Dwight T. Eaglin v. State of Florida

SC06-760

THE NEXT CASE ON THE AGENDA IS

EAGLIN VERSUS STATE.

MR. MOELLER.

>> MAY IT PLEASE THE COURT.

MY NAME IS ROBERT MOELLER, AND I

AM THE PUBLIC DEFENDER FOR THE

10TH JUDICIAL CIRCUIT.

I AM HERE ON BEHALF OF THE

APPELLANT, DWIGHT T. EAGLIN.

MR. EAGLIN WAS SENTENCED TO

DEATH FOR TWO HOMICIDES THAT

THAT OCCURRED AT CHARLOTTE

CORRECTIONAL INSTITUTION AFTER

THE JURY RECOMMENDED THAT HE BE

SENTENCED TO DEATH.

I WOULD LIKE TO KIND OF JUMP TO

THE THIRD ISSUE IN THE BRIEF,

HAVING TO DO WITH THE MITIGATING

EVIDENCE THAT WAS PRESENTED AND

NOT PRESENTED TO THE JURY AND TO

THE COURT.

THE DEFENDANT CHOSE TO PUT ON A

RATHER UNORTHODOX DEFENSE IN THE

PENALTY PHASE, WHICH FOCUSES
UPON THE SECURITY FAILINGS AT
CHARLOTTE CORRECTIONAL
INSTITUTION THAT LED TO THESE
HOMICIDES AND CREATED THE
ATMOSPHERE WHERE THEY COULD
OCCUR.
>> IT SEEMS TO ME THAT
JURISPRUDENCE, WHEN WE ARE
TALKING ABOUT MITIGATING
EVIDENCE, IS THAT WE LOOK AT THE
CHARACTER OF THE DEFENDANT,
REALLY, IN LOOKING AT WHETHER OR
NOT THERE IS SOMETHING ABOUT THE
DEFENDANT'S BACKGROUND AND
CIRCUMSTANCES AND ALL OF THIS,
THAT REALLY, FOR THIS PARTICULAR
DEFENDANT, WOULD REQUIRE A
SENTENCE LESS THAN THAT.
AND SO, YOU KNOW, THIS IS ALL
VERY INTERESTING, AND MAYBE
THERE OUGHT TO BE SOME KIND OF
INVESTIGATION OR SOMETHING AT
THIS INSTITUTION TO SEE ABOUT
THEIR SECURITY AND WHAT IS GOING
ON THERE.
BUT, TELL ME HOW THAT MITIGATES
MR. EAGLIN'S PARTICIPATION IN

THESE MURDERS?

>> WELL, I THINK THE DEFENSE THEORY WAS ESSENTIALLY THAT THE CORRECTIONAL SYSTEM, OR THIS PARTICULAR INSTITUTION, CREATED THE OPPORTUNITY FOR THIS TO HAPPEN.

>> SO, THEY PUT MR. EAGLIN ON THIS DETAIL THAT WAS WORKING, SO THEY GAVE HIM SOME OPPORTUNITY TO HAVE ACCESS TO PUT WEAPONS TOGETHER SO THAT HE COULD EFFECTUATE THESE ESCAPES AND THIS MURDER?

IS THAT BASICALLY THE THEORY?

>> THEY CREATED THE OPPORTUNITY AND SHARED SOME OF THE BLAME FOR THIS, BUT PART OF THE PROBLEM IN THIS CASE IS IT WAS A VERY UNORTHODOX DEFENSE, AND A VERY UNUSUAL APPROACH IN THE PENALTY PHASE.

AND, THE RECORDS INDICATE THERE WAS A MORE TRADITIONAL TYPE OF MITIGATION THAT WAS NOT PRESENTED, AND HAVING KIND OF A PROBLEM WITH THAT BECAUSE IN THE PSI IN A REPORT FROM DR. KROP, THERE WAS, AS I SAID, MORE

TRADITIONAL TYPE OF MITIGATING
EVIDENCE THAT THE JURY NEVER
HEARD.
>> LET ME MAKE SURE I
UNDERSTAND.
YOU SAID YOU WERE JUMPING TO
NUMBER THREE.
THE SECOND ISSUE HAD TO DO WITH
WHETHER THAT NEWS REPORT SHOULD
COME IN, AND I THINK THAT IS THE
SAME QUESTION THAT JUSTICE
QUINCE HAD.
APPARENTLY THAT IS THE TYPE OF
MITIGATION THEY PUT ON, BUT YOUR
THIRD POINT ON APPEAL IS THAT
THE TRIAL COURT FAILED TO
ADEQUATELY CONSIDER ALL
AVAILABLE MITIGATION IN THOSE
RECORDS?
SO, IF YOU COULD HELP US
UNDERSTAND, THAT THIS IS A
DIRECT APPEAL AND NOT
POST-CONVICTION.
WHAT IS THE ERROR THAT YOU ARE
CLAIMING THAT THE TRIAL COURT
MADE IN THIS CASE?
FOR ISSUE THREE?
YOU SAID YOU WERE FOCUSING ON

ISSUE THREE.

I WANT TO UNDERSTAND WHAT IS THE ISSUE, BECAUSE THE DEFENSE LAWYER SAID HE WASN'T-- THAT EAGLIN HAD INSTRUCTED HIM TO FORGO PRESENTATION OF EVIDENCE REGARDING HIS CHILDHOOD.

THAT IS IN HIS RECORD, AND THE COURT FELT THE EVIDENCE SHOULD NOT BE PRESENTED, SO WE HAVE SORT OF A MIXED MUHAMMAD SITUATION, WHICH HE DOESN'T COMPLETELY WAIVE MITIGATION.

BUT, HE TAKES, SORT OF ONLY PUTS ON UNCONVENTIONAL MITIGATION.

WHERE IS THE TRIAL COURT'S ERROR IN WHAT HAPPENED IN THE PENALTY PHASE THAT WOULD CAUSE A REVERSAL ON DIRECT APPEAL?

