

>> THE NEXT CASE ON TODAY'S DOCKET WILL BE TROY V. STATE OF FLORIDA.

>> GOOD MORNING, MR. CHIEF JUSTICE AND FELLOW MEMBERS OF THE COURT.

BOB STRAIN FROM CCRC IN TAMPA FOR MR. TROY.

THE COURT'S AWARE THAT THE POSTCONVICTION COURT'S HANDLING OF OUR TWO MOTIONS BELOW CREATED COMPLICATIONS IN US GETTING THIS APPEAL HERE TODAY, NAMELY THE SUMMARY DENIAL OF ALL THE POSTCONVICTION CLAIMS IN THE RULE 3851 MOTION, BUT HIS SIMULTANEOUS GRANTING OF THE MOTION TO INTERVIEW THE JUROR THAT HAD THE BUSINESS CONNECTION OR --

>> BUT GIVEN THAT WE NOW KNOW THAT THERE IS NO CONNECTION, I'M HAVING A HARD TIME, AND, AGAIN, I'M ONE THAT FAVORS THAT JUDGES SHOULD GIVE EVIDENTIARY HEARINGS.

THAT'S WHAT THE RULE WAS CHANGED TO.

BUT THESE ALLEGATIONS IN THIS POSTCONVICTION MOTION ARE ABOUT THE, I MEAN, THEY CERTAINLY HAVE DETAIL, BUT I CANNOT IMAGINE HOW AN EVIDENTIARY HEARING WOULD EVEN REMOTELY LEAD YOU TO BE ABLE TO ESTABLISH EITHER OF THE TWO CLAIMS AS TO THIS ISSUE OF

THE WITNESS OR THE JUROR.

>> JUSTICE PARIENTE, WE ARGUED
IN THE BRIEF AND TRIED TO
CONVINCE THE COURT BELOW THAT,
NUMBER ONE, AS TO THE JUDGE'S
RULING DENYING THE INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM
REGARDING TRIAL COUNSEL AND THE
VICTIM'S FATHER AND THE JUROR
FROM THE CHAMBER OF COMMERCE,
THE JUDGE'S ORDER IGNORED THE
SECOND COMPONENT OF OUR CLAIM
WHICH WAS THAT EVEN IF
MR. HAMBLIN AND MR. ORTIZ DID
NOT HAVE A KNOWN CONNECTION OR
KNEW EACH OTHER FROM THE CHAMBER
OF COMMERCE AND REAL ESTATE
BUSINESS COMMUNITY AND WHAT HAVE
YOU, THAT TRIAL COUNSEL WAS
STILL GIVEN THE INITIAL
INFORMATION THAT WE FOUND IN THE
JURY SELECTION FORMS ABOUT THE
CHAMBER, ABOUT HIS BUSINESS.
THE CONNECTION OF MR. ORTIZ
BEING IN THE REAL ESTATE --

>> ALL RIGHT, LET'S ASSUME THAT
EVERYTHING YOU SAY WOULD BE
CORRECT WHICH IS THAT TRIAL
COUNSEL SHOULD HAVE ASKED THIS
GUY MORE QUESTIONS.

UNDER CARATELLI DON'T YOU HAVE
TO SHOW THAT A ACTUALLY-BIASED
JUROR SAT -- IN OTHER WORDS,
IT'S NOT ENOUGH THAT A JUROR
MAYBE THAT THERE SHOULD BE --

>> WELL --

>> LET ME -- MORE QUESTIONS
ASKED OR MAYBE THAT SOMEBODY
WOULD HAVE ISSUED, ASKED FOR A
PEREMPTORY OR EVEN DEVELOPED A
CAUSE CHALLENGE.

FOR THE INEFFECTIVE ASSISTANCE,
YOU'VE GOT TO SHOW AN ACTUAL
BIAS, ISN'T THAT CORRECT?

>> WELL, JUSTICE PARIENTE,
THAT'S THE RIGHT RULING OF THE
CASE YOU'RE CITING, AND THIS
GETS TO THE, OR THE PREDICAMENT
WE IN FLORIDA IN POSTCONVICTION
ARE IN.

WE DO NOT KNOW WHAT TRIAL
COUNSEL WAS, WHAT KIND OF
BACKGROUND WORK HE DID FROM THE
JURY SELECTION INFORMATION THAT
WAS PROVIDED AHEAD OF TIME.

WE DO KNOW THAT TRIAL COUNSEL
HAD, HAD KNOWLEDGE THAT THE
VICTIM'S FATHER WAS VOLATILE AND
SPECIALLY INVOLVED IN THIS CASE
AS A FAMILY MEMBER OF A VICTIM.
AND SPECIFICALLY, I'M REFERRING
TO THE FEBRUARY, 2002,
RESTRAINING ORDER THAT
MR. TROY'S MOTHER HAD TO GET
AGAINST IN RESPONSE TO THE
HARASSMENT THAT MR. ORTIZ WAS
GETTING HIM.

SO ASSUME AS MR. TABRUGGE SAW
THE JURY FORM THAT IDENTIFIED AS
THE ONLY BUSINESS OR ASSOCIATION
THAT MR. HAMBLIN BELONGED TO
BEING THE SIESTA KEY CHAMBER OF

COMMERCE, HE SHOULD HAVE PUT TWO AND TWO TOGETHER AND FIGURED OUT WE HAVE AN UNUSUAL IF NOT UNIQUE SITUATION WITH THIS JURY.

