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**Norman Blake McKenzie v. State of Florida**

**SC07-2101**

>> THE NEXT CASE ON THE COURT'S  
AGENDA IS MCKENZIE VERSUS STATE.

>> MR. QUARLES LET'S HEAR ABOUT  
THE DEFENDANT WHO HELPED  
HIMSELF. >> PLEASE THE COURT,  
I'M CHRIS QUARLES FROM DAYTONA  
BEACH AND I REPRESENT NORMAN  
BLAKE MCKENZIE, EXHIBIT A OF THE  
RULE ARGUMENT THAT PRECEDED US.

HE KILLED TWO MEN IN  
ST. AUGUSTINE, FLORIDA, FOR --  
TO STEAL THEIR CAR AND PROPERTY.  
AND HE WAS UPSET WITH HIS COURT  
APPOINTED LAWYERS INITIALLY  
BECAUSE THEY WAIVED ANY TRIAL  
WITHOUT --

>> TO MAKE SURE WE HAVE A  
DEFENDANT IN THIS CASE WHO,  
READING THE PRESENTENCE  
INVESTIGATION WAS ACTUALLY  
EMPLOYED FULL-TIME AS -- IN AN  
ARCHITECTURAL FIRM MAKING  
\$63,000 A YEAR.

AND WE DON'T HAVE A -- IN THIS  
CASE A -- TO BE CLEAR -- A  
SEVERELY MENTALLY ILL DEFENDANT  
-- WE HAVE A DEFENDANT WHO  
APPARENTLY HAD A SEVERE DRUG  
ADDICTION.

>> CORRECT.

AND FOR WHATEVER REASON AND I'M  
STILL NOT SURE WHAT THAT REASON,  
HE WAS IN A HURRY.

HE WAS IN A HURRY TO GET THE  
TRIAL OVER WITH AND EVEN AT THE  
END OF THE -- WHEN HE WAS FOUND  
GUILTY, AFTER HE REPRESENTED  
HIMSELF, PRO SE AT THE STAND BY  
COUNSEL, HE THEN REQUESTED  
COUNSEL FOR THE PENALTY PHASE  
AND WHEN HE FOUND OUT THERE  
WOULD BE A DELAY --

>> WE REQUIRE COUNSEL ON APPEAL  
BUT IS HE NOW NOT IN SUCH A  
HURRY?

>> NO, HE'S NOT IN A HURRY.

NO.

NO.

>> EASY TO HAVE THAT HAPPEN.

>> YES, IT IS AND I DON'T THINK  
HE -- I MEAN, HE'S NOT YOUR

TYPICAL VOLUNTEER, I HAVE HAD  
CASES WHERE THEY PLEAD GUILTY  
AND ASK FOR DEATH AND WANT DEATH  
AND HE, TO THE BEST OF HIS  
ABILITY, WHICH WASN'T VERY GOOD,  
TRIED TO FIGHT THE CHARGES AT  
LEAST, ESPECIALLY --

>> BEFORE --

>> THE PENALTY PHASE.

>> BEFORE WE GOT TO THIS POINT

AND GOT TO THE POINT WHERE A  
SPEEDY TRIAL WAS WAIVED AND HE  
WAS UPSET WITH HIS LAWYERS FORCE  
DOING THAT.

WAS THERE ANY BASIS OR ANY KIND  
OF MENTAL HEALTH EXAMINATION OF  
HIM.

>> THERE WAS ONE MENTION IN THE  
RECORD OF THAT BEING AN ISSUE,  
AND HE IMMEDIATELY PIPED UP AND  
SAID, I GOT TWO, TWO COMPETENCY  
REPORTS THAT WERE DONE, SEE,  
THIS WAS AFTER HE LEFT ST.

AUGUSTINE SHE WENT ON A CRIME  
SPREE AND ROBBED ACROSS NORTH  
CENTRAL FLORIDA AND HE --

>> GEORGIA.

>> I DON'T REMEMBER IF IT WAS  
GEORGIA, BUT THESE ARE THE ONLY

TWO PEOPLE HE KILLED BUT...

>> DOESN'T HE HAVE A PENDING  
MURDER CASE IN GEORGIA.

>> NOT THAT I RECALL, I MAY BE  
WRONG.

>> THAT MAY BE AND WE PROBABLY  
ARE JUMPING AHEAD AND THOSE  
PRIOR VIOLENT FELONIES, HE WAS  
IN PRISON IN THE '80s AND THE  
ONES THE JUDGE RELIES ON, ALL  
OCCURRED AFTER THESE MURDERS.

>> YES.

YES.

AS WELL AS THE CONTEMPORANEOUS  
MURDER, THERE WERE TWO VICTIMS  
HERE AND HE PLED TO -- THAT'S  
WHY HE WAS NOT AVAILABLE TO THE  
LAWYERS IN ST. AUGUSTINE TO  
CONFER ABOUT THE SPEEDY TRIAL,  
HE WAS IN GAINESVILLE AND HE  
SAYS THEY COULD HAVE CALLED, I  
DIDN'T WANT MY SPEEDY TRIAL  
RIGHTS WAIVED AND WHEN HE LEFT,  
AND HIS FIRST APPEARANCE, HE  
INDICATED HE DID NOT WANT THE --  
WANTED THE PUBLIC DEFENDER AND  
WAS GOING TO TRY TO HIRE PRIVATE  
COUNSEL AND IN HIS ABSENCE THE

PD WAS APPOINTED ANY WAY AND  
THAT IS WHERE THEY WAIVED  
SPEEDY.

AND THAT IS WHERE THEY GOT OFF  
ON THE LONG FOOT.

HE NEVER TRUSTED THEM AGAIN.

>> ON YOUR ISSUES, THAT YOU HAVE  
RAISED, IS THERE ONE ISSUE THAT  
YOU THINK REALLY IS THE -- I  
MEAN, SEEMS TO ME MOST  
JUDICIOUSLY TO WAIVE, AND NOT  
WITHOUT MERIT, NOT YOUR FAULT,  
HE WAIVED HIS RIGHT TO COUNSEL,  
WHAT ISSUES ARE YOU GOING TO  
ADDRESS, AND, YOU KNOW, WHETHER  
THERE IS... [INAUDIBLE].

