

>> THE SECOND CASE ON THE DOCKET IS WEATHERSPOON VERSUS STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT, COUNSEL.

MY NAME IS THE IRA KARMELIN. I'M HERE ON BEHALF OF CALVIN WEATHERSPOON.

STARRY DEVICE SEES IS THE CORNER STONE OF OUR JURISPRUDENCE SYSTEM BUT STARE DECISIS HAS TO FOLLOW THE LOGIC OF THE CASE BEFORE IT AND NOT JUST THE NAME AND THAT IS THE ERROR THAT AS OCCURRED HERE.

IN, 1995 THIS COURT HELD THAT THE CRIME OF ATTEMPTED FELONY MURDER DID NOT EXIST IN THIS STATE.

THE LEGISLATURE HAD THE CHOICE OF EITHER DIRECTLY OVERRULING THIS COURT AS IT HAD DONE IN OTHER CASES, SPECIFICALLY SCOTT AND CICCONE IN REFERENCE TO DRUGS.

THEY DIDN'T OVERRULE THIS COURT. THEY WENT AND THEY CREATED A NEW CRIME.

IN 1999 THEY CREATED FELONY CAUSING BODILY INJURY.

THEY THEN CHANGED IT TWO YEARS LATER AND CHOSE THE NAME, ATTEMPTED FELONY MURDER AND WHAT THE COURT--

>> LET ME ASK YOU THIS.

>> MAY I ASK YOU SPEAK UP.

I FLEW UP YESTERDAY AND MY WHOLE LEFT SIDE IS CLOGGED.

>> OKAY.

CAN YOU HEAR ME NOW?

>> YES, SIR.

>> WHEN, WHEN THERE IS AN INDICTMENT FOR FIRST-DEGREE MURDER, THE INDICTMENT, THE LAW DOES NOT REQUIRE THE INDICTMENT TO STATE WHETHER THE STATE IS PURSUING EITHER PREMEDITATED MURDER OR FELONY MURDER, AM I CORRECT?

>> THE LAST 101 YEARS EVER SINCE THE COURT ISSUED SLOAN, YES, SIR.

>> STATUTE THAT THE LEGISLATURE ENACTED TO CREATE THE CRIME OF

ATTEMPTED FELONY FIRST-DEGREE MURDER, WAS THE STATUTE INVOLVING FIRST-DEGREE MURDER CHANGED AS WELL?  
ARE THE PROSECUTORS NOW REQUIRED IN THEIR INDICTMENT TO CHOOSE WHICH, WHICH THEORY THEY'RE GOING TO PURE YOU SUE?  
>> THE COURT HAS NOT RULED THAT. THE COURT HAS--  
>> NOT TALKING ABOUT, ANY STATUTES CHANGE IN THAT REGARD?  
>> 782.04, THE MURDER STATUTE HAS HAD SOME CHANGES BUT IT HAS CHANGED SINCE SLOAN. SPECIFICALLY WHEN THE COURT ISSUED SLOAN IT WAS A SINGLE SENTENCE.  
THE COURT FOUND BASED ON SLOAN SINCE IT WAS A SINGLE SENTENCE YOU COULD SAY JUST MURDER AND IT INCLUDED BOTH.  
BUT THE STATUTE HAS CHANGED DRAMATICALLY 1915.  
WE'VE GONE FROM A SINGLE SENTENCE TO PARAGRAPH UPON PARAGRAPH.  
PARAGRAPH ONE IS THE PREMEDITATED MURDER.  
THE PARAGRAPH TWO ARE THE FELONY MURDERS AND THEY CONTINUE ON WITH THE OTHER PARAGRAPHS WHETHER IT WILL BE A FIRST-DEGREE FELONY MURDER OR A THIRD-DEGREE FELONY MURDER.  
THE LEGISLATURE HAS CHANGED IT SINCE 1915.  
I BELIEVE THE CASE LAW HASN'T CAUGHT UP WITH IT THOUGH.  
>> SO AS OF TODAY'S DATE, THE STATE STILL, IN AN ATTEMPTED, NOT FIRST-DEGREE MURDER, THE STATE STILL HAS TO ALLEGE IN THE INDICTMENT THEY'RE PURSUING FIRST DEGREE PREMEDITATED MURDER OR FIRST-DEGREE FELONY MURDER?  
>> THAT IS THE STATUS OF THE LAW TODAY.  
>> THE STATUTE YOU'RE RELYING ON IS ATTEMPTED FIRST-DEGREE FELONY MURDER?  
>> THE STATUTE--  
>> STATUTE ENACTED BY THE LEGISLATURE.

>> 782.051.  
>> THEY CREATED A CRIME.  
>> A CRIME COMPLETELY SEPARATE.  
>> WAS THAT STATUTE IN EFFECT AT  
THE TIME THE CRIME WAS  
COMMITTED?  
>> YES.  
THE STATUTE WAS EFFECTIVE IN  
1998.  
THIS CRIME OCCURRED IN 2008.  
>> I TAKE IT YOUR POSITION  
BECAUSE SUCH A STATUTE EXISTS  
AND THERE IS SUCH A CRIME, THAT  
IT HAS TO BE SPECIFICALLY PLED  
IN THE INFORMATION?  
>> YES, SIR.  
AS WITH ALL, AS WITH ALL CRIMES,  
THE INFORMATION, THE CHARGING  
DOCUMENT MUST HAVE THE ESSENTIAL  
ELEMENTS OF THE CRIME.  
GOING BACK TO SLOAN AND WHY THIS  
COURT HELD THAT YOU DON'T HAVE  
TO ALLEGE A FELONY MURDER FOR  
PREMEDITATED MURDER, THE COURT  
HELD THAT THE FELONY MURDER IS  
PREMEDITATION.  
WHETHER I AGREE WITH IT OR NOT  
IT DOESN'T NECESSARILY APPLY TO  
MR. WEATHERSPOON'S CASE  
BECAUSE--  
>> LET ME ASK YOU ABOUT THE  
PENALTIES IN THESE TWO VERY  
DIFFERENT CASE.  
>> VERY DIFFERENT.  
>> IN, WITH RESPECT TO THE  
ATTEMPTED MURDER, AND--  
>> WHICH ATTEMPTED?  
>> THE ATTEMPTED FELONY MURDER  
AND THE ATTEMPTED FIRST AGREE  
PREMEDITATED MURDER ARE THE  
PENALTIES DIFFERENT?  
>> VERY MUCH SO.  
>> OKAY.  
>> AN ATTEMPTED PREMEDITATED  
MURDER IS PUNISHABLE NO MORE  
THAN 30 YEARS.  
IT'S A FIRST-DEGREE FELONY.  
HOWEVER WHEN THE LEGISLATURE  
CREATED 782.051 THE ATTEMPTED  
FELONY MURDER, THEY MADE IT ONE  
PLBL.  
A FIRST DEGREE PUNISHED BY LIFE.  
>> IT IS KIND OF ODD BY CHARGING  
ONE OFFENSE THAT HAS A 30-YEAR

PENALTY YOU CAN BRING IN AN  
OFFENSE THAT HAS A LIFE PENALTY.  
THAT SEEMS KIND OF ANOMALOUS.  
IN THAT REGARD, ISN'T THIS  
DIFFERENT THAN WHAT WE'RE  
COMPARING IT TO, THE FIRST  
DEGREE MURDER OF, FIRST-DEGREE  
FELONY MURDER?

>> YES, SIR.

>> BECAUSE THERE THE PENALTIES  
ARE THE SAME, RIGHT?

>> IT IS SIMPLY FIRST-DEGREE  
MURDER PROVEN EITHER BY  
PREMEDITATION OR BY FELONY  
MURDER.

>> AND THE PENALTIES ARE THE  
SAME REGARDLESS.

>> EXACTLY.

THEY BOTH CAN CARRY THE DEATH  
PENALTY.

I'M SORRY, TIS QUINCE, I CAN'T  
HEAR YOU.

>> WHAT WAS THE STATE'S ARGUMENT  
IN REGARDS TO HAVING THAT  
INSTRUCTION?

DID THEY ALLEGE IT WAS AN  
INCLUDED OFFENSE UNDER THE--  
WHAT WAS IT A NECESSARILY LESSER  
INCLUDED OFFENSE OF ATTEMPTED  
PREMEDITATED MURDER?

>> THEY DIDN'T CALL IT A LESSER  
INCLUDED OFFENSE.  
THEY FELL BACK ON THE SLOAN LINE  
OF CASES.

>> IT'S A GREATER INCLUDED  
OFFENSE, RIGHT?

>> IN THIS PARTICULAR CASE, IF  
THEY WERE RIGHT IT WOULD BE A  
GREATER INCLUDED OFFENSE.  
THEY FELL BACK ON THE CASE LAW  
THAT SIMPLY SAID IF WE CHARGE  
PREMEDITATION WE AUTOMATICALLY  
GET FELONY MURDER AND--

>> IT SEEMS TO ME UNDER THIS  
CIRCUMSTANCE, WELL MAYBE I WILL  
JUST WAIT AND ASK THE STATE THIS  
QUESTION.

NEVER MIND.

>> HAVING THE GREATER OFFENSE IT  
LEADS TO WHAT THIS COURT HAS  
ALWAYS PROHIBITED, AN ABSURD  
RESULT.

HOW CAN WE CHARGE SOMEONE WITH  
ONE CRIME AND AUTOMATICALLY

INCLUDE A CRIME THAT IS EVEN  
GREATER?

>> NOW IN CONNECTION WITH THIS  
WE DON'T REALLY-- DO WE HAVE AN  
ARGUMENT HERE ABOUT THE GENERAL  
VERDICT IN THE CASE?

SO THEY CAME BACK WITH A GENERAL  
VERDICT BUT WE DON'T REALLY KNOW  
WHETHER THEY FOUND IT WAS, WHICH  
ONE OF THE ATTEMPTS IT WAS  
AND-- HOW CAN YOU KNOW THAT THE  
DEFENDANT SHOULD GET THE HIGHER  
PENALTY AS OPPOSED TO LOWER  
PENALTY BECAUSE WE DON'T KNOW  
FROM THE VERDICT, DO WE?

>> IT GOES BEYOND THAT, JUSTICE  
CANADY.

>> WE DON'T HAVE AN ARGUMENT ON  
THAT, DO WE?

>> WE HAVE AN ARGUMENT, IN THIS  
PARTICULAR CASE

MR. WEATHERSPOON'S COUNSEL ASKED  
FOR A SPECIFIC VERDICT SO THE  
JURY COULD SAY WHICH ONE THEY  
WERE CHOOSING.

THE TRIAL COURT REFUSED IT BUT  
DURING DELIBERATION THE JURY  
CAME BACK WITH A QUESTION  
BECAUSE THE VERDICT FORM DID NOT  
MATCH THE JURY INSTRUCTIONS.

SO WE HAVE IS EVEN MORE  
CONFUSION WHICH THEY WERE GOING  
FOR BECAUSE THEY SPECIFICALLY  
ASKED ABOUT ATTEMPTED FELONY  
MURDER BECAUSE THAT WAS NOT ON  
THE VERDICT FORM.

THE VERDICT FORM SIMPLY SAID,  
ATTEMPTED FIRST-DEGREE MURDER.  
SO THE JURY WAS CLEARLY CONFUSED  
AND THE TRIAL JUDGE SIMPLY TOLD  
THEM BASICALLY, ATTEMPTED  
FIRST-DEGREE MURDER IS EITHER A  
ATTEMPTED FIRST DEGREE  
PREMEDITATED MURDER OR  
ATTEMPTED FELONY MURDER.

>> WHAT IS THE SENTENCE  
HERE?

>> LIFETIME SEVEN.

SEVEN CONSECUTIVE LIFETIME  
SENTENCES BETWEEN THE ATTEMPTED  
MURDER CHARGES AND THE ROBBERY  
CHARGE.

THE ROBBERY CHARGE IS PART OF  
THE SECOND POINT THAT I HAVE IN

MY BRIEF THAT IS NOT PART OF THE CERTIFIED QUESTION, THAT MR. WEATHERSPOON'S IS ASKING THE COURT TO CONSIDER AS WELL BECAUSE THAT INVOLVES HIS CONFESSION.

>> LET ME ASK YOU THIS QUESTION ABOUT, DURING THE ACTUAL GUILT PART OF THE TRIAL, ACTUAL PREJUDICE.

DID YOUR LACK OF, THE LACK OF NOTICE IN THE INFORMATION THAT THE STATE WAS SEEKING THIS PARTICULAR CHARGE, DID IN ANY WAY INFORM ACTUALLY PREJUDICE YOU IN YOUR PREPARATION OF THE PRESENTATION OF THE CASE?

>> YES, YOUR HONOR.

>> HOW IS THAT?

>> AS STATED BY TRIAL COUNSEL THEY PREPARED FOR A TRIAL WHERE THEY WERE, WHERE THEY DID--

>> YOU WERE NOT THE TRIAL COUNSEL?

>> I WAS NOT THE TRIAL COUNSEL. WHERE THEY DID ADMIT THE ROBBERY.

THEY ADMITTED THE ROBBERY--

>> WHY DID THEY DO THAT?

>> IN OPENING STATEMENT, RIGHT FROM OPENING STATEMENT.

THAT IS WHERE IT BEGAN AND IT CONTINUES THROUGH BECAUSE, BY ADMITTING THE ROBBERY, THEY, AND THEY EVEN ASKED FOR AN INDEPENDENT ACT INSTRUCTION FOR THE JURY INSTRUCTIONS BECAUSE THEIR POSITION WAS OR MR. WEATHERSPOON'S POSITION WAS THE CODEFENDANT ACTED BEYOND THE SCOPE OF THE ROBBERY.

HE HAD NO IDEA THAT THE OTHER CODEFENDANT WAS GOING TO ACTUALLY SHOOT SOMEONE.

SO THEY WERE PREJUDICED.