>> UNDER YOUR THEORY, COUNSEL --

>> PARDON ME?

>> UNDER YOUR THEORY A JURY COULD NEVER BE SELECTED, LIKE, IN A SMALL COMMUNITY BECAUSE EVERYBODY KNOWS EACH OTHER.

>> NO.

WELL, NO, THIS IS A -- WE FEEL THAT THE SITUATION OF MR. ORTIZ HAVING A RESTRAINING ORDER AGAINST HIM BROUGHT BY MR. TROY'S MOTHER TAKES IT AWAY FROM ANY COMMON RESIDENTIAL THING OR BUSINESS COMMUNITY THING --

>> SO WHAT SHOULD HE HAVE DONE WITH THAT?

I'M STILL NOT SURE WHAT MR. ORTIZ HAVING A RESTRAINING ORDER AGAINST HIM, HOW THAT ALL PLAYS INTO WHAT YOU WERE JUST TALKING ABOUT WHICH IS THE JURY SELECTION PROCESS.

>> WELL --

>> SO TELL US SPECIFICALLY WHAT YOU ARE SAYING THAT DEFENSE COUNSEL SHOULD HAVE DONE.

>> IT SHOWS -- THE RESTRAINING ORDER SHOWED THAT MR. ORTIZ WAS A VERY, VERY UNIQUE AND ACTIVE FAMILY MEMBER OF A MURDER VICTIM.

HE WAS HARASSING THE DEFENDANT'S MOTHER SUFFICIENT THAT A CIRCUIT JUDGE IN SARASOTA COUNTY ISSUED THE RESTRAINING ORDER TO KEEP THE VICTIM'S FATHER AWAY FROM THE DEFENDANT'S MOTHER.

THAT IS AN EXTRAORDINARY FACTOR.

>> SO WHAT DOES THAT SHOW US?

>> WELL, IT SHOWS THAT MR. ORTIZ HAD A LEVEL OF INVOLVEMENT, IF YOU WILL, WITH THIS CASE THAT, THAT WAS VERY, VERY SPECIAL.

>> SO COUNSEL SHOULD HAVE BEEN, ASKED THE JUDGE TO ACT, TO SPECIFICALLY ASK THE JURORS ABOUT MR. ORTIZ?

IS THAT WHAT YOU'RE ARGUING?

>> WELL, JUST AS OUR INVESTIGATOR DID, JUSTICE QUINCE, AS SOON AS WE SAW THE INFORMATION ON THE JURY PANEL QUESTIONNAIRE ABOUT THE SIESTA KEY CHAMBER OF COMMERCE MEMBERSHIP FOR MR. HAMBLIN, BY THAT TIME MR. TABRUGGE KNEW OR SHOULD HAVE BEEN ABLE TO PUT TWO AND TWO TOGETHER AND SAY, WAIT A MINUTE.

THE VICTIM'S FATHER, WHO'S SPECIALLY INVOLVED WITH THIS CASE, ALSO LIVES ON SIESTA KEY, ALSO IS INVOLVED IN THE REAL ESTATE FIELD ON SIESTA KEY, AND IS ALSO A MEMBER OF THAT CHAMBER OF COMMERCE THAT MR. ORTIZ --

>> AND THEN WHAT?

>> WELL, IN ABUNDANCE OF CAUTION
HE SHOULD HAVE AT LEAST ASKED
SOME MORE QUESTIONS IN VOIR DIRE
BUT THEN USE A CHALLENGE TO
STRIKE HIM FOR EVEN ANY
REMOTE --

>> ALL RIGHT.

SO, FIRST OF ALL, I'M NOT SURE
YOU DID ANSWER MY QUESTION.
YOU'RE NOW FOCUSING AGAIN ON THE
QUESTIONS THAT WEREN'T ASKED.
I'M ASKING ABOUT HOW THE SECOND
PRONG CAN BE ESTABLISHED, AND
NOW THAT YOU'VE GOT THIS THE
JURY INTERVIEW NOT ONLY DOES IT
SHOW THERE WAS NO RELATIONSHIP,
BUT THERE'S -- YOU HAVEN'T MADE
AN ARGUMENT THAT AN
ACTUALLY-BIASED JUROR SAT.

>> AND I APOLOGIZE, I DID GET
SIDETRACKED, JUSTICE PARIENTE.
BUT REMEMBER, UNDER THE FLORIDA
RULES INVOLVING JUROR
QUESTIONING AS WE HAVE BRIEFED,
"ST. PETERSBURG TIMES" GETS TO
INTERVIEW THE JURORS, MR. ORTIZ
BOASTS THAT HE GOT TO INTERVIEW
JURORS, BUT I WAS PREVENTED FROM
INTERVIEWING JURORS TO GIVE YOU
THE EXACT PREJUDICE.

>> OKAY, BUT YOU DID GET TO
INTERVIEW THIS JUROR.
YOU SAID IT WAS COMPLICATED IN
THIS CASE BECAUSE IT WAS
GRANTED, BUT THE RULE IS --
UNLESS WE CHANGE THE RULE AND

OVERTURN OUR PRECEDENT -- THAT WE ARE, WE RESTRICT LAWYERS FROM BEING ABLE TO INTERVIEW JURORS. NOW, YOU KNOW, WHAT I'M HAVING, AGAIN, A HARD TIME WITH THIS CASE.

