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Jeremiah Martel Rodgers v. State of Florida

>> THE LAST CASE ON THE COURT'S
AGENDA THIS MORNING IS RODGERS
VERSUS STATE.

MR. TRUSKOSKI.

>> I'M RYAN TRUSKOSKI
REPRESENTING JEREMIAH
RODGERS, WE'RE HERE UPON
DEFENDANT'S RESENTENCING.
AT HIS RESENTENCING, HE WAIVED
HIS RIGHT TO JURY TRIAL.
HE WAIVED HIS RIGHT TO PRESENT
MITIGATING EVIDENCE BECAUSE HE
WANTED TO DIE.
NOW THE PRIMARY ISSUE WHETHER
THE TRIAL COURT SHOULD HAVE
ORDERED A COMPETENCY
EVALUATION, BEFORE THE
DEFENDANT WAS ALLOWED TO WAIVE
THESE CRITICALLY IMPORTANT
RIGHTS.

>> YOU --

>> WASN'T THERE SOME DISCUSSION
ABOUT COMPETENCY ON THIS RECORD
WHEN HE FIRST STARTED DOWN THIS
PATH?

>> AFTER THE DIRECT APPEAL WAS
OVER?

OR IN THE BEGINNING OF --

>> IN THE RESENTENCING.

>> THE RESENTENCING?

>> YES.

THE TRIAL ATTORNEY WAS ASKED TO
COMMENT ON THE DEFENDANT'S
COMPETENCY.

THE DEFENDANT, THE DEFENDANT'S
TRIAL ATTORNEY STATED HE HAD NO
CONCERNS.

HE THOUGHT THAT THE DEFENDANT
WAS IN FACT COMPETENT.

>> HE HAD NO REASON TO BELIEVE
THAT THE DEFENDANT WAS NOT
COMPETENT?

>> CORRECT.

>> AND DID THE TRIAL JUDGE MAKE
SOME KIND OF OBSERVATION LIKE
THAT ALSO?

>> THE TRIAL COURT, I DON'T
KNOW IF THE TRIAL COURT MADE

THAT EXPLICIT FINDING.
MAYBE IMPLICITLY.
BUT THE TRIAL COURT DID ENGAGE
THE DEFENDANT IN A COLIQUY,
ABOUT THE ISSUE.
NOW I BELIEVE THAT THE COLIQUY
WAS LEGALLY INSIEVE BECAUSE IT
DIDN'T GO TO HIS MENTAL STATUS,
HIS ABILITY TO THINK CLEARLY.
IT WENT TO MORE TRADITIONAL
THINGS, DO YOU KNOW YOU HAVE A
RIGHT TO PRESENT MITIGATING
EVIDENCE?

I BELIEVE THAT THE COLIQUY WAS
JUST BASICALLY IRRELEVANT UNDER
THE CIRCUMSTANCE.

>> I WOULD LIKE TO ASK YOU, WE
HAVE NOT IN THE AREA OF THE
WAIVER OF MITIGATION, WAIVER OF
JURY TRIAL, INSTITUTED A
REQUIREMENT THAT THERE MUST BE
COMPETENCY EVALUATION BEFORE A
WAIVER CAN BE KNOWINGLY MADE,;
IS THAT CORRECT?

>> THAT'S CORRECT.

>> ARE YOU URGING SUCH A RULE
OF LAW?

OR ARE YOU SAYING THE FACTS AND
CIRCUMSTANCES OF THIS CASE HE
ACCOMPLISHED THE EVALUATION?

>> I AM, I AM URGING SUCH A
RULE OF LAW AS A MATTER OF
PUBLIC POLICY.

RIGHT NOW WE DO HAVE SUCH A
RULE IN THE POST-CONVICTION
SETTING UNDER 3.851, I, REQUIRE
A COMPETENT AT THIS EVALUATION
BY TWO EXPERTS BEFORE THE
DEFENDANT IS ALLOWED TO DISMISS
POST-CONVICTION PROCEEDINGS.

>> BUT I GUESS THE PROBLEM I
SEE, IN NORMAL COMPETENCY
SITUATIONS, YOU NORMALLY MAKE
SOME ASSERTIONS THAT THE
DEFENDANT IS, DOING THIS OR NOT
DOING THAT, WHICH, RAISES SOME
ISSUE IN SOMEONE'S MIND.

YOU'RE ADVOCATING HE DESPITE
ANY OF THAT, NO MATTER HOW
LUCID A DEFENDANT IS, THAT HE
SHOULD HAVE A COMPETENCY, HE OR
SHE SHOULD HAVE A COMPETENCY
EVALUATION?

>> YES.

IT SHOULD BE THE PUBLIC POLICY OF FLORIDA BEFORE A DEFENDANT IS ALLOWED TO ADVOCATE FOR HIS OWN DEATH, THAT, WE HAVE, WE'RE GUARANTEED THAT HE'S COMPETENT TO THE TO DO SO.

>> WE CERTAINLY HAVE NEVER ADOPTED THAT RULE.

EVERY CASE FROM KOON, MOHAMMED, HAVE WE PREVIOUSLY REJECTED THAT OR IS NO LAWYER TRIED TO ADVOCATE A RULE THAT WOULD SAY, AGAIN, IN ADDITION TO KOON AND IN ADDITION TO MOHAMMED THERE SHOULD BE A COMPETENCY REVIEW?

>> FROM MY REVIEW I THOUGHT IT WAS FIRST IMPRESSION.

