>> ALL RISE.
>> PLEASE BE SEATED.
>> GOOD AFTERNOON.
WE NOW MOVE TO THE THIRD CASE ON TODAY'S DOCKET, SMITH V. STATE OF FLORIDA.
>> GOOD AFTERNOON.
MR. CHIEF JUSTICE AND MAY IT PLEASE THE COURT, MY NAME IS RACHEL ROEBUCK FROM CCRC MIDDLE ALONG WITH MY CO-COUNSEL, ERIC TINKER--
>> COULD YOU SPEAK UP A LITTLE BIT?
>> YES.
WE REPRESENT MR. DELMER SMITH.
DOES THAT HELP?
OKAY.
I WANT TO BEGIN TODAY BY ADDRESSING THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS AS TO THE MOTIONS TO SUPPRESS AT THE TRIAL AS TO BOTH THE DUFFEL BAG AND THE PLASTIC BAG.
AND THEN, IF TIME PERMITS ME TO, ALSO ADDRESS THE MITIGATION CLAIM.
I'M GOING TO BEGIN BY DISCUSSING THIRD PARTY CONSENT.
MARTHA TEJEDA, WHO WAS MR. SMITH'S PARAMOUR AT THE TIME OF THIS TRIAL OR AT THE TIME OF HIS PRETRIAL DETENTION, DID NOT HAVE AUTHORITY TO CONSENT TO THE SEARCH AND THE SEIZURE OF HIS BAGS.
THE TRIAL COURT BELOW ERRED WHEN THEY FOUND THAT MR. SMITH ABDICATED CONTROL OF HIS ITEMS THAT ORIGINATED IN A STORAGE UNIT--
>> DIDN'T SHE HAVE APPARENT AUTHORITY?
>> I THINK THE DIFFERENCE BETWEEN-- I DON'T THINK APPARENT AUTHORITY APPLIES IN THIS CASE, AND I'LL TELL YOU WHY.
I THINK THE DIFFERENCE BETWEEN ACTUAL AUTHORITY AND APPARENT

AUTHORITY IS THAT A MISTAKE WAS
MADE.
SO THE STANDARD IS THE SAME.
THE STANDARD IS MUTUAL USE BY
PERSONS WITH JOINT OR COMMON
ACCESS FOR MOST PURPOSES.
>> THERE WASN'T QUITE A MISTAKE
WAS MADE.
THE DIFFERENCE IS ONE IS THERE'S
A SUBJECTIVE YOU HAVE THE
AUTHORITY, THE OTHER IS TO THE
OUTSIDE WORLD YOU OBJECTIVELY
HAVE AUTHORITY EVEN THOUGH YOU
MAY NOT.
THAT'S THE DIFFERENCE, AS I
UNDERSTAND IT.
>> CORRECT.
>> OKAY.
>> SO BUT THERE WERE NO MISTAKES
MADE, AND THERE WERE NO
MISGIVINGS IN THIS PLACE THAT
POLICE HAD.
EVERYTHING THAT YOU AND I KNOW
NOW THE POLICE KNEW ON SEPTEMBER
11TH, 2009.
>> WELL, HERE'S WHAT THE POLICE
KNEW: THAT THEY WENT TO
MS.TEJADA'S HOUSE, THAT
MS.TEJADA HAD IN HER HOUSE A
DUFFEL BAG AND HAD THE CAR OF
MR. SMITH--
>> YES.
>>-- AND INSIDE THE CAR, WHICH
SHE HAD THE KEYS TO AT THE TIME
AND SHE GAVE OVER THE KEYS
BECAUSE THEY KNEW IT HAD THE
MICKEY MOUSE THING, THE MICKEY
MOUSE KEY CHAIN ON THE KEYS AT
THE TIME AND HAD THE BAG INSIDE
THE CAR-- THAT THEY GAVE OVER
THOSE ITEMS TO POLICE.
THAT'S WHAT THE POLICE KNEW,
RIGHT?
>> YES.
THE POLICE KNEW THAT.
THE POLICE ALSO KNEW, BECAUSE
THEY LISTENED TO THE JAIL PHONE
CALLS, THE OBJECTIVE BELIEF OF
MR. SMITH THAT THE PURPOSE OF
TELLING HER TO MOVE THIS

PROPERTY WAS THAT NO ONE WOULD
FIND IT.
>> WELL--
>> SO THEY DID KNOW, BUT THEY
DID MISTAKE THAT IT WAS HER
PROPERTY.
>> WHAT HE SAID WAS I NEED YOU
TO GO TO MY THINGS AND GET
THIS--
>> YES.
>> I NEED YOU TO GO GET MY KEYS
AND TAKE MY CAR--
>> YES.
>>-- AND HIDE THESE THINGS,
EXCEPT FOR SOME OF THEM I NEED
YOU TO THROW OUT, RIGHT?
>> WHAT SPECIFIC--
>> THE CLOTHES?
>> WHEN YOU GO TO THE SPECIFIC
PAGE OF THE TRANSCRIPT WHERE
HE'S TALKING ABOUT THE CLOTHES,
THERE ARE SEVERAL POINTS WHERE
IT SAYS UNINTELLIGIBLE.
AND DURING THAT CONVERSATION,
HE'S TALKING ABOUT HIS
EX-GIRLFRIEND WHOSE NAME IS
MICHELLE WHO THREW OUT A LOT OF
HIS BELONGINGS.
SO WHEN HE'S REFERRING TO THE
CLOTHES, HE'S SAYING THE CLOTHES
THAT ARE IN MY STORAGE ARE THE
ONLY ONES THAT WERE NOT THROWN
AWAY.
SO I DON'T THINK HE'S
INSTRUCTING HER TO THROW THE
CLOTHES AWAY.
>> IF THE POLICE KNOW THAT
SOMEONE ELSE HAS BEEN GIVEN
ACCESS TO PROPERTY, THAT THAT
PROPERTY IS NOW WITHIN THEIR
EXCLUSIVE, THAT OTHER PERSON'S
EXCLUSIVE POSSESSION BECAUSE
HE'S IN JAIL, HE CAN'T HAVE
POSSESSION OF THEM--
>> RIGHT.
>>-- THAT THEY'VE BEEN TAKEN
AWAY FROM A HIDING PLACE AND SHE
NOW HAS ACCESS TO THEM AND HE
SPECIFICALLY ASKS HER TO GO INTO
THE DUFFEL BAG, TO ENTER INTO

