00.
HE WAS AT THE HOUSE.
MURDERED HIM AROUND 5:30 OR 6:00.
THEN THEY --
>> WHEN WAS HE ARRESTED IN NEW YORK?
>> IT WAS, I WOULD SAY, 36 TO 48 HOURS LATER BECAUSE.
>> WHAT?
>> 6 TO 48 HOURS.
THEY DROVE FROM SANFORD TO NEW YORK WHICH I THINK TOOK THEM 18 HOURS.
>> I WANT TO GO BACK TO SOMETHING ABOUT THIS PLEA.
JUST SO I UNDERSTAND SOMETHING.
IN THIS CASE THE LAWYERS DIDN'T THINK IT WAS A GOOD IDEA FOR, EVEN, WITH, WHATEVER WAS FOUND ON MR. BARNHILL FOR HIM TO PLEAD GUILTY, CORRECT?
>> YES.
>> OKAY.
SO THEN HE PLEADS GUILTY.
AND THEN HE'S GOT FOR WHATEVER REASONS, HIS OWN SECOND THOUGHTS ABOUT WHETHER HE WANTS TO PLEAD GUILTY.
SO, HE DISCUSSES IT WITH HIS LAWYERS.
HIS LAWYERS SAY, THE JUDGE

IS GOING TO BE UPSET WITH US,
IF WE DO IT.
IS THAT -- WHEN YOU SAY
THERE IS A STRATEGIC REASON
FOR NOT HAVING THEN TRIED TO
WITHDRAW THE PLEA, THAT THEY
THOUGHT WAS NOT A GOOD IDEA
IN THE FIRST PLACE, WHAT'S
THE STRATEGIC REASON?
>> WELL, FIRST OF ALL, THERE
IS NO BASIS TO WITHDRAW THE
PLEA.
>> WHAT'S THE STRATEGIC
REASON?
>> SECONDLY THEY DISCUSSED
USING THE PLEA AS MITIGATION.
AND THIRD, --
>> I UNDERSTAND.
BUT WE STARTED, THIS IS A
LITTLE UNUSUAL.
USUALLY THE LAWYERS ARE
SAYING, YES IT'S A GOOD IDEA
TO PLEAD.
HERE THEY HAD SAID, WE DON'T
THINK SO.
BUT HE INSISTED.
WELL NOW A DAY LATER IS LIKE
FREAKING OUT ABOUT IT.
THEN HE KNOW SAYS I HAVE
SECOND THOUGHTS.
TALKING ABOUT WE'RE PLEADING
TO FIRST-DEGREE MURDER.
SO, I'M TRYING TO UNDERSTAND
AND AGAIN, THEN TRYING TO
SEE WHERE THE, WHERE WHERE
IT GETS US, WHY THE LAWYERS
WOULDN'T GIVE IT, A TRY?
IT'S STILL WITHIN 30 DAYS OF
THE PLEA, TO TRY TO WITHDRAW
IT WHEN THE, WHATEVER THE,
THERE HAS BEEN NO SENTENCE.
SO THERE IS A LESSER
STANDARD.
WHAT'S THE, STRATEGIC REASON
AT THAT POINT?
NOW ALL OF SUDDEN, NOW WE
REALIZE IT WAS A GOOD IDEA
FOR HIM TO PLEAD.
IT COULDN'T HAVE BEEN THAT
BECAUSE THEY SAID IT WASN'T
A GOOD IDEA.
WAS IT THEY WERE GOING TO
GET THE JUDGE UPSET BY HIS
MOVING TO WITHDRAW THE PLEA?