>> THE TRIAL COURT, FOR ONE THING, DID NOT CONSIDER ALL THE MITIGATING EVIDENCE THAT WAS IN THE RECORD, SPECIFICALLY, MOST NOTABLY, DR. KROP'S REPORT INDICATING THE DEFENDANT SUFFERS FROM A SERIOUS PSYCHIATRIC DISORDER, BIPOLAR DISORDER, AND ALSO THE TRIAL COURT FAILED TO CONSIDER EVIDENCE OR THE

STATEMENTS IN THE PSI REGARDING
MR. EAGLIN'S USE OF COCAINE AND
ALCOHOL AS A TEENAGER, AND ALSO
THE STATEMENTS IN THE PSI
REGARDING MR. EAGLIN'S USE OF
PROZAC, WHICH GOES ALONG WITH
HIS BIPOLAR DISORDER.
>> OF COURSE, THIS ISN'T
POST-CONVICTION.
YOU ARE NOT SAYING ERROR IN WHAT
THE JURY HEARD.
YOU ARE NOW GOING TO WHAT
HAPPENED AT THE CENSURE HEARING?
>> I TRIED TO PRESENT THE LARGER
CONTEXT ABOUT THE FACT THAT THE
COURT CANNOT REALLY HAVE ANY
CONFIDENCE IN THE SENTENCING
OUTCOME, BECAUSE THERE WAS
EVIDENCE THAT WAS NOT PRESENTED
TO THE JURY AND EVIDENCE NOT
CONSIDERED BY THE TRIAL COURT.
>> THIS IS WHY I AM HAVING
TROUBLE WITH THIS CLAIM.
IT IS SORT OF A MIX, IT SEEMS TO
ME, THE MIX OF A POSSIBLE
INEFFECTIVE COUNSEL APPEARING
BECAUSE COUNSEL-- AND TOO, UNDER
MUHAMMAD, THAT WHEN MITIGATION

IS WAIVED, WHICH IT WASN'T IN
THIS CASE, THE TRIAL COURT HAS
TO CONSIDER ALL MITIGATING
EVIDENCE OBTAINED IN THE RECORD
TO THE EXTENT BELIEVABLE AND
UNCONTROVERTED, BUT IN THIS
SITUATION, ARE YOU SAYING THE
TRIAL COURT ERRED BECAUSE
SOMEBODY, EVEN THOUGH IT WASN'T
POINTED OUT TO THEM, SOMEBODY
SHOULD HAVE SAID IN HIS OFFICE
AND GONE THROUGH THE WHOLE
RECORD AND SAID, HERE'S
SOMETHING IN THE PSI I SHOULD
PUT IN MY SENTENCING ORDER?
>> I AM SAYING THAT THE JUDGE
DOES HAVE RESPONSIBILITY TO GO
THROUGH THE RECORD.
>> IN A CASE LIKE THIS, HOW
COULD THAT HAPPEN?
DID THE STATE POINT OUT TO--
>> THE JUDGE KNEW ABOUT
DR. KROP'S REPORT BECAUSE IT WAS
MENTIONED IN THE BRIEF COLLOQUY
THAT WAS HAD BETWEEN THE COURT
AND THE DEFENDANT AND THE
DEFENSE COUNSEL WHEN THEY
ATTEMPTED TO WAIVE THESE ITEMS,
SO THE COURT WAS AWARE.

>> DR. KROP, THOUGH, DID NOT TESTIFY IN WHAT WE SAY IN MUHAMMAD, IS TO CONSIDER ALL MITIGATION IN THE RECORD, ASSUMING THIS IS A MUHAMMAD SITUATION.
HOW CAN A LETTER THAT IS JUST PLACED IN THE RECORD, WITHOUT THE TESTIMONY OF THE MENTAL-HEALTH EXPERT, BE SOMETHING THAT A JUDGE WOULD GO, I AM FINDING THAT BELIEVABLE AND UNCONTROVERSIAL?
THAT WOULD NOT BE FAIR TO THE STATE, AND WOULD WANT TO PRESENT THE OPPOSITE SIDE.
SO, THAT IS WHERE MY PROBLEM IS, TRYING TO UNDERSTAND WHAT WE WOULD BE TELLING TRIAL JUDGES THAT THEY SHOULD DO IN THE FUTURE.
>> ANOTHER PROBLEM IN THIS CASE IS THE MITIGATION I'M TALKING ABOUT THAT WAS NOT PRESENTED, IS NOT WELL DEVELOPED.
I KNOW THE COURT HAS STRUGGLED A LOT WITH CASES WHERE ALL MITIGATION WAS WAIVED, WHAT YOU

DO IN THAT SITUATION, AND I
THINK A LOT OF THE THINGS
CONCERNED IN A CASE LIKE THIS,
WHERE YOU HAVE A PARTIAL WAIVER
OF MITIGATION AND WHERE THE
WAIVER GOES TO PERHAPS THE MOST
COMPELLING MITIGATION THAT COULD
HAVE BEEN PRESENTED.
IT SEEMS TO ME THAT WHAT IS IN
THE PSI AND DR. KROP'S REPORT IS
ONLY THE TIP OF THE ICEBERG AND
OBVIOUSLY A LOT MORE COULD HAVE
BEEN DEVELOPED.
>> YOU ARE AN EXPERIENCED
LAWYER.
IT SOUNDS LIKE WHAT YOU ARE
REALLY DOING IS SAYING WE ARE
GOING TO HAVE TO LOOK AT ALL OF
THIS FOR POST-CONVICTION BECAUSE
I JUST DON'T SEE-- WHAT WOULD
THE RULE OF LAW BE?
THE TRIAL COURT URGED, BECAUSE
THERE WAS A REPORT IN THE RECORD
THAT WAS NON-VERIFIED AND SHOULD
HAVE BEEN CONSIDERED IN FINDING
MITIGATION THAT NO ONE SIGNED.
>> IT IS HARD TO STAY IN A RULE
OF LAW LIKE THIS.
I AM JUST HAVING A PROBLEM.