HAD THEY NOT, HAD THEY KNOWN THAT THE STATE WAS TRYING TO PROCEED UNDER ATTEMPTED FELONY MURDER THEY WOULD NOT HAVE ADMITTED THE ROBBERY BECAUSE THEY GAVE AWAY THE CASE.

>> BUT HERE, AND AGAIN THERE'S YOU'RE MAKING THE ARGUMENT OF PREJUDICE BUT AS JUSTICE CANADY

IS POINTING OUT, THE GENERAL VERDICT, YOU CAN HAVE A GENERAL VERDICT WITH FELONY MURDER AND PREMEDITATED MURDER BECAUSE ALTHOUGH SOME HAVE ADVOCATED THERE STILL SHOULD BE A SPECIAL VERDICT BECAUSE IT'S THE SAME PENALTY AND IT'S, IT MAY MATTER FOR, IF IT'S A DEATH PENALTY CASE FOR THINGS LIKE CCP BUT YOU, THIS YOU'RE TALKING ABOUT DIFFERENT ELEMENTS AND THE POINT THAT I DON'T THINK WAS RAISED BUT DIFFERENT PENALTIES WHICH ARE DRAMATIC.

>> YES.

>> THE DEFENSE, DID, AT SENTENCING DID THE DEFENDANT'S ATTORNEY ARGUE THAT THEY SHOULD PRESUME THAT THEY WERE CONVICTED OF THE PREMEDITATED, I MEAN ATTEMPTED PREMEDITATED MURDER AS OPPOSED TO ATTEMPTED FELONY MURDER?

>> I DON'T BELIEVE SO, NO.

>> THEY NEEDED JUSTICE CANADY'S ADVOCACY.

>> JUSTICE PARIENTE, YOU'RE CORRECT.

GENERAL VERDICTS WORK IN SOME CASES.

WE HAVE DUI CASES ACROSS THE STATE ALL THE TIME.

IT CAN BE PROVEN TWO DIFFERENT WAYS, A GENERAL VERDICT DOESN'T MATTER.

IN THIS CASE, SOMETIMES YOU HAVE THAT WHERE YOU NEED THE SPECIAL VERDICT AND COURTS, WHEN ASKED, YOU KNOW, THIS COURT DID NOT, OR SHOULD SAY THE TRIAL COURT DID NOT WHEN IF THE TRIAL COURT HAD GIVEN THE SIMPLE REQUEST FOR A SIMPLE VERDICT WE MAY NOT BE HERE BECAUSE IT MAY HAVE BEEN A DIFFERENT VERDICT.

THE FOURTH MAY HAVE RULED DIFFERENTLY.

THE, ARE THERE ANY OTHER QUESTIONS ON THE MURDER BECAUSE I DO WANT TO DEVOTE JUST A COUPLE MINUTES TO THE CONFESSION?

>> DO YOUR ARGUMENT ANY WAY YOU

PLEASE AND YOU WILL HEAR FROM  
US.

>> YES, SIR.

THE SECOND POINT ON THE APPEAL  
IS MR. WEATHERSPOON'S  
CONFESSION.

IN, BEING INTERROGATED BY THE  
BROWARD SHERIFF'S OFFICE HE WAS  
ADVISED OF HIS RIGHTS AND HE  
SAID, YES, I'M GOING TO HAVE TO  
SPEAK TO AN ATTORNEY BECAUSE I  
WAS NOT THERE AND NO OTHER  
CIRCUMSTANCES BUT TODAY.

THE TRIAL COURT FOUND THAT THAT  
WAS NOT AN UNEQUIVOCAL  
INVOCATION OF HIS RIGHT TO,  
RIGHT TO COUNSEL BUT I'M BEFORE  
THIS COURT ON THE SECOND POINT  
TO BRING OUT THE CASE OF WOOD  
VERSUS ERCLE FROM THE SECOND  
CIRCUIT COURT OF APPEALS WHERE  
THE FEDERAL COURTS HAVE HELD I  
THINK I SHOULD GET A LAWYER, IS  
UNEQUIVOCAL REQUEST--

>> WAIT A MINUTE.

HERE IS WHAT HE SAID.

UPON BEING ADVISED OF THE  
CHARGES, WEATHERSPOON SAID, YOU  
KEEP ASSUMING THAT I WAS THERE  
AND I WASN'T THERE.

YES, I'M GOING TO HAVE TO SPEAK  
TO AN ATTORNEY BECAUSE I WAS NOT  
THERE.

IN NO OTHER CIRCUMSTANCES BUT  
TODAY.

I HAVE NEVER DONE ANY CRIMES  
WITH THESE BOYS ASIDE FROM  
TODAY.

>> YES, SIR.

>> JUST SEEMS TO ME WANTS TO  
HAVE IT BOTH WAYS.

HE WANTS TO TELL THE POLICE  
OFFICERS I WOULD NEVER DO THIS,  
I NEVER DONE THIS, OH, BY THE  
WAY, I WANT A LAWYER.

I DON'T KNOW THAT IS REALLY  
UNEQUIVOCAL.

>> WELL, USING YOUR EXAMPLE--

>> IT THE EXAMPLE, IT IS QUOTE  
FROM THE TRANSCRIPT.

>> I AGREE YOU ARE QUOTING FROM  
THE TRANSCRIPT, YOU GAVE AN  
EXAMPLE WHERE HE SAYS BY THE WAY  
I WANT A LAWYER.

BY THE WAY I WANT A LAWYER IS CLEARLY UNEQUIVOCAL REQUEST FOR AN ATTORNEY.

>> I THINK THEN THE OFFICERS FOLLOWS UP WITH, BECAUSE WE'RE TALKING ABOUT, IT HAS TO BE UNEQUIVOCAL.

NOT EQUIVOCAL.

>> YES, MA'AM.

>> THAT IS WHY I AM HERE TO TALK TO CALVIN, HE IS SAYING I WASN'T THERE.

AT WHICH POINT DO YOU WANT TO TALK TO US OR NOT?

AT WHICH POINT WHAT DID HE DO?

HE RESPONDED YES.

SO HE REALLY HAD THE CHANCE THEN TO SAY, I WANT AN ATTORNEY.

I MEAN HE HAD JUST BEEN READ, LISTEN, I'M SYMPATHETIC TO SOME OF THESE CASES BUT HE HAD JUST BEEN READ AND COMPLETED A RIGHTS FORM.

AND IT IS IN THAT CONTEXT HE THEN SAYS, YES, I WANT TO TALK.

>> IF OUR CASE WAS LAW WAS NOT THE WAY IT WAS I WOULD AGREE WITH YOU BUT THE WAY OUR CASE LAW IS, AS SOON AS SOMEONE SAYS, I WANT A LAWYER, THE OFFICER DOESN'T GET TO SAY, ARE YOU SURE YOU WANT A LAWYER?

HE DOESN'T GET TO ASK THE QUESTION.