>> WELL, FIRST OF ALL,
MR. BARNHILL NEVER TESTIFIED
AND THERE IS NO EVIDENCE
THAT HE SAID I WANT TO
WITHDRAW THIS PLEA.
WHAT THERE WAS A NOTE, AND
MR. CAUDLE TESTIFIED, WELL,
HIS PHRASING OF DEFENDANT'S
DESIRE TO WITHDRAW THE PLEA,
HE COULDN'T REMEMBER WHETHER
DEFENDANT HAD CALLED HIM.
WHETHER HE WAS JUST OUT
THERE AND THEY TALKED ABOUT
WHETHER TO WITHDRAW THE PLEA
OR NOT.
>> OKAY.
SO THIS RECORD, THIS MIGHT
BE THE, ON THIS RECORD,
BECAUSE HE DIDN'T TESTIFY TO
THIS FACT AT THE EVIDENTIARY
HEARING, WE CANNOT ASSUME
THAT EITHER HE WANTED TO
WITHDRAW THE PLEA BACK THEN,
OR THAT EVEN NOW, THAT HIS
DESIRE WAS TO WITHDRAW THE
PLEA BECAUSE HE DIDN'T
TESTIFY TO THAT?
>> CORRECT.
AND HE WAS BEFORE THE COURT
FIVE MORE TIMES BECAUSE THE
PENALTY PHASE THEN TOOK
PLACE 11 MONTHS LATER.
AND, MR. BARNHILL, THE JUDGE
RECOGNIZED HIS PRESENCE AT
EVERY SINGLE HEARING FOR
THOSE 11 MONTHS.
BEFORE THEY PICKED THE
PENALTY PHASE JURY, THE
JUDGE RECOGNIZED HIM.
SAID NOW YOU'VE ENTERED A
PLEA IS EVERYBODY READY TO
GO TO PENALTY PHASE.
>> YOU KNOW, WHEN DEFENDANTS
COME BEFORE THE COURT FOR
WHATEVER HEARING OR THOSE
KINDS OF THINGS THAT GO ON
BEFORE THE ACTUAL TRIAL,
DEFENDANTS RARELY COME
BEFORE THE COURT AND SAY,
WAIT, JUDGE, LET ME TELL YOU
THIS.
I WANT TO WITHDRAW MY PLEA.
I WANT THIS, YOU KNOW THEY
SHOULD HAVE FILED A MOTION

TO SUPPRESS.
NONE OF THAT KIND OF STUFF.
I MEAN, IT JUST SEEMS TO ME
THAT IT DOESN'T MATTER
WHETHER HE WAS BEFORE THE
COURT ALL THESE TIMES.
IT MATTERS WHETHER OR NOT
THERE WAS A REASON THAT, THE
DEFENSE ATTORNEYS SHOULD
HAVE FILED A MOTION TO
WITHDRAW.
>> THERE WAS NO REASON.
THERE WAS NO REASON TO
WITHDRAW THE PLEA.
WHEN MR. BARNHILL WAS
REGAINING COMPETENCY, WHICH
WAS RIGHT ABOUT THE TIME
MR. CAUDLE WENT TO SEE HIM.
THAT WAS NOVEMBER 8th OR 10.
IF YOU LOOK IN THE ORIGINAL
RECORD, DR. DANZIGER'S
PARTNER, DR. PEREZ, HAD SEEN
HIM ON NOVEMBER 12th.
AND HE WAS FINE.
SO AT THAT POINT, THEY WERE
DISCUSSING, OKAY, NOW YOU'VE
ENTERED A PLEA, WHAT ARE THE
RAMIFICATIONS OF THAT AND
DISCUSSING THAT.
AND THAT'S WHAT COUNSEL IS
FOR IS TO ADVISE HIS CLIENT
OF WHERE ARE WE NOW?
THERE WAS NO TESTIMONY FROM
EITHER MR. CAUDLE OR
MR. HALF, THAT MR. BARNHILL
EVER TOLD THEM, I WANT TO
WITHDRAW MY PLEA.
AND THEY WERE VERY CLOSE TO
THIS DEFENDANT.
THEY WERE IN COURT
CONTINUOUSLY.
IF MR. BARNHILL HAD TOLD
THEM I WANT TO WITHDRAW MY
PLEA, THEY WOULD HAVE
WITHDRAWN IT.
>> SO THERE IS NO LETTER TO
COUNSEL NEW YORK LETTER TO
COURT NOR ORAL STATEMENT
FROM THE DEFENDANT OR ANY
OTHER EVIDENCE IN THIS
RECORD WHERE HE SAYS, I MADE
A MISTAKE I WANT TO WITHDRAW
MY PLEA?
>> NO, SIR.