>> IF YOU ARE HAVING PROBLEMS--
HOW WILL THE PROBLEM BE
ADDRESSED THEN?
THE COURT I KNOW HAS STRUGGLED
WITH THIS IN CASES WHERE ALL
MITIGATION HAS BEEN WAIVED, BUT
IT SEEMS TO ME THERE SHOULD BE A
MECHANISM WHEREBY WE CAN BE
ASSURED THAT THE JURY HEARS ALL
THE PERTINENT, AVAILABLE
MITIGATION SO THAT THEY CAN
RENDER AN ADEQUATE
RECOMMENDATION, AND THAT THE
JUDGE ALSO CONSIDERS ALL THE
PERTINENT MITIGATION, ESPECIALLY
OF THIS TYPE, WHICH IS THE TYPE
TRADITIONALLY PRESENTED.
>> THE TRIAL JUDGE HAS ALSO GOT
TO INSPECT THE RIGHT OF THE
DEFENDANT.
>> RIGHT, AND THERE IS A LOT OF
TENSION THERE BETWEEN THE RIGHT
OF THE DEFENDANT AND THE NEED
FOR THE JURY TO HEAR ALL OF THE
EVIDENCE.
>> THE DEFENDANT WAS NOT WANTING
TO PUT ALL THE MITIGATION IN
VARIOUS PLACES IN THE RECORD,

CORRECT?

KIND OF THREW OUT THE WHOLE

PENALTY PHASE UP UNTIL THE END.

HE HAD 30 DAYS TO GET ONE

CONSIDERED.

>> I THINK, REALLY, THAT ONLY

CAME UP AT ONE POINT DURING THE

PENALTY PHASE.

I THINK CLEARLY HE WANTED TO

HAVE ALL THIS PRISON INFORMATION

PRESENTED, AND THERE IS A BRIEF

COLLOQUY AT SOME POINT WHERE HE

WANTED TO WAIVE THE MENTAL

MITIGATION AND THE SOCIAL

ASPECT, THE ABUSE IN CHILDHOOD

AND THAT SORT OF THING.

>> IT SEEMS TO ME WHAT YOU ARE

REALLY ADVOCATING IS THAT WE ARE

INCORRECT IN ALLOWING THE

DEFENDANT TO WAIVE AND THAT HE

SHOULD NOT BE ALLOWED, AND

EVERYTHING THAT COUNSEL COMES UP

WITH OR THAT IS IN THE RECORD

SHOULD BE PRESENTED, OR THE

OTHER WAY.

I MEAN, IT SEEMS TO ME THAT IS

WHAT YOU ARE SAYING, THAT WE

SHOULD NOT ALLOW THE DEFENDANT

TO WAIVE MITIGATION.

IS THAT REALLY THE BOTTOM LINE
OF WHAT YOU ARE SAYING?
>> I THINK SO, BECAUSE NOT ALL
AVAILABLE MITIGATION IS
PRESENTED.
YOU HAVE CONFIDENCE IN THE
JURY'S RECOMMENDATION AND THIS
COURT IS NOT ABLE TO CONDUCT A
PROPER REVIEW IN LIGHT OF,
OBVIOUSLY, ALL THE EVIDENCE.
>> IF THE DEFENDANT WAIVES
MITIGATION, SHOULD WE NOT HAVE A
JURY THEN?
>> I'M SORRY?
>> IF WE ALLOW A DEFENDANT TO
WAIVE MITIGATION, THAT WHAT YOU
ARE SAYING IS WE SHOULD HAVE THE
JURY THERE IF THE DEFENDANT IS
WAIVING MITIGATION?
>> WELL NO, BECAUSE I THINK,
WELL, FOR EXAMPLE MUHAMMAD
INDICATES THAT WHEN THE
MITIGATION IS WAIVED AND THE
JURY RECOMMENDATION-- I'M NOT
SAYING YOU SHOULD DO AWAY WITH
THE JURY ALTOGETHER.
I THINK THE JURY NEEDS TO HEAR
ALL THE AVAILABLE MITIGATION.

>> HERE MR. MOELLER, LET'S GET BACK TO THIS CASE, AND THERE IS SOMETHING VERY DIFFERENT TO ME, WHICH IS THE MENTAL MITIGATION, WHICH MAY BE, IF IT WAS SOMETHING ABOUT AN EXTREME EMOTIONAL DISTRESS OR UNDER THE INFLUENCE MITIGATOR, BOY, AND THE DEFENSE LAWYER SAYS I HAVE TO PRESENT THIS, BUT MY CLIENT DOESN'T LET ME, IT MIGHT BE-- AM I CORRECT THAT THE COUNSEL ON THE RECORD INDICATED TO THE COURT HE FELT MENTAL MITIGATION? NOW WE ARE TALKING ABOUT NOT THE DEFENDANT BEING THE CAPTAIN OF HIS OWN SHIP.
EVEN THOUGH ENDORSING THE JUDGE, WHO HAS CONSIDERED DR. KROP'S LETTER THAT IS IN THE RECORD, THAT WAS NOT SUBJECT TO CROSS-EXAMINATION, THAT THE STATE DIDN'T HAVE A CHANCE TO COUNTER, AND EVEN THOUGH THE LAWYER SAID HE DIDN'T WANT TO PUT IT IN, THAT THE TRIAL COURT ERRED BY NOT CONSIDERING IT?
EVEN IF THERE WAS SOMETHING WRONG GENERALLY WITH THE LAW, I

