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Michael James Jackson v. State of Florida

SC07-2008

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE LAST CASE ON THE COURT'S
AGENDA IS JACKSON VERSUS STATE.

>> MAY IT PLEASE THE COURT.

I AM REPRESENTING MR. JACKSON.

THIS IS A DEATH PENALTY CASE.

WE ARE IN DIRECT APPEAL.

I WOULD LIKE TO START OFF WITH
ARGUMENT SIX, WHICH WOULD BE THE
MUHAMMED ISSUE SPECIFICALLY.

THE TRIAL COURT ERROR IN GIVING
WEIGHT TO THE JURY

RECOMMENDATION.

>> HOW DO WE KNOW THAT THE TRIAL
JUDGE DID THAT WHEN THE TRIAL
JUDGE DID NOT SAY THAT IN HIS
SENTENCING ORDER, SO WHY DO YOU
MAKE THAT ARGUMENT THAT HE GAVE
THEM A GREAT WEIGHT?

>> THAT IS CORRECT, AND THE
ORDER IS SILENT ON THE ISSUE
EITHER WAY, BUT IN A PRIOR
SENTENCING HEARING THE TRIAL
JUDGE ONLY PRONOUNCED THAT THE
LAW REQUIRED HIM TO GIVE GREAT
WEIGHT TO THE JURY VERDICT AND
MADE A COMMENT THAT THE JURY'S
VERDICT WOULD BE DISPOSITIVE
BECAUSE THE COURT WOULD HAVE NO
WAY OF OVERTURNING IT BECAUSE HE
DID NOT WANT EVIDENCE OF
MITIGATION BROUGHT FORTH TO THE
JURY.

HE WANTED THE JURY TO DECIDE
BASED ON THE FACT OF THE CASE
ALONE, AND OUR ARGUMENT IS THAT
THE JUDGE HAD AN INDEPENDENT
DUTY TO GIVE LITTLE OR VERY
LITTLE OR NO WEIGHT.

>> WHAT DO WE DO WITH THE
LANGUAGE THAT THE TRIAL JUDGE
USES THAT SAYS BASICALLY HOW
THEY CONDUCTED A SEPARATE

ANALYSIS OF THE AGGRAVATING AND
MITIGATING CIRCUMSTANCES?

IS THAT SOME INDICATION THAT HE
IS LOOKING AT THINGS BEYOND WHAT

THE JURY MAY HAVE DETERMINED?

>> I THINK EVERY PENALTY PHASE
REQUIRES A JUDGE TO
INDEPENDENTLY RELAY AND CONDUCT
HIS OWN ANALYSIS, SO I DON'T
THINK THAT IS DISPOSITIVE OF
ANYTHING.

AND, YOU KNOW THERE IS CASE LAW
OUT THERE, I THINK IT IS
BROUGHT.

THE STATE CITED, BASICALLY SAID,
YOU LOOK AT THE TRIAL COURT.
IF THE ORDER IS NOT SILENT--
BROOKS BASICALLY SAYS SOMETHING
TO THE EFFECT THAT THE LANGUAGE
MUST BE IN ORDER, BUT HERE IT
SAYS WE HAVE ORAL PRONOUNCEMENTS
THAT ARE UNEQUIVOCAL BY THE
JUDGE.

THE LAW REQUIRES I MUST DO THIS.
I DON'T HAVE A CHOICE, AND WE
ARE PRESUMING THAT THE JUDGE DID
WHAT HE SAID HE WAS GOING TO DO.

>> YOU ARE ON ISSUE SIX, WHICH
IS A PENALTY PHASE ARGUMENT.
WE ARE HERE ON THIS DIRECT
APPEAL OF THE SENTENCE OF DEATH.
I UNDERSTAND YOU CAN'T ARGUE ALL
YOUR ISSUES, BUT ARE YOU GOING
TO ARGUE ANY OF YOUR GUILT PHASE
ISSUES TODAY, OR DO YOU JUST
WANT THE RIGHT TO THE QUESTION
OF THE TRIAL COURT WEIGHING

>> THIS ARGUMENT--

[INAUDIBLE]

AND GET TO THE OTHER ISSUES AS
WE HAVE TIME FOR.

I WILL SHIFT GEARS IF YOU WOULD
LIKE ME TO.

>> WE WOULD NOT LIKE ANYTHING
OTHER THAN FOR YOU TO REPRESENT
A DEFENDANT ON A DIRECT APPEAL,
WHERE DEATH IS ON THE TABLE, TO
MAKE SURE THAT IN TERMS OF THE
GUILT PHASE ISSUES, THAT IF
THERE ANY SUBSTANTIAL GUILT
PHASE ISSUES THAT YOU THINK
MERIT REVERSAL, THAT MIGHT BE
THE FIRST ORDER OF BUSINESS.

>> OKAY, LET'S SEE.

ARGUMENT TWO IS ABOUT THE SEARCH
IN THE SOUTH CAROLINA MOTEL
ROOM.

WITH THIS ARGUMENT, WE REALIZE
THERE IS CASE LAW AGAINST--

>> IN YOUR ARGUMENT, BASICALLY,
REALLY IS THAT WE HAVE A SEARCH
WARRANT HERE, A SEARCH WARRANT
THAT APPLIES TO SOME OF THE
ITEMS THAT THEY NEED TO FIND,
BECAUSE GENERAL LAW IS YOU CAN
SEARCH ANYPLACE WHERE THESE
ITEMS MIGHT BE.

NOW YOU ARE ASKING US TO SAY--
BUT WHEN IT COMES TO THE SAFE
THEY SHOULD HAVE HAD A SECOND
SEARCH WARRANT AND THAT IS BASED
ON WHAT?