>> A COUPLE AND I HAVE HAD MUCH  
BETTER CASES AND MUCH BETTER  
ISSUES AND THERE ARE PROBLEMS  
WITH ALL OF THESE ISSUES, BUT  
THE COME I LIKE ARE THE JUDGE  
STEPPING IN, IN JURY SELECTION,  
AND EXCUSING JUROR SCHULTZ FOR  
CAUSE.

JUROR SCHULTZ --

>> AND THE STATE ALREADY --  
HASN'T THE STATE ALREADY RAISED  
THE ISSUE ABOUT THAT?

>> THE STATE SAID THAT -- JUST

TO PUT IT INTO CONTEXT, JUROR  
SCHULTZ HAD HAD A CHILD WHO HAD  
BEEN KILLED, ADULT CHILD WHO HAD  
BEEN KILLED IN THE 8 MONTHS OR  
SO BEFORE THE TRIAL AND AS THE  
VICTIM OF A CRIME.

AND THAT WAS ILLICIT IN VOIR  
DIRE.

AND MR. MCKENZIE ASKED HER ABOUT  
THAT, WOULD THAT BE A PROBLEM,  
NO, I COULD CONSIDER BOTH LIFE  
AND DEATH IN THIS PARTICULAR  
CASE, IT WOULD NOT BE A PROBLEM.

THE STATE THEN WHEN IT CAME TIME  
TO EXERCISE CAUSE CHALLENGES,  
THE STATE ATTORNEY SAID, WE'RE  
CONCERNED ABOUT MRS. SCHULTZ,  
AND THE JUDGE INTERRUPTED THE  
PROSECUTOR AT THAT POINT AND  
SAID, YEAH, SHE HAD A VICTIM --  
CHILD VICTIM OF A CRIME, I'M  
GOING TO GO AHEAD AN EXCUSE HER  
FOR CAUSE.

>> BUT THERE WAS NO OBJECTION.

>> NO OBJECTION TO THAT.

>> AND NO MOTION FOR DIS  
QUALIFICATION OF THE JUDGE AND  
IT WAS LET GO -- IF THIS WERE

THE WIFE OF THE CHIEF OF PLEATS,  
I COULD SEE YOU MAKING THAT  
ARGUMENT -- POLICE, I COULD SEE  
YOU MAKING THAT ARGUMENT BUT I  
CANNOT IMAGINE THE DEFENDANT  
WANTING THE JUROR ON AND I CAN'T  
IMAGINE THIS JUDGE WOULD ALLOW  
THAT TO OCCUR, PARTICULARLY WHEN  
THERE IS AN INDIVIDUAL NOT  
REPRESENTED BY COUNSEL AND TO AT  
LEAST HAVE A LEVEL PLAYING FIELD  
AND THE ISSUE IS DO YOU HAVE A  
PROPERLY QUALIFIED JURY AND I  
CAN THE NOT THINK OF ANY  
COMMON-MINDED CITIZEN OF  
FLORIDA, THAT WOULD THINK THE  
PARENT OF A CHILD, A CHILD WHO  
HAD JUST BEEN MURDERED, I MEAN,  
JUST A SHORT TIME AGO, THIS IS  
NOT WAY IN THE PAST, SOMEHOW  
OUGHT TO SIT ON A MURDER CASE.  
I JUST -- IT SORT OF DEFIES ALL  
LOGIC TO ME.

>> WELL, MAYBE -- FOR WHATEVER  
REASON HE APPARENTLY LIKED HER,  
AS A JUROR, AND SHE ANSWERED THE  
RIGHT WAY, AND --

>> THEREFORE HE HAD AN  
OBLIGATION TO OBJECT TO THE

CHALLENGE AND AS JUSTICE LEWIS SAYS UNDER ANY SCENARIO, IF A CAUSE CHALLENGE HAD BEEN RAISED TO THIS JUROR, AND ANY JUDGE IN THIS STATE HAD DENIED IT, AND ASSUMING THE OTHER PREREQUISITES WERE MET IT WOULD BE REVERSIBLE ERROR.

>> WHY DIDN'T THE JUDGE LET THE PROSECUTOR MAKE THE CAUSE CHALLENGE HERSELF.

>> BECAUSE IT SEEMS TO ME THE PROSECUTOR MIGHT HAVE ACTUALLY SAID THAT IS A FAVORABLE JUROR TO ME.

>> INDEED, INDEED.

>> BUT, THIS -- THE JUDGE HAS A -- AN OBLIGATION TO ENSURE A FAIR TRIAL.

AND AS JUSTICE LEWIS SAID, EVEN WITH THE DEFENDANT WHO IS NOT REPRESENTING HIMSELF, THAT IF THERE ARE -- IF EVERY JUROR SAID, WELL, I KNOW THE STATE'S WITNESSES, THEY ARE MY BUDDIES, DRINKING BUDDIES, I THINK THAT THE COURT WOULD HAVE SOME INDEPENDENT OBLIGATION THERE.

ARE YOU SAYING THEY WOULDN'T?  
TO SEE THAT JURORS THAT SIT ARE  
FAIR AND IMPARTIAL.

>> I THINK THAT IS UP TO THE  
PARTIES, I MEAN, THE JUDGE --

>> I MEAN, LOOK AT IT FROM THE  
OTHER SIDE OF THE COIN.

LET'S SAY THE COURT ALLOWED THE  
LADY TO SIT ON THE JURY.

AND HE WAS CONVICTED AND  
SENTENCED TO DEATH.

YOUR ARGUMENT HERE WOULD HAVE  
BEEN, THE PROSECUTOR IS AN  
ADVOCATE, WE CANNOT RELY ON HIM  
MAKE THE CHALLENGE, AND THIS GUY  
IS PRO SE AND THE COURT SHOULD  
HAVE STEPPED IN, IN THE NAME OF  
JUSTICE AND KEPT THE LADY OUT.

BECAUSE, HER DAUGHTER WAS  
MURDERED.

SEE --

THAT IS THE ARGUMENT YOU WOULD  
HAVE BEEN MAKING, YOU HAVE TO  
RESPECT.

>> WITH DUE RESPECT I DON'T  
THINK I WOULD HAVE MADE THAT  
ARGUMENT.

I THINK WHAT DIFFERENTIATES THIS  
IS THE JUDGE STEPPING AWAY FROM

THE IMPARTIAL ROLE THAT SHE IS  
SUPPOSED TO HAVE.