DON'T SEE HOW, IN THIS CASE, IT
WOULD WARRANT GRANTING ANY KIND
OF RELIEF, BECAUSE THEN YOU
WOULD BE SAYING THE COURT SHOULD
ACTUALLY BE ACTING CONTRARY TO
WHAT THE LAWYER SAID HE DIDN'T
WANT TO PUT IN, WHICH WAS MENTAL
MITIGATION.
JUST ON THAT ONE, ON THE MENTAL
MITIGATION EVIDENCE, HOW COULD
WE HAVE A RULE OF LAW THAT SAYS
THE JUDGE HAS CONSIDERED
SOMETHING THE DEFENSE LAWYER,
WHO IS REPRESENTING THE CLIENT,
SAID HE DID NOT WANT TO HAVE PUT
IN-- HE DIDN'T WANT TO HAVE
CONSIDERED?
>> I AM NOT SURE WHO MADE THAT
DECISION, WHETHER IT WAS THE
DEFENSE LAWYER OR THE CLIENT.
THE CLIENT SEEMS TO AGREE HE
DIDN'T WANT THAT PRESENTED, BUT
I KNOW THAT IN THE MUHAMMAD
COURT, THEY TALKED ABOUT WHAT
SHOULD BE DONE WHEN ALL
MITIGATION IS WAIVED, AND OF
COURSE THE PSI REQUIRED IN THE
COURT ALSO SUGGESTED THAT THE

TRIAL COURT COULD DO OTHER
THINGS, SUCH AS CALL WITNESSES
ON ITS OWN AND DEVELOP
MITIGATION OR APPOINT ANOTHER
ATTORNEY IF THE DEFENDANT DIDN'T
WISH TO HAVE IT PRESENTED.
THIS IS THE TYPE OF THING THAT I
THINK CAN BE DONE, AND SHOULD BE
DONE, SO THE JURY IN THE COURT
HEARS EVERYTHING THAT SHOULD BE
PRESENTED.
>> I THINK I WOULD LIKE TO MOVE
ON NOW TO THE NEXT ISSUE.
I WANT TO TALK ABOUT ISSUE
HAVING TO DO WITH THE COURT'S
USE OF THE DEFENDANT'S SUPPOSED
LACK OF REMORSE IN SUPPORT OF
THE SENTENCE AT THE DESK.
THIS COURT HAS STATED REPEATEDLY
THAT LACK OF REMORSE HAS NO
PLACE IN THE SENTENCING PROCESS,
AND YET IN THE SENTENCING ORDER
OF THE COURT, I WILL QUOTE FROM
THAT, THE COURT SAYS FINALLY--
THE COURT RECALLS THAT THIS
DEFENDANT TESTIFIED DURING THE
PENALTY PHASE IN THE SPENCER
HEARING, THAT NEITHER TIME DID
HE EXPRESS ANYTHING LIKE GENUINE

REMORSE.
HIS ATTITUDE BORDERED ON
ARROGANCE, AND THEN HE GOES ON
RIGHT AFTER THAT TO SENTENCE THE
DEFENDANT TO A SENTENCE OF
DEATH.
MY OPPONENT, IN THE BRIEFS,
SUGGESTED THAT THE COURT ONLY
DID THIS TO NEGATE ANY
MITIGATING FACTOR OF REMORSE,
BUT AT NO TIME DURING THE
PROCEEDING DID THE DEFENDANT OR
DEFENSE COUNCIL SUGGESTS THAT
REMORSE SHOULD BE CONSIDERED BY
THE JURY OR THE COURT AS A
MITIGATING CIRCUMSTANCE, SO
THERE WAS REALLY NO REASON FOR
THE COURT TO PUT IN THIS
DISCUSSION OF REMORSE, AND IT
FLIES IN THE FACE OF THIS
COURT'S PRECEDENCE.
>> SO IT IS AN ERROR.
HOW DO WE DEAL WITH THAT?
WE HAVE HERE A NUMBER OF
AGGRAVATING FACTORS, SO IF THE
JUDGE IMPROPERLY CONSIDERED
REMORSE, WHERE DOES THAT FIT IN?
>> THEN HE SHOULD HAVE TO

RECONSIDER THE SENTENCE WITHOUT
REGARD TO ANY REMORSE.
OBVIOUSLY, HE MIGHT COME UP WITH
THE SAME DETERMINATION, BUT WE
CAN'T KNOW THAT UNLESS WE SEND
IT BACK DOWN THERE.
>> WHAT WAS THEIR ANALYSIS?
WHY WOULD THIS BE A HARMFUL
ERROR, AND WHY ARE ALL OF THESE
CIRCUMSTANCES?
THIS DEFENDANT, IF I REMEMBER
CORRECTLY, IS IN PRISON FOR A
MURDER UNDER A SENTENCE OF DEATH
AND THE COURT INDICATES HIS
INTENTION TO KILL ANYBODY WHO
GETS IN HIS WAY, MAKES
REFERENCES SPECIFICALLY TO ONE
OF THE VICTIMS THAT GENERALLY--
TO THE OTHER VICTIM AS PEOPLE
THAT WOULD BE-- AND ALL THE
OTHER THINGS THAT ARE SHOWN
HERE, WHY WOULD WE CONSIDER THAT
TO BE HARMFUL?
>> ACTUALLY, HE WAS SERVING A
SENTENCE OF LIFE FOR COMMITTING
MURDER.
>> I THOUGHT YOU SAID HE WAS
UNDER A SENTENCE OF DEATH.
[INAUDIBLE]

>> IT IS POSSIBLE THAT IT MIGHT NOT MAKE ANY DIFFERENCE, BUT THE COURT SHOULD KNOW THAT HE CAN'T CONSIDER THIS.

>> ON THAT, THIS ISN'T A CASE WHERE A COMMENT ABOUT REMORSE OR LACK OF REMORSE WAS ARGUED BY THE PROSECUTION TO THE JURY, CORRECT?

>> RIGHT.

>> SO, WE DON'T HAVE THAT.

NOW WE JUST HAVE TO LOOK AT THE JUDGE'S SENTENCING ORDER AND, ASSUMING HE FOUND LACK OF REMORSE, IT IS EASIER IN A SITUATION WHERE WE ARE LOOKING AT THE JUDGE'S SENTENCING ORDER TO SAY THAT, LOOKING AT ALL OF THESE AGGRAVATORS, AND YOU HAVE TO CONCEDE ON THIS RECORD, ESSENTIALLY, NO MITIGATION, THAT IT IS ENTIRELY HARMLESS BEYOND ANY REASONABLE DOUBT.