ONLY WHEN IT IS, EXCUSE ME ONLY WHEN EQUIVOCAL INVOCATION CAN YOU AGREE--

>> IN THE CONTEXT AS JUSTICE LABARGA READ TO YOU, THE DECISION, I'M ASSUMING OF THE TRIAL COURT WAS, WAS THERE TESTIMONY AT THE SUPPRESSION HEARING ABOUT THIS FROM THE POLICE AND FROM THE DEFENDANT? WHO TESTIFIED?

>> THERE WAS A WHOLE VIDEO WAS PLAYED.

WE'RE TALKING HOURS-LONG VIDEO. THIS WAS PART OF IT.

THE DETECTIVE WAS EXAMINED ON THE ISSUE.

THE DETECTIVE STATED THAT HE DIDN'T EVEN REALIZE THAT A REQUEST FOR COUNSEL HAD BEEN

MADE UNTIL MONTHS LATER WHEN IT WAS POINTED OUT TO HIM.

>> SO HE-- THE DETECTIVE, THIS IS NOW, WE'VE GOT THIS IN BLACK AND WHITE BUT THE DETECTIVE WHO WAS CONVERSING WITH THE DEFENDANT DIDN'T SEE THAT AS A REQUEST FOR COUNSEL?

>> HE DIDN'T EVEN RECOGNIZE THE WORD, ATTORNEY.

IT JUST WENT RIGHT OVER HIS HEAD.

>> WELL, SO WITH WE HAVE THOUGH, WE HAD AN EVIDENTIARY HEARING?

>> YES.

>> THE TRIAL JUDGE MADE FIEDS. WE HAVE, AND THE TRIAL COURT FOUND WHAT?

>> THE TRIAL COURT FOUND THAT THE CONFESSION WAS VOLUNTARY. THAT THIS WAS NOT A REQUEST FOR COUNSEL.

>> WASN'T AT ALL OR WASN'T EQUIVOCAL?

WE COULD HAVE EITHER HE DIDN'T REQUEST AN ATTORNEY, IT WAS AN EQUIVOCAL REQUEST OR AN UNEQUIVOCAL REQUEST.

SO WHAT DID THE JUDGE FIND?

>> I DON'T BELIEVE THE JUDGE GOT THAT SPECIFIC.

>> OKAY.

>> [INAUDIBLE]

>> I WOULD LIKE TO RESERVE THE REST FOR REBUTTAL.

>> GOOD MORNING.

DON ROGERS, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE OF FLORIDA.

THIS CASE IS REALLY ABOUT THE NOTICE.

WAS THE DEFENDANT ON NOTICE REGARDING THE THEORIES THE STATE WOULD USE TO PROSECUTE THE CASE? AND, IT IS CLEAR THAT THERE WAS ADEQUATE NOTICE HERE.

THERE WAS OVERWHELMING NOTICE HERE, FROM THE BEGINNING.

>> WAS THERE NOTICE IN THE CHARGING DOCUMENT?

>> THERE WAS NO SPECIFIC NOTICE IN THE CHARGING DOCUMENT IN THAT THE STATUTE, THE STATUTE WAS NOT--

>> THE THING IS--  
>> SPECIFIED.  
>> FROM THE PERSPECTIVE OF  
FIRST-DEGREE MURDER CASE,  
OBVIOUSLY IN THE INDICTMENT YOU  
DON'T HAVE TO HAVE THE NOTICE  
WE'RE TALKING ABOUT HERE BUT NOW  
WE HAVE THE LEGISLATURE HAS  
ENACTED A STATUTE THAT SETS  
FORTH THIS SPECIFIC CRIME.  
IT IS NOW A CRIME IN FLORIDA,  
ATTEMPTED FELONY MURDER.  
HOW IS, HOW IS IT THAT YOU'RE  
NOT REQUIRED TO SET FORTH THAT  
CRIME IN THE INFORMATION?  
THE ALTERNATIVE OR SOMETHING?  
>> WE HAD A CRIME THAT WAS  
ATTEMPTED FELONY MURDER THAT WAS  
A CRIME FOR A LONG TIME IN  
FLORIDA.  
IT WAS NOT A CRIME FOR THREE  
YEARS--  
>> IF YOU DON'T CHARGE IT, AND  
THEN THE LAWYERS GOING TO COURT  
MAKE ALL KINDS OF STRATEGIC, YOU  
KNOW DECISIONS WHERE THEY ADMIT  
TO THE ROBBERY OF COURSE, IN THE  
FELONY MURDER, ADMIT ROBBERY,  
ADMITTING TO ATTEMPTED MURDER?  
>> THIS COURT HAS LONG SIDE IN  
NUMEROUS CASES I CITED IN THE  
BRIEF THE DOCTRINE THAT THE  
NOTICE IS PROVIDED BY THE BROAD  
DISCOVERY RULES ON--  
>> IS THINK ANY CASE, IS THERE  
ANY CASE WHERE WE HAVE HELD OR  
ANY COURT IN FLORIDA HAS HELD  
IT'S APPROPRIATE FOR SOME ONE TO  
BE CONVICTED OF A GREATER  
OFFENSE THAT HAS NOT BEEN  
CHARGED IN THE INDICTMENT OR THE  
INFORMATION?  
EVEN IF HE WAS, EVEN IF THE  
NOTICE WAS GIVEN IN DISCOVERY,  
SOMEHOW THAT CAME UP, IS THERE  
ANY CASE THAT ALLOWS SOMEBODY TO  
BE CONVICTED OF SUCH A GREATER  
OFFENSE THAT HAS NOT BEEN  
CHARGED?  
>> OFF THE TOP OF MY HEAD, NONE  
THAT I KNOW OF.  
>> IF THERE WAS ONE YOU PROBABLY  
WOULD HAVE FOUND IT, DON'T YOU  
THINK?

>> THIS WAS NOT ONE OF THE REAL SPECIFIC ISSUES THAT--

>> I UNDERSTAND.

>> HERE IS-- WE WERE TALKING ABOUT PREJUDICE.

I MEAN WHAT HAPPENS HERE, AND I THINK AGAIN, THIS ISSUE OF THE DIFFERENT PUNISHMENTS WHICH IS, IS A HUGE ISSUE, AND BECAUSE HERE IS WHAT HAPPENED.

IS AN OPENING STATEMENT THAT THE DEFENDANT DECIDES TO ADMIT THE ROBBERY AND AT THAT POINT THE STATE OBJECTED AND SAID IT COULD PURSUE THIS ATTEMPTED FELONY MURDER CHARGE, AND THEN IT CAME UP AT, AND HE SAID, DEFENSE COUNSEL SAID, AGAIN HE WAS TALKING ABOUT THE DEFENDANT HAD NO KNOWLEDGE THAT THERE WAS GOING TO BE A MURDER.

>> I THINK THAT IS GAMESMANSHIP. IF YOU LOOK--

>> BUT, IT'S, THE DIFFERENCE THOUGH IS THAT YOU CAN DO THIS IN A FIRST-DEGREE MURDER CASE AND I THINK EVERYBODY IN THE COURTS HAVE GONE ALONG, ASSUMING IT'S JUST LIKE FELONY MURDER AND MURDER AND IT'S CLEARLY NOT.

