>> ALL 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, YOU SHALL BE
HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
OUR FIRST CASE FOR THE DAY IS
LEBRON V. STATE OF FLORIDA.
YOU MAY PROCEED.
>> GOOD MORNING.
MY NAME IS JAY EDWIN MILLS, AND
I REPRESENT JERMAINE LEBRON ON
HIS POSTCONVICTION PROCEEDINGS.
I KNOW THAT YOU'VE ALL READ THE
BRIEFS THAT HAVE BEEN FILED IN
THIS CASE.
I SPOKE WITH MR. NUNNELLEY A
COUPLE OF WEEKS AGO, AND I THINK
WE BOTH AGREE THAT THE ISSUES
HAVE BEEN BRIEFED VERY WELL AT
THIS POINT.
THE PRIMARY CONCERNS THAT I HAVE
CENTER AROUND TWO ISSUES,
ACTUALLY, ONE OF WHICH APPLY TO
BOTH THE GUILT AND THE PENALTY
PHASE, AND IT IS THE CUMULATIVE
EFFECT OF WHAT I BELIEVE ARE
ERRORS OR OMISSIONS THAT WERE
COMMITTED BY TRIAL COUNSEL.
THE SECOND ISSUE I'VE GOT DEALS
WITH ONLY THE PENALTY PHASE, AND
THAT IS THE 7-5 DEATH
RECOMMENDATION WHEN CONSIDERED
ALONG WITH THE CUMULATIVE EFFECT
OF THE ERRORS THAT I BELIEVE
WERE MADE DURING THE PENALTY
PHASE OF THIS CASE.
I BELIEVE AS TO THE GUILT PHASE
OF THIS CASE, AS WE'VE BRIEFED
BUT I WANT TO TALK ABOUT A

COUPLE OF THINGS SPECIFICALLY,
ONE IS THE FAILURE TO FILE A
MOTION TO SUPPRESS THE EVIDENCE
THAT WAS SEIZED OUT OF THE
VEHICLE THAT MR. LEBRON WAS
FOUND IN BY DETECTIVE RODRIGUEZ
IN NEW YORK.
THAT WAS A DAY PLANNER THAT HAD
THE VICTIM'S OR HAD -- YEAH, HAD
THE VICTIM'S IDENTIFICATION
INSIDE THAT DAY PLANNER.
I BELIEVE --
>> LET ME ASK YOU ABOUT THE DAY
PLANNER.
NOW, THAT WAS FOUND IN AN
AUTOMOBILE, RIGHT?
>> CORRECT.
>> WAS THAT AUTOMOBILE STOLEN?
>> I DON'T RECALL THAT IT WAS.
>> WELL, NOW, IF IT WAS STOLEN,
MIGHT THAT NOT BE A SIGNIFICANT
CIRCUMSTANCE?
I MEAN, THERE MAY BE OTHER
PROBLEMS WITH YOUR ARGUMENT, BUT
DOES SOMEONE WHO HAS STOLEN A
CAR HAVE A REASONABLE
EXPECTATION OF PRIVACY OF THINGS
THAT ARE IN THE CAR?
>> AGAIN, I'M NOT CLEAR THAT THE
VEHICLE WAS STOLEN.
BUT ASSUMING IT WAS, AND I
BELIEVE THAT MAY WELL HAVE BEEN
THE CASE, I DON'T THINK THAT
THAT ISSUE, THE ISSUE REGARDING
AN EXPECTATION OF PRIVACY IN A
STOLEN VEHICLE, WAS EVER RAISED
ANYWHERE ALONG THE LINE.
AND --
>> WELL, BECAUSE IT HAD NO
MERIT.
>> COUNSEL WOULD, I MEAN,
COUNSEL -- BUT YOU'RE
COMPLAINING THAT COUNSEL DID NOT
DO SOMETHING TO GET THAT
SUPPRESSED.
>> CORRECT.
>> WELL, BUT IF IT'S NOT GOING
TO WORK, THEN COUNSEL'S GOT NO
REASON TO GET INTO IT.
IF THE -- AND I JUST DON'T

UNDERSTAND HOW THERE CAN BE AN
EXPECTATION OF PRIVACY IN A
STOLEN VEHICLE.
AND I KNOW THE LANDSCAPE ABOUT
SEARCHES OF VEHICLES --
>> YES, SIR.
>> -- INCIDENT TO ARREST HAS
CHANGED.
THAT'S ANOTHER ISSUE HERE.
I DON'T THINK WE CAN APPLY THAT
RETROACTIVELY, I DON'T THINK.
AND TO SAY THAT COUNSEL WAS
DEFICIENT THEN BECAUSE HE COULD
HAVE SEEN WHAT WAS GOING TO
HAPPEN AGAIN.
BUT PUTTING THAT ASIDE, EVEN
UNDER THE LAW WE'VE GOT NOW I
DON'T SEE HOW SOMEONE WHO HAS
STOLEN A CAR CAN HAVE AN
EXPECTATION OF PRIVACY OF WHAT'S
IN THE CAR.
>> I DON'T RECALL, SIR, THAT
THERE WAS EVER ANY EVIDENCE THAT
THE DEFENDANT, THE APPELLANT IN
THIS CASE STOLE THAT CAR.
IN FACT, I THINK THAT THE RECORD
SHOWS THAT HE WAS A PASSENGER IN
THE CAR AND NOT THE DRIVER WHEN
DETECTIVE RODRIGUEZ CAME UPON
THE VEHICLE.
>> BUT IT WAS STILL A STOLEN
CAR.
>> THAT MAY WELL BE, BUT I, I
DON'T KNOW THAT THAT NECESSARILY
EXTINGUISHES HIS EXPECTATION OF
PRIVACY.
>> BUT YOU DO AGREE THIS
HAPPENED BEFORE THE RECENT
CHANGE IN THE AUTOMOBILE SEARCH
LAW.
THIS OCCURRED WHEN BELTON WAS
STILL THE LAW OF THE LAND?
THE FACTS IN THIS CASE?
>> WELL -- TRUE ENOUGH, SIR.
>> OKAY.
>> WE CITED CHIMMEL IN OUR
BRIEFS, TOO, THAT INDICATE THAT
A SEARCH INCIDENT TO ARREST
LIMITED TO THE ARM'S LENGTH OR
THE REACH OF THE PERSON THAT'S