THE DUFFEL BAG, HOW IS THAT NOT
AT LEAST APPARENT, JOINT
POSSESSION OR AT LEAST APPARENT
ACCESS TO THOSE THINGS?
JUST HAVING A HARD TIME
UNDERSTANDING THAT.
>> OKAY.
SO JOINT ACCESS, YOU KNOW,
WHETHER OR NOT YOU HAVE JOINT
ACCESS OR THE POTENTIAL FOR
JOINT ACCESS DOES NOT MEAN
YOU'RE MUTUALLY USING THE
PROPERTY.
SO THAT'S THE REASON THAT WE
CITE CASES--
>> ISN'T IT COMMON AUTHORITY
OVER THE PROPERTY?
>> WELL, IT'S MUTUAL USE BY
PERSONS WHO HAVE COMMON OR JOINT
ACCESS.
THAT'S WHAT AUTHORITY IS DEFINED
AS.
SO OUR ARGUMENT IN THE BRIEFS
WAS THAT SINCE SHE IS NOT
MUTUALLY USING THIS PROPERTY--
TAKE THE STATE'S CASE THAT THEY
CITE FRAZIER V. CUPP WHERE THE
DEFENDANT AND HIS COUSIN ARE
SHARING A GYM BAG.
AND THE COUSIN BRINGS A GYM BAG
TO THE POLICE AND SAYS THERE'S
SOMETHING IN HERE I THINK YOU
MIGHT WANT TO SEE.
>> ISN'T THAT HOW AUTHORITY'S
BEEN DEFINED, AUTHORITY TO
CONSENT AND SEARCH ARISES FROM
MUTUAL USE, AS YOU'VE SAID--
>> YES.
>>-- BY PERSONS GENERALLY
HAVING JOINT ACCESS, COMMON
AUTHORITY OR-- SO IT'S AN OR,
THERE, MEANING THERE'S THREE OF
THEM.
ISN'T THERE SUFFICIENT
RELATIONSHIP TO THE EFFECTS TO
BE INSPECTED; THAT IS, I HAVE
THE KEYS TO THE CAR.
I DROVE THE CAR HERE.
I AM THE ONLY ONE WHO HAS, AT
THIS POINT, ACCESS TO THE CAR.

ISN'T THAT SUFFICIENT
RELATIONSHIP TO THE PREMISES?
>> SO TWO RESPONSES TO THAT.
THE FIRST IS SHE CERTAINLY HAD
AUTHORITY TO CONSENT TO THE
SEARCH OF HER HOME BECAUSE IT
WAS HERS AND SHE LIVED THERE.
WHAT THAT DOES NOT EXTEND TO IS
THE AUTHORITY TO CONSENT TO THE
SEARCH OF CONTAINERS OR ITEMS
WITHIN HER HOME THAT DO NOT
BELONG TO HER.
AND ALTHOUGH HE DID HAVE THE
KEYS, AND THE MINNIE MOUSE KEY
CHAIN, BY THE WAY, WAS IN THE
LOCK BOX.
SO SHE DID HAVE THE KEYS, BUT
SHE DIDN'T HAVE THE KEYS LIKE IN
MOST AUTHORITY CASES JUST BY
VIRTUE OF THEIR CLOSENESS OR
THEIR INTIMACY OR BECAUSE THEY
HAD COMINGLED OR SHARED
PROPERTY.
>> SO LET'S SAY, FOR EXAMPLE,
THAT I KNOCK OVER A BANK AND I
TAKE PROCEEDS FROM THAT BANK AND
PUT IT IN A DUFFEL BAG.
AND I PUT MY CLOTHES IN THE
GARBAGE BAG BECAUSE I DON'T WANT
THOSE--
>> I'M SORRY, YOU PUT?
>> MY CLOTHES IN A GARBAGE BAG
BECAUSE I DON'T WANT DNA TO BE
DISCOVERED.
AND I TAKE THAT TO MY
GIRLFRIEND'S HOUSE, AND I SAY,
GIRLFRIEND, CAN YOU PLEASE HOLD
ON TO THESE THINGS FOR ME?
SO THAT I AM NOT, THEY ARE NOT
DISCOVERED BY THE POLICE.
AND THEN I LEAVE.
DOES MY GIRLFRIEND NOT HAVE SOME
AUTHORITY OVER THOSE ITEMS IN
WHICH I DROPPED AT HER HOUSE?
>> I THINK IF THE INTENT IS
CLEAR THAT THE PURPOSE FOR HER
HAVING POSSESSION AS FAR AS
THEIR BEING UNDER HER ROOF OF
THAT PROPERTY WAS TO STORE THEM,
THEN I THINK THAT YOU DO