AT THE EVIDENTIARY HEARING
HE DID NOT TESTIFY I TOLD MY
ATTORNEYS I WANTED TO
WITHDRAW THE PLEA AND THEY
REFUSED TO DO IT.
>> NOW I'M CONFUSED THEN.
WHY ARE WE TALKING ABOUT WHO
SAID THERE WAS A STRATEGIC
REASON FOR THEM NOT TO
WITHDRAW THE PLEA?
WHERE DID THAT COME FROM?
>> BECAUSE MR. CAUDLE
TESTIFIED THAT WHEN HE AND
MR. BARNHILL WERE DISCUSSING
THIS, THEY SAID, IF, FIRST
OF ALL, WITHDRAWING A PLEA
IS A HUGE THING.
AND THERE MAY OR MAY NOT BE
GROUNDS.
SECONDLY, WE CAN USE THIS
PLEA AS MITIGATION, WHICH
THEY DID.
AND IT WAS FOUND AS
MITIGATION THAT HE
COOPERATED WITH THE COURT.
THAT HE ENTERED A GUILTY
PLEA AND, THIRDLY, THAT,
THIS IS I'M STRAIGHT OUT OF
THE JUDGE'S FINDINGS TOO,
THAT, IT COULD BE PERCEIVED
THAT MR. BARNHILL WAS
MANIPULATING THE COURT.
>> I GUESS, SO IT SOUNDS TO
ME LIKE THAT MEANS THAT, HE
DID WANT TO WITHDRAW HIS
PLEA BUT I'M NOT GOING TO
BEAT, THIS WHOLE CLAIM IS
CONCERNS ME BECAUSE IT SEEMS
LIKE WE'RE THROWING A LOT OF
THINGS TOGETHER.
I DON'T THINK THAT THE,
MR. BARNHILL IS, ESTABLISHED
PREJUDICE BY, I DON'T THINK
THERE IS IN THIS RECORD THAT
HE SPECIFICALLY SAID HE
WOULD WITHDRAW HIS HE PLEA.
BUT IT SOUNDS LIKE READING
BETWEEN THE LINES THAT MAY
HAVE HAPPENED, JUST NOT
ESTABLISHED IN THIS RECORD.
SO, ARE THERE, THE OTHER
ISSUE THAT I, THAT, WASN'T
DISCUSSED IN MR. STRAIN'S
DIRECT ARGUMENT WAS ABOUT

THE RECUSAL OF THE TRIAL JUDGE.
AND, WHETHER BECAUSE WE ONLY DENIED IT BASED ON A TECHNICALITY.
HOW DO WE EVALUATE THAT CLAIM? OF INEFFECTIVE ASSISTANCE OF COUNSEL?
>> THIS COURT FOUND THE MOTION LEGALLY INSUFFICIENT BECAUSE OF THE TECHNICALITY!!IS.
BUT LEGALLY INSUFFICIENT ALSO MEANS THERE IS NOT A WELL-FOUNDED FEAR HE WILL NOT RECEIVE AN IMPARTIAL TRIAL.
>> YOU THINK BY NOT DISTINGUISHING IT WE RULED ON BOTH THE MERITS AS WELL AS THE PROCEDURAL DEFECT?
>> I DON'T SEE HOW THIS COURT COULD NOT INHERENTLY RULE ON THE LEGAL SUFFICIENCY OF THE REASONS WITHIN THAT MOTION AND ALLOW A CASE TO GO FOR ANOTHER 10 YEARS AND THEN SAY, OH, WELL IT'S LEGALLY INSUFFICIENT.
I MEAN IT'S LEGALLY SUFFICIENT, IF COUNSEL HAD DONE THESE LITTLE TECHNICAL THINGS THESE GROUNDS ARE GOOD.
I REALLY CAN'T SEE THIS COURT DOING THAT.
IF THOSE GROUNDS HAD BEEN GOOD AND, I'M, IF YOU LOOK AT THE INITIAL BRIEF AND ANSWER BRIEF THE TECHNICALITIES WERE NOT RAISED IN THE BRIEFS ON APPEAL.
THEY WERE RAISED BY THE COURT.
I HAVE NO IDEA WHY THAT HAPPENED.
BUT IF, YOU LOOK AT THE GROUNDS THAT WERE RAISED IN THE CASE LAW THAT I'VE CITED, MANSFIELD, ARBILIAZ, RIVERA AND CHAMBERLAIN, REMEMBER THIS TRIAL JUDGE IS, HAS VERBAL, IN ARBILAZ COURT WARNED AGAINST INJUDICIOUS