BEEN ARRESTED.
>> WHICH THIS WAS IN THE
CONSOLE, WAS IT NOT?
>> I'M SORRY?
>> WAS THIS NOT IN THE CONSOLE?
ISN'T THAT THE EVIDENCE IN THIS
CASE, THAT THEY FOUND --
>> I BELIEVE IT WAS, YES, SIR.
>> SO THAT'S IN ARM'S LENGTH OF
THE PASSENGER IN THE CAR.
>> I THINK IN CHIMMEL THAT THE
COURT TALKS ABOUT THE TIME THE
SEARCH OCCURRED.
AND, CERTAINLY, MR. LEBRON AND
THE OTHER TWO OCCUPANTS -- OR AT
LEAST ONE OF THE OCCUPANTS HAD
BEEN SECURED BY LAW ENFORCEMENT.
>> WELL, THEN, OKAY.
THEN WE HAVE A DIFFERENT
INTERPRETATION OF THE BELTON LAW
PRIOR TO THE RECENT CHANGE.
BECAUSE, CERTAINLY, THE RECENT
CHANGE PUTS IT IN THAT POSTURE.
BUT I THINK THE U.S. SUPREME
COURT HAS BEEN TOTALLY CLEAR
THAT LAW ENFORCEMENT IS NOT TO
SUFFER THE SANCTION OF
SUPPRESSION OF EVIDENCE WHEN
THEY FOLLOW LONG-EXISTING LEGAL
PRECEDENT, IE, BELTON.
I THINK THEY EVEN SAID THAT,
DIDN'T THEY?
>> I THINK YOU'RE CORRECT --
>> EXPRESSLY SAID THAT.
>> BUT I THINK OUR -- MY
POSITION IS THAT CHIMMEL --
>> WOULD STILL CONTROL --
>> SIR?
>> WOULD STILL CONTROL?
>> YES, SIR.
>> AND SAY THAT CONTROLS THIS
CASE.
OKAY.
>> SO THAT --
>> BUT EVEN IF, EVEN IF THAT'S
THE CASE, DON'T WE HAVE THE
INEVITABLE DISCOVERY RULE COMING
INTO PLAY HERE?
I MEAN, THIS WAS A STOLEN
VEHICLE THAT WAS GOING TO BE

IMPOUNDED AT SOME POINT BECAUSE
THE OCCUPANTS WERE UNDER ARREST.
CERTAINLY, A WARRANT WOULD HAVE
ISSUED TO SEARCH THAT VEHICLE
BASED ON THE FACT THAT THESE
PEOPLE WERE, HAD ARREST
WARRANTS.
SO ISN'T IT INEVITABLE THAT THIS
INFORMATION WOULD HAVE BEEN
DISCOVERED?
>> I DON'T KNOW THAT THAT WAS
FERRETED OUT DURING --
>> BUT IF WE THINK ABOUT IT,
ISN'T THAT, WOULDN'T THAT HAVE
HAPPENED?
THEY WOULD HAVE GOTTEN, THEY
WOULD HAVE HAD PROBABLE CAUSE TO
GET A WARRANT TO SEARCH THAT
VEHICLE.
THE SAME PLANNER AND SHOTGUN
SHELLS WOULD HAVE BEEN FOUND.
AND SO EVEN IF WE ASSUME THAT
YOU'RE CORRECT AND THAT CHIMMEL
AND BELTON SAYS THAT YOU
COULDN'T HAVE SEARCHED THIS
VEHICLE INCIDENT TO ARREST, THIS
SAME EVIDENCE WOULD HAVE
INEVITABLY BEEN FOUND.
>> I DON'T KNOW, JUSTICE, THAT
THERE WAS ANY INDICATION THAT
LAW -- YOU SAY THAT WE CERTAINLY
WOULD HAVE HAD PROBABLE CAUSE.
I HAVE TO RESPECTFULLY DISAGREE
WITH THAT.
THERE WAS, THE PLANNER WAS FOUND
INSIDE A CONSOLE, AND --
>> WELL, ONCE -- IF YOU GET AN
ARREST -- IF YOU GET A SEARCH
WARRANT FOR THE VEHICLE, YOU
COULD HAVE SEARCHED THE ENTIRE
VEHICLE INCLUDING THAT CONSOLE.
>> ABSOLUTELY, YOU COULD HAVE.
I'M NOT SURE THOUGH, JUSTICE
QUINCE, THAT YOU COULD HAVE
GOTTEN A SEARCH WARRANT WITH THE
INFORMATION THAT LAW ENFORCEMENT
HAD AT THAT TIME OTHER THAN THE
FACT THAT TWO OR POSSIBLY THREE
OF THE OCCUPANTS OF THE VEHICLE
WERE PLACED UNDER ARREST --