MAINTAIN A REASONABLE
EXPECTATION OF PRIVACY IN THOSE
ITEMS.
>> WELL, THAT'S NOT REALLY THE
QUESTION.
I MIGHT, BUT THAT MAKES-- THAT
THAT DOESN'T MEAN SHE DOESN'T
ALSO HAVE SOME EXPECTATION OF
PRIVACY AND CONTROL AND
AUTHORITY OVER THOSE ITEMS FOR
WHICH SHE CANNOT DO.
SO THOSE ARE TWO SEPARATE AND
NOT MUTUALLY EXCLUSIVE THINGS.
I STILL MAINTAIN A FOURTH
AMENDMENT RIGHT.
IN OTHER WORDS, I TEND TO AGREE
WITH YOU THAT THEY'RE NOT
ABANDONED, THOSE ITEMS.
>> OKAY.
>> BUT THAT'S SEPARATE AND APART
FROM WHETHER THEY ARE JOINTLY
HELD FOR PURPOSES OF DO I HAVE
THE AUTHORITY TO CONSENT, RIGHT?
>> THOSE ARE TWO SEPARATE
THINGS, I WOULD AGREE.
>> RIGHT.
AND DOESN'T THAT-- IS THERE AT
LEAST SUFFICIENT INDICIA HERE IF
FOR THE LATTER, IF NOT
NECESSARILY FOR THE FORMER?
JOINT CONTROL?
>> THERE IS SUFFICIENT INDICIA
OF JOINT, OF CONTROL AND ACCESS
TO THE PROPERTY, BUT THERE ISN'T
FOR MUTUAL USE.
THAT'S MY POINT.
SO, FOR INSTANCE, THE STATE
CITES THE CASE HEENE FROM THIS
COURT, OR HAINE, WHICH IS VERY
SIMILAR TO THE PATTERNS OF THIS
CASE EXCEPT FOR A VERY IMPORTANT
DISTINCTION.
THE DEFENDANT IS ACCUSED OF A
MURDER.
HE GOES TO HIS FRIEND'S HOUSE
BASICALLY SAYS I JUST KILLED TWO
PEOPLE.
I'M LEAVING THIS GUN IN YOUR
ATTIC.
AND THE REASON THAT THIS COURT

SAID THAT THAT FRIEND DID NOT--
OR DID, RATHER, HAVE ACTUAL
AUTHORITY TO HAND OVER THOSE
ITEMS AND THE EXPECTATION OF
PRIVACY WAS GONE WAS BECAUSE
THAT FRIEND TOLD THE DEFENDANT
IN HEENE YOU NEED TO GET THAT
OUT OF MY HOUSE.
I DON'T WANT THAT IN MY HOUSE AT
ALL.
SO THERE WAS NO REASONABLE
EXPECTATION THAT WHAT YOU'RE
LEAVING IN THIS HOUSE WOULD HAVE
REMAINED PRIVATE IN ANY WAY,
SHAPE OR FORM.
THAT'S VERY DIFFERENT THAN WHAT
WE HAVE HERE ON THE PHONE CALLS
WHERE THEY'RE SPECIFICALLY
TALKING ABOUT KEEP THIS FOR ME,
KEEP THIS UNTIL I GET OUT.
YES, I'LL KEEP IT FOR YOU, I
HAVE NO PROBLEM DOING THAT.
>> CAN I TALK TO YOU ABOUT
PREJUDICE HERE?
>> YES.
>> SO LET'S SAY I AGREE WITH
YOU, AT LEAST AS TO SOME OF THE
ITEMS.
WASN'T THERE ALSO TESTIMONY IN
THE EVIDENCE THAT YOUR CLIENT
WAS CONNECTED TO THOSE ITEMS?
FOR EXAMPLE, DIDN'T MS. QUINONES
TESTIFY THAT AT LEAST SOME OF
THE STOLEN ITEMS THAT WERE
IDENTIFIED, THAT SHE SAW THE
DEFENDANT WITH THOSE ITEMS?
>> ARE YOU TALKING ABOUT THE
ENCYCLOPEDIA?
>> THAT'S ONE OF THEM.
>> OKAY.
>> AND WASN'T THERE A WATCH
ALSO?
>> YES.
>> OKAY.
>> THE WATCH WAS INSIDE THE
LOCKBOX.
THAT'S ANOTHER--
>> RIGHT.
>> WELL, THIS WAS A MATCHING SET
OF WATCHES.