>> LET'S ASSUME NOT IN THIS CASE, MAYBE IT IS A PERFECTLY REASONABLE RULE AND I'M INTERESTED THAT NO ONE ELSE BROUGHT IT UP BEFORE BECAUSE WE DO IT IN POST-CONVICTION.

LET'S ASSUME WE DON'T HAVE THE THAT RULE AND WE KNOW A LOT ABOUT MR. ^RODGERS AND FRANKLY, A LOT OF THE THINGS THAT HE SAID SEEMS NOT ONLY TO BE THOUGHTFUL BUT, WHETHER WE AGREE OR DISAGREE, KIND OF LIKE ONE OF THOSE CATCH-22s.

SOMEBODY SAYS I DON'T WANT TO LIVE THE REST OF MY LIFE IN A SIX BY NINE.

I WOULD RATHER DIE.

DOES THAT MAKE THEM INCOMPETENT OR, SOMETHING ELSE PHILOSOPHICALLY.

SO EVERYTHING I READ IN THIS RECORD, DIDN'T POINT TO ME THAT WE HAD TO THIS INCOMPETENT DEFENDANT.

TELL ME WHAT, WE ONLY DO IT ON CASE-BY-CASE BASIS.

WHAT IN THIS CASE SHOWS THAT THE JUDGE OR HIS LAWYER SHOULD HAVE BEEN ON NOTICE THAT HE WAS NOT COMPETENT TO MAKE THESE DECISIONS?

>> OKAY, IF I COULD OUTLINE FIVE FACTORS FOR THE COURT.

ONE, WOULD BE, THAT THE DEFENDANT'S LIFELONG HISTORY OF

MENTAL ILLNESS.

TWO, ONE --

>> WHAT DO WE DO WITH HIS STATEMENTS WITH REGARD TO WHAT YOU DO, YOU ACT CRAZY AND GET AWAY WITH ANYTHING?

>> I'M SORRY, SAY THAT AGAIN.

>> WHAT DO YOU DO, ISN'T THERE EVIDENCE OR STATEMENTS FOUND SOMEWHERE IN THIS RECORD THAT TALK ABOUT THIS INDIVIDUAL SAYING THAT WHAT YOU DO, IF YOU ACT CRAZY AND YOU TAKE ADVANTAGE OF IT YOU CAN GET AWAY WITH ANYTHING?

ISN'T THAT IN HERE ALSO?

>> THAT IS IN HERE ALSO.

>> THAT IS JUST UNLIKE A PERSON WHO CLEARLY HAS, AND MAY BE DISPUTED BUT, UNLIKE ANY STATEMENTS LIKE THAT IN OTHER RECORDS?

>> I BELIEVE THAT WHEN HE WAS NOT COMPETENT, WHEN HE WAS SAYING THOSE THINGS AND WAS DOING IT JUST TO MAKE SURE HE WAS SENTENCED TO DEATH.

AND, THAT'S FINE, IF HE SAYS THOSE THINGS AND WE ALREADY KNOW HE IS COMPETENT.

BUT IN THIS CASE, WE'RE REALLY GUESSING.

>> WE DO KNOW THIS ABOUT HIM. AND THE JUDGE IN A VERY GOOD, TO ME A PRETTY COMPREHENSIVE ORDER, THAT IS NOT THE JUDGE'S ORDER.

LET ME ACTUALLY, I WAS THINKING -- IT IS ACTUALLY THE LAWYER'S STATEMENTS THAT, IS IT TRUE OR UNCONTROVERTED THAT HIS MOTHER SEXUALLY ABUSED HIM AND EVENTUALLY TOOK HER OWN LIFE?

>> CORRECT.

>> IS IT ALSO TRUE THAT HE HIMSELF WOULD CUT AND MUTILATE HIS OWN BODY AND MADE SUICIDAL ATTEMPTS?

>> CORRECT.

>> ALL RIGHT.

SO THEREFORE, IN TERMS OF HIS MENTAL ILLNESS, SOMEBODY WHO IS SUICIDAL IS NOT NECESSARILY

MENTALLY INCOMPETENT, WHAT IS THERE, IF YOU WANT TO CONTINUE, WHAT IS THERE IN THIS RECORD THAT SHOWS THAT THE DEFENDANT SHOULD HAVE BEEN EVALUATED FOR COMPETENCY TO WAIVE MITIGATION?

>> OKAY, IF I COULD FINISH MY FIVE FACTORS.

FIRST WAS HIS LIFE LONG HISTORY OF MENTAL ILLNESS.

SECOND ONE, ONE DOCTOR ALREADY DECLARED HIM INCOMPETENT.

>> WHEN WAS THIS?

>> THE DOCTOR'S NAME WAS LAWRENCE GILGUN.

>> SAID WHEN?

>> THAT WAS IN ABOUT 2000.

NOW --

>> WAS THAT IN RELATION TO THE ORIGINAL TRIAL OR NO?

>> YES.

>> IT WAS?

>> NOW, NUMBER THREE, OTHER THAN --

>> WAS THAT BEFORE OR AFTER HIS STATEMENTS ABOUT, IF YOU SAY MENTAL ILLNESS YOU CAN ALMOST GET AWAY WITH ANYTHING?

>> I BELIEVE THAT THE EVALUATION WAS DONE FIRST. AND THEN THERE WERE, THIRD FACTOR THERE WERE OTHER DOCTORS THAT DID DECLARE HIM COMPETENT BACK IN 2000 BUT SAID THIS WAS LIKELY TO CHANGE.