IT'S A DIFFERENT STATUTE WITH DIFFERENT ELEMENTS AND AS JUSTICE CANADY HAS POINTED OUT WITH STARKLY DIFFERENT PUNISHMENTS AND YOU'VE GOT A GENERAL VERDICTS AND THIS IS PRESERVED.

SO THE I DON'T SEE HOW THE STATE, YOU KNOW, AGAIN, GOING FORWARD, CLEARLY THE STATE KNOWS IT NEEDS TO CHARGE THIS.

THIS IS NOT OWN ARE RUSS. THEY CAN CHARGE IT EVERY TIME, RIGHT?

>> YES.

>> AND THERE IS NO BUT IT'S WITH KNOWLEDGE THAT THERE IS STARKLY DIFFERENT PUNISHMENTS FOR THESE CRIMES.

>> HERE YOU HAD, 31/2 YEARS OF DISCOVERY.

THIS WAS A CLASSIC CASE OF, OF ATTEMPTED FELONY MURDER.

I MEAN WHAT HAPPENED HERE, I

MEAN, YOU HAVE EYEWITNESS  
TESTIMONY AN DEPOSITIONS FOR A  
LONG TIME.

THERE WAS NO QUESTION.

THIS WAS A CLASSIC CASE OF  
ATTEMPTED FELONY MURDER.

THE, THE DEFENSE HERE ALSO HAD  
KNOWLEDGE THAT THE FOURTH DCA  
RULED THIS WAS PROPER CHARGING  
METHOD IN SY AND FOLLOWED BY THE  
SECOND DCA IN FLORENCE.

WE HAVE TWO DIFFERENT COURTS OF  
A APPEAL, THE COURT OF APPEAL  
WHERE THIS TRIAL OCCURRED SAID  
THIS IS THE PROPER WAY TO CHARGE  
THIS.

WHAT DID THE STATE ATTORNEY DO,  
FOLLOW RULING OF APPELLATE  
COURT.

>> EXCUSE ME, DID THE STATE, THE  
STATE, AT ANY POINT DURING THIS  
THREE YEARS THAT YOU'RE TALKING  
ABOUT EVER SUGGEST TO THE  
DEFENDANT THAT THEY WERE GOING  
TO ALSO PROCEED UNDER 782.051,  
THAT THE STATUTE?

DID THE STATE EVER DURING THAT  
PERIOD SUGGEST, BEFORE OPENING  
ARGUMENT HERE, THAT THEY WERE  
GOING TO PROCEED UNDER THAT  
STATUTE?

>> I THINK THERE IS TWO-WAYS TO  
ANSWER THAT.

THE ANSWER IS YES.

>> OKAY.

>> THERE ARE FOUR CODEFENDANTS  
HERE.

TWO OF THE CODEFENDANTS WERE  
ALREADY TRIED PREVIOUS TO THIS  
TRIAL, OKAY.

BOTH OF THOSE TWO OTHER  
CODEFENDANTS WERE TRIED BASED  
UPON THE TWO THEORIES.

THE, CRIMINAL DEFENSE BAR IN  
PALM BEACH COUNTY IS NOT THAT  
LARGE.

THESE ATTORNEYS KNEW THAT THE  
PRIOR TWO DEFENDANTS HAD BEEN  
TRIED UNDER THE DUAL THEORIES.  
IN FACT THE ATTORNEY FOR THE  
CODEFENDANT HERE ACKNOWLEDGED  
THAT ON THE RECORD.

>> ON THE SAME INFORMATION?

>> YES THEY'RE ALL IN THE SAME

INFORMATION.

>> THEY WERE TRIED UNDER THIS INFORMATION?

>> YES.

>> WHEN IN THOSE CASES WERE THOSE DEFENSE ATTORNEYS PUT ON NOTICE OF 782.051?

>> I DON'T KNOW.

THAT IS NOT A PART OF THIS RECORD.

>> SEEMS TO ME YOU'RE ALMOST TALKING ABOUT AS IF IT WAS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

WE'RE TALKING ABOUT DUE PROCESS HERE AND THE STATE IS TRYING TO MAKE UP FOR ITS, AGAIN, GOOD FAITH.

YOU KNOW, WE'RE NOT HERE IN A SITUATION WHERE THE STATE, YOU KNOW, OH, MY GOODNESS, THEY WERE TERRIBLE AND IT WAS A GOTCHA THING BUT AGAIN AS JUSTICE QUINCE POINTS OUT IT'S CERTAINLY, IT'S CLEAR FROM WHAT THE DEFENDANT'S OWN ATTORNEY IS SAYING, THAT HE SAYS HE IS SURPRISED.

NOW, AND, GOES AHEAD ON IT.

NOW, WE, WE'VE GOT TO TAKE THAT AS FACE VALUES AS FAR AS PREJUDICE.

>> THE PROSECUTOR SAYS SOMETHING ELSE.

IF YOU LOOK AT PAGE 1399 IN THE RECORD, WHEN THIS IS FIRST BROUGHT UP, UNDERSTAND THIS IS FIRST BROUGHT UP AFTER THE STATE HAS ALREADY PRESENTED ALL OF THEIR WITNESSES, JUST BEFORE THEY'RE GOING TO PLAY THE TAPED STATEMENT.

WHEN THIS IS FIRST BROUGHT UP, THIS IS THE PROSECUTOR.

WE HAD A DISCUSSION BEFORE THE TRIAL EVEN STARTED AND WE TOLD THEM THAT WE DIDN'T THINK WE HAD TO SPECIFICALLY ALLEGE THAT BECAUSE THEY UNDERSTOOD WE WERE GOING TO USE, WE WERE GOING UNDER THE SEPARATE THEORIES.

SO WHEN THIS WAS FIRST BROUGHT UP, THAT WAS THE RESPONSE BY THE STATE ATTORNEY.

>> WAS THIS FIRST BROUGHT UP AT THE OPENING STATEMENT?

>> IT WAS.

>> SO IS THAT WHEN THE PROSECUTOR TOLD THEM AT THE OPENING STATEMENT THAT THEY COULD PROCEED UNDER EITHER THEORY?

>> I READ THAT TO SAY IT WAS BEFORE THE TRIAL STARTED, WHICH WOULD HAVE BEEN BEFORE, BEFORE EVEN VOIR DIRE.

>> MAYBE, MAYBE NOT.

>> THAT IS WHAT I READ THAT TO SAY.

IT WAS SAID AND IT WASN'T CHALLENGED.

NORMALLY, IF A PROSECUTOR SAYS SOMETHING TO A DEFENSE COUNSEL AND DEFENSE COUNSEL OBJECTS TO IT, THERE WILL BE IMMEDIATE OBJECTION.

>> I MEAN HE COULD HAVE READ IT THE SAME WAY I'M READING IT, YEAH, YOU DID SAY THAT AT THE OPENING STATEMENT STAGE, TELLING US THAT YOU COULD PROCEED UNDER EITHER THEORY EVEN THOUGH WE OBJECTED TO IT.

>> I UNDERSTAND THAT.

>> THE THING ABOUT WHAT YOU'RE SUGGESTING THE ISSUE OF NOTICE OF THE CHARGES THAT SOMEONE IS ACCUSED OF, THAT'S, THAT'S A VERY IMPORTANT FUNCTION IN OUR JUDICIAL SYSTEM THAT PEOPLE KNOW WHAT THEY'RE BEING CHARGED WITH. YOU'RE SAYING WELL, PROSECUTORS TELL THEM RIGHT BEFORE TRIAL WE'LL PURSUE UNDER THIS THEORY. WE'RE REDUCING THAT MAJOR ISSUE, THAT NOTICE REQUIREMENT TO JUST, YOU KNOW, SOMEBODY TELLING YOU THAT RIGHT BEFORE TRIAL.

>> WHAT I'M SAYING--

>> WHAT IS JUST WRONG HAVING FORMAL NOTICE WE REQUIRE FOR EVERYTHING ELSE, SOMETHING IN WRITING, AN INFORMATION THAT CHARGES THAT CHARGE?

>> CLEARLY THE STATUTE COULD HAVE BEEN INCLUDED IN THE CHARGING DOCUMENT, I UNDERSTAND THAT BUT HERE AS FAR AS NOTICE,

THERE WAS NOTICE.  
THERE WAS NO PREJUDICE.  
THESE TWO DEFENSE ATTORNEYS,  
THEY HAD KNOWLEDGE FROM THE  
BEGINNING OF THIS TRIAL THAT THE  
STATE WAS GOING TO PURSUE BOTH  
THEORIES.

AND IT WAS GAMESMANSHIP TO LAY  
IN WAIT AFTER HAVING THEIR  
CLIENTS ADMIT TO THE ROBBERIES.

>> I'M SORRY, AGAIN THEY HAD  
NOTICE HOW?

THAT THE STATE WAS GOING TO  
PURSUE BOTH THEORIES.  
WHAT WAS THE SPECIFIC, WHAT DID  
THE STATE TELL THEM, AT THAT  
POINT, AT THE BEGINNING OF IT,  
OF THIS CASE, THAT WOULD HAVE  
PUT THEM ON NOTICE, THAT THE  
STATE WAS GOING TO PURSUE BOTH  
THEORIES, ATTEMPTED MURDER?

>> WHAT WAS DISCLOSED IN  
DISCOVERY.

THE DISCOVERY INCLUDED  
DEPOSITIONS OF THE VARIOUS  
WITNESSES.

IT INCLUDED THE EXCHANGE OF THE  
TAPED STATEMENTS GIVEN BY THE  
FOUR CODEFENDANTS, AND IN THOSE  
STATEMENTS IT'S CLEAR THAT WHAT  
WE HAVE HERE IS A CLASSIC CASE  
OF FELONY MURDER, ATTEMPTED  
FELONY MURDER.

>> THEY CERTAINLY WOULD HAVE  
BEEN ON NOTICE OF ATTEMPTED  
MURDER THE.

AND THEY WERE CERTAINLY ON  
NOTICE OF ROBBERY, BUT THE  
SPECIFICS OF FELONY MURDER,  
THAT IS WHAT--

>> WHAT FOUR PEOPLE--

>> WHAT WAS THE SPECIFIC NOTICE  
OF 782.051?

THAT'S--

>> LET ME SAY THE FACTS OF THE  
CASE.

WHEN FOUR PEOPLE ENTER ON  
THANKSGIVING EVE A DUNKIN'  
DONUTS CROWDED WITH PEOPLE, ONE  
ARMED WITH A SHOTGUN, AND THREE  
OF THEM END UP WITH A SHOTGUN  
BLAST THROUGH THE HEAD, THAT'S A  
CLASSIC CASE OF ATTEMPTED FELONY  
MURDER.

>> CAN I GO BACK TO SOMETHING MORE BASIC WHICH IS, THAT, I GUESS I DON'T UNDERSTAND HOW THE STATE CAN CHARGE SOMETHING BY IMPLICATION.

HERE IS REALLY WHAT WE'RE TALKING ABOUT.

THE INFORMATION IS TO GIVE THE CHARGE OF THE CRIMES.

WE HAVE TWO SEPARATE CRIMES WITH TWO SEPARATE ELEMENTS, WITH TWO SEPARATE PUNISHMENTS.

WHAT YOU'RE ARGUING FOR IS SORT OF THAT, IN THIS CASE THERE WAS AN AMENDMENT BY IMPLICATION.

AND, I DON'T, I'M NOT SEEING WHERE THE LAW IS THAT WOULD ALLOW THAT TO HAPPEN.

NOW, IF THEY, CAN YOU EXPLAIN THAT, ABOUT HOW THAT, HOW THAT IS LEGALLY WITH OUR PRECEDENT? BECAUSE AGAIN I AGREE WITH YOU, EVERYONE ASSUMED, IT WAS JUST LIKE FELONY MURDER AND MURDER BUT IT'S NOT.

SO CAN THE COURT, THE STATE, BY IMPLICATION AMEND AND INFORMATION TO CHARGE A COMPLETELY DIFFERENT CRIME WITH A COMPLETELY DIFFERENT PUNISHMENT?

>> WELL THE INFORMATION, IF YOU LOOK AT IT CAREFULLY ITS DOES CHARGE ATTEMPT AND IT DOES CHARGE THE FELONY MURDER SECTION OF THE MURDER STATUTE.

>> WHICH IS THE WRONG STATUTE.

>> WHICH IS THE WRONG STATUTE BUT STILL IT CHARGES ATTEMPTED FELONY MURDER AND ONLY

THREE-YEAR PERIOD--

>> DOES IT EVER USE THE WORDS, ATTEMPTED FELONY MURDER.

>> IT DOES NOT.

>> IT REFERS TO THE STATUTE?

>> REFERS TO THE STATUTE.

>> WHICH WE HAVE SAID--

>> TALKS ABOUT ROBBERY AND TALKS ABOUT THE DISCHARGE OF A FIREARM.

SO IT DOES CHARGE ATTEMPTED FELONY MURDER.

>> IS THE ROBBERY, EXCUSE ME, IS THE REFERENCE TO ROBBERY IN THE

ATTEMPTED MURDER SECTION OR IS IT AT THE ROBBERY A SEPARATE COUNT?  
ROBBERY IS A SEPARATE COUNT, RIGHT?  
>> BUT IT IS IN THE ATTEMPTED MURDER COUNT TOO, YES.  
>> JUST AS, JUDGE WARNER IN HER DISSSENT, I GOT TO LOOK BACK, THE INFORMATION DID NOT ALLEGE A REFERENCE TO ROBBERY AT ALL IN THE ATTEMPTED PREMEDITATED MURDER COUNT, IS THAT INCORRECT WHAT SHE SAID?  
>> BECAUSE I WAS LOOKING AT IT ALSO TRYING TO SEE IF ROBBERY WAS ACTUALLY MENTIONED IN THAT COUNT?  
>> LET'S, WE CAN FIND THAT.  
>> I'M LOOKING AT, I DON'T SEE IT LOOKING AT BUT TALKS ABOUT DISCHARGE OF A FIREARM. IT DOES REFERENCE THE ATTEMPT STATUTE.  
IT DOES REFERENCE THE ATTEMPTED FELONY MURDER SECTION OF THE MURDER STATUTE, YES.  
>> LET ME ASK YOU THIS.  
AND THIS IS KIND OF RINGING THE CHANGES ON WHAT I ALREADY ASKED BEFORE BUT TO KIND OF GET THIS INTO PERSPECTIVE.  
IF THE STATE CHARGES SOMEBODY WITH MANSLAUGHTER, AND THEN IN THE COURSE OF THE DISCOVERY, THE STATE ATTORNEY SAYS, AND LAWYERS ARE TALKING AND, YOU KNOW, WE THINK THIS MAY BE FIRST-DEGREE MURDER BUT THEY NEVER, THEY NEVER ALTER THE CHARGING DOCUMENT.  
THEY JUST GO FORWARD ON THE BASIS OF THE MANSLAUGHTER CHARGE.  
CAN THAT, CAN THE PERSON WHO HAS BEEN CHARGED WITH MANSLAUGHTER BE CONVICTED OF FIRST-DEGREE MURDER?  
>> IN THAT PARTICULAR CASE THE STATE WOULD CERTAINLY FILE AN AMENDED INFORMATION.  
>> WHY DIDN'T THEY DO THAT HERE?  
>> IT WAS TALKED ABOUT.  
>> BUT A LOT OF THINGS ARE

TALKED ABOUT.

>> I UNDERSTAND THAT.

>> SOMETIMES FOR MANAGERMENTS  
MAKE A-- FORMALITIES MAKE A  
DIFFERENCE.

WHEN IT HAS TO DO WITH CHARGES  
AND CONVICTION FOR A GREATER  
OFFENSE, THIS SEEMS LIKE THAT  
MIGHT BE WHERE THE FORMALITIES  
ARE VERY IMPORTANT.

WHY AM I WRONG ABOUT THAT?

>> WHAT HAPPENED HERE IS THAT WE  
HAVE A THREE-YEAR PERIOD, ONLY A  
THREE-YEAR PERIOD WHERE GRACE  
ATTEMPTED FELONY MURDER DIDN'T  
EXIST.

THE LEGISLATURE FIXED THAT.

>> AND I WILL, I WILL SAY IN ALL  
THIS THAT THIS IS NOT THE  
STATE'S FAULT, OKAY?

I'M NOT, I'M SAYING THAT THE  
JUDICIARY HAS HELPED ALONG IN  
WHAT HAPPENED HERE.

>> YES.

>> BUT I STILL GO BACK TO THE  
QUESTION ABOUT WHY THIS WOULD  
NOT BE SOMETHING WHERE THE  
FORMALITY MAKES A DIFFERENCE,  
CIRCUMSTANTIAL FOR THE FORMALITY  
SHOULD MAKE A DIFFERENCE JUST AS  
IT WOULD IN THE EXAMPLE I GAVE  
ABOUT MANSLAUGHTER BEING CHARGED  
AND THEN THE STATE WANTING TO  
PROCEED TO, TO GET A CONVICTION  
OF FIRST-DEGREE MURDER WITHOUT  
EVER CHANGING THE CHARGES.

>> I SUPPOSE WHAT WE'RE GETTING  
TO HERE IS HARMLESS ERROR SORT  
OF ARGUMENT HERE.

IN THIS PARTICULAR CASE I THINK  
AS LONG AS THE PENALTY WAS THE  
LOWER OF THE TWO PENALTIES THERE  
IS NO HARM.

THERE WOULD BE NO HARM  
WHATSOEVER TO THE DEFENDANT.

>> THAT'S NOT WHAT HAPPENED.

>> NO, HERE WAS, IT WAS, IT WAS  
AN ATTEMPTED FELONY MURDER WITH  
A FIREARM AND THE FIREARM RAISED  
IT UP.

>> AND WE KNOW THAT FROM, BUT  
THE VERDICT FORM DOESN'T SAY  
THAT?

>> DOESN'T SAY THAT THE VERDICT

FORM IS JUST A GENERAL VERDICT FORM.

>> THE SENTENCE THAT WAS GIVEN WAS THE SENTENCE FOR ATTEMPTED FELONY MURDER?

>> YES.

>> I MEAN, WAS HE CONVICTED SEPARATELY OF THE ROBBERY?

>> YES HE WAS.

>> AND WHAT SENTENCE WAS HE GIVEN FOR THAT?

>> NOT SURE OFF THE TOP OF MY HEAD.

>> ROBBERY WITH A FIREARM COULD HAVE A LIFE SENTENCE FOR THAT.

>> I THINK THEY WERE LIFE SENTENCES.

>> BUT THAT'S REALLY ANOTHER DAY AS TO WHETHER THIS DEFENDANT WILL STILL FACE LIFE IN PRISON, RIGHT?

>> YES.

>> WE HAVE TO SORT OF MAKE SURE THAT DUE PROCESS IS FOLLOWED. DO YOU WANT TO ADDRESS THE SECOND ISSUE?

>> SURE.

THE STATE'S POSITION IS WHAT, WHAT THE COURT HAS ALREADY STATED, THAT IT APPEARS WHAT WAS, WHAT WAS STATED HERE WAS BASICALLY AN, WAS AN EQUIVOCAL REQUEST FOR COUNSEL AND IT WAS IMMEDIATELY CLARIFIED.

IF, IT WAS STATED THAT IMMEDIATELY CLARIFIED, HEY, WELL, THAT'S WHY I'M HERE TO TALK TO YOU, CALVIN.

YOU WANT TO TALK TO US OR NOT? MR. WEATHERSPOON IMMEDIATELY SAID, YEAH, I'M TALKING TO YOU SO FAR BUT YOU'RE ALL ASSUMING I WAS THERE.

SO HE HAD A PERFECT OCCASION AT THAT POINT IN TIME, NO, I WANT, YOU KNOW, TO BE VERY UN, TO BE VERY UNEQUIVOCAL, BE VERY SPECIFIC, I WANT A LAWYER. AND HE NEVER SAID THAT.

>> BUT THE LAW IN THIS AREA IS, IF THAT FIRST STATEMENT HAD BEEN SUFFICIENT, THE INTERROGATION SHOULD HAVE STOPPED.

YOU DON'T GO FURTHER TO CLARIFY

IF THE FIRST STATEMENT IS A  
REQUEST FOR COUNSEL, YOU AGREE  
WITH THAT?

>> THAT'S THE LAW, YES.

THAT'S THE LAW.

>> THAT IS WHAT WE HAVE TO LOOK  
AT AT THAT POINT.

IT APPEARS TO ME IN FLORIDA LAW  
MAYBE WE ARE A LITTLE MORE  
STRINGENT WITH REGARD TO WHAT  
THE REQUEST HAS TO SAY.

THAT YOU CAN'T JUST TALK ABOUT  
HAVING A LAWYER.

MAYBE I SHOULD HAVE A LAWYER,  
WHAT DO YOU THINK, I SHOULD HAVE  
A LAWYER?

THAT, SOME PEOPLE WOULD SAY WELL  
THAT'S SUFFICIENT BUT ARE WE A  
LITTLE MORE STRINGENT ON THAT  
REQUIREMENT THAN SOME OF THE  
OTHER STATES OR THE FEDERAL  
DECISIONS?

>> I CAN'T INTELLIGENTLY ADDRESS  
THAT.

I--

>> FAIR ENOUGH.

>> I REALLY CAN'T.

>> OKAY.

>> IF THERE ARE NO FURTHER  
QUESTIONS, THE STATE WOULD ASK  
THAT YOU ANSWER THE QUESTION  
BEFORE YOU FROM THE FOURTH DCA  
IN THE NEGATIVE AND AFFIRM THE  
CONVICTIONS BELOW.

THANK YOU.

>> JUSTICE PARIENTE TO ANSWER  
YOUR QUESTION, MR. WEATHERSPOON  
GOT LIFE ON THE ROBBERIES, HE  
GOT LIFE ON EVERYTHING AND ALL  
CONSECUTIVE TO EACH OTHER, WHICH  
LEADS ME TO THE PREJUDICE PRONG  
BECAUSE AS THE COURT HAS POINTED  
OUT, A FAILURE IN A CHARGING  
DOCUMENT DOESN'T MEAN ANYTHING  
UNLESS THERE IS ACTUAL  
PREJUDICE.

WELL THESE TRIAL ATTORNEYS WENT  
INTO THE TRIAL AND ADMITTED THE  
ROBBERY.

THEY ADMITTED A CRIME FOR WHICH  
MR. WEATHERSPOON GOT LIFE.

THEY DID IT BECAUSE THEY WERE  
TRYING TO PROTECT HIM FROM THE  
ATTEMPTED FIRST DEGREE

PREMEDITATED MURDER.  
THEY MADE A STRATEGIC DECISION.  
>> WHAT'S A THE REMEDY HERE?  
WHAT'S THE REMEDY HERE?  
DOES HE GET TO HAVE A NEW TRIAL?  
>> YES.  
>> OR DOES HE GET TO HAVE HIS  
SENTENCES REDUCED TO WHAT THE  
SENTENCE WOULD BE FOR ATTEMPTED  
PREMEDITATED MURDER?  
>> HE GETS A NEW TRIAL BECAUSE,  
BECAUSE OF THE STRATEGIC  
DECISION WHICH IS PATENT ON THE  
RECORD, WHICH IS STATED ON  
RECORD, THAT THEY ADMITTED THE  
ROBBERIES, HE NEEDS TO A NEW  
TRIAL SO THEY KNOW WHAT HE IS  
ACTUALLY BEING CHARGED WITH AND  
TRIED ON SO THEY CAN PREPARE A  
PROPER DEFENSE.  
THAT WOULD BE DUE PROCESS.  
>> AND SO IF THAT'S DUE PROCESS  
AND HE GOES TO A NEW TRIAL, AND  
HE IS THEN, CAN HE THEN BE  
CONVICTED OF FIRST-DEGREE FELONY  
MURDER?  
>> NOT BECAUSE OF OUR RULES OF  
PROCEDURE, ONCE THE TRIAL WAS  
COMMENCED ALL OTHER CHARGES WERE  
DISMISSED.  
THEY CAN'T MAKE, A DEFENDANT WHO  
APPEALS SUCCESSFULLY COME BACK  
CAN'T BE HIT WORSE AND ADDED NEW  
CHARGES OTHERWISE THERE IS NO  
SENSE IN APPEALING.  
HE HAS TO BE AT THE SAME POINT  
WHERE HE WAS THEN.  
SO HE DESERVES A NEW TRIAL ON  
THE INFORMATION FOR WHICH HE WAS  
TRIED BUT INCORRECTLY.  
AND THAT WOULD BE WHAT DUE  
PROCESS, I BELIEVE DUE PROCESS  
WOULD REQUIRE.  
AND WE ARE ASKING THAT THE  
COURT--  
>> ON THIS HARMLESS ERROR ISSUE,  
WHAT'S, IS THERE SOME PLAUSIBLE  
DEFENSE HERE THAT IT WASN'T A  
ROBBERY?  
THE WHOLE THING, THE ARGUMENT IS  
THEY WOULD HAVE TRIED THIS  
DIFFERENTLY BUT WHAT HAVE THEY  
GOT TO TRY THIS DIFFERENTLY  
WITH?

>> JUSTICE CANADY, THERE IS NO QUESTION THAT THE CRIME OCCURRED, THAT VICTIMS WERE HIT AND FOUR PEOPLE DID IT BUT THE QUESTION IS WHO. THE QUESTION IS WHETHER MR. WEATHERSPOON DID IT AND WHAT PART HE TOOK PLACE IN IT.

>> THERE, IS THERE ANY QUESTION HE TOOK SOME PART IN IT?

>> IF THE CONFESSION IS ADMITTED, NO. IF THE CONFESSION IS NOT ADMITTED, YES. IT RISES AND FALLS ON THE CONFESSION.

>> SO IF THE CONFESSION COMES IN, MAYBE THIS, THE OTHER ERROR WOULD BE, ABOUT THE CHARGING AND ALL THAT WOULD END UP BECOMING HARMLESS BECAUSE HE IS GETTING A LIFE SENTENCE ANYWAY?

>> IT WOULDN'T BE HARMLESS, IT WOULD BE ACADEMIC BUT WOULD NOT BE HARMLESS.

>> WELL, BUT--

>> I BELIEVE THERE'S A DIFFERENCE BETWEEN THE TWO.

>> I RECOGNIZE THERE IS A VIEW OF HARMLESS ERROR, PURELY ACADEMIC ERROR IS NOT NECESSARILY HARMLESS. I QUESTION THAT. IF IT IS NOT GOING TO MAKE ANY DIFFERENCE TO HIM, I DON'T SEE HOW YOU CAN SAY THAT IT IS THE, THE ERROR WAS HARMFUL, THAT HE WAS PREJUDICED BY IT IF IT MAKES NO DIFFERENCE TO HIM. BUT THAT'S, WE CAN GET THE ANGELS OUT TO DANCE ON THE HEADS OF THOSE PINS AND SEE WHAT HAPPENS.

>> MAY I CONCLUDE?

>> SURE.

>> MR. WEATHERSPOON WOULD SIMPLY ASK YOU ANSWER THE CERTIFIED QUESTION IN THE AFFIRMATIVE, THAT THE STATE DOES NEED TO SPECIFICALLY ALLEGE IT. DISAPPROVE DEMPSEY AND BELL WHICH IS THE CODEFENDANT. REMAND IT TO THE DCA WITH INSTRUCTIONS TO VACATE THE

ENTIRE JUDGMENT AND A WHOLE NEW  
TRIAL.  
THANK YOU.