>> THAT'S RIGHT.
THE MATCHING SET.
>> SO WITH RESPECT TO THE
MEDICAL ENCYCLOPEDIA, I DO AGREE
THERE IS TESTIMONY IN THE TRIAL
RECORD THAT EVEN PERHAPS IF YOU
SUPPRESS THE PHYSICAL BOOK WOULD
HAVE STILL BEEN ALLOWED.
BUT WHAT WOULD NOT HAVE HAPPENED
HAD YOU NOT HAD THE PHYSICAL
BOOK IN EVIDENCE WAS THE BRILES
FAMILY WOULD NOT HAVE BEEN ABLE
TO SAY THAT IS THE BOOK THAT'S
BEEN IN OUR HOUSE FOR YEARS.
THEY WOULD HAVE BEEN, THEY BOTH
HAVE MEDICAL ENCYCLOPEDIAS.
>> HE ALSO TESTIFIED THAT HE
PAWNED OR WENT TO THE PAWNSHOP
FOR SOME OF THE STOLEN ITEMS
THAT WERE THERE, CORRECT?
>> YES, HE DID.
>> SO GIVEN THAT MS. QUINONES
IDENTIFIES SOME OF THE STOLEN
ITEMS AND MR. SELES IDENTIFIES
THE DEFENDANT WITH SOME OF THE
STOLEN ITEMS, WASN'T THE
TESTIMONY THAT IT WAS FOUND IN
THIS DUFFEL BAG IN MS.TEJADA'S
HOUSE NOT REALLY ALL THAT
RELEVANT GIVEN THERE WAS ALREADY
SIGNIFICANT CONNECTION TO THERE?
IN OTHER WORDS, SUCH THAT IT
WOULDN'T CHANGE THE OUTCOME IN
THIS CASE?
>> I DO THINK IT WOULD HAVE
CHANGED THE OUTCOME IN THIS
CASE, AND I'LL EXPLAIN WHY.
MR. SELES WAS THE ALTERNATIVE
SUSPECT.
THE DEFENSE STRATEGY AT TRIAL
WAS THAT HE WAS THE REAL KILLER.
AND ALTHOUGH HE IDENTIFIED
MR. SMITH AS HAVING POSSESSION
OF THE NECKLACE, FOR INSTANCE,
HE ALSO TRIED TO LIE AND SAY
THAT HE HAD NEVER TOUCHED IT AND
HE WAS IMPEACHED AND HE'S ALSO
TO --
>> YOUR CLIENT'S FINGERPRINTS
WERE FOUND ON IT?

>> YES, THEY WERE.
>> RIGHT.
>> ALSO CONNECTED TO ACCESS TO THE STORAGE UNIT THAT WE ARE TALKING ABOUT ON NORTH COURT STORAGE.
AND ALSO HAS CONNECTIONS TO ITEMS IN PLASTIC BAG.
THE TOOLS AND MODEL AIRPLANES AND HAS ALL THE CONNECTIONS.
>> THE JURY WOULD HAVE HEARD THE PHONE CALLS, RIGHT, THOSE WOULD HAVE COME INTO EVIDENCE?
>> IF THE MOTION TO SUPPRESS WAS GRANTED --
>> SURE.
>> I'M NOT SURE WHAT THE RELEVANCE WOULD BE AT THAT POINT.
>> HEY, I WANT YOU TO HIDE SOMETHING FOR ME, GET SOMETHING FOR ME.
>> BECAUSE WHAT MR. SMITH IS ACTUALLY SAYING TO HER IN UNEDITED -- UNEDITED.
>> YOU HAVE TO OPEN IT UP AND GET IT YOURSELF.
>> THAT'S WHERE THE BB GUN WAS. THE WAY IT WAS MOTION AND THIS WAS NOT A GUN CASE, BUT THE WAY IT'S EDITED MAKES IT SEEM YOU NEED TO GET AND IN REALITY THAT'S NOT WHAT HE WAS SAYING.
I WANT TO MOVE ON IF THERE'S NO OTHER QUESTIONS ABOUT CONSENT BRIEFLY TO THE INVENTORY SEARCH ISSUE.
>> WE DON'T NEED TO GET THERE IF WE FIND ACTUAL OR APPARENT AUTHORITY?
>> THERE WOULDN'T NEED --
>> ALTERNATIVE RATIONALE THAT THERE WAS INVENTORY SEARCH AND BASED ON THAT THEY OBTAINED SEARCH WARRANT, CORRECT?
>> YES.
HOWEVER, IF YOU DON'T GET THERE, THERE'S EVIDENCE AND DETECTIVE AT THE HEARINGS ADMITTED THAT THE REASON THEY WENT WAS

EVIDENCE COLLECTION, IT WAS NOT
PROPERTY THAT TRADITIONALLY
POLICE ARE BURDENED WITH THAT
THEY HAVE TO INVENTORY AND
CATALOG.
>> THEY DID OTHERWISE FOLLOW
OTHER THAN TAKING THE PICTURES
DEPARTMENT POLICY?
>> THERE WAS EVIDENCE THAT THEY
TOOK PHOTOGRAPHS, THERE WAS NOT
EVIDENCE THAT THEY TOOK
PHOTOGRAPHS EXACTLY PER
DEPARTMENT POLICY BECAUSE THE
PHOTOGRAPHS WAS NOT IN EVERY
STAGE OF OPENING.
>> BUT THERE WERE OFFICERS THAT
DID STATE IT WAS INVENTORY --
>> YES, BUT IF YOU LOOK AT THE
ACTUAL -- FOR THE BAG THAT
ORIGINATED IN THE CAR, FOR
INSTANCE, IF YOU LOOK AT
PROPERTY RECEIPT, THE EVIDENCE
BOX IS CHECKED INSTEAD OF
SAFEKEEPING OR FOUND OR ANY OF
THE OTHER OPTIONS, IT WENT TO
FORENSICS THE NEXT DAY, SO EVEN
AFTER THEY'RE COLLECTING THESE
ITEMS FROM THIS HOUSE, THEY ARE
TREATING IT MUCH MORE LIKE
EVIDENCE THAN THEY ARE PROPERTY
THAT THEY'RE JUST SAFEKEEPING.
>> AND THE TRIAL COURT, POST
CONVICTION COURT HEARD CONTRARY
EVIDENCE THAT YOU'RE TALKING
ABOUT, THE OTHER EVIDENCE AND
MADE FINDING THAT IT WAS
INVENTORY SEARCH?
>> CERTAINLY.
>> HOW ARE WE TO UNDO THE
FINDING? MAKES A FINDING THAT
THIS WAS AN INVENTORY SEARCH,
HOW DO WE RULE CONTRARY TO THAT?
>> BECAUSE THERE'S SO MUCH
EVIDENCE THAT IT WAS ACTUAL
PRETEXT, SO THE INQUIRY WHEN
YOU'RE TALKING ABOUT WHETHER
INVENTORY SEARCH IS LEGAL IS
LIKE I SAID THE MOTIVATION FOR
ACQUIRING THE PROPERTY, IF YOU
HAVE AN EVIDENCE MOTIVE, YOU ARE