>> REALLY, ALL HE DID,  
RESPECTFULLY IT SEEMS TO ME, IS  
THAT HE INTERRUPTED IN MID  
SENTENCE AND SAID THIS IS SO  
CLEAR, IT WAS, AS I UNDERSTAND  
THE RECORD, WHILE THE ASSISTANT  
STATE ATTORNEY WAS SAYING, YOU  
KNOW, THERE IS A PROBLEM WITH  
MS. SCHULTZ AND ALL OF A SUDDEN  
THE JUDGE SAYS, YES, I KNOW.

>> WE'RE CONCERNED WITH  
MS. SCHULTZ.

>> AND EVEN THE STATE WAS  
CONCERNED THAT THIS PERSON SERVE  
ON THE JURY AND REALLY, ALL THAT  
THE JUDGE DID WAS SORT OF  
SHORT-CIRCUIT THAT DISCUSSION.

AND DIDN'T REALLY INJECT, UNTIL,  
UNTIL THE STATE SAID THERE IS A  
PROBLEM WITH THIS JUROR, IS THAT  
A FAIR STATEMENT.

>> THAT IS A FAIR STATEMENT BUT  
I THINK THE JUDGE SHOULD HAVE  
LET IT PLAY OUT AND FIND OUT  
WHAT THE PROSECUTOR WAS GOING TO  
SAY, AND I THINK, I KNOW A LOT

OF DEFENSE LAWYERS LIKE WOMEN ON  
THEIR JURIES, AND THIS WAS A  
WOMAN.

AND WE DON'T KNOW WHETHER HE WAS  
A MINORITY.

WE DON'T KNOW IF THE PROSECUTOR  
HAD TRIED -- SAID SELL, IN AN

ABUNDANCE OF CAVERN I WILL NOT  
CHALLENGE HER FOR CAUSE, SHE

SAID SHE CAN BE FAIR AND SHE

SAID THE RIGHT ANSWERS ON

CONSIDERING THAT AND I WILL

EXERCISE A PEREMPTORY AND THEN

YOU HAVE A RIGHT TO DO A KNEE

SLAP, OH, THE FIRST WOMAN THE

STATE EXCUSE AND MAYBE IT WAS A

MINORITY.

WHO KNOWS HOW IT WOULD HAVE

PLAYED OUT AND THAT WAS SHORT

CIRCUITED BY THE JUDGE, AND

TAKING IT UPON HERSELF, TO GRANT

A CAUSE -- I MEAN, TO EXCUSE HER

FOR CAUSE WITHOUT EVEN A CAUSE

CHALLENGE BEING MADE BY EITHER

SIDE.

>> [INAUDIBLE].

>> BECAUSE THERE ARE CASES,

THERE ARE NONE WHERE THE JUDGE

DEPARTS FROM THEIR IMPARTIAL

ROLE AT JURY SELECTION, PERHAPS  
THAT I COULD FIND THAT RESULTS  
-- CALLED IT FUNDAMENTAL ERROR  
BUT I THINK ANY TIME THE JUDGE  
IS LESS THAN NEUTRAL, I THINK  
THAT THAT IS FUNDAMENTAL ERROR,  
AND I THINK THE MAGISTRATE, THE  
-- IS THE PRESIDING OFFICER, AND  
IS LOOKED UPON BY THE JURY,  
THERE IS ALL THAT GOOD LANGUAGE  
IN ALL OF THOSE CASES ABOUT HOW  
IMPORTANT A ROLE THE JUDGE  
PLAYS.

AND WHEN THE JUDGE TAKES SIDES,  
THAT IS --

>> IN THIS CONTEXT IF THERE IS  
ANY INFERENCE THAT THE JUDGE WAS  
LESS THAN NEUTRAL, THE JUDGE  
WOULD SEEM LESS THAN NEUTRAL TO  
PROTECT THE DEFENDANT.

I MEAN, THAT SEEMS TO ME TO BE  
THE OVERWHELMING INFERENCE, IN  
THESE CIRCUMSTANCES, AND NOW I  
UNDERSTAND WHAT YOU ARE SAYING  
AND MAYBE YOU WANT IT ON THERE  
BUT HE COULD HAVE SAID SOMETHING  
IF THAT WAS THE CASE AND I JUST  
-- IT SEEMS LIKE THIS IS THE

DISCUSSION THAT IS SOMEWHAT  
DETACHED FROM THE REAL... WHAT  
HAPPENED.

>> THERE AGAIN, WE DON'T -- ON  
THE COLD RECORD, MAYBE, BUT  
THERE AGAIN, MIGHT HAVE BEEN A  
MINORITY.

CLEARLY WAS A WOMAN.

>> I THINK YOU WOULD HAVE TO  
SHOW A COURSE OF CONDUCT, BY THE  
JUDGE, DURING THE TRIAL, CLEARLY  
SHOWED THAT THEY WERE -- THAT  
THE JUDGE WAS ADDITION HELPING  
THE PROSECUTOR AND --  
ADDITIONALLY HELPING THE  
PROSECUTOR AND THAT IS WHERE  
THERE ARE CASES AND TO ME,  
AGAIN, IF THERE IS ANY  
INFERENCE, THE OTHER JUSTICES  
HAVE SAID, IS THAT THE JUDGE  
WOULD HAVE BEEN CONCERNED ABOUT  
THE DEFENDANT'S RIGHTS TO HAVE  
THIS KIND OF JUROR --

>> COUPLE THAT WITH MY OTHER  
DECENT POINT I THINK WHICH WAS  
STAND BY AS APPOINTED DURING...  
AND THE JAR IS NOT IN THE  
COURTROOM, AND THE JUDGE  
CHASTISES STAND BY COUNSEL FOR

HELPING MR. MCKENZIE DURING THE  
CHARGE CONFERENCES AND --  
>> WHERE IN THE RECORD -- I  
MEAN, I THINK YOU ARE -- YOUR  
CHARACTERIZATION OF THAT IS NOT  
IN THE CONTEXT OF THE WHOLE  
RECORD, SEEM TO BE -- SEEMS TO  
BE INCORRECT.