THIS WAS A VERY BRUTAL MURDER. I GUESS YOU LOOK THROUGH THE WHOLE GUILT PHASE, AND THE ONLY THING THAT THIS DEFENSE LAWYER SAID MIGHT HAVE DONE WRONG IN THE GUILT PHASE IS NOT ASK SOME QUESTIONS IN VOIR DIRE.

YOU KNOW, IT JUST STRIKES ME, AND I'M NOT TRYING TO MINIMIZE THIS, BUT WE TRY TO LOOK TO SEE WHETHER THERE'S A CONVICTION, A CONVICTION WAS PROPERLY OBTAINED AND WHETHER THE DEATH PENALTY WAS PROPERLY IMPOSED.

THIS DOES FEEL LIKE A CASE WHERE THERE IS NITPICKING GOING ON AND THAT IT'S NOT REALLY HELPING.

AND YOU'RE AN EXPERIENCED CCRC ATTORNEY, SO I DON'T WANT TO -- I'M NOT GETTING ON YOU, YOU KNOW.

YOU GUYS DO THE BEST WITH WHAT YOU HAVE, BUT I JUST DON'T SEE THERE'S ANYTHING HERE.

>> JUSTICE PARIENTE, NITPICKING IS WHAT WE DO.

WE PRESENT TO THIS COURT THE FEATURES AS IT DEVELOPS.

>> NITPICKING, BUT THIS QUESTION WASN'T ASKED IN VOIR DIRE WHERE

YOU'RE NOT, YOU HAVEN'T ATTACKED ANYTHING ELSE ABOUT THE FOUNDATION FOR THE GUILT OF THIS DEFENDANT, CORRECT?

>> JUSTICE PARIENTE, IN VIEW OF HOW THE DEFENSE HANDLED THE GUILT PHASE, GUILT PHASE ISSUES WERE NOT THERE --

>> WELL, GOOD.

AND THAT, TO ME, REALIZE ABOUT THIS DEFENSE LAWYER HAVING DONE, YOU KNOW, AN EXCELLENT JOB.

GLAD THAT YOU DIDN'T, IN THIS CASE, FIND DEFICIENCIES.

BUT THE ONLY THING HE DIDN'T DO IN THIS WHOLE TRIAL IS HE SHOULD HAVE ASKED A COUPLE MORE QUESTIONS, AND YOU CAN'T ESTABLISH ANYTHING ABOUT THIS JUROR THAT INFECTED THE TRIAL.

>> WELL, AND PART OF IT IS BECAUSE WE HAVE NOT BEEN ABLE BECAUSE OUR MOTION, OUR REQUEST FOR DISCOVERY BEFORE MR. HAMBLIN WAS BROUGHT IN WHATEVER DAY, APRIL 22, THE REQUEST FOR DISCOVERY WAS DENIED.

NOW, JUSTICE PARIENTE, REMEMBER --

>> BACK TO THE DISCOVERY OF TALKING TO THE WHOLE JURY?

>> NO.

NO, THIS WAS --

>> WHAT DISCOVERY ARE YOU TALKING ABOUT?

>> THIS WAS A SPECIAL MOTION

THAT WE FILED AFTER THE COURT GRANTED THE MOTION TO INTERVIEW JUROR HAMBLIN.

WE FILED A MOTION TO RENEW CONSIDERATION OF OUR LEWIS DISCOVERY MOTION SO THAT WE COULD GET A SUBPOENA TO THE SIESTA KEY CHAMBER OF COMMERCE TO SEE IF THERE WERE DOCUMENTATIONS OR OTHER MATERIALS THAT THE CHAMBER MIGHT HAVE TO REFRESH MR. HAMBLIN'S RECOLLECTION.

REMEMBER, THERE WERE TWO -- EVEN THOUGH THE BOTTOM LINE WAS OR THE ESSENCE OF MR. HAMBLIN'S TESTIMONY WAS HE DID NOT KNOW MR. ORTIZ, HE DID, HIS MEMORY WAS NOT PERFECT.

IT DID FAIL IN TWO RESPECTS. HE REMEMBERED THAT MR. ORTIZ WORKED ON SIESTA KEY IN A CONDOMINIUM, BUT HE DIDN'T, COULDN'T RECALL WHERE HE LEARNED THAT INFORMATION.

WELL, IN REALITY THE RECORD SHOWED THAT THIS CAME FROM THE VICTIM'S MOTHER WHO HAD TESTIFIED AND EXPLAINED THAT THEY LIVED ON SIESTA KEY IN THE CONDO, AND THIS IS THE SAME MOTHER THAT THE JURY FOREWOMAN WAS EXCUSED AFTER GOING UP TO HER BEFORE THE JURY CHARGE AND PENALTY PHASE FOR HUGGING HER, THAT THAT'S THE INCIDENT THAT

THE STATE ATTORNEY WAS COMMENDED
ON BY THE, BY THE JUDGE FOR
BRINGING THAT WRONGFUL ACTIVITY
AND BIAS OF THE JURY FOREWOMAN.
SO WE DON'T KNOW.

THAT WAS THE JURY FOREWOMAN WAS
STRUCK THE DAY AFTER THE JURY
ASKED THE UNIQUE QUESTION
WHETHER THEY COULD HAVE A GROUP
PHOTO TAKEN, IF THAT WAS ALLOWED
UNDER FLORIDA RULES.