NOT INVENTORYING OF IT.
RECEIVED COUNSEL AT PENALTY
PHASE OF DEATH PENALTY TRIAL,
HAD COUNSEL NOT BEEN IN
EFFECTIVE MR. SMITH'S TRIAL
WOULD HAVE SUFFERED FROM HIS
SISTERS THAT HE SUFFERED EXTREME
PHYSICAL ABUSE.
>> DID COUNSEL, YOU'RE AT VITAL
TIME SO I DON'T WANT TO INTRUDE
ON THAT, BUT --
>> I WOULD LIKE TO INTRUDE ON IT
MYSELF IF I COULD AND THEN I
WILL USE THE REMAINDER.
>> CAN I ASK A QUESTION OR TWO?
>> YES.
>> DIDN'T COUNSEL ACTUALLY HAVE
MITIGATION SPECIALIST REACH OUT
TO ALL 3 OF THE SISTERS OR THE 2
SISTERS THAT TESTIFIED.
>> THE TWO SISTERS, THEY CALL
HER A WOMAN, THEY DON'T REMEMBER
HER NAME, A WOMAN CONTACTED ME
IN 2011-2012, PATRICIA SAYS, I
TOLD HER EVERYTHING I'M TELLING
YOU NOW.
>> BUT THERE'S CONTRARY EVIDENCE
TO THAT, BOTH OF THE ATTORNEY
AND THE INVESTIGATORS SAY THAT
THAT -- THE SISTERS NEVER CALLED
BACK OR RETURNED PHONE CALLS AND
WERE UNCOOPERATIVE AFTER YOUR
CLIENT HEARD ABOUT IT, GOT UPSET
AND INSTRUCTED THEM NOT TO REACH
OUT TO FAMILY, RIGHT?
>> TWO RESPONSES, JANET AND
PATRICIA WERE ASKED, WERE YOU IN
CONTACT AT ALL WITH YOUR BROTHER
DURING THE TRIAL PHASE OR
PENALTY PHASE AND THEY SAID NO,
ALSO MR. --
>> THE QUESTION WAS -- THE
QUESTION WAS THE TESTIMONY FROM
THE INVESTIGATOR AND THE
ATTORNEY.
>> THE ATTORNEY TESTIFIED THAT
HIS SUSPICION WAS BECAUSE WHEN
THEY WENT TO VISIT MR. SMITH AND
TOLD HIM WE CONTACTED YOUR
SISTER, HE WAS ANGRY AND AFTER

THAT NO FURTHER COOPERATION WAS ABLE TO BE HAD.
HE DIDN'T PERSONALLY CONTACT ANY ONE SO IT'S CALLING --
>> DIDN'T -- DIDN'T COUNSEL TESTIFY, THOUGH, THAT AS A MATTER OF STRATEGY THAT HE DIDN'T WANT TO ALIENATE HIS CLIENT AND IT TOOK A LOT OF COAXING TO GET YOUR CLIENT TO GET TESTING AND DIDN'T WANT TO ANTAGONIZE HIM MORE BECAUSE HE HAD BEEN UNCOOPERATIVE BY CONTACTING THE SISTERS, RIGHT?
>> YES, HOWEVER, AT THE QUASI NELSON HEARINGS, WHERE THEY AIR GRIEVANCES WITH EACH OTHER, CLEARLY STATES IF HE'S NOT GOING TO WHOLESALE WAIVE OF MITIGATION, I'M THE DRIVER OF THE CAR AND I DECIDE WHAT WITNESSES NOT HIM WE ARE GOING TO PRESENT AND ALSO EVEN IF YOU FIND THAT THE DEFICIENCY DIDN'T AFFECT THE JURY, SO YOU FIND THAT MR. BRUNWOOD WAS SUFFICIENTLY AND THE JURY DIDN'T HAVE THE TIME TO GET THE INFORMATION, ADMITTED THAT THAT DIRECTION TO NOT TALK TO MY FAMILY WAS LIFTED, RIGHT BEFORE THE TRIAL STARTED AND THERE WERE 8 MONTHS IN BETWEEN THE PENALTY PHASE AND THE SPENCER HEARING WHERE HE COULD HAVE CALLED JAN AND PATRICIA AND MADE NO ATTEMPT.
>> COUNSEL, YOU HAVE USED MORE THAN HALF OF YOUR REBUTTAL TIME.
>> WOULD YOU ASK YOUR QUESTION?
>> WHY DON'T YOU KEEP YOUR REBUTTAL TIME?
>> I APPRECIATE IT.
>> MAY IT PLEASE THE COURT TIMOTHY FREEMAN ON BEHALF OF THE STATE OF FLORIDA, DEALING FIRST WITH THE SUPPRESSION ISSUE AND THE DUFFLE BAG AND GARBAGE BAG, I THINK IT WAS CLEAR THAT THERE WAS APPARENT AUTHORITY, WE GET