STATEMENTS.
IT WASN'T JUST TARGETED TO DEFENSE COUNSEL.
IT'S TARGETED TO THE STATE TOO.
AND --
>> IN THIS CASE WHAT WAS THE CIRCUMSTANCES UNDER WHICH THE TRIAL JUDGE MADE THE STATEMENTS THAT MR. BARNHILL NOW CLAIMS, DEMONSTRATES THE BIAS AND PREJUDICE?
>> THIS WAS IN THE PERIOD WHEN THE JURY WAS RECESSED AFTER IT HAD BEEN SELECTED FOR THE GUILT PHASE, THEY WERE GOING TO TRIAL.
THEY DID THE MOTION TO SUPPRESS.
THE BASIS OF THE MOTION TO SUPPRESS WAS THAT, THERE WAS AN OLD ARREST WARRANT IN NEW YORK.
WHEN THEY 1207D THE CAR, THEN THE TWO PEOPLE IN THE CAR IN NEW YORK, SAID, MR. BARNHILL IS OVER AT THIS APARTMENT.
SO, THEY FOUND THIS OLD ARREST WARRANT FOR MR. BARNHILL.
THEY WENT TO THE APARTMENT.
THE GIRLFRIEND WHO HAD HIS BABY, AND IT WAS HER PARENT'S HOUSE, GAVE THEM CONSENT TO COME IN.
>> I GUESS WHAT I'M REALLY ASKING YOU IS, WAS THIS STATEMENT MADE IN THE CONTEXT OF THE TRIAL COURT RULING ON THE MOTION TO SUPPRESS, OR WAS THIS SOMETHING THAT WAS SUPERFLUOUS AND OUTSIDE OF THAT DETERMINATION?
>> NO, HE WAS, SO, AT THE MOTION TO SUPPRESS, MR. BARNHILL TESTIFIED, WELL, I WAS LIVING THERE EVEN THOUGH HE HAD NO PERSONAL PROPERTY THERE.
THERE WERE NINE PEOPLE IN THE APARTMENT.
HE HAD NEVER MET THE PARENTS

WHO OWNED THE APARTMENT AND,
JUDGE LESTER IN DENYING IT,
HE GAVE HIS ORAL REASONS,
IT'S ABOUT THREE PAGE LONG.
IN THAT HE SAYS, I JUST, I
JUST DO NOT BELIEVE THAT,
AND THIS WENT TO THE
STANDING ISSUE BECAUSE THEY
HAD TO SHOW STANDING FOR HIM
TO CONTEST THAT ILLEGAL
ENTRY.
SO THE JUDGE WAS, JUST,
STATING HIS REASONS AND
SAYING THAT I DON'T BELIEVE
THAT HE WAS LIVING THERE.
>> YOU MAY BE RIGHT OR WRONG
ON THE MERITS BUT I'VE GOT
THE OPINION IN FRONT OF ME
AND IT IS, YOUR
REPRESENTATION THAT WE ALSO
CONSIDERED THE MERITS IS
REFUTED RIGHT FROM WHAT WE
SAY IN THE OPINION WHICH IS,
WE SAY LEGALLY INSUFFICIENT
BECAUSE THE SUPPORTING
AFFIDAVIT MADE BY THE
DEFENDANT DOES NOT STATE THE
SPECIFIC FACTS AND THEN, WE
GO ON A WHOLE PARAGRAPH
ABOUT TECHNICAL
REQUIREMENTS.
AND THEN IT SAYS, WITHOUT
DISCUSSING THE TECHNICAL
REQUIREMENTS, BARNHILL
ARGUES MOTION WAS LEGALLY
SUFFICIENT BECAUSE THE
GROUNDS UPON WHICH THE
MOTION WAS BASED HE CITES
THIS, WHETHER THAT IS TRUE
OR NOT THE TECHNICAL
REQUIREMENTS OF THE MOTION
WERE NOT MET AND THE TRIAL
COURT'S DECISION TO DENY THE
MOTION WAS PROPER.
SO, I DON'T KNOW HOW YOU CAN
READ THIS AND SAY THAT WE
EVEN REMOTELY LOOKED AT THE
MERITS OF THE UNDERLYING
CLAIM.
>> WHAT I SAID IS, THIS
COURT DID NOT RULE ON THE
MERITS AND I AM VERY
SURPRISED THAT THIS COURT
DID NOT --