>> AND THAT THE VEHICLE WAS
STOLEN.
BECAUSE THE VEHICLE WAS STOLEN,
THEY CERTAINLY WERE NOT GOING TO
TURN IT OVER TO ANYONE, CORRECT?
NOT -- THERE WERE THREE
OCCUPANTS OF THE VEHICLE, RIGHT?
>> THERE WERE.
>> THEY WERE NOT GOING TO TURN
THE VEHICLE OVER TO ANY ONE OF
THOSE PERSONS, CORRECT?
>> I THINK YOU'RE CORRECT.
YES, MA'AM.
OKAY.
YES, MA'AM.
THE OTHER ISSUES AS TO THE GUILT
PHASE OF THE CASE HAVE TO DO
WITH, WITH MR. SLOVIS'
PERFORMANCE AS TRIAL COUNSEL.
NOW, THIS CASE HAS BEEN UP
BEFORE THE SUPREME COURT A
NUMBER OF TIMES.
I'M SURE, I KNOW, I'M CONFIDENT
THAT THE COURT'S AWARE THAT
MR. SLOVIS TRIED THE GUILT PHASE
OF THIS CASE BY HIMSELF.
THERE, HIS DEATH
PENALTY-QUALIFIED COUNSEL WAS
INVOLVED IN ANOTHER TRIAL AT THE
TIME THE GUILT PHASE TOOK PLACE,
AND JUDGE PERRY DID NOT OR WOULD
NOT CONTINUE THE CASE SO THAT
DEATH-QUALIFIED COUNSEL COULD BE
PRESENT.
MR. SLOVIS STATED A NUMBER OF
TIMES THAT HE WAS NOT QUALIFIED
TO SELECT A JURY IN A DEATH
PENALTY CASE, THAT HE HAD NO
IDEA WHAT HE WAS DOING, HE HAD
NEVER PARTICIPATED IN A DEATH
PENALTY CASE IN THE STATE OF NEW
YORK WHERE HE WAS LICENSED.
>> BUT DESPITE THAT, WHAT WAS
ERRONEOUS ABOUT HIS SELECTION OF
THE JURY?
>> I WOULD SUBMIT TO THE COURT
THAT HIS JURY SELECTION
PERFORMANCE WAS DEFICIENT,
CERTAINLY.
MR. LEBRON IS A MINORITY, AND

THERE WAS AT LEAST ONE
AFRICAN-AMERICAN GENTLEMAN THAT
WAS EXCUSED -- WITHOUT OBJECTION
BY MR. SLOVIS -- THAT WAS
EXCUSED BECAUSE OF WHAT WAS
CHARACTERIZED AS AN EXTREME
HARDSHIP --
>> FINANCIAL HARDSHIP.
>> HE WOULD HAVE TO TAKE THE BUS
TO THE COURT EACH DAY.
AND MR. SLOVIS DID NOT ATTEMPT,
CERTAINLY HE NEVER ASKED FOR A
INQUIRY.
>> BUT WE'RE TALKING ABOUT AN
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIM.
>> CORRECT.
>> AND SO YOU'VE GOT TO PROVE
BOTH DEFICIENT PERFORMANCE ON
THE PART OF THE COUNSEL AND
RESULTING PREJUDICE, CORRECT?
AND WHAT IS THE STANDARD IN A
POSTCONVICTION TO SHOW PREJUDICE
AND ERRONEOUSLY ALLOWING A JUROR
TO BE EXCUSED?
>> I BELIEVE THAT IT'S PROVEN, I
BELIEVE THE STANDARD IS BY A
PREPONDERANCE OF THE EVIDENCE.
CERTAINLY, STRICKLAND DOESN'T
REQUIRE THAT WE SHOW THAT THE
OUTCOME WOULD HAVE BEEN
DIFFERENT.
I THINK STRICKLAND AND THE CASES
FOLLOWING STRICKLAND SIMPLY --
NOT SIMPLY, BUT REQUIRE A
SHOWING THAT THERE IS A
LIKELIHOOD BEFORE WE HAVE MET
OUR BURDEN.
>> I BELIEVE, AND WHEN WE'RE
TALKING ABOUT THE ERRONEOUS
CHALLENGE OF THE JUROR, DON'T
YOU HAVE TO SHOW IN
POSTCONVICTION THAT A JUROR WHO
WAS SUBJECT TO CHALLENGE
ACTUALLY SAT ON THE JURY?
ISN'T THAT THE STANDARD WHEN
WE'RE IN POSTCONVICTION?
>> I DON'T BELIEVE THAT IT IS.
I'M SORRY, I HAVE TO DISAGREE
WITH THAT POSITION.

AGAIN --
>> WHAT DID, WHAT DID JUDGE, THE TRIAL JUDGE FIND ABOUT THAT PARTICULAR CLAIM IN HIS ORDER?
I MEAN, DIDN'T HE MAKE FINDINGS AND SAY THAT BASICALLY THE COUNSEL HAD OBJECTED, AND -- BUT THAT THERE WAS NO AUTHORITY BECAUSE THIS WAS ON A FINANCIAL BURDEN THAT THERE WAS ONE PROSPECTIVE AFRICAN-AMERICAN JUROR --
>> CORRECT.
>> BUT THERE WAS NO AUTHORITY TO HAVE THE STATE PAY FOR THIS JUROR TO GET EXTRA TRANSPORTATION.
SO THE IDEA THAT BECAUSE THIS GUY, LAWYER'S FROM NEW YORK THAT SOMEHOW THAT RENDERS HIS PERFORMANCE DEFICIENT WHEN THE TRIAL LAWYER OBJECTED, AND IT WAS OVERRULED, AND I'M NOT SURE WHAT ELSE YOU WOULD HAVE EXPECTED ANY LAWYER -- DEATH-QUALIFIED OR NOT -- TO HAVE DONE UNDER THOSE CIRCUMSTANCES.
>> I WOULD CERTAINLY EXPECT THAT THERE WOULD BE FURTHER INQUIRY INTO THE HARDSHIP.
>> BUT THAT'S, YOU KNOW, NOW WE'RE GETTING INTO THE -- WE ARE ALL FAMILIAR WITH STRICKLAND.
THE SIXTH AMENDMENT REQUIRES THAT COUNSEL PERFORM IN A MINIMALLY-COMPETENT WAY.
YOU'RE SORT OF ASKING THAT, WELL, I THINK HE SHOULD HAVE DONE THIS, I THINK HE SHOULD HAVE DONE THAT.
THAT'S THE CLASSIC 20/20 HINDSIGHT.
AND SO DO YOU HAVE -- YOU KNOW, YOU'RE RAISING SEVERAL CLAIMS.
WHAT WOULD YOU CONSIDER, DO YOU HAVE THE -- IS THIS YOUR BEST GUILT PHASE CLAIM ON INEFFECTIVE ASSISTANCE OF COUNSEL?
IS IT THIS ONE OR --

>> NO.
THE CULMINATION OF SEVERAL.
>> WELL, SO FAR WE HAVE A MOTION
TO SUPPRESS BASED ON INEVITABLE
DISCOVERY OR THE FACT THAT THE
VEHICLE WAS STOLEN THAT WOULD
HAVE BEEN MERITLESS, AN
OBJECTION TO A JUROR NOT BEING
EXCUSED FOR FINANCIAL HARDSHIP,
THAT THERE'S NO CASE LAW THAT
WOULD SAY THAT THAT JUROR SHOULD
HAVE BEEN ALLOWED TO SIT.
WHAT ELSE IS THERE?
>> JUDGE, JUSTICE, MR. SLOVIS
FAILED TO OBJECT TO VARIOUS
STATEMENTS MADE BY THE
PROSECUTION DURING THE COURSE OF
THE GUILT PHASE SUCH AS IT'S THE
LAW THAT YOU IMPOSE DEATH IF
AGGRAVATORS OUTWEIGH THE
MITIGATORS.
THAT'S CERTAINLY NOT AN ACCURATE
STATEMENT OF THE LAW.
IT'S PROPER TO IMPOSE DEATH IF
THE AGGRAVATORS OUTWEIGH THE
MITIGATORS.
THAT MAY BE CLOSE TO BEING AN
ACCURATE STATEMENT.
HE FAILED TO OBJECT OR MOVE FOR
A MISTRIAL WHEN IT WAS SAID THAT
IT'S INCUMBENT TO VOTE FOR DEATH
IF THE AGGRAVATORS OUTWEIGH THE
MITIGATOR.
>> DO YOU HAVE ANYTHING ON YOUR
GUILT PHASE ISSUES THAT WOULD
POINT TO A QUESTION AS TO
WHETHER OUR CONFIDENCE IN THE
OUTCOME OF THIS GUILT PHASE --
THAT IS, THAT LEBRON IS, IN
FACT, GUILTY OF FIRST-DEGREE
MURDER -- IS UNDERMINED?
ANY WITNESSES THAT SHOULD HAVE
BEEN CALLED THAT WEREN'T CALLED,
NEW WITNESSES THAT HAD BEEN
UNCOVERED, A DEFICIENT GUILT
PHASE INVESTIGATION, ANYTHING OF
THAT NATURE THAT WOULD CALL INTO
QUESTION THE INTEGRITY OF THIS
VERDICT?
>> THE WITNESSES THAT COME TO

