

>> NEXT CASE, LAST CASE ON THE DOCKET, CRAIG ALAN WALL, SR. V. STATE OF FLORIDA.

>> THANK YOU.

>> MADE IT PLEASE THE COURT, I AM JULIUS AULISIO FROM THE PUBLIC DEFENDERS OFFICE. WE WERE APPOINTED TO REPRESENT MISTER WALL ON HIS DEATH PENALTY APPEALS.

WE FILED A MOTION BECAUSE HE RECEIVED THE DEATH PENALTY. IS COURT DENIED THAT MOTION TO WITHDRAW, THAT HE NEEDED THE BENEFIT OF AN ADVERSARY, ADVOCACY SO THAT IS WHAT WE ARE DOING?

HE ENTERED A PLEA OF GUILTY TO THE DEATH OF LAURA TAFT AND SEEKING THE DEATH PENALTY COMMANDED NO CONTEST, THE DEATH OF THEIR INFANT SON, CRAIG WALL JUNIOR.

>> IT LOOKS LIKE SEVERAL OF THE ISSUES, WHEN WE REQUIRE APPELLATE ADVOCACY WE ALLOW THE DEFENDANT TO FILE HIS BRIEF. ARE YOU GOING TO BE ADDRESSING THE POINTS CRAIG WALL RAISES OR JUST WHAT YOU ARE ARGUING?

>> I'M GOING TO THE ADDRESS, TWO ISSUES THAT WERE RAISED IN OUR BRIEF.

>> WHETHER THERE SHOULD HAVE BEEN A COMPETENCY EVALUATION PRIOR TO ACCEPTING HIS PLEA OF GUILTY?

>> CORRECT.

>> AND WHETHER THE JUDGE SHOULD EVERY ACCUSED HIMSELF?

>> YES, YOUR HONOR.

>> ALTHOUGH CRAIG WALL DOES NOT WANT TO DIE HE FEELS HE DESERVES THE DEATH PENALTY.

HE DOES NOT DESERVE THE DEATH PENALTY AT THIS TIME, THERE WAS NOT AN ADEQUATE COMPETENCY EVALUATION AND ADEQUATE COMPETENCY HEARING TO DETERMINE IF HE COULD ENTER A VOLUNTARY,

FREELY, KNOWINGLY PLEA.

>> COULD YOU HELP ME UNDERSTAND HOW ALL THESE DIFFERENT COMPETENCY EXAMINATIONS FIT TOGETHER?

BECAUSE YOU DO AGREE THAT IN DECEMBER OF 2013, THE DEFENDANT WAS DETERMINED AFTER EXAMINATION TO BE COMPETENT TO PROCEED, IS THAT CORRECT?

>> YES, YOUR HONOR, THAT WAS BASICALLY THEY HAVE A COURT PSYCHOLOGIST THE TRIAL COURT ASKS TO DETERMINE IF HE IS COMPETENT TO PROCEED.

>> IS THAT DIFFERENT?

I THOUGHT THERE WAS DOCTOR POORMAN THE DID AN EXAMINATION PRIOR TO THE PLEA.

IS THAT INCORRECT?

>> IT WAS AN INTERVIEW PRIOR TO THE PLEA.

>> THAT IS WHAT PSYCHIATRISTS AND PSYCHOLOGISTS DO.

THEY SIT AND TALK.

I'M TRYING TO UNDERSTAND, YOU ARE SAYING IT IS NOT AN EXAMINATION, THE TRIAL COURT ALLOWED THEM TO PROCEED?

>> ORIGINALLY THE FIRST TIME SHE WENT TO SEE HIM, NOT COMPETENT.

>> IN MAY 2013.

I'M TALKING ABOUT SUBSEQUENT TO THAT.

WAS THERE A COMPETENCY, ARE YOU SAYING THERE WAS NO COMPETENCY HEARING DONE, NO COMPETENCY EXAMINATION?

ACCORDING TO THE RECORD.

>> THERE WAS INADEQUATE, BASICALLY WE DON'T KNOW HOW LONG SHE INTERVIEWED HIM, SHE GOES TO BE JAILED IS ANOTHER CASE WHERE SHE WENT TO JAIL AND SAW SOMEBODY FOR 5 MINUTES.

WE DON'T KNOW HOW LONG, SHE DIDN'T DO ANY KIND OF TESTS --

>> WAS HE REPRESENTED BY COUNSEL AT THAT POINT?

AT THE TIME SHE MADE A

COMPETENCY, SHE SAID FIRST HE WAS INCOMPETENT 6 OR 7 MONTHS LATER, WAS HE REPRESENTED BY COUNSEL?

DID COUNSEL MAKE ANY REQUEST FOR A FULLER DETERMINATION?

>> -- IT HAS NOT, WOULD PROBABLY BE A CLOSE CONVICTION MATTER BUT IT IS NOT GOING TO HAPPEN.

>> HAD COUNSEL BEEN THE ONE FOR THE DETERMINATION WHETHER HE COULD PROCEED PER SE?

>> THAT WAS --

>> AND THE COURTS.