>> "OK!".
THEN I'M SORRY.
I THOUGHT YOU SAID THAT WE MUST HAVE IMPLICITLY RULED ON THE MERITS AND, I DIDN'T SEE WHERE THAT WAS IMPLICITLY SAID.
>> NO, I SAID THAT I CANNOT IMAGINE THAT IF THIS COURT FOUND THAT THOSE FACTS WERE SO EGREGIOUS THAT A TECHNICALLY CORRECT MOTION WOULD REQUIRE DISQUALIFICATION --
>> YOU KNOW, UNLESS THIS COURT STARTS TO ABANDON ITS THOUGHTS ABOUT PROCEDURAL BARS AND, JUST GOES AND JUST, IGNORES ALL OF IT AND GOES TO THE MERITS, I DON'T THINK YOU CAN ASSUME THAT WHEN WE SAY SOMETHING IS PROCEDURALLY BARRED UNLESS WE SAY AND WE REACH THE MERITS THAT WE'VE REACHED THE MERITS.
NOW MAYBE, YOUR ARGUMENT SHOULD BE WE SHOULD ALWAYS DO THAT SO WE CAN PREVENT POST-CONVICTION BUT WE DON'T DO THAT AS A MATTER OF GENERAL COURSE HERE.
>> AND I'M SORRY IF YOU MISUNDERSTOOD ME, BUT NO THIS COURT DID NOT REACH THE REASONS --
>> YOU'RE SAYING IF, WE MUST HAVE THOUGHT IT WASN'T, HAD NO MERIT OR WE WOULD HAVE REACHED THE MERITS?
>> THAT'S WHAT, I JUST CAN'T IMAGINE IF THE COURT SAW SOMETHING SO EGREGIOUS WOULD REQUIRE DISQUALIFICATION --
>> EGREGIOUS, MOTIONS TO DISQUALIFY DON'T REQUIRE EGREGIOUS BEHAVIOR.
THEY JUST REQUIRE SUFFICIENT FACTS.
NOW BEGIN AS I SAID YOU MAY BE CORRECT THAT WHAT HE SAID, THE JUDGE, WHO YOU SAID WAS A JUDGE THAT TALKED A LOT, MAY HAVE BEEN INJUDICIOUS

BUT IT WAS SAID IN THE
CONTEXT OF A, PROCEEDING AND
SOUNDS TO ME LIKE IT WAS
POSSIBLY PERTINENT TO WHAT
HE WAS DECIDING.
SO THAT WE TAKE IT OUTSIDE
OF THE, THE MERITS OF A
MOTION TO DISQUALIFY ANYWAY.
>> AND AS I WAS SAYING TO
JUSTICE QUINCE, THE JUDGE
WENT ON AND, HE WAS, GIVING
HIS FINDINGS ON THE RECORD.
HE MADE THE FINDING AS TO
CREDIBILITY AND, I DO NOT
FIND MR. BARNHILL'S
EXPLANATION OF HIS STANDING,
TO CONTEST THIS ARREST, I DO
NOT FIND THAT CREDIBLE.
>> I THINK IF HE HAD LIMITED
TO NOT FINDING IT CREDIBLE
BUT HE WENT A LITTLE
FARTHER.
>> HE DID.
YOU LOOK AT NEXT PAGE AFTER
THAT HE IS CALLING THAT, HE
SAID IF THE STATE WERE JUST
GOING THROUGH AND ARRESTING
PEOPLE I WOULD FIND THAT
REPUGNANT.
THAT'S THE WAY THIS JUDGE
TALKS.
>> HOW WOULD YOU ASSUMING
THAT THERE WAS DEFICIENT
PERFORMANCE HOW DO YOU SHOW
PREJUDICE IN FAILING TO FILE
A MOTION, A TECHNICALLY
CORRECT MOTION TO RECUSE?
WHAT WOULD, WHAT IS
DEFENDANT HAS TO SHOW THAT
THE JUDGE WOULD HAVE RECUSED
HIMSELF?
OR THAT, EVEN IF THE JUDGE
DID RECUSE HIMSELF, THEN
ANOTHER JUDGE WOULD HAVE
RULED DIFFERENTLY?
>> THAT THERE'S A REASONABLE
PROBABILITY THE OUTCOME OF
THIS SENTENCING WOULD BE
DIFFERENT.
AND, THERE WERE FOUR VERY
STRONG AGGRAVATORS.
THERE WERE ACTUALLY FIVE BUT
ROBBERY EMERGED.
HE WAS ON COMMUNITY CONTROL

