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John Marek v. State of Florida

SC09-1080

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE.

THE SUPREME COURT OF FLORIDA IS

NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR.

GIVE ATTENTION AND YOU SHALL BE
HEARD.

GOD SAVE THIS UNITED STATES,
THIS GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT PLEASE
BE SEATED.

>> GOOD MORNING AND WELCOME TO
THIS SESSION OF THE FLORIDA
SUPREME COURT.

THE ONLY CASE ON THE COURT'S
DOCKET THIS MORNING IS MAREK
VERSUS STATE, ARE THE PARTIES
READY TO PROCEED?

MR. McCLAIN.

>> THANK YOU, PLEASE THE
COURT... [INAUDIBLE].

>> PLEASE TALK INTO THE MIC.

>> SORRY.

USUALLY HAVE -- MY VOICE IS NOT
A PROBLEM IN TERMS OF MILDNESS.
THIS IS A APPEAL FROM THE DENIAL
OF A -- 38TH DISTRICT MOTION, I
WILL FOCUS MY ARGUMENT ON THE
NEWLY DISCOVERED EVIDENCE CLAIM
WHICH IS THIS FIRST ONE

ADDRESSED IN THE BRIEF AND IF
THERE ARE ANY QUESTIONS ABOUT
ANYTHING ELSE, CERTAINLY I AM
WILLING TO ANSWER THEM.

AT THE EVIDENTIARY HEARING THAT
OCCURRED ON JUNE 1ST AND 2ND
THERE WERE SIX WITNESSES, WHO --
NEWLY DISCOVERED WITNESSES
PRESENTED AND OF THOSE, ONE OF
WHICH LEON DOUGLAS, THERE ARE
ISSUES ABOUT AND THE REMAINING
FIVE, THOSE FIVE WITNESSES, I
SUBMIT, REQUIRE AT THE VERY

LEAST, PENALTY PHASE RELIEF.
AND LET ME EXPLAIN WHY.
FIRST, THE JUDGE IN DENYING HIS
FIRST GROUND FOR DENYING RES
JUDICATA AND THE WITNESSES DID
NOT TESTIFY AT ANY PREVIOUS
PROCEEDINGS AND I SUBMIT THAT
THAT WAS WRONG ANALYSIS TO HAVE
RES JUDICATA AND IN TERMS OF THE
QUESTION OF DILIGENCE, THE
TESTIMONY PRESENTED WAS IN 2001,
WHEN MR. WIGLEY WAS MURDERED, IN
PRISON, THERE WAS AN EFFORT MADE
TO MAKE UP A LIST OF PEOPLE IN
PRISON AND OUT OF PRISON, WHO
WIGLEY MAY HAVE CONFIDED IN,
JUST TO SEE IF THERE WAS ANYBODY
OUT THERE AND --

>> AND THIS WAS DONE WHEN.

>> 2001.

IT WAS AT THE TIME OF THE -- THE
COURT DECIDED TO TAKE THE --
WHERE THE COURT RECOGNIZED,
NEWLY DISCOVERED EVIDENCE
WARRANTED A -- ACTUALLY PENALTY
PHASE RELIEF FOR MR. MILLS WHICH
ULTIMATELY LED TO A LIFE
SENTENCE AN ON THE BASIS OF A
STATEMENT MR. MILLS MADE WHILE
INCARCERATED IN JAIL, A, WAIT --
AWAITING MR. MILLS' TRIAL FOR
THE CODEFENDANT, ANDERSON ASH
LIMIT AND SO IT WAS A SHOT IN
THE DARK TO CHECK AND SEE IF
THERE WAS ANYTHING OUT THERE AND
ALL OF THE PEOPLE THAT WERE
TALKED TO HAD NO INFORMATION,
AND TWO INDIVIDUALS WHOSE NAMES
WERE ON THE LIST BECAME
SIGNIFICANT BECAUSE THEY ARE
WITNESSES NOW AND ONE OF THE
INDIVIDUALS, ROBERT PEARSON, AND
ROBERT PEARSON, WHO DID TESTIFY
ON JUNE 1ST, WAS ON THE LIST IN
2001, HE WAS CONTACTED IN 2001,
AND AT THAT TIME, INDICATED HE
DID NOT WANTED TO TALK, DID NOT
WANTED TO GET INVOLVED, BOTH
MS. MCDERMOTT TESTIFIED
REGARDING THAT AND MR. PEARSON
TESTIFIED, HE REFUSED TO GET
INVOLVED AND THE OTHER PERSON'S
NAME ON THE LIST WAS MICHAEL
CONLEY AND THERE WAS BE A EFFORT

MADE TO LOCATE HIM AND DOC RECORDS INDICATED HE WAS GOOD FRIENDS WITH MR. WIGLEY AND HE WAS RELEASED FROM PRISON AND EFFORTS WERE MADE TO CONTACT HIM AND THERE WAS A LEAD TO SOMEBODY IN BROWARD COUNTY AND TURNS OUT ACCORDING TO MR. CONWAY IT WAS A FAMILY MEMBER OF HIS AND HE HAD GONE THROUGH A DIVORCE, HE WAS CONCERNED ABOUT HIS WIFE, OR PEOPLE ON BEHALF OF HIS WIFE, CONTACTING HIM, HIS FAMILY MEMBER INDICATED TO MR. CONLEY THAT HE'S GIVING THAT INFORMATION AND BASICALLY SHUT IT DOWN AND IN FACT, MS. MCDERMOTT TESTIFIED TO, AS THE INVESTIGATOR, WENT OUT AN ATTEMPTED TO CONTACT HIM AND RAN INTO THE BROTHER IN BROWARD COUNTY AND HAS NOT BEEN ABLE TO LOCATE HIM.

AS TO THE OTHER INDIVIDUALS, WHO TESTIFIED, IN 2009, THEY WERE NOT KNOWN, THEY DIDN'T GET ON THE LIST, AGAIN, THE LIST IN 2001, WAS BASICALLY A SHOT IN THE DARK, HAIL MARY PASS KIND OF THING.

>> I -- SINCE YOUR TIME IS LIMITED, LET'S ASSUME WE AGREE WITH YOU THAT DUE DILIGENCE WAS... AND YOU HAVE NOW FOCUSED ON THE PENALTY PHASE.

>> YES.

>> WHAT DO YOU THINK THAT THIS EVIDENCE IS ADMISSIBLE IN THE PENALTY PHASE, HEARSAY... [INAUDIBLE] A DIFFERENT STORY. WHAT -- HOW WOULD THAT PROBABLY PRODUCE A LIFE SENTENCE, BECAUSE THAT IS REALLY THE TEST, FOR NEWLY DISCOVERED EVIDENCE IS, WOULD IT PROBABLY PRODUCE A LESS SENTENCE.

>> WELL, FIRST, ONE PLACE TO LOOK IS MR. MOLDOF WHO TESTIFIED JUNE 2ND AND HOW THE STATEMENTS IMPACTED HIM AND WHAT HE WOULD HAVE DONE IN TERMS OF THE PENALTY PHASE AND IN 1984, ONE OF THE ISSUES THAT HAPPENED WAS IN REFERENCE TO HIS DECISION NOT

TO PRESENTS THE LIFE SENTENCE
MR. WIGLEY RECEIVED AND THE TIME
IN 1984 HE EXPLAINED IT WAS
BECAUSE THE JUDGE WOULD ALLOW
THE STATE TO BRING OUT THE FACT
THAT WIGLEY HAD MADE A STATEMENT
TO THE POLICE IN WHICH WIGLEY
PUT ALL OF THE BLAME ON
MR. MAREK.

>> YOU AGREE IF THIS EVIDENCE
WERE TO COME IN, AND -- IN AT
LEAST THE PENALTY PHASE,
WIGLEY'S CONFESSION WOULD --
>> YES.

AND MR. MOLDOF, HAD NO PROBLEM
WITH THAT AND WOULD HAVE
PRESENTED THIS AND HE THOUGHT
THAT A STATEMENT AFTER THE CRIME
TO THE POLICE, WAS, HE CERTAINLY
WOULD ARGUE, WOULD BE
SELF-SERVING VERSUS CONSISTENT
STATEMENTS MADE TO INDIVIDUALS
HE WAS INCARCERATED WITH, AND,
HE WOULD HAVE NO PROBLEM
PURSUING THAT.

>> I GUESS -- YOU ARE SAYING,
WELL, THE LAWYER WOULD ACT
DIFFERENTLY.

BUT, IN TERMS OF THE AGGRAVATOR
AND THE MITIGATOR, I UNDERSTAND
WE CAN LOOK AT WHETHER YOUR
CULPABLE DEFT RECEIVED A LIFE
SENTENCE, IT JUST DOESN'T LOOK
LIKE THAT SITUATION.

WHAT COULD A JURY -- WHAT
MITIGATOR WOULD THIS GO THROUGH
OR WHAT AGGRAVATOR, WOULD IT
CHANGE?

Y -- YOU SEE, I UNDERSTAND YOU
HAVE PRESENTED INTERESTING
TESTIMONY BUT WHERE WOULD IT FIT
IN IN A NEW PENALTY PHASE AND
GIVE ME YOUR BEST SHOT, IT
WOULDN'T CHANGE THE AGGRAVATORS
AND WHAT MITIGATORS WOULD IT GO
TO.

>> FIRST OF ALL, IT WOULD HAVE
LED MR. MOLDOF TO PRESENT THE
LIFE SENTENCE, WHICH WAS NOT
PRESENTED BEFORE AND THAT HAS
BEEN RECOGNIZED, A LIFE
SENTENCE, AS A MITIGATING
CIRCUMSTANCE AND, SECOND, IT
WOULD HAVE GONE TO REDUCE

MR. MAREK'S ROLE, IN THE COURT,
ON DIRECT APPEAL FOUND THAT HE
WAS THE DOMINANT INDIVIDUAL.
THIS WOULD HAVE GONE TO NEGATE
THAT.

>> IF WE -- I'M SORRY. .

>> YOU DO RECOGNIZE THAT NOT
ONLY WAS THE DEFENSE COUNSEL...
HAVE BEEN CHANGED AND THE STATE
WOULD HAVE DONE THINGS
DIFFERENTLY THAN THEY WOULD HAVE
AND WOULD HAVE BEEN ABLE TO
BRING IN THINGS LIKE THE
CONFESSION AND PSYCHOLOGICAL
INFORMATION, THAT INDICATED THAT
MR. WIGLEY WAS A FOLLOWER, NOT A
LEADER.

AND THINGS THAT WOULD TEND TO
UNDERMINE THIS NEWLY DISCOVERED
EVIDENCE, ISN'T THAT CORRECT.

>> MR. MOLDOF TESTIFIED AS TO
THE MENTAL HEALTH EVALUATIONS,
MENTAL HEALTH EVALUATIONS WERE
DONE SOLELY ON SELF-REPORTING OF
MR. WIGLEY AND THERE IS FIRST A
QUESTION OF WHAT ONES WOULD HAVE
BEEN ADMISSIBLE AND SECOND, THE
EXPERTS DIDN'T HAVE THESE
STATEMENTS MADE IN PRISON.
WHICH SUGGESTS THAT MR. WIGLEY
WAS IN FACT NOT A FOLLOWER.
AND THE CONCLUSION --

>> BUT, ALSO, I MEAN, WHEN YOU
LOOK AT THESE STATEMENTS, IN
CONTEXT, ISN'T IT LIKELY THAT A
JURY WOULD VIEW THESE THINGS
INCONSISTENT AS THEY WERE,
VARIABLE AS THEY WERE AS MOST
LIKELY AND EXERCISE IN BRAGGING,
AND SELF-PROTECTION.

IN TRYING TO PROJECT AN IMAGE OF
TOUGHNESS, IN ORDER TO AVOID
SOME TROUBLES IN PRISON.

>> FOR EXAMPLE, MR. PEARSON IN
PARTICULAR, HIS TESTIMONY WAS
QUITE COMPELLING AND HE
INDICATED, MR. PEARSON INDICATED
THAT MR. WIGLEY... VARIED OVER
TIME AND THE ONLY THING THAT
VARIED WAS MR. WIGLEY'S MEMORY
WHEN HE WAS ALONE WITH THE
VICTIM IN THE SHACK, AS TO
WHETHER OR NOT HE REMEMBERS
KILLING HER OR SIMPLY REMEMBERS

WAKING UP AND SHE WAS DEAD AND ALL OF HIS VERSIONS, MR. MAREK WAS OUT IN THE TRUCK, NOT INVOLVED.

>> BUT THERE IS WHERE THE EVIDENCE THAT I GUESS TO ME HAS BEEN VERY COMPELLING, ABOUT MR. MAREK'S FINGERPRINTS BEING THE ONLY FINGER PRINT FOUND IN THE SHACK WHERE THE BODY WAS FOUND.

SO THE IDEA THAT IT WAS MAREK THAT WAS OUTSIDE AND PLAYED AN INSIGNIFICANT ROLE IS CONTRADICTED BY THE PHYSICAL EVIDENCE.

I MEAN, IF YOU DIDN'T HAVE THAT PHYSICAL EVIDENCE, AND PLUS YOU STILL -- THERE IS NOTHING THAT HAS CHANGED THE FACT THAT THIS COURT RELIED ON, THAT THE TWO -- SURVIVING -- THE PASSENGER, DID NOT ULTIMATELY GO, SAID IT WAS MR. MAREK THAT DID ALL THE TALKING AND THE POLICE OFFICER AFTERWARDS SAID IT WAS MR. MAREK THAT DID ALL THE TALKING, NOT MR. WIGLEY AND THAT DOESN'T DISAPPEAR, DOESN'T IT DOESN'T, BUT, CERTAINLY IT IS WORTH NOTING IN MR. WIGLEY'S TRIAL THAT WAS NOT PORTRAYED AS OMINOUS AND IT WAS LESS OMINOUS AND HE WAS THE TALKER AND THAT WAS PURSUANT TO AN AGREEMENT WITH MR. WIGLEY, I THINK THE BOTTOM LINE, THOUGH, IS, IF YOU HAVE CONFLICTING EVIDENCE, IT ALL SORT OF NEGATES AND WHAT YOU END UP HAVING IS THE DISPARITY IN THE TREATMENT OF THESE TWO INDIVIDUALS.

WHICH IS WHAT CALLS FOR THE LIFE SENTENCE.

I MEAN, YOU COULD HAVE DOUBTS AS TO WHICH OF WIGLEY'S STATEMENTS TO BELIEVE, BUT, CLEARLY, THERE IS MORE GOING ON HERE, AND --

>> IT IS INTERESTING, THE ARGUMENT FOR THIS PENALTY PHASE, YOU ARE NOT SAYING THAT THIS COURT, BASED NOW ON THE NEWLY DISCOVERED EVIDENCE, NOW PRODUCED MAREK'S SENTENCE, THE

LIFE SENTENCE, ARE YOU.

>> CERTAINLY, THAT... I MAKE A NUMBER OF ARGUMENTS, AND I SAY UNDER NEWLY DISCOVERED EVIDENCE, AND THESE CIRCUMSTANCES, IT IS NOT JUST A QUESTION OF WHETHER IT WOULD HAVE MADE A DIFFERENCE TO THE JURY, IN ABRAM SCOTT IT WOULD HAVE MADE A DIFFERENCE TO THE SENTENCING JUDGE AND SHE SAID SHE WOULD HAVE IMPOSED LIFE AND IT SHOULD HAVE BEEN LOOK AT AS HOW IT WOULD AFFECT THE COURT ON DIRECT APPEAL.

>> WHAT --

>> ABRAM SCOTT SKIES, JUDGE SCHAEFFER INDICATED, BEFORE SHE RECUSED HELPFUL HAD SHE KNOWN OF THE LIFE NOTICE FOR THE CODEFENDANT.

>> BUT THAT IS NOT THIS CASE.

>> BUT IS AN EXAMPLE OF HOW IT HAS TO BE EVALUATED.

NOT JUST WHAT HAPPENED IN FRONT OF THE E JURY, BUT HOW IT COULD HAVE IMPACTED --

>> WE DON'T HAVE THE ORIGINAL JUDGE HERE BUT THE JUDGE DIDN'T EVEN FIND THE WITNESSES TO BE CREDIBLE.

>> CORRECT.

BUT, WHAT THE JUDGE DID DO IN 1988 IS STRUCK AN AGGRAVATING CIRCUMSTANCE AND SAID IT WAS HARMLESS MERELY BECAUSE THERE WAS NO MITIGATION.

AND, THAT DECISION WOULD NOT BE SUSTAINABLE, HAD THE LIFE SENTENCE FOR THE CODEFENDANT BEEN IN THE RECORD.

WHEN STRIKING AN AG AND IF THERE IS MITIGATION THAT COULD HAVE PROVIDED THE BASIS FOR A LIFE SENTENCE AND THE JUDGE, AT THE TIME OF THE TRIAL, INDICATED DURING THE INSTRUCTION CONFERENCE, THAT IN THE CASE, THERE WAS NO WAY THAT HE COULD OVERRIDE A JURY RECOMMEND DIGS OF LIFE, AND SO THAT WAS ONE OF THE REASONS WHY HE TOLD MR. MOLDOF, TRYING TO PERSUADE -- SWAY THE JURY WITH THE LIFE SENTENCE STUFF I'LL ALLOW THE

PROSECUTION TO GET INTO WIGLEY'S
CONFESSION, SO MY POINT.

>> THAT THIS COURT HAS TO NOT
JUST LOOK AT THE JURY, THE TRIAL
JUDGE, BUT ALSO, THIS COURT ON
DIRECT APPEAL AND IN
POST-CONVICTION --

>> WHEN YOU LOOK AT ALL OF THOSE
THINGS AND YOU LOOK AT THE
CIRCUMSTANCES OF HOW -- WHERE
THESE STATEMENTS WERE MADE, I
MEAN, YOU HAVE THE SITUATION
WHERE ONE OF THE PEOPLE SAYING,
BASICALLY, THAT THIS --

MR. WIGLEY IS REALLY A WIMP AND
HAS HE WAS -- BRAGGING ABOUT
THIS AND ANOTHER ONE WHO SAID
THAT BASICALLY HE SAID HE DIDN'T
DO IT, OR WHEN THE GUY INDICATED
HE WOULDN'T GIVE HIM ANY HELP,
HE CHANGED HIS STORY AND SAID HE
DID DO IT.

AND ANOTHER ONE SAYS THAT, YOU
KNOW, I DIDN'T REALLY BELIEVE
THESE STATEMENTS THAT HE WAS
MAKING, AND SO, WHEN A JURY --
THE JURY AND THE JUDGE EVEN THE
COURT LOOK AT ALL OF THESE
CIRCUMSTANCES, SURROUNDING THE
MAKING OF THESE VARIOUS
STATEMENTS, IT REALLY SEEMS A
VERY DIFFICULT TASK FOR ME TO
SAY, ANYWAY, THAT THIS WOULD
HAVE TRULY MADE, PROBABLY MADE A
DIFFERENCE IN THE SENTENCING.
AND, I -- THE CONTEXT OF THESE
STATEMENTS, REALLY IS WHAT
PERSUADES ME THAT THIS REALLY
WOULD NOT HAVE MADE A
DIFFERENCE.

>> FIRST I WOULD LIKE TO POINT
OUT THAT THE PROSECUTION ON JUNE
2ND, EXILE EXAMINING
MS. MCDERMOTT MADE THE POINT
THAT, HOW MR. WIGLEY'S BODY IN
FACT WAS FOUND.

WAS SO STRIKINGLY SIMILAR TO THE
VICTIM IN THIS CASE, THEY -- THE
STATE'S ARGUMENT WAS THAT THAT
WOULD SUGGEST THAT THERE WAS A
CONNECTION.

BECAUSE, MISBAIL --

>> HOW HIS BODY AS FOUND.

>> NAKED WITH A RED BANDANNA

AROUND HIS NEXT.

>> THE CIRCUMSTANCES OF THIS CASE HAS BEEN BANTERED ABOUT FOR YEARS AND I'M NOT SURE HOW THAT HELPS IN THIS SITUATION.

>> WELL, I MEAN, I THINK HER POINT WAS, BECAUSE OF THE SIMILARITY IN HOW THE BODY WAS FOUND, IT WOULD SUGGEST THAT MR. WIGLEY'S BOYFRIEND, WHO MURDERED HIM, HAD DONE TO HIM WHAT HAD BEEN DONE -- HE HAD DONE TO SOMEONE ELSE.

AND I THINK THAT THAT WAS WHAT THE STATE'S POINT WAS.

BUT, ULTIMATELY, THERE IS NO QUESTION THAT THIS COURT IN 1988, WOULD HAVE HAD TO REVERSE WHEN AN AGGRAVATOR WAS STRUCK. AND THE JURY IN THIS CASE WAS GIVEN FOUR AGGRAVATORS AND THE JUDGE FOUND FOUR AGGRAVATORS AND IN 1988 ONE OF THOSE WAS STRUCK,

AT THE TIME, IN 1984, THE MITIGATION WAS SIMPLY A GUARD FROM THE JAIL, TESTIFYING, AS TO HIS -- MR. MAREK'S CONDUCT IN JAIL AND HE HAD SHOWN REMORSE AND THE PROSECUTION TURNED AROUND AND SAID REMORSE WAS SIMPLY THAT HE WAS CAUGHT, NOT THAT HE WAS REALLY REMORSEFUL. IN ANY EVENT, I BELIEVE THAT THE FACT THAT IT BECOMES MUDDLED, AS TO WHO DID WHAT, IS PRECISELY WHAT THIS COURT HAS INDICATED REQUIRES THE -- THAT THEY BE TREATED THE SAME AND WOULD REQUIRE A LIFE SENTENCE FOR MR. MAREK.

>> YOU ARE WELL INTO YOUR REBUTTAL.

>> I WILL --

>> IF YOU WANT TO SAVE ANY TIME.

>> I WILL SAVE THE REMAINING TIME.

>> ALL RIGHT.

>> I'M CAROLYN SNURKOWSKI FROM THE ATTORNEY GENERAL'S OFFICE, JUDGE LEVINSON WHO HEARD THE JUNE 1ST, 2009 HEARING WAS NOT THE TRIAL AND IT WAS A CONFUSION WITH REGARD TO WHAT HE -- HE HAD TO LOOK AT THE TOTAL CASE AFRESH

AND REVIEWED THE RECORDS AND HIS ASSESSMENT OF THE RECORD IS BASED ON TRANSCRIPTS, TESTIMONY, PRESENTED FOR HIM, AND THE ARGUMENTS THAT WERE MADE BY COUNSEL, BEFORE HIM, AND, HE MADE ASSESSMENTS THAT THE WITNESSES WERE NOT CREDIBLE AND I WOULD LIKE TO STEP BACK A LITTLE BIT, BECAUSE, AS WELL, I FULLY APPRECIATE THAT I -- THESE WITNESSES DID NOT -- WERE NOT COMPELLING, WOULD NOT CHANGE THE OUTCOME, AND PROBABLY WOULD NOT CHANGE THE OUTCOME WITH REGARD TO A NEW PENALTY PHASE OR YOU CAN EVEN GET TO A PENALTY PHASE THE STATE WOULD SUBMIT IT IS A RARE CASE WHERE THIS TRIAL COURT IN FACT FOUND NO DUE DILIGENCE, AND IT IS SUPPORTED BY THE RECORD, IT IS SUPPORTED BY THE TESTIMONY THAT WAS PRESENTED AT TRIAL BY DEFENSE COUNSEL, WITH REGARD TO WHAT ACTION THEY UNDERTOOK AND IN THIS CASE IT POINTS TO THE FACT THAT WE HAVE A TARGET DATE. WE KNOW THAT MR. WIGLEY DIED, HE WAS KILLED MAY 6TH, 2000 AND AT THAT TIME, DEFENSE COUNSEL FOR MR. MAREK WAS ENGAGING IN LITIGATION AND AT THAT TIME, RIGHT AFTERWARDS, IN FACT, WITHIN A YEAR, OF THAT, THEY SECURED INFORMATION FROM DOC AND THE STATE ATTORNEY'S OFFICE AND -- WHO PROSECUTED THE CASE AND OTHER COURSES -- GOVERNMENT AGENCIES WITH REGARD TO INFORMATION CONCERNING MR. WIGLEY AND MR. MAREK. MR. WIGLEY IN PARTICULAR, ABOUT MR. MAREK. AND WHAT THEY FOUND OUT, AND WHAT THE ALLEGATION WAS, IF YOU LOOK BACK AT THE HISTORY OF THIS CASE, THE 9TH CLAIM IN THAT CASE HAD TO DO WITH -- THE CULPA ABILITY OF THE PARTIES, WITH REGARD TO MAREK, AND WIGLEY AND AT THAT TIME, THEY WERE PRESENTING AND TRYING TO SECURE EVIDENCE THAT SHOWED THAT THE

HISTORY, WIGLEY'S HISTORY, DEMONSTRATED THAT HE WAS A MORE CULPABLE -- AND HE WAS NOT A LESSER DOMINATING PERSON OR HE WAS NOT THE LESSER PERSON, EQUALLY OR MORE DOMINANT TYPE OF PERSONALITY.

AND, FAILED AT THAT.

BUT, IN DOING THAT, THEY WERE INVESTIGATING THIS EVIDENCE, THEY SECURED THE NAMES, THEY MADE CONSCIENTIOUS DECISIONS WITH REGARD TO SECURING WHAT NAMES THEY FOUND, AND CALLING THROUGH THAT -- COMING THROUGH THE LIST AND FINDING OUT WHO WAY WOULD SECURE AND MR. BANTERMAN WAS ON THE LIST AND THEY DISCOUNTED HIM AND HE COMES LATER ON IN 2009.

>> HOW MANY OF THESE -- I BELIEVE THERE WERE 6 PEOPLE WHO TESTIFIED --

>> THAT'S CORRECT, YOUR HONOR.

>> AT THE EVIDENTIARY HEARING. HOW MANY OF THOSE NAMES WERE IN FACT DISCOVERED AND TALKED TO AT POINTS.

>> WE KNOW AT LEAST THREE OF THOSE INDIVIDUALS WERE ON THE LIST, BECAUSE MR. MCDERMOTT ACKNOWLEDGED THAT AND THE OTHERS COULD OR COULD NOT HAVE BEEN ON BUT THEY WERE THE RAPID TRAIL THAT LED TO THE OTHER INDIVIDUALS, LIKE MR. MITCHELL, I BELIEVE, SAID,... MR. MITCHELL LED THEM TO AN INDIVIDUAL MR. CLARK, AND MR. CLARK LED THEM TO LEON DOUGLAS, AND I MEAN, IT WAS -- THERE WAS -- THE AVAILABLE EVIDENCE WAS THERE, AND DUE DILIGENCE DOES REQUIRE EFFORT ON THE PART OF THE LAWYER AND THE LAWYER DOESN'T SAY I GET A PASS BECAUSE I WAS UNSUCCESSFUL AND YOU TRY AND AT THIS POINT IN TIME IT WAS NOT A TIME WHEN NOTHING WAS GOING ON, THEY WERE ACTUALLY LOOKING FOR CLAIMS, WITH REGARD TO CHALLENGING THE CULPABILITY OF THE INDIVIDUALS WITH REGARD TO THE CRIME AND AS I SAID THIS IS

ONE OF THOSE CASES WHERE WE DO HAVE A FAILURE TO PERFORM DUE DILIGENCE AND THE TRIAL COURT WHO LOOKED AT THE CASE --

>> EVERY TIME WE HAVE ONE OF THESE CASES, THIS IS AN ISSUE THAT COMES ABOUT BUT WHEN THERE ARE NEW STATEMENTS THAT COME ABOUT WE WIND UP CHASING OUR TAILS, BECAUSE THEY TALKED TO SOMEONE AND THEY DIDN'T SAY BACK THEN WHEN THEY ARE SAYING NOW AND THOSE ARE THE DIFFICULT THINGS WE MUST, MUST WRESTLE WITH AND I FIND IT DIFFICULT AND THIN TO RULE ON A CASE LIKE THIS ON A DUE DILIGENCE WHEN THERE ARE STRONGER REASONS IN EXISTENCE THAT WOULD TAKE US BEYOND THAT.

>> AND I --

>> I SEE PROBLEMS, HERE, QUITE HONESTLY WITH, YOU KNOW, IN MY VIEW WITH SOME OF THE THINGS THAT OCCURRED DURING THE HEARING, AND THOSE KINDS OF THINGS.

BUT, IT IS THE ULTIMATE, I THINK JUSTICE PARIENTE HIT ON THAT IS REALLY THE HEART OF WHAT THIS CASE IS ABOUT.

I MEAN...

>> AND I DON'T DISAGREE, YOUR HONOR, I UNDERSTAND THAT BUT I THINK IT IS IMPORTANT BECAUSE WE HAVE A TRIAL COURT WHO CAME IN THE CASE, NEW, AND FOUND -- MADE THAT GLARING DETERMINATION, THERE WAS NOT DUE DILIGENCE, AFTER HEARING THE EVIDENCE.

>> AGAIN, I DON'T KNOW THAT THAT IS SUPPORTED, AND AS I LOOK AT THE RECORD I DON'T KNOW THAT THAT IS A FINDING, BECAUSE IT IS A FINDING IS REALLY SUPPORTED WHEN YOU LOOK AT THE WHOLE SCHEME OF THESE KINDS OF CASES THAT COME BEFORE US BECAUSE THIS IS ALWAYS AN ISSUE THE STATE WANTS TO GRAB TO, THIS IS THE ONLY ISSUE IN THE CASE.

>> BUT, I DON'T --

>> I WOULD, WOULD HOME YOU WOULD ADDRESS SOME OF THE OTHER ONES.

RATHER THAN JUST HANG ON THAT POINT.

PARTICULARLY, THE QUESTION OF JUSTICE -- THE QUESTION JUSTICE PARIENTE RAISES AND THE RESPONSE MR. McCLAIN PROVIDED TO US, HE HAS MADE A COMPELLING ARGUMENT, ONE PERSON IS RECEIVING A LIFE PENALTY AND THESE ARE THINGS THAT OUGHT TO BE REWEIGHED AND REEVALUATED.

>> WELL, IN FACT IF YOU LOOK AT MR. CONLEY, GO TO THE WITNESS WHOSE TESTIFIED, HE TESTIFIED THAT HE THOUGHT FOR EXAMPLE THAT ALTHOUGH WIGLEY WAS TELLING HIM THIS, IT WAS FOR A REASON AND THE REASON WAS HE WANTED HIS -- MR. CONLEY'S WIFE TO HELP WIG L WITH REGARD TO HIS POST-CONVICTION LITIGATION, AND MR. BANTERMAN, HAS -- HIS TESTIMONY REFLECTS THAT MR. WIGLEY WAS BOASTING WITH REGARD TO HIS COMMENTS ABOUT HOW HE KILLED SOMEBODY.

IF YOU LOOK THE AT MR. PEARSON

--

>> GO BACK TO MR. CONLEY, HE DID NOT TESTIFY AGAIN.

>> HE DID NOT.

HE WAS ILL AND COULD NOT COME BACK.

>> HE STRUCK ME, IN TERMS OF -- OF COURSE WE DIDN'T SEE HIM, BUT HIS TESTIMONY IS CLEAR TO ME THAT HE HAD A FEELING THAT MR. WIGLEY... TELLING THE TRUTH. NOW, LET'S ASSUME THAT WIGLEY DID STRANGLE THE VICTIM.

AND THAT THIS IS -- SEEMS TO BE CONSISTENCY THAT MIGHT MAKE THAT, YOU KNOW, A POSSIBLE THING, THAT IS, THAT IT WAS WIGLEY THAT ACTUALLY DID THE STRANGLING AND THEY BOTH MAY HAVE HAD SEXUAL RELATIONS. DOES THAT CHANGE THE RELATIVE CULPABILITY MIX, IN OTHER WORDS, IF WE LOOK AT THE SUM TOTAL AND SAY, YOU KNOW WHAT?

LOOKS LIKE WIGLEY MAY HAVE BEEN THE PERSON WHO DID THE STRANGLING AND HE GOT THE LIFE

SENTENCE, HOW DOES THAT AFFECT THE...

>> I DON'T THINK IT CHANGES, IF YOU ARE ASKING ME, THE LIKELY PROBABILITY AND THE ANSWER IS NO AND THE REASON FOR THAT IS -- EXCUSE ME -- A NUMBER OF REASONS, FIRST OF ALL, MR. MAREK TOOK THE STAND IN HIS TRIAL, AND SAID HE WASN'T THERE.

AND THE JURY HEARD THAT, AND, ALSO, HEARD MR. MAREK ADMITTED THAT HE WAS THE ONE THAT STARTED US OFF ON THE TREK AND HE WAS THE ONE THAT INVITED THE VICTIM TO -- HE WAS GOING TO HELP HER AND HE WAS THE ONE -- EXCUSE ME, MR. MAREK'S OWN LIPS, WE HEAR THAT HE IS THE PERSON WHO IS TAKING PART IN SETTING IS ALL IN MOTION.

>> LET'S -- IN TERMS OF THAT YOU HAVE TWO MEN AND THEY HAVE STOPPED FOR PEOPLE THAT ARE BY THE SIDE OF THE ROAD, AND THOSE TWO MEN, THEY -- IS IT NOT LIKELY THAT THE DISCUSSION OCCURRED BEFORE HANDLED, WHAT THEY WERE GOING TO DO?

I MEAN, YOU KNOW WHAT I'M SAYING?

ANY SUGGESTION MR. MAREK HAS DECIDED ON HIS OWN, TO GO OFF ON THE PLAN, AND THAT SOMEHOW HE DRUGS WIGLEY TO GO ALONG WITH HIM.

>> THAT IS NOT THE PLAN, THE PLAN IS THEY ARE DRIVING DONE THE HIGH WA AND COMING INTO FLORIDA AND HAVING A GOOD TIME, AND SEE THIS CAR AND STOP, AND RENTEDER -- TO RENDER ASSISTANCE AND MR. MAREK SAYS I'LL HELP YOU, BECAUSE SHE'S LOOKING FOR ASSISTANCE.

>> BECAUSE HE IS DOING THE TALKING, HOW DOES IT MAKE THE OTHER PERSON NOT CULPABLE EQUALLY FOR WHAT HAPPENED.

>> THIS COURT ON DIRECT APPEAL REVIEWED THE RECORD AND DETERMINED THAT ALONG THE WAY, WHAT MR. MAREK SAID TO THE JURY WAS FOUND TO BE CORRECT.

BECAUSE, OTHER WITNESSES SAID THE SAME THING.

JEAN TRACK TESTIFIED THAT SHE WAS SURVIVING -- THE SURVIVING INDIVIDUAL AND TESTIFIED MAREK SPOKE TO HER AND MAREK CAME TO THE CAR AND MAREK WHO SUGGESTED ONE OF THEM GO, AND, IT WAS THE VICTIM WHO SAID -- ASKED JEAN TO GO, AND SHE WAS AFRAID.

AND SO, THE VICTIM WENT.

IT WAS MAREK WHO AFTER THE MURDER ALMOST IMMEDIATELY AFTER THE MURDER WAS TALKING TO POLICE OFFICERS, AND TALKING ABOUT WHY WE'RE THERE AND HE WAS THERE, AND HE WAS IN FLORIDA, AND -- BECAUSE HE WAS LOOKING FOR COLLEGE FRIENDS.

IT WAS MAREK WHO DID ALL OF THE TALKING.

YOU DON'T HAVE ANY TESTIMONY, IN THE RECORD TO REFLECT OTHERWISE.

AND, THE AT THE TRIAL, MAREK'S TRIAL WHILE THERE WAS A ISSUE MANY MOONS AGO WITH REGARD TO WHO, WHETHER THERE WAS A -- DISPARATE DETERMINATION AS TO WHO WAS THE ACTUAL KILLER, THE BOTTOM LINE WAS, THAT THERE WAS NOT, THE STATE IN THIS PARTICULAR CASE, MAREK'S CASE, SAID, I DON'T CARE HOW YOU DECIDE IT, WHATEVER YOU FIND MR. MAREK'S -- WHAT HE ACTUALLY DID THE MURDER OR HELPED IN THE MURDER OR WHAT HE DID, IT IS STILL FIRST DEGREE MURDER AND THAT IS WHAT HE WAS CONVICTED OF, MR. WIGLEY WAS CONVICTED OF FIRST DEGREE MURDER, ALSO, AND GOT A LIFE SENTENCE.

>> AND THAT IS ALL, I THINK, I DON'T THINK, ANYTHING CHANGES THAT MR. MAREK GUILTY OF -- MAKES HIM GUILTY OF FIRST DEGREE MURDER, I GUESS THE ONLY -- WHAT WE WERE FOCUSING ON IS OUR JURISPRUDENCE THAT DEALS WITH AN EQUALLY CULPABLE PERSON, TO GET A LIFE SENTENCE, AND OTHER PORTIONALITY, IN FAIRNESS, TO THE SYSTEM, SO THAT THERE IS CREDIBILITY IN THE SYSTEM, THAT

THE CODEFENDANT SHOULD ALSO GET A LIFE SENTENCE AND I THOUGHT THAT WAS THE ONLY ISSUE.

>> THAT IS CORRECT BUT THERE IS NOTHING IN THE RECORD THAT CHANGED BASED ON THE VICTIMS.

>> AND I GUESS THE QUESTION I ASKED WAS, IF IT WAS MR. WIGLEY THAT DID -- STRANGLING THE VICTIM, AND THAT YOU SAY THAT DOESN'T CHANGE THE CALCULUS OF THE WAY THE COURT WOULD LOOK AT THE CASE.

>> FIRST OF ALL, I DON'T THINK YOU EVER FIND THAT, WE CAN THE NOT MAKE THE DETERMINATION BUT ASSUME FOR THE MOMENT WE PRESENT THE EVIDENCE WITH REGARD TO THE WITNESSES, THEY CAME IN.

FIRST OF ALL, THEY HAVE TO BE TAKEN IN CONTEXT AND THE COURT RECOGNIZES THAT, AND AS I WAS GOING THROUGH THE SCENARIO OF ALL OF THESE WITNESSES EACH ONE OF THEM THAT'S A PROBLEM WITH REGARD TO THEIR CREDIBILITY, OR THEIR BELIEVEABILITY OR THE KIND OF STORY THEY ARE TELLING, BECAUSE ALL OF THE STORIES ARE DIFFERENT AND NOT THE SAME BUT,

SECOND OF ALL, WE HAVE A DETERMINATION THAT, BY THAT COURT AND ALL THE COURTS THAT LOOKED AT THE CASE, THAT, IN FACT, MR. MAREK WAS THE MORE DOMINANT ONE AND NOTHING -- NOTHING -- ABOUT THE SIX WITNESSES CHANGED THAT, AND PLUS, NOW WE KNOW, NOW WE HAVE A CASE THAT IS BEFORE THE COURT --

>> YES, THERE IS A DIFFERENCE AND THAT IS WHAT WE ARE TRYING TO GET TO THE BOTTOM LINE.

AND THAT IS, IF WIGLEY WAS THE -- PERFORMED THE ACTUAL STRANGULATION, I THINK THAT IS THE BOTTOM LINE QUESTION. BEING PROPOUNDED, WOULD YOU RESPOND TO THAT.

>> AND I'M --

>> IF IT WERE FOUND --

>> SURE.

>> THAT MR. WIGLEY WAS ACTUALLY THE PERSON WHO COMMITTED THE

STRANGULATION, WHAT HAPPENS THEN.

>> I THINK AGAIN, THIS IS LIKE OTHER CASES, WHERE THE COURT HELD IT IS A MORE DOMINANT REACTION AND LAVALIER, SHE ASKED HER SON AND HE WAS ACQUITTED AND HE APPARENTLY DID THE MURDER BUT HE WAS ACQUITTED AND THE MORE DOMINANT PERSON IS ENTITLED TO GET -- AND THE COURT HELD, A NUMBER OF CASES OUT THERE, WALTON, A NUMBER OF CASES, STEIN, A NUMBER OF CASES THAT REFLECT THAT YOU HAVE A -- MORE DOMINANT FIGURE THAT PERSON IS ELIGIBLE --

>> I GUESS I'M CONCERNED ABOUT, I KNOW WE HAVE THE MASTER MIND, THAT IS WHAT I WAS ASKING EARLIER, DOES IT REALLY MEAN, BECAUSE ONE PERSON IS DOING THE TALKING, I DON'T KNOW HOW, WHETHER ONE IS, MORE HANDSOME GUY THAN THE OTHER AND THEY SAID, YOU ARE THE LADIES MAN, YOU GO DO THE TALKING, YOU ARE THE SMOOTHER PERSON, I DON'T KNOW, THAT THAT ACTUALLY IS EQUIVALENT TO THE CASES WHERE THERE IS TRULY A MASTERMIND WHO IS LIKE, YOU KNOW, THAT DRIVES THE IDEA OF THIS MURDER, OR THE MURDER OF SOMEBODY'S HUSBAND OR SPOUSE AND THAT IS WHERE WE HAVE SAID, THOSE KIND OF MASTER MINDS AND WHERE THERE ARE TWO PEOPLE ACTING IN CONCERT, AND IF THERE IS A -- AN AGREEMENT, THAT ONE OF THEM IS GOING TO DO THE TALKING, I DON'T KNOW, YOU KNOW, AGAIN -- AND I -- I DON'T KNOW HOW THAT TRANSLATES INTO THAT PERSON'S BEING THE MASTER MIND.

>> FIRST OF ALL, I DON'T THINK YOU HAVE THOSE FACT AND THOSE ARE NOT THE FACTS OF THE CASE, YOU DON'T HAVE ANYBODY SAYING, THAT A LEGALLY AGREED WITH MAREK THAT HE WAS GOING TO BE THE ONE THAT TALKED. THERE IS NO AGREEMENT TO THAT. THERE IS -- ALL WE HAVE IN THIS RECORD IS MAREK WAS THE ONE WHO

WAS DOMINATED.
OR DOMINATED THE CONVERSATION,
AND MAREK WAS THE ONE THAT WENT
FORWARD AND THE ONE THAT
ADDRESSED AND SET THE PROCESS IN
MOTION AND WE HAVE WIGLEY'S
TESTIMONY, HIS TESTIMONY --
TRIAL TRANSCRIPT NOW, THAT
REFLECTS THAT THE STATE SAID
THAT, YOU KNOW, WIGLEY'S TRIAL,
THAT YOU KNOW, WIGLEY WAS
INVOLVED, TOO.
BUT, IN THE RECORD, THE --
BEFORE THIS JURY WHAT WE HAD WAS
THE JUDGE, JURY, KNOWING THAT IT
WAS WIGLEY WHO WAS STANDING BY
WITH HIS HEAD HUNG DOWN, NOT
SAYING ANYTHING.
HE DIDN'T ACT, HE DIDN'T DO
ANYTHING.
AND THAT IS WHAT WE HAVE IN THIS
RECORD.
MAREK DOING EVERYTHING.
>> WE ALSO HAVE OTHER POTENTIAL
EVIDENCE, THAT SHOWS THAT
MR. WIGLEY WAS A WEAK PERSON,
AND A FOLLOWER, NOT A LEADER.
>> RIGHT.
>> WHICH WOULD CONFIRM THE
CIRCUMSTANCES THAT POINT TO
MR. MAREK AS THE DOMINANT ACTOR.
>> AND THAT IS MY NEXT POINT,
WHAT I'M REALLY GETTING AT.
BEYOND THESE SIX PEOPLE, WHO DO
NOT IMPACT WHAT HAPPENED AT THIS
TRIAL, IF YOU HAVE ANOTHER
PENALTY PHASE OR YOU HAVE TO PUT
THIS IN THE CALCULUS, OF, WE
HAVE DR. CASH, DR. COOPER, WHO
ALL WERE DOCTORS WHO HAD LETTERS
TO THE COURT AT THAT TIME, WHO
WOULD HAVE BEEN CALLING, CALLED
AND YOU DO THIS REPORT, AND TALK
ABOUT WHAT IN FACT THE RECORD
BEARS OUT AND THAT WAS WIGLEY
WAS A WIMP.
HE WAS NOT A FOLLOWER, YOU HAVE
EVERY ONE OF THESE WITNESSES
THAT TESTIFIED AS -- AT THE
EVIDENTIARY HEARING, SAYING THAT
WIGLEY'S A WIMP.
THEY ARE NOT CHANGING THAT.
THEY ARE NOT CHANGING ANYTHING.
THEY ARE NOT, NOT CUTTING INTO

THE REAL ISSUE, BEFORE THE COURT.

AND THAT IS, WHETHER IN FACT MAREK WAS THE DOMINANT ONE, BECAUSE THAT IS THE PREMISE UPON WHICH THE COURT AND EVERY COURT THAT LOOKED AT IT, NO MATTER WHAT THE ISSUE MAY BE, WHETHER AN -- EDMONDS ISSUE OR WHATEVER, DETERMINED THAT MAREK WAS THE PREDOMINANT ACTOR IN THIS CASE AND NOTHING -- NOTHING -- THAT WIGLEY SAID TO THESE SIX PEOPLE -- FIVE PEOPLE, BECAUSE I DON'T THINK HE TALKED TO MR. DOUGLAS, THESE FIVE PEOPLE MAKES A DIFFERENCE, IN JAIL TWO OF THESE PEOPLE SAID, WIGLEY SAID, I KILLED BEFORE AND I'LL KILL AGAIN.

>> DIDN'T HE TELL ONE OF THE WITNESSES THAT HE WAS ACTUALLY THE ONE THAT TALKED TO THE WOMEN ON THE ROAD, WHICH IS REFUTED .

>> YES.

>> BY THE SURVIVING TRAVELING COMPANION AND HAS NO CREDIBILITY.

>> RIGHT.

AND, AGAIN, THEY CHANGE AND, WHAT MR. PEARSON SAID, HOW THEY FLUCTUATED, ONE OF THE STORIES WAS THAT HE DIDN'T KNOW WHEN MAREK LEFT AND FELL ASLEEP AND FOUND THE WOMAN DEAD AND DIDN'T KNOW WHERE MAREK WAS, AND THAT DOESN'T MEAN THAT HE ACTUALLY DID THE STRANGULATION, HE TELLS ONE WITNESS, THAT HE DID IT WITH HIS HANDS.

HE TOLD ANOTHER ONE HE STRANGLED WITH A BANDANNA AND WE HAVE DIFFERENT STATEMENT, GOING ACROSS THE BOARD.

AND SO, BASED ON WHAT WE HAVE, TAKING IN TOTO WE HAVE TO LOOK AT ALL OF THE EVIDENCE, THE TRIAL JUDGE FOUND THERE WAS NO CREDIBILITY AS TO ANY OF THESE WITNESSES, AND THAT THERE WOULD NOT BE -- WOULD NOT BE A PROBABILITY, THE OUTCOME WOULD BE DIFFERENT.

THE STATE UNLESS THERE ARE OTHER

QUESTIONS WOULD ASK THE COURT TO AFFIRM.

THANK YOU.

>> THANK YOU.

>> FIRST, AS TO JUDGE LEVINSON'S CREDIBILITY, I THINK IN CONTEXT, WHAT HE IS SAYING IS THAT HE DID NOT FIND MR. WIGLEY CREDIBLE, BECAUSE, THERE WERE INCONSISTENCIES BETWEEN THE STATEMENT AND THE... TESTIFIED DID NOT NECESSARILY BELIEVE HIM. AND THERE IS NO INDICATION THAT HE FOUND AN INDIVIDUAL OTHER THAN MR. DOUGLAS, AS CREDIBLE. AND, SECOND, AS TO BRIEFLY, ON THE DILIGENCE POINT, IT WAS INDICATED INFORMATION FROM THE STATE ATTORNEY'S OFFICE, PROSECUTING MR. WIGLEY'S MURDER IN 2011, THAT IS NOT TRUE AND IT WAS AN OPEN FILE AND... REFUSED TO PROVIDE IT AND IT WAS NOT DISCOVERED UNTIL 2009.

ALSO, MR. BANTERMAN WAS-ON-NOT ON THE LIST -- MR. BANTERMAN WAS NOT ON THE LIST, ON -- AND THAT'S THE TESTIMONY.

AND ALSO, TO MAKE THIS POINT THAT AS TO WHETHER MR. PEARSON

--

>> HOW, THEN, HOW WAS MR. BANTERMAN FOUND.

>> HE WAS FOUND IN THE DOC RECORDS, IN 2009, AND HE WAS TALKED TO IN 2009.

HE NAME WAS IN THE DOC RECORDS IN O-1, BUT HIS NAME WAS NOT PUT ON THE LIST.

AND, THE EXPLANATION WAS HE DIDN'T SEEM TO HAVE THAT CLOSE OF A CONNECTION WITH MR. WIGLEY...

>> BUT HIS NAME WAS IN THE RECORD.

IN 2001.

>> YES.

>> AS TO MR. PEARSON, MR. PEARSON, NEVER --

>> DO YOU SPEND SOME TIME ON HER ARGUMENT, THE BOTTOM LINE, SHE SAYS THAT THIS REALLY DOESN'T CHANGE THE OUTCOME AS TO THE SENTENCING AND SEEMS TO BE THE

HEART OF WHERE WE ARE GOING INTO
YES, YOUR HONOR AND ULTIMATELY,
I GUESS, SORT OF THE
HYPOTHETICAL KIND OF NOTION THAT
I BELIEVE, JUSTICE PARIENTE WAS
SORT OF ALLUDING TO IS, IN A
SITUATION WHERE WE HAVE NEW
EVIDENCE THAT IS DEFINITELY
ESTABLISHING THAT MR. WIGLEY IS
THE KILLER, THERE IS NO
QUESTION, IT WOULD HAVE TO BE A
LIFE SENTENCE.

>> THE STATE SAYS, THE STATE
SAYS THAT REALLY, WHAT YOU HAVE
HERE IS -- WE MAY QUIBBLE ON
WORDS, BUT THE MASTERMIND, THE
PERSON WHO REALLY SEDUCES OR
ENTICES THIS VICTIM, INTO THE
WEB, DOES ALL THE TALKING, DOES
ALL THE MANIPULATION AND SECURES
THE PERSON, WHAT ABOUT THAT,
THAT IS WHAT SHE SAID.

>> ALL THE CASES THAT SHE IS
RELYING UPON... [INAUDIBLE]
THERE IS NO INDICATION...
[INAUDIBLE] IN FACT ALL THE
EVIDENCE IS THAT THERE WAS NO --

>> IS THAT A REQUIREMENT?

>> I THINK, THE MASTER MIND, YOU
KNOW --

>> TO FALL INTO THAT CATEGORIES
OF CASES.

>> I THINK ALL OF THE CASES THAT
SHE CITED ARE ALL... CASES, THE
PLANNED TO MAKE ARRANGEMENTS TO
MURDER HER HUSBAND.

AND I CAN'T REMEMBER WHAT THE
OTHER CASE IS.

MY RECOLLECTION IS IT INVOLVED A
COLD, CALCULATED... [INAUDIBLE].

>> ARE YOU SAYING YOU CANNOT
FROM THE CIRCUMSTANCES OF THE
CASE, DETERMINE THAT SOMEONE IS
A MASTERMIND.

YOU HAVE TO HAVE THAT --

>> IT IS POSSIBLE.

BUT IN THIS CASE, WHAT IS
INTERESTING, IS --

>> IT'S POSSIBLE.

>> IT'S POSSIBLE AND IN THIS
CASE IT IS NOT POSSIBLE, IF YOU
LOOK AT WHAT HAPPENED IN
MR. WIGLEY'S TRIAL, THE...
[INAUDIBLE] LOOK AT WHAT

HAPPENED IN MR. WIGLEY'S TRIAL
THE PROSECUTION WAS ARGUING THE
SAME EVIDENCE THAT, SHOWING THIS
WAS MR. WIGLEY WHO WAS THE ONE
IN CONTROL.

ARGUING THAT HIS SILENCE WAS
OMINOUS AND ARGUING HE WAS THE
ONE THEY WERE REALLY AFRAID OF.

>> I -- GO AHEAD.

>> I'M SAYING WHERE THE EVIDENCE
IS AMBIGUOUS, THE PROSECUTION --

>> BUT EVIDENTLY, I MEAN, IT
SEEMS TO ME THAT THERE IS SOME
DISCERNMENT GOING HERE, BECAUSE
HE ENDED UP WITH, YOU KNOW, A
LIFE SENTENCE.

AS OPPOSED TO --

>> MITIGATION.

>> SENTENCED TO DEATH.

>> MITIGATION WAS PRESENTED IN
HER WIGLEY'S CASE AND NONE IN
MR. MAREK'S CASE AND ONE OF THE
THINGS THAT IS BEING OVERLOOKED
IS THE MENTAL HEALTH EVALUATION,
THE MENTAL HEALTH EVALUATION IS
MR. WIGLEY WAS INSANE.

AND THAT HE DID IT IN A FRENZY.

AND, SO, MR. MOLDOF TESTIFIED,

IT WAS EASY TO RIP APART THE
INSANITY THING THAT WAS NOT
PRESENTED MT. ARE WIGLEY --

>> WHAT WERE THEIR AGES AND
RELATIVE HEIGHTS.

>> MR. MAREK IS DEFINITELY
TALLER, THEY WERE ABOUT THE SAME
AGE.

>> WHAT WAS BOTH OF THEIR
CRIMINAL HISTORIES.

>> OFF THE TOP OF MY HEAD, I
DON'T REMEMBER MR. WIGLEY'S AND
MR. MAREK WAS A \$65 CREDIT CARD
CHARGE... CONSIDERED A FELONY.

>> NO PRIOR VIOLENT FELONIES.

>> NO PRIOR VIOLENT FELONY AND
THE POINT I WAS MAKING IS, WHAT
DO YOU... [INAUDIBLE] IF IT IS
50/50, THEY SHOULD GET THE SAME
SENTENCE AND THAT IS WHAT THE
COURT CASE LAW IS AND I DON'T
THINK -- THAT'S WHY I DON'T
THINK I HAVE TO PROVE...

[INAUDIBLE] I THINK I HAVE TO
PROVE ANYBODY THAT LOOKS AT
THIS... [INAUDIBLE] JUST AS

LIKELY MR. WIGLEY... [INAUDIBLE]
SO THAT'S WHY I'M ARGUING THAT
EVEN IF IT IS MUDDLED AND EVEN
IF YOU LOOK AT A AND DON'T KNOW
WHAT HAPPENED, THAT IT SHOULD BE
A LIFE SENTENCE FOR BOTH OF
THEM, AND UNDER THE PROPER
ANALYSIS AND I WANTED TO MAKE
THIS POINTED, MR. MOLDOF
TESTIFIED HE WAS NOT... HE HAD
HAD THE STATEMENTS TO PRESENTS
MR. MAREK'S VERSION, THAT HE WAS
OUT IN THE PICKUP TRUCK.
WHEN THIS WAS GOING ON.

>> YOU HAVE USED YOUR TIME.

>> THANK YOU, YOUR HONOR.

>> THANK YOU VERY MUCH FOR YOUR
ARGUMENTS, YOUR DILIGENCE AND
GETTING THE BRIEFS TO US IN A
VERY SHORT PERIOD OF TIME.
THANK YOU VERY MUCH.

THE COURT WILL NOW BE IN RECESS.

>> PLEASE RISE.