AND THEN THE FOURTH FACTOR IS, THE POINT THAT HE HAS NOT HAD AN EVALUATION IN A LONG TIME. THE PASSAGE OF TIME BETWEEN 2000 AND THE MAY 07 RESENTENCING, WE DO NOT HAVE AN EVALUATION OF HIM.

>> BUT DO WE HAVE ANYTHING OTHER THAN, OTHER THAN HIS DESIRE TO WAIVE A JURY AND WAIVE THE PRESENTATION OF MITIGATION BETWEEN 2000 AND 2007, THAT WOULD CAUSE US TO QUESTION THE COMPETENCY DETERMINATION HE MUST HAVE HAD IN ORDER TO STAND TRIAL?

>> YES.

WHICH IS ACTUALLY MY FIFTH FACTOR.

THE STATEMENTS BY HIS OWN TRIAL ATTORNEY IN HIS SENTENCING MEMORANDUM SAYING THE DEFENDANT IS MENTALLY ILL.

THAT HE CANNOT THINK CLEARLY. THOSE STATEMENTS CONTRADICT, YES, THAT THE DEFENDANT IS COMPETENT.

SO THAT IS SOMETHING NEW AND PRESENT.

>> IT DOES SOUND TO ME LIKE THE ONLY, I HAVE A HARD TIME ON THIS RECORD FINDING THAT THAT WOULD PUT THE JUDGE ON NOTICE THAT HE MIGHT NOT BE COMPETENT, WHETHER IT WOULD HAVE BEEN A GOOD IDEA TO HAVE HIM REEVALUATE HIS COMPETENCY, NOT THE QUESTION.

AND WHETHER THE LAWYERS WERE INEFFECTIVE NOT GETTING HIM EVALUATED FOR COMPETENCY IS NOT PERFORMING.

THERE IS NOTHING, IN TERMS, WE HAD A RECENT CASE CAME OUT, THE TENI IS CASE, WHERE THERE WAS COLIQUY AND THERE WERE THINGS THAT QUESTIONED WHAT WAS HAPPENING.

HERE, WOULD YOU AGREE THAT, HIS RESPONSES AND WHAT HE SAID DID NOT INDICATE ANYTHING THAT, OTHER THAN SOMEBODY WHO WAS ACTUALLY INTURNED IN PRISON REALIZES HORRIBLE CRIME HE COMMITTED AND WANTS TO PUT HIMSELF AND HIS VICTIM FAMILY OUT OF THEIR MISERY?

>> I DO AGREE WITH THAT.

I MEAN, THERE IS NOTHING THAT I COULD POINT TO THAT SAID, THE TRIAL JUDGE SHOULD HAVE ACT ON THAT ALONE, TO ORDER A COMPETENCY EVALUATION OTHER THAN THE FACTORS YOU ALREADY SAID.

YOU KNOW, UNDER OF COURSE 1985 HILL DECISION, THE TRIAL JUDGE DOES HAVE AN INDEPENDENT OBLIGATION IN THIS AREA AND ACTUALLY, IN ONE OF THE CASES CITED IN THE STATE'S BRIEF, BOYD v. STATE, BOYD v. STATE, 2005, FLORIDA SUPREME COURT,

ONE OF THE FACTORS IS, A TESTS SHOULD BE ORDERED WHENEVER IT APPEARS NECESSARY BASED ON THE DEFENDANT'S HISTORY.

THAT'S WHY I'M POINTING TO THE HISTORY OF STATEMENTS THAT YES, HE COULD BECOME INCOMPETENT. THIS COULD CHANGE.

>> WHAT IS THAT HISTORY?

DO WE KNOW WHAT, I KNOW THE TRIAL JUDGE IN HIS ORDER SAYS WE HAVE A HISTORY OF MENTAL ILLNESS.

WHAT IS THE THAT HISTORY OF MENTAL ILLNESS?

>> HISTORY OF POST-TRAMATIC STRESS DISORDER.

DISSOCIATIVE DISORDER, SUBSTANCE ABUSE.

PERSONALITY DISORDER.

>> WHEN WERE THOSE KIND OF DIAGNOSES MADE?

>> THAT WAS DR. SARAH DELAND AND THAT WAS DURING FIRST

--

[INAUDIBLE]

>> THIS IS THE DEFENDANT, THIS IS THE CODEFENDANT WITH LAWRENCE THAT THEY MET IN A MENTAL INSTITUTION.

THIS, I DON'T THINK THE STATE WOULD DISAGREE THAT THIS DEFENDANT HAD SOME SERIOUS, A PRETTY SIGNIFICANT HISTORY OF ABNORMALITIES IN HOW HE GREW UP.

SHORT OF THE COMPETENCY ISSUE, BECAUSE I KNOW YOU RAISED PROPORTIONALITY, BUT YOU DON'T ATTACK ANY ASPECT OF THE KNOWING WAIVER OF MITIGATION? UNDER KOON OR HOW THE JUDGE PROCEEDED?

ANY ISSUE AS TO THE WAIVER OF THE JURY TRIAL, ALL OF THAT IS NOT BEING CHALLENGED IN THIS APPEAL; IS THAT CORRECT?

>> CORRECT.

NO FURTHER QUESTIONS AT THIS TIME OR IF THERE ARE ANY FURTHER QUESTIONS.