AT THIS TIME.
THE TIME HE MIRDED
MR. GALLIPEAU FOR BURGLARIES.
IT WAS HEINOUS AND ATROCIOUS.
COLD, CALCULATED.
OH, DURING THE ROBBERY WHICH
MERGED WITH PECUNIARY GAIN
AND UNDER SENTENCE.
>> IT WAS A JURY
RECOMMENDATION --
>> IT WAS 9-3.
>> WOULDN'T THE PROPER WAY,
ISN'T MORE LIKE THE PORTER
SITUATION THEY HAVE TO SHOW
ACTUAL BIAS?
BECAUSE I DON'T THINK WE
WOULD ALLOW A BIASED JUDGE
EVEN IF ANOTHER JUDGE MIGHT
REACH THE SAME RESULT, THAT
WE CAN REALLY HAVE
CONFIDENCE IN THAT.
WOULDN'T IT BE MORE A
QUESTION OF WAS ACTUAL BIAS
SHOWN?
>> YES.
AND I THINK, YOU CAN'T TAKE
A STATEMENT LIKE THIS AN
ISOLATED STATEMENT OUT OF
CONTEXT.
YOU HAVE TO LOOK AT THIS WAY
THE JUDGE CONTROLS HIS
COURTROOM.
AND WHEN YOU'RE WITH THIS
JUDGE, I MEAN LIKE YOU SAID
IN ARBIALAZ, YOU CAN'T TAKE
THE COLD RECORD AND KNOW
WHAT THE TENOR OF HIS WOIS
WAS.
ACTUALLY JUDGE LESTER
DOESN'T SOUND LIKE THAT ON
THE RECORD.
YOU CAN TAKE SOMETHING OUT
OF THE RECORD AND SAY ISN'T
THAT AWFUL.
WHEN YOU READ ENTIRE RECORD
AND THIS PENALTY PHASE WAS
HUGE.
IT WAS ABOUT 2000 PAGES.
THEY CALLED 13 WITNESSES.
THE STATE HAD 24 BECAUSE IT
WAS A GUILTY PLEA.
SO, WHEN YOU LOOK AT
EVERYTHING, AND, JUST, I
LIKE TO SAY WITH MY LAST

STATEMENT THAT THIS DEFENSE COUNSEL, IF YOU LOOK AT THIS ENTIRE RECORD WAS SO EFFECTIVE THEY BASICLY WROTE THE BOOK ON HOW TO BE EFFECTIVE.
I ASK THIS COURT TO AFFIRM THE TRIAL COURT'S ORDERS.
>> MR. STRAIN, REBUTTAL.
>> AGAIN MY APOLOGIES FOR BEING CONFUSED ABOUT THE RECORD ON THE TWO JURORS.
THE RECORD INCIDENTALLY NEEDS ALSO CORRECTED, MISS DAVIS JUST, MADE REFERENCE TO GUILTY PLEAS AS THIS COURT DID IN DIRECT APPEAL IN THE BRIEF AND EVEN MR. CAUDLE DID IN HIS WRITTEN CLOSING ARGUMENT BUT THEY WERE NO CONTEST PLEAS.
BUT NEVERTHELESS, --
>> DO YOU AGREE WITH YOUR OPPONENT THE TWO JURORS, DIDN'T ACTUALLY SERVE?
>> THAT MUST BE, IT WAS JUST MY HAVING PRECISE RECOLLECTION.
AGAIN MY APOLOGY, JUSTICE ANSTEAD.
NEVERTHELESS WHEN THIS COURT INCLUDED THAT EXCHANGE WITH THE JURORS ON DIRECT APPEAL, OPINION MIGHT HAVE BEEN, WHAT YOU COULD SAY WAS, INDICATIVE OF THE DISJOINTED AND NONSENSICAL QUESTIONING THAT WAS GOING ON.
>> BUT STILL, WHERE IS THE PREJUDICE?
EVEN IF, HE SHOULD HAVE EXAMINED THAT, THAT JUROR, THE JUROR DID NOT SERVE.
HE WAS, STRICKEN --
>> THE FOCUS --
>> WHAT'S THE PREJUDICE?
>> THE FOCUS OF THAT CLAIM IS NOT ON THOSE TWO JURORS, JUSTICE QUINCE.
I DON'T MEAN TO INDICATE THAT.
THE FOCUS IS ON THE BIFURCATED, DISJOINTED, NONSENSICAL QUESTIONING AND

IN A 9-3 VOTE --
>> THAT THE STATE
CHARACTERIZES AS NONSENSICAL,
WHATEVER.
>> THOSE ARE THE STATE'S
WORDS.
WHEN THE ABA GUIDELINES
PROPERLY REFLECT, JUST
DIDN'T HAPPEN IN THE 1980s
WITH DEATH PENALTY CASES
THAT, VOIR DIRE IN CAPITAL
CASES MUST BE SOPHISTICATED,
ONE CANNOT HAVE, BETTER
ISSUE BEFORE THIS COURT IN
TERMS OF THE OPPOSITE OF A
SOPHISTICATED VOIR DIRE WHEN
THE STATE DESCRIBES IT AS IT
DID ON DIRECT APPEAL TO
JUSTIFY THE JUDGE'S MULTIPLE
INTERRUPTIONS.
>> YOU REMEMBER THE SHOW,
COLOMBO.
BUMBLING DETECTIVE THAT WAS
VERY, VERY GOOD, THE STATE
ARGUES IN THIS CASE WITH
MAJOR AGGRAVATORS YOU'VE GOT
9-3 VOTE ON CRUEL DEATH OF
80 SOMETHING-YEAR-OLD
GENTLEMAN.
WHY CAN'T WE LOOK AT OTHER
WAY TO GET A 9-3 VOTE WAS
VERY SUCCESSFUL PERFORMANCE?
>> JUSTICE --
>> JUST TO COUNTER HER
ARGUMENT.
>> ABSOLUTELY.
THAT IS THE SITUATION IN ALL
OUR CASES.
WHEN WE ARGUE PREJUDICE,
IT'S, SURMISING.
WHEN JUSTICE LESTER SAYS,
THAT, THAT THERE IS JUST NO
REASON TO EVALUATE
MR. BARNHILL FOR COMPETENCY
AT THE TIME OF THE PLEA,
HE'S SURMISING AND MAKING
CONCLUSORY STATEMENTS TOO.
BUT, IT'S THE PICTURE OF
THIS WHOLE CASE.
WE KNOW THAT NOT ONLY ON
RESUES AL THING THE WRITTEN
MOTION BEFORE STARTED
TESTIMONY WAS INEFFECTIVELY
FILED.

AT LATER ON, AS THE BRIEFING SHOWS, MR. CAUDLE MADE A VERBAL MOTION DESPITE THE DICTATES OF THE ROGERS CASE THAT ALL DISQUALIFICATION MOTIONS HAD TO BE IN WRITING.
YOU COMBINE THESE IN MR. BARNHILL'S CASE IS VERY, VERY STRONG FOR THE CUMULATIVE EFFECT OF HORRIBLE, HORRIBLE, VOIR DIRE, SIGNIFICANT, LEGITIMATE, BUT COMPLEX QUESTIONS OF COMPETENCY FOR THIS PLEA, THAT TOOK AWAY THE PLANNED PRUDENT DECISION THAT THE COUNSEL HAD AND YOU COMBINE IT WITH THE RESULT OF ONLY THREE JURORS DIFFERENT WOULD HAVE MADE THIS A LIFE SENTENCE, WE URGE RELIEF BASED ON THIS RECORD.
THANK YOU VERY MUCH.
>> THANK YOU VERY MUCH.
WE THANK BOTH OF YOU FOR YOUR PRESENTATIONS.
THE COURT WILL TAKE THE CASE UNDER ADVISEMENT.
THE COURT WILL STAND IN RECESS UNTIL TOMORROW MORNING.
>> ALL RISE.