FROM THE JAIL CALLS, THE
DEFENDANTS IS SPEAKING AND
TELLING WHAT VISIT HE WANTS WITH
THE BAGS, TELLS HER I WANT YOU
TO DO THESE THINGS, THAT GIVES
HER THE AUTHORITY TO GO IN AND
GO THROUGH ALL OF THE BAGS, I
TAKE IT'S CLEAR THAT WE HAVE
APPARENT AUTHORITY BASED UPON
THAT INFORMATION.
BUT THE JUDGE CORRECTLY KNOWS
THAT THE -- THERE'S ALTERNATIVE
BASES OF THE TRIAL COURT IN
FINDING THAT COUNSEL WAS NOT IN
EFFECTIVE HERE AND THAT THAT IS
VALID INVENTORY SEARCH, THERE
WAS TESTIMONY FROM DETECTIVE WHO
EXPLAIN THE SARASOTA COUNTY
SHERIFF'S OFFICE STANDARD
PROCEDURES, CONDUCTING INVENTORY
SEARCH, THEY DO NOT TAKE
PROPERTY IN AS LONG AS IT'S NOT
LOCKED, THEY ARE GOING TO DO
INVENTORY BECAUSE THEY DON'T
WANT DANGEROUS ITEMS IN THEIR
PROPERTY ROOM AND THAT'S THE
BASIS --
>> BECAUSE THEY HAVE NO IDEA
WHAT'S IN THE DUFFLE BAG, RIGHT?
>> RIGHT.
AS COUNSEL POINTED OUT THERE WAS
A FIREARM IN THE DUFFLE BAG SO
THERE WAS A GOOD REASON, NOW
INSIDE THE DUFFLE BAGS THEY
FOUND A LOCK BOX, THEY DIDN'T
OPEN THE LOCK BOX UNTIL THEY GOT
SEARCH WARRANT.
>> IN OTHER WORDS, DOES THAT
INDICATE INTENT THAT THAT WAS
NOT EVIDENCE SEARCH BUT
INVENTORY SEARCH.
>> SO I THINK THAT THAT
CLARIFIES AND SHOWS THE VALIDITY
OF THE LOWER COURT'S RULING IN
THIS ASPECT AND WE HAVE TO BE
ABLE TO SHOW AND IN ORDER TO
FIND THAT COUNSEL WAS IN
EFFECTIVE THE DEFENDANT HAD TO
SHOW THAT NO ATTORNEY DID WHAT
THIS ATTORNEY DID, NO REASONABLE

ATTORNEY AND I DON'T THINK THAT THEY'VE ESTABLISHED THAT AT ALL AND SECONDLY IN TERMS OF PROCEDURE ON THE PROCEDURE PRONG WE HAVE, EVEN IF ALL OF THAT EVIDENCE WAS EXCLUDED WE HAVE A MOUNTAIN OF OTHER EVIDENCE THAT LINKS THIS DEFENDANT TO THIS HOMICIDE.
WE HAVE THE WATCH THE BROWN FAMILY WAS ABLE TO IDENTIFY AS HAVING BELONGED TO THE VICTIM THAT SHE WAS IN FACT, WEARING --
>> NOT JUST HOMICIDE ITSELF, YOU HAVE SAME PROPERTY THAT LINKS HIM TO THE SAME PROPERTY THAT WAS ULTIMATELY FOUND IN MS.TEJADA'S HOUSE?
>> YES.
>> THE KEY CHAIN AND DIAMOND NECKLACE AND ENCYCLOPEDIA.
>> IF THIS COURT WERE TO EXCLUDE EVERYTHING THAT WAS IN THE DUFFLE BAG, THERE'S STILL AMPLE EVIDENCE LINKING HIM, NOT ONLY DO WE HAVE THE PHYSICAL EVIDENCE THAT WAS D THE JEWELRY AND PHYSICAL ITEMS THAT WERE COLLECTED, WE ALSO, HAVE OF COURSE, THE CELL PHONE TESTIMONY WHICH SHOWS THE CELL TOWER TESTIMONY, FORGIVE ME WHICH SHOWS THE DEFENDANT WHO LIVES IN NORTH PORT DRIVING UP TO THE VICINITY OF WHERE THE -- THE VICTIM LIVED.
IT'S APPROXIMATELY 15-MILE RIDE IF YOU LOOK AT THE MAP FROM WHERE HE LIVES TO WHERE THE HOMICIDE OCCURRED AND THAT CELL TOWER INFORMATION PLACES HIM IN THE VICINITY OF TOWER 304 AT ABOUT THE TIME THAT THE HOMICIDE OCCURRED AT 3:38, 3:45.
SO I -- THERE'S OTHER EVIDENCE THAT LINKS HIM TO THIS CASE AND THE INVENTORY SEARCH REGARDLESS OF HOW THIS COURT RULES ON INVENTORY SEARCH ASPECT OF THIS CASE, THERE'S NO WAY THAT THIS

