

>>> FLORIDA SUPREME COURT IS NOW IN SESSION, PLEASE BE SEATED.
ARE SECOND AND FINAL CASE TODAY IS CAYLOR VERSUS STATE NUMBER 2023-0338.

>> GOOD MORNING YOUR HONORS.

AND BARBARA BUSHARIS REPRESENTING MATHEW LEE CAYLOR, I WOULD LIKE TO RESERVE FIVE MINUTES OF MY TIME.

THANK YOU.

MR. CAYLOR IS SEEKING A NEW PENALTY PHASE TRIAL IN THIS MATTER BECAUSE THE ATTEMPT HE MADE TO RESEND HIS WAIVER OF A JURY WAS REJECTED.

HE IS SEEKING A NEW PENALTY PHASE THAT COULD BE HEARD BY A JURY.

I WANT TO BEGIN BY TALKING ABOUT THE POINT IN TIME WHEN IT BECAME CLEAR THE REASON FOR MR. CAYLOR'S WAIVER WAS NO LONGER PRESENT IN THAT IS, WELL, THE REASON WAS NO LONGER PRESENT AS OF JANUARY 2021.

THAT IS WHEN THE VICTIMS MOTHER IN THIS CASE PASSED AWAY AND MR. CAYLOR DID NOT KNOW THAT FOR SEVERAL MONTHS.

BUT DURING THE MONTHS FOLLOWING THAT HE SAID ON SEVERAL DIFFERENT OCCASIONS WHEN HE ATTEMPTED TO WAIVE A JURY AS WELL AS MITIGATION, AS WELL AS A COUPLE OF TIMES HIS PRESENCE AT PROCEEDINGS BUT THE REASON HE WANTED TO INTO THESE WAIVERS WAS A PROMISE HE HAD MADE TO THE VICTIMS MOTHER.

>> CORRECT ME IF I AM WRONG, I REMEMBER THE PHRASEOLOGY OF THE PROMISE WAS ABOUT THE FAMILY.

IT ONLY BECAME SPECIFIC TO THE MOTHER AFTER HE LEARNED OF HIS DECEASED, RIGHT?

>> I DISAGREE WITH THAT READING OF THE RECORD.

THE PROMISE INVOLVED THE FAMILY, CERTAINLY, BUT IT WAS A PROMISE TO HER THAT HE WOULD NOT PUT HER IN THE FAMILY THROUGH PROCEEDINGS.

BUT WHEN YOU LOOK BACK, AT ONE POINT HE TALKS ABOUT HOW THE VICTIMS MOTHER, THIS IS GOING BACK YEARS, ACTUALLY CAME TO SEE HIM IN PERSON BEFORE HIS FIRST SENTENCING.

AND AT THAT POINT IN TIME HE HAD TOLD HER.

>> LEAVING ALL THIS ASIDE, IT SEEMS TO ME THE TROUBLE WITH YOUR POSITION HERE IS THE POINT OF A WAIVER IN THE POINT OF COLLOQUY BEFORE A WAIVER IS DEALING WITH CHANGE CIRCUMSTANCE.

ANY TIME A RIGHT IS WAIVED IT IS INCUMBENT ON THE PORT COURT TO MAKE A DECISION THAT PERHAPS THE CIRCUMSTANCES WILL CHANGE.

WAIVER DOESN'T MEAN ANYTHING IF IT IS REFLECTED THE FACT THINGS MIGHT CHANGE AND YOU MAY HAVE COME TO REGRET THAT YOU HAVE WAIVED THIS RIGHT.

IT SEEMS TO ME THE RULE YOU ARE ASKING US TO ADOPT IS ONE THAT TAKES THE SUBSTANCE OUT OF WAIVER MAKES ANY DEFENDANT CAPABLE OF SAYING BECAUSE OF THE CHANGE CIRCUMSTANCE WHERE THIS POSTULATE IN MY WAIVER BECAUSE THAT IS NOW CHANGED, IT IS NOT AN EFFECTIVE WAIVER.

>> NO YOUR HONOR.

THE FACT THAT CHANGED CHANGED BEFORE THE WAIVER WAS ENTERED INTO.

THIS IS NOT A SITUATION WHERE MR. CAYLOR KNOWINGLY ENTERED A WAIVER BEING FULLY APPRISED OF THE CIRCUMSTANCES, PARTICULARLY THE PERSON IS TRYING TO HONOR WAS DECEASED.

AND THEN LATER THE PERSON TRAGICALLY DIED AND HE SAID WAIT A MINUTE, NOW MY REASONING HAS CHANGED.

>> REGARDLESS OF THE TIMING, ISN'T THIS BAKED INTO THE CAKE AND THE DETERMINATION THAT THIS WAS BAD FAITH FOR THE PURPOSES OF OBTAINING A DELAY?

IF WE ARE LOOKING AT THIS FROM AN ABUSE OF DISCRETION STANDPOINT, THE ARGUMENT WAS MADE, THE TRIAL COURT CONSIDERED IT, IT MAY BEEN A CREDIBILITY ISSUE THE TRIAL COURT MADE REACHING THIS CONCLUSION, BUT REGARDLESS, HOW DO WE REMOVE THIS FROM THE GLOBAL DETERMINATION THAT THIS IS BAD FAITH?

WOULDN'T IT HAVE TO BE SOME MISUNDERSTANDING OF FACT FROM THE TRIAL COURTS PERSPECTIVE?

>> WELL, THE DETERMINATION THAT THIS WAS MADE IN BAD FAITH FOR THE PURPOSE OF DELAY, YOUR HONOR, I DON'T THINK IS BORNE OUT BY THE RECORD WHEN YOU LOOK AT THE CHRONOLOGY WHEN DIFFERENT THINGS HAPPENED. AND CERTAINLY THE TRIAL COURT WAS AS IGNORANT OF THE CIRCUMSTANCES WHEN MR. CAYLOR'S WAIVERS WERE ACCEPTED AS MR. CAYLOR WAS HIMSELF.

>> THERE HAS TO BE SOME MISUNDERSTANDING OF FACT ON THE TRIAL COURT SUPPORT FOR THIS.

>> EVERYONE WAS MISINFORMED.

>> THE BEGINNING OF THE PRECEDING WHEN IT COMES OUT, YOUR CLIENT JUST SITS THERE.

DOESN'T SAY OH NO, I DON'T WANT TO DO THIS, I WANT TO REVISIT MY WAIVER BECAUSE SHE'S DEAD.

HE DIDN'T SAY THAT.

WAS MONTHS LATER, ISN'T THAT CORRECT.

>> YOUR HONOR, MY CLIENT WAS REPRESENTED BY COUNSEL AND WHO WAS APPEARING BY ZOOM WAS TAKEN COMPLETELY ABACK AT THE NEWS.

HIS COUNSEL DID NOT SAY ANYTHING, THE COURT DID NOT SAY ANYTHING, THE STATE DID NOT SAY ANYTHING.

>> EXPRESSING HIMSELF, I DON'T THINK BASED ON THE RECORD HERE.

>> HE IS VERY CAPABLE.

>> BUT HE WAITED FOUR MONTHS OR WAS IN IT ABOUT FOUR MONTHS.

>> THERE WAS A DELAY OF 3.5 MOST FOUR MONTHS BEFORE THE MOTION WAS FILED DURING WHICH HE HAD TO CONSULT WITH COUNSEL IN THE RECORD DID CONTAIN, I WANTED TO POINT YOU TO A DOCUMENT PREPARED BY DEFENSE COUNSEL IN RESPONSE TO REQUEST FOR A NELSON HEARING AFTER THE WAIVER HAD BEEN ACCEPTED AND NOT WITHDRAWN.

IT IS ON PAGES 628 AND 629 OF THE RECORD.

IT IS A SUMMARY OF CONTACT BY ATTORNEYS AND SUPPORT STAFF.

BUT IT VERIFIES WHAT THE RECORD SUGGESTS, WHICH IS THERE WAS NO CONTACT BETWEEN MR. CAYLOR'S AND HIS COUNSEL BEFORE IMMEDIATELY THAT MOTION WAS FILED IN MARCH.

>> I AM SORRY TO CUT YOU OFF, BUT CAN YOU PROVIDE US WITH AN EXAMPLE OF WHERE DEFENDANTS MISUNDERSTANDING ABOUT A FACT THAT SEEMS TO BE TOTALLY AUXILIARY TO THE RIGHT THAT HE IS WAITING.

THAT MADE THE WAIVER UNKNOWING.

CAN YOU PROVIDE US WITH ANY CASES THAT SUPPORTS YOUR IT MAY BE SIMILAR TO WHAT WE ARE CONSIDERING HERE?

>> YOUR HONOR, I CAN'T PROVIDE YOU WITH AN EXAMPLE THAT IS ON ALL FOURS. THE FACT HERE IS NOT ANCILLARY, THE FACT HE WAS MR. TAYLOR'S ENTIRE MOTIVATION FOR ENTERING HIS WAIVERS, WHICH HE STATED REPEATEDLY.

>> HOW WAS THE CASE SIMILAR OR DISSIMILAR.

>> FIGUEROA INVOLVED A MISUNDERSTANDING AS TO THE LEGAL CONSEQUENCES. THAT IS A DIFFERENCE WHICH IS WHY I DIDN'T CITE IT AS BEING ON ALL FOURS, BUT I DO THINK IT IS INSTRUCTIVE THAT WHEN THERE IS A FACTOR THAT TRULY SUBVERTS THE DEFENDANTS ABILITY.

>> THE NATURE OF THE FACTOR WOULD HAVE TO COME INTO PLAY, RIGHT?

IT WAS BECAUSE THE TRIAL COURT SAID SOMETHING THAT WAS A MISSTATEMENT OF THE LAW.

>> CORRECT.

HERE YOU HAVE THE TRIAL COURT AND APPARENTLY THE STATE WILL BE MISTAKEN ABOUT THE FUNDAMENTAL REASON FOR WHICH HE WAS ENTERING INTO THE WAIVER.

>> THE WHOLE THING ABOUT THE WAIVER.

WHEN PEOPLE ARE GOING THROUGH WAVING AND THERE'S THE COLLOQUY, DO THEY ASK WHY SUBJECTIVELY THEY ARE WAVING?

>> YES, SOMETIMES.

>> IS THAT PART OF THE STATE AQUATIC WE LIVE WHY ARE YOU DOING THIS?

>> I DON'T BELIEVE IT IS REQUIRED BUT IT WAS COMPLETELY UNDERSTOOD HERE THAT THIS IS WHAT HE WAS DOING THIS.

>> BUT ALL SORTS OF PEOPLE CAN HAVE ALL SORTS OF SUBJECTIVE REASONS FOR WHY THEY WANT TO WAIVE THE RIGHT TO A JURY TRIAL AND SOMETIMES THAT WILL BE NONE, SOMETIMES IT WON'T BE KNOWN.

AND IT SEEMS LIKE TO ACCEPT YOUR ARGUMENT WOULD SET US OFF ON A COURSE WHERE PEOPLE WOULD COME UP AND SAY MY MOTHER DIED AFTER I GAVE THE WAIVER AND I ONLY WAY BECAUSE I DIDN'T WANT TO PUT MY MOTHER THROUGH HAVING TO WATCH MY TRIAL.

ALL KINDS OF THINGS LIKE THAT BASED ON THE SUBJECTIVE REASONS THAT IS NOT THE FOCUS OF THE INQUIRY ABOUT WHETHER THE WAIVER IS KNOWING AND VOLUNTARY.

IS IT?

>> IN THIS CASE, YOUR HONOR, IT SHOULD BE.

AND I DO WANT TO CLARIFY WE ARE NOT TAKING THE POSITION THAT AN AFTER-THE-FACT CHANGE IS AN ISSUE HERE, BUT THIS IS A SITUATION WHERE MR. CAYLOR WAS ATTEMPTING TO WAIVE A FUNDAMENTAL RIGHT, RIGHT THAT ARE STATE CONSTITUTIONS THAT IS VIOLATE, FEDERAL CONSTITUTION WHICH IS TO HAVE A JURY DECIDE HIS.

>> SORT OF THE SAME POINT I STARTED EARLIER, WHICH WEAVER HAS TO MEAN SOMETHING AND PRESUMABLY I MET RECORD BY 72 IN 573, THIS IS A LETTER FROM MR. CAYLOR TO JUDGE PATTERSON OF MARCH 25, 2022.

AND HE IS GOING ON IN HIS OWN VOICE ABOUT HOW HE WOULD HAVE NEVER MADE THE WAIVER IN DESCRIBING HIS MENTAL ILLNESS, HIS BIPOLAR DISORDER.

WE MIGHT NOT AS PART OF A FORM WAIVER INQUIRE AS TO THE SUBJECTIVE MOTIVATION OF A PERSON IN MAKING THE WAIVER, BUT THE TRIAL COURT DOES ASSURE ITSELF THE COMPETENCY OF THE PERSON MAKING THE WAIVER SO THE JUDGE MAKES A FINDING THE PERSON IS EITHER NOT ON ANY MIND ALTERING MEDICATION OR HAS TAKEN HIS OR HER MEDICATION, HAS CONFIRMED THE PERSON IS ACTING INVOLUNTARILY.

THESE ARE ALL PARTS OF A NORMAL COLLOQUY.

SEEMS LIKE THE BASIS FOR MR. TAYLOR'S WITHDRAWAL OR ATTEMPTED WITHDRAWAL IS IN THE FACT, THE SUBJECTIVE MOTIVATION.

MONEY REALLY SAYS IS I'M DEALING WITH MY MENTAL ILLNESS AND THERE IS CHAOS IN THE MEDICATION I'M NOT GETTING AS REGULARLY AS POSSIBLE SO YES, I WOULD LIKE TO WITHDRAW MY WAIVER.

THE TROUBLE WITH THAT IS THE DECISION TO MAKE THE WAIVER ON THE RECORD WAS SUPPORTED I AM SURE BY THE COLLOQUY TO THE DEFENDANTS PRESENT MENTAL STATUS, PRESENT VOLUNTARINESS.

I THINK THE RULE YOU ARE ASKING US TO ADOPT MAKES HASH OF WHAT HAPPENS WHEN A COLLOQUY IS TAKEN IN CORPORATE ARE ASKING US TO NULLIFY IT BECAUSE OF ITS INCONVENIENCE AND THE REGRET THE DEFENDANT LATER HAS.

>> RESPECTFULLY I DON'T THINK GIVING UP A JURY UNDER MISTAKEN REASON IS AN INCONVENIENCE.

AND I DON'T THINK THE SURROUNDING CIRCUMSTANCES.

>> DO YOU DISPUTE MR. CAYLOR HAD ADEQUATE MENTAL STATUS TO WAIVE HIS RIGHTS WHEN HE WAVED AT THEM.

>> NO.

>> YOU DON'T DISPUTE ABOUT.

>> I DON'T DISPUTE THAT.

>> YOUR POSITION IS THAT THE WAIVER WAS VOLUNTARY AND YOUR QUARREL IS WITH KNOWING THAT WITH RESPECT TO SOME SUBJECTIVE FACT, NOT WITH THE CONSEQUENCES OF THE WAIVER.

>> THE CONSEQUENCES OF THE WAIVER ARE, AND I APOLOGIZE I DON'T REMEMBER WHERE IN THE RECORD IT IS BUT IT IS IN ONE OF MR. CAYLOR'S STATEMENTS, MR. CAYLOR MADE THE WAIVER KNOWING IT WAS 99.9 I THINK WERE HIS WORDS PERCENT CERTAIN TO LEAD TO A DEATH SENTENCE, TO GIVE UP A JURY WHICH AT

THE TIME DID NOT REQUIRE YOU KNOW MENEFEE.

HE KNEW THAT'S WHAT HE WAS DOING AND HE KNEW HE WAS DOING IT BECAUSE OF A PROMISE TO THE VICTIMS MOTHER.

>> I DON'T SEE AND I WOULD REALLY LIKE FOR YOU TO RESPOND TO THE DIFFERENCE BETWEEN US THAT EXTERNAL COME UP HOWEVER IMPORTANT IT MAY BE, A FACT EXTERNAL TO THE DECISION OF ONE OF THE LEGAL CONSEQUENCES. YOUR POINTING TO THAT EXTERNAL FACT.

DID SAY HE HAD MADE THE DETERMINATION TO WAIVE HIS RIGHTS BECAUSE HE HAD NO SUBJECTIVE BELIEF IN THE AFTERLIFE AND THEN HE FOUND RELIGION AND NOW HE WANTS TO CHANGE HIS WAIVER BECAUSE HE THINKS HE HAS TO DO SOME KIND OF THING WITH HIS LIFE.

YOUR ROLE WOULD ALLOW HIM TO TAKE THAT EXTERNAL CONSIDERATION AND MAKE IT PART OF THE KNOWING AND VOLUNTARY COLLOQUY BEFORE THE COURT.

>> YOUR HONOR, THE RULE, TO THE EXTENT WE ARE SEEKING A RULE TODAY I DON'T THINK WOULD GO THAT FAR BUT IT WOULD BE WHEN SOMETHING MADE IT CLEAR THROUGHOUT THE PROCEEDINGS THAT IS GOAL IN WAVING, SOMETHING TO WHICH HE IS ENTITLED IS A PROMISE OR IN EXTERNAL PROMISE, YES.

AND WHEN THAT PROMISE IS IMPOSSIBLE BECAUSE OF THE DEATH OF THE PROMISEE THE PERSON IS NOT INFORMED, THE PERSON SHOULD BE GIVEN AN OPPORTUNITY TO REFLECT ON WHETHER HE WANTS TO ENTER INTO A WAIVER.

I WANT TO RETURN TO THE MOMENT THAT JUSTICE KENNEDY MENTIONED WHERE HE DID NOT OBJECT AT THE RESENTENCING HEARING.

MR. CAYLOR HAD NO IDEA THAT THEY WERE GOING TO HEAR THAT NEWS AND APPARENTLY IN THE RECORD THE COURT DID NOT KNOW UNTIL THAT DATE TOO THERE THERE IS ONE PARTY THAT KNEW AHEAD OF TIME AND THAT WAS THE STATE OF FLORIDA.

THE STATE OF FLORIDA COULD HAVE REACHED OUT TO COUNSEL AND GIVEN THEM AN OPPORTUNITY TO HAVE THIS INFORMATION AND TO OBJECT AT THE HEARING. THEY COULD'VE STARTED THE HEARING WITH THERE'S BEEN A MATERIAL CHANGE IN CIRCUMSTANCES FOR MY CLIENT.

THAT A MATERIAL CHANGE IN CIRCUMSTANCE THE CIRCUMSTANCES DON'T EXIST BECAUSE THE VICTIMS MOTHER HAD BEEN DEAD SINCE THE PREVIOUS JANUARY IN THE STATE OF FLORIDA DIDN'T DO THAT.

THE STATE OF FLORIDA SAT THERE COULD WE LET THIS IS WHAT HE WANTS TO DO. AND ONLY AFTER THAT THAT THE STATE OF FLORIDA SAY BY THE WAY, SHE'S DEAD BUT WE HAVE OUR VICTIM IMPACT STATEMENT RIGHT HERE.

I THINK WE HAD TO TOTAL BUT IN THE FACT THAT MR. CAYLOR WAS WITH COUNSEL WHO DID NOT OBJECT AND A MOTION WAS FILED APPARENTLY AS SOON AS HE WAS ABLE TO CONFER WITH COUNSEL.

I AM GETTING TOWARD THE END OF MY TIME.

IN ADDITION TO THAT NOTE UNDER THE STANDARD THE COURT DEVELOPED IN FLOYD FOR RETRACTING A WAIVER OR ALLOWING SOMEONE TO RETRACTOR WAIVER.

YES, THE JUSTICE AS YOU MENTIONED THE TRIAL COURTS FINDING IT WAS MADE FOR DELAY WHICH I DON'T BELIEVE IS SUPPORTED BY THE RECORD IF YOU LOOK AT THE CHRONOLOGY.

THE OTHER FLOYD FACTORS WAY COMPLETELY IN MR. CAYLOR'S FAVOR.

THERE WAS NO EVIDENTIARY PROCEEDING THAT WOULD HAVE TO BE UNDONE.

THE ONLY THING THAT HAPPENED AT THE SENTENCING HEARING IS DOCUMENTS HAVE BEEN ENTERED INTO THE RECORD.

AND IN FACT, EVEN WHEN THE HEARING WAS CLOSED THE COURT WAS EXPLICITLY WAITING FOR A STATE REPORT FROM AN EXPERT RETAINED BY THE STATE.

SO CLEARLY THIS WAS NOT THE SAME THING AS SOMEBODY GOING THROUGH AN EVIDENTIARY PROCEEDING, THE EXPENSE OF A TRIAL, CALLING WITNESSES AND THEN TRYING TO CHANGE THEIR MIND.

IF YOU LOOK AT IT UNDER THE FLOYD FACTORS, MR. CAYLOR SHOULD HAVE BEEN ABLE TO EXERCISE HIS RIGHT TO A JURY AND IF YOU HAVE NO FURTHER QUESTIONS I WOULD LIKE TO RESERVE THE REMAINDER OF MY TIME.

>> MAKE IT PLEASE THE COURT, CHARMAINE MILLSAPS REPRESENTING THE STATE WOULD'VE LIKED TO GET RIGHT TO THE HEART OF WHAT KNOWING FOR A WAIVER MEANS BECAUSE THAT'S REALLY THE CLAIM HERE THAT THE WAIVER WAS UNKNOWNING AND I WOULD LIKE TO QUOTE FROM THE FIGARO CASE CITING THE UNITED STATES SUPREME COURT CASE OF RULE AS.

YOU SAY THE LAW ORDINARILY CONSIDERS A WAIVER KNOWING INTELLIGENT AND SUFFICIENTLY AWARE THE DEFENDANT FULLY UNDERSTANDS THE NATURE OF THE RIGHT AND HOW THE RIGHT WOULD LIKELY APPLY IN GENERAL, YOU ARE QUOTING THE UNITED STATES SUPREME COURT THERE.

THE KNOWLEDGE YOU NEED FOR THE WAIVER TO BE KNOWING IN THE LEGAL SENSE IS A KNOWLEDGE REGARDING SURROUNDING THE RIGHT YOU ARE WAIVING.

WHAT THIS WITHOUT THE BE AS IT HAPPENED IN FIGARO SOME MISINFORMATION REGARDING THE RIGHT OF ISSUE.

SOMEBODY WOULD HAVE TO SAY THIS CLAIM TO HAVE ANYTHING TO DO WITH WHAT WE MEAN BY KNOWING WOULD HAVE TO BE AMISS APPREHENSION OR MISINFORMATION ABOUT THE RIGHT TO A PENALTY PHASE JURY HERE THIS ALLEGATION DOESN'T EVEN COME CLOSE TO THIS.

IS A COMPLETE DISCONNECT WHAT YOU NEED TO KNOW FOR KNOWING WAIVER AND ITS CLAIM.

IT'S QUITE FRANKLY, THE MOTHERS DEATH IN TERMS OF WHETHER THE WAIVER WAS VOLUNTARY IS COMPLETELY.

MISINFORMATION ASKED TO BE CONNECTED TO THE RIGHT THAT YOU ARE WAIVING FOR THE CONSEQUENCES.

HEAR WHAT HE WOULD HAVE TO BE TOLD US WHAT PENALTY PHASE JURIES PURPOSE AND ROLE IS TO HEAR THE CONSEQUENCES WOULD BE THIS WOULD TURN INTO A BENCH PENALTY PHASE WITH THE JUDGE ALONE WOULD MAKE THE FACTUAL FINDINGS WERE TYPICALLY WHEN YOU HAD A JURY WOULD BE IN CONJUNCTION WITH THE JURY.

>> I AGREE WITH YOUR ARGUMENT AND YET I'M CURIOUS WHETHER THE STATE DID IN FACT KNOW ABOUT THE MOTHERS PASSING PRIOR TO THE QUALITY DURING WHICH MR. CAYLOR WAIVED HIS RIGHT.

>> THE PROSECUTOR MUST'VE KNOWN BEFORE HE WALKED INTO THE PENALTY PHASE.

I CAN TELL YOU I DON'T KNOW NOT KNOW WHAT THE ANSWER.

NORMALLY WE FIND OUT FROM THE VICTIMS WHEN SOME PROCEEDING IS COMING UP THAT THE VICTIM IS GOING TO BE PART OF OR A MAJOR STAGE OF THE CASE.

JUST FOR MY OWN EXPERIENCE I USUALLY FIND OUT ABOUT WHETHER THE VICTIMS ARE GOING TO COME TO AN ORAL ARGUMENT FOR EXAMPLE JUST A FEW WEEKS BEFORE HE RECONTACTED THEM FOUR OR FIVE WEEKS BEFORE SO I SUSPECT THE PROSECUTOR ONLY KNEW BEFORE THE PENALTY PHASE BUT THERE IS NOTHING IN THE RECORD ABOUT THAT.

>> WHEN DID THE WAIVER HAPPENED.

>> THE WAIVER COLLOQUY.

>> YES.

>> THE WAIVER COLLOQUY WAS IN MAY.

MOTHER DIED IN JANUARY THAT YEAR AND THEN MAY WAS A WAIVER COLLOQUY IN NOVEMBER WAS SAID PENALTY PHASE, THE BENCH PENALTY PHASE.

BUT I WOULD ALSO LIKE TO READ IN FIGARO YOU RELIED ON RUE AS ANDREW AS HAS A BOARD THAT LITERALLY SAYS WHERE THEY ARE TALKING ABOUT, THAT WAS THE WHOLE ISSUE HOW THOROUGH THE DEFENDANTS COMPLETE IN THE WORDS OF THE UNITED STATES SUPREME COURT.

THE DEFENDANTS KNOWLEDGE HAS TO BE.

THEY DIDN'T GET GRADING MATERIAL IN THE UNITED STATES SUPREME COURTS AND FAST TRACKS IS STILL VALID EVEN THOUGH YOU DO NOT HAVE MUCH MORE RELEVANT INFORMATION, THE INFORMATION THE GOVERNMENT IS GOING TO PRESENT AGAINST YOU.

WHAT IT SAYS IN RESPECTED DEFENDANTS AWARENESS OF THE RELEVANT CIRCUMSTANCES IT DOES NOT REQUIRE COMPLETE KNOWLEDGE BUT IT PERMITS THE COURT TO ACCEPT A GUILTY FEE, WHICH IS A FORMAL WAIVER WITH ITS ACCOMPANYING WAIVER OF THE VARIOUS CONSTITUTIONAL RIGHTS AND HERE IS THE MONEY QUOTE.

DESPITE VARIOUS FORMS AMISS APPREHENSION UNDER WHICH A DEFENDANT MIGHT LABOR AND IT CITES BRADY VERSUS THE UNITED STATES WHICH IS THE CASE I RELIED ON.

EVEN A DEFENDANT ADMITTED FROM THE UNITED STATES SUPREME COURT THAT A DEFENDANT IN THE EVENT A MISTAKE OF FACT NOT RELATED TO THE RIGHTED ISSUE COMMIT NOT RELATED, THAT IS A MISAPPREHENSION, THAT IS MISINFORMATION BUT IS UNCONNECTED TO THE RIGHT AT ISSUE DOES NOT RENDER, IN THAT CASE IT WAS A GUILTY PLEA, BUT IT DOES NOT RENDER A WAIVER INVOLUNTARY.

THE UNITED STATES SUPREME COURT DOESN'T CARE ABOUT OTHER FORMS OF MISTAKES THAT AREN'T RELATED TO THE RIGHT AT ISSUE.

THE PROSECUTORS.

>> MAY I ASK YOU QUICKLY ON STANDARD OF REVIEW WITH THAT BEING YOUR ARGUMENT, DO YOU STILL SEE IT AS ABUSE OF DISCRETION OR REGARDLESS OF HOW THE COURT INTERPRETED THIS ARGUMENT IT WOULD HAVE BEEN LEGALLY INSUFFICIENT REGARDLESS?

>> AS A MATTER OF LAW, THIS CLAIM DOES NOT GIVE RISE, CANNOT SUPPORT AN UNKNOWING BUT THAT DOES NOT CHANGE MY ARGUMENT.
IT'S ALTERNATIVE.

AND WENT ON BOTH THE FACTS AND LAW IN THIS WAS A FINDING BY A TRIAL COURT THAT THIS WAS MADE IN BAD FAITH THAT THE MOTION TO WITHDRAW THE PRIOR WAIVER OF THE PENALTY PHASE JURY AND HERE IS A QUOTE IN BAD FAITH FOR PURPOSES OF OBTAINING THE DELAY IN THE RECORD FULLY SUPPORTS THAT, THE TRIAL JUDGE RELIED ON TWO MAIN REASONS FOR THAT ONE WAS OVER FOUR MONTHS.

JUST A FEW DAYS YOU DON'T REMEMBER, THIS DEFENDANT WAS INFORMED TWICE BY TWO DIFFERENT SOURCES TO PROSECUTE THE RIGHT AFTER THE JUDGE ASKED THE DEFENDANT TO REAFFIRM HIS WANTING TO WAIVE LITERALLY CHANGED THE PAGE THE PROSECUTOR TELLS EVERYONE IN THE COURTROOM OF THE MOTHER HAS DIED IN THE GRANDFATHER OF THE VICTIM WHO IS THE FATHER OF THE MOTHER IN THE VICTIM IMPACT THAT IS BEING READ TO THE COURT, THAT IS ALSO INCLUDED. TO DO DIFFERENT SOURCES AT TWO DIFFERENT TIMES AND HE HAS NO TROUBLE WRITING LETTERS TO THIS JUDGE.

THIS RECORD IS FULL SO YOU MAY WANT TO TALK TO COUNSEL BUT THAT NEEDS TO BE DONE QUICKLY.

HE SHOULD'VE ASKED FOR A BREAK RIGHT THEN IF THIS WAS HIS SOLE MOTIVATION. I'M JUST SAYING THE JUDGE COULD SAY EVEN IF THAT IS IN RESPONSE TO WHAT HAPPENED, THAT IS IRRELEVANT, LEGALLY IRRELEVANT TO KNOWING AND IF HE WANTED TO ENFORCE THE WAIVER HE COULD.

ONE MORE THING ABOUT FLOYD, THE ARGUMENT HERE SEEMS TO BE THE JUDGE NOT MANY VERY JUDICIAL RESOURCES WERE SPENT BECAUSE OF THE PENALTY PHASE WAS ADMITTEDLY BECAUSE OF BOTH THE WAIVER AND MITIGATION IS A VERY SHORT THING.

BASICALLY WHAT HAPPENED WAS THE TRANSCRIPTS FROM THE FIRST PENALTY PHASE CAME IN FOR PURPOSES OF MOHAMMED IN THE VICTIM IMPACT LETTERS WERE READ AND THEY WERE GOING TO LET THE DEFENDANT TALK BUT THE JUDGE SAID YOU CAN DO THAT BUT ADMITTEDLY IT WAS SHORT BUT WE DO NOT DO ENTIRE PROCEEDINGS JUST BECAUSE THEY DIDN'T TAKE DAYS AND DAYS AND DAYS AND SECONDLY, WE DON'T EVEN KNOW THAT'S TRUE.

THAT JUDICIAL LABOR, WE DON'T KNOW IF JUDGE PATTERSON VERY WELL MAY HAVE STARTED READING THE PENALTY PHASE TRANSCRIPTS FROM THE FIRST TO START PREPARING HIS SENTENCING ORDER.

WE HAVE NO IDEA.

THE JUDICIAL LABEL THAT HAPPENED ON THE RECORD, THERE MAY HAVE BEEN

MUCH MORE BACK IN CHAMBERS.

REGARDLESS OF HOW MUCH TIME WAS SPENT, YOU DO NOT REDO AN ENTIRE THING. THE JUDGES FINDINGS THAT CHANGING YOUR MIND AND WAITING FOR MONTHS IS BAD FAITH OR COMPLETELY SUPPORTED BY THIS RECORD AND THERE IS NO ABUSE OF DISCRETION WHEN A JUDGE HAS MADE BASICALLY FACTUAL FINDING OF BAD FAITH SUPPORTED, BOTH THOSE ARE UNDISPUTED.

IT IS UNDISPUTED THE MOTION WAS FOUR MONTHS LATE REALLY AND THAT THE DEFENDANT ADDED HISTORY ALL THROUGH THE PRECEDING AND CHANGING HIS MIND.

WE ASK YOU TO AFFIRM THE SENTENCE FOLLOWING THE HISTORY SENTENCING. THANK YOU.

>> THANK YOU VERY MUCH.

>> YOUR HONORS, REGARDING THE DEFENDANT CHANGING HIS MIND, THERE IS ONLY ONE PERIOD OF TIME DURING WHICH MR. CAYLOR'S DECISION ABOUT WAVING ARGUABLY CAUSED ANY DELAY WITH THE PROCEEDINGS ALREADY DELAYED FOR OTHER REASONS AND THAT IS THAT TIME PERIOD BETWEEN WHEN HE FOUND OUT IN NOVEMBER THAT THE VICTIMS MOTHER WAS DEAD AND WHEN HIS MOTION WAS FILED.

AND I WOULD AGAIN DIRECT YOU TO THE SUMMARY OF CONTEXT WITH COUNSEL AND THE DEFENDANT AS EVIDENCED THIS WAS NOT AN UNREASONABLE DELAY, IT WAS NOT DONE FOR THE PURPOSE OF DELAYING THE ENTIRE PROCEEDINGS. THIS MOTION WAS FILED AS SOON AS MR. CAYLOR WAS ABLE TO CONSULT WITH COUNSEL ABOUT THE CONSEQUENCES OF WHAT HE LEARNED AT THE NOVEMBER HEARING.

I ALSO WANT TO POINT OUT HE WAS TOLD IF HE WANTED TO SAY ANYTHING HE COULD BUT THAT HE WOULD BE SWORN AND QUESTIONED AND SUBJECT TO CROSS-EXAMINATION AND SO IT'S UNDERSTANDABLE HE AGREED TO WAIT UNTIL THE SPENCER HEARING AND THIS MOTION WAS FILED IN ADVANCE OF THE SPENCER HEARING BEING SCHEDULED.

WANT TO QUICKLY GO BACK TO FLOYD.

WHEN YOU REMOVE THE BAD FAITH FINDING, WHICH I DON'T BELIEVE IS SUPPORTED BY THE RECORD, FLOYD SAID THE TRIAL COURTS DISCRETION SHOULD BE EXERCISED LIBERALLY IN FAVOR OF GRANTING TO AN ACCUSED THE RIGHT TO A TRIAL BY JURY IMPORTANT THAT COULD HAVE HAPPENED HERE.

ARE POSITION WAS IT WAS AN ABUSE OF THE TRIAL COURTS DISCRETION IN THE CONTEXT OF THE WAY THESE WAIVERS WERE MADE AND ATTEMPTED TO BE WITHDRAWN TO DENY MR. CAYLOR THAT JURY FOR HIS PENALTY PHASE, WHICH IS A SIGNIFICANT RIGHT AND ONE THAT HE KNEW HE WAS BASICALLY ACQUIESCING TO THE REINSTATEMENT OF A DEATH SENTENCE.

THAT WAS CLEAR FROM THE RECORD.

FLOYD SAYS WAS SOME REAL HARM WILL BE DONE, UNLESS IT WOULD BE REAL INCONVENIENCE TO THE COURT OR THE STATE THAT THE IMPORTANCE OF THE RIGHT TO JURY SHOULD LEAD THE COURT TO EXERCISE ITS DISCRETION IN FAVOR

OF GIVING SOMEONE A JURY TRIAL AND SO IF THERE ARE NO FURTHER QUESTIONS,
MR. CAYLOR REQUESTS A NEW PENALTY PHASE BEFORE THE JOURNEY.

>> THANK YOU.

WE ARE ADJOURNED.

>> ALL RISE.