MIND IN RESPONSE TO THE QUESTION
ARE ROBERT AND CHARLOTTE SPEARS.
>> BUT THEY COULDN'T FIND THOSE
STILL EVEN FOR THE HEARING ON
THE COLLATERAL RELIEF, CORRECT?
>> THAT'S CORRECT.
>> SO, I MEAN, THIS IS -- I'M
NOT AWARE OF ANY CASE IF FLORIDA
THAT SAYS THAT YOU CAN SAY X AND
Y SHOULD HAVE BEEN CALLED AS
WITNESSES WITHOUT PRESENTING X
AND Y TO TESTIFY DURING THE
COLLATERAL PROCEEDING.
BECAUSE IF WE COULD DO THAT,
WE'D JUST HAVE ON JUST PURE
ALLEGATIONS WITHOUT ANY
EVIDENCE.
AND SO HERE IT SEEMS TO ME THAT
EVEN IF WE ACCEPT THEY SHOULD
HAVE BEEN CALLED AS WITNESSES,
THERE'S A FAILURE OF PROOF
BECAUSE THERE WAS NO EVIDENCE
DURING THE COLLATERAL
PROCEEDING.
ISN'T THAT CORRECT?
>> YES, SIR, IT IS.
>> OKAY.
>> IT IS.
>> ALL RIGHT, I MEAN --
>> YOU'RE ALMOST -- YOU'RE IN
YOUR REBUTTAL.
YOU HAD SEVERAL PENALTY PHASE
CLAIMS, AND MY QUESTION JUST
GENERALLY ON THAT IS THIS WAS
HIS, WHAT, FIFTH PENALTY PHASE,
MR. LEBRON'S?
FOURTH?
THIRD?
>> I DON'T THINK IT WAS HIS
FIFTH, YOU KNOW --
>> WELL, HE GOT SEVERAL 7-5s.
>> HE HAS.
>> EACH TIME.
IT'S SORT OF REMARKABLE.
MR. NORGARD WAS HIS LAWYER.
>> CORRECT.
>> NOW, MR. NORGARD IS WELL
KNOWN TO THIS COURT, AND WE
COULD TAKE JUDICIAL NOTES TO THE
FACT THAT MR. NORGARD TESTIFIES

FREQUENTLY FOR WHAT IS DEFICIENT
IN INVESTIGATION.
IT IS HARD, I'M HARD PRESSED TO
SEE HOW AFTER MR. NORGARD LOOKED
INTO THE MENTAL HEALTH
MITIGATION, OBTAINED MENTAL
HEALTH EXPERTS AND GOT WHAT HE
THOUGHT WOULD BE A DAMNING
DIAGNOSIS HOW MR. NORGARD COULD
BE FAULTED FOR THAT REASONABLE
TRIAL DECISION AFTER
INVESTIGATING MITIGATION.
I THINK YOU JUST HAVE A VERY
DIFFICULT BURDEN ON THIS
ESPECIALLY BECAUSE IT WAS TRIED
SO MANY TIMES.
TO SAY, WELL, I THINK HE SHOULD
HAVE PUT THAT MENTAL HEALTH
EXPERT ON.
DO YOU HAVE ANYTHING THAT YOU
CAN OTHER THAN THE -- WE READ
YOUR BRIEFS THAT WOULD SAY THIS
JUST WAS A LAWYER THAT JUST FELL
DOWN ON HIS JOB AND REALLY
UNDERMINES CONFIDENCE IN THE
PENALTY PHASE FOR MR. LEBRON?
>> I THINK WE DO.
AND THE REASON I SAY THAT, YOUR
HONOR, IS WITH ALL DUE RESPECT
TO MR. NORGARD, THERE WAS NEVER
A REPORT THAT WAS WRITTEN BY
DR. DEE WHO WAS HIS MENTAL
HEALTH EXPERT.
WE DON'T -- UNFORTUNATELY,
DR. DEE HAD PASSED AT THE TIME
THAT WE HAD THE POSTCONVICTION
HEARING.
>> WELL, MR. NORGARD TESTIFIED
THOUGH.
HE TESTIFIED ABOUT WHAT DR. DEE
TOLD HIM AND WHY HE DID NOT WANT
TO PURSUE THAT.
HE SPECIFICALLY SAID WHAT
DR. DEE TOLD HIM ABOUT THE
ANTISOCIAL PERSONALITY ORDER AND
THE DEGREE TO WHICH IT WAS
MANIFESTED IN THE DEFENDANT FOR
MR. NORGARD, ISN'T THAT CORRECT?
>> THAT IS CORRECT.
HE TESTIFIED AT THE EVIDENTIARY

HEARING IN THIS CASE.
THE SHEER VOLUME OF ISSUES,
MENTAL HEALTH ISSUES THAT BOTH
DR. EISENSTEIN AND
MR. CUNNINGHAM --
DR. CUNNINGHAM, WHO I KNOW
YOU'RE FAMILIAR WITH -- FOUND IN
THEIR INVESTIGATION OF
MR. LEBRON'S MENTAL HEALTH
STATUS, IF YOU WILL, I WOULD
SUBMIT TO THE COURT FAR OUTWEIGH
DR. DEE'S OPINION AS TO WHAT HE
THINKS THAT --
>> DON'T WE ALSO HAVE
DR. DANSLER IN THIS CASE ALSO?
IT SEEMS TO ME THAT WE HAVE --
>> DOCTOR, I BELIEVE IT WAS
DR. DANSLER TESTIFIED AT THE
POSTCONVICTION EVIDENTIARY
HEARING.
>> UH-HUH.
AND HE DIRECTLY REFUTED SOME OF
THE, MUCH OF THE TESTIMONY FROM
DR. CUNNINGHAM AND
DR. EISENSTEIN DIDN'T HE?
>> I DON'T -- MY RECOLLECTION
IS, MY RECOLLECTION IS THAT
DR. DANZIGER TALKED ABOUT A
NUMBER OF DIFFERENT ISSUES THAN
WHAT DR. CUNNINGHAM TALKED
ABOUT.
>> BUT WHEN YOU LOOK AT THIS
CASE, YOU HAVE MR. NORGARD
TALKING ABOUT THE FACT THAT HE
CONSULTED WITH DR. DEE AND GOT A
VERY -- AS JUSTICE PARIENTE PUT
IT -- DAMNING REPORT.
AND DIDN'T HE ALSO CONSULT WITH
A DR. McLEAN?
I BELIEVE THAT'S ANOTHER MENTAL
HEALTH EXPERT ON THIS CASE ALSO?
>> I THINK DR. DANZIGER WAS THE
ONLY ONE THAT TESTIFIED AT THE
EVIDENTIARY HEARING.
>> RIGHT.
BUT I'M TALKING ABOUT PRIOR TO
TRIAL.
NOT AT THE EVIDENTIARY HEARING,
BUT PRIOR TO TRIAL DIDN'T HE
CONSULT WITH SOMEONE ELSE OTHER