COURT CAN FIND THAT THE ATTORNEY WAS IN EFFECTIVE IN HANDLING THE CASE IN THE WAY THAT HE DID.
IF WE CAN TURN TO MITIGATION ISSUE, FIRST AND FOREMOST, MOST IMPORTANT THING TO PAY ATTENTION THAT THE REASON WHY COUNSEL WAS UNABLE TO OBTAIN MORE INFORMATION FROM THE DEFENDANT'S FAMILY IS THE DEFENDANT HIMSELF OBSTRUCTED THAT INFORMATION, THE DEPARTMENT SAID I DON'T WANT YOU TO GET MY FAMILY INVOLVED AND WHEN HE DID GET OVER HIS CLIENTS INSTRUCTIONS AND SPOKE TO ONE OF THE SISTERS, THE DEFENDANT VERY UPSET WITH HIM AND IT WAS IMPORTANT, OF COURSE, FOR HIM TO TRY TO MAINTAIN SOME KIND OF WORKING RELATIONSHIP WITH HIS CLIENT --
>> DO YOU AGREE AS MATTER OF FEDERAL IN EFFECTIVENESS OF COUNSEL LAW, THAT IT WAS NOT DEPOSITED.
>> OH, YES, OH YES, IF YOU LOOK AT MITIGATION THAT COUNSEL OBTAINED, SOME THAT HE OBTAINED OVER HIS CLIENT'S WISHES DON'T DO THIS.
>> COUNSEL DID STILLER JOB IN PRESENTING FOR HIS CLIENT, WITH REGARD TO SISTERS, CALL ONE TIME, GET NO RESPONSE AND LISTEN TO YOUR CLIENT AND SAY DON'T DO IT AGAIN.
>> DEPEND ON THE CIRCUMSTANCES, YOUR HONOR.
>> SEEMS TO BE WHAT HAPPENED HERE.
>> HE DID CONTACT --
DR. ISENSTEING, MITIGATION EXPERT, PSYCHOLOGIST DID ISN'T THAT CORRECT SPEAK WITH THE SISTERS, HE GOT INFORMATION FROM THE SISTERS THAT HE WAS ABLE TO USE TO PRESENT, WHEN HE MAKES THE FIRST STEP AND THEN ALL SUBSEQUENT ATTEMPTS ARE REBUFFED BY THE ENTIRE FAMILY, THEY WERE

UNABLE TO COMMUNICATE WITH
ANYBODY.
>> WELL, ALL SUBSEQUENT
INDICATES THAT THERE WAS -- YOU
CALLED 5 TIMES, YOU WENT AND
KNOCKED ON THE DOOR AND YOU GOT
A SLAMMED DOOR, YOU'RE REQUIRED
TO SHAKE THE TREES AND NOT RAKE
THE LEAVES OFF, I GET THAT, WHAT
I DON'T UNDERSTAND OR WHAT I AM
CONCERNED ABOUT IS THE EVIDENCE
SEEMS TO SUGGEST WE CALLED ONCE,
WE GOT A HANG-UP OR NO CALL BACK
AND MY CLIENT, I TOLD MY CLIENT,
MY CLIENT GOT UPSET AND THAT WAS
IT S THE EVIDENCE THAT THERE WAS
MORE THAN WHAT I JUST DESCRIBED?
>> WITH REGARD TO HOW MANY TIMES
THEY CALLED I'M NOT EXACTLY
CERTAIN THAT IT WAS JUST ONE
CALL, I THINK WHAT THE ATTORNEY
TESTIFIED TO WAS -- HE WAS NOT
THE ONE WHO MADE THE CALLS, IT
WAS MITIGATION SPECIALIST WHO IS
MADE THE CALLS, HE SAID
SPECIFICALLY THAT WITH THE ONE
SISTER WE WERE ABLE TO GET TO
COMMUNICATE WITH US, WENT FROM
BEING HELPFUL, WILLING TO
COMMUNICATE TO NOT RETURNING OUR
PHONE CALLS AT ALL AND HOW MANY
CALLS THEY MADE THE RECORD IS
NOT CLEAR WHETHER THEY MADE ONE,
3 OR 5, WE DON'T KNOW.
>> THE TRIAL COURT FOUND THAT
THE TRIAL DEFENDANT OBSTRUCTED
THE EFFORT?
>> YES.
IF WE LOOK AT IT NOW IN TERMS OF
PREJUDICE, WHAT ADDITIONAL
INFORMATION WAS OBTAINED AFTER
AT POST CONVICTION.
>> IN FACT, THE TRIAL COURT
FOUND AS MITIGATING FACTOR THAT
HE ASSIGNED WEIGHT TO
CHILDHOOD ABUSE, CORRECT?
>> YES.
>> THE SAME THING ACCOUNTED FOR
IN THE MITIGATION AGGRAVATION
WEIGHING, IS THAT CORRECT?

>> YES, THAT'S MY POINT.
THE THING THAT DOCTOR WAS ABLE TO SAY IS I WENT TO THE DEFENDANT'S HOMETOWN, I SAW THE HOUSE THAT HE GREW UP IN, IT WAS IN A BAD NEIGHBORHOOD, I SAW THE PLACE WHERE HE WAS ABUSED, I SPOKE TO THE FAMILY AND DETERMINED THAT, YES, THE ABUSE DID OCCUR AND CONFIRMED MY DIAGNOSIS, IT CONFIRMED WHAT I TESTIFIED TO AT THE TRIAL, THE ONLY THING ADDITIONAL THAT DR. ISENTINE THAT HE WAS ABLE TO TESTIFY THAT HE SUFFERED FROM POST TRAUMATIC STRESS DISORDER, THE LOWER COURT FOUND WHEN LOOKING AT ADDITIONAL MITIGATION AND COMPARED WITH THE REALLY STRONG AGGRAVATOR, EVIDENCE SUPPORTING THE AGGRAVATORS IN THIS CASE, THAT LITTLE BIT OF MITIGATION WAS JUST NOT ENOUGH TO OUTWEIGH -- I MEAN, WE HAVE HEINOUS ATROCIOUS AND CRUEL, WE HAVE A WITNESS WHO TESTIFIED AT THE TRIAL WHO WAS ACTUALLY ONE OF THE DEFENDANT'S VICTIMS, SHE SURVIVED.
SHE CAME IN AND TESTIFIED TO THE TRIAL COURT AND TESTIFIED TO THE JURY, I WAS AT HOME WHEN DELMER SMITH BROKE INTO MY HOUSE, 250-POUND DELMER SMITH INTO MY HOUSE, HE TIED ME UP, WITH ELECTRICAL CORD IN A WAY THAT IF I MOVED I WAS GOING TO BE CHOKED.
HE ROBBED HER AND TERRORIZED HER.
THAT FAR OUTWEIGHS THE MITIGATION THAT DOCTOR WAS ABLE TO SECURE BY SPEAKING TO THE FAMILY.
I DON'T HAVE ANY OTHER ARGUMENT IF THE COURT HAS ANY QUESTIONS, NO, THANK YOU.
>> I WANT TO RESPOND TO THE ALLEGATION THAT THERE WAS A MOUNTAIN OF EVIDENCE IN THIS