AND THE JUDGE SAID, WELL, THAT'S
A UNIQUE QUESTION, AND THE
ATTORNEY SAID, UNIQUE THAT WE
DON'T HAVE AN ANSWER THAT SAYS
NO.

SO THERE WERE SPECIAL THINGS
WITH THIS JURY.

AND WHEN YOU PUT THOSE TYPE OF
DETAILS TOGETHER WITH HOW
VOLATILE MR. ORTIZ WAS, WE JUST
WANT TO DO TWO THINGS UPON A
REMAND FOR EVIDENCE SHARE; ASK
MR. TABRUGGE WHAT IN THE WORLD
HE WOULD -- WHY HE DIDN'T DO AN
INVESTIGATION OF MR. ORTIZ AND
FIND THESE THINGS THAT CONNECTED
HIM AS A POSSIBILITY THAT MEMORY
FIVE YEARS AGO COULD HAVE BEEN.
REMEMBER, MR. HAMBLIN SAID,
WELL, I, NO DOUBT, WROTE
MR. ORTIZ MY MEMBERSHIP DUES
CHECK THAT YEAR.

SO MEMORY IN '09 WAS NOT
PERFECT.

AND IT GOES TO THE SIMPLE FACT

AS TO THE GALEMORE, THE ASSISTANT WARDEN, ARGUMENT WE'RE MAKING.

YES, AS THE STATE CORRECTLY POINTED OUT, MR. TABRUGGE DID A WONDERFUL JOB.

WHAT WAS IT, EIGHT DIFFERENT CORRECTIONS EMPLOYEES TESTIFIED FROM THE TIME MR. TROY WAS INCARCERATED AS A JUVENILE IN TENNESSEE DOWN TO THE DIFFERENT PLACES HERE.

BUT THE ASSISTANT WARDEN WHOSE PROFFER OF FUTURE CONDUCT WAS THE ONLY ONE WHO WAS TO TESTIFY ABOUT FUTURE CONDUCT.

THOSE CORRECTION OFFICERS WHO DID TESTIFY IN THE PENALTY PHASE ONLY TESTIFIED EITHER ABOUT PAST OR EXISTING INCARCERATION MANIFESTATIONS THAT MR. TROY ARGUED.

WE POINT OUT WE JUST WANT TO ASK MR. TABRUGGE, MR. TABRUGGE, YOU HAD THREE DAYS AFTER YOUR PROFFER OF THE ASSISTANT WARDEN WAS DENIED.

WHY DIDN'T YOU GO AND PREPARE HIM ONE OF THE THREE NIGHTS AND BRING HIM IN BEFORE THE CLOSE AND PENALTY?

>> AND WHAT WOULD YOU -- SEE, MY PROBLEM WITH IT IS, AGAIN, I THINK THERE -- HE DID DO AN EXCELLENT JOB IN THE PENALTY PHASE.

I CAN'T IMAGINE HOW THIS PARTICULAR TESTIMONY COULD HAVE, IF IT WAS NOT BEING OFFERED, UNDERMINES OUR CONFIDENCE IN THE PENALTY PHASE.

BUT LET'S JUST GIVE YOU AT LEAST, LET'S LOOK AT IT.

IF THEY HAD TOLD HIM ABOUT MR. TROY, ARE YOU TELLING ME THAT THE ASSISTANT WARDEN WHO DOESN'T, ISN'T GOING TO BE TESTIFYING AS AN EXPERT WOULD HAVE SAID, WELL, BASED ON MR. TROY'S JUVENILE RECORD AND ADULT RECORD OR WHATEVER, I HAVE A VIEW THAT HE WOULD HAVE BEEN NO RISK?

I MEAN, WHAT TYPE OF -- WHAT WOULD HAVE MADE IT ADMISSIBLE IF HE HAD BEEN GIVEN THE RECORDS TO REVIEW?

IN OTHER WORDS, HE DIDN'T KNOW THIS DEFENDANT, SO HE COULDN'T TESTIFY ABOUT THAT.

BUT I THINK THAT'S WHERE I THINK YOU MAY BE OFF ON THE WRONG TRACK BECAUSE I DON'T THINK IT WOULD HAVE AFFECTED THE ADMISSIBILITY RULING OF THE JUDGE.

>> WELL, TWO THINGS.

WE ARGUE IN OUR BRIEFING THAT THE JUDGE IN POSTCONVICTION ISSUED A CONFUSING REASON FOR WHY HE DENIED THE PROFFER ADD TRIAL COMPARED TO WHAT THIS

COURT SAID ON DIRECT APPEAL.
BUT THE KEY IS WE SIMPLY SAID,
JUSTICE PARIENTE, AND POINTED
OUT JUST LIKE IN SKIPPER V.
SOUTH CAROLINA AND VALLE V.
FLORIDA, YES, WE RECOGNIZE HOW
APPELLATE COURTS HAVE TO RULE ON
WHAT WAS THE IMPACT OF WHAT WAS
ADMITTED OR NOT ADMITTED.
BUT SKIPPER AND VALLE FOCUS ON
WHAT THE JURORS, THE IMPACT
WOULD BE ON THE SENTENCING
JUROR.
AND HERE IN THE POSTCONVICTION
PENALTY PHASE PROCEEDING --
>> YOU ARE NOW DOWN TO FOUR
MINUTES.
>> ALL RIGHT, THANK YOU VERY
MUCH.
IT WAS RANK LEVEL GUARDS TALKING
ABOUT WHAT MR. TROY DID AS A
JUVENILE OR IN HIS TIME IN
FLORIDA.
THIS WOULD HAVE BEEN ELEVATED BY
A WARDEN WHO, AND A LOCAL
ASSISTANT WARDEN WHO AT ONE TIME
HAD WORKED OVER --
[INAUDIBLE]
AND THE IMPACT IS, WE ARGUE, TO
THE JURY COULD HAVE BEEN
MONUMENTAL.
>> SOMEONE WHO HAD NO PERSONAL
CONTACT WITH THIS DEFENDANT.
>> WELL, AND THAT'S OUR POINT.
IF THE RULING WAS BECAUSE HE
DIDN'T --

>> NO, I'M TALKING ABOUT THE EFFECT ON THE JURY, NOT -- YOU'RE TALKING ABOUT HOW THE JURY WOULD HAVE BEEN AFFECTED, BUT WHY IN THE WORLD DO YOU BELIEVE THE JURY WOULD HAVE BEEN AFFECTED MORE BY SOMEONE WHO HAD NO CONTACT WITH MR. TROY VERSUS --

>> WELL, THAT'S PART OF THE INEFFECTIVENESS COMPONENT OF OUR CLAIM.

>> OH, SO HE SHOULD HAVE TAKEN THE WARDEN TO MEET MR. TROY?

>> THAT'S WHAT WE BRIEFED.

HE KNEW THAT'S WHY THE PROFFER WAS REJECTED, AND THAT'S WHAT THIS COURT SAID, THAT IT WOULD BE SPECULATION ABOUT PRISON RULES APPLIED TO MR. TROY BECAUSE HE DIDN'T KNOW MR. TROY AND NEVER MET HIM, NEVER LOOKED AT MR. TROY'S RECORDS.

HE HAD THREE NIGHTS DURING PENALTY PHASE TO DO IT, AND HE HAD THREE MONTHS BEFORE THE SPENCER HEARING TO DO IT --

>> ARE YOU SAYING --

>> -- AND WE DON'T KNOW WHY --

>> -- THAT YOU HAVE TESTIMONY THAT THIS WARDEN WOULD HAVE GONE AHEAD AND BECOME YOUR EXPERT BY MEETING WITH A DEATH ROW DEFENDANT?

>> HE COULD HAVE MET WITH HIM --

>> I'M ASKING WHETHER YOU COULD

PUT THAT ON --

>> -- SUPPLIED THE WARDEN'S NAME
TO --

>> BUT YOU'RE TELLING ME YOU
TALKED TO THIS WARDEN, AND THE
WARDEN WOULD HAVE GONE AND
MET --

>> NO, MA'AM, I DIDN'T -- WE'VE
NEVER ALLEGED THAT OR SAID THAT.

>> OKAY.

>> THANK YOU.

>> MAY IT PLEASE THE COURT,
STEPHEN AKE ON BEHALF OF THE
STATE.

I GUESS I'D LIKE TO START WHERE
HE JUST LEFT OFF --

>> LET ME ASK YOU ABOUT THE
FIRST THING ABOUT THESE
INTERVIEWS WITH JURORS, AND I'VE
PARTICIPATED IN MANY OPINIONS
WHERE JUDGES, WHERE WE'VE BEEN
ASKED TO RECEDE FROM PRECEDENT
AND AGREED WE SHOULDN'T.

BUT IF CARATELLI REQUIRES THAT
AN ACTUAL BIASED JUROR BE SAT,
HOW DOES A DEFENDANT SATISFY
THAT BURDEN IF THEY CAN'T GO
TALK TO A JUROR?

WHAT IS IT THAT THEY CAN DO TO
AT LEAST GET TO THE POINT OF,
YOU KNOW, HAVING AN EVIDENTIARY
HEARING ON THE ISSUE?

>> IN THE POSTCONVICTION
CONTEXT, YOUR HONOR, WE'RE
SEEING ALLEGATIONS OF THEY HAVE
SOME BASIS TO MAKE AN ALLEGATION

THAT THERE'S SOMETHING THAT HAPPENS THAT WOULD HAVE RESULTED IN THIS JUROR BEING BIASED OR SOME REASON TO CHALLENGE THE VERDICT ON THIS CASE.

AND IN THOSE CASES WHERE THEY HAVE SUFFICIENT ALLEGATIONS AND SUFFICIENT PROOF, A LOT OF TIMES THE COURTS ARE ALLOWING THEM TO GO IN AND DO JUROR INTERVIEWS.

>> NOW, IN THIS STRANGE SITUATION THEY'RE ACTUALLY -- CAN WE CONSIDER THAT THE JUROR WAS INTERVIEWED IN DECIDING THAT THERE'S REALLY NO WAY TO MEET THE SECOND PRONG OF, IN CARATELLI?

>> YOUR HONOR, I HONESTLY DON'T BELIEVE THAT IS RELEVANT.

IT'S A SEPARATE PROCEEDING.

I THINK THIS COURT NEEDS TO LOOK AT THE ALLEGATIONS IN THEIR POSTCONVICTION MOTION AND WHAT TOOK PLACE, WHAT THAT RECORD SHOWS AS OPPOSED TO THE RECORD FROM THE SEPARATE PROCEEDING UNDER THE RULE --

>> DOESN'T IT HELP YOU?

>> IT DOES HELP US, BUT I HONESTLY DON'T THINK IT'S PART AND PARCEL OF IT EVEN THOUGH IT IS, TECHNICALLY, IN THIS RECORD.

>> WHAT WAS THE JUDGE GRANTING AN INTERVIEW FOR IF IT WASN'T FOR POSTCONVICTION PURPOSES?

>> WELL, FOR THE PURPOSE OF IF

THERE'S ACTUALLY ANY BASIS IN FACT FOR YOU TO GO BACK AND CHALLENGE THE VERDICT BASED ON ANY KIND OF MISCONDUCT.

THE JUDGE SAID IN ALL HONESTY IT BORDERS ON THE TENUOUS, BUT I'M GOING TO GO AHEAD OUT OF AN ABUNDANCE OF CAUTION AND LET YOU ASK THIS JUROR THESE QUESTIONS BECAUSE THEY WERE ALLEGING HE HAD GIVEN FALSE ANSWERS --

>> SO IF SOMETHING HAD COME OUT OF THAT, THERE COULD HAVE BEEN SUCCESSIVE EVIDENCE FOR MISTRIAL BASED ON MISCONDUCT?

>> EXACTLY, YOUR HONOR.

IT JUST SO HAPPENED THE TIMING OF THIS ONE WAS RUNNING NEXT TO EACH OTHER, BUT THEY CERTAINLY DON'T ALWAYS DO THAT.

SOMETIMES THEY GO BEFORE OR AFTER.

BUT IN THIS CASE I CERTAINLY DO THINK THAT IT HELPS US BECAUSE THEY BROUGHT IN THE JUROR AND ASKED HIM, AND HE DIDN'T KNOW MR. ORTIZ AND HAD NO DEALINGS WITH HIM AT THIS SIESTA KEY CHAMBER OF COMMERCE.

I THINK WHAT WE NEED TO GET TO IS THE ALLEGATIONS IN THEIR POSTCONVICTION MOTION OF INEFFECTIVENESS OF TRIAL COUNSEL'S FAILURE TO INQUIRE ABOUT THIS ALLEGED RELATIONSHIP THAT THEY MAY HAVE HAD.

THERE'S ABSOLUTELY NO EVIDENCE THAT TRIAL COUNSEL OR ANY TRIAL COUNSEL WOULD KNOW ANYTHING ABOUT MR. ORTIZ'S BACKGROUND IN THE SIESTA KEY CHAMBER OF COMMERCE OR THAT HE WOULD HAVE ANY REASON WHATSOEVER TO THINK THAT JUROR HAMBLIN, WHO PUT ON A QUESTIONNAIRE THAT HE WAS IN THIS CHAMBER OF COMMERCE, HAS ANYTHING TO DO WITH THE VICTIM'S FAMILY IN THIS CASE.

>> I THOUGHT --

>> THAT WOULD --

>> -- DEFENSE COUNSEL SAID THAT HE HAD INFORMATION THAT MR. ORTIZ WAS A PART OF THE CHAMBER ALSO.

>> NO.

THEY GOT THAT POSTCONVICTION, YOUR HONOR, THROUGH THEIR INVESTIGATOR.

THAT CAME OUT YEARS LATER WHERE CCR FOUND A NEWSPAPER ARTICLE THAT SAID MR. ORTIZ HAD BEEN ELECTED TREASURER OF THE SIESTA KEY CHAMBER OF COMMERCE.

AND THEY OBTAINED THAT AND SAID, OH, TRIAL COUNSEL, YOU WERE DEFICIENT BECAUSE YOU DIDN'T ASK ABOUT THIS.

HOW WOULD HE KNOW ABOUT THIS?

I MEAN, IT'S JUST AN INCREDIBLE LEAP TO SAY THAT TRIAL COUNSEL WAS DEFICIENT FOR NOT KNOWING THAT MR. ORTIZ WAS A MEMBER OF

THE SIESTA KEY CHAMBER OF
COMMERCE.

AND THE OTHER ALLEGATIONS ARE
BASED ON, BASICALLY, A PROXIMITY
OF LIVING TOGETHER ON AN ISLAND
OF, APPARENTLY, 7,000 RESIDENTS
AT THE TIME OF THE TRIAL.

>> I'M CONCERNED ABOUT THE TRIAL
EXPERIENCE, BUT THE MECHANICS AS
TO HOW TRIAL COUNSEL IS SUPPOSED
TO LEARN THIS.

AS SOON AS YOU GET A SUSPICION,
WHAT IS HE SUPPOSED TO DO, ASK
FOR A CONTINUANCE SO HE CAN HIRE
AN INVESTIGATOR SO HE CAN GO OUT
AND SEE WHETHER OR NOT HE SHOULD
CHOOSE THIS JUROR?

>> CORRECT, YOUR HONOR.

>> HOW DOES THAT WORK?

>> USUALLY, MY UNDERSTANDING IS
THAT USUALLY JURORS ARE GIVEN
THE QUESTIONNAIRE THAT MORNING
AND QUICKLY GOING THROUGH THEM
MAYBE THE DAY BEFORE.

THEY DON'T HAVE TIME TO GO HIRE
INVESTIGATORS TO INVESTIGATE 150
POTENTIAL JURORS AND TRY TO FIND
OUT EVERY LITTLE DETAIL ABOUT
THEM.

THAT'S TAKEN PLACE IN
POSTCONVICTION BECAUSE NOW WE
KNOW WE'VE GOT A SET NUMBER OF
JURORS, CCR CAN INVESTIGATE AND
FIND OUT EVERY LITTLE THING
ABOUT THEM, BUT THERE'S NO WAY
YOU CAN ESTABLISH THE TRIAL

COUNSEL PERFORMED DEFICIENTLY BY FAILING TO INQUIRE BASED ON THAT LIMITED INQUIRY THAT TOOK PLACE AT VOIR DIRE THAT ANY OF THE JURORS KNOW ANY OF THE FAMILY MEMBERS OF THE VICTIMS.

>> WELL, I GUESS I THOUGHT A PART OF HIS ARGUMENT -- AND MAYBE I WAS JUST READING TOO MUCH INTO IT -- WAS THAT THIS MAN, MR. ORTIZ, WAS SO INVOLVED IN THIS CASE AS A FAMILY MEMBER THAT -- AND HE WAS NOT, AS I UNDERSTAND IT, SPECIFICALLY NAMED AS DO YOU KNOW THIS PERSON, CORRECT?

>> CORRECT.

>> AND SO I THOUGHT A PART OF HIS ARGUMENT WAS THAT COUNSEL WAS DEFICIENT FOR NOT HAVING HIM NAMED SPECIFICALLY SO THAT MAYBE MR. HAMBLIN WOULD HAVE RECOGNIZED HIS NAME BECAUSE HE WAS SO INVOLVED IN THIS CASE THAT THAT WAS SOMEONE THEY KNEW THE JUROR SHOULD BE AWARE OF.

>> NO, THAT WAS NOT AN ALLEGATION THAT THEY SHOULD HAVE SPECIFICALLY HAD HIM INQUIRE ABOUT MR. ORTIZ.

THEIR ALLEGATION WAS BECAUSE HE'S SO VOLATILE, TRIAL COUNSEL SHOULD HAVE KNOWN THAT HE MIGHT HAVE INTIMIDATED THIS JUROR BECAUSE OF THEIR RELATIONSHIP, WHICH THEY DIDN'T HAVE A

RELATIONSHIP.

BUT BASICALLY, THEIR ARGUMENT IS MR. HAMBLIN WAS A REAL ESTATE AGENT ON SIESTA KEY, A VERY SMALL, YOU KNOW, ISLAND BEACH COMMUNITY AND THAT MR. ORTIZ, THAT TRIAL COUNSEL DID KNOW THAT MR. ORTIZ WORKED FOR A CONDOMINIUM AS A PROPERTY MANAGER AND, THEREFORE, BECAUSE OF THE NATURE OF MR. HAMBLIN'S REAL ESTATE BUSINESS, THEY SHOULD HAVE KNOWN OF SOME KIND OF RELATIONSHIP BECAUSE MR. ORTIZ WAS SO QUOTE-UNQUOTE VOLATILE.

GRANTED, THERE WAS SOME RESTRAINING ORDER, BUT HE DIDN'T TESTIFY AT TRIAL.

HE TESTIFIED AT THE PENALTY PHASE AND READ A VICTIM IMPACT STATEMENT OF, LIKE, FOUR OR FIVE SENTENCES LONG.

BUT THERE'S JUST NOTHING THERE.

THIS IS AN INCREDIBLY SPECULATIVE TYPE OF CLAIM THAT I THINK THE TRIAL COURT WAS PROPER IN SAYING THERE'S NO WAY THEY CAN BE ENTITLED TO AN EVIDENTIARY HEARING ON THESE VAGUE ALLEGATIONS.

I BRIEFLY TALK ABOUT ISSUE ONE WITH MR. GALEMORE.

AGAIN, THE TRIAL COURT SUMMARILY DENIED THIS, AND I WOULD SUBMIT IT WAS PROPER BASED ON THE

FAILURE --

>> THE WARDEN?

>> THIS IS THE ASSISTANT WARDEN AT, I BELIEVE, POLK CORRECTIONAL INSTITUTE.

THEY PROFFERED, OR THEY WANTED TO CALL HIM AT THE PENALTY PHASE, AND IT'S VERY CLEAR FROM THE RECORD THAT TRIAL COUNSEL WANTED HIM TO TESTIFY ABOUT THIS INFORMATION THAT HE HAD PRINTED UP OFF THEIR WEB SITE WHICH WAS THE CONDITIONS OF WHAT AN INMATE WOULD HAVE A DAILY LIFE LIKE ON PRISON IF HE WERE TO RECEIVE A LIFE SENTENCE AS OPPOSED TO A DEATH SENTENCE.

HE HAD PRINTED OUT A SHEET AND GIVEN IT TO THE TRIAL COURT THAT'S IN THE RECORD, I THINK IT'S CALLED COMMON MISCONCEPTIONS ABOUT SERVING LIFE IN PRISON.

AND IT'S, BASICALLY, IF YOU'RE SENTENCED TO LIFE IN PRISON, YOU'RE GOING TO WORK, YOU'RE NOT GOING TO BE IN AIR-CONDITIONING, NOT GOING TO HAVE TV AND WHAT HAVE YOU.

HE DID NOT WANT MR. GALEMORE TO TESTIFY TO PERSONAL EXPERIENCE.

HE HAD EIGHT OTHER CORRECTIONAL EMPLOYEES THAT ACTUALLY SUPERVISED MR. TROY AND WERE FAMILIAR WITH HIM.

HE HAD THOSE PEOPLE FOR THAT

TESTIMONY.

HE WANTED MR. GALEMORE TO TESTIFY ABOUT WHAT THE CONDITIONS IN THE PRISON WOULD BE LOOK FOR ANYBODY SENTENCED TO LIFE, NOT NECESSARILY MR. TROY. BUT THEY, COUNSEL INDICATED AT THE VERY END, AND THIS IS, I THINK, KEY.

THEY'VE NEVER ALLEGED THAT MR. GALEMORE WOULD HAVE FAVORABLE TESTIMONY TO THEM. THEIR ALLEGATIONS ARE TRIAL COUNSEL SHOULD HAVE PREPARED MR. GALEMORE BY GIVING HIM THESE RECORDS, BUT THEY NEVER EVEN SAY HE'S GOING TO PROVIDE FAVORABLE TESTIMONY, AND, IN FACT, I WOULD QUESTION THAT HE WOULD PROVIDE FAVORABLE TESTIMONY.

MR. TROY HAD A PRIOR ASSAULT CHARGE FROM PRISON WHERE HE STABBED ANOTHER INMATE, AND HE ALSO ADMITTED TO USING DRUGS WHILE IN PRISON.

IT'S VERY UNLIKELY THAT MR. GALEMORE, ASSISTANT WARDEN, WOULD COME IN A CAPITAL CASE AND TESTIFY FAVORABLY BASED ON HIS REVIEW OF MR. TROY'S RECORD.

>> AND THE ISSUE AS TO WHETHER TESTIMONY LIKE THIS, ABOUT THIS IS WHAT IT'S LIKE TO SERVE LIFE IN PRISON, COULD BE RELEVANT, BUT THE JUDGE MADE A DECISION IT WASN'T IN THIS CASE.

WE AFFIRMED IT.

HE MADE THE STATEMENT, WELL, I DIDN'T EVEN KNOW HIM.

BUT IN TRUTH, YOU KNOW, THERE MAY BE SOME BASIS IN A FUTURE CASE FOR THERE TO BE RELEVANCE, JUST THAT GENERAL TESTIMONY ABOUT WHAT LIFE MEANS IN THE STATE OF FLORIDA.

>> RIGHT.

>> BUT IT WOULDN'T LINK UP WITH WHAT WILL LIFE MEAN FOR THIS PARTICULAR DEFENDANT, AND THAT'S WHAT YOU'RE -- THAT'S REALLY WHAT YOU'RE SAYING.

>> RIGHT.

AND THIS COURT ADDRESSED IT ON DIRECT APPEAL, AND I WOULD ARGUE THAT THIS COURT'S FINDING THAT THE TRIAL COURT PROPERLY EXCLUDED IT AND EVEN IF IT HAD ERRED IS FATAL TO HIS POSTCONVICTION CLAIM BECAUSE IT CAN'T SHOW PREJUDICE WHEN THIS COURT'S ALREADY SAID THAT MR. GALEMORE'S TESTIMONY, YOU KNOW, THE EXCLUSION OF IT WAS HARMLESS.

SO I THINK, BASICALLY, THEIR ALLEGATIONS ON DEFICIENCY AND PERFORMANCE PROGRESS WERE REFUTED BY WHAT THE RECORD SAYS.

I'D ASK THIS COURT TO AFFIRM.

THANK YOU.

>> JUST BRIEFLY, JUSTICE QUINCE, YOU WERE REFERRING -- AND I

DON'T KNOW IF YOU UNDERSTOOD CLEARLY -- WHEN THE JURY PANEL WAS ASKED WHETHER ANY OF THEM KNEW THE VICTIM OR THE VICTIM'S FAMILY, THAT'S THE PART THAT WAS THE DOOR OPENING AND, I THINK, THE MAJOR --

>> THAT WAS THE PART THAT WHAT?

>> THAT WAS THE MAJOR DOOR OPENING FOR THE JUDGE TO GRANT POSTCONVICTION INTERVIEW.

BECAUSE IF THE VICTIM WAS NAMED, USED ORTIZ AS HER MIDDLE NAME AND THEN HER MARRIED NAME OR -- YES, MARRIED NAME.

BUT THE JUDGE DID NOT LIFT OUT THE REST OF THE VICTIM'S FAMILY. AND BECAUSE THE SIMPLE ANSWER, WELL, NO, WE DON'T KNOW THEM, THAT'S WHY I REALLY THINK THE POSTCONVICTION BROUGHT MR. HAMBLIN IN BECAUSE OF THE VOIR DIRE SCENARIO WAS SO, IF YOU WILL --

>> BUT YOU AREN'T MAKING, YOU DIDN'T MAKE AN ALLEGATION THAT BECAUSE SHE WAS JUST BONNIE ORTIZ CARROLL AND THEY --

>> NO, AND THAT --

>> THAT WAS NOT A PART.

>> THAT WAS THE DOOR OPENING FOR THE --

[INAUDIBLE]

THANK YOU.

>> THANK YOU.

THE COURT WILL NOW STAND IN

RECESS FOR TEN MINUTES.

>> PLEASE RISE.

SUPREME COURT'S NOW IN RECESS.