SO, YOU WOULD HAVE TO SAY THAT THIS JUDGE THOUGHT WELL, I AM GOING TO LOOK AT LACK OF REMORSE AND I WILL MAKE IT MORE AGGRAVATED, BUT THIS IS ABOUT AS

AGGRAVATED AS YOU GET IN THE
MURDER.
SOMEONE IS ALREADY SERVING LIFE,
AND THEN KILLS TWO PEOPLE IN A
HEIGHTENED WAY.
I AM JUST HAVING A HARD TIME
UNDERSTANDING HOW IT COULD MAKE
ANY CONCEIVABLE DIFFERENCE TO
THE JUDGE'S SENTENCING DECISION,
AND CERTAINLY TO OURS, LOOKING
AT THE PROPRIETY OF THE DEATH
SENTENCE?
>> IF THIS COURT FINDS THAT THE
JUDGE DIDN'T PROPERLY CONSIDER
ALL THE MITIGATION, THAT COULD
BE A FACTOR IN WHETHER IT IS
HARMLESS OR NOT, SO I'LL JUST
MAKE THAT ONE COMMENT.
LET ME MOVE ON NOW TO A COUPLE
OF THE OTHER ISSUES.
I WANT TO GO BACK NOW TO THE
FIRST ISSUE RAISED IN A BRIEF
HAVING TO DO WITH THE TESTIMONY
OF JESSE BAKER, ONE OF THE STATE
WITNESSES.
THERE WERE TWO SO-CALLED
JAILHOUSE SNITCHES, WHO
TESTIFIED REGARDING THE
CONVERSATIONS AMONG THE THREE

INMATES WHO WERE PLANNING THIS
ESCAPE AND WHAT THEY TALKED
ABOUT.
KENNETH LYKINS WAS ONE, AND
JESSE BAKER WAS THE OTHER, AND
THEY WITNESSED THESE
CONVERSATIONS.
DURING THE COURSE OF THE
CROSS-EXAMINATION OF MR. BAKER,
DEFENSE COUNCIL WANTED TO POINT,
OR TO ASK, MR. BAKER ABOUT A
DISCIPLINARY REPORT HE HAD
RECEIVED FOR LYING TO A
CORRECTIONS OFFICER.
>> COULD YOU GIVE US-- EVEN
ASSUMING THAT THE SECOND
DISTRICT'S EXCEPTION WOULD HOLD
UP, WHAT WAS THE LYING ABOUT IN
THIS CASE?
DO WE KNOW?
>> I DON'T BELIEVE THAT IS IN
THE RECORD.
>> HOW COULD THAT POSSIBLY BE
RELEVANT IF IT WAS LYING ABOUT
ANOTHER PRISONER'S ESCAPE
ATTEMPT?
THE JUDGE WOULD SAY, NOW EVEN
THOUGH WE HAVE THE STATUTE WITH

THE CASE LAW-- BUT HE COULD HAVE
BEEN LYING ABOUT WHAT HE HAD FOR
BREAKFAST.
HOW DO WE KNOW IT WAS, WITHOUT
UNDERSTANDING THE DETAILS OF
THAT-- THAT YOU WOULD GET IN A
DISCIPLINARY REPORT ON
CROSS-EXAMINATION THAT SAID ON
SOME OCCASION, HEAVEN FORBID,
THAT AN INMATE LIED TO A
CORRECTIONAL OFFICER, AND THIS
PARTICULAR WITNESS HAD WHAT--
TEN PRIOR FELONIES?
>> HE HAD A BUNCH.
I DON'T KNOW THE EXACT NUMBER,
BUT FOR THIS DISCIPLINARY
VIOLATIONS, HE RECEIVED 60 DAYS
IN SOLITARY AND WAS CONSIDERED A
MAJOR PR.
I THINK THE POINT IS THE FACT
THAT HE LIED ABOUT ANYTHING IN
THE PAST IS TO HIS CREDIBILITY.
>> YOU ARE NOT SAYING THAT EVEN
IF THERE WAS SOME RULE THAT
ALLOWED THAT HE LIED, THAT THE
JURY WOULD BE ENTITLED TO HEAR
WHAT THE DISCIPLINE WAS?
>> I AM NOT SURE THAT DISCIPLINE
IS RELEVANT.

I JUST BRING THAT UP TO SHOW

THAT, OBVIOUSLY, THERE WAS A

SERIOUS VIOLATION-- THE FACT

THAT HE GOT 60 DAYS AND DEFENSE

COUNSEL REPRESENTED--

[INAUDIBLE]

HOW IS IT HARMFUL?

>> BECAUSE THIS WENT DIRECTLY TO

THE FACT THAT HE WAS LYING.

I THINK THAT IS THE MAJOR POINT.

AND WENT TO HIS CREDIBILITY.

>> RIGHT.

>> YOU THINK PRIOR FELONIES?

>> I BELIEVE THAT WAS THE

CASE --

>> SEEMS TO ME THAT IF YOU ARE

EVEN GOING TO TRY TO ATTEMPT TO

GET IN A PRIOR ACT OF

MISCONDUCT AS IMPEACHMENT, IT

IS, AT LEAST GOT TO GET INTO

THE BALLPARK OF WHAT THE, SEEMS

IT IS THE SECOND DISTRICT'S

EXCEPTION, WHETHER WE AGREE

WITH IT OR NOT, WHICH IS IN

THOSE CASES SOMEONE FILED A

FALSE REPORT TO POLICE ON A

PRIOR OCCASION.

AND THERE WAS SOME DETAIL ABOUT

IT.

AGAIN, HERE EXCEPT FOR SAYING

IT MUST HAVE BEEN A PRETTY BAD

THING BECAUSE HE GOT 60 DAYS IN

SOLITARY, YOU HAVE VERY FRANKLY

SAID, WE HAVE NO IDEA WHAT IT

IS.

SO, ISN'T IT THE, DEFENSE

LAWYER HAS THE BURDEN TO SHOW

RELEVANCY, BEFORE, SOMETHING

COMES IN?

