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Ronnie Ferrell v. State of Florida

SC07-92 | SC07-1447

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE NEXT CASE ON THE COURT'S

CALENDAR IS IN FERRELL VERSUS

STATE.

YOU MAY BE SEATED.

>> MAY IT PLEASE THE COURT.

I AM RICK SICHTA REPRESENTING

MR. FERRELL.

>> DID YOU WRITE THE BRIEFS IN

THIS CASE?

>> YES MAAM.

>> ARE YOU AWARE THAT WE HAVE

REPEATEDLY SAID THAT

INCORPORATING AN ARGUMENT IN A

MOTION THAT WAS PREVIOUSLY FILED

WILL NOT BE SUFFICIENT TO

PRESERVE THAT ISSUE FOR APPEAL

AND A BRIEF IS REPLETE WITH

REFERENCES, GO SEE OUR ARGUMENT,

YOU KNOW, IN THE 3.5, 8.50

MOTION.

>> LOOKING AT ALL THE VOLUMES
RIGHT NOW, THE FIRST ONE IS
FAILURE TO INVESTIGATE.
I LISTED ALL OF THE ISSUES AND
THE CITATIONS AND ALL OF THE
EXHIBITS IN THE RECORD.
>> BUT YOU HAVE GOT TO MAKE THE
ARGUMENT, YOU HAVE GOT TO MAKE
THE ARGUMENT.
>> I THINK THE WHOLE BRIEF IS
OVER 100 PAGES LONG AND I CITED
THE FAILURE TO INVESTIGATE,
FAILURE TO SHOW UP FOR
DEPOSITION.
>> WE WILL WORRY ABOUT THE BRIEF
LATER.
WHY DON'T YOU GO WITH THE MERITS
OF WHY THE JUDGE WAS INCORRECT
ON THE GUILT PHASE, AND FINDING
THERE WAS NO DEFICIENT
PERFORMANCE OR PREJUDICE AND
GIVE US YOUR BEST SHOT ON THE
GUILT PHASE AS TO WHAT WOULD
HAVE OCCURRED IF THE DEFENSE
LAWYER HAD BEEN AT DEPOSITIONS
YOU SAY HE SHOULD HAVE BEEN AT
OR PRETRIAL HEARINGS THAT YOU
SAY HE SHOULD HAVE BEEN THAT.

IN THE END, WHAT DID YOU PRODUCE

IN THE HEARING THAT WOULD CREATE

PREJUDICE SO THAT THERE WOULD

HAVE TO BE A NEW TRIAL?

WE ARE ALL WITNESSES THAT REALLY

SHOW THAT WHAT OCCURRED AT TRIAL

IS AND WHAT ACTUALLY HAPPENED.

>> FIRST OF ALL, THIS COUNSEL

FAILED TO TAKE A DEPOSITION OF

ALL EYEWITNESSES, ALL FIVE OF

THEM.

>> LET'S JUST ASSUME, THERE IS

SOME DEPOSITIONS HE WAS-- SOME

HE WAS NOT, BUT WHAT I'M ASKING

YOU, IF WE ARE GOING TO LOOK AT

THIS AS A CHRONIC CLAIM, WHICH I

DON'T THINK THIS ONE IS, WHAT IS

THE PREJUDICE AS FAR AS NOT

HAVING THE DEPOSITIONS, WHAT DO

YOU SAY NOW?

WHAT EVIDENCE DID YOU PRESENT

ABOUT WHAT WITNESSES COULD HAVE

TESTIFIED HERE?

>> FIRST OF ALL ALL OF THE

WITNESSES-- IT WAS A FIVE

WITNESS CASE LIKE I MENTIONED

BEFORE.

SIMPLY BY READING THE

DEPOSITIONS ARE SHOWING UP FOR

THE DEPOSITIONS.

THE FIRST ONE, A FORMER 1974 WAS

GETTING PAID AT THE TIME OF THIS

CASE.

THEY DID NOT DISCLOSE THAT BY

THE WAY AND THAT IS ONE OF THE

BRADY VIOLATIONS, THAT THEY DID

NOT DISCLOSE THE FREQUENCY OF

THE PAYMENTS.

HE WAS GETTING PAID FOR OVER 20

YEARS AGO HE GOT PAID

APRIL 18TH, DAYS AFTER THIS

MURDER OCCURRED.

HE WAS ARRESTED FOUR TIMES AND

IT WAS NOT BROUGHT UP TO THE

DEFENSE ATTORNEY.

IF COUNSEL WOULD HAVE READ THE

DEPOSITIONS, TAKEN THE

DEPOSITIONS, I BELIEVE-- WAS

TAKEN TWO MONTHS PRIOR TO TRIAL

AND OBVIOUSLY COUNSEL DID NOT

SHOW UP.

HE SHOWED UP FOR THREE OF THE

DEPOSITIONS BY THE WAY.

IF I MAY STATE, THE TRIAL COURT

SAID THAT WAS PRESUMPTIVELY

DEFICIENT IN THE FIRST PLACE AND

QUOTED IT VERY DISTURBING, AND

AS THIS COURT KNOWS, THAT WAS
THE SAME COUNSEL IN THIS CASE.
NUMBER TWO, JUAN BROWN TESTIFIES
THAT HE SEES OUR CLIENT VICTIM
RIDING IN THE BACK OF THE BLAZER
AT 11:30 AT NIGHT, PASSING HIM
GOING 45 MILES AN HOUR EACH WAY.
COUNSEL LOOKS AT THE RECORDS,
LOOKS AT THE DEPOSITIONS AND IN
THIS CASE HE NOTICED THE VEHICLE
WINDOWS ARE TINTED.
HE NOTICES MR. BROWN HAD THREE
STATEMENTS OF WHERE HE SEES
THESE PEOPLE.
IF YOU WOULD HAVE READ THE
DEPOSITIONS, FOR INSTANCE
MR. BROWN SAYS HE WAS A GRADUATE
OF UCLA AND HE ATTENDED ONE
CLASS.
FROM THE VERY BEGINNING THERE
WAS PROBLEMS WITH THESE
WITNESSES.
THE DETECTIVE, THE STATE'S MAIN
DETECTIVE, IN HIS DEPOSITION
WHERE THIS COUNSEL MEETS HALFWAY
THROUGH ADMITS MR. FERRELL IS
NOT THE ONE IN THE PREVIOUS
ROBBERY IN WHICH THEY USE THE
WILLIAMS ROLE, IN WHICH THEY

FOCUS THIS TRIAL MAY GIVE A

REASON WHY OUR FINE WOULD HAVE A

MOTIVE TO KILL.

>> I DO DETECT IN YOUR

PRESENTATION, YOU ARE REALLY

CENTERING IN ON THIS DEFENDANT

BEING PART OF THE ROBBERY.

I REALLY THOUGHT THE STATE'S

VIEW WAS, THAT WASN'T

NECESSARILY PART OF THAT ROBBERY

BUT WAS FRIENDS AND BECAUSE OF

WHAT HAD HAPPENED, THEN BECAME

INVOLVED.

AM I MISTAKEN HOW THE STATE

APPROACHED THIS?

YOU SEEM TO PORTRAY IT

DIFFERENTLY THAN I SEE IT.

>> THE STATE TRIAL JUDGE YOUR

HONOR PUT ON TWO WITNESSES TO

TALK ABOUT THE PRIOR ROBBERY

THAT MR. FERRELL WAS ACTIVELY

INVOLVED IN.

MR. FERRELL WAS HEARD TALKING

AND SAID-- BEFORE HE COMES TO

RETALIATE AGAINST US.

[INAUDIBLE]

NUMBER TWO, ROBERT WILLIAMS WHO

WE WILL TALK ABOUT NEXT, IS

ANOTHER WITNESS TO ALLEGES HE
WAS A JAILHOUSE SNITCH WHO GOT
ON THE STAND AND SAID
MR. FERRELL -- HE SAID
MR. FERRELL TALKED TO HIM ABOUT
THE WHOLE ROBBERY AND HOW IT
WENT DOWN, AND HOW FERRELL HAD
TO GET BACK BEFORE HE RETALIATED
SO THESE WERE PRESENTED TO THE
JURY, THAT MR. FERRELL ACTIVELY
PARTICIPATED IN THIS CASE.
MR. BOLENA, BY SIMPLE
CROSS-EXAMINATION QUESTION COULD
HAVE REBUTTED THAT ENTIRE
TESTIMONY BUT THE DETECTIVE'S
OWN INVESTIGATION THAT WAS A
THIRD PERSON, SHARP.
THEY TOOK A SWORN STATEMENT FROM
HIM I BELIEVE IN JUNE OF '91.
SHARP ADMITS TO COMMITTING THIS
EARLIER ROBBERY.
IT MAKES HIM CREDIBLE.
>> LET ME ASK YOU THIS.
I GUESS I HAVE MISAPPREHENDED
THIS RECORD SOMEWHAT ALSO
BECAUSE I THOUGHT THERE WAS A
TESTIMONY HERE THAT MR. FERRELL
WAS IN FACT INVOLVED AND THE
REASON HE WAS USED TO LOWER THE

VICTIM AND THE NEXT INCIDENT WAS
BECAUSE HE HAD NOT BEEN
RECOGNIZED.
HE KNEW THE VICTIM.
HE HAD NOT BEEN RECOGNIZED BY
THE VICTIM AT THE PRIOR ROBBERY,
SO HE WAS STILL FREE TO SORT OF
COME TO THE VICTIM AND LURE HIM
AND AS IT WERE.
>> YES YOUR HONOR THAT IS WHAT
THEY TESTIFIED TO.
IF YOU LOOK AT THE EYEWITNESSES
IN THE CASE, INCLUDING THE
VICTIMS WHO TALKS TO A GUY NAMED
MR. SMITH, TESTIFIED HE WAS THE
FIFTH WITNESS IN THE CASE, HE
SAID THERE WERE-- ONE GUY WAS
WEARING A MASK AND THAT ONE GUY
HAS BEEN FOUND OUT THAT WAS IN
THE RECORD THE COUNSEL HAD TO
LOOK AT WAS DEATRY SHARP.
THERE IS NO MENTION OF SOMEBODY
PLANNING.
MR. FERRELL HIMSELF TOOK PART IN
THIS CRIME.
>> WHAT ON THE DEATRY SHARP,
LET'S ASSUME WE AGREE WITH YOU
THAT THE JURY MIGHT HAVE BEEN

SIGNIFICANT IF DEATRY SHARP WAS

THE THIRD PARTICIPANT IN THE

TRIAL ROBBERY ON APRIL 20 IT.

WHAT EVIDENCE DID YOU PRESENT AT

THE EVIDENTIARY HEARING THAT

WOULD BE ADMISSIBLE EVIDENCE FOR

THE JURY THAT THE THIRD

PARTICIPANT IN THAT ROBBERY WAS

DEATRY SHARP.

TO THE EVIDENTIARY HEARING?

>> I PRESENTED ALL THE EXHIBITS.

>> BUT I'M SAYING, LET'S JUST

SAY WE AGREE ON THAT BASIS

ALONE, THERE SHOULD BE A NEW

TRIAL.

WHAT EVIDENCE-- DON'T YOU HAVE

TO HAVE EITHER BROUGHT FORTH

MR. SHARP OR SOME EVIDENCE THAT

HE WAS, THAT WOULD HAVE BEEN

ADMISSIBLE AT A TRIAL AS TO HIS

INVOLVEMENT AND THIS OTHER

ROBBERY?

>> THIS INFORMATION EXISTED AND

TO PROVE PREJUDICE I NEED TO

SHOW SUFFICIENT TO UNDERMINE THE

OUTCOME.

TRIAL COUNSEL COULD HAVE USED IT

AS IMPEACHMENT EVIDENCE.

THAT WOULD BE EVIDENCE IN THE

CASE.

I DON'T HAVE TO CALL THE

WITNESSES.

>> WHO WOULD THEY HAVE IMPEACHED

WITH THAT, WHO?

WHICH WITNESS?

>> WILLIAMS WOULD HAVE TESTIFIED

AS TO THE EARLIER ROBBERY.

>> WHAT SHOULD MR. WILLIAMS,

SINCE-- THE JAILHOUSE SNITCH, I

WAS TRYING TO STAY ON ONE ISSUE

WHICH IS JUST, BECAUSE YOU HAVE

THROWN OUT SIDNEY JONES AND HE

WAS A CONFIDENTIAL INFORMANT.

THE PROBLEM IS A LOT OF THINGS

HAVE BEEN THROWN OUT.

THE TRIAL COURT ANALYZED EACH OF

THESE, GAVE AN EVIDENTIARY

HEARING INCLUDED AS TO EACH

ISSUE THERE WAS EITHER NOT

SUFFICIENT PERFORMANCE ARE NOT

PREJUDICED SO ON TOP OF THE FACT

THAT I AM TRYING TO GET A SENSE,

THE BEST CLAIM YOU HAVE--

>> THAT IS NOT THE BEST CLAIM WE

HAVE BY THE WAY.

>> ALRIGHT, LET'S GO BACK TO

THIS ISSUE, WHICH IS IT LOOKS

LIKE WE HAVE A TRIAL LAWYER THAT
WAS ONLY HALF PRESENTS FOR SOME
OR PART OF THIS CASE AND
CERTAINLY THE JUDGE RECOGNIZED
THAT IN GIVING YOU A NEW PENALTY
PHASE, AND I GUESS WE ARE GOING
TO BE AT THE STATE APPEAL BUT
THAT IS THE ONE YOU REALLY OUGHT
TO CONCENTRATE ON.
I AM TRYING TO UNDERSTAND THE
EFFECT OF THE TRIAL COUNSEL NOT
BEEN AS FAMILIAR AS YOU ARE
SAYING HE SHOULD'VE BEEN A FALL
OF THE PRETRIAL DISCOVERY, HOW
THAT MANIFESTED ITSELF IN THE
TRIAL AND HOW IT WOULD BE
DIFFERENT ON A RETRIAL?
>> AND CROSS-EXAMINING THE
WITNESS IS, WITH THE INFORMATION
CONTAINED IN THE HEARING, THIS
IS A POWERFUL TOOL.
MR. WILLIAMS'S MAIN STATEMENT,
THE VICTIM WAS SHOT WHILE HE WAS
DRIVING THE CAR.
THIS WAS ALL CONTAINED IN THE
NEWSPAPERS.
WE PRESENTED THESE NEWSPAPER
ARTICLES AS PUBLIC RECORD.
THIS IS THE EXACT SAME ISSUE.

MR. WILLIAMS ALSO IS LOOKING AT

A 15-YEAR SENTENCE.

ALL OF THESE WITNESSES ARE

JAILHOUSE SNITCHES.

THIS IS NOT ANYTHING NEW FOR

THIS COURT.

BOTH OF THESE PEOPLE HAVE BEEN

IN FRONT OF THIS COURT IN THE

PAST FOR SIMILAR ISSUES.

AS YOU KNOW THE PROSECUTOR HAS

BEEN CONDEMNED BY THIS COURT FOR

THE EXACT SAME ARGUMENTS HE MADE

IN THIS CASE, IN BOTH THE GUILT

AND PENALTY PHASE.

THIS COURT CALLED IT EGREGIOUS.

THEY THREW THE BOOK AT HIM AND

HE IS STILL DOING IT.

AS A SIDE NOTE, HE TESTIFIED AT

THE EVIDENTIARY HEARING-- SAYING

HE CANNOT BE AN ADVOCATE OR A

WITNESS IN THE CASE.

>> THE WILLIAMS RULE MOTION I

BROUGHT BACK BEFORE.

COUNSEL STIPULATES TO THE FACTS

OF THE CASE, SAYING WHERE'S THE

PREJUDICE?

HAVE YOU READ DEATRY SHARP,

DETECTIVE BOLENA WOULD NOT

HAVE-- OF THAT EVIDENCE WOULD
NOT HAVE COME INTO THE TRIAL.
THIS WOULD HAVE BEEN A FOCUS.
WILLIAMS' TESTIMONY REGARDS TO
THAT AND THAT WAS HIS ONLY
TESTIMONY IN THE CASE.
IT WOULD NOT HAVE EVEN BEEN
ALLOWED.
THOSE SUBPOENAS WERE ISSUED FOR
TRIAL BY THE WAY YOUR HONOR, AND
AS THE RECORD SHOWS, COUNSEL
ARGUED IN OPENING STATEMENT AN
ALIBI, MR. FERRELL-- HE HAD NO
INTENTION OF EVEN PUTTING IT IN
THE OPENING STATEMENT AND
DISPENSING THE ALIBI.
OBVIOUSLY IN THE CLOSING
ARGUMENT COUNSEL UNDERSTANDS THE
MADE IN ERROR AND SAYS, JURY, I
AM SORRY.
I THOUGHT WE WERE GOING TO
PRESENT WITNESSES AND NOW WE
BECOME IRRELEVANT.
IF YOU ARE GOING TO BLAME IT ON
SOMEBODY, BLAME IT ON ME.
I AM TRYING TO GET THE COURT TO
BLAME IT ON THE COUNSEL BECAUSE
HIS PERFORMANCE -- BY THE WAY
THERE IS NO PROFFER OF ANY

MITIGATION.

>> SINCE YOU ARE GOING TO GET
INTO YOUR REBUTTAL, LET'S TALK
ABOUT THE JUDGE DID RULE IN YOUR
FAVOR ON GIVING THIS DEFENDANT
AND THE PENALTY PHASE.
MY CONCERN IS THAT I WANT TO
UNDERSTAND THE BASIS ON WHICH
THERE IS PREJUDICE.
WE HAVE HAD CASES WHERE WE HAVE
HELD THAT THERE CAN BE AN-- CAN
BE AN INVOLUNTARY WAIVER UNLESS
THERE HAS BEEN AN ADEQUATE
INVESTIGATION, SO ARE YOU SAYING
THE FACT THAT HE COULD HAVE BEEN
ABLE TO PRESENT MITIGATION IS
ENOUGH TO GIVE IN A PENALTY
PHASE OR DOES HE HAVE TO
ACTUALLY SAY THAT.
IF I HAD KNOWN THIS, I WOULD NOT
HAVE WAIVED MY MITIGATION NUMBER
ONE, AND TWO, WHETHER THE
MITIGATION YOU ARE PREPARED TO
PRESENT REALLY WOULD BE SUCH
THAT IT WOULD UNDERMINE
CONFIDENCE IN THE PENALTY PHASE,
SO IF YOU CAN ADDRESS THOSE
THINGS.

NUMBER ONE IS-- IT GOES BACK--

I WANT TO PUT MITIGATION ON BUT

IT MAY SAY SOMETHING.

>> THE ATTORNEY USED A MERE 18

HOURS PREPARING FOR THE PENALTY

PHASE AND THIS COURT SAYS IT WAS

AN UNKNOWING VOLUNTARY WAIVER.

>> WHETHER MR. FERRELL NEEDS TO

SAY, IF I HAD KNOWN I COULD HAVE

PUT ON ALL THIS MITIGATION I

WOULD NOT HAVE WAIVED IT.

IS THAT AN OBLIGATION WE HAVE

EVER IMPOSED?

>> LET ME ASK YOU THIS.

AM I CORRECT IN UNDERSTANDING

THAT, AT THE EVIDENTIARY HEARING

MR. FERRELL DID NOT TESTIFY?

>> THAT IS CORRECT.

>> NOW, TRIAL COUNSEL--

>> CORRECT.

HOW DO WE KNOW ANYTHING ABOUT

ANY DISCUSSION BETWEEN TRIAL

COUNSEL AND MR. FERRELL IN WHICH

THE ISSUE OF THE PRESENTATION OF

MITIGATION WAS DISCUSSED?

FOR ALL WE KNOW TRIAL COUNSEL

TOLD MR. FERRELL, WE NEED TO DO

THIS TO PRESENT A CASE OF

MITIGATION AND MR. FERRELL SAID,

YOU WILL NOT TALK TO MY FAMILY,

YOU WILL DO NONE OF THIS.

I AM INNOCENT AND I AM NOT GOING

DOWN THIS ROAD AND YOU ARE

FORBIDDEN TO DO IT.

NOW, WE SIMPLY DON'T KNOW.

MR. FERRELL DID NOT TESTIFY, AND

I DON'T KNOW HOW WE CAN MAKE ANY

JUDGMENT ABOUT THE ADEQUACY OF

COUNSEL'S PERFORMANCE IN THIS

REGARD, WHICH IS CENTRAL TO

THAT, WOULD HAVE BEEN A

DISCUSSION BETWEEN COUNSEL AND

MR. FERRELL AND MR. FERRELL HAS

NOT TESTIFIED.

>> THE JUDGE IN 1989-- U.S.

SUPREME COURT SAID THIS IS

DETERMINING WHAT IS REASONABLE.

REGARDLESS OF WHETHER THE

DEFENDANT WANTS TO PRESENT

MEDICATION OR WHETHER THE

DEFENDANT WANTS TO PRESENT

EVIDENCE IN THE GUILT PHASE,

COUNSEL MUST DO AN INVESTIGATION

TO PROPERLY PRESERVE IT FOR

FEDERAL APPEAL.

THERE IS A LITTLE DISCUSSION

JUDGE, TO ANSWER YOUR QUESTION.

RIGHT BEFORE THE PENALTY PHASE
COUNSEL SAYS, THERE IS NOTHING
TO WAIVE OR NOTHING TO OFFER IN
THE WAY OF MITIGATION BUT A
BRIEF COLLOQUY.
MR. FERRELL WAIVED IT AND THEY
SIMPLY GO ON, JUST LIKE THEY DID
IN THE GUILT PHASE AND THE
OPPORTUNE TIME IN THAT SPENCER
HEARING, BY THE WAY, RIGHT
BEFORE THE SPENCER HEARING AND
COUNSEL DOES NOT SHOW FOR THAT
HEARING EITHER.
HE TELLS THE JUDGE AS A SIDE BAR
HE IS NOT-- THERE IS NOTHING
OTHER THAN WHAT--
[INAUDIBLE]
IF I COULD PRESERVE THE LAST FEW
MINUTES.
UNLESS THERE ARE OTHER
QUESTIONS.
>> I DON'T THINK YOU ADDRESS
PREJUDICE SO MAYBE MR. TASSONE
WILL DO THAT ON REBUTTAL.
>> MAY IT PLEASE THE COURT.
I AM MEREDITH CHARBULA, COUNSEL
FOR THE APPELLEE.
>> USUALLY, IF YOU LOOK AT THIS
COUNSEL AND THE PENALTY PHASE,

AND YOU REALIZE THAT WE CANNOT
ASK HIM ABOUT IT--
HE SURE SEEMS TO HAVE MISSED AN
AWFUL LOT OF HEARINGS BUT MORE
IMPORTANTLY, HE FAILED TO ATTEND
MOST OF THE DEPOSITIONS AND IT
DOES APPEAR THAT HE FAILED TO
USE ANYTHING AT THE ACTUAL TRIAL
IN THIS CASE.
I REALIZE WE CAN'T PEEL IT APART
AND SAY, YEAH BUT ON THIS CASE,
IN THIS ISSUE IT DIDN'T MATTER.
I AM JUST VERY CONCERNED, AND
BECAUSE IT SPILLS OVER INTO THE
PENALTY PHASE, WHICH WE KNOW
BASED ON ALL OF THE RELATIVES
THAT TESTIFIED, HE DID NOT
CONTACT THEM.
THEY SAY THEY CONTACTED HIM AND
HE NEVER GOT BACK TO THEM.
IT LOOKS LIKE WE HAVE SOMEBODY
THAT WAS KIND OF GOING THROUGH
THE MOTIONS, AND THAT IS MY
CONCERN ABOUT THE GUILT AND
CERTAINLY THE PENALTY PHASE.
>> I THINK IF YOU LOOK, I THINK
IF YOU LOOK AT THE HEARINGS WHAT
YOU SEE IS ALMOST ALL OF THEM--

WHILE I TALK TO COUNSEL IN
CHAMBERS AND WE ARE GOING TO
PASS THIS CASE NEXT WEEK.
YOU CAN SAY THAT SOUNDS
TERRIBLE, BUT IN FACT MOST OF
THOSE WERE JUST CONTROLLED
CASES.
NOW, THE TWO HEARINGS IN WHICH
SHE COMPLAINED WAS THE DATE OF
TRIAL WHERE JURY SELECTION WAS
SUPPOSED TO BEGIN.
THERE IS A LOT OF DISCUSSION ON
THE RECORD THAT COUNSEL HAD
INDICATED HE WAS GOING TO FILE A
NOTICE FOR A CONTINUANCE, HE WAS
NOT READY FOR TRIAL.
THERE IS NOT AN EXPLANATION FOR
WHY HE WAS NOT AT THAT HEARING
BUT IN ANY EVENT FERRELL CANNOT
SHOW PREJUDICE BECAUSE JURY
SELECTION DID NOT START THAT DAY
SO THE OTHER ONE IS, AND A
NOTICE OF A HABITUAL OFFENDER
WAS SERVED, AND THERE WAS NO
INDICATION THAT TRIAL COUNSEL
KNEW THAT WAS ANYTHING OTHER
THAN ANOTHER CONTROL HEARING
BECAUSE THERE WAS NO NOTICE THAT
HE WAS GOING TO SERVE-- THE

PROSECUTOR WAS GOING TO SERVE,
BUT IN ANY EVENT THEY FOUND NO
PREJUDICE BECAUSE CLEARLY
FERRELL DID NOT PREVENT A TRIAL
COUNSEL FROM FILING--
>> WHAT ABOUT THE DEPOSITION?
WHAT CODEFENDANT IN THE CASE--
HARTLEY, WHO WAS THE SHOOTER--
WAS THEIR REASON THAT HE DID NOT
ATTEND BECAUSE THEY WERE ALL
THREE DEFENSE LAWYERS WERE
WORKING TOGETHER COOPERATIVELY
ON THIS DISCOVERY?
THAT IS WHAT I AM TRYING TO
SEARCH FOR, SOME EXPLANATIONS
FOR THIS DEFENSE COUNSEL, THE
SEEMING LACK OF INTEREST IN THE
DISCOVERY PROCESS.
>> I THINK, IN OTHER COUNSEL,
THERE IS NOTHING IN THE RECORD
TO SHOW COUNSEL DID NOT SHARE
DEPOSITIONS AND EVEN AT THE
EVIDENTIARY HEARING ALTHOUGH
FERRELL MADE ALLEGATIONS THAT HE
DID APPEAR AT A COUPLE OF
DEPOSITIONS, AND WILLIAMS WAS
ONE OF THEM-- ALSO WE KNOW HE
HAD SIDNEY JONES' DEPOSITION, SO

AND HE IMPEACHED SEVERAL OF THE
STATE WITNESSES WITH PRIOR SWORN
STATEMENTS.
>> I GUESS, AND I WANT TO ASK
YOU THIS QUESTION ON SIDNEY
JONES.
SIDNEY JONES WAS A CONFIDENTIAL
INFORMANT?
>> THAT IS TRUE.
>> IF IT IS NOT A BRADY CLAIM,
AND DEFENSE COUNSEL KNEW, WHY
WASN'T HE CROSS-EXAMINED ON THAT
POINT?
>> I THINK THAT IS THE
PROVERBIAL DOUBLE-EDGED SWORD.
ONE OF THE THINGS COUNSEL
MISSTATED WHEN THEY SAID SIDNEY
JONES WAS A CONFIDENTIAL
INFORMANT ON THE APRIL 18TH
MURDER-- THE MURDER WAS ACTUALLY
APRIL 22ND.
AT ANY RATE HE WAS SOMEONE WHO
WAS IN THE NEIGHBORHOOD SELLING
DRUGS.
THE COUNSEL KNEW ABOUT THAT.
ONE OF THE THINGS THAT OF COURSE
MAY JUMP OUT AT ANY REASONABLE
JUROR IS THE PERSON IS A
CONFIDENTIAL INFORMANT AND IS

GETTING PAID IN APRIL AND THAT'S

A MONTH HE REPORTS THE CRIME THE

POLICE OBVIOUSLY THINK HE IS A

RELIABLE PERSON, OTHERWISE THEY

WOULD NOT HIRE HIM AS A CI.

ANY REASONABLE DEFENSE COUNSEL

WOULD SAY I'M NOT GOING TO

QUESTION THIS PERSON ABOUT THE

CI.

THAT WILL OPEN THE DOOR TO A

PERSON IMPLYING THAT SIDNEY

JONES IS, DESPITE HIS FELONY

CONVICTIONS, SOMEONE CLEARLY LAW

ENFORCEMENT BELIEVES IS A

RELIABLE SOURCE.

IF YOU LOOK TO THE PAYMENTS THE

DEFENSE PUT ON AT THE

EVIDENTIARY HEARING YOU WILL SEE

SIDNEY JONES' TESTIMONY IN APRIL

GAVE PROBABLE CAUSE FOR SEVERAL

SEARCH WARRANTS.

SO FOR DEFENSE COUNSEL TO SAY,

ISN'T IT TRUE YOU ARE A CI MIGHT

READ A-- LEAD A REASONABLE JUROR

TO SAY THE POLICE THINK AS HE IS

RELIABLE, I'M GOING TO THINK HE

IS RELIABLE TOO.

CLEARLY HE KNEW ABOUT IT BECAUSE

HE HAD THE BOLENA DEPOSITION IN
CONTRARY TO COUNSEL
REPRESENTATIONS.
NICHOLS WAS PRESENT AT THE TIME
JONES WAS A CI AND HE TALKED TO
DEATRY SHARP.
I WOULD REALLY LIKE TO TALK TO
DEATRY SHARP.
WHAT COUNSEL FAILED TO POINT OUT
WAS THAT THE COLLATERAL COURT
FOUND THAT THERE WAS NO GIGLIO
VIOLATION AND THAT IS WHERE
DEATRY SHARP CAME IN.
DEATRY SHARP'S CLAIM THAT HE WAS
THE PARTICIPANT IN THE ROBBERY,
AND IF YOU LOOK IN THE
DEPOSITION, HE SAID HE WAS A
LOOKOUT MAN, WAS INCONSISTENT.
HIS VERSION WAS INCONSISTENT
WITH FELTON'S TESTIMONY AND
ROBERT WILLIAMS TESTIMONY SO THE
COLLATERAL COURT JUDGE FOUND IT
IS A FACT THAT DEATRY SHARP
POSSIBLE VERSION OF EVENTS HE
PARTICIPATED IN THE ROBBERY WAS
ABSOLUTELY INCONSISTENT SO TO
CLAIM THAT IT WAS ERROR FOR, OR
THERE IS SOME SORT OF VIOLATION
BECAUSE ONE WITNESS DISAGREED

WITH WHAT THREE WITNESSES SAID,
INCLUDING MAYHEW FOR EXCITED
UTTERANCE, TO SAY THAT SHOWS AN
EFFECTIVE ASSISTANCE TO THE
COUNSEL OR ANY TYPE OF
MISCONDUCT IS SIMPLY LUDICROUS
AND THE COURT FOUND THAT DEATRY
SHARP WAS DIFFERENT-- WHAT
HAPPENED WAS MAYHEW TWO DAYS
BEFORE THE MURDER RUNS INTO THE
APARTMENT AND REPORTS HE HAS
BEEN ROBBED.
HE SAYS, I THINK IT LOOKED LIKE
HARTLEY.
HE SAID THERE WERE TWO MEN, NOT
THREE AND HE SAID THEY WERE
MASKED.
WHAT LINWOOD SMITH OBSERVES IS
HE HAS A GASH ON HIS FOREHEAD
WHICH HE IS BLEEDING FROM, AND A
GUNSHOT WOUND TO HIS KNEE WHICH
WAS A GRAZE WOUND.
>> JUST SO WE UNDERSTAND YOUR
ARGUMENT ABOUT ALL OF THIS--
[INAUDIBLE]
IT REALLY WAS NOT THE CASE
NECESSARY TO FIND RONNIE FERRELL
PARTICIPATED.

>> ABSOLUTELY.

>> IS THAT CORRECT?

>> YES MAAM AND CLEARLY THE

STATE HAD EVIDENCE THAT SIMPLY

BECAUSE DEATRY SHARP SAID

SOMETHING DIFFERENT, IT DOESN'T

MEAN THE STATE PUT ON FALSE

EVIDENCE OR THE STATE HAD

EVIDENCE TO SUPPORT THE WILLIAMS

RULE OR COUNSEL WOULD HAVE

PREVAILED ON THE TRIAL COURT TO

EXCLUDE THE WILLIAMS RULE

ESPECIALLY SINCE THIS COURT HAS

FOUND DEATRY SHARP WAS NOT

CONSISTENT WITH THE DEAD MAN.

>> EITHER WAY, EVEN IF HE DIDN'T

PARTICIPATE HE PROVIDED THE

MOTIVE FOR WHY THEY WERE GOING

TO NOW KILL HIM.

>> FERRELL'S PARTICIPATION DID

NOT PROVIDE THE MOTIVE.

HARTLEY AND JOHNSON--

ESSENTIALLY HE WAS TIRED OF

GETTING ROBBED BY KIP AND DOUG,

AND FERRELL, HARTLEY AND JOHNSON

GOT TOGETHER AND DECIDED WE

BETTER DO A PREEMPTIVE STRIKE.

THAT WAS THE MOTIVE FOR THE

MURDER AND THAT IS WHY THEY

COULD USE FERRELL IN FACT,
BECAUSE WHETHER FERRELL
PARTICIPATED IN THE ROBBERY OR
NOT AND LIMITED TO THE
OBSTRUCTION WAS GIVEN, WHETHER
HE PARTICIPATED OR NOT, AS YOU
POINTED OUT THAT WAS NOT THE
MOTIVE FOR THE MURDER.
THE MOTIVE FOR THE MURDER WAS
GINO MAYHEW HAD RECOGNIZED KIP
AND WANTED TO TAKE HIM OUT AND
THEY GOT TOGETHER AND DECIDED
THAT THEY BETTER DO IT FIRST, SO
THAT WAS THE MOTIVE FOR THE
MURDER.
>> INSOFAR, AND ALSO BY THE WAY
AS FAR AS DEATRY SHARP, COUNSEL
DID HAVE DEATRY SHARP'S SWORN
STATEMENT.
IT WAS PROVIDED IN DISCOVERY AND
THAT IS IN THE SUPPLEMENTAL
RECORDS OF COUNSEL DID HAVE
DEATRY SHARP-- AT THE
EVIDENTIARY HEARING JUSTICE
PARIENTE I THINK YOU JUMP RIGHT
ON IT.
IN ORDER TO SHOW THE TRIAL
COUNSEL WAS INEFFECTIVE FOR

FAILING TO CROSS-EXAMINE MORE

EFFECTIVELY, I THINK IT IS JUST

LOGICAL THAT THAT WITNESS HAS TO

BE CALLED TO SHOW IF A MORE

STELLAR CROSS-EXAMINATION BY

MR. TASSONE WOULD HAVE AFFECTED

HIS TRIAL.

>> WHY COULD THEY NOT PRESENT A

SWORN DEPOSITION TESTIMONY OF

THE MATERIAL THAT WOULD HAVE

BEEN USED, AND YOU CAN EVALUATE

THAT BY SAYING, COMPARING WHAT

WAS SAID AT TRIAL IN THE TRIAL

TRANSCRIPT SIDE-BY-SIDE WITH THE

INFORMATION OR MATERIAL THAT HAD

BEEN GATHERED AND NOTHING WAS

USED.

WHY COULD YOU NOT DO THAT?

>> YOU COULD DO THAT, AND HE

DID, ALTHOUGH HE DID NOT

SUGGEST-- FERRELL DID NOT

SUGGEST WHAT KIND OF QUESTIONS

SHOULD HAVE BEEN ASKED OR HOW

THEY SHOULD HAVE BEEN ASKED OR

WHAT SORT OF INFORMATION WOULD

HAVE BEEN MORE DEVASTATING BUT

IF YOU LOOK AT THE CROSS

EXAMINATION OF SMITH, WILLIAMS

AND SIDNEY JONES, TRIAL COUNSEL

USE INCONSISTENT STATEMENTS IN
THEIR SWORN STATEMENTS TO
IMPEACH THEM.
>> AND THAT IS WHAT I WAS TRYING
TO GET AT, TO PIN DOWN IS, WHY
IS -- WHAT AREAS WERE NOT THE
SUBJECT OF CROSS-EXAMINATION?
YOU ARE SAYING THERE REALLY
ISN'T ANYTHING THAT THEY WERE
ABLE TO POINT TO.
>> THEY DIDN'T WANT TO DO IT AND
THE COLLATERAL COURT SAID YOU
DID NOT POINT TO NOR DID YOU
PROVE HOW A SPECIFIC QUESTION
WOULD HAVE CHANGED THE TESTIMONY
OR THE OUTCOME.
I THINK MUCH OF WHAT HE HAS DONE
IN MANY OF THE CASES IS-- GO
LOOK AT THE RECORD, GO LOOK AT
THE MEDIA REPORT AND SEE WHAT
YOU SHOULD HAVE DONE.
WELL, THAT IS NOT YOUR BURDEN
AND THAT IS NOT THE STATE'S
BURDEN.
TO BRING EVIDENCE TO THE
EVIDENTIARY HEARING, TO SHOW HOW
A MORE EFFECTIVE
CROSS-EXAMINATION WOULD HAVE

AFFECTED THE TESTIMONY, BECAUSE
IT COULD BE EXPLANATION.
THE WITNESS COULD HAVE A
PERFECTLY GOOD EXPLANATION FOR A
SPECIFIC QUESTION.
>> YOU HAVE TO ACTUALLY HAVE IN
THE COLLATERAL PROCEEDINGS, HAVE
TO RECALL THE WITNESS WHO
PRESENTED A TRIAL AND THEN
CROSS-EXAMINE THE WITNESS FROM
THE MATERIAL THAT WAS THERE.
>> ABSOLUTELY BECAUSE YOU HAVE
TO PRESENT IT TO THE TRIAL COURT
BECAUSE THE TRIAL COURT OR
COLLATERAL COURT HAS TO MAKE A
DETERMINATION OF WHAT IMPACT
THAT WOULD HAVE ON THE WITNESS,
SO THEY DID NOT DO THAT.
>> I AM NOT SURE-- I WOULD GO TO
THAT THEY HAVE TO ASSERT A CLAIM
AND HAVE TO ESTABLISH IT IS
CORRECT, BUT IF FOR EXAMPLE YOU
HAVE A WITNESS THAT WAS CALLED,
WHO THREE WEEKS BEFORE THE
DEPOSITION HAD SAID THE COMPLETE
OPPOSITE, AND THAT DEPOSITION
WAS NEVER USED AS A BASIS FOR
IMPEACHMENT, AND IT WOULD HAVE
DEVASTATED WHAT THAT WITNESS

SAID AND THOSE STATEMENTS WENT
UNCHALLENGED.
YOU ARE NOT SAYING YOU WOULD
HAVE TO CALL THE WITNESS BACK TO
SHOW HOW THAT WITNESS WOULD HAVE
REACTED TO IT?
>> I THINK IN THAT EXTREME
CIRCUMSTANCE, YOU ARE ABSOLUTELY
RIGHT.
>> REALLY YOU WOULD HAVE TO CALL
THAT WITNESS BACK.
WHAT YOU HAVE TO DO IS SHOW WHAT
EVIDENCE EXISTED THAT WOULD HAVE
BEEN USED FOR IMPEACHMENT FOR
EXAMPLE, SO WE DISCUSS IT
RELATING TO SIDNEY JONES, WHICH
IS WHAT YOU ARE SAYING IS THAT
HE WAS NOT CROSS-EXAMINED, THAT
THAT--
[INAUDIBLE]
INCLUDING HIS FOUR OR FIVE
FELONIES.
>> THE FACT THAT HE WAS USING
COCAINE SOMETIME AFTER THE
INCIDENT, THE FACT IS DOING
DRUGS.
>> WE HAVE THE EYEWITNESS TO
THEY TRY TO PUT ON AN EXPERT

ABOUT WHAT YOU COULD SEE FROM
THAT DISTANCE AND THE JUDGE SAID
THAT EXPERT WAS NOT, COULD NOT
TESTIFY AND THEY HAD TO
SEPARATELY APPEAL THE RULING, SO
WE GET BACK TO HOW ELSE WOULD
YOU IMPEACH THIS PARTICULAR
WITNESS ABOUT-- AND HE DID.
SO, I THINK THIS IS, AND WHEN I
SAID CERTAIN PEOPLE WERE NOT
CALLED, IN TERMS OF I DON'T
THINK THAT IS AN ABSOLUTE RULE
AND IF I SAID IT, THEN I DO NOT
AGREE WITH--
>> I UNDERSTAND WHAT YOU ARE
SAYING JUSTICE PARIENTE AND I
WOULD SAY AS A GENERAL RULE, IF
YOU HAD AN EXTREME CIRCUMSTANCE,
I MIGHT SAY THAT IS THE CASE BUT
I WOULD STILL ARGUE THERE MIGHT
BE AN EXPLANATION FOR IT THE
WOULD NOT HAVE IMPACTED--
>> WE NEVER IMPOSE SEVERAL.
IF THERE IS SIGNIFICANT
IMPEACHMENT THAT WAS NOT
UNCOVERED, THAT A REASONABLE
INVESTIGATION WOULD HAVE BEEN
COVERED OR THERE WAS BRADY
MATERIAL THAT WAS NOT TURNED

OVER, WE CAN EVALUATE HOW, WHAT
THAT IS.
>> WHAT I'M SAYING IS, WHEN YOU
LOOK AT THIS RECORD IN THIS
EVIDENCE AND WHAT WAS PRESENTED
AT THE EVIDENTIARY HEARING AND
WHAT WAS PLED AND WHAT WAS NOT
THE LOGICAL CONCLUSION IS TO
CALL THE WITNESSES-- I REALLY
WOULD LIKE, IF I COULD TAKE MY
NEXT FIVE MINUTES AND TALK
ABOUT--
>> LET ME BRIEFLY ASK YOU-- YOU
HAVE CONCEDED THAT THE
PROSECUTOR MADE CERTAIN
STATEMENTS IN THE CLOSING
ARGUMENTS THAT WERE IMPROPER,
AND THAT WAS NOT RAISED AS AN
ISSUE OF FUNDAMENTAL ERROR IN
THE DIRECT APPEAL.
EXPLAIN TO ME WHY THERE WASN'T
FUNDAMENTAL ERROR AND WHY
APPELLATE COUNSEL UNDER DIRECT
APPEAL WAS NOT AN EFFECTIVE FOR
FAILING TO RAISE THE ISSUE OF
FUNDAMENTAL ERROR?
>> FIRST OF ALL I WOULD LIKE TO
SAY I KNOW THEY POINTED OUT

BEFORE THESE WERE IMPROPER--
BEFORE URBAN AND BROOKS FOR
FUNDAMENTAL ERROR, THIS APPEAL
WAS DONE WELL BEFORE URBAN AND
BROOKS WERE.
>> TWO LAWYERS THAT SAW THE SAME
ARGUMENTS BROUGHT THEM UP AS
FUNDAMENTAL ERROR.
AND THAT TO ME, GIVEN IT IS THE
SAME PROSECUTOR, IT SHOWS THAT
THIS-- YOU DON'T WAIT FOR THE
CASE BECAUSE SOMEBODY HAS GOT TO
BE THE ONE TO BRING THE CASE.
>> BUT THIS COURT HAS NEVER SAID
APPELLATE COUNSEL, IF YOU DON'T
BRING A NEW ISSUE BEFORE THE
COURT.
I UNDERSTAND WHAT THIS COURT IS
SAYING BUT IF YOU LOOK OF THE
CLOSING ARGUMENT IN THE GUILT
PHASE, IT IS VERY CLEAR.
IT STICKS VERY CLOSE TO THE
EVIDENCE.
THIS COURT, AND WHAT I SAY IS
URBAN AND BROOKS CRYSTALLIZED
FOR THIS, FOR EVERY PRACTITIONER
OF WHAT IS AND WHAT IS NOT
PROPER.
MR. SICHTA SAID HE IS STILL

DOING THAT AND I WANT TO STOP

IT.

THE THING IS, THIS TRIAL

HAPPENED IN 1993, WELL BEFORE

BROOKS.

IT IS SIMPLY NOT TRUE HE IS

STILL DOING IT.

>> IN BROOKS THERE WERE A NUMBER

OF STATEMENTS THERE THAT WERE

OBJECTED TO.

>> THERE WERE.

>> SO YOU CAN'T REALLY SAY THAT

IS BASED ENTIRELY ON A

FUNDAMENTAL ERROR ANALYSIS

BECAUSE YOU HAVE GOT ALL OF

THESE IMPROPER OBJECTIVES.

ISN'T THAT CORRECT?

>> RIGHT, AND TRIAL COUNSEL DID

NOT OBJECT AND OF COURSE WE

COULD NOT ASK TRIAL COUNSEL WHY

THEY DID NOT OBJECT, BUT WE SEE

AN BELL FOR INSTANCE, THAT THE

SAME TRIAL COUNSEL, SAME

PROSECUTOR, HE USES THE

ARGUMENTS AGAINST HIM.

YOU SEE THAT IN THE PENALTY

PHASE THAT HE DID THAT.

HE TESTIFIED IN BELL AND THIS

COURT DECIDED BELL AND NOTED THE
REASON WHY HE DOES NOT JUMP UP
AND DOWN IS BECAUSE JURORS DON'T
LIE, AND THAT WAS RECOGNIZED BY
THE COURT.
JURORS DON'T LIKE HIM JUMPING UP
AND DOWN AND THE FACT IS HE USED
IT AGAINST HIM.
MY CLAIM OF, IT IS NOT EFFECTIVE
AT COUNSEL BECAUSE OF THE TIME
THIS COURT HAD NOT RULED THAT IT
WAS FUNDAMENTAL ERROR AND
BECAUSE IT WAS NOT OBJECTED TO,
COUNSEL CAN'T BE-- APPELLATE
COUNSEL CAN'T BE INEFFECTIVE FOR
NOT RAISING THE FUNDAMENTAL
ERROR.
THAT IS MY ARGUMENT AND I
UNDERSTAND, JUSTICE PARIENTE,
THAT ONE LAWYER HAS TO BE THE
FIRST ONE TO BRING IT.
>> AGAIN, WE CAN'T LOOK BACK AND
SAY-- EVEN THOUGH THERE ARE
COUNTLESS AND PROPER ARGUMENTS
TO SAY THAT IS THE STRATEGY,
THAT GOES ALONG TO SEGUE INTO
WHAT DID THE DEFENSE COUNSEL DO
FOR MR. FERRELL TO PREPARE FOR
THE PENALTY PHASE, SO HE COULD

ADVISE HIM IN A KNOWING AND

INTELLIGENT WAY THAT IT WAS A

GOOD OR BAD IDEA NOT TO PUT ON

MITIGATION.

>> WE DON'T KNOW.

TRIAL COUNSEL IS DEAD.

>> SO THAT MEANS THAT FERRELL

LOSES BECAUSE HIS TRIAL COUNSEL

IS DEAD, EVEN THOUGH HE BROUGHT

IN ALL OF HIS FAMILY MEMBERS TO

SAY THAT THEY TRIED TO CONTACT

MR. ARNOLD AND MR. ARNOLD NEVER

RETURNED HIS CALLS, THAT WE KNOW

NO MENTAL HEALTH EXAMINATION WAS

DONE, THAT WE HAVE GOT-- WHICH

IS ANALOGOUS TO THAT SAYS AN

INTELLIGENT WAIVER IS IN THE

INVESTIGATION.

>> FIRST OF ALL THE COUNSEL DID

NOT INVESTIGATE.

FERRELL DID NOT TESTIFY AT THE

EVIDENTIARY TRIAL THAT HE

INSTRUCTED COUNSEL OR THAT HE

DID NOT SUPPORT COUNSEL'S

WILLINGNESS TO INVESTIGATE.

FERRELL DID NOT TESTIFY, IF ONLY

COUNSEL WOULD HAVE INVESTIGATED

I WOULD HAVE ALLOWED HIM TO BE

PUT ON MEDICATION BUT EVEN IF

YOU FIND EFFICIENT PERFORMANCE,

BECAUSE YOU CAN'T TELL, AND I

THINK THAT IS PART OF THE BURDEN

ON HIS HEAD, LOOK AT PREJUDICE.

WHAT DID HE PUT ON AT THE

EVIDENTIARY HEARING?

DR. CROP SAID BRAIN DAMAGE AND A

LOW IQ.

NO CONNECTION BETWEEN THE BRAIN

DAMAGE IN THE MURDER.

HE SAID SPECIFICALLY THERE IS NO

CONNECTION BETWEEN THE

NEUROPSYCHOLOGICAL IMPAIRMENT

AND THE MURDER.

NONE OF THE STATUTORY MITIGATORS

APPLY.

ANTI-SOCIAL-- DISRUPTIVE

INFLUENCE IN SCHOOL, BEHAVIOR

PROBLEMS.

>> THE JUDGE MAY LISTEN TO ALL

OF THOSE WITNESSES.

HE MADE A JUDGMENT CALL THAT WAS

A 7-5 JURY VOTE, AND THE FACT

THAT THIS DEFENDANT WAS NOT THE

TRIGGERMAN AND, AS WE NOW, IT IS

CLEAR, WAS NOT EVEN INVOLVED IN

THE PRIOR ROBBERY, THAT HEARING

ANY MENTAL MITIGATION OR

ANYTHING ABOUT HIS FAMILY'S
BACKGROUND, WHICH WAS A
SIGNIFICANT DYSFUNCTIONAL FAMILY
BACKGROUND, WOULD HAVE WAIVED AT
LEAST ONE JUROR.
SO WE HAVE GOT THAT FACTUAL
FINDING AND WE HAVE BEEN VERY
LOATH TO OVERTURN A JUDGE'S
DECISIONS OF PLANNING NEW
PENALTY PHASES, JUST AS WE
GENERALLY UPHOLD THEIR DENIAL OF
A NEW PENALTY PHASE.
>> MAY I ANSWER THE QUESTION?
FIRST OF ALL, PREJUDICE IS A
NOVO REVIEW AND I WOULD POINT
OUT ONE.
YOU HAVE, I THINK IT IS FAIR TO
SAY, MRS. FERRELL TESTIFIED SHE
WAS A HARD-WORKING MOTHER WHO
LEFT HER HUSBAND BECAUSE HE WAS
ABUSING HER WHEN FERRELL WAS 11,
THAT HE CONSTANTLY GOT IN
TROUBLE AND SHE COUNSELED HIM TO
TURN HIS LIFE AROUND.
SHE TOOK HIM TO CHURCH, SHE TOOK
HIM TO SCHOOL.
ONE OF HIS SIBLINGS TURNED OUT
TO BE A SCHOOLTEACHER IN A

CHRISTIAN ACADEMY, SO AS FAR AS
A DYSFUNCTIONAL FAMILY IS
CONCERNED, I THINK THAT IS NOT
ABSOLUTELY.
CERTAINLY THERE WAS ABUSE BY HIS
FATHER TO HIS MOTHER, BUT A LOT
OF THINGS SHE SAID I THINK A
JURY WOULD NOT HAVE BECAUSE SHE
MADE THE BEST EFFORT POSSIBLE
OVER AND OVER AGAIN AND HE KEPT
GETTING IN TROUBLE OVER AND OVER
AGAIN.
NEITHER OFFERED ANY MITIGATION.
IT WAS DR. CROP AND DR. CROP
SAID ANTI-SOCIAL.
THE BRAIN DAMAGE THAT WAS
CONTESTED AT THE EVIDENTIARY
HEARING ABOUT THE TESTING
PERFORMED WERE NOT INDICATIVE OF
BRAIN DAMAGE.
DR. CROP SAID THERE NEEDED TO BE
FURTHER TESTING AND THERE WAS
NONE, BUT THERE IS NO EVIDENCE
OF BRAIN DAMAGE.
WHEN YOU LOOK AT PREJUDICE, THE
JURY WOULD HAVE HEARD HE WAS
ANTI-SOCIAL, WHICH MEANS HE DOES
NOT MIND HURTING OTHER PEOPLE.
THEY WOULD HAVE HEARD THAT HE

HAD A SIGNIFICANT BEHAVIOR

PROBLEM IN SCHOOL.

THEY WOULD HAVE HEARD HE WAS A

DRUG DEALER.

THEY WOULD NOT HAVE HEARD THAT

ABSENT THAT TESTIMONY.

THEY WOULD HAVE HEARD HE WAS A

JUVENILE OFFENDER WHO KEPT

GETTING IN TROUBLE OVER AND OVER

AGAIN, WHO WAS IN AND OUT OF

PRISON.

HE GOT OUT FIVE MONTHS LATER AND

WAS CONVICTED OF POSSESSION OF A

FIREARM, PUT BACK IN PRISON AND

WITHIN A YEAR HE COMMITTED THIS

MURDER.

WHEN YOU LOOK AT PREJUDICE,

DR. CROP-- ANTI-SOCIAL, THIS

COURT HAS RECOGNIZED THIS IS A

FACTOR THAT MOST JURIES DON'T

BELIEVE IS FAVORABLE.

I THINK IF YOU ACTUALLY LOOK AT

THE EVIDENCE PRESENTED AT THE

EVIDENTIARY HEARING--

[INAUDIBLE]

DR. CROP PAINTED A PICTURE OF AN

ANTI-SOCIAL PERSONALITY WHO

CONTINUALLY GOT IN TROUBLE IN

THE CRIMINAL JUSTICE SYSTEM AND
AS FAR AS HIS SIBLING AND MOTHER
IS CONCERNED, CARING SIBLINGS,
CARING MOTHER, DRAGGED OVER AND
OVER AND OVER AGAIN AND HE
SIMPLY RESISTED.
SO, I SUBMIT THAT FERRELL CANNOT
SHOW PREJUDICE.
AND THE NOVO REVIEW, THERE ARE
FINDINGS THE COURT DID NOT MAKE
REGARDING THE OTHER CLAIMS, SO
IT WOULD HAVE TO BE REMANDED
BACK TO THE COLLATERAL COURT,
BUT THIS SHOULD BE THE NEW-- THE
PENALTY PHASE SHOULD BE REVERSED
AT THIS POINT.
>> THANK YOU VERY MUCH FOR YOUR
ARGUMENT.
REBUTTAL? I WOULD LIKE TO
ADDRESS THE JUSTICE'S QUESTION
AND I KNOW THERE WERE OTHER
QUESTIONS-- THAT THE TWO
STATEMENTS THAT ARE MOST
HAUNTING IN THIS CASE ARE THE
JUDGE SAYING THERE IS NOBODY
HERE TO REPRESENT MR. FERRELL AT
THE START OF WHEN THE JURY
SELECTION WAS ORIGINALLY
INTENDED, THE FIRST JURY

SELECTION AND THE ONLY STATEMENT
THAT MR. FERRELL MADE WAS RIGHT
BEFORE THE SPENCER HEARING, AND
DON'T I GET TO SAY ANYTHING?
AND THE RECORD IS REPLETE
THROUGH WHAT WAS DONE BY
COUNSEL, WHAT WAS NOT DONE BY
COUNSEL.
IF YOU ARE GOING TO CONDUCT A
MITIGATION, YOU HAVE TO CALL
WITNESSES, YOU HAVE TO HAVE A
THEM LINED UP IN THE COURTROOM,
YOU OUGHT TO EXPLAIN THEM TO THE
DEFENDANT.
HE DID NOT EVEN HIRE AN
INVESTIGATOR.
HE DID NOT EVEN SUBMIT A BILL TO
THE CITY OF JACKSONVILLE.
THERE IS NO RECORD WHATSOEVER HE
TOOK ANY STEPS TO PREPARE THIS
CASE.
>> DID NOT PUT MR. FERRELL ON--
DID YOU OFFER EVIDENCE THAT
THERE IS NO BILL FOR
INVESTIGATION?
HOW DID YOU ESTABLISH THAT?
>> WE HAD NO FILE.
THE RECORDS FROM THE CITY OF

JACKSONVILLE FIRST, AND ASKED
THEM, DID HE SUBMIT A BILL?
THERE WAS NO RECORD OF A MOTION
FOR PAYMENT IN THE COURT FILE.
WE WENT TO THE CITY OF
JACKSONVILLE SAYING ITSOMEHOW
SLIPPED THROUGH THE SYSTEM.
THEY SAID THEY NEVER GOT A BILL
FOR THE CASE, NO BILL FOR THE
ATTORNEY AND NO BILL FOR THE
INVESTIGATOR.
>> YOUR EXPERIENCE IS ONLY
SIGNIFICANT INSOFAR AS THERE WAS
A RECORD.
>> THE NEWSPAPER ARTICLES FROM
THE FLORIDA TIMES, MR. BOTTAIN
IN HIS CLOSING ARGUMENT SAID,
THESE ISSUES THAT THESE
WITNESSES TALKED ABOUT ARE THE
POINTS OF TRUTH, THE POINTS OF
LIGHT OF TRUTH AND THAT ONLY
THIS INFORMATION WAS KNOWN TO BE
CONFIDENTIAL INFORMANTS, THESE
SNITCHERS BUT THAT IS NOT TRUE.
EVERY BIT OF IT WAS IN THE
NEWSPAPERS.
WE INTRODUCED A NEWSPAPER
ARTICLES AND IN FACT THE
WITNESSES, THEY SNITCHES

TESTIFIED TO WHAT WAS IN THE

NEWSPAPER ARTICLES AND

CONTRADICTED THEIR OWN MEDICAL

EXAMINER.

THERE WERE SIX SHOTS INSTEAD OF

FIVE.

I THINK IT IS HAUNTING, COUNSEL

BROUGHT UP BELL.

BELL WAS ONE OF THE CASES THIS

COURT AFFIRMS BUT MR. NICHOLS

WAS NO AND IS NO STRANGER TO

THIS COURT.

IN EVERY CASE THAT CAME BEFORE

THE COURTS, IT WAS ALWAYS THE

SAME STRATEGY.

KEEP MY MOUTH SHUT, DON'T PUT ON

ANY WITNESSES AND I GET BOTH

ENDS OF THE SAME ARGUMENT.

MAYBE HE WAS JUST UNLUCKY AND

HAD NOTHING TO ARGUE IN ANY OF

THOSE CASES.

I SUGGEST THAT DEFIES LOGIC.

THIS WAS AN ABSENT COUNSEL, AN

OVERREACHING PROSECUTOR, A

PROSECUTOR WHO KNEW WHAT THE

LAWS OF THIS STATE WERE SINCE

1951 AND AN URBAN AND BROOKS

THIS COURT ISSUED A WHOLE

STRING, A PARADE OF CASES THAT
CONDEMNED THE SAME THING THAT
HAPPENED IN THE GUILT PHASE AND
IN THE SENTENCING PHASE.
JUSTICE KENNEDY YOU ASK HOW WE
CAN PROVE PREJUDICE.
IF I WANT TO PLAY A GAME OF
BASEBALL, I HAVE TO BRING A BAT,
AT LEAST A STICK, A BALL-- THERE
HAS TO BE EVIDENCE.
IF I WANT TO PLANT A GARDEN I
HAVE TO GET A HOLE, A TILLER FOR
THE SOIL.
THERE IS NOTHING IN THE FILE.
HIS FAMILY TESTIFIED THEY TRIED
TO MEET WITH MR. NICHOLS SEVERAL
TIMES.
MANY TIMES HE DID NOT RETURN
CALLS, COULD NOT GET A MEETING.
CAN WE USE THESE SWORN
STATEMENTS AS FEED FOR
POSSIBLE--
DO WE HAVE TO CALL THE WITNESS?
I SUGGEST NO.
AND THERE IS NO CASE LAW THAT
SAYS WE HAVE TO CALL THE
WITNESS.
>> YOU ARE OVER TIME, BUT SINCE
YOU ARE ON A ROLL HERE, JUST ON

THE ISSUE OF PREJUDICE, LET'S

ASSUME THE PENALTY PHASE-- THERE

SEEMS TO BE A LOT OF EVIDENCE,

BUT HOW WOULD IT HAVE HELPED

MR. FERRELL WITH HIS JURY?

IT SOUNDS LIKE HE HAD-- THERE IS

NO BRAIN DAMAGE CONNECTED WITH

ANYTHING TO DO WITH THIS

SHOOTING.

THERE ARE SEVERAL STRONG

ACTIVATORS INCLUDING PRIOR

FELONIES.

I AM HAVING TROUBLE WITH THE

SECOND PRONG OF HOW THIS PENALTY

PHASE IS UNDERMINED BY HIM NOT

HAVING INVESTIGATED THIS

MITIGATION.

>> I GUESS IN DOING THIS FOR A

LONG PERIOD OF TIME, I GUESS

WHEN CONFRONTED WITH AN

INDIVIDUAL'S HISTORY, I ALWAYS

ASK THE QUESTION WHY.

MAYBE THE JURY WOULD HAVE LIKE

TO HAVE KNOWN THERE WAS A MURDER

THAT HE WITNESSED WHEN HE WAS

EIGHT YEARS OLD WITHIN HIS OWN

HOUSEHOLD.

MAYBE THEY WOULD HAVE KNOWN

ABOUT HIS SCHOOL RECORD AND NOT
THE FACT HE WAS DISRUPTED IN
SCHOOL BUT WHY WAS HE DISRUPTED
IN SCHOOL?
>> WHAT DID THE SCHOOL RECORDS
SHOW?
>> HE HAD A LOW IQ.
WE NEVER GOT TO THE POINT WHY,
OR EXCUSE ME-- HIS SCHOOL
RECORDS WE COULD NOT OBTAIN
BECAUSE OF THE TIME LIMITATIONS,
SO WHAT WE HAD WAS THE FACT.
WHAT WE COULD PROVE WAS THE FACT
THAT I THINK HE WITNESSES HIS
SISTER BEING MURDERED OR A
SISTER MURDERING SOMEONE IN THE
HOUSEHOLD.
>> WHAT TIME LIMITATIONS ARE YOU
TALKING ABOUT?
YOU SAID YOU COULD NOT GET
SCHOOL RECORDS BECAUSE OF THE
TIME--
>> THE DUVAL SCHOOL SYSTEM COULD
NOT PROVIDE THEM TO US.
>> WAS THERE ANY REASON TO
BELIEVE TRIAL COUNSEL COULD'VE
GOTTEN THEM?
>> FROM EXPERIENCE I CAN TELL
YOU THAT THEY HOLD THEM MORE

THAN THREE OR FOUR YEARS.

THIS WAS A YOUNG MAN WHO WENT TO

TRIAL.

YOU KNOW THIS GUY MADE A

DECISION.

THIS TRIAL COUNSEL MADE A

DECISION THAT HE WAS A NOT GOING

TO FILE ANY MOTION BEFORE HE

EVEN GOT DISCOVERED.

I'M JUST NOT THAT SMART.

>> YOU ARE WELL OVER YOUR TIME

NOW.

IF YOU JUST WRAP THIS UP FOR US

IN A SENTENCE OR SO.

>> I THINK THE PREJUDICE IS

SHOWN BY HIS LACK OF ATTENDING

PRE-TRIAL, HIS LACK OF OBTAINING

RECORDS, NOT CHALLENGING THE

WILLIAMS RULE TESTIMONY.

HE DID NOT CHALLENGE THE "TIMES

UNION" ARTICLES THAT WOULD HAVE

SHOWN THOSE SNITCHES COULD HAVE

GOTTEN ALL THEIR INFORMATION

FROM THE NEWSPAPERS.

HE DID NOT ISSUE SUBPOENAS, HE

DID NOT HIRE AN INVESTIGATOR, HE

DID NOT HIRE A MITIGATION

COORDINATOR, AND CERTAINLY YOU

KNOW THE COURT DID NOT KNOW

WHERE HE WAS, AND I THINK THE

RECORD REFLECTS THAT HIS CLIENT

DID NOT TELL WHERE HE WAS

EITHER.

>> THANK YOU VERY MUCH.