>> THAT IS OF COURSE A MINORITY
VIEW THAT WE ARE TRYING TO PUT
FORTH AND SAYS BASICALLY THE
DEFENDANT HAS A HEIGHTENED
EXPECTATION OF PRIVACY AND HAS
RECOGNIZED THE MINORITY.

>> HEIGHTENED IN ANY OTHER AREA
OF THE HOME OR THIS MOTEL ROOM?

>> CORRECT.

>> BECAUSE IT IS LOCKED?

>> CORRECT.

>> AND IN OTHER CASES THERE HAVE
BEEN LOCKED CONTAINERS.

IT MAY NOT HAVE BEEN A SAFE BUT
A LOCKED CONTAINER AND THE
COURTS HAVE SAID THAT IF THE
ITEMS TO BE LOOKED FOR COULD
HAVE BEEN IN THAT LOCKED
CONTAINER, THEN THE POLICE, WITH
THEIR SEARCH WARRANTS, COULD
SEARCH THAT LOCKED CONTAINER.

>> THAT IS CORRECT.

>> SO, HOW IS THIS DIFFERENT
FROM A LOCKED CONTAINER?

>> WE ARE PUTTING A GOOD PHASE
ARGUMENT OF THE MINORITY
POSITION THAT A SECOND WARRANT
IS REQUIRED.

>> THE NEXT ISSUE, ARGUMENT
THREE, WOULD BE THE SOUTH
CAROLINA JAILHOUSE RECORDING
THAT WAS TURNED OVER TO FLORIDA
OFFICIALS.

OUR ARGUMENT HERE IS, UNDER

SOUTH CAROLINA LAW, THERE SHOULD HAVE BEEN A WARRANT OR A WRITTEN CERTIFICATION BEFORE THESE THINGS WERE HANDED OVER TO FLORIDA AUTHORITIES.

IF THE HEARING ON THIS BELOW THE TRIAL ATTORNEYS COULD NOT COME UP WITH ANY AUTHORITY ON THIS AND THEY WERE-- THIS WAS A REQUIREMENT OF FLORIDA LAW I PROVIDE THE FLORIDA STATUTE AND SOUTH CAROLINA STATUTE ON THE ISSUE, WHICH IS NOT A MODEL OF CLARITY.

>> WHAT DOES IT SAY?

>> IT SAYS THAT BEFORE A PROVIDER OR COMMUNICATIONS SERVICES, SOMETHING TO THAT EFFECT.

>> A PROVIDER OF COMMUNICATIONS SERVICES?

>> I THINK IT WOULD BE THE JAILHOUSE PEOPLE IN THIS CASE. IT WOULD BE PEOPLE MONITORING THE EQUIPMENT, TAKING CARE OF THE EQUIPMENT.

>> IS A PROVIDER OF A COMMUNICATIONS SERVICE, IS THAT A PERSON WHO, LIKE A TELEPHONE COMPANY OR SOMETHING LIKE THAT? IS THAT NOT A PROVIDER OF THE SERVICE?

IS THAT WHAT THE STATUTE IS GETTING AT?

>> THAT IS PART OF IT. THERE IS A LONG LIST OF PROVIDER, OFFICER, EMPLOYEE, LANDLORD, CUSTODIAN COMMUNICATION.

>> WHAT ABOUT THE TELEPHONE CALL MADE--

>> YES.

>> IS THAT THE PHONE SYSTEM-- AN AUTOMATED VOICE THAT WHOEVER SPOKE ON IT WAS TOLD BASICALLY THAT CALLS WOULD BE MONITORED AND RECORDED?

I HEARD THAT AT LEAST TWICE.

>> THERE WAS TESTIMONY THAT THAT WAS WHAT HAPPENED.

>> GIVEN THAT HE KNEW, WHERE IS THE PROCESS?

>> OUR ARGUMENT IS THAT HE DID HAVE EXTRICATION OF PRIVACY AND

THAT, REGARDLESS OF THAT, SOUTH CAROLINA LAW REQUIRED A WARRANT OR A WRITTEN CERTIFICATION.

WE RECOGNIZE THAT COMMUNICATION OR THAT WARNING WAS PROVIDED.

>> SO FAR, YOU HAVE RAISED THE TWO GUILT PHASE ISSUES.

YOU HAVE-- YOU ARE ESSENTIALLY SAYING THAT THE PRECEDENCE AGAINST YOU OR THE MINORITY VIEW, CORRECT?

DO YOU HAVE ANY GUILT PHASE ISSUE THAT YOU THINK IS SUBSTANTIAL ENOUGH THAT MIGHT WARRANT DISCUSSION HERE TODAY?

>> UNDER ARGUMENT FOR THE ISSUE-- THE STATE PUT FORTH EVIDENCE THAT THE DEFENDANT SOLICITED HIS CELLMATE TO HELP HIM ESCAPE FROM JAIL.

SPECIFICALLY, THE DEFENDANT OFFERED THE CELLMATE \$10,000 TO SWITCH WRISTBANDS BECAUSE THE CELLMATE WAS ABOUT TO BE RELEASED AND THE DEFENDANT WOULD GO OUT UNDER THE GUISE OF--

[INAUDIBLE]

>> POSSIBLY.

WE ARE ARGUING IN A RELEVANT AND PRECEDENTIAL BECAUSE IT HAS NOTHING TO DO WITH THE CASE.

>> THEY SAID HE WAS IN JAIL AWAITING TRIAL ON THESE CHARGES.

>> HE WAS IN JAIL AWAITING TRIAL ON THESE CHARGES?

THERE IS NOT ENOUGH NEXUS IN THIS CASE TO PROVE CONSCIOUSNESS OF GUILT BECAUSE THERE WAS NOTHING TO THE EFFECT OF--

>> WAS HE GOING-- WHAT WAS HE GOING TO ESCAPE FROM?