WHAT ARE YOU --

>> WELL, AT PAGE -- VOLUME 7,  
497 TO 98, THEY ARE IN THE  
CHARGES CONFERENCE AND IT IS NOT  
CLEAR, BUT IT LOOKS LIKE,  
APPEARS A REASONABLE INFERENCE  
THE APPELLANT LOOKED TO HIS  
STAND BY COUNSEL WHEN THEY WERE  
TALK ABOUT JURY INSTRUCTIONS,  
AND HE SAYS, OKAY, I JUST HAVE  
NO... AND THE COURT INTERRUPTS  
AND SAYS, HE HAS TO ASK FOR YOUR  
ASSISTANCE, HE'S NOT ENTITLED TO  
DO REPRESENTATION, HE'S NOT  
ENTITLED --

>> YOU ARE SORT OF GIVING AND IN  
TOW NATION AND I THINK THE POINT  
IS, THAT THERE WAS STAND BY  
COUNSEL FOR THE JURY CHARGE, AND  
THERE IS NO INDICATION THAT THE

-- AT THAT POINT, THE DEFENDANT SAID, NO, I NEED A FEW MINUTES TO TALK TO MY COUNSEL ABOUT THE JURY INSTRUCTIONS, AND IT WASN'T DONE IN FRONT OF THE JURY, SO THERE CAN'T BE ANY -- INTO CORRECT.

>> PREJUDICE IN THAT WAY, AND I THINK IT IS AGAIN A DIFFICULT SITUATION, A DEFENDANT IN CYSTS ON SELF-REPRESENTATION AND DOESN'T HAVE A RIGHT TO STAND BY COUNSEL, BUT, THE JUDGE TO TRY TO HELP ENSURE THE FAIRNESS GIVES HIM STAND BY COUNSEL AND STAND BY COUNSEL HAS A LIMB ROLE AND I DON'T SEE THAT STATEMENT AS BEING THE JUDGE DEPARTED FROM HIS OR HER NEUTRAL STANCE IN THE CASE, AND WHAT IS YOUR ISSUE ON AS TO THAT COMMENT.

>> WELL, I RESPECTFULLY DISAGREE AND I THINK IT IS A CLEAR DEPARTURE AND CLEAR FROM THE RECORD WHEN MR. MCKENZIE BASICALLY BACKS DOWN, THAT HE WAS INTIMIDATED AND THOUGHT HE ANYTHINGrd THE JUDGE AND I THINK THAT IS A FAIR READING OF THE

EXCHANGE.

HE STOPS WHATEVER HE WAS GOING  
TO SAY.

>> THE COURT SAID -- STAND BY  
COUNSEL, YOU HAVE TO ASK FOR IT.

HE IS NOT ENTITLED TO THAT  
REPRESENTATION, HE'S NOT  
ENTITLED AND HE IS REPRESENTING  
HIMSELF AND HE'S ASKED TO  
REPRESENT HIMSELF AND HE HAS A  
QUESTION FOR STAND BY COUNSEL  
AND HE'LL ASK YOU A QUESTION  
BUT, AS THE JUDGE SAID, THAT IS  
NOT A MISREPRESENTATION OF THE  
LAW, FARETTA DOES NOT PERMIT  
DUAL REPRESENTATION.

>> MOST OF THE CASE LAW ON THAT  
DEALS WITH THE DEFENDANT  
OBJECTING TO STAND BY COUNSEL  
GETTING INVOLVED.

IT'S NOT THE OTHER WAY AROUND.

IT IS NOT WHERE THE JUDGE IS  
CHASTISING OR KEEPING --  
LESSENING THE INVOLVEMENT OF  
STAND BY COUNSEL.

THAT THAT IS -- MOST OF THE CASE  
LAW DERIVES FROM WAIT A MINUTE,  
I DIDN'T GET MY TRUE RIGHTS OF

REPRESENTATION BECAUSE STAND BY  
COUNSEL CAME IN HERE AND  
REPRESENTED ME AND I DIDN'T WANT  
IT.

>> LET'S JUST ASSUME THAT  
SOMEHOW THERE SHOULD HAVE BEEN  
GREATER CONSULTATION AND I WOULD  
THINK THAT THIS HAPPENED IN THE  
PENALTY PHASE AND THE JUDGE MAY  
HAVE BEEN SOMEWHAT FRUSTRATED  
BECAUSE MR. MCKENZIE FIRST SAYS,  
YES, NOW I WANT COUNSEL BACK FOR  
THE PENALTY PHASE AND THEN HE  
DOES AN ABOUT-FACE, BUT, DON'T  
YOU HAVE TO SHOW SOME KIND OF  
EFFECT ON THE -- THAT THERE WAS  
A PENALTY PHASE INSTRUCTIONS  
THAT WERE IMPROPERLY GIVEN OR  
SOMETHING THAT WOULD HAVE BEEN  
REQUESTED, IF ONLY STAND BY  
COUNSEL HAD BEEN ABLE TO BECOME  
MORE INVOLVED, DON'T YOU HAVE TO  
CONNECT IT UP WITH THE -- AS  
JUSTICE CANADY SAID WITH THE  
REALITY OF WHAT HAPPENED HERE?  
WELL, I DON'T THINK SO WHERE YOU  
ARE IN ESSENCE DENIED YOUR SIXTH  
AMENDMENT RIGHT.

>> WHERE IS -- THAT IS THE ONLY

PLACE IN THE RECORD AND THAT IS  
PRETTY SIGNIFICANT TO ME THAT  
THAT SORT OF PROVES THE OPPOSITE  
POINT, WHICH IS THAT THE JUDGE  
DIDN'T INTERFERE WITH THE RIGHT  
OF SELF-REPRESENTATION, BUT,  
ALSO ALLOWED THERE TO BE STAND  
BY COUNSEL, AND GAVE  
MR. MCKENZIE SOMETHING THAT THE  
LAW WOULD NOT NECESSARILY  
ENTITLE HIM TO.

>> I TOLD YOU, IT WASN'T THE  
BEST ISSUE I EVER HAD UP HERE  
BUT IT WAS ONE OF MY FAVORITE,  
TOO, OUT OF THIS INITIAL BRIEF.

>> PLEASE UNDERSTAND, I MEAN, AS  
WE ASK THE QUESTIONS, IT IS NOT  
TO SHOOT THE MESSENGER AND THE  
SYSTEM WORKS BY FOLKS LIKE YOU  
PRESENTING ARGUMENT, BUT WE HAVE  
TO GO THROUGH THE PROCESS AND  
THESE QUESTIONS HAVE TO BE ASKED  
AND WE HAVE TO PROBE THESE  
THINGS AND I THINK YOU  
UNDERSTAND THAT.

>> I UNDERSTAND THAT AND GETTING  
BACK TO YOUR PRIOR ARGUMENT, I  
MEAN, I THINK THIS COURT AND --

I, ESPECIALLY WOULD LOVE TO SEE  
FARETTA LIMITED, IN SOME WAY  
ESPECIALLY IN CAPITAL CASES AND  
WE REQUIRE MINIMUM QUALIFIED  
COUNSEL TO TRY THESE CASES --  
>> SO WE UNDERSTAND, ALTHOUGH  
THIS WAS AN INTERESTING SEGUE TO  
YOUR CASE, YOU HAVE NOT RAISED  
AS AN ISSUE ON APPEAL, THAT THE  
DEFENDANT WAS DENIED HIS RIGHT  
TO A FAIR TRIAL BY REPRESENTING  
HIMSELF.

>> NO, I DID NOT.

>> BECAUSE I AGREE, I THINK IT  
WOULD BE FABULOUS IF WE COULD  
LIMIT -- I THINK, PERSONALLY,  
THAT IN DEATH CASES I AGREE WITH  
YOU, I THINK THE U.S. SUPREME  
COURT IS GOING TO PUT US INTO  
THIS -- WITH GOOD INTENTION,  
TRYING TO GET THE DEFENDANT MORE  
RIGHTS, BUT, IT DOES RAISE THE  
LIMITS AND YOU HAVE NOT RAISED  
THE ISSUE HERE AND MR. MCKENZIE  
WOULDN'T BE THE BEST EXAMPLE,  
BECAUSE DOESN'T IT -- IT APPEARS  
HE IS COMPETENT AND WAS A  
COMPETENT INDIVIDUAL AS WE  
STARTED OUT, NOT SOMEBODY WITH

SEVER MENTAL ILLNESS.

>> DOESN'T APPEAR TO BE.

>> GOOD -- YOU RAISED SOME ISSUE INVOLVING THE FARETTA INQUIRY, THAT TOOK PLACE HERE, WAS NOT ADEQUATE.

>> YES, THE FARETTA INQUIRY, I ARGUE WAS INSUFFICIENT IN ONE RESPECT, SHE ASKED HAVE YOU REPRESENTED YOURSELF AT TRIAL AND THERE WAS NO EXPLORATION OF HIS FAMILIARITY WITH THE CRIMINAL JUSTICE SYSTEM, WHETHER HE HAD EVER BEEN TO TRIAL BEFORE, WITH REPRESENTATION.

>> IS THAT A REQUIREMENT?

>> SOME OF THE CASES TALK ABOUT THAT IS THE BETTER WAY TO DO IT, YES.

IT IS NOT IN THE STANDARD --

>> IS THAT A REQUIREMENT.

>> I BELIEVE THAT IT IS A REQUIREMENT, THAT THE JUDGE DETERMINE THE DEFENDANT'S FAMILIARITY AND EXPERIENCE, EXPERIENCE IN THE CRIMINAL JUSTICE SYSTEM.

>> YOU KNOW, THIS IS ONE OF

THOSE CASES, AND ONE OF THOSE  
COLLOQUIES AND A LOT OF TIME WE  
SEE THE COLLOQUIES AND THIS  
DEFENDANT WILL SAY YES OR NO AND  
MAKE NO FURTHER EXPLANATION IN  
REGARDS TO THE QUESTIONS THE  
COURT ASKS AND THIS IS A  
DEFENDANT WHO, YOU KNOW, TALKS  
ABOUT, I UNDERSTAND THE  
RAMIFICATIONS, OF THESE KINDS OF  
THINGS, AND I MEAN, HE IS NOT  
JUST SAYING, YES, AND NO.

HE ACTUALLY ANSWERS THESE  
QUESTIONS, WITH SOME  
EXPLANATION, AND SOME TALKING  
AND SO, TO ME THIS IS ONE OF THE  
BETTER INQUIRIES, THAT WE HAVE  
SEEN WHEN WE ARE TALKING ABOUT  
THESE FARETTA KINDS OF CASES.

>> AND HE DOES THINGS LIKE NOT  
EVEN TESTIFY, JUST TRIES TO JUST  
INTRODUCES BANK RECORDS, TO SHOW  
THAT --

>> THAT DOESN'T HAVE -- DOESN'T  
REALLY ANSWER THIS QUESTION  
ABOUT WHETHER OR NOT THE FARETTA  
DISCUSSION WAS ADEQUATE.  
INTO IT SHOWS THAT HE WASN'T  
FAMILIAR ENOUGH WITH COURT

PROCEDURES OR EXPERIENCED WITH  
COURT PROCEDURE TO KNOW THE  
PROPER --

>> DID THIS JUDGE LET THIS BANK  
RECORDS IN.

>> LET THIS BANK RECORDS IN BUT  
THEY HAD NO CONTEXT TO THE JURY,  
BECAUSE --

>> AGAIN IF YOU WOULD SAY THIS  
INQUIRY IN THE CAPITAL CASE  
WOULD HAVE TO EXTEND TO, HAVE  
YOU EVER REPRESENTED YOURSELF IN  
A PENALTY PHASE THE PENALTY  
PHASE IS SO UNIQUE THAT MOST  
DEFENDANTS OR DEFENSE ATTORNEYS  
DO NOT HAVE... AND YOU KNOW  
THERE IS NOT THAT PRESENT  
REQUIREMENT THAT WE LIMIT  
SELF-REPRESENTATION FOR THE GILL  
PHASE.

>> MAYBE THERE SHOULD BE.  
BUT --

>> IN THIS CASE WOULD HAVE TO  
HAVE A CONSTITUTIONAL BASIS,  
DON'T YOU AGREE WITH THAT?  
YOU HAVE NOT -- OTHER THAN THAT  
ONE ISSUE ABOUT THE -- THEY  
SHOULD HAVE INQUIRED ON IT AND

NO CASE LAW THAT SAYS IT IS  
REQUIRED, THERE IS NO OTHER  
BASIS TO REVERSE THIS ON A --  
FARETTA.

>> NO, POLICY, ICE JUST WANT TO  
SUBMIT TO YOU THAT BECAUSE OF  
CASES LIKE THIS, BECAUSE OF  
VOLUNTEERS, PLEAS, PEOPLE ASKING  
FOR THE DEATH PENALTY AND I'M  
SEEING MORE AND MORE OF THEM IN  
MY PRACTICE, OVER THE YEARS,  
THIS -- THE WHOLE DEBT PENALTY  
SENTENCING SCHEME IN FLORIDA IS  
SKEWED, YOU DON'T GET A PROPER  
WEIGHING OF THE AGGRAVATORS, YOU  
DON'T GET A PROPER PRESENTATION  
OF THE AGGRAVATORS OR THE  
MITIGATION.

>> I UNDERSTAND WHAT YOU ARE  
SAYING, AND --  
BUT DON'T WE HAVE TO COME BACK  
TO THE FACTS, THAT IT IS HIS  
CASE AND HE, AND HE HAS A RIGHT  
THAT MAY BE TAKEN WAY IN SOME  
EXTREME CIRCUMSTANCES.  
BUT HE HAS THE RIGHT TO HAVE  
THIS CASE DEALT WITH THE WAY HE  
WANTS IT DEALT WITH.  
IS HE TO REPRESENT HIMSELF.

>> HE DOES HAVE CERTAIN --

>> HE'S A PERSON, HE'S A PERSON,  
HE'S A PERSON, AND IT SEEMS TO  
ME, THAT WE NEED TO BE CAREFUL  
ABOUT SAYING, WELL, YOU ARE A  
PERSON, BUT WE WILL TREAT YOU AS  
NOT A PERSON, FOR SOME PURPOSES  
HERE.

AND YOU ARE ON TRIAL FOR YOUR  
LIFE, BUT YOU NEED TO SIT DOWN  
AND SHUT UP, AND YOU WILL NOT --  
YOU ARE NOT GOING TO BE ABLE TO  
MAKE DECISIONS ABOUT HOW THIS  
COURSE OF PROCEEDINGS WILL GO  
FORWARD.

AND YOU CANNOT REALLY  
PARTICIPATE IN A MEANINGFUL WAY,  
IN THE WAY YOU WOULD LIKE IT TO.

AND I -- IT SEEMS TO ME THAT,  
MAYBE, THAT IS THE WISE POLICY  
AND MAYBE THAT WOULD BE IN HIS  
INTERESTS BUT IT DOES SEEM TO ME  
TO DO SOME -- SOME INJURY TO THE  
RESPECT FOR THAT PERSON AS AN  
INDIVIDUAL.

>> WELL, IT IS A SLIPPERY SLOPE  
AND I -- YOU SPEAK THE TRUTH,  
BUT, TO TAKE IN -- TAKEN TO

ANOTHER EXTREME YOU HAVE --  
EXTREME YOU HAVE THE CAPITAL  
DEFENDANTS WHO USE THE SYSTEM TO  
COMMIT SUICIDE.

>> AND AGAIN WE ARE QUITE AWARE  
OF THAT.

AND I THINK THE JUDGE WAS VERY  
AWARE OF IT, BECAUSE, SHE  
FOLLOWS MOHAMMED, SHE ORDERED A  
PRE-SENTENCE INVESTIGATION AND  
WHAT WE HAVE HERE AND I HAVE  
SEEN CASES WHERE WE KNOW THAT  
MENTALLY ILL DEFENDANTS, WHO  
SAY, NO, I DON'T WANT THE COURT  
TO KNOW ABOUT MY MENTAL ILLNESS,  
BECAUSE I WANT TO BE PUT TO  
DEATH, THAT IS NOT ONE OF THESE  
CASES AND SO THAT IS WHY,  
ALTHOUGH I, YOU KNOW, I WOULD  
HAVE LIKED, IN THE MOHAMMED  
SERIES OF CASES TO GO IF YOUR, I  
DON'T THINK THIS CASE IS A GOOD  
ONE, BECAUSE, WHEN WE LOOK AT  
WHAT HAPPENED HERE, HE CONFESSED  
TO TWO HORRIBLE MURDERS, FOR  
MONEY, AND WHERE YOU ARE NOT  
CHALLENGING CCC AND PRIOR  
VIOLENT FELONY AND THIS IS A --  
UNDER ANY CIRCUMSTANCES, WITHOUT

THERE BEING SOME SUBSTANTIAL  
STATUTORY MITIGATION, WHATEVER A  
LAWYER COULD DO, IT WOULD NOT BE  
MITIGATION, IN THIS CASE, THAT  
COULD OUT WEIGH THE SUBSTANTIAL  
AGGRAVATION FROM THE -- EVEN  
LOOKING AT THAT PSI --

>> I DON'T KNOW IF WE CAN SAY  
THAT FOR SURE.

>> BECAUSE YOU SAID YOU SAW A  
LOT OF THESE CASES LATELY AND  
I'M SAYING, NO, I HAVE SEEN  
CASES WHERE SOMEONE IS DOING  
SOMETHING AND YOU CAN TELL, THAT  
THAT DEFENDANT IS A MENTALLY ILL  
DEFENDANT AND THIS WAS A  
CALCULATED MURDER, THIS WAS A  
PERSON THAT WAS -- CAME THERE TO  
MURDER THESE TWO DEFENDANTS.  
INNOCENT VICTIMS FOR MONEY.

-- INNOCENT VICTIMS FOR MONEY  
AND WENT ON AS YOU SAID, A SPREE  
OF ROBBING AND LUCKILY NOT  
MURDERING ANYBODY ELSE.

>> ALL OF THE JURY DIDN'T --  
NEVER LEARNED OF HIS REAL  
COCAINE ADDICTION, THEY STILL  
GOT TWO VOTES ON EACH FOR LIFE.

AND IF THE CASE HAD BEEN  
PROPERLY MITIGATED AND THE  
CHALLENGE, THE ACTS HAD BEEN  
PROPERLY CHALLENGED, PERHAPS, WE  
MIGHT HAVE A DIFFERENT RESULT.  
THIS IS REALLY JUST A FARCE AND  
A SHAM.

>> YOU ARE WELL INTO YOUR  
REBUTTAL.

BUT I THINK WE HAD A QUESTION  
DOWN HERE.

>> ISN'T IT TRUE THAT IN SPITE  
OF THE CLIENT HAVING THE RIGHT  
TO REPRESENT HIMSELF, ARE YOU  
STILL SAYING A MAN...

[INAUDIBLE].

>> ABSOLUTELY.

>> SO WE HAVE TO ALLOW A PERSON  
TO DO WHAT THEY WANT TO DO...

[INAUDIBLE].

>> WELL, I'M NOT SURE IN A  
CAPITAL CONTEXT THAT THAT IS THE  
RIGHT WAY TO HANDLE IT.

BUT, I UNDERSTAND YOUR POINT.

THANK YOU.

>> ALL RIGHT, THANK YOU.

MS. DAVIS.

>> MAY IT PLEASE THIS COURT, I'M  
BARBARA DAVIS.

I REPRESENT THE STATE OF

FLORIDA.

JUST A FEW FACTUAL HOUSEKEEPING

MATTERS.

THE -- ALL THE PRIOR VIOLENT

FELONIES HAPPENED BEFORE THESE

TWO MURDERS EXCEPT FOR TWO OF

THEM ONE WAS THE CARJACKING IN

ALACHUA COUNTY AND ONE WAS GRAND

THEFT -- GRAND THEFT IN ALACHUA

AND THE CARJACKING IN -- ALACHUA

AND THE CARJACKING IN MARION.

>> THE JUDGE LISTS STATE PRIOR

VIOLENT FELONIES AND LOOKS FROM

THE PSI THAT HE HAD -- HE HAD

HAD IN, AT LEAST -- HE HAD THE

SENTENCE IN 1983, THE 7 YEARS IN

THE DEPARTMENT OF CORRECTIONS,

FOR GRAND THEFT AND HE WAS ALSO

INCARCERATED IN THE DEPARTMENT

OF CORRECTIONS IN 1990.

FOR VARIOUS CHARGES THAT HE GOT

A SUBSTANTIAL SENTENCE FOR.

BUT IT LOOKS LIKE, UNTIL THE --

HE WAS THEN -- MUST HAVE BEEN

RELEASED SOMETIME IN THE '90s,

AND IN OTHER WORDS, HE HAD TWO

SUBSTANTIAL PRISON TERMS, AND

THEN HE WAS RELEASED AND THEN  
THESE OTHER ONES THAT ARE --  
MARIAN COUNTY, AND ST. JOHN'S  
AND ALL OF THAT, DOES THAT --  
YOU ARE SAYING THOSE OCCURRED,  
ACTUAL CRIMES OCCURRED BEFORE  
THE MURDER?

>> YES.

.  
BECAUSE ONCE, ONCE THE VICTIMS  
WERE FOUND, AND HE HAD LEFT HIS  
CAR, AT THE CRIME SCENE, AND  
TAKEN ONE OF THE -- SCENE AND  
TAKEN ONE OF THE VICTIM'S CAR,  
THERE WAS A BLOW OUT ON THE  
VICTIM'S CAR AND LEFT THE CAR IN  
ALACHUA AND SOLD ANOTHER CAR AND  
THERE WAS A HIGH SPEED CASE AND  
A CARJACKING IN MARIAN COUNTY  
AND ALL OF THE ALACHUA  
ROBBERIES, ONCE HE GOT THEM INTO  
CUSTODY AND TOUCHES ON THIS IN  
THE PENALTY PHASE HE TOLD THEM  
ABOUT THE ROBBERIES THEY DIDN'T  
EVEN KNOW ABOUT AND --

>> HIS CONVICTION FOR THOSE  
OCCURRED AFTER THE -- HE WASN'T  
-- OCCURRED AFTER THE MURDERS?  
CONVICTIONS FOR -- THERE ARE

CRIMES, AND BEFORE THESE MURDERS  
BUT HIS CONVICTIONS FOR THEM  
STILL WAS AFTER THE MURDER.  
>> YES, BECAUSE ONCE THEY  
ARRESTED HIM, ACTUALLY HE WAS  
ARRESTED IN CITRUS COUNTY AND  
CAME BACK TO MARION COUNTY AND  
THEY FOUND OUT ABOUT THE ALACHUA  
ROBBERIES AND THE JUDGE, IF YOU  
LOOK IN THE BEGINNING OF THE  
RECORD, SHE WAS WITHIN THE  
TRANSPORT ORDER TO MARION AND  
THEN, HE WOULD BE ALREADY AT  
LAKE BUTLER AND SHE'S GOT THE  
TRANSPORT ORDER TO LAKE BUTLER  
AND REMEMBER, THE PUBLIC  
DEFENDER WAS NOT APPOINTED ON  
THIS CASE UNTIL FEBRUARY, SO  
EVEN THOUGH HE WAS ARRESTED IN  
OCTOBER THEY WERE HOLDING HIM ON  
OTHER CHARGES AND SHE WAS HE WAS  
NOT ARRESTED ON THE MURDERS  
UNTIL FEBRUARY 6TH.

>> IS THERE A PENDING MURDER  
CHARGE.

>> I DON'T KNOW.

I'M SORRY, I DON'T KNOW.

AND... ALSO, AS FAR AS ISSUE

NUMBER ONE, THE JUDGE STEPPING  
IN AND I JUST, ON THE JUROR FOR  
CAUSE I WOULD LIKE TO POINT OUT  
THAT PAGE 25 OF MY ANSWER BRIEF,  
ACTUALLY, WHAT THE PROSECUTOR  
SAID IS, YOUR HONOR, WE ARE  
CONCERNED ABOUT MS. SCHULTZ  
BASED ON HER LOSS OF HER SON AS  
A MURDER VICTIM, AND SO, THE  
JUDGE SAYS THAT IS TRUE, AND THE  
PROSECUTOR CONTINUES, SO, I  
THINK WE ARE GOING TO... AND  
THEN THIS JUDGE SAYS, I'LL  
STRIKE HER FOR CAUSE AND THIS  
JUROR SCHULTZ WAS MARRIED TO A  
RETIRED POLICE OFFICER.  
HER DAUGHTER HAD BEEN KILLED 7  
MONTHS EARLIER AND HER --  
ANOTHER DAUGHTER HAD BEEN IN THE  
MILITARY POLICE.  
AND SO AS THE COURT OBSERVED,  
THIS COULD HAVE BEEN THE JUDGE  
IN -- JUST TAKING CARE OF  
BUSINESS, BECAUSE, IT WAS  
OBVIOUS, THE PROSECUTOR WAS  
GOING TO STRIKE THIS JUROR, THE  
PROSECUTOR HAD ONLY ONE  
PEREMPTORY CHALLENGE.  
AND THERE WAS -- MR. MCKENZIE,