THAN DR. DEE?
>> NOT THAT I'M AWARE OF.
DR. DEE WAS THE ONLY, WAS THE
ONLY ONE OF MY RECOLLECTION THAT
WAS REFERRED TO BY MR. NORGARD
AT THE EVIDENTIARY HEARING.
>> I THINK THAT MY RECOLLECTION
IS THAT HE HIRED ANOTHER MENTAL
HEALTH EXPERT TO REVIEW THE
RECORDS, ETC., AND NOT --
[INAUDIBLE]
TALK TO THE DEFENDANT.
THE STATE WOULDN'T HAVE AN
OPPORTUNITY --
[INAUDIBLE]
OR TO IMPLICATE WHAT DR. DEE
THOUGHT.
BASIS OF THE FUGITIVE
DECISION --
[INAUDIBLE]
IT WAS A DOUBLE-EDGED SWORD.
>> I DON'T RECALL THAT, JUSTICE
PERRY, I'M SORRY.
I DON'T RECALL THAT THERE WAS A
SECOND MENTAL HEALTH EVALUATION
DONE OF MR. LEBRON.
>> BUT AS HE SAID, IT WASN'T
REALLY A MENTAL HEALTH
EVALUATION OF THE DEFENDANT, IT
WAS REALLY MORE LOOKING AT THE
RECORDS AND BEING ABLE TO PUT
THOSE RECORDS INTO EVIDENCE
WITHOUT HAVING ACTUALLY HAD AN
EVALUATION OF THE DEFENDANT.
YOU DON'T RECALL THAT?
>> I DON'T, I DON'T.
AND THE -- LET ME -- I'M OUT OF
TIME, BUT IN RESPONSE TO YOUR
QUESTION, JUSTICE QUINCE, I --
THERE WAS NOT ANY OTHER MENTAL
HEALTH EXPERT THAT WAS CALLED
OTHER THAN DR. DANZIGER AT THE
EVIDENTIARY HEARING.
AND I DON'T RECALL THAT THERE
WERE ANY OTHER REPORTS.
I DON'T RECALL ANY TESTIMONY OR
ANY EVIDENCE AT THE HEARING
REGARDING ANY REPORT BY DR. DEE,
ANY RECORDS OF DR. DEE THAT
WOULD HAVE BEEN AVAILABLE FOR

REVIEW BY ANYONE ELSE.
>> BUT WE, AS NOTED, IT WAS
REALLY THE TESTIMONY OF THE
ATTORNEY TELLING US WHAT DR. DEE
HAD TOLD HIM, AND THAT
DISCUSSION FORMED HIS DECISION
NOT TO PUT ON A MENTAL HEALTH
EXPERT WHO HAD EXAMINED HIM AND
WOULD SAY THAT HE HAD THIS
OUTRAGEOUS, YOU KNOW, ANTISOCIAL
PERSONALITY DISORDER.
>> YOU'RE CORRECT.
I MEAN, THE RECORD DOES --
>> OKAY.
>> THE RECORD DOES SHOW THAT.
THANK YOU.
>> THANK YOU.
>> MAY IT PLEASE THE COURT, I'M
KEN NUNNELLEY, I REPRESENT THE
STATE OF FLORIDA.
DR. MCLEAN WAS INVOLVED IN THE
2002 PENALTY PHASE.
AND THAT'S SET OUT AND DISCUSSED
IN OUR BRIEF, PAGE 37 IN THE
FOOTNOTE.
THE BOTTOM LINE, AND I DON'T
KNOW THAT I NEED TO BELABOR
ANYTHING ABOUT THIS CASE REALLY
TO ANY DEGREE AT ALL, BUT
MR. NORGARD WAS VERY CLEAR THAT
THE LAST THING HE WANTED WAS THE
STATE TO HAVE A CHANCE TO HAVE
ITS OWN MENTAL STATE EVALUATION
OF THIS MAN.
BECAUSE HE KNEW WHAT THEY WERE
GOING TO FIND, BECAUSE DR. DEE
TOLD HIM.
AND THAT IS THAT THIS MAN IS, IN
DR. DEE'S WORDS, "THE COLDEST
ANTISOCIAL PERSONALITY DISORDER
I HAVE EVER SEEN IN MY CAREER."
>> AND FOR MR. NORGARD TO GET
THAT FROM SOMEBODY WHO WAS A
DEFENSE-FRIENDLY EXPERT WAS, I
MEAN, IN ITSELF IS A STATEMENT.
>> I THINK WE HAVE -- YES,
MA'AM.
AND MR. NORGARD WAS VERY CLEAR
ABOUT HOW MANY TIMES HE HAD USED
DR. DEE.

AND I'M NOT TAKING A SHOT AT
ANYBODY BY SAYING THAT.
MR. NORGARD WAS VERY CLEAR THAT
HE HAD USED DR. DEE MANY, MANY,
MANY TIMES.
I BELIEVE IT GOES BACK AS FAR AS
1985, IS WHAT HE SAID.
UM, AND DR. DEE'S WELL KNOWN TO
ME, HE'S WELL KNOWN TO Y'ALL, HE
WAS WELL KNOWN TO MR. NORGARD,
AND I THINK IT BEGS THE QUESTION
TO SAY THAT MR. NORGARD CAN'T
TAKE THAT VERBAL REPORT FROM
DR. DEE AT FACE VALUE.
>> I HAVE A QUESTION JUST ABOUT
THE JURY RECOMMENDATION.
EACH TIME THE CASE WENT TO
PENALTY PHASE WAS 7-5.
>> YES, MA'AM.
>> JUST A SPARE MAJORITY.
AND YET IT SEEMS THAT MR. LEBRON
WAS THE MAJOR PARTICIPANT IN
THIS MURDER.
I MEAN, UNDERSTANDING THAT IT'S
NOT OUR, YOU KNOW, BECAUSE
USUALLY 7-5 EITHER THAT MEANS
THAT MR. NORGARD KEPT ON DOING A
VERY GOOD JOB, OR ONLY ONE MORE
VOTE THEY NEEDED TO GET A LIFE
RECOMMENDATION.
I MEAN, IT'S NOT THAT THE
MITIGATION IS COMPELLING.
WAS THERE SOME CONCERN THAT
THERE REALLY WERE TOO MANY OTHER
PEOPLE INVOLVED IN THIS?
I MEAN, JUST FROM THE RECORD
THAT YOU'RE FAMILIAR WITH AS TO
WHY THAT, YOU KNOW, WE WOULD
NORMALLY SEE IN A CASE LIKE THIS
A 12-0, 11-1 RECOMMENDATION.
AND I WAS JUST SURPRISED WITH
SUCH LITTLE MENTAL HEALTH
MITIGATION TO SEE A 7-5.
>> I THINK WE WOULD HAVE SEEN A
12-0 IF MENTAL STATE MITIGATION
HAD BEEN ATTEMPTED.
>> SO WHAT WAS IT THAT WAS
COMPELLING ABOUT THE MITIGATION?
>> I DON'T KNOW.
>> THAT WAS PRESENTED?

>> WELL, I MEAN, CERTAINLY --
>> I WOULD HAVE TO SPECULATE.
>> WELL, I MEAN, CERTAINLY --
LET'S FACE IT, WE SEE A LOT OF
THESE CASES.
YOU'VE COME BEFORE US ON A
REGULAR BASIS, AND ALL OF THEM
HAVE A DIFFERENT KIND OF FACTUAL
PREDICATE WHERE THEY'VE COME
FROM.
BUT THIS PERSON, THE DEFENDANT,
CAME FROM A BACKGROUND THAT
WOULD BE COMPELLING TO A
LAYPERSON THAT HERE'S A PERSON
WHO WAS BASICALLY THROWN OUT BY
HIS MOTHER, HE WAS IN REFORM
SCHOOL FOR THE ENTIRE, MOST OF
HIS YOUTH.
AND ALTHOUGH THERE MAY NOT BE
THESE OTHER THINGS, IT WAS SORT
OF A PITIFUL KIND OF SITUATION.
AND SO, I MEAN, THE FACTS OF THE
CASE ABOUT HIS BACKGROUND, HIS
MOTHER HAVING THE STRIP CLUB AND
THOSE KINDS OF THINGS, THE
THINGS HE OBSERVED OR WAS
INVOLVED IN, THOSE ARE THINGS
THAT SORT OF PULL ON THE
HEARTSTRINGS OF FOLKS.
IT MAY NOT BE A BASIS FOR A
LEGAL BASIS FOR AGGRAVATORS OR
MITIGATORS, BUT, I MEAN, IT'S A
SAD PICTURE.
TO SAY WE DON'T KNOW WHY --
>> IT IS.
>> I MEAN, IT WAS A SAD PICTURE
FOR A PERSON GONE AWRY.
>> AND, YOU KNOW, THERE IS THE
KIND OF GLITCH IN THE CASE ABOUT
THE OMISSION OF THE STEP OF WHO
ACTUALLY PULLED THE TRIGGER.
THAT PROBABLY HAS SOME
SIGNIFICANCE TO IT TOO.
THAT'S ALL I CAN SAY.
I MEAN, MR. NORGARD, QUITE
HONESTLY, YOU KNOW, KIND OF
PULLED A RABBIT OUT OF A HAT
GETTING THE 7-5.
I MEAN, IT COULD HAVE GONE BADLY
FOR THE DEFENDANT VERY EASILY.