HE WAS CHARGED WITH THIS CASE, WITH THIS CRIME, CORRECT?

>> CORRECT.

>> WHAT ELSE WAS HE ESCAPING FROM IF HE WANTED TO ESCAPE?

>> HIS POSITION IS THAT HIS CODEFENDANTS WERE WRONGFULLY TURNING ON HIM AND IMPLICATING HIM IN THE MURDER AND THAT THE EVIDENCE WAS MOUNTING AGAINST HIM, AND HE HAD TO GET OUT OF DODGE.

>> GET OUT OF DODGE ON THIS

CASE?

>> CORRECT.

>> SO, WHERE IS THE ERROR IN ALLOWING THIS PRETTY DAMNING EVIDENCE INTO-- FOR THE JURY TO CONSIDER?

>> WE FEEL THAT THERE NEEDS TO BE SOME KIND OF LINK SUCH AS TRYING TO GET OUT OF JAIL TO DISPOSE OF EVIDENCE IN THE CASE.

>> THERE IS NO CASE LAW THAT SUPPORTS THAT IS THERE?

>> WELL, THERE IS CASE LAW THAT SAYS THERE HAS TO BE A LINK.

>> I UNDERSTAND THAT BUT YOU JUST SAID ESSENTIALLY HE ADMITTED A LINK, THAT THE EVIDENCE IN THIS CASE WAS MOUNTING AGAINST HIM AND THEREFORE HE WANTED TO PLEAD TO AVOID BEING TRIED ON THIS CASE BECAUSE THE EVIDENCE WAS MOUNTING AGAINST HIM.

I UNDERSTAND, A GOOD PERCEPTION OF IT, BUT THAT SEEMS TO ME TO BE AN ADMISSIVE NEXUS, BUT I'M ASKING, IS THERE A CASE LAW THAT SAYS THE NEXUS HAS TO BE THAT HE WANTS TO GET OUT OF JAIL TO DESTROY EVIDENCE?

>> THE CASE LAW DOES NOT GO THAT FAR IN THIS REQUIREMENT.

IT IS MORE LAX THAN THAT.

BASICALLY, IN PART TWO OF THAT ARGUMENT, IT IS UNDULY PRECEDENTIAL BECAUSE THE ESCAPE HAD NOTHING TO DO WITH THE FACT OF THE CRIME.

>> WHY DON'T YOU DISCUSS FOR US YOUR ARGUMENT CONCERNING THE INDEPENDENT ACT BY THE CO-DEFENDANT.

IF I UNDERSTAND YOU, YOU ARE SAYING THAT YOUR CLIENT ADMITTED TO PLANNING AND BEING A PART OF THE ROBBERY OF THESE TWO VICTIMS, BUT THAT HE HAD NO KNOWLEDGE AND DID NOT PARTICIPATE IN THE KIDNAPPING AND MURDER OF THE HUSBAND AND WIFE?

>> THAT IS CORRECT.

THE DEFENDANT DID HAVE-- AND HIS TESTIMONY WAS THAT SHE STAYED

OUTSIDE OF THE SUMNER HOME, THE VICTIM'S, AND WADE AND NIXON WENT INTO THE KIDNAPPING AND ROBBERY.

>> WHAT DOES HE EXPECT TO HAPPEN WHEN THE OTHER TWO PEOPLE WENT INSIDE THE HOUSE?

>> JUST FOR THEM TO FACILITATE THE ROBBERY AND SUBDUE THE VICTIMS, BUT THE TESTIMONY WAS--

>> SO, WHEN THEY CAME OUT AND PUT THE LADY AND THE MAN INTO THE TRUNK OF THE CAR?

>> CORRECT.

>> HE WAS OUTSIDE IN ANOTHER CAR, YET HE DECIDED NOT--

[INAUDIBLE]

SO IS THAT THE POINT THAT HE THEN BECOMES COMPLICIT IN THE ACTUAL KIDNAPPING?

LET'S ASSUME THAT WAS NOT A PART OF THE ORIGINAL PLAN, BUT ONCE HE SAW THAT AND DID NOTHING AND CONTINUE TO FOLLOW THEM IN THE CAR HE WAS IN, DOESN'T THAT THEN MAKE HIM A PART OF THAT?

>> POSSIBLY, BUT I THINK HIS TESTIMONY WAS THAT HE DID NOT KNOW THEY WERE PUT IN THE TRUNK OF THE CAR AND THEY WERE FOLLOWING--

>> HE IS SITTING OUTSIDE IN A CAR AND HE DID NOT SEE THEM PUT THESE PEOPLE IN THE CAR?

>> I BELIEVE THAT WAS THE TESTIMONY.

>> HE DID NOT ALSO GO WITH THEM TO THE SITE THAT THEY WERE BURIED?

>> HE DID.

HE DID, AND HE SAID THAT HE DIDN'T KNOW WHAT THE OTHER TWO WERE DOING.

>> WHEN DID THIS ACT BECOME INDEPENDENT?

HE IS THERE, HE FOLLOWED THE CAR TO THE SITE WHERE THESE FOLKS WERE BURIED, WATCHED THEM BE BURIED.

WHEN DID THIS INDEPENDENCE BEGIN?

>> HIS INDEPENDENCE BEGAN WHEN HE FIRST REALIZED THE SUMNERS WERE KIDNAPPED.

>> AND HE DID WHAT?

>> HE DID NOTHING TO STOP THEM
BUT I DON'T THINK HE DID
ANYTHING TO AID THEM.

>> BUT, THIS IS ALL BASED ON HIS
VERSION OF WHAT HAPPENED, WHICH
IS CONTRADICTED BY OTHER
EVIDENCE THAT WAS PRESENTED TO
THE JURY.

>> CORRECT.

>> SO, WHY DOES IT HAVE ANY-- I
MEAN, YOU ARE ASKING US TO
DISREGARD THE EVIDENCE.

>> THIS COURT WILL BE REVIEWING
THE SUFFICIENCY OF THE EVIDENCE
AND OUR ARGUMENT IS TO PUT FORTH
TO FACILITATE THAT, THAT WAS
JUST AN INDEPENDENT ACT.

>> HE WAS GIVEN INSTRUCTION ON
THE INDEPENDENT ACT, CORRECT?
AND THE JURY DID NOT BUY HIS
ARGUMENT, THAT THIS WAS AN
INDEPENDENT ACT.

THERE IS EVIDENCE IN THE RECORD
TO SUPPORT THAT THIS WAS NOT AN
INDEPENDENT ACT OF THE
CODEFENDANT.

DO YOU ACCEPT THAT ASSERTION?

>> I DO.

>> SO, IF THERE IS EVIDENCE TO
SUPPORT WHAT THE JURY FOUND,
THEN WE HAVE TO ACCEPT THAT,
DON'T WE?

>> YES, THAT IS THE CASE LAW.
UNFORTUNATELY, OUR ARGUMENT
WOULD BE THE CODEFENDANT--
[INAUDIBLE]

BUT WE RECOGNIZE THE CASE LAW IS
AGAINST US ON THAT.

IF THERE ANY FURTHER QUESTIONS.

>> MAY IT PLEASE THE COURT.

I AM MEREDITH CHARBULA.

I AM THE ASSISTANT ATTORNEY
GENERAL AND I AM REPRESENTING
THE APPELLEE IN THIS CASE.

IF I COULD TAKE THE ISSUES IN
THE ORDER THAT THE APPELLANT HAS
RAISED THEM.

>> LET'S GO REAL CAREFULLY ABOUT
WHAT HAPPENED IN THE PENALTY
PHASE.

THE DEFENDANT WAIVED HIS RIGHT
TO PRESENT MITIGATING EVIDENCE?

>> YES, YOUR HONOR.

>> AND HE DISCHARGED HIS COUNCIL?

>> NO YOUR HONOR.

THE JUDGE CONDUCTED AN EXTENSIVE COLLOQUY AND I POINTED OUT THOSE CITATIONS IN MY BRIEF.

THE JUDGE CONDUCTED A COLLOQUY. MR. TAKOSKI MENTIONED THE JUDGE MENTIONED DURING A SENTENCING HEARING HE WAS REQUIRED TO GIVE GREAT WEIGHT.

I BELIEVE HE WAS MISTAKEN WHERE THAT CONVERSATION TOOK PLACE WAS DURING THE WAIVER COLLOQUY BECAUSE THE TRIAL JUDGE TRIED VERY HARD TO CONVINCING THE DEFENDANT THAT HE SHOULD PUT MITIGATION ON, SO HE CONDUCTED AN EXTENSIVE COLLOQUY WITH THE DEFENDANT.

HE THEN TURNED TO DEFENSE COUNSEL AND MR. JACKSON WAS REPRESENTED THROUGHOUT THE PENALTY PHASE, THROUGHOUT THE SENTENCING.

COUNSELING DID A PRE-SENTENCING MEMORANDUM ON BEHALF OF THE LIFE SENTENCE, SO HE TURNS TO THE DEFENSE COUNCIL, DID AN EXTENSIVE INQUIRY.

COUNCIL LAID OUT FOR THE TRIAL COURT WHAT EVIDENCE HE WOULD PRESENT, SOME MENTAL-HEALTH RECORDS, SCHOOL RECORDS, RECORDS OF AN ARREST OF HIS BIOLOGICAL MOTHER, WHO ESSENTIALLY ABANDONED HIM AT BIRTH, TO SHOW THAT SHE TOO ENGAGED IN SORT OF THE SCAM, FRAUDULENT CONDUCT THAT MR. JACKSON BEFORE THIS AND OTHER ISSUES.

HE HAD BEEN PUT ON RITALIN WHEN HE WAS A CHILD.

HE HAD BEEN SUSPENDED BECAUSE HE WAS DISRUPTIVE AND ALL THOSE THINGS THAT WERE LAID OUT IN THE PSI, SO COUNCIL WENT THROUGH THAT AND AGAIN THE TRIAL JUDGE TURN TO THE DEFENDANT AND SAID, WERE YOU AWARE OF ALL THIS MITIGATION?

YES, I WAS AWARE.

I KNEW ALL OF THIS STUFF, BUT IT CAN'T HELP ME.

HE HAD SAID THAT EARLIER, BUT HE SAID YES, I AM AWARE OF THIS MITIGATION AND I DON'T WANT COUNCIL TO PUT IT ON.

SO, THE TRIAL COURT TOLD HIM, I AM REQUIRED TO GIVE GREAT WEIGHT.

YOU ARE TAKING YOUR LEG OUT, POSSIBLY TAKING YOUR LEG OUT FOR A LIFE SENTENCE IF YOU DON'T PRESENT MITIGATION.

>> HE IS NOT REQUIRED TO GIVE GREAT WEIGHT IF THERE IS NOT MITIGATION, SO THE JUDGE WAS JUST SAYING IN REFERENCE TO TRY TO CONVINCE THE DEFENDANT TO PUT ON MITIGATION?

>> EXACTLY, AND NOW HE DID INSTRUCT THE JURY PRIOR TO THEM DELIBERATING IN THE PENALTY PHASE THAT HE WAS REQUIRED TO GIVE HIM GREAT WEIGHT, WHICH WAS CORRECT.

IN MUHAMMAD, HE WAS REQUIRED TO GIVE GREAT WEIGHT.

WE RECOGNIZE THAT LAST WEEK, IF THE JURY WOULD HAVE BROUGHT BACK LIFE HE WOULD HAVE BEEN REQUIRED TO GIVE THAT COLLOQUY AWAY SO INSTRUCTION IS NOT THERE.

WE LOOKED AT THE SENTENCING ORDER HAD AND WE SEE THAT THE TRIAL JUDGE DID NOT SAY THAT HE WAS GIVEN GREAT WEIGHT.

HE ACKNOWLEDGED THAT THE JURY WAS WITHOUT THE BENEFIT OF LITIGATION.

HE TALKED ABOUT THE DEFENDANT'S WAIVER OF MITIGATION IN THE SENTENCING ORDER AND HE TALKED ABOUT HAVE HE SEPARATELY AND INDEPENDENTLY WAIVED AGGRAVATING CIRCUMSTANCES AGAINST THE MITIGATING CIRCUMSTANCES.

THIS COURT WOULD FIND THE MUHAMMED AREA, WHICH IN BROOKS AND GRAHAM CLEARLY OUTLINED THERE IS NO MUHAMMED ERROR, BUT THE ONLY REMEDY OF COURSE IS JUST RETURNING IT TO THE TRIAL COURT AND SAYING DON'T GIVE THE JURY'S RECOMMENDATION GREAT WEIGHT.

BUT I THINK THAT IS THE ONLY

REMEDY THAT WOULD BE AVAILABLE BECAUSE THE TRIAL JUDGE'S INSTRUCTIONS WERE CORRECT. THE TRIAL JUDGE DID, PURSUANT TO THE COURT'S DIRECTION, ORDER A PSI IN HIS SENTENCING ORDER. WE REFERRED TO THE PSI. THAT PSI IS FAIRLY EXTENSIVE ABOUT THE DEFENDANT'S HISTORY, ALL THOSE THINGS THE TRIAL JUDGE CONSIDERED PURSUANT TO THE ORDER OF THE COURT IN MUHAMMED.

>> HE HAD COUNCIL REPRESENTING HIM IN THE PENALTY PHASE.

>> YES YOUR HONOR.

THEY BOTH HAD DOUBLE-DIGIT EXPERIENCE AS TRIAL LAWYERS. THE JURY CAME BACK WITH AN 8-4 RECOMMENDATION.

WHAT WAS THEIR ARGUMENT?

>> PRIMARILY THE ARGUMENT DURING THE PENALTY PHASE, THE FACT THAT THE EVIDENCE SHOWED THAT BRUCE NIXON AND ALLEN WADE WERE THE ONES ACTUALLY INVOLVED IN THE BURIAL AND THE PRE-DIGGING OF THE GRAVE ETC. SO HE ARGUED THAT DISPARITY BETWEEN BRUCE NIXON'S TESTIMONY.

MICHAEL JACKSON, LOOKING AT THE MUHAMMED ISSUE, THERE WAS NOT A COMPLETE WAIVER OF MITIGATION BECAUSE MICHAEL JACKSON PUT ON MITIGATION DURING HIS TESTIMONY IN THE GUILT PHASE WHEN HE TESTIFIED HE PLAYED A MINOR ROLE AND HE WAS SIMPLY AN ACCOMPLICE IN THE ACT AND CONDUCTED INDEPENDENTLY BY HIS CO-DEFENDANTS.

HE TALKED EXTENSIVELY ABOUT HIS PRIOR RECORD, WHICH HE FREELY TOLD THE JURY THAT HAD NOTHING TO DO WITH VIOLENCE, SO HE PUT ON SEVERAL THINGS IN MITIGATION DURING HIS OWN TESTIMONY, AND THE JURY WAS INSTRUCTED ON A CATCH-ALL MITIGATOR SO THEY WERE INSTRUCTED TO CONSIDER ALL THE FACTS ABOUT THE CASE INCLUDING EVIDENCE THAT WAS PUT ON IN THE GUILT PHASE AND THAT IS WHAT THE TRIAL COUNCIL EMPHASIZED DURING THE PENALTY PHASE WAS THAT SORT

OF EVIDENCE, THAT HE WAS JUST--
INSOFAR AS ISSUE TWO, THE CASE
LAW, AND I THINK THE APPELLANT
CAN SEE THAT THERE WAS NO
WARRANT, SECOND WARRANT REQUIRED
FOR THE SAFE.

THE TRIAL JUDGE MADE A FINDING
AND READ PART OF THE WARRANT
INTO THE RECORD, THAT THE ITEMS
THAT WERE SECRETED IN A SAFE
WERE DESCRIBED EXACTLY IN THE
WARRANTS.

CASE LAW FROM THE UNITED STATES
SUPREME COURT HAVE ESTABLISHED
THAT IF THE PROPERTY IS
DESCRIBED IN THE WARRANT THEN
THE POLICE CAN LOOK IN EVERY
NOOK AND CRANNY, EVERY CLOSED
CONTAINER AND I THINK THE
APPELLANT HAS SUBMITTED THAT
CASE LAW IS AGAINST HIM.

INSOFAR AS ISSUE THREE, WHEREAS
THE APPELLANT HAS ARGUED THAT
THE NORTH CHARLESTON POLICE
DEPARTMENT WAS REQUIRED TO SERVE
A WARRANT ON THEMSELVES FOR
INTERCEPTING COMMUNICATIONS,
FIRST OF ALL, THE APPELLANT HAS
SUBMITTED HE DID NOT MAKE THE
SAME ARGUMENT BELOW.

NUMBER ONE, HE NEVER RAISED THE
FOURTH AMENDMENT ISSUE SO TALK
ABOUT THE EXPECTATION OF
PRIVACY.

>> I THOUGHT HIS ARGUMENT ON
THIS ISSUE REALLY WAS THAT AN
ORDER FOR THE FLORIDA POLICE TO
GET IT FROM THE SOUTH CAROLINA
POLICE, THAT THE FLORIDA POLICE
HAD TO DO SOMETHING.

THE SOUTH CAROLINA POLICE I
ASSUME COULD USE IT IN ANY
MANNER THEY SAW FIT BUT FLORIDA,
IN ORDER FOR FLORIDA TO GET IT,
SOMETHING MORE WOULD--

>> I DON'T READ HIS ARGUMENT
THAT WAY.

I READ HIS ARGUMENT THAT THE
SOUTH CAROLINA SHERIFF'S
DEPARTMENT WAS FORBIDDEN FROM
TAKING THAT TAPE AND USING IT IN
ANY WAY, INCLUDING TURNING IT
OVER TO THE FLORIDA AUTHORITIES
WITHOUT A WARRANT.

FIRST OF ALL, HE DID NOT MAKE THE SAME ARGUMENT BELOW, BUT HE HAS NOT SHOWN ANY AUTHORITY UNDER THE SOUTH CAROLINA STATUTE FACT THAT SAYS THAT A JAIL IS A PROVIDER OF COMMUNICATIONS, JUST BECAUSE I THINK HE RECOGNIZED THAT RIGHT AWAY.

IT SOUNDS LIKE AT&T OR BELLSOUTH AND THERE IS NOTHING WITHIN THE STATUTE THAT I COULD FIND THAT WOULD DEFINE A PROVIDER AS SOMEONE WHO ALLOWS SOMEONE TO USE THE TELEPHONE IN THE COURSE OF OFFICIAL BUSINESS.

HE ALSO MAKES THE FOURTH AMENDMENT ISSUE, AND OF COURSE I THINK THAT IS FAIRLY WELL RESOLVED BECAUSE THERE IS NO EXPECTATION OF PRIVACY WHEN THE DEFENDANT IS WARNED THAT THE CALL WILL BE MONITORED AND RECORDED.

ALSO, SOUTH CAROLINA HAS A CONSENT EXCEPTION.

EVEN IF YOU WANT TO SAY MAYBE THE JAIL WAS--

AND IT MAKES SENSE THEY WOULD HAVE TO OBTAIN A WARRANT AND SERVE IT ON THEMSELVES AND TURN IT OVER TO THE FLORIDA POLICE, HE CONSENTED WHEN HE CONTINUED HIS CONVERSATION.

ALSO THERE IS ABSOLUTELY NOTHING THAT THE APPELLANT HAS OFFERED TO SHOW THAT FLORIDA WAS BOUND IN ANY WAY BY THIS SOUTH CAROLINA STATUTE, WHICH WOULD BE APPLICABLE IN THE SOUTH CAROLINA COURT, ABSENT A FOURTH AMENDMENT VIOLATION.

HE HAS NOT MADE ANY ARGUMENT THAT FLORIDA WAS FORBIDDEN FROM RECEIVING THIS FROM SOUTH CAROLINA.

SO I THINK WHEN YOU LOOK AT NUMBER ONE, HE HAS NOT SHOWN A VIOLATION OF SOUTH CAROLINA STATUTE AT ALL.

NUMBER TWO, HE HAS NOT SHOWN FLORIDA WAS FORBIDDEN TO USE IT BECAUSE IT WAS AN ALLEGED VIOLATION OF SOUTH CAROLINA LAW BECAUSE IT IS CLEARLY NOT A

VIOLATION OF FLORIDA LAW AND THE FOURTH AMENDMENT-- WHEN HE HEARS THE ARGUMENT AND BECAUSE OF THE PLACE AND MANNER IN WHICH HE MADE THE PHONE CALL.

I THINK THE APPELLANT HAS ESSENTIALLY ADMITTED THE ISSUE IS THE CASE LAW IS AGAINST HIM. INsofar AS ISSUE FOUR, THE INMATE, ROBERT BAILEY, TESTIFIED--

ONE THING SIGNIFICANT ABOUT ROBERT BAILEY IS YOU HAVE TO REMEMBER, FIRST OF ALL I THINK MURRAY CONTROLS THE CASE AND NEXUS WERE SHOWN BY THE FACT THAT HE WAS IN JAIL, AND THE ONLY THING HE WAS IN JAIL ON WAS THE MURDER.

ACTUALLY THERE ARE TWO ISSUES ABOUT EVIDENCE OF CONSCIOUSNESS AND GUILT.

HE TRIED TO BRIBE A YOUNG LADY HE HAD MET THROUGH ANOTHER INMATE IN JAIL TO GIVE HIM A FALSE ALIBI, WROTE HER LETTERS WHICH WERE TURNED OVER TO THE POLICE AND READ PARTIALLY IN THE EVIDENCE.

ONE OF THE THINGS ROBERT BAILEY TESTIFIED AT TRIAL WAS THAT HE AND MICHAEL JACKSON TALKED ABOUT THIS CASE ALL THE TIME.

THAT IS WHAT THEY TALKED ABOUT SO MICHAEL JACKSON WAS TALKING TO ROBERT BAILEY ALL THE TIME ABOUT HIS CASE AND HIS MOTIVE WAS TO GET OUT AND BUILD HIS DEFENSE, SO HE TESTIFIED TO THAT AT TRIAL.

ROBERT BAILEY WAS TALKING TO THE DEFENDANT ABOUT THE CASE.

THE DEFENDANT WAS IN JAIL SOLELY ON THE MURDER.

MURRAY IS RIGHT ON POINT IN THIS CASE, THAT EVIDENCE OF AN ESCAPE ATTEMPT TO AVOID DETECTION IS RELEVANT TO THE CONSCIOUSNESS OF GUILT.

EVEN IF THE COURT WOULD FIND ERROR ON THAT, IT IS CERTAINLY HARMLESS GIVEN THE FACT IT WAS SUBMISSIBLE THAT HE TRIED TO BUY A FALSE ALIBI.

INSOFAR AS THE INDEPENDENT ACT,
OF COURSE THAT COMES IN ON HIS
FIRST ARGUMENT THAT THE TRIAL
COURT IMPROPERLY DENIED THE
MOTION FOR JUDGMENT OF ACQUITTAL
BASED ON JACKSON'S TESTIMONY.

I THINK THIS COURT CASE LAW HAS
ESTABLISHED THAT IN NO WAY
POSSIBLE COULD THIS BE AN
INDEPENDENT ACT, EVEN IF YOU
ONLY ACCEPTED MICHAEL JACKSON'S
TESTIMONY BECAUSE THE KIDNAPPING
AND MURDER WAS COMMITTED IN
FURTHERANCE OF THE ROBBERY AND
HE WAS INDISPUTABLY INVOLVED IN
THE BRIBERY.

IN FACT, AT TRIAL COUNCIL THE
DEFENDANT WENT UP IN AN EX PARTE
BENCH CONFERENCE WITH THE TRIAL
JUDGE AND AGREED THAT JACKSON
WAS GOING TO ADMIT TO THE
ROBBERY AND THE TRIAL JUDGE
AGAIN CONDUCTED, A VERY
EXPERIENCED TRIAL JUDGE,
CONDUCTED COLLOQUY WITH HIM TO
MAKE SURE IT WAS INVOLUNTARILY
DONE, SO JACKSON ADMITTED THE
ROBBERY.

WHAT THEY WANTED TO DO WAS USE
THE ATM CARD TO GET AS MUCH
MONEY AS THEY COULD OUT OF THE
SUMNERS, SO THE FACT THEY WERE
KIDNAPPED AND KILLED ALLOWED
THEM, OVER THE COURSE OF THE
NEXT FIVE DAYS, MICHAEL JACKSON
ALONE, TO WITHDRAW SOME \$5,000
FROM THE SUMNERS CHECKING AND
SAVINGS ACCOUNTS BY USE OF THE
ATM CARD.

YOU SEE, IT WAS A VERY FOCUSED
CRIME.

THEY DID NOT TAKE TELEVISIONS.
THEY TOOK JEWELRY AND COINS, BUT
THEY WENT OUT FOR ELECTRONIC
EQUIPMENT.

THEY WERE OUT FOR THE ATM CARDS
AND THE CREDIT CARDS AND THOSE
WERE THE THINGS THAT WERE FOUND
IN MICHAEL JACKSON'S HOTEL ROOM.

WE ALSO HAVE MICHAEL JACKSON --
YOU SEE THE LEADERSHIP ROLE.
BRUCE NIXON CERTAINLY TESTIFIED
THAT WAS THE CASE.

YOU HAVE TO REMEMBER BRUCE NIXON

AND ALLEN WADE BOTH OF JACKSON SAID WERE THE MASTERMIND OF THE ROBBERY, THEY WERE 18 YEARS AND ONE MONTH RESPECTIVELY.

JACKSON WAS-- HE HAD EXTENSIVE, AND EXPERIENCE IN THAT TYPE OF CRIME, FORGERY, BAD CHECKS ETC..

>> JACKSON WAS THE ONE THAT KNEW THE VICTIMS.

>> TIFFANY COLE WAS JACKSON'S GIRLFRIEND.

TIFFANY COLE KNEW THE SUMNERS FROM SOUTH CAROLINA AND AT LEAST ONCE OR TWICE, WEEKS BEFORE THE MURDER, MICHAEL JACKSON AND TIFFANY COLE STAYED WITH THE SUMNERS OVERNIGHT.

THEY DID NOT HAVE ANY MONEY SO THEY ASKED IF THEY COULD STAY OVERNIGHT.

THAT IS HOW THEY KNEW THE SUMNERS.

ALSO MR. AND MRS.SUMNER TRAVELED TO SOUTH CAROLINA IN THE WEEKS BEFORE THE MURDER TO SELL THEIR CAR TO TIFFANY COLE.

TIFFANY COLE'S STEPFATHER WAS A FRIEND SO THEY KNEW EACH OTHER, SO IT WAS TIFFANY AND MICHAEL JACKSON WHO STARTED THE SEED OF THESE PEOPLE.

>> THEY WERE VERY INFIRM BUT--

>> I AGREE WITH YOU BECAUSE I'M ONLY NINE YEARS AWAY FROM THAT.

>> WHAT I WANTED TO GET TO IS THIS.

BECAUSE WE ARE GOING TO HAVE THE CODEFENDANTS, COLE AND WADE, COMING UP BECAUSE THEY BOTH HAVE SENTENCES, IT IS THE STATE'S POSITION, WHEN WE LOOK AT ALL THE EVIDENCE, THAT EVERYBODY WAS VERY INVOLVED, BUT IS IT THE STATE'S POSITION THAT JACKSON WAS THE MASTERMIND OF THIS?

>> IT IS THE STATE'S POSITION THAT EVERY ONE OF THESE DEFENDANTS PARTICIPATED FULLY, BUT THAT THE IDEA ORIGINATED WITH MICHAEL JACKSON AND TO AN EXTENT TIFFANY COLE.

JACKSON TESTIFIED EVEN AT TRIAL THAT HE MENTORED BRUCE NIXON AND ALLEN WADE.

HE WAS TALKING TO THEM ABOUT NOT LEAVING FINGERPRINTS IN THE HOUSE.

HE TALKED TO THEM ABOUT SUBDUING THE SUMNERS.

THE EVIDENCE IS CLEAR IN THE MICHAEL JACKSON CASE, THAT MICHAEL JACKSON WAS DIRECTING THE PERSONS.

>> WHEN THEY WENT UP AHEAD OF THE CRIME, WHO WAS THERE FOR THE DIGGING OF THE GRAVES?

>> FIRST NIXON SAID THAT ALL FOUR WENT TO DIG THE GRAVES. NIXON TESTIFIED AT TRIAL THAT SOME TWO DAYS PRIOR TO THE CRIME, ALL FOUR OF THEM TRAVELED INTO SOUTH GEORGIA, ATTEMPTING TO FIND A LOCATION TO DIG THE GRAVE AND THAT MICHAEL JACKSON REJECTED A COUPLE OF SITES. THEY WERE ALL SELECTING SITES. MICHAEL JACKSON REJECTED A COUPLE OF SELECTED SITES BECAUSE HE CONCLUDED THEY WERE NOT ISOLATED ENOUGH, BUT THE THREE WHO DUG THE GRAVES WERE JACKSON, WADE, AND NIXON AND TIFFANY HELD THE FLASHLIGHT.

>> SO, ALL OF THEM WERE INVOLVED?

>> IF SO, THE STATE'S ARGUMENT BORNE OUT BY WITNESS' TESTIMONY, IS THAT THIS WAS NOT ONLY A PLANNED ROBBERY, BUT A PLANNED ROBBERY, KIDNAPPING AND THEY PLANNED TO BURY THESE VICTIMS.

>> THEY BURIED THEM ALIVE ACTUALLY.

>> THEY BURIED THEM ALIVE?

>> THE MEDICAL EXAMINER TESTIFIED THAT THEY WERE ALIVE WHEN THE DIRT GOT TO THEIR NECKS.

THEY WERE ALIVE WHEN THE DIRT COVERED THEIR NOSES.

THE FACT THAT THEY INHALED DIRT, THE WAY THEY DIED, WAS THE SITUATION OF THE DIRT PRESSING AGAINST THEIR CHEST AND THE FACT THAT THEY WERE SMOTHERED OR SUFFOCATED BECAUSE OF THE BRIEFING IN THE DIRT.

AS I SAY, OF COURSE THIS COURT

HAS HELD THAT THE FACT THAT THEY WERE MADE INFIRM BY OLD AGE, IN OTHER WORDS, THERE IS NO REQUIREMENT THE STATE SHOW THAT THE DEFENDANT KNEW OR TARGETED THEM SPECIFICALLY BECAUSE THEY WERE OLDER AND PHYSICALLY INFIRM, BUT CLEARLY MICHAEL JACKSON--

[INAUDIBLE]

AND THE REASON WHY I SAY THAT, AND I CERTAINLY DON'T THINK 61 IS OLD, BUT THE REASON I SAY THAT IS MICHAEL JACKSON THROUGHOUT HIS CONVICTION STATED THESE PEOPLE ARE OLD, THEY WERE SICK.

>> THEY WERE VERY FRAIL. THESE WERE TWO INDIVIDUALS, AND I GUESS BY OBSERVATION, THE VICTIMS, THE FEMALE VICTIM HAD, WAS UNDERGOING CHEMOTHERAPY AND HAD LIVER CANCER, WAS DOWN TO 90 POUNDS.

THE HUSBAND WALKED EITHER WITH-- COULD NOT WALK ON HIS OWN, SO WE WERE TALKING ABOUT AN EXTREMELY FRAIL, SICK INDIVIDUAL.

>> HE HAD DIABETES. BOTH HAD OSTEOPOROSIS UPON AUTOPSY.

>> BUT WHAT WOULD HAVE BEEN SEEN BY MR. JACKSON OR THE TWO INDIVIDUALS THAT COULD NOT REALLY DO MUCH TO FIGHT OFF ANY KIND OF AN ATTACK.

>> ABSOLUTELY.

AND, IN HIS CONFESSION OR STATEMENT TO THE POLICE, HE TALKED ABOUT-- OF COURSE HE IS 23 YEARS OLD AND ANYBODY 45 OR OLDER IS OLD- BUT HE TALKED ABOUT HOW THESE FOUR OLD PEOPLE, AND ALSO EVEN TOLD THE POLICE THAT MR. SUMNER HAD DIABETES AND MRS. SUMNER HAD CANCER AND THEY TOOK A LOT OF DRUGS AT NIGHT THAT KNOCKED THEM OUT.

HE WAS IN A POSITION TO OBSERVE THAT BECAUSE AT LEAST ONE OR TWO NIGHTS HE WAS IN THE SUMNER HOME, SO HE WAS VERY WELL AWARE OF IT AND TALKED ABOUT IT THROUGHOUT HIS CONFESSION ABOUT

HIS AWARENESS THAT THEY WERE OLD, AND CERTAINLY THAT THEY WERE DISABLED BY ILLNESS AND MR. SUMNER HAD, IN FACT, BROKEN HIS TIBIA SHORTLY BEFORE THE MURDERS, AND THAT ALSO CONTRIBUTED TO HIS-- THE FACT THAT HE COULD NOT AMBULATE VERY WELL.

BUT MR. SUMNER HIMSELF WAS 105 POUNDS ON AUTOPSY. BOTH OF THEM WERE VERY SMALL AND FRAIL AND, UNFORTUNATELY, VERY ILL INDIVIDUALS THAT THE DEFENDANTS TOOK ADVANTAGE OF AND BURIED THEM ALIVE.

>> IF THIS COURT HAS NO FURTHER QUESTIONS, THE STATE WOULD ASK THIS COURT TO AFFIRM THE DEFENDANT'S CONVICTION TO THE SENTENCE OF DEATH.

>> THANK YOU VERY MUCH. I HAVE NO REBUTTAL.

>> THANK YOU VERY MUCH. THE COURT IS NOW IN RECESS.

>> PLEASE RISE.