WHO WAS QUITE VERBAL, AND  
INTERACTIVE IN THE PROCESS,  
NEVER SAID, WAIT A MINUTE, I  
WANT THAT JUROR, YOU LIKE THAT  
JUROR, WHY ARE YOU STRIKING THE  
JUROR AND THIS IS CLEAR NOT  
PRESERVED, IT'S NOT FUNDAMENTAL,  
AS FAR AS THE JUDGE INTERVENING  
AND SUPPOSEDLY LIMITING STANDBY  
COUNSEL, THAT WAS NOT PRESERVED.  
IF YOU LOOK AT THE CASE THE  
DEFENSE CITED, MCKASKLE V.  
WIGGINS, THE DEFENDANT'S RIGHT  
TO REPRESENT HIMSELF IS  
GUARANTEED BY THE UNITED STATES  
CONSTITUTION, STANDBY COUNSEL  
CANNOT INTERFERE WITH THAT RIGHT  
OR GIVE ANY APPEARANCE THAT THE  
DEFENDANT DOES NOT HAVE COMPLETE  
AUTONOMY.

THE JUDGE, TIME DURING A 67 PAGE  
CHARGE CONFERENCE, REMINDED  
STANDBY COUNSEL HE HAS TO ASK  
FOR YOU TO HELP HIM.

AND MR. MCKENZIE, IF YOU LOOK AT  
THAT COMMENT ON PAGE 497 OF THE  
CHARGE CONFERENCE, THE CHARGE  
CONFERENCE WENT ON TO PAGE 513.

MR. MCKENZIE NEVER SAID STOP, I WANT HIM TO HELP ME, HE CONTINUED TO BE QUITE INTERACTIVE AND VERBAL, I AM OBJECTING TO THIS, THERE WAS NO CHILLING OF HIS RIGHTS WHATSOEVER.

AS FAR AS HIS INEXPERIENCE WITH THE LEGAL SYSTEM, THE FIRST ONE OCCURRED ON AUGUST 10TH, 2007.

YOU CAN SEE THAT HE HAD EXTENSIVE EXPERIENCE WITH THE LEGAL SYSTEM, EVEN IF THAT WERE THE STANDARD.

SHE FOLLOWED THE BOOK.

>> I KNOW YOU TOLD ME THIS OR MAYBE YOU DIDN'T, IN TERMS OF HIS PRIOR EXPERIENCE, THE JUDGE HAS THE 1991 CONVICTION FOR STRONGARM ROBBERY IN BROWARD COUNTY.

DO WE KNOW HOW LONG HE HAS SERVED THAT SENTENCE?

>> IF YOU PULL THE DEPARTMENT OF CORRECTIONS SHEET ON HIM, THEY DIDN'T HAVE ANY DATE FOR CUSTODY, THAT WAS A 15 YEAR SENTENCE WHICH WAS IMPOSED IN MAY OF 1991.

HE ALSO HAD DIFFERENT IN  
CUSTODY, OUT OF CUSTODY, HE WAS  
RELEASED FROM THE 1991 SENTENCE  
IN OCTOBER OF 2002.

AND THEN, THE OTHER CRIME THAT  
THE JUDGE HAS UNDER FIRE, THE  
FELONY, THE CONVICTIONS FOR  
THOSE CRIMES WERE ALL AFTER THIS  
MURDER AND THEY WERE PLEADED.

>> THEY OCCURRED BEFORE THE  
MURDER AND HE PLED TO THEM IN  
ALACHUA AND MARION AND THIS WAS  
IN AUGUST.

>> ESSENTIALLY, FROM 2002 TO  
2006, HE MAY BE COMMITTING  
CRIMES, IT WAS IN THE RECORD  
THAT HE WAS ACTUALLY WORKING FOR  
\$53,000 A YEAR.

>> YES, AND HE ACTUALLY WAS  
QUITE PROUD OF THAT AND SAID NOT  
ONLY DID HE GET THE \$63,000 BUT  
HE WOULD GET \$53,000 BONUS AT  
THE END OF THE YEAR FOR HIS  
WORK.

HE ACTUALLY TALKED ABOUT THAT  
WHEN HE WAS DOING CLOSING  
ARGUMENT THAT THE PENALTY PHASE  
WHICH IS ONE OTHER FACTOR WOULD

LIKE TO CORRECT.

IN THE PENALTY PHASE, WHEN CHRISTOPHER QUARLES SAID HE DIDN'T KNOW ENOUGH TO TESTIFY, MR. MCKENZIE WAS GIVING HIS CLOSING ARGUMENT, HE STARTED TALKING ABOUT DIFFERENT ISSUES, THE PROSECUTOR HAD AGREED TO THE BANK STATEMENTS COMING IN, AND HE COULD TALK TO THAT AND EVERYTHING BUT WHAT HE STARTED TALKING ABOUT, REALLY EXTRACURRICULAR THINGS, THE PROSECUTOR OBJECTED AND PUT ON RECORD THAT THEY HAD DISCUSSED MR. MCKENZIE PRESENTING EVIDENCE THROUGH WITNESSES AND TESTIFYING TO DIFFERENT FACTS SO THAT HE COULD ARGUE THEM IN THE PENALTY PHASE AND IT WAS HIS STRATEGY NOT TO DO THAT, AND HE SAID ON THE RECORD THAT I DID NOT WANT TO BE SUBJECTED TO CROSS-EXAMINATION, AND I DIDN'T WANT THE STATE DELVING INTO SOME OF THE ISSUES.

THAT IS IN THE RECORD AT 5:75.

I THINK, ASIDE FROM THE FACT

THAT NONE OF THESE ISSUES WERE

PRESERVED, IF THERE ARE NO OTHER  
QUESTIONS, I WOULD RELY ON THE  
BRIEFS AND ASK THIS COURT TO  
CONFIRM THE CONVICTION AND  
SENTENCE.

>> CHRISTOPHER QUARLES?

>> I DON'T HAVE ANYTHING  
FURTHER.

>> THANK YOU FOR YOUR ARGUMENTS,  
THE COURT WILL BE IN RECESS  
UNTIL TOMORROW MORNING.

>> PLEASE RISE.