>> SO ARE YOU RESTING ON YOUR BRIEF ON PROPORTIONALTY OR YOU WANT TO MAKE ARGUEMENT --

>> I WOULD REST ON THE BRIEF.
>> MISS MILSAPS.
>> GOOD MORNING CHIEF JUSTICE
QUINCE.
MAY IT PLEASE THE COURT,
CHARMAINE MILLSAPS.
REPRESENTING THE STATE.
>> SPEAK UP INTO YOUR MIKE.
>> I'LL JUST TALK LOUDER.
I DON'T HAVE ANY PROBLEM DOING
THAT.
FIRST OF ALL ON THE COMPETENCY,
I THINK WHAT WE'RE DOING WE'RE
CONFUSING THINGS.
YES, THE STATE AGREES HE IS
MENTALLY ILL.
STATE AGREES, LAWRENCE IS
MENTALLY ILL.
WE ALSO ASSERT THERE IS RECORD
IN BOTH OF THEM THAT THEY
EXAGGERATE.
THAT IS WHAT DR. ^McCLAREN AT
THE FIRST, THERE WERE TWO
COMPETENCY HEARINGS BEFORE THE
FIRST PENALTY PHASE.
REMEMBER HE ENTERED A GUILTY
PLEA.
SO THERE WAS NO FIRST GUILT
PHASE.
THERE WAS A FIRST PENALTY PHASE
AND A SECOND PENALTY PHASE.
>> WAS THERE ANY PROBLEM WITH
HIM ENTERING THE GUILTY PLEA?
WAS THERE ANY QUESTION ABOUT
WHETHER HE WAS COMPETENT TO
EVEN ENTER A GUILTY PLEA?
>> NO, YOUR HONOR.
THAT HAS NOT BEEN RAISED
ANYWHERE.
AS FAR AS, AT THE, DOCTOR
McCLAREN AT THE FIRST JANUARY
2000 COMPETENCY HEARING, SAID
HE GAVE HIM, FIRST TESTED
HIM FOR IQ.
IQ CAME BACK A WAY, IQ CAME
BACK 83.
ALSO GIVE HIM A MMPI, IS WHAT
DR. ^McCLAREN TESTIFIED.
I HAD IT SCORED BY COMPUTER. IT
CAME BACK INVALID.
THEREFORE THAT IS EVIDENCE THAT
THIS DEFENDANT, WE HAVE,
COMPUTER EVIDENCE THAT THIS
DEFENDANT IS EXAGGERATING THE

EXTENT OF HIS MENTAL ILLNESS.
NOT ONLY THAT GETS UP ON THE
STAND AT SECOND PENALTY PHASE,
WHAT YOUR HONOR, JUSTICE LEWIS,
IS TALKING ABOUT, THE
DEFENDANT'S OWN TESTIMONY AT
THE PENALTY PHASE.
HE ADMITS HE HAS A LONG HISTORY
AND, THAT'S WHY HE WAS IN
CHATTAHOOCHEE.
HE EXAGGERATES AND USES THIS TO
GET OUT OF THE GENERAL
POPULATION.
HE USES SOME, A LOT OF THE
DOCTORS AGREED AT THE FIRST
PENALTY PHASE THAT, THAT SOME
OF HIS CUTTING, THEY REFER TO
IT AS CUTTING, THAT SOME OF HIS
CUTTING WAS IN FACT
MANIPULATIVE.
>> YOU KNOW WHAT?
THIS KEEPS, I THINK OF THAT
FIRST PART OF CATCH-22 ABOUT
WHETHER, SOMEBODY THAT DOESN'T
WANT TO GO TO WAR, THEY'RE
NORMAL OR ABNORMAL.
BUT, WHAT IS CLEAR IN THIS
CASE, AND I THINK WE'VE ALREADY
CROSSED IT, MANY YEARS AGO, BUT
HE SAYS THAT HE WANTS TO WAIVE
MITIGATION, YET HE HAS SELFISH
REASON.
I'M 30 YEARS OLD.
I'M HEALTHY.
I CAN'T IMAGINE LIVING 50 MORE
YEARS IN PRISON THAT IS WORSE
THAN DEATH.
SO A DEATH SENTENCE IS, YOU
KNOW, GIVES ME AN EXPECTED END,
DOING TIME THIS WAY IS NOT
EASY.
NOW, I'M PRETTY IMPRESSED BUT
THAT SOUND LIKE A PERSON WHO
IS, PRETTY COMPETENT, BECAUSE
THE IDEA OF SOMEBODY LIVING
REST OF HIS LIFE IN PRISON,
MAYBE THE DEATH SENTENCE GETS
THEM OUT OF IT.
SO I THINK WHAT WE'RE REALLY
DEALING WITH HERE, IS, WHETHER,
IF THERE IS NO ABSOLUTE
EVIDENCE OF COMPETENCY, DO WE
WANT, OR SHOULD WE IN THE
FUTURE ADD, BEFORE SOMEBODY

ESSENTIALLY SAYS, HEY, STATE,
KILL ME, THAT THEY'RE BE A
COMPETENCY EVALUATION?
I MEAN, FOR WHATEVER REASON WE
DECIDED TO ORDER IT, SOMEBODY
GIVES UP ALL POSTCONVICTION.

>> I DISAGREE WITH THAT.

>> WE'RE NOT REQUIRING IT?

>> YOU HAVE A RULE.

-- EXCEPTION.

BUT THAT RULE IN THE
POST-CONVICTION REQUIRES THE
JUDGE, FIND, CONCLUDE THAT
THERE ARE REASONABLE GROUND TO
BELIEVE THAT THE PRISONER IS
NOT MENTALLY COMPETENT.
THE RULE ITSELF REQUIRES SOME
MANIFESTATION.

WE DO NOT JUST GO THROUGH
EVERYBODY, OKAY?

THERE IS NO PER SE RULE --

>> AND MR. TRUSKOSKI HAS
NOT BEEN --

>> YOU WOULD SAY THE SAME RULE
WOULD APPLY.

IF THE JUDGE HAS REASONABLE
GROUNDS TO DOUBT A PERSON'S
COMPETENCY, WHETHER TO ENTER
THE GUILTY PLEA OR WAIVE THE
JURY TRIAL OR WAIVE MITIGATION
THEY ORDER A COMPETENCY
EVALUATION.

THAT IS.

>> CONSTITUTIONALLY TO DO SO.
CONSTITUTIONAL LAW USES
GROUNDS, BONIFIED.

BUT REASONABLE GROUNDS IS JUST,
EQUIVALENT TO THAT.

AND, NOT ONLY ALL THOSE
EXAMPLES, BUT TO ENTER A PLEA
AS WELL.

YOUR HONOR, WE AGREE A JUDGE,
IF THERE IS ANY EVIDENCE,
MANIFESTATION OF INCOMPETENCY,
A JUDGE MUST SUA SPONTE
AT ANY POINT, AT
ANY POINT SEES THAT THEY HAVE
CONSTITUTIONALABLEGATION TO DO
THAT.

THERE IS NO PER SE RULE
ANYWHERE ACROSS THE SPECTRUM.
WE DON'T REQUIRE THAT IN
POST-CONVICTION.

IT'S NOT PER SE, OKAY HE WILL

WAIVE SOMETHING, WE'LL GET HIM
EVALUATED.

WE DON'T DO THAT ANYWHERE.

AND WE DON'T DO IT HERE.

I WOULD LIKE TO GO DOWN HIS
FOUR FACTORS AS WELL.

WE ARE.

FIRST OF ALL --

>> FIRST OF ALL THE STATE
AGREES HE IS MENTALLY ILL.

THAT DOES NOT MAKE YOU
INCOMPETENT.

THAT THE COURT HELD IN
MUHAMMAD.

YOU CAN HAVE MENTAL ILLNESS
AND --

>> THERE ARE MENTAL ILLNESS AND
THERE ARE ALL SHADES.

HIS MENTAL ILLNESS ISN'T ONE
WHERE HE HAS HAD LOUIS NATIONS
SOMETHING WHICH WOULD REALLY
INTERFERE WITH HIS ABILITY TO
SEE THE WORLD IN A CERTAIN WAY.
HOW WOULD YOU CHARACTERIZE HIS
MENTAL ILLNESS MAY HAVE COME
FROM HIS REALLY HORRIBLE EARLY
CHILDHOOD.

>> THAT IS WHAT PRETTY MUCH ALL
THE MENTAL, THAT'S WHAT WE
CONCEDE, WE CONCEDED UP HERE,
WE CONCEDED ALL ALONG AS WE DID
IN SENTENCING MEMORANDUM, THAT
HE DID HAVE THIS HORRIBLE
CHILDHOOD, LEADING TO
POST-TRAMATIC STRESS DISORDER
AS DR.^McCLAREN TESTIFIED IN
THE FIRST, IN THE FIRST
COMPETENCY.

SO, WE DO, INDEED AGREE THAT,
HIS CHILDHOOD, AND TO ANSWER
YOUR QUESTION, JUSTICE QUINCE,
THE CHILDHOOD MANIFESTATIONS OF
SOME OF HIS MENTAL ILLNESS, GO
BACK TO 11, 12 AND 13.

OKAY?

SO THERE IS --

>> YOU'RE NOT DISPUTING A LONG
HISTORY OF MENTAL ILLNESS FOR
THIS PARTICULAR INDIVIDUAL?

>> BUT NOT THAT RISES TO THE
LEVEL OF INCOMPETENCY.

ONCE MORE, DR.^GILGUN WHO WE
RELIED ON, I ALSO LIKE TO TALK
TO YOU, DR.^GILGUN'S EVALUATION

HE MET WITH THE DEFENDANT,
DECEMBER 7th, 1999.
THE COMPETENCY HEARING WAS THEN
HELD AND DR.^GILGUN TESTIFIES
JANUARY 2000.

>> IS THERE ANY KIND OF RULE OF
LAW THAT SAYS ONCE A DOCTOR
FINDS THE DEFENDANT
INCOMPETENT, THAT SOMEHOW THERE
IS A REQUIREMENT THAT, OR EVERY
OTHER PROCEEDING THERE AFTER
THERE HAS TO BE ANOTHER
COMPETENCY HEARING?

>> NO.

I'M AWARE OF NO RULE.
AND BUT I WOULD ALSO LIKE TO
TALK TO YOU ABOUT DR.^GILGUN'S
TESTIMONY.

YES, TECHNICALLY, THE OTHER TWO
DOCTORS FOUND HIM COMPETENT.
BOTH DR.^BENSON AND
DR.^McCLAREN WHO TESTIFIED AT
THAT HEARING SAID HE WAS
COMPETENT.

EVEN DR.^GILGUN WHY TECHALLY
TESTIFIES HE IS INCOMPETENT,
REALLY, OPENLY ADMITS THAT THE
DEFENDANT UNDERSTANDS THE
CHARGES AGAINST HIM.

CAN CONSULT WITH HIS LAWYER,
ALL THAT.

THE THING THAT HE IS WORRIED
ABOUT IS ONE OF THE STATUTORY
FACTORS ABOUT THE DEFENDANT'S
BEHAVIOR.

AND IT IS HIS CUTTING BEHAVIOR
HE IS WORRIED ABOUT.

YOUR HONOR, I'M NOT REALLY SURE
WHEN YOU READ DR.^GILGUN'S
TESTIMONY ENOUGH, THAT THE
LEGAL DEFINITION OF COMPETENCY,
WHICH IS THAT THE UNDERSTAND
FROM THE UNITED STATES SUPREME
COURT, WHICH IS THAT YOU
UNDERSTAND THE PROCEEDINGS
AGAINST YOU AND CAN HELP YOUR
LAWYER, IF YOU LOOK AT JUST HIS
TESTIMONY AS TO THOSE FACTORS,
EVEN DR.^GILGUN SAID YES, HE
CAN DO THAT.

ALL RIGHT?

SO --

>> YOU HAVE THE 2000 COMPETENCY
HEARING FOR THE FIRST PENALTY

PHASE, THERE WAS COMPETENCY HEARING.

THE JUDGE BELIEVED AND FOUND CREDIBLE THE TESTIMONY OF THE TWO OF THE DOCTORS THAT HE WAS COMPETENT.

AND, THAT CASE WENT TO TRIAL. I DON'T KNOW IF COMPETENCY WAS RAISED ON APPEAL BUT THERE IS NO, BECAUSE IT WOULD BE DIFFERENT IF HE HAD, AT SOME POINT IN THE PROCEEDINGS BEEN FOUND BY THE COURTS TO BE INCOMPETENT AND HIS COMPETENCY WOULD HAVE TO BE REEVALUATED UNTIL HE WAS, CORRECT?

>> DETERMINATIONS PRIOR DETERMINATIONS UNDER JERO, ONE OF THE FACTORS YOU LOOK AT IS PRIOR DETERMINATIONS OF COMPETENCY AND --

>> IN THIS CASE THERE WAS NEVER A DETERMINATION BY THE TRIAL COURT THAT HE WAS INCOMPETENT?

>> THERE WERE IN EFFECT TWO TRIAL COURTS HERE.

JUSTICE BELL, JUDGE BELL, DID THE FIRST COMPETENCY HEARING. AND, THAT I'VE BEEN TALKING TO YOU ABOUT.

AND FOUND HIM COMPETENT. BUT HE DID NOT TRY THE CASE BECAUSE HE WAS DISQUALIFIED. JUDGE RASSMUSSEN, AND BY TRY I MEAN AT THE PENALTY PHASE.

WHO ALSO PRESIDED AT THIS PENALTY PHASE HOLDS A SECOND ONE AS WELL.

>> SECOND COMPETENCY HEARING?

>> YES.

WHERE HE TAKES MORE TESTIMONY BECAUSE THE DEFENDANT, I DON'T KNOW EXACTLY WHAT HE DOES BUT HE DID SOME CUTTING BEHAVIOR IN FEBRUARY.

JANUARY COMPETENCY HEARING. FOUND COMPETENT BY JUDGE BELL AT THE END OF JANUARY.

COMPETENCY HEARING AT THE BEGINNING OF JANUARY, ORDER AT THE END OF JANUARY.

FEBRUARY, HE ENGAGES IN MORE OF THE CUTTING BEHAVIOR.

AND AS DR.^BENSON EXPLAINS,

IT'S NOT REALLY THESE ARE FAKE
SUICIDE ATTEMPTS.

THAT'S NOT REALLY THE WAY
DR.^BENSON SAID TO LOOK AT
THIS.

HE CUTS HIMSELF TO RELIEVE
TENSION.

AND WHY HE CAN CUT HIMSELF SO
BADLY THAT HE CAN ACCIDENTALLY
COMMIT SUICIDE, THE CUTTING
BEHAVIOR IS JUST, THAT IS
UNFORTUNATELY, ACCORDING TO
DR.^BENSON, VERY COMMON AMONG
PEOPLE WHO ARE, WHO ARE PUT IN
PSYCHIATRIC UNITS, AS, YOUNGER,
AS CHILDREN AND ADOLESCENTS.
SO WHAT WE HAVE HERE IS CUTTING
BEHAVIOR.

AND, THAT CUTTING BEHAVIOR HE
DID AGAIN IN FEBRUARY.

SO WE HELD ANOTHER ONE IN
APRIL, ANOTHER COMPETENCY.

IT WASN'T QUITE AS FORMAL.
BUT, OKAY.

BUT DR.^GILGUN I THINK HIMSELF
OWN TESTIMONY DOESN'T REALLY,
WHEN YOU LOOK AT THE SPECIFIC
ANSWERS TO THE SPECIFIC
QUESTIONS, WHY HE COMES TO THE
CONCLUSIONS HE IS INCOMPETENT,
IF YOU LOOK AT, WELL WE REALLY
CONSIDER INCOMPETENCY, HE SAYS
YES, HE DOES UNDERSTAND THE
PROCEEDINGS, THE ROLE OF ALL
THE PARTIES, WHAT EASY'S
CHARGED WITH AND YES, HE CAN
HELP HIS LAWYERS.

SO I UNDERSTAND WHY, I DON'T
THINK ANY JUDGE WOULD HAVE
FOUND, DR.^GILGUN'S TESTIMONY
TO BE SUFFICIENT FOR A
INCOMPETENCY.

LIKELY TO CHANGE.

YES THEY DID TESTIFY, THE
DOCTORS THAT IT WAS LIKELY TO
CHANGE.

THERE IS A PASSAGE OF TIME FROM
2000.

REMEMBER, BOTH THE COMPETENCY
HEARINGS I'M TALKING ABOUT, TO
YOU OCCURRED IN 2000 AND THIS
SECOND PENALTY PHASE OCCURS IN
2007.

SO THAT'S SEVEN YEARS.

BUT LAWRENCE ADMITS, LAWRENCE TESTIFIES AT THIS SECOND PENALTY PHASE AND ADMITS HE IS NOT BEING TREATED BY DOC.

>> YOU MEAN RODGERS?

>> I'M SORRY.

I KNEW I WAS GOING TO DO THAT. AND I DID IT.

RODGERS IS NOT BEING TREATED BY DOC.

OKAY?

HE IS NOT JUST OUT IN THE WORLD.

HE IS UNDER OUR CARE AND SUPERVISION.

>> IS HE UNDER, WHEN HE WAIVED, DID THE JUDGE, WHEN HE WAIVED ALL THE VARIOUS RIGHTS, WAS HE UNDERMEDICATION AT THE TIME OF ANY OF THE WAIVERS? THAT YOU KNOW OF.

>> NO.

I DON'T THINK -- LET ME ANSWER THAT MUCH MORE TECHNICALLY KEY I WOULD AT THAT.

I DON'T RECALL THE JUDGE ASKING THAT, THE WAIVERS OCCURRED AT BEGINNING.

HIS TESTIMONY OBVIOUSLY OCCURS AT THE END OF PENALTY PHASE. HE TESTIFIES HE IS NOT UNDER ANY MEDICATION.

>> MAIN THING THAT IS NOT BEING, VOLUNTARINESS, VOLUNTARY NATURE OF THE WAIVERS, EITHER OF RIGHT TO THE -- OR RIGHT TO JURY TRIAL ARE NOT BEING CHALLENGED IN THIS CASE?

>> THERE IS NO VOLUNTARINESS OF KOON, SAYING THAT KOON WAIVER WASN'T VOLUNTARY IS NOT DOING THAT.

THE FIFTH FACTOR HIS OWN ATTORNEY ADMITTING THAT HE IS MENTALLY ILL.

THE STATE DOES THAT.

THAT THAT IS NOT EVIDENCE OF INCOMPETENCY.

HE HAS MENTAL ILLNESS.

WE THINK IT IS EXAGGERATED AND WE ALSO THINK HE MANIPULATES IT BUT WE'RE NOT DENYING ITS EXISTENCE.

AS SO TO, I WANTED TO POINT OUT

WE DON'T HAVE A PER SE RULE ANYWHERE AND WE DON'T HAVE ONE HERE.

I WANT TO SAY SOMETHING ABOUT THE PROPORTIONALTY BECAUSE I WANT TO GET IT STRAIGHT WHO THE ACTUAL SHOOTER IS.

BECAUSE IN OPPOSING COUNSEL'S INITIAL BRIEF HE SAYS LAWRENCE WAS THE ACTUAL SHOOTER.

>> WASN'T THERE AGREEMENT OR SOMETHING THAT, HE COULD PRESENT, THIS ENDED UP BEING A PLEA, CORRECT?

>> YES.

WE ENTERED INTO A PLEA AGREEMENT TO GET THE PLEA. THAT PLEA AGREEMENT AGREED, WE WOULD NOT ARGUE, DOWN AT THE TRIAL COURT, IT DOES SAY STATE, THAT HE WAS THE SHOOTER.

WHAT I'M TALKING ABOUT --

>> MY QUESTION, TO YOU IS, DURING THE PLEA COLIQUY, DID THE STATE GIVE A FACTUAL BASIS FOR THE PLEA?

AND DURING THAT WAS THERE ANYTHING SAID ABOUT WHO WAS THE SHOOTER?

BECAUSE WHEN YOU ENTER A PLEA --

>> WE NEVER VIOLATED OUR PLEA AGREEMENT.

WE NEVER ARGUED THAT, AND HE ISN'T EVEN SAYING THAT, THAT WE VIOLATED THAT.

YES, YOUR HONOR, WE DID A FACTUAL BASIS BUT I DON'T, I MEAN --

>> I'M JUST ASKING IF IN THAT FACTUAL BASIS ANYTHING WAS SAID ABOUT WHO WAS THE SHOOTER? NO?

>> NO, I DON'T KNOW.

>> OKAY.

>> SO WE DID NOT VIOLATE, WE GOT THE PLEA AGREEMENT. THE PLEA AGREEMENT DOES SAY THAT THE STATE WILL NOT ARGUE THAT RODGERS WAS THE ACTUAL SHOOTER.

>> WHY ARE YOU NOW, WHY BRING UP SOMETHING THAT IS NOT NECESSARY TO THIS APPEAL

SOMEONE COULD ARGUE AT A LATER TIME IS VIOLATION OF STATE'S PLEA AGREEMENT.

>> THAT IS PART OF HIS PROPORTIONATE ARGUESMENT.

>> SEEMS THIS CASE IS PROPORTIONAL NO MATTER WHO IS THE REAL SHOOTER.

>> THAT IS OUR POSITION, YOUR HONOR.

THAT IT IS PROPORTIONAL. REMEMBER THAT THE CASE IS FACTUALLY SIMILAR, LEGALLY AND FACTUALLY MOST SIMILAR TO THIS IS THE CODEFENDANT CASE OF LAUREN.

I DON'T BELIEVE A AGREEMENT DOWN BEFORE MADE BEFORE A FACT-FINDER FINDS HE IS ACTUAL SHOOTER WE'RE VIOLATING THAT. IF YOU DO FIND A VIOLATION CAN YOU TREAT THIS --

>> I'M NOT SAYING I FIND IT A VIOLATION.

JUST SAY IN THIS KIND OF CASE, WHY EVEN, GO THERE IF YOU DON'T NEED TO THE?

THAT'S UP TO YOU.

OKAY.

I'M JUST SAYING.

>> I JUST FIND IT A LITTLE ODD TO BE DOING PROPORTIONALITY REVIEW ON SOMETHING OTHER THAN THE TRIAL COURT'S FACTUAL FINDING.

WE NOW HAVE A FACTUAL FINDING FROM THE TRIAL COURT.

ACTUALLY, YOUR HONOR, WE HAVE A FACTUAL FINDING FROM EVERY FACT FINDER.

JUDGE BELL IN THE LAWRENCE CASE, JUDGE BELL WHO DID TRY THE CODEFENDANT OF LAWRENCE, FOUND LAW REINS WAS NOT THE SHOOTER.

THIS COURT ALSO FOUND LAWRENCE WAS NOT THE SHOOTER.

OKAY?

AND YOU SAID THIS IN ALL THE WAY ALONG AND NOW, WE HAVE A FACTUAL FINDING.

I DON'T KNOW HOW YOU'RE GOING TO DO IMAGINARY PROPORTIONALTY

REVIEW WITHOUT LOOKING AT WHAT THE TRIAL COURT FOUND?

SO, I THINK THAT PLEA AGREEMENT WAS LIMITED TO, PRIOR TO A FACT-FINDING, MAKE IT A FACT-FINDING.

I HAVE JUST NO IDEA HOW AN APPELLATE COURT IS GOING TO DO AN IMAGINARY PROPORTIONALITY REVIEW.

BUT THERE IS NO, THERE WAS NO EVIDENCE IN FRONT OF THIS JUDGE, THIS JUDGE TURNED TO THE LAWYER, ABOUT COMPETENCY. THE JUDGE TURNED TO THE LAWYER. PROSECUTOR BROUGHT IT UP. VERY SHORT.

TURNED TO THE LAWYER AND SAID, DO YOU HAVE, IS YOUR CLIENT MANIFESTING ANY EVIDENCE OF INCOMPETENCY?

I'M PARAPHRASING HERE.

AND DEFENSE COUNSEL LAWRENCE, FLOWERS, SAID NO, SIR.

AS FAR AS I'M CONCERNED HE HAS BEEN COMPETENT THROUGHOUT MY ENTIRE REPRESENTATION.

HE WAS APPOINTED UNTIL OCTOBER, OR NOVEMBER.

SO HE HAD BEEN HIS LAWYER FOR SEVEN TO EIGHT MONTHS, BEFORE THAT STATEMENT AT THE BEGINNING.

SO HE, HE HAD BEEN THE ATTORNEY OF RECORD IN THIS CASE FOR SEVEN TO EIGHT MONTHS, WHEN HE MADE THAT STATEMENT.

THANK YOU VERY MUCH.

>> THANK YOU FOR YOUR ARGUMENTS.

>> AFFIRM THE JUDGMENT.

>> I JUST WANT TO ADDRESS WHETHER THERE IS A PER SE RULE ON THIS IN THE POST-CONVICTION SETTING.

IT WAS MY READING OF 3.851-I THAT IT WAS AUTOMATIC.

>> NO.

IT SAYS IF THE JUDGE CONCLUDES THERE ARE REASONABLE GROUNDS TO BELIEVE THE PRISONER IS NOT MENTALLY COMPETENT.

THAT'S WHEN YOU HAVE THE APPOINTMENT OF THE EXPERTS.

>> I APOLOGIZE THEN FORGETTING THAT WRONG.

I GUESS IT SEEMED TO ME WHY WOULD YOU HAVE A SPECIAL RULE ON IT IF IT IS ALREADY THE SAME AS THE EXISTING CASE LAW ON DIRECT APPEAL.

>> WANT TO KNOW THE ANSWER TO THAT?

THE ANSWER WAS BECAUSE TRIAL COURTS BELOW DIDN'T KNOW WHAT PROCEDURE TO FOLLOW WHEN THE DEFENDANT WANTED TO GIVE UP ALL RIGHTS.

WE WERE ASKED TO PROMULGATE A RULE SO WE WOULD HAVE UNIFORMTY HOW THE PROCEEDINGS WERE DEALT WITH.

>> I APOLOGIZE FOR MISREADING THAT RULE.

UNLESS THERE IS ANY OTHER QUESTIONS?

>> THANK YOU.

>> THANK YOU.

>> THANK BOTH OF YOU FOR YOUR ARGUMENTS.

THE COURT WILL BE IN RECESS.

>> PLEASE RISE.