THE INITIATIVE, THE SAME PROBLEM JUSTICE LEWIS IS HAVING, THERE WAS NO OBJECTION MADE TO THE COMPETENCY DETERMINATION.

THE TRIAL JUDGE ALLOWS HIM TO PROCEED PER SE?

>> CORRECT.

>> WHERE IS THE PROBLEM?

WHERE SPECIFICALLY DID THE TRIAL COURT AIR?

>> THE TRIAL COURT ERRED PRIOR TO ACCEPTING HIS PLEA, THE COURT PSYCHOLOGIST INTERVIEWED HIM. THERE ARE NO TESTS.

>> WAS HE DOING SOMETHING THAT WOULD HAVE REQUIRED, BROUGHT TO THE COURT'S ATTENTION, THAT THERE WAS A PROBLEM AND HE NEEDED TO BE REEVALUATED?

>> YES.

ALL ALONG THE WHOLE PROCEEDINGS HE WAS DOING THINGS, JUDGE LEWIS, THE ORIGINAL JUDGE ON THIS CASE SAID HE SHOULD BE EVALUATED AFTER A PRETRIAL CONFERENCE HEARING.

>> WHAT SPECIFICALLY?

MAYBE HE DID BUT WHAT SPECIFICALLY WOULD HAVE ALERTED THE TRIAL JUDGE THAT THERE SHOULD HAVE BEEN A COMPETENCY HEARING BEFORE GOING THROUGH THE PLEA COLLOQUY?

>> THE FACT THAT HE IS SEEKING THE DEATH PENALTY, FIRST OF ALL, THE JUDGE -- THE JUDGE WAS

OBVIOUSLY ALERTED TO THE FACT,  
WHEN TALKING ABOUT ACCEPTING THE  
PLEA THE JUDGE SAID I'M NOT  
COMFORTABLE ACCEPTING THIS PLEA  
WITHOUT HAVING HIM EVALUATED AND  
HE SAID HE WANTED TO HAVE DOCTOR  
KORMAN, THE CORE PSYCHOLOGISTS,  
AND WANTED TO EVALUATE THE MAN  
SPECIFICALLY SAID HE WASN'T  
GOING TO ACCEPT THE PLEA UNTIL  
THEY EVALUATED HIM BUT  
UNFORTUNATELY THAT WAS NEVER  
DONE.

IT SEEMED THIS CASE HAD DRAGGED  
ON SO LONG, THE HEARINGS, EVERY  
SINGLE HEARING WAS EXTREMELY  
CONTENTIOUS.

MISTER WALL WOULD USE VULGAR  
LANGUAGE, THE JUDGE WOULD LET  
HIM GO ON AND ON.

HE LET HIM DO THAT BUT HE KNEW  
BECAUSE OF THE WAY HE WAS ACTING  
THAT HE NEEDED TO BE EVALUATED.

>> HE HAD SOME SUICIDE ATTEMPTS  
RIGHT?

TIMewise WHEN WERE THOSE IN  
RELATION TO WHEN HE TOOK THE  
PLEA AGREEMENT?

>> THEY WERE BEFORE.

HE HAD SUICIDE TENDENCIES EARLY  
ON, RIGHT AFTER THE INCIDENT  
HAPPENS BUT ALSO HAD SOME  
SUICIDE ATTEMPTS LATER, IN 2014,  
LATE 2014, JUST PRIOR, WHEN HE  
WAS FOUND INCOMPETENT OR NOT  
COMPETENT TO REPRESENT HIMSELF  
HE WAS ON SUICIDE WATCH.

>> THAT WAS 2013, RIGHT?

>> YES.

WELL, YES.

>> BECAUSE HE WAS FIRST FOUND  
INCOMPETENT TO REPRESENT HIMSELF  
IN MAY 2013.

THERE IS NOTHING THAT INDICATES  
SUICIDE ATTEMPTS AFTER THAT  
EVALUATION, IS THERE?

>> EVEN AT THE TIME, AT THE TIME  
THEY WERE GOING TO ENTER THE  
PLEA, IT WAS DETERMINED IT WOULD  
GO ON THE PENALTY PHASE, HIS

ATTORNEY INDICATED HE MIGHT NOT BE READY FOR PENALTY PHASE BECAUSE HE IS ON SUICIDE WATCH, DIDN'T HAVE ACCESS TO HIS MATERIALS AND IS CURRENTLY UNDER SUICIDE WATCH THOUGH THERE HAD TO BE MORE ATTEMPTS.

>> IN 2013.

>> THE PLEA WAS ENTERED IN FEBRUARY.

>> CLOSEST IN TIME SUICIDE ATTEMPT TO THAT PLEA AGREEMENT. BEFORE HAND. BEFORE.

WHEN WAS THE CLOSEST IN TIME TO THAT?

>> I DON'T KNOW THE EXACT DATE BUT HE WAS STILL UNDER SUICIDE WATCH.

>> I DIDN'T KNOW HE WAS STILL UNDER SUICIDE WATCH, CONFIDENT TO PROCEED PER SE. I REALIZE IT IS DIFFICULT ON YOU.

I'M NOT TRYING TO MEET THE MESSENGER, WHEN THESE THINGS -- CAN'T LOCATE THEM IN THE RECORD. AND THAT IT'S PROBLEMATIC WHICH YOU CAN APPRECIATE.

HE HAD STAND BY COUNSEL DURING ALL OF THIS AND THAT IS ONE OF THE THINGS HE IS ANGRY ABOUT.

>> HAD COUNSEL OR STANDBY COUNSEL.

>> HE DISCHARGED COUNSEL THREE TIMES, FOUR TIMES AND THE JUDGE BRINGING BACK SPECIAL COUNSEL TO BE AVAILABLE TO DO THOSE WAS WE ARE TRYING TO GET AS BEST WE CAN THE CORRECT STATUS OF THE RECORD AND IT IS VERY DIFFICULT.

>> THE BRIEF SETS IT OUT CLEARLY, THE STATUS OF WHERE THEY ARE.

>> YOU ARE NOT ARGUING FOR A BLANKET RULE THAT WHENEVER -- TALKING ABOUT THE GUILTY PLEA, THE WAIVER OF MITIGATION THERE SHOULD ALWAYS BE A COMPETENCY HEARING BEFORE WAIVERS OF

MITIGATION AND TALKING FOR THE GUILTY PLEA.

>> TALKING ABOUT THE PLEA. YOU ARE NOT MAKING ANY ATTACK ON IMPOSITION OF THE DEATH PENALTY IN THIS CASE.

>> WE ARE SAYING HIS PLEA WAS NOT FREELY INVOLVED.

>> BECAUSE WHAT WE HAVE HERE BASED ON THE JUDGE HAVING APPOINTED SPECIAL COUNSEL, PERSON HAD A LIFETIME OF ABUSE, HE WAS IN THE DOZIER SCHOOL, HE WAS EMOTIONALLY DISTURBED, YOU WOULD AGREE ALL THAT THAT MIGHT BE MITIGATION DOESN'T MAKE HIM INCOMPETENT TO ENTER A PLEA AGREEMENT, YOU AGREE WITH? BEING EMOTIONALLY DISTURBED AND MENTALLY ILL DOES NOT RENDER SOMEONE INCOMPETENT TO PLEAD GUILTY.

I WANTED TO SEPARATE IN A CASE LIKE THIS, IT IS LIKE CATCH 22, SOMEONE HAS GOT TO BE INCOMPETENT IF THEY WANT TO PLEAD GUILTY AND WANT THE DEATH PENALTY, YOU ARE NOT ARGUING ANYTHING, CATCH 22 RULE. THE SAME PEOPLE WOULD NOT WANT TO DIE, SAME PEOPLE WOULD WANT TO CONTEST GUILT OR COMPETENT PEOPLE, YOU GOT TO LOOK AT THE RECORD AND SAY THE JUDGE SHOULD HAVE, SEEING THIS ON HIS OWN ORDERED A COMPETENCY EXAM BEFORE THE GUILTY PLEA.

>> VERY STRONGLY SUGGESTED HE WOULD NOT ACCEPT THE PLEA WITHOUT HAVING HIM EVALUATED AND AT THE LAST MINUTE THE DEFENSE COUNSEL, DEFENSE COUNSEL WAS POSSIBLY FOOLED INTO THINKING THAT IS THINKING HE IS INCOMPETENT, BECAUSE HE IS VERY ARTICULATE AND INTELLIGENT AND CAN WRITE THINGS BUT THAT DOESN'T MEAN HE DOESN'T HAVE BRAIN DAMAGE.

>> BRAIN DAMAGE IS NOT THE BASIS

FOR ORDERING A COMPETENCY EXAM WHERE EVERY DEFENDANT ON DEATH WOULD HAVE TO HAVE A COMPETENCY EXAM.

>> IN THIS CASE SEEKING THE DEATH PENALTY, THIS COURT HAS TO REVIEW WHETHER THE DEATH PENALTY IS FREELY AND VOLUNTARILY ENTERED.

>> THE PLEA AGREEMENT PROVIDES THE STATE AND I AGREE TO THE DEATH PENALTY IN THIS CASE, BOTH PARTIES AGREE, CIRCUMSTANCES OUTWEIGH MITIGATING CIRCUMSTANCES.

BOTH PARTIES UNDERSTAND THE COURT WILL DETERMINE THE SENTENCE PURSUANT TO FLORIDA LAW.

THE NEXT PARAGRAPH SAYS SUBMITTED TO A PSYCHOLOGICAL EXAMINATION AND I'M COMPETENT TO UNDERSTAND AND ENTER THIS PLEA, WHAT ELSE DID THE COURT HAVE DONE?

>> THAT STATEMENT IS IN PLAY, THAT STATEMENT IS SOMETHING.

>> DID HE DRAFT IS THAT.

>> THE CIRCUMSTANCES HERE, THIS WAS HIS FIANCEE, THEY ARE WITNESSES TO THE MURDER, WITNESSES TO THE FIVE WEEK MAC CHILD BEING ARMED, AND THE GUILTY PLEA FOR THE KILLING OF HIS FIANCEE AND NO CONTESTS IN CONNECTION WITH THE MURDER FOR THE INFANT.

IT IS NOT LIKE THIS IS A QUESTIONABLE CASE WITH ALL THE WITNESSES WHO SAW THIS HAPPEN.

>> THAT IS WHAT MISTER WALL IS SEEKING THE DEATH PENALTY FOR THE TO THE FIANCEE.

>> IT IS NOT WHAT I AM SAYING IS WITHOUT AN ADEQUATE CONFERENCE EVALUATION, AT THE AGE OF 10 IT WAS DETERMINED THAT HE HAD A BRAIN SCAN AND THERE WERE IRREGULARITIES IN IT.

THE MITIGATION SPECIALIST SAID

IF SHE HAD SEEN THAT, A FULL PSYCHOLOGICAL BATTERY AND GOT A BRAIN SCAN WHICH DETERMINED WHAT WAS GOING ON HERE.

IF THAT AREA OF THE BRAIN CONTROLLED HIS IMPULSE IS DESTROYED OR NOT FUNCTIONING. HE DOES NOT HAVE INFORMATION THAT HE SHOULD ENTER THE PLEA, HE DOES NOT KNOW THE PLEA WAS FREELY AND VOLUNTARILY ENTERED. NONE OF THIS TESTING WAS DONE IT SHOULD HAVE BEEN DONE IN ORDER TO DETERMINE --

>> ARE YOU TALKING ABOUT TESTING THAT IS NORMALLY DONE WHEN DETERMINING COMPETENCY?

>> I DON'T THINK YOU ARE.

>> THE COURT APPOINTED 5 DIFFERENT PSYCHOLOGISTS, THE ONLY WAY TO FIND THE BRAIN DAMAGES THROUGH NEUROPSYCHOLOGICAL TESTING. WHEN I WAS DOING TRIAL WORK, DOCTOR THE WAS A NEUROPSYCHOLOGIST AND HE WOULD DO EIGHT HOURS OF WILL BATTERY OF TESTING TO DETERMINE IF THERE IS BRAIN DAMAGE IN THIS INDIVIDUAL.

WITHOUT MISTER WALL HAVING THAT INFORMATION --

>> YOU ARE TALKING ABOUT A STANDARD FOR COMPETENCY THAT DOES NOT EXIST IN THE LAW IT SOUNDS LIKE.

>> I HAVE TO AGREE. THIS IS A UNIQUE SITUATION WHERE AN INDIVIDUAL SEEKING STATIC THE ESTATE ASSISTED ON SUICIDE THESE CASES DON'T COME UP OFTEN, WHERE THE PERSON SEEKING TO BE PUT TO DEATH.

>> THAT HAS TO DO WITH THE DEATH PENALTY AND THE ISSUE IS CAN HE PLEAD GUILTY TO THE DEATH PENALTY OR IS THERE A FURTHER EVALUATION?

THE TRIAL JUDGE DID THAT FURTHER EVALUATION IN THIS CASE, AND

MISTER WALL HAD A CHANCE TO PUT ON HIS MITIGATION AND THAT -- THOSE ARE TWO SEPARATE THINGS WAS WHETHER HE WAS COMPETENT TO PLEAD GUILTY TO A CRIME AS JUSTICE LEWIS SAID, THERE WAS NO QUESTION AND PRETTY SOLID AS TO THE INFANT.

THE QUESTION, ABOUT TESTING, ADVERSARIAL TESTING, IT DIDN'T HAPPEN IN THIS CASE.

DOES APPOINTED SPECIAL COUNSEL AND PUT ON SIGNIFICANT MITIGATION WHICH THE JUDGE EVALUATED.

I DON'T SEE BY SAYING HE WANTED TO DIE HIS GUILTY PLEA COULDN'T BE VOLUNTARY, HIS COMPETENCY SHOULD HAVE BEEN TESTED.

>> COULD BE A FULL VOLUNTARY PLEA WITHOUT HIM KNOWING THIS INFORMATION WHICH WAS IN THERE.

I WILL MOVE ON --

>> WHAT YOU ARE SAYING IF I GET THE GIST, ARGUMENTS THAT WHEN THE DEATH PENALTY HAS TO BE SOMETHING WRONG WITH THEM AND WE SHOULD LOOK AT WHETHER OR NOT WHAT IS WRONG WITH THEM IS IMPEDING HIS OR HER ABILITY TO MAKE THIS DECISION AND YOU WANT US TO REQUIRE EXTRA WORK IN THOSE CASES TO MAKE SURE THAT IS NOT HAPPENING.

>> YES.

>> WE GET TO THE BOTTOM.

>> THE ISSUE, THE JUDGE COMMITTED A REVERSIBLE ERROR BY NOT RECUSING HIMSELF.

THIS IS A TIMELY MOTION BECAUSE WHAT MISTER WALL DIDN'T FIND OUT ABOUT COMMENTS IN THESE TRANSCRIPTS -- AT THE ONE HEARING HE ALLEGED HE WAS NOT THERE.

HE ALLEGED HE EXITED THE COURTROOM AS AFTER HE EXITED THE COURTROOM --

>> IF YOU LOOK BEYOND THE TIMELINESS OF IT, WHAT EXACTLY

SHOWS THE JUDGE WAS BIASED?  
>> HE SPECIFICALLY MADE THE STATEMENT THE SUPREME COURT WILL APPRECIATE THE PATIENCE IN THIS CASE.

>> HOW DOES THAT SHOW BIAS?  
WE KNOW FROM READING THIS THAT YOUR CLIENT WAS AN EXTRAORDINARILY ABUSIVE LITIGANT AND USED EXTRAORDINARILY FOUL LANGUAGE.

>> I DID NOT DISPUTE THAT.  
>> I AM TRYING TO BE PATIENT. THE SUPREME COURT WILL SEE -- WHATEVER HE SAID HE TALKED ABOUT BEING PATIENT AND SEEMS HE WAS PATIENT.

I DO NOT SEE THE BIAS IN THAT COMMENT.

I AM A STRUGGLE TO SEE IT. HELP EXPLAIN IT TO ME.

>> THE BIAS WAS NOT ABOUT HIS PAY AND SUPPLIES, THE SUPREME COURT WILL GET TO REVIEW IT AND HE DID IN ANOTHER HEARING.

>> SUPREME COURT REVIEWS ALL KINDS OF THINGS.

>> NOT AUTOMATICALLY.

>> FROM THAT STATEMENT, ONE WOULD NECESSARILY CONCLUDE THE JUDGE ALREADY DECIDED THE DEATH PENALTY WOULD BE IMPOSED.

>> WHAT HE SAID WAS TRYING TO TELL YOU I AM BALANCING COMPETING INTERESTS TO GET TO THE RIGHT DECISION.

THE SUPREME COURT HAS EVERY CHANCE TO SECOND-GUESS ME. I DON'T HAVE ANY ISSUE WITH THAT.

IS THE OFFENDING COMMENT YOU'RE TALKING ABOUT, SUPREME COURT REVIEWING?

>> THAT WAS THE ONE IN SUPPORT OF THE OTHER COMMENTS. THIS COMMENT, WE CAN -- THAT WOULDN'T HAVE QUALIFIED, THAT COMMENT SUPPORTS THE OTHER COMMENTS, HE IS GOING TO REVIEW THIS CASE.

AND THESE ARE DEATH PENALTY CASES.

THE ONLY WAY THE JUDGE WOULD HAVE KNOWN THE SUPREME COURT WILL REVIEW THIS CASE IS IF HE WAS IMPOSING THE DEATH PENALTY. IF HE'S NOT IMPOSING THE DEATH PENALTY THE CASE MIGHT NOT GO TO APPELLATE REVIEW.

IT WOULD GO TO THE SECOND DCA. THE SUBSTITUTED THE WORD SECOND DCA FOR SUPREME COURT THE STATE WOULD HAVE EVERY LEGAL BASIS TO MOVE FOR RECUSAL.

THE JUDGE ALREADY DETERMINED HE WILL NOT IMPOSE THE DEATH PENALTY.

THE DEATH PENALTY WON'T BE IMPOSED IN THIS CASE.

>> YOU ARE SAYING BECAUSE HE USED THE TERM SUPREME COURT THE DEATH PENALTY -- MADE UP HIS MIND HE WILL IMPOSE THE DEATH PENALTY.

>> EXACTLY.

>> WE HAVE A CASE LIKE THAT WHERE WE DIDN'T FIND THERE WAS ENOUGH BIAS.

>> THAT WAS THE FOSTER CASE, THE ISSUE WASN'T RIGHT BECAUSE THERE HAD BEEN NO MOTION TO RECUSE BUT IN THAT CASE THEY HAD TO SHOW ACTUAL BIAS.

IN THIS CASE YOU ONLY HAD TO SHOW APPEARANCE OF BIAS.

A COMPLETELY DIFFERENT STANDARD AND IT WAS IN THE FRONT.

>> THE JUDGE SHOULD HAVE SAID THE APPELLATE COURT AND WE WOULDN'T BE HERE.

AND THE SUPREME COURT WERE HERE.

>> ON A NUMBER OF OCCASIONS.

AS I WAS READING MY BRIEF, ANOTHER OCCASION, HE MADE A STATEMENT INDICATING THAT.

>> IS IN THIS THE CASE WHERE THE STATE HAD ALREADY INDICATED IT WAS GOING TO SEEK DEATH?

>> YES.

>> EVERYONE UNDERSTOOD THIS WAS

A POTENTIAL DEATH PENALTY CASE  
AND WHO DOES REVIEW DEATH  
PENALTY CASES?

THE SUPREME COURT.

A REAL STRETCH.

YOU HAVE ANOTHER ARGUMENT?

DID YOU HAVE ANOTHER ISSUE?

HOW MANY ISSUES IS THIS?

TWO?

>> LET ME ASK THE TIMING, THE  
FIRST STATEMENT WAS MADE  
APRIL 12, 2013, THE SECOND  
DECEMBER OF 2013 AND THE MOTION  
WAS FILED APRIL 4, 2014, AND THE  
RECORD REFLECT THE DEFENDANT WAS  
DEFINITELY THERE AND PRESENT AND  
HEARD ONE OF THESE STATEMENT AND  
THERE IS A 10 DAY TIME LIMIT FOR  
MOTION TO DISQUALIFY AND SO HOW  
IS IT NOT UNTIMELY?

>> HE DIDN'T LEARN ABOUT THE  
FIRST STATEMENT UNTIL HE SAW THE  
TRANSCRIPT AND SAW IT WRITTEN.  
THAT IS TIMELY.

IT COULD BE THE JUDGE HAD SAID  
AT ONE TIME.

IT IS LIKE.

>> YOUR ARGUMENT HAS TO BE AT  
ONE TIME IT WOULDN'T BE  
SUFFICIENT LEGAL BASIS FOR  
RECUSAL BUT AT TWO TIMES IT  
WOULD BE.

>> IT COULD BE ONE TIME.

>> IF HE HEARD THE JUDGE MAKE A  
STATEMENT IT WOULD BE SUFFICIENT  
RECUSAL, DID NOT FILE THE MOTION  
IN TEN DAYS UNDER THE LAW.

>> IT IS WHETHER AT ONE POINT HE  
DIDN'T THINK THE JUDGE HAD MADE  
THAT PREDETERMINATION BUT WHEN  
HE SAW THE TRANSCRIPT, HE SAW  
WHAT IT SAID, HE ALREADY DECIDED  
TO IMPOSE THE DEATH PENALTY.

>> YOU ARE DOWN TO ONE MINUTE  
AND 52 SECONDS FOR REBUTTAL.  
YOU CAN KEEP GOING IF YOU ONCE.

>> MAY IT PLEASE THE COURT, I AM  
C. SUZANNE BECHARD, I WANT TO  
ADDRESS THE ISSUES WITH REGARD  
TO THE FIRST ISSUE, COMPETENCE,

I WANT TO TAKE THE COURT THROUGH WHAT HAPPENED IN THE CASE, SOME HAS BEEN DISCUSSED ALREADY BUT JUST TO GET EVERYTHING CLARIFIED, WHAT WE HAD WAS DETERMINATION IN MAY 2013 HE DIDN'T HAVE THE WHEREWITHAL TO REPRESENT HIMSELF.

HE WAS NOT COOPERATING AND ALLOWING ANYBODY TO EXAMINE HIM. IN DECEMBER 2013, DOCTOR POORMAN EXAMINED HIM AND SHE FOUND HE IS COMPETENT TO REPRESENT HIMSELF UNDER REQUIREMENTS OF INDIANA VERSUS EDWARDS.

10 WE COME TO THE TIME HE WAS WANTING TO ENTER HIS PLEA IN FEBRUARY 2015, HE HAS COUNSEL AGAIN AT THIS POINT, HE HAS COUNSEL AGAIN AT THIS POINT.

>> BEFORE YOU GET TOO MUCH, DECEMBER 13TH, WHEN HE IS FOUND COMPETENT TO REPRESENT HIMSELF, COUNSEL REMOVED AT THAT POINT AND HE IS REPRESENTING HIMSELF. >> HE IS REPRESENTING HIMSELF, HE HAD THE SAME STANDBY COUNSEL SINCE FAIRLY EARLY IN THE PROCESS.

STANDBY COUNSEL AGAIN, PRIOR TO THE PLEA AT SOME POINT, APRIL 2014, COUNSEL COMES ON BECAUSE HE WAS TALKING ABOUT HOW HE WAS NOT ABLE TO ISSUE SUBPOENA FROM JAIL.

>> COUNSEL COMES BACK ON AS COUNSEL AS OPPOSED TO STANDBY. REPRESENTED BY COUNSEL, WHEN YOU COME TO EARLY 2015 WITH DISCUSSION ABOUT ENTERING A PLEA, AND THE COURT WANTS TO GO AHEAD AND HAVE HIM EVALUATED OUT OF AN ABUNDANCE OF CAUTION. THE DEFENDANT HAS A RAPPORT WITH DOCTOR POORMAN WHO EXAMINES HIM AND DOCTOR POORMAN TESTIFIES SHE TALKED TO HIM AND DESCRIBED HIM AS BEING AT PEACE WITH HIS DECISION, UNDERSTOOD THE POTENTIAL PENALTIES, UNDERSTOOD

THE DEFENSES HE COULD POSSIBLY RAISE A LEGAL STRATEGY HE WANTED TO PURSUE AND ASK APPROPRIATE QUESTIONS OF WITNESSES, AND SHE DIDN'T HAVE ANY CONCERNS ABOUT HIS LITERACY, VERBAL ABILITY, OVERALL LEVEL OF INTELLIGENCE AND REMAINS COMPETENT TO PROCEED.

>> THAT WAS WHAT DAY?

>> FEBRUARY 23RD, 2015.

THE COURT THEREAFTER TALKS TO APPELLATE, REQUESTED THORAZINE, SAVED IT UP AND I AM NOT SUICIDAL, THE PROCESS TO BE OVER WITH AND DURING THAT DISCUSSION, THIS IS IN THE RECORD, 1963-64, HE SAYS THE REASON FOR PLEADING IS TAKE RESPONSIBILITY FOR HIS ACTIONS AND NOT IN SO MANY WORDS BUT PROVIDE A ROLE MODEL FOR THAT RESPONSIBILITY FOR HER OLDER SON.

>> WHEN WITH THE MOST RECENT SUICIDE ATTEMPT PRIOR TO THE HEARING?

>> WE DON'T REALLY KNOW. THERE WAS ONE INVOLVING THORAZINE.

THAT IS THE ONE WE HAVE. THERE IS DISCUSSION IN THE RECORD.

HE CLAIMS AT VARIOUS POINTS THE JAIL IS HOLDING HIM UNDER SUICIDE WATCH WRONGLY BECAUSE HE'S NOT STILL ATTEMPTING SUICIDE AND ARE DOING THAT TO PUNISH HIM BECAUSE THEY DON'T LIKE HIM.

>> WHEN IS THE MOST RECENT ONE WE KNOW ABOUT?

>> I DON'T KNOW THE ANSWER TO THAT BUT IT WAS I BELIEVE SOME TIME IN 2013.

IT WASN'T RIGHT UP AGAINST THE PLEA IF THAT MAKES A DIFFERENCE. IT IS THE STATE'S POSITION THAT THE RULE WAS ADEQUATELY FOLLOWED HERE.

THE RULE PROVIDES IF ANYBODY

INVOLVED IN THIS PROCESS HAS REASONABLE GROUND TO BELIEVE THERE IS A PROBLEM WITH COMPETENCE THE COURT MAY APPOINT, MAY ORDER THE DEFENDANT TO BE EXAMINED BY NO MORE THAN THREE EXPERTS.

THERE IS NO FURTHER THINGS THAT NEED TO BE DONE, NO DESCRIPTION WHAT NEEDS TO BE DONE WITH THE EXAMINATION OR REQUIREMENT FOR MULTITUDES OF TESTS OR ANYTHING LIKE THAT.

IT IS AN EXAMINATION AND THAT IS WHAT HAPPENED HERE.

THE RULE PROVIDES NO MORE THAN THREE EXPERTS.

THE GILL CASE IS COMPLETELY NOT INFORMATIVE HERE.

IN THAT CASE THE COURT WENT ABOVE AND BEYOND, THERE IS NO REQUIREMENT THE COURT GO ABOVE AND BEYOND WHICH IS WHAT APPELLATE IS ASKING FOR HERE.

WHEN DOCTOR POORMAN TESTIFIED AND HIT ALL THE HIGH NOTES INVOLVED IN RULE 3.21182 WITH REGARD TO CAPACITY.

IF YOU LOOK AT WHAT HER TESTIMONY IS THERE ISN'T ANYTHING THAT RAISES A CONCERN HERE.

SHE MADE REFERENCE TO HIS BEHAVIOR BUT IT IS OBVIOUS IN THE RECORD THAT ALTHOUGH HE WAS A BAD ACTOR, HE HAD THE ABILITY TO CONTROL HIMSELF AND BEHAVE APPROPRIATELY WHEN HE WANTED TO AND WOULD EVEN APOLOGIZE.

WAS I WANT TO DRAW THE COURT'S ATTENTION TO IS THE RECORD AT PAGE 1964, THE COURT IN THIS PROCESS OF LISTENING TO DOCTOR POORMAN AND THE FACTUAL BASIS, GETTING THE DEFENDANT REASON FOR WHY HE WANTS TO PLEAD GUILTY, THE COURT DISCUSSES HIS IMPRESSIONS OF APPELLATE AND DESCRIBES HIM AS BEING INTELLIGENCE, STUDIED THE LAW,

WELL APPRISED, REPRESENTED HIMSELF AT VARIOUS POINTS IN THE PROCEEDING AND UNDERSTAND THE LAW BETTER THAN ANY DEFENDANT I HAD IN FRONT OF ME IN A NUMBER OF YEARS.

>> JUST FOR CLARIFICATION, SOME OF THIS GETS LOST.

HOW FAR DID HE GO IN SCHOOL?

>> HE FINISHED HIGH SCHOOL, GOT A G.E.D. AND WENT TO TRADE SCHOOL.

>> WHEN WAS HE AND DOZIER SCHOOL FOR BOYS?

>> IT WAS FROM AGE 15 AND HE GOT HIS G.E.D. AT DOZIER.

>> WE ARE ALL FAMILIAR WITH DOZIER.

>> THAT BEING A BAD PLACE. ANYTHING THAT INDICATES WHAT HIS IQ IS?

>> NOT THAT I CAN RECALL.

>> NONE OF THOSE TESTS WERE DONE.

>> NOTHING IN THE RECORD ABOUT THOSE TESTS BEING DONE AND NEVER AN ISSUE ABOUT HIS --

>> HOW OLD WAS HE AT THE TIME OF THE CRIME?

>> IN HIS EARLY 30s.

I WANT TO SAY HE WAS 33 OR 34.

>> HE HAD BEEN INCARCERATED FROM THE TIME HE GOT OUT OF DOZIER?

>> HE COMMITTED AT AGE 18, INCARCERATED FOR 17 YEARS

THEREAFTER AND SERVED 15 AND GOT OUT OF PRISON IN LATE 2008,

THESE TOOK PLACE IN EARLY 2010.

IT IS THE STATE'S POSITION THE TRIAL COURT DID EVERYTHING TO

ENSURE THIS GENTLEMAN WAS COMPETENT TO ENTER HIS PLEA AND

THE STATE WOULD ASK THE STATE OCCUR -- TO DISQUALIFY IS BASED

ON TWO HEARINGS, BOTH OF WHICH IS THE STATE'S POSITION, AND AS

THE OFFENDING COMMENT WAS MADE, INTERACTED WITH THE JUDGE.

THE SECOND HEARING HE SAYS HAD ALREADY LEFT.

AND RESPONSE TO THE DEFENDANT,

THE STATE'S POSITION WAS FOR BOTH OF THEM, AND IT WAS NOT AN ISSUE WITH THE FIRST ONE THAT WAS COMPLETELY UNTIMELY. THE SECOND ONE IF THE COURT WILL ASSUME HE WAS NOT THERE AND REALLY DID ONLY FIND OUT ABOUT THIS AT THE TIME OF THESE TRANSCRIPTS, WAS STILL LEGALLY INSUFFICIENT, HE WANTED TO GET THE DEATH PENALTY, WANTED RESPONSIBILITY FOR HIS ACTIONS. MADE REFERENCES TO APPELLATE REVIEW.

IF IT IS A DEAF CASE IT WILL BE ON THE JUDGE'S MIND, APPELLATE REVIEW IS PROBABLY IN THE FLORIDA SUPREME COURT.

THERE JUST ISN'T ANYTHING THAT WOULD RAISE A DEEP CONCERN FOR LITIGANTS.

>> YOU CAN IMAGINE OTHER SITUATIONS, AND LET THE FLORIDA SUPREME COURT THE SIDE THAT AND CONFER IT.

>> THAT IS NOT THIS CASE AT ALL AND WHEN YOU LOOK AT THE RECORD, THE JUDGE MADE UP HIS MIND.

YOU HAVE A JUDGE WHO IN CONTRAVENTION TO WHAT THIS DEFENDANT WANTED, HE APPOINTED SPECIAL COUNSEL TO BRING ADDITIONAL MITIGATION.

IT IS THE STATE'S POSITION THERE IS NO ISSUE HERE.

IF THERE ARE NO FURTHER QUESTIONS WE ASK THE COURT TO AFFIRM.

>> REBUTTAL?

>> WITHOUT THE TESTING, WE CAN'T FIND WHAT IS WRONG.

AND DOCTOR WITH ME, MOVES MY LEG A LITTLE BIT AND SAYS YOU ARE FINE, GET UP AND DRIVE.

A SHORT TIME LATER, HAD MI 5 DONE, MY PELVIS IS BROKEN, IT WAS A QUARTER-INCH FURTHER I WOULD HAVE NEEDED RECONSTRUCTIVE SURGERY.

THAT IS WHAT WE HAVE HERE.

>> DOCTOR FRIEND AFTER THAT.  
>> HE IS A FRIEND.  
X FRIEND.  
THAT IS WHAT WE HAVE HERE.  
A SHORT INTERVIEW, NO TEST, NO  
PSYCHOLOGICAL TEST, NO NARROW  
SCAN DONE, NOTHING IS DONE, THIS  
CANNOT BE CALLED --  
>> HOW DO YOU KNOW?  
EARLIER YOU SAID YOU DON'T KNOW  
HOW LONG THE INTERVIEW WAS.  
>> I DON'T.  
NO MATTER, THERE WAS NO TESTING  
DONE, NO -- THERE WAS NO  
PSYCHOLOGICAL TEST DONE.  
>> JUST SO WE KNOW, THE LAW HAS  
NEVER BEEN, WE WENT OVER THIS,  
THERE HAS GOT TO BE PRESCRIBED  
NEUROPSYCHOLOGICAL TESTING, IQ  
TESTING, ANYTHING LIKE THAT.  
IS THAT CORRECT?  
>> THAT IS CORRECT.  
BUT MISTER WALL NEEDS TO KNOW  
THAT.  
THIS COURT CAN CORRECT THAT  
BECAUSE MISTER WALL MORE THAN  
LIKELY WILL NOT SEEK  
POSTCONVICTION UNLESS HE  
UNDERSTANDS BRAIN DAMAGE WAS  
CAUSING HIM TO NOT BE ABLE TO  
CONTROL HIS IMPULSES.  
THIS SHOULD VACATE THE JUDGMENT  
AND SENTENCE OF THE LOWER COURT  
AND RE-MANNED FOR PROCEEDINGS IN  
FRONT OF A DIFFERENT JUDGE,  
THANK YOU.  
>> THANK YOU, COURT IS IN  
RECESS.