AND I THINK THE JURY VOTE OF
ITSELF AND OF ALL THE
PROPORTIONALITY IS AN ISSUE THAT
HAS BEEN RESOLVED.
I THINK CERTAINLY THE JURY VOTE
ITSELF -- NOT THAT I NECESSARILY
BELIEVE THAT A JURY VOTE PER SE
IS TERRIBLY MEANINGFUL FOR A LOT
OF THINGS -- BUT IN THIS CASE I
THINK IT CERTAINLY SUGGESTS
MR. NORGARD DID A PRETTY GOOD
JOB.
>> WHY DON'T YOU RATHER INSTEAD
OF JUST TALKING GENERALITIES,
LET'S ADDRESS SOME OF THE LEGAL
ISSUES.
WHAT'S THE STATE'S POSITION ON
THE SUPPRESSION ISSUE WITH
REGARD TO THE VEHICLE IN NEW
YORK?
>> NO STANDING, INEVITABLE
DISCOVERY AND HARMLESS ERROR, IN
THAT ORDER.
STOLEN VEHICLE, THE ORDER'S VERY
CLEAR.
THE VEHICLE WAS STOLEN.
IT WAS SITTING OUT FRONT OF A
CLUB, I BELIEVE THE CLUB OWNED
BY THE DEFENDANT'S MOTHER.
ALSO MY UNDERSTANDING IS IN
CLOSE PROXIMITY TO A POLICE
PRECINCT.
IT'S SOMEWHERE IN NEW YORK, AND
THAT, YOU KNOW, LOCATIONS MEAN
NOTHING TO ME UP THERE.
I DON'T KNOW THE LAY OF THE
LAND.
I DON'T KNOW WHAT -- I KNOW IT
WAS A CHEVROLET BLAZER, I DON'T
KNOW WHAT YEAR OR MODEL OFF THE
TOP OF MY HEAD.
BUT MY UNDERSTANDING IS THAT THE
DAY PLANNER WITH MR. OLIVER'S
IDENTIFICATION IN IT WAS FOUND
UNDER THE CONSOLE AND FOUR
SHOTGUN SHELLS, SAME MAKE AND
MODEL AS USED IN THE MURDER,
WERE FOUND INSIDE THE CONSOLE.
THIS, AGAIN, WAS A STOLEN
VEHICLE.

NYPD WAS NOT GOING TO LEAVE IT
SITTING ON THE STREET.
MR. LEBRON CERTAINLY HAS NO
STANDING TO COMPLAIN ABOUT A
SEARCH OF A VEHICLE THAT'S NOT
HIS AND WHEN IT'S A STOLEN
VEHICLE.
IN ANY EVENT, IT WOULD HAVE BEEN
THEY WERE ARRESTED ON DEATH
WARRANTS -- I'M SORRY, ARREST
WARRANTS FOR MURDER OUT OF
FLORIDA.
SO IT GETS IMPOUNDED AND GETS
SEARCHED.
IT GETS IMPOUNDED AND SEARCHED
PURSUANT TO A SEARCH WARRANT,
BUT REGARDLESS OF HOW WE GET
THERE, ALL OF THAT EVIDENCE GETS
FOUND.
WITH RESPECT TO THE OTHER ISSUES
THAT THE COURT HAS SPECIFIC
QUESTIONS, I WILL, YOU KNOW,
CERTAINLY ANSWER THEM, YOU KNOW,
TO THE BEST THAT I CAN.
>> WELL, ON THE MENTAL, ON THE
MITIGATION SINCE THIS WAS TRIED
THREE, PENALTY PHASE I GUESS FOR
THE THIRD TIME, DID MR. NORGARD
USE A MENTAL HEALTH EXPERT AT
ANY OF THE OTHER PENALTY PHASES?
>> I BELIEVE HE USED
DR. McLEAN IN THE 2002
PROCEEDING.
>> THAT'S WHAT YOU SAID --
>> YES, MA'AM.
>> WHAT WAS THE REASON HE
DECIDED NOT TO USE DR. McLEAN
AGAIN?
>> THAT WAS NOT REALLY FLESHED
OUT AT THE HEARING.
>> BECAUSE WHEN SOMETHING GETS
TRIED OVER AND OVER, YOU FIGURE
YOU CAN LOOK AT AND SAY, WELL,
WHY DID THIS STRATEGY?
IT DIDN'T GO WELL LAST TIME, I'M
GOING TO CHANGE MY STRATEGY.
WAS MR. NORGARD ASKED ABOUT
THAT, WHETHER HE DID ANYTHING
DIFFERENT AND WHY HE DID IT, OR
IS THAT JUST ABSENT FROM THE

RECORD?
>> HE TESTIFIED THAT HE --
TRYING TO THINK OF THE WORD HE
USED BECAUSE HE HAD A PRETTY
GOOD PHRASE FOR IT.
HE SAID HE REEVALUATED WHAT HE
HAD DONE EVERY TIME IN PREPARING
FOR THE NEXT PROCEEDING AND THAT
THE, THE PRESENTATION THAT WAS
PUT ON AT THE PENALTY PHASE THAT
WE'RE ON NOW WAS THE RESULT OF
HIS CONSIDERED STRATEGY BASED
UPON HIS ASSESSMENT AND
EVALUATION AND REVIEW OF PRIOR
PROCEEDINGS.
>> AND I THINK THAT'S AN
IMPORTANT THING FOR WHEN WE'RE
LOOKING AT DEFICIENCY, THAT THE
SAME COUNSEL FOR EACH ONE --
>> YES, MA'AM.
>> SO HE'S BUILDING ON WHATEVER
HE HAS --
>> ABSOLUTELY.
>> -- DECIDED.
>> HE KEPT TRYING, AND HE KEPT
GETTING THE SAME RESULT WHICH
IS, QUITE HONESTLY, UNCOMMON.
USUALLY IT GETS BETTER FOR THE
STATE.
WITH THAT SAID, IF THE COURT HAS
NO FURTHER QUESTIONS, I WOULD
ASK THE COURT TO AFFIRM THE
DENIAL OF RELIEF.
>> THANK YOU FOR YOUR ARGUMENTS.