>> WELL I THINK, THAT AGAIN,

THE FACT THAT HE LIED GOES TO

HIS CREDIBILITY AND, WITH

REGARD TO SPECIFICS, THAT MIGHT

GO MORE TO THE WEIGHT OF IT.

>> YOU BUT KNOW THAT, THE

ENTIRE EVIDENCE CODE AND PRESS

DEPTH DOESN'T SAY SOMEONE LYING

ON PRIOR OCCASION IS ADMISSIBLE

IMPEACHMENT IN A TRIAL.

AM I MISSING SOMETHING?

>> WELL, NO, NOT REALLY BUT YOU

MENTIONED THE SECOND DCA

EXCEPTIONS AND ALSO I THINK

THAT, THERE CAN BE SITUATIONS

I'M NOT SURE THIS IS ONE OF

THEM, WHERE DUE PROCESS REQUIRE

THAT THESE TYPE, THIS TYPE OF

EVIDENCE COME IN, AND THAT
WOULD TRIM THE SPECIFIC OR,
SPECIFIC PROVISIONS OF THE
EVIDENCE CODE.
>> I WOULD GATHER THAT YOU JUST
CONCEDED, NOT CONCEDED, I DON'T
WANT TO USE THAT WORD, THIS
ISN'T ONE OF THEM, WHERE THERE
COULD ABDOU PROCESS VIOLATION
BY EXCLUDING A IMPEACHMENT, FOR
ALL WE KNOW, THERE WAS LYING A
TO A CORRECTIONS OFFICER BY A,
NOT EVEN THE MAIN WITNESS IN
THE CASE?
>> WELL, IT MAY NOT BE, YOU
KNOW, WHEN YOU SAY HE IS NOT A
MAIN WITNESS, HE WAS ONE OF
ONLY TWO WITNESSES THAT TALKED
ABOUT THE, THE DISCUSSIONS THAT
WERE HEARD AMONG THE INMATES
PLANNING THIS ESCAPE AND, THAT
SORT OF THING.
SO, HE WAS CERTAINLY AN
IMPORTANT WITNESS EVEN IF HE
WASN'T A KEY WITNESS.
AND, GOING BACK TO THE POINT
ABOUT THE DUE PROCESS, THAT
WAS, REFERRED TO IN ONE OF THE

CASES CITED BY MY OPPONENT IN
HIS BRIEF, ROBUCK, THE COURT
TALKED ABOUT IN SOME CASES DUE
PROCESS MAY REQUIRE GERMANE
CROSS-EXAMINATION OF A WITNESS
REGARDING A PRIOR INCIDENT OF
FALSE REPORTING.
SO I WANTED TO MENTION THAT.
>> MR.^MOELLER, YOU ARE INTO
YOUR REBUTTAL, DID YOU HAVE
ANOTHER ISSUE YOU WANTED TO
PRESENT?
>> I THINK I WILL RELY UPON MY
BRIEFS WITH REGARD TO THE OTHER
ISSUES AND SAVE SOME TIME FOR
MY REBUTTAL.
THANK YOU.
>> THANK YOU.
MR.^AKE.
>> GOOD MORNING, MAY IT PLEASE
THE COURT.
STEPHEN AKE ON BEHALF OF STATE OF
FLORIDA.
WITH THE THIRD ISSUE COUNSEL
STARTED WITH, THE BULK OF
ARGUEMENT GOING TO INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM
GOING BEST ADDRESSED IN A
POST-CONVICTION PROCEEDING

WE'LL HAVE I'M SURE IN THE
FUTURE.
BUT THE BULK OF THE ARGUMENT IS
THAT DEFENSE COUNSEL, TRIAL
COUNSEL WAS, I GUESS, FOLLOWING
HIS CLIENT'S WISHES TO WAIVE
THIS MITIGATION.
AS JUSTICE PARIENTE POINTED
OUT, WITH REGARD TO THE MENTAL
MITIGATION, THE ATTORNEY
INDICATED THAT HE MADE THE
STRATEGIC DECISION NOT TO
PRESENT THAT BECAUSE IT WOULD
BE DANGEROUS.
HE AGREED WITH HIS CLIENT.
HIS CLIENT ALSO RATIFIED THAT
AFTER QUESTIONING BY THE TRIAL
COURT.
>> HOW OLD WAS THIS DEFENDANT
AT THE TIME OF THIS CRIME WAS
HOW OLD?
>> I BELIEVE HE WAS IN HIS
EARLY 30s.
>> HOW LONG HAD HE BEEN
INCARCERATED ON THE SENTENCE?
>> HE COMMITTED THE PINELLAS
COUNTY MURDER IN TWO 2001.
HE, I KNOW FROM THE PSI HE HAD

PRIOR OFFENSES ALSO.

I KNOW HE HAD AT LEAST ONE

JUVENILE OFFENSE.

HE HAD BEEN INVOLVED IN THE

CRIMINAL JUSTICE SYSTEM FOR

SOME TIME.

BUT HE BEGAN SERVING THAT LIFE

SENTENCE IN 2001 I BELIEVE.

BUT, THE CLIENT, MR.^EAGLIN,

MADE THE DECISION NOT TO

PRESENT THE NON-STATUTORY

MITIGATION.

HE DID NOT WANT HIS FAMILY

INVOLVED IN THIS CASE.

THAT'S ALL ON THE RECORD AND

COUNSEL, BECAUSE EAGLIN IS THE

CAPTAIN OF HIS SHIP, THE

COUNSEL FOLLOWED HIS DIRECTIONS

AND.

>> ISN'T, NOT THAT THIS CASE

MIGHT BE THE CASE, WHEN WE

HAVE, WHEN SOMEONE WAIVES ALL

MITIGATION --

>> RIGHT.

>> WE HAVE THIS ELABORATE

PROCEDURE THAT HAS TO BE

FOLLOWED AND THERE IS THE KOON

WAIVER AND ALL THAT.