CASE, THERE WAS NO DNA IN THIS CASE, NO CONFESSION, NO PRINTS AT THE CRIME SCENE, THIS WAS A CIRCUMSTANTIAL EVIDENCE CASE BASED ON POSSESSION OF STOLEN PROPERTY.
>> CAN YOU DO THE MITIGATION POINT, IF YOU CAN ANSWER THE TWO QUESTIONS THAT I HAVE WAS THERE MORE THAN ONE EFFORT TO REACH OUT, IS THAT THE TESTIMONY, EVEN ACCEPTING THAT THE VERSION YOU DON'T AGREE WITH AND THE PROCEDURE ASPECT HE JUST RAISED RIGHT THERE, IS THERE LACK OF PREJUDICE HERE EVEN IF THEY WERE ABLE TO SPEAK TO THE SISTERS?
>> WE MOVE ONTO CALLING QUINN, THE LAST NOTE IN THE FILE AS FAR AS CONTACT ATTEMPTS.
TO DO AWAY WITH THE JURY PREJUDICE, THERE'S 8 MONTHS IN BETWEEN THE JURY AND THE SPENCER HEARING WHERE COUNSEL MAKES ZERO ATTEMPTS AND DIRECTS CALLING QUINN AT CONTACTING, JAN, PATRICIA OR ALICE OR ONLY PERSON THAT HE SPECULATES ABOUT, YOU KNOW, ACTUALLY BEING FORWARDED FROM CONTACTING MR. SMITH GETTING ANGRY ABOUT.
NOW, I WILL MOVE ON TO THE PREJUDICE, DOCTOR WAS ABLE TO DIAGNOSIS MR. SMITH WITH PTSD WHICH IS AN ADDITIONAL DIAGNOSIS AND HE WAS ABLE TO CONFIRM WHICH IS A CLINICAL CONDITION, CHILDHOOD ABUSE, IT'S NOT CUMULATIVE IN ANY WAY WHAT THE JURY HEARD AT SPENCER HEARING, THE JUDGE DID FIND BECAUSE IT WAS UNREBUTTED AND THE ONLY REASON HE FOUND THAT THERE WAS EVIDENCE THAT MR. SMITH WAS ABUSED AS A CHILD BUT HE GAVE IT A LITTLE WAIT AND I CAN'T IMAGINE A JUDGE OR A JURY GIVING LITTLE WEIGHT TO WHAT WE NOW KNOW HAPPENED TO MR. SMITH AND CHILDHOOD WHICH WAS THAT HIS

FATHER'S FAVORITE TIME TO BEAT
HIM WAS WHEN HE WAS JUST OUT OF
THE BATH NAKED AND WHEN HE GOT
OLD ENOUGH, THAT WAS ON A DAILY
BASIS AND WHEN HE GOT OLD ENOUGH
TO FIGHT BACK WHICH WAS 8, HIS
FATHER WOULD TAKE HIM DOWN TO
THE BASEMENT AND CHAIN HIM WITH
ROPES AND EXTENSION CORDS TO A
POLL TO EFFECTUATE THE BEATINGS
THAT WAY.
I THINK BEFORE I RUN OUT OF TIME
--
>> YOU HAVE RUN OUT OF TIME.
YOUR 30 MINUTES, I'M SORRY, 37
SECONDS OVER, SO IF YOU WOULD
SUM UP IN ANOTHER 30 SECOND I'D
APPRECIATE IT.
>> I THINK WHAT CAPITAL JURIES
ARE LOOKING FOR WHEN THEY ARE
FACED WITH A DEFENDANT THAT'S
MURDERED AN INNOCENT PERSON IS
WITH US THIS PERSON RAISED OR
FORGED, IS THERE SOMETHING IN
THEIR BACKGROUND THAT IF I
DELETED AND TOOK IT AWAY SO THAT
THEY DIDN'T HAVE TO GO THROUGH
IT AM I SURE THAT WE WOULD HAVE
ENDED UP HERE ANYWAY AND THAT IS
WHAT MR. SMITH'S JR. WAS ROBBED
OF THE OPPORTUNITY TO DO.
SO WE ARE ASKING YOU TO REVERSE
HIS CONVICTION BECAUSE HE WAS
CONVICTED WITH THE HELP OF
ILLEGALLY OBTAINED EVIDENCE AND
WERE ALSO ALTERNATIVELY ASKING
YOU TO REMAND BACK TO MANATEE
COUNTY TO NEW PENALTY PHASE SO
THE JURY CAN HEAR ABOUT HIS
CHILD ABUSE, THANK YOU SO MUCH.
>> THANK YOU.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS.