

LEO L. BOATMAN V. STATE OF FLORIDA.

>> Marshal: ALL RISE. HEAR YE HEAR YE HEAR YE..THE FLORIDA SUPREME COURT 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.

>> Chief Justice Carlos Muniz: GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT FIRST CASE TODAY IS BOATMAN V. STATE OF FLORIDA.

CASE NUMBER SC2022-1547

.>> David Jonathon Joffe,Appellant: THANK YOU CHIEF JUSTICE MUNIZ YOUR HONOR. GOOD MORNING MY NAME IS.

DAVID JOFFE I HAVE THE PLEASURE OF REPRESENTING THE APPELLANT. LEO BOATMAN THIS IS A DIRECT REVIEW FROM HIS CONVICTION AT THE TRIAL COURT IN BRADFORD COUNTY THE EIGHTH JUDICIAL CIRCUIT. MR BOATMAN IS CONVICTED OF FIRST-DEGREE MURDER AND WAS SENTENCED TO DEATH BY THE TRIAL JUDGE. MR BOATMAN'S LIFE BEGAN WHEN HE WAS BORN IN A MENTAL INSTITUTION THROUGH HIS MOTHER WHO WAS ALSO IN A MENTAL INSTITUTION. HIS FATHER WAS ALSO IN THAT MENTAL INSTITUTION. MR BOATMAN WAS THERE FOR POSSIBLY THREE YEARS. ACCORDING TO MY REVIEW OF THE RECORDS WHEN HE GOT OUT HE WAS TAKEN FROM HIS MOTHER BY DCF AT SOME POINT WAS GIVEN TO HIS GRANDMOTHER'S GRANDMOTHER GAVE UP PARENTAL RIGHTS AND LIKE MANY INDIVIDUALS ENDED UP SERVING IN THE FLORIDA STATE PRISON SYSTEM . HE WENT TO DCF AND FINDS HIMSELF HERE TODAY. ON NOVEMBER 4, 2019 THE STATE OF FLORIDA CHARGED MR BOATMAN IN 2 COUNT TRUE BILL CHARGING HIM AND.

[LISTING NAMES] WITH PREMEDITATED MURDER.

[UNCLEAR AUDIO]

>> HOW OLD WAS HE WHEN HE WAS INDICTED.

>> David Jonathon Joffe,Appellant: IN THIS PARTICULAR CASE I'M NOT SURE OF THE EXACT DATE. I THINK MR BOATMAN WAS RELATIVELY YOUNG. MR BOATMAN HAD A HISTORY OF PRIOR MURDERS JUSTICE LABARGA HE HAD UNFORTUNATELY HAD MURDERED TWO INDIVIDUALS IN THE.

[LISTING NAMES] TWO FSU STUDENTS ATTEMPTED TO MURDER SOMEONE IN FLORIDA STATE PRISON WHICH HE WAS CAUGHT IN THE ACT. I BELIEVE HE MURDERED SOMEBODY ELSE PREVIOUSLY AS WELL IN THE FLORIDA STATE PRISON. UNFORTUNATELY FOR MR BOATMAN, HE HAS A HISTORY OF COMMITTING MURDERS AS WELL.

WHAT HAPPENED IN THIS PARTICULAR CASE, MR BOATMAN, ALONG WITH ANOTHER INDIVIDUAL. MR. WELLS PLANNED AND COMMITTED A MURDER OF AN INDIVIDUAL IN THE DAY ROOM IN THE FLORIDA STATE PRISON.

WHILE THIS ACT WAS OCCURRING, FLORIDA STATE PRISON OFFICIALS ATTEMPTED TO ENTER THE ROOM AND THEY CLAIMED THEY WERE NOT ABLE TO ENTER THE ROOM BECAUSE MR BOATMAN WAS SOMEHOW BLOCKING THE DOOR.

I FIND THAT A BIT ODD BECAUSE I DON'T KNOW HOW ONE INDIVIDUAL CAN JUST

BLOCK A DOOR. ANYWAY THE EVENT TOOK APPROXIMATELY 12 MINUTES. THE INDIVIDUAL WAS DEAD . ONCE THE FLORIDA STATE PRISON OFFICIALS WERE ABLE TO ENTER THE ROOM. THEY TRIED TO DISPERSE A CHEMICAL AGENT. EVENTUALLY ONCE THEY WENT IN . HE WAS DEAD MR BOATMAN AND THE OTHER.

>> Justice Jorge LaBarga: . HE TRIED TO DISPERSE THE CHEMICAL AGENT BEFORE HE GOT INTO THE ROOM.

>> David Jonathon Joffe,Appellant: THERE WAS A CRACK IN THE DOOR AND HE TRIED TO DISPERSE THE CHEMICAL AGENT . THEY WERE TOLD BY THE SUPERVISOR TO LET DAR. THEY ARE BETTER EQUIPPED AND ARMED TO DEAL WITH VIOLENT ACTS. IN THE PRISON SYSTEM.

MR BOATMAN THE OFFICERS WERE NOT EQUIPPED TO DO THAT CANNOT BE EXPECTED TO GO UP AGAINST SOMEBODY WITH A SHANK.

>> David Jonathon Joffe,Appellant: I'M NOT SUGGESTING THAT.

>> Justice Charles Canady: THAT IS KIND OF WHAT YOU ARE SUGGESTING.

>> David Jonathon Joffe,Appellant: I AM JUST SAYING WHEN THE EVENT WAS OCCURRING. IT TOOK APPROXIMATELY 12 MINUTES WHILE THE INDIVIDUAL WAS BEING STABBED IN HIS EYES WHILE BEING CHOKED. AND WHILE HE HAD THIS METAL OBJECT IN HIS NECK WAS BEING STOMPED AND EVENTUALLY WAS STOMPED SO THE METAL OBJECT WENT THROUGH HIS NECK THAT MAY HAVE EVENTUALLY KILLED HIM AS WELL. AT SOME POINT DURING THIS CASE, MR BOATMAN'S TRIAL COUNSEL FILED A MOTION TO DETERMINE COMPETENCY IN THIS PARTICULAR CASE. MR BOATMAN HAD A HISTORY OF SEVERAL SUICIDE ATTEMPTS. DURING HIS LIFE. HE HAD BEEN ADMITTED TO.

[LISTING NAMES] TEACHING HOSPITAL AS WELL. IN GAINESVILLE, FLORIDA FOR TREATMENT AGAIN. HE WAS BORN IN A MENTAL HOSPITAL. I DON'T KNOW IF IT GETS ANY WORSE THAN THAT TO A MOTHER WAS ALSO IN A MENTAL HOSPITAL. HE WAS NEGLECTED BY EVERYONE WHO RAISED HIM ESSENTIALLY.

DR. WARNER NOTED THE MR BOATMAN MET THE DIAGNOSTIC CRITERIA FOR COMPETENCY BUT YET STILL SAID HE WAS NOT COMPETENT BECAUSE HE DID NOT HAVE A RATIONAL OR ADEQUATE UNDERSTANDING OF THE PROCEEDINGS. HE IS NOT ABLE TO MAKE A FREE AND RATIONAL DECISION AS IT RELATES TO HIS DECISION TO PLEAD OR GO FORWARD WITH TRIAL.

>> THE PROBLEM IS DR. WARNER'S FINDING SEEM TO ALWAYS START OUT WITH . HE HAD ADEQUATE APPRECIATION FOR WHATEVER . HE USED THE WORD ADEQUATE ADEQUATE OVER AND OVER AGAIN. HE DID SAY HE HAD ADEQUATE CAPACITY IN COURT. HE CHOSE INADEQUATE CAPACITY TO THIS COURTROOM BEHAVIOR INADEQUATE CAPACITY TO DISCLOSE TO HIS LAWYERS . FACTS PERTINENT TO THE CASE. IT SEEMS LIKE HE WAS JUST THERE BUT YET HAD ADEQUATE CAPACITY TO BASICALLY UNDERSTAND THE PROCEEDINGS AND PROCEEDED TO TRIAL. WHERE DO YOU GO FROM HE HAS ADEQUATE HE IS AVERAGE TO NOT BEING COMPETENT.

>> David Jonathon Joffe,Appellant: JUSTICE LABARGA I THINK BECAUSE THIS IS A DEATH PENALTY CASE AND BECAUSE YOU HAVE A MENTAL HEALTH PROFESSIONAL SAYING

HE IS ADEQUATE BUT YET HE STILL NOT COMPETENT BECAUSE HE DOES NOT HAVE A RATIONAL UNDERSTANDING AND BECAUSE THE TRIAL JUDGE HAS HIS GREAT DISCUSSION AND THERE IS CASE LAW THAT SAYS THE TRIAL JUDGE CAN ON HIS OR HER OWN APPOINT ANOTHER DOCTOR TO EVALUATE THE INDIVIDUAL TO DETERMINE COMPETENCY. THAT WOULD IT HAD NOT HAVE BEEN BETTER TO APPOINT ANOTHER DOCTOR. NOW, COULD THE ATTORNEY REPRESENTING MR BOATMAN ALSO HAVE ASKED ANOTHER DOCTOR TO EVALUATE FOR COMPETENCY?

GRANTED, THERE WERE DOCTORS INVOLVED IN MITIGATION OF THIS CASE.

OBVIOUSLY, MITIGATION COINCIDES WITH COMPETENCY, BUT I THINK FOR OUR PURPOSES WE ARE FOCUSED HERE ON COMPETENCY. IT WOULD'VE BEEN A BETTER PRACTICE FOR EITHER THE TRIAL COURT OR THE TRIAL LAWYER TO HAVE ASKED FOR ANOTHER DOCTOR TO HAVE BEEN APPOINTED. THAT IS WHY EVEN ON THAT ISSUE ALONE. I'M ASKING THE COURT TO REVERSE AND REMAND THIS CASE BACK TO THE TRIAL COURT SO A DOCTOR CAN BE APPOINTED SO THAT MR BOATMAN CAN BE EVALUATED PROPERLY EVALUATED BECAUSE AND AT THAT POINT MR BOATMAN COULD THEORETICALLY HAVE BEEN SENT TO THE FLORIDA STATE HOSPITAL FOR FURTHER EVALUATION. WHERE HE COULD HAVE STAYED FOR THREE MONTHS, SIX MONTHS, NINE MONTHS OR ONE YEAR AND BEEN SEEN OVER A LONGER PERIOD OF TIME SO THAT THIS ISSUE MAY IN FACT BE A NONISSUE.

WHERE HE COULD OF BEEN MEDICATED OR NOT MEDICATED OR MADE A FURTHER DETERMINATION OF WHETHER OR NOT IT WAS COMPETENT.

>> Justice Jorge LaBarga: I THINK YOU STARTED YOUR ANSWER WITH THE FACT SINCE THE STATE IS SEEKING THE DEATH PENALTY. IT SHOULD'VE BEEN A HIGHER CALLING HERE AND PERHAPS YOU AND ADHERE IN THEORY, THAT DEATH IS DIFFERENT, THEREFORE THERE SHOULD BE MORE STRINGENT REQUIREMENTS IN THIS CASE? AS FAR AS MAKING SURE HE IS COMPETENT OR NOT COMPETENT.

>> David Jonathon Joffe, Appellant: . THAT'S AN INTERESTING STATEMENT. I THOUGHT A LOT ABOUT THAT. I THINK SOMETIMES THE STATEMENT THAT THIS IS DIFFERENT IS OVERUSED. I THINK IT CAN BE OVERUSED TO THE POINT WHERE IT IS DANGEROUS TO OVERUSE THAT. I THINK IT CAN GET TO THE POINT WHERE IT IS SO DANGEROUS IT CAN BE USED AGAINST THE DEFENSE OR AND APPELLANTS.

I WOULD THINK IN EVERY CASE WHERE THE DOCTOR WERE TO COME IN AND SAY THIS PERSON MEETS THE MINIMUM CRITERIA BUT THEY ARE NOT COMPETENT. I THINK I OR A JURIST WOULD SAY.

>> Justice Charles Canady: .SHE WAS NOT CONSISTENT ABOUT THAT. THE EXPERT WAS ALL OVER THE PLACE.

WHEN SHE IS ASKED A SPECIFIC QUESTION OF WHETHER HE WAS COMPETENT TO MAKE THIS DECISION, SHE SAYS, NO.

THIS IS NOT A CASE WHERE WE HAVE AN EXPERT UNEQUIVOCAL TESTIMONY. HOW THAT GETS DEALT WITH MIGHT BE DIFFERENT. BUT THAT IS NOT THE CASE WE HAVE GOT HERE.

THE EXPERT IS ALL OVER THE PLACE.

IT'S PRETTY CLEAR TO ME FROM LOOKING AT WHAT SHE SAID THAT SHE WANTS TO

SAY THINGS THAT WILL HELP THE GUY.

BUT SHE IS KIND OF HEMMED IN BY THE REALITIES OF WHAT HE SAID AND DONE.  
WHAT AM I MISSING?

>> David Jonathon Joffe,Appellant: THAT IS CORRECT JUSTICE CANADY.

I THINK AT THAT POINT, BECAUSE SHE IS MAYBE WAFFLING OR BEING WISHY-WASHY OR NOT BEING MAY BE DIRECT, I THINK AT THAT POINT, THE COURT CAN MAKE A DETERMINATION EITHER EXCEPT WHAT YOU'RE SAYING. I DON'T ACCEPT WHAT YOU'RE SAYING, AND I POINT ANOTHER DOCTOR OR 2 DOCTORS DO EVALUATE MR BOATMAN. I NEED SOMETHING MORE CONCRETE AND MORE SOLID TO RELY UPON BECAUSE I CANNOT RELY UPON.

>> Justice Charles Canady: HE'S GOT HIS OWN EYES AND EARS TO RELY UPON HE HAS BEEN OBSERVING MR BOATMAN AND LISTENING TO HIM.

PEOPLE LIKE MR BOATMAN ARE IN A VERY DIFFICULT POSITION . WE ALL UNDERSTAND THAT.

I THINK MR BOATMAN IS TRYING TO EXERCISE WHAT AGENCY HE HAS.

HE HAS MADE CHOICES ABOUT WHAT HE WANTS TO DO HERE.

IT IS HARD TO SEE HOW THERE IS ANYTHING THAT WOULD POINT TOWARDS INCOMPETENCE. YOU MAY DISAGREE WITH IT. IT MIGHT BE A DECISION YOU WOULD NOT MAKE IF YOU ARE IN HIS SHOES, BUT THAT IS NOT A BASIS FOR CONCLUDING THAT HE IS INCOMPETENT.

>> David Jonathon Joffe,Appellant: YOU RAISE A GOOD POINT. I THINK WHAT MR. BOATMAN MAY ULTIMATELY BE TRYING TO DO IS GET HIMSELF THE DEATH PENALTY BECAUSE HE WANTS TO GET UP CLOSE MANAGEMENT. HE IS GRATING AT THE FACT THAT HE'S UNDER CLOSE MANAGEMENT. HE DOESN'T WANT TO BE IN CLOSE MANAGEMENT ANYMORE. HE'S DONE ALL OF THESE THINGS IN THE STATE PRISON SYSTEM TO TRY TO GET IN THE GOOD GRACES.

>> Justice Charles Canady: LIKE COMMIT MULTIPLE MURDERS?

>> David Jonathon Joffe,Appellant: IS THAT RATIONAL? DO RATIONAL PEOPLE DO THAT. NO, I DON'T THINK THAT IS CALLED INCALCULABLE. I THINK THAT LEADS TO A CERTAIN LEVEL OF MENTAL ILLNESS SOMETHING IS WRONG HERE, I THINK.

>> THAT IS NOT THE TEST BEFORE US . IT IS NOT THE TEST WE DON'T SAY ANYONE WHO HAS A MENTAL ILLNESS OR HAS SOME DEGREE OF TROUBLE IS INCOMPETENT . TO THE CONTRARY, WE WON'T REVISIT THE QUESTION UNLESS NO REASONABLE PERSON WOULD TAKE THAT VIEW ADOPTED BY THE TRIAL COURT. IT SEEMS LIKE MAYBE WE SHOULD FOCUS ON . OBVIOUSLY, IT HAS TO BE YOUR POSITION THAT NO REASONABLE PERSON WOULD HAVE DONE WHAT THE TRIAL COURT DID IN LIGHT OF THE TESTIMONY OF THE EXPERT AND THE JUDGE'S OWN OBSERVATION OF MR BOATMAN. DO YOU WANT TO MAKE THAT ARGUMENT . I CANDIDLY DON'T SEE IT. YOU'RE HERE ARGUING FOR HIM. I FEEL LIKE YOU NEED TO CUT TO THE CHASE AND TELL US WHETHER NO REASONABLE PERSON WOULD'VE MADE THAT DECISION.

>> David Jonathon Joffe,Appellant: I DON'T KNOW THAT NO REASONABLE PERSON WOULD'VE FOUND HIM COMPETENT OR INCOMPETENT. I DON'T THINK FROM THIS RECORD WE CAN MAKE THAT DETERMINATION.

WHAT JUSTICE CANADY HAD MENTIONED THAT THE TRIAL JUDGE IS THERE OBSERVING MR BOATMAN . WE ARE NOT PSYCHIC. WE CANNOT GET INTO MR BOATMAN'S HEAD AND SEE WHAT IS GOING ON AS THE WHEELS TURN INSIDE MR BOATMAN'S HEAD. HE MAY NEED A NEUROPSYCHOLOGICAL EVALUATION TO DETERMINE AND FURTHER HE MAY NEED A CAT SCAN OR FURTHER EXAMINATION TO REALLY DETERMINE DOES HE HAVE BRAIN DAMAGE. IS THERE SOMETHING MORE GOING ON?

TO REALLY DETERMINE THAT LEVEL OF COMPETENCY IS HE COMPETENT. IN ANSWER TO YOUR QUESTION, I'M NOT A LICENSED PSYCHOLOGIST AND NOT A LICENSED PSYCHIATRIST. I CANNOT JUST LOOK AT SOMEONE AND SAY YOU'RE COMPETENT YOU ARE NOT COMPETENT . I SPEND ONE HOUR WITH YOU. I THINK THERE NEEDS TO BE SEVERAL DAYS SPENT WITH THE PERSON SEVERAL DAYS OF TESTING, WHICH IS WHAT A NEUROPSYCHOLOGIST CAN DO. I THINK THE STANDARD UNDER FLORIDA LAW FOR COMPETENCY IS EXTREMELY LOW.

BECAUSE OF WHAT JUSTICE CANADY WAS SAYING ABOUT THIS DOCTOR BEING WISHY-WASHY AND ALL OVER THE PLACE. I'M ASKING THE COURT TO REVERSE AND REMAND THIS CASE BACK TO THE TRIAL COURT FOR A DETERMINATION WHETHER OR NOT MR BOATMAN WAS COMPETENT OR NOT?

MOST RESPECTFULLY, I DON'T THINK IT IS ENOUGH TO SAY, THE TRIAL JUDGE IS ABLE TO SEE OR WATCH THIS PERSON AND SAY I THINK YOU ARE OKAY.

THAT IS JUST I DON'T THINK THAT IS ENOUGH. I THINK WE NEED LICENSED PSYCHOLOGIST OR DOCTORS TO SAY THAT FOR US. I THINK THAT'S WHY WE AS PRACTITIONERS RELY UPON THEM IN MITIGATION. THAT'S WHY WE RELY UPON THEM IN THE COMPETENCY PHASE. JUSTICE LABARGA I THINK YOU ASKED ME A QUESTION THEN I GOT DIVERTED TO ANOTHER QUESTION.

>> Justice Jorge LaBarga: ONE THING THAT STRIKES ME.  
[UNCLEAR AUDIO].

>> David Jonathon Joffe, Appellant: WE DON'T KNOW BECAUSE THAT HAS NOT BEEN. THAT IS NOT DRAWN OUT. IT IS NOT BROUGHT OUT. IT IS NOT ANALYZED FROM THE RECORD BELOW. WE CAN ONLY SURMISE FROM THAT THE ONE COULD SURMISE FROM THAT THAT THAT ISSUE FROM AN INTELLECTUAL STANDPOINT, FOR ONE TO MAKE THAT CONNECTION AND THEREFORE EVEN DRAW IT FURTHER AND SAY BECAUSE OF THAT THE CASE NEEDS TO BE REMANDED AND THAT MR BOATMAN NEEDS TO BE EVALUATED FOR COMPETENCY BECAUSE OF THAT ISSUE.

I THINK THIS COURT HAS HELD IN.

[LISTING NAMES] IN 2002 AND RUTHERFORD 1998 AND IN BRUNO IN 2001. JUSTICE. [LISTING NAMES] THE MENTAL HEALTH EVALUATIONS ARE FUNDAMENTAL IN DEFENDING AGAINST THE DEATH PENALTY. WHEN WE RAISE THE ISSUE OF THAT DEATH IS DIFFERENT I THINK SOMEHOW THAT MAY PLAY INTO ACCOUNT THERE. WHEN MR BOATMAN ESSENTIALLY WAIVED HIS RIGHT TO A JURY IN THAT THE PENALTY PHASE I THINK THAT ALSO TIES IN WITH THE ISSUE OF COMPETENCY. MR BOATMAN ON HIS OWN VOLITION FILED HIS OWN PRO SE MOTION WAVING HIS RIGHT TO HAVE A JURY HEARING THE PENALTY PHASE.

ADDITIONALLY, WHEN PRO SE LITIGANTS OR WHEN LITIGANTS ARE REPRESENTED BY COUNSEL AND THEY FIND SOMETHING WITH THE COURT MANY TIMES THAT GETS KICKED OUT. IT IS REJECTED, IT IS SENT BACK.

AND IF THE CLERK OR THE JUDGE WILL SAY YOU ARE NOT REPRESENTED BY A LAWYER . WE WON'T ACCEPT THIS. I'M UNCLEAR AS TO WHY THIS TRIAL JUDGE ALLOWED THIS TO HAPPEN IN A CASE OF SUCH MAGNITUDE.

ESPECIALLY WHEN THERE WAS AN ISSUE AS TO WHETHER MR BOATMAN REALLY COULD UNDERSTAND WHAT HE WAS DOING HERE.

BY DOING THIS BASED UPON WHAT THIS TRIAL JUDGE HAD DONE PREVIOUSLY . BASICALLY WHAT MR BOATMAN WAS DOING WAS ALMOST GUARANTEEING HIMSELF A DEATH PENALTY SENTENCE.

>> Justice Charles Canady: JUST FROM HEARING WHAT YOU SAY HERE YOU THINK THE JUDGE JUST GOT WHAT MR BOATMAN ASKED FOR, AND SAID OKAY. THAT IS NOT WHAT HAPPENED.

WASN'T THERE AN EXTENSIVE COLLOQUY?

>> David Jonathon Joffe,Appellant: WITH MR BOATMAN YOU MEAN.

>> Justice Charles Canady: YES.

>> David Jonathon Joffe,Appellant: YES JUSTICE CANADY THERE WAS AN EXTENSIVE COLLOQUY. BUT OUR POSITION IS THAT MR BOATMAN WAS NOT COMPETENT AND THAT HE HAD A SURREPTITIOUS DESIRE TO GET TO UNION CI TO GET DEATH ROW. HE WAS NOT RATIONAL.

>> Justice John Couriel: I THINK TO THE CONTRARY THAT REFLECTS A DEGREE OF RATIONALITY. HE HAD A GOAL AND UNDERSTOOD THAT COMMITTING MURDER WOULD GET HIM WHERE HE WANTED TO BE. THAT SOUNDS PRETTY CONNECTED TO REALITY, DON'T YOU THINK?  
IT SOUNDS LIKE MOTIVE.

>> David Jonathon Joffe,Appellant: .IT IS A DOUBLE EDGED SWORD.  
WE CAN ARGUE BOTH SIDES OF THE DOUBLE EDGE SWORD.  
MY PERSPECTIVE WOULD BE THAT FOR SOMEONE TO DO THAT. IT IS JUST NOT RATIONAL.

>> Justice: DID DR. WARNER ULTIMATELY CHARACTERIZE AS A MATTER OF JUDGMENT AND NOT RATIONALITY. WHY IS THAT NOT AN ACCURATE CHARACTERIZATION OF THE DECISION.

>> David Jonathon Joffe,Appellant: IN WHAT DECISION.

>> Justice: SHE QUESTIONS HIS JUDGMENT RATHER THAN HIS COMPETENCY.  
THOSE ARE DISTINCT CONCEPTS RIGHT.

>> David Jonathon Joffe,Appellant: RIGHT ARE YOU SAYING THAT . ARE YOU TYING THAT IN DR. WARNER'S WISHY-WASHINESS ABOUT COMPETENCY.

>> Justice:YOU SEEM TO SAY IT'S ALMOST BRIGHT LINE RULE IF SOMEBODY WANTS TO GET DEATH ROW. THEY MUST BE INCOMPETENT. WHEN WE ARE LOOKING AT THE RECORD TO DETERMINE WHETHER WHAT LEGAL ARGUMENTS ARE, AND WHAT THE EVIDENCE SUPPORTS, WE SEE HER CHARACTERIZED THAT MORE AS A JUDGMENT ISSUE. RATHER THAN A COMPETENCY ISSUE.

>> David Jonathon Joffe,Appellant: AND I THINK IN THIS CASE WE CAN TAKE THAT INTO ACCOUNT AS WELL AS COMPETENCY I THINK WE CAN LOOK AT BOTH. I THINK HERE YOU CAN LOOK AT MR BOATMAN'S JUDGMENT OR LACK THEREOF. I THINK WE TAKE INTO ACCOUNT HIS ENTIRE EXPERIENCE FROM THE TIME HE WAS BORN IN A MENTAL INSTITUTION ALL THE WAY UP TO THE POINT WHERE HE IS UNDERGOING THE QUESTIONING OF COLLOQUY BY THE TRIAL JUDGE AS TO WHETHER OR NOT HE IS WAVING HIS RIGHT TO HAVE THE PENALTY PHASE HEARD BY A JURY OR BY A TRIAL JUDGE.

I DON'T KNOW THAT HE HAS EVER HAD A COLLOQUY AS TO THAT ISSUE THAT MIGHT BE THE FIRST TIME HE WAS COLLOQUY AS TO WHETHER OR NOT WHAT THE JURY TO MAKE A DETERMINATION OR THE JUDGE TO MAKE A DETERMINATION AS TO YOUR FATE ESSENTIALLY.

I WOULD THINK THAT ANY GOOD TRIAL LAWYER WOULD WANT A JURY TO MAKE THAT DECISION, NOT A JUDGE.

I DON'T THINK THAT A RATIONAL PERSON .

>> Justice Charles Canady: AGAIN THIS IS NOT ABOUT WISDOM IT MIGHT NOT BE SMART BUT YOU ARE FOCUSING ON WHAT WOULD BE WISE AS OPPOSED TO WHAT DEMONSTRATES INCOMPETENCE. AND THERE WAS A DIFFERENT THINGS THAT IS POINT THAT IS BEING MADE FOR IT IS NOT ABOUT JUDGMENT OR WISDOM, IT IS ABOUT COMPETENCY.

>> David Jonathon Joffe,Appellant: THAT IS CORRECT JUSTICE CANADY. I THINK IT GOES BACK TO WHAT YOU SAID ABOUT THE DOCTORS WISHY-WASHYNESS, ABOUT HER SOMEWHAT LACK OF COMMITMENT IN HER STATEMENTS ABOUT COMPETENCY OR WHAT YOU TERM THAT SHE WAS TRYING TO FIT MAYBE A ROUND PEG INTO A SQUARE HOLE.

>> Justice John Couriel: WHAT EVIDENCE CAN YOU POINT TO IN THE RECORD THAT MR BOATMAN DID NOT UNDERSTAND HE WAS IN A JUDICIAL PROCEEDING?

>> David Jonathon Joffe,Appellant: JUSTICE COURIEL I DON'T THINK THERE IS ANYTHING IN THE RECORD THAT SAYS MR BOATMAN THOUGHT HE WAS ON A BEACH GETTING A SUNTAN. I THINK HE KNEW.

>> Justice John Couriel: WHAT EVIDENCE CAN YOU POINT TO IN THE RECORD.

>> David Jonathon Joffe,Appellant: I DON'T SAY THAT TO BE FLIPPANT.

>> Justice John Couriel: AND I GET IT. WHAT EVIDENCE CAN POINT YOU IN THE RECORD THAT MR BOATMAN WAS INCAPABLE OF ASSISTING COUNSEL IN HIS SENTENCE. THAT IS THE TEST.

>> David Jonathon Joffe,Appellant: I DON'T KNOW THERE IS ENOUGH IN THE RECORD TO SAY, ASSISTING COUNSEL OTHER THAN IN HIS WRITING TO THE COURT . HE DID SAY IN HIS MOTION TO DISQUALIFY THE TRIAL JUDGE. HE DID SAY ESSENTIALLY WHO WAS HAPPY WITH HIS TRIAL LAWYERS AND HE WAS OKAY WITH THEM GETTING THE CONTINUANCES AND GETTING ADEQUATE TIME TO BE ABLE TO DEFEND HIM. BUT HE NOW WAS CALLING INTO QUESTION THE JUDGE BEING ABLE TO BE FAIR AND IMPARTIAL BECAUSE HE FELT THE JUDGE AT ONE OF THE STATUS CONFERENCES WAS SAYING THE TRIAL LAWYERS WERE LYING.

WERE LYING TO THE COURT BECAUSE WERE ASKING FOR CONTINUANCES. THE LAWYERS WERE REPRESENTING THAT THEY WERE SETTING DEPOSITIONS YET THE DEPOSITIONS WERE NOT BEEN TAKEN.

OF COURSE THE COURT HAS TO MOVE ITS CALENDAR AND SAID WE WILL MOVE FORWARD WILL NOT CONTINUE THIS ADDING OF ITEMS. DOES THAT ANSWER YOUR QUESTION.

>> Justice John Couriel: I GUESS IT IS YOUR BEST EFFORT IN ANSWERING MY QUESTION.

>> David Jonathon Joffe,Appellant: IT IS MY BEST EFFORT. THANK YOU. JUSTICE SASSO I WAS ANSWERING YOUR QUESTION

>> I THINK YOU ANSWERED IT. THANK YOU.

>> David Jonathon Joffe,Appellant: ALSO AN AUGUST 6, 2021 MR BOATMAN FILED A MOTION TO DISQUALIFY THE TRIAL JUDGE AND FOUR DAYS LATER IT WAS DENIED AS LEGALLY INSUFFICIENT.

IN LEWIS V. STATE FLORIDA FIRST DISTRICT COURT STATED THAT FIRST THAT A MOTION TO DISQUALIFY A TRIAL JUDGE IS LEGALLY SUFFICIENT WHEN THE ALLEGED FACTS REPLACE A REASONABLY PRUDENT PERSON IN A FEAR OF NOT RECEIVING A FAIR AND IMPARTIAL TRIAL.

I THINK IN THIS PARTICULAR CASE. MR BOATMAN HONESTLY FELT HE WOULD NOT RECEIVE A FAIR AND IMPARTIAL TRIAL.

I SEE I'M RUNNING INTO MY REBUTTAL TIME.

THANK YOU.

>> Attorney:

RICK A. BUCHWALTER REPRESENTING THE APPELLEE THE STATE OF FLORIDA I INTENDED TO LIMIT MY RESPONSES TO THOSE ARGUMENTS MADE BY OPPOSING COUNSEL IF THE COURT HAS OTHER QUESTIONS.

>> Justice Charles Canady: JUST MY QUESTION. I'M CURIOUS OF THE 4 AGGRAVATORS THE MOST WEIGHT WENT TO HAC SUFFERED AND TORTURED. BUT CCP WAS ITS. THEY PLANNED THIS, AND YET ONLY GREAT WEIGHT I SAY VERY GREAT WEIGHT IS A LOT OF WEIGHT VERY GREAT WEIGHT FOR THE OTHER ONE AND JUST GREAT WEIGHT FOR CCP.

>> Rick A. Buchwalter,Appellee: I DON'T KNOW WHY THE TRIAL COURT FOUND THERE WAS GREAT WEIGHT V. THAT VERY GREAT WEIGHT FOR THE OTHERS. THERE'S CLEARLY STRONG EVIDENCE OF CCP. APPARENTLY, THE COURT DID NOT WEIGH THAT AS HEAVILY AS THEY DID THE OTHER AGGRAVATORS.

THAT IS THE ONLY RESPONSE I CAN JUST WONDER CCP DEALS WITH THE WHAT'S GOING ON IN THE MIND OF THE DEFENDANT.

AS OPPOSED TO HAC THAT DEALS WITH THE VICTIM.

I'M JUST WONDERING IF IT HAS ANY CONNECTION TO THE COMPETENCY MAY BE THE JUDGE DECIDED THAT PERHAPS IT WAS NOT AS COMPETENT AS HE SHOULD BE OR SOMETHING LIKE THAT.

ANYTHING LIKE THAT IN THE RECORD.

>> Rick A. Buchwalter,Appellee: THERE IS NOTHING IN THE RECORD THAT WOULD

SUGGEST THAT AT ALL. AGAIN, I'M SURMISING AT THIS POINT IT SEEMS LIKE HE DOES NOT PROVIDE AS MUCH WEIGHT FOR THAT PARTICULAR AGGRAVATOR CLEARLY THERE IS GREAT EVIDENCE OF PLANNING. THERE IS THE POST MIRANDA ADMISSIONS.

>> Justice Jorge LaBarga: GREAT WEIGHT IS SOMETHING YOU DON'T WANT TO HAVE. IF YOU ARE A DEFENDANT. THE OTHER ONES ARE VERY GREAT WEIGHT. I'M WONDERING WHAT THE REASON WAS.

>> Rick A. Buchwalter, Appellee: THERE IS NOTHING IN THE RECORD THAT PROVIDES ANY INDICATION AS TO WHY HE WAVED THE OTHER AGGRAVATORS, BUT HE DID NOT WITH THAT AGGRAVATE HER AS MUCH AS THE OTHER AGGRAVATORS. WITH REGARD TO THE COMPETENCY ISSUE. FIRST, I WANT TO POINT SOMETHING OUT THAT THE ISSUE THAT WAS RAISED IN THE INITIAL BRIEF OF THIS CASE ON COMPETENCY HAS TO DO WITH THE COURT'S DECISION . I WANT TO MENTION THAT ONLY BECAUSE OF DURING THE ARGUMENT WE STARTED TALKING. THERE WAS SOME TALK ABOUT THE FACT THAT MAYBE THE ATTORNEY SHOULD HAVE HAD ANOTHER DOCTOR APPOINTED, OR SOMETHING ALONG THOSE LINES.

THAT ISSUE WAS NEVER RAISED AS TO WHETHER OR NOT THE LAWYERS. IN THIS CASE WERE SOMEHOW INEFFECTIVE FOR DOING THAT. I JUST WANT TO POINT OUT OUT TO THE COURT. WHAT WE ARE DOING IS WHETHER OR NOT THE COURT ABUSED ITS DISCRETION WHEN THE COURT FOUND THAT MR BOATMAN WAS COMPETENT TO CONTINUE IN HIS TRIAL.

CLEARLY THINK THE RECORD SUPPORTS THAT. CERTAINLY I DON'T THINK WE CAN SAY THAT NO REASONABLE JUDGE WOULD HAVE FOUND THAT.

THAT HE WAS COMPETENT TO PROCEED. . THAT NO ON REASONABLE JUDGE WOULD FOUND HE WAS COMPETENT TO PROCEED. WE HAVE DR. WARNER'S TESTIMONY WHERE AS HAS BEEN INDICATED SHE INDICATED HE HAD AN ADEQUATE UNDERSTANDING OF THE PROCEEDINGS AGAINST HIM, FOR HE HAD AN ADEQUATE ABILITY TO PARTICIPATE IN HIS OWN DEFENSE. THAT IS THE TEST.

AND IF THIS CASE THE DOCTOR SUPPORTS THE FINDING OF COMPETENCY. EVEN THOUGH SHE CONCLUDES OTHERWISE.

AS THE TRIAL COURT MENTIONS, I THINK, RATHER APTLY, THE TRIAL COURT SAID IN SUMMARIZING HER TESTIMONY. BASICALLY SHE SAYS IT WALKS LIKE A DUCK AND QUACKS LIKE A DUCK, BUT I'M GOING TO CALL IT A CHICKEN. NO IT IS NOT A CHICKEN. IT IS A DUCK. HE HAS ADEQUATE UNDERSTANDING OF THE PROCEEDING. HE'S ABLE TO RATIONALLY ASSIST HIS ATTORNEY. HE IS COMPETENT.

THE COURT CERTAINLY DID NOT ABUSE ITS DISCRETION IN FINDING THAT IN FACT THE RECORD SUPPORTS THE COURT'S FINDING BECAUSE THERE IS NO OUTWARD MANIFESTATION BY MR BOATMAN DURING HIS TRIAL REGARDING THAT WOULD GIVE ANY INDICATION OF COMPETENCY. DEFENDANT THAT MR BOATMAN TESTIFIED ON HIS OWN BEHALF IN A VERY RATIONAL MANNER.

THERE IS VERY LITTLE QUESTION AS TO THE COURT CORRECTLY DETERMINING THAT HE WAS INCOMPETENT . IT DID NOT ABUSE ITS DISCRETION IN DOING SO.

WITH REGARD TO THE WAIVER OF THE RIGHT TO HIS DEATH PENALTY JURY. IT'S A

VERY SIMILAR ISSUE AS THE COURT HAS RECOGNIZED. IN THIS CASE, DR. WARNER WAS COMING TO TESTIFY AT THE PENALTY PHASE, THE COURT ASKED DR. WARNER TO TAKE SOME TIME TO GO BACK AND SPEAK WITH MR BOATMAN FOR A PERIOD OF TIME AND COME OUT AND TALK TO THE JUDGE ABOUT THE WAIVER.

AT THAT POINT THE COURT HAD ALREADY MADE A DETERMINATION OF COMPETENCY. THERE IS A PRESUMPTION AT THAT POINT THAT HE IS COMPETENT. THERE IS NOTHING ON THE RECORD TO INDICATE AT THAT POINT THAT HE IS INCOMPETENT. AS I BELIEVE JUSTICE SASSO POINTED OUT, SHE REALLY IS QUESTIONING HIS JUDGMENT ABOUT WHETHER OR NOT THAT IS WHAT HE SHOULD BE DOING. THAT IS NOT THE TEST. AGAIN, THE TEST OF COMPETENCY HAS TO DO WITH HIS ABILITY TO UNDERSTAND THE PROCEEDING . THE HIS ABILITY TO ASSIST HIS ATTORNEY DOES NOT EVIDENCE IN THIS CASE TO THE CONTRARY.

THE LAST THING I JUST WANT TO BRIEFLY TOUCH UPON IS THE DISQUALIFICATION MOTION ON THE TRIAL JUDGE.

THAT THE STANDARD OF REVIEW FOR THIS COURT IS A DE NOVO REVIEW BUT THE TEST IS WHETHER A REASONABLE PERSON WOULD HAVE A FEAR OF HIS INABILITY TO GET A FAIR TRIAL. I DON'T THINK THERE ARE ANY COMMENTS MADE BY THE TRIAL COURT IN THIS CASE TO INDICATE TO A REASONABLE PERSON THAT HE COULD NOT GET A FAIR TRIAL. THE COURT CLEARLY HAD SOME CONCERNS ABOUT MOVING THE CASE ALONG. HE HAD SPOKEN PREVIOUSLY AT PRIOR HEARINGS ABOUT TRYING TO GET THE CASE SET FOR TRIAL IN THE FACT THAT THIS HEARING DATE, WAS WHEN THEY WOULD HAVE THE PRETRIAL CONFERENCE AND SET IT FOR TRIAL. UP TO THAT POINT THEY HAD AN INDICATION ABOUT DEPOSITIONS BEEN TAKING. THE SCHEDULING OF THOSE DEPOSITIONS AND THE COURT WAS QUESTIONING WHY THINGS HE HAD BEEN TOLD ON THE CALENDAR WERE NOT TAKEN CARE OF? AND WHY IS IT THAT THEY WERE NOT PREPARED TO GO TO TRIAL?

THEY HAD MADE A REQUEST FOR CONTINUANCE SO THEY CAN APPOINT SO THEY COULD GO TO THE DEATH PENALTY SEMINAR. THE JUDGE DENIED THE CONTINUANCE AND SHORTLY THEREAFTER, THE MOTION WAS FILED.

IT SEEMS THAT THE BASIS REALLY ISN'T . THEY WERE TRYING TO OBTAIN A CONTINUANCE. I BELIEVE THAT WITH THE COURT IS INDICATING ITS CONCERN ABOUT. THE COURT MADE NO STATEMENT THAT WOULD GIVE ANY REASONABLE PERSON A FEAR OF NOT BEING ABLE TO GET A FAIR TRIAL.

MUST THE COURT HAS ANY OTHER QUESTIONS, I WILL CONCLUDE MY REQUEST TO THIS COURT TO AFFIRM THE CONVICTION, THE SENTENCE OF MR BOATMAN. THANK YOU.

>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH.

>> David Jonathon Joffe,Appellant: IN MOHAMMED THE STATE. THE FLORIDA SUPREME COURT STATED IN 2001. THIS COURT FOUND A TRIAL JUDGE MAY STILL REQUIRE AN ADVISORY JURY RECOMMENDATION AS TO THE PENALTY PHASE CITING STATE V. CARR 1976 DECISION BY THE FLORIDA SUPREME COURT.

WHAT THIS CASE IS ESSENTIALLY SAYING IS, DURING THE PENALTY PHASE TRIAL JUDGE CAN ACCEPT A WAIVER FROM A DEFENDANT IN A DEATH PENALTY CASE. IT

CAN ALSO SAY I WILL LET YOU I WILL ACCEPT YOUR WAIVER. BUT AT THE SAME TIME IN AN ABUNDANCE OF CAUTION, I WILL LET THE JURY REMAIN HERE TO MAKE A DECISION. SO I CAN MAKE SURE THAT THE DECISION.

>> Justice Charles Canady: THERE IS NOTHING THAT SAYS THAT THE JUDGE HAS TO DO THAT .

>> David Jonathon Joffe,Appellant: OF COURSE NOT JUSTICE CANADY OF COURSE NOT.

>> Justice Charles Canady: WHAT DOES THAT HAVE TO DO WITH ANYTHING.

>> David Jonathon Joffe,Appellant: THAT IS WHY WE ARE HERE.

>> Justice Charles Canady: WE ARE HERE BECAUSE THE JUDGE FAILED TO DO SOMETHING HE WAS NOT REQUIRED TO DO?

>> David Jonathon Joffe,Appellant: THIS IS FLORIDA SUPREME COURT PRECEDENT. WHAT I'M SAYING IS THAT IT WOULD'VE BEEN BETTER PRACTICE, ESPECIALLY IN A CASE LIKE THIS TO AVOID THESE ISSUES . MOST RESPECTFULLY.

>> Justice Charles Canady: DID YOU ARGUE THIS SPECIFICALLY.

>> David Jonathon Joffe,Appellant: IN THE BRIEF BELOW?

>> Justice Charles Canady: IN THE BRIEF. YES, THE BRIEF HERE.

>> David Jonathon Joffe,Appellant: I THINK THIS IS SOMETHING I FOUND AS I WAS DOING ADDITIONAL RESEARCH AS I WAS PREPARING FOR ORAL ARGUMENT.

>> Chief Justice Carlos Muniz: YOU SHOULD MOVE ON THEN YOU SHOULD REALLY LIMIT YOURSELF TO WHAT IS IN THE BRIEF.

>> David Jonathon Joffe,Appellant: THEN I HAVE NOTHING FURTHER JUSTICE MUNIZ. THANK YOU JUSTICE CANADY THANK YOU.

>> Marshal: ALL RISE.