HERE, I THINK, JUSTICE QUINCE

MENTIONED, REFERRED TO IT, THIS ISN'T CONVENTIONAL MITIGATION WHAT WAS PRESENTED, THAT SOMEHOW BECAUSE THE STATE OF FLORIDA HAD A SYSTEM THAT ALLOWED FOR SOMEONE TO GET A WEAPON, I DON'T KNOW, THAT THE STATE OF FLORIDA IS RESPONSIBLE FOR THESE DEATHS, IS ALMOST, YOU KNOW, I THINK IT --

>> NEGLIGENT.

>> FAIRLY OFFENSIVE AS, I DON'T KNOW HOW IT IS MITIGATION BASICALLY.

BUT THAT IS WHAT WAS PRESENTED.

SO IN A SITUATION WHERE SOMEONE SAYS I WANT TO, YOU KNOW, WE HAD A CASE YESTERDAY, MR.^GORE, WHO DIDN'T WANT MITIGATION PRESENTED BUT WANT -- SOMEONE ESSENTIALLY WAIVES ALL MITIGATION.

I REALLY WANT TO PUT ON IS SOMETHING THAT, IF THE LAWYER TALKS TO THE CLIENT, THIS IS NOT THE KIND OF MITIGATION THAT'S GOING TO, CERTAINLY CONVINCE A JUDGE.

ALTHOUGH I GUESS THE JURY STILL

FOUND 8-4.

>> RIGHT.

>> INTERESTINGLY ENOUGH.

HOW DOES THAT WORK?

I MEAN IS IT JUST, IF WE DON'T

HAVE ANY CASE LAW THAT SAYS, IF

THERE IS ESSENTIAL WAIVER?

>> YOU HAVE BOYD VERSUS STATE.

>> BOYD?

>> BOYD. B, O, Y, D.

DECIDED IN 2005.

CITED IN BOTH OF OUR BRIEFS.

VERY FACTUALLY SIMILAR TO THIS

CASE.

THE DEFENDANT IN BOYD PRESENTED

HIS OWN TESTIMONY AND THAT OF

HIS PASTOR'S AND WAIVED

EVERYTHING ELSE AND THIS COURT

WENT THROUGH DETAILED ANALYSIS

AND DISTINGUISHED FROM THE

MUHAMMAD KOON TYPE SITUATION.

SAID HE IS NOT WAIVING RIGHT TO

PRESENT MID MITIGATION.

HE IS CONTROLLING WHAT

MITIGATION IS PRESENTED TO THE

JURY.

THAT'S WHAT WE HAVE IN THIS

CASE.

THE DEFENDANT DIDN'T WAIVE HIS
RIGHT TO PRESENT MITIGATION
EVIDENCE.
HE JUST CONTROLLED WHAT WAS
PRESENTED.
AND OBVIOUSLY HIS ATTORNEY
AGREED WITH HIM AS TO THE
MENTAL MITIGATION.
THAT WAS, A STRATEGIC DECISION
ON HIS PART.
THEY ALLUDE TO DR.^KROP'S
QUOTE, UNQUOTE REPORT, WHICH IS
REALLY JUST A ONE PAGE PROPOSED
MITIGATION HE MAY HAVE.
I BELIEVE HE INDICATE IN THAT
REPORT THAT MR.^EAGLIN HAD BEEN
DIAGNOSED WITH BIPOLAR.
AND THAT IS ALSO IN THE PSI, I
BELIEVE THE DEPARTMENT OF
CORRECTIONS HAD NOTED THAT
BASED ON THE 2001 PINELLAS
COUNTY MURDER.
THAT THERE WAS A NOTATION TO
THAT EFFECT.
AND THAT THAT COUNSEL ARGUES
THAT THE TRIAL COURT WAS UNDER
AN OBLIGATION TO BASICALLY FIND
THAT AS MITIGATION EVEN THOUGH

IT HAD NOT BEEN PRESENTED VIA
LIVE TESTIMONY FROM DR.^KROP.
OBVIOUSLY, I BELIEVE IT WAS
JUSTICE PARIENTE POINTED IT
OUT, TRIAL COURT HAD THE DUTY
TO FIND MITIGATION WHEN IT IS
IN THE RECORD IF IT IS
BELIEVABLE AND UNCONTROVERTED.
CLEARLY THAT IS NOT THE CASE
WITH DR.^KROP'S REPORT.
THE STATE WOULD HAVE DEFINITELY
CHALLENGED HIS FINDINGS I'M
SURE HAD THEY PRESENTED
DR.^KROP, ESPECIALLY GIVEN
TRIAL COUNSEL'S DECISION WAS
THAT TESTIMONY WOULD BE
DANGEROUS.
I'M SURE THERE WAS MUCH MORE TO
IT THAT WE WILL FIND OUT IN
POST-CONVICTION AS TO THE
REASONS FOR THAT.
BUT I DON'T BELIEVE THAT IS
BELIEVABLE AND UNCONTROVERTED
AND CERTAINLY NOT ERROR BY THE
TRIAL JUDGE TO NOT CONSIDER IT
SIMPLY BECAUSE IT WAS NOT
MENTIONED IN THE PSI.
WITH REGARD TO THE FORTH ISSUE
AS TO REMORSE OR LACK THEREOF,

I BELIEVE THE TRIAL JUDGE, IF
YOU READ THE SENTENCING ORDER
IN CONTEXT HE GOES THROUGH THE
AGGRAVATION AS TO BOTH VICTIMS
AND GOES THROUGH THE
MITIGATION.
AT THE VERY END HE PUTS TWO OR
THREE SENTENCE THERE IS ABOUT
EAGLIN'S TESTIMONY AS BOTH
PENALTY PHASE AND SPENCER
HEARING.
ARGUABLY, EAGLIN COULD HAVE
BEEN TRYING TO EXPRESS REMORSE
AT HIS TESTIMONY AT THOSE TWO
TIMES.
GRANTED THE DEFENSE ATTORNEYS
DID NOT PROPOSE THAT AS A,
NON-STATUTORY MITIGATION THAT
HE HAD REMORSE BUT, THEIR
SENTENCING MEMORANDUM WAS
FILED PRIOR
TO THE SPENCER HEARING AND
MR.^EAGLIN GAVE A STATEMENT AT
SPENCER HEARING.
>> WHAT DID HE SAY THAT CAN BE
CONSIDERED AS REMORSE?
>> WELL, HE SAID THAT, I
UNDERSTAND EVERYBODY TALKING

ABOUT HOW GOOD A PERSON DARLA
LATHREM IS AND CHARLES
FUSTON AND DON'T DISCREDIT NONE
OF THAT HE GOES ON TO SAY, THIS
IS AT THE SPENCER HEARING.
I DON'T HAVE THE RECORD CITE.
I CAN'T READ IT ON MY COPY BUT
IT IS AT THE SPENCER HEARING.
HE GOES ON TO SAY THAT
BASICALLY SOMEBODY ELSE WILL BE
RESPONSIBLE FOR DETERMINING
JUSTICE.
HE ARGUABLY --
>> THAT SEEMS A REAL THREAT TO
SAY THAT THAT IS --
>> IT MAY NOT BE THE MOST
TRADITIONAL METHOD OF
EXPRESSING BUT I THINK ARGUABLY
IT COULD BE CONSIDERED BY THE
TRIAL COURT AS THAT WAS AN
ATTEMPT TO EXPRESS REMORSE.
BASICALLY WHAT YOU HAVE IS THE
TRIAL COURT ADDRESSING HIS
TESTIMONY IN A SENTENCING ORDER
BECAUSE HE PROBABLY FELT A NEED
TO DO IT BECAUSE THAT MAY HAVE
BEEN PROPER TO HIS MITIGATION.
AND CERTAINLY, EVEN IF IT WAS
ERROR TO PUT THAT IN THERE IT

IS CLEARLY HARMLESS IN THIS
CASE.
WE HAVE FIVE AGGRAVATING
CIRCUMSTANCES AS TO THE MURDER
OF DARLA LATHREM AND THREE AS
TO CHARLES FUSTON.
SO I DON'T BELIEVE, HE
CERTAINLY DIDN'T CONSIDER IT IN
HIS AGGRAVATING CIRCUMSTANCES
THAT HE LACKED REMORSE.
YOU CAN READ HIS ANALYSIS AS TO
THAT.
HE JUST THREW IT IN AT THE END
MAINLY TO DISCUSS THE
DEFENDANT'S TESTIMONY AT THE
PENALTY PHASE AND THE SPENCER
HEARING.
COUNSEL'S FINAL ISSUE WAS THE
COURT'S DISCRETION IN NOT
ALLOWING COUNSEL TO IMPEACH
MR.^JESSE BAKER WITH HIS
DISCIPLINARY REPORT THAT HE
RECEIVED.
CLEARLY THAT IS NOT ALLOWABLE
IMPEACHMENT UNDER THE FLORIDA
EVIDENCE CODE, SECTION 90.610.
IT IS NOT A CONVICTION FOR A
CRIME OR ONE INVOLVING

DISHONESTY.

THERE WAS NEVER ANY PROFFER

WHAT THIS DOES MINUTE NARY

REPORT WENT TO.

COUNSEL BASICALLY JUST SAID IT

WAS FOR LYING AND HE GOT 60

DAYS.

AS I POINTED OUT IN MY BRIEF,

THERE'S A MAJOR DISTINCTION AS

TO WHAT SOMEBODY CAN BE FOUND

IN VIOLATION OF A DISPLAIN NARY

REPORT FOR UNDER THE FLORIDA

ADMINISTRATIVE CODE BY

DEPARTMENT OF CORRECTIONS

VERSUS SAY A CRIMINAL

CONVICTION.

THERE'S A GREAT, GREATER

DIFFERENCE IN THE STANDARDS AS

TO ONE OR THE OTHER.

I MEAN, EAGLIN WOULDN'T BE

ENTITLED TO COUNSEL.

HE WOULDN'T BE ABLE TO

CROSS-EXAMINE WITNESSES.

THERE IS NO BURDEN OF PROOF IN

THE DISMEN NARY REPORT.

IT IS CERTAINLY NOT IN AREA OF

CONVICTION.

I THINK TRIAL COURT WAS ACTING

SOUNDLY WITHIN HIS DISCRETION

WHEN HE DENIED THAT.

IF THERE ARE NO FURTHER

QUESTIONS THE STATE WILL ASK

THE COURT TO AFFIRM THE

JUDGEMENT OF CONVICTION.

THANK YOU.

>> THANK YOU.

MR.^MOELLER?

>> JUST VERY BRIEFLY, THERE WAS

A QUESTION ABOUT HOW OLD

MR.^EAGLIN WAS WHEN THESE

OFFENSES OCCURRED.

HE WAS 27 YEARS OLD.

AT THE TIME OF THE OFFENSES AND

HE HAD BEEN INCARCERATED SINCE

2001.

AND, WITH REGARD TO THE REMORSE

ISSUE, I JUST ASK THE COURT TO

GO THROUGH MR.^EAGLIN'S

TESTIMONY AT THE PENALTY PHASE

AND AT THE SPENCER HEARING.

IT WAS VERY, FAIRLY BRIEF.

IT'S HARD TO CHARACTERIZE WHAT

HIS TESTIMONY WAS ABOUT,

BECAUSE RATHER RAMBLING AND

UNFOCUSED I MUST SAY.

I DON'T THINK THE COURT WILL

FIND ANYTHING IN THERE THAT,

REMOTELY RESEMBLES AN

EXPRESSION OF REMORSE

UNFORTUNATELY OR FORTUNATELY

FOR THE ISSUE THAT WE'RE TRYING

TO RAISE IN THIS, IN THIS CASE.

I REALLY HAVE NOTHING FURTHER.

I'LL RELY ON THE BRIEFS.

THANK YOU VERY MUCH.

>> THANK BOTH COUNSEL FOR THEIR

ARGUMENTS.

THE COURT WILL NOW BE IN RECESS

FOR TEN MINUTES.

>> PLEASE RISE.

SUPREME COURT